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Title: FEDERAL REGISTER:

Volume: 63

Issues: 84-94
PAGES: 24097-26955

Date: MAY 1 - MAY 15, 1998

UMI Number: 2575.00

Note:

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5-1-98
Vol. 63 No. 84

Journal of
Federal Register

Friday
May 1, 1998

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Printing Office
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5-1-98
Vol. 63 No. 84
Pages 24097-24382

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Investment Securities and End-User Derivatives; Interpretive Ruling and Policy Statement

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretive Ruling and Policy Statement No. 98-2—Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities and Withdrawal of Interpretive Ruling and Policy Statement No. 92-1—Supervisory Policy Statement on Securities Activities.

SUMMARY: The National Credit Union Administration (NCUA), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS), (collectively referred to as the agencies) under the auspices of the Federal Financial Institutions Examination Council (FFIEC) have approved the Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities (1998 Statement) which provides guidance on sound practices for managing the risks of investment activities. This statement replaces the Supervisory Policy Statement on Securities Activities published on February 3, 1992 (1992 Statement). NCUA adopted the 1992 Statement as Interpretive Ruling and Policy Statement No. 92-1 (IRPS No. 92-1). Many elements of the prior statement are retained in the 1998 Statement, while other elements have been revised or eliminated. In adopting the 1998 Statement, the agencies are removing the specific constraints in the 1992 Statement concerning investments

by insured depository institutions in "high risk" mortgage derivative products. The agencies believe that it is a sound practice for institutions to understand the risks related to all their investment holdings. Accordingly, the 1998 Statement substitutes broader guidance than the specific pass/fail requirements contained in the 1992 Statement. Other than for the supervisory guidance contained in the 1992 Statement, the 1998 Statement does not supersede any other requirements of the agencies' statutory rules, regulations, policies, or supervisory guidance. Because the 1998 Statement does not retain the elements of the 1992 Statement addressing the reporting of securities activities (Section II of the 1992 Statement), the agencies intend to separately issue supervisory guidance on the reporting of investment securities and end-user derivatives activities. Each agency may issue additional guidance to assist institutions in the implementation of this statement.

DATES: The Interpretive Ruling and Policy Statement is effective October 1, 1998.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: Daniel Gordon, Senior Investment Officer, Office of Investment Services, (703) 518-6620 or Kim Iverson, Program Officer, Office of Examination and Insurance (703) 518-6360, or at the above address.

SUPPLEMENTARY INFORMATION: In 1992, the agencies implemented the FFIEC's Supervisory Policy Statement on Securities Activities (57 FR 4028, February 3, 1992). The 1992 Statement addressed: (1) selection of securities dealers, (2) portfolio policy and strategies (including unsuitable investment practices), and (3) residential mortgage derivative products (MDPs).

The final section of the 1992 Statement directed institutions to subject MDPs to supervisory tests to determine the degree of risk and the investment portfolio eligibility of these instruments. At that time, the agencies believed that many institutions had demonstrated an insufficient understanding of the risks associated with investments in MDPs. This occurred, in part, because most MDPs were issued or backed by collateral

guaranteed by government sponsored enterprises. The agencies were concerned that the absence of significant credit risk on most MDPs had allowed institutions to overlook the significant interest rate risk present in certain structures of these instruments. In an effort to enhance the investment decision making process at financial institutions, and to emphasize the interest rate risk of highly price sensitive instruments, the agencies implemented supervisory tests designed to identify those MDPs with price and average life risks greater than a newly issued residential mortgage pass-through security.

These supervisory tests provided a discipline that helped institutions to better understand the risks of MDPs prior to purchase. The 1992 Statement generally provided that institutions should not hold high risk MDPs in their investment portfolios.¹ A high risk MDP was defined as a mortgage derivative security that failed any of three supervisory tests. The three tests included: an average life test, an average life sensitivity test, and a price sensitivity test.²

These supervisory tests, commonly referred to as the "high risk tests," successfully protected institutions from significant losses in MDPs. By requiring a pre-purchase price sensitivity analysis that helped institutions to better understand the interest rate risk of MDPs, the high risk tests effectively precluded institutions from investing in many types of MDPs that resulted in large losses for other investors. However, the high risk tests may have created unintended distortions of the investment decision making process. Many institutions eliminated all MDPs from their investment choices, regardless of the risk versus return merits of such instruments. These reactions were due, in part, to concerns about regulatory burden, such as higher than normal examiner review of MDPs.

¹ The only exceptions granted were for those high risk securities that either reduced interest rate risk or were placed in a trading account. Federal credit unions were not permitted these exceptions.

² Average Life: Weighted average life of no more than 10 years; Average Life Sensitivity: (a) weighted average life extends by no more than 4 years (300 basis point parallel shift in rates), (b) weighted average life shortens by no more than 6 years (300 basis point parallel shift in rates); Price Sensitivity: price does not change by more than 17 percent (increase or decrease) for a 300 basis point parallel shift in rates.

By focusing only on MDPs, the test and its accompanying burden indirectly provided incentives for institutions to acquire other types of securities with complex cash flows, often with price sensitivities similar to high risk MDPs. The emergence of the structured note market is just one example. The test may have also created the impression that supervisors were more concerned with the type of instrument involved (i.e., residential mortgage products), rather than the risk characteristics of the instrument, since only MDPs were subject to the high risk test. The specification of tests on individual securities may have removed the incentive for some institutions to apply more comprehensive analytical techniques at the portfolio and institutional level.

As a result, the agencies no longer believe that the pass/fail criteria of the high risk tests as applied to specific instruments constitutes effective supervision of investment activities. The agencies believe that an effective risk management program, through which an institution identifies, measures, monitors, and controls the risks of investment activities, provides a better framework. Hence, the agencies are eliminating the high risk tests as binding constraints on MDP purchases in the 1998 Statement.

Effective risk management addresses risks across all types of instruments on an investment portfolio basis and ideally, across the entire institution. The complexity of many financial products, both on and off the balance sheet, has increased the need for a more comprehensive approach to the risk management of investment activities.

The rescission of the high risk tests as a constraint on an institution's investment activities does not signal that MDPs with high levels of price risk are either appropriate or inappropriate investments for an institution. Whether a security, MDP or otherwise, is an appropriate investment depends upon a variety of factors, including the institution's capital level, the security's impact on the aggregate risk of the portfolio, and management's ability to measure and manage risk. The agencies continue to believe that the stress testing of MDP investments, as well as other investments, has significant value for risk management purposes. Institutions should employ valuation methodologies that take into account all of the risk elements necessary to price these investments. The 1998 Statement states that the agencies believe, as a matter of sound practice, institutions should know the value and price

sensitivity of their investments prior to purchase and on an ongoing basis.

Summary of Comments

The 1998 Statement was published by the FFIEC for comment in the *Federal Register* of October 3, 1997 (62 FR 51862). The FFIEC received twenty-one comment letters from a variety of insured depository institutions, trade associations, Federal Reserve Banks, and financial services organizations. Overall, the comments were supportive of the 1998 Statement. The comments generally approved of: (i) The rescission of the high risk test as a constraint on investment choices in the 1992 Statement; (ii) the establishment by institutions of programs to manage market, credit, liquidity, legal, operational, and other risks of investment securities and end-user derivatives activities; (iii) the implementation of sound risk management programs that would include certain board and senior management oversight and a comprehensive risk management process that effectively identifies, measures, monitors, and controls risks; and (iv) the evaluation of investment decisions at the portfolio or institution level, instead of the focus of the 1992 Statement on limiting an institution's investment decisions concerning specific securities instruments.

The following discussion provides a summary of significant concerns or requests for clarifications that were presented in the aforementioned comments.

1. Scope

The guidance covers a broad range of instruments including all securities in held-to-maturity and available-for-sale accounts as defined in the Statement of Financial Accounting Standards No. 115 (FAS 115), certificates of deposit held for investment purposes, and end-user derivative contracts not held in trading accounts.

Some comments focused on the 1998 Statement's coverage of "end-user derivative contracts not held in trading accounts." According to these comments, the 1998 Statement appears to cover derivative contracts not traditionally viewed as investments including: (i) swap contracts entered into when the depository institution makes a fixed rate loan but intends to change the income stream from a fixed to floating rate, (ii) swap contracts that convert the interest rates on certificates of deposit from fixed to floating rates of interest, and (iii) swap contracts used for other asset-liability management purposes. Those commenters objected to

the necessity of additional guidance for end-user derivatives contracts given current regulatory guidance issued by the agencies with respect to derivative contracts.

The guidance contained in the 1998 Statement is consistent with existing agency guidance. The agencies believe that institutions should have programs to manage the market, credit, liquidity, legal, operational, and other risks of both investment securities and end-user derivative activities. Given the similarity of the risks in those activities and the similarity of the programs needed to manage those risks, especially when end-user derivatives are used as investment vehicles, the agencies believe that covering both activities within the scope of the 1998 Statement is appropriate.

2. Board Oversight

Some commenters stated that the 1998 Statement places excessive obligations on the board of directors. Specifically, comments indicated that it is unnecessary for an institution's board of directors to: (i) Set limits on the amounts and types of transactions authorized for each securities firm with whom the institution deals, or (ii) review and reconfirm the institution's list of authorized dealers, investment bankers, and brokers at least annually. These commenters suggested that it may be unnecessary for the board—particularly for larger institutions—to review and specifically authorize each dealer. They indicated that it should be sufficient for senior management to ensure that the selection of securities firms is consistent with board approved policies, and that establishment of limits for each dealer is a credit decision that should be issued pursuant to credit policies.

The agencies believe that the board of directors is responsible for supervision and oversight of investment portfolio and end-user derivatives activities, including the approval and periodic review of policies that govern relationships with securities dealers. Especially with respect to the management of the credit risk of securities settlements, the agencies encourage the board of directors or a subcommittee chaired by a director to actively participate in the credit decision process. The agencies understand that institutions will have various approaches to the credit decision process, and therefore that the board of directors may delegate the authority for selecting dealers and establishing dealer limits to senior management. The text of the 1998

Statement has been amended to clarify the obligation of the board of directors.

3. Pre-Purchase Analysis

The majority of the commenters were in full support of eliminating the specific constraints on investing in "high risk" MDPs. Some commenters expressed opposition with respect to the 1998 Statement's guidance concerning pre-purchase analysis by institutions of their investment securities. Those commenters felt that neither pre-acquisition stress testing nor any specific stress testing methodology should be required for individual investment decisions. Some commenters involved in the use of securities for collateral purposes emphasized the benefits of pre- and post-purchase stress testing of individual securities.

The agencies wish to stress that institutions should have policies designed to meet the business needs of the institution. These policies should specify the types of market risk analyses that should be conducted for various types of instruments, including that conducted prior to their acquisition and on an ongoing basis. In addition, policies should specify any required documentation needed to verify the analysis. Such analyses will vary with the type of investment instrument.

As stated in Section V of the 1998 Statement, not all investment instruments need to be subjected to a pre-purchase analysis. Relatively simple or standardized instruments, the risks of which are well known to the institution, would likely require no or significantly less analysis than would more volatile, complex instruments. For relatively more complex instruments, less familiar instruments, and potentially volatile instruments, institutions should fully address pre-purchase analysis in their policies. In valuing such investments, institutions should ensure that the pricing methodologies used appropriately consider all risks (for example, caps and floors in adjustable-rate instruments). Moreover, the agencies do not believe that an institution should be prohibited from making an investment based solely on whether that instrument has a high price sensitivity.

4. Identification, Measurement, and Reporting of Risks

Some commenters questioned whether proposed changes by the agencies concerning Schedule RC-B of the Consolidated Reports of Condition and Income ("Call Reports") conflicted with the 1998 Statement's elimination of the high risk test for mortgage

derivative products. The proposed changes to the Call Reports would require the disclosure of mortgage-backed and other securities whose price volatility in response to specific interest rate changes exceeds a specified threshold level. (See 62 FR 51715, October 2, 1997.)

The banking agencies have addressed the concerns presented in these comments within the normal process for changing the Call Reports. For the 1998 Call report cycle, there will be no changes to the high risk test reporting requirement in the Call Reports. (The above discussion is not applicable for federal credit unions. Any changes to the Call Report for credit unions will be made through the normal process for changing Call Reports.)

5. Market Risk

One commenter suggested that the agencies enhance the 1998 Statement by discussing and endorsing the concept of total return. The agencies agree that the concept of total return can be a useful way to analyze the risk and return tradeoffs for an investment. This is because the analysis does not focus exclusively on the stated yield to maturity. Total return analysis, which includes income and price changes over a specified investment horizon, is similar to stress test analysis since both examine a security under various interest rate scenarios. The agencies' supervisory emphasis on stress testing securities has, in fact, implicitly considered total return. Therefore, the agencies endorse the use of total return analysis as a useful supplement to price sensitivity analysis for evaluating the returns for an individual security, the investment portfolio, or the entire institution.

6. Measurement System

One respondent stated that the complexity and sophistication of the risk measurement system should not be a factor in determining whether pre- and post-acquisition measurement of interest rate risk should be performed at the individual investment level or on an institutional or portfolio basis. The agencies agree that this statement may be confusing and are amending the Market Risk section.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small credit unions, defined as those having less

than \$1 million in assets. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

NCUA has determined that the final Interpretive Ruling and Policy Statement does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB).

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final Interpretive Ruling and Policy Statement applies directly only to federal credit unions. NCUA has determined that the final Interpretive Ruling and Policy Statement does not constitute a "significant regulatory action" for purposes of the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for Congressional review of agency rules. The reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act, 5 U.S.C. 551. NCUA is currently awaiting the Office of Management and Budget's (OMB) decision on whether this is a major rule.

By the National Credit Union Administration Board on April 16, 1998.

Becky Baker,
Secretary of the Board.

Accordingly, Interpretive Ruling and Policy Statement No. 98-2 is issued as follows:

1. Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).
2. Interpretive Ruling and Policy Statement No. 92-1 (57 FR 22157, May 27, 1992) is withdrawn.
3. Interpretive Ruling and Policy Statement No. 98-2 is issued to read as follows:

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 98-2) will not appear in the Code of Federal Regulations.

Interpretive Ruling and Policy Statement No. 98-2—Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities

I. Purpose

This policy statement (Statement) provides guidance to financial

institutions (institutions) on sound practices for managing the risks of investment securities and end-user derivatives activities.¹ The FFIEC agencies—the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration—believe that effective management of the risks associated with securities and derivative instruments represents an essential component of safe and sound practices. This guidance describes the practices that a prudent manager normally would follow and is not intended to be a checklist. Management should establish practices and maintain documentation appropriate to the institution's individual circumstances, consistent with this Statement.

II. Scope

This guidance applies to all securities in held-to-maturity and available-for-sale accounts as defined in the Statement of Financial Accounting Standards No. 115 (FAS 115), certificates of deposit held for investment purposes, and end-user derivative contracts not held in trading accounts. This guidance covers all securities used for investment purposes, including: money market instruments, fixed-rate and floating-rate notes and bonds, structured notes, mortgage pass-through and other asset-backed securities, and mortgage-derivative products. Similarly, this guidance covers all end-user derivative instruments used for nontrading purposes, such as swaps, futures, and options.² This Statement applies to all federally-insured commercial banks, savings banks, savings associations, and federally chartered credit unions.

As a matter of sound practice, institutions should have programs to manage the market, credit, liquidity, legal, operational and other risks of investment securities and end-user derivatives activities (investment activities). While risk management programs will differ among institutions, there are certain elements that are fundamental to all sound risk management programs. These elements include board and senior management oversight and a comprehensive risk

management process that effectively identifies, measures, monitors, and controls risk. This Statement describes sound principles and practices for managing and controlling the risks associated with investment activities.

Institutions should fully understand and effectively manage the risks inherent in their investment activities. Failure to understand and adequately manage the risks in these areas constitutes an unsafe and unsound practice.

III. Board and Senior Management Oversight

Board of director and senior management oversight is an integral part of an effective risk management program. The board of directors is responsible for approving major policies for conducting investment activities, including the establishment of risk limits. The board should ensure that management has the requisite skills to manage the risks associated with such activities. To properly discharge its oversight responsibilities, the board should review portfolio activity and risk levels, and require management to demonstrate compliance with approved risk limits. Boards should have an adequate understanding of investment activities. Boards that do not, should obtain professional advice to enhance its understanding of investment activity oversight, so as to enable it to meet its responsibilities under this Statement.

Senior management is responsible for the daily management of an institution's investments. Management should establish and enforce policies and procedures for conducting investment activities. Senior management should have an understanding of the nature and level of various risks involved in the institution's investments and how such risks fit within the institution's overall business strategies. Management should ensure that the risk management process is commensurate with the size, scope, and complexity of the institution's holdings. Management should also ensure that the responsibilities for managing investment activities are properly segregated to maintain operational integrity. Institutions with significant investment activities should ensure that back-office, settlement, and transaction reconciliation responsibilities are conducted and managed by personnel who are independent of those initiating risk taking positions.

IV. Risk Management Process

An effective risk management process for investment activities includes: (1) policies, procedures, and limits; (2) the

identification, measurement, and reporting of risk exposures; and (3) a system of internal controls.

Policies, Procedures, and Limits

Investment policies, procedures, and limits provide the structure to effectively manage investment activities. Policies should be consistent with the organization's broader business strategies, capital adequacy, technical expertise, and risk tolerance. Policies should identify relevant investment objectives, constraints, and guidelines for the acquisition and ongoing management of securities and derivative instruments. Potential investment objectives include: generating earnings, providing liquidity, hedging risk exposures, taking risk positions, modifying and managing risk profiles, managing tax liabilities, and meeting pledging requirements, if applicable. Policies should also identify the risk characteristics of permissible investments and should delineate clear lines of responsibility and authority for investment activities.

An institution's management should understand the risks and cashflow characteristics of its investments. This is particularly important for products that have unusual, leveraged, or highly variable cashflows. An institution should not acquire a material position in an instrument until senior management and all relevant personnel understand and can manage the risks associated with the product.

An institution's investment activities should be fully integrated into any institution-wide risk limits. In so doing, some institutions rely only on the institution-wide limits, while others may apply limits at the investment portfolio, sub-portfolio, or individual instrument level.

The board and senior management should review, at least annually, the appropriateness of its investment strategies, policies, procedures, and limits.

Risk Identification, Measurement and Reporting

Institutions should ensure that they identify and measure the risks associated with individual transactions prior to acquisition and periodically after purchase. This can be done at the institutional, portfolio, or individual instrument level. Prudent management of investment activities entails examination of the risk profile of a particular investment in light of its impact on the risk profile of the institution. To the extent practicable, institutions should measure exposures to each type of risk and these

measurements should be aggregated and integrated with similar exposures arising from other business activities to obtain the institution's overall risk profile.

In measuring risks, institutions should conduct their own in-house pre-acquisition analyses, or to the extent possible, make use of specific third party analyses that are independent of the seller or counterparty. Irrespective of any responsibility, legal or otherwise, assumed by a dealer, counterparty, or financial advisor regarding a transaction, the acquiring institution is ultimately responsible for the appropriate personnel understanding and managing the risks of the transaction.

Reports to the board of directors and senior management should summarize the risks related to the institution's investment activities and should address compliance with the investment policy's objectives, constraints, and legal requirements, including any exceptions to established policies, procedures, and limits. Reports to management should generally reflect more detail than reports to the board of the institution. Reporting should be frequent enough to provide timely and adequate information to judge the changing nature of the institution's risk profile and to evaluate compliance with stated policy objectives and constraints.

Internal Controls

An institution's internal control structure is critical to the safe and sound functioning of the organization generally and the management of investment activities in particular. A system of internal controls promotes efficient operations, reliable financial and regulatory reporting, and compliance with relevant laws, regulations, and institutional policies. An effective system of internal controls includes enforcing official lines of authority, maintaining appropriate separation of duties, and conducting independent reviews of investment activities.

For institutions with significant investment activities, internal and external audits are integral to the implementation of a risk management process to control risks in investment activities. An institution should conduct periodic independent reviews of its risk management program to ensure its integrity, accuracy, and reasonableness. Items that should be reviewed include:

- (1) Compliance with the appropriateness of investment policies, procedures, and limits;
- (2) The appropriateness of the institution's risk measurement system

given the nature, scope, and complexity of its activities;

- (3) The timeliness, integrity, and usefulness of reports to the board of directors and senior management.

The review should note exceptions to policies, procedures, and limits and suggest corrective actions. The findings of such reviews should be reported to the board and corrective actions taken on a timely basis.

The accounting systems and procedures used for public and regulatory reporting purposes are critically important to the evaluation of an organization's risk profile and the assessment of its financial condition and capital adequacy. Accordingly, an institution's policies should provide clear guidelines regarding the reporting treatment for all securities and derivatives holdings. This treatment should be consistent with the organization's business objectives, generally accepted accounting principles (GAAP), and regulatory reporting standards.

V. The Risks of Investment Activities

The following discussion identifies particular sound practices for managing the specific risks involved in investment activities. In addition to these sound practices, institutions should follow any specific guidance or requirements from their primary supervisor related to these activities.

Market Risk

Market risk is the risk to an institution's financial condition resulting from adverse changes in the value of its holdings arising from movements in interest rates, foreign exchange rates, equity prices, or commodity prices. An institution's exposure to market risk can be measured by assessing the effect of changing rates and prices on either the earnings or economic value of an individual instrument, a portfolio, or the entire institution. For most institutions, the most significant market risk of investment activities is interest rate risk.

Investment activities may represent a significant component of an institution's overall interest rate risk profile. It is a sound practice for institutions to manage interest rate risk on an institution-wide basis. This sound practice includes monitoring the price sensitivity of the institution's investment portfolio (changes in the investment portfolio's value over different interest rate/yield curve scenarios). Consistent with agency guidance, institutions should specify institution-wide interest rate risk limits

that appropriately account for these activities and the strength of the institution's capital position. These limits are generally established for economic value or earnings exposures. Institutions may find it useful to establish price sensitivity limits on their investment portfolio or on individual securities. These sub-institution limits, if established, should also be consistent with agency guidance.

It is a sound practice for an institution's management to fully understand the market risks associated with investment securities and derivative instruments prior to acquisition and on an ongoing basis. Accordingly, institutions should have appropriate policies to ensure such understanding. In particular, institutions should have policies that specify the types of market risk analyses that should be conducted for various types or classes of instruments, including that conducted prior to their acquisition (pre-purchase analysis) and on an ongoing basis. Policies should also specify any required documentation needed to verify the analysis.

It is expected that the substance and form of such analyses will vary with the type of instrument. Not all investment instruments may need to be subjected to a pre-purchase analysis. Relatively simple or standardized instruments, the risks of which are well known to the institution, would likely require no or significantly less analysis than would more volatile, complex instruments.³

For relatively more complex instruments, less familiar instruments, and potentially volatile instruments, institutions should fully address pre-purchase analyses in their policies. Price sensitivity analysis is an effective way to perform the pre-purchase analysis of individual instruments. For example, a pre-purchase analysis should show the impact of an immediate parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. Where appropriate, such analysis should encompass a wider range of scenarios, including non-parallel changes in the yield curve. A comprehensive analysis may also take into account other relevant factors, such as changes in interest rate volatility and changes in credit spreads.

When the incremental effect of an investment position is likely to have a significant effect on the risk profile of the institution, it is a sound practice to analyze the effect of such a position on

¹ The FFIEC's 1998 Statement (63 FR 20191, April 23, 1998) does not supersede any other requirements of the respective agencies' statutory rules, regulations, policies, or supervisory guidance.

² Natural person federal credit unions are not permitted to purchase non-residential mortgage asset-backed securities and may participate in derivative programs only if authorized by the NCLA.

³ Federal credit unions must comply with the investment monitoring requirements of 12 CFR 703.90. See 62 FR 32989 (June 18, 1997).

the overall financial condition of the institution.

Accurately measuring an institution's market risk requires timely information about the current carrying and market values of its investments. Accordingly, institutions should have market risk measurement systems commensurate with the size and nature of these investments. Institutions with significant holdings of highly complex instruments should ensure that they have the means to value their positions. Institutions employing internal models should have adequate procedures to validate the models and to periodically review all elements of the modeling process, including its assumptions and risk measurement techniques. Management relying on third parties for market risk measurement systems and analysis should ensure that they fully understand the assumptions and techniques used.

Institutions should provide reports to their boards on the market risk exposures of their investments on a regular basis. To do so, the institution may report the market risk exposure of the whole institution. Alternatively, reports should contain evaluations that assess trends in aggregate market risk exposure and the performance of portfolios in terms of established objectives and risk constraints. They also should identify compliance with board approved limits and identify any exceptions to established standards. Institutions should have mechanisms to detect and adequately address exceptions to limits and guidelines. Management reports on market risk should appropriately address potential exposures to yield curve changes and other factors pertinent to the institution's holdings.

Credit Risk

Broadly defined, credit risk is the risk that an issuer or counterparty will fail to perform on an obligation to the institution. For many financial institutions, credit risk in the investment portfolio may be low relative to other areas, such as lending. However, this risk, as with any other risk, should be effectively identified, measured, monitored, and controlled.

An institution should not acquire investments or enter into derivative contracts without assessing the creditworthiness of the issuer or counterparty. The credit risk arising from these positions should be incorporated into the overall credit risk profile of the institution as comprehensively as practicable. Institutions are legally required to meet certain quality standards (i.e.,

investment grade) for security purchases. Many institutions maintain and update ratings reports from one of the major rating services. For non-rated securities, institutions should establish guidelines to ensure that the securities meet legal requirements and that the institution fully understands the risk involved. Institutions should establish limits on individual counterparty exposures. Policies should also provide credit risk and concentration limits. Such limits may define concentrations relating to a single or related issuer or counterparty, a geographical area, or obligations with similar characteristics.

In managing credit risk, institutions should consider settlement and pre-settlement credit risk. These risks are the possibility that a counterparty will fail to honor its obligation at or before the time of settlement. The selection of dealers, investment bankers, and brokers is particularly important in effectively managing these risks. The approval process should include a review of each firm's financial statements and an evaluation of its ability to honor its commitments. An inquiry into the general reputation of the dealer is also appropriate. This includes review of information from state or federal securities regulators and industry self-regulatory organizations such as the National Association of Securities Dealers concerning any formal enforcement actions against the dealer, its affiliates, or associated personnel.

The board of directors is responsible for supervision and oversight of investment portfolio and end-user derivatives activities, including the approval and periodic review of policies that govern relationships with securities dealers.

Sound credit risk management requires that credit limits be developed by personnel who are as independent as practicable of the acquisition function. In authorizing issuer and counterparty credit lines, these personnel should use standards that are consistent with those used for other activities conducted within the institution and with the organization's over-all policies and consolidated exposures.

Liquidity Risk

Liquidity risk is the risk that an institution cannot easily sell, unwind, or offset a particular position at a fair price because of inadequate market depth. In specifying permissible instruments for accomplishing established objectives, institutions should ensure that they take into account the liquidity of the market for those instruments and the effect that

such characteristics have on achieving their objectives. The liquidity of certain types of instruments may make them inappropriate for certain objectives. Institutions should ensure that they consider the effects that market risk can have on the liquidity of different types of instruments under various scenarios. Accordingly, institutions should articulate clearly the liquidity characteristics of instruments to be used in accomplishing institutional objectives.

Complex and illiquid instruments can often involve greater risk than actively traded, more liquid securities. Oftentimes, this higher potential risk arising from illiquidity is not captured by standardized financial modeling techniques. Such risk is particularly acute for instruments that are highly leveraged or that are designed to benefit from specific, narrowly defined market shifts. If market prices or rates do not move as expected, the demand for such instruments can evaporate, decreasing the market value of the instrument below the modeled value.

Operational (Transaction) Risk

Operational (transaction) risk is the risk that deficiencies in information systems or internal controls will result in unexpected loss. Sources of operating risk include inadequate procedures, human error, system failure, or fraud. Inaccurately assessing or controlling operating risks is one of the more likely sources of problems facing institutions involved in investment activities.

Effective internal controls are the first line of defense in controlling the operating risks involved in an institution's investment activities. Of particular importance are internal controls that ensure the separation of duties and supervision of persons executing transactions from those responsible for processing contracts, confirming transactions, controlling various clearing accounts, preparing or posting the accounting entries, approving the accounting methodology or entries, and performing revaluations.

Consistent with the operational support of other activities within the financial institution, securities operations should be as independent as practicable from business units. Adequate resources should be devoted, such that systems and capacity are commensurate with the size and complexity of the institution's investment activities. Effective risk management should also include, at least, the following:

Valuation. Procedures should ensure independent portfolio pricing. For thinly traded or illiquid securities,

completely independent pricing may be difficult to obtain. In such cases, operational units may need to use prices provided by the portfolio manager. For unique instruments where the pricing is being provided by a single source (e.g., the dealer providing the instrument), the institution should review and understand the assumptions used to price the instrument.

Personnel. The increasingly complex nature of securities available in the marketplace makes it important that operational personnel have strong technical skills. This will enable them to better understand the complex financial structures of some investment instruments.

Documentation. Institutions should clearly define documentation requirements for securities transactions, saving and safeguarding important documents, as well as maintaining possession and control of instruments purchased.

An institution's policies should also provide guidelines for conflicts of interest for employees who are directly involved in purchasing and selling securities for the institution from securities dealers. These guidelines should ensure that all directors, officers, and employees act in the best interest of the institution. The board may wish to adopt policies prohibiting these employees from engaging in personal securities transactions with these same securities firms without specific prior board approval. The board may also wish to adopt a policy applicable to directors, officers, and employees restricting or prohibiting the receipt of gifts, gratuities, or travel expenses from approved securities dealer firms and their representatives.

Legal Risk

Legal risk is the risk that contracts are not legally enforceable or documented correctly. Institutions should adequately evaluate the enforceability of its agreements before individual transactions are consummated. Institutions should also ensure that the counterparty has authority to enter into the transaction, and that the terms of the agreement are legally enforceable. Institutions should further ascertain that netting agreements are adequately documented, executed properly, and are enforceable in all relevant jurisdictions. Institutions should have knowledge of relevant tax laws and interpretations governing the use of these instruments.

[FR Doc. 98-11451 Filed 4-30-98; 8:45 am]

BILLING CODE 7535-01-J

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 704

Investment and Deposit Activities; Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is adopting as final the interim final amendments to the investment regulation as issued last year. The final amendments revise the broker-dealer and safekeeping provisions. NCUA is also deleting the references to the High Risk Securities Test for CMOs/REMICs in its regulations on investments and corporate credit unions. These amendments will clarify certain procedures related to credit unions' involvement with broker-dealers and safekeeping of securities.

DATES: The interim final amendments published at 62 FR 64146 are adopted as final effective May 1, 1998. Amendments in this rule to part 703 are effective October 1, 1998. Amendments in this rule to part 704 are effective May 1, 1998.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: Daniel Gordon, Senior Investment Officer, Office of Investment Services, (703) 518-6620 or Kim Iverson (Program Officer), Office of Examination and Insurance (703) 518-6360, or at the above address.

SUPPLEMENTARY INFORMATION:

A. Interim Final Rule

On November 24, 1997, NCUA issued an interim final rule that made substantive revisions and technical changes to part 703. 62 FR 64146, December 4, 1997. NCUA received eleven comment letters, three from trade associations, two from credit union leagues, three from federal credit unions, two from corporate credit unions, and one from a state-chartered credit union. Five commenters supported the technical changes and offered no other comments. The remaining six had specific comments, as discussed below.

The interim final rule amended § 703.50 to state that a federal credit union may use a third party that is not registered with the Securities and Exchange Commission (SEC) or is not a federally regulated depository institution to purchase a certificate of deposit (CD) as long as the credit union purchases the CD directly from a bank,

credit union, or other depository institution. One commenter requested clarification that wiring funds to a correspondent bank for further credit to the issuing institution is an acceptable practice. Another suggested that the rule should simply state whether credit unions are prohibited from using third-parties, passing their funds through third parties, or passing funds through unregistered brokers. Another commenter suggested the reason for the amendment was that entities that sell only CDs are not usually subject to comprehensive regulatory oversight, and NCUA should not inadvertently force credit unions to stop buying CDs from legitimate, regulated CD brokers (banks and registered broker-dealers).

NCUA wishes to clarify that it is permissible to send funds to an agent depository institution either of the credit union (credit union's correspondent) or of the issuing depository institution (issuer's correspondent) for credit to an issuing depository institution (issuer). For example, a credit union can send its funds directly to the issuer's correspondent. Alternatively, it is permissible for a credit union to send funds to its correspondent and this correspondent can send those funds to the issuer's correspondent or the issuer. A federal credit union may not wire, or send in any manner, funds to an agent depository institution of an unregistered entity to purchase a CD. The account relationship must be directly with the issuer unless the credit union is using a broker-dealer that is SEC-registered or is a federally regulated depository institution. NCUA believes that the amendment made by the interim final rule is sufficiently clear in this area and is not making additional changes to the provision in this final rule.

This interim final rule also established that a credit union may safekeep securities with a selling broker-dealer as long as the safekeeper used by the broker-dealer is regulated by the SEC. Two commenters suggested that the preamble recommend that a safekeeping agreement prohibit a third party from pledging or lending the credit union's securities without notice of each specific transaction. Without notice of each specific transaction, the credit union would have an unknown counterparty exposure. The NCUA Board agrees it is a sound business practice for every credit union to carefully read and understand the details of any agreement it enters into and encourages credit unions to do so. In the absence of a delegation of authority, a credit union must specifically authorize any actions its

broker-dealer may take with its securities (purchases, sales, pledges, securities lending, etc.), and must not sign an account agreement with a broker-dealer that permits the broker-dealer to take any action with its securities without the credit union's consent and knowledge. The credit union must participate in the monetary gains derived from such actions.

The interim final rule also clarified that the requirement to obtain two price quotes prior to purchasing a security does not apply to new issues issued at original issue discount, in addition to those issued at par. Two commenters suggested that the preamble encourage credit unions to compare prices regardless of whether new issue securities are offered at par or at discount. The commenters believe securities purchase decisions should be made within the context of how they compare to similar Treasury securities.

In the interim final rule, the original issue discount securities that NCUA was primarily concerned with were Treasury securities. Credit unions certainly should consider whether other securities sold at original issue discount compare to similar Treasuries. NCUA encourages price comparisons to comparable Treasuries even for new issues issued at original issue discount or at par.

Two commenters requested that NCUA clarify the applicability of Section 703.60(d) to CDs. That provision requires a credit union to obtain and reconcile monthly a statement of purchased investments and repurchase collateral held in safekeeping. The commenters were concerned about CD investments, since monthly safekeeping statements are generally not received from depository institutions. The NCUA Board wishes to clarify that this requirement does not apply to CDs where the credit union has made the investment (deposit) directly with the depository institution and where there is no third party safekeeping of the CD.

In summary, the NCUA Board is adopting the interim final amendments in final, without any changes.

B. Deletion of MDP High Risk Tests

NCUA is deleting the requirements regarding mortgage derivative product (MDP) high risk tests in parts 703 and 704. NCUA no longer believes that the pass/fail criteria of the high risk tests as applied to specific instruments are necessary to constitute effective monitoring of investment activities. The rescission of the high risk tests as a constraint on a credit union's investment activities does not signal that MDPs with high levels of price risk

are either appropriate or inappropriate investments. NCUA continues to believe that the stress testing of MDP investments, as well as other investments, is prudent and has significant value for risk management purposes.

An effective risk management process, through which an institution identifies, measures, monitors, and controls the risks of all its investment activities, provides a better framework. Whether a security, MDP or others, is an appropriate investment depends upon a variety of factors, including the credit union's capital level, the security's impact on the aggregate risk of the portfolio, and management's ability to measure and manage risk. Credit unions should employ valuation methodologies that take into account all of the risk elements necessary to price these investments.

For natural person federal credit unions that purchase securities having certain characteristics, as defined in paragraph 703.90(b), in an amount exceeding the credit union's net capital, part 703 requires a reasonable and supportable estimate of the potential impact of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points.

Part 704 requires corporate credit unions to subject all their assets and liabilities to a 300 basis point instantaneous, parallel, and sustained shock in interest rates for purposes of generating "net economic value" (NEV) volatility measures. Proper NEV calculations will capture the risk of the underlying cash-flows and their corresponding price sensitivity.

C. Corrections

Section 703.50(b)(2) of the current rule refers to the North American State Administrators Association. The correct reference is the North American Securities Administrators Association and the final amendments reflect the proper terminology.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small credit unions, defined as those having less than \$1 million in assets. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

NCUA has determined that the final amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB).

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule applies directly only to federal credit unions. NCUA has determined that the final rule does not constitute a "significant regulatory action" for purposes of the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. The reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act, 5 U.S.C. 551. NCUA is currently awaiting the Office of Management and Budget's decision on whether this is a major rule.

List of Subjects

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 704

Credit union, Reporting and recordkeeping requirements.

The National Credit Union Administration Board approved the final amendments to Part 703 and Part 704 on April 16, 1998 and approved as final the interim final amendments to Part 703 on April 22, 1998.

Becky Baker,
Secretary of the Board.

Accordingly NCUA adopts the interim final rule amending 12 CFR part 703 which was published at 62 FR 64146 on December 4, 1997, as a final rule without change and amends 12 CFR parts 703 and 704 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

§ 703.30 [Amended]

2. Section 703.30 is amended by removing paragraph (g) and redesignating paragraphs (h), (i), (j), (k),

and (l) as paragraphs (g), (h), (i), (j), and (k).

3. Section 703.50 is amended by revising paragraph (b)(2) to read as follows:

§ 703.50 What rules govern my dealings with entities I use to purchase and sell investments ("broker-dealers")?

(b) * * *

(2) Information available from state or federal securities regulators and securities industry self-regulatory organizations, such as the National Association of Securities Dealers and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer, its affiliates, or associated personnel.

4. Section 703.100 is amended by revising paragraph (e) to read as follows:

§ 703.100 What investments and investment activities are permissible for me?

(e) You may invest in fixed or variable rate CMOs/REMICs.

5. Section 703.130 is revised to read as follows:

§ 703.130 May I continue to hold investments purchased before January 1, 1998, that will be impermissible after that date?

(a) Subject to safety and soundness considerations, you may hold a CMO/REMIC residual, SMBS, or zero coupon security with a maturity greater than 10 years, if you purchased the investment:

(1) Before December 2, 1991; or

(2) On or after December 2, 1991, but before January 1, 1998, if for the purpose of reducing interest rate risk and you meet the following:

(i) You have a monitoring and reporting system in place that provides the documentation necessary to evaluate the expected and actual performance of the investment under different interest rate scenarios;

(ii) You use the monitoring and reporting system to conduct and document an analysis that shows, before purchase, that the proposed investment will reduce your interest rate risk;

(iii) After purchase, you evaluate the investment at least quarterly to determine whether or not it actually has reduced your interest rate risk; and

(iv) You classify the investment as either trading or available-for-sale.

(b) All grandfathered investments are subject to the valuation and monitoring requirements of §§ 703.70, 703.80, and 703.90.

PART 704—CORPORATE CREDIT UNIONS

6. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

7. Section 704.5 is amended by revising paragraph (c)(6) to read as follows:

§ 704.5 Investments.

(c) * * *

(6) CMOs/REMICs.

Appendix B to Part 704—[Amended]

8. Appendix B to part 704 is amended as follows:

a. A heading is added to the beginning of the Appendix; and

b. In Part I paragraph (c)(6) is removed and paragraphs (c)(7) through (c)(9) are redesignated as paragraphs (c)(6) through (c)(8); and

c. In Part II paragraph (c)(6) is removed and paragraphs (c)(7) and (c)(8) are redesignated as paragraphs (c)(6) and (c)(7).

The addition reads as follows:

Appendix B to Part 704—Expanded Authorities and Requirements

Part I

* * * * *

[FR Doc. 98-11450 Filed 4-30-98; 8:45 am]

BILLING CODE 7535-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 529

Certain Other Dosage Form New Animal Drugs; Isoflurane

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Marsam Pharmaceuticals, Inc. The ANADA provides for inhalational use of isoflurane USP for induction and maintenance of general anesthesia in horses and dogs.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0209.

SUPPLEMENTARY INFORMATION: Marsam Pharmaceuticals, Inc., Bldg. 31, 24 Olney Ave., Cherry Hill, NJ 08034, filed ANADA 200-187 that provides for inhalational use of isoflurane USP for induction and maintenance of general anesthesia in horses and dogs. The drug is limited to use by or on the order of a licensed veterinarian.

Approval of ANADA 200-187 for Marsam Pharmaceuticals, Inc.'s, isoflurane is as a generic copy of Ohmeda Pharmaceutical Product's NADA 135-773 AErrane® (isoflurane, USP). The ANADA is approved as of February 11, 1998, and the regulations are amended in 21 CFR 529.1186(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Marsam Pharmaceuticals, Inc., has not been previously listed in § 510.600 (21 CFR 510.600) as sponsor of an approved application. The regulations are amended in § 510.600(c)(1) and (c)(2) to reflect the new sponsor.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20855, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for

"Marsam Pharmaceuticals, Inc.," and in the table in paragraph (c)(2) by numerically adding an entry for "000209" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Marsam Pharmaceuticals, Inc., Bldg. 31, 24 Olney Ave., Cherry Hill, NJ 08034.	000209

(2) * * *

Drug labeler code	Firm name and address
000209	Marsam Pharmaceuticals, Inc., Bldg. 31, 24 Olney Ave., Cherry Hill, NJ 08034.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 529.1186 is amended by revising paragraph (b) to read as follows:

§ 529.1186 Isoflurane.

(b) *Sponsors.* See Nos. 000074, 000209, 010019, 012164, and 059258 in § 510.600(c) of this chapter.

Dated: April 22, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98-11685 Filed 4-30-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs; Spectinomycin Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The NADA provides for veterinary prescription use of spectinomycin solution as a subcutaneous injection in cattle for treatment of bovine respiratory disease.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT:

George K. Haibel, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1644.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001-0199, filed NADA 141-077 that provides for veterinary prescription use of Adspec™ (spectinomycin) sterile solution for cattle, by subcutaneous injection in the neck, for treatment of bovine respiratory disease (pneumonia) associated with *Pasteurella haemolytica*, *P. multocida*, and *Haemophilus somnus*. The NADA is approved as of January 28, 1998, and the regulations are amended by adding § 522.2121 (21 CFR 522.2121) to reflect the approval.

A tolerance for residues of spectinomycin in edible tissues of cattle has not been previously established. The regulations are amended in 21 CFR 556.600 to provide a tolerance for spectinomycin residues in cattle kidney (target tissue) and in cattle muscle.

FDA is also amending the regulations to provide for the acceptable daily intake (ADI) for total residues of spectinomycin. The ADI is the amount of total drug residue that can be consumed by humans every day. Previously, FDA had provided for safe concentrations, which represent the ADI corrected for consumption. The safe concentrations were confusing because few individuals understood the relationship between safe concentration, a value representing total residues, and tolerance, the part of the drug residue in a given tissue that is detected by an analytical method. To eliminate this confusion, FDA is codifying the ADI.

Also, the heading of § 522.2120 *Spectinomycin injection* (21 CFR 522.2120) is revised to "§ 522.2120 *Spectinomycin dihydrochloride injection*" to clarify the difference between § 522.2120 and § 522.2121 *Spectinomycin sulfate solution*.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning January 28, 1998, because the application contains substantial evidence of the effectiveness of the drug involved, studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.2120 [Amended]

2. Section 522.2120 *Spectinomycin injection* is amended by revising the heading to read "*Spectinomycin dihydrochloride injection*."

3. Section 522.2121 is added to read as follows:

§ 522.2121 Spectinomycin sulfate solution.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains spectinomycin sulfate tetrahydrate equivalent to 100 milligrams of spectinomycin.

(b) *Sponsor.* See 000009 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.600 of this chapter.

(d) *Conditions of use—(1) Cattle—(i) Dose.* 10 to 15 milligrams per kilogram of body weight, at 24-hour intervals for 3 to 5 consecutive days.

(ii) *Indications for use.* For the treatment of bovine respiratory disease (pneumonia) associated with *Pasteurella haemolytica*, *P. multocida*, and *Haemophilus somnus*.

(iii) *Limitations.* For subcutaneous injection in the neck. Do not inject more than 50 milliliters at each site. Do not slaughter within 11 days of last treatment. Do not use in female dairy cattle 20 months of age or older. Use in this class of cattle may cause residues in milk. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

4. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

5. Section 556.600 is revised to read as follows:

§ 556.600 Spectinomycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of spectinomycin is 25 micrograms per kilogram of body weight per day.

(b) *Chickens and turkeys.* A tolerance of 0.1 part per million (ppm) for negligible residues of spectinomycin in uncooked edible tissues of chickens and turkeys is established.

(c) *Cattle.* A tolerance of 4 ppm for parent spectinomycin (marker residue) in kidney (target tissue) is established. A tolerance of 0.4 ppm for parent spectinomycin in cattle muscle is established.

Dated: April 22, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98-11686 Filed 4-30-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 2793]

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Fees for Application and Issuance of Nonimmigrant Visas

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule results from a recent amendment to the law. It permits the Secretary of State to waive the visa fees for a nonimmigrant alien who will be engaged in charitable activities in the United States, subject to criteria the Secretary sets up. This provision became effective on the date of enactment. This rule implements that amendment.

DATES: This interim rule is effective May 1, 1998. Written comments are invited and must be received on or before June 30, 1998.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520-0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520-0106, (202) 663-1204.

SUPPLEMENTARY INFORMATION: Section 2 of Pub. L. 105-54 of October 7, 1997, amended section 281 of the Immigration and Nationality Act, as amended, (INA), by adding a sentence providing for the waiver or reduction of nonimmigrant visa fees under certain circumstances for aliens coming to the United States to engage in charitable activities.

Current rules relating to nonimmigrant visa fees are contained in 22 CFR 41.107 subsection (c) which describes certain aliens exempted from fees. This rule expands that subsection to include those individuals who are coming primarily for charitable purposes or for purposes related thereto. As Senator Abraham (a co-sponsor) stated in the Senate discussion of the amendment of INA 281, "It is not in the U.S. interest to impose fees that inhibit or otherwise burden individuals who seek to help our communities." It is in this spirit underlying the legislation that this interim rule has been developed.

The statute provides that the waiver or reduction of fees for application and issuance of a nonimmigrant visa is subject to criteria prescribed by the Secretary of State, including the duration of stay and the financial burden upon the charitable organization. In keeping with that injunction, it is deemed appropriate to require prospective beneficiary charitable organizations to request the relief to be provided because of the financial burden and to furnish sufficient information to establish that the alien(s) concerned will be engaged in activities which motivated the

enactment of this provision. The request should be furnished in writing, *inter alia* to provide documentation reconciling the number of visas issued with the lesser amount of fees collected.

Thus, the current text of 22 CFR 41.107(c) will become "(c)(1)" and a new (c)(2) will set forth the data required to support the waiver of the fees. These include, in (c)(2)(i), disclosure of whether the organization, if U.S.-based, is tax exempt as a charitable organization under 26 U.S.C. 501(c) or, if foreign, is equivalently recognized as a charitable organization in the country in which based. Section 41.107(c)(2)(ii) requires that the activities in which the alien(s) will engage will be charitable in nature, providing assistance to the poor and needy including, but not limited to, those activities identified in the legislation. Section 41.107(c)(2)(iii) requires such identifying information as the location in which the services will be provided and the number of and identifying data regarding each of the alien(s) concerned. Finally, § 41.107(c)(2)(iv) seeks data on the proposed duration of the temporary stay of the alien(s) in the United States, which should be commensurate with both the classification in which the alien(s) will be applying and the purposes for which the alien(s) will be entering the United States.

Regulatory Analysis and Notices

Interim Rule

The implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The provision of law being implemented became effective on enactment on October 7, 1997. It provides a benefit to institutions that it is in the interest of the United States as determined by Congress to benefit. Delay of the benefit for public notice and comment is unnecessary and inconsistent with the intent of the law.

The Regulatory Flexibility Act

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies, that it is not expected to have a significant economic impact on a substantial number of small entities and will benefit those that are charitable organizations.

E.O. 12988 and E.O. 12866

This rule has been reviewed as required under E.O. 12988 and determined to be in compliance therewith. This rule is exempt from review under E.O. 12666, but has been reviewed internally by the Department to ensure consistency therewith. The rule does not directly affect states or local governments or Federal relationships and does not create unfunded mandates.

5 U.S.C. Chapter 8

As required by 5 U.S.C., chapter 8, the Department has screened this rule and determined that it is not a major rule, as defined in 5 U.S.C. 80412.

Paperwork Reduction Act

While charitable organizations requesting this benefit will have to apply with information matching their situation to legal requirements, that information will be used for agency decisions on individual visas and not used for public dissemination or statistical purposes.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports, Visas.

In view of the foregoing, 22 CFR part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104.

2. Section 41.107 is amended by redesignating paragraph (c) as paragraph (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 41.107 Visa fees.

(c)

(2) The consular officer shall waive the nonimmigrant visa application and issuance fees for an alien who will be engaging in charitable activities for a charitable organization upon the written request of the charitable organization claiming that it will find the fees a financial burden, if the consular officer is satisfied that:

(i) The organization seeking relief from the fees is, if based in the United States, tax-exempt as a charitable organization under the provisions of section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)); if a foreign organization based outside the United States, it establishes that it is recognized as a charitable institution by the government of the country in which it is based under criteria substantially similar to those of section 501(c)(3), and

(ii) The charitable activities in which the alien will engage are specified and will be a part of, or will be related to and in support of, the organization's provision of services, including but not limited to health care, food and housing, job training, and similar direct services and assistance to the poor and needy, and

(iii) The request includes the location of the proposed activities, the number and identifying data of each of the alien(s) who will be applying for visas, and

(iv) The proposed duration of the alien(s)'s temporary stay in the United States is reasonably consistent with the charitable purpose for which the alien(s) seek to enter the United States.

Dated: April 15, 1998.

Donna J. Hamilton,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 98-11533 Filed 4-30-98; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF JUSTICE

28 CFR Part 51

[Order No. 2149-98]

RIN 1190-AA35

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as Amended; Revision of Procedures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is revising its administrative guidelines regarding preclearance of voting changes under Section 5 of the Voting Rights Act of 1965. The amendment is necessary to conform the Department's guidelines with recent case law.

DATES: Effective May 1, 1998.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, 202-307-2898, 1-800-253-3931, or david.h.hunter@usdoj.gov.

SUPPLEMENTARY INFORMATION: Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, requires certain jurisdictions (listed in the appendix to the Procedures) to obtain "preclearance" from either the United States District Court for the District of Columbia or from the United States Attorney General before implementing any new standard, practice, or procedure that affects voting.

The Supreme Court held in *Reno v. Bossier Parish School Board*, 117 S.Ct.

1491, 1497 (1997), that a voting change that violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973 (which proscribes practices that have discriminatory results), should not on that basis alone be denied Section 5 preclearance. Accordingly, we are deleting paragraph (2) of § 51.55(b) ("Section 2").

Good cause exists under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d) for implementing this rule as a final rule effective immediately without provision for public comment. The amendment simply conforms the Procedures to the Supreme Court's interpretation of the Voting Rights Act. Public comment could have no effect on this amendment.

List of Subjects in 28 CFR Part 51

Administrative practice and procedure, Archives and records, Authority delegations (Government agencies), Civil rights, Elections, Voting rights.

For the reasons stated in the preamble, 28 CFR Part 51 is amended as follows:

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

1. The authority citation for part 51 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

§ 51.55 [Amended]

2. In § 51.55, the designation of paragraph (b) (1) and the word "subsequently" are removed from paragraph (b), and paragraph (b)(2) is removed.

Dated: April 23, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98-11604 Filed 4-30-98; 8:45 am]

BILLING CODE 4410-13-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-98-031]

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations during the transit of participating vessels from Annapolis Harbor, Maryland, to the race start area on the Chesapeake Bay for Leg 8 of the Whitbread Round-the-World sailing race on May 3, 1998. These special local regulations are necessary to control vessel traffic in the vicinity of Spa Creek and the Severn River due to the confined nature of the waterway and expected vessel congestion during the transit of the racers. The effect will be to restrict general navigation in the regulated area for the safety of race participants, spectator craft and other vessels transiting the event area.

DATES: The special local regulations are effective from 10 a.m. EDT (Eastern Daylight Time) to 11 a.m. EDT on May 3, 1998.

FOR FURTHER INFORMATION CONTACT:

Chief Warrant Officer R.L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226-1971, (410) 576-2674.

SUPPLEMENTARY INFORMATION: The start for Leg 8 of the Whitbread Round-the-World sailing race will be held in the vicinity of Annapolis, Maryland, on May 3, 1998. The vessels participating in the race will conduct an organized transit from Annapolis Harbor to the race start area. Therefore, to ensure the safety of the racers, spectators and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the transit to the race start area. Under provisions of 33 CFR 100.511, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander, and the operator of any vessel in the regulated area shall stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: April 21, 1998.

J.S. Carmichael,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98-11649 Filed 4-30-98; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego; 98-009]

RIN 2115-AA97

Safety Zone; Colorado River, Laughlin, NV

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Colorado River, Laughlin, Nevada, for the Laughlin River Days marine event on May 30 and 31, 1998. The Laughlin River Days event consists of various watercraft races and other maritime festivities. The safety zone supporting this event consists of a circular area with a radius of approximately 1500 feet centered around a single buoy located approximately equidistant between the following two points: the Laughlin Bridge, and 500 feet north of the launch ramp at Davis Camp. This safety zone is established to protect the lives and property of the event participants and spectators by establishing an exclusionary zone around the race course. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective from 7 a.m. (PDT) until 6:30 p.m. (PDT) on May 30 and 31, 1998.

ADDRESSES: Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101-1064.

FOR FURTHER INFORMATION CONTACT: LT Mike Arguelles, U.S. Coast Guard, Marine Safety Office, San Diego at (619) 683-6484.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publication of a notice of proposed rulemaking and delay of its effective date would be contrary to the public interest since the details of the safety zone boundaries necessary to support the Laughlin River Days marine event, and other logistical details surrounding the event, were not finalized until a date fewer than 30 days prior to the event date.

Discussion of Regulation

This regulation is necessary to protect the lives and property of the event participants and spectators by establishing an exclusionary zone around the Laughlin River Days. During race times, vessels will be traveling at high rates of speed which will hinder their reaction time to obstacles. This safety zone will be marked by the sponsor, and enforced by U.S. Coast Guard personnel working in close coordination with the sponsor. Vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). Due to the short duration and limited scope of the safety zone, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. Small entities may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small

business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact LT Mike Arguelles, Coast Guard Marine Safety Office San Diego, at the Address Listed in ADDRESSES.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612, and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2 of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in ADDRESSES.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of \$100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of \$100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. A new § 165.T11-038 is added to read as follows:

§ 165.T11-038 Safety Zone: Colorado River, Laughlin, Nevada.

(a) *Location.* The following area constitutes a safety zone in the navigable waters of the Colorado River, Laughlin, Nevada. The safety zone consists of a circular area with a radius of 1500 feet centered around a single buoy located approximately equidistant between the Laughlin Bridge and 500 feet north of the launch ramp at Davis Camp.

(b) *Effective Dates.* This section is effective from 7 a.m. (PDT) until 6:30 p.m. (PDT) on May 30 and 31, 1998.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Dated: April 20, 1998.

J.A. Watson,
Commander, U.S. Coast Guard, Captain of
the Port, San Diego, California.

[FR Doc. 98-11650 Filed 4-30-98; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 223**

RIN 0596-AB41

Sale and Disposal of National Forest Timber; Indices To Determine Market-Related Contract Term Additions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends current regulations providing for Market-Related Contract Term Additions, by requiring the use of Industry Series Producer Price Indices from the Bureau of Labor Statistics, rather than the previously required indices in the Commodity Series. Use of a different Producer Price Index series requires a concomitant change in procedures for determining when market-related contract term additions

are needed. In addition to changing the index series, the final rule makes a number of technical changes. The intended affect is to grant timber sale contract term additions based on market criteria that are more representative than those currently used.

DATES: This rule is effective June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Rex Baumbach, Timber Management Staff, MAIL STOP 1105, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-1105, (202) 205-0855.

SUPPLEMENTARY INFORMATION:**Background**

Experience indicates that the lumber market declines that would justify a market-related timber sale contract term addition generally coincide with substantial economic dislocation in the wood products industry. Such economic distress broadly affects community stability, the ability of the wood products industry to supply construction lumber and other wood products from domestic sources, and threatens the existence of wood manufacturing plants needed to meet future demands for wood products. Accordingly, on December 7, 1990, the Department published a final rule (55 FR 50643) to establish procedures at 36 CFR 223.52 for extending contract termination dates to prevent contract default or severe financial loss to the purchaser in response to adverse conditions in the lumber markets. The rule, which has remained in effect until now, provides that if there is a drastic decline in wood product prices a market-related contract term addition would be triggered.

The rule also requires the use of various wood product Producer Price Indices, prepared by the Department of Labor, Bureau of Labor Statistics (BLS), to determine whether a drastic reduction in wood product prices has occurred. Since adoption of the rule, a drastic reduction occurred for Douglas-fir, Dressed Index, during the first quarter of 1991 and, most recently, in the second quarter of 1995. As a result, the Forest Service notified purchasers and, upon the purchasers' written request, added an additional year to timber sale contract terms for qualifying contracts.

In order to address timber sale purchaser concerns and technical issues related to implementation of this regulation, the Forest Service proposed a revision to this rule and requested public comment on October 21, 1996 (61 FR 54589). The deadline for

receiving comments was January 21, 1997.

Response to Comments Received

Nineteen respondents provided responses to the proposed rule. Comments were received from 14 timber sale purchasers, four timber industry associations, and one consulting forester. A summary of the comments and the Department's response to them follow.

General Comments

Comment. One respondent requested that efforts to implement changes to Market-Related Contract Term Additions (MRCTA) be delayed until a formal revision of the timber sale contract could be completed.

Response. The Department realizes that it would be desirable to consider all possible contract changes at one time. However, while a comprehensive revision of the timber sale contract is being considered, the timeframe for the completion of this revision is undetermined. Furthermore, there will always be a need for periodic revisions of portions of the timber sale contract to meet new situations. The revision of MRCTA procedures will allow the timber sale contract to be more responsive to changing economic conditions; therefore, the Department sees no benefit to delaying amendment of the MRCTA regulations.

Comment. One respondent expressed a need for a procedure to address a slow lumber market decline, as well as a rapid lumber market decline.

Response. Major softwood lumber market declines during the past 50 years have occurred within a period of 30 months or less. Both the current MRCTA procedures and this final rule evaluate the significance of market changes over a period of 27 months. Data indicate that nearly 50 percent of the total volume sold is contained in contracts shorter than 3 years in length and nearly 80 percent of all timber sale contracts are shorter than 3 years in length. Average contract length has been declining steadily in recent years. A lumber market decline over a period of more than 30 months is unlikely, based on historic trends, and most contracts would not be adversely affected if such a lumber market decline were to occur. Thus, the Department does not agree that there is a need to establish a new procedure to address the unlikely possibility of a slow lumber market decline.

Availability of MRCTA

Section 223.52(a) of the proposed rule provided that contracts that contain

periodic payment requirements will contain a MRCTA provision.

Comment. Thirteen respondents stated that since lumber markets are so volatile, MRCTA should be available for all timber sales over 1 year in length or for any sale that is extended beyond 1 year in length for reasons beyond the control of the purchaser.

Response. It appears that some of these respondents misinterpreted the proposed rule by concluding that MRCTA would apply only to contracts over 2 years in length. Both the current procedure and the proposed rule provide for MRCTA for any contract that contains periodic payment provisions. Periodic payment provisions are included in contracts that are longer than one full normal operating season. Under current procedures, when contracts are awarded during the normal operating season, the length of the contract could exceed 1 year and not include MRCTA provisions. The Department agrees to change procedures and include MRCTA procedures in timber sale contracts that exceed 1 year in length, regardless of whether or not the contract contains periodic payment provisions, except as provided in § 223.52(a)(3), harvesting rapidly deteriorating timber.

However, the Department does not agree with the request to modify timber sale contracts to include MRCTA if those contracts are extended beyond 1 year in length for reasons beyond the control of the purchaser. Since contracts currently contain provisions for compensating purchasers if their contracts are suspended, providing for MRCTA for the few contracts that may be extended beyond 1 year is an additional unnecessary compensation.

Selection of Index

Section 223.52(a)(2) of the proposed rule provided that the Forest Supervisor would select the price index for contracts. This paragraph in the proposed rule also provides that only one price index may be used in contracts.

Comment. Fourteen respondents remarked that purchasers should be allowed to choose the price index when the contract is awarded, based on their assessment of the lumber market and their intended use of the wood from that sale. Some of these respondents said they were concerned about the burden of the Forest Supervisor in choosing an index.

Eight respondents said that if purchasers choose the index, the contract could be modified later to change the index if the sale was

extended beyond 4 years or was transferred to another party.

Response. The index is based on the species and products being sold. It is not a burden on the Forest Supervisor to choose the index, nor are there valid reasons to change the index after the sale is bid. Therefore, the Department declines to change this section of the regulation, based on this comment.

Comment. Seventeen respondents proposed using the Wood Chip Index with all qualifying sales, since all sales have a significant chip component and many sales have a mixture of sawtimber and chipable material. Therefore, contract relief would be granted if either the lumber or the wood chip index showed a drastic decline in market price.

Response. The Department thinks that the volume of chip by-products produced with a sawlog timber sale is not enough to justify the MRCTA extension, based solely on a drastic decline in the Wood Chip Index. Further, it is the Department's view that inclusion of more than one index in a given timber sale would not meet the "substantial overriding public interest" standard required by the National Forest Management Act (16 U.S.C. 472a(c)). Substantial overriding public interest has been determined to exist when the criteria in the regulation have been met. When the criteria in the regulation have been met, there is a disruption of the economy that may result in loss of industry and jobs. If more than one index is used for granting extensions on timber sale contracts, it is unlikely that this criteria for substantial overriding public interest would be met.

Harvesting Objective

Section 223.52(a)(3)(i) of the proposed rule provided that MRCTA will not be used in timber sales with a primary objective of harvesting damaged, dead, or dying timber.

Comment. Nine respondents said that only those sales with accelerated harvest provisions should be exempt from MRCTA and, once the accelerated harvest is completed, the contract should be modified to include MRCTA. These respondents pointed out that many sales containing damaged, dead, or dying timber or salvage are not in need of urgent harvest because the material is not deteriorating rapidly.

Response. The Department agrees that some sales containing damaged, dead, or dying timber or salvage are not in need of urgent harvest because the material is not deteriorating rapidly. Therefore, this paragraph has been modified in the final rule to preclude use of MRCTA only when the sale is

subject to rapid deterioration. Furthermore, an additional paragraph has been added to state that completion dates specified in such contracts will not be extended, based on MRCTA. Completion dates specified in timber sale contracts usually provide for shorter time periods for the rapid harvest of deteriorating timber or specific timeframes when road construction is required.

Stumpage Rate Adjustment

Section 223.52(a)(3)(ii) of the proposed rule provided that contracts that contain stumpage rate adjustment provisions will not include MRCTA provisions.

Comment. Seventeen respondents indicated that MRCTA and stumpage rate adjustment provisions fulfill separate and distinct functions in the timber sale contract and that both are needed.

Response. Market-related contract term addition provides additional time during a significant lumber market decline for purchasers to perform contracts and to avoid a situation requiring administrative intervention. Thus, the MRCTA procedure allows time for the market to improve and provides an opportunity to harvest a mixture of high and low priced sales. Conversely, the stumpage rate adjustment provisions allow the Government and purchaser to share the risk and reward of market fluctuations, protecting the agency's ability to provide an even flow of products in both good and bad markets. The stumpage rate adjustment procedure provides assistance by allowing a reduced price during lumber market declines. Stumpage rate adjustment and market-related contract term addition respond to different problems associated with lumber market declines and both procedures serve useful functions. Therefore, this paragraph is eliminated from the regulation.

Price Indices

Section 223.52(b)(1)(i) of the proposed rule provided that Bureau of Labor Statistics Producer Price Indices for Hardwood Lumber, Eastern Softwood Lumber, Western Softwood Lumber, and Wood Chips be used in MRCTA provisions.

Comment. Eight respondents expressed a need for a separate index for western hardwood sales.

Response. There is no index available that represents only western hardwood lumber, since the amount of hardwood lumber produced in the West is too small to provide a meaningful index. The amount of hardwood harvested

from Forest Service land in the West is also very small. In addition, the available Hardwood Index is representative of most hardwood markets, including those in the West; therefore, no change is being made from the list of indices from what was proposed.

Comment. Eight respondents stated that the Wood Chip Index is based primarily on data on eastern markets (60 percent). They desired more data on western wood chip markets in this index in order to reflect market conditions as closely as possible.

Response. Data available for the producer price wood chip index is limited. Using the two lower level indices for short tons (eastern wood chips) and standard units (western wood chips) would weaken the reliability of both indices. Analysis has indicated little difference between the two indices in their ability to identify a severe chip market decline; therefore, the Department will continue using only one national Wood Chip Index in MRCTA.

Use of Preliminary Indices

Section 223.52(b)(1)(ii) of the proposed rule provided that preliminary index values will be revised when final index values are available, but that the identification of qualifying quarters will not be changed, based on the final index values.

Comment. Eight respondents indicated that to simplify recordkeeping and reduce the chance of error, the Forest Service should utilize preliminary indices and not revise indices when final data becomes available.

Response. The Department believes that the best available data should be used for determining qualifying quarters for MRCTA and that the chance of an undetected clerical error is slight. Therefore, preliminary indices must be updated as final data becomes available. However, as stated in § 223.52(b)(1)(ii) of the final rule, the determination of qualifying quarters, although based partially on preliminary data, will not be revised when final data becomes available.

Significant Market Decline

Section 223.52(b)(2) of the proposed rule provided that a significant market decline has occurred when, for 2 or more consecutive quarters, the index is 15 percent below the average index for the four highest of the previous 8 quarters. On average, this criteria indicates an approximate 25 percent decline in price over a 2-year period.

Comment. Five respondents stated that the preamble of the proposed rule makes an arbitrary, subjective, and unsupported claim that a significant lumber market decline is defined as a 25 percent decline over a 2-year period. These respondents proposed that the procedures be adjusted to ensure that a market similar to the 1991 lumber market decline trigger an MRCTA for all indices.

Response. Between June 1989 and December 1990, the inflation adjusted Softwood Lumber Index declined 16 percent, while the Douglas Fir Dressed lumber index declined 25 percent. Indices, based on a single species, are more volatile. One of the objectives of this MRCTA regulation is to base the drastic wood price determination on indices that are broader-based than a single species. The Department is satisfied with how indices are triggered using the new procedures and no change from the proposed MRCTA triggering procedures is being made.

Normal Operating Season

Section 223.52(c)(1) of the proposed rule provided that, after the first year of contract time is granted, additional time will be added during the "normal operating season."

Comment. Sixteen respondents stated that the term "normal operating season" should be redefined for this regulation, so that it includes only time periods which actually allow operations to occur. If the definition of normal operating season is not changed, these respondents suggested that additional time could be added day-for-day to the contract during periods when there are no restrictions on logging.

Response. The purpose of a normal operating season is to identify a period of time where additional contract operating time can be granted when the timber sale purchaser is delayed by weather or other reasons. The normal operating season should identify periods of time when the weather is likely to allow logging and operations are not restricted for other reasons. The Department does not believe that a different definition of normal operating season or new criteria for additional contract time is needed for the purposes of this rule.

Conclusion

The MRCTA rule provides additional contract time on timber sale contracts when severe market declines occur. This final rule revises the current rule to use indices that are more representative of the lumber market and to make technical improvements to procedures.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. In short, little or no effect on the national economy will result from this final rule. This action consists of administrative changes to regulations affecting timber sale contract length. The Producer Price Indices selected and revised procedures better reflect the cyclical nature of lumber markets and help the agency determine whether a drastic downturn has actually occurred in these particular markets. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Failure to adopt these improved procedures for measuring drastic decline in wood product prices will subject both small purchasers and large purchasers to increased risk of default in those situations where current indices are not as valid as indicators of price decline as those in this final rule. Modifications to timber sale contracts have the intended effect of allowing purchasers of timber sales to complete timber sales when adverse conditions have occurred in the lumber market and when no other means of granting additional contract time are available.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of \$100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore,

a statement under section 202 of the Act is not required.

Environmental Impact

This final rule deals with business practices related to timber sale contracts and, as such, has no direct effect on the amount, location, or manner of timber offered for purchase. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

No Takings Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property. There are no Constitutionally-protected private property rights to be affected, since the contract provisions that implement this rule will only be used in new contracts or with contract modifications that are made at the request of the timber sale purchaser.

Civil Justice Reform Act

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule (1) preempts all State and local laws and regulations that are in conflict or which would impede its full implementation; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest

products, Government contracts, National forests, Reporting requirements, Timber sales.

Therefore, for the reasons set forth in the preamble, Part 223 of Title 36 of the Code of Federal Regulations is amended, as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 continues to read:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714-726, 16 U.S.C. 620-620j, unless otherwise noted.

2. Revise § 223.52 to read as follows:

§ 223.52 Market-related contract term additions.

(a) *Contract provision.* (1) Except as provided in paragraph (a)(3) of this section, each timber sale contract exceeding 1 year in length shall contain a provision for the addition of time to the contract term, under the following conditions:

(i) The Chief of the Forest Service has determined that adverse wood products market conditions have resulted in a drastic reduction in wood product prices applicable to the sale; and

(ii) The purchaser makes a written request for additional time to perform the contract.

(2) The contract term addition provision of the contract must specify the index to be applied to each sale. The Forest Supervisor shall determine, and select from paragraph (b) of this section, the index to be used for each sale based on the species and product characteristics, by volume, being harvested on the sale. The index specified shall represent more than one-half of the advertised volume.

(3) A market-related contract term addition provision shall not be included in contracts where the sale has a primary objective of harvesting timber subject to rapid deterioration.

(b) *Determination of drastic wood product price reductions.* (1) The Forest Service shall monitor and use Producer Price Indices, as prepared by the Department of Labor, Bureau of Labor Statistics (BLS), adjusted to a constant dollar base, to determine if market-related contract term additions are warranted.

(i) The Forest Service shall monitor and use only the following indices:

BLS producer price index	Industry code
Hardwood Lumber	2421# 1
Eastern Softwood Lumber	2421# 3
Western Softwood Lumber	2421# 4
Wood Chips	2421# 5

(ii) Preliminary index values will be revised when final index values become available, however, determination of a qualifying quarter will not be revised when final index values become available.

(2) The Chief of the Forest Service shall determine that a drastic reduction in wood product prices has occurred when, for 2 or more consecutive quarters, the applicable adjusted price index is less than 85 percent of the average of such adjusted index for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter. A qualifying quarter is a quarter where the applicable adjusted index is more than 15 percent below the average of such index for the 4 highest of the previous 8 calendar quarters. Qualifying quarter determinations will be made using the Producer Price Indices for the months of March, June, September, and December.

(3) A determination, made pursuant to paragraph (b)(2) of this section, that a drastic reduction in wood product prices has occurred, shall constitute a finding that the substantial overriding public interest justifies the contract term addition.

(c) *Granting market-related contract term additions.* When the Chief of the Forest Service determines, pursuant to this section, that a drastic reduction in wood product prices has occurred, the Forest Service is to notify affected timber sale purchasers. For any contract which has been awarded and has not been terminated, the Forest Service, upon a purchaser's written request, will add 1 year to the contract's terms, except as provided in paragraphs (c)(1) through (4) of this section. This 1-year addition includes time outside of the normal operating season.

(1) Additional contract time may not be granted for those portions of the contract which have a required completion date or for those portions of the contract where the Forest Service determines that the timber is in need of urgent removal or that timber deterioration or resource damage will result from delay.

(2) For each additional consecutive quarter, in which a contract qualifies for a market-related contract term addition, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to the contract.

(3) No more than twice the original contract length or 3 years, whichever is less, shall be added to a contract's term by market-related contract term addition.

(4) In no event shall a revised contract term exceed 10 years as a result of market-related contract term additions.

(d) *Recalculation of periodic payments.* Where a contract is lengthened as a result of market conditions, any subsequent periodic payment dates shall be delayed 1 month for each month added to the contract's term.

Dated: April 27, 1998.

Brian Eliot Burke,
Deputy Under Secretary, Natural Resources
and Environment.

[FR Doc. 98-11626 Filed 4-30-98; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-5983-3]

Technical Amendments to Approval and Promulgation of Air Quality Implementation Plans; State of Delaware: Open Burning and Non-CTG RACT Regulations; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On March 12, 1997 (62 FR 11329), the Environmental Protection Agency published in the *Federal Register* a direct final rule concerning the approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware, consisting of two control measures to reduce volatile organic compound (VOC) emissions, which established an effective date of May 12, 1997. This document corrects the effective date of the rule to May 1, 1998 to be consistent with sections 801 to 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATES: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air, at (202) 260-5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Officer (GAO). EPA recently

discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in March 12, 1997, *Federal Register* document, by operation of law, the rule did not take effect on May 12, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since March 12, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule

is discussed in the March 12, 1997, *Federal Register* document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantial requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator.

[FR Doc. 98-11549 Filed 4-30-98; 8:45 am]

BILLING CODE 6560-60-M

ENVIRONMENTAL PROTECTION AGENCY

CFR 40 Part 52

[FRL-5981-8]

Technical Amendments to Approval and Promulgation of Section 182(f) Exemption to the Nitrogen Oxides (NO_x) Control Requirements for the Lake Charles Ozone Nonattainment Area; Louisiana; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On May 29, 1997 (62 FR 29072), the Environmental Protection Agency published in the *Federal Register* a final rule issuing final approval of a petition from the State of Louisiana requesting that the Lake Charles marginal ozone nonattainment area be exempt from applicable nitrogen oxides (NO_x) control requirements of section 182(f) of the Clean Air Act, which established an effective date of May 27, 1997. This document corrects the effective date of the rule to May 1, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air at (202) 260-5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the May 29, 1997, *Federal Register* document, by operation of law, the rule did not take effect on May 27, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since May 29, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as

specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the May 29, 1997, Federal Register document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator

[FR Doc. 98-11545 Filed 4-30-98; 8:45 am]
BILLING CODE 6560-60-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-5983-2]

Technical Amendments to Approval of Section 112(l) Program of Delegation; Wisconsin; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On April 1, 1997 (62 FR 15402), the Environmental Protection Agency published in the Federal Register a direct final rule concerning the approval of Wisconsin's request for delegation of the Federal Air Toxics program contained within 40 CFR parts 61 and 63 pursuant to section 112(l) of the Clean Air Act (CAA) as amended,

which established an effective date of June 2, 1997. This document corrects the effective date of the rule of May 1, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air and Radiation at (202) 260-5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the April 1, 1997, Federal Register document, by operation of law, the rule did not take effect on June 2, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since April 1, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the April 1, 1997, Federal Register document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator

[FR Doc. 98-11550 Filed 4-30-98; 8:45 am]
BILLING CODE 6560-60-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[FRL-6006-2]

RIN 2069-AF48

Acid Rain Program; Nitrogen Oxides Emission Reduction Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule in response to court order.

SUMMARY: This action removes a provision of a final rule concerning emission limitations for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act ("Act"). The provision was recently remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit at EPA's request.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 564-9151.

SUPPLEMENTARY INFORMATION: On April 13, 1995, EPA promulgated nitrogen oxides ("NO_x") emission limitations (in lb/mmBtu) for certain types of coal-fired utility boilers for the Acid Rain Program under title IV of the Act. 60 FR 18751 (1995). EPA set limits of 0.45 and 0.50 lb/mmBtu respectively for tangentially fired boilers and dry bottom, wall fired boilers ("Group 1 boilers"). On December 19, 1996, EPA promulgated additional NO_x emission limitations for Phase II of the program, i.e., revised limits for Group 1 boilers and new limits for cell burner, cyclone, wet bottom, and vertically fired boilers ("Group 2 boilers"). 61 FR 67112 (1996). In setting the December 19, 1996 NO_x limits, EPA also promulgated a final rule provision (i.e. § 76.16) that addressed the relationship between NO_x requirements under titles I and IV of the Act and provided a mechanism under which the December 19, 1996 NO_x limits would become inapplicable to certain boilers. As part of recent litigation in which the December 19, 1996 regulations were upheld by the Court (*Appalachian Power v. U.S. EPA*, 135 F.3d 791 (D.C. Cir., 1998)), EPA requested a remand, which was granted by the Court, of § 76.16 in order to provide additional opportunity for public comment on the provision. In today's action, EPA is removing the existing, final provision in § 76.16 and will take no further action on the provision in the instant rulemaking proceeding. In a separate, future rulemaking proceeding, EPA intends to propose a similar provision (i.e., as a new, proposed § 76.16) and provide an additional opportunity for public comment.

For the reasons discussed above, this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (1993)). For the same

reasons, this action does not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. With regard to this action, the Agency thus has no obligations under sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4). Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, the action is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and any other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this document in the Federal Register. This action is not a "major rule" as defined in 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 76

Environmental protection, Acid rain, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 24, 1998.

Richard D. Wilson,
Assistant Administrator for Air and Radiation

Accordingly, for the reasons set out above, 40 CFR part 76 is amended as follows:

PART 76—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 576.16 [Removed]

2. Section 76.16 is removed.

[FR Doc. 98-11662 Filed 4-30-98; 8:45 am]

BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-5983-5]

Technical Amendments to Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On November 13, 1996 (61 FR 58303), the Environmental Protection Agency published in the Federal Register a final rule concerning the extension of the time period during which certain alternative analytical test methods may be used in the Federal Reformulated Gasoline (RFG) program, which established an effective date of January 13, 1997. This document corrects the effective date of the rule to May 1, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air and Radiation at (202) 260-5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the November 13, 1996, Federal Register document, by operation of law, the rule did not take effect on January 13, 1997, as stated therein. Now that EPA has discovered its error, the November 13, 1996, rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable,

unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since November 13, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the November 13, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the November 13, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of

Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator.

[FR Doc. 98-11548 Filed 4-30-98; 8:45 am]

BILLING CODE 5560-60-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL-5983-6]

Technical Amendments to Sulfentrazone; Establishment of Tolerances; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On March 10, 1997 (62 FR 10703), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the establishment of tolerances for residues of the herbicide sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and its major metabolite 3-hydroxymethyl sulfentrazone (N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide), in or on the raw agricultural commodity soybean seed at 0.05 ppm and for combined inadvertent residues of sulfentrazone, and its metabolites, 3-hydroxymethyl sulfentrazone and 3-desmethyl sulfentrazone [N-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide] in cereal grains (excluding sweet corn) forage at 0.2 ppm, straw at 0.6 ppm, hay at 0.2 ppm, grain at 0.1 ppm, stover at 0.1 ppm, bran at 0.15 ppm and hulls at 0.30 ppm. The March 10, 1997, document established an effective date of March 10, 1997. This document

corrects the effective date of the rule May 1, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260-2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the March 10, 1997, **Federal Register** document, by operation of law, the rule did not take effect on March 10, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since March 10, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the March 10, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the March 10, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator.

[FR Doc. 98-11547 Filed 4-30-98; 8:45 am]

BILLING CODE 5560-60-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL-5983-1]

Technical Amendments to Propiconazole Pesticide Tolerances for Emergency Exemptions Correction; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On May 2, 1997 (62 FR 24045), the Environmental Protection Agency published in the **Federal Register** a final rule that corrected the tolerance level for cranberries that had been listed incorrectly in a document published in the **Federal Register** on April 11, 1997, establishing time-limited tolerances for combined residues of the pesticide propiconazole in or on the food commodities almonds and cranberries. The May 2, 1997, notice established an effective date of May 2, 1997. This document corrects the effective date of the rule to May 1, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260-2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the May 2, 1997, **Federal Register** document, by operation of law, the rule did not take effect on May 2, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21

U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since May 2, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the May 2, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the

U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator

[FR Doc. 98-11551 Filed 4-30-98; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[FRL-5982-9]

Technical Amendments to Significant New Uses of Certain Chemical Substances Correction; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On May 21, 1997 (62 FR 27694), the Environmental Protection Agency published in the *Federal Register* a final rule concerning the correction of two cross-references in a significant new use rule issued pursuant to section 5 of the Toxic Substances Control Act, 15 U.S.C. 604, on December 2, 1996 (61 FR 63726, codified at 40 CFR 721.4484). The correction rule established an effective date of January 31, 1997. This document corrects the effective date of the correction rule to May 1, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, Office of Pesticides Prevention and Toxic Substance, at (202) 260-2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency

promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the May 21, 1997, *Federal Register* document, by operation of law, the rule did not take effect on January 31, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the May 21, 1997, *Federal Register* should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 76229, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 1, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available,

judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator

[FR Doc. 98-11552 Filed 4-30-98; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43, 63, and 64

[IB Docket Nos. 97-142 and 95-22, FCC 97-398]

Foreign Participation in the U.S. Telecommunications Market

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration; corrections.

SUMMARY: The Federal Communications Commission published in the *Federal Register* of December 9, 1997, a summary of a Report and Order that it adopted on November 25, 1997, that created a new regulatory framework for international telecommunications. The Commission inadvertently omitted one sentence from a revised section of the rules. This document corrects that omission. This document also amends the December 9 publication to make clear that the Commission's order disposed of petitions for reconsideration in a related docket.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas A. Klein or Susan O'Connell, International Bureau, (202) 418-1460.

SUPPLEMENTARY INFORMATION:

1. In FR Doc. No. 97-32013, published in the *Federal Register* of December 9, 1997 (62 FR 64741), the Commission inadvertently omitted a sentence from the revised § 63.18(e)(4)(ii)(A). This correction adds the necessary sentence. The Commission included this correction in an Errata released on January 12, 1998.

2. The Commission also now wishes to clarify that FR Doc. No. 97-32013 was also an action disposing of petitions for reconsideration filed in IB Docket No. 95-22, Market Entry and Regulation of Foreign-Affiliated Entities.

Corrections

In FR Doc. 97-32013, published on December 9, 1997 (62 FR 64741), make the following corrections.

1. On page 64741, in column 2, line 4 of the document is corrected to read "IB Docket Nos. 97-142 and 95-22, FCC 97-398."

2. On page 64741, in column 2, line 9 of the document is corrected to read: Final rule; petitions for reconsideration.

3. On page 64756, in column 2, add the following sentence before the final sentence of § 63.18(e)(4)(ii)(A):

§ 63.18 Contents of applications for international common carriers.

- (e) * * *
- (4) * * *
- (ii) * * *
- (A) * * * Except as provided in paragraph (e)(4)(ii)(B) of this section, any carrier that seeks to provide international switched basic services over its authorized private line facilities between the United States and a non-WTO Member country for which the Commission has not previously authorized the provision of switched services over private lines shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96-261 and that the country affords resale opportunities equivalent to those available under U.S. law. * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary

[FR Doc. 98-11615 Filed 4-30-98; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[GC Docket No. 97-113; FCC 98-56]

Electronic Filing of Documents in Rulemaking Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In order to implement the changes mandated by the Telecommunications Act of 1996 to serve the public more quickly and efficiently, the Commission is expanding the use of electronic filing in FCC proceedings. The Commission is amending its rules to permit the filing of pleadings and comments in rulemaking proceedings (except broadcast allotment proceedings), petitions for rulemaking (except in broadcast allotment proceedings), pleadings in Notice of Inquiry proceedings, and petitions for reconsideration and all responsive

pleadings in these proceedings, including ex parte presentations and summaries or oral ex parte presentations in these proceedings, over the Internet. This proceeding will make it easier for the public to participate in FCC rulemaking proceedings and is an important step not only in the Commission's ongoing efforts to streamline and improve the Commission's decision making processes.

EFFECTIVE DATE: June 30, 1998.

FOR FURTHER INFORMATION CONTACT:

Legal information: Laurence H. Schecker, Office of General Counsel, 202-418-1720; **Technical information:** Sheryl Segal, Office of Public Affairs, 202-418-0265.

SUPPLEMENTARY INFORMATION:

1. In this Order, we amend parts 0 and 1 of our Rules to allow parties to file comments and other pleadings electronically via the Internet in FCC informal notice and comment rulemaking proceedings conducted under section 553 of the Administrative Procedure Act, 5 U.S.C. 553, except for broadcast allotment proceedings. We will also permit the electronic filing of all pleadings and comments in proceedings involving petitions for rulemaking (except in broadcast allotment proceedings) and Notice of Inquiry proceedings (NOIs). We will evaluate the new rules and assess the operation of the system as we gain experience to determine whether there is any need to make modifications, and whether it is feasible to expand further the applicability of the system beyond rulemaking-related proceedings and possibly ultimately to require electronic filing. The electronic comment filing system (ECFS) is now operational and can be used to file comments electronically in individual proceedings designated by the Commission. When the rule changes adopted in this order go into effect, the ECFS may be used for electronic filing of comments as specified in this order. It is anticipated that the transition to the ECFS as the official system of record will be completed by July 1998. A Public Notice will be issued at that time.

2. **Formal Status of Electronically Filed Comments.** Every commenting party supported the concept of electronic filing of comments in rulemaking proceedings. We believe that the electronic transmission of comments to the Commission will make it easier for the public to participate in our proceedings, encouraging greater and more diverse public input. This procedure may well reduce the cost of filing comments, because parties will no

longer have to file multiple paper copies and arrange for mailing or messenger delivery if the party to be served agrees to be served electronically. The ECFS will automatically catalogue all of the comments, making it easier to review comments. Electronic comment filing will also make it easier for people with disabilities to participate in our proceedings. As the National Association of the Deaf observed, the deaf and hard of hearing community relies on the Internet as an important form of communication, and the various costs and complications of filing comments on paper has often prevented these individuals from sharing their views with the Commission. Furthermore, this procedure will allow for the on-line review of comments filed with the Commission by the staff and by the public. We believe that increased public participation in our decision making process will allow us to consider a broader range of opinions and input, improving our decision making process. For all these reasons, we strongly encourage the public to use the ECFS system.

3. We note that for now electronic filing procedures will be used in general rulemaking proceedings. The procedure will not be available for rules of "particular applicability" (e.g., tariff investigations) unless the Commission has specifically permitted such filings in those types of proceedings. Further, electronic filing may be used in general rulemaking proceedings even when the Commission has dispensed with the use of notice and comment procedures under the Administrative Procedure Act's exceptions. In such rulemaking proceedings, electronic filing could be used for petitions for reconsideration, for example.

4. The choice of the Internet as the filing mechanism generally was supported by the commenting parties, although some commenters questioned whether bandwidth limitations might affect the use of the Internet. Bandwidth is not an issue here because documents will be transmitted to us electronically and even large documents will not be of a size to hamper downloading. Our technical staff is working to ensure that the public easily be able to gain access to and use the ECFS. Some commenters made specific suggestions for the electronic filing interface and recommended that changes to the "quickstart" interface be made available for public testing. We are reviewing these suggestions and the final ECFS instructions will explain the Commission's interface choices. Input from the public and FCC staff on the ECFS interface is important, and we will

implement periodic reviews to consider changes to the system in the future.

5. As we have noted, we strongly encourage the public to utilize the ECFS system to file comments electronically. However, the public may continue to file comments by traditional means, on paper. We will treat comments filed on paper and comments filed electronically the same. If a party files its comments electronically, there is no need to file a paper version of the document, and we discourage parties from filing both electronically and on paper. If both electronic and paper versions are filed, we will treat the electronic version as the original, official copy, and one paper copy should be filed. Electronic comments that are received before the applicable deadline and meet the necessary formalities will be treated as formal filings, and comments that are received after the deadlines, or that fail to meet the necessary formalities, will be treated as informal or ex parte filings.

6. *Extension to Other Related Proceedings.* We agree with commenters that electronic filing should be permitted for petitions for rulemaking (except in broadcast allotment proceedings), pleadings in NOIs, and petitions for reconsideration and all responsive pleadings in the foregoing proceedings and rulemaking proceedings (except broadcast allotment proceedings). We see no reason to phase in these additions to our electronic comment filing initiative over time. We will amend our rules accordingly. In the future, after the Commission and the public has had experience with the ECFS system, we anticipate adding other types of pleadings and documents to the electronic filing system and moving toward an all-electronic filing system.

7. *Signatures.* Extension of the ECFS to proceedings other than rulemaking proceedings, we might have to amend the signature rule, 47 CFR 1.52, which requires that "[t]he original of all petitions, motions, pleadings, briefs, and other documents filed" by counsel or by any party not represented by counsel must be signed. For example, in rulemaking proceedings, petitions for reconsideration, oppositions, and replies must conform to § 1.52, 47 CFR 1.52. One commenter asserted that filing electronically results in the lack of a traceable signature. The only other parties commenting on this question simply referred to electronic signatures as part of their discussion of security measures. Sections 1.743(e) and 1.913(e) of our rules, 47 CFR 1.743(e) and 1.913(e), currently permit electronic signatures for certain applications. Under these rules, "the signature on an

electronically filed application will consist of the electronic equivalent of the typed name of the individual." We believe these procedures can be applied to documents filed electronically through the ECFS, and we will amend § 1.52 of our rules, 47 CFR 1.52, to define electronic signatures similarly for documents filed in this manner.

8. *Ex Parte Submissions.* We agree that the ECFS can be used for summaries of permissible ex parte presentations in rulemaking proceedings (except broadcast allotment proceedings). If a party is filing a notice for the record summarizing an oral ex parte meeting in a permit-but-disclose rulemaking, it may do so electronically or on paper. In proceedings in which electronic filing is permitted, paper filings will also be scanned into the system. The summaries of ex parte presentations will be available to all Commissioners and Commission staff via the FCC's Internet. In addition, the ECFS will, on a daily basis, generate a listing of all documents filed electronically or scanned into the ECFS which will be provided to the Commissioners, Bureaus, and Offices. Thus, Commission employees involved in oral ex parte presentations will receive notice of or and have immediate access to copies of the summaries of oral ex parte presentations. In view of this, in proceedings in which electronic filing is permitted, we are modifying the current requirement in § 1.1206(b)(2) of our rules, 47 CFR 1.1206(b)(2), that persons making oral ex parte presentations must submit copies of the summary of the presentation to the Commissioner or Commission employee involved in the oral presentation. Written ex parte presentations in these proceedings can be filed electronically, or, if filed on paper, will be scanned into the system by Commission personnel. We note that we are permitting electronic filings in NOIs and petition for rulemaking proceedings (except broadcast allotment proceedings). These proceedings are exempt for purposes of ex parte filing rules. In addition, ex parte comments will be able to be filed electronically in these proceedings, as Bell Atlantic/NYNEX suggests. We will reassess the electronic filing of summaries of ex parte presentations as we gain more experience with the ECFS system.

9. *Security.* The FCC's Internet servers are protected by a "firewall" that prevents outside users from gaining access to our internal data. The ECFS has been designed to work with the firewall to keep the master database of comments secure. Security measures make it more difficult for members of

the public to use electronic filing. A major goal of the ECFS is to make it easier to file information with, and retrieve information from, the FCC. Unlike specialized FCC activities, rulemakings are open to all members of the public. Currently, we have no special security checks for paper filings. Anyone could mail or hand-deliver a set of paper comments claiming to be a certain party, and the Commission would have to rely on the real party to identify the "imposter" comments. The same standards should work just as well for electronic comments. We note that in proceedings in which electronic filing has been permitted thus far, we have encountered no problems. We have adequate measures in place to deal with abusive or frivolous filings. We will not take further steps at this time, because we agree with commenting parties that such instances can be addressed on a case-by-case basis.

10. Submission of materials through the ECFS will post them to the World Wide Web. We anticipate that parties submitting confidential materials (either those presumptively confidential or those for which the party seeks confidentiality) will continue to do so on paper. It is administratively difficult to deal with confidentiality requests in the rulemaking context because of the large number of parties typically involved.

11. *Filing Deadline Issues.* We proposed, at least initially, to keep the same filing deadline (5:30 p.m. eastern time) for electronic comments as we currently have for paper comments. Some commenters agree that we should retain the status quo. Other commenters suggested that because the ECFS will be accessible 24 hours a day through the Internet, the filing deadline should be pushed back until midnight. Other parties indicated that the date and time electronic comments are received by the Commission, whenever that occurred, should govern, that is, comments would be received at all times but if received after 5:30 p.m. on a business day, would be deemed to be filed the next business day. Electronic filing makes it technically possible for us to extend our filing deadline later in the day, and we wish to encourage electronic filing. We will therefore permit electronic comments filed via the ECFS to be made until midnight of the date due. Our rules will be amended accordingly. We note that a time stamp mechanism so that the filing date of each comment can be confirmed has already been built into the ECFS, along with automatic notification to the commenter of the official filing date and time.

12. *Extensions of Time.* We will amend our rules (47 CFR 0.231(i)) to delegate to the Secretary authority to grant requests for extensions of time based on operational or congestion problems in appropriate circumstances. We will reassess these procedures after we have had some experience to determine whether congestion and outages are likely to be a significant problem.

13. *Formatting and Copy Issues.* The ECFS has been designed to accept filings created in the following major word processing formats—Microsoft Word, WordPerfect, Adobe Acrobat, and ASCII text—as well as Microsoft Excel for spreadsheets. These formats represent the overwhelming majority of the market today, and virtually every other word processor will export files in these formats. For viewing and printing, the ECFS will automatically convert files into Adobe Acrobat Portable Document Format (PDF) so that users can access the formatted files even if they do not have the word processor used to create the document. The ECFS documentation and on-line help will specify the acceptable formats. We encourage electronic filers to utilize sufficiently large fonts to ensure ease of reading documents. Over time, as users' needs change and technology advances, we will consider adding additional file formats if technically feasible. Because an earlier version of Microsoft Internet Explorer did not support a specific technical feature necessary for uploading files into the FCC's database system, the quickstart system in use for the past months only allowed uploading using Netscape Navigator. Microsoft has since added the necessary feature in the current version of Internet Explorer (4.0), which is free to the public, so the final ECFS implementation will support both the major browsers. We anticipate that other browsers will be able to use the system, and will work to include necessary features as needed. Documentation for the ECFS will provide users with additional information on compatible software.

14. Non-electronic attachments to electronic filings should be filed the same day as the electronic filing. We encourage parties to scan their attachments as PDF files and submit them electronically. If parties cannot do so, we will attempt to scan the non-electronic portion of the filing into the ECFS. If it is not possible to scan the materials, the party submitting such material should reference it in the pleading and the materials will be included in the record. Documents filed electronically should be self-contained. No hyperlinks to other sites on the

Internet will be permitted in electronically-filed documents. To allow hyperlinks would permit parties to expand, perhaps endlessly, the materials submitted to us for consideration. It also could conceivably result in linkage to inappropriate sites. We will, however, consider this issue as part of our evaluation of the ECFS.

15. We prefer that parties utilize the ECFS system, but paper filings can continue to be made accompanied by diskettes. As the system matures, we will consider whether a bulletin board system should be added and whether acceptance of CD-ROM is advisable.

16. The ECFS is designed to convert automatically all filings into Adobe Acrobat (PDF) format. PDF preserves document formatting and pagination when viewed on different systems, although in some cases there may be slight differences between the paper and on-line version. Because there may be deviations from the paper and on-line versions, a word limit makes sense, since all major word processors include a word count feature. Also, this measurement is more consistent than file size, which may vary with the word processor and may change during electronic transmission. One double-spaced page is roughly 250 words. Therefore, we will modify our rules to allow either a maximum number of pages or a maximum number of words (calculated at 250 words per page). We encourage parties filing on paper to number their paragraphs. However, we will not require paragraph numbering and failure to include paragraph numbers will not be a reason for us to disregard a comment.

17. Because electronic submissions will be available simultaneously to the staff via the FCC Intranet, there is no need for filing multiple copies. Only one official copy of an electronic filing is necessary, unless the Commission has specified that additional electronic copies must be filed, and we will amend our rules accordingly. Commission staff will handle internal distribution of documents if such distribution is required. However, we do not anticipate this will be necessary because the ECFS provides all Commission staff, including the Commissioners, with almost immediate access to pleadings filed electronically. As we previously noted, the ECFS will also generate on a daily basis a listing of documents filed electronically with or scanned into the system. This listing will be distributed to all Commissioners, Bureaus, and Offices. The ECFS thus makes it unnecessary for parties to provide courtesy copies of pleadings directly to Commissioners, Bureaus, and Offices.

Although we will not prohibit courtesy filings, we strongly discourage the filing of excessive copies of documents. If a party wishes to make the additional effort and expenditure of providing one courtesy copy of a pleading directly to a Commissioner, Bureau, or Office, they may do so. Courtesy copies, however, may only be provided on paper. Parties must mark such copies "Courtesy Copy" on the title page to avoid confusion as to whether a document is an original or copy. We will continue regularly to reassess our internal distribution methods as we gain more experience with this system.

18. The ECFS was designed to allow an FCC staff person to verify comments after they have been filed electronically and before they are made available for viewing and downloading by the public through the Internet. This intermediate step is designed to ensure that parties have provided essential information, such as the docket number. Paper documents must still be scanned into the system, as with the current RIPS system, which will take slightly longer for them to be available electronically. In addition, determinations may need to be made as to whether a pleading is late filed, ex parte, confidential correspondence, or filed within the Sunshine Period. Other than these processing steps, electronically-submitted comments can be made available to the public immediately after filing. It seems reasonable to commit to having comments available on-line through the FCC's World Wide Web site for downloading the day after the filing deadline (except materials that must be scanned into the ECFS or in extraordinary cases), and we will endeavor to do so. Some parties ask that comments be available from the Commission's copy contractor by 8:30 a.m. following the filing deadline. This would seem to be an overly stringent standard. The copy contractor will receive an electronic mail notification list of all filings at the same time as the Bureaus and copies will be available as soon as they are processed by the Secretary's Office.

19. In some cases, parties must serve copies of their filings on all other participants in a proceeding. Specifically, in rulemaking proceedings, oppositions to petitions for reconsideration and replies to such oppositions must be served on certain parties. Commenters generally agreed that, even when comments were filed electronically with the FCC, service on other parties would have to be on paper unless those parties stated that they would accept electronic service. A party must agree to accept electronic service

at their premises before service may be accomplished in that manner. We are exploring adding a field on the ECFS to allow parties to check whether they will accept electronic service. In the meantime, parties should indicate their willingness to accept electronic filing in their pleadings. We may explore other approaches in the future, but it is important to gain experience with the practice of electronic filing before attempting to do so. When parties agree to electronic service, service in that manner will be considered the same as facsimile service. We will amend the rule accordingly.

20. *Final Regulatory Flexibility Act Certification.* We previously certified that the proposed rules "[would] not, if promulgated, have a significant economic impact on a substantial number of small entities." No comments were received concerning this certification. Our purpose in granting electronically filed comments comparable legal treatment to comments filed on paper is to simplify and clarify the existing rules, and to give parties additional options for filing comments. The modifications do not impose any additional compliance burden on persons dealing with the Commission, including small entities. All parties will still be permitted to file comments on paper, exactly as they do today. We anticipate that the revisions we adopt here will make it somewhat easier for small entities as well as others that wish to file and review comments electronically to do so. Accordingly, we certify that the rules will not have a significant economic impact on a substantial number of small entities. In addition, the Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

21. Accordingly, it is ordered that pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), Parts 0 and 1 of the Commission's Rules are amended as set forth in the Rule Changes below.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.231 is amended by revising paragraph (i) to read as follows:

§ 0.231 Authority delegated.

(i) The Secretary, acting under the supervision of the Managing Director, serves as the official custodian of the Commission's documents and shall have authority to appoint a deputy or deputies for the purposes of custody and certification of documents located in Gettysburg, Pennsylvania or other established locations. The Secretary is delegated authority to rule on requests for extensions of time based on operational problems associated with the Commission's electronic comment filing system. See § 1.46 of this chapter.

3. Section 0.401 is amended by adding paragraph (a)(1)(iii) to read as follows:

§ 0.401 Location of Commission offices.

(a) * * *

(1) * * *

(iii) Electronic filings, where permitted, must be transmitted as specified by the Commission or relevant Bureau or Office.

PART 1—PRACTICE AND PROCEDURE

4. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

5. Section 1.4 is amended by revising paragraph (f) and the text of paragraph (h) preceding the examples to read as follows:

§ 1.4 Computation of time.

(f) Except as provided in § 0.401(b) of this chapter, all petitions, pleadings, tariffs or other documents not required to be accompanied by a fee and which are hand-delivered must be tendered for

filing in complete form before 5:30 p.m. in the Office of the Secretary, either in Washington or Gettysburg, as directed by § 0.401(b) of this chapter. The Secretary will determine whether a tendered document meets the pre-5:30 deadline. Documents filed electronically pursuant to § 1.49(f) must be received by the Commission's electronic comment filing system before midnight.

(h) If a document is required to be served upon other parties by statute or Commission regulation and the document is in fact served by mail (see § 1.47(f)), and the filing period for a response is 10 days or less, an additional 3 days (excluding holidays) will be allowed to all parties in the proceeding for filing a response. This paragraph (h) shall not apply to documents filed pursuant to § 1.89, § 1.120(d), § 1.315(b) or § 1.316. For purposes of this paragraph (h) service by facsimile or by electronic means shall be deemed equivalent to hand delivery.

6. Section 1.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.46 Motions for extension of time.

(b) Motions for extension of time in which to file responses to petitions for rulemaking, replies to such responses, comments filed in response to notice of proposed rulemaking, replies to such comments and other filings in rulemaking proceedings conducted under Subpart C of this part shall be filed at least 7 days before the filing date. If a timely motion is denied, the responses and comments, replies thereto, or other filings need not be filed until 2 business days after the Commission acts on the motion. In emergency situations, the Commission will consider a late-filed motion for a brief extension of time related to the duration of the emergency and will consider motions for acceptance of comments, reply comments or other filings made after the filing date.

(c) If a motion for extension of time in which to make filings in proceedings other than notice and comment rule making proceedings is filed less than 7 days prior to the filing day, the party filing the motion shall (in addition to serving the motion on other parties) orally notify other parties and Commission staff personnel responsible for acting on the motion that the motion has been (or is being) filed.

7. Section 1.47 is amended by revising paragraph (d) to read as follows:

§ 1.47 Service of documents and proof of service.

(d) Except in formal complaint proceedings against common carriers under §§ 1.720 through 1.736, documents may be served upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address. See § 1.736. Documents that are required to be served must be served in paper form, even if documents are filed in electronic form with the Commission, unless the party to be served agrees to accept service in some other form.

8. Section 1.49 is amended by revising paragraph (a) and adding new paragraph (f) preceding the note at the end of the section to read as follows:

§ 1.49 Specifications as to pleadings and documents.

(a) All pleadings and documents filed in paper form in any Commission proceeding shall be typewritten or prepared by mechanical processing methods, and shall be filed on A4 (21 cm. x 29.7 cm.) or on 8½ x 11 inch (21.6 cm. x 27.9 cm.) paper with the margins set so that the printed material does not exceed 6 1/2 x 9½ inches (16.5 cm. x 24.1 cm.). The printed material may be in any typeface of at least 12-point (0.42333 cm. or 1½/32 ") in height. The body of the text must be double spaced with a minimum distance of 7/32 of an inch (0.5556 cm.) between each line of text. Footnotes and long, indented quotations may be single spaced, but must be in type that is 12-point or larger in height, with at least 1/16 of an inch (0.158 cm.) between each line of text. Counsel are cautioned against

employing extended single spaced passages or excessive footnotes to evade prescribed pleading lengths. If single-spaced passages or footnotes are used in this manner the pleading will, at the discretion of the Commission, either be rejected as unacceptable for filing or dismissed with leave to be refiled in proper form. Pleadings may be printed on both sides of the paper. Pleadings that use only one side of the paper shall be stapled, or otherwise bound, in the upper left-hand corner; those using both sides of the paper shall be stapled twice, or otherwise bound, along the left-hand margin so that it opens like a book. The foregoing shall not apply to printed briefs specifically requested by the Commission, official publications, charted or maps, original documents (or admissible copies thereof) offered as exhibits, specially prepared exhibits, or if otherwise specifically provided. All copies shall be clearly legible.

(f)(1) In the following types of proceedings, all pleadings, including

permissible ex parte submissions, notices of ex parte presentations, comments, reply comments, and petitions for reconsideration and replies thereto, may be filed in electronic format:

(i) General rulemaking proceedings other than broadcast allotment proceedings;

(ii) Notice of inquiry proceedings; and

(iii) Petition for rulemaking proceedings (except broadcast allotment proceedings).

(2) For purposes of paragraphs (b) and (c) of this section, and any prescribed pleading lengths, the length of any document filed in electronic form shall be equal to the length of the document if printed out and formatted according to the specifications of paragraph (a) of this section, or shall be no more than 250 words per page.

9. Section 1.51 is amended by revising paragraph (e) to read as follows:

§ 1.51 Number of copies of pleadings, briefs and other papers.

(e) The parties to any proceeding may, on notice, be required to file additional copies of any or all filings made in that proceeding.

10. Section 1.52 is revised to read as follows:

§ 1.52 Subscription and verification.

The original of all petitions, motions, pleadings, briefs, and other documents filed by any party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and verify the document and state his address. Either the original document, or an electronic reproduction of such original document containing the facsimile signature of the attorney or unrepresented party is acceptable for filing. If a facsimile copy of a document is filed, the signatory shall retain the original until the Commission's decision is final and no longer subject to judicial review. If pursuant to § 1.429(h) a document is filed electronically, a signature will be considered any symbol executed or adopted by the party with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses. Except when otherwise specifically provided by rule or statute, documents signed by the attorney for a party need not be verified or accompanied by affidavit. The signature or electronic reproduction thereof by an attorney constitutes a certificate by him that he has read the

document; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If the original of a document is not signed or is signed with intent to defeat the purpose of this section, or an electronic reproduction does not contain a facsimile signature, it may be stricken as sham and false, and the matter may proceed as though the document had not been filed. An attorney may be subjected to appropriate disciplinary action, pursuant to § 1.24, for a willful violation of this section or if scandalous or indecent matter is inserted.

11. Section 1.401 is amended by revising paragraph (b) to read as follows:

§ 1.401 Petitions for rulemaking.

(b) The petition for rulemaking shall conform to the requirements of §§ 1.49, 1.52 and 1.419(b) (or § 1.420(e), if applicable), and shall be submitted or addressed to the Secretary, Federal Communications Commission, Washington, DC 20554, or (except in broadcast allotment proceedings) may be submitted electronically.

12. Section 1.403 is revised to read as follows:

§ 1.403 Notice and availability

All petitions for rule making (other than petitions to amend the FM, Television, and Air-Ground Tables of Assignments) meeting the requirements of § 1.401 will be given a file number and, promptly thereafter, a "Public Notice" will be issued (by means of a Commission release entitled "Petitions for Rule Making Filed") as to the petition, file number, nature of the proposal, and date of filing. Petitions for rule making are available at the Commission's Dockets Reference Center (1919 M Street NW., Room 239, Washington, DC), and may also be available electronically over the Internet at <<http://www.fcc.gov/>>.

13. Section 1.419 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 1.419 Form of comments and replies; number of copies.

(d) Participants that file comments and replies in electronic form need only submit one copy of those comments, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments.

(e) Comments and replies filed in electronic form by a party represented by an attorney shall include the name,

street address, and telephone number of at least one attorney of record. Parties not represented by an attorney that file comments and replies in electronic form shall provide their name, street address, and telephone number.

14. Section 1.429 is amended by revising paragraphs (d), (e), (f), (g) and (h) to read as follows:

§ 1.429 Petitions for reconsideration.

(d) The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b). No supplement to a petition for reconsideration filed after expiration of the 30 day period will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement. The petition for reconsideration shall not exceed 25 double-spaced typewritten pages. See also § 1.49(f).

(e) Except as provided in § 1.420(f), petitions for reconsideration need not be served on parties to the proceeding. (However, where the number of parties is relatively small, the Commission encourages the service of petitions for reconsideration and other pleadings, and agreements among parties to exchange copies of pleadings. See also § 1.47(d) regarding electronic service of documents.) When a petition for reconsideration is timely filed in proper form, public notice of its filing is published in the *Federal Register*. The time for filing oppositions to the petition runs from the date of public notice. See § 1.4(b).

(f) Oppositions to a petition for reconsideration shall be filed within 15 days after the date of public notice of the petition's filing and need be served only on the person who filed the petition. See also § 1.49(d). Oppositions shall not exceed 25 double-spaced typewritten pages. See § 1.49(f).

(g) Replies to an opposition shall be filed within 10 days after the time for filing oppositions has expired and need be served only on the person who filed the opposition. Replies shall not exceed 10 double-spaced typewritten pages. See also § 1.49(d) and § 1.49(f).

(h) Petitions for reconsideration, oppositions and replies shall conform to the requirements of §§ 1.49 and 1.52, except that they need not be verified. Except as provided in § 1.420(e), an original and 11 copies shall be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554. Parties filing in

electronic form need only submit one copy.

15. Section 1.1206 is amended by revising paragraphs (b)(1) and (b)(2) preceding Note 1 to read as follows:

§ 1.1206 Permit-but-disclose proceedings.

(b) * * *

(1) *Written presentations.* A person who makes a written ex parte presentation subject to this section shall, no later than the next business day after the presentation, submit two copies of the presentation to the Commission's secretary under separate cover for inclusion in the public record. The presentation (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that two copies have been submitted to the Secretary, and must be labeled as an ex parte presentation. If the presentation relates to more than one proceeding, two copies shall be filed for each proceeding. Alternatively, in rulemaking proceedings governed by § 1.49(f), the person making the presentation may file one copy of the presentation electronically; no additional paper copies need to be filed.

(2) *Oral presentations.* A person who makes an oral ex parte presentation subject to this section that presents data or arguments not already reflected in that person's written comments, memoranda or other filings in that proceeding shall, no later than the next business day after the presentation, submit to the Commission's Secretary, an original and one copy of a memorandum which summarizes the new data or arguments. Except in proceedings subject to § 1.49(f) in which pleadings are filed electronically, a copy of the memorandum must also be submitted to the Commissioners or Commission employees involved in the oral presentation. In proceedings governed by § 1.49(f), the person making the presentation may, alternatively, electronically file one copy of the memorandum, which will be available to Commissioners and Commission employees involved in the presentation through the Commission's electronic comment filing system. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. The memorandum (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate

that an original and one copy have been submitted to the Secretary or that one copy has been filed electronically, and must be labeled as an ex parte presentation. If the presentation relates to more than one proceeding, two copies of the memorandum (or an original and one copy) shall be filed for each proceeding.

[FR Doc. 98-10310 Filed 4-30-98; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 92-297; RM-7872; PP-22 et al.; FCC 98-71]

Dismissal of All Pending Pioneer's Preference Requests; Review of the Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: By this action, the Commission denies a petition for reconsideration filed by QUALCOMM Incorporated. QUALCOMM contends that the Commission is obligated to consider on its merits QUALCOMM's request for a pioneer's preference in the 2 GHz broadband Personal Communications Service (PCS). However, the Commission affirms that it no longer has the authority to award pioneer's preferences because the Balanced Budget Act of 1997 (Budget Act) terminated the pioneer's preference program. The intended effect of this action is to affirm the Commission's previous Order, which formally terminated the pioneer's preference program and dismissed all pending pioneer's preference requests.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418-2452; internet: rsmall@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) adopted April 16, 1998, and released April 23, 1998. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International

Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of MO&O

1. On October 20, 1997, QUALCOMM filed a petition for reconsideration of the Commission's Order, 62 FR 48951, September 18, 1997, which dismissed all pending pioneer's preference requests, including QUALCOMM's 2 GHz broadband PCS request. For reasons that follow, we deny the petition for reconsideration.

2. In 1994, we denied QUALCOMM's 2 GHz broadband PCS request. In January 1997, however, the United States Court of Appeals for the District of Columbia Circuit (Court) granted QUALCOMM's petition for review of our action, vacated our denial of QUALCOMM's pioneer's preference request, and remanded the proceeding to us for further consideration.

3. On August 5, 1997, President Clinton signed into law the Budget Act. Among other things, the Budget Act revised the expiration date of the pioneer's preference program, as set forth in section 309(j)(13)(F) of the Communications Act of 1934, as amended. That section had been added in 1994 legislation domestically implementing the General Agreement on Tariffs and Trade (GATT), and read prior to enactment of the Budget Act: "The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on September 30, 1998." The Budget Act advanced that date to "the date of enactment of the Balanced Budget Act of 1997." Thus, the pioneer's preference program expired on August 5, 1997. In our Order, we formally terminated the pioneer's preference program and dismissed all pending pioneer's preference requests, including QUALCOMM's.

4. On October 9, 1997, QUALCOMM filed with the Court a "Motion to Enforce Mandate and Supporting Memorandum," contending that our Order misconstrued the Budget Act and requesting the Court to order us to consider QUALCOMM's pioneer's preference request on its merits. On October 16, 1997, counsel for the Commission filed an opposition to the motion, pointing out, *inter alia*, that QUALCOMM's motion was procedurally improper because QUALCOMM had not filed a petition for

reconsideration of the Order affording us an opportunity to address its contentions. On October 20, 1997, while QUALCOMM's motion was still pending before the Court, QUALCOMM filed with the Commission a petition for reconsideration of the Order. On November 5, 1997, the Court dismissed the motion on the grounds that QUALCOMM had failed to exhaust its administrative remedies, stating that the "appropriate procedure for QUALCOMM to seek relief is to petition to the Commission to reconsider its decision dismissing QUALCOMM's application."

5. In its petition for reconsideration, QUALCOMM argues that "the FCC's application of the Budget Act violates the rule against retroactive application of the law," that "the language of the Budget Act suggests that Congress intended to permit continuation of the [pioneer's preference] program, while placing restrictions on the Commission's authority to preclude the filing of mutually exclusive applications," and that "QUALCOMM is entitled to a fair hearing on the merits of its pioneer's preference application." QUALCOMM also claims that, in terminating the pioneer's preference program and dismissing its request for a preference without providing for public notice and comment, our Order violated the requirements of the Administrative Procedure Act (APA). We reject each of these arguments.

6. *Retroactivity.* We find QUALCOMM's characterization of our Order dismissing its pioneer's preference request as an improper "retroactive" application of the Budget Act to be without merit. The Order appropriately gave prospective effect to this statute in concluding that as of the date of its enactment, August 5, 1997, we no longer had authority to grant pending requests for pioneer's preferences. Thus, contrary to QUALCOMM's claim, our action did not violate the traditional presumption against retroactivity that the Supreme Court reiterated in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

7. Moreover, our application of the Budget Act in this case is consistent with the firmly-established principle that, "when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law." *Bruner v. United States*, 343 U.S. 112, 116-117 (1952). The Supreme Court has explained that application of a new jurisdictional rule normally does not raise concerns about retroactivity "because jurisdictional statutes speak to the power of the court rather than to the rights or obligations

of the parties." *Landgraf*, 511 U.S. at 273. Similarly, application of the Budget Act in this case does not produce an impermissible retroactive effect because that statute addresses our authority to act, not the merits of QUALCOMM's pioneer's preference request.

8. Accordingly, we find that we properly applied the time-honored tenet of statutory construction that, "when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law." *Bruner*, 343 U.S. at 116-117. Moreover, even if the Budget Act properly could be characterized as altering the substantive law applicable to pioneer's preferences, the statute's application in QUALCOMM's case does not raise the retroactivity concerns identified in *Landgraf*. As the Supreme Court explained, a new statute is considered retroactive only if "it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf*, 511 U.S. at 280. See also *Soco River Cellular, Inc. v. FCC*, No. 91-1248, slip op. at 9 (DC Cir. Jan. 16, 1998) (*Soco River*). The Budget Act has none of these effects. It neither increases QUALCOMM's liability for past conduct nor imposes new duties relating to completed transactions. Additionally, this new statute does not impair any right possessed by QUALCOMM "because none vested on the filing of its [request]." *Chadmoore Communications, Inc. v. FCC*, 113 F.3d 235, 241 (DC Cir. 1997).

9. Further, in its remand order, the Court in *Freeman Engineering* did not find that QUALCOMM had a vested right to a pioneer's preference; it simply required us to reevaluate whether QUALCOMM's request for a preference should be granted or denied. Thus, the effect of the remand was to return QUALCOMM's preference request to pending status before the Commission and afforded QUALCOMM no greater or lesser rights than those of any other party with a pending preference request. Clearly, Congress had the power to enact legislation that terminated our authority to grant pending requests for pioneer's preferences; and "the mere expectations of a license applicant cannot bar the legitimate exercise of such congressional power." *Multi-State Communications, Inc. v. FCC*, 728 F.2d 1519, 1526 n.12 (DC Cir.), cert. denied, 469 U.S. 1017 (1984). The mere fact that a statute is "applied in a case arising from conduct antedating the statute's enactment or upsets expectations based in prior law" does not render the statute

retroactive." *Saco River*, slip op. at 9, quoting *Landgraf*, 511 U.S. at 269.

10. *Scope of Sunset Provision in Budget Act*. QUALCOMM asserts that the Budget Act does not bar us from awarding pioneer's preferences, but only limits our power to provide preferential treatment to pioneers by precluding the filing of mutually exclusive applications. We disagree. Our preference program rewarded innovators by enabling them to obtain licenses without having to face competing (i.e., mutually exclusive) applications. We are not at liberty to grant some other sort of preference to communications pioneers. Section 309(j)(13)(A) of the Communications Act provides that we "shall not award licenses" by giving preferential treatment to innovators "except in accordance with the requirements" of section 309(j)(13). 47 U.S.C. 309(j)(13)(A). Following its amendment by the Budget Act, section 309(j)(13) contains no provision authorizing us to give preferences to innovators in the licensing process. Further, while sections 7(a) and 303(g) give us the authority to award pioneer's preferences in the absence of an explicit statute to the contrary, section 309(j)(13)(F) is just such a statute.

11. QUALCOMM contends, however, that Congress did not intend for the Budget Act's immediate termination of the pioneer's preference program to affect its pending preference request because the House Report on the 1994 GATT Legislation stated that Congress did not intend to "affect the rights of persons who have been denied a pioneer's preference." Petition for Reconsideration at 6 (quoting Report to accompany H.R. 5110, 103 Cong. 2d, House Rept. 103-826 (House Report)). We are not persuaded by QUALCOMM's argument. The quoted statement from the House Report does not address the sunset provision set forth in section 309(j)(13)(F) of the Communications Act. Instead, the statement in question clarified that a different provision of the Act, section 309(j)(13)(E), which precluded further administrative and judicial review of certain grants of pioneer's preference requests, was not intended to "affect the rights of persons who have been denied a pioneer's preference." House Report at 8 (emphasis added). That is, Congress intended simply to make clear in 1994 that parties like QUALCOMM could appeal the denial of a pioneer's preference request despite the no review provision.

12. *Right to a Hearing*. QUALCOMM argues that the Order violated its right to due process by denying its "right to

a fair hearing [that had] vested long before Congress changed the law relating to pioneer's preferences on a going forward basis." We disagree. QUALCOMM does not have a constitutional "right to a fair hearing" unless that hearing concerns constitutionally protected liberty or property interests: "The requirements of procedural due process apply only to the deprivation of interests encompassed by the [Constitution's] protection of liberty and property." *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). Although QUALCOMM claims a property interest in a fair hearing, any hearing that it would receive at this point would not implicate any property interest because we no longer have authority to grant QUALCOMM's preference request. As the U.S. Court of Appeals for the District of Columbia Circuit recently reaffirmed, "[t]he filing of an application creates no vested right to a hearing; if the substantive standards change so that the applicant is no longer qualified, the application may be dismissed." *Chadmoore*, 113 F.3d at 241 (quoting *Hispanic Information & Telecommunications Network v. FCC*, 865 F.2d 1289, 1294-95 (DC Cir. 1989)); see also *Melcher v. FCC*, 134 F.3d 1143, 1164-65 (DC Cir. 1998).

13. While QUALCOMM contends that it has a vested right in a pioneer's preference, neither we nor the court has ever found that QUALCOMM was entitled to a preference under our rules. Further, QUALCOMM has no right to a hearing that cannot yield the benefits it seeks. A hearing is a means to an end, and the end that QUALCOMM seeks—grant of a pioneer's preference—is no longer available. A hearing thus would be futile. Accordingly, our decision to dismiss QUALCOMM's preference application "simply respects the statutorily-fixed deadline" for exercising our authority to award pioneer's preferences: "[I]n thus following the legislature's direction, the [Commission] contravened no due process right to fundamentally fair procedures." *Spannaus v. FCC*, 990 F.2d 643, 645 (DC Cir. 1993).

14. *APA Notice and Comment Requirements*. QUALCOMM argues that "[t]he APA requires that the Commission allow an opportunity for notice and comment before promulgating rules other than those 'of agency organization, or practice.'" The APA also, however, permits us to proceed without notice and comment procedures when good cause exists for finding such procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C.

553(b)(B). Similarly, publication or service of a rule change at least 30 days before its effective date is not required when good cause is found. 5 U.S.C. 553(d)(3). Such is the situation before us. The unambiguous language of the Budget Act terminating our authority to grant pioneer's preferences effective upon enactment of the Act made it unnecessary for us to follow public notice and comment procedures or to provide for at least 30 days advance publication in order to amend our rules to terminate the pioneer's preference program and to dismiss pending pioneer's preference requests.

15. *Other Matters*. In comments filed November 6, 1997, QUALCOMM argues that the Order interpreted the sunset provision of section 309(j)(13)(F) in a manner inconsistent with past Commission precedent but failed to explain the reasons for this departure from precedent. Specifically, QUALCOMM claims that in the Second Report and Order and Further Notice of Proposed Rule Making (Second R&O) in the Pioneer's Preference Review Proceeding, 60 FR 13396, March 13, 1995, we interpreted section 303(j)(13)(F) as applying only to pioneer's preference requests filed after September 1, 1994, but in our Order we applied that provision to pioneer's preference requests, such as QUALCOMM's, which were filed before that date. Because the Order relied on the sunset provision as the basis for dismissing QUALCOMM's request, QUALCOMM asserts that it was denied administrative due process because the Commission changed its interpretation of the sunset provision without explanation.

16. As an initial matter, we agree with observations made by PrimeCo Personal Communications, L.P. and Sprint PCS, in their opposition to the petition, that QUALCOMM's comments constitute a late-filed supplement to its petition for reconsideration. Accordingly, pursuant to section 1.429 of the Commission's rules, we are dismissing those comments. Nonetheless, we note *sua sponte* that the "unexplained departure from precedent" argument advanced in QUALCOMM's comments is without merit. In the Second R&O, in rejecting comments suggesting that we immediately repeal the pioneer's preference program, we explained that, for preference requests filed after September 1, 1994, section 309(j)(13)(F) directed us to continue this program until September 30, 1998, and that for preference requests filed on or before September 1, 1994, we did not find any valid reason for terminating the program earlier. No commenter in that

proceeding had raised, and we did not discuss, whether we had the authority to continue the pioneer's preference program beyond the date specified in section 309(j)(13)(F) for preference requests filed on or before September 1, 1994. It is clear, however, that we retained no such authority. The GATT legislation required the termination of the entire pioneer's preference program by a date certain, September 30, 1998. That we retained the discretion to terminate the program with respect to earlier-filed preference requests (but chose not to exercise that discretion) does not imply that we had discretion to continue the program in any respect beyond the date set forth in the legislation. Our actions in the Order dismissing QUALCOMM's preference request and terminating the pioneer's preference program as of the date set forth in section 309(j)(13)(F) as amended by the Budget Act, August 5, 1997, are thus fully consistent with our actions in the Second R&O.

17. Finally, we note that in comments filed November 12, 1997, Global Broadcasting Company, Inc. requests that we "consider on the merits" the pioneer's preference request filed by Web SportsNet, Inc. and Gregory D. Deieso but also dismissed in our Order. We are dismissing these comments as an improperly late-filed petition for reconsideration of our action dismissing the preference request, but also note that we have no authority to grant the relief requested.

Ordering Clauses

18. Accordingly, *it is ordered* that the petition for reconsideration filed on October 20, 1997 by QUALCOMM Incorporated is *denied*. This action is taken pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

19. *It is further ordered* that the comments filed on November 6, 1997 by QUALCOMM Incorporated and on November 12, 1997 by Global Broadcasting Company, Inc. are *dismissed*. This action is taken pursuant to section 1.429(d) of the Commission's rules.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

(FR Doc. 98-11616 Filed 4-30-98; 8:45 am)

BILLING CODE 6712-01-P

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5243 and 5252

RIN 0703-AA34

Adjustments to Prices Under Shipbuilding Contracts

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy (DON) is removing certain regulations for adjustments to prices under shipbuilding contracts contained in the Navy Acquisition Procedures Supplement (48 CFR part 5243, §§ 5252.243-9000 and 5252.243-9001). The National Defense Authorization Act of Fiscal Year 1998 eliminated the statutory authority for these rules. Such rules are now unnecessary and are removed immediately. Providing for a comment period before final action in this case would be unnecessary, impracticable, and contrary to public interest. However, DON will accept and consider comments from interested persons in evaluating the effect of this action.

DATES: *Effective Date of Removal:* May 1, 1998.

Comment Date: Comments on this removal action should be submitted in writing to the address shown below on or before June 30, 1998.

ADDRESSES: Interested parties should submit written comments to Department of the Navy, Office of the Assistant Secretary of the Navy (Research, Development and Acquisition) Acquisition and Business Management, 2211 South Clark Place, Arlington, Virginia, 22244-5104.

FOR FURTHER INFORMATION CONTACT: Mr. Michael G. Shaffer, (703)602-1263.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense Authorization Act, 1985 (Pub. L. 98-525 § 1234(a), 98 Stat. 2604, Oct. 19, 1984) established certain limitations on price adjustments made to shipbuilding contracts, which were codified at 10 U.S.C. 2405. The DON published proposed rules to implement the requirements of 10 U.S.C. 2405 in the *Federal Register* on Nov. 16, 1989 (54 FR 47689). A correction and extension of the public comment period was published in the *Federal Register* on Feb. 2, 1990 (55 FR 3603). Revised proposed rules and notice of additional public comment period and public hearing were published in the *Federal*

Register on Jun. 29, 1990 (55 FR 26708). Extension of the public comment period and rescheduling of the public hearing were published in the *Federal Register* on Aug. 16 and Oct. 26, 1990 (55 FR 33541 and 43150). An interim rule and request for comments was published in the *Federal Register* on Dec. 5, 1991 (56 FR 63664). This interim rule added to title 48 of the Code of Federal Regulations a new Part 5243, as well as new §§ 5252.243-9000 and 5252.243-9001, and was made effective on Dec. 5, 1991. No final rule was published.

Section 810 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85, 111 Stat. 1839, Nov. 18, 1997) repealed 10 U.S.C. 2405, making the Navy's implementing regulations contained in 48 CFR parts 5243 and 5252 unnecessary. For this reason, the Navy is now removing and reserving 48 CFR part 5243 in its entirety, as well as §§ 5252.243-9000 and 5252.243-9001.

While the Navy is removing part 5243 in its entirety from the Code of Federal Regulations, information and policy statements regarding contract modifications remain in part 5243 of the Navy Acquisition Procedures Supplement ("NAPS"), which may be accessed at www.abm.rda.hq.navy.mil/naps, or by contacting the office listed in the ADDRESSES block.

B. Determination To Remove Without Prior Public Comment

This removal action is being issued as a final rule without a public comment period as an exception to the DON's standard practice of soliciting comments during the rulemaking process. Providing a period for public comment in this case would be unnecessary, impracticable, and contrary to the public interest. This determination is based on two factors. First, removal of these rules is entirely administrative and corrective in nature, not requiring the exercise of agency discretion. Second, to allow these rules to remain in the Code of Federal Regulations any longer may mislead and confuse the public regarding statutory requirements relating to adjustments of any price under a shipbuilding contract for the amount set forth in a claim, request for equitable adjustment, or demand for payment.

C. Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

Removal of these rules does not meet the definition of "significant regulatory action" for purposes of E.O. 12866.

Regulatory Flexibility Act

Removal of these rules will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

Removal of these rules will not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR Part 1320).

List of Subjects in 48 CFR Parts 5243 and 5252

Government procurement.

Dated: April 22, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps,
U.S. Navy, Federal Register Liaison Officer.

Under the authority of Sec. 810 of Pub. L. 105-85, and for the reasons set forth in the preamble, remove and reserve part 5243 and Sections 5252.243-9000 and 5252.243-9001 of title 48 of the Code of Federal Regulations.

[FR Doc. 98-11592 Filed 4-30-98; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Part 232**

[FRA Docket No. PB-9, Notice No. 11]

RIN 2130-AB22

Two-Way End-of-Train Telemetry Devices and Certain Passenger Train Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is revising the regulations regarding the use and design of two-way end-of-train telemetry devices (two-way EOTs) to specifically address certain passenger train operations where multiple units of freight-type equipment, material handling cars, or express cars are part of a passenger train's consist. Trains of this nature are currently being operated by the National Railroad Passenger Corporation (Amtrak), and these revisions are intended to clarify and address the applicability of the two-way EOT requirements to these types of operations.

EFFECTIVE DATE: This rule is effective May 1, 1998.

ADDRESSES: Any petition for reconsideration should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: James Wilson, Motive Power and Equipment Division, Office of Safety, RRS-14, FRA, 400 Seventh Street, S.W., Stop 25, Washington, D.C. 20590 (telephone 202-632-3367), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC-12, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590 (telephone 202-632-3178).

SUPPLEMENTARY INFORMATION:**Background**

On January 2, 1997, FRA published a final rule amending the regulations governing train and locomotive power braking systems at 49 CFR part 232 to add provisions pertaining to the use and design of two-way end-of-train telemetry devices (two-way EOTs). See 62 FR 278. The purpose of the revisions was to improve the safety of railroad operations by requiring the use of two-way EOTs on a variety of trains pursuant to 1992 legislation, and by establishing minimum performance and operational standards related to the use and design of the devices. See Pub. L. No. 102-365 (September 3, 1992); 49 U.S.C. 20141.

The regulations published on January 2, 1997, regarding two-way EOTs, provided an exception from the requirements for "passenger trains with emergency brakes." See 49 CFR 232.23(e)(9). The language used in this exception was extracted in total from the statutory exception contained in the statutory provisions mandating that FRA develop regulations addressing the use and operation of two-way EOTs or similar technology. See 49 U.S.C. 20141(c)(2). A review of the legislative history reveals that there was no discussion by Congress as to the precise meaning of the phrase "passenger trains with emergency brakes." Consequently, FRA is required to effectuate Congress' intent based on the precise language used in that and the other express exceptions and based on the overall intent of the statutory mandate. See 49 U.S.C. 20141(c)(1)-(c)(5). Furthermore, any exception contained in a specific statutory mandate should be narrowly construed. See *Chesapeake & Ohio Ry. v. United States*, 248 F. 85 (6th Cir. 1918) *cert. den.*, 248 U.S. 580; *DRG R.R. v. United States*, 249 F. 822 (8th Cir.

1918); *United States v. ATSF Ry.*, 156 F.2d 457 (9th Cir. 1946).

The intent of the statutory provisions related to two-way EOTs was to ensure that trains operating at a speed over 30 mph or in heavy grade territory were equipped with the technology to effectuate an emergency application of the train's brakes starting from both the front and rear of the train. The specific exceptions contained in the statute were aimed at trains (i) that do not operate within the express parameters or (ii) that are equipped or operated in a fashion that provides the ability to effectuate an emergency brake application that commences at the rear of the train without the use of a two-way EOT. See 49 U.S.C. 20141(c)(1)-(c)(5). Based on the intent of the statute and based upon a consistent and narrow construction of the specific language used by Congress in the express exceptions, FRA believes it is clear that Congress did not intend the phrase "passenger trains with emergency brakes" to constitute a blanket exception for all passenger trains. If that was Congress' intent, it would not have added the qualifying phrase "with emergency brakes."

In FRA's view, this language limits the specific statutory exception to passenger trains equipped with a separate emergency brake valve in each car throughout the train and, thus, to passenger trains possessing the ability to effectuate an emergency application of the train's brakes from the rear of the train. Therefore, passenger trains that include RoadRailers[®], auto racks, express cars, or other similar vehicles designed to carry freight that are placed at the rear of the train, that are not equipped with emergency brake valves, would not fall within the specific statutory or regulatory exception as they are incapable of effectuating an emergency brake application that commences at the rear of the train. Further, FRA does not believe that Congress envisioned a significant number of express or intermodal cars being hauled at the rear of passenger trains when the specific exception was included in the statute.

FRA believes that Congress intended to except only those trains traditionally considered to be passenger trains, which would include passenger trains containing baggage and mail cars as these have consistently been considered passenger equipment with emergency brakes. However, passenger trains which operate with numerous inaccessible baggage or mail cars attached to the rear of the train that lack any ability to effectuate an emergency brake application from the rear of the

train would, in FRA's view, fall outside the specific statutory and regulatory exception for "passenger trains with emergency brakes."

Subsequent to the issuance of the final rule on two-way EOTs published on January 2, 1997 and the period permitted for the submission of petitions for reconsideration of that rule, Amtrak raised concerns regarding the applicability of the final rule to some of its passenger train operations, particularly those which recently began to operate with numerous express, material handling cars, or RoadRailers[®] entrained in the consist. These concerns focused on FRA's enforcement guidance provided to its field inspectors, which stated that the exception for "passenger trains with emergency brakes" was intended to apply only to trains traditionally considered to be passenger trains, a category that would include passenger trains containing a limited number of baggage and mail cars at the rear of the train. This guidance was based on the reasoning provided in the preceding discussion. Amtrak contended that FRA's interpretive guidance was an improper reading of the statutory and regulatory exception and did not adequately consider the superior braking capabilities of passenger equipment. Although FRA disagrees that its guidance was improper, FRA did agree that a closer examination of the applicability of the two-way EOT requirements to passenger trains needed to be performed in light of the superior braking ratios of passenger cars and the presence of emergency brake valves on the passenger cars in mixed train consists, which provide certain safety assurances that are not present in traditional freight operations. Consequently, FRA agreed that the mixed passenger and "express" service currently being operated by Amtrak is unique and needed to be handled separately from traditional freight operations.

Amtrak currently operates a number of trains that include numerous material handling cars, express cars, auto racks, mail cars, and/or RoadRailer[®] equipment. These types of rolling equipment are either not equipped with emergency brake valves or, if equipped with such valves, they are not accessible to any member of the train crew.

Amtrak expects that the operation of this type of rolling equipment will continue to grow and that many of its trains will eventually have a number of these vehicles in their consists. As noted above, FRA believes that a passenger train operated with this rolling equipment falls outside the statutory and regulatory exception to the

two-way EOT requirement for "passenger trains with emergency brakes," and thus, would be required under the existing rules to be equipped with an operative two-way EOT or alternative technology. However, FRA also recognizes the unique nature of these types of mixed operations and realizes that the safety assurances provided by the braking ratios and the presence of emergency brake valves at various locations through much of the consist on certain mixed passenger trains make requiring the use of a two-way EOT unnecessary.

To gain a perspective on the stopping characteristics and safety implications of the mixed passenger train operations, FRA requested the Volpe National Transportation Systems Center (Volpe) to review the information and procedures used by Amtrak in developing various stopping distance calculations submitted to FRA. In addition, FRA requested that Volpe develop and analyze its own data regarding these types of mixed passenger trains. In making their calculations, both Volpe and Amtrak used variables of grade; train configuration; and the number, weight, and types of cars and locomotives expected to be used in these types of operations. Although all of the calculations were based on worse-case scenarios (e.g., the angle cock was assumed to be closed just behind the last car with an accessible emergency brake valve, and only friction braking—tread or disc brakes of locomotives and cars—was considered available to stop the train), all stops were achieved on the specified grade used in the calculation.

In making its calculations Volpe used a MathCad program to compute stopping distances. Volpe used the results of its calculations as a check against the results Amtrak had produced and submitted to FRA. Volpe concluded that Amtrak's procedures predicted longer (more conservative) stopping distances than the approach taken by Volpe. Amtrak's results were also compared to the requirements of the Amtrak Communication and Signal Department, Specification S-603, Curve 8, which is used to determine stopping distances for passenger equipment for signal block spacing. Curve 8 values for stopping distances are augmented by a factor of 25 percent to account for conditions which may impair brake performance. The absolute (actual) signal block spacing on the Northeast Corridor is actually greater than any of the stopping distances produced by either Volpe or Amtrak in their calculations. Therefore, stopping distances within established signal

blocks should not be a problem. The process Amtrak used was sufficiently conservative so that predicted stopping distances were greater than would be experienced in reality. Nevertheless, FRA worked with Amtrak to define further limitations adequate to ensure safety under identified worst-case conditions, and these limitations were set forth in this proposal.

Based on the information provided by Amtrak and the independent calculations conducted by Volpe, FRA published an NPRM on January 16, 1998, proposing to revise the regulations on two-way EOTs to specifically address certain passenger train operations where numerous freight-type cars, material handling cars, or express cars are part of a train's consist. See 63 FR 2647 (January 16, 1998). In the NPRM, FRA stated that swift action was necessary with regard to the provisions proposed and that a lengthy comment period would be impracticable, unnecessary, and contrary to the public interest. It was noted that a number of freight railroads were expressing concern and apprehension over permitting these mixed passenger trains to operate over their rails in light of FRA's above-mentioned interpretive guidance. In fact, at least one instance was found in which a mixed Amtrak train was detained for six hours by a freight railroad until a two-way EOT was applied because the freight railroad refused to permit the train to operate without the device. FRA also believed that requiring Amtrak to acquire a number of two-way EOTs and operate under the provisions of the current regulatory scheme during a lengthy comment period would impose a substantial and unwarranted financial and operational burden without improving the safety of Amtrak operations. Furthermore, the proposals contained in the NPRM included certain restrictions on the operation and make-up of certain passenger trains that were proposed for exception from the two-way EOT requirements, restrictions that FRA believe will enhance the safety of those operations and that are not currently mandated.

In addition to the concerns discussed above, FRA also believed that swift action was necessary because Amtrak is continuing to take delivery of express and other equipment and to build this line of business in order to close its operating deficit and to support continued intercity rail passenger service in a time of declining support from the public treasury. The public's interest in continued rail passenger service warrants reasonable flexibility to achieve this business objective. This

development corresponded with the implementation of two-way EOT requirements, rapidly complicating what appeared at the outset to be a relatively straightforward issue. Prior to the effective date of the two-way EOT rule, Amtrak implemented a two-way EOT system on its AutoTrain, previously the only Amtrak train operated with any significant number of unoccupied cars at the rear of the train. Anticipating the need to equip other trains as the express business grows, Amtrak is in the process equipping over 100 locomotives and deploying rear-end units at appropriate points along its lines where trains are built. Amtrak also committed to FRA to operate cars with cables for head-end power transmission (such as mail and baggage cars) at the front of trains where practicable given constraints on loading and unloading, in order limit the number of cars to the rear of the train that are beyond the last car with an accessible emergency valve. However, as Amtrak's express service grows and Amtrak builds trains responsive to that growth (a phenomenon that is well underway), there is an increased danger that Amtrak's own internal policies for use of available two-way EOT systems would not be honored in the field through oversight. Thus, FRA believed that having clear and certain Federal requirements regarding the use of two-way EOTs were essential to public safety.

Based on the concerns noted above, FRA issued the NPRM with a comment period of only 15 days in order to quickly address the applicability of the two-way EOT requirements to mixed passenger train operations. FRA made clear that if no substantive adverse comments were received on the NPRM within the 15-day comment period, it would immediately issue a final rule containing the provisions of the proposal. FRA also made clear in the NPRM that it intended for any final rule issued to take effect immediately upon publication.

Written comments on the NPRM have been received from Amtrak, Consolidated Rail Corporation (Conrail), and the Brotherhood of Locomotive Engineers (BLE). The relatively brief comments received from Amtrak and Conrail do not substantively affect the approach taken in the NPRM and primarily relate to clarifying the language used in the proposed provisions of the NPRM or the discussion contained in the section-by-section analysis of the NPRM. Therefore, these specific comments will be directly addressed in the section-by-section analysis of this final rule. In

Amtrak's written comments, Amtrak also requests that trains consisting of six or fewer mail or express cars be specifically excepted from the requirements for the use of a two-way EOT. As the NPRM and this final rule are specifically and narrowly focused on mixed passenger train operations, FRA believes that this rulemaking is not the appropriate forum for addressing Amtrak's request. Furthermore, such a request has much broader industry-wide implications than the issues addressed in this rulemaking and would involve consideration of additional safety concerns and the performance of detailed research not focused on or contemplated in this proceeding.

In its written comments, Conrail raises a concern regarding the responsibility and potential liability of a host railroad if a passenger train operates on its line while not in compliance with the requirements of this rule. The responsibilities of the host railroad with regard to this rule are the same as they are for any of the requirements contained in part 232. See 232.0(e). As a matter of policy, enforcement actions for noncompliance with this rule will generally be imposed on the railroad or individuals responsible for the operation of the train (i.e., Amtrak in most cases), unless the host railroad causes the violation of such requirements.

The BLE submitted brief written comments on the NPRM, generally objecting to any amendments to the two-way EOT regulations. The BLE agrees with FRA that Congress did not discuss the potential for mixed passenger train operations and generally asserts that when passenger equipment is used in conjunction with freight equipment it should be equipped with a two-way EOT. The BLE does not provide any specific data or cite to any potential safety or operational problems involved with excepting certain mixed passenger trains from the requirements for use of a two-way EOT. Furthermore, the BLE does not object either to the data assembled and assessed by FRA regarding mixed passenger trains or to the additional safety assurances that exist on these types of trains that are not present in traditional freight operations. Consequently, based on the discussion above and contrary to the broad assertions of the BLE, FRA believes that it would be in the public interest and that there is more than sufficient safety justification for excepting certain mixed passenger trains from the requirements related to the use of two-way EOTs.

After reviewing the above noted comments received on the NPRM, FRA concludes that no substantive adverse

comments have been provided that cause FRA to further consider or delay the implementation of the requirements proposed in the NPRM. Furthermore, FRA has received no requests for a public hearing on the NPRM. Consequently, the final rule that is being issued by FRA revising the regulations on two-way EOTs to specifically address certain passenger train operations where numerous freight-type cars, material handling cars, or express cars are part of a train's consist is virtually identical to the proposal contained in the NPRM published on January 16, 1998.

Section-by-Section Analysis

FRA is amending § 232.23 by revising paragraphs (e) and (g) and by adding a new paragraph (h) to specifically address passenger train operations that include using cars that do not have readily accessible emergency brake valves.

Paragraph (e) of § 232.23 contains a listing of the trains that are excepted from the two-way EOT requirements. Conforming changes have been made to paragraphs (e)(8) and (e)(9). In paragraph (e)(9) FRA retains the exception for passenger trains in which all of the cars in the train are equipped with a readily accessible emergency brake valve, as discussed in detail above.

In paragraph (e)(10) FRA adds an exception to the requirements regarding two-way EOTs for passenger trains that operate with a car placed at the rear of the train that is equipped with an emergency brake valve readily accessible to a crew member in radio communication with the locomotive engineer of the train. FRA intends for this exception to be applicable to passenger trains containing cars that do have a readily accessible emergency brake valve at the rear of the train. FRA believes this exception is justified as it is virtually identical to the exception granted to freight trains with an occupied caboose (contained in paragraph (e)(3)) since it would permit an emergency application of brakes to be initiated from the occupied car at the rear of the passenger train.

In paragraph (e)(11) FRA provides an exception for certain passenger trains that have cars placed at the rear of the train that do not have readily accessible emergency brake valves. This exception is intended to recognize the safety of these types of trains if configured and operated in accordance with the provisions of this exception. The exception contained in this subparagraph applies only to trains of twenty-four (24) cars or fewer. Therefore, passenger trains that have

more than 24 cars in the consist and that do not fall within the exceptions contained in subparagraphs (e)(9) or (e)(10) would be required to be equipped with an operative two-way EOT device or alternative technology. It should be noted that a locomotive that is used for power and/or controlling purposes and is not designed to carry passengers will not be considered a car for purposes of these calculations. Therefore, locomotives hauled dead in tow would be required to be counted as a car for purposes of these calculations.

In the NPRM, FRA proposed that each bogie used in RoadRailer® operation be counted as a car for purposes of calculating the number of cars in a passenger train consist. See 63 FR 2649. In its written comments, Amtrak objected to this method of calculating the number of cars in a train as it would artificially inflate the number of cars in a train. Amtrak stated that a string of RoadRailer® equipment will always have at least one more bogie than the total number of RoadRailer® vans since bogies include at least one couplermate. It was not FRA's intention to artificially inflate the number of cars in the train by proposing such a method of calculation. FRA's use of the term "bogie" was intended to refer to the intermediate bogies not the couplermates. However, after consideration of Amtrak's comments, FRA believes it would be confusing and possibly lead to incorrect calculation of the number of cars in a train if bogies are used as the determining factor. Consequently, in order to avoid confusion and clarify the intent of the final rule, FRA will calculate the number of cars in a train containing RoadRailer® equipment by counting each RoadRailer® van as a car. It should be noted that this method of calculation is solely for the purpose of applying the exception contained in this paragraph. In order to accurately calculate the percentage of operative brakes pursuant to §§ 232.1 and 232.12, it is necessary to consider the brakes on all the bogies in the train.

Based on data and information submitted by Amtrak and reviewed by Volpe and based upon Volpe's independent analysis regarding passenger train braking ratios and the response of passenger train brakes, FRA believes that certain mixed passenger trains can be safely operated without being required to be equipped with a two-way EOT or alternative technology, provided certain operational and train configuration restrictions are maintained. Paragraph (e)(11)(i) requires that if the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway

through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a consist containing twelve (12) cars, the sixth (6th) car (or a car closer to the rear) in the consist must have a readily accessible emergency brake valve; likewise, in an eleven (11) car consist, the sixth (6th) car (or a car closer to the rear) must have a readily accessible emergency brake valve, since all half numbers will be rounded up. Paragraph (e)(11)(ii) requires that if the total number of cars in a passenger train consist is from thirteen (13) to twenty-four (24), a car located no less than two-thirds (2/3) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a twenty-one (21) car consist, the fourteenth (14th) car (or a car closer to the rear) must have a readily accessible emergency brake valve.

In addition to these train-configuration requirements, paragraphs (e)(11)(iii) and (iv) contain certain operating requirements that must be followed by any passenger train operating pursuant to this specific exception. Such trains are required to have a train crew member occupy the rearmost car equipped with a readily accessible emergency brake valve and remain in constant radio communication with the locomotive engineer whenever the train is operating over a section of track with an average grade of two percent or higher over two continuous miles. FRA recommends that the engineer alert the train crew member approximately ten (10) minutes prior to descending the heavy grade, so the crew member will be in place at the crest of the grade. Furthermore, the final rule requires that the crew member not leave his or her position until the locomotive engineer advises that the train has traversed the grade. FRA believes that these operational requirements will ensure that immediate action can be taken by a member of the train crew to effectuate an emergency brake application whenever the train is descending a heavy grade.

FRA is also amending paragraph (g) to indicate that the operating limitations that will be imposed on a passenger train required to be equipped with a two-way EOT that experiences an en route failure of the device will be contained in paragraph (h). It should be noted that FRA intends the criteria contained paragraph (g) for determining when a loss of communication between

the front and rear units will be considered an en route failure to be applicable to passenger train operations.

Paragraph (h) contains the operational limitations and restrictions that are being placed on passenger trains that experience en route failures of two-way EOTs. Conrail, in its written comments, voiced concern that the language contained in the proposed rule text did not accurately reflect the operating restrictions discussed in the preamble. Consequently, in this final rule FRA has rewritten and reorganized paragraph (h) to make it more understandable and to clarify FRA's intent.

Due to the time-sensitive nature of passenger operations, FRA believes that placing a speed restriction on passenger trains is not the most effective method of handling en route failures of a two-way EOT. Rather than delaying the movement of a passenger train that experiences an en route failure of a device, FRA believes that certain operating restrictions can be imposed on the train and its crew to ensure the safety of these trains, particularly in non-heavy-grade territory. However, FRA believes that in order to realize the benefits of a two-way EOT as contemplated by Congress, the device must be operative when the train descends a heavy grade. Thus, FRA will only permit a passenger train to continue to operate under the operating restrictions contained in this paragraph in other than heavy grade territory. Consequently, paragraph (h)(1) has been slightly modified from the NPRM and is intended to strictly prohibit a passenger train that is required to be equipped with an operable device, from descending an average grade of two percent or more for two continuous miles until an operable device is installed or an alternative method of initiating an emergency brake application from the rear of the train is achieved.

Paragraph (h) has been further modified to make clear that the operating restrictions contained in paragraph (h)(2) are applicable to all passenger trains that experience en route failures of the two-way EOT and that are operating on other than heavy grade territory (i.e., two percent for two continuous miles). Paragraph (h)(2) is intended to permit passenger trains that develop an en route failure of the two-way EOT to continue to operate over track that is not in heavy grade territory as long as a crew member occupies the rearmost car with a readily accessible emergency brake valve and remains in constant radio communication with the locomotive engineer. In addition, FRA believes that since the train no longer

has the safety assurances provided by a two-way EOT, the engineer must periodically test the braking characteristics of the train by making running brake tests. If the engineer suspects the brakes are not functioning properly, immediate action shall be taken to bring the train to a stop until corrections can be made. Paragraph (h)(3) requires that all en route failures of the devices must be corrected either at the next location where the necessary repairs can be made or at the next location where a required brake test of the train is to be conducted, whichever point the train arrives at first.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. Because the requirements contained in this final rule clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA has concluded that this final rule does not constitute a significant rule under either Executive Order 12866 or DOT's policies and procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this final rule does not have a significant impact on a substantial number of small entities. Because the requirements contained in this final rule clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA has concluded that there are no substantial economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

This final rule does not change any information collection requirements.

Environmental Impact

FRA has evaluated this final rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this final rule does not have any effect on the quality of the environment.

Federalism Implications

This final rule does not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 232

Penalties, Railroad power brakes, Railroad safety, Reporting and recordkeeping requirements, Two-way end-of-train devices.

The Rule

In consideration of the foregoing, FRA amends part 232, title 49, Code of Federal Regulations as follows:

PART 232—RAILROAD POWER BRAKES AND DRAWBARS

1. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102, 20103, 20107, 20108, 20110–20112, 20114, 20133, 20141, 20301–20304, 20701–20703, 21301, 21302, 21304, and 21311; and 49 CFR 1.49(c), (g), and (m).

2. Section 232.23 is amended by revising paragraphs (e) introductory text, (e)(8), and (e)(9) and adding a new sentence to the beginning of the introductory text of paragraph (g), and adding new paragraphs (e)(10), (e)(11), (g)(2) and (h) to read as follows:

§ 232.23 Operations requiring use of two-way end-of-train devices; prohibition on purchase of nonconforming devices.

(e) *Exceptions.* The following types of trains are excepted from the requirement for the use of a two-way end-of-train device:

(8) Trains that operate exclusively on track that is not part of the general railroad system;

(9) Passenger trains in which all of the cars in the train are equipped with an emergency brake valve readily accessible to a crew member;

(10) Passenger trains that have a car at the rear of the train, readily accessible to one or more crew members in radio contact with the engineer, that is equipped with an emergency brake valve readily accessible to such a crew member; and

(11) Passenger trains that have twenty-four (24) or fewer cars (not including locomotives) in the consist and that are equipped and operated in accordance with the following train-

configuration and operating requirements:

(i) If the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(ii) If the total number of cars in a passenger train consist is thirteen (13) to twenty-four (24), a car located no less than two-thirds (2/3) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(iii) Prior to descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, the engineer of the train shall communicate with the conductor, to ensure that a member of the crew with a working two-way radio is stationed in the car with the rearmost readily accessible emergency brake valve on the train when the train begins its descent; and

(iv) While the train is descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, a member of the train crew shall occupy the car that contains the rearmost readily accessible emergency brake valve on the train and be in constant radio communication with the locomotive engineer. The crew member shall remain in this car until the train has completely traversed the heavy grade.

(g) *En route failure of device on a freight or other non-passenger train.* Except on passenger trains required to be equipped with a two-way end-of-train device (which are provided for in paragraph (h) of this section), en route failures of a two-way end-of-train device shall be handled in accordance with this paragraph.

(2) [Reserved]

(h) *En route failure of device on a passenger train.* (1) A passenger train required to be equipped with a two-way end-of-train device that develops an en route failure of the device (as explained in paragraph (g) of this section) shall not operate over a section of track with an average grade of two percent or greater over a distance of two continuous miles until an operable two-way end-of-train device is installed on the train or an alternative method of initiating an emergency brake application from the rear of the train is achieved.

(2) Except as provided in paragraph (h)(1) of this section, a passenger train

required to be equipped with a two-way end-of-train device that develops an en route failure of the device (as explained in paragraph (g) of this section) shall be operated in accordance with the following:

(i) A member of the train crew shall be immediately positioned in the car which contains the rearmost readily accessible emergency brake valve on the train and shall be equipped with an operable two-way radio that communicates with the locomotive engineer; and

(ii) The locomotive engineer shall periodically make running tests of the train's air brakes until the failure is corrected; and

(3) Each en route failure shall be corrected at the next location where the necessary repairs can be conducted or at

the next location where a required brake test is to be performed, whichever is reached first.

3. Appendix A to Part 232, "Schedule of Civil Penalties," is amended by revising the heading of the entry for § 232.23 and revising the entry for § 232.23(g) and adding an entry for § 232.23(h), to read as follows:

Appendix A to Part 232—Schedule of Civil Penalties

Section	Violation	Willful violation
232.23	Operating standards:	

Section	Violation	Willful violation
(g) En route failure, freight or other non-passenger	5,000	7,500
(h) En route failure, passenger	5,000	7,500

Issued in Washington, D.C., on April 24, 1998.
Jolene M. Molitoris,
Administrator.
[FR Doc. 98-11408 Filed 4-30-98; 8:45 am]
BILLING CODE 4910-06-P

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-113-AD]

RIN 2120-AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require repetitive inspections for discrepancies of the spring strut assembly of the forward door of the main landing gear (MLG), and replacement of the existing spring strut assembly with a new or serviceable part, if necessary. This proposal also would require eventual replacement of the existing spring strut assembly with an improved part, which, when accomplished, would terminate the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the spring strut assembly of the forward door of the MLG, which, if not corrected, could result in inability to extend the MLG.

DATES: Comments must be received by June 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-113-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00

p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Al(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-113-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No.

Federal Register

Vol. 63, No. 84

Friday, May 1, 1998

98-NM-113-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises that a BAe Model ATP airplane made an emergency landing because the left main landing gear (MLG) failed to extend. Investigation of the incident revealed a number of possible causes, including corrosion, wear, or damage to the operating mechanism. On March 31, 1998, the FAA issued a notice of proposed rulemaking (NPRM) to address these possible causes (reference Docket No. 97-NM-312-AD; 63 FR 16713, April 6, 1998).

Further investigation of the incident revealed that the spring strut assembly of the forward door of the MLG on the airplane was loose. (The spring strut assembly is part of the mechanism which opens the MLG door and allows extension and retraction of the MLG.) Similar loose attachment also was observed on one other in-service airplane, and has been attributed to damage of the rivets that connect the fork end of the spring strut assembly to the tube of the assembly. Failure of these rivets, if not corrected, could cause failure of the spring strut assembly of the forward door of the MLG, which could result in inability to extend the MLG.

Explanation of Relevant Service Information

The manufacturer has issued British Aerospace Alert Service Bulletin ATP-32-85, Revision 1, dated March 20, 1998, which describes procedures for repetitive visual inspections for discrepancies of the fork end of the spring strut assembly of the forward door of the left and right MLG on the airplane. The actions involve inspecting for looseness or damage of the rivets that connect the fork end fitting to the tube of the spring strut assembly, and inspecting for movement between the fork end fitting and the tube of the spring strut assembly. This alert service bulletin also describes procedures for replacing the spring strut assembly with a new or serviceable part, if any rivet is found to be damaged, if any rivet hole is found to be elongated, or if the

attachment of the fork end fitting to the tube is found to be loose. The CAA classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The manufacturer also has issued British Aerospace Service Bulletin ATP-32-87, dated January 29, 1998, which describes procedures for replacing the existing spring strut assembly of the forward door of the MLG with an improved spring strut assembly. Such replacement eliminates the need for the repetitive inspections described previously.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that this AD proposes to mandate the replacement of the existing spring strut assembly of the forward door of the MLG with an improved spring strut assembly, as described in British Aerospace Service Bulletin ATP-32-87, dated January 29, 1998, as terminating action for the repetitive inspections specified in British Aerospace Alert Service Bulletin ATP-32-85, Revision 1, dated March 20, 1998. Accomplishment of the modification specified in this service bulletin has not been classified as mandatory by the CAA.

The FAA has determined that, in certain cases, long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed requirement to replace the existing spring strut assembly with an improved spring strut assembly is in consonance with these conditions.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours (2 work hours per MLG) to accomplish the proposed inspection, at an average labor rate of \$60 per work hour. Based on this figure, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be \$2,400, or \$240 per airplane, per inspection cycle.

It would take approximately 12 work hours (6 work hours per MLG) to accomplish the proposed modification, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$2,200 per airplane (\$1,100 per MLG). Based on this figure, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be \$29,200, or \$2,920 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a 'significant regulatory action' under Executive Order 12866; (2) is not

a 'significant rule' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft (Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited): Docket 98-NM-113-AD.

Applicability: BAe Model ATP airplanes, as listed in British Aerospace Alert Service Bulletin ATP-32-85, Revision 1, dated March 20, 1998, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spring strut assembly of the forward door of the main landing gear (MLG), which, if not corrected, could result in the inability to extend the MLG, accomplish the following:

(a) Within 600 flight hours after the effective date of this AD, perform a visual

inspection for discrepancies of the fork end of the spring strut assembly of the forward door of the MLG, on the left and right side of the airplane; in accordance with British Aerospace Alert Service Bulletin ATP-32-85, Revision 1, dated March 20, 1998.

(1) If no discrepancy is detected, repeat the visual inspection thereafter at intervals not to exceed 1,500 flight hours until the actions specified by paragraph (b) of this AD are accomplished.

(2) If any discrepancy is detected, prior to further flight, replace the existing spring strut assembly with a new or serviceable part, in accordance with the alert service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 1,500 flight hours until the actions specified by paragraph (b) of this AD are accomplished.

(b) Within 18 months after the effective date of this AD, replace the spring strut assembly of the forward door of the MLG with an improved spring strut assembly, on the left and right side of the airplane; in accordance with British Aerospace Service Bulletin ATP-32-87, dated January 29, 1998. This replacement constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 24, 1998.

Gary L. Killian,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-11561 Filed 4-30-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-ANE-59-AD]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires initial and repetitive inspections of the No. 7 fuel nozzle and support assembly, replacement of the No. 7 fuel nozzle and support assembly with a more leak-resistant configuration, and replacement of aluminum oil pressure and scavenge tube fittings with steel fittings. In addition, the current AD requires replacing an additional aluminum oil scavenge line bolt with a steel bolt. This action would require initial and repetitive borescope inspections for loss of fuel nozzle nut torque and nozzle support wear, and replacement or modification of the fuel nozzles at the next accessibility of the diffuser build group as terminating action to the inspections. This proposal is prompted by reports of loss of fuel nozzle nut torque and nozzle support wear. The actions specified by the proposed AD are intended to prevent loss of fuel nozzle nut torque and nozzle support wear, which could result in a fuel leak and possible engine fire.

DATES: Comments must be received by June 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-ANE-59-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565-6600, fax (860) 565-4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. **FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, telephone (781) 238-7175, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-ANE-59-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-ANE-59-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On January 24, 1995, the Federal Aviation Administration (FAA) issued airworthiness directive AD 95-02-16, Amendment 39-9135 (60 FR 6654, February 3, 1995), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, to require inspection of the No. 7 fuel nozzle and support assembly for evidence of fuel leakage and burning until replacement of the No. 7 fuel nozzle and support assembly with an improved sealing configuration. That AD also requires replacement of the aluminum oil tube fittings with steel fittings. In addition, that AD requires replacing an additional aluminum oil scavenge line bolt with a steel bolt. That action was prompted by reports of two uncontained engine fires due to fuel leakage from the No. 7 fuel nozzle and

support assembly, ignition of that fuel, melting of aluminum oil pressure and scavenge tube fittings that are in the proximity of the No. 7 nozzle, and augmentation of that fire with the liberated oil. That condition, if not corrected, could result in fuel leakage from the No. 7 fuel nozzle and support assembly, ignition of that leaking fuel, and liberation of oil from melted oil line fittings, which can result in an uncontained engine fire and damage to the aircraft.

Since the issuance of that AD, the FAA has received reports of loss of fuel nozzle nut torque and nozzle support wear. AD 95-02-16 mandated welding of the No. 7 fuel nozzles to the fuel nozzle support to prevent secondary fuel leakage and replacement of oil scavenge lines to a more fire resistant stainless steel. Field experience has shown that the welding of the fuel nozzle to the fuel nozzle support can cause a loss of torque on the fuel nozzle nut. The loss of torque on the fuel nozzle nut results in rotation of the nut and air scoop assembly and subsequent contact between the airscoop and the nozzle support fairing, resulting in wear through the fairing and nozzle support and eventually a secondary fuel leak. The loss of nut torque has also been reported to cause thread wear, which in some cases has resulted in liberation of the nozzle from the support after it has been removed from the engine.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6310, dated October 13, 1997, that describes procedures for inspections for loss of fuel nozzle nut torque and nozzle support wear, and ASB No. A6311, dated October 14, 1997, that describes procedures for replacement or modification of fuel nozzles to an improved design.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95-02-16 to require initial and repetitive inspections for loss of fuel nozzle nut torque and nozzle support wear, and replacement or modification of the fuel nozzles at the next accessibility of the diffuser build group as terminating action to the inspections. The calendar end-date was determined based upon risk analysis and parts availability.

There are approximately 13,902 engines of the affected design in the worldwide fleet. The FAA estimates that 7,100 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 0.3 work hours per

engine to accomplish the proposed inspections, and 9.2 hours to perform the proposed modifications or replacement, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$12,620 per engine to replace the nozzle and \$1,500 to modify existing nozzles. The FAA estimates that 10% of the nozzles will have to be replaced. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$18,950,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 9135 (60 FR 6654, February 3, 1995) and by adding a new

airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 97-ANE-59-AD. Supersedes AD 95-02-16, Amendment 39-9135.

Applicability: Pratt & Whitney (PW) Model JT8D-209, -217, -217A, -217C, -219, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR turbofan engines incorporating the modifications described in PW Service Bulletin (SB) No. 5650, dated January 17, 1986, Alert Service Bulletin (ASB) No. A6169, Revision 4, dated June 5, 1996, or earlier revisions, or SB 6240, dated January 20, 1996, and any PW Model JT8D engine with low emissions fuel nozzle and support assemblies, Part Numbers 775485, 809137-01, 802965, 5004308-02, 5004308-032, 814358, 5004308-042 or 815658-01 installed. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC-9 and MD-80 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of fuel nozzle nut torque and nozzle support wear, which could result in a fuel leak and possible engine fire, accomplish the following:

(a) For engines that have not incorporated modifications to the No. 7 fuel nozzle and support assembly in accordance with PW ASB No. A6169, Revision 4, dated January 20, 1996, or earlier revisions, or PW SB No. 6240, dated January 20, 1996, as of the effective date of this AD; or for engines that have not incorporated the oil scavenge tube and fitting modifications in accordance with ASB No. A6170, dated October 20, 1994, as of the effective date of this AD, accomplish the following:

(1) Inspect No. 7 fuel nozzle and support assemblies in accordance with PW ASB No. A6153, Revision 1, dated June 8, 1994, as follows:

(i) For engines that have accumulated 3,200 hours or more time in service (TIS) since last fuel nozzle and support assembly overhaul and have not received an initial inspection for fuel leakage, perform an initial inspection for fuel leakage before further flight.

(ii) For engines that have accumulated less than 3,200 hours TIS since last fuel nozzle and support assembly overhaul and have not received an initial inspection for fuel leakage, perform an initial inspection for fuel leakage

prior to accumulating 3,200 hours TIS since last fuel nozzle and support assembly overhaul.

(iii) Thereafter, inspect for fuel leakage in accordance with PW ASB A6153, Revision 1, dated June 8, 1994, at intervals not to exceed 700 hours TIS since last inspection.

(iv) Remove from service No. 7 fuel nozzle and support assemblies that exhibit evidence of fuel leakage as described in PW ASB No. A6153, Revision 1, dated June 8, 1994, and replace with the improved sealing configuration nozzle in accordance with paragraph (a)(2)(i) of this AD, as follows:

(A) Within 25 hours TIS, or 25 cycles in service (CIS), whichever occurs first, after the inspection performed in paragraph (a)(1) for aircraft with only one engine exhibiting No. 7 fuel nozzle and support assembly leakage.

(B) Prior to further flight, on aircraft with two or more engines exhibiting No. 7 fuel nozzle and support assembly leakage, remove and replace at least all but one of the leaking No. 7 fuel nozzle and support assemblies. If not replacing all leaking No. 7 fuel nozzle and support assemblies, the remaining No. 7 fuel nozzle and support assembly that exhibits leakage shall be removed and replaced in accordance with paragraph (a)(1)(iv)(A) of this AD.

(2) At the next accessibility of the diffuser build group after the effective date of the AD, but no later than July 31, 1999, accomplish the following:

(i) Replace the No. 7 fuel nozzle and support assembly in accordance with paragraph 1.B.(3) of the Accomplishment Instructions of PW ASB No. A6311, dated October 14, 1997.

(ii) Replace the aluminum pressure and scavenge oil tube fittings with steel fittings in accordance with PW ASB No. A6170, Revision 2, dated October 20, 1994.

(iii) Replacement of the following oil tubes with corresponding oil tubes that incorporate steel fittings constitutes compliance with paragraph (b)(2) of this AD:

(A) Outer internal No. 4 and 5 bearing pressure tube assembly for PW JT8D-200 series engines.

(B) Outer internal main bearing pressure tube assembly for PW JT8D-200 series engines.

(C) Main bearing pressure manifold assembly for PW JT8D-200 series engines.

(D) Front No. 4 1/2 and 6 bearing pressure tube assembly for JT8D-200 series engines.

(E) No. 4 bearing oil scavenge tube assembly for all other JT8D engines.

(F) No. 4 bearing oil pressure tube assembly for all other JT8D engines.

(G) Main bearing pressure manifold assembly for all other JT8D engines.

(3) Incorporation of the hardware required by paragraph (a)(2)(i) of this AD constitutes terminating action for the inspections required by paragraphs (a)(1) of this AD.

(b) For engines that have incorporated modifications of the No. 7 fuel nozzle and support assembly in accordance with PW ASB No. A6169, Revision 4, dated June 5, 1996, or earlier revisions, and have not incorporated the replacement of the No. 7 fuel nozzle and support assembly with a fuel nozzle and support assembly with tack welded lock tabs in accordance with PW SB

No. 6240, dated January 12, 1996, accomplish the following:

(1) Borescope inspect, remove, and replace fuel nozzle and support assemblies for nut rotation in accordance with methods, intervals and inspection criteria specified in PW ASB No. 6310, dated October 13, 1997.

(2) At the next accessibility of the diffuser build group after the effective date of the AD, but no later than [insert 5 years after the effective date of the AD], replace the No. 7 fuel nozzle and support assembly with a welded air nozzle assembly in accordance with paragraph 1.B.(1), 1.B.(2) and 1.B.(3) of the Accomplishment Instructions of PW ASB No. A6311, dated October 14, 1997.

(3) Accomplishment of paragraph (b)(2) of this AD is terminating action to the inspections of paragraph (b)(1) of this AD.

(c) For engines that have incorporated the replacement of the No. 7 fuel nozzle and support assembly with a fuel nozzle and support assembly with tack welded lock tabs in accordance with PW SB No. 6240, dated January 12, 1996, at the next accessibility of the diffuser build group after the effective date of the AD, but no later than [insert 5 years after the effective date of the AD], replace the No. 7 fuel nozzle and support assembly with a welded air nozzle assembly in accordance with paragraph 1.A.(1), 1.A.(2) and 1.A.(3) of the Accomplishment Instructions of PW ASB No. A6311, dated October 14, 1997.

(d) For the purpose of this AD, accessibility of the diffuser build group is defined as engine maintenance that entails flange separation of the diffuser case from the combustion chamber outer case.

(e) For the purpose of this AD, fuel nozzle and support assembly overhaul is defined as disassembly of the fuel nozzle from the support assembly that entails removal of the fuel nozzle nut.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 23, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98-11559 Filed 4-30-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AWP-11]

Proposed Modification to Class E Airspace; Ukiah, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Ukiah, CA, by lowering a portion of the base of controlled airspace from 9,500 feet mean sea level (MSL) to 1,200 feet above ground level (AGL). This action is due to the proposed establishment of a new federal airway (V-607) between Mendocino and Arcata, CA. The proposed airway, if adopted, will have a minimum enroute altitude of 9,000 feet MSL. A review of airspace classification has made this action necessary in order to achieve compliance with criteria stated in FAA Order 7400.2D. The intended effect of this proposal is to ensure that the Class E airspace at Ukiah, CA will be of sufficient size to contain V-607.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP-520, Docket No. 98-AWP-11, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT:

Larry Tonish, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261, telephone (310) 725-6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Individuals wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98-AWP-11." The postcard will be date/time stamped and returned to the individual. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11A-2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR Part 71 to modify the Class E airspace area at Ukiah, CA, by lowering a portion of the base of controlled airspace from 9,500 feet MSL to 1,200 feet AGL. This action is due to the proposed establishment of a new federal airway (V-607) between Mendocino and Arcata, CA. The proposed airway, if adopted, will have a minimum enroute altitude of 9,000 feet MSL. A review of airspace classification has made this action necessary in order to achieve compliance with criteria stated in FAA

Order 7400.2D. The intended effect of this proposal is to ensure that the Class E airspace at Ukiah, CA will be of sufficient size to contain V-607. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6006 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in that Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Subpart E—Class E Airspace

AWP CA E Ukiah, CA [Revised]

Ukiah Municipal Airport, CA

(Lat. 39°07'34"N, long. 123°12'03"W)

Fortuna VORTAC

(Lat. 40°40'17"N, long. 124°14'04"W)

Mendocino VORTAC

(Lat. 39°03'12"N, long. 123°16'27"W)

Red Bluff VORTAC

(Lat. 40°05'56"N, long. 122°14'11"W)

That airspace extending upward from 1,200 feet above the surface within a 17.4 mile radius of the Mendocino VORTAC, excluding that airspace east of the western edge of V25 and that airspace bounded by a line from lat. 39°32'00"N, long. 123°33'14"W; to lat. 39°32'00"N, long. 123°11'34"W; to lat. 39°21'37"N, long. 123°04'54"W; to lat. 39°19'07"N, long. 123°07'22"W, thence counterclockwise via the 17.4 mile radius of the Mendocino VORTAC to lat. 39°19'04"N, long. 123°25'40"W; to lat. 39°32'00"N, long. 123°33'14"W. That airspace extending upward from 7,500 feet MSL south of the Red Bluff VORTAC between the 20.9- and 39.1-mile arcs of the Red Bluff VORTAC bounded on the northwest by the northwest edge of V-199 and on the southeast by the southeast edge of V-25. That airspace extending upward from 8,500 feet MSL south of the Red Bluff VORTAC bounded on the northeast by a 39.1-mile arc of the Red Bluff VORTAC, on the southeast by the southeast edge of V-25, on the south and southwest by the north edge of V-200 and a 17.4-mile arc of the Mendocino VORTAC, and on the northwest by the northwest edge of V-199. That airspace extending upward from 9,500 feet MSL bounded on the southeast by the northwest edge of V-199 to lat. 39°21'37"N, long. 123°04'54"W; to lat. 39°32'00"N, long. 123°11'34"W; to lat. 39°32'00"N, long. 123°20'33"W, and on the west by the east edge of V-607, and on the north by a line 7.8 miles south of a parallel to the Red Bluff VORTAC 291° and Fortuna VORTAC 110° radii to the 17.4-mile arc of the Red Bluff VORTAC, thence counterclockwise to the northwest edge of V-199, and that airspace bounded on the east by the western edge of V607 to lat. 39°46'40"N, long. 123°35'50"W, and on the west by the east edge of V-27 to the 24-mile radius of the Fortuna VORTAC, thence counterclockwise to the west edge of V-607. That airspace extending upward from 5,300 feet MSL bounded on the east by the southwest edge of V-27 and on the west by the west/southwest edge of V-494.

Issued in Los Angeles, California, on April 21, 1998.

John G. Clancy,
Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98-11647 Filed 4-30-98; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Trading Hours

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend Commission Regulation 1.41(k) to allow additional changes in trading hours to be deemed approved by the Commission one business day after receipt of written notice of a change in accordance with the regulation. The Commission is publishing notice of the proposed rulemaking and requesting public comment.

DATES: Comments on the proposed rulemaking must be made by May 18, 1998.

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; transmitted by facsimile to (202) 418-5521; or transmitted electronically to (secretary@cftc.gov).

FOR FURTHER INFORMATION CONTACT: Lois J. Gregory, Attorney, Contract Markets, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418-5483.

SUPPLEMENTARY INFORMATION:

Regulation 1.41(k) allows a change in trading hours which does not permit trading to open before 7:00 a.m. or close after 6:00 p.m. local time in the city where the contract market is located to be deemed approved by the Commission at the close of business one business day after properly labeled written notice of the change is received by the Commission if the change is not inconsistent with the Commodity Exchange Act or the Commission's other regulations. Trading hour changes which do permit trading to open before 7:00 a.m. or close after 6:00 p.m. local time must be submitted to the Commission for approval pursuant to Regulation 1.41(b).

The Commission is proposing to amend Regulation 1.41(k) to allow additional changes in trading hours to be deemed approved by the Commission one business day after receipt of written notice of a change in accordance with the subsection. Specifically, under the rule as proposed to be amended, if a contract market had previously received

Commission approval for trading between 6:00 p.m. and 7:00 a.m. in at least one of its designated contracts, it could submit all subsequent changes in trading hours pursuant to regulation 1.41(k). Thus, under 1.41(k) as proposed to be revised, the first time a contract market proposed changing trading hours for any of its designated contracts to fall between the hours of 6:00 p.m. and 7:00 a.m., the proposal would have to be submitted to the Commission for approval pursuant to Regulation 1.41(b). The Commission would review such initial proposal to ensure that adequate systems and procedures were in place to accommodate the expanded trading hours. Matters to be addressed would include, among other matters, clearing, margin, market data, and surveillance programs. Any subsequent change to trading hours could then be approved under the expedited procedures of revised Regulation 1.41(k).

The Commission is proposing to amend Regulation 1.41(k) in the manner described as a result of its recent efforts to modernize and streamline its regulatory framework. Growth, technological developments, and around-the-clock trading have altered the marketplace. The proposed amendment to Regulation 1.41(k) is part of the Commission's efforts to ensure that its rules have adapted to these changes.

With respect to electronic trading, the proposed amendments to Regulations 1.41(k) contemplate that listing a contract for trading on an automated trading system would constitute more than a change in trading hours. It would also be a change in the method of trading. Accordingly, neither the initial establishment of an electronic trading system nor the subsequent listing of additional contracts would be eligible for treatment under Regulation 1.41(k). However, changes in the trading hours of a contract that was already listed on an electronic system would be eligible for treatment under revised Regulation 1.41(k).

Related Matters**A. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 [Pub. L. 104-13 (May 13, 1995)] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this proposed regulation has no burden, the group of regulations (3038-0022), of which this is a part has the following burden:

Average burden hours per response.....	3,546.26
Number of Respondents	10,971
Frequency of response	On occasion.

Copies of the OMB approved information collection package associated with this regulation may be obtained from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington DC 20503, (202) 395-7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact on small businesses. The only entity this rulemaking would affect would be contract markets. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, (47 FR 18618 (April 30, 1982)). Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements, Segregation requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular Section 8a thereof, 7 U.S.C. 12a, the Commission hereby proposes to amend Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.41 is amended by revising paragraph (k)(1) to read as follows:

1.41 Contract market rules; submission of rules of the Commission; exemption of certain rules.

(k) *Trading hours.* (1) Notwithstanding the provisions of paragraph (b) of this section and except in connection with an initial listing of a contract on an automated trading system, all changes in trading hours shall be deemed approved by the Commission at the close of business one

business day after written notice of such a change is received by the Commission if:

(i) The change is not inconsistent with any provision of the Act or the Commission's regulations;

(ii) For a change that permits trading anytime between 6 p.m. and 7 a.m. local time in the city where the contract market is located, the contract market has previously received Commission approval for trading between such hours in at least one of its designated contracts; and

(iii) The contract market labels the written notice as being submitted pursuant to paragraph (k) of this section.

Issued in Washington D.C. on April 28, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-11655 Filed 4-30-98; 8:45 am]

BILLING CODE 6351-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AC69

Disaster Assistance; Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the categories of projects currently eligible for funding under the Hazard Mitigation Grant Program (HMGP) by defining eligible mitigation activities under the HMGP to include nonstructural flood hazard mitigation measures and minor flood control projects that do not duplicate the efforts and authorities of other Federal agencies.

DATES: We invite comments on this proposed rule, which may be submitted on or before June 30, 1998.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646-4536, or (email) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3619, (facsimile) (202) 646-3104.

SUPPLEMENTARY INFORMATION:**Background**

In December 1993, the President signed the Hazard Mitigation and Relocation Assistance Act, which amended § 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170c. This amendment provides legislative authority to use the majority of mitigation funding available from flood disasters to undertake nonstructural floodplain management measures.

Nonstructural Measures

Authorized by § 404 of the Stafford Act, the HMGP provides States and local governments financial assistance to implement measures that permanently reduce or eliminate future damages and losses from natural hazards. In response nonstructural measures are FEMA's first priority when grantees use Hazard Mitigation Grant Program funds to address a flood hazard. Our experience with the use of nonstructural flood hazard mitigation measures by acquiring, elevating, and floodproofing high-risk structures sharply reduces the number of structures in harm's way. Advantages of this approach include substantial environmental and hydrologic benefits.

This proposed rule would modify the list of eligible types of projects and clarify types of activities that are eligible under the program, and would reflect FEMA's multi-hazard program objectives and priorities. FEMA would include development and initial implementation of vegetation management programs for wildfire hazard mitigation and erosion hazard mitigation in the list of eligible activities. Routine maintenance and landscaping activities would not be eligible. Vegetation management can reduce the volume and continuity of flammable vegetation in order to slow or prevent the spread of wildfire from vegetation to developed properties and to improve the potential effectiveness of wildfire suppression activities. Vegetation management can also reduce costs associated with erosion from floods and severe storms.

Vegetation management programs often require significant regular maintenance in order to preserve their hazard mitigation benefits. Such maintenance would be the responsibility of the subgrantee. Before approving a grant FEMA or the State may require a maintenance plan and commitment by the subgrantee accepting responsibility for the maintenance.

The list of eligible HMGP projects provided for under subsection (c) is not all-inclusive, but provides a general overview of potential project categories and clarifies that major structural flood control projects would not be considered for funding under the HMGP. Applicants may propose project types not listed for funding consideration.

Warning Systems

While "Development or improvement of warning systems" has been removed from the list of eligible project type examples in the rule, FEMA will continue to entertain applications for such projects under the Five Percent Initiative. The five percent initiative provides the State greater flexibility over the approval of HMGP projects up to five percent of the available program funding. FEMA's guidance for implementing the initiative specifically indicates that warning systems, which are difficult to evaluate against HMGP eligibility criteria, are appropriately funded within the five percent initiative.

Structural Assistance

FEMA recognizes that dikes, levees, dams, channelization, channel widening, stream realignment, seawalls, groins, and jetties continue to serve as a means to minimize vulnerability to hazards under certain circumstances. These structures fall traditionally under the water resources design and construction authorities of the U.S. Army Corps of Engineers and the Natural Resources Conservation Service of the U.S. Department of Agriculture. Both of those agencies have extensive experience assisting in the planning, design, and construction of major structural projects. FEMA has limited experience with major structural flood control projects. Rather than duplicate assistance available from other Federal agencies, FEMA limits its flood control assistance to minor flood control projects and localized protection of critical facilities that generally do not fall under the authority of other Federal agencies.

Minor Flood Control Projects

The most common activities under the minor flood control project category include modification of existing culverts and bridges; upgrades of storm drainage systems; installation of floodgates; and creation of small retention or detention basins. Based on these types of projects, the term "minor flood control projects" refers to the limited scope of a project's impact upon the floodplain that would lessen the frequency or severity of

flooding and decrease predicted flood damage. For example, minor physical changes, such as a modification to a culvert, that can reduce flooding and losses for whole groups of homes or neighborhoods may be more cost-effective than an individual mitigation measure applied to every home in that area.

Finally, the language in this proposed rule mirrors project eligibility descriptions included in § 553 of the National Flood Insurance Reform Act of 1994, Pub. L. 103-325, which authorizes the new Flood Mitigation Assistance program. This proposed rule would provide a consistent approach throughout FEMA's mitigation grant programs in the funding flood mitigation projects.

Correction to General, Allowable Open Space, Recreational, and Wetlands Management Uses

44 CFR 206.434(d)(2) would be corrected to read "permeable" in place of "previous". This change is to allow unimproved, unpaved short-term parking areas such as visitors parking areas at an acquired property to be used as a park or recreational area. The change would acknowledge the present misspelling of "pervious" as "previous" in § 206.434(d)(2) and would substitute the equivalent, more familiar term "permeable" for "pervious".

Removal of Language Regarding Inapplicability of the Uniform Relocation Act

This proposed rule would delete 44 CFR 206.434(e), *Inapplicability of the Uniform Relocation Act*, which exempts projects that meet certain criteria from meeting the requirements of the Uniform Relocation Act. This exemption was created by amendment to the Stafford Act in 1993 and applied only to disaster assistance for 9 major disasters declared during the Great Midwestern Flood of 1993. Project funding under those 9 disasters is nearly complete; paragraph 206.434(e) is no longer applicable to the program. FEMA's voluntary open space acquisition projects continue to be exempt from most provisions of the Uniform Relocation Act under 49 CFR 24.101(a).

National Environmental Policy Act

This proposed rule is categorically excluded under 44 CFR 10.8. FEMA has not prepared an environmental assessment.

Executive Order 12898, Environmental Justice

FEMA reviewed the socioeconomic conditions relating to this proposed rule and made a finding that no disproportionately high and adverse effect on minority or low-income populations will result from implementation of this program.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Regulatory Flexibility Act

The Director certifies that this rule is not a major rule under Executive Order 12291. It will not have significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and is not expected (1) to affect adversely the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, or (3) to create any additional burden on small entities. FEMA has not prepared a regulatory flexibility analysis of this proposed rule.

Paperwork Reduction Act

This proposed rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule would involve no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Grant programs, Hazard mitigation.

Accordingly, 44 CFR part 206 is proposed to be amended as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.434(c) is revised to read as follows:

§ 206.434 Eligibility.

(c) *Types of projects.* Projects may be of any nature that will result in protection of public or private property. Eligible projects include, but are not limited to:

(1) Property acquisition or relocation, as defined in § 206.434(d);

(2) Retrofitting structures and facilities to strengthen against high winds, earthquake, flood, wildfire, or other natural hazards;

(3) Elevation of floodprone structures;

(4) Development and initial implementation of vegetation management programs for wildfire and erosion hazard mitigation, with the subgrantee accepting responsibility for continuing maintenance required to preserve hazard mitigation benefits;

(5) Minor flood control projects that do not duplicate the flood prevention activities of other Federal agencies, that lessen the frequency or severity of flooding, and that decrease predicted flood damages in localized flood problem areas. They include modification of existing culverts and bridges, installation or modification of floodgates, stream bank stabilization, and creation of small retention and detention basins. Minor flood control projects shall not include major flood control projects such as dikes, levees, seawalls, groins, jetties, dams, and stream channelization.

(6) Localized flood control projects, such as ring levees and floodwall systems, which serve to protect critical facilities.

(7) Development and implementation (for example, training for building officials) of State or local mitigation standards;

(8) Development of comprehensive hazard mitigation programs with implementation as an essential component.

3. Section 206.434(d)(2) is revised to read as follows:

§ 206.434 Eligibility.

(d) . . .

(2) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles that are easily movable (except mobile homes),

unimproved, permeable parking lots, and buffer zones.

4. Section 206.434 is amended by deleting paragraph (e) and redesignating paragraphs (f) and (g) as paragraphs (e) and (f).

Dated: April 24, 1998.

James L. Witt,

Director.

[FR Doc. 98-11641 Filed 4-30-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

(CS Docket No. 98-54; FCC 98-68)

1998 Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the *Notice of Proposed Rulemaking* ("NPRM"), the Commission seeks comment or ways to simplify and make more uniform the Cable Television Service pleading and complaint process rules. This proceeding is initiated in conjunction with the Commission's 1998 biennial regulatory review. The intended effect of this proceeding is to reduce the regulatory burden on franchising authorities, cable operators, and other interested persons making filings under the rules.

DATES: Comments are due on or before June 22, 1998. Reply comments are due on or before July 7, 1998. Public Information requirements are due June 30, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Horan, Consumer Protection and Competition Division, Cable Services Bureau, at (202) 418-7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Notice of Proposed Rulemaking* in CS Docket No. 98-54, FCC 98-68 which was adopted on April 13, 1998 and released on April 22, 1998. A copy of the complete item is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, D.C. 20036, (202) 857-

3800. The complete *Notice of Proposed Rulemaking* also is available on the Commission's Internet home page (<http://www.fcc.gov>).

Summary of Action:

I. Background

1. On April 13, 1998, the Federal Communications Commission ("Commission") adopted a *Notice of Proposed Rulemaking* which sought comment or ways to simplify and make more uniform the Cable Television Service pleading and complaint process rules, 47 CFR 76. The NPRM is summarized below.

A. Introduction

2. Under the Commission's current part 76 rules, the procedures for initiating Commission action on a cable television service issue vary depending on the rules upon which the pleading or complaint is based. Although there are practical and legal reasons for the different pleading procedures, there may be some common elements to every pleading or complaint that could be made uniform across the broad spectrum of issues raised under part 76. The Commission thus seeks comment on whether we can or should institute some uniform pleading process and, if so, what form it should take.

B. Discussion

3. The Commission is initiating this proceeding in conjunction with the Commission's 1998 biennial regulatory review pursuant to section 11 of the 1996 Telecommunications Act, 47 U.S.C. 161. Pursuant to section 11, Congress instructed the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest. Although section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an opportunity for a thorough examination of all of the Commission's regulations. The Commission believes that, where possible, simplification of the complaint processes for part 76 rules by instituting a uniform system would likely serve the public interest by lessening confusion and reducing the regulatory burden on franchising authorities, cable operators, and other interested persons making filings under the part 76 rules.

4. At least thirteen different types of petitions or complaints could be filed to initiate Commission action related to the part 76 rules. Each type of petition or complaint has particular requirements regarding the conditions that must be satisfied before a filing can

be made, who must be served with the filing, and the deadline time for a response. One reason for this variation is that our rules have been adopted over a period of time in response to changes in the Communications Act and, more specifically, for changes with respect to cable issues passed in 1984, 1992, and 1996. The rules adopted to implement changes in the law may have adopted a complaint process with its own unique procedures when an existing complaint process would have been sufficient. For example, following the filing of a petition for special relief, interested persons may submit comments or oppositions within twenty days after the date of public notice of the filing of such petition. In contrast, with respect to a petition for an issuance of an order to show cause, interested persons may submit comments or oppositions within thirty days after the petition has been filed. In this proceeding, the Commission seeks comment on whether these types of differences should be maintained or whether in circumstances of similar pleadings, the procedural rules associated with those pleadings should be the same.

5. The rules associated with each different pleading type are designed to establish fair and expeditious procedures for receiving, considering, and resolving issues related to the cable television service rules. The Commission believes that there are some aspects of the pleading requirements in part 76 rules that could be made uniform. The Commission seeks comment on which aspects of the pleading processes can be made consistent regardless of the part 76 rule under which the complaint is being filed; or alternatively, which pleading processes are similar and should have similar procedures. Specifically, is it appropriate to have the same or different (1) periods of time to formulate and file a complaint; (2) service requirements; (3) pleading cycles; (4) affidavit and evidentiary requirements; and (5) burdens of proof? The Commission also seeks proposals on how to achieve a more streamlined complaint process for part 76 pleadings. Specifically, the Commission seeks comment on those filing requirements, now unique to a particular type of pleading or complaint, that are beneficial and should be applied universally to all part 76 pleadings; and conversely, which filing requirements are not useful and should be eliminated.

II. Procedural Matters

A. Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared an Initial

Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals in the NPRM. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

1. Need for, and objectives of, the proposed rules.

7. The Commission has proposed to simply and unify the pleading and complaint process rules for Cable Television Service, 47 CFR 76. The Commission has tentatively concluded that such a procedure would serve the public interest by making the pleading and complaint process for 47 CFR 76 less confusing and less burdensome.

2. Legal basis.

8. The authority for the action proposed for this rulemaking is contained in Section 4 of the Communications Act of 1934, 47 U.S.C. 154.

3. Description and estimate of the number of small entities

9. The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business" and "small organization." In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").

10. *Small MVPDs.* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1,758 total cable and other pay television services and 1,423 had less than \$11 million in revenue. The Commission addresses below each service

individually to provide a more precise estimate of small entities.

11. *Cable Systems.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under 47 CFR 76.901(e), a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, the Commission estimates that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1439 small entity cable system operators that may be effected by the decisions and rules the Commission is adopting. The Commission believes that only a small percentage of these entities currently provide qualifying "telecommunications services" as required by the Communications Act and, therefore, estimate that the number of such entities are significantly fewer than noted.

12. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission finds that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

13. *Multipoint Multichannel Distribution Systems ("MMDS").* The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its

affiliates has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. This definition of a small entity in the context of MMDS auctions has been approved by the SBA.

14. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of \$11 million annually. The Commission concludes that, for purposes of this RFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

15. *Direct Broadcast Satellite ("DBS").* Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. Estimates of 1996 revenues for various DBS operators are significantly greater than \$11,000,000 and range from a low of \$31,132,000 for Alphastar to a high of \$1,100,000,000 for Primestar. Accordingly, the Commission concludes that no DBS operator qualifies as a small entity.

16. *Home Satellite Dish ("HSD").* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only nonsubscription programming; and (3) viewers who receive satellite programming services illegally without subscribing.

17. According to the most recently available information, there are

approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator ("MSO"). Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

18. *Open Video System ("OVS").* The Commission has certified nine OVS operators. Of these nine, only two are providing service. On October 17, 1996, Bell Atlantic received approval for its certification to convert its Dover, New Jersey Video Dialtone ("VDT") system to OVS. Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources. Metropolitan Fiber Systems was granted certifications on December 9, 1996, for the operation of OVS systems in Boston and New York, both of which are being used to provide programming. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. The Commission believes that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, the Commission concludes that at least some of the OVS operators qualify as small entities.

19. *Satellite Master Antenna Television ("SMATVs").* Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If the Commission assumes that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, the Commission is not aware of any privately published

financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, the Commission concludes that a substantial number of SMATV operators qualify as small entities.

20. *Local Multipoint Distribution System ("LMDS").* Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined above. A small radiotelephone entity is one with 1500 employees or less. However, for the purposes of this NPRM, the Commission includes only an estimate of LMDS video service providers.

21. LMDS is a service for which licenses were auctioned by the FCC beginning in February 1998. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, the Commission proposed to define a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than \$40 million. The Commission has not yet received approval by the SBA for this definition.

22. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, the Commission assumes that CellularVision is a small business under both the SBA definition and our proposed auction rules. Accordingly, the Commission affirms its tentative conclusion that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

23. *Program Producers and Distributors.* The Commission has not developed a definition of small entities applicable to producers or distributors of television programs. Therefore, the Commission will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812), Motion Picture and Video Tape Distribution (SIC 7822), and Theatrical Producers (Except Motion Pictures) and

Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the television programming industry is an entity with \$21.5 million or less in annual receipts for SIC 7812 and 7822, and \$5 million or less in annual receipts for SIC 7922. The 1992 Bureau of the Census data indicate the following: (1) there were 7265 U.S. firms classified as Motion Picture and Video Production (SIC 7812), and that 6987 of these firms had \$16,999 million or less in annual receipts and 7002 of these firms had \$24,999 million or less in annual receipts; (2) there were 1139 U.S. firms classified as Motion Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had \$16,999 million or less in annual receipts and 1013 of these firms had \$24,999 million or less in annual receipts; and (3) there were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than \$5 million in annual receipts.

24. Each of these SIC categories is very broad and includes firms that may be engaged in various industries including television. Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, the Commission concludes that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the rules adopted in this proceeding.

4. Description of reporting, recordkeeping, and other compliance requirements

25. The Commission is not proposing any new or modified recordkeeping or information collection requirements.

5. Significant alternatives which minimize the impact on small entities, and which are consistent with stated objectives.

26. The Notice solicits comments and proposals for means to simplify or make uniform 47 CFR 76 pleading and complaint process rules. Any significant alternatives presented in the comments will be considered.

6. Federal rules which overlap, duplicate, or conflict with these rules.

27. None.

7. Report to Congress.

28. The Commission shall send a copy of this IRFA along with this Notice in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5

U.S.C. 801(a)(1)(A). A copy of this IRFA will also be published in the Federal Register.

B. Paperwork Reduction Act of 1995 Analysis

29. The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and would impose new and modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the proposed information collection requirements contained in this Notice, as required by the 1995 Act. Public comments are due June 30, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

30. Written comments by the public on the proposed new and modified information collection requirements are due June 30, 1998. Comments should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov. For additional information on the proposed information collection requirements, contact Judy Boley at 202-418-0214 or via the Internet at the above address.

C. Ex Parte Presentations

31. The NPRM is a permit but disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

D. Comments

32. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before June 22, 1998 and reply comments on or before July 7, 1998. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. Parties are also asked to submit, if possible, draft rules that reflect their positions. If you want each

Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, D.C. 20554, with a copy to Thomas Horan of the Cable Services Bureau, 2033 M Street, NW., 7th Floor, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW., Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, D.C. 20554.

33. Parties are also asked to submit comments and reply comments on diskette, where possible. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Thomas Horan of the Cable Services Bureau, 2033 M Street, NW., 7th Floor, Washington, D.C. 20554. Such a submission must be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure.
Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 98-11617 Filed 4-30-98; 8:45 am]
BILLING CODE 6712-01-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 980414094-8094-01; I.D. No. 091797A]

RIN 0648-AK55

Endangered and Threatened Wildlife and Plants; Definition of "Harm"

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule defines the term "harm," which is contained in the definition of "take" in the Endangered Species Act. The purpose of this rulemaking is to clarify the type of harm that may result in a take of a listed species under the ESA. This is not a change in existing law. This proposed rule defines the term "harm" to include any act which actually kills or injures fish or wildlife. Such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.

DATES: Comments must be received by June 30, 1998.

ADDRESSES: Comments should be sent to Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Joe Blum, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, phone (301)713-1401 or Garth Griffin, NMFS, 525 NE Oregon St., Suite 500, Portland, OR 97232, phone (503)231-2005.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the ESA makes it illegal to take an endangered species of fish or wildlife. The definition of "take" is to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." (16 U.S.C. 1532(19)). The U.S. Fish and Wildlife Service (FWS) issued a regulation further defining the term "harm" to eliminate confusion concerning its meaning (40 FR 44412; 46 FR 54748). The FWS' definition of "harm" has been upheld by the Supreme Court as a reasonable interpretation of the term and supported by the broad purpose of the ESA to conserve endangered and threatened

species (See *Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon*, 115 S. Ct. 2407, 2418, 1995). With the listings of Pacific salmon and steelhead stocks, potentially affected parties have questioned whether NMFS also interprets harm to include habitat destruction. This proposed rule clarifies that NMFS' interpretation of harm is consistent with that of FWS.

Definitions and Source of Authority

NMFS interprets the term "harm" as an act that actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, and sheltering (Compare 50 CFR 17.3). The habitat modification or degradation contained in the definition of "harm" is limited to those actions that actually kill or injure listed fish or wildlife.

This proposed rule is reasonable for the conservation of the habitats of listed species. Congress acknowledged these needs by stating in the "Purposes" subsection of the ESA: "The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved * * *." (16 U.S.C. 1531(b)). In addition to the text contained in the "Purposes" subsection, which indicates the broad goals of the ESA, the structure and legislative history of the ESA indicate Congressional intent to protect the habitats of listed species (*Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon*, 115 S. Ct. 2407, 2418, 1995).

Activities That May Constitute a Take

A principle purpose of this proposed rule is to provide clear notification to parties that habitat modification or degradation may harm listed species and, therefore, constitute a "take" under the ESA. The following list identifies several examples of habitat-modifying activities that may fall within the scope of this proposed rule when the activities actually kill or injure fish or wildlife. This list is not exhaustive:

1. Constructing or maintaining barriers that eliminate or impede a listed species' access to habitat essential for its survival or recovery;
2. Removing, poisoning, or contaminating plants, fish, wildlife, or other biota required by the listed species for feeding, sheltering, or other essential functions;
3. Discharging pollutants, oil, toxic chemicals, radioactivity, carcinogens,

mutagens, or teratogens into a listed species' habitat;

4. Removing or altering rocks, soil, gravel, vegetation, or other physical structures that are essential to the integrity and function of a listed species' habitat;

5. Removing water or otherwise altering streamflow when it is likely to impair spawning, migration, or other essential functions;

6. Releasing non-indigenous or artificially propagated individuals into a listed species' habitat;

7. Constructing or operating inadequate fish screens or fish passage facilities at dams or water diversion structures in a listed species' habitat;

8. Constructing or using inadequate bridges, roads, or trails on stream banks or unstable hill slopes adjacent to or above a listed species' habitat; and

9. Constructing or using inadequate pipes, tanks, or storage devices containing toxic substances, where the release of such a substance is likely to significantly modify or degrade listed species' habitat.

Incidental Take Exceptions

The ESA authorizes NMFS to exempt parties from its take prohibitions under certain circumstances. Under section 7 of the ESA, NMFS conducts consultations on proposed Federal actions and determines whether the proposed action is likely to jeopardize the continued existence of a listed species or to result in the destruction or adverse modification of its critical habitat. If the proposed action does not do so or would not if specified reasonable and prudent alternatives were followed, NMFS may then issue a biological opinion and incidental take statement. The incidental take statement estimates the expected incidental take of a listed species resulting from the action and specifies those terms and conditions required to implement the reasonable and prudent measures necessary or appropriate to minimize this incidental take. If the proposed action is conducted in accordance with these terms and conditions, the incidental take is exempted from the ESA's take prohibitions.

Under section 10(a)(1)(B), NMFS may permit non-Federal parties to take a listed species if such a taking is incidental to, and not the purpose of, an otherwise legal activity. Prior to receiving an incidental take permit pursuant to 10(a)(1)(B), a non-Federal party must prepare a permit application and conservation plan. A conservation plan must contain a description of (1) the impact that will likely result from the taking; (2) what steps the applicant

will take to minimize and mitigate the impacts and how these steps will be funded; (3) what alternative actions to the take were considered and why they are not being utilized; and (4) any measures the Secretary of Commerce (Secretary) may require as being necessary or appropriate for the purposes of the plan (16 U.S.C. 1539(a)(2)(A)). If the Secretary finds that the applicant will minimize and mitigate the impacts of any incidental take, and will meet other requirements of section 1539(a)(2)(B), the Secretary may issue a permit, legally binding the applicant to the conservation measures set forth in the conservation plan.

Congress intended that the conservation planning process be used to reduce conflicts between listed species and private development and to provide a framework that would encourage "creative partnerships" between the private sector and local, state, and Federal agencies in the interest of endangered and threatened species and habitat conservation. NMFS encourages the development of conservation plans and intends to continue pursuing such agreements in the future with willing parties.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule will make no change in the existing law. Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act. Codifying NMFS' current definition of harm, as proposed in this rule, will not result in any additional economic impact on affected entities. NMFS is not implementing a new policy or definition. NMFS definition of harm would remain the same whether or not it is codified.

Non-Federal interests must conduct their actions consistent with the requirements of the ESA. When a species is listed, non-Federal interests must comply with the prohibitions on takings under section 9 of the ESA or associated regulations. If the activity is funded, permitted or authorized by a Federal agency, that agency must comply with the non-jeopardy mandate of section 7 of the ESA, which is also a result of the listing of a species, not the clarification of what is contained in the definition of harm. Since, under sections 9 and 7, not harming a species

is included in the statutory prohibition, affected entities are currently required to meet the existing standards that would be codified by this proposed rule, thus, promulgating this rule would not result in any additional impact. As such, no initial regulatory flexibility analysis has been prepared.

A draft Environmental Assessment will be made available to provide for adequate public review prior to finalizing this regulation.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

Dated: April 28, 1998.

Rolland A. Schmitt,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 742a *et seq.*, 1361 *et seq.*, and 1531-1544, unless otherwise noted.

2. In § 217.12, the definition for "Harm" is added in alphabetical order to read as follows:

§ 217.12 Definitions.

Harm in the definition of "take" in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding, and sheltering.

[FR Doc. 98-11668 Filed 4-30-98; 8:45 am]

BILLING CODE 3610-22-F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant, and Fetal Nutrition; Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

DATE AND TIME: May 27-29, 1998, 9:00 a.m.-5:00 p.m.

PLACE: Food and Nutrition Service, 3101 Park Center Drive, th Floor Conference Room, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: The Council will continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP).

The agenda items will include the formulation of recommendations for the Council's 1998 report to the President and Congress and a discussion of general program issues.

Recommendations for the report may address administrative and legislative changes for WIC and CSFP as determined by the Council.

STATUS: Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the contact person named below before or after the meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Persons wishing additional information about this meeting should contact Jackie Rodriguez, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 540,

Alexandria, Virginia 22302. Telephone: (703) 305-2730.

Dated: April 16, 1998.

Yvette S. Jackson,
Administrator.

[FR Doc. 98-11612 Filed 4-30-98; 8:45 am]

BILLING CODE 3410-30-U

DEPARTMENT OF AGRICULTURE

Forest Service

Withdrawal of Notice of Intent (NOI) for the Angostura Diversity Unit Vegetation Management Plan EIS

AGENCY: Forest Service, USDA.

SUMMARY: The Angostura Diversity Unit Vegetation Management Plan original NOI which was published in the *Federal Register* / Vol. 57, No. 44 / Thursday, March 5, 1992 / Notices on page 7906 is hereby cancelled. A decision on this proposed action is no longer necessary.

DATES: This notice is effective May 1, 1998.

ADDRESSES: For direct comments and further information contact: Carveth Kramer, Carson National Forest, 208 Cruz Alta Road, P.O. Box 558, Taos, NM 87571, (505) 758-62200.

Dated: April 20, 1998.

Leonard L. Lucero,
Forest Supervisor.

[FR Doc. 98-11568 Filed 4-30-98; 8:45 am]

BILLING CODE 3410-11-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities and services previously furnished by such agencies.

EFFECTIVE DATE: June 1, 1998.

Federal Register

Vol. 63, No. 84

Friday, May 1, 1998

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On February 27, March 6 and 13, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 9999, 11207 and 12438) of proposed additions to and deletions from the Procurement List:

The following comments pertain to Janitorial/Custodial, Buildings 300 and 301, Robins Air Force Base, Georgia.

Comments were received from the current contractor for the janitorial service. The contractor indicated that the addition of the service to the Procurement List would cause harm to his firm, which is a small disadvantaged business, and asked the Committee not to add the service to the Procurement List. The contractor said that if the janitorial services in the two buildings were not retained as part of the larger janitorial contract which his firm would be bidding on, it would hurt the company, which was trying to stay competitive in an overcrowded industry.

The Committee noted that its action would only affect approximately one-third of the value of the contractor's current contract, providing the contractor with the opportunity to continue competing for a significant amount of janitorial work at Robins Air Force Base. The Committee also noted that the percentage of the firm's sales that would be lost by the addition action was below the level that the Committee normally considers to be severe adverse impact.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial

VA Outpatient Clinic, Mobile, Alabama

Janitorial/Custodial

Marine Corps Base including Fallbrook Naval Ordinance Center, Camp Pendleton, California

Janitorial/Custodial

Buildings 300 and 301, Robins Air Force Base, Georgia

Janitorial/Custodial

Walnut Creek National Wildlife Refuge, 9981 Pacific Street, Prairie City, Iowa

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has

determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following commodities and services are hereby deleted from the Procurement List.

Commodities

Door Knob Conversion Kit

5340-01-392-6940

5340-01-392-6941

5340-01-392-6944

5340-01-392-6945

5340-01-394-3872

5340-01-392-6943

5340-01-392-6942

5340-01-392-6949

5340-01-395-2928

5340-01-392-6951

5340-01-392-6946

5340-01-392-6950

5340-01-392-6948

5340-01-392-6947

5340-01-392-6954

5340-01-392-6955

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5340-01-392-6960

5340-01-392-6962

5340-01-392-6963

5340-01-392-6961

5340-01-394-3873

5340-01-392-6967

5340-01-393-8586

5340-01-393-8585

5340-01-393-8587

5340-01-393-8588

5340-01-393-8589

5340-01-393-8590

5340-01-393-8591

5340-01-394-0238

5340-01-394-0239

5340-01-394-0237

5340-01-394-0240

5340-01-394-3874

5340-01-394-0241

5340-01-394-0242

5340-01-394-0244

5340-01-394-0243

5340-01-391-3805

5340-01-391-8170

5340-01-394-0246

5340-01-394-0247

5340-01-394-7991

5340-01-394-7992

5340-01-394-7994

5340-01-394-7996

5340-01-394-7993

5340-01-394-7995

5340-01-395-1173

5340-01-394-0245

Services

Commissary Shelf Stocking & Custodial

Fort Hamilton, New York

Grounds Maintenance

Naval and Marine Corps Reserve Center, Dayton, Ohio

Janitorial/Custodial

Valley Grove AMSA, Valley Grove, West Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 98-11628 Filed 4-30-98; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 1, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the

commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Body Fluids Barrier Kit

6515-01-376-7247

NPA: Lighthouse for the Blind, St. Louis, Missouri

Services

Base Supply Center

Travis Air Force Base, California

NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas

Janitorial/Custodial

Federal Building and Courthouse, 1 North

Palafox Street, Pensacola, Florida

NPA: Lakeview Center, Inc., Pensacola, Florida

Beverly L. Milkman,

Executive Director.

[FR Doc. 98-11630 Filed 4-30-98; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List; Correction

In the document appearing on page 23077, FR Doc. 98-10965, in the issue of April 24, 1998, in the second column, the service listed as "Base Supply Centers, Shaw Air Force Base, South Carolina" should read "Operation of Individual Equipment Element and Hazardous Materials Store, Shaw Air Force Base, South Carolina."

Beverly L. Milkman,

Executive Director.

[FR Doc. 98-11629 Filed 4-30-98; 8:45 am]

BILLING CODE 6353-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 1:00 p.m. on June 3, 1998, at the Clovis Public Library, Ingram Room, 701 North Main Street, Clovis, New Mexico 88101. The purpose of the meeting is to hold a factfinding meeting in followup to the September 15, 1997, inquiry into official activities during food stamp fraud sting operation in Clovis, New Mexico.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213-894-3437 (TDD 213-894-3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98-11588 Filed 4-30-98; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 7:30 p.m. on Friday, May 29, 1998, at the Westin Galleria Hotel, 5060 West Alabama Street, Houston, Texas 77056. The purpose of the meeting is to discuss ongoing projects and in recognition of Asian American Heritage Month.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213-894-3437 (TDD 213-894-3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the

Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98-11589 Filed 4-30-98; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Bureau of the Census

School Enrollment Report

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Ann Powell, Bureau of the Census, Room 2330-3, Washington, DC 20233-0001, (301) 457-2441.

SUPPLEMENTARY INFORMATION:

I. Abstract

Each year, the Census Bureau sends the School Enrollment Report, P-4 form to the 40 state departments of education that do not publish enrollment data early enough in the year for us to use their published reports. Information requested includes fall public and nonpublic enrollment by grade for the state and selected counties. In six states we collect year-end enrollment. The Census Bureau uses school enrollment data in preparing estimates of state population. State population estimates are used by dozens of Federal agencies for allocating Federal program funds, as bases for rates of occurrences, and as

input for Federal surveys. State and local governments, businesses, and the general public use state population estimates for planning and other information uses.

II. Method of Collection

The School Enrollment Report, P-4 form, is mailed each Spring to approximately 40 state education agencies. We request fall public and nonpublic school enrollment by grade for the state and selected counties. Responses are returned and reviewed on a flow basis during the summer and early fall. Data collected will be used as input for the development of population estimates. The estimates are made in November, December and January.

III. Data

OMB Number: 0607-0459.

Form Number: P-4.

Type of Review: Regular review.

Affected Public: State education agencies.

Estimated Number of Respondents: 40.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 20 hours.

Estimated Total Annual Cost: \$545. @ \$27.25 per hour.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Sections 181 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-11623 Filed 4-30-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census 2000

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 30, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Communications Staff, Decennial Management Division, Bureau of the Census, Room 2002, Suitland Federal Center #2, Washington, DC 20233-0001, (301) 457-3947.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Constitution mandates that a census of the Nation's population and housing be taken every ten years. The Census Bureau's goal in Census 2000 is to take the most accurate and cost-effective census possible. The importance of an accurate decennial census cannot be overstated. Census data are used to reapportion the House of Representatives and redraw legislative district boundaries, ensuring that political representation is distributed accurately, and to determine funding allocations for the distribution of billions of dollars of federal and state funds each year. Census data tell us what we know about our country; they are the definitive benchmark for virtually all demographic information used by state, local, and tribal governments, policy makers, educators, journalists, and community and nonprofit organizations.

From Census 2000, the Census Bureau will produce the basic population totals by state for Congressional apportionment, as mandated by the Constitution, and more specifically elaborated in Title 13 U.S. Code. In compliance with P.L. 94-171, for each state the Census Bureau will produce

population totals by race, Hispanic origin, and age for census blocks and higher geographic levels for legislative redistricting. The Census Bureau also will be collecting a wealth of demographic, social, economic, and housing characteristics from the population. This information is required to implement programs and enforce federal laws and, as noted above, plays an important role in the distribution of federal and state funds each year and serves as a benchmark for many different purposes.

In the process of developing our data collection forms, the Census Bureau has tried to reduce respondent burden in three ways: (1) Including only those questions that are explicitly required in federal law or whose use is strongly implied by the data requirements in the law—both the short form and the long form have fewer questions than their 1990 counterparts, (2) working through the decade to develop forms that are easy to understand and fill out, and (3) asking most questions at only a sample of one in six households nationwide.

II. Method of Collection

In Census 2000, the Census Bureau will make every effort to account for all people living in the Nation and Americans overseas (and their dependents) who are working for the U.S. Government. In most areas where city-style addresses are used for mail delivery, the Census Bureau will mail the following independent mailing pieces: an advance letter, a questionnaire with postage-paid return envelope, and a reminder card. In most areas with non-city style addresses (except for very remote or sparsely populated areas), enumerators will deliver a questionnaire to each housing unit, to be returned in a postage-paid envelope. Housing units in latter areas also will receive an advance letter before questionnaire delivery and a reminder card following questionnaire delivery. In very remote or sparsely populated areas without a city-style address, enumerators will visit each housing unit and complete an unaddressed short-form questionnaire. The enumerators will ask additional long-form questions of a sample of units. They also will develop an address list for the area and spot each housing unit's location on a map at the time of enumeration. In areas where response is by mail, enumerators will visit and collect information from households that did not return a questionnaire by mail or report their census information by other means, such as by telephone—this operation is called nonresponse follow-up. The Census Bureau also will

conduct a reinterview of a small portion of respondents during nonresponse follow-up to ensure the quality of work in this operation.

The Census Bureau plans to take the following additional steps to improve response to the census:

- Build partnerships with state, local, and tribal governments and with community groups to alert the Census Bureau to problems and advise the Bureau of opportunities to publicize Census 2000 and the best ways to communicate the message.

- Motivate individuals to respond (by explaining the benefits and mandatory nature of the census) and make Census 2000 forms attractive, easy to understand, and simple to fill out. Private sector designers have worked with the Census Bureau to simplify the forms and implement the user-friendly features shown to increase response during testing and research conducted by the Census Bureau.

- Placing unaddressed Be Counted forms or language assistance guides in locations, such as community centers and Walk-In Questionnaire Assistance Centers, for use by people who believe they have not been counted in the census. The Census Bureau intends to make these forms available in a broad range of non-English languages, but the number of languages has not yet been finalized.

- Employing new methods to find and enumerate people, such as enumerating persons who use services at shelters, soup kitchens, and other facilities and placing unaddressed Be Counted forms in publicly accessible locations for pick up and completion by people who believe that they have not been counted in the census.

- Providing telephone questionnaire assistance.

The Census Bureau intends to employ statistical sampling to check the quality of the work. An independent quality check—called the Integrated Coverage Measurement survey—will use the information gathered from a second, independent operation to improve the accuracy of the census. The Integrated Coverage Measurement survey will be submitted separately for OMB review, as will the forms for the census enumeration in Puerto Rico, the U.S. Virgin Islands, and the Pacific Island Areas.

III. Data

OMB Number: Not available.

Form Numbers:

Short Form: D-1, D-1(S) and possibly other languages
Long Form: D-2, D-2(S) and possibly other languages

Update/Leave: D-1(UL), D-2(UL), D-1A(UL), D-2A(UL)
Enumerator Forms: D-1E, D-2E, D-1E(SUPP), D-2E(SUPP)
Household Follow-up: D-1(HF), D-2(HF), D-1(HF)(S), D-2(HF)(S)
Be Counted Forms: D-10, D-10(S) and possibly other languages
Advance Census Report: D-13
Individual Census Questionnaires: D-15A, D-15B
Individual Census Reports: D-20A, D-20A(S), D-20B, D-20B(S)
Military Census Report: D-21
Shipboard Census Report: D-23
Letters/Cards/Notices: D-5(L), D-5(L)(UL), D-9, D-9(UL), D-11, D-1E(S), D-2E(S), D-1(F), D-16A(L), D-16B(L) and possibly other languages, D-16A(L)(UL), D-16B(L)(UL), D-19A(L), D-19B(L), D-19C(L), D-19A(L)(S), D-19B(L)(S), D-19C(L)(S), D-26, D-27, D-28, D-31, D-31(P), D-3309
Reinterview: D-806

Type of Review: Regular Submission.
Affected Public: Individuals or Households.

Estimated Number of Respondents: 106,200,000 households (approx.) (Short Form: 83%; Long form: 17%)

Reinterview: 1,200,000 households.

Estimated Time Per Response: Short Form: 10 minutes, Long Form: 38 minutes, Reinterview: 5 minutes.

Estimated Total Annual Burden: Short Form: 14,691,000 hours, Long Form: 11,434,200 hours, Reinterview: 100,000 hours, Total: 26,225,200 hours.
Estimated Total Annual Cost: The only cost to respondent is that of their time.

Respondent's Obligation: Mandatory.
Legal Authority: Title 13 U.S.C. Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; the comments will become a matter of public record.

Dated: April 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-11624 Filed 4-30-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23-98]

Foreign-Trade Zone 87—Lake Charles, LA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Lake Charles Harbor & Terminal District (a.k.a. the Port of Lake Charles), grantee of Foreign-Trade Zone 87, requesting authority to expand its zone in Lake Charles, Louisiana, within the Lake Charles Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 22, 1998.

FTZ 87 was approved on July 22, 1983 (Board Order 217, 48 FR 35478, 8/4/83). The zone project currently consists of four sites along the Calcasieu River and Ship Channel and the Industrial Canal: Site 1 (463 acres)—general cargo area of the Port of Lake Charles, Lake Charles; Site 2 (360 acres)—industrial area on both sides of the Industrial Canal, some 12 miles south of the general cargo area, Lake Charles; Site 3 (11 acres)—warehouse facility at Fournet and Ford Streets, Lake Charles; and, Site 4 (3 acres)—warehouse facility at 3001 Industrial Avenue, Lake Charles.

The applicant is now requesting authority to expand the general-purpose zone to include two new sites (924 acres) in Calcasieu Parish (Proposed Sites 5 and 6): Proposed Site 5 (391 acres)—Lake Charles Harbor & Terminal District's Industrial Park East, Highway 397, Lake Charles; and, Proposed Site 6 (533 acres, 3 parcels at the Chennault Airpark)—Parcel 1 (523 acres)—3650 J. Bennett Johnston Avenue, Lake Charles; Parcel 2 (9 acres)—East Broad Street, Lake Charles; and, Parcel 3 (1 acre)—Avenue C, Lake Charles. Proposed Site 5 was recently acquired by the Port. Proposed Site 6 is adjacent to Proposed Site 5 and is owned by area governmental entities and is leased to the Chennault International Airport Authority. Both sites are designated state enterprise zones. No specific manufacturing requests are being made at this time. Such requests would be

made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 30, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 15, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 150 Marine Street, Lake Charles, LA 70601

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: April 23, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98-11667 Filed 4-30-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-412-810; C-412-811; A-428-811; C-428-812]

Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany and the United Kingdom; Negative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of negative preliminary determinations of circumvention of antidumping and countervailing duty orders.

SUMMARY: On April 14, 1997, the Department of Commerce received an application requesting circumvention inquiries of the antidumping and countervailing duty orders on hot-rolled lead and bismuth carbon steel products from Germany and the United Kingdom. The application alleged that the principal German and British producers of hot-rolled lead and bismuth carbon

steel products are circumventing the respective orders by shipping leaded steel billets to the United States, where they are easily and inexpensively converted into the hot-rolled lead and bismuth carbon steel products covered by the orders. Pursuant to the application, the Department of Commerce initiated anticircumvention inquiries on June 25, 1997.

We preliminarily determine that imports into the United States of leaded steel billets that were exported from Germany and the United Kingdom do not constitute circumvention of the antidumping and countervailing duty orders on hot-rolled lead and bismuth carbon steel products from Germany and the United Kingdom, within the meaning of section 781(a) of the Tariff Act of 1930, as amended. Interested parties are invited to comment on these preliminary determinations.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT:

Anne D'Alauro, Russell Morris, or Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended, by the Uruguay Round Agreements Act (URAA), effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Parts 353 and 355 (1997).

Background

On March 22, 1993, the Department of Commerce (the Department) published in the *Federal Register* the antidumping duty orders (58 FR 15334) and countervailing duty orders (58 FR 15325, 15327) on hot-rolled lead and bismuth carbon steel products (hot-rolled lead bar) from Germany and the United Kingdom. On April 14, 1997, the Department received an application (amended on May 14, 1997) filed by Inland Steel Bar Company and USS/KOBE Steel Company (the petitioners), requesting that the Department conduct anticircumvention inquiries of the antidumping and countervailing duty orders on hot-rolled lead bar from Germany and the United Kingdom pursuant to section 781(a) of the Tariff Act. The petitioners alleged that the

principal German (Saarstahl A.G. i.K. and Thyssen Stahl A.G.) and British (British Steel plc) producers of hot-rolled lead bar are circumventing the respective orders by shipping leaded-steel billets (lead billets) to the United States, where they are easily and inexpensively converted into the hot-rolled lead bar products covered by the orders.

The Department received written comments opposing the request to initiate the inquiries from Thyssen on May 12, 1997, from Saarstahl A.G. i.K. on May 16, 1997, from British Steel plc on May 23, 1997, and from the European Community (EC) on May 27, 1997. We also received written comments in opposition to the initiation of the inquiries from Bar Technologies, Inc. (Bar Tech) on May 19, 1997, Sheffield Steel Corporation on June 2, 1997, Birmingham Steel Corporation on June 3, 1997, and Nucor Steel Corporation on June 5, 1997.

Pursuant to the petitioners' application and in accordance with 19 CFR 353.29(e) and 355.29(e), the Department initiated circumvention inquiries of the antidumping and countervailing duty orders on hot-rolled lead bar from Germany and the United Kingdom (62 FR 34213; June 25, 1997).

We sent initial questionnaires to the foreign respondents on June 25, 1997, and received responses on July 21, 1997. On September 10, 1997, the Department again issued questionnaires to all foreign respondents. Also on this date, the Department issued questionnaires to those U.S. steel companies which were identified in the foreign respondents' July 21, 1997 questionnaire responses as lead billet customers. The U.S. steel companies which responded to the Department's questionnaires on October 29, 1997 and November 3, 1997, purchased virtually all of the foreign respondents' exports of lead billets to the United States in 1995 and 1996, and rolled them into hot-rolled lead bar (hereafter referred to as U.S. re-rollers). The Department issued supplemental questionnaires to both the U.S. re-rollers and foreign respondents.

In conducting the inquiries, we requested and received detailed information on a range of topics, such as processing, pricing information, and conversion costs. We also collected data on patterns of trade, sourcing patterns, and other trend data for the period January 1, 1991, through June 30, 1997.

Scope of Antidumping and Countervailing Duty Orders

Imports covered by these orders include hot-rolled bars and rod of non-alloy or other alloy steel, whether or not

descaled, containing by weight 0.03 percent of lead or 0.05 percent of bismuth, in coils or cut lengths, and in numerous shapes and sizes. The order excludes "other alloy steels," as defined by Chapter 72, note 1(f) of the Harmonized Tariff Schedule of the United States (HTSUS), "except steels classified as other alloy steel by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium or selenium." Most of the products covered are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope of the order remains dispositive.

Scope of the Circumvention Inquiries

The products subject to these circumvention inquiries are carbon or alloy steel billets containing 0.03 percent or more of lead or 0.05 percent or more of bismuth (the only accepted metallurgical equivalent to lead), and other alloy steel billets by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium or selenium, that meet the chemical requirements for the merchandise subject to the orders.

Facts Available

Section 776(a)(2) of the Act requires the Department to use facts available if "an interested party or any other person . . . withholds information that has been requested by the administering authority . . . under this title." The facts on the record show that Bar Tech did not comply with the Department's requests for information required to calculate the value of the processing performed in the United States. In our initial questionnaire dated September 10, 1997, the Department requested information regarding the total amount of lead billet consumed in the production of one unit of hot-rolled lead bar (lead billet consumption rate). Bar Tech responded to our questionnaire on October 29, 1997, but did not provide its lead billet consumption rate.

The Department's supplemental questionnaires dated November 18, 1997 and January 7, 1998, again requested that Bar Tech report its lead billet consumption rate. Bar Tech,

however, did not provide its lead billet consumption rate to the Department.

Section 776(b) of the Act permits the administrative authority to use an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Such an adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed on the record. Because Bar Tech did not comply with the Department's request to provide its lead billet consumption rate, we find that Bar Tech failed to cooperate by not acting to the best of its ability to comply with the Department's request. Therefore, we are using adverse inferences in accordance with section 776(b) of the Act. The adverse inference for Bar Tech's lead billet consumption rate is the use of the highest average lead billet consumption rate submitted by another U.S. re-roller participating in these inquiries.

Nature of the Circumvention Inquiry

Section 781(a)(1) of the Act provides that the Department, after taking into account any advice provided by the United States International Trade Commission (ITC) under section 781(e), may include the imported merchandise under review within the scope of an order if the following criteria have been met:

A. The merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

(i) An antidumping duty order issued under section 736,

(ii) A finding issued under the Antidumping Act, 1921, or

(iii) A countervailing duty order issued under section 706 or section 303;

B. Such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies;

C. The process of assembly or completion in the United States is minor or insignificant; and

D. The value of the parts or components [produced in the foreign country with respect to which the order applies], is a significant portion of the total value of the merchandise.

If one of the four elements does not apply, there can be no finding of

circumvention. However, even if all four of these criteria are met, the Act requires that the Department also consider additional factors. Section 781(a)(3) of the Act directs the Department to consider, in determining whether to include parts or components produced in a foreign country within the scope of a countervailing and antidumping duty order, such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country; and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

U.S. Re-rollers

We requested information from U.S. re-rollers with respect to these circumvention inquiries. Information was submitted by the following U.S. re-rollers: American Steel & Wire (AS&W), a wholly-owned subsidiary of Birmingham Steel Corporation; Bar Tech; Nucor Steel Corporation (Nucor); Republic Engineered Steels (Republic); and Sheffield Steel Corporation (Sheffield). Based upon our analysis of the information submitted by the foreign respondents and the U.S. re-rollers, we have determined that no affiliation exists between the U.S. re-rollers and the foreign respondents, as defined in section 771(33) of the Act. A determination with respect to section 781(a)(1) and (2) of the Act, is based solely on the processing of lead billets into hot-rolled lead bar by these unaffiliated U.S. re-rollers.

The rolling facilities owned by each of the U.S. re-rollers were in operation before the initiation of the respective antidumping and countervailing (AD and CVD) investigations of hot-rolled lead bar from Germany and the United Kingdom. All of the U.S. re-rollers, except Bar Tech, existed as re-rollers before the initiation of the investigations. Bar Tech was established after the issuance of the AD and CVD orders when Bar Tech purchased Bethlehem Steel's Bar, Rod & Wire (BRW) facilities in Lackawanna, New York in 1994. Bethlehem Steel, a former re-roller of hot-rolled lead bar, was one of the original petitioners in the lead bar investigations.

Much of the information provided by the U.S. re-rollers is proprietary. Therefore, in most instances, the

information used in our analysis below has been ranged, and our discussion of this information has been generalized in order to maintain the proprietary treatment of submitted information. In addition, for most of the U.S. re-rollers, the source of their imported lead billets is also proprietary. Therefore, the analysis below refers to both imports from Germany and the United Kingdom.

Statutory Analysis

(1) Whether the Class or Kind of Merchandise Is Sold in the United States

AS&W, Bar Tech, Republic, and Sheffield sell hot-rolled lead bar in the United States. Nucor processes lead billets into hot-rolled lead bar, which the company further processes into cold-finished products.

(2) Whether Merchandise Sold in the United States Is Completed or Assembled in the United States From Foreign Parts or Components

All of the U.S. re-rollers purchase lead billets from one or more of the foreign respondents subject to the AD and CVD orders. They each use the lead billets to produce hot-rolled lead bar in the United States.

(3) Whether the Process of Assembly or Completion Is Minor or Insignificant

Section 781(a)(2) lists the factors the Department will consider in determining whether the process of assembly or completion is minor or insignificant. The Statement of Administrative Action (SAA), H. Doc. No. 316, Vol. 1, 103d Cong., 2nd Sess. (1994), states that no single factor listed in section 781(a)(2) of the Act will be controlling. SAA at 893. The SAA also states that the Department will evaluate each of the factors as they exist in the United States depending on the particular circumstance scenario. *Id.* Therefore, the importance of any one of the factors listed under 781(a)(2) of the Act can vary from case to case depending on the particular circumstances unique to each specific circumstance inquiry. Each of the factors set forth in section 781(a)(2) of the Act is examined below for the U.S. re-rollers.

(a) The Level of Investment in the United States

The rolling facilities owned by each of the U.S. re-rollers were in operation before the initiation of the respective AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom. Although Bar Tech did not exist before the initiation of the investigations, the facility producing

subject merchandise that is operated by the company does pre-date the investigations. Each of the U.S. re-rollers has made substantial capital investments in its respective rolling mills.

AS&W entered the hot-rolled lead bar market in 1986, with its purchase of rolling facilities from U.S. Steel. In 1993, Birmingham Steel acquired AS&W and entered the specialty bar, rod, and wire products business. In 1996, Birmingham Steel invested \$132 million in a new high-quality rolling mill at AS&W's Cleveland, Ohio facility, enabling the company to produce larger-sized bar products and bars with tighter size tolerances and more stringent mechanical properties. AS&W primarily produces non-lead hot-rolled bars, and less than a quarter of the mill's production utilizes lead billets. AS&W sells the hot-rolled lead bar that it produces to unaffiliated customers.

Bar Tech came into existence in 1994, with the purchase of Bethlehem Steel's BRW facilities for \$19 million. Between 1994 and 1997, Bar Tech made additional investments in the rolling facilities' buildings, machinery, and equipment. In April 1996, Bar Tech acquired Bliss & Laughlin (B&L), the largest cold-finishing company in the United States. In September 1997, Bar Tech announced plans to invest \$30 million in its steelmaking facilities. Approximately half of the investment is allocated for the production of lead and non-lead semi-finished steels (billets) at its Johnstown meltshop. The majority of the remaining investment is designated for equipment upgrades at its 13 inch rolling mill in Lackawanna, New York to roll both lead and non-lead billets.

Nucor's steel mill in Darlington, South Carolina became operational as a new steel mill in 1969. Prior to 1991, Nucor added a high-speed rolling line to its mill. The addition of such equipment allows for automatic straightening, shearing, stacking, and bundling of bar, and has significantly enhanced Nucor's ability to produce hot-rolled lead and non-lead bar from lead and non-lead billets. Since 1991, Nucor has made several investments for a variety of improvements.

In November 1989, Republic was created through an employee stock ownership plan with the purchase of LTV's Bar Division. With the purchased steelmaking facilities, Republic gained the ability to produce lead and non-lead ingots, and hot-rolled and cold-finished bar products. Republic currently produces lead billets via the ingot process in a shared facility; however, the quantity it can produce is restricted by environmental permit limits. During

the 1990's, Republic invested in the construction of a continuous casting facility which has the capability to produce both lead and non-lead billets; however, Republic currently only produces non-lead billets at the facility.

Sheffield was established in the early 1980's, with the purchase of the Sand Springs, Oklahoma meltshop and rolling facility in 1981, and the construction of the Kansas City, Missouri rolling facility in 1985. In 1986, Sheffield purchased a 12 inch rolling mill facility in Joliet, Illinois from Continental Steel for \$3.5 million. This rolling mill was originally installed around 1957. Since acquiring the Joliet mill in 1986, Sheffield has made additional investments of approximately \$6 million in the facility, which is the company's only rolling mill which produces hot-rolled lead bar. Sheffield entered the hot-rolled lead bar market in 1992.

(b) The Level of Research and Development (R&D) in the United States

Four of the five re-rollers reported that they had little or no R&D related to the production of hot-rolled lead bar. One U.S. re-roller reported that it conducted some R&D with respect to the development of heating, rolling and inspection practices used in the production of lead steels. The U.S. re-rollers reported that there have been few technological breakthroughs affecting lead steels since 1991. Because the rolling of hot-rolled lead bar is a technically mature process, R&D into the process of rolling bar is not a significant factor in this industry.

(c) The Nature of the Production Process in the United States

The International Trade Commission (ITC) states that the manufacturing process for the production of hot-rolled lead bar consists of three different stages: (1) melting, (2) casting, and (3) hot-rolling. See *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, and the United Kingdom*, Determinations of the Commission in Investigations Nos. 701-TA-314 thru 317, USITC Publication 2611 (March 1993). Lead billets are created during the second stage; the U.S. re-rollers perform the third and final stage in the manufacturing process of hot-rolled lead bar.

Each of the U.S. re-rollers are fully operational hot-rolled lead and non-lead bar producers, manufacturing bar in a like manner. The nature of the process overall consists of a series of sizing and shaping of the lead billets to produce specific sized and shaped hot-rolled bar on rolling equipment used to manufacture either hot-rolled lead or

non-lead bars. The rolling process does not require equipment dedicated exclusively to the production of hot-rolled lead bar. Three of the five re-rollers also have cold-finishing operations to further process the hot-rolled lead bar. In the cold-finishing process, the bar undergoes surface treatments in the form of polishing, turning, grinding, and straightening.

The process for producing hot-rolled lead bar from lead billets is as follows. First, the lead billets are placed in a re-heat furnace and heated to a temperature usually above 2200 degrees Fahrenheit. This heating procedure increases the malleability of the steel, reducing energy consumption and wear on the rolling mill. Once the lead billets reach the necessary temperature, walking beams gradually discharge them from the re-heat furnace onto the rolling lines. The lead billets are then rolled on a series of rolling mills, including roughing, intermediate, and finishing mills. Each rolling mill has a series of stands which compress and shape the lead billets with each pass through. As a lead billet passes through the stands, it becomes elongated and its cross-section becomes smaller. This process transforms a lead billet into a hot-rolled lead bar product having a specific size and shape. Generally four to 15 percent of a lead billet's weight is lost in the rolling process.

The hot-rolled lead bar is then placed on a hot bed and cooled to a temperature of about 800 degrees Fahrenheit. Once cooled, the hot-rolled lead bar undergoes straightening, non-destructive testing, deburring, and saw cutting. The hot-rolled lead bar is either coiled or cut into various lengths at the finishing shear. At this stage, some re-rollers apply a surface treatment to clean and coat their products. After being inspected for straightness, length, and defects, the hot-rolled lead bars are weighed, packaged, and placed in the warehouse for later shipment.

There are environmental issues and limitations in rolling lead billets versus non-lead billets. Environmental controls, worker safety, and health regulations are more stringent for lead than for non-lead grades. For instance, additional ventilation of exhaust fumes is necessary as lead and bismuth steel wastes are classified as hazardous waste, necessitating their segregation and separate treatment from other scrap. Specialized safety equipment and more rigorous operating procedures must also be used in compliance with Occupational Safety and Health Administration (OSHA) standards.

(d) The Extent of Production Facilities in the United States

In general, each of the U.S. re-rollers have production facilities in various states throughout the United States, but the rolling of hot-rolled lead bar mainly takes place in Illinois, Ohio, Utah, South Carolina, and New York. As we have noted earlier, most of the U.S. re-rollers were rolling lead billets into hot-rolled lead bar before the initiation of the AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom.

In analyzing the extent of production facilities, we considered the square footage of building space dedicated to rolling the semifinished product (lead billet) into hot-rolled lead bar, the number of employees involved in rolling the lead billets, and the capital equipment used in the production of hot-rolled lead bar. Sheffield, for example, reported that its Joliet rolling facility encompasses 334,305 square feet for the processing of lead billet into hot-rolled lead bar.

With regard to the number and level of skilled employees involved in rolling lead billets into hot-rolled lead bar, Sheffield, for example, reported that in the production process of hot-rolled lead bar, from the time the lead billets are received in the billet yard to the time that hot-rolled lead bar is shipped to a customer, there are 25 skilled workers responsible for the rolling of a lead billet into hot-rolled lead bar, and all of the other ancillary functions.

With respect to the capital equipment used in the processing of lead billet into hot-rolled lead bar, the U.S. re-rollers have invested a substantial amount of money not only in the construction of factory buildings used in rolling operations for both lead and non-lead products, but also in the purchase of sophisticated machinery required to produce hot-rolled bar from lead and non-lead billets, and the maintenance required for such machinery.

(e) Whether the Value of the Processing Performed in the United States Represents a Small Proportion of the Value of the Merchandise Sold in the United States

We calculated the difference in value between the hot-rolled lead bar sold in the United States and the value of the lead billets purchased from the foreign respondents that were used in the production of that merchandise. For ASW, BarTech, Republic, and Sheffield, we based our calculation of value-added to the merchandise sold in the United States on the difference between the delivered lead billet import price and

the ex-factory sales price of the hot-rolled lead bar. This methodology was used because both transactions (lead billet purchases and hot-rolled lead bar sales) were sales between unaffiliated parties. To derive the value of processing performed by each U.S. re-roller, we subtracted from the ex-factory sales price of hot-rolled lead bar to unaffiliated customers the delivered price of lead billets, after adjusting for a yield factor (to account for additional lead billet consumed in the production of one unit of hot-rolled lead bar).

In regard to Nucor, because the company uses all the hot-rolled lead bar that it produces to further manufacture cold-finished products, we applied a different value-added methodology. We based our calculation of value-added on the comparison between the conversion fee Nucor's rolling mill charged its affiliated cold-finisher and the resulting total input cost of hot-rolled lead bar to the cold-finisher, after adjusting both for a yield factor (to account for additional lead billet consumed in the production of one unit of hot-rolled lead bar).

Some of the U.S. re-rollers purchased lead billets from all three suppliers of lead billets subject to these inquiries, while others purchased exclusively from one source. Some of the U.S. re-rollers, however, were unable to identify the supplier of lead billets on a transaction-specific basis with respect to the U.S. sales of the processed hot-rolled lead bar. Therefore, for each U.S. re-roller, the calculation of value-added is based upon a weighted-average price of imported lead billet from the foreign respondent(s) from whom the U.S. re-roller purchased its lead billets. Because the processing of the imported lead billet into hot-rolled lead bar is virtually identical regardless of the source of the imported lead billet, we consider this weighted-average, non-supplier specific calculation of value-added to be appropriate in those instances. However, where possible, we used the supplier-specific information to calculate the value-added to each supplier.

The value of processing performed in the United States ranges from approximately 10 percent to 29 percent for the U.S. re-rollers. The value of processing varies because of the lead billet prices charged by the foreign respondents to the U.S. re-rollers, the U.S. re-roller's yield factor for rolling one unit of lead billet into one unit of hot-rolled lead bar, and the different prices charged by the U.S. re-rollers to their customers due to size and shape of the hot-rolled lead bar. Because the calculation of the value of processing is based upon proprietary data, the value-

added percentages presented above have been ranged

(4) Whether the Value of Imported Parts Is a Significant Portion of Value of Lead Bar

Under section 781(a)(1)(D) of the Act, the value of the imported parts or components must be a significant portion of the total value of the subject merchandise sold in the United States in order to find circumvention. The imported lead billet is the sole material input into the completed hot-rolled lead bar and a significant portion of the value of the completed hot-rolled lead bar is based upon this material cost.

Other Factors To Consider

In making a determination whether to include parts or components within an order, section 781(a)(3) of the Act instructs us to take into account such factors as: the pattern of trade, including sourcing patterns; whether affiliation exists between the exporter of the parts and the person who assembles or completes the merchandise sold in the United States; and whether imports into the United States of the parts produced in the foreign country have increased after the initiation of the investigation which resulted in the issuance of the order. Each of these factors are examined below.

(1) Pattern of Trade and Sourcing

The first factor to consider under section 781(a)(3) is changes in the pattern of trade, including changes in the sourcing patterns of the lead billets. SAA at 894. Unlike our examination of the processing of lead billets into hot-rolled lead bar in the United States, which was essentially the same for all of the U.S. re-rollers, there are differences in the pattern of trade among the U.S. re-rollers and the three foreign respondents (British Steel, Thyssen, and Saarlöh). Among the foreign respondents, British Steel and Thyssen are the two largest lead billet exporters to the United States. In comparison, Saarlöh is a small exporter of lead billets.

British Steel began selling lead billets to the United States in 1994. By 1996, the company's lead billet sales doubled. British Steel's sales of hot-rolled lead bar peaked in 1992, declined in 1993 and 1994, rebounded in 1995, and continued to trend upwards in 1996. In general, sales of hot-rolled lead bar by British Steel have greatly exceeded its sales of lead billets to the U.S. market (in spite of the AD and CVD orders). British Steel's sales of hot-rolled lead bar in the U.S. market have remained significant since the imposition of the

orders. In fact, Sheffield reported that its primary competition for hot-rolled lead bar shapes is imports from British Steel.

Thyssen has been selling lead billets to the United States since 1988, well before the Department initiated its hot-rolled lead bar investigations in May 1992. Thyssen's lead billet shipments to the United States increased steadily from 1991 to 1996, peaking in 1996, while its hot-rolled lead bar sales to the U.S. market terminated in 1992. Thyssen has stated that lead billets, and not hot-rolled lead bar, have always been its primary U.S. market, and the pattern of trade for both products indicates this to be accurate.

Saarlöh began selling lead billets to the United States in 1992, the last year the steelmaker sold hot-rolled lead bar to U.S. customers. Saarlöh's exports of lead billets to the United States peaked in 1993, and since then have significantly decreased.

AS&W has been purchasing lead billets since its inception in 1986. AS&W reported that since 1992, the company has sourced lead billets from both foreign and domestic suppliers. A major change in the company's sourcing was the termination of a billet supply agreement (inclusive of lead and non-lead billets) with USS/KOBE. When Birmingham Steel purchased AS&W in 1993, there was a lead billet supply agreement in effect with USS/Lorain Works, which subsequently became USS/KOBE. USS/KOBE terminated the supply agreement in 1996, citing a lack of lead billet availability. With the termination of this supply agreement, AS&W was no longer able to source lead billets domestically.

Bar Tech began purchasing lead billets in 1996. Bar Tech has not sourced lead billets from domestic producers. Bar Tech never purchased lead bar from the foreign respondents.

Nucor did not begin purchasing lead billets until 1992, when the company began sourcing from foreign respondents. Purchases from the foreign respondents have been generally declining. Nucor had previously purchased hot-rolled lead bar from foreign sources.

Republic's predecessor began purchasing lead billets from foreign sources in the mid-80's. Since becoming an independent company in 1989, Republic has continued to source its lead billets from foreign sources to supplement its own production. Republic has never purchased lead billets from domestic producers. The company did purchase hot-rolled lead bar from foreign sources in the early 1990's; however, since 1993, Republic

has sourced hot-rolled lead bar exclusively from domestic suppliers.

Sheffield has sourced lead billets from both domestic and foreign producers since it began purchasing lead billets in 1992. Throughout much of 1993, Sheffield sourced lead billets from Inland; however, by late 1993, Inland stopped its external sales of lead billets citing its own internal lead billet consumption needs. In June 1995, Inland was again in a position to supply lead billets. Sheffield placed orders with Inland, but by the fourth quarter of 1995, Inland once again stopped selling lead billets. Since 1996, Sheffield has sourced lead billets from abroad.

(2) Affiliation

The second factor to consider under section 781(a)(3) of the Act is whether the manufacturer or exporter of the lead billets is affiliated with the entity that assembles or completes the merchandise sold in the United States from the imported lead billets. In these circumvention inquiries, the Department inquired whether affiliation existed between the U.S. re-roller and the foreign respondents, pursuant to section 771(33) of the Act. Based upon our analysis of the questionnaire responses from both the U.S. re-rollers and the foreign respondents, we find that no affiliation exists between the parties. There is neither common ownership, direct or indirect, between the U.S. re-rollers and the foreign suppliers of lead billets, nor a joint venture between the companies. Further, there are no facts (e.g., close supplier relationship) that suggest control of any of the re-rollers by the foreign respondents. In sum, we have found no evidence to indicate that the foreign respondents have attempted either to purchase or to construct re-rolling facilities in the United States which would allow them to import lead billet and process it into hot-rolled lead bar for their own use.

(3) Whether Imports Have Increased

The third factor to consider under section 781(a)(3) is whether imports of lead billets into the United States have increased after the initiation of the hot-rolled lead bar investigations. Therefore, we have analyzed the level of imports of lead billets from both Germany and the United Kingdom since 1992, the year in which the AD and CVD investigations of hot-rolled lead bar were initiated. While we find that imports of lead billets have increased from all three foreign respondents, the increase appears to be the result of causes other than the initiation of the hot-rolled lead bar investigations.

According to some of the U.S. re-rollers, there has been a switch from domestically produced lead billets to foreign-sourced imports because Inland and USS/KOBE have not met the lead billet supply needs of the U.S. market. In addition, there were two new entrants to the hot-rolled lead bar market after the initiation of the hot-rolled lead bar investigations that required supplies of lead billet. Sheffield entered into the hot-rolled lead bar market after Bethlehem Steel exited the market in 1992. Two years later, Bar Tech entered the hot-rolled lead bar market after purchasing Bethlehem's rolling facilities. Bethlehem Steel, one of the original petitioners in the hot-rolled lead bar investigations, produced its own lead billets; however, neither Sheffield nor Bar Tech currently have lead billet production and thus, must source their lead billets from other outside sources.

Further, according to the ITC, in the United States almost all semifinished steel such as blooms, billets, and slabs are used in captive production of finished steel products. Steel processors, such as the U.S. re-rollers, are an important outlet for excess semifinished steel products manufactured by steel producers. In the relatively limited semifinished steel market, the consumer is likely also to be the supplier's competitor in sales of finished steel. See USITC Publication 2758, *Industry & Trade Summary Semifinished Steel* (March 1994) at pages 3, 5, and 11. Because the consumer of a billet is generally a competitor of the supplier, the dynamics of supply operate differently than for finished steel products. A steelmaker with excess melting capacity may have incentive to refrain from selling semifinished steel, such as billets.

It has also been difficult to measure the rise in imports of lead billets from Germany and the United Kingdom against import trends from other countries. This is because the primary HTS number under which lead billets are imported is a basket category which includes other imports of semifinished products of iron or nonalloy steel with a chemical content of under 0.25 percent carbon. In its application, Inland and USS/KOBE provided import data for this HTS category. According to these data, imports of semifinished products of iron or nonalloy steels from countries not subject to antidumping or countervailing duty orders increased after the initiation of the hot-rolled lead bar investigations, and in some cases significantly.

Summary of Statutory Analysis

As discussed above, in order to make an affirmative determination of circumvention, all the elements under sections 781(a)(1) and (2) of the Act must be satisfied. In addition, section 781(a)(3) of the Act instructs the Department to consider, in determining whether to include parts or components within the scope of an order, such factors as: pattern of trade, affiliation, and whether imports into the United States of such parts or components increased after the initiation of the investigation which resulted in the issuance of the order. When the criteria of sections 781(a)(1) and (2) are applied to the individual facts, our analysis of whether circumvention is occurring is inconclusive. However, when the evidence to be considered under section 781(a)(3) of the Act is incorporated into our analysis, we find that all of the evidence, taken as a whole, does not lead us to find a basis for including lead billets within the scope of the AD and CVD orders on hot-rolled lead bar from Germany and the United Kingdom.

Pursuant to sections 781(a)(1) and (2), we find that the processing of lead billets into hot-rolled lead bar is essentially identical for all of the U.S. re-rollers involved in these inquiries. A detailed description of the re-rolling process is provided above. Though the U.S. re-rollers perform only one of the three processes needed to produce hot-rolled lead bar, they do perform the final process of converting the semifinished steel product into a functional finished steel good. Also, because the production process of converting lead billets into hot-rolled lead bar is a technically mature process, we did not expect to find significant R&D expenditures by the U.S. re-rollers.

The process of rolling lead billet into hot-rolled lead bar requires significant capital investment in rolling machinery and equipment, and compliance with a variety of OSHA and environmental regulations. Capital equipment and machinery used by the U.S. re-rollers, once purchased, installed, and operational, represent significant fixed plant and equipment which cannot be easily disassembled and transported to another location. Investment in re-rolling facilities requires a long-term investment of capital, long-term corporate planning, and a long-term business commitment by the U.S. re-roller.

Pursuant to section 781(a)(3), in reaching our determination, we took into consideration the factors of pattern of trade, sourcing, affiliation, and import trends. The facts concerning

pattern of trade, sourcing, affiliation, and import trends do not indicate that there is circumvention of the hot-rolled lead bar orders. Even if we were to conclude that the calculated value of processing performed by the U.S. re-rollers in the United States is relatively small, when we examined sections 781(a)(1) and (2) in conjunction with the factors under section 781(a)(3), the facts, taken as a whole, do not lead us to find that circumvention of the hot-rolled lead bar orders is occurring.

Throughout the United States, the U.S. re-rollers have extensive capital-intensive rolling facilities staffed by skilled workers. As previously discussed, the U.S. re-rollers are not affiliated with the foreign respondents and their rolling facilities were in existence and operational before the initiation of the hot-rolled lead bar investigations. Indeed, the petition for the hot-rolled lead bar investigations was filed on behalf of two of the five U.S. re-rollers, AS&W and Republic. In addition, a third U.S. re-roller, Bar Tech, purchased its rolling facilities from Bethlehem Steel, one of the two original petitioners in the hot-rolled lead bar investigations.

According to the responses from the U.S. re-rollers, most of their investment in rolling facilities in the United States was made before the initiation of the AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom. In addition, some of the U.S. re-rollers made large investments in their rolling mills after 1992, the year in which the investigations on hot-rolled lead bar began. Thus, before and after 1992, U.S. re-rollers made large investments of capital and resources into their rolling facilities. These facts demonstrate that there were substantial production facilities for converting lead billets into hot-rolled lead bar before the initiation of the hot-rolled lead bar investigations.

Further, as discussed above, British Steel remains a large exporter of hot-rolled lead bar to the United States and its bar market in the United States is still much larger than its U.S. lead billet market. Thyssen was primarily a lead billet exporter to the United States before 1992, the year the lead bar investigations were initiated. That did not change after the initiation of the hot-rolled lead bar investigations. Saarlöh, which exports a relatively small volume of lead billets to the United States, is not a major player in the U.S. lead billet market.

With respect to the U.S. re-rollers, changes in their respective sourcing patterns after 1992, appear to be due to changes in the U.S. market, independent

of the hot-rolled lead bar investigations. U.S. re-rollers were purchasing lead billets and rolling them into hot-rolled lead bar before 1992. As noted above, Republic began purchasing lead billets in the mid-80's from foreign sources. New hot-rolled lead bar entrants came into the market after the departure of Bethlehem, causing an increase in the demand for lead billets. While Bethlehem was able to produce its own lead billets, the two new entrants, Bar Tech and Sheffield, have to purchase their lead billets from independent sources. In addition, there were also shifts from domestic to foreign billet suppliers because the domestic companies producing lead billets were only able to meet their own internal consumption needs. As discussed above, since 1996, both AS&W and Sheffield have been forced to source lead billets from foreign suppliers as a result of the termination of their supply arrangements with USS/KOBE and Inland, respectively.

Our analysis demonstrates that imposition of the hot-rolled lead bar orders in 1993, was not the impetus for the importation of lead billet by the U.S. re-rollers in order to produce hot-25 rolled lead bar. As noted above, a number of the U.S. re-rollers were producing hot-rolled lead bar prior to the orders and continued to produce hot-rolled lead bar after the orders. In addition, these unaffiliated U.S. re-rollers invested a substantial amount in their rolling facilities both before and after the AD and CVD orders to roll both lead and non-lead billets into hot-rolled bar.

The facts of these inquiries also show that the foreign respondents did not change their product lines in the United States as a result of the initiation of the hot-rolled lead bar investigations. As noted, Thyssen's primary market in the United States has been lead billets since the mid-80's. British Steel, which commenced selling lead billets in 1994, continues to export a significant amount of hot-rolled lead bar to the United States.

Based upon this analysis under section 781(a) of the Act, we preliminarily find that circumvention of the AD and CVD orders on hot-rolled lead bar is not occurring by reason of imports of lead billets from Germany and the United Kingdom.

Public Comment

Interested parties may request disclosure of the calculations performed for these determinations within five days of the date of publication of this determination, and may request a hearing within 10 days of publication.

Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to comments, limited to issues raised in those briefs or comments, may be filed no later than 37 days after the publication of this notice. Any hearing, if requested, will be held 44 days after the publication of this notice. The Department will publish the final determinations with respect to these anti-circumvention inquiries, including the results of its analysis of any written comments.

These negative preliminary circumvention determinations and notice are in accordance with section 781(a) of the Tariff Act and 19 CFR 353.29(e) and 19 CFR 355.29(e).

Dated: April 23, 1998.

Robert S. LaRossa,
Assistant Secretary for Import
Administration.

[FR Doc. 98-11666 Filed 4-30-98; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Membership Opportunity for the U.S.-Haiti Business Development Council

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The U.S.-Haiti Business Development Council (BDC) was established in December, 1994 as a principal component of the Department of Commerce's program of activities in support of the Clinton Administration's Haiti Recovery Initiative. The BDC is chaired jointly by the U.S. and Haitian governments. The Department of Commerce is currently seeking nominations of outstanding individuals to serve on the U.S. section of the BDC as representatives of their particular industry sector. The purpose of the BDC is to provide a forum through which U.S. and Haitian private sector representatives can engage in constructive exchanges of information on commercial matters, and in which governments can exchange information and more effectively work together on issues of mutual concern relating to the following:

- Identifying commercial opportunities, impediments, and issues of concern to the respective business communities;
- Improving the dissemination of appropriate commercial information on both markets;

- Promoting trade/business development and promotion programs to assist the respective business communities in accessing each market, including trade missions, exhibits, seminars, and other events;
- Facilitating appropriate technical cooperation; and,
- Considering other steps that may be taken to foster growth and enhance commercial relations.

Obligations

Private sector members will be appointed for a two (2) year term and will serve at the discretion of the Secretary of Commerce. Private sector members shall serve as representatives of the business community and the industry their business represents. Private sector members are expected to participate fully in defining the agenda for the Council and in implementing its work program. It is expected that private sector members chosen for BDC membership will attend at least seventy-five percent (75%) of the BDC meetings which will be held in the United States and Haiti.

Private sector members are fully responsible for travel, living and personal expenses associated with their participation in the BDC. The private sector members will serve in a representative capacity presenting the views and interests of the particular business sector in which they operate; private sector members are not special government employees. It is anticipated that the private sector members of the BDC will form a steering committee to guide overall private sector participation. It is further anticipated that the steering committee will arrange for staff support for the BDC activities at the expense of the steering committee members.

Criteria

The Council shall be composed of two sections, a U.S. section and a Haitian section. The U.S. section will be chaired by the Under Secretary for International Trade of the Department of Commerce, or his designee, and will include approximately 25 members from the U.S. private sector. All potential candidates will be vetted in accordance with the Department of Commerce's vetting procedures.

In order to be eligible for membership in the U.S. section, potential candidates must:

- Must represent a U.S. commercial interest involved in trade and/or investment in Haiti; and,
- Not be a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended (FARA).

In reviewing eligible candidates, the Department of Commerce will consider such selection factors as:

- Depth of experience in the Haitian market;
- Import/export experience;
- Industry or service sector represented;
- When possible, contribution to diversity based on company size, location, demographics, and traditional under-representation in business; and,
- Stated commitment to actively participate in BDC activities and meetings.

To be considered for membership, please provide the following: name and title of individual proposed for consideration; name and address of company or organization sponsoring each individual; company's or organization's product or service line; size of company or organization; export experience/foreign investment experience; a brief statement (not more than 2 pages) on why each candidate should be considered for membership on the Council; the particular segment of the business community each candidate would represent; and a statement that the applicant is not a registered Foreign Agent under the FARA.

DEADLINE: In order to receive full consideration, requests must be received no later than June 1, 1998.

ADDRESSES: Please send your requests for consideration to Ms. Elizabeth Jaffee, Haiti Desk Officer, Office of Latin America and the Caribbean, by fax on 202/482-0464 or by mail at Room 3025, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Jaffee, Haiti Desk Officer, Office of Latin America/Caribbean, Room 3025, U.S. Department of Commerce, Washington, DC 20230, telephone: 202/482-4302.

Authority: Act of February 14, 1903, c.552, as amended, 15 U.S.C. 1512, 32 Stat. 825.

Dated: April 28, 1998.

Walter M. Bastian,
Director, Office of Latin America and the Caribbean.

[FR Doc. 98-11657 Filed 4-30-98; 8:45 am]

BILLING CODE 3510-DA-P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On April 14, 1998, Cemex, S.A. de C.V. filed a first Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A second request for Panel Review was filed by Cementos de Chihuahua S.A. de C.V. Panel review was requested of the final antidumping determination review made by the International Trade Administration in the sixth administrative review respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the *Federal Register* on March 16, 1998 (63 FR 12764). The NAFTA Secretariat has assigned Case Number USA-MEX-98-1904-02 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the *Federal Register* on February 23, 1994 (59 FR 8686). The panel review in this matter will be conducted in accordance with these Rules.

A first Request for Panel Review was filed with the U.S. Section of the

NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 14, 1998, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 14, 1998);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 29, 1998); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 15, 1998.

James R. Holbein,
U.S. Secretary, NAFTA Secretariat.
[FR Doc. 98-11587 Filed 4-30-98; 8:45 am]
BILLING CODE 3510-GT-M

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 21 May 1998 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC 23 April 1998.

Charles H. Atherton,
Secretary.
[FR Doc. 98-11570 Filed 4-30-98; 8:45 am]
BILLING CODE 6330-01-M

COMMODITY FUTURES TRADING COMMISSION**Concept Release Concerning the Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market**

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on Concept Release.

SUMMARY: On January 16, 1998, the Commodity Futures Trading Commission issued a Concept Release concerning the regulation of noncompetitive transactions executed on or subject to the rules of a contract market. Through this release, the Commission solicited comments on a broad range of questions concerning the oversight of transactions involving (i) the exchange of futures contracts for, or in connection with, cash commodities, (ii) other noncompetitive transactions, and (iii) the use of execution facilities for noncompetitive transactions. The Concept Release was initially published for public comment on January 26, 1998 (63 FR 3708) with comments on the release due by March 27, 1998. In response to a request from the Coffee, Sugar and Cocoa Exchange, Inc., the Commission extended the comment period for an additional 30 days, until April 27, 1998.

The Commission has received a request from the Futures Industry Association Inc. to extend the comment period on certain parts of the Concept Release which relate to block trading. The Commission has decided to grant this request. The extended deadline for comments on the issues raised in section III.A.3. ("Alternative Execution Procedures") of the Concept Release is September 1, 1998. To the extent that comments on sections III.B. ("Qualifying Standards"), III.C. ("Continuing Regulatory Requirements"), and IV. ("Execution Facilities for Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market") relate to the block trading issues raised in section III.A.3. of the Concept Release, they also may be received on or before September 1, 1998.

The deadline for comments on all other issues raised in the Concept Release remains April 27, 1998.

Any person interested in submitting written data, views, or arguments on the Concept Release should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre,

1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418-5521, or by electronic mail to secretary@cftc.gov.

DATES: Comments on section III.A.3. of the Concept Release must be received on or before September 1, 1998. To the extent that comments on sections III.B., III.C., and IV. relate to the block trading issues raised in section III.A.3. of the Concept Release, they must be received on or before September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Rebecca Creed, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418-5493.

Issued in Washington, D.C., on this 27th day of April, 1998, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-11602 Filed 4-30-98; 8:45 am]

BILLING CODE 6351-01-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**Proposed Information Collection; Comment Request.**

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. & 3508(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning its proposed Program Development Assistance and Training (PDAT) Budget Form.

Copies of the information collection requests can be obtained by contacting the office listed below in the address section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the addresses section by July 2, 1998.

ADDRESSES: Send comments to the Corporation for National and Community Service, Office of Evaluation and Effective Practices—Training and Technical Assistance, Attn: Jim Ekstrom, 1201 New York Avenue, N.W., Washington, D.C., 20525. **FOR FURTHER INFORMATION CONTACT:** Jim Ekstrom, (202) 606-5000, ext. 139.

SUPPLEMENTARY INFORMATION:**A. Background**

In the past Program Development Assistance and Training (PDAT) Budget information was requested informally without the form being proposed in this notice. As a result, the PDAT financial information submitted to the Corporation by applicants did not consistently provide the information that was requested. The Corporation anticipates that the use of the one-page budget form being proposed here will result in the submission of more complete PDAT-related financial information by the applicants.

B. Current Action

Each year the Corporation seeks to collect PDAT budget information from the 48 state commissions on national and community service. The information that will be collected on the proposed one-page PDAT budget form will be used during the Corporation's annual review of PDAT applications. The proposed PDAT budget form will be useful to the Corporation in the PDAT application review process that leads to the allocation of PDAT funds to the state commissions.

Type of Review: New form.

Agency: Corporation for National and Community Service.

Title: Program Development Assistance and Training (PDAT) Budget Form.

OMB Number: None.

Agency Number: None.

Affected Public: The 48 state commissions on national and community service.

Total Respondents: 48.

Frequency: Annually.

Average Time Per Response: 2 hours.

Estimated Total Burden Hours: 96 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 28, 1998.

Kenneth L. Kloth, General Counsel.

[FR Doc. 98-11643 Filed 4-30-98; 8:45 am]

BILLING CODE 6050-28-P

DEPARTMENT OF DEFENSE**Department of the Army****Environmental Assessment (EA) on the Disposal and Reuse of the Defense Distribution Depot, Memphis, TN (DDMT)**

AGENCY: Department of the Army.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by this EA is the disposal of the DDMT, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended. The EA addresses the environmental consequences of the disposal and subsequent reuse of the 642 acres divided into two sections, the main installation (574 acres) and Dunn Field (68 acres). Three alternative methods of disposal were analyzed: Encumbered disposal, unencumbered disposal and retention of the property in caretaker status (i.e., no action alternative). The Army's preferred alternative for disposal of the DDMT is encumbered disposal which involves conveying the property with conditions imposed on historic resources, remedial activities, utility easements, asbestos-containing material and lead-based paint.

The EA, which is incorporated into the Finding of No Significant Impact (FNSI), examines potential effects of the proposed action and alternatives on 15

resources areas and areas of environmental concern: land use, climate, air quality, noise, geology, and water resources infrastructure, hazardous and toxic substances, permits and regulatory authorizations, biological resources and ecosystems, cultural resources, economic development, socioeconomic and quality of life.

The EA concludes that the disposal and subsequent reuse of the property will not have a significant impact on the human environment. Issuance of an FNSI would be appropriate. An Environmental Impact Statement is not required prior to implication of the proposed actions.

DATES: Comments must be submitted on or before June 1, 1998.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to Mr. Jerry Jones at the Corps of Engineers, Mobile District (ATTN: CESAM-PD-EI), 109 St. Joseph Street, P.O. Box 2288, Mobile, Alabama 36628-0001 or by facsimile at (334) 694-3815.

Dated: April 24, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 98-11613 Filed 4-30-98; 8:45 am]

BILLING CODE 3710-8-M

DEPARTMENT OF DEFENSE**Department of the Army****Draft Environmental Impact Statement (DEIS) on the Disposal and Reuse of the Stratford Army Engine Plant (SAEP), Stratford, CT**

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by the DEIS is the disposal of the Stratford Army Engine Plant (SAEP), in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended. The DEIS addresses the environmental impacts of the disposal and subsequent reuse of SAEP land and facilities. Alternatives examined in the DEIS include encumbered disposal of the property, unencumbered disposal of the property and no action. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of the property but would maintain it in caretaker status for an indefinite period. The Army's preferred

alternative for disposal of the SAEP property is encumbered disposal which involves conveying the property with conditions imposed on asbestos-containing materials, easements, groundwater use prohibition, historical resources, lead-based paint, wetlands and remedial activities to protect human health regarding the transfer of land and facilities.

The EIS also analyzes the potential environmental effects of reuse by means of evaluating intensity-based probable reuse scenarios. Appropriate to the SAEP are medium-low, low and medium intensity reuse scenarios reflecting the range of activities that could occur after disposal of the property.

DATES: Comments and suggestions received within the 45 days of the publication of the Environmental Protection Agency's Notice of Availability for this action will be addressed in the Final EIS.

SCOPING: The Army will hold a public meeting for this Draft EIS. The location and date of the meeting, to be scheduled in May 1998, will be announced in the local news media. Oral and written comments may be presented at the public meeting.

ADDRESSES: Copies of the Draft EIS are available for review at the Stratford Public Library, 2203 Main Street, Stratford, Connecticut 06497. Copies may be obtained by writing to Mr. Joe Hand, at the Corps of Engineers, Mobile District, ATTN: TD-EC, 109 St Joseph Street, Mobile, Alabama 36628-0001 or by telephone at (334) 694-3881 or facsimile at (334) 690-2605.

Dated: April 27, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 98-11614 Filed 4-30-98; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE**Department of the Army****Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application SN 09/035,910 Concerning Improved Method for Purifying Cholera Toxin**

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application SN 09/035,910 entitled "Improved

Method for Purifying Cholera Toxin." This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, MD 21702-5012.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harris, Patent Attorney, 301-619-7807, Fax 301-619-5034.

SUPPLEMENTARY INFORMATION: A new affinity purification method has been developed that can be used to purify cholera toxin (CT) and the B subunit of CT. In addition to purifying the native CT, it can be used to purify chemical conjugates or genetically engineered fusion proteins composed of CTB. This purification procedure is highly selective, since it can be used to purify CT but not the closely related heat-labile enterotoxin of *Escherichia coli*. This procedure is extremely fast and simple to perform, resulting in an extremely pure preparation. The affinity matrix is available commercially and can be used repeatedly without loss of affinity or resolution.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 98-11590 Filed 4-30-98; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors to the United States Naval Academy

AGENCY: Department of the Navy, DoD.

ACTION: Notice of meeting.

SUMMARY: The United States Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATE: The meeting will be held on Monday, May 4, 1998 from 8:30 a.m. to 12:00 p.m. The executive session of the

meeting will be held from approximately 11:00 a.m. to 12:00 p.m. and will be closed to the public.

ADDRESS: The meeting will be held in the Bo Coppedge Room of Alumni Hall at the United States Naval Academy, Annapolis, MD.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerral K. David, U.S. Navy, Executive Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402-5000, Telephone number: (410) 293-1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, United States Code. Due to unavoidable delay in the administrative process of preparing for this meeting, the normal 15 days notice could not be provided.

Dated: April 28, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98-11627 Filed 4-30-98; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97-3189-001]

Atlantic City Electric Company; Notice of Filing

April 27, 1998.

Take notice that on March 2, 1998, Atlantic City Electric Company (Atlantic City Electric) in compliance with the Commission's January 29, 1998 order, 82 FERC ¶ 61,068, filed revised network tariff service rates based on the annual peak which the Commission directed the PJM Companies to file consistent with the use of such peaks for the allocation of fixed transmission rights.

Atlantic City Electric requests that this compliance filing be allowed to become effective on April 1, 1998. Atlantic City Electric served copies of the filing on persons on the service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before May 8, 1998. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11577 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11181-002 Oregon]

Energy Storage Partners; Notice of Intent To Conduct Public Scoping Meetings and Site Visit

April 27, 1998.

The Federal Energy Regulatory Commission (Commission) received an application from Energy Storage Partners (applicant) to license the Lorella Pumped Storage Project No. 11181-002. The project would be located in Klamath County, Oregon, approximately 20 miles southeast of the town of Klamath Falls, and it would be a closed system project comprised of two artificial reservoirs. The Commission will hold public and agency scoping meetings on May 28, 1998, for preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) for the issuance of a major license for the Lorella Pumped Storage Project No. 11181-002.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping

meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

When: Thursday, May 28, 1998, from 9:00 a.m. until 12:00 p.m.
Where: Klamath County Museum, 1451 Main Street, Klamath Falls, OR 97601

Public Scoping Meeting

When: Thursday, May 28, 1998, from 7:00 p.m. until 10:00 p.m.
Where: Klamath County Museum, 1451 Main Street, Klamath Falls, OR 97601

To help focus discussions, we will distribute a Scoping Document (SDI) outlining the subject areas to be addressed at the meeting to the parties on the Commission's mailing list. Copies of the SDI also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit beginning at 11:00 a.m. on May 27, 1998. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the lobby of Shilo Inns, 2500 Almond Street, Klamath Falls, Oregon. All participants are responsible for their own transportation to the site. Anyone with questions about the site visit should contact Mr. Douglas Spaulding on (612) 315-6309.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the relative depth of analysis for issues to be addressed in the EIS; and (5) identify resources issues that are of lesser importance, and, therefore, do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings

will be asked to sign in before the meeting starts and to clearly identify themselves for the record. Speaking time for attendees at the meetings will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, not later than June 29, 1998. All filings should contain an original and eight copies, and must clearly show at the top of the first page "Lorella Pumped Storage Project, FERC No. 11181-002."

For further information, please contact Hector M. Perez at (202) 219-2843.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11579 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-5-34-000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 27, 1998.

Take notice that on April 23, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective May 1, 1998, the following tariff sheets:

Twenty-Seventh Revised Sheet No. 8A
Eighteenth Revised Sheet No. 8A.01
Nineteenth Revised Sheet No. 8A.02
Twenty-Fourth Revised Sheet No. 8B
Seventeenth Revised Sheet No. 8B.01

FGT states that in Docket No. TM98-4-34-000 filed on February 26, 1998 and approved by Commission order dated March 23, 1998, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 3.46% to become effective April 1, 1998. In the

instant filing, FGT is filing a flex adjustment of <0.50>% to be effective May 1, 1998, which, when combined with the Base FRCP of 3.46%, results in an Effective Fuel Reimbursement Charge Percentage of 2.9%.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.5%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline and is filed no more than sixty and at least seven days before the proposed effective date. The instant filing complies with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11576 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-192-000]

K N Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

April 27, 1998.

Take notice that on April 23, 1998, pursuant to Section 154.204 of the Commission's Regulations, K N Wattenberg Transmission Limited Liability Co. (KNW), tendered for filing and acceptance a revised FERC Gas Tariff, Volume No. 1 to incorporate the

tariff language required in order to facilitate firm transportation service to customers and to file tariff changes to permit KNW to charge negotiated rates for its transportation services.

KNW states that copies of the filing were served upon KNW's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11575 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-367-000]

PG&E Gas Transmission, Northwest Corp.; Notice of Request Under Blanket Authorization

April 27, 1998.

Take notice that on April 20, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E), 2100 Southwest River Parkway, Portland, Oregon 97201, filed in Docket No. CP98-367-000 a request pursuant to Sections 157.205, and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install a new tap in Klamath Falls, Oregon under PG&E's blanket certificate issued in Docket No. CP82-530-000 pursuant to Section 7 of the Natural Gas Act, and all as more fully set forth in the request that is on file with the Commission and open to public inspection.

PG&E requests authorization to install a new tap near the airport in Klamath Falls, Oregon for delivery of gas to WP Natural Gas Company. PG&E states that initial delivery will be 70 dth/hour with

potential maximum expandability to 208 dth/hour and that the tap will not have an impact on PG&E's peak day or annual deliveries. PG&E states that the tap will cost \$20,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11571 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-131-001]

Sumas International Pipeline Inc., Notice of Compliance Filing

April 27, 1998.

Take notice that on April 17, 1998, Sumas International Pipeline Inc. (SIPI) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the tariff sheets listed in Appendix A to the filing, to become effective April 1, 1998.

SIPI asserts that the purpose of this filing is to comply with Order No. 587 issued on July 17, 1996; the Notice Clarifying Procedures for Filing Tariff Sheets issued on September 12, 1996, in Docket No. RM96-1-000; and the Commission's direction of 30 March 1998 in Docket No. RP98-131-000 to correct pagination errors on certain tariff sheets and to revise tariff language to incorporate Gas Industry Standards Board (GISB) Standards 1.3.2 and 3.3.4 verbatim.

SIPI states that copies of this filing were mailed to all customers of SIPI and Interested Parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11573 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-191-000]

Texas-Ohio Pipeline, Inc.; Notice of Petition for Waiver

April 27, 1998.

Take notice that on April 22, 1998, Texas-Ohio Pipeline, Inc. (Texas-Ohio) tendered for filing a petition for waiver of the electronic communications and Internet transaction requirements of the Commission's Order Nos. 587-B, 587-C, and 587-G.

Texas-Ohio states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as on or before May 4, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11574 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-1965-000]

West Texas Wind Energy Partners, LLC; Notice of Issuance of Order

April 28, 1998.

West Texas Wind Energy Partners, LLC (WTWEP) filed an application requesting that the Commission accept a power purchase agreement authorizing it to engage in wholesale power sales at market-based rates to Central and South West Services, Inc. (CSWS),¹ and for certain waivers and authorizations. In particular, WTWEP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by WTWEP. On April 23, 1998, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's April 23, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by WTWEP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(G) Absent a request to be heard within the period set forth in Ordering Paragraph (F) above, WTWEP is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of WTWEP, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of WTWEP's issuances of securities or assumptions of liabilities * * * .

Notice is hereby given that the deadline for filing motions to intervene

¹ CSWS is acting as agent for Central Power and Light Company, West Texas Utilities Company, and Southwestern Electric Power Company.

or protests, as set forth above, is May 26, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-11618 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket no. ER98-1617-000, et al.]

Northern States Power Company et al. Electric Rate and Corporate Regulation Filings

April 27, 1998.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket Nos. ER98-1617-000, ER98-1618-000, ER98-1656-000, ER98-1657-000, ER98-1658-000, ER98-1659-000, and ER98-1660-000]

Take notice that on April 22, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing an amendment to its filing of seven Firm Point-to-Point Transmission Service Agreements between NSP and NSP Wholesale.

NSP is in response to the Commission's deficiency letter dated March 23, 1998. NSP is requesting that the filed Firm Point-to-Point Transmission Service Agreements, as corrected by this filing, be accepted for filing effective January 1, 1998. NSP requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Comment date: May 12, 1998, in accordance with Standard Paragraph E, at the end of this notice.

2. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southern Electric Power Company

[Docket No. ER98-1944-000]

Take notice that on April 22, 1998, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies), submitted an amended

filing in the above captioned proceeding.

The CSW Operating Companies state that a copy of this amended filing has been served on the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Arkansas Public Service Commission, the Oklahoma Corporation Commission and all parties to this proceeding.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Company

[Docket No. ER98-2107-000]

Take notice that on April 22, 1998, Oklahoma Gas and Electric Company, tendered for filing an amendment to its March 9, 1998, filing in the above referenced docket. Oklahoma Gas and Electric Company states that the amendment is to notify the Commission that Oklahoma Gas and Electric Company finds the conditions attached to the Commission's March 13, 1998, SPP order acceptable and no longer finds it necessary to condition its submittal in this docket upon the outcome of the Southwest Power Pool Regional Transmission Tariff (Docket No. ER98-1163-000). In addition, Oklahoma Gas and Electric Company has proposed that the effective date of its tariff change submitted in this docket be revised from April 1, 1998 to June 1, 1998 to match the effective date of the SPP Regional Tariff.

Copies of the filing were served upon all parties shown on the official service list in this docket.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company

[Docket No. ER98-2536-000]

Take notice that on April 13, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Allegheny Power Service Corporation under LG&E's Open Access Transmission Tariff.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER98-2540-000]

Take notice that on April 14, 1998, Niagara Mohawk Power Corporation tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 245 and any supplements thereto, with Toledo Edison Company.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company
[Docket No. ER98-2546-000]

Take notice that on April 15, 1998, Northeast Utilities Service Company (NUSCO), Northeast Utilities Service Company tendered for filing Service Agreements to provide Non-Firm Point To-Point Transmission Service and Firm Point-To-Point Transmission Service to the Columbia Power Marketing Corporation under the NU system Companies' Open Access Transmission Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the Columbia Power Marketing Corporation.

NUSCO requests that the Service Agreement become effective April 17, 1998.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER98-2548-000]

Take notice that on April 10, 1998, New England Power Pool (NEPOOL), tendered for filing a report on behalf of those electric utility Participants in NEPOOL which are subject to the reporting requirements contained in Section 202(g) of the Federal Power Act and Part 294 of the Commission's Regulations.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER98-2630-000]

Take notice that on April 22, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Griffin Energy Marketing, L.L.C., under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997, in Docket No. ER97-3561-001. Under the tendered Service Agreement, Virginia Power will provide services to Griffin Energy Marketing, L.L.C., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff.

Virginia Power requests an effective date of April 22, 1998, for the Service Agreement.

Copies of the filing were served upon Griffin Energy Marketing, L.L.C., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER98-2632-000]

Take notice that on April 22, 1998, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for firm point-to-point transmission service to PacifiCorp Power Marketing, Inc. (PacifiCorp), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on April 23, 1998.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER98-2633-000]

Take notice that on April 22, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Aquila Power Corporation (Aquila). Wisconsin Electric respectfully requests an effective date of April 24, 1998, to allow for economic transactions.

Copies of the filing have been served on Aquila, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER98-2634-000]

Take notice that on April 22, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 41 to add one (1) new Customer to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of April 21, 1998, to Amoco Energy Trading Corporation.

Copies of the filing have been provided to the Public Utilities

Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER98-2635-000]

Take notice that on April 22, 1998, Southern California Edison Company (Edison), tendered for filing a one-time billing adjustment made pursuant to the formula rate contained in the Environmental Energy Storage Agreement between Edison and the Bonneville Power Administration.

Edison seeks waiver of the 60 day prior notice requirement and requests that the Commission assign an effective date of April 23, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER98-2636-000]

Take notice that on April 22, 1998, Southern California Edison Company (Edison), tendered for filing an executed Service Agreement for Wholesale Distribution Service with Long Beach Generation LLC under Edison's Wholesale Distribution Access Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER98-2637-000]

Take notice that on April 22, 1998, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3 with the Town of Wickenburg.

A copy of this filing has been served on the Arizona Corporation Commission and the Town of Wickenburg.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Arizona Public Service Company

[Docket No. ER98-2638-000]

Take notice that on April 22, 1998, Arizona Public Service Company (APS), tendered for filing a revised Service Agreement for providing Network Integration Transmission Service under APS' Open Access Transmission Tariff to the Arizona Public Service Company—Merchant Group.

A copy of this filing has been served on APS' Merchant Group and the Arizona Corporation Commission.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Consumers Energy Company

[Docket No. ER98-2639-000]

Take notice that on April 22, 1998, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) with Tennessee Valley Authority.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota and Northern States Power Company (Wisconsin))

[Docket No. ER98-2640-000]

Take notice that on April 22, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively referred to as NSP), tendered for filing its Market-Based Rate Application.

NSP requests that this Market-Based Rates Electric Service Schedule, together with confirming changes to NSP's Electric Services Tariff, be made effective on the date of the Commission issues an order approving NSP's Market-Based Rate Application.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Kentucky Utilities Company

[Docket No. ER98-2643-000]

Take notice that on April 22, 1998, Kentucky Utilities Company (KU), tendered for filing non-firm transmission service agreements between KU, Conagra Energy Services, Inc., and OGE Energy Resources, Inc., under its Transmission Services Tariff

and service agreements with Tennessee Power Company and Illinois Municipal Electric Agency under its Power Services Tariff.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, the Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98-2644-000]

Take notice that on April 22, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 29 to add Merchant Energy Group of the Americas, Inc., to Allegheny Power's Open Access Transmission Service Tariff which has been submitted for filing with the Federal Energy Regulatory Commission in Docket No. OA96-18-000. The proposed effective date under the Service Agreements is April 21, 1998.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: May 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-11619 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission

April 27, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major Water Power Project, 5 Megawatts or Less.
b. *Project No.:* P-2964-006.
c. *Date Filed:* March 31, 1998.
d. *Applicant:* City of Sturgis, Michigan.

e. *Name of Project:* Sturgis Hydroelectric Project.

f. *Location:* On the St. Joseph River in St. Joseph County, near Centerville, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Mr. John J. Griffith, P.E., Electric Department Superintendent, City of Sturgis, 130 North Nottawa, Sturgis, MI 49091

Mr. John E. Fisher, P.E., Chairman, Lawson-Fisher Associates P.C., 525 West Washington Ave., South Bend, Indiana 46601

i. *FERC Contact:* Patrick K. Murphy (202) 219-2659.

j. *Comment Date:* 60 days from the date of this notice.

k. *Description of Project:* The existing run-of-river project consists of: (1) An 800-foot-long dam, comprised of a 300-foot-long spillway and an 500-foot-long earthen portion; (2) two powerhouses (old & new); and (3) an 18-mile-long 14.4/24.9 KV WYE transmission line. The old powerhouse houses two turbine-generator units (each 550 kilowatts (KW)); the new powerhouse houses two units (each 750 KW) totaling 1,300-kw generating capacity. The Sturgis Project reservoir has a surface area of 580 acres and a storage volume of approximately 6,550 acre-feet at 825 feet surface elevation. There is no new construction proposed for power purposes.

l. With this notice, we are initiating consultation with the MICHIGAN STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional

scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of this notice and serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11572 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

April 27, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Exemption of a Constructed Small Hydroelectric Power Project 5 Megawatts or less.

b. *Project No.:* 11613-000.

c. *Date filed:* February 25, 1998.

d. *Applicant:* Ronald Lizotte.

e. *Name of Project:* HE 257.

f. *Location:* In the Tiller Ranger District, Umpqua National Forest, Francis Creek, Sections 27 and 28, Tn.29S., R.1W. Willamette Meridian, Douglas County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ronald Lizotte, P.O. Box 193, Tiller, Oregon 97484, (541) 825-3942.

i. *FERC Contact:* Gaylord W. Hoisington, (202) 219-2756.

j. *Brief Description of Project:* The project consists of: (1) a 24-inch-high concrete diversion dam; (2) a 1,280-foot-long, 3-inch-diameter PVC pipe; (3) a 12-inch pelton wheel; (4) a 55-volt, 53-amp Davidson Marine alternator; (5) a 5,000-watt inverter; (6) a 1,800-foot-long transmission line; (7) a 0.6-mile-long access road; and (8) other appurtenances.

k. With this notice, we are initiating consultation with the Oregon State

Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, SHPO, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days after application is filed, and must serve a copy of the request on the applicant. In this case, we will extend the comment period until June 25, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11578 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL98-5-000 through -007]

Inquiry Concerning the Commission's Policy on Independent System Operators; Notice of Regional Conferences

April 27, 1998.

The Federal Energy Regulatory Commission (Commission) will convene seven public conferences of one day or less to discuss regional factors relevant to our policy concerning Independent System Operators (ISOs). The conferences will be held between May 28 and June 8, 1998.

I. Introduction

In Order Nos. 888 and 889 and their progeny,¹ the Commission established fundamental principles of non-discriminatory open access transmission services and encouraged, but did not require, the formation of ISOs. On March 13, 1999, the Commission initiated an Inquiry Concerning the Commission's Policy on ISOs in Docket

No. PL98-5-000. A two-day public conference was held at the Commission's headquarters in Washington, D.C. on April 15-16, 1998. The Commission received input on a range of ISO issues from 40 speakers participating on seven topical panels. Approximately 400 individuals attended the conference on each day, while numerous others observed the proceedings electronically. By design, this first conference addressed the Commission's general ISO policies.

To comprehensively examine ISO issues, the Commission believes it is important to provide an adequate forum to explore regional factors that should be taken into account in the Commission's consideration of its ISO policy. For this reason, the Commission will hold seven regional conference between May 28 and June 8, 1998.

The Commission intends each regional conference to examine specific regional characteristics and institutional factors that bear upon the formation, governance, design and functions of ISOs or other types of organizations formed to administer the electric transmission grid on a regional basis. It wishes to examine whether the incorporation of such considerations into the Commission's policy on ISOs will foster more rapid ISO formation. The Commission also wishes to examine whether regional factors present barriers to the formation of ISOs, including ISOs of appropriate size, scope and membership as may be necessary to promote competition and reliability in bulk power markets and to support state initiatives providing for retain customer choice and direct access, and, if so, what actions can be undertaken to remove or reduce such barriers.

II. Regional Conferences

The Commission will hold seven regional conferences as described below. A single Commissioner will preside at each conference. The Commissioner will be accompanied by a Commission staff member who will help direct questions to the panelists. Starting and ending times will be announced in a subsequent order.

Presiding commissioner	Conference date	City and conference location	Docket No.
Comm. Massey	May 28, 1998	Phoenix, AR, Hyatt Regency Phoenix, 122 North Second Street, Phoenix, AR 85004, (602) 252-1234.	PL98-5-001

¹ See Promoting Wholesale Completion Through Open Access Nondiscriminatory Transmission Services by Public Utilities; and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996); FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g,

Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 61 FERC ¶ 81,248 (1997), order on reh'g, Order No. 888-C, 62 FERC ¶ 61,048 (1998), Open-Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 Fed. Reg.

21,737 (1996), FERC Stats. & Regs. ¶ 31,035 (1996), order on reh'g, Order No. 889-A, 62 Fed. Reg. 12,484 (1997), FERC Stats. & Regs. ¶ 31,049 (1997), order on reh'g, Order No. 889-B, 61 FERC ¶ 61,253 (1997).

Presiding commissioner	Conference date	City and conference location	Docket No.
Comm. Massey	May 29, 1998	Kansas City, MO, Embassy Suites, 7640 N.W. Tiffany Springs Parkway, Kansas City, MO 64153, (816) 891-7788.	PL98-5-002
Comm. Hebert	June 1, 1998	New Orleans, LA, Doubletree Inn, 300 Canal Street, New Orleans, LA 70130, (504) 581-1300.	PL98-5-003
Comm. Bailey	June 4, 1998	Indianapolis, IN, Adams Mark, 2544 Executive Drive, Indianapolis, IN, (317) 248-2481.	PL98-5-004
Chr. Hoecker	June 5, 1998	Portland, OR, Sheraton Portland, Airport Hotel, 8235 N.E. Airport Way, Portland, OR 97220, (503) 281-2500.	PL98-5-005
Comm. Bailey	June 8, 1998	Richmond, Va, Richmond Airport, Holiday Inn, 5203 Williamsburg Road, Richmond, VA 23150, (804) 222-6450.	PL98-5-006
Comm. Breathitt	June 8, 1998	Orlando, FL, Marriott Orlando Airport, 7499 Augusta National Dr., Orlando, FL 32822, (407) 851-9000.	PL98-5-007

All conferences will be open to the general public. No pre-registration is required. No food service is provided as part of these conferences. Requests for hotel accommodations should be directed to the hotels identified above for each conference or to other hotels in the area.

III. Participation in Conference

at this time, the Commission does not envision the use of topical panels at each of the regional conferences. However, we may group speakers expressing interests in common or similar issues on a single panel. Potential participants may wish to examine the extensive list of questions and topics appended to the Commission's initial order in this proceeding to become familiar with the scope of the Commission's interests.

Persons wishing to speak at one of the conferences must submit a request to make a statement in the applicable subdocket in Docket No. PL98-5-000. The first page of the request should clearly specify the name, title and organization (if any) of the person desiring to speak, the party or parties the speaker represents, and the city for which participation is requested. The request must also include a brief synopsis (not to exceed three pages) of the regional issue or issues that each speaker wishes to address. The synopsis for each speaker should begin on a separate page.² All requests must be filed (with an original and fourteen copies) with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, on or before May 8, 1998. The Commission may also contact industry experts to participate in each conference. The Commission will issue a further notice listing the speakers and panels for each conference.

² A party may submit requests to speak for more than one speaker or for more than one city. However, requests should be organized by city and should clearly identify the region-specific issues that the speaker will address.

In addition, all interested persons are invited to submit written comments (not to exceed 10 pages) addressing topics to be discussed at the regional conferences on or before June 25, 1998. Comments must be filed (with an original and fourteen copies) with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Comments should pertain directly to the characteristics or institutional factors associated with a particular region and should be captioned with one of the particular subdocket(s) identified above. Comments of a general nature concerning regional issues should be submitted in Docket No. PL98-5-000.³ Comments in all subdockets as well as the lead docket will be considered in the Commission's examination of its ISO policies. All comments will be placed in the Commission's public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. Comments are also accessible via the Commission's Records Information Management System (RIMS) on the Commission's Internet web site at <http://www.ferc.fed.us>.

The Commission does not intend to broadcast the regional conferences. However, the Commission will arrange for a court reporter to transcribe the proceedings in each city. Persons interested in receiving a copy of one or more of the regional conference transcripts for a fee should contact Ace-Federal Reporters, Inc., at 202-347-3700.

For further information concerning requests to speak at one of the regional conferences, contact: E. Allen Mosher, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, Voice: 202-208-0889, Fax: 202-208-

³ This order does not extend the May 1, 1998 deadline in Docket No. PL98-5-000 for written comments that do not concern region-specific issues.

0960, E-mail: allen.mosher@ferc.fed.us
Brian Gish, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, Voice: 202-208-0996, Fax: 202-208-006, E-mail: brian.gish@ferc.fed.us

For further information concerning conference logistics, contact: Wanda V. Washington, Office of Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, Voice: 202-208-1460, Fax: 202-208-0819, E-mail: wanda.washington@ferc.fed.us

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11580 Filed 4-30-98; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6007-2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Electric Utility Steam Generating Unit Mercury Emissions Collection Effort

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: A public meeting will be held by the Office of Air and Radiation, Office of Air Quality Planning and Standards to review the EPA's announced plan to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Electric Utility Steam Generating Unit Mercury Emissions Information Collection Effort Information Collection Request; EPA ICR No. 1858.01. A 60-day period of public review of the proposed information collection was announced in the Federal Register on April 9, 1998 (63 FR 17406).

DATES: The public review meeting will be held on May 21, 1998 at the EPA headquarter's auditorium, 401 M Street, S.W., Washington, D.C. The meeting will be from 8:30 a.m. until 1:00 p.m., Eastern daylight savings time.

ADDRESSES: Members of the public wishing to attend the meeting should register by phoning Ms. Libby Bradley at (919) 541-5578. Please note that space is limited and registrations will be accepted on a first-come, first-served basis.

Copies of the draft OMB Form 83-I, supporting statement, and questionnaire are available from Public Docket No. A-92-55 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, S.W., Washington, D.C. 20460. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 4:00 p.m., Monday through Friday. The draft materials (docket entries A-92-55, I-J-2, I-J-3, and I-J-4) are available for review in the docket center or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260-7548 or 7549. The FAX number for the Center is (202) 260-4400. A reasonable fee may be charged for copying. The draft materials are also available free of charge from the EPA's website listing **Federal Register** notices at "http://www.epa.gov/ttn/oarpg/t3pfpr.html" or by contacting one of the people listed below.

Docket. Docket No. A-92-55 is available for public inspection and copying as noted above. The docket is an organized file of information used by the EPA in the development of the Final Report to Congress required by section 112(m)(1)(A) of the Clean Air Act. Comments received on the proposed ICR are in category I-J of the docket for review by interested parties.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this meeting, contact Mr. William Maxwell [telephone number (919) 541-5430; facsimile number (919) 541-5450; e-mail "maxwell.bill@epa.gov"], Combustion Group, Emission Standards Division (MD-13); or Mr. William Grimley [telephone number (919) 541-1065; facsimile number (919) 541-1039; e-mail "grimley.william@epa.gov"], Emission Measurement Center, Emission Monitoring and Analysis Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The EPA has prepared the proposed ICR Electric

Utility Steam Generating Unit Mercury Emissions Information Collection Effort Information Collection Request; EPA ICR No. 1858.01, for submittal to the OMB.

A public meeting is being held as part of the process of public review of the proposed ICR required by the Paperwork Reduction Act. The purpose of this meeting is for the EPA to listen to public opinion on the draft ICR and any suggested recommendations the public may have regarding changes the Agency should take. Members of the public wishing to present formal comments at the meeting should so indicate when registering. Individual speaking times will be limited to 10 minutes in order to give everyone an equal opportunity to speak.

Seating will be limited for the meeting and advance registration is suggested. Information about attending the meeting and obtaining a copy of the draft materials is provided elsewhere in this notice.

In addition to the public meeting announced herein, the EPA is also willing to meet with interested constituencies in an open exchange of information at other times. Persons wishing to schedule such a meeting should contact Mr. William Maxwell at the number noted above.

After the meeting and the close of the public comment period on June 8, 1998, the draft ICR will be revised based on the comments received and then submitted for OMB review. Another period of public comment will accompany this OMB review. Those wishing to present comments on the draft ICR and those wishing to comment but unable to attend the public meeting are requested to submit written comments. Written comments on the draft ICR must be received by the Air and Radiation Docket and Information Center by June 8, 1998 at the address noted above. The EPA requests that a separate copy of all comments also be provided to Mr. William Maxwell at the address noted above.

Dated: April 24, 1998.

Bruce C. Jordan,
Director, Emission Standards Division.
[FR Doc. 98-11661 Filed 4-30-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6007-6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Construction Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Construction Grants Program Information Collection Request, EPA ICR No. 0827.05 and Control No. 2040-0027, current expiration date May 31, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 30, 1998.

ADDRESSES: Lucille Liem, Office of Wastewater Management, Mail Code 4204, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by writing to the preceding address.

FOR FURTHER INFORMATION CONTACT: Lucille Liem, Telephone Number: (202) 260-5844/Facsimile Number: (202) 260-1827/E-mail: LIEM.LUCILLE@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are State, Tribal, and Local governments, including the District of Columbia, Puerto Rico, the Outer Pacific Islands, and the Virgin Islands.

Title: Construction Grants Program (OMB Control No. 2040-0027; EPA ICR 0827.05) expiring 05/31/98.

Abstract: This Information Collection Request (ICR) extends the clearance for the information collection activities required under the Environmental Protection Agency's (EPA's) Construction Grants Program. The program is authorized by Title II of the Clean Water Act (CWA). Under this program, municipalities and Indian Tribes may obtain grants for wastewater treatment construction projects.

In order to obtain a construction grant, a municipality must submit information describing the project and its ability to manage it. Municipal

managers use the information to plan, design, build, operate, and maintain a treatment works that protects public health and the environment. In addition, the appropriate State or EPA Regional office reviews the information to determine if the project is necessary, reasonable, in accordance with sound planning principles, and a prudent use of Federal funds.

In general, Indian Tribes submit the same type of information as municipalities. Therefore, estimates of the municipal burden in descriptions of the individual information collections include the Indian Tribes' time, where applicable. EPA Regions assist the Tribes in preparing grant applications, which decreases the burden of the information requirements. In addition, the Indian Health Service provides technical assistance.

EPA collects information from the State to meet statutory and administrative program management requirements. Under this ICR, the only requirement for States is the listing of projects for funding in priority order. State program managers would develop this type of list for their own administrative needs. EPA reviews the information to determine if the State's program meets CWA requirements and evaluates the effectiveness of the State's program management.

Under Title II, construction grant programs may be administered by EPA or delegated States. The requirements for the construction grants program are at 40 CFR Part 35, Subpart I, and Title II of the CWA. These provisions require grantees to submit information to EPA or delegated States, and also require States that award construction grants to submit information to EPA. Authority for collecting this information comes from the Construction Grants Information Collection Request (OMB No. 2040-0027, ICR 0827.05).

EPA is currently phasing out the Construction Grants Program. The program is being replaced by the State Revolving Loan Fund (SRF) Program (Title VI of the Clean Water Act). Established in the 1987 amendment to the CWA, the SRF program provides a continuous source of funding for publicly owned treatment works (POTWs). Because most States are now funding construction projects through the SRF program rather than the Construction Grants Program, the burden associated with the Construction Grants Program has decreased significantly. (The information collection request associated with the SRF program are cleared under a separate ICR, OMB No. 2040-0118, ICR No. 1391.)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement:

Average Burden Hours per Response: 4.7.

Frequency of Response: 280.

Number of Likely Respondents: 60.

Average Annual Cost Burden: \$23,823.68.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 27, 1998.

Michael B. Cook,
Director, Office of Wastewater Management.
[FR Doc. 98-11663 Filed 4-30-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6007-1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Compliance Information Project

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Compliance Information Project. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260-2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1802.01

SUPPLEMENTARY INFORMATION:

Title: Compliance Information Project (CIP); EPA ICR No. 1802.01. This is a new collection.

Abstract: The purpose of the CIP is to test creative new strategies for identifying compliance information which, to date, EPA or the States may have failed to capture or utilize. Sources of such information may include unutilized studies or reports, produced by States, private parties, or other government agencies, and observations by field personnel which, for one reason or another, escape our traditional methods for collecting and documenting information. The CIP is designed to channel such unidentified or unutilized compliance information to the personnel who design and implement our information, targeting, and planning systems to fill gaps in the Agency's or the States' databases, guide us to previously unidentified compliance problems, enhance our ability to describe our successes, or help us in other ways.

Non-Federal respondents will be State compliance and enforcement personnel, especially field inspectors and persons who manage inspectors. Through the CIP, the Agency will conduct field personnel roundtable interviews in each

of the ten EPA Regions, and invite one or two representatives from each State to participate along with Regional personnel. At the request of the States which participated in the pilot roundtable in Region III, the Agency will provide the interview questions in the form of a questionnaire to each of the participants in advance of the roundtable so that each participating organization may prepare for the roundtables and afterwards prepare detailed written responses. The Agency will conduct the roundtables as a group discussion of the questionnaire topics with managers and/or Inspectors from the Region and each of the states in the Region. Participants will then return to their states, distribute the questionnaire across media organizations, complete written responses to the questionnaire, and then forward the responses to EPA.

State involvement and participation is essential if the CIP is to succeed. Consultation and coordination with each State participating in the roundtable process is an integral part of the overall project design. Each participating State will receive opportunities to comment on all aspects of the Project, including the design and the content of our discussion questions and work products, and how the new information is used. EPA has extended similar opportunities for involvement to the Environmental Council of States and all of the major State environmental associations. Initial responses to the Project from the States have been positive. In general, the States appear to share EPA's interest in exploring for new sources of compliance information. The States will receive access to all of the compliance information gathered by EPA through the Project, whether from federal, state, or non-governmental sources.

Responses to the information collection request are voluntary and not required to obtain or retain any benefit. The Agency will ask persons who participate in the CIP not to refer to specific persons, facilities, or cases by name, nor collect, as part of this project, references to specific persons, facilities, or cases in any form, unless such information is already in the public record. The Agency will not, and in fact will be unable to, use compliance information collected through the CIP to form compliance conclusions, rank or index performance of specific persons, facilities, or cases. The Agency will not ask for, nor collect, any confidential business information (CBI). All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded. An agency may not conduct or sponsor, and a person is not

required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/30/97. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 117 hours per responding entity. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States.
Estimated Number of Respondents: 50.

Frequency of Response: 1.
Estimated Total Annual Hour Burden: 5,850 hours.

Estimated Total Annualized Cost Burden: \$260,667.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1802.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 27, 1998.

Joseph Retzer,
Director, Regulatory Information Division.
[FR Doc. 98-11660 Filed 4-30-98; 8:45 am]
BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5491-3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 OR (202) 564-7153.

Weekly receipt of Environmental Impact Statements Filed April 20, 1998 Through April 24, 1998

Pursuant to 40 CFR 1506.9.

EIS No. 980142, Final EIS, AFS, ID, Sandpoint Noxious Weed Control Project, Implementation, Proposing to control noxious weeds on 46 sites, Idaho Panhandles National Forests, Sandpoint Ranger District, Bonner County, ID, Due: June 01, 1998, Contact: Betsy Hammet (208) 263-5111.

EIS No. 980143, Draft EIS, OSM, TN, Fall Creek Falls Petition Evaluation Document, Implementation, Designate the Land as Unsuitable for Surface Coal Mining Operation, Van Buren and Bledsoe Counties, TN, Due: July 30, 1998, Contact: Sam K. Bae (202) 208-2633.

EIS No. 980144, Final EIS, FRC, WA, Skagit River Basin Hydroelectric Projects, Eight Projects—(FERC. No. 10100) (FERC. No. 4437) (FERC. No. 4376) (FERC. No. 9787) (FERC. No. 10311) (FERC. No. 6984) and FERC No. 10269 and No. 10416) Construction and Operation, Licensing, Whatcom and Skagit Counties, WA, Due: June 01, 1998, Contact: Gordon Warren (202) 219-2836.

EIS No. 980145, Legislative Draft, COE, WA, Howard A. Hanson Dam (HHD) Additional Water Storage (AWS) Phase I Project, Construction and Operation, Green River Basin, Pierce and King Counties, WA, Due: June 15, 1998, Contact: Ms. Kris Loll (206) 784-3548.

EIS No. 980146, Draft Supplement, AFS, SD, Anchor Hill Mine Expansion Project in Gilt Edge Mine, Additional Information and Clarification, Plan-of-Operations, Approval Black Hills National Forest, SD, Due: June 15, 1998, Contact: Don Murray (605) 578-2744.

EIS No. 980147, Final EIS, USN, CA, Mare Island, Naval Shipyard Disposal and Reuse, Implementation, City of Valley, Solano County, CA, Due: June 01, 1998, Contact: Jerry Hemstock (650) 244-3023.

Dated: April 28, 1998.

William D. Dickerson,
Director, NEPA Compliance Division, Office of Federal Activities.
[FR Doc. 98-11658 Filed 4-30-98; 8:45 am]
BILLING CODE 6560-60-U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5491-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 13, 1998 Through April 17, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D-AFS-L65300-AK Rating LO, Canal-Hoya Timber Sale, Implementation, Stikine Area, Tongass National Forest, Value Comparison Unit (VCU), AK.

Summary: EPA used a screening tool to conduct a limited review of this action. Based upon the screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D-BLM-L08054-AK Rating LO, Northern Intertie Project, Construction of 230 kV Transmission Line from Healy to Fairbanks, AK, Application for Right-of-Way Grant, Gold Valley Electric Association, AK.

Summary: EPA used a screening tool to conduct a limited review of this action. Based upon the screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D-NOA-E39041-SC Rating EC2, Marine Environmental Health Research Laboratory (MEHRL), Construction and Operation of Premiere, High Technology and Marine Research Center, Approval of Permits, Charleston County, SC.

Summary: EPA expressed environmental concerns and about lack of discussion on fuel storage tanks, spill prevention and containment strategies in the event of a tank turnover and

impacts from running laboratory ventilation hoods.

ERP No. D-UMC-K11088-CA Rating EO2, Tustin Marine Corps Air Station (MCAS) Disposal and Reuse, Implementation, Orange County, CA.

Summary: EPA expressed environmental objections due to projected adverse impacts to wetlands and other jurisdictional waters. EPA requested that the final EIS demonstrate that all practicable measures were taken to avoid and minimize the placement of fill in wetlands and other aquatic resources. EPA, also expressed concern about potential impacts associated with the use of fertilizers and pesticides at the golf course and recommended that final EIS examine reasonable opportunities to reduce the use of fertilizers and pesticides.

Final EISs

ERP No. F-BLM-J01076-WY, Powder River (WYW136142) and Thundercloud (WYW136458) Coal Lease Applications, Federal Coal Leasing, Campbell and Converse Counties, WY.

Summary: EPA's review has not identified any potential environmental impacts.

ERP No. F-BLM-K67046-NV, Olinghouse Mine Project, Construction of Two Open Pits, Waste Dump, Haul Road and Cyanide Heap Leach Pads, Plan-of-Operation Approval Carson City, Washoe County, NV.

Summary: EPA concerns were addressed in the Final EIS. EPA still have environmental concerns about potential impacts to nearby springs and potentially adverse pit lake chemistry. EPA requested that the Record of Decision (ROD) include specific mitigation and monitoring provisions on these two issues.

ERP No. F-NOA-L91001-AK, Juneau Consolidated Facility, Space for the University of Alaska Fairbanks School of Fisheries and Ocean Science (UAF), Possible Site Lena Point, Fisheries Management Operation, 'Vision for 2005', Juneau, AK.

Summary: EPA continues to have environmental concerns regarding wastewater treatment at the proposed facility and the Record of Decision should specify whether the facility will tie into the existing City and Borough of Juneau treatment system or operate an on-site treatment plant.

ERP No. F-US-J11014-CO United States Army Garrison, Fitzsimons (Formerly Fitzsimons Army Medical Center) Disposal and Reuse for BRAC-95, Implementation, City of Aurora, Denver County, CO.

Summary: EPA expressed lack of objections.

ERP No. FS-USA-E65040-MS, Camp Shelby Continued Military Training Activities, Use of National Forest Lands, Updated Information, Final Site Selected Authorization for Implementation of the Proposed G. V. (Sonny) Montgomery Ranges, Special Use Permit, DeSoto National Forest, Forrest, George and Perry Counties, MS.

Summary: EPA's initial comments on developing this training range have largely been addressed by additional data/exposition. However, certain concerns will only be verified after the range becomes operational. Therefore, EPA will continue to participate in the interagency team, which will be monitoring the facility's progress.

Dated: April 28, 1998.

William D. Dickerson,
Director, NEPA Compliance Division, Office of Federal Activities.
[FR Doc. 98-11659 Filed 4-30-98; 8:45 am]
BILLING CODE 6560-60-U

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00536; FRL-5788-6]

State FIFRA Issues Research and Evaluation Group (SFIREG) Pesticide Operations and Management Working Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Pesticide Operations and Management Working Committee will hold a 2-day meeting, May 18 and 19, 1998. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Pesticide Operations and Management will meet on Monday, May 18, 1998, from 8:30 a.m. to 5:00 p.m. and Tuesday, May 19, 1998, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at: The Claremont Hotel, 2000 Fourth Avenue at Virginia, Seattle, WA 98121.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Field and External Affairs Division, Office of Pesticide Programs (7506C) Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Arlington-Crystal City, VA 22202, CM-II, (703) 305-5306, (703) 308-1850 (fax); e-mail: lyon.elaine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Pesticide Operations Management includes the following.

1. Consumer Information Sheets for the purchase of treated wood products.
2. Anti-coagulant rodenticides and non-target wildlife deaths.
3. Labeling of chlorine gas products for agricultural use.
4. Results of AAPCO federal facilities compliance survey.
5. Use of commodity fumigant methyl bromide for structural fumigation.
6. Enforceability of restrictive label statements - statements required by the agency vs. statements included at registrant's request.
7. EPA's custom blend policy.
8. Proposal to amend the Worker Protection Standard requirement to provide specific information about pesticide applications.
9. Pesticide advertising on the WEB.
10. Pesticide Inspector Regulatory Training.
11. Greenhouse pesticide labeling and enforcement.
12. Update on the Certification and Training Advisory Group.
13. Pesticide Use in the Commercial Practice of Animal Damage Control.
14. Use of federal vs. state credentials during inspections.
15. Antimicrobial compliance program.
16. Waiver of liability statements on pesticide labels.
17. Reports from committee members.
18. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: April 23, 1998.

Jay Ellenberger,

Director, Field and External Affairs Division,
Office of Pesticide Programs.

[FR Doc. 98-11665 Filed 4-30-98; 8:45 am]

BILLING CODE 5560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-59365; FRL-5787-3]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38.

EPA has designated this application as TME-98-02. The test marketing conditions are described below.

DATES: This notice becomes effective April 22, 1998. Written comments will be received until May 18, 1998.

ADDRESSES: Written comments, identified by the docket control number [OPPT-59365] and the specific TME number should be sent to: TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB-607 (7407), 401 M Street, SW., Washington, DC 20460. (202) 554-1404, TDD (202) 554-0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT-59365]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Shirley Howard, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-435I, 401 M St., SW., Washington, DC 20460, (202) 260-3780; e-mail: Howard.sd@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-98-02. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume,

use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions, including the stated use and the worker protection provisions described in the application, in the accompanying Material Safety Data Sheet, and in this notice must be met.

Inadvertently the notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the TSCA nonconfidential information center (NCIC), Rm. ETG-102 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME-98-02:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. During manufacturing, processing, and use of the substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who may be exposed to the substance shall use a NIOSH-approved air-supplied respirator with an Assigned Protection Factor (APF) of 2,000 for those operations when the substance is handled as a liquid under heated conditions (70°C or greater). This respirator shall also be required in the Material Safety Data Sheet (MSDS) that accompanies this substance to the customer.

3. The applicant must ensure that employees are provided with information and training on the TME substance. This information and training must be provided at the time of each employee's initial assignment to a work area containing the TME substance and whenever the substance is introduced into the employee's work area for the first time.

4. The Company must affix a label to each container of the substance or formulations containing the substance. The label shall include, at a minimum, the following statement:

WARNING: Breathing of this substance may be harmful. Chemicals similar in structure to (insert appropriate name) have been found to cause lung toxicity and respiratory sensitization. To protect yourself, you must wear a NIOSH-approved air-supplied respirator with an Assigned Protection Factor (APF) of 2,000 for those

operations when the substance is handled as a liquid under heated conditions (70°C or greater).

5. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

- a. Records of the quantity of the TME substance produced and the date of manufacture.
- b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
- c. Copies of the labels affixed to containers of the substance or formulations containing the substance.
- d. Copies of the bill of lading that accompanies each shipment of the substance.
- e. Copies of the written agreements with processors outside the company agreeing to comply with the same worker protection, worker training, and labeling requirements applicable to the applicant.

T-98-02

Date of Receipt: March 2, 1998. The extended comment periods will close (insert date 15 days after date of publication in the Federal Register).

Applicant: IFS Industries, Inc.

Chemical: Isocyanic acid, polymethylenepolyphenylene ester, polymer with 2,2-dimethyl-1,3-propanediol, .alpha.-hydro.-omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,3-isobenzofurandione and 1,1'-methylenebis[4-isocyanatobenzene].

Use: Adhesive for concrete to metal assembly.

Production Volume: 108,000 kg.

Number of Customers: One.

Test Marketing Period: 12 months.

Risk Assessment: EPA identified concerns for lung toxicity and respiratory sensitization based on data on analogous chemical substances. However, the health concerns were mitigated by requiring workers potentially exposed to the TME substance via inhalation to wear a NIOSH-approved air-supplied respirator with an Assigned Protection Factor (APF) of 2,000 for those operations when the substance is handled as a liquid under heated conditions (70°C or greater). Therefore, the Agency has determined that the test market activities will not present an unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information

come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: April 22, 1998.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 98-11664 Filed 4-30-98; 8:45 am]

BILLING CODE 5560-50-F

EXPORT-IMPORT BANK OF THE UNITED STATES

Agency Information Collection Activities: Submission of OMB Review; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the Paperwork Reduction Act of 1995, the Export-Import Bank of the United States (Ex-Im Bank) has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved collection described below. A request for public comment was published in 63 FR, No. 59, 13437, March 27, 1998. No comments have been received.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank) is soliciting comments from members of the public concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collection of information for those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Interested persons are invited to submit comments on or before June 1, 1998.

ADDRESSES: Comments and recommendations concerning the submission should be sent to OMB Desk

Officer, Dennis Marvich, Office of Management and Budget, Information and Regulatory Affairs, New Executive Office Building, Washington, D.C. 20503, (202) 395-3122.

FOR FURTHER INFORMATION CONTACT: Copies of these submissions and any additional information may be obtained from Dan Garcia, Export-Import Bank of the United States, 811 Vermont Ave., N.W., Washington, D.C. 20571, (202) 565-3335.

SUPPLEMENTARY INFORMATION:

Abstract: OMB 3048-0005: Two applications fall under this collection. EIB-95-9 is the Ex-Im Bank Letter of Interest Application Form and EIB-95-10 is the Ex-Im Bank Preliminary Commitment and Final Commitment Application Form. There are no changes to either EIB-95-9 or EIB-95-10 other than a three-year extension of the expiration date.

Burden Statement Summary:

Type of request: Extension of expiration date.

OMB Number: 3048-0005.

Form Number: EIB-95-9 and EIB-95-10.

Title: EIB-95-9—Ex-Im Bank Letter of Interest Application Form and EIB-95-10—Ex-Im Bank Preliminary Commitment and Final Commitment Application Form.

Frequency of Use: Submission of Applications.

Respondents: Any U.S. or foreign bank, other financial institution, other responsible party including the exporter or creditworthy borrowers in a country eligible for Ex-Im Bank assistance.

Estimated total number of annual responses: EIB-95-9: 900, EIB-95-10: 550.

Estimated total number of hours needed to fill out the form: EIB-95-9: 300, EIB-95-10: 550.

Dated: April 29, 1998.

Dan Garcia,

Agency Clearance Officer.

[FR Doc. 98-11791 Filed 4-30-98; 8:45 am]

BILLING CODE 5590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Acquisition Services Information Requirements."

DATES: Comments must be submitted on or before June 30, 1998.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898-7453, Office of the Executive Secretary, Room 4022, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to "Acquisition Services Information Requirements." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898-3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Acquisition Services Information Requirements.

OMB Number: 3064-0072.

Frequency of Response: Occasional.

Affected Public: Contractors and vendors who wish to do business with the FDIC.

Estimated Number of Respondents: 16,840.

Estimated Time per Response: varies from 0.25 hours to one hour.

Estimated Total Annual Burden: 9,316 hours.

General Description of Collection: The collection involves the submission of information on various forms by contractors who wish to do business, have done business, or are currently under contract with the FDIC. The information is used to enter contractors on the FDIC's nationwide contractor database (the National Contractor System); ensure compliance with established contractors ethics regulations (12 CFR 366); obtain information on a contractor's past

performance for proposal evaluation purposes; and review a potential lessor's fitness and integrity prior to entering into a lease transaction.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 27th day of April, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98-11534 Filed 4-30-98; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the end-of-course evaluation form used for National Fire Academy field courses.

SUPPLEMENTARY INFORMATION: The National Fire Academy (NFA) is

mandated under the Fire Prevention and Control Act of 1974, Public Law 93-498, to provide training and education to the nation's fire service and emergency service personnel. The programs offered by the Academy serve as models of excellence. To maintain the quality of these programs, it is necessary to evaluate them on an on-going basis. The National Fire Academy Field Course Evaluation form provides one means maintaining quality assurance for NFA field (off-campus) or State Weekend Program courses. This form is used for courses delivered throughout the Nation.

Collection of Information

Title: National Fire Academy Field Course Evaluation Form.

Type of Information Collection: Extension of existing collection.

OMB Number: 3067-0233.

Form Numbers: FEMA Form 95-45.

Abstract: The National Fire Academy Field Course Evaluation Form is used in all field deliveries of NFA courses. The form is primarily used to assess the effectiveness of the course materials and instructor delivery. The Demographic information is used in developing needs assessments and identifying the student population's representation. There are no changes to the information collected using FEMA Form 95-45 or the method used to collect the information.

Affected Public: Individuals and households.

Number of Respondents: 25,000.

Estimated Hours Per Response: 15 minutes.

Frequency of Response: One-Time.

Estimated Total Annual Burden Hours: 6,250 hours.

Estimated Cost: \$5,000 per year.

COMMENTS: Written comments are solicited to:

(a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be received on or before June 30, 1998.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

FOR FURTHER INFORMATION CONTACT: Questions concerning the collection of information should be directed to Ms. Polly Birdsall at (301) 447-1228. Contact Ms. Anderson at (202) 646-2625 for copies of the proposed collection of information.

Dated: April 27, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98-11637 Filed 4-30-98; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed extension of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning State plans for the administration of the Individual and Family Grant program.

SUPPLEMENTARY INFORMATION: The State Administrative Plans for the Individual and Family Grant Program is required under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended, Section 411(a), and its implementing federal regulation 44 CFR 206-131. The plan forms an agreement between State and the Federal Emergency Management Agency (FEMA) to administer Individual Family Grants (IFG) according to national criteria, standards, and procedures for determination of disaster victims' eligibility. The IFG program is intended to provide funds to individuals or families with disaster-related necessary expenses or serious needs, who are unable to meet such expenses or needs through other means.

Collection of Information

Title: State Administrative Plans for the Individual and Family Grant Program.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067-0146.

Abstract: The Governor is required by law to administer the IFG Program and FEMA is required to publish regulations and procedures governing administration of the program. FEMA carries out its role by requiring a State plan that conforms to the regulations while allowing individual State procedural variations. There are 56 States that have State Administrative Plans already in place. Each State must update their plan annually to reflect policy changes. Specific requirements for the State Administrative Plan are contained in federal regulation 44 CFR 206.131(e).

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 168 hours.

Number of Respondents: 56.

Hours Per Response: 3 hours per respondent to prepare and submit annual plan updates.

Estimated Cost: The average salary level for State employees at a GS-9 to update a State plan is estimated to be \$2,550.

COMMENTS: Written comments are solicited to:

(a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be received on or before June 30, 1998.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472.

Telephone number (202) 646-2625. FAX number (202) 646-3524.

FOR FURTHER INFORMATION CONTACT: Contact Sharon Hordesky, Emergency Management Specialist, Response and Recovery Directorate, Program Guidance and Implementation Branch, (202) 646-2778 for additional information. Contact Ms. Anderson at (202) 646-2625 for copies of the proposed collection of information.

Dated: April 27, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98-11637 Filed 4-30-98; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for emergency processing in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and OMB regulation 5 CFR 1320.13.

SUPPLEMENTARY INFORMATION: Section 577 of the National Flood Insurance Act Amendments of 1994, mandated the Director, Federal Emergency Management Agency submit a report to Congress within 2 years after the date of the enactment of the Act that:

(1) Lists all communities that are likely to be identified as having erosion hazard areas;

(2) Estimates the amount of flood insurance claims under the national flood insurance program that are attributable to erosion;

(3) States the amount of flood insurance claims under such program that are attributable to claims under section 1306(c) of the National Flood Insurance Act of 1968;

(4) Assesses the full economic impact of erosion on the National Flood Insurance Fund; and

(5) Determines the costs and benefits of expenditures necessary from the National Flood Insurance Fund to complete mapping of erosion hazards. FEMA has contract with The Heinz Center in October 1997 to conduct the survey. The Center will be assisted by teams of economists at the University of Georgia and at George Washington

University to complete the analysis of the data. The economists will be available full time to work on this project during the summer months.

Collection of Information

Title: Mail Survey of Property Owners in Coastal Erosion Hazard Areas.

Type of Information Collection: New Collection.

Abstract: FEMA is under a Congressional mandate to perform a benefit costs analysis of proposed changes to the National Flood Insurance Program in coastal erosion zones. Benefits will be estimated by a property value study, using data from this mail survey. Information from this survey will be used for statistical purposes only.

The respondent universe for the survey includes all coastal counties in the 29 coastal United States, including the Great Lakes. The sample size of 27 counties was selected and randomly selected coastal property owners will be asked to complete the survey.

Affected Public: Individuals or households, Business or other for-profit.

Number of Respondents: 10,000.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 3,333 hours.

Frequency of Response: One-Time.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to Dennis Marvich, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

Dated: April 27, 1998

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98-11636 Filed 4-30-98; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: FEMA Contract Clause—Accessibility of Meetings to Persons with Disabilities.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067-0213.

Abstract: Contractors who plan meetings, conferences or seminars for FEMA must submit a plan to the Contracting Officer detailing how the minimum accessibility standards for the disabled set forth in the contract clause will be met.

Affected Public: Business or other for-profit.

Number of Respondents: 10.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 30 hours.

Frequency of Response: On occasion.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to Dennis Marvich, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

Dated: April 27, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98-11639 Filed 4-30-98; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1214-DR]

Alabama; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA-1214-DR), dated March 9, 1998, and related determinations.

EFFECTIVE DATE: April 20, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 20, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98-11633 Filed 4-30-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1214-DR]

Alabama; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA-1214-DR), dated April 9, 1998, and related determinations.

EFFECTIVE DATE: April 18, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of

Alabama, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 9, 1998:

Covington County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98-11634 Filed 4-30-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1195-DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-1195-DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 24, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98-11635 Filed 4-30-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1215-DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA-1215-DR), dated April 20, 1998, and related determinations.

EFFECTIVE DATE: April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1998:

Claiborne, Hancock, and Union Counties for Public Assistance and Individual Assistance.

Anderson, Bradley, Crockett, Dyer, and Robertson Counties for Individual Assistance.

Jackson County for Public Assistance. Campbell and Lawrence Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98-11631 Filed 4-30-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1215-DR]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA-1215-DR), dated April 20, 1998, and related determinations.

EFFECTIVE DATE: April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1998:

Dickson, Knox, Loudon, Morgan, Rhea, Sevier, and Wilson Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Division Director, Response and Recovery Directorate.

[FR Doc. 98-11632 Filed 4-30-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Members of Senior Executive Service Performance Review Board

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice lists the names of the members of the FEMA Senior Executive Service Performance Review Board.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Denise R. Yachnik, Executive

Coordinator, Office of Human Resources Management, 500 C Street, SW., Washington, DC 20742, 202-646-3040.

SUPPLEMENTARY INFORMATION: The names of the members of the FEMA Senior Executive Service Performance Review Board established under 5 U.S.C. 4314 (c)(4) are: John L. Matticks, Lynn G. Canton, Bruce J. Campbell, Robert J. Adamcik, Patricia A. English and Dianne K. Bona.

Dated: April 27, 1998.

Ernest B. Abbott,
General Counsel.

[FR Doc. 98-11640 Filed 4-30-98; 8:45 am]

BILLING CODE 8718-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203-011618.

Title: APL/MOL/HMM Trans-Pacific Slot Exchange Agreement.

Parties:

American President Lines, Ltd. ("APL")
APL Co. PTE Ltd. ("APL")
Mitsui O.S.K. Lines, Ltd. ("MOL")
Hyundai Merchant Marine Co., Ltd. ("HMM")

Synopsis: The proposed Agreement authorizes HMM to use up to an annualized average of 6000 TEUs of space per week on vessels operated by either APL or MOL, and for APL and MOL to use up to an annualized average of 7000 TEUs per week on vessels operated by HMM in the trade between the Pacific Coast of the United States and the Far East. The parties may also interchange empty containers and agree upon sailing schedules, service frequency, and collective rate making on a voluntary basis. This Agreement will replace the current APL/MOL/HMM Reciprocal Slot Exchange Agreement, FMC Agreement No. 203-011596.

Agreement No.: 207-011619.

Title: Frota/Global Joint Service and Cooperative Working Agreement.

Parties:

Frota Oceanica e Amazonica S.A.

("Frota")

Global Transporte Oceanico S.A. ("Global")

Synopsis: The proposed Agreement would permit the parties to operate a joint service in the trade between United States Atlantic and Gulf ports (except for the Port of New York), and inland points via such ports, and ports and points served via the East Coast of Central America, the Caribbean, and Northern Brazil. The port of New York will be served by Frota as part of a cooperative working agreement ("CWA") which will utilize vessels operated by the Joint Service. At the Port of New York Frota will hold itself out as a separate carrier and issue its own bill of lading. The parties have requested a shortened review period.

Dated: April 27, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Poling,
Secretary.

[FR Doc. 98-11535 Filed 4-30-98; 8:45 am]

BILLING CODE 8730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 15, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Carl D. Larson, Fullerton, North Dakota; to acquire additional voting shares of Omega City Holding Company, La Moure, North Dakota, and thereby indirectly acquire voting shares of First State Bank of La Moure, La Moure, North Dakota.

Board of Governors of the Federal Reserve System, April 28, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-11672 Filed 4-30-98; 8:45 am]

BILLING CODE 8210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisition by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-10567) published on page 19727 of the issue for Tuesday, April 21, 1998.

Under the Federal Reserve Bank of Chicago heading, the entry for 1st Brookfield, Inc., Employee Stock Ownership Plan, Brookfield, Illinois, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. 1st Brookfield, Inc., Employee Stock Ownership Plan, Brookfield, Illinois; to acquire an additional 12.40 percent, for a total of 42.35 percent, of the voting shares of 1st Brookfield, Inc., Brookfield, Illinois, and thereby indirectly acquire The First National Bank of Brookfield, Brookfield, Illinois.

Comments on this application must be received by May 15, 1998.

Board of Governors of the Federal Reserve System, April 28, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-11670 Filed 4-30-98; 8:45 am]

BILLING CODE 8210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of

the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 26, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. FirstBancorporation, Inc., Beaufort, South Carolina; to acquire 100 percent of the voting shares of FirstBank of the Midlands, N.A., Columbia, South Carolina (in organization).

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Rigler Investment Company, New Hampton, Iowa; to acquire 100 percent of the voting shares of Figge Bancshares, Inc., Ossian, Iowa, and thereby indirectly acquire The Ossian State Bank, Ossian, Iowa, and Iowa State Bank, Calmar, Iowa.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Central Trust Company, Lander, Wyoming; to acquire 64.44 percent of the voting shares of VH Bancorporation Inc., Edina, Minnesota, and thereby indirectly acquire Grand Marais State Bank, Grand Marais, Minnesota.

Board of Governors of the Federal Reserve System, April 28, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-11671 Filed 4-30-98; 8:45 am]

BILLING CODE 8210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, May 6, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank director eligibility issues.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.bog.frb.fed.us> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 29, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98-11732 Filed 4-29-98; 11:09 am]

BILLING CODE 8210-01-P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Trade Commission.

TIME AND DATE: 2:00 p.m., Thursday, May 14, 1998.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public: (1) Oral Argument in Automotive Breakthrough Sciences, Inc., Docket 9275.

Portions Closed to the Public: (2) Executive Session to follow Oral Argument in Automotive Breakthrough Sciences, Inc., Docket 9275.

CONTACT PERSON FOR MORE INFORMATION: Victoria Streitfield, Office of Public Affairs: (202) 326-2180, Recorded Message: (202) 326-2711.

Donald S. Clark,

Secretary.

[FR Doc. 98-11795 Filed 4-29-98; 2:38 am]

BILLING CODE 8750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-day Proposed Collection: Indian Health Service Medical Staff Credentials and Privileges File

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

PROPOSED COLLECTION: Title: 09-17-0009, "Indian Health Service Medical Staff Credentials and Privileges File". Type of Information Collection Request: Revision of currently approved information collection, 09-17-0009, "Indian Health Service Medical Staff Credentials and Privileges File" which expires July 31, 1998. Form Number: Instructions and information collection formats are contained in IHS Circular No. 93-2, "Credentials and Privileges Review Process for the Medical Staff." Need and Use of Information Collection: The IHS operates health care facilities that provide health care services to American Indians and Alaska Natives. To provide these services, the IHS employs (directly and under contract) several categories of health care providers including: physicians (M.D. and D.O.), dentists, psychologist, optometrists, podiatrists, audiologist; and in some states, physician assistants, certified registered nurse anesthetists, nurse practitioners, and certified nurse midwives. IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice. Health care providers become medical staff members, depending on the local health care facility's capabilities and medical staff bylaws. There are three types of IHS medical staff applicants: (1) Health care provider applying for direct employment with IHS; (2) contract health care providers who will not seek to become IHS employees; and, (3) employed IHS health care providers who seek to transfer between IHS health care facilities.

National health care standards developed by the Health Care Financing Administration (HCFA) and by the JCAHO require health care facilities to review, evaluate and verify the credentials, training and experience of

medical staff applicants prior to granting medical staff privileges. To meet these standards, IHS health care facilities require each medical staff applicant to provide information concerning their education, training, licensure, and work experience and any adverse disciplinary actions taken against them. This information is then verified with references supplied by the applicant and may include: former employers, educational institutions, licensure and certification boards, the American Medical Association, the Federation of State Medical Boards, the National Practitioner Data Bank, and the applicants themselves.

In addition to the initial granting of medical staff membership and clinical

privileges, JCAHO standards require that a review of the medical staff be conducted not less than every two years. This review evaluates the current competence of the medical staff and verifies whether they are maintaining their licensure and the certification requirements of their specialty.

The medical staff credentials and privileges records are maintained at the health care facility where the health care provider is a medical staff member. The establishment of these records at IHS health care facilities is not optional; such records must be established and maintained at all health care facilities in the United States that are accredited by JCAHO. This information collection activity is used to evaluate individual

health care providers applying for medical staff privileges at Indian Health Service (IHS) health care facilities. Affected Public: Individuals, Businesses or other for-profit, Not-for-profit institutions and State, local or Tribal Government. Type of Respondents: health care providers requesting Medical staff privileges at IHS health facilities.

Table 1 below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual Number of Responses, Average burden hour per response, and Total annual burden hour.

TABLE 1

Data collection instrument	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response*	Total annual burden hours
Application to Medical Staff	600	1	600	0.75 (45 mins)	450.0
Reference letter	1800	1	1800	0.33 (0 mins)	600.0
Reappointment request	644	1	644	1.00 (60 mins)	644.0
Medical Privileges	387	1	387	1.00 (60 mins)	387.0
Ob-Gyn Privileges	25	1	25	1.00 (60 mins)	25.0
Surgical Privileges	23	1	23	1.00 (60 mins)	23.0
Psychiatric Privileges	18	1	18	1.00 (60 mins)	18.0
Anesthesia Privileges	16	1	16	1.00 (60 mins)	16.0
Dental Privileges	128	1	128	0.33 (0 mins)	42.2
Optometric Privileges	21	1	21	0.33 (0 mins)	6.9
Psychology Privileges	23	1	23	0.17 (0 mins)	3.9
Audiologic Privileges	6	1	6	0.08 (0 mins)	0.5
Podiatric Privileges	6	1	6	0.08 (0 mins)	0.5
Radiology Privileges	9	1	9	0.33 (0 mins)	3.0
Pathology Privileges	3	1	3	0.33 (0 mins)	1.0
Total	3,709				2,221.0

* For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology.

SEND COMMENTS AND REQUESTS FOR FURTHER INFORMATION: Send your written comments, requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lance Hodahkwon, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852.1601, call non-toll free (301) 443-1116, send via facsimile to (301) 443-1522, or send your E-mail requests, comments, and return address to: lhodahkw@hqe.ihs.gov.

COMMENT DUE DATE: Your comments regarding this information collection are best assured of having their full effect if received on or before June 30, 1998.

Dated: April 21, 1998.

Michael H. Trujillo,
Assistant Surgeon General, Acting Director.
[FR Doc. 98-11625 Filed 4-30-98; 8:45 am]
BILLING CODE 4160-16-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in June 1998.

A portion of the Drug Testing Advisory Board meeting will be open and will include a roll call, general announcements, and a discussion of

various program, procedural, and technical issues. The preliminary agenda for the open session includes, but is not limited to, the following topics: HHS update, DOT update, NRC update, and a discussion of information submitted by industry representatives regarding the proposed draft document alternative drug testing specimens and technologies. Public comments are welcome during the open session. If anyone needs special accommodations for persons with disabilities please notify the Contact listed below.

The DTAB meeting will include the review of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

An agenda for this meeting and a roster of board members may be obtained from: Ms. Giselle Hersh, Division of Workplace Programs, Room 13A-54, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443-6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee name: Drug Testing Advisory Board.
Meeting date: June 9, 1998.
Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, Maryland 20877.
Open: June 9, 1998, 8:30 a.m.-11:00 a.m.
Closed: June 9, 1998, 11:00 a.m.-4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443-6014 and FAX: (301) 443-3031.

Dated: April 27, 1998.

Jeri Lipov,
Committee Management Officer, Substance Abuse and Mental Health Services Administration.
[FR Doc. 98-11526 Filed 4-30-98; 8:45 am]
BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
[Docket No. FR-4341-N-08]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.
ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-1226; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 23, 1998.

Fred Karnas, Jr.,
Deputy Assistant Secretary for Economic Development.
[FR Doc. 98-11391 Filed 4-30-98; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: David H. Dixon, Bluffdale, Utah. The applicant wishes to establish a cooperative breeding program for the European goshawk (*Accipiter gentilis*), the European sparrowhawk (*Accipiter nisus*), the English peregrine falcon (*Falco peregrinus peregrinus*), the Cassini peregrine falcon (*Falco peregrinus cassini*), the Saker falcon (*Falco cherrug*), the Black shabreen (*Falco peregrinus peregrinator*), the Red-headed merlin (*Falco chicquera*) and the Black sparrowhawk (*Accipiter melanoleucus*). Mr. Dixon wishes to be

an active participant in this program with five other private individuals. The Utah Falconers and Raptor Breeders Association has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358-2095); FAX: (703/358-2298).

Dated: April 27, 1998.

Margaret Tieger,
Chief, Branch of Permits, Office of Management Authority.
[FR Doc. 98-11564 Filed 4-30-98; 8:45 am]
BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.
ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. Pursuant to 25 CFR 83.9(a) notice is hereby given that: Beaver Creek Band of Pee Dee Indians 978 Seivern Road Wagener, South Carolina 29164 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on January 21, 1998, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other

interested parties at the appropriate time.

Under Section 83.9(a) of the Federal regulations, third parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 3427, 1849 C Street, N.W., Washington, D.C. 20240, (202) 208-3592.

Dated: April 20, 1998.

Hilda Manuel,

Deputy Commissioner of Indian Affairs.

[FR Doc. 98-11607 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. Pursuant to 25 CFR 83.9(a) notice is hereby given that the Eno-Occaneechi Indian Tribe, 4031 Mary's Grove Church Road, Mebane, North Carolina 27302 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on November 24, 1997, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) of the Federal regulations, third parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as

other information in the BIA's files. * Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 3427, 1849 C Street, N.W., Washington, D.C. 20240, (202) 208-3592.

Dated: April 20, 1998.

Hilda Manuel,

Deputy Commissioner of Indian Affairs.

[FR Doc. 98-11606 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-958-6310-01; GP8-0167; Form OR-2812-6]

Extension of Approved Information Collection, OMB Number 1004-0168; and Request for Comments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of an existing approval to collect certain information from private landowners which will allow BLM to determine road use and maintenance fees for logging road right-of-way permits issued under the O&C Logging Road Right-of-Way regulations (43 CFR 2812).

EFFECTIVE DATE: Comments on the proposed information collection must be received by BLM by June 30, 1998 to assure consideration.

ADDRESSES: Mail comments to: John Styduhar (OR958.1), Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, OR 97208.

Send comments via Internet to: jstyduha@or.blm.gov. Please include "ATTN: 1004-0168" and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management, Oregon State Office, 1515 S.W. 5th Ave., Portland, OR 97201.

BLM will make comments available for public review at the 5th Street address during regular business hours

(8:30 a.m. to 4:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Styduhar, BLM Oregon State Office (503)-952-6454.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the *Federal Register* concerning a collection of information contained in BLM Form OR-2812-6 to solicit comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

Private landowners in western Oregon obtain authorization to transport their timber over BLM-controlled roads under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761). Logging road right-of-way permits issued by the BLM are subject to the requirements of the O&C Logging Road Right-of-Way regulations (43 CFR 2812). As a condition of each right-of-way permit, a permittee must provide BLM with a certified statement of the amount of timber hauled, the lands from which the timber was hauled, and the BLM roads over which the timber was hauled. This information is collected on a quarterly basis and provided to BLM using Form OR-2812-6, Report of Road Use.

When a Report of Road Use is received in the BLM office, it is noted in a register and routed through the appropriate staff for verification, calculation of road use and maintenance fees, and subsequent billing and payment from the permittee. Monies received for road use contribute to the recovery of costs incurred by BLM in the construction of forest access roads. Fees collected for road maintenance are reimbursements for services provided by BLM in the maintenance of roads used by the permittee. If BLM did not

require the collection of information included in the Report of Road Use, it would not be possible to determine payment amounts, ledger account status, or monitor a permittee's compliance with the terms of the permit. The costs for services provided by BLM would not be collected in a timely manner if the frequency of reporting is reduced. This would have a direct effect on the ability of BLM to properly maintain its road system, protect the road investment, and provide safe and efficient access to the public lands.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collected is estimated to average 1 hour per response. The respondents include individuals, partnerships, and corporations engaged in the removal and transportation of timber and other forest products. The frequency of response is quarterly. The number of responses per year is estimated to total 400. The estimated total annual burden on respondents is about 1600 hours. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 23, 1998.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 98-11652 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-018-08-1040-00]

Correction to Red Hills Area of Critical Environmental Concern (ACEC), Tuolumne County

AGENCY: Bureau of Land Management, Folsom Field Office, CA.

ACTION: Notice correction.

The following are corrections to the legal description due to typographical errors in the publication of the *Federal Register* Vol. 50, No. 138, page 29276, second column, published on July 18, 1985. The corrected information for each section is given below:

Mount Diablo Meridian, California

T.1S., R.13E.,

Sec.13, NW¼, N½NE¼, SE¼NE¼, NE¼SE¼;
T.1S., R.14E.,
Sec. 16(*), E½, N½NW¼, S½SE¼SW¼, SE¼SW¼SW¼, N½SW¼SW¼SW¼, SE¼NW¼, N½SW¼, N½SE¼SW¼, E½NE¼SW¼SW¼, N½SW¼NW¼, W½SW¼SW¼NW¼, E½SE¼SW¼NW¼, NE¼NE¼NW¼SW¼;
Sec. 27, N½NE¼, E½SE¼NE¼, SW¼NE¼, W½SE¼, W½;
Sec. 34, W½NE¼NE¼, NW¼NE¼, N½NW¼.

(*) In addition to typographical corrections in the original publication, section 16 incorporates changes in the boundary of the Area of Critical Environmental Concern due to the issuance of a Recreation and Public Purposes (R&PP) patent and the cancellation of a previous R&PP lease.

Dated: April 22, 1998.

D.K. Swickard,

Folsom Field Manager.

[FR Doc. 98-11582 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-360-1020-00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northwest California Resource Advisory Council, Redding, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92-463) and the Federal Land Policy and Management Act (Public Law 94-579), the U. S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Thursday and Friday, June 4 and 5, 1998, at the BLM's Redding Field Office, 355 Hemsted Drive, Redding, CA.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. on June 4. Agenda items include a review of public comments on the proposal to close Black Sands Beach to motor vehicle access, a presentation on the Automated Lands, Minerals and Records System, an overview of the Federal Land Policy and Management Act, and reports from the BLM field managers in Redding, Arcata and Ukiah. Time will be set aside at 1 p.m. for public comments. Depending on the number of people wishing to speak, a time limit may be established. On June 5, the council will participate in a field tour of public lands managed by the Redding Field Office. Members of the public are invited on the tour, but

they must provide their own transportation and lunch.

FOR ADDITIONAL INFORMATION: Contact Joseph J. Fontana, public affairs officer, at (530) 257-5381.

Joseph J. Fontana,
Public Affairs Officer.

[FR Doc. 98-11608 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-958-1430-01; GP8-0166; OR-19043, OR-19159]

Public Land Order No. 7310; Partial Revocation of Executive Order Dated July 2, 1910, and Revocation of Secretarial Order Dated June 13, 1933; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In Public Land Order No. 7310, published January 14, 1998, as FR Doc. 98-852, on 63 FR 2260, third column, make the following corrections:

1. In the Heading, insert the word "Partial" prior to "Revocation of Executive Order Dated July 2, 1910".
2. In the Summary, the first sentence which reads "This order revokes in their entirety an Executive order and a Secretarial order which withdrew 520 acres of public lands for the Bureau of Land Management's Powersite Reserve No. 118 and Powersite Classification No. 274.", is hereby corrected to read, "This order revokes an Executive order insofar as it affects 40 acres of public land for the Bureau of Land Management's Powersite Reserve No. 118, and revokes in its entirety a Secretarial order which withdrew 480 acres of public lands for the Bureau of Land Management's Powersite Classification No. 274."

3. Paragraph 1 which reads, "The Executive Order dated July 2, 1910, which established Powersite Reserve No. 118, is hereby revoked in its entirety.", is hereby corrected to read, "The Executive Order dated July 2, 1910, which established Powersite Reserve No. 118, is hereby revoked insofar as it affects the following described land:"

Robert D. DeViney, Jr.,
Chief, Branch of Realty and Records Services,
Oregon/Washington.

[FR Doc. 98-11476 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management
(AZ-020-08-1430-01; AZA-30576)

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, are located in Pinal County, Arizona, and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The lands are not needed for federal purposes. Lease or conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest.

AZA-30576

The following described lands, located near the Town of Queen Valley, Pinal County, have been found suitable for lease or conveyance to the Pinal County Board of Supervisors for an open space park.

Gila and Salt River Meridian, Arizona

T. 1S., R. 10E.
Sec. 34, NE¼ of lot 1

Containing approximately 10 acres.

The lease or conveyance would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. Those rights as Gaylord Yost Family Trust, may have as to that portion of the Queen Valley Grazing Allotment.

FOR FURTHER INFORMATION CONTACT: David Redmond at the Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, (602)580-5527.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit

comments regarding the proposed lease, conveyance or classification of the lands to the Field Office Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Classification Comments

Interested parties may submit comments involving the suitability of the land for: an open space park, for Pinal County. Comments on the classification are restricted to whether the land is physically suited for the proposals, whether the uses will maximize the future use or uses of the land, whether the uses are consistent with local planning and zoning, or if the uses are consistent with state and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific uses proposed in the applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for proposed uses. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the Federal Register.

Dated: April 20, 1998.

Michael A. Taylor,
Field Manager.

[FR Doc. 98-11581 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-32-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(UT-050-4210-05; UTU-72937)

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document Vol. 63, No. 62 beginning on page 15858 in the issue of Wednesday of April 1, 1998, make the following correction: The legal land description was written as follows:

Salt Lake Meridian

T.28 S., R.11 E.,
Sec. 4 W¼NE¼.

Containing 80 acres more or less.

The legal description should be changed to read as follows:

Salt Lake Meridian

T.28 S., R.11 E.,
Sec. 14 W¼NE¼.

Containing 80 acres more or less.

Dated: April 21, 1998.

Dave Henderson,

Acting District Manager

[FR Doc. 98-11595 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-DQ-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(NV-020-1220-00)

Nevada; Notice of Public Scoping Meetings Regarding Attempts To Break Land Speed Record on Black Rock Desert

AGENCY: Bureau of Land Management, Interior.

ACTION: Public scoping meetings for an application for a Special Recreation Permit in an attempt to break the world land speed record will be held at the following locations and dates: Monday, May 18, 1998 at the Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada; Wednesday May 20, 1998 at the Gerlach Community Center, Gerlach, Nevada; and Thursday May 21, 1998 at the Pershing County Community Center, 820 Sixth Street, Lovelock, Nevada. All meetings will begin at 7:00 p.m.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM), Winnemucca District, received an application from Spirit of America, represented by Bill Breedlove, to conduct high speed runs on the playa of the Black Rock Desert from September through November, 1998. These runs may reach speeds over 700 mph. The intent of the runs is to break the current world land speed record. All comments and concerns about the application must be received by the Winnemucca District, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445 by June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Lynn Clemons, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445 (702) 623-1500.

Dated: April 23, 1998.

Les Boni,

Acting District Manager.

[FR Doc. 98-11651 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(CA-942-5700-00)

Filing of Plate of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825-0451, (916) 978-4310.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 30 N., R. 13 E.,—Dependent resurvey and subdivision of sections 1, 2, 3, and 8, (Group 1198) accepted February 17, 1998, to meet certain administrative needs of the BLM, Eagle Lake Field Office.

T. 26 N., R. 17 E.,—Dependent resurvey, and subdivision of sections 3, 11, and 23, (Group 1172) accepted February 17, 1998, to meet certain administrative needs of the BLM, Eagle Lake Field Office.

T. 28 N., R. 4 E.,—Dependent resurvey and subdivision of section 4, (Group 1181) accepted February 17, 1998, to meet certain administrative needs of the BLM, Redding Field Office.

T. 36 N., R. 11 E.,—Dependent resurvey and subdivision of sections 3, 4, 5 and 9, (Group 1202) accepted February 17, 1998, to meet certain administrative needs of the BLM, Alturas Field Office.

T. 25 N., R. 17 E.,—Dependent resurvey and subdivision of section 3, (Group 1172) accepted February 20, 1998, to meet certain administrative needs of the BLM, Eagle Lake Field Office.

T. 29 N., R. 14 E.,—Dependent resurvey and subdivision of sections 30 and 31, (Group 1262) accepted February 24, 1998, to meet certain administrative needs of the BLM, Eagle Lake Field Office.

T. 7 S., R. 21 E.,—Dependent resurvey, subdivision, and mates-and-bounds survey, (Group 1228) accepted February 24, 1998, to meet certain administrative needs of the US Forest Service, Sierra National Forest.

T. 48 N., R. 12 W.,—Retracement survey, corrective dependent resurvey and mates-and-bounds survey, (Group 888) accepted March 4, 1998, to meet certain administrative needs of the US Forest Service, Rogue River National Forest.

T. 40 N., R. 10.,—Dependent resurvey and tract survey, (Group 1241) accepted March 9, 1998, to meet certain administrative needs of the US Forest Service, Klamath National Forest.

T. 18 N., R. 9 E.,—Supplemental plat of the SW ¼ of section 32, accepted March 12, 1998, to meet certain administrative needs of the BLM, Folsom Field Office.

T. 39 N., R. 8 W.,—Dependent resurvey, and mates-and-bounds survey, (Group 1217) accepted March 16, 1998, to meet certain administrative needs of the US Forest Service, Klamath and Shasta-Trinity National Forests.

T. 5 S., R. 30 E.,—Dependent resurvey and mates-and-bounds survey, (Group 1272) accepted March 17, 1998, to meet certain administrative needs of the US Forest Service, Inyo National Forest.

San Bernardino Meridian, California

T. 1 N., R. 18 W.,—Dependent resurvey, subdivision of fractional section 24 and mates-and-bounds survey, (Group 1093) accepted February 9, 1998, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T. 15 S., R. 3 E.,—Dependent resurvey and mates-and-bounds survey, (Group 1019) accepted February 23, 1998, to meet certain administrative needs of the US Forest Service, Cleveland National Forest.

T. 1 S., R. 19 W.,—Dependent resurvey and subdivision of sections 13 and 14, (Group 1222) accepted March 12, 1998, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T. 1 S., R. 20 W.,—Dependent resurvey, subdivision of sections and mates-and-bounds survey, (Group 1111) accepted March 24, 1998, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: April 20, 1998.

Lance J. Bishop,

Chief, Branch of Cadastral Survey.

[FR Doc. 98-11591 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(ID-957-1150-00)

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., April 21, 1998.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 22 and 27, and a mates-and-bounds survey in section 27, T. 11 N., R. 29 E., Boise Meridian, Idaho, Group 984, was accepted April 21, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the surveys of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709-1657.

Dated: April 21, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98-11584 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(ID-957-1420-00)

Idaho: Filing of Plats of Survey; Idaho

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. April 21, 1998.

The supplemental plat prepared to correct the duplication of two lot 5's T. 6 S., R. 6 E., Boise Meridian, Idaho, Group 1010, was accepted April 21, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709-1657.

Dated: April 21, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98-11585 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management
(ID-933-1430-00; IDI-31824)

Opening of Land in a Proposed Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 20.00 acres of National Forest System land for the protection of the Nez Perce Indian Chinook Salmon Rearing Ponds expires June 24, 1998, after which the land will be open to mining. The land has been and will remain open to surface entry and mineral leasing.

EFFECTIVE DATE: June 24, 1998.

FOR FURTHER INFORMATION CONTACT:

Larry R. Lievsay, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208-373-3864.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal has been published in the Federal Register (61 FR 123, June 25, 1996), which segregated the land described therein for up to 2 years from the mining laws, subject to valid existing rights, but not from the general land laws and the mineral leasing laws. The 2-year segregation expires June 24, 1998. The withdrawal application will continue to be processed unless it is canceled or denied. The land is described as follows:

Boise Meridian

T. 35 N., R. 6 E.,
Sec. 1, S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$

The area described contains 20.00 acres in Idaho County.

At 9 a.m. on June 24, 1998, the land shall be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 20, 1998.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 98-11583 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Draft Petition Evaluation Document/ Environmental Impact Statement; Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of the draft petition evaluation document/ environmental impact statement (PED/ EIS) for Fall Creek Falls State Park, Tennessee.

SUMMARY: The Office of Surface Mining (OSM) of the United States Department of the Interior is making available for public comment, the draft PED/EIS for a petition to designate certain lands in the watershed and viewshed of Fall Creek Falls State Park and Natural Area, Van Buren and Bledsoe Counties, Tennessee, as unsuitable for all surface coal mining operations.

DATES: Written comments: OSM will accept written comments on the draft PED/EIS until July 30, 1998.

Public Hearing: A public hearing will be held at 7 p.m., C.D.T. on Thursday, June 18, 1998, at the address given below.

ADDRESSES: Copies of the PED/EIS:

Single copies of the draft PED/EIS may be obtained by contacting Beverly Brock at the address and telephone number listed under FOR FURTHER INFORMATION CONTACT. A copy of the PED/EIS is available for inspection at that address, and also at the Bledsoe and Van Buren County Clerk's offices.

Written Comments: Written comments may be hand delivered or mailed to Beverly Brock, Supervisor, Technical Group, Office of Surface Mining, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902.

Public Hearing: A public hearing will be held at the Cumberland County High School Gymnasium, Crossville, Tennessee, at the date and time listed under DATES.

FOR FURTHER INFORMATION CONTACT:

Beverly Brock, Supervisor, Technical Group, Office of Surface Mining, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902. Telephone: (423) 545-4103, ext. 146. E-Mail/Internet: bbrock@osmre.gov.

SUPPLEMENTARY INFORMATION: OSM has been petitioned by Save Our Cumberland Mountains, Tennessee Citizens for Wilderness Planning, and forty-nine citizens to designate the watershed and viewshed of Fall Creek Falls State Park and Natural Area, Tennessee, as unsuitable for all types of surface coal mining operations. OSM has prepared a draft PED/EIS as required by Section 522(d) of the Surface Mining Control and Reclamation Act of 1977 and the National Environmental Policy Act of 1969. The draft PED/EIS evaluates the potential coal resources of the area, the demand for coal resources, and the impacts of alternative unsuitability decisions on the human environment, the economy, and the supply of coal.

A public hearing has been scheduled as indicated above. Anyone who wishes to speak will be given the opportunity to do so, but initial comments will be limited to 10 minutes. Time limits may be extended at the discretion of the presiding official. Persons wishing to present testimony are encouraged to contact OSM at the address given above. OSM would appreciate receiving a written copy of the speaker's comments four days prior to the public hearing, if possible. The hearing will be transcribed. Filing a written statement at the time of oral presentation is encouraged as this will facilitate the job of the court reporter. A transcript of the hearing will be available at a nominal fee approximately ten working days after the hearing.

Dated: April 24, 1998.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98-11611 Filed 4-30-98; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 1998 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces the availability of Universal Hiring Program (UHP) grants to pay up to 75 percent of the total salary and benefits for new officers over three years, and up to a maximum of \$75,000 per officer, with the remainder to be paid by state or local funds. Funding will begin once the new officers have been hired or on the

date of the award, whichever is later, and will be paid over the course of the grant. Funding may not be applied to officers hired pre-award without written authorization from the COPS Office. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

DATES: Application deadlines are May 22 and July 10, 1998. If your agency previously was awarded a FAST, AHEAD, or UHP grant, you may request additional officers at any time.

ADDRESSES: To obtain a copy of an application or for more information, call the U.S. Department of Justice Response Center at (202) 307-1480 or 1-800-421-6770.

FOR FURTHER INFORMATION CONTACT:

The U.S. Department of Justice Response Center, (202) 307-1480 or 1-800-421-6770. The UHP application and information on the COPS Office also are available on the Internet via the COPS web site at: <http://www.usdoj.gov/cops>.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. UHP enables interested agencies to supplement their current sworn forces, or interested jurisdictions to establish a new agency, through Federal grants for up to three years. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

Grants will be made of up to 75 percent of the total salary and benefits for each new officer over three years, and up to a maximum of \$75,000 per officer, with the remainder to be paid by state or local funds. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant. Funding may not be applied to officers hired pre-award without written authorization from the COPS Office.

Waivers of the non-Federal matching requirement may be requested under UHP, but will be granted only upon a showing of extraordinary fiscal hardship.

COPS grant funds must not be used to replace funds that eligible agencies otherwise would have devoted to future officer hiring. In other words, any hiring under UHP must be in addition to, and

not in lieu of, officers that otherwise would have been hired. All grant recipients must develop a written plan to retain their COPS-funded officer positions after Federal funding has ended. This plan must be submitted to the COPS Office with your application.

In hiring additional officers, agencies may not reduce the scope of their customary screening and training procedures, and must include community policing principles in their training curricula.

An award under the COPS Universal Hiring Program will not affect the consideration of an agency's eligibility for a grant under other COPS programs.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: April 20, 1998.

Joseph E. Brann,

Director.

[FR Doc. 98-11594 Filed 4-30-98; 8:45 am]

BILLING CODE 4410-AT-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given that a Consent Decree in *United States v. Dennis Gerbaz, et al.*, Civil No. 89-M-554 (D. Colo.), was lodged with the United States District Court for the District of Colorado on April 24, 1998.

The Consent Decree concerns alleged violations of section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), resulting from the defendant's discharge of dredge and fill material into portions of the Roaring Fork River without a permit from the U.S. Army Corps of Engineers. Under the Consent Decree, the settling defendant will contribute funds towards certain work on portions of the Roaring Fork River, in accordance with the Master Plan. The Master Plan establishes a river restoration and stabilization plan for portions of the Roaring Fork River.

The Department of Justice will receive written comments relating to the proposed Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addressed to David J. Kaplan, Attorney, U.S. Department of Justice, Environmental Defense Section, Environment and Natural Resources Division, P.O. Box 23986, Washington, DC 20026-3986, and should refer to *United States v. Dennis Gerbaz, et al.*, Civil No. 89-M-554 (D. Colo.).

The Consent Judgment may be examined at the Clerk's Office, United

States District Court for the District of Colorado, United States Court House, 1929 Stout Street, Rm C-145, Denver, Colorado 80294.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 98-11605 Filed 4-30-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1921-98]

Announcement of District Advisory Council on Immigration Matters; Third Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service), has established a District Advisory Council on Immigration Matters (DACOIM) to provide the New York District Director of the Immigration and Naturalization Service with recommendations on ways to improve the response and reaction to customers in the local jurisdiction and to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices. The purpose of this notice is to announce the forthcoming meeting.

DATES AND TIMES: The third meeting of the DACOIM is scheduled for May 28, 1998 at 1:00 p.m.

ADDRESSES: The meeting will be held at 201 Varick Street, New York, New York 10014, 11th Floor Conference Room.

FOR FURTHER INFORMATION CONTACT: Susan Young, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14-100, New York, New York 10278, telephone: (212) 264-0736.

SUPPLEMENTARY INFORMATION: Meetings will be held tri-annually on the fourth Thursday during the months of September, January, and May through 1999.

Summary of Agenda

The purpose of the meeting will be to conduct general business, review sub-committee reports and facilitate public participation. The DACOIM will be chaired by Charles Troy, Assistant District Director for Management, New York District, Immigration and Naturalization Service.

Public Participation

The DACOIM meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting for consideration by the DACOIM. Written statements should be sent to Susan Young, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14-100, New York, New York 10278, telephone: (212) 264-0736. Only written statements received by 5:00 p.m. on May 22, 1998 will be considered for presentation at the meeting. Minutes of the meeting will be available upon request.

Dated: April 27, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98-11601 Filed 4-30-98; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR**Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice**

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time, and place: May 13, 1998, 10:00 am, U.S. Department of Labor, Rm. S-5215 A/B, 200 Constitution Ave., NW, Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219-7597.

Signed at Washington, DC, this 25th day of April 1998.

Andrew James Samet,

Deputy Under Secretary, International Affairs.

[FR Doc. 98-11642 Filed 4-30-98; 8:45 am]

BILLING CODE 4510-28-M

DEPARTMENT OF LABOR**Employment Standards Administration****Wage and Hour Division****Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions**

General Wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29

CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S-3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office

(GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487-4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 23rd day of April 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98-11338 Filed 4-30-98; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

(DOCKET NO. 50-341)

Detroit Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43 issued to the Detroit Edison Company (the licensee) for operation of the Fermi 2 plant located in Monroe County, Michigan.

The proposed amendment would revise Technical Specification (TS) 3.8.1.1 to change the emergency diesel generator (EDG) allowed outage time (AOT) from 3 to 7 days. In order to use the extended AOT, the revised TS will require the licensee to ensure the

alternate AC power source (combustion turbine-generator 11-1) is operable and to verify the planned activity is not potentially risk significant in accordance with use of the licensee's configuration risk management program as described in a new paragraph in the Administrative Controls section of the TS.

The amendment was requested in a submittal dated November 22, 1995, as supplemented February 19, April 19, May 3, June 12, and December 4, 1996, January 30 and August 7, 1997, and April 27, 1998. The staff issued a **Federal Register** notice on February 28, 1996 (61 FR 7550), providing the notice of consideration of issuance of the amendment, proposed no significant hazards consideration (NSHC), and opportunity for a hearing. The portions of the November 22, 1995, submittal related to changes in EDG surveillance testing and reporting requirements (also discussed in the NSHC) were addressed in amendment no. 107 issued on June 20, 1996. The February 19, April 19, May 3, June 12, and December 4, 1996, and August 7, 1997, submittals provided additional information but did not change the proposed TS or the staff's initial proposed determination of NSHC. The January 30, 1997, submittal added a verification that the alternate AC source is available prior to entering the 7-day AOT. This submittal also did not change the staff's initial proposed determination of NSHC. The April 27, 1998, submittal added a description of the Fermi 2 configuration risk management program (CRMP) to the Administrative Controls section of the TS. This submittal included a determination of NSHC for the change, as discussed below. The current notice encompasses the changes described in the January 30, 1997, and April 27, 1998, submittals.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the April 27, 1998, supplemental amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a

margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

-1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Configuration Risk Management Program (CRMP) is an Administrative Program that assesses risk based on plant status. This proposed change does not change the design, configuration, or method of plant operation. Adding the requirement to implement this program for Technical Specification (TS) 3.8.1.1 does not affect the probability or the consequences of an accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change does not change the design, configuration, or method of plant operation. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a physical modification to the plant, a new mode of operation or a change to the UFSAR (updated final safety analysis report) transient analyses. The proposed change adds additional requirements to the evaluation of equipment outages. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by the close of business within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should

the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 1, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 22, 1995, as supplemented February 19, April 19, May 3, June 12, and December 4, 1996, January 30 and August 7, 1997, and April 27, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 28th day of April 1998.

For the Nuclear Regulatory Commission,

Andrew J. Kugler,

Project Manager, Project Directorate III-1
Division of Reactor Projects—III/IV, Office of
Nuclear Reactor Regulation.

[FR Doc. 98-11656 Filed 4-30-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power and Light Company; Susquehanna Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-44 and NPF-22, issued to Pennsylvania Power and Light Company (PP&L, the licensee), for operation of the Susquehanna Steam Electric Station (SSES), Units 1 and 2, located in Luzerne County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend the Technical Specifications (TSs) to increase the Rod Block Monitor (RBM) flow biased trip setpoints and also change the RBM channel calibration frequency and allowed outage times.

The proposed action is in accordance with the licensee's application for amendment dated November 27, 1996, as supplemented by letter dated February 12, 1997.

The Need for the Proposed Action

The RBM was originally designed to prevent fuel damage during a Rod Withdrawal Error (RWE) event while operating in the power range in a normal mode of operation. The RWE analyses originally assumed that the RBM automatically actuated to stop control rod motion. This automatic stop of control rod motion is the sole design basis of the RBM.

As a result of rod drift events at SSES, the RWE is currently analyzed without taking credit for the RBM to stop control rod motion. The results of these analyses are operating limits that prevent fuel damage from an RWE without the need for an RBM system to automatically actuate to stop control rod motion.

The licensee considered that the RBM system was no longer needed and could be removed from the TSs and in 1996 requested approval from the NRC to remove it. The NRC decided that an acceptable alternative was a proposal to raise the RBM setpoints to reduce its operational impacts. This proposed amendment is about raising the RBM setpoints.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the RBM was initially considered as a system that would prevent fuel damage during an RWE event while operating in the power range in a normal mode of operation. However, the licensee's results of their analyses show that the RBM is not required to prevent fuel damage and the staff agrees with this.

Further, it is noted that with this TS change, the licensee will find the need to do fewer control rod pattern adjustments and a reduction in nuisance alarms. In addition to this, the change should reduce operator interaction with the system (reducing possible man-to-machine interface problems).

The TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for SSES, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on February 18, 1998, the staff

consulted with the Pennsylvania State official, S. Maingi of the Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 27, 1996, as supplemented by letter dated February 12, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 27th day of April 1998.

For the Nuclear Regulatory Commission,

Victor Nerses,

Senior Project Manager, Project Directorate
I-2, Division of Reactor Projects—II/III, Office
of Nuclear Reactor Regulation.

[FR Doc. 98-11621 Filed 4-30-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-22]

Private Fuel Storage, L.L.C., Independent Spent Fuel Storage Installation, Skull Valley Indian Reservation, Tooele County, UT, Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Description of Proposed Action

Private Fuel Storage, L.L.C. (the applicant) submitted an application, dated June 20, 1997, for a license to construct and operate an independent spent fuel storage installation (ISFSI) at the Skull Valley Indian Reservation in Tooele County, Utah. The license, under the provisions of Part 72 to Title 10 of the Code of Federal Regulations (10 CFR part 72), would authorize the applicant to receive, possess, store, and transfer spent nuclear fuel from licensed commercial U.S. nuclear power reactors in dry storage systems. A notice of consideration of issuance of a materials

license for the proposed Private Fuel Storage Facility (PFSF) was published in the *Federal Register* on July 31, 1997 (62 FR 41099).

Environmental Report

In connection with this proposed action, the applicant submitted an Environmental Report in accordance with the requirements specified in 10 CFR part 51 and pursuant to the National Environmental Policy Act of 1969. The Environmental Report is available for public inspection at the Commission's Public Document Room in the Gelman Building, 2120 L Street, NW, Washington, DC, and the Local Public Document Room at the University of Utah, Marriott Library, Documents Division, 295 S. 1500 East, Salt Lake City, Utah 84112-0860.

Environmental Impact Statement

In accordance with NRC regulations specified in 10 CFR 51.20(b)(9), NRC has determined that the proposed action is a major federal action that warrants the preparation of an Environmental Impact Statement (EIS) on the construction and operation of the proposed ISFSI.

NRC will first conduct a scoping process and, as soon as practicable thereafter, prepare a draft EIS for comment by the public and other agencies. The draft EIS will be the subject of a separate notice in the *Federal Register*. After receipt and consideration of comments, the NRC will prepare a final EIS.

Public Scoping Process

The scoping process for the EIS will be used to:

- (1) Define the scope of the proposed action which is to be the subject of the EIS.
- (2) Determine the scope of the EIS and identify the significant issues to be analyzed in depth.
- (3) Identify and eliminate from detailed study issues which are peripheral or are not significant.
- (4) Identify any environmental assessments and other EIS which are being or will be prepared that are related to but are not part of the scope of the EIS under consideration.
- (5) Identify other environmental review and consultation requirements related to the proposed action.
- (6) Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision making schedule.
- (7) Identify any cooperating agencies, and as appropriate, allocate assignments for preparation and schedules for

completion of the EIS to the NRC and any cooperating agencies.

(8) Describe the means by which the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following persons to participate in the scoping process:

- (1) The applicant, Private Fuel Storage, L.L.C.;
- (2) Any person who has petitioned for leave to intervene or who has been admitted as a party to the proceeding on the license application;
- (3) Any other Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce relevant environmental standards;
- (4) Affected State and local agencies, including those authorized to develop and enforce relevant environmental standards;
- (5) Any affected Indian tribe; and
- (6) Any person who has requested an opportunity to participate in the scoping process.

Participants should submit written comments on the EIS scoping process to Dr. Edward Y. Shum, Environmental Project Manager, Spent Fuel Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. To be considered in the scoping process, comments should be postmarked by June 19, 1998.

Participation in the scoping process does not entitle participants to become parties to the proceeding to which the EIS relates. Participation in the adjudicatory proceeding is governed by the procedures specified in 10 CFR 2.714 and 2.715, and in the aforementioned *Federal Register* Notice (62 FR 41099).

Public Scoping Meeting

In accordance with 10 CFR 51.26, the scoping process may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. As part of the EIS scoping process related to the applicant's proposed action, NRC will conduct a public scoping meeting at The Ballroom of the Little America Inn, 500 South Main Street, Salt Lake City, Utah 84101, on June 2, 1998, at 6:30 p.m. The meeting will include a briefing by Private Fuel Storage, L.L.C. on the proposed ISFSI, a briefing by the NRC on the environmental review process and the proposed scope of the EIS, and the opportunity for interested agencies,

organizations, and individuals to submit comments or suggestions on the environmental issues or proposed scope of the EIS. Persons may register to present oral comments by writing to Dr. Edward Y. Shum, at the aforementioned address, or may register at the meeting. Individual oral comments may be limited in time, depending on the number of persons who register. Comments presented at the meeting will be considered in the EIS scoping process.

Summary

At the conclusion of the scoping process, NRC will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process.

For additional information about the proposed action, the EIS, or the scoping process, contact Dr. Edward Y. Shum at the aforementioned address or by telephone at (301) 415-8545.

Dated at Rockville, Maryland, this 24th day of April 1998.

For the Nuclear Regulatory Commission,
Charles J. Haughney,
*Acting Director, Spent Fuel Project Office,
Office of Nuclear Material Safety and
Safeguards.*

[FR Doc. 98-11620 Filed 4-30-98; 8:45 am]
BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23127; 812-10988]

TCW/BQA Enhanced 500 Limited Partnership, et al.; Notice of Application

April 24, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION:

Applicants seek an order to permit certain limited partnerships to transfer their assets to corresponding series of a registered open-end management investment company in exchange for the series' shares.

APPLICANTS: TCW/BQA Enhanced 500 Limited Partnership, TCW Emerging Markets Fixed Income Total Return II Limited Partnership, TCW Large Cap Growth Limited Partnership, TCW Large

Cap Value Limited Partnership (collectively, "Partnerships"), TCW Galileo Funds, Inc. ("Company"), TCW Asset Management Company ("TAMCO"), and TCW Funds Management, Inc. ("Adviser").

FILING DATE: The application was filed on February 4, 1998. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: an order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 19, 1998 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 865 South Figueroa Street, Suite 1800, Los Angeles, CA 90017.

FOR FURTHER INFORMATION CONTACT: Annmarie J. Zell, Staff Attorney, at (202) 942-0532, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).
SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942-8090).

Applicants' Representations

1. TWC/BQA Enhanced 500 Limited Partnership, TCW Emerging Markets Fixed Income Total Return II Limited Partnership, TCW Large Cap Growth Limited Partnership, and TCW Large Cap Value Limited Partnership were organized as California limited partnerships on May 31, 1996, August 23, 1996, June 22, 1993, and October 13, 1997, respectively. The Partnerships are not registered under the Act in reliance on section 3(c)(1) of the Act.

2. TAMCO, a wholly owned subsidiary of The TCW Group, Inc., serves as the sole general partner of the Partnerships and has exclusive responsibility for their overall management, control, and administration. TAMCO is an investment adviser registered under the

Investment Advisers Act of 1940 ("Advisers Act") and serves as an investment adviser with respect to the Partnerships' assets.

3. The Company, a Maryland corporation, is an open-end management investment company registered under Act. Currently, the Company offers seventeen series ("Existing Funds") and proposes to offer four additional series ("New Funds"), each of which will correspond to a Partnership in terms of investment objective and policies.

4. The Company has entered into an investment advisory agreement with the Adviser, an investment adviser registered under the Advisers Act, pursuant to which the Adviser will provide advisory services to the Existing Funds and New Funds. The officers of TAMCO serving as portfolio managers of the Partnerships also serve as officers of the Adviser and will serve as portfolio managers of the corresponding New Funds.

5. Applicants propose that, pursuant to an Agreement and Plan of Exchange ("Plan"), each of the New Funds will acquire assets from its corresponding Partnership in exchange for New Fund shares ("Exchanges"). New Fund shares delivered to the Partnerships in the Exchanges will have an aggregate net asset value ("NAV") equal to the NAV of the assets transferred by the Partnerships to the Company (except for any reduction due to the New Funds' payment of organizational expenses). Upon consummation of the Exchanges, each Partnership will distribute the New Fund shares to its respective limited partners, with each limited partner receiving shares having an aggregate NAV equivalent to the NAV of the units of the Partnership held by the limited partner prior to the Exchange (except for the effect of the payment of certain organizational expenses by the New Funds and the retention of assets by the Partnership to pay accrued expenses). After payment of any accrued expenses from retained assets, each Partnership will be liquidated and dissolved. No liabilities of a Partnership will be transferred to its corresponding New Fund; all known liabilities, other than accrued expenses discussed above, will be paid by each Partnership prior to the transfer of its assets to the corresponding New Fund. The General Partner, TAMCO, will be responsible for any unknown liabilities of each Partnership.

6. The expenses of the Exchanges will be borne by TAMCO. Organizational expenses, up to a maximum of \$50,000 per New Fund, will be paid by the New Funds and amortized over five years.

Organizational expenses in excess of \$50,000 per New Fund will be paid by the Adviser. Any unamortized organization expenses associated with the organization of the New Funds at the time the Adviser withdraws its initial investment in the Company will be borne by the Adviser, not the New Funds. Through October 31, 1998, the Adviser will place a limit on the annual expenses of each New Fund. This limit is generally intended to cap New Fund expense ratios at levels projected to be incurred during 1998 by the Partnerships.

7. The board of directors of the Company ("Board") and TAMCO have considered the desirability of the Exchanges from the points of view of the company and the Partnerships, and all of the members of the Board (including all of the independent directors within the meaning of section 2(a)(19) of the Act) and TAMCO have approved the Exchanges and concluded that: (i) the terms of the Exchanges have been designated to meet the criteria in section 17(b) of the Act; (ii) the Exchanges are desirable as a business matter from the respective points of view of the Company and the Partnerships; (iii) the Exchanges are in the best interests of the Company and the Partnerships; (iv) the Exchanges are reasonable and fair, do not involve overreaching, and are consistent with the policies of the Act; (v) the Exchanges are consistent with the policies of the Company and the Partnerships; and (vi) the interests of existing shareholders in the Company and existing partners in the Partnerships will not be diluted as a result of the Exchanges. These findings, and the basis upon which the findings are made, have been fully recorded in the respective minute books of the Company and TAMCO.

8. The Exchanges will not be effected until (i) the Company's Form N-1A registration statement has been filed; (ii) the Company and the Partnerships have received a favorable opinion of counsel regarding the tax consequences of the Exchanges; and (iii) the SEC has issued the requested order.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" as, among other things, any person directly or indirectly controlling, controlled by, or under common control

with, such other person; and officer, director, partner, copartner or employee of such other person; or, if such other person is an investment company, any investment adviser of the investment company. Each Partnership is an affiliated person of an affiliated person of the Company because TAMCO, the general partner of the Partnerships, and the Adviser are under common control. Thus, the proposed Exchanges may be deemed to be prohibited under section 17(a) of the Act.

2. Rule 17a-7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the security. The relief provided by rule 17a-7 may not be available to applicants because the transaction is effected on a basis other than cash. Applicants also note that TAMCO is not only the investment adviser but also has a one percent economic interest in each Partnership. As a result, applicants believe that the relief afforded by rule 17a-7 is not available.

3. Section 17(b) of the Act authorized the SEC to exempt any person from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

4. Applicants believe that the proposed Exchanges satisfy the requirements of section 17(b). Applicants state that because New Fund shares will be issued to the limited partners at net asset value and only nominal shares will be outstanding after the completion of the Exchanges, their interests will not be diluted. Applicants also state that the investment objectives and policies of each New Fund are substantially similar to its corresponding Partnership and that after the Exchanges, limited partners will hold substantially the same assets as Company shareholders as they held as limited partners. Applicants also note that the partners will become investors in an entity that offers greater liquidity, without incurring immediate tax consequences or transaction and brokerage charges. In this sense, applicants submit that the Exchanges can be viewed as a change in the form

in which assets are held, rather than a disposition giving rise to section 17(a) concerns.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

The Exchanges will comply with the terms of rule 17a-7(b) through (f).

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-11565 Filed 4-30-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39909; File No. SR-BSE-98-4]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to an Administrative Change to its Listing and Maintenance Rules

April 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 10, 1998, the Boston Stock Exchange, Inc. ("Exchange" or "BSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to move the paragraph governing the suspension and restoration of trading in an Exchange listed security, currently located in Chapter XXIV, § 2220 of the Exchange's rules, to Chapter XXVII, § 2264.

The text of the proposed rule change is available at the Office of the Secretary, The Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to move the paragraph governing the suspension and restoration of trading in an Exchange listed security, currently located in Chapter XXIV, § 2220 of the Exchange's rules, to Chapter XXVII, § 2264. The proposed rule change is intended to incorporate all of the Exchange's listing and maintenance requirements in Chapter XXVII. No changes are being made to the text of the rule being relocated.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act.²

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act³ and subparagraph (e)(3) of Rule 19b-4 thereunder.⁴ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A).

³ 17 CFR 240.19b-4(e)(3).

purposes of the Act. In reviewing this filing, the Commission considered the proposal's impact on efficiency, competition, and capital formation.⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-98-4 and should be submitted by May 22, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz,
Secretary.

[FR Doc. 98-11566 Filed 4-30-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39920; File No. SR-DCC-98-01]

Self-Regulatory Organizations; Delta Clearing Corp.; Order Granting Approval of a Proposed Rule Change to Permit the Use of Mortgage Backed Securities as Margin Collateral

April 27, 1998.

On January 5, 1998, Delta Clearing Corp. ("Delta") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DCC-98-01) pursuant to Section 19(b)(1) of the Securities

⁵ See 15 U.S.C. 78c(f).

⁶ 17 CFR 200.30-3(a)(12).

Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the *Federal Register* on February 25, 1998.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Delta's participants may clear and settle repurchase and reverse repurchase agreements in both treasury securities³ ("treasury repos") and in mortgage backed securities⁴ ("mortgage backed repos") through Delta's system. Some participants only clear and settle mortgage backed repos through Delta. Because Delta currently only accepts federal funds⁵ or treasury securities as margin collateral, these participants incur an additional cost associated with obtaining treasury securities for purposes of supplying margin collateral. Because these participants already possess mortgage backed securities related to the transactions they are clearing through Delta, it would be a more straightforward process for them to honor their margin obligations with these mortgage backed securities.

Delta has stated its belief that with appropriate haircuts, the acceptance of margin in the form of mortgage backed securities should pose no additional risk to the system. Delta notes that the Commission under its net capital rule generally applies the same haircuts to treasury securities and mortgage backed securities.⁶ Consistent with Delta's

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 39684 (February 19, 1998), 63 FR 9621.

³ Treasury securities are defined in Delta's procedures as a treasury bill, treasury bond or treasury note issued by the United States Department of the Treasury.

⁴ Mortgage backed securities are defined in Delta's procedures as book entry securities directly issued by the Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC"), as applicable, through its mortgage origination program, and which is designed to receive principal payments using a predetermined principal balance schedule. A mortgage security may either be a fixed rate mortgage security or an adjustable rate mortgage security. All of the following securities are excluded from the definition of mortgage securities: (i) securities which are issued in registered or bearer form, (ii) securities which are not transferable through the Federal Reserve System, (iii) securities which are not issued or guaranteed directly by FNMA or FHLMC, (iv) securities where the underlying assets are mortgage backed securities, rather than a pool of mortgages, and (v) notional, interest only, principal only, accrual and partial accrual securities, and floaters and inverse floaters.

⁵ Federal funds are defined in Delta's procedures as cash balances available for immediate withdrawal in accounts maintained at banks that are members of the Federal Reserve system.

⁶ Section 3(a)(42)(B) of the Act defines government securities to include securities which

treatment of treasury securities used for margin collateral, Delta will value mortgage backed securities in accordance with the schedule of applicable haircuts found in the Commission's uniform net capital rule.⁷ Furthermore, Delta notes that its clearing bank, The Bank of New York, will accept mortgage backed securities from Delta without further haircuts.

II. Discussion

Section 17A(b)(3)(F) of the Act⁸ requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the rule change is consistent with Delta's obligations under the Act. The rule change should encourage wider use of Delta's system by providing participants with the ability to more efficiently and more economically meet their margin requirements. The revised margin collateral procedures should especially encourage more use of Delta's system by those participants that only clear and settle mortgage backed repos by allowing these participants to honor their margin obligations with mortgage backed securities they possess. Wider use of Delta's system should assist Delta in promoting the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder. It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DCC-98-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,
Secretary.

[FR Doc. 98-11653 Filed 4-30-98; 8:45 am]

BILLING CODE 8010-01-M

are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors. The Department of Treasury has designated securities issued by FNMA and by FHLMC as exempt. Notice issued by the Department of Treasury (October 7, 1987), 52 FR 36559.

⁷ Rule 15c3-1(c)(2)(vi)(A)(1), 17 CFR 240.15c3-1(c)(2)(vi)(A)(1).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE
COMMISSION[Release No. 34-39883A; File No. SR-
NASD-97-69]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change, as Amended, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Tape Recording of Conversations

April 23, 1998.

Correction

In FR Document No. 98-10796, beginning on page 20232 for Tuesday, April 23, 1998, make the following correction. On page 20235, second column, the first full paragraph, revise the second sentence to read:

"The procedures would require, at a minimum, that the member tape record all telephone conversations between all of its registered persons and both existing and potential customers for a period of two years, and maintain these supervisory procedures for two years."

Jonathan G. Katz,
Secretary

[FR Doc. 98-11567 Filed 4-30-98; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public
Comments and RecommendationsACTION: Notice and request for
comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202-205-6629.

SUPPLEMENTARY INFORMATION:

Title: "8 (a) Export Survey Initiative".
Type of Request: New Request.
Form No: N/A.

Description of Respondents: 8 (a) Firms who are located in the top ten exporting states and have more than one of the SIC Codes listed as the top ten for exporting.

Annual Responses: 200.

Annual Burden: 50.

Comments: Send all comments regarding this information collection to William A. Fisher, Acting Associate Administrator, Office of Minority Enterprise Development, Small Business Administration, 409 3rd Street, S.W., Suite 8000, Washington, D.C. 20416. Phone No: 202-205-6412.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: April 27, 1998.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 98-11540 Filed 4-30-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster
#9841]Commonwealth of Pennsylvania and
Contiguous Counties in Ohio

Mercer County and the contiguous Counties of Butler, Crawford, Lawrence, and Venango in Pennsylvania and Mahoning and Trumbull Counties in Ohio constitute an economic injury disaster loan area as a result of a fire that occurred on April 6, 1998 in the Hermitage Square Plaza in the City of Hermitage, Pennsylvania. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on January 25, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for Ohio is 9842002.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 23, 1998.

Aida Alvarez,
Administrator.
[FR Doc. 98-11539 Filed 4-30-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3079]

Arkansas; (and Contiguous Counties
in Missouri and Tennessee)

Mississippi County and the contiguous Counties of Craighead, Crittenden, and Poinsett in the State of Arkansas; Dunklin and Pemiscot Counties in the State of Missouri; and Dyer, Lauderdale, and Tipton Counties in the State of Tennessee constitute a disaster area as a result of damages caused by severe storms and tornadoes that occurred on April 16, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on June 22, 1998 and for economic injury until the close of business on January 25, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.000
Homeowners Without Credit Available Elsewhere	3.500
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damages are 307912 for Arkansas; 308012 for Missouri; and 308112 for Tennessee. For economic injury the numbers are 984300 for Arkansas; 984400 for Missouri; and 984500 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 23, 1998.

Aida Alvarez,
Administrator.
[FR Doc. 98-11538 Filed 4-30-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3069]

State of Georgia; Amendment #5

In accordance with notices from the Federal Emergency Management Agency dated April 16, 1998, the above-numbered Declaration is hereby amended to include Houston County in the State of Georgia as a disaster area due to damages caused by severe storms and flooding. In addition, the incident period is established as beginning on February 14, 1998 and continuing.

Any counties contiguous to the above-named primary county have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 10, 1998 and for economic injury the termination date is December 11, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 17, 1998.

Herbert L. Mitchell,
Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98-11536 Filed 4-30-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3077]

State of Ohio

Ottawa County and the contiguous Counties of Erie, Lucas, Sandusky, and Wood in the State of Ohio constitute a disaster area as a result of severe thunderstorms and lake effect damages that occurred April 9, 1998. Applications for loans for physical damage from this disaster may be filed until the close of business on June 22, 1998 and for economic injury until the close of business on January 21, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.000
Homeowners Without Credit Available Elsewhere	3.500
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125

	Percent
For Economic Injury Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 307711 and for economic injury the number is 983700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 21, 1998.

Aida Alvarez,
Administrator.

[FR Doc. 98-11537 Filed 4-30-98; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice #2795]

United States International
Telecommunications Advisory
Committee (ITAC); Notice of Meeting

The Department of State announces that a meeting of the United States International Telecommunications Advisory Committee (ITAC) will be held May 13, 2:00-4:00 p.m., in Room 1107 of the Department of State, 2201 "C" Street, N.W., Washington, D.C. The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues.

The agenda of the ITAC meeting will include: (1) Report and assessment of the World Telecoms Development Conference (WTDC98) held recently in Malta; (2) report on the OAS/CITEL Assembly held recently in Quito, and related activities; and (3) presentation of U.S. positions for the upcoming ITU Council (May 20-29 in Geneva) and related Plenipotentiary Conference preparations. Questions regarding the agenda of ITAC activities in general may be directed to Richard Shrum, Department of State (Ph 202-647-0050).

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to 202-647-7407 not later than 24 hours before the scheduled meeting and include the name of the meeting, your name, affiliation, social security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, or U.S. government ID (company ID's are no

longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: April 22, 1998

John Gilsean,
Acting Executive Director for International
Telecommunications Advisory Committee.
[FR Doc. 98-11598 Filed 4-30-98; 8:45 am]

BILLING CODE 4710-45-M

DEPARTMENT OF STATE

[Public Notice No. 2796]

International Telecommunication
Advisory Committee (ITAC),
Telecommunication Standardization
Sector (ITAC-T) Study Group B;
Meeting Notice

The Department of State announces a meeting, under the International Telecommunication Advisory Committee, of Study Group B of the Telecommunication Standardization Sector (ITAC-T). The meeting will be held Wednesday, May 27, 1998, beginning at 9:00 a.m. and scheduled for all day, in Room 1107 of the Department of Commerce, 325 Broadway, Boulder, CO 80303.

The purpose of this meeting is to develop United States positions for specific upcoming meetings dealing with standards activities of the International Telecommunication Union-telecommunication Standardization Sector (ITU-T).

In particular, the meeting agenda will include preparation for a planned ITU-T meeting of Study Group 4 (TMN and Network Maintenance) for June 22-July 3, 1998. Questions regarding the agenda, or Study Group B activities may be directed to William Utlaut, Department of Commerce (303 497-5993), fax number (303 497-5216).

Dated: April 13, 1998.

William J. Kirsch,
Chairman, ITAC-T Sector.
[FR Doc. 98-11599 Filed 4-30-98; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF STATE

[Public Notice #2790]

Shipping Coordinating Committee,
Maritime Safety Committee; Notice of
Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 A.M. on Tuesday, May 5, 1998, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street,

SW, Washington, D.C. The purpose of this meeting will be to finalize preparations for the 69th Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 11-20, 1998, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

- a. Adoption of amendments to the Safety of Life at Sea.
- b. Role of the human element.
- c. Matters related to the Irradiated Nuclear Fuel (INF) Code.
- d. Formal safety assessment.
- e. Sole look-out at night, and;
- f. Report of eight subcommittees—Stability, Load Lines and Fishing Safety; Fire Protection; Safety of Navigation; Ship Design and Equipment; Dangerous Goods, Solid Cargoes and Containers; Radiocommunication and Search and Rescue; Bulk Liquids Gases and Training and Watchkeeping.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G-MS), U.S. Coast Guard, 2100 2nd Street, SW, Room 1218, Washington, DC 20593-0001 or by calling (202) 267-2970.

Dated: March 31, 1998.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98-11596 Filed 4-30-98; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF STATE

[Public Notice #2794]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 12:00 P.M. on Monday, June 15, 1998 in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001. The purpose of the meeting is to finalize preparations for the Flag State Implementation (FSI) Subcommittee on Safety of Life at Sea (SOLAS) and associated bodies of the International Maritime Organization (IMO) which is scheduled for June 22-26, 1998, at the IMO Headquarters in London. At this meeting, the U.S. position on documents submitted for consideration at the sixth session of the FSI Subcommittee will be discussed.

Among other things, the items of particular interest are:

1. Implementation of IMO instruments: Responsibilities of Governments and measures to encourage flag State compliance.
2. Revision of survey guidelines (resolution A.740(18) and Guidelines on surveys (resolution A.560(14)).
3. Guidelines for unscheduled inspections on Ro-Ro passenger ships.
4. Exemption certificates.
5. Surveys of emergency towing arrangements.
6. Deficiency reports.
7. Mandatory reports under MARPOL 73/78.
8. Mandatory reporting procedures on ship detentions.
9. Casualty statistics.

Members of the public may attend the meeting up to the capacity of the room. Interested persons may seek information by writing: LTJG Dave Deaver, U.S. Coast Guard Headquarters (G-MOC-4), 2100 Second Street, SW, Room 1116, Washington, DC 20593-0001 or by calling: (202) 267-0502.

Dated: April 24, 1998.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98-11597 Filed 4-30-98; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF STATE

[Public Notice #2797]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m., on Thursday, May 14, 1998, in room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to report on the 77th session of the IMO Legal Committee, which will be held April 20-24, in London, regarding the provision of financial security for seagoing vessels, compensation for pollution from ships' bunkers, a draft convention on wreck removal, and other matters. This meeting will also be a further opportunity for interested members of the public to express their views on whether the United States should ratify the Hazardous and Noxious Substances Convention, adopted in London in May, 1996.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, or to submit views

concerning the subjects of discussion, write to either Captain Malcolm J. Williams, Jr., of Lieutenant Commander Bruce P. Dalcher, U.S. Coast Guard (G-LMI), 2100 Second Street, S.W., Washington, D.C. 20593, or by telephone (202) 267-1527, telefax (202) 267-4496.

Dated: April 13, 1998.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 98-11600 Filed 4-30-98; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of April 24, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-98-3761

Date Filed: April 20, 1998

Parties: Members of the International Air Transport Association

Subject:

PTC12 Telex Mail Vote 934 (as corrected by TE602)
Middle East-Havana Excursion Fares
Intended effective date: May 1, 1998

Docket Number: OST-98-3762

Date Filed: April 20, 1998

Parties: Members of the International Air Transport Association

Subject:

PTC1 Telex Mail Vote 932 (as amended by TD248)
US-Argentina/Brazil/Uruguay fares
Intended effective date: May 1, 1998
r1-041c
r2-051c

Docket Number: OST-98-3777

Date Filed: April 22, 1998

Parties: Members of the International Air Transport Association

Subject:

PSC/MV/108 dated March 6, 1998
Mail vote S073 (Economic & Monetary Union in Europe)
Amendments dated April 21, 1998 (attached to pleading)
r-1-720a, r-4-725a, r-7-726e
r-2-722, r-5-725b, r-8-726f
r-3-722f, r-6-726a, r-9-742a
Intended effective date: amended to June 1, 1998

Docket Number: OST-98-3778

Date Filed: April 22, 1998

Parties: Members of the International Air Transport Association

Subject:

CTC12 Telex Mail Vote 935 r1-3
US-Austria/Belgium/Germany/

Netherlands/
Scandinavia/Switzerland Cargo Rate
Revalidation/Amendment
Telex Amendment to Mail Vote
(TW946)

Intended effective date: October 1, 1998

r1-002

r2-554f

r3-584ff

Docket Number: OST-98-3779

Date Filed: April 22, 1998

Parties: Members of the International Air Transport Association

Subject:

PAC/Reso/397 dated March 23, 1998
Reso 850a (Saudi Arabia)

Intended effective date: May 16, 1998

Docket Number: OST-98-3784

Date Filed: April 24, 1998

Parties: Members of the International Air Transport Association

Subject:

PTC1/PTC12 Telex Mail Vote 936
Special Construction Rules—Reso 024j

(Within TC1 and Europe-Africa)

Intended effective date: May 15, 1998

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98-11646 Filed 4-30-98; 8:45 am]

BILLING CODE 4910-02-P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending April 24, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-98-3767.

Date Filed: April 24, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 22, 1998.

Description: Application of Western Pacific Airlines, Inc., pursuant to 49 U.S.C. Section 41105, requests authority to transfer its certificate of public convenience and necessity to Blue Line

Holding Corp. ("Blue Line"), the assignee of Star Air Trading Corp. ("Star").

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98-11645 Filed 4-30-98; 8:45 am]

BILLING CODE 4910-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Correcting Unsafe Conditions That May Develop in Foreign-Manufactured Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement.

SUMMARY: This notice announces the FAA's policy with respect to foreign mandatory continuing airworthiness information, when no aircraft of the affected design are currently in operation in the U.S.

FOR FURTHER INFORMATION CONTACT:

Linda S. Walker, Aircraft Engineering Division, AIR-120, Aircraft Certification Service, FAA, 800 Independence Avenue, S.W., Washington, D.C. 20591, telephone (202) 267-9592.

SUPPLEMENTARY INFORMATION:

Discussion

Safety of civil aircraft is assured by a number of means. First the design of such aircraft must meet the safety standards prescribed in parts 21 through 31 of the Federal Aviation Regulation (FAR). Compliance of a particular design (i.e. a particular model) with those standards is evidenced by the issuance of a document known as a type certificate. The drawings and other data which describe that design are known as the type design. A related document is the type certificate data sheet which prescribes the conditions and limitations under which the design meets those standards. Second, each individual aircraft must be shown to conform to that design and be in condition for safe operation. That an aircraft conforms to the approved design and is in condition for safe operation are evidenced by issuance of another document for that particular aircraft known as an airworthiness certificate. Once an individual aircraft receives an airworthiness certificate and goes into service, it must be properly maintained so that it remains in a condition for safe operation.

Notwithstanding compliance with the above requirements, an unsafe condition may be discovered during the lifetime of the aircraft. If an unsafe condition is discovered, and the unsafe condition is likely to exist or develop in other aircraft of the same design, the FAA requires the operator of each affected aircraft to take action to correct that unsafe condition. The required corrective action is specified in a regulation known as an airworthiness directive. Depending on the nature of the unsafe condition, the required corrective action may include a modification of the aircraft, replacement of certain components, periodic inspections or imposition of additional operating limits.

In the case of aircraft imported from other countries, the FAA relies to a certain extent on findings made on its behalf by the airworthiness authority of the state of design (i.e., the country having jurisdiction over the organization responsible for the type design). Under the provisions of Annex 8 to the Convention on International Civil Aviation ("Airworthiness of Aircraft") and bilateral agreements (bilateral airworthiness agreements and bilateral aviation safety agreements), the airworthiness authority of the state of design certifies to the FAA that a design complies with the applicable standards. Based largely on that certification, the FAA issues a type certificate for that design. In addition, the airworthiness authority certifies to the FAA that an individual aircraft being imported into the U.S. conforms to that design and is in condition for safe operation. Based on that certification, the FAA issues a U.S. airworthiness certificate for that aircraft. Under the provisions of Annex 8 and the bilateral agreements, the airworthiness authority of the country of manufacture must also advise the FAA of all mandatory continuing airworthiness information (MCAI), i.e. the foreign equivalent to FAA airworthiness directives. The FAA assesses that information and determines whether to issue airworthiness directives to require the necessary corrective actions.

In some instances, a type certificate is issued by the FAA for a foreign design long before an individual aircraft of that design is imported into the U.S. Similarly, there are instances in which no aircraft of a specific design currently has a U.S. airworthiness certificate because all that were imported have since been exported, damaged beyond repair or scrapped. Based on experience gained with aircraft of the same design operating in other countries, the airworthiness authority of the state of design frequently advises the FAA, in the meantime, of a number of mandatory airworthiness modifications and special inspections. Even when

there are no aircraft of a design currently operating in this country, the FAA's practice has been to issue corresponding airworthiness directives requiring the necessary corrective action to be taken in the event an aircraft of that design is imported later.

It is recognized that this practice requires the expenditure of considerable FAA resources for safety benefits which could also be achieved through existing requirements for issuance of airworthiness certificates. As discussed above, the airworthiness authority of the state of design must, under the provisions of Annex 8 to the Convention on International Civil Aviation and bilateral agreements, certify to the FAA that an individual aircraft is in condition for safe operation. In order to make that certification, the authority must determine that the aircraft complies with each applicable MCAI it has issued. Sometimes a used aircraft of a particular design is imported from a country other than the state of design. In that event, the finding that the aircraft is in a condition for safe operation must be made by FAA personnel or persons authorized to do so on behalf of the FAA. Regardless of whether it is imported directly from the state of design, an aircraft must be found to be in a condition for safe operation before an airworthiness certificate can be issued; therefore, the issuance of an airworthiness directive merely duplicates existing requirements if no aircraft of the affected design (i.e. the affected model) already has a U.S. airworthiness certificate. In lieu of this duplicative practice, the FAA is adopting an alternative procedure that may be used when no aircraft of the affected model has been issued a U.S. airworthiness certificate.

Under this alternative procedure, the FAA will continue to review each MCAI when received to determine whether it meets established FAA criteria for required corrective action. As is current FAA practice, no further action will be taken for an MCAI that does not meet those criteria. As is also the current practice, an airworthiness directive will be issued for an MCAI that meets those criteria if there is one or more aircraft of the affected design currently in service in this country. If no aircraft of the affected design currently has a U.S. airworthiness certificate, the FAA may elect to defer regulatory action on the MCAI that meets those criteria until an application for airworthiness certificate is made for an aircraft of that design. Compliance with the provisions of each MCAI that meets those criteria will be required then to support a finding that the aircraft is in a condition for safe

operation. In the meantime, the FAA will make available, upon request, a list of such MCAI to prospective purchasers of aircraft of that design (i.e. that model).

If an aircraft of the affected model does receive a U.S. airworthiness certificate, the FAA will amend the type certificate data sheet for that model to list the specific MCAI's for which compliance must be shown before the aircraft can be found to be in a condition for safe operation. The FAA will also publish a notice in the *Federal Register* at that time to inform the public of that amendment. The FAA will issue AD's for any subsequent MCAI's that meet FAA criteria for corrective action.

This alternative procedure is not considered appropriate at this time for other products, such as engines or propellers, since there is presently no reliable means to ensure that none have been imported and installed in U.S. registered aircraft.

Issued in Washington, DC, on April 24, 1998.
Abbas A. Rizvi,
Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.
 [FR Doc. 98-11648 Filed 4-30-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Race and National Origin Identification. **DATES:** Written comments should be received on or before June 30, 1998 to be assured of consideration. **ADDRESS:** Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dennis Snyder, Employment Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8553.

SUPPLEMENTARY INFORMATION:

Title: Race and National Origin Identification

Form Number: ATF F 2931.1

Abstract: This form on its own and when combined with other Bureau tracking forms will allow the Bureau to determine its applicant/employee pool, and thereby, enhance its recruitment plan. It will also allow the Bureau to determine how its diversity/EEO efforts are progressing and to determine adverse impact on the employee selection process.

Current Actions: This is a new collection of information. Respondents provide the information once per application. The information is voluntary.

Type of Review: New

Affected Public: Individuals or households

Estimated Number of Respondents: 10,000

Estimated Time Per Respondent: 3 minutes

Estimated Total Annual Burden Hours: 500

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 22, 1998.

William T. Earle,
Assistant Director (Management)/CFO.
 [FR Doc. 98-11524 Filed 4-30-98; 8:45 am]
 BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 360]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of Title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco and Firearms, must publish and revise at least annually in the *Federal Register*, a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of Title 18, United States Code. Accordingly, the following is the 1998 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the *Federal Register* and blasting agents. The list is intended to include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated April 25, 1997, FR, Vol. 62 No. 80, and will be effective as of the date of publication in the *Federal Register*.

List of Explosive Materials

A

Acetylides of heavy metals.
 Aluminum containing polymeric propellant.
 Aluminum ophorite explosive.
 Amatex.
 Amatol.
 Ammonal.
 Ammonium nitrate explosive mixtures (cap sensitive).
 *Ammonium nitrate explosive mixtures (non cap sensitive).
 Aromatic nitro-compound explosive mixtures.
 Ammonium perchlorate explosive mixtures.

Ammonium perchlorate composite propellant.
 Ammonium picrate [picrate of ammonia, Explosive D].
 Ammonium salt lattice with isomorphously substituted inorganic salts.
 *ANFO [ammonium nitrate-fuel oil].
 B
 Baratol.
 Baronol.
 BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
 Black powder.
 Black powder based explosive mixtures.
 *Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water gel explosives.
 Blasting caps.
 Blasting gelatin.
 Blasting powder.
 BTNEC [bis (trinitroethyl) carbonate].
 Bulk salutes.
 BTNEN [bis (trinitroethyl) nitramine].
 BTTN [1,2,4 butanetriol trinitrate].
 Butyl tetryl.

C

Calcium nitrate explosive mixture.
 Cellulose hexanitrate explosive mixture.
 Chlorate explosive mixtures.
 Composition A and variations.
 Composition B and variations.
 Composition C and variations.
 Copper acetylide.
 Cyanuric triazide.
 Cyclotrimethylenetrinitramine [RDX].
 Cyclotetramethylenetrinitramine [HMX].
 Cyclonite [RDX].
 Cyclotol.

D

DATB [diaminotrinitrobenzene].
 DDNP [diazodinitrophenol].
 DEGDN [diethyleneglycol dinitrate].
 Detonating cord.
 Detonators.
 Dimethylol dimethyl methane dinitrate composition.
 Dinitroethyleneurea.
 Dinitroglycerine [glycerol dinitrate].
 Dinitrophenol.
 Dinitrophenolates.
 Dinitrophenyl hydrazine.
 Dinitroresorcinol.
 Dinitrotoluene-sodium nitrate explosive mixtures.
 DIPAM.
 Dipicryl sulfone.
 Dipicrylamine.
 Display fireworks.
 DNPD [dinitropentano nitrile].
 DNPA [2,2-dinitropropyl acrylate].
 Dynamite.

E

EDDN [ethylene diamine dinitrate].

EDNA.
 Ednatol.
 EDNP [ethyl 4,4-dinitropentanoate].
 Erythritol tetranitrate explosives.
 Esters of nitro-substituted alcohols.
 EGDN [ethylene glycol dinitrate].
 Ethyl-tetryl.
 Explosive conitrates.
 Explosive gelatins.
 Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
 Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
 Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
 Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
 Explosive mixtures containing sensitized nitromethane.
 Explosive mixtures containing tetranitromethane (nitroform).
 Explosive nitro compounds of aromatic hydrocarbons.
 Explosive organic nitrate mixtures.
 Explosive liquids.
 Explosive powders.

F

Flash powder.
 Fulminate of mercury.
 Fulminate of silver.
 Fulminating gold.
 Fulminating mercury.
 Fulminating platinum.
 Fulminating silver.

G

Gelatinized nitrocellulose.
 Gem-dinitro aliphatic explosive mixtures.
 Guanyl nitrosamino guanyl tetrazene.
 Guanyl nitrosamino guanylidene hydrazine.
 Guncotton.

H

Heavy metal azides.
 Hexanite.
 Hexanitrodiphenylamine.
 Hexanitrostilbene.
 Hexogen (RDX).
 Hexogene or octogene and a nitrated N-methylaniline.
 Hexolites.
 HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
 Hydrazinium nitrate/hydrazine/aluminum explosive system.
 Hydrazoic acid.

I

Igniter cord.
 Igniters.
 Initiating tube systems.

K

KDNBF [potassium dinitrobenzofuroxane].

L
Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate (styphnate of lead, lead trinitroresorcinate).
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M
Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N
NIBTN [nitroisobutametrial trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol (ethylene glycol dinitrate, EGDN).
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O
Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].

Organic amine nitrates.
Organic nitramines.

P
PBX [RDX and plasticizer].
Pellet powder.
Perthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX [2,6-bis(picrylamino)]-3,5-dinitropyridine.

R
RDX [cyclonite, hexogen, T4, cyclo-1,3,5-trimethylene-2,4,6-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S
Safety fuse.
Salutes, (bulk).
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T
Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].

TATB [triaminotrinitrobenzene].
TEGDN (triethylene glycol dinitrate).
Tetrazene [tetracene, tetrazine, 1(5-tetrazoly)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN (trimethylolethane trinitrate).
TNEF [trinitroethyl formal].
TNEOC (trinitroethyl orthocarbonate).
TNEOF (trinitroethyl orthoformate).
TNT [trinitrotoluene, trotyl, trilit, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U
Urea nitrate.

W
Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X
Xanthamons hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT:
Mark Waller, Specialist, Firearms, Explosives and Arson Programs Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202-927-8310).
Approved:
Dated: April 20, 1998.
John W. Magaw,
Director.
[FR Doc. 98-11525 Filed 4-30-98; 8:45 am]
BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Customs Service

Harbor Maintenance Fee No Longer To Be Collected on Cargo Loaded for Export

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document announces that as of April 25, 1998, Customs will no longer be collecting the Harbor Maintenance Fee for cargo loaded on board a vessel for export at a port subject to the Harbor Maintenance Fee. Further, this document announces that protest procedures are inapplicable to refund claims for export-related Harbor Maintenance Fees.

EFFECTIVE DATE: April 25, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Barbare, Operations Management Specialist, Budget Division, (202) 927-0034.

SUPPLEMENTARY INFORMATION:

Background

The Harbor maintenance Fee was created by the Water Resources Development Act of 1986 (26 U.S.C. 4461 *et seq.*) (the Act) and is implemented by § 24.24 of the Customs Regulations (19 CFR 24.24). The fee, pursuant to the Act and as implemented by the regulations was to be assessed on port use associated with imports, exports, and movements of cargo and passengers between identified ports and paid to the U.S. Customs Service.

On March 31, 1998, the Supreme Court in *United States, Petitioner v. United*

States Shoe Corporation

_____, No. 97-372 declared that the Harbor Maintenance Fee is unconstitutional as applied to exports. Consequently, as of April 25, 1998, the United States Customs Service will no longer be collecting the Harbor Maintenance Fee for port use associated with exports.

The Supreme Court also affirmed the decision of the lower courts that protest procedures are inapplicable to refund claims for export-related Harbor Maintenance Fees. The public is hereby advised that the Customs Service will not decide or respond to any protest alleging that the export-related Harbor Maintenance Fees are prohibited by the Export Clause of the United States Constitution. Any person who previously received correspondence from Customs concerning any such protests should disregard such correspondence and will not receive further communications regarding such protests.

Pursuant to a court order issued by the United States Court of International Trade in the case *United States Shoe Corp. v. The United States* (Court No. 94-11-0068), dated April 6, 1998, the government will design a claim form for refund claims and the claim form process will apply to all claims filed within the 2-year statute of limitations applicable to 28 U.S.C. § 1581(i) cases.

Dated: April 28, 1998.

Samuel H. Banks,

Acting Commissioner of Customs.

[FR Doc. 98-11644 Filed 4-30-98; 8:45 am]

BILLING CODE 4820-02-P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects on the list specified below, to be included in the exhibit, "Bonnard" See list¹, imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a long agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Museum of Modern Art, New York, New York, from on or about June 21, 1998, to on or about October 13, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the *Federal Register*.

Dated: April 24, 1998.

Les Jin,

General Counsel.

[FR Doc. 98-11532 Filed 4-30-98; 8:45 am]

BILLING CODE 8230-01-M

¹ A copy of this list may be obtained by contacting Ms. Jacqueline Caldwell, Assistant General Counsel, at 202/619-6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547-0001.

Corrections

Federal Register

Vol. 63, No. 84

Friday, May 1, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Correction

In notice document 98-10470, beginning on page 19964, in the issue of Wednesday, April 22, 1998, make the following corrections:

1. On page 19984, in the second column, in the 24th line, "Amendment No.: 221." should read "Amendment No.: 220."
2. On the same page, in the same column, after line 39, insert the following text:

IES Utilities Inc., Central Iowa Power Cooperative, and Corn Belt Power Cooperative, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: February 3, 1998.

Brief description of amendment: The amendment revises the definitions of Cold Condition and Cold Shutdown and adds a new section, 3.17, "Vessel Hydrostatic Pressure and Leak Testing," to the Technical Specifications to specifically allow reactor vessel hydrostatic pressure testing to be performed during plant shutdown.

Date of issuance: March 31, 1998.

Effective date: March 31, 1998.

Amendment No.: 221.

Facility Operating License No. DPR-49: Amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: February 26, 1998 (63 FR 9874). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room

location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

BILLING CODE 1505-01-0

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-69-AD; Amendment 39-10437; AD 98-07-17]

RIN 2120-AA64

Airworthiness Directives; Twin Commander Aircraft Corporation 500, 520, 560, 680, 681, 685, 690, 695, and 720 Series Airplanes

Correction

In rule document 98-8579, beginning on page 16679 in the issue of Monday, April 6, 1998, make the following corrections:

§ 39.13 [Corrected]

On page 16680, in the third column, in § 39.13, in the "Applicability" section, in the table, in the first line, "5500-A, 5500-B, 5500-S, 5500-U" should read "500-A, 500-B, 500-S, 500-U". In the second line, "5560, 5560-A, 5560-E, and 5560-F" should read "560, 560-A, 560-E, and 560-F".

BILLING CODE 1505-01-0

Friday
May 1, 1998

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 600

Magnuson-Stevens Act Provisions;
National Standard Guidelines; Final Rule

federal register

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970708168-8073-02; I.D. 061697B]

RIN 0648-AJ58

Magnuson-Stevens Act Provisions; National Standard Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS revises guidelines for national standards 1 (optimum yield), 2 (scientific information), 4 (allocations), 5 (efficiency), and 7 (costs and benefits); and adds guidelines for new national standards 8 (communities), 9 (bycatch), and 10 (safety of life at sea). The guidelines are intended to assist in the development and review of Fishery Management Plans (FMPs), amendments, and regulations prepared by the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The revisions and additions implement the October 1996 amendments to the Magnuson-Stevens Act, which resulted from the Sustainable Fisheries Act (SFA). Additional minor changes are made to conform national standard guideline language to the Magnuson-Stevens Act, as amended. Numerous changes were made to the proposed rule based on comments received.

DATES: Effective June 1, 1998.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, 301-713-2341.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the President signed into law the SFA (Pub. L. 104-297), which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). This rule amends 50 CFR part 600, subpart D, to update the national standard guidelines and to implement the Magnuson-Stevens Act amendments pertaining to the national standards.

Background

Section 301(a) of the Magnuson-Stevens Act contains 10 national standards for fishery conservation and management, with which all FMPs and amendments prepared by the Councils and the Secretary must comply. Section

303(b) requires that the Secretary establish advisory guidelines, herein referred to as "national standard guidelines," based on the national standards, to assist in the development of FMPs. In addition to amending several existing national standards, the SFA established three new national standards, which require consideration of impacts of fishery management decisions on fishing communities (national standard 8), bycatch (national standard 9), and safety of life at sea (national standard 10).

On August 4, 1997, NMFS published a proposed rule at 62 FR 41907 to amend the national standard guidelines; comments were requested through September 18, 1997. The preamble of the proposed rule contained detailed descriptions of the proposed amendments, which are not repeated here. Thirty-seven sets of comments were received during the comment period, which are responded to in the Comments and Responses section of this preamble.

Because of remaining issues regarding interpretation of the Magnuson-Stevens Act's provisions relative to overfishing and rebuilding overfished stocks, NMFS reopened the public comment period on national standard 1 on December 29, 1997 (62 FR 67608), for an additional 30 days. Comments were specifically requested regarding four issues: (1) Usage of the terms "overfishing" and "overfished," (2) usage of the terms "fishery" versus "stock," (3) rebuilding schedules for overfished stocks, and (4) exceptions for mixed-stock fisheries. The notice of reopening of the comment period on national standard 1 contained a detailed explanation of those issues, which is not repeated here. Thirty-four additional sets of comments were received during the reopened comment period; those comments are also responded to in the Comments and Responses section.

Changes from the Proposed Rule

As a result of public comments received both during the initial comment period and the reopened comment period, NMFS has made the following changes from the proposed rule:

General

NMFS reviewed the entire text of the guidelines to ensure that the terms "shall," "must," and "should" are used consistent with the definitions in § 600.305. "Shall" is used only when quoting directly from the statute, "must" denotes a statutory obligation, and "should" indicates that an action is strongly recommended to fulfill the

Secretary's interpretation of the Magnuson-Stevens Act.

National Standard 1

1. Section 600.310(c)(3) has been revised to indicate that a reasonable proxy for the MSY stock size is approximately 40 percent of the pristine stock size, rather than the range of 27-75 percent as previously included. This change was made to better reflect the findings of fishery science literature. (See also the response to comment 20 under national standard 1).

2. Section 600.310(d)(4)(iii) has been revised to include a reference to guidelines issued under section 305(b) of the Magnuson-Stevens Act for Council actions concerning essential fish habitat. (See also the response to comment 18 under national standard 1.)

3. Section 600.310(d)(6) has been revised to provide more flexibility in managing mixed-stock fisheries. The proposed guidelines would have allowed overfishing on one component of a mixed-stock fishery only if the rate or level of fishing mortality would not cause any stock or stock complex to fall below its minimum stock size threshold. Paragraph (d)(6)(iii) has been revised to remove that requirement. Paragraph (d)(6)(ii) has been revised to clarify that the intent of the required analysis is thorough consideration of measures that could prevent or mitigate overfishing of one or more stocks in a mixed-stock fishery. (See also the response to comment 35 under national standard 1.)

4. Section 600.310(e)(4)(ii) has been substantively revised to elaborate on the length of rebuilding programs for overfished stocks. The proposed guidelines had simply repeated the statutory language from section 304(e)(4) of the Magnuson-Stevens Act. The notice reopening the comment period offered two options. After considering public comments (see comments 8-16 under national standard 1), NMFS has chosen the more flexible interpretation.

To give meaning to the statutory requirement that a rebuilding program be "as short as possible," the starting point in structuring a rebuilding program is the length of time in which a stock could be rebuilt in the absence of fishing mortality on that stock. If that period is less than 10 years, the factors in section 304(e)(4)(A)(i), including the needs of fishing communities, may be used to adjust the rebuilding period up to 10 years. If the stock cannot be rebuilt within 10 years, because of the factors listed in section 304(e)(4)(A)(ii), the factors in section 304(e)(4)(A)(i) may be used to justify a schedule longer than the no-mortality period. To ensure that

the rebuilding period is not indefinite, the outside limit of the rebuilding period is the no-mortality period plus one mean generation time (or equivalent period based on the species' life-history characteristics).

5. Section 600.310(f)(2)(i) and (ii) have been revised so as not to under emphasize the benefits to the Nation accruing from food production and recreational opportunities. (See also the response to comment 34 under national standard 1).

6. Section 600.310(f)(4)(ii) has been revised so that the annual harvest level obtained under an OY control rule "must" instead of "should" always be less than or equal to the harvest level under an MSY control rule. This change reflects the SFA's amendment to the definition of "optimum."

7. Section 600.310(f)(4)(iii) has been revised to change the term "research fishing" to "scientific research" to clarify that "fishing" under the Magnuson-Stevens Act does not include scientific research activity conducted from a scientific research vessel. (See also the response to comment 45 under national standard 1.)

National Standard 2

1. Section 600.315(e)(1) introductory text has been revised to clarify that SAFE reports are intended to summarize the most recent information concerning the biological condition of stocks and the marine ecosystems in the fishery management unit and the social and economic condition of the recreational and commercial fishing interests, fishing communities, and the fish processing industries. (See also the response to comment 4 under national standard 2.)

2. Section 600.315(e)(1)(ii) has been revised to include safety as one of the types of information that should be summarized in SAFE reports. (See also the responses to comment 2 under national standard 2 and comment 3 under national standard 10).

National Standard 5

Section 600.330(b)(1) has been revised to replace the term "encouraging," with regard to efficient utilization of fishery resources, with the term "considering," to make the wording consistent with the intent of Congress. (See also the response to comment 1 under national standard 5.)

National Standard 8

Section 600.345(c) has been revised, replacing "should" with "must" in order to reflect the obligation under national standard 8.

National Standard 9

1. Section 600.350(b) has been revised in its entirety to clarify the consideration of bycatch effects of existing and planned conservation and management measures. (See also the response to comment 11 under national standard 9.)

2. Section 600.350(c) has been revised to add language to clarify that Atlantic highly migratory species harvested in a commercial fishery that are not regulatory discards and that are tagged and released alive under a scientific tag-and-release program established by the Secretary are not considered bycatch. Also, language was added to specify that bycatch includes the discard of whole fish at sea or elsewhere. (See also the responses to comments 7 and 8 under national standard 9.)

3. Section 600.350(c)(2) has been removed. (See also the response to comment 7 under national standard 9.)

4. Section 600.350(d) has been revised by replacing "should" with "must" in order to reflect the obligation under national standard 9. The introductory text has also been revised to emphasize that NMFS believes the first priority for reducing bycatch should be to avoid catching bycatch species where possible. Additional text has been added to § 600.350(d) to indicate that, in their evaluation of bycatch minimization measures, Councils must consider net benefits to the Nation. At the end of § 600.350(d) introductory text, the word "shall" has been changed to "must" to emphasize that the evaluation requirements of the Magnuson-Stevens Act under this national standard are not discretionary. (See also the responses to comments 24, 25, and 28 under national standard 9.)

5. The first sentence in section 600.350(d)(1) has been revised, replacing "should" with "must" in order to reflect the required provisions of a fishery management plan under section 303(a)(11) and (12) of the Magnuson-Stevens Act.

6. Section 600.350(d)(2) has been revised to indicate that, in the absence of quantitative estimates of the impacts of each alternative, Councils may use qualitative "measures" (rather than "estimates"). In addition, a sentence has been added to indicate that information on amount and type of bycatch should be summarized in the SAFE report. (See also the response to comment 31 under national standard 9.)

7. Section 600.350(d)(3) has been revised to include language that indicates that determinations of whether conservation and management measures minimize bycatch and bycatch mortality

to the extent practicable must also be consistent with maximization of net benefits to the Nation. The paragraphs under § 600.350(d)(3) have been redesignated to accommodate the addition of a new paragraph (d)(ii), which states that the Councils should, in selecting bycatch minimization measures, adhere to the precautionary principle found in the FAO Code of Conduct for Responsible Fisheries. (See also the responses to comments 33 and 35 under national standard 9.)

8. Section 600.350(d)(4) has been revised to delete the terms "implement" and "implementation" when referring to the Councils' required actions under national standard 9, because it is NMFS' responsibility, rather than that of the Councils, to implement management measures. This change was not a result of public comment.

National Standard 10

Section 600.355(b)(3) has been revised to include language that clarifies that safety of the fishing vessel and the protection from injury of persons aboard the vessel are considered the same as "safety of human life at sea." (See also the response to comment 5 under national standard 10.)

Comments and Responses

General

Numerous commenters concluded that, in general, the proposed guidelines reflect fairly the intent of the SFA's amendments to the Magnuson-Stevens Act. Comments concerning specific aspects of the proposed revisions to guidelines for individual national standards are presented and responded to in the following paragraphs.

NMFS received several comments on language contained in the preamble of the proposed rule. Because the preamble was intended only to explain and clarify material contained in the codified text, NMFS has not responded to comments that pertained only to the preamble. However, in instances where such comments pertained also to language in the codified text, or where such comments led to changes in the codified text from the proposed rule, NMFS has responded in the following paragraphs.

Comment 1: Several commenters expressed their view that sufficient flexibility should be provided in the guidelines to provide managers with appropriate latitude to meet the objectives of the SFA while respecting the needs of communities and citizens.

Response: NMFS agrees that some flexibility in application of the national standards was intended by Congress, is necessary to manage the diverse

fisheries of the Nation, and should be provided to respond to the needs of fishery participants and communities, so long as the stocks upon which the fisheries are based can be rebuilt and their productivity sustained. However, any such flexibility must be consistent with all of the statutory requirements of the Magnuson-Stevens Act. In addition, NMFS believes that the guidelines must reflect the intent of the Magnuson-Stevens Act taken as a whole. After carefully considering the public comments received, the language in the SFA, and the legislative history, NMFS concluded that there is justification to introduce greater flexibility in certain aspects of the guidelines, most notably the rebuilding schedules for overfished stocks and for mixed-stock fisheries; those changes have been made in this final rule. (See also Changes from the Proposed Rule and responses to comments 9 and 35 under national standard 1.)

Comment 2. One letter of comment stated that the final rule should clarify that the national standard guidelines are advisory and do not have the force and effect of law.

Response. NMFS agrees that the guidelines do not have the force and effect of law and believes it made that point clearly in the preamble to the proposed rule. For example, the proposed rule contains the following statements:

(1) "These proposed guidelines are intended to provide direction and elaboration on compliance with the national standards and, in themselves, do not have the force and effect of law."

(2) "The guidelines are intended to assist in the development and review of Fishery Management Plans (FMPs), amendments, and regulations..."

(3) "The proposed guidelines explain requirements and provide some options for compliance with the guidelines. Lists and examples are not all inclusive; rather, they are intended to provide illustrations of the kind of information, discussion, or examination/analysis useful in demonstrating consistency with the standard in question. The proposed guidelines are intended to provide for reasonable accommodation of regional or individual fishery characteristics, provided that the requirements of the Magnuson-Stevens Act are met. The guidelines are intended as an aid to decision making, with responsible conservation and management of valued national resources as the goal."

(4) "The main purpose of the guidelines is to aid the Councils in fulfilling the requirements of the Magnuson-Stevens Act."

Throughout the proposed rule, the guidelines are referred to as advisory, explanatory, and interpretive. In addition, NMFS has attempted to make clear the distinction between "must" and "should" as used in the guidelines.

Comment 4. One commenter stated that it will be very difficult for the Councils to meet the SFA's compliance deadlines for all fisheries, given the requirements set forth in the guidelines.

Response. NMFS agrees that the statutory deadlines established by the SFA and reflected in the guidelines will be challenging to meet. However, NMFS is committed to working closely with the Councils to meet those deadlines.

Comment 5. One commenter suggested that aquaculture activities should be considered in the guidelines because, even with the best regulatory controls and the restoration of wild stocks to levels that produce maximum sustainable yield (MSY), the demand for seafood products cannot be met from these sources alone.

Response. Aquaculture is considered a fishery, as defined by the Magnuson-Stevens Act, so the national standard guidelines apply and should be followed by Councils as they consider integrating aquaculture activities into FMPs.

Comment 6. One commenter questioned NMFS' ability to comply with several provisions of the SFA because of budgetary constraints.

Response. Compliance with all of the provisions of the amended Magnuson-Stevens Act has been difficult, at best. However, NMFS has had significant success in implementation, using all of the available resources, using all of the available tools at its disposal. For example, the great majority of the deadlines established in the SFA that are within the control of NMFS have been met. In the few instances where deadlines have been missed, it has been primarily the result of providing additional time for public involvement and comment. NMFS' successes in meeting deadlines have been due in part to reprogramming of priorities and resources within NMFS to the maximum extent allowed by law, and to Congressional reprogramming of funds made available within NOAA.

Comment 7. One commenter stated that NMFS must consider all affected users, including seafood consumers, in managing fisheries. The goal should be healthy, sustainable use for everyone's benefit.

Response. NMFS agrees that all users must be considered in achieving the Magnuson-Stevens Act's goal of maximizing net benefits to the Nation.

Comment 8. Two commenters stated that NMFS is inviting trouble by stating in the preamble that it will take considerable time and effort to bring all FMPs into compliance. Waiting until the October 11, 1998, deadline to amend all FMPs will cause a logjam of amendments, and conservation reforms will not be implemented in a timely manner.

Response. NMFS has worked with the Councils from the earliest stages of implementation of the SFA to plan and prepare for necessary amendments of FMPs. In addition, NMFS has conveyed to the Councils that, on October 11, 1996, the day the President signed the SFA into law, many of the provisions of the SFA, such as national standards 8, 9, and 10, became effective. All regulatory actions finalized after that date were required to comply with those standards, as well as with many other provisions of the SFA. In some cases, the details of implementation have had to be developed, such as the national standard guidelines that are the subject of this rule. Until those details are finalized, the Councils will not be able to take them fully into account in development of their management actions. As the specifics of those provisions are finalized, all of the Councils' proposed actions will be judged on the basis of those requirements, as well.

Comment 9. Several commenters suggested that anecdotal information and public testimony should be allowed and treated as fact. A particular concern was that, in establishing objective and measurable criteria for determining the status of a stock, anecdotal information from fishermen, especially commercial information, is precluded from use in stock assessments.

Response. The Magnuson-Stevens Act requires the use of the best scientific information available and the use of quantifiable parameters to manage fisheries. The inclusion of objective and measurable criteria in the guidelines applies the Magnuson-Stevens Act's approach to using reproducible, scientifically based information in stock assessments. This approach is necessary to preclude having to choose among unsubstantiated opinions about a stock's condition. The public is free, however, to submit anecdotal information to the Councils and to the Secretary, including through public testimony and comment during the development of plans and implementing regulations; all such information will be made part of the administrative record. While anecdotal information cannot be afforded the same status as scientific information obtained under a well-designed data collection

plan, it can be particularly useful in identifying potential problems with scientifically obtained information and can be part of the basis for a redesign of the data collection program.

Comment 10. Several commenters requested that, given the complex nature of the proposed guidelines, additional time be allowed for public comment. Others expressed serious concern that the lack of guidance on critical issues such as overfishing could compromise the ability of the Councils to comply with the new conservation requirements of the Magnuson-Stevens Act. Some commenters felt that delays in issuing final guidelines have undermined public confidence in NMFS' commitment and ability to effectively implement the conservation mandates of the Magnuson-Stevens Act and urged NMFS to complete the comment periods and proceed with advice and guidelines to the Councils as swiftly as possible.

Response. Despite its commitment to publish final guidelines as soon as possible, after reviewing the diverse comments received during the first comment period, NMFS determined that it was in the best interest of the public to provide an additional opportunity for comment on the most problematic issues regarding national standard 1. However, the completion of the Report to Congress and notification of Councils of the list of overfished fisheries on September 30, 1997, placed an imperative on NMFS to complete the guidelines as quickly as possible. If Councils fail to submit rebuilding plans for all overfished stocks by September 30, 1998, the Secretary must develop rebuilding plans for the Councils for each overfished stock by June 30, 1999.

Comment 11. One commenter disagreed with NMFS' determination that the proposed rule would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

Response. NMFS believes that its determination of no significant economic impacts on a substantial number of small entities in the proposed rule accurately reflects the effects of this action on small entities. Because this rule only amends guidelines, and does not have the force and effect of law, it does not, in itself, revise any existing regulatory programs or establish any new regulatory requirements. NMFS has no basis, at this time, to assess specific effects of possible future management actions that may result from this rule, except in the broadest sense. Only when future amendments to fishery management programs are implemented

will potential impacts on small entities occur. At the time regulations are developed, the impacts on small entities of potential alternatives will be assessed; Regulatory Flexibility Analyses and other analytical documents will be prepared, as required by applicable law, and made available for public comment.

National Standard 1

Comment 1. Several commenters objected to the fundamental role played by MSY throughout the guidelines for national standard 1. A variety of reasons were cited, including the lack of flexibility afforded by use of MSY, the difficulty of estimating MSY, and the fact that some fishery scientists disfavor the concept.

Response. No change was made. MSY is key to the Magnuson-Stevens Act, even more so than under the former Magnuson Act. MSY now constitutes an upper limit on optimum yield (OY), as stated in section 3(28)(B) of the Magnuson-Stevens Act; is established as the initial target for rebuilding an overfished stock or stock complex in section 3(28)(C); and is the cornerstone of the definition of overfishing in section 3(29). In reviewing the language in the Magnuson-Stevens Act as a whole, and the legislative history of the SFA, NMFS believes the lack of flexibility imposed by ascribing such a fundamental role to MSY was clearly an intent of Congress. The difficulty of estimating MSY is a significant problem that will require the best efforts of NMFS and the Councils to solve. While it is true that some fishery scientists disfavor the concept of MSY, others find it very useful, and its application in international agreements is on the increase, particularly in the establishment of precautionary approaches to fishery management.

Comment 2: Several commenters offered the following view relative to the usage of "overfishing" and "overfished": The terms "overfishing" and "overfished" used in the SFA are intended to have the same meaning given to the term "overfishing" in the existing guidelines and are not intended to change the emphasis on or timeframe for addressing overfishing. The deletion of the modifier "long-term" from the regulatory definition of "overfishing" was not significant; the use of MSY is a target, not a constraint within which OY is determined. However, use of the term "fishery" instead of "stock or stock complex" in the SFA definition of overfishing and overfished was an intentional change from the wording in the existing guidelines to ensure that

multi-species or mixed-stock fisheries are managed and considered as a unit.

Other commenters agreed with NMFS' interpretation that removal of the phrase "long-term" in the statutory language is significant in that it raises the standard to which conservation and management measures are held.

Response: NMFS disagrees that the definition for "overfishing" and "overfished" in the SFA did not change the emphasis on or timeframe for addressing overfishing or that MSY is only a target instead of a constraint. However, NMFS does agree that use of the term "fishery" instead of "stock or stock complex" was an intentional change intended to allow for the management of mixed-stock fisheries on a unit basis (see also response to comments 35 and 36). The definition for "overfishing" and "overfished" (identically defined) has as its basis the current definition of "overfishing" in the existing national standard guidelines (50 CFR 600.310(c)(1)). That definition states: "Overfishing is a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis."

During the development of the Magnuson-Stevens Act's amendments, NOAA suggested to Congressional staff that the phrase "long-term" be deleted from the definition of "overfishing" to require Councils to stop overfishing sooner rather than later. Congress chose to delete the modifier "long-term" when referring to the capacity of a stock to produce MSY. NOAA considered this change to be significant. Other amendments to the SFA bolster this interpretation:

(1) The rebuilding requirements (especially the 10-year maximum with three very limited exceptions, and the Secretary's obligation to develop rebuilding plans if the Councils fail to do so).

(2) Congress' conclusion that the survival of certain stocks is threatened and that immediate action needs to be taken to protect those stocks (section 2(a)(2) of the SFA).

In addition, floor debates in both the House and Senate expressed Congressional displeasure with the length of time Councils have taken in the past to address overfishing problems (see, for example, the statement of Senator Stevens at S10810, September 18, 1996).

The SFA points to MSY as the goal of rebuilding programs and to maintenance of stocks at this level on a continuing basis. Unless MSY is established as a strict goal, the greatly enhanced benefits anticipated by enactors of the SFA

cannot be achieved. This position is supported by the following:

(1) The intent of the SFA was to require Councils to ensure that fish stocks were not harvested beyond their MSY, as evidenced by the debate on the floor of the House, when members voted 304-113 to adopt the Gilchrest amendment specifically stating that OY could no longer exceed MSY. The new definition of "optimum" was maintained in the Senate bill that ultimately became law.

(2) Section 3(28)(C) indicates that, for overfished fisheries, rebuilding is to occur until the stocks have reached a level that can produce MSY on a continuing basis.

(3) Inclusion of a rebuilding requirement in the Magnuson-Stevens Act implies that stock size is relevant to the concept of "overfishing" and "overfished," and that MSY (a measure of biomass) is to be used as the measure against which the success of a rebuilding program is judged. A rebuilding requirement without a biomass foundation has no meaning.

(4) The phrase "on a continuing basis" in the SFA definition of "overfishing" indicates that stocks are to be maintained at levels capable of producing MSY (and OY) on a continuous (uninterrupted) basis; thus, short-term overfishing that causes populations to decline below these levels is not permissible. HR 39 would have allowed OY to exceed MSY for healthy fisheries, but that approach was rejected in the Senate bill, which became law.

(5) Senator Hollings in the floor debate on the Sustainable Fisheries Act (Congressional Record - Senate, September 18, 1996) stated that "The bill also: First, caps fishery harvests at the maximum sustainable levels and requires action to prevent overfishing and rebuild depleted fisheries; . . ."

(6) The summary of the Managers Amendment to S. 39 (The Sustainable Fisheries Act), as printed in the Congressional Record - Senate on September 19, 1996, states in the discussion regarding definitions that "this change prevents the maximum sustainable yield of a fishery from being exceeded."

(7) Senate Report No. 104-276 regarding the Sustainable Fisheries Act states on page 4077 that "Finally, the substitute would amend the existing definition of 'optimum' with respect to fishery yield to cap fish harvests at the maximum sustainable yield."

Comment 3. Several commenters objected to the proposed definition of MSY control rule in § 600.310(c)(1)(ii) or to the identification of the maximum

fishing mortality threshold with the MSY control rule in § 600.310(d)(2)(i). Typically, the objections centered around the degree of flexibility afforded to the Councils in choosing the form of the MSY control rule (and thereby, the maximum fishing mortality threshold). Commenters generally felt that the language of the Magnuson-Stevens Act permits only one choice of MSY control rule—namely, harvesting at a single, invariant rate, where this rate is chosen so as to maximize the resulting long-term average yield. Given this interpretation, the commenters stated that the Councils should be denied the option of varying the maximum fishing mortality threshold as a function of stock size.

Response. No change was made. While the Magnuson-Stevens Act clearly requires that fishing mortality be prevented from exceeding rates or levels that would jeopardize the capacity of a stock or stock complex to produce MSY on a continuing basis, it does not indicate that such rates or levels cannot vary with stock size. In general, MSY control rules that allow for the fishing mortality rate to vary with stock size (i.e., those that decrease fishing mortality when stock size is low) provide a higher average catch and a lower probability of observing a seriously reduced stock size than those that require the fishing mortality rate to remain constant. NMFS believes both of these characteristics are very much in keeping with the letter and intent of the Magnuson-Stevens Act.

Comment 4. Several commenters objected to the proposed inclusion of a "constant catch" example in § 600.350(c)(2)(i), feeling that this particular MSY control rule is inefficient or potentially dangerous.

Response. No change was made. The example is included partly for logical completeness. The commenters are correct that this control rule is a safe harvest strategy only when the catch level is chosen very conservatively, in which case some amount of potential yield is foregone. However, in cases where minimizing harvest variability is a primary concern, it is conceivable that the greatest net benefits might be realized by making such a tradeoff (i.e., by giving up a certain amount of catch, on average, in order to increase year-to-year stability of harvests).

Comment 5. Several commenters objected to the proposed definition of MSY in § 600.310(c)(1)(i). Concerns included the fact that the largest long-term average catch may vary with changes in the minimum size limit or selectivity pattern, the perception that the definition is invalid for stocks that

are already overfished, and the difficulty of establishing a long-term average under current environmental conditions when those conditions do not prevail over the long term.

Response. No change was made. As defined in § 600.310(c)(1)(i), MSY does not vary with changes in the minimum size limit or selectivity pattern. While such changes can have an effect on long-term average catches, the guidelines view MSY in a more global sense. In other words, MSY is the largest long-term average catch across all possible management regimes, not just a single management regime characterized by a particular minimum size limit or selectivity pattern. In terms of its applicability to overfished stocks, the guidelines' definition of MSY is valid, providing that "long-term" is suitably defined. As to the relationship between MSY and environmental conditions, it should be noted that MSY is the largest long-term average catch that could be obtained if current ecological and environmental conditions were to remain constant indefinitely. Of course, ecological and environmental conditions do not remain constant indefinitely, which is one of the reasons for the guidelines' emphasis on the fact that MSY is a theoretical concept, rather than an empirical one.

Comment 6. Several commenters were concerned that insufficient consideration was given to allowing for uncertainty in the estimation of MSY, for example due to errors in catch and other input data, estimation errors in stock assessments, frequency of stock assessments, and changes in environmental conditions.

Response. No change was made. As emphasized in § 600.310(c)(2)(ii), allowing for uncertainty in the estimation of MSY is important. The items listed in the above comment are excellent examples of factors that Councils are encouraged to consider in the process of incorporating appropriate consideration of risk into the estimation of MSY.

Comment 7. Several commenters objected to the examples of alternatives to specifying MSY in § 600.310(c)(3). A variety of reasons were cited, including the fact that some of the examples listed might not be appropriate in all cases, the fact that some possible alternatives were not listed, and the fact that the alternatives listed depend on estimated values rather than known quantities.

Response. No change was made. As noted in § 600.305(c)(9), examples (such as those listed in § 600.310(c)(3)) are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options. Thus,

the reference points listed in § 600.310(c)(3) are intended to suggest some ways in which Councils might proceed in the event that data are insufficient to estimate MSY directly. The fact that a reference point is not included in § 600.310(c)(3) does not necessarily mean that it may never be used as a proxy for MSY. Nor does the fact that a reference point is included in § 600.310(c)(3) necessarily mean that it may always be used as a proxy for MSY. However, there is no escaping the conclusion that, regardless of whether MSY or a proxy is used, some sort of estimation will necessarily be involved.

Comment 8. Several commenters objected to proposed paragraphs that contain references to a 10-year time period for rebuilding, but that do not contain the full text of the statutory language clarifying that 10 years is a constraint rather than a target. In particular, some commenters objected to the mention of a 10-year time period for rebuilding in § 600.310(d)(2)(ii), feeling that this contradicted the fuller discussion of the statutory language in § 600.310(e)(4)(ii). More specifically, a stock that is below the MSY level, but not overfished under § 600.310(d)(2)(ii), might take as long as 10 years to rebuild to the MSY level if fished at the maximum rate allowable under § 600.310(d)(2)(i), even though the Magnuson-Stevens Act states clearly that the rebuilding period for an overfished stock or stock complex must be as short as possible, taking into account the status and biology of the stock or stock complex, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock or stock complex within the marine ecosystem.

Response. No change was made. The statutory timeframe for rebuilding is clearly a binding constraint on Council actions undertaken to rebuild a stock or stock complex that is overfished. No provision of the guidelines can, or is intended to, override the statutory language. The subject of § 600.310(d)(2)(ii), the minimum stock size threshold, is distinctly different from the subject of § 600.310(e)(4)(ii), the acceptable timeframe for rebuilding an overfished stock or stock complex. The former describes how to tell whether a stock or stock complex is overfished, while the latter describes what to do if a stock or stock complex is overfished.

Comment 9. Several commenters asked that the guidelines contain an explicit interpretation of the statutory description of the time period for

rebuilding summarized in § 600.310(e)(4)(ii) of the proposed rule.

Response. NMFS agrees; this request was a primary reason the comment period was reopened. As described under Changes from the Proposed Rule, § 600.310(e)(4)(ii) has been substantially revised to interpret the statutory provision.

Comment 10. One commenter stated that the biology of the stock does not dictate a rebuilding period of more than 10 years unless recovery is impossible in the absence of all fishing mortality.

Response. The starting point in structuring a rebuilding program is the length of time it would take a stock to recover if fishing mortality ceased. That a stock is long-lived, or reproduces slowly, does not necessarily mean that it could not be rebuilt within 10 years. The initial relevant inquiry is the no-fishing mortality period. If it is less than 10 years, factors such as the needs of fishing communities may justify lengthening the schedule to 10 years. If the no-mortality period is longer than 10 years, the schedule can also be adjusted, relying on those factors, up to a limit based on the stock's life-history characteristics.

Comment 11. A number of commenters preferred the first option offered in the notice reopening the comment period. They believed the rebuilding period should not be indeterminate. For stocks that cannot be rebuilt within 10 years, even in the absence of fishing mortality, the commenters thought the factors in section 304(e)(4)(A)(i) of the Magnuson-Stevens Act should not be used to extend the rebuilding period.

Response. NMFS agrees that the rebuilding period should not be indeterminate. For stocks that will take more than 10 years to rebuild, the guidelines impose an outside limit that is objective, measurable, and linked to the biology of the particular species. While the statutory language is subject to more than one interpretation, NMFS believes the factors in section 304(e)(4)(A)(i) may be used to extend the rebuilding period, whether the no-fishing mortality period is shorter or longer than 10 years.

Comment 12. Two commenters argued that "as short as possible" means the time period should not be allowed to stretch to 10 years for stocks that could be rebuilt more quickly.

Response. The guidelines allow a rebuilding program to extend to 10 years, but only when the Council can justify that the needs of fishing communities or other factors in section 304(e)(4)(A)(i) of the Magnuson-Stevens

Act outweigh the imperative to rebuild the stock as quickly as possible.

Comment 13. Other commenters stated the outer limit should be "reasonable," perhaps based on life-history characteristics. Proposals included 10 years plus one reproduction cycle; one generation time; and the no-fishing mortality period plus a period linked to fishing mortality levels that will not prevent steady rebuilding. Some commenters believed that Congress did not intend for many fisheries to be closed if they could not be rebuilt within 10 years; rather, a reduced level of fishing should be allowed.

Response. The guidelines strike a balance between the Congressional directive to rebuild stocks as quickly as possible, and the desire, expressed in national standard 8, to minimize adverse economic effects on fishing communities. For stocks that cannot be rebuilt within 10 years, the guideline allows flexibility in setting the rebuilding schedule beyond the no-fishing mortality period, but places a reasonable, species-specific cap on that flexibility by limiting the extension to one mean generation time. Reduced fishing mortality that result in steady increases in the biomass are acceptable, if rebuilding goals can be met within the timeframe specified in the guideline.

Comment 14. A few commenters thought there should be no upper limit on the rebuilding period, and that the length of a rebuilding schedule should be left to Council discretion.

Response. Congress chose 10 years as the upper limit for the rebuilding period for most stocks; the exceptions in section 304(e)(4)(A)(ii) of the Magnuson-Stevens Act are narrow. For stocks that fall within the exceptions, the mandate that they be rebuilt in "as short as possible" a period indicates the need for a definite, measurable bound on the rebuilding schedule. The Congressional intent is very clear, that the previous practice of unlimited discretion in rebuilding stocks must be changed.

Comment 15. Several commenters suggested that stocks whose rebuilding would not be affected by the cessation of fishing mortality should be exempt from the provisions of section 304(e)(4) of the Magnuson-Stevens Act.

Response. NMFS understands that factors other than fishing mortality confound and handicap rebuilding efforts for some stocks, but can find no basis in the statute for exempting such stocks from the rebuilding requirement. (See also the response to comment 18 under national standard 1). The flexibility introduced in the rebuilding and mixed-stock provisions of the

guidelines should assist in management of these stocks.

Comment 16. Two commenters suggested that the guidelines contain an explicit description of the starting point for the rebuilding period.

Response. Section 600.310(e)(4)(ii) has been revised to indicate that the rebuilding period commences as soon as the first measures in a new or revised rebuilding program are implemented.

Comment 17. Two letters of comment raised concern that rebuilding programs may not be adopted until the year 2000 due to delays in approving new overfishing definitions and the submission of rebuilding programs based on those definitions. The commenters believe that new overfishing definitions and rebuilding programs in accordance with those programs should be submitted by October 11, 1998.

Response. NMFS agrees that rebuilding programs may be delayed beyond the year 2000, given the schedules established by the SFA, but will work with the Councils to implement revised definitions of overfishing and rebuilding plans as soon as possible. NMFS has clearly communicated to the Councils that section 108(b) of the SFA requires them to amend their FMPs not later than 24 months after enactment of the SFA (October 11, 1996) to bring them into conformance with the provisions of sections 303(a)(1), (5), (7) and (9)-(14) of the Magnuson-Stevens Act. Section 303(a)(10) specifically requires the specification of objective and measurable criteria for identifying when the fishery to which the FMP applies is overfished, and section 304(e) requires the submission of rebuilding plans for stocks that are determined to be overfished.

On September 30, 1997, NMFS submitted a report to Congress that identified those stocks in their areas of jurisdiction that are overfished or approaching an overfished condition, based on existing overfishing definitions, as required by the Magnuson-Stevens Act. The Councils were notified that they have 1 year within which to submit rebuilding programs for those stocks identified as overfished. Therefore, the Councils are to be simultaneously working on both new definitions of overfishing and rebuilding plans, as necessary. As new overfishing definitions are approved, the status of stocks will need to be reassessed against those new criteria. It is likely that some stocks that were not listed as overfished when judged against the overfishing definitions in place in September 1997 will be determined to

be overfished when compared to the criteria in new definitions. If and when that occurs, NMFS will notify the affected Council(s) and the public of that fact and the Council(s) will have 1 year from that date in which to submit a rebuilding plan.

Comment 18. Two commenters suggested that the guidelines elaborate on the relationship between environment/habitat and the specified time period for rebuilding. In particular, the commenters wondered what is meant by the term "environmental conditions," whether remedial action would still be required in the event that environmental conditions cause the minimum possible rebuilding time to exceed 10 years, whether MSY should be re-estimated if habitat capacity changes, and, if so, whether remedial action could appropriately address habitat issues as well as fishing mortality.

Response. Except for a slight revision to § 600.310(d)(4)(iii), as described below, no change was made. "Environmental conditions" means those biological or physical components of the marine ecosystem with which the overfished stock or stock complex interacts (also see revised § 600.310(e)(4)(ii)). Council action is required whenever a stock or stock complex is determined to be overfished, regardless of whether it is possible to achieve rebuilding within 10 years. Regarding MSY, it is clear from the definition in § 600.310(c)(1)(i) that MSY is conditional on the state of the environment, which includes habitat. As noted in § 600.310(d)(4)(ii), environmental changes that affect the long-term productive capacity of the stock or stock complex require re-specification of one or more status determination criteria. As noted in § 600.310(d)(4)(iii), Councils should recommend restoration of habitat in cases where manmade environmental changes are partially responsible for a stock or stock complex being in an overfished condition. In addition, § 600.310(d)(4)(iii) has been revised to reference the Councils' responsibilities in cases where essential fish habitat is concerned.

Comment 19. Several commenters objected to the proposed requirement that each FMP specify, to the extent possible, both a maximum fishing mortality threshold and a minimum stock size threshold for each stock or stock complex covered by that FMP (§ 600.310(d)(2)).

Response. No change was made. Section 303(a)(10) of the Magnuson-Stevens Act requires the specification of status determination criteria, and

sections 304(e)(1) and 304(e)(2) state that these criteria are to be used for the purpose of determining which fisheries are in need of action "to end overfishing" and "to rebuild affected stocks of fish." The only way that both needs ("end overfishing" and "rebuild affected stocks") can be addressed is if the status determination criteria include measures appropriate to each—namely, one measure pertaining to the rate of fishing mortality and another measure pertaining to the size of the stock. That is, if only a maximum fishing mortality threshold were specified, it would be possible to determine which fisheries require action to end overfishing, but it would not be possible to determine which fisheries require action to rebuild affected stocks. Conversely, if only a minimum stock size threshold were specified, it would be possible to determine which fisheries require action to rebuild affected stocks, but it would not be possible to determine which fisheries require action to end overfishing.

Comment 20. Several commenters objected to the proposed provision in § 600.310(d)(2)(ii) that would allow the minimum stock size to be as low as 50 percent of the MSY stock size, conditional on an appropriate choice of MSY control rule. These commenters felt uniformly that Congress intended for any stock or stock complex below its MSY level to be considered overfished, and suggested that a stock size threshold be set at 80 percent (one commenter said "at or above 80 percent") of the MSY stock size. The commenters were divided over whether this reference point should constitute a minimum threshold or an "interim" threshold, where an interim threshold was defined as a point that "should trigger a review of what remedial action is necessary to prevent the decline from continuing."

Response. No change was made. A key question is whether Congress intended for each stock or stock complex that temporarily falls below its MSY level to be considered overfished, even if the rate of fishing mortality on that stock or stock complex has consistently been within the limit allowed by the MSY control rule. If the answer is "yes," then any threshold below the MSY stock size is unacceptable. For example, a threshold set at 80 percent of the MSY stock size is just as unacceptable as one set at 50 percent of the MSY stock size. However, NMFS believes it is important to remember that natural variability is an inherent part of fishery systems, and that any stock or stock complex managed for MSY will sooner or later

fall below its MSY level, though only temporarily.

Because the Magnuson-Stevens Act explicitly allows OY to be as high as MSY, NMFS believes that Congress must have intended to allow stocks to be managed such that stocks were capable of producing MSY, meaning that Congress must have been willing to accept the consequence that some stocks would fall below their respective MSY producing levels temporarily. Given this interpretation, the question becomes, "How low is too low?" While the fishery science literature does not provide a definitive answer to this question, NMFS believes that a prudent rule can be established as follows: Two of the best known models in the fishery science literature find that, on average, the stock size at MSY is approximately 40 percent of the stock size that would be obtained if fishing mortality were zero (the pristine level). (The actual values are 36.8 percent (Compertz-Fox model) and 50 percent (Verhulst-Schaefer model).) Also, the fishery science literature contains several suggestions to the effect that any stock size below about 20 percent of the pristine level should be cause for serious concern. In other words, a stock's capacity to produce MSY on a continuing basis may be jeopardized if it falls below a threshold of about one-fifth the pristine level. Expressing this threshold in terms of the stock size at MSY results in a minimum stock size threshold equal to 50 percent of the MSY level. A stock at 50 percent of its MSY level would typically be close to 20 percent of its pristine level, a threshold below which it must not be allowed to fall.

Of course, the guidelines do not prohibit the Councils from setting as many "interim" stock size thresholds as they like, so long as these are above the minimum stock size threshold. However, it would be a mistake for the guidelines to require use of an interim stock size threshold set at 80 percent of the MSY level in all cases, insofar as some stocks may be incapable of rebuilding to the MSY level from such a threshold within the statutory time period, depending on the status and biology of the stock, the stock's interactions with other components of the marine ecosystem, and the choice of MSY control rule.

Comment 21. Several commenters suggested that the guidelines contain an explicit prohibition against "short-term" or "pulse" overfishing.

Response. No change was made. Taken together, § 600.310(d)(2)(i), (e)(3), and (e)(3)(i) already indicate that exceeding the maximum fishing

mortality threshold for even a single year is not permissible, except as provided under § 600.310(d)(6). If "short-term" or "pulse" overfishing means that the maximum fishing mortality threshold would be exceeded for a period of at least 1 year, then the guidelines clearly prohibit these practices.

Comment 22. Two commenters suggested that the minimum stock size threshold should always be set equal to the MSY stock size. However, one of these commenters further suggested that it should be permissible for a stock or stock complex to fall slightly below its minimum stock size threshold on an occasional basis without being considered overfished.

Response. No change was made. Setting the minimum stock size threshold equal to the rebuilding target means that natural variability will frequently cause stocks to be classified as "overfished," even if no overfishing ever occurs. The suggestion to permit occasional, slight violations of the minimum stock size threshold would require establishing criteria for determining the acceptable rate and extent of threshold violation, which would undoubtedly be a problematic exercise.

Comment 23. Several commenters suggested that the guidelines should incorporate, to the maximum extent possible, recent strides made in the application of the precautionary approach, such as those contained in the United Nations Treaty on Straddling Stocks and Highly Migratory Species.

Response. No change was made. The guidelines are already very much in step with, and in some cases ahead of, recent strides made in the application of the precautionary approach in the international arena. In addition, as noted in the preamble of the proposed rule, further technical guidance regarding specification of a precautionary approach will be provided by NMFS in the near future.

Comment 24. One commenter suggested that the guidelines should require all MSY estimates (both point estimates and ranges) and OY specifications (both single values and ranges) to be accompanied by confidence intervals, which the commenter felt to be a basic component of a risk-averse approach. The commenter suggested that such confidence intervals could be qualitative in nature, if necessary.

Response. No change was made. NMFS agrees that a risk-averse approach is highly desirable, both for estimation of MSY and for specification of OY, but does not believe that requiring

confidence intervals for these quantities is necessarily the best or only way to implement such an approach. For example, if point estimates are determined in an explicitly risk-averse manner, the addition of confidence intervals could prove more confusing than helpful, especially to a nontechnical audience. However, in those cases where Councils feel that confidence intervals would be helpful, § 600.310(c)(2)(ii) already gives the Councils explicit latitude to use them. The same paragraph also requires that appropriate consideration of risk be incorporated into estimates of MSY, while § 600.310(f)(5)(iii) states that criteria used to set target catch levels (such as OY) should be explicitly risk averse, so that greater uncertainty regarding the status or productive capacity of a stock or stock complex corresponds to greater caution in setting target catch levels.

Comment 25. One commenter suggested that a precautionary approach is not appropriate for a management target such as OY.

Response. No change was made. Contrary to this comment, NMFS believes a precautionary approach is particularly appropriate for a management target such as OY. If management is effective, harvests will typically be close to the target level, so if the precautionary approach is to have a substantial impact on fishery management, it needs to be applied to management targets at least as much as to management thresholds.

Comment 26. One commenter suggested that the description of the precautionary approach should state that lack of information should not prevent a Council from taking reasonable steps to address fishery resource problems.

Response. No change was made. This suggestion is already implicit in § 600.310(f)(5)(iii), which states that greater uncertainty (i.e., greater lack of information) should correspond to greater caution in setting target catch levels. NMFS believes that prudent decision-making in the face of uncertainty is a cornerstone of any precautionary approach.

Comment 27. Two commenters expressed concern over the target stock size for rebuilding. One commenter suggested that the target should be the OY stock size and felt that the guidelines erred in treating the MSY stock size as though it were the target. The other commenter suggested that the target ought to be the MSY stock size and felt that the guidelines erred in treating the MSY stock size as though it were a threshold.

Response. The Magnuson-Stevens Act, in section 3(28)(C), implies strongly that the MSY stock size is at least an initial target for rebuilding. Of course, to the extent that OY is lower than MSY and that management is generally successful in achieving OY on a continuing basis, the OY stock size will be greater than the MSY stock size; thus the ultimate target level (OY stock size) will be greater than the initial target level (MSY stock size). The guidelines are consistent in treating the MSY stock size as a constraint rather than as a threshold.

Comment 28. Several commenters suggested that the method for calculating rebuilding time requires clarification. Assuming that some sort of estimation is involved in calculating rebuilding time, a number of possibilities present themselves. Does "rebuilding time" refer to the expected rebuilding time, the median rebuilding time, some percentile of rebuilding times, or something else?

Response. No change was made. The commenters are correct that there are a large number of ways to calculate rebuilding time. In addition to statistics pertaining to the time required to reach some specified stock size, other possibilities include various statistics pertaining to the stock size achieved at some specified future time—for example, the expected stock size, the median stock size, or some percentile of stock sizes. While these choices pose potentially substantive issues, NMFS believes there are a number of reasonable ways to calculate rebuilding time that would be consistent with the provisions of the national standard 1 guidelines. It is beyond the scope of these guidelines to establish a single method to be used in all cases. However, it is possible that the forthcoming technical guidance regarding the precautionary approach (as described in the preamble to the proposed rule) could address these issues.

Comment 29. One commenter suggested that the maximum fishing mortality threshold should be greater than the fishing mortality rate associated with the chosen MSY control rule. The commenter noted that this would be consistent with the approach taken by Rosenberg *et al.* (1994) (see preamble to the proposed rule).

Response. No change was made. The commenter is correct insofar as the report by Rosenberg *et al.* (1994) interpreted the former Magnuson Act as taking overfishing to be a rate of fishing mortality somewhat greater than the rate associated with any MSY control rule. However, it is clear that the Magnuson-

Stevens Act takes a different, more conservative, approach by linking overfishing much more directly to MSY. Allowing the maximum fishing mortality threshold to exceed the fishing mortality rate associated with the MSY control rule would thus be inconsistent with the Magnuson-Stevens Act.

Comment 30. One commenter felt that the proposed procedural requirements for interim measures in § 600.310(e)(5) are too burdensome. The commenter stated that, under the proposed guidelines, the Councils would essentially have to develop the same measures as part of an FMP or amendment for implementation on a more permanent basis, before recommending the measures as interim measures. Instead, the Councils should be allowed to recommend an interim action whenever there is a substantial conservation benefit to be gained.

Response. No change was made. NMFS agrees that actions to address overfishing should not be constrained unnecessarily. Section 304(e)(6) of the Magnuson-Stevens Act states that interim measures can be requested by a Council during its development of an FMP, an FMP amendment, or proposed regulations to address overfishing as required under section 304(e), until such measures can be replaced by such FMP, amendment, or regulations. Section 305(c)(3)(B) of the Magnuson-Stevens Act establishes time constraints on interim actions and makes extensions contingent upon the Council's actively preparing an FMP, FMP amendment, or proposed regulations to address overfishing on a permanent basis. Section 600.310(e)(6) of the guidelines reflects these statutory requirements.

Comment 31. One commenter objected to statements in § 600.310(f)(1)(ii) and (f)(5)(i) to the effect that OY cannot be achieved on a continuing basis if status determination criteria are not met. The commenter contended that the purpose of the status determination criteria is to measure FMP performance, not to control fishing, and that the present wording of the guidelines might preclude a Council from taking a gradual approach toward bringing fishing mortality into conformity with the maximum fishing mortality threshold.

Response. No change was made. NMFS believes that status determination criteria are indeed intended to control fishing. The commenter is correct insofar as the guidelines would preclude a Council from taking a gradual approach toward bringing fishing mortality into conformity with the maximum fishing

mortality threshold. Once a Council is notified that overfishing is occurring, it must take action within 1 year to end overfishing. A gradual approach is not permitted.

Comment 32. One commenter suggested that the guidelines should include a clear statement to the effect that, whenever overfishing is occurring, remedial action is required.

Response. No change was made. The statement already appears in § 600.310(e)(3)(i).

Comment 33. One commenter suggested that the guidelines should encourage adoption of target harvest levels set safely below MSY.

Response. No change was made. The statement already appears in § 600.310(f)(5)(i).

Comment 34. Several commenters suggested that § 600.310(f)(2)(i) and (f)(2)(ii) under emphasized the benefits to the Nation accruing from food production relative to those accruing from recreational opportunities. Two commenters suggested that contributions to the surrounding economies ought to be listed as a benefit accruing from food production, as well as from recreational opportunities. One commenter suggested that the guidelines seemed to equate recreational fishing with non-consumptive use and commercial fishing with consumptive use, giving the impression that recreational fishing does not contribute to food production. One commenter was concerned regarding the vague nature of the "other non-consumptive activities" that were suggested to be "important to the national, regional, and local economies" in § 600.310(f)(2)(ii).

Response. Sections 600.310(f)(2)(i) and (f)(2)(ii) have been revised. NMFS believes that neither the benefits to the Nation accruing from food production nor those accruing from recreational opportunities should be under emphasized. Contributions to the national, regional, and local economies are now listed as benefits accruing from both food production and recreational opportunities. Contrary to one of the comments cited, the proposed rule explicitly acknowledged the contribution of recreational fishing to food production; this acknowledgment is retained in the revised language. The non-specific reference to "other non-consumptive activities" has been deleted from § 600.310(f)(2)(ii), insofar as this paragraph is not intended to provide an exhaustive list of non-consumptive uses.

Comment 35. Several commenters disagreed with the proposed guidelines' allowance of an exception to the requirement of preventing overfishing,

in the case of one stock component of a mixed-stock fishery. They said that the legislative history of the SFA supports elimination of this exception, and challenged NMFS' authority to retain it.

Response. The legislative history of the SFA does not directly address this issue. The statute defines "overfishing" and "overfished" in terms of the capacity of a fishery to produce MSY. National standard 1 requires conservation and management measures to prevent overfishing while achieving the OY from each fishery. Section 304(e) of the Magnuson-Stevens Act requires the Secretary to identify fisheries that are being overfished. The Council must then take steps to end overfishing in the fishery.

A "fishery" is defined in the Magnuson-Stevens Act as "one or more stocks of fish which can be treated as a unit for purposes of conservation and management." In a mixed-stock fishery, several stocks are harvested together and are managed as a unit. From the SFA's focus on "fisheries," and the fact that it did not amend national standard 1, NMFS infers that Congress did not mean to eliminate entirely the long-standing practice of allowing a mixed-stock fishery to continue, if certain conditions specified in the guidelines were met.

To respond to concerns that this exception might become a huge loophole, the proposed guidelines considerably narrowed this exception from the existing guidelines. To allow overfishing of one stock in a mixed-stock fishery, a Council must meet three stringent conditions: (1) It must demonstrate by analysis that the action will result in long-term net benefits to the Nation; (2) it must demonstrate by analysis that a similar level of benefits cannot be achieved by modifying fleet behavior, gear selection or configuration, or other technical characteristic so that no overfishing would occur; and (3) it must ensure that the action will not cause any species or evolutionarily significant unit thereof to require protection under the Endangered Species Act.

The exceptions for mixed-stock fisheries have thus been significantly constrained by requiring that (1) demonstrated net benefits to the Nation be long-term, rather than short-term; (2) an analysis be performed to consider technical or operational alternatives to overfishing; and (3) the stock or stock complex not be driven to a dangerously low level.

NMFS believes the guidelines strike the correct balance between preventing a stock from becoming overfished and achieving OY for the fishery as a whole.

Comment 36. The notice reopening the comment period asked whether overfishing evaluations and rebuilding programs should be focused on individual stocks, or on a fishery. In response, many commenters pointed out that a stock-by-stock approach is the only scientifically justified method. Overlooking the condition of each stock is also inconsistent with Congressional intent to rebuild all fishery resources. Other commenters wanted to focus on fisheries, as part of an ecosystem approach to management. A mixed stock fishery should be managed as a unit, and should not be closed just because one component of the fishery is overfished.

Response. A fishery comprised of many stocks cannot be judged as overfished or not; only for a stock or stock complex of fish can measurable, objective criteria of overfishing be established, as required by the SFA. The same concern applies to judging whether a fishery has been rebuilt; biologically, that can be determined only on a stock or stock complex basis. The Secretary's first report to Congress (September 30, 1997, under section 304(e)) identified stocks, not fisheries, as overfished.

Focusing on stocks as a scientific endeavor is not inconsistent with managing a fishery as a unit. As explained in the response to comment 35 under national standard 1, identification of a stock as overfished does not necessarily mean that the entire fishery in which it occurs must be severely constrained while that stock is rebuilt. Scientific judgments on overfishing and rebuilding must be made, to the extent practicable, on a stock-by-stock basis, but management judgments on optimizing benefits can be made on the fishery as a whole. In other words, managers should be aware of the biological status of each stock, and should also be required to justify the continuation of overfishing of a stock in a mixed-stock fishery on the grounds of maximizing benefits.

Comment 37. One commenter suggested that a discussion of "acceptable biological catch" (ABC) be included in the guidelines, as in the 1989 version. The commenter felt that ABC is used by most, if not all, of the Councils and in many FMPs.

Response. No change was made. NMFS believes that ABC, as typically used, is an example of the "annual target harvest levels that vary with stock size" described in § 600.310(f)(4)(ii). Given that the term "acceptable biological catch" does not appear in the Magnuson-Stevens Act (although "allowable biological catch" is used

once, without definition, in section 303(b)(11)), NMFS does not believe that it is necessary to reference this additional term by name in the guidelines.

Comment 38. One commenter objected to specifying minimum stock size threshold as a function of MSY stock size, as in § 600.310(d)(2)(ii). The commenter was concerned that extreme changes in environmental conditions could lead to extreme changes in carrying capacity and could result in a mismatch between the minimum stock size threshold and the stock's new productive capacity.

Response. No change was made. Section 600.310(d)(4)(ii) requires that status determination criteria be respecified if changes in environmental conditions cause the long-term productive capacity of the stock or stock complex to change. (See also the response to comment 18 for national standard 1).

Comment 39. One commenter objected to the statement in § 600.310(f)(5)(i) that continual harvest at a level above OY would violate national standard 1, even if no overfishing resulted. The commenter felt that it is both physically and fiscally impossible to assure that quotas are not systematically exceeded.

Response. No change was made. NMFS believes that the national standard 1 mandate for "achieving, on a continuing basis, the OY from each fishery" should not be interpreted to mean, "achieving, on a continuing basis, the OY or some greater amount of harvest from each fishery." By definition, MSY is the greatest amount of harvest that could be achieved from a fishery on a continuing basis. Presumably, the reason that the Magnuson-Stevens Act makes explicit provision for setting OY at a level below MSY is that, where justified on the basis of relevant economic, social, or ecological factors, continual harvest at a higher level (such as MSY) is to be avoided. NMFS' experience has been that it is indeed possible to assure that quotas are not systematically exceeded. If, however, a Council finds that a systematic amount of harvest overrun is inevitable, quotas should be reduced by that amount.

Comment 40. Several commenters suggested that the guidelines list examples of management actions required under a variety of fishing mortality rates and stock sizes.

Response. No change was made. NMFS believes there are so many variables and contingencies specific to each fishery that it would not be meaningful to list examples of the type

requested. In general, though, it is clear that a Council's primary control will be over fishing mortality. If the fishing mortality rate on a stock or stock complex exceeds the maximum fishing mortality threshold, it must be reduced to the extent that it no longer exceeds that threshold, as described in § 600.310(e)(3)(i) and (e)(4)(i). If a stock or stock complex is overfished, fishing mortality must be controlled such that the stock rebuilds to the MSY level within a time period satisfying the statutory requirements, as described in § 600.310(e)(3)(ii) and (e)(4)(ii).

Comment 41. In discussing fisheries that have large state components, one commenter said that states will have to cooperate to achieve the SFA's rebuilding objectives. He recommended that the possibility of preempting a state's authority over a fishery in its waters be specified in the guidelines.

Response. The criteria and procedures for Federal preemption of state authority are set out in section 306(b) of the Magnuson-Stevens Act. In addition, NMFS would also comply with applicable requirements of Pub. L. 104-4, the Unfunded Mandates Reform Act of 1995, and E.O. 12612, Federalism. NMFS sees no reason to reiterate these requirements in the guidelines, but agrees that consultation and state cooperation will be essential in meeting rebuilding schedules for some fisheries.

Comment 42. One commenter stated that the guidelines should clearly point out that the SFA imposes the obligation to establish a strong domestic plan to rebuild stocks, within 10 years if biologically possible, and that obligation applies to international as well as domestic fisheries.

Response. NMFS agrees that the obligation to establish a strong domestic plan to rebuild stocks, within 10 years if biologically possible, is a requirement of the SFA, regardless of the species involved. The guidelines, as proposed, reflect this view. There is no exception provided in the guidelines for any species or fishery beyond that provided in the SFA (section 304(e)(4)(C)). NMFS notes that the SFA requires that any rebuilding program for fisheries managed under an international agreement must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States. NMFS does not agree that additional clarifying language is necessary in the guidelines.

Comment 43. With respect to highly migratory species such as tunas and billfish, one commenter believed expressions of yield and overfishing are meaningless on local scales. The commenter questioned what is required

of the Councils and what the limits of authority are regarding ending overfishing and rebuilding overfished stocks in areas where the majority of the exclusive economic zone (EEZ) stock/fishery occurs in state waters (e.g., onaga) or in international waters (e.g., armorhead) where no agreements exist.

Response. The Councils have the responsibility under SFA to do all they can to eliminate overfishing and to rebuild overfished stocks. The Councils are limited in their authority and their ability to correct overfishing in many cases. However, this limitation should not prevent the Councils from doing everything within their authority and capabilities to address overfishing. (See also the response to comment 33 under national standard 1.)

Comment 44. One commenter was concerned regarding NMFS' proposed requirement to implement regulations to end (or prevent) overfishing and to rebuild (or sustain) affected fish stocks that are considered to be overfished or approaching an overfished condition. The commenter objected to this provision's application to migratory fish stocks with international harvesters, especially when the majority of the harvest is taken by foreign fleets.

Response. The SFA provisions concerning overfishing and rebuilding migratory fish stocks are not restricted to those situations where the U.S. harvest is a majority of the total fishing mortality. The SFA does, however, recognize the international aspects of migratory species, and provides that the period for rebuilding may exceed 10 years if management measures under an international agreement so dictate. And, as noted in the response to comment 33 under national standard 1, the rebuilding program for fisheries managed under an international agreement must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States. The guidelines reflect these provisions of the SFA.

Comment 45. One commenter said the proposed rule states that all fishing mortality must be counted against OY, including that resulting from bycatch, research fishing, and any other fishing activities, although the Magnuson-Stevens Act (section 3(15)) defines fishing in a way that does not include scientific research activity that is conducted by a scientific research vessel.

Response. The proposed guidelines have been revised to reflect the fact that the term "fishing" does not include any scientific research activity that is conducted by a scientific research vessel. In § 600.310(f)(4)(iii), the words

"research fishing" have been changed to "scientific research." However, the fishing mortality that occurs during scientific research requires estimation and inclusion in the accounting of all harvesting mortality to which stocks are subjected.

Comment 46. One commenter stated that overfishing criteria do not provide any explicit treatment for hatchery stocks. The commenter assumed that hatchery stocks cannot be aggregated with wild stocks for the purposes of establishing overfishing criteria.

Response. NMFS agrees with the commenter's assumption that hatchery stocks cannot be aggregated with wild stocks for purposes of establishing overfishing criteria.

National Standard 2

Comment 1. One commenter suggested that NMFS should encourage the policy that fisheries management must be based on scientific facts.

Response. NMFS agrees, and recognizes that additional factors, such as social and economic impacts, must be taken into consideration in formulating management measures.

Comment 2. One commenter stated that the guidelines for national 2 should expressly address data on bycatch and safety.

Response. NMFS agrees and has amended § 600.315(e)(1)(ii) to include safety. That section already includes a reference to bycatch.

Comment 3. One commenter stated that data reporting requirements in national standard 2 are too burdensome and will inhibit fisheries management.

Response. Section 301(a)(2) of the Magnuson-Stevens Act requires that conservation and management measures be based on the best scientific information available. The minimum information sets required in FMPs are described in section 303(a) and (b) of the Magnuson-Stevens Act. The guidance provided in § 600.315 summarizes those statutorily required minimum requirements. Moreover, the Paperwork Reduction Act requires NMFS to minimize the burden of its information collection by ensuring the information will have practical utility.

Comment 4. Two commenters suggested there should be more explicit guidance under national standard 2 regarding the data requirements related to fishing communities.

Response. NMFS agrees. The language in § 600.315(e)(1) introductory text has been revised to clarify that Stock Assessment and Fishery Evaluation (SAFE) reports are intended to summarize the most recent information

concerning a variety of aspects of the fishery, including fishing communities.

National Standard 4

Comment 1. One commenter suggested that the guidelines for national standard 4 should be modified by adding: "In all [FMPs] prepared by any Council in a limited access fishery, all permits must be treated equally and fairly."

Response. No change was made. The criteria that a Council must use in developing a limited access program are listed in the Magnuson-Stevens Act (section 303(b)(6)). National standard 4 requires that all allocations, including limited access permits, be handled fairly and equitably.

Comment 2. One commenter suggested that national standard 4 should contain a strict prohibition that prevents any one state (such as Alaska) from being granted (by any Council) monopoly control of fisheries management in Federal waters where fishermen from several states harvest under an approved FMP.

Response. The Magnuson-Stevens Act provides that a state may regulate a fishing vessel outside the boundaries of that state (section 306(a)(3)). However, management measures developed by a state pursuant to this authority may not discriminate between residents of different states. Mechanisms exist for ensuring that such authority does not result in unfair treatment. For example, two North Pacific Fishery Management Council FMPs that defer the majority of management authority to the State of Alaska (the crab and salmon FMPs) have mechanisms that provide for individuals to challenge the State's management actions.

Comment 3. One commenter stated that fishing sectors such as subsistence fishing and aboriginal people indigenous to the region should be added to the commercial, recreational, and charter fishing sections identified.

Response. No change was made. The Magnuson-Stevens Act already requires that all fishermen should be treated fairly and equitably.

National Standard 5

Comment 1. Several commenters stated that the guidelines do not adequately reflect the revision from "promoting economic efficiency" to "considering economic efficiency" in national standard 5, particularly in the use of the term "encouraging" relative to efficient utilization.

Response. NMFS agrees that the word "encouraging" should be replaced with "considering," to make this standard consistent with the intent of Congress;

§ 600.330(b)(1) has been revised accordingly. The reference to limited access systems is only an example of a program that may contribute to efficiency. No statements or references are made that limited access is a preferred alternative to increase efficiency.

Comment 2. One commenter stated that the use of the phrase "least cost to society" in the national standard 5 guideline is inappropriate, because achieving long-term benefits may require costs that are greater than the least available.

Response. The use of this phrase is similar to its use in the national standard 7 guideline, which refers to minimizing costs. The phrase does not mandate that the alternative with the lowest cost be selected. Rather, it is meant to provide guidance that efficient utilization of resources is a way to achieve benefits for the Nation, while limiting the costs to society. Analysis of alternative management measures, including those that would offer greater efficiency, are expected to estimate the relative benefits and costs of those measures.

National Standard 7

Comment 1. One commenter suggested that the Councils should be required to prepare an FMP for any fishery that has recreational and/or commercial catch.

Response. The Magnuson-Stevens Act did not impose such a requirement. The national standard guidelines do not excuse the Councils from developing FMPs that are necessary or appropriate. The guidelines prior to the SFA stated that an FMP should be prepared only for fisheries in need of management. NMFS believes no change is necessary, because requiring an FMP for every fishery could redirect critical funds needed for resource surveys, data collection, data or impact analyses, or other essential activities, but result in little or no incremental benefit to the Nation.

National Standard 8

Comment 1. One commenter stated that the definition of "fishing communities" needs to be amended to include all components of the recreational industry.

Response. No change was made. The definition of "fishing community" in the guidelines already includes recreational fishing or directly related fisheries-dependent services and industries.

Comment 2. One commenter stated that "sustained participation" referred to in this standard does not guarantee any specific rights, practices, or access

to a specific fishery. Two other commenters stated that the intent of Congress in reference to "sustained participation" was not to cause fishermen to change gear or species, particularly since some communities are dependent on specific gears and/or fisheries.

Response. No change was made. "Sustained participation" means continued access to the fishery within the constraints of the condition of the resource. This standard requires that the importance of fishery resources to a community be taken into account in conservation and management measures; however, the long-term conservation and/or rebuilding of stocks may require limits on particular gears and the harvest of specific stocks.

Comment 3. One commenter stated that proposed § 600.345(b)(2) captures the intent of Congress that this standard does not allocate resources to particular communities, while § 600.345(c)(3) has implicitly allocative language in its focus on "levels of dependence on and engagement in" the fishery.

Response. No change was made. The language in § 600.345(c)(3) reflects the meaning of the Magnuson-Stevens Act, which refers to communities being "substantially engaged" and "substantially dependent." The levels of dependence on and engagement in a fishery need to be ascertained in order to identify communities, whether located in rural or metropolitan areas, that may be potentially affected. Further, dependence, engagement, and sustained participation are not measured solely in terms of the percent of fishing activity in relation to the entire economic base of the community; there are other social, cultural, and economic assessments specifically focused on the harvesting, processing, and fishery-support industries.

Comment 4. One commenter stated that, in § 600.345(b) and (c), the definitions and explanations are so broad as to render them useless in identification of fishing communities.

Response. NMFS disagrees. The guidance reflects the language and intent of Congress to be inclusive of fishing communities. The definitions and explanations in § 600.345(b) and (c) are acceptable operational definitions for use by social scientists and economists in undertaking data gathering and analysis.

Comment 5. One commenter stated that, in § 600.345, all components of the recreational fishing industry in fishing communities should be described and analyzed in the same manner and depth as commercial fishery components.

Response. NMFS agrees. The guidance in the national standard guidelines covers all sectors.

National Standard 9

Comment 1. Several commenters stated that the guidelines as written diverged significantly from the statute and Congressional intent and require a substantial rewriting. One commenter was concerned that the Councils would not have to take action to amend their FMPs to minimize bycatch and would still be found to be in compliance with national standard 9.

Response. NMFS disagrees. The Councils and NMFS must review all existing FMPs and all future FMPs and FMP amendments for compliance with national standard 9. Existing FMPs will be amended, if necessary, to ensure compliance with this standard. The Councils are required to re-examine the conservation and management measures contained in their FMPs for ways to reduce bycatch below current levels. In addition, the Councils must revisit the measures periodically to ensure that bycatch is reduced as much as practicable. No change in the guidelines is necessary.

Comment 2. Several commenters stated that the SFA sent a very clear message that bycatch is a serious problem and that the Councils are required not to study the problem, as suggested in the proposed guidelines, but to amend FMPs to include measures to "minimize bycatch and to minimize the mortality of such bycatch that cannot be avoided."

Response. NMFS agrees that bycatch is a problem in many of the Nation's fisheries. The amendments to the Magnuson-Stevens Act require that conservation and management measures minimize bycatch to the extent practicable and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. The requirement is clearly not discretionary. NMFS disagrees that the guidelines only require the Councils to study the bycatch problem; the Councils must take action to minimize bycatch and bycatch mortality to the extent practicable. No change in the guideline is necessary (also see the response to comment 1 under national standard 9).

Comment 3. Several commenters observed that national standard 9 recognizes bycatch as an integral component of the total fishery, with biological if not economic value. The commenter stated that this national standard encourages the redeployment, or perhaps the elimination, of destructive, non-selective gears.

Response. NMFS agrees. The Councils have a range of options available to them to satisfy the requirements of national standard 9; the commenter mentioned only two of the options available. However, the legislative history of the SFA includes a floor statement by Congressman Young that "it is not the intent of Congress that the [Councils] ban a type of fishing gear or a type of fishing in order to comply with this standard."

Comment 4. One commenter observed that national standard 9 applies not only to commercially valuable species, but also to all finfish, shellfish, and invertebrate species with no commercial value.

Response. NMFS agrees. The definition of "fish" in the Magnuson-Stevens Act includes finfish, shellfish, and invertebrate species, and all other forms of marine animal and plant life except marine mammals and birds; by extension, bycatch applies to these forms of marine life.

Comment 5. One commenter stated that the guidelines are not clear on exactly what is required for compliance with this national standard and what the consequences would be of not meeting that requirement. The commenter also suggested that such requirements would likely not be followed because they are too time/staff/data intensive. Another commenter stated that the guidelines suggest that measures to minimize bycatch need not be implemented if they are determined to be "inconvenient" with respect to, for example, "changes in fishing, processing, disposal, or marketing costs," or "changes in fishing practices and the behavior of fishermen."

Response. The Secretary is required to ensure that all FMPs are in compliance with the national standards. FMPs or FMP amendments that are not in compliance will not be approved. Inconvenience is not an excuse; bycatch must be avoided as much as practicable, and bycatch mortality must be reduced until further reductions are not practicable. Adherence to the national standards is not discretionary.

Comment 6. One commenter suggested that, in the definition of bycatch in § 600.350(c), NMFS strike the parenthetical in the definition of bycatch and the phrase, "or that enter commerce through sale, barter, or trade."

Response. The language in § 600.350(c) is consistent with the Magnuson-Stevens Act; commercial fishing, as defined in section 3(4), "means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter

commerce through sale, barter or trade." While the term "sale" is inclusive of barter and trade, the phrase has been kept in the guidelines to ensure that there is no ambiguity as to what is considered bycatch. NMFS believes the parenthetical in the definition of "bycatch" provides useful clarification of "harvested in a fishery." No change was made.

Comment 7. Several commenters recommended removing the definition of discard in proposed § 600.350(c)(2) because they believed the term was included by NMFS without support in the Magnuson-Stevens Act or its legislative history. They stated that the definition is in conflict with the law and allows the continuation of fishing methods and practices that involve great amounts of bycatch, like roe stripping and shark finning.

Response. The definition in § 600.350(c)(2) has been removed; however, NMFS has retained the interpretation that "bycatch" includes the discard of whole fish—not the discard of unwanted parts. Nothing in the definitions of "bycatch" or "economic discards" suggests that the discard of unwanted parts of fish is addressed accordingly (see the response to comment 12 under national standard 9 for a discussion of practices such as shark finning).

Comment 8. One commenter requested that NMFS add to the last sentence in the definition of bycatch in § 600.350(c) the words "or Atlantic highly migratory species harvested in a commercial fishery that are not regulatory discards and that are tagged and released alive under a scientific tag and release program established by the Secretary."

Response. NMFS agrees and has added the suggested language to § 600.350(c).

Comment 9. A commenter asked whether any fish caught and sold would be considered bycatch.

Response. According to the definition of bycatch in the Magnuson-Stevens Act, the sale of any fish removes it from being considered bycatch.

Comment 10. A commenter stated that fish that are ground up and thrown overboard are not counted as discards.

Response. NMFS disagrees. Whole fish that are ground up and thrown overboard would be considered bycatch.

Comment 11. One commenter suggested that, in § 600.350(b), the second sentence be replaced with: "Bycatch can, in four ways, impede efforts to protect marine ecosystems, achieve sustainable fisheries and the full benefits that they provide to the Nation." The suggestion was also made

that the following sentence be added to § 600.350(b): "First, removing unknown amounts of commercial or non-commercial biomass as bycatch affects marine ecosystems in ways that are poorly understood at best."

Response. The first suggestion was adopted, because sustainable fisheries are predicated on healthy marine ecosystems. In addition, § 600.350(b) was revised to combine the concepts of increased uncertainty concerning total fishing related mortality and the impact of bycatch on other uses of fishery resources.

Comment 12. One commenter stated that portions of fish not used or retained (e.g., finned sharks) are incidental catch (and are therefore bycatch). Other commenters stated that sharks could be harvested for fins and discarded without being counted as discards.

Response. The Magnuson-Stevens Act does not define incidental catch; however, it defines "bycatch" as fish that are harvested in a fishery, but that are not sold or kept for personal use. The Magnuson-Stevens Act does not specify that the entire animal or plant must be sold or kept for personal use. This does not mean, however, that wasteful practices should not be of concern, nor that they may not be restricted by the Councils on some other basis. The issue of how much of a fish should be retained is a utilization issue, which is distinct from the bycatch issue.

Comment 13. One commenter stated that damaged and/or mutilated (e.g., shark-bitten) target species that are discarded are bycatch.

Response. NMFS agrees. Such fish are considered bycatch if they are not sold or kept for personal use.

Comment 14. Economic discards of target species, such as tunas during times of market surplus, including dumping of fish on land, are bycatch.

Response. NMFS agrees. Such discards are considered bycatch.

Comment 15. One commenter observed that the Magnuson-Stevens Act's definition of bycatch does not mention unobserved fishing mortality and recommended that the parenthetical inclusion of unobserved fishing mortality in the definition of bycatch in § 600.350(c) of the regulations should be removed.

Response. NMFS disagrees. The statute does not limit Council actions only to observed bycatch. Unobserved fishing-related mortality is implicitly included in the definition because it constitutes a harvest of fish that are not sold or kept for personal use. NMFS notes, however, that there is little information available on unobserved fishing-related mortality and believes

that primary emphasis should initially be placed on minimizing observed sources of fishing-related mortality.

Comment 16. One commenter noted that unobserved fishing-related mortality should be given prominence in the proposed guidelines.

Response. NMFS disagrees. Given the many sources of bycatch mortality, NMFS believes that unobserved fishing-related mortality is sufficiently prominent in the guidelines as proposed.

Comment 17. One commenter asked how NMFS will ever assign a poundage to unobserved mortality and what scientific basis will be used to determine unobserved mortality.

Response. NMFS recognizes that determining unobserved fishing mortality will be extremely difficult. However, all significant sources of fishing-related mortality need to be considered when developing conservation and management measures. While there are some existing technologies that could be used to estimate unobserved fishing mortality (e.g., video-based systems), new methods will need to be developed. This will involve an experimental process, including rigorous peer reviews of the results.

Comment 18. One commenter noted that the amount of discards by the recreational fishery has a significant impact on fish stocks.

Response. NMFS agrees. Discards by recreational anglers are considered to be bycatch unless they are specifically exempted in the Magnuson-Stevens Act. All mortality associated with recreationally caught fish must be considered in the determination of OY and MSY; this is addressed in the guidelines for national standard 1.

Comment 19. One commenter observed that fish released alive in recreational catch-and-release and tagging programs do die and should be counted as bycatch and against OY.

Response. NMFS agrees that all bycatch mortality and mortality attributable to exempted tagging and release programs should be considered in determination of OY. As noted in the response to comment 25 under national standard 9, the Magnuson-Stevens Act exempts only Atlantic highly migratory species harvested in a tag-and-release program established by the Secretary. This is further addressed in the guidelines to national standard 1.

Comment 20. One commenter stated that the SFA specifically excludes recreational catches from the requirements for bycatch reduction and avoidance. The commenter felt that a specific reference to the value of catch-

and-release fisheries under the guidelines to national standard 9 would be useful.

Response. NMFS disagrees. Fish caught and released alive under an approved catch-and-release fishery management program are exempt from being considered bycatch under section 3(2) of the Magnuson-Stevens Act (see also the response to comment 21 under national standard 9). Management regulations (e.g., minimum size limits and bag limits) that result in the release of fish by recreational anglers are not considered catch-and-release programs and, therefore, such catches are considered to be bycatch, even though the fish are released alive. Increased efforts to release recreationally caught fish in healthy condition may partially satisfy the requirement in national standard 9 that mortality of bycatch that cannot be avoided be minimized to the extent practicable.

Comment 21. One commenter asked what is meant by the exclusion of "fish released alive under a recreational catch-and-release fishery" under the bycatch definition.

Response. A definition of the term "catch-and-release fishery management program" has been added to Section 600.350(c) as follows: a catch-and-release fishery management program is one in which the retention of a particular species is prohibited. In such a program, those fish released alive would not be considered bycatch.

Comment 22. One commenter stated that highly migratory species in a commercial fishery managed by the Secretary that are tagged and released alive in the Atlantic are not considered bycatch. The same commenter asked whether the provision also extended to Pacific highly migratory species managed by the Western Pacific Council, and if not, why not?

Response. NMFS agrees that the Magnuson-Stevens Act specifically exempted fish caught in highly migratory species tag-and-release programs in the Atlantic from being considered bycatch. This exemption was not extended in the SFA to Pacific highly migratory programs. Therefore, fish tagged and released in highly migratory species tag-and-release programs in the Pacific are considered bycatch.

Comment 23. One commenter stated that definitions of bycatch as "catch which is not retained or utilized" and incidental catch as "catch which is retained in whole or part but not necessarily targeted," as adopted by the Western Pacific Fishery Management Council, are not consistent with the Magnuson-Stevens Act or with the

proposed national standard 9 guidelines.

Response. The Western Pacific Council's definition of "bycatch," though not identical, is not inconsistent with the new definition in the Magnuson-Stevens Act. The definition of "incidental catch" is not inconsistent with anything in the Act or the guidelines.

Comment 24. Several commenters disagreed with the following statement in the preamble to the proposed guideline: "Bycatch can be decreased either by decreasing the catch of fish that would be discarded or by retaining fish that would otherwise be discarded." They also stated that avoidance should take precedence over retention and that retention of bycatch fails both tiers of national standard 9 in that it neither avoids nor minimizes it.

Response. NMFS agrees that priority must first be given to avoiding bycatch to the extent possible. To the extent that it is not possible, priority must then be given to minimizing bycatch mortality. Any proposed conservation and management measure that does not give first priority to avoiding the capture of bycatch species must be supported by appropriate analyses, including determination of the net benefits to the Nation. Section 600.350(d) introductory text has been revised accordingly. Sections 313(i) and 405(d)(3) of the Magnuson-Stevens Act suggest that retention and utilization are viable solutions to some bycatch problems.

Comment 25. Several commenters stated that the proposed rule would make national standard 9 a discretionary option for the Councils by using the word "should" at the end of § 600.350(d). The commenters believed the proposed guidelines fail to require any Council to select and implement measures to minimize bycatch.

Response. The requirements of the Magnuson-Stevens Act are not discretionary. The Councils must consider the requirements in § 600.350(d) when evaluating conservation and management measures relative to the national standards. To ensure that this point is made, the word "should" in § 600.350(d) introductory text has been changed to "must" to emphasize the mandatory nature of Council actions under this national standard.

Comment 26. One commenter stated that the proposed language for national standard 9 neglected to include "to the extent practicable" when discussing reduction of mortality of bycatch that cannot be avoided. The commenter stated that Congress explicitly recognized that the costs of reducing

bycatch at some level outweigh the benefits, and that the Magnuson-Stevens Act does not demand that bycatch be decreased to the point of technical feasibility, just to the point that it still makes sense to reduce it.

Response. NMFS agrees; the guidelines already contain the language suggested. For the purposes of this national standard, the term "practicable" is not synonymous with the term "possible," because not all reductions that are possible are practicable. NMFS recognizes that in some fisheries it may not be practicable to eliminate all bycatch and bycatch mortality.

Comment 27. One commenter stated that, as stocks approach overfished conditions or are below their optimum levels, harvests (including bycatch) should be limited to well below the threshold at which there is a risk of precipitating or contributing to a decline.

Response. NMFS agrees. Bycatch mortality is a component of total fishing mortality and must be incorporated into stock assessments. To the extent that stock assessments include information on the types and magnitude of bycatch, total allowable catch determinations will reflect that information.

Comment 28. Several commenters stated that the guidelines ought to point out specifically that economics cannot justify bycatch that has a negative impact on the health of any stock in a multispecies fishery.

Response. NMFS agrees. The primary responsibility of the Councils is to develop conservation and management measures that, to the extent practicable, minimize the capture of bycatch species and that, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. The economic consequences of dealing with bycatch is one of the factors that determines the extent to which it is practicable to reduce bycatch or bycatch mortality in a particular fishery. The determination must be based on the net benefits to the Nation resulting from particular management measures. Language has been added to § 600.350(d) introductory text to indicate that the net benefits to the Nation include, but are not limited to, negative impacts on affected stocks; incomes accruing to participants in directed fisheries in both the short and long term; incomes accruing to participants in fisheries that target the bycatch species; environmental consequences; non-use values of bycatch species, which include non-consumptive uses of bycatch species and existence values, as well as

recreational values; and impacts on other marine organisms.

Comment 29. One commenter believed that, by allowing the Councils to prioritize their actions to address bycatch, NMFS would effectively (and unfairly) penalize those fisheries that have voluntarily collected and submitted bycatch data. The commenter felt that bycatch reduction should be done in a coordinated fashion, involving all harvesters.

Response. NMFS disagrees with the first part of the comment. The collection of such data was voluntarily initiated by the fishing industry because it was recognized that bycatch is a problem that must be dealt with; the fishing industry is to be commended for taking initiative in dealing with bycatch. The guidelines specifically list activities that the Councils must undertake to satisfy the requirements of this national standard. No fishery is exempt from the requirements. However, for practical reasons, the Councils will have to determine their priorities for development of management actions and the basis for setting those priorities.

Comment 30. One commenter stated that non-selective, destructive gear—specifically longlines, gillnets, and trawls—ought to be specifically mentioned in the section on bycatch as gear to which special attention ought to be paid in the development of any fishery management measures.

Response. NMFS disagrees. The Councils will need to prioritize their actions, not only with respect to various fisheries, but also to various gears. The Councils will need to determine, during the development of fishery management measures, which gears to allow and which ones need special attention. No change in the guidelines is necessary.

Comment 31. Several commenters suggested that SAFE reports are important tools in minimizing bycatch and that a requirement be added that information on the amount and type of bycatch be summarized in the SAFE report.

Response. NMFS agrees and has added appropriate language to § 600.350(d)(2). NMFS notes that § 600.315(e)(1)(ii) of the guidelines for national standard 2 already contains this requirement.

Comment 32. Several commenters stated that the list of factors in § 600.350(b)(3) is comprehensive and invites the Councils to use those factors as loopholes to avoid taking action. Commenters questioned why such a comprehensive list is needed for this standard and none of the others.

Response. NMFS disagrees. The lack of complete and perfect information is

not an excuse for not taking action. Uncertainty concerning the desirable and undesirable effects of minimizing bycatch and bycatch mortality should be dealt with similarly. (See also the response to comment 35 under national standard 9).

Comment 33. One commenter stated that there are no criteria or methods for establishing criteria for determining how much bycatch is too much.

Response. NMFS disagrees. Section 600.350(d)(3) provides a list of criteria for evaluating the impacts of bycatch. Each Council must determine how much bycatch is too much by balancing the various factors that will maximize the net benefits to the Nation (see also the response to comment 24 under national standard 9). Language that includes the maximization of net benefits to the Nation has been added to § 600.350(d)(3). The legislative history of the SFA includes the following floor statement by Congressman Young: "'Practicable' requires an analysis of the cost of imposing a management action; the Congress does not intend to ...impose costs on fishermen and processors that cannot be reasonably met."

Comment 34. Several commenters stated that Councils should prioritize their actions to address those fisheries that have not only the greatest bycatch rate, but also the greatest amount of bycatch.

Response. NMFS agrees that the Councils will need to prioritize their actions to address those fisheries where actions to reduce bycatch can have the greatest impact. Each Council will have to determine the basis for setting its priorities.

Comment 35. One commenter stated that the final rule must clearly reflect that Councils are not constrained from acting when faced with uncertainty surrounding one or several items included in § 600.350(d)(3).

Response. NMFS agrees. The Councils must take action to ensure the sustainability of the Nation's marine fishery resources. National standard 2 specifically requires that conservation and management measures be based on the best scientific information available. Where there is uncertainty surrounding any of the items in § 600.350(d)(3), Councils should adhere to the precautionary approach stated in the Food and Agriculture Organization of the United Nations (FAO) Code of Conduct for Responsible Fisheries (Article 6.5). The Code specifically states, "The absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve

target species, associated or dependent species and non-target species and their environment." Language to that effect has been added to § 600.350(d)(3).

Comment 36. Several commenters noted that requirements to implement monitoring programs in FMPs may prevent approval. Such requirements could be an administrative burden for the Councils and be very costly to implement.

Response. NMFS disagrees. Section 303(a)(11) of the Magnuson-Stevens Act specifically requires the Councils to establish, for each fishery, a "standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery." The statute makes no allowance for the financial or administrative burden of establishing such reporting programs. It is clear that, in order to be able to assess the amount and type of bycatch occurring in various fisheries, monitoring programs must be established.

Comment 37. One commenter stated that data collection from all fishermen must be made a high priority.

Response. NMFS agrees and notes that the uncertainty surrounding estimates of the types and amounts of bycatch cannot be reduced without the cooperation and involvement of all components of the fisheries.

National Standard 10

Nine commenters commented specifically on national standard 10. All were positive and most substantive comments were directed at making the standard more restrictive. Several commenters gave unqualified support to the standard. One commenter urged that NMFS work aggressively with the Councils "to ensure that safety is constantly considered in fishery management."

Comment 1: One commenter noted that no criteria were provided for the phrase "to the extent practicable" in national standard 10, as were provided for national standard 9.

Response: NMFS disagrees. Section 600.355(b)(2) directly addresses these concerns.

Comment 2: One commenter noted "while it is stated clearly in the opening paragraph of the regulatory text (§ 600.355(b)(1)) that this standard [is] not meant to 'give preference to one method of managing a fishery over another,' the suggested mitigation management measures are replete with inappropriate implicit endorsement of ITQs (individual transferrable quotas) that directly undermine that provision." These references include "limiting the number of participants in the fishery," "spreading effort over time and area,"

and "implementing management measures that reduce the race for fish."

Response: The mitigation measures do not necessarily endorse ITQs. While ITQs may be one way to solve some problems with safety of life at sea and reduce the "race for fish," they are not the only way. Vessel/license limitation systems have been and are being adopted without ITQs, such as in the Alaska crab and groundfish fisheries. In New England, the use of "days at sea" has spread effort over time and area without creating a "race for fish." The term "race for fish" was used in the discussion of the bill that became the SFA, to describe the intensive fisheries that have developed at the expense of safety. As a primary reason for the establishment of this national standard, NMFS believes the term captures the intent of Congress and the legislation.

Comment 3: One commenter recommended that the national standard 10 guidelines require that Councils establish mandatory, standardized, accurate, and complete injury reporting requirements.

Response: NMFS agrees in part. Domestic fishing vessels are already required to report this information to the U.S. Coast Guard (USCG) under provisions at 46 CFR parts 4 and 28. This information can be made available through the USCG, and reports compared against vessels participating in the fisheries. Guidance on contents of SAFE reports at § 600.315(e)(1)(ii) has been revised to include consideration of safety issues.

Comment 4: One commenter recommended that the statement "This standard is not meant to give preference to one method of managing a fishery over another," should be deleted or replaced by, "While this standard is not meant to give preference to one method of managing a fishery over another, it should be considered a significant factor in allocation and other management decisions and the Council should provide rational justification why the safest method is not being used." Common sense would dictate that the safer management regime be used.

Response: NMFS disagrees and believes the guidance, as proposed, is accurate.

Comment 5: One commenter recommended that the term "safety of human life at sea" should be modified to read "safety of human life and limb at sea" to emphasize reduction in injuries as well as loss of life.

Response: NMFS considers the term "safety of human life at sea" to include not only safety of life, but safety of limb and the general operating environment, as well, to the extent that fishery

management measures may affect that safety. The discussion of the term at § 600.355(b)(3) has been revised to reflect this point.

Comment 6: One commenter recommended that this standard require that an FMP specify qualifications for individuals who are responsible for maintaining and controlling the stability of a fishing or fish processing vessel.

Response: Such a requirement is outside the scope of this rulemaking. Other than requiring employment and income information, neither NMFS nor the Councils have specified individual qualifications for fishermen. Individual professional qualifications for the master and crew come under the authority of the USCG, as specified by the Commercial Fishing Industry Vessel Safety Act. NMFS does have the authority to require permits of fishing vessel operators under the Magnuson-Stevens Act, section 303(b)(1)(B).

Comment 7: One commenter recommended that this standard consider more than the stability of the vessel and include safety of machinery and processing equipment, as well. FMPs should require processing vessels to meet and maintain safety standards developed in consultation with the Department of Labor's Occupational Safety and Health Administration (OSHA) as a condition of participation in the fishery.

Response: Onboard safety concerns, to the extent they are caused by fishery management measures, are addressed by the guidelines at § 600.355(c)(2). As noted in the comment, the USCG and OSHA have the primary responsibility for machinery and processing safety on board fishing vessels. Vessels are already required to comply with those standards; additional FMP requirements would therefore be redundant.

Comment 8: One commenter stated that § 600.355(c)(3) does not direct the creation of a mechanism for fisheries to be closed due to adverse weather conditions.

Response: While a mechanism to close, delay the opening of, or otherwise halt the fishery during adverse weather can improve safety, NMFS does not consider such a mechanism mandatory. Rather, it is one mitigation measure available to the Council, as noted in § 600.355(e)(1).

Comment 9: One commenter recommended that OSHA, the National Institute of Occupational Safety and Health, and the National Transportation Safety Board be consulted for vessel safety, in addition to the USCG.

Response: NMFS does not believe that requiring consultations with all these agencies is necessary at this time. These

agencies are outstanding sources of information on specific issues, and consultation with one or more of them may be appropriate in certain circumstances. However, routine consultation with these agencies is not necessary and would become burdensome to the Councils and to the agencies involved. NMFS encourages the Councils to use these and other groups, including industry groups, in formulating safer management measures.

Comment 10: One commenter recommended that a risk analysis be conducted for future amendments that include allocations between gear types, inshore-offshore processing allocations, seasonal openings, area openings or closures, and possibly others.

Response: NMFS does not believe that requiring a specific safety risk analysis for all these actions is necessary at this time. While a risk analysis may be appropriate in situations where there are a number of alternatives whose effects on safety are not clear, in others, the alternatives may be constrained by other national standard or legal restrictions, or their effects are very clear and a risk analysis is unnecessary. NMFS prefers to allow each Council to conduct a risk analysis at its option, based on consultations with the USCG and the fishing industry.

Classification

OMB has determined this rule to be economically significant under E.O. 12866 because this rule provides guidance on implementing statutory changes that may have large economic impacts on specific sectors of the economy. Each amendment to an existing FMP and all new FMPs will include detailed analyses of the benefits and costs of the management programs under consideration to ensure compliance with E.O. 12866.

In addition, OMB has determined this rule to be "major" under the Small Business Regulatory Enforcement and Fairness Act Congressional Review provision (5 U.S.C. 801 *et seq.*). Pursuant to authority at 5 U.S.C. 808(1), this major rule conducting a regulatory program for commercial and recreational activities related to fishing will be effective June 1, 1998.

The main purpose of these guidelines, in carrying out the 1996 amendments to the Magnuson-Stevens Act, is to reduce overfishing immediately, rebuild overfished stocks within a set timeframe, and prevent by catch and reduce mortality of unavoidable bycatch to the maximum extent possible. The effects of these guidelines can only be described qualitatively; quantified and

monetized estimates of benefits, costs and other effects cannot be developed until specific regulatory actions are identified and proposed. Changes in employment, regional economic development, and a variety of distributional concerns are examples of the important effects not otherwise captured in estimates of social costs and benefits.

Producers will bear costs implementing programs and regulations developed under these guidelines to restore fisheries stocks. These costs will take a variety of forms, such as mandatory investments in new fishing gear to reduce bycatch; restrictions on the level of fishing effort, which raise average costs; and other measures intended to reduce the quantity of fish harvested. Consumers also will bear costs, primarily in the form of lost consumers' surplus resulting from reduced market supply and concomitant higher prices. These costs will rise to the extent that consumer tastes continue to evolve toward greater preference for fish and shellfish over other foods.

Once fisheries stocks have recovered, producers will gain benefits in the form of reduced costs of production. Consumers also will benefit to the extent that restored stocks permit increases in the allowable harvest compatible with sustainable yield. Summed over all fisheries in the exclusive economic zone over the long term, the potential increase in net revenues is estimated at \$2.9 billion annually. Social benefits will equal the fraction of this amount remaining after all costs are deducted.

In the short-run, fisheries employment will likely fall as producers adapt to rules and restrictions undertaken to restore long-term sustainability. These job losses will be at least partially offset by increases in employment elsewhere. Once fisheries stocks have recovered, however, fisheries employment could increase by up to 300,000 jobs over present employment levels. As in the case of short-term job losses, these employment gains will be at least partially offset by reductions in jobs elsewhere. Changes in employment do not translate directly into benefits or costs, however, and must be evaluated instead as a separate class of effects resulting from individual rules and regulations promulgated pursuant to this guidance.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial

number of small entities. This rule adds to and updates the national standards and accompanying explanatory and interpretive language to implement statutory provisions of the SFA. The SFA's amendments to the national standards make it necessary for the Councils to examine their existing FMPs and all future proposed management measures to ensure that they comply with the national standards; FMPs found out of compliance will need to be amended. These guidelines are intended to provide direction and elaboration on compliance with the national standards and, in themselves, do not have the force of law. Should Councils propose regulations as a result of the SFA, those actions may affect small entities and could be subject to the requirement to prepare a Regulatory Flexibility Analysis at the time they are proposed. Any future effects on small entities that may ultimately result from amendments to FMPs to bring them into compliance with the Magnuson-Stevens Act would be speculative at this time. One comment was received regarding this determination; the commenter believed that the impacts of these guidelines would have a significant economic impact on a substantial number of small entities. However, as explained in the response to general comment 8 above, NMFS believes that, while significant impacts could result from future management actions, the guidelines themselves have no such effect. Furthermore, NMFS has no basis upon which to assess, at this time, the impacts of regulations that may result from these revisions to the guidelines, except in the broadest sense. As a result, a Regulatory Flexibility Analysis for this rule was not prepared.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, National Oceanic and Atmospheric Administration, Penalties, Reporting and recordkeeping requirements, Statistics.

Rolland A. Schmitt

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. The part heading is revised to read as set forth above.

3. In § 600.305, paragraph (c)(13) is removed and the second and third sentences of paragraph (a)(2), the last sentence of paragraph (a)(3), and paragraphs (c)(1), (c)(3), (c)(11), and (c)(12) are revised to read as follows:

§ 600.305 General.

(a) * * *

(2) * * * The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Magnuson-Stevens Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) * * * FMPs that are in substantial compliance with the guidelines, the Magnuson-Stevens Act, and other applicable law must be approved.

(c) * * *

(1) *Must* is used, instead of "shall", to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson-Stevens Act, the logical extension thereof, or of other applicable law.

(3) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens Act, and is a factor reviewers will look for in evaluating a SOPP or FMP.

(11) *Council* includes the Secretary, as applicable, when preparing FMPs or amendments under section 304(c) and (g) of the Magnuson-Stevens Act.

(12) *Stock or stock complex* is used as a synonym for "fishery" in the sense of the Magnuson-Stevens Act's first definition of the term; that is, as "one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics," as distinguished from the Magnuson-Stevens Act's second definition of fishery as "any fishing for such stocks."

4. Section 600.310 is revised to read as follows:

§ 600.310 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's multiple purposes and policies, implementing an FMP's objectives, and balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be reduced under paragraph (f)(3) of this section. The most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing.

(c) *MSY.* Each FMP should include an estimate of MSY as explained in this section.

(1) *Definitions.* (i) "MSY" is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions.

(ii) "MSY control rule" means a harvest strategy which, if implemented, would be expected to result in a long-term average catch approximating MSY.

(iii) "MSY stock size" means the long-term average size of the stock or stock complex, measured in terms of spawning biomass or other appropriate units, that would be achieved under an MSY control rule in which the fishing mortality rate is constant.

(2) *Options in specifying MSY.* (i) Because MSY is a theoretical concept, its estimation in practice is conditional on the choice of an MSY control rule. In choosing an MSY control rule, Councils should be guided by the characteristics of the fishery, the FMP's objectives, and the best scientific information available. The simplest MSY control rule is to remove a constant catch in each year that the estimated stock size exceeds an appropriate lower bound, where this catch is chosen so as to maximize the resulting long-term average yield. Other examples include the following: Remove a constant fraction of the biomass in each year, where this fraction is chosen so as to maximize the resulting long-term average yield; allow a constant level of escapement in each year, where this level is chosen so as to maximize the resulting long-term average yield; vary the fishing mortality rate as a continuous function of stock size, where the parameters of this function are constant and chosen so as to maximize the resulting long-term average yield. In any MSY control rule,

a given stock size is associated with a given level of fishing mortality and a given level of potential harvest, where the long-term average of these potential harvests provides an estimate of MSY.

(ii) Any MSY values used in determining OY will necessarily be estimates, and these will typically be associated with some level of uncertainty. Such estimates must be based on the best scientific information available (see § 600.315) and must incorporate appropriate consideration of risk (see § 600.335). Beyond these requirements, however, Councils have a reasonable degree of latitude in determining which estimates to use and how these estimates are to be expressed. For example, a point estimate of MSY may be expressed by itself or together with a confidence interval around that estimate.

(iii) In the case of a mixed-stock fishery, MSY should be specified on a stock-by-stock basis. However, where MSY cannot be specified for each stock, then MSY may be specified on the basis of one or more species as an indicator for the mixed stock as a whole or for the fishery as a whole.

(iv) Because MSY is a long-term average, it need not be estimated annually, but it must be based on the best scientific information available, and should be re-estimated as required by changes in environmental or ecological conditions or new scientific information.

(3) *Alternatives to specifying MSY.* When data are insufficient to estimate MSY directly, Councils should adopt other measures of productive capacity that can serve as reasonable proxies for MSY, to the extent possible. Examples include various reference points defined in terms of relative spawning per recruit. For instance, the fishing mortality rate that reduces the long-term average level of spawning per recruit to 30–40 percent of the long-term average that would be expected in the absence of fishing may be a reasonable proxy for the MSY fishing mortality rate. The long-term average stock size obtained by fishing year after year at this rate under average recruitment may be a reasonable proxy for the MSY stock size, and the long-term average catch so obtained may be a reasonable proxy for MSY. The natural mortality rate may also be a reasonable proxy for the MSY fishing mortality rate. If a reliable estimate of pristine stock size (i.e., the long-term average stock size that would be expected in the absence of fishing) is available, a stock size approximately 40 percent of this value may be a reasonable proxy for the MSY stock size, and the product of this stock size and

the natural mortality rate may be a reasonable proxy for MSY.

(d) *Overfishing.*—(1) *Definitions.* (i) "To overfish" means to fish at a rate or level that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(ii) "Overfishing" occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis.

(iii) In the Magnuson-Stevens Act, the term "overfished" is used in two senses: First, to describe any stock or stock complex that is subjected to a rate or level of fishing mortality meeting the criterion in paragraph (d)(1)(i) of this section, and second, to describe any stock or stock complex whose size is sufficiently small that a change in management practices is required in order to achieve an appropriate level and rate of rebuilding. To avoid confusion, this section uses "overfished" in the second sense only.

(2) *Specification of status determination criteria.* Each FMP must specify, to the extent possible, objective and measurable status determination criteria for each stock or stock complex covered by that FMP and provide an analysis of how the status determination criteria were chosen and how they relate to reproductive potential. Status determination criteria must be expressed in a way that enables the Council and the Secretary to monitor the stock or stock complex and determine annually whether overfishing is occurring and whether the stock or stock complex is overfished. In all cases, status determination criteria must specify both of the following:

(i) *A maximum fishing mortality threshold or reasonable proxy thereof.* The fishing mortality threshold may be expressed either as a single number or as a function of spawning biomass or other measure of productive capacity. The fishing mortality threshold must not exceed the fishing mortality rate or level associated with the relevant MSY control rule. Exceeding the fishing mortality threshold for a period of 1 year or more constitutes overfishing.

(ii) *A minimum stock size threshold or reasonable proxy thereof.* The stock size threshold should be expressed in terms of spawning biomass or other measure of productive capacity. To the extent possible, the stock size threshold should equal whichever of the following is greater: One-half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years if the stock or stock complex were exploited

at the maximum fishing mortality threshold specified under paragraph (d)(2)(i) of this section. Should the actual size of the stock or stock complex in a given year fall below this threshold, the stock or stock complex is considered overfished.

(3) *Relationship of status determination criteria to other national standards.*—(i) *National standard 2.* Status determination criteria must be based on the best scientific information available (see § 600.315). When data are insufficient to estimate MSY, Councils should base status determination criteria on reasonable proxies thereof to the extent possible (also see paragraph (c)(3) of this section). In cases where scientific data are severely limited, effort should also be directed to identifying and gathering the needed data.

(ii) *National standard 3.* The requirement to manage interrelated stocks of fish as a unit or in close coordination notwithstanding (see § 600.320), status determination criteria should generally be specified in terms of the level of stock aggregation for which the best scientific information is available (also see paragraph (c)(2)(iii) of this section).

(iii) *National standard 6.* Councils must build into the status determination criteria appropriate consideration of risk, taking into account uncertainties in estimating harvest, stock conditions, life history parameters, or the effects of environmental factors (see § 600.335).

(4) *Relationship of status determination criteria to environmental change.* Some short-term environmental changes can alter the current size of a stock or stock complex without affecting the long-term productive capacity of the stock or stock complex. Other environmental changes affect both the current size of the stock or stock complex and the long-term productive capacity of the stock or stock complex.

(i) If environmental changes cause a stock or stock complex to fall below the minimum stock size threshold without affecting the long-term productive capacity of the stock or stock complex, fishing mortality must be constrained sufficiently to allow rebuilding within an acceptable time frame (also see paragraph (e)(4)(ii) of this section). Status determination criteria need not be respecified.

(ii) If environmental changes affect the long-term productive capacity of the stock or stock complex, one or more components of the status determination criteria must be respecified. Once status determination criteria have been respecified, fishing mortality may or may not have to be reduced, depending

on the status of the stock or stock complex with respect to the new criteria.

(iii) If manmade environmental changes are partially responsible for a stock or stock complex being in an overfished condition, in addition to controlling effort, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible (see also the guidelines issued pursuant to section 305(b) of the Magnuson-Stevens Act for Council actions concerning essential fish habitat).

(5) *Secretarial approval of status determination criteria.* Secretarial approval or disapproval of proposed status determination criteria will be based on consideration of whether the proposal:

(i) Has sufficient scientific merit.

(ii) Contains the elements described in paragraph (d)(2) of this section.

(iii) Provides a basis for objective measurement of the status of the stock or stock complex against the criteria.

(iv) Is operationally feasible.

(6) *Exceptions.* There are certain limited exceptions to the requirement to prevent overfishing. Harvesting one species of a mixed-stock complex at its optimum level may result in the overfishing of another stock component in the complex. A Council may decide to permit this type of overfishing only if all of the following conditions are satisfied:

(i) It is demonstrated by analysis (paragraph (f)(6) of this section) that such action will result in long-term net benefits to the Nation.

(ii) It is demonstrated by analysis that mitigating measures have been considered and that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur.

(iii) The resulting rate or level of fishing mortality will not cause any species or evolutionarily significant unit thereof to require protection under the ESA.

(e) *Ending overfishing and rebuilding overfished stocks.*—(1) *Definition.* A threshold, either maximum fishing mortality or minimum stock size, is being "approached" whenever it is projected that the threshold will be breached within 2 years, based on trends in fishing effort, fishery resource size, and other appropriate factors.

(2) *Notification.* The Secretary will immediately notify a Council and request that remedial action be taken whenever the Secretary determines that:

(i) Overfishing is occurring;

(ii) A stock or stock complex is overfished;

(iii) The rate or level of fishing mortality for a stock or stock complex is approaching the maximum fishing mortality threshold;

(iv) A stock or stock complex is approaching its minimum stock size threshold; or

(v) Existing remedial action taken for the purpose of ending previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress.

(3) *Council action.* Within 1 year of such time as the Secretary may identify that overfishing is occurring, that a stock or stock complex is overfished, or that a threshold is being approached, or such time as a Council may be notified of the same under paragraph (e)(2) of this section, the Council must take remedial action by preparing an FMP, FMP amendment, or proposed regulations. This remedial action must be designed to accomplish all of the following purposes that apply:

(i) If overfishing is occurring, the purpose of the action is to end overfishing.

(ii) If the stock or stock complex is overfished, the purpose of the action is to rebuild the stock or stock complex to the MSY level within an appropriate time frame.

(iii) If the rate or level of fishing mortality is approaching the maximum fishing mortality threshold (from below), the purpose of the action is to prevent this threshold from being reached.

(iv) If the stock or stock complex is approaching the minimum stock size threshold (from above), the purpose of the action is to prevent this threshold from being reached.

(4) *Constraints on Council action.* (i) In cases where overfishing is occurring, Council action must be sufficient to end overfishing.

(ii) In cases where a stock or stock complex is overfished, Council action must specify a time period for rebuilding the stock or stock complex that satisfies the requirements of section 304(e)(4)(A) of the Magnuson-Stevens Act.

(A) A number of factors enter into the specification of the time period for rebuilding:

(1) The status and biology of the stock or stock complex;

(2) Interactions between the stock or stock complex and other components of the marine ecosystem (also referred to as "other environmental conditions");

(3) The needs of fishing communities;

(4) Recommendations by international organizations in which the United States participates; and

(5) Management measures under an international agreement in which the United States participates.

(B) These factors enter into the specification of the time period for rebuilding as follows:

(1) The lower limit of the specified time period for rebuilding is determined by the status and biology of the stock or stock complex and its interactions with other components of the marine ecosystem, and is defined as the amount of time that would be required for rebuilding if fishing mortality were eliminated entirely.

(2) If the lower limit is less than 10 years, then the specified time period for rebuilding may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the United States participates, except that no such upward adjustment can result in the specified time period exceeding 10 years, unless management measures under an international agreement in which the United States participates dictate otherwise.

(3) If the lower limit is 10 years or greater, then the specified time period for rebuilding may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the United States participates, except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality, plus one mean generation time or equivalent period based on the species' life-history characteristics. For example, suppose a stock could be rebuilt within 12 years in the absence of any fishing mortality, and has a mean generation time of 8 years. The rebuilding period, in this case, could be as long as 20 years.

(C) A rebuilding program undertaken after May 1, 1998 commences as soon as the first measures to rebuild the stock or stock complex are implemented.

(D) In the case of rebuilding plans that were already in place as of May 1, 1998, such rebuilding plans must be reviewed to determine whether they are in compliance with all requirements of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act.

(iii) For fisheries managed under an international agreement, Council action must reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) *Interim measures.* The Secretary, on his/her own initiative or in response

to a Council request, may implement interim measures to reduce overfishing under section 305(c) of the Magnuson-Stevens Act, until such measures can be replaced by an FMP, FMP amendment, or regulations taking remedial action.

(i) These measures may remain in effect for no more than 180 days, but may be extended for an additional 180 days if the public has had an opportunity to comment on the measures and, in the case of Council-recommended measures, the Council is actively preparing an FMP, FMP amendment, or proposed regulations to address overfishing on a permanent basis. Such measures, if otherwise in compliance with the provisions of the Magnuson-Stevens Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(ii) If interim measures are made effective without prior notice and opportunity for comment, they should be reserved for exceptional situations, because they affect fishermen without providing the usual procedural safeguards. A Council recommendation for interim measures without notice-and-comment rulemaking will be considered favorably if the short-term benefits of the measures in reducing overfishing outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants in the fishery.

(f) *OY*—(1) *Definitions*. (i) The term "optimum," with respect to the yield from a fishery, means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery.

(ii) In national standard 1, use of the phrase "achieving, on a continuing basis, the OY from each fishery" means producing, from each fishery, a long-term series of catches such that the average catch is equal to the average OY and such that status determination criteria are met.

(2) *Values in determination*. In determining the greatest benefit to the Nation, these values that should be weighed are food production, recreational opportunities, and protection afforded to marine ecosystems. They should receive serious attention when considering the

economic, social, or ecological factors used in reducing MSY to obtain OY.

(i) The benefits of food production are derived from providing seafood to consumers, maintaining an economically viable fishery together with its attendant contributions to the national, regional, and local economies, and utilizing the capacity of the Nation's fishery resources to meet nutritional needs.

(ii) The benefits of recreational opportunities reflect the quality of both the recreational fishing experience and non-consumptive fishery uses such as ecotourism, fish watching, and recreational diving, and the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(iii) The benefits of protection afforded to marine ecosystems are those resulting from maintaining viable populations (including those of unexploited species), maintaining evolutionary and ecological processes (e.g., disturbance regimes, hydrological processes, nutrient cycles), maintaining the evolutionary potential of species and ecosystems, and accommodating human use.

(3) *Factors relevant to OY*. Because fisheries have finite capacities, any attempt to maximize the measures of benefit described in paragraph (f)(2) of this section will inevitably encounter practical constraints. One of these is MSY. Moreover, various factors can constrain the optimum level of catch to a value less than MSY. The Magnuson-Stevens Act's definition of OY identifies three categories of such factors: Social, economic, and ecological. Not every factor will be relevant in every fishery. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding reductions in MSY.

(i) *Social factors*. Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Other factors that may be considered include the cultural place of subsistence fishing, obligations under Indian treaties, and worldwide nutritional needs.

(ii) *Economic factors*. Examples are prudent consideration of the risk of overharvesting when a stock's size or productive capacity is uncertain, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S.-harvested fish. Other factors that may be considered include the value of

fisheries, the level of capitalization, the decrease in cost per unit of catch afforded by an increase in stock size, and the attendant increase in catch per unit of effort, alternate employment opportunities, and economies of coastal areas.

(iii) *Ecological factors*. Examples are stock size and age composition, the vulnerability of incidental or unregulated stocks in a mixed-stock fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. Also important are ecological or environmental conditions that stress marine organisms, such as natural and manmade changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(4) *Specification*. (i) The amount of fish that constitutes the OY should be expressed in terms of numbers or weight of fish. However, OY may be expressed as a formula that converts periodic stock assessments into target harvest levels; in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement; or as an amount of fish taken only in certain areas, in certain seasons, with particular gear, or by a specified amount of fishing effort.

(ii) Either a range or a single value may be specified for OY. Specification of a numerical, fixed-value OY does not preclude use of annual target harvest levels that vary with stock size. Such target harvest levels may be prescribed on the basis of an OY control rule similar to the MSY control rule described in paragraph (c)(1)(ii) of this section, but designed to achieve OY on average, rather than MSY. The annual harvest level obtained under an OY control rule must always be less than or equal to the harvest level that would be obtained under the MSY control rule.

(iii) All fishing mortality must be counted against OY, including that resulting from bycatch, scientific research, and any other fishing activities.

(iv) The OY specification should be translatable into an annual numerical estimate for the purposes of establishing any TALFF and analyzing impacts of the management regime. There should be a mechanism in the FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(v) The determination of OY requires a specification of MSY, which may not always be possible or meaningful. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist,

or where the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size diminish the meaningfulness of the MSY concept, the OY must still be based on the best scientific information available. When data are insufficient to estimate MSY directly, Councils should adopt other measures of productive capacity that can serve as reasonable proxies for MSY to the extent possible (also see paragraph (c)(3) of this section).

(vi) In a mixed-stock fishery, specification of a fishery-wide OY may be accompanied by management measures establishing separate annual target harvest levels for the individual stocks. In such cases, the sum of the individual target levels should not exceed OY.

(5) *OY and the precautionary approach*. In general, Councils should adopt a precautionary approach to specification of OY. A precautionary approach is characterized by three features:

(i) Target reference points, such as OY, should be set safely below limit reference points, such as the catch level associated with the fishing mortality rate or level defined by the status determination criteria. Because it is a target reference point, OY does not constitute an absolute ceiling, but rather a desired result. An FMP must contain conservation and management measures to achieve OY, and provisions for information collection that are designed to determine the degree to which OY is achieved on a continuing basis—that is, to result in a long-term average catch equal to the long-term average OY, while meeting the status determination criteria. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach OY, but not to exceed OY by a substantial amount. The Secretary has an obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive, or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification. Exceeding OY does not necessarily constitute overfishing. However, even if no overfishing resulted from exceeding OY, continual harvest at a level above OY would violate national standard 1, because OY was not achieved on a continuing basis.

(ii) A stock or stock complex that is below the size that would produce MSY should be harvested at a lower rate or

level of fishing mortality than if the stock or stock complex were above the size that would produce MSY.

(iii) Criteria used to set target catch levels should be explicitly risk averse, so that greater uncertainty regarding the status or productive capacity of a stock or stock complex corresponds to greater caution in setting target catch levels. Part of the OY may be held as a reserve to allow for factors such as uncertainties in estimates of stock size and DAH. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(6) *Analysis*. An FMP must contain an assessment of how its OY specification was determined (section 303(a)(3) of the Magnuson-Stevens Act). It should relate the explanation of overfishing in paragraph (d) of this section to conditions in the particular fishery and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate them to determine the amount, if any, by which MSY exceeds OY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation. If overfishing is permitted under paragraph (d)(6) of this section, the assessment must contain a justification in terms of overall benefits, including a comparison of benefits under alternative management measures, and an analysis of the risk of any species or ecologically significant unit thereof reaching a threatened or endangered status, as well as the risk of any stock or stock complex falling below its minimum stock size threshold.

(7) *OY and foreign fishing*. Section 201(d) of the Magnuson-Stevens Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States.

(i) *DAH*. Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(ii) *DAP*. Each FMP must assess the capacity of U.S. processors. It must also assess the amount of DAP, which is the sum of two estimates: The estimated amount of U.S. harvest that domestic processors will process, which may be based on historical performance or on surveys of the expressed intention of

manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and the estimated amount of fish that will be harvested by domestic vessels, but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(iii) *JVP*. When DAH exceeds DAP, the surplus is available for JVP. JVP is derived from DAH.

5. In § 600.315, paragraphs (e)(3) and (e)(4) are redesignated as paragraphs (e)(4) and (e)(5), respectively; new paragraph (e)(3) is added; and paragraphs (c)(2), (c)(3), (e)(1) introductory text, (e)(1)(ii), and newly redesignated (e)(4) are revised to read as follows:

§ 600.315 National Standard 2—Scientific Information.

(c) * * *

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource, marine ecosystem, and the fishery (including fishing communities).

(3) The information submitted by various data suppliers should be comparable and compatible, to the maximum extent possible.

(e) * * *

(1) The SAFE report is a document or set of documents that provides Councils with a summary of information concerning the most recent biological condition of stocks and the marine ecosystems in the FMU and the social and economic condition of the recreational and commercial fishing interests, fishing communities, and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks, marine ecosystems, and fisheries being managed under Federal regulation.

(ii) The SAFE report provides information to the Councils for determining annual harvest levels from each stock, documenting significant trends or changes in the resource, marine ecosystems, and fishery over time, and assessing the relative success of existing state and Federal fishery management programs. Information on bycatch and safety for each fishery should also be summarized. In addition, the SAFE report may be used to update or expand previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.

(3) Each SAFE report should contain a description of the maximum fishing mortality threshold and the minimum stock size threshold for each stock or stock complex, along with information by which the Council may determine:

(i) Whether overfishing is occurring with respect to any stock or stock complex, whether any stock or stock complex is overfished, whether the rate or level of fishing mortality applied to any stock or stock complex is approaching the maximum fishing mortality threshold, and whether the size of any stock or stock complex is approaching the minimum stock size threshold.

(ii) Any management measures necessary to provide for rebuilding an overfished stock or stock complex (if any) to a level consistent with producing the MSY in such fishery.

(4) Each SAFE report may contain additional economic, social, community, essential fish habitat, and ecological information pertinent to the success of management or the achievement of objectives of each FMP.

6. In § 600.320, the last sentence of paragraph (c) is revised to read as follows:

§ 600.320 National Standard 3—Management Units.

(c) * * * The Secretary designates which Council(s) will prepare the FMP, under section 304(f) of the Magnuson-Stevens Act.

7. In § 600.325, paragraph (c)(3)(ii) is revised to read as follows:

§ 600.325 National Standard 4—Allocations.

(c) * * *
(3) * * *

(ii) *Promotion of conservation.*

Numerous methods of allocating fishing privileges are considered "conservation and management" measures under section 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product. To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, any harvest restrictions or recovery benefits must be allocated fairly and equitably among the

commercial, recreational, and charter fishing sectors of the fishery.

8. In § 600.330, paragraphs (a) and (b)(1), the first sentence of paragraph (c) introductory text, the last sentence of paragraph (c)(1), and paragraph (c)(2) are revised to read as follows:

§ 600.330 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) * * *

(1) *General.* The term "utilization" encompasses harvesting, processing, marketing, and non-consumptive uses of the resource, since management decisions affect all sectors of the industry. In considering efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

(c) *Limited access.* A "system for limiting access," which is an optional measure under section 303(b) of the Magnuson-Stevens Act, is a type of allocation of fishing privileges that may be considered to contribute to economic efficiency or conservation.

(1) * * * Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Magnuson-Stevens Act, except for fees allowed under section 304(d)(2).

(2) *Factors to consider.* The Magnuson-Stevens Act ties the use of limited access to the achievement of OY. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Magnuson-Stevens Act and in § 600.325(c)(3). In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Magnuson-Stevens Act's limitations on returning economic rent to the public under section 304(d). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

9. In § 600.340, paragraph (b)(1) is amended by revising the second sentence to read as follows:

§ 600.340 National Standard 7—Costs and Benefits.

(b) * * *

(1) * * * The Magnuson-Stevens Act requires Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs.

10. Sections 600.345, 600.350, and 600.355 are added to subpart D to read as follows:

§ 600.345 National Standard 8—Communities.

(a) *Standard 8.* Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to:

(1) Provide for the sustained participation of such communities; and
(2) To the extent practicable, minimize adverse economic impacts on such communities.

(b) *General.* (1) This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is within the context of the conservation requirements of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.

(2) This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.

(3) The term "fishing community" means a community that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic

needs, and includes fishing vessel owners, operators, and crew, and fish processors that are based in such communities. A fishing community is a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing or on directly related fisheries-dependent services and industries (for example, boatyards, ice suppliers, tackle shops).

(4) The term "sustained participation" means continued access to the fishery within the constraints of the condition of the resource.

(c) *Analysis.* (1) FMPs must examine the social and economic importance of fisheries to communities potentially affected by management measures. For example, severe reductions of harvests for conservation purposes may decrease employment opportunities for fishermen and processing plant workers, thereby adversely affecting their families and communities. Similarly, a management measure that results in the allocation of fishery resources among competing sectors of a fishery may benefit some communities at the expense of others.

(2) An appropriate vehicle for the analyses under this standard is the fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act. Qualitative and quantitative data may be used, including information provided by fishermen, dealers, processors, and fisheries organizations and associations. In cases where data are severely limited, effort should be directed to identifying and gathering needed data.

(3) To address the sustained participation of fishing communities that will be affected by management measures, the analysis should first identify affected fishing communities and then assess their differing levels of dependence on and engagement in the fishery being regulated. The analysis should also specify how that assessment was made. The best available data on the history, extent, and type of participation of these fishing communities in the fishery should be incorporated into the social and economic information presented in the FMP. The analysis does not have to contain an exhaustive listing of all communities that might fit the definition; a judgment can be made as to which are primarily affected. The analysis should discuss each alternative's likely effect on the sustained participation of these fishing communities in the fishery.

(4) The analysis should assess the likely positive and negative social and

economic impacts of the alternative management measures, over both the short and the long term, on fishing communities. Any particular management measure may economically benefit some communities while adversely affecting others. Economic impacts should be considered both for individual communities and for the group of all affected communities identified in the FMP. Impacts of both consumptive and non-consumptive uses of fishery resources should be considered.

(5) A discussion of social and economic impacts should identify those alternatives that would minimize adverse impacts on these fishing communities within the constraints of conservation and management goals of the FMP, other national standards, and other applicable law.

§ 600.350 National Standard 9—Bycatch.

(a) *Standard 9.* Conservation and management measures shall, to the extent practicable:

(1) Minimize bycatch; and
(2) To the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

(b) *General.* This national standard requires Councils to consider the bycatch effects of existing and planned conservation and management measures. Bycatch can, in two ways, impede efforts to protect marine ecosystems and achieve sustainable fisheries and the full benefits they can provide to the Nation. First, bycatch can increase substantially the uncertainty concerning total fishing-related mortality, which makes it more difficult to assess the status of stocks, to set the appropriate OY and define overfishing levels, and to ensure that OYs are attained and overfishing levels are not exceeded. Second, bycatch may also preclude other more productive uses of fishery resources.

(c) *Definition—Bycatch.* The term "bycatch" means fish that are harvested in a fishery, but that are not sold or kept for personal use. Bycatch includes the discard of whole fish at sea or elsewhere, including economic discards and regulatory discards, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality). Bycatch does not include any fish that legally are retained in a fishery and kept for personal, tribal, or cultural use, or that enter commerce through sale, barter, or trade. Bycatch does not include fish released alive under a recreational catch-and-release fishery management program. A catch-and-release fishery management program is

one in which the retention of a particular species is prohibited. In such a program, those fish released alive would not be considered bycatch. Bycatch also does not include Atlantic highly migratory species harvested in a commercial fishery that are not regulatory discards and that are tagged and released alive under a scientific tag-and-release program established by the Secretary.

(d) *Minimizing bycatch and bycatch mortality.* The priority under this standard is first to avoid catching bycatch species where practicable. Fish that are bycatch and cannot be avoided must, to the extent practicable, be returned to the sea alive. Any proposed conservation and management measure that does not give priority to avoiding the capture of bycatch species must be supported by appropriate analyses. In their evaluation, the Councils must consider the net benefits to the Nation, which include, but are not limited to: Negative impacts on affected stocks; incomes accruing to participants in directed fisheries in both the short and long term; incomes accruing to participants in fisheries that target the bycatch species; environmental consequences; non-market values of bycatch species, which include non-consumptive uses of bycatch species and existence values, as well as recreational values; and impacts on other marine organisms. To evaluate conservation and management measures relative to this and other national standards, as well as to evaluate total fishing mortality, Councils must—

(1) *Promote development of a database on bycatch and bycatch mortality in the fishery to the extent practicable.* A review and, where necessary, improvement of data collection methods, data sources, and applications of data must be initiated for each fishery to determine the amount, type, disposition, and other characteristics of bycatch and bycatch mortality in each fishery for purposes of this standard and of section 303(a)(11) and (12) of the Magnuson-Stevens Act. Bycatch should be categorized to focus on management responses necessary to minimize bycatch and bycatch mortality to the extent practicable. When appropriate, management measures, such as at-sea monitoring programs, should be developed to meet these information needs.

(2) *For each management measure, assess the effects on the amount and type of bycatch and bycatch mortality in the fishery.* Most conservation and management measures can affect the amounts of bycatch or bycatch mortality in a fishery, as well as the extent to

which further reductions in bycatch are practicable. In analyzing measures, including the status quo, Councils should assess the impacts of minimizing bycatch and bycatch mortality, as well as consistency of the selected measure with other national standards and applicable laws. The benefits of minimizing bycatch to the extent practicable should be identified and an assessment of the impact of the selected measure on bycatch and bycatch mortality provided. Due to limitations on the information available, fishery managers may not be able to generate precise estimates of bycatch and bycatch mortality or other effects for each alternative. In the absence of quantitative estimates of the impacts of each alternative, Councils may use qualitative measures. Information on the amount and type of bycatch should be summarized in the SAFE reports.

(3) *Select measures that, to the extent practicable, will minimize bycatch and bycatch mortality.* (i) A determination of whether a conservation and management measure minimizes bycatch or bycatch mortality to the extent practicable, consistent with other national standards and maximization of net benefits to the Nation, should consider the following factors:

(A) Population effects for the bycatch species.

(B) Ecological effects due to changes in the bycatch of that species (effects on other species in the ecosystem).

(C) Changes in the bycatch of other species of fish and the resulting population and ecosystem effects.

(D) Effects on marine mammals and birds.

(E) Changes in fishing, processing, disposal, and marketing costs.

(F) Changes in fishing practices and behavior of fishermen.

(G) Changes in research, administration, and enforcement costs and management effectiveness.

(H) Changes in the economic, social, or cultural value of fishing activities and nonconsumptive uses of fishery resources.

(I) Changes in the distribution of benefits and costs.

(J) Social effects.

(ii) The Councils should adhere to the precautionary approach found in the Food and Agriculture Organization of the United Nations (FAO) Code of Conduct for Responsible Fisheries (Article 6.5), which is available from the Director, Publications Division, FAO, Viale delle Terme di Caracalla, 00100 Rome, Italy, when faced with uncertainty concerning any of the factors listed in this paragraph (d)(3).

(4) *Monitor selected management measures.* Effects of implemented

measures should be evaluated routinely. Monitoring systems should be established prior to fishing under the selected management measures. Where applicable, plans should be developed and coordinated with industry and other concerned organizations to identify opportunities for cooperative data collection, coordination of data management for cost efficiency, and avoidance of duplicative effort.

(e) *Other considerations.* Other applicable laws, such as the MMPA, the ESA, and the Migratory Bird Treaty Act, require that Councils consider the impact of conservation and management measures on living marine resources other than fish; i.e., marine mammals and birds.

§ 600.355 National Standard 10—Safety of Life at Sea.

(a) *Standard 10.* Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

(b) *General.* (1) Fishing is an inherently dangerous occupation where not all hazardous situations can be foreseen or avoided. The standard directs Councils to reduce that risk in crafting their management measures, so long as they can meet the other national standards and the legal and practical requirements of conservation and management. This standard is not meant to give preference to one method of managing a fishery over another.

(2) The qualifying phrase "to the extent practicable" recognizes that regulation necessarily puts constraints on fishing that would not otherwise exist. These constraints may create pressures on fishermen to fish under conditions that they would otherwise avoid. This standard instructs the Councils to identify and avoid those situations, if they can do so consistent with the legal and practical requirements of conservation and management of the resource.

(3) For the purposes of this national standard, the safety of the fishing vessel and the protection from injury of persons aboard the vessel are considered the same as "safety of human life at sea. The safety of a vessel and the people aboard is ultimately the responsibility of the master of that vessel. Each master makes many decisions about vessel maintenance and loading and about the capabilities of the vessel and crew to operate safely in a variety of weather and sea conditions. This national standard does not replace the judgment or relieve the responsibility of the vessel master related to vessel safety. The Councils, the USCG, and NMFS, through the consultation process of paragraph (d) of

this section, will review all FMPs, amendments, and regulations during their development to ensure they recognize any impact on the safety of human life at sea and minimize or mitigate that impact where practicable.

(c) *Safety considerations.* The following is a non-inclusive list of safety considerations that should be considered in evaluating management measures under national standard 10.

(1) *Operating environment.* Where and when a fishing vessel operates is partly a function of the general climate and weather patterns of an area. Typically, larger vessels can fish farther offshore and in more adverse weather conditions than smaller vessels. An FMP should try to avoid creating situations that result in vessels going out farther, fishing longer, or fishing in weather worse than they generally would have in the absence of management measures. Where these conditions are unavoidable, management measures should mitigate these effects, consistent with the overall management goals of the fishery.

(2) *Gear and vessel loading requirements.* A fishing vessel operates in a very dynamic environment that can be an extremely dangerous place to work. Moving heavy gear in a seaway creates a dangerous situation on a vessel. Carrying extra gear can also significantly reduce the stability of a fishing vessel, making it prone to capsizing. An FMP should consider the safety and stability of fishing vessels when requiring specific gear or requiring the removal of gear from the water. Management measures should reflect a sensitivity to these issues and provide methods of mitigation of these situations wherever possible.

(3) *Limited season and area fisheries.* Fisheries where time constraints for harvesting are a significant factor and with no flexibility for weather, often called "derby" fisheries, can create serious safety problems. To participate fully in such a fishery, fishermen may fish in bad weather and overload their vessel with catch and/or gear. Where these conditions exist, FMPs should attempt to mitigate these effects and avoid them in new management regimes, as discussed in paragraph (e) of this section.

(d) *Consultation.* During preparation of any FMP, FMP amendment, or regulation that might affect safety of human life at sea, the Council should consult with the USCG and the fishing industry as to the nature and extent of any adverse impacts. This consultation may be done through a Council advisory panel, committee, or other review of the

FMP, FMP amendment, or regulations. Mitigation, to the extent practicable, and other safety considerations identified in paragraph (c) of this section should be included in the FMP.

(e) *Mitigation measures.* There are many ways in which an FMP may avoid or provide alternative measures to reduce potential impacts on safety of human life at sea. The following is a list of some factors that could be considered when management measures are developed:

(1) Setting seasons to avoid hazardous weather.

(2) Providing for seasonal or trip flexibility to account for bad weather (weather days).

(3) Allowing for pre- and post-season "soak time" to deploy and pick up fixed gear, so as to avoid overloading vessels with fixed gear.

(4) Tailoring gear requirements to provide for smaller or lighter gear for smaller vessels.

(5) Avoiding management measures that require hazardous at-sea inspections or enforcement if other

comparable enforcement could be accomplished as effectively.

(6) Limiting the number of participants in the fishery.

(7) Spreading effort over time and area to avoid potential gear and/or vessel conflicts.

(8) Implementing management measures that reduce the race for fish and the resulting incentives for fishermen to take additional risks with respect to vessel safety.

[FR Doc. 98-11471 Filed 4-30-98; 8:45 am]

BILLING CODE 3510-22-F

federal register

Friday
May 1, 1998

Part III

Federal Trade Commission

16 CFR Part 260
Guides for the Use of Environmental
Marketing Claims; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims

AGENCY: Federal Trade Commission.

ACTION: Final revised guides.

SUMMARY: The Federal Trade Commission ("Commission") issued Guides for the Use of Environmental Marketing Claims ("guides") on July 28, 1992. The guides included a provision for public comment and review three years after adoption to determine whether there was a need for any modifications. In connection with this review, in July 1995 the Commission sought public comment on a variety of issues, and held a two day public workshop-conference on December 7 and 8, 1995. On October 11, 1996, the Commission issued revised guides, but advised that it had not yet completed its review of the Recyclable and Compostable guides because of ongoing relevant consumer research. One purpose of the research was to examine whether "recyclable" and "compostable" claims continue to imply that consumers can recycle or compost the marketed product in their own area. Further, the Commission decided to seek additional public comment on the issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products could be considered "recyclable" under the guides and whether products made from such reconditioned and/or reused parts could qualify as "recycled" under the guides. The Commission has now completed its review of the above issues and is issuing further amendments to the guides, as discussed below.

The Compostable guide is amended to clarify that an unqualified compostable claim can be made if a product is compostable in a home compost pile or device, even if municipal or institutional composting facilities are not locally available. This is because consumers are likely to perceive claims of compostability to mean that a product may be composted in a home compost pile or device. The Recyclable guide is modified to allow the term "recyclable" to be used for a package or product that can be recovered from the solid waste stream for reuse or for the manufacture of another package or product, so long as the package or product can be collected through an established recycling program (thus including reused, reconditioned and remanufactured products). The guides retain the provision that, to make an

unqualified recyclable claim, recycling collection programs should be available to a substantial majority of consumers or communities, but the Commission is modifying the suggested qualifying statement for when an unqualified claim is not appropriate. Further, a new example illustrates that the phrase "Please Recycle" is considered equivalent to a "recyclable" claim. In addition, the Recycled Content guide is amended to clarify that recycled content may consist of used, reconditioned or remanufactured components, as well as raw materials. Finally, the Commission is amending the guides to clarify that they apply to all forms of marketing, including digital or electronic media, such as the Internet and electronic mail, and to the marketing of services, as well as products and packages.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankie, Attorney, (202) 326-3022, or Pablo Zylbergait, Attorney, (202) 326-3260, Division of Enforcement, Bureau of Consumer Protection, FTC, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:**I. Background****A. Purpose of the Guides**

Like other industry guides issued by the Commission, the Environmental Marketing Guides "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements." 16 CFR 1.5. The guides indicate how the Commission will apply Section 5 of the Federal Trade Commission Act ("FTC Act"), which prohibits unfair or deceptive acts or practices, in the area of environmental marketing claims.¹⁵ U.S.C. 45. The guides apply to all forms of marketing of products and services to the public, whether through advertisements, labels, package inserts, promotional materials, or electronic media.

B. 1995 Federal Register Notice

When the Commission issued the guides in 1992, it included a provision that three years after adoption, it would seek public comment on "whether and how the guides need to be modified in light of ensuing developments." Pursuant to this provision, in a *Federal Register* Notice published on July 31, 1995 ("1995 Notice"), the Commission sought comment on a number of general issues relating to the guides' efficacy and the need, if any, to revise or update the guides. 60 FR 38978. The Commission also sought comment on

specific issues related to particular environmental claims addressed by the guides. In addition, the 1995 Notice announced that Commission staff would be conducting a public workshop-conference at the conclusion of the comment period to discuss issues raised by the written comments. The workshop was held on December 7 and 8, 1995.

The Commission received 99 comments in response to the 1995 Notice.¹ Some of those comments are relevant to the issues presented in the October 11, 1996 *Federal Register* Notice ("1996 Notice"), discussed below.²

C. 1996 Federal Register Notice

On October 11, 1996, the Commission published revised guides (1996 Notice), which included revisions to the prefatory sections, as well as the following sections: General Environmental Benefits, Degradable/Biodegradable/Photodegradable, Recycled Content, Source Reduction, Refillable, and Ozone Safe and Ozone Friendly. 61 FR 53311. At that time, the Commission advised that it was still in the process of reviewing the Recyclable and Compostable guides and wanted to evaluate the results of ongoing consumer research. The Commission also stated that it was seeking further public comment on the issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products could be considered "recyclable" under the guides and whether products manufactured from such reconditioned and/or reused parts could qualify as "recycled" under the guides. In addition, the Commission reiterated its request for consumer

¹ The comments came from 45 trade associations or trade association coalitions; 28 manufacturers, distributors or retailers; 12 consumer, environmental or public advocacy organizations; 4 state government officials or bodies; 2 federal government agencies or officials; 2 certification organizations; 1 standards organization; 1 city government official; 1 individual; 1 educational institution; 1 consulting company; and 1 public-private recycling coalition.

² The comments are on the Commission's public record as Document Nos. B17512400001-B17512400099 for the 1995 Notice and B20818700001-B2081870227 for the 1996 Notice. The comments are cited in this Notice by the name of the commenter, reference to either the 1995 Notice or the 1996 Notice, depending on which notice(s) was responded to by the commenter, a shortened version of the comment number, and the relevant page(s) of the comment, e.g., Virginia Automotive Recyclers Ass'n, 1996 Notice, #1 at 1. The transcript of the public workshop is on the Commission's public record as Document No. P954501. A complete list of commenters, the comments, a transcript of the workshop proceedings, and consumer perception studies conducted are available for inspection and copying in the Consumer Response Center, Room 130, Federal Trade Commission, 6th & Pennsylvania Ave., N.W., Washington, D.C. 20580.

perception data for "recyclable" and "compostable" claims.³

In response to the 1996 Notice, 227 comments were received.⁴ Part II summarizes the comments on the 1996 Notice, and comments on the 1995 Notice that are relevant to the issues raised in the 1996 Notice.

D. Consumer Survey Evidence

The consumer perception survey evidence received by the Commission is relevant to the issues raised in the 1996 Notice. The Council on Packaging in the Environment ("COPE") conducted a national telephone survey in April 1996, providing evidence on whether consumers consider products made from reconditioned parts to be "recycled." COPE surveys from March 1993, September 1993, and December 1994 provide empirical data concerning consumers' interpretations of "recyclable" and "Please Recycle" claims. A Roper Starch Worldwide, Inc. ("Roper Starch") survey of consumers conducted through personal, in-home interviews during December 1996, provides information on how recyclable claims are interpreted. Research performed by professors from American University, through mall-intercept interviews, provides empirical data on consumer interpretation of recyclable claims and certain disclosures.⁵

³ For example, the 1995 Notice requested any empirical data relevant to whether consumers perceive that products made from reconditioned parts that would otherwise have been discarded should qualify as "recycled" products. Further, the 1995 Notice sought comment on certain issues relating to the Recyclable and Compostable guides and requested any empirical data regarding whether an unqualified recyclable or an unqualified compostable claim conveys a claim concerning local availability of recycling or composting programs and whether any evidence indicates that those guides should be modified, and if so, in what manner. In addition, the 1995 Notice stated that the available evidence suggested that certain qualifying disclosures outlined in the Recyclable and Compostable guides may be more effective than others in conveying to consumers that facilities may not be available in their community to recycle or compost the product. Thus, the Commission asked for any evidence indicating that certain of those qualifying disclosures should be modified, and if so, in what manner.

⁴ These came from 201 automotive parts dealers, "automotive recyclers," automotive salvage companies, dismantlers, wreckers and rebuilders; 17 trade associations (11 of which represent "automotive recyclers," rebuilders, and dismantlers); 2 manufacturers; 1 federal government agency; 1 public-private recycling hotline; 1 municipal recycling and solid waste commission; 1 association of recycling managers; 1 state office of environmental assistance; 1 non-profit public service corporation; and 1 individual.

⁵ Although the revised guides are effective immediately, the Commission will take into consideration the date when materials were authorized to be printed in conformance with the former guides.

II. Summary of Comments and Modifications to the Guides**A. The Compostable Guide****1. Summary of Comments Regarding the Compostable Guide**

Only a few comments directly addressed the Compostable guide, which states that an unqualified compostable claim might be deceptive unless a product can be safely composted at home and in a municipal composting facility. The Society of the Plastics Industry, Inc. ("SPI") stated that home composting appears to be the primary means of composting practiced by consumers and thus asked the Commission to clarify that an unqualified compostable claim can be made for an item that can be safely composted in a home compost pile or device.⁶ SPI stated that it was unaware of any data indicating that a product compostable in a home compost pile or device would not be compostable in a municipal composting facility. SPI stated further that the lack of municipal composting facilities near the consumer is irrelevant to the validity of an unqualified compostable claim. SPI noted, however, that if a product is only compostable in a municipal facility, then that fact should be disclosed and a qualifier regarding local availability should be used. Another commenter recommended modifying the definition of "compostable" to indicate that the advertised product "must break down in approximately the same time as the materials it is generally composted with."⁷

2. Modifications to the Compostable Guide

Because there are fewer than 20 municipal solid waste composting facilities in the United States, the Commission now believes that few consumers are likely to know about and associate a compostable claim with municipal solid waste composting facilities.⁸ Moreover, the Commission

⁶ SPI, 1995 Notice, #53 at 25; 1996 Notice, #70 at 2.

⁷ Mobil Chemical Co. ("Mobil"), 1995 Notice, #38 at 4. The guide currently states that a compostable claim means that a product will break down in a "safe and timely manner." The Commission interprets the "timely manner" language to mean that the product or package will break down in approximately the same time as the materials with which it is composted.

⁸ This view is supported by a 1991 University of Illinois study about consumer perceptions of such terms as "degradable/biodegradable," "compostable," "recyclable," and "environmentally friendly." When consumers were asked the open-ended question, "What does the term compostable mean?," 44.2% of respondents defined compostable in terms of a home compost pile. The study reported that consumers did not mention municipal

agrees with SPI that a product technically capable of being composted in a home compost pile or device would also be compostable in a municipal composting facility. Thus, the Compostable guide and Example 1 have been revised to clarify that an unqualified compostable claim can be made if a product is compostable in a home compost pile or device even if municipal or institutional⁹ composting facilities are not locally available.¹⁰ The guide still states, however, that if a claim is made that a product is compostable in a municipal or institutional composting facility, then the claim may need to be qualified to the extent necessary to avoid deception about the limited availability of composting facilities.

B. The Recyclable and Recycled Content Guides**1. Claims Regarding Local Availability of Recycling Facilities**

a. Background. The Recyclable guide states that consumers are likely to interpret unqualified recyclable claims to imply that facilities are available in their community to recycle the product, and that if facilities are not available to a substantial majority of consumers or in a substantial majority of communities, then such claims should be qualified. An important issue that arose in the review of the Recyclable guide concerned whether this interpretation of an unqualified claim is still correct. Closely related to this issue is how consumers interpret the increasing number of claims such as "Please Recycle" in the marketplace, and if these claims also need qualification when available facilities are limited.

b. Summary of Comments Regarding the Local Availability Standard and "Please Recycle" Claims. The issue of how consumers interpret unqualified recyclable claims and whether the term implies anything about the availability of local recycling facilities provoked a wide range of comments. A few commenters contended that no qualifications about limited availability were necessary.¹¹ Most of the

composting programs in their definitions of "compostable."

⁹ The word "institutional" has been added because there are also privately operated composting facilities.

¹⁰ Example 3 has been deleted because revised Example 1 now illustrates the same concept. In addition, references to "yard waste" have been changed to "yard trimmings" because the Environmental Protection Agency ("EPA") advised that the latter term is becoming more prevalent.

¹¹ International Dairy Foods Ass'n ("IDFA"), 1995 Notice, #13 at 2-3; American Bakers Ass'n, 1995

Continued

approximately 40 commenters who specifically discussed recyclable claims, however, only favored a less restrictive approach to when the term "recyclable" should be qualified. One commenter stated that the assertion that some consumers may not understand that "recyclable" means that the package is recyclable only if there is a recycling program in the community, seems to unnecessarily question the intelligence of consumers.¹² Another commenter recommended that the Commission indicate that only claims of recyclability that imply availability of programs (rather than recyclable claims in general) may require qualification to the extent necessary to avoid consumer deception about limited availability of recycling programs and collection sites.¹³ Another commenter stated that the Commission would promote dissemination of information and spur demand for increased recycling facilities by modifying the recyclability standards to allow claims of recyclability where a material can be recycled by an accepted, practical method, whether or not facilities to do so are widely available.¹⁴

Commenters also recommended that the threshold for making unqualified "recyclable" claims be lowered to permit such claims if facilities are available to a significant percentage of the population nationwide, or to a reasonable portion of the population (rather than the current threshold of substantial majority).¹⁵ Several commenters suggested that the Commission harmonize its guides with the draft standards being developed within the International Organization for Standardization ("ISO"), which would require that collection facilities be available to a "reasonable portion" of the population.¹⁶ One commenter contended that the "reasonable portion" language is more manageable than the

"substantial majority" wording in the guides and would require less cumbersome data collection.¹⁷

In contrast, several commenters urged the Commission to retain the current recyclable qualifications.¹⁸ EPA stated that claims of recyclability need to be qualified as recommended in the guides because there is no real benefit to consumers in being informed that a product or package is technically recyclable if a program is not available enabling them to recycle the material after use.¹⁹ EPA also stated that it would strongly oppose allowing the unqualified use of the term "recyclable" unless it can be definitely proven that such usage would not contribute to the placement of improper materials into recycling bins.

Another commenter maintained that the substantial increase in curbside collection programs over the past few years does not obviate the problem because the availability of curbside collection can itself mislead consumers about the recycling properties of certain materials.²⁰ A recycling association noted that false claims of recyclability waste consumers' time both in preparing materials to be recycled and in sorting through material not picked up because of contamination with non-recyclables.²¹ The commenter stated, for example, that its members had to explain to consumers why the recycling crew did not take the corrugated takeout pizza boxes labeled "recyclable," but which, in fact, were not recycled in the community where the pizza was sold.

Another commenter urged the Commission to modify the guides to limit the use of the unqualified claim "recyclable" to only those products and materials that are accepted for recycling in the majority of curbside recycling programs across the country or in the communities where the product is sold or distributed, or are accepted for recycling at the point of purchase or distribution, or have demonstrated a recycling rate of 50% or better nationally or in the communities where the product is sold or distributed.²² The Environmental Defense Fund ("EDF") stated that, to avoid consumer deception at the point of purchase, the qualifying

language accompanying a claim should explicitly state the current extent of availability of facilities and programs required to fulfill the claim, and therefore avoid placing the burden on consumers to determine local availability.²³ Two university professors who conducted research on recycling claims also suggested stronger qualifications.²⁴

The comments on statements such as "Please Recycle" also were mixed. Several industry commenters stated that statements like "Please Recycle" are exhortations to encourage consumers to recycle and not claims about whether a particular product is widely recyclable.²⁵ NSDA explained that in the soft drink industry, the three-chasing-arrows logo is almost always displayed in conjunction with the "Please Recycle" message, and the industry does not want any special meaning to be attached to the logo or the adjoining "Please Recycle" phrase, which simply asks the consumer to consider recycling.²⁶

In contrast, EPA stated that it viewed "Please Recycle" as similar to an unqualified claim of recyclability.²⁷ EPA also expressed concern that the phrase "Please Recycle" accompanied by the chasing-arrows symbol may simply be an effort by marketers to display that symbol without having to make a qualified recyclable claim. EPA stated that such messages are so similar to a claim of recyclability that when unqualified, they may be deceptive. University researchers Mayer & Cude suggested revising the guides to clarify that the phrase "Please Recycle" is not adequate to inform consumers about a product's recyclability.²⁸ Several Attorneys General recommended modifying the guides to state that the exhortation to recycle be expressly qualified whenever collection facilities are limited for the material in question by stating the percentage of the population that cannot recycle the material, followed by information on how to find out whether the material is recyclable in the consumer's area.²⁹

¹² EDF, 1995 Notice, #93 at 4.

¹³ Professors Robert N. Mayer and Brenda J. Cude ("Mayer & Cude"), 1995 Notice, #20 at 3.

¹⁴ GMA, 1995 Notice, #59 at 19 (such claims energize consumers to recycle items that can be recycled; curbing the use of "Please Recycle" might threaten upward trend of recycling rates); National Soft Drink Ass'n ("NSDA"), 1995 Notice, #62 at 6; SDA, 1995 Notice, #65 at 9; Chemical Specialties Manufacturers Ass'n, 1995 Notice, #72 at 15.

¹⁵ NSDA, 1995 Notice, #62 at 6.

¹⁶ EPA, 1995 Notice, #22 at 2.

¹⁷ EPA, 1995 Notice, #22 at 2.

¹⁸ Mayer & Cude, 1995 Notice, #20 at 5.

¹⁹ Attorneys General of the States of Arizona, California, Connecticut, Florida, Massachusetts, Minnesota, Missouri, New York, Pennsylvania,

c. *Consumer Perception Data Regarding the Local Availability Standard and "Please Recycle" Claims.* In the December 1994 COPE survey, respondents were asked if a "Please Recycle" claim on a package meant that collection programs existed in their community to recycle that package. Approximately one-third of consumers stated that the "Please Recycle" label meant that they could recycle the product in their community. When consumers were asked if the "Please Recycle" label on a package meant that the package can be recycled by consumers in all, most, some, a few or no communities, over one-half responded that the claim meant that the product could be recycled by consumers in "all" or "most" communities nationwide.

One question in the Roper Starch survey asked consumers if the claim of "recyclable package" on a cereal box meant that there definitely is a recycling facility for such packages in the consumers' communities. Of the respondents, 37% thought that the "recyclable" claim meant that there definitely was a recycling facility in their community, while 50% thought that there definitely was not a recycling facility in their community.

Although the research described above provides some consumer survey data regarding "Please Recycle" and local availability claims, in the 1996 Notice the Commission stated that it also wanted to evaluate the results of ongoing consumer research related to the Recyclable and Compostable guides. In July 1997, the Commission received the results of that research, which was conducted by Professors Manoj Hastak and Michael Mazis and funded by American University. Using a mail-intercept approach, respondents were exposed to one of two product packages (cardboard milk carton or plastic petroleum jelly jar) with one of three different labels on the package ("Recyclable," "Please Recycle," or no environmental claim).

After examining one package (either milk or petroleum jelly), respondents were asked a series of questions designed to measure their perceptions of the package's recyclability. Consumers were asked how likely or unlikely it is that the package can be recycled in their community.³⁰ Of the respondents

Tennessee, Washington, and Wisconsin ("Attorneys General"), 1995 Notice, #45 at 3.

³⁰ The communities that were selected for this study were chosen because neither of the product packages used in the study could be recycled curbside in these areas; there were no known drop off facilities in these communities that would accept either the milk carton or the petroleum jelly

exposed to the package without any environmental claim, between 46% and 54% (for milk and petroleum jelly, respectively) indicated that it was likely or extremely likely that the package was recyclable in their community. Over 72% of the respondents exposed to the "recyclable" label indicated that it was likely or extremely likely that the package was recyclable in their community. Over 75% of the respondents who were shown the "Please Recycle" label indicated that it was likely or extremely likely that the package was recyclable in their community.

Then, the respondents were asked how likely or unlikely it is that the package can be recycled in most communities in the United States. Of the respondents exposed to the package without any environmental claim, between 40% and 46% (for milk and petroleum jelly, respectively) indicated that it was likely or extremely likely that the package can be recycled in most communities in the United States. Approximately 70% of the respondents who were shown the "recyclable" or "Please Recycle" label indicated that it was likely or extremely likely that the package can be recycled in most communities in the United States.

d. *Retention of the Local Availability Standard; Amendment of the Recyclable Guide Regarding "Please Recycle" Claims.* As discussed above, recent survey data confirm that the presence of either the "recyclable" claim or the "Please Recycle" claim significantly increased the percentage of consumers who believed the package to be recyclable in their community and in most communities in the United States. The large increase in responses to the "recyclable" and "Please Recycle" labels over where no claim is made shows that the claims make a difference in consumer perception of the availability of recycling facilities in their communities and in most United States communities. Further, there were no statistically significant differences in response to the two questions between the "recyclable" and "Please Recycle" groups. The Commission concludes that these results indicate that a local availability claim is conveyed to consumers by an unqualified "recyclable" claim.³¹ The study further

jar; and the brand names of the products were not sold locally.

³¹ This conclusion is also supported by the December 1994 COPE survey. The Roper Starch data also shows that a significant percentage of consumers take a local availability claim from an unqualified "recyclable" claim, although a greater percentage did not. This result may be due, at least

indicates that packages with the claim "Please Recycle" are just as likely to be perceived as recyclable as packages with the claim "recyclable," and also to convey a local availability claim.

Further, some commenters indicated that unqualified claims of recyclability where there is no local availability of recycling programs, mislead consumers into placing improper materials into recycling bins and thus the claims can increase the costs of recycling programs. It also was pointed out that while a product may be technically recyclable, if a program is not available allowing consumers to recycle the product, there is no real value to consumers. Thus, the Commission has decided to retain the current disclosure system for "recyclable" claims. Unqualified "recyclable" claims should only be made when a package or product is recyclable for a substantial majority of consumers or communities; in all other instances, an appropriate disclosure should accompany such claims.³²

In addition, recent survey data reveal that a significant majority of consumers equate the claim "Please Recycle" with unqualified "recyclable" claims. Accordingly, new Example 11 to the Recyclable guide illustrates that the phrase "Please Recycle" is equivalent to a "recyclable" claim and, thus, that unqualified usage should be limited to products that can be recycled locally by a substantial majority of consumers or communities.

2. *Safe Harbor Disclosures for Products or Packages That Are Not Recyclable in a Substantial Majority of Communities*

a. *Summary of Comments Regarding Disclosures.* Under the Recyclable guide, the Commission adopted a three-tiered disclaimer approach, depending on the availability of recycling facilities for a package or product. The first tier is when recycling facilities are available to a substantial majority of consumers or communities nationwide; in such cases,

in part, to the survey's emphasis on the word "definitely."

³² The Commission is cognizant that ISO's "reasonable portion" environmental labeling standard went out in April 1998 for comments and balloting and will go out for final balloting toward the end of 1998. The Trade Agreements Act of 1979 states that any federal agency must, in developing standards, "take into consideration international standards and shall, if appropriate, base the standards on international standards." Trade Agreements Act of 1979, title IV, section 402, 93 Stat. 242 (1979) (codified as amended at 19 U.S.C. 2532(2)(A) (Supp. 1995)). Since the reasonable portion standard has not been formally adopted (or defined) by ISO, the Commission believes that it would be premature to contemplate revising the substantial majority standard at this time. Of course, at any time the Commission may alter or revise the guides based on international developments or other relevant changes.

unqualified recyclable claims can be made. The second tier is when facilities are available to a significant percentage of the population or communities, but not yet to a substantial majority of consumers or communities. In that situation, a suggested qualification is "Check to see if recycling facilities exist in your area." The third tier is when facilities are available to less than a significant percentage of communities or the population. Then, a recommended disclosure would be to state that the product is only recyclable in a few communities nationwide. Also, the guide provides that an alternative approach to qualifications would be to disclose the approximate percentage of communities or the population to whom recycling programs are available for the product.

Almost half of the commenters on recyclable claims urged the Commission to adopt different qualifiers, contending that the current "check to see" qualifier is too stringent. Several commenters suggested that the Commission revise the guides to allow for the qualifier "recyclable—where facilities exist," in addition to the "Check to see if recycling facilities exist in your area" qualifier.³³ Several commenters stated that the qualifier "recyclable where facilities exist" was sufficient to advise a consumer that the product might not be recyclable in the consumer's area.³⁴ Commenters also favored claims such as "recyclable through participating photofinishers" and "recyclable through participating dealers."³⁵ Another commenter urged the Commission to streamline the lengthy qualifications for "recyclable" claims offered as examples in the guides.³⁶

³³ Foodservice & Packaging Institute, Inc., 1995 Notice, #63 at 8–9 (if the claims are qualified in a positive manner, the consumer may be encouraged to seek out recycling opportunities that exist in the community, or by requesting information, create demand for expansion of recycling programs); Amoco Chemical Co., 1995 Notice, #35 at 2–3 (it is necessary to balance the need to inform the consumer about recyclable products with the need to avoid overstating the consumer's ability to recycle those products); Mobil, 1995 Notice, #38 at 3–4 (negative qualifiers such as "recycling programs may not exist in your area" are counterproductive, while positive qualifiers encourage the consumer to seek out recycling opportunities).

³⁴ Washington Legal Foundation, 1995 Notice, #84 at 3 (manufacturers may reasonably conclude that exporting consumers to "check to see if recycling facilities exist in your area" is a misuse of label and advertising space); SPI, 1996 Notice, #70 at 3.

³⁵ Kodak, 1995 Notice, #42 at 3; NAPM, 1995 Notice, #83 at 2.

³⁶ American Frozen Foods Institute, 1995 Notice, #85 at 3 (suggesting that manufacturers must be confident that qualifications that use fewer words and provide less detailed information than the Commission has suggested may be viewed as appropriate by the agency).

The Ford Motor Company ("Ford") contended that the current guides do not adequately address the recyclability of durable goods such as automobiles, because the guides' contemplate situations involving only curbside or drop off recycling programs.³⁷ Ford noted that vehicle owners have no difficulty availing themselves of various automotive disposal and recycling services, and therefore, recommended that automobile manufacturers be permitted to make unqualified claims of recyclability, even though their collection sites are not those contemplated by the guides.

The U.S. Environmental Recycling Hotline ("Hotline") suggested that product labels using its 1-800-CLEANUP telephone number in conjunction with a "recyclable" claim could be a "safe harbor," if used appropriately.³⁸ Another commenter maintained that companies using such terms as "recyclable," "compostable," "degradable," and "refillable" should be required to print a telephone number near the claim so that confused consumers can have their questions answered.³⁹

Several State Attorneys General stated that the "check to see" qualifier incorrectly implies that the most likely problem with an unqualified recyclable claim is the possibility of there not being any recycling facilities in the consumer's locality.⁴⁰ The Attorneys General suggested that the problem consumers are more likely to encounter is that the recycling facilities do not collect the material in question. They suggested that a clear, easily understood qualification be used when collection sites for the material in question are available to some but not all consumers or communities, for instance, "Not recyclable in 75% of U.S. communities. Check to see if recyclable in your area."

b. Consumer Perception Data Regarding Recyclable Disclosures. In the March 1993 COPE survey, half of those interviewed were asked whether an unqualified "recyclable" claim meant that collection programs existed in their community to recycle the product, and the other half were asked the same question with the qualified "Recyclable—check to see if recycling facilities exist in your area" disclosure. In each case, more than 40% of

respondents answered "yes" (i.e., the claim meant that collection programs existed in their community to recycle the product), regardless of whether they were exposed to the unqualified or qualified claim. There was no statistically significant difference between the two responses (46% for the unqualified claim; 43% for the qualified claim). The Commission believes that these results indicate that the "check to see" disclosure may not be effective in conveying to consumers that local facilities may not be available to recycle the product.

In the September 1993 survey, COPE tested a qualification similar to that recommended in the Compostable guide when facilities are available to a significant percentage, but not a substantial majority of the population (i.e., "Appropriate facilities may not exist in your area"). Half of those questioned were asked whether an unqualified "recyclable" claim meant that recycling programs for the product existed in their community and the other half were asked the same question when exposed to the claim:

"Recyclable—recycling programs for this bottle may not exist in your area." Of those exposed to the unqualified claim, 45% responded that the claim meant that facilities existed in their area, and 48% responded that it did not. Of consumers exposed to the qualified claim, "Recyclable—recycling programs for this bottle may not exist in your area," 29% responded that it meant that recycling programs for that bottle existed in their area, and 59% responded that the claim did not mean that recycling programs existed in their area. The Commission believes that these results indicate that the more cautionary disclosure, i.e., "Recycling programs [for this product] may not exist in your area," is more successful in conveying to consumers that facilities may not be available locally, than the "Check to see if recycling facilities exist in your area" disclosure.

c. Amendments Regarding Safe Harbor Recyclable Disclosures. Based on the comments and the consumer perception data discussed above that found that the "check to see" qualification did not significantly change consumers' perceptions of local availability of collection sites when compared with an unqualified "recyclable" claim, the Commission is withdrawing the safe harbor "Check to see if recycling facilities exist in your area." The Commission also concludes that the alternatives suggested by some commenters, such as "recyclable where facilities exist" would be inadequate to change consumer perception. In

particular, this alternative would suffer from the problem identified by the Attorneys General in that such a claim could imply that if any facility exists in a consumer's community, then the item is recyclable, when, in fact, that facility may not recycle the product. Example 4 of the Recyclable guide (where this issue is presented) has been revised to suggest the following types of disclosures: "Recycling programs for this bottle [product or packaging] may not exist in your area" or "This bottle [product or packaging] may not be recyclable in your area."⁴¹ Because the new safe harbors are tied to the marketed product as opposed to recycling programs generally, they reduce the possibility that consumers may infer that because a recycling program exists in their area, that any product represented as "recyclable" can, in fact, be recycled in their local program.

3. Reused and/or Reconditioned Parts Marketed as "Recycled" or "Recyclable"

a. Background. In the 1995 Notice, the Commission specifically sought comment as to whether consumers perceive that products made from reconditioned parts that would otherwise have been thrown away are "recycled" products, and what modifications, if any, should be made to the guides to address these consumer perceptions. The Commission received no empirical evidence in response to that request, but did receive several comments that discussed the issue. In the 1996 Notice, the Commission stated that it had determined to give further consideration to the question, as well as to the related issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products should be considered "recyclable" if adequate infrastructures for collecting the parts are available.

At that time, the Recycled Content guide defined "recycled content" as material that a marketer can substantiate has been recovered or otherwise diverted from the waste stream. This definition could be interpreted to include products made from reconditioned and/or reused parts, as well as products made from products converted into raw materials, such as steel made from melted down cans. The 1996 Notice pointed out, however, that the Recyclable guide stated that for something to be recyclable it must be diverted from the solid waste stream for use as "raw materials in the

⁴¹ The new qualifications also are consistent with the one suggested in the Compostable guide: "Appropriate facilities may not exist in your area."

manufacture or assembly of a new product or package." Thus, the 1996 Notice concluded that product parts that are capable of being reconditioned and/or reused in the manufacture of new products are not considered "recyclable" under the guides, because the parts are not actually reprocessed into raw materials before reuse.

b. Summary of Comments Regarding Reused and/or Reconditioned Parts as "Recycled" or "Recyclable." There was a consensus among those commenting that reused and/or reconditioned automotive parts should be permitted to be called "recycled." Approximately 207 comments to the 1996 Notice were patterned after, or similar to, a form letter from the Automotive Recyclers Association ("ARA"), a trade association representing automotive parts dealers, "automotive recyclers," automotive salvage companies, dismantlers, and wreckers.⁴² These commenters stated that the automotive recycling industry has been a pioneer in the recycling movement for over 50 years and that the products they sell have been and must continue to be described as "recycled." They contended that by using viable parts removed from vehicles bound for the waste stream, their products are reintroduced into commerce without wasting additional natural resources. The used automotive parts dealers, dismantlers, and salvage companies commented that they consider themselves to be "professional automotive recyclers" and one stated that "recycled" was the automotive industry's term first, before everyone else "jumped on the environmental bandwagon."⁴³

Several commenters said that customers are not confused when they buy a "recycled" automotive part because they realize that they are getting a used part for less money, i.e., used automotive parts cost 30–90% of the price of new parts.⁴⁵ Other commenters

said recycled parts give consumers an alternative repair option and help reduce the unnecessary production of new parts.⁴⁶ Some commenters noted that recycling automotive parts also helps keep vehicle insurance affordable because automotive recyclers buy damaged vehicles from insurance companies and resell the recycled parts (indirectly) to insurance companies to repair other damaged vehicles.⁴⁷ Another commenter suggested that the sale of many used parts as component assemblies, such as complete engine assemblies, reduces installation time and thus saves labor costs.⁴⁸ That commenter also pointed out that the automotive dismantler may be the only source of parts for the consumer who owns an older vehicle.

ARA stated that the Commission should consider the impact on the used automotive parts industry if it does not permit reused parts to be labeled as "recycled," and suggested that failure to do so would provide an unfair competitive advantage for products made from recycled raw materials.⁴⁹ ARA therefore recommended revising the Recyclable guide to incorporate reused automotive components as a qualifying use for the term "recyclable."⁵⁰ ARA further suggested that reused automotive parts should be included in the guidance regarding the Recycled Content guide.

In contrast, PRC expressed concern that any expansion of the term "recycling" would confuse consumers because they would have no means of distinguishing between used or remanufactured products and newly manufactured products made from raw

⁴² Attached to many of these letters were petitions containing the names and addresses of customers who stated: "[I] support reused parts being described as 'recycled.' I understand the quality of the product I am buying when it is advertised as 'recycled' and believe the service this company provides should continue to be recognized as recycling." Approximately 2,190 names of customers were on the petitions. See, e.g., Branch Auto Parts, 1996 Notice, #38 at 2; Alliance Auto Parts Inc., 1996 Notice, #48 at 2.

⁴³ See, e.g., B & K Auto Salvage, 1996 Notice, #124 at 1; Greensboro Auto Parts Co., Inc., 1996 Notice, #128 at 1; EL & M Auto Recycling, Inc., 1996 Notice, #161 at 1; Automotive Parts Rebuilders Ass'n ("APRA"), 1996 Notice, #102 at 4 (noting also that many used automotive parts dealers have the word "recycling," or some variation of it, in their names).

⁴⁴ BIG Truck Salvage, Inc., 1996 Notice, #77 at 1.

⁴⁵ Georgia Automotive Recyclers Ass'n, 1996 Notice, #117 at 1; Bliss Auto Wreckers, 1996 Notice,

#118 at 1. See also Michael W. Gibson, Ft. Worth, TX, Controller of the following companies: AAA Small Car World, Auto Recyclers of Houston, Budget American & Import Auto Parts, All Auto Recyclers of San Antonio, Auto Recyclers of Austin and Auto Recyclers of Ft. Worth ("Michael W. Gibson"), 1996 Notice, #78 at 1 (customers are not generally confused when products are described as "recycled," because they are almost always referred to as "recycled used parts"; these parts cost 50% or less, of the cost of a new or rebuilt/remanufactured part); Palmer's Auto Salvage ("Palmer's"), 1996 Notice, #43 at 3 (30–60%); Arizona Automotive Recyclers Ass'n ("Arizona Recyclers"), 1996 Notice, #99 at 2 (50%).

⁴⁶ See, e.g., Midway Auto Parts, 1996 Notice, #2 at 1; Autosalvage of Ithaca Inc., 1996 Notice, #40 at 1; Cousineau Auto Inc., 1996 Notice, #85 at 1.

⁴⁷ Route 19 Auto Salvage Inc., 1996 Notice, #39 at 1; Lynnwood Auto Wreckers Incorporated, 1996 Notice, #59 at 1. See also Pennsylvania Automotive Recycling Trade Society, 1996 Notice, #15 at 1; Palmer's, 1996 Notice, #43 at 11; Don's Automotive Mall, Inc. ("Don's"), 1996 Notice, #92 at 10; Arizona Recyclers, 1996 Notice, #99 at 2.

⁴⁸ Don's, 1996 Notice, #92 at 4.

⁴⁹ ARA, 1996 Notice, #101 at 8.

⁵⁰ ARA, 1995 Notice, #71 at 2, 6. See also ARA, 1996 Notice, #101 at 1–9.

materials.⁵¹ Similarly, Pitney Bowes, while favoring an expansion of the use of "recycled" and "recyclable," urged the Commission to distinguish among products that are made from reconditioned parts, reused parts, and remanufactured parts because they differ in specifications, product disclosures to the consumer, warranties, and manufacturing processes.⁵² Ford pointed out that in the automotive industry, the use of the term "recycled" generally means that a part has been removed from a scrap vehicle and resold with little or no work performed on it.⁵³ A "remanufactured" part, in contrast, has undergone substantial cleaning, repair and reworking and under industry practice this part would not be considered "recycled." Because restoration work has been performed on rebuilt and remanufactured parts, while recycled vehicle parts are often sold "as is," APRA noted that some rebuilders may not desire to use the term "recycled," but they should not be precluded from doing so.⁵⁴

Several commenters urged the Commission to allow the application of "recycled" and "recyclable" to other remanufactured and reused products that are not broken down to raw materials before being reused. These commenters noted that reused, reconditioned and remanufactured parts are important components of many products, such as office copiers, one-time use cameras and mailing machines.⁵⁵ Kodak noted that it has developed a reuse program for its one-time use cameras in which it reconditions and reuses, or breaks down into raw materials, 86% of a used camera by weight for use in the manufacture of new one-time use cameras.⁵⁶ Kodak contended that because collection of this sort of reused material diverts products from the waste stream, those products should qualify as "recyclable."⁵⁷

ARA pointed out that many states, including New Jersey, Missouri,

Minnesota, Maine, Louisiana, Kentucky, Georgia, and Florida, have acknowledged in their statutes that recycling encompasses all efforts, including reuse, to remove solid waste from the waste stream.⁵⁸ ARA stated that the Commission should provide incentives for all methods of recycling, as long as the goal of conserving natural resources and diverting waste is achieved. Other commenters noted that the draft ISO standard allows products that are diverted from the waste stream and returned to use in the form of raw materials or products to be considered "recyclable," and urged the Commission to adopt a similar approach.⁵⁹

c. *Quality Standards for Reused and Remanufactured Parts.* The 1996 Notice asked whether consumers generally perceive that the term "recycled" conveys information about the quality of a product, and whether consumers' concerns about product quality differ depending on whether a product is made from reconditioned and/or reused parts recovered from the solid waste stream versus from materials recovered from the solid waste stream and converted into raw materials. The 1996 Notice also asked if consumer perception about whether a product is or is not "recycled" would be affected if marketers of products made from reconditioned and/or reused parts could prove that those products are "substantially equivalent" in quality to comparable products made from recycled raw materials. The notice further asked what evidence should be required to show "substantial equivalency," and if consumers are likely to be deceived about the quality of products made from reconditioned and/or reused parts if they are advertised as "recycled."

Several commenters discussed the quality of reused or reconditioned products as it relates to recyclability and recycled content.⁶⁰ SPI suggested that substantial quality equivalency should be required, and that reliance on applicable government or industry standards for such products might be a way to demonstrate such equivalency.

By contrast, APRA noted that the sections of the guides relating to recyclability and recycled content currently do not mention quality and stated there is no reason why a product should have to demonstrate a particular quality, much less a comparability to new products, before being allowed to

use the designation "recycled" or "recyclable."⁶¹ APRA contended that those designations describe environmental attributes and not the quality of a product, and should not be used to denote quality. APRA noted that quality standards for rebuilt and remanufactured motor vehicle parts are already reflected in the Commission's Guides for the Rebuilt, Reconditioned and Other Used Automotive Parts Industry, 16 CFR Part 20. Kodak suggested that any concerns about product quality could be addressed through the responsible use of product warranties extended by manufacturers.⁶²

d. *Consumer Perception Data Regarding Reconditioned Products as "Recycled."* The 1995 Notice requested empirical evidence addressing the issue of whether consumers perceive that products made from reconditioned parts that would otherwise have been discarded should qualify as "recycled" products. In the April 1996 COPE survey, consumers were asked whether they considered products made from certain materials to be "recycled." Seventy-one percent stated that a television set made from reconditioned parts taken from used televisions is "recycled," while 25% said the reconditioned television set was "not recycled." The Commission believes that these results suggest that a large majority of consumers consider reconditioning to be a form of "recycling."

e. *Expansion of the Recyclable Guide to Include Reused and/or Reconditioned Products.* The majority of those commenting on the Recyclable guide supported its relaxation, and it was pointed out that such relaxation would be consistent with the laws of various states. Commenters pointed out that because the breakdown of a product into raw materials consumes more energy than reuse of that product, reused, reconditioned and remanufactured components diverted from the solid waste stream are even more beneficial to the environment than diverted components that are broken down into raw materials.

The Commission has therefore expanded the "recyclable" definition to include any package or product that can be collected, separated or otherwise recovered from the solid waste stream for "reuse," or for the manufacture or assembly of "another" (not necessarily new) package or product, so long as the package or product can be collected "through an established recycling program." The phrase "through an

established recycling program" has been added to the recyclable definition to indicate that the expanded definition does not encompass all goods with a potential for reuse of any kind. For a product to be called "recyclable," there must be an established recycling program, municipal or private, through which the product will be converted into, or used in, another product or package.

New Examples 9 and 10 illustrate the expansion of the Recyclable guide. Example 9 deals with manufacturers or retailers that collect and recycle their own products. The example allows a "recyclable" claim, even if no municipal recycling program exists, if the manufacturer or retailer: (a) sets up a collection and recycling program for that product, and (b) explains that the product is recyclable through that non-municipal (or private) program. Example 10 indicates that the disclosure requirements regarding local availability of municipal recycling facilities also apply to non-municipal recycling programs.

f. *Clarification of the Term "Recycled Content."* The 1996 Notice explained that the term "recycled content" referred to material that a marketer can substantiate has been recovered or otherwise diverted from the waste stream. Although this could be interpreted to include products made from reconditioned and/or reused parts, as well as products made from products converted into raw materials, such as steel from melted down cans, the Commission did not endorse this interpretation because the Recyclable guide unambiguously stated that for something to be "recyclable" it must be diverted from the solid waste stream and actually reprocessed into raw materials before reuse. This has now been changed.

For the reasons discussed in this section, the Recycled Content guide has been clarified to expressly encompass used, reconditioned, and remanufactured components, as well as raw materials. The revised Recycled Content guide now also states that manufacturers and retailers must disclose the nature of the recycled content, unless such content consists solely of raw materials, or it would be clear to consumers from the context that a product contains used, reconditioned, or remanufactured components. The Commission believes that whether the product being purchased is new (including a product made from recycled raw materials) or is made from used, reconditioned, or remanufactured components is a fact material to consumers' purchasing decisions. In

certain instances, it will be evident to consumers that the product is not new (e.g., if the product is purchased from a secondhand store, or if the product is an automotive part that has been purchased from an automotive dismantler). In those cases, no disclosure of the used nature of the product's recycled content would be necessary because it is clear from the context of the claim that the recycled content consists of used, reconditioned, or remanufactured components. In cases where it is not apparent from the context that the product is not new, however, to avoid consumer deception, the marketer should disclose the used, reconditioned, or remanufactured nature of the product's recycled content. Although the prior use of a product might be less important to consumers' purchasing decisions where substantial equivalency to a new item or an item made from recycled raw materials could be established, at the present time the record does not contain evidence that objective standards for determining substantial equivalency exist for many products. Moreover, in certain cases, there may not even be a comparable item made from recycled raw materials.

New Example 11 illustrates the use of an appropriate qualifier for a product that contains both recycled raw materials and reconditioned parts. Under that example, the percentage of materials composed of reconditioned parts should be disclosed. A consumer could then correctly assume that the remaining percentage consists of recycled raw materials.

New Example 12 deals with the use of a "recycled" label when it would not be clear to a consumer that the product at issue was used. In such a case, the product should be labeled to convey to a consumer that the product was used in order to avoid consumer deception.

New Example 13 illustrates the deceptive use of a "recycled" label when it would not be clear to a consumer that the product at issue contains recycled reconditioned parts. Such a label should clearly convey that the product contains recycled reconditioned parts to avoid deceiving consumers about the nature of that product's recycled content.

New Examples 14 and 15 concern the automotive parts market. As discussed above, in the used automotive parts market, consumers understand that certain recycled automotive parts are used parts that have not undergone any type of repair, rebuilding, or remanufacturing. Example 14, which involves a used automotive part, illustrates that in such a situation the unqualified use of the word "recycled"

would not be deceptive. Example 15 deals with rebuilt, reconditioned, or remanufactured automotive parts that are labeled as "recycled." Some commenters pointed out that because reconditioned, rebuilt, and remanufactured parts have had restorative work performed on them, some dealers may not want to use the "recycled" label (as it connotes to some consumers that the part is used and has not undergone any restoration). The Commission believes that dealers of reconditioned, rebuilt, and remanufactured parts should nevertheless be permitted to use the "recycled" label if they so desire. Example 15 illustrates the types of disclosures that are appropriate for use with those parts that bear a "recycled" label.

4. Additional Amendments to the Recyclable Guide

a. *The Mercury-Containing and Rechargeable Battery Management Act.* The Mercury-Containing and Rechargeable Battery Management Act of 1996 ("Battery Act") establishes uniform national labeling requirements regarding rechargeable nickel-cadmium and some lead-acid batteries, to aid in battery collection recycling. 42 U.S.C. 14301 et seq. Under the Battery Act, rechargeable nickel-cadmium and some lead-acid rechargeable batteries must be labeled with the three-chasing-arrows symbol or a comparable symbol. Additionally, rechargeable nickel-cadmium batteries must contain the phrase: "BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY." 42 U.S.C. 14322(b). Each regulated lead-acid battery must contain the words: "LEAD," "RETURN," and "RECYCLE." If the regulated battery is sealed, it must contain the phrase: "BATTERY MUST BE RECYCLED." 42 U.S.C. 14322(b). The Commission believes that batteries labeled in accordance with the statute's requirements satisfy the guides' disclosure provisions and therefore the Recyclable guide now includes a footnote stating that batteries labeled in accordance with the Battery Act are deemed to be in compliance with the guides.

b. *Example Regarding Use of the SPI Code.* Example 2 of the Recyclable guide states that the placement of the SPI code in an inconspicuous part of a package or product does not constitute a recyclability claim. That example has been clarified to emphasize that the placement of an SPI code in a conspicuous location may constitute a claim of recyclability, and thus, may have to be qualified to disclose the

⁵¹ PRC, 1996 Notice, #100 at 1-2.

⁵² Pitney Bowes, 1996 Notice, #218 at 3.

⁵³ Ford, 1995 Notice, #29 at 6. See also Michael W. Gibson, 1996 Notice, #78 at 1 (a recycled part is a used part placed back in service, but rebuilt or remanufactured parts are not referred to as "recycled" in the automotive industry).

⁵⁴ APRA, 1996 Notice, #102 at 7.

⁵⁵ Kodak, 1995 Notice, #42 at 2; 1996 Notice, #95 at 2; Pitney Bowes, 1996 Notice, #218 at 4-7.

⁵⁶ Kodak, 1995 Notice, #42 at 2. Kodak stated that statistics show that at least half of all cameras it distributes are returned to the company for this recycling. See also Kodak, 1996 Notice, #95 at 2.

⁵⁷ Kodak, 1995 Notice, #42 at 2. See also Kodak, 1996 Notice, #95 at 2 (noting that other products, such as the so-called "end of life" office equipment products, are also recovered and converted into equivalent salable products).

⁵⁸ ARA, 1996 Notice, #101 at 8.

⁵⁹ 3M, 1995 Notice, #32 at 9; Kodak, 1995 Notice, #42 at 3.

⁶⁰ See, e.g., SPI, 1996 Notice, #70 at 3; APRA, 1996 Notice, #102 at 3-5.

⁶¹ APRA, 1996 Notice, #102 at 3-5.

⁶² Kodak, 1996 Notice, #95 at 3.

limited availability of recycling programs for that package or product.

c. *Update of Examples 5 and 6.* Examples 5 and 6 have been updated by including products that better illustrate the current level of local recyclability described in each example.

C. Clarification Regarding Applicability of the Guides to the Marketing of Services, and to All Forms of Electronic Advertising

The Commission has determined to make minor amendments to the language in Sections 260.2, 260.5, 260.6(b) and 260.7(a) to clarify that the guides apply to the marketing of services because environmental claims also are being made in the marketing of services and there is no reason to limit the applicability of the guides to only products or packages. Furthermore, the Commission has made a minor amendment to Section 260.2 to clarify that the guides apply to all forms of electronic advertising, including marketing through digital or electronic means, such as the Internet or electronic mail.

III. Text of Modified Guides

List of Subjects in 16 CFR Part 260

Advertising, Environmental claims, Labeling, Trade practices.

For the reasons set forth in the preamble, 16 CFR Part 260 is amended as follows:

PART 260—GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS

1. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 41–58.

2. Section 260.2 is revised to read as follows:

§ 260.2 Scope of guides.

(a) These guides apply to environmental claims included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, product brand names, or through any other means, including marketing through digital or electronic means, such as the Internet or electronic mail. The guides apply to any claim about the environmental attributes of a product, package or service in connection with the sale, offering for sale, or marketing of such product, package or service for personal, family or household use, or for commercial, institutional or industrial use.

(b) Because the guides are not legislative rules under Section 18 of the FTC Act, they are not themselves enforceable regulations, nor do they have the force and effect of law. The guides themselves do not preempt regulation of other federal agencies or of state and local bodies governing the use of environmental marketing claims. Compliance with federal, state or local law and regulations concerning such claims, however, will not necessarily preclude Commission law enforcement action under Section 5.

3. Section 260.5 is revised to read as follows:

§ 260.5 Interpretation and substantiation of environmental marketing claims.

Section 5 of the FTC Act makes unlawful deceptive acts and practices in or affecting commerce. The Commission's criteria for determining whether an express or implied claim has been made are enunciated in the Commission's Policy Statement on Deception.¹ In addition, any party making an express or implied claim that presents an objective assertion about the environmental attribute of a product, package or service must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim. A reasonable basis consists of competent and reliable evidence. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Further guidance on the reasonable basis standard is set forth in the Commission's 1983 Policy Statement on the Advertising Substantiation Doctrine, 49 FR 30999 (1984); *appended to Thompson Medical Co.*, 104 F.T.C. 648 (1984). The Commission has also taken action in a number of cases involving alleged deceptive or unsubstantiated environmental advertising claims. A current list of environmental marketing cases and/or copies of individual cases can be obtained by calling the FTC Consumer Response Center at (202) 326–2222.

¹ *Cliffdale Associates, Inc.*, 103 F.T.C. 110, at 176, 176 n.7, n.8, Appendix, reprinting letter dated Oct. 14, 1983, from the Commission to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (1984) ("Deception Statement").

4. Section 260.6 is amended by revising paragraphs (a) and (b) (the examples are unchanged) to read as follows:

§ 260.6 General principles.

(a) *Qualifications and disclosures.* The Commission traditionally has held that in order to be effective, any qualifications or disclosures such as those described in these guides should be sufficiently clear, prominent and understandable to prevent deception. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

(b) *Distinction between benefits of product, package and service.* An environmental marketing claim should be presented in a way that makes clear whether the environmental attribute or benefit being asserted refers to the product, the product's packaging, a service or to a portion or component of the product, package or service. In general, if the environmental attribute or benefit applies to all but minor, incidental components of a product or package, the claim need not be qualified to identify that fact. There may be exceptions to this general principle. For example, if an unqualified "recyclable" claim is made and the presence of the incidental component significantly limits the ability to recycle the product, then the claim would be deceptive.

5. Footnotes 4, 5 and 6 of § 260.8 are redesignated as footnotes 7, 8 and 9 and § 260.7 is amended by revising the introductory text, paragraph (a) (the examples are unchanged), paragraphs (c) and (d), and paragraph (e) and its example 10, and by adding examples 11 through 15 for paragraph (e), to read as follows:

§ 260.7 Environmental marketing claims.

Guidance about the use of environmental marketing claims is set forth in this section. Each guide is followed by several examples that illustrate, but do not provide an exhaustive list of, claims that do and do not comport with the guides. In each case, the general principles set forth in § 260.6 should also be followed.²

² These guides do not currently address claims based on a "lifecycle" theory of environmental benefit. The Commission lacks sufficient information on which to base guidance on such claims.

(a) *General environmental benefit claims.* It is deceptive to misrepresent, directly or by implication, that a product, package or service offers a general environmental benefit. Unqualified general claims of environmental benefit are difficult to interpret, and depending on their context, may convey a wide range of meanings to consumers. In many cases, such claims may convey that the product, package or service has specific and far-reaching environmental benefits. As explained in the Commission's Advertising Substantiation Statement, every express and material implied claim that the general assertion conveys to reasonable consumers about an objective quality, feature or attribute of a product or service must be substantiated. Unless this substantiation duty can be met, broad environmental claims should either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted.

(c) *Compostable.* (1) It is deceptive to misrepresent, directly or by implication, that a product or package is compostable. A claim that a product or package is compostable should be substantiated by competent and reliable scientific evidence that all the materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Claims of compostability should be qualified to the extent necessary to avoid consumer deception. An unqualified claim may be deceptive if:

(i) The package cannot be safely composted in a home compost pile or device; or

(ii) The claim misleads consumers about the environmental benefit provided when the product is disposed of in a landfill.

(2) A claim that a product is compostable in a municipal or institutional composting facility may need to be qualified to the extent necessary to avoid deception about the limited availability of such composting facilities.

Example 1: A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive provided the manufacturer can substantiate that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device. If this is the case, it is not relevant that no local municipal or institutional composting facilities exist.

Example 2: A lawn and leaf bag is labeled as "Compostable in California Municipal Yard Trimmings Composting Facilities." The bag contains toxic ingredients that are released into the compost material as the bag breaks down. The claim is deceptive if the presence of these toxic ingredients prevents the compost from being usable.

Example 3: A manufacturer makes an unqualified claim that its package is compostable. Although municipal or institutional composting facilities exist where the product is sold, the package will not break down into usable compost in a home compost pile or device. To avoid deception, the manufacturer should disclose that the package is not suitable for home composting.

Example 4: A nationally marketed lawn and leaf bag is labeled "compostable." Also printed on the bag is a disclosure that the bag is not designed for use in home compost piles. The bags are in fact composted in yard trimmings composting programs in many communities around the country, but such programs are not available to a substantial majority of consumers or communities where the bag is sold. The claim is deceptive because reasonable consumers living in areas not served by yard trimmings programs may understand the reference to mean that composting facilities accepting the bags are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of such programs, for example, by stating, "Appropriate facilities may not exist in your area." Other examples of adequate qualification of the claim include providing the approximate percentage of communities or the population for which such programs are available.

Example 5: A manufacturer sells a disposable diaper that bears the legend, "This diaper can be composted where solid waste composting facilities exist. There are currently [X number of] solid waste composting facilities across the country." The claim is not deceptive, assuming that composting facilities are available as claimed and the manufacturer can substantiate that the diaper can be converted safely to usable compost in solid waste composting facilities.

Example 6: A manufacturer markets yard trimmings bags only to consumers residing in particular geographic areas served by county yard trimmings composting programs. The bags meet specifications for these programs and are labeled, "Compostable Yard Trimmings Bag for County Composting Programs." The claim is not deceptive. Because the bags are compostable where they are sold, no qualification is required to indicate the limited availability of composting facilities.

(d) *Recyclable.* It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated or otherwise recovered from the solid waste stream for reuse, or in the manufacture or assembly of another package or product, through an established recycling program. Unqualified claims of

recyclability for a product or package may be made if the entire product or package, excluding minor incidental components, is recyclable. For products or packages that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components of the product or package are recyclable. Claims of recyclability should be qualified to the extent necessary to avoid consumer deception about any limited availability of recycling programs and collection sites. If an incidental component significantly limits the ability to recycle a product or package, a claim of recyclability would be deceptive. A product or package that is made from recyclable material, but, because of its shape, size or some other attribute, is not accepted in recycling programs for such material, should not be marketed as recyclable.⁴

Example 1: A packaged product is labeled with an unqualified claim, "recyclable." It is unclear from the type of product and other context whether the claim refers to the product or its package. The unqualified claim is likely to convey to reasonable consumers that all of both the product and its packaging that remain after normal use of the product, except for minor, incidental components, can be recycled. Unless each such message can be substantiated, the claim should be qualified to indicate what portions are recyclable.

Example 2: A nationally marketed 8 oz. plastic cottage-cheese container displays the Society of the Plastics Industry (SPI) code (which consists of a design of arrows in a triangular shape containing a number and abbreviation identifying the component plastic resin) on the front label of the container, in close proximity to the product name and logo. The manufacturer's conspicuous use of the SPI code in this manner constitutes a recyclability claim. Unless recycling facilities for this container are available to a substantial majority of consumers or communities, the claim should be qualified to disclose the limited availability of recycling programs for the container. If the SPI code, without more, had been placed in an inconspicuous location on the container (e.g., embedded in the bottom of the container) it would not constitute a claim of recyclability.

Example 3: A container can be burned in incinerator facilities to produce heat and power. It cannot, however, be recycled into

⁴ The Mercury-Containing and Rechargeable Battery Management Act establishes uniform national labeling requirements regarding certain types of nickel-cadmium rechargeable and small lead-acid rechargeable batteries to aid in battery collection and recycling. The Battery Act requires, in general, that the batteries must be labeled with the three-chasing-arrows symbol or a comparable recycling symbol, and the statement "Battery Must Be Recycled Or Disposed Of Properly." 42 U.S.C. 14322(b). Batteries labeled in accordance with this federal statute are deemed to be in compliance with these guides.

another product or package. Any claim that the container is recyclable would be deceptive.

Example 4: A nationally marketed bottle bears the unqualified statement that it is "recyclable." Collection sites for recycling the material in question are not available to a substantial majority of consumers or communities, although collection sites are established in a significant percentage of communities or available to a significant percentage of the population. The unqualified claim is deceptive because, unless evidence shows otherwise, reasonable consumers living in communities not served by programs may conclude that recycling programs for the material are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of programs, for example, by stating "This bottle may not be recyclable in your area," or "Recycling programs for this bottle may not exist in your area." Other examples of adequate qualifications of the claim include providing the approximate percentage of communities or the population to whom programs are available.

Example 5: A paperboard package is marketed nationally and labeled, "Recyclable where facilities exist." Recycling programs for this package are available in a significant percentage of communities or to a significant percentage of the population, but are not available to a substantial majority of consumers. The claim is deceptive because, unless evidence shows otherwise, reasonable consumers living in communities not served by programs that recycle paperboard packaging may understand this phrase to mean that such programs are available in their area. To avoid deception, the claim should be further qualified to indicate the limited availability of programs, for example, by using any of the approaches set forth in Example 4 above.

Example 6: A foam polystyrene cup is marketed as follows: "Recyclable in the few communities with facilities for foam polystyrene cups." Collection sites for recycling the cup have been established in a half-dozen major metropolitan areas. This disclosure illustrates one approach to qualifying a claim adequately to prevent deception about the limited availability of recycling programs where collection facilities are not established in a significant percentage of communities or available to a significant percentage of the population. Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 7: A label claims that the package "includes some recyclable material." The package is composed of four layers of different materials, bonded together. One of the layers is made from the recyclable material, but the others are not. While programs for recycling this type of material are available to a substantial majority of consumers, only a few of those programs have the capability to separate the recyclable layer from the non-recyclable layers. Even though it is technologically possible to separate the layers, the claim is not

adequately qualified to avoid consumer deception. An appropriately qualified claim would be, "Includes material recyclable in the few communities that collect multi-layer products." Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 8: A product is marketed as having a "recyclable" container. The product is distributed and advertised only in Missouri. Collection sites for recycling the container are available to a substantial majority of Missouri residents, but are not yet available nationally. Because programs are generally available where the product is marketed, the unqualified claim does not deceive consumers about the limited availability of recycling programs.

Example 9: A manufacturer of one-time use photographic cameras, with dealers in a substantial majority of communities, collects those cameras through all of its dealers. After the exposed film is removed for processing, the manufacturer reconditions the cameras for resale and labels them as follows: "Recyclable through our dealership network." This claim is not deceptive, even though the cameras are not recyclable through conventional curbside or drop off recycling programs.

Example 10: A manufacturer of toner cartridges for laser printers has established a recycling program to recover its cartridges exclusively through its nationwide dealership network. The company advertises its cartridges nationally as "Recyclable. Contact your local dealer for details." The company's dealers participating in the recovery program are located in a significant number—but not a substantial majority—of communities. The "recyclable" claim is deceptive unless it contains one of the qualifiers set forth in Example 4. If participating dealers are located in only a few communities, the claim should be qualified as indicated in Example 6.

Example 11: An aluminum beverage can bears the statement "Please Recycle." This statement is likely to convey to consumers that the package is recyclable. Because collection sites for recycling aluminum beverage cans are available to a substantial majority of consumers or communities, the claim does not need to be qualified to indicate the limited availability of recycling programs.

(e) **Recycled content.** (1) A recycled content claim may be made only for materials that have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer). To the extent the source of recycled content includes pre-consumer material, the manufacturer or advertiser must have substantiation for concluding that the pre-consumer material would otherwise have entered the solid waste stream. In asserting a recycled content claim, distinctions may be made between pre-consumer and post-consumer materials.

Where such distinctions are asserted, any express or implied claim about the specific pre-consumer or post-consumer content of a product or package must be substantiated.

(2) It is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled material, which includes recycled raw material, as well as used,³ reconditioned and remanufactured components. Unqualified claims of recycled content may be made if the entire product or package, excluding minor, incidental components, is made from recycled material. For products or packages that are only partially made of recycled material, a recycled claim should be adequately qualified to avoid consumer deception about the amount, by weight, of recycled content in the finished product or package. Additionally, for products that contain used, reconditioned or remanufactured components, a recycled claim should be adequately qualified to avoid consumer deception about the nature of such components. No such qualification would be necessary in cases where it would be clear to consumers from the context that a product's recycled content consists of used, reconditioned or remanufactured components.

Example 10: A packaged food product is labeled with a three-chasing-arrows symbol without any further explanatory text as to its meaning. By itself, the symbol is likely to convey that the packaging is both "recyclable" and is made entirely from recycled material. Unless both messages can be substantiated, the claim should be qualified as to whether it refers to the package's recyclability and/or its recycled content. If a "recyclable" claim is being made, the label may need to disclose the limited availability of recycling programs for the package. If a recycled content claim is being made and the packaging is not made entirely from recycled material, the label should disclose the percentage of recycled content.

Example 11: A laser printer toner cartridge containing 25% recycled raw materials and 40% reconditioned parts is labeled "65% recycled content; 40% from reconditioned parts." This claim is not deceptive.

Example 12: A store sells both new and used sporting goods. One of the items for sale in the store is a baseball helmet that, although used, is no different in appearance than a brand new item. The helmet bears an unqualified "Recycled" label. This claim is deceptive because, unless evidence shows otherwise, consumers could reasonably believe that the helmet is made of recycled raw materials, when it is in fact a used item. An acceptable claim would bear a disclosure clearly stating that the helmet is used.

³ The term "used" refers to parts that are not new and that have not undergone any type of remanufacturing and/or reconditioning.

Example 13: A manufacturer of home electronics labels its video cassette recorders ("VCRs") as "40% recycled." In fact, each VCR contains 40% reconditioned parts. This claim is deceptive because consumers are unlikely to know that the VCR's recycled content consists of reconditioned parts.

Example 14: A dealer of used automotive parts recovers a serviceable engine from a vehicle that has been totaled. Without repairing, rebuilding, remanufacturing, or in any way altering the engine or its components, the dealer attaches a "Recycled" label to the engine, and offers it for resale in its used auto parts store. In this situation, an unqualified recycled content claim is not likely to be deceptive because consumers are likely to understand that the engine is used and has not undergone any rebuilding.

Example 15: An automobile parts dealer purchases a transmission that has been recovered from a junked vehicle. Eighty-five percent by weight of the transmission was rebuilt and 15% constitutes new materials. After rebuilding⁶ the transmission in accordance with industry practices, the dealer packages it for resale in a box labeled "Rebuilt Transmission," or "Rebuilt Transmission (85% recycled content from rebuilt parts)," or "Recycled Transmission

⁶ The term "rebuilding" means that the dealer dismantled and reconstructed the transmission as necessary, cleaned all of its internal and external parts and eliminated rust and corrosion, restored all impaired, defective or substantially worn parts to a sound condition (or replaced them if necessary), and performed any operations required to put the transmission in sound working condition.

(85% recycled content from rebuilt parts)." These claims are not likely to be deceptive.

* * * * *

6. Section 260.8 is revised to read as follows:

§ 260.8 Environmental assessment.

(a) National Environmental Policy Act. In accordance with section 1.83 of the FTC's Procedures and Rules of Practice⁷ and section 1501.3 of the Council on Environmental Quality's regulations for implementing the procedural provisions of National Environmental Policy Act, 42 U.S.C. 4321 et seq. (1969),⁸ the Commission prepared an environmental assessment when the guides were issued in July 1992 for purposes of providing sufficient evidence and analysis to determine whether issuing the Guides for the Use of Environmental Marketing Claims required preparation of an environmental impact statement or a finding of no significant impact. After careful study, the Commission concluded that issuance of the Guides would not have a significant impact on the environment and that any such impact "would be so uncertain that environmental analysis would be based on speculation."⁹ The Commission concluded that an environmental

⁷ 16 CFR 1.83.
⁸ 40 CFR 1501.3.
⁹ 16 CFR 1.83(a).

impact statement was therefore not required. The Commission based its conclusions on the findings in the environmental assessment that issuance of the guides would have no quantifiable environmental impact because the guides are voluntary in nature, do not preempt inconsistent state laws, are based on the FTC's deception policy, and, when used in conjunction with the Commission's policy of case-by-case enforcement, are intended to aid compliance with section 5(a) of the FTC Act as that Act applies to environmental marketing claims.

(b) The Commission has concluded that the modifications to the guides in this part will not have a significant effect on the environment, for the same reasons that the issuance of the original guides in 1992 and the modifications to the guides in 1996 were deemed not to have a significant effect on the environment. Therefore, the Commission concludes that an environmental impact statement is not required in conjunction with the issuance of the 1998 modifications to the Guides for the Use of Environmental Marketing Claims.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 98-11455 Filed 4-30-98; 8:45 am]

BILLING CODE 6750-01-P

federal register

Friday
May 1, 1998

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 101 and 120
Preliminary Regulatory Impact Analysis
and Initial Regulatory Flexibility Analysis
of the Proposed Rules to Ensure the
Safety of Juice and Juice Products;
Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101 and 120

[Docket Nos. 93N-0325 and 97N-0296]

RIN 0910-AA43

Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rules to Ensure the Safety of Juice and Juice Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Preliminary regulatory impact analysis.

SUMMARY: The Food and Drug Administration (FDA) is publishing the preliminary regulatory impact analysis (PRIA) that it has prepared under Executive Order 12866 and initial regulatory flexibility analysis (IRFA) that it has prepared under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), on the costs and benefits of FDA's proposed regulations regarding the Hazard Analysis Critical Control Points (HACCP) and labeling for juice and juice products. FDA is issuing those proposals because of recent outbreaks of foodborne illness and deaths caused by consumption of juice products that were not pasteurized or otherwise processed to control pathogenic microorganisms. Those proposals are intended to ensure that juice and juice products are safe.

DATES: Submit written comments by May 26, 1998 on aspects of this analysis related to labeling for juice and juice products and by July 8, 1998 on aspects of this analysis related to HACCP for juice and juice products.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Comments should be identified with the docket numbers found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: David J. Zorn, Center for Food Safety and Applied Nutrition (HFS-726), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4729.

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I. Background

This document constitutes FDA's PRIA and IRFA of the proposed rules to amend the food labeling regulations and to require HACCP for juice and juice products. Because the industries affected by both proposed rules substantially overlap and because both proposals address the same public health problem, the safety of juice and products containing juice, the agency has chosen to analyze the economic impact of both proposed rules in a single PRIA and IRFA. These documents analyze both the costs and benefits of the proposed rules as well as the expected impacts on the affected small entities. FDA has found that these rules may constitute significant rules under Executive Order 12866 because they could have a significant impact on one sector of the economy (producers of minimally processed juice). In addition, FDA has determined under the RFA that each proposal would present a significant impact on a substantial number of small entities.

II. Introduction

FDA has examined the impacts of these proposed rules under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Under the Executive Order, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that each of these proposed rules may constitute a significant regulatory action as defined by Executive Order 12866, as discussed as follows.

In addition, FDA has determined that these rules are not significant rules under the Unfunded Mandates Reform Act of 1995 (UMRA) requiring benefit-cost and other analyses. Under UMRA significant rule is defined as "a Federal mandate that may result in the expenditure by State, local and tribal governments in the aggregate, or by the private sector, of \$100,000,000 (adjusted annually for inflation) in any 1 year".

Finally, in accordance with the SBREFA, the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (the Administrator) has determined that these proposed rules are major rules for the purpose of congressional review. A major rule for this purpose is defined as one that the Administrator has determined has resulted or is likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

III. Factors Considered in Developing This Analysis

This analysis estimates costs and benefits for two proposed regulations, published in the *Federal Register* of April 24, 1998 (63 FR 20450 and 20486), that would affect the safety of juice products. The first rule requires warning statements on minimally processed packaged juice. That is, juice that has not been processed in a manner that will produce, at a minimum, a 5-log reduction, for a period at least as long as the shelf life of the product when stored under normal and moderate abuse conditions, in the pertinent microorganism. The "pertinent microorganism" is the most resistant microorganism of public health significance that is likely to occur in the juice. In the remainder of this analysis, this will be referred to as the "5-log reduction."¹ The second rule requires manufacturers of most juice to implement a HACCP program with the same 5-log reduction performance criteria. However, FDA is proposing to exempt retailers who, for the purposes of this rule, the agency has tentatively decided will include very small businesses that make juice on their premises and whose total sales of juice and juice products do not exceed 40,000 gallons per year and who sell directly to consumers or directly to consumers and other retailers.

The effective date for the labeling rule is proposed to be 60 days following publication of the final rule with

¹ That is, the total combined effect of all controls have the effect of reducing the number of colony forming units (cfu's) by a factor of 100,000. This implies that even if the product should contain 1,000 cfu's per gallon (gal.) prior to processing, the final product after processing would contain only .01 cfu's per gal.

warning statements required either on the labels or, in the case of products which do not bear the warning statement on the label, on labeling (e.g., on signs or placards at the point of sale) on juices that have not been processed in a manner that will produce, at a minimum, a 5-log reduction. Packaged juices produced by large firms are required to bear warning labels beginning on January 1, 2000, and packaged juices produced by small and very small firms² are required to bear warning labels beginning on January 1, 2001. The agency expects that the HACCP rule, because of its complexity, will not be finalized for at least 1 year following finalization of the juice labeling rule. The HACCP rule is proposed to be effective for large firms, 12 months following publication of the final HACCP rule; for small firms, 24 months following publication of the final HACCP rule; and for very small firms, 36 months following publication of the final HACCP rule. For purposes of this rule, the agency is proposing to define large processors as those who have more than 500 employees, small processors as those who have less than 500 employees and very small processors as those who have either: (1) Total annual sales of less than \$500,000, or (2) that have total annual sales of greater than \$500,000 but total annual food sales of less than \$50,000, or (3) that employ fewer than 100 full-time equivalent employees and annually sell less than 100,000 units of the juice in the United States.

To a large extent, benefits and costs will depend on how processors of juice who do not currently implement controls sufficient to achieve a 5-log reduction respond to the warning label regulation. That is, firms will choose whether to display the warning statement or to comply early with the 5-log reduction. The agency has no information to indicate the choices that specific processors will make.

The actual choice that each processor will make depends on several factors: (1) The revenue that processors expect to lose because of consumers' responses to the Government's announcement of

² The labeling rule does not define "very small firms" but the HACCP rule does give a separate definition of "very small firms" as a subset of "small firms" as defined in the labeling and HACCP rules. Therefore, the term "very small firms" has been used here in relationship to the labeling rule to make clear where this subset fits in the context of both of these rules. The HACCP rule defines small businesses as those with fewer than 500 employees. It defines very small businesses as those with total annual sales of less than \$500,000 or those with total annual food sales of less than \$50,000 or those with fewer than 100 employees and less than 100,000 units of juice sold annually.

the rules and the warning label, (2) the costs of and length of time allowed to make label changes, (3) the costs of achieving a 5-log reduction in pathogens, and (4) the revenue that processors expect to lose if consumers respond negatively to the changes in product characteristics caused by processing the juice.

Processors will choose to discontinue juice production if they perceive that either labeling or a change in processing practices will lower profits below a "normal" return.³ In other words, processors will go out of the juice business rather than comply with these regulations only if one of the two following conditions is satisfied: (1) The combination of the cost of displaying the warning labeling and the reduction in revenue caused by the negative response of consumers to the warning results in below normal profits; or (2) a combination of increased costs from processing and a reduction in revenue caused by the negative response of consumers to the changes in product quality results in below normal profits.

For the purposes of this analysis, the agency has assumed that, in order to avoid having their products associated with the warning to consumers, all establishments that will eventually be covered by the HACCP rule will implement controls sufficient to achieve a 5-log reduction when the labeling rule takes effect. The agency has also assumed for the purposes of this analysis that those establishments not covered by the HACCP rule will display the warning statement for packaged juice products. However, in order to avoid displaying the warning statement, these establishments may choose to process their juice in a manner sufficient to achieve a 5-log reduction in pathogens or under an adequate voluntary HACCP plan.

IV. Regulatory Options

The preambles in the accompanying proposed regulations describe the compelling public need for these regulations. For example, in recent years, pathogens have been discovered in fresh juices after having caused severe illness in humans. These products were previously not known to be vehicles for such hazards, given their low pH. Because these events have occurred, the agency tentatively finds that it is prudent to require the adoption of preventative controls for hazards now associated with juice where controls

³ A normal return on profits is the average market return on capital that a processor could receive, for example, by investing in the stock market.

may not have been previously thought to be necessary.

There are a number of regulatory options that FDA has preliminarily considered to reduce the risks associated with consuming juice products. FDA requests comments on benefits, costs, and any other aspect of these options.

A. Take No New Regulatory Action

Choosing this option would imply either reliance on: (1) Existing Federal regulation, (2) State and local regulatory activity, (3) business interests, (4) consumer demands, and (5) product liability pressures to reduce risks incurred by consumers of juice products or acceptance that the risks that juice currently presents are risks that consumers are unwilling to pay to reduce. In the first case, it is unlikely that the market will adjust to eliminate the risks present in juice because of the difficulty of establishing the link between the various kinds of illnesses, whether acute or chronic, to consumption of juice. Generally, this link may only be established when there are large, geographically focused outbreaks of acute illness. However, research indicates that most cases of foodborne illness are sporadic and geographically dispersed and not associated with any identifiable and focused outbreaks (Ref. 1). In the second case, it is presumed that consumers are willing to pay to reduce these risks given the sizeable estimated benefits of the proposed rules. Finally, while industry and State governments have undertaken steps in many areas to reduce risks associated with juice, FDA believes that the changes have been made with the expectations of Federal regulation. It is unlikely that the market would fully adjust to reduce the risk without additional Federal action.

B. Regulate Only High-Risk Juice Products or High-Risk Hazards

FDA could choose to make these rules applicable only to juice products that have been associated by epidemiology or by inspection history with health hazards. This option is discussed in the appendix supporting this analysis (Ref. 9). In the appendix, the agency concluded that unpasteurized or otherwise nonheat treated juices present the largest risk to consumers because pathogens pose the highest risk of the several categories of hazards. FDA is proposing that all chemical, physical, and biological hazards be included under HACCP, despite the differences in relative risk posed by different types of hazards. It is important to note that processors may, under the umbrella of

HACCP, adjust for the probability and severity of hazards by adjusting critical limits, the frequency of monitoring, intensity of corrective action, or any number of other margins. FDA has not evaluated the benefits and costs of structuring HACCP based on this option, and seeks comments on it, especially on the option of covering only some types of juice.

C. Do Either One of the Proposed Rules but Not Both

One option would be to eliminate the HACCP requirement for juices, one of the two proposed actions, and only require that juices that are not processed to achieve a 5-log reduction be labeled with a warning to consumers. The purpose of this labeling is to alert consumers who are at increased risk to avoid these products and to inform all consumers of the risk of these products relative to other juices. However, it is difficult to predict what products consumers would switch to once they encounter the warnings. It is possible that some consumers may reduce their health status by choosing less nutritious substitutes in order to avoid the products with the warning labels. Although labeling may be effective for changing both producer behavior (particularly to avoid displaying the warning) and consumer behavior, the agency believes that labeling alone is unlikely to be sufficient to address all health hazards associated with consumption of juice products.

Another option would be to eliminate the labeling rule and only require that juice processors implement HACCP. This option would reduce the possibility that some consumers might overreact and avoid all juice. This option would also allow fresh juice to be marketed without warnings and would result in some cost savings for products that will not need to pay for labeling costs. However, it would also result in some reduction in benefits because the HACCP rule will take longer to implement than the labeling rule and because the proposed labeling rule covers juice made at the point of sale and the proposed HACCP rule does not cover retailers.

D. Require New Current Good Manufacturing Practices

FDA could develop and require current good manufacturing practices (CGMP's) or sanitation standards specific to juice products to improve the safety of juices. The use of CGMP's would assist processors in ensuring the safety of their juices by providing guidance on how to reduce insanitary manufacturing practices and on how to

protect against food becoming contaminated. While FDA currently has general CGMP's that provide guidance to all food processing industries, it does not have specific CGMP's for the juice industry.

There are three reasons that this alternative alone may be undesirable. First, CGMP's by themselves are unlikely to have a sufficient impact on the safety of juice, particularly relative to HACCP. That is, CGMP's do not provide: (1) A structure for each processor to align specific hazards unique to the processor's operations with specific control measures; (2) assurance that the processor will establish specific performance standards appropriate to the processor's unique operation; (3) records that document that the performance standards are met; and (4) records of frequent audits to verify that controls are being applied, all of which are associated with HACCP. Identifying specific hazards, designing controls that are specific and unique to each operation, and verifying that these controls are being applied as specified are essential elements of a control program that will provide an improved level of food safety.

Secondly, under the HACCP approach being proposed, the industry is required to use FDA's general CGMP's in part 110 (21 CFR part 110) and to develop and adopt sanitation standard operating procedures (SOP's) as part of their prerequisite programs for their HACCP plan. Therefore, the HACCP approach builds on the foundation of CGMP's at the same time it avoids the limitations of this alternative.

HACCP is designed for use in all segments of the food industry from growing, harvesting, processing, manufacturing, distributing, and merchandising to preparing food for consumption. Prerequisite programs such as current good manufacturing practices (CGMP's) are an essential foundation for the development and implementation of successful HACCP plans.

The production of safe food products requires that the HACCP system be built upon a solid foundation of prerequisite programs. Each segment of the food industry must provide the conditions necessary to protect food while it is under their control. This has traditionally been accomplished through the application of CGMP's. These conditions and practices are now considered to be prerequisite to the development and implementation of effective HACCP plans. Prerequisite programs provide the basic environmental and operating conditions

that are necessary for the production of safe, wholesome food.

E. Require Pasteurization

FDA could require that all juice be pasteurized rather than requiring HACCP with a specified 5-log reduction. Although FDA is not currently aware of other practical methods to achieve this level of control, solely requiring pasteurization would inhibit new technological innovation and it would only address one type of hazard (pathogens that are not heat resistant). In this analysis, the agency has, in fact, evaluated the costs of pasteurization for those juices not now pasteurized. It should be pointed out that, by volume, the vast majority of juices are now pasteurized or otherwise equivalently treated. Thus, the marginal costs and benefits of requiring pasteurization only apply to the small fraction of juice that is not heat treated.

The agency requests comment on the appropriateness of the 5-log reduction performance standard and if other approaches, such as establishing a minimal acceptable risk standard for juices, could be used that would ensure the safety of the juice. The agency requests comments on what such a minimal acceptable risk standard should be and how it would be implemented. The agency also invites interested persons to submit scientific data concerning the acceptability of a 5-log reduction requirement or whether a more or less stringent performance standard (e.g., 3- or 7-log reduction) for specific juices would be more appropriate or whether different approaches consistent with a minimal acceptable risk standard for juices might be appropriate for specific juices based on their unique characteristics.

F. Set Different Performance Standards for Processing of Different Products

One regulatory option would be to establish different performance standards for processing different types of juice products to decrease the number of pathogens. In the proposal, the agency has tentatively proposed that any combination of processing steps which cumulatively result in a 5-log (a 100,000-fold) reduction in pathogens should be applied to the production of all types of juice. However, different products may warrant different processing stringencies because of a number of factors, including: (1) The initial microbial counts on raw produce are likely to vary, (2) different types of produce are likely to harbor different kinds of pathogens, and (3) different products provide different environments for microbial growth. This

option could either be exercised as part of the final rule in response to comments or the proposed standards could remain with the option to further petition the agency for a different standard. The benefits and costs of the standard will vary directly with the stringency of different performance standards. However, FDA does not have data to estimate preliminarily the costs and benefits of this option.

G. Expand HACCP Rule Coverage

FDA has tentatively concluded that the retail sector should not be included in the HACCP rule and has asked for comments on the appropriateness of this conclusion. The expansion of coverage of the HACCP rule to include retailers that process juice at the point of sale would add an estimated additional 14,300 restaurants and 1,300 grocery stores and supermarkets for a total of approximately 16,000 establishments. If the cost for these establishments to implement HACCP was equivalent to that of very small processors who would be required to initiate pasteurization (\$26,000 in the first year and \$11,900 in subsequent years), then the total additional cost of this option would be approximately \$416 million in the first year and approximately \$190 million in subsequent years. However, the agency does not have direct information about the cost of implementing HACCP in a retail setting for juice and the actual costs may vary significantly from these estimates.

H. Use of One of Various Alternatives

An alternative approach to mandating HACCP would be to provide a more flexible array of options tailored to the microbial risk present in the particular juice. Manufacturers of apple cider would be provided a permanent option choosing between labeling or implementing a HACCP program with a 5-log pathogen reduction. All juices other than untreated apple cider would be provided a permanent option of choosing between labeling, implementing a HACCP system, or achieving a 5-log pathogen reduction. However, FDA believes that this option provides only weak incentives for processors to implement a HACCP system. Processors could label hazardous products without taking steps to improve the safety of juice or choose to achieve a 5-log reduction for microbial pathogens without addressing other hazards. The agency believes that labeling would not achieve the same level of product safety. Additionally, there would be less incentive for

processors to implement a HACCP system, which includes, among other things, developing and implementing sanitation SOP's and recordkeeping at critical control points in addition to achieving a 5-log reduction. Other hazards that would not be addressed include chemical contaminants, hazardous metals, including lead and tin, mycotoxins, pesticides, and physical hazards, such as glass.

Another regulatory option would be to include labeling for unpackaged juice products for all retail outlets, such as restaurants. This option would also require any very small retailer (as defined for the purposes of this rulemaking) who is manufacturing less than 40,000 gallons of juice per year and selling it directly to consumers and other retailers to either label or achieve a 5-log kill until a requirement for HACCP would become effective 36 months from the date of publication of the final rule.

If this option is combined with both proposed rules, FDA has estimated the benefits to be \$383 to \$478 million annually and estimated the costs in the first year to be \$54 million and the costs in subsequent years to be \$28 million.

V. Benefits

This analysis provides estimates of three additive, independent benefits of these two proposed rules: (1) Reduced expenditures related to regulatory enforcement, (2) reduced adverse health effects, and (3) other benefits. To some extent, the benefits of the two rules are intertwined. Because of the earlier compliance dates, the impact of the labeling rule will be to achieve some of the benefits faster. That is, if firms choose to achieve a 5-log reduction through their processing practices to avoid labeling, then some of the future benefits that would be otherwise achieved under HACCP will be achieved sooner because of the incentive provided by the labeling rule. Also, if at-risk consumers avoid unpasteurized juices as a result of the labeling, there will be reduced adverse health effects prior to the introduction of HACCP. On average, the labeling rule will achieve some of the benefits 2 years faster than the HACCP rule.

A. Enforcement Benefits

To the extent that these proposed rules are effective at reducing contaminated juice, they should reduce the number of safety-related enforcement actions (for both domestic and imported products) taken by the agency for juice products. The enforcement activities chosen as a

baseline for juice products fall between the period 1992 and 1996 (inclusive) and involve import detentions and domestic recalls.

In the final regulatory impact analysis for FDA's seafood HACCP rule, FDA used an assumption that the rule would prevent 50 percent of the current number of annual enforcement actions. The agency did not receive comments on this assumption in that rule and does not yet have data from implementation of the rule to validate it. However, this may be a conservative assumption. If HACCP plans are properly conceived, implemented and validated, it is likely that the vast majority of problems will be caught and corrected in the plant, rather than result in foodborne disease outbreaks or be caught through Federal sampling of the final product. Thus, the agency will continue to make this assumption but requests comment on it.

1. Import Enforcement

Over the period 1992 through 1996, there were a number of imported juice products detained for various violations of the Federal Food, Drug, and Cosmetic Act (the act). A detention is a procedure for preventing violative products from entering the United States. Following a determination that a sample of a product is violative, three steps occur: (1) FDA sends a detention notice to the importer providing an opportunity to introduce testimony as to the condition of the product; (2) the importer may contact an attorney, submits a response application, and introduces evidence regarding the product; and (3) FDA makes a determination about what should be done with the shipment. There are three actions that FDA can specify for a detained shipment: (1) The product is allowed to be "reshipped" out of the country, (2) the product is reconditioned so as to bring it into compliance with U.S. law, or (3) the product is destroyed under Federal supervision. Assume that the cost per shipment of the three steps to all parties involved is \$5,000. Then the remaining cost of detention is the cost per shipment of the three actions which is related to the value of the shipment.

Table 1 gives the number of shipments detained and the total dollar value of juice products detained for violations of the act for the entire period 1992 through 1996.

The average value per shipment of imported juice products refused entry is approximately \$10,000. The average number of imported juice product shipments detained annually is 23.

TABLE 1.—TOTALS OF JUICE IMPORT DETENTIONS FOR 1992 THROUGH 1996 BY REASON FOR DETENTION

Reason for Detention	Food Additive Issues	Poisonous or Deleterious Substances	Violative Pesticide Residues	Chemical Contamination	New Drug Residues	Microbial Hazards	Total
Number of Shipments	44	17	53	1	1	1	117
Value of Shipments	\$122,000	\$112,000	\$802,000	\$79,000	\$20,000	\$2,000	\$1,137,000

If, on an annual basis, 23 imported juice product shipments are detained at an average Federal enforcement and industry negotiation cost of \$5,000 per shipment (60 FR 65189), and if all 23 shipments (with an average value of \$10,000 per shipment) are destroyed so that the entire \$10,000 value of the shipment is lost, then the total annual cost of all juice detentions is approximately \$345,000 (23 shipments x (\$10,000 value of shipment + \$5,000 enforcement and negotiation cost)). If 50 percent of these enforcement costs are prevented, then the benefits related to import enforcement are approximately \$175,000.

2. Recalls

Recalls tracked by FDA for pathogens or pesticides in juice products are infrequent. For the period 1992 through 1996 there was one class 1 recall and there were seven class 2 recalls⁴ for such hazards, or about two recalls per year. A class 1 recall may cost as much as \$3 to \$5 million between expenditures by the manufacturer, retailers and State, local, and Federal authorities. However, the typical juice recall is smaller and less costly than this. If the combination of industry and government costs per recall on average is \$1 million, then the total annual cost of juice recalls is approximately \$2 million (2 recalls per year at \$1 million each). This assumption is based on FDA conversations with industry for both large and small recalls. FDA acknowledges that this may not be the true average cost of a recall and requests comment on this assumption. If 50 percent of these enforcement costs are prevented, then the benefits related to recalls tracked by FDA are \$1 million. However, FDA may not be aware of all recalls that take place, particularly for less hazardous reasons. Assuming that the recalls that FDA is not aware of are considerably smaller, perhaps costing \$100,000, and that FDA may only hear about 10 percent of such recalls, then

⁴Class 1 recalls are for dangerous or defective products that predictably could cause serious health problems or death. Class 2 recalls are for products that might cause a temporary health problem, or pose only a slight threat of a serious nature.

the total annual cost of such recalls could be \$1 million. If 50 percent of these enforcement costs are prevented, then the benefits related to recalls not tracked by FDA would be \$500,000. Thus, the total annual benefits of the HACCP rule related to recalls is estimated to be \$1.5 million.

In addition to those benefits, when firms have recalls that are made public they will generally suffer a loss of sales, at least temporarily, from lost "goodwill." This alone does not result in a social cost but rather a social transfer as other firms will step forward to capture sales lost from the recalling firm. However, in addition to the resources invested in recalling the product, the recalling firm may invest real resources in advertising to recapture lost goodwill, a social cost. FDA cannot quantify this cost.

B. Health Benefits

This section presents quantitative estimates of health benefits from this rule. This is accomplished by the following steps:

1. The most significant hazards in juice are described in terms of severity and duration;
2. The hazards are described in terms of resulting health effects and symptoms when they cause illness;
3. The health effects and symptoms are translated into consumer utility losses;
4. The utility losses are translated into values in terms of lost dollars (this gives the cost per case for every combination of level of severity and for the specified duration for each hazard);
5. The average annual number of reported cases associated with juice are distributed according to the percentages associated with each level of severity;
6. The factors used to account for under reporting of foodborne illness are estimated;
7. The reported cases are multiplied by the under reporting factors to get the estimated average annual number of cases;
8. The percentages of each type of hazard expected to be prevented by the proposal are listed; and
9. The total health benefits of the proposal are derived by multiplying numbers 4, 7, and 8.

That is, $TB = RC \times CF \times CR \times V$, where TB = total health benefits in dollars, RC = number of reported cases, CF = under reporting correction factor, CR = percent of cases reduced, V = dollar value per case averted (medical costs + value of pain and lost function).

1. Description of Microbial Hazards in Juice

Most of the significant health risks associated with juice products are microbial. In the last 5 years the hazards associated with commercially processed, packaged juice produced by nonretail establishments include *Bacillus cereus*, *Escherichia coli* O157:H7, and *Salmonella non typhi*.⁵ Table 2 lists these hazards with associated severities and duration of severities. These hazards have been directly linked to orange and apple juice products. However, all juices take farm produce as an input; all use similar types of processing steps; and all are distributed in similar ways. Therefore, although other types of juices are less likely to be associated with foodborne disease outbreaks primarily because consumption of orange and apple juice greatly exceeds consumption of all other types of juice combined, all juices are similarly vulnerable to microbial contamination. All juices are sensitive to potential contamination by pathogenic microorganisms due to the way fruits and vegetables are grown and harvested.

Based on current scientific understanding, potential vehicles or mechanisms for pathogenic cross contamination common to most fruit and vegetable harvesting and juicing operations include water; manure fertilizer; worker, field, and facility sanitation and transportation, handling and processing. While most of the potential for contamination would appear on the surface of the fruit or vegetable, the process of juicing this

⁵Most of the information in section V of this document (Benefits) is taken from Ref. 9. It includes hazards other than those for which benefits have been estimated in this analysis. The hazards considered in section V of this document are those for which the risk is highest. That is to say they are the most significant in terms of probability of occurrence and severity.

fruit or vegetable would potentially incorporate the pathogenic microorganisms into the final juice

product. Ref. 10, page 31, lists the pH of some fruit and vegetable juices.

TABLE 2.—DESCRIPTION OF MICROBIAL HAZARDS IN JUICE

Hazard	Severity	Percent ³	Duration of Illness (days)
<i>E. coli</i> O157:H7	Mild	50	5
	Moderate	32	9
	Severe-acute	18	32
	Severe-chronic	2	26,645 ¹
	Death	1	
<i>Salmonella</i> (non typhi)	Mild	65	2
	Moderate	30	5
	Severe	5	17
	Reactive arthritis-short term	2	25
	Reactive arthritis-long term	5	18,250 ²
	Death	.1	
<i>B. cereus</i>	Mild	99	.75
	Moderate	1	1
	Severe	0	NA
	Death	0	NA

¹Symptoms lasting 26,645 days, or 73 years, implies that it is generally very young children who experience these severe chronic effects (Ref. 2-3).

²Symptoms lasting 18,250 days, or 50 years. This estimate and other information in section V of this document (Benefits) relating to reactive arthritis are taken from Ref. 10.

³Percentages are taken from Ref. 10.

Symptoms of illness that results from exposure to each hazard may be classified as mild, moderate, or severe. In general, mild cases are not brought to the attention of a medical professional. Moderate cases receive medical attention but do not require hospitalization. Severe cases involve hospitalization and some of these result in death. The "Percent" column in Table 2 gives an estimate of the percentage of the total number of cases that are classified in these four categories of severity for each hazard. Note that the categories are not necessarily mutually exclusive, for example, severe-chronic cases of *E. coli* O157:H7 follow only after severe-acute cases of *E. coli* O157:H7, and deaths follow only after severe cases. However,

the "Percent" column reports each category of severity as a percentage of total cases so that there is no double counting. Another factor that tends to distinguish the categories of severity is the duration of time that symptoms are experienced. The "Duration" column gives the general duration of symptoms (in days) that are associated with the categories of severity for each hazard.

2. Description of Health Effects and Symptoms of Microbial Hazards in Juice

In order to quantify the loss (disutility) that individuals experience from becoming ill, the pain, suffering, and mobility loss must be scaled. Tables 3, 4, and 5 represent the outcome of one type of scaling of these effects. Individuals who become ill experience

different levels of functional status in terms of mobility, ability to do other physical activity, and ability to engage in social activities. The "Functional Status Code" column in Table 3 represents the status code which correlates with the categories of severity for each hazard. Individuals who become ill also experience additional disutility due to the symptoms of the illness. The "Symptom/Problem Complex Code" column represents the symptom/problem complex codes which correlate with the categories of severity for each hazard. Descriptions of the functional status and symptom/problem complex codes are given in Tables 4 and 5. FDA requests comment on this scaling model.

TABLE 3.—DESCRIPTION OF HEALTH EFFECTS AND SYMPTOMS OF MICROBIOLOGICALLY RELATED ILLNESSES IN JUICE

Hazard	Severity	Functional Status Code ¹	Symptom/Problem Complex Code ²
<i>E. coli</i> O157:H7	Mild	L20	8, 12, 13, 29
	Moderate	L19	8, 12, 13, 16, 19, 29, 32
	Severe-acute	(L1 x .2) + (L6 x .8) ³	8, 12, 13, 16, 19, 29, 32
	Severe-chronic	L31	9
<i>Salmonella</i> (non typhi)	Mild	L20	12, 13, 29
	Moderate	L20	12, 13, 29
	Severe	L6	12, 13, 16, 29
	Reactive arthritis	L35, L41, L42, L43 ⁴	19
<i>B. cereus</i>	Mild	L19	12, 13, 29
	Moderate	L19	12, 13, 29

TABLE 3.—DESCRIPTION OF HEALTH EFFECTS AND SYMPTOMS OF MICROBIAL RELATED ILLNESSES IN JUICE—Continued

Hazard	Severity	Functional Status Code ¹	Symptom/Problem Complex Code ²
	Severe	NA	NA

¹ Functional Status Codes are described in Table 4.
² Symptom/Problem Complex Codes are described in Table 5.
³ The disutilities for two functional status codes were taken for severe cases of *E. coli* O157:H7 because functional status varies among severe cases of this hazard.
⁴ Functional Status Code varies, Ref. 10.

In Table 4, the last column, "Level of Disability," represents the degree of departure from perfect functionality. Thus, a person would be functioning at about half capacity if the level was .5 and would be even more diminished at .75. Code L42 is used whenever the mobility, physical activity, and social activity conditions apply and a person is experiencing no symptoms. In Table 5, "Level of Disability" refers to the amount of pain and suffering such that .03 would be minor pain and suffering relative to .3.

TABLE 4.—DESCRIPTION OF FUNCTIONAL STATUS CODES¹

Function Status Levels	Mobility	Physical Activity	Social Activity	Level of Disability
L1	In special care unit	In bed or chair	Had help with self-care	.5626
L6	In hospital	In bed or chair	Had help with self-care	.5301
L19	In house	Walked with physical limitations	Performed self-care but not work, school, or housework	.4176
L20	In house	Walked with physical limitations	Limited in work, school, or housework	.4448
L23	In house	Walked without physical limitations	Performed self-care, but not work, school, or housework	.3512
L31	Did not drive, needed help with transportation	Walked without physical limitations	Limited in work, school, or housework	.4087
L35	Drove car and used transportation without help	Walked with physical limitations	Limited in work, school, or housework	.3980
L41	Drove car and used transportation without help	Walked without physical limitations	Did work, school, or housework, but other activities limited	.3145
L42	Drove car and used transportation without help	Walked without physical limitations	Did work, school, or housework, and other activities	.2567
L43	Drove car and used transportation without help	Walked without physical limitations	Did work, school, or housework, and other activities	.0000

¹ Ref. 4.

TABLE 5.—DESCRIPTION OF SYMPTOM/PROBLEM COMPLEX CODES¹

Symptom/Problem Complex	Description	Level of Disability
8	Itching, bleeding or pain in rectum	.0379
9	Pain in chest, stomach, side, back, or hips	.0382
12	Sick or upset stomach, vomiting, or diarrhea (watery bowel movements)	.0065
13	Fever chills with aching all over and vomiting or diarrhea	.0722
16	Headache, dizziness, or ringing in ears	.0131
19	Pain, stiffness, numbness, or discomfort of neck, hands, feet, arms, legs ankles, or several joints together	.0344
29	General tiredness, weakness, or weight loss	.0027
32	Loss of consciousness such as seizures (fits), fainting, or coma (out cold or knocked out)	.1507

¹ Ref. 4, p. D-14.

3. Utility Losses From Microbial Hazards in Juice

The "Functional Status Code" translates into values of disability given in the "Functional Disability" column in Table 6. The symptom/problem complex code translates into values of

disutility given in the "Symptom/Problem Disability" column in Table 6. The "Total Disability" column is the sum of the "Functional Disability" and the "Symptom/Problem Disability" columns. The "Utility Losses for Survivors" column is derived by multiplying the total disability per day by the number of days that symptoms of

the illness persists. This gives the utility loss for survivors in terms of the number of quality adjusted life days (QALD's) for each case of the categories of severity for each hazard.⁶ FDA requests comment on this estimation of utility loss.

⁶ A QALD is a day of perfect health.

TABLE 6.—UTILITY LOSSES FROM MICROBIAL HAZARDS IN JUICE

Hazard	Severity	Functional Disability (per day)	Symptom/Problem Disability (per day)	Total Disability (per day)	Utility Losses for Survivors (QALD's)
<i>E. coli</i> O157:H7	Mild	.4448	.1193	.5641	2.8
	Moderate	.4176	.1668	.5844	5.3
	Severe-acute	.5464	.3175	.8639	27.8
	Severe-chronic	.4087	.0382	.4469	11,907.7
<i>Salmonella</i> (non typhi)	Mild	.4448	.0814	.5262	1.1
	Moderate	.4448	.0814	.5262	2.6
	Severe	.5301	.0945	.6246	10.6
	Reactive arthritis-short term	.3980	.0344	.4324	10.8
	Reactive arthritis-long term	.2582	.0280	.2862	5,223.2
	Death	NA	NA	NA	NA
<i>B. cereus</i>	Mild	.4176	.0814	.4990	.4
	Moderate	.4176	.0814	.4990	.5
	Severe	0	0	0	0

4. Value of Losses From Microbial Hazards in Juice

FDA values a QALD at \$630. This value derives from the statistical estimate of a unit-risk reduction (commonly referred to as the value of a statistical life (VSL)) which the Department of Health and Human Services assigns the value of \$5 million. Using \$5 million for a full lifetime yields a value for a quality adjusted life year (QALY) of approximately \$230,000, when discounted at 7 percent. (A QALY is the estimated value of a year spent in perfect health. These values are discounted to reflect time preferences for investments in health. That is, as with any other commodity, people have a stronger preference for good health

now than they have for good health in the future. Costs or benefits realized in the future are "discounted" to make them comparable to today. Essentially, discounting is the inverse of the interest rate. Thus, if a benefit of \$1.10 were to be realized 1 year in the future, this would be equivalent, at approximately a 10 percent discount rate, to a benefit of \$1 realized today. This is the reverse of saying that \$1 invested today at a 10 percent annual interest rate is worth \$1.10 1 year from now.) Dividing this value by 365 days per year yields a value for a QALD of approximately \$630. The "Value of Utility Losses for Survivors" column in Table 7 comes from multiplying the number of QALD's lost due to the illness (see "Utility Losses for Survivors" in Table 6) by the

value of a QALD, \$630. This represents the value of pain and mobility losses that individuals experience. Additionally, there are the societal costs of medical treatment. These costs are shared generally between insurance companies and individuals. They include all aspects of medical expenses (e.g., physician visits, laboratory tests, prescriptions and therapies, hospital stays). These are estimated in the "Medical Costs" column in Table 7 (Ref. 2-3, pp. 19 and 40 and Ref. 10). The "Value of Losses per Case" column in Table 7 is the sum of the "Value of Utility Losses for Survivors" column and the "Medical Costs" column for the categories of severity for each hazard. FDA requests comment on these valuations.

TABLE 7.—VALUE OF LOSSES FROM MICROBIAL HAZARDS IN JUICE

Hazard	Severity	Value of Utility Losses for Survivors (QALD=\$630)	Medical Costs	Value of Losses per Case (VSL=\$5,000,000) (QALD=\$630)
<i>E. coli</i> O157:H7	Mild	\$1,800	\$0 ¹	\$2,000
	Moderate	\$3,300	\$200 ²	\$4,000
	Severe-acute	\$17,200	\$16,000 ²	\$33,000
	Severe-chronic	\$995,700	\$225,000 ³	\$1,221,000
<i>Salmonella</i> (non typhi)	Death	NA	NA	\$5,000,000
	Mild	\$700	\$200 ⁴	\$1,000
	Moderate	\$1,600	\$800 ⁴	\$2,000
	Severe	\$6,700	\$9,100 ⁴	\$16,000
	Reactive arthritis-short term	\$6,800	\$100 ⁵	\$7,000
	Reactive arthritis-long term	\$970,000 ⁵	\$5,860 ⁵	\$976,000
<i>B. cereus</i>	Death	NA	NA	\$5,000,000
	Mild	\$300	\$0 ⁶	\$300
	Moderate	\$300	\$100 ⁶	\$400
	Severe	\$0	\$0	\$0

TABLE 7.—VALUE OF LOSSES FROM MICROBIAL HAZARDS IN JUICE—Continued

Hazard	Severity	Value of Utility Losses for Survivors (QALD=\$630)	Medical Costs	Value of Losses per Case (VSL=\$5,000,000) (QALD=\$630)
	Death	NA	NA	\$5,000,000

¹ Ref. 2-3, p. 40.
² Explained in Table 8.
³ Recalculated from data in Buzby et al., pp. 41-45 in order to arrive at the present value of the cost per case using a 7 percent discount rate.
⁴ Buzby et al., pp. 18-19. Mild *Salmonella* medical costs are recalculated from data in Cohen, M. L. et al. so as not to include productivity in medical costs.
⁵ Ref. 10.
⁶ The medical cost estimates for *B. cereus* were made by FDA for this analysis. The extremely brief duration of mild cases suggests that there would be no medical costs for this level of severity. For moderate cases one visit to a doctor with medical tests are estimated to cost approximately \$100.

TABLE 8.—MEDICAL COSTS FOR SEVERE-ACUTE CASES ASSOCIATED WITH *E. coli* O157:H7¹

Factors	Acute Hemorrhagic Colitis	Acute HUS	Average Severe-Acute Case
Percent of Severe Cases	80%	20%	
Present Value per Case	\$11,000	\$36,000	
Weighted Present Value per Case	\$8,800	\$7,200	\$16,000

¹ Ref. 2-3, p. 40.

5. Distribution of the Reported Cases per Year for Microbial Hazards in Juice

Table 9 estimates the number of cases associated with each hazard by severity. The "Average Total No. of Cases

Reported per Year" column represents the average number of reported cases for each hazard from 1992 through 1996. Cases for each hazard are divided among the four categories of severity according to the percentages described

in Table 8. Only those reported cases associated with commercially-produced juices sold in interstate commerce as beverages or used as ingredients in beverages are included in the averages presented.

TABLE 9.—DISTRIBUTION OF THE REPORTED CASES PER YEAR FOR MICROBIAL HAZARDS IN JUICE

Hazard	Severity	Percent	Average No. of Cases Reported per Year
<i>E. coli</i> O157:H7	Mild	50	8
	Moderate	32	5
	Severe-acute	18	3
	Severe-chronic	2	.3
	Death	1	.2
	Total cases		16 ¹
<i>Salmonella</i> (non typhi)	Mild	65	8
	Moderate	30	4
	Severe	5	1
	Reactive arthritis-short term	2	.2
	Reactive arthritis-long term	5	1
	Death	.1	.01
	Total cases		12
<i>B. cereus</i>	Mild	99	17
	Moderate	1	.2
	Severe	0	0
	Death	0	0
	Total cases		17

¹ Total cases per pathogen are accurate. The sum of the number of cases for all levels of severity per pathogen may not equal the total number of cases per pathogen due to rounding.

6. Estimates of Factors Needed to Offset Underreporting of Foodborne Illness

The cases reported in column 4 in Table 10 are the lower bound of the likely total number of these cases. The total number of foodborne illness is much greater than those numbers

reported to the Centers for Disease Control and Prevention (CDC) for several reasons. First, individuals who become ill do not always go to doctors. This is particularly true for milder cases of foodborne disease. Obviously, if people do not go to health care

professionals, the illnesses will not be captured in any data base and will not be picked up by CDC. Second, even when people go to health care professionals, they are not necessarily diagnosed as having foodborne disease as the symptoms for many types of

foodborne disease are common to influenza and other diseases. There is often little incentive to culture stools to definitively identify a pathogen if the disease is thought to be of short duration and not requiring treatment. Even where a pathogen is identified, there is even less incentive to identify the food or other vehicle which carried it. Third, even when a correct diagnosis is made, State and local health professionals do not always report these cases upwards, particularly going as far as CDC. Again, milder cases are less likely to be reported than more severe cases.⁷ To complicate matters, the rate of under reporting is not observable, and, even if it were known in any 1 year, it may fluctuate dramatically from year to year. Nevertheless, in order to compensate for the rate of under reporting, the number of known cases associated with a hazard (i.e., reported to CDC) is multiplied by factors which are estimated to account for underreporting.

In *Foodborne Pathogens: Risks and Consequences* (the CAST Report) there are two estimates given of the actual number of foodborne illnesses: One

estimate made by Bennett et al., and one made by Todd (Ref. 6, p. 46). Both Bennett et al. and Todd estimate the total number of cases and the total number of deaths for each hazard. By dividing Bennett's et al. and Todd's estimates of the actual number of cases and deaths by the number of reported cases and deaths (Ref. 6, p. 42), the respective implicit factors needed to correct for underreporting of these categories for each hazard are derived. Based on these correction factors, FDA has estimated correction factors for each category of severity. The agency has taken the correction factor for the number of cases as the correction factor for mild cases and the correction factor for the number of deaths as the correction factor for severe cases. For moderate cases, the agency has interpolated between the factors for mild and severe cases. *E. coli* O157:H7 was not a recognized food-safety hazard at the time that Bennett's et al. work was done. For a more complete description of how these estimates were derived see the Appendix attached to this document (Ref. 9).

In Table 10, the third column, "Estimate of Underreporting Correction Factor (Bennett)," and the fifth column, "Estimate of Underreporting Correction Factor (FDA based on Todd)," give the exact implicit correction factors that can be derived from the work of Bennett and Todd et al. The fourth column, "Estimate of Underreporting Correction Factor (FDA based on Bennett)," and the sixth column, "Estimate of Underreporting Correction Factor (FDA based on Todd)," give FDA's interpolations of the work of Bennett and Todd et al. for each of the identified categories of severity. In general, each researcher's estimate of the underreporting correction factor for total cases was used as the estimate for mild cases, and each researcher's estimate of the underreporting correction factor for deaths was used as the estimate for deaths and severe cases. FDA interpolated between each researcher's estimates of underreporting for total cases and deaths to derive under reporting rates for moderate cases. FDA requests comment on these estimates of underreporting.

TABLE 10.—ESTIMATES OF FACTORS NEEDED TO OFFSET UNDERREPORTING OF FOODBORNE ILLNESS

Hazard	Severity	Estimate of Underreporting Correction Factor (Bennett)	Estimate of Underreporting Correction Factor (FDA based on Bennett)	Estimate of Underreporting Correction Factor (Todd)	Estimate of Underreporting Correction Factor (FDA based on Todd)
<i>E. coli</i> O157:H7	Mild				195
	Moderate				20
	Severe				7
	Death			7	7
	Total cases	ND ¹		195	
<i>Salmonella</i> (non typhi)	Mild		307		474
	Moderate		307		45
	Severe		246		4
	Reactive arthritis-short term		307		474
	Reactive arthritis-long term		307		474
<i>B. cereus</i>	Death	246	246	4	4
	Total cases	307		474	
	Mild		96		1,615
	Moderate		96		1,615
	Severe	NA	NA	NA	NA
	Death	NA	NA	NA	NA
	Total cases	96		1,615	

7. Estimates of Juice-Associated Cases per Year

In Table 11, FDA has estimated ranges of the likely annual number of cases that occur for each of the four pathogens

studied. The column "Estimate of Actual No. of Juice Associated Cases per Year (FDA based on Bennett)" in Table 11 is derived by multiplying the "Average Total No. of Reported Cases per Year" column in Table 9 by the

"Estimate of Underreporting Correction Factor (FDA based on Bennett)" column in Table 11. The column "Estimate of Actual No. of Juice Associated Cases per Year (FDA based on Todd)" in Table 11 is calculated in a similar manner.

⁷ The CAST Report expands these three categories of reasons that a case of illness may not be recognized as foodborne into six reasons (Ref. 6).

TABLE 11.—ESTIMATES OF JUICE-ASSOCIATED CASES PER YEAR

Hazard	Severity	Estimate of Under-reporting Correction Factor (FDA based on Bennett)	Estimate of Under-reporting Correction Factor (FDA based on Todd)	Estimate of Actual No. of Juice-Associated Cases per Year (FDA based on Bennett)	Estimate of Actual No. of Juice-Associated Cases per Year (FDA based on Todd)
<i>E. coli</i> O157:H7	Mild	ND	195	ND	1,560
	Moderate	ND	20	ND	100
	Severe-acute	ND	7	ND	20
	Severe-chronic	ND	7	ND	2
	Death	ND	7	ND	1
	Total cases			ND	1,700
<i>Salmonella</i> (non typhi)	Mild	307	474	2,460	3,790
	Moderate	307	45	1,230	180
	Severe	246	4	150	2
	Reactive arthritis-short term	307	474	60	100
	Reactive arthritis-long term	307	474	180	280
	Death	246	4	2	.04
	Total cases			3,800	4,000
<i>B. cereus</i>	Mild	96	1,615	160	2,750
	Moderate	96	1,615	2	30
	Severe	0	0	0	0
	Death	0	0	0	0
	Total cases			200	2,800

8. Percent of Cases Preventable by HACCP Proposal

In general, most pathogens will be eliminated when juice is heat-treated. For example, *E. coli* O157:H7, and *Salmonella* should all be completely eliminated from juice by standard methods of flash pasteurization (absent extraordinarily high counts, detrimental human intervention, or equipment failure). However, hazards associated with *B. cereus* will not necessarily be eliminated by heat treatment. This bacterium forms spores which are more difficult to kill by heat. After heat treatment, if the spores survive, they may grow out and produce a toxin which causes illness. Ideally, the best way to reduce illness associated with *B. cereus* is by killing the bacterium in its nonspore state before any toxin has been produced. For most types of heat-treated juice, there is a small probability that the heat treatment will take place when *B. cereus* is in its nonspore state. To the

extent that processors adopt controls for these hazards other than flash pasteurization which are less effective, the percentage of cases prevented may be smaller than those estimated here. FDA requests comment on these estimates. Based on information from USAA, FDA estimates that the exemption from the HACCP rule for retailers and small retail processors will affect 14 percent of the volume of unpasteurized juice. Therefore, the agency estimates that though pathogen controls may be 100 percent effective in controlling some hazards, such controls will only prevent 86 percent of the cases of illness from these hazards.

TABLE 12.—PERCENT OF CASES PREVENTABLE BY HACCP PROPOSAL

Hazard	Percent of Cases Preventable by HACCP Proposal
<i>E. coli</i> O157:H7	86

TABLE 12.—PERCENT OF CASES PREVENTABLE BY HACCP PROPOSAL—Continued

Hazard	Percent of Cases Preventable by HACCP Proposal
<i>Salmonella</i> (non typhi)	86
<i>B. cereus</i>	9

9. Estimates of Annual Benefits for HACCP Proposal

The total benefits for the categories of severity for each hazard are derived by multiplying the percentage of cases preventable by the HACCP proposal by the estimates of the number of actual cases. The sum of those benefits for each hazard is the total benefits of the HACCP proposal for pathogen control. Table 13 gives the estimate of benefits for each hazard using each source of information on the appropriate correction factor for underreporting.

TABLE 13.—ESTIMATES OF ANNUAL BENEFITS FOR HACCP PROPOSAL

Hazard	Severity	FDA Estimate of Annual Benefits Based on Bennett	FDA Estimate of Annual Benefits Based on Todd
<i>E. coli</i> O157:H7	Mild		\$2,680,000
	Moderate		\$360,000
	Severe-acute		\$660,000
	Severe-chronic		\$2,442,000
	Death		\$5,000,000
	Total		\$11,142,000
	Mild	\$2,120,000	\$3,260,000

TABLE 13.—ESTIMATES OF ANNUAL BENEFITS FOR HACCP PROPOSAL—Continued

Hazard	Severity	FDA Estimate of Annual Benefits Based on Bennett	FDA Estimate of Annual Benefits Based on Todd
<i>Salmonella</i> (non typhi)	Moderate	\$2,120,000	\$300,000
	Severe	\$2,080,000	\$32,000
	Reactive arthritis-short term	\$350,000	\$630,000
	Reactive arthritis-long term	\$146,400,000	\$234,240,000
	Death	\$10,000,000	\$200,000
	Total	\$163,070,000	\$238,662,000
<i>B. cereus</i>	Mild	\$42,000	\$711,000
	Moderate	\$1,000	\$12,000
	Severe	0	0
	Death	0	0
	Total	\$43,000	\$725,000

Table 14 presents a range of estimates of annual benefits based on the estimates in Table 13. The low and high estimates do not represent lower and upper bounds of benefits, but only a range of potentially likely estimates.

TABLE 14.—RANGE ESTIMATES OF ANNUAL MICROBIOLOGICALLY RELATED BENEFITS FOR HACCP PROPOSAL

Hazard	Low Estimate of Annual Benefits	High Estimate of Annual Benefits
<i>E. coli</i> O157:H7	\$11,142,000	\$11,142,000
<i>Salmonella</i> (non typhi) ¹	\$163,070,000	\$238,662,000
<i>B. cereus</i> ¹	\$43,000	\$725,000
Totals	\$174,000,000	\$251,000,000

¹ Ranges for these two pathogens are taken from two different estimates that exist in the public health literature. The estimates for the other pathogen was made by FDA, alone.

10. Percent of Cases Preventable by Labeling Proposal

FDA does not have direct estimates of the effects of a warning label on the incidence of illness from juice consumption. FDA indirectly estimates the effects by estimating how warning labels will change consumption, assuming that changes in the number of illnesses are proportional to changes in consumption. FDA believes that the labeling rule will cause a reduction in the consumption of unpasteurized juice, but the size of the reduction is uncertain. As a likely value, FDA estimates that consumption and illnesses will decline by 5 percent in response to the warning label. The 5

percent reduction is the estimated effect on cooking practices of the USDA meat safe handling label, as found in a recent survey (Ref. 11). However, there are some dissimilarities between the meat and juice labels, most particularly that the juice label is targeted at sensitive consumers. If, for example, parents redirect children away from nonheat-treated juice, then consumption and illness will decline by 16 percent, which is the proportion of apple cider consumed by children under the age of 6 (Ref. 12). This estimate embodies the assumptions that cider consumption is a good proxy for unpasteurized juice consumption, and that parents will not let their children consume unpasteurized juices.

11. Estimates of Annual Benefits for Labeling Proposal

Table 11 shows FDA's estimate that there are approximately 5,600 cases of foodborne illness associated with commercially processed, packaged juice produced by nonretail establishments. In addition to these cases, an average of 6 cases annually of *Cryptosporidium parvum* have been associated with commercially processed, packaged juice produced by retail establishments exempted from the HACCP rule. Table 15 shows the agency's estimate of the actual number of cases per year by severity.

TABLE 15.—ESTIMATES OF JUICE-ASSOCIATED *C. parvum* CASES PER YEAR

Severity	Average No. of Cases Reported per Year (1992–1996)	FDA Estimate of Underreporting Correction Factor ¹	FDA Estimate of Actual No. of Juice-Associated Cases per Year
Mild	5	100	500
Moderate	1	10	10
Severe	.06	5	.3
Death	.001	5	.005
Total	6		500

¹Because *C. parvum* was not a recognized food safety hazard at the time that Bennett et al. and Todd's work was done, FDA has made its own estimates of the factors needed to correct for underreporting of this hazard.

Table 16 gives the agency's estimate of the value of the loss per case of *C. parvum*.

TABLE 16.—ESTIMATE OF VALUE OF LOSSES ASSOCIATED WITH CASE OF *C. parvum*

Severity	Percent	Duration of illness (in days)	Function Status Code ¹	Symptom/Problem Complex Code ²	Total Disability (per day)	Utility Losses for Survivors (QALD's)	Value of Utility Losses for Survivors (QALD=\$630)	Medical Costs	Value of Losses per Case (VSL=\$5,000,000) (QALD=\$630)
Mild	90	9	L41	12, 13, 29	.3959	3.6	2,300	\$0 ³	\$2,000
Moderate	9	17	L41	12, 13, 29	.3959	6.7	\$4,200	\$400 ³	\$5,000
Severe	1	24	L6	12, 13, 29	.6115	14.7	\$9,300	\$8,300 ⁴	\$18,000
Death	.02						NA	NA	\$5,000,000

¹Functional Status Codes are described in Table 4.
²Symptom/Problem Complex Codes are described in Table 5.
³Medical Costs for mild and moderate cases of *C. parvum* were calculated by multiplying the per day medical costs for *E. coli* 0157:H7 for these levels of severity by the duration of illness of *C. parvum*. The symptoms of *C. parvum* for these levels of severity are similar to those of *E. coli* 0157:H7.
⁴Medical Costs for severe cases of *C. parvum* were calculated by multiplying the per day medical costs for severe cases of acute hemorrhagic colitis by the duration of illness of *C. parvum*. The implicit assumption is that the medical costs for acute hemorrhagic colitis (bloody diarrhea) are equivalent to the medical costs for watery diarrhea associated with *C. parvum*.

The labeling rule is expected to prevent some cases of foodborne illness as people avoid juice that is labeled. Because *B. cereus* is, in general, not disproportionately associated with minimally processed juice, cases of *B. cereus* are not expected to be prevented by the labeling. However, to the extent that the label is effective and to the extent of the volume of juice that is labeled, the labeling rule will reduce the number of cases associated with *E. coli* 0157:H7, *Salmonella* and *C. parvum*.

Combining the estimates of the number of illnesses in Tables 11 and 15, the total number of estimated cases associated with minimally processed juice for these 3 hazards is 6,100 per year associated with consumption of the

70 million gallons of minimally processed juice produced annually. FDA has estimated that 14 percent of minimally processed juice (10 million gallons) will be exempt from the HACCP rule but will be covered by the labeling rule. Therefore, the number of illnesses that may be associated with this volume of juice (10 million gallons) will be exempt from the HACCP rule but will be covered by the labeling rule. Therefore, the number of illnesses which may be associated with this volume of juice (10 million gallons) is approximately 900 and 5,200 illnesses are associated with minimally processed juice covered by the HACCP rule.

As stated earlier, FDA estimates that consumption of labeled, minimally

processed juice will decline by 5 percent in response to the warning label. This leads to the conclusion that the labeling rule is expected to prevent approximately 50 illnesses annually (900 x .05). If juice consumption decreases by as much as 16 percent in response to the warning label, then the labeling rule may prevent as many as 140 illnesses per year.

The value of this reduction in illness depends on the type of cases prevented. FDA assumes that these cases will be distributed according to the share of illnesses associated with each of these hazards. Table 17 shows the expected distribution of cases prevented by labeling across the hazards and severities.

TABLE 17.—DISTRIBUTION OF CASES PREVENTED BY LABELING PROPOSAL

Hazard	Severity	Low Estimate of Actual No. of Juice-Associated Cases per Year	High Estimate of Actual No. of Juice-Associated Cases per Year	Low Estimate of No. of Cases Prevented by a 5% Consumer Response to Labeling	High Estimate of No. of Cases Prevented by a 5% Consumer Response to Labeling	Low Estimate of No. of Cases Prevented by a 16% Consumer Response to Labeling	High Estimate of No. of Cases Prevented by a 16% Consumer Response to Labeling
<i>E. coli</i> 0157:H7	Mild	1,560	1,560	13	13	36	35
	Moderate	100	100	1	1	2	2
	Severe-acute	20	20	.2	.2	.5	.5
	Severe-chronic	2	2	.02	.02	.05	.05
	Death	1	1	.008	.008	.02	.02
<i>Salmonella</i> (non typhi)	Total	1,700	1,700	14	14	39	38
	Mild	2,460	3,790	20	31	58	87
	Moderate	1,230	180	10	1	29	4
	Severe	150	2	1	.02	4	.05
	Reactive arthritis-short term	60	100	.5	.8	1	2
<i>C. parvum</i>	Reactive arthritis-long term	180	280	1	2	4	6
	Death	2	.04	.02	.0003	.05	.0009
	Total	3,800	4,000	32	32	90	91
	Mild	500	500	4	4	11	11
	Moderate	10	10	.08	.08	.2	.2
Total	Severe	.3	.3	.002	.002	.006	.006
	Death	.005	.005	.00004	.00004	.0001	.0001
	Total	500	500	4	4	11	11
	Total	6,000	6,200	50	50	140	140

TABLE 18.—VALUE OF LOSSES PREVENTED BY THE LABELING PROPOSAL

Hazard	Severity	Low Estimate of Value of Losses Prevented by a 5% Consumer Response to Labeling	High Estimate of Value of Losses Prevented by a 5% Consumer Response to Labeling	Low Estimate of Value of Losses Prevented by a 16% Consumer Response to Labeling	High Estimate of Value of Losses Prevented by a 16% Consumer Response to Labeling
<i>E. coli</i> 0157:H7	Mild	26,000	26,000	72,000	70,000
	Moderate	4,000	4,000	8,000	8,000
	Severe-acute	7,000	7,000	17,000	17,000
	Severe-chronic	24,000	24,000	61,000	61,000
	Death	40,000	40,000	100,000	100,000
	Total	101,000	101,000	258,000	258,000
<i>Salmonella</i> (non typhi)	Mild	20,000	31,000	58,000	87,000
	Moderate	20,000	2,000	58,000	8,000
	Severe	16,000	300	64,000	1,000
	Reactive arthritis-short term	4,000	6,000	7,000	14,000
	Reactive arthritis-long term	976,000	1,952,000	3,904,000	5,856,000
	Death	100,000	2,000	250,000	5,000
<i>G. parvum</i>	Total	1,136,000	1,993,000	4,341,000	5,971,000
	Mild	8,000	8,000	22,000	22,000
	Moderate	400	400	1,000	1,000
	Severe	0	0	100	100
	Death	200	200	500	500
	Total	9,000	9,000	24,000	24,000
Total		1,000,000	2,000,000	5,000,000	6,000,000

12. Pesticide Residues

Tolerances for pesticides in foods are established by the Environmental Protection Agency (EPA) and enforced by FDA. FDA collects samples for both surveillance and compliance purposes. Since the incidence of violative pesticide residues in fruit and vegetable juices is relatively low, few compliance samples are taken.

This discussion pertains to surveillance samples of fruit and vegetable juices from 1991 through 1997 (see Table 15). The lab classification scheme used for pesticide residues is: 1 = in compliance;

2 = not in compliance, but not of regulatory concern; and 3 = not in compliance, and of regulatory concern.

The class 2 and 3 violative sample data are summarized in Table 15. Of the 1,196 surveillance samples of juice taken and analyzed during this period, only three (approximately one quarter of one percent) were class 3 violative. One was apple cider and the other two were apple juice, and the violative pesticide residue was acephate in each case. There were also five class 2 violations, in which trace quantities of a pesticide with no tolerance (i.e., the pesticide was not approved for use in the commodity)

were found. The products with class 2 violations were grape juice, watermelon juice concentrate, strawberry/nectarine juice (2 samples), and apple juice concentrate; the pesticides were chlorpyrifos, acephate, and methamidophos.

Pesticides present some potential chronic risks to humans at very low levels of exposure. There is a small background risk associated even with nonviolative pesticide residues and, in the case of products with violative levels, an added risk from the violative residues. (Violative residues are residues above tolerance or residues of pesticides with no tolerance.)

TABLE 19.—VIOLATIVE PESTICIDE RESIDUES IN FRUIT AND VEGETABLE JUICES, 1991 THROUGH 1997

Commodity	Fiscal Year	Pesticide	Amount Found, ppm	Tolerance, ppm	Class Violation
Grape juice	1993	Chlorpyrifos	Trace	None	2
Apple cider	1995	Acephate	0.075	None	3
Apple juice	1995	Acephate	0.052	None	3
Apple juice	1995	Acephate	0.040	None	3
Watermelon juice, concentrate	1996	Acephate	Trace	None	2
Strawberry/nectarine juice	1996	Methamidophos	Trace	None	2
Strawberry/nectarine juice	1996	Methamidophos	Trace	None	2
Apple juice, concentrate	1997	Methamidophos	Trace	None	2

There are two potential benefits associated with the regulation of pesticides: (1) Decreases in cancer and other illness caused by chronic consumption of pesticide residues and,

(2) social benefits associated with reductions in the costs of recapturing firm goodwill. The U.S. EPA is responsible for determining the benefits of reducing exposure to pesticide

residues and, it is assumed, that the health benefits of the enforcement actions proposed here are already accounted for when regulatory tolerances are established. As to the

latter benefit, when firms have products with violative residues either over tolerance for legal pesticides or any residue of an illegal pesticide and a recall of the violative product becomes publicly known, the sales of those firms are reduced, at least temporarily. Because other firms will step in to supply the product, that loss of sales alone does not constitute a social cost. However, it is likely that real resources will be expended to recapture the lost "goodwill" that would be in addition to the real expenditures made to actually recall the product. FDA cannot quantify the cost savings that will occur because of more vigilant monitoring of pesticide residues by firms under a HACCP rule.

C. Other, Nonquantified Benefits

1. Firm Efficiency

The principle benefits from HACCP reported by the pilot firms are more effective and efficient operations, a higher level of confidence in the safety of the product, and greater customer satisfaction. The pilot firms attributed these benefits to HACCP because of the following results.

(1) Training makes the employees more aware of safety and needed control measures, and empowers employees to prevent problems and respond properly when deviations occur. Improvement in employee performance was perhaps the most significant benefit from HACCP expressed to FDA by the pilot firms. One firm reported that "due to

increased HACCP awareness, employees have been instrumental in designing new processes/procedures for monitoring and control." The firm gave an example of a processing step that was changed to reduce the likelihood of occurrence of a physical hazard. FDA is unable to estimate the societal cost savings in terms of reduced product costs which will, ultimately, affect the cost of implementing HACCP.

(2) SOP's and other documented procedures enable employees to implement their tasks more consistently and effectively, and result in smoother operations.

(3) Prerequisite programs and incoming ingredient controls prevent hazards from being introduced into the process; continuous monitoring reveals problems quickly and enables prompt correction and continuation of production with less waste.

(4) Recordkeeping and review makes employees more accountable and conscientious about safety.

(5) Validation and verification activities provide management with greater control over their operations and documentation of the safety of their product.

Perhaps the most significant benefit in terms of firm efficiency will be cost savings from greater awareness by firms of violative product runs, and the resulting increase in response to such violative runs. Although the benefits of formal recalls have already been

accounted for, many pilot plant managers suggested that the continuous monitoring required by HACCP enabled them to decrease the amount of waste associated with production-line problems. For example, one manufacturer noted that glass breakage was a constant problem on the line and that, prior to HACCP, almost an entire lot would have to be discarded because the manager could not be sure exactly when a problem had started. With continuous HACCP monitoring, problems were caught more quickly and the problem corrected more promptly, thereby minimizing the amount of lost product.

The cost savings may be substantial from this source of benefits but FDA is unable to quantify them. FDA requests comments on these and other potential benefits.

2. Increased Shelf Life

Nonheat-treated juices have a limited shelf life. Heat-treated juices have longer shelf lives. Depending upon temperature used, increases of 7 days or more have been reported. Longer shelf life allows more flexibility in the conditions of distribution and sale of products. The agency requests comments on how this potential benefit may be quantified.

D. Summary of Benefits

Table 20 summarizes the benefits of these two rules.

TABLE 20.—BENEFITS OF JUICE PROPOSALS

Type of Benefit	Description	Annual Value
Enforcement: Import Detentions	Reduced waste and Federal activity from detaining violative juice imports	\$175,000
Enforcement: Product Recalls	Reduced numbers of domestic recalls of violative juice products	\$1,500,000
Health Benefits: HACCP	Reduced illness and death from controlling pathogens in juice	\$174 to 251 million
Health Benefits: Labeling	Reduced illness and death from avoidance of minimally processed juice	\$1 to \$6 million
Health Benefits: Pesticides	Reduction of consumption of violative pesticide residues in juice and social losses from lost goodwill	Not quantified but small
Other Benefits: Firm Efficiency	Some offsetting reductions in manufacturing costs due to increased worker productivity and less product waste	Not quantified but potentially large
Other Benefits: Increased Shelf Life	Product Shelf life may be increased for products achieving a 5-log reduction of pathogens	Not quantified but potentially large
Total Quantified Benefits		\$180 to 260 million

VI. Costs

A. General Industry Information Used Throughout This Analysis

The costs of these rules have been estimated by analyzing the costs for each proposed requirement on a per-plant basis and multiplying these costs by the number of plants affected by each requirement. Cost per plant will vary by current practice, product, and size. In order to determine the number of plants

covered, the analysis will first analyze coverage qualitatively.

1. Types of Plants Covered

The labeling rule and the HACCP rule do not equally affect an identical subset of the food industry.

2. HACCP Rule Coverage

For the purpose of this rule, FDA has tentatively decided that retailers will include processors who are very small

businesses and who make juice on their premises and directly sell juice or juice products to consumers and other retailers provided that retail sales of juice and juice products do not exceed 40,000 gallons per year. The HACCP rule covers all processors of juice except those who are retailers. Retailers may include grocery stores, supermarkets, farms, roadside stands, restaurants and eating places.

3. Labeling Rule Coverage

The labeling rule covers processors and retailers of packaged minimally processed juice. The labeling rule is also applicable to packaged beverages that

have not received further processing to control microbial hazards and that contain minimally processed juice. Such beverages include diluted juice beverages, "smoothies," sports drinks, flavored bottled waters, and carbonated

beverages that contain juice that was not processed to control pathogens.

Table 21 provides examples of the types of products and processors covered and not covered by the two rules.

TABLE 21.—COVERAGE OF JUICE PROPOSALS

Processor Type	Covered by Labeling Rule	Covered by HACCP Rule ³
Processors of packaged beverages sold as juice ¹	Yes	Yes
Processors of packaged purees sold as juice	Yes	Yes
Processors of juice used as an ingredient in a beverage (e.g., the cranberry juice in cranberry juice cocktail)	Yes	Yes
Processors of juice which retail the juice at a different location from which it is produced	Yes	Yes
Processors of beverage concentrates sold as juice	Yes	Yes
Processors of beverage bases of a fruit origin or other beverage bases including dried or powdered juice mixes ²	Yes	Yes
Processors of packaged baby (infant and junior) fruit juices and drinks	Yes	Yes
Processors of juice that ship to a different location (e.g., the juice processing plant owned by a supermarket chain that then ships the juice to the chain's stores or very small processors that sell juice from their own roadside stand and to other retailers)	Yes	No
Retailers of packaged juice processed by other establishments (e.g., supermarkets, restaurants and roadside stands that sell juice produced by another processor) Note: the juice sold by these retailers is covered by the HACCP rule but the retailer is not covered by the HACCP rule.	Yes	No
Processors of packaged juice that do not ship juice to different locations but retail the entire production on the premises (e.g., supermarkets, and roadside stands that produce juice at the point of sale)	Yes	No
Processors of beverages that include juice as an ingredient but which do not produce the juice itself	No	No
Retailers of juice processed for immediate consumption	No	No
Processors of non-beverage products that include juice as an ingredient	No	No
Processors of hard cider or other alcoholic beverages	No	No
Processors of oils	No	No
Processors of purees not sold as beverages (e.g., tomato puree)	No	No
Processors of juices not sold as beverages (e.g., vinegar or borscht)	No	No
Processors of imitation juice flavorings	No	No
Processors of coffees, teas, or cocoa products	No	No

¹ Juice types are berry; citrus; core fruit; mixed fruit; pit fruit; subtropical and tropical fruit; vine fruit; other fruit; beans, peas and corn; fruits used as vegetables; leaf and stem vegetables; mixed vegetables; root and tuber vegetables; and other vegetables.

² Beverage bases of fruit origin are berry, citrus, core fruit, mixed fruit, pit fruit, subtropical and tropical fruit, vine fruit, and other fruit.

³ A "yes" in this column applies only to processors producing in excess of 40,000 gallons of packaged juice per year. Very small businesses processing packaged juice, producing 40,000 gallons of juice or less annually are classified as retailers for the purpose of the HACCP rule and are therefore exempt from it.

4. Number of Establishments Covered

FDA's own Official Establishment Inventory (OEI, FDA's list of food establishments under its jurisdiction) lists approximately 900 juice manufacturers. However, recent information from the U.S. Apple Association (USAA) indicates that there are about 1,800 apple juice plants, most of which are very small processors. A typical description of these very small processors is an apple grower who operates a small apple press and bottling operation on the same property. In general these processors market their products in more than one way. The channels of distribution include: Roadside stands owned by the processors and stands owned by others, farmers' markets, grocery stores, and restaurants. FDA has proposed to exempt retail establishments from the HACCP rule. For the purposes of this rule, the agency has tentatively decided that retailers will include very small businesses that make juice on their

premises and whose total sales of juice and juice products do not exceed 40,000 gallons per year and who sell directly to consumers or directly to consumers and other retailers. Based on data supplied by the USAA, this exemption would exempt from the HACCP rule 80 percent of apple juice processors. (Ref. 13). Such an exemption would leave approximately 360 apple juice processors covered by both of these regulations, and all 1,800 would be covered by the labeling rule.

The OEI lists about 200 plants in the United States that produce core fruit (apple, crab apple, pear, quince, etc.) juice. If all of the 200 core fruit plants in the OEI are included in the USAA list and are not exempt, then there would still be an excess of 160 apple juice processing plants in the USAA list not exempt from the HACCP rule and an excess of 1,600 (1,800-200) plants in the USAA list not exempt from the labeling rule. (Information from FDA's field inspections indicates that very few

of these 160 plants will be exempted from the HACCP rule under the exemption for retailers of juice for immediate consumption. Almost none of the very small apple juice processing plants recently inspected by FDA retailed all of the juice that they produced at the same location that it was processed. See Table 21 for a description of the types of products and processors not covered.)

The agency is aware that there are also many very small orange juice processors who grow oranges and who also operate a juicing and bottling operation on the same property. However, the agency has no direct information on the number of such orange juice processors. The OEI lists about 300 plants in the United States that produce citrus fruit juice. In this analysis, the agency has assumed that there is an equivalent number (300) of very small processors who are not listed in the OEI. It is likely that the proportion of very small orange juice

processors to OEI citrus juice makers is lower than the proportion of very small apple juice processors to OEI apple juice makers because the growing region for oranges in the United States is far smaller than the region for growing apples.

FDA assumes for the purpose of this analysis, that 80 percent of these very small orange juice processors will be exempt from the HACCP rule based on their classification as retail establishments. This would leave 60 very small orange juice processors covered by both of these regulations, and all 300 covered by the labeling rule. FDA has assumed that there are no vegetable juice processors which are not in the OEI or which are not also very small processors of apple or orange juice as estimated above. FDA requests comments on these assumptions.

FDA has assumed that 5 percent (about 50 plants (900 x .05)) of all juice plants in the OEI would have implemented HACCP substantially in the form required by this regulation by the time that this proposed HACCP rule is finalized regardless of this regulatory action. Therefore, approximately a total

of 1,070 plants (850 plants in the OEI plus 60 very small orange and 160 apple juice retailers) will be affected by the HACCP rule.

The labeling rule will cover retailers (roadside stands and grocery stores) of packaged minimally processed juice.

The agency does not have direct information on the number of supermarkets and grocery stores that produce and package at the point of sale and sell minimally processed juice. The agency believes that only a portion of chain supermarkets and grocery stores do so. Duns Market Identifier (DMI) lists approximately 9,400 chain supermarkets (SIC 54110101) and approximately 3,800 chain grocery stores (SIC 54119904) making a total of approximately 13,000 chain supermarkets and grocery stores. If 10 percent of these stores produce at the point of sale and sell packaged minimally processed juice, then approximately 1,300 chain grocery stores and supermarkets will be affected by the labeling rule. (In addition to these processors, there are other retailers that do not process juice but which offer for sale the juice produced

by other processors, which should be labeled by the manufacturer.)

Due to publicity about the hazards associated with minimally processed juice, the agency believes that relatively few retailers are offering such products for sale. DMI lists approximately 3,100 independent supermarkets (SIC 54110103) and approximately 31,000 independent grocery stores (SIC 54119905) making a total of approximately 34,100 chain supermarkets and grocery stores. If 5 percent of these stores sell minimally processed packaged juice, then approximately 1,700 independent grocery stores and supermarkets will be affected by the labeling rule. The labeling rule will also affect roadside markets and stands that retail packaged minimally processed juice. For the purpose of this analysis, the agency assumes that there are 1,000 such roadside markets and stands. However, the assumptions that go into these calculations may be incorrect, and the agency specifically requests comments on them.

Table 22 shows the estimated number of establishments affected by each rule.

TABLE 22.—NUMBER OF PLANTS AFFECTED BY THE HACCP AND LABELING RULES

Plant Type	No. of Establishments Affected by HACCP Rule	No. of Establishments Affected by Labeling Rule
Juice manufacturers in the OEI	850	20 ¹
Very small apple juice makers	160	1,600
Very small orange juice makers	60	300
Roadside retailers		1,000
Grocery stores and supermarkets processing and packaging at the point of sale		1,300
Total	1,070	4,220

¹ The number of juice manufacturers listed in the OEI affected by the labeling rule is small (20) because most of these manufacturers are already achieving a 5-log reduction. See Table 24.

5. Hourly Price of Labor

Throughout this analysis the hourly price of labor is taken to be approximately \$13. This is estimated by taking the 1996 average hourly rural wage of \$9.20 (Ref. 7) and increasing it by 40 percent (the average amount for benefit costs paid by employers) (Ref. 8), or \$3.70 to account for such costs in addition to wages, such as Social Security, workers' compensation,

unemployment insurance, paid leave, retirement and savings, health insurance, and supplemental pay.

6. Length of Production Period

The agency is aware that many juice processors operate on a seasonal basis. Information supplied by USAA indicates that 94 percent of the apple cider producers process only seasonally. The season for apple cider production runs primarily from September through

December. The other 6 percent operate year round. Many other processors covered by the proposed HACCP rule (e.g., makers of beverage bases) may process year round. The agency has assumed that 50 percent of the 850 plants in the OEI plus all of the 220 very small juice makers affected by the HACCP rule produce seasonally. Table 23 shows the length of the production period for plants producing seasonally and year round.

TABLE 23.—PLANTS' PRODUCTION PERIOD

Production	Weeks of Operation per Year	Hours of Operation per Day	No. of Plants
Seasonal	16	12	645
Year Round	52	24	425
Total			1,070

B. Cost Estimates by Requirement

1. Costs have been estimated for the following sections of the labeling regulation:

(1) Signs or Placards (§ 101.17(f)(3)(i)) (part 101 (21 CFR part 101))

(2) Container Labels (§ 101.17(f)(3)(ii))

2. Costs have been estimated for the following sections of the HACCP regulation:

(1) CGMP's (§ 120.5 (part 120 (21 CFR part 120))

(2) Prerequisite Program SOP's (§ 120.6)

(3) Hazard Analysis and HACCP Plan (§§ 120.7 and 120.8)

(4) Corrective Actions (§ 120.10)

(5) Validation and Verification (§ 120.11)

(6) Records (§ 120.12)

(7) Training (§ 120.13)

(8) Imports and Foreign Processors (§ 120.14)

1. Labeling Costs

This cost depends strongly upon producers' responses to the labeling requirements. Some producers may elect to comply early with the HACCP rule and avoid the warning labels or labeling. Others may choose to label until they are required to implement HACCP. Finally, some firms may choose not to produce juice products because they believe that either the cost of HACCP implementation or the negative effect on revenue generated by consumer response to labels may depress profits below a normal return for a substantial time period. Such producers will be better served by reinvesting their capital into more profitable ventures.

a. *Signs or placards (§ 101.17(f)(3)(i)).* The costs of signs and placards may be estimated by multiplying the number of establishments that must post placards by the cost per placard. As shown in Table 22 the agency estimates that the labeling rule covers approximately 4,220 plants. However, for the purpose of this analysis, the agency has assumed that all those processors that will at some point be required to implement HACCP will do so at the earliest possible date to avoid the warning labeling, or delay operation until they implement a 5-log pathogen reduction process.

The following analysis underlies this assumption. If displaying the warning

can be avoided by beginning pasteurization (or an equivalent 5-log pathogen reduction process) sooner, some firms may marshal the resources to do so. FDA does not have data, however, that will allow it to predict how many firms will respond to this labeling regulation in this fashion. However, one way to examine this choice is examine the additional discounted costs of pasteurizing sooner. For example, if a small firm's cost of initiating pasteurization is about \$18,000, with recurring costs of about \$8,000, and the firm has an annual juice revenue of \$200,000, then a total sales decline caused by the warning of 8 percent (a loss of approximately \$16,000 discounted at a rate of 7 percent) or more spread over the course of 2 years (or approximately 4 percent for 2 years) would cause the firm to attempt to borrow the funds needed to initiate pasteurization 2 years early or to delay operation until it implements a 5-log pathogen reduction process. FDA's predictions of consumer reactions to the labeling (for the purposes of benefit estimations) are an expected loss of revenue of about 5 percent. Thus, there is a tentative conclusion that most firms that are not exempt from the HACCP rule will choose to implement a 5 log reduction in pathogens immediately rather than label and to delay operation until such processes have been implemented.

However, there are many uncertainties contained in this simple example. Because of the short time frame for labeling to begin, 60 days from publication of the final rule, many firms may not be able to purchase and install pasteurization equipment or find other means of validating a 5 log reduction in the target organism. It is unclear how manufacturers think that consumers will react to the warning signs, they may believe that their customers will not reduce their purchases of juice. Also, firms with larger sales or smaller pathogen reduction costs will need a smaller percentage sales decline from labeling in order to be induced to initiate 5 log pathogen controls early. Finally, it is unclear how many firms will have immediate access to the capital requirements imposed by this rule.

If, therefore, all processors which will eventually be covered by the HACCP

rule do not label, then they have no direct labeling cost. The cost of the labeling rule to these processors is the extra expense that results from implementing HACCP 2 years earlier than would be required by the HACCP rule alone. This cost, as stated above, is \$16,000 (discounted for 2 years at 7 percent). Of the 1,070 establishments covered by the HACCP rule, all of the 20 firms in the OEI which are also affected by the labeling rule (those estimated to be producing minimally processed juice) plus all of the 220 very small orange and apple juice processors covered by the HACCP rule are affected in this way (240 plants in all). The agency assumes, based on information from industry sources, that 30 percent of this set of processors (72 plants) have already initiated or are in the process of initiating pasteurization. Therefore, the total cost of the labeling rule for this set of processors is \$2,688,000 (\$16,000 x 168 plants).

The establishments that will need to display warning labeling are those 3,980 establishments covered by the labeling rule but not by the HACCP rule. Based on information learned from FDA's nutrition labeling rules, the average cost per placard (and periodic replacement) is estimated to be \$100. This estimate will encompass the possibility that some firms may have to supply multiple signs to meet the requirement that it will be available at the point of purchase. Therefore, the total one-time cost for this set of processors is \$398,000.

b. *Container labels (§ 101.17(f)(3)(ii)).* The cost of labeling is estimated by multiplying the number of affected separable labels on packaged products, normally referred to as stock keeping units (SKU's), by the cost of changing the label to add the warning. Table 24 shows FDA's estimate of the cost per SKU of placing a warning label on the information panel for different lengths of the compliance period. These costs decrease over time for several reasons. The primary reason is that manufacturers change labels or, at least, reorder them at regular intervals and a larger length of compliance period allows manufacturers to incorporate regulatory changes into planned changes.

TABLE 24.—LABEL CHANGE COSTS PER SKU FOR DIFFERENT LENGTHS OF THE COMPLIANCE PERIOD

	2 months	6 Months	1 Year	2 Years	3 Years
Administrative costs	\$6,000	\$1,800	\$900	\$450	\$350
Redesign costs	\$1,500	\$450	\$450	\$50	\$50
Inventory loss	\$800	\$250	\$0	\$0	\$0

TABLE 24.—LABEL CHANGE COSTS PER SKU FOR DIFFERENT LENGTHS OF THE COMPLIANCE PERIOD—Continued

	2 months	6 Months	1 Year	2 Years	3 Years
Totals	\$8,300	\$2,500	\$1,350	\$500	\$400

Processors of minimally processed packaged juice which are not covered by HACCP will need to add the warning to their package labels at the end of the 2-year compliance period. FDA estimates that 2,980 processors will be subject to this provision (1,440 very small apple juice retailers and 240 very small orange juice retailers exempted from the HACCP rule plus 1,300 grocery stores producing packaged juice). The total cost for this provision is \$1,490,000 (2,980 x \$500) at the end of the 2-year compliance period. For simplicity of reporting and calculation with the other labeling costs, this cost will be added as \$1,301,000 (the present value of \$1,490,000 discounted 2 years at 7 percent).

c. *Summary of likely labeling costs.* The agency estimates that the likely total cost of the labeling rule is a one-time cost of \$4,387,000 (\$2,688,000 + \$398,000 + \$1,301,000).

2. HACCP Costs

a. *CGMP's (§ 120.5).* This section of the proposal reaffirms the applicability of the CGMP's in part 110 in determining whether facility design, materials, personnel practices, and cleaning and sanitation procedures are safe.

No costs are attributed to this section for this rulemaking. The overwhelming majority of juice plants are in compliance with the CGMP's. In 1996 only 6 percent of the plants inspected were cited for official action. Therefore it is assumed that these rules will not have any effect on the enforcement of the CGMP's for juice products.

b. *Prerequisite program SOP's (§ 120.6).* FDA is proposing to require that processors control and document specific SOP's that provide a foundation for the HACCP system and to have and implement SOP's for prerequisite programs. In general, there are three activities that are part of prerequisite program SOP's: (1) Developing SOP's, (2) implementing sanitation controls with corrections of deviations from SOP's, and (3) monitoring and documenting for SOP's.

i. *Developing SOP's.* Each processor must have a sanitation SOP. FDA estimates that SOP's for juice plants could be developed with 20 hours of labor. At the rural hourly cost of labor

(\$13), the cost per plant of developing SOP's is approximately \$260. If one half of the 900 domestic plants in the OEI and all of the 220 very small juice processors do not currently have SOP's, then they will have to develop them to comply with this regulation, if it is adopted. Under those assumptions, the total cost for the industry to develop SOP's would be approximately \$174,200 (\$260 x 670 plants).

ii. *Implementing sanitation controls with corrections of deviations from SOP's.* Each processor must implement a sanitation SOP and correct deviations from the prerequisite program SOP's in a timely fashion.

In 1996, 39 percent of the juice plants inspected were cited as VAI (voluntary action indicated). This citation usually indicates that an investigator noted deficiencies that were not significant enough to warrant an administrative or regulatory action but which should be corrected on a voluntary basis.

Information from the inspection reports indicates that approximately 30 percent of the juice plants inspected had sanitation and food safety related deficiencies, 4 percent had deficiencies which were related to low-acid canned food regulations, and 4 percent had deficiencies for misbranding or mislabeling. Also in 1996, 6 percent of the juice plants inspected were cited as OAI (official action indicated). This citation indicates that an investigator noted deficiencies significant enough to recommend regulatory or administrative sanctions. Information from the inspection reports indicates that 3 percent of the juice plants had significant deficiencies that could be related to food safety or low-acid canned food regulations, 2 percent had significant deficiencies for misbranding or mislabeling.

On a few of the VAI inspection reports, FDA investigators indicated an estimate of the cost of correcting sanitation and food safety related deficiencies indicated. Two-thirds of the reports estimated costs of corrections at \$0 to \$99, and one-third of the reports estimated costs of corrections at \$1,000 to \$4,999.* Taking the middle of these ranges gives an average estimated cost of corrections of approximately \$1,000 ((\$50 x 67 percent) + (\$3,000 x 33 percent)) per plant for correcting

sanitation and food safety related deficiencies.

The HACCP rule will mandate the implementation of daily monitoring of sanitation controls. This should make the correction of sanitation and food safety related deficiencies happen on the day that they occur rather than months later. Regulatory inspections of juice plants are made approximately once every 5 years. If food safety and sanitation related deficiencies occur on average approximately once every 5 years midway between inspections (to facilitate calculation), then the HACCP rule should cause corrections to be taken an average of 2.5 years earlier than would be the case without the rule. The cost of the rule, then, is not the full cost of taking the corrections. Those corrections would be taken even without the HACCP rule after the plant was inspected and the deficiencies noted. The cost of the HACCP rule is the present value of making the expenditures to correct the deficiencies at an earlier date than would take place otherwise. The present value of making an infinite series of \$1,000 expenditures once every 5 years and 2.5 years earlier than they would otherwise occur is \$500 when discounted at 7 percent.

Based on information from inspection reports, FDA assumes that about 30 percent of all 1,070 covered juice plants (about 320 plants) are not likely to have sanitation controls that are sufficiently implemented, but which do not warrant administrative or regulatory action. If it costs each of these 320 plants \$500 to implement sanitation controls and to correct deviations from SOP's, then the total cost borne by the industry for this requirement is \$160,000, which, because it is discounted, will be added as a one-time expenditure in the total costs.

iii. *Monitoring and documenting of SOP's.* All procedures in the prerequisite program SOP's are required to be conducted at the frequencies specified and implementation of these procedures will have to be monitored and documented.

FDA estimates that monitoring and documenting of SOP's will require one-half hour of labor per operating week. The cost per plant of SOP monitoring and documenting is given in Table 25.

* No reports estimated costs of \$100 to \$999.

TABLE 25.—ANNUAL PER PLANT COST OF SOP MONITORING AND DOCUMENTING

Production	Weeks of Operation per Year	Estimate Hrs. per Week for SOP Monitoring and Documenting	Wage (\$/hour)	Estimate Annual SOP Monitoring and Documenting Cost per Plant
Seasonal	16	.5	\$13	\$100
Year round	52	.5	\$13	\$340

Table 26 shows the distribution of per plant and total industry costs based on the estimate in Table 25 for SOP

monitoring and documenting needed to comply with this rule, if it is adopted. These estimates assume that no plants

are currently in compliance with these particular requirements.

TABLE 26.—TOTAL ANNUAL COST OF SOP MONITORING AND DOCUMENTING

Production	Estimate Annual SOP Monitoring and Documenting Cost per Plant	No. of Plants	Estimate Annual SOP Monitoring and Documenting
Seasonal	\$100	645	\$64,500
Year round	\$340	450	\$153,000
Totals		1,095	\$218,000

c. *Hazard Analysis and HACCP Plan* (§§ 120.7 and 120.8). Under the proposal, processors are required to have a written hazard analysis and to have and implement a written HACCP plan whenever a hazard analysis reveals a food hazard that is reasonably likely to occur. Requirements are set forth for the minimum contents of the plan and for the signing and dating of the HACCP plan by specified personnel. Failure of a processor to have and implement a HACCP system in compliance with this rule, if adopted, will render the food products of that processor adulterated.

i. *Hazard analysis and HACCP plan development.* Under the proposal, each plant is responsible for developing a written hazard analysis of hazards that are reasonably likely to occur in the product that a processor can control. The hazards to be considered are any chemical, physical, and biological hazards that may cause illness, injury, or death in humans. Plant management must determine the likelihood of occurrence of these hazards, either due to their introduction through material inputs or processing or a possible failure to eliminate them or to reduce them to acceptable levels in processing. Some Federal Government sampling and illness outbreak data are available to provide firms with a set of possible hazards that may affect a particular product and process. In addition, section V of this document, the accompanying appendix, and the preambles to these proposed rules contain information on most of the hazards that have caused problems in juice products in the past. Additional information may be forthcoming in the

HACCP final rule (after FDA evaluates the comments). Experience from the HACCP pilot suggests that the hazard analysis for products similar to juice took 16 to 24 hours. FDA's preliminary estimate is that it will take approximately four individuals, including a plant manager; 5 hours each to complete the hazard analysis; and another 15 hours each to formulate the HACCP plan. The HACCP plan requires that the plant manager, quality control official and others establish critical control points (CCPs) for every hazard identified in the hazard analysis and critical limits at each CCP; establish a plan to monitor those CCP's; determine how deviations from critical limits will be handled; and establish procedures for verification and validation that the plan is being followed and that it is properly controlling the identified hazards. FDA assumes that part of this process will be to determine the most cost-effective means to comply with this regulation when developing the plan. Thus, the total number of person hours per plant to develop both documents is 80 hours. At \$13 per hour the total cost per plant is about \$1,000 per plant.

FDA has assumed that about 5 percent (50 plants) of all juice plants in the OEI will have implemented HACCP substantially in the form required by this regulation by the time that this regulation is finalized regardless of this regulatory action. This assumption is based on conversations with pilot plant firms who have indicated to FDA that many large firms have begun both to do HACCP and require HACCP of their suppliers. It is estimated that approximately 1,070 plants will need to

do hazard analyses and develop HACCP plans to comply with this rule, if it is adopted. Therefore, the total cost of 1,070 plants at \$1,000 each to develop a hazard analysis and a HACCP plan is approximately \$1,070,000 million.

ii. *Pesticide HACCP controls.* Pesticides may be a component of material inputs that must be controlled. If a processor has direct knowledge of the amount of pesticide applied, either because the produce is from the processor's own farm or because records showing the application of pesticides accompanies the incoming produce, then the processor may control pesticide hazards by means of a supplier certificate. Under such an arrangement a supplier would only need to provide the processor with a certification that any pesticides had been properly applied to the produce so as not to exceed applicable tolerances. As each arrives at the processing plant, a worker will need to verify that the supplier for that shipment has supplied the processor with a proper and up-to-date certification. FDA assumes that verification of supplier certification requires 1 minute per shipment which, at \$13 per hour, represents a cost per shipment of approximately \$0.25.

FDA has estimated the number of shipments that will be verified in this manner by working backward from the amount of juice consumed. Annual juice consumption in the United States is 2.3 billion gallons (gal). The agency assumes that 80 percent of this total (1.84 billion gal) is produced by approximately 75 large firms (operating 225 plants). FDA believes that all large firms are currently doing a sufficient

amount of sampling and monitoring (or receiving supplier certificates) for pesticides. Therefore it is assumed that there are no costs for large firms to comply with this requirement. That leaves 20 percent of the total (460 million gal) produced by approximately 2,575 small and very small firms. FDA assumes that all small and very small firms use domestic produce only. If 15 pounds (lb) of produce are required to make 1 gal of juice, then small firms use 6.9 billion lb of domestic produce (460 million gal x 15 lb/gal). If 45,000 lb of produce (the amount carried by a typical tractor trailer) constitutes 1 shipment of produce, then small and very small firms use 153,000 shipments of produce (6.9 billion lb + 45,000 lb/shipment).

However, for the purposes of this proposed regulation FDA is including as retailers very small businesses that make juice on their premises, whose total sales of juice and juice products do not exceed 40,000 gallons per year and who sell directly to consumers or directly to consumers and other retailers. This exemption decreases the percentage of juice processed under pesticide controls by approximately 14 percent thereby reducing the number of shipments of produce to 132,000 (153,000 x 86 percent).

FDA assumes that 80 percent of small and very small firms covered by the rule (676) will process shipments of produce that will be accompanied by supplier certifications of pesticide application after the HACCP rule is in place. Therefore, the number of shipments to be handled under prerequisite program controls is 106,000 (132,000 shipments x 80 percent) per year. Thus, this analysis assumes that the average small and very small plant receives approximately 160 (106,000 shipments + 676 small plants) shipments per year. The total per plant cost is about \$40 (60 shipments x \$0.25/shipment) for the 676 small and very small plants that can control this issue in this way. Based on these calculations, the total marginal cost of this type of control for pesticides is approximately \$27,000 (\$40 x 676 plants).

If such records cannot be obtained, different types of controls need to be implemented. In this case, the processor must run pesticide residue tests to ensure that there are no pesticides either over tolerance or used on products for which there is no tolerance. To determine the frequency of such testing, processors may avail themselves of Government test results which indicate the likely variance of illegal residues over a particular crop or region.

Current records indicate that, for domestic crops, only about .25 percent (one-quarter of 1 percent) are out of compliance. Furthermore, as HACCP is adopted by more of the food industry, it is expected that records, for some types of produce, will routinely accompany produce intended for interstate commerce. However, many types of produce are currently commingled at different stages in the distribution network. This creates a problem for backtracking when there are either pesticide or pathogen problems.

There are two potential costs associated with ensuring that pesticide residues are legal: (1) Matching and shipping pesticide spray records with crops and (2) costs of multiresidue testing. If records are to accompany produce, fruits and vegetables may only be commingled if all of the commingled produce has records showing it is under tolerance. Otherwise, produce with paperwork must be kept separate from produce without such paperwork. In the latter case, if it is to be used to produce juice, multiresidue tests must be performed costing about \$150 per test. Just as was calculated for supplier certificates, FDA calculates that there are 132,000 shipments which use 5,865 million pounds of produce that must be covered by pesticide controls. As 80 percent has been considered to be handled by supplier certificates, 20 percent of the remaining shipments must be covered by a sampling plan. Thus, of the 845 small plants total, 169 will cover an average of 160 shipments with a pesticide sampling plan. The number of shipments that must be tested is about 26,000 (132,000 x 20 percent) per year.

Because of the likelihood of a very low violation rate, approximately one-quarter of 1 percent, which is coupled with a maximum upper bound added risk of about 1 in a million lifetime cancer cases (see section V of this document), those processors who are unable to obtain supplier certificates should need to only sample lots periodically to ensure that such lots are in compliance. If the average number of shipments per plant per year is 160, processors could randomly sample 10 shipments per year and, assuming all were negative, could be assured with 80 percent confidence that there are no more than 14 percent violative lots in the entire season's produce input. Furthermore, if processors are turning up violative shipments, they are expected to take corrective action to prevent future shipments from being violative so that the rate of violative juice that reaches consumers is expected to stay extremely low. Thus, costs will

be estimated for these processors based on 10 random samples per year at a cost of \$150 per sample. Based on these calculations, the total marginal cost of pesticide testing is approximately \$254,000 (10 tests x \$150/test x 169 firms). Costs per plant are estimated to be an average of \$1,500. Therefore, the total annual cost of pesticide control for the HACCP rule is \$281,000 (\$254,000 for pesticide testing + \$27,000 for supplier certificate verification).

iii. *Pathogen HACCP controls.* Processors will need to include controls for microbial hazards in their HACCP plans and to implement these controls in their operations. Potential microbial hazards include both heat sensitive and heat resistant pathogens (and heat resistant toxins produced by pathogens), including viruses. However, FDA is interested in the safety of products as they are consumed, and any combination of controls that successfully controls pathogens will satisfy the requirements of this regulation. This regulation will allow each processor to choose the combination of control measures that cost-effectively controls microbial hazards. In addition, because of this "performance" nature of HACCP, manufacturers will be encouraged to continue to seek out and implement less costly and more effective methods.

Processors may attempt to control pathogens through other means, using a combination of several steps that are less effective separately, but which when used together will achieve adequate log reductions of pathogens. These methods may include control of contamination at the growing level, including use of potable water for irrigation, use of safe fertilizers, rejection of fruits dropped from trees onto the ground, and application of good sanitation practices during harvesting. Other controls that can be applied at the receiving, sorting, and processing levels include washing, brushing and sanitizing the product before extraction, acidifying the product, and using preservatives. FDA requests comments on potential costs and use of these or any other methods.

At present, pasteurization is the primary effective, commercially implemented method for controlling pathogens in juice. However, the agency is not proposing to require pasteurization in the proposed HACCP rule since other methods, either singularly or combined, may be as effective in achieving the 5-log reduction. However, the effectiveness and commercial feasibility of these other methods have not been established over a significant period of

time. It is possible that the effectiveness and feasibility of other methods will be established prior to the finalization of the HACCP rule, thus affording processors a less expensive means of pathogen control. To the extent that processors adopt other, less expensive pathogen controls, the costs for pasteurization estimated in this analysis will be an overestimate of the actual cost of the rule. The agency has estimated an option for carrying out pasteurization that it believes minimizes the cost of pasteurization. That is, the agency has estimated the costs of purchasing special, low cost pasteurizers designed for low-volume applications that are suited to small businesses. It is also worth mentioning that pasteurized juice products can be made using drops and culled produce, which significantly lowers the cost of the material inputs. Processes other than pasteurization may not be able to reduce pathogens sufficiently to accept this type of produce.

Another possibility, for which FDA has not estimated costs, is that processors that do not have pasteurizing equipment on site will ship their juice to a facility that can provide them with pasteurization and bottling service and then ship the bottled juice back for distribution. Juice and dairy plants are the facilities most likely to be able to provide this service. Purchasing the service of pasteurization may be a more cost-effective option for some juice processors.

In fact, some juice companies do contract out their juice making process. They blend the different varieties of raw produce for their product and then ship it to a processor. There the produce is

washed and culled, pressed, pasteurized, bottled, and labeled. The juice is then picked up by the owner and distributed. Other juice companies have contracted out the pasteurization-bottling processes. They press the produce themselves, then ship the juice to a pasteurization-bottling facility to be pasteurized and bottled. Still other companies have contracted out the pasteurization process only. They press the produce themselves, then ship the juice to a pasteurization facility to be pasteurized, and then ship the pasteurized juice back in bulk for bottling and distribution. If some juice companies decide to take approaches similar to these in response to this rule, their operations will change fundamentally. Juice processors will choose the option which will result in the lowest marginal cost to produce juice. The agency has not included the estimate of the cost of contracting out pasteurizing because of: (1) The increased complexity of the HACCP plan to control for recontamination, (2) the problem of estimating processors' access to pasteurization equipment owned by other processors, and (3) the extra expense involved in transporting the products. All these cast serious doubt on the feasibility of this option for many very small processors. However, this analysis is uncertain and FDA would expect each manufacturer to examine the option of contracting their product to be pasteurized and taking advantage of this where it is less costly than purchasing their own equipment.

Another aspect of pathogen control which some processors may adopt, and for which FDA has not estimated costs, is juice refrigeration. Pasteurized juice

which has not been heated to the degree so as to make it shelf stable must be refrigerated. This cost has not been investigated because the agency has assumed that producers of nonshelf stable juice are already refrigerating their products. The agency requests comment on this assumption and on the cost of refrigeration, if any, over and above that which is already being done.

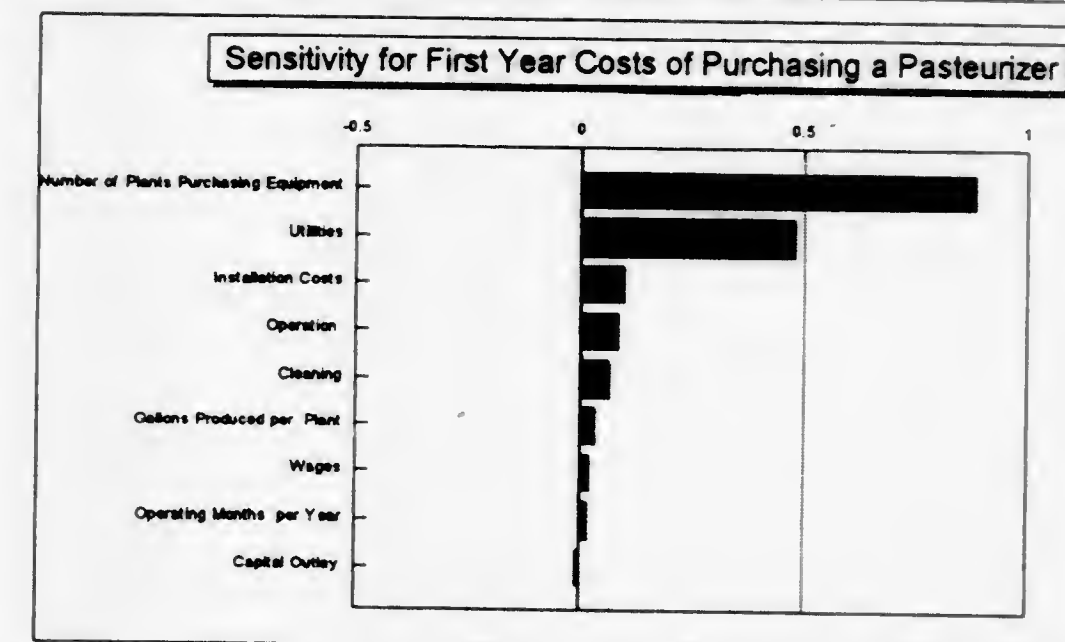
The costs of pasteurization vary depending on numerous factors, such as the capacity of the facility, and the amount of labor. In addition, there is uncertainty in the estimates of the number and size of the processors who will need to install pasteurization equipment, among other factors. Some makers of cider processing equipment are marketing pasteurization units for small processors. Medium sized pasteurization/heater/chiller units are reported to cost about \$17,000 plus about \$1,500 for installation. These units have the capacity necessary to meet the needs of a small processor producing about 400,000 gal of juice in a 4-month season.

Additionally, initial startup of pasteurization would require alterations in plant construction, design or layout to accommodate the additional processing step and equipment operator training. Also, there are operating expenses related to pasteurization including utilities, cleaning, maintenance and repair, and depreciation. Table 27 lists the parameter values that have been used in a Monte Carlo analysis to model the potential costs of installing and using pasteurization equipment by juice processors.

TABLE 27.—INPUTS AND RESULTS OF MONTE CARLO ANALYSIS OF INITIATING PASTEURIZATION

Parameter	10th Percentile	Mean	90th Percentile
Wage rates	\$11.30	\$13	\$14.70
No. of operating months	2	6	9
Plant capacity (in gal)	34,000	74,000	124,000
Installation costs	\$1,300	\$1,500	\$1,700
Cleaning hours (monthly)	52	60	68
Costs of the pasteurizer	\$10,000	\$17,000	25,000
Hours to operate (monthly)	26	30	34
Total Pasteurization Cost (per plant)	\$18,200	\$26,200	\$34,800

The key variables that affect this analysis are shown in the "tornado" diagram, Figure 1.



For the purpose of this benefit-cost analysis, FDA has preliminarily concluded that it is unlikely that fresh orange (and possibly other citrus) juice processors will have to pasteurize their products to achieve a 5-log reduction when a HACCP program is adopted

because of the nature of the fruits and the methods of juice extraction commonly used by industry. Therefore, costs for these processors are limited to the costs of creating and operating a HACCP system, not to purchasing pasteurizing equipment.

Of the 1,070 processors covered by the HACCP rule only a portion of these will need to initiate pasteurization. Table 28 shows FDA's assumption about the number of processors in the OEI of various types of juice that are not pasteurizing.

TABLE 28.—TYPES OF PLANTS CURRENTLY WITHOUT PASTEURIZATION

Type	No. Plants with Type as Primary Product	Best Estimate of Plants Minimally Processing
Berry	77	1
Citrus	211	10
Core	133	3
Mixed Fruit	36	1
Pit	31	1
Sub-tropical/tropical	29	1
Vine	2	0
Other	8	0
Beans/peas/corn	5	0
Fruits used as vegetables	41	1
Leaf/stem	8	0
Mixed vegetable	10	1
Root/tuber	8	1
Fruit beverage bases	37	0
Liquid fruit beverage bases	124	0
Combination true flavored and imitation flavored beverages	19	0
Liquid combination true flavored and imitation flavored beverages	55	0
Other beverage bases	28	0
Baby (infant and junior) fruits, juices and drinks	6	0
Totals	868	20

Of the 20 processors in the OEI assumed not to be pasteurizing, 10 of these are citrus juice processors and may not need to initiate additional controls beyond those already in place for controlling pathogens. That leaves 10 processors in the OEI assumed to need to initiate pasteurization. FDA's preliminary determination is that the 60 very small orange juice processors will not need to implement additional

controls for pathogens than those already in place. Of the 160 very small apple juice processors the agency assumes, based on industry sources, that 30 percent (50) have already initiated or are in the process of initiating pasteurization because of both demand and supply effects.

The assumption that 30 percent of apple juice processors have already initiated pasteurization follows from the

adverse publicity concerning unpasteurized juice. On the demand side, both consumers and retailers have become more aware of the hazards associated with unpasteurized juice over the last 5 years. From 1992 to 1997, in two national newspapers, the number of articles concerning the safety of apple juice doubled. On the supply side, producers have certainly become aware of the problems associated with their

unpasteurized juice both due to the efforts of FDA and from the news media. For example, in the five states with the largest number of apple juice processors (New York, Ohio, Michigan, Illinois, and Pennsylvania), articles in major newspapers about the safety of juice

increased 13 percent between 1992 and 1997. This awareness constitutes action on the supply side as producers contemplate the potential liability and loss in sales (from a loss of goodwill) associated with producing a potentially unsafe product. That leaves 110 very

small apple juice processors to implement pasteurization in order to control pathogens as required in the HACCP rule. Table 29 shows the first year total cost of pathogen control attributable to the HACCP rule.

TABLE 29.—FIRST YEAR COST OF PATHOGEN CONTROL ATTRIBUTABLE TO HACCP PROPOSAL

Processor Type	Cost per Plant	No. of Plants	Total
Very small apple juice processors	\$18,200	110	\$2,002,000
Juice processors in the OEI	\$34,800	10	\$348,000
Total			\$2,350,000

Pasteurization will require ongoing costs for operation and maintenance. FDA estimates these annual costs for labor, utilities, and materials subsequent to the first year to be \$7,000 per year for

very small processors and \$8,000 per year for processors in the OEI. These estimates can be derived from Table 27 by subtracting the cost of the pasteurizer and installation from the total

pasteurization cost for the 10th and 90th percentile estimates. The total cost of pathogen control in subsequent years is given in Table 30.

TABLE 30.—SUBSEQUENT YEAR COST OF PATHOGEN CONTROL ATTRIBUTABLE TO HACCP RULE

Processor Type	Cost per Plant	No. of Plants	Total
Very small apple juice processors	\$7,000	110	\$770,000
Juice processors in the OEI	\$8,000	10	\$80,000
Total			\$850,000

There are other costs that are related to processing for pathogen control. The pasteurization of juice causes changes in the characteristics of the products, primarily in terms of texture and taste. Some current consumers of nonheat-treated juice will bear the costs of losing a particular product as well as costs of searching for products with the characteristics that they prefer the most. Thus, one cost of these regulations is the loss of "fresh" juice, that is, juice that is not heat (or otherwise) processed. The appropriate measure of the loss of a product is the sum of producer and consumer surplus. Consumer surplus is a measure of the value that consumers obtain from a product. It is measured by what consumers would be willing to pay for a product over and above what they actually must pay. Producer surplus is a measure of the amount of rent producers receive, the price minus the cost of production. Measurement of consumer surplus depends on several factors that influence the shape of the demand curve; the most important one in this case being the substitutability of other juice products. If a product has close substitutes in the minds of consumers, the amount of both producer and consumer surplus is smaller. In addition, if there are attributes that consumers do not perceive or are not informed about, such as additional nutritional benefits associated with the lost product, there may be additional

costs of losing that product. FDA has no information on how readily consumers will accept pasteurized juice in the place of fresh juice nor any other information that could be used to estimate that cost.

iv. *Glass and direct food additive HACCP controls.* FDA has not attributed any costs for control of glass or direct food additives even though these potential hazards are among those that are likely to be relevant for juice. There have been some recalls in recent years for each of these two hazards. However, glass is a food safety hazard that is readily recognized by consumers who can hold producers accountable for its presence in food. Thus, the agency believes that processors packing juice in glass are already currently implementing every feasible control for this potential hazard in order to limit their liability and to provide consumer protection. Additionally, although approximately 25 percent of the processing plants pack juice in glass containers, this number is diminishing rapidly for economic and safety reasons.

Regarding food additives, many juice products contain food or color additives for the purpose of coloring or extending product shelf life. However, the agency believes that processors using direct food additives in juice are already currently implementing sufficient controls for these potential hazards as they are strictly regulated by FDA.

Even though processors may need to institute some additional monitoring and recordkeeping for these hazards after implementing HACCP, the agency believes that the additional cost will be negligible. Therefore, there is zero marginal cost associated with control for direct food additives, and there is zero marginal cost (and zero marginal benefits) associated with HACCP controls for glass.

v. *Natural toxin controls.* Processors of juice using imported apple juice will need to implement controls for the natural toxin, patulin. Patulin is a natural toxin that is found in apple juice made from moldy apples and is a hazard that is more likely to occur in imported apple juice products. Processors of juice using imported apple juice will need to implement controls by testing for this toxin.

FDA has estimated the number of shipments that will be tested for patulin by working backward from the amount of apple juice imported. About 200 million gallons of apple juice are imported into the United States by 7 large firms (operating 23 plants) annually. FDA assumes that all small firms use domestic produce only. Therefore, there are no costs accruing to small firms from this requirement.

If 15 lb of produce are required to make 1 gallon of juice, then large firms use 3 billion lb of foreign apples imported in the form of apple juice (200

million gal x 15 lb/gal). If 45,000 lb of apples (the amount carried by a typical tractor trailer) constitute 1 shipment of apples, then large firms use 66,667 shipments of imported apples (3 billion lb ÷ 45,000 lb/shipment). Thus, this analysis assumes that the average number of imported apple shipments per year to each large plant (which are the likely importers) is approximately 2,900 (66,667 shipments ÷ 23 plants).

The agency does not know the current frequency of shipments of apples containing patulin at violative levels. However, the agency assumes that the 23 large plants will randomly sample 30 shipments per year at a cost of \$150 per sample. The total marginal cost of patulin testing is approximately \$104,000 (30 tests x \$150/test x 23 firms). Costs per plant are \$4,500. If any lots are found positive, costs will be incurred that are estimated in section VI.B.1.d.i of this document.

d. *Corrective actions (§ 120.10).*—i. *Corrective action plan.* Most processors will have a corrective action plan that specifies the appropriate action to be taken for the violation of each critical limit. If a processor does not have a corrective action plan then the processor must revalidate the HACCP plan whenever a deviation occurs.

The development of a corrective action plan for juice products is less expensive than revalidation after each deviation from a critical limit. FDA estimates that a corrective action plan

for juice products can be developed in 4 hours with a cost per plant of approximately \$50 (about 4 hours of management time).

Approximately 1,070 plants will develop corrective action plans to comply with this rule, if adopted. Therefore, the total cost of 1,070 plants at \$50 each to develop corrective action plans is approximately \$54,000.

ii. *Corrective actions.* The implementation of HACCP requires that corrective actions be taken when critical limits are violated although deviations should be infrequent. The agency is expecting that those juice plants that pasteurize will establish a minimum of two CCP's: One for pathogens and one for pesticides. Firms may already have established CCP's for metal or glass for which no marginal costs or benefits are counted in this analysis. In addition, processors using imported apple juice may need to establish a CCP for patulin. Citrus juice producers may establish three CCP's, culling, washing and brushing, and pesticides. This analysis has assumed that pathogens will be controlled by pasteurization for noncitrus juices. Pasteurizers are designed to sense the temperature at which the product comes out of the pasteurizer and automatically recirculate the product if it has not been heated sufficiently. Therefore, corrective actions for pasteurization should be so rare as to be negligible for this analysis. FDA believe that virtually all citrus

processors are currently monitoring the culling, and washing and brushing steps. Based on data from FDA pesticide sampling, violations of critical limits for pesticide should also be rare.

Some plants may choose to have multiple critical limits for pesticides because of the nature of the hazard they present (i.e., chronic). The stringency of the corrective action could vary directly with the critical limits. For example, if the first (lowest) critical limit were exceeded, the corrective action could be to investigate the problem. A violation of a higher limit, possibly one that could present an acute problem, would cause the product to be destroyed. As an upper-bound estimate, this analysis will assume that: (1) Deviations of pesticide and natural toxin critical limits occur once per month in each plant in the first year and once per quarter in subsequent years, (2) each corrective action requires 1 hour of labor to resolve, and (3) the cost of reconditioning is \$100 per corrective action. The cost per plant is highly dependent upon the number of months that the plant is in operation.

Assuming that seasonal plants operate 4 months per year and all other plants operate 12 months per year, Tables 31 and 32 show the estimated first year and subsequent year costs of corrective actions per plant as well as the distribution of costs and total industry cost for the corrective actions needed to comply with this rule, if adopted.

TABLE 31.—COST OF FIRST YEAR CORRECTIVE ACTIONS

Production	Months of Operation per Year	No. of Deviations per Month	No. of Labor Hours per Deviation	Wage (\$/h)	Cost of Reconditioning per Deviation	Cost per Plant First Year	No. of Plants	Totals
Seasonal	4	1	1	\$13	\$100	\$150	645	\$97,000
Round	12	1	1	\$13	\$100	\$260	425	\$111,000
Totals							1,070	\$208,000

TABLE 32.—COST OF SUBSEQUENT YEAR CORRECTIVE ACTIONS

Production	Months of Operation per Year	No. of Deviations per Year	No. of Labor Hours per Deviation	Wage (\$/h)	Cost of Reconditioning per Deviation	Cost per Plant Subsequent Year	No. of Plants	Totals
Seasonal	4	.25	1	\$13	\$100	\$40	645	\$26,000
Round	12	.25	1	\$13	\$100	\$70	425	\$30,000
Totals							1,070	\$56,000

e. *Validation and verification (§ 120.11).*—i. *Verification.* HACCP coordinators need to verify at least weekly by record review that the HACCP plan is being followed, and

calibrate process-monitoring instruments weekly.

If record review for verification requires 1 hour per operating week and the calibration of instruments used for

monitoring critical limits requires 1 hour per week, then the verification cost per plant per production cycle is given in Table 33.

TABLE 33.—COST OF VERIFICATION

Production	Weeks of Operation per Year	H per Week for Verification	Wage (\$/h)	Verification Cost per Plant	No. of Plants	Totals
Seasonal	16	2	\$13	\$420	645	\$271,000
Year round	52	2	\$13	\$1,350	425	\$574,000
Totals					1,070	\$845,000

ii. *Validation.* Processors will need to validate their HACCP plans during the first year after implementation and at least annually, or whenever any changes occur that could affect or alter the hazard analysis, or HACCP plan. Further, if the processor does not have a HACCP plan because there are no hazards that are reasonably likely to occur, the processor must reassess their hazard analysis when any significant changes occur. Examples of things that may change include: (1) Raw material specifications or sources of raw materials, (2) product formulation, (3) processing methods or systems, (4) packaging, (5) finished product distribution systems, or (6) intended consumers or use by consumers. The purpose of validation is to determine that the HACCP plan is adequate to control food-safety hazards.

Validation is intended to answer several specific questions. These include: (1) Have all hazards been identified, (2) have the most appropriate control measures been identified, (3) are the critical limits appropriate, (4) does the monitoring measure what is needed to determine that the critical limits are being met, (5) are the right records being collected to tell whether the system is working properly, (6) are the right corrective measures being taken to ensure that any defective product is controlled properly, and (7) are the verification procedures adequate to provide assurance that the plan is being followed? If the processor addresses each of these several questions and the response to each is positive, then the processor can say that his plan has been validated and is working.

Each processor's operation will be unique and will require a validation approach adapted to the specific operation. Each approach may need to involve multiple activities since there is no one measurement or indicator to use

to validate the hazard analysis and the HACCP plan. There are several factors that have been considered to determine the potential costs associated with these activities.

Validation may only be performed by an individual who has received training in an FDA-approved course. However, no additional costs are assigned to this requirement because the same training that is needed to perform the hazard analysis and prepare the HACCP plan will meet this need and is estimated in section VI.B.2.f.g.i of this document.

No one type of validation will work for all processors of fruit and vegetable juices for all types of hazards. For example, validation that a pasteurizer is attaining the desired "kill" level for a particular type of product and volume will be considerably different from validating that illegal pesticide residues are not present in the product. Three potential types of validation activities are: (1) Reviewing HACCP documents and scientific literature, (2) challenge studies, and (3) product testing.

The trained individual may periodically review all plant HACCP documents, including the HACCP plan and the hazard analysis, to determine if they are consistent with scientific literature. It is expected that industry trade publications will serve as a ready source of this information. Challenge studies, such as for pasteurizing units, determine the limits of the processing equipment and the unique parameters that need to be set to achieve the desired results. However, in some cases, simply relying on manufacturers specifications will be sufficient. Finally, it is expected that at least some end-product testing will take place. If, for example, processors are unsure of residue levels because of pooled raw inputs, they will need to test some finished product. In addition, some processors may find it useful to perform periodic microbial testing of wash water or incoming raw

product. However, because of the sporadic nature of many of the hazards that must be considered in these products, testing alone may not be sufficient validation.

FDA estimates that validation is likely to take place twice per year for the 425 plants that operate year round and once per year for the 645 plants that operate seasonally. Validation of the SOP's and HACCP plan is likely to require hiring a food science and technology consultant (presumably, the same person hired to perform other HACCP-related services) for the approximately 845 plants that are small businesses. The costs estimated are assumed to cover both human and capital costs to accomplish the mix of likely validation activities (literature review, challenge testing, and product or water testing). FDA estimates that such consultant services cost approximately \$1,000 per validation in the first year (assuming that consultant's services cost \$1,000 per day and that the validation process takes a single day of the consultant's time). The agency estimates that in subsequent years a consultant will be able to validate the system in one-half of a day. There are approximately 75 large firms operating 225 plants who are likely to have the resources available to perform the validation functions inhouse. For large firms, FDA estimates that validating SOP's and HACCP plans will require 25 percent of the level of effort taken for the original SOP and HACCP plan development (\$600). Because FDA has assumed that about 5 percent (50 plants) of all juice plants in the OEI would have voluntarily implemented HACCP substantially in the form required by this regulation by the time this regulation is finalized, only 175 large plants are affected. Tables 35 and 36 give the estimated cost for validation in the first and subsequent years.

TABLE 34.—COST OF FIRST YEAR VALIDATION

Plant Type	Cost of SOP Development	Cost of HACCP Plan Development	Ratio of Validation to Development Level of Effort	Validation Cost per Plant	No. of Validations per Year	No. of Plants Affected	Total
Seasonal small businesses				\$1,000	1	645	\$645,000
Year round small businesses				\$1,000	2	250	\$500,000
Year round large businesses	\$260	\$2,100	.25	\$600	2	175	\$210,000
Total							\$1,355,000

TABLE 35.—COST OF SUBSEQUENT YEAR VALIDATION

Plant Type	Cost of SOP Development	Cost of HACCP Plan Development	Ratio of Validation to Development Level of Effort	Validation Cost per Plant	No. of Validations per Year	No. of Plants Affected	Total
Seasonal small businesses				\$500	1	645	\$323,000
Year round small businesses				\$500	2	250	\$250,000
Year round large businesses	\$260	\$2,100	.13	\$300	2	175	\$105,000
Total							\$678,000

f. *HACCP records (\$ 120.12).*—i. *Monitoring and recordkeeping.* Processors will need to monitor CCP's and keep HACCP system records of observations at the CCP's. Even for those plants that have necessary controls in place, plants without HACCP are not likely to be doing the amount of monitoring and recordkeeping that HACCP requires. Therefore, all processors that have not already implemented HACCP will need to

increase monitoring and recordkeeping activities.

If the additional monitoring and recordkeeping that needs to be done throughout the entire plant is equivalent to 5 percent of one worker's time (3 minutes per hour of operation per plant), then the cost is dependent on the number of days that the plant is in operation and the number of hours that it operates per day.

Assuming seasonal plants operate 12 hours per day for 120 days per year and year round plants operate 24 hours per day for 360 days per year, then Table 36 shows the annual cost of additional monitoring and recordkeeping per plant. It also shows the distribution of per plant costs and total industry costs for the additional monitoring and recordkeeping needed to comply with this proposed rule.

TABLE 36.—COST OF MONITORING AND RECORD KEEPING

Production	Hours of Operation per Day	Days of Operation per Year	Wage (\$/h)	Percent Additional Time	Cost per Plant per Year	No. of Plants	Totals
Seasonal	12	120	\$13	5%	\$900	645	\$581,000
Year round	24	360	\$13	5%	\$5,600	425	\$2,380,000
Totals						1,070	\$2,961,000

ii. *Record maintenance.* The records produced for this regulation will need to

be maintained for use by both the processor and regulators. Assuming record maintenance requires 1 h per week while the plant is

being operated then the annual cost of record maintenance per plant is described in Table 37.

TABLE 37.—COST OF RECORD MAINTENANCE

Production	Weeks of Operation per Year	Hours per Week Maintaining Records	Wage (\$/h)	Cost per Plant	No. of Plants	Totals
Seasonal	16	1	\$13	\$210	645	\$135,000
Year round	52	1	\$13	\$680	425	\$289,000
Totals					1,070	\$424,000

h. *Imports and foreign processors* (§ 120.14).—i. *Importers*. Information from the U.S. Customs Service indicates that approximately 120 importers import juice into the United States. The import provisions of the HACCP proposal will, in practice, cause importers to implement written procedures to ensure that the juice is produced under HACCP or equivalent safeguards. The importer may keep file copies of the foreign processor's HACCP plan, written guarantees that the product was produced in accordance with the HACCP plan, or certificates of inspection from foreign Governments. The importer may also have to inspect the foreign plant or test the imported product. Written records of all HACCP actions must be maintained by the importer. Some combination of records from the foreign processor and safeguards provided by the importer will become necessary to meet the requirements of this proposed rule. The agency estimates that the cost of these activities will be \$10,000 per importer in early years, decreasing as memorandum of understandings with exporting countries are established.

ii. *Foreign juice processors*. The agency does not have any direct

information on the number of foreign juice plants that export to the United States. However, approximately 75 percent of U.S. juice consumption is supplied by 900 plants in the OEI. Approximately 25 percent of U.S. juice consumption is supplied by foreign firms. This analysis assumes that the ratio of the number of domestic plants in the OEI to domestic production is equivalent to the ratio of the number of foreign exporters to foreign juice imports. The result of this assumption is an estimate of 300 foreign plants exporting to the United States that will need HACCP. FDA requests information from foreign governments and importers on the number of exporting juice plants in their respective countries.

Using this estimate for the number of juice exporting plants, if the cost per plant for initiating HACCP is same as for a large U.S. plant which is already pasteurizing juice (since all juice exported to the United States is pasteurized), then the first year cost per foreign juice exporter is approximately \$26,000, and the cost in subsequent years is \$22,000. Therefore the total cost in the first year for 300 foreign processors is approximately \$8 million

and approximately \$7 million in subsequent years.

Table 45 in the Initial Regulatory Flexibility Analysis, which follows, shows typical costs for a large plant which has not already implemented HACCP. The agency assumes that these costs are representative of foreign plants exporting to the United States. The largest point of uncertainty in this estimation relates to the cost of employee training. The average domestic juice plant which employs 500 or more people has approximately 830 employees. This analysis assumes that 10 percent of these employees will need to be trained in HACCP-related duties. If training costs \$100 per employee then the cost of employee training alone in a large plant is \$8,300. Some plants employ more than 3,000 employees. For such a plant the cost of employee training would be \$30,000. The agency request comment on the cost to foreign processors.

Table 40 lists types of juice exported to the United States and the various countries producing the juice. This is not a complete list of countries exporting juice to the United States, nor is it a comprehensive list of juice products.

TABLE 40.—SOURCES OF IMPORTED JUICE

Apple Juice	Grape Juice	Citrus Juice	Prune Juice	Pineapple Juice	Vegetable Juice
Argentina Australia Austria Belgium-Luxembourg	Argentina Austria Belgium-Luxembourg	Argentina Australia Austria Belgium-Luxembourg Belize Brazil Canada	Belgium-Luxembourg	Brazil	Canada
Canada Chile Denmark	Brazil Canada Chile	Dominican Republic France Honduras	Canada		
France	France		France	Honduras	
Hungary Israel Italy	Israel Italy	Israel Italy Jamaica Japan Leeward/Windward Islands Mexico			Israel
Mexico Netherlands New Zealand				Mexico	Japan
Germany	Germany	Germany South Korea	Germany	Philippines	
Spain Switzerland				Singapore	
Turkey Yugoslavia				Taiwan Thailand	Switzerland Taiwan

Table 40 is provided to give information about the scope of countries and products covered by these rules. The agency believes that a high estimate of the number of firms exporting juice to the United States is 300. Because the quality of the juice must be maintained during transport, all juice exported to the United States is currently processed in such a way so as to appropriately

address potential pathogens. However, the agency has no information to suggest that any foreign juice processors have implemented HACCP in their operations.

C. Summary of Costs for Labeling and HACCP Rules

The total quantified costs are approximately \$26 million in the first

year and \$15 million in all subsequent years. There will be a substantial impact on those processors who are producing minimally processed juice in that some will stop making the product, some will implement HACCP, and some will label. Table 41 summarizes costs of the rules by provision.

TABLE 41.—TOTAL FIRST YEAR AND RECURRING COST PER ACTIVITY

Activity	First Year Costs	Recurring Costs
Labeling Costs	\$4,387,000	
Develop SOP's	\$174,000	
Sanitation SOP's	\$160,000	
Monitoring and documenting for SOP's	\$218,000	\$218,000
Hazard analysis and HACCP plan	\$1,070,000	
Pesticide controls	\$281,000	\$281,000
Pathogen controls	\$2,350,000	\$850,000
Natural toxin controls	\$104,000	104,000
Corrective action plan	\$54,000	
Corrective actions	\$208,000	\$56,000
Verification	\$845,000	\$845,000
Validation	\$1,355,000	\$678,000
HACCP monitoring and recordkeeping	\$2,961,000	\$2,961,000
Record maintenance	\$424,000	\$424,000
Record storage	\$161,000	
HACCP coordinator training	\$1,391,000	
Employee training	\$841,000	\$841,000
Importers	1,200,000	600,000
Foreign processors	8,000,000	7,000,000
Totals	\$26,184,000	\$14,858,000

VII. Summary of Benefits and Costs

FDA has examined the costs and benefits of the proposed rules as required under Executive Order 12866. FDA finds that the costs and benefits of these rules have different values in subsequent years such that, to compare them properly, they must be discounted to the present year (the point at which a decision must be made). The quantified benefits (discounted annually at 7 percent) are expected to range from \$3 billion to \$4 billion and the quantified costs (discounted annually at 7 percent) are expected to be \$240 million.

VIII. Initial Regulatory Flexibility Analysis

FDA has examined the impact of the two proposed rules as required by the RFA (5 U.S.C. 601–612). If a rule has a significant impact on a substantial number of small entities, the RFA

requires agencies to analyze options that would minimize the economic impact of that rule on small entities. The agency acknowledges that these proposed rules are likely to have a significant impact on a substantial number of small entities.

A. Objectives

The RFA requires a succinct statement of the purpose and objectives of any rule that will have a significant impact on a substantial number of small entities.

The warning label proposal responds to the need to alert consumers to the potential risk of foodborne illness from consumption of juice products not pasteurized or otherwise processed to destroy pathogens that may be present. FDA is proposing to require warning labels on such juice products to inform consumers of the potential hazard of pathogens in such products; such labeling will not be required for juice

that is processed to achieve a 5-log reduction. Once HACCP is implemented, the warning labeling will no longer be required for those products covered by the HACCP rule. The HACCP rule is being proposed to ensure that juice manufacturers control all physical, chemical, and microbial hazards in their products.

B. Definition of Small Business and Number of Small Businesses Affected

The RFA requires a statement of the definition of small business used in the analysis and a description of the number of small entities affected.

Table 42 shows the definition of small business for each type of establishment affected and a description of the number of small entities affected by each of the rules. The agency has accepted the Small Business Administration (SBA) definitions of small business for this analysis.

TABLE 42.—APPROXIMATE NUMBER OF SMALL PLANTS COVERED BY THESE RULES

Type of Establishment	Standard Industry Classification Codes	SBA Definition of Small by Category	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by HACCP Rule	No. of Small Establishments Covered by Labeling Rule
Juice manufacturers in the OEI	2033, 2037	Less than 500 employees	75%	675	20

TABLE 42.—APPROXIMATE NUMBER OF SMALL PLANTS COVERED BY THESE RULES—Continued

Type of Establishment	Standard Industry Classification Codes	SBA Definition of Small by Category	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by HACCP Rule	No. of Small Establishments Covered by Labeling Rule
Roadside-type apple juice makers	2033, 2037	Less than 500 employees	100%	160	1,600
Roadside-type orange juice makers	2033, 2037	Less than 500 employees	100%	60	300
Grocery stores and super-markets processing at the point of sale	5411	Less than \$20,000,000 per yr.	85%		1,100
Grocery stores and super-markets	5411	Less than \$20,000,000 per yr.	85%		1,450
Totals				895	4,470

C. Description of the Impact on Small Entities

1. Costs to Small Entities

Because there is a broad distribution of products covered, firm types, current processing practices and sizes, it would be misleading to report average per firm costs. However, some idea of the costs can be gained from the following examples. The impacts that the costs will have on a firm will vary depending on the total revenue derived from juice

by a firm and the profit (return on sales) associated with juice production. Data on food manufacturing firms indicates that 75 percent of firms have return on sales of less than 5 percent.

The first example (Table 43) is of a small apple cider plant that is now producing nonheat-treated juice, buying commingled fruit, and has not developed or implemented sanitation SOP's. This plant will need to buy a pasteurizer (or find and validate a different process that achieves a 5-log

reduction) and do some pesticide testing. The next example (Table 44) is a small plant that is producing pasteurized orange juice year round with fruit from a known source, and that has already developed and implemented sanitation SOP's (except that records have not been kept on SOP's). These two plants can be compared to a very large apple juice plant (Table 45) that imports some apples and therefore must test for patulin, and has not developed or implemented sanitation SOP's.

TABLE 43.—COSTS FOR ILLUSTRATIVE SMALL APPLE CIDER PROCESSOR

Type of Cost	Cost in First Year	Cost in Subsequent Years
Develop SOP's	\$260	
Sanitation SOP's	\$500	
Monitoring and documenting of SOP's	\$100	\$100
Hazard analysis and HACCP plan	\$1,000	
Pesticide testing controls	\$1,500	\$1,500
Pathogen controls	\$18,200	\$7,900
Corrective action plan	\$50	
Corrective actions	\$150	\$40
Verification	\$420	\$420
Validation	\$1,000	\$500
HACCP monitoring and recordkeeping	\$900	\$900
Record maintenance	\$210	\$210
Record storage	\$150	
Training of coordinator	\$1,300	
Employee training	\$300	\$300
Totals	\$26,000	\$11,900

TABLE 44.—COST FOR ILLUSTRATIVE SMALL ORANGE JUICE PROCESSOR

Type of Cost	Cost in First Year	Cost in Subsequent Years
Monitoring and documenting of SOP's year round	\$340	\$340
Hazard analysis and HACCP plan	\$1,000	
Pesticide controls	\$60	\$60
Corrective action plan	\$50	
Corrective actions	\$260	\$70
Verification	\$1,350	\$1,350
Validation	\$2,000	\$1,000
HACCP monitoring and recordkeeping	\$5,600	\$5,600
Record maintenance	\$680	\$680
Record storage	\$150	
Training of coordinator	\$1,300	
Employee training	\$300	\$300

TABLE 44.—COST FOR ILLUSTRATIVE SMALL ORANGE JUICE PROCESSOR—Continued

Type of Cost	Cost in First Year	Cost in Subsequent Years
Totals	\$13,100	\$9,400

TABLE 45.—COSTS FOR ILLUSTRATIVE VERY LARGE APPLE JUICE PROCESSOR

Type of Cost	Cost in First Year	Cost in Subsequent Years
Develop SOP's	\$260	
Sanitation SOP's	\$500	
Monitoring and documenting of SOP's	\$340	\$340
Hazard analysis and HACCP plan	\$1,000	
Natural toxin control	\$4,500	\$4,500
Corrective action plan	\$50	
Corrective actions	\$260	\$70
Verification	\$1,350	\$1,350
Validation	\$1,200	\$1,200
HACCP monitoring and recordkeeping	\$5,600	\$5,600
Record maintenance	\$680	\$680
Record storage	\$150	
Training of coordinator	\$1,300	
Employee training	\$8,300	\$8,300
Totals	\$26,000	\$22,000

2. Professional Skills Required for Compliance

The RFA requires a description of the professional skills required for

compliance with this rule. Table 46 describes the professional skills required for compliance with the various activities required by this rule.

TABLE 46.—PROFESSIONAL SKILLS REQUIRED FOR COMPLIANCE

Required Activity	Section of Proposal	Professional Skills Required for Compliance
Developing prerequisite program SOP's	§ 120.6	Managers familiar with incoming materials and plant sanitation
Implementing sanitation controls with corrections of deviations from prerequisite program SOP's	§ 120.6	Production workers who are able to maintain the sanitation controls as described in the sanitation SOP's and supervisors or managers who can determine what corrective actions are necessary for deviations from SOP's
Monitoring and documenting of prerequisite program SOP's	§ 120.6	Production workers who are appropriately trained to monitor and keep records on observations and measurements for prerequisite program SOP's
Developing hazard analysis and HACCP plan	§§ 120.7 and 120.8	Supervisors or managers who fulfill the role of HACCP coordinator as well as microbiologists, chemists, and attorneys
Implementing pesticide controls	§§ 120.7 and 120.8	Production workers who are appropriately trained to carry out tests, to monitor, and to keep records on observations and measurements at critical control points
Implementing pathogen controls	§§ 120.7 and 120.8	Production workers who are appropriately trained to monitor and keep records on observations and measurements at critical control points
Taking corrective actions	§ 120.10	Production workers who are trained to take corrective actions described in corrective action plans and supervisors or managers who can determine what corrective actions are necessary for deviations from critical limits
Verification	§ 120.11	Supervisors or managers who fulfill the role of HACCP coordinator
Validation	§ 120.11	Food scientists or food technologists who can perform a scientific review of the process
Monitoring and recordkeeping	§ 120.12	Production workers who are appropriately trained to monitor and keep records on observations and measurements at critical control points
Record maintenance	§ 120.12	Clerical or production workers
HACCP coordinator training	§ 120.13	Supervisors or managers who fulfill the role of HACCP coordinator
HACCP employee training	§ 120.13	Clerical and production workers

TABLE 46.—PROFESSIONAL SKILLS REQUIRED FOR COMPLIANCE—Continued

Required Activity	Section of Proposal	Professional Skills Required for Compliance
Imports	§ 120.14	Clerical workers as well as supervisors or managers who fulfill the role of HACCP coordinator

3. Recordkeeping requirements

The RFA requires a description of the recordkeeping requirements of the proposed rule. Table 47 shows the

provisions for which records need to be made and kept by small businesses, the number of small businesses affected, the annual frequency that the records need to be made, the amount of time needed

for making each record, and the total number of hours for each provision in the first year and then in subsequent years.

TABLE 47.—SMALL BUSINESS RECORDKEEPING REQUIREMENTS

Provision	No. of Small Entities Keeping Records	Annual Frequency	Hours per Record Small Entity	Total Hours, First Year	Total Hours, Subsequent Years
120.6 Monitoring and recordkeeping of SOP's	670	16	.5	5,400	5,400
	225	52		5,900	5,900
120.7 and 8 Hazard analysis and HACCP plan	895	1	80	71,600	0
120.8 Pesticide controls by supplier certificate	676	227	.02	3,100	3,100
120.11 Verification	670	16	2	21,400	21,400
	250	52		26,000	26,000
120.11 Validation	670	1	8 (first yr)	5,400	2,700
	250	2	4 (subsequent yr)	4,000	2,000
120.12 HACCP records	670	1,440	.05	48,200	48,200
	250	8,640		108,000	108,000
120.12 Record maintenance	670	16	1	10,700	10,700
	250	52		13,000	13,000
Totals				323,000	246,000

D. Minimizing the Burden on Small Entities

The RFA requires an evaluation of any regulatory overlaps and regulatory alternatives that would minimize the costs to small entities.

There are two alternatives that the agency has considered to provide regulatory relief for small entities. First, FDA considered and is proposing the option of exempting some small entities from the requirements of these rules. Second, FDA considered and is proposing the option of lengthening the compliance period for small entities.

1. Exempt Small Entities

One alternative for alleviating the burden for small entities would be to exempt them from the provisions of these rules. FDA is proposing to exempt retailers who, for the purposes of this rule, the agency has tentatively decided will include very small businesses that make juice on their premises and whose total sales of juice and juice products do not exceed 40,000 gallons per year and who sell directly to consumers or directly to consumers and other retailers.

Revenue from sales of 40,000 gallons of nonheat treated juice may be approximately \$160,000 with annual profits ranging from \$1,600 to \$16,000 per year (1 percent to 10 percent). This

exemption covers most of the very small businesses, although less than 15 percent of the volume of unpasteurized juice. However, packaged products sold by these types of retailers are covered under the labeling rule. FDA requests comments on this exemption.

2. Extend Compliance Period

FDA has also proposed a tiered, extended compliance period giving the smallest firms the most time to comply with the HACCP rule, if such rule is adopted. The proposed labeling rule, however, requires either label changes on the product or labeling 60 days after publication of the final rule. It is proposed that small businesses be allowed to use signs and placards for an extended period before changing the labels on their products. Small and very small firms that produce packaged juices may continue to use signs and placards to display the warning instead of placing the warning on the label of the product until January 1, 2001. On that date all firms producing packaged juice that is not processed with a 5-log reduction must display the warning on the product label. A longer compliance period allows firms to finance large fixed costs out of retained earnings. For a regulation of general applicability across a sector of the economy, it is difficult for firms obtain loans to finance

regulatory costs, partially because no increases in profits are expected that could be used to repay the loan. This may be particularly troublesome for small firms that must finance the costs of HACCP controls. FDA is unable to quantify the cost savings of the extended compliance period although one effect of the cost savings will be to reduce small firm failure.

E. Summary

FDA has examined the impact of these proposed rules on small businesses in accordance with the RFA. This analysis, together with the rest of the preamble and the Preliminary Regulatory Impact Analysis, constitutes the preliminary RFA. FDA has determined that these rules are likely to have a significant impact on a substantial number of small entities.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Bean, Nancy H., and Patricia M. Griffin, "Foodborne Disease Outbreaks in the United States, 1973-1987: Pathogens, Vehicles, and Trends," *Journal of Food Protection*, vol. 53 (September), p. 805.

2-3. Buzby, J., et al., *Bacterial Foodborne Disease: Medical Costs and Productivity Losses* (AER-741), U.S. Department of Agriculture, 1996, p. 42.

4. *Estimating the Value of Consumers' Loss from Foods Violating the FD&C Act*, vol. II, Final Report, September 1988, FDA Contract No. 233-86-2097, p. D-12-13.

5. Cohen, M. L., R. E. Fountaine, R. A. Pollard, S. D. Von Allmen, T. M. Vernon, and E. J. Gangarosa, "An Assessment of Patient-Related Economic Costs in an Outbreak of Salmonellosis," *New England Journal of Medicine*, vol. 299, no. 9, 1978, pp. 459-460.

6. Council for Agricultural Science and Technology, *Foodborne Pathogens: Risks and Consequences*, Task Force Report No. 122, September 1994, p. 51.

7. Personal communication of Gibbs, R., ERS/USDA to David Zorn, Rural Wage for '96, April 22, 1997.

8. Bureau of Labor Statistics, U.S. Department of Labor, "Employer Costs for Employee Compensation—March 1996," U.S. Department of Labor: 96-424, p. 1.

9. Food and Drug Administration, Williams, R., et al., "Appendix: Preliminary Investigation into the Morbidity and

Mortality Associated with the Consumption of Fruit and Vegetable Juices," October, 31, 1997.

10. Food and Drug Administration, Zorn, D., and K. Klontz, "Appendix: The Value of Consumer Loss Relating to Foodborne Reactive Arthritis," February 2, 1998.

11. Food Marketing Institute, *Trends in the United States: Consumer Attitudes & the Supermarket*, 1996. Washington, DC: Food Marketing Institute.

12. U.S. Department of Agriculture, *Food and Nutrition Intakes by Individuals in the United States, 3 Days, Continuing Survey of Food Intakes by Individuals, 1989-1991*.

13. Letter from Julia Stewart Daly, U.S. Apple Association to Dr. John E. Kvenberg, FDA, August 14, 1997.

X. Requests for Comments

Interested persons may, on or before May 26, 1998, submit to the Dockets Management Branch (address above) written comments regarding this preliminary regulatory impact analysis on aspects related to labeling for juice and juice products and by July 8, 1998,

on aspects of this analysis related to HACCP for juice and juice products. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket numbers found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 24, 1998.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

The following are the appendices to the Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rules to Ensure the Safety of Juice and Juice Products.

BILLING CODE 4160-01-F

Appendix:***The Value of Consumer Loss Relating to Foodborne Reactive Arthritis***

Prepared by David J. Zorn. Karl Klontz supplied key data.

February 2, 1998

Introduction

This appendix details the calculation of economic losses to consumers from developing reactive arthritis (ReA) as a result of a foodborne *Salmonella* infection. The agency requests comments on all aspects of this appendix, especially the link between ReA and *Salmonella* infections and any variation in that link with the different *Salmonella* species.

This study has relied primarily on the work of Thomson, et al. to describe ReA in terms of attack rate, severity and duration. This study was chosen because it represents the most recent primary research into this issue. The study is of post-*Salmonella*-infection ReA in a point source cohort concurrently exposed to the same microorganism. Because the study is specific to a *Salmonella* outbreak, any variation related to ReA resulting from infections of other pathogens is eliminated. Because the study is based on epidemiological follow-up of an outbreak of foodborne illness rather than reviews of clinical reports and medical records, its results are well suited to applying to epidemiological data on cases of *Salmonella* related to juice consumption.

I. Description of Foodborne Relationship

Reactive arthritis commonly occurs in young men and women (and sometimes children). ReA refers to pain, stiffness, redness or swelling in a joint resulting from a previous infection, usually involving the digestive or genito-urinary systems such as *Salmonella*, *Yersinia*, *Shigella* and *chlamydia* infections. (Ref. <http://text.arthritis.ca/types/reactive.html>)

II. Description of ReA

Stiffness and pain are often worse in the morning. Arthritis most often occurs in the joints of the lower limbs (knees, ankles, toes), but the upper limbs can also be involved. Problems may be in the joints only or involve other body systems such as the eyes, skin, or tendons. Occasionally there is heel pain where the Achilles tendon attaches to the bone, or underneath the foot where the tendons supporting the arch of the foot attach to the heel. Sometimes there is back pain resulting from involvement of the sacroiliac joints.

Women may develop cervicitis (irritation of the cervix) but there may be no symptoms. In men urethritis (discharge from the urethra, difficult or painful urination) may develop. Painful or painless skin ulcers may appear in the mouth, or on the penis, or vagina. These features are similar to those in Reiter's syndrome. Problems with the eyes may result in mild or severe symptoms including pain or sensitivity to sunlight. Sometimes these problems occur many months prior to the onset of joint problems.

Sometimes the disease is self-limiting, meaning it goes away with no remaining problems. Other people have recurrent attacks. Most people manage well with treatment. Ongoing joint problems may result in stiff joints and weak muscles and it often becomes difficult to fully straighten the joints.

Treatments

1. Medication

Short-term antibiotics (usually tetracycline) are sometimes used to treat the initial infection. Non-steroidal anti-inflammatory drugs (NSAIDs), most commonly Voltaren[®] (diclofenac) or Indocid[®] (indomethacin), are used to treat joint problems. Intra-articular steroid injections can help the pain and swelling in single joints. Occasionally, stronger medications such as Rheumatrex[™] (methotrexate) are used.

Eye problems should be managed jointly by a rheumatologist and an ophthalmologist (eye specialist). Treatment for eye problems is usually steroid drops but oral corticosteroids are sometimes needed in more severe cases.

2. Heat/cold

3. Exercise

4. Protecting Joints

Protecting joints means using joints in ways that avoid excess mechanical stress from daily tasks. There are three main techniques for protecting joints:

Pacing: alternating heavy or repeated tasks with easy tasks or breaks.

Joint Position: using joints in the best way to avoid extra stress. For example, using larger, stronger joints to carry loads, such as a shoulder bag instead of a hand-held purse, and avoiding keeping the same position for a long time

Helpful Devices: such as canes, luggage carts, grocery carts, special chairs, etc., can help perform daily tasks. Small appliances such as microwaves, food processors and bread makers can be useful in the kitchen. Grab bars and shower seats are important protection against falls.

5. Weight Control

Lifestyle

Along with the physical symptoms of RA, many people experience feelings of helplessness and depression. (Ref. <http://text.arthritis.ca/types/reactive.html>)

III. Percent of Cases

The incidence of ReA following *Salmonella* infection is often reported to be about 1-2%. Thomson et al. found an incidence of 6.6% (27/411).¹ This is consistent with studies of other epidemics where a dysenteric population forms the inception cohort. The greater incidence reflects the methodology of surveying an entire dysenteric population.

Of those persons with *Salmonella* infections 2.2% (33% of the total that developed ReA) experienced pain that resolved completely within 4 months. Another 2.4% (37% of the total that developed ReA) experienced flares and remissions of pain with periods of wellness in between. Another 1% (15% of the total that developed ReA) experienced waxing and waning of symptoms

¹ Percentages have been recalculated based on the actual number of persons contacted in the 5 year follow-up survey (411) instead of the number of persons which originally experienced acute gastroenteritis (423).

with no periods of wellness. Finally, 1% (15% of the total that developed ReA) experienced chronic unremitting pain.

IV. Duration

Of those persons who experienced pain that resolved completely within 4 months, 22% (2/9) were asymptomatic within 7 days, 67% (6/9) were asymptomatic within 28 days, 11% (1/9) were asymptomatic within 120 days. If symptoms resolved three quarters of the way through each of these periods (i.e., 5 days, 20 days, and 80 days respectively), then the weighted average duration for this group is about 25 days.

Persons in the other categories were still experiencing symptoms 5 years after the onset of the gastrointestinal illness. The duration of ReA in such patients is taken to be for the rest of their lives. Thomson et al. found that the mean age of onset of ReA was not statistically different from the mean age of the infected population. Information from CDC indicates that in 1996 the average age of persons contracting salmonellosis is 27. Using an average life span of 77 years, the average person developing long term ReA following a *Salmonella* infection will experience symptoms for 50 years (18,250 days).

V. Functional Status Codes and Disutility

In order to quantify the disutility that individuals experience from developing ReA, the reduction in mobility and physical and social activity must be scaled. This study uses one type of scaling of these effects following the work of Bush et al. Individuals who become ill experience different levels of functional status in terms of mobility, ability to do other physical activity, and ability to engage in social activities. Functional status disutility represents a degree of departure from perfect functionality.

According to Thomson et al. "Two thirds [18 out of the 27 that developed ReA] continued to have subjective complaints, mostly of minor significance. However, symptoms were severe enough to force a change in work for 4 patients [15%]." The other third showed signs and symptoms of active inflammation that resolved within a 4 month period with no late exacerbations.

Course of Disease	Percent of Total ReA Patients
Resolved Pain within 4 Months	33%
Flares and Remissions with Periods of Wellness	37%
Waxing and Waning with No Periods of Wellness	15%
Chronic Unremitting Pain	15%

For the two categories of patients where there is no indication of change in the course of the illness during its duration (regardless whether the duration is 1 month or 50 years) the functional status code of L35 is assigned. These patients experience no change in mobility but suffer a reduction in physical and social activity.

For the two remaining categories of patients where there is an indication of change in the course of the illness a combination of the functional status codes L41, L42 and L43 is assigned. For the 15% of ReA patients which never experience periods of wellness, codes L41 and L42 were assigned in equal portions $((L41 \times .5) + (L42 \times .5))$. For the 37% of ReA patients which do experience periods of wellness, codes L41, L42 and L43 were assigned in equal portions $((L41 \times .33) + (L42 \times .33) + (L43 \times .34))$.

Function Status Level	Mobility	Physical Activity	Social Activity	Level of Disutility
L35	Drove car & used transportation without help	Walked with physical limitations	Limited in work, school, or housework	.3980
L41	Drove car & used transportation without help	Walked without physical limitations	Did work, school, or housework, but other activities limited	.3145
L42*	Drove car & used transportation without help	Walked without physical limitations	Did work, school, or housework, and other activities	.2567
L43*	Drove car & used transportation without help	Walked without physical limitations	Did work, school, or housework, and other activities	.0000

* Code 42 is used whenever the mobility, physical activity and social activity conditions apply and a person is experiencing a symptom. Code L43 is used whenever the mobility, physical activity and social activity conditions apply and a person is experiencing no symptoms.

Course of Disease	Percent of Total ReA Patients	Functional Status Disutility
Resolved Pain within 4 Months	33%	.3980
Flares and Remissions with Periods of Wellness	37%	.1885
Waxing and Waning with No Periods of Wellness	15%	.2856
Chronic Unremitting Pain	15%	.3980

VI. Symptom/Problem Code and Disutility

Additionally, in order to quantify the disutility that individuals experience from developing ReA, the pain and suffering must be scaled. Again, this study uses the scaling of these effects by Bush et

al. Individuals who become ill experience disutility due to the symptoms of illness.

The characteristic pain symptoms of arthritis can be described as pain, stiffness, numbness, or discomfort of neck, hands, feet, arms, legs, ankles, or several joints together. This description corresponds to the Bush et al. Symptom/Problem Complex code of 19. Therefore, the level of symptom-related disutility assigned to each category of patients for each day they experience symptoms is .0344. For the 37% of ReA patients which do experience periods of wellness, this level of disutility is assigned for only two thirds of the time for an average daily disutility of .0227.

VII. Total Disutility per Day per Case

Course of Disease	Percent of Total ReA Patients	Functional Status Disutility per Day	Symptom/Problem Complex Disutility per Day	Total Daily Disutility	Duration in Days	Total Disutility per Case (in Quality Adjusted Life Days Lost)
Resolved Pain within 4 Months	33%	.3980	.0344	.4324	25	11
Flares and Remissions with Periods of Wellness	37%	.1885	.0227	.2112	18,250	3,854
Waxing and Waning with No Periods of Wellness	15%	.2856	.0344	.3200	18,250	5,840
Chronic Unremitting Pain	15%	.3980	.0344	.4324	18,250	7,891
Weighted Average of Long-Term Cases		.2582	.0280	.2862		5,223

VIII. Medical Cost Estimate

Direct information on the direct medical cost (cost of medical treatment and patient care) per case of ReA is not available. Medical costs for ReA are calculated based on the assumption that medical costs per case of ReA are equivalent to the medical costs per case of the average case of all types of arthritis. Information indicates that in 1992 the total cost in terms of direct medical costs and lost wages of all types of arthritis was about \$65 billion dollars. Of this total 24% was

due to direct medical costs and 76% was due to lost wages. (Ref. www.nih.gov/niams/news/lappin.htm National Institute of Arthritis and Musculoskeletal and Skin Diseases "Arthritis: What We Know Today," Debra R. Lappin, Esq., May 30, 1997) According to the National Health Interview Survey, an estimated 40 million Americans have arthritis. Approximately 6 million people are self-diagnosed (that is, they believe that they have arthritis, but have not sought medical attention for it.) (Ref. <http://www.arthritis.org/offices/al/about/demecoinfo.shtml>)

Based on this information, the total direct medical cost for all types of arthritis is approximately \$16 billion per year (\$64.8 billion x 24%). Therefore the average direct medical cost per arthritis sufferer is approximately \$400 per year (\$16 billion ÷ 40 million). This medical cost estimate is used for long term ReA cases. Discounted at 7% annually the total medical cost for an average case of ReA lasting 50 years is estimated to be \$5,860. The medical cost for a short term case of ReA lasting 25 days on average is estimated at \$100.

IX. Total Value of Losses per Case

To determine the total value of losses per case associated with ReA it is necessary to add the utility losses per case to the medical costs per case. To do this it is necessary to monetize the value of the utility losses. FDA values a Quality Adjusted Life Day at \$630.

Course of Disease	Percent of Total ReA Patients	Total Disutility per Case (in Quality Adjusted Life Days Lost)	Value of Utility Losses per Case (Discounted at 7%) (QALD = \$630)	Medical Costs per Case (Discounted at 7%)	Total Value of Losses per Case
Resolved Pain within 4 Months	33%	10.8	\$6,800	\$100	\$6,900
Flares and Remissions with Periods of Wellness	37%	3,854.4	\$711,500	\$5,900	\$717,400
Waxing and Waning with No Periods of Wellness	15%	5,840.0	\$1,078,000	\$5,900	\$1,083,900
Chronic Unremitting Pain	15%	7,891.3	\$1,456,700	\$5,900	\$1,462,500
Weighted Average of Long-Term Cases		5,223.2	\$962,000	\$5,900	\$967,900

Printed Reference

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*Appendix:**Preliminary Investigation into the Morbidity and Mortality Associated
with the Consumption of Fruit and Vegetable Juices*

Prepared by Richard Williams, Thomas Wilcox, Babgaleh Timbo, Debra Street, Clark Nardinelli, Patrick McCarthy, George Jackson, Minnis T. Hendricks, and Elisa Elliot. Cristina Ford McLaughlin, Judy Lee, Eric Hanson, Tom O'Brien, and Mary Bender supplied key data. Wesley Long, Lee Anne Jackson, Ken Falci, and Ron Lorentzen commented on various drafts.

[April 20, 1998. Note. This document was prepared in the Spring and Summer of 1997 in support of the Preliminary Regulatory Impact Analysis and the Initial Regulatory Flexibility Analysis of the Proposed Rules to Ensure the Safety of Juice and Juice Products. Since the completion of the final version of this document, FDA has accumulated more information, refined its assumptions about the relationships between reported and actual numbers of illnesses, and estimated the distribution of illnesses by severity. The new information and methods are used in the regulatory impact analysis, but not in this document, which has not been changed since Fall 1997.]

October 31, 1997

Executive Summary

Recent outbreaks of illnesses associated with juices have demonstrated the potentially serious human health hazards posed by fruit and vegetable juices. As a component of the cost-benefit analysis for both the HACCP and Labeling rules associated with fruit and vegetable juices, the Center for Food Safety and Applied Nutrition's working group was asked to investigate the morbidity and mortality associated with the consumption of juices and juice drinks. The standard procedure for estimating human health benefits is to (1) estimate the baseline numbers of illnesses and death associated with a technology or compound to be controlled, (2) estimate the likely reductions in those illnesses and deaths associated with various proposed control options, and (3) estimate the values associated with the reduced illnesses and deaths. The report estimates the parameters associated with the first step -- the numbers of illnesses and deaths likely to be associated with the consumption of juice products.

This preliminary investigation included a description of juice products, the estimated levels of consumption of juices, a discussion of production methods, an explanation of how hazards may be introduced into the product, a discussion of the evidence on illness from consuming juices, a description of the human health effects caused by selected microbial pathogens, and a discussion of the physical and chemical hazards associated with juices.

Americans consumed approximately 2.3 billion gallons of the major fruit and vegetable juices in 1995, or 37 billion servings. Orange and apple juice accounted for over 80 percent of juice consumption. The consumption of juice drinks amounted to 2 billion gallons, or 32 billion servings. The working group estimated annual consumption of non-heat-treated juice to be 38 million gallons, or 600 million servings.

The working group found that contamination of juice products may occur at any point between the orchard and the table, but most likely occurs during the growing and harvesting of the raw product. The use of dropped fruit, the proximity of livestock or

wild animals, contaminated ground water, and contaminated humans are possible causes of contaminated fruit.

From 1993 through 1996, the Centers for Disease Control and Prevention outbreak data and U. S. Food and Drug Administration recall data show that juices accounted for 447 laboratory-confirmed cases of illness associated with microbial pathogens. The cases by pathogen included 62 *Salmonella* spp., 86 *E. coli* O157: H7, 85 *B. cereus*, 191 *C. parvum*, and 23 illnesses caused by an unknown pathogen. The associated juice products were apple juice or cider (277 cases) and orange juice (170 cases). The annual average of 112 cases included annual averages of 16 *Salmonella*, 22 *E. coli* O157: H7, 48 *C. parvum*, 21 *B. cereus*, and 6 cases with unknown pathogens.

There is wide agreement that the laboratory-confirmed cases from outbreaks and recalls understate the actual number of juice-related cases, but no consensus exists on the size of the understatement. We estimated the total number of juice-related illnesses by multiplying the average number of laboratory-confirmed cases by factors that account for under-reporting. We based the multipliers on the relationships between annual outbreak cases in 1983-1987 and two widely cited estimates of the number of foodborne illnesses (Bennett et al. 1987; Todd 1989). However, these estimates contain considerable uncertainty.

For *Salmonella*, the two multipliers were 307 and 474, which implied that the 16 annual laboratory-confirmed cases might have been accompanied by an estimated 4,900 or 7,600 total juice-related cases. For *E. coli* O157: H7, the two multipliers were 100 (the default multiplier) and 195, which implied that the 22 annual laboratory-confirmed cases may have been accompanied by 2,200 or 4,300 total juice-related cases. For *C. parvum*, we multiplied 48 annual laboratory-confirmed cases by 100 (the default) to get an estimated 4,800 total juice-related cases. For *B. cereus* the two multipliers were 96 and 1,615, so that 21 annual laboratory-confirmed cases implied 2,000 or 33,900 total juice-related

cases. For the unknown pathogen we multiplied 6 annual laboratory-confirmed cases by 100 for an estimated 600 total juice-related cases.

Among reported cases of the four pathogens, *E. coli* O157: H7 has led to the most severe human health consequences, including hemolytic uremic syndrome and death. The most severe reported juice-related *Salmonella* cases have led to hospitalization. Cases of *C. parvum* and *B. cereus* have caused gastrointestinal and other symptoms, but have not required hospitalization. The severity of unreported cases is uncertain; in this preliminary investigation we assumed that the severity of unreported juice-borne illnesses was similar to the severity of all foodborne illnesses. For all foodborne pathogens, the average severity of illnesses associated with *E. coli* O157: H7 is greatest, followed by the illnesses associated with *Salmonella*. Foodborne *C. parvum* and *B. cereus* both lead to milder symptoms.

The other hazards -- mostly physical and chemical -- that have been found in juices have been sporadic and associated with fewer cases than the microbial pathogens.

Illnesses and deaths in four recent outbreaks associated with juice products have demonstrated that juices can present serious human health hazards. The principal purpose of this preliminary investigation is to separate what we know from what we do not know about the hazards associated with juices. We will use what we know to make some preliminary inferences about what we do not know. These inferences are not intended to be the final word on the morbidity and mortality associated with the consumption of fruit and vegetable juices. On the contrary, the study of the hazards associated with juices is ongoing and will change as we accumulate new data and other information.

Most hazard assessments are performed for a single hazard, such as a pesticide or a specific microbial pathogen. The hazard assessed may even be limited to a single food or product. This study of the hazards associated with juices will concentrate on microbial pathogens in fruit and vegetable juices, but will also include physical and chemical hazards. The organization of the report is as follows:

I. Description of the Product

II. Consumption

III. Description of the Production Methods: What Can Go Right

IV. Potential Introduction of Hazards into Juice Products: What Can Go Wrong

V. The Level of Contamination and the Probability of Illness: Evidence that Something Has Gone Wrong

VI. Human Health Effects

VII. Not Heat-Treatable Hazards

VIII. Summary

The most important health hazards recently associated with juices have been microbial pathogens; the framework for this investigation will therefore be based on microbiological hazards. The framework will be modified as necessary to account for other types of hazards, including chemical and physical hazards.

I. Description of the Product

The products encompassed by this investigation include juices, drinks, and nectars made from soft fruit (e.g., berries, cranberries, and currants), stone fruit (e.g., prune, apricot), citrus fruit, pome fruit (e.g., apple, pear), mixed fruit, fruit seed or pit (e.g., coconut), tropical fruit (e.g., guava, mango), vine fruit (e.g., grape), any other fruit, beans-peas-corn, fruits-used-as-vegetables (e.g., tomato), leaf and stem vegetables (e.g., celery), root and tuber vegetables (e.g., carrot), and mixed vegetables. The various products are sold in cans and paper, plastic, or glass containers. Products are either shelf-stable, frozen, or refrigerated.

II. Consumption

We estimated the annual consumption of all fruit and vegetable juices and juice drinks. We based the estimates on several sources; the table below shows the sources of data and how we used them.

Source of data	Description	Uses
Putnam and Alehouse (1997)	U. S. Department of Agriculture disappearance data	Total juice consumption; part of calculation of consumption of non-heat-treated orange juice
U. S. Department of Agriculture (1995), <i>Continuing Survey of Food Intakes of Individuals, 1989-1991</i> .	Consumer survey data	Percentiles of juice consumption; consumption of juices by different age groups; corroboration of disappearance estimates of consumption
Nielsen SCANTRACK	Results from supermarket sales by bar codes	Fraction of total juice consumption accounted for by non-heat-treated orange juice; lower-bound

U. S. Apple Association (1997a; 1997b)	Survey of apple cider processors	estimated consumption of non-heat-treated apple juice and cider Consumption of non-heat- treated apple juice and cider
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We used the disappearance data in preference to other sources, which we used mainly for information not contained in the disappearance data. Annual juice consumption can be measured and reported in gallons, liters, or servings, and can be characterized as per person, per juice drinker, or total. Although the data available and the question to be answered determined how we characterized various aspects of juice consumption, we used total servings as the principal measure of annual exposure.

We expected the distinction between heat-treated and non-heat-treated juices to matter more than any other for the morbidity and mortality associated with juices. We therefore estimated both total juice consumption and the consumption of non-heat-treated juices.

A. TOTAL CONSUMPTION OF FRUIT AND VEGETABLE JUICES

The Economic Research Service of the U. S. Department of Agriculture (Putnam and Alehouse 1997) estimates annual food consumption as the residual in the food supply and food use balance sheet. Total available food supply is the sum of production, beginning inventories, and imports. The measurable uses of food commodities include exports, industrial uses, seed and feed, and closing (or end-of-year) inventories. The difference between available supply and measurable uses is called food disappearance.

The use of food disappearance to estimate human food consumption has some shortcomings. The assumption that people consume all non-measured food commodities is wrong, because much food is wasted or fed to pets and other animals. Moreover, the estimated measurable uses of food commodities may miss some non-food uses. Food disappearance should therefore be regarded as an upper bound on the consumption of most foods. For juices, however, the difference between the upper bound represented by

disappearance and the true level of consumption is probably small, because juices do not have non-food uses. In this investigation, we used the disappearance data as the principal estimate of annual consumption of fruit and vegetable juices and drinks.

The consumption (or disappearance) per person of the major fruit juices (single strength equivalent: orange, grapefruit, lemon, lime, apple, grape, pineapple, prune) was 8.7 gallons in 1995 (Putnam and Alehouse 1997). The disappearance data do not contain separate estimates for berry, pear, plum, apricot, coconut, and tropical fruit juices, but the consumption of these juices is likely to be quite small. Vegetable juice (mainly tomato and tomato-based mixed juices) consumption was 0.3 gallons per person, for total juice consumption of 9.0 gallons or 34.1 liters (9.0 gallons \times 3.785 liters per gallon) per person per year. Total annual consumption of juice products (based on a population of 260 million) was therefore 2.3 billion gallons (260 million \times 9.0 gallons), or 8.9 billion liters (see table 1). In addition to juices, Americans consumed 7.8 gallons per person of fruit drinks (including flavored non-carbonated drinks, cocktails, and ades), for a total juice drink consumption of 2 billion gallons or 7.7 billion liters.

The great variety of juices and juice products consumed may give the misleading impression that American juice consumption is extremely varied. As table 1 shows, orange juice consumption -- 5.45 gallons per person in 1995 -- accounted for 60 percent of all juice consumed. Americans consumed 1.79 gallons of apple juice per person -- 20 percent of all juice consumed. The Continuing Survey of Food Intakes by Individuals gave a similar picture of juice consumption. In the survey for 1989-1991, orange juice accounted for 55 percent and apple juice for 17 percent of all eating occasions for juices. Southgate, Johnson, and Fenwick (1995) estimated orange juice to be 55 percent and apple juice to be 19 percent of total juice consumption. Orange and apple juices therefore account for the greater part of total juice consumption.

Juice and juice drink consumption can be put in perspective by comparison with the consumption of other beverages. In 1995, the average American consumed 24.4 gallons

of milk, 11.6 gallons of bottled water, 20.5 gallons of coffee, 8.7 gallons of tea, 51.2 gallons of carbonated soft drinks, and 25.1 gallons of alcoholic beverages (Putnam and Alehouse 1997). Fruit juices and fruit drinks combined accounted for more than 10 percent of all major beverage consumption (see table 2).

The U. S. Food and Drug Administration's (FDA) serving size for fruit juices and fruit drinks (and all other beverages) is 8 fluid ounces (240 milliliters). The serving size represents the amount customarily consumed per eating occasion for fruit and vegetable juices and juice drinks. The FDA juice serving size implies that total juice servings in 1995 were 37 billion (2.3 billion gallons \div 0.0625 gallons per serving). For juice drinks, the total number of servings was 32 billion servings (2.0 billion gallons \div 0.0625 gallons per serving).

The U. S. Department of Agriculture's Continuing Survey of Food Intakes by Individuals for 1989-1991 provides another way to estimate the annual consumption of juices. We used it to check the plausibility of the estimates derived from the disappearance data. The survey counted 219,181 eating occasions for juice products over a 3-day period. Each weighted response represented on average 1000 people. We estimated total juice drinking occasions per year to be $219,181 \times 1,000 \times 121 = 26.5$ billion. If each person consumed (on average) 8 ounces per eating occasion, then the total amount consumed was 1.7 billion gallons (26.5 billion \times 0.0625 gallons). The annual amount consumed per person would be 6.9 gallons (1,660,000,000 gallons \div 248,000,000 people). This estimate is lower than the 9.0 gallons estimated from the disappearance data partly because fruit juice consumption per person rose 13 percent between 1989-1991 and 1995. In 1989-91 juice disappearance averaged close to 8 gallons per person. In addition, as we pointed out above, the disappearance of fruit and vegetable juices overstates consumption because it is the residual left after other uses have been measured. Any measurement error or waste will be counted as juice consumption. Finally, the survey understated consumption because it counted an eating occasion with multiple servings as a single serving.

We believe, then, that juice consumption as estimated from the Continuing Survey of Food Intakes by Individuals for 1989-1991 and the disappearance data (Putnam and Alehouse 1997) give roughly consistent estimates of juice consumption. Because it was more recent, we relied on the disappearance data for our overall estimates of juice consumption. The disappearance data, however, did not tell us anything about the distribution of juice consumption -- all it told us was the annual per capita consumption of the leading juices. To estimate the distribution of juice consumption, we used the Continuing Survey of Food Intakes by Individuals for 1989-1991.

According to the survey, approximately 40 percent of the population ("eaters") consumed at least one serving of fruit or vegetable juice over a 3-day period. We will use that fraction as a lower-bound estimate of the number of regular consumers. For these juice drinkers, mean annual consumption was 16 gallons. Median annual consumption equaled 12 gallons. Other points of the distribution of consumption included the 25th percentile consumption equal to 8 gallons, the 75th percentile consumption equal to 22 gallons, and the 90th percentile equal to 32 gallons. According to the survey, the amount of juice consumed by relatively heavy juice drinkers remained low. Two standard FDA servings of juices per day (16 ounces, or 46 gallons per year) would have put an individual above the 95th percentile consumer in the survey. This result, however, may partly reflect the survey's under-count of the number of servings per eating occasion.

The Continuing Survey of Food Intakes by Individuals also showed that children and the elderly consumed a disproportionate amount of juices. Children under the age of 6 made up 9 percent of the population at the time of the survey, but consumed 16 percent of juices. Adults 60 and over made up 17 percent of the population, but consumed 20 percent of juices. Fruit juice accounts for 50 percent of all fruit servings consumed by children (Dennison 1996).

B. NON-HEAT TREATED JUICES

We estimated the consumption of non-heat-treated juices by combining estimates of total consumption or production with estimates of the market share of non-pasteurized juices. The two main products in the non-heat-treated category are fresh orange juice and natural (or fresh) apple cider or juice. We did not have direct estimates of the consumption of non-heat-treated juices. We estimated consumption of non-heat-treated citrus juice indirectly by combining information from supermarket sales data with disappearance data. Because the supermarket sales data did not list non-heat-treated apple juice as a separate category, we relied on industry production data on apple juice and cider for our best estimate of consumption.

Orange juice. According to the Nielsen SCANTRACK data, by volume fresh squeezed citrus juices accounted for 0.5 percent of all fruit juices sold in 1996. We assumed that nearly all of that was orange juice (some grapefruit juice is sold fresh-squeezed). The annual amount of fruit juice consumed was approximately 9.0 gallons per person in 1995 (see table 1); the amount of non-pasteurized orange juice per person would therefore be 0.05 gallons (0.005×9.0 gallons). The total annual amount of non-pasteurized orange juice consumed would be 11,700,000 gallons (0.005×9.0 gallons per person \times 260,000,000 persons). With the FDA serving size of 8 ounces, the total number of servings of fresh-squeezed orange juice would be 187 million per year (11.7 million gallons \div 0.0625 gallons per serving).

Apple juice and cider. The Nielsen SCANTRACK survey does not distinguish between heat-treated and non-heat-treated apple cider. According to the Nielsen 1996 data, 16.4 million gallons of cider required refrigeration. Because many of the refrigerated products sold as apple cider were pasteurized, this estimate may have overstated the amount of non-heat-treated apple cider sold. For two reasons, however, the Nielsen total for refrigerated apple cider more likely understated the amount of non-heat-treated apple juice and cider. First, the survey did not include small grocery stores and other retail stores where refrigerated cider was sold. Second, the total excluded non-heat-treated apple juice. The survey recorded sales of 83 million gallons of refrigerated apple juice, with

some unknown proportion not pasteurized. Sales of refrigerated apple cider may therefore underestimate total sales of non-heat-treated juice and cider. The Nielsen survey results served as a lower-bound estimate of the consumption of unpasteurized cider and juice. The lower-bound annual amount of unpasteurized apple cider and juice consumed per person would therefore be 0.063 gallons, or 8 ounces (16,400,000 gallons \div 260,000,000 persons) -- the FDA serving size. The consumption per person, then, would be approximately one serving per person per year, or 260 million servings.

Data supplied by the U. S. Apple Association provided a more complete estimate of the consumption of non-pasteurized apple cider (U. S. Apple Association 1997a). The association identified 1,049 producers of apple cider in the United States. The association distributed 918 surveys to apple cider processors and received 465 responses (51 percent), although not all surveys were returned complete. Of those cider producers in the sample, 97 percent did not pasteurize their product. The producers who did pasteurize, however, were all in the largest sales category. By volume and sales, pasteurized apple cider accounted for much more than 3 percent of output, but we do not know how much more. The processors in the U. S. Apple Association survey who reported engaging in interstate commerce also came disproportionately from the large producers.

The survey gave ranges of output by gallons for apple cider for 409 respondents (88 percent). The largest category by number of firms consisted of 187 small producers who each sold less than 5,000 gallons of apple cider per year. The smallest category by number of firms contained the 7 producers who each sold more than 500,000 gallons per year and probably accounted for a majority (by volume) of cider sales. We estimated total production for the 409 respondents by assigning mean volumes of the range in each category. We assigned all processors in the under 5,000 gallons category an annual output of 2,500 gallons; other assigned outputs included 7,500 gallons for the 5,000 to 9,999 gallons range, 30,000 gallons for the 10,000 to 49,999 range, 75,000 gallons for the 50,000 to 99,999 range, 300,000 gallons for the 100,000 to 499,999 range, and 750,000 gallons for the 500,000 to 999,999 range. Two processors produced more than one

million gallons per year (U. S. Apple Association 1997b). The survey gave us no further information, but other sources indicated that at least one large processor produced approximately 4 million gallons per year. We used the range 1,000,000-4,000,000 gallons for the largest output category and assigned each of the two largest survey respondents outputs of 2,500,000 gallons, the midpoint of the range. Under these assumptions, we estimated that the survey respondents produced a total output of 20 million gallons $((187 \times 2,500) + (50 \times 7,500) + (135 \times 30,000) + (12 \times 75,000) + (18 \times 300,000) + (5 \times 750,000) + (2 \times 2,500,000))$.

The survey respondents produced an estimated 20 million gallons of apple cider, and the response rate to the survey was approximately 50 percent. If the size distribution of non-respondents was the same as respondents, total production equaled 40 million gallons $(2 \times 20 \text{ million gallons})$. The large interstate producers were more likely to pasteurize their product. Of the 51 interstate producers who responded to the survey, 7 pasteurized and 4 planned to do so in the future (U. S. Apple Association 1997b). In the largest sales category (annual sales greater than \$100,000) one half of respondents reported pasteurizing (or had plans to do so in the future). We assumed that all of the firms that were pasteurizing their product came from the three largest output categories, and that half of the firms in those output categories pasteurized their product. Under those two assumption, pasteurizing firms produced 7 million gallons $((18 \times 300,000 \div 2) + (5 \times 750,000 \div 2) + (2 \times 2,500,000 \div 2))$, or approximately 35 percent of the survey respondent's output. If the percentage pasteurizing was the same for non-respondents as for respondents, then the total production of pasteurized apple cider was 14 million gallons. Under these assumptions, the total amount of unpasteurized cider would be 26 million gallons $(40 \text{ million gallons} - 14 \text{ million gallons})$. The total number of servings would be 416 million per year $(26 \text{ million gallons} \div 0.0625 \text{ gallons per serving})$. Consumption per person would be 0.1 gallons $(26 \div 260,000,000)$. The amount exceeded what we estimated from the Nielsen data, probably because the U. S. Apple Association surveys implicitly included more retail outlets than did Nielsen.

Total. We estimated the annual consumption of non-heat-treated orange and other citrus juices to be 11.7 million gallons, or 44 million liters. Annual consumption per person would be about 0.05 gallons. The lower-bound estimated consumption of non-heat-treated apple juice or cider, 16.4 million gallons (62 million liters), came from Nielsen SCANTRACK and failed to include large parts of the market. We therefore chose the higher estimate, 26 million gallons (98 million liters), from the U. S. Apple Association surveys as the preferred estimate of the consumption of non-heat-treated apple juice or cider. We estimated annual consumption per person to be 0.1 gallons per person.

We added the higher apple cider estimate to the Nielsen orange juice estimate to estimate the annual consumption of all non-heat-treated fruit and vegetable juices. The sum, 38 million gallons, (0.15 gallons per person) represented about 1.7 percent $(38,000,000 \div 2,300,000,000)$ of total juice consumption. The total number of servings of non-heat-treated juice would be approximately 600 million servings (187 million servings of orange and other citrus juice + 416 million servings of apple juice or cider).

High-risk consumers. We did not find direct estimates of the consumption of non-heat-treated juices by children and old people. As a proxy for non-heat-treated apple juice and cider, we used cider consumption from the Continuing Survey of Food Intakes by Individuals. According to the 1989-1991 survey, children consumed a disproportionate amount of apple cider. Children under the age of 6 made up 9 percent of the population at the time of the survey, but consumed 16 percent of cider. Adults 60 and over made up 17 percent of the population and consumed 17 percent of apple cider.

The survey did not list the consumption of fresh orange juice as a separate category, but did list the consumption of fresh grapefruit juice, which we assume to be non-heat-treated. Children under the age of 6 consumed little fresh grapefruit juice, accounting for less than one-half of one percent of total consumption. Adults 60 and over, by contrast, accounted for more than 48 percent of fresh grapefruit juice consumption -- close to triple that group's population share.

III. Description of the Production Methods: What Can Go Right

As table 3 illustrates, the production of juices is remarkably similar across products.

Obtaining fruit and vegetable juice from fruits and vegetables requires up to 12 processing steps, many with several different processing possibilities. The 12 steps are:

- 1) Growing
- 2) Harvesting
- 3) Washing and culling
- 4) Extraction of juice
- 5) Pressing to separate juice from remaining solids
- 6) Clarification and filtration to remove various impurities
- 7) De-aeration (removes air bubbles)
- 8) Heat treatments (includes pasteurization) and other anti-microbial treatments
- 9) Concentration
- 10) Refrigeration or preservatives
- 11) Reconstitution of juice from concentrate
- 12) Packaging

Some products go through all 12 steps; others, such as unpasteurized fresh juices, go through fewer steps. The major unpasteurized commercial products are apple cider (which is unfiltered apple juice), filtered apple juice, and fresh orange juice. Most juice products apparently go through some type of heating stage to inactivate microorganisms or oxidative enzymes.

What follows are short descriptions of different types of juices -- how the fruits and vegetables are harvested, processed, and turned into juice.

A. APPLE JUICE

Varieties. The 15 commercially most important varieties have historically been Red Delicious, Yellow Delicious, Macintosh, Rome Beauty, Jonathan, York Imperial, Stayman Winesap, Yellow Newtown, Cortland, Rhode Island Greening, Winesap, Northern Spy, Idared, Gravenstein and Granny Smith.

Growing environment. Apples are grown throughout the United States, with Washington, New York, Michigan, California and Pennsylvania being the largest producers (Way and McLellan 1989). Apples are grown both in humid and dry areas, high and low altitudes, warm and cold climates. Most orchards do not use manure as a fertilizer (U. S. Apple Association 1997a). Deliberate livestock grazing is rare; most growers attempt to keep wild animals away from the trees, although it is impossible to keep all wildlife out of orchards. Apples may be sprayed with pesticides in the orchard.

Juice. The definition of apple cider and apple juice differs across regions. Cloudy juice is called cider; thoroughly filtered and clarified juice is called juice. Different definitions exist for products that have undergone some filtering and clarification, but are not clear. In general, the product must be cloudier in New England than in the West in order to qualify as cider.

Most apple cider or juice is a blend of several varieties of apples. Blending enables the producer to achieve the desired balance of acidity, aroma, astringency and sweetness (Downing 1989).

Harvesting. Apples can be harvested by hand or by machine. Hand harvesting is much more common, because mechanical harvesting damages fruit more frequently (Massey 1989). Apples are stored in the processor's yard only for short periods after harvest. Long-term storage takes place in facilities where low temperature (normally -1 to 0°C), adequate ventilation, and a controlled atmosphere (less than 3 percent O₂ and less than 3

percent CO₂) can be maintained. Half of the respondents in a survey of apple cider producers use drops (apples that have fallen to the ground)(U. S. Apple Association 1997a).

Transportation. Apples are packed in 20-pound boxes (Eastern U. S.) or bushel packs (Western U. S.). They are most often transported to processing facilities in open trunks or wagons pulled by tractors.

Washing and inspection of fruit. A bin of apples is usually dumped into water at an inspection station. Some apples are culled and the rest washed in an acid bath of pH 2 or 3; others are dumped into water with 100 ppm chlorine (or higher) (Kupperman 1996). Some apple processors use either brushing or agitation (O'Leary 1993). The apples are rinsed before the juice is extracted (with skin on) and the remaining solids pressed (steps 3, 4, and 5).

Finished product. Nothing further is done to natural cider or juice, except chilling, possible chemical preservation (step 10), refrigeration or freezing (step 10), and packaging (step 12). For heat-treated apple juice, clarification (step 6) and pasteurization (step 8) will be performed. Pasteurization takes 25 to 30 seconds at temperatures that vary between 76.6°C and 87.7°C. Apple juice to be concentrated (step 9) is heated to temperatures of 77 to 93°C for 2 to 3 minutes (Kress 1996). The juice leaves the concentrator at about 70° Brix (70 percent sugar) (Kress 1996). Juice can then be re-constituted. (step 11).

Apple juice is hot-filled at 79 to 91°C into containers and held for 1 to 2 minutes before closing (step 12). Containers are cooled to between 32 and 41°C and stored (Kress 1996).

Imports. Imported apple juice accounts for close to one-half of total consumption (see table 1). Practically all imported juice comes in the form of concentrate (*The Almanac of*

the Canning, Freezing, Preserving Industries 1996). The imported apple juice comes from all over the world, with Latin America and Europe being particularly important sources.

B. ORANGE JUICE

Varieties. One species of orange, the Sweet Orange, is commercially important in the United States. Sweet Oranges include common (or Valencia), navel, blood, non-acid, and sour oranges. Most orange juice is made from Valencia and navel oranges (Kimball 1991). Domestic oranges are grown in Arizona, California, Florida and Texas (Rebeck 1995).

Juice. Most commercial orange juice is a blend of several varieties. Non-pasteurized, which is mostly fresh-squeezed juice, comes from one variety at a time -- such as early season Hamlin or late season Valencia oranges (Attaway, Carter, and Fellers 1989).

Harvesting and transportation. In Florida, harvesting begins when the fruit reaches the standard for maturity established by the USDA and the Florida Department of Citrus. California does not have mandatory USDA or state standards for maturity. Oranges are harvested by hand or by machine; the fruit is then loaded into trucks that hold 500-550 boxes (90 pounds each) of fruit (Rebeck 1995). Trucks dump oranges onto a ramp where processing eliminates leaves, stems and dirt. Oranges are culled and then put into holding bins.

Washing and inspection of fruit. Conveyer belts move oranges from holding bins to surge bins to roller spreaders and brush washers. The oranges are washed with a detergent and culled again before the orange juice is extracted (with skin off, step 4) and pressed (step 5) (Kimball 1991; Rebeck 1995; Nordby and Nagy 1980). For non-pasteurized juice, the oranges may be chilled to 0.6°C before juice extraction (Attaway, Carter, and Fellers 1989).

Finished product. Nothing further is done to non-pasteurized juice, unless a heat exchanger is used to chill the juice to -1.1°C . Refrigeration (step 10) will be used for preservation; packaging will be in non-hermetically sealed containers (step 12) (Attaway, Carter, and Fellers 1989).

For heat-treated orange juice, filtration, de-aeration, and pasteurization will all be performed. Pasteurization takes about 30 seconds at temperatures between 60°C and 93°C (Rebeck 1995, Nordby and Nagy 1980). Orange juice that is for concentrate is heated to about 81.9°C , although we do not know the period of time for this heat treatment (Rao and Sancho 1993). The juice leaves concentrator at about 65° Brix (65 percent sugar).

Imports. Orange juice (almost all concentrate) is imported from Brazil, Mexico, and other countries. Brazil is the world's leading exporter of orange juice. Imported orange juice accounts for more than 15 percent of consumption (see table 1) (*The Almanac of the Canning, Freezing, Preserving Industries* 1996).

C. GRAPEFRUIT JUICE

Varieties. There are two basic types of grapefruit -- common (or white) and pigmented (or pink). White grapefruit varieties commercially grown in the U. S. are Duncan and Marsh. Pink grapefruit varieties are Flame, Henderson, Ray Ruby, Rio Red and Star Ruby (Kimball 1991).

Harvesting and transportation. In Florida, harvesting begins when fruit reaches maturity standards set up by the USDA and the Florida Department of Citrus. Grapefruit are harvested by hand or by machine; the fruit is then loaded into trucks that hold 500-550 boxes (85 pounds each) of fruit (Rebeck 1995). Trucks dump grapefruit onto a ramp

where processing eliminates leaves, stems and dirt. The grapefruit are culled and put in holding bins.

Washing and inspection of fruit. Conveyor belts move the grapefruit from holding bins to surge bins to roller spreaders and brush washers, where the grapefruit are washed with a detergent and culled again before the juice is extracted (skin off, step 4) and solids pressed (step 5).

Finished product. The literature we have surveyed does not contain references to unpasteurized grapefruit juice. We therefore assume that, because grapefruit juice processing and orange juice processing are similar in the steps leading to and including pasteurization, the methods for processing grapefruit juice that does not undergo pasteurization are similar to the methods for orange juice that does not undergo pasteurization.

For heat-treated grapefruit juice, filtration, de-aeration, and pasteurization will be performed. Pasteurization temperatures are between 60°C and 88°C for about 30 seconds (Rebeck 1995; Nordby and Nagy 1980). Although the literature does not say, we assume that grapefruit juice is concentrated at the same temperature as orange juice. The juice leaves the concentrator at about 65° Brix (65 percent sugar).

Imports. Some grapefruit juice (almost all concentrate) is imported from Latin America. Imported grapefruit juice accounts for less than one percent of consumption (see table 1) (*The Almanac of the Canning, Freezing, Preserving Industries* 1996).

D. TANGERINE AND LEMON JUICE

The six varieties of tangerines commercially important in the U. S. are Clementine, Dancy, Kinnow, Lee, Murcott and Nova. Up to 10 percent of tangerine juice can be added to orange juice without declaration or violation of federal standards of identity.

Tangerines to be made into juice are handled and processed in a similar manner to oranges and grapefruit.

Lemon juice is prepared and handled in a similar manner to the other citrus juices (Swisher and Swisher 1980). In certain cases, lemon juice may be crushed and comminuted (minced) (Worrall 1994). Juice that is to be concentrated is usually prepared from unpasteurized or partially pasteurized lemon juice (Swisher and Swisher 1980).

Imports. Lemon juice (almost all concentrate) is imported from Latin America. Imported lemon juice accounts for more than 28 percent of consumption (see table 1) (*The Almanac of the Canning, Freezing, Preserving Industries* 1996).

E. GRAPE JUICE

Varieties. There are 4 classes of grapes: hybrids of native northeastern grapes, European grapes, southern and southeastern Muscadine grapes, and French hybrids (McLellan and Race 1995). Most grape juice is made from the Concord grape, a northeastern hybrid. The rest of this discussion will refer only to Concord grapes.

Harvesting. Concord grapes are harvested when their acid level is high. Cold storage at 0°C reduces grape acidity to levels acceptable to consumers. Grapes are harvested mechanically, placed in one-ton bulk boxes equipped with polyethylene liners, and taken to a grading station to measure their soluble solids. Grapes are usually processed within 4 to 6 hours after picking (McLellan and Race 1995).

Washing and inspection of fruit. Grapes are transferred to a stemmer-crusher operation that removes leaves, petioles and stems from the fruit (step 4). The grapes are then put in a rotating perforated drum where they are crushed or broken open. The grapes then enter a tubular heat exchanger where they are heated to 60°C. This process, called hot-break, is designed to extract color and increase juice yield (Pederson 1980a; McLellan and Race

1995). Enzymes (step 4B) and press aids (step 4C) are added. Pressing and screening and filtration are similar to those steps for other products.

Finished product. Juice is flash pasteurized at 79.4 to 85°C for 1 minute, then cooled to 0°C (Pederson 1980a; McLellan and Race 1995). The cooled grape juice is stored in refrigerated tanks for up to one year. During storage some of the natural potassium bitartrate precipitates out as argol, a waste product. Before juice is further processed additional clarification is performed (step 6). The clarified juice is hot filled at a minimum temperature of 82.2°C. Either evaporation (57.2 to 71°C) or a combination of reverse osmosis and evaporation (Pederson 1980a; Downes 1995) can concentrate grape juice.

Imports. Close to one-third of the grape juice consumed is imported (table 1) (*The Almanac of the Canning, Freezing, Preserving Industries* 1996). The United States imports grape juice from North and South America, the Middle East, and elsewhere.

F. CHERRY JUICE

Varieties. Cherry juice can be made from sweet or sour cherries.

Harvesting and inspection of fruit. Cherry juice is made from high quality cherries -- not culls, which usually possess off-flavors. They can be harvested mechanically. Harvested cherries are usually soaked for less than 12 hours in cold (10°C) water (Tressler et al 1980).

Processing and finished product. Cherries are processed in one of three ways: hot pressing, cold pressing, and cold pressing thawed fruit. In hot pressing, cherries are heated to 65.5°C and pressed (step 4 and 5) before being cooled and screened. After the juice is chilled to 10°C, it is allowed to settle overnight and is clarified (step 6). In cold pressing, washed cherries are extracted (step 4) and pressed (step 5). The juice is then heated to 87.7 to 93.3°C and cooled. Pectinase is added and allowed to act for about 3

hours in order to reduce viscosity and clarify the juice. Following this step, the juice is heated to 82.2°C, cooled and filtered. With cold pressing, thawed cherries are crushed and pitted, then frozen. Before pressing, cherries are thawed to about 4.5-10°C. This juice is treated like cold pressed juice. Sugar is normally added to cherry juice to bring it up to 17° Brix. If sweet cherries are used for juice, sour cherry juice will be mixed with it to create proper flavor. Hot and cold pressed juices are usually mixed together to obtain proper color and flavor. Because of its strong flavor, cherry juice is usually blended or mixed with other juices. Cherry juice can be pasteurized to as low as 73.8°C, if air is eliminated in the headspace (Tressler, Charley, and Luh 1980).

G. BERRY AND STONE FRUIT JUICE

Varieties. These fruits include prunes, plums, apricots, strawberries, blackberries, raspberries, cranberries, pears, and similar fruits (Downes 1995).

Harvesting and inspection of fruit. Hand picked fruit is normally of high quality; mechanically picked fruit need not be. Both are used to make juice. After the fruit is picked, debris, mold, and rot are removed before the fruit is washed.

Processing and finished product. Pears and similar fruit need to be pressed at high pressure; berries probably need enzymes and pressing aids as well. These fruits are all processed with their skin on. Different milling and pressing processes (steps 4 and 5) are used for the different fruits. Various clarification and filtration may also be needed, depending on the product (step 6). Some of the berry juices may need de-aeration (step 7). Almost all of these juices can be flash pasteurized at 79.4°C or above for 30 seconds to eliminate microorganisms and oxidative enzymes (Tressler, Charley, and Luh 1980). Either evaporation (57.2 to 71°C) or a combination of reverse osmosis and evaporation (Pederson 1980a; Downes 1995) can concentrate these juices.

Imports. In 1995, the United States imported close to 90 million liters of pear and berry juice (*The Almanac of the Canning, Freezing, Preserving Industries* 1996). We do not have separate estimates of the consumption of those juices; it is likely that imports make up a relatively large share -- perhaps one-third -- of total consumption.

H. PINEAPPLE JUICE

Varieties. The pineapple is a member of the Bromeliaceae family. It is grown in the tropics, mainly in Hawaii, Thailand, Indonesia, Malaysia and Brazil (Hooper 1995; Inderkum 1994; Mehrlich and Felton 1980).

Processing of fruit. Pineapple juice tends to be a by-product of the pineapple canning industry. The juice is obtained from whole fruits, canning industry fruit, and skin residues (Inderkum 1994; Hooper 1995). The fruit residues are crushed by rollers and the mash is extracted and pressed (steps 4 and 5). The juice from fruit residues is combined with pre-extraction juice before being filtered and pasteurized. The juice is concentrated to 60 or 70° Brix and packed either aseptically or frozen. Reconstituted juice is pasteurized, chilled, packaged, and shipped (step 12).

Imports. Approximately 90 percent of the pineapple juice consumed in the United States is imported (see table 1). Of the imported juice, about 75 percent is concentrate (*The Almanac of the Canning, Freezing, Preserving Industries* 1996). The imported juice comes from the major producing countries, such as Brazil, Indonesia, Malaysia, and Thailand.

I. TOMATO JUICE

Varieties. Many different varieties of tomatoes are used commercially for tomato juice.

Harvesting. Tomatoes are mechanically harvested before they are well colored and ripened; otherwise, harvesting will cause extensive damage to the raw fruit (Leonard 1980).

Washing and inspection of fruit. Tomatoes are sorted in the field to eliminate tomatoes with insect damage, mold, off-color, rot, sunburn, and other flaws. They are then taken to a cannery where they are washed several times. The final wash normally contains at least 5 ppm chlorine. Tomato juice can be extracted using methods in step 4, or by slicing (skin on), pressing (as per step 5), and filtering (step 6). After extraction, heating the juice to 104.4°C for 15 seconds inactivates the natural enzymes pectinesterase and polygalacturonase (Leonard 1980). Tomato juice also requires de-aeration (step 7).

Finished product. Tomato juice is homogenized after de-aeration to prevent settling and separation. Salt is added from 0.5 to 1.25 percent by weight to improve juice flavor. Tomato juice contains less acid than many other juices, so more severe heat processing is necessary. Tomato juice must be processed to temperatures that eliminate *Bacillus coagulans* -- 118.3°C for 1.5 minutes, 121.1°C for 42.0 seconds (steps 8 and 10) (Leonard 1980). Tomato juice is not usually concentrated by heat, because heat concentration affects taste (Francis and Harmer 1988).

Imports. Very little tomato juice is imported (*The Almanac of the Canning, Freezing, Preserving Industries* 1996).

J. OTHER VEGETABLE JUICES

Types. Vegetable juice may be obtained from leaf or stem vegetables such as beet leaves, cabbage, celery, lettuce, rhubarb, and others. Juice may also be obtained from root vegetables -- beets, carrots, onions, parsnips, sweet potatoes -- and seed bearing plants, including cucumbers, pepper, and others.

Harvesting. Vegetables can be harvested by hand or by machine. Vegetables are normally harvested before maturity in order to reduce mechanical damage during handling and processing.

Washing and inspection of fruit. Vegetables are sorted and trimmed to eliminate those with insect damage, mold, off-color, rot, sunburn, and other flaws. After being sorted, the vegetables are washed in water that contains from 10 to 200 ppm chlorine (Powrie and Skura 1991). Vegetable juices can be extracted using methods in step 4, or slicing (skin on), pressing (step 5), and filtering (step 6). If a vegetable was not heated before juice extraction, it is necessary to heat-treat the extracted juice to inactivate the natural enzymes. Although the enzymes are inactivated in tomato juice by heating juice to 104.4°C for 15 seconds, other vegetables may be heated to different temperatures. Some vegetable juices may also require de-aeration.

Finished product. Many vegetable juices are non-acidic and therefore require severe heat processing to inactivate enzymes and microorganisms. Vegetable juices may be processed to temperatures of 115.5 to 121.1°C (steps 8 and 10). If acid is added to the vegetable juice, then less heat treatment is necessary (Pederson 1980b). Vegetable juices are not normally concentrated by heat, because heat concentration affects taste (Francis and Harmer 1988).

Imports. Imports are negligible, as is total consumption of non-tomato-based vegetable juices.

K. PACKAGING

Glass bottles are the traditional containers used for fruit and vegetable juices (Paine and Paine 1992 is the reference for this entire section). Glass is inert, easy to clean, durable and rigid, and impermeable to odors, vapors and liquids. Juices can either be hot-filled or pasteurized in the bottle.

Polyethylene (PET) and polyvinyl chloride (PVC) bottles can also be used for juices, but these bottles become distorted at temperatures above 65-70°C. Polyethylene bottles covered with polyvinylidene chloride have reduced gas permeability. Because they rely on internal pressure to provide rigidity, they are best suited for carbonated juices. Orange juice has been packed in clear oriented polypropylene bottles because this material provides good oxygen and moisture barriers.

High-acid juices are packed in lacquered and coated cans. Cans are usually hot filled but they may also be cold filled. Cold filled juice is pasteurized and then placed in the can; this type of canned juice requires refrigeration.

Frozen orange juice concentrate is packed in composite paperboard canisters. Bulk frozen orange juice is packed into 200 liter polyethylene drums or polyethylene lined drums. Pasteurized fruit juices can be packed in polyethylene-coated cartons. These products must be stored in refrigerators. Pasteurized juice can be stored long term under frozen conditions. All juice containers, except those aseptically packaged, benefit from cool storage.

IV. Potential Introduction of Hazards into Juice Products: What Can Go Wrong

In the previous section we described common production methods for fruit and vegetable juices. In this section we discuss possible hazards and theoretical points in the production process where hazards might enter.

A. MOST COMMON HAZARDS

Three types of hazards may affect juice products: microbiological, chemical, and physical. Of these, microbiological hazards are the most severe.

The primary microbial hazards that have been found in fruit juices are *Escherichia coli* O157:H7, *Cryptosporidium parvum*, *Bacillus cereus*, and *Salmonella* spp. Table 4 contains information on those outbreaks and recalls for which there have been confirmed cases with juice as the vehicle. The 1996 outbreaks were associated with *E. coli* O157:H7 and *C. parvum*. Past outbreaks and isolated cases have involved *Vibrio cholerae* O1 and *Clostridium botulinum*.

The microbial hazards identified from the history of pathogen-related outbreaks from juice products do not exhaust the potential microbial hazards; emerging pathogens may be more serious than any currently identified hazards. The outbreaks associated with *E. coli* O157:H7 and *C. parvum* involved pathogens that were unknown a generation ago.

B. HAZARD ENTRY POINTS

The outline below shows areas where hazards may enter juice products. This information may be useful in assessing the likelihood of hazard entry for purposes of (for example) a Hazard Analysis Critical and Control Point (HACCP) hazard assessment.

Contamination can occur within any of the 12 steps associated with juice production described above and in table 3. Some of the theoretically possible modes of entry for hazards include:

1. Raw Product: (steps 1 and 2)

- a. Contamination by airborne pathogens (from nearby farms, for example)
- b. Contamination by fertilizer
- c. Contamination by wild or domestic animal feces (especially drop fruit)
- d. Contamination by non-potable water used to apply pesticides
- e. Contamination during shipping
- f. Human contamination

- g. Pesticides or herbicides during farm production
- f. Raw Product -- metals, stones
- 2. Contamination during processing (steps 3 through 12).
 - a. Contaminated by unsanitary wash water
 - b. Contamination during extraction, pressing or clarification
 - c. Contamination following heat treatment or during bottling
 - d. Contamination by humans following heat treatment of juice
 - e. Processing -- chemical sanitizers
 - g. Processing -- filtration screens, glass (from breaking bottles, plastic)
- 3. Post-Processing Contamination
 - a. Contamination during storage and shipping

Adequate heat treatment (pasteurization or further heat treatment) will inactivate heat-sensitive pathogens resulting from contamination occurring in steps 1(a) through (f) or 2 (a) through 2 (b). Non-heat methods, such as pulsed light or filtration, may also inactivate these pathogens.

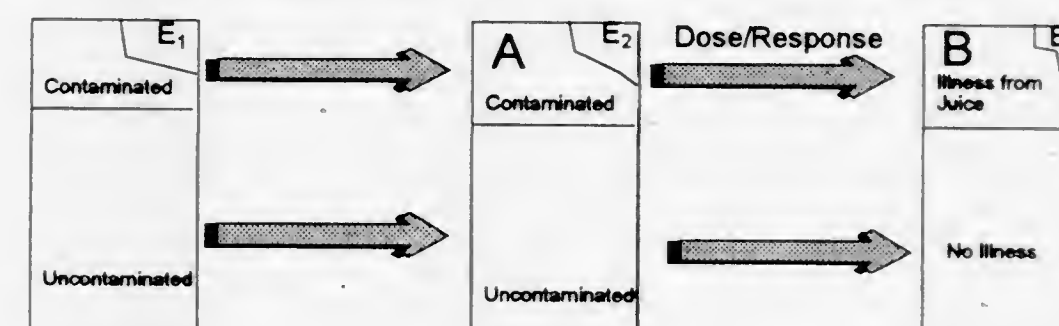
V. The Level of Contamination and the Probability of Illness: Evidence that Something Has Gone Wrong

The probability of illness resulting from consumption of contaminated juice products may be divided into two underlying probabilities: 1) the probability that the juice becomes contaminated (at some level), and 2) the conditional probability that, given that the juice is contaminated, drinking it makes humans ill. The probability of illness from drinking juice contaminated with microbial pathogens is positively related to the degree of contamination as measured by the number of organisms (or dose) consumed. As with most hazards associated with juices, however, the evidence needed to estimate these two probabilities -- the probability that juice is contaminated and the probability of illness from consuming contaminated juice -- is either fragmented or missing. The diagram below illustrates the

relationship between the two probabilities and the role of the supporting data that are generally available to estimate these probabilities.

Juice Risk Assessment

Raw Fruit Juice Consumers



E - Evidence from human outbreaks and product sampling

As the diagram illustrates, the evidence on product contamination and human illness (areas E₁, E₂, and E₃) from microbiological hazards are small, unknown proportions of total contamination and illness. Contamination may start with the raw fruit or vegetable and be carried through processing into juice. Contamination may occur during processing. Product sampling provides the most telling evidence that juice is contaminated. If, however, the underlying rates of contamination are low and contamination is sporadic, it may be impossible to sample enough product to estimate rates of contamination with any statistical precision. One sample snapshot will not provide an accurate description of the average amount of contaminated raw product or the resulting amount of contaminated juice.

Once juice is contaminated, some people will likely become ill. If we knew the amount of contaminated juice (area A), the level of contamination (organisms per unit of volume), and the dose-response relationship, we could predict the number of illnesses (area B) and deaths likely to result from consuming the contaminated juice. Because we do not know the amount of contaminated juice, the level of contamination, or the dose-response function, we cannot estimate the total amount of illness by combining the three variables. Instead, we must infer the total amount of illness from the data on reported outbreaks -- a small and unknown fraction of total illnesses.

In order to use the epidemiological data from an outbreak to estimate a dose-response function, we would need to determine the total population exposed to contaminated juice, verify that juice was the vehicle, estimate the dose consumed, and classify the symptoms and complications. In order to estimate the full human dose-response relationship for a particular pathogen-product combination (such as *E. coli* O157: H7 in apple juice), we would need a large, representative sample of outbreak data, with estimated doses consumed and the percent of consumers who became ill at each dose level.

Because we lacked an evidence-based dose-response model, we looked at the evidence linking the microbial contamination of juices to the epidemiological evidence on the microbial illnesses associated with juices.

A. THE LEVEL OF CONTAMINATION

1. Discussion

Contamination may occur during growth, harvesting, processing, or post-processing of fruits and vegetables. The level of exposure (pathogen count or quantity) is a function of the initial amount of the hazard introduced into the product and subsequent increase or decrease of the hazard (if any) before consumption. For microbial hazards, the dose in the

final product will be a function of (1) the initial microbial load and (2) the multiplication or inactivation of the pathogens during processing, storage and distribution.

The probability that the raw product is contaminated with a microbial pathogen depends on whether domestic or wild animals are in or near the growing area, the source of water, the use of drop apples (or the equivalent for other fruit), the type of fertilizer used (particularly manure), and the frequency and method of washing the raw fruit. Animal feces cause contamination either directly by contaminating drop apples or indirectly by contaminating workers, water, or possibly air. The use of manure also increases the probability of contamination. Well water is more likely to be contaminated than water from a municipality or other qualified provider. Washing the fruit tends to reduce contamination, unless the water itself is contaminated.

Once the juice has been contaminated, the pathogens may either multiply or become inactivated. For bacterial and fungal pathogens, the number of organisms will increase at different rates depending on the pathogen, the package, the storage temperature, and the specific characteristics of the juice, particularly the acidity and water activity. With low temperatures, low water activity (low a_w), or acidic conditions (low pH), the pathogens may not survive or may fail to multiply. Recent studies indicate, however, that the specific characteristics of juices cannot be expected to completely inactivate all microbial pathogens.

Several organisms, including an *E. coli* O157: H7 strain (ATCC 43895) can survive exposure to extremely acidic (pH < 3) environments (Leyer, Eang, and Johnson 1995; Benjamin and Datta 1995). Most juices, including apple (pH = 3.4 - 4.0), orange (pH = 3.6 - 4.3), grapefruit (pH = 3.0), prune (pH = 3.7), tomato (pH = 4.1 - 4.2), and pineapple (pH = 3.5), are not acidic enough (pH \geq 3) to guarantee pathogen inactivation (U. S. Food and Drug Administration 1997a). Sugar reduces water activity (a_w); the reduced water activity can lead to pathogen cell shrinkage and death (Branen and Davidson 1983). The sugar concentrations in juices, however, are probably too low to ensure safety. Fruit

juices have water activity levels of about 0.97; an activity level of 0.80 would be necessary for microbial safety (Peterson and Johnson 1978; Thorner and Herzberg 1970). Freezing will prevent multiplication, but will not kill bacterial pathogens (Council for Agricultural Science and Technology [CAST] 1994). Parasites (e.g., *C. parvum*) and human viruses (e.g., Norwalk virus) will not multiply in juice, but will not be inactivated.

Apple and other juices produced by pressing or other methods that introduce skin into the product are likely to contain contaminants before processing, because sterile field conditions are highly unlikely. The outbreak literature contains examples of contamination from nearby cattle, from deer in the orchard, and possibly from sheep (see citations in table 4). Few farmers report that livestock are allowed to graze in the orchards (U. S. Apple Association 1997a). Orchards are, however, often located near livestock or wildlife with the potential for microbial contamination. *E. coli* O157:H7 has been cultured from the feces of deer, sheep, pigs, goats, dogs, birds, flies, and a horse (Randall, Wray, and McLaren 1997; Keene et al. 1996; Rice, Hancock, and Besser 1995).

Farmers can take steps to reduce the likelihood of contamination from these sources, but it is impossible to eliminate microbial pathogens from all raw fruits and vegetables. The microbial pathogens that have been found in juice are widespread in animal feces and are therefore likely to be present in soil, water, and air.

2. Evidence

The ideal way to gather evidence on the morbidity and mortality associated with juices would be to carry out a prospective statistical survey that linked evidence on the microbial contamination of juices with evidence on subsequent human illness, but no one has done such a survey. The best current evidence that some juice is contaminated came from retrospective outbreak investigations, which demonstrated an association between illness outbreaks and juice consumption. In four of the outbreaks listed in table 4, investigators were able to isolate the pathogen from the product itself. *Salmonella typhimurium* was

isolated from two bottles of apple cider taken from homes of victims of the 1975 outbreak. In the 1993 *C. parvum* outbreak from fresh-pressed apple cider, oocysts were detected in the leftover cider and on swabs from the surface of the cider press. In the outbreak of salmonellosis from orange juice in 1995, the Centers for Disease Control and Prevention (CDC) investigators cultured *Salmonella* spp. from 10 of 12 juice containers and from all 4 juice lots represented. An FDA laboratory found *E. coli* O157:H7 in one sample of apple juice from the 1996 outbreak and recall associated with unpasteurized apple juice.

Recalls provide even more direct evidence of juice contamination. In the 1994 orange juice recall listed in table 4, 4 of 6 samples analyzed for *B. cereus* tested positive. For the 1992 Orange Julius recall, 2 of 13 samples tested positive for *Salmonella* spp.

We can also call upon circumstantial evidence suggesting that at least some juice products will be contaminated. We know which conditions and practices are likely to cause microbial contamination and we know that some of the conditions and practices are widespread. For example, according to the industry survey, 55 percent of cider producers use drop apples, 97 percent do not pasteurize their cider, and 8 percent do not wash apples before pressing (U. S. Apple Association 1997a). As long as these practices continue, some apple cider will likely be contaminated with microbial pathogens.

The prevalence of practices that can lead to microbial contamination, when combined with outbreak and recall investigations that have found contaminated juices, establishes the plausibility of juices as the vehicles for illnesses. Because we do not have evidence on the level and types of contamination, the importance of the health hazard cannot be measured by the level of contamination of fruit and vegetable juices. Instead, we measure the health hazard as the number of illnesses associated with the consumption of juices.

B. PROBABILITY OF ILLNESS

1. Discussion

Once the contaminated product finds its way to consumers, the dose of the microbial pathogen is only one component affecting the probability of illness. The age and immune status of the exposed population, and individual characteristics -- such as the acidity of the stomach -- affect both the probability and the severity of illness at a given dose. Children accounted for all of the known severe cases from one recent *E. coli* O157:H7 outbreak associated with unpasteurized apple juice.

We did not have sufficient information on the age and immune status of consumers of the various juice products to incorporate those variables into the estimates of the number of illnesses caused by juices. The numbers presented below, then, do not distinguish between consumers of different age or immune status.

2. Evidence

Table 4 contains all the evidence that we have accumulated on microbial illnesses resulting from juice consumption. The table lists the outbreaks of illness reported to the Centers for Disease Control and Prevention (CDC), FDA recalls, and state health agencies' investigations associated with microbial pathogens in juices and juice drinks. In order to avoid double-counting, when an event appeared in more than one data base, we listed the CDC outbreak data only; if the event did not appear in the CDC records but was in both FDA recall data and state health records, we listed it under FDA recalls. The table contains 21 events: 13 outbreaks, 3 recalls, and 5 incidents reported by state health departments. The products involved were apple juice or cider (8 events), orange juice (5 events), tomato juice (4 events), coconut milk (1 event), carrot juice (1 event), watermelon juice (1 event), and flavored drinks (1 event). The pathogens were *E. coli* O157:H7 (5 events), *Salmonella* spp. (5 events), *C. parvum* (3 events), *B. cereus* (1 event), *Vibrio cholerae* O1 (1 event), *Clostridium botulinum* (5 events), and unknown (1 event).

According to Centers for Disease Control and Prevention outbreak data, state outbreak data, and FDA recall records, juices accounted for 447 confirmed illnesses from 1993 through 1996 (see table 4). The breakdown by pathogen was 62 *Salmonella* spp., 86 *E. coli* O157:H7, 85 *B. cereus*, 191 *C. parvum*, and 23 cases caused by an unknown pathogen. The products associated with illnesses were apple juice or cider (277 cases) and orange juice (170 cases).

No estimates of the annual number of all juice-related microbial illnesses exist. Most observers agree that the total number of cases exceeds the reported cases, but no consensus exists on the magnitude of the difference. The uncertainty can be seen in the estimates of the total number of foodborne illnesses caused by the four pathogens that have been associated with juices since 1993.

The most information on incidence of foodborne microbial illnesses is for *Salmonella*. The National *Salmonella* Surveillance System of the Centers for Disease Control and Prevention collects reports of *Salmonella* isolates from throughout the U. S.; the annual number of isolates averages about 40,000 (CDC 1996c). The CDC also includes *Salmonella* as one of the pathogens followed by its sentinel sites survey program. The CDC's 5 sentinel sites (representing 5 percent of the U. S. population) reported 2,142 laboratory-confirmed cases of foodborne illness attributable to *Salmonella* spp. in 1996 (USDA 1997), implying that 42,840 ($2,142 \times 20$) total laboratory-confirmed cases could have occurred in 1996. The extrapolation from the sentinel sites comes close to the 40,000 average annual laboratory-confirmed cases in the CDC national *Salmonella* surveillance project.

The total number of illnesses caused by *Salmonella* exceeds the number of laboratory-confirmed cases, but by an uncertain amount. In some early surveys based on investigations of outbreaks, epidemiologists found that unreported cases might be about 100 (or more) times reported cases (Aserkoff, Schroeder, and Brachman 1970). That estimate has often been used as an upper-bound multiplier for converting reported cases of

salmonellosis into estimated total cases (Helmick et al. 1994). More recent estimates of total cases derived from reported cases usually include both lower-bound and upper-bound multipliers. Cohen and Tauxe (1986) suggested that between one and 10 percent of cases of salmonellosis were reported, for a multiplier range of 10 to 100. Chalker and Blaser (1988) found the median ratio of estimated total cases to reported cases in 8 outbreaks to be close to 20. In another section of the same paper, Chalker and Blaser used the carriage rate for *Salmonella* to estimate the annual number of infections. The carriage rate of 0.15 percent combined with the infection duration of about 5 weeks (0.096 years) implied an estimated annual infection rate of approximately 1.5 percent (0.15 percent ÷ 0.096 years). With an infection rate of 1.5 percent, we would expect about 4 million infections per year (0.015×260 million).

Chalker and Blaser concluded that the number of laboratory-confirmed cases of salmonellosis represented 1 to 5 percent of all cases, which remains the most widely-cited range for the rate of reported cases. Multiplying the 40,000 annual cases in the CDC *Salmonella* surveillance by 20 to 100 generates an estimated 800,000 to 4,000,000 of annual illnesses caused by *Salmonella*, a range cited by Helmick et al. (1994), Buzby and Roberts (1996), and in much of the literature on foodborne diseases.

The most widely cited point estimates of the annual number of illnesses are Bennett et al. (1987), who estimated the annual number of foodborne *Salmonella* cases to be 1,920,000, and Todd (1989), who put the number at 2,960,000. Bennett et al. relied on the judgment of experts from CDC who reviewed the evidence from outbreak investigations and the surveillance reports to come up with an estimated 2,000,000 total cases, with 96 percent foodborne ($0.96 \times 2,000,000 = 1,920,000$). Todd estimated the number of cases in several ways, but selected the median estimate as the most likely. His median was the mid-point between Bennett et al.'s 1,920,000 cases and the standard upper bound of 4,000,000 cases. Because CAST (1994) included both point estimates, we used them to generate two different upper bounds on the number of *Salmonella* cases associated with juices.

The relatively recent emergence of *E. coli* O157:H7 as a major foodborne pathogen meant that we had fewer estimates of its incidence. The Centers for Disease Control and Prevention's 5 sentinel sites reported 384 laboratory-confirmed cases of foodborne illness attributable to *E. coli* O157:H7 in 1996 (USDA 1997). The sentinel sites cover about 5 percent of the U. S. population, which implies that 7,680 (384×20) total laboratory-confirmed cases could have occurred in 1996 -- if the sentinel sites are representative of the entire population. Because many cases are either not reported or not confirmed, the true number may be higher. Boyce, Swerdlow, and Griffin (1995) applied the infection rate from a prospective population study conducted in Washington state -- 8 per 100,000 people -- to the U. S. population to get an estimated 21,000 annual infections. According to the Council for Agricultural Science and Technology (CAST) 1994 report, other studies found infection rates as low as 3 per 100,000. If the two estimated infection rates represent lower and upper bounds, then 7,668 to 20,448 cases of *E. coli* O157:H7 illness occur per year ($0.00003 \times 260,000,000$ to $0.00008 \times 260,000,000$).

Todd (1989) included three estimates of the annual number of *E. coli* O157:H7 illnesses. He generated two of the estimates by inflating the annual average number of outbreak cases for the years 1978-1982 with different multipliers; he generated the third estimate by extrapolating from Canadian data. Todd chose the median of the three estimates, 25,000, as the best point estimate of the annual number of illnesses attributable to *E. coli* O157:H7. His chosen estimate of 25,000 equaled the average annual outbreak cases in 1978-1982 -- 30 -- multiplied by the implicit multiplier -- 826 -- linking *Salmonella* cases as estimated in Bennett et al. (1987) to reported outbreak cases. Todd's estimate for the incidence of foodborne *E. coli* O157:H7 assumed that the degree of under-reporting for *E. coli* O157:H7 was identical to the degree of under-reporting implicit in Bennett et al.'s estimated incidence of foodborne *Salmonella*. CAST (1994) reproduced Todd's estimate as the best point estimate of the annual number of cases of illness caused by *E. coli* O157:H7.

C. parvum is also a newly recognized foodborne microbial hazard. Although human infection with *C. parvum* was first confirmed in 1973, the first confirmed foodborne outbreak occurred in 1993. The distinctive symptoms of cryptosporidiosis -- long-lasting watery diarrhea -- make it likely that outbreaks will be noticed. The most important outbreaks associated with this pathogen have come about as a result of contaminated water. In an outbreak associated with municipal drinking water, over 400,000 people may have become ill (Mac Kenzie et al. 1994). According to a recent study of 199 sites in 23 states, *C. parvum* was present in 11 percent of all groundwater (Hancock, Rose, and Callahan 1997). The groundwater tested and found positive came from vertical wells (5 percent positive), springs (20 percent positive), infiltration galleries (50 percent positive), and horizontal wells (45 percent positive).

If the contaminated water comes into contact (directly, or indirectly through an animal carrier) with the fruit or juice and is not pasteurized, illness will likely occur. The cider-related outbreaks caused by *C. parvum* demonstrate that this event has occurred (see table 4). The CDC attributed the cider-related 1996 outbreak to the use of contaminated well-water to rinse the apples used to make cider.

C. parvum has emerged too recently for there to be estimates of its foodborne incidence. Moreover, producing estimates of the incidence of foodborne cryptosporidiosis is complicated by the difficulty of distinguishing foodborne from other sources of *C. parvum*. For example, the 1993 waterborne outbreak may have included some cases associated with juice drinks made with contaminated water (see table 4). Several products made with municipal water were recalled, but the far greater direct contact with contaminated water made it impossible to determine how many illnesses were associated with juice drinks. Person-to-person transmission of *C. parvum* may also make estimating its foodborne incidence difficult. In the 1993 outbreak associated with apple cider contaminated with *C. parvum*, the 160 primary cases caused by cider consumption led to 53 secondary cases caused by person-to-person contact (Millard et al. 1994).

The symptoms of *B. cereus* food poisoning are short-lived (see below). For this reason, the illness may be the most under-reported of those that we have identified as juice-related microbial pathogens. The potential for a large degree of underreporting leads to more uncertainty in the estimated *B. cereus* incidence than for any other of the pathogens we associated with juices. The experts in Bennett et al. (1987) put the number of illnesses at 5,000 per year. Todd (1989) used two *Salmonella* multipliers -- 350 (his own) and 826 (from Bennett et al. 1987) -- to inflate the 142 annual average *B. cereus* cases from the 1978-1982 CDC outbreak reports; the resulting estimates equaled 49,700 (350×142) and 117,416 (826×142). Todd's best point estimate, 84,000 annual cases, was approximately midway between the two estimates generated by the multipliers. The CAST (1994) report included both 5,000 and 84,000 as estimated annual incidences of *B. cereus* food poisoning.

3. Estimates of the Number of Illness from Consuming Juices

In order to estimate the number of illness from the consumption of juices, we used estimates of the frequency of reported juice-related illnesses in the years 1993 to 1996. We assumed that estimated frequencies of illnesses in recent years constituted the best estimates of the current frequency of illnesses. To generate the estimated frequencies, we found it necessary to make several assumptions that were not based on evidence. For that reason, the estimated numbers of illnesses must be regarded as highly uncertain. As more data and better models become available, we expect these estimates to change.

As table 4 shows, 447 confirmed illnesses of widely varying severities -- an annual average of 112 -- can be associated with juices in 1993-1996. The 112 illnesses included annual averages of 16 *Salmonella*, 22 *E. coli* O157: H7, 48 *C. parvum*, 21 *B. cereus*, and 6 cases with unknown pathogens per year. We used these averages as our lower-bound estimated annual number of illnesses associated with juices. Generating upper-bound estimates proved more difficult. We believe that the laboratory-confirmed cases from outbreaks and recalls understate the actual number of juice-related cases, but no consensus exists on the

size of the understatement. Estimating the total number of illnesses associated with juices therefore required going well beyond the data. We estimated the total number of juice-related illnesses by multiplying the average number of 1993-1996 reported cases by factors that account for under-reporting. Because the under-reporting probably differs by pathogen, the multipliers differed for the four pathogens.

The multipliers (20 to 100) cited above for the annual number of illnesses caused by *Salmonella* apply to the annual number of laboratory-confirmed cases recorded by the CDC surveillance system. Because the confirmed cases of juice-related illnesses in table 4 came from outbreak and recall data, we could not use multipliers based on the surveillance numbers. Instead, we chose multipliers appropriate for outbreak cases. The state data and recall data (see table 4) came from events like CDC outbreaks -- not from passive surveillance.

The decision to use multipliers appropriate to outbreaks proved straightforward, but the selection of specific multipliers posed problems. Neither Todd (1989) nor Bennett et al. (1987) used explicit multipliers for *Salmonella*. Bennett et al. made no explicit connection between outbreak cases and total cases, but it is possible to compute an implicit multiplier by dividing their estimated total cases by outbreak cases of *Salmonella*. Todd used Bennett et al.'s implicit *Salmonella* multiplier for *E. coli* O157:H7 and as part of the estimates for *B. cereus* and *Salmonella* itself. The multipliers used by Todd, however, applied to outbreak cases from 1978-82, and -- if applied to the more recent outbreak data -- would not generate the same estimated numbers of illnesses. For that reason, we computed new multipliers based on more recent outbreak data.

CAST (1994) described the estimates of foodborne illnesses from Bennett et al. (1987) and Todd (1989) as "not at the high or low ends of the ranges and generally are considered by CAST task force members to be estimates based on defensible assumptions." Because both Todd and Bennett were members of the CAST task force, we assumed that they both continued to accept their earlier estimates of incidence. The

CAST report contained five estimates of foodborne illnesses caused by the pathogens we identified as the hazards associated with juices -- two estimates each for *Salmonella* and *B. cereus*, one estimate for *E. coli* O157:H7. The report contained no estimates of the number of illnesses caused by *C. parvum*, which was only recognized as a foodborne hazard in 1993. The most recent CDC foodborne outbreak data in the CAST report (based on Bean et al. 1990) covered the years 1983-1987. We therefore computed implicit multipliers based, when possible, on the ratios of Todd's or Bennett et al.'s estimated cases to average annual outbreak cases for 1983-1987. The implicit multipliers for each pathogen equaled the estimated annual number of total foodborne cases divided by the annual number of outbreak cases in 1983-1987. The main disadvantage of this procedure was that the base years for reported cases were a decade old. Another disadvantage, the absence of estimated cases of foodborne *C. parvum*, forced us to use a default multiplier for that pathogen.

After computing the multipliers from outbreak data and estimated cases of all foodborne illness, we used them to generate upper-bound estimates of the annual amount of juice-borne illness in 1993-1996. We assumed that the relationship between confirmed juice-related outbreak cases and total estimated cases of juice-related microbial illnesses in the years 1993-1996 was identical to the relationship between confirmed foodborne outbreak cases in 1983-1987 and total estimated cases of foodborne microbial illnesses. The assumption, although unlikely to be precisely correct, led to no obvious bias. We then generated upper-bound estimates of the number of cases associated with each of the four pathogens by multiplying the number of reported juice-borne cases by the implicit multipliers. Table 5 shows the results.

The annual average number of outbreak cases caused by *Salmonella* spp. in 1983-1987 was 6,249. With the estimate of total cases based on Bennett et al. (1987), the ratio of total to confirmed outbreak cases of salmonellosis equaled 307 ($1,920,000 \div 6,249$). The implicit multiplier of 307 generated an estimate of 4,900 (16×307) annual cases of juice-borne salmonellosis (table 5, column 3). In the estimate based on Todd (1989) the ratio of

total to confirmed outbreak cases of salmonellosis equaled 474 ($2,960,000 \div 6,249$). The implicit multiplier of 474 generated an estimate of 7,600 (16×474) annual cases of juice-borne salmonellosis (table 5, column 4).

We estimated the number of juice-related illnesses attributable to the other pathogens with the same method used for *Salmonella*. The average annual number of outbreak cases caused by *E. coli* O157: H7 in 1983-1987 was 128. Because Bennett et al. (1987) made no estimates of the illnesses attributable to *E. coli* O157: H7, we used 100 as a default multiplier -- 100 remains the standard multiplier in the literature on under-reporting of microbial illness. The estimated number of *E. coli* O157: H7 illnesses attributable to juices was 2,200 (22×100) (table 5, column 3). In the estimate based on Todd (1989), the ratio of total to confirmed outbreak cases of *E. coli* O157: H7 equaled 195 ($25,000 \div 128$). That multiplier led to an estimated 4,300 (22×195) annual cases of illness attributable to juices (table 5, column 4).

Because we lacked estimates from Bennett et al. (1987) or Todd (1989) of the annual number of illnesses caused by foodborne *C. parvum*, we again used 100 as the default multiplier linking reported outbreak cases to total juice-related cases. The 48 average annual cases of cryptosporidiosis generated an annual juice-related illnesses estimate of 4,800 (table 5, columns 3 and 4).

B. cereus displayed the largest difference in estimated cases. Outbreaks of *B. cereus* illness led to an average of 52 cases per year in 1993-1996. Bennett et al. (1987) estimated the annual number of cases to be 5,000. With a ratio of total to confirmed outbreak cases of 96 ($5,000 \div 52$), the estimated number of juice-related cases would be 2,000 (21×96) (table 5, column 3). In Todd (1989), the estimated *B. cereus* illnesses equaled 84,000. The ratio of this estimated total to confirmed outbreak cases of *B. cereus* was 1,615 ($84,000 \div 52$). This implicit multiplier generated an estimate of 33,900 ($21 \times 1,615$) for annual *B. cereus* cases associated with juices (table 5, column 4).

The large difference between the two estimates of *B. cereus* illnesses came from the extremely large difference in the two multipliers used to link reported and actual cases. The large range of implicit multipliers for *B. cereus* reflects the large uncertainty associated with that illness; the uncertainty exists because the short-lived symptoms cause *B. cereus* illness to seldom be reported.

We applied the default multiplier of 100 to the unknown pathogen, for a total of 600 cases. The sum of the *B. cereus* cases and cases associated with the unknown pathogen represent the total cases of illnesses associated with heat-treated juices. With the *B. cereus* multiplier based on Bennett et al., the total annual estimated illnesses associated with microbial pathogens in heat-treated juices would be 2,600 ($2,000 + 600$). With the multiplier based on Todd, the total would be 34,500 ($33,900 + 600$).

The multipliers we used to estimate total cases based on reported cases embodied much uncertainty. Moreover, multipliers derived from estimates of all foodborne illnesses may not be applicable to the sub-category of juice-borne illnesses. It is also likely that for a sub-category such as fruit and vegetable juices, the multipliers vary greatly from year to year. We regard these multipliers and the resulting estimated numbers of illness not as definitive but as a first attempt to link reported and unreported cases of juice-related illness. We look forward to improved multipliers and estimates of unreported cases from the results to be generated by the CDC sentinel site project.

VI. Human Health Effects

The descriptions of illnesses presented below apply to all cases of the illnesses, not to juice-related cases alone. Although the symptoms might differ for juice-related cases, we assume that the differences are not systematic. The evidence regarding frequencies of illnesses of different severity is summarized in table 6. The table is not intended to be comprehensive and is not specific to juices; the frequencies and patient outcomes will

differ for different doses and serotypes of pathogens. The microbial pathogens that have been associated with outbreaks all lead to gastrointestinal symptoms of varying severity and duration. The outbreak cases listed in table 4 may not have had the same distribution by severity of illness as described in table 6, because reported cases tend to be more severe than unreported cases. Persons suffering from mild gastrointestinal symptoms seldom seek medical care and do not show up in the disease data bases.

The symptoms accompanying *E. coli* O157: H7 illness include diarrhea, bloody stools, abdominal pain, and cramping. In about one-half of all cases, vomiting will occur; something less than one-third of all victims will suffer fever. Mild cases, which are characterized by diarrhea, abdominal pain, and nausea, account for about one-half of the total (CAST 1994). Mild cases last less than four days; victims do not consult physicians (Buzby et al. 1996). In moderate cases, which account for 32 percent of the total, muscle pain and dehydration can occur in addition to the gastrointestinal symptoms. Moderate cases last 4 or more days and involve at least one visit to a physician. Severe cases, which require hospitalization, account for 18 percent of the total. The probability of a severe case of the illness is much greater for the immunocompromised than for the immunocompetent. It is also typically the immunocompromised who develop the long-term and more serious health consequences associated with this pathogen. Those consequences can include hemolytic uremic syndrome (HUS), thrombotic thrombocytopenic purpura (TTP), or death (Griffin 1995). Children and the elderly are at greater risk of developing hemolytic uremic syndrome (CAST 1994). About one-half of fatalities attributed to *E. coli* O157: H7 are caused by hemolytic uremic syndrome; the other half are caused by hemorrhagic colitis. Estimated fatality rates range from 1 to 2.5 percent (Griffin 1995; CAST 1994; Buzby et al. 1996).

Reported outbreak cases provide direct evidence on the human health effects of *E. coli* O157:H7. The 19 *E. coli* O157:H7 outbreaks that occurred between February 1982 and March 1993 resulted in 1,557 confirmed cases of illness. Of those cases, 23 percent required hospitalization and 6 percent developed hemolytic uremic syndrome. 19 people -

- 1.2 percent of the total -- died (Griffin 1995; Boyce, Swerdlow, and Griffin 1995). Because outbreak cases tend to be of greater than average severity, these percentages probably overstate the frequency of severe outcomes for all cases. The percentages of juice-related cases leading to hospitalization and hemolytic uremic syndrome, however, exceeded the percentages for all 19 outbreaks (see table 4).

Symptoms of salmonellosis vary by serotype and by the immune status of the victim. Diarrhea, nausea, vomiting, fever, and headache lasting anywhere from a day to a week characterize a typical case of salmonellosis. A mild case might last two days, whereas a moderate case could last a week or more. Severe cases, which can last up to three weeks, usually require hospitalization. Reactive arthritis and Reiter's syndrome are potential long-term consequences. The estimated distribution of cases between mild, moderate, and severe depends on dose and on the population at risk. At doses that have been associated with past outbreaks, mild cases are estimated to account for about 60 to 70 percent, moderate cases for 20 to 30 percent, and severe cases 5 to 15 percent of all cases (Mauskopf et al. 1988; Martin et al. 1993). Fatal cases account for less than 0.1 percent of the total (CAST 1994).

Salmonella typhi leads to a severe illness characterized by fever, headache, coughing, nausea, vomiting, diarrhea, dehydration, rash, weakness, and malaise. The illness may last several weeks and usually requires hospitalization. The case fatality rate is 6 percent (CAST 1994).

C. parvum causes watery diarrhea, nausea, vomiting, abdominal pain, and cramping. Cryptosporidiosis lasts from one to several weeks. In a study of the 1993 Greater Milwaukee outbreak, CDC used the following severity classifications: a mild case meant that the patient did not seek health care; a moderate case meant at least one physician visit or emergency room visit but no hospitalization; a severe case required hospitalization. For the Greater Milwaukee outbreak associated with drinking water, the distribution of severity was 90 percent mild, 9 percent moderate, and 1 percent severe (Haddix 1997).

Cryptosporidiosis can also lead to certain chronic health problems, including cholecystitis, hepatitis, and pancreatitis. For some immunocompromised people, such as AIDS victims, cryptosporidiosis can be progressive and possibly fatal.

B. cereus food poisoning has been associated with diarrhea and abdominal cramping. The illness caused by the *B. cereus* diarrhea toxin usually lasts less than one day, and victims seldom seek medical care. The illness caused by the *B. cereus* emetic toxin lasts longer and can lead to vomiting, but has mainly been associated with rice and other starchy foods.

VII. Not Heat-Treatable Hazards

The microbial pathogens do not exhaust the potential human hazards associated with fruit and vegetable juices. The other hazards, mostly not heat-treatable, include various materials that can be inadvertently introduced into the product, such as chemical contaminants and metallic substances. Outbreaks and product recalls (see table 7) provide the main evidence that these hazards may be present in juice and juice drinks. Product recalls have been issued because of the presence of lead, tin, copper, sulfites, sodium hydroxide, unlabeled yellow dye #5, natamycin, salt, milk, glass, and plastic. The presence of pesticides, tin, fluoride, viruses, toxic seed material from guanabana fruit, and the poisonous parts of the elderberry plant have caused outbreaks.

These hazards are diverse in their health consequences (all information on health effects in this section comes from the U. S. Food and Drug Administration's (1997b) Health Hazards Evaluation Board Report). Lead "represents a long-term, chronic hazard of negative consequences on neurological-behavioral and cognitive development." There may also be acute symptoms if the dose is high enough. For tin in fruit drinks, the hazards are gastrointestinal: vomiting and acute gastric disturbance. The small amounts of copper that have been found in juices have led to nausea and vomiting. Higher concentrations of copper are more toxic, but have not occurred in juices or juice drinks.

The chemical contaminants that have been found in juices include sulfites, sodium hydroxide, and undeclared dyes. Sulfite-sensitive people can experience symptoms ranging from moderate-acute sensitivity reaction to anaphylactic-like shock. Victims described the health effect from sodium hydroxide in citrus punch as oral burning or irritation of the lips if in contact with the bottle neck. Multiple fruit drink products for 10 companies contained undeclared FD&C yellow # 5 (a potential allergen), which is considered a limited-acute to moderate-acute health hazard.

Other contaminants posing health hazards include glass, plastic, salt, and milk. Undeclared salt could be a health hazard to people with hypertension, heart failure, and some types of renal disease. Undeclared milk is a hazard to people with lactose intolerance or protein allergy (or intolerance). Glass particles are a danger to the mouth, throat, and gut, but the risk is small. For plastic, aspiration is the potential hazard. The people who swallowed the plastic complained of choking.

Pesticides pose many potential human health hazards. Although pesticides can be toxic in high enough doses, the residues likely to be found in fruit juices are too small to pose an acute hazard. The more likely hazards result from chronic exposure to small pesticide residues. Those residues, if consumed for many years, may be large enough to lead to chronic health problems such as cancer. The likelihood of chronic health hazards from pesticide residues in juices depends on the likelihood of long-term consumption of the contaminated product. If an excessive residue occurred rarely, the likelihood of chronic health effects would be negligible. If an excessive residue occurred as a result of normal processing practice (such as might occur with the improper use of an anti-microbial) and was likely to recur, then there would be potential chronic health effects for some consumers.

The probability that juices or juice products will contain pesticide residues depends on the amounts used on the raw product, the amounts present in the soil, and the effect of

processing on pesticide residues. The levels of pesticide residues found in raw fruits have generally been well below established safety levels. In fiscal year 1994, for example, less than one percent of the fruits sampled in the FDA's pesticide monitoring program had violative residues (Food and Drug Administration 1995). Processing probably reduces residues further. For example, 98 percent of benomyl residue is removed from oranges and 71 percent is removed from apples during processing into juice (Elkins 1989). The combined effects of low residues on raw fruits and vegetables and of further reductions during processing account for the virtually absence of violative residues in fruit juices.

From fiscal year 1991 through fiscal year 1997, the FDA tested 1,196 domestic and imported fruit and vegetable juice samples; the samples came from both surveillance and compliance programs. Of the 1,196 samples, three contained violative residues of acephate. Other violative residues (class 2 -- not in compliance but not of regulatory concern) found between fiscal 1991 and fiscal 1997 included traces of acephate in one sample of watermelon juice concentrate, traces of chlorpyrifos in one sample of grape juice, and traces of methamidophos in two samples strawberry-nectarine juice and one sample of apple juice concentrate. Of the eight samples not in compliance, only three were of regulatory concern.

To estimate the potential number of excess cancers from violative acephate residues, we will assume that the samples analyzed between fiscal year 1991 and fiscal year 1997 were representative of all juices. The levels of acephate in the three violative juice samples were 0.075, 0.052, and 0.040 ppm, for an mean residue equal to 0.056 ppm (mg/liter). The fraction of samples containing measurable residues was approximately 0.0025 ($3 \div 1196$). The average residue in all juices (both violative and non-violative) would equal 0.00014 mg/liter (0.056×0.0025). With annual juice consumption equal to 34 liters, daily juice consumption would be 0.093 liters/day (34 liters/year \div 365 days/year). The mean daily intake of acephate residues in juice would equal 1.3×10^{-5} mg/day ($0.00014 \text{ mg/liter} \times 0.093 \text{ liters}$). The daily intake per kilogram of body weight for a 60 kg person would be 2.2×10^{-7} mg/kg-bw/day ($1.3 \times 10^{-5} \text{ mg/day} \div 60 \text{ kg-bw}$). The U. S. Environmental

Protection Agency has estimated the cancer potency of acephate to be $0.0087 \text{ (mg/kg-bw/day)}^{-1}$. The lifetime probability of cancer would be the product of potency and exposure, or 1.9×10^{-9} ($0.00000022 \text{ mg/kg-bw/day} \times 0.0087 \text{ (mg/kg-bw/day)}^{-1}$). For a population of 260 million, the result would be about 0.5 additional cancers.

Other contaminants found in fruit and vegetable juices include suspected viral contamination, natural toxins (patulin), and mold. In one juice-related outbreak of gastrointestinal illness, the symptoms included abdominal pain, nausea, and vomiting and were characterized by abrupt onset and short duration. In another outbreak, the symptoms developed within 48 hours of drinking juice and included cramping, vomiting, diarrhea, and low-grade fever. Viral contaminants were suspected in both outbreaks, but not found. The nausea and vomiting suspected to have resulted from toxic seed material in guanabana juice began within one hour of consumption. Parts of the elderberry plant contain an alkaloid and glucose that under certain conditions can produce hydrocyanic acid. Juice made from elderberry caused gastrointestinal and neurological symptoms.

Assessing most of the hazards described in this section will not go beyond hazard identification. These hazards are irregular and unpredictable, with mostly mild outcomes. The potential adverse health effects associated with some of the hazards, such as pesticides, are great and may require monitoring by processors. Nonetheless, we found little epidemiological and product sampling evidence that juices have been contaminated with these hazards at levels sufficient to cause serious illness.

VIII. Summary

Several different questions about the morbidity and mortality associated with the consumption of fruit and vegetable juices have been shown to be potentially important. These questions include:

- What are the health hazards associated with juice consumption?
- Which processing steps are most frequently associated with the introduction of these hazards?
- What kinds of juices are most likely to contain these hazards?

The Center for Food Safety and Applied Nutrition working group has gathered and considered information and data related to these questions and will address what is known and what is not known concerning the answers to all three questions.

What are the health hazards associated with juice consumption?

The main health hazards associated with juices appear to be illnesses caused by microbial pathogens. Although other hazards -- such as pesticide residues -- are potentially serious, the estimated risks are small and no human data indicates that their presence in juices has caused serious illnesses. By contrast, we do have some human health data on illnesses and deaths resulting from consumption of juice contaminated with microbial pathogens. From 1993 through 1996, juices accounted for 447 confirmed illnesses caused by microbial pathogens, with symptoms that ranged from mild discomfort to one death (see tables 4, 5 and 6). The pathogens included *Salmonella*, *E. coli* O157:H7, *B. cereus*, *C. parvum*, and an unknown microbial pathogen. It is likely that the 447 reported cases represented a very small fraction of the total cases that occurred, because in most instances victims either do not seek medical treatment, or -- when they do -- their illnesses are not diagnosed, misdiagnosed, not reported, or fail to be associated with their consumption of juice.

Which processing steps are most frequently associated with the introduction of these hazards? We found little data available to answer this question. Farms and orchards appear to account for most primary sources of contamination; in fact, many pathogens, such as *E. coli* O157: H7, appear to be common in the rural environment, and therefore some of the raw product will be contaminated. Although little evidence has been accumulated to indicate where and how pathogens are most likely to be introduced, the following possible causes of contamination (which occur during the growing and

harvesting steps) have been suggested: use of dropped fruit, proximity of livestock or wild animals, contaminated ground water, and contaminated humans.

Washing the exterior of the fruits effectively removes the contamination only if the washing is sufficiently thorough and the product interior has not become contaminated. If heat processing (or some similar effective step) is carried out properly, little risk from pathogens should remain in the finished juice product (with the exception of the *B. cereus* toxin, which can survive ordinary juice pasteurization times and temperatures). In the past, acidity and water activity prevented the survival of microbial pathogens in non-heat-treated juice. In recent years, new microbial strains have emerged that have demonstrated their ability to survive in at least some relatively acidic juices.

What kinds of juices are most likely to contain these hazards? This question can be answered at least qualitatively. Non-heat-treated juices accounted for 339 (76 percent) of the 447 cases reported in 1993-1996, while accounting for slightly more than one percent of juice consumption. In addition, the illnesses associated with non-heat-treated juices tended to be more severe than those associated with heat-treated juices (see table 6). We therefore conclude that non-heat-treated juices are much more hazardous than heat-treated juices.

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Table 1. Consumption and Imports: 1995

Juice	Consumption (gallons per person)	Total Consumption (millions of gallons)	Total Consumption (millions of liters)	Imports (millions of liters)	Import Share (percent of total)
Orange	5.45	1417.0	5363.3	829.1	15.5
Grapefruit	0.64	166.4	629.8	3.3	0.5
Lemon	0.12	31.2	118.1	33.6	28.5
Lime	0.02	5.2	19.7	n.e.s.	n.e.s.
Apple	1.79	465.4	1761.5	874.3	49.6
Grape	0.29	75.4	285.4	90.7	31.8
Pineapple	0.35	91.0	344.4	308.7	89.6
Prune	0.04	10.4	39.4	n.e.s.	n.e.s.
Tomato (vegetable)	0.30	78.0	295.2	1.3	0.4
Other	n.a.	n.a.	n.a.	159.4	n.a.
Total juice	9.00	2340.0	8856.8	2300.4	26.0

Sources: Putnam and Alehouse 1997; *The Almanac of the Canning, Freezing, Preserving Industries* 1996.

Table 2. Beverage Consumption by Type

Product	Annual Consumption (gallons per person)	Total Consumption (billions of gallons)	Total Consumption (billions of servings)
Major Beverages	158.3	41.2	659
Carbonated Soft Drinks	51.2	13.3	213
Milk	24.4	6.3	101
Alcoholic Beverages	25.1	6.5	104
Coffee	20.5	5.3	85
Bottled Water	11.6	3.0	48
Tea	8.7	2.3	36
All Juice Drinks	7.8	2.0	32
Fruit and Vegetable Juices	9.0	2.3	37
All Orange Juice	5.5	1.4	23
Non-Heat-Treated Orange Juice	0.05	0.012	0.187
All Apple Juice	1.8	0.5	7
Non-Heat-Treated Apple Juice	0.10	0.026	0.416

Sources: Putnam and Alehouse 1997; *The Almanac of the Canning, Freezing, Preserving Industries* 1996; U. S. Apple Association 1997a; Nielsen SCANTRACK.

Table 3. Production

Step 1. Growing	Step 2. Harvesting	Step 3. Washing and Culling
	A. Hand	Quality of fruit
	B. Mechanical - quicker and more economical.	A. Damage by harvesting a potential problem.
		B. Fruits and vegetables inspected to eliminate products with insect damage, mold, off-color, rot, etc. Only good quality fruits used for juices.
		C. Fruits and vegetables brushed and cleaned with detergent and chlorinated water.

Step 4. Extraction	Step 4. Extraction, continued	Step 4. Extraction, continued	Step 5. Pressing
A. Milling	5. Citrus mill	B. Enzymes - used to break down mash to simpler substances - increases juice yield. Some enzyme products can almost liquefy mash.	Press types
1. Hammer mill.	a. FMC juice extractor - a serrated cup positions fruit, a round steel tube is inserted into fruit. Pressure is applied to fruit, forcing its contents out through inserted tube.	1. Pectinase. 2. Cellulose and hemicellulase.	A. Rack and frame. B. Bladder press - press aid may be used. C. Screw press - continuous operation - press aid used - operating cost low. D. Counter current extractor - removes juice by leaching - requires firm fruit - time required to start up and shut down means machine should be run for several weeks - press aid used. E. Horizontal basket press (Bucher press) - press aid used. F. Belt press - press aid used. G. Decanter centrifuge - use centrifugal force to separate the solids from juice.
2. Grinder mill - rotating head which forces fruit over a set of fixed knives.	b. Brown extractor - juice is obtained by cutting fruit in half, with halves given pressure over reamers. The juice is transferred in one direction and hulls in the other direction.	C. Press aids - improves pressing of fruits - adds bulk. 1. Wood fibers. 2. Paper. 3. Rice hulls.	
3. Stoned fruit mill-crushes fruit without damaging stones.		D. Leaching - the addition of water or low Brix juice - lower quality juice and additional water to eliminate.	
4. Grape mill (de-stalker)	6. Mash transport - pipe using pumps to move mash.		

Step 6. Clarification and Filtration	Step 7. Juice De-aeration	Step 8. Heat Treatments	Step 9. Concentration
A. Screening.	Some juices, such as orange, trap air and are de-aerated by being sprayed into vacuum de-aerator. This process reduces vitamin C destruction and other changes due to oxygen.	A. Juices are heated to decrease microbial growth and to inactivate natural enzymes.	Juices are low in solids, so it is common to concentrate many of them.
B. Pectinase - used to reduce viscosity and clarify juice.		B. Sugar solutions (frozen fruit) reduce dissolved oxygen.	A. Evaporation - water is removed by boiling.
C. Gelatins - used to remove tannins or proteins.		C. Lemon juice, ascorbic acid, sulfur dioxide, sulfites, other chemical agents can be used.	An evaporation plant consist of: 1. an evaporator, where the juice evaporates by using the heat provided (usually steam). 2. a separator, where the concentrate is separated from the vapors, and 3. a condenser, where the vapors are condensed.
D. Bentonite - used to remove excess proteins.			B. Reverse Osmosis - the suspended solids are removed by centrifugation or ultra-filtration and the clear serum is concentrated by reverse osmosis.
E. Filtration 1. Diatomaceous earth filtration 2. Plate and frame press 3. Horizontal filter 4. Vacuum filters 5. Cartridge filters			C. Freeze concentration - high quality juice concentrations can be made. Concentrate to maximum Brix 50°; operation has high capital and operating costs.
F. Ultra-filtration.			
G. Micro-filtration.			

Step 10. Preservation	Step 11. Juice from Concentrate	Step 12. Packaging
A. Refrigeration (0-2.2°C)	Concentrate is pumped into blending tank where treated water, essence (and oil in the case of citrus fruit) and probably pulp is added. This reconstituted juice is pasteurized, chilled, packaged and shipped.	A. Hermetically (air and moisture sealed): 1. Glass 2. Cans 3. Aseptic packaging into: tetra Pak, Combibloc, PurePak, Elopak, etc.
B. Freezing		B. Not hermetically sealed 1. Polyethylene (PET) plastic bottles (sizes fl oz: 4, 8, 16, 32, 64, 128) 2. Polyvinyl chloride (PVC) bottles 3. Plastic bags in fiberboard boxes (4-5 gal) 4. composite paperboard cartons
C. Pasteurization		
D. Chemical treatment Benzoic acid, sulfur dioxide		
E. Membrane filtration		
F. Drying		
G. Other potential treatments 1. Irradiation 2. Ultraviolet light sterilization 3. High-intensity pulse-light pasteurization 4. Electric pulse and poration 5. Microwave pasteurization 6. Surface pasteurization 7. High-pressure pasteurization		

Table 4. Heat-Treatable Microbial Hazards

Evidence from outbreaks

Year	Juice	Hazard	Cases	Cause	Source
1975	Apple cider	<i>Salmonella typhimurium</i>	296	Drop apples; orchard fertilized with cow manure; unpasteurized Home-made	CDC 1975
1976	Tomato juice	<i>Clostridium botulinum</i>	1		CDC Foodborne Outbreak Surveillance System
1979	Tomato juice	<i>C. botulinum</i>	1	Home-made	CDC Foodborne Outbreak Surveillance System
1981	Tomato juice	<i>C. botulinum</i>	1	Home-made	CDC Foodborne Outbreak Surveillance System
1983	Tomato juice	<i>C. botulinum</i>	1	Home-made	CDC Foodborne Outbreak Surveillance System
1991	Apple cider	<i>Escherichia coli</i> O157:H7	23; 6 hospitalized; 4 HUS	Drop apples; unpasteurized	Besser et al. 1993
1991	Coconut milk	<i>Vibrio cholerae</i> O1	4 (6 consumed product)	Heavy contamination during manufacturing in Thailand; unpasteurized	Taylor et al. 1993
1993	Apple cider	<i>Cryptosporidium parvum</i>	160	Apples contaminated with calf feces; unpasteurized	Millard et al. 1994

Year	Juice	Hazard	Cases	Cause	Source
1995	Orange juice	<i>Salmonella</i> Hartford, Gaminara, Rubinslaw	62	Inadequate sanitation and cleaning; unpasteurized	Cook et al. 1996
1996	Apple juice	<i>E. coli</i> O157: H7	66; 14 HUS; 1 death	Unpasteurized	CDC 1996b
1996	Apple cider	<i>E. coli</i> O157: H7	14; 7 hospitalized; 3 HUS	Drop apples; unpasteurized	CDC 1997
1996	Apple cider	<i>E. coli</i> O157: H7	6	Apple cider made at church event	Griffin 1996
1996	Apple cider	<i>C. parvum</i>	31	Unpasteurized; well water used for rinsing contained coliforms	CDC 1997

Evidence from recalls

Year	Juice	Hazard	Cases	Cause	Source
1992	Orange Julius drink	<i>Salmonella agona</i>	25	Orange Julius compound contaminated with <i>Salmonella</i> spp.	FDA recall data
1993	Flavored drinks	<i>C. parvum</i>	Cannot be separated from water-borne cases	From contaminated city water supply	FDA recall data
1994	Orange juice	<i>Bacillus cereus</i> ; yeast	85 cases	Fermented; juice left at room temperature	FDA recall data

Evidence from state investigations

Year	Juice	Hazard	Cases	Cause	Source
1989	Orange juice	<i>Salmonella typhi</i>	69; 21 hospitalized	Infected worker	Personal communication with Mike Cambridge, New York State Health Dept., January 22, 1997
1993	Carrot juice	<i>C. botulinum</i>	1 hospitalized	Home-made	Personal communication with Patty Walker, Washington State Health Dept., January 15, 1997
1993	Orange juice	Yeast or unknown toxicant	23; 1 person saw physician	Improper storage time and container	Personal communication with Sharon Karam, Ohio State Health Dept., January 21, 1997
1993	Watermelon drink	<i>Salmonella</i> spp.	18	Home-made	Personal communication with Roberta Hammond, Florida State Health Dept., January 21, 1997
1996	Apple cider	<i>E. coli</i> O157:H7 (suspected)	1	Cow manure on clothes of farmer making cider	Personal communication with Marshall Deasy, Pennsylvania State Health Dept., January 15, 1997

Table 5. The Annual Number of Illnesses Associated with Juice Consumption

(1) Pathogen	(2) Lower Bound	(3) Upper-Bound Estimate I	(4) Upper-Bound Estimate II
a. Non-Heat-Treated			
<i>Salmonella</i>	16	4900	7600
<i>E. coli</i> O157: H7	22	2200	4300
<i>C. parvum</i>	48	4800	4800
b. Heat-Treated			
<i>B. cereus</i>	21	2000	33900
Unknown	6	600	600

Notes to Table 5:

Column (1). We classified the pathogens associated with illness according to whether or not the juice vehicle was heat-treated. The illnesses caused by the pathogens listed under the non-heat-treated heading (part (a)) all were associated with the consumption of non-pasteurized juices. The illnesses listed under the heat-treated heading (part (b)) all were associated with the consumption of pasteurized juices.

Column (2). The lower-bound numbers are the annual average confirmed illnesses for 1993-1996 from CDC outbreaks, state outbreak investigations, and FDA recall data.

Column (3). The estimated number of cases is based on Bennett et al. (1987) and CAST (1994). To get these numbers, we multiplied the confirmed cases from column (2) by 307 for *Salmonella*, 100 for *E. coli* O157: H7, 100 for *C. parvum*, 96 for *B. cereus*, and 100 for the unknown pathogen.

Column (4). The estimated number of cases is based on Todd (1989) and CAST (1994). To get these numbers, we multiplied the actual cases from column (2) by 474 for *Salmonella*, 195 for *E. coli* O157: H7, 100 for *C. parvum*, 1,615 for *B. cereus*, and 100 for the unknown pathogen.

Table 6. Human Health Effects

Hazard	Distribution of cases by severity (percent)	Characteristics of mild case	Characteristics of moderate case	Characteristics of severe case
<i>Escherichia coli</i> O157:H7	Mild: 50 Moderate: 27-32 Severe: 18-23	Nausea, cramping, or diarrhea; lasts less than 4 days	Nausea, cramping, or diarrhea, possible headache, muscle pain, fever, abdominal pain, dehydration; lasts 4 days or more	Hospitalization; some cases develop HUS or TTP; case fatality rate = 1-2.5 percent; 1.2 percent of outbreak cases have been fatal; HUS and hemorrhagic colitis each account for half of fatalities
<i>Salmonella</i> (non typhi)	Mild: 60-70 Moderate: 20-30 Severe: 5-15	Diarrhea, nausea, vomiting, abdominal cramping, lasts 1-2 days	Same as mild, but lasting up to one week	Headache, possible fever, hospitalization; case fatality rate = 0.1 percent of all cases
<i>Cryptosporidium parvum</i>	Mild: 90 Moderate: 9 Severe: 1	Watery diarrhea, lasting one day to several weeks, abdominal cramping, nausea	Same as mild, but lasting longer	Hospitalization
<i>Bacillus cereus</i>	Mild: most cases Moderate: rare	Diarrhea, abdominal cramping	Same as mild, with vomiting	

Sources: Council for Agricultural Science and Technology 1994; Griffin 1995; Mauskopf et al. 1988; Martin et al. 1993; Haddix 1997; U. S. Food and Drug Administration 1997.

Table 7. Not Heat-Treatable Hazards

Evidence from outbreaks

Year	Product	Hazard	Cases	Cause	Source
1967	Orange juice	Virus (unidentified; other contaminants possible)	5200 (estimated)	Contaminated water added to orange juice concentrate	Schmelzer et al. 1967; Tabershaw et al. 1967
1969	Canned tomato juice	Tin	113	Nitrate in soil incorporated in tomato and corroded cans	Barker and Runte 1972
1984	Elderberry juice	Poisonous parts of plant	11		CDC 1984
Evidence from state investigations					
1989	Orange juice	Virus		Ill food handlers	Personal communication with Pam Shillam, Colorado State Health dept., January 17, 1997
1990	Guanabana juice	Toxic seed material	9		Personal communication with Dr. Hendricks, Texas State Health Dept., January 16, 1997

Evidence from recalls

Year	Product	Hazard	Cases	Cause	Source
1988	Fruit punch drink	Tin	2	Acidity of punch reacted with tin coating of cans (used wrong cans for packaging juice drink)	FDA recall data
1990-1991	Fruit juice and fruit drinks	Natamycin		Added as a preservative	FDA recall data
1991	Fruit drink	Sulfites		Inadvertently added	FDA recall data
1991	Fruit Punch	Glass		Packed in glass bottles	FDA recall data
1991-1992	Fruit drinks	Sodium hydroxide	3; 1 hospitalized (in 1992)	Sanitizing agent got into product containers during cleaning	FDA recall data
1990s	Fruit drinks	FD&C yellow #5 dye		Undeclared dye	FDA recall data
1992	Fruit juices	Lead	1	Leached from can seams by low pH	FDA recall data
1993	Orange juice	Milk		Filler lines not cleaned between milk and juice production	FDA recall data
1993	Orange flavored soft drink (with pear juice)	Copper	2	Cracks in heat exchanger allowed product to come in contact with copper pipe fitting	FDA recall data
1994	Fruit flavored juice beverage	Glass		Unknown	FDA recall data

Year	Product	Hazard	Cases	Cause	Source
1994	Lemon juice and grape juice	Sulfites		Added	FDA recall data
1995	Tomato juice	Salt	1	Undeclared	FDA recall data
1996	Apple-prune juice and prune juice	Lead	No illness; chronic hazard	Contaminated imported prune juice; possibly came in large drum	FDA recall data
1996	Fruit drink	Plastic	3 (complained of choking)	Plastic bags draped over side of bottle loading bin	FDA recall data
1997	Orange juice	Glass		Packed in glass bottles	FDA recall data
1997	Pineapple juice	Tin		Undeclared	FDA recall data

Evidence from FDA investigations

Year	Product	Hazard	Cases	Cause	Source
1997	Apple juice concentrate	Patulin		Undeclared	FDA analysis

federal register

Friday
May 1, 1998

Part V

Federal Retirement Thrift Investment Board

5 CFR Part 1605
Correction of Administrative Errors; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1605

Correction of Administrative Errors

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a final rule adopting as final without change the revision of the Board's regulations concerning correction of administrative errors affecting Thrift Savings Plan (TSP) accounts. The rule provides for attribution of makeup contributions by a participant to the appropriate prior year in which the contributions should have been made but for the error. Such makeup contributions are permitted only if aggregation with other contributions made in (or with respect to) the appropriate prior year would not result in contributions in excess of the dollar limits under sections 402(g) and 415(c) of the Internal Revenue Code (I.R.C.).

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Woodruff, Associate General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005; (202) 942-1661.

SUPPLEMENTARY INFORMATION: The Board published a final rule governing the correction of administrative errors in the *Federal Register* on December 24, 1996 (61 FR 68464). This rule revises the section of those regulations which limited TSP makeup contributions when a retroactive adjustment to an employee's pay included a correction for the employee's missed TSP contributions during the period of retroactivity. At the time the regulations were issued, the Board interpreted I.R.C. 402(g) (26 U.S.C. 402(g)) and its discussions with the Internal Revenue Service (IRS) as requiring that such makeup contributions always be counted against the IRS deferral limit for the year in which they were actually made, rather than the limit for the year to which they were attributable.

On June 25, 1997, however, the U.S. District Court for the Northern District of New York rejected, in *Kahmann v. Reno*, 967 F. Supp. 731 (N.D.N.Y.), the Government's argument that I.R.C. 402(g) and the Board's derivative regulation prevented an employee from making TSP contributions erroneously denied by her agency in excess of the current year's section 402(g) limit. The

court ordered the Government to permit the employee to make up missed contributions to the TSP applying the relevant prior years' section 402(g) limits.

Accordingly, the Board published an interim regulation in the *Federal Register* on January 29, 1998 (61 FR 58973), calling for prior-year attribution for makeup employee contributions to the TSP, consistent with the district court's holding and reasoning. The Board has received two written comments on the interim rule.

The first commenter, the manager of a payroll office of a component of a Federal agency, suggested that the Board's interim rule was in conflict with IRS regulations. However, the Board also received a written comment from the IRS clarifying the scope of its earlier communications with the Board. Without addressing the *Kahmann* decision, the IRS nevertheless affirmed that the Board's interim regulation was not contrary to the provisions of the I.R.C. applicable to the TSP, in that the tax treatment of the TSP is set forth in I.R.C. 7701(j). Because section 7701(j) does not contain all of the same restrictions as are placed on a qualified cash or deferred arrangement (described in I.R.C. 401(k)), including the I.R.C. 402(g) limit on deferrals, the IRS agreed with the Board that a participant's makeup contributions to the TSP may properly be attributed to the year in which the contributions should have been made. According to the IRS, such makeup contributions to correct a prior year error would therefore not be includible in the TSP participant's current year income, provided that they do not cause the applicable limit (i.e., the limit under section 402(g) for the year to which the contributions are attributable) to be exceeded.

Accordingly, the Board is adopting the provisions of the interim rule as a final rule without change.

Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will only affect TSP participants.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 104-4, 109 Stat. 48, 64, the effect of these regulations on State, local, and

tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64-65, is not required.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), the Board submitted this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before the publication of this rule in today's *Federal Register*. This rule is not a major rule as defined in section 804(2) of title 5, United States Code.

List of Subjects in 5 CFR Part 1605

Administrative practice and procedure, Employee benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,
Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, part 1605 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

1. The authority citation for Part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351 and 8474.

2. Section 1605.2 is amended by revising paragraph (c)(5) to read as follows:

§ 1605.2 Makeup of missed or insufficient contributions.

()*(*)

(c) * * *

(5) When establishing a schedule of makeup contributions, the employing agency must review any schedule proposed by the affected participant, as well as the participant's prior TSP contributions, if any, to determine whether the makeup contributions, when combined with prior contributions, would exceed the annual contribution limit(s) contained in sections 402(g) and 415 of the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415) for the prior year(s) with respect to which the contributions are being made.

(i) The employing agency must not permit contributions that, when combined with prior contributions, would exceed the applicable annual

contribution limit(s) contained in I.R.C. 402(g) and 415.

(ii) A schedule of makeup contributions may be suspended if a participant has insufficient net pay to permit the makeup contributions. If this happens, the period of suspension should not be counted against the maximum number of pay periods to which the participant is entitled in order to complete the schedule of makeup contributions.

()*(*)

3. Section 1605.4 is amended by revising paragraph (c)(1) to read as follows:

§ 1605.4 Back pay awards and other retroactive pay adjustments.

()*(*)

(c)(1) Makeup employee contributions required under paragraphs (a) and (b) of this section must be computed before the back pay or other retroactive pay adjustment is made. The makeup employee contributions must be deducted from the back pay or other retroactive pay adjustment and

contributed to the TSP. However, contributions must not be made that would cause the participant to exceed the annual contribution limit(s) contained in sections 402(g) and 415 of the Internal Revenue Code (I.R.C.) (26 U.S.C. 402(g) and 415) for the prior year(s) with respect to which the contributions are being made, taking into consideration the TSP contributions already made in (or with respect to) that year.

()*(*)

[FR Doc. 98-11603 Filed 4-30-98; 8:45 am]
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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.
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WASHINGTON, DC

WHEN: May 19, 1998 at 9:00 a.m.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202-523-4538

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Presidential Documents

Title 3—

The President

Proclamation 7088 of April 29, 1998

National Day of Prayer, 1998

By the President of the United States of America

A Proclamation

In every era of American history, devout men and women from every nation have come to our shores seeking the freedom to worship according to their own conscience. Recognizing the sacredness of this fundamental human right, our founders wisely guaranteed it in the First Amendment to the Constitution.

Prayer has always been an integral part of American life. In every city, town, and rural community across our country, people of every religious denomination gather to worship according to their faith. In churches, synagogues, temples, and mosques, Americans come together to pray. We pray for the health and happiness of loved ones; for inner peace and peace among nations; and for the wisdom and courage to face the challenges of the new millennium. And always we raise our voices and hearts in prayers of thanksgiving for the blessing of freedom.

Just as Americans rely on prayer for strength and renewal in private life, so do we turn to it at moments of great joy or crisis in our public life as a Nation. Meeting in Philadelphia to make the momentous decisions that would ultimately determine the nature and form of American Government, the Continental Congress began daily deliberations with a prayer for God's blessings and assistance. In his first inaugural address, President George Washington also prayed for guidance from the Almighty as he began the enormous task of leading a new, untried democracy.

In this century, with America in the throes of the Great Depression and a world teetering on the brink of war, President Franklin Delano Roosevelt concluded his first inaugural address with a fervent prayer: "In this dedication of a Nation we humbly ask the blessing of God. May He protect each and every one of us. May He guide me in the days to come." And today, as we look ahead to the promise of a new century, Americans continue to draw strength from the bedrock of faith and religious freedom upon which our democracy rests.

The Congress, by Public Law 100-307, has called on our citizens to reaffirm the role of prayer in our society and to honor the religious diversity our freedom permits by recognizing annually a "National Day of Prayer."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 7, 1998, as a National Day of Prayer. I encourage the citizens of this great Nation to pray, each in his or her own manner, seeking strength from God to face the problems of today, requesting guidance for the uncertainties of tomorrow, and giving thanks for the rich blessings that our country has enjoyed throughout our history.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William Clinton

[FR Doc. 98-11921
Filed 5-1-98; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Executive Order 13081 of April 30, 1998

Amendment to Executive Order No. 13038, Advisory Committee on Public Interest Obligations of Digital Television Broadcasters

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to extend the reporting deadline of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, it is hereby ordered that Executive Order 13038, as amended, is further amended by deleting "June 1, 1998" in section 2 and inserting "October 1, 1998" in lieu thereof.

William Clinton

THE WHITE HOUSE,
April 30, 1998.

[FR Doc. 98-11922
Filed 5-1-98; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register

Vol. 63, No. 85

Monday, May 4, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-175-AD; Amendment 39-10509; AD 98-09-28]

RIN 2120-AA64

Airworthiness Directives; Short Brothers Model SD3-30 and SD3-60 Series Airplanes Equipped With Fire Fighting Enterprises (U.K.) Ltd. Fire Extinguishers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Shorts Model SD3-30 and SD3-60 series airplanes equipped with certain fire extinguishers, that requires replacement of the covers for fire extinguisher adapter assemblies that are installed on certain bulkheads with new covers that swivel to lock the extinguishers in place; and replacement of nozzles and triggers on these fire extinguishers with better fitting nozzles and stronger triggers. It also requires the installation of new fire extinguisher point placards and a revision of the Airplane Flight Manual to instruct the flight crew in the use of the new covers for these adapter assemblies. This amendment is prompted by reports that these fire extinguishers are not discharging properly because they do not fit correctly with the adapter, and that triggers on these extinguishers are failing. The actions specified by this AD are intended to ensure that, in the event of fire in the baggage bay, extinguishing agent is properly distributed within this area, and portable extinguishers operate properly; and to prevent injury to crew and passengers when a portable extinguisher is discharged.

DATES: Effective June 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers (USA), Inc., Civil Technical Operations, P.O. Box 211 (Route 76 East), Bridgeport, West Virginia 26330. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Shorts Model SD3-30 and SD3-60 series airplanes equipped with certain fire extinguishers was published in the *Federal Register* on January 27, 1997 (62 FR 3832). That action proposed to require replacement of the covers for fire extinguisher adapter assemblies that are installed on certain bulkheads with new covers that swivel to lock the extinguishers in place; and replacement of nozzles and triggers on these fire extinguishers with better fitting nozzles and stronger triggers. It also proposed to require the installation of new fire extinguisher point placards and a revision of the Airplane Flight Manual to instruct the flight crew in the use of the new covers for these adapter assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, an organization representing airline pilots, supports the proposed AD; however, it requests that the FAA implement specific training in the use of critical equipment such as fire extinguishers, including the actual equipment used in the aircraft.

The FAA acknowledges the commenter's concern. The FAA has determined that an unsafe condition exists, and that the actions required by this AD are adequate in order to ensure the continued safety of the affected fleet. While there may be merit to the commenter's suggestion, this AD is not the appropriate context in which to evaluate that suggestion. Since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. No change to this final rule is necessary.

The manufacturer of the affected airplanes notes that replacement of the discharge head assembly in accordance with Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26-107, Revision 1, dated November 2, 1992, includes replacement of the trigger as also required by the company's Service Bulletin 26-108, dated September 1992. Both service bulletins are cited as the appropriate sources of service information in paragraph (c) of the proposed AD. The commenter requests that this information be provided in the AD so that operators would not rework the fire extinguisher head per Service Bulletin 26-107 (which would require the installation of a new trigger in accordance with Service Bulletin 26-108), only to discover that both actions could be accomplished by replacing the discharge head.

The FAA concurs that some confusion could result with regard to the current wording contained in paragraph (c)(1) of this final rule. Therefore, the FAA has changed paragraph (c)(1) to read, "Install a chamfered nozzle on the discharge head assembly of each fire extinguisher and add a new trigger by replacing * * *." That change, together with the clarification contained in the service bulletin, should preclude any confusion in that regard.

The same commenter requests that an inspection procedure be provided in order to determine whether the trigger has actually been replaced in accordance with Service Bulletin 26-108. The commenter states that paragraph 3.A.(3)(h) of Service Bulletin 26-107, Revision 1, requires that the fire extinguisher trigger be marked with part number BA22988-3 after rework of the nozzle chamfer. The commenter further

asserts that, since effectivity of Service Bulletin 26-108 does not include discharge head part number BA22988-3, maintenance personnel may assume that, following accomplishment of Service Bulletin 26-107 (and re-marking of the part to BA22988-3), replacement of the trigger in accordance with Service Bulletin 26-108 is not necessary.

The FAA does not concur that an inspection should be added to this AD. Contrary to the commenter's assertion, Service Bulletin 26-107 requires that the reworked discharge head, not the trigger itself, be marked with part number BA22988-3. In any event, the AD requires replacement of the trigger with the stronger trigger, either through accomplishment of Service Bulletin 26-107, Revision 1, or 26-108, regardless of the part number marking on the fire extinguisher discharge head. However, replacement of the trigger is required only if such replacement has not been accomplished prior to the effective date of the AD. Investigation of airplane maintenance records may be necessary to confirm whether the stronger trigger has been installed. If there are no records showing that it has already been installed, the stronger trigger must be installed in accordance with this AD.

The commenter also provided corrected information concerning the address from which the referenced service bulletins may be obtained and the cost of parts needed for compliance. The correct address is shown above under the heading **ADDRESSES**, and the cost impact information presented below reflects the corrected information concerning the cost of parts. The cost impact information also reflects changes that have occurred in the number of affected U.S.-registered airplanes since the notice of proposed rulemaking was published.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 33 Model SD3-30 series airplanes of U.S. registry will be affected by this AD. For these airplanes, it will take approximately 9 work hours per airplane to accomplish the required actions on airplanes with only a forward baggage bay, and 14 work hours per airplane to accomplish

the required actions on airplanes with forward and aft baggage bays. The average labor rate is \$60 per work hour. Required parts will cost approximately \$735 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Model SD3-30 series airplanes is estimated to be between \$42,075 and \$51,975, or between \$1,275 and \$1,575 per airplane.

The FAA estimates that 52 Model SD3-60 series airplanes of U.S. registry will be affected by this AD. For these airplanes, it will take approximately 12 work hours per airplane to accomplish the required actions, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$776 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Model SD3-60 series airplanes is estimated to be \$77,792, or \$1,496 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-09-28 Short Brothers, PLC: Amendment 39-10509. Docket 96-NM-175-AD.

Applicability: Model SD3-30 and SD3-60 series airplanes equipped with fire extinguishers manufactured by Fire Fighting Enterprises (U.K.) Ltd.; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that, in the event of fire, extinguishing agent is properly distributed within the baggage bays and portable extinguishers operate properly; and to prevent injury to crew and passengers, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a new cover on each fire extinguisher adapter assembly on bulkheads between the passenger cabin and aft and/or forward baggage bay, in accordance with Shorts Service Bulletin SD330-26-14, dated September 1994 (for Shorts Model SD3-30 series airplanes), or Shorts Service Bulletin SD360-26-11, dated July 1994 (for Shorts Model SD3-60 series airplanes), as applicable.

(b) Prior to further flight after accomplishing the actions required by paragraph (a) of this AD, accomplish both paragraphs (b)(1) and (b)(2) of this AD:

(1) Install new fire extinguisher point placards, in accordance with Shorts Service Bulletin SD330-26-14, dated September 1994 (for Shorts Model SD3-30 series airplanes), or Shorts Service Bulletin SD360-26-11, dated July 1994 (for Shorts Model SD3-60 series airplanes), as applicable. And

(2) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM), in accordance with Note 1 of Paragraph 1.C. of Shorts Service Bulletin SD330-26-14, dated September 1994 (for Shorts Model SD3-30 series airplanes), or Shorts Service Bulletin SD360-26-11, dated July 1994 (for Shorts Model SD3-60 series airplanes), as applicable.

(c) For airplanes equipped with fire extinguishers having part number (P/N) BA51012SR-3 or BA51012SR: Within 6 months after the effective date of this AD, accomplish either paragraph (c)(1) or (c)(2) of this AD:

(1) Install a chamfered nozzle on the discharge head assembly of each fire extinguisher and add a new trigger by replacing the discharge head assembly with a new discharge head assembly, having P/N BA22988-3, in accordance with Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26-107, Revision 1, dated November 2, 1992. Or

(2) Replace the trigger on the discharge head assembly of each fire extinguisher with a new trigger, in accordance with Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26-108, dated September 1992. After replacement, install a chamfered nozzle on the discharge head assembly of each fire extinguisher by reworking the discharge head assembly in accordance with Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26-107, Revision 1, dated November 2, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Short Brothers Shorts Service Bulletin SD330-26-14, dated September 1994; Short Brothers Shorts Service Bulletin SD360-26-11, dated July 1994; Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26-107, Revision 1, dated November 2, 1992; and Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26-108, dated September 1992; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers (USA), Inc., Civil Technical Operations, P.O. Box 211 (Route 76 East), Bridgeport, West Virginia 26330. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the

Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 8, 1998.

Issued in Renton, Washington, on April 22, 1998.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-11302 Filed 5-1-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-05-AD; Amendment 39-10458]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-215-1A10 and CL-215-6B11 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; correction.

SUMMARY: This document corrects an error that appeared in amendment 39-10458 that was published in the *Federal Register* on April 10, 1998 (63 FR 17672). The error resulted in the inadvertent omission of the applicability statement of the amendment. This amendment is applicable to certain Bombardier Model CL-215-1A10 and CL-215-6B11 series airplanes. This amendment requires repetitive inspections to detect cracking on certain wing to fuselage frame-angles, and repair, if necessary.

DATES: Effective July 9, 1998.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the *Federal Register* as of July 9, 1998 (63 FR 17672, April 10, 1998).

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7512; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION: Amendment 39-10458, applicable to certain Bombardier Model CL-215-1A10 and CL-215-6B11 series airplanes, was published in the *Federal Register* on April 10, 1998 (63 FR 17672). That amendment requires

repetitive inspections to detect cracking on certain wing to fuselage frame-angles, and repair, if necessary.

As published, the applicability statement of the amendment was omitted inadvertently. The FAA has determined that this omission must be corrected. In all other respects, the original document is correct.

Since no other part of the regulatory information has been changed, the direct final rule is not being republished.

The effective date of this amendment remains July 9, 1998.

§ 39.13 [Corrected]

1. On page 17674, in the first column, the airworthiness directive, amendment 39-10458, is corrected by adding the applicability statement preceding Note 1 to read as follows:

* * * * *

Applicability: Model CL-215-1A10 and CL-215-6B11 series airplanes, serial numbers 1001 through 1125 inclusive, certificated in any category.

* * * * *

Issued in Renton, Washington, on April 24, 1998.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-11560 Filed 5-1-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ANM-24]

Amendment of Class D Airspace; Twin Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule published on February 25, 1998 (63 FR 9409) which changed the name of the airport in the Twin Falls, ID, Class D airspace legal description. During a review of Idaho airspace, it was discovered that the airport name needed updating because it was changed from Twin Falls-Sun Valley Regional, Joslin Field to Joslin Field-Magic Valley Regional. This rule also updated the coordinates for the airport.

EFFECTIVE DATE: The direct final rule published at 63 FR 9409 is effective 0910 UTC, May 26, 1998.

FOR FURTHER INFORMATION CONTACT:

Dennis Ripley, ANM-520.6, Federal Aviation Administration, 1601 Lind Avenue S.W., Renton, Washington, 98055-4056; telephone number: (425) 227-2527.

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the *Federal Register* on February 25, 1998 (63 FR 9409). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. The comment period ended March 27, 1998. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment or a written notice for intent to submit such an adverse comment were received within the comment period, the regulation would become effective on May 26, 1998. No adverse comments were received, and thus this document confirms that the final rule will become effective on that date.

Issued in Seattle, Washington, on April 6, 1998.

Joe E. Gingles,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98-11766 Filed 5-1-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASW-35]

Establishment of Class E Airspace, Osceola, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Class E airspace extending upward from 700 feet above ground level (AGL) at Osceola Municipal Airport, Osceola, AR. The development of a nondirectional radio beacon (NDB) Standard Instrument Approach Procedure (SIAP) to runway (RWY) 19 has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Osceola Municipal Airport, Osceola, AR.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region,

Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone 817-222-5593

SUPPLEMENTARY INFORMATION:

History

On June 15, 1995, a proposal to amend 14 CFR Part 71 to establish Class E airspace at Osceola, AR, was published in the *Federal Register* (60 FR 31424). The proposal was to establish controlled airspace extending upward from 700 feet AGL. The intended effect of the proposal was to provide adequate Class E airspace to contain aircraft executing the NDB RWY 19 SIAP at Osceola, AR.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The Rule

This amendment to 14 CFR Part 71 establishes Class E airspace, at Osceola, AR, extending upward from 700 feet above the surface within a 6.4-mile radius of the Osceola Municipal Airport at Osceola, AR and within 8 miles west and 4 miles east of the 021° bearing from the Osceola NDB extending from the 6.4-mile radius to 9.9 miles north of the NDB.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

ASW AR E5 Osceola, AR [New]

Osceola Municipal Airport, AR (lat. 35°41'28" N., long. 090°00'36" W.)

Osceola NDB (lat. 35°41'34" N., long. 090°00'47" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Osceola Municipal Airport and within 8 miles west and 4 miles east of the 021° bearing from the Osceola NDB to 9.9 miles.

Issued in Fort Worth, TX, on April 24, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98-11768 Filed 5-1-98; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators and Commodity Trading Advisors

Correction

In Title 17 of the Code of Federal Regulations, parts 1 to 199, revised as of April 1, 1997, page 191, in § 4.24 (j)(1)(v) is corrected by changing the reference "(k)" to read "(j)".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 351 and 354

[Docket No. 960123011-8040-02]

RIN 0625-AA43

Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce ("the Department") is amending its regulations on administrative protective order ("APO") procedures in antidumping and countervailing duty proceedings to simplify and streamline the APO administrative process and reduce the administrative burdens on the Department and trade practitioners. The Department is also amending the regulations to simplify the procedures for investigating alleged violations of APOs and the imposition of sanctions. These changes are made in response to and in cooperation with the trade practitioners that are subject to these rules.

EFFECTIVE DATE: The effective date of this final rule is June 3, 1998. This final rule will apply to all investigations initiated on the basis of petitions filed on or after June 3, 1998, and other segments of proceedings initiated after this date.

FOR FURTHER INFORMATION CONTACT: For further information contact Joan L. MacKenzie or Mark A. Barnett, Office of Chief Counsel for Import Administration, (202) 482-1310 or (202) 482-2866, respectively.

SUPPLEMENTARY INFORMATION:

General Background

APO Procedures

On February 8, 1996, the Department published proposed rules governing procedures for providing access to business proprietary information submitted to the Department by other parties in U.S. antidumping ("AD") and countervailing duty ("CVD") proceedings. Proposed Rule and Request for Comment (Antidumping and Countervailing Duty Proceedings; Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violations of a Protective Order), 61 FR 4826 ("February Notice"). See also, Proposed Changes to

Administrative Protective Order Procedures in Antidumping and Countervailing Duty Proceedings, APO Application Form and Standard APO, 59 FR 51559 (October 12, 1994) ("October Notice").

The Department proposed these changes in APO procedures in consultation with trade practitioners, who are the ones most directly affected by these procedures. Specifically, Department staff consulted with representatives of the International Law Section of the District of Columbia Bar, the International Trade Committee of the Section of International Law and Practice of the American Bar Association, the ITC Trial Lawyers Association, and the Customs and International Trade Bar Association. As a result of the consultations, the Department proposed changes in the APO process to improve the process, to simplify and streamline the process for all concerned, including the Department, and at the same time to continue to ensure protection of business proprietary information from unauthorized disclosure.

After analyzing and carefully considering all of the comments that the Department received in response to the February Notice and after further review of the provisions of the proposed rule, the Department is publishing final regulations. These regulations improve, simplify, and streamline the APO process significantly and, at the same time, protect business proprietary information from unauthorized disclosure.

Effective Date

The new APO procedures, including the use of the revised application for APO, form ITA-367 (5.98), will become effective June 3, 1998. They will apply to all investigations initiated on the basis of petitions filed on or after June 3, 1998, and other segments of proceedings initiated after this date. Segments of proceedings to which these regulations do not apply will continue to be governed by the regulations in effect on the date the petitions were filed or other segments were initiated, to the extent that those regulations were not invalidated by the URAA or replaced by the interim final regulations published on May 11, 1995 (60 FR 25130 (1995)) and § 351.105 of the AD/CVD procedural regulations that the Department published separately on May 19, 1997 (62 FR 27296), (hereinafter referred to as the May 19 Regulations). In these segments of proceedings, the Department will require that parties use the old APO application form ITA-367 (3.89) for all

requests to amend their existing APOs. If all parties in these segments of proceedings mutually agree to be bound by the new APO regulations and procedures, the parties must file a joint agreement and new applications for APO.

APO Sanctions

The Department is also amending its regulations concerning sanctions for violations of APOs. The regulations governing the imposition of sanctions for APO violations are set forth at 19 CFR Part 354. In the nine years since Part 354 was introduced, the Department has investigated and resolved numerous allegations of violations of APOs. Most charges have been settled, and none has resulted in a hearing before a presiding official or a decision by the APO Sanctions Board. Experience also has proven that, even if an individual has technically violated the terms of an APO, it is not always appropriate to impose a sanction. Rather, a warning may be appropriate in many instances. The Department also has found that situations arise in which the investigation can be shortened without limiting procedural rights. Additionally, under current regulations, it is unduly cumbersome to withdraw charges when the Department determines that they are not warranted. Finally, the Department recognizes that an individual with prior violations deserves to have his or her record cleared after a period of time without further violations. Therefore, the Department is amending Part 354 of its regulations to articulate a standard for issuance of a warning of an APO violation and to address the other situations described above.

The Department is amending the regulations to simplify the procedures for investigating alleged violations and the imposition of sanctions, establish criteria for abbreviating the investigation of an alleged violation, include private letters of reprimand among the sanctions available, and set a policy for determining when the Department issues warnings instead of sanctions. Further, the Department is revising the provisions dealing with settlement to make them consistent with practice. The Department also is simplifying the procedures for withdrawing charging letters. Finally, the amendments add a sunset provision that codifies existing practice regarding the rescission of charging letters.

Explanation of Particular Provisions**APO Procedures**

The Department's AD regulations were contained in 19 CFR Part 353 and its CVD regulations were contained in 19 CFR Part 355. Parts 353 and 355 each contained separate provisions dealing with the treatment of business proprietary information and APO procedures. The Department consolidated the AD and CVD regulations and repealed existing Parts 353 and 355. See *Antidumping Duties; Countervailing Duties*; Final rule, 62 FR 27295 (May 19, 1997). We have drafted the regulations dealing with APO procedures in light of this consolidation. Accordingly, these regulations will be contained in 19 CFR Part 351, subpart C. More specifically, with the exception of the definitional provisions of § 351.102, the APO procedures will be contained in 19 CFR 351.304, 305, and 306. The procedures for imposing sanctions for violation of a protective order are contained in 19 CFR 354.

Definitions

Section 351.102 is a definitional section, based on previous 19 CFR 353.2 and 355.2. It was published separately with the May 19 regulations. Insofar as APO procedures are concerned, we added definitions of two new terms, now contained in the administrative protective order. Because these definitions apply to APO procedures, we are discussing them here.

The first term, *applicant*, is defined as an individual representative of an interested party that has applied for access to business proprietary information under an APO. The second term, "authorized applicant," is defined as an applicant that the Secretary has authorized to receive business proprietary information under an APO, and is a term borrowed from the practice of the U.S. International Trade Commission ("ITC").

One commenter noted that the definition of "applicant" contained in the Proposed AD/CVD Procedural Regulations was inconsistent with the description of that definition in the preamble to the February Notice. This commenter also suggested that a definition of "representative" be added to the regulations.

We revised the definition of "applicant" to make it consistent with the description of that term provided above. The term "representative" was defined in the model APO published with the February Notice. We have revised that definition to refer to an

individual, enterprise or entity acting on behalf of an interested party.

Administrative Protective Order Unit and Central Records Unit

Section 351.103 defines the responsibilities of the Central Records Unit and the Administrative Protective Order Unit, both of which play a role protecting business proprietary information. The APO Unit was established with the reorganization of the Department that became effective July 1, 1996. Under the reorganization, the APO function is consolidated under the Director for Policy and Analysis, and is managed by a Senior APO Specialist who leads the APO Unit. The Senior APO Specialist is responsible for directing the Department's handling of business proprietary information.

The Administrative Protective Order Unit and the Dockets Center of the Central Records Unit have recently been relocated to shared space in room 1870. Because of the proximity of the two offices, business proprietary information released by the APO Unit to authorized representatives is conducted through the Dockets Center. Because the relocation of the Dockets Center occurred after the publication of the AD/CVD procedural regulations, we are taking this opportunity to amend § 351.103 to reflect these changes. Pursuant to Presidential order, security has been increased in Federal office buildings and delivery couriers are no longer permitted access to the Herbert C. Hoover Building (HCHB). Consequently, Import Administration has created the Dockets Center in Room 1870. The Dockets Center is accessible directly from the 15th Street courier's entrance to HCHB. Prior to being allowed in the building at this entrance all packages are scanned by Departmental security personnel. APO materials are picked up at this entrance from the APO Unit.

Section 351.304 Establishing Business Proprietary Treatment of Information.

Section 351.304 sets forth rules concerning the treatment of business proprietary information in general, and provides persons with the right to request that certain information be considered business proprietary or be exempt from disclosure under APO.

Customer Names

One commenter noted that section 777(c)(1)(A) of the Tariff Act of 1930, as amended, ("Act") protects customer names from disclosure under APO in an investigation only until an order is published or the investigation is suspended or terminated, and suggested that the regulation should be revised to

reflect this. We have not revised the regulation. The statute does not require the Department to disclose customer names under APO following publication of an order or following suspension or termination of the investigation. If the Department's final determination is challenged, parties may obtain access to customer names under the terms of a judicial protective order. Absent such litigation, we do not believe it necessary or appropriate to require parties to disclose additional information under protective order after an investigation has been completed, suspended or terminated.

Identification of Business Proprietary Information

Paragraph (b) of § 351.304 addresses the identification and marking of business proprietary information in submissions to the Department.

One commenter argued that the Department should clarify how the requirement to mark business proprietary information applies to materials in exhibits such as printouts, drawings, photographs, excerpts from brochures and other similar materials. The commenter pointed out that such materials are not always clearly identified as business proprietary, leaving the recipient to refer to the public version to determine whether any particular data are in fact claimed to be confidential.

The Department agrees that all business proprietary information should be marked in accordance with the regulations. This includes all verification exhibits. It is in the interest of all parties to prevent inadvertent APO violations that can occur when marking is incomplete or inaccurate. We recognize that marking printouts and voluminous exhibits presents challenges. Printouts may consist almost entirely of business proprietary information, with public information limited to certain headings or fields. In such cases, it may be easier for an authorized applicant to distinguish between public and proprietary information by reviewing the public version rather than searching for brackets in a document that contains nearly all business proprietary information. Moreover, because bracketing may be revised by a party within one day of the date of filing (see below), authorized applicants are encouraged to confirm their identification of public information by comparison to the public version source in order to avoid an inadvertent release of business proprietary information.

If a party objects to the submitting person's claim for business proprietary

treatment, the objection must be submitted in writing. The APO Unit is the point of contact for examining and resolving the issue whether information that is claimed as proprietary meets the standards in § 351.105 of the AD/CVD procedural regulations that the Department published separately on May 19, 1997.

Public Versions

Paragraph (c) of § 351.304 concerns the public version of a business proprietary submission, provides for a one-day lag rule (see also § 351.303(c)(2)), and addresses corrections to errors in bracketing business proprietary information. We reiterate that the Secretary will enforce vigorously the requirement for public summaries, and will grant claims that summarization is impossible only in exceptional circumstances. To assist in ensuring consistent enforcement of the Department's requirements for public summarization of numerical data and narrative portions of submissions, the APO Unit is the point of contact for examining and resolving complaints about inadequate public summaries.

One-Day Lag Rule

The one-day lag rule follows existing practice by permitting parties to file a public version of a document containing business proprietary information one business day after the due date of the business proprietary version of the document. This practice is known as the "one-day lag" rule. Under current practice, submitting persons may correct the bracketing of information in the business proprietary version up to the deadline for submission of the public version (i.e., they have one day in which to correct bracketing). The Department proposed to slightly modify the one-day lag rule to require a party to file the final business proprietary version of the document at the same time as the submitting party files the public version of the document. The specific filing requirements are contained in § 351.303 of the AD/CVD Procedural Regulations that the Department published separately on May 19, 1997. Comments on this provision were addressed in those regulations.

One commenter expressed concern regarding improper disclosure of APO protected information and the Department's statement that non-bracketed information will be treated as public information once bracketing has become final. We believe, however, that the commenter misunderstood the Department's statement. The statement only pertains to a party's own business proprietary information contained in a

document it has submitted. The Department will always take and require immediate corrective action when information subject to an APO has been improperly disclosed and discovered in a reasonable amount of time.

Summarization of Numerical Data

One commenter argued that public summarization of numerical data should not be required, because the ITC does not require it. Other commenters requested that specific guidelines for summarization of numerical data be included in the regulation. Some commenters requested greater flexibility in ranging numbers that are very large or very small.

As one commenter recognized, a public summary, which is addressed in paragraph (c)(1), is required by section 777(b)(1)(B) of the Act and Article 6.5.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement"). Public summarization of numerical data is crucial to the ability of parties to participate in the Department's proceedings. Without adequate public summarization, interested parties without APO access will not be able to participate meaningfully in the Department's proceedings. The Department, therefore, will continue to require summarization of numerical data.

While there may be some benefits to consistent treatment of business proprietary information between the Department and the ITC, there are differences in each agency's mission that justify individual practices. Summarization of company-specific numerical information at the ITC is more difficult because the information concerns a company's performance using "macro" numbers and projected data. Moreover, in most cases, the ITC provides aggregate data where such information would not reveal an individual company's business proprietary information. It is this aggregate data, which is often available to the public, which is most relevant to the ITC's analysis and determinations. Information in the Department's proceedings, on the other hand, is often transaction-specific, "micro" information. Such information would be difficult to aggregate across companies and such aggregate data would be of almost no relevance to the Department's analysis and the public's understanding of that analysis. Therefore, it is preferable to continue to require that such information be ranged or indexed.

Omission of specific criteria for public summarization of numerical data previously contained in §§ 353.32(b)(1)

and 355.32(b)(1) was an oversight. We are including the criteria for adequate summarization in § 351.304(c)(1) of these regulations. The Department has always allowed an exception to the public summarization requirement when it does not protect business proprietary information from disclosure, such as with very small or very large numbers. We will continue to permit such exceptions on a case-by-case basis in accordance with the requirements of § 351.304(c)(1).

Summarization of Narrative Portions of Submissions

One commenter argued that requiring a public summary of the narrative portion of a submission is a change in policy not required by the Uruguay Round Agreements Act (URAA) and is too burdensome. The commenter asserted that the proposed regulation will add hundreds of hours and thousands of dollars to the costs of participating in these cases. Finally, the commenter stated that the proposed regulation appears to create a presumption that all business proprietary information is public unless proven otherwise, which reverses agency practice designed to protect business proprietary information against disclosure.

The commenter is mistaken that the Department's regulation constitutes a change in practice. The Department has consistently required a public summary of the narrative portion of a submission containing business proprietary information.

Laws affecting disclosure of information by the federal government generally are pro-disclosure. The United States has the most transparent antidumping and countervailing duty procedures in the world. Protection of business proprietary information is a narrow exception to the requirement for disclosure and the preference for transparency. For these reasons, the regulations require parties to demonstrate that business proprietary information should be withheld from disclosure, rather than the reverse. There is a presumption that business proprietary information can be publicly summarized to permit meaningful participation by a party that does not have access to business proprietary information under APO.

Summarization of Business Proprietary Information of Other Parties

Three commenters raised concerns whether § 351.304(c)(1) requires authorized applicants to create public summaries of business proprietary information submitted by other parties.

It does not. The Department has never required authorized applicants to publicly summarize the business proprietary information of another party and the Department does not intend to change that practice. In fact, § 351.304 (c)(1) states that a submitter should not create a public summary of business proprietary information of another person.

Nonconforming Submissions

Paragraph (d) of § 351.304 deals with nonconforming submissions, *i.e.*, submissions that do not conform to the requirements of section 777(b) of the Act and paragraphs (a), (b), and (c) of § 351.304.

One commenter expressed concern that this provision might be abused by parties making unwarranted claims of a clear and compelling need to withhold business proprietary information from disclosure under APO merely to delay release of that information and thereby imperil the ability of other parties to participate in the proceeding in a timely fashion. Although we appreciate the concerns of the commenter, we do not believe that revision of the regulation is necessary. In most cases, the Department has been able to make determinations as to the status of information in much less than 30 days, and we expect that to continue to be the case. As written, the regulation provides greater flexibility for those determinations which may require more time for decision.

The Department does not believe that the regulation, as drafted, will lead to significant abuse. The Department's current experience has involved few situations of abuse. To the extent that baseless claims for non-release of information do occur, the Department retains the authority to deal with them expeditiously.

Another commenter proposed that the Department amend this regulation to permit the Secretary to return any part of a submission that does not meet the requirements of the regulations. We do not agree. For the same reasons the Department revised the one-day lag rule to require a new complete submission of a document that required correction, we also will require a complete new submission of any document returned because parts of it are defective.

Section 351.305 Access to Business Proprietary Information

Section 351.305 establishes procedures for obtaining business proprietary information under APO, including a new procedure based on the use of a single APO for each segment of a proceeding.

The Revised APO

Paragraph (a) of § 351.305 sets forth a new procedure in which the Secretary will place a single APO on the record for each segment of an AD or CVD proceeding, within two days after a petition is filed, or an investigation is self-initiated, or five days after the initiation of any other segment. ("Segment of the proceeding" is defined in § 351.102 as a portion of the proceeding that is reviewable under section 516A of the Act.) All authorized applicants will be subject to the terms of this single APO. This new procedure will streamline the APO process dramatically, and will expedite the issuance of APOs and the disclosure of information to authorized applicants. Commenters strongly endorsed this new procedure, and agree it will streamline the APO process and expedite the issuance of APOs and the disclosure of information to authorized applicants.

APO Requirements

Paragraph (a) of § 351.305 also sets forth the requirements that are to be included in the APO and to which all authorized applicants must adhere. The Department proposed to eliminate from the APO detailed internal procedures that firms were required to follow to protect APO information from unauthorized disclosure. In paragraph (a)(1), the Department proposed to permit each applicant to establish its own internal procedures. All commenters agreed with this proposal, and we have adopted it in these final regulations.

Notification of Change of Facts

Paragraph (a)(2) of § 351.305 requires an authorized applicant to notify the Secretary of any changes in the facts asserted by the authorized applicant in its APO application. Paragraph (a)(2) does not require certification of these facts. Paragraph 6 of the proposed APO, however, would have required the authorized applicant to provide, at the conclusion of a segment of the proceeding, upon the departure of an authorized applicant from a firm, or when an individual no longer will have access to APO information, a certification that attests to the individual's compliance with the terms under which such access is granted. Two commenters questioned the necessity for such individual certifications. They argued that the thrust of the Department's new rules is to permit firms to develop their own internal procedures to protect business proprietary information, rather than for the Department to "micro-manage" APO

issues. Thus, they asserted, firms will have internal procedures to ensure that persons leaving a firm, for example, destroy or return any documents containing business proprietary information. They point out that under the procedure proposed by the Department, applicants already sign an APO application individually, and the additional certification is therefore superfluous. Moreover, commenters argued, the Court of International Trade's (CIT) judicial protective orders permit a single certification, and there is no reason to follow two different procedures for appellate and administrative proceedings.

The Department agrees. Paragraph (a)(2) continues to require a party to notify the Department of any changes in the facts asserted by an authorized applicant in its application, but we have deleted the requirement for certification at the end of the proceeding segment in paragraph 6 of the APO. Authorized applicants are required to notify the Department of any possible violation of the APO; the additional certification is redundant. The Department presumes all authorized applicants are complying with the terms of the APO until we determine through an investigation under Part 354 that a violation of an APO has occurred. Thus we have retained the requirement that parties notify the Department and other parties of changes, but have removed from paragraph 6 of the APO the requirement that every individual certify its compliance with the regulations at the close of the person's participation under the APO.

Notification of Destruction of Business Proprietary Information

Paragraph (a)(4), now renumbered as paragraph (a)(3), of § 351.305 requires the destruction of business proprietary information when a party is no longer entitled to it, normally at the close of a segment of a proceeding. Paragraph 7 of the APO also required an individual certification from each authorized applicant that it complied with the terms of the APO. For the reasons stated above, we agree this certification is unnecessary. We presume that an authorized applicant will comply with the terms of the APO requiring destruction of business proprietary information at a designated time.

We will continue to require, however, notification to the Department of destruction of business proprietary information. Parties will be able to keep certain business proprietary information for more than one segment of a proceeding, and discipline in tracking and destroying information is more

important than ever. Therefore the Department will continue to hold parties accountable for timely destruction of material when no longer authorized by the APO to have it.

One commenter suggested that the failure to return or destroy APO material is a procedural issue and should not be viewed as constituting a violation of the APO if not satisfied. We disagree. Until business proprietary information is destroyed, there is a risk of disclosure. The destruction of business proprietary information is important to prevent unauthorized disclosure. It is one of the few specific requirements in the regulations. While the failure to return or destroy may not result in actual disclosure of business proprietary information, and in certain circumstances may only result in a warning, it is clearly a violation of the regulations and the APO.

The Department proposed that an authorized applicant be required to destroy business proprietary information that the applicant is not authorized to retain within a thirty-day time period after the expiration of the time for filing for a judicial or binational panel review of the last segment for which the authorized applicant may retain the information. Thirty days should cover most contingencies, but the Department will be willing to grant extensions for good cause shown. Commenters supported this proposal and we will incorporate it into each APO, which will set specific deadlines on a case-by-case basis.

Electronic Data

Paragraph 3 of the APO places one restriction on the use of business proprietary information contained in electronic form; the information can not be accessible by a modem. We are restricting access to electronic information by modem, but not requiring any specific technical restrictions, instead leaving the method to be used to the individual authorized applicant. This proposal was supported by commenters. Commenters suggested a revision of the language of the paragraph to clarify this requirement, which we have incorporated into paragraph 3 of the APO.

Independent Contractors

The definition of "support staff" contained in the APO permits the use of independent contractors to perform photocopying and other production tasks involving APO information, provided that the independent contractors perform their work on the premises of the authorized applicant (e.g., at the firm), and the independent

contractors work under the supervision of an authorized applicant.

Commenters requested a clarification that the Department also will allow parties to use employees or subcontracted individuals (e.g., courier services) to pick up or deliver APO information released by the Department, and to deliver APO information to other parties. One commenter also requested a clarification that "independent contractors" includes part-time employees. We agree that support staff and independent contractors can be used for all delivery functions and that "independent contractors" includes part-time employees.

In order to guard against unauthorized disclosure, however, the Department will continue its current practice of releasing APO information only if the employee or independent contractor presents a picture ID and a letter of identification from the firm of the authorized applicant that authorizes the Department to release the APO information to that particular individual.

Remand Proceedings

The Department proposed that the APO permit access to new business proprietary information submitted in the course of a remand during litigation involving the segment of the proceeding in which the initial APO was issued. Parties no longer will have to apply separately for access under an APO during a remand proceeding. Commenters supported this proposal. The APO issued in each proceeding will reflect this practice.

APO Applications

Paragraph (b) of § 351.305 deals with the APO application process itself, including permitting parties to use two independent representatives.

Multiple Authorized Applicants

Under current practice, the Department generally allows only one representative of a party to have access to business proprietary information under an APO. In response to requests from parties to proceedings, the Department proposed that two independent representatives of a party be allowed APO access, with one representative being designated as the lead representative. We also proposed granting APOs separately to non-legal representatives, who otherwise qualify to receive an APO, only if they had a significant practice before the Department. The purpose of this proposal was to ensure that effective sanctions could be imposed to deter APO violations. The Department will

consider requests that more than two independent representatives be designated as authorized applicants on a case-by-case basis.

Commenters agreed with this proposal, and requested that the Department clarify that the lead authorized applicant will not be liable for APO infractions committed by a separately authorized applicant. We agree. Authorized applicants are responsible for violations committed by any person in the same firm, but not for violations committed by an individual at another entity that applied for APO access separately. The lead representative would not be responsible for APO violations committed by the separately authorized applicant.

Application for an APO

Paragraph (b)(2) of § 351.305 establishes a "short form" application that applicants can generate from their own word-processing equipment. An applicant must acknowledge that any discrepancies between the application and the Department's APO placed on the record will be interpreted in a manner consistent with the Department's APO. Parties agreed with this proposal and we have adopted it in paragraph (b)(2).

APO Application Coverage

Paragraph (b)(2) of § 351.305 also provides that an applicant must apply to receive all business proprietary information on the record of the particular segment of the proceeding in question. A party no longer may apply to receive only selected parties' business proprietary information. The purpose of this requirement is to eliminate the need for parties to prepare separate APO versions of submissions for each of the different parties involved in a proceeding and to reduce the number of APO violations that occur through the inadvertent service of a document containing business proprietary information to parties not authorized to receive it. In order to avoid forcing parties to receive submissions in which they have no interest, however, a party may waive service of business proprietary information if it does not wish to have served on it by another party. Thus, for example, Respondent A may waive its right to be served with a copy of the business proprietary version of Respondent B's questionnaire response. Nonetheless, if Respondent A receives any of respondent B's proprietary information from any party by mistake, no APO violation will have occurred. Commenters generally supported the proposal, because it eases the burden on

submitters and reduces the likelihood of inadvertent APO violations.

One commenter strongly objected to the proposal as inconsistent with section 777 of the Act and burdensome on respondents. The commenter asserted that substitution of a waiver procedure for party-specific submissions is inadequate because respondents are nonetheless required to accept submissions by petitioners that contain the business proprietary information of several parties, including business proprietary information that the respondents may have had no reason to request. It asserted that by requiring respondents' representatives to accept from petitioners' representatives documents containing multi-party business proprietary information, the Department is unnecessarily shifting the burden and responsibility of complying with APO procedures from petitioners to respondents. Furthermore, where counsel is served a business proprietary document and then redacts only certain portions designated confidential by the filing party before transmitting the document to his client, there is no check on whether a proper redaction has been made. Neither the Department nor other parties have access to, or even knowledge of, the specially redacted version, and this procedure will heighten the risk of inadvertent disclosure of business proprietary information. Instead, the commenter argues, if the public summaries prepared by parties meet Commerce guidelines, the information contained in any public version of a filed document should be sufficient to inform a party already knowledgeable of the proprietary data represented by the public summary.

The Department recognizes that these rules place a new burden on a representative to ensure that when it receives a submission with business proprietary information from multiple parties, it takes steps to ensure no business proprietary information of another party is disclosed to its client. Each authorized applicant has pledged to do this when he or she signs the application for access to business proprietary information under an APO. The rules mitigate this additional burden by requiring parties to clearly identify the person to whom each item of business proprietary information pertains. Although adequate public summaries are helpful, they are not a substitute for a full discussion of a party's own business proprietary information. Public summaries serve to assist a party's participation where other

parties' business proprietary information is involved.

Nothing in the statute prohibits these procedures. Section 777 of the Act requires the Department to "make all business proprietary information presented to, or obtained by it, during a proceeding . . . available to interested parties who are parties to the proceeding under a protective order . . ." On balance, we believe the procedures adopted will spread the burden for protecting business proprietary information and reduce inadvertent disclosure of business proprietary information.

Deadline for Application for APO Access

Paragraph (b)(3) of § 351.305 concerns the deadline for applying for access to business proprietary information under APO. In deciding the question of APO application deadlines, the Department balances the need to provide maximum access by parties to APO information with the need to minimize the burden on the Department in processing APO applications, as well as the burden on parties and the Department that have to serve late applicants with APO information placed on the record before a late APO is granted. We proposed in paragraph (b)(3) to encourage parties to submit APO applications before the first questionnaire response is filed, but to permit parties to submit applications up to the date on which case briefs are due.

Two commenters requested that the Department have no deadline for APO applications. They did not provide any reason why a representative would need to have access to the entire record after the time case briefs are filed. Under § 351.309(b), which was published separately with the May 19 regulations, written argument will not be accepted after case or rebuttal briefs are filed unless requested by the Secretary. A party can always provide a representative with the party's own data, and represent the party before the Department during disclosure of that party's calculations. Providing a new representative with a record after the close of comments would be unduly burdensome for the Department staff which has extremely tight deadlines for issuing the final determination. A representative can obtain the entire record under judicial protective order during litigation if necessary. Therefore, we have incorporated the proposed deadline, the day case briefs are due, into the regulations.

We also have taken into account the burden imposed on parties by APO applications that are filed after major submissions have been made by other

parties to the proceeding. Under current rules, parties have only two days in which to serve an authorized applicant that obtained its APO late in the proceeding with APO information that already has been placed on the record. Under the deadline set forth in paragraph (b)(3), the burden on parties may increase. We therefore proposed that parties have five days in which to serve late APO applicants. In addition, we required that late applicants be required to pay the costs associated with the additional production and service of business proprietary submissions that were served on other parties earlier in the proceeding. Commenters supported these proposals and they are incorporated into § 351.301, which was published separately.

The Department reemphasizes that it will not allow an APO application filed later in the proceeding to serve as the basis for extending any administrative deadline, such as a briefing or hearing schedule.

Approval of the APO Application and the APO Service List

Paragraph (c) of § 351.305 deals with the approval of an APO application. The Department proposed to approve an application within two days of its receipt in an investigation and within five days in other AD and CVD proceedings, unless there is a question concerning the eligibility of an applicant to receive access under APO. In that case, the Secretary will decide whether to approve the application within 30 days of receipt of the application. We amended the regulation to provide for a single five-day deadline to provide parties a reasonable time to comment on applications in all instances.

Commenters generally supported the Department's proposal because it will facilitate the timely completion of investigations and administrative reviews by providing expedited access to business proprietary information to all parties to a proceeding. They suggested that the Department's regulations also indicate that similarly expedited treatment will be provided to applications for amendments to APOs. The Department considers an application for an amendment to be subject to the same procedures as the original application.

Some commenters expressed concern that approving APO applications so quickly may create problems. In many cases, the APO application will be served by mail on other interested parties, and commenters were concerned that the Department could approve the application before the

parties have an opportunity to comment on it. When the APO material is already in the hands of an approved applicant who has filed for access for additional individuals, commenters asserted it is imperative that parties be informed of the existence of the amended application, and be given time to react, before APO material is released to any additional individuals. The problem is of special concern to commenters if the application seeks to add in-house counsel to the APO.

Although the Department agrees that the concerns raised by these commenters have merit, we must balance these concerns with the need of applicants to receive APO material expeditiously. We note that the Department rarely receives objections to applications to amend APOs. However, in recognition of the concerns raised, we intend to approve applications to amend the Department's APO service list to include an additional authorized applicant at the end of the five-day period. If a representative wishes to have its amendment approved before the five-day deadline, it should submit its application with a statement that all other parties to the proceeding have consented to the application.

Commenters proposed that if the APO applicant needs immediate access, service on the other parties could be made by hand delivery or overnight mail, by facsimile, or by E-mail. Alternatively, the applicant could file the application as a "consent motion". If there is no need for immediate access, commenters proposed that parties be permitted to serve by mail and that Department approval be held for five days to ensure that the other parties have had an opportunity to respond. Commenters also proposed that the regulations also should state that objections to applications must be filed within two days of receipt of the application and served by hand on the applicant.

One commenter, on the other hand, was concerned that parties to a case should not be able to delay release of proprietary documents merely by the objection, on whatever grounds, to the eligibility of an applicant to obtain information. Rather, the commenter proposed that the Department enunciate certain grounds that might serve as the proper basis for an objection, such as affiliation with the party in question, prior violations of protective orders or other ethical rules, or a potential conflict of interest that exists based on work done either within the government or at another firm involving the same or a similar matter. Commenters did not want parties to have the opportunity to

delay approval of applications by minor objections, such as an objection to the number of applicants.

The Department recognizes that the current regulations permit a party to hand-serve an APO application (or an application for an amendment to the APO service list) on the Department, while serving the parties by mail. The Department could approve an application before parties even received notice that the application had been filed. We are therefore revising § 351.305(b)(2) to require parties to serve an APO application (including applications for amendments) on the Department and on the parties in the same manner, whether by hand or by mail. We are also extending the deadline in § 351.305(c) for approving an APO application (including an application to amend the APO service list) to five days from two for all segments of proceedings. These procedures should provide expedited approval of APO access while preserving the rights of parties to comment on APO applications. Although the Department may approve an APO application on or before the five-day deadline, a party objecting to an APO application may elect not to serve its business proprietary information on the applicant to which it is objecting until the Department has addressed the objection and has made a decision whether to grant the applicant access to the objecting party's proprietary information.

There are few bases on which a party can legitimately object to granting an APO so long as the applicant meets the conditions established in the APO application and APO. An objection based on the number of applicants would generally be considered frivolous; the Department does not interfere with a party's choice of representation or staffing. The only area where Import Administration has the authority to deny an individual the right to practice before it involves a finding, pursuant to our very detailed APO violation regulations, that a party has violated a protective order and that the violation warrants the extreme sanction of a ban from practice before Import Administration. An allegation in this area would require a detailed investigation. The restriction on practice before the Department because of an APO violation would be imposed through the APO violation proceeding, not through an objection to an APO application.

Import Administration does not have authority to address the post-employment restrictions contained in 18 U.S.C. 207. The authority to interpret

post-employment restriction resides with the Assistant General Counsel for Administration at the Department of Commerce. Nor does the Department have the authority to advise on the application of state professional conduct rules to a party's practice before the Department. Any allegations of violations of the rules of a particular bar association must be raised with that organization.

Alternative Methods of APO Approval

In the October Notice, several commenters suggested alternative methods of approving APOs, such as the creation of a pre-approved roster of members of a representative's firm, or permitting a lead signatory in a firm to grant access to the other professionals within the firm. The Department did not adopt either alternative because there may be facts peculiar to a particular AD or CVD proceeding or a segment of a proceeding that render an otherwise eligible applicant ineligible, and the roster approach would preclude a party from raising legitimate objections to the approval of an APO application. Likewise, the lead signatory approach would preclude parties from exercising their right to object, for good cause, to the disclosure of APO information to a particular individual.

Two commenters continued to support the roster system. One pointed out that such a procedure would still allow Commerce to review the individual eligibility of each applicant and would allow far greater flexibility on the part of the participating firm. These commenters did not address the points raised by the Department in opposing the proposal, such as notice and certainty. As noted above, commenters expressed concern that they have an advance opportunity to comment on an APO application before access is granted. They were concerned that the Department might approve an APO application before parties had had a chance to review it because of the short two-day deadline the Department proposed for approving an application. We are therefore not adopting either alternative method of approving APO applications. The maximum five-day deadline for approving an application should enable parties to add representatives without undue delay.

Department Notification of APO Service List

If an application is approved, the Secretary will include the name of the authorized applicant on an APO service list that the Department will maintain for each segment of a proceeding. Paragraph (c) of § 351.305 provides that

the Secretary will use the most expeditious means available to provide parties with the APO service list on the day the list is issued or amended.

Commenters generally supported the proposal. While they supported a flexible approach with respect to promulgating and updating the APO service list, they also expressed concern with the lack of specificity as to the form of notice to anticipate. Commenters were particularly concerned with the use of the Internet to the extent the Department is contemplating reliance on electronic mail, based on the uncertainty of the timely receipt of information (particularly where the parties are out of the office) or even whether the information would be received at all. To the extent the Department elects to rely on any Internet or e-mail notification, commenters urged the Department to also send a copy of the notification by mail to the parties to ensure that actual notification was received.

Other commenters stated that the preferred method is by facsimile. They stated that most businesses, including law firms practicing before the Department, have procedures to ensure that incoming facsimiles rapidly come to the attention of the indicated recipient. Commenters noted that these procedures are not necessarily in place with respect to the Internet and transmission by mail involves at least two days of delay.

At this time, the Department will fax every change in the APO service list directly to each party on the service list for each proceeding. In addition, until the Department is assured that parties are routinely receiving notification of the APO service list by fax, the Department will mail hard copies of the service to the lead applicant. This will provide certainty and consistency necessary to effectively monitor APO service lists. APO service lists will be available to the public on Import Administration's home page on the Internet as a public service. The Department will adapt these procedures to advances in technology adopted by the trade bar in the future to ensure it provides notice as efficiently as possible.

Section 351.306 Use of Business Proprietary Information.

Section 351.306 sets forth rules concerning the use of business proprietary information.

Use of Business Proprietary Information by the Secretary

Paragraph (a) is based on existing §§ 353.32(f) and 355.32(f). One change is

the reference in paragraph (a)(4) to the disclosure of information to the U.S. Trade Representative under 19 U.S.C. 3571(i). Section 3571(i) (section 281(i) of the URAA) deals with the enforcement of U.S. rights under the World Trade Organization Agreement on Subsidies and Countervailing Measures. Also, although the regulation itself is little changed, we note that the URAA amended section 777(b)(1)(A)(i) of the Act to clarify that the Department may use business proprietary information for the duration of an entire proceeding (from initiation to termination or revocation), as opposed to merely the particular segment of a proceeding for which information was submitted.

Use of Business Proprietary Information by Parties

Section 777 of the Act permits the Department to use business proprietary information for the duration of an entire proceeding, from initiation to termination or revocation. Under the current regulations, the Department limits the record of a segment of a proceeding to information submitted during that particular segment of the proceeding. 19 CFR 353.34(a). The Department limits the use of business proprietary information by representatives of parties to the segment of the proceeding in which the information was submitted. 19 CFR 353.34(b)(3)(ii). Although the Department may have access to business proprietary information from another segment of the proceeding, the Department may not base a decision on business proprietary information that is not on the record of the particular segment of the proceeding.

The URAA identifies three specific instances in which the Department would be expected to use information from different segments of proceedings or different proceedings: (1) Information from prior segments may be used in a sunset or changed circumstances review of the same proceeding (section 777(b)(1) of the Act); (2) business proprietary information from a sunset or changed circumstances review resulting in revocation may be used in an investigation on the same merchandise from the same country initiated within two years of revocation (section 777(b)(3) of the Act); and (3) information from a terminated investigation may be used in a new investigation on the subject merchandise from the same and another country within three months of termination of the prior investigation (sections 704 and 734 of the Act).

Paragraph (b) of § 351.306 deals with the use of business proprietary information by parties from one segment of a proceeding to another. In the February notice, the Department proposed to permit parties to retain business proprietary information released under APO for two segments of the proceeding subsequent to that in which the information was placed on the record. Paragraph (b) provided that normally an authorized applicant may use such information only in the particular segment of the proceeding in which the information was obtained. An authorized applicant could, we proposed, place business proprietary information received in one segment of a proceeding on the record of either of two subsequent consecutive segments (generally administrative reviews under section 751(a)) if the information is relevant to an issue in the subsequent segments.

We have modified this paragraph to give the Department greater flexibility in determining how business proprietary information may be used. Our intention at this time is to allow an authorized applicant to retain business proprietary information obtained in one segment of a proceeding for two subsequent consecutive administrative reviews and to use such business proprietary information in those administrative reviews or other segments of the proceeding initiated during that time. This use of business proprietary information will be authorized by the terms of the APOs.

Four commenters wanted to expand the policy by having essentially unlimited access to proprietary information for the entire duration of the proceeding and, in some cases, even across proceedings. These commenters suggested that any changes should be applied to current APOs, as well as future APOs. They argued that such broad ability to use business proprietary information was consistent with the statute and would best enable them to identify inconsistencies in submissions from one segment of a proceeding to another.

Four commenters supported the proposed policy with certain restrictions. These commenters urged the Department to prohibit wholesale incorporation of business proprietary information from another segment of the proceeding and, instead, require that any business proprietary information submitted from another segment of the proceeding be relevant to the segment in which it is submitted. Additionally, some of these commenters indicated that a shorter period of time (one

segment) would be sufficient to achieve the Department's goals.

Four commenters strongly opposed any change to current policy. They argued that the limited changes to the statute cannot justify the significant changes proposed in the regulations. This group argued that statutory requirements and prior CIT decisions regarding the record for review effectively prohibit the changes proposed by the Department. This group also cited concerns that the broader ability to retain and use business proprietary information would increase the likelihood of disclosure of that information and thereby discourage parties from participating in proceedings before the Department. The group contended that these changes will also impose additional burdens on parties (to monitor the use of their business proprietary information in subsequent segments and to whom their business proprietary information is released, and to maintain the ability to justify all differences in their reported information from one segment to the next). The group contended that this practice would also increase burdens on the Department to document and verify the bases for any differences across segments of proceedings.

We have not broadened the proposal to permit unlimited use of business proprietary information across all segments of a proceeding, or across all proceedings other than those specified in the statute. There is no legal support for the request to utilize business proprietary information across proceedings.

Nor do we agree with commenters totally opposing use of business proprietary information in more than one segment. The statute and CIT precedent do not prohibit the proposed changes. The proposed changes would provide for inclusion of the information from another segment on the record of the segment in question. The proposed changes were not based on statutory changes made by the URAA, but, rather, rely on authority which the Department has always possessed. We agree that these changes will create some additional burdens on all parties to monitor subsequent segments of proceedings to avoid release of their business proprietary information to a party to whom they object. These are rare occurrences, and we have attempted to minimize this burden and, thereby, minimize the likelihood that these changes will cause respondents to refuse to participate in the Department's proceedings due to concerns about their business proprietary information. Any additional burden on the Department

will be minimized by the Department's ability to reject submissions of irrelevant business proprietary information from other segments.

We agree that wholesale incorporation of business proprietary information from prior segments should be rejected unless absolutely necessary. We also agree that the Department should reject business proprietary information from another segment which is not relevant to the ongoing segment. Such decisions, however, may be difficult to make and may present additional bases for appeal to the CIT. Therefore, the Department does not intend to make a decision on relevancy every time a party submits information from a prior segment into the current segment, but it reserves the right to do so in appropriate circumstances. At the same time, in order to avoid imposing undue burdens on the Department, we intend to consider such information only to the extent that is relevant to issues raised by interested parties or that the Department otherwise deems appropriate.

The Department expects that there will be a multitude of practical problems that will have to be worked out over time and with experience under these new procedures. Initially we will permit parties to retain business proprietary information for two additional segments (generally administrative reviews) after the segment in which the business proprietary information was submitted. This is a reasonable compromise between the long-held desires of petitioners to be able to address perceived inconsistencies between segments, and respondents' concerns that their business proprietary information not be distributed among representatives and across segments for indeterminate periods. Once business proprietary information is placed on the record of a subsequent segment of the proceeding, it remains a permanent addition to the later record, unless the Department rejects the information.

The Department believes that this new practice normally will be used to move business proprietary information from an investigation or administrative review to two subsequent consecutive administrative reviews. The Department also intends to authorize the use of business proprietary information submitted in an investigation or administrative review in other segments, such as scope proceedings or changed circumstances reviews, initiated during those two administrative reviews. If the Department determines, as it gains experience, that it is appropriate to

modify this practice, it will do so by changing the terms of the APOs.

Identifying Parties Submitting Business Proprietary Information

Paragraph (c) of § 351.306 addresses identification of submitters of business proprietary information in submissions containing business proprietary information from multiple persons. The Department is requiring that APO applicants be required to request access to all business proprietary information submitted in a particular segment of a proceeding. In addition, we proposed that in the case of submissions, such as briefs, that include business proprietary information of different parties, the submission must identify each piece of business proprietary information included and the party to which the information pertains. (For example, Information Item #1 came from Respondent A, Information Item #2 came from Respondent B, etc.) The purpose of this proposal is to enable parties to submit a single business proprietary version of a submission that may be served on all parties represented by authorized applicants, instead of forcing parties to submit and serve different APO versions for each of the parties involved in a proceeding. In the case of a submission served on a party not represented by an authorized applicant (a relatively rare event), the submitter still would have to prepare and serve a separate submission containing only that party's business proprietary information.

Three commenters supported this proposal. They agree it will reduce the possibility of APO violations when documents contain business proprietary information provided by more than one party. Commenters further suggested that, when all business proprietary information in a submission is obtained from a single party, the Department's regulations permit the submitting party to identify the original submitter of the business proprietary information only once, on the title page of the submission. We agree and have incorporated this into § 351.306(c).

Commenters also suggested that the Department should clarify the proposed rule by stating that only business proprietary information of another party needs to be specifically identified by source. The commenter proposed that any business proprietary information that is bracketed in the submission should be assumed to be business proprietary information belonging to the party submitting the document unless otherwise identified as business proprietary information of another party. The commenter pointed out that

without this clarification, submissions to the Department would become cluttered with notations as to the original submitter of the business proprietary information and it may become very difficult to read the submission. We agree, and have incorporated this suggestion into § 351.306(c) of the regulations.

One commenter urged the Department to clarify what is meant by the term "identify contiguously with each item" so that parties can adapt their procedures accordingly. The commenter noted that particularly troublesome would be documents containing multi-party information on a single line. The commenter requested that the Department should clarify whether the identifying markings are also required in public versions.

The term "contiguous" was used to require identification closely enough with the item of business proprietary information so a party could clearly and quickly identify the original submitter of the business proprietary information. We do not want to be so specific that parties lose flexibility to respond to different situations. Documents can vary, and readability must not be sacrificed. In some situations, a notation next to the item of business proprietary will best serve everyone's interests. In a more complicated document, footnotes might be better. Since the public version of a submission should be identical with the business proprietary version except for the deletion of the proprietary information, the public submission will contain the identity of the original submitter of the proprietary information.

Some commenters objected to the Department's proposed exception (§ 351.306(c)(2)) to the single-version business proprietary information document rule where a party does not have a representative. They argued that it undermined the benefits gained from not having to file respondent-specific submissions and that adequate public summaries would be adequate.

The Department believes that this requirement is necessary. A party needs disclosure of another party's arguments against it to adequately defend itself. To fail to do so would not provide sufficient transparency to the proceeding.

Concern was expressed regarding the potential mismarking of business proprietary information in a document, and the reliance thereafter on the information mismarked by another party. The commenter urged that the latter party's reliance on the mismarked information should not constitute a breach of the protective order. Another

commenter took the opposite view. It suggested that if a party mistakenly indicates the wrong original submitter of business proprietary information in a submission, the party should only be required to correct the mistake, and the mistake should not constitute an APO violation in and of itself. The commenter further argued, however, that if, as a result of a mistake, a party were to disclose business proprietary information to another party not authorized to receive it, that disclosure would constitute an APO violation under the existing APO rules.

Only the party creating the submission from multiple parties' business proprietary information knows with certainty the person that originally submitted the business proprietary information. Therefore the submitter must be responsible for the accuracy of the labeling. This is the purpose of the proposal. Unless an authorized applicant knows that an identification is incorrect, he or she should be entitled to rely on the identification. Otherwise the requirement serves no purpose. An unauthorized disclosure resulting from inaccurate labeling that leads to an APO violation will be attributed to the person labeling the original submitter of the business proprietary information.

Another commenter opposed the proposal altogether, arguing that the proposal is an attempt to shift costs and responsibility from petitioner to respondent, causing respondent to lose time reviewing petitioner's case brief in the five days that they have to prepare rebuttal briefs under proposed § 351.309(d). The commenter argued that while the number of inadvertent APO violations will decrease for petitioner's counsel, they will increase for respondent's counsel, because respondent's counsel must now make sure petitioner's documents do not include APO material that should not be released.

These proposed procedures formalize what has been the Department's practice since 1992. Moreover, we believe that these proposals balance the different interests of petitioners and respondents. Although there are risks of inadvertent APO violations associated with any option, we believe that the fact that all authorized applicants will have access to the business proprietary information of all parties (whether or not service is waived) should reduce significantly the number of inadvertent disclosures. In this regard, the inadvertent service on an authorized applicant of a submission containing information of a party for which the applicant has waived service would not constitute an APO violation.

Administrative Protective Order Sanction Procedures

Five parties commented on the proposed amendments to the APO sanction procedures. All commenters supported the proposed changes. Upon further reflection, the Department is amending its regulations consistent with the proposed regulations. As explained below, the Department also is making clerical revisions to use terms "administrative protective order" and "business proprietary information" consistently throughout this part, and to conform the regulations to changes made in the organization of the Department on July 1, 1996.

Section 354.2 Definitions.

The definition section is revised to be consistent with the definitions contained in the Department's proposed antidumping and countervailing procedural regulations at 19 CFR 351.102. The definitions of the terms "administrative protective order", "Secretary", "segment of the proceeding", and "Senior APO Specialist" are added to Part 354 in § 354.2.

The definition of "director" is revised to reflect the reorganization of the Department that became effective July 1, 1996. Under the reorganization, the APO function is consolidated under the Director for Policy and Analysis, and is managed by a Senior APO Specialist. The Senior APO Specialist is responsible for directing the Department's handling of business proprietary information. The Senior APO Specialist assists with investigations of alleged APO violations, which streamlines the APO violation investigation process. A definition of "Senior APO Specialist" is added in § 354.2, and the definition of "director" is revised to include the Senior APO Specialist. The definition of director is also amended to conform the regulation to the changes in office director positions made in the July 1, 1996 reorganization.

Section 354.5 Report of violation and investigation.

Paragraph (a)(1) is amended to require that all allegations of APO violations be reported to either the Senior APO Specialist or the Office of Chief Counsel for the Department. Under the current practice, alleged violations are reported to the APO specialist in the Office of Investigations or Office of Compliance, depending on where the alleged violation occurred. The amendment conforms the regulation to the July 1, 1996 reorganization of the Department.

Paragraphs (d) (7) and (8) are combined and revised to reflect changes in the Act and Department practice regarding the use of business proprietary information in segments of proceedings other than the one in which the information was originally submitted. These changes are discussed above. The Department's procedural regulations will now allow use of business proprietary information in more than one segment of a proceeding or another proceeding in limited situations. The segments of proceedings in which business proprietary information may be used will be contained in the administrative protective order. Paragraphs (d) (7) and (8) are combined and revised to reflect these changes.

Classification

E.O. 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these amendments would not have a significant economic impact on a substantial number of small business entities because the rule that they would amend does not have such an impact and, furthermore, the amendments would tend to simplify the procedures pertaining to administration of APO sanctions. The Deputy Under Secretary for International Trade is responsible for regulations governing sanctions for violations of APOs. The Assistant Secretary for Import Administration is responsible for the regulations governing issuance and use of APOs.

List of Subjects in 19 CFR Parts 351 and 354

Business and industry, Foreign trade, Imports, Trade practices.

Dated: April 29, 1998.

Timothy J. Hauser,
Deputy Under Secretary for International Trade.

Dated: April 29, 1998.

Robert S. LaRossa,
Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR chapter III is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

2. Section 351.103 is revised as follows:

§ 351.103 Central Records Unit and Administrative Protective Order Unit.

(a) Import Administration's Central Records Unit maintains a Public File Room in Room B-099 and a Dockets Center in Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. The office hours of the Public File Room and Dockets Center are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (see § 351.104), the Subsidies Library (see section 775(2) and section 777(a)(1) of the Act), and the service list for each proceeding (see paragraph (c) of this section).

(b) *Filing of documents with the Department.* While persons are free to provide Department officials with courtesy copies of documents, no document will be considered as having been received by the Secretary unless it is submitted to the Import Administration Dockets Center in Room 1870 and is stamped with the date and time of receipt.

(c) *Service list.* The Central Records Unit will maintain and make available a service list for each segment of a proceeding. Each interested party that asks to be included on the service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment. The service list for an application for a scope ruling is described in § 351.225(n).

(d) *Import Administration's Administrative Protective Order Unit (APO Unit)* is located in Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230. The

office hours of the APO Unit are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the APO Unit is responsible for issuing administrative protective orders (APOs), maintaining the APO service list, releasing business proprietary information under APO, and APO violation investigations. The APO Unit also is the contact point for questions and concerns regarding claims for business proprietary treatment of information and proper public versions of submissions under § 351.105 and § 351.304.

3. Sections 351.304, 351.305 and 351.306 are added to subpart C to read as follows:

§ 351.304 Establishing business proprietary treatment of information.

(a) *Claim for business proprietary treatment.* (1) Any person that submits factual information to the Secretary in connection with a proceeding may:

(i) Request that the Secretary treat any part of the submission as business proprietary information that is subject to disclosure only under an administrative protective order,

(ii) Claim that there is a clear and compelling need to withhold certain business proprietary information from disclosure under an administrative protective order, or

(iii) In an investigation, identify customer names that are exempt from disclosure under administrative protective order under section 777(c)(1)(A) of the Act.

(2) The Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, except for

(i) Customer names submitted in an investigation,

(ii) Information for which the Secretary finds that there is a clear and compelling need to withhold from disclosure, and

(iii) Privileged or classified information.

(b) *Identification of business proprietary information.* (1) *In general.* A person submitting information must identify the information for which it claims business proprietary treatment by enclosing the information within single brackets. The submitting person must provide with the information an explanation of why each item of bracketed information is entitled to business proprietary treatment. A person submitting a request for business proprietary treatment also must include an agreement to permit disclosure under an administrative protective order,

unless the submitting party claims that there is a clear and compelling need to withhold the information from disclosure under an administrative protective order.

(2) *Information claimed to be exempt from disclosure under administrative protective order.* (i) If the submitting person claims that there is a clear and compelling need to withhold certain information from disclosure under an administrative protective order (see paragraph (a)(1)(ii) of this section), the submitting person must identify the information by enclosing the information within double brackets, and must include a full explanation of the reasons for the claim.

(ii) In an investigation, the submitting person may enclose business proprietary customer names within double brackets (see paragraph (a)(1)(iii) of this section).

(iii) The submitting person may exclude the information in double brackets from the business proprietary information version of the submission served on authorized applicants. See § 351.303 for filing and service requirements.

(c) *Public version.* (1) A person filing a submission that contains information for which business proprietary treatment is claimed must file a public version of the submission. The public version must be filed on the first business day after the filing deadline for the business proprietary version of the submission (see § 351.303(b)). The public version must contain a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. If an individual portion of the numerical data is voluminous, at least one percent representative of that portion must be summarized. A submitter should not create a public summary of business proprietary information of another person.

(2) If a submitting party discovers that it has failed to bracket information correctly, the submitter may file a complete, corrected business proprietary version of the submission along with the public version (see § 351.303(b)). At the close of business on the day on which the public version of a submission is due under paragraph (c)(2) of this section, however, the

bracketing of business proprietary information in the original business proprietary version or, if a corrected version is timely filed, the corrected business proprietary version will become final. Once bracketing has become final, the Secretary will not accept any further corrections to the bracketing of information in a submission, and the Secretary will treat non-bracketed information as public information.

(d) *Nonconforming submissions.* (1) *In general.* The Secretary will return a submission that does not meet the requirements of section 777(b) of the Act and this section with a written explanation. The submitting person may take any of the following actions within two business days after receiving the Secretary's explanation:

(i) Correct the problems and resubmit the information;

(ii) If the Secretary denied a request for business proprietary treatment, agree to have the information in question treated as public information;

(iii) If the Secretary granted business proprietary treatment but denied a claim that there was a clear and compelling need to withhold information under an administrative protective order, agree to the disclosure of the information in question under an administrative protective order; or

(iv) Submit other material concerning the subject matter of the returned information. If the submitting person does not take any of these actions, the Secretary will not consider the returned submission.

(2) *Timing.* The Secretary normally will determine the status of information within 30 days after the day on which the information was submitted. If the business proprietary status of information is in dispute, the Secretary will treat the relevant portion of the submission as business proprietary information until the Secretary decides the matter.

§ 351.305 Access to business proprietary information.

(a) *The administrative protective order.* The Secretary will place an administrative protective order on the record within two days after the day on which a petition is filed or an investigation is self-initiated, or five days after initiating any other segment of a proceeding. The administrative protective order will require the authorized applicant to:

(1) Establish and follow procedures to ensure that no employee of the authorized applicant's firm releases business proprietary information to any person other than the submitting party,

an authorized applicant, or an appropriate Department official identified in section 777(b) of the Act;

(2) Notify the Secretary of any changes in the facts asserted by the authorized applicant in its administrative protective order application;

(3) Destroy business proprietary information by the time required under the terms of the administrative protective order;

(4) Immediately report to the Secretary any apparent violation of the administrative protective order; and

(5) Acknowledge that any unauthorized disclosure may subject the authorized applicant, the firm of which the authorized applicant is a partner, associate, or employee, and any partner, associate, or employee of the authorized applicant's firm to sanctions listed in part 354 of this chapter (19 CFR part 354).

(b) *Application for access under administrative protective order.* (1) Generally, no more than two independent representatives of a party to the proceeding may have access to business proprietary information under an administrative protective order. A party must designate a lead firm if the party has more than one independent authorized applicant firm.

(2) A representative of a party to the proceeding may apply for access to business proprietary information under the administrative protective order by submitting Form ITA-367 to the Secretary. Form ITA-367 must identify the applicant and the segment of the proceeding involved, state the basis for eligibility of the applicant for access to business proprietary information, and state the agreement of the applicant to be bound by the administrative protective order. Form ITA-367 may be prepared on the applicant's own word-processing system, and must be accompanied by a certification that the application is consistent with Form ITA-367 and an acknowledgment that any discrepancies will be interpreted in a manner consistent with Form ITA-367. An applicant must apply to receive all business proprietary information on the record of the segment of a proceeding in question, but may waive service of business proprietary information it does not wish to receive from other parties to the proceeding. An applicant must serve an APO application on the other parties in the same manner and at the same time as it serves the application on the Department.

(3) To minimize the disruption caused by late applications, an application should be filed before the first

questionnaire response has been submitted. Where justified, however, applications may be filed up to the date on which the case briefs are due, but any applicant filing after the first questionnaire response is submitted will be liable for costs associated with the additional production and service of business proprietary information already on the record. Parties have five days to serve their business proprietary information already on the record to applicants authorized to receive such information after such information has been placed on the record.

(c) *Approval of access under administrative protective order; administrative protective order service list.* The Secretary will grant access to a qualified applicant by including the name of the applicant on an administrative protective order service list. Access normally will be granted within five days of receipt of the application unless there is a question regarding the eligibility of the applicant to receive access. In that case, the Secretary will decide whether to grant the applicant access within 30 days of receipt of the application. The Secretary will provide by the most expeditious means available the administrative protective order service list to parties to the proceeding on the day the service list is issued or amended.

§ 351.306 Use of business proprietary information.

(a) *By the Secretary.* The Secretary may disclose business proprietary information submitted to the Secretary only to:

(1) An authorized applicant;

(2) An employee of the Department of Commerce or the International Trade Commission directly involved in the proceeding in which the information is submitted;

(3) An employee of the Customs Service directly involved in conducting a fraud investigation relating to an antidumping or countervailing duty proceeding;

(4) The U.S. Trade Representative as provided by 19 U.S.C. 3571(i);

(5) Any person to whom the submitting person specifically authorizes disclosure in writing; and

(6) A charged party or counsel for the charged party under 19 CFR part 354.

(b) *By an authorized applicant.* An authorized applicant may retain business proprietary information for the time authorized by the terms of the administrative protective order. An authorized applicant may use business proprietary information for purposes of the segment of a proceeding in which the information was submitted. If

business proprietary information that was submitted in a segment of the proceeding is relevant to an issue in a different segment of the proceeding, an authorized applicant may place such information on the record of the subsequent segment as authorized by the APO.

(c) *Identifying parties submitting business proprietary information.* (1) If a party submits a document containing business proprietary information of another person, the submitting party must identify, contiguously with each item of business proprietary information, the person that originally submitted the item (e.g., Petitioner, Respondent A, Respondent B). Business proprietary information not identified will be treated as information of the person making the submission. If the submission contains business proprietary information of only one person, it shall so state on the first page and identify the person that originally submitted the business proprietary information on the first page.

(2) If a party to a proceeding is not represented by an authorized applicant, a party submitting a document containing the unrepresented party's business proprietary information must serve the unrepresented party with a version of the document that contains only the unrepresented party's business proprietary information. The document must not contain the business proprietary information of other parties.

(d) *Disclosure to parties not authorized to receive business proprietary information.* No person, including an authorized applicant, may disclose the business proprietary information of another person to any other person except another authorized applicant or a Department official described in paragraph (a)(2) of this section. Any person that is not an authorized applicant and that is served with business proprietary information must return it to the sender immediately, to the extent possible without reading it, and must notify the Department. An allegation of an unauthorized disclosure will subject the person that made the alleged unauthorized disclosure to an investigation and possible sanctions under 19 CFR part 354.

PART 354 [AMENDED]

4-5. The authority citation for part 354 is revised to read as follows:

Authority: 5 U.S.C. 301, and 19 U.S.C. 1677.

6. All references in part 354 to "protective order" are revised to read "administrative protective order", all

references to "proprietary information" are revised to read "business proprietary information", and all references to "appropriate Director" are revised to read "Director".

§ 354.1 [Amended]

7. Section 354.1 is amended by removing the citations "19 CFR 353.30 and 355.20" and replacing them with "19 CFR 351.306".

8. Section 354.2 is revised as follows:

§ 354.2 Definitions.

For purposes of this part:

Administrative protective order (APO) means an administrative protective order described in section 777(c)(1) of the Tariff Act of 1930, as amended; APO Sanctions Board means the Administrative Protective Order Sanctions Board.

Business proprietary information means information the disclosure of which the Secretary has decided is limited under 19 CFR 351.105, or successor regulations;

Charged party means a person who is charged by the Deputy Under Secretary with violating a protective order;

Chief Counsel means the Chief Counsel for Import Administration or a designee;

Date of service means the day a document is deposited in the mail or delivered in person;

Days means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

Department means the United States Department of Commerce;

Deputy Under Secretary means the Deputy Under Secretary for International Trade or a designee;

Director means the Senior APO Specialist or an office director under a Deputy Assistant Secretary, International Trade Administration, or a designee;

Lesser included sanction means a sanction of the same type but of more limited scope than the proposed sanction; thus a one-year bar on representations before the International Trade Administration is a lesser included sanction of a proposed seven-year bar;

Parties means the Department and the charged party or affected party in an action under this part;

Presiding official means the person authorized to conduct hearings in administrative proceedings or to rule on any motion or make any determination under this part, who may be an Administrative Law Judge, a Hearing Commissioner, or such other person who is not under the supervision or

control of the Assistant Secretary for Import Administration, the Deputy Under Secretary for International Trade, the Chief Counsel for Import Administration, or a member of the APO Sanctions Board;

Proprietary information means information the disclosure of which the Secretary has decided is limited under 19 CFR part 351 including business or trade secrets; production costs; distribution costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the gross net subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

Secretary means the Secretary of Commerce or a designee;

Segment of the proceeding means a portion of an antidumping or countervailing duty proceeding that is reviewable under section 516A of the Tariff Act of 1930, as amended.

Senior APO Specialist means the Department employee under the Director for Policy and Analysis who leads the APO Unit and is responsible for directing Import Administration's handling of business proprietary information;

Under Secretary means the Under Secretary for International Trade or a designee.

9. Section 354.3 is amended by revising paragraphs (a)(3), and (a)(4), and by adding a new paragraph (a)(5), as follows:

§ 354.3 Sanctions.

(a) * * *

(3) Other appropriate administrative sanctions, including striking from the record any information or argument submitted by, or on behalf of, the violating party or the party represented by the violating party; terminating any proceeding then in progress; or revoking any order then in effect;

(4) Requiring the person to return material previously provided by the Secretary and all other materials containing the business proprietary information, such as briefs, notes, or charts based on any such information received under an administrative protective order; and

(5) Issuing a private letter of reprimand.

* * *

10. Section 354.5 is amended by revising paragraphs (a), (b), (c) and (d)(1), (d)(2), and (d)(7), and by

removing paragraph (d)(8), and redesignating paragraph (d)(9) as (d)(8), as follows:

§ 354.5 Report of violation and investigation.

(a) An employee of the Department who has information indicating that the terms of an administrative protective order have been violated will provide the information to the Senior APO Specialist or the Chief Counsel.

(b) Upon receiving information which indicates that a person may have violated the terms of an administrative protective order from an employee of the Department or any other person, the director will conduct an investigation concerning whether there was a violation of an administrative protective order, and who was responsible for the violation, if any. No director shall investigate an alleged violation that arose out of a proceeding for which the director was responsible. For the purposes of this part, the director will be supervised by the Deputy Under Secretary for International Trade with guidance from the Chief Counsel. The director will conduct an investigation only if the information is received within 30 days after the alleged violation occurred or, as determined by the director, could have been discovered through the exercise of reasonable and ordinary care.

(c)(1) The director conducting the investigation will provide a report of the investigation to the Deputy Under Secretary for International Trade, after review by the Chief Counsel, no later than 90 days after receiving information concerning a violation if:

(i) The person alleged to have violated an administrative protective order personally notified the Secretary and reported the particulars surrounding the incident; and

(ii) The alleged violation did not result in any actual disclosure of business proprietary information. Upon the director's request, and if extraordinary circumstances exist, the Deputy Under Secretary for International Trade may grant the director up to an additional 90 days to conduct the investigation and submit the report.

(2) In all other cases, the director will provide a report of the investigation to the Deputy Under Secretary for International Trade, after review by the Chief Counsel, no later than 180 days after receiving information concerning a violation. Upon the director's request, and if extraordinary circumstances exist, the Deputy Under Secretary for International Trade may grant the director up to an additional 180 days to

conduct the investigation and submit the report.

(d) * * *

(1) Disclosure of business proprietary information to any person other than the submitting party, an authorized applicant, or an appropriate Department official identified in section 777(b) of the Tariff Act of 1930, including disclosure to an employee of any other United States Government agency or a member of Congress.

(2) Failure to follow the terms and conditions outlined in the administrative protective order for safeguarding business proprietary information.

* * *

(7) Use of business proprietary information submitted in one segment of a proceeding in another segment of the same proceeding or in another proceeding, except as authorized by the Tariff Act of 1930 or by an administrative protective order.

* * *

11. Section 354.6 is revised as follows:

§ 354.6 Initiation of proceedings.

(a) *In general.* After an investigation and report by the director under § 354.5(c) and consultation with the Chief Counsel, the Deputy Under Secretary for International Trade will determine whether there is reasonable cause to believe that a person has violated an administrative protective order. If the Deputy Under Secretary for International Trade determines that there is reasonable cause, the Deputy Under Secretary for International Trade also will determine whether sanctions under paragraph (b) or a warning under paragraph (c) is appropriate for the violation.

(b) *Sanctions.* In determining under paragraph (a) of this section whether sanctions are appropriate, and, if so, what sanctions to impose, the Deputy Under Secretary for International Trade will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case. If the Deputy Under Secretary for International Trade determines that sanctions are appropriate, the Deputy Under Secretary for International Trade will initiate a proceeding under this part by issuing a charging letter under § 354.7. The Deputy Under Secretary for International Trade will determine whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

(c) *Warning.* If the Deputy Under Secretary for International Trade determines under paragraph (a) of this

section that a warning is appropriate, the Deputy Under Secretary will issue a warning letter to the person believed to have violated an administrative protective order. Sanctions are not appropriate and a warning is appropriate if:

(1) The person took due care;

(2) The Secretary has not previously charged the person with violating an administrative protective order;

(3) The violation did not result in any disclosure of the business proprietary information or the Secretary is otherwise able to determine that the violation caused no harm to the submitter of the information; and

(4) The person cooperated fully in the investigation.

12. Section 354.7 is amended by revising paragraph (b), as follows:

§ 354.7 Charging letter.

* * *

(b) Settlement and amending the charging letter. The Deputy Under Secretary for International Trade and a charged or affected party may settle a charge brought under this part by mutual agreement at any time after service of the charging letter; approval of the presiding official or the administrative protective order Sanctions Board is not necessary. The charged or affected party may request a hearing but at the same time request that a presiding official not be appointed pending settlement discussions. Settlement agreements may include sanctions for purposes of § 354.18. The Deputy Under Secretary for International Trade may amend, supplement, or withdraw the charging letter as follows:

(1) If there has been no request for a hearing, or if supporting information has not been submitted under § 354.13, the withdrawal will not preclude future actions on the same alleged violation.

(2) If a hearing has been requested but no presiding official has been appointed, withdrawal of the charging letter will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

(3) The Deputy Under Secretary for International Trade may amend, supplement or withdraw the charging letter at any time after the appointment of a presiding official, if the presiding

official determines that the interests of justice would thereby be served. If the presiding official so determines, the presiding official will also determine whether the withdrawal will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

* * *

13. Section 354.9 is amended by revising paragraph (b), as follows:

§ 354.9 Request for a hearing.

(a) * * *

(b) Upon timely receipt of a request for a hearing, and unless the party requesting a hearing requests that the Under Secretary not appoint a presiding official, the Under Secretary will appoint a presiding official to conduct the hearing and render an initial decision.

§ 354.15 [Amended]

14. Section 354.15 is amended by removing paragraph (e).

§ 354.17 [Amended]

15. Section 354.17(b) is amended by removing the citations "19 CFR 353.30 and § 355.20" and replacing them with "19 CFR 351.305(c)".

16. Section 354.18 is added to part 354, to read as follows:

§ 354.18 Public notice of sanctions.

If there is a final decision under § 354.15 to impose sanctions, or if a charging letter is settled under § 354.7(b), notice of the Secretary's decision or of the existence of a settlement will be published in the **Federal Register**. If a final decision is reached, such publication will be no sooner than 30 days after issuance of a final decision or after a motion to reconsider has been denied, if such a motion was filed. In addition, whenever the Deputy Under Secretary for International Trade subjects a charged or affected party to a sanction under § 354.3(a)(1), the Deputy Under Secretary for International Trade also will provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations and to any Federal agency likely to have an interest in the matter. The Deputy Under Secretary for International Trade

will cooperate in any disciplinary actions by any association or agency. Whenever the Deputy Under Secretary for International Trade subjects a charged or affected party to a private letter of reprimand under § 354.3(a)(5), the Secretary will not make public the identity of the violator, nor will the Secretary make public the specifics of the violation in a manner that would reveal indirectly the identity of the violator.

17. Section 354.19 is added to part 354, to read as follows:

§ 354.19 Sunset.

(a) If, after a period of three years from the date of issuance of a warning letter, a final decision or settlement in which sanctions were imposed, the charged or affected party has fully complied with the terms of the sanctions and has not been found to have violated another administrative protective order, the party may request in writing that the Deputy Under Secretary for International Trade rescind the charging letter. A request for rescission must include:

(1) A description of the actions taken during the preceding three years in compliance with the terms of the sanctions; and

(2) A letter certifying that: the charged or affected party complied with the terms of the sanctions; the charged or affected party has not received another administrative protective order sanction during the three-year period; and the charged or affected party is not the subject of another investigation for a possible violation of an administrative protective order.

(b) Subject to the Chief Counsel's confirmation that the charged or affected party has complied with the terms set forth in paragraph (a) of this section, the Deputy Under Secretary for International Trade will rescind the charging letter within 30 days after receiving the written request.

Appendix to 19 CFR Part 351, Subpart C

Note: The following appendix will not appear in the Code of Federal Regulations: Application for Administrative Protective Order in Antidumping or Countervailing Duty Proceeding, and Administrative Protective Order.

BILLING CODE 3510-DS-P

Case Number _____
 Segment of Proceeding _____
 (Period of Review) _____
 Number of Pages _____
 Public Document _____

United States Department of Commerce
 International Trade Administration

APPLICATION FOR ADMINISTRATIVE PROTECTIVE ORDER
 in
 ANTIDUMPING OR COUNTERVAILING DUTY PROCEEDING

The Matter of the _____
 Antidumping/Countervailing Duty (indicate one) _____
 Proceeding on _____

ACCEPTED _____
 REJECTED _____
 DATE _____

_____ from _____
 _____ (Country)

 _____ (Product)

This application covers business proprietary information in the following segment of the proceeding:

- [] Investigation - petition filed on : _____
 [] Administrative Review initiated on : _____ (____FR____)
 for period : _____ to _____
 [] Other _____ : _____ (____FR____)

 (specify)

This application is:

- [] the initial application to be placed on the APO service list; or
 [] a request to amend the APO service list.

REPRESENTATION

1. I am an applicant for: _____
 who is an interested party/parties as follows:
 [] petitioner; [] respondent; [] other interested party,
 as defined in 19 C.F.R. § _____ of the
 Department's regulations.
2. If the interested party/parties I represent have another
 authorized applicant or representative, _____

_____ is the lead firm.

REQUEST FOR INFORMATION

3. I request disclosure of all business proprietary information under administrative protective order ("APO") which will be or has been placed on the record of this segment of this proceeding that is releasable under 19 C.F.R. § 351.305 for the purpose of fully representing the interests of my client:

- [] all business proprietary information, including hard copy and electronic data; or
 [] all business proprietary information in hard copy form only.

INDIVIDUAL STATEMENTS

4. TO BE COMPLETED BY ATTORNEY APPLICANTS

- A. I am/am not (indicate one) an officer of the interested party or parties listed in paragraph 1, or of other competitors of the person submitting the business proprietary information requested in this application.
- B. I do/do not (indicate one) participate in the competitive decision-making activity of the interested party or parties listed in paragraph 1, or of other competitors of the person submitting the business proprietary information requested in this application. I understand that competitive decision-making activity includes advice on production, sales, operations, or investments, but does not include legal advice.

- C. I do/do not (indicate one) have an official position or other business relationship other than providing advice for the purpose of this segment of the proceeding with the interested party or parties listed in paragraph 1, or with other competitors of the person submitting the business proprietary information requested in this application.
- D. I do/do not (indicate one) currently intend within 12 months after the date upon which the final determination/results is/are published to enter into any of the relationships described in paragraphs 4A B and C.
- E. Explain for each applicant any affirmative response to paragraph 4A, B, C or D: _____

5. TO BE COMPLETED BY NON-ATTORNEY APPLICANTS

- A. I am/am not (indicate one) employed by/retained by (indicate one) a law firm representing the interested party or parties listed in paragraph 1.
- B. If I am retained by an attorney, the name of the lawyer and law firm are: _____
- C. If I am not an employee of a law firm and have not been retained by the attorney for the interested party or parties listed in paragraph 1, in a separate attachment to this application I am providing information concerning my practice before the International Trade Administration ("ITA").
- D. I am/am not (indicate one) an officer or employee of a interested party or parties listed in paragraph 1, or of other competitors of the submitter of the business proprietary information requested in this application.
- E. I do/do not (indicate one) participate in the competitive decision-making activity of the interested party or parties listed in paragraph 1, or of other competitors of the person submitting the business proprietary information requested in this application. I understand that competitive decision-making activity includes advice on production, sales, operations, or investments, but does not include legal advice.

- F. I do/do not (indicate one) have an official position or other business relationship other than providing advice for the purpose of this segment of the proceeding with the interested party or parties listed in paragraph 1, or with other competitors of the person submitting the business proprietary information requested in this application.
- G. I do/do not (indicate one) currently intend within 12 months after the date upon which the final determination/results is/are published to enter into any of the relationships described in paragraphs 5D, E and F.
- I. Explain for each applicant any affirmative response to paragraph 5D, E, F or G: _____

AGREEMENT TO BE BOUND

6. Recognizing the penalties for perjury under the laws of the United States, I affirm that all statements in this application are true, accurate, and complete to the best of my knowledge. I agree, individually and on behalf of my law firm, corporate law office, or company, if any, to be bound by the terms stated in the administrative protective order issued in this segment of the proceeding.
7. I certify that this application is a true and accurate copy of the Department's "Application for Administrative Protective Order", FORM ITA-367 (5.98). If there are any discrepancies, I agree to be bound by the Department's standard form.

INDIVIDUAL SIGNATORIES

8. ATTORNEY APPLICANTS (~~SAMPLE~~ FORMAT)

Individual applicants:

(1) _____, _____, _____
(name of applicant) (signature) (date)

of _____
(name and address of law firm)

I am admitted to practice in the following jurisdiction(s) and before the following court(s): _____

9. NON-ATTORNEY APPLICANTS (SAMPLE FORMAT)

Individual applicants:

(1) _____, _____, _____
 (name of applicant) (signature) (date)

of _____
 (name and address of firm)

I am a member of the following professional association(s):

COURTESY PAGE
FOR
WAIVER OF SERVICE

If my application for administrative protective order ("APO") in this proceeding is granted, I waive service of the following business proprietary information that I would be authorized to receive under the APO:

- o
- o
- o
- o

Inadvertent service of a document
 containing business proprietary information
 on a party that has been granted APO access
 and has waived service
 IS NOT A VIOLATION OF THE APO.

A/C-____-____
 (Segment of Proceeding)
 (Period of Review)
 Public Document

In the Matter of the Antidumping/Countervailing Duty)
 (Segment of Proceeding) of)
 from (A/C-____-____))

ADMINISTRATIVE PROTECTIVE ORDER

IT IS HEREBY ORDERED THAT:

All business proprietary information submitted in the above-referenced segment of the proceeding, including new information submitted in a remand during litigation on this segment of the proceeding, which the submitting party agrees to release or the Department of Commerce ("the Department") determines to release, will be released to the authorized applicants on the administrative protective order (APO) service list for this segment of the proceeding, except the following:

- o customer names in an investigation;
- o specific information of a type for which the Department determines there is a clear and compelling need to withhold from disclosure.

USE OF BUSINESS PROPRIETARY INFORMATION UNDER THIS APO

Business proprietary information subject to this APO may be used by an authorized applicant in this segment of the proceeding and in the following other segments or proceedings:

[This section will authorize use of business proprietary information in other segments of the same proceeding, or in other proceedings, consistent with the Tariff Act and the regulations. The terms in this section will vary, depending on what segment of the proceeding this APO covers. This section will also establish the deadline for destruction of business proprietary information in each set of circumstances.]

REQUIREMENTS FOR AUTHORIZED APPLICANTS

All applicants authorized to have access to business proprietary information under this APO are subject to the following terms:

1. The authorized applicant must establish and follow procedures to ensure that no employee of the authorized applicant's firm releases business proprietary information to any person other than the submitting party, an authorized applicant, or the appropriate Department official identified in section 351.306(a) of the regulations. No person in the authorized applicant's firm may release business proprietary information received under this APO to any person other than those described in this paragraph.
2. The authorized applicant may allow APO access to one or more paralegals, law clerks, secretaries, or other support staff employed by or on behalf of the applicant's firm and operating within the confines of the firm. The authorized applicant may also use the services of subcontracted individuals to pick up APO information released by the Department. All support staff must sign and date an acknowledgement that they will abide by the terms and conditions of the APO at the time they are first permitted access to any information subject to APO.
3. The authorized applicant must ensure that business proprietary information in an electronic format will not be accessible by modem to parties not authorized to receive business proprietary information.
4. The authorized applicant must pay all reasonable costs incurred by the submitter of the electronic business proprietary information for the copying of its electronic information released to the authorized applicant, if payment is requested. Reasonable costs include the cost of the electronic medium and the cost of copying the complete proprietary version of the electronic information/medium submitted to the Department in APO releasable form, but not costs borne by the submitter of the electronic data in the creation of the electronic data/medium submitted to the Department.

NOTIFICATION REQUIREMENTS

5. If changed circumstances affect the authorized applicant's representation of an interested party at any time authorized under this APO (i.e., reassignment, departure from firm), the authorized applicant must notify the Department in accordance with section 351.305(a)(2) of the regulations.
6. At the expiration of the time specified in this APO, the authorized applicant must destroy all business proprietary information and notify the Department of the destruction in accordance with section 351.305(a)(3) of the regulations, or provide to the Department official responsible for the administration of the APO in this segment of the proceeding a protective order issued by a court or in a binational panel proceeding.

SANCTIONS FOR BREACH OF THIS APO

7. The authorized applicant will be subject to any or all of the sanctions described in 19 C.F.R. Part 354 if there is a violation of this APO by the authorized applicant or any of the persons identified in item 9 of this APO.
8. The authorized applicant will accept full responsibility, individually and on behalf of the authorized applicant's firm or corporate office, for violation of this APO by any employee of the firm or corporate office, or support staff retained by the firm or corporate office, who is permitted access to APO information.
9. The authorized applicant will promptly report and confirm in writing any possible violation of this APO to the Department.

DEFINITIONS

For purposes of this APO, the following definitions apply:

"Representative" is an individual, enterprise, or entity acting on behalf of an interested party.

"Applicant" is a representative of an interested party who has applied for access to business proprietary information under this APO.

"Authorized applicant" is an applicant that the Secretary has authorized to receive business proprietary information under this APO.

"Lead firm" is the firm that will be the primary contact with the Department and that will accept service of all documents for the party it represents where two firms independently have access under APO.

"Support staff" includes paralegals, law clerks, secretaries and other support staff that are employed by or on behalf of the applicant's firm and operating within the premises of the firm, and work under the supervision of an authorized applicant, as well as subcontractors of the firm providing similar support staff functions.

"Electronic data" includes (1) data submitted by a party, generated by the Department, or entered by the recipient on computer tape, disk, diskette, or any other electronic computer

medium; and (2) all electronic work products resulting from manipulation of this data, as transferred in any form onto any other electronic computer medium, such as tape, disk, diskette, Bernoulli cartridge, removable disk pack, etc.

 (Signature of Department Official)
 Typed Name
 Title
 Import Administration

 (date)

[FR Doc. 98-11802 Filed 5-1-98; 8:45 am]

BILLING CODE 3510-08-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 90G-0412]

Lipase Enzyme Preparation From *Rhizopus Niveus*: Affirmation of GRAS Status as a Direct Food Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that lipase enzyme preparation derived from *Rhizopus niveus* is generally recognized as safe (GRAS) for use as a direct human food ingredient. This action is in response to a petition submitted by Fuji Oil Co., Ltd. **DATES:** The regulation is effective May 4, 1998. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication listed in § 184.1420 (21 CFR 184.1420), effective May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3101.

SUPPLEMENTARY INFORMATION:**I. Background**

In accordance with the procedures described in 21 CFR 170.35, Fuji Oil Co., Ltd., submitted a petition (GRASP 7G0330) requesting that lipase-protease enzyme preparation from *R. niveus* be affirmed as GRAS for use as a direct human food ingredient. FDA published a notice of filing of this petition in the Federal Register of June 18, 1992 (57 FR 27256), and gave interested persons an opportunity to submit comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. FDA received no comments in response to the filing notice.

Although the petitioner proposed that the subject enzyme preparation be called by the common or usual name "lipase-protease," the proposed use of the enzyme preparation is solely for its lipase activity. The GRAS exemption described in section 201(s) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(s)) specifies that a GRAS substance must be generally recognized as safe "under the conditions of its intended use." Thus, affirmation of

GRAS status pertains to the particular use of a substance. Accordingly, FDA considers the enzyme preparation that is the subject of this document to be "lipase enzyme preparation." To avoid confusion between lipase, the enzyme, and the lipase-containing enzyme preparation, which contains lipase as its characterizing enzyme activity, but which also contains diatomaceous earth as a carrier and may contain other enzyme activities and impurities, this document will henceforth use the terms "lipase" to refer to the enzyme and "lipase enzyme preparation" to refer to the fermentation-derived lipase enzyme preparation, including the carrier diatomaceous earth.

II. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances directly or indirectly added to food. The basis of such views may be either scientific procedures or, in the case of a substance used in food prior to January 1, 1958, experience based on common use in food. General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation and ordinarily is based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive regulation, and ordinarily is based upon generally available data and information.

FDA has evaluated Fuji Oil Co., Ltd.'s petition on the basis of scientific procedures to establish that the use of lipase enzyme preparation as an enzymatic catalyst for the interesterification of fats and oils is GRAS. In evaluating the petition, FDA considered: (1) Published and unpublished data and information relating to the identity and function of the enzyme component (i.e., lipase) (Refs. 1 through 5); (2) published and unpublished data and information relating to the production organism (Ref. 6); and (3) published and unpublished information, methods, and principles relating to the methods and processing aids used in the manufacture of the enzyme preparation (Refs. 4 and 7 through 10).

III. Safety Evaluation**A. Introduction**

Commercial enzyme preparations that are used in food processing typically are not chemically pure but contain, in addition to the enzyme component, other components that derive from the production organism and the fermentation media, residual amounts of processing aids, and substances used as stabilizers, preservatives or diluents. Issues relevant to a safety evaluation of the enzyme preparation therefore include the safety of the enzyme component, the safety of the enzyme source, and the safety of processing aids and other substances added during the manufacturing process. As with all substances added to food, a safety evaluation of an enzyme preparation also includes consideration of dietary exposure to that preparation.

B. The Enzyme Component

Triglycerides are fats or oils comprised of fatty acids linked by ester bonds to each of the three hydroxyl groups of glycerol. Triacylglycerol lipases catalyze the hydrolysis of these ester bonds and can be grouped according to their specificity. The lipase produced by *Geotrichum candidum*, for example, preferentially cleaves triglycerides containing long-chain fatty acids with a cis double bond in the 9-position, but such specificity for the hydrolysis of esters containing a particular type of fatty acid is unusual. Several other lipases (e.g., the lipase derived from *Candida cylindracea*) are nonspecific with respect to either the chemical structure of the fatty acid moiety, or the position of the ester bond, that is hydrolyzed; these lipases catalyze the complete breakdown of triglycerides into glycerol and free fatty acids, and the mono- and diglycerides that are intermediates in the reaction do not normally accumulate (Refs. 2 and 4).

The largest group of triacylglycerol lipases exhibits specificity with respect to the position of the ester bond that is cleaved, i.e., only bonds at the 1- or 3-position of the glycerol component are hydrolyzed. Most of the lipases that are commonly used in food processing (e.g., animal lipase, esterase-lipase from *Mucor miehei*, and lipases derived from *Aspergillus niger*, *M. javanicus*, and *R. delemar*), including the *R. niveus*-derived lipase that is the subject of this document, belong to this group (EC No. 3.1.1.3; CAS Reg. No. 9001-62-1) (Refs. 2, 4, and 11).

Although the petitioner did not address the detailed molecular structure of lipase from *R. niveus*, most lipases that have been characterized at the

molecular level are glycoproteins that contain between 2 and 15 percent carbohydrates, with mannose as the major glycoside (Ref. 4). Lipases from animal and microbial sources have a long history of use in food. Animal lipase (21 CFR 184.1415) is affirmed as GRAS based on its common use in food prior to January 1, 1958. Esterase-lipase from the fungus *M. miehei* (21 CFR 173.140) is approved for use as a food additive. These enzymes are commonly used to enhance flavor production in cheese and in butterfat (Refs. 1, 12, and 13). In addition, lipases from animal sources (e.g., bovine stomach and hog or porcine pancreas) and microbial sources (including *R. arrhizus*, *R. delemar*, and *R. niveus*) have been listed in the Codex Alimentarius Commission "Inventory of Processing Aids" (Ref. 14).

The reaction product of the *R. niveus*-derived lipase is a mixture of mono- and diglycerides and free fatty acids (Refs. 2 through 5). The reaction catalyzed by this lipase is reversible and, therefore, under appropriate conditions the enzyme can catalyze the synthesis of triglycerides from a mixture of glycerides and free fatty acids. When this combination of hydrolysis and synthesis occurs within a mixture of triglycerides, or within a mixture of triglycerides and fatty acid esters, the reaction products are triglycerides that have been interesterified, i.e., triglycerides in which the fatty acid components have been exchanged between triglyceride molecules or between triglyceride molecules and fatty acid esters (Refs. 1 through 5). For example, the GRAS food ingredient "cocoa butter substitute primarily from palm oil" may be manufactured by the lipase-catalyzed interesterification of partially saturated palm oil-derived triglycerides with the fatty acid ester ethyl stearate (21 CFR 184.1259).

Intesterification also can be achieved through the use of chemical catalysts such as sodium methylate. Such chemical catalysis results in random interesterification, in which fatty acid interchange occurs at all three positions on the glycerol backbone. In contrast, enzymatic catalysis with a lipase, such as the lipase that is the subject of this document, results in selective interesterification at the 1- and 3-positions only. Random interesterification is used commercially in the manufacture of margarines and shortenings, but lipase-catalyzed selective interesterification, which allows an unsaturated fatty acid to remain at the 2-position, is important in the manufacture of fats and oils used in confectionery, such as cocoa butter substitute primarily from palm oil (Refs.

2 through 4). The petitioner stated that one of the primary uses of *R. niveus*-derived lipase enzyme preparation would be in the manufacture of cocoa butter substitute primarily from palm oil.

In general, issues relevant to a safety evaluation of proteins such as the enzyme component of an enzyme preparation are potential toxicity and allergenicity (Ref. 15). Pariza and Foster (Ref. 15) note that very few toxic agents have enzymatic properties, and those that do (e.g., diphtheria toxin and certain enzymes in the venom of poisonous snakes) catalyze unusual reactions that are not related to the reactions catalyzed by enzymes that are commonly used in food processing, such as the lipase that is the subject of this document. Further, the agency has recently noted, in the context of guidance to industry regarding the safety assessment of new plant varieties, that enzymes themselves do not generally raise safety concerns (57 FR 22984 at 23005, May 29, 1992). Exceptions include enzymes that produce substances that are not ordinarily digested and metabolized, or that produce toxic substances.

The catalytic activities of the lipase that is the subject of this document are well known. As already discussed, lipase catalyzes two related reactions: (1) The splitting of commonly consumed triglycerides into smaller components, i.e., fatty acids and mono- and diglycerides; and (2) the synthesis of triglycerides from fatty acids and mono- and diglycerides. The reaction products (i.e., fatty acids, mono- and diglycerides, and triglycerides) from both of these reactions are readily metabolized by the human body and do not have toxic properties (Ref. 16).

The agency is not aware of any reports of allergic reactions associated with the ingestion of enzymes derived from *Rhizopus* species. There have been, however, some reports of allergies and primary irritations from skin contact with enzymes or from inhalation of dust from concentrated enzymes (e.g., proteases used in the manufacture of laundry detergents) (Refs. 17 through 19). These reports relate primarily to workers in production plants (Ref. 18) and are not relevant to an evaluation of the safety of ingestion of such enzymes in food. Moreover, Pariza and Foster (Ref. 15) note that there are no confirmed reports of primary irritations in consumers caused by residues of food processing enzymes in food.

FDA concludes that generally available and accepted data and information establish that the use of lipase in food raises no toxicity or

allergenicity concerns. FDA also concludes that generally available and accepted data and information establish that the lipase that is the subject of this document is capable of achieving its intended technical effect. Finally, FDA concludes that generally available and accepted data and information establish that the lipase that is the subject of this document is similar in function to other lipases that are used in food processing to catalyze the hydrolysis of ester bonds at the 1- or 3-position of the glycerol component of a triglyceride.

C. Enzyme Source, Manufacturing Methods, and Processing Aids

The source of the lipase that is the subject of this document is the fungus *R. niveus*. Fungally-derived enzyme preparations used in food processing are usually not chemically pure but contain, in addition to the enzyme component, other components that derive from the production organism and the fermentation media, residual amounts of processing aids, and substances used as stabilizers, preservatives or diluents. The petitioned enzyme preparation meets the general requirements and additional requirements for enzyme preparations in the monograph on Enzyme Preparations in the Food Chemicals Codex, 4th ed. (Ref. 20). When the *R. niveus*-derived lipase enzyme preparation is produced in accordance with current good manufacturing practice (CGMP), it is produced using processing aids that are substances that are acceptable for general use in foods and under culture conditions that ensure a controlled fermentation, thus preventing the introduction of extraneous microorganisms that could be the source of toxic materials and other toxic substances (Ref. 20).

The lipase enzyme preparation is produced in a multistage process by controlled fermentation¹ using a pure culture of the fungus *R. niveus* followed by isolation of the enzyme-containing fraction. Prior to its use in the interesterification of fats and oils, the enzyme-containing fraction is adsorbed onto diatomaceous earth as a carrier. These methods are based upon generally available and accepted methods used for fermentation, for processing fermentation-derived enzyme-containing fractions, and for immobilizing an enzyme-containing fraction on an insoluble carrier (Refs. 4 and 7 through 10).

¹ The stage of the manufacturing process in which the enzyme is being produced by an actively growing culture of microorganisms is referred to as fermentation.

In the initial stage of the fermentation process, the seed cultures of *R. niveus* are checked for purity and classification after growth on a potato-agar medium. The production cultures are suspended in sterile water and added to a previously autoclaved wheat bran culture medium. After growth for 28 to 32 hours, the broth is checked for quality and added to large batch-fermentors containing sterilized growth medium (semisolid wheat bran). The culture is monitored until the water content and pH value of the resulting malt, which is referred to as the "koji," reach standard requirements.

A cell-free extract of the enzymes that are components of the fermentation mixture is prepared by sprinkling and steeping the koji with cold water, filtering the extracted koji through a filter press and a fine filtration apparatus, and precipitating the enzymes that are present in the resulting filtrate with ethanol. After decanting the supernatant and centrifuging the remaining slurry, the sediment containing the extracted enzymes is collected and dried overnight in a vacuum-dryer at 40 to 45 °C. The dried powder is ground, sized, and mixed before storing at room temperature. The finished product is adjusted to a standard activity by mixing the enzyme powder with dextrin as an excipient. The standardized enzyme powder is adsorbed onto diatomaceous earth carrier prior to its use in the interesterification of fats or oils. The petitioner provided a published scientific review article that discusses this immobilization technique with respect to use of lipase enzyme preparations (Ref. 4).

The production strain of *R. niveus* that is the source of the lipase enzyme is nontoxicogenic and nonpathogenic. The manufacturing methods completely remove the organism from the enzyme-containing fraction (Ref. 4). Moreover, the petitioner provided documentation, based upon published methods for strain identification (Ref. 6), showing that the production strain was taxonomically identical to the strain used for the production of *R. niveus*-derived amyloglucosidase enzyme preparation, which is approved for use as a secondary direct food additive (21 CFR 173.110).

FDA concludes that the presence of added substances and impurities that are derived from the enzyme source or that are introduced by manufacturing does not present a basis for concern about the safety of the lipase enzyme preparation.

D. Dietary Exposure

FDA considered the estimated dietary exposure to lipase enzyme preparation for the proposed use as an enzymatic catalyst in the interesterification of fats and oils (Refs. 21 through 23). The predominant source of potential exposure to the total organic solids in the enzyme preparation will be baked goods that use interesterified fat at levels up to 30 percent. The petitioner stated that the standardized enzyme powder is adsorbed onto diatomaceous earth carrier prior to its use in the interesterification of fats or oils, so that it can be removed from the modified triglyceride following the enzyme-catalyzed interesterification. Because the adsorbed enzyme preparation is removed from the interesterified product following catalysis, no detectable enzyme remains in the interesterified product.

FDA concludes that dietary exposure to the lipase enzyme preparation is negligible and therefore does not present a basis for concern about use of the lipase enzyme preparation.

IV. Specifications

The agency finds that, because the potential impurities in the lipase enzyme preparation that may originate from the source or manufacturing process do not raise any basis for concern about the safe use of the preparation, the general requirements and additional requirements for enzyme preparations in the monograph on Enzyme Preparations in the Food Chemicals Codex, 4th ed. (1996), which are being incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, are adequate as minimum criteria for food-grade lipase enzyme preparation. Lipase assay can be performed using a method entitled "Lipase Activity" (Ref. 24) or by using any appropriate validated method.

V. Conclusions

The agency has evaluated all available information and finds, based upon the published information about the identity and function of lipase, that the enzyme component of lipase enzyme preparation will achieve its intended technical effect and raises no toxicity or allergenicity concerns. In addition, the agency finds, based upon the published information about the identity and function of lipase, that the enzyme component of the lipase enzyme preparation is similar in function to other lipases that are used in food processing to catalyze the hydrolysis of ester bonds at the 1- or 3-position of the glycerol component of a triglyceride.

The agency further finds, based upon generally available and accepted information, that when the lipase enzyme preparation is manufactured in accordance with § 184.1420, the source, *R. niveus*, and the manufacturing process will not introduce impurities into the preparation that may render its use unsafe. Finally, the agency finds that dietary exposure to the lipase enzyme preparation from the petitioned use does not present a basis for concern about use of the lipase enzyme preparation. Therefore, the agency concludes, based upon the evaluation of published data and information, corroborated by unpublished data and information, and based upon scientific procedures (§ 170.30(b)), that the lipase enzyme preparation described in the regulation set out below is GRAS for use as an enzymatic catalyst in the interesterification of fats and oils.

VI. Environmental Considerations

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Analysis For Executive Order 12866

FDA has examined the impacts of this final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of \$100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, the agency has determined that this final rule is not a major rule for the purpose of Congressional review.

The primary benefit of this action is to remove uncertainty about the regulatory status of the petitioned

substance. No compliance costs are associated with this final rule because no new activity is required and no current or future activity is prohibited by this rule.

VIII. Regulatory Flexibility Analysis

FDA has examined the impacts of this final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small entities. No compliance costs are associated with this final rule because no new activity is required and no current or future activity is prohibited. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Scott, D., "Enzymes, Industrial," Encyclopedia of Chemical Technology, edited by Mark, H. F. et al., John Wiley and Sons, New York, 3d ed., 9:173-224, 1978.
2. MacRae, A. R., "Lipase-Catalyzed Interesterification of Fats and Oils," *Journal of the American Oil Chemists Society*, 60:291-294, 1983.
3. Ratledge, C., "Biotechnology as Applied to the Oils and Fats Industry," *Fette Seifen Anstrichmittel*, 86:379-389, 1984.
4. MacRae, A. R., and R. C. Hammond, "Present and Future Applications of Lipases," *Biotechnology and Genetic Engineering Reviews*, 3:193-217, 1985.
5. IUB, "Enzyme Nomenclature 1992," Academic Press, New York, p. 307, 1992.
6. Inui, T., Y. Takeda, and H. Iizuka, "Taxonomical Studies on Genus *Rhizopus*," *Journal of General and Applied Microbiology*, 11:1-121, 1965.
7. Beckhorn, E. J., M. D. Labee, and L. A. Underkofler, "Production and Use of Microbial Enzymes for Food Processing," *Journal of Agricultural and Food Chemistry*, 13:30-34, 1965.
8. Underkofler, L. A., R. R. Barton, and S. S. Rennet, "Microbiological Process Report—Production of Microbial Enzymes and Their Applications," *Applied Microbiology*, 6:212-221, 1958.
9. Chibata, Ichiro, ed., *Immobilized Enzymes—Research and Development*, John Wiley and Sons, New York, 1978.
10. Chaplin, M. F., and C. Bucke, *Enzyme Technology*, Cambridge University Press, New York, 1990.
11. Shahani, K. M., "Lipases and Esterases," *Enzymes in Food Processing*, edited by Reed, G., Academic Press, New York, 2d ed., pp. 208-214, 1975.

12. Reed, G., "Industrial Enzymes—Now Speed Natural Processes," *Food Engineering*, 24:105-109, 1952.

13. De Becze, G. I., "Food Enzymes," *Critical Reviews in Food Technology*, 1:479-518, 1970.

14. Codex Alimentarius, Joint FAO/WHO Food Standards Programme, Food and Agriculture Organization of the United Nations/World Health Organization, Rome, vol. 1, 2d ed., 1992.

15. Pariza, M. W., and E. M. Foster, "Determining the Safety of Enzymes Used in Food Processing," *Journal of Food Protection*, 46:453-468, 1983.

16. Shils, M. E., J. A. Olson and M. Shike, eds., *Modern Nutrition in Health and Disease*, Lea & Febiger, Philadelphia, 8th ed., pp. 51-57, 1994.

17. "Evaluation of the Health Aspects of Papain as a Food Ingredient," Select Committee on GRAS Substances, Washington, DC, available through U.S. Department of Commerce, National Technical Information Service, Order No. PB-274-174, 1977.

18. Fulwiler, R. D., "Detergent Enzymes—An Industrial Hygiene Challenge," *American Industrial Hygiene Association Journal*, 32:73-81, 1971.

19. "Enzyme-containing Laundering Compounds and Consumer Health," National Research Council/National Academy of Sciences, National Technical Information Service, Washington, DC, Order No. PB-204-118, 1971.

20. Monograph on "Enzyme Preparations," Food Chemicals Codex, National Academy Press, Washington, DC, 4th ed., pp. 131 and 133-134, 1996.

21. Memorandum dated October 21, 1988, from Food and Color Additives Review Section, FDA, to Direct Additives Branch, FDA, "Lipase/Protease Enzyme Preparation Derived from *Rhizopus niveus*."

22. Memorandum dated March 8, 1989, from Food and Color Additives Review Section, FDA, to Direct Additives Branch, FDA, "Lipase/Protease Enzyme Preparation from *Rhizopus niveus*."

23. Memorandum dated April 3, 1990, from Food and Color Additives Review Section, FDA, to Direct Additives Branch, FDA, "Lipase/Protease Enzyme Preparation from *Rhizopus niveus*. Refinement of Estimated Daily Intake (EDI). Submission of 3-6-90."

24. Monograph on "Enzyme Preparations," Food Chemicals Codex, National Academy Press, Washington, DC, 4th ed., p. 803, 1996.

List of Subjects in 21 CFR Part 184

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

2. Section 184.1420 is added to subpart B to read as follows:

§ 184.1420 Lipase enzyme preparation derived from *Rhizopus niveus*.

(a) Lipase enzyme preparation contains lipase enzyme (CAS Reg. No. 9001-62-1), which is obtained from the culture filtrate resulting from a pure culture fermentation of a nonpathogenic and nontoxicogenic strain of *Rhizopus niveus*. The enzyme preparation also contains diatomaceous earth as a carrier. The characterizing activity of the enzyme, which catalyzes the interesterification of fats and oils at the 1- and 3-positions of triglycerides, is triacylglycerol lipase (EC 3.1.1.3).

(b) The ingredient meets the general requirements and additional requirements for enzyme preparations in the monograph on Enzyme Preparations in the "Food Chemicals Codex," 4th ed. (1996), pp. 133 and 134, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter for the interesterification of fats and oils.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

Dated: April 14, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98-11681 Filed 5-1-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Propofol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Abbott Laboratories. The NADA provides for veterinary prescription use of propofol emulsion for intravenous injection in dogs as an anesthetic.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center For Veterinary Medicine (HFV-110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1612.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064-4000, filed NADA 141-098 that provides for veterinary prescription use of Propofol® (propofol) emulsion for intravenous injection in dogs for induction of anesthesia, maintenance of anesthesia, or induction of anesthesia where maintenance is provided by inhalation anesthetic. The NADA is approved as of March 13, 1998, and the regulations are amended in 21 CFR 522.2005(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning March 13, 1998, because the application contains substantial evidence of the effectiveness of the drug involved and studies of animal safety required for approval and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.2005 [Amended]

2. Section 522.2005 *Propofol injection* is amended in paragraph (b) by removing "No. 000061" and adding in its place "Nos. 000061 and 000074".

Dated: April 22, 1998.

Stephen F. Sundlof,
Director, Center for Veterinary Medicine.
[FR Doc. 98-11740 Filed 5-1-98; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Elanco Animal Health, Division of Eli Lilly and Co. The supplemental NADA's provide a revised specification for monensin bulk drug substance used to make monensin Type A medicated articles.

EFFECTIVE DATE: May 4, 1998.
FOR FURTHER INFORMATION CONTACT: Mary G. Leadbetter, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1662.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, is the sponsor of NADA 38-878 that provides for use of monensin Type A medicated articles to make monensin Type C medicated feeds for chickens, turkeys, and quail, and NADA 95-735 that provides for use of monensin Type A medicated articles to make monensin Type B and C medicated feeds for cattle and goats. Elanco filed supplemental NADA's that provide revised assay information used in checking the specifications of the monensin bulk drug substance used in Type A medicated articles. The supplemental NADA's were approved as of March 17, 1997, and the regulations are amended in 21 CFR 558.355(a) to reflect the approval.

Approval of these supplements did not require a freedom of information summary because the approvals concern a change in specifications of the monensin bulk drug substance. This change does not affect the product's safety or effectiveness.

The agency has determined under 21 CFR 25.33(a)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended in paragraph (a) after the parenthetical phrase by removing the period at the end of the second sentence, and by adding the phrase ", or, using High Performance Liquid Chromatography, the factor distribution of monensin Factor A or B is calculated as the percentage of total biopotency of all peaks."

Dated: April 21, 1998.

Andrew J. Beaulieu,
Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.
[FR Doc. 98-11741 Filed 5-1-98; 8:45 am]
BILLING CODE 4160-01-F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4231

RIN 1212-AA69

Mergers and Transfers Between Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulation on Mergers and Transfers Between Multiemployer Plans to clarify how the rules are to be applied to plans terminated by mass withdrawal and to make other minor changes and clarifications in the regulation.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024 (202-326-4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Background

Under section 4231 (a) and (b) of ERISA, a merger, or a transfer of assets and liabilities, between multiemployer plans must satisfy four requirements unless otherwise provided in regulations prescribed by the PBGC:

- (1) The PBGC must receive 120 days' advance notice of the transaction;
- (2) Accrued benefits must not be reduced;
- (3) There must be no reasonable likelihood that benefits will be suspended as a result of plan insolvency; and
- (4) An actuarial valuation of each affected plan must have been performed as prescribed in section 4231(b)(4).

The PBGC's regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231) prescribes procedures for requesting a determination that a merger or transfer satisfies applicable requirements, allows the PBGC to waive the 120-day notice requirement, and sets higher-level and lower-level requirements for "safe harbor" plan solvency tests and for valuation standards. Whether the

higher-level or lower-level requirements apply depends on whether a "significant transfer" is involved.

On May 1, 1997, the PBGC published for public comment (at 62 FR 23700) a proposed rule to amend part 4231. One commenter submitted comments. The final rule reflects changes made in response to the comments.

Terminated Plan Transactions

The proposed amendment provided that transactions involving plans terminated by mass withdrawal under ERISA section 4041A(a)(2) would (except for "de minimis" transactions) be governed by the higher-level valuation standard and "safe harbor" solvency test. The proposed amendment also extended to "de minimis" terminated plan transactions the requirement that actuarial valuation reports be submitted to the PBGC.

The commenter expressed concern that the proposed amendment would "have the adverse effect of making it more expensive for a large, well-funded plan to rescue a small terminated plan by absorbing it into a large, stable asset pool." The final regulation adopts the commenter's suggestion that a plan not be subjected to the higher-level valuation provisions simply because it was involved in a terminated plan transaction if it were not otherwise "significantly affected" (see §§ 4231.5 and 4231.9(b)(1)(iii)).

Other Changes

The commenter pointed out that for consistency with other provisions, redesignated § 4231.6(a)(2) should refer to "the first five years beginning on or after the proposed effective date" (rather than just "after" that date). The PBGC agrees and has made the suggested change.

Paperwork Reduction Act

The collection of information requirements in Part 4231 as amended have been approved by the Office of Management and Budget under control number 1212-0022 (expires June 30, 2000). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Compliance With Rulemaking Guidelines

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

The PBGC certifies that the amendment in this rule will not have a significant economic impact on a

substantial number of small entities. This certification is based on the fact that the primary substantive effect of the amendment is to liberalize certain existing requirements and to clarify the application of existing requirements to a very rare category of transactions, viz., multiemployer mergers and transfers involving plans that have terminated by mass withdrawal. (The PBGC is aware of only two such transactions since section 4231 of ERISA was enacted.)

Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, compliance with sections 603 and 604 of the Regulatory Flexibility Act is not required.

List of Subjects in 29 CFR Part 4231

Pensions, Reporting and recordkeeping requirements.

For the reasons given above, 29 CFR part 4231 is revised to read as follows.

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

- Sec.
- 4231.1 Purpose and scope.
 - 4231.2 Definitions.
 - 4231.3 Requirements for mergers and transfers.
 - 4231.4 Preservation of accrued benefits.
 - 4231.5 Valuation requirement.
 - 4231.6 Plan solvency tests.
 - 4231.7 De minimis mergers and transfers.
 - 4231.8 Notice of merger or transfer.
 - 4231.9 Request for compliance determination.
 - 4231.10 Actuarial calculations and assumptions.

Authority: 29 U.S.C. 1302(b)(3), 1411.

§ 4231.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe notice requirements under section 4231 of ERISA for mergers and transfers of assets or liabilities among multiemployer pension plans. This part also interprets the other requirements of section 4231 and prescribes special rules for *de minimis* mergers and transfers. The collections of information in this part have been approved by the Office of Management and Budget under OMB control number 1212-0022.

(b) *Scope.* This part applies to mergers and transfers among multiemployer plans where all of the plans immediately before and immediately after the transaction are multiemployer plans covered by title IV of ERISA.

§ 4231.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, EIN, ERISA, fair market value, IRS, multiemployer plan, PBGC, plan, plan year, and PN.

In addition, for purposes of this part: *Actuarial valuation* means a valuation of assets and liabilities performed by an enrolled actuary using the actuarial assumptions used for purposes of determining the charges and credits to the funding standard account under section 302 of ERISA and section 412 of the Code.

Certified change of collective bargaining representative means a change of collective bargaining representative certified under the Labor-Management Relations Act of 1947, as amended, or the Railway Labor Act, as amended.

Fair market value of assets has the same meaning as the term has for minimum funding purposes under section 302 of ERISA and section 412 of the Code.

Merger means the combining of two or more plans into a single plan. For example, a consolidation of two plans into a new plan is a merger.

Significantly affected plan means a plan that—

(1) Transfers assets that equal or exceed 15 percent of its assets before the transfer,

(2) Receives a transfer of unfunded accrued benefits that equal or exceed 15 percent of its assets before the transfer,

(3) Is created by a spinoff from another plan, or

(4) Engages in a merger or transfer (other than a *de minimis* merger or transfer) either—

(i) After such plan has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, or

(ii) With another plan that has so terminated.

Transfer and transfer of assets or liabilities mean a diminution of assets or liabilities with respect to one plan and the acquisition of these assets or the assumption of these liabilities by another plan or plans (including a plan that did not exist prior to the transfer). However, the shifting of assets or liabilities pursuant to a written reciprocity agreement between two multiemployer plans in which one plan assumes liabilities of another plan is not a transfer of assets or liabilities. In addition, the shifting of assets between several funding media used for a single plan (such as between trusts, between annuity contracts, or between trusts and annuity contracts) is not a transfer of assets or liabilities.

Unfunded accrued benefits means the excess of the present value of a plan's accrued benefits over the fair market value of its assets, determined on the basis of the actuarial valuation required under § 4231.5(b).

§ 4231.3 Requirements for mergers and transfers.

(a) *General requirements.* A plan sponsor may not cause a multiemployer plan to merge with one or more multiemployer plans or transfer assets or liabilities to or from another multiemployer plan unless the merger or transfer satisfies all of the following requirements:

(1) No participant's or beneficiary's accrued benefit is lower immediately after the effective date of the merger or transfer than the benefit immediately before that date.

(2) Actuarial valuations of the plans that existed before the merger or transfer have been performed in accordance with § 4231.5.

(3) For each plan that exists after the transaction, an enrolled actuary—

(i) Determines that the plan meets the applicable plan solvency requirement set forth in § 4231.6; or

(ii) Otherwise demonstrates that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA.

(4) The plan sponsor notifies the PBGC of the merger or transfer in accordance with § 4231.8.

(b) *Compliance determination.* If a plan sponsor requests a determination that a merger or transfer that may otherwise be prohibited by section 406(a) or (b)(2) of ERISA satisfies the requirements of section 4231 of ERISA, the plan sponsor must submit the information described in § 4231.9 in addition to the information required by § 4231.8. PBGC may request additional information if necessary to determine whether a merger or transfer complies with the requirements of section 4231 and this part. Plan sponsors are not required to request a compliance determination. Under section 4231(c) of ERISA, if the PBGC determines that the merger or transfer complies with section 4231 of ERISA and this part, the merger or transfer will not constitute a violation of the prohibited transaction provisions of section 406(a) and (b)(2) of ERISA.

(c) *Certified change in bargaining representative.* Transfers of assets and liabilities pursuant to a certified change in bargaining representative are governed by section 4235 of ERISA. Plan sponsors involved in such transfers are not required to comply with this part. However, under section 4235(f)(1) of ERISA, the plan sponsors of the plans involved in the transfer may agree to a transfer that complies with sections 4231 and 4234 of ERISA. Plan sponsors that elect to comply with sections 4231 and 4234 must comply with the rules in this part.

§ 4231.4 Preservation of accrued benefits.

Section 4231(b)(2) of ERISA and § 4231.3(a)(1) require that no participant's or beneficiary's accrued benefit may be lower immediately after the effective date of the merger or transfer than the benefit immediately before the merger or transfer. A plan that assumes an obligation to pay benefits for a group of participants satisfies this requirement only if the plan contains a provision preserving all accrued benefits. The determination of what is an accrued benefit must be made in accordance with section 411 of the Code and the regulations thereunder.

§ 4231.5 Valuation requirement.

(a) *In general.* For a plan that is not a significantly affected plan, or that is a significantly affected plan only because the merger or transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, the actuarial valuation requirement under section 4231(b)(4) of ERISA and § 4231.3(a)(2) is satisfied if an actuarial valuation has been performed for the plan based on the plan's assets and liabilities as of a date not more than three years before the date on which the notice of the merger or transfer is filed.

(b) *Significantly affected plans.* For a significantly affected plan, other than a plan that is a significantly affected plan only because the merger or transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, the actuarial valuation requirement under section 4231(b)(4) of ERISA and § 4231.3(a)(2) is satisfied only if an actuarial valuation has been performed for the plan based on the plan's assets and liabilities as of a date not earlier than the first day of the last plan year ending before the proposed effective date of the transaction. The valuation must separately identify assets, contributions, and liabilities being transferred and must be based on the actuarial assumptions and methods that are expected to be used for the plan for the first plan year beginning after the transfer.

§ 4231.6 Plan solvency tests.

(a) *In general.* For a plan that is not a significantly affected plan, the plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) is satisfied if—

(1) The expected fair market value of plan assets immediately after the merger or transfer equals or exceeds five times the benefit payments for the last plan year ending before the proposed

effective date of the merger or transfer; or

(2) In each of the first five plan years beginning on or after the proposed effective date of the merger or transfer, expected plan assets plus expected contributions and investment earnings equal or exceed expected expenses and benefit payments for the plan year.

(b) *Significantly affected plans.* The plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) is satisfied for a significantly affected plan if all of the following requirements are met:

(1) Expected contributions equal or exceed the estimated amount necessary to satisfy the minimum funding requirement of section 412(a) of the Code (including reorganization funding, if applicable) for the five plan years beginning on or after the proposed effective date of the transaction.

(2) The expected fair market value of plan assets immediately after the transaction equal or exceed the total amount of expected benefit payments for the first five plan years beginning on or after the proposed effective date of the transaction.

(3) Expected contributions for the first plan year beginning on or after the proposed effective date of the transaction equal or exceed expected benefit payments for that plan year.

(4) Expected contributions for the amortization period equal or exceed unfunded accrued benefits plus expected normal costs. The actuary may select as the amortization period either—

(i) The first 25 plan years beginning on or after the proposed effective date of the transaction, or

(ii) The amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 412(b)(4) of the Code.

(c) *Rules for determinations.* In determining whether a transaction satisfies the plan solvency requirements set forth in this section, the following rules apply:

(1) Expected contributions after a merger or transfer must be determined by assuming that contributions for each plan year will equal contributions for the last full plan year ending before the date on which the notice of merger or transfer is filed with the PBGC. Contributions must be adjusted, however, to reflect—

(i) The merger or transfer,

(ii) Any change in the rate of employer contributions that has been negotiated (whether or not in effect), and

(iii) Any trend of changing contribution base units over the preceding five plan years or other period of time that can be demonstrated to be more appropriate.

(2) Expected normal costs must be determined under the funding method and assumptions expected to be used by the plan actuary for purposes of determining the minimum funding requirement under section 412 of the Code (which requires that such assumptions be reasonable in the aggregate). If the plan uses an aggregate funding method, normal costs must be determined under the entry age normal method.

(3) Expected benefit payments must be determined by assuming that current benefits remain in effect and that all scheduled increases in benefits occur.

(4) The expected fair market value of plan assets immediately after the merger or transfer must be based on the most recent data available immediately before the date on which the notice is filed.

(5) Expected investment earnings must be determined using the same interest assumption to be used for determining the minimum funding requirement under section 412 of the Code.

(6) Expected expenses must be determined using expenses in the last plan year ending before the notice is filed, adjusted to reflect any anticipated changes.

(7) Expected plan assets for a plan year must be determined by adjusting the most current data on fair market value of plan assets to reflect expected contributions, investment earnings, benefit payments and expenses for each plan year between the date of the most current data and the beginning of the plan year for which expected assets are being determined.

§ 4231.7 De minimis mergers and transfers.

(a) *Special plan solvency rule.* The determination of whether a *de minimis* merger or transfer satisfies the plan solvency requirement in § 4231.6(a) may be made without regard to any other *de minimis* mergers or transfers that have occurred since the last actuarial valuation.

(b) *De minimis merger defined.* A merger is *de minimis* if the present value of accrued benefits (whether or not vested) of one plan is less than 3 percent of the fair market value of the other plan's assets.

(c) *De minimis transfer defined.* A transfer of assets or liabilities is *de minimis* if—

(1) The fair market value of the assets transferred, if any, is less than 3 percent

of the fair market value of all the assets of the transferor plan;

(2) The present value of the accrued benefits transferred (whether or not vested) is less than 3 percent of the fair market value of all the assets of the transferee plan; and

(3) The transferee plan is not a plan that has terminated under section 4041A(a)(2) of ERISA.

(d) *Value of assets and benefits.* For purposes of paragraphs (b) and (c) of this section, the value of plan assets and accrued benefits may be determined as of any date prior to the proposed effective date of the transaction, but not earlier than the date of the most recent actuarial valuation.

(e) *Aggregation required.* In determining whether a merger or transfer is *de minimis*, the assets and accrued benefits transferred in previous *de minimis* mergers and transfers within the same plan year must be aggregated as described in paragraphs (e)(1) and (e)(2) of this section. For the purposes of those paragraphs, the value of plan assets may be determined as of the date during the plan year on which the total value of the plan's assets is the highest.

(1) A merger is not *de minimis* if the total present value of accrued benefits merged into a plan, when aggregated with all prior *de minimis* mergers of and transfers to that plan effective within the same plan year, equals or exceeds 3 percent of the value of the plan's assets.

(2) A transfer is not *de minimis* if, when aggregated with all previous *de minimis* mergers and transfers effective within the same plan year—

(i) The value of all assets transferred from a plan equals or exceeds 3 percent of the value of the plan's assets; or

(ii) The present value of all accrued benefits transferred to a plan equals or exceeds 3 percent of the plan's assets.

§ 4231.8 Notice of merger or transfer.

(a) *When to file.* Except as provided in paragraph (f) of this section, a notice of a proposed merger or transfer must be filed not less than 120 days before the effective date of the transaction. For purposes of this part, the effective date of a merger or transfer is the earlier of—

(1) The date on which one plan assumes liability for benefits accrued under another plan involved in the transaction; or

(2) The date on which one plan transfers assets to another plan involved in the transaction.

(b) *Who must file.* The plan sponsors of all plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsors, must jointly file the notice required by this section.

(c) *Where to file.* The notice must be delivered to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(d) *Filing date.* For purposes of paragraph (a) of this section, the notice is not considered filed until all of the information required by paragraph (e) of this section has been submitted. Information filed under this part is considered filed—

(1) On the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) The postmark was made by the United States Postal Service; and

(ii) The information was mailed postage prepaid, properly addressed to the PBGC; or

(2) On the date it is received by the PBGC, if the conditions stated in paragraph (d)(1) of this section are not met. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

(e) *Information required.* Each notice must contain the following information:

(1) For each plan involved in the merger or transfer—

(i) The name of the plan;

(ii) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any; and

(iii) The plan sponsor's EIN and the plan's PN and, if different, the EIN or PN last filed with the PBGC. If no EIN or PN has been assigned, the notice must so indicate.

(2) Whether the transaction being reported is a merger or transfer, whether it involves any plan that has terminated under section 4041A(a)(2) of ERISA, whether any significantly affected plan is involved in the transaction (and, if so, identifying each such plan), and whether it is a *de minimis* transaction as defined in § 4231.7 (and, if so, including an enrolled actuary's certification to that effect).

(3) The proposed effective date of the transaction.

(4) A copy of each plan provision stating that no participant's or beneficiary's accrued benefit will be lower immediately after the effective date of the merger or transfer than the benefit immediately before that date.

(5) For each plan that exists after the transaction, one of the following statements, certified by an enrolled actuary:

(i) A statement that the plan satisfies the applicable plan solvency test set forth in § 4231.6, indicating which is the applicable test.

(ii) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including the supporting data or calculations, assumptions and methods.

(6) For each plan that exists before a transaction (unless the transaction is *de minimis* and does not involve any plan that has terminated under section 4041A(a)(2) of ERISA), a copy of the most recent actuarial valuation report that satisfies the requirements of § 4231.5.

(7) For each significantly affected plan that exists after the transaction, the following information used in making the plan solvency determination under § 4231.6(b):

(i) The present value of the accrued benefits and fair market value of plan assets under the valuation required by § 4231.5(b), allocable to the plan after the transaction.

(ii) The fair market value of assets in the plan after the transaction (determined in accordance with § 4231.6(c)(4)).

(iii) The expected benefit payments for the plan in the first plan year beginning on or after the proposed effective date of the transaction (determined in accordance with § 4231.6(c)(3)).

(iv) The contribution rates in effect for the plan for the first plan year beginning on or after the proposed effective date of the transaction.

(v) The expected contributions for the plan in the first plan year beginning on or after the proposed effective date of the transaction (determined in accordance with § 4231.6(c)(1)).

(f) *Waiver of notice.* The PBGC may waive the notice requirements of this section and section 4231(b)(1) of ERISA if—

(1) A plan sponsor demonstrates to the satisfaction of the PBGC that failure to complete the merger or transfer in less than 120 days after filing the notice will cause harm to participants or beneficiaries of the plans involved in the transaction;

(2) The PBGC determines that the transaction complies with the requirements of section 4231 of ERISA; or

(3) The PBGC completes its review of the transaction.

§ 4231.9 Request for compliance determination.

(a) *General.* The plan sponsor(s) of one or more plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsor(s), may file a request for a

determination that the transaction complies with the requirements of section 4231 of ERISA. The request must contain the information described in paragraph (b) or (c) of this section, as applicable.

(1) *The place of filing.* The request must be delivered to the address set forth in § 4231.8(c).

(2) *Single request permitted for all de minimis transactions.* Because the plan solvency test for *de minimis* mergers and transfers is based on the most recent valuation (without adjustment for intervening *de minimis* transactions), a plan sponsor may submit a single request for a compliance determination covering all *de minimis* mergers or transfers that occur between one plan valuation and the next. However, the plan sponsor must still notify PBGC of each *de minimis* merger or transfer separately, in accordance with § 4231.8. The single request for a compliance determination may be filed concurrently with any one of the notices of a *de minimis* merger or transfer.

(b) *Contents of request.* (1) *General.* A request for a compliance determination concerning a merger or transfer that is not *de minimis* must contain—

(i) A copy of the merger or transfer agreement;

(ii) A summary of the required calculations, including a complete description of assumptions and methods, on which the enrolled actuary based each certification that a plan involved in the merger or transfer satisfied a plan solvency test described in § 4231.6; and

(iii) For each significantly affected plan, other than a plan that is a significantly affected plan only because the merger or transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, copies of all actuarial valuations performed within the 5 years preceding the date of filing the notice required under § 4231.8.

(2) *De minimis merger or transfer.* A request for a compliance determination concerning a *de minimis* merger or transfer must contain one of the following statements for each plan that exists after the transaction, certified by an enrolled actuary:

(i) A statement that the plan satisfies one of the plan solvency tests set forth in § 4231.6(a), indicating which test is satisfied.

(ii) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including supporting data or calculations, assumptions and methods.

§ 4231.10 Actuarial calculations and assumptions.

(a) *Most recent valuation.* All calculations required by this part must be based on the most recent actuarial valuation as of the date of filing the notice, updated to show any material changes.

(b) *Assumptions.* All calculations required by this part must be based on methods and assumptions that are reasonable in the aggregate, based on generally accepted actuarial principles.

(c) *Updated calculations.* If the actual effective date of the merger or transfer is more than one year after the date the notice is filed with the PBGC, PBGC may require the plans involved to provide updated calculations and representations based on the actual effective date of the transaction.

Issued in Washington, D.C., this 28th day of April 1998.

Alexis M. Herman,
Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,
Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 98-11784 Filed 5-1-98; 8:45 am]

BILLING CODE 7708-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[USCG-1998-3772]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and

temporarily effective between January 1, 1998 and March 31, 1998, which were not published in the *Federal Register*. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the *Federal Register* may not have been possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between January 1, 1998 and March 31, 1998, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this preamble will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL-401, 400 Seventh Street SW., Washington, DC 20593-0001 between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at <http://dms.dot.gov>, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning the quarterly list contact Lieutenant Christopher S. Keane, Office of Regulations and Administrative Law, USCG, at (202) 267-6233 between the hours of 8 a.m. and 3 p.m., Monday through Friday. For information concerning the Docket Management Facility contact Paullette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, (202) 866-9329.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around

a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the *Federal Register* is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. However, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to an enforcement action, *Federal Register* notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the *Federal Register* notice of substantial rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the *Federal Register*. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period January 1, 1998 and March 31, 1998, unless otherwise indicated.

Michael L. Emge,

Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

District docket	Location	Type	Effective date
01-98-001	EAST RIVER, NEW YORK	SECURITY ZONE	1/8/98
01-98-003	EAST RIVER, NEW YORK	SECURITY ZONE	1/15/98
01-98-004	PORTLAND, ME	SAFETY ZONE	1/28/98
01-98-007	BATH, ME	SAFETY ZONE	1/24/98
01-98-010	PORTLAND, ME	SAFETY ZONE	2/18/98
01-98-011	PORTLAND, ME	SAFETY ZONE	3/16/98
01-98-019	KENNEBEC RIVER, BATH, ME	SAFETY ZONE	3/28/98
01-98-022	BOSTON, MA	SECURITY ZONE	3/13/98
05-98-003	JAMES RIVER, NEWPORT NEWS, VA	SAFETY ZONE	1/12/98
05-98-005	ALBERMARLE SOUND, HARVEY POINT, AND VICINITY	SECURITY ZONE	1/30/98

QUARTERLY REPORT—Continued

District docket	Location	Type	Effective date
05-98-007	OUTER BANKS, DUCK, NC, AND VICINITY	SECURITY ZONE	2/1/98
05-98-019	HAMPTON ROADS, WILLOUGHBY BAY, VA	SAFETY ZONE	3/11/98
05-98-022	PORT NORFOLK REACH, NORFOLK, VA	SAFETY ZONE	3/20/98
05-98-023	ELIZABETH RIVER, NORFOLK, VA	SAFETY ZONE	3/22/98
07-98-012	BAHIA DE MAYAGUEZ, PUERTO RICO	SPECIAL LOCAL	3/22/98
09-98-001	CALUMET RIVER	SAFETY ZONE	3/9/98
09-98-02	TOUSSAINT RIVER CHANNEL, OHIO	SAFETY ZONE	3/20/98
13-98-003	COLUMBIA RIVER, RICHLAND, WA	SECURITY/SAFETY ZONE	2/4/98
COTP Docket	Location	Type	Effective date
CORPUS CHRISTI 98-001	MATAGORDA BAY, INTRACOASTAL WATERWAY	SAFETY ZONE	2/2/98
HOUSTON-GALVESTON 98-001	HOUSTON SHIP CHANNEL, HOUSTON, TX	SAFETY ZONE	1/10/98
HOUSTON-GALVESTON 98-002	UPPER TRINITY BAY, HOUSTON, TX	SAFETY ZONE	1/18/98
HOUSTON-GALVESTON 98-003	HOUSTON SHIP CHANNEL, HOUSTON, TX	SAFETY ZONE	1/22/98
HOUSTON-GALVESTON 98-004	HOUSTON SHIP CHANNEL, HOUSTON, TX	SAFETY ZONE	2/19/98
HOUSTON-GALVESTON MSU 98-102	BUOY, TX	SAFETY ZONE	2/8/98
HOUSTON-GALVESTON MSU 98-103	GALVESTON SHIP CHANNEL, GALVESTON, TX	SAFETY ZONE	2/20/98
LOUISVILLE 98-001	OHIO RIVER, MAYSVILLE, KY	SAFETY ZONE	1/4/98
NEW ORLEANS 98-001	LWR MISSISSIPPI RIVER, M. 94 TO M. 96	SAFETY ZONE	2/23/98
NEW ORLEANS 98-002	LWR MISSISSIPPI RIVER, M. 94 TO M. 95	SAFETY ZONE	3/11/98
PORT ARTHUR 98-007	USNS BELLATRIX	SAFETY ZONE	3/21/98
PORT ARTHUR 98-005	NECHES RIVER CLOSURE	SAFETY ZONE	1/16/98
SAN DIEGO 98-002	SAN DIEGO, CA	SAFETY ZONE	1/17/98
SAN DIEGO 98-004	OCEANSIDE HARBOR, OCEANSIDE, CA	SAFETY ZONE	2/4/98
SAN DIEGO 98-008	SAN DIEGO, CA	SAFETY ZONE	3/30/98
SAN FRANCISCO BAY 98-001	SACRAMENTO-SAN JOAQUIN DELTA, CA	SAFETY ZONE	2/14/98
SAN FRANCISCO BAY 98-002	SAN FRANCISCO BAY, SAN FRANCISCO, CA	SAFETY ZONE	3/14/98
SAN FRANCISCO BAY 98-003	SACRAMENTO-SAN JOAQUIN DELTA, CA	SAFETY ZONE	2/19/98
SAN FRANCISCO BAY 98-004	SACRAMENTO-SAN JOAQUIN DELTA, CA	SAFETY ZONE	2/20/98
SAN FRANCISCO BAY 98-006	SACRAMENTO-SAN JOAQUIN DELTA, CA	SAFETY ZONE	2/24/98
SAN FRANCISCO BAY 98-007	HUMBOLDT BAY, CA	SAFETY ZONE	3/15/98
SAN JUAN 98-008	SAN JUAN, PUERTO RICO	SAFETY ZONE	2/14/98
SAN JUAN 98-011	SAN JUAN, PUERTO RICO	SAFETY ZONE	2/19/98
TAMPA 98-022	TAMPA, FL	SAFETY ZONE	3/24/98
TAMPA 98-023	TAMPA, FL	SAFETY ZONE	3/25/98

[FR Doc. 98-11773 Filed 5-1-98; 8:45 am]
BILLING CODE 4910-15-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05-98-030]

RIN 2115-AE47

Drawbridge Operation Regulations;
Atlantic Intracoastal Waterway,
Hobucken, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulations that govern the operation of the S.R. 304 bridge across the Atlantic Intracoastal Waterway, mile 157.2, Hobucken, North Carolina, because the swing bridge has been removed.

DATES: This rule becomes effective on June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administration, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was

not published for this regulation. Good cause exists for not publishing a NPRM because prior removal of the bridge renders a notice and comment period unnecessary.

Background and Purpose

The swing bridge across the Atlantic Intracoastal Waterway, mile 157.2, at Hobucken, North Carolina, was replaced by a high level fixed bridge. The existing swing bridge has been removed, thereby eliminating the need for 33 CFR 117.821(a)(2). This action has no economic consequences. It merely removes regulations for a swing bridge that no longer exists.

This action necessitates redesignating the regulations listed in 33 CFR 117.821(a) (3), (4), (5), and (6) for the drawbridges at Surf City, Figure Eight, Wrightsville Beach, and Sunset Beach along the Atlantic Intracoastal Waterway within North Carolina.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be non-existent, therefore, a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. *Small entities* include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This final rule does not affect vessel navigation on this waterway since it merely removes regulations for a bridge which no longer exists. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.b. and item (32)(e) of Figure 2-1 of Commandant Instruction M16475.1C

dated November 14, 1997, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE
OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. In § 117.821, paragraph (a)(2) is removed and paragraphs (a) (3), (4), (5), and (6) are redesignated as paragraphs (a) (2), (3), (4), and (5), respectively.

Dated: April 23, 1998.

J. Carmichael,

Captain, U.S. Coast Guard, Acting
Commander, Fifth Coast Guard District.

[FR Doc. 98-11774 Filed 5-1-98; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of
Engineers

33 CFR Part 207

Navigation Regulations

AGENCY: U.S. Army Corps of Engineers, DoD.
ACTION: Final rule.

SUMMARY: The Corps is amending the navigation regulations for the Red River Waterway, Louisiana and the Yazoo Diversion Canal at Vicksburg, Mississippi. The Red River Waterway navigation regulation is amended to prescribe the maximum length, width, and draft of vessel tows that are allowed to enter the lock chamber for each lockage. The Yazoo Diversion Canal navigation regulation is amended to establish procedures and location for mooring of vessels along the west bank. The maximum length of allowable vessel tow that may enter the lock chamber for each lockage on the Red River Waterway, is increased from 685 feet to 705 feet. The maximum allowable width and draft of tow remains the same at 80 feet and 9 feet, respectively. Increasing the usable tow

length to 705 feet will increase the efficiency of lock operations by reducing the number of tow breakups during a locking operation. The navigation regulation for the Yazoo Diversion Canal will clarify vessel mooring locations along the canal west bank for various river stages and provide that fairways will be established by the Vicksburg District Engineer. Establishing fairways and specifying locations along the west bank where vessels may moor during various river stages will control indiscriminate vessel moorings and improve navigation safety.

DATES: The final rule is effective June 3, 1998.

ADDRESSES: HQUSACE, ATTN: CECW-OD, Washington, D.C. 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Hilton, Dredging and Navigation Branch (CECW-OD) at (202) 761-8830 or Mr. Jim Jeffords, Vicksburg District, Operations Division at (601) 631-5274.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was published on Wednesday, March 5, 1997, Vol. 62, No. 43, pages 9996-9997.

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1), the Corps is amending the regulations in 33 CFR Part 207. The Commanding Officer, Lower Mississippi Valley Division, Vicksburg, Mississippi has requested an amendment to the regulations in 33 CFR 207.249(b)(5)(iv) and 33 CFR 207.260 (c) and (g). The 685 feet maximum tow length currently allowed in the Red River Waterway lock chamber is based on the design vessel tow length. Increasing the tow length that may safely enter the lock chamber for each lockage to 705 feet, will not affect the safety of either the lock structure or the tow in the chamber during a filling or emptying operation, if the tow is properly secured and positioned.

Discussion of Public Comments and Changes

Section 207.249(b)(5)(iv). Two comments were received to the March 5, 1997, Federal Register notice to increase the tow length. These individuals supported the proposed increase in vessel tow length from 685 feet to 705 feet for vessels attempting to pass through the lock during normal pool stages in a single passage.

Section 207.260 (c) and (g). Five comments were received to the proposed amendment to regulate mooring along the east and west banks of the Yazoo Diversion Canal based on water level stages at the Vicksburg gage.

All individuals recognized the danger of mooring along the banks in close proximity to the confluence of the Yazoo Diversion Canal and the Mississippi River. However, there was no consensus on what distance from the confluence vessels could be safely moored along the banks of the canal. Several individuals requested that the proposed mooring location on the west bank be modified, since restricting mooring would cause economic hardship to adjacent property owners. A meeting with the five affected parties resulted in a resolution satisfactory to all. All agreed that no vessel or raft shall be moored along the east bank of the Yazoo Diversion Canal at any stage for approximately 750 feet from the mouth of the canal where it enters into the Mississippi River. Mooring along the west bank would be regulated as follows: At stages below 20 feet on the Vicksburg Gage, no vessel or raft shall be moored along the west bank of the canal between points Latitude 32°21'16", Longitude 90°53'05" and Latitude 32°20'55", Longitude 90°53'18", which is approximately 1200 feet above and 1200 feet below the public boat launch (foot of Clay Street) at Vicksburg City Front. No vessel or raft shall be moored along the west bank of the canal at any stage from the mouth of the Yazoo Diversion Canal where it enters into the Mississippi River to Latitude 32°20'21", Longitude 90°53'44", which is approximately 1200 feet from the mouth.

Procedural Requirements

A. Executive Order 12866

This final rule is not a significant regulatory action under E.O. 12866. The economic impact of this rule is so minimal that further regulatory evaluation is unnecessary. We conclude this because the change benefits the commercial towing industry.

B. Review Under the Regulatory Flexibility Act

These final rules were reviewed under the Regulatory Flexibility Act (Pub. L. 96-354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The economic impact of the change to the tow length on the Red River Waterway and mooring locations on the Yazoo Diversion Canal, will have a positive effect on the towing industry and the general public, with no anticipated navigational safety or interference with existing waterway

traffic and accordingly certifies that this final rule has no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We concluded, based on the Red River Waterway increase in tow length and Yazoo Diversion Canal mooring locations, that there is no significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment was available for review during the public comment period at the Corps Vicksburg District Office, Vicksburg, Mississippi.

D. Collection of Information

This final rule contains no collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

E. Federalism

The Corps has analyzed this final rule under principles and criteria in E.O. 12612 and determined that this final rule has no sufficient federalism implications to warrant preparation of a Federalism Assessment.

F. Unfunded Mandates Act

This final rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We also found, under Section 203 of the Act, that small Governments are not significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 207

Navigation (water), Transportation, and Lockages.

For the reasons set out in the preamble, 33 CFR Part 207 is amended, as follows:

PART 207—NAVIGATION REGULATIONS

1. Authority citation for Part 207 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1).

2. Section 207.249 is amended by revising paragraphs (b)(5)(iv) to read as follows:

§ 207.249 Ouachita and Black Rivers, Ark. and La. Mile 0.0 to Mile 338.0 (Camden, Ark.) above the mouth of the Black River; the Red River, La., Mile 6.7 (Junction of Red, Atchafalaya and Old Rivers) to Mile 228.0 (Shreveport, La.); use, administration, and navigation.

(b) * * *

(5) * * *

(iv) The maximum dimensions on the Red River Waterway of a vessel tow attempting to pass through the lock during normal pool stages in a single passage are 80 feet wide, 705 feet long, and 9 feet draft. Tows requiring breaking into two or more sections to pass through the lock may transit the lock at such time as the lockmaster/lock operator determines that they will neither unduly delay the transit of craft of lesser dimensions, nor endanger the lock structure and appurtenances because of wind, current, or other adverse conditions. These craft are also subject to such special handling requirements as the lockmaster/lock operator finds necessary at the time of transit.

3. Section 207.260 is amended by revising paragraphs (c) and (g) to read as follows:

§ 207.260 Yazoo Diversion Canal, Vicksburg, Miss., from its mouth to the entrance of the upper Vicksburg Harbor Extension.

(c) Mooring. At stages below 20 feet on the Vicksburg Gage, no vessel or raft shall be moored along the west bank of the canal between points Latitude 32°21'16", Longitude 90°53'05" and Latitude 32°20'55", Longitude 90°53'18", which is approximately 1200 feet above and 1200 feet below the public boat launch (foot of Clay Street) at Vicksburg City Front. No vessel or raft shall be moored along the west bank of the canal at any stage from the mouth of the Yazoo Diversion Canal where it enters into the Mississippi River to Latitude 32°20'21", Longitude 90°53'44", which is approximately 1200 feet from the mouth of the canal. No vessel or raft shall be moored along the east bank of the canal at any stage from the mouth of the Yazoo Diversion Canal where it enters into the Mississippi River to Latitude 32°20'12", Longitude 90°53'41", which is approximately 750 feet from the mouth of the canal. When tied up, boats, barges, or rafts shall be moored by bow and stern lines parallel to the bank and as close in as practicable. Lines shall be secured at sufficiently close intervals to insure the vessel or raft will not be drawn away from the bank by winds, current, or other passing vessels. No vessel or raft shall be moored along the banks of the canal for a period longer than five (5) calendar days without written permission from the District Engineer, Corps of Engineers, Vicksburg District

Office, 4155 E. Clay St., Vicksburg, Mississippi 39180-3435.

(g) Fairway. A clear channel not less than 175 feet wide as established by the District Engineer shall be left open at all times to permit free and unobstructed navigation by all types of vessels.

Dated: March 25, 1998.

Approved:

Robert W. Burkhardt,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 98-11689 Filed 5-1-98; 8:45 am]

BILLING CODE 3710-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 85

[AMS-FRL-6007-3]

RIN 2060-AE19

IM Program Requirement—On-Board Diagnostic Checks; Amendment to the Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's action revises the federal vehicle inspection and maintenance (I/M) rules relating to the implementation deadline by which states are required to begin On-Board Diagnostic Checks (OBD) as a routine part of basic and enhanced I/M programs. This rule change delays to January 1, 2001, the required implementation date for OBD in basic and enhanced I/M program areas in the Ozone Transport Region (OTR) and in all other areas. During this time extension the Agency will generate, collect and analyze the data necessary to accord OBD checks the appropriate level of emission reduction credits. Additionally, certain clarifying amendments are being made to this rule to allow for updates to the Code of Federal Regulations which are cross-referenced in the OBD rule.

DATES: This rule change is effective May 4, 1998.

ADDRESSES: Materials relevant to this rulemaking are contained in the Public Docket No. A-94-21. The docket is located at the Air Docket, Room M-1500 (6102), Waterside Mall SW, Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 5:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Buddy Polovick, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (734) 741-7928.

SUPPLEMENTARY INFORMATION: The preamble, regulatory language and a regulatory announcement are available electronically from the EPA internet Web site. This service is free of charge, except for any cost one may already incur for internet connectivity. An electronic version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below.

<http://www.epa.gov/EPA-AIR/> (either select desired date or use Search feature)

<http://www.epa.gov/OMSWWW/> (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, minor changes in format, pagination, etc. may occur. The version published in the *Federal Register* is the official version of this document.

Regulated Entities

Entities potentially regulated by the minor amendment to the I/M rule are those which adopt, approve, fund or implement I/M programs. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Local air quality agencies.
State government	State air quality agencies responsible for I/M programs.
Federal government ..	DOT.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities of which EPA is now aware that could potentially be regulated by this I/M amendment. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria of 40 CFR 51.350 of the I/M rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Summary of Rule

Under the Clean Air Act as amended in 1990 (the Act), 42 U.S.C. 7401 et seq., the U.S. Environmental Protection Agency (EPA) published in the *Federal Register* on November 5, 1992, (40 CFR part 51, subpart S) rules relating to motor vehicle inspection and maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR 52950). Subsequent to that rule, the EPA published in the *Federal Register* on August 6, 1996, (40 CFR parts 51 and 85) rules relating to the implementation of On-Board Diagnostic (OBD) checks as a routine part of I/M programs (hereafter referred to as the I/M OBD rule; see 61 FR 40940). EPA published a proposed rulemaking proposing changes to those rules in the *Federal Register* on December 22, 1997 (62 FR 66841). For a full description of all relevant background information please see that notice. EPA today takes final action to amend those OBD rules to delay to January 1, 2001, the deadline by which OBD checks must be implemented in I/M programs.

Today, EPA amends 40 CFR 51.373 to delay the implementation deadline for OBD checks in all I/M areas, including OTR low enhanced areas. Additionally, certain clarifying amendments have been made to allow for updates to Part 86 of the Code of Federal Regulations which are cross-referenced in the OBD rule. The requirement shall remain that states revise their I/M SIPs by August 6, 1998, to include the requirement to implement OBD checks by the January 1, 2001 deadline. For further information on this issue please see the **Public Participation** section of this rule.

Additionally, EPA amends here today two sections of the I/M OBD rule which were not proposed to be amended in the notice of proposed rulemaking for this rule. Those sections, 40 CFR 51.357(b)(4) and 85.2222(c), were inadvertently not identified as sections which also had dates that needed to be realigned with the new testing deadline of January 2001. Those sections indicated that by January 1, 2000, an incomplete readiness evaluation of the automobile's OBD system or a failure of the OBD diagnostic check were required to result in failure of the I/M test. Both of these sections should be amended to require failure under these circumstances by January 1, 2001, to be consistent with the change of the start of OBD testing. EPA regards this late addition to the rules to be amended as noncontroversial because such a timeline was implied by moving the start dates for those tests to January 1, 2001. Obviously vehicles could not be

required to fail before they are required to be tested.

EPA believes that the overall issue of revising dates to conform with delayed OBD testing was sufficiently raised in the rulemaking process and that further comment would be unnecessary. For these reasons, EPA invokes the "good cause" clause of the Administrative Procedure Act 553(b)(3) to make these changes today in this final notice instead of unnecessarily repropose another rulemaking for these changes, which EPA believes would be contrary to the public interest in achieving prompt, consistent I/M OBD rules.

It is important to note that EPA has not changed the sections that allow for states to implement OBD inspections before the required deadline if desired, and to allow failure of OBD to result in failure of the I/M test, thereby requiring repair in such cases. Both efforts shall remain optional to the states. However, states which choose to conduct OBD checks, on vehicles so equipped, before the new deadline, may earn minimal emission reduction credits for doing so only if they perform the OBD checks in conjunction with the exhaust and (where applicable) evaporative tests. States may not yet earn emissions reductions credits for only OBD checks, in the absence of exhaust and evaporative testing, which are comparable to exhaust and evaporative test credits. Only after the Agency has accorded OBD a defined level of emissions reduction credit can states potentially drop the exhaust and evaporative tests and still earn comparable emission reduction credits for performing only OBD checks on those vehicles. Should EPA and states complete testing and review of OBD systems sooner than expected, the Agency may be able to make credit available for OBD testing without exhaust and evaporative testing, to states which choose to implement I/M OBD checks before January, 2001. Any questions about credit assignments for OBD checks should be directed to the contact person for this rule.

These amendments are consistent with the relevant requirements of the Act. These changes will not result in any change in health and environmental benefits. The only Act-required deadline with regard to OBD testing is that described above, such that states must revise their SIPs by August 6, 1998. [The Act requires such revisions by two years from promulgation of the OBD rules, or August 6, 1996 in this case.] That requirement has been retained in this amendment. The Act does not require a specific deadline for implementation of OBD testing. EPA believes it is

reasonable to extend the previously established deadline pending further study of the effectiveness of OBD testing for the reasons stated above.

II. Public Participation

The following sections describe the submitted comments and EPA's response thereto.

A. Request to Extend Comment Period

1. Summary of Comments

One commenter requested an extension of the comment period from the 15 days provided in the NPRM to the full and customary 30 day period. They noted that the timing of the 15 day period coincided with the holidays and did not provide ample time to consider the NPRM and submit full comment.

2. Response to Comments

EPA noted in the NPRM for this rule that the shortened comment period was necessary because of the tight timeline for promulgating these amendments. Considerable advance notice of the Agency's intentions had been provided to all stakeholders months in advance of the NPRM. Because the timing of the rule may have been inconvenient and because the Agency was still reviewing comments, additional time was provided to that commenter to expand their comments. EPA opted to not pursue publishing a formal extension of the comment period for an additional 15 days because that time would likely have lapsed before such a notice would appear in the *Federal Register*. No other commenter expressed concern about needing additional time to amplify their comments. As it turned out, the commenter ultimately notified the Agency that after further reviewing the proposal and its initial comments it did not need to submit additional comments.

B. The Requirement to Revise I/M SIP Submittals by August 6, 1998

1. Summary of Comments

One commenter noted that while they support EPA's proposal to delay implementation of OBD to January 1, 2001, they recommend that EPA reconsider the requirement that states revise their I/M SIP submittals by August 6, 1998. They believe the requirement will force a commitment of resources to develop OBD programs well before they are required and that requirements may change in the interim. Furthermore, the commenter asserted that more pressing SIP submittals must be made in the near term.

2. Response to Comments

EPA recognizes that the new deadline delays a program requirement for a period of time during which I/M program requirements may change. However OBD requirements are projected to change little if any. Test procedures, standards and equipment needs are outlined in the original I/M OBD rule, and implementation guidelines will be available in 1998. EPA does not intend to require states to fully develop their OBD program almost three years before implementation as that is not necessary. However, the Clean Air Act, Section 202 (m)(3), does require that states amend their I/M SIP submittals within two years of promulgation of OBD regulations, to include the OBD checks. As EPA promulgated its original I/M OBD rule on August 6, 1996, by statute states must amend their SIPs by August 6, 1998 to require OBD checks in their I/M programs. To meet this requirement EPA will accept at a minimum, a brief SIP amendment which commits to implementing EPA approved OBD checks, as outlined in the I/M OBD rule, by January 1, 2001. A similar amendment to the applicable state I/M requirements shall be made which indicates that I/M OBD checks consistent with EPA rules are required to be conducted by January 1, 2001. No detailed OBD program submittal is required by August 6, 1998. Any questions about such requirements should be directed to the contact person for this rule.

C. Tachometer Connectors Without Mandatory OBD Checks

1. Summary of Comments

One of OBD's numerous functions is that it can be used to perform engine speed (RPM) measurements on vehicles so equipped. Because the RPM measurement is necessary for I/M idle tests, it is important for all new vehicles to be equipped with either tachometer connectors or OBD. One commenter noted that current regulations require MY '96 and newer vehicles, which are tested with idle tests, to use the OBD connector to perform the tachometer measurement. They note that because OBD was to be required by 1998, manufacturers may have stopped equipping cars with the tachometer loops used solely for measuring RPM. They are now concerned that without the OBD requirement that EPA may make manufacturers responsible to provide alternate means to perform the RPM measurement. They are concerned that states be permitted to use alternate means to make tachometer

measurements on OBD equipped vehicles during the period of delay. They seek to confirm EPA's policies with regard to RPM measurement for OBD equipped vehicles.

2. Response to Comments

EPA has no intention of making manufacturers responsible for resuming installation of tachometer connectors. OBD represents a new era in vehicle technology and nothing would be gained by going back to previous requirements for tachometer connectors on new vehicles. OBD systems offer substantial benefits regardless of I/M requirements, and for these reasons they shall continue to be required on newly manufactured vehicles.

While decentralized stations have the option of using OBD scanners or alternative tach measurement equipment before required OBD testing begins, most should already have OBD scan equipment simply because it is far more useful to them in other capacities, namely as a powerful diagnostic tool. Any test and repair facility which works on 1996 and newer cars will be highly motivated to make the investment in OBD scan tools solely to support the repair side of their shop. EPA maintains that this delay in OBD implementation will cause no additional expense for those stations other than what they would already have incurred as overhead for repairing those newer vehicles. Centralized I/M programs which opt to implement OBD checks before the new deadline have the option to use alternative RPM measurement equipment in that interim as well, however with their high lane throughput they will easily be able to afford OBD scanning equipment, as the per vehicle cost will be nominal.

The tachometer measurement on OBD equipped vehicles which do not have tach connectors can be made without querying the OBD system. Equipment is already available in the field to monitor the engine RPM. Radio frequency units and other technologies are used successfully and could easily take the place of OBD scanners for stations which choose not to invest in those units until required testing begins.

D. Ability of Aftermarket Business to Participate in Repair of OBD Failed Vehicles

1. Summary of Comments

One commenter noted their support for the delayed implementation of OBD checks but is concerned that once testing begins in 2001, failure of the OBD check shall mean automatic failure of the I/M test, thereby requiring repair.

They oppose such mandatory OBD testing and repair for failed vehicles unless all independent aftermarket businesses can participate in the service and repair of such vehicles. They do not believe that aftermarket parts manufacturers currently have the information they need to manufacture the parts for these repairs. They feel EPA should use the extra time during the delay to ensure that such information is available.

2. Response to Comments

This comment is not directly related to the proposal to delay implementation of OBD checks because manufacturer information requirements are not affected. The commenter's information availability concerns have been addressed previously in another EPA rulemaking, the Service Information Rules, 60 FR 40474; published August 9, 1995. Those rules require automobile manufacturers to provide aftermarket service providers with information needed to make use of the OBD system and to make emission related repairs. Any further questions about those requirements should be directed to Holly Pugliese (734) 214-4288.

E. OBD Readiness Code Failures and Voluntary I/M Failure for OBD Checks

1. Summary of Comments

One commenter expressed support for EPA's proposal to delay implementation of OBD checks for many of the reasons cited above, namely that because OBD is a new technology a period of study is warranted so that program implementation and success is not compromised by startup problems. However the commenter did note several concerns with the I/M OBD rule and its requirements. One concern was that EPA left unchanged sections of the rule which allow for states to begin OBD checks before the proposed new deadline and to allow failure of the OBD check to trigger failure of the I/M test and require repair in such cases. They note that linking the I/M pass/fail decision to the OBD check before EPA's field evaluation is completed would be premature if there are technology and startup problems and could lead to consumer dissatisfaction and could adversely affect I/M programs. The commenter noted their concern with another section of the rule left unchanged which requires vehicles to be failed for the OBD check if the system's "readiness evaluation" is not completed at the time of inspection. They believe that rather than failing a vehicle for a readiness problem, the rule should require that if readiness codes

are not set the default pass/fail determination should be made by an alternative tailpipe and/or evaporative test. Lastly the commenter noted that they believe EPA will have to reconsider the January 1, 2001 deadline if the field studies warrant it and they request that EPA commit to revisit the rules before then, if that is the case.

2. Response to Comments

EPA agrees there are both risks and benefits for states which begin OBD checks before the proposed new deadline of January 1, 2001 and before EPA has completed its field evaluation. States would benefit from increased consumer knowledge and acceptance of OBD while at the same time having the opportunity to work out startup problems such as complications with equipment and network compatibility. There may be some risk associated with failing vehicles for the I/M test if indicated only by the OBD check. [For instance, technical problems with certain OBD systems or other implementation problems may lead to some false failures. EPA believes that such risks are minimal considering the advanced nature of OBD technology, but these are normal for infant technology.] Furthermore, EPA is developing implementation guidelines for OBD checks and intends to make those guidelines final by late 1998.

EPA believes that states generally are sensitive to the integral nature of each I/M program element and are equally concerned with ensuring success of their programs in order to achieve the maximum air quality benefits. It would therefore not be expected that states would choose to implement OBD prematurely if doing so would place the broader I/M program at risk. EPA has and will continue to work with states individually to provide the guidance and information needed to optimize OBD's potential. It is important to note that under Section 116 of the Act states may make their I/M programs as stringent as they choose as long as they meet the minimum requirements set by EPA. Therefore they may opt to fail vehicles from their I/M test based on OBD failure alone, before the requirement to do so begins. EPA is confident that states can make the assessment whether or not it is beneficial for them to do so on an individual basis and we will endeavor to share useful information with those interested states.

With regard to the commenter's concerns about EPA rules requiring OBD failure for incomplete readiness status, EPA stands by its original requirement. EPA did not propose to

amend this requirement and does not believe it would be prudent to do so. The "readiness evaluation" means that the OBD system queries each of the individual emissions control monitor components during certain operating modes or conditions to ensure that the monitors are functioning properly. Once these determinations are made the readiness code is set to confirm that relevant monitors have successfully been queried. This feature is designed as such so that when a technician scans the OBD system and sees that all the readiness codes are set, they can be confident of the validity of any diagnostic trouble codes (DTCs) that may or may not be set. While a non functioning readiness monitor does not necessarily mean that a vehicle is operating dirty, it provides no assurance that the OBD system has fully evaluated the emissions performance of the vehicle and that the absence of DTCs indicates a properly functioning system. Without operational readiness criteria, a vehicle or component may be failing but a monitor will not have had the opportunity to evaluate operation and set DTCs as appropriate. Additionally, in such circumstances, the technician will not have an indicator of an emission component problem, unless he or she performs a tailpipe or evaporative emission test.

EPA does not believe states should be put in a position where they should have to rely on other I/M tailpipe or evaporative tests to make a pass fail decision for OBD equipped vehicles. Nor does EPA believe that the public should bear the burden of any readiness deficiencies. OBD has the potential to vastly streamline I/M testing and this cannot be achieved unless readiness criteria are included in the list of potential failure triggers. By January, 2001 manufacturers will have built at least 5 model years of OBD equipped vehicles and EPA believes that is ample time to correct any initial design or technical problems with the systems. To create special test requirements for readiness deficient vehicles runs the risk of fundamentally weakening I/M programs, particularly OBD's future. It would promote the idea throughout the I/M community and amongst vehicle owners that OBD technology is not as good as it was intended to be. It could erode the integrity of OBD sufficiently to draw public criticism. A vehicle owner may not understand why their OBD equipped vehicle must be subjected to a more time consuming and intrusive tailpipe or evaporative check when others are not. Furthermore, keeping the readiness failure criteria

provides vehicle owners one more measure of a vehicle's performance, ensuring that manufacturers design and build the cleanest vehicles possible. For all the reasons noted above, EPA believes it is absolutely essential that readiness criteria remain as one of the triggers for failure of the OBD test once testing becomes mandatory in 2001. EPA declines to accept the commenter's recommendation to do otherwise. However, just as states have the flexibility to voluntarily implement OBD before January 2001, they are not bound to fail vehicles for OBD readiness deficiencies alone during these interim years. They may choose to confirm readiness code failures with alternate tailpipe and evaporative tests.

It is important to note that technicians in I/M lanes may encounter another type of readiness deficiency, not a problem of a design or technical nature but rather a situation where the vehicle which is presented for testing simply has not had the chance to operate each of its monitors. Generally each monitor can only be triggered while the vehicle is operating under certain conditions or operating modes, e.g., certain highway speeds, coolant temperatures, start/stop sequences, etc. If a vehicle owner drives only short distances or low speeds (for instance, because they may live near work or the test center), certain monitors may not get the opportunity to operate before the vehicle is presented for testing. As a result, the technician cannot complete the OBD check and will have to direct the vehicle owner to return after operating the vehicle in such a manner that all monitors have been operated. Evidence thus far indicates that such scenarios are rare. In most cases this means owners may have to operate on the highway for a certain period of time. This extra step is akin to what often occurs in traditional I/M testing (which requires the vehicle to be fully warmed before testing), whereby owners who present "cold" vehicles may be turned away to drive their vehicles until fully warmed. This particular type of readiness deficiency scenario is not expected to have a qualitative impact on the success of OBD but will be addressed in the implementation guidance.

Finally, the commenter's request that EPA commit to reconsider the deadline before the arrival of the January 1, 2001 deadline, should EPA determine the field studies warrant it, can be answered simply. EPA has no intention of implementing any program before it is ready, especially if such premature implementations would place the current benefits of an I/M program at risk. That is precisely one of the reasons

for the delay promulgated here today. While it is too early to state definitively that no problems with OBD warranting further delay will be found, EPA is confident that the three year delay will be adequate to determine the state of the technology.

III. Administrative Requirements

A. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and small government jurisdictions. A small government jurisdiction is defined as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. This action will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. This certification is based on the fact that the I/M areas impacted by this rulemaking do not meet the definition of a small government jurisdiction. The I/M rule applies only to urbanized areas with populations in excess of 100,000 or 200,000 depending upon location.

B. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the requirements in this action would impose any mandate at all as defined in Section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, this rule is not estimated to impose costs in excess of \$100 million. Therefore, EPA is not required to and has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers

opportunities to states to delay implementation of certain requirements and thus enables them to lower economic burdens from those resulting from the currently existing I/M rule.

C. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

D. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budget impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

E. Reporting and Recordkeeping Requirements

This regulatory action does not contain any information collection requirements which require the approval of the Office of Management

and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

IV. Effective Date

This rule will take effect May 4, 1998. EPA finds good cause to have the rule take effect immediately because it relieves a restriction, which for the reasons described above EPA believes is inappropriate at this time, which took effect January 1, 1998. It would not be in the public interest to keep that restriction in effect once EPA has acted to relieve it.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulphur oxides, Transportation, Volatile organic compounds.

40 CFR Part 85

Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: April 27, 1998.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, parts 51 and 85 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

2. Section 51.351 is amended by revising paragraph (c) to read as follows:

§ 51.351 Enhanced I/M performance standard.

(c) *On-board diagnostics (OBD).* The performance standard shall include inspection of all 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357.

3. Section 51.352 is amended by revising paragraph (c) to read as follows:

§ 51.352 Basic I/M performance standard.

(c) *On-board diagnostics (OBD).* The performance standard shall include inspection of all 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357.

4. Section 51.357 is amended by revising paragraph (b)(4) to read as follows:

§ 51.357 Test procedures and standards.

(b) (4) *On-board diagnostics test standards.* Vehicles shall fail the on-board diagnostic test if they fail to meet the requirements of 40 CFR 85.2207, at a minimum. Failure of the on-board diagnostic test need not result in failure of the vehicle inspection/maintenance test until January 1, 2001.

5. Section 51.373 is amended by revising paragraph (g) to read as follows:

§ 51.373 Implementation deadlines.

(g) On-Board Diagnostic checks shall be implemented in all basic, low enhanced and high enhanced areas as part of the I/M program by January 1, 2001.

PART 85—[AMENDED]

6. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7601(a).

§ 85.2207 [Amended]

7. Section 85.2207 is amended by removing and reserving paragraphs (a) and (e).

8. Section 85.2222 is amended by revising paragraph (c) to read as follows:

§ 85.2222 On-board diagnostic test procedures.

(c) The test system shall send a Mode \$01, PID \$01 request in accordance with SAE J1979 to determine the evaluation status of the vehicle's on-board diagnostic system. The test system shall determine what monitors are supported by the on-board diagnostic system, and the readiness evaluation for applicable monitors in accordance with SAE J1979. The procedure shall be done in accordance with SAE J1979 "E/E Diagnostic Test Modes," (DEC91). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of SAE

J1979 may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001. Copies may be inspected at the EPA Docket No. A-94-21 at EPA's Air Docket (LE-131), Room 1500 M, 1st Floor, Waterside Mall, 401 M Street SW, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Beginning January 1, 2001, if the readiness evaluation indicates that any on-board tests are not complete the customer shall be instructed to return after the vehicle has been run under conditions that allow completion of all applicable on-board tests. If the readiness evaluation again indicates that any on-board test is not complete the vehicle shall be failed.

9. Section 85.2231 is amended by revising paragraph (b) to read as follows:

§ 85.2231 On-board diagnostic test equipment requirements.

(b) The test system shall be capable of communicating with the standard data link connector of vehicles with certified OBD systems.

[FR Doc. 98-11751 Filed 5-1-98; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ059-0005; FRL-6004-5]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the Arizona State Implementation Plan (SIP). The revision concerns Maricopa County's Ordinance P-7, Maricopa County Trip Reduction Ordinance. This approval action will incorporate this ordinance into the federally-approved SIP. The intended effect of approving this ordinance is to reduce emissions of volatile organic compounds, nitrogen oxides, carbon monoxide, and particulate matter by reducing the number of single-occupant-vehicle commute trips in the Phoenix, Arizona, metropolitan area. EPA is finalizing the approval of this revision into the Arizona SIP under provisions of

the CAA regarding EPA action on SIP submittals. SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: June 3, 1998.

ADDRESSES: Copies of the SIP revision and supporting information are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following location: Office of Air Planning (AIR-2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Frances Wicker, Office of Air Planning, AIR-2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1248.

SUPPLEMENTARY INFORMATION:

I. Background

On December 9, 1997 at 62 FR 64794, EPA proposed to approve Maricopa County's Ordinance P-7, Maricopa County Trip Reduction Ordinance which was revised by the Maricopa County, Arizona, Board of Supervisors on May 26, 1994 and submitted as a SIP revision to EPA by the Arizona Department of Environmental Quality on August 31, 1995. A discussion of the ordinance and EPA's proposed approval action can be found in the notice of proposed rulemaking (NPRM) cited above.

EPA has evaluated this ordinance for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various Agency policy guidance documents referenced in the NPRM. EPA has found that the ordinance meets the applicable EPA requirements.

II. Public Comments

No comments were received on the proposed approval during the 30-day public comment period that was provided in 62 FR 64794.

III. EPA Action

EPA is approving the above submitted ordinance for inclusion into the federally-approved Arizona SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state

implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that

may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major" rule as defined by 5 U.S.C. § 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, *Hydrocarbons, Carbon monoxide, Particulate matter, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.*

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 20, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 by adding paragraph (c)(82)(i)(E) to read as follows:

§ 52.120 Identification of plan.

(c) * * *
(82) * * *
(i) * * *

(E) Maricopa County.

(1) Ordinance P-7, Maricopa County Trip Reduction Ordinance, adopted May 26, 1994.

[FR Doc. 98-11759 Filed 5-1-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-5980-9]

Technical Amendments to Approval and Promulgation of Implementation Plans; Minnesota; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On July 22, 1997 (62 FR 39120), the Environmental Protection Agency published in the *Federal Register* a direct final rule approving a revision to the Minnesota State Implementation Plan (SIP) for the Saint Paul particulate matter (PM) nonattainment area located in Ramsey County, Minnesota, which established an effective date of September 22, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air at (202) 260-5585.

Supplementary Information:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 22, 1997, *Federal Register* document, by operation of law, the rule did not take effect on September 22, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 22, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental

justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 22, 1997, Federal Register document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator.

[FR Doc. 98-11542 Filed 5-1-98; 8:45 am]

BILLING CODE 8580-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[AD-FRL-6003-7]

RIN 2060-AH94

Standards of Performance for New Stationary Sources: General Provisions; National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action amends the General Control Device Requirements applicable to flares in 40 CFR Part 60 which were issued as a final rule on January 21, 1986, and the Control Device Requirements applicable to flares in 40 CFR Part 63 which were issued as a final rule on March 16, 1994. This action amends existing specifications to permit the use of hydrogen-fueled flares. For additional

information concerning comments, see the parallel proposal found in the Proposed Rules Section of this Federal Register.

DATES: This direct final rule is effective June 23, 1998 without further notice unless the Agency receives relevant adverse comments by June 3, 1998. Should the Agency receive such comments, it will publish a document withdrawing this rule. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 23, 1998.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A-97-48 (see docket section below), Room M-1500, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. The EPA requests that a separate copy also be sent to Mr. Robert Rosensteel (see **FOR FURTHER INFORMATION CONTACT** section for address). Comments may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Docket. The official record for these amendments has been established under docket number A-97-48. A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESS** section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260-7548 or (202) 260-7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5608.

SUPPLEMENTARY INFORMATION:

Electronic Filing

Electronic comments and data can be sent directly to EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of

encryption. Comments and data will also be accepted on diskette in Word Perfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A-97-48. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in Docket No. A-97-48, or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541-5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541-5384, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: www.epa.gov/ttn/oarpg/rules.html.

Regulated Entities

Entities affected by this direct final rule include:

Category	Examples of regulated entities
Industry	Synthetic Organic Chemical Manufacturing Industries; and Petroleum Refining Industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have any questions regarding the applicability of this direct final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented in this preamble is organized as follows:

I. Background

- Existing Flare Specifications
- DuPont's Request for Specifications for Hydrogen-Fueled Flares

II. DuPont Test Program For Hydrogen-Fueled Flares

- Summary of Earlier Relevant Hydrogen-Fueled Flares Tests
- Objectives of the DuPont Test Program
- Design and Implementation of DuPont Test Program
- Results of the Test Program

III. Rationale

- The Need for Specifications for Hydrogen-Fueled Flares
- Use of DuPont Test Results as the Basis for Hydrogen-Fueled Flare Specifications

- Selection of Specifications for Hydrogen-Fueled Flares
 - Decision to Proceed With Direct Final Rulemaking
- IV. Summary of the Amendments to the Flare Specifications
- V. Impacts
- Primary Air Impacts
 - Other Environmental Impacts
 - Energy Impacts
 - Cost and Economic Impacts
 - Summary of Impacts
- VI. Administrative
- Paperwork Reduction Act
 - Executive Order 12866
 - Regulatory Flexibility Act
 - Unfunded Mandates Reform Act
 - Submission to Congress and the Comptroller General

I. Background

The General Control Device Requirements of 40 CFR 60.18 were issued as a final rule on January 21, 1986 and are applicable to control devices complying with New Source Performance Standards (NSPS) promulgated by the Agency under Section 111 of the Clean Air Act (CAA), and National Emission Standards for Hazardous Air Pollutants (NESHAP) issued under the authority of Section 112 prior to the CAA Amendments of 1990. The Control Device Requirements of 40 CFR 63.11 were issued as a final rule on March 16, 1994 and are applicable to control devices used to comply with NESHAP issued under the authority of the CAA Amendments of 1990, for the control of hazardous air pollutants (HAP). These existing control device requirements contain specifications defining required operating conditions of control devices generally. Specifically, 40 CFR 60.18(b) through (d), and 40 CFR 63.11(b) contain the operating conditions for flares (i.e., existing flare specifications). Flares operating in accordance with these specifications destroy volatile organic compounds (VOC) or volatile HAP with a destruction efficiency of 98 percent or greater. These existing flare specifications were written for flares combusting organic emission streams. The current regulations do not permit the use of flares not meeting these specifications to satisfy control requirements under the CAA.

E.I. du Pont de Nemours and Company (DuPont) representatives requested that the EPA either add specific limits for hydrogen-fueled flares to the existing flare specifications or approve their hydrogen-fueled flares as alternate means of emission limitation under 40 CFR 61.484, 40 CFR 61.12(d) and 40 CFR 63.6(g) (Docket No. A-97-48, Item No. II-D-2). DuPont subsequently sponsored a testing program to demonstrate that hydrogen-

fueled flares in use at DuPont destroy emissions with greater than 98 percent efficiency. The test program demonstrated that these hydrogen-fueled flares achieved greater than 98 percent destruction efficiency. Further, the EPA judged the conditions of the test program to be universally applicable under the specifications contained in these amendments. Therefore, this notice provides the background and rationale for this action to add specifications for hydrogen-fueled flares to the existing flare specifications.

This notice is being published as a direct final notice since the EPA does not anticipate relevant adverse comments. For the reasons discussed in this notice, the EPA believes that hydrogen-fueled flares meeting the operating specification in this amendment will achieve the same control efficiency, i.e., 98 percent or greater, as flares complying with the existing flare specifications. Further, these specifications will result in reduced emissions of carbon monoxide, nitrogen oxides, and carbon dioxide formed during the combustion of supplemental fuel necessary for hydrogen-fueled flares to comply with existing regulations. By promulgating these amendments some companies using hydrogen-fueled flares can, as of the effective date of this amendment, reduce supplemental fuel use resulting in cost savings and reduced emissions.

A. Existing Flare Specifications

Flares are commonly used in industry to safely combust VOC and volatile HAP. Flares can accommodate fluctuations in VOC or volatile HAP concentrations, flow rate, heating value, and inerts content. Further, flares are appropriate for continuous and intermittent flow applications. Some organic emission streams can be flared without the need for supplemental fuel. However, the use of supplemental organic fuel such as natural gas to ensure the complete combustion of emissions is common.

The EPA determined the destruction efficiency of flares combusting organic emissions in the early 1980's and developed the existing flare specifications as a result of this work. The testing was conducted with a nominal 8-inch diameter flare head furnished by a vendor (Docket No. A-97-48, Item No. I-II-12) and pilot-scale flares (Docket No. A-97-48, Item No. I-II-5). From destruction efficiency testing under a wide variety of velocities, gas compositions, tip diameters, air and steam assistance, and the presence or absence of a pilot

burner, it was concluded that the destruction efficiency of flares was above 96 percent when operated within the conditions of the flare specifications. These specifications list the minimum heat content of the flame (British thermal units per standard cubic feet of gas, or Btu/scf), and the tip velocity (feet per second, or ft/s) allowed for steam-assisted, air-assisted and nonassisted flares.

B. DuPont's Request for Specifications for Hydrogen-Fueled Flares

DuPont operates six flares at three facilities which are used to combust waste gases containing hydrogen (from 13 to 22 mol percent), VOC and volatile HAP. These waste streams also contain other combustible waste gases, inerts, and oxygen. All of DuPont's hydrogen-fueled flares are nonassisted and use pilot burners.

The concentrations of the combustible gases are low, and since the heating value of hydrogen per unit of volume is low, the DuPont emission streams have lower volumetric heat contents than the streams of flares meeting the existing flare specifications. Because DuPont's six flares do not meet the existing flare specifications, and three of these flares are used to control emissions for HAP sources currently subject to NESHAP, DuPont initiated a process to demonstrate that their hydrogen-fueled flares achieve the same destruction efficiency as flares complying with the existing flare specifications. DuPont began the process by investigating the literature on hydrogen-fueled flares (Docket No. A-97-48, Item No. II-I-2). The objective of this investigation was to find any data that may exist in earlier hydrogen-fueled flare test reports that would support their assertion that hydrogen-fueled flares achieve a control efficiency for VOC and volatile HAP of 98 percent or greater. The investigation concluded that no such historical data exist.

At this point, DuPont wrote a letter to the EPA, discussed in the introduction to this section, asking the EPA to consider either adding specific limits for hydrogen-fueled flares to the existing specifications, or approving their hydrogen-fueled flares as an alternate means of emission limitation. DuPont stated that they would provide testing to support this request, and the EPA's Office of Air Quality Planning and Standards (OAQPS) and Office of Research and Development (ORD) agreed to review their test plan, observe testing and review the test report.

II. DuPont Test Program for Hydrogen-Fueled Flares

A. Summary of Earlier Relevant Hydrogen-Fueled Flare Tests

There has been previous testing of hydrogen-fueled flares. In 1970, a study was conducted to evaluate the stability of hydrogen-fueled flares (Docket No. A-97-48, Item No. II-1-6). In this study the velocity gradient and the volume percent hydrogen were correlated with the observation of blow out (i.e., when the flame is completely extinguished) for diffusion flares with hydrogen concentrations in the 50 to 100 volume-percent range. The velocity gradient is defined as the change in velocity at the boundary of the fuel and air. A critical velocity gradient for a given volume-percent of hydrogen was identified, above which the flame was unstable. The significance of this study was that the stability of hydrogen-rich flares (i.e., 50 to 100 volume-percent) was able to be predicted by calculating the velocity gradient. Another study was conducted in 1984 (Docket No. A-97-48, Item No. II-1-9), where the velocity gradient and predictions of flame stability were investigated, but in the range of hydrogen concentrations from 4 to 75 volume-percent hydrogen. However, data were not collected in these tests sufficient to determine destruction efficiencies.

B. Objectives of the DuPont Test Program

The primary objective of DuPont's hydrogen-fueled flare testing program was to demonstrate that the hydrogen-fueled flares used at their facilities were achieving a volatile HAP and VOC destruction efficiency equal to or greater than that of flares meeting the existing flare specifications. Specific technical objectives to support this primary objective were:

- (1) To determine the limits of velocity and hydrogen content within which hydrogen-fueled flares are stable, and;
- (2) To measure the destruction efficiencies of a surrogate for HAP under conditions corresponding to those in industrial hydrogen-fueled flares.

C. Design and Implementation of DuPont Test Program

The results of the testing program form the basis of these flare specification amendments. The testing program used a nominal 3-inch pipe flare with a hood and a stack suspended over the flare to capture the plume. Stability and destruction efficiency tests were performed on the test flare.

The first portion of the testing consisted of stability testing. To determine the flare's stability limit, a stable flame was first established, then the hydrogen flow rate was slowly reduced while holding the tip velocity constant. Hydrogen readings were recorded when the flame lifted off, and again when the flame completely blew out. This procedure was repeated at

different tip velocities in the 16 to 130 ft/s range, for flares with and without pilot burners.

The destruction efficiency of the flare was tested at high gas velocities and hydrogen contents in the stable range. The gases in the waste gas stream and in the hood stack were sampled and analyzed for concentrations of the compound chosen as a surrogate for HAP. Since the surrogate is a VOC this destruction efficiency also demonstrates the destruction efficiency of VOC. Destruction efficiencies were then calculated from these results.

D. Results of the Test Program

1. Flare Stability

The measurements of the hydrogen volume percent at lift off and blow out for the piloted and unpiloted nominal 3-inch (2.9 inch inner diameter) pipe flare are shown in Figure 1 as a function of velocity. Because the hydrogen content at lift off was essentially the same for flares with and without a pilot burner, a single line was fit to the data sets of lift off measurements for piloted and unpiloted flares, this is represented by the upper curve in Figure 1. The data point in the far upper right corner of the figure is an unexplained outlier that is inconsistent with all other data points and was excluded from the linear regression analysis of the lift off data set. The middle and lower curves in Figure 1 are the blow out curves without and with a pilot, respectively.

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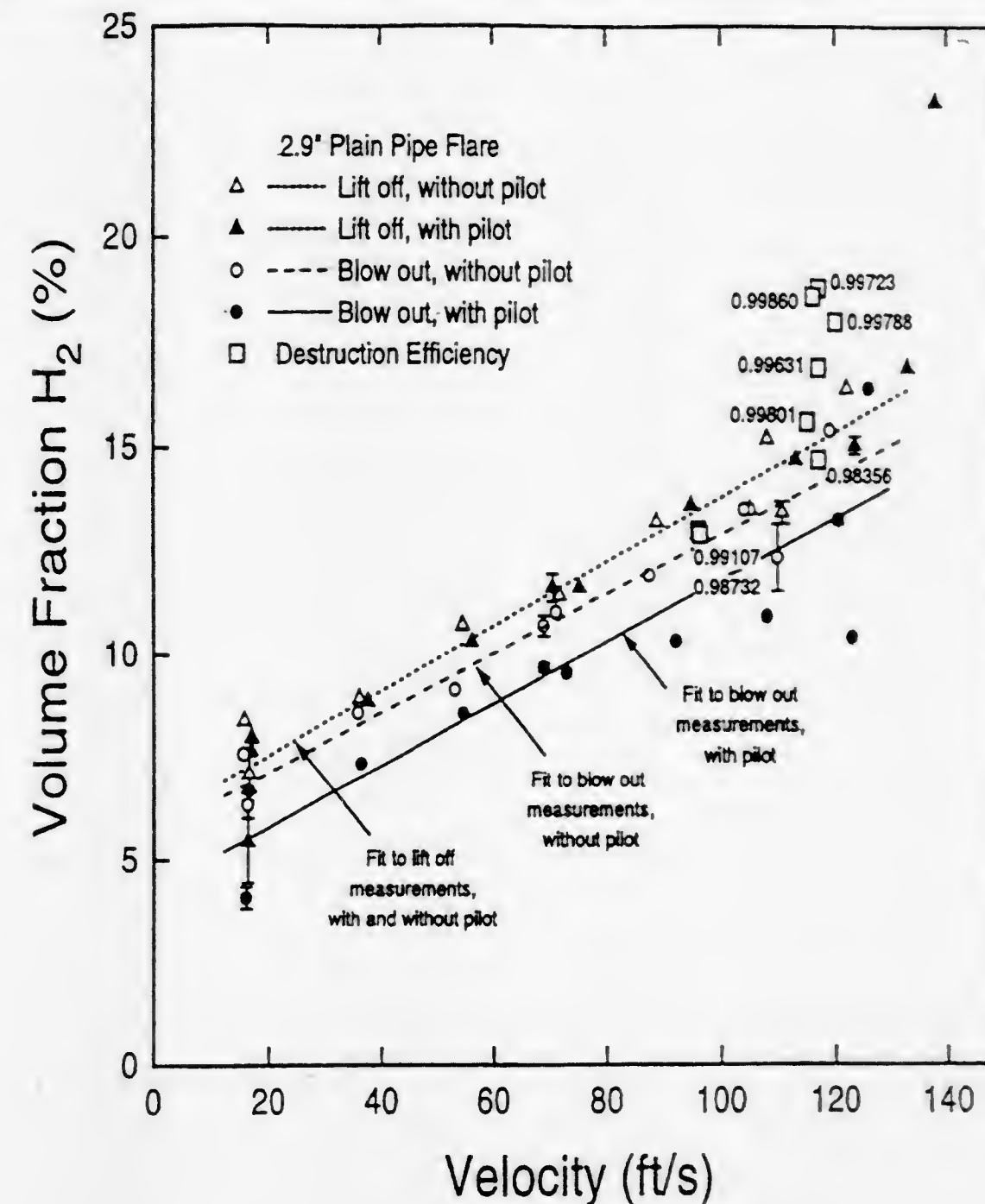


Figure 1. Hydrogen volume fractions measured at lift off and blow out on the nominal 3-inch plain pipe flare, with and without pilot flame (Docket No. A-97-48, II-I-1).

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2. Destruction Efficiency

The measured mean destruction efficiencies and destruction efficiencies at the 95 percent confidence level are shown in Figure 1. All the measurements of destruction efficiencies at conditions more stable than lift off were above 99 percent. Further, control efficiencies greater than 98 percent were found at hydrogen contents below the lift off curve.

III. Rationale

A. The Need for Specifications for Hydrogen-Fueled Flares

The EPA is taking this action to amend 40 CFR 60.18 and 40 CFR 63.11 since the EPA sees the need to permit the use of hydrogen-fueled flares to meet the EPA control requirements. As discussed below, hydrogen has a lower heat content than organics commonly combusted in flares meeting the existing flare specifications and cannot, therefore, be used to satisfy current control requirements. However, since the combustion of hydrogen is different than the combustion of organics, and the test report demonstrates a destruction efficiency greater than 98 percent, the EPA believes that hydrogen-fueled flares meeting the specifications outlined in the amendments will achieve a control efficiency of 98 percent or greater. This level of control is equivalent to the level of control achieved by flares meeting the existing specifications. In addition to achieving the same destruction efficiency of VOC or organic HAP, the adoption of these amendments has the added advantage of reducing the formation of secondary pollutants; since the combustion of supplemental fuel would not be required by hydrogen-fueled flares to meet the existing flare specifications.

1. The Heat Content of Hydrogen

The heat content of a substance is a measure of the amount of energy stored within the bonds between atoms in each molecule of the substance. Hydrogen is a simple molecule consisting of two hydrogen atoms held together by weak, hydrogen bonds, thus resulting in a low heat content. In comparison, organic chemicals are larger chains (or rings) of carbons with hydrogens and other atoms attached to them. These molecules are held together with a combination of ionic, covalent and hydrogen bonds, which contain substantially more energy (i.e., higher heat content) than the hydrogen bond in the hydrogen molecule.

2. The Difference in Combustion Between Hydrogen and Organics

The first phenomenon to explain the difference in combustion between hydrogen and organics is related to the thermodynamics of the combustion reaction. In order for the hydrogen atom to react in the combustion/oxidation reaction, the weak hydrogen bond between the two hydrogen atoms must first be broken. Because there is less energy holding the hydrogen atoms together, less energy (heat) is required to separate them. Once the hydrogen bonds are broken, the hydrogen atoms are free to react in the combustion reaction.

The second phenomenon explaining the difference in combustion between hydrogen and organics is due to hydrogen's upper and lower flammability limits. The flammability limits are the minimum (lower) and maximum (upper) percentages of the fuel in a fuel-air mixture that can propagate a self-sustaining flame. The lower and upper flammability limits of hydrogen are 4.0 and 74.2 percent, respectively, which is the second widest range of lower and upper limits of substances typically combusted in flares (Docket No. A-97-48, Item No. II-1-2).

The third phenomenon explaining the difference in combustion between hydrogen and organics is the relative difference in diffusivity between hydrogen and organics in air. Diffusivity refers to how easily molecules of one substance mix with molecules of another. Further, the quicker the fuel and air in a flare mix, the quicker the combustion reaction occurs. The measure of how quickly a substance mixes with another substance is expressed in terms of the diffusivity coefficient. The larger the diffusivity coefficient, the quicker the mixing. The diffusivity coefficient for the mixture of hydrogen and air is an order of magnitude higher than those for the mixture of air and volatile HAP with readily available diffusivity coefficients. Therefore, hydrogen is more diffuse in air compared to organics and more quickly enters the flammability range than organics.

B. Use of DuPont Test Results as the Basis for Hydrogen-Fueled Flare Specifications

These tests were conducted by DuPont primarily for their flaring conditions. However, after reviewing the test plan, observing the testing, and thoroughly reviewing the test report supplied by DuPont, the EPA concluded that the test results were applicable to all nonassisted flares with a hydrogen

content of 8.0 percent (by volume) or greater, and a diameter of 3 inches or greater. The EPA believes that the test results are universally applicable since all the effective data points demonstrated a destruction efficiency greater than 98 percent, with the majority achieving greater than 99 percent destruction. Therefore, if the test flare can achieve these destruction efficiencies, then the EPA expects industrial flares meeting the flare specifications in these amendments to achieve a destruction efficiency of 98 percent or greater.

In selecting the conditions under which the pilot flare testing was to be conducted and interpreting the results of the testing, a "conservative" decision was made for each choice, that is the condition that would most likely assure that a full-scale flare would achieve at least as high and possibly higher destruction efficiency was chosen. This approach applied to the selection of flare tip design, flare tip diameter, pilot burner heat input, and characteristics of the surrogate for HAP for destruction testing. It also applied to the evaluation of stability testing and destruction efficiency results, as well as the selection of operating limits applying to hydrogen concentration and tip discharge velocity.

1. The Selection of the Flare Type

A nonassisted, plain-tip flare was used in the testing program because all of DuPont's flares are nonassisted. A nonassisted flare is a flare tip without any auxiliary provision for enhancing the mixing of air into its flame. The plain-tip means no tabs or other devices to redistribute flow were added to the rim of the flare. Because the presence of tabs improves the stability of the flare by channeling the flare's flow and improving mixing of fuel and air, it was concluded that the lack of tabs (i.e., plain tip) would result in the least stable test conditions.

2. The Comparison of the Selected Flare with the Existing Flare Specifications

A 3-inch flare was selected for the emission test since this was the same size flare used for the testing to establish the basis for the existing flare specifications in 40 CFR 60.18 and 40 CFR 63.11. Stability tests were conducted using propane to determine if the flare was operating properly and could meet the existing flare specifications. Test results demonstrated that this flare was stable when it was expected to be stable and not stable when it was not expected to be (i.e., as indicated by the existing flare specifications).

3. The Size of the Test Flare

Another reason for using the 3-inch flare for these tests is because a 3-inch flare is small, relative to the size of flares in industry (as a point of reference, the DuPont flares are 16 to 48 inches in diameter). Research indicates that smaller flares are less stable than larger flares (Docket No. A-97-48, Item No. II-1-1, Sec 4, page 6). Specifically, the physical parameter known as the velocity gradient can be used to predict when a flame will blow out by plotting the velocity gradient versus the volume-percent hydrogen. The larger the boundary velocity gradient, the more unstable the flame. Further, the velocity gradient is inversely proportional to the diameter of the pipe. Therefore, at a given velocity, the larger the pipe, the smaller the boundary velocity, and the more stable the flame. The EPA concludes that if a stable flame can be maintained with a smaller flare pipe, then a larger flare would be expected to be stable at lower hydrogen concentrations and higher velocities. Therefore, the EPA believes that 3-inch or larger flares that meet these specifications will have destruction efficiencies as high or higher than those obtained from the 3-inch pipe flares.

4. The Selection of the Size of the Pilot Burner

The amount of heat input from the pilots on DuPont's full-scale hydrogen-fueled flares are in the range from 0.05 to 0.6 percent of the total heat input to the flares. A venturi burner turned down to approximately one third of its 9,000 Btu/hr capacity was used for the tests described in this document, and the heat input was equal to 0.3 to 0.6 percent of the pilot flare's total heat input during the stability and destruction efficiency tests. Therefore, the heat input from the pilot during the tests was comparable to the heat input for the full-scale flares operated by DuPont.

The relatively small proportion of heat input from the venturi burner compared to the total heat input to the test flare would not be expected to have a significant effect on either the stability or destruction efficiency results, because this amount of heat is insignificant compared to the flare's total heat content. Also, the use of a pilot burner is consistent with EPA's flare specification which requires that the pilot flame be present at all times.

5. The Selection of Ethylene as the Surrogate for HAP to be used in the testing

For this study it was desired to select a surrogate for HAP that was more

difficult to destroy than the volatile HAP present in the large scale flare waste streams, and which could be measured at a concentration of 10 parts per billion by volume and higher. In general, the difficulty of destruction for organics increases as the molecular weight decreases, but the limit of detection decreases as the molecular weight decreases. It is obvious then that there may be some compromise necessary in selecting a surrogate for HAP.

In order to compare the relative difficulty to destroy various species, a linear multiple regression model was used that calculates a destruction temperature using parameters describing the molecular structure, autoignition temperature, and residence time as inputs to the model. The destruction temperatures obtained are theoretical temperatures for plug flow reactors to achieve specified destruction allowing a comparison to be made among various chemical species to estimate relative destructibility (Docket No. A-97-48, Item No. II-1-14). As a first step the destruction temperatures were calculated for all the chemical species that were identified as present in DuPont's full-scale flare waste streams. The next step was to calculate destruction temperatures for the surrogates for HAP under consideration. (The results from this analysis are presented in Tables 4-3 and Table 4-4 of Docket Item II-1-14).

In comparing the model's destruction temperature estimates for candidate surrogates for HAP present in DuPont's flare streams, the best choice as a surrogate was methane, but the detection limit was too high to be accepted for the field study. The next choice was methanol but not only is the detection limit high, it is a HAP and it is also a liquid at ambient temperatures, presenting handling difficulties. The next candidate considered was ethylene which was selected for the study. It has a higher destruction temperature than all the organic HAP in the study, except methanol, and has an acceptable limit of detection. Therefore, the most difficult to destroy substance was chosen for the study that was feasible to use.

6. The Criteria for a Stable Flame

The hydrogen content reported when lift off was first observed was selected as the criterion for a stable flame, because it was easy and precise to identify. The EPA concluded that this was a conservative estimate for the stability limit because destruction efficiencies greater than 98 percent were noted even for hydrogen contents below the lift off level.

Another reason why the EPA concluded that lift off was a conservative criterion for a stable flame was based on a correlation between the stability ratio and the destruction efficiency observed in earlier flare testing conducted in the 1980's (Docket No. A-97-48, Item No. II-1-5). At that time it was demonstrated that the destruction efficiencies were directly proportional to the ratio of the flare gas heating value to the minimum heating value for flame stability (i.e., stability ratio). Regardless of the substance being combusted, it was observed that the destruction efficiency plateaued to greater than 98 percent destruction when the stability ratio was above approximately 1.2. For this test program, the destruction efficiency versus the ratio of actual hydrogen to hydrogen at lift off (analogous with the stability ratio, and referred to as the hydrogen ratio) was plotted for this test program. The curve of the data was similar to those obtained from the flare test programs in the 1980's. Three data points demonstrated that at stability ratios below 1.0, with the lowest stability ratio of 0.955, destruction efficiencies greater than 98 percent were achieved. Since the amendments for these flare specifications require a stability ratio of 1.0 or greater, it is assumed that a 98 percent or greater destruction efficiency will be achieved.

7. The Operating Parameters Used for Testing the Destruction Efficiency (i.e., Hydrogen Content and Flare Tip Velocity)

The destruction efficiency of ethylene for the hydrogen-fueled flares was tested at high tip velocities (i.e., approximately 100 to 120 ft/sec) because this is the velocity range expected to produce lower destruction efficiencies. Therefore, if acceptable destruction efficiencies are observed at high tip velocities, then at least as high or even higher destruction efficiencies are expected at lower tip velocities.

The expectation to observe decreased destruction efficiency at high tip velocities is explained by two phenomena. The first phenomenon is due to the increased fuel flow. The increased volume of fuel flow entrains more air, and more eddies are formed at the boundary between the fuel and the air. These eddies tend to strip off some of the gases' flow, even before the flame is able to combust the substances, so uncombusted or incompletely combusted substances may be lost to the ambient air.

Another phenomenon explaining the expectation of decreased destruction efficiency at increased tip velocities

results from comparisons of stability ratios at different tip velocities. For this test program the ratio of the hydrogen content at lift off to the hydrogen content at blow out with a pilot was used as an analogous ratio to the previously mentioned stability ratio. Further, the value of hydrogen at blow out was used as the minimum hydrogen content, since at essentially this level of hydrogen, the destruction efficiencies were above 98 percent for tip velocities of 100 and 120 ft/sec. The DuPont test program's data revealed a trend where the hydrogen ratios were lower at higher velocities compared to lower tip velocities, 1.15 to 1.17 versus 1.3, respectively. Since the test programs in the 1980's demonstrated that the destruction efficiency is directly proportional to the stability ratio, then it could be expected that the same or higher destruction efficiencies would be experienced at lower tip velocities where the hydrogen ratios are larger.

C. Selection of the Specifications for Hydrogen-Fueled Flares

The operating specification for hydrogen-fueled flares in these amendments is the maximum tip velocity for a given hydrogen content, from the equation of the line fitting the data from the stability testing at lift off conditions as seen in Figure 1. The equation in these amendments comes directly from the test report. This equation is presented in the appropriate form in Section IV of this preamble with the units changed to metric.

There are safety requirements that must be carefully considered for all flare installations, and this is the case for the user of these hydrogen-fueled flare amendments. As an example, if the discharge velocity is too low under certain conditions, the flame could propagate back into the process with potentially catastrophic results. These amendments only specify a maximum discharge velocity for the purpose of assuring efficient destruction of pollutants in waste streams and do not address any aspect of safe operation. The user of any EPA flare specifications should carefully consider all features of this application, not just the limitation on maximum discharge velocity, and implement all necessary measures to assure a safe operation. Safe operating conditions are always the responsibility of the owner/operator at each facility to assure that all applicable safety requirements are adhered to whether they are company, consensus and/or governmental requirements.

The EPA did not think that extrapolating the data outside the range of values tested to be prudent; therefore,

the hydrogen-fueled flare specifications have been restricted to the confines of the conditions used for the test program. The following restrictions are included in the hydrogen-fueled flare specifications:

1. Nonassisted Flares

The amendments are applicable to only nonassisted flares because that is the only type of flare tested for these amendments.

2. Continuous Flame

The existing flare specifications require the presence of a continuous flame where reliable ignition is obtained by continuous pilot burners designed for stability. To ensure that the pilot is continuously lit, a flame detection device is required. These amendments incorporate the same requirements for the same reason, to ensure flame stability.

3. Minimum Flare Diameter

The testing was conducted on 3-inch flares, therefore this is the minimum flare diameter for the amendments.

4. Minimum Hydrogen Content

The minimum hydrogen content in the gas streams tested was rounded to the nearest whole number, 8.0 volume percent, and set as the defining minimum hydrogen concentration cutoff for a hydrogen-fueled flare.

5. Maximum Tip Velocity

The maximum tip velocity was set at 37.2 m/sec (122 ft/s), because that was the highest tip velocity tested.

6. Flame Stabilizers

Flame stabilizers (often called flame holders) are allowed because stability and destruction efficiency testing was conducted without them, so if these tabs stabilize the flame even better mixing, and potentially greater destruction efficiencies can be achieved.

7. Minimum Flare Tip Velocity

A minimum flare tip velocity was not listed since evidence indicates that performance will not be diminished due to lower tip velocities (See the preceding discussion concerning safety responsibilities).

D. Decision To Proceed With Direct Final Rulemaking

This notice is being published as a direct final notice since the EPA does not anticipate relevant adverse comments. For the reasons discussed in this notice, the EPA believes that hydrogen-fueled flares meeting the operating specification in this

amendment will achieve the same control efficiency, i.e., 98 percent or greater, as flares complying with the existing flare specifications. Further, these specifications will result in reduced emissions of carbon monoxide, nitrogen oxides, and carbon dioxide formed during the combustion of supplemental fuel necessary for hydrogen-fueled flares to comply with existing regulations. By promulgating these amendments some companies using hydrogen-fueled flares can, as of the effective date of this amendment, reduce supplemental fuel use resulting in cost savings and reduced emissions.

IV. Summary of the Amendments to the Flare Specifications

The amendments to the flare specifications add requirements for nonassisted flares that combust 8.0 percent (by volume) or greater of hydrogen in the stream and have a 3-inch or greater diameter. The amendments present an equation that calculates the maximum allowable flare tip velocity for a given volume percent of hydrogen. This equation format is similar to the one used for air-assisted flares in the existing flare specifications. The specific equation for the maximum tip velocity for hydrogen-fueled flares is:

$$V_{max} = (X_{H_2} - K_1) \cdot K_2$$

Where:

V_{max} = Maximum permitted velocity, m/sec.

K_1 = Constant, 6.0 volume-percent hydrogen.

K_2 = Constant, 3.9(m/sec)/volume-percent hydrogen.

X_{H_2} = The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946-77.

This direct final rule adds specifications for hydrogen-fueled flares to both 40 CFR 60.18 and 63.11. The amendments to the General Provisions for NSPS are contained in 40 CFR 60.18. In addition, 40 CFR 60.18 (c)(4)(i) was revised to correct an earlier published typographical error. The amendments to the General Provisions for NESHAP are contained in 40 CFR 63.11(b)(9). 40 CFR 63.11(b)(8) was also revised to make the number of significant figures consistent throughout the specifications.

IV. Impacts

The impacts discussed in this section are only for six DuPont flares that are required by current or pending EPA regulations to meet the existing flare specifications. The EPA does not have information, and cannot estimate

impacts for other hydrogen-fueled flares in the United States. Therefore, the following estimates are limited to these six DuPont flares.

A. Primary Air Impacts

The amended flare specifications will reduce emissions by the same amount (i.e., 98 percent or greater) as emissions would be reduced by using flares meeting the existing flare specifications.

B. Other Environmental Impacts

The Agency estimates that these amendments to the flare specifications will reduce secondary emissions of pollutants since the combustion of supplemental organic fuel will no longer be required; therefore, there will be no emissions resulting from the combustion of a supplemental fuel. It is estimated that these flare specification amendments will reduce annual emissions from the six affected DuPont flares by 147 megagrams (161 tons per year) of criteria pollutants (i.e., 124 megagrams (136 tons per year) of carbon monoxide, and 22.7 megagrams (25 tons per year) of nitrogen oxides) and 39,900 megagrams (44,000 tons per year) of carbon dioxide.

In addition to these secondary emission reductions, there may also be State regulations that require owners/operators to follow the existing flare specifications, and by allowing the owners/operators to meet the specifications in these amendments, there may be further reductions in secondary air emissions. Therefore, these impacts are a minimal estimate of the potential secondary air emission reductions.

C. Energy Impacts

These amendments to the flare specifications are expected to decrease the amount of energy used by DuPont's six hydrogen-fueled flares since these flares will no longer be required to combust secondary fuel. The expected energy savings is estimated to be 7.75 × 10⁸ cubic feet of natural gas annually (7.75 × 10¹¹ Btu/yr).

D. Cost and Economic Impacts

Cost savings will be realized due to these amendments by not requiring the combustion of supplemental fuel (to comply with the original heat content requirements), and by not requiring the subsequent resizing of the existing flares that would result from a requirement to combust supplemental fuel in order to accommodate the additional flow of supplemental fuel. The cost of natural gas as supplemental fuel for the six affected flares is estimated to be \$2.8 million per year. The capital investment

to replace a smaller flare tip with a larger one is estimated to be approximately \$667,000 per flare or \$4 million for all six flares. The total annual savings achieved by allowing hydrogen-fueled flares that fulfill the specifications of these amendments are the sum of the annual fuel cost savings, and the annualization of the capital savings (calculated to be \$280,000 per year). Therefore, total annual savings for the six affected DuPont flares are estimated to be \$3.08 million per year. Since sources using these hydrogen-fueled flare specifications will experience savings, no adverse economic impacts will result from this action.

E. Summary of Impacts

This section discussed the cost savings, emission reduction of secondary pollutants, and energy savings from only the six DuPont flares subject to current or pending regulations. These flare specification amendments have the potential to reduce emissions and save money and fuel from hydrogen-fueled flares of which the EPA is not yet aware.

VI. Administrative

A. Paperwork Reduction Act

This rule does not contain any information collection subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq.

B. Executive Order 12866 Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that these amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, are not subject to review by the Office of Management and Budget.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities, because this rule imposes no additional regulatory requirements, but merely expands the types of flares that may be used to meet the requirements of 40 CFR 60 and 40 CFR 63.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final standards that include a Federal mandate that may result in estimated costs to State, local, or tribal governments, or to the private sector, of, in the aggregate, \$100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the standard and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the standards.

The EPA has determined that the final standards do not include a Federal mandate that may result in estimated costs of, in the aggregate, \$100 million or more to either State, local, or tribal governments, or to the private sector, nor do the standards significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the Unfunded Mandates Act do not apply to this final rule.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference.

Dated: April 17, 1998.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, 7601 and 7607.

Subpart A—General Provisions

2. Section 60.17 is amended by revising paragraph (a)(6) to read as follows:

§ 60.17 Incorporation by reference.

(a) * * *

(6) ASTM D1946-77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.45(f)(5)(i), 60.18(c)(3)(i), 60.18(f), 60.614(d)(2)(ii), 60.614(d)(4), 60.664(d)(2)(ii), 60.664(d)(4), 60.564(f), 60.704(d)(2)(ii) and 60.704(d)(4).

3. Section 60.18 is amended by revising paragraphs (c)(3) and (c)(4)(i), and by adding paragraphs (c)(3)(ii) and (c)(3)(iii) to read as follows:

§ 60.18 General control device requirements.

(c) * * *

(3) An owner/operator has the choice of adhering to either the heat content specifications in paragraph (c)(3)(ii) of this section and the maximum tip velocity specifications in paragraph (c)(4) of this section, or adhering to the

requirements in paragraph (c)(3)(i) of this section.

(i)(A) Flares shall be used that have a diameter of 3 inches or greater, are nonassisted, have a hydrogen content of 8.0 percent (by volume), or greater, and are designed for and operated with an exit velocity less than 37.2 m/sec (122 ft/sec) and less than the velocity, V_{max} , as determined by the following equation:

$$V_{max} = (X_{H_2} - K_1) \cdot K_2$$

Where:

V_{max} = Maximum permitted velocity, m/sec.

K_1 = Constant, 6.0 volume-percent hydrogen.

K_2 = Constant, 3.9(m/sec)/volume-percent hydrogen.

X_{H_2} = The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946-77. (Incorporated by reference as specified in § 60.17).

(B) The actual exit velocity of a flare shall be determined by the method specified in paragraph (f)(4) of this section.

(ii) Flares shall be used only with the net heating value of the gas being combusted being 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted being 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (f)(3) of this section.

(4)(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (f)(4) of this section, less than 18.3 m/sec (60 ft/sec), except as provided in paragraphs (c)(4)(ii) and (iii) of this section.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7414, 7416, 7429, 7601 and 7607.

Subpart A—General Provisions

2. Section 63.11 is amended by revising paragraphs (b)(6) and (b)(8), and by adding paragraphs (b)(6)(i) and (b)(6)(ii) to read as follows:

§ 63.11 Control device requirements.

(b) * * *

(6) An owner/operator has the choice of adhering to the heat content specifications in paragraph (b)(6)(ii) of this section, and the maximum tip velocity specifications in paragraph (b)(7) or (b)(8) of this section, or adhering to the requirements in paragraph (b)(6)(i) of this section.

(i)(A) Flares shall be used that have a diameter of 3 inches or greater, are nonassisted, have a hydrogen content of 8.0 percent (by volume) or greater, and are designed for and operated with an exit velocity less than 37.2 m/sec (122 ft/sec) and less than the velocity V_{max} , as determined by the following equation:

$$V_{max} = (X_{H_2} - K_1) \cdot K_2$$

Where:

V_{max} = Maximum permitted velocity, m/sec.

K_1 = Constant, 6.0 volume-percent hydrogen.

K_2 = Constant, 3.9(m/sec)/volume-percent hydrogen.

X_{H_2} = The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946-77. (Incorporated by reference as specified in § 63.14).

(B) The actual exit velocity of a flare shall be determined by the method specified in paragraph (b)(7)(i) of this section.

(ii) Flares shall be used only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted at 7.45 MJ/scm (200 Btu/scf) or greater if the flare is non-assisted. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K \sum_{i=1}^n C_i H_i$$

Where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C.

K = Constant =

$$1.740 \times 10^{-7} \left(\frac{1}{\text{ppmv}} \right) \left(\frac{\text{g-mole}}{\text{scm}} \right) \left(\frac{\text{MJ}}{\text{kcal}} \right)$$

where the standard temperature for (g-mole/scm) is 20 °C.

C_i = Concentration of sample component i in ppmv on a wet basis, as measured for organics by Test Method 18 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946-77 (incorporated by reference as specified in § 63.14).

H_i = Net heat of combustion of sample component i, kcal/g-mole at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D2382-76 (incorporated by reference as specified in § 63.14) if published values are not available or cannot be calculated.

n = Number of sample components.

(8) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity V_{max} . The maximum permitted velocity, V_{max} , for air-assisted flares shall be determined by the following equation:

$$V_{max} = 8.71 + 0.708(H_T)$$

Where:

V_{max} = Maximum permitted velocity, m/sec.

8.71 = Constant.

0.708 = Constant.

H_T = The net heating value as determined in paragraph (b)(6)(ii) of this section.

[FR Doc. 98-11262 Filed 5-1-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-598-6]

Technical Amendments to Designation of Areas for Air Quality Planning Purposes; Texas; Revised Geographical Designation of Certain Air Quality Control Regions; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On June 3, 1997 (62 FR 30270), the Environmental Protection Agency published in the *Federal Register* a direct final rule approving a July 2, 1993, request by the Governor of Texas to revise the geographical boundaries of seven Air Quality Control Regions (AQCRs) in the State of Texas to conform with the Texas Natural

Resource Conservation Commission (TNRCC) regional boundaries, which established an effective date of August 4, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air, at (202) 260-5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the June 3, 1997, *Federal Register* document, by operation of law, the rule did not take effect on August 4, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 3 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 3, 1997, *Federal Register* document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator.

[FR Doc. 98-11544 Filed 5-1-98; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-5987-9]

Technical Amendments to Designation of Areas for Air Quality Planning Purposes; State of New Jersey; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; correction of effective date under CRA.

SUMMARY: On July 3, 1997 (62 FR 35972), the Environmental Protection Agency published in the Federal Register a direct final action to correct entries to the table in § 81.331 of Title 40 of the Code of Federal Regulations (CFR) for "New Jersey-Carbon Monoxide," which established an effective date of July 3, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air at (202) 250-5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 3, 1997, Federal Register document, by operation of law, the rule did not take effect on July 3, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause

under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 3, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 3, 1997, Federal Register document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator.

[FR Doc. 98-11546 Filed 5-1-98; 8:45 am]

BILLING CODE 8560-60-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-5999-7]

Amendments to the Test Procedures for Heavy-Duty Engines, and Light-Duty Vehicles and Trucks and Amendments to the Emission Standard Provisions for Gaseous Fueled Vehicles and Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 5, 1997, EPA promulgated a direct final rulemaking that amended several sections of the heavy-duty engine test procedure regulations. These changes were needed in order to accommodate the use of new testing equipment, to provide greater flexibility in the type of testing equipment used and to ensure uniform calibration and use of the testing equipment. EPA stated that it would withdraw any provisions that received adverse or critical comments. EPA also published a notice of proposed rulemaking at that time proposing the same amendments. Due to adverse comments that were received regarding three provisions of the final rule, EPA is removing those three provisions in this action. The Agency intends to issue in the near future a final rule addressing these provisions.

EFFECTIVE DATE: June 3, 1998.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A-96-07, and are available for public inspection and photocopying between 8 a.m. and 5:30 p.m. Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, U.S. EPA, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (734) 668-4574.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Administrative Designation and Regulatory Analysis
- III. Regulatory Flexibility
- IV. Unfunded Mandates
- V. Paperwork Reduction Act
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- VII. Copies of Rulemaking Documents

I. Introduction

On September 5, 1997, EPA published a direct final rule (62 FR 47114) and accompanying notice of proposed rule

(62 FR 46937) making amendments to the test procedures for heavy-duty engines and light duty vehicles and trucks. The changes were made in order to accommodate the use of new testing equipment and clarify certain issues that had been identified since the test procedures were first promulgated. Although EPA believed that the action was non-controversial, adverse comments were received from the Engine Manufacturers Association (EMA) and from the American Automobile Manufacturers Association (AAMA). Their respective adverse comments have been placed in the public docket for viewing.

Both of the comments received by EPA referred to changes made to §§ 86.1333-90, 86.119-90, 86-1319-84 and 86.1319-90. In § 86.1333-90 EPA provided a new requirement for cycle verification at idle conditions. The new requirement stated that for idle segments that are seven seconds or longer, the average feedback torque must fall within ± 10 ft-lb of CITT. Both EMA and AAMA commented that current dynamometer systems utilized might not be capable of controlling torque to this specification and thus the time period might have to be lengthened or modifications made to dynamometer control systems.

EPA also revised §§ 86.119-90, 86.1319-84 and 86.1390-90 to require manufacturers to verify that the critical flow venturi is achieving critical flow when using a CFV-CVS sampling system during the emissions test. Both EMA and AAMA commented that, although they agree with the technical merits of such requirement, more lead time would be needed to make the software and hardware changes necessary to comply.

Finally, EPA made a correction to its light-duty diesel fuel cetane specification in § 86.113-94. In the Gaseous Fuels Rule (59 FR 48472) modifications to the section specifying certification fuel parameters for light-duty vehicles and trucks resulted in inadvertent changes to the diesel fuel specifications. In its comments, AAMA expressed concern that the change will not provide sufficient lead time for manufacturers to comply and that, in addition, diesel hydrocarbon emissions are sensitive to cetane levels and thus in-use compliance issues could be created in the future.

As a result of these adverse comments, EPA is removing the provisions of the direct final rule that pertain to the comments received. EPA is thus reinstating the regulatory language in those provisions as it was prior to the publication of the direct

final rule on September 5, 1997. EPA's decision to remove these regulatory changes is not based on EPA's agreement or disagreement with the adverse comments received. The removal is based solely on the receipt of the comments themselves. As stated in the September 5, 1997 rule, the provisions would become effective only if no persons submitted adverse comments or requested an opportunity to comment.

As noted above, EPA published a notice of proposed rulemaking on September 5, 1997 (62 FR 46937) to accompany the direct final rule published on that date. As noted in that notice of proposed rulemaking, if EPA received adverse comments, all public comments received regarding the direct final rule would be addressed in a subsequent final rule based on the proposed rule. The Agency would not institute a second comment period on the proposed rule.

Therefore, EPA intends to issue a final rule in the near future regarding the portions of the direct final rule that the commenters addressed, and that are removed today. EPA will take the comments it has received into account in promulgating this final rule. No further comment period is contemplated prior to completion of the final rule.

II. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this action is not a "significant"

regulatory action within the meaning of the Executive Order and is therefore not subject to OMB review.

III. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. In support of its proposed rule entitled *Control of Emissions of Air Pollution from Highway Heavy-Duty Engines* (61 FR 33421, June 27, 1996), EPA characterized the heavy-duty engine manufacturing industry in Chapter 3 of its Regulatory Impact Analysis (RIA). Based on that characterization, EPA has determined that these technical amendments will not have a significant impact on a substantial number of small entities.

IV. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a written statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be \$100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely impacted by the rule. EPA has determined that the costs to State, local, or tribal governments, or the private sector, from this rule will be less than \$100 million.

V. Paperwork Reduction Act

The technical amendments promulgated by this action do not create or change the information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has previously approved the information collection requirements already contained in all the Part 86 sections amended by this action and has assigned OMB control numbers 2060-0104 and 2060-0064.

VI. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule, to each House of

Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" defined by 5 U.S.C. 804(2).

VII. Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this rule are available via the Internet on the Office of Mobile Sources (OMS) Home Page (<http://www.epa.gov/OMSWWW/>). This service is free of charge, except for any cost you already incur for Internet connectivity. An electronic version is made available on the day of publication on the primary Web site (<http://www.epa.gov/docs/fedrgstr/EPA-AIR/>).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Gasoline, Incorporation by reference, Labeling, Motor vehicle pollution, Motor vehicles, Reporting and recordkeeping requirements.

Dated: April 14, 1998.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, part 86 of chapter I of title 40

of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. Section 86.113-94 of subpart B is amended by revising the table after paragraph (b)(2) to read as follows:

§ 86.113-94 Fuel specifications.

(b) * * *

(2) * * *

Item		ASTM test method No.	Type 2-D
Cetane Number		D613	42-50
Distillation range:			
IBP	°F	D86	340-400
	(°C)		(171.1-204.4)
10 pct. point	°F	D86	400-460
	(°C)		(204.4-237.8)
50 pct. point	°F	D86	470-540
	(°C)		(243.3-282.2)
90 pct. point	°F	D86	560-630
	(°C)		(293.3-332.2)
EP	°F	D86	610-690
	(°C)		(321.1-365.6)
Gravity	*API	D287	32-37
Total sulfur	pct.	D2622	0.03-0.05
Hydrocarbon composition:			
Aromatics, min.	pct.	D1319	27
Paraffins,		D1319	(¹)
Naphthenes,			
Olefins			
Flashpoint, min.	°F	D93	130
	(°C)		(54.4)
Viscosity, centistokes		D445	2.0-3.2

¹ Remainder.

3. Section 86.119-90 of Subpart B is amended by revising paragraph (b)(3) and removing paragraph (b)(8) to read as follows:

§ 86.119-90 CVS calibration.

(b) * * *

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Tolerances
Barometric pressure (corrected)	P _b	Inches Hg (kPa)	±0.1 in Hg (±0.34 kPa).
Air temperature, flowmeter	ETI	°F (°C)	±25°F (±14°C).
Pressure depression upstream of LFE	EPI	Inches H ₂ O (kPa)	±0.05 in H ₂ O (±0.12 kPa).
Pressure drop across LFE matrix	EDP	Inches H ₂ O (kPa)	±0.005 in H ₂ O (±0.01 kPa).
Air flow	Q _a	ft ³ /min. (m ³ /min.)	±5 pct.

CALIBRATION DATA MEASUREMENTS—Continued

Parameter	Symbol	Units	Tolerances
CFV inlet depression	PPI	Inches fluid (kPa)	±13 in fluid (±0.55 kPa).
Temperature at venturi inlet	T _v	°F (°C)	±0.5°F (±0.28°C).
Specific gravity of manometer fluid (1.75 oil)	Sp. Gr		

4. Section 86.1319-84 of Subpart N is amended by revising paragraph (d)(3) and removing paragraph (d)(8) to read as follows:

§ 86.1319-84 CVS calibration.

(d) * * *

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Tolerances
Barometric pressure (corrected)	P _b	Inches Hg (kPa)	±0.1 in Hg (±0.34 kPa).
Air temperature, flowmeter	ETI	°F (°C)	±25°F (±14°C).
Pressure depression upstream of LFE	EPI	Inches H ₂ O (kPa)	±0.05 in H ₂ O (±0.12 kPa).
Pressure drop across LFE matrix	EDP	Inches H ₂ O (kPa)	±0.005 in H ₂ O (±0.01 kPa).
Air flow	Q _a	ft ³ /min. (m ³ /min.)	±5 pct.
CFV inlet depression	PPI	Inches fluid (kPa)	±13 in fluid (±0.55 kPa).
Temperature at venturi inlet	T _v	°F (°C)	±0.5°F (±0.28°C).
Specific gravity of manometer fluid (1.75 oil)	Sp. Gr		

5. Section 86.1319-90 of Subpart N is amended by revising paragraph (d)(3) and removing paragraph (d)(8) to read as follows:

§ 86.1319-90 CVS calibration.

(d) * * *

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Sensor-readout tolerances
Barometric pressure (corrected)	P _b	in Hg (kPa)	±0.1 in Hg (±0.34 kPa).
Air temperature, into flowmeter	ETI	°F (°C)	±0.5 °F (±0.28 °C).
Pressure drop between the inlet and throat of metering venturi	EDP	Inches H ₂ O (kPa)	±0.05 in H ₂ O (±0.12 kPa).
Air flow	Q _a	ft ³ /min. (m ³ /min.)	±5% of NBS "true" value.
CFV inlet depression	PPI	Inches fluid (kPa)	±13 in fluid (±0.55 kPa).
Temperature at venturi inlet	T _v	°F (°C)	±4.0 °F (±2.22 °C).
Specific gravity of manometer fluid (1.75 oil)	Sp. Gr		

6. Section 86.1333-90 of Subpart N is amended by revising paragraphs (d) heading and introductory text, (d)(1) and (d)(2) to read as follows:

§ 86.1333-90 Transient test cycle generation.

(d) Cold start enhancement devices. The zero percent speed specified in the engine dynamometer schedules (appendix I (f)(1), (f)(2) or (f)(3) to this part) shall be superseded by proper

operation of the engine's automatic cold start enhancement device.

(1) During automatic cold start enhancement device operation, a manual transmission engine shall be allowed to idle at whatever speed is required to produce a feedback torque of 0 ft-lbs. ±10 ft-lbs. (using, for example, clutch disengagement, speed to torque control switching, software overrides, etc.) at those points in appendix I (f)(1), (f)(2), or (f)(3) to this part where both reference speed and reference torque are zero percent values.

(2) During automatic cold start enhancement device operation, an automatic transmission engine shall be allowed to idle at whatever speed is required to produce a feedback torque of CITT ft-lbs. ±10 ft-lbs. (see paragraph (e)(2) of this section for definition of CITT) at those points in appendix I (f)(1), (f)(2), or (f)(3) to this part where both reference speed and reference torque are zero percent values.

[FR Doc. 98-10718 Filed 5-1-98; 8:45 am]
BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

(FRL-5982-3)

Technical Amendments to Imidacloprid; Pesticide Tolerances for Emergency Exemptions; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On July 9, 1997 (62 FR 36691), the Environmental Protection Agency published in the *Federal Register* a final rule establishing time-limited tolerances for combined residues of imidacloprid in or on the crop group citrus fruits and processed commodity dried citrus pulp, which established an effective date of July 9, 1997. This document corrects the effective date of the rule on May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260-2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 9, 1997, *Federal Register* document, by operation of law, the rule did not take effect on July 9, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for

public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 9, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in July 9, 1997, *Federal Register* should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 9, 1997, *Federal Register* document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the

U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amendment effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98-11556 Filed 5-1-98; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

(FRL-5982-4)

Technical Amendments to Myclobutanil; Pesticide Tolerances for Emergency Exemptions; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On July 9, 1997 (62 FR 36671), the Environmental Protection Agency published in the *Federal Register* a final rule establishing a time-limited tolerance for combined residue of myclobutanil in or on peppers (bell and non-bell), peppermint and spearmint, which established an effective date of July 9, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260-2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to

the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 9, 1997, *Federal Register* document, by operation of law, the rule did not take effect on July 9, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 9, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the July 9, 1997, *Federal Register* should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State official as

specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 9, 1997, *Federal Register* document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98-11555 Filed 5-1-98; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

(FRL-5982-6)

Technical Amendments to Azoxystrobin; Pesticide Tolerances; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On July 9, 1997 (62 FR 36684), the Environmental Protection Agency published in the *Federal Register* a final rule establishing tolerances for residues of the fungicide azoxystrobin, which established an effective date of June 3, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the

Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260-2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 9, 1997, *Federal Register* document, by operation of law, the rule did not take effect on June 3, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(c)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 9, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA

does not believe that affected entities that acted in good faith relying upon the effective date stated in the July 9, 1997, Federal Register should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 9, 1997, Federal Register document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator

[FR Doc. 98-11554 Filed 5-1-98; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL-5982-7]

Technical Amendments to Cyclanilide; Pesticide Tolerances, Correction; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On June 25, 1997 (62 FR 34182), the Environmental Protection Agency published in the Federal Register a final rule correction of the tolerance level for meat of cattle, goats, horses, hogs and sheep, which established an effective date of May 23, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260-2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the June 25, 1997, Federal Register document, by operation of law, the rule did not take effect on May 23, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to

provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 25, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the June 25, 1997, Federal Register should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator

[FR Doc. 98-11553 Filed 5-1-98; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-5982-1]

Technical Correction to Heading of Federal Register Publication Announcing Final Authorization of Revisions to Arizona Hazardous Waste Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical correction.

SUMMARY: On March 7, 1997 (62 FR 10464), EPA published an immediate final rule concerning authorization of revisions to Arizona's hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). The title to the Federal Register publication announcing the rule mistakenly referred to Nevada instead of Arizona. The purpose of this document is to correct this title.

EFFECTIVE DATE: This correction is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool, U.S. EPA Region IX (WST-3) 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744-2086.

SUPPLEMENTARY INFORMATION:

I. Background

Section 553 of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment because (1) the correction creates no new regulatory requirements, and (2) interested persons have already been put on notice of the error by a March 21, 1997, Federal

Register publication (62 FR 13540) correcting the error and extending the effective date of the March 7, 1997, rule (the March 21, 1997 rule did not take effect, however, because EPA did not submit the rule to Congress as required by section 801 of the Congressional Review Act). For the same reasons, EPA finds that good cause exists to provide for an immediate effective date of this correction pursuant to 5 U.S.C. 553(d)(1) and 802.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as describe in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice issues as required by Executive Order 12808 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the March 7, 1997, Federal Register document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this technical correction is effective on May 4, 1998. This correction is not a "major rule" as defined in 5 U.S.C. 804(2).

This rule only corrects the title to the March 21, 1997, Federal Register publication; it does not amend any substantive requirements contained in the rule. Under these circumstances, it is EPA's view that, to the extent it is available, any judicial review would be limited to this correction.

Dated: April 22, 1998.

Carol Browner,
Administrator

[FR Doc. 98-11558 Filed 5-1-98; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL-5981-2]

Technical Amendments to District of Columbia; Final Approval of State Underground Storage Tank Program; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination on the District of Columbia's application for program approval; correction of effective date under CRA.

SUMMARY: On July 9, 1997 (62 FR 36698), the Environmental Protection Agency published in the Federal Register a notice of final determination on the District of Columbia's application for program approval concerning the District of Columbia's application for approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA), which established an effective date of August 8, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Hostage, Office of Solid Waste and Emergency Response at (202) 260-7979.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 9, 1997, Federal Register document, by operation of law, the July 9, 1997, rule did not take effect on August 8, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B),

provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 9, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the July 9, 1997, *Federal Register* should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues under Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 9, 1997, *Federal Register* document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule

and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator.

[FR Doc. 98-11543 Filed 5-1-98; 8:45 am]
BILLING CODE 6680-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-223; RM-9014]

Radio Broadcasting Services; Ashdown and DeQueen, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition for rule making filed jointly on behalf of Bunyard Partnership, Jay W. Bunyard and Anne W. Bunyard, this document substitutes Channel 227C3 for Channel 221A at Ashdown, Arkansas, and modifies the license of Bunyard Partnership for Station KARQ(FM), as requested. Additionally, to accommodate the modification at Ashdown, Channel 221C2 is substituted for Channel 226C2 at DeQueen, Arkansas, and the license of Jay W. Bunyard and Anne W. Bunyard for Station KDQN-FM is modified accordingly. As the petitioners' modification request was filed pursuant to the provisions of Section 1.420(g)(3) of the Commission's Rules, competing expressions of interest for Channel 227C3 at Ashdown were not permitted. See 62 FR 58936, October 31, 1997. Coordinates for Channel 227C3 at Ashdown, Arkansas, are 33-40-22 and 94-11-02; coordinates for Channel 221C2 at DeQueen, Arkansas, are 34-13-35 and 94-17-35. With this action, the proceeding is terminated.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97-223, adopted April 15, 1998, and released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR Part 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas is amended by removing Channel 221A and adding Channel 227C3 at Ashdown.

3. Section 73.202(b), the Table of FM Allotments under Arkansas is amended by removing Channel 226C2 and adding Channel 221C2 at DeQueen.

Federal Communications Commission.

John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-11738 Filed 5-1-98; 8:45 am]
BILLING CODE 6712-01-F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC-94-31; FHWA-97-2318]

RIN 2125-AD42

Parts and Accessories Necessary for Safe Operation; Antilock Brake Systems

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to require that air-braked truck tractors manufactured on or after March 1, 1997, and air-braked single-unit trucks, buses, trailers,

and converter dollies manufactured on or after March 1, 1998, be equipped with antilock brake systems (ABSs) that meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 121. The FHWA is also requiring hydraulic-braked trucks and buses manufactured on or after March 1, 1999, to be equipped with ABSs that meet the requirements of FMVSS No. 105. In addition, the agency is requiring motor carriers to maintain the ABSs on these vehicles. This rulemaking is intended to ensure that the in-service brake standards of the FMCSRs are consistent with the FMVSSs. The rulemaking would also improve the safety of operation of commercial motor vehicles by reducing the incidence of accidents caused by jackknifing and other losses of directional stability and control during braking. With regard to commercial motor vehicles manufactured prior to the dates previously mentioned, the FHWA is not requiring motor carriers to retrofit such vehicles with ABSs.

DATES: This rule is effective June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS-10, (202) 366-4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the *Federal Register* Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the *Federal Register*'s home page at: <http://www.nara.gov/nara/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/su-docs>.

Background

Section 4012 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914, 2157) directs the Secretary of Transportation to initiate a rulemaking

concerning methods for improving the braking performance of new commercial motor vehicles,¹ including truck tractors, trailers, and their dollies. Congress specifically directed that the rulemaking examine antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing.

The National Highway Traffic Safety Administration (NHTSA) Rulemaking

In response to the ISTEA, the NHTSA published a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 105, *Hydraulic Brake Systems*, and FMVSS No. 121, *Air Brake Systems*, to require that medium and heavy vehicles be equipped with an ABS to improve the lateral stability (i.e., traction) and steering control of these vehicles during braking (60 FR 13216, March 10, 1995). For truck tractors, the ABS requirement is supplemented by a 48.3 kilometer per hour (30-mph) braking-in-a-curve test on a low coefficient of friction surface using a full brake application. By improving lateral stability and control, these requirements will significantly reduce jackknifing and other losses of control during braking, as well as the deaths and injuries caused by those control problems.

In addition, the NHTSA final rule requires all powered heavy vehicles to be equipped with an in-cab lamp to indicate ABS malfunctions. Truck tractors and other trucks equipped to tow air-braked trailers are required to be equipped with two separate in-cab lamps: one indicating malfunctions in the towing vehicle ABS and the other in the trailer ABS. The requirement for the in-cab lamp to alert the driver of malfunctions in the trailer ABS applies to trucks and truck tractors manufactured on or after March 1, 2001 (61 FR 5949, February 15, 1996). Trailers produced during an initial 11-year period (March 1, 1998 through March 1, 2009) must also be equipped with an external malfunction indicator that is visible to the driver of the towing tractor (61 FR 5949).

The amendments to FMVSS No. 105 become effective on March 1, 1999. With the exception of the in-cab indicator for trailer ABS malfunctions, the amendments to FMVSS No. 121 became effective on March 1, 1997, for

truck tractors, and on March 1, 1998, for air-braked trailers, converter dollies, single unit trucks, and buses.

FHWA Notice of Intent

On March 10, 1995, the FHWA published a notice of intent to initiate a rulemaking concerning requirements for ABSs on commercial motor vehicles operating in interstate commerce (60 FR 13306). The notice of intent included an extensive discussion of the NHTSA's ABS fleet study conducted between 1988 and 1993. Copies of the reports from the fleet study have been placed in the docket.² The NHTSA tracked the maintenance performance histories of 200 truck tractors and 50 semitrailers equipped with ABSs, as well as the histories of a comparison group of 88 truck tractors and 35 semitrailers that were not equipped with ABSs to determine the incremental maintenance costs and patterns associated with installing ABSs on these heavy vehicles.

The authors concluded that, based upon the data collected during the fleet study, currently available ABSs are reliable, durable, and maintainable. While an ABS is not a zero-cost maintenance item, its presence on a vehicle did not substantially increase maintenance costs (less than one percent for tractors, less than two percent for trailers) or decrease vehicle operational availability.

The NHTSA data indicate that ABSs are neither difficult nor unduly expensive to maintain. The fleet test results do not indicate that the level of maintenance required to keep an ABS functional is unreasonable relative to the safety benefits that will result from the use of these systems.

The FHWA concluded that a rulemaking should be initiated to propose amending the FMCSRs to include ABS requirements and solicited comments on this decision.

FHWA Notice of Proposed Rulemaking (NPRM)

On July 12, 1996, the FHWA published a notice of proposed rulemaking that would require motor carriers to maintain the ABSs on commercial motor vehicles manufactured on or after the effective dates of the NHTSA requirements (61 FR 36691). The NPRM discussed the comments received in response to the

¹ For the purposes of section 4012, the term "commercial motor vehicle" means any self-propelled or towed vehicle used on highways to transport passengers or property if such vehicle has a gross vehicle weight rating (GVWR) of 11,794 kilograms (kg) (26,001 pounds) or more. The NHTSA's final rule on ABS applies to medium and heavy vehicles with a GVWR of 4,536 kg (10,001 pounds) or more.

² "An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Heavy Truck Tractors," DOT Report No. 807 846, March 1992, and "An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Semitrailers," DOT Report No. 808 059, October 1993.

notice of intent and the FHWA's responses to the comments. The comments covered a range of issues including: Interpretation of 49 CFR 396.3—certain commenters believed an amendment to part 393 was not necessary and that § 396.3 could be used to assure that motor carriers provide appropriate maintenance for ABSs; research on ABS operation and failure modes; retrofitting; inspection procedures; and applicability to Canada- and Mexico-based motor carriers. The FHWA did not propose an exemption for commercial motor vehicles operated in the United States by Canada and Mexico-based motor carriers, but specifically requested comments from such motor carriers and original equipment manufacturers that sell vehicles for the Canadian and Mexican markets.

Discussion of Comments

The FHWA received 8 comments in response to the July 12, 1996, NPRM. The commenters were: Advocates for Highway and Auto Safety (the Advocates); the American Trucking Associations, Inc. (ATA); Insurance Institute for Highway Safety (IIHS); the International Brotherhood of Teamsters (the Teamsters); Midland-Grau Heavy Duty Systems; Rockwell WABCO Vehicle Control Systems (Rockwell WABCO); the Texas Department of Transportation (Texas DOT); and, the Truck Manufacturers Association (TMA).

Generally, the commenters were in favor of the FHWA establishing requirements for motor carriers to maintain the ABSs. However, the ATA expressed concerns about the FHWA's proposed cross-reference to FMVSS Nos. 105 and 121, and certain aspects of the proposed regulatory language that the ATA considered design restrictive. The Texas DOT supported the proposed requirements for ABSs, but expressed concern about radio frequency interference (RFI) problems with current generation ABSs. The specific concerns or issues raised by the commenters are discussed below.

Retrofitting

The ATA, Teamsters, Midland-Grau, Rockwell WABCO, and the TMA supported the FHWA's decision not to propose an ABS retrofitting requirement for vehicles manufactured prior to the effective date of the NHTSA requirements. None of the remaining commenters expressed views concerning retrofitting. Rockwell WABCO stated:

Rockwell WABCO agrees with the FHWA's position that it is inappropriate to require

ABS to be retrofitted on commercial vehicles built prior to the effective date of the NHTSA regulation. Rockwell WABCO believes antilock braking systems (ABS) represent the best and most reliable technology available to improve the stability and control of medium and heavy vehicles during braking. However, for the systems to function as designed, they must be properly installed. Rockwell WABCO believes it would be extremely difficult to achieve quality installations if a nation-wide retrofit program were mandated on commercial vehicles built prior to the effective date of the regulation.

Today, commercial vehicle OEMs (original equipment manufacturers) are installing ABS in a reliable manner. With proper documentation and attention to harness design, wire routing, component mounting and quality control procedures, reliable ABS installations have become routine. However, without the infrastructure available at the OEM level, significant difficulties could result if ABS retrofitting was mandated.

It would be extremely difficult for ABS manufacturers to provide the necessary support to the large number of retrofit centers that would be required to perform a task of this magnitude. Because of the variety and configurations of vehicles involved, a significant amount of engineering would be required to accomplish a major retrofit program. As the NHTSA research has shown, even with the cooperation of a variety of suppliers, it potentially is difficult to achieve defect free tractor/truck ABS installations during a retrofitting process.

The TMA is an organization of truck manufacturers, including the Ford Motor Company, Freightliner Corporation, General Motors Corporation, Mack Trucks, Inc., Navistar International Transportation Corporation, PACCAR Inc. (manufacturers of Kenworth and Peterbilt trucks) and Volvo GM Heavy Truck Corporation. The TMA stated:

TMA does not support the concept of ABS retrofit. The FHWA is not proposing that motor carriers be required to retrofit vehicles manufactured prior to the dates previously mentioned, however, the FHWA requested comments on this subject. Kits for retrofit have not been designed and are, therefore, not commercially available.

The Teamsters stated:

The International Brotherhood of Teamsters agrees that retrofitting ABS for CMV's (commercial motor vehicles) currently in service would not be advisable. It would be extremely difficult and expensive to properly retrofit all the vehicles which are now in service. As the NHTSA Fleet Study proved, the technology is not currently available to allow a smooth retrofitting process. Many technical problems would be faced during the retrofitting process: pieces of equipment would have to be fabricated, and workers would have to be trained to install and service these "new" brake

systems. According to the requirements of § 396.25, these workers would need to obtain one year of experience before working on ABS.

There would be no guarantee that the retrofitted brakes would operate properly and it might be possible to damage or disable the original brake system thus making it impossible to stop the vehicle within a safe distance. The International Brotherhood of Teamsters is inclined to agree with the FHWA assumption that the percentage of malfunctions of the retrofitted ABS would be "much greater if motor carriers were required to attempt retrofitting the innumerable configurations of air-braked vehicles." (61 FR 36695) For these reasons which could negatively impact on CMV safety the International Brotherhood of Teamsters believes it would not be prudent to require motor carriers to retrofit ABS at this time.

If, in the future, retrofit kits were developed which adequately addressed these safety concerns, then requiring retrofitting would be wise. These kits, provided by the manufacturers, could be designed for specific vehicles and provide detailed instructions to assist in their installation. Should these kits become available, the International Brotherhood of Teamsters would recommend that retrofitting be required.

The FHWA agrees with the commenters; statements about the difficulties the motor carrier industry would have retrofitting commercial motor vehicles with ABS. The FHWA believes the NHTSA research provides a strong indication of the types of technical problems that would be expected if motor carriers were required to retrofit vehicles with ABS.

As the FHWA noted in the preamble to the NPRM, at the time the NHTSA conducted its research, only one heavy truck manufacturer offered ABS as a fully-engineered production option on its line of trucks. In contrast, most of the remaining truck tractor manufacturers had only limited experience installing small numbers of "current-generation" ABSs and, therefore, had not worked out many of the detailed design aspects of installing the systems. The retrofitting of ABSs on truck tractors required teamwork on the part of ABS suppliers, truck manufacturers, wheel and hub suppliers, and wiring harness suppliers. Even with this team effort, some of the test vehicles were delivered to the participating motor carriers with pre-existing problems that, for one reason or another, prevented the ABS from functioning properly.

In all, 116 out of the 200 truck tractors (58 percent) experienced installation/pre-production design-related problems. The researchers indicated that the relatively high percentage is indicative of the "newness" of the systems in North American applications. Table 1

summarizes the types of problems that were experienced in the truck tractor

portion of the fleet study. Table 2 summarizes installation-related

problems in the semitrailer portion of the fleet study.

TABLE 1.—TRUCK TRACTOR ABS INSTALLATION/PRE-PRODUCTION DESIGN-RELATED PROBLEMS BY SYSTEM COMPONENT NEEDING WORK

ABS component	Number of trucks requiring inspections, adjustments or repairs of this component	Number of trucks requiring replacements of this component
Wiring Cables	12	² 23
Wiring Connectors	29	10
Sensors and Related Parts	5	10
Modulator Valves and Related Parts	13	³ 50
Electronic Control Units (ECUs)	17	² 20
Others ¹	7	
Total Number of Trucks per Column	57	102
Overall Number of Trucks Involved in Installation/Pre-Production Design Related Problems	116	

¹ Others include: rewiring due to installation oversights; two miscellaneous wire resecurments; and the addition of one ground strap to adjust the ECU.

² One problem represented all of these replacements.

³ One problem involved 40 of these trucks, while another involved 10 trucks.

Note: Individual column numbers are not additive since specific trucks may have needed maintenance on more than one component.

TABLE 2.—SEMITRAILER ABS INSTALLATION/PRE-PRODUCTION DESIGN-RELATED PROBLEMS BY SYSTEM COMPONENT NEEDING WORK

ABS component	Number of semitrailers requiring inspections, adjustments or repairs of this component	Number of semitrailers requiring replacements of this component
Wiring Cables	0	2
Wiring Connectors	11	0
Sensors and Related Parts	² 3	10
Modulator Valves and Related Parts		
Electronic Control Units (ECUs)		5
Others ¹		26
Total Number of Semitrailers per Column	14	31
Overall Number of Semitrailers Involved in Installation/Pre-Production Design-Related Problems	31	

¹ Others include: Isolation diode installation and replacement of ECU grommets.

² Sensor adjustment resulted from incorrectly adjusted wheel bearings on new semitrailers.

Note: Individual column numbers are not additive since specific semitrailers may have needed maintenance on more than one component.

The NHTSA report on the truck tractor portion of the fleet study indicates the percentage of installation-related problems is similar to that observed by many of the participating fleets when they receive newly-built vehicles. However, the FHWA believes the percentage of malfunctions would be much greater if motor carriers were required to attempt retrofitting innumerable configurations of air-braked vehicles. The FHWA considers NHTSA's fleet study to be a best-case scenario for retrofitting ABS in that the vehicle and brake manufacturers (as well as wheel and hub manufacturers) worked together to complete the installations of the ABS. Even with this collaborative effort of experienced engineers, numerous problems related to the retrofitting process surfaced during the fleet study.

Although many motor carriers have excellent maintenance programs and talented engineering staff, the FHWA believes that the majority of motor carriers could not retrofit their vehicles without a substantial amount of technical assistance from vehicle and component manufacturers. Without this technical assistance, it is more likely than not that many of the retrofitted ABS installations would not be performed correctly, thereby creating the potential for a degradation of the CMV's braking performance. It is unrealistic to expect manufacturers to be able to help more than 300,000 motor carriers complete the retrofitting of several million vehicles while working on the design and installation of ABSs on newly manufactured vehicles.

The comments submitted by Rockwell WABCO, Midland-Grau, and the TMA suggest that brake system and vehicle

manufacturers would not have the resources to assist motor carriers in complying with a retrofitting requirement. Even if there were a collaborative effort between vehicle and component manufacturers and the motor carriers, it is unlikely that the quality of the ABS installations would be better than those performed for the NHTSA fleet study.

Although none of the commenters to the NPRM specifically discussed the costs of retrofitting, the FHWA believes it is important to note that the cost of retrofitting a commercial motor vehicle with an ABS is likely to be higher than original equipment manufacturer (OEM) installations because the vehicle will have to be removed from revenue service during the retrofitting process. This is not the case for brand new vehicles. Also, repeated adjustments or repairs of the type described in the

NHTSA research reports would mean more down time for the retrofitted vehicles.

The FHWA agrees with the Teamsters' interpretation of § 396.25 of the FMCSRs, Qualifications of brake inspectors. As the agency indicated in the preamble to the NPRM, § 396.25 prohibits motor carriers from allowing their employees to be responsible for ensuring that brake-related inspection, repair, and maintenance tasks are performed correctly unless the employee has at least one year of training and/or experience. This requirement was issued in response to section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (now codified at 49 U.S.C. 31137(b)). Therefore, motor carriers that lack sufficient staff with at least one year of training and/or experience at retrofitting ABSs prior to the effective date of a retrofitting requirement, would have to rely on commercial garages or similar facilities to fulfill a retrofitting requirement. Since many of these facilities would also have very little, if any, experience retrofitting ABSs, there is no assurance that they could do a better job than the motor carriers' employees. Therefore, most motor carriers could not allow their employees to attempt the retrofitting of ABSs, and would not have a practical means to satisfy a retrofitting requirement.

Roadside Inspection Procedures

Rockwell WABCO commented on the importance of having standardized roadside inspection procedures for the various ABSs. Rockwell WABCO stated:

As stated in our earlier response to FHWA (after the agency's March 10, 1995, notice of intent), Rockwell WABCO would like to emphasize that the procedure must be short, simple and straightforward. The inspections should provide meaningful information about the condition of the ABS and take advantage of the self-diagnostic system capabilities required by (the NHTSA) rulemaking. Rockwell WABCO recommends that FHWA adopt a common inspection procedure for all ABS systems regardless of manufacturer or vehicle type.

If FHWA decides that roadside inspections are necessary and effective to ensure ABS is properly maintained, Rockwell WABCO recommends the inspection consist of (1) a basic bulb check of the ABS indicator lamp to be conducted when the ignition switch is turned from the "off" to the "on" position followed by (2) verification that the ABS indicator lamp deactivates at the end of the check of lamp function.

In order to pass the inspection, the bulb must illuminate during the bulb check and then deactivate. This will indicate the lamp is functioning properly and there are no current or pre-existing malfunctions present in the ABS. If the ABS indicator lamp does

not activate at all when the ignition key is turned from the "off" to the "on" position, a potential bulb or indicator lamp circuit problem exists. If the indicator lamp does not deactivate after the bulb check, a current or pre-existing malfunction potentially exists in the ABS, requiring diagnosis and possible repair and/or adjustment.

The FHWA appreciates the information provided by Rockwell WABCO. The agency provided members of the Commercial Vehicle Safety Alliance's³ (CVSA) Vehicle Committee with copies of the July 12, 1996, notice of proposed rulemaking which included a detailed discussion of the inspection procedures recommended by the brake manufacturers commenting to the docket. The FHWA will work with the appropriate committees within the CVSA to assist in the development of training material to help inspectors identify ABS components and determine if the ABSs are working properly.

The FHWA, through a contract with the Trucking Research Institute (TRI)⁴, has developed videotapes to familiarize commercial motor vehicle drivers and maintenance personnel with ABSs. The FHWA has also developed an ABS brochure for drivers ("Truck Drivers Guide to Antilock Braking Systems," FHWA-MC-98-006, March 1998) and an ABS handbook for maintenance personnel ("Technician Guidelines for Antilock Braking Systems: Air-Braked Trucks, Tractors and Trailers," FHWA-MC-98-008, March 1998). The videotapes ("Antilock Braking Systems: What Every Driver Needs to Know" and "Technician Guidelines for ABS") and driver brochure are available free of charge from the FHWA. Copies may be requested by contacting the Office of Motor Carrier Research and Standards at the address or telephone number listed at the beginning of this final rule. The technicians booklet will be available in July 1998 and may be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The telephone number for ordering

³ The Commercial Vehicle Safety Alliance (CVSA) is an organization of Federal, State and Provincial government agencies and representatives from private industry in the United States, Canada and Mexico dedicated to improvement of commercial vehicle safety. State agencies responsible for conducting roadside inspections are members of the CVSA.

⁴ The Conference Committee report on the 1993 Department of Transportation Appropriations Act (Pub.L. 102-388, October 8, 1992) directed the FHWA to follow the instructions of the House report on obligating certain research funds, including funding research on means to improve the training of heavy truck brake mechanics. H.R. Conf. Rep. No. 102-924, at 35 (1992).

publications from the NTIS is 703-605-6000.

The FHWA believes the information included in the videotapes and publications can be used by the CVSA to help train employees of State agencies responsible for conducting roadside inspections within a relatively short period of time.

Inspection, Repair, and Maintenance Procedures

Two commenters discussed the need for inspection, repair, and maintenance procedures for motor carriers. The Teamsters stated:

While the International Brotherhood of Teamsters agrees with the FHWA that specific roadside inspection procedures should not be included in the FMCSR there is a need to specify within the regulations the methodology of vehicle inspections for motor carriers. The vehicle inspections should include a review of the ABS malfunction indicator lamp, as well as any other appropriate inspection procedures. It is logical that specific language detailing the systematic inspection, maintenance, and repair of ABS should be included in part 396, appendix G, subpart B.

Midland-Grau stated:

Regarding the need to add detailed systematic, inspection, repair, and maintenance requirements in part 396 of the FMCSRs, MIDLAND-GRAU believes this is not necessary. MIDLAND-GRAU along with other ABS suppliers and vehicle manufacturers, will continue their efforts to support the industry with the necessary product, inspection, repair, and service information. MIDLAND-GRAU believes there are already more effective methods to develop and distribute the subject information. The FHWA has in this notice defined clearly the appropriate sources for this information.

The FHWA does not agree with the Teamsters' argument that the FMCSRs should include detailed inspection procedures for motor carriers to maintain ABSs. The FMCSRs do not currently contain detailed inspection procedures for systems and components on commercial motor vehicles. The regulations provide inspection criteria and minimum qualifications for individuals performing the periodic or annual inspection, and motor carrier employees responsible for brake-related inspection, repair, and maintenance tasks. The FHWA believes this approach is more effective than trying to develop a single set of procedures to cover all types of ABSs, including present and future designs. As noted earlier, the agency has developed videotapes and publications to familiarize drivers and maintenance personnel with ABSs. The agency believes the videotapes and publications will provide the industry

with basic information to effectively maintain ABSs and advice on when to seek expert assistance from vehicle and/or brake system manufacturers.

The FHWA appreciates the information provided by Midland-Grau. The agency notes that the TRI has worked with Midland-Grau and the other brake manufacturers in developing the ABS videotapes and publications for the FHWA. This cooperative effort between the private sector and the government to provide non-regulatory technical guidance to the industry is an effective alternative to prescriptive regulations concerning ABS maintenance procedures.

Applicability to Canadian and Mexican Vehicles

The Advocates, Teamsters, and TMA expressed support for the FHWA's proposal not to provide an exemption for commercial motor vehicles operated in the United States by Canada- and Mexico-based motor carriers. None of the other commenters expressed an opinion concerning this issue.

The Teamsters stated:

The International Brotherhood of Teamsters strongly agrees with the FHWA that it " . . . is appropriate to require ABS on foreign-based vehicles manufactured on or after the effective dates of the NHTSA requirements if those vehicles are operated within the United States." (61 FR 36696) This requirement would ensure that " . . . all CMVs operating in interstate or foreign commerce within the United States are required to meet the same safety standards." (ibid)

The International Brotherhood of Teamsters encourages the strict enforcement of these requirements as it is currently known that a large percentage of those vehicles crossing the Mexican-United States border are not in compliance with the United States FMCSRs.

The Advocates stated:

Advocates strongly supports this initiative by the FHWA and applauds the agency's determination not only to improve domestic commercial vehicle operating safety, but also to set an example for international harmonization that increases medium and heavy vehicle safety for Canadian and Mexican motor carriers. This rulemaking proposal is a textbook example of regulating in the public interest. We commend the agency for its resolve to move forward on this major safety policy despite adverse comments filed in response to the FHWA's March 10, 1995, notice of intent to initiate the instant rulemaking. Advocates endorses this proposal and, in light of the lead time for compliance that duplicates the calendars set forth for FMVSSs Nos. 105 and 135, asks that the agency promulgate a final rule as soon as possible that is effective on the date of publication.

The TMA stated:

TMA feels that only commercial motor vehicles that meet all of the applicable requirements of part 393, including the proposed § 393.55 requirements that addresses ABS, should be allowed to operate in the U.S. Therefore, we support the FHWA proposal to not grant an exception for commercial motor vehicles operated in the U.S. by Canada- and Mexico-based motor carriers. Truck manufacturers, however, need timely resolution of the following questions so that they can appropriately advise their Canadian and Mexican motor carrier customers on ABS purchases.

1. When is the enforcement of this requirement going to commence?
2. When will the inspection procedures and criteria be finalized?
3. How will this requirement be enforced? Will it be handled at the border by U.S. Customs officials? By FHWA officials? By State officials? Or will it be enforced during random roadside inspections?

The FHWA agrees with the commenters. Although the NPRM explicitly requested comments from foreign carriers that would be subject to the proposed requirements, the agency did not receive any comments from Canada- or Mexico-based motor carriers operating within the United States. The agency is not aware of any technical or economic reasons why these carriers could not comply with the ABS requirements. Therefore, the final rule is applicable to CMVs operated in the United States by Canada- and Mexico-based motor carriers. The FHWA notes that this decision is consistent with the applicability of all of the agency's equipment-related regulations.

Currently, subpart C of part 393 cross-references FMVSS No. 105 (Hydraulic Brake Systems), FMVSS No. 106 (Brake Hoses), and FMVSS No. 121 (Air Brake Systems), as well as several other CMV-related FMVSSs. The FHWA's cross-references have the net effect of requiring that vehicles operated by Canada- and Mexico-based motor carriers be equipped with safety features and equipment that are compatible with the NHTSA requirements irrespective of where the vehicle was originally manufactured, or whether the vehicle was manufactured for sale or use in the United States. Commercial motor vehicles that do not meet all of the applicable requirements of part 393 cannot be operated in the United States. As such, commercial motor vehicles operated by foreign-based motor carriers are currently required by the FHWA to have, at a minimum, brake systems that comply with the applicable provisions of FMVSS Nos. 105, 106, and 121 in effect on the date of manufacture.

Although the FHWA does not have data on the extent to which CMVs manufactured for sale in Canada and Mexico comply with the current brake-

related FMVSSs and FMCSRs, it is unlikely that there are technical reasons that would preclude manufacturers of these vehicles from offering ABS as an option. As previously mentioned, foreign-based motor carriers are currently required to operate commercial motor vehicles that comply with all of the applicable requirements of part 393 while in the United States.

Prior to issuing the NPRM, the FHWA contacted the TMA to determine the availability of ABS on air braked vehicles sold in Canada and Mexico. The TMA indicated that five of the manufacturers that sell medium and heavy-duty trucks in Canada install ABSs as standard equipment. Another manufacturer offers ABSs as optional equipment for the Canadian market.

With regard to the Mexican market, none of the TMA's members install ABSs as standard equipment. Only two of the TMA's members offer ABSs as optional equipment. However, another member indicated it would make ABSs available on units manufactured in Mexico in the near future.

The FHWA also contacted Dina, a Mexican manufacturer of heavy trucks, and determined that ABSs are offered as optional equipment.

Based upon the information obtained from the TMA and Dina, and the docket comments received in response to the NPRM, the FHWA believes that requiring ABSs on Canadian and Mexican CMVs manufactured on or after the effective dates of NHTSA's ABS requirements, and operated in the United States, is appropriate. The FHWA notes that ABS is not yet commercially available for hydraulically-braked medium and heavy vehicles in the United States, Canada or Mexico. However, given the March 1, 1999, effective date of the FMVSS No. 105 requirements for ABSs, the FHWA believes these systems will be commercially available in time for motor carriers to comply with the FMCSRs.

In response to the TMA's questions about enforcement, the FHWA and the States may cite motor carriers for violations of the ABS requirements at any time after the final rule becomes effective. The ABS requirements will be enforced primarily through roadside inspections conducted by the States. Checking the status of the ABSs will be one of many items (e.g., brake adjustment and the condition of major brake system components; steering, suspension, and fuel systems; tires, wheels, and rims; axles and axle positioning components; lamps and reflectors; cargo securement) inspectors examine during roadside inspections.

The agency does not expect the recommended inspection procedures that may be used by the States to be complex or time consuming. The brake manufacturers' comments provided in response to the agency's March 10, 1995, notice of intent, and the July 12, 1996, NPRM include straightforward inspection procedures that could be used by the States at any time after the effective date of the final rule.

Cross-Referencing the FMVSSs

The ATA opposed the manner in which the FHWA cross-referenced FMVSS Nos. 105 and 121 and presented two possible alternative ways of writing § 393.55. The ATA stated:

By referencing FMVSSs (Nos.) 105 and 121 in this proposed FMCSR, the agency is placing a burden on motor carriers to show compliance with new vehicle requirements which were written for manufacturers. Carriers cannot do this without help.

While we agree with the FHWA/OMC's (Office of Motor Carriers) intent, we are concerned with the language of the regulation. The problem comes from the reference to the FMVSSs in the FMCSRs.

FMVSSs are standards directed at manufacturers who have the personnel, facilities, and test equipment necessary to test their products. By requiring vehicle users to assure that replacement parts meet the FMVSSs, FHWA/OMC is requiring that consumers create the technical expertise of manufacturers for themselves. Virtually no motor carrier has either the staff, facilities or equipment with which to test products for compliance to FMVSS type requirements.

If the agency wants vehicle users to purchase repair parts and components which meet FMVSSs, then it must work with the National Highway Traffic Safety Administration (NHTSA) to assure that new parts and components are labeled with compliance information or a code. This is already done in FMCSR § 393.67(f) for fuel tanks. Consumers, on their own, are incapable of certifying that replacement parts and components meet new vehicle or component standards. Consumers can ask suppliers to provide certifications, however, they cannot go beyond such an importune.

The ATA indicated that this issue was raised in its comments to the FHWA's notice of proposed rulemaking concerning automatic brake adjusters and brake adjustment indicators (59 FR 39518, August 3, 1994). The ATA quoted the FHWA's response to its comments. The agency's response, presented in the preamble to the final rule, indicated an in-use requirement for a commercial motor vehicle part or accessory that references an FMVSS does not place a burden on motor carriers (60 FR 46236, September 6, 1995). The agency also indicated motor carriers have ample experience in obtaining replacement parts for vehicle subsystems. The ATA believes the

FHWA's response to its comments "explicitly places in focus the problem which exists in this area." The ATA stated:

Carriers face little difficulty acquiring replacement parts for lighting and illuminating systems, in compliance with FMCSR 393.11, because (paragraph 5.8), *Replacement Equipment*, of FMVSS 108 requires such parts to carry appropriate identification markings. The same is true for tires (\$6.5 of FMVSS 119) and wheels (\$5.3 of FMVSS 120). In the case of brake components like ABS parts, however, no such labeling is required.

The ATA also stated:

Part of the concern which drives us to the conclusion that parts need to be marked in a manner that enables carriers to show continued compliance with FMVSSs stems from the fact that component systems are becoming obsolete at an unprecedented pace. It is not at all unusual for a carrier wanting to repair a system to find that it is better to upgrade than repair. Two important considerations in the decision are whether replacement parts identical to the original exist and whether the upgraded system will out-perform its forerunner.

The FHWA does not believe the ATA's concerns about cross-referencing FMVSS Nos. 105 and 121 are warranted. The regulatory language proposed did not include a requirement for motor carriers to conduct certification testing of ABSs in order to verify vehicles were equipped with an ABS that meets the NHTSA requirements.

Motor vehicle manufacturers must certify that the vehicles they manufacture for sale and use in the United States meet all applicable Federal Motor Vehicle Safety Standards issued by the NHTSA. In certain cases, the vehicle safety standards require motor vehicle equipment to be marked by the equipment manufacturer to certify that the product meets the applicable safety standard (e.g., retroreflective sheeting for use on trailers manufactured on or after December 1, 1993, are marked with DOT-C2, DOT-C3, or DOT-C4, depending on the width of the tape). During roadside inspections of commercial motor vehicles, Federal and State officials look for certification markings on components, such as, retroreflective sheeting, tires, brake hoses, fuel tanks, windshields, etc., because there are no other practical means to verify that such components or items meet the testing requirements specified in the Federal regulations. The certification markings for these components or items also help motor carriers identify products that meet applicable Federal requirements.

Through cross-references to the FMVSSs, the FHWA places upon motor

carriers the responsibility for being knowledgeable about the Federal manufacturing standards that are applicable to heavy trucks, buses, and trailers. Motor carriers have the responsibility of purchasing vehicles and components from manufacturers that are able to certify that the products they sell meet the applicable Federal manufacturing standards. If the commercial motor vehicle is damaged during its service-life, or components wear out and require replacement, motor carriers are required to have the vehicle properly repaired by knowledgeable and capable maintenance personnel. Maintenance personnel should recognize that there are Federal safety standards and be capable of determining whether the repairs being performed will restore the vehicle to its previous condition.

Looking specifically at the cross-references to FMVSS Nos. 105 and 121, vehicle manufacturers are responsible for ensuring that the ABSs installed in new commercial motor vehicles meet the applicable requirements. The FHWA acknowledges that individual ABS components are not required to be marked or labeled by the manufacturer. However, there is no readily apparent reason why the ECU, sensors, modulator valves, tone rings and connectors would need certification markings in order for motor carriers to determine the appropriate replacement components for the ABSs. Motor carriers need only know that a specific component in the ABS needs to be replaced, locate the appropriate replacement part and ensure that it is properly installed in accordance with the vehicle or ABS manufacturer's recommendations. Generally, this will ensure that the ABS continues to perform as required.

With regard to the assertion that the regulatory language would prevent carriers from upgrading their ABSs in the future, the ATA has misinterpreted the proposed ABS requirements, as well as the current FMCSRs. The agency does not prohibit motor carriers from modifying their vehicles to meet the latest Federal safety standards. Motor carriers must, at a minimum, ensure that their vehicles meet the cross-referenced FMVSSs in effect at the time the commercial motor vehicle was manufactured, but may modify their vehicles to meet any subsequent version of the applicable safety standards.

Motor carriers who want to go beyond routine inspection, repair and maintenance tasks and attempt major upgrades of the ABSs on their commercial motor vehicles, are responsible for ensuring that the modified brake systems meet the

minimum performance requirements specified by the NHTSA. However, this does not mean that motor carriers cannot exceed those requirements or that they must conduct testing. Carriers may rely on installation instructions and other information from the ABS manufacturer to determine whether the upgraded ABS meets the NHTSA's performance requirements.

The argument by the ATA that motor carriers would be required to understand, in whole or in part, the test procedures that manufacturers are required to follow, or conduct testing in order to ensure compliance with the cross-referenced standards, is without basis. For more than 25 years, the FMCSRs have included cross-references to the FMVSS Nos. 105 and 121, with an apparently clear understanding by the vast majority of the regulated industry that motor carriers are not required to conduct certification testing. Although motor carriers and vehicle manufacturers have requested interpretations on numerous aspects of part 393 of the FMCSRs, the cross-references to the FMVSSs do not appear to have raised a discernible level of confusion or concern. Therefore, the FHWA has retained the cross-references to FMVSS Nos. 105 and 121.

Flexibility to Disconnect ABSs if Manufacturing or Design Defects are Suspected

The ATA expressed concerns that ABSs may fail in ways that could adversely impact the service brake system on commercial motor vehicles. The ATA believes the FHWA should allow carriers to disconnect ABSs if defects are suspected. The ATA stated:

The agency implies that consumers need not worry about ABS failing unsafe. Based on NHTSA's FMVSS 121 demonstration work (previously referenced) this problem does, however, remain a serious concern.

In our comments to the FHWA Notice of Intent in this docket, we raised the issue of carriers being able to disconnect ABSs if, "because of existing circumstances, doing so is the safest policy." This Notice attempts to discount this concern on the basis that NHTSA will correct any serious failures through a safety-defect related recall and that "... there is no documentation of an ABS defect or malfunction contributing to an accident as the ATA suggests may occur in the future."

A major and growing concern that carriers have with government is that it is not structured to react as fast as necessary given the ever increasing rate at which technology continues to change. While a suspect bolt in a system can be checked in a laboratory rather quickly, and a consensus on the results of that test rapidly formed, an unwanted

transient system response, caused by a flaw in a microchip, is much harder to positively identify and diagnose. There is no way that NHTSA can respond with a safety recall program fast enough to assure a faulty ABS controller or modulator component does not lead to several accidents.

Past experience with many truck systems, including ABS, has taught motor carriers that certain product designs occasionally incorporate critical components that fail and that such failure will repeat across the fleet. This is not like a person with one automobile where the situation can be quickly assessed, the driver made aware of the problem and a repair made at the owner's convenience.

A fleet of hundreds or thousands of vehicles in many locations requires time to find the involved equipment and make the required repairs before the adverse effects of a defect can be mitigated. In the meantime, the fleet must be operated as safely as possible. This can call for quick temporary measures, to assure no further accidents happen, while solutions are developed, procedures and/or parts made available, and corrections made. What has been proposed in this docket should not be allowed to become a regulation which keeps fleets from quickly taking the most prudent course of safe action in dealing with a product defect.

While FHWA/OMC (Office of Motor Carriers) contends that no accidents caused by an ABS which did not fail-safe are yet documented, the fact is that a latent failure can exist in an ABS which will not surface until the systems have been in use for a number of years, in many different applications. For example, the situation that developed after air bags were in widespread use, i.e., injuring, sometimes fatally, young children and old people, is now being addressed.

A review of NHTSA's defect files will illustrate this point. We cite the heavy truck steering gear box failure which occurred several years ago that caused a major disruption in fleet operations. The manufacturer of the gear assembly asked owners of trucks all over the country to immediately stop their trucks until they could positively identify the problem and replace suspect gear boxes. This manufacturer-generated recall cost the industry many millions of dollars in vehicle downtime. If a defect surfaces in an ABS component which can cause it to malfunction in an unsafe way, e.g., unintentional release of the brakes, the involved vehicles should not be stopped until the problem is identified and corrected, when a simple ABS

disconnect will allow them to operate safely.

Users of ABS not only have to be concerned about mechanical failures, like the one that occurred with the gear box, but, also with electrical failures and faulty algorithms programmed in the ECU, which, under certain circumstances, make a vehicle less safe. A prime example of this is the reduction in stopping capability caused when ABS equipped vehicles operate on unpaved roads. This discovery caused the logging truck tested in Canada to be equipped with a switch to disable the ABS when the truck was operated off of the paved highway (Forest Engineering Research Institute of Canada's report SR-97 (TP 11815E) entitled *Evaluation of an Antilock Braking System and Automatic Slip Regulation on a Log-Hauling Truck*).

The FHWA disagrees with the ATA's arguments and has not adopted regulatory language that would allow motor carriers to disconnect ABSs. Based upon the information presented in the NHTSA's research reports, and the preamble to the NHTSA's March 10, 1995, final rule concerning ABSs, the FHWA does not foresee the development of problems such as those anticipated by the ATA.

In the event an ABS or vehicle manufacturer, or the NHTSA determines that there is a safety-related defect, the manufacturers are responsible for notifying purchasers of the defective equipment and remedying the problem free of charge (49 CFR part 577, Defect and Noncompliance Notification). If a manufacturer or the NHTSA indicates there is an ABS defect of the severity alluded to by the ATA, the FHWA would immediately notify all Federal officials responsible for enforcing the FMCSRs and State officials responsible for enforcing compatible State regulations to ensure that carriers are not unfairly penalized for inoperable ABSs. However, in the absence of notification from a vehicle or ABS manufacturer or the NHTSA, the FHWA does not intend to allow motor carriers to disconnect the ABSs.

The preamble to NHTSA's March 10, 1995, final rule included a response to the ATA's concerns about alleged safety problems with current-generation ABSs. The NHTSA indicated that during the two-year evaluation of 200 ABS-equipped truck tractors, a total of 421 incidents were recorded involving in-service wear related ABS malfunctions. The vast majority (99.8 percent) of these malfunctions were benign. When the ABSs became inoperative, the vehicle reverted to a normally-braked vehicle

without ABS protection and remained fully operational until the malfunction was remedied. Similarly, during the two-year evaluation of 50 ABS-equipped semi-trailers, 44 such incidents were noted. All (100 percent) were benign.

The NHTSA indicated that only two ABS malfunction incidents occurred during the tractor fleet study that resulted in the vehicle having reduced braking performance. The first incident involved a manufacturing defect with the surface coating of a piston slide valve in the modulator section of a drive-axle-only ABS and only affected one truck-tractor. When the ABS manufacturer found the cause of this failure, a design change was made to rectify the problem and all the other test units in the fleet study were retrofitted with the improved components.

The second incident was discussed in the research report concerning the evaluation of trailer ABSs and involved a leaking relay valve. The motor carrier experienced periodic problems with leaking relay valves which were part of the ABS relay valve/modulator assemblies on their ABS-equipped tractors. The ABS modulator valves and relay valves were combined into one unit which serves the left and right brake chambers of the steer or drive axles on the tractor. In one of these cases, the supply air was found to be leaking to the relay valve exhaust port, a problem that had reportedly occurred on several previous occasions. The leaking valves were returned to the ABS manufacturer to determine the cause of this malfunction.

The ABS manufacturer disassembled the valves and determined that rust and oil sludge in the tractors' air systems were causing the relay valve's intake and exhaust seats to not seal properly, resulting in the air leakage. Therefore the problem was related to improper maintenance by the motor carrier and not the design, manufacture or installation of the ABS.

In responding to the ATA's descriptions of ABS problems experienced by motor carriers that were not involved in the NHTSA fleet study, the NHTSA stated:

Contrary to ATA's allegations that existing ABSs have significant safety problems, most commenters, including vehicle and brake manufacturers, appear to agree with NHTSA's assessment that current generation ABSs are safe and reliable. Unlike the 1970's when several vehicle and brake manufacturers objected to the rulemaking, and ATA, TEBDA (Truck Equipment and Body Distributors Association), and PACCAR challenged the antilock standard in court, comments to the September 1993 NPRM indicate that vehicle and brake manufacturers now generally believe that the

proposal was appropriate and today's antilock systems provide significant safety benefits. (60 FR 13216, 13242, March 10, 1995)

The NHTSA indicated that neither the vehicle nor brake manufacturers expressed concern that today's ABSs would fail in such a way as to compromise basic braking performance, as ATA alleges.

Although the ATA argues that the NHTSA cannot respond fast enough with a safety recall to assure a faulty ABS does not lead to accidents, the FHWA notes that vehicle and ABS manufacturers are responsible for notifying vehicle owners if there is a defect which relates to motor vehicle safety, or the product fails to conform to applicable Federal safety standards. If the manufacturer is aware of a defect relating to motor vehicle safety, the manufacturer must take action. The NHTSA has the authority (pursuant to 49 U.S.C. 30118(b)) to order a manufacturer to provide notification of a defect or noncompliance in the event a manufacturer disputes complaints about the existence of a safety-related defect or noncompliance.

The FHWA believes the ATA has overlooked manufacturers' responsibilities and focused on the amount of time it would take the NHTSA to force a manufacturer to take action. The FHWA does not intend to penalize motor carriers for inoperative ABSs when there is an acknowledged dispute between manufacturers and the NHTSA. The FHWA would notify enforcement officials about potential ABS problems irrespective of whether there was a NHTSA-ordered notification to ensure that motor carriers are not unfairly penalized. The FHWA's actions would not have any bearing on the NHTSA's procedures concerning defect and noncompliance notification, but would serve only as an advisory to enforcement officials that there could be a defect or noncompliance in certain ABSs and that motor carriers operating the vehicles in question should not be cited for the specific defect or noncompliance while the matter was being resolved by the NHTSA.

With regard to the ATA's reference to the NHTSA's handling of the air bag issue, the FHWA considers the comment inappropriate in the context of this rulemaking. The ATA has provided no information to support its comparison between the NHTSA's air bag and antilock brake system rulemakings. The FHWA has carefully reviewed all of the NHTSA's rulemaking notices and research reports relevant to ABSs and supports the NHTSA's decision to require that commercial

motor vehicles be equipped with ABSs. Therefore, the FHWA is requiring motor carriers to maintain the ABSs.

ABS Malfunction Signals

The ATA believes the FHWA should establish performance-based requirements for ABS malfunction indicators, rather than use what the ATA considers to be design-restrictive standards specified by the NHTSA. The ATA stated:

By referencing "electrical circuit" in the sections of the regulation applying to ABS malfunction signals, the agency is unnecessarily limiting the options of future designers. The final regulation should be performance, not design oriented.

A major concern that commercial vehicle users have about FMVSS 121 is that it contains sections which are design rather than performance requirements. These sections contain design requirements because of the difficulty in writing performance standards. Specific design requirements can discourage the development of more effective designs. When FHWA/OMC (Office of Motor Carriers) incorporates design requirements into its regulations, then more effective components/systems cannot even be installed on used vehicles. And, if FMVSS 121 is changed to permit them, they still can't be used on older vehicles because they have to comply with FMVSS 121 as it was when the vehicle was built.

An implicit assumption evidently made in all portions of the proposal dealing with malfunction signals is that they need to be transmitted through wires. While this is true today, some of the advanced concept ABSs and EBSs (electronically-controlled braking systems), which we have been privileged to see, use other technology. Fiber optics, infra-red, and radio frequency technologies can all be used to transmit malfunction signals and there is good reason to believe that, in the future, they will be.

The proposed regulation needs to be changed to embrace such technology by deleting references to "circuits" and "electrical circuit" and refer instead to the generic "system." This will make the proposal performance oriented, still require working malfunction systems, and preclude the need for modifications to the regulation to accommodate new technology.

Also, because the proposed FMCSR incorporates NHTSA requirements for malfunction lamps, the proposed (Section 393.55(d)) contains requirements for ABS malfunction lamps on combination vehicles which are unnecessarily difficult for commercial vehicle users to understand and do not appear to comply with FHWA's zero-based rulemaking objectives.

The FHWA disagrees with the ATA's arguments against the use of the terms "malfunction circuit" and "electrical circuit" in the proposed ABS requirements. The FHWA believes the ATA has mistakenly associated the requirements for ABSs to be capable of detecting certain malfunctions and

transmitting the information to the driver, with the methods for transmitting the signals.

The NHTSA requires that each truck tractor manufactured on or after March 1, 1997, and each single-unit vehicle manufactured on or after March 1, 1998, be equipped with an electrical circuit that is capable of signaling a malfunction that affects the generation or transmission of response or control signals in the vehicle's ABSs. Each of these vehicles is also required to have an indicator lamp, mounted in front of, and in clear view of, the driver. The indicator lamp is activated whenever there is a malfunction that affects the generation or transmission of the response or control signals in an ABS. The indicator lamp must remain activated as long as the malfunction exists, whenever the ignition (start) switch is in the "on" (run) position, irrespective of whether the engine is running. Each message about the existence of a malfunction in an ABS must be stored after the ignition switch is turned to the "off" position and automatically reactivated when the ignition switch is turned to the "on" position. The indicator lamps also must be activated as a check of lamp function whenever the ignition is turned to the "on" or "run" position. The indicator lamp must be deactivated at the end of the check of lamp function, unless there is a malfunction or a message about a pre-existing malfunction. (49 CFR 571.121, paragraph S5.1.6.2(a))

Each truck tractor manufactured on or after March 1, 2001, and each single-unit vehicle manufactured on or after March 1, 2001, that is equipped to tow another air-braked vehicle must be equipped with an electrical circuit that is capable of transmitting a malfunction signal from the antilock brake system(s) on one or more towed vehicle(s) (e.g., trailer(s) and converter dolly(ies)) to the trailer ABS malfunction lamp in the cab of the towing vehicle, and must have a means for connecting the electrical circuit to the towed vehicle. Each truck tractor and single-unit vehicle must also be equipped with an indicator lamp (separate from the indicator lamp used to alert the driver of malfunctions in the truck tractor or single unit vehicle's ABS) mounted in front of, and in clear view of, the driver, which is activated whenever the malfunction signal circuit in the towing vehicle receives a signal indicating an ABS malfunction on one or more towed vehicle(s). The indicator lamp must remain activated as long as an ABS malfunction signal from one or more towed vehicle(s) is present, whenever the ignition (start) switch is in the "on" ("run") position, irrespective

of whether the engine is running. The indicator lamp must also be activated as a check of lamp function whenever the ignition is turned to the "on" ("run") position. The indicator lamp shall be deactivated at the end of the check of lamp function unless a trailer ABS malfunction signal is present. (49 CFR 571.121, paragraph S5.1.6.2(b))

Section 571.121, paragraphs S5.2.3.2 and S5.2.3.3 provide requirements for ABS malfunction signals and indicators on trailers, respectively.

The FHWA believes the NHTSA requirements provide functional specifications for malfunction circuits and indicators, but do not limit manufacturers to the use of wires for transmitting signals between circuits or components. The FHWA has discussed the ABS requirements with the NHTSA and confirmed that the regulations do not prohibit the use of fiber optics, infra-red or radio-frequency technologies for the transmission of signals. The FHWA notes that with all of these alternative means of transmitting signals, electrical circuits are needed to generate and receive the signals. Therefore, the agency believes the use of the terms "malfunction circuit" and "electrical circuit" is appropriate and is retaining those terms in the regulatory language.

Radio-Frequency Interference (RFI)

The Texas DOT discussed problems with ABSs installed on some of its vehicles. The State believes the operational problems were caused by radio-frequency interference. Radio-frequency interference (RFI) is electrical interference from sources of energy outside a system(s), in contrast to electromagnetic interference generated inside systems. The Texas DOT stated:

TxDOT's interests lie with the current state of technology in ABS systems, and potential problems involving this technology with regards to radio frequency interference (RFI).

While we support the installation of ABS brakes, we believe that FHWA should take into account potential problems with this emerging technology. We have experienced sporadic RFI problems affecting the ABS systems on our light duty equipment fleet, thus our reason for concern on the larger and more complex equipment.

Most carriers, like TxDOT, may have high power (=100 watt) commercial two-way radios onboard their vehicles. TxDOT has shown over the last several years that the complex, heavily computerized environment which exists in modern vehicles is not conducive to such near-field radio frequency (RF) emissions. Radio transmissions can and do cause onboard system failures. Additional shielding and equipment design changes have been required in order for all systems to co-exist synergistically. TxDOT is currently working closely with the Society of

Automotive Engineers (SAE) in promoting new standards for RFI protection in these areas.

The FHWA has reviewed the preamble to NHTSA's final rule on ABSs and the NHTSA's research reports (referenced previously in this document and available in the docket) on the in-service evaluation of ABSs. The preamble and the research reports suggest RFI problems are the exception and not the rule for current-generation ABSs. The preamble states:

In the 1970s, there were several highly publicized incidents in which radio frequency interference (RFI) problems caused the ABS to cycle continuously during a brake application, thereby greatly diminishing braking power by venting brake system air pressure. The agency notes that manufacturers have completely eliminated the potential for RFI problems since current generation ABSs have been designed with shielded wiring systems and more sophisticated electronics that are better able to recognize spurious signals. No RFI problems have been reported with current-generation ABSs. (60 FR 13216, 13243, March 10, 1995)

The FHWA notes that the Texas DOT did not provide details on the year, make, and model of the vehicles in question or identify the manufacturer of the ABSs. In addition, the State did not indicate whether the RFI problems were reported to the NHTSA for appropriate action.

The FHWA considers the problems described by the Texas DOT to be serious, but emphasizes that the purpose of this rulemaking is to require motor carriers to maintain the ABSs on commercial motor vehicles subject to the NHTSA's requirements. The NHTSA, through notice-and-comment rulemaking, has provided all interested parties with the opportunity to discuss alleged safety problems with ABSs. The preamble to the NHTSA's March 10, 1995, final rule includes an extensive discussion of alleged safety problems with ABSs and the NHTSA's responses. The FHWA does not believe this rulemaking is the proper forum for debating such issues and has forwarded the Texas DOT's comments to the NHTSA.

Discussion of the Final Rule

Section 393.55

The FHWA is amending the FMCSRs by adding a new § 393.55, *Antilock brake systems*. This section is being added to subpart C, Brakes, of part 393. The provisions of paragraph (a) require that hydraulic braked trucks and buses manufactured on or after March 1, 1999, be equipped with an ABS that meets the requirements of FMVSS No. 105.

Paragraph (b) requires indicator lamps on hydraulic-braked vehicles to alert the driver of ABS malfunctions. Paragraph (c) requires that each air-braked truck tractor manufactured on or after March 1, 1997, be equipped with an ABS that meets the requirements of FMVSS No. 121. Paragraph (c) also covers air braked trucks, buses, trailers, and converter dollies manufactured on or after March 1, 1998. The requirement for ABS malfunction indicators on air braked vehicles is covered under paragraph (d). Paragraph (e) covers the requirement for the external indicator lamp on trailers and converter dollies manufactured between March 1, 1998, and March 1, 2009.

Applicability to Canadian and Mexican Vehicles

As discussed previously, the final rule is applicable to CMVs operated in the United States by Canada- and Mexico-based motor carriers. Although the Federal governments of Canada and Mexico have not indicated whether they intend to require ABSs for CMVs operating in their countries, the FHWA believes that it is appropriate to require ABS on foreign-based vehicles manufactured on or after the effective dates of the NHTSA requirements if those vehicles are operated within the United States.

Driveaway-Towaway Operations Exemption

The FHWA has revised the language for the final rule to include an exemption for commercial motor vehicles engaged in driveaway-towaway operations (as defined in § 390.5). This action was taken in response to recent telephone calls from vehicle manufacturers and letters from the Truck Trailer Manufacturers Association (TTMA) and the Canadian Transportation Equipment Association (CTEA). The TTMA and the CTEA asked whether the ABS requirements would be applicable to vehicles built in the United States and exported to Canada or other countries. The TTMA also asked about the applicability of the ABS requirements to vehicles manufactured for the military. The FHWA has advised vehicle manufacturers, the TTMA and the CTEA that it would consider these issues in developing the final rule. Copies of the TTMA and the CTEA's letters are in the docket along with the FHWA's responses.

The FHWA believes that an exemption is appropriate for vehicles that are manufactured exclusively for use outside of the United States. Although these vehicles are operated on public roads in the United States when

they are being transported from the point of manufacture to the Canadian or Mexican border, or to railroad or shipping yards for subsequent movement to foreign destinations, the economic burden associated with requiring these vehicles to be equipped with ABSs for the one-way trip out of the United States would certainly exceed the potential benefits.

The driveaway-towaway exemption would also be applicable to vehicles being delivered to the Armed Forces of the United States. Therefore, motor carriers delivering new vehicles from manufacturers to the military cannot be penalized if the military purchases vehicles without ABSs. Vehicles operated by the military are exempt from the FMCSRs under § 390.3(f)(2).

The FHWA notes that the driveaway-towaway exemption provided in § 393.55 is consistent with exceptions provided by the NHTSA. Section 571.7(c) of the Federal Motor Vehicle Safety Standards provides an exception for vehicles and items of equipment manufactured for, and sold directly to the Armed Forces of the United States in conformity with contractual specifications. Section 571.7(d), through a cross-reference to the United States Code, indicates the FMVSSs do not apply to motor vehicles or motor vehicle equipment intended only for export, labeled for export on the vehicle or equipment and on the outside of any container of the vehicle or equipment, and exported (49 U.S.C. 30112(b)(2)). The FHWA believes that it is important to ensure, to the greatest extent practicable, consistency between the FMVSSs and the FMCSRs.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. No serious inconsistency or interference with another agency's actions or plans is likely to result, and it is unlikely that this regulatory action would have an annual effect on the economy of \$100 million or more. The FHWA's regulation only requires maintenance of ABSs; the NHTSA final rule published on March 10, 1995, is the regulation which actually requires installation of ABSs. The data collected by NHTSA indicates that the level of maintenance required to keep an ABS functional would only increase incrementally and would not be unreasonable relative to the safety benefits that would result from the use

of these systems. Therefore, it is anticipated that the economic impact of this rule will be minimal.

The preamble to NHTSA's March 10, 1995, final rule included estimates of the increased costs of operating heavy vehicles equipped with ABS. Three categories of operating costs were examined: lifetime maintenance costs; lifetime fuel costs due to the additional weight of the ABSs; and lifetime revenue loss due to payload displacement. The range of the increase in total lifetime operating costs related to equipping vehicles with ABS is from \$201 for single-unit trucks and buses to \$787 for truck tractors. The increase in total lifetime operating costs for trailers equipped to tow other trailers (i.e., used in multi-trailer combinations) is \$524 while the increase in operating costs for non-towing trailers is \$360. The increase in operating costs for trailer converter dollies is \$687. The NHTSA indicated that the total estimated increase in lifetime vehicle operating costs associated with ABSs for all commercial motor vehicles will be \$232 million per year when the majority of these vehicles are equipped with ABSs. A copy of the NHTSA's final economic assessment is included in the docket.

In addition, the FHWA has determined that this action is not a significant regulatory action under the Department of Transportation's regulatory policies and procedures because it does not concern a matter about which there is substantial public controversy, it will not have a substantial effect on State and local governments, or initiate a substantial regulatory program or change in policy.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities and has determined that it will not have a significant economic impact on a substantial number of small entities. The FHWA finds that this rule will not significantly increase costs for motor carriers because FHWA regulations only require maintenance of brake systems and the data collected by the NHTSA shows that the presence of an ABS on a vehicle would not substantially increase maintenance costs (less than one percent for tractors and less than two percent for trailers) or decrease vehicle operational availability. The range of the increase in total lifetime operating costs related to having ABSs on a commercial motor vehicle (e.g., lifetime maintenance costs; lifetime fuel costs due to the additional weight of the ABSs; and lifetime revenue loss due to

payload displacement) is from \$201 for single-unit trucks and buses to \$787 for truck tractors. The increase in total lifetime operating costs for trailers equipped to tow other trailers (i.e., used in multi-trailer combinations) is \$524 while the increase in operating costs for non-towing trailers is \$360. The increase in operating costs for trailer converter dollies is \$687.

For a small entity operating a newly purchased truck tractor and semitrailer, the increase in total lifetime operating costs for each of the vehicles would be spread over the useful service-life of the vehicle. If, for example, the useful service-life for the truck tractor is seven years, and the useful service-life for the semitrailer is 14 years, the small entity would expect to spend \$787 during the useful service-life of the truck tractor and \$360 during the useful service-life of the semitrailer. The small entity would spend an additional \$787 in increased total lifetime operating costs during the service-life of the replacement truck tractor. This would result in approximately \$1,934 in increased total lifetime operating costs during a 14-year period in which the small entity purchases two new truck tractors and one semitrailer.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. These new safety requirements do not directly preempt any State law or regulation, and no additional costs or burdens would be imposed on the States as a result of this action. Furthermore, the State's ability to discharge traditional State governmental functions will not be affected by this rulemaking.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action will not have any effect on the quality of the environment.

Unfunded Mandates Reform Act

This rule does not impose any unfunded mandates on State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532-1538).

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highway safety, Incorporation by reference, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

Issued on: April 17, 1998.

Gloria J. Jeff,
Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. Section 393.5 is amended by adding the definition of *antilock brake system*, in alphabetical order, to read as follows:

§ 393.5 Definitions.

Antilock Brake System or ABS means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:

- (1) Sensing the rate of angular rotation of the wheels;
- (2) Transmitting signals regarding the rate of wheel angular rotation to one or more controlling devices which interpret those signals and generate responsive controlling output signals; and
- (3) Transmitting those controlling signals to one or more modulators

which adjust brake actuating forces in response to those signals.

3. In subpart C, § 393.55 is added to read as follows:

§ 393.55 Antilock brake systems.

(a) *Hydraulic brake systems.* Each truck and bus manufactured on or after March 1, 1999 (except trucks and buses engaged in driveaway-towaway operations), and equipped with a hydraulic brake system, shall be equipped with an antilock brake system that meets the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 105 (49 CFR 571.105, S5.5).

(b) *ABS malfunction indicators for hydraulic braked vehicles.* Each hydraulic braked vehicle subject to the requirements of paragraph (a) of this section shall be equipped with an ABS malfunction indicator system that meets the requirements of FMVSS No. 105 (49 CFR 571.105, S5.3).

(c) *Air brake systems.* (1) Each truck tractor manufactured on or after March 1, 1997 (except truck tractors engaged in driveaway-towaway operations), shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(b)).

(2) Each air braked commercial motor vehicle other than a truck tractor, manufactured on or after March 1, 1998 (except commercial motor vehicles engaged in driveaway-towaway operations), shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(a) for trucks and buses, S5.2.3 for semitrailers, converter dollies and full trailers).

(d) *ABS malfunction circuits and signals for air braked vehicles.* (1) Each truck tractor manufactured on or after March 1, 1997, and each single-unit air braked vehicle manufactured on or after March 1, 1998, subject to the requirements of paragraph (c) of this section, shall be equipped with an electrical circuit that is capable of signaling a malfunction that affects the generation or transmission of response or control signals to the vehicle's antilock brake system (49 CFR 571.121, S5.1.6.2(a)).

(2) Each truck tractor manufactured on or after March 1, 2001, and each single-unit vehicle that is equipped to tow another air-braked vehicle, subject to the requirements of paragraph (c) of this section, shall be equipped with an electrical circuit that is capable of transmitting a malfunction signal from the antilock brake system(s) on the towed vehicle(s) to the trailer ABS malfunction lamp in the cab of the

towing vehicle, and shall have the means for connection of the electrical circuit to the towed vehicle. The ABS malfunction circuit and signal shall meet the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.2(b)).

(3) Each semitrailer, trailer converter dolly, and full trailer manufactured on or after March 1, 2001, and subject to the requirements of paragraph (c)(2) of this section, shall be equipped with an electrical circuit that is capable of signaling a malfunction in the trailer's antilock brake system, and shall have

the means for connection of this ABS malfunction circuit to the towing vehicle. In addition, each trailer manufactured on or after March 1, 2001, subject to the requirements of paragraph (c)(2) of this section, that is designed to tow another air-brake equipped trailer shall be capable of transmitting a malfunction signal from the antilock brake system(s) of the trailer(s) it tows to the vehicle in front of the trailer. The ABS malfunction circuit and signal shall meet the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.2).

(e) *Exterior ABS malfunction indicator lamps for trailers.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 and before March 1, 2009, and subject to the requirements of paragraph (c)(2) of this section, shall be equipped with an ABS malfunction indicator lamp which meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.3).

[FR Doc. 98-11775 Filed 5-1-98; 8:45 am]

BILLING CODE 4910-22-P

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

USDA Freedom of Information Act Regulations

AGENCY: Department of Agriculture.
ACTION: Proposed rule.

SUMMARY: This proposed revision of the Department of Agriculture Freedom of Information Act (FOIA) regulations provides substantive and administrative changes to conform to the requirements of the Electronic FOIA Amendments of 1996, Pub. L. 104-231. It also provides guidance to the Department of Agriculture on implementation of this amended law.

DATES: Comments must be received by June 3, 1998.

ADDRESSES: Mail comments concerning this proposal to Andrea Fowler, FOIA Officer, Office of Communications, U.S. Department of Agriculture, Washington, DC 20250, or deliver them to room 536A, Jamie L. Whitten Federal Building, 1400 Independence Ave., SW, Washington, DC. Comments received may be reviewed between the hours of 9 am-4 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Andrea E. Fowler, Office of Communications, (202) 720-8164.

SUPPLEMENTARY INFORMATION:

Background Information

On October 2, 1996, President Clinton signed into law the Electronic FOIA Amendments of 1996, Pub. L. 104-231. The amendments to the FOIA address electronic records in the text of the statute for the first time. The amendments include provisions that address the availability of "reading room" material by electronic telecommunication means, volume estimation, format of disclosure, marking of deletions, electronic searches, and the expedited processing of FOIA requests. In addition, the amendments extend the time limit for

responding to an initial FOIA request from ten to twenty days, modify the requirements for reporting Freedom of Information activities to Congress, and clarify the extent to which an agency may extend the time within which it will respond to a FOIA request or appeal.

USDA, therefore, is revising its FOIA regulations to implement these statutory amendments. In addition, USDA is reorganizing, renumbering, and making clarifying and stylistic changes to its FOIA regulations. USDA is not revising Appendix A to the FOIA regulations at this time.

The following provisions in the revised regulations will implement the Electronic FOIA Amendments:

1. Section 1.4 incorporates a new provision to implement 5 U.S.C. 552(a)(2)(D), which creates a new category of records to receive "reading room" treatment: documents released in response to a FOIA request that may become the subject of subsequent requests for substantially the same records. 5 U.S.C. 552(a)(2)(D).

2. Section 1.4 also incorporates a new requirement that reading room records created on or after November 1, 1996, be made available to the public by "computer telecommunications" or other "electronic means." 5 U.S.C. 552(a)(2).

3. Section 1.4 also incorporates a requirement that each agency maintain an index of FOIA processed records and make the index available on-line. 5 U.S.C. 552(a)(2).

4. Section 1.4 also incorporates a revision to require that each agency maintain reference material or a guide for requesting records or information from the agency. The guide must include an index of all major information systems of the agency, a description of major information and record locator systems, and a handbook for obtaining various types and categories of public information from the agency, both through FOIA requests and through other means. The guide should be made publicly available in agency reading rooms and through an electronic site, as well as upon request. 5 U.S.C. 552(g).

5. Section 1.7 increases the time limit to respond to an initial FOIA request from ten to twenty working days. 5 U.S.C. 552(a)(6)(D).

6. Section 1.8 provides for "multitrack" processing of FOIA

requests, based on the amount of work or time (or both) that is involved in processing them. 5 U.S.C. 552(a)(6)(D).

7. Section 1.9 adds a requirement that each agency consider requests for "expedited processing" and grant such requests where the requester shows an imminent threat to life or physical safety or an urgency to inform the public about federal government activity. 5 U.S.C. 552(a)(6)(E).

8. Section 1.15 incorporates a new provision requiring that each agency make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of the FOIA. 552(a)(3)(B).

9. Section 1.15 incorporates a new requirement that each agency make reasonable efforts to search for records in electronic form or format, except when such efforts would interfere significantly with the operation of the agency's automated information system. 5 U.S.C. 552(a)(3)(C).

10. Section 1.15 incorporates a new requirement that each agency indicate, on the released portion of a redacted record, the amount of information that has been deleted from a record, unless including that indication would harm an interest protected by an applicable exemption. 5 U.S.C. 552(b).

11. Section 1.15 incorporates a requirement for each agency to make a reasonable effort to estimate the volume of matter being withheld, when entire records, or entire pages are withheld, and provide the estimate to the requester. 5 U.S.C. 552(a)(6)(F).

12. Section 1.15 requires that each agency provide records in any form or format requested, if the record is readily reproducible by the agency in the form or format requested. 5 U.S.C. 552(a)(3)(B).

13. Section 1.16 requires each agency to notify a requester of "unusual circumstances" that require additional time for processing a request, and offer the requester the opportunity to limit scope of the request, or arrange an alternative time frame for processing, or both. 5 U.S.C. 552(a)(6)(B)(I).

14. Section 1.16 incorporates a new provision to limit the conditions under which an agency backlog of FOIA requests may be considered an "exceptional circumstance" justifying a longer processing time. "Exceptional circumstances" will not include a delay that results from a predictable agency

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workload of FOIA requests, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. 552(a)(6)(C)(ii).

15. Section 1.20 modifies the content, timetable, and procedure for filing the annual FOIA report. The annual reporting period will change from a calendar year to a fiscal year. 5 U.S.C. 552(e).

Revised Section

1. Section 1.4, Implementing regulations for the Office of the Secretary, has been incorporated into § 1.25.

Removed Section

1. Section 1.5(e), which allows oral FOIA requests, has been removed in order to ensure that agencies maintain accountability and are able to track requests and process them in the order of receipt within each agency.

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Freedom of information, Privacy.

Accordingly, it is proposed to revise 7 CFR, part 1, subpart A except Appendix A, to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

Sec.

- 1.1 Purpose and scope.
- 1.2 Policy.
- 1.3 Agency implementing regulations.
- 1.4 Public access to certain materials.
- 1.5 Requests for records.
- 1.6 Aggregating requests.
- 1.7 Agency response to requests for records.
- 1.8 Multitrack processing.
- 1.9 Expedited processing.
- 1.10 Search services.
- 1.11 Review services.
- 1.12 Handling information from a private business.
- 1.13 Date of receipt of requests or appeals.
- 1.14 Appeals.
- 1.15 General provisions respecting release of records.
- 1.16 Extension of administrative deadlines.
- 1.17 Failure to meet administrative deadlines.
- 1.18 Fee schedule.
- 1.19 Exemptions and discretionary release.
- 1.20 Annual report.
- 1.21 Compilation of new records.
- 1.22 Authentication.
- 1.23 Records in formal adjudication proceedings.
- 1.24 Preservation of records.
- 1.25 Implementing regulations for the Office of the Secretary and the Office of Communications.

Appendix A—Fee Schedule

Subpart A—Official Records

Authority: 5 U.S.C. 301, 552; 7 U.S.C. 3125a; 31 U.S.C. 9701; and 7 CFR 2.28(b)(7)(viii).

§ 1.1 Purpose and scope.

This subpart establishes policy, procedures, requirements, and responsibilities for administration and coordination of the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, pursuant to which any person may obtain official records. It also provides rules pertaining to the disclosure of records pursuant to compulsory process. This subpart also serves as the implementing regulations (referred to in § 1.3, "Agency implementing regulations") for the Office of the Secretary (the immediate offices of the Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) and for the Office of Communications. The Office of Communications has the primary responsibility for implementation of the FOIA in the Department of Agriculture ("USDA" or "Department"). The term "agency" or "agencies" is used throughout this subpart to include both USDA program agencies and staff offices.

§ 1.2 Policy.

(a) Agencies of USDA shall comply with the time limits set forth in the FOIA and in this subpart for responding to and processing requests and appeals for agency records, unless there are unusual circumstances within the meaning of 5 U.S.C. 552(a)(6)(B) and § 1.16(b). An agency shall notify a requester in writing whenever it is unable to respond to or process a request or appeal within the time limits established by the FOIA.

(b) All agencies of the Department shall comply with the fee schedule provided as appendix A to this subpart, with regard to the charging of fees for providing copies of records and related services to requesters.

§ 1.3 Agency implementing regulations.

(a) Each agency of the Department shall promulgate regulations setting forth the following:

(1) The location and hours of operation of the agency office or offices where members of the public may gain access to those materials required by 5 U.S.C. 552(a)(2) and § 1.4 to be made available for public inspection and copying.

(2) Information regarding the publication and distribution (by sale or otherwise) of indexes and supplements to indexes that are maintained in

accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.4(c);

(3) The title and mailing address of the official or officials of the agency authorized to receive requests for records submitted in accordance with § 1.5(a), and to make determinations regarding whether to grant or deny such requests. Authority to make such determinations includes authority to:

(i) Extend the 20 working days administrative deadline for reply pursuant to § 1.16;

(ii) Make discretionary releases pursuant to § 1.19(b); and

(iii) Make determinations regarding the charging of fees pursuant to appendix A to this subpart;

(4) The title and mailing address of the official of the agency who is authorized to receive appeals submitted in accordance with § 1.4(e) and to make determinations regarding whether to grant or deny such appeals. Authority to determine appeals includes authority to:

(i) Extend the 20 working days administrative deadline for reply pursuant to § 1.16 (to the extent the maximum extension authorized by § 1.16(c) was not used with regard to the initial request);

(ii) Make discretionary releases pursuant to § 1.19(b); and

(iii) Make determinations regarding the charging of fees pursuant to appendix A to this subpart; and

(5) Other information which would be of concern to a person wishing to request records from that agency in accordance with this subpart.

§ 1.4 Public access to certain materials.

(a) In accordance with 5 U.S.C. 552(a)(2), each agency within the Department shall make the following materials available for public inspection and copying (unless they are promptly published and copies offered for sale):

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the agency and are not published in the *Federal Register*;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released pursuant to a FOIA request under 5 U.S.C. 552(a)(3), and which because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. Agencies shall decide on a case by case basis whether records fall into

this category, based on the following factors:

(i) Previous experience with similar records;

(ii) The particular characteristics of the records involved, including their nature and the type of information contained in them; and

(iii) The identity and number of requesters and whether there is widespread media, historical, academic, or commercial interest in the records.

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) Records encompassed within paragraphs (a)(1) through (a)(5) of this section created on or after November 1, 1996, shall be made available to the public by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means.

(c) Each agency of the Department shall maintain and make available for public inspection and copying current indexes providing identifying information regarding any matter issued, adopted, or promulgated after July 4, 1967, and required by paragraph (a) of this section to be made available or published. Each agency shall publish and make available for distribution copies of such indexes and supplements to such indexes at least quarterly, unless it determines by notice published in the *Federal Register* that publication would be unnecessary and impracticable. After issuance of such notice, each agency shall provide copies of any index upon request at a cost not to exceed the direct cost of duplication.

(d) Each agency is responsible for preparing reference material or a guide for requesting records or information from that agency. This guide shall also include an index of all major information systems, and a description of major information and record locator systems.

(e) Each agency shall also prepare a handbook for obtaining information from that agency. The handbook should be a short, simple explanation to the public of what the FOIA is designed to do, and how a member of the public can use it to access government records. The handbook should be available on paper and through electronic means, and it should identify how a requester can access agency Freedom of Information Act annual reports. Similarly, the annual reports should refer to the handbook and how to obtain it.

(f) It is appropriate to make frequently requested records available in accordance with paragraph (a)(4) of this section in situations where public access in a timely manner is important,

and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. Agencies may remove a record from this access medium when the appropriate officials determine that it is unlikely there will be substantial further requests for that document.

§ 1.5 Requests for records.

(a) Any person who wishes to inspect or obtain copies of any record of any agency of the Department shall submit a request in writing and address the request to the official designated in regulations promulgated by that agency. The requester may ask for a fee waiver. All such requests for records shall be deemed to have been made pursuant to the Freedom of Information Act, regardless of whether the request specifically mentions the Freedom of Information Act. To facilitate processing of a request, the requester should place the phrase "FOIA REQUEST" in capital letters on the front of the envelope or on the cover sheet of the fax transmittal.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, names of individuals, names of offices, and names of agencies or other organizations that may help identify the records. If the request relates to a matter in pending litigation, the requester should identify the court and its location.

(c) If an agency determines that a request does not reasonably describe the records, the agency shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records the requester is seeking. The "date of receipt" in such instances, for purposes of § 1.13, shall be the date of receipt of the amended or clarified request.

(d) If a requester for records or a fee waiver made under this subpart is denied, the requester shall have the right to appeal the denial. Requesters also may appeal agency determinations of a requester's status for purposes of fee levels under § 5 of appendix A to this subpart. All appeals must be in writing and addressed to the official designated in regulations promulgated by the agency which denied the request. To facilitate processing of an appeal, the requester should place the phrase "FOIA APPEAL" in capital letters on the front of the envelope or on the cover sheet of the fax transmittal.

(e) Requests that are not addressed to a specific agency in USDA, or which pertain to more than one USDA agency, or which are sent to the wrong agency of USDA, should be forwarded to the Department's FOIA Officer in the Office of Communications, U.S. Department of Agriculture, Washington, DC 20250.

(f) The Department FOIA Officer will determine which agency or agencies should process the request, and, where necessary, refer the request to the appropriate agency or agencies. The Department FOIA Officer will also notify the requester of the referral and of the name of each agency to which the request has been referred.

(g) A request will be properly received when it is in the possession of the component agency that has responsibility for maintaining the requested records.

(h) Each agency shall develop and maintain a record of all written requests and appeals received in that agency. The record shall include the names of the requester; a brief summary of the information requested; whether the request or appeal was granted, denied, or partially denied; the exemption from mandatory disclosure under 5 U.S.C. 552(b) upon which any denial was based; and the amount of any fees associated with the request or appeal.

§ 1.6 Aggregating requests.

When an agency reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element that may be considered in determining whether such a belief would be reasonable is the brevity of the time period during which the requests have been made.

§ 1.7 Agency response to requests for records.

(a) 5 U.S.C. 552(a)(6)(A)(i) provides that each agency of the Department to which a request for records or a fee waiver is submitted in accordance with § 1.5(a) shall inform the requester of its determination concerning that request within 20 working days of its date of receipt (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized under § 1.16. If the agency determines to grant the request, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which the agency will provide the requested records. If the agency grants only a portion of the request, it shall treat the

portion not granted as a denial, and make a reasonable effort to estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. If the agency determines to deny the request in part or in whole, it shall immediately inform the requester of that decision and provide the following:

- (1) The reasons for the denial;
- (2) The name and title or position of each person responsible for denial of the request;
- (3) The requester's right to appeal such denial and the title and address of the official to whom such appeal is to be addressed; and
- (4) The requirement that such appeal be made within 45 days of the date of the denial.

(b) If the reason for not fulfilling a request is that the records requested are in the custody of another agency outside USDA, other than in the permanent custody of the National Archives and Records Administration ("NARA"), the agency shall inform the requester of this fact and shall forward the request to that agency or Department for processing in accordance with its regulations. If the records are in the permanent custody of NARA, the agency shall so inform the requester. Information about obtaining access to records at NARA may be obtained through the NARA Archival Information Locator (NAIL) Database at <http://www.nara.gov/nara.nail.html>, or by calling NARA at (301) 713-6800. If the agency has no knowledge of requested records or if no records exist, the agency shall notify the requester of that fact.

§ 1.8 Multitrack processing.

(a) When an agency has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) Agencies may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) Agencies may provide a requester whose request does not qualify for the fastest track an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due

diligence in processing requests in the most expeditious manner possible.

(d) Agencies shall process requests in each track on a "first-in, first-out" basis, unless there are unusual circumstances as set forth in § 1.16, or the requester is entitled to expedited processing as set forth in § 1.9.

§ 1.9 Expedited processing.

(a) A requester may apply for expedited processing at the time of the initial request for records. Within ten calendar days of its receipt of a request for expedited processing, an agency shall decide whether to grant it, and shall notify the requester of the decision. Once the determination has been made to grant expedited processing, an agency shall process the request as soon as practicable. If a request for expedited processing is denied, the agency shall act expeditiously on any appeal of that decision.

(b) A request or appeal will be taken out of order and given expedited treatment whenever the agency determines that the requester has established either of the following criteria:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged federal government activity, if made by an individual primarily engaged in disseminating information. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information; however, other requesters must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public as a whole, and not just a particular segment or group. "Urgency" contemplates that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only or information sought for litigation or commercial activities would not meet the test of urgency, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(c) A requester who seeks expedited processing must provide a written statement that the requester has certified to be true and correct to the best of the requester's knowledge, explaining in detail the basis for requesting expedited processing. The agency will not

consider the request to have been received unless accompanied by a written, certified statement, and will be under no obligation to consider the request for expedited processing until it receives such a written, certified statement.

(d) The same procedures apply to requests for expedited processing of administrative appeals.

§ 1.10 Search services.

Search services are services of agency personnel—clerical or professional—used in trying to find the records, that are responsive to a request. Search services includes both manual and electronic searches and time spent examining records for the purpose of finding information that is within the scope of the request. Search services also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

§ 1.11 Review services.

(a) Review services are services of agency personnel—clerical or professional—in examining records, both paper and electronic, located in response to a request that is for a commercial use (as specified in § 6 of appendix A to this subpart) to determine whether any portion of any record located is exempt from mandatory disclosure.

(b) Review services include processing any records for disclosure, e.g., doing all that is necessary to redact exempt portions and otherwise prepare records for release.

(c) Review services do not include the time spent resolving general legal or policy issues regarding the application of exemptions.

§ 1.12 Handling information from a private business.

Each USDA agency is responsible for making the final determination with regard to the disclosure or nondisclosure of information in agency records that has been submitted by a business. When, in the course of responding to an FOIA request, an agency cannot readily determine whether the information obtained from a person is privileged or confidential business information, the policy of USDA is to obtain and consider the views of the submitter of the information and to provide the submitter an opportunity to object to any decision to disclose the information. If a request (including a subpoena *duces tecum* as described in § 1.215) is received in USDA for

information that has been submitted by a business, the agency shall:

(a) Provide the business information submitter with prompt notification of a request for that information (unless it is readily determined by the agency that the information requested should not be disclosed or, on the other hand, that the information is not exempt by law from disclosure). Afford business information submitters reasonable time in which to object to the disclosure of any specified portion of the information. The submitter must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to its competitive position, the submitter must explain item-by-item why disclosure would cause such harm. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under FOIA;

(b) Notify the requester of the need to inform the submitter of a request for submitted business information;

(c) Determine whether the requested records are exempt from disclosure or must be released;

(d) Provide business information submitters with notice of any determination to disclose such records prior to the disclosure date, in order that the matter may be considered for possible judicial intervention; and

(e) Notify business information submitters promptly of all instances in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

§ 1.13 Date of receipt of requests or appeals.

The date of receipt of a request or appeal shall be the date it is received in the agency and office responsible for the administrative processing of FOIA requests or appeals.

§ 1.14 Appeals.

(a) Requesters seeking administrative appeal of a denial of a request for records or denial of a fee waiver must ensure that the appeal is received by the agency within 45 days of the date of the denial letter.

(b) Each agency shall provide for review of appeals by an official different from the official or officials designated to make initial denials.

(c) 5 U.S.C. 552(a)(6)(A)(ii) provides that each agency in the Department to which an appeal of a denial is submitted shall inform the requester of its determination concerning that appeal within 20 working days (excluding Saturdays, Sundays, and legal public holidays), plus any extension

authorized by § 1.16, of its date of receipt. If the agency determines to grant the appeal, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If the agency grants only a portion of the appeal, it shall treat the portion not granted as a denial. If it determines to deny the appeal either in part or in whole, it shall inform the requester of that decision and of the following:

(1) The reasons for denial;

(2) The name and title or position of each person responsible for denial of the appeal; and

(3) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).

(d) Each agency, upon a determination that it wishes to deny an appeal, shall send a copy of the records requested and of all correspondence relating to the request to the Assistant General Counsel, General Law Division, Office of the General Counsel ("Assistant General Counsel"). When the volume of records is so large as to make sending a copy impracticable, the agency shall enclose an informative summary of those records. The agency shall not deny an appeal until it receives concurrence from the Assistant General Counsel.

(e) The Assistant General Counsel shall promptly review the matter (including necessary coordination with the agency) and render all necessary assistance to enable the agency to respond to the appeal within the administrative deadline or any extension of the administrative deadline.

§ 1.15 General provisions respecting release of records.

(a) When releasing documents, agencies shall provide the record in any form or format the requester specifies, if the record is readily reproducible in that form or format. Agencies shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, agencies shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of an agency's automated information system. Such determinations shall be made on a case by case basis.

(b) In the event a requested record contains some portions that are exempt from mandatory disclosure and others that are not, the official responding to the request shall ensure that all

reasonably segregable nonexempt portions are disclosed, and that all exempt portions are identified according to the specific exemption or exemptions which are applicable. The amount of deleted information shall be indicated on the released portion of paper records. Deletions may be marked by use of brackets or darkened areas indicating removal of information, or by any other method that would reasonably demonstrate the extent of the deletion. In the case of electronic deletion, or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information shall be indicated at the place in the record where such deletion was made. This may be done by use of brackets, shaded areas, or some other identifiable technique which will clearly show the limits of the deleted information.

(c) If, in connection with a request or an appeal, a charge is to be made in accordance with § 8 of appendix A to this subpart, agencies shall inform the requester of the fee amount and of the basis for the charge. Each agency, in accordance with § 8 of appendix A to this subpart, may require payment of the entire fee, or a portion of the fee, before it provides the requested records. An agency shall require full payment of any delinquent fee owed by the requester plus any applicable interest prior to releasing records on a subsequent request or appeal. If a requester refuses to remit payment in advance, an agency may refuse to process the request or appeal with written notice to that effect forwarded to the requester. The "date of receipt" of an appeal for which advance payment has been required shall be the date that payment is received.

(d) In the event compliance with the request or appeal involves inspection of records by the requester rather than providing copies of the records, the agency response shall include the name, mailing address, and telephone number of the person to be contacted to arrange a mutually convenient time for such inspection.

(e) Whenever duplication fees, or search fees for unsuccessful searches (see § 4(f) of appendix A to this subpart), are anticipated to exceed \$25.00, and the requester has not indicated, in advance, a willingness to pay fees as high as those anticipated, agencies shall notify the requester of the amount of the anticipated fee. If an extensive and therefore costly successful search is anticipated, agencies also should notify requesters of the anticipated fees. The notification shall offer the requester the opportunity to confer with agency personnel to reform the request to meet the requester's needs at a lower fee. In

appropriate cases, an advance deposit in accordance with § 8 of appendix A to this subpart may be required.

§ 1.16 Extension of administrative deadlines.

(a) In unusual circumstances as specified in this section, when additional time is needed to respond to the initial request or to an appeal, agencies shall acknowledge the request or the appeal in writing within the 20 working day time period, describe the unusual circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in the following:

(1) In instances in which the agency, with respect to a particular request, has extended the response date by 10 additional working days, if the agency finds that it cannot make a response determination within the additional 10 working day period, the agency shall notify the requester and provide the requester an opportunity to limit the scope of the request to allow the agency to process the request within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request.

(2) If the requester refuses to reasonably modify the request or arrange for an alternative time frame for processing the request, the FOIA provides that such refusal shall be considered as a factor in determining whether there are exceptional circumstances that warrant granting additional time for the agency to complete its review of the records, as set forth in 5 U.S.C. 552(a)(6)(C). The term "exceptional circumstances" does not include a delay that results from a predictable agency backlog, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(b) As used in this section, "unusual circumstances" that may justify delay are:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request or among two or more components of the

agency having substantial subject-matter interest in the request.

Note: consultation regarding policy or legal issues between an agency and the Office of the General Counsel, Office of Communications, or the Department of Justice is not a basis for extension under this section.

(c) The 10-day extension authorized by this section may be divided between the initial and appellate reviews, but in no event shall the total extension exceed 10 working days.

(d) Nothing in this section shall preclude the agency and the requester from agreeing to an extension of time. Any such agreement should be confirmed in writing and should specify clearly the total time agreed upon.

§ 1.17 Failure to meet administrative deadlines.

In the event an agency fails to meet the administrative deadlines set forth in § 1.7, or § 1.14, plus any extension authorized by § 1.16, it shall notify the requester, state the reasons for the delay, and the date by which it expects to dispatch a determination. Although the requester may be deemed to have exhausted his or her administrative remedies under 5 U.S.C. 552(a)(6)(C), the agency shall continue processing the request as expeditiously as possible and dispatch the determination when it is reached in the same manner and form as if it had been reached within the applicable deadline.

§ 1.18 Fee schedule.

Pursuant to § 2.28 of this title, the Chief Financial Officer is delegated authority to promulgate regulations providing for a uniform fee schedule applicable to all agencies of the Department regarding requests for records under this subpart. The regulations providing for a uniform fee schedule are found in appendix A to this subpart.

§ 1.19 Exemptions and discretionary release.

(a) All agency records, except those specifically exempted from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), shall be made promptly available to any person submitting a request under this subpart.

(b) Agencies are authorized in their sole discretion, to make discretionary releases when such release is not otherwise specifically prohibited by Executive Order, statute, or regulation.

§ 1.20 Annual report.

(a) Each agency of the Department shall compile the following Freedom of Information Act statistics on a fiscal

year basis beginning October 1, 1997, and report the following information to the Office of Communications no later than November 30 following the fiscal year's close:

(1) The number of requests for records received and the number of requests which were processed;

(2) The number of determinations made not to comply with initial requests for records made to it under § 1.5(a), and the reasons for each such determination;

(3) The number of appeals made by persons under § 1.14(b), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(4) A complete list of all statutes that the agency relies upon to authorize the agency to withhold information under 5 U.S.C. 552(b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(5) The number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(6) The median number of days taken by the agency to process different types of requests;

(7) The total amount of fees collected by the agency for processing requests;

(8) The number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(b) Each agency shall compile the information required by paragraph (a) of this section for the preceding fiscal year into a report and submit this report to the Director of Communications, Office of Communications, no later than November 30 following the fiscal year's close.

(c) The Director of Communications, Office of Communications, shall combine the reports from all the agencies within USDA into a Departmental report, and shall submit to the Attorney General on or before February 1 of each year in accordance with 5 U.S.C. 552(e).

(d) Each agency shall make the report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

§ 1.21 Compilation of new records.

Nothing in 5 U.S.C. 552 or this subpart requires that any agency create a new record in order to fulfill a request

for records. However, an agency is required to provide a record in a form or format specified by a requester, if the record is readily reproducible by the agency in the form or format requested. Creation of records may be undertaken voluntarily if the agency determines this action to be in the public interest or the interest of USDA.

§ 1.22 Authentication.

When a request is received for an authenticated copy of a document which the agency determines to make available to the requesting party, the agency shall cause a correct copy to be prepared and sent to the Office of the General Counsel which shall certify the same and cause the seal of the Department to be affixed, except that the Hearing Clerk in the Office of Administrative Law Judges may authenticate copies of documents in the records of the Hearing Clerk and that the Director of the National Appeals Division may authenticate copies of documents in the records of the National Appeals Division.

§ 1.23 Records in formal adjudication proceedings.

Records in formal adjudication proceedings are on file in the Hearing Clerk's office, Office of Administrative Law Judges, U.S. Department of Agriculture, Washington, DC 20250, and shall be made available to the public.

§ 1.24 Preservation of records.

Agencies shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code, and appropriate records disposition authority granted by NARA. Under no circumstances shall records be sent to a Federal Records Center, transferred to the permanent custody of NARA, or destroyed while they are the subject of a pending request, appeal, or civil action under the FOIA.

§ 1.25 Implementing regulations for the Office of the Secretary and the Office of Communications

(a) For the Office of the Secretary and for the Office of Communications, the regulations required by § 1.3 are as follows:

(1) Records available for public inspection and copying may be obtained in Room 536-A, Jamie L. Whitten Federal Building, USDA, Washington, DC 20250 during the hours of 9 a.m. to 5 p.m. by prior appointment;

(2) Any indexes and supplements which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.5(b) will also be available in Room 536-A, Jamie L. Whitten Federal Building, USDA, Washington, DC 20250 during the hours of 9 a.m. to 5 p.m.;

(3) The person authorized to receive Freedom of Information Act requests and to determine whether to grant or deny such requests is the FOIA Officer, Office of Communications, USDA, Washington, DC 20250;

(4) The official authorized to receive appeals from denials of FOIA requests and to determine whether to grant or deny such appeals is the Director of Communications, Office of Communications, USDA, Washington, DC 20250.

(b) The organization and functions of the Office of the Secretary and the Office of Communications is as follows:

(1) The Office of the Secretary provides the overall policy guidance and direction of the activities of the Department of Agriculture. Department-wide policy statements and announcements are made from this office.

(2) The Office of the Secretary consists of the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and other staff members.

(3) In the absence of the Secretary and the Deputy Secretary, responsibility for the operation of the Department of Agriculture is as delegated at part 2, subpart A of this title.

(4) The Office of Communications provides policy direction, review, and coordination of public information programs of the Department of Agriculture. The Office of Communications has responsibility for maintaining the flow of information to the mass communications media, various constituency groups, and the general public.

(5) The Office of Communications is headed by the Director of Communications. In the Director's absence, the Office of Communications is headed by the Deputy Director.

Done at Washington, DC this 13 day of April, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98-10432 Filed 5-1-98; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 94-115-1]

RIN 0579-AA70

Veterinary Diagnostic Services User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise user fees for veterinary diagnostic services to reflect changes in operating costs and changes in calculations. In addition, we are proposing to add new user fees to cover the costs of additional veterinary diagnostic services. In addition, we propose to reorganize these user fees by type of service and location where the service is provided, and to group reagents into categories. We are also proposing to revise user fees for the use of animal import centers operated by the Animal and Plant Health Inspection Service, and to add new user fees for new spaces. These actions are necessary to ensure that we recover our costs. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes us to set and collect these user fees.

DATES: Consideration will be given only to comments received on or before July 6, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket 94-115-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 94-115-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information concerning services provided for live animals and germ plasm, contact Dr. Gary S. Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231; (301) 734-3294.

For information concerning services provided for veterinary diagnostics, contact Dr. James E. Pearson, Director,

National Veterinary Services Laboratories, VS, APHIS, P.O. Box 844, Ames, IA 50010; (515) 239-8266.

For information concerning program operations for Veterinary Services, contact Ms. Louise Lothery, Director, Veterinary Services Resource Management Staff, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737-1231; (301) 734-7517.

For information concerning rate development of the proposed user fees, contact Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737-1232; (301) 734-8351.

SUPPLEMENTARY INFORMATION:

Background

User Fees Authorized Under the Farm Bill

The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the Farm Bill), authorizes the Secretary to prescribe regulations and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance (sec. 2509(c)(1) of the Farm Bill). The Farm Bill also authorizes the Secretary of Agriculture, among other things, to prescribe regulations and collect fees to recover the costs of veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States (sec. 2509(c)(2) of the Farm Bill).

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import-and-export-related services for live animals and birds and animal products are contained in 9 CFR part 130 (the regulations).

Regulations Proposed in This Document

We propose to revise the user fees for certain veterinary diagnostic services, including certain diagnostic tests, reagents, and other veterinary diagnostic materials and services. Operating costs have increased since these user fees were established in a final rule published in the *Federal Register* on September 1, 1993 (58 FR 38954-38961, Docket No. 91-021-5). Therefore, the user fees need to be revised to reflect the increases. Additional reviews of these user fees show that some of the original estimates did not include enough direct labor hours and that the direct labor

calculations need to be revised to accurately reflect the costs of providing services. In reexamining our user fees, we believe that a comprehensive overhaul of the Veterinary Diagnostics user fees would more accurately recover our costs and provide clarity and ease of use for customers needing to look up user fees for our tests and other services. As discussed below, this overhaul would include reorganizing the presentation of user fees in the regulations, grouping reagents into simpler categories, implementing new user fees, and revising all of the existing Veterinary Diagnostic user fees.

The proposed user fees increase by varying amounts based on how close the existing user fee is to our actual costs. Some user fees required modest adjustments while others required large increases. These proposed changes are based on recalculating user fees to include adequate direct labor hours and use average laboratory employee salaries to calculate direct labor costs. The amount of the change proposed varies based on individual tests and services; therefore, the amount of the changes varies. Overall, we do not expect these proposed changes to significantly impact users. In most cases, the historical volume, associated with the tests and services for which we propose significant increases, is small.

In addition, we are proposing to add new user fees for other veterinary diagnostic services we provide. We continue to provide new services as required. We need to add user fees for services that we have added since the veterinary diagnostic user fees were first established. In addition, we believe that we need to add user fees for specific services which may be required or requested and for which there are currently no specific user fees. These new user fees are discussed in detail later in this document.

We are proposing two changes in the organization of user fees for veterinary diagnostics. First, we would reorganize the user fees by type of service and location where the service is provided. Second, we would group diagnostic reagents into categories. These changes are discussed in detail later in this document.

Additionally, we propose to revise user fees for the use of APHIS-operated animal import centers, to cover the costs for birds or poultry requiring nonstandard housing, care, or handling and to more accurately reflect the space utilization. For example, expenses for offices and hallways would be included in the overhead portion of the user fee calculation, instead of the user fee portion available to the animals, which

is higher than the overhead portion of the user fees. We propose to add new user fees for the use of new spaces at the APHIS animal import center in Newburgh, NY. We propose to revise the user fees specified in § 130.8 for import compliance assistance and release from agricultural hold to more accurately reflect the cost of the services we provide. We also propose miscellaneous changes to the user fee regulations to eliminate duplication, add clarity, and incorporate provisions of the Debt Collection Improvement Act of 1996.

Veterinary Diagnostics

Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells and, if so, to identify those organisms or agents. Services in this category include: (1) Performing laboratory tests and providing diagnostic reagents and other veterinary diagnostic materials and services at the National Veterinary Services Laboratories' (NVSL) Foreign Animal Disease Diagnostic Laboratory (FADDL) at Greenport, NY, and (2) performing identification, serology, and pathobiology tests and providing veterinary diagnostic reagents and other materials and services at NVSL at Ames, IA. Diagnostic reagents are biological materials used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction. We also consider sterilization by gamma radiation to be a veterinary diagnostics service. Other miscellaneous veterinary diagnostic services include, but are not limited to, providing check tests, test kits, manuals, standard operating procedures, and training.

We have reviewed the user fees that we charge for these services and have determined that we need to revise the amount of these user fees to reflect changes in costs and to recover the full cost of providing veterinary diagnostic services. We are also proposing to add new user fees to cover all veterinary diagnostic services. All of the proposed veterinary diagnostic user fees are listed below by type of service.

Currently, the Veterinary Diagnostic user fees are contained in §§ 130.14-130.18 of the regulations. The regulations separately list user fees for tests at NVSL and FADDL; reference assistance tests at NVSL; diagnostic reagents at NVSL; diagnostic reagents, slide sets, and tissue sets at NVSL and FADDL; and sterilization by gamma radiation. The proposed regrouping of tests into identification, serology, or pathobiology tests and the regrouping of

reagents by bacteriology or virology type will be much easier for customers and the laboratories to reference. Due to the differences between requirements for tests being performed at NVSL and FADDL, we believe that user fees for these tests and services should be listed by location. In this proposal, all FADDL fees are listed in a single section (9 CFR 130.14). In addition, reference assistance tests are tests performed at NVSL, and the regulations currently unnecessarily duplicate these user fees. Therefore, we believe that all NVSL tests should be listed together.

In order to clarify, simplify, and eliminate redundancy, we are proposing to reorganize the veterinary diagnostic user fees into the following sections. Proposed § 130.14 would include user fees for laboratory tests, reagents, and other veterinary diagnostics services we perform at FADDL. Proposed § 130.15 would include user fees for laboratory tests we perform to isolate and identify pathogenic agents at the Diagnostic Bacteriology Laboratory (DBL) and at the Diagnostic Virology Laboratory (DVL) at NVSL. Proposed § 130.16 would include user fees for laboratory tests we perform as part of serology testing at DBL and DVL at NVSL. Proposed § 130.17 would include user fees for toxicological and other tests performed by the Pathobiology Laboratory (PL) at NVSL. Proposed § 130.18 would include user fees for diagnostic reagents we provide from NVSL. Proposed § 130.19 would include user fees for other veterinary diagnostics services we provide at NVSL (e.g., check tests, test kits, manuals, standard operating procedures, and training).

Currently, § 130.49 specifies exemptions to user fees for veterinary diagnostic services listed in §§ 130.14 through 130.18. These exemptions would still apply to all of our veterinary diagnostic services. Therefore, we propose to revise § 130.49 to specify that the exemptions apply to veterinary diagnostic services listed in §§ 130.14 through 130.19.

Components of Proposed User Fees

The user fees proposed in this document are based on fiscal year 1998 salaries, more accurate estimates of the average number of direct labor hours required to provide each service, and average salaries for the laboratory where the work is performed. The proposed user fees have been calculated to recover the full costs for tests, diagnostic reagents, and other veterinary diagnostic services. These costs include direct labor, administrative support, premium costs (if any), Agency overhead costs, and Departmental

charges. These components are described below.

We propose to charge a specific dollar amount for each service we provide; that is, each test we perform or each diagnostic reagent or other veterinary diagnostic service we provide. We have attempted to minimize the cost of our services, thereby keeping APHIS user fees at the lowest possible level. If, in the future, a user requests a test, diagnostic reagent, or other veterinary diagnostic material or service that is not on the list, we would charge the proposed hourly user fee for the amount of time required to perform the service, calculated to the nearest quarter of an hour.

Each user fee varies based on the direct labor hours required to perform the test or provide the diagnostic reagent or other veterinary diagnostic material or service. For example, the time spent by laboratory personnel to prepare a sample and conduct and read the test would be part of the direct labor hours for testing a tissue sample for disease-causing organisms. In cases where a test is performed for more than one disease, it may take different amounts of time for each disease. Those times have been averaged to calculate the user fee. We have carefully calculated all of our proposed user fees to correctly reflect the direct labor hours required for each test, reagent, or service. We took into account variations in the time needed to provide a service by determining the average time necessary.

Direct labor costs are the average salary and benefit costs of the laboratory employees performing the service multiplied by the direct labor hours required. Average costs were used to calculate direct labor costs because we have determined that it is more accurate to use the average salary for the laboratory employees to calculate the user fee. Currently, some veterinary diagnostics user fees are based on salary and benefit costs for a specific employee at the laboratory. We have determined that this does not accurately reflect the cost of providing services, because in many cases various employees at different salaries may perform part or all of a test or service. The calculations for these proposed user fees are consistent with the calculations used for the other user fees throughout 9 CFR part 130.

Administrative support costs are incurred at the local level, that is, at the laboratories. They include clerical and administrative activities; direct materials; indirect labor hours; travel and transportation for personnel, supplies, equipment, and other necessary items; training; legal counsel;

general supplies for offices, washrooms, cleaning, etc.; contractual services; grounds maintenance; and utilities. Direct materials include the cost of any materials needed to conduct the test or provide the diagnostic reagent, slide set, tissue set, or service. For example, direct materials for conducting a laboratory test include, but are not limited to, glassware, chemicals, and other supplies necessary to perform the test. These direct materials are included in administrative support costs because they are standard laboratory supplies and not purchased solely for a specific test. Indirect labor hours include supervision of personnel and time spent doing necessary work that is not directly connected with a test, diagnostic reagents, or other veterinary diagnostic material or service, such as equipment repair. Contractual services may include, but are not limited to, guard service and maintenance. Some administrative support items may or may not be contractual, depending on local circumstances. For example, trash pickup may be provided as a utility or a contractual service. However, the costs are all administrative support. Utilities include water, telephone, electricity, natural and propane gas, heating and diesel oil. The costs of administrative support are applied as a percentage of the base direct labor amount. At NVSL, administrative support is 113 percent of direct labor, and, at FADDL, administrative support is 625 percent of direct labor.

Premium costs are expenses that are incurred solely for a specific test or service. For example, certain tests require expensive reagents in addition to the direct labor time and laboratory materials included in administrative support costs. Premium costs required for the proposed flat rate user fees have already been included in the calculations. Any premium costs required for hourly rate user fees would be added to the calculated user fee. For example, the polymerase chain reaction test would be performed for an hourly rate user fee, and any applicable royalties for this test would be added to the calculated hourly rate user fee.

Agency overhead is the pro-rata share, attributable to a particular diagnostic reagent, material, or veterinary diagnostic service, of the management and support costs for all Agency activities at the regional level and above. Also included are the costs of providing budget and accounting services, management support at the headquarters and regional level, including the Administrator's office, and personnel services, public

information services, and liaison with Congress.

Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the U.S. Department of Agriculture. Services the Department provides centrally include the Federal telephone service; mail; National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and Departmental forms. The Department informs APHIS as to how much the agency owes for these services. We have included a pro-rata share of these Departmental charges, as attributed to a particular test, diagnostic reagent, or other veterinary diagnostic material or service, in our user fee calculations.

Rounding

When we first adopted user fees, we determined that it was reasonable that our user fees for veterinary diagnostic services should be rounded up to the nearest quarter. This is necessary to ensure that we collect enough revenue to cover the costs of providing these services. If we were to round down, many user fees would be lower than the cost of the service. As we do not have a reserve fund, there would be no immediate funds for us to draw on to make up the deficiency.

We have considered changing the rounding of user fees from rounding up to the nearest quarter to rounding up to the nearest dollar to make administration less burdensome and to

simplify collections and accounting. We realize that rounding to the next whole dollar would add to the balance of overall user fees collected. The magnitude of this additional amount varies by user fee category, and would vary similarly in fees we intend to propose in the future, if the same technique were used. We would monitor the effects of rounding to the next whole dollar on the balances in the account and propose adjustments in the fees as necessary. We invite comments specifically addressing the advantages and disadvantages of this rounding technique. Such a change in our approach to rounding would be reflected in future APHIS user fee rulemaking.

Calculation of Proposed User Fees

The basic steps in the calculation, for each particular service, are: (1) Calculate direct labor costs by determining the average amount of direct labor required to perform the service and multiply the average direct labor hours by the average salary and benefit costs for laboratory employees; (2) calculate the pro-rata share of administrative support; (3) determine the premium costs (if any); (4) calculate the pro-rata share of Agency overhead and Departmental charges, respectively; (5) add all costs; and (6) round total cost up to the nearest quarter.

The result of these calculations is a user fee that covers the total cost to perform a particular test or provide a particular veterinary diagnostic material or service one time, rounded up to the nearest quarter.

We have individually calculated costs for each veterinary diagnostic test and

service based on the formula shown in Table 1, FY 98 User Fee Calculations.

As is the case with all APHIS user fees, we intend to review, at least annually, the user fees proposed in this document. We will publish any necessary adjustments in the Federal Register.

FADDL Costs Compared to NVSL Costs

Readers may note that our proposed user fees for tests performed at FADDL are higher than our proposed user fees for the same tests performed at NVSL. Both FADDL and NVSL work with infectious and contagious disease agents. However, FADDL, which is isolated from the United States mainland, is designed to work specifically with highly infectious diseases exotic to the United States. Because of this, special biosecurity measures are required at FADDL that are not required at NVSL. As a result, FADDL operating costs are higher than NVSL operating costs. The higher FADDL operating costs are incorporated into the Administrative support costs; in addition to the typical administrative support costs, FADDL, as a high-tech facility requiring special biosecurity measures, generates additional, higher expenses. Primarily, the rent for the facility is significantly higher than for a standard laboratory. In addition, since FADDL must be located on an island, all employees and supplies must be transported by boat to the facility, therefore, high transportation expenses are included. The user fees we are proposing reflect this difference in costs.

TABLE 1.—FY 98 USER FEE CALCULATIONS
[Example using one hour of direct labor]

User fee component	Laboratory			
	NVSL			FADDL
	DVL	DBL	PL	
Laboratory average grade and step for salary	GS10-5	GS9-4	GS12-5	GS11-4
Hourly salary rate	\$18.97	\$16.33	\$24.72	\$20.30
+Benefits (calculated as a % of salary)	\$4.15	\$3.58	\$5.41	\$4.44
= Average laboratory salary and benefits	\$23.12	\$19.91	\$30.13	\$24.74
x Direct labor time (in hours)	1	1	1	1
= Direct labor costs (salary and benefits)	\$23.12	\$19.91	\$30.13	\$24.74
+ Administrative support costs ¹ (113% of direct labor at NVSL, 625% of direct labor at FADDL)	\$26.13	\$22.50	\$34.05	\$154.63
+ Premium costs (if any)	\$0.00	\$0.00	\$0.00	\$0.00
Subtotal 1	\$49.25	\$42.21	\$64.18	\$179.37
+ Agency overhead (16.15% of subtotal 1)	\$7.95	\$6.85	\$10.37	\$28.97
Subtotal 2	\$57.20	\$49.26	\$74.55	\$208.34
+ Departmental charges (5.55% of subtotal 2)	\$3.17	\$2.73	\$4.14	\$11.46

TABLE 1.—FY 98 USER FEE CALCULATIONS—Continued
[Example using one hour of direct labor]

User fee component	Laboratory			
	NVSL			FADDL
	DVL	DBL	PL	
Subtotal 3 ²	\$60.37	\$51.99	\$78.69	\$219.80
+ Rounding up to the nearest \$0.25	\$0.13	\$0.01	\$0.06	\$0.20
User fee	\$60.50	\$52.00	\$78.75	\$220.00

¹ For every \$1 incurred in direct labor at NVSL, another \$1.13 is incurred in administrative support costs. For every \$1 incurred in direct labor at FADDL, another \$6.25 is incurred in administrative support costs.

² If the total direct labor time used produced more than one unit, then Subtotal 3 would be divided by the total number of units produced at this point. For example, when diagnostic reagents are produced, more than one unit of the reagent is produced in a batch, i.e., it takes approximately 54 hours to produce a batch of 200 individual 1 ml units of glanders CF antigen. Therefore, the subtotal would be divided by 200 to estimate the cost for a 1 ml unit.

Discounts

Currently, in §§ 130.14, 130.15, and 130.16 we discount user fees for the second and subsequent tests with multiple antigens performed on the same submission at FADDL and NVSL for the following tests: Complement fixation, hemagglutination inhibition, and virus neutralization. For example, in §§ 130.14 and 130.16, the user fee for a complement fixation test at NVSL is \$9.00 for the first test performed on a sample and \$2.00, or \$1.80 (20 percent of \$9.00) rounded up to the nearest quarter of a dollar, for the second and each subsequent complement fixation test on the same sample. As explained below, we are proposing to revise these discounts by (1) eliminating the discounts for tests performed at FADDL, (2) eliminating the discounts when the tests are performed for certain diseases, and (3) revising the way the discounts are applied. In addition, we propose to add discounts for several tests.

We have reviewed the costs for tests at FADDL that are currently listed in § 130.15 and have determined that, due to differences in workload, each subsequent test performed on a sample at FADDL costs the same as the first test. The discounted user fees have not recovered the full costs for tests performed at FADDL, and we propose to eliminate discounts at FADDL that are currently listed in § 130.15.

We have reviewed the costs for tests at NVSL (other than FADDL) that are currently listed in §§ 130.14 and 130.16 and have determined that the current discounts do not recover the full costs of performing the tests. For example, testing related to equine piroplasmiasis, bovine plasmosis, dourine, and glanders require monoclonal antibodies that are expensive to produce. Because it costs as much to do each subsequent test, we do not recover our actual costs when we

discount tests for these diseases. In addition, a certain amount of time and effort is required to prepare reagents and appropriate controls to conduct the first 10 of any of the other tests for which discounts are offered in §§ 130.14 and 130.16. Once the reagents and controls have been prepared for the first 10 tests, less time and effort is necessary to test additional samples and the costs are lower for each additional test. Because we discount the second and additional tests, the discounted user fees do not cover our actual costs to perform these tests. Therefore, we propose to eliminate the discount for testing related to equine piroplasmiasis, bovine plasmosis, dourine, and glanders, and to revise the discounts for the other tests to apply to the 11th and subsequent tests of the same type on the same sample. The discounted user fee for the 11th and subsequent tests would be 20 percent of the proposed user fee for each subsequent test on the same submission by the same submitter for the same test and antigen. For example, the user fee for the fluorescent antibody test is \$9.75, and the discounted user fee would be \$2.00, or \$1.95 (20 percent of \$9.75) rounded up to the nearest quarter of a dollar.

We have determined that several additional tests performed at NVSL may be appropriate for discounts. Therefore, in proposed §§ 130.15(a) and 130.16 we propose to add discounts for fluorescent antibody, indirect fluorescent antibody, and peroxidase linked antibody tests. The discounted user fee for the 11th and subsequent tests would be 20 percent of the proposed user fee for each subsequent test on the same submission by the same submitter for the same test and antigen.

Hourly Rate Veterinary Diagnostic User Fees

We propose to add an hourly rate user fee for FADDL and NVSL to §§ 130.14(c) and 130.19, respectively. These hourly rate user fees would be used for services that do not have an identified flat rate user fee (for example, tests and reagents that are not available now and those services whose costs would be more accurately represented by an hourly rate user fee instead of a flat rate). For example, a per slide flat rate user fee for a polymerase chain reaction test would not take into account the differences in the time required based on the number of slides. Using an hourly rate user fee for the polymerase chain reaction test would more accurately reflect the time required to perform the test. Therefore, the hourly rate user fee would be charged.

The hourly rate user fees would be based on the actual time required to render the service calculated to the nearest quarter of an hour. Any applicable premium costs for hourly rate user fees would be added to the calculated user fee. For example, the polymerase chain reaction test would be performed for an hourly rate user fee and any applicable royalties.

In addition, we propose to remove the current flat rate user fee in §§ 130.14, 130.15, and 130.16 for histopathology and apply the hourly rate user fee to histopathology tests. We believe that the hourly rate user fee would provide a more accurate user fee based on the amount of time it takes to perform the test versus the flat rate user fee based on the number of slides that are tested. We believe that this change to an hourly rate user fee would allow for economies of scale and therefore, lower charges for tests requiring multiple slides.

Restructured CFR Sections

For clarity, simplicity, and ease of use, we are proposing to reorganize the veterinary diagnostic user fees in the regulations. Currently, the regulations list a separate user fee for each veterinary diagnostic test, reagent, and service. These user fees are currently grouped in the following manner: Tests related to the importation or exportation of animals or birds at NVSL or FADDL (§§ 130.14 and 130.15); reference assistance testing for a veterinarian, State animal health official, or university to establish or confirm a diagnosis (§ 130.16); reagents, slide sets, and tissue sets at NVSL or FADDL (§ 130.17); and sterilization by gamma radiation (§ 130.18).

We are proposing to revise the veterinary diagnostic user fee sections to group the user fees based on the type of service and the location where the service is provided. Currently, some of the veterinary diagnostic user fees are grouped by type of service and location. We propose to group all of the veterinary diagnostic user fees first by location and second by type of test or service.

We believe that we no longer need to separately distinguish reference assistance testing as is currently done in § 130.16 because these tests can be performed for reasons other than to establish or confirm a diagnosis for a veterinarian, State animal health official, or university. Regardless of the

reason APHIS conducts the test, the user fee would be the same. Therefore, we no longer need to duplicate these user fees in a separate section for reference assistance testing. User fees for bacterial identification tests and toxicology tests, which are currently listed only as reference assistance tests, would be incorporated into proposed §§ 130.15 and 130.17, respectively. Because we would no longer separate reference assistance testing, we also propose to remove the definition for reference assistance testing.

As explained earlier, there are inherent differences between work that may be performed at FADDL and work that may be performed at NVSL or other authorized import sites (for example, handling foreign diseases). Therefore, we propose to group all FADDL user fees together. Currently, FADDL user fees are included in §§ 130.15, 130.16, 130.17, and 130.18. We propose to incorporate all FADDL user fees into a new § 130.14. The FADDL user fees would be grouped by reagents, tests, and other veterinary diagnostic services.

Currently, all NVSL user fees are listed in §§ 130.14, 130.16, and 130.17. We propose to group all NVSL veterinary diagnostic user fees by type of test: Identification tests (proposed § 130.15), serology tests (proposed § 130.16), and other tests (proposed § 130.17). The reagents would also be grouped by the type of reagent: Bacteriology and virology (proposed § 130.18). Within these reagent groups,

we would change the reagent user fees from the current user fee for each individual reagent to a user fee for each category of reagent. These reagent categories are determined by the composition of the reagent and the application for the reagent. Finally, we propose to group the remaining other veterinary diagnostic services together (proposed § 130.19).

Comparison of Proposed Veterinary Diagnostic User Fees With Current User Fees

The following comparison tables show the proposed changes from the current user fees, including the change in the dollar amount and the percentage change. When we proposed a new name for a user fee, the table lists the current name for comparison purposes. In addition, the reagent comparison tables list the specific current reagents that are combined into the proposed reagent categories.

FADDL Reagent User Fees

Table 2 shows the user fees proposed in § 130.14(a) for FADDL reagents. We propose to implement three new user fees for FADDL reagents. In addition, we propose to move nine user fees for FADDL reagents that are currently listed in § 130.17(b) of the regulations into § 130.14(a). These nine reagents would be grouped into seven reagent categories. All of these user fees would increase.

Table 2. User Fees for FADDL Reagents (Proposed § 130.14(a))

Proposed reagent	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Bovine antiserum, any agent	\$80.00	1 ml			
(was Bovine antiserum, any agent)			\$2.50	\$77.50	3100
(was Foot-and-mouth disease anti-VIAA serum)			5.00	75.00	1500
Caprine antiserum, any agent	97.50	1 ml	0		
Cell culture antigen/microorganism	63.75	1 ml			
(was ASF-immunosmophoresis antigen)			60.75	3.00	5
(was FMD virus associated antigen)			36.75	27.00	73
Equine antiserum, any agent	100.50	1 ml	0		
Fluorescent antibody conjugate	120.25	1 ml	48.50	71.75	148
Monoclonal antibody (was Monoclonal antibodies, mouse ascitic fluid)	122.75	1 ml	14.75	108.00	732
Other spp. antiserum, any agent (was Anti-FMD antigen, guinea pig origin)	104.50	1 ml	12.75	91.75	720
Ovine antiserum, any agent	94.25	1 ml	2.00	92.25	4613
Porcine antiserum, any agent (was Swine antiserum, any agent)	81.25	1 ml	2.00	79.25	3963
Rabbit antiserum, any agent	98.50	1 ml	0		

FADDL Veterinary Diagnostic Tests User Fees

Table 3 shows the user fees proposed in § 130.14(b) for FADDL veterinary diagnostic tests. We propose to implement five new user fees for FADDL veterinary diagnostic tests. We propose to move 12 of the user fees currently listed in § 130.15(a) of the regulations into § 130.14(b). On average, most of these user fees would increase by less than 20 percent.

TABLE 3.—USER FEES FOR FADDL VETERINARY DIAGNOSTIC TESTS (PROPOSED § 130.14(b))

Proposed veterinary diagnostic test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Agar gel immunodiffusion	\$14.75	Test	\$13.50	\$1.25	9
Card	8.25	Test	0		
Complement fixation	33.00	Test	30.50	2.50	8
Direct immunofluorescent antibody	11.00	Test	9.50	1.50	16
Enzyme linked immunosorbent assay	12.75	Test	11.00	1.75	16
Fluorescent antibody neutralization (hog cholera)	96.00	Test	22.00	74.00	336
Hemagglutination inhibition	27.75	Test	0		
Immunoperoxidase	18.25	Test	0		
Indirect fluorescent antibody	23.25	Test	21.50	1.75	8
In-vitro safety	299.50	Test	0		
In-vivo safety	4,345.75	Test	4,177.00	168.75	4
Latex agglutination	11.00	Test	9.25	1.75	19
Tube agglutination	14.00	Test	0		
Virus isolation in embryonated eggs	176.00	Test	163.75	12.25	7
Virus isolation (oesophageal/pharyngeal)	88.25	Test	80.00	8.25	10
Virus isolation, other	84.50	Test	77.75	6.75	9
Virus neutralization	25.75	Test	22.00	3.75	17

FADDL Other Veterinary Diagnostics

Table 4 shows the user fees proposed in § 130.14(c) for other veterinary diagnostics provided at FADDL. We propose to implement new user fees for three tests and a new hourly user fee for other FADDL veterinary diagnostics for which there are no identified flat rate user fees or for which an hourly user fee is more appropriate. In addition, we propose to move four user fees currently listed in §§ 130.17(a) and (b) and 130.18 of the regulations into § 130.14(c). On average, these user fees would increase between 20 and 35 percent.

TABLE 4.—USER FEES FOR FADDL OTHER VETERINARY DIAGNOSTICS (PROPOSED § 130.14(c))

Other veterinary diagnostics	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Bacterial isolation	\$55.00	Test	0		
Hourly user fee services	220.00	Hour	0		
	55.00	Quarter Hour	0		
Infected cells on chamber slides or plates (was ASF—slide set for direct fluorescent antibody test)	31.00	Slide	23.00	8.00	35
Reference animal tissues for immunohistochemistry (was ASF and Hog Cholera tissue sets)	94.25	set	76.75	17.50	23
Sterilization by gamma radiation	530.00	can	427.75	102.25	24
Training (school or technical assistance)	450.00	Per person per day	0		
Virus Titration	55.00	Test	0		

Bacteriology Isolation and/or Identification Tests

Table 5 shows the user fees proposed in § 130.15(a) for bacteriology isolation and/or identification tests. We propose to implement 19 new user fees for bacteriology isolation and/or identification tests. In addition, we propose to move seven user fees that are currently listed in § 130.16(a) of the regulations into § 130.15(a). On average, these user fees would increase by less than 10 percent.

TABLE 5.—USER FEES FOR BACTERIOLOGY ISOLATION AND IDENTIFICATION TESTS (PROPOSED § 130.15(a))

Proposed bacteriology isolation or identification test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Bacterial identification, automated (was Bacterial identification/isolation, routine)	\$16.00	Isolate	\$15.00	\$1.00	7
Bacterial identification, non-automated	61.25	Isolate	0		
Bacterial isolation (was Bacterial identification/isolation, routine)	16.00	Sample	15.00	1.00	7
Bacterial serotyping, all other	30.75	Isolate	0		
Bacterial serotyping, Pasteurella multocida	7.50	Isolate	0		
Bacterial serotyping, Salmonella (was Salmonella serotyping)	21.25	Isolate	20.00	1.25	6
Bacterial toxin typing	91.50	Isolate	0		
Bacteriology requiring special characterization	27.00	Test	25.00	2.00	8
DNA fingerprinting	36.50	Test	0		

TABLE 5.—USER FEES FOR BACTERIOLOGY ISOLATION AND IDENTIFICATION TESTS (PROPOSED § 130.15(a))—Continued

Proposed bacteriology isolation or identification test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
DNA probe	29.50	Test	0		
Fluorescent antibody	9.75	Test	0		
Leptospira culturing (was Leptospira cultures)	27.00	Sample	25.00	2.00	8
Leptospira serotyping	80.50	Isolate	75.00	5.50	7
Mycobacterium avian serotyping	157.50	Isolate	0		
Mycobacterium identification (biochemicals)	63.25	Isolate	0		
Mycobacterium identification (gas chromatography)	26.50	Procedure	0		
Mycobacterium isolation, animal inoculations	520.50	Submission	0		
Mycobacterium isolation, all other	105.50	Submission	0		
Mycobacterium paratuberculosis isolation	26.50	Submission	0		
Mycology culture identification	52.75	Isolate	0		
Mycology/fungus culture or isolation	26.50	Sample	0		
Mycoplasma identification	26.25	Isolate	0		
Mycoplasma isolation	26.25	Sample	0		
Phage typing, Salmonella enteritidis (was Phage typing)	10.75	Isolate	10.00	0.75	8
Phage typing, all other	26.50	Isolate	0		
Plasmid typing	26.50	Isolate	25.00	1.50	6
Warburg	316.50	Isolate	0		

Virology Identification Tests

Table 6 shows the user fees proposed in § 130.15(b) for virology identification tests. We propose to implement a new user fee for virology identification tests. In addition, we propose to move two user fees that are currently listed in § 130.16(a) of the regulations into § 130.15(b). On average, these user fees would increase by less than 10 percent.

TABLE 6.—USER FEES FOR VIROLOGY IDENTIFICATION TESTS (PROPOSED § 130.15(b))

Proposed virology identification test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Fluorescent antibody tissue section	\$18.25	Test	0		
Virus isolation (except for Newcastle disease virus)	31.50	Test	29.75	1.75	6
Virus isolation for Newcastle disease virus	15.25	Test	14.00	1.25	9

Bacteriology Serology Tests

Table 7 shows the user fees proposed in § 130.16(a) for bacteriology serology tests. We propose to implement seven new user fees for bacteriology serology tests. In addition, we propose to move 11 user fees that are currently listed in § 130.14(a) of the regulations into § 130.16(a). On average, most of these user fees would increase by less than 15 percent.

TABLE 7.—USER FEES FOR BACTERIOLOGY SEROLOGY TESTS (PROPOSED § 130.16(a))

Proposed bacteriology serology test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Brucella milk ELISA	\$15.75	Test	0		
Brucella ring (BRT)	10.50	Test	0		
Brucella ring, heat inactivated (HIRT)	10.50	Test	0		
Brucella ring, serial (serial BRT)	15.75	Test	0		
Buffered acidified plate antigen presumptive	4.00	Test	3.50	0.50	14.29
Card	2.00	Test	2.00	0.00	0
Complement fixation	9.00	Test	9.00	0.00	0
Enzyme linked immunosorbent assay, all other	4.75	Test	4.75	0.00	0
Enzyme linked immunosorbent assay for dourine, glanders, or piroplasmosis	9.00	Test	4.75	4.25	89
Indirect fluorescent antibody	9.75	Test	9.00	0.75	8
Mercaptoethanol	4.00	Test	3.50	0.50	14
Microscopic agglutination—includes up to 5 serovars	11.00	Sample	10.00	1.00	10
Mycology/fungus serology	10.50	Test	0		
Particle concentration fluorescent immuno assay (PCFIA)	18.25	Test	0		
Plate	4.00	Test	3.50	0.50	14
Rapid automated presumptive	4.25	Test	0		
Rivanol	4.00	Test	3.75	0.25	7
Tube agglutination	4.00	Test	3.50	0.50	14

Virology Serology Tests

Table 8 shows the user fees proposed in § 130.16(b) for virology serology tests.

We propose to implement two new user fees for virology serology tests. In addition, we propose to move eight user fees that are currently listed in § 130.14(a) of the regulations into § 130.16(b). On average, these user fees would increase by less than 10 percent.

TABLE 8.—USER FEES FOR VIROLOGY SEROLOGY TESTS (PROPOSED § 130.16(b))

Proposed virology serology test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Agar gel immunodiffusion	\$5.00	Test	\$4.75	\$0.25	5
Complement fixation	9.00	Test	9.00	0.00	0
Enzyme linked immunosorbent assay	4.75	Test	4.75	0.00	0
Hemagglutination inhibition	7.50	Test	7.50	0.00	0
Indirect fluorescent antibody	9.75	Test	9.00	0.75	8
Latex agglutination	5.00	Test	4.75	0.25	5
Peroxidase linked antibody	9.75	Test	0		
Plaque reduction neutralization (was Plaque neutralization)	7.75	Test	7.50	0.25	3
Rabies fluorescent antibody neutralization	26.50	Test	0		
Virus neutralization	7.75	Test	7.50	0.25	3

Pathobiology Tests

Table 9 shows the user fees proposed in § 130.17 for pathobiology tests. We

propose to implement 23 new user fees for pathobiology tests. In addition, we propose to move 11 user fees that are currently listed in §§ 130.14(a) and 130.16(a) of the regulations into § 130.17. On average, most of these user fees would increase between 5 and 15 percent.

TABLE 9.—USER FEES FOR PATHOBIOLOGY LABORATORY TESTS (PROPOSED § 130.17(a))

Proposed pathobiology laboratory test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Aflatoxin quantitation	\$20.50	Test	0		
Aflatoxin screen	11.25	Test	0		
Agar gel immunodiffusion spp. identification	6.25	Test	0		
Antibiotic (bioautography) quantitation	25.00	Test	0		
Antibiotic (bioautography) screen	50.00	Test	0		
Antibiotic inhibition	25.25	Test	0		
Arsenic	6.75	Test	0		
Ergot alkaloid screen	25.25	Test	0		
Ergot alkaloid confirmation	33.00	Test	0		
Feed microscopy	25.25	Test	0		
Fumonisin only	20.50	Test	0		
Gossypol	37.75	Test	0		
Mercury	56.00	Test	0		
Metals screen (was ICP metals—screen)	29.75	Test	26.25	3.50	13
Metals single element confirmation (was ICP metals—confirmation) ..	6.75	Test	6.00	0.75	13
Mycotoxin: aflatoxin-liver	82.25	Test	0		
Mycotoxin screen	34.00	Test	30.75	3.25	11
Nitrate/nitrite	25.00	Test	0		
Organic compound confirmation (was GC/MS organic compound—confirmation) ..	34.00	Test	31.00	3.00	10
Organic compound screen (was GC/MS organic compound—screen) ..	114.75	Test	106.50	8.25	8
Parasitology	19.25	Test	17.00	2.25	13
Pesticide quantitation	51.25	Test	47.50	3.75	8
Pesticide screen	38.00	Test	34.25	3.75	11
pH test	10.00	Test	0		
Plate cylinder	37.75	Test	0		
Selenium	33.25	Test	30.50	2.75	9
Silicate/carbonate disinfectant	25.00	Test	0		
Temperature disks	50.25	Test	0		
Toxicant quantitation, other	42.25	Test	39.75	2.50	6
Toxicant screen, other	25.00	Test	39.75	-14.75	-37
Vomitoxin only	20.75	Test	0		
Water activity	12.50	Test	0		
Zearaleone quantitation	20.50	Test	0		
Zearaleone screen	11.25	Test	0		

Diagnostic Bacteriology Reagents

Table 10 shows the user fees proposed in § 130.18(a) for diagnostic bacteriology reagents. We propose to implement 33 new user fees for reagent categories. In addition, we propose to move 11 user fees that are currently listed in

§ 130.17(a) of the regulations into § 130.18(a). All of these proposed reagent categories include changes in the amount of the user fee.

TABLE 10.—USER FEES FOR DIAGNOSTIC BACTERIOLOGY REAGENTS (PROPOSED § 130.18(a))

Proposed reagent	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Anaplasma card test antigen	\$34.00	2 ml	0		
Anaplasma card test kit without antigen	105.50	Kit	0		
Anaplasma CF antigen	17.00	2 ml	0		
Anaplasma stablate	67.25	4.5 ml	0		
Avian origin bacterial antisera, mycoplasma	11.50	1 ml	0		
Avian origin bacterial antisera, all other (was Pasteurella antiserum)	17.75	1 ml	10.00	7.75	78
Bacterial agglutinating antigens other than brucella and salmonella pullorum	30.50	5 ml	0		
Bacterial conjugates (was Lepto FA conjugate)	36.00	1 ml	19.25	16.75	87
Bacterial disease CF antigens, all other (was Brucella ovis antigen)	8.50	1 ml	2.25/1 ml (5.50/2 ml)	6.25	278
Bacterial ELISA antigens	9.50	1 ml	0		
Bacterial or protozoal antisera, all other	7.25	1 ml	0		
Bacterial reagent cultures (was Leptospira and Pasteurella antigens)	21.25	Culture	20.00	1.25	-125
Bacterial reference culture	63.25	Culture	0		
Bacteriophage reference culture	63.25	Culture	0		
Bovine serum factor	1.25	2 ml	0		
Brucella abortus CF antigen	34.00	60 ml	0		
Brucella agglutination antigens, all other	34.00	60 ml	0		
Brucella buffered plate antigen	50.00	60 ml	0		
Brucella canis tube antigen (was Brucella canis antigen)	30.50	25 ml	103.13/25 ml (8.25/2 ml)	-72.63	-70
Brucella card test antigen (packaged)	19.50	Package	0		
Brucella card test kit without antigen	70.25	Kit	0		
Brucella cells	5.25	Gram	0		
Brucella cells, dried	2.00	Pellet	0		
Brucella ring test antigen	72.75	60 ml	0		
Brucella rivanol solution	8.75	60 ml	0		
Dourine CF antigen	17.50	1 ml	0		
Dourine stablate	34.75	4.5 ml	0		
Equine and bovine origin hemoparasitic antisera	21.25	1 ml	0		
Equine negative control CF antigen	171.25	1 ml	0		
Equine origin glanders antiserum	18.25	1 ml	0		
Flazo-orange (was Lepto FA Flazo-orange)	6.25	3 ml	6.00	0.25	4
Glanders CF antigen	17.50	1 ml	0		
Hemoparasitic disease CF antigens, all other	158.25	1 ml	0		
Leptospira transport medium	3.25	10 ml	3.00	0.25	8
Monoclonal antibody	37.50	1 ml	0		
Mycobacterium spp. Old tuberculin (was Johnin OT)	3.75	1 ml	6.125/1 ml (12.25/2 ml)	-2.38	-39
Mycobacterium spp. PPD (was Johnin PPD)	3.25	1 ml	5.38/1 ml (10.75/2 ml)	-2.13	-40
Mycoplasma hemagglutination antigens	105.50	5 ml	0		
Negative control sera	4.00	1 ml	0		
Other spp. antiserum, any	32.75	1 ml	0		
Rabbit origin bacterial antisera (was Leptospira antiserum)	14.25	1 ml	2.25/1 ml (4.50/2 ml)	12.00	533
Salmonella pullorum microagglutination antigen	6.25	5 ml	0		
Stabilates, all other	258.25	4.5 ml	0		

Diagnostic Virology Reagents

Table 11 shows the user fees proposed in § 130.18(b) for diagnostic virology reagents. We propose to implement seven new user fees for reagent categories. In addition, we propose to move 125 user fees that are currently listed in § 130.17(a) of the regulations into § 130.18(b). The individual user fees for these 126 reagents would be reorganized into 12 reagent categories. All of these current user fees for reagents would change.

TABLE 11.—USER FEES FOR DIAGNOSTIC VIROLOGY REAGENTS (PROPOSED § 130.18(b))

Proposed reagent	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Antigen, except avian influenza and chlamydia psittaci antigens, any	\$41.50	2 ml			

TABLE 11.—USER FEES FOR DIAGNOSTIC VIROLOGY REAGENTS (PROPOSED § 130.18(b))—Continued

Proposed reagent	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
(was Avian adenovirus 127, paramyxovirus-2, paramyxovirus-3; and Newcastle disease antigens)			\$39.50	\$2.00	5
(was Contagious ecthyma CF antigen)			14.00/2 ml (7.00/1 ml)	27.50	196
(was Infectious bursal disease antigen)			16.00/2 ml (8.00/1 ml)	25.50	159
Avian antiserum except avian influenza antiserum, any	23.00	2 ml			
(was Avian adenovirus 127, encephalomyelitis, paramyxovirus-2, and paramyxovirus-3; Duck viral enteritis; Infectious bronchitis virus, bursal disease, and laryngotracheitis; Newcastle disease; and Psittacine herpes virus (standard) antisera)			21.75	1.25	6
(was Chlamydia psittaci antiserum)			43.50/2 ml (21.75/1 ml)	-20.50	-47
Avian influenza antigen, any	9.25	2 ml	8.75	0.50	6
Avian influenza antiserum, any	53.75	6 ml	51.00/6 ml	2.75	5
Bovine or ovine serum, any	88.00	2 ml			
(was Bluetongue; Bovine coronavirus, herpes virus type 1, herpes virus type 2, herpes virus type 4, papular stomatitis, parvovirus, respiratory syncytial virus, rotavirus, and viral diarrhea; Epizootic hemorrhagic disease; and Parainfluenza-3 antisera)			83.50	4.50	5
(was Contagious ecthyma antiserum)			5.25/2 ml	82.75	1576
Cell culture	20.00	Flask	0		
Chlamydia psittaci spp. of origin monoclonal antibody panel	47.25	Panel	0		
Conjugate, any	20.25	1 ml			
(was Bluetongue; Bovine coronavirus, herpes virus type 1, herpes virus type 2, herpes virus type 4, papular stomatitis, parvovirus, respiratory syncytial virus, rotavirus, viral diarrhea; Chlamydia psittaci; Contagious ecthyma; Encephalomyocarditis; Epizootic hemorrhagic disease; Hemagglutinating encephalomyelitis; Parainfluenza-3; Porcine adenovirus (AV), parvovirus (PPV), reovirus, and rotavirus; Swine influenza, and Transmissible gastroenteritis conjugates)			19.25	1.00	5
(was Duck viral enteritis conjugate)			31.25	-11.00	-35
(was Equine adenovirus, Equine herpes type 1, and Psittacine herpes virus conjugates)			24.00	-3.75	-16
Diluted positive control serum, any	6.75	2 ml			
(was Encephalomyocarditis; Hemagglutinating encephalomyelitis; Parainfluenza-3; Porcine parvovirus (PPV), and rotavirus; Swine influenza; and Transmissible gastroenteritis positive control sera)			6.25	0.50	8
(was Bovine herpes virus type 1, and type 2, parvovirus, respiratory syncytial virus, and viral diarrhea positive control sera)			4.50	2.25	50
Equine antiserum, any	12.25	2 ml			
(was Equine adenovirus, herpes type 1, herpes type 2, and herpes type 3 antisera)			11.50	0.75	7
(was Equine influenza antiserum)			21.75	-9.50	-44
(was Equine viral arteritis antiserum)			19.30/2 ml (48.25/5 ml)	-7.05	-37
Hog Cholera tissue sets	81.50	Tissue set	76.75	4.75	6.19
Monoclonal antibody	37.50	1 ml	0		
Other spp. antiserum, any	32.75	1 ml	0		
Porcine antiserum, any (was Encephalomyocarditis; Hemagglutinating encephalomyelitis; Porcine adenovirus (AV), parvovirus (PPV), reovirus, and rotavirus; Swine influenza; and Transmissible gastroenteritis antisera)	60.50	2 ml	57.50	3.00	5
Positive control tissues, all	4.25	2 cm ² section	0		
Rabbit origin antisera	14.25	1 ml	0		
Reference virus, any	63.50	0.6 ml	0		

TABLE 11.—USER FEES FOR DIAGNOSTIC VIROLOGY REAGENTS (PROPOSED § 130.18(b))—Continued

Proposed reagent	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Viruses (except reference viruses), chlamydia psittaci agent, or chlamydia psittaci antigen, any. (was Avian encephalomyelitis, paramyxovirus-2, paramyxovirus-3, and reovirus; Bluetongue; Bovine coronavirus, herpes type 1, type 2, and type 4, papular stomatitis, parvovirus, respiratory syncytial, rotavirus, and viral diarrhea; Chlamydia psittaci agent; Contagious ecthyma; Duck viral enteritis; Encephalomyocarditis; Epizootic hemorrhagic disease; Equine adenovirus, herpes type 1, type 2, and type 3, influenza, and viral arteritis; Hemagglutinating encephalomyelitis; Infectious bursal disease; Infectious laryngotracheitis; Newcastle disease; Parainfluenza-3; Porcine adenovirus (AV), parvovirus (PPV), reovirus, and rotavirus; Psittacine herpes; Quail bronchitis; Swine influenza; and Transmissible gastroenteritis viruses).	5.50	0.6 ml	5.25	0.25	5
(was Chlamydia psittaci antigen)			3.15/0.6 ml (5.25/1 ml)	2.35	75
(was Infectious bronchitis virus)			4.50	1.00	22

Other Veterinary Diagnostics

Table 12 shows the user fees proposed in § 130.19 for other veterinary diagnostics. We propose to implement 13 new user fees and a new hourly user fee for other NVSL veterinary diagnostics for which there are no identified flat rate user fees or for which an hourly user fee is more appropriate. In addition, we propose to move a user fee that is currently listed in § 130.8(a) of the regulations into § 130.19.

TABLE 12.—USER FEES FOR OTHER VETERINARY DIAGNOSTICS (PROPOSED § 130.19)

Proposed other veterinary diagnostics services	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Antimicrobial susceptibility test	\$30.50	Isolate	0		
Avian safety test	2701.75	Test	0		
Check tests, anaplasma complement fixation	132.00	Kit	0		
Check tests, culture	88.00	Kit	0		
Check tests, serology, all other	125.75	Kit	0		
Fetal bovine serum safety test (was fetal bovine serum sample verification).	673.50	Verification	666.00	7.50	1
Hourly user fee services	56.00	Hour	56.00	0.00	0
Quarter hour	14.00	Quarter hour	14.00	0.00	0
Minimum	16.50	Minimum	16.50	0.00	0
Manual, Brucellosis complement fixation	13.00	Manual	0		
Manual, Brucellosis culture	52.75	Manual	0		
Manual, Tuberculosis culture (English or Spanish)	79.25	Manual	0		
Manual, Veterinary mycology	105.50	Manual	0		
Manual, Anaplasmosis, Johne's disease, mycoplasma hyopneumonia, piroplasmosis, dourine, or glanders.	21.25	Manual	0		
Manuals or standard operating procedure (SOP), All other	13.25	Manual or SOP copy	0		
Manuals or SOP, per page	2.00	Page	0		
Training (school or technical assistance)	120.00	Per person per day	0		

Definitions (§ 130.1)

We propose to add a definition for *APHIS representative* to the regulations. This term is defined and used throughout subchapter D, which covers the exportation and importation of animals (including poultry) and animal products. Currently, the terms *APHIS animal health technician* and *APHIS veterinarian* are defined in § 130.1. The term *animal health technician* is used in

§ 130.3 in reference to services provided at APHIS animal import centers. The term *APHIS veterinarian* is used in § 130.20 in reference to inspection services provided in conjunction with endorsements of export health certificates. For consistency, we propose to replace the terms *APHIS animal health technician* and *APHIS veterinarian* with *APHIS representative*. The proposed definition would read as

follows: "An individual, including, but not limited to animal health technicians and veterinarians, authorized by the Administrator to perform the services for which the user fees in this part are charged." Because an APHIS representative would cover APHIS animal health technicians and APHIS veterinarians, we propose to remove those definitions.

We propose to revise the definition for *export health certificate*. Currently, the definition specifies that an APHIS veterinarian endorses the export health certificate. In some cases an APHIS representative who is not a veterinarian may be able to endorse an export health certificate. For example, export health certificates for animal products may not require the endorsement of an APHIS veterinarian. Therefore, we propose to change APHIS veterinarian to APHIS representative in the definition for export health certificate. Currently, the definition for export health certificate covers only animals or birds. Based on an importing country's requirements, an export health certificate may be required for animal products, organisms, and vectors as well as animals and birds. Therefore, we propose to expand the definition to read as follows: "An official document that, as required by the importing country, is endorsed by an APHIS representative and states that animals, animal products, organisms, vectors, or birds to be exported from the United States were found to be healthy and free from evidence of communicable diseases and pests."

We propose to add new definitions for *nonstandard care and handling* and *nonstandard housing*. Currently, § 130.2 includes user fees for birds in nonstandard housing or receiving nonstandard care and handling at APHIS animal import centers. Nonstandard housing, care, and handling are defined in § 130.2(b) and (c). For consistency, we propose to move these definitions to § 130.1.

We propose to revise the definition of *pet birds*. Currently, the definition only covers birds that are imported. User fees may apply to pet birds that are exported, as for example, when another country requires an export health certificate for a pet bird. Therefore, we propose to extend the definition to include both importation and exportation. In addition, currently the definition of *pet birds* excludes only ratites. We believe that hatching eggs should also be excluded from consideration as pet birds. Therefore, we propose to add hatching eggs to the exceptions in the definition. The proposed definition would read as follows: Birds, except hatching eggs and ratites, that are imported or exported for the personal pleasure of their individual owners and are not intended for resale.

As discussed above, we believe we no longer need to separately identify reference assistance tests from other veterinary diagnostics tests. Therefore, we propose to remove the definition for *reference assistance testing*.

User Fees for Animal Import Centers (§ 130.2)

Currently, § 130.2 specifies the user fees for animals and birds quarantined in APHIS animal import centers. Currently, § 130.2(a) specifies the applicable user fees. Currently, §§ 130.2(b) through 130.2(e) address nonstandard housing, nonstandard care and handling, nonstandard feed, and reservation fees, respectively. As discussed above under definitions, we propose to move the definitions for nonstandard care, handling, and housing from § 130.2(b) and (c) to § 130.1. We have reviewed these user fees and are proposing several user fee changes and several nonsubstantive changes as described below.

Our review showed that we are not recovering our full costs for quarantining zoo animals in APHIS animal import centers. We have determined that our costs for quarantining zoo animals is equivalent to our costs for quarantining domestic animals. Therefore, we propose to combine the user fees for domestic and zoo animals. The user fees for domestic animals would remain the same; however, the user fee for zoo animals would increase from \$32.25 to \$56.50 per day. In addition, we would revise the list of domestic animals to correct an error by eliminating the word "buffalo" and adding the word "bills". The list currently includes the word "bison" which covers buffalo. Bulls were inadvertently omitted. We propose to remove the separate listing for zoo animals.

Our review showed that we are not recovering our full costs for quarantining large birds or poultry receiving nonstandard care, handling, or housing in APHIS animal import centers. We believe that we need to increase this user fee to recover our costs; however, smaller birds and poultry receiving nonstandard care, handling, or housing in APHIS animal import centers do not cost as much to quarantine. Therefore, we propose separate user fees for birds or poultry requiring nonstandard care, handling, or housing based on the size of the bird or the type of poultry. Birds that are less than or equal to 250 grams, doves, pigeons, and quail would be charged \$3.25 per day. This user fee would be less than the current user fee for birds and poultry. Birds that are between 251 and 1,000 grams, chickens, ducks, grouse, guinea fowl, partridges, pea fowl, and pheasants would be charged \$7.50 per day. This user fee would remain the same for birds and would be less than the current user fee for

poultry. Birds that are more than 1,000 grams, large poultry, and large waterfowl, including, but not limited to, game cocks, geese, swans, and turkeys, would be charged \$14.00 per day. This user fee would be more than the current user fee for birds and poultry. In addition, we propose to move these user fees for nonstandard care, handling, and housing into a separate section (proposed § 130.2(b)) to replace the current sections defining nonstandard housing (§ 130.2(b)) and nonstandard care and handling (§ 130.2(c)).

As a result of these proposed changes, we would redesignate current § 130.2(d) on nonstandard feed as proposed § 130.2(c). We also propose to make nonsubstantive edits to the text.

Currently, § 130.2(e) specifies that a reservation fee paid by the importer under part 93 of this chapter will be applied to the APHIS user fee due for animals or birds quarantined in an animal import center operated by APHIS. Sections 130.2 and 130.3 both list user fees for animals or birds quarantined in animal import centers operated by APHIS. Therefore, § 130.2(e) should apply to the user fees in §§ 130.2 and 130.3. We believe that the reservation fee reference would be more appropriate in proposed § 130.50(b), which addresses associated charges. Therefore, we propose to move § 130.2(e) into proposed § 130.50(b)(1).

User Fees for Exclusive Use of Animal Import Centers (§ 130.3)

We reviewed our user fees for the exclusive use of APHIS animal import centers and have determined that we should change the way we calculate the user fees listed for the buildings in Newburgh, NY, and add a user fee for a new building, also in Newburgh, NY. Currently, the published dimensions represent the outside building dimensions. These measurements include office space, bathrooms, utility, and storage areas. We believe that the costs for those items should be included in the administrative support cost factor. Therefore, we recalculated the dimensions for spaces A and B and have recalculated the user fees based on the proposed dimensions. Space A would be \$43,102.00 per month for 5,396 sq. ft. (503.1 sq. m.), rather than \$47,609.00 per month for 5,904 sq. ft. (248.5 sq. m.). Space B would be \$71,118.50 per month for 8,903 sq. ft. (827.1 sq. m.), rather than \$78,555.00 per month for 9,742 sq. ft. (905 sq. m.). In addition, we propose to add a new, smaller space C at \$7,229.00 per month for 905 sq. ft. (84.1 sq. m.).

User Fees for Services at Privately Operated Import Quarantine Facilities (§ 130.5)

Currently, § 130.5(a) addresses user fees for services at privately operated import quarantine facilities. Currently, § 130.5(b) lists the hourly rate user fees for these services. For consistency with § 130.9, which consolidates in § 130.9(a) the hourly rate user fees and the services to which they apply, we propose to consolidate in § 130.5(a) the hourly rate user fees and the services to which these user fees apply.

User Fees for Other Services (§ 130.8)

Currently, § 130.8 includes a user fee for fetal bovine serum sample verification. Fetal bovine serum sample verification is a veterinary diagnostic service which we provide at NVSL. We propose to add the user fee into proposed § 130.19, as explained above. Therefore, we propose to remove the user fee from § 130.8 to avoid duplication.

Currently, § 130.8 includes user fees for import compliance assistance and release from export agricultural hold. We have reviewed these user fees and determined that the estimates used for the current user fees do not include enough direct labor time for these services. In addition, the services we provide for both of these activities fall into two categories. First, all the information provided by the importer or exporter is complete and correct. In these cases, the processing is straightforward and generally takes less than half an hour to process. Second, the information provided by the importer or exporter is not complete or some other factor requires additional effort. In these cases, more time, on average 3.5 hours, is required, for example, to review the forms, to request more information from the importer/exporter, to research various aspects of the product, organism or vector being imported or exported, or to correspond with NVSL about tests. While our experience shows that most importers and exporters fit the first category, they should not have to subsidize those who fit into the second category. Therefore, we propose to set two user fees for each of these services. The user fee for a simple import compliance assistance or a simple release from agricultural hold would be \$51.25. A simple case would be one that required 2 or less hours of assistance. The user fee for a complicated import compliance assistance or a complicated release from agricultural hold would be \$131.75. A complicated case would be one that

required more than 2 hours of assistance.

Hourly Rate User Fees (§ 130.21)

Currently, § 130.21(a) lists services for which hourly user fees are charged for inspection and supervision services provided within the United States for export animals, birds, and animal products. Currently, § 130.21(b) lists the hourly rate user fees for the services listed in § 130.21(a). For consistency with § 130.9, which consolidates in § 130.9(a) the hourly rate user fees and the services to which they apply, we propose to consolidate in § 130.21(a) the hourly rate user fees and the services to which these user fees apply.

In addition, we are proposing to remove the word "byproducts" from the section heading. The term "byproducts" is generally used to refer to inedible animal products. APHIS inspects and issues export health certificates for both inedible and edible animal products. The term "products" covers both. Therefore, we would change the section heading to "User fees for inspection services provided within the United States for export animals, birds, and animal products."

Payment of User Fees (§ 130.50)

To eliminate duplication throughout part 130 and to add clarity to the requirements in § 130.50, we are proposing miscellaneous nonsubstantive changes throughout § 130.50, including adding paragraph headers. As a result of these changes, § 130.50(a) and (b) would be redesignated as § 130.50(c) and (d), respectively. All of the changes to § 130.50 are described below and summarized in a chart at the end of this section.

We propose to add language in proposed § 130.50(a) to clarify who must pay APHIS user fees. In addition, we would specify throughout part 130 that all of the user fees listed must be paid in accordance with §§ 130.50 and 130.51.

Currently, §§ 130.14(c), 130.15(c), 130.16(c), 130.17(c), and 130.18(b) provide for payment of costs that are incurred due to special mail handling, such as express, overnight, or foreign mailing. If special mail handling is required, all costs incurred must be paid in addition to the user fee for the test or service requiring special mail handling. We believe that this same requirement should apply to the user fees listed throughout part 130. Therefore, we propose to eliminate duplication within §§ 130.14 through 130.18 and expand the special mail handling requirement to all of the user

fees in part 130 by moving it from §§ 130.14(c), 130.15(c), 130.16(c), 130.17(c), and 130.18(b) into proposed § 130.50(b)(2), where it will apply to all user fees in part 130.

Currently, §§ 130.6(b), 130.7(b), 130.8(b), 130.14(b), 130.15(b), 130.16(b), and 130.20(e) provide for reimbursable overtime to be paid in addition to the listed flat rate user fee when we provide services during overtime (i.e., on a Sunday or holiday or at any other time outside the normal tour of duty of the employee). In addition, currently, §§ 130.5, 130.9, and 130.21 provide for the premium rate user fee to be applied in lieu of the hourly rate user fee when we provide services during overtime. All of our user fees were calculated based on direct labor costs for services provided during the normal tour of duty for our employees. When services are provided on overtime, reimbursable overtime or the premium user fee should be charged to recover the full costs of providing flat rate or hourly rate user fee services, respectively.

Therefore, to eliminate duplication and expand these requirements for overtime services to cover all user fees in part 130, we would move the reimbursable overtime requirement from §§ 130.6(b), 130.7(b), 130.8(b), 130.14(b), 130.15(b), 130.16(b), and 130.20(e) into proposed § 130.50(b)(3)(i), where it would apply to all flat rate user fees in part 130. We would also move the premium rate user fee requirement from §§ 130.5, 130.9, and 130.21 into proposed § 130.50(b)(3)(ii), where it would apply to all hourly rate user fees in part 130.

Currently, § 130.50(a) specifies when user fee payments are due. We would redesignate current § 130.50(a) as proposed § 130.50(c) and revise the text to add references to the sections of the regulations that list the user fees for which payment is due, and to clarify and eliminate duplication, as described below.

Currently, §§ 130.50(a)(1) and (a)(2) specify when user fees for animals and birds in an animal import center or privately operated permanent import quarantine facility and animals and birds in a privately operated temporary import quarantine facility, respectively must be paid. All of these user fees must be paid when the animals or birds are released from quarantine. Therefore, we propose to combine §§ 130.50(a)(1) and (a)(2) into proposed § 130.50(c)(1) to eliminate duplication.

Currently, § 130.50(a)(3) contains provisions for the payment of user fees for inspection services, including when these services are covered by a compliance agreement signed in accordance with 9 CFR part 156. We

propose to expand this provision to include inspection services covered by any compliance agreement signed in accordance with title 9, chapter I, of the Code of Federal Regulations, and to put the expanded provision in proposed § 130.50(c)(2).

Currently, § 130.50(a)(4) provides for user fees for export health certificates to be paid when billed or prior to receipt of the endorsed certificate. We would clarify these provisions in proposed § 130.50(c)(3).

Currently, § 130.50(a)(5) specifies provisions for the payment of user fees for veterinary diagnostics. In proposed § 130.50(c)(4) we would clarify when the user fees could be paid when billed versus the requirement to be paid when the veterinary diagnostic service is requested. In addition, we would simplify the text by referring to these services as veterinary diagnostic services rather than listing tests, diagnostic reagents, slide sets, tissue

sets, and sterilization by gamma radiation.

Currently, § 130.50(a)(6) contains provisions for payment of user fees for reference assistance tests. As stated earlier, we believe we no longer need to separately distinguish reference assistance testing from other veterinary diagnostic tests. We propose to include the user fees for these tests with other veterinary diagnostic tests. Therefore, the payment of these user fees would be covered by proposed § 130.50(c)(4), which would allow an additional option for paying user fees for these tests when billed.

Currently, § 130.50(a)(7) through (a)(9) specify provisions for the payment of user fees for live animals presented for importation at a port of entry, inspections and permit services, and hourly rate user fees, respectively. We would combine these provisions into proposed § 130.50(c)(5) and revise the payment options for the user fees specified in § 130.8 to include the

option for payment when billed. In addition, we would edit the text to clarify that the user fees could be paid when billed versus the requirement to be paid when the service is provided.

In addition, we propose to combine §§ 130.50(b) and (c) into proposed § 130.50(d). Currently, § 130.50(b) identifies acceptable payment methods. Currently, § 130.50(c) specifies that payment must be for the exact amount due. We propose to combine these provisions to specify that payment for the exact amount due must be made by one of the acceptable methods. In addition, we propose to revise the cash payment provision currently in § 130.50(b)(4) to incorporate the provision currently specified in § 130.51(a)(4) that cash payments would be accepted only during normal business hours.

The following table summarizes all of these changes, listed in order for the proposed sections in § 130.50.

Proposed location	Requirement	Action
§ 130.50(a)	Any person for whom a service is performed and the person requesting the service would be jointly and severally liable for the payment of APHIS user fees.	Clarify by adding language from the Farm Bill.
§ 130.50(b)(1)	Reservation fees would be applied to the APHIS user fees specified in §§ 130.2 and 130.3.	Move from § 130.2(a) to expand the applicability to all relevant user fees.
§ 130.50(b)(2)	All costs incurred for special mail handling would be paid by the user, in addition to the user fee for the service.	Move from §§ 130.14(c), 130.15(c), 130.16(c), 130.17(c), 130.17(c), and 130.18(b) to eliminate duplication in these sections and to expand the applicability to all user fees in 9 CFR part 130.
§ 130.50(b)(3)(i)	Reimbursable overtime would be paid in addition to the listed flat rate user fee when we provide services during overtime.	Move from §§ 130.6(b), 130.7(b), 130.8(b), 130.14(b), 130.15(b), 130.16(b), and 130.20(e) to eliminate duplication and expand the applicability to all flat rate user fees in 9 CFR part 130.
§ 130.50(b)(3)(ii)	Premium rate user fees would be applied in lieu of the hourly rate user fee when we provide services during overtime.	Move from §§ 130.5(c), 130.9(b), and 130.21(c) to eliminate duplication and expand the applicability to all hourly rate user fees in 9 CFR part 130.
§ 130.50(c)(1)	User fees for animal and bird quarantines and related tests must be paid prior to their release from quarantine.	Combine § 130.50(a)(1) and (a)(2) to eliminate duplication and move into proposed § 130.50(c). In addition, add section references for user fees.
§ 130.50(c)(2)	User fees for supervision and inspection services for export animals and animal products must be paid when billed, or as specified in a compliance agreement.	Move from § 130.50(a)(3).
§ 130.50(c)(3)	User fees for export health certificates would be paid prior to receipt of endorsed certificates or when billed.	Move from § 130.50(a)(4), add section references for user fees, and clarify when the billing option would apply.
§ 130.50(c)(4)	User fees for veterinary diagnostics would be paid when the service is requested or when billed.	Move from § 130.50(a)(5), add section references for user fees, and clarify when the billing option would apply. (NOTE: This would also cover user fees formerly addressed by § 130.50(a)(6).)
§ 130.5(c)(5)	User fees for other services would be paid when the service is provided or when billed.	Combine § 130.50(a)(7), (8), and (9) to eliminate duplication; add section references for user fees; clarify when the billing option would apply; and expand the billing option to apply to user fees for inspection and permit services.
§ 130.50(d)(1) through (d)(4)	Acceptable forms of payment	Redesignate from § 130.50(b)(1) through (b)(4) and combine § 130.50(c).

Penalties for Nonpayment or Late Payment of User Fees (§ 130.51)

We are proposing several changes to § 130.51, including the incorporation of relevant provisions of the Debt Collection Improvement Act of 1996. These changes are described below. In addition we propose to make miscellaneous nonsubstantive changes, such as adding paragraph headers and renumbering paragraphs as necessitated by other proposed changes.

We propose to incorporate the provision currently specified in § 130.51(a)(4) that cash payments would be accepted only during normal business hours into proposed § 130.50(d)(1). Therefore, we propose to remove § 130.51(a)(4). As a result of this change, we would redesignate § 130.51(a)(5) as proposed § 130.51(a)(4).

Currently, §§ 130.51(b)(3) and (b)(4) refer to veterinary diagnostic tests and other veterinary diagnostic services, respectively. As we have proposed throughout part 130, we would combine these to group the veterinary diagnostics together. Therefore, proposed § 130.51(b)(3) would be simplified by referring to these services as veterinary diagnostic services.

We are proposing to add a new § 130.51(d) to specify that user fees paid with dishonored payments, such as a check returned for insufficient funds, will be subject to interest and penalty charges in accordance with the Debt Collection Improvement Act (as specified in 30 U.S.C. 3717). Administrative charges will be assessed at \$20.00 per dishonored payment to be paid in addition to the original amount owed. These payments must be made in guaranteed form, such as money order, certified check, or cash.

We propose to add a new § 130.51(e) to incorporate the relevant provisions of the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701, 3716, 3717, 3719, and 3720A). These provisions address taxpayer identification numbers, administrative offset, cross servicing, and delinquent debt reporting. Taxpayer identification numbers must be obtained from all persons, other than Federal agencies, who must pay user fees. All debts that have not been paid within 180 days would be eligible for administrative offset and cross servicing. Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim. Under administrative offset, APHIS would notify the Department of Treasury of the debts that are over 180

days delinquent and the Department of Treasury could offset the debt from certain Federal payments that may be made to the debtor. Cross servicing means that one program services many agencies. In this case, it means that the Department of Treasury could collect debts on behalf of APHIS. For cross servicing, APHIS would transfer debts that are over 180 days delinquent to the Department of Treasury. In addition, APHIS would report all unpaid debts to credit reporting bureaus.

In addition, we would add the relevant sections of the Debt Collection Improvement Act of 1996 to the authority citation for part 130.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for the changes in APHIS user fees proposed in this document. The economic analysis provides a cost-benefit analysis as required by E.O. 12866 and the analysis of impacts of small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis, which includes comparisons of each user fee change and the change in collections for each user fee, is available for review at the location listed in the ADDRESSES section at the beginning of this document.

We do not have enough data for a comprehensive analysis of the economic impacts of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and the economic impact of those benefits or costs.

User Fees Authorized Under the Farm Bill

The provisions in 21 U.S.C. 114a authorize the Secretary of Agriculture to control and eradicate communicable diseases of livestock and poultry. The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the 1990 Farm Bill), authorizes the Secretary of Agriculture, among other things, to prescribe regulations and collect fees to recover

the costs of carrying out the provisions of 21 U.S.C. 114a that relate to veterinary diagnostics (sec. 2509(c)(2) of the 1990 Farm Bill).

The 1990 Farm Bill further authorizes the Secretary to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance (section 2509(c)(1) of the 1990 Farm Bill).

In addition, section 2509(d) of the 1990 Farm Bill provides that the Secretary may prescribe such regulations as the Secretary determines necessary to carry out these provisions of the 1990 Farm Bill.

Regulations Proposed in This Document

We are proposing to revise the user fees for certain veterinary diagnostic services, including certain diagnostic tests, reagents, and other veterinary diagnostic materials and services. In addition, we are proposing to add new user fees for other veterinary diagnostic services we provide. We are proposing to reorganize the regulations in 9 CFR part 130 to list user fees by type of service and location where service is provided, and to group diagnostic reagents into categories.

Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells and to identify those organisms or agents. Services in this category include: (1) Performing laboratory tests and providing diagnostic reagents and other veterinary diagnostic materials and services at the Foreign Animal Disease Diagnostic Laboratory (FADDL) at Greenport, NY, and (2) performing identification, serology, and pathobiology tests and providing veterinary diagnostic reagents and other materials and services at the National Veterinary Services Laboratories (NVSL) at Ames, IA. Diagnostic reagents are biological materials used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction. We also consider sterilization by gamma radiation to be a veterinary diagnostics service. Other miscellaneous veterinary diagnostic services include, but are not limited to, providing check tests, test kits, manuals, standard operating procedures, and training.

Small Entities Impacted by Proposed Changes

Users of these veterinary diagnostic services are importers, exporters, veterinarians, commercial laboratories,

State laboratories, universities, and foreign governments.

The Small Business Administration's criteria for a small entity engaged in importing and exporting live animals, poultry, and birds is one whose total sales are less than \$5 million annually. This is also the criteria for small testing laboratories, veterinary service providers, and research organizations.

Except for those entities who deal exclusively in purebred or registered animals, 1995 data from the Bureau of the Census shows that the majority of agricultural entities who deal in grade animals can be considered small. However, the number of entities who specifically trade in live animals and who would qualify as a small entity

under this definition cannot be determined.

According to the Bureau of the Census, 94 percent of testing laboratories can be considered small. While veterinary testing laboratories comprise part of this classification, it cannot be determined how many entities performing veterinary services would be considered small under the Small Business Administration's guidelines.

To the extent that changes in user fees alter operational costs, any entity who utilizes APHIS' services that are subject to user fees may be affected by the proposed changes in user fees. The degree to which an entity is affected depends on its market power, or the ability to which costs can be either

absorbed or passed on to its buyers. Without information on either profit margins and operational expenses of the affected entities,¹ or the supply responsiveness of the affected industry,² the scale of impacts cannot be precisely predicted.

Changes in Collections

The estimated increased collections generated by the proposed user fees in this document could be \$1.28 million annually (collections could increase from \$2.13 million collected in FY 97 to \$3.41 million). This represents an increase in user fee collections for veterinary diagnostics and other import- and export-related services of approximately 40 percent. (See Table 13.)

TABLE 13.—SUMMARY OF CURRENT AND PROJECTED COLLECTIONS FOR APHIS USER FEES

User fee categories	Current user fee collections ¹	Projected user fee collections	Change in user fee collections
Revised Veterinary Diagnostics User Fees:			
FADDL: ²			
Reagents, Tests, Other (§ 130.14)	\$508,297	\$1,074,542	\$566,245
NVSL:			
Identification Tests (§ 130.15)	398,023	428,581	30,558
Serology Tests (§ 130.16)	727,979	928,506	200,527
Pathobiology Tests (§ 130.17)	81,260	90,608	9,348
Reagents (§ 130.18)	76,534	84,321	7,787
Other (§ 130.19)	149,184	174,832	25,648
Total Revised Veterinary Diagnostics User Fees	1,941,277	2,781,390	840,113
New Veterinary Diagnostics User Fees:			
FADDL:			
Reagents, Tests, Other (§ 130.14)		98,126	98,126
NVSL:			
Identification Tests (§ 130.15)		47,476	47,476
Serology Tests (§ 130.16)		1,000	1,000
Pathobiology Tests (§ 130.17)		1,397	1,397
Reagents (§ 130.18)		154,929	154,929
Other (§ 130.19)		104,589	104,589
Total New Veterinary Diagnostics User Fees		407,517	407,517
Total Veterinary Diagnostics User Fees Collections	1,941,277	3,188,907	1,247,630
Other User Fee Changes:			
Zoo Animals Quarantined in APHIS Animal Import Centers (§ 130.2 (a))	1,935	3,192	1,257
Non-Standard Care and Handling for Birds or Poultry (§ 130.2 (b))	33,780	37,965	4,185
Exclusive Use of Space at APHIS Animal Import Center in Newburgh, NY (§ 130.3)	126,164	121,450	(4,714)
User Fees for Other Services (§ 130.8)	27,528	62,970	35,442
Total Other User Fee Changes	189,407	225,577	36,170
Total Changes in User Fee Collections	2,130,684	3,414,484	1,283,800

¹ Source: USDA—APHIS—FSO, NVSL, FADDL.

² Includes collections from cooperative agreements where user fees are the basis for determining amount to be charged.

The benefit of user fees is the shift in the payment of services from taxpayers as a whole to those persons who are receiving the government services.

While taxes may not change by the same amount as the change in user fee collections, there is a related shift in the appropriations of taxes to government

programs, which allows those tax dollars to be applied to other programs which benefit the public in general. Therefore, there could be a relative

¹ Profits for sales of small entities are proprietary in nature and are not a part of the public record.

² The measurement of supply responsiveness would provide information on the likely impact on

an entity's production due to changes in operating costs.

savings to taxpayers of \$1.28 million annually as a result of the proposed changes in user fees.

The administrative cost involved in obtaining these savings would be minimal. APHIS already has a user fee program and a mechanism for collecting user fees in place. This proposal would update existing user fees in the system and require collection of additional user fees. Therefore, increases in administrative costs would be small. Because the savings are sufficiently large, and the administrative costs would be small, it is likely that the net gain in reducing the burden on taxpayers as a whole would outweigh the cost of administering the revisions of the user fees.

Estimated Impact

The proposed user fees fall into two categories: New and revised user fees. The vast majority of the proposed user fees are expected to make only small contributions to the total new collections. Most (nearly 70 percent) of the proposed new user fees would be less than \$50 each and 40 percent would be less than \$25. Most (approximately 70 percent) of the proposed revised user fees increase by less than 20 percent, with many (more than 50 percent) of them increasing by less than 10 percent.

We anticipate a low demand for the majority of the proposed new user fees that are greater than \$50 and the proposed revised user fees that would increase by more than 20 percent. Most of the proposed new user fees that exceed \$50 either include more direct labor time than those services with lower user fees or require premium costs to pay for special materials.

The proposed revised user fees that would increase by more than 20 percent include those user fees that were underestimated when initially established. Experience and more accurate accounting data have shown that most of these services require more direct labor hours, require premium costs to pay for special materials, or should be calculated using average lab salaries, which is consistent with the calculations for other user fees throughout 9 CFR part 130.

Alternatives

One alternative to this proposed rule would be to make no changes to the current user fees. We do not consider making no changes to the current user fees a reasonable alternative because we would not recover the full cost of providing veterinary diagnostic and import- and export-related services. Therefore, the only way to pay for these services is through charges to the

customer through user fees or other forms of reimbursable agreements.

Another alternative to this proposed rule would be to either exempt small businesses from these user fees or establish a different user fee structure for small businesses. APHIS cannot exempt certain classes of users, such as small businesses, from the user fees, and cannot charge user fees that recover less than the full cost of providing the service. In addition, every business, including small businesses, using a government service needs to pay the cost of that service, rather than having other businesses pay a disproportionate share or passing those costs on to the general public, who are not the primary beneficiary of the service. Therefore, we do not consider exempting small businesses from these user fees or establishing a different user fee structure for small businesses as viable options.

Another alternative to this proposed rule would be to spread the proposed increased costs over all of the user fees, so no single user fee would increase significantly. Our user fees are calculated to recover the costs of the service for which each user fee is charged. To spread the proposed increases among user fees would mean that some entities would subsidize others. The intent of user fees is to shift the burden of the cost of these services from the general taxpayer to the entity receiving the service. Therefore, APHIS cannot spread the increases evenly over all of the user fees.

This proposed rule contains no new information collection or recordkeeping requirements.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control numbers are 0579-0015, 0579-0040, 0579-0055, and 0579-0094.

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, 9 CFR part 130 would be amended as follows:

PART 130—USER FEES

1. The authority citation for part 130 would be revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 130.1 would be amended as follows:

a. The definitions for *APHIS animal health technician*, *APHIS veterinarian*, and *reference assistance testing* would be removed.

b. Definitions for *APHIS representative*, *nonstandard care and handling*, and *nonstandard housing* would be added, in alphabetical order, to read as set forth below.

c. The definitions for *export health certificate* and *pet birds* would be revised to read as set forth below.

d. Footnotes 3 and 4 and their references would be removed, and footnote 2 and its reference would be redesignated as footnote 3.

e. At the end of the definitions for *zoo bird* and *zoo equine* a reference to footnote 3 would be added.

§ 130.1 Definitions.

APHIS representative. An individual, including, but not limited to, animal health technicians and veterinarians, authorized by the Administrator to perform the services for which the user fees in this part are charged.

Export health certificate. An official document that, as required by the importing country, is endorsed by an APHIS representative and states that animals, animal products, organisms, vectors, or birds to be exported from the United States were found to be healthy and free from evidence of communicable diseases and pests.

Nonstandard care and handling. Nonstandard care and handling includes hand-feeding, more than one feeding per day, frequent observation, and any handling or observation which requires personnel to attend to the birds or poultry outside of normal business hours.²

² Normal business hours at the APHIS Animal Import Centers are: 7:30 a.m. to 11:30 a.m., Honolulu, HI; 7 a.m. to 3:30 p.m., Miami, FL; and 8 a.m. to 4:30 p.m., Newburgh, NY.

Nonstandard housing. Nonstandard housing is individual housing not normally available at an APHIS Animal Import Center, any housing constructed or purchased at the request of the importer, any housing with blinds, dense foliage, or plants, and any housing where the temperature can be adjusted.

Pet birds. Birds, except hatching eggs and ratites, which are imported or

exported for the personal pleasure of their individual owners and are not intended for resale.

4. Section 130.2 would be revised to read as follows:

§ 130.2 User fees for individual animals and certain birds quarantined in APHIS Animal Import Centers.

(a) *Standard requirements.* User fees for each animal or bird receiving

standard housing, care, feed, and handling while quarantined in an APHIS owned or operated Animal Import Center or quarantine facility are listed in the following table. Each user fee listed in the table is assessed per animal or bird quarantined by APHIS. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Animal or bird	Daily user fee
Birds (excluding ratites and pet birds imported in accordance with part 93 of this subchapter):	
0-250 grams	\$1.00
251-1,000 grams	3.25
Over 1,000 grams	7.50
Domestic or zoo animals (except equines, birds, and poultry):	
Bison, bulls, camels, cattle, or zoo animals	56.50
All other—including but not limited to alpacas, llamas, goats, sheep, and swine	15.00
Equines (including zoo equines, but excluding miniature horses):	
1st through 3rd day	149.50
4th through 7th day	108.25
8th and subsequent days	91.75
Miniature horses	40.25
Poultry:	
Doves, pigeons, quail	2.00
Chickens, ducks, grouse, guinea fowl, partridges, pea fowl, pheasants	3.50
Large poultry and large waterfowl including but not limited to game cocks, geese, swans, and turkeys	8.25
Ratites:	
Chicks (less than 3 months old)	5.75
Juveniles (between 3 and 10 months old)	8.00
Adults (11 months old and older)	16.25

(b) *Special requirements.* User fees for birds or poultry, including zoo birds or poultry, receiving nonstandard housing, care, or handling to meet special requirements while quarantined in an APHIS owned or operated Animal Import Center or quarantine facility are listed in the following table. The user fees listed in the table are assessed for each bird or poultry quarantined by APHIS. Special requirements may be requested by the importer or required by an APHIS representative. Certain conditions or traits, such as pregnancy or aggression, may necessitate special requirements for certain birds or poultry. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Bird or poultry (nonstandard housing, care, or handling)	Daily user fee
Birds 0-250 grams and doves, pigeons, and quail	\$3.25
Birds 251-1,000 grams and poultry such as chickens, ducks, grouse, guinea fowl, partridges, pea fowl, and pheasants	7.50
Birds over 1,000 grams and large poultry and large waterfowl including but not limited to game cocks, geese, swans, and turkeys	14.00

(c) *Feed.* The importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the APHIS owned or operated Animal Import Center or quarantine facility, for any animal or bird that requires a diet other than standard feed, including but not limited to diets of fruit, insects, nectar, or fish.

(Approved by the Office of Management and Budget under control number 0579-0094)

5. Section 130.3 would be amended by revising paragraph (a)(1), including the table, to read as follows:

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) An importer may request to exclusively occupy a space at an APHIS Animal Import Center. The user fees for spaces at APHIS Animal Import Centers are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

APHIS animal import center	Space	Monthly (30 day) user fee
Newburgh, NY:		
Space A	5,396 sq. ft. (503.1 sq. m.)	\$43,102.00
Space B	8,903 sq. ft. (827.1 sq. m.)	71,118.50

APHIS animal import center	Space	Monthly (30 day) user fee
Space C	905 sq. ft. (84.1 sq. m.)	7,229.00

6. Sections 130.5 through 130.8 would be revised to read as follows:

§ 130.5 User fees for services at privately operated permanent and temporary import quarantine facilities.

(a) User fees for each animal quarantined in a privately operated permanent or temporary import quarantine facility will be calculated at \$56.00 per hour, or \$14.00 per quarter-hour, with a minimum fee of \$16.50, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0579-0094)

§ 130.6 User fees for import or entry services for live animals at land border ports along the United States-Mexico border.

(a) User fees, with a minimum fee of \$16.50, for live animals presented for importation into or entry into the United States through a land border port along the United States-Mexico border are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

Type of live animal	User fee (per head)
Feeder	\$1.75
Slaughter	2.50
Horses, other than slaughter	29.25
In-bond or in transit	3.75
Any ruminants not covered above	6.00

(b) [Reserved]

(Approved by the Office of Management and Budget under control numbers 0579-0055 and 0579-0094)

§ 130.7 User fees for import or entry services for live animals at all other ports of entry.

(a) User fees, with a minimum fee of \$16.50, for live animals presented for importation into or entry into the United States through any port of entry, other than a land border port along the border between the United States and Mexico, are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

Type of live animal	User fee
<i>Animals being imported into the United States:</i>	
Horses, other than slaughter and in transit	\$19.00 per head.
<i>Breeding animals (Grade animals, except horses):</i>	
Swine	0.50 per head.
Sheep and goats	0.50 per head.
All others	2.25 per head.
Registered animals, all types	4.00 per head.
<i>Feeder animals:</i>	
Cattle (not including calves)	1.00 per head.
Swine	0.25 per head.
Sheep and calves	0.25 per head.
<i>Slaughter animals, all types</i>	16.50 per load.
Poultry (including eggs), imported for any purpose	33.00 per load.
<i>Animals transiting¹ the United States</i>	
Cattle	1.00 per head.
Swine	0.25 per head.
Sheep and goats	0.25 per head.
Horses and all other animals	4.50 per head.

¹ The user fee in this section will be charged for intransit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the applicable hourly user fee will apply.

(b) [Reserved]

(Approved by the Office of Management and Budget under control numbers 0579-0055 and 0579-0094)

§ 130.8 User fees for other services.

(a) User fees for other services that are not specifically addressed elsewhere in part 130 are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

Service	User fee
Germ Plasm Being exported: ²	
Embryo:	
(up to 5 donor pairs)	\$54.75 per certificate.
(each additional group of donor pairs, up to 5 pairs per group, on the same certificate)	24.75 per group of donor pairs.
Semen	33.50 per certificate.
Germ Plasm Being imported: ¹	
Embryo	39.50 per load.
Semen	39.50 per load.
Import compliance assistance:	
Simple (2 hours or less)	51.25 per release.
Complicated (more than 2 hours)	131.75 per release.
Inspection for approval of slaughter establishment:	
Initial approval	246.50 for all inspections required during the year.
Renewal	213.50 for all inspections required during the year.
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:	
Approval (Compliance Agreement)	262.75 for first year of 3-year approval (for all inspections required during the year).
Renewed approval	152.00 per year for second and third years of 3-year approval (for all inspections required during the year).
Pet birds, except pet birds of U.S. origin entering the United States from Canada:	
Which have been out of United States 60 days or less	71.25 per lot.
Which have been out of United States more than 60 days	169.75 per lot.
Processing VS form 16-3, "Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors":	
For permit to import fetal bovine serum when facility inspection is required	208.50 per application.
For all other permits	27.50 per application.
Amended application	11.50 per amended application.
Application renewal	15.00 per application.
Release from export agricultural hold:	
Simple (2 hours or less)	51.25 per release.
Complicated (more than 2 hours)	131.75 per release.

¹ For inspection of empty containers being imported into the United States, the applicable hourly user fee would apply, unless a user fee has been assessed under 7 CFR 354.3.

² This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the applicable hourly user fee would apply.

(b) [Reserved]

(Approved by the Office of Management and Budget under control numbers 0579-0015, 0579-0040, 0579-0055, and 0579-0094)

7. Section 130.9 would be amended by revising the introductory text of paragraph (a) to read as follows and by removing and reserving paragraph (b).

§ 130.9 User fees for miscellaneous import or entry services.

(a) User fees for import or entry services listed in (a)(1) through (a)(4) of this paragraph will be calculated at \$56.00 per hour, or \$14.00 per quarter hour, with a minimum fee of \$16.50, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

• • • • •

(b) [Reserved]

(Approved by the Office of Management and Budget under control numbers 0579-0055 and 0579-0094)

8. In § 130.10, the introductory text of paragraph (a) would be revised to read as follows:

§ 130.10 User fees for pet birds quarantined at APHIS-owned or supervised quarantine facilities.

(a) User fees for each pet bird quarantined in an animal import center⁴ or other APHIS-owned or supervised quarantine facility are listed in the following table. These user fees include standard care, feed, and handling. The person for whom the service is provided and the person requesting the service

⁴ APHIS animal import centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 93 of this chapter.

are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

9. Sections 130.14 through 130.18 would be revised to read as follows:

§ 130.14 User fees for FADDL veterinary diagnostics.

(a) *Diagnostic reagents.* User fees for diagnostic reagents⁵ provided by

⁵ Reagents provided by FADDL are for the diagnosis of animal diseases foreign to the United States. These reagents may be available to customers on the mainland after safety testing with permission from the Administrator. The customer may have to pay the cost for the safety test in addition to the reagent user fee. For more information on the specific reagents contact: Laboratory Chief, USDA, APHIS, VS, FADDL, Greenport, NY 11344; phone (516) 323-2500, FAX (516) 323-2798.

FADDL are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Reagent	User fee	Unit
Bovine antiserum, any agent	\$80.00	1 ml.
Caprine antiserum, any agent	97.50	1 ml.
Cell culture antigen/microorganism	63.75	1 ml.
Equine antiserum, any agent	100.50	1 ml.
Fluorescent antibody conjugate	120.25	1 ml.
Guinea pig antiserum, any agent	104.50	1 ml.
Monoclonal antibody	122.75	1 ml.
Ovine antiserum, any agent	94.25	1 ml.
Porcine antiserum, any agent	81.25	1 ml.
Rabbit antiserum, any agent	98.50	1 ml.

(b) *Veterinary diagnostics tests.* User fees for veterinary diagnostic tests performed at FADDL are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Agar gel immunodiffusion	\$14.75	Test.
Card	8.25	Test.
Complement fixation	33.00	Test.
Direct immunofluorescent antibody	11.00	Test.
Enzyme linked immunosorbent assay	12.75	Test.
Fluorescent antibody neutralization (hog cholera)	96.00	Test.
Hemagglutination inhibition	27.75	Test.
Immunoperoxidase	18.25	Test.
Indirect fluorescent antibody	23.25	Test.
In-vitro safety	299.50	Test.
In-vivo safety	4345.75	Test.
Latex agglutination	11.00	Test.
Tube agglutination	14.00	Test.
Virus isolation (oesophageal/pharyngeal)	88.25	Test.
Virus isolation in embryonated eggs	176.00	Test.
Virus isolation, other	84.50	Test.
Virus neutralization	25.75	Test.

(c) *Other veterinary diagnostic services.* User fees for other veterinary diagnostic services performed at FADDL are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Veterinary diagnostic service	User fee	Unit
Bacterial isolation	\$55.00	Test.
Hourly user fee services ¹	220.00	Hour.
Hourly user fee services—Quarter hour	55.00	Quarter hour.
Infected cells on chamber slides or plates	31.00	Slide.
Reference animal tissues for immunohistochemistry	94.25	Set.
Sterilization by gamma radiation	530.00	Can.
Training (school or technical assistance)	450.00	Per person per day.
Virus titration	55.00	Test.

¹ For all veterinary diagnostic services for which there is no flat rate user fee, the hourly rate user fee will be calculated for the actual time required to provide the service.

(Approved by the Office of Management and Budget under control numbers 0579-0055 and 0579-0094)

§ 130.15 *User fees for veterinary diagnostic isolation and identification tests performed at NVSL (excluding FADDL) or other authorized sites.*

(a) *Bacteriology isolation and identification tests.* User fees for bacteriology isolation and identification tests performed at NVSL (excluding FADDL) or other authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Bacterial identification, automated	\$16.00	Isolate.
Bacterial identification, non-automated	61.25	Isolate.
Bacterial isolation	16.00	Sample.
Bacterial serotyping, all other	30.75	Isolate.
Bacterial serotyping, <i>Pasteurella multocida</i>	7.50	Isolate.

Test	User fee	Unit
Bacterial serotyping, <i>Salmonella</i>	21.25	Isolate.
Bacterial toxin typing	91.50	Isolate.
Bacteriology requiring special characterization	27.00	Test.
DNA fingerprinting	36.50	Test.
DNA probe	29.50	Test.
Fluorescent antibody ¹	9.75	Test.
Leptospira culturing	27.00	Sample.
Leptospira serotyping	80.50	Isolate.
Mycobacterium avian serotyping	157.50	Isolate.
Mycobacterium identification (biochemical)	63.25	Isolate.
Mycobacterium identification (gas chromatography)	26.50	Procedure.
Mycobacterium isolation, animal inoculations	520.00	Submission.
Mycobacterium isolation, all other	105.50	Submission.
Mycobacterium paratuberculosis isolation	26.50	Submission.
Mycology culture identification	52.75	Isolate.
Mycology/fungus culture or isolation	26.50	Isolate.
Mycoplasma isolation	26.25	Sample.
Mycoplasma identification	26.25	Isolate.
Phage typing, all other	26.50	Isolate.
Phage typing, <i>Salmonella enteritidis</i>	10.75	Isolate.
Plasmid typing	26.50	Isolate.
Warburg	316.50	Isolate.

¹ A discount will apply to all diagnostic, non-import related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody, virus neutralization, and peroxidase linked antibody tests. This discount only applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. The user fee for each discounted test will be 20 percent of the original user fee rounded up to the nearest quarter. This discount will apply for tests for all diseases except equine piroplasmiasis, bovine piroplasmiasis, dourine, and glanders.

(b) *Virology identification tests.* User fees for virology identification tests performed at NVSL (excluding FADDL) or other authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Fluorescent antibody tissue section	\$18.25	Test.
Virus isolation for Newcastle disease virus	15.25	Test.
Virus isolation (except for Newcastle disease virus)	31.50	Test.

(Approved by the Office of Management and Budget under control numbers 0579-0055 and 0579-0094)

§ 130.16 *User fees for veterinary diagnostic serology tests performed at NVSL (excluding FADDL) or at authorized sites.*

(a) *Bacteriology serology tests.* User fees for bacteriology serology tests performed at NVSL (excluding FADDL) or other authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Brucella milk ELISA	\$15.75	Test.
Brucella ring (BRT)	10.50	Test.
Brucella ring, Heat inactivated (HIRT)	10.50	Test.
Brucella ring, Serial (Serial BRT)	15.75	Test.
Buffered acidified plate antigen presumptive	4.00	Test.
Card	2.00	Test.
Complement fixation ¹	9.00	Test.
Enzyme linked immunosorbent assay for dourine, glanders, or piroplasmiasis	9.00	Test.
Enzyme linked immunosorbent assay, all other	4.75	Test.
Indirect fluorescent antibody ¹	9.75	Test.
Mercaptoethanol	4.00	Test.
Microscopic agglutination—includes up to 5 serovars ²	11.00	Sample.
Mycology/fungus serology	10.50	Test.
Particle concentration fluorescent immunoassay (PCFIA)	18.25	Test.
Plate	4.00	Test.
Rapid automated presumptive	4.25	Test.
Rivanol	4.00	Test.
Tube agglutination	4.00	Test.

¹ A discount will apply to all diagnostic, non-import related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody, virus neutralization, and peroxidase linked antibody tests. This discount only applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. The user fee for each discounted test will be 20 percent of the original user fee rounded up to the nearest quarter. This discount will apply for tests for all diseases except equine piroplasmiasis, bovine piroplasmiasis, dourine, and glanders.

² The user fee for the sixth and subsequent serovar will be \$2.00 each.

(b) *Virology serology tests.* User fees for virology serology tests performed at NVSL (excluding FADDL) or at authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Agar gel immunodiffusion	\$5.00	Test.
Complement fixation ¹	9.00	Test.
Enzyme linked immunosorbent assay	4.75	Test.
Hemagglutination inhibition ¹	7.50	Test.
Indirect fluorescent antibody ¹	9.75	Test.
Latex agglutination	5.00	Test.
Peroxidase linked antibody ¹	9.75	Test.
Plaque reduction neutralization	7.75	Test.
Rabies fluorescent antibody neutralization	26.50	Test.
Virus neutralization ¹	7.75	Test.

¹ A discount will apply to all diagnostic, non-import related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody, virus neutralization, and peroxidase linked antibody tests. This discount only applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. The user fee for each discounted test will be 20 percent of the original user fee rounded up to the nearest quarter. This discount will apply for tests for all diseases except equine piroplasmiasis, bovine piroplasmiasis, dourine, and glanders.

(Approved by the Office of Management and Budget under control numbers 0579-0055 and 0579-0094)

§ 130.17 User fees for other veterinary diagnostic laboratory tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) User fees for veterinary diagnostic tests performed at the Pathobiology Laboratory at NVSL (excluding FADDL) or at authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Aflatoxin quantitation	\$20.50	Test.
Aflatoxin screen	11.25	Test.
Agar gel immunodiffusion spp. identification	6.25	Test.
Antibiotic (bioautography) quantitation	25.00	Test.
Antibiotic (bioautography) screen	50.00	Test.
Antibiotic inhibition	25.25	Test.
Arsenic	6.75	Test.
Ergot alkaloid screen	25.25	Test.
Ergot alkaloid confirmation	33.00	Test.
Feed microscopy	25.25	Test.
Fumonisin only	20.50	Test.
Gossypol	37.75	Test.
Mercury	56.00	Test.
Metals screen	29.75	Test.
Metals single element confirmation	6.75	Test.
Mycotoxin: aflatoxin-liver	82.25	Test.
Mycotoxin screen	34.00	Test.
Nitrate/nitrite	25.00	Test.
Organic compound confirmation	34.00	Test.
Organic compound screen	114.75	Test.
Parasitology	19.25	Test.
Pesticide quantitation	52.25	Test.
Pesticide screen	38.00	Test.
pH	10.00	Test.
Plate cylinder	37.75	Test.
Selenium	33.25	Test.
Silicate/carbonate disinfectant	25.00	Test.
Temperature disks	50.25	Test.
Toxicant quantitation, other	42.25	Test.
Toxicant screen, other	25.00	Test.
Vomitoxin only	20.75	Test.
Water activity	12.50	Test.
Zearaleone quantitation	20.50	Test.
Zearaleone screen	11.25	Test.

(b) [Reserved]

(Approved by the Office of Management and Budget under control numbers 0579-0055 and 0579-0094)

§ 130.18 User fees for veterinary diagnostic reagents produced at NVSL or other authorized site (excluding FADDL).

(a) *Bacteriology reagents.* User fees for bacteriology reagents produced by the Diagnostic Bacteriology Laboratory at NVSL (excluding FADDL) or other authorized site are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Reagent	User fee	Unit
Anaplasma card test antigen	\$34.00	2 ml.
Anaplasma card test kit without antigen	105.50	Kit.
Anaplasma CF antigen	17.00	2 ml.
Anaplasma stabilate	67.25	4.5 ml.
Avian origin bacterial antisera, mycoplasma	11.50	1 ml.
Avian origin bacterial antisera, all other	17.75	1 ml.
Bacterial agglutinating antigens other than brucella and salmonella pullorum	30.50	5 ml.
Bacterial conjugates	36.00	1 ml.
Bacterial disease CF antigens, all other	8.50	1 ml.
Bacterial ELISA antigens	9.50	1 ml.
Bacterial or protozoal antisera, all other	7.25	1 ml.
Bacterial reagent culture ¹	21.25	Culture.
Bacterial reference culture ²	63.25	Culture.
Bacteriophage reference culture	63.25	Culture.
Bovine serum factor	1.25	2 ml.
Brucella abortus CF antigen	34.00	60 ml.
Brucella agglutination antigens, all other	34.00	60 ml.
Brucella buffered plate antigen	50.00	60 ml.
Brucella canis tube antigen	30.50	25 ml.
Brucella card test antigen (packaged)	19.50	Package.
Brucella card test kit without antigen	70.25	Kit.
Brucella cells	5.25	Gram
Brucella cells, dried	2.00	Pellet
Brucella ring test antigen	72.75	60 ml.
Brucella rivanol solution	8.75	60 ml.
Dourine CF antigen	17.50	1 ml.
Dourine stabilate	34.75	4.5 ml.
Equine and bovine origin hemoparasitic antisera	21.25	1 ml.
Equine negative control CF antigen	171.25	1 ml.
Equine origin glanders antiserum	18.25	1 ml.
Flazo-orange	6.25	3 ml.
Glanders CF antigen	17.50	1 ml.
Hemoparasitic disease CF antigens, all other	158.25	1 ml.
Leptospira transport medium	3.25	10 ml.
Monoclonal antibody	37.50	1 ml.
Mycobacterium spp. old tuberculin	3.75	1 ml.
Mycobacterium spp. PPD	3.25	1 ml.
Mycoplasma hemagglutination antigens	105.50	5 ml.
Negative control sera	4.00	1 ml.
Other spp. antiserum, any	32.75	1 ml.
Rabbit origin bacterial antiserum	14.25	1 ml.
Salmonella pullorum microagglutination antigen	6.25	5 ml.
Stabilates, all other	258.25	4.5 ml.

¹ A reagent culture is a bacterial culture that has been subcultured one or more times after being tested for purity and identity. It is intended for use as a reagent with a diagnostic test such as the leptospiral microagglutination test.

² A reference culture is a bacterial culture that has been thoroughly tested for purity and identity. It should be suitable as a master seed for future cultures.

(b) *Virology reagents.* User fees for virology reagents produced by the Diagnostic Virology Laboratory at NVSL (excluding FADDL) or at authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Reagent	User fee	Unit
Antigen, except avian influenza and chlamydia psittaci antigens, any	\$41.502	ml.
Avian antiserum except avian influenza antiserum, any	23.00	2 ml.
Avian influenza antigen, any	9.25	2 ml.
Avian influenza antiserum, any	53.75	6 ml.
Bovine or ovine serum, any	88.00	2 ml.
Cell Culture	20.00	Flask.
Chlamydia psittaci spp. of origin monoclonal antibody panel	47.25	Panel.
Conjugate, any	20.25	1 ml.
Diluted positive control serum, any	6.75	2 ml.
Equine antiserum, any	12.25	2 ml.
Hog Cholera tissue sets	81.50	Tissue set.
Monoclonal antibody	37.50	1 ml.
Other spp. antiserum, any	32.75	1 ml.
Porcine antiserum, any	60.50	2 ml.
Positive control tissues, all	4.25	2 cm. ²
Rabbit origin antiserum	14.25	section.

Reagent	User fee	Unit
Reference virus, any	63.50	0.6 ml.
Viruses (except reference viruses), chlamydia psittaci agent, or chlamydia psittaci antigen, any	5.50	0.6 ml.

(Approved by the Office of Management and Budget under control number 0579-0094)

10. A new § 130.19 would be added to read as follows:

§ 130.19 User fees for other veterinary diagnostic services or materials provided at NVSL (excluding FADDL).

(a) User fees for other veterinary diagnostic services or materials available from NVSL (excluding

FADDL) are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Service	User fee	Unit
Antimicrobial susceptibility test	\$30.50	Isolate.
Avian safety test	2,701.75	Test.
Check tests, anaplasma complement fixation	132.00	Kit. ¹
Check tests, culture	88.00	Kit. ¹
Check tests, serology, all other	125.75	Kit. ¹
Fetal bovine serum safety test	673.50	Verification.
Hourly user fee services ²		
Hour	56.00	Hour.
Quarter hour	14.00	Quarter Hour.
Minimum	16.50	
Manual, Brucellosis complement fixation	13.00	1 copy.
Manual, Brucellosis culture	52.75	1 copy.
Manual, Tuberculosis culture (English or Spanish)	79.25	1 copy.
Manual, Veterinary mycology	105.50	1 copy.
Manual, Anaplasmosis, Johne's disease, mycoplasma hyopneumonia, piroplasmosis, dourine, or glanders	21.25	1 copy.
Manuals or standard operating procedure (SOP), all other	13.25	1 copy.
Manuals or SOP, per page	2.00	1 page.
Training (school or technical assistance)	120.00	Per person per day.

¹ Any reagents required for the check test will be charged separately.

² For veterinary diagnostic services for which there is no flat rate user fee the hourly rate user fee will be calculated for the actual time required to provide the service.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0579-0094)

11. Section 130.20 would be amended by revising the introductory text in paragraphs (a) and (b)(1) to read as follows and by removing paragraph (d).

§ 130.20 User fees for endorsing export health certificates.

(a) User fees for the endorsement of export health certificates that do not require the verification of tests or vaccinations are listed in the following table. The user fees apply to each export health certificate⁶ endorsed for the following types of animals, birds, or animal products, regardless of the number of animals, birds, or animal products covered by the certificate. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

⁶ An export health certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export health certificates as a service.

(b)(1) User fees for the endorsement of export health certificates that require the verification of tests or vaccinations are listed in the following table. The user fees apply to each export health certificate⁶ endorsed for animals and birds depending on the number of animals or birds covered by the certificate and the number of tests required. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

12. Section 130.21 would be amended by revising the section heading and the introductory text in paragraph (a) to read as follows, by removing and reserving paragraph (b), and by removing paragraph (c).

§ 130.21 User fees for inspection and supervision services provided within the United States for export animals, birds, and animal products.

(a) User fees for inspection and supervision services listed in paragraph (a)(1) through (a)(7) of this section will be calculated at \$56.00 per hour, or \$14.00 per quarter-hour, with a minimum fee of \$16.50, for each

employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

§ 130.49 [Amended]

13. In § 130.49, paragraph (a) would be amended by removing the reference "130.18" and adding the reference "130.19" in its place.

14. Sections 130.50 and 130.51 would be revised to read as follows:

§ 130.50 Payment of user fees.

(a) *Who must pay APHIS user fees?* Any person for whom a service is provided related to the importation, entry, or exportation of an animal, article, or means of conveyance or relating to veterinary diagnostics, and any person requesting such services, shall be jointly and severally liable for payment of fees assessed.

(b) *Associated charges.*

(1) *Reservation fee.* Any reservation fee paid by an importer under part 93 of this chapter will be applied to the APHIS user fees specified in §§ 130.2 and 130.3 for animals or birds

(2) *Other user fee services.* User fees specified in §§ 130.6, 130.7, 130.8, and 130.9 must be paid when service is

quarantined in an Animal Import Center.

(2) *Special handling expenses.* The user fees in this part do not include any costs that may be incurred due to special mail handling, including, but not limited to express, overnight, or foreign mailing. If any service requires special mail handling, all costs incurred

must be paid by the user in addition to the user fee for the service.

(3) *Overtime charges.* If a test must be conducted on a Sunday or holiday or at any time outside the normal tour of duty of the employee, then, as provided for in part 97 of this chapter, one of the following will apply:

(i) *Overtime associated with flat rate user fees (i.e., for a specific service, test, or reagent).* Reimbursable overtime must

be paid for performing each test, in addition to the flat rate user fee listed in this part.

(ii) *Overtime associated with hourly rate user fees.* The premium rate user fee, as listed in the following table, in lieu of the hourly rate user fee listed in this part, must be paid for each employee required to perform each service:

Premium rate user fee

	Outside the normal tour of duty	
	Weekdays and holidays	Sundays
Per hour	\$65.00	\$74.00
Per quarter-hour	16.25	18.50
Minimum	16.50	16.50

(c) *When are APHIS user fees due?*

(1) *Animal and bird quarantine and related tests.* User fees specified in §§ 130.2, 130.3, 130.5, 130.10, and tests specified in §§ 130.14 through 130.19 for animals and birds in an Animal Import Center or privately operated permanent or temporary import quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid prior to the release of those animals or birds from quarantine;

(2) *Supervision and inspection services for export animals, animal products.* User fees for supervision and inspection services specified in § 130.21 must be paid when billed, or, if covered by a compliance agreement signed in accordance with this chapter, must be paid when specified in the agreement;

(3) *Export health certificates.* User fees for export health certificates specified in § 130.20 must be paid prior to receipt of endorsed certificates unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed;

(4) *Veterinary diagnostics.* User fees specified in §§ 130.14 through 130.19 for veterinary diagnostic services, such as tests on samples submitted to NVSL or FADDL, diagnostic reagents, slide sets, tissue sets, and other veterinary diagnostic services, must be paid when the veterinary diagnostic service is requested, unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed;

(5) *Other user fee services.* User fees specified in §§ 130.6, 130.7, 130.8, and 130.9 must be paid when service is

provided (for example when live animals are inspected when presented for importation at a port of entry), unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed;

(d) *What payment methods are acceptable?* Payment must be for the exact amount due and may be paid by:

(1) Cash, will be accepted only during normal business hours if payment is made at an APHIS office⁷ or an Animal Import Center;

(2) All types of checks, including traveler's checks, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA;

(3) Money orders, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA; or

(4) Credit cards (VISATM and MasterCardTM) if payment is made at an Animal Import Center or an APHIS office that is equipped to process credit cards.⁷

§ 130.51 Penalties for nonpayment or late payment.

(a) *Unpaid debt.* If any person for whom the service is provided fails to pay when due any debt to APHIS, including any user fee due under title 7 or title 9, Code of Federal Regulations, then:

(1) *Subsequent user fee payments.* Payment must be made for subsequent

⁷ A list of APHIS offices and Animal Import Centers that accept cash or credit cards may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20738-1231.

user fees before the service is provided if:

(i) For unbilled fees, the user fee is unpaid 60 days after the date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 60 days after date of bill;

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(2) *Resolution of difference between estimate and actual.* APHIS will estimate the user fee to be paid; any difference between the estimate and the actual amount owed to APHIS will be resolved as soon as reasonably possible following the delivery of the service, with APHIS returning any excess to the payor or billing the payor for the additional amount due.

(3) *Prepayment form.* The prepayment must be in guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) *Denied service.* Service will be denied until the debt is paid if:

(i) For unbilled fees, the user fee is unpaid 90 days after date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 90 days after date of bill;

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(b) *Unpaid debt during service.* If APHIS is in the process of providing a

service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is inadequate or unacceptable, then APHIS will take the following action:

(1) *Animals or birds in quarantine.* If an APHIS user fee specified in § 130.2 or § 130.3 is due for animals or birds in quarantine at an Animal Import Center or at a privately operated import quarantine facility, APHIS will not release them;

(2) *Export health certificate.* If an APHIS user fee specified in § 130.20 is due for an export health certificate, APHIS will not release the certificate; and

(3) *Veterinary diagnostics.* If an APHIS user fee specified in §§ 130.14 through 130.19 is due for a veterinary diagnostic test or service, APHIS will not release the test result, any endorsed certificate, or any other veterinary diagnostic service.

(c) *Late payment penalty.* If for unbilled user fees, the user fees are unpaid 30 days after the date the pertinent regulatory provisions indicates payment is due, or if billed, are unpaid 30 days after the date of the bill, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

(d) *Dishonored payment penalties.* User fees paid with dishonored forms of payment, such as a check returned for insufficient funds, will be subject to interest and penalty charges in accordance with 30 U.S.C. 3717. Administrative charges will be assessed at \$20.00 per dishonored payment to be paid in addition to the original amount owed. Payment must be in guaranteed form, such as cash, money order, or certified check.

(e) *Debt collection management.* In accordance with the Debt Collection Improvement Act of 1996, the following provisions apply:

(1) *Taxpayer identification number.* APHIS will collect a taxpayer identification number from all persons, other than federal agencies, who are liable for a user fee;

(2) *Administrative offset.* APHIS will notify the Department of Treasury of debts that are over 180 days delinquent for the purposes of administrative offset. Under administrative offset, the Department of Treasury will withhold funds payable by the United States to a person (i.e., Federal income tax refunds) to satisfy the debt to APHIS.

(3) *Cross-servicing.* APHIS will transfer debts that are over 180 days delinquent to the Department of Treasury for cross-servicing. Under cross-servicing, the Department of

Treasury will collect debts on behalf of APHIS. Exceptions will be made for debts that meet certain requirements, for example, debts that are already at a collection agency or in payment plan; and

(4) *Report delinquent debt.* APHIS will report all unpaid debts to credit reporting bureaus.

(f) *Animals or birds abandoned after quarantine at an Animal Import Center.* Animals or birds left in quarantine at an Animal Import Center for more than 30 days after the end of the required quarantine period will be deemed to be abandoned.

(1) After APHIS releases the abandoned animals or birds from quarantine, APHIS may seize them and sell or otherwise dispose of them, as determined by the Administrator, provided that their sale is not contrary to any Federal law or regulation, and may recover all expenses of handling the animals or birds from the proceeds of their sale or disposition.

(2) If animals or birds abandoned in quarantine at an Animal Import Center cannot be released from quarantine, APHIS may seize and dispose of them, as determined by the Administrator, and may recover all expenses of handling the animals or birds from the proceeds of their disposition and from persons liable for user fees under § 130.50(a).

Done in Washington, DC, this 28th day of April 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-11776 Filed 5-1-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ANM-07]

Proposed Modification of Class D Airspace; Colorado Springs USAF Academy Airstrip, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would amend the Class D airspace area at Colorado Springs United States Air Force (USAF) Academy Airstrip, CO. The intended effect of this action is to provide additional airspace in the Visual Flight Rules (VFR) traffic pattern by increasing the ceiling of the Class D airspace from 8600' MSL to 8800' MSL.

DATES: Comments must be received on or before June 18, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM-520, Federal Aviation Administration, Docket No. 98-ANM-07, 1601 Lind Avenue SW, Renton, Washington 98055-4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM-520.6, Federal Aviation Administration, Docket No. 98-ANM-07, 1601 Lind Avenue SW, Renton, Washington 98055-4056; telephone number: (425) 227-2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 98-ANM-07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contain in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date, for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the

Federal Aviation Administration, Airspace Branch, ANM-520, 1601 Lind Avenue SW, Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR 71) to modify Class D airspace at Colorado Springs USAF Academy Airstrip, CO. The USAF Academy has seen substantial development adjacent to the airfield in recent years causing the VFR traffic pattern altitude to be increased to 7800' MSL (1000' AGL). In the interest of safety at this high intensity student training area, it is considered reasonable and necessary to have a 1000' Class D airspace area above the standard VFR traffic pattern. The 1000' of Class D area allows a student pilot a safety area of 500' above the standard VFR traffic pattern and still have 500' from overflights of the USAF Class D airspace. This proposal would satisfy the requirement of a 1000' safety area by increasing the Class D airspace area from 8600' MSL to 8800' MSL.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas are published in Paragraph 5000 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 General.

* * *

ANM CO D Colorado Springs USAF Academy Airstrip, CO [Revised]

Colorado Springs USAF Academy Airstrip, CO

(Lat. 38°58'11" N, long. 104°48'47" W)

That airspace extending upward from the surface to and including 8,800 feet MSL within a 3-mile radius of the USAF Academy Airstrip, excluding that airspace within the Colorado Springs, CO, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * *

Issued in Seattle, Washington, on April 6, 1998.

Joe E. Gingles,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98-11767 Filed 5-1-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-71]

RIN 1218-AA95

Methylene Chloride; Notice of Motion for Reconsideration; Proposed Rule

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of motion for reconsideration; proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has received a motion for reconsideration of certain provisions of its standard regulating occupational exposure to methylene chloride (MC), 62 FR 1494 (Jan. 10, 1997). The motion, filed jointly by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, the Halogenated Solvents Industry Alliance, Inc., and others asks OSHA to amend the methylene chloride standard by adding to the medical surveillance provisions of the standard a provision for temporary medical removal protection benefits for employees who are temporarily removed or transferred to another job because of a medical determination that exposure to methylene chloride may aggravate or contribute to the employee's existing skin, heart, liver, or neurological disease; and modifying certain startup dates for employers in certain identified application groups, i.e., who use MC in certain work operations. The standard currently requires employers with fewer than 20 employees to complete installation of engineering controls by April 10, 2000 and larger employers to do so by earlier dates. The motion asks that the April 10, 2000 startup date for engineering controls be applied to some additional small- and medium-sized employers in the identified application groups. Shorter startup date extensions are requested for the larger employers in those same application groups. The parties to the motion further request that respirator use to achieve the 8-hour time-weighted-average permissible exposure limit not be required before the engineering control startup dates for the employers covered by the motion.

OSHA tentatively concludes that the amendments are appropriate and are supported by the rulemaking record. Accordingly, OSHA is hereby proposing to amend the MC standard with the

modifications the parties have recommended. OSHA is reopening the rulemaking record for the methylene chloride standard for 30 days for the limited purpose of receiving public comment on the proposed amendments.

DATES: Comments concerning the proposed rule must be postmarked or transmitted by fax on or before June 3, 1998. Comments concerning the collection of information requirements must be postmarked or transmitted by fax on or before July 6, 1998.

ADDRESSES: Comments are to be submitted in quadruplicate to: The Docket Office, Docket No. H-71, Room N-2625, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219-7894. Comments of 10 pages or fewer may be transmitted by fax to (202) 219-5046, provided the original and three copies are sent to the Docket Office thereafter. The hours of operation of the Docket Office are 10:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, OSHA Office of Public Affairs, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219-8151.

SUPPLEMENTARY INFORMATION:

INFORMATION COLLECTION REQUIREMENTS:

This proposed rule contains collection of information requirements in 29 CFR 1910.1052, "Methylene Chloride," in paragraphs (j)(11)(B) and (j)(14)(i), (ii), and (iv). Under these requirements employers must provide certain examinations beyond those now required under the standard. The proposed rule would not change the requirement in the existing standard that employers provide the employee with a copy of the written medical opinion for each medical examination required by the standard. Because it requires additional medical examinations than does the current rule and, for some of those examinations, the provision of more information about the results, the proposed rule imposes additional collection of information requirements on employers than the current standard. The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and 5 CFR 1320.11 require Federal agencies to submit collections of information contained in proposed rules to the Office of Management and Budget (OMB) for review. OSHA has submitted the appropriate request to OMB for approval. OSHA currently has approval for the collection of information requirements in the existing Methylene

Chloride standard under OMB Control Number 1218-0179.

OSHA invites comments on whether the proposed collection of information:

1. Ensures that the collection of information is necessary for the proper performance of the functions of OSHA, including whether the information will have practical utility;

2. Estimates the projected burden accurately, including whether the methodology and assumptions used are valid;

3. Enhances the quality, utility and clarity of the information to be collected; and

4. Minimizes the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Methylene Chloride (MC) (29 CFR 1910.1052).

Description: The purpose of this standard and its information collection requirements is to protect employees from adverse health effects associated with occupational exposure to MC. The current standard requires employers to monitor employee exposure to MC, inform employees of monitoring results, and notify employees of corrective action to be taken. Employers are also required to provide medical surveillance to employees who are exposed to MC above the action level. Employers must also provide information and training to employees on the following: health effects of MC, specifics regarding use of MC in the workplace, the content of the standard, and means the employees can take to protect themselves from overexposure to MC.

In response to a motion for reconsideration by the United Auto Workers (UAW), the Halogenated Solvents Industry Alliance, Inc., and others, the Agency is proposing to add paragraphs (j)(9)(i) (A) and (B), (j)(10), (j)(11), (j)(12), (j)(13), and (j)(14), dealing with medical removal protection, medical removal protection benefits, voluntary removal or restriction of an employee, and multiple health care professional review to the MC standard.

Respondents: The respondents are employers whose employees have occupational exposure to MC, Chemical Abstracts Service Registry Number 75-09-2, in general industry, construction and shipyard employment, approximately 92,000 respondents.

Estimate of Burden Hours: OSHA estimates that the total burden for the

proposed MC collection of information provision will be 619 burden hours.

Estimate of Costs: OSHA estimates that the total cost for the first year will be \$60,515 for the collection of information provision.

Interested parties are requested to send comments regarding this information collection to the Office of Information and Regulatory Affairs, Attn: OSHA Desk officer, OMB New Executive Office Building, 725 17th Street, NW, Room 10235, Washington, DC 20503. Commenters are encouraged to send a copy of their comments on the collection of information to OSHA along with their other comments.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the final information collection request: They will also become a matter of public record. Copies of the referenced information collection request are available for inspection and copying in the OSHA Docket office and will be mailed immediately to any person who requests copies by telephoning Adrian Corsey at (202) 219-7075 extension 105. For electronic copies of the MC information collection request, contact OSHA's WebPage on the Internet at <http://www.osha.gov/> and click on "Federal Register Notices". Then click on "Type of Publication", then "Notices", and lastly "1998". Copies of the request are also available at the OMB docket office.

I. Background

On January 10, 1997, OSHA issued a standard regulating occupational exposure to methylene chloride (MC). 62 FR 1494. The standard was designed to reduce both the risk that worker exposure to MC will cause cancer and the risk that MC will cause or aggravate certain other adverse health effects. The standard reduced the prior 8-hour time-weighted-average permissible exposure limit (8-hour TWA PEL) to MC from 500 parts per million (ppm) to 25 ppm. It also set a short term exposure limit (STEL) of 125 ppm averaged over a 15 minute period.

The 8-hour TWA PEL was set at 25 ppm to reduce, to the extent feasible, the risk that workers exposed to MC would contract cancer. Data showing that MC exposure presents a risk of cancer included animal bioassay data, studies detailing the metabolism of MC to carcinogenic products in humans, and epidemiological studies suggesting an elevated risk of biliary cancer and astrocytic brain cancer in MC-exposed workers. The agency used a physiologically-based pharmacokinetic

(PBPK) model to estimate the cancer risk. OSHA's final risk assessment estimated that, at the prior 8-hour TWA PEL of 500 ppm (a level that the Agency found was considerably higher than the level at which most affected workers were currently exposed, see 62 FR 1565), lifetime occupational exposure to MC could result in approximately 125 cancer deaths per 1000 exposed workers. 62 FR 1563, Table VII. At the new 8-hour TWA PEL of 25 ppm, OSHA estimated that the excess cancer risk would be reduced to approximately 3.6 deaths per 1000 workers. Id. OSHA concluded that a significant risk to workers remains at an exposure level of 25 ppm but set the 8-hour TWA PEL at that level because it was the lowest level for which OSHA could document feasibility across all the affected application groups. 62 FR 1575.

The STEL was set at 125 ppm to minimize the adverse health effects caused by acute exposure to MC. Central nervous system (CNS) depression has been observed at MC concentrations as low as 175 ppm. CNS depression is characterized by fatigue, difficulty in maintaining concentration, dizziness, and headaches. These consequences of MC exposure constitute material impairments of health and, by reducing workers' coordination and concentration, can lead to workplace accidents. Also, MC is metabolized to carbon monoxide (CO) and therefore causes health impairment similar to that caused by direct exposure to CO. Carbon monoxide blocks the oxygen binding site on hemoglobin, producing carboxyhemoglobin, or COHb. Elevated COHb levels reduce the supply to oxygen to the heart and can aggravate pre-existing heart disease and lead to heart attacks. Physical exertion increases the concentration of COHb in MC-exposed workers and thus increases the risk of a heart attack, particularly to persons with silent or symptomatic cardiac disease, who may be susceptible to very small increases in COHb due to an already impaired blood supply to the heart.

The liver and skin are also susceptible to acute effects from MC exposure. Chlorinated hydrocarbons as a class (of which MC is a member) are generally toxic to the liver. However, animal studies indicate that MC is among the least hepatotoxic of this class of compounds. The limited amount of human data that are available is inconclusive but supports the hypothesis that MC is toxic to the liver. 62 FR at 1515. Prolonged skin contact with MC also causes irritation and skin burns. 62 FR at 1609.

Employers must achieve the 8-hour TWA PEL and the STEL, to the extent feasible, by engineering and work practice controls. If such controls are unable to achieve the exposure limits, and during the time they are being implemented, employers must provide, at no cost to employees, and ensure that employees use, appropriate respirators. The standard does not permit the use of air-purifying respirators to protect against MC exposure because MC quickly penetrates all currently available organic vapor cartridges, rendering air-purifying respirators ineffective after a relatively brief period of time. Therefore, when respiratory protection is required, the standard provides that atmosphere-supplying respirators must be used.

The standard requires employers to provide medical surveillance to employees who are exposed to MC either (1) at or above the action level on 30 or more days per year or at or above the 8-hour TWA PEL or STEL on 10 or more days per year; (2) at or above the 8-hour TWL PEL or STEL for any time period where an employee who has been identified by a physician or other licensed health care professional as being at risk from cardiac disease or from some other serious MC-related health condition requests inclusion in the medical surveillance program; or (3) during an emergency. The medical surveillance must include a comprehensive medical and work history that emphasizes neurological symptoms, skin conditions, history of hematologic or liver disease, signs or symptoms suggestive of heart disease (angina, coronary artery disease), risk factors for cardiac disease, MC exposures, and work practices and personal protective equipment used during such exposures. The standard's medical surveillance procedures focus on MC's noncarcinogenic health effects because a medical surveillance program cannot detect cancer at a preneoplastic state. 62 FR at 1589. However, the standard's medical surveillance provisions can lead to early detection of cancer and to higher survival rates from early treatment.

OSHA found that the standard was both technologically and economically feasible in all of the industrial applications that use MC. However, the Agency recognizes that larger employers are better able than smaller ones to absorb or pass through the costs associated with compliance with the standard. To avoid placing an undue economic burden on small businesses, OSHA provided for later startup dates for small employers. Larger employers were given until April 10, 1998 (one

year after the standard's effective date) to complete installation of engineering controls to achieve the PEL and STEL, while employers with fewer than 20 employees were given a total of three years, or until April 10, 2000, to do so. Employers with fewer than 20 employees were also given more time than larger employers to comply with the other provisions of the standard. In addition, intermediate startup dates were established for polyurethane foam manufacturers with 20-99 employees because OSHA anticipated that firms in that group could have somewhat higher capital expenditures to meet the requirements of the standard.

II. The Motion for Reconsideration

The motion filed by the parties asks OSHA to reconsider two aspects of the standard: (1) The agency's decision not to include medical removal protection benefits in the medical surveillance provisions of the standard; and (2) the start-up dates for engineering controls and for use of respirators to achieve the 8-hour TWA PEL for employers using MC in certain specific applications.

Those applications are:

- Polyurethane foam manufacturing;
- Foam fabrication;
- Furniture refinishing;
- General aviation aircraft stripping;
- Formulation of products containing methylene chloride;
- Boat building and repair;
- Recreational vehicle manufacture;
- Van conversion;
- Upholstery; and
- Use of methylene chloride in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing.

The motion requests that the standard's current final engineering control startup date of April 10, 2000, which now applies to employers with fewer than 20 employees, be applied also to employers in the specified application groups with 20-49 employees and to foam fabricators with 20-149 employees. (In referring to an employer's number of employees, the parties to the motion explain that they intend for the number of employees to refer to the total number of workers employed by the particular employer, not the number who work at a particular facility or the number that use methylene chloride in their work.) The motion requests shorter extensions of the engineering control dates for larger employers in these application groups. The parties further request that respirator use to achieve the 8-hour TWA PEL not be required before the

engineering control startup dates for the employers covered by the motion.

In evaluating the motion, OSHA notes that the parties are not seeking to modify the fundamental protections provided to workers by the standard. They are not challenging the 8-hour TWA PEL or the STEL or the requirement that those limits be met, to the extent feasible, through engineering and work practice controls. Nor are the parties seeking modifications of the provisions in the standard for regulated areas, protective work clothing and equipment, hygiene facilities, hazard communication, employee information and training, and recordkeeping. Moreover, the extensions of the startup dates that they seek would not change the standard's current final compliance deadline of April 10, 2000 but would merely give additional employers the benefit of that startup date. The parties suggest that their proposed changes to startup dates will enhance long-term worker protection by enabling employers to use their resources effectively and efficiently in developing permanent engineering solutions to reduce MC exposures in their workplaces. The parties' proposed addition to the medical surveillance provisions of the standard—a provision for medical removal protection benefits—is also designed to enhance worker protection by encouraging worker participation in medical surveillance. Thus, the parties believe that the amendments they seek will promote worker protection while minimizing employers' compliance burdens.

III. Medical Removal Protection Benefits

OSHA set the permissible exposure limits for methylene chloride to eliminate significant risk, to the extent feasible, to workers exposed to MC. However, individuals vary in their response to chemical exposures. Some may see their health impaired, or preexisting medical conditions aggravated, at an exposure level that does not provoke such effects in most workers. Medical surveillance can identify those workers who exhibit signs or symptoms of illnesses that could be aggravated by exposure to a toxic substance and lead to treatment or reduction in exposure. OSHA has therefore provided for medical surveillance whenever it has issued a new standard for a single toxic substance.

Medical surveillance can result in a medical opinion that particular workers should be removed from their present jobs have their work activities otherwise

restricted. This can lead to concern among workers that participation in medical surveillance could cost them their jobs. A worker who fear that medical surveillance may endanger his or her livelihood may be reluctant to consent to medical tests or to provide complete and accurate information during a medical examination. If employees whose health could be significantly impaired by continued MC exposure withhold their full cooperation, they might continue to be exposed to MC without being aware that such exposure poses a risk to their health. To avoid having the potential loss of a job act as a disincentive to workers participating in the standard's medical surveillance program, OSHA has, in certain of its toxic chemical standards, provided for medical removal protection benefits (MRPB). MRPB provisions require that an employer who must remove an employee from continued exposure to a chemical or otherwise restrict an employee's exposure to that chemical must maintain the employee's earnings and other employment rights and benefits for a specified time.

When it has included MRPB provisions in earlier standards, OSHA has delineated as specifically as possible the medical conditions that trigger removal. Where possible, the Agency has specified objective removal criteria. For example, the lead standard (29 CFR 1910.1025) requires that an employee be removed from exposure above the action level when an employee's blood lead concentration exceeds a certain value. Similarly, the cadmium standard (29 CFR 1910.1047) lists objective biological monitoring criteria that trigger medical removal.

OSHA has also, however, recognized that medical removal is sometimes appropriate without regard to specific biological markers when, in the judgment of a physician or other licensed health care professional, removal is necessary to protect the health of the employee. Thus, in addition to objective removal criteria, the lead and cadmium standards provide for medical removal based on the discretion of a health care professional. The lead standard requires medical removal "on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead." Under the cadmium standard, an employee must be removed if a written medical opinion determines that removal is justified by "biological

monitoring results, inability to wear a respirator, evidence of illness, other signs or symptoms of cadmium-related dysfunction or disease, or any other reason deemed medically sufficient" The formaldehyde standard (29 CFR 1910.1048) contains no objective criteria for medical removal but provides for removal "if the physician finds that significant irritation of the mucosa of the eyes or of the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization result from workplace formaldehyde exposure and recommends restrictions or removal."

In the proposed MC rule, OSHA solicited comment on whether it should provide for medical removal protection benefits in the final rule. 56 FR at 57043 (Nov. 7, 1991). A number of commenters urged the Agency to do so on the basis that MRPB would encourage employee participation in medical surveillance. In the final rule, OSHA found, as it had in the earlier standards discussed above, that MRPB would increase employee participation in medical surveillance. However, the Agency declined to include such a provision in the standard because it did not believe it could offer substantive guidance to medical professionals as to when it would be appropriate to remove an employee from further MC exposure or to return a removed employee to the workplace. 62 FR at 1595.

The parties to the motion for reconsideration believe they have drafted a provision that is narrowly tailored to diseases that MC exposure may aggravate and that limits the scope of the provision in a way that avoids any undue economic burden on small employers. Under their proposal, MRPB would be required only when a physician or other licensed health care professional (PLHCP) determines that the employee's exposure to MC would contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke), or skin disease. The parties note that the heart, liver, central nervous system, and skin are the organs and systems that OSHA identified in the standard as being particularly susceptible to MC-induced noncarcinogenic health effects. They believe that physicians and other licensed health care professionals will be able to render an informed judgment as to whether MC exposure will contribute to or aggravate an existing disease affecting these systems or organs.

The parties further propose, in paragraph (j)(10), that the standard require the PLHCP to presume that MC exposure below the 8-hour TWA PEL

will not aggravate an existing disease of the heart, liver, central nervous system, or skin. Under the proposal, a PLHCP who recommends removal of an employee who is exposed below the 8-hour TWA PEL must cite specific medical evidence to support the recommendation. Absent such evidence, the employer need not remove the employee.

When a medical determination indicates removal, the parties' proposal requires the employer to either transfer the employee to comparable work where MC exposures are below the action level or remove the employee from MC exposure. For each employee thus removed or transferred, the employer must maintain the employee's earnings, seniority, and other employment rights and benefits for up to six months. The employer may cease paying MRP benefits before the end of the six-month period upon receipt of a medical determination that the employee's exposure to MC will no longer aggravate any existing cardiac, hepatic, neurological, or dermal disease, or upon receipt of a medical determination concluding that the employee can never return to MC exposure above the action level.

The parties also propose inclusion of provisions that OSHA has routinely included in previous standards that provided for MRPB. These provisions (1) allow an employer to condition an employee's receipt of MRPB on participation in follow-up medical surveillance; (2) provide for a diminution of MRP benefits to offset any workers' compensation indemnity payments the employee receives for the same period of time; (3) provide an offset of such benefits against compensation from a publicly or employer-funded compensation program or income the employee receives from other employment that is made possible by virtue of the employee's removal, and (4) require the employer to pay MRP benefits if it voluntarily removes or restricts an employee due to the effects of MC exposure on the employee's medical condition.

The current standard provides for the employer to select the PLHCP who conducts medical surveillance. Under the parties' proposal, the health care professional selected by the employer would make the medical determination whether to recommend that an employee be removed. The parties also, propose to include a provision that allows employees the option to have the recommendation of the employer-selected health care professional reviewed by a health care professional

or the employee's choice. If the two health care professionals disagree, they jointly designate a third, who must be a specialist in the field at issue and whose written opinion is the definitive medical determination under the standard. The parties note that, in previous standards that have provided for MRPB, OSHA has included similar provisions for multi-step review to strengthen the basis for medical removal determinations and to increase employee confidence in those determinations.

The parties have also recommended a provision designed to avoid an undue burden that could result if a small business would need to provide medical removal protection benefits to more than one employee at the same time. Paragraph (j)(11)(i)(B) of their proposal states that if the employer receives a recommendation for medical removal of an additional employee and comparable work that does not involve exposure to MC at or above the action level is not available, the employer need not remove the additional employee if the employer can demonstrate that removal and the costs of MRP benefits to that employee, considering feasibility in relation to the size of the employer's business and the other requirements of this standard, make further reliance on MRP an inappropriate remedy. In such a case, the employer may retain the additional employee in the existence job until transfer or removal becomes appropriate, provided: (i) The employer or the PLHCP informs the additional employee of the risk to the employee's health from continued MC exposure; and (ii) the employer ensures that the employee receives medical surveillance, including a physical examination, at least every 60 days.

OSHA has carefully considered the parties' proposal in light of its earlier concern that a MRPB provision must provide sufficient guidance to licensed health care professionals as to when medical removal is indicated. OSHA concludes that the MRPB provision recommended by the parties delineates with sufficient specificity the circumstances that can trigger medical removal protection benefits. First, the provision requires MRPB only if the PLHCP finds that the employee has an identifiable disease of one or more specific organs that are known to be susceptible to MC exposure. Second, by providing for a rebuttable presumption that such a disease will not be aggravated by exposure to MC below the 8-hour TWA PEL, the parties' proposal ensures that the physician or other health care professional will take into account the level of methylene chloride

to which the worker is exposed. OSHA believes that, with these constraints, the parties' proposal will improve employee confidence and participation in medical surveillance while providing adequate guidance to the physicians and other licensed health care professionals who will be conducting medical surveillance and making recommendations for medical removal under the standard.

OSHA also believes that the ancillary provisions of the MRPB program recommended by the parties are appropriate. The parties have patterned their recommendation on the existing OSHA standards that provide for MRPB. OSHA agrees that provisions it has routinely included as part of a MRPB program, including those providing for a multi-step review process, should be included in the methylene chloride standard. OSHA continues to believe that multi-step review is vital to ensuring employee confidence in medical removal determinations and is a necessary part of any standard that provides for medical removal protection benefits.

The one provision in the parties' proposal with no direct counterpart in earlier standards that provide for MRPB is the provision in proposed paragraph (j)(11)(i)(B) that would allow an employer who has already removed one or more employees under paragraph (j)(11) to retain an additional employee in the existing job despite a removal recommendation if removal would result in undue economic burden. In such a situation, the parties propose that the employer must provide enhanced medical surveillance to the employee and must ensure that the employee who is not removed is fully informed of the health risk presented by continued MC exposure.

OSHA agrees with the parties that, in the limited circumstances specified in this provision, it is appropriate to allow an employer to retain an employee in his or her present job, even when the PLHCP has recommended removal, provided the employer ensures that the employee receives the more frequent medical surveillance specified in the proposed provision and is fully aware of the health risk. Frequent medical surveillance and full information will enable the employer and employee to take steps to minimize the risk under existing workplace conditions, by, for example, implementing those controls that are in place and strictly following work practices that are designed to minimize the employee's MC exposure. Thus, the parties' proposal provides additional protection to those workers who would be retained in their current jobs under paragraph (j)(11)(i)(B).

IV. Extensions of Startup Dates

The motion for reconsideration requests that the standard's current final engineering control startup date of April 10, 2000, which is limited in the final standard to employers with fewer than 20 employees, also apply to employers in the specified application groups who have 20-49 employees and to foam fabricators who have 20-149 employees. According to the parties employers in these application groups and size categories, like those with fewer than 20 employees, have limited resources with which to develop and implement engineering controls and will be able to use those resources more efficiently if

given additional time to develop and install effective controls and to take advantage of the compliance assistance that OSHA plans to offer. The motion requests shorter extensions of the engineering control dates for larger employers in these application groups.

The parties further request that respirator use to achieve the 8-hour TWA PEL (currently required by Aug. 31, 1998 under a partial stay issued by OSHA on Dec. 18, 1997, 62 FR 66275) not be required before the engineering control startup dates for those employers covered by the motion. They contend that workers would be better protected if these employers can concentrate their limited resources on

implementing effective engineering controls rather than diverting part of those resources to interim and expensive respiratory protection that would no longer be needed a short time later, once full compliance with the 8-hour TWA PEL and STEL is achieved by engineering controls.

The following chart shows the startup dates requested by the motion for reconsideration. Where the startup date for a provision has already passed, the chart lists that provision as being "in effect." For the reasons discussed below, OSHA is now proposing to adopt the startup dates requested by the parties to the motion.

PROPOSED STARTUP DATES

	Employers with fewer than 20 employees	Polyurethane foam mfrs. with 20 or more employees	Selected applications ¹ with 1-49 employees and foam fabricators with 1-149 employees	Selected applications ¹ with 50 or more employees and foam fabricators with 150 or more employees	All other employers with 20 or more employees
Engineering controls to achieve 8-hour TWA PEL and STEL.	April 10, 2000 (unchanged from current standard).	October 10, 1999 ²	April 10, 2000 ²	April 10, 1999 ²	In effect.
Respirators to achieve 8-hour TWA PEL.	April 10, 2000 ²	October 10, 2000 ²	April 10, 2000 ²	April 10, 1999 ²	In effect.
Respirators to achieve STEL.	In effect	In effect	In effect	In effect	In effect.
All other provisions	In effect	In effect	In effect	In effect	In effect.

¹ As described earlier, the selected applications are furniture refinishing; general aviation aircraft stripping; product formulation; use of MC-based adhesive for boat building and repair, recreational vehicle manufacture, van conversion, or upholstery; and use of MC in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making, or floor refinishing and resurfacing.
² Under a partial stay issued on December 18, 1997 (62 FR 66275) these dates are now December 10, 1998 for engineering controls and August 31, 1998 for respirators to achieve the 8-hour TWA PEL.

OSHA generally agrees that worker protection against MC exposure will best be achieved if employers develop and install effective engineering controls as soon as practicable. OSHA has long recognized that engineering controls are superior to respiratory protection as a means of protecting workers against inhalation of toxic chemicals. Engineering controls protect workers by reducing the airborne concentrations of methylene chloride to or below permitted limits. Their effectiveness does not, unlike respirator use, depend on the respiratory protection functioning as designed or on employers effectively supervising employees to ensure that they use and maintain respiratory equipment consistently and properly. Respirators also may present safety hazards by limiting workers' mobility, vision, and ability to communicate.

The agency also recognizes that employers require a reasonable amount of time to develop and install engineering controls. Engineering controls, such as local exhaust

ventilation, must be properly designed and installed if they are to work efficiently. The parties request that OSHA help employers in the application groups for which relief is sought to develop effective engineering controls by offering compliance assistance that will give those employers guidance as to appropriate engineering controls and avoid the uncertainty and expense that would result if each employer were to attempt to design and implement its own controls. OSHA agrees that compliance assistance would help employers use their resources more efficiently and plans to offer such assistance. Already, OSHA has developed Fact Sheets for a number of applications that identify engineering controls and work practices that employers can use to protect their employees against MC exposure. OSHA has also developed a small entity compliance guide and has started conducting a series of outreach seminars on the MC standard in various cities around the country. OSHA intends to add to this information base to further

help employers to develop engineering controls that would be both effective and feasible to implement in their facilities.
Although OSHA has long recognized the superiority of engineering controls, respirator use is necessary when engineering and work practice controls cannot achieve the required exposure levels. The Agency has consistently required that respirators be used when feasible engineering and work practice controls cannot achieve permissible exposure limits. OSHA also requires the use of respirators for interim protection while engineering controls are being developed and installed. For most toxic chemicals, air-purifying respirators, which are relatively inexpensive, provide effective protection at most workplace exposure levels. However, air-purifying respirators do not provide effective protection against MC exposure because MC quickly penetrates all currently available organic vapor cartridges. Therefore, when respirators are required under the MC standard,

atmosphere-supplying respirators must be used.

Atmosphere-supplying respirators are a relatively expensive type of respiratory equipment, requiring the employer not only to purchase the respiratory equipment itself but also to install an air compressor and associated ductwork or rent cylinders containing breathing air. In light of the relatively high cost associated with the atmosphere-supplying respirators required by the MC standard, OSHA agrees with the parties that the standard should permit employers in the identified application groups to concentrate their limited resources on developing permanent engineering solutions rather than diverting part of those resources to interim respiratory protection to achieve the 8-hour TWA PEL.

OSHA further notes that the parties' proposal will provide workers with significant interim protection before the final compliance deadline of April 10, 2000 or by whatever earlier date controls are required. First, under the parties' proposal, the STEL will go into effect as scheduled, and employers will be required to ensure that some combination of engineering controls, work practice controls, and respiratory protection reduce exposures below that level. Workers will therefore be protected against acute health effects associated with high short-term exposure to MC. Moreover, reduction of short-term exposures to below the STEL will, in many cases, help reduce 8-hour time-weighted average exposures as well and will thereby provide workers with some interim protection against the chronic effects of MC exposure.

The parties' proposal will also not delay compliance with the requirement that employers implement feasible work practices to reduce MC exposures. Such controls can achieve significant reductions in MC exposures in many workplaces at low cost. Early implementation of work practice controls will also enable employers to evaluate the extent to which exposures can be reduced by such controls and will enable them to better determine the nature and extent of the engineering controls they will need to achieve the 8-hour TWA PEL and STEL. Furthermore, the remaining protections of the standard (regulated areas, protective work clothing and equipment, hygiene facilities, hazard communication, employee information and training, and recordkeeping) will take effect as currently scheduled for all employers.

In many workplace situations, adherence to careful work practices will achieve substantial reductions in MC

exposures. In its Fact Sheets, OSHA has identified feasible work practices for several of the application groups (furniture refinishing, polyurethane foam manufacturing, construction work) for which the parties seek relief. Many of the identified work practices would be feasible for and useful to facilities in other application groups as well. To facilitate widespread dissemination of the information on work practices in the Fact Sheets, OSHA is listing them below.

A. Furniture Refinishers

Keep MC Vapors Contained

- Keep the door to mixing/storage areas closed at all times.
- Store and transport MC only in approved safety containers.
- Properly label all MC containers to indicate their contents, hazards, and proper use, storage and disposal. Read these labels and follow the directions.
- Keep solution containers closed tightly when not in use.
- Avoid unnecessary transfer or movement of stripping solutions.
- Keep dip tanks and reservoir tanks covered when not in use.
- Keep the stripping solution at the appropriate temperature (often around 70° F). At this temperature, wax in the solution will form a vapor barrier that prevents the solution from evaporating too quickly. If the temperature is too high or too low, the wax will not form a vapor barrier.
- Do not let sludge dry on the stripping table. Place the wet sludge in sealed containers for later recovery or disposal, or dry it using proper engineering controls (e.g., local exhaust ventilation) to capture the MC vapors.

Avoid Breathing MC Vapors

- Turn on the dip tank or stripping table ventilation system at least an hour before work begins or leave it on overnight.
- Avoid breathing air directly above the stripping solution and dip tank. Do not lean over the tank when working.
- Avoid breathing the air directly above the furniture during manual stripping. Do not lean over an area covered with stripper.
- Do not work or stand between solution-covered furniture and the exhaust system.
- Turn the solution-recycling system off when it is not being used.
- Do not rely on the odor of MC to warn you of overexposure. People cannot smell MC until vapor concentrations are above 300 ppm, which is 12 times higher than the 8-hour time-weighted-average permissible

exposure limit of 25 ppm. Also, you sense of smell can quickly get used to the odor of MC so that you stop noticing it.

- If you become dizzy, light-headed, or have other symptoms of MC exposure, go immediately to an area with fresh air.

Minimize the Chance of Spills and Leaks

- Develop and follow your facility's procedures for detecting MC leaks from process equipment, holding tanks, and spill control devices.
- Frequently inspect process equipment, holding tanks, and spill control devices for cracks, loose parts, and other possible sources of leaks.
- Where spills occur, follow procedures for containing them.
- Clean up all spills and leaks as quickly as possible.
- Place rags, waste, paper towels, or absorbent used to clean spills in a closed container (preferably a non-aluminum, all metal safety container) immediately after use.
- Make sure that leaks are repaired and spills cleaned up by employees who are trained in proper cleanup methods. These employees should wear appropriate personal protective equipment.

Take Extra Precautions in Low and Confined Spaces

- MC vapors are heavier than air, so they tend to move to low, unventilated spaces such as tanks and maintenance pits.
- Do not enter or lean into a storage tank, dip tank, or low-lying confined area until it has been completely aired out and tested. Wear proper PPE and follow the appropriate confined space entry procedures outlined in OSHA's Permit Required Confined Spaces standard (29 CFR 1910.146).
- Use a long-handled tool to pick up items that you drop into a confined space or low-lying area.

B. Polyurethane Foam Manufacturers

Keep MC Vapors Contained

- Keep the doors to the pouring and cooling areas closed at all times.
- Store and transport MC only in approved safety containers.
- Properly label all MC containers to indicate their contents, hazards, and proper use, storage and disposal. Read these labels and follow the directions.
- Keep MC containers closed tightly when not in use.
- Avoid unnecessary transfer or movement of MC.
- Keep the openings on the sides of the tunnel closed when it is not in use.

This keeps MC vapors from escaping and ensures that the makeup air system at the end of the tunnel runs well.

Avoid Breathing MC Vapors

- Turn on local exhaust ventilation systems in the tunnel and cooling rooms at least an hour before work begins or leave them on overnight.
- Turn on the general ventilation system in the cooling room at least an hour before work begins or leave it on overnight.
- Avoid breathing air directly above cooling foam.
- When possible, minimize the amount of time spent near the cooling foam and tunnel openings because these areas are likely to have the highest levels of MC vapors.
- Do not work or stand between cooling foam and the exhaust system.
- Do not rely on the odor of MC to warn you of overexposure. People cannot smell MC until vapor concentrations are above 300 ppm, which is 12 times higher than the 8-hour time-weighted-average permissible exposure limit of 25 ppm. Also, you sense of smell can quickly get used to the odor of MC so that you stop noticing it.
- If you become dizzy, light-headed, or have other symptoms of MC exposure, go immediately to an area with fresh air.

Minimize the Chance of Spills and Leaks

- Develop and follow your facility's procedures for detecting MC leaks from process equipment, holding tanks, and spill control devices.
- Frequently inspect the tunnel and other equipment for cracks, loose parts, and other possible sources of leaks.
- Clean up all spills and leaks as quickly as possible.
- Place rags, waste, paper towels, or absorbent used to clean spills in a closed container (preferably a non-aluminum, all metal safety container) immediately after use.
- Make sure that leaks are repaired and spills cleaned up by employees who are trained in proper cleanup methods. These employees should wear appropriate personal protective equipment.

Take Extra Precautions in Low and Confined Spaces

- MC vapors are heavier than air, so they tend to move to low, unventilated spaces.
- Do not enter or lean into a low-lying confined area until it has been completely aired out and tested. Wear proper PPE and follow the appropriate

confined space entry procedures outlined in OSHA's Permit Required Confined Spaces standard (29 CFR 1910.146).

- Use a long-handled tool to pick up items that you drop into a confined space or low-lying area.

C. Construction Work

Keep MC Vapors Contained

- Store and transport MC products only in approved safety containers.
- Properly label all MC containers to indicate their contents, hazards, and proper use, storage and disposal. Read these labels and follow the directions.
- Keep MC product containers closed tightly when not in use.
- Avoid unnecessary transfer or movement of MC products.

Avoid Breathing MC Vapors

- Avoid breathing the air directly above areas covered with MC. Do not lean over an area covered with MC.
- Do not work or stand between MC-covered areas and the exhaust system.
- Do not rely on the odor of MC to warn you of overexposure. People cannot smell MC until vapor concentrations are above 300 ppm, which is 12 times higher than the 8-hour time-weighted-average permissible exposure limit of 25 ppm.
- Also, your sense of smell can quickly get used to the odor of MC so that you stop noticing it.
- If you become dizzy, light-headed, or have other symptoms of MC exposure, go immediately to an area with fresh air.

Minimize the Chance of Spills and Leaks

- Develop and follow procedures for containing MC spills or leaks.
- Frequently inspect MC product containers for cracks or other possible sources of leaks.
- Clean up all spills and leaks as quickly as possible.
- Place rags, waste, paper towels, or absorbent used to clean spills in a closed container (preferably a non-aluminum, all metal safety container) immediately after use.
- Make sure that leaks are repaired and spills cleaned up by employees who are trained in proper cleanup methods. These employees should wear appropriate personal protective equipment.

Take Extra Precautions in Low and Confined Spaces

- MC vapors are heavier than air, so they tend to move to low, unventilated spaces.

- Do not enter or lean into a low-lying confined area until it has been completely aired out and tested. Wear proper PPE and follow the appropriate confined space entry procedures outlined in OSHA's Permit Required Confined Spaces standard (29 CFR 1910.146).
- Use a long-handled tool to pick up items that you drop in area where MC is being used.

V. Preliminary Economic and Regulatory Flexibility Analysis

OSHA is proposing to revise paragraph (j), Medical Surveillance, of the final rule governing occupational exposure to methylene chloride (MC) (29 CFR 1910.1052) to add medical removal protection benefits to the rule. This preliminary economic analysis estimates the costs of complying with the proposed MRP provisions and then assesses the economic feasibility and potential economic impacts of these costs on firms in the affected sectors. The information used in this analysis is taken from the exposure profile, industry profile, and economic impacts analysis presented in the Final Economic Analysis (Ex. 129) that accompanied OSHA's final rule for methylene chloride (Federal Register Vol. 62, 7, pp. 1494 to 1619). Relying on the data developed for the analysis to support this proposed revision to the final rule ensures analytical consistency and comparability across the two economic analysis documents.

OSHA's final MC rule did not contain medical removal protection provisions. The revisions being proposed today respond to a motion for reconsideration filed by the United Auto Workers (UAW), the Halogenated Solvents Industry Alliance, Inc., and others. As requested in that motion, OSHA is proposing to add paragraphs (j)(9)(i) (A) and (B), (j)(10), (j)(11), (j)(12), (j)(13), and (j)(14), dealing with medical removal protection, medical removal protection benefits, voluntary removal or restriction of an employee, and multiple health care professional review, respectively, to the final rule. Medical removal protection (MRP) would apply only under certain limited circumstances, i.e., medical removal protection would be required only if a physician or other licensed health care professional finds that exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke), or dermal disease. The proposed rule instructs the physician or other licensed health care professional to presume that a medical condition is unlikely to require removal from exposure to MC,

unless medical evidence indicates to the contrary, if the employee is not exposed to MC at concentrations above the 8-hour TWA PEL of 25 ppm. The physician or other licensed health care professional may also recommend removal from exposure to MC for any other condition that would, in the health care professional's opinion, place the employee's health at risk of material impairment from exposure to MC, but MRP would only be triggered by a finding that exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke), or dermal disease.

Any employee medically removed must (1) be provided with comparable work where MC exposures are below the action level, or (2) be completely removed from MC exposure. The employee's total pay, benefits and seniority must be maintained throughout the period of medical removal protection, even if the only way to remove the employee from MC exposure is to send him or her home for the duration of the medical removal protection period. The employer may reduce the amount paid to the removed worker to the extent that the worker's previous pay has been offset by other compensation (such as worker's compensation payments) or by wages from another job made possible by the medical removal.

The proposal would require employers to maintain medical removal protection benefits for up to six months. Medical removal protection may be terminated in less than 6 months if a medical determination shows that the employee may return to MC exposure, or a medical determination is made that the employee can never return to MC exposure.

In situations in which no comparable work is available for the medically removed employee, the proposal would allow the employer to demonstrate that the medical removal and the costs of medical removal protection benefits, considering feasibility in relation to the size of the employer's business and the other requirements of this standard, make reliance on medical removal protection an inappropriate remedy. In such a situation, the employer may retain the employee in the existing job until transfer or removal becomes appropriate, provided that the employer ensures that the employee receives additional medical surveillance, including a physical examination at least every 60 days until removal or transfer occurs, and that the employer or PLHCP informs the employee of the risk

to the employee's health from continued MC exposure.

In conducting this economic analysis, OSHA has estimated the number of workers with the four listed types of conditions (neurological, hepatic, cardiac, and dermal disease) that can trigger MRP. OSHA has assumed that medical removal protection would be extended only to employees exposed above the PEL, as reflected by the presumption. This analysis also assumes that all employers will provide medical removal protection whenever a physician or other licensed health care provider recommends removal, i.e., OSHA has not quantified the number of times small firms may retain an employee for whom a removal recommendation has been made in the employee's existing job due to the employer's financial inability to remove the employee. Because some very small firms may find that medical removal protection is infeasible in their circumstances but this cost analysis assumes that all such employees will be removed, OSHA believes that this analysis is likely to overestimate the costs associated with MRP.

Cost of Medical Removal Protection Provisions

OSHA's estimates of the costs of the proposed medical removal protection provisions are calculated based on the number of workers eligible for medical removal protection times the frequency of the medical conditions that would trigger medical removal protection in the exposed population times the costs of medical removal protection for each type of medical condition.

Number of Workers Eligible for Medical Removal Protection Under the Proposal

Because of the presumption stated explicitly in the proposed revisions, medical removal protection will be limited in almost all cases to employees exposed to MC at concentrations above the PEL of 25 PPM as an 8-hour TWA. The Final Economic Analysis (Ex. 129) estimated that approximately 55,000 employees in all affected application groups are currently exposed above 25 ppm. This estimate is used here to calculate the number of employees potentially eligible for medical removal protection during the year in which medical removal protection would be in effect but the engineering control requirements of the rule would not yet be in effect for some of the application groups. Once the implementation of engineering controls is required, OSHA assumes, for the purposes of this analysis, that 10 percent of those employees previously exposed to an 8-

hour TWA above 25 ppm (5,500 employees) would continue to be exposed to an 8-hour TWA above 25 ppm.

OSHA believes that reliance on these assumptions will lead to an overestimate of the number of employees eligible for medical removal protection because some firms will have implemented controls and lower the exposure of their employees well before the final standard requires them to do so. Once the standard requires employers to implement engineering controls, OSHA's Final Economic Analysis (Ex. 129) estimated that the exposure of almost all employees would be reduced to MC levels below 25 ppm as a 8-hour TWA. To capture all costs potentially associated with the proposed medical removal protection provisions, OSHA has assumed for this analysis that some employees will continue to be exposed above 25 ppm.

Frequency of Medical Removal Protection Under the Proposed Provisions

The proposed changes to the occupational exposure to methylene chloride standard allow for medical removal protection in the event that exposure to methylene chloride "may contribute to or aggravate existing cardiac, hepatic, neurological (including stroke), or skin disease." Medical removal protection does not apply if the condition is such that removal from MC exposure must be permanent.

OSHA believes that MC-induced or aggravated neurological symptoms (other than stroke) occur infrequently and that when such protection is triggered by neurological manifestations (other than stroke), the period of time involved in the removal will be relatively brief. OSHA also believes that MC-induced or aggravated heart conditions or strokes are likely to result in permanent medical removal, and thus that employers will not incur the costs of medical removal protection in these cases. This analysis therefore focuses on medical removal protection for MC-induced or aggravated dermatitis or abnormal hepatic conditions. Each of these conditions is likely to resolve with time, proper treatment, or both, and these are therefore the conditions likely to result in a determination that temporary medical removal protection, rather than permanent removal, is needed.

Because the proposal would provide for medical removal protection in situations where exposure to MC contributes to or aggravates the listed condition, this analysis focuses on the frequency with which each covered

condition occurs in the working population, and not simply on the frequency with which MC causes these conditions. For the first year after the MRP provisions are in effect, OSHA has no evidence that hepatic conditions are more prevalent in workplaces that use MC than in the general working age population and therefore assumes that the prevalence of hepatic conditions will be the same as in the general working age population (18-65). OSHA estimates that 5 percent of the working population will be found on evaluation to have hepatic conditions sufficiently abnormal to trigger medical removal.

For dermatitis, which is seldom a lasting condition, OSHA similarly assumes, in the absence of evidence to the contrary, that the prevalence in the MC-exposed workforce is the same as the rate in the general working age population. For dermatitis, Vital and Health Statistics (National Center for Health Statistics, 1995) reports that, in 1993, the prevalence of dermatitis was 2.93 percent for persons between 18 and 45 and 2.18 percent for persons between 45 and 65. Weighting using the BLS data cited above, OSHA finds that 2.7 percent of the MC-exposed workforce will be found on the first required medical evaluation to have dermatitis and will be medically removed.

After the proposed standard has been in effect for the first year, OSHA assumes that the prevalence of dermatitis will continue at the same rate. For liver conditions, OSHA assumes that most of the conditions that triggered removal in the first year will have been resolved and that the number of older cases that flare up and have to be treated again, combined with new cases that trigger medical removal, will occur at a combined rate 1/3 that of the initial rate.

Costs of Medical Removal Protection

Employers incur three kinds of costs for medical removal protection: costs for medical evaluations not already required; costs resulting from changing the employee's job, such as those related to retraining and lost productivity; and, where alternative jobs that do not involve MC exposure are not available, the costs of keeping a worker who is not working on the payroll.

Employers may incur costs for medical evaluations (over and above those already required for medical surveillance) for two reasons: to determine if the employee can return to work, and to determine, using multiple PLHCP review, whether the initial medical determination was correct. Because the proposal allows employees to be removed from medical removal

protection status only on the basis of a new medical determination, every instance of medical removal protection will require one additional examination. OSHA estimated the cost of a medical examination at \$130 in the Final Economic Analysis (Ex. 129). Every case of medical removal protection would require at least one additional medical evaluation. In addition, OSHA estimates that 10 percent of all removed cases will require a second medical evaluation either for the purpose of multiple health care professional review or because the first examination showed that the employee could not yet be returned to normal duty.

The largest MRP-related costs in almost all cases will be the cost of paying for time away from work for the removed employee. OSHA estimates that the typical dermatitis case will involve 6 days away from work. BLS (BLS, Occupational Injuries and Illnesses: Counts, Rates, and Characteristics, 1994) reports that, in 1994, the typical lost worktime case of dermatitis involved 3 days away from work. OSHA allowed an additional three days to allow time for a return-to-work determination to be made. For medical removal for hepatic conditions, OSHA estimates that a 4-week period of medical removal will normally be sufficient to provide for stabilization and a return to the normal range for the typical case of elevated liver enzymes. Because almost no cases will be resolved in less than 4 weeks and a small number of cases (such as those involving serious liver disease) may take much longer to resolve, OSHA's cost estimate estimates 5 weeks as the average period of medical removal for these cases.

For the short-term medical removal associated with dermatitis, OSHA has conservatively assumed that the employee will be paid full wages and benefits even though not at work. For the longer term medical removal associated with hepatic conditions, OSHA estimates that, in firms with more than 20 employees, alternative jobs not involving exposure to MC will be found for affected employees. OSHA estimates the costs of moving employees to alternative jobs as equivalent to the loss of 20 person hours in lost productivity and/or retraining expenses. For firms with fewer than 20 employees, OSHA expects that there may be more difficulty finding alternative positions both because fewer alternative positions are available and because more positions in the establishment are likely to involve exposure to MC.

For the very small firms in furniture stripping, where all jobs may involve

exposure to MC, OSHA has assumed that all cases of medical removal will involve removing employees from work entirely, and thus that employers will incur the full costs of the employee's wages and benefits for the five weeks the employee is medically removed. Firms with fewer than 20 employees in other application groups tend to be somewhat larger than in furniture stripping and will therefore be more likely to have work that does not involve exposure to MC at levels above the action level. For example, in such small-business-dominated application groups as printing shops, and in small cold cleaning and paint stripping operations, exposure to MC tends to involve only a single employee and is commonly intermittent even for that employee. For establishments with fewer than 20 employees in application groups other than furniture stripping, OSHA estimates that 50% will be able to find alternative employment and 50% will need to send the employee home because alternative jobs without MC exposure cannot be found.

Annualized Cost Estimates

Table 1 shows OSHA's estimated annualized costs for firms in each application group. The total annualized costs for medical removal protection are estimated to be \$920,387 per year for all affected employers. The greatest costs are in the cold cleaning application group, the all other industrial paint stripping application group, and the furniture stripping application group. All of these application groups have annualized MRP costs in excess of \$100,000 per year.

TABLE 1.—ANNUALIZED COSTS OF MRP FOR METHYLENE CHLORIDE APPLICATION GROUPS

Application group	Annualized costs (\$)
Methylene Chloride Manufacturing	70
Distribution/Formulation of Solvents	6,597
Metal Cleaning:	
Cold Degreasing and Other Cold Cleaning	307,216
Open-Top Vapor Degreasing	2,709
Conveyorized Vapor Degreasing	378
Semiconductors	1,147
Printed Circuit Boards	0
Aerosol Packaging	2,875
Paint Remover Manufacturing ..	593
Paint Manufacturing	823
Paint Stripping:	
Aircraft Stripping	9,662

TABLE 1.—ANNUALIZED COSTS OF MRP FOR METHYLENE CHLORIDE APPLICATION GROUPS—Continued

Application group	Annualized costs (\$)
Furniture Stripping	80,579
All Other Industrial Paint Stripping	206,619
Flexible Polyurethane Foam Manufacturing	4,296
Plastics and Adhesives Manufacturing and Use	52,639

TABLE 1.—ANNUALIZED COSTS OF MRP FOR METHYLENE CHLORIDE APPLICATION GROUPS—Continued

Application group	Annualized costs (\$)
Ink and Ink Solvent Manufacturing	182
Ink Solvent Use	53,298
Pesticide Manufacturing and Formulation	541
Pharmaceutical Manufacturing	3,576
Solvent Recovery	0
Film Base Manufacturing	0

TABLE 1.—ANNUALIZED COSTS OF MRP FOR METHYLENE CHLORIDE APPLICATION GROUPS—Continued

Application group	Annualized costs (\$)
Polycarbonate Manufacturing ...	0
Construction	115,297
Shipyards	18,652
Total, All Application Groups	920,387

Source: Office of Regulatory Analysis; OSHA; Department of Labor.

TABLE 2.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACTS OF THE PROPOSED MC STANDARD'S MEDICAL REMOVAL PROVISIONS

Application group	Number of affected establishments	Annualized costs of compliance	
		as percent of sales	as percent of profit
Manufacture of MC	4	0.0000	0.0004
Distribution/Formulation of Solvents	320	0.0003	0.0046
Metal Cleaning:			
Cold Degreasing and Other Cold Cleaning	23,717	0.0001	0.0021
Open-Top Vapor Degreasing	278	0.0001	0.0016
Conveyorized Vapor Degreasing	45	0.0001	0.0014
Semiconductors	239	0.0000	0.0002
Printed Circuit Boards	141	0.0000	0.0000
Aerosol Packaging	50	0.0001	0.0012
Paint Remover Manufacturing	80	0.0001	0.0015
Paint Manufacturing	49	0.0001	0.0027
Paint Remover Use (Paint Stripping):			
Aircraft Stripping	300	0.0001	0.0017
Furniture Stripping	6,152	0.0154	0.2977
All Other Industrial Paint Stripping	35,041	0.0000	0.0010
Flexible Polyurethane Foam Manufacturing	100	0.0003	0.0093
Plastics and Adhesives Manufacturing and Use	3,487	0.0000	0.0000
Ink and Ink Solvent Manufacturing	15	0.0000	0.0003
Ink Solvent Use	11,869	0.0004	0.0098
Pesticide Manufacturing and Formulation	60	0.0001	0.0018
Pharmaceutical Manufacturing	108	0.0000	0.0004
Solvent Recovery	35	0.0000	0.0000
Film Base	1	0.0000	0.0000
Polycarbonates	4	0.0000	0.0000
Construction	9,504	0.0027	0.0705
Shipyards	25	0.0025	0.0655
All Application Groups	91,624	0.0014	0.0296

Source: Office of Regulatory Analysis; OSHA; Department of Labor

Economic Impacts

Table 2 combines the cost data from Table 1 and the economic profile information provided in the Final Economic Analysis for the Methylene Chloride rule (Ex. 129) to provide estimates of the potential impacts of these compliance costs on firms in affected application groups. The proposed medical removal protection is clearly economically feasible: on average, annualized compliance costs amount only to 0.0014 percent of estimated sales and 0.03 percent of profits. For all but one application

group—furniture stripping—compliance costs are less than 0.07 percent of profits, and less than 0.003 percent of the value of sales. Even in furniture stripping, the annualized costs of medical removal protection are still only 0.015 percent of sales and 0.3 percent of profits. Impacts of this magnitude do not threaten the economic feasibility of firms in any affected application group. If highly unusual circumstances were to arise that pose such a threat, the proposed standard allows specifically for the cost impact to be considered on a case-by-case basis.

OSHA's cost methodology for this proposal tends to overestimate the costs and economic impacts of the standard for several reasons. First, OSHA has not taken into account cost savings that employers will realize from the extended startup dates that are being proposed. As discussed above, by extending the startup date for the use of respirators to achieve the 8-hour TWA PEL, this proposal will enable some employers to avoid using respirators at all because they will achieve the 8-hour TWA PEL by means of engineering controls before the date that respirator

use is required. Such employers will achieve significant cost savings as compared to the current standard. OSHA has not, however, attempted to quantify those savings.

Other aspects of OSHA's methodology also tend to result in cost overestimates. OSHA's use of general population prevalence data to estimate the prevalence of conditions that might lead to medical removal overestimates costs by ignoring the possibility that workers in MC establishments may be healthier than the general population, i.e., it ignores the "healthy worker" effect. OSHA has also assumed that all unusual hepatic conditions will lead to medical removal, when in many cases no

medical removal protection will be necessary. Finally, OSHA has also included in its cost estimate all cases involving medical removal, when it is in fact likely that some smaller firms would be able to argue that the cost of extending MRP benefits to an additional employee would make reliance on MRP an inappropriate remedy and thereby avoid removing that additional employee, as allowed by the proposal.

Regulatory Flexibility Screening Analysis and Certification

Tables 3 and 4 provide a regulatory flexibility screening analysis. As in the analysis for all firms in Table 2, OSHA used the cost data presented in Table 1

in combination with the data on small firms presented in the Final Economic Analysis (Ex. 129). Table 3 shows annualized compliance costs as a percentage of revenues and profits using SBA definitions of small firms for each relevant SIC code within each application group. This analysis shows that costs as a percentage of revenues and profits are slightly greater than is the case for all firms in the SIC, but still average only 0.0017 percent of revenues and 0.035 percent of profits. The most heavily impacted industry is furniture stripping, but the impacts in this group are the same for all firms in the group because all furniture stripping firms are small using the SBA definition.

TABLE 3.—SCREENING ANALYSIS OF POTENTIAL ECONOMIC IMPACTS ON SMALLER FIRMS (SMALL ESTABLISHMENTS AND FIRMS AS DEFINED BY SBA UNDER SECTION 3 OF THE SMALL BUSINESS ACT)

Application group	Number of small establishments affected	Costs as a percentage of profits for small firms	Costs as a percentage of sales for small firms
Manufacture of MC	0	NA	NA
Distribution/Formulation of Solvents	278	0.0005	0.0072
Metal Cleaning:			
Cold Degreasing and Other Cold Cleaning	22,365	0.0003	0.0067
Open-Top Vapor Degreasing	262	0.0003	0.0051
Conveyorized Vapor Degreasing	42	0.0002	0.0044
Semiconductors	185	0.0000	0.0002
Printed Circuit Boards	109	0.0000	0.0000
Aerosol Packaging	47	0.0002	0.0019
Paint Remover Manufacturing	77	0.0001	0.0026
Paint Manufacturing	62	0.0002	0.0045
Paint Remover Use (Paint Stripping)	77	0.0001	0.0026
Aircraft Stripping	173	0.0004	0.0088
Furniture Stripping	6,152	0.0154	0.2977
All Other Industrial Paint Stripping	33,044	0.0001	0.0029
Flexible Polyurethane Foam Manufacturing	49	0.0001	0.0034
Plastics and Adhesives Manufacturing and Use	3,281	0.0002	0.0031
Ink and Ink Solvent Manufacturing	11	0.0000	0.0004
Ink Solvent Use	9,210	0.0005	0.0106
Pesticide Manufacturing and Formulation	49	0.0001	0.0034
Pharmaceutical Manufacturing	15	NA	NA
Solvent Recovery	24	0.0000	0.0000
Film Base	0	NA	NA
Polycarbonates	0	NA	NA
Construction	9,086	0.0033	0.0866
Shipyards	0	NA	ONA
All Application Groups	84,573	0.0017	0.0352

NA=No small firms in this application group.
Source: Office of Regulatory Analysis; OSHA; Department of Labor.

TABLE 4.—SCREENING ANALYSIS OF POTENTIAL ECONOMIC IMPACTS ON FIRMS WITH FEWER THAN 20 EMPLOYEES

Application group	Number of small establishments affected	Costs as a percentage of profits for small firms	Costs as a percentage of sales for small firms
Manufacture of MC	0	NA	NA
Distribution/Formulation of Solvents	139	0.0018%	0.0322%
Metal Cleaning:			
Cold Degreasing and Other Cold Cleaning	9,223	0.0005	0.0110
Open-Top Vapor Degreasing	0	NA	NA
Conveyorized Vapor Degreasing	11	0.0005	0.0132
Semiconductors	0	NA	NA
Printed Circuit Boards	20	0.0000	0.0000
Aerosol Packaging	10	0.0006	0.0072
Paint Remover Manufacturing	34	0.0003	0.0114

TABLE 4.—SCREENING ANALYSIS OF POTENTIAL ECONOMIC IMPACTS ON FIRMS WITH FEWER THAN 20 EMPLOYEES—Continued

Application group	Number of small establishments affected	Costs as a percentage of profits for small firms	Costs as a percentage of sales for small firms
Paint Manufacturing	7	0.0006	0.0194
Paint Remover Use (Paint Stripping)	34	0.0003	0.0114
Aircraft Stripping	75	0.0011	0.0335
Furniture Stripping	5,900	0.0155	0.3034
All Other Industrial Paint Stripping	25,441	0.0002	0.0042
Flexible Polyurethane Foam Manufacturing	8	0.0010	0.0386
Plastics and Adhesives Manufacturing and Use	498	0.0013	0.0264
Ink and Ink Solvent Manufacturing	3	0.0002	0.0022
Ink Solvent Use	5,395	0.0011	0.0237
Pesticide Manufacturing and Formulation	40	0.0010	0.0386
Pharmaceutical Manufacturing	0	NA	NA
Solvent Recovery	17	0.0000	0.0000
Film Base	0	NA	NA
Polycarbonates	0	NA	NA
Construction	9,085	0.0044	0.1596
Shipyards	0	NA	NA
All Application Groups	55,907	0.0026	0.0644

NA=No small firms in this application group.
Source: Office of Regulatory Analysis; OSHA; Department of Labor.

As noted in the discussion of costs, firms with fewer than 20 employees are much more likely to incur greater costs for medical removal protection because such firms may have difficulty in finding a job that does not involve exposure to MC at levels above the action level. OSHA therefore examined annualized compliance costs as a percentage of sales and profits for firms with fewer than 20 employees.

Table 4 shows the results of this analysis. For the typical affected firm with fewer than 20 employees, the annualized costs of medical removal protection represent 0.0026 percent of sales and 0.064 percent of profits. Furniture stripping has the greatest potential impacts—annualized costs are 0.016 percent of sales and 0.3 percent of profits for firms in this application group. These impacts do not constitute significant impacts, as envisioned by the Regulatory Flexibility Act. However, because unusually prolonged medical removal without an alternative job within the establishment might present problems for these very small firms, the proposed standard includes a provision requiring special consideration of the economic burden imposed by medical removal protection when an employer would otherwise need to provide MRP benefits to more than one employee. This provision ensures that impacts are not unduly burdensome even in rare and unusual circumstances. Therefore, based on its analyses both of impacts and small firms using the SBA definitions, and of very small firms with fewer than 20 employees, OSHA

certifies that the proposed MRP provisions will not have a significant impact on a substantial number of small entities.

VI. Public Participation

Comments should be submitted to the OSHA Docket Office by June 3, 1998.

Note: OSHA is only reopening the record for comments on the two issues raised in the Motion for Reconsideration: the compliance dates and medical removal protection. It is not reopening the record or requesting comments on any other issues pertaining to the methylene chloride standard.

Authority and Signature: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

List of Subjects in 29 CFR Part 1910

Chemicals, Hazardous substances, Occupational safety and health.

Signed at Washington, DC, this 29th day of April, 1998.

Charles N. Jeffress,
Assistant Secretary of Labor.

Part 1910 of title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1910—[AMENDED]

1. The general authority citation for subpart Z of CFR 29 part 1910 continues to read, in part, as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), or 6-96 (62 FR 111), as applicable; and 29 CFR Part 1911.

2. Section 1910.1052 would be amended by revising paragraphs (j)(9)(i) (A) and (B) and paragraph (n)(2), and by adding paragraphs (j)(10), (j)(11), (j)(12), (j)(13), and (j)(14) as follows:

§ 1910.1052 Methylene Chloride.

(j) Medical surveillance.

(9) Written medical opinions.

(i) (A) The physician or other licensed health care professional's opinion concerning whether exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke) or dermal disease or whether the employee has any other medical condition(s) that would place the employee's health at increased risk of material impairment from exposure to MC.

(B) Any recommended limitations upon the employee's exposure to MC, including removal from MC exposure, or upon the employee's use of respirators, protective clothing, or other protective equipment.

(10) Medical Presumption. For purposes of this paragraph (j) of this section, the physician or other licensed health care professional shall presume,

unless medical evidence indicates to the contrary, that a medical condition is unlikely to require medical removal from MC exposure if the employee is not exposed to MC above the 8-hour TWA PEL. If the physician or other licensed health care professional recommends removal for an employee exposed below the 8-hour TWA PEL, the physician or other licensed health care professional shall cite specific medical evidence, sufficient to rebut the presumption that exposure below the 8-hour TWA PEL is unlikely to require removal, to support the recommendation. If such evidence is cited by the physician or other licensed health care professional, the employer must remove the employee. If such evidence is not cited by the physician or other licensed health care professional, the employer is not required to remove the employee.

(11) Medical Removal Protection (MRP). (i) Temporary medical removal and return of an employee.

(A) Except as provided in paragraph (j)(10) of this section, when a medical determination recommends removal because the employee's exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke), or skin disease, the employer must provide medical removal protection benefits to the employee and either:

(1) Transfer the employee to comparable work where methylene chloride exposure is below the action level; or

(2) Remove the employee from MC exposure.

(B) If comparable work is not available and the employer is able to demonstrate that removal and the costs of extending MRP benefits to an additional employee, considering feasibility in relation to the size of the employer's business and the other requirements of this standards, make further reliance on MRP an inappropriate remedy, the employer may retain the additional employee in the existing job until transfer or removal becomes appropriate, provided:

(1) The employer ensures that the employee receives additional medical surveillance, including a physical examination at least every 60 days until transfer or removal occurs; and

(2) The employer or PLHCP informs the employee of the risk to the employee's health from continued MC exposure.

(C) The employer shall maintain in effect any job-related protective measures or limitations, other than removal, for as long as a medical

determination recommends them to be necessary.

(ii) End of MRP benefits and return of the employee to former job status.

(A) The employer may cease providing MRP benefits at the earliest of the following:

(1) Six months;

(2) Return of the employee to the employee's former job status following receipt of a medical determination concluding that the employee's exposure to MC no longer will aggravate any cardiac, hepatic, neurological (including stroke), or dermal disease;

(3) Receipt of a medical determination concluding that the employee can never return to MC exposure.

(B) For the purposes of this paragraph (j), the requirement that an employer return an employee to the employee's former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(12) Medical Removal Protection Benefits. (i) For purposes of this paragraph (j), the term medical removal protection benefits means that, for each removal, an employer must maintain for up to six months the earnings, seniority, and other employment rights and benefits of the employee as though the employee had not been removed from MC exposure or transferred to a comparable job.

(ii) During the period of time that an employee is removed from exposure to MC, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(iii) If a removed employee files a workers' compensation claim for an MC-related disability, the employer shall continue the MRP benefits required by this paragraph until either the claim is resolved or the 6-month period for payment of MRP benefits has passed, whichever occurs first. To the extent the employee is entitled to indemnity payments for earnings lost during the period of removal, the employer's obligation to provide medical removal protection benefits to the employee shall be reduced by the amount of such indemnity payments.

(iv) The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal from either a publicly or an employer-funded

compensation program, or receives income from employment with another employer made possible by virtue of the employee's removal.

(13) Voluntary Removal or Restriction of an Employee. Where an employer, although not required by this section to do so, removes an employee from exposure to MC or otherwise places any limitation on an employee due to the effects of MC exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to those required by paragraph (j)(12) of this section.

(14) Multiple Health Care Professional Review Mechanism. (i) If the employer selects the initial physician or licensed health care professional (PLHCP) to conduct any medical examination or consultation provided to an employee under this paragraph (j)(11), the employer shall notify the employee of the right to seek a second medical opinion each time the employer provides the employee with a copy of the written opinion of that PLHCP.

(ii) If the employee does not agree with the opinion of the employer-selected PLHCP, notifies the employer of that fact, and takes steps to make an appointment with a second PLHCP within 15 days of receiving a copy of the written opinion of the initial PLHCP, the employer shall pay for the PLHCP chosen by the employee to perform at least the following:

(A) Review any findings, determinations or recommendations of the initial PLHCP; and

(B) Conduct such examinations, consultations, and laboratory tests as the PLHCP deems necessary to facilitate this review.

(iii) If the findings, determinations or recommendations of the second PLHCP differ from those of the initial PLHCP, then the employer and the employee shall instruct the two health care professionals to resolve the disagreement.

(iv) If the two health care professionals are unable to resolve their disagreement within 15 days, then those two health care professionals shall jointly designate a PLHCP who is a specialist in the field at issue. The employer shall pay for the specialist to perform at least the following:

(A) Review the findings, determinations, and recommendations of the first two PLHCPs; and

(B) Conduct such examinations, consultations, laboratory tests and discussions with the prior PLHCPs as the specialist deems necessary to resolve the disagreements of the prior health care professionals.

(v) The written opinion of the specialist shall be the definitive medical determination. The employer shall act consistent with the definitive medical determination, unless the employer and employee agree that the written opinion of one of the other two PLHCPs shall be the definitive medical determination.

(vi) The employer and the employee or authorized employee representative may agree upon the use of any expeditious alternate health care professional determination mechanism in lieu of the multiple health care professional review mechanism provided by this paragraph so long as the alternate mechanism otherwise satisfies the requirements contained in this paragraph.

• • • • •

(n) Dates.

• • • • •

(2) Start-up dates.

(i) Initial Monitoring required by paragraph (d)(2) of this section shall be completed according to the following schedule:

(A) For employers with fewer than 20 employees, within 300 days after the effective date of this section.

(B) For polyurethane foam manufacturers with 20 to 99 employees, within 255 days after the effective date of this section.

(C) For all other employers, within 150 days after the effective date of this section.

(ii) Engineering controls required under paragraph (f)(1) of this section shall be implemented according to the following schedule:

(A) For employers with fewer than 20 employees: within three (3) years after the effective date of this section.

(B) For employers with fewer than 150 employees engaged in foam fabrication; for employers with fewer than 50 employees engaged in furniture refinishing, general aviation aircraft stripping, and product formulation; for employers with fewer than 50 employees using MC-based adhesives for boat building and repair, recreational vehicle manufacture, van conversion, and upholstery; for employers with fewer than 50 employees using MC in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing: within three (3) years after the effective date of this section.

(C) For employers engaged in polyurethane foam manufacturing with 20 employees or more: within thirty (30) months after the effective date of this section.

(D) For employers with 150 or more employees engaged in foam fabrication;

for employers with 50 or more employees engaged in furniture refinishing, general aviation aircraft stripping, and product fabrication; for employers with 50 or more employees using MC-based adhesives in boat building and repair, recreational vehicle manufacture, van conversion and upholstery; and for employers with 50 or more employees using MC in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing: within two (2) years after the effective date of this section.

(E) For all other employers: within one (1) year after the effective date of this section.

(iii) Employers identified in paragraphs (n)(2)(ii) (B), (C), and (D) of this section shall comply with the following requirements listed in this paragraph by the dates indicated:

(A) Use of respiratory protection whenever an employee's exposure to MC exceeds or can reasonably be expected to exceed the 8-hour TWA PEL, in accordance with paragraphs (c)(1), (e)(3), (f)(1) and (g)(1) of this section: by the applicable dates set out in paragraphs (n)(2)(ii) (B), (C) and (D) of this section for the installation of engineering controls.

(B) Use of respiratory protection whenever an employee's exposure to MC exceeds or can reasonably be expected to exceed the STEL in accordance with paragraphs (e)(3), (f)(1), and (g)(1) of this section: by the applicable dates indicated in paragraph (n)(2)(iv) of this section.

(C) Implementation of work practices (such as leak and spill detection, cleanup and enclosure of containers) required by paragraph (f)(1) of this section: by the applicable dates indicated in paragraph (n)(2)(iv) of this section.

(D) Notification of corrective action under paragraph (d)(5)(ii) of this section: no later than (90) days before the compliance date applicable to such corrective action.

(iv) Unless otherwise specified in this paragraph (n), all other requirements of this section shall be complied with according to the following schedule:

(A) For employers with fewer than 20 employees, within one (1) year after the effective date of this section.

(B) For employers engaged in polyurethane foam manufacturing with 20 to 99 employees, within 270 days after the effective date of this section.

(C) For all other employers, within 255 days after the effective date of this section.

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[FR Doc. 98-11797 Filed 5-1-98; 8:45 am]
BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60 and 63

[AD-FRL-6003-6]

RIN 2060-AH94

Standards of Performance for New Stationary Sources: General Provisions; National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action amends the General Control Device Requirements (40 CFR 60.18) which were issued as a final rule on January 21, 1986, and the Control Device Requirements (40 CFR 63.11) which were issued as a final rule on March 16, 1994. This action amends the flare provisions contained in these requirements to include operating specifications for flares that contain substantial amounts of hydrogen in their waste streams. EPA believes that hydrogen-fueled flares meeting the operating specifications in this amendment will achieve the same control efficiency, i.e., 98 percent or greater, as flares complying with the existing flare specifications. Further, these specifications will result in reduced emissions of carbon monoxide, nitrogen oxides, and carbon dioxide formed during the combustion of supplemental fuel necessary for hydrogen-fueled flares to comply with existing regulations.

Because these amendments are only adding specifications for hydrogen-fueled flares and do not otherwise alter the level of pollutant reduction required for flares used to comply with the requirements of the Clean Air Act, the EPA does not anticipate receiving adverse comments. Consequently, the proposed revisions to the promulgated rule are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no relevant adverse comments are received by the due date for comments (see **DATES** section), no further action will be taken with respect to this proposal, and the

direct final rule will become final on the date provided in that action.

DATES: Comments. Comments must be received on or before June 3, 1998, unless a hearing is requested by May 14, 1998. If a hearing is requested, written comments must be received by June 18, 1998.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than May 14, 1998. If a hearing is held, it will take place on May 19, 1998 beginning at 10:00 a.m.

ADDRESSES: Comments. Comments should be submitted (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention Docket No. A-97-48 (Hydrogen-Fueled Flares), Room M-1500, U. S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The EPA requests that a separate copy also be sent to Mr. Robert Rosensteel (see **FOR FURTHER INFORMATION CONTACT** section for address). Comments may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should call Ms. Marguerite Thweatt, Organic Chemicals Group, (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5673.

Docket. The official record for this rulemaking has been established under docket Number A-97-48 (Hydrogen-Fueled Flares). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESSES** section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260-7548 or (202) 260-7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the technical analysis for this rule, contact Mr. Robert Rosensteel at (919) 541-5608, Organic Chemicals Group, Emission Standards Division (MD-13), U. S. Environmental

Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Electronic Filing

Electronic comments and data can be sent directly to EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A-97-48. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in docket number A-97-48 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541-5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541-5384, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: www.epa.gov/ttn/oarpg/rules.html.

Regulated Entities

Entities affected by this action, upon promulgation, will include:

Category	Examples of regulated entities
Industry	Synthetic Organic Chemical Manufacturing Industries; and Petroleum Refining Industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of these proposed amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

If no relevant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this **Federal**

Register will automatically go into effect on the date specified in that rule. If relevant adverse comments are timely received, the direct final rule will be withdrawn and all public comment received will be addressed in a subsequent final rule. Because the EPA will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative

A. Paperwork Reduction Act

This rule does not contain any information collection subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

B. Executive Order 12866 Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this amendment is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to review by the Office of Management and Budget.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this rule will not have

a significant economic impact on a substantial number of small entities, because this rule imposes no additional regulatory requirements, but merely expands the types of flares that may be used to meet the requirements of 40 CFR parts 60 and 63. The Administrator certifies that this rule will not have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final standards that include a Federal mandate that may result in estimated costs to State, local, or tribal governments, or to the private sector, of, in the aggregate, \$100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the standard and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the standards.

The EPA has determined that the final standards do not include a Federal mandate that may result in estimated costs of, in the aggregate, \$100 million or more to either State, local, or tribal governments, or to the private sector, nor do the standards significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the Unfunded Mandates Act do not apply to this proposed rule.

List of Subjects

40 CFR Part 60

Environmental protection, and Air pollution control.

40 CFR Part 63

Environmental protection, Air pollution control, and Hazardous substances.

Dated: April 17, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98-11261 Filed 5-1-98; 8:45 am]

BILLING CODE 6560-60-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-58, RM-9252]

Radio Broadcasting Services; Brewster, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Brewster Broadcasting Company proposing the allotment of Channel 232A to Brewster, Massachusetts, as that community's first local broadcast service. The channel can be allotted to Brewster with a site restriction 6.3 kilometers (3.9 miles) west of the community at coordinates 41-46-31 and 70-00-38..

DATES: Comments must be filed on or before June 15, 1998, and reply comments on or before June 30, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gary S. Smithwick, Smithwick & Belendiuk, P.C., 1990 M Street, NW., Suite 510, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-58, adopted April 15, 1998, and released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC, 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-11737 Filed 5-1-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-59; RM-9256]

Radio Broadcasting Services; Casper, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Citicasters Co. proposing the allotment of Channels 228C1, 243C1, and 263C1 at Casper, Wyoming, as the community's eighth, ninth, and tenth local commercial FM transmission services. Channel 228C1 can be allotted to Casper in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.9 kilometers southwest to avoid a short-spacing to the allotment reference site for Channel 228A, Moorcroft, Wyoming. The coordinates for Channel 228C1 at Casper are North Latitude 42-47-45 and West Longitude 106-22-53. Additionally, Channel 243C1 can be allotted at Casper with a site restriction of 3.5 kilometers (2.2 miles) southeast to avoid a short-spacing to the construction permit site of Station KYTI(FM), Channel 243C3, Sheridan, Wyoming; and Channel 263C1 can be allotted to Casper with site restriction of 9.7 kilometers (6.0 miles) southwest to avoid a short-spacing to the licensed site of Station KGWY(FM), Channel 264C1, Gillette, Wyoming. See Supplementary Information, *infra*.

DATES: Comments must be filed on or before June 15, 1998, and reply comments on or before June 30, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Cindy D. Jackson, Hogan & Hartson, L.L.P., 555 13th Street, NW., Washington, DC 20004-1009 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-59, adopted April 15, 1998, and released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

The coordinates for Channel 243C1 at Casper are North Latitude 42-49-13 and West Longitude 106-17-22; and the coordinates for Channel 263C1 at Casper are North Latitude 42-46-05 and West Longitude 106-21-56.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-11736 Filed 5-1-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-57, RM-9251]

Radio Broadcasting Services; Jacksonville and Center, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Robert W. Shivery requesting the substitution

of Channel 272C2 for Channel 272A at Jacksonville, Texas, and the modification of Station KLJT(FM)'s license to reflect the higher powered channel. To accommodate the upgrade at Jacksonville, Shivery also requests the substitution of Channel 272A for Channel 263A and the change of transmitter site for Station KDET(FM) at Center, Texas, and the modification of Station KDET(FM)'s license accordingly. Channel 272C2 and Channel 263A can be allotted to Jacksonville and Center, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 272C2 can be allotted to Jacksonville with a site restriction of 14.4 kilometers (9.0 miles) southeast at coordinates 31-52-52 NL and 95-09-30 WL. Channel 263A can be allotted to Center with a site restriction of 12.6 kilometers (7.8 miles) southeast at coordinates 31-42-13 NL and 94-06-05 WL. As requested, we also propose to modify the license for Station KLJT(FM) to specify operation on Channel 272C2. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 272C2 at Jacksonville or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 15, 1998, and reply comments on or before June 30, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David Tillotson, 4606 Charleston Terrace, NW, Washington, DC 20007 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-57, adopted April 15, 1998, and released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR PART 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-11735 Filed 5-1-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-53, RM-9253]

Radio Broadcasting Services; Malvern and Bryant, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Malvern Entertainment Corporation, licensee of Station KBOK-FM, Channel 227A, Malvern, Arkansas, requesting the reallocation of Channel 227A from Malvern to Bryant, Arkansas, and modification of the license for Station KBOK-FM to specify Bryant as its community of license, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates used for Channel 227A at Bryant are 34-30-30 NL and 92-32-42 WL.

DATES: Comments must be filed on or before June 15, 1998, and reply comments on or before June 30, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jerrold Miller, Esq., Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-53, adopted April 8, 1998, and

released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-11734 Filed 5-1-98; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 98-001; Notice 01]

RIN 2127-AH05

Insurer Reporting Requirements; List of Insurers Required to File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: NHTSA proposes to update its lists in appendices A, B, and C of part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. If these revised appendices are adopted in a final rule, each insurer included in any of these appendices must file a report for the 1995 calendar year not later than October 25, 1998. Further, as long as they remain listed,

they must submit reports by each subsequent October 25.

DATES: Comments on this proposed rule must be received by this agency not later than July 6, 1998. If this rule is made final, insurers listed in the appendices would be required to submit reports beginning with the one due October 25, 1998.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366-0846. Her fax number is (202) 493-2739.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, *Insurer reports and information*, NHTSA requires certain passenger motor vehicle insurers to file an annual report. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's implementing regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA

finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 33112(f)(1)(A) and (B) as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), in 49 CFR part 544, NHTSA exercises its exemption authority by listing in appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In appendix B, NHTSA lists those insurers that are required to report for particular states because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. In the January 1987 final rule, the agency stated that appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available for the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded those reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations, and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new appendix C, which consists of an annually updated list of the self-insurers that are subject to part 544. Following the same approach as in the case of appendix A, NHTSA has included, in appendix C, each of the relatively few self-insurers which are subject to reporting instead of relatively numerous self-insurers which are exempted. NHTSA updates appendix C based primarily on information from the publications *Automotive Fleet Magazine* and *Business Travel News*.

C. When a Listed Insurer Must File a Report

Under part 544, as long as an insurer is listed, it must file reports on or before each October 25. Thus, any insurer listed in the appendices as of the date of the most recent final rule must file a report by the following October 25, and by each succeeding October 25, absent a further amendment removing the insurer's name from the appendices.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

Based on the 1995 calendar year A.M. Best data for market shares, NHTSA proposes to amend the list in appendix A of insurers which must report because each had at least 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on June 23, 1997 (See 62 FR 33754). One company, Metropolitan Group, included in the June 1997 listing, is proposed to be removed from appendix A. Three companies, American Financial Group, Erie Insurance Company, and Zurich

Insurance Group-U.S., are proposed to be added.

Each of the 20 insurers listed in appendix A of this notice would be required to file a report not later than October 25, 1998, setting forth the information required by part 544 for each State in which it did business in the 1995 calendar year. As long as those 20 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists those insurers that would be required to report for particular States for calendar year 1995, because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. Based on the 1995 calendar year A.M. Best data for market shares, it is proposed that Integon Corporate Group, reporting on its activities in the State of North Carolina be removed from appendix B. Two companies, Allmerica P & C Companies and Island Insurance, that were not listed in appendix B, are proposed to be added.

The 12 insurers listed in appendix B of this notice would be required to report on their calendar year 1995 activities in every State in which they had a 10 percent or a greater market share. These reports must be filed no later than October 25, 1998, and set forth the information required by part 544. As long as those 12 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Based on information in *Automotive Fleet Magazine* and *Business Travel News* for 1995, the most recent year for which data are available, NHTSA proposes several changes in appendix C. As indicated above, that appendix lists rental and leasing companies required to file reports. Based on the data reported in the above mentioned publications, it is proposed that five rental and leasing companies, Associates Leasing Inc., Enterprise-Rent-A-Car, GE Capital Fleet Services, PHH Vehicle Management Services, and Wheels, Inc., be included in appendix C. Accordingly, each of the 20 companies (including franchisees and licensees) listed in this notice in appendix C would be required to file reports for calendar year 1995 no later than October 25, 1998, and set forth the information required by part 544. As long as those 20 companies remain listed, they would be required to submit reports on or before each subsequent

October 25 for the calendar year ending slightly less than 3 years before.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and has determined the action not to be "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59, January 2, 1987).

Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. The cost estimates in the 1987 final regulatory evaluation were adjusted for inflation, using the Bureau of Labor Statistics Consumer Price Index for 1997. The agency estimates that the cost of compliance will be about \$70,500 for any insurer that is added to appendix A, about \$28,200 for any insurer added to appendix B, and about \$10,956 for any insurer added to appendix C. If this proposed rule is made final, for appendix A, the agency would add three insurers and remove one insurer; for appendix B, the agency would remove one and add two insurers; and for appendix C, the agency would add five additional companies.

The agency therefore estimates that the net effect of this proposal, if made final, would be a cost increase to insurers, as a group of approximately \$223,980.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation have been placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366-4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to and approved by the

Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information was assigned OMB Control Number 2127-0547 ("Insurer Reporting Requirements") and was approved for use through July 31, 2000.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed to be included on appendices A, B, or C would be construed to be a small entity within the definition of the RFA. "Small insurer" is defined in part under 49 U.S.C. 33112 as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that two copies of the comments be submitted. All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these

submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, two copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and one copy from which the purportedly confidential information has been deleted should be accompanied by cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime Insurance, Insurance, Insurance Companies, Motor Vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 would continue to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 would be revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. This report shall

contain the information required by § 544.6 of this part for the calendar year three years previous to the year in which the report is filed (e.g., the report due by October 25, 1998 shall contain the required information for the 1995 calendar year).

3. Appendix A to part 544 would be revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American Financial Group¹
American International Group
California State Auto Association
CNA Insurance Group
Erie Insurance Group¹
Farmers Insurance Group
GEICO Corporation Group
ITT Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
Safeo Insurance Companies
State Farm Group
Travelers Insurance Group
USAA Group
Zurich Insurance Group-U.S.¹

4. Appendix B to Part 544 would be revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Allmerica P & C Companies (Michigan)¹
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Island Insurance Group (Hawaii)¹
Kentucky Farm Bureau Group (Kentucky)
Nodak Mutual Insurance Company (North Dakota)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to part 544 would be revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.)
Associates Leasing Inc.¹
A T & T Automotive Services, Inc.
Avis, Inc.
Budget Rent-A-Car Corporation

Citicorp Bankers Leasing Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car¹
GE Capital Fleet Services¹
Hertz Rent-A-Car Division (subsidiary of
Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
Penske Truck Leasing Company
PHH Vehicle Management Services¹
Ryder System, Inc. (Both rental and leasing
operations)
U-Haul International, Inc. (Subsidiary of
AMERCO)
USL Capital Fleet Services
Wheels Inc.¹
Issued on: April 29, 1998.
L. Robert Shelton,
Associate Administrator for Safety
Performance Standards.
[FR Doc. 98-11781 Filed 5-1-98; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

50 CFR Part 600

(I.D. 042798D)

Magnuson-Stevens Act Provisions;
Essential Fish Habitat

AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

ACTION: Proposed recommendations for
essential fish habitat; notice of public
hearings and request for public
comments.

SUMMARY: NMFS requests public
comments on proposed
recommendations for essential fish
habitat (EFH) to the Western Pacific
Fishery Management Council (Council)
for its fishery management plans (FMP)
for bottomfish, crustaceans, pelagics and
precious corals. NMFS also announces a
public hearing on the proposed
recommendations.

DATES: Comments must be received by
June 22, 1998. The public hearing will
be held at 7:00pm, May 20, 1998, in
Honolulu, HI.

ADDRESSES: The meeting will be held at
Tokai University, Pacific Center, 2241
Kapiolani Blvd., Honolulu, HI. Send
comments or requests for a copy of the
proposed EFH recommendations for any
or all of the FMPs to: NMFS, Southwest
Region, 2570 Dole Street, Room 106,
Honolulu, HI 96822-2396.

¹ Indicates a newly listed company which must
file a report beginning with the report due on
October 25, 1998.

FOR FURTHER INFORMATION CONTACT: John
Naughton, NMFS, Southwest Region,
Pacific Islands Area Office, (808) 973-
2940.

SUPPLEMENTARY INFORMATION: The
Sustainable Fisheries Act of 1996
amended the Magnuson-Stevens Fishery
Conservation and Management Act
(Magnuson-Stevens Act) to establish
new requirements for EFH descriptions
in FMPs and require consultation
between NMFS and Federal agencies on
activities that may adversely impact
EFH for species managed under FMPs.
The Magnuson-Stevens Act requires all
Councils to amend their FMPs by
October 1998 to describe and identify
EFH for each managed fishery. In
accordance with the Magnuson-Stevens
Act, NMFS published an interim final
rule in the *Federal Register* on
December 19, 1997 (62 FR 66531),
providing guidelines to assist the
Councils in description and
identification of EFH in FMPs
(including adverse impacts on EFH) and
consideration of actions to ensure
conservation and enhancement of EFH.
The Magnuson-Stevens Act also
requires NMFS to provide each Council
with recommendations and information
regarding EFH for each fishery under
that Council's authority.

NMFS has developed proposed EFH
recommendations for the identification
of EFH for each of the Western Pacific
Council's FMPs through a process that
has involved input from the Council, its
advisory bodies, and the fishing
industry at the Council's public
meetings in November 1997, and April
1998.

The proposed EFH recommendations
for each FMP include a description of
EFH for the managed species; a
description of adverse effects to EFH,
including fishing and non-fishing
threats; and a description of measures to
ensure the conservation and
enhancement of EFH. Copies of the
proposed EFH recommendations are
available (see ADDRESSES). Public
comments are requested by June 22,
1998.

Special Accommodations

This meeting will be physically
accessible to people with disabilities.
Requests for sign language
interpretation or other auxiliary aids
should be directed to John Naughton
(see FOR FURTHER INFORMATION CONTACT)
at least 5 working days prior to the
hearing date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 28, 1998.

James P. Burgess,
Director, Office of Habitat Conservation,
National Marine Fisheries Service.
[FR Doc. 98-11778 Filed 5-1-98; 8:45 am]
BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

50 CFR Part 622

(I.D. 121197E)

RIN 0648-AJ16

Fisheries of the Caribbean, Gulf of
Mexico, and South Atlantic; Reef Fish
Fishery of the Gulf of Mexico;
Resubmission of Disapproved and
Revised Measure in Amendment 11

AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

ACTION: Notice of agency decision.

SUMMARY: NMFS announces the
disapproval of a revised, previously
disapproved measure submitted by the
Gulf of Mexico Fishery Management
Council (Council) and originally
contained in Amendment 11 to the
Fishery Management Plan for the Reef
Fish Resources of the Gulf of Mexico
(FMP). The measure would have
redefined optimum yield (OY) for that
FMP.

ADDRESSES: Requests for copies of the
documents supporting the disapproval
decision should be mailed to the
Southeast Regional Office, NMFS, 9721
Executive Center Drive N., St.
Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT:
Robert Sadler, 813-570-5305.

SUPPLEMENTARY INFORMATION: The
Magnuson-Stevens Fishery
Conservation and Management Act
(Magnuson-Stevens Act) requires each
regional fishery management council to
submit any fishery management plan or
amendment to NMFS for review and
approval, disapproval, or partial
approval. The Magnuson-Stevens Act
also requires that NMFS, upon receiving
an amendment, immediately publish a
document in the *Federal Register*
stating that the amendment is available
for public review and comment.

On December 31, 1997, NMFS
published a notice of availability (NOA)
of a revised, previously disapproved
measure originally in Amendment 11,
and requested comments (62 FR 68246).
The revised definition would have

initially set OY for each reef fish stock
managed under the FMP at a yield level
that would result in at least a 30-
percent spawning potential ratio (SPR)
for that stock. This measure would have
allowed the Council to propose setting
OY for these species based on a more
conservative (higher) SPR level if the
Reef Fish Stock Assessment Panel
indicates that appropriate biological
information supports such action.
Additional background, the Council's
rationale for the revised measure in the
amendment, and NMFS' concerns about
inconsistency with national standards 1
and 2 of the Magnuson-Stevens Act are
contained in the NOA.

On April 3, 1998, after considering
the public comment received on the
revised measure, NMFS disapproved the
revised measure based on concerns
expressed in the NOA and summarized
here.

Comments and Responses

One public comment on the revised
measure was received.

Comment: A recreational fishing
association opposed an OY definition of
40-percent SPR for reef fish because it
would be inconsistent with the
Magnuson-Stevens Act and not based on
the best available scientific information.
The commenter did not provide any
rationale in support of this position or
address the concerns raised by NMFS.

Response: NMFS disagrees with this
comment because the best available
scientific information indicates that for
some species an OY definition based on
a 40-percent SPR would be necessary to
prevent overfishing. As a result, such a
definition would be necessary for the
FMP to be consistent with the
Magnuson-Stevens Act. NMFS' reasons
for disapproving the revised OY

definition further explain why NMFS
disagrees with this public comment.

NMFS' Reasons for Disapproving the
Revised Measure

Comments from the Southeast
Fisheries Science Center (SEFSC)
indicate that OY should be defined at a
more biologically conservative level
than 30-percent SPR for species for
which biological information is
presently unavailable and for those
species that may be especially
vulnerable to overfishing because they
change sex and are believed to be less
resilient as they mature. The SEFSC
recommended that OY be defined as a
fishing mortality rate that allows a 40-
percent SPR for these 15 species: red
porgy (removed from the FMP under
Amendment 15 to provide for
management by Florida), rock hind,
speckled hind, yellowedge grouper, red
hind, jewfish, red grouper, misty
grouper, warsaw grouper, snowy
grouper, Nassau grouper, yellowmouth
grouper, gag, scamp, and yellowfin
grouper. Jewfish and Nassau grouper are
overfished species.

The SEFSC concluded that the 30-
percent OY is inappropriate for the 15
listed species. Specifically, an OY
definition based on a 30-percent SPR
does not address the fact that some
species change sex from female to male,
which reduces egg production and is
believed to make the population less
resilient to fishing and environmental
factors that reduce reproductive success.
Use of a 30-percent SPR to define OY
for such species not only would fail to
incorporate the best available scientific
information for the sex-changing
species, but also would put them at risk
of overfishing.

For the species listed above for which
biological information is currently

unavailable, the definition of OY based
on a 30-percent SPR is inconsistent
with NMFS' policy of employing a
precautionary approach to fishery
management. An OY definition based
on a 40-percent SPR for species for
which biological information is
presently unavailable is more
appropriate than one based on a 30-
percent SPR, because an OY based on
30-percent SPR could produce a fishing
mortality rate that exceeds maximum
sustainable yield (MSY) and result in
overfishing. It has been shown over a
wide range of stock-recruitment
parameter combinations that an OY
based on a 40-percent SPR has a
relatively low risk of producing a
fishing mortality rate that would exceed
MSY and result in overfishing. The
Magnuson-Stevens Act requires that OY
be no higher than MSY. For these
reasons, NMFS has determined that
approval of the resubmitted measure
would risk overfishing of these species.

Public comments on the SEFSC's
concerns were specifically invited in the
NOA. The public comment did not
address the SEFSC's concerns or
provide a basis for approval of the
revised measure. Following
consideration of this comment and all
other available information, NMFS
found that the OY definition is
inconsistent with national standards 1
and 2. This finding formed the basis for
the final agency decision to disapprove
the OY definition as part of Amendment
11.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 28, 1998.

Roland A. Schmitten,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.
[FR Doc. 98-11777 Filed 5-1-98; 8:45 am]
BILLING CODE 3510-22-F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for an Approval of a New Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is seeking approval from the Office of Management and Budget (OMB) to establish procedures for determining the computing capabilities of vendors, contractors, and other potential electronic commerce trading partners. Participants would include, but not be limited to: Contractors that supply bids to supply commodities for use under export donation programs; vendors that supply bids for transportation of commodities; and contractors that supply bids to store commodities.

An Electronic Commerce Capability Survey will provide for submission of computing capability information from the trade. Currently there is no procedure in place to allow for the collection of computing capability information. The new procedure will allow CCC to collect the information needed to target specific labor and paper intensive processes for migration towards electronic commerce.

DATES: Comments on this notice must be received on or before July 6, 1998 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Timothy P. Mehl, Chief, Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926-3536, fax (816) 926-6767.

SUPPLEMENTARY INFORMATION:

Title: Electronic Commerce Capability Survey.

OMB Number: New submission.

Type of Request: Approval of a new information collection.

Abstract: CCC conducts a variety of programs under which information is submitted and manually entered by CCC. A brief description of each of these programs is explained below.

The Dairy and Domestic Operations Division (D&DOD) issues invitations for purchase of commodities for domestic and dairy programs on a monthly, multi-month, quarterly and yearly basis. Vendors respond by making offers using the form KC-327, Domestic Offer Form. D&DOD verifies that the KC-327 is responsive and manually enters the information on the form into the bid evaluation program. The keypunched data is then uploaded into the Processed Commodities Inventory Management System (PCIMS). As an alternative to keypunch, bids are entered manually by using PCIMS bid input screens.

Export Operations Division (EOD) issues invitations to purchase or process commodities for food donation programs monthly. Special invitations, however, are issued throughout the month. Steamship lines currently respond to these invitations with offers for transportation via hard copy form KC-324, Steamship Line Service Offer. Responsive offers are analyzed by Traffic Management Division; the lowest U.S. and foreign flag offers for each U.S. port and foreign discharge port are recorded on form KC-149, Ocean Rates. Form KC-149's are reviewed for accuracy and form KC-148, Commodity Requests, is attached. Ocean rate forms and commodity request forms are forwarded to Information Management Processing Division (IMPD) for data entry and proof lists are printed for review.

Bulk Grain Division (BGD) issues invitations as needed for purchase of grains for use in export donation programs. Grain export companies respond to these invitations for offers on form KC-331, Procurement Offer Form, which is a part of each invitation. At the same time BGD issues the invitation, EOD communicates with the Private Volunteer Organization (PVO) booking agent, to issue a freight tender for ocean freight. Once the steamship line's bid for ocean freight is received from the booking agent, the offers are manually recorded on a spread sheet. When the grain offers are evaluated, they are combined with the ocean freight

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received from the booking agent to determine lowest landed cost to destination. Data entry requires dual bid entry for verification purposes.

CCC conducts a program to provide storage adequate to fulfill its program needs by contracting with commercial warehouses to store grain in country, sub-terminal, and terminal locations. CCC contracts for the use of privately owned facilities in carrying out this program. Grain, cotton, and processed commodity warehouse operators interested in storing and/or handling CCC-interest commodities are required to have entered into a Uniform Storage Agreement with CCC. Warehouse operators must meet certain standards and complete documents prior to receiving CCC approval. Information which is provided by warehouse operators is entered into the Grain Inventory Management System (GIMS) which is in turn used by numerous other Agency entities. CCC uses this data to develop policy and implement program operations.

The current keypunching processes require entering handwritten data and then verifying the results. This information collection will enable CCC to analyze the computing capability of its trading partners and move processes towards electronic commerce in a logical and orderly fashion.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Business and other for profit organizations.

Respondents: 3,750.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 937 hours.

Proposed topics for comment include: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to

minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503, and to Timothy P. Mehl, Chief, Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926-3536, fax (816) 926-6767.

All comments will become a matter of public record.

Signed at Washington, DC, April 24, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98-11697 Filed 5-1-98; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Uniform Grain and Rice Storage Agreement Fees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of fees.

SUMMARY: The purpose of this notice is to publish a schedule of fees to be paid to Commodity Credit Corporation (CCC) by grain and rice warehouse operators requesting to enter into a storage agreement; increase the capacity of an existing storage agreement; or renew an existing storage agreement.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Howard Froehlich, Chief, Storage Contract Branch, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, S.W., STOP 0553, Washington, D.C. 20250-0553, telephone (202) 720-7398, FAX (202) 690-3123.

In accordance with the provisions of the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), CCC enters into storage agreements with private grain and rice warehouse operators to provide for the storage of commodities owned by CCC or pledged as security to CCC for marketing assistance and price support loans.

Specifically, 7 CFR 1421.5558 provides that all grain and rice warehouse operators who do not have an existing agreement with CCC for

storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral, but who desire such an agreement, must pay an application and examination fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination.

A review of the revenue collected for application and examination fees indicates that the fees collected are insufficient to meet costs incurred by CCC for warehouse examinations and contract origination administrative functions. Accordingly, beginning April 1 with the start of the 1998-99 contract year, the fees are changed by increasing by 10 percent those fees applicable to the 1997-98 contract year. The fee will be computed at the rate of \$15 for each 10,000 bushels of storage capacity or fraction thereof, but the fee will be not less than \$150 nor more than \$1,500.

Further, each warehouse operator who has a non-federally licensed grain or rice warehouse in States that do not have a cooperative agreement with CCC for warehouse examinations must pay an annual fee to CCC for each such warehouse which is approved by CCC or for which CCC approval is sought. The collection of the annual fee by CCC is currently suspended. CCC continues to suspend collection of the annual fee, but CCC may reinstate the annual fee by future notice to the industry.

Signed at Washington, DC, on April 27, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98-11695 Filed 5-1-98; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Reinstatement of an Information Collection

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection: Comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), Rural

Utilities Service (RUS), and the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection in support of compliance with Civil Rights laws.

DATES: Comments on this notice must be received by July 6, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Jacqueline Micheli, Equal Opportunity Specialist, Rural Development, U.S. Department of Agriculture, STOP 0703, 1400 Independence Ave., S.W., Washington, DC 20250-0703, Telephone (202) 690-9812 (voice) or 690-9809 (TDD).

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1901-E, Civil Rights Compliance Requirements.

OMB Number: 0575-0018.

Type of Request: Reinstatement of an information collection.

Abstract: The information collection under OMB Number 0575-0018 enables the RHS, RBS, RUS, and FSA to effectively monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis.

The RBS, RHS, RUS, and FSA, formerly the Farmers Home Administration, are required to provide Federal financial assistance through its farmer, housing, and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR Part 1901, Subpart E ("1901-E"), require the recipients of RBS, RHS, RUS, and FSA's Federal financial assistance to collect various types of information, including information on participants in certain of these agencies' programs, by race, color, and national origin. While these agencies realize that the provisions of 1901-E are outdated as the result of statutory amendment and other processes of law, the information needed to be collected under this implementing regulation is not affected by the obsolete nature of the regulation. The RBS, RHS, RUS, and FSA use the information to monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. The agencies are in the process of revising 1901-E, and expect to publish for comment a **Federal Register** document proposing these revisions in 1998. The following laws implemented are 7 CFR 1901-E:

a. Title VI of the Civil Rights Act of 1964 ("Title VI"). The implementing

regulations for this Act issued by the Department of Justice and the Department of Agriculture requires recipients of RBS, RHS, RUS, and FSA's program assistance to collect information on the race/national origin of the beneficiaries of their specific programs. This information is used by the RBS, RHS, RUS, and FSA for compliance review and monitoring purposes for Title VI.

b. Title VIII of the Civil Rights Act of 1968 (as amended) ("Title VIII"). Section 808a of Title VIII (42 U.S.C. 3608a (1988)), in pertinent part, requires the Secretary of Agriculture to collect racial and ethnic data on beneficiaries and recipients of USDA housing programs. Furthermore, the implementing regulations issued by the Department of Housing and Urban Development ("HUD") and adopted by the RBS, RHS, RUS, and FSA, requires recipients and other participants in RHS's housing programs affirmatively to further fair housing by providing housing and the opportunity to acquire housing in a non-discriminatory fashion. One way to demonstrate compliance with Title VIII is to prepare affirmative fair housing marketing plans, and to collect and maintain data to reflect compliance with the requirements of that plan. Furthermore, under the Memorandum of Understanding between HUD and USDA, many complaints of fair housing violation by USDA recipients will be processed by HUD. The collection and maintenance of these data will assist in this enforcement effort.

c. Executive Order 11246. The implementing regulations issued by the Department of Labor (DOL) and adopted by the RBS, RHS, RUS, and FSA, require recipients of Federally assisted construction contracts of \$10,000 or more to maintain goals for hiring minorities and females, and to submit employment utilization reports to the DOL's Office of Federal Contract Compliance Programs.

The information collected and maintained by the recipients of certain programs from RBS, RHS, RUS, and FSA is used internally by these agencies for monitoring compliance with the civil rights laws and regulations. This information is made available to USDA officials, officials of other Federal agencies, and to Congress for reporting purposes. Without the required information, RBS, RHS, RUS, FSA and its recipients will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws. In addition, the RBS, RHS, RUS, and FSA, and their recipients would be

vulnerable in lawsuits alleging discrimination in the affected programs of these agencies and would be without appropriate data and documentation to defend themselves by demonstrating that services and benefits are being provided to beneficiaries on an equal opportunity basis.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Recipients of RBS, RHS, RUS, and FSA's Federal financial assistance, loan, and loan guarantee programs.

Estimated Number of Respondents: 19,565.

Estimated Number of Responses per Respondent: 5.40.

Estimated Total Annual Burden on Respondents: 533,017.

Copies of this information collection can be obtained from Richard Gartman, Regulations and Paperwork Management Branch, Support Services Division, at (202) 720-9745.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Development, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Richard Gartman, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, Ag Box 0743, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 20, 1998.

Jill Long Thompson,
Under Secretary, Rural Development.

Dated: April 4, 1998.

August Schumacher, Jr.,
Under Secretary, Farm and Foreign
Agricultural Services.

[FR Doc. 98-11693 Filed 5-1-98; 8:45 am]
BILLING CODE 3410-XT-U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of publication.

SUMMARY: Notice is hereby given that the Farm Service Agency has published a list of warehouses licensed under the United States Warehouse Act (7 U.S.C. 241 et. seq.) as of December 31, 1997, as required by section 26 of that Act (7 U.S.C. 266). A list of cancellations or terminations that occurred during calendar year 1997 is also available. Interested persons may obtain a copy of either list from the person listed below.

FOR FURTHER INFORMATION CONTACT: Judy Fry, Farm Service Agency, Warehouse and Inventory Division, U.S. Department of Agriculture, STOP 0553, 1400 Independence Avenue, S.W., Washington, DC 20250-0553; e-mail requests may be sent: Judy—Fry@wdc.fsa.usda.gov.; telephone 202-720-3822.

Signed at Washington, D.C., on April 24, 1998.

Keith Kelly,

Administrator, Farm Service Agency.
[FR Doc. 98-11696 Filed 5-1-98; 8:45 am]
BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 1998

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: On April 6, 1998, the Secretary of Agriculture determined that 10,500 metric tons of nonfortified nonfat dry milk packaged in 25 kilogram bags are available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1998.

FOR FURTHER INFORMATION CONTACT:

Ira Branson, Director, CCC Program Support Division, FAS, USDA, (202) 720-3573.

Dated: April 28, 1998.

Christopher E. Goldthwait,
Acting Administrator, Foreign Agricultural
Service.

[FR Doc. 98-11698 Filed 5-1-98; 8:45 am]
BILLING CODE 3410-10-M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Agricultural Policy Advisory Committee for Trade and Agricultural Technical Advisory Committees for Trade Meetings

AGENCY: Foreign Agricultural Service.

ACTION: Notice of meetings.

SUMMARY: The Agricultural Policy Advisory Committee for Trade (APAC) and the Agricultural Technical Advisory Committees for Trade (ATACTs) will hold meetings during the period of May 1, 1998–December 20, 1998. The meetings will include a review and discussion of current issues which influence U.S. agricultural trade policy that include, but are not limited to, issues concerning GATT accession negotiations with various countries; U.S./Mexico bilateral agricultural trade issues; U.S./Canada bilateral agricultural trade issues; international sanitary and phytosanitary barriers to trade; and WTO Uruguay Round Agreement implementation issues.

Pursuant to section 2155(f)(2) of title 19 of the United States Code, the U.S. Trade Representative has determined that these meetings will be concerned solely with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy priorities, negotiating objectives, bargaining positions. Accordingly, these meetings will be closed to the public.

ADDRESSES: The meetings will be held at the U.S. Department of Agriculture, 14th and Independence Avenues, S.W., Washington, D.C. 20250 unless an alternate site is necessary.

FOR FURTHER INFORMATION CONTACT: Pate Felts, Director of Intergovernmental Affairs, Office of the United States Trade Representative at (202) 395-6120 or Paula Thomasson, Joint Executive Secretary, Agricultural Policy Advisory Committee for Trade, Foreign Agricultural Service, U.S. Department of Agriculture, at (202) 720-6829.

Dated: April 28, 1998.

Lon Hatamiya,
Administrator, Foreign Agricultural Service.
[FR Doc. 98-11789 Filed 5-1-98; 8:45 am]
BILLING CODE 3410-10-M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Champaign (IL), Eastern Iowa (IA), and Enid (OK) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Champaign-Danville Grain Inspection Departments, Inc. (Champaign), Eastern-Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), and Enid Grain Inspection Company, Inc. (Enid), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: May 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, S.W., Washington, DC 20250-3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202-720-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 1, 1997, Federal Register (62 FR 63513), GIPSA asked persons interested in providing official services in the geographic areas assigned to Champaign and Enid to submit an application for designation. Applications were due by December 30 1997. Champaign and Enid, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

In the December 17, 1997, Federal Register (62 FR 66051), GIPSA asked persons interested in providing official services in the geographic area assigned to Eastern Iowa to submit an application for designation. Applications were due by January 15 1998. Eastern Iowa, the only applicant, applied for designation to provide official services in the entire area currently assigned to them.

Since Champaign, Eastern Iowa, and Enid were the only applicants, GIPSA did not ask for comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Champaign, Eastern Iowa, and Enid are able to provide official services in the geographic areas

for which they applied. Effective June 1, 1998, and ending May 31, 2001, Champaign is designated to provide official services in the geographic area specified in the December 1, 1997, Federal Register. Effective August 1, 1998, and ending May 31, 2001, Eastern Iowa is designated to provide official services in the geographic area specified in the December 17, 1997, Federal Register. Effective July 1, 1998, and ending May 31, 2001, Enid is designated to provide official services in the geographic area specified in the December 1, 1997, Federal Register.

Interested persons may obtain official services by contacting Champaign at 217-398-0723, Eastern Iowa at 319-322-7149, and Enid at 405-233-1121.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: April 27, 1998.

Neil E. Porter,
Director, Compliance Division.
[FR Doc. 98-11694 Filed 5-1-98; 8:45 am]
BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Natural Resource Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the New York State NRCS Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue a series of new conservation practice standards in its National Handbook of Conservation Practices. These new standards include: Agrichemical Mixing Facility (NY702) and Record Keeping (NY748).

DATES: Comments will be received on or before June 3, 1998.

FOR FURTHER INFORMATION CONTACT:

Inquire in writing to Richard D. Swenson, State Conservationist, Natural Resources Conservation Service (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York, 13202-2450. Copies of these standards are available by request from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural

Improvement and Reform Act of 1996 states that revisions made after the enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: April 24, 1998.

Steven L. Machovec,

Acting State Conservationist, Natural Resources Conservation Service, Syracuse, NY.

[FR Doc. 98-11593 Filed 5-1-98; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-802]

Gray Portland Cement and Clinker From Mexico: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Kristen Stevens, or John Totaro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230; telephone: (202) 482-3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (hereinafter, "the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the old regulations (19 CFR part 353 (1997)).

Scope of the Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use

other than being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. Our written description of the scope of the order remains dispositive.

Amendment of Final Results

On March 16, 1998, the Department of Commerce (the Department) published the final results of the administrative review of the antidumping duty order on Gray Portland Cement and Clinker from Mexico (63 FR 12764). This review covered CEMEX S.A de C.V (CEMEX), and its affiliate, Cementos de Chihuahua (CDC), manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is August 1, 1995 through July 31, 1996.

On March 24, 1998, counsel for petitioner, the Southern Tier Cement Producers Committee, filed allegations of clerical errors with regard to the final results in the sixth administrative review of the antidumping duty order of gray portland cement and clinker from Mexico. On April 3, 1997, counsel for the respondent, CEMEX, also filed allegations of clerical errors with regard to this review. Petitioner then filed rebuttal comments on April 10, 1998. The Department, upon review of the allegations, agrees that certain aspects of the final results constitute ministerial errors within the meaning of 19 CFR 353.28, and is hereby issuing an amended final based on corrections for these ministerial errors.

First, CEMEX and petitioner noted that the margin program contained an incorrect instruction which resulted in an incorrect calculation of home market credit and inventory carrying cost. The Department, upon review of the margin program determined that the original final margin program failed to perform the proper mathematical calculation in calculating home market credit and inventory carrying cost, and U.S. credit and inventory carrying cost. The Department has corrected the amended final margin program to reflect these changes. For a complete discussion of the Department's corrected margin program, please see the amended final results analysis memo from the case analyst to the file.

Second, CEMEX contends that the Department used an incorrect factor to

convert quantities from short tons to metric tons in the margin calculation program. CEMEX did not raise this alleged error in its case brief for the sixth review. The petitioner argues that the Department used this conversion factor in the fifth review amended final results, the sixth review preliminary results, and the sixth review final results. We agree with petitioner, moreover, CEMEX did not object to the explicit statement in the **Federal Register** notice of the fifth review amended final results that the Department used the conversion factor CEMEX now contests—.907194 metric tons per short ton—in the amended final results. The Department's short ton/metric ton conversion factor (1 MT=1.1023 ST; 1/1.1023=0.907194) varies by 0.000009 from the factor proposed by CEMEX as the "numerically correct" factor (1 ST=2000 Lbs.; 1 MT=2,204.623 Lbs.; 2000/2,204.623=0.907185). Clearly, the Department's conversion factor is also "numerically correct," but reflects a different calculation methodology from that proposed by CEMEX. Thus, the Department did not err by using this factor, and we will not depart from established practice by adopting CEMEX's conversion factor for the sixth review amended final results.

Third, CEMEX alleges that the Department used incorrect inflation factors for the months of December 1995 and January 1996 in its calculation of the difference in merchandise (DIFMER) adjustment. Petitioner did not object to the corrected inflation factor, but noted that the Department failed to use the appropriate costs, as revised after verification, in the DIFMER adjustment calculation. Upon review of the margin program, the Department determined that CEMEX and petitioner are both correct, therefore, we have revised the inflation factors for the months of December 1995 and January 1996, revised the cost of production to reflect the costs as reported to us after verification, and recalculated DIFMER for both CEMEX and its collapsed affiliate, CDC. For a complete discussion of the Department's corrected margin program, please see the amended final results analysis memo from the case analyst to the file.

Finally, petitioner alleges that the Department failed to issue a final duty absorption finding in the **Federal Register** notice for the final results of review. CEMEX did not rebut petitioner's allegation. Upon review of the final results, the Department has determined that its position has not altered from the preliminary results of review and has determined that the

parties to the proceeding did not comment on the Department's preliminary finding. Therefore, consistent with our prior practice, the Department will continue to adhere to its preliminary finding for the final results of review. However, due to the fact that the final weighted-average dumping margin was revised between

the preliminary and final results, we have finally determined that CEMEX has margins on 92.49 percent of its U.S. sales.

Pursuant to section 353.28 of the Department's regulations, parties to the proceeding will have 5 days after the date of publication of this notice to notify the Department of other

ministerial or clerical errors, as well as, 5 days thereafter to rebut any comments by parties.

Amended Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
CEMEX S.A de C.V	8/1/95-7/31/96	37.49

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of amended final results of review for all shipments of gray portland cement and clinker from Mexico, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 61.85 percent for gray portland cement and clinker, the all others rate established in the LTFV investigations. See Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico, 55 FR 29244, (1990).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 21, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-11429 Filed 5-1-98; 8:45 am]

BILLING CODE 3510-05-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-508-605]

Industrial Phosphoric Acid from Israel; Extension of Time Limit for Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for countervailing duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the countervailing duty order on industrial phosphoric acid from Israel, covering the period January 1, 1996 through December 31, 1996. This

extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Maria MacKay, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-2786.

POSTPONEMENT: Under the Act, the Department of Commerce (the Department) may extend the deadline for issuance of the preliminary results of review if it determines that it is not practicable to issue the preliminary results within the statutory time limit of 245 days after the last day of the month in which the anniversary of the date of the publication of the order occurs. The Department finds that it is not practicable to issue the preliminary results for the calendar year 1996 administrative review of industrial phosphoric acid from Israel within this time limit. (See Memorandum from the Acting Deputy Assistant Secretary for Import Administration, dated April 27, 1998, to the Acting Assistant Secretary for Import Administration, "Industrial Phosphoric Acid from Israel: Extension of the Deadline for the Preliminary Results of the 1996 Administrative Review (January 1, 1996 through December 31, 1996)", which is a public document on file in the Central Records Unit.)

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, the Department will extend the time for issuance of the preliminary results of this review from May 4, 1998 to no later than August 31, 1998.

Dated: April 27, 1998.
Maria Harris Tildon,
Acting Deputy Assistant Secretary for Import Administration.
 [FR Doc. 98-11801 Filed 5-1-98; 8:45 am]
 BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration
 [I.D. 042798A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on February 12, 1998, to Pogo Producing Co.; and on April 1, 1998, to Burlington Resources Offshore, Inc. and Apache Corp, all of Houston TX; and, on April 24, 1998, to Chevron U.S.A. of New Orleans, LA.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055 or Colleen Coogan, Southeast Region (813) 570-5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public

comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: April 29, 1998.
P. Michael Payne,
Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service.
 [FR Doc. 98-11780 Filed 5-1-98; 8:45 am]
 BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration
 [I.D. 042098C]

Marine Mammals; Permit No. 959

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the Cetacean Research Unit, P.O. Box 159, Gloucester, Massachusetts 01930, has requested an amendment to scientific research Permit No. 959.

DATES: Written comments must be received on or before June 3, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s): Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298 (508/281-9250); and

Regional Administrator, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive, North, St. Petersburg, FL 33702-2432 (813/570-5301).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit Holder is currently authorized to conduct photo-identification and observational studies on 400 humpback whales (*Megaptera novaeangliae*), 250 finback whales (*Balaenoptera physalus*), 50 sei whales (*Balaenoptera borealis*), and 50 right whales (*Eubalaena glacialis*) annually in the waters of Maine, New Hampshire, Massachusetts, Virginia, North Carolina, Georgia, and Florida over a 5-year period.

The Holder is now requesting that the Permit be amended to authorize: (1) biopsy sampling of up to 150 humpback whales from the Gulf of Maine feeding population, ranging from New York to Nova Scotia; and (2) suction cup tagging with time-depth recorders/VHF radio tags of up to 50 humpback whales from the same population, and 50 finback whales from the New England feeding population, over the remaining duration of the permit. The biopsy samples will be used for several purposes, including an investigation into using skin collagen tensile strength as a means to estimate the age of a sampled whales, an examination of its recent exposure to human pathogens, and molecular genetic studies. Time-depth recorders/VHF radio tags multi-sensor packages will be used in conjunction with sonar traces to understand the feeding ecology of endangered whales in New England.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal

Commission and its Committee of Scientific Advisors.

Dated: April 28, 1998.
Ann D. Terbush,
Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.
 [FR Doc. 98-11779 Filed 5-1-98; 8:45 am]
 BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage of Import Limits and Visa and Certification Requirements for Certain Part-Categories Produced or Manufactured in Various Countries; Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1998 Correlation; Corrections

April 28, 1998.

In the letter to the Commissioner of Customs published in the **Federal Register** on March 31, 1998 (63 FR 15387), 2nd column, in the table under "HTS change," lines 10 and 11, correct the 1st four digits of each HTS number for Category 670-L from "4209" to "4202."

In the letter to the Commissioner of Customs published in the **Federal Register** on April 13, 1998 (63 FR 17993), 2nd column, in the table under "HTS Change" for Categories 369-L and 670-L, correct the 1st four digits of each HTS number from "4209" to "4202."

In the notice published in the **Federal Register** on April 13, 1998 (63 FR 17993), 3rd column, in the table, correct the 1st four digits of each HTS number from "4209" to "4202."

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.
 [FR Doc. 98-11727 Filed 5-1-98; 8:45 am]
 BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 29, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.
Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 98-11827 Filed 4-30-98; 10:29 am]
 BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 22, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.
Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 98-11828 Filed 4-30-98; 10:29 am]
 BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 15, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.
Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 98-11829 Filed 4-30-98; 10:29 am]
 BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 8, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.
Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 98-11830 Filed 4-30-98; 10:29 am]
 BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 1, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.
Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 98-11831 Filed 4-30-98; 10:29 am]
 BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, May 25, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202-418-5100.
Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 98-11832 Filed 4-30-98; 10:30 am]
 BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, May 18, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 98-11833 Filed 4-30-98; 10:30 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 2:00 p.m., Monday, May
11, 1998.

PLACE: 1155 21st St., N.W., Washington,
D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean W. Webb,
Secretary of the Commission.
[FR Doc. 98-11834 Filed 4-30-98; 10:30 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 2:00 p.m., Monday, May
4, 1998.

PLACE: 1155 21st., N.W., Washington,
D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 98-11835 Filed 4-30-98; 10:30 am]
BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0088]

Submission for OMB Review;
Comment Request Entitled Travel
Costs

AGENCIES: Department of Defense (DOD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Notice of request for public
comments regarding a revision to an
existing OMB clearance.

SUMMARY: Under the provisions of the
Paperwork Reduction Act of 1995 (44
U.S.C. Chapter 35), the Federal
Acquisition Regulation (FAR)
Secretariat has submitted to the Office
of Management and Budget (OMB) a
request to review and approve a revision
of a currently approved information
collection requirement concerning
Travel Costs. A request for public
comments was published at 62 FR
64932, December 9, 1997. No comments
were received.

DATES: Comments may be submitted on
or before June 3, 1998.

FOR FURTHER INFORMATION CONTACT:
Linda Nelson, Federal Acquisition
Policy Division, GSA, (202) 501-1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 31.205-46, Travel Costs, requires
that, except in extraordinary and
temporary situations, costs incurred by
a contractor for lodging, meals, and
incidental expenses shall be considered
to be reasonable and allowable only to
the extent that they do not exceed on a
daily basis the per diem rates in effect
as of the time of travel as set forth in the
Federal Travel Regulation for travel in
the conterminous 48 United States, the
Joint Travel Regulations, Volume 2,
Appendix A, for travel is Alaska,
Hawaii, the Commonwealth of Puerto
Rico, and territories and possessions of
the United States, and the Department
of State Standardized Regulations,
section 925, "Maximum Travel Per
Diem Allowances for Foreign Areas." The
burden generated by this coverage is
in the form of the contractor
preparing a justification whenever a
higher actual expense reimbursement
method is used.

B. Annual Reporting Burden

Public reporting burden for this
collection of information is estimated to
average .25 hours per response
including the time for reviewing
instructions, searching existing data
sources, gathering and maintaining the
data needed, and completing and
reviewing the collection of information.

The annual reporting burden is
estimated as follows: Respondents,
16,000; responses per respondent, 10;
total annual responses, 58,000;
preparation hours per response, .25; and
total response burden hours, 40,000.

Obtaining Copies of Proposal

Requester may obtain copies of OMB
applications or justifications from the
General Services Administration, FAR
Secretariat (MVRS), 1800 F Street, NW,
Room 4035, Washington, DC 20405,
telephone (202) 501-4755. Please cite
OMB Control No. 9000-0088, Travel
Costs, in all correspondence.

Dated: April 28, 1998.
Sharon A. Kiser,
FAR Secretariat.
[FR Doc. 98-11700 Filed 5-1-98; 8:45 am]
BILLING CODE 6820-34-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0138]

Submission for OMB Review;
Comment Request Entitled Contract
Financing

AGENCIES: Department of Defense (DOD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Notice of request for comments
regarding an extension to an existing
OMB clearance.

SUMMARY: Under the provisions of the
Paperwork Reduction Act of 1995 (44
U.S.C. Chapter 35), the Federal
Acquisition Regulation (FAR)
Secretariat has submitted to the Office
of Management and Budget (OMB) a
request to review and approve an
extension to a currently approved
information collection requirement
concerning Contract Financing A
request for public comments was
published at 63 FR 9212, February 24,
1998. No comments were received.

DATES: Comments may be submitted on
or before June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Jerry
Olson, Federal Acquisition Policy
Division, GSA (202) 501-3221.

ADDRESSES: Comments regarding this
burden estimate or any other aspect of
this collection of information, including
suggestions for reducing this burden,
should be submitted to: FAR Desk
Officer, OMB, Room 10102, NEOB,
Washington, DC 20503, and a copy to
the General Services Administration,
FAR Secretariat, 1800 F Street, NW,
Room 4035, Washington, DC 20405.
Please cite OMB Control No. 9000-0138,
Contract Financing, in all
correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining
Act of 1994, Public Law 103-355,
provided authorities that streamlined
the acquisition process and minimize
burdensome government-unique
requirements. Sections 2001 and 2051 of
the Federal Acquisition Streamlining
Act of 1994 substantially changed the
statutory authorities for Government
financing of contracts. Sections 2001(f)
and 2051(e) provide specific authority
for Government financing of purchases
of commercial items, and sections
2001(b) and 2051(b) substantially
revised the authority for Government
financing of purchases of non-
commercial items.

Sections 2001(f) and 2051(e) provide
specific authority for Government
financing of purchases of commercial
items. These paragraphs authorize the
Government to provide contract
financing with certain limitations.

Sections 2001(b) and 2051(b) also
amended the authority for Government
financing of non-commercial purchases
by authorizing financing on the basis of
certain classes of measures of
performance.

To implement these changes, DOD,
NASA, and GSA amended the Federal
Acquisition Regulation by revising
Subparts 32.0, 32.1, and 32.5; by adding
new Subparts 32.2 and 32.10; and by
adding new clauses to 52.232.

The coverage enables the Government
to provide financing to assist in the
performance of contracts for commercial
items and provide financing for non-
commercial items based on contractor
performance.

B. Annual Reporting Burden

Public reporting burden for this
collection of information is estimated to
average 2 hours per request for
commercial financing and 2 hours per
request for performance-based
financing, including the time for

reviewing instructions, searching
existing data sources, gathering and
maintaining the data needed, and
completing and reviewing the collection
of information.

The annual reporting burden for
Commercial Financing is estimated as
follows: Respondents, 1,000; responses
per respondent, 5; total annual
responses, 5,000; preparation hours per
response, 2; and total response burden
hours, 10,000.

The annual reporting burden for
Performance-Based Financing is
estimated as follows: Respondents, 500;
responses per respondent, 12; total
annual responses, 6,000; preparation
hours per response, 2; and total
response burden hours, 12,000.

Obtaining Copies of Proposals:
Requester may obtain a copy of the
justification from the General Services
Administration, FAR Secretariat
(MVRS), 1800 F Street, NW, Room 4035,
Washington, DC 20405, telephone (202)
501-4755. Please cite OMB Control No.
9000-0138, Contract Financing, in all
correspondence.

Dated: April 28, 1998.
Sharon A. Kiser,
FAR Secretariat.
[FR Doc. 98-11701 Filed 5-1-98; 8:45 am]
BILLING CODE 6820-34-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense
(DoD) announces a meeting of the
Defense Partnership Council. Notice of
this meeting is required under the
Federal Advisory Committee Act. This
meeting is open to the public. The
topics to be covered will include the
DoD Personnel System Initiative
concept and other matters related to the
enhancement of Labor-Management
Partnership throughout DoD.

DATES: The meeting is to be held May
20, 1998, in room 1E801, Conference
Room 7, the Pentagon, from 1:00 p.m.
until 3:00 p.m. Comments should be
received by May 13, 1998, in order to be
considered at the May 20 meeting.

ADDRESSES: We invite interested
persons and organizations to submit
written comments or recommendations.
Mail or deliver your comments or
recommendations to Mr. Kenneth
Oprisko at the address shown below.
Seating is limited and available on a
first-come, first-serve basis. Individuals

wishing to attend who do not possess an
appropriate Pentagon building pass
should call the below listed telephone
number to obtain instructions for entry
into the Pentagon. Handicapped
individuals wishing to attend should
also call the below listed telephone
number to obtain appropriate
accommodations.

FOR FURTHER INFORMATION CONTACT: Mr.
Kenneth Oprisko, Chief, Labor Relations
Branch, Field Advisory Services
Division, Defense Civilian Personnel
Management Service, 1400 Key Blvd,
Suite B-200, Arlington, VA 22209-
5144, (703) 696-6301, ext. 704.

Dated: April 28, 1998.

L.M. Bynum,
*Alternate CSD Federal Register, Liaison
Officer, Department of Defense.*
[FR Doc. 98-11722 Filed 5-1-98; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

ACTION: Notice.

Pursuant to Public Law 92-463,
notice is hereby given that a meeting of
the Defense Advisory Committee on
Military Personnel Testing is scheduled
to be held from 8:30 a.m. to 4:30 p.m.
on June 25, 1998, and from 8:30 a.m. to
4:30 p.m. on June 26, 1998. The meeting
will be held at The Crowne Plaza Hotel,
555 East Canal Street, Richmond,
Virginia 23219. The purpose of the
meeting is to review planned changes
and progress in developing paper-and-
pencil and computerized enlistment
tests and renorming of the tests. Persons
desiring to make oral presentations or
submit written statements for
consideration at the Committee meeting
must contact Dr. Jane M. Arabian,
Assistant Director, Accession Policy,
Office of the Assistant Secretary of
Defense (Force Management Policy),
Room 2B271, The Pentagon,
Washington, DC 20301-4000, telephone
(703) 697-9271, no later than June 8,
1998.

Dated: April 28, 1998.

L.M. Bynum,
*Alternate OSD Federal Register, Liaison
Officer, Department of Defense.*
[FR Doc. 98-11723 Filed 5-1-98; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Test and Evaluation

AGENCY: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Test and Evaluation will meet in closed session on May 27-28, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the entire range of activities relating to Test and Evaluation and recommend new and innovative ways that the T&E community can better support the warfighter.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: April 28, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-11724 Filed 5-1-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Coalition Warfare

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Coalition Warfare will meet in closed session on April 22-23, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address how best to make future U.S. military capabilities, embodied by JV2010, coalition compatible.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: April 28, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-11725 Filed 5-1-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government Owned Invention

AGENCY: Department of the Navy, DoD.
ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Patent Application entitled "Adhesion Enhancement for Underplating Problem," filed December 17, 1996, Serial No. 08/594,957.

Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, and must include the application number.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, telephone (703) 696-4001.

(Authority: 35 U.S.C. 207, 37 CFR part 404).

Dated: April 17, 1998.

Michael I. Quinn,
Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98-11786 Filed 5-1-98; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Madison Technology International, Ltd.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to Madison Technology International, Ltd., a revocable, nonassignable, exclusive license in the United States, to practice the Government owned invention described in U.S. Patent Application Serial No. 08/840112 entitled "Amplification of Signals from High Impedance Sources."

DATES: Anyone wishing to object to the grant of this license must file written objections, along with supporting evidence, not later than July 6, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, telephone (703) 696-4001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: April 17, 1998.

Michael I. Quinn,
Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98-11785 Filed 5-1-98; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 4, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 6, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer:

Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th and D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202-4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202-4651, or should be electronically mailed to the internet address Pat_Sherrill@ed.gov, or should be faxed to 202-708-9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506(c)(2)(A)) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 30, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Safe and Drug-Free School Recognition Program.

Abstract: The Safe and Drug-Free School Recognition Program will identify schools that are doing an exemplary job of creating safe schools and will provide a brief description of what each school is doing.

Additional Information: In December, 1997, President Clinton directed the Department of Education and the Department of Justice to produce an annual report on school safety. A draft outline of the report was released in late February. A key component of the proposed report will be a description of effective models for safe schools. A mechanism for identifying and assessing the quality and effectiveness of school-based models will be this Recognition Program. Therefore, the Department is requesting an emergency clearance by May 4, 1998 in order to meet the request from the White House. Failure to recognize these schools in time for the report may result in having no guidance to offer as a counter balance to information on crime and violence statistics in schools.

Frequency: One time.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 130.

Burden Hours: 2,760.

[FR Doc. 98-11949 Filed 5-1-98; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Solicitation for Financial Assistance Number DE-PS07-98ID13651—Industrial Process Control With Laser-Based Ultrasonics

AGENCY: Idaho Operations Office, DOE.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office (ID) is seeking applications for cost-shared research and development of Laser-Based Ultrasonic technologies that will enhance economic competitiveness, reduce energy consumption and reduce environmental impacts of the steel industry. The objective of the solicitation is to develop and use an integrated laser ultrasonic system for in-process manufacturing applications in the U.S. steel industry. A workshop on Industrial Applications of Laser Ultrasonics held December 9 and 10, 1997, identified significant applications of laser ultrasonic techniques in industrial process monitoring and control. These applications, generally encompassing manufacturing processes in all IOF industries, include measurement of temperature, thickness, and material properties (stress, defects, and other intrinsic physical parameters). The Workshop addressed current status and future research and development needs in laser ultrasonic techniques as well as barriers for technology use. Two of the primary barriers identified in the Workshop will be addressed by this solicitation; they are (1) development of an integrated sensor system to combine the use of laser ultrasonics with other measurement tools to meet the in-process monitoring requirements for accuracy and reproducibility and (2) installation and use of this integrated system in an industrial process demonstrating the cost-savings utility to the industry. A total of \$1,500,000 in federal funds (\$550,000 in fiscal year 1998, \$500,000 in fiscal year 1999, and \$450,000 in fiscal year 2000) is expected to be available to fund this effort. DOE anticipates making a single award with a duration of three years or less. A minimum of 30% non-federal cost-share is required for research and development and a minimum of 50% non-federal cost-share is required for later demonstration and process evaluation. Collaborations between industry, university, and Federal Laboratory participants are encouraged.

FOR FURTHER INFORMATION CONTACT: T. Wade Hillebrant, Contract Specialist; Procurement Services Division; U.S. DOE, Idaho Operations Office, 850 Energy Drive, MS 1221, Idaho Falls, ID 83401-1563; telephone (208) 526-0547.

SUPPLEMENTARY INFORMATION: The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93-577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086. The solicitation text has been posted on the ID Procurement Services Division home page, and may be accessed using Universal Resource Locator address at <http://www.id.doe.gov/doeid/solicit.html>. This site also includes a link to the report of the workshop on Industrial Applications of Laser Ultrasonics The Application Instruction package forms (Nos. 1 through 6 and 7 if applicable) may be accessed at <http://www.id.doe.gov/doeid/application.html>. Sources intending to propose must send a notice of intent to propose to Mr. Hillebrant (point of contact listed above). Hard copies of the solicitation and the application forms may also be requested from Mr. Hillebrant.

Issued in Idaho Falls, Idaho, on April 20, 1998.
Michael Adams,
Acting Director, Procurement Services Division.
 [FR Doc. 98-11770 Filed 5-1-98; 8:45 am]
 BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[FE Docket Nos. 98-10-NG, 98-14-NG, 97-06-NG, 96-92-NG, 98-18-NG, 98-21-NG, 98-22-NG, 98-23-NG, 95-11-NG, 98-24-NG]

Office of Fossil Energy; Kimball Energy Corporation, et al.; Orders Granting, Amending and Vacating Blanket Authorizations To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting,

amending and vacating various natural gas import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at <http://www.fe.doe.gov>, or on the electronic bulletin board at (202) 586-7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E-033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on April 23, 1998.
John W. Glynn,
Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

Attachment

APPENDIX—IMPORT/EXPORT BLANKET AUTHORIZATIONS GRANTED AND AMENDED

Order No.	Date issued	Importer/Exporter FE Docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1365	03/03/98	Kimball Energy Corporation 98-10-NG	75 Bcf .....	.....	Import from Canada beginning on April 1, 1998, through March 31, 2000.
1366	03/05/98	Duke Energy LNG Marketing and Management Company 98-14-NG.	700 Bcf ....	.....	Import LNG from various international sources beginning on the date of first shipment.
1240-B	03/06/98	CXY Energy Marketing (U.S.A.) Inc. 97-06-NG.	.....	.....	Authority vacated.
1228-A	03/06/98	CXY Energy Marketing (U.S.A.) Inc. (Formerly Wascana Energy Marketing (U.S.) Inc.) 96-92-NG.	.....	.....	Name change.
1368	03/19/98	POCO Marketing LTD. 98-18-NG	250 Bcf ....	.....	Import from Canada beginning April 1, 1998, through March 31, 2000.
1369	03/19/98	Tristar Gas Marketing Company 98-21-NG	20 Bcf	.....	Import and export up to a combined total from and to Mexico beginning on April 1, 1998, through March 31, 2000.
1370	03/20/98	Tractebel Energy Marketing, Inc. 98-22-NG	24 Bcf	.....	Import and export up to a combined total from and to Canada beginning on the date of first import or export delivery.
1371	03/25/98	The Brooklyn Union Gas Company 98-23-NG.	50 Bcf .....	.....	Import from Canada beginning on date of first delivery.
1026-A	03/26/98	Black Hills Energy Resources, Inc. (Formerly Wickford Energy Marketing, Inc.) 95-11-NG.	.....	.....	Name change.
1372	03/31/98	Williams Energy Services Company 98-24-NG.	400 Bcf	.....	Import and export up to a combined total from and to Mexico beginning on April 1, 1998, through March 31, 2000.

[FR Doc. 98-11772 Filed 5-1-98; 8:45 am]
 BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 98-03—Certification Notice—158]

Office of Fossil Energy; Borger Energy Associates, L.P.; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On April 11, 1998, Borger Energy Associates, L.P. submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G-039, FE-27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586-9624

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the *Federal Register* that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Borger Energy Associates, L.P.
Operator: Quixx Power Services, Inc.
Location: Borger, Texas on Spur 119 North.
Plant Configuration: Topping-Cycle, Cogeneration.
Capacity: 200 megawatts.
Fuel: Natural gas.

Purchasing Entities: Southwestern Public Service Company.
In-Service Date: July 17, 1998 (simple-cycle), February 17, 1999 (cogen. operation).

Issued in Washington, D.C., April 28, 1998.
Anthony J. Como,
Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.
 [FR Doc. 98-11771 Filed 5-1-98; 8:45 am]
 BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-266-000]

Enogex Interstate Transmission L.L.C. and Ozark Gas Transmission, L.L.C.; Notice of Site Visit

April 28, 1998.

On May 13, 1998, the Office of Pipeline Regulation (OPR) staff will conduct an aerial inspection of the proposed Ozark/NOARK Expansion Project in Sebastian, Franklin, Logan, Johnson, Pope, Conway, Van Buren, Stone, Izard, Baxter, Sharp, Lawrence, Greene, and Clay Counties, Arkansas. The aerial inspection will begin at 9:00 a.m. at Mid South Aviation, Inc., North Little Rock Airport, North Little Rock, Arkansas. If weather conditions preclude an overflight, the inspection will be canceled. A representative of the project sponsors, Enogex Interstate Transmission L.L.C. and Ozark Gas Transmission, L.L.C., will accompany the OPR staff.

All interested parties may attend, although those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208-1088.

Robert Arvedlund,
Chief, Environmental Review & Compliance Branch I.

[FR Doc. 98-11707 Filed 5-1-98; 8:45 am]
 BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Presentation

April 28, 1998.

Take notice that on Tuesday, May 5, 1998, a presentation will be made by representatives of Morgan Stanley Co., Inc. to the Commissioners and staff. The subject of the presentation is Locational Pricing and the Convergence of Physical

and Financial Markets in the Electricity and Natural Gas Industries.

The presentation will take place at 3 p.m. in Room 3M-3 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The meeting is open to the public. Questions concerning the presentation should be directed to Kay Morice, 202-208-0507.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11702 Filed 5-1-98; 8:45 am]
 BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-368-000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

April 28, 1998.

Take notice that on April 20, 1998, as supplemented on April 24, 1998, Northern Border Pipeline Company (Applicant), P.O. Box 3330, Omaha, Nebraska 68124-3330, filed in Docket No. CP98-368-000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to construct a new delivery tap on Applicant's system in Cedar County, Iowa for possible future service to North Star Steel Company (North Star), under Applicant's blanket certificate issued in Docket Nos. CP84-420-000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to construct a tap which will consist of a six-inch tee and valve. Applicant asserts that the estimated cost of the proposed facilities is \$39,000, which North Star has agreed to reimburse Applicant. Applicant states that it will file to obtain Commission approval to operate the proposed tap, at such time as North Star elects to interconnect with Applicant.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be

authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11703 Filed 5-1-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission

April 28, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P-2927-004.

c. *Date Filed:* September 29, 1997.

d. *Applicant:* Aquamac Corporation.

e. *Name of Project:* Aquamac Hydroelectric Project.

f. *Location:* On the Merrimack River, in the City of Lawrence, Essex, County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Gerard Griffin, Jr., Aquamac Corporation, 9 South Canal St., Lawrence, MA 01842, (505 686-0342).

i. *FERC Contact:* Mark Pawlowski (202) 219-2795.

j. *Deadline Date:* June 26, 1998.

k. *Status of Environmental Analysis:* This application has been accepted, but is not ready for environmental analysis at this time—see attached paragraph D7.

l. *Description of Project:* The existing run-of river project utilizes flows diverted by the upstream Lawrence Hydro Project and consisting of: (1) A trashrack structure; (2) manually operated headgate and penstock; (3) a single 250-kW generating unit; and (4) appurtenant facilities. There is no dam and reservoir associated with the project. The applicant estimates that the total average annual generation would be 1,600 Mwh.

m. *Purpose of Project:* All generated power is sold to the Merrimac Paper Company for its manufacturing processes.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D7.

o. Available Locations of Application:

A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Room 2A-1, Washington, D.C. 20426, or by calling (202) 208-2326. A copy is also available for inspection and reproduction at Aquamac Corporation, 9 South Canal St., Lawrence, Massachusetts 30246, (508) 656-0342.

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11704 Filed 5-1-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission

April 28, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P-2928-004.

c. *Date Filed:* September 29, 1997.

d. *Applicant:* Merrimac Paper Company.

e. *Name of Project:* Merrimac Hydroelectric Project.

f. *Location:* On the Merrimack River, in the City of Lawrence, Essex County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Gerard Griffin, Jr., Merrimac Paper Company, Inc., 9 South Canal St., Lawrence, MA 01842, (508) 686-0342.

i. *FERC Contact:* Mark Pawlowski (202) 219-2795.

j. *Deadline Date:* June 26, 1998.

k. *Status of Environmental Analysis:* This application has been accepted, but

is not ready for environmental analysis at this time—see attached paragraph D7.

l. *Description of Project:* The existing run-of river project utilizes flows diverted by the upstream Lawrence Hydro Project and consisting of: (1) A trashrack structure; (2) manually operated headgate and penstock; (3) three generating units of an installed total capacity of 1250-kW; and (4) appurtenant facilities. There is no dam and reservoir associated with the project. The applicant estimates that the total average annual generation would be 7,300 Mwh.

m. *Purpose of Project:* All generated power is used by the applicant for its paper manufacturing processes.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D7.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Room 2A-1, Washington, D.C. 20426, or by calling (202) 208-2326. A copy is also available for inspection and reproduction at Merrimac Paper Company, Inc., 9 South Canal St., Lawrence, Massachusetts 30246, (508) 656-0342.

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the

Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11705 Filed 5-1-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

April 28, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of application:* Minor License.

b. *Project No.:* P-11574-000.

c. *Date Filed:* February 23, 1996.

d. *Applicant:* City of Norwich,

Department of Public Utilities.

e. *Name of Project:* Occum Hydro Project.

f. *Location:* On the Shetucket River, near the City of Norwich, New London County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)—825(r).

h. *Applicant Contact:* Mr. Peter Polubiatko, Electric Division Manager, City of Norwich Department of Utilities, 16 Golden Street, Norwich, CT 06360, (203) 823-4153.

i. *FERC Contact:* Ed Lee (202) 219-2809.

j. *Deadline for Comments, Recommendations, Terms and Conditions, and Prescriptions:* See paragraph D9.

k. *Status of Environmental Analysis:* This application is now ready for environmental analysis—see attached paragraph D9.

l. *Description of Project:* The existing project consists of: (1) A 605-foot-long, 28-foot-high dam with masonry and concrete spillway sections, an earth embankment section and intake structure; (2) a reservoir with a 90 acre surface area and a 600 acre-foot gross storage capacity at normal pool elevation 66.1 feet NGVD; (3) a powerhouse containing one generation unit with a capacity of 800 kW and an average annual generation of 3.75 GWh; (4) a 125-foot-long, 4.8-kV transmission line; and (5) appurtenant facilities.

m. *Purpose of Project:* All project power would be used by the applicant.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street N.W., Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at the address shown in Item h.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of

intent may be filed in response to this notice.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11706 Filed 5-1-98; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6008-3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Pollutant Discharge Elimination System (NPDES)/Sewage Sludge Monitoring Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Pollutant Discharge Elimination System (NPDES)/Sewage Sludge Monitoring Reports, EPA ICR No. 229.11, and OMB Control No. 2040-0004, expiring May 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 3, 1998

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260-2740, by e-mail at farmer.sandy@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 229.11.

SUPPLEMENTARY INFORMATION:

Title: The Discharge Monitoring Report for the National Pollutant Discharge Elimination System (NPDES)/Sewage Sludge Monitoring Reports (OMB Control No. 2040-0004; EPA ICR No. 229.11) expiring 5/31/98. This is a request for extension of a currently approved collection.

Abstract: This ICR estimates the current monitoring, reporting, and record keeping burden and costs associated with submitting and reviewing Discharge Monitoring Reports (DMRs), sewage sludge monitoring reports, and other monitoring reports under the Environmental Protection Agency's (EPA) NPDES program. The NPDES program regulations, codified at 40 CFR parts 122 through 125, require permitted municipal and non-municipal point source discharges to collect, analyze, and submit data on their wastewater discharges. Under these regulations, the permittee is required to collect and analyze wastewater samples or have the analysis performed at an outside laboratory and report the results

to the permitting authority (EPA or an authorized NPDES State) using DMRs, a pre-printed form used for reporting pollutant discharge information. Sample monitoring, analysis, and reporting frequencies vary by permit, but must be performed at least annually for all permitted discharges except for certain storm water discharges.

Upon renewal of this ICR, the permitting authority will continue to require NPDES and sewage sludge facilities to report pollutant discharge monitoring data. The permitting authority will use the data from these forms to assess permittee compliance, modify/add new permit requirements, and revise effluent guidelines. The monitoring data required of NPDES and sewage sludge facilities represents the minimum information necessary to achieve the Agency's goals and satisfy regulatory standards.

Due to the re-estimation of burden for this collection, the burden hours associated with this new ICR have been greatly reduced from the hours of the current ICR. This decrease is due to more accurate estimates, which reflect the general practice of using outside laboratory services. The change in burden is reflected in higher operation and maintenance costs, due to the cost associated with using the services of outside laboratories.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/24/97 (62 FR 62590); one comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10.7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources;

complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: NPDES permittees including publicly owned treatment works, privately owned treatment works industrial facilities, and storm water permittees. The sewage sludge record keeping and reporting requirements identified in this ICR apply to treatment works (public and private) treating domestic sewage and to domestic septage haulers.

Estimated Number of Respondents: 130,380.

Frequency of Response: Varies depending on nature and effect of the discharge, but, except for storm water discharge, is not less than annually.

Estimated Total Annual Hour Burden: 6,540,416 hours.

Estimated Total Annualized Cost Burden: \$278,450,948.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0229.11 and OMB Control No. 2040-0004 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460; and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: April 28, 1998.

Joseph Retzer,
Director, Regulatory Information Division.
[FR Doc. 98-11756 Filed 5-1-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6008-2]

Agency Information Collection Activities Under OMB Review; Comment Request; Identification, Listing and Rulemaking Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been

forwarded to the Office of Management and Budget (OMB) for review and approval: Identification, Listing and Rulemaking Petitions, expiring 06/30/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 3, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, (202) 260-2740, or download off the Internet at <http://www.epa.gov/icr/icr.htm> and refer to EPA ICR No. 1189.06.

SUPPLEMENTARY INFORMATION:

Title: Identification, Listing and Rulemaking Petitions, OMB Control No. 2050-0053; EPA ICR No. 1189.06. This is a request for extension of a currently approved collection.

Abstract: Under 40 CFR 260.20(b), all rulemaking petitioners must submit basic information with their demonstrations, including name, address, and statement of interest in the proposed action. Under section 260.21, all petitioners for equivalent testing or analytical methods must include specific information in their petitions and demonstrate to the satisfaction of the Administrator that the proposed method is equal to or superior to the corresponding method in terms of its sensitivity, accuracy, and reproducibility. Under section 260.22, petitions to amend part 261 to exclude a waste produced at a particular facility (more simply, to delist a waste) must meet extensive informational requirements. When a petition is submitted, the Agency reviews materials, deliberates, publishes its tentative decision in the **Federal Register**, and requests public comment. EPA also may hold informal public hearings (if requested by an interested person or at the discretion of the Administrator) to hear oral comments on its tentative decision. After evaluating all comments, EPA publishes its final decision in the **Federal Register**.

40 CFR 260.30, 260.31, and 260.33 comprise the standards, criteria, and procedures for variances from classification as a solid waste for three types of materials: materials that are collected speculatively without sufficient amounts being recycled; materials that are reclaimed and then reused within the original primary production process in which they were generated; and materials which have been reclaimed, but must be reclaimed further before the materials are

completely recovered. This variance is available to owners or operators of enclosed flame combustion devices.

40 CFR 261.33 and 261.4 contain provisions that allow generators to obtain a hazardous waste exclusion for certain types of wastes. Facilities applying for these exclusions must either submit supporting information or keep detailed records. Under section 261.3(a)(2)(iv), generators may obtain a hazardous waste exclusion for wastewater mixtures subject to Clean Water Act regulation. Under section 261.3(c)(2)(ii)(C), generators may obtain an exclusion for certain non-wastewater residues resulting from high metals recovery processing (HTMR) or K061, K062 and F006 waste. In addition, under section 261.4(b)(6), generators of chromium-containing waste may obtain a hazardous waste exclusion under certain conditions.

Also addressed under this section is the shipment of samples between generators and laboratories for the purpose of testing to determine its characteristics or composition. Sample handlers who are not subject to DOT or USPS shipping requirements must comply with the information requirements of section 261.4(d)(2).

When intended for treatability studies, hazardous waste otherwise subject to regulation under Subtitle C of RCRA is exempted from these regulations, provided that the requirements in section 261.4(e)-(f) are met, including the following information requests: Initial notification, recordkeeping, reporting, and final notification. In addition, generators and collectors of treatability study samples also may request quantity limit increases and time extensions, as specified in section 261.4(e)(3).

40 CFR 261.31(b)(2)(ii) governs procedures and informational requirements for generators and treatment, storage and disposal facilities to obtain exemptions from listing as F037 and F038 wastes. Also under this section are regulations promulgated in 1990 under section 261.35(b) and governing procedures and information requirements for the cleaning or replacement of all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams.

EPA anticipates that some data provided by respondents will be claimed as Confidential Business Information (CBI). Respondents may make a business confidentiality claim by marking the appropriate data as CBI.

Respondents may not withhold information from the Agency because they believe it is confidential. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 23, 1998 (63 FR 3561-3562). One comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 57 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Hazardous Waste Handlers, Generators, or Treatment, Storage and Disposal Facilities

Estimated Number of Respondents: 330.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 18,670 hours.

Estimated Total Annualized Cost Burden: \$41,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1189.06 and OMB Control No. 2050-0053 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 (or

E-Mail
Farmer.Sandy@epamail.epa.gov); and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 28, 1998.

Joseph Retzer,
Director, Regulatory Information Division.
[FR Doc. 98-11757 Filed 5-1-98; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6008-1]

National Advisory Council for Environmental Policy and Technology, Title VI Implementation Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment to Notice Published April 28, 1998.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), the U.S. Environmental Protection Agency (EPA) now gives notice of a meeting of the Title VI Implementation Advisory Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT).

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. The purpose of the Title VI Implementation Advisory Committee is to advise the Administrator and Deputy Administrator of EPA on techniques that may be used by EPA funding recipients to operate environmental permitting programs in compliance with Title VI. The Title VI Implementation Advisory Committee is one of four standing committees of NACEPT.

The Committee consists of 23 independent representatives drawn from among state and local governments, industry, the academic community, tribal and indigenous interests, and grassroots environmental and other non-governmental organizations.

DATES: The previous notice announced in error that the Committee would meet on April 18 and 19. We regret the confusion and any inconvenience that this error may have caused.

The Committee will meet on May 18, 1998 from 9:00 a.m. to 7:00 p.m. and May 19, 1998 from 9:00 a.m. to 3:00

p.m. The public comment session will be held on May 18 from 5:00 p.m. to 7:00 p.m.

Members of the public who wish to make brief oral presentations should contact Lois Williams at 202-260-6891 by May 11, 1998 to reserve time during the public comment session. Individuals or groups making presentations will be limited to a total time of five minutes. Those who have not reserved time in advance may make comments during the public comment session as time allows.

ADDRESSES: The Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, VA 22204. The meeting is open to the public. However, seating will be limited and available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Kenyon, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202-260-8169.

Dated: April 28, 1998.

Gregory Kenyon,
Designated Federal Officer, NACEPT Title VI Implementation Advisory Committee.
[FR Doc. 98-11758 Filed 5-1-98; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6008-5]

Notice of Stakeholder Meeting on the Draft 1999 Drinking Water Infrastructure Needs Survey Approach

AGENCY: Environmental Protection Agency.

ACTION: Announcement of stakeholder meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will hold a public meeting to brief interested parties and collect their opinions on the Draft 1999 Drinking Water Infrastructure Needs Survey Approach. The EPA will consider the comments and views expressed at these meetings in developing the final survey approach. EPA encourages the full participation of all stakeholders.

DATES: The stakeholder meeting regarding the Draft 1999 Drinking Water Infrastructure Needs Survey Approach will be held on Tuesday, May 19, 1998, from 9:30 AM to 4:00 PM EDT.

ADDRESSES: The May 19, 1998 stakeholder meeting will be held in the WIC Conference Room 17, U. S. EPA Headquarters, 401 M Street SW, Washington, DC. To register for the meeting, please contact the EPA Safe

Drinking Water Hotline at 1-800-426-4791, or Rick Naylor of EPA's Office of Ground Water and Drinking Water at (202) 260-5135. Participants registering in advance will be mailed a packet of materials before the meeting. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines are limited and will be allocated on the basis of first-reserved, first served.

FOR FURTHER INFORMATION CONTACT: For information on meeting logistics, please contact the Safe Drinking Water Hotline at 1-800-426-4791 or Rick Naylor of EPA's Office of Ground Water and Drinking Water at (202) 260-5135.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act (SDWA) Amendments of 1996 require EPA to conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States every four years. The first (1995) Drinking Water Infrastructure Needs Survey [EPA 812-R-97-001] was submitted to Congress in January 1997. This document may be obtained by contacting the Safe Drinking Water Hotline at 1-800-426-4791 or from the EPA Web Site at: <http://www.epa.gov/OGWDW/docs/needs/>. The 1999 Drinking Water Infrastructure Needs Survey Report to Congress is due February 2001.

Dated: April 28, 1998.

Robert J. Blanco,
Acting Director, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency.
[FR Doc. 98-11754 Filed 5-1-98; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

April 27, 1998

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with

a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 3, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202-418-0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: OMB Control No.: 3060-0313.

Title: Section 76.207, Political File. Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5,375.

Estimated Time Per Response: 1 hour.

Frequency of Response: Recordkeeping requirement.

Cost to Respondents: \$10,750. The photocopying and stationery costs associated with this recordkeeping requirement are estimated to be \$2 per system (5,375 x \$2. = \$10,750).

Total Annual Burden: 5,375 hours.

Needs and Uses: Section 76.207 requires every cable television system to keep and permit public inspection of a complete record (political file) of all requests for cable cast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the system of such requests, the charges made, if any, if the request is granted. The disposition includes the schedule of time purchased, when the spots actually aired, the rates charged, and the classes to time purchased. Also, when

free time is provided for use by or on behalf of candidates, a record of the free time provided is to be placed in the political file. The data are used by the public in order to assess the amount of money expended and time allotted to a political candidate to ensure that equal access was afforded to other legally qualified candidates for public office.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

[FR Doc. 98-11733 Filed 5-1-98; 8:45 am]
BILLING CODE 6712-01-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of a Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Tuesday, April 28, 1998, the Corporation's Board of Directors determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Julie L. Williams (Acting Comptroller of the Currency), concurred in by Ms. Carolyn Buck, acting in the place and stead of Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter: Memorandum re: General Counsel Opinion Regarding Interest Charges by Interstate State Banks.

The Board further determined, by the same majority vote, that no notice earlier than April 22, 1998, of this change in the subject matter of the meeting was practicable.

Dated: April 29, 1998.

Federal Deposit Insurance Corporation.
James D. LaPierre,
Deputy Executive Secretary.
[FR Doc. 98-11940 Filed 4-30-98; 2:55 pm]
BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight

forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

International Transportation Consultants, Ltd., d/b/a I.T.C., Ltd., 1551-53 Carmen Drive, Elk Grove Village, IL 60007

Officers: Wladimir Leonartowicz, President, Marc Leonartowicz, Vice President

Dated: April 28, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98-11680 Filed 5-1-98; 8:45 am]

BILLING CODE 8730-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m. (EDT), May 11, 1998.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center record keeping.
2. Congressional/agency/participant liaison.
3. Benefits administration.
4. Investments.
5. Participant communications.
6. Approval of the minutes of the April 13, 1998, Board member meeting.
7. Thrift Savings Plan activity report by the Executive Director.
8. Approval of the update of the FY 1998 budget and FY 1999 estimates.
9. Investment policy review.
10. Review of KPMG Peat Marwick audit report: "Pension and Welfare Benefits Administration Review of Capacity Planning and Performance Management of the Thrift Savings Plan at the United States Department of Agriculture, National Finance Center."
11. Status of audit recommendations.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: April 29, 1998.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board

[FR Doc. 98-11819 Filed 4-29-98; 4:56 pm]

BILLING CODE 8760-01-M

FEDERAL TRADE COMMISSION

[File No. 981-0040]

Digital Equipment Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices of unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Willard Tom, FTC/H-374, Washington, D.C. 20580 (202) 326-2932 or 326-2786.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 23, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted from Digital Equipment Corporation ("Digital") an Agreement Containing Consent Order ("Proposed Consent Order"). The Proposed Consent Order is designed to remedy anticompetitive effects likely to occur in three product markets as a result of the acquisition by Intel Corporation ("Intel") of certain assets of Digital. The Order requires that Digital License its Alpha microprocessor technology to two Commission-approved companies to ensure that there are independent suppliers and developers of Alpha. The Order ensures that Intel will not have exclusive control over the technology, and that Alpha will remain competitive.

II. Description of the Parties and the Transaction

Digital is a Massachusetts corporation headquartered in Maryland, Massachusetts, with sales of approximately \$13 billion and net income of over \$140 million for the fiscal year ended June 28, 1997. Digital manufactures and sells computer systems, and develops, manufactures, and sells microprocessors based on its proprietary 64-bit¹ Alpha architecture.

The Alpha microprocessor is widely regarded as among the highest performing general purpose microprocessors available and is the only non-Intel microprocessor architecture that can run the Windows NT operating system in "native" mode.² Digital is the largest consumer of Alpha chips, which it uses in its computer systems.

Intel Corporation ("Intel"), a Delaware corporation headquartered in Santa Clara, California, is the world's leading semiconductor manufacturer. Intel reported 1996 sales of approximately \$20.8 billion and net income of more than \$5 billion. Intel supplies a broad

¹ The number of bits generally correlates with the amount of data that a microprocessor can process during one clock cycle. Intel's current Pentium microprocessors have a 32-bit architecture (known as IA-32), while Digital's alpha chip has a 64-bit architecture.

² Windows and Windows NT are operating systems. Operating systems are a type of software that acts as an intermediary between applications software and the microprocessor. An operating system runs in "native" mode when it is specifically written to interact optimally with the particular microprocessor architecture. Microsoft, the developer of Windows NT, today supports only two microprocessor architectures—Intel's and Digital's—to run Windows NT in native mode. Other microprocessor architectures today must use translation software in order to run Windows NT, significantly reducing performance and speed.

line of semiconductor devices used as computer system components, including x86-compatible microprocessors³ such as the Pentium line, which are used primarily in conjunction with Microsoft's Windows and Windows NT operating systems. Intel has been working with other companies to develop a 64-bit microprocessor (currently known by the project name Merced) with a new 64-bit architecture (known as IA-64), which is intended to extend Intel's current x86 architecture and compete with Digital's Alpha architecture.

The proposed transaction resolves three pending lawsuits between Digital and Intel relating to microprocessor intellectual property and technology rights. Digital initiated that litigation in May 1997, claiming the Intel infringed ten Digital patents by making and selling Intel Pentium chips. Intel countersued, claiming, among other things, that Digital is infringing nine Intel patents by making and selling Alpha microprocessors.

On October 26, 1997, the parties agreed to settle the litigation and grant each other broad patent cross-licenses. Intel would also buy Digital's microprocessor production facilities (such a facility is known in industry parlance as a "fab") for net book value (approximately \$650 million). In addition, Intel agreed to produce Alpha microprocessors for supply exclusively to Digital. Digital agreed to endorse publicly these IA-64 architecture and design some Digital computer systems based on Intel 64-bit microprocessors. Digital will retain the intellectual property rights and design assets for Alpha, including the design engineers who conduct research and development for the Alpha architecture.

III. Competitive Concerns

A. Relevant Markets

The draft Complaint alleges three relevant markets: (1) The manufacture and sale of high-performance, general-purpose microprocessors that are capable of running the Windows NT operating system in native mode; (2) the manufacture and sale of all general-purpose microprocessors and (3) the design and development of future generations of high performance, general-purpose microprocessors.

The Complaint alleges that microprocessors designed to run the Windows NT Operating system and its

³ "X-86 architecture" generally refers to the original line of Intel microprocessor products for personal computers and includes successive generations such as the 8096, 286, 386, 486 and the Pentium family of chips.

complementary application programs constitute a relevant antitrust product market. The demand for microprocessors is determined indirectly by the demand for operating systems, which is determined in part by the software applications that run on those systems. Applications are designed for specific operating systems; operating systems can optimally run application programs only when the operating system is written for the microprocessor architecture (so that the microprocessor runs native on that operating system). Consumers cannot readily switch between computer systems that use different microprocessor architectures, because in most cases such a switch also requires changing the operating system and application programs, an expensive proposition and one that may not yield the same level of functionality enjoyed by consumers on their former systems.

Windows NT is currently written in two versions, so that only the Alpha microprocessor and the Intel-based microprocessors can run it in native mode.⁴ Windows NT will also be compatible with Merced, Intel's 64-bit chip, which will not be commercially available until 1999. Thus, consumers using software optimized for use with Windows NT must choose between Intel-based and Alpha-based systems. Thus, if the price of Alpha and high-end Intel microprocessors were to increase by 5 percent, consumers using Windows NT would not readily switch to computer systems built with alternative microprocessors.

The Complaint also alleges that a second relevant product market includes all general-purpose microprocessors, a category that includes devices based on the Intel and Alpha architectures, as well as microprocessors based on other rival architectures such as those developed by Hewlett-Packard (PA-RISC), Sun Microsystems (SPARC), IBM (PowerPC), and Silicon Graphics (MIPS). Because only Alpha and Intel microprocessors can optimally run Windows NT, however, these two microprocessors are the closest substitutes in this broader, differentiated product market.

Finally, the Complaint alleges that the transaction will reduce competition in the innovation market for the design of microprocessors. Intel and Digital are two of a very few competitors developing next-generation, high-performance microprocessors. Computer makers choose microprocessors based, in part, on the "roadmap" provided by each microprocessor manufacturer—that

⁴ See fn. 2.

is, the manufacturer's projection of future expected increases in performance and functionality for successive generations of microprocessors based on the same architecture. Roadmaps therefore provide an essential element of microprocessor competition. Intel and Digital compete for sales to computer manufacturers, based on their roadmaps, and they use each other's roadmaps as benchmarks for developing next-generation products to leapfrog the performance of the rival company's chips.

B. Barriers to Entry

The Complaint alleges there are significant barriers to entry in the market, including incurring large sunk costs to build a fab and design a microprocessor, overcoming the network externalities and Intel's installed base, obtaining Microsoft support to obtain Windows NT-compatibility, building a reputation as a reliable microprocessor manufacturer and innovator.

Building a new microprocessor facility requires the expenditure of substantial fixed and sunk costs and takes many years. A new entrant must also design the microprocessor, an expensive and lengthy process.

Most important, a successful entrant would need to convince computer system manufacturers to design their systems around the new microprocessor. Entrants, however, face a significant "Catch-22" in this endeavor because of "network externalities." Externalities exist where consumers place more value on a particular technology (microprocessor, operating system, peripherals, applications, etc.) that is more widely adopted than other technologies. Software developers and computer system manufacturers are unwilling to support a new microprocessor technology unless they first see that it enjoys consumer interest. Because of these network externalities and reputational effects, however, consumers are unwilling to switch to a new microprocessor technology unless they first see that it has compatible operating systems, software, and peripherals. In this environment, consumer and industry expectations about the degree to which a manufacturer will be able to get network externalities and reputational effects working for it in the near future are critical.

The importance of these expectations is illustrated by Intel's recent marketing efforts on behalf of the Merced, its new 64-bit microprocessor. Even though

Merced has yet to be tested and will not be available for more than a year, Intel has already successfully obtained commitments from a large share of the software vendors and computer system manufacturers to write software and build computers for it.

C. Competitive Effects

Intel has market power in both relevant microprocessor product markets. Intel accounts for nearly 90 percent of dollar sales and nearly 85 percent of unit sales of microprocessors for Windows NT and for nearly 90 percent of dollar sales and 80 percent of unit sales of general-purpose microprocessors. No firm other than Intel accounts for more than 4 percent of dollar sales of microprocessors or for more than 10 percent of unit sales of microprocessors. Finally, the competitive significance of other high-performance microprocessors—such as Hewlett-Packard's PA-RISC, Sun Microsystems' SPARC, PowerPC from the Motorola/IBM/Apple venture, and Silicon Graphics' MIPS microprocessors—has been declining.

The transaction also threatens to increase concentration significantly in the relevant innovation market. Digital and Intel are two of the most significant innovation competitors in the design and development of high-performance microprocessors. Even with its comparatively small share of the relevant markets, the Alpha architecture (because of Alpha's superior processing performance) represents the most significant threat to Intel's continued market dominance. Intel's documents refer repeatedly to the competitive threat posed by Alpha, which is acknowledged by many as possibly the best performing and fastest microprocessor in the world. Innovation and actual competition between the two companies is likely to increase in the future because of the growing popularity of Microsoft's Windows NT operating system, which currently supports only Digital's Alpha and Intel's advanced microprocessors. As the demand for and functionality of Windows NT grow, the competition between the Alpha and Intel architecture is likely to intensify.

On these facts, it is clear that an acquisition of Digital by Intel would substantially lessen competition. Although the transaction at issue here does not involve an outright acquisition of Alpha technology, it nevertheless threatens competition in the relevant markets. Under the terms of the settlement, Intel will acquire Digital's Alpha fabrication plant (known as Fab 6) and will produce Alpha chips for Digital. Digital will retain its Alpha

intellectual property and design team and is, therefore, only receiving "foundry" services (that is, a supply agreement where one company manufactures the product for another) from Intel. The parties will also end the patent litigation and sign a patent cross-license agreement.

The proposed transaction has positive implications for the future of Digital's Alpha systems. The supply agreement frees Digital from operating a plant that it was not able to utilize efficiently. Because Intel manufactures a vast line of semiconductor products, it can utilize the plant more efficiently than Digital. As a result, overall manufacturing costs will go down and, under the Digital-Intel agreement, those cost reductions will be passed on to Digital. Under the agreement, Digital will also be able to bring the next generation of Alphas—based on an improved .18 micron process technology—to market earlier than it would have absent the transaction.

Digital's move to this "fabless" business model of operation is not unprecedented. Other successful companies—like Sun Microsystems, Inc. and Silicon Graphics—have designed high performance microprocessors while relying on third-party foundries for manufacturing. None of the other fabless microprocessor companies, however, placed manufacturing in the hands of such a dominant competitor.

Because of this unique characteristic, the proposed transaction creates the opportunity for Intel to slow down or otherwise impair the supply of Alpha microprocessors, harming competition in the relevant markets. In particular, the transaction presents a risk that Intel will not provide the necessary level of coordination between the design and manufacturing processes, and that Intel may take other steps to reduce quality and slow the supply of Alpha microprocessors to Digital. Every foundry arrangement requires design engineers and manufacturing process engineers to coordinate their efforts. The development of a microprocessor involves conforming that design to the process technology and vice-versa. The Digital-Intel settlement separates these functions and provides no incentive for Intel to "tweak" its own processes to conform to Digital's products.

Furthermore, the transaction as proposed threatens the continued viability of Digital's sales of Alpha to the "merchant market."⁵ As part of this

⁵ Merchant market means sales of separate microprocessor chips to computer system manufacturers, who then use them as a component in their own computer systems.

transaction, Digital is selling off most of its semiconductor business to Intel and thus will have no economic need for a marketing staff, which includes people who market Alpha to other computer system manufacturers. Without a marketing staff to service and pursue the merchant market, the loss of competition would be significant.⁶ Computer system manufacturers using Alpha microprocessors have pioneered the opening of new market segment for Alpha-based systems, such as media graphics. With the expected growth of Windows NT, Alpha and Intel should go head-to-head in competition in these market segments for these systems. The uncertainty created by the proposed transaction, had it not been addressed by the proposed consent, could have reduced competition between Intel and Alpha processors, resulting in higher prices, reduced consumer choice, and lower rates of innovation.

The Complaint concludes that, unless remedied, the transaction is likely to create uncertainty regarding the future competitive viability of Alpha, thereby maintaining and enhancing Intel's market power, which could result in increased prices and reduced quality and innovation in each of the relevant markets for the following reasons: (1) By making it less likely that Digital would maintain the sales force to continue "merchant market" sales of Alpha microprocessors and other products to other computer system manufacturers, it would reduce competition between Intel and Digital for such sales; and (2) putting Digital's supply of Alpha solely in the hands of Intel would give Intel the opportunity to delay production of Alpha microprocessors, impede the development of new generations of Alpha microprocessors, and otherwise undermine the competitiveness of Alpha. In these ways, according to the Complaint, the consummation of the proposed transaction, without any changes, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

IV. The Proposed Consent Order

The Commission has entered into an agreement containing a Proposed Consent Order with Digital in settlement of the draft Complaint. The Proposed Consent Order is designed to preserve Alpha's future viability by ensuring alternative sources for production,

⁶ As explained more fully below, as part of this consent agreement, Digital will be licensing Alpha to Samsung, a company that plans to sell the Alpha chip in the merchant market through a U.S. subsidiary.

marketing, and development of Alpha products. The Proposed Consent Order requires Digital to enter into or to continue certain licensing arrangements and alliances with Advanced Micro Devices, Inc. ("AMD"), Samsung Electronics Co., Ltd. ("Samsung"), or some other Commission-approved licensee, and to be begin the process of certifying International Business Machines, Inc. ("IBM"), or some other Commission-approved company, to become an Alpha foundry. The purpose of these provisions is to establish two licensees and another foundry as providers and developers of Alpha devices, independent of Intel.

The Proposed Consent Order binds Digital to comply with the terms of agreements it already has entered into with Samsung. Under those agreements, Samsung will obtain an architectural license and technical support. Furthermore, Digital will grant to Samsung a non-exclusive AlphaPowered trademark license and the assistance and support necessary to enable Samsung to enter rapidly and expand the merchant market segment for Alpha products.⁷ Under the current version of the Samsung-Digital agreement, Samsung will be creating a U.S. subsidiary, to be known as the Alpha Volume Company, that plans to market Alpha chips to the merchant market segment. Furthermore, Digital has committed to purchase substantial volumes of its Alpha products needs at a competitive price from Samsung, thus reducing its reliance on Intel.

The Proposed Consent Order also requires Digital to enter into a broad license with AMD, or a Commission-approved licensee, that includes a license to the Alpha architecture and software tools that enable AMD to develop microprocessors compatible with the Alpha architecture. Digital must provide technical and engineering support until AMD is capable of independently developing and producing products based on the Alpha architecture, but in no event for more than two years.

The licenses with AMD and Samsung (or two other Commission-approved companies) are architectural licenses, meaning that the license is to the Alpha architecture, as defined by convention in Digital's official reference manual.

⁷ The Proposed Consent Order also includes provisions for an "Interim Trustee" (i.e., an auditor) and a licensing trustee. The Interim Trustee provision assures early assessment and monitoring of Digital's agreements with the licensees and continuing monitoring and reporting to the Commission of how the provisions are working. The licensing trustee provision is triggered if the parties to a licensing agreement fail to agree within the requisite time.

Under such license, the licensee is free to create its own implementations and derivative works—that is, to design original chips around the architecture—with the one caveat that it maintain backward compatibility with the existing Alpha architecture.⁸ In this way, a licensee will have every incentive to develop the merchant market aggressively because it will have the ability to create Alpha-derivative innovations that can give it profitable "design wins"—that is, agreements with computer system manufacturers by which the computer system manufacturers will design a computer line around the licensee's chip. These architectural licenses also provide assurance to customers who commit to the Alpha architecture because the licenses provide independent sources of supply and innovation for these microprocessors.

The Proposed Consent Order also requires Digital to enter into an agreement, subject to Commission approval, with IBM or some other Commission-approved company to evaluate that company as a potential foundry partner of the steps necessary to become a qualified supplier of Alpha products. Submission of that agreement is required within six months of Commission approval of the Proposed Consent Order. Alternatively, the Proposed Consent Order permits Digital to demonstrate why such an agreement is unnecessary.

Samsung is a leading supplier of DRAM technology, is considered to have excellent manufacturing quality, and will receive marketing assistance from Digital. Samsung is already in the merchant market and the Order should empower Samsung to further its marketing efforts in this important segment. AMD is the leading challenger to Intel for x86-compatible microprocessors and already a major merchant market supplier, with excellent design capabilities. Though AMD does not yet produce Alpha chips, it should have every ability to do so. AMD is a major supplier of microprocessors and should have significant incentives to develop an Alpha-based business because it does not otherwise have a 64-bit architecture capable of challenging the upcoming

⁸ An architectural integrity provision in the Order preserves backward compatibility for existing applications written to exploit the architecture, and to make designing easier for applications developers that have not yet ported applications to Alpha. If Digital fails to innovate and improve the performance of the Alpha architecture, however, the Order allows AMD to modify the base architecture without Digital approval.

Intel IA-64 architecture. IBM is an established high-performance microprocessor foundry, likely to be capable of producing Alpha products. All three of these companies, or other licensees, help to ensure adequate and independent supplies of Alpha microprocessors.

V. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons about both the appropriateness of the relief provided herein as well as the suitability of Samsung, AMD, and IBM as licensees who can ensure alternative sources for the manufacture, marketing, and development of Alpha products. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make it final.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Order, including the proposed licenses and alliances, to help the Commission determine whether to make final the Proposed Consent Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 98-11798 Filed 5-1-98; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Notice of Availability (NOA); Record of Decision (ROD); Immigration and Naturalization Service (INS) Lease Construction and Consolidation, Dade County, Florida

April 23, 1998.

This is the Record of Decision (ROD) for the GSA Proposed Action, which is to lease a building to be constructed at 9300-9499 NW 41st Street in Western Dade County, Florida. This building would consolidate the INS District

Office, the Executive Office for Immigration Review (EOIR), and the Asylum Office. This is the GSA preferred alternative.

The purpose of this project is to consolidate the INS into one facility to accommodate their legislatively mandated growth. INS needs a consolidated facility to better accommodate this growth, to better coordinate its functions, and to meet the need to locate closer to the Krome Service Processing Center, and to its operation at the Miami International Airport (MIA). This consolidation would improve the overall efficiency of the INS operations. Current inefficiencies result from separated functions at their existing facilities that can not accommodate projected INS requirements. Employees and clients must often travel over an hour between locations. Separated functions require duplicate functions transportation of records and personnel around Metro Dade County. This lengthens the time it takes the INS to administer its case load. The distance between the District Office and the Krome Center has caused serious administrative and security problems. A consolidated facility located closer to the Krome Center and west of the MIA would provide more effective coordination of functions, including the INS Foreign Inspection Service located at MIA.

The current District Office at 7880 Biscayne Boulevard can not accommodate the projected growth. The building has small floor plates, inadequate waiting areas, and elevator and building systems that are not adequate to service the requirements of the current and projected INS space needs.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500-1508), and GSA Order PBS P 1095.4B, GSA prepared an Environmental Impact Statement (EIS) for the Proposed Action. The purpose of the EIS is to:

- Identify the alternatives considered including the Proposed Action;
- Solicit public comments and incorporate response into the analysis;
- Identify potential impacts of the alternatives considered;
- Disclose potential impacts resulting from the alternatives considered;
- Identify measures to mitigate adverse impacts;
- Incorporate the impacts and mitigation into the decision process.

This ROD will communicate GSA's decision on implementing the Proposed Action, the basis for that decision, and

identify mitigation measures to be implemented as part of the decision. The Draft and Final EIS documents are incorporated into this ROD by reference, and are available upon request from GSA.

This EIS was prepared because of the level and intensity of public response received by GSA during the final comment period after GSA had completed an Environmental Assessment (EA). GSA completed an EA in July 1996 and executed a Findings of No Significant Impact (FONSI). GSA provided 30-days of final public comment prior to taking action. Because of the level and intensity of the public responses received, GSA determined that there were "potentially significant" issues associated with proceeding with the Proposed Action. GSA therefore elected to elevate its environmental analysis to an EIS, the highest level of analysis. GSA then began the environmental process a second time with the publication of a Notice of Intent (NOI) to prepare an EIS in the *Federal Register* on September 27th. Notice was also placed in the Miami Herald and letters were mailed to all potentially impacted parties as part of a second public scoping process.

The EIS examined the impacts for both the Proposed Action and the No Action. If GSA proceeds with the Proposed Action, there are potential impacts to both the "Doral" area from the relocation of INS, and potential impacts to the 7880 Biscayne Boulevard area that would result from INS vacating the current location. Conversely, in the case of the No Action, there are potential impacts to the 7880 Biscayne area from the INS remaining at their current location and potential impacts to the INS from continued operations in their current facilities.

GSA released the Draft EIS with publication in the *Federal Register* for a 45-day public comment period that began on January 24, 1997. A Public Meeting was conducted in Miami on February 12th. The Final EIS was released for a 30-day public comment period with publication in the *Federal Register* on March 28th. The final comment period closed on April 28th. GSA provided written notices of availability for these documents in the *Federal Register*, the Miami Herald, through the Metro-Dade Library, and through direct mailings to interested parties and using a mailing list provided by the West Dade Federation of Homeowners Associations (WDFHA). GSA distributed approximately 150 copies of the Draft and Final EIS to Federal, State and local governments, elected officials, neighborhood

associations, the business community, and to all interested parties identified during scoping process.

GSA made diligent efforts to solicit input from all potentially impacted parties, and GSA also made diligent efforts to keep the community fully informed during the NEPA process. This was accomplished using newspaper Public Notices, direct mailings, written correspondence, a Public Meeting, and through keeping an open dialogue with representatives of the WDFHA. GSA communicated regularly and openly with the WDFHA, to keep all parties fully informed during the environmental process. GSA provided factual information to interested parties in a timely manner. GSA also extended the comment periods several times, when requested to do so, so as to provide additional time for those wishing to provide comments.

Alternatives Considered

GSA spent over three years exploring and analyzing alternatives to meet the requirements of the INS consolidation within the Delineated Area (DA). In 1992 the INS provided GSA with the Delineated Area (DA). This DA was outlined by the INS as a 95 square mile area surrounded by Flagler Street on the South, 135th Street on the North, LeJeune Road on the East, and 107th Avenue on the West.

The DA was selected based on the accessibility of major thoroughfares including the Florida Turnpike, the Palmetto and Dolphin Expressways, and LeJeune Road. The requirement was that the DA to be in a more centralized portion of Dade County with access to major roadways, MIA, and the Krome Facility. The survey conducted as part of the EIS concluded that during the survey period, 25.4% of the INS client visits originated from outside Dade County. A 1991 INS survey indicated that 78% of clients who filed petitions with the INS lived either west of LeJeune Road or north of Flagler Street. Demographic forecasts predict that the majority of future residential and commercial growth will occur in the western side of Miami.

During the period from 1993 until April 1996, GSA analyzed and considered over 20 alternative locations and delivery options within the DA. This included leasing existing building(s), building(s) purchase, and the consideration of lease construction alternatives at various sites that would be either donated to GSA or made available through a no cost purchase option.

GSA conducted financial analysis on the methods available for delivering the

needed space to meet the INS' requirements. This was done to determine the most economical and cost effective delivery method. As part of the Prospectus submittal process, GSA used both the Net Present Value and an Income/Expense approach, to compute the lowest cost to the taxpayer. This analysis concluded that leasing was the most cost effective method and the lowest cost to the taxpayer. In April 1995 GSA received Congressional approval to lease 214,607 occupiable square feet of space within the DA to meet the requirements of the INS. Only lease acquisition was authorized by Congress under this Prospectus approval. The Draft and Final EIS contain a complete and comprehensive explanation of the alternative development and screening processes followed by GSA for this project from 1992 to date.

After GSA Congressional approval of the lease Prospectus in April 1995, a market survey was initiated by GSA to identify lease alternatives and to identify prospective offerors. On December 1, 1995, GSA issued a Solicitation for Offers (SFO), an open market competitive request for offers to provide leased space that would meet the requirements of the INS consolidation as outlined in the SFO. A total of seven initial offers were received by GSA. Best and Final Offers (BAFO) were due by April 28, and all but one offeror withdrew their offers prior to BAFO. Only one offer remained open at BAFO.

Therefore, the EIS analyzed the two alternatives remaining open and viable to GSA. These alternatives are the Proposed Action Alternative and the No Action Alternative. All other alternatives were either withdrawn prior to BAFO, or were initially screened from consideration by GSA based on economic, technical, or operational criteria.

No Action Alternative

Under this alternative, the INS would continue to be housed at its current locations, and would meet its increased space requirements through a series of ad hoc leases. The INS would continue to operate at dispersed locations and in overcrowded conditions at the District Office. INS would meet its growth needs by leasing additional space in close proximity to its current locations.

Proposed Action

Under this alternative, the GSA would execute an agreement with a private developer, already selected by GSA through an open and competitive procurement, for the lease construction

of a building to house the consolidated INS. The building would be 214,607 osf, would employ about 500 persons in 1998 increasing to 763 persons by the year 2005. The building would provide 885 parking spaces. Approximately 1,100 persons would visit the facility daily to transact business with the INS. The building would be constructed with three floors and a parking garage in rear. The building would be designed as a modern office building to fit the style and character of the commercial buildings that currently surround the vacant site. The building would be designed to efficiently accommodate the unique requirements of the INS. This is the GSA preferred alternative.

Environmental Consequences and Mitigation

Based on the analysis contained in both the EA and the EIS, there were no potentially significant environmental impacts from either the Proposed Action or the No Action except for those discussed in this ROD. These impacts were associated with public controversy and land use issues, and not with impacts to the natural environment. Therefore, neither alternative was considered to be environmentally preferred over the other. Additional potential impacts to the natural and human environment were considered and found to be minor or not significant. This is documented in both the Draft EIS and the Final EIS by reference.

The Proposed Action

The issues that were identified during the scoping process fall into one of the following general categories: Impacts to streets and traffic; impacts to property values (primarily residential), impacts to the character and economic stability of the neighborhood and surrounding community, and impacts to the area from increased crime.

The Proposed Action would result in the construction of a building to suit facility to house the INS, and would require a lease agreement to be executed between GSA and a private developer. GSA would assume a leasehold interest in the building for a period of 10 years. There would be no Federal ownership of the facility. The developer would be responsible for obtaining all local and state approvals prior to beginning construction. These would include all zoning approvals, Concurrency Review, land use approvals, and all building permits that require conformance to various local, State, and Federal statutes.

The approval and permitting process would be the responsibility of the developer, and thus obtaining permits

and Concurrency review would serve to mitigate many of the impacts that have been identified.

Concurrency is the process by which Dade County examines proposed projects and determines whether the necessary public facilities and infrastructure capacity is available. Seven agencies are involved in the review process for Concurrency in Dade County and they are: Building and Zoning; Department of Environmental and Resource Management (DERM); Fire Department; Metro Dade Transit Authority; Parks and Recreation; Public Works; and Solid Waste.

Concurrency is part of the permitting process. The infrastructure and service capacity must be available before a developer is granted a Final Development Order. The analysis of potential impacts undertaken in the EIS is based on the Standards for Concurrency required by Dade County. The Concurrency review and a Final Development Order application takes place at the County level, and these permitting decisions are based on the available capacity at the time of the application by a developer.

Traffic

A traffic study was undertaken by traffic consultants Carr-Smith Associates, to determine the potential impact of the Proposed Action on the roadways around the potentially affected area. To determine the number of vehicle trips that would be generated, an internal survey was conducted by the INS to determine the origin and destination of all employees and visitors during a five day period (October 23-29, 1996). This was considered a typical work week. Employees located at the District Office and at other INS offices that would be part of the consolidation were included in the survey. A total of 438 current INS employees would move to the proposed facility. A total of 1092 client visits per day were identified for the survey week.

All employees would not be onsite everyday, and the arrivals of the clients occurred throughout the business day. These factors were considered in the formula for computing the number of the vehicle trips generated. Levels of Service (LOS) standards were provided by the Metro-Dade Planning Department for the surrounding roadways. Current traffic counts were taken. LOS levels were computed using the current data collected and using the projected growth rates provided by Dade County. The LOS levels with the Proposed Action were calculated and found to remain within acceptable Dade County LOS Standards.

Based on the findings of this traffic study, the impact of the proposed INS facility is within Metro-Dade County's Concurrency requirements. In addition, planned expansions in the transit service to the area and soon to be implemented changes in the INS application and processing procedures, will serve to mitigate some of the resulting traffic impacts of the new facility. Because of technology improvements in the processing procedures, and because of expected reductions in both staff and applicants in the Citizenship USA program, INS projects that the number of daily client visits to be less than the 1,092 persons who visited the current INS facilities during the survey period of October 23-29, 1996. These anticipated reductions, coupled with anticipated route alterations of the mass transit system, will serve to mitigate some of the increased traffic projected to be associated with the INS facility.

A copy of the traffic study, will full analysis and conclusions and methodology, is contained in the EIS. The developer would be required to meet Concurrency Review for traffic prior to permitting any proposed construction.

Mass Transit

Metro Dade transit Authority does not alter bus routes until a project has established a completion date and demonstrates a need for additional service. GSA and INS will contact Metro Dade Transit Authority at the appropriate time in this process, and formally request that additional service be provided to the facility based on the need and date of occupancy. GSA anticipates no difficulties in increasing the service levels once the need is demonstrated to the Metro Dade Transit Authority. Increased levels of public transportation to the facility will serve to mitigate some of the vehicle trips generated by the INS.

Metro-Bus service is available directly in front of the site. However, there is currently only one bus in the morning and one in the afternoon serving the site. Busses currently service 84th Avenue (No. 87 Bus) every 30 minutes during peak hours, and every hour during non-peak hours, from 6AM to 9PM. This route provides direct service from Dadeland and the Metrorail to the south, from the Okeechobee Metrorail Station to the north. The route also has connections at Flagler Street from Downtown (Route 11, running every 10 minutes, all day). This route runs about one mile east of the proposed site. Alteration of this route west to 97th Avenue would provide regular bus

service to the facility throughout the day.

Other potential mitigation measures would be the INS promoting ride sharing, staggered work hours, and subsidized public transportation for employees. Still others include the addition of express busses, and private jitney minibus service as regulated countywide by the 1985 Jitney Ordinance.

The Proposed Action would be required to under go Concurrency review for by Metro-Dade Transit Authority.

Parking

The proposed facility would include 885 spaces. Dade County requires one space for every 300 osf or 715 required spaces. The Proposed facility exceeds the Dade County parking requirement.

Land Use/Zoning

The Proposed Action is in substantial compliance with Land Use and Zoning Comprehensive Plans for the area. The developer would be required to obtain Zoning and Land Use approvals prior to construction and as part of the Concurrency review.

Impacts to Property Values

The site of the Proposed Action is surrounded by commercial office buildings on both the east and the west and the proposed use is in conformance with Dade County land use plans.

GSA's contractor, Radian International, secured a professional opinion from a Licensed State Certified Appraiser familiar with the area around the proposed site. The Appraiser did not provide data or render an opinion that the proposed INS facility would have any direct or unique impacts on the surrounding property values. Other private and government buildings, of similar size and use in the area, have not had any detrimental impacts on property values. No cause-effect relationship was established between the location of the INS Offices and surrounding property values.

The proposed site is located on Section 28, Range 40, Township 53. Section 28 is 640 acre (one mile square) area surrounded by four major roadways: 41st Street on the north; 25th Street on the south; 87th Avenue on the east; and 97th Avenue on the west. There are other government and commercial uses on the contiguous 640 acre Section 28 including: Metro-Dade Police Headquarters, an FAA lease for a radar tower, the Federal Reserve Bank of Miami, and the just completed US Army Southern Command Headquarters Administrative facility (SOUTHCOM).

This Army relocation of the SOUTHCOM from Panama to Dade County will be completed by May 31, 1998. This new facility has been leased by the Army for a 10-year term, is approximately 154,000 square feet, and will employ about 900 persons. The Proposed INS location is located just northeast of the SOUTHCOM facility (about three quarters of a mile) on Section 28. The WDFHA did not oppose this relocation of SOUTHCOM to the Doral area. The Appraiser retained by GSA stated that none of the aforementioned and varied government uses on Section 28, demonstrated any negative impacts to the surrounding property values.

Crime

Western Dade is projected to develop both commercially and residentially by the Dade County Comprehensive Development Master Plan. As this growth occurs, an increase in crime is projected, with or without the INS consolidation.

The INS facility would be designed to accommodate the INS needs. These design factors would include a larger floor plate, adequate parking, faster processing times for clients and fewer people at the site at any one time, required security procedures, and assigned waiting areas. These measures will serve to process INS clients efficiently at the facility.

The Metro-Dade Police Station is located on Section 28, (less than one mile south of the proposed site), and its presence, would serve to deter crime in the area. There was no cause-effect relationship found that would uniquely link the INS presence to increased crime rates in the area.

Neighborhood Impacts to the Doral Area

The residents of the Doral area strongly oppose the proposed INS location. The Doral area is seeking to become an independent municipality, separate from Dade County. The proposed site in the center of the proposed City of Doral. The WDFHA has suggested that the proposed INS location would be the preferred location for the new "Village of Doral" municipal complex. If the Doral Incorporation is successful, the proposed action would negatively impact the goals of the community as stated in their Incorporation Petition.

The Doral community, through its representative the WDFHA, is on the record stating that they oppose the INS locating at the current site, or at any other site in the same general area. There has been no previous opposition by WDFHA to the other government

uses on Section 28, including the recent lease construction of 150,000 square foot building for SOUTHCOM Headquarters.

Other land use on Section 28 include several large office buildings (former Eastern Doral Computer Center and Headquarters Carnival Cruise Lines), an FAA radar facility, the Metro-Dade Police Headquarters, the 80 acre Miami West Park, and light industrial and warehouse buildings. Given the mix of uses, including other substantial government facilities on Section 28, the INS at the proposed lease construction would not be out of character with other surrounding land uses. Included in the Police Station complex on Section 28 are four buildings totaling over 300,000 square feet including the Metro-Dade Police Headquarters, Police District #3 Doral West, maintenance and vehicle storage, and detention facilities.

The INS facility at the proposed location would be in substantial zoning compliance and would conform to land uses on other surrounding properties. The building would be designed as a commercial office building of similar size and appearance to other nearby buildings. The above are mitigating factors demonstrating that the proposed facility is not out of character to other land uses in Section 28, and therefore should have no unique impact on the surrounding community.

A Final Development Order will be required by Dade County at the conclusion of the Concurrency review. This review will determine if public services and infrastructure are available to support the proposed project. If the capacity is not available, then permitting would not be available to the developer, or alterations to the proposed development would be required by Dade County in order to meet Concurrency Standards. This process would serve to mitigate potential impacts this project would cause to the infrastructure and public services in the area.

No Action

INS relocation to Western Dade County cause would a small negative impact to the area around the 7880 Biscayne Boulevard location due to potential loss of retail and service business. However, due to the high crime rates in the general area, most INS employees do not patronize nearby retail establishments.

Some of the nearby businesses generate income from the INS clients who often spend hours waiting in line due to the inefficient layout at the current facility. Mitigating factors to these impacts would include the two-

year lead time the property owner would have to find a replacement tenant, and the two-year lead time period the existing business would have to make appropriate adjustments in their business plans. Efforts are underway by the Biscayne Area Chamber of Commerce to promote Downtown Development Initiatives and obtain grants to stimulate the economy in the area.

There would be serious adverse impacts to the INS if they remained long term in their current facilities. There is no opportunity for expansion. Continued operation of physically separated functions will continue to hinder the INS in performing its mission. INS performs an important function for the United States with the administration and enforcement of US Immigration Laws. Operating in inadequate facilities and separated locations would negatively impact the INS' ability to effectively service its clients as well as the public.

Rationale for Decision

1. The proposed action was found to fall within the Dade County Concurrency Standards for traffic based on a traffic study conducted as part of the EIS.

2. Public transportation is available at the proposed location. Based on the existing route system, the capacity exists to increase the level of public transportation to the proposed facility. GSA will contact Metro-Dade Transit Authority at the appropriate point in the process to facilitate route and service alteration at the proposed facility to accommodate the public transportation needs.

3. The proposed facility is in compliance with local zoning, land use and comprehensive plans, contains more than the required parking, and would be subject to Concurrency review as part of the permitting process. The developer would be required to obtain permits and local approvals.

4. There are currently other substantial government facilities located on Section 28, including the FAA radar tower, the US Army Southern Command Headquarters (SOUTHCOM), and the Metro-Dade Police Station and Doral Substation including detention facilities. There was no evidence found that any of these other public uses have caused negative impacts to property values, nor any evidence that the INS would negatively impact property values. SOUTHCOM has just leased a new 150,000 square foot building, less than a mile southeast of the proposed site, to house 900 federal employees for occupancy June 1, 1997. In the opinion

of an Appraiser retained by GSA, the INS facility would not constitute a stigma development.

5. The INS facility will be designed to accommodate the needs of the INS and to provide a secure building that will be visually and functionally compatible with other nearby commercial and public use buildings.

6. There was no evidence presented to indicate that this project would uniquely contribute to increased crime in the area.

Therefore, having given consideration to all of the factors discovered during the 13 month environmental review process, it is GSA's decision to proceed with the Proposed Action: Lease construction of a building of 214,607 occupiable square feet of space, to house the INS consolidation on a 7.3 acre site is located at 9300-9499 NW 41st Street in Miami.

Dated: April 23, 1998.

Phil Youngberg,
Regional Environmental Officer (PT).
[FR Doc. 98-11719 Filed 5-1-98; 8:45 am]
BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science Region, VI; Announcement of Availability of a Grant for a Family Planning Information, Education and Clinical Services Linkage Innovations Research Project

AGENCY: Office of Family Planning,
Region VI.

ACTION: Notice.

SUMMARY: The Office of Family Planning (OPF), Region VI, requests applications for a new research grant in family planning services delivery improvement.

DATES: To receive consideration, applications must be postmarked or delivered to the Office of Grants Management no later than June 15, 1998.

ADDRESSES: Completed applications should be sent to: Office of Grants Management, U.S. Public Health Service, DHHS Region VI, 1301 Young St., Suite 766, Dallas, TX 75202.

FOR FURTHER INFORMATION CONTACT: Evelyn Glass, Family Planning Unit Chief—214-767-3088, for assistance on technical and program aspects; Maureen Pickett, Grants Management Officer—214-767-3401, to answer questions about the preparation of grant applications.

Requests for applications kits may be faxed to 214-767-3425.

ELIGIBILITY: Any public or private non-profit organization or agency which has offices in Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas) and which has the ability to coordinate the project across state boundaries is eligible to apply for this grant. The grant will be awarded only to an organization or agency which demonstrates a capability to provide the proposed services, meets the statutory requirements, and currently maintains an office in the region.

The applicant who receives funds under this announcement must be knowledgeable regarding reproductive health needs within Region VI states, must have the ability to work with and obtain information from Title X grantees, State Family Planning Training Coordinators, and various community groups across the Region, and must be able to coordinate and facilitate technical assistance and training activities with community-based demonstration projects in the region.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services (OHS) to award grants and contracts to: (1) Establish and operate family planning clinics; (2) provide training for personnel to carry out family planning service programs; (3) provide research in fields related to family planning service and service delivery; and (4) develop and distribute family planning informational and educational materials.

Section 1001 of the statute authorizes the Secretary to award grants to public or private non-profit entities to assist in the establishment and operation of voluntary family planning projects to provide a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). The statute requires that, to the extent practicable, entities shall encourage family participation. Title X funds may not be used in programs where abortion is a method of family planning. Implementing regulations for Section 1001 appear at 42 CFR part 59, subpart A.

Section 1004 authorizes the Secretary to make grants to public or private non-profit entities and individuals for projects for research in the biomedical, contraceptive development, behavioral and program implementation fields related to family planning and

population. Implementing regulations for Section 1004 appear at 42 CFR part 52, Region VI Office of Family Planning intends to make available funds to investigate innovative approaches for providing family planning/reproductive health related information and services targeted to specific hard to reach populations.

Purposes of Grant

This notice announces the availability for funds to support a new research project to address two (2) of the five (5) Title X program priorities:

- (1) Increasing outreach to individuals not likely to seek services, including males, homeless persons, disabled persons, substance abusers, and adolescents; and
- (3) Serving adolescents, including more community education, emphasis on postponement of sexual activity, and more accessible provision of contraceptive counseling and contraception.

The family planning services program, authorized by Section 1001 of Title X, is required by law to provide family planning services, including education and counseling, to all persons desiring such services. There are subgroups of the population which have been under-represented in the traditional family planning delivery system. Experience has shown that it is difficult to draw some sub-populations, such as males of all ages, certain adolescents, homeless persons, disabled persons, and substance abusers, into the traditional clinic setting for family planning/reproductive health related information and services. This effort, authorized under Section 1004 of the Title X statute, is an attempt to look at ways to link family planning/reproductive health services with community-based providers of clinical, social and educational services to the under-served populations.

Approximately \$1.2 million is available to support the research project, and \$1 million of that amount is available to support new innovations for linking providers of family planning information, education, and clinical services to populations that are less likely to seek services and are often hard to reach (such as but not limited to males, homeless persons, disabled persons, substance abusers, and adolescents). An applicant for a grant under this announcement may elect to support the development of a network of linkages between agencies which service any of the hard to reach populations, including but not limited to those described above, and appropriate services and activities

relating to family planning/reproductive health. The linkages might involve arranging for the production and distribution of appropriate and relevant patient educational materials; making transportation available for clinical services; or, providing for public information and education on family planning/reproductive health issues.

In addition, with approximately \$200,000, and in close collaboration with Region VI staff, the applicant who receives funds under this announcement will be responsible for the following activities:

- Advertise the availability of funds for the community-based projects;
- Assist community-based organizations with development and preparation of proposals;
- Provide technical assistance to interested organizations;
- Receive and screen proposals;
- Assemble an Objective Review Committee to review proposals;
- Arrange for the transfer of funds to community-based organizations whose projects are selected for funding; and
- Provide assistance with regular follow-up and program evaluation.

Application Consideration and Assessment

Applications will be reviewed by a multidisciplinary panel of independent reviewers and assessed according to the following criteria:

- (1) A clear description of the project, including goals and objectives, methods of achieving objectives, a reasonable work plan and timetable, and a clear statement of results or benefits expected. (20 points)
- (2) The feasibility of the project and the likelihood of its producing meaningful results, as evidenced by the applicant's sound methodology to measure the extent to which the proposed approach enhances the delivery of family planning/reproductive health education, counseling and/or services to hard to reach populations and its potential for replication. (25 points)
- (3) The history of the applicant organization in successfully providing a variety of services, such as clinical, social, educational, training, vocational, and legal services, to under-served and hard to reach populations or in under-served communities or collaborating with agencies that serve these populations. (25 points)
- (4) The administrative and management capability of the applicant organization in relation to the type of project proposed, the project period, and the adequacy of the applicant's resources for the project. (15 points)

(5) Letters of support from community-based organizations indicating their support of the project and their interest in participating in the project. (15 points)

Applications must be postmarked or, if not sent by U.S. mail, received at the Office of Grants Management no later than the close of business on June 15, 1998. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked later than June 15, 1998 will be judged late and will not be accepted for review. (Applicants should request a legibly dated postmark from the U.S. Postal Service.) Applications which do not conform to the requirements of this program announcement or do not meet the applicable regulatory requirements will not be accepted for review. Applicants will be so notified, and the applications will be returned.

Grant Award

The grant will be funded in annual increments (budget periods). The project may be funded for up to three (3) years. Funding for all approved budget periods beyond the first year is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of federal funds.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, Intergovernmental Review of Department of Health and Human Services Programs and Activities, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made to the Governor's office of the pertinent states for information regarding the review process designated by their state or the SPOC for the state in question.

SPOC comments must be received by the Office of Grants Management 30 days prior to the funding date to be considered.

When the final funding decision has been made, each applicant will be notified by letter of the outcome of its application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the

purposes of the grant, and terms and condition of the grant award.

Dated: April 8, 1998.

James Randolph Farris,

Regional Health Administrator.

[FR Doc. 98-11688 Filed 5-1-98; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Time and Date: 6:30 p.m.-9 p.m., June 6, 1998; 8 a.m.-5 p.m., June 7, 1998.

Place: Renaissance Atlanta Hotel-Downtown, 590 West Peachtree Street, NW, Atlanta, Georgia 30308.

Status: Open: 6:30 p.m.-7 p.m., June 6, 1998. Closed: 7 p.m.-9 p.m., June 6, 1998, through 5 p.m., June 7, 1998.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focus on prevention and control and to support injury prevention research centers.

Matters To Be Discussed: Agenda items include announcements, discussion of review procedures, and review of grant applications.

Beginning at 7 p.m., June 6, through 5 p.m., June 7, the Committee will meet to conduct a review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92-463.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Richard W. Sattin, M.D., Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341-3724, telephone 770/488-4580.

Dated: April 27, 1998.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-11715 Filed 5-1-98; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Research Studies to Support Microbial Risk Assessment Modeling; Availability of Cooperative Agreements; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN) is announcing the availability of approximately \$800,000 for research funds for fiscal year (FY) 1998 to conduct research to support the development of risk assessment dose-response models for microbiological hazards associated with food. FDA anticipates making two to three awards at \$250,000 to \$400,000 (direct and indirect costs) per award per year. Support of these agreements may be up to 3 years. The number of agreements funded will depend on the quality of the applications received and the availability of Federal funds to support the project. After the first year, 2 additional years of noncompetitive support are predicated upon performance and the availability of Federal FY funds.

DATES: Submit applications by June 18, 1998. If the closing date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, Grants Management Officer, Division of Contracts and Procurement Management (HFA-520), Food and Drug Administration, Park Bldg., 5600 Fishers Lane, rm. 3-40, Rockville, MD 20857, 301-443-6170. Applications hand-carried or commercially delivered should be addressed to Park Bldg., 12420 Parklawn Dr., rm. 3-40, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of

this notice: Robert L. Robins (address above).

Regarding the programmatic aspects of this notice: Wes R. Long, Food Safety Initiative Risk Assessment Lead, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS-301), 200 C St. SW., Washington, DC 20204, 202-205-4064.

SUPPLEMENTARY INFORMATION: FDA will support the research studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

PHS urges applicants to submit work plans that address specific objectives of "Healthy People 2000." Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, stock No. 017-0010-0474-0) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, 202-512-1800.

I. Background

FDA is mandated by the President's Food Safety Initiative (FSI) to develop risk assessment tools to help assure the microbiological safety of foods. Even though the American food supply is among the safest in the world, millions of Americans are stricken by illness each year caused by the food they consume, and some 9,000 Americans a year, primarily the very young and elderly, die as a result. The goal of FSI is to further reduce the incidence of food borne disease to the greatest extent possible. Risk assessment helps promote this goal by determining the likelihood that exposure to a hazard, such as a food borne pathogen, will result in harm or disease. Risk assessment methods help characterize the nature and size of risks to human health associated with food borne hazards and assist regulators in making decisions about where in the food chain to allocate public resources to reduce those risks that have the greatest consequences for human health. Carefully formulated risk assessments based on the best available data generated from research lead to more informed risk management and better decisions. The President's FSI requires that 1998 funds be used to develop better data and modeling techniques to

assess the exposure of the population to microbial contaminants and the range of health consequences of that exposure.

Research is needed to develop improved methods and models that will make it possible to perform quantitative microbial risk assessments to the degree of complexity needed for most food-safety issues. Such research requires an integration of work in the biological sciences, predictive microbiology, and applied mathematics. Risk assessment's FSI activities focus on developing models for improving risk assessments. Fundamentally, however, additional data is needed to assist in the development of these models. For dose-response models—that is, determining the quantity of a virulent organism ingested and the likely outcome of that event—there are numerous data needs. Risk assessors have mostly relied on qualitative or semi-quantitative criteria, such as outbreak reports or surveillance data, to develop these models. Significant improvements in modeling dose-response relationships for the human population could be realized from a coordinated research effort that leverages completed, ongoing, or planned human clinical trials funded by the National Institutes of Health (NIH), the Environmental Protection Action (EPA), the Department of Defense (DOD), and others and emphasizes expansion of clinical studies to include the acquisition of data needed in the areas of dose-response relationships at low-dose levels, assessment of potential biomarkers of infection caused by food borne pathogens, and the effects of food matrices on dose-response; also the development of correlative dose-response data from relevant animal surrogates.

II. Research Goals and Objectives

The specific objective of this program of research will be to conduct research to complement the use, development, or improvement of dose-response models for use in risk assessment.

Applications that fulfill the following specific project objectives will be considered for funding. Collaborations among researchers with complementary capabilities are encouraged.

A. Project Objectives

To generate dose-response data from human clinical studies and develop correlative dose-response data from relevant animal surrogates. The FDA seeks to support research to complement completed, ongoing, and planned controlled clinical infection studies, such as those supported by NIH, EPA, or DOD, for the purpose of providing data on the dose-response

relationship in humans ingesting food borne pathogenic microorganisms.

Research would be conducted to expand clinical studies to include additional strains and/or lower-dose levels to facilitate dose-response modeling. It may also include collection and use of subject samples (e.g., stools, peripheral blood) in the development of in vitro or ex vivo correlates (biomarkers) of human susceptibility, and/or expansion of clinical studies to collect data on food matrix effects.

In addition, the research must include the development of correlative dose-response data from relevant animal surrogates using the same bacterial strains, prepared under the same conditions, as used in the human dosing experiments, utilizing an appropriate dose range to allow extrapolation to low doses. Oral dose-response in animals will be required. Research may include both normal animals and immunocompromised animals. Applicable models of compromised host subpopulations include, but are not limited to, animals with defined defects of the innate or acquired immune system or with disruption of the composition and/or diversity of the indigenous gut microflora.

B. Protection of Human Research Subjects

Some activities carried out by a recipient under this announcement may be governed by the Department of Health and Human Services' (DHHS) regulations for the protection of human research subjects (45 CFR part 46). These regulations require recipients to establish procedures for the protection of subjects involved in any research activities. Prior to funding and upon request of the Office for Protection from Research Risks (OPRR), prospective recipients must have on file with OPRR an assurance to comply with 45 CFR part 46. This assurance to comply is called an Assurance document. It includes the designated Institutional Review Board for review and approval of procedures for carrying out any research activities occurring in conjunction with this award. If an applicable Assurance document for the applicant is not already on file with OPRR, a formal request for the required Assurance will be issued by OPRR at an appropriate point in the review process, prior to award, and examples of required materials will be supplied at that time. No applicant or performance site, without an approved and applicable Assurance on file with OPRR, may spend funds on human subject activities or accrue subjects. No performance site, even with an OPRR-

approved and applicable Assurance, may proceed without approval by OPRR of an applicable Assurance for the recipients. Applicants may wish to contact OPRR by facsimile (301-402-0527) to obtain preliminary guidance on human subjects issues. When contact OPRR, applicants should provide their institutional affiliation, geographic location, and all available request for application (RFA) citation information.

III. Reporting Requirements

A Program Progress Report and a Financial Status Report (FSR) (SF-269) are required. An original FSR and two copies shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the cooperative agreement. Failure to file the FSR (SF-269) on time may be grounds for suspension or termination of the agreement. Progress reports will be required quarterly within 30 days following each Federal fiscal quarter (January 31, April 30, July 30, October 31), except that the fourth report which will serve as the annual report and will be due 90 days after the budget expiration date. CFSAN program staff will advise the recipient of the suggested format for the Program Progress Report at the appropriate time. A final FSR (SF-269), Program Progress Report and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least quarterly by the Project Officer and the Project Advisory Group. Project monitoring may also be in the form of telephone conversations between the Project Officer/Grants Management Specialist and the Principal Investigator and/or a site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be duly recorded in the official file and may be available to the recipient upon request.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. These cooperative agreements will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive awards. Organizations described in section 501(c)(4) of the Internal Revenue Code of 1968 are not eligible to receive awards.

Members of the Food Safety Initiative Risk Assessment Consortium and/or their collaborators are not eligible to compete for these program funds.

C. Length of Support

The length of support will be for up to 3 years. Funding beyond the first year will be noncompetitive and will depend on: (1) Satisfactory performance during the preceding year, and/or (2) the availability of Federal FY funds.

V. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this RFA. Substantive involvement includes but is not limited to the following:

1. FDA will appoint project officers who will actively monitor the FDA supported program under each award.

2. FDA will establish a Project Advisory Group which will provide guidance and direction to the project officer with regard to the scientific approaches and methodology that may be used by the investigator.

FDA scientists will collaborate with the recipient and have final approval on the experimental protocol. This collaboration may include protocol design, data analysis, interpretation of findings, co-authorship of publications, and the development and filing of patents.

VI. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive

applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers. Final funding decisions will be made by the Commissioner of Food and Drugs or his designee.

B. Program Priorities and Review Criteria

Funding priority will be for research proposals that will provide data for dose-response models for the following foodborne pathogens: Shiga-like toxin-producing *Cryptosporidium parvum*, pathogenic *Escherichia coli*, *Listeria monocytogenes*, Norwalk virus, *Salmonella* spp., *Shigella* spp., *Vibrio* spp., and *Staphylococcus* spp. enterotoxin. Other foodborne pathogens will also be considered. As previously stated, proposed research must be conducted in collaboration with completed, ongoing, or planned human clinical trials.

All comments received on the funding priority will be taken into consideration and will receive a response.

All applications will be evaluated by program and grants management staff for responsiveness. Applications determined not to be within the scope of the project objectives will be considered nonresponsive. Applications considered nonresponsive will be returned to the applicant, without being reviewed. Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or scientific nature must be directed to the CFSAN program staff and all questions of an administrative or financial nature must be directed to the grants management staff (address above). Applications will be based on the following criteria:

1. Research should be proposed on dose-response that is within the objectives listed in Research Goals and Objectives, section II of this document.
2. Whether the proposed study is within the budget and costs have been adequately justified and fully documented;
3. Soundness of the rationale for the proposed study and appropriateness of the study design to address the objectives of RFA;
4. Availability and adequacy of laboratory and associated animal facilities;
5. Availability and adequacy of support services, e.g., biostatistical computer, data bases, etc., and;
6. Research experience, training, and competence of the principal investigator and support staff.

VII. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 5/95) or the original and two copies of the PHS 5161 (Rev. 7/92) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Robert L. Robins (address above). State and local governments may choose to use the PHS 398 application form in lieu of the PHS 5161. The application receipt date is June 18, 1998. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday. No supplemental or addendum material will be accepted after the receipt date.

The outside of the mailing package and item 2 of the application face page should be labeled "Response to RFA-FDA-CFSAN-98-1."

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

Do not send applications to the Center for Scientific Research (CSR), NIH. Any application that is sent to NIH, that is then forwarded to FDA and not received in time for orderly processing, will be deemed unresponsive and returned to the applicant. Instructions for completing the application forms can be found on the NIH home page on the Internet (address: <http://www.nih.gov/grants/funding/phs398/phs398.html>; the forms can be found at http://www.nih.gov/grants/funding/phs398/forms_toc.html). However, as noted previously, applications are not to be mailed to NIH. Applications must be submitted via mail delivery as stated previously. FDA is unable to receive applications via Internet.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 5/95). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label address. Applicants are also advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by NIH on its applications. Do not send applications to CSR, NIH. Applications from State and local governments may be submitted on Form PHS 5161 (Rev. 7/92) or Form PHS 398 (Rev. 5/95).

The face page of the application should reflect RFA's number RFA-FDA-CFSAN-98-1.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925-0001.

C. Legend

Unless disclosure is required by FOIA as amended (5 U.S.C. 552), as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted and/or proprietary information shall not be used or disclosed except for evaluation purposes.

Dated: April 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98-11743 Filed 5-1-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

(Docket No. 96P-0090)

Determination That Testosterone Propionate 2% Ointment Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a previous determination regarding the fact that testosterone propionate 2% ointment (Perandren Ointment) was not withdrawn from sale for reasons of safety or effectiveness. FDA has determined that it is not appropriate at this time to accept abbreviated new drug applications (ANDAs) for testosterone propionate 2% ointment.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301-594-2041.

SUPPLEMENTARY INFORMATION: ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as a "listed drug." A listed drug is one that has an effective approval, either under section 505(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(c)) for safety and effectiveness or under section 505(j) of the act, which has not been withdrawn for reasons of safety or effectiveness (21 CFR 314.3, see also 21 U.S.C. 355(j)(6)). Neither at the time of ANDA submission nor at the time of ANDA approval is it essential that a listed drug be currently marketed.

FDA's "Approved Drug Products with Therapeutic Equivalence Evaluations" (popularly referred to as the "Orange Book") contains the official register of listed drugs, and a drug is removed from this register in either of two ways. First, a listed drug is removed if the agency withdraws or suspends approval of the drug's new drug application (NDA) or ANDA for reasons of safety or effectiveness. Second, in the case of a listed drug that was discontinued from sale but did not have its approval withdrawn or had its approval withdrawn for reasons other than safety or effectiveness, the drug is removed if FDA determines that it was discontinued from sale for reasons of

safety or effectiveness (21 CFR 314.162). FDA may be called upon to make such a finding when petitioned by a potential ANDA applicant (§ 314.161 (21 CFR 314.161)).

On March 19, 1996, Richard Hamer Associates, Inc., submitted a citizen petition (Docket No. 96P-0090/CP1), under 21 CFR 10.25(a), 10.30, and 314.161(b), requesting that the agency determine whether testosterone propionate 2% ointment was discontinued from sale for reasons of safety or effectiveness and, if the agency determines that the drug was not discontinued from sale for reasons of safety or effectiveness, to relist the drug in the Orange Book. Testosterone propionate 2% ointment (Perandren Ointment) was the subject of NDA 0-0499 held by Ciba Pharmaceutical Co. This NDA was submitted to FDA on January 24, 1939, and under the procedures of the act at that time, the NDA "became effective" (the statutory equivalent of "approval" under the act as it appears now) on March 7, 1939, 23 years before passage of the 1962 amendments to the act. The significance of these dates is that from 1938 through 1962, FDA reviewed drugs only to pass upon their safety. The 1962 amendments to the act (Pub. L. 87-781 (October 10, 1962)) required FDA to review drugs not only for safety, but also for effectiveness. The effectiveness standard applied both prospectively to new drugs entering the market and retrospectively to drugs whose applications became effective between 1938 and 1962.

In the *Federal Register* of September 23, 1971 (36 FR 18885), FDA withdrew approval of NDA 0-0499 for Perandren Ointment based on the applicant's failure to submit required annual reports (section 505(e) of the act and 21 CFR 314.80 and 314.81).

In the *Federal Register* of December 6, 1996 (61 FR 64754), FDA in responding to the Hamer petition, announced its determination that testosterone propionate 2% ointment (Perandren Ointment) was not discontinued from sale for reasons of safety or effectiveness. In that same notice, FDA announced that this determination will allow FDA to approve ANDAs for testosterone propionate 2% ointment. Upon further investigation, however, FDA has determined that NDA 0-0499 for Perandren Ointment was never approved as effective for any of its labeled indications and, therefore, was never a "listed drug" such that it could be "relisted." As discussed previously, for a drug approved under section 505(c) of the act to be a "listed drug," it must have been approved for

effectiveness as well as safety. No information was ever submitted on the effectiveness of this product prior to its withdrawal of approval in 1971. So, while it remains true that NDA 0-0499 was not discontinued from sale for reasons of safety or effectiveness, it is not appropriate at this time to accept ANDAs for testosterone propionate 2% ointment.

The *Federal Register* notice of December 6, 1996, is amended insofar as it is inconsistent with the findings of this notice.

Dated: April 27, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98-11684 Filed 5-1-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

(Docket No. 96E-0189)

Determination of Regulatory Review Period for Purposes of Patent Extension; LIPOSORBER® LA-15 System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LIPOSORBER® LA-15 System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFA-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human

drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device LIPOSORBER® LA-15 System. LIPOSORBER® LA-15 System is indicated for use in performing low density lipoprotein cholesterol (LDL-C) apheresis to acutely remove LDL-C from the plasma of high risk patient populations for whom diet has been ineffective and maximum drug therapy has either been ineffective or not tolerated. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LIPOSORBER® LA-15 System (U.S. Patent No. 4,637,994) from Kanegafuchi Kagaku Kogyo Kabushiki Kaisha, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 7, 1996, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of LIPOSORBER® LA-15 System represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LIPOSORBER® LA-15 System is 3,598 days. Of this time, 1,995 days occurred during the testing phase of the regulatory review period, while 1,603 days occurred during the approval

phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* April 18, 1986. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(g)) for human tests to begin became effective April 18, 1996, the date that the IDE for a similar, related product, LIPOSORBER® LA-40 System, was approved.

Although the device was subsequently modified, the results of the initial clinical investigations on the earlier model, LIPOSORBER® LA-40 System were included in FDA's analysis of the approved product's safety and effectiveness. The test on the earlier model is, therefore, part of the testing phase.

Additionally, the product is of a type which, under present regulations, would require IDE approval prior to the start of clinical investigations, and normally the initiation of the testing phase for a medical device is determined by reference to the approval phase of the relevant IDE.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e):* October 3, 1991. The applicant claims March 24, 1988, as the date the premarket approval application (PMA) for the LIPOSORBER® LA-40 System (PMA 880019) was initially submitted, which applicant argues should be used in place of the PMA for LIPOSORBER® LA-15 System (PMA 910018). FDA records indicate that PMA 880019 was received by the agency on March 25, 1998, but this PMA was never filed, and it was withdrawn by the applicant on April 3, 1996. The applicant claims that PMA 910018 was submitted on March 26, 1991, but FDA records indicate that it was submitted on October 3, 1991.

The applicant argues that the PMA for the LA-40 device should be used as the start of the approval phase for the LA-15 device, because its liposorber technology and adsorbent are identical to those described in the patent for which applicant is requesting extension, U.S. Patent No. 4,637,994. The LA-15 device contains additional components of a plasma separator, the tubing system for plasmaphereses and the apheresis unit.

However, the patent term restoration regulations define the approval phase of medical device in terms of the actual approved product, not an earlier tested product. For example, while the patent term restoration statute does define drug

product as the active ingredient of a new drug, "product" for "medical devices" has been defined as "[a]ny medical device . . . subject to regulation under the Federal Food, Drug, and Cosmetic Act" (35 U.S.C. 156(f)). Given that the LA-40 device was withdrawn by applicant from further regulatory consideration, the LA-15 device is the only applicable medical device subject to FDA regulations.

Regarding the definition of regulatory review period for the start of the approval phase of a medical device, the regulations state " . . . the period beginning on the date the application was initially submitted with respect to the device under section 515 and ending on the date such application was approved under such Act . . . " 35 U.S.C. 156(g)(3)(B); see also 21 CFR 60.22(c)(2)(i). In this case, the only PMA which submitted, filed, and approved under section 515 of the Federal Food, Drug, and Cosmetic Act was PMA P910018, which was submitted on October 3, 1991, and is, therefore, the appropriate date the approval application was initially submitted for LIPOSORBER® LA-15 System.

3. *The date the application was approved:* February 21, 1996. FDA has verified the applicant's claim that PMA P9910018 was approved on February 21, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 6, 1998, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 2, 1998, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the

heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 1998.

Thomas J. McGinnis,
Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98-11682 Filed 5-1-98; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dental Plaque Subcommittee of the Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dental Plaque Subcommittee of the Nonprescription Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 27, 28, and 29, 1998, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Robert L. Sherman or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD-560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 301-827-5191, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 27, 1998, the subcommittee will discuss: (1) The safety and effectiveness of the combination of stannous pyrophosphate and zinc citrate; (2) the effectiveness of the combination of hydrogen peroxide, sodium lauryl sulfate, sodium citrate and zinc chloride; (3) the safety and effectiveness of hexetidine, soluble pyrophosphate, nonsaponifiable fraction of corn oil, bromchlorophene and chlorhexidine digluconate; and (4) final formulation testing. On May 28, 1998, the subcommittee will discuss labeling

of over-the-counter antiplaque-antigingivitis drug products. On May 29, 1998, the subcommittee will discuss recommended therapeutic combinations for antiplaque-antigingivitis drug products.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 20, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 12 m. on May 27, 28, and 29, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 20, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 24, 1998.

Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 98-11742 Filed 5-1-98; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D-0191]

Testing for Skin Sensitization to Chemicals in Latex Products; Draft Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled "Testing for Skin Sensitization to Chemicals in Latex Products." This draft guidance is intended to provide alternative claims for medical devices containing natural rubber latex to the "hypoallergenic" claim that no longer will be acceptable after September 30, 1998. The draft guidance, which is not in effect at this time, is being issued for comment. This draft guidance was reviewed by the General Hospital and Personal Use Devices Panel in September 1997, and it will be posted on the Internet.

DATES: Written comments concerning this guidance must be received by August 3, 1998.

ADDRESSES: Written comments concerning the draft guidance must be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the draft guidance to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance. **FOR FURTHER INFORMATION CONTACT:** Chiu S. Lin, Center for Devices and Radiological Health (HFZ-480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-443-8913.

SUPPLEMENTARY INFORMATION:

I. Background

This is the second draft of the guidance entitled "Testing for Skin Sensitization to Chemicals in Latex Products," and it replaces the July 28, 1997, version that was posted on the Internet and distributed by DSMA to manufacturers of medical devices made of natural rubber to consumer groups and other agencies of the Federal Government for comment. This draft guidance was also discussed during the General Hospital and Personal Use Devices Advisory Panel meeting on September 15, 1997. This second draft incorporates comments received from the General Hospital and Personal Use Devices Advisory Panel meeting, consumer groups, and medical device manufacturers. This draft guidance is intended to provide alternative claims for medical devices containing natural rubber latex to replace the "hypoallergenic" claim. The "hypoallergenic" claim will no longer be acceptable after September 30, 1998, which is the effective date of the final rule on medical devices containing natural-rubber that published in the **Federal Register** of September 30, 1997 (62 FR 51021). This draft guidance also includes test methods for supporting these claims. When this draft guidance becomes final, the manufacturers of latex containing medical devices may use it to address label options and what tests FDA regards as appropriate to

support statements that replace the current "hypoallergenic" statement.

II. Significance of Guidance

The draft guidance represents the agency's recommended tests to support label claims for reduced chemical sensitivity during use of latex products and label options. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is being issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the draft guidance entitled "Testing for Skin Sensitization to Chemicals in Latex Products" via your fax machine, call the CDRH Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (944) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes "Testing for Skin Sensitization to Chemicals in Latex Products," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at <http://www.fda.gov/cdrh>. The draft guidance entitled "Testing for Skin Sensitization to Chemicals in Latex Products" will be available at <http://www.fda.gov/cdrh/ode/ed-rp.html>.

A text-only version of the CDRH Web site is also available from a computer or VT-100 compatible terminal by dialing 1-800-222-0185 (terminal settings are 8/1/N). Once the modem answers, press

Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

IV. Comments

Interested persons may, on or before August 3, 1998, submit to the Dockets Management Branch written comments regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 14, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98-11683 Filed 5-1-98; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Notice of Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92-463, as amended, notice is hereby given of the thirty-eighth meeting of the Fogarty International Center (FIC) Advisory Board, May 19, 1998, in the Lawton Chiles International House (Building 16) at the National Institutes of Health. The Research Awards Subcommittee will meet on May 18 in the FIC Conference Room, Building 31, Room B2C07, from 1:00 p.m. to approximately 4:00 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 8:30 a.m. to approximately 12:00 noon.

In addition to a report by the Director, FIC, the agenda will include presentations on FIC Evolution and Long-Range Planning; the Status of FIC International Training and Research Programs; ICD-Wide Initiatives in Support of International Relations; and

FIC International Policy Support to NIH and other Government Agencies.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Public Law 92-463, as amended, the entire meeting of the Research Awards Subcommittee on May 18 will be closed to the public from 1:00 p.m. to approximately 4:00 p.m., and the Board meeting on May 19 will be closed to the public from 1:00 p.m. to adjournment for the review of applications for awards under the Senior International Fellowship and International Fellowship Programs; and the Fogarty International Research Collaboration Awards and HIV, AIDS and Related Illnesses Collaboration Awards.

Paula Cohen, Committee Management Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 CENTER DR MSC 2220, Bethesda, Maryland 20892-2220, telephone: 301-496-1491, will provide a summary of the meeting and a roster of the committee members upon request.

Irene Edwards, Executive Secretary, Fogarty International Center Advisory Board, Building 31, Room B2C08, telephone: 301-496-1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cohen at least 2 weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Fellowship Awards Programs; and 93.934, Fogarty International Research Collaboration Award)

Dated: April 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-11676 Filed 5-1-98; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting of the National Cancer Advisory Board and Its Subcommittees

Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given of the meeting of the National Cancer Advisory Board (Board), National Cancer Institute (NCI), and its Subcommittees on May 11-13, 1998. The meeting of the Board and its Subcommittees will be open to the public as indicated below. Attendance

by the public will be limited to space available.

A portion of the Board meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552(c)(4) and 552(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications and for discussion of issues pertaining to programmatic areas and/or NCI personnel. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the applications or programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 609, 6130 Executive Boulevard, MSC 7410, Bethesda, Maryland 20892-7410, (301) 496-5708 will provide summaries of the meetings and rosters of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Linda Quick-Cameron, Committee Management Officer, at (301) 496-5708 in advance of the meetings.

Name of Committee(s): Subcommittee on Activities and Agenda, Subcommittee on Cancer Centers, Subcommittee on Clinical Investigations, Subcommittee on Planning and Budget.

Date: May 11, 1998.

Time: 7:00 p.m.—Adjournment.

Place: Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, Maryland 20814.

Agenda(s): See NCI Homepage/Advisory Board and Groups, <http://deainfo.nci.nih.gov/ADVISORY/boards.htm>

Tentative agenda available 10 working days prior to meetings;

Final agenda available 5 working days prior to meetings.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892-7405, (301) 496-5147.

Name of Committee: National Cancer Advisory Board.

Dates: May 12-13, 1998.

Place: Building 31C, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD. 20892.

Open: May 12—9:00 a.m. to 4:00 p.m.; May 13—9:00 a.m. to 12:20 p.m.

Agenda: Program reports and presentations; business of the Board. For a

detailed agenda: See NCI Homepage/Advisory Board and Groups, <http://deainfo.nci.gov/ADVISORY/boards.htm>

Tentative agenda available 10 working days prior to meetings;

Final agenda available 5 working days prior to meetings.

Closed: May 12—Approximately 4:35 p.m.—Adjournment.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892-7405, (301) 496-5147.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.392, Cancer Detection and Diagnosis Research; 93.394, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: April 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-11677 Filed 5-1-98; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Cancer Research Network Across Health Care Systems Video Conference Call.

Date: May 12, 1998.

Time: 1:00 p.m. to Adjournment.

Place: Executive Plaza South, Conference Room 540, 6130 Executive Boulevard, Bethesda, MD 20892

Contact Person: Courtney M. Kerwin, Ph.D., M.P.H., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 630I, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892-7405, Telephone: 301/496-7421.

Purpose/Agenda: To review, discuss and evaluate grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or

commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: April 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-11678 Filed 5-1-98; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Eye Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Clinical Research.

Date: May 20, 1998.

Time: 2:00 p.m.

Place: Telephone Conference, Executive Plaza South, Suite 350.

Contact Person: Andrew P. Mariani, Ph.D., Executive Plaza South, Room 350, 6120 Executive Blvd., Bethesda, MD 20892-7164, (301) 496-5561.

Purpose/Agenda: Review of Grant Applications.

Name of SEP: Clinical Research.

Date: May 21, 1998.

Time: 8:30 a.m.

Place: National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., Bethesda, MD 20892-7164.

Contact Person: Andrew P. Mariani, Ph.D., Executive Plaza South, Room 350, 6120 Executive Blvd., Bethesda, MD 20892-7164, (301) 496-5561.

Purpose/Agenda: Review of Grant Applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health)

Dated: April 22, 1998.

LaVerne Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-11679 Filed 5-1-98; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting.

Name of SEP: Program Project Committee.

Date: May 21, 1998.

Time: 8:30 a.m.—adjournment.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Tommy Broadwater, Ph.D., Chief, Grant Review Branch, Natcher Building, Room 5AS25U, Bethesda, Maryland 20819, Telephone: 301-594-4952.

Purpose/Agenda: To evaluate and review a grant application.

This meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with this application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, (HHS)

Dated: April 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-11675 Filed 5-1-98; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

SAMHSA Special Emphasis Panel II; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the following teleconference meeting of the SAMHSA Special Emphasis Panel II in May.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17-89, Rockville, Maryland 20857. Telephone: 301-443-7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. The discussion could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, Section 10(d).

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Dates: May 12, 1998 2 p.m.-3:30 p.m.

Place: Parklawn Building, Room 16C-26—Telephone Conference, 5600 Fishers Lane, Rockville, Maryland 20852.

Closed: May 12, 1998 2 p.m.-3:30 p.m.

Panel: FEMA—Crisis Counseling—Florida.

Contact: Lionel Fernandez, Ph.D., Review Administrator, Room 17-89, Parklawn Building, Telephone: 301-443-4266 and FAX: 301-443-3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: April 28, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Administration. [FR Doc. 98-11739 Filed 5-1-98; 8:45 am]

BILLING CODE 4182-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4349-N-17]

Submission For OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 3, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the

information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 28, 1998.

David S. Cristy,

Director, IRM Policy, and Management Division.

Title of Proposal: Operating Budget, Supporting Schedules and Board Resolution.

Office: Public and Indian Housing.
OMB Approval Number: 2577-0026.

Description of The Need For The Information and Its Proposed Use: HUD needs this information to ensure that sound financial practices are followed by PHAs and that Federal funds are used for eligible expenditures. For PHAs, as a financial summary and analysis of immediate and long-term operating programs and plans, it is used to provide control over operations and to achieve objectives.

Form Number: HUD-52564, 52567, 52571, 52571, 52573 and 52574.

Respondents: State, Local, or Tribal Governments and non-Profit Institutions.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of re- spondents	x	Frequency of response	x	Hours per re- sponse	=	Burden hours
Information Collection	3580		1		120		429,600

Total Estimated Burden hours: 429,600.

Status: Reinstatement with change.

Contact: Joan DeWitt, HUD, (202) 708-1875 Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: April 28, 1998.

[FR Doc. 98-11793 Filed 5-1-98; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Draft Environmental Impact Statement/ Environmental Impact Report on the Draft Truckee River Operating Agreement; Correction

AGENCY: Department of the Interior.

ACTION: Notice; correction.

SUMMARY: The Department of the Interior published a document in the Federal Register issue of March 13, 1998, concerning the availability for a draft environmental impact statement/ draft environmental impact report; INT-DES-98-8. The dates and locations of the formal public hearings have changed.

Correction

In the Federal Register issue of March 13, 1998, in FR Doc. 98-6517 on page 12502, in the third column replace the dates and locations of public hearings with the following:

DATES: Formal public hearings on the environmental document are scheduled as listed below. Organizations and individuals may present oral or written comments at the public hearings by signing up when arriving at the hearing.

- May 11, 1998, 12:30—3:30 p.m., Elks Point NV

- May 11, 1998, 6—9 p.m., Truckee CA

- May 12, 1998, 6—9 p.m., Fallon NV

- May 13, 1998, 6—9 p.m., Nixon NV

- May 14, 1998, 6—9 p.m., Fernley NV

- May 15, 1998, 6—9 p.m., Sparks NV

Locations

- Tahoe Regional Planning Agency, 308 Dorla Court, Elks Point NV

- Truckee-Donner Public Utilities District Board Room, 11571 Donner Pass Road, Truckee CA

- Community Center, 100 Campus Way, Fallon NV

- Pyramid Lake Tribal Council Chambers, 210 Capitol Hill, Nixon NV

- Fernley Town Complex, 595 Silver Lane, Fernley NV

- Sparks City Council Chambers, 431 Prater Way, Sparks NV

FOR FURTHER INFORMATION CONTACT: Mr. David Overvold, Bureau of Reclamation, PO Box 640, Carson City NV 89702-0640, telephone (702) 882-3436; Mr. Chet Buchanan, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Reno NV 89502-5093, telephone (702) 784-5227; or Mr. Paul Dabbs, California Department of Water Resources, 3251 S Street, Sacramento CA 95816, telephone (916) 227-7564.

Dated: April 28, 1998.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 98-11769 Filed 5-1-98; 8:45 am]

BILLING CODE 4310-04-P

DEPARTMENT OF THE INTERIOR

Privacy Act of 1974, As Amended; Revisions to Existing System of Records

AGENCY: Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 55a(e)(11), as amended (Privacy Act of 1974 (5

U.S.C. 552a(e)(11)), as amended (Privacy Act), the Department of the Interior (DOI) is issuing public notice of its intent to amend the existing system of records entitled "Payroll, Attendance, Retirement, and Leave Records—Interior, Office of the Secretary-85" (OS-85), by adding a new routine use, and updating several other sections of the system notice.

DATES: Persons wishing to comment on the proposed routine use must do so by June 3, 1998.

Effective Date: The proposed revised system of records will become effective without further notice on June 3, 1998, unless comments received result in a contrary determination. DOI will publish a new notice if changes are made based on review of comments received.

ADDRESSES: Interested individuals may comment on this publication by writing to the Privacy Act Officer, Department of the Interior, 1849 C Street NW, Mail Stop 5312, Washington, DC 20240. Hand delivered comments may be made to DOI, 1849 C Street NW, room 5312, Washington, DC 20240, from 8: a.m. to 4:30 p.m. on business days, or they may be sent by facsimile transmission to FAX number (202) 501-2360. Comments will be available for inspection at the DOI, 1849 C Street NW, room 5312, from 8 a.m. to 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: William W. Wolf, Office of Information Resources Management, DOI, 1849 C Street N.W., Mail Stop 5312, Washington, D.C. 20240, telephone: (202) 208-5339.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 104-193, the Personal Responsibility and Work Reconciliation Act of 1996, the DOI will disclose data from its payroll records (OS-85) to the Office Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for use in the National Database of New Hires, part of the Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09-90-0074, last published in the Federal Register on July 25, 1996 (61 FR 38754). A description of the Federal Locator Service was published in the Federal Register on October 2, 1997 (62 FR 51663).

The FPLS is a computerized network through which States request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National

Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by the DOI, it may disclose to the FPLS their names, social security numbers, home address, dates of birth, dates of hire, and information identifying the DOI as the employer. The DOI also may disclose to FPLS names, social security numbers, and quarterly earnings if each DOI employee, within one month of the end of the quarterly reporting period.

Information submitted by the DOI to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by the DOI to the FPLS also will be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

The DOI also is updating the following sections of the system notice: System Location; Categories of Records in the System; Storage and System Manager(s) and address.

Accordingly, the DOI proposes to amend OS-85, originally published at 51 FR 39918 (November 3, 1986), and amended at 53 FR 51324 (December 21, 1988), as follows:

Dated: April 29, 1998.

William W. Wolf,

Departmental Privacy Act Officer.

INTERIOR/OS-85

SYSTEM NAME:

Payroll, Attendance, Retirement, and Leave Records Interior—Office of the Secretary-85.

SYSTEM LOCATION:

(1) Bureau of Reclamation, Administrative Service Center, Payroll Operations Division, 7201 West Mansfield Avenue, Denver, CO 80235-2230.

(2) All Departmental Offices and locations which prepare and provide input documents and information for data processing and administrative actions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

All employees of the Department of the Interior, and employees of Independent Agencies, Councils, and Commissions who are provided payroll administrative support by the Department.

CATEGORIES OF RECORDS IN THE SYSTEMS:

Employee identification, pay rate and grade, retirement, and location data; length of service; pay, leave, time and attendance, allowances, and cost distribution records; deductions for Medicare or FICA, savings bonds, FEGLI, union dues, taxes, allotments, quarters, charities, health benefits, Thrift Savings Fund contributions, awards, shift schedules, pay differentials, IRS tax lien data, commercial garnishments, child support and/or alimony wage assignments; and related payroll and personnel data. Also included is information on debts owed to the government as a result of overpayment, refunds owed, or a debt referred for collection on a transferred employee. The payroll, attendance, retirement, and leave records described in this notice form a part of the information contained in the Department's integrated payroll and personnel automated information system. Personnel records contained in the system are covered under the governmentwide system of records notice published by the Office of Personnel Management (OPM/GOVT-1).

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:

5 U.S.C. 5101, et seq; 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary uses of the records are for fiscal operations for payroll, attendance, leave, insurance, tax, retirement and cost accounting programs; and to prepare related reports to other Federal agencies including the Department of the Treasury and the Office of Personnel Management. Disclosures outside the Department of the Interior may be made: (1) To the Department of the Treasury for preparation of payroll checks and other

checks to Federal, State, and local government agencies, non-governmental organizations, and individuals; (2) to the Internal Revenue Service and to State, local, tribal and territorial governments for tax purposes; (3) to the Office of Personnel Management in connection with programs administered by that office; (4) to another Federal agency to which an employee has transferred; (5) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (6) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (7) to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual; (8) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (9) to Federal, State or local agencies where necessary to enable the Department of the Interior to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit; (10) to appropriate Federal and State agencies to provide required reports including data on unemployment insurance; (11) to the Social Security administration to report FICA deductions; (12) to labor unions to report union dues deductions; (13) to insurance carriers to report withholdings for health insurance; (14) to charitable institutions to report contributions; (15) to a Federal agency for the purpose of collecting a debt owed the Federal government through administrative or salary offset; (16) to other Federal agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals; (17) to provide addresses obtained from the Internal Revenue

Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal claim against the debtor; (18) with respect to Bureau of Indian Affairs employee records, to a Federal, State, local agency, or Indian tribal group or any establishment or individual that assumes jurisdiction, either by contract or legal transfer, of any program under the control of the Bureau of Indian Affairs; (19) with respect to Bureau of Reclamation employee records, to non-Federal auditors under contract with the Department of the Interior or Energy or water user and other organizations with which the Bureau of Reclamation has written agreements permitting access to financial records to perform financial audits; (20) to the Federal Retirement Thrift Investment Board with respect to Thrift Savings Fund contributions; (21) to disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds; (22) to disclose the names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104-193).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Maintained in manual, microfilm, microfiche, imaged and printout form in the Payroll Office. Currently applicable records are stored on magnetic media at the computer processing center, historic records are stored on magnetic media at the computer center. Original input documents are kept in standard office

filing equipment and/or stored as imaged documents on magnetic media.

RETRIEVABILITY:

Indexed by name, social security number, and organizational code.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

The records contained in this system of records have varying retention periods as described in General Records Schedule 2 issued by the Archivist of the United States, and are disposed of in accordance with the National Archives and Records Administration Regulations, 36 CFR part 1228 et seq.

SYSTEM MANAGER(S) AND ADDRESS:

The following system manager is responsible for the payroll records contained in the Department's integrated payroll and personnel automated information system. These records are pertinent to all Department of the Interior bureaus and offices and client agencies. Personnel records contained in the system fall under the jurisdiction of the Office of Personnel Management as prescribed in 5 CFR part 293 and 5 CFR part 297.

Chief, Benefits and Program Information Branch, Bureau of Reclamation, Administrative Service Center, Payroll Operations Division, 7201 West Mansfield Avenue, Denver, CO 80235-2230.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORDS SOURCE CATEGORIES:

Individuals on whom the records are maintained, supervisors, timekeepers, official personnel records, previous employers, and the Internal Revenue Service.

[FR Doc. 98-11718 Filed 5-1-98; 8:45 am]

BILLING CODE 4310-RK-M

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Intent To Amend an Incidental Take Permit: Inclusion of Bull Trout on the Plum Creek Timber Company Permit for Timber Harvest in the State of Washington**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) has received a request to add bull trout (*Salvelinus confluentus*) to the species covered by permit PRT-808398 issued to Plum Creek Timber Company, L.P., on June 27, 1996. This request is pursuant to the Implementation Agreement for the Habitat Conservation Plan accompanying incidental take permit PRT-808398. The Service is proposing to add bull trout to Plum Creek's permit.

DATES: Written comments regarding the addition of bull trout to the Plum Creek permit should be received on or before June 3, 1998.

ADDRESSES: Written comments should be addressed to Mr. John Engbring, Western Washington Fish and Wildlife Office, 510 Desmond Drive, S.E., Suite 101, Lacey, Washington 98503. Documents cited in this notice and comments received will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. William Vogel, Wildlife Biologist, Western Washington Fish and Wildlife Office, 510 Desmond Drive, S.E., Suite 101, Lacey, Washington 98503; telephone (360) 753-4367.

SUPPLEMENTARY INFORMATION:**Background**

On June 27, 1996, the Fish and Wildlife Service (Service) issued an incidental take permit (PRT-808398) to Plum Creek Timber Company, L.P., pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1532 et seq.). This permit authorizes the incidental take of the threatened northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus*), and grizzly bear (*Ursus arctos*=*U. a. horribilis*), and the endangered gray wolf (*Canis lupus*), in the course of the otherwise legal forest management and related land-use activities in portions of King and Kittitas Counties, Washington. Pursuant to the Habitat Conservation Plan and the

Implementation Agreement, Plum Creek received assurances from the Service that then-unlisted vertebrate species would be added to the permit upon listing under the Act, if doing so were consistent with the Implementation Agreement.

On June 13, 1997 (62 FR 32268), the Service proposed to list the Klamath River population of bull trout as endangered and the Columbia River population of bull trout as threatened. On September 11, 1997, Plum Creek requested that bull trout be added to its permit. While the Service has not yet made a final decision on listing bull trout as a threatened or endangered species, the Service is proposing to respond to Plum Creek's request and determine if addition of the Columbia River distinct population segment of bull trout to the permit is warranted. The purpose of this notice is to seek public comment on the Service's proposal to add bull trout to Plum Creek's permit.

Implementation Agreement Provisions

The Implementation Agreement is a legal document describing the roles and responsibilities of the Service and Plum Creek during the permit period. Under the Implementation Agreement, plan species are those vertebrate species dependent on the various habitat types analyzed in the Habitat Conservation Plan. In the Plum Creek Habitat Conservation Plan, bull trout are a plan species. The Implementation Agreement specifies that should any of the plan species that were unlisted at the time of permit issuance subsequently become listed under the Act, Plum Creek may request a permit amendment to have that species added to their permit.

Plum Creek received assurances that, absent extraordinary circumstances, plan species would be added to the permit without requiring additional mitigation from Plum Creek if the Service determined that such action would not appreciably reduce the likelihood of the survival and recovery of the affected species, or any other species, in the wild and that adding the species to the permit would be consistent with the Service's other responsibilities. Absent extraordinary circumstances, plan species would be added to the permit without requiring additional mitigation from Plum Creek. Extraordinary circumstances are defined in the Implementation Agreement as a substantial and material adverse change in the status of the species.

To determine whether adding bull trout to Plum Creek's permit would appreciably reduce the likelihood of the survival and recovery of bull trout or

any other species, the Service will reinstate the Section 7 process under the Act. The Service will also determine whether the permit amendment meets each of the issuance criteria described in Section 10(a)(2)(B) and that a substantial and material adverse change in the status of bull trout has not occurred since the permit issuance.

Bull Trout Requirements and New Information Since Permit Issuance

The Service is currently reviewing information about bull trout to determine whether extraordinary circumstances exist and/or whether adding bull trout to Plum Creek's permit would appreciably reduce the ability of bull trout to survive and recover in the wild. The Service is also reviewing public comments on the proposed rule to list the Klamath River population of bull trout as endangered and the Columbia River population of bull trout as threatened, and will make a final listing determination soon. Information collected as part of the listing determination process is also being used to make the permit amendment decision. This information is available for review at the address listed above.

The Service has identified five distinct population segments of bull trout: (1) Coastal/Puget Sound; (2) Klamath River; (3) Columbia River; (4) Jarbidge River; and (5) Saskatchewan River (June 13, 1997, 62 FR 32268). The Columbia River population segment includes the entire Columbia River Basin and all its tributaries, excluding the isolated bull trout populations found in the Jarbidge River of Nevada. In the Plum Creek Habitat Conservation Plan area, bull trout have been documented in the Yakima River subbasin, which is part of the proposed Columbia River Basin distinct population segment. Within the planning area, bull trout are documented to occur upstream of Cle Elum Lake, within and upstream of Kachess and Kechelus Lakes, and in the Cle Elum River downstream of Kechelus Lake.

The Yakima River subbasin encompasses 6,155 square miles and contains about 1,900 river miles of perennial streams. Predominant land use within the subbasin includes irrigated agriculture (~1,000 square miles), urbanization (~50 square miles), timber harvesting (~2,200 square miles), and grazing (~2,900 square miles) (DOI 1996). About 150 square miles of the subbasin is managed for timber production by Plum Creek and these lands are located within 3 subpopulation areas of the 7

subpopulation areas within the Yakima River subbasin.

Despite an extensive survey effort, bull trout have not been found in the Green River drainage upstream of the Howard Hansen Dam. The Green River drainage is part of the Coastal/Puget Sound distinct population segment. The Coastal/Puget Sound distinct population segment has not been proposed for listing under the Act (June 13, 1997, 62 FR 32268) and is not being considered for addition to the Plum Creek permit.

Bull trout rely on cold, clean water. They are most closely associated with complex habitats, including large woody debris, undercut banks, boulders, and pools. Cover provides critical rearing, foraging, and resting habitat, and protection from predators. The fact that bull trout spawn in the fall and that the young have a strong association with substrates makes them particularly vulnerable to altered stream flow patterns and channel instability. Bull trout prefer cold, low-gradient streams with loose, clean gravels for spawning and rearing. Bull trout appear to have strict water temperature tolerances and maintaining cold water temperatures is important for bull trout. Water temperature is controlled not only by shade (as influenced by canopy coverage of adjacent riparian stands), but by groundwater sources, sedimentation, influx of water from upstream areas, presence of large woody debris, elevation, and other factors.

Historic adverse impacts to bull trout from forest management and related land-use activities include removal of large woody debris from streams and riparian areas, inputs of sediment from upslope logging and road construction, elevated stream temperatures, and transportation of logs within the channel network. Current management actions to minimize impacts from timber harvest include managing riparian buffers to provide large woody debris, shade, root strength, detrital inputs, and sediment filtration; managing upslope areas to reduce peak flows, mass-wasting, and other man-caused inputs of sediment; adequately addressing construction, maintenance, and abandonment of roads so as to reduce the delivery of fine sediments to streams; and avoiding any unnatural blockages to fish passage or alterations in channel morphology. There are several recent treatments of the effects of forest management, especially forest roads, on bull trout (Baxter *et al.* In press; Quigley and Arbelbide 1997; Quigley *et al.* 1996; and Thurow *et al.* 1997). Thurow determined that increasing road densities and their related effects are associated with

declines in four non-anadromous salmonid species (including bull trout). Thurow found a correlation between low road densities and healthy populations of salmonids. Therefore, addressing impacts from roads is extremely important to protect critical bull trout habitat requirements.

Minimization and Mitigation Measures

The Environmental Impact Statement developed for the initial permit decision analyzed the effects that implementing the Habitat Conservation Plan would have on bull trout. The Service believed that the Habitat Conservation Plan would have minimal adverse impacts on bull trout and that it generally provided improving conditions for bull trout. Buffers on fishbearing and other perennial streams were expected to provide for the natural processes and functions that bull trout rely on such as large woody debris inputs, detrital and litter input, root-strength and bank stability. The Service expected to see reductions in delivery of fine sediment from roads and recovery of forest stand structures to improve hydrologic conditions, and reductions in peak flows and mass-wasting risks.

The Plum Creek Habitat Conservation Plan utilizes a combination of conservation measures that are expected to protect bull trout. All fishbearing streams receive a conservatively managed buffer 200 feet in width (measured horizontally). The first 30 feet is a no-harvest zone. Perennial streams without fish and spatially intermittent streams containing perennial subsurface flow both receive a 100-foot managed buffer if they are located above bull trout streams. The management of these buffers is dictated by post-harvest criteria as well as by stand-level amounts of various forest stages. For instance, over the 50-year duration Habitat Conservation Plan, these areas are scheduled to improve from 37 percent mature forest or better to 60 percent mature forest or better.

Any riparian habitat area entered for selective harvest must retain minimum standards designed to maintain riparian functions. Inner gorges and mass-wasting areas are protected. The entire area is undergoing Watershed Analysis on an accelerated 5-year schedule that can only increase (not decrease) the level of protection these streams and sensitive areas receive. Even-aged harvest units will contain an average of 6 snags or snag recruitment trees per acre. Where harvest units contain ephemeral streams with definable channels, a portion of the leave trees are often aggregated in these areas due to logistical constraints. Additionally,

because rotations are long (65–120 years depending on species and site) and selective harvest is used liberally (about 80 percent of east-side harvests are uneven-aged management), fewer ephemeral streams are exposed to the temporary yet harsh conditions of a standard clearcut at any given time than would be observed under standard commercial forestry.

Road management is another important component of the Habitat Conservation Plan and will also be addressed through watershed analysis. Watershed Analysis examines potential risks to the resources, such as sediment delivery from roads, and develops prescriptions to reduce the vulnerability of the resources. For instance, as a result of the Quartz Mountain Watershed Analysis within the Habitat Conservation Plan area, a road-sediment budget was established that included an elaborate monitoring system. In that watershed, sediment delivery must be reduced to target levels prior to construction of new roads.

In the Plum Creek Habitat Conservation Plan area, the known bull trout locations are within the Grizzly Bear Recovery Zone. In that area, as part of the Habitat Conservation Plan's grizzly bear conservation strategy, open roads under Plum Creek's control must be reduced to below 1 mile per section within the first 10 years of the plan.

The minimization and mitigation measures described above represent the minimum level of riparian conservation that Plum Creek has committed to implement. Several aspects of the Habitat Conservation Plan, including watershed analysis, are subject to adaptive management as described below. If additional actions are necessary to protect bull trout, adjustments would be made to watershed analysis-derived prescriptions and to the interim and minimum buffer prescriptions.

Monitoring and Adaptive Management: To ensure that the mitigation and minimization strategies are effective, the Habitat Conservation Plan incorporates a variety of aquatic monitoring components that will provide feedback for adaptive management. For habitat conditions, Plum Creek will conduct bank-full and low-flow cross-sectional and longitudinal channel profiles, Wolman pebble counts, large woody debris counts, permanent photo points to document changes in channel morphology and substrate composition, and measurement of the frequency and residual volume of pools. To analyze the effects on stream temperatures, Plum Creek will initiate a study to measure

potential differences in stream temperatures for four riparian prescriptions, including 300-foot no-harvest riparian buffers on fish-bearing streams on National Forest lands. Streams with verified populations of bull trout, or those on the Clean Water Act 303(d) list, will be monitored for stream temperature at a minimum of two locations per stream. Diurnal fluctuations and maximum annual temperature will be evaluated. Bull trout streams will have additional temperature measurements to monitor conditions during the spawning season, and to evaluate the effects of groundwater input on stream temperature. Ambient air temperature will also be monitored.

In addition to habitat monitoring, Plum Creek will assess salmonid populations in a watershed with recovering habitat conditions. To assess the biological integrity of streams, Plum Creek will continue long-term monitoring of aquatic macro-invertebrates.

Plum Creek will also conduct watershed analysis and re-evaluations of watershed analyses to provide updated information on hillslope conditions, stream channel conditions, and the effectiveness of resource protection prescriptions. Examples of monitoring and research done as a result of watershed analysis include: (1) A road sediment production study; (2) McNeil sampling of streams to assess fine sediment levels; (3) installation of stream gages; (4) testing of digital elevation hydrologic models; (5) stream temperature monitoring; and (6) stream surveys to evaluate channel changes and large woody debris levels. If monitoring results indicate that prescriptions are ineffective or inadequate, the prescriptions will be changed to make them effective and adequate.

References

- Baxter, C.V., Frissell, C.A. and F.R. Hauer. In press. Geomorphology, logging roads and the distribution of bull trout (*Salvelinus confluentus*) spawning in a forested river basin: implications for management and conservation.
- Quigley, T.M., R.W. Haynes and R.T. Graham, technical editors. 1996. Integrated scientific assessment for ecosystem management in the interior Columbia Basin and portions of the Klamath and Great Basins. U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. Portland, Oregon.

Quigley, T.M. and S.J. Arbelbide, technical editors. 1997. An assessment of ecosystem components in the interior Columbia Basin and portions of the Klamath and Great Basins: Volume III. U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. Portland, Oregon.

Thurow, R.F., D.C. Lee and B.F. Rieman. 1997. Distribution and status of seven native salmonids in the interior Columbia River Basin and portions of the Klamath River and Great Basins. North American Journal of Fisheries Management 17: 1094–1110.

U.S. Department of Interior, U.S. Department of Commerce. 1996. Final Environmental Impact Statement for the Proposed Issuance of a Permit to Allow Incidental Take of Threatened and Endangered Species: Plum Creek Timber Company, L.P., Lands in the I-90 Corridor, King and Kittitas Counties, Washington. (U.S. Fish and Wildlife Service, National Marine Fisheries Service). Olympia, Washington. March 1996.

Dated: April 29, 1998.

Thomas J. Dwyer,
Acting Regional Director, Region 1, Portland,
Oregon.

[FR Doc. 98–11825 Filed 5–1–98; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice to accept contribution from private source.

SUMMARY: The U.S. Geological Survey is accepting a \$10,000 contribution from the National Stone Association to expedite a digital map showing potential sources of crushed stone in the conterminous United States.

ADDRESSES: If any other parties are interested in making contributions for the same or similar purposes, please contact Mr. William Langer, U.S. Geological Survey, Mineral Resources Program, Box 25046, Mail Stop 973, Denver, CO 80225; telephone (303) 236–1249; e-mail blanger@usgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: April 14, 1998.

P. Patrick Leahy,
Chief, Geologic Division.

[FR Doc. 98–11787 Filed 5–1–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-1810-00]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the second draft Environmental Impact Statement (EIS) for the Newcastle Resource Management Plan (RMP) for the Public Lands administered by the Bureau of Land Management (BLM) in the Wyoming portion of the Newcastle Resource Area.

SUMMARY: The first draft EIS for the Newcastle RMP was issued in September, 1993. It has been decided to update and reissue a second draft for further comment because some public comments were inappropriately accepted on the first draft after the comment period ended. All public comments received on the first draft EIS have been considered and changes in the second draft document have been made based on those comments. When published, the final EIS will contain the proposed Newcastle Resource Management Plan, the comments on the second draft EIS, and the BLM responses to them.

EFFECTIVE DATES: Written comments concerning the analysis will be accepted for 90 days following the date the Environmental Protection Agency (EPA) publishes a notice of availability and filing of the draft EIS in the *Federal Register*. The EPA notice of availability is expected to be published on April 24, 1998.

Public meetings will be held in Sundance, Newcastle, and Lusk, Wyoming, to provide opportunities for the public to meet with representatives from the BLM and to comment on the draft EIS. A court reporter will be in attendance to record all comments for the record. When the times, dates, and places for these meetings are established, the public will be notified in advance through *Federal Register* or other notices, news releases, or mailings. Persons who wish to be placed

on the mailing list or participate in the Newcastle RMP planning process should contact the person(s) identified below at the Newcastle Resource Area Office.

The draft EIS may be viewed at the following locations: Newcastle Resource Area BLM Office, 1101 Washington Blvd., Newcastle, Wyoming; Wyoming BLM State Office, 5353 Yellowstone Road, Cheyenne, Wyoming; and county and city libraries in Crook, Niobrara and Weston counties. Copies of the draft EIS may be obtained from the address below.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Area Manager, or Project Leaders, Jack Hanson or Shelley Peele, Bureau of Land Management, Newcastle Resource Area, 1101 Washington Blvd., Newcastle, Wyoming 82701, phone 307-746-4453.

Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published with the final EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management Newcastle Resource Area administers all public lands and minerals (as defined by the Federal Land Management Policy Act (FLPMA)) in Crook, Niobrara, and Weston counties. The draft EIS for the Newcastle RMP presents four alternative multiple use management plans (or four alternative RMPs) for those public lands that were analyzed in detail: Alternative A (continuation of existing management direction) and three other alternatives

that provide a variety of land use and resource management options for the public lands.

Issues addressed in the draft EIS include split-estate lands and the related limitations of BLM management responsibilities (particularly those involving non-Federal land surface over Federally owned minerals), the control of prairie dogs on intermingled public and private land ownerships, whether or not public lands in the Lance Creek Fossil Area should be designated an Area of Critical Environmental Concern (ACEC), and clarification of several maps in the first draft EIS to distinguish between public and non-Federal lands.

Dated: April 27, 1998.

Alan L. Kesterke,
Associate State Director.
[FR Doc. 98-11610 Filed 5-1-98; 8:45 am]
BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	
PGS Reservoir (U.S.), Inc., G&G Activity, SEA No. L98-3	Green Canyon Area, 130 miles south of Terrebonne Parish, Louisiana.	02/13/98
ARN Pipeline Company, Pipeline Activity, SEA No. G-17713 ...	Eugene Island Area, Blocks 63, 62, 55, 40, 34, and 33, Lease OCS-G 17713, 63 miles southwest of Terrebonne Parish, Louisiana.	02/20/98

Activity/Operator	Location	
Transcontinental Gas Pipe Line Corporation, Pipeline Activity, SEA Nos. G-18794A and G-18795.	Main Pass Area, South and East Addition, Blocks 261, 247, 226, 216, 195 and 191; Viosca Knoll Area, Blocks 428, 427, 383, 339, 295, 251, 207, 208, 163, 119, 75, and 31; Mobile Area, Blocks 999, 955, 954, 910, 866, and 822; Leases OCS-G 18794A and 18795; 61 miles south of Dauphin Island, Alabama.	02/02/98
Poseidon Oil Pipeline Company, L.L.C., and Amerada Hess Corporation, Pipeline Activity; SEA Nos. G-18837, G-18838, and P-11615.	Garden Banks Area, Blocks 260, 259, 215, 216, 172, 128, 84, and 85; South Marsh Island Area, South Addition, Blocks 204 and 205; Leases OCS-G18837, 18838, and 7462; 93 to 110 miles south-southwest of Terrebonne Parish, Louisiana.	01/28/98
Shell Gas Gathering Company, Pipeline Activity, SEA No. G-19668.	Viosca Knoll Area, Blocks 780, 736, and 692; Main Pass Area, South and East Addition, Blocks 282 and 260; Lease OCS-G 19668; 60 to 68 miles south of Mobile County, Alabama.	03/20/98
Phillips Petroleum Company, Pipeline Activity, SEA Nos. G-19662 and G-19663.	Ship Shoal Area, South Addition, Blocks 361, 260, 259, and 349, Leases OCS-G19662 and 19663, 69 to 71 miles south of Terrebonne Parish, Louisiana.	01/26/98
Texaco Exploration and Production, Inc., Pipeline Activity, SEA No. G-19672.	Viosca Knoll Area, Blocks 786, 742, 698, and 697; Main Pass Area, South and East Addition, Blocks 225, 256, and 252; Lease OCS-G 19672; 56 to 67 miles south of Baldwin County, Alabama.	03/09/98
Zilkha Energy Company, Exploration Activity, SEA No. N-5931A.	High Island Area, East Addition, South Extension, Block A-355, Lease OCS-G 17213, 102 miles southeast of the nearest coastline of Galveston Island, Texas.	01/09/98
Amoco Exploration and Production, Development Activity, SEA No. N-5963A.	Mississippi Canyon Area, Blocks 173 and 217; Desoto Canyon Area, Blocks 133 and 177; Leases OCS-G 9789, 9790, 10444, and 10445; 100 miles south of Dauphin Island, Alabama.	02/05/98
Chevron U.S.A., Exploration Activity, SEA No. N-5997	Mobile Area, Block 873, Lease OCS-G 16527, 4.7 miles south of Baldwin County, Alabama.	02/04/98
Coastal Oil & Gas Corporation, Exploration Activity, SEA No. N-5696A.	Garden Banks Area, Block 139, Lease OCS-G 17295, 123 miles southeast of Galveston Island, Texas.	12/22/97
Oryx Energy Company, Temporary Mooring System Request, SEA No. TMS-1-98.	Main Pass Area, South and East Addition, Blocks 284 and 285, Lease OCS-G 16514, 50 miles east of Plaquemines Parish, Louisiana.	02/26/98
Ensearch Exploration, Inc., Development Activity, SEA No. S-4581UA.	Garden Banks Area, Blocks 344 and 388, Leases OCS-G 8232 and 7486, 125 miles south of Vermilion Parish, Louisiana.	02/09/98
Mobil Exploration & Producing U.S. Inc.'s, Development Activity, SEA No. S-4554U.	Mobile Area, Block 823, Lease OCS-G 5057, 4 miles south of Dauphin Island, Alabama.	12/22/97
Chevron U.S.A., Exploration Activity, SEA No. S-4619	Viosca Knoll Area, Block 69, Lease OCS-G 7877, 20 miles south of Gulf Island National Seashore, Jackson County, Mississippi.	03/04/98
Exxon Company, U.S.A., Development Activity, SEA No. R-3182.	West Delta Area, Block 30, Lease OCS 026, 9 miles south of Plaquemines Parish, Louisiana.	03/18/98
Texaco Exploration and Production, Inc., Exploration, Exploration Activity, SEA No. R-3189.	Green Canyon Area, Blocks 416 and 460, Leases OCS-G 9932 and 9934, 104 miles south of Terrebonne Parish, Louisiana.	03/12/98
Chevron U.S.A. Inc., Structure Removal Operations, SEA No. ES/SR 98-003.	South Timbalier Area, Block 24, Lease OCS 0387, 10 miles offshore the Louisiana coast.	02/12/98
North Central Oil Corporation, Structure Removal Operations, SEA No. ES/SR 98-008.	South Timbalier Area, Block 136, Lease OCS-G 8720, 33 miles offshore the Louisiana coast.	02/05/98
Murphy Exploration & Producing Co., Structure Removal Operations, SEA No. ES/SR 98-009.	Matagorda Island Area, Block 604, Lease OCS-G6037, 18 miles southeast of Calhoun County, Texas.	01/28/98
Chevron U.S.A. Inc., Structure Removal Operations, SEA No. ES/SR 98-010.	Viosca Knoll Area, Block 24, Lease OCS-G 8763, 18 miles south of Jackson County, Mississippi.	03/19/98
Vastar Resources, Inc., Structure Removal Operations, SEA No. ES/SR 98-013.	South Marsh Island Area, Block 24, Lease OCS-G 14437, 46 miles south of the Louisiana coast.	02/23/98
Walter Oil & Gas Corporation, Structure Removal Operation, SEA Nos. ES/SR 98-011 and 98-012.	Galveston Area, Blocks 350 and 228, Leases OCS-G 4721 and 9040, 38 miles south of Galveston County, Texas.	03/27/98
The Houston Exploration Company, Structure Removal Operations, SEA No. ES/SR 98-014.	Eugene Island Area, Block 48, Lease OCS-G 7727, 28 miles south of the Louisiana coast.	02/19/98
Kerr-McGee Corporation, Structure Removal Operations, SEA No. ES/SR 98-015.	Main Pass Area, Block 90, Lease OCS-G 9704, 6 miles east of Breton National Wildlife Refuge and Wilderness Area, south of the state of Mississippi.	03/05/98
Kerr-McGee Corporation, Structure Removal Operations, SEA No. ES/SR 98-016.	High Island Area, Block 34, Lease OCS-G 6137, 9 miles south of Jefferson County, Texas.	03/27/98
Samedan Oil Corporation, Structure Removal Operations, SEA No. ES/SR 98-026.	East Cameron Area, Block 226, Lease OCS-G 10633, 66 miles south of Cameron Parish, Louisiana.	04/13/98
Linder Oil Company, Structure Removal Operations, SEA No. ES/SR 98-029.	Eugene Island Area, Block 133, Lease OCS-G 4445, 32 miles south-southwest of Terrebonne Parish, Louisiana.	03/30/98
Walter Oil & Gas Corporation, Structure Removal Operations, SEA No. ES/SR 98-030.	West Cameron Area, Block 254, Lease OCS-G 7608, 52 miles south of Cameron Parish, Louisiana.	04/13/98

Activity/Operator	Location	
Taylor Energy Company, Structure Removal Operations, SEA No. ES/SR 98-031.	South Marsh Island Area, Block 69, Lease OCS-G 1201, 52 miles south of St. Mary Parish, Louisiana.	04/02/98
LL&E, Structure Removal Operations, SEA Nos. ES/SR 98-032 and 98-033.	Eugene Island Area, Blocks 108 and 364, Leases OCS-G 3811 and 9600, 68 miles south of Terrebonne Parish, Louisiana.	04/02/98
Kerr-McGee Corporation, Structure Removal Operations, SEA No. ES/SR 98-034.	Ship Shoal Area, Block 241, Lease OCS-G 14505, 40 miles south of Terrebonne Parish, Louisiana.	04/14/98
Burlington Resources Offshore, Inc., Structure Removal Operations, SEA No. ES/SR 98-037.	Eugene Island Area, Block 93, Lease OCS 0228, 37 miles southwest of St. Mary Parish, Louisiana.	04/03/98

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

J. Michael Melancon,
Acting Regional Director.
[FR Doc. 98-11699 Filed 5-1-98; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF THE INTERIOR

National Park Service

Boundary Revision: Chesapeake and Ohio Canal National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision.

SUMMARY: Notice is hereby given that the National Park Service is revising the boundary of Chesapeake and Ohio Canal National Historical Park to include one additional tract of land.

FOR FURTHER INFORMATION, CONTACT: Chief, Acquisition Division, National Park Service, AT/LAFO, PO Box 908, Martinsburg, WV 25402, (304) 263-4943.

SUPPLEMENTARY INFORMATION: Public Law 91-664, enacted January 8, 1971 authorizes the acquisition of certain lands for the Chesapeake and Ohio Canal National Historical Park. Section 7(c)(ii) of the Land and Water Conservation Fund Act, as amended by Pub. L. 104-333, authorizes minor boundary revisions of areas within the National Park System. Such boundary revisions may be made, when necessary, after advising the appropriate Congressional Committees and following publication in the *Federal Register*.

In order to properly interpret and preserve the historic character of the Chesapeake and Ohio Canal National Historical Park it is necessary to revise the existing boundary to include one additional tract of land comprising approximately 115.24 acres. The property is being acquired by donation.

Notice is hereby given that the exterior boundary of the Chesapeake and Ohio Canal National Historical Park is hereby revised to include the following tract of land: All of the same land acquired by Adele C. Charpentier and Cleopatra Charpentier, from the Mount Vernon Trust Company, by deed dated December 1, 1941 and recorded December 8, 1941 in Deed Book 217, Page 322 in the Land Records of Washington County, State of Maryland. Subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

This tract of land is depicted on Segment Map 81, identified as P81-1 dated June, 1971. The maps are on file and available for inspection in the office of the National Park Service, Appalachian Trail Land Acquisition

Field Office, 1314 Edwin Miller Boulevard, P. O. Box 908, Martinsburg, West Virginia 25401

Dated: April 1, 1998.

Terry R. Carlstrom,
Regional Director.
[FR Doc. 98-11717 Filed 5-1-98; 8:45 am]
BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

Fort Baker Comprehensive Plan, Golden Gate National Recreation Area, Marin County, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), Golden Gate National Recreation Area is undertaking a conservation planning and impact analysis process to identify and assess potential impacts of alternate management concepts for future activities at the Fort Baker area. Notice is hereby given that the National Park Service will prepare a draft environmental impact statement and comprehensive plan.

Background

Fort Baker is within the boundary of Golden Gate National Recreation Area (GGNRA), a unit of the National Park System comprised of coastal lands in Marin, San Francisco and San Mateo Counties, California. Fort Baker (just north of the Golden Gate Bridge) is a historic district on the National Register of Historic Places. It has over one and one-half miles of San Francisco Bay shoreline, and habitat for the endangered Mission Blue Butterfly is found on hillsides above developed portions of the site. More than 170,000 visitors annually use the Bay Area Discovery Museum (a Fort Baker educational opportunity created within several rehabilitated historic buildings which were transferred to the National Park Service in 1986). Portions of the site still under the jurisdiction of the

Army, including over 70 acres of land and 50 historic buildings, will be transferred to the NPS by 2001. Also included in the transfer will be over 180 acres of San Francisco Bay tidelands.

The conservation planning and impact analysis process will focus primarily on lands and buildings to be transferred by the Army to the National Park Service (NPS), with consideration of the site as a whole. Concepts for the use and development of this site were approved in the 1980 General Management Plan (1980 GMP) for GGNRA, including the use of historic buildings for a conference center, restoration of a natural beach and waterfront, and general site improvements to better accommodate park visitors.

Proposal Alternatives Developed to Date

The proposed activities currently include the following: Rehabilitation of historic buildings, possible use of non-historic buildings and potential limited new construction to accommodate an education and retreat center; restoration of the beach and waterfront to enhance natural values and improve visitor access; modification of the marina and boat house to accommodate public uses; protection of sensitive natural resources; expansion to accommodate the needs of the existing Bay Area Discovery Museum and the Coast Guard Station; and improvements to vehicle and pedestrian access and circulation.

Other alternatives currently being evaluated include the following: for use of the historic buildings—an emphasis on park-partner programs, residential academy of environmental sciences and arts for school-aged youth, and general residential uses; for the waterfront—retaining the bulkhead, protecting the filled former beach with rip-rap, and including a more urban landscape treatment of the waterfront; for the marina—retaining the current marina development as a public facility and converting its use to accommodate only short-term moorings for park visitors; for the non-historic residences—removal or retention and rehabilitation to support the use of historic structures; for the Coast Guard Station and Bay Area Discovery Museum—retaining them at their current size with no expansion.

Specific outcomes of this conservation planning and impact analysis process are a comprehensive plan for Fort Baker, including a building re-use plan, a developed area plan and a waterfront design. The plan will amend the 1980 GMP. Additional information about Fort Baker can be

found on the Internet at <http://www.nps.gov/goga/fortbaker/fortbaker.htm>.

Scoping To Date/Decision Process

A *Federal Register* notice, published August 19, 1997 to initiate the scoping process for environmental analysis, indicated no decision had been made about whether to prepare an Environmental Assessment or Environmental Impact Statement. Scoping activities were undertaken in fall 1997. These included tours of Fort Baker, a public workshop, and planning presentations (including the scoping document and proposed alternatives) made at GGNRA Advisory Commission meetings in winter 1997-1998. A brochure describing the planning process and preliminary alternatives and issues was also distributed to the public. Upon consideration of public responses obtained through this scoping effort, it has been determined that an Environmental Impact Statement will be prepared.

All comments received during the initial scoping phase have been documented and will be considered during EIS preparation. Interested individuals, organizations and agencies wishing to provide additional comments or suggestions, or wishing to now be added to the project mailing list, should respond to: Fort Baker EIS; Attn: Nancy Hornor, Fort Mason; Golden Gate National Recreation Area; San Francisco, CA 94123. Any new comments must be postmarked no later than thirty (30) days following publication of this notice (or if via e-mail, transmitted no later than this date to fortbaker@nps.gov).

Availability of the Draft EIS (DEIS) for review and written comment will be announced by formal Notice, via local and regional news media, and direct mailing. At this time the DEIS is anticipated to be available for public review during summer 1998, and that subsequently a Final EIS (FEIS) will be completed in fall/winter 1998. To afford an additional comment opportunity on the DEIS, public meetings will be held through the GGNRA Advisory Commission (full details on dates and locations for these sessions may be obtained from the project contact noted above). Notice of the Record of Decision will be published in the *Federal Register* not sooner than thirty (30) days after the FEIS is distributed. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation will be the Superintendent, Golden Gate National Recreation Area. A solicitation,

evaluation, and selection process will follow completion of the above process to select a partner to implement the selected plan for the historic buildings and possible other elements of the plan.

Dated: April 15, 1998.

Patricia L. Neubacher,
Acting Regional Director, Pacific West.
[FR Doc. 98-11716 Filed 5-1-98; 8:45 am]
BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 25, 1998. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013-7127. Written comments should be submitted by May 19, 1998.

Carol D. Shull,
Keeper of the National Register.

ALASKA

Anchorage Borough-Census Area
Loussac—Sogn Building, 425 D St., Anchorage, 98000567

COLORADO

Custer County
Beckwith Ranch, 64159 CO 69, Westcliffe vicinity, 98000568

GEORGIA

Thomas County
Poe, Martha, Dogtrot House, 0.75 W of jct of Twelve Mile Post Rd. and GA 19, Metcalf vicinity, 98000569

LOUISIANA

Orleans Parish
Maylie's Restaurant, 1007-09 Poydras St., New Orleans, 98000577

St. Martin Parish
Stephanie Plantation House, 1862 LA 347, Arnaudville, 98000570

Tangipahoa Parish

Cate House, 111 N. Magnolia St., Hammond, 98000571

NEW YORK

Rensselaer County
Pumpkin House, 180 Fourth St., Troy, 98000573

Schuyler County
Lee School, NY 14, Montour, 98000572

RHODE ISLAND

Providence County

Blackstone Park Historic District, Roughly bounded by Seekonk R., Laurell Ave., Blackstone Blvd., and S. Angell St., Providence, 08000575
Tower—Flagg Barn Complex, 100 Abbott Run Valley Rd., Cumberland, 08000574

WISCONSIN

Milwaukee County

Public Service Building, 231 W. Michigan St., Milwaukee, 08000576

[FR Doc. 98-11748 Filed 5-1-98; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

[OJP(BJA)-1173]

RIN 1121-ZB11

Bureau of Justice Assistance FY 1998 Open Solicitation Announcement: Call for Papers

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Justice.

ACTION: Request for concept papers.

SUMMARY: Announcement of the Bureau of Justice Assistance (BJA) FY 1998 Open Solicitation. BJA is seeking innovative solutions to criminal justice problems facing local communities. BJA invites eligible State, local, and tribal governments and their agencies to submit brief concept papers describing emerging or chronic criminal justice issues within their jurisdictions and partnership-based strategies to address those issues.

DATES: Submissions must be received by BJA by close of business (5:30 p.m. E.S.T.) July 2, 1998. BJA will not grant extensions of the deadline or accept faxed submissions.

ADDRESSES: Submissions must be mailed or delivered to: Bureau of Justice Assistance Control Desk, 5640 Nicholson Lane, Suite 300, Rockville, MD, 20852.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center at 1-800-421-6770. Copies of the FY 1998 Open Solicitation Announcement may be obtained by calling the BJA Clearinghouse at 1-800-688-4252, or by accessing the BJA World Wide Web home page at <http://www.ojp.usdoj.gov/BJA>.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets

Act of 1968, as amended, 42 U.S.C. 3751-59 (1994).

Background

The Bureau of Justice Assistance (BJA) is soliciting concept papers in order to continue to encourage, support and publicize local innovations and to build safe and healthy communities. Applicants may submit only one concept paper in each topic area. Applicants may apply for as many topic areas as they wish, but must submit a different concept for each topic. Concept papers must address the topic areas listed below.

FY 1998 Open Solicitation Topic Areas are as follows: (1) Community Justice: strategies to create partnerships between communities and local criminal justice systems to combat crime; (2) Law Enforcement Partnerships to Address Hate Crimes: strategies that address crimes committed against individuals or groups because of race, ethnicity, religious affiliation, gender, disability, or sexual orientation; (3) Criminal Justice Challenges for Rural or Tribal Communities: strategies that address criminal justice challenges unique to rural or tribal communities; (4) Criminal Justice Responses to Senior Citizens: strategies that address issues presented by senior citizens' participation in the criminal justice system as victims, witnesses, defendants, offenders, and volunteers; (5) The Role of Alcohol and Crime: strategies that address the link between alcohol and crime; (6) Indigent Defense: strategies that enhance the representation of indigent criminal defendants; (7) Cultural Barriers to Justice: strategies to reduce cultural barriers preventing individuals from participating fully in the criminal justice system by virtue of language, philosophy, or experience; (8) Nontraditional Uses of Prosecution Resources to Enhance Public Safety: strategies which use prosecutors or prosecution resources to enhance public safety through nontraditional outreach in areas such as schools, community groups, and special needs populations; (9) Public Health and Criminal Justice Collaborations: strategies to develop collaborative efforts among public health and criminal justice agencies to prevent or reduce the incidence of violent crime in the community; and (10) Local Priorities: criminal justice strategies to address local problem areas not described in topic areas (1) through (9).

Submissions will be reviewed by panels of practitioners, who will make recommendations for awards to the Director of BJA. Awards will be worth

up to \$150,000 and cover a period of 18 months. All submissions must adhere to the requirements outlined in the FY 1998 Open Solicitation Announcement.

Eligibility

Eligibility for the FY 1998 Open Solicitation Program to units and agencies of State, local, or tribal governments. Units of tribal governments must represent federally recognized tribes. Eligibility includes, but is not limited to: States, counties, municipalities, villages, towns, townships, courts, prosecution, indigent defense, probation, parole, pretrial services, corrections, law enforcement, and social services. This restriction does not preclude private/not-for-profit agencies from collaborating with eligible applicants, not does it preclude two or more units of government from applying under the cover of one authorized applicant, which will be responsible for the administration of the award.

Dated: April 29, 1998.

Nancy E. Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 98-11788 Filed 5-1-98; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)-1174]

RIN 1121-ZA12

Announcement of the Availability of the National Institute of Justice Solicitation for Research and Evaluation on Violence Against Women

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Research and Evaluation on Violence Against Women: Practitioner-Researcher Collaboration; Evaluation of Policies and Programs including Experimental Research Designs; Longitudinal Studies of Women's Experience with Violence; and Basic Research."

DATES: Due date for receipt of proposals is close of business, July 7, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1-800-851-3420. For general information about application

procedures for solicitations, please call the U.S. Department of Justice Response Center 1-800-421-6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201-03, as amended, 42 U.S.C. 3721-23 (1994).

Background

NIJ is soliciting proposals for research and evaluation on violence against women. Four major program areas are identified in the request for proposals. They are Practitioner-Researcher Collaborations, Evaluation of Policies and Programs including Experimental Research Designs, Longitudinal Studies of Women's Experience with Violence, and Basic Research. For this solicitation, violence against women includes domestic or intimate partner violence, sexual assault, other assaultive behaviors against women and stalking. NIJ anticipates awarding a total of 15 to 20 grants in the four program areas with a funding total of \$4,000,000.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1-800-851-3420 to obtain a copy of "Research and Evaluation on Violence Against Women: Practitioner-Researcher Collaboration; Evaluation of Policies and Programs including Experimental Research Designs; Longitudinal Studies of Women's Experience with Violence; and Basic Research" (refer to document no. SL000279). For World Wide Web access, connect to either NIJ at <http://www.ojp.usdoj.gov/nij/funding.htm>, or the NCJRS Justice Information Center at <http://www.ncjrs.org/fedgrant.htm#nij>.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98-11690 Filed 5-1-98; 8:45 am]

BILLING CODE 4410-18-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98-060)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Omni Technologies, Inc., of Kenner, Louisiana, has applied for an exclusive license to practice the invention disclosed in NASA Case No. SSC-00052 entitled "Apparatus & Method for

Effecting Data Transfer Between Data Systems," for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Beth Vrioni at (407) 867-6225, Mail Code MM-E, John F. Kennedy Space Center, FL 32899.

Dated: April 27, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98-11744 Filed 5-1-98; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR part 73—Physical Protection of Plants and Materials.

2. Current OMB approval number: 3150-0002.

3. How often the collection is required: On occasion. Required reports are submitted and evaluated as events occur.

4. Who is required or asked to report: Persons who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material.

5. The number of annual responses: 68,643.

6. The number of hours needed annually to complete the requirement or request: The industry total burden is 410,602 hours annually (43,241.7 hours for reporting and 367,359.8 hours for recordkeeping).

7. Abstract: NRC regulations in 10 CFR part 73 prescribe requirements for

establishment and maintenance of a physical protection system with capabilities for protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The information in the reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of special nuclear material is in compliance with license and regulatory requirements.

Submit, by July 6, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (<http://www.nrc.gov>) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-6 F33, Washington, DC, 20555-0001, or by telephone at 301-415-7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 23th day of April 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,
NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98-11729 Filed 5-1-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: 10 CFR part 4, "Nondiscrimination in Federally Assisted Commission Programs."
3. The form number if applicable: 3150-0053.
4. How often the collection is required: Occasionally.
5. Who will be required or asked to report: Recipients of Federal financial assistance provided by the Nuclear Regulatory Commission.
6. An estimate of the number of responses: 30.
7. The estimated number of annual respondents: 30.
8. An estimate of the total number of hours needed annually to complete the requirement or request: 8 hours annually (16 minutes per recordkeeper).
9. An indication of whether Section 3507(d), Pub. L. 104-13 applies: Not applicable.
10. Abstract: Recipients of NRC financial assistance provide data to demonstrate assurance to NRC that they are in compliance with nondiscrimination regulations and policies.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (<http://www.nrc.gov>) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by June 3, 1998: Erik Godwin, Office of Information and Regulatory Affairs (3150-0053), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo Shelton, 301-415-7233.

Dated at Rockville, Md., this 24th day of April 1998.

For the Nuclear Regulatory Commission,
Brenda Jo Shelton,
NRC Clearance Officer, Office of the Chief
Information Officer.

[FR Doc. 98-11730 Filed 5-1-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-400]

Carolina Power and Light; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-63, issued to Carolina Power & Light (CP&L or the licensee), for operation of the Shearon Harris Nuclear Power Plant located in Wake and Chatham Counties, North Carolina.

The proposed amendment would revise Technical Specification (TS) 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation" to allow a 2-hour surveillance interval to facilitate testing of the 6.9 kV Emergency Bus Undervoltage relays. Specifically, CP&L proposes modifying TS Table 3.3.3 Items 9.a. and 9.b. to change the Action from 15 to 15a. Action 15a would maintain all of the requirements of Action 15 and allow removal of 6.9 kV Emergency Bus Undervoltage relays for 2 hours for surveillance testing provided the redundant train Emergency 6.9 kV Bus and associated undervoltage primary and secondary relays are operable. With the proposed modification, CP&L would be able to perform surveillance testing of the relays without entering TS 3.0.3.

To adequately perform a TS-required surveillance test, the Harris Nuclear Plant must enter TS 3.0.3 which could lead to an unnecessary plant shutdown. The surveillance interval for this test is at least once per 31 days. There is insufficient time between test performance to process a license amendment through normal means.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff

must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Loss-of-Offsite Power Emergency Bus undervoltage relays are not accident initiating components as described in the Final Safety Analysis Report. The proposed change allows a surveillance test interval to facilitate required testing per the Harris Nuclear Plant Technical Specifications (TS). Redundancy of emergency buses, availability of alternate automatic loss-of-offsite power protection, and the capability of manual initiation of affected components combined with the short duration allowed for testing, compensate for the new allowed surveillance interval.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Loss-of-Offsite Power Emergency Bus undervoltage relays are not accident initiating components as described in the Final Safety Analysis Report (FSAR). The proposed change only affects testing of the Loss-of-Offsite Power Emergency Bus undervoltage relays while not affecting other structures, systems, or components.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed change to testing of Loss-of-Offsite Power Emergency Bus undervoltage relays does not affect any of the parameters that relate to the margin of safety as described in the Bases of the TS or the FSAR. Accordingly, NRC Acceptance Limits are not affected by this change.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the *Federal Register* a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 3, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's

Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner

must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request

should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 24, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Dated at Rockville, Maryland, this 27 day of April 1998.

For the Nuclear Regulatory Commission,
Scott C. Flanders,
*Project Manager, Project Directorate II-1,
 Division of Reactor Projects -I/II, Office of
 Nuclear Reactor Regulation.*
 [FR Doc. 98-11731 Filed 5-1-98; 8:45 am]
 BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-423]

Central Maine Power Co; Millstone Nuclear Power Station, Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval under Title 10 of the Code of Federal Regulations (10 CFR) § 50.80, by issuance of an Order, of the transfer of control of Facility Operating License No. NPF-49, to the extent held by Central Maine Power Company (CMP), which holds a partial ownership interest in the Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the transfer of control of the license, to the extent effected by a proposed restructuring of CMP. Under the restructuring, CMP would become a wholly owned subsidiary of a newly created holding company but would continue to hold a partial ownership interest in Millstone Unit 3. No direct transfer of the license would occur. Northeast Nuclear Energy Company would continue to be the licensed operator for Millstone Unit 3, and is not involved in the proposed transaction. The proposed action is in accordance with the submittal, dated March 4, 1998, from Central Maine Power Company, by and through its counsel, Morgan, Lewis, and Bockius.

The proposed action is needed, to the extent the proposed restructuring of CMP will effect a transfer of control of the license as held by CMP, to permit the restructuring to occur. CMP has stated that the proposed restructuring will provide long-term advantages through increased management and financial flexibility that will better position CMP and its existing nonutility subsidiaries to compete effectively in a changing commercial and regulatory environment. CMP has also stated that this structure will also serve to insulate CMP's utility business from business risks associated with the activities of the nonutility subsidiaries and be consistent with the corporate structure used by many other utilities in the United States.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that there will be no physical or operational changes to Millstone Unit 3. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate or maintain the facility, as Northeast Nuclear Energy Company, which is not involved in the proposed restructuring of CMP, will continue to be exclusively responsible for the operation and maintenance of Millstone Unit 3.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents will not be increased by the proposed action, and that post-accident radiological releases will not be greater than previously determined. Further, the Commission has determined that the proposed action will not affect routine radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternative with equal or greater environmental impact need not be evaluated.

As an alternative to the proposed requested action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Millstone Unit 3, dated December 1984.

Agencies and Persons Contacted

In accordance with its stated policy, on April 20, 1998, the staff consulted with the Connecticut State Official, Kevin T. A. McCarthy, of the Monitoring and Radiation Division, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State Official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the application dated March 4, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 24th day of April 1998.

For the Nuclear Regulatory Commission,
Phillip F. McKee,
*Deputy Director for Licensing, Special
 Projects Office, Office of Nuclear Reactor
 Regulation.*
 [FR Doc. 98-11728 Filed 5-1-98; 8:45 am]
 BILLING CODE 7590-01-P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Liability for Termination of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information contained in its regulation on Liability for Termination of Single-Employer Plans, 29 CFR Part 4062 (OMB control number 1212-0017; expires September 30, 1998). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by July 6, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202-326-4040. (For TTY and TDD, call 800-877-8339 and request connection to 202-326-4040). The regulation on Liability for Termination of Single-employer Plans can be accessed on the PBGC's home page at <http://www.pbgc.gov>.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (For TTY and TDD, call 800-877-8339 and request connection to 202-326-4024).

SUPPLEMENTARY INFORMATION: Section 4062 of the Employee Retirement Income Security Act of 1974 provides that the contributing sponsor of a single-employer pension plan and members of

the sponsor's controlled group ("the employer") incur liability ("employer liability") if the plan terminates with assets insufficient to pay benefit liabilities under the plan. The PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 4062.6 of the PBGC's employer liability regulation (29 CFR 4062.6) requires a contributing sponsor or member of the contributing sponsor's controlled group who believes employer liability upon plan termination exceeds 30 percent of the employer's net worth to so notify the PBGC and to submit net worth information. This information is necessary to enable the PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

The collection of information under the regulation has been approved by OMB under control number 1212-0017 through September 30, 1998. The PBGC intends to request that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that an average of 13 contributing sponsors or controlled group members per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information will be 12 hours and \$1800 per respondent, with an average total annual burden of 156 hours and \$23,400.

The PBGC is soliciting public comments to—

- evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, DC, this 27th day of April, 1998.

David M. Strauss,
Executive Director, Pension Benefit Guaranty Corporation.
 [FR Doc. 98-11710 Filed 5-1-98; 8:45 am]
 BILLING CODE 7708-01-P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of the collection of information under its regulation on Disclosure to Participants, 29 CFR Part 4011 (OMB control number 1212-0050; expires September 30, 1998). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by July 6, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202-326-4040. (For TTY and TDD, call 800-877-8339 and request connection to 202-326-4040). The regulation on Disclosure to Participants can be accessed on the PBGC's home page at <http://www.pbgc.gov>.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (For TTY and TDD, call 800-877-8339 and request connection to 202-326-4024).

SUPPLEMENTARY INFORMATION: Section 4011 of the Employee Retirement Income Security Act of 1974 requires plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

The PBGC's regulation implementing this provision (29 CFR Part 4011) prescribes which plans are subject to the notice requirement, who is entitled to receive the notice, and the time, form, and manner of issuance of the notice. The notice provides recipients with meaningful, understandable, and timely information that will help them become better informed about their plans and assist them in their financial planning.

The collection of information under the regulation has been approved by OMB under control number 1212-0050 through September 30, 1998. The PBGC intends to request that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that an average of 3,500 plans per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 1.97 hours and \$74 per plan, with an average total annual burden of 6,904 hours and \$258,900.

The PBGC is soliciting public comments to—

- evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

- enhance the quality, utility, and clarity of the information to be collected; and

- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, DC, this 27th day of April, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98-11711 Filed 5-1-98; 8:45 am]

BILLING CODE 7708-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39923; File No. SR-CBOE-97-50]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to "Go Along" Orders

April 27, 1998.

Introduction

On September 25, 1997,¹ the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposed rule change to issue a regulatory circular which would establish the representation of "go along" orders on the floor of the Exchange as a violation of just and equitable principles of trade pursuant to Exchange Rule 4.1.

The proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 39261 (October 20, 1997) 62 FR 55663 (October 27, 1998). One comment letter was received in response to the proposal.⁴ The Exchange subsequently filed Amendment Nos. 1 and 2 to the proposed rule change on January 20, 1998 and February 10, 1998, respectively.⁵

¹ The Exchange originally submitted this proposal as SR-CBOE-96-67 on November 11, 1996, and withdrew it at the request of the Commission on February 18, 1997.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See letter and attachment from Trent Cutler, TSC Partners, L.P., to Jonathan Katz, Secretary, Commission, dated January 7, 1998.

⁵ Amendment No. 1 clarifies the definition of "go along" orders in the regulatory circular that the Exchange expects to issue to its members.

Amendment No. 1 deletes "generally" from the first sentence of the circular entitled "Definition of Go Along Orders." In addition, Amendment No. 1 clarifies the definition by explaining there are two elements that an instruction to a floor broker must meet before those instructions make an order a "go along" order. First, the floor broker must be

II. Background and Description

The purpose of the proposed rule change is to prohibit floor brokers from representing or executing "go along" orders (as further described below) on the floor of the Exchange. The Exchange will consider the representation or execution of such orders an act inconsistent with just and equitable principles of trade pursuant to Exchange Rule 4.1. The Exchange proposes to set forth the prohibition against the representation of "go along" orders in a regulatory circular describing the types of conduct which would be considered to be violative of just and equitable principles of trade. The proposed regulatory circular will state the following:

Definition of "Go Along" Orders

A "go along" order, or a "not held with the crowd" order, is an order that instructs a floor broker to bid or offer (as appropriate for the type of order) on a contract only (i) when a particular market-maker in the trading crowd are bidding or offering on the contract and (ii) at the price or prices established by such market-makers in the trading crowd. The prohibition of "go along" orders does not limit a floor broker's use of discretion in representing an order on behalf of a customer. Instead, the prohibition is intended to prohibit a floor broker from accepting a specific instruction to trade in a manner that mimics the trading behavior of one or more market-makers.

Generally, customers submitting "go along" orders to floor brokers will specify whether the order is to buy or sell, the number of contracts, the series, and the strike price. Typically, the floor broker will be instructed to buy when

instructed to bid or offer when one or more participant in the trading crowd are bidding or offering. Second, the floor broker must be instructed to bid or offer at the price established by the other participants in the trading crowd. Furthermore, the Exchange is proposing to add a sentence to make clear that the prohibition against "go along" orders is not intended to prohibit a floor broker from properly exercising discretion in the representation of an order. Amendment No. 2 further clarifies the definition of "go along" order to state that the floor broker must be instructed to bid (offer) on a contract only when particular market-makers in the trading crowd are bidding (offering) on that contract, that the floor broker must be instructed to bid (offer) at the prices established by such market-makers in the trading crowd. Amendment No. 2 also amends the last sentence of the first paragraph of the definition section to state that the prohibition against "go along" orders prevents a floor broker from accepting a specific instruction to trade "in a manner that mimics the trading behavior of one or more market makers." See letters from Timothy H. Thompson, Senior Attorney, CBOE, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated January 16, 1998 ("Amendment No. 1") and February 9, 1998 ("Amendment No. 2").

the majority of the market-makers participating on a trade are buying or to sell the majority of the market-makers participating on a trade are selling. Similarly, a floor broker may be instructed to buy when a particular market-maker (or combination of market-makers) is buying (selling) on a trade. "Go along" orders can be entered from off the floor of the Exchange and can be concealed at the complete discretion of the customer. CBOE represents that "go along" orders often are placed by market-making firms as a side business, by upstairs broker-dealers who want to participate in "market making," and by specialists on other exchanges, who are attempting to receive the benefits of market-making without assuming the affirmative obligations to provide markets. These orders are entered in both multiply-traded and singly listed option classes.

Rationale for the Prohibition

The CBOE believes that the proliferation of "go along" orders interferes with the risk-reward trade-off of Exchange market-making. "Go along" order participants, according to CBOE, generally are professional traders that are attempting to accept the rewards of market making without accepting any of the risks. In addition, CBOE does not believe these orders provide any incremental liquidity or price discovery because market participants entering "go along" orders are merely trading at a price and size at which market-makers are willing to trade. "Go along" order participants, as customers, however, are not obliged to fulfill the affirmative market-making obligations of market-makers and their activity is not necessarily subject to Commission or Exchange oversight.

III. Summary of Comments

The Commission received one comment letter opposing the proposed rule change from members of the Pacific Exchange, Inc. ("PCX").⁶ The commenters argue that the proposed rule change, by prohibiting orders "that don't match the trading crowd as long as the broker has discretion" makes this a rule restricting discretionary orders, which is much broader than a rule restricting "go along" orders. The commenters state that the rule is attempting to reduce competitive forces on the trading floor, which would reduce liquidity and pricing efficiency for all market participants, which, in turn damages the Exchange's long-term competitive position.

⁶ See supra note 3.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5)⁷ that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁸

The Commission finds that it is reasonable for CBOE to prohibit floor brokers from accepting "go along" orders. CBOE has determined that the use of "go along" orders is an abusive trading practice whereby professional traders, including market-makers, attempt to mimic the trading pattern of particular market-makers. More specifically, CBOE believes that the proliferation of "go along" order use could seriously threaten its market-maker trading opportunities. "Go along" orders often obtain parity with the bid/offer of the market-maker(s) they are designed to trade along with, thereby diluting market-maker participation in these affected trades. In essence, traders submitting "go along" orders are attempting to achieve the same time and place advantage held by market-makers on the floor. However, market-makers, in return for their time and place advantage, are subject to affirmative and negative market-making obligations.⁹ While it is certainly possible that market-makers on CBOE's floor can mimic the trading behavior of other market-makers, they are required to make an active market while present in a particular trading crowd.¹⁰ Customers

⁷ 15 U.S.C. 78f(b)(5).

⁸ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ See CBOE Rules 8.7; 8.15 (Lead Market-Makers and Supplemental Market-Makers); and 8.16 (RAES Eligibility in Option Classes Other Than DJX). See also Securities Exchange Act Release Nos. 28021 (May 16, 1990), 55 FR 21131 (May 22, 1990) ("... the Commission notes that the position of options market makers on the floor provides them substantial time and place advantages over other market participants.") and 21008 (June 1, 1984), 49 FR 23721 (June 7, 1984) ("In return for assuming these obligations to the marketplace, market makers are permitted to trade on the floor of the exchange, thus being provided significant 'time and place' as well as margin credit ('exempt credit') advantages over other market participants.")

¹⁰ CBOE Rule 8.7(b) and phone conversation between Timothy H. Thompson, Senior Attorney, CBOE, and Michael Walinskas, Deputy Associate Director, Market Regulation, Commission, on April 24, 1998.

submitting "go along" orders, by contrast, have no market-making responsibilities, and therefore, should not be afforded benefits derived from the special time and place benefits that are unique to market-makers.

Notwithstanding the appropriate basis for prohibiting "go along" orders, restrictions on abusive trading practices must be carefully crafted so as not to restrict trading beyond that necessary to curb the identified abuse.¹¹ In this regard, the Commission emphasizes that CBOE's proposed restriction is narrowly tailored to apply only in the specific instance where a customer instructs a floor broker to bid (or offer) on a contract when particular market-makers are bidding or offering, at the price or prices established by such market-makers. The prohibition against "go along" orders does not limit any category of market participant from access to CBOE markets and does not impair market participants from effecting legitimate trading strategies, including obtaining the best available price. The proposed rule change also does not prohibit a floor broker from accepting an order that directs him or her to buy (or sell) along with the trend of the crowd. If given such instructions, a floor broker may, in his or her own expert judgment, trade in a manner that mimics the behavior of one or more market-makers.

The comment letter objected to original language in the definition of "go along" order that stated "Such an order is prohibited even if the bid or offer does not match exactly the price established by the other participants in the trading crowd as long as the customer has given the broker discretion to determine what to bid or offer based upon the prices established by the other participants." The Commission notes that the Exchange has eliminated this provision. The Commission also notes, as discussed more fully above, that the prohibition of "go along" orders does not limit a floor broker's discretion, but instead prohibits a customer from giving a floor broker specific instructions to trade in a particular manner.

The Commission finds good cause to approve Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment Nos. 1 and 2 both clarify the definition of "go along" order to narrowly outline the boundaries of the restriction and to ensure that the prohibition against "go

¹¹ Cf. Amex intra-day trading restriction. See Securities Exchange Act Release No. 34363 (July 13, 1994), 59 FR 36808 (July 19, 1994).

along" orders does not prohibit a floor broker from properly exercising discretion in the representation of an order or prevent market participants from effecting legitimate trading strategies. In addition, the proposed rule change was published for the full comment period and Amendment Nos. 1 and 2 do not substantively change the proposal. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the rule proposal, including whether Amendment Nos. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-97-50 and should be submitted by May 26, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CBOE-97-50), including Amendment Nos. 1 and 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan G. Katz,
Secretary.

[FR Doc. 98-11746 Filed 5-1-98, 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39925; File No. SR-CBOE-97-67]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Substantive Revisions of the Exchange's Rules Governing Margin Regulation

April 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 29, 1997, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes substantive changes to its rules concerning margin requirements. The revisions would: (i) Expand the types of short positions that would be considered "covered" in a cash account, specifically, certain short positions that are components of limited-risk spread strategies (e.g., butterfly and box spreads); (ii) allow a bank-issued escrow agreement to serve as cover in lieu of cash for certain spread positions held in a cash account; (iii) recognize butterfly and box spreads as strategies for purposes of margin treatment and establish appropriate margin requirements; (iv) recognize various strategies involving stocks (or other underlying instruments) paired with long options, and provide for lower maintenance margin requirements on such hedged stock positions; (v) permit the extension of credit on certain long term options and certain long box spreads; (vi) consolidate in one chapter, the various margin requirements that presently are dispersed throughout the Exchange's rules; (vii) revise other Exchange rules impacted by the proposal; and (viii) update and improve, as necessary, current margin rules.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make revisions to its rules governing margin regulation that would: (i) Expand the types of short positions that would be considered "covered" in a cash account, specifically, certain short positions that are components of limited-risk spread strategies (e.g., butterfly and box spreads); (ii) allow a bank-issued escrow agreement to serve as cover in lieu of cash for certain spread positions held in a cash account; (iii) recognize butterfly and box spreads as strategies for purposes of margin treatment and establish appropriate margin requirements; (iv) recognize various strategies involving stocks (or other underlying instruments) paired with long options, and provide for lower maintenance margin requirements on such hedged stock positions; (v) permit the extension of credit on certain long term options and certain long box spreads; (vi) consolidate in one chapter, the various margin requirements that presently are dispersed throughout the Exchange's rules; (vii) revise other Exchange rules impacted by the proposal; and (viii) update and improve, as necessary, current margin rules.

Previously, the margin requirements governing options were set forth in Regulation T, "Credit by Brokers and Dealers."² However, recent amendments to Regulation T that became effective June 1, 1997, modified or deleted certain margin requirements regarding options transactions in favor of rules to be adopted by the option self-regulatory organizations ("OSROs"),

² 12 CFR 220 et seq. The Board of Governors of the Federal Reserve System issued Regulation T pursuant to the Act.

subject to approval by the Commission.³ In a rule filing approved last year, the Exchange adopted certain options-related margin requirements that were dropped from Regulation T.⁴ The rule filing also made changes to clarify several margin rules and to establish consistency with certain margin rules maintained by the New York Stock Exchange ("NYSE").

At the present time, the Exchange seeks to revise its margin rules to implement enhancements long desired by Exchange members and member firms, public investors, and the Exchange staff. The Exchange believes that certain multiple options position strategies and other strategies that combine stock with option positions warrant identification and recognition for purposes of establishing more equitable margin requirements. Currently, the two components of a strategy that combines stock with an options position must be margined separately. The Exchange believes the risk limitation that results if the stock and options position are viewed collectively is not reflected in the current maintenance margin requirements.⁵ Lastly, the proposal would permit credit to be extended on certain types of options.

During the development of the proposed rule change, the Exchange reviewed its margin rules with a view towards updating and improving the rules. In some instances, the Exchange found it necessary to make minor changes to certain rules because they would be impacted by the more substantive proposals.

a. *Definition Section.* Presently, the Exchange's definition "current market value" is equivalent to the definition found in Regulation T. Instead of repeating the Regulation T definition, the proposal would revise the definition found in the Exchange's rules to note that the meaning of the term "current market value" is as defined in Regulation T. Because the Exchange and other OSROs intend to seek a change in the Regulation T definition, a linkage to the Regulation T definition would keep the Exchange's definition equivalent without requiring a future rule filing.

The Exchange also seeks to establish definitions for the "butterfly spread" and "box spread" options strategies.

³ See Board of Governors of the Federal Reserve System Docket No. R-0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

⁴ See Securities Exchange Act Release No. 38709 (June 2, 1997), 62 FR 31643 (June 10, 1997).

⁵ Telephone conversation between Richard Lewandowski, Assistant Vice President, Exchange, and Michael Loftus, Attorney, Division of Market Regulation, Commission, April 27, 1998.

The definitions relate to the Exchange's proposed rules that would recognize and specify cash and margin account requirements for butterfly and box spreads.⁶ The Exchange believes the definitions are necessary to specifically establish what multiple option positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for the proposed cash and margin treatment.

Finally, the proposal would define the term "listed." Because "listed" is frequently used in the Exchange's margin rules, the Exchange believes it would be more efficient to define the term once rather than specifying the meaning each time the term is utilized.

b. *Extension of Credit on Long Options, Stock Index Warrants, Foreign Currency Warrants, and Currency Index Warrants.* The proposal would allow extensions of credit on certain listed long options and warrant productions (including currency and index warrants, but excluding traditional stock warrants issued by a corporation on its own stock).⁷ Only those options or warrants that are more than 9 months from expiration would be eligible for credit extension. The proposal requires initial and maintenance margin of not less than 75% of the current market value of a listed option or warrant. Therefore, a broker-dealer would be able to loan up to 25% of the current market value of a listed option or warrant.

The proposal also would permit the extension of credit on options and warrants not listed or traded on a registered national securities exchange or a registered securities association ("OTC options"). However, in addition to being more than 9 months from expiration, an OTC option or warrant must be in-the-money and guaranteed by the carrying broker-dealer. The proposal requires initial and maintenance margin of not less than 75% of the OTC option's (warrant's) in-the-money amount (or intrinsic value), plus 100% of the amount, if any, by which the current market value of the OTC option or warrant exceeds the in-the-money amount.

When the time remaining until expiration for a warrant or option (listed and OTC) on which credit has been extended reaches nine months, the maintenance margin requirement would become 100% of the purchase price.

The proposal also would provide for the extension of credit on a long box

⁶ The proposed rules are outlined below under the "Cash Account" and "Margin Account" sections.

⁷ Throughout the remainder of this notice, the term "warrant(s)" means this type of warrant.

spread composed entirely of European-style option. A long box spread is a strategy composed of four option positions which essentially lock-in the ability to buy and sell the underlying component or index for a profit, even after netting the cost of establishing the long box. The two exercise prices embedded in the strategy determine the buy and the sell price. The Exchange believes that because the cost of establishing the long box is covered by the profit realizable at expiration, there is no risk in carrying the debit incurred to establish the box spread. Although the Exchange believes that 100% of the debit could be loaned, the Exchange proposes to implement a margin requirement and approximates 50% of the debit. The Exchange's proposal would require 50% of the aggregate difference in the two exercise prices (buy and sell) which results in a margin requirement slightly higher than 50% of the debit typically incurred. This is both an initial and maintenance margin requirement. The proposal would afford a long box position a market value for margin equity purposes of not more than 100% of the aggregate exercise price differential.

c. *Cash Account.* The proposal would make butterfly and box spreads in cash-settled, European-style options eligible for the cash account. To qualify for carrying in the cash account, the butterfly and box spreads would be required to meet the specifications, contained in the proposed definition section. The proposal would require full cash payment of the debit that is incurred when a long butterfly or box spread strategy is established. The Exchange believes that if the debit is fully paid, there is no risk to the carrying broker-dealer.

Short butterfly spread generate a credit balance when established. However, in the worst case scenario where all options are exercised, a debit (loss) greater than the initial credit balance received would accrue to the account. This debit or loss is limited. To eliminate the risk to the carrying broker-dealer, the proposal would require that the initial credit balance, plus an amount equal to the difference between the initial credit and the total risk, be held in the account in the form of cash or cash equivalents. The total risk potential in a short butterfly spread comprised of call options is the aggregate difference between the two lowest exercise prices. When respect to short butterfly spreads comprised of put options, the total potential is the aggregate difference between the two highest exercise prices. Therefore, to carry short butterfly spreads in the cash

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

account, the proposal would require that cash or cash equivalents equal to the maximum risk be held or deposited.

Short box spreads also generate a credit balance when established, but unlike the butterfly spread, this credit is sufficient to cover the total debit (loss) that, in the case of a box spread, will accrue to the account if held to expiration. The Exchange believes the credit should be retained in the account. Therefore, the proposal would require that cash or cash equivalent coverings the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be held or deposited.

In addition, the proposal would allow an escrow agreement to be utilized in lieu of the cash or cash equivalents that are a prerequisite to carrying short butterfly and box spreads in the cash account.

d. *Margin Account.* Currently, the Exchange's margin rules do not recognize butterfly and box spreads for margin purposes. Therefore, margin requirements tailored to the risks of these respective strategies, which the Exchange believes have limited risk, are not currently provided. A butterfly spread is a pairing of two standard spreads, one bullish and one bearish. Under current Exchange margin rules, the two spreads (bullish and bearish) must be margined separately. The Exchange believes this practice requires more margin than necessary because the two spreads serve to offset each other with respect to risk. The Exchange believes that the two individual spreads should be viewed in combination to form a butterfly spread, and that commensurate with the lower combined risk, investors should receive the benefit of lower margin requirements. The proposal would recognize butterfly spreads as distinct strategies and specify requirements that are the same as the cash account requirements described above.

As noted earlier, under the proposal the margin required for a long box spread would be 50% of the aggregate difference in the two exercise prices framing the strategy. This is both an initial and maintenance margin requirement. For margin equity purposes, a long box spread could not be valued at more than 100% of the aggregate exercise price differential. The requirement for a short box spread in the margin account would be the same as the cash account requirement described earlier. Short box spreads would not be recognized for margin equity purposes.

In addition to butterfly and box spreads, the Exchange proposes to recognize five options strategies that are

designed to limit the risk of a position in the underlying component. The strategies are: (i) Long Put/Long Stock; (ii) Long Call/Short Call; (iii) Conversion; (iv) Reverse Conversion; and (v) Collar. Proposed Exchange Rule 12.3(c)(5)(C)(3), "Exceptions," would identify and set forth the requirements for these hedge strategies.

The five strategies are summarized below in terms of a stock position held in conjunction with an overlying option (or options). However, the proposal is structured to also apply to components that underlie index options and warrants. The Exchange's proposal only addresses maintenance margin relief for the stock component (or other underlying instrument) of the five proposed strategies. The Exchange believes that a reduction in the initial margin for the stock component of these strategies is not currently possible because the 50% initial margin requirement under Regulation T continues to apply, and the Exchange does not possess the independent authority to lower the initial margin requirement for stock. However, the Exchange notes that the Federal Reserve Board is considering recognizing the reduced risk afforded stock by these option strategies for the purpose of lowering initial stock margin requirements and is also considering other changes that would facilitate risk-based margins.

The "Long Put/Long Stock" and the "Long Call/Short Stock" strategies are very similar to the "Collar" and "Reverse Conversion" strategies that are addressed below.

A "Conversion" is a long stock position held in conjunction with a long put and a short call. The put and call must have the same expiration and exercise price. The long put/short call is essentially a synthetic short stock position which offsets the long stock, and the exercise price of the options acts like a predetermined sale price. The short call is covered by the long stock and the long put is a right to sell the stock at a predetermined price—the put exercise price. Regardless of any decline in market value, the stock, in effect, is worth no less than the put exercise price.

A "Reverse Conversion" is a short stock, short put, and long call trio. Again, the put and call must have the same expiration and exercise price. The long call/short put is essentially a synthetic long stock position which offsets the short stock and the exercise price of the options acts like a predetermined purchase (buy-in) price. The short put is covered by the short stock and the long call is a right to buy

the stock (in this case closing the short position) at a predetermined price—the call exercise price. Regardless of any rise in market value, the stock can be acquired for the call exercise price, in effect, the short position is valued at no more than the call exercise price. The "Long Call/Short Stock" hedge described above is a Reverse Conversion without the short put, or simply short stock offset by a long call.

A "Collar" is a long stock position held in conjunction with a long put and a short call. A Collar differs from a Conversion in that the exercise price of the put is lower than the exercise price of the call in the Collar strategy, therefore, the options do not constitute a pure synthetic short stock position. The "Long Put/Long Stock" hedge mentioned above is similar to a Collar without the short call, or simply long stock hedged by a long put.

The proposal would establish reduced maintenance margin requirements for the stock component of these five strategies as described below:

1. Long Put/Long Stock

The lesser of:

- 10% of the put exercise price, plus 100% of any amount by which the put is out-of-the-money; or
- 25% of the long stock market value.

2. Long Call/Short Stock

The lesser of:

- 10% of the call exercise price, plus 100% of any amount by which the call is out-of-the-money; or
- The maintenance margin requirement on the short stock.

3. Conversion

- 10% of the exercise price.

The stock may not be valued at more than the exercise price.⁹

4. Reverse Conversion

- 10% of the exercise price, plus any in-the-money amount.⁹

5. Collar

The lesser of:

- 10% of the put exercise price, plus 100% of any amount by which the put is out-of-the-money; or

⁹ The writer of a call option has an obligation to sell the underlying component at the call exercise price. The writer cannot receive the benefit of a market value that is above the call exercise price because, if assigned an exercise, the underlying component would be sold at the exercise price, not the market price.

⁹ The writer of a put option has an obligation to buy the underlying component at the put exercise price. If assigned an exercise, the underlying component would be purchased (the short position effectively closed) at the exercise price, even in the event the market price is lower. To offset the benefit to the account of a lower market value, the put in-the-money amount is added to the requirement.

- 25% of the call exercise price.

The stock may not be valued at more than the call exercise price.

These same maintenance margin requirements will apply, for example, when these strategies are utilized with a mutual fund or a stock basket underlying index options or warrants.

e. *Restructuring.* The proposal would replace the present margin requirement for short (uncovered) listed options with current Interpretation and Policy .01 to Exchange Rule 12.3 ("Interpretation"). The Interpretation contains a table listing all existing options and warrant products, their underlying component or index, the percentage used in a basic formula for calculating the margin requirement, and the percentage used in the calculation of a minimum requirement that becomes operative whenever the basic formula results in a lower requirement.¹⁰ The revision will ensure that the margin requirements for all types of options and warrants will be set forth in one section in an efficient and organized manner. The restructuring also allows the deletion of the short, uncovered option margin requirements for option/warrant products that now appear in the other chapters (Chapter 23 (interest rate options), Chapter 24 (index options), and Chapter 30 (warrants)) because the methodology for calculating the margin is identical—only the percentages and underlying components or indexes differ.

The margin requirements for short (uncovered) positions in OTC options would be relocated under Exchange Rule 12.3(c)(5)(B). The text of the Interpretation (margin requirements for short listed options) currently differs from the text of the Exchange rule that sets forth the margin requirements for short OTC options. The difference stems from the fact that the current Exchange rule relating to OTC options was modeled after the NYSE margin rule. To establish consistency and better organization, the proposal would revise the text of the margin requirements for both listed and OTC short options to make them similar. The Exchange has noted that the methodology of both margin requirements is essentially the same, only different percentages are applied.

In addition, to the extent possible, the proposal has combined the margin requirements pertaining to long position offsets for short OTC options with those for short listed options. The revision

¹⁰ A row also has been added to the table to incorporate the margin requirement for a narrow-based stock index warrant. This requirement is being moved from Chapter 30.

will combine two sets of relatively identical requirements that currently exist.

f. *Consolidation.* For the most part, the proposal would delete the margin requirements applicable to short options/warrants and spreads that currently appear in Chapters 23, 24, and 30. Exchange Rule 12.3 would be restructured to generically cover the margin requirements for short and spread positions in options/warrants of the types currently in the other chapters. Other complex requirements located elsewhere that are not amenable to such generic treatment, have been incorporated into Exchange Rule 12.3 as necessary.

g. *Miscellaneous.* 1. *Time Margin Must Be Obtained.* The proposal would clarify the time in which initial margin, or payment in respect of cash account transactions, is due. Exchange Rule 12.2, which was adopted at a time when the Exchange had authority only to set maintenance margin levels, currently requires that margin be obtained as promptly as possible. Because the Exchange now has additional rulemaking responsibility for initial margin requirements, the proposal specifies that initial margin requirements are due in one "payment period" as defined in Regulation T.¹¹ The proposal also revises Exchange Rule 12.2 to specify that maintenance margin must be obtained as promptly as possible, but in any event within 15 days (rather than the former standard—"within a reasonable time"). The Exchange believes this revision is consistent with the current NYSE requirement.

2. *Effect of Mergers and Acquisitions on the Margin Required for Short Equity Options.* The proposal would implement as Interpretation and Policy .13 of Exchange Rule 12.3, an exception to the margin requirement for short options in the event trading in the underlying security ceases due to a merger or acquisition. The exception currently exists pursuant to an Exchange Regulatory Circular. Under the exception, if an underlying security ceases to trade due to a merger or acquisition, and a cash settlement price has been announced by the issuer of the option, margin would be required only for in-the-money options and would be set at 100% of the in-the-money amount. The Exchange has noted that the NYSE currently maintains a similar written interpretation.

3. *Determination of Value for Margin Purposes.* The proposal would revise Exchange Rule 12.5 to make it

consistent with the other portion of the Exchange's proposal that allows the extension of credit on certain long-term options. Currently, Exchange Rule 12.5 does not allow the market value of long-term options to be considered for margin equity purposes. The revision would allow options and warrants eligible for loan value pursuant to proposed Rule 12.3 to be valued at current market prices for margin purposes. The Exchange believes the change is necessary to ensure that the value of the option or warrant (the collateral) is sufficient to cover the debit carried in conjunction with the purchase.

4. *OTC Options.* Some minor corrections have been made to the table in Exchange Rule 12.3(c)(5)(B) that displays the margin requirements for short OTC options.

5. *Exempted Securities.* Currently, the Exchange's maintenance margin requirement for a non-convertible debt security is found in Exchange Rule 12.3(c)(1), "Exempted Securities." However, the term "non-convertible debt security" refers to corporate bonds which are not considered exempt securities under the Act. Therefore, the Exchange seeks to remove the paragraph regarding non-convertible debt securities from the "Exempted Securities" category, and redesignate it as a separate section of Exchange Rule 12.3(c)(2).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,¹² in that it is designed to perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

¹¹ 12 CFR 220.2.

¹² 15 U.S.C. 78f(b)(5).

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submission should refer to File No. SR-CBOE-97-67 and should be submitted May 26, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan G. Katz,
Secretary.

[FR Doc. 98-11747 Filed 5-1-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39924; File No. SR-DTC-98-01]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of Proposed Rule Change to Conform DTC's Rules to Revised Article 8 of the Uniform Commercial Code of the State of New York

April 27, 1998.

On January 14, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-97-14) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the *Federal Register* on April 14, 1998.² The Commission received no comment letters in response to the filing. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

The rule change amends DTC's rules to make them consistent with revised Article 8 of the Uniform Commercial Code ("UCC") as adopted by the State of New York. Generally, the revisions to Article 8, which governs the transfer of securities, reflect that the transfer of ownership of securities and other investment vehicles are no longer effected by the delivery and holding of certificates. Instead, securities are transferred by debits and credits to securities accounts maintained by securities intermediaries. The rule change adds new terminology to DTC's rules,³ revises certain definitions,⁴ and deletes section references based on the prior version of Article 8. The amendments do not change the

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 39836 (April 7, 1998), 63 FR 18239.

³ The proposed rule change will add the following terms to DTC's rules: (1) Certificated security; (2) control; (3) deposit; (4) entitlement holder; (5) entitlement order; (6) free pledge; (7) free release; (8) NYUCC; (9) person; (10) pledge; (11) pledge versus payment; (12) release; (13) release versus payment; (14) security entitlement; (15) security certificate; (16) uncertificated security; and (17) withdrawal.

⁴ The proposed rule change will make technical revisions to the following terms: (1) Clearing agency agreement; (2) deliverer; (3) delivery; (4) deposited security; (5) incomplete transaction; (6) instructor; (7) minimum amount securities; (8) net addition securities; (9) participant; (10) payee; (11) payor; (12) pledge security; (13) pledgee; (14) pledgor; (15) receiver; (16) securities account; (17) security; (18) segregated account; and (19) settlement amount.

substance or meaning of DTC's current rules.

The rule change also amends DTC Rule 20 to specifically state that DTC's board of directors may be resolution delegate to the chairman of the board the power to approve fees and charges.

II. Discussion

Section 17A(b)(3)(F)⁵ of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule changes are consistent with this requirement because by conforming its rules to the revised Article 8 of the UCC, DTC should help maintain certainty with respect to the substantive rights and obligations under New York State's version of the UCC that are applicable to DTC and its participants.

The Commission also believes that providing DTC's board of directors with the authority to delegate to the chairman of the board the power to approve fees and charges is consistent with this requirement because it allows DTC's board to act more expeditiously.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication in order to enable DTC to revise its rules to be consistent with New York State's version of Article 8 of the UCC as soon as possible.⁶

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-98-01) be, and hereby is, approved on an accelerated basis.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval. Telephone conversation between Kristen Wells, Senior Analyst, Division of Reserve Bank Operations, Board of Governors of the Federal Reserve System, and Jeffrey Mooney, Special Counsel, Division of Market Regulation, Commission (April 24, 1998).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-11745 Filed 5-1-98; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Capstone Ventures SBIC, L.P. (License No. 09/79-0413)

Notice of Issuance of a Small Business Investment Company License

On September 19, 1997, an application was filed by Capstone Ventures SBIC, L.P., at 3000 Sand Hill Road, Bldg. 1, Suite 290, Menlo Park, California 94025, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79-0413 on April 7, 1998, to Capstone Ventures SBIC, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 22, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98-11794 Filed 5-1-98; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 2798]

Bureau of Political-Military Affairs; Imposition of Missile Proliferation Sanctions Against Entities in North Korea and Pakistan

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that entities in North Korea and Pakistan have engaged in missile technology proliferation activities that require imposition of sanctions pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of

⁷ 17 CFR 200.30-3(a)(12).

1979, as amended (as carried out under Executive Order 12424 of August 19, 1994).

EFFECTIVE DATE: April 17, 1998.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State, (202-647-1142).

SUPPLEMENTARY INFORMATION: Pursuant to Section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)), Section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2401b(b)(1)), as carried out under Executive Order 12924 of August 19, 1994 (hereinafter cited as the "Export Administration Act of 1979"), and Executive Order 12851 of June 11, 1993, the United States Government determined on April 17, 1998, that the following foreign persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in Sections 73(a)(2) (B) and (C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2) (B) and (C)) and Sections 11B(b)(1)(B) (ii) and (iii) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B) (ii) and (iii)) on these entities:

1. Changgwang Sinyong Corporation (a.k.a. North Korea Mining Development Trading Corporation) (North Korea) and its sub-units, successors, and affiliated companies; and

2. Khan Research Laboratories (Pakistan) and its sub-units and successors.

Accordingly, the following sanctions are being imposed on these entities:

(A) New individual licenses for export to the entities described above of items controlled pursuant to the Export Administration Act of 1979 will be denied for two years;

(B) New licenses for export to the entities described above of items controlled pursuant to the Arms Export Control Act will be denied for two years;

(C) No United States Government contracts involving the entities described above will be entered into for two years; and

(D) No products produced by the entities described above will be imported into the United States for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanction only applies to exports made pursuant to individual export licenses.

Additionally, because of the definition of "person" in section

74(8)(B) of the Arms Export Control Act (22 U.S.C. 2797c(8)(B)) and North Korea's status as a country with a non-market economy that is not a former member of the Warsaw Pact, the following sanctions shall be applied to all activities of the North Korean government relating to the development of production of missile equipment or technology and all activities of the North Korean government affecting the development or production of electronics, space systems or equipment, and military aircraft:

(A) New licenses for export to the government activities described above of items controlled pursuant to the Arms Export Control Act will be denied for two years;

(B) No U.S. Government contracts involving the government activities described above will be entered into for two years; and

(C) No products produced by the government activities described above will be imported into the United States for two years.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: April 24, 1998.

Eric D. Newsom,

Acting Assistant Secretary of State for Political Military Affairs.

[FR Doc. 98-11935 Filed 5-1-98; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-97-3052; Notice 2]

Kolcraft Enterprises, Inc.; Grant of Application for Decision of Inconsequential Noncompliance

Kolcraft Enterprises of Chicago, Illinois, has determined that approximately 107,000 child restraint systems fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and has filed an appropriate report pursuant to 49 CFR part 573, "Defects and Noncompliance Reports." Kolcraft has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on November 25, 1997, in the

¹³ 17 CFR 200.30-3(a)(12)

Federal Register (62 FR 59755). NHTSA received no comments.

FMVSS No. 213, paragraph S5.7, requires that each material used in a child restraint system shall conform to S4 of FMVSS No. 302, "Flammability of Interior Materials." This specifies that any material that does not adhere to other material(s) at every point of contact shall meet the burn rate requirements of S4.3 when tested separately. Materials are to be tested as a composite only if the material adheres to other material(s) at every point of contact.

The Kolcraft child restraints affected and the dates of production are as follows: Plus 4, Infant Rider (Models 36822-HY and 13x22-HY; 1/96 to 4/97); Plus 4, Infant Rider (Models 36820-LM and 13822-LM; 2/96 to 4/97); Plus 4, Travel-About, Infant Rider (Models 36820-RF and 138x2-RF; 3/96 to 4/97); Plus 4, Plus 5, Infant Rider, Travel-About (Models 368xx-SE and 13xx2-SE; 2/96 to 12/96); Rock n' Ride (Model 13100-PJ; 1/96 to 5/97; no longer in production); and Performa (Model 23305-TU; 3/96 to 10/96). The seat covers are constructed either of fabric, fiberfill and backing (scrim) or of vinyl, foam, and vinyl backing. In each of the affected models, one or more of the filling, face, or backing materials exceeded the 4 inches per minute burn rate when tested in accordance with S5 of FMVSS No. 302. Kolcraft estimates that about 107,000 child restraints potentially contain the non-compliant materials.

Kolcraft supports its application for inconsequential noncompliance with the following:

Kolcraft tested all potentially affected child restraint seat covers in the composite state and disaggregated state, and confirmed that all seat covers comply with the flammability standards of FMVSS No. 302 when tested in the composite state (as incorporated into FMVSS No. 213). Kolcraft also found that all potentially affected child restraint seat covers passed the cigarette burn test contained in California Technical Bulletin 116 when tested in the composite state.

Kolcraft maintains that the construction of the potentially affected seat covers makes it very unlikely that the various layers of its child restraint seat covers would ever be exposed to fire separately. The layers of fabric are securely bonded or sewn together around the entire perimeter of the seat cover and other areas. Kolcraft contends that it is unlikely that a large section of the fabric would be torn away, and extremely remote that that particular portion would be exposed to a potential

ignition source. The most common source of ignition, and the source that FMVSS No. 302 is primarily designed to protect against, is a lighted cigarette. As stated above, all of Kolcraft's child restraints passed the cigarette burn test contained in California Technical Bulletin 116.

Kolcraft also contends that the frequency of incidents involving nonconforming materials or equipment should be a factor in determining whether noncompliance has an impact on safety. Kolcraft notes that, to its knowledge, there has not been one incident of a child injured by a fire that originated in a child restraint in the last 19 years.

Based on the above factors, Kolcraft contends that its child restraint seat pads, by virtue of complying with the flammability requirements of FMVSS No. 302 when tested in the composite state and by passing the cigarette burn test contained in California Technical Bulletin 116, comply with the purpose and intent of FMVSS Nos. 213 and 302, and therefore, the noncompliance is inconsequential to motor vehicle safety.

The agency has reviewed Kolcraft's application and has determined that the noncompliance is inconsequential to motor vehicle safety. NHTSA agrees with Kolcraft that the noncompliant seat covers are unlikely to pose a flammability risk when they are securely sewn to the seat, which is the normal condition for these seats.

Kolcraft supported this point by performing flammability testing under two conditions: first on the seat and cover as a composite, i.e., as it exists on a child seat with the items sewn together; and second, by performing the cigarette burn test contained in California Technical Bulletin 116 on the seat covers in the composite state. In both cases, the seat cover burned at a rate below the four inches per minute maximum set out in FMVSS No. 302.

The agency granted an application for inconsequential noncompliance submitted by Century Products Co. (60 FR 41148) in which the circumstances were identical to those in this application. The granting of Century's application was based, in part, on the agency's decision to grant a petition for inconsequential noncompliance submitted by PACCAR (57 FR 45868) in which the circumstances were similar to those presented in the Century, and now, Kolcraft application. PACCAR manufactures mattresses for the sleeper areas of certain truck tractors. A small portion of the material used in the construction of the mattresses, and subject to the requirements of FMVSS No. 302, failed the burn rate test. The

agency determined that ignition of the noncompliant material was unlikely and, due to the small volume of the material, would not pose the threat of a serious fire if ignited. As a result of this analysis, the PACCAR petition was granted.

The circumstances here are similar to those in which the agency granted a petition for inconsequentiality by General Motors in connection with a noncompliance of the upper beam indicator, 56 FR 33323 (1991). The indicator was noncompliant only when the cigarette lighter was operating. The agency determined that the possibility of the upper beams being operated simultaneously with the cigarette lighter posed a very limited safety hazard. Similarly, it is unlikely that the various layers of the child restraint seat covers large enough to cause serious burn injuries would be separated from the remainder of the seat cover. Further, even if a large section of the seat cover was torn away, NHTSA considers the possibility that this material would be exposed to a potential ignition source to be extremely remote.

Although it is possible that fuel-fed fires from vehicle crashes could consume a vehicle's interior, the flammability of the seat cover materials would be irrelevant to the severity of such a fire and to the potential injuries incurred by a child.

NHTSA's evaluation of the consequentiality of this noncompliance should not be interpreted as a diminution of the agency's concern for child safety. Rather, it represents NHTSA's assessment of the gravity of the noncompliance based upon the likely consequences. Ultimately, the issue is whether this particular noncompliance is likely to increase the risk to safety. Although empirical results are not determinative, the absence of any reports of fires originating in these child restraints supports the agency's decision that the noncompliance does not have a consequential effect on safety.

For the above reasons, the agency has determined that Kolcraft has met its burden of persuasion that the noncompliance at issue here is inconsequential to motor vehicle safety and its application is granted. Accordingly, Kolcraft is hereby exempted from the notification and remedy provisions of 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118(d), 30120(h) delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 27, 1998.

L. Robert Shelton,
Associate Administrator for Safety
Performance Standards.

[FR Doc. 98-11783 Filed 5-1-98; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Modification of Exemption From the Vehicle Theft Prevention Standard; General Motors Corp.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of General Motors Corporation (GM) for an exemption of a high-theft line, the Oldsmobile Alero (formerly the Oldsmobile Achieva), from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the anti-theft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. GM requested confidential treatment for some of the information and attachments submitted in support of its petition. In a letter to GM dated November 26, 1997, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366-0846. Her fax number is (202) 493-2739.

SUPPLEMENTARY INFORMATION: In a petition dated October 25, 1997, General Motors Corporation (GM) informed the agency of its planned nameplate change for its Oldsmobile Achieva car line beginning with model year (MY) 1999. GM also informed the agency that the nameplate for the Oldsmobile Achieva will be changed to Oldsmobile Alero, and that the Alero car line will be a continuation of the Achieva line. The Achieva car line is subject to the parts-marking requirements of the theft prevention standard.

In its petition dated October 25, 1997, GM requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the Oldsmobile Alero car line. The petition is pursuant to 49 CFR part 543, Exemption From Vehicle Theft Prevention Standard, based on the installation of an anti-theft device as standard equipment for the entire line.

GM's submittal is considered a complete petition, as required by 49 CFR 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the anti-theft device for the new line. GM will install its "Passlock" anti-theft device as standard equipment on its MY 1999 Oldsmobile Alero car line.

In order to ensure the reliability and durability of the device, GM conducted tests based on its own specified standards. GM provided a detailed list of the tests conducted. GM stated its belief that the device is reliable and durable since the device complied with GM's specified requirements for each test.

GM compared the "Passlock" device proposed for the Alero car line with its first generation "PASS-Key" and "PASS-Key II" devices which the agency has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. GM believes that its "Passlock" anti-theft device will be at least as effective as the "PASS-Key" and "PASS-Key II" devices.

The following GM car lines have the "Passlock" device as standard equipment and have been granted a full exemption from the parts-marking requirements: The Chevrolet Cavalier, beginning with MY 1997 (see 61 FR 12132, March 25, 1996) and the Pontiac Sunfire, beginning with MY 1998 (see 62 FR 20240, April 25, 1997). The "Passlock" device provides the same kind of functionality as the "PASS-Key" and "PASS-Key II" devices, but features a coded lock cylinder rather than an electrically coded ignition key. The "Passlock" device utilizes an electronic sensor located near the ignition lock instead of a coded key, allowing the device to incorporate a standard key. GM stated that when the sensor detects proper lock rotation, it sends a code to the controller. If the correct code is received, fuel is enabled. If an incorrect code is received, fuel is disabled.

GM also stated that the theft rates, as reported by the National Crime

Information Center, are lower for GM models equipped with "PASS-Key"-like devices which have been granted exemptions from the parts-marking requirements than theft rates for similar, earlier models that have been parts-marked. Therefore, GM concludes that the "PASS-Key"-like devices are more effective in deterring motor vehicle theft than the parts-marking requirements of 49 CFR part 541. GM also concluded that based on the system performance of the "PASS-Key"-like devices on other GM models, and the similarity of design and functionality of the device on the Oldsmobile Alero to the "PASS-Key" device, GM believes that the agency should determine that the "Passlock" device will be at least as effective in reducing and deterring motor vehicle theft as the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

Based on comparison of the reduction in theft rates of Corvettes using a passive anti-theft system and audible/visible alarm with the reduction in theft rates for Chevrolet Camaro and Pontiac Firebird models equipped with a passive anti-theft device without an alarm, GM believes that an alarm or similar attention attracting device is not necessary and does not compromise the anti-theft performance of these systems.

The agency notes that the reason that the vehicle lines whose theft data GM cites in support of its petition received only a partial exemption from parts-marking was that the agency did not believe that the anti-theft device on these vehicles ("PASS-Key" and "PASS-Key II") by itself would be as effective as parts-marking in deterring theft because it lacked an alarm system. On that basis, it decided to require GM to mark the vehicle's most interchangeable parts (the engine and the transmission), as a supplement to the anti-theft device. Like those earlier anti-theft devices GM used, the new "Passlock" device on which this petition is based also lacks an alarm system. Accordingly, it cannot perform one of the functions listed in 49 CFR Part 542.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle.

Since deciding those petitions, however, the agency became aware that theft data shows declining theft rates for GM vehicles equipped with either version of the "PASS-Key" system. Based on that data, it concluded that the lack of a visual or audio alarm had not prevented the anti-theft system from being effective protection against theft and granted two GM petitions for full exemptions for car lines equipped with "PASS-Key II". See 60 FR 25939 (May 15, 1995) granting in full the petition for

Chevrolet Lumina and Buick Regal car lines equipped with "PASS-Key II"; and 58 FR 44874 (August 25, 1993), granting in full the petition for exemption of Buick Riviera and Oldsmobile Aurora car lines equipped with "PASS-Key II". In both of those instances, the agency concluded that a full exemption was warranted because "PASS-Key II" had shown itself as likely as parts-marking to be effective protection against theft despite the absence of a visual or audio alarm.

The agency concludes that, given the similarities between the "Passlock" device and the "PASS-Key" and "PASS-Key II" systems, it is reasonable to assume that "Passlock", like those systems, will be as effective as parts-marking in deterring theft. Accordingly, it has granted this petition for exemption in full and will not require any parts to be marked on the Oldsmobile Alero car line beginning with MY 1999.

The agency believes that the device will provide the types of performance listed in 49 CFR 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided about its antitheft device. This confidential information included a description of reliability and functional tests conducted by GM for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the MY 1999 Oldsmobile Alero car line from the parts-marking requirements of 49 CFR part 541.

If GM decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to

permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 29, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98-11782 Filed 5-1-98; 8:45 am]

BILLING CODE 4910-69-P

DEPARTMENT OF TRANSPORTATION

[STB Ex Parte No. 627]

Market Dominance Determinations—Product and Geographic Competition

AGENCY: Surface Transportation Board.
ACTION: Notice of Proposal to Eliminate Product and Geographic Competition From Consideration in Market Dominance Determinations.

SUMMARY: Pursuant to its decision in *Review of Rail Access and Competition Issues*, STB Ex Parte No. 575 (STB served Apr. 17, 1998), the Board is instituting a proceeding to consider removing product and geographic competition as factors in market dominance determinations in railroad rate proceedings. The Board requests that persons intending to participate in this proceeding notify the agency of that intent. A separate service list will be issued based on the notices of intent to participate that the Board receives.

DATES: Notices of intent to participate in this proceeding are due May 12, 1998. Comments on this proposal are due May 29, 1998. Replies are due June 29, 1998.

ADDRESSES: An original plus 12 copies of all comments and replies, referring to STB Ex Parte No. 627, must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Ex Parte No. 627, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

Copies of the written comments will be available from the Board's contractor, D.C. News and Data, Inc., located in Room 210 in the Board's building, D.C. News can be reached at (202) 289-4357. The comments will also be available for viewing and self copying in the Board's Microfilm Unit, Room 755.

In addition to an original and 12 copies of all paper documents filed with the Board, the parties shall submit their pleadings, including any graphics, on a 3.5-inch diskette formatted for WordPerfect 7.0 (or in a format readily convertible into WordPerfect 7.0). All textual material, including cover letters, certificates of service, appendices and exhibits, shall be included in a single file on the diskette. The diskettes shall be clearly labeled with the filer's name, the docket number of this proceeding, STB Ex Parte No. 627, and the name of the electronic format used on the diskette for files other than those formatted in WordPerfect 7.0. All pleadings submitted on diskettes will be posted on the Board's website (www.stb.dot.gov). The electronic submission requirements set forth in this notice supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in the Board's regulations. See 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527, 61 FR 52710, 711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).¹

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: In STB Ex Parte No. 575, the Board conducted two days of informational hearings, on April 2 and 3, 1998, to examine issues of rail access and competition in today's railroad industry, and the statutory remedies and agency regulations and procedures that relate to those matters. As a result of those hearings, we announced, *inter alia*, that we would commence a proceeding to consider eliminating the product and geographic competition factors of our market dominance guidelines in cases challenging the reasonableness of rail rates.²

Under 49 U.S.C. 10707, the Board can entertain a challenge to the reasonableness of a rail rate only if we

¹ A copy of each diskette submitted to the Board should be provided to any other party upon request.

² The current market dominance guidelines are set forth in *Product and Geographic Competition*, 2 I.C.C.2d 1, 20-22 (1985) (*Market Dominance III*).

first find that the rail carrier has market dominance over the traffic to which the rate applies, that is, that there is no effective competition for that traffic. In making that determination, we now consider four forms of competition that may effectively constrain the carrier's pricing: *intramodal competition* (whether the shipper could obtain the transportation service that it needs from other railroads); *intermodal competition* (whether the shipper could obtain service by another transportation mode); *product competition* (whether the shipper can use a suitable substitute product that can be acquired without relying on the services of the same carrier); and *geographic competition* (whether the shipper can obtain the product it needs from a different source and/or by shipping its goods to a different destination using another carrier). Shippers have the burden of showing that there is no effective intramodal and intermodal competition; carriers have the burden of identifying any product and geographic competition and showing its effectiveness.

At the Ex Parte 575 hearings, shippers complained about the difficulties associated with seeking rate relief from the Board today, particularly the complexity and burden of litigating issues of product and geographic competition, issues that they charge have transformed the threshold market dominance phase of a rail rate complaint into a full-blown antitrust-style case of its own. Shippers regard product and geographic competition issues as major, undue litigation obstacles that discourage captive shippers from even seeking regulatory relief from unreasonably high rates in both large and small rates cases. Accordingly, consistent with our determination in Ex Parte 575 to reexamine certain aspects of our current regulatory regime in the context of today's more consolidated rail industry—particularly those that concern the availability of regulatory relief—we are instituting this proceeding to consider eliminating product and geographic competition from our market dominance analysis.

We note that our predecessor, the Interstate Commerce Commission (ICC), initially concluded that consideration of product and geographic competition issues would complicate rate proceedings unduly. *Special Procedures for Making Findings of Market Dominance*, 353 I.C.C. 875, 905-06, modified, 355 I.C.C. 12 (1976) (*Market Dominance II*), *aff'd in relevant part sub nom. Atchison, T. & S.F. Ry. v. ICC*, 580 F.2d 623 (D.C. Cir. 1978). The ICC subsequently reversed course and

decided that consideration of these issues would be manageable. *Market Dominance Determinations*, 365 I.C.C. 118, 127-31 (1981) (*Market Dominance II*), *aff'd sub nom. Western Coal Traffic League v. United States*, 719 F.2d 772 (5th Cir. 1983) (*en banc*), *cert. denied*, 466 U.S. 953 (1984). Later, recognizing that it is inherently "much more difficult" for shippers to prove the ineffectiveness of these factors than of intramodal and intermodal competition, the ICC placed upon the railroads the burden of both identifying any product and geographic competition and demonstrating the effectiveness of such competition in individual cases. *Market Dominance III*, 2 I.C.C.2d at 15.

The comments presented in the Ex Parte 575 hearings suggest, however, that, even without bearing the burden of proof on these issues, shippers find that the product and geographic competition inquiry remains an imposing burden upon their ability to prosecute rail rate complaints. Aggressive use of the discovery process may be partly responsible for the heavy burdens associated with the inquiry into product and geographic competition, and we have recently taken action to prevent a rail carrier from effectively shifting those burdens onto a complaining shipper through unsupported and/or overreaching discovery demands. *FMC Wyoming Corp. et al. v. Union Pac. R.R.*, STB Docket No. 42022 (STB served Apr. 17, 1998). However, curbing individual instances of discovery abuses may not be sufficient to address the shippers' concerns. Therefore, we are instituting this proceeding to obtain public comment on whether we should eliminate product and geographic competition from consideration altogether.

Any person that wishes to participate as a party of record in this matter must notify us of this intent by May 12, 1998. In order to be designated a party of record, a person must satisfy the filing requirements outlined in the ADDRESSES section. We will then compile and issue a service list. Copies of comments and replies must be served on all persons designated on the list as a party of record. Comments on the proposal are due May 29, 1998; replies are due June 29, 1998.

A copy of this decision is being served on all persons on the service list in Ex Parte No. 575. This decision will serve as notice that persons who were parties of record in the Ex Parte 575 proceeding will not be placed on the service list in the Ex Parte 627 proceeding unless they notify us of their intent to participate therein.

The Board preliminarily certifies that the proposal to eliminate product and geographic competition from its market dominance analysis, if adopted, would not have a significant effect on a substantial number of small entities. While the proposal, if adopted, may ease the burdens on those prosecuting rate complaints, we do not expect it to affect a substantial number of small entities. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: April 28, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

[FR Doc. 98-11669 Filed 5-1-98; 8:45 am]

BILLING CODE 4910-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 200X)]

Norfolk and Western Railway Company; Abandonment Exemption; In Dickenson and Buchanan Counties, VA

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon 3.34 miles of its line of railroad between milepost CL-13.56 at Duty and milepost CL-16.90 at Clinchfield Coal in Dickenson and Buchanan Counties, VA.¹ The line traverses United States Postal Service Zip Codes 24217 and 24066.

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR

¹ On April 23, 1998, NW informed the Board that the actual mileage for the line is 3.34 miles instead of 3.3 miles as stated in its verified notice.

1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met. As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.*—*Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 3, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 14, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 26, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423. A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 8, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

³ Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

conditions will be imposed, where appropriate, in a subsequent decision. Pursuant to the provisions of 49 CFR 1152.29(e)(2), NW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NW's filing of a notice of consummation by May 4, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: April 23, 1998.

By the Board, David M. Konschnlk, Director, Office of Proceedings.

Vernon A. Williams, Secretary.

[FR Doc. 98-11517 Filed 5-1-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Commission to Study Capital Budgeting

AGENCY: Advisory Commission to the President of the United States.

ACTION: Notice of meetings.

SUMMARY: The agenda for the next meetings of the Commission to Study Capital Budgeting includes discussions and hearing of testimony on capital budgeting issues on Friday, May 8. On Saturday morning, May 9, the Commission will hear reports from its working groups studying different aspects of capital budgeting and discuss the next steps to be taken in preparation of its report. The Commission's final report on capital budgeting is due on December 13, 1998. Meetings are open to the public. Limited seating capacity is available.

Dates, Times and Places of the Next Commission Meetings

May 8, 1998, 9 a.m. to 5 p.m.

The Federal Courthouse
Conference Room 850, Eighth Floor
500 Pearl Street
New York, NY 10007

May 9, 1998, 9 a.m. to 12 noon

The Federal Courthouse
Conference Room 850, Eighth Floor
500 Pearl Street
New York, NY 10007.

The Commission is seeking all views on capital budgeting. Interested parties may submit their views to: President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258), Washington, DC 20503, Voice: (202) 395-4630, Fax: (202) 395-6170, E-Mail: capital_budget@eop.gov,

Website: <http://www.whitehouse.gov/wh/eop/omb/pcscbf/>.

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Designated Federal Official, Room 4456 Main Treasury, Washington, DC 20220, Voice: (202) 622-1285, Fax: (202) 622-1294, E-Mail: william.dinkelacker@treas.sprint.com.

Angel E. Ray,
Committee Management Officer.
[FR Doc. 98-11790 Filed 5-1-98; 8:45 am]
BILLING CODE 4810-25-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Zenith Insurance, Ltd.—Fraudulent Bonding

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is regarding Treasury Department Circular 570; 1997 Revision, published July 1, 1997, at 62 FR 35548.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6850.

SUPPLEMENTARY INFORMATION: Federal bond-approving officers are advised that Zenith Insurance Company, Woodland Hills, CA, a Treasury certified company, does not issue construction, bid, performance or payment bonds and is in no way related to Zenith Insurance, Ltd. Zenith Insurance, Ltd. is not a Treasury approved surety company.

Please refer to the State of California Department of Insurance Press Release #041, dated April 3, 1998, for additional information regarding Zenith Insurance, Ltd.

Questions related to the authenticity of Zenith bonds should be directed to Zenith Insurance company at (818) 587-5721. The authenticity of its bonds currently in force, that were written during the past year, should also be verified.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet at <http://www.fms.treas.gov/c570/index.html> or through our computerized public bulletin board system (FMS Inside Line) at (202) 874-6887. A hard copy of the Circular may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512-1800. When ordering the Circular from GPO, use the following stock number: 048000-00509-8.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20792.

Dated: April 27, 1998.

Mitchell A. Levine,
Assistant Commissioner, Financial
Information, Financial Management Service.
[FR Doc. 98-11800 Filed 5-1-98; 8:45 am]
BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98-32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98-32, Electronic Federal Tax Payment System (EFTPS) Programs for Reporting Agents.

DATES: Written comments should be received on or before July 6, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Electronic Federal Tax Payment System (EFTPS) Programs for Reporting Agents.

OMB Number: 1545-1601.

Revenue Procedure Number: Revenue Procedure 98-32.

Abstract: This revenue procedure provides information about the Electronic Federal Tax Payment System (EFTPS) programs for Batch Filers and Bulk Filers (Filers). EFTPS is an electronic remittance processing system for making federal tax deposits (FTDs) and

federal tax payments (FTPs). The Batch Filer and Bulk Filer programs are used by Filers for electronically submitting enrollments, FTDs, and FTPs on behalf of multiple taxpayers.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 620.

Estimated Time Per Respondent/Recordkeeper: 83 hours, 41 minutes.

Estimated Total Annual Reporting/Recordkeeping Burden Hours: 51,885.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 27, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98-11687 Filed 5-1-98; 8:45 am]

BILLING CODE 4830-01-U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Songs on Stone: James McNeill Whistler and the Art of Lithography," (see list),¹ imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Art Institute of Chicago from June 6 to August 30, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the Federal Register.

Dated: April 28, 1998.

Les Jin,

General Counsel.

[FR Doc. 98-11712 Filed 5-1-98; 8:45 am]

BILLING CODE 5230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Amended Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Social Security Administration (SSA) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The goal of this match is to compare income status as reported to VA with records maintained by SSA.

The Department of Veterans Affairs plans to match records of veterans and surviving spouses and children who receive pension, and parents who receive DIC, with the Master Beneficiary Record (MBR) and Master Earnings File (MEF) maintained by SSA.

VA will use this information to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to ensure accurate reporting of income.

¹ A copy of this list may be obtained by contacting Ms. Carol Epstein, Assistant General Counsel, at 202/619-6981. The address is U.S. Information Agency, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

RECORDS TO BE MATCHED: The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) first published at 41 FR 9294, March 3, 1976 and last amended at 63 FR 7196, February 12, 1998. The SSA records consist of information from SSA "Master Beneficiary Record (MBR) 09-60-0090," published at 60 FR 2144, January 6, 1995 and last amended October 11, 1995 at 60 FR 52948 (Routine Use #24(b)). In the absence of MBR data, SSA will attempt to verify the SSN in VA records using the Master Earnings File (MEF) 09-60-0059," published at 59 FR 62407 December 5, 1994 and last amended 62 FR 11939, March 13, 1997 (Routine Use #26). In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100-503.

The match will start no sooner than 30 days after publication of this Notice in the *Federal Register*, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the

ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested individuals may submit written comments to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between 8 a.m. and 4:30 p.m., Mondays through Fridays, except holidays.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (213B), (202) 273-7218.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: April 22, 1998.

Togo D. West, Jr.,

Acting Secretary of Veterans Affairs.

[FR Doc. 98-11713 Filed 5-1-98; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

A Nursing Home/Residential Care Facility at VA Palo Alto Health Care System

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the VA Palo Alto Health Care System (VAPAHCS) for an Enhanced-Use lease development. The Department intends to enter into a long-term lease of real property with the developer whose proposal will provide improved quality and access to nursing home/residential care services while offering a return of "in-kind" services to VA which will further enhance quality of care to veteran patients at VAPAHCS.

FOR FURTHER INFORMATION CONTACT:

Jacob Gallun, Office of Asset and Enterprise Development (189), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 565-4307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: April 23, 1998.

Togo D. West, Jr.,

Acting Secretary.

[FR Doc. 98-11714 Filed 5-1-98; 8:45 am]

BILLING CODE 8320-01-M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N-0044]

RIN 0910-AA59

Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure or Function of the Body

Correction

In proposed rule document 98-11294, appearing on pages 23624-23632, in the issue of Wednesday, April 29, 1998, the running head "Rules and Regulations" should read "Proposed Rules".

BILLING CODE 1506-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39413; File No. SR-PCX-97-37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to Market Maker Outside Trading Accounts

Correction

In notice document 98-32756 beginning on page 65840, in the issue of Tuesday, December 16, 1997, under the subject heading, insert "December 8, 1997."

BILLING CODE 1506-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release 34-39700; International Series Release No. 1122; File No. 600-20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of and Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

Correction

In notice document 98-5550 beginning on page 10669, in the issue of

Federal Register

Vol. 63, No. 85

Monday, May 4, 1998

Wednesday, March 4, 1998, make the following correction:

On page 10670, in the first column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1506-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39635; File No. SR-PCX-97-21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Suspension of Its Automatic Execution System ("Auto-Ex") During Unusual Market Conditions

Correction

In notice document 98-3999 beginning on page 8246, in the issue of Wednesday, February 18, 1998, under the subject heading, insert "February 9, 1998."

BILLING CODE 1506-01-D

federal register

Monday
May 4, 1998

Part II

Environmental Protection Agency

40 CFR Parts 148, et al.
Organobromine Production Wastes;
Identification and Listing of Hazardous
Waste; Land Disposal Restrictions;
Listing of CERCLA Hazardous
Substances, Reportable Quantities; Final
Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[FRL-5999-9]

RIN 2050-AD79

Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is adding two new hazardous waste codes to its current lists of hazardous waste found in 40 CFR part 261. One waste type to be added and designated by the hazardous waste code K140 is floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol. The second waste is 2,4,6-tribromophenol and is being added both to the list of commercial chemical products, designated by the hazardous waste code U408 and to the list of hazardous constituents in Appendix VIII of 40 CFR part 261. EPA is also modifying the land disposal treatment standards for hazardous waste in 40 CFR part 268 by adding these new wastes. The effect of listing this waste will be to subject it to stringent management and treatment standards under RCRA, as well as to emergency notification requirements for releases of hazardous substances to the environment. These notifications are required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) and the Emergency Planning and Community Right to Know Act (EPCRA). EPA is also issuing Reportable Quantity (RQ) requirements for these notifications. EPA has made a final determination not to list as hazardous ten waste streams from the production of bromochloromethane, ethyl bromide,

tetrabromobisphenol A, 2,4,6-tribromophenol wastewaters, octabromodiphenyl oxide, and decabromodiphenyl oxide.

DATES: Effective Date: November 4, 1998.

ADDRESSES: The official record of this action is identified by Docket number F-98-OBLF-FFFFF and is located at the following address: EPA Docket Clerk, U.S. EPA, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (703) 603-9230. The public may copy 100 pages from the docket at no charge; additional copies are \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424-9346 (toll-free) or (703) 412-9810, in the Washington, DC metropolitan area. The TDD Hotline number is (800) 553-7672, or (703) 486-3323, locally. For technical information on the final listing determination, contact Anthony Carrell at (703) 308-0458, or carrell.anthony@epamail.epa.gov.

For technical information on the CERCLA aspects of this rule, contact: Elizabeth Zeller, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 603-8744.

SUPPLEMENTARY INFORMATION:

This rule is available on the Internet. Please follow these instructions to access the rule electronically: From the World Wide Web (WWW), type <http://www.epa.gov/epaoswer>, then select option for Rules and Regulations.

The official record for this action is kept in a paper format, and is maintained at the address in the **ADDRESSES** section at the beginning of this document.

- I. Affected Entities
- II. Legal Authority
- III. Summary of the Proposed and Final Rules
 - A. Background Analysis
 - B. Summary of Proposed Rule
 - C. Additional Opportunity to Comment

- D. Final Rule
- IV. Response to Comments
 - A. Development of Structure-Activity Relationship (SAR) Analyses
 - B. Why the SAR Analysis of 2,4,6-TCP and 2,4,6-TBP Constitutes a Scientific Study That Shows Toxic Effects
 - C. Issues Regarding the Use of Structure-Activity Relationship (SAR) Analysis
 - D. Addition of Constituent to Appendix VIII
 - E. Plausible Mismanagement Scenario and Other Issues in the Listing Determination for Waste Solids From the Production of 2,4,6-Tribromophenol
 - F. Listing Determination for Wastes From the Production of Tetrabromobisphenol-A
 - G. Other Issues
- V. Conclusions
- VI. Land Disposal Restrictions
 - A. Treatment Standards for Organobromine Waters
 - B. Applicable Technology
 - C. Capacity Analysis Results Summary
- VII. Waste Minimization Opportunities in the Industry
- VIII. State Program Implementation
 - A. Applicability of Rules in States
 - B. Effect on State Authorizations
- IX. Compliance and Implementation
 - A. Section 3010 Notification
 - B. Compliance Dates for Facilities
- X. Listing as CERCLA Hazardous Substances and RQ Adjustment
- XI. Regulatory Impact Analysis and Compliance Costs
 - A. Regulatory Impact Analysis Pursuant to Executive Order 12866
 - B. Regulatory Flexibility Analysis
- XII. Paperwork Reduction Act
- XIII. Unfunded Mandates Reform Act
- XIV. National Technology Transfer and Advancement Act
- XV. Submission to Congress and the General Accounting Office

I. Affected Entities

Entities potentially affected by this action are those which handle either the waste stream or the chemical being added to EPA's list of hazardous wastes under RCRA, and to the CERCLA list of hazardous substances, entities which need to respond to releases of hazardous substances, states that are required to adopt RCRA hazardous waste programs. Affected entities include:

Category	Affected entities
Industry	Generators of the listed waste solids and filter cartridges from the production of 2,4,6-tribromophenol; or the product 2,4,6-tribromophenol, or entities that treat, store, transport, or dispose of these wastes.
State, Local, Tribal Govt	State and Local Emergency Planning entities.
Federal Govt	National Response Center, and any Federal Agency that handles the listed waste or chemical.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists

those entities that EPA now is aware potentially could be affected by this action. Other entities not listed in the table also could be affected. To

determine whether your facility is regulated by this action, you should examine 40 CFR parts 260 and 261 carefully in concert with the amended

rules found at the end of this **Federal Register** document. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Legal Authority

These regulations are promulgated under the Solid Waste Disposal Act (SWDA), as amended by various other Acts over time. These statutes are commonly referred to as the Resource Conservation and Recovery Act (RCRA) and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 through 6992k (42 U.S.C. 6901-6992k).

Section 3001(a) of RCRA, 42 U.S.C. 6921(a), requires EPA to promulgate criteria for identifying characteristics of hazardous wastes and for listing hazardous wastes. Section 3001(b) of RCRA requires EPA to promulgate regulations, based on these criteria, identifying and listing hazardous wastes which shall be subject to the requirements of RCRA Subtitle C.

Hazardous waste is defined at section 1004(5) of RCRA, 42 U.S.C. 6903(5). There are two types of hazardous waste. First, hazardous wastes are those solid wastes which may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness. In addition, hazardous wastes are those solid wastes which may pose a substantial present or potential hazard to human health or the environment when improperly managed.

EPA's regulations establishing criteria for listing hazardous wastes are codified at volume 40 of the Code of Federal Regulations (CFR) at § 261.11 (40 CFR 261.11). Section 261.11 states three criteria for identifying characteristics and for listing wastes as hazardous.

First, wastes may be classified as "characteristic" wastes if they have the properties described at 40 CFR 261.20 which would cause them to be classified as having the characteristics of ignitability, corrosivity, reactivity and toxicity.

Second, wastes may be classified as acute hazardous wastes if they are fatal to humans at low doses, lethal in animal studies at particular doses designated in the regulation, or otherwise capable of causing or significantly contributing to an increase in serious illness.

Third, wastes may be listed as hazardous if they contain hazardous constituents identified in appendix VIII of 40 CFR part 261 and the Agency concludes, after considering eleven factors enumerated in § 261.11(a)(3), that the waste is capable of posing a

substantial present or potential hazard to human health or the environment when improperly managed. Under § 261.11(a)(3), a substance is listed in appendix VIII if it has been "shown in scientific studies" to have toxic effects on life forms.

Wastes listed as hazardous are subject to federal requirements under RCRA for persons who generate, transport, treat, store or dispose of such waste. Facilities that must meet the hazard waste treatment, storage and disposal requirements, including the need to obtain permits to operate, are commonly referred to as RCRA Subtitle C or "Subtitle C" facilities. Subtitle C is Congress' original statutory designation for that part of RCRA that directs EPA to issue regulations for hazardous wastes as may be necessary to protect human health or the environment. Thus, facilities like incinerators or landfills that are required to comply with RCRA requirements for hazardous waste are referred to as Subtitle C incinerators or landfills.

Subtitle C is codified as Subchapter III of Chapter 82 (Solid Waste Disposal) of Volume 42 of the United States Code, 42 U.S.C. 6921 thru 6939e. EPA standards and procedural regulations implementing subtitle C are found generally at 40 CFR parts 260 through 272.

Section 3001(e)(2) of RCRA (42 U.S.C. 6921(e)(2)) requires EPA to determine whether to list, as hazardous, wastes generated by various chemical production processes, including the production of organobromines.

Solid wastes which are not hazardous wastes may be disposed of at facilities which are overseen by state and local governments. These are the so-called subtitle D facilities. Subtitle D is Congress' original statutory designation for that part of RCRA which deals with non-hazardous solid waste.

Subtitle D is codified as Subchapter IV of Chapter 82 (Solid Waste Disposal) of Volume 42 of the United States Code (42 U.S.C. 6941 thru 6949a). EPA regulations affecting subtitle D facilities are found generally at 40 CFR parts 240 thru 247, and 255 thru 258.

In response to the mandate on organobromine production wastes in RCRA section 3001(e)(2), the Agency undertook a two-year study of the industry and, eventually, listed several wastes from the production of ethylene dibromide (EDB) and methyl bromide.

The final rule listing wastes from the production of EDB was published in the **Federal Register** on February 13, 1986 (51 FR 5327). These wastes are listed in Title 40 of the Code of Federal Regulations § 261.32 (40 CFR 261.32)

and are designated by EPA hazardous waste numbers K117, K118, and K136. The final rule listing wastes from methyl bromide production was published on October 6, 1989 (54 FR 41402). These wastes are listed at 40 CFR 261.32 and are designated by hazardous waste codes K131 and K132. Methyl bromide and ethylene dibromide are also on the Appendix VIII list of hazardous constituents.

In June of 1991, EPA entered into a proposed consent decree in a lawsuit filed by the Environmental Defense Fund, et al. (*EDF v. Reilly*, Civ. No. 89-0598 (D.D.C.)), in which the Agency agreed, among other things, to publish proposed and final determinations whether to list wastes from the production of the five other organobromine chemicals evaluated in this rulemaking.

Under a recently lodged proposed consent order in that case, the Agency is required to promulgate on or before April 15, 1998 a final decision on whether or not to list these wastes as hazardous. The Agency reserves the right to evaluate wastes from the production of other organobromine compounds in the future, if and when such an evaluation is deemed necessary.

III. Summary of the Proposed and Final Rules**A. Background Analysis**

To provide a sound technical basis for this listing determination, EPA conducted a study of the organobromine chemicals industry in 1991 and 1992. Six firms were identified as currently manufacturing organobromine chemicals at eight facilities in the United States. The majority of organobromine chemicals are currently sold as flame retardants. Most are solid compounds that are incorporated into polymers, which are then used in a variety of products. Smaller volumes of organobromine chemicals are used as reagent chemicals and pharmaceutical intermediates. Under the authority of RCRA Section 3007, EPA sent questionnaires to these firms and four of them were selected for engineering site visits. These four facilities account for over 99 percent of total domestic production. Samples of process residuals were collected during the site visits to familiarize the Agency with the types of materials generated by the industry. Later in the study, record samples to be used as part of the technical basis to decide whether a listing rule is appropriate were collected at facilities of the two largest domestic producers. EPA published a proposed rule on the listing of organobromine

wastes in the *Federal Register* on May 11, 1994 (59 FR 24530). The Listing Background Document for this proposed listing determination contains a detailed description of the Agency's basis for proposing to list this waste stream, and for proposing not to list nine other waste streams; EPA proposed to defer action on one waste. The public version of this document, which does not contain confidential business information, can be copied at the RCRA public docket. See ADDRESSES section.

The third criterion described above for listing hazardous wastes in 40 CFR 261.11, is applicable to the listing of organobromine wastes. That is, wastes may be listed if they contain hazardous constituents identified in Appendix VIII of 40 CFR Part 261 and the Agency concludes the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed.

With respect to the other two criteria, the wastes under consideration here are not acutely hazardous. Further, "characteristic" wastes, in general, are not listed separately, since their classification depends upon whether, on a case-by-case basis, they qualify as wastes based on various tests described in the regulations. EPA notes that any of the organobromine wastes could be classified as "characteristic" wastes if they "fail" the applicable tests.

B. Summary of Proposed Rule

Consistent with its regulations, EPA, before proposing to list the organobromine production wastes determined whether there were present any Appendix VIII constituents and whether there was information on any other constituents of the waste that could lead to health or environmental concerns. The health effects data, along with other factors (generally related to exposure) required to be considered under 40 CFR 261.11(a)(3), were then evaluated to decide whether the wastes should be listed as hazardous wastes.

In this rulemaking EPA has considered all relevant factors for each waste stream. The critical factors, which vary depending on the individual waste stream, were identified in the rulemaking record for the proposal and are summarized at 59 FR 24536 to 24541. The record for this rule contains responses to all comments submitted on the relevant factors.

EPA proposed not to list as hazardous nine waste streams from the production of organobromine compounds. The Agency also proposed to defer action on the listing determination for one waste stream from the manufacture of tetrabromobisphenol A (TBBPA)

because of inadequate information on the process. In the proposal the Agency stated, "Based on comments received, including any data, EPA may choose, rather than deferring, to promulgate a final determination either to list or not to list tetrabromobisphenol A waste as a hazardous waste under RCRA" (59 FR 24537).

EPA proposed to list as hazardous one waste stream from the production of 2,4,6-tribromophenol (2,4,6-TBP). The listing of this waste, as noted above, required consideration of whether an Appendix VIII constituent was present. While none of the constituents had been listed in Appendix VIII at the time of proposal, EPA did consider that the 2,4,6-tribromophenol present in the waste would likely qualify for Appendix VIII listing. Accordingly, along with the proposed hazardous waste listing, EPA proposed to include 2,4,6-tribromophenol in Appendix VIII.

The proposed addition to Appendix VIII is discussed at 59 FR 24531 and 24538. While EPA did not have a laboratory study directly showing that 2,4,6-tribromophenol has toxic effects on life forms, the Agency explored the use of structure-activity relationships to determine whether, nevertheless, there are other types of scientific studies that could indirectly show that this compound has toxic effects and, thereby, qualify for listing on Appendix VIII under 40 CFR 261.11(a)(3). Structure-activity relationships involve the use of health effects information for a compound with a chemical structure and properties very similar to those of the chemical of concern. The Agency determined that this technique could be used for 2,4,6-tribromophenol because the chemical behavior and mechanism of action for this compound is expected to be similar to its chlorinated analogue, 2,4,6-trichlorophenol.

After considering the data supporting the Appendix VIII listing determination and factors under 40 CFR 261.11(a)(3), EPA proposed to list as hazardous waste solids and filter cartridges from the production of 2,4,6-tribromophenol and designate it as K140. These waste solids consisted of floor sweepings and off-specification product from the production of 2,4,6-tribromophenol. EPA also proposed to add 2,4,6-tribromophenol to the list of commercial chemical products (as U408) that are hazardous wastes if discarded (40 CFR 261.33).

Under section 102(b) of CERCLA, all hazardous wastes newly listed under CERCLA have statutory reportable quantities (RQs) of one pound unless and until adjusted by regulation. Waste U408 is 2,4,6-tribromophenol, an

individual hazardous substance. Based on its evaluation, the Agency proposed an adjusted RQ of 100 pounds for 2,4,6-tribromophenol.

The only hazardous constituent identified in the other waste proposed for listing, K140, is 2,4,6-tribromophenol. In accordance with the RQ adjustment methodology for hazardous waste streams, the RQ for K140 is being adjusted to 100 pounds based on the 100 pound RQ of its only hazardous constituent, 2,4,6-tribromophenol.

C. Additional Opportunities To Comment

In the original listing determination, EPA presumed that the plausible management scenario for the 2,4,6-tribromophenol waste solids was disposal in an unlined landfill. This was critical in the Agency's determining that the waste presented a substantial risk. However, comments on the rule by the only manufacturer of 2,4,6-tribromophenol showed that these wastes had been sent voluntarily, over a period of more than fifteen years, to a number of different Subtitle C landfills. Accordingly, EPA reevaluated the management scenario to comport with the actual Subtitle C disposal scenarios.

Since EPA's reexamination evaluated information not previously placed in the record, the Agency provided notice of this new information and its reevaluation in a letter dated September 3, 1997. This letter, sent to three commenters on the original proposal who were expected to have a direct interest in the listing of the particular waste, added additional information to the rulemaking record and explained the Agency's new rationale for listing the 2,4,6-tribromophenol waste solids.

EPA received comments from the three entities that received the notice letter. One commenter supported the decision to list 2,4,6-TBP production wastes, and two opposed the listing. The substance of the September 3 letter and EPA's response to the comments appears below in Unit IV.E. The Unit IV.E. deals with response to comments on the plausible mismanagement scenario for the 2,4,6-tribromophenol waste solids.

The commenter supporting the listing decision also argued that EPA underestimated the risks posed by disposal of the 2,4,6-TBP waste in a Subtitle C landfill, because EPA had ignored the presence of other toxic contaminants in the waste. The Agency reexamined the analytical data for the waste samples from the 2,4,6-tribromophenol production waste.

Based on that reexamination, EPA found that the waste contained another toxic constituent (ethylene dibromide) that appeared to further support the listing. EPA provided additional notice of this additional constituent to the interested party that is the sole generator of the waste in a letter dated January 14, 1998. The generator submitted comments on this second notice letter, and Unit IV.E also discusses the Agency's responses to these comments.

D. Final Rule

The final rule promulgated today is based on consideration of all comments submitted on the proposed rule, including those submitted in response to the reevaluation in the September 3 letter, and all relevant information available in the rulemaking record. Today's rule issues the final listing for 2,4,6-tribromophenol as a hazardous constituent in Appendix VIII of 40 CFR

part 261, promulgates the listing of floor sweeping, off-specification product and spent filter media from the production of 2,4,6-tribromophenol as hazardous waste K140 (40 CFR 261.32) and lists the 2,4,6-tribromophenol commercial chemical product as a hazardous waste when discarded, with a waste code of U408 (40 CFR 261.33 (f)). These listings are based on the presence in the waste of 2,4,6-tribromophenol. EPA also has determined not to list any of the other wastes described in the proposed rule, including wastes from the production of tetrabromobisphenol A, on which the Agency had originally proposed to defer a final decision.

Also included in today's final rule, the Agency is adding 2,4,6-tribromophenol and K140 to the list of CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4. CERCLA defines the term "hazardous substance" chiefly by reference to various Federal

environmental statutes. For example, the term includes "any hazardous waste having the characteristics identified under or listed pursuant to RCRA Section 3001." Thus, on the effective date of today's rulemaking, when 2,4,6-tribromophenol and K140 are added as RCRA hazardous wastes, these wastes automatically become CERCLA hazardous substances. In today's final rule, EPA also is adjusting the reportable quantities (RQs) for 2,4,6-tribromophenol (U408) and K140 to 100 pounds in Table 302.4 of 40 CFR part 302.

In the subsequent sections of today's notice, EPA responds to public comments received on the proposal and on the reevaluations and provides its reasons for changing the final rule from proposal or declining to make changes suggested by commenters. Table 1 summarizes the basis for the listing determinations.

TABLE 1.—BASIS FOR LISTING DETERMINATIONS

Product	Waste stream	Analysis	Decision
Dibromomethane	Filters	Very small volume (less than 1 kg/yr) One producer.	No List.
	Wastewaters	Deep-well injected at site with approved no-migration petition (only one producer).	No List.
Ethyl Bromide	Filters	Very small volume stream (less than 1.5 kg/yr) ..	No List.
	Wastewaters	Only constituent identified is ethanol at low concentration.	No List.
Tetrabromobisphenol A ..	Wastewaters	Stream is already listed as K131 for methyl bromide. Also contains 15,000 ppm tribromophenol.	Already listed waste.
Octabromodiphenyl oxide	Filter cake	Toluene and brominated dibenzofurans present at levels below concern. Assuming worst case for leachate, risk for the maximally exposed individual estimated to be below 10 ⁻⁶ for octabromodiphenyl oxide.	No list.
	Wastewaters	Major constituent of concern, brominated dibenzofurans, shows minimal risk; solubility of octabromodiphenyl oxide is very low; modeling of worst case for wastewaters showed risk below 10 ⁻⁶ for octabromodiphenyl oxide.	No list.
Decabromodiphenyl oxide	Filter cake	The major constituent in waste (decabromodiphenyl oxide) could not be quantified. Assuming worst case for leachate, risk below 10 ⁻⁶ level because of very low solubility for this chemical.	No list.
	Wastewaters	The major constituent in waste (decabromodiphenyl oxide) could not be quantified. Assuming worst case for leachate, risk below 10 ⁻⁶ level because of very low solubility.	No list.
Tetrabromobisphenol A ..	Off-specification product	Tetrabromobisphenol A is of relatively low toxicity and has limited mobility. Levels of tribromophenol in leachate are below those for concern.	No list.
Tribromophenol	Wastewaters	Used structure activity relationship analysis for tribromophenol. Data collected indicate releases during deep-well injection are not likely to occur or would be of low risk. Tribromophenol not detected in groundwater at site.	No list.

TABLE 1.—BASIS FOR LISTING DETERMINATIONS—Continued

Product	Waste stream	Analysis	Decision
	Floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol; discarded commercial chemical product.	Used structure activity relationship analysis to show carcinogenicity of tribromophenol. High concentration of chemical in solids and TCLP leachate. Mobile in leachate and would present high risk if released from landfill, even a Subtitle C landfill.	List as hazardous waste (K140) and commercial chemical product (U408).

IV. Response to Comments

Seven parties submitted comments on the proposed rulemaking. Comments were received from two companies that manufacture bromine products, one trade association representing industrial chemical producers, two manufacturers of chemical products other than bromines, one company involved in the treatment and destruction of hazardous and toxic wastes, and one environmental interest group. The major issue addressed by commenters to the original proposal was the Agency's use of structure-activity relationship (SAR) analysis to support a listing determination. The major issue addressed with respect to the September 3 reevaluation was on EPA's use of Subtitle C landfills as a mismanagement scenario for modeling purposes and the assessment of risk relating to Subtitle C landfills. EPA also discusses the January 14, 1998 reevaluation of additional constituents found in the 2,4,6-TBP production wastes. More detailed summaries of the comments and complete Agency responses are provided in the Public Comment Summary & Response Document and the Supplementary Comment Summary & Response Document prepared for comments on the September 3, 1997, and January 14, 1998 letters. These documents are included as appendices to the Listing Background Document supporting today's rule (available in the public docket—see ADDRESSES section).

Before addressing the public comments in detail, some of the basic concepts related to the use of SAR analysis for this rulemaking are addressed here.

A. Development of Structure-Activity Relationship (SAR) Analyses

1. Principles Related to SAR Analyses

In the preamble to the proposed rule, EPA briefly discussed the basis for using SAR analyses for regulatory purposes. The scientific process used in SAR analysis also was presented in *Development of Provisional Human Health Reference Value for 2,4,6-Tribromophenol* and the Listing Background Document for the proposed listing (henceforth collectively termed "the Listing Background Document.") SAR analyses are based on the observation that structurally similar compounds have similar chemical properties. Thus, they may be absorbed, distributed, and metabolized in similar ways, and may have similar mechanisms of action and toxic properties. If two compounds or a group of compounds are chemically related, toxicologic data for one or more compounds in the group can be used to predict the toxicologic effects of other compounds in the group. The more closely related two compounds are, the more similar their toxic properties are likely to be.

The validity of SAR analysis is related to the degree of similarity of the candidate (the compound for which adequate toxicity information are lacking) and the surrogate (the chemical used as the basis for the analysis), and the amount of information available on how any differences between the two chemicals affects their activity. Because chemical similarity plays a critical role in SAR analysis, this discussion begins with a brief primer on chemical structure.

The periodic table of the elements arranges elements in order of increasing atomic number, in a manner that shows their chemical relatedness. Elements

that are in the same column on the periodic table have the same number of electrons in their outer shell, and are chemically similar. Elements that lack one electron in their outer shell are in the same column, and are called halogens. This group includes fluorine, chlorine, bromine, and iodine, which react in chemically similar ways. Bromine and chlorine are the most similar halogens; fluorine binds to carbon much more strongly than do chlorine or bromine, while the reactivity of iodine is also influenced by its larger size. When chemical groups replace the hydrogen atoms in organic (carbon-containing) molecules, the molecules are called "substituted." The chemical groups that do the substituting are called "substituents," and play a large role in determining the chemical reactivity of the compound.

Figure 1 compares the structures of the two compounds studied in the SAR analysis, and shows the structure of the parent compound, phenol. 2,4,6-Trichlorophenol (TCP) is phenol with chlorine substitution at the 2-, 4-, and 6-positions. Similarly, 2,4,6-tribromophenol (TBP) is phenol with bromine substitution at the 2-, 4-, and 6-positions. Thus, the two compounds are phenols substituted with closely related halogens at the same positions. Note that both the position and number of substitutions are the same in the two compounds. If the two compounds were substituted by different numbers of halogen atoms, or at different positions from each other, they would be expected to be less similar chemically and physically. This is because both the type and location of the substitution contribute to the electronic, steric, and other attributes of the molecule.¹

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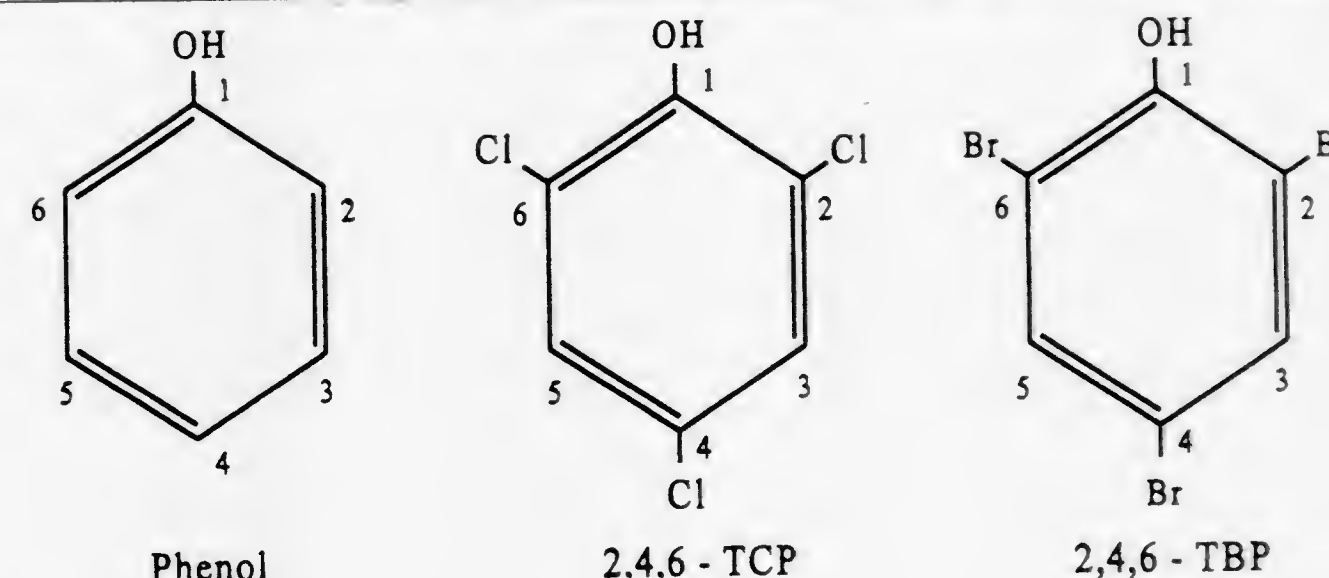


Figure 1 - Structures of 2,4,6 - TCP, 2,4,6 - TBP, and the parent compound, phenol.

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2. Structure-Activity Relationship Analysis

In the proposed rule, EPA developed a Quantitative SAR (QSAR) analysis for 2,4,6-TBP using 2,4,6-TCP as the surrogate, and attempting to adjust the cancer slope factor based on the closely-related electronic properties of bromine and chlorine. However, EPA received a number of comments stating that this analysis was too oversimplified to be reliable. In particular, commenters stated that additional parameters should be used in such an analysis. It was suggested that data on hydrophobicity (a description of the degree to which a compound repels water) and steric effects be incorporated into the analysis. Information on the hydrophobicity of a molecule is relevant to understanding how a molecule distributes in the body (e.g., fatty tissues versus blood), whether it accumulates in the fat, and the ease or difficulty with which the molecule may move across cell membranes to its site of action. This attribute of a molecule is often expressed as the octanol-water partition coefficient, which quantitatively indicates the degree to which the compound partitions to either water or lipid materials. The water solubility of a molecule, i.e., the amount that will dissolve in pure water, also influences the octanol-water partition coefficient. Steric (spatial) effects, which are caused by the different orientation of atoms in space relative to each other, are

important because they provide information on whether the molecule's size and shape allow it to interact with receptors in biological systems, such as enzymes, hormones, and genetic material.

EPA has re-evaluated the SAR analysis in light of these comments, and agrees that additional parameters could have been considered; however, available data are insufficient to adequately account for these additional parameters. Despite the lack of adequate information to evaluate all parameters affecting the relative toxicity of 2,4,6-TCP and 2,4,6-TBP, the Agency believes that these compounds are so similar that it is appropriate to use the 2,4,6-TCP slope factor as an estimated slope factor for 2,4,6-TBP. Many of the toxicological similarities are discussed further in the following sections. In addition, the very factors suggested by comments for consideration, as noted above, provide a further basis for showing how these two chemicals are closely related. For example, when the Agency adjusted the slope factor for electronic effects, the change was less than 1%. Also, a key measure of hydrophobicity, the log of the octanol-water partition coefficients (log K_{ow}), is similar for these two chemicals; the values of log K_{ow} are 4.23 for 2,4,6-TBP and 3.69 for 2,4,6-TCP. All of these factors lead the Agency to conclude that 2,4,6-TCP can be used as a direct surrogate for 2,4,6-TBP.

3. 2,4,6-TBP Slope Factor and Risk Estimate

Although EPA is using the 2,4,6-TCP cancer slope factor as a default for 2,4,6-TBP, the Agency examined the impact of modifying the cancer slope factor in response to public and favorable peer reviewer comment, to account for the difference in molecular weight of 2,4,6-TCP and 2,4,6-TBP.

The molecular weight of a compound is the weight in grams of a specified number (a mole) of molecules of that compound, and is used to convert between the weight of a sample of a compound and a measure of the number of molecules in that sample.² Because a bromine atom is heavier than a chlorine atom, one gram of 2,4,6-TBP has fewer molecules in it than does a gram of 2,4,6-TCP, and therefore a gram of 2,4,6-TBP would be less potent than a gram of 2,4,6-TCP, all other things being equal. This is because chemically-induced cancer results from molecules binding to DNA or to another molecule in the body,³ and, therefore, a compound's cancer potency is related most directly to the number of molecules administered (rather than the weight alone). As a result, the 2,4,6-TCP slope factor may be multiplied by the

² Waser, J., K.N. Trueblood, and C.M. Knobler. 1976. *Chem One*. New York, NY: McGraw-Hill pp. 25-29.

³ William, G.M. and J.H. Weisburger. 1991. *Chemical carcinogenesis*. In: Amdur, M.O., J. Doull, and C.D. Klaassen. *Casarett and Doull's Toxicology: The Basic Science of Poisons*, 4th ed. New York, NY: Pergamon Press. pp. 127-200.

¹ Waser, J., N. Trueblood, and C. M. Knobler. 1976. *Chem One*. New York, NY: McGraw-Hill pp. 25-29.

ratio of the 2,4,6-TCP molecular weight (197) to the 2,4,6-TBP molecular weight (331). Adjusting for molecular weight would result in a default value for the 2,4,6-TBP CSF of 6.5×10^{-3} (mg/kg/day)⁻¹, compared with 1.1×10^{-2} (mg/kg/day)⁻¹ for 2,4,6-TCP. If this slope factor were applied in a risk analysis in the preamble to the proposed rule, it would have little effect on results. Using the corrected cancer risk factor, the estimated individual risk from exposure to 2,4,6-TBP in groundwater would be 4.2×10^{-4} and 1.2×10^{-5} for the off-specification product and the filter cartridges, respectively, compared with risks of 7×10^{-4} and 2×10^{-5} calculated without the correction in the proposed rule. These changes are minor and would not change the Agency's decision, i.e., the risks posed by these wastes warrant control through listing.

4. Notice and Comment for the Use of an SAR

To check its analysis, EPA subjected it to both internal Agency review and external peer review. External peer review was solicited on a draft of the Public Comment Summary & Response Document. As background, the peer reviewers were provided the risk assessment section of the Listing Background Document for the proposal and the public comments on that part of the proposal. Three individuals with experience in SAR analyses were asked: (1) Is the SAR presented for 2,4,6-TBP sufficiently rigorous to be scientifically defensible and could the reviewers identify major areas of uncertainty with the analysis? (2) Is it appropriate for the Agency to conclude that 2,4,6-TCP and 2,4,6-TBP are similar and is 2,4,6-TCP an appropriate surrogate for 2,4,6-TBP? (3) Was all of the available information about the mechanism of toxicity for 2,4,6-TBP considered? (4) Is there any genetic toxicity data that could be included in the analysis? and (5) Could any additional information be provided to strengthen the Agency's conclusions?

All three peer reviewers agreed that a SAR analysis was appropriate for this rule. Additionally, the peer reviewers agreed that 2,4,6-TCP is the most appropriate surrogate for 2,4,6-TBP, and that it is appropriate to use the cancer potency factor for 2,4,6-TCP as a default value for 2,4,6-TBP. (One commenter also suggested that the potency factors be adjusted for the differences in molecular weight. This confirmed EPA's analysis. EPA has addressed the substantive technical issues raised by the commenters in a detailed memorandum to the file, which is in the docket.

B. Why the SAR Analysis of 2,4,6-TCP and 2,4,6-TBP Constitutes a Scientific Study That Shows Toxic Effects

1. Why This Is a Scientific Study

Although EPA usually uses controlled animal studies or epidemiological studies of human exposure as the basis for its regulations, 40 CFR 261.11(a)(3) does not preclude the use of other types of scientific studies. Moreover, EPA's interpretation of its own regulations to include SAR analysis as a scientific study is entitled to substantial deference.

SAR analysis is interpreted by EPA to be a scientific study. The scientific principles on which SAR analyses are based were developed from many years of chemical review and analysis and, more recently, toxicity studies on related compounds. For example, the SAR analysis for 2,4,6-TBP rests not only on the chemical similarity of 2,4,6-TBP and 2,4,6-TCP, but also on toxicity studies showing structurally similar brominated and chlorinated compounds to be related in terms of whether they are carcinogens. These studies are discussed in more detail in Section III.C.3. of this preamble.

EPA has, in the past, relied on scientific studies in the form of sophisticated statistical analyses that are one step removed from a laboratory study much in the same way SAR analysis is. In addition, EPA has used meta-analyses, a statistical tool for combining the data from multiple studies, in several risk assessments, including the risk assessment for environmental tobacco smoke.⁴ Furthermore, the controlled animal studies performed on 2,4,6-TCP are indisputably scientific studies and these studies, with the aid of SAR analysis, show that 2,4,6-TBP is a potential carcinogen, as discussed below.

2. Does It "Show" Toxic Effects?

Section 40 CFR 260.11(a)(3) does not specify that EPA must conduct laboratory studies that directly implicate the precise chemical. In this case, the finding that 2,4,6-TCP is carcinogenic in animal studies, together with the SAR analysis demonstrating the close chemical similarity of 2,4,6-TCP and 2,4,6-TBP, shows that 2,4,6-TBP is expected to be carcinogenic because they provide a sound basis for EPA to infer the toxic effects of 2,4,6-TBP from the toxic effects demonstrated for 2,4,6-TCP, as noted below.

⁴ USEPA. 1992. Respiratory health effects of passive smoking: Lung cancer and other disorders. ORD, USEPA, Washington DC, 20460. EPA/600/6-90/006F.

It also is important to recognize that all scientific studies that actually measure toxic effects in a laboratory have some level of uncertainty when used as the basis for regulatory action. Uncertainty is caused by:

- Extrapolation from animal models to humans;
- Variable responses among animals within a study;
- Statistical variability of results between different studies (i.e., if the experiment were to be repeated, one would not necessarily observe exactly the same tumor incidences);
- Extrapolation from high laboratory doses to low actual human exposures; and
- Extrapolation to humans from studies in animals that live for a fraction of the human life span.

Uncertainty in carcinogen assessment is discussed in detail in EPA's Proposed Guidelines for Carcinogen Risk Assessment, and articles cited therein.⁵

From a scientific perspective it is impossible to "show" anything without some uncertainty. Therefore, EPA interprets the language of the regulation as a requirement to "show" with a scientifically reasonable level of uncertainty. In this case, the level of uncertainty associated with this particular SAR is reasonable for the two chemicals being compared in this rulemaking because:

- 2,4,6-TBP and 2,4,6-TCP are both tri-halogenated phenols with substitutions at the same positions;
- The physical and chemical properties, such as the octanol-water partition coefficient and the water solubility, of the compounds are similar;
- Available genetic toxicity data show consistent results for 2,4,6-TCP and 2,4,6-TBP; and
- Examples in the literature and in Section C.3 of this preamble (e.g., 1,2-dibromoethane and 1,2-dichloroethane) support the idea that if a chlorinated compound is a carcinogen, the compound formed by substitution of a chlorine with bromine will still be a carcinogen.

Some commenters provided examples of chemical pairs where SAR analysis would be inappropriate, such as benzene/toluene and methanol/ethanol (see Figure 2 and the accompanying text for a further discussion of these chemicals). EPA agrees that for these pairs, a SAR analysis should not be used for regulatory purposes. However, the data support a conclusion that the structural and chemical similarities

⁵ Proposed Guidelines for Carcinogen Risk Assessment. Federal Register 61(79): 17960-18011. Tuesday, April 23, 1996.

between 2,4,6-TBP and 2,4,6-TCP are much stronger than those in the pairs in Figure 2, and thus the uncertainty for the current rulemaking is much less than the uncertainty/error would be for a SAR analysis for any of the chemical pairs in the counter example. EPA has determined that these data support the regulation of 2,4,6-TBP under RCRA, because they reasonably support a conclusion that 2,4,6-TBP has a level of carcinogenicity comparable to that of 2,4,6-TCP, a known carcinogen.

C. Issues Regarding the Use of Structure-Activity Relationship (SAR) Analysis

1. Use of SARs to Support Listing Constituents in Appendix VIII

All seven commenters addressed the use of structure-activity relationships (QSARs) in this rulemaking. Two commenters stated that SAR analysis cannot be used to support listing a constituent in Appendix VIII, citing the language of 40 CFR 261.11(a)(3), which states that constituents may be listed in Appendix VIII "only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms." The commenters stated that SARs are not equivalent to empirical data, do not represent "scientific studies" and do not show that 2,4,6-tribromophenol has toxic effects on life forms. Therefore, the commenters stated that information on structure-activity relationships cannot be used to list constituents in Appendix VIII and, consequently, may not be used to list hazardous wastes under EPA's regulation.

EPA disagrees with the commenters. The commenters interpret "shown in scientific studies" to mean directly shown in laboratory studies that pertain to the constituent in question. EPA does not interpret the phrase so narrowly. SAR analysis represents a valid scientific approach for assessing toxicity. As noted above, EPA has concluded that there is sufficient similarity between 2,4,6-TBP and 2,4,6-TCP to justify using a SAR analysis for this rulemaking.

EPA's use of SAR analysis in regulatory programs is not unprecedented. EPA has used SAR analysis for assessing the hazards of chemicals to human health and the environment for 15 years in the New Chemicals Program under section 5 of TSCA. The process of using SAR takes into account the similarity of the surrogate chemicals with regard not only to chemical structure and functional reactive groups, but physical/

chemical properties as well (e.g., water solubility and octanol/water partition coefficients). Physical/chemical properties such as water solubility and octanol/water partition coefficients are important because they are related to how a compound is absorbed and distributed in the body. In particular, the octanol/water partition coefficient is a measure of a compound's relative solubility in octanol and water, and is related to how well a compound dissolves in fat versus the blood. The octanol/water partition coefficient describes a compound's hydrophobicity, which was mentioned in Section III.A.2. of this preamble. In cases where direct chemical-specific toxicity data are lacking and where appropriate analogue chemicals exist to allow valid comparisons to be drawn, SAR analysis represents a scientifically valid approach for assessing the potential toxicity of a chemical. As discussed in Section III.B. of this preamble, EPA regards SAR as "scientific studies" and believes that the SAR analysis conducted for this rulemaking does "show" toxic effects of 2,4,6-TBP sufficiently to support its listing in Appendix VIII.

2. Use of SARs Is a Departure From Agency Policy

Two commenters stated that the use of SAR analysis in this rulemaking represents a departure from Agency policy. The commenters added that the use of SARs in making hazardous waste determinations establishes a new criterion for identifying hazardous wastes and the public was not given sufficient opportunity to comment on this new criterion.

The Agency agrees that this listing represents a new element in the Agency's hazardous waste listing determination policy in that this is the first listing to use SAR as a basis for listing a waste stream as hazardous. However, the SAR analysis is consistent with 40 CFR 260.11(a)(3) of EPA's regulations, since EPA's decision to list a constituent in Appendix VIII makes use of a scientific study that shows the toxic effects of that constituent. There has been adequate opportunity to comment on this issue, since the Agency explained in the proposal that it was interpreting 40 CFR 260.11(a)(3) to allow use of structure-activity relationships. Indeed, the bulk of comments on the proposed rule dealt with the highly technical issue of whether SAR could be used to list hazardous wastes. This is a strong indication that commenters understood that they were being given the opportunity to express their views on

this matter. EPA takes the position that, depending on the strength of the evidence, SAR-based listings are appropriate to use for the hazardous waste listings program. SAR is an available tool that can solve a problem the Agency faces in the case: Making risk-based regulatory decisions (such as listing determinations) in the absence of Agency-verified or provisional health benchmarks (e.g., reference dose (RfD), reference concentration (RfC), or cancer slope factor (CSF)).

As described in further detail in other places in this preamble, the evidence in this case rests on four points: 2,4,6-TCP is a close structural analogue to 2,4,6-TBP; the physical and chemical properties of the compounds are similar; the available genetic toxicity data also show consistent results for 2,4,6-TCP and 2,4,6-TBP; and examples in the literature support the idea that if a chlorinated compound is a carcinogen, the compound formed by substitution of a chlorine with bromine will still be a carcinogen.

SAR is one approach that was designed specifically to address this problem. The use of SAR is particularly compelling in the organobromines listing determination. The constituent 2,4,6-TBP has an extremely close structural analogue (2,4,6-TCP) for which direct toxicity data are available. Because of this, the Agency specifically solicited comment on the policy implications of the use of QSAR/SAR in the organobromines proposal.

The Agency has concluded that SAR currently is a viable approach for making a human health impact determination for the waste stream of concern. The strong technical argument involved, that the principal toxicant of concern, 2,4,6-TBP, is a highly similar analogue of 2,4,6-TCP, makes this listing the appropriate place to use SAR. It is important to note, however, that the determination to list 2,4,6-TBP-containing residuals as hazardous wastes is not based solely on the SAR analysis for 2,4,6-TBP. Other factors were included in the risk assessment, including the concentrations of 2,4,6-TBP in the waste, the volumes of waste generated, the mobility of the 2,4,6-TBP in leachate tests of the waste, plausible mismanagement scenarios, and potential receptors.

3. Validity of SAR Analysis in Supporting the Hazardous Waste Listing Determination for 2,4,6-TBP Production Wastes

All seven commenters addressed the general validity of the SAR analysis employed in this rulemaking. One commenter supported the Agency's use

of SARs and the inference that 2,4,6-TBP and 2,4,6-TCP are similar, but the other six commenters raised scientific and procedural concerns related to the use of SAR analysis to support a listing determination. Some of the comments were specific to the SAR analysis in the proposed rule. Specifically, two commenters objected to the analysis being based on electronic effects alone, instead of also considering hydrophobic and steric effects. Other comments addressed the general aspects of the analysis, i.e., the appropriateness of 2,4,6-TCP as a surrogate for 2,4,6-TBP. In light of the quantitative uncertainties raised and other issues, the Agency believes that a SAR analysis does show that 2,4,6-TCP is an appropriate surrogate for 2,4,6-TBP, based on their high degree of structural similarity, i.e., both are tri-substituted phenols with the closely-related halogens chlorine (2,4,6-TCP) or bromine (2,4,6-TBP) located at the 2-, 4-, 6-positions (see Section A1. for a more detailed discussion of the structural similarity between 2,4,6-TBP and 2,4,6-TCP).

As mentioned in Section III.A.3., the Agency is adopting one quantitative manipulation suggested by both a commenter and a peer reviewer. They noted that the differing molecular weights of the two compounds should be taken into account in the slope factor projection; this change has been adopted. When making this adjustment, however, the Agency found that the change would not exert a significant change in the risk results (i.e., a 40% decrease in risk). Even if EPA made the change, the risk would still warrant listing.

As part of the support for SAR analysis, this discussion summarizes the available data related to the carcinogenic activity of 2,4,6-TCP and the genetic toxicity of 2,4,6-TCP and 2,4,6-TBP. 2,4,6-TCP carcinogenicity was tested in mice and rats. Based on the results of this study, 2,4,6-TCP is classified as a probable human carcinogen (B2), and the CSF for 2,4,6-TCP was calculated based on leukemia in male rats. No long-term animal studies that could detect cancer have been conducted with 2,4,6-TBP.

Results from short-term genetic toxicity studies, such as those described in the following paragraphs, provide information on whether the compound of interest interacts with DNA and causes mutations or other DNA damage, such as chromosome aberrations. These data are used to predict whether a compound is likely to be carcinogenic, and to help interpret results of cancer assays in animals. A variety of different genetic toxicity tests commonly are

used. Because no single test can detect all types of damage, a battery of tests is necessary to assess completely a compound's potential to cause DNA damage. Findings in mammalian cells generally are considered more relevant than findings in bacterial cells. For 2,4,6-TCP, genetic toxicity studies appear to indicate that 2,4,6-TCP is positive in mammalian cell gene mutation assays, and negative in a bacterial (*Salmonella typhimurium*) mutation assay and in a mammalian cell chromosome aberration assay. Genetic toxicity data for 2,4,6-TBP are limited to a negative result in a *S. typhimurium* gene mutation assay.⁶ Although this single negative result might appear to predict that 2,4,6-TBP is not carcinogenic, 2,4,6-TCP also produced negative results in this bacterial assay,⁷ but is carcinogenic in rats. Therefore, the *S. typhimurium* gene mutation assay does not appear to accurately predict whether this class of compounds is carcinogenic.

One commenter believed that the analysis should have compared 2,4,6-TBP to an entire class of compounds rather than to a single chemical compound. The Agency believes that comparison with a single compound is acceptable for SAR analysis in cases such as this, when the structural similarities between the two compounds are so strong. Comparisons across multiple chemicals are needed for larger structural differences. This commenter also stated that the QSAR/SAR analysis disregarded documented differences between the carcinogenicity of chlorinated and brominated analogues. For example, the commenter noted differences in the species and tissue (e.g., kidney or liver) in which tumors develop following administration of trihalomethanes ranging from chloroform (CHCl₃) to bromoform (CHBr₃). The compounds in the series represent a series of replacements of chlorine atoms by bromine atoms (i.e., 3 chlorines; 2 chlorines and 1 bromine; etc.).

Because the trihalomethanes are such small molecules, the three halogen atoms constitute a relatively large

percentage of the total volume of the molecule. Thus, substituting bromine for chlorine would be expected to have a larger effect than the same substitution in the large 2,4,6-TCP/2,4,6-TBP molecules. This difference in size may explain the observed differences in target organs among the trihalomethanes. An important point to note is that all four trihalomethanes are carcinogens, regardless of the target tissue.

Regarding the issue of the appropriateness of SAR analyses based on analogues in which a chlorine is substituted by a bromine, the Agency notes that there are additional well-studied examples in which substitution of a chlorine by a bromine has resulted in retention of carcinogenic activity. For example, both 1,2-dichloroethane (ethylene dichloride)⁸ and 1,2-dibromoethane (ethylene dibromide)⁹ are multi-target carcinogens, causing tumors in the lung, the forestomach, the circulatory system, and the mammary gland. The Agency recognizes that examples of bromine/chlorine substitutions in which both the chlorinated analogue and the brominated analogue are carcinogens are not sufficient to show that such substitutions in general will not change a carcinogen into a noncarcinogen. However, based on these examples and in light of the carcinogenicity of 2,4,6-TCP in animal testing, it is plausible to conclude that 2,4,6-TBP is a potential carcinogen. (For a more detailed discussion of many of the scientific bases underlying SAR and the rationale behind the selection of cancer as the endpoint for human exposure, see the Response to Public Comment Document for this rulemaking, in the public docket.)

One commenter expressed concerns that the use of SAR analyses to make predictions of the expected types of toxicity produced by a compound can result in erroneous predictions. The commenter illustrated the point by providing several cases (e.g., benzene/toluene, methanol/ethanol, methyl n-butyl ketone/methyl isobutyl ketone (MnBK/MIBK)) in which predictive errors would occur based on SAR analysis performed with structurally similar chemicals. The Agency recognizes the limitations to SAR

analysis and agrees that the choice of surrogate needs to carefully take into account the degree of similarity between the chemical of interest (the "candidate") and the surrogate (from which predictions are made). The structural and chemical similarities between 2,4,6-TCP and 2,4,6-TBP are greater than those in the pairs cited by the commenter. Both 2,4,6-TBP and 2,4,6-TCP consist of a phenol molecule with halogen substitutions at the 2-, 4-, and 6-positions, and differ only in the identity of the halogen. As shown in Figure 2, the differences in the pairs listed by the commenter are much

larger. The pairs cited by the commenter differ in having/not having a substituent group (benzene/toluene), or are positional isomers (1-/2-naphthylamine), homologues (methanol/ethanol, n-hexane/n-heptane), or structural isomers (MnBK/MIBK). These differences in the cited pairs have greater potential to change the chemical properties of the molecule. For example, the addition of the methyl group in the benzene/toluene pair changes the way that the molecule is converted to other molecules and removed from the body. Toluene is converted (metabolized) to compounds

with low toxicity (e.g., benzoic acid) that are dissolved easily in water and removed from the body. Benzene's structure does not allow the use of this pathway for removing the chemical. Instead, benzene is converted and removed via a pathway that creates cancer-producing compounds.¹⁰

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¹⁰ Andrews, L.S. and R. Snyder. 1991. Toxic effects of solvents and vapors. In: Amdur, M.O., J. Doull, and C.D. Klaassen. Casarett and Doull's Toxicology: The Basic Science of Poisons, 4th ed. New York, NY: Pergamon Press. pp. 681-722.

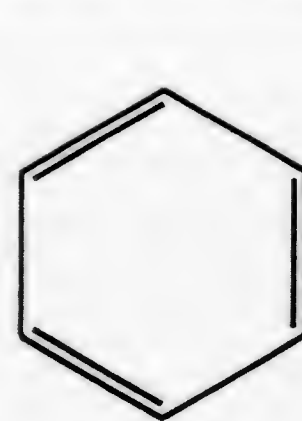
⁶ Zieger, E., B. Anderson, S. Halworth, T. Lawlor, K. Mortelmans, and W. Speck. 1987. *Salmonella* mutagenicity tests. III. Results from the testing of 225 chemicals. *Environ Mutagen* 9 (Suppl. 9) 1-109. As cited in Docket #F-94-OBLP-S0013.

⁷ Haworth, S., T. Lawlor, K. Mortelmans, W. Speck, and E. Zeiger. 1983. *Salmonella* mutagenicity test result for 250 chemicals. *Environ Mutagen Suppl* 1:3-142.

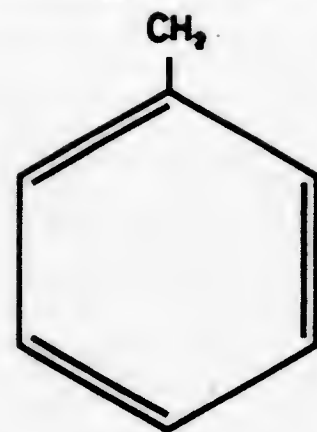
⁸ Rasanen, L., M. L. Hattula, and A. U. Arstila. 1977. The mutagenicity of MCPA and its soil metabolites, chlorinated phenols, catechols and some widely used slimicides in Finland. *Bull Environ Contam Toxicol* 18:565-571.

⁹ NCI. 1978. Bioassay of 1,2-dichloroethane for possible carcinogenicity. National Cancer Institute, Bethesda Maryland. NCI-CG-TR No. 66; DHEW/PUB/NIH-78-1361.

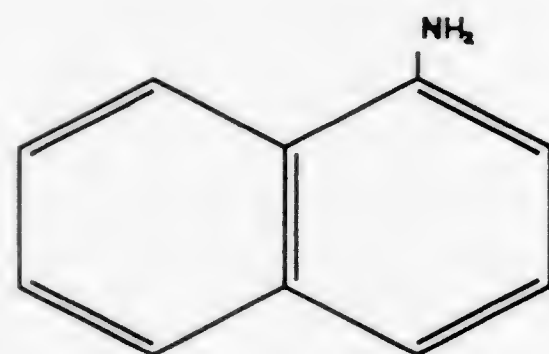
¹⁰ NTP. 1982. Carcinogenesis bioassay of 1,2-dibromoethane for possible carcinogenicity F344 rats and B6C3F₁ mice. U.S. National Toxicology Program, Research Triangle Park, North Carolina. NTP-TR No. 210; NIH/PUB 87-1766.



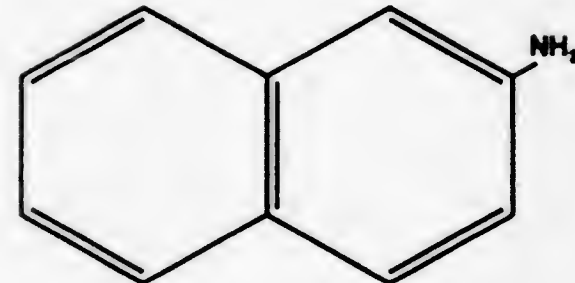
Benzene



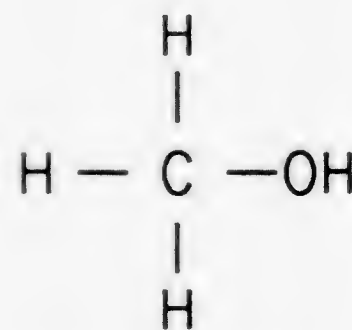
Toluene



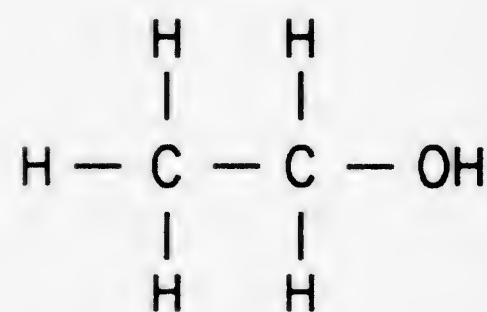
1-Naphthylamine



2-Naphthylamine

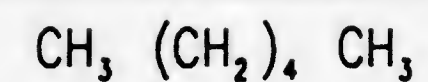


Methanol

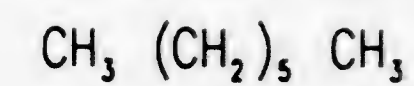


Ethanol

Figure 2. SAR pairs discussed by commenter



n-Hexane



n-Heptane

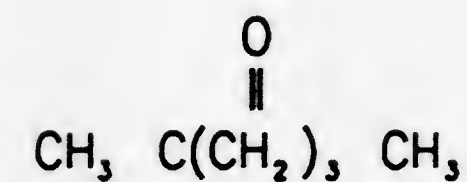
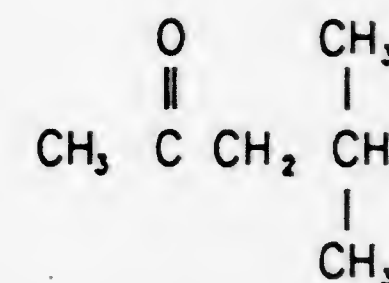
Methyl n-butyl ketone
(MnBK)methyl isobutyl ketone
(MIBK)

Figure 2 (con't). SAR pairs discussed by commenter

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Thus, the structural similarities between 2,4,6-TCP and 2,4,6-TBP are greater than those between pairs of chemicals cited by a commenter in a counter-example. As described in the Listing Background Document and the Response to Public Comment Document, the physical properties of the compounds are also similar, with similar octanol/water partition coefficients and solubility in the same solvents. The available genetic toxicity data show consistent results for 2,4,6-TCP and 2,4,6-TBP, although data for the latter compound are quite limited. Finally, examples in the literature support the idea that if a chlorinated compound is a carcinogen, the compound formed by substitution of a chlorine with bromine still will be a carcinogen. Based on this line of reasoning, the Agency believes that a SAR is appropriate in this case, and the very strong chemical similarities between 2,4,6-TCP and 2,4,6-TBP justify the use of the cancer slope factor for 2,4,6-TCP as a default value for 2,4,6-TBP.

Two commenters expressed reservations regarding the use of QSAR/SAR analysis to support listing determinations, but outlined conditions under which the use of SARs may be acceptable. Both of these commenters recommended that the Agency require some level of peer review of SAR results as a standard procedure, including both internal reviews by Agency senior scientists and external peer reviews. EPA is cognizant of the novelty of the use of SAR analysis for this hazardous waste determination and, therefore, has subjected its analysis to both internal Agency review and external peer review, as described in Section III.A.4.

4. Types of Data Appropriate to Support or Refute SAR Predictions

Five commenters responded to the Agency's request for information on the types of data appropriate in supporting or refuting SAR results. Three commenters stated that actual data should be used to confirm or refute SAR predictions and that empirical evidence should take precedence over modeling predictions. One commenter added that the Agency should simplify delisting procedures for sole-constituent wastes that were listed based on SAR analysis such that if actual data become available that refute the SAR conclusions, the Agency could delist the waste. EPA appreciates the commenters' response to its request for information on the types of data appropriate for supporting or refuting SAR analyses. If toxicity data for 2,4,6-TBP become available at some point in the future and these data refute

the results of the Agency's SAR analysis for this rulemaking, EPA could take appropriate action at that time to revisit the listing investigation for 2,4,6-TBP production wastes.

D. Addition of Constituent to Appendix VIII

Two commenters stated that EPA cannot simultaneously propose to list a constituent in Appendix VIII and propose to list a waste as hazardous because it contains that constituent. The commenters contended that this approach is illegal and violates the procedures established in 40 CFR 261.11(a)(3), which require the Agency to list a constituent in Appendix VIII based on the results of "scientific studies" demonstrating that the substance has toxic or other adverse effects. Following the listing of a constituent in Appendix VIII, the Agency may use that constituent to justify a hazardous waste listing. Therefore, they reasoned that EPA may not proceed with listing the 2,4,6-tribromophenol production wastes because the hazardous constituent (2,4,6-tribromophenol) was proposed for inclusion in Appendix VIII simultaneously with the proposed hazardous waste listing.

EPA disagrees and finds no basis in the regulation to support this contention. Furthermore, this practice is long-standing. Other simultaneous listings are found at 59 FR 24530 (May 11, 1994), 59 FR 458 (Jan. 4, 1994), 54 FR 50968 (Dec. 11, 1989), and 51 FR 6537 (Feb. 25, 1986).

The plain language of 40 CFR 261.11(a)(3) provides that a waste shall be listed if it contains an Appendix VIII constituent and the Administrator concludes it poses a hazard after considering the eleven factors cited in the regulation. Neither the August 1986 preamble text to which the commenter makes reference nor the regulatory language of 40 CFR 261.11(a)(3) suggest that a sequential determination is required. In the August 1986 rule, the Agency stated that the significance of placing a constituent in Appendix VIII includes the fact that the constituent then can be cited as a basis for listing toxic wastes (51 FR 28296, August 6, 1986). Nothing in this statement suggests that an Appendix VIII listing must be proposed for public comment and finalized separately from an associated hazardous waste listing. The public was given ample opportunity to comment on all relevant issues concerning both the hazardous waste listing and the Appendix VIII listing on which it is based.

Not only is there nothing in the regulation that precludes EPA from considering Appendix VIII and hazardous waste listings in the same proposal but, in many instances, to do otherwise could lead to absurd and futile results. In general, because listing a substance in Appendix VIII and listing a substance or a waste stream as a hazardous waste under 40 CFR 261.11(a)(3) involve consideration of a common factor, toxicity, simultaneous listing is appropriate.

E. Plausible Mismanagement Scenario and Other Issues in the Listing Determination for Waste Solids From the Production of 2,4,6-Tribromophenol

1. Comments on the Proposed Rule

In comments on the proposed rule published May 11, 1994 (59 FR 24530), one commenter disputed the plausible mismanagement scenario used by the Agency to support the proposed listing of 2,4,6-TBP production wastes (disposal in unlined Subtitle D landfills), and noted that the proposed rule contained errors in the description of 2,4,6-TBP waste quantities and management practices. The commenter stated that it was the sole generator of TBP wastes covered by the proposed listing and that all of its solid streams containing TBP are shipped to a Subtitle C disposal facility. The generator subsequently submitted information showing that it disposed of these wastes in Subtitle C facilities for many years. (See letter to Anthony Carrell, EPA, from Stephen M. Wallace, Great Lakes Chemical Corporation, dated April 23, 1997). The generator reported sending the waste to various Subtitle C landfills since 1981 (1981-1990, Chemical Waste Management, Emelle, AL; 1991-1994, Chemical Waste Management, Carliss, LA; 1995-1996, American Ecology, Winona, TX; 1997, Phillips Environmental, Avalon, TX). The commenter noted that the only waste from 2,4,6-TBP production disposed in a Subtitle D landfill consists of 10 tons of empty soda ash bags that do not contain any TBP. The commenter stated that the other combined waste solids from TBP production (floor sweepings, off-specification product and spent carbon from filters) total approximately 34 tons annually. The commenter argued that EPA's selection of an unlined Subtitle D landfill as a plausible mismanagement scenario is erroneous and, therefore, EPA's risk analysis significantly overstates the risk.

After considering these comments, EPA issued the September 3, 1997, letter, noted above, which evaluated additional information to support the

Agency's listing decision. The following paragraphs in this section describe the substance of the September 3 letter, including the new risk analysis and the new plausible mismanagement scenario of voluntary disposal in a Subtitle C landfill for this waste stream. Responses to the additional comments received on the September 3 letter are discussed in the remaining sections of this Unit.

In the September 3 letter, EPA stated that based on the information provided by the commenter, the Agency agrees that the quantity of waste solids from 2,4,6-TBP production that contain 2,4,6-TBP levels of concern should be approximately 34 tons, and should not include the 10 tons of empty bags. The Agency also acknowledges that the generator apparently has a long record of disposing the wastes with high 2,4,6-TBP content in a lined Subtitle C hazardous waste landfill. However, EPA continues to believe that the waste solids from production of 2,4,6-TBP should be listed as hazardous, even if the waste continues to be sent to Subtitle C landfills. EPA considered several critical factors in deciding to list this waste stream.

First, Congress clearly expressed its intent that the Agency is not to place excessive reliance on confidence in landfill design and liners for problematic wastes. In the Hazardous and Solid Waste Amendments (HSWA) of 1984, Congress explicitly added as one of the "findings" to RCRA that "land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes" and that "reliance on land disposal should be minimized or eliminated." RCRA section 1002(b)(7), 42 U.S.C. 6902(b)(7). As a result of this finding, and others, Congress added the land disposal restriction (LDR) program to RCRA, which significantly restricts land disposal of hazardous wastes. Further, it was made very clear in the Conference Report for HSWA that the new findings in RCRA were intended to House Report No. 98-1133, 98th Cong., 2d Sess. at 80-81 (Oct. 3, 1984). EPA views the statute and legislative history as sufficient justification to evaluate in a listing determination all risks of land disposal, including in appropriate cases risks from voluntary disposal in permitted Subtitle C facilities. This is particularly true where risks presented by a waste might be high if releases occur, and treatment of the waste under Subtitle C would significantly reduce these risks.

Accordingly, EPA added to the rulemaking record additional data on the effects of disposal in Subtitle C landfills and reevaluated its analysis of the factors contained in 40 CFR

261.11(a)(3) that are relevant to listing the 2,4,6-tribromophenol waste solids. The following analysis describes the September 3 letter's evaluation of, in particular, the inherent toxicity of the hazard constituent in the waste (§ 261.11(a)(3)(i)), concentration of the hazardous constituent in the waste (§ 261.11(a)(3)(ii)), the potential of the hazardous constituent to migrate into the environment (§ 261.11(a)(iii)), the relevance of the quantities of the waste generated (§ 261.11(a)(3)(viii)) when compared with these other factors, and how these factors are weighed when considered with the plausible management scenario of voluntary disposal of the waste in a Subtitle C landfill (§ 261.11(a)(3)(vii)). EPA concluded, after balancing these factors in accordance with the Agency's listing determination policy described in its December 22, 1994, proposed rule listing certain wastes generated during the production of dyes and pigments (59 FR 66073-78) that the 2,4,6-tribromophenol waste solids are capable of posing a substantial present or potential hazard to human health or the environment.

Review of the scientific data, particularly sample analysis and Structure Activity Relationships (SAR), shows that evaluation of disposal in subtitle C facilities is especially appropriate for untreated 2,4,6-tribromophenol waste solids. The waste contains a highly toxic chemical, 2,4,6-TBP, which may present significant carcinogenic risk even at low concentrations. This chemical was also found to be present in the wastes of concern at extremely high concentrations. EPA's analytical data show levels up to 40% (equivalent to 400,000 ppm) in the waste solids. Thus, while the volume of wastes generated (approximately 34 tons annually) is not very large, the extremely high levels of 2,4,6-TBP render this waste highly toxic. As a general matter, when settings its own priorities, EPA would not ordinarily consider it a priority to make a listing determination on a small-volume waste from a single generator. However, EPA has a set of statutory obligations to make a prescribed set of listing determinations and a determination on this particular waste stream is an obligation under the consent decree governing EPA's completion of those obligations.

Furthermore, EPA's data show that 2,4,6-TBP is relatively mobile and will leach out of the waste at high concentrations. In the proposal, EPA used the TCLP method to estimate the potential concentration of waste constituents that could be in leachate

generated from disposal of the waste in a landfill, and found up to 760 mg/L of 2,4,6-TBP in the TCLP leachate. This level is 76,000 times the health-based criteria of 0.01 mg/L that corresponds to the 10⁻⁶ cancer risk level for ingestion. The proposed rule estimated risks of 7 × 10⁻⁴ from migration to groundwater, if this waste were placed in an unlined landfill (see the proposed rule, 59 FR 24538). Although the generator has sent this waste to a lined Subtitle C facility in the past, EPA believes that the risks estimated from migration from an unlined landfill provide an indication of the potential risks that could occur if 2,4,6-TBP is released from the lined landfill due to failure of the unit to contain the waste leachate. The Agency agrees that the liner/leachate collection system in a Subtitle C unit would serve to contain the waste, and would substantially lessen the risk even in the case of liner failure. However, EPA believes that the purpose of the RCRA hazardous waste treatment requirements (as expressed by Congress) is to reduce the uncertainty inherent in engineered containment approaches.

In past rulemakings EPA has assumed that waste containment systems will tend to degrade with time. In the proposal for the Land Disposal Restrictions (January 14, 1986, 51 FR 1641) EPA noted that in the long-term (beyond the post-closure period) the efficiency of cover and liner systems will degrade. Eventually synthetic liners will degrade and leachate collection systems will cease operation. In the proposed Liner and Leak Detection Rule (May 29, 1987; 52 FR 20218) EPA also stated that no liner can be expected to remain impervious forever. As a result of interactions with waste, environmental effects, installation problems, and operating practices, liners eventually may degrade, tear, or crack and allow liquids to migrate out of the unit. In evaluating the benefits of this rule (see 52 FR 20270), EPA noted that a properly installed double liner and leachate collection system, together with a final cover placed at closure, substantially reduces release during the operating life and post-closure care period. However, these technologies may not effectively reduce the longer-term risk for landfills, especially for persistent and mobile compounds, because the containment system may only delay leachate release from the landfill until after the post-closure period, when the cap and leachate collection system begin to fail.

EPA has attempted to account for the effect of Subtitle C containment (covers and liners) in the Regulatory Impact Analyses (RIA) completed for other

recent rulemakings. (See the RIA for the Land Disposal Restrictions—Phase II rule, pages 5–10, in the docket for the final Phase II rule, published September 19, 1994, 59 FR 47980; and the RIA for the final rule on Corrective Action Management Units, Appendix C, in the docket for the rule published February 16, 1993, 58 FR 8658.) These documents are incorporated by reference into the docket for this rule. As EPA noted in the source document used in these RIAs (Technical Guidance Document, "Indexing of Long-Term Effectiveness of Waste Containment Systems for a Regulatory Impact Analysis," Office of Solid Waste, November 1992; this document has been placed in the public docket for today's rule), the structural integrity of waste containment systems degrades over time due to stresses on system components. EPA noted that failures of multi-component liner systems have been reported in the literature, and that some liners fail unpredictably with time. While acknowledging the uncertainties in predicting long-term effectiveness, EPA estimated that the effectiveness of Subtitle C composite liner systems may decrease significantly with time.

Although it is difficult to quantify the impact of the long-term degradation of liner systems, the high level of risk estimated from disposal of this waste in an unlined landfill (7×10^{-4}) means that even a modest reduction in long-term liner effectiveness would present risks of concern. For example, if the long-term effectiveness of the landfill liner and containment system were on the order of 95%, which would reduce the potential risks from releases to groundwater by 20-fold, the residual risk would exceed 3×10^{-5} . In fact, the containment systems would have to be in excess of 98% effective for the estimated risk to drop below 1×10^{-5} . The risks for this particular untreated waste, therefore, would remain above EPA's presumptive level of concern for listing ($>10^{-5}$), whether they were sent to an unlined landfill or a Subtitle C landfill (for a discussion in risk levels used in listing determination see December 22, 1994, 59 FR 66075).

The Agency recognizes that a recent court decision (*Dithiocarbamate Task Force v. EPA*, 98 F.3d 1394 (D.C. Cir. 1996)), raised questions as to what constitutes "plausible" mismanagement under the listing regulations (§ 261.11(a)(3)). However, EPA has not yet fully evaluated the recent court decision to determine how to weigh possible future changes in management practices and is not relying on projecting new management practices in this listing decision. For the purposes of

the analysis in the September 3 letter, EPA assumed that the current waste management practices continue (i.e., disposal of the untreated waste in Subtitle C landfills).

To respond to the commenter's concern related to waste solids that do not contain 2,4,6-TBP, EPA is revising the regulatory language to clarify that the wastes covered in the listing are those of concern, i.e., those containing high levels of 2,4,6-TBP. This avoids capturing the empty soda ash bags, and possibly other waste solids downstream from the production unit that EPA did not intend to cover in the listing. Therefore, the final listing reads as follows:

K140—Floor sweepings, off-specification product, and spent filter media from the production of 2,4,6-tribromophenol.

Another commenter stated that the high concentrations of TBP in the floor sweepings sampled by EPA provide singular justification for the listing of these wastes. EPA agrees with the commenter that the high concentration of the toxic chemical, 2,4,6-TBP, is a major concern. However, EPA did not consider this factor in isolation, but also considered the mobility of the waste and its inherent toxicity as equally important factors, and balanced all of these factors in the risk assessment. As noted above, the risk assessment predicts TBP leaching from unlined and lined landfills to receptor drinking-water wells at concentrations well above health-based levels of concern.

2. Comments on the September 3, 1997, Notice Letter

As noted previously in today's rule, EPA provided an opportunity for further comment on the Agency's reevaluation, described above, of the rationale for the listing determination for the waste solids from the production of 2,4,6-TBP. EPA sent letters of notice to three parties who commented on the proposed rule and could be expected to have an interest in the final decision and the revised rationale for listing. EPA received the comments noted below from the three entities that received the notice letter; one supported the decision to list 2,4,6-TBP production wastes, and two opposed the listing. EPA's response to these new comments are summarized below and are described in more detail in the docket. (See "Supplementary Response To Public Comment", April 1998)

a. Procedural Comments. One commenter challenged EPA's approach of sending notice letters to only three commenters on procedural grounds, and claimed that EPA was soliciting

comments through a "selective notice procedure" that fails to give the general public opportunity to be heard on several issues. The commenter argued that others should have a chance to comment on the idea that placement of waste in a Subtitle C landfill that is in compliance with appropriate regulations may be "mismanagement," because this may have significant ramifications for individuals who did not previously comment and has "far-reaching effects for those operating and using" hazardous waste facilities.

Another commenter argued that EPA cannot list wastes based on the theory that Subtitle C disposal constitutes "mismanagement" without amending its listing criteria, stating that EPA must first propose and seek comment on the new theory of mismanagement before it can redefine its basic approach to the listing process.

EPA does not agree that notice was inadequate, nor does the Agency agree the listing criteria must be amended. Due to the limited time EPA has for completing this action, the Agency decided that letters providing actual notice to the parties who commented on the proposed rule and could be expected to have a direct interest in the final rule decision was appropriate. Those receiving the letter included the only current generator of the waste, and the industry group and environmental group that commented on the proposed rule. These are the parties EPA decided were arguably affected by the recharacterization of the rationale for listing. EPA is not aware of any other generators of this waste or any other persons who would have a direct interest in this decision. The actual notice given in this case is sufficient.

No reasons offered by the commenters indicate any need to go beyond the actual notice EPA provided. The decision in this case does not have "palpable effects upon a regulated industry or the public in general." Instead, it affects this wastestream, alone, and those that can argue they have an interest in the wastestream. To the extent a similar analysis may be used for other wastestreams EPA may consider listing in the future, the affected parties will have adequate opportunity to comment then. Moreover, today's action does not compromise their legal rights to challenge such EPA listing decisions in the future.

Also, there are no ramifications for individuals who did not previously comment. The fact of the matter is that the revised rationale described in the letter will not have "far-reaching

effects" for those operating and using hazardous waste landfills. Rather, this decision is being made on the basis of risk for one specific waste with certain properties and does not reflect any new policy direction towards any other operators or users of hazardous waste landfills. No persons are expected to change their habits, for example, in changing the operations of their landfills, as a result of this decision. No persons who operate their landfills in accordance with Agency regulations will be affected by this decision. In any future circumstances in which EPA chooses to evaluate, as part of a listing decision, the risk basis of voluntarily putting a waste in a Subtitle C landfill ample opportunity for comment will be provided.

Further, the commenter's concern that disposal of untreated waste in a Subtitle C landfill that complies with regulations may be mismanagement is misleading. Disposal of untreated waste in any type of landfill could be considered mismanagement, despite compliance with all applicable landfill design and operation regulations. No one would want highly dangerous materials voluntarily placed in a Subtitle C landfill. Clearly, some untreated wastes could pose a potential hazard of such magnitude that merely voluntarily placing them in a lined landfill would not be sufficient. In this instance, applying the factors in § 261.11(a)(3), EPA has concluded that the disposal of this highly toxic, untreated waste in a Subtitle C landfill is improper management within the meaning of that subsection of the regulations. EPA is not suggesting that the landfills in question have been mismanaged. On the contrary, the voluntary use of Subtitle C landfills by the generator has been laudable. However, for purposes of a listing determination, the overall practice is improper management in that it does not adequately control risks to human health and the environment.

EPA also does not agree that the listing criteria have to be modified in any way to allow the Agency to make the listing determination for the organobromine waste at issue. The regulations (see § 261.11(a)(3)) clearly permit EPA to render a listing decision based on a variety of factors. These factors were weighed when considered with the plausible management scenario of voluntary disposal of the waste in a Subtitle C landfill without previous treatment. After balancing these factors EPA concluded that the 2,4,6-tribromophenol waste solids are capable of posing a substantial present or potential hazard to human health or the environment. It is consistent with the

regulations to reason that, if voluntary Subtitle C landfilling (absent treatment) presents a substantial present or potential hazard, the practice constitutes improper management under § 261.11(a)(3)(vii). Therefore, a regulatory change is definitely not needed prior to making this listing determination.

b. Risks Related To Plausible Mismanagement Scenario. One commenter stated that EPA's proposed listing is based on a management scenario that is unsupported and implausible, and further noted that the evaluation of future failure rates of Subtitle C landfill containment systems is not supported by evidence in the docket. The commenter states that the one study relied upon by EPA fails to account for the multi-component nature of liner systems and does not specify how it accounts for these factors, making it impossible to determine the validity of the assigned failure rates. The commenter claimed EPA's sole reliance on this study is arbitrary and capricious. The commenter also stated that EPA did not consider site-specific factors (e.g., liner type, soil type, annual precipitation) to determine if leachate will reach groundwater. The commenter claimed, therefore, that EPA has not made a reasoned determination that the long-term effectiveness evaluation is valid at these specific facilities.

The commenter is wrong for a number of reasons. The effectiveness-time relationships given in the reference used by EPA (*Indexing of Long-Term Effectiveness of Waste Containment Systems for a Regulatory Impact Analysis*, USEPA, November 1992) was based on an examination of the technical literature on the subject, and an evaluation of many technical factors. The document evaluated the effectiveness of various components of the containment system, and identified the likely degradation mechanisms. For example, landfill containment systems may leak due to improper installation, and may be degraded by subsidence, drying/cracking, freeze-thaw cycles, burrowing of animals, leachate incompatibility, and vehicle loads. This analysis considered the composite clay/geomembrane liners and caps required under RCRA Subtitle C regulations. The document also provided data and cited references showing that even configurations like RCRA Subtitle C liners do, in some cases, leak over time. Concerning the leachate collection system, EPA notes that the regulations require operation and maintenance of these collection and leak detection systems for 30 years after closure of the landfill (see 40 CFR 264.117). Over the

long-term, therefore, EPA cannot rely on leachate collection systems to prevent the eventual release of leachate of untreated waste from the landfill if the liner system fails.

EPA agrees that the degradation of a containment system depends to some extent on the systems design and other site-specific factors. However, the commenter provided no specific data indicating what site-specific factors would prevent release of constituents from the wastes disposed, or what the long-term containment efficiencies might exist for the landfills at the sites in question. Therefore, EPA has no reason to alter its analysis on this basis. Furthermore, EPA does not believe that such a site-specific analysis is appropriate in this case, because the generator may use many different landfills for disposal. In fact, the history of the generator's disposal practices (See letter from Great Lakes Chemical Corporation to EPA dated April 23, 1997) shows that the generator changed disposal sites quite often (e.g., the generator sent the waste to three different landfills between 1994 and 1997).

One commenter stated that EPA has turned this inquiry from determining whether dangerous "mismanagement" is plausible into an inquiry into whether it can be ruled out completely, and cites EPA's admission that there is at least a 95% chance that C landfills will not leak. The commenter claims EPA argues that "nothing lasts forever," and therefore Subtitle C disposal can be mismanagement. The commenter argues that this type of logic was unacceptable in the *Dithiocarbamate* case. The commenter states that EPA effectively writes the requirement of a "plausible mismanagement scenario" out of the listing rule, and that recent court decisions do not allow EPA to evaluate such a factor so as to drain it of all content.

As a preliminary matter, EPA points out that this listing is wholly consistent with the *Dithiocarbamate Task Force* case. The Agency has found that the common practice of the only generator of the waste over more than 15 years is the plausible management scenario. The assessment of all relevant factors under § 261.11(a)(3) led the Agency to conclude that voluntary Subtitle C landfill disposal is improper management.

Furthermore, the Agency has not turned this into an inquiry about whether "mismanagement" can be ruled out completely. Rather, the Agency has evaluated this particular waste under the conditions of plausible management and reached a conclusion that there is

a substantial present or potential risk. The commenter is attempting to turn the Agency's risk analysis into a narrow inquiry into plausible mismanagement. This is simply incorrect.

With respect to the EPA's analysis of risk, the Agency did not state that there is a 95% chance that C landfills will not leak. Rather, EPA was indicating that even if the containment system was 95% effective, the potential risks from the waste in question are so high that it would still present a risk at levels of concern. Even if a Subtitle C landfill was 98% effective in reducing risk relative to risk in an unlined landfill (e.g., the Subtitle C landfill's effectiveness decreased 2% from a combination of cap failure and abandonment of active landfill management), the estimated risk would still exceed 1×10^{-5} . The actual long-term efficiency is extremely difficult to estimate, given the highly uncertain long-term integrity of liners/leachate collection systems and landfill caps. The document cited by EPA that attempts to evaluate the effectiveness of liner systems estimated it would degrade to an efficiency well below 95% over the long term (e.g., one hundred years). EPA is not attempting to absolutely rule out certain management scenarios, but rather to account for the likely degradation of a Subtitle C containment system over the long-term. Certainly the available data (cited in the document used by EPA) clearly show that the materials that make up liners and caps are expected to degrade over time. Therefore, given this fact, in conjunction with the available estimates of long-term effectiveness, EPA believes that the highly toxic waste in question may present a significant risk when placed in any landfill, even a Subtitle C unit.

One commenter stated that EPA's legislative references do not support the idea that disposal in Subtitle C landfills constitutes mismanagement, but rather relate to historic problems caused by unregulated disposal, and expressed support for minimizing the quantities and toxicity of wastes that must be disposed. The commenter states Congress did not require all wastes to be treated before land disposal, but only wastes that are hazardous, and notes that the fact that treatment might reduce the hazardousness of a waste is not a relevant factor in EPA's listing criteria.

EPA disagrees with the claim that Congress was concerned only with unregulated land disposal. The statute itself clearly states Congressional intent: "certain classes of land disposal facilities are not capable of assuring long-term containment of certain

hazardous wastes * * * and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes." (See RCRA, section 1002(b)(7)). EPA agrees that Congress did not require all wastes to be treated prior to land disposal. However, in this case EPA believes the waste in question presents a substantial hazard when land filled, even in a Subtitle C landfill, in the form in which it is generated (i.e., untreated). Therefore, EPA believes the waste is, in fact, hazardous and should be subject to full regulation under Subtitle C, including the land disposal restrictions.

One commenter stated that, while EPA is not relying on projecting new management practices in this listing decision, the *Dithiocarbamate* decision is still controlling. The commenter noted that when the court struck down the K160 listing, it did not remand it to allow EPA to reevaluate whether disposal in a Subtitle C landfill constitutes "plausible mismanagement," as EPA is attempting to do here. The commenter went on to say that, in striking down 24 other waste listings (U-listings) in the *Dithiocarbamate* decision, the court refused to accept as examples of mismanagement various past or future accidents, and stated that EPA assertions that "accidents will happen" does not constitute "plausible mismanagement." The commenter claimed this analysis is equally applicable to EPA's assumption that all landfills will leak eventually, and the fact that some unquantified uncertainty exists regarding long-term risks from Subtitle C disposal does not mean that such disposal is mismanagement. The commenter argued that the only change listing the waste would cause would be to require compliance with land disposal treatment standards and it is difficult to see how a listing would substantially reduce risks. The commenter stated that EPA did not address the question of how much risk reduction would result from treatment. The commenter also noted that the fact that treatment might reduce the hazardousness of a waste is not a relevant factor under § 261.11(a)(3) in deciding whether to list a waste as hazardous.

The commenter's reference to "the *Dithiocarbamate* case" is not relevant in this context. In the *Dithiocarbamate* case, the court did not address the issue of Subtitle C management in any substantive way. The court stated that it was vacating the listing of K160 "[b]ecause EPA failed to identify a plausible mismanagement scenario * * * (98 F.3d at 1404) and did not

reach the issue of whether voluntary disposal in a Subtitle C landfill (absent treatment) would present a substantial risk. The decision in no way limits the Agency from considering potential risks from Subtitle C management. EPA had not raised the issue in rulemaking because the Agency had determined that the plausible management scenario was an unlined landfill. The Agency did not conduct a risk assessment on the Subtitle C landfill because it did not believe it had to.

The reference to consideration of the U wastes in the *Dithiocarbamate* case is also irrelevant in this context. The commenter is confusing EPA's acknowledgment of the uncertainty in quantitatively estimating the long-term efficiency of Subtitle C containment systems as being equivalent to assertions that "accidents happen," referenced by the *Dithiocarbamate* case. As noted in response to other comments in this proceeding, EPA's evaluation attempted to account for the likely degradation of a Subtitle C containment system over the long-term. Therefore, EPA continues to believe that it is logical and appropriate to assume that the containment efficiency of landfills will degrade sufficiently so that, for this highly toxic waste, disposal of the untreated material in a Subtitle C landfill may present a substantial present and potential hazard.

As noted in the commenter's own statements, unlike in the *Dithiocarbamate* case, in which the court did not see how U-listings would avert accidents, a listing of the 2,4,6-TBP waste solids would, in fact, prevent the placement of untreated wastes in the landfill. Further, the treatment standards for this newly listed waste (see the land disposal restrictions section of today's rule) require levels of 2,4,6-TBP for nonwastewaters to be no greater than 7.4 mg/kg. This level equates to a reduction of up to a 50,000-fold reduction in the level of 2,4,6-TBP in the waste. Such a reduction in 2,4,6-TBP levels will likely result in significant risk reduction—a clear benefit of the listing. Furthermore, the § 261.11(a)(3) criteria, as noted by the commenter, does not require the Agency to consider risk reduction. Section 261.11 is promulgated under the authority of section 3001 of RCRA, which requires EPA to identify criteria for listing. Once listed, the wastes would become subject to the management requirements of Subtitle C. The regulations for management requirements are promulgated under other sections of RCRA, like sections 3002 (generator standards), 3003 (transportation standards), 3004

(standards for treatment, storage and disposal facilities), and 3005 (permits for treatment, storage or disposal). These are the sections under which EPA would consider risk reduction measures that would be protective of human health or the environment.

While one commenter supported EPA's decision to list the 2,4,6-TBP solids and filter cartridges, the commenter stated that EPA assumes in its reevaluation that the wastes at issue will always be landfilled in a Subtitle C facility, even though the regulated community is under no legal or technical mandate to do so in the absence of a hazardous waste listing. The commenter claimed that EPA's proposed listing rationale based on Subtitle C landfilling substantially understates the risks, and argues that EPA should not assume past disposal practices represent the only plausible mismanagement practice for at least four reasons: (1) There is no technical or other bar to additional companies producing 2,4,6-TBP and generating the waste at issue, either at existing organobromine chemical production facilities or at new locations. Therefore identification of plausible mismanagement scenarios should involve more than an analysis of one company's historic disposal practices; (2) the wastes at issue (floor sweepings and filter cartridges) are frequently observed in the organobromine chemical industry, and in many cases are landfilled onsite in nonhazardous units. Thus, EPA should consider how similar wastes from other organobromine production processes are managed when identifying plausible mismanagement scenarios; (3) the company currently generating these wastes has used three different landfills since 1994, suggesting that cost is the overriding factor in the company's disposal decision. It is not unreasonable for EPA to assume the cost differential between Subtitle C and D landfills may cause the company to use a nonhazardous waste landfill; and (4) the production facility's 1995 TRI report reveals that half of the TRI chemicals sent offsite for disposal were sent to a nonhazardous landfill. Thus, even at this one facility Subtitle C landfilling is not uniformly practiced.

As a general response to these comments, the Agency notes that these arguments have no practical effect and would not change EPA's decision to list the waste. In the original proposal to list the 2,4,6-TBP production solids, EPA estimated the risks from disposal in an unlined landfill would warrant listing the waste (see proposed rule, 59 FR 24530, May 11, 1994). As noted in the

September 3, 1997 notice letter, the risks from such disposal would be mitigated in a Subtitle C landfill, but would still be at levels of concern. Therefore, EPA does not need to rely on projecting new management practices in this listing decision. EPA intends to address the more general issue of how to weigh potential changes in management practice in the future.

Two commenters argued that EPA did not fully consider the impact of the existing RCRA Subtitle C regulations in its analysis of potential risks from disposal in such a regulated landfill. One argued that the proposed mismanagement scenario presumes that all landfill operators are in violation of RCRA regulations, and noted that the regulations require that liner/leachate collection systems prevent migration out of landfills during the active life (including the closure period) of the landfill. The commenter argues that the resources spent on landfill design and construction have resulted in more than a 20-fold decrease in risk posed by the waste disposed. The commenter stated that if EPA is concerned with releases from landfills, the proper place to address this is through the regulations governing land disposal units, and not the listing process.

The other commenter stated that comprehensive landfill regulations prevent the release of hazardous constituents from the waste into the environment by: Double liners and leachate collection systems, groundwater monitoring, and corrective action requirements in case of a release. The commenter also noted that the performance of Subtitle C landfills is guaranteed by operating, closure, and post-closure permits, but stated that none of these safeguards were addressed in EPA's reevaluation.

EPA agrees that the regulations governing Subtitle C landfills are stringent and are designed to prevent releases from the unit, to detect if such leaks occur, and to take corrective action if necessary. However, EPA is not assuming that all landfill operators will be in violation of RCRA. EPA is simply recognizing that such standards are not protective in perpetuity nor for every possible waste. EPA is not saying that voluntary Subtitle C landfilling is always "improper", just that there are wastes that should not go into them if they are not treated. EPA agrees that properly installed liner systems and final covers substantially reduce the potential for releases during the operating life and post-closure period (see 52 FR 20270, May 29, 1987). EPA also agrees that permits for landfills help to ensure the implementation of

stringent requirements for groundwater monitoring and corrective action. The RCRA regulations require a 30 year post-closure period, during which the unit is maintained and monitored (see 40 CFR 264.117), but after the post-closure monitoring ends releases may not be detected or corrected. While extending the post-closure period might be one way to decrease potential risks from Subtitle C landfills, EPA notes that treatment under the land disposal restrictions program is another way (and perhaps a more direct way) of ensuring long-term risks are minimized. Listing the waste solids from the production of 2,4,6-TBP ensures that this highly toxic waste will be treated prior to landfill disposal.

c. Demonstration of a Substantial Hazard. One commenter claimed that EPA's approach does not demonstrate that the TBP wastes managed in Subtitle C landfills pose a substantial hazard as required by the statute and EPA's rules (§ 261.11(a)(3)). The commenter argued that no human health or environmental damage has ever occurred as a result of improper management of TBP wastes, and the quantity of the TBP waste (35 tons per year) is "inconsequential." The commenter also stated that the court in the *Dithiocarbamate* case indicated that EPA must balance the toxicity of the chemicals with other factors specified in EPA's listing criteria. Finally, the commenter noted that EPA's estimate of risks above 10^{-5} from TBP wastes in Subtitle C landfills is "based on improper extrapolation from Subtitle D risk modeling."

EPA disagrees with the commenter's assessment of the hazard posed by the TBP wastes. First, the regulatory criteria for listing wastes as hazardous is that the wastes may * * * pose a substantial present or potential hazard." These wastes certainly meet that criteria. While EPA has not found damage cases that document health or environmental damage from disposal of this waste, this is only one of the factors EPA considers in its listing decisions. While EPA has not identified any cases of actual damages from this waste, EPA has explained how it considered the other factors under § 262.11(a)(3). The risk assessment, after consideration of all of these factors shows individual risk numbers to be above EPA's level of concern. Furthermore, by listing a waste as hazardous, EPA hopes to prevent such damage from occurring, and the Agency has often listed wastes in the absence of definitive damage cases. Contrary to the comment, EPA does not concede that the volume of waste at issue (34 tons annually) is necessarily "inconsequential." The volume of waste

must be examined in conjunction with the concentration and properties of toxic constituents present. In this case, the relatively small quantity of waste contains very high concentrations of a highly toxic constituent, 2,4,6-TBP.

As noted elsewhere in today's rule, EPA continues to believe that the SAR results demonstrate that 2,4,6-TBP is highly toxic. Furthermore, EPA has shown how this toxic chemical, in a highly concentrated waste, may potentially cause a substantial risk even if managed in a Subtitle C landfill. The waste in question is so toxic and concentrated that release may occur at levels of concern, even if the containment system of a Subtitle C landfill were very high (e.g., 95%). Given this result, EPA believes that listing is warranted.

d. Other Risk Issues. Two commenters argued that the Agency's toxicity assumptions for 2,4,6-TBP are invalid. One stated that EPA failed to address comments on the use of Quantitative Structure Activity Relationships (QSAR) in its risk analysis, and incorporated its previous comments by reference. The commenter also noted that a proposal by EPA to gather the data necessary to evaluate 2,4,6-TBP was rejected by the Interagency Testing Committee (ITC). The commenter stated that, while the ITC originally proposed to include 2,4,6-TBP on the priority testing list under Section 4(e) of the Toxic Substances Control Act (TSCA), following receipt of exposure information from an industry group and the producer of 2,4,6-TBP, the ITC revised its position and removed 2,4,6-TBP from the priority list. The commenter stated that the rationale for removal of 2,4,6-TBP was based on the ITC's determination that "environmental and workplace" monitoring indicate that 2,4,6-tribromophenol is not likely to result in substantial environmental releases or significant exposures to workers, consumers or the general population."

EPA has not ignored the comments received on the Agency's use of Structure Activity Relationships for estimating the toxicity of 2,4,6-TBP. EPA responds fully to all comments related to this issue in a separate section of today's preamble. As the commenter noted, the ITC's 40th Report revised the TSCA section 4(e) Priority Testing List by removing 2,4,6-TBP, which had previously been recommended for testing in its 39th report (62 FR 8578, February 25, 1997). The ITC stated that it removed 2,4,6-TBP after reviewing data that demonstrated that: (1) It is used as a chemical intermediate to produce flame retardants; (2) greater

than 99% of 2,4,6-TBP used as an end-product is shipped overseas to be used as an intermediate in the production of brominated flame retardants; and (3) environmental and workplace monitoring indicate that 2,4,6-TBP is not likely to result in substantial environmental releases or significant exposures to workers, consumers, or the general public. Exposure and release information provided by industry and the CMA include an industrial hygiene survey from 1979, a historical prospective mortality study of workers, a pollution evaluation, and a determination of brominated organic compounds in environmental matrices (secondary effluents). The available exposure information pertains to workers and the potential for general population exposure from manufacturing sites. In deciding to list waste solids from the production of 2,4,6-TBP, however, EPA considered in detail the potential exposure and risks due to the disposal of wastes generated, not product use. EPA notes that none of the exposure studies used in the ITC decision deal with RCRA issues, for example, the presence of TBP in waste streams, its subsequent disposal in a landfill, and the potential hazards associated with leakage from such a landfill or with any mismanagement scenario.

EPA further examined the rationale for the removal of 2,4,6-TBP from the Priority Testing List and does not agree that this action in any way undermines EPA's use of SAR to estimate the chemical's toxicity. 2,4,6-TBP was not removed from the ITC Priority Testing List because the ITC had found that TBP was not toxic. Indeed, the chemical was originally included on the List because the NIEHS needed chronic toxicity and 2-year carcinogenesis study data. The availability of these data would obviate the need for the use of a qualitative or quantitative SAR by EPA, which would prefer to use actual data on the constituent in question whenever possible. Among the studies cited by CMA and GLCC as available for EPA review are acute toxicity (oral, inhalation, and dermal), dermal sensitization, skin and eye irritation, 21-day inhalation toxicity, 28-day subacute dermal toxicity, clearance, teratogenicity, genotoxicity, and pharmacokinetics. None of these studies are sufficient to judge the carcinogenic potential of TBP, which is the primary endpoint of concern for this chemical. Therefore, EPA does not believe that the ITC decision to remove TBP from the Priority Testing List addresses EPA's determination that 2,4,6-TBP is highly

toxic as indicated by SAR and that disposal of wastes containing high levels of this toxic chemical in a landfill (even a Subtitle C landfill) poses a substantial hazard that requires listing the waste as hazardous.

One commenter supported the proposed decision to list waste solids from the production of 2,4,6-tribromophenol, but argued that EPA underestimated the risks posed by disposal of the waste in a Subtitle C landfill for at least three reasons. The reasons noted by the commenter were: (1) The TCLP understates the leaching potential of the waste in a Subtitle C landfill by at least an order of magnitude, because the waste may be exposed to solvents and other chemicals that encourage contaminant leaching, and because the TCLP appears "uniquely ineffective" in leaching contaminants from the waste; (2) EPA's risk estimates are based on the presence of 2,4,6-TBP only and ignore the presence of arsenic and other toxic contaminants in the waste and TCLP leachate; (3) EPA's assumption of 95% containment efficiency for a Subtitle C landfill is unreasonable given that owner/operator's post-closure responsibilities typically end after 30 years; containment efficiency would drop to 60% at 100 years, and beyond 100 years additional declines can be expected.

As a general response to the argument that EPA underestimated the risks posed by Subtitle C disposal for the wastes in question, the Agency notes that these arguments have no practical effect and would not change EPA's decision to list the waste. However, EPA does not agree with some of the arguments put forth by the commenter, and is responding to them for this reason. EPA does not agree that the TCLP underestimates the leaching potential of the waste in question for reasons discussed below. Absent any firm data to conclude otherwise, EPA finds no reason to conclude that the TCLP underestimates the leaching potential of the 2,4,6-TBP production wastes. As a preliminary matter, EPA notes that the commenter cites no basis for its quantified estimate that the leaching is underestimated by one order of magnitude. Moreover, there is no indication that the TCLP is "uniquely ineffective" in leaching contaminants from this waste, as the commenter claims. The properties of 2,4,6-TBP indicate that the relatively low leaching efficiency is not unexpected. This chemical is not highly soluble in water (70 ppm; see The Merck Index, Ninth Edition, 1976) and would not be expected to leach from the organic waste matrix at very high levels.

The octanol-water partition coefficient (Kow) for this substance is on the order of 17,000 (or in log form, 4.23); this coefficient is a measure of the tendency of the chemical to partition into organic phases compared to water, and this value indicates the chemical is expected to be at 17,000-fold higher concentration in the organic phase compared to water. It, therefore, would be expected to remain bound in the organic phase and would tend to be less mobile. Furthermore, the lower leaching from the spent filter material is also logical, because the filter material is activated carbon. Activated carbon is used expressly to remove organic material from a process stream, and the 2,4,6-TBP is expected to be relatively tightly adsorbed to this matrix. Therefore, EPA has no reason to believe, despite the commenters' assertions, that the TCLP results are not valid for this waste.

EPA's decision to list this waste focused on 2,4,6-TBP because this chemical was found at levels that greatly exceeded the other constituents detected. While other constituents were detected in the waste, many were also found in blank laboratory QC samples (e.g., methylene chloride) indicating that the detection of these volatile constituents in waste samples may have been due to some sample contamination, perhaps in the laboratory. Concerning arsenic, the analytical results are suspect due to known problems with measuring some metals in these type of waste matrices. (See Method 6020, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, third edition, 1994; OSW/USEPA). One of the waste samples (spent carbon filter material, number GL-08) showed the presence of other brominated phenols, notably 2,4-dibromophenol; however, EPA does not have any health-based levels to rigorously evaluate them.

Analysis of the other sample (floor sweepings and off-specification product, GL-09) showed the presence of several volatile constituents that were found in the blank samples. However, this sample also contained significant levels of 1,2-dibromoethane (also known as ethylene dibromide, or EDB). As evidenced by the very low drinking water standard established for this chemical (the maximum contaminant level, or MCL, is 0.00005 mg/L; see 40 CFR 141.61), this substance is highly toxic, and the level reported in the TCLP analysis (36 mg/L) is 720,000 times the existing MCL. The Agency believes that the relatively high levels of this chemical in the waste (and the corresponding TCLP sample) further confirms that these production solids

contain high levels of highly toxic chemicals and present a substantial hazard, even if managed in a Subtitle C landfill. There is further discussion of the presence of EDB in the following Unit IV.E.3.

In its reevaluation, EPA did not conclude that the containment efficiency for a Subtitle C landfill was necessarily 95%. The Agency's point was, even if the efficiency was as high as 95%, the potential release from 2,4,6-TBP production solids in a landfill may present risks at levels of concern. While estimating the long-term efficiency of containment is highly uncertain, EPA agrees that it may be less than 95%, thereby making the potential risk higher.

e. Other Comments. The commenter that supports EPA's decision to list the waste at issue noted that the disposal of wastes with high concentrations of organic contaminants is what Congress sought to restrict through the Land Disposal Restrictions program. The commenter argued that a hazardous waste listing for these wastes is appropriate to ensure Congressional objectives of the LDR program are achieved. The commenter claims EPA must consider these expressions of "proper" management when applying its criteria for listing hazardous waste.

EPA agrees that in establishing the Land Disposal Restrictions program, Congress found land disposal to be incapable of ensuring long-term containment of hazardous waste. However, EPA does not agree that the high content of organic contaminants is, by itself, sufficient to require listing. The listing decision is based on the highly toxic nature of the constituent in question (2,4,6-TBP), in conjunction with potential risks associated with its release, even if placed in a Subtitle C landfill. Therefore, EPA agrees that listing, and the associated treatment required under the land disposal restrictions program, are appropriate because of the chemicals high toxicity and potential mobility in groundwater. EPA does not agree that listing is appropriate merely to comply with Congressional intent for treatment of hazardous waste, because a waste must first be determined to be hazardous before the LDR program applies.

One commenter argued that EPA's reevaluation could be read as an indictment of the Agency's comprehensive Subtitle C program for managing hazardous wastes in landfills, and indicated that if Subtitle C disposal is not protective and constitutes mismanagement, then EPA's landfill standards are inadequate. The commenter does not believe this is the

case and claims the criticism of the long-term integrity of landfills is an effort to avoid the implications of the *Dithiocarbamate* decision. The commenter stated that, even is some uncertain degree of risk is posed in the long term by such disposal, this uncertainty is not a sufficient basis for listing these wastes.

As noted elsewhere in response to other related comments, EPA believes the extensive regulatory controls provide management that reduces the potential for releases to the environments. EPA's decision to list the solids from the production of 2,4,6-TBP is in not an indictment of the Agency's Subtitle C program, but is based on the specific characteristics of this waste (i.e., toxicity, mobility) and the potential risks that would occur if these wastes were disposed without prior treatment, and the long-term containment systems in a Subtitle C landfill degrade over time, as expected.

3. Comments on the January 14, 1998 Notice Letter

As noted in the above section, a reexamination of the analytical data of the samples from the 2,4,6-TBP production waste showed that 1,2-dibromoethane (EDB) was found in both the total and TCLP analyses of the sample of floor sweepings and off-specification product. The EPA sent a letter of notice to the interested parties (i.e., the sole generator of this waste and the commenter that originated the comment about additional constituents being present in the waste). The letter explains the new piece of information and notes that the presence of this highly toxic chemical appears to further support the Agency's contention that the waste warrants listing. EPA received comments from the generator, and the Agency's responses are summarized below. The comments and responses are described in more detail in the docket. (See "Supplementary Response To Public Comment," April 1998).

The commenter challenged the validity of the analytical results showing the presence of EDB in the waste, because of technical flaws in the analytical procedure. The commenter collected more samples of the floor sweepings and product, and submitted chemical analyses that did not show the presence of EDB. The commenter went on to note that EDB is not used as a raw material, nor is it produced as a by-product in the 2,4,6-TBP process. The commenter argued that even if the EDB was found in the floor sweepings, the presence of EDB could not justify the scope of the Agency's proposed listing. The commenter stated that, since EDB is

not present in the 2,4,6-TBP process, its presence would have to be the result of a mixture of 2,4,6-TBP and EDB.

EPA disagrees with the contention that the Agency's analysis was flawed. EPA reexamined the raw analytical data for this sample and the data clearly indicate that EDB was detected and quantified as reported. EPA has provided a full response in the docket to these and other comments related to the analysis of the wastes under study (see the Supplementary Comment Summary & Response Document in the docket). EPA agrees that EDB does not appear to be used in the 2,4,6-TBP process, and that it is unlikely to form as a by-product. However, EDB is used as a raw material elsewhere in the facility, and the raw analytical data clearly support the finding of EDB in the waste. Therefore its presence may be due to the cross contamination of waste streams, as the commenter suggested. The lack of EDB in the recent samples obtained by the commenter suggest that EDB may not be present in all samples of waste. Given the limited data, EPA agrees that EDB is not the primary basis of listing this waste, but that the presence of the 2,4,6-TBP itself is the major concern.

The commenter stated the Agency did not provide public notice of its intent to list 2,4,6-TBP production wastes based on the presence of EDB, and that this is in violation of the Administrative Procedures Act. Furthermore, the commenter contends that the EPA's "new rationale" to list TBP as hazardous would fail to take into account the marked shift in emphasis between the proposed and final rules.

As EPA noted in its response to similar comments on the first notice letter (see subsection 2.a above), due to the limited time EPA has for completing this action, the Agency decided that a letter of actual notice to the aforementioned interested parties was appropriate. The generator of the 2,4,6-tribromophenol production waste is the only party EPA believes would be affected by the recharacterization of the rationale for listing and that would have a direct interest in the final listing decision. The Agency is not aware of any other generators of this waste, or any other persons who would have a direct interest in this decision, thus the actual notice given in this case is sufficient.

Finally, the commenter stated that it had not received any response to its previous comments challenging the use of QSAR as a basis for alleging that 2,4,6-TBP itself is toxic. The commenter also stated that EPA does not have any data indicating that 2,4,6-TBP is toxic,

and is instead relying on predictive models that were never intended to be used for this purpose. The commenter submitted further comments on this issue.

EPA was not seeking further comments on the use of QSAR in this listing determination. The Agency's responds to all comments concerning QSAR submitted on the proposed rule in Units IV.A, IV.B, and IV.C of today's final rule. These responses are also given in the Public Comment Summary and Response Document found in the docket as an appendix to the background document.

F. Listing Determination for Wastes From the Production of Tetrabromobisphenol-A

1. Solids

In the proposed rule, EPA deferred a hazardous waste listing decision on waste solids from the production of tetrabromobisphenol-A (TBBPA), based on a lack of information on waste characterization and toxicity. In the absence of data on the amount of brominated phenols in TBBPA product, the leachability of brominated phenols from the product matrix and toxicological data on TBBPA solids, the EPA was unable to analyze the potential risks associated with TBBPA migrating to ground water if managed in unlined landfills. The Agency, accordingly, requested this information in the proposal and also noted that if sufficient information to support a listing determination was received during the public comment period, the Agency may choose to promulgate a determination rather than defer action in the final rule.

One commenter provided toxicological data on TBBPA that support an assessment of the potential for environmental risk from release of TBBPA. (The toxicological data were previously submitted to EPA under Section 8(d) of the Toxic Substances Control Act (TSCA) and as the result of a TSCA Section 4 Test Rule.) The test data on the toxicology of TBBPA indicate that TBBPA product "does not pose a health hazard to mammals." One reason appears to be that TBBPA is poorly absorbed when ingested. In 1985, the Interagency Testing Committee reviewed TBBPA and found no need to conduct further health effects testing. In addition, the results of ecological testing submitted to the Agency by the Brominated Flame Retardant Industry Panel do not indicate an unacceptable level of hazard for aquatic organisms.

Ecological effects data submitted by the commenter (and previously

collected by EPA under TSCA as noted above) indicate that TBBPA is not particularly toxic to aquatic test species (e.g., fathead minnow, bluegill, daphnia); no long-term aquatic effects are observed with tetrabromobisphenol-A in water at levels below 0.22 mg/L. Using the data on fish and assuming that the waste was placed in an unlined landfill close to a stream into which ground water discharged, the Agency made a worst-case assumption that leachate from the landfill would be saturated with tetrabromobisphenol-A at the chemicals solubility level (4.16 mg/L). This leachate would be diluted before reaching any nearby stream (in the proposed rule, EPA estimated a dilution fraction on the order of 100 for leachate exiting a landfill), and then diluted further after discharge to such a stream. Therefore, the diluted concentration in the stream after such a scenario would be well below the above-stated long-term aquatic effect level of 0.22 mg/L.

In determining potential risk from the TBBPA waste, EPA also considered the possible risk due to the presence of traces of 2,4,6-TBP in the TBBPA waste. The commenter provided the Agency with data on concentrations of 2,4,6-tribromophenol in the TBBPA product. In considering whether to list spilled product and floor sweepings from the packaging of TBBPA due to the possible presence of 2,4,6-TBP, EPA assumed that the 2,4,6-TBP concentration in the spilled product would be no greater than the 2,4,6-TBP concentration in the TBBPA product itself. (Note that this appears to be a worst case assumption because 2,4,6-TBP is not handled in the packaging area, thus the spilled product should not be contaminated with any further 2,4,6-TBP; the commenter confirmed that waste solids from production of TBBPA are floor sweepings generated from spills in the packaging area, and not the production area). The commenter reported that commercial TBBPA has less than 1% impurities, and the primary impurities are isomers of tribromobisphenol A, not 2,4,6-TBP. The concentration of 2,4,6-TBP in the TBBPA product reported by the commenter is more than 100 times less than the concentration of 2,4,6-TBP EPA found in the off-specification 2,4,6-TBP product.

The TCLP leaching data presented in the proposed rule show a maximum concentration of 760 mg/l of 2,4,6-TBP in leachate extracts from the off-specification 2,4,6-TBP product. In the absence of TCLP leaching data for the TBBPA solids, EPA assumed the TCLP leaching efficiency of 2,4,6-TBP from the spilled TBBPA product and floor sweepings would be comparable to the

leaching efficiency of 2,4,6-TBP measured for the off-specification TBP product. Thus, the TCLP level for 2,4,6-TBP from the TBBPA solids was assumed to be more than 100-fold less than the TCLP level found in the TBP off-specification product. As described in the proposed rule, the level of estimated individual risk from exposure to 2,4,6-TBP in groundwater for disposal of the off-specification 2,4,6-TBP product in an unlined Subtitle D landfill was 7×10^{-4} (with the SAR-based health number is corrected for molecular weight differences of 2,4,6-TCP and 2,4,6-TBP as noted in today's notice, the risk would be 4.2×10^{-4}). Using this analysis, any risk posed by TBBPA solids under the same disposal scenario would be more than a 100-fold less, or less than 10^{-6} . Therefore, this waste is not a candidate for listing as hazardous based on the presence of 2,4,6-TBP.

In addition, EPA has monitoring data that also indicate TBBPA wastes do not present a significant risk. As stated in the proposed rule, record sampling of an on-site landfill at one plant where TBBPA solids formerly were disposed for a number of years showed the absence of TBBPA and any brominated compounds in the landfill leachate. Therefore, based on the data submitted by the commenter, the available data on the limited toxicity of TBBPA noted above, and the monitoring data, the Agency has decided not to list waste solids from the production of TBBPA.

2. Wastewaters

As discussed in the proposed rule (59 FR 24537), wastewaters from the manufacture of tetrabromobisphenol-A already are listed and carry the hazardous waste code of K131. Methyl bromide and TBBPA are produced in the same process. One commenter objected to the language used in the proposed rule to describe the process step that generates wastewaters. The proposal states "process wastewater originates from the distillation step where methyl bromide is recovered." The commenter contended that the wastewater originated from a distillation step where methanol is recovered. The commenter believed the language in the proposed rule was inconsistent with the existing listing description for K131 and was concerned that EPA was attempting to amend the K131 listing as part of this rulemaking.

The Agency concedes that the language used in the proposed rule was misleading. Indeed, the distillation step is where methanol, or both methanol and methyl bromide, can be recovered, as described in the Listing Background Document. The Agency was not

referring to a specific process at any one facility. It was simply attempting to make the point that TBBPA and methyl bromide are produced in the same process and the wastewaters arising from that process meet the existing listing description for K131. As a result, there is no need for further action on a hazardous waste listing for wastewaters from TBBPA production.

In response to a petition filed by the Ethyl Corporation for judicial review of the K131 listing, the Agency stayed the K131 listing as it applies to the "liquid material exiting the reactor producing methyl bromide located at Ethyl Corporation's production facility." This facility currently recycles the wastewaters, after solids removal, to the bromine plant for recovery of bromine values. As directed by the terms of the stay, the Agency is in the process of "determining whether the wastewater stream generated at this facility contains a solid waste and, if so, whether it is eligible for an exemption or variance." EPA clarifies that today's rulemaking does not affect the Agency's ongoing effort to respond to this petition. EPA is not attempting to reach a decision on the applicability of the K131 listing to Ethyl's wastewater stream as part of the listing determination for wastes from organobromines production.

G. Other Issues

One commenter felt that the model used by the Agency for assessing migration of 2,4,6-tribromophenol wastewaters from the deep formations into which they were injected was very conservative and over-estimated potential risks. The commenter felt that many of the assumptions of the model describe physical conditions that are known not to exist.

In response, the Agency notes that the model was intended to represent a conservative scenario in order to identify any potential risk if leakage were to occur. The Agency reexamined the record and agrees that the existing data collected for the site suggest that the release scenario modeled is not likely to exist. The information available indicates that the only abandoned wells found in the area of the injection wells that are deep enough to penetrate the injection zone are in fact known to be plugged and should not serve as potential conduits for release of waste constituents from the injection zone to the upper drinking water aquifer. Furthermore, as noted in the proposed rule, sampling of drinking water wells on the plant site and in the vicinity of the plant did not find any trace of tribromophenol in the groundwater, even though disposal has been

occurring for nearly twenty years. In any case, the comment is moot, since EPA has decided not to list wastewaters from the production of 2,4,6-TBP.

One commenter requested that the Agency provide a detailed definition of the term "production" as used in the proposed listing description for K140. The commenter suggested that production be defined to limit the reach of the listing to wastes resulting from the actual synthesis of 2,4,6-TBP (i.e., the listing should not encompass wastes from processes that isolate an intermediate or a product other than 2,4,6-TBP).

The Agency does not believe it is necessary for this final rule to define "production" because the majority of wastes listed in 40 CFR 261.37 include the unambiguous term "production." The fact that intermediates or co-products may arise from the same process that produces 2,4,6-TBP is irrelevant to the basis for listing the process wastes from the production of 2,4,6-TBP. If listings were constructed so narrowly as to capture wastes from the production of a given product only when the process produced that product alone, vast amounts of process waste containing similarly hazardous constituents would remain unregulated. In this case, by manipulating the process, a producer of tribromophenol may co-produce di-, tetra-, or penta-brominated phenols along with tribromophenol from the same process. If the listing were crafted the way the commenter suggests, the operator of such a process would escape the intent of this regulation, while still producing 2,4,6-TBP.

One commenter expressed concern that the proposed rule may have the unintended effect of increasing the land disposal of wastes containing 2,4,6-TBP by preventing their use as feedstocks to bromine recovery units (BRUs). EPA does not agree with this statement. The listing of TBP production wastes should not affect the current management of these materials in BRUs. EPA clarifies that BRUs are halogen acid furnaces, which meet the definition of industrial furnace in 40 CFR 260.10. As stated in the proposed rule, the combustion of hazardous waste in industrial furnaces is regulated under 40 CFR part 266, subpart H. The commenter noted that EPA issued a correction notice on August 27, 1991 that excluded from regulation certain brominated materials combusted in halogen acid furnaces (56 FR 42504). The Agency agrees that the provision added by the correction notice effectively excludes brominated materials meeting the criteria in 40 CFR 261.2(d)(2)(i)-(iii) from designation as

"inherently waste-like" materials. Accordingly, these materials are not hazardous wastes; thus, furnaces processing them are not processing hazardous wastes and are not subject to the BIF regulations. Listed and characteristic brominated streams that do not meet the criteria of 40 CFR 261.2(d)(2), i.e., that contain >1% of Appendix VIII materials, are considered inherently waste-like and should not be burned in non-RCRA facilities. Today's listing of TBP wastes does not alter the criteria of this exclusion nor subject the commenter's BRUs to any additional requirements. If the commenter's brominated waste streams meet the criteria for the exclusion, the BRUs to which these streams are fed are not subject to regulation under part 266, subpart H.

Finally, the Agency notes that the sole generator of the 2,4,6-tribromophenol production solids did not attempt to use this material as feedstock for the BRU, even in the absence of a hazardous waste listing.

One commenter questioned the accuracy of early sampling and analysis results obtained at one facility. This commenter submitted a letter to the Agency in 1993 detailing concerns over the quality and accuracy of some of the analytical results. The commenter concluded in the 1993 letter, "There are a great many non-credible and questionable analyses in this study. We believe that the analytical work will simply not stand up to close scrutiny. The analytical results are not of a quality that lend themselves to making a valid risk assessment or developing regulations for the organo-bromine industry. The validity and accuracy simply aren't there." EPA prepared a complete response to the issues enumerated in that letter and has placed it in the public docket for today's rulemaking. EPA notes that none of the questioned data were used as a basis for the decision to list wastes from the production of 2,4,6-tribromophenol.

V. Conclusions

The Agency is listing, as EPA Hazardous Waste No. K140, floor sweepings, off-specification product, and spent filter media from the production of 2,4,6-tribromophenol. EPA is also listing discarded 2,4,6-TBP product as EPA Hazardous Waste No. U408. EPA received no comments objecting to the listing of U408, except to the extent that issues relating to SAR may be considered relevant to the U408 listing. (EPA notes, however, that the analysis completed for the listing of K140 also included an evaluation of the risks posed by off-specification 2,4,6-

tribromophenol product. Such off-specification product should be very similar to discarded material that might carry the U408 listing and, as such, the discarded U-waste may present comparable risks and is even more likely to be disposed of in an unlined landfill). EPA responded above, and in the separate Response to Public Comment Document, to all comments on the SAR analysis. These listing determinations are based on the projected toxicity of 2,4,6-TBP from structural activity studies, and the assessment of risk from potential exposure to this chemical. EPA's decision to list these wastes as hazardous represents a determination by the Agency that the wastes identified in this action meet the criteria for listing hazardous wastes presented in 40 CFR 261.11. Specifically, based on available evidence, the Agency concludes that 2,4,6-tribromophenol is similar in toxicity to its chlorinated analogue (2,4,6-trichlorophenol) and, therefore, may pose a risk to human health and the environment if improperly land-disposed.

Based on the data collected by the Agency during the recent organobromines industry study and the unique conditions of the industry regarding limitations to future expansion, EPA believes there is ample justification for a no-list determination for wastes generated from production of the other organobromine chemicals identified in the proposed consent decree (i.e., tetrabromobisphenol A, bromochloromethane, ethyl bromide, octabromodiphenyl oxide, and decabromodiphenyl oxide) and for wastewaters from 2,4,6-tribromophenol production. After considering the collected information and data from toxicological, chemical, hydrogeological, and engineering viewpoints, EPA has concluded that the disposal of any wastes from these processes that are not currently listed in 40 CFR part 261, subpart D does not pose a substantial present or future risk to human health or the environment. Therefore, EPA is not listing any additional hazardous wastes generated from the production of these chemicals. The Agency received no comments objecting to its decision not to list these wastes.

VI. Land Disposal Restrictions

A. Treatment Standards for Organobromine Wastes

In the land disposal restrictions Phase III proposed rule (60 FR 11722, March 2, 1995), EPA proposed that the newly identified K140 and U408 wastes

comply with numerical treatment standards for 2,4,6-tribromophenol to be promulgated in 40 CFR 268.40, and that 2,4,6-tribromophenol be added as a underlying hazardous constituent subject to the universal treatment standards of 40 CFR 268.48.

Since treatment data currently are not available for 2,4,6-TBP, the Agency proposed to set the UTS for 2,4,6-TBP based on analytical detection limit data transferred from 2,4,6-trichlorophenol. The structures of 2,4,6-tribromophenol and 2,4,6-trichlorophenol are sufficiently similar to be considered halogenated congeners of phenol. Both halogenated phenols contain three symmetrically placed bromine or chlorine substituents that are difficult to remove by chemical substitution. The chemical behavior and mechanisms of action for 2,4,6-tribromophenol are expected to be similar to its chlorinated analogue, 2,4,6-trichlorophenol. Thus, the Agency proposed the treatment standards for 2,4,6-tribromophenol at 7.4 mg/kg for nonwastewaters and 0.035 mg/L for wastewaters for 2,4,6-tribromophenol.

The Agency solicited comment regarding the achievability of this standard by demonstrated available technologies and regarding the analytical detection limit of 2,4,6-TBP in treatment residual matrices. The Agency also solicited any available data on the concentrations 2,4,6-TBP in treatment residuals from the recovery or destruction of wastes containing 2,4,6-TBP. The analytical method for 2,4,6-TBP is SW-846 method 8270 (GC/MS for semivolatiles, capillary column).

In response to the Agency's request for comment, Chemical Waste Management, Inc. supported the Agency's proposed treatment standards associated with organobromine wastes; the Environmental Technology Council, while objecting to setting treatment standards on the sole basis of analytical detection limits, noted that EPA can use technology transfer to develop standards from similar chlorinated organics. Therefore, EPA is promulgating the proposed UTS for 2,4,6-TBP at 7.4 mg/kg for nonwastewaters and 0.035 mg/L for wastewaters.

B. Applicable Technology

The single facility that produces 2,4,6-TBP wastes uses a bromine recovery unit (BRU) to recover bromine values from organic liquid and vapor waste streams. In this unit, the organics are burned and the combustion products are removed by a wet scrubber. The BRU is a halogen acid furnace which meets the regulatory definition of industrial furnace in 40 CFR 260.10. The

combustion of hazardous waste in industrial furnaces is regulated under 40 CFR part 266, subpart H, which regulates air emissions from these units and requires monitoring and analyses.

Treatment of 2,4,6-TBP wastes in the BRU should be effective in destroying the phenolic component of 2,4,6-tribromophenol and providing for recovery of bromine. Based on available information, EPA proposed that the best demonstrated available technology (BDAT) for 2,4,6-tribromophenol wastes is treatment by BRU. EPA solicited comment on this assertion and on the potential applicability of other technologies which destroy 2,4,6-tribromophenol and provide recovery of bromine.

Great Lakes Chemical Corporation (GLCC) commented that EPA's assumption that TBP waste generated by GLCC currently is managed in a bromine recovery unit (BRU) is incorrect. GLCC maintains that treatment of TBP in the existing BRU would be very difficult, if not impossible (both technically and legally). Accordingly, GLCC concluded that the proposed TBP treatment standard is flawed. The Agency disagrees. Because tribromophenol is not refractory, EPA believes the BRU technology clearly is applicable to waste treatment of the K140 and U408 wastes and, therefore, may form the basis of a standard. There are various combustion technologies capable of meeting the numerical treatment standards, one of which is BRU. The Agency stated in error in the proposal that the existing BRU already is subject to the performance standards of part 266, subpart H. However, in order to treat the listed organobromine wastes, the subject BRU would be subject to the part 266, subpart H performance standards. EPA has assessed the costs associated with incineration of the newly identified organobromine wastes as part of its regulatory impact analysis. See the regulatory impact analysis discussion in Section X of this preamble. Because the Agency has promulgated the universal treatment standards for the organobromine wastes, treaters are free to use any technology capable of achieving the numerical standard promulgated today (so long as the standard is not achieved by means of impermissible dilution).

C. Capacity Analysis Results Summary

1. Introduction

This section summarizes the results of the capacity analysis for the wastes covered by today's rule. For a detailed discussion of capacity analysis-related

data sources, methodology, and detailed response to comments for each group of wastes covered in this rule, see the following document: "Background Document for Capacity Analysis for Land Disposal Restrictions: Surfaced-disposed Organobromine Production Wastes (Final Rule)" (i.e., the Capacity Background Document).

When EPA establishes land disposal restrictions (LDR) determinations, LDR treatment standards become effective when promulgated unless the Agency grants a national capacity variance delaying the effective date. RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2) authorizes EPA to grant a national capacity variance for the waste and to establish a different date (not to exceed two years beyond the statutory deadline) based on "the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" if there is inadequate alternative treatment/recovery capacity.

In general, EPA's capacity analysis focuses on the amount of waste to be restricted from land disposal that is currently managed in land-based units and will therefore require alternative treatment as a result of the LDRs. The quantity of wastes that are not managed in land-based units (e.g., wastewater managed only in RCRA exempt tanks, with discharge to a Publicly Owned Treatment Works (POTW)) is not included in the quantities requiring alternative treatment as a result of the LDRs. Also, wastes that do not require alternative treatment (e.g., those that are currently treated using an appropriate treatment technology) are not included in these quantity estimates. Land-disposed wastes requiring alternative treatment or recovery capacity that is available on-site or within the same company as the generator are also omitted from the required commercial capacity estimates.

EPA's decisions on whether to grant a national capacity variance are based on the availability of alternative treatment or recovery technologies. Consequently, the methodology focuses on deriving estimates of the quantities of waste that will require either commercial treatment or the construction of new on-site treatment or recovery unit as a result of the LDRs. The resulting estimates of required commercial capacity are then compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal before meeting the LDR treatment standards. If adequate capacity does not exist, RCRA

section 3004(h) authorizes EPA to grant a national capacity variance for the waste for up to two years or until adequate alternative treatment or recovery capacity becomes available.

2. Capacity Analysis Results Summary

A brief summary of the capacity analysis performed to support this rule is presented below. For additional detailed information, please refer to the "Background Document for Capacity Analysis for Land Disposal Restrictions: Surfaced-disposed Organobromine Production Wastes (Final Rule)".

For this capacity analysis, EPA examined data on waste characteristics and management practices that have been gathered for the organobromine production industry study in the 1992 RCRA Section 3007 survey. The Agency analyzed the capacity-related information from the survey responses, reviewed the public comments received in response to the proposed rule, and identified the following annualized quantities of newly listed hazardous wastes requiring commercial treatment: Less than 100 tons of organobromine nonwastewater wastes (K140, U408) are expected to require alternative treatment capacity. The available data sources indicate that there are no quantities of K140 and U408 wastewaters that will require alternative commercial treatment, and therefore this volume is assumed to be zero.

EPA is finalizing the rule to apply UTS to these wastes. The treatment standards for organobromine production wastes are concentrations which in turn are based on bromine recovery unit as the BDAT. Additionally, EPA believes that incineration and thermal destruction technologies are applicable technologies to meet these treatment standards. The Agency estimated that the commercially available sludge and solid combustion capacity is approximately 430,000 MT per year and sufficient to treat these wastes when the listing determinations for these wastes become effective. Since EPA is finalizing numerical standards for these wastes, the Agency does not exclude the use of other technologies capable of meeting the final LDR treatment standards. Sufficient commercial capacity exists to treat these wastes to meet the LDR standards. Therefore, EPA is not granting a national capacity variance under LDR for these wastes. The LDR standards for these wastes will become effective when the listings become effective.

For soil and debris contaminated with the newly listed wastes, EPA proposed to not grant a national capacity variance. EPA received no comments regarding

this issue. EPA believes that the contaminated soil and debris can be managed on-site or if necessary, off-site commercial treatment capacity is available. Therefore, EPA is not granting a national capacity variance to hazardous soil and debris contaminated with the newly listed wastes covered under this rule. Based on the questionnaire, there were no data showing the mixed radioactive wastes with the newly listed wastes. There were also no comments concerning the radioactive wastes mixed with the newly identified wastes. EPA is not granting a national capacity variance for mixed radioactive wastes or soil and debris contaminated with these mixed radioactive wastes.

VII. Waste Minimization Opportunities in the Industry

During the industry study, the Agency identified two potential opportunities for waste minimization. The first involves the recovery of tribromophenol in the tetrabromobisphenol-A and tribromophenol process. Commercial tetrabromobisphenol-A is made by condensation of phenol and acetone and, hence, the feedstock contains some unreacted phenol. Record sampling of one wastewater stream, which leaves the process hot, revealed that it contained tribromophenol. The Agency appreciates the effort that the commenter has made to recover TBP and understands the difficulty of recovering pure product. The Agency received some information from the two manufacturers of TBBPA. One firm claimed the idea was impractical. The second has installed a process to recover a low-grade material which is a mixture containing underbrominated bisphenol-A compounds. It is yet unknown if this material can be marketed successfully as a low-grade flame retardant formulation. The facility has informed the Agency that if the material cannot be marketed it will be sent to Subtitle C facilities for disposal. This plant also is recycling the wastewater, after solids removal, to the bromine plant for recovery of bromine from the sodium bromide present. Removal of the solids is necessary to prevent problems in the bromine recovery operation.

The second area where savings could be achieved is in product packaging. Materials spilled in the packaging areas are drummed and shipped to Subtitle C facilities. Presently, the two major manufacturers of organobromine chemicals generate over 300 tons per year of various spilled solid products. Improved housekeeping in the packaging areas will reduce the volumes of these wastes.

VIII. State Program Implementation

A. Applicability of Rules in States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce RCRA programs within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its authorized hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State modifies its program to reflect the Federal standards, and applies for and is granted authorization. While EPA initially implements HSWA-related provisions in authorized States, States still must adopt these provisions as State law to retain final authorization.

Today's rule for listing EPA Hazardous Waste Nos. K140 and U408 is being promulgated pursuant to section 3001(e)(2) of RCRA, a provision added by the HSWA. With these rules being promulgated today, EPA considers its HSWA obligation to make a determination regarding listing organobromine wastes to be fulfilled. Therefore, the Agency is adding these requirements to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA and that take effect in all States, regardless of their authorization status. The land disposal restrictions and treatment standards in today's rule are being promulgated pursuant to section 3004(g) and (m) of RCRA, provisions also added by HSWA. Table 2 in 40 CFR 271.1(j) is

modified to indicate that these requirements are self-implementing. States may apply for final authorization for the HSWA provisions identified in 40 CFR 271.1(j), as discussed in the following section of the preamble.

B. Effect on State Authorizations

As noted previously, today's rule is being promulgated pursuant to provisions added by HSWA. The additions of K140 to the list of hazardous wastes from specific sources and of U408 to the list of commercial chemical products that are hazardous when discarded are promulgated pursuant to Section 3001(e)(2) of RCRA, a provision added by the HSWA.

The land disposal restrictions and treatment standards are promulgated pursuant to Sections 3004 (g) and (m), also HSWA provisions.

As noted above, EPA will implement the HSWA portions of today's rule in authorized States until they modify their programs to adopt these rules and such modifications are approved by EPA. Because this rule will be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim authorization under RCRA section 3006(g), if the State regulations are substantially equivalent to EPA's regulations, or final authorization under RCRA sections 3006(b), if the State regulations are fully equivalent to EPA's regulations. The procedures and schedule for State programs modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire on January 1, 2003 (see 40 CFR 271.24(c), 52 FR 60129, December 18, 1992).

It should be noted that 40 CFR 271.21(e) requires that States having final RCRA authorization must modify their programs to reflect Federal program changes and subsequently submit the modifications to EPA for approval. The deadline by which States must modify their programs to adopt today's rule will be determined by the date of promulgation of the final rule in accordance with 40 CFR 271.21(e)(2). Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in today's rule. Such State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, these State regulations will not be deemed as RCRA

requirements until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce those regulations as a matter of State law. In addition, in implementing the Federal program, EPA will work with the States under cooperative agreements to minimize duplication of efforts; in many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of EPA's regulations are not required to include regulations equivalent to the EPA regulations in their application. However, States must modify their programs by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The requirements States must meet when submitting final authorization applications are set forth in 40 CFR 271.3.

IX. Compliance and Implementation

A. Section 3010 Notification

Generally, when new hazardous wastes are listed, all persons who generate, transport, treat, store, or dispose of the newly listed wastes are required to notify either EPA, or a State authorized by EPA to operate the hazardous waste program, of their activities pursuant to section 3010 of RCRA. However, under the Solid Waste Disposal Amendments of 1980 (Pub. L. 96-482), EPA was given the option of waiving the notification requirement for persons who handle wastes that are covered by today's listing and already have notified EPA that they manage other hazardous wastes and have received an EPA identification number. This waiver is being promulgated because of the likelihood that persons managing today's promulgated wastes already are managing one or more hazardous wastes that generally are associated with the generation of EPA Hazardous Waste Nos. K140 and U408 and, therefore, have previously notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes these wastes and has not previously notified and received an identification number, that person must obtain an identification number pursuant to 40 CFR 262.12 before that

person can generate, transport, treat, store, or dispose of these wastes.

B. Compliance Dates for Facilities

The effective date of today's rule is November 4, 1998. Today's listings will be promulgated pursuant to HSWA. HSWA requirements are applicable in authorized States at the same time as in unauthorized States. Therefore, EPA will regulate the wastes being promulgated today until States are authorized to regulate these wastes. Once these regulations are promulgated in a final rule by EPA, the Agency will apply these Federal regulations to these wastes and to their management in both authorized and unauthorized States.

1. Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of wastes that are subject to RCRA regulation for the first time by this rule (that is, facilities that have not previously received a permit pursuant to section 3005 of RCRA and are not currently operating pursuant to interim status), might be eligible for interim status (see section 3005(e)(1)(A)(ii) of RCRA). In order to obtain interim status based on treatment, storage or disposal of such newly identified wastes, eligible facilities are required to comply with 40 CFR 270.70(a) and 270.10(e) by providing notice under section 3010 and submitting a Part A permit application no later than November 4, 1998. Such facilities are subject to regulation under 40 CFR part 265 until a permit is issued.

In addition, under section 3005(e)(3) and 40 CFR 270.73(d), not later than November 4, 1998, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a Part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on that date.

2. Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly identified hazardous wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA must file an amended Part A permit application with EPA no later than the effective date of today's rule, (i.e., November 4, 1998). By doing this, the facility may continue managing the newly listed wastes. If the facility fails

to file an amended Part A application by that date, the facility will not receive interim status for management of the newly listed hazardous wastes, and may not manage those wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Facilities that already have RCRA permits must request permit modifications if they want to continue managing newly listed wastes. See 40 CFR 270.42(g). This provision states that a permittee may continue managing the newly listed wastes by following certain requirements, including submitting a Class 1 permit modification request by the date on which the waste or unit becomes subject to the new regulatory requirements (i.e., the effective date of today's rule), complying with the applicable standards of 40 CFR parts 265 and 266, and submitting a Class 2 or 3 permit modification request within 180 days of the effective date.

Generally, a Class 2 modification is appropriate if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60-day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a "default provision," which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized. See 40 CFR 270.42(b).

A Class 3 modification is generally appropriate if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will grant or deny the permit modification request according to the more extensive procedures of 40 CFR part 124. There is no default provision for Class 3 modifications. See 40 CFR 270.42(c).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all

applicable 40 CFR part 265 ground-water monitoring and financial responsibility requirements no later than November 4, 1998. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

X. Listing as CERCLA Hazardous Substances and RQ Adjustment

All hazardous wastes listed in 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), pursuant to CERCLA section 101(14)(C), 42 U.S.C. 9601(14). CERCLA hazardous substances and their reportable quantities (RQs) are listed in Table 302.4 at 40 CFR 302.4. Therefore, in addition to the K140 listing being promulgated today for 40 CFR 261.32 and the U408 listing being promulgated for 40 CFR 261.33, the Agency also is adding K140 and 2,4,6-tribromophenol to the list of CERCLA hazardous substances at Table 302.4 of 40 CFR 302.4.

Reporting Requirements. Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center of the release.¹² In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11004, requires owners or operators of certain facilities to report the release of a CERCLA hazardous substance in a quantity that equals or exceeds its RQ to State and local authorities. EPCRA section 304 notification must be given to the community emergency coordinator of the local emergency planning committee (LEPC) for each area likely to be affected by the release, and to the State emergency response commission (SERC) of any State likely to be affected by the release.

Adjustment of RQs. Under section 102(b) of CERCLA, all hazardous substances under CERCLA have a statutory RQ of one pound unless and until adjusted by regulation. The

Agency's methodology for adjusting RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance.¹³ The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, acute mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. Generally, for each intrinsic property, the Agency ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ of 1, 10, 100, 1000, or 5000 pounds. Each hazardous substance may receive several tentative RQ values based on the primary criteria. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQs are assigned, substances are evaluated further for their susceptibility to certain degradative processes, which are used as secondary RQ adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria) generally is raised one level.¹⁴ This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ (as determined by the primary RQ adjustment criteria) for the original substance. The downward adjustment is appropriate because the potential for harm posed by the release of the original substance is increased as a result of degradative processes.

The methodology summarized above is applied to adjust the RQs of individual hazardous substances. An

additional process applies to RCRA listed wastestreams, which contain individual hazardous constituents. As the Agency has stated (54 FR 33440, August 14, 1989), to assign an RQ to a RCRA wastestream, the Agency determines the RQ for each constituent within the wastestream and establishes the lowest RQ value of these constituents as the adjusted RQ for the wastestream.

Adjusted RQs for 2,4,6-tribromophenol and K140. Waste U408 is 2,4,6-tribromophenol, an individual hazardous substance. It has been evaluated for the six primary RQ adjustment criteria—aquatic toxicity, acute mammalian toxicity, ignitability, reactivity, chronic toxicity, and potential carcinogenicity—and the secondary adjustment criteria of BHP. Available studies of aquatic toxicity have measured an LC50 of 6.54 mg/L for the fathead minnow, resulting in a primary criterion RQ of 100 pounds for the substance.

In addition, based on an analysis of the structural and chemical similarities of 2,4,6-tribromophenol and 2,4,6-trichlorophenol and an evaluation of the potential carcinogenicity of the latter of the two substances, EPA has estimated a low hazard ranking for the potential carcinogenicity of 2,4,6-tribromophenol. This low hazard ranking results in a primary criterion RQ of 100 pounds. Based on this evaluation and the absence of relevant BHP data, the Agency today is finalizing an adjusted RQ of 100 pounds for 2,4,6-tribromophenol.

The EPA is adjusting the RQ of waste K140 in accordance with the methodology for adjusting RQs of hazardous wastestreams by assigning them RQs equal to that of the wastestream constituent with the lowest RQ.

XI. Regulatory Impact Analysis and Compliance Costs

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order 12866 requires that a regulatory agency determine whether a new regulation will have "significant regulatory action" and, if so, that a cost-benefit analysis be conducted. This analysis is a quantification of the potential benefits, costs, and economic impacts of a rule. A significant regulatory action is defined as a regulation that has an annual cost to the economy of \$100 million or more that adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

state, local, or tribal governments or communities; creates a serious inconsistency with actions taken or planned by another agency; materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency estimated the costs of today's rule to determine if it is a significant regulation as defined by Executive Order 12866. Today's rule is estimated to have an annualized incremental cost of well below \$100,000. Based on this compliance cost estimate, today's rule is not considered to be an economically significant regulatory action. However, the Agency believes that this action is significant for novel policy reasons. The following section discusses the results of the economic analyses used to support the Agency's determination.

Approach

To estimate the costs, economic impacts, and benefits of today's rule, the Agency compared post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions. Benefits are addressed in the risk assessment section of this preamble. The baseline management practice for this waste is disposal in a Subtitle D landfill, because this would be the least expensive disposal option.

Results

The facility generating this waste is already in the Subtitle C universe because it generates other listed hazardous wastes. Therefore, costs associated with entering the RCRA hazardous waste system are not attributable to this listing. The owner/operator of the affected facility currently manages wastes off-site, and it is assumed for purposes of this analysis that off-site management would continue under Subtitle C.

At the time of the proposed listing there were two available options for

handling the waste—land filling and incineration. The initial costs were based on the cost of management in a Subtitle C landfill. During the time between the proposal and final promulgation of this listing, Land Disposal Restrictions (LDRs), requiring incineration, were proposed for this waste. Using costs from the *Assessment of the Potential Costs and Benefits of the Hazardous Waste Identification Rule for Industrial Process Wastes*, Volume One: Chapter 3, May 25, 1995, incineration of low volumes of hazardous waste are assumed to be \$1,428/ton. Additionally, costs of \$130/ton are needed to handle the residual which is assumed to be one-quarter of the original tonnage, by weight. For disposal of the 34 tons¹⁴ of waste and residual generated by the affected facility, the marginal compliance cost of this listing would be less than \$48,000 per year. The transportation costs are assumed to be equivalent to the Subtitle D handling because there is a hazardous waste incinerator in El Dorado, Arkansas.

Disposal method	Cost/year	Marginal difference
Hazardous		
Incineration	\$48,552	.....
Residual-Sub C	1,105	.....
Land filling .....	.....	.....
Total post-rule	49,657	.....
Baseline	Subtitle D landfilling	1,700 47,957

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions).

With respect to organobromine producing facilities that are small entities, the Agency does not believe that today's final rulemaking will have a significant impact. The organobromine chemical-producing industry in the U.S. is geographically limited by the location of underground bromide-bearing brine deposits. EPA identified two firms in southern Arkansas that account for 95% of the organobromine chemicals produced in the U.S. EPA evaluated the economic effect of the rule as discussed

in the cost and economic impact section of this rulemaking, and determined that no facilities would be significantly affected.

For the reasons discussed above in the cost and economic impact section, EPA has determined that today's final rule will not have a significant impact to a substantial number of these small entities. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

XII. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Facilities will have to comply with the existing Subtitle C recordkeeping and reporting

received by the Agency from Great Lakes Chemical

requirements for the newly listed wastestreams.

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050-0009 (ICR 1573, Part B Permit Application, Permit Modifications, and Special Permits); 2050-0120 (ICR 1571, General Facility Hazardous Waste Standards); 2050-0028 (ICR 261, Notification of Hazardous Waste Activity); 2050-0034 (ICR 262, RCRA Hazardous Waste Permit Application and Modification, Part A); 2050-0039 (ICR 801, Requirements for Generators, Transporters, and Waste Management Facilities under the Hazardous Waste Manifest System); 2050-0035 (ICR 820, Hazardous Waste Generator Standards);

Company publicly state the generation of 34 tons of waste per year.

¹² For more detailed information on this methodology, see the preamble to an RQ adjustment final rule published on August 14, 1989 (54 FR 33426). A different methodology is used to assign adjusted RQs to radionuclides (see 54 FR 22524, May 24, 1989).

¹³ No RQ level increase based on BHP occurs if the primary criteria RQ already is at its highest possible level (100 pounds for potential carcinogens and 5000 pounds for all other types of hazardous substances except radionuclides). BHP is not applied to radionuclides.

¹⁴ In the proposal, this analysis considered waste volumes as CBI, however, in the docket comments

¹¹ The toll free telephone number of the National Response Center is 800-424-8802; in the Washington, DC metropolitan area, the number is 202-267-2675.

and 2050-0024 (ICR 976, 1997 Hazardous Waste Report).
Release reporting required as a result of listing wastes as hazardous substances under CERCLA and adjusting the reportable quantities (RQs) has been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has been assigned OMB control number 2050-0046 (ICR 1049, Notification of Episodic Release of Oil and Hazardous Substances).

XIII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate because this rule imposes no

enforceable duty on any State, local, or tribal governments. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes and local governments would have no compliance costs under this rule, which applies only to facilities managing the listed organobromine production wastes and the discarded product waste. It is expected that states will adopt similar rules, and submit those rules for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding \$100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

XIV. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act ("NTTAA"), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practice, etc.) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. EPA identified no potentially applicable voluntary consensus standards for today's final rule.

XV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(A)(1)(a) as added by the Small Business Regulatory Enforcement Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 148
Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 261
Environmental protection, Hazardous wastes, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268
Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271
Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302
Air pollution control, Chemicals, Emergency Planning and Community Right-To-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: April 15, 1998.
Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.18 is amended by adding paragraph (f) to read as follows:

§ 148.18 Waste specific prohibitions—newly listed and identified wastes.

(f) Effective August 3, 1998, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste number K140, and in 40 CFR 261.33(f) as EPA Hazardous Waste number U408 are prohibited from underground injection.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

4. In § 261.32 the table is amended by adding in numerical order the following waste stream to the subgroup 'Organic chemicals':

§ 261.32 Hazardous wastes from specific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
K140	Floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol.	(T)

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
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5. In § 261.33(f) the table is amended by adding in numerical order the following substance to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

Hazardous waste No.	Chemical abstracts No.	Substance
U408	118-79-6	2,4,6-Tribromophenol.

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
2,4,6-Tribromophenol	Tribromophenol, 2,4,6-	118-79-6	U408

PART 268—LAND DISPOSAL RESTRICTIONS

8. The authority citation for Part 268 continues to read as follows:

Subpart C—Prohibitions on Land Disposal

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

9. Section 268.33 is added to read as follows:

§ 268.33 Waste-specific prohibitions—organobromine wastes.

(a) Effective November 4, 1998, the waste specified in 40 CFR 261.32 as EPA Hazardous Wastes Numbers K140, and in 40 CFR 261.33 as EPA Hazardous waste number U408 are prohibited from land disposal. In addition, soils and debris contaminated with these wastes, radioactive wastes mixed with these hazardous wastes, and soils and debris contaminated with these radioactive mixed wastes, are prohibited from land disposal.

(b) Between May 4, 1998 and November 4, 1998, the wastes included in the paragraph (a) of this section may

be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(c) The requirements of paragraphs (a) and (b) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under § 268.44;

(4) Hazardous debris that has met treatment standards in § 268.40 or in the alternative treatment standards in § 268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(d) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards

6. Appendix VII to Part 261 is amended by adding the following waste stream in alphanumeric order.

Appendix VII to Part 261—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
K140	2,4,6-Tribromophenol.

7. Appendix VIII to Part 261 is amended by adding the following hazardous constituent in alphabetical order:

Appendix—VIII to Part 261—Hazardous Constituents

specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents (including underlying hazardous constituents in characteristic wastes that have been diluted to remove the characteristic) in excess of the applicable Universal Treatment Standard levels of § 268.48, the waste is prohibited from land disposal, and all requirements of this part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

10. In § 268.40 the table is amended by adding in alphanumeric order the following new entries. The appropriate footnotes are republished without change.

§ 268.40 Applicability of treatment standards.

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste Code	Waste Description and Treatment/Regulatory Subcategory ¹	Regulated Hazardous Constituent		Wastewaters		Non-wastewaters
		Common Name	CAS ² number	Concentration in mg/L ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/L TCLP"; or Technology Code	
K140	Floor sweepings, off-specification product, and spent filter media from the production of 2,4,6-tribromophenol.	2,4,6-Tribromophenol	118-79-6	0.35	7.4	
U408	2,4,6-Tribromophenol	2,4,6-Tribromophenol	118-79-6	0.035	7.4	

¹ The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

² CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

³ Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

⁴ All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

⁵ Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

11. In § 268.48(a), the table is amended by adding in alphabetical order the following new entry as follows: The appropriate footnotes are republished without change.

§ 268.48 Universal treatment standards.

(a) * * *

UNIVERSAL TREATMENT STANDARDS

[Note: NA means not applicable]

Regulated constituent/common name	CAS ¹ Number	Wastewater standard	Nonwastewater standard
		Concentration in mg/L ²	Concentration in mg/kg ³ unless noted as "mg/L TCLP"
2,4,6-Tribromophenol	118-79-6	0.035	7.4

¹ CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

² Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

³ Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

and 2 in chronological order by date of publication to read as follows.

13. Section 271.1(j) is amended by adding the following entries to Tables 1

§ 271.1 Purpose and scope.

* * * * *
(j) * * *

12. The authority citation for Part 271 continues to read as follows:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
May 4, 1998	Listing of Organobromine Production Wastes.	[Insert Federal Register reference page cite from publication date].	November 4, 1998

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
August 3, 1998	Prohibition on land disposal of newly listed and identified wastes.	3004(g)(4)(C) and 3004(m)	[Insert date of publication; FR page numbers]
May 4, 2000	Prohibition on land disposal of radioactive waste mixed with the newly listed and identified wastes, including soil and debris.	3004(m) 3004(g)(4)(C) and 3004(m)	Do. Do. Do.

Part 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

14. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

15. Section 302.4 is amended by adding the following entries to Table 302.4 and its Appendix A as set forth below. The appropriate footnotes to Table 302.4 are republished without change.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code +	RCRA Waste Number	Category	Pounds (Kg)
2,4,6-tribromophenol	118796		100	4	U408	B	100 (45.4)
K140 Floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol.			1*	4	K140	B	## 100 (45.4)

4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

1*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CAIRN	Hazardous substance
118796 2,4,6-Tribromophenol	

[FR Doc. 98-11259 Filed 5-1-98; 8:45 am]

BILLING CODE 6560-50-P

federal register

Monday
May 4, 1998

Part III

Department of
Transportation

Federal Railroad Administration

49 CFR Parts 223 and 239
Passenger Train Emergency
Preparedness; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 223 and 239

(FRA Docket No. PTEP-1, Notice No. 3)

RIN 2130-AA96

Passenger Train Emergency Preparedness

AGENCY: Federal Railroad Administration (FRA), Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, including all railroads hosting the operations of rail passenger service. The rule also requires each affected railroad to instruct its employees on the provisions of its plan. Emergency preparedness plans must address such subjects as communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information. The plan adopted by each affected railroad will be subject to formal review and approval by FRA.

These emergency preparedness regulations constitute the second phase in a four-phase process that began in 1994. In the first phase, FRA encouraged railroads to examine their programs to determine what improvements could be made, while in the third phase, FRA will review the railroad plans to determine if all emergency preparedness issues have been adequately addressed within the varying contexts of railroad operations. In the fourth phase, FRA will review the implementation and effectiveness of these standards and related voluntary developments, and will address the need for further rulemaking activity.

The final rule does not apply to tourist and historic railroad operations. However, after appropriate consultation with the excursion railroad associations to determine appropriate applicability in light of financial, operational, or other factors unique to such operations, emergency preparedness requirements for these operations may be prescribed by FRA that are different from those affecting other types of passenger operations.

EFFECTIVE DATE: July 6, 1998.

ADDRESSES: Any petition for reconsideration should reference FRA

Docket No. PTEP-1, Notice No. 3, and be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Edward R. English, Director, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., RRS-10, Mail Stop 25, Washington, D.C. 20590 (telephone number: 202-632-3349), or David H. Kasminoff, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., RCC-12, Mail Stop 10, Washington, D.C. 20590 (telephone: 202-632-3191).

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1997, FRA published in the *Federal Register* a notice of proposed rulemaking (NPRM) to amend part 223, entitled *Safety Glazing Standards—Locomotives, Passenger Cars and Caboose*, by revising § 223.5 and adding a new paragraph in § 223.9 to require the marking of emergency windows, and to add a new "Part 239—Passenger Train Emergency Preparedness." 62 FR 8330. The proposed part 239 set forth minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with passenger train operations, including railroads hosting the operations of rail passenger service. In addition, the NPRM prescribed marking, inspection, maintenance, and repair requirements for all emergency window and door exits intended for egress by passengers or for access by emergency responders.

The overall safety record of conventional intercity and commuter passenger train operations in the United States has been exemplary. However, accidents continue to occur, often as a result of factors beyond the control of the passenger railroad. Further, the rail passenger operating environment in the United States is rapidly changing—technology is advancing, equipment is being designed for ever-higher speeds, and many potential new operators of passenger equipment are appearing. With this more complex operating environment, FRA must become more proactive to ensure that operators of passenger train service, as well as those railroads hosting passenger operations, engage in careful, advance planning to minimize the consequences of emergencies that could occur. Even minor incidents could easily develop into life-threatening events if they are

not addressed in a timely and effective manner.

In recent years, passenger train accidents, such as the tragic "Sunset Limited" passenger train derailment near Mobile, Alabama in September 1993, have demonstrated the need to improve the way railroads respond in emergency situations. On September 22, 1993, at about 2:45 a.m., barges that were being pushed by the towboat "Mauvilla" in dense fog struck and displaced the Big Bayou Canot railroad bridge near Mobile, Alabama. At about 2:53 a.m., National Railroad Passenger Corporation (Amtrak) train no. 2, the "Sunset Limited," en route from Los Angeles, California to Miami, Florida with 220 persons on board, struck the displaced bridge and derailed. The three locomotive units, the baggage and dormitory cars, and two of the six passenger cars fell into the water. The fuel tanks on the locomotive units ruptured, and the locomotive units and the baggage and dormitory cars caught fire. Forty-two passengers and five crewmembers were killed, and 103 passengers were injured. The towboat's four crewmembers were not injured.

In a report on the accident released on September 19, 1994, the National Transportation Safety Board (NTSB) determined that several circumstances hampered emergency response efforts. NTSB Railroad-Marine Accident Report 94/01. In its assessment of emergency response at the accident site, the NTSB noted that the location of the accident was remote (accessible only by rail, water, or air), fog in the area was dense (requiring the use of radar to navigate boats), limited modes of transportation were available for bringing in personnel and equipment, and the magnitude of the accident was great. Nevertheless, the NTSB concluded that, following the delay while emergency responders identified the location of the accident, emergency response activities were efficient and effective. The report did find, however, that Amtrak did not have an effective system in place to apprise passengers of train safety features, passengers were slowed during evacuation by the absence of emergency lighting on the passenger cars, and emergency responders were hindered by their inability to obtain an adequate passenger and crew list from Amtrak until the next day. The NTSB also noted that if the Mobile County Emergency Management Agency had held drills to simulate a train accident, the incident commander might have learned about Amtrak's procedure for accounting for passengers, and CSX Transportation, Inc. (CSX Transportation), the owner of the bridge and trackage, might have

obtained the correct telephone number to contact the U.S. Coast Guard.

Considerable effort has focused on how to mitigate casualties after a train accident occurs. In this regard, even before the occurrence of the tragic accident near Mobile, FRA had tasked DOT's Volpe National Transportation Systems Center (TSC), in Cambridge, Massachusetts, to perform research and to recommend emergency preparedness guidelines for passenger train operators. The results were published at the end of 1993 as a publication entitled

"Recommended Emergency Preparedness Guidelines for Passenger Trains" (Volpe Report), which is available to the public through the National Technical Information Service, Springfield, VA 22161 (DOT/FRA/ORD-93-24—DOT-VNTSC-FRA-93-23). The publication references safety recommendations of the NTSB, as well as many other publications on the subject of emergency preparedness, and contains recommended guidelines designed to assist passenger train operating systems and emergency response organization management in evaluating and modifying or supplementing their emergency response plans. A copy of the Volpe Report has been placed in the public docket for this rulemaking.

The Volpe Report recommendations address guidelines relating to emergency plans, procedures, and training. In addition, guidelines are presented for passenger train and facility features intended to shorten emergency response time, improve the effectiveness of evacuating passengers, and minimize the effects of an emergency. The publication also lists inter-organizational emergency protocols, which include those of fire departments, emergency medical services (EMS), police departments, public utilities, hospitals, and local, State, regional, and Federal governments.

In an effort to be proactive after the accident near Mobile, FRA mailed the Volpe Report to all intercity passenger and commuter railroads, freight railroads, the United Transportation Union, and the Brotherhood of Locomotive Engineers in March 1994 for their information and guidance. Concurrent with this mailing, FRA invited the railroads to attend an agency-sponsored roundtable meeting in Washington, D.C., on June 9, 1994, to discuss the emergency preparedness issues addressed in the publication. The 23 persons attending the roundtable included representatives from FRA and the following other organizations:

Amtrak,
Long Island Rail Road (LIRR),
MTA Metro-North Railroad (METRO-NORTH),
Northeast Illinois Regional Commuter Railroad Corporation (METRA),
Peninsula Corridor Joint Powers Board (CALTRAIN),
Port Authority Trans-Hudson Corporation (PATH),
Southern California Regional Rail Authority (METROLINK),
Southeastern Pennsylvania Transportation Authority (SEPTA),
Tri-County Commuter Rail Authority (TRI-RAIL),
TSC, and
Virginia Railway Express (VRE).

During the meeting, FRA agreed to assist the passenger railroads in establishing improved working relationships with their host freight railroads. FRA also promised to help the passenger railroads in their emergency response efforts in larger metropolitan areas by contacting emergency response agencies and eliciting more cooperation between them. In addition, FRA stated that it would conduct field visits to several passenger railroads to study their equipment and their emergency response and training programs.

At that same meeting, the passenger railroads agreed to provide stronger supervisory oversight of their emergency response and training programs, and stated that they would offer additional, structured "hands-on" training to their train crews concerning the removal of emergency windows and passenger evacuation. They also agreed to develop programs for recurring passenger car inspections, emphasizing checking of emergency equipment such as windows, tools, and fire extinguishers. Further, they agreed to improve their methods of apprising passengers of emergency information, to include seat drops, placards inside each car, and messages in on-board newsletters. While FRA was encouraged that passenger railroads had already begun to incorporate the recommendations of the Volpe Report into their own emergency preparedness procedures and policies, more progress by the entire industry was needed.

As a result of concerns raised about the safety of the operation of rail passenger service, Congress enacted section 215 of the Federal Railroad Safety Authorization Act of 1994, Pub. L. No. 103-440, 108 Stat. 4619, 4623-4624 (November 2, 1994), entitled "Passenger Car Safety Standards," which amended 49 U.S.C. 20133 to read as follows:

§ 20133. Passenger cars

(a) MINIMUM STANDARDS.—The Secretary of Transportation shall prescribe

regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers. Before prescribing such regulations, the Secretary shall consider—

- (1) the crashworthiness of the cars;
- (2) interior features (including luggage restraints, seat belts, and exposed surfaces) that may affect passenger safety;
- (3) maintenance and inspection of the cars;
- (4) emergency response procedures and equipment; and
- (5) any operating rules and conditions that directly affect safety not otherwise governed by regulations.

The Secretary may make applicable some or all of the standards established under this subsection to cars existing at the time the regulations are prescribed, as well as to new cars, and the Secretary shall explain in the rulemaking document the basis for making such standards applicable to existing cars.

(b) INITIAL AND FINAL

REGULATIONS.—(1) The Secretary shall prescribe initial regulations under subsection (a) within 3 years after the date of enactment of the Federal Railroad Safety Authorization Act of 1994. The initial regulations may exempt equipment used by tourist, historic, scenic, and excursion railroad carriers to transport passengers.

(2) The Secretary shall prescribe final regulations under subsection (a) within 5 years after such date of enactment.

(c) PERSONNEL.—The Secretary may establish within the Department of Transportation 2 additional full-time equivalent positions beyond the number permitted under existing law to assist with the drafting, prescribing, and implementation of regulations under this section.

(d) CONSULTATION.—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary may consult with Amtrak, public authorities operating railroad passenger service, other railroad carriers transporting passengers, organizations of passengers, and organizations of employees. A consultation is not subject to the Federal Advisory Committee Act; (5 U.S.C. App.), but minutes of the consultation shall be placed in the public docket of the regulatory proceeding.

The Secretary of Transportation has delegated these rulemaking responsibilities to the Federal Railroad Administrator. 49 CFR 1.49(m).

FRA is committed to the maximum feasible use of collaborative processes in the development of safety regulations. Consistent with the intent of Congress that FRA consult with the railroad industry, FRA invited various organizations to participate in a passenger train emergency preparedness working group (Working Group) to focus on the issues related thereto and build the framework for the development of a Notice of Proposed Rulemaking (NPRM) and, ultimately, the final rule. FRA held its first Working Group meeting on August 8, 1995. The 33-member Working Group was comprised of

representatives from FRA and the following other organizations:

American Public Transit Association (APTA),
Amtrak,
Association of American Railroads (AAR),
Brotherhood of Locomotive Engineers (BLE),
CALTRAIN,
LIRR,
Maryland Mass Transit Administration
(MARC),
Massachusetts Bay Transportation Authority
(MBTA),
METRA,
METRO-NORTH,
METROLINK,
National Association of Railroad Passengers
(NARP),
NTSB,
New Jersey Transit Rail Operations (NJTR),
Northern Indiana Commuter Transportation
District (NICTD),
PATH,
Safe Travel America (STA),
SEPTA,
TRI-RAIL,
TSC,
United Transportation Union (UTU), and
VRE.

Regulations covering comprehensive safety standards for rail passenger equipment—inspection, testing, and maintenance of passenger equipment; equipment design and performance criteria related to passenger and crew survivability in the event of a train accident; and the safe operation of passenger train service—supplementing existing railroad safety standards, are covered by a separate rulemaking and are being addressed by a separate working group. The NPRM on passenger equipment safety standards was published in the *Federal Register* on September 23, 1997. 62 FR 49728. Persons wishing to receive more information regarding this other rulemaking should refer to FRA Docket No. PCSS-1 and contact either Mr. Edward Pritchard, Acting Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., RRS-14, Mail Stop 25, Washington, D.C. 20590 (telephone 202-632-3348), or Daniel L. Alpert, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-632-3186).

Both the proposed rule and final rule on passenger train emergency preparedness were developed by FRA in consultation with the Working Group. The proposal incorporated comments submitted by the Working Group in response to a preliminary draft of the proposed rule text, and all comments submitted in response to the NPRM were provided to members of the Working Group for their consideration

in preparation of the final rule. The Working Group then helped FRA develop the final rule based on a consensus process, with facts and analysis flowing from both the Working Group's deliberations and information submitted by all commenters on the NPRM. In accordance with 49 U.S.C. 20133(d), the evolving positions of the Working Group members—as reflected in the minutes of the group meetings and associated documentation, together with data provided by the membership during their deliberations—have been placed in the public docket of this rulemaking.

In announcing the first meeting of the Working Group on August 8, 1995, FRA stated that the purpose of the meeting was to provide an opportunity to collectively focus on evaluating issues related to passenger train emergency preparedness, as well as to develop and formulate plans and programs that would culminate in a final rule. The discussion focused on the key issues of emergency notification, training of railroad employees and emergency responders, suitability of on-board emergency equipment, and the Volpe Report. While FRA did not limit the Working Group's discussions, the agency requested that, at a minimum, the following topics and issues should be considered and addressed during the consultation process for possible inclusion in the rule:

- Types of safety equipment that should be required in each passenger car (e.g., fire extinguishers, saws, hammers, and flashlights) including where the equipment should be located, who should have access to it, and how to avoid pilferage;
- Training for railroad employees on the use of on-board emergency equipment;
- Frequency of inspection of on-board emergency equipment;
- Effective marking of emergency windows on each passenger car;
- Informing passengers about safety procedures and emergency equipment, including locations of exit doors and windows;
- Demonstrations by on-board crewmembers of emergency procedures and exits after major station stops;
- Communication capabilities of on-board crewmembers;
- Requiring on-board crewmembers to be trained to provide cardio-pulmonary resuscitation (CPR) or first aid treatment or both;
- Ensuring that on-board crewmembers have contact telephone numbers for control centers and local authorities;

- Requiring preparation of an emergency preparedness plan, including periodic exercises to test employee knowledge of proper procedures involving passenger illness or injury, stalled trains, evacuation procedures, derailments, collisions, severe weather, and security threats;
 - Coordinating applicable portions of emergency preparedness plans between passenger railroads and freight railroads that host these passenger operations;
 - Extent to which safety action plans should be regulated in terms of content or format, and whether such plans should be subject to FRA review and approval;
 - Training for auxiliary individuals participating in passenger emergencies (e.g., control center employees, on-board service staff, and appropriate supervisory and maintenance personnel);
 - Training for emergency responders along passenger corridor routes;
 - Accounting for the unique emergency preparedness concerns raised by passenger operations through tunnels, on elevated structures, and in electrified territory;
 - Level of training specificity required for each category of employee;
 - Requiring passenger railroads to develop and update inter-organizational emergency protocols with local communities, in order to augment safety action plans;
 - Providing emergency responders with accurate passenger counts; and
 - Emergency lighting in passenger cars (e.g., floor strip lighting, flood lighting, and emergency exit lighting), including standards for testing and reliability.
- FRA deliberated at length with members of the Working Group about what the rule would demand of affected railroads, in order to achieve the goal of optimizing their level of preparedness when faced with passenger train emergencies. The consensus was that the final rule needed to be flexible in its requirements to allow each railroad to address the unique characteristics of its individual operation. The Working Group recommended that FRA require each affected railroad to prepare a formal emergency preparedness plan covering broad elements, such as: employee and emergency-responder training; on-board crewmember responsibilities; communication between the train crew and the control center, and between the control center and the emergency responders; delineation of passenger railroad and freight railroad responsibilities in cases of joint operations; and operations in tunnels or over elevated structures.

However, the group urged FRA to afford railroads considerable latitude to design and administer emergency preparedness plans that best address each railroad's specific safety issues and concerns, with each plan then subject to review and approval by FRA.

FRA incorporated the Working Group's recommendations into a draft NPRM, and mailed the draft to the group on December 14, 1995, along with a copy of the minutes of the first meeting of the Working Group. Copies of both documents, and other relevant enclosures, were placed in the public docket for this rulemaking. The 34-member Working Group held its second meeting on February 6-7, 1996, and was comprised of representatives from the same organizations in attendance at the first Working Group meeting. The Working Group reviewed the draft and presented its comments, and a copy of the minutes of the second meeting of the group is also included in the rulemaking docket. The Working Group's comments were then incorporated into the NPRM that was published in the *Federal Register* on February 24, 1997. 62 FR 8330.

While FRA has focused on crafting a rule containing comprehensive requirements in connection with railroads adopting, implementing, and complying with their emergency preparedness plans, many details remained unresolved at the NPRM stage concerning the enforcement obligations that FRA should impose in the final rule. Among the broad range of possibilities, FRA noted that the final rule could impose a "reasonable care" standard and focus on achieving substantial compliance, with an emphasis on determining whether each railroad has demonstrated a genuine good faith effort to fulfill each of the elements of its emergency preparedness plan. Under this approach, for example, FRA would verify whether a railroad has established a training program for its employees on the applicable provisions of the emergency preparedness plan, and could impose a civil penalty on the railroad for failing to comply with this basic element of its emergency preparedness plan. However, if FRA concluded that the railroad had properly adopted a training program, but during the occurrence of an actual emergency several employees failed (under the stress of the situation) to fulfill all of their responsibilities under the emergency preparedness plan, FRA would likely not penalize either the railroad or the individuals. Also, if a railroad failed to designate an employee to maintain a current list of emergency telephone numbers, FRA could clearly

penalize the railroad for this omission. However, if a railroad's plan properly provided for the maintenance of the list of emergency telephone numbers, but one telephone number on a long list of accurate numbers was found by FRA to be out of date, and thus incorrect, FRA could use its prosecutorial discretion to elect not to impose a civil penalty on the railroad.

As an alternative, FRA noted in the NPRM that the agency could maintain strict oversight by requiring compliance with every individual element of the emergency preparedness plan, and impose a civil penalty in every instance in which a railroad failed to achieve compliance. Accordingly, under this approach, a railroad could be penalized for failing to constantly update its list of emergency telephone numbers, neglecting to distribute applicable portions of its emergency preparedness plan to each and every on-line emergency responder, or operating a train with an incorrect type of on-board emergency equipment. Rather than stressing a determination of the overall level of emergency preparedness achieved by a railroad before an emergency ever occurs, this enforcement philosophy would specifically focus on whether the railroad in fact complied with all of the written emergency plan procedures for implementing each plan element. FRA invited commenters to address the questions of what compliance obligations should exist in the final rule, in the context of requiring railroads to adopt and implement procedures for achieving emergency preparedness, and what enforcement policy should be exercised by the agency regarding those obligations. Commenters were also asked to review the language of the section-by-section analysis and rule text of the proposed rule and to offer suggestions on whether FRA's expectations for compliance with the emergency preparedness plan elements were too rigid, or not strict enough.

Although FRA did not receive many written comments on how the agency should define its enforcement philosophy concerning the final rule, the consensus of the Working Group was that FRA should not penalize a railroad that has displayed its best efforts in achieving compliance and that FRA should focus on evaluating the overall quality of the emergency preparedness plan rather than on finding possible minor deficiencies. The Working Group also stated that FRA should not necessarily measure the success of an emergency preparedness plan based solely upon the outcome of an emergency situation. In this regard,

the Working Group noted that even if a railroad meticulously prepares a comprehensive and detailed emergency preparedness plan, the severity level of an emergency and the "real life" reactions to a crisis situation by a railroad's employees (even assuming that the railroad properly trained the employees on the applicable plan's provisions in accordance with § 239.101(a)(2)) may prevent a railroad from achieving a favorable result in a specific emergency scenario. Accordingly, the Working Group urged FRA to evaluate a railroad's response to an emergency situation based upon how precisely the railroad adopted and complied with its written emergency preparedness plan, and not necessarily upon the actual results of the plan's implementation.

Consistent with both the Working Group's recommendations and FRA's stated policy in 49 CFR part 209 with respect to deciding whether enforcement action is the best method for addressing noncompliance, representatives of FRA and States participating under 49 CFR part 212 will consider a number of different factors before recommending the assessment of a civil penalty involving the requirements of this rule. These factors include:

- The inherent seriousness of the violation;
- The kind and degree of potential safety hazard presented by the violation under the circumstances;
- Any actual harm to persons or property already caused by the violation;
- The offending person's general level of compliance;
- The offending person's recent history of compliance with the particular rule involved, especially at the particular location involved;
- Whether a remedy other than a civil penalty (ranging from a warning to an emergency order) is appropriate under the circumstances; and
- Other factors relevant in the immediate circumstances.

In drafting the final rule, FRA has incorporated relevant information derived from the investigation of the accident involving Amtrak train 1, the "Sunset Limited," which occurred in Hyder, Arizona on October 9, 1995. In that accident, the initial notification was made by the Amtrak locomotive engineer to the Southern Pacific Transportation Company (SP) train dispatcher's office in Denver, Colorado, which then notified the appropriate local emergency response agencies. The SP yardmaster in Phoenix Yard also dialed 911 after hearing the engineer's

radio transmissions to the train dispatcher.

While the local emergency responders stated that the accident was handled well by all parties involved, the responders noted that they were hampered in reaching the accident site by extremely rough terrain, initially negotiable only by four-wheel drive vehicles until graders and earth movers created a trail for conventional vehicles. The responders were somewhat confused by being provided with only a milepost location instead of a more familiar identifier. The responders were also frustrated by the lack of an accurate passenger count, but Amtrak has stated that once it has satellite cellular telephone capabilities train conductors will report passenger counts to a central telephone number after leaving each station. In addition, the responders indicated that, although the emergency lighting did not function on the overturned passenger cars, passengers were able to disembark through the car doors and emergency windows.

FRA has also included requirements in the final rule relating to emergency egress from passenger trains, based upon information obtained from the investigations of the two more recent train accidents in New Jersey and Maryland. In the first accident, a near head-on collision occurred on February 9, 1996 between NJTR trains 1254 and 1107 at milepost 2.8, on the border line of Secaucus and Jersey City, New Jersey. Of the 331 passengers and crew on both trains, two crewmembers and one passenger were fatally injured, and an additional 162 passengers reported minor injuries. In the second accident, a near head-on collision occurred on February 16, 1996 between MARC train 286 and Amtrak train 29 on CSX Transportation, at Silver Spring, Maryland, milepost 8.3. The accident resulted in 11 fatalities, involving three crewmembers and eight passengers, and at least 12 non-fatal injuries to passengers of the MARC train.

While many of the questions raised by the New Jersey and Maryland train accidents are currently being addressed by the working group which is considering regulations covering rail passenger equipment safety, the important issue of emergency egress is being addressed by this emergency preparedness rulemaking. Specifically, the Maryland accident raised serious concerns as to whether MARC passengers had sufficient information about the location and operation of emergency exits to enable them to find and use those exits in an emergency or accident. FRA believes that in addition to marking the emergency exits, all

commuter and intercity passenger railroads should review their practices for providing this information. On February 20, 1996, FRA issued Emergency Order No. 20 (Notice No. 1), which required prompt action to immediately enhance passenger train operating rules and emergency egress and to develop an interim system safety plan addressing cab car forward and multiple unit (MU) operations. 61 FR 6876, Feb. 22, 1996. In pertinent part, Notice No. 1 of the Emergency Order stated:

[t]here is a need to ensure that emergency exits are clearly marked and in operable condition on all passenger lines, regardless of the equipment used or train control system. FRA's regulations generally require that all passenger cars be equipped with at least four emergency opening windows, which must be designed to permit rapid and easy removal during a crisis situation. The investigation of the Silver Spring accident has raised some concerns that at least some of the occupants of the MARC train attempted unsuccessfully to exit through the windows. Whether those same people eventually were among those who exited safely, or whether those persons were attempting to open windows that were not emergency windows is not known at this time. However, there is sufficient reason for concern to require that measures be taken to ensure that such windows are readily identifiable and operable when they are needed. Accordingly, the order requires that any emergency windows that are not already legibly marked as such on the inside and outside be so marked, and that a representative sample of all such windows be examined to ensure operability. (FRA Safety Glazing Standards, 49 CFR Part 223, require that each passenger car have a minimum of four emergency window exits "designed to permit rapid and easy removal during a crisis situation.")

61 FR 6880, Feb. 22, 1996.

On February 29, 1996, FRA issued Notice No. 2 to Emergency Order No. 20 to refine three aspects of the original order, including providing more detailed guidance on the emergency egress sampling provision. 61 FR 8703, Mar. 5, 1996. In pertinent part, Notice No. 2 of the Emergency Order stated:

The original order required but did not set parameters for testing a representative sample of emergency exits. The alteration to the emergency egress provisions requires that sampling of emergency window exits be conducted in conformity with either of two alternate methods commonly recognized for such efforts. This modification provides a degree of uniformity industry wide. These methods require sampling meeting a 95 percent confidence level that all emergency window exits operate properly (i.e., the methods do not accept a defect rate of 5 percent). Although the original order would have required testing all exits on a specific series or type of car if one such car had a defective window exit, the amended order

permits the use of these commonly accepted sampling techniques to determine how many additional windows in [sic] test. In general, these principles require that the greater the percentage of windows initially found defective, the greater the percentage of windows that will have to be tested.

In addition, FRA has modified the emergency egress portion of the order to clarify that the exterior marking requirement applies to those windows that may be employed for access by emergency responders, which may be windows other than, or in addition to, those designed for emergency egress for passengers. In addition, FRA has modified the interim system safety plan portion of the order to require discussion of the railroad's programs and plans for liaison with and training of emergency responders with respect to emergency access to passengers. The original order required discussion only of methods used to inform passengers of the location and method of emergency exits.

61 FR 8703, Mar. 5, 1996.

On March 12, 1996, in response to the MARC train accident in Silver Spring, Maryland on February 16, 1996, the NTSB issued "Safety Recommendations" to both the Maryland Mass Transit Administration (R-96-4 through R-96-6) and FRA (R-96-7). The NTSB was concerned because the emergency quick-release mechanisms for the exterior doors on MARC's Sumitomo rail cars were located in a secured cabinet some distance from the doors that they control, and the emergency controls for each door were not readily accessible and identifiable. The NTSB recommended that emergency quick-release mechanisms for exterior doors on MARC cars be well marked and relocated, so that they are immediately adjacent to the door control and readily accessible for emergency escape. The NTSB also noted that the left and right rear exterior side doors of the first car and the front interior end door and the right front exterior door of the second car were jammed, and observed that none of the car doors had removable windows or pop-out emergency escape panels (kick panels) for use in an emergency.

In addition, the NTSB stated that several train passengers were unaware of the locations of emergency exits, and none knew how to operate them. The NTSB found that the interior emergency window decals were not prominently displayed and that one car had no interior emergency window decals. Also, the exterior emergency decals were often faded or obliterated, and the information on them, when legible, directed emergency responders to another sign at the end of the car for instructions on how to open emergency

exits. The NTSB recommended that all emergency exits be clearly identified, with easily understood operating instructions prominently located on each car's interior, for use by passengers, and on each car's exterior, for use by emergency responders.

Based upon its investigation, the NTSB recommended that FRA:

Inspect all commuter rail equipment to determine whether it has: (1) easily accessible interior emergency quick-release mechanisms adjacent to exterior passageway doors; (2) removable windows or kick panels in interior and exterior passageway doors; and (3) prominently displayed retroreflective signage marking all interior and exterior emergency exits. If any commuter equipment lacks one or more of these features, take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum passenger car safety standards. (Class 1, Urgent Action) (R-96-7)

Safety Recommendation R-96-7 at page 3.

On March 26, 1996, FRA convened a joint meeting of the Passenger Train Emergency Preparedness Working Group and the Passenger Equipment Safety Standards Working Group to discuss the NTSB's recommendations and incorporate the Safety Board's findings, as appropriate, into each working group's rulemaking proceeding. Fifty-seven members from 21 different organizations attended the joint meeting. Although some of the recommendations involving structural modifications to rail equipment are being dealt with by the Passenger Equipment Safety Standards Working Group, the remaining NTSB recommendations involving marking, inspection, maintenance, and repair of emergency exits are reflected in § 223.9(d), entitled "Requirements for new or rebuilt equipment," and § 239.17, entitled "Emergency exits." The Section-by-Section Analysis contains a detailed discussion of FRA's new requirements, particularly in light of the two 1996 accidents in New Jersey and Maryland and the NTSB's safety investigations and recommendations.

In a letter to FRA dated June 24, 1996, Donald N. Nelson, President of Metro-North and Chairperson of APTA's Commuter Railroad Committee, announced that commuter railroads nationwide were implementing a series of rail passenger safety initiatives building on the provisions of FRA's Emergency Order No. 20 and the NTSB's Safety Recommendations R-96-4 through R-96-7. In pertinent part, all commuter rail authorities committed to early voluntary implementation of the emergency preparedness requirements

proposed in the NPRM, including requiring inspection and testing of all emergency window exits as part of routine car maintenance to ensure correct operation and ease of egress, offering emergency responder training for every jurisdiction within each commuter railroad's service area, and educating passengers on the use of emergency exits on commuter trains. The commuter railroads also indicated that each one will ensure the safety of its operation by adopting a comprehensive system safety plan that:

- (a) Defines the overall safety effort; how it is to be implemented and the staff required to maintain it;
- (b) Establishes the safety interface within the railroad, as well as with its key outside agencies;
- (c) Clearly indicates Senior Management support for implementing the safety plan and the railroad's overall commitment to safety;
- (d) Establishes the safety philosophy of the organization and provides the means for implementation;
- (e) Defines the authority and responsibilities of the safety organization and delineates the safety related authority and responsibilities of other departments; and
- (f) Incorporates safety goals and objectives into the overall corporate strategic plan.

APTA's Commuter Railroad Committee letter at pages 1 and 2.

As part of the ongoing review process within DOT, and subsequent to the Working Group's previous opportunities to review the rule text of the NPRM, FRA implemented changes to the draft proposed regulatory text and preamble. FRA initiated those changes in order to strengthen the rule's requirements and establish more objective criteria for FRA's review of each railroad's emergency preparedness plan. In a letter dated December 27, 1996, FRA sent a copy of the revised proposed regulatory text to members of the Working Group, and requested comments on issues that the members wished to see included in the preamble section of the proposal. FRA requested that all comments be submitted to FRA by the close of business on January 8, 1997. The NPRM was then published in the **Federal Register** on February 24, 1997.

In a letter to the Working Group dated August 8, 1997, FRA noted that it had completed its review of the oral and written comments on the NPRM. As part of the drafting process of the final rule, FRA invited members of the Working Group to attend a meeting on August 28, 1997 to discuss a number of significant issues that had been identified by the commenters and to consider FRA's recommendations. Based upon the helpful participation and cooperation of the Working Group at that meeting, FRA then completed the final rule. A copy of

the minutes of the August 28, 1997 Working Group meeting is included in the public docket for this rulemaking, and a detailed discussion of the meeting follows in the "Discussion of Comments and Conclusions" portion of this final rule.

Development of the Passenger Safety Program

As discussed above, this final rule is one element of a comprehensive effort to improve the safety of rail passenger service. In addition to this rulemaking, FRA is currently dealing with related issues in several contexts. Recent actions concerning passenger safety needs have included, for instance, Emergency Order No. 20, which addressed, on an interim basis, key issues regarding railroad operating rules, inspection of required emergency window exits, and emergency exit signage and marking.

In the Passenger Equipment Safety Standards Working Group, FRA is examining possible requirements for improved emergency egress features for both retrofit and new construction. Affected railroads have completed the removal of latches requiring special tools for access to manual releases on powered doors. Separately, FRA is reviewing the totality of emergency egress requirements and the issue of their overall adequacy, including the relocation of manual releases to locations immediately adjacent to end vestibule doors. FRA anticipates that these efforts will be advanced through the collaborative rulemaking process. However, if necessary to ensure prompt action, FRA may propose specific requirements based upon its own staff analysis.

In the context of improving railroad communications, FRA's Railroad Safety Advisory Committee (RSAC) established a working group to specifically address communication facilities and procedures, with a strong emphasis on passenger train emergency requirements. The NPRM in this proceeding was published on June 26, 1997, reflecting the consensus recommendations of the RSAC. The final rule will address the need for redundant communications capability on all passenger trains. Although that rulemaking will establish minimum safety requirements with respect to communications equipment, it should be noted that intercity and commuter railroads already make extensive provision for ensuring communication capabilities during emergencies.

FRA is engaged in a four-phase process to address emergency preparedness. In the first phase, in 1994,

FRA distributed the Volpe Report (as described above) and encouraged railroads to examine their existing programs to determine what improvements could be made. The present rulemaking represents the second step in this process, formalizing a planning requirement and identifying certain mandatory elements. The third phase will begin as FRA reviews railroad plans to determine that the issues presented by the Volpe Report and the rule have been adequately addressed within the varying contexts of the commuter authority operations. FRA will conduct a detailed review of each plan. Following preliminary review and final approval of written plan submissions, FRA will determine how the program is being implemented in the field. FRA will also be interested in learning how this effort is being integrated into the overall system safety planning process that commuter authorities have agreed to undertake. FRA is optimistic that this approach will yield positive results, promoting creativity and cross-fertilization of the emergency preparedness planning process through FRA, APTA, and other channels. This give-and-take approach should facilitate standardization of matters involving interface with passengers, while permitting continued adaptation of programs to local needs.

The fourth phase will involve FRA's review, after gaining at least a full year of actual experience under the standards enacted here, of the implementation and effectiveness of the standards and related voluntary developments. In this phase of activity, FRA will work with interested parties to evaluate whether further rulemaking or other action might be necessary to ensure that, for each program element, standards and practices are sufficiently precise and stringent to achieve the desired improvements in emergency preparedness. Further, this review will determine whether experience in working with emergency responders indicates that additional program elements should be addressed.

Discussion of Comments and Conclusions

A total of 15 responses were received by FRA concerning the NPRM. Prior to the two public hearings that were held in Chicago, Illinois and New York, New York, five organizations submitted written comments: American Association of Private Railroad Car Owners, Inc. (AAPRCO); LIRR; METRA; METROLINK; and UTU. At the public hearing held in Chicago on April 4, 1997, six organizations were represented: APTA; Des Plaines, Illinois

Fire Department; Office of Emergency Management of DuPage County, Illinois; Illinois Law Enforcement Training Standards Board; METRA; and the Village of Wheeling, Illinois. At the public hearing held in New York City on April 7, 1997, four organizations were represented: APTA; BLE; Omniglow Corporation (Omniglow); and UTU. Ten organizations and one individual submitted post-hearing written comments: AAPRCO; AAR; Amtrak; APTA; CALTRAIN; Littleton, Colorado Fire Department; LIRR; NICTD; NTSB; UTU; and Kieran Darcy.

In a letter to the members of the Working Group dated August 8, 1997, FRA noted that a significant number of issues and concerns had been raised by commenters on the NPRM. In the spirit of continuing the meaningful partnership on development of the emergency preparedness rule, FRA convened a meeting of the Working Group in Washington, D.C. on August 28, 1997, in order to discuss the major issues addressed in the comments and at the public hearings and consider changes to the proposal for inclusion in the final rule. Among the issues discussed at this meeting were the: categories of employees required to be "qualified" personnel for purposes of carrying out responsibilities under the emergency preparedness plan; types and numbers of emergency simulations required of railroads; elements of passenger information programs; the process of formal review and approval of the emergency preparedness plan by FRA; and adoption of a single emergency preparedness plan for each passenger service operation by the passenger railroad and its host railroad(s). Discussions follow with respect to the primary issues raised by the commenters and/or discussed by the Working Group during the consultative process. In light of the comments received, FRA has reconsidered some of the proposals.

1. FRA proposed that a minimum of one on-board crewmember on a train be qualified under the plan. Should FRA revise the definition of "crewmember" in the final rule to exclude on-board service personnel from the category of on-board staff that a railroad must qualify under the applicable provisions of its emergency preparedness plan? Should FRA increase the minimum number of crewmembers that must be qualified?

The NPRM defined a "crewmember" as "a person other than a passenger who performs either: (1) On-board functions connected with the movement of the train or (2) On-board service," and proposed that "each passenger train

shall have a minimum of one on-board crewmember who is qualified under the applicable emergency preparedness plan's provisions." 62 FR at 8356, 8357. FRA acknowledges the safety benefit in having each railroad provide emergency preparedness training to every on-board employee (including employees of contractors), and anticipates that railroads will voluntarily elect to train most, if not all, on-board personnel in emergency response procedures, but FRA recognizes the practical limits of an expansive definition of "crewmember."

Among the comments received, APTA noted that the proposed definition of "crewmember" is overbroad, and brings in classes of workers such as security forces, service providers, marketing staff, survey takers, and hosts. Certain contract vendors providing services such as food and beverage are neither railroad personnel nor passengers, yet would appear to fall under the proposed definition. Also, some commuter operations lease out a bar or club car, and APTA believes that those personnel should not be included in the definition. The additional training expenses associated with qualifying this category of non-operating railroad employees under the railroad's emergency preparedness plan would not be cost effective. APTA, therefore, requested that the definition of "crewmember" be revised to cover only operating personnel. Also, since on-board service personnel typically work for Amtrak in intercity service, APTA stated that the concept should not be applied to commuter railroads.

METROLINK commented that some of its conductors perform the function of fare enforcement conductors, and should be excluded from the definition of "crewmember." In addition, METROLINK noted that since it may contract out food service on some of its intercity trains, these contract workers should also be excluded from coverage in the final rule.

The UTU believed that a passenger train should not be dispatched unless the conductor is the qualified crewmember under the emergency preparedness plan, and noted that in serious accidents, the engineer cannot respond because of personal injury or damage to the locomotive radio system. In addition, the UTU stated that on-board personnel are not qualified on the physical characteristics of the railroad and may be asleep at the time of an accident. If a train has a crewmember who is qualified under the emergency preparedness plan, along with a conductor from a freight railroad who is qualified on the physical characteristics of the railroad, the two individuals

could coordinate emergency efforts. The BLE stated that the training that is developed for the qualified individual responsible for communications must include the engineer in order to reflect a redundancy factor for on-board personnel, and noted that the final rule should not count on-board crewmembers employed as service attendants as qualified crewmembers.

Upon careful consideration of the comments, FRA concludes that rail passenger safety will be enhanced by limiting the definition of "crewmember" to exclude on-board railroad and contractor employees who have little knowledge of emergency preparedness issues and railroad operations (e.g., security forces, marketing staff), while simultaneously requiring that all operating employees (and sleeping car and coach attendants on trains operating in intercity service) be qualified under the emergency preparedness plan. In reaching this conclusion, FRA recognizes that individuals who merely sell food and beverages to passengers onboard a passenger train, but are not involved with the train's operation, may be incidental to the railroad's overall plan for emergency preparedness. However, FRA believes that sleeping car and coach attendants on intercity trains can play a very key role in precipitating passenger evacuation during the aftermath of an emergency.

Unlike passengers on commuter trains, who generally remain aboard their trains for short time periods and have minimal direct dealings with crewmembers, passengers traveling in overnight trains have frequent contact with their coach and sleeping car attendants. While commuter trains generally operate through densely populated metropolitan or suburban areas, intercity-passenger trains, by their very nature, face a greater likelihood that if an emergency situation occurs it will happen in a remote area not readily accessible by members of the emergency responder community. The location of the emergency, unclear jurisdictional authority, lack of road access, lack of emergency equipment, or unavailability of knowledgeable and skilled personnel could prevent police, emergency medical technicians, or other emergency response personnel from making a timely response and hamper evacuation. The coach and sleeping car attendants will be aware of the approximate number of passengers on board the intercity train and likely know how many passengers with impaired mobility may be unable to evacuate the train on their own through the emergency window and door exits or

who risk injury if they try to do so. Accordingly, since these attendants could prove invaluable in assisting both the passengers and the emergency responders during the initial period after the occurrence of the emergency, FRA concludes that the emergency preparedness plan must provide for proper training of these individuals.

FRA also recognizes that in the aftermath of an emergency the crewmembers will have many important responsibilities, including maintaining contact with the control center, ensuring proper protection of the train, and providing for the safety of the passengers. If the emergency involves a collision or derailment, one or more of the crewmembers may be injured and unable to carry out his or her duties. In an effort to increase the number of crewmembers who will be available to implement the railroad's emergency preparedness plan, the final rule requires that all on-board operating employees be qualified under the applicable provisions of the emergency preparedness plan. See § 239.101(a)(2)(vi). Of course, in the event that a railroad operates a train with the engineer as the only crewmember, then the railroad will be in full compliance provided that the engineer is fully trained and qualified under the plan.

Accordingly, FRA is revising the definition of "crewmember," as it applies for purposes of intercity service, to include both operating employees on board the train (i.e., railroad employees, or employees of contractors to railroads, who have been assigned to perform service subject to the Federal hours of service laws during a tour or duty) and individuals who serve as sleeping car or coach attendants. Instead of permitting an intercity train to operate with a minimum of only one crewmember who is qualified under the railroad's emergency preparedness plan, the final rule requires that all on-board operating employees be trained and qualified under the plan's provisions. However, a narrow exception will exist when a freight train crew serves as the relief crew on a passenger train. In this limited circumstance, the final rule permits the passenger train to operate, provided that at least one on-board operating crewmember from the passenger train is properly trained and qualified under the railroad's plan and available to perform excess service in the event of an emergency situation. See 49 U.S.C. 21102(a) and 21103. For purposes of all other categories of passenger train service, FRA is revising the definition of "crewmember" to apply only to operating employees on

board the train (i.e., railroad employees, or employees of contractors to railroads, who have been assigned to perform service subject to the Federal hours of service laws during a tour or duty), but exclude persons who provide on-board food or beverage service or security protection. In addition, all of the on-board operating employees (along with sleeping car and coach attendants assigned to intercity service) must be trained and qualified under the plan's provisions.

2. Should tabletop exercises not count toward the requirement to conduct emergency simulations, and instead should at least one full-scale simulation be required during the time period specified? If so, should the minimum number of activities be adjusted to reflect the increased quality of the simulation program? Should railroads be required to develop training programs for emergency responders and their organizations?

Although FRA noted in the NPRM that a tabletop exercise is relatively easy to orchestrate, "as it involves only a meeting room and knowledgeable managers and employees from the passenger train operator and the appropriate responding organizations who voluntarily participate," FRA stated that it might include a comprehensive requirement in the final rule involving multiple numbers of full-scale disaster simulations. See 62 FR at 8346. The NPRM set forth a requirement for railroads operating passenger train service to conduct emergency simulations, either full-scale or table exercises, in order to determine their capabilities to execute their emergency preparedness plans. 62 FR at 8257, 8258. The proposal required each commuter or short-haul railroad to conduct enough simulations to include each major line at least once during every two calendar years at least 50 percent of the total number of major lines during any given calendar year. Railroads providing intercity passenger train service were to conduct at least two emergency simulations during each calendar year for each business unit or other major organizational element.

Comments Received

Amtrak stressed that tabletop simulation exercises can accomplish many of the same objectives as full-scale exercises, but at a much lower cost. It noted that the actual emergency response activities required when real accidents occur also provide an ongoing source of preparedness and insight with respect to possible improvements. Amtrak also opined that tabletop simulations, plus actual emergency

response situations that inevitably occur, should be sufficient to accomplish the objectives of evaluating and improving the ability of railroads and emergency responders to function effectively in the event of an accident. Amtrak recommended that if the final rule requires some actual full-scale experiences each year, an actual response, accompanied by an appropriate debriefing and critique, satisfy that requirement.

APTA stated that the simulation requirement should be either deleted or made optional, and noted that commuter railroads agree with the intent of the regulation, but object to a prescriptive approach. APTA observed that simulations, especially full-scale ones, are time consuming, expensive, and benefit a small percentage of employees. It stated that in view of these factors, the requirement to perform simulations at all combined with the requirement to perform simulations on 50 percent of main lines each year, goes beyond what is necessary for emergency preparedness.

APTA also noted that since emergency responders are not required to attend, commuter railroads often hold full-scale training sessions that are poorly attended. It argued that each railroad should be permitted to maintain operational flexibility to determine the best way to involve emergency responders.

The LIRR noted that emergency response agency costs vary and are difficult to quantify, since the majority of fire departments and ambulance crews are volunteers. Since they are volunteers, it may be difficult for the LIRR to get them to attend many drills. However, there are costs for equipment usage (e.g., fuel) and for medical supplies (e.g., bandages and splints). The railroad noted that, including preparation, it takes two full months to plan a full-scale simulation, integrate it with the responding agencies, coordinate and integrate it with the railroad's own transportation people (track time, service disruptions, alternative means of transportation, development of the program and scenario), and then complete the drill. Internally, the LIRR uses tabletop exercises extensively for procedure review and testing. They are used in areas where it is difficult to get track time and run the railroad, and are less effective than practical, experiential drills and training because of the minimal amount of exposure to the emergency responders.

CALTRAIN commented that tabletop exercises should be accorded the same weight and emphasis as actual field

drills. Tabletop exercises, with follow-up debrief and critique, are very effective and less administratively burdensome. Certain exercises, such as window removal or after-dark conditions, can be performed as part of a tabletop drill by moving to the nearest rail facility. Subsequent to the Working Group meeting held in Washington, D.C. on August 28, 1997, CALTRAIN recommended that any full activation of the emergency preparedness plan in either an actual accident or other emergency situation count as a simulation, instead of only triggering a 180-day extension of the timeframe in which to perform the full-scale simulation, while if no such activation occurred, then the two-year cycle would apply. Since a "real" activation would be fully evaluated and modifications would be made, a "simulated" drill would be burdensome and redundant. Also, while CALTRAIN makes reasonable efforts to contact and invite area agencies, attendance is not mandatory. It argued that the final rule should discuss "best efforts to contact, train, and participate" in drills, since response agencies have budgetary and other issues with which to contend that affects their ability to participate in emergency drills on any given day.

METRA commented that it has 13 major lines, and would have to hold 6.5 simulations each year under the proposal. It noted that the participants would also have to be trained before each simulation, and under proposed 49 CFR 239.105, debriefing and critique sessions would be held afterward. METRA assumes that responder preplanning requires three weeks, the actual simulation takes two to four weeks to plan and coordinate, and the critique is performed a week after the simulation and compiled and acted upon the following week, for a total of 58.5 weeks spent performing 6.5 simulations. Under the proposal, METRA contends that it would have to conduct more than five simulations per year due to its system size and number of major routes. Even if the personnel and budget could be found to plan and conduct this level of simulation every year, METRA believes that it is questionable that the region's emergency responders could participate at this level.

METRA states that the Illinois Law Enforcement and Standards Board has certified METRA's program for training all law enforcement personnel throughout Illinois, and requests that a "Train the Trainer" program be added to the final rule as a means of ensuring a qualified response to passenger train emergencies. METRA's concern is that

many of the fire departments overlap to such an extent, that by performing the set number of route simulations in the proposal, some of the departments could be involved in three or more simulations per year. Because of liability and publicity concerns, most fire departments would elect to be fully involved, but too many simulations may dilute the aggressiveness of the emergency responders. METRA suggested that the number of required simulations should be reduced in the final rule to only two per year, and that videotaping of emergency simulations could be used in the preparation of training for future simulations.

In its comments, the NTSB expressed concern that a railroad could comply with the rule by only performing tabletop exercises each time it conducts an emergency simulation. The NTSB stated that a tabletop simulation exercise is not equal to a comprehensive full-scale exercise, since only a full-scale exercise involving personnel and equipment can demonstrate an organization's capability and readiness to respond to a disaster. It also noted that full-scale exercises best afford a railroad the ability to assess the effectiveness of its emergency response plan and to identify the resources necessary to support its plan in an actual emergency, as well as to uncover specific problems, and that emergency response personnel can only become familiar with railroad equipment by participating in full-scale search-and-rescue scenarios.

The Office of Emergency Management of DuPage County, Illinois commented that a simulation is a much better means of training emergency responders to respond to a significant emergency than a classroom alone. However, DuPage County has three METRA lines running through it (and a fourth in planning), and would have to perform two simulations annually in addition to meeting other Federal emergency planning requirements. The commenter noted that although a tabletop exercise is a great way to discuss policy and talk about what will likely happen, until a person actually goes into the field and stands next to the rail car or has to move injured persons off the second level of a rail car, it is impossible to know how one really does it.

The Des Plaines, Illinois Fire Department believes that its employees get more knowledge through individual training at the departmental level than they can from mass casualty situations or large-scale incidents, and notes that individual training ensures that all personnel go through the hours of classes and go out on a train to touch

it, open its doors, and take a window out. Employees can also attempt to extricate a dummy from the train. In a large-scale drill, personnel are assigned to sectors, and depending on the sector to which they are assigned, will obtain the knowledge of just that one piece of the mass casualty situation, and will not receive the broad spectrum.

The UTU commented that the railroads should concentrate on case histories more than large-scale drills. It stated that large-scale drills are expensive and time consuming, tie up the railroad, and do not provide much learning opportunity.

In light of the written comments and testimony at the two public hearings from members of the emergency response community, FRA has reconsidered its proposal and is eliminating the provision for performing a tabletop exercise in lieu of a full-scale exercise, but scaling back the simulation requirement to involve only one meaningful full-scale simulation (performed either annually or every two years depending on the size of the railroad). A railroad that is considered larger, i.e., its operation includes either at least 150 route miles or 200 million passenger miles annually, must conduct at least one full-scale simulation annually, regardless of the number of major lines or business organizational elements on its operation. Each railroad operating passenger train service is also required to develop a training program available to all on-line emergency responders who could reasonably be expected to respond during an emergency situation, with an emphasis upon access to railroad equipment, location of railroad facilities, and communications interface. The training program will provide information to emergency responders who may lack the opportunity to participate in an actual simulation. The railroads could either offer the training directly or make the training information and materials available to State training institutes, firefighter organizations (e.g., National Fire Protection Association), or State police academies.

The consensus of the commenters was that it takes each railroad months to plan a full-scale simulation, to conduct the drill, and to complete the debriefing and critique session. Although some full-scale simulation training is essential, many of the commenters (including members of local fire departments) stated that emergency responders also need "hands-on" training for railroad equipment, which is better effected through "hands-on" classroom training. Classroom training permits a railroad to run a number of

evolutions, allows many groups of individuals to have access to the equipment to achieve equipment familiarization, and enables emergency responders to practice lifting the rail equipment. While disaster simulations key on one incident (e.g., a hazardous materials incident or a train collision and a resulting fire), a classroom scenario can cover many different types of incidents. One commenter noted that if it had to spend a disproportionate amount of its time conducting numerous simulations, it would be forced to scale back its current program for training members of the emergency responder community.

FRA agrees with the commenters that the financial and logistical costs of conducting full-scale simulations are significantly higher than those for tabletop simulations, including the opportunity costs of lost revenue and the need to take railroad track and equipment out of service during the simulation. FRA also acknowledges that during "hands-on" classroom training a greater number of individuals receive direct access to railroad equipment than occurs during a large-scale drill. FRA encourages each railroad to voluntarily conduct tabletop exercises to identify the emergency response capabilities of its personnel in terms of their knowledge of procedures and equipment. However, FRA has decided that the safety objectives of this rulemaking are best served by requiring railroads to conduct at least a minimal number of comprehensive, full-scale simulations to determine whether a railroad is adequately prepared for the likely variety of emergency scenarios that could occur on its lines.

In reaching its decision to focus on a smaller number of larger scale simulations, FRA also acknowledged that under regulations established by the Federal Emergency Assistance Agency (FEMA), States are eligible to receive financial assistance for disaster preparedness under the Disaster Preparedness Improvement Grant Program. See 44 CFR Part 300. Under this program, States can receive FEMA money for training and to test and exercise procedures for their efforts in disaster response. While emergency responder organizations can receive funds to participate in railroad accident exercises and simulations, many of these same responder groups must also budget their limited time and resources in preparing for all other types of potential disasters that could strike their communities, e.g., airplane crashes, floods, and earthquakes. FRA recognized that if the final rule required railroads to conduct significant numbers

of full-scale simulations, and they received full participation from the emergency responder community, the limited funds available from FEMA might prove inadequate to meet the overall disaster-preparedness needs of the States and local jurisdictions.

Intercity operations present special challenges. Amtrak noted that full-scale simulations cause significant burdens, and argued that the final rule should permit tabletop simulations in lieu of full-scale ones. As an operator of seven different commuter services in this country, Amtrak noted that it would be involved in a great number of simulations on commuter lines, as well as its intercity service, and stated that full-scale emergency exercises involve weeks of preparation, commitment of physical resources, and expenditure of funds for actual implementation of the exercise. Track and equipment would be out of service during the placement, conduct, and removal of equipment from the drill site. Significant disruption of normal operations on a rail line could occur in connection with conducting a simulation. Passengers and shippers could be inconvenienced and equipment utilization adversely affected.

3. *What elements should be included in passenger information programs? Should surveys be required in the final rule?*

The NPRM required each railroad to conspicuously and legibly post emergency instructions inside all passenger cars (e.g., on car bulkhead signs, seatback decals, or seat cards) and use one or more additional methods to provide safety awareness information (i.e., on-board announcements, laminated wallet cards, ticket envelopes, timetables, station signs or video monitors, public service announcements, or seat drops). 62 FR at 8357. The proposal also expected each railroad to survey representative samples of passengers at least annually to determine the effectiveness of its passenger awareness program activities, and to improve its program, as appropriate based on the information developed. 62 FR at 8357.

APTA commented that while commuter railroads should be required to develop and use passenger emergency awareness programs, the features of the programs should be left to each commuter railroad's discretion. It stated that the final rule should be based on performance, not the command-and-control approach in the proposal. APTA also argued that the prescription favoring certain types of signage should be removed from the final rule, and the safety awareness requirement changed

to merely list examples of possible methods of disseminating safety awareness information. APTA noted that each commuter railroad has its own unique approach to developing and using tools to make passengers aware of emergency instructions inside passenger cars, and should retain flexibility to find the right mix of passenger communication techniques. APTA contended that unless the passenger information requirement allows a railroad latitude to use innovative means or new technology to deliver safety information, a railroad would have to apply for a waiver to develop or use the new program or technology, thus delaying its introduction.

The LIRR also commented on the issue of passenger awareness program activities. The railroad suggested that safety awareness information could be printed on a pocket-sized card in order to remind customers of the basics of what to do in the event of an emergency situation. FRA notes that § 239.101(a)(7)(ii), as proposed, already permits a railroad to disseminate information to passengers on "laminated wallet cards." 62 FR at 8357.

FRA agrees with the two commenters that requiring railroads to choose among only the seven listed additional methods of providing safety awareness information to their customers is too restrictive, and could discourage railroads from being innovative. FRA fully expects most railroads to use either on-board service announcements, laminated wallet cards, ticket envelopes, timetables, station signs or video monitors, public service announcements, or seat drops as the second means of ensuring the effectiveness of their passenger safety awareness programs. However, FRA encourages the use of alternate but equally effective approaches, especially if validated by information deduced from the debriefing and critique sessions held after passenger train emergency situations or simulations.

FRA is not, however, revising the requirement that railroads post emergency instructions inside all passenger cars. In the event of an emergency, passengers may experience panic and momentarily forget any information that may have been conveyed by the crew before the train's departure (e.g., through an on-board announcement). FRA believes that an important part of the successful implementation of this rule depends on railroads posting convenient and conspicuous reminders to their passengers of the important safety procedures to follow in the event of an emergency. Such a requirement will

also provide a measure of consistency, benefiting passengers who use more than one service provider.

Upon review of the comments on the passenger survey requirement, FRA concludes that the financial cost to each passenger railroad of developing and conducting a survey capable of reaching a statistically significant cross-section of its customer population in order to periodically update and improve its passenger safety awareness information greatly exceeds any potential benefit. Accordingly, FRA is deleting this requirement from the final rule.

In proposing the survey requirement, FRA presumed that railroads would merely include additional questions on customer satisfaction surveys currently used to assess passenger comfort and assist railroads in timetable planning. FRA assumed that the additional costs to the railroad industry would therefore be minimal. However, three railroads and APTA commented on FRA's proposal, convincing FRA that unless the rule required each railroad to employ a rigorous and scientific survey methodology, most oral and written surveys would likely be completed only by those passengers who are either regular riders already familiar with emergency procedures or dissatisfied riders who have complaints about train service. Without such a financially burdensome requirement, the survey results would be of little or no value to the railroads in verifying passenger awareness of the location(s) on the passenger car of safety information or knowledge of safety procedures to be followed in the event of an emergency. Accordingly, since any changes made by the railroads to their passenger awareness programs might be predicated upon inaccurate or incomplete information, FRA believes that a survey requirement would likely not benefit passenger safety.

Consistent with FRA's conclusion, APTA commented that although passenger surveys may be useful in determining passenger safety awareness, there is no guarantee that they will be useful in fact. APTA stated that since completion of the survey is voluntary on the part of the public, the survey would not provide any real knowledge to the railroad of passenger awareness of emergency preparedness.

APTA also disagreed with FRA's estimate that the survey requirement would entail no additional cost to each railroad, noting that DOT recently estimated that on-board transit surveys cost \$12 per completed survey (DOT-97-08, as reported in the Urban Transportation Monitor). Based upon 360 million passenger trips daily and a

sample size of one percent, APTA concluded that the total cost to survey commuter rail passengers would be \$21,600,000 ($360/2 \times .01 \times \12.00). Although APTA realized that the cost might be smaller, depending on the number of surveys done and number of questions asked, it stressed that the final cost would be more than incidental.

Amtrak commented that the survey requirement is unnecessary and undesirable, and could undermine the public's opinion of the safety of train travel. It noted that no other transportation mode is required to conduct surveys of passengers' levels of knowledge of safety information or procedures. Instead of performing mandatory surveys, Amtrak recommended that railroads focus on providing passengers with the information necessary for them to function in the event of an emergency, as is currently done in the airline industry. Amtrak shared APTA's concern that since public participation in the survey is voluntary, railroads would have serious concerns about the objectivity and validity of the results obtained.

NICTD opposed the use of passenger surveys to determine knowledge or compliance and stated that despite the rule's flexibility in the methodology of surveys, surveys would not in and of themselves measurably contribute to overall passenger education concerning emergency situations. NICTD stated that the education and ongoing training of train crews concerning emergency situations is more productive and cost effective, since train crews are ultimately responsible for dealing with passengers in these situations.

NICTD also questioned the cost/benefit factor of having employees orally survey passengers aboard trains or at train stops, arguing that the use of written surveys distributed to passengers boarding trains, or provided as seat drops, would not guarantee completion of the forms. Further, NICTD stressed that the requirement to survey a "representative sample of passengers" each calendar year cannot be assured by the survey process, whether the survey is done orally or in writing. Oral surveys may be viewed by passengers as annoying, who will then refuse to cooperate, and written surveys will likely be completed only by those passengers who are inclined to respond.

The LIRR commented that it performs at least one customer-satisfaction survey per year, at a cost of \$155,000 per survey, and on a case-by-case basis performs targeted surveys to assist in a decision-making process. The LIRR's Market Development area input shows

that the response rate should be at least 45 percent to allow for valid projection of the sample findings to the whole population. However, the LIRR's normal response rate of mail-back surveys that it has conducted in the past, without incentives, is only 15 percent.

4. *Should FRA modify the requirement that the agency conduct a formal review and approval of each railroad's emergency preparedness plan within 180 days of receipt of the plan from the railroad?*

The NPRM stated that within 180 days of receipt of each initial emergency preparedness plan, and within 60 days in the case of a railroad commencing or hosting passenger operations after the initial deadline for plan submissions, FRA would conduct a formal review of the plan. 62 FR at 8358. FRA would then notify the railroad of the results of the review, whether the plan had been approved by FRA, and if not approved, the specific points in which the plan was deficient. 62 FR at 8358. If the plan was not approved by FRA, the railroad was required to amend its plan to correct all deficiencies (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice of disapproval. 62 FR at 8358.

APTA commented that FRA should remove the time limit for approval of the emergency preparedness plan, and return to the original consensus recommendation of the Working Group that there be no deadlines. APTA stated that it doubted that FRA would be able to turn around the plans to the commuter rail systems within the specified timeframe, and recommended that FRA should adopt a consultative approach to emergency preparedness instead of the approach included in the NPRM.

In response to APTA's concerns, FRA is adopting a bifurcated approach to approval of the emergency preparedness plan in the final rule. The final rule specifies that within 90 days of receipt of each initial plan, and within 45 days in the case of a railroad commencing operations after the initial deadline for plan submissions, FRA will conduct a limited, preliminary review to determine if the required elements of the emergency preparedness rule are sufficiently addressed and discussed in the railroad's emergency preparedness plan submission. For example, this initial review will determine if the railroad has included a section in its plan on liaison relationships with on-line emergency responders, but will not yet involve field verification by FRA safety inspectors that the railroad is in fact inviting these responders to attend

training programs on access to railroad equipment. After this initial review, as appropriate, FRA will then grant or deny conditional approval of the plan in writing. Within 180 months of receipt of each emergency preparedness plan, and within 180 days in the case of a railroad commencing operations after the initial deadlines for plan submissions, FRA will then complete a comprehensive review, consisting of ongoing dialogues with rail management and labor union representatives and field analysis and verification of the railroad's implementation of the plan's provisions, followed by final approval or denial.

The bifurcated approach to approval of the emergency preparedness plan will permit FRA to quickly review each plan for procedural compliance and immediately determine if the railroad has at least considered all required plan elements. However, FRA will then have a much longer timeframe in which to evaluate the plan's substantive sufficiency and the railroad's actual implementation. Without this change in the final rule, FRA would have had to choose between delaying many railroads from adopting their emergency preparedness plans or accepting some railroad plan submissions on good faith with little more than a cursory review. Either option would compromise the safety of railroad passengers and train crews in the event of a passenger train emergency situation.

5. *Should the final rule require a joint submission of one emergency preparedness plan by each railroad that provides or operates passenger train service and (as applicable) each railroad that hosts such service?*

In the section of the NPRM addressing joint operations, FRA stated that each freight railroad hosting passenger train service would be required to have an emergency preparedness plan addressing its specific responsibilities, and each railroad operating passenger train service over the line of a freight railroad would be required to coordinate the applicable portions of its emergency preparedness plan with the corresponding portions of the freight railroad's plan. 62 FR 8357. The purpose for the requirement was to ensure an optimal level of emergency preparedness on the part of every railroad involved in the operation of a particular passenger train service. In the section of the NPRM addressing the filing of the emergency preparedness plan, each affected railroad would be required to file its plan with FRA within 180 days of the effective date of the rule, or at least 90 days before commencing passenger operations, whichever is later. 62 FR at 8358.

It has become apparent to FRA during the course of the comment period that there is a reluctance on the part of both freight and passenger railroads to accept full responsibility for the requisite implementation of all of the elements of an emergency preparedness plan. FRA is concerned that the consensus of the commenters is that each entity expects the other entity to be held accountable by FRA in the event that an emergency situation occurs and the provisions of the plan are improperly executed. In order to ensure that all railroads involved in a particular rail passenger service operation understand each one's crucial role in planning for emergency preparedness, instead of merely requiring coordination of applicable portions of multiple emergency preparedness plans, the Working Group recognized the need to include a joint submission requirement in the final rule.

CALTRAIN commented that under the proposal, passenger or commuter railroads are responsible for the relationships with host or tenant freight railroads. While CALTRAIN stated its intent to work closely with such railroads, it noted that it has no authority over the freight railroads and declined responsibility for their actions or omissions. CALTRAIN suggested that FRA focus on evidence of a "good faith effort," since CALTRAIN cannot mandate actions and cannot enforce the conduct of external agencies. This commenter urged FRA to use its enforcement powers.

APTA agreed with FRA that the language in an early version of the proposal that was shared with the Working Group, which placed the entire responsibility for the joint operation on the host freight railroad, did not properly account for the responsibilities of both parties. Since the NPRM reversed that scenario, APTA recommends that FRA either delete or redraft § 239.103(a)(3) to assign a measure of responsibility to the host freight railroad. APTA argued that although the NPRM required coordination, it does not provide a mechanism to ensure cooperation by the freight railroad to coordinate emergency efforts. If a freight railroad refuses or is unwilling to cooperate, a commuter railroad lacks recourse. The commuter railroad could still be fined for not coordinating with an unwilling freight railroad. Consistent with APTA's observations, the LIRR commented that the final rule needs terminology that recognizes that there is some joint responsibility between all of the involved parties to a passenger operation.

In its comments, the AAR acknowledged that while freight railroads neither provide nor operate rail passenger service themselves, and are not subject to most of the rule's requirements, freight railroads still have certain emergency preparedness responsibilities. The AAR recommended that FRA not revise the proposed language of § 239.101(a)(3), since it is in a freight railroad's interest to coordinate with a passenger railroad to ensure emergency preparedness. The AAR rejected APTA's concern about freight railroads refusing to cooperate with the passenger railroads, arguing that APTA, or any other interested party, presented no data or evidence to indicate that passenger railroads have experienced problems from freight railroads refusing to coordinate emergency responses. The AAR believed that FRA would never fine a passenger railroad that demonstrates that it attempted to comply with the regulation, but was unable to coordinate with a freight railroad due to the freight railroad's refusal to cooperate.

Based upon careful consideration of the comments, FRA is requiring communication and coordination between all railroads affected by this rule involved in each passenger operation, by mandating the submission by the passenger railroad of one emergency preparedness plan that is jointly prepared. Accordingly, if a State or public authority provides commuter rail passenger train service by contracting with another railroad to actually operate the service, and the passenger operation is in turn hosted by a freight railroad, all three entities are required to work together and file one emergency preparedness plan for the operation setting forth each railroad's procedures and responsibilities under the plan. If for example, a passenger operation will fulfill none of the requirements of emergency planning, with the host railroad having all of the responsibilities under the plan, this fact must be clearly stated in the plan.

In the event of noncompliance by any or all of the entities involved in the implementation of the plan, FRA reserves the right to initiate appropriate enforcement action against all parties participating in the plan. Of course, FRA will intervene to assist any railroad that is having difficulty crafting a joint emergency preparedness plan, and help mediate a solution. While FRA might not initially seek an injunction to prevent a passenger train operation from operating due to a host railroad's failure to cooperate, FRA could initiate civil penalty action against the host railroad

for its failure to comply with the requirements of part 239.

The portion of the emergency preparedness plan addressing the host railroad's responsibilities shall, at a minimum, include procedures for notifying emergency responder organizations and discuss the railroad's general capabilities for rendering assistance to an involved passenger railroad during an emergency situation. The host railroad must also address any physical and operating characteristics of its rail lines that may affect the safety of the rail passenger operations, e.g., evacuation of passengers from a train stalled in a tunnel or on an elevated structure.

Section-by-Section Analysis

As a number of the issues and provisions have been discussed and addressed in detail in the preceding discussions, this section-by-section analysis will explain the provisions of the final rule and changes from the NPRM by briefly highlighting the rationales or referring to the prior discussion. The discussions and conclusions contained above should be considered in conjunction with the analysis contained below. Each comment received has been fully considered by FRA in preparing this final rule.

FRA amends part 223 of title 49, Code of Federal Regulations by adding six new definitions and requiring railroads operating passenger train service to clearly mark emergency windows. FRA also adds part 239 to title 49, Code of Federal Regulations specifically devoted to prescribing minimum Federal safety standards concerning the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains.

1. Definitions: Section 223.5

Section 223.5 is reorganized and definitions of four important terms employed in the passenger train emergency preparedness regulations are added. The four new defined terms are "emergency responder," "passenger train service," "person," and "railroad." For ease of reference, FRA defines the term "railroad" so as to include the statutory (49 U.S.C. 20102) definitions of both "railroad" and "railroad carrier" and to clarify that those who provide railroad transportation directly or through an operating contractor are railroad carriers. Thus, the term "railroad" is clearly intended to include commuter authorities as well as rapid transit authorities whose operations are in an urban area and are connected with

the general railroad system of transportation. These terms are intended to have the same meaning as in part 239 of this chapter. However, FRA does not intend for its definition of "railroad" in either this part or part 239 of this chapter to have any bearing on how the term is used for purposes of the regulatory activities of the Surface Transportation Board.

2. Requirements for New or Rebuilt Equipment: Section 223.9

FRA received no comments regarding proposed paragraph (d), and the paragraph is adopted as proposed. In accordance with the requirements of 49 CFR 223.9(c) and 223.15(c), all passenger cars must be equipped with at least four emergency windows, which must be designed to permit rapid and easy removal during a crisis situation. Section 223.9(d) requires that all windows intended by a railroad to be used during an emergency situation be properly marked inside and outside, and that the railroad post clear and understandable instructions for their use at or near the designated locations.

Section 223.9(d)(1) requires that the emergency windows be conspicuously and legibly marked on the inside of the car with luminescent material. FRA realizes that during an emergency a main power supply to the passenger cars may become inoperative and that crewmembers with portable flashlights may be unavailable. Since lack of clear identification or lighting could make it difficult for passengers to find the emergency exits, the rule requires luminescent material on all emergency windows to assist and speed passenger egress from the train during an emergency. The marking of the emergency windows must be conspicuous enough so that a reasonable person, even while enduring the stress and potential panic of an emergency evacuation, can determine where the closest and most accessible emergency route out of the car is located. In addition, while this subsection does not prescribe a particular brand, type, or color of luminescent paint or material that a railroad must use to identify a window exit, FRA intends each railroad to select a material durable enough to withstand the daily effects of passenger traffic, such as the contact that occurs as passengers enter and leave the cars.

METROLINK, in commenting on the proposed rule, noted that the last line of § 223.9(d) requires "each railroad [to] post clear and legible operating instructions at or near such exits," stated that it assumes that the referenced instructions relate to the

doors rather than the windows. Contrary to METROLINK's assumption, the instructions required by this paragraph are for operating the emergency window exits. The requirements for posting operating instructions at or near emergency door exits are contained in § 239.107 of this chapter.

Section 223.9(d)(2) requires that the emergency windows intended for emergency access by emergency responders for extrication of passengers be marked with retroreflective material. Since FRA recognizes that not every window will be equipped for emergency access, railroads are required to choose a retroreflective, unique and easily recognizable symbol that will readily attract the attention of emergency responders. The final rule does not require a specific size or shape for the symbol, but FRA intends the railroad's emergency preparedness plan developed pursuant to § 239.101 of this chapter to contain a provision explaining emergency responder access (along with passenger car egress), consistent with the evacuation strategy formulated jointly by the passenger train operator and the emergency responder organizations, in accordance with the emergency responder liaison provision set forth in § 239.101(a)(5) of this chapter. Of course, while the final rule does not require emergency responders to participate in evacuation planning or strategy with the railroads, the railroads must offer liaison training and assistance.

The final rule allows a marking that could consist of a symbol or words (such as "RESCUE ACCESS"). Although FRA stated in the proposed rule that it reserved the right to be more prescriptive in the final rule based upon a uniform pattern, and noted that FRA was working to identify an appropriate marking that might be capable of universal recognition, FRA has decided to retain the flexibility set forth in the proposal. However, if during the fourth phase of FRA's comprehensive effort to address passenger safety issues FRA determines that a uniform pattern or symbol is required, FRA may modify the marking requirements of § 223.9(d)(2) during a future rulemaking action.

The final rule also requires railroads to post clear and understandable instructions at designated locations describing how to operate the emergency windows. This paragraph does not mandate that railroads use specific words or phrases to guide the passengers and emergency responders. Instead, each railroad should evaluate the operational characteristics of its emergency windows, and select key words or diagrams that adequately

inform the individuals who must use them. While railroads are encouraged to post comprehensive instructions, FRA also realizes that during an emergency situation every additional moment devoted to reading and understanding access or egress information places lives at risk. In addition, FRA expects passengers and emergency responders to be already familiar with the location and operation of the railroad's emergency windows as a result of emergency responder liaison activities and passenger awareness programs conducted in accordance with §§ 239.101(a)(5) and (a)(7).

3. Appendix B to 49 CFR Part 223

FRA is revising Appendix B to 49 C.F.R. part 223—Schedule of Civil Penalties, to include penalties for violations of the provisions of § 223.9(d) to be included in the final rule. Commenters were invited in the NPRM to submit suggestions to FRA describing the types of actions or omissions that would subject a person to the assessment of a civil penalty, and were also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation. FRA did not receive any public comments nor did the Working Group present any recommendations to the agency on this topic. Accordingly, FRA has amended the penalty schedule based on its own analysis of the inherent seriousness of violating the marking requirements for emergency windows of part 223. The penalty schedule also changes the maximum penalty that FRA is authorized to assess for violations of the provisions of this part. The maximum penalty is raised from \$20,000 to \$22,000 for any violation where circumstances warrant. This change is intended to comply with the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321-373 (April 26, 1996), which requires Federal agencies to adjust civil monetary penalties to counter inflation's effect of diminishing the impact of these penalties. The inflation adjustment is to be calculated by increasing the maximum civil monetary penalty by the percentage that the Consumer Price Index for the month of June 1995 exceeds the Consumer Price Index for the month of June of the last calendar year in which the amount of the penalty was last set or adjusted. The initial adjustment, however, may not exceed 10 percent. The resulting \$22,000 maximum penalty was

determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalty otherwise provided for in the Federal railroad safety laws.

4. Purpose and Scope: Section 239.1

FRA did not receive any comments, and this section is adopted as proposed. Section 239.1(a) states that the purpose of this part is to reduce the magnitude of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage emergencies. Paragraph (b) states that these regulations provide minimum standards for the subjects addressed, and the affected railroads may adopt more stringent requirements, so long as they are not inconsistent with this part. FRA does not in any way intend that the subject matter of 49 CFR part 239, Passenger Train Emergency Preparedness, be read to impose burdens or requirements on emergency responders who either participate with railroads in emergency simulations involving the operation of passenger train service or respond to actual emergency situations, or on any other person who may be involved with the aftermath of a passenger train emergency not specified in proposed § 239.3 concerning applicability. Accordingly, FRA does not intend to restrict a State from adopting a law, rule, regulation, order, or standard affecting emergency responders unless it is inconsistent with 49 U.S.C. 20106.

5. Application: Section 239.3

As a general matter, FRA will apply this rule to all railroads that operate passenger train service on the general railroad system of transportation, provide commuter or other short-haul passenger train service in a metropolitan or suburban area, or host the operations of such passenger train service. A public authority that indirectly provides passenger train service by contracting out the actual operation to another railroad or independent contractor will be regulated by FRA as a railroad under the provisions of the final rule. Although the public authority will ultimately be responsible for the development and implementation of an emergency preparedness plan (along with all related recordkeeping requirements), the railroad or other independent contractor that operates the authority's passenger train service will be expected to fulfill all of the responsibilities under this part with respect to emergency preparedness planning, including implementation.

FRA has revised paragraph (a)(3) to state that all railroads hosting the operation of passenger train service are covered by the final rule. While FRA recognizes that the majority of host relationships are entered into by freight railroads, there are a number of instances where passenger operations (e.g., Amtrak) host other passenger operations over their trackage. Accordingly, the final rule has been revised to reflect this fact.

Paragraph (b)(1) of both the NPRM and final rule indicate that the rule does not apply to rapid transit operations in an urban area that are not connected with the general railroad system of transportation, and this paragraph is intended merely to clarify the circumstances under which rapid transit operations are subject to FRA jurisdiction under this part.

In a final rule published in the *Federal Register* on December 27, 1995, the Federal Transit Administration (FTA) announced that it would begin requiring states to oversee the safety of rail fixed guideway systems not regulated by FRA. 60 FR 67034; see 49 U.S.C. 5530, 49 CFR part 659. Under its statutory scheme, FTA does not directly enforce safety statutes or regulations against rail fixed guideway systems, nor does FTA have safety inspectors who enter upon the regulated properties to perform inspections. In accordance with FTA's statutory authority and the above rulemaking, FTA does not interpret what constitutes commuter rail or rapid transit, but instead regulates whatever rail fixed guideway systems that FRA does not.

As set forth in Appendix A to part 209 of this chapter, with the exception of self-contained urban rapid transit systems, FRA's statutory jurisdiction extends to all entities that can be construed as railroads by virtue of their providing non-highway ground transportation over rails or electromagnetic guideways, and will extend to future railroads using other technologies not yet in use. For policy reasons, FRA does not exercise jurisdiction under all of its regulations to the full extent permitted by statute. Based on its knowledge of where the safety problems were occurring at the time of its regulatory action and its assessment of the practical limitations on its role, FRA has, in each regulatory context, decided that the best option was to regulate something less than the total universe of railroads.

In light of the above, FRA may elect to limit the exercise of its jurisdiction over these entities for policy reasons. FRA currently withholds the exercise of its jurisdiction over rapid transit

operations where conventional and light rail operations are separated in time (night/day hour specifications). In making this policy determination, FRA anticipates working with the FTA on a joint policy statement that will be published in the *Federal Register* and discuss the types of rapid transit systems covered by this rule that will be subject to FRA's jurisdiction and which ones will instead be subject to state safety oversight under FTA's jurisdiction. As part of this joint policy analysis by FRA and FTA, our two agencies will seek to coordinate more explicitly the requirements of FRA regulations and State safety oversight programs.

The final rule is structured to apply to intercity and commuter service (as well as rapid transit operations that operate over the general railroad system of transportation), not tourist operations. At a later time, FRA may propose application of the rule, or some portion thereof, to tourist, scenic, historic, and excursion railroads. FRA's regulatory authority permits it to tailor the applicability sections of its various regulations so as to expand or contract the populations of railroads covered by a particular set of regulations. FRA has had jurisdiction over all railroads since the Federal Railroad Safety Act of 1970 was enacted.

In considering the issue of requiring emergency preparedness planning by tourist and historic railroad operators in the context of this rulemaking, FRA has not yet had the opportunity to fully consult with those railroads and their associations to determine appropriate applicability in light of financial, operational, or other factors that may be unique to such railroad operations. After appropriate consultation with the excursion railroad associations takes place, emergency preparedness requirements for these operations may be prescribed by FRA that are different from those affecting other types of passenger train operations. These requirements may be more or less onerous, or simply different in detail, depending in part on the information gathered during FRA's consultation process.

The Federal Railroad Safety Authorization Act of 1994 instructed FRA to examine the unique circumstances of tourist railroads when establishing safety regulations. The Act, which amended 49 U.S.C. 20103, stated that:

In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or

other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

Pub. L. No. 103-440, § 217, 108 Stat. 4619, 4624 (November 2, 1994). In addition, section 215 of that Act specifically permits FRA to exempt equipment used by tourist, historic, scenic, and excursion railroads to transport passengers from the initial regulations that were scheduled to be prescribed by November 2, 1997. 49 U.S.C. 20133(b)(1). In its report to Congress entitled "Regulatory Actions Affecting Tourist Railroads," FRA responded to the direction in the statutory provision and also provided additional information related to tourist railroad safety for consideration of the Congress. FRA will address the emergency preparedness concerns for these unique types of operations at a later date in a separate rulemaking proceeding. To facilitate resolution of this issue, and a significant number of related issues, the Railroad Safety Advisory Committee (RSAC) has established a Tourist and Historic Railroads Working Group. As a matter of cost efficiency, the Working Group may elect to cover emergency preparedness planning for tourist railroads as part of a package of tourist-specific safety proposals during a multi-day consultation on several rulemaking dockets. FRA would then issue a Notice of Proposed Rulemaking addressing issues in several dockets that pertain to these smaller passenger operations.

In § 239.3(b)(2), FRA states that the requirements of this part will not apply to the operation of private passenger train cars, including business or office cars and circus trains. While FRA believes that a private passenger car operation should be held to the same basic level of emergency preparedness planning as other passenger train operations, FRA is taking into account the financial burden that would be imposed by requiring private passenger car owners and operators to conform to the requirements of this part. Private passenger cars are often hauled by host railroads such as Amtrak and commuter railroads, and these hosts often impose their own safety requirements on the operation of the private passenger cars. Pursuant to this part, the host railroads will already be required to have emergency preparedness plans in place to protect the safety of their own passengers; the private car passengers will presumably benefit from these plans even without the rule directly covering private car owners or operators. In the case of non-revenue

passengers, including employees and guests of railroads that are transported in business and office cars, as well as passengers traveling on circus trains, the railroads will provide for their safety in accordance with existing safety operating procedures and protocols relating to normal freight train operations.

6. Preemptive Effect: Section 239.5

FRA did not receive any comments, and this section is adopted as proposed. Section 239.5 informs the public as to FRA's views regarding the preemptive effect of the final rule. While the presence or absence of such a section does not in itself affect the preemptive effect of this part, it informs the public concerning the statutory provision which governs the preemptive effect of these rules. Section 20106 of title 49 of the United States Code provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard, 49 U.S.C. 20106 preempts any State regulatory agency rule covering the same subject matter as these regulations proposed today.

Of course, the subject matter of these regulations covers only the preparation, adoption, and implementation of emergency preparedness plans for passenger train operations. Although the subject matter includes a requirement in § 239.101(a)(5) that railroads establish liaison relationships with their on-line emergency responders by developing and making available a training program emphasizing access to railroad equipment, location of railroad facilities, and communications interface, FRA is not requiring emergency responders to participate in these liaison activities. Accordingly, since FRA is only regulating the content of the training opportunities that railroads must offer to the responder community, States are in no way preempted from regulating any other training requirements or other activities of the non-railroad emergency responders who arrive at the scene of an emergency after a railroad's emergency preparedness plan has been activated consistent with part 239.

Further, FRA acknowledges that there may be special local interests concerning types and/or quantities of on-board emergency equipment that

might need accommodating, particularly in cases of public authorities operating passenger train service within only one territory. Although national uniformity to the extent practicable of laws, regulations, and orders related to railroad safety is important, FRA does not want to decrease the level of emergency preparedness already in place on a passenger railroad.

7. Definitions: Section 239.7

This section contains an extensive set of definitions to introduce the regulations. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the final rule. The definitions are carefully worded in an attempt to minimize the potential for misinterpretation of the final rule. Several of the definitions introduce new concepts which require further discussion.

For a detailed discussion of FRA's decision to revise the definition of "crewmember," see the preceding "Discussion of Comments and Conclusions" portion of this document under heading of item number 1. The definition of "crewmember" is primarily intended to cover persons who either perform on-board functions connected with the movement of a train and are subject to the Federal hours of service laws during a tour of duty (e.g., a locomotive engineer, conductor) or provide on-board service in a sleeping car or coach assigned to intercity service, other than food, beverage, or security service (e.g., an Amtrak sleeping car attendant), a deadheading employee can be covered by the definition as well. Accordingly, such an employee could count as a "qualified" employee under § 239.101(a)(2)(vi) of this part for purposes of meeting a passenger railroad's minimum on-board staffing requirements for its emergency preparedness plan when a freight train crew has relieved that passenger railroad's expired crew. During a passenger train emergency situation, off-duty employees are expected to assume their appropriate roles under the railroad's emergency preparedness plan and assist the passengers.

In commenting on the proposal, METROLINK indicated that on some trains it has conductors who perform the function of fare enforcement, and recommended that FRA exclude these individuals from the definition of "crewmember." METROLINK also requested that FRA exclude contract food workers from the definition of "crewmember." In accordance with FRA's revised definition of "crewmember," these categories of

employees are now excluded from coverage.

The term "control center" envisions not only the traditional railroad concept of a train dispatcher's office, but also railroad offices that are identified as "control centers" but only monitor railroad operations, and modern system operations centers such as those of CSX Transportation in Jacksonville, Florida and the Burlington Northern Santa Fe Corporation in Ft. Worth, Texas. The term does not include a location on a railroad with responsibility for the security of railroad property, personnel, or passengers.

It is very likely that control center personnel are located at facilities which are remote from the right-of-way. These facilities should consist of the necessary command, control, and communications equipment to maintain normal train operations, to control electric traction, and to maintain communications throughout the passenger train system. In addition to these functions, the control center should help coordinate responses to emergencies by using equipment such as radio communications systems, direct "hotline" telephones, wayside power removal controls, and ventilation controls under the direction of emergency responders, according to the protocols and procedures of the emergency preparedness plan.

Typical emergency scenarios encompassed by the term "emergency" or "emergency situation" involving a significant threat to the safety or health of one or more persons requiring immediate action may include one or more of the following: illness or injury; a stalled train in a tunnel or on a bridge; collision with a person, including suicides; collision or derailment; fire; collision or derailment with a fire; immersion; severe weather conditions; natural disasters; and security situations (e.g., bombings, bomb threats, hijacking, civil disorders, and other acts of terrorism). The definition of "emergency" or "emergency situation" has been changed in the final rule to include examples of some of the more common scenarios that would require a railroad to activate its emergency preparedness plan. However, regardless of whether a particular emergency illustration is specifically listed in the definition, FRA expects a railroad to activate its emergency preparedness plan anytime an unexpected event related to the operation of its passenger train service involves a significant threat to the safety or health of one or more persons requiring immediate action.

The NPRM defined "emergency responder" as "a qualified member of a police or fire department, or other organization involved with public safety, who responds to a passenger train emergency." 62 FR at 8356. In its comments, APTA requested that FRA delete the word "qualified" because it implies that someone on the railroad will determine an emergency responder's qualifications. APTA stated that at an accident scene, a commuter railroad lacks the practical capability to determine an emergency responder's qualifications, and on-board personnel do not have the time to determine qualifications. The LIRR noted that emergency responder qualifications are dictated by police and fire departments, not the railroads.

In including the word "qualified" in the proposed definition of "emergency responder," FRA never intended to place a burden on the railroads to determine the professional qualifications of emergency responders. It was assumed that the railroads would cooperate fully with any individual sent by an organization involved with public safety in response to a passenger train emergency, based solely upon that organization's own determination of its employee's qualifications. However, in response to the concerns of the two commenters, FRA has deleted the word "qualified" from the definition of "emergency responder," and also revised the definition to clarify that a member of an emergency responder organization may coordinate as well as directly provide emergency services.

The AAR commented that the definition of "joint operations" is open to various interpretations, and suggested that FRA revise the definition in the final rule to state that "joint operations means rail operations conducted by more than one railroad, except as necessary for the purpose of interchange." FRA agrees with this recommendation, and never intended for the final rule to apply to joint operations in instances when the sole purpose for using the trackage is interchange. Accordingly, the definition of "joint operations" in the final rule has been revised to exclude interchange situations.

The term "qualified," as used in the rule, means employees who are trained under an applicable emergency preparedness plan's components and implies no provision or requirement for Federal certification of persons who perform those functions.

The definition of "railroad" is based upon 49 U.S.C. 20102(1) and (2), and encompasses any person providing railroad transportation directly or

indirectly, including a commuter rail authority that provides railroad transportation by contracting out the operation of the railroad to another person, as well as any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, but excludes urban rapid transit not connected to the general system.

The terms explained here are not exhaustive of the definitions included in § 239.7 of this part. This introduction merely provides a sampling of the most important concepts of the final rule. Many other terms are defined and explained in the section-by-section analysis when analyzing the actual final rule text to which they apply.

8. Responsibility for Compliance: Section 239.9

FRA did not receive any comments, and this section is adopted as proposed. Section 239.9 clarifies FRA's position that the requirements contained in the final rules are applicable to any "person." Including a contractor, that performs any function required by the final rule. Although all sections of the final rule address the duties of a railroad, FRA intends that any person who performs any action required by this part on behalf of a railroad is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action. For example, if an independent contractor is hired by a railroad to maintain its records of inspection, maintenance, and repair of emergency window and door exits, pursuant to § 239.107, the contractor is required to perform those duties in the same manner as required by a railroad.

9. Penalties: Section 239.11

Section 239.11 identifies the penalties that FRA may impose upon any person, including a railroad or an independent contractor providing goods or services to a railroad, that violates any requirement of this part. These penalties are authorized by 49 U.S.C. 21301, 21304, and 21311, formerly contained in § 209 of the Federal Railroad Safety Act of 1970 (Safety Act) (49 U.S.C. 20101-20117, 20131, 20133-20141, 20143, 21301, 21302, 21304, 21311, 24902, and 24905, and §§ 4(b)(1), (i), and (t) of Pub. L. 103-272, formerly codified at 45 U.S.C. 421, 431 *et seq.*). The penalty provision parallels penalty provisions included in numerous other regulations issued by FRA under authority of the provisions of law formerly contained in the Safety Act. Essentially, any person who violates any requirement of this part or causes the violation of any such

requirement will be subject to a civil penalty of at least \$500 and not more than \$11,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed \$22,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in ensuring that compliance is achieved not only in terms of developing and implementing emergency preparedness plans, but also to better determine if railroads are planning ahead to minimize the consequences of emergencies that could occur.

The penalty schedule also implements the maximum penalty that FRA is authorized to assess for violations of the provisions of this part. The maximum penalty reflects an increase from \$10,000 to \$11,000 for violations and an increase from \$20,000 to \$22,000 for willful violations. This change is intended to comply with the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by § 31001(s)(1) of the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321-373 (April 26, 1996), which requires Federal agencies to adjust civil monetary penalties to counter inflation's effect of diminishing the impact of these penalties. The inflation adjustment is to be calculated by increasing the maximum civil monetary penalty by the percentage that the Consumer Price Index for the month of June 1995 exceeds the Consumer Price Index for the month of June of the last calendar year in which the amount of the penalty was last set or adjusted. The initial adjustment, however, may not exceed 10 percent. The resulting \$11,000 and \$22,000 maximum penalties were determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws.

Although the penalty provision broadly provides that any person who violates or causes the violation of any requirement of 49 CFR part 239 is subject to a civil penalty, members of the Working Group were concerned

about the possibilities of theft of its on-board emergency equipment and/or vandalism of its passenger cars, and wanted FRA's permission to post warnings to members of the general public that committing such acts could subject them to Federal penalties. FRA encourages railroads to notify their passengers (and any potential vandal or trespasser) that in addition to any Federal or state criminal statutes that exist to prohibit vandalism, theft, trespassing, or tampering involving railroad equipment, property, or operations, FRA may impose a civil penalty upon any individual who willfully causes a railroad to be in violation of any requirement of this part. Take for example, a railroad that supplies each of its passenger cars with one fire extinguisher and one pry bar, and provides each of its on-board crewmembers with one flashlight. By equipping its train with all of these items, the railroad would be in full compliance with the minimum requirements of paragraph 239.101(a)(6)(i) of this part. Accordingly, if unbeknownst to the railroad, a vandal pilfers a pry bar from one of the passenger cars while the train is in service FRA can impose a civil penalty upon that individual for causing the railroad to be in violation of 49 CFR part 239. FRA recommends that in addition to posting written warnings on and in passenger cars, railroads use on-board announcements to remind their passengers of the serious consequences that can result from placing the railroad in violation of the important safety requirements of this part.

The final rule includes a schedule of civil penalties in an Appendix A to 49 CFR part 239, to be used in connection with this part. Commenters were invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that would subject a person to the assessment of a civil penalty. Commenters were also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation. FRA did not receive any public comments nor did the Working Group present any recommendations to the agency on this topic. Accordingly, FRA has drafted the penalty schedule based on its own analysis of the inherent seriousness of violating the requirements of part 239 of this chapter.

10. Waivers: Section 239.13

Section 239.13 identifies FRA's ability to grant waivers of compliance with the requirements of this rule. Requests for such waivers can be filed by any interested party. In reviewing the

request, FRA would conduct a factual investigation to determine whether there was a basis to deviate from the general criteria without compromising or risking a diminution of rail safety.

11. Information Collection: Section 239.15

FRA is adding this section to note that it is inserting the OMB approval number for the information collection requirements of this rule for part 239, since OMB has completed its review and granted approval. This section also identifies the sections of part 239 that contain information collection requirements.

12. Emergency preparedness plan: Section 239.101

In drafting the final rule, FRA recognized that the specific operations of each individual passenger train system must be considered in the development and implementation of effective emergency preparedness programs. Factors which should be considered include system sizes and route locations, types of passenger cars and motive power units, types of right-of-way structures and wayside facilities, and numbers of passengers carried, as well as internal railroad organizations and outside emergency response resources. Under the final rule, each railroad subject to the regulation is required to establish an emergency preparedness plan designed to safely manage emergencies and minimize subsequent trauma and injury to passengers and on-board railroad personnel. The plan must reflect the railroad's policies, plans, and readiness procedures for addressing emergencies. The railroad is expected to employ its best efforts, under the circumstances of the emergency situation, to execute the provisions of its plan.

In their development of emergency preparedness plans, FRA encourages railroads to integrate, as practicable, the recommended guidelines contained in the Volpe Report. The report provides a comprehensive degree of specificity. While the final rule does not require the special level of detail reflected in the Volpe Report, FRA advocates that railroads voluntarily incorporate such elements and items as appropriate into the development of their own emergency preparedness plans, and reject recommendations only after judicious consideration.

While FRA stresses that each railroad should retain latitude in developing an emergency preparedness plan appropriate for its operations, the plan must provide a comprehensive overview, make clear and positive

statements to railroad employees, and contain implementation details concerning the roles, responsibilities, and expectations for employee participation. The plan does not have to be one single document with each section applying to every railroad that is a party to the plan or to every affected railroad employee and location; instead, the plan may consist of multiple documents, with a separate section of the plan detailing the specific responsibilities for each job category or function or railroad or all. In instances where a railroad hosts the operations of a passenger railroad, both railroads have to address issues of emergency preparedness. The rule requires the host railroad to jointly develop the applicable portions of an emergency preparedness plan with the operating passenger railroad, uniquely dealing with the passenger operations not otherwise addressed. A detailed discussion of the requirement to jointly adopt a single emergency preparedness plan for the passenger service is included in the preceding "Discussion of Comments and Conclusions" portion of this document under item number 5.

The majority of passenger train operational difficulties are handled effectively and do not become emergencies. Since in many instances a train crew can immediately take action to resolve a problem and potential emergency without evacuating the train, existing emergency preparedness policies deemphasize immediate evacuation from trains located between stations unless passengers and crews are in immediate danger. Accordingly, in most situations, after notifying the control center that a problem exists and receiving permission, the train crew will move the train to the nearest station or safe location (e.g., outside a tunnel) before taking further action. If the train crew is unable to resolve the situation, railroad personnel or outside emergency responders may be sent to the emergency scene to provide mechanical aid, alternate transportation, or medical assistance.

The effectiveness of a railroad's overall response under its emergency preparedness plan will be greatly influenced by the type of emergency with which the train crew is presented (e.g., injury or illness, stalled train, suicide or accidental collision with a person, derailment or collision, smoke or fire, severe weather conditions or natural disasters, and vandalism or sabotage). The response will also be affected by the characteristics and type of train involved and the functional status of electrical and mechanical systems, including lighting, ventilation,

and public address systems. In addition, the operational environment (e.g., a train is located in a tunnel, on an elevated structure, or in electrified territory), and the type of right-of-way structure or wayside facility must be addressed, as appropriate, in each railroad's emergency preparedness plan.

The emergency preparedness plan must establish a chain of command which assigns functions and responsibilities to appropriate passenger railroad operating personnel, while recognizing the authority and responsibilities of emergency responders. Coordination is important to the ability of all parties to respond appropriately to an emergency, regardless of its size and location. Documentation, including applicable portions of the emergency preparedness plan, protocols, and procedures within rulebooks, manuals, and guidelines for control center employees and on-board personnel, provides the basic framework for coordination between all internal parties responding to an emergency. This internal documentation must address at least the following issues:

- Delineation of functions and responsibilities during emergencies for passenger railroad operating personnel, including control center personnel;
- Telephone numbers of railroad personnel and emergency responders who need to be notified;
- Criteria for determining whether an emergency exists and requires assistance from emergency responders;
- Procedures for determining the specific type, location, and severity of the emergency, and thus which response is appropriate;
- Procedures for notifying emergency responders; and
- Procedures and decision-making criteria for transferring incident responsibility from the passenger railroad operator to emergency responders.

Section 239.101 sets forth the general requirement that railroads shall develop and comply with their own emergency preparedness plans and written procedures to implement their own plans for addressing issues of emergency preparedness, that meet Federal minimum standards. Section 239.101(a) requires all railroads covered by part 239 to develop and implement written procedures to fulfill each applicable provision of this section. Depending on the nature of a railroad's operations, as well as on whether its operations involve a host railroad, different elements of this section may be fulfilled by more than one entity. While FRA requires all elements of this section to be addressed for each passenger train

operation, the rule does not mandate that every element be addressed separately by each affected entity who is one of multiple parties to a single emergency preparedness plan.

Accordingly, if a passenger train service operator relies on a freight railroad host to notify outside emergency responders after an emergency occurs, FRA would permit the freight railroad to set out its responsibility to address this element in its portion of the emergency preparedness plan. Provided that both entities properly coordinate their portions of the emergency preparedness plan (and include cross-reference citations to each other's sections of the plan), the passenger train service operator's portion of the plan could omit a particular item and still be in compliance with the final rule.

The final rule does not require that the public authority and the operating railroad or independent contractor each actively participate in performing duties in accordance with the joint filing with FRA of the emergency preparedness plan if the operating railroad or independent contractor is the only party performing a function under the regulation. However, each party's responsibility for compliance with this part must be clearly spelled out in the emergency preparedness plan that is filed with FRA for approval covering the entire passenger train service operation. After approval of the plan, FRA may hold the public authority or the other entity or both responsible for compliance with this part.

Based upon review of the comments and consultations with the Working Group, FRA is establishing the parameters for emergency preparedness plans in general, but will defer to the expertise of each individual railroad to adopt a suitable emergency preparedness plan for its railroad, in accordance with these parameters. As previously noted, the emergency preparedness plan may consist of multiple documents, with a separate document detailing the responsibilities of each category of employee under the railroad's plan. Each railroad is also encouraged to review the suggestions provided in the Volpe Report before developing its portion of the emergency preparedness plan in accordance with the requirements set forth in this section. In developing the plan, railroads are reminded that the goal of the final rule is to maximize the safety of passengers, railroad personnel, emergency response personnel, property, and the general public that come in contact with the railroad by providing for immediate notification of outside law enforcement officials and

emergency responders. Railroads should not instruct their on-board employees to substitute as professional emergency responders and delay notification of appropriate railroad and outside officials.

Communication

Section 239.101(a)(1) sets forth the requirement that the passenger train crewmembers must communicate immediately and effectively with each other, as well as with the control center and the passengers. Typically, in an emergency situation the final rule anticipates that an on-board train crewmember will immediately contact the control center via a dependable on-board radio or an alternate means of communication (e.g., wayside railroad telephone, public telephone, private residence telephone, or cellular telephone) to advise appropriate railroad officials of the nature of the emergency and the type of assistance required. After this initial notification to the control center occurs, the passengers shall be informed of the emergency and provided directions. As appropriate, all passengers must be accounted for (particularly in sleeping compartments) so as to expedite evacuation, if necessary, and to avoid needless effort to search for "missing" persons, however, a passenger manifest is not required.

In its comments, METROLINK stated that the train crewmember should notify the passengers after consultation with the control center and the control center officer, unless the train must be evacuated immediately. The LIRR requested in its comments that FRA revise § 239.101(a)(1) in the final rule to require an on-board crewmember to remove all occupants of the train from imminent danger as a first step after he or she quickly and accurately assesses the passenger train emergency situation. The LIRR recommended that FRA adopt a performance-based standard, so instead of the rule requiring each railroad to provide specific levels of information to its passengers, the rule should permit general levels of information. The measure of success would be based upon whether the railroad successfully handled the emergency by ensuring the timely evacuation of its passengers.

APTA commented that crewmembers on commuter railroads need to have flexibility in what they tell passengers about an emergency situation, and noted that the proposal was ambiguous about the level of detailed information that must be provided. APTA also argued that since the proposal appeared to require crewmembers to tell all

passengers about the emergency, it could worsen an emergency situation by leading to inappropriate statements to passengers. APTA stressed that commuter railroad crewmembers are professionals, and should be empowered to use discretion in determining the appropriate information to tell passengers during and after an emergency.

FRA recognizes that each emergency situation is unique, and may require rapid decisionmaking and varied approaches by on-board crewmembers on how best to ensure the safety of the passengers. In response to APTA's concerns, proposed § 239.101(a)(1)(i) has been modified in the final rule by adding the words "as appropriate" in order to provide discretion to the on-board crewmembers as to when and how to inform the passengers about the nature of the emergency and the types of countermeasures that are in progress. FRA also replaced the words "the train crewmember" with the words "an on-board crewmember" in order to clarify that the crewmember who first notifies the control center does not necessarily have to be the same crewmember who communicates with the passengers. This change reflects the fact that generally it is the locomotive engineer who contacts the control center and the train conductor who keeps the passengers apprised of pertinent developments.

It is FRA's expectation that railroads will properly train their employees to perform the requisite life-saving functions after an emergency (e.g., relocation of passengers from a smoke-filled car to a safer section of the train or evacuation of the passengers from a derailed car), in conjunction with their responsibilities to assess the nature of the emergency and notify the control center as soon as practicable thereafter. Accordingly, while FRA may conclude in the course of investigating a specific train incident or accident that a particular employee's egregious mishandling of an emergency situation warrants individual enforcement action or enforcement action against the railroad, or both, the flexibility of the final rule is consistent with FRA's reluctance to strictly impose a precise order or manner in which on-board crewmembers must execute their individual responsibilities under the railroad's emergency preparedness plan. However, in the course of reviewing and approving emergency preparedness plans under § 239.201, FRA expects to see the railroads incorporating specific recommended practices as guidance to their employees concerning how they must respond to the various types of emergency situations most likely to

occur during passenger operations, such as on-board fires, downed electrical power sources, or passenger injuries from a derailment.

Although the final rule does not require a railroad to use a specific means of communication, FRA expects the railroad to select a method that is effective and capable of reaching pertinent railroad control centers and on-board locations in order to comply with the notification requirement of this subsection. FRA further expects that railroads will voluntarily build redundancy into their emergency preparedness plans by outfitting their crewmembers with an immediately available backup means of communication, in the event that primary communications systems are either damaged during the emergency or otherwise rendered inoperative. For example, a cellular telephone could be made available for use by on-board crewmembers to contact the control center in the event the locomotive radio is inoperative. Also, on-board crewmembers could still maintain proper communication with the passengers, in the event that regular or emergency power was unavailable to operate the train's public address system, by using portable megaphones.

Although FRA had asked for comments on whether the final rule should expand the notification language of § 239.101(a)(1) to mandate a specific primary means of communication, and whether the final rule should also require each affected railroad to equip its passenger trains with a secondary means of communication in the event that the primary means is unavailable, no written comments were received on this issue. While the language of the final rule on this issue remains unchanged from the proposal, FRA expects the issue to be fully resolved in the context of the forthcoming revision of the Radio Standards and Procedures (49 CFR part 220). That rulemaking was tasked to the RSAC on April 1, 1996, and the NPRM was published in the *Federal Register* on June 26, 1997. 62 FR 34544. Among the proposals set forth in proposed § 220.9 of that NPRM, is a requirement that "each occupied controlling locomotive in a train shall have a working radio, and each train shall also have communications redundancy." 62 FR at 34549, 34550, 34556. Persons wishing to receive more information regarding the NPRM on Railroad Communications should contact Mr. Gene Cox or Mr. Dennis Yachechak, Operating Practices Specialists, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone numbers: 202-632-

3504 (Cox); 202-632-3370 (Yachechak)), or Ms. Patricia V. Sun, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone number: 202-632-3183).

While the final rule does not require that both ends of a train contain communication devices for use by a crewmember other than the engineer to directly contact the control center, FRA received comments from the UTU at the August 28 and September 2, 1997 Working Group meetings about the need for enhanced means of communications on trains, especially trains operating in intercity service. FRA is aware of devices, such as tone generators, that can enhance the communication capabilities of the radios already carried by each conductor and used to communicate with the engineer. If railroads voluntarily equip their trains with these devices in order to go beyond the minimum requirements of the final rule, then conductors may be able to directly communicate with the control center in the event that the engineer's radio communications equipment malfunctions or is damaged, or the engineer is incapacitated during the emergency situation. However, FRA recognizes that while portable radios can be placed on trains in a similar manner to equipping locomotives with mobile radios, portable radios may not be able to transmit to the control center due to distance, lower wattage, and smaller antennas. In the case of commuter railroads operating in push/pull service there will already be two mobile radios onboard, one at each end of the train.

It is FRA's understanding that many railroads publish an emergency toll-free telephone number in the employee timetable which connects with the control center office. Amtrak, while operating its intercity trains on a host railroad, will necessarily have access to those telephone numbers while on the host's property. Amtrak also has a nationwide toll-free telephone number which connects the caller (including private citizens) to the national Amtrak police desk in Washington, DC, which is manned around the clock. The final rule does not require that notification to the control center occur within a precisely measured number of minutes, rather it uses the words "as soon as practicable" in order to give railroads maximum flexibility. FRA expects that in the totality of the circumstances of the emergency situation, the train crewmembers will exercise their best judgment using the railroad's own emergency preparedness plan procedures.

Under current practice, Amtrak's notification of the emergency responders will vary slightly depending on whether or not the passenger train emergency occurs in Amtrak-dispatched territory. In territory where trains are dispatched by Amtrak, either the control center will directly notify the emergency responder or the control center will notify Amtrak police, who will then, as appropriate, notify pertinent emergency responders, State and federal agencies, and Amtrak supervisors. In territory where trains are not dispatched by Amtrak, the host railroad control center will directly notify the appropriate emergency responders, government agencies, and host railroad supervisors. Which emergency responders and agencies are notified depends on the nature of the emergency. Most control centers have emergency telephone numbers already in their computer systems, usually listed alphabetically by city, with hard copy backups.

In its comments, APTA requested that FRA modify § 239.101(a)(1)(ii) to increase the rule's flexibility concerning notifications by the control center to emergency responders, and permit the emergency preparedness plan to discuss the means by which the contacts will occur. APTA noted that not all commuter railroads have control centers in each emergency responder jurisdiction, and the control center in one State may control territory that passes into another State. There is no direct link, therefore, between the dispatcher and the emergency responders, and the railroad's police department is generally responsible for making these contacts.

In response to APTA's concerns, FRA is aware that because each railroad's operations are somewhat unique, the appropriate persons and organizations who must be notified will vary based upon the railroad's individual operating characteristics and the actual type of emergency that occurs. Accordingly, paragraph (a)(1)(ii) does not specify which emergency responder organizations (e.g., fire departments, helicopter rescue groups) or which categories of appropriate railroad officials that the control center must contact. Because the paragraph is already worded to provide maximize flexibility to railroads in designating the emergency contacts, FRA has not modified this paragraph in response to APTA's concerns.

FRA encourages each affected railroad to consider any reasonable method of notification when it drafts its emergency preparedness plan, so long as the notifications by the control center

personnel occur promptly, whether by direct or indirect means. In this regard, FRA encourages railroads to consider the comments of Eric Sondeen of the Littleton, Colorado Fire Department, in drafting the section of their emergency preparedness plans that addresses communication. Among his comments, Mr. Sondeen recommended that railroads provide, on an annual basis, emergency dispatch center telephone numbers to all rail corridor emergency response agencies, including secondary telephone numbers. Mr. Sondeen also suggested that railroad crew timetables contain 24-hour civilian emergency response agency telephone numbers for contingency cellular telephone contacts by crewmembers.

METROLINK commented that each railroad should designate an employee function or position to be responsible for maintaining current emergency telephone numbers, rather than an individual employee. In response to this comment, FRA notes that paragraph (a)(1)(ii) does not specify which control center employees may be designated by the railroad to maintain the list of emergency telephone numbers. FRA concludes that the paragraph, as written, already permits a railroad great flexibility to select any relevant specific individual or general job category to maintain the lists, provided that the designation is properly set forth in the railroad's emergency preparedness plan submission. Accordingly, this paragraph is adopted as proposed. In addition, the term "adjacent" is not defined (e.g., a distance measurement from the passenger train experiencing the emergency to adjacent rail modes) for purposes of determining which other rail modes must be notified. Instead, consistent with the Working Group's request that the final rule provide each affected railroad with flexibility to implement the rule's provisions, this subsection requires that the emergency preparedness plan state how the railroad will achieve the appropriate notifications.

Although the final rule does not require railroad control center personnel to notify operators of pipelines and electric power companies that a passenger train emergency has occurred, FRA recognizes that pipelines and power lines can pose potentially serious hazards to rail passengers. On September 30, 1993, Amtrak Train No. 88, while being hosted on track owned by CSX Transportation, collided near Intercession City, Florida with a vehicle owned by Rountree Transport and Rigging, Inc. (NTSB Highway Accident Report (HAR) 95/01.) A natural gas pipeline was located in close proximity

to the location of the passenger train accident, but no one notified the owner of the pipeline operation. Fortunately, an off-duty employee of the pipeline company viewed coverage of the accident on television approximately one hour after the accident, and notified the pipeline owner. Although CSX Transportation's emergency procedures manual stated that the first priority for its Operations Center dispatchers following an accident is to promptly notify appropriate local emergency response agencies when an emergency situation exists, CSX Transportation emergency procedures did not define the derailment of a train in an area occupied by a pipeline as an emergency condition. Among the NTSB's conclusions was that "Osceola County emergency responders failed to determine and assess the risks posed by potentially hazardous pipelines at the accident site." NTSB/HAR 95/01 at page 50. The NTSB also noted in a footnote that one week before the collision an Osceola County fireman had attended a training session on pipeline emergency response actions that was sponsored by the pipeline company, but had not briefed others at the fire station about his training before the time of the accident. NTSB/HAR 95/01 at page 28, footnote 16.

Since the NPRM did not propose that railroads should be required to notify operators of pipelines and electric power companies when a passenger train accident occurs nearby, and FRA did not seek public comment on this issue, the final rule does not impose this additional notification requirement. However, based upon the many important safety issues that must be considered when a rail accident occurs, and in accord with the NTSB's findings concerning the accident that occurred near Intercession City, Florida in 1993, FRA encourages both railroads and members of the emergency responder community to voluntarily incorporate relevant information about pipelines and power line locations into their emergency preparedness planning. In addition, as part of the four-phase process of addressing emergency preparedness, FRA will review the implementation and effectiveness of paragraph (a)(1) and related voluntary developments, and evaluate whether further rulemaking activity or action is appropriate.

Initial Training

Section 239.101(a)(2) requires that the emergency preparedness plan provide for initial training, and then periodic training at least once every two years thereafter, of all railroad employees who

have responsibilities under the plan, and that the training address the role of each affected employee. Adequate training is integral to any safety program. This subsection recognizes that the successful implementation of an emergency preparedness plan depends upon the knowledge of the on-board and control center personnel about the system route characteristics, passenger cars and motive power units, and emergency plans, protocols, procedures, and on-board emergency equipment. An employee who has not been trained to react properly during an emergency situation may present a significant risk to railroad personnel and passengers. On-board employees must receive "hands-on" instruction concerning the location, function, and operation of on-board emergency equipment, stressing the following:

- Opening emergency window, roof, and door exits, with an emphasis on operating them during adverse conditions such as when a rail car is overturned;
- Use of emergency tools and fire extinguishers;
- Use of portable lighting when the main power source is unavailable on a passenger train; and
- Use of megaphones and public address systems (if they are provided by the railroad for communication purposes).

At the Working Group meeting held on August 28, 1997, some members questioned what FRA meant in paragraph (a)(2)(i)(E) by the phrase "hands-on instruction." Some members of the group thought that it meant every employee being trained must actually open an emergency window and an emergency door exit on a passenger car, while others thought that a railroad would be in full compliance if only one employee were required to perform the "hands-on" exercise while hundreds of others received their training merely by observing. In addition, one member commented that since an emergency window used for demonstration purposes is costly to repair and requires taking the passenger car temporarily out of service to replace the rubber stripping, the final rule should permit employees to receive their "hands-on" training by watching a video presentation.

FRA recognizes the unique characteristics of the various railroad properties, and is reluctant to inhibit flexibility and creativity by imposing rigorous specifications in the rule text itself on how every railroad should perform "hands-on" training. However, FRA expects each railroad's emergency preparedness plan to address the means

by which it proposes to train all of its on-board employees on the specific elements of: rail equipment familiarization; situational awareness; passenger evacuation; coordination of functions; and "hands-on" instruction. In this regard, FRA will not approve a plan that provides for "hands-on" training exclusively by allowing employees to watch a video, since watching a two-dimensional image of someone else demonstrating a means of emergency escape or using a piece of emergency equipment can be ineffectual. But, if a railroad wishes to use a video as an instructive tool in combination with a scale model of an emergency window (mock-up) containing a rubber pull strip, and the emergency preparedness plan provides for small groups of employees taking turns handling window glazing and practicing emergency escape using the mock-up, FRA would find this approach acceptable.

The final rule also requires appropriate training of control center personnel who effect the implementation of a railroad's emergency response plan. FRA expects the railroad to provide training only for the requisite control center employees designated under the plan to convey the nature and extent of a passenger train's emergency to the emergency responder organizations. Accordingly, FRA is not requiring training of other control center employees who perform merely incidental functions, e.g., a clerical or other office employee who receives a telephone call from a stalled train.

During the NPRM stage of this proceeding, FRA primarily envisioned the need for each railroad to provide appropriate training to its control center personnel on their duties after a passenger train emergency has already occurred (e.g., notifying outside emergency responders about a derailment). However, in light of a recent accident near Savannah, Georgia, FRA has revised the final rule to clarify that control center personnel may have important emergency-preparedness responsibilities even before a life-endangering situation turns into a passenger train emergency. Specifically, on October 9, 1997, an Amtrak train operating on track owned by CSX Transportation in Garden City, Georgia collided with a truck hauling a "lowboy" trailer (which has unusually low clearance between its underside and the ground) at a grade crossing. The truck had become stuck on the crossing. Prior to the collision, local police contacted CSX Transportation police, who alerted the CSX Transportation dispatching center in Jacksonville,

Florida. The information concerning the stuck trailer reached the dispatcher of a nearby parallel line in the area, who saw no imminent risk because of an absence of rail traffic on this line. Unfortunately, the information did not reach the dispatcher of the line on which the lowboy trailer was actually stuck. Because the crew of the Amtrak train was not notified of the trailer's presence by the dispatcher and was not able to stop the train in time once it became visible, the Amtrak train collided with the trailer.

While the investigation of the accident is still in its early stages, the best information currently available supports certain preliminary conclusions. Information concerning the presence of the truck on the crossing was conveyed to CSX Transportation prior to the collision, but either the information was not sufficiently descriptive of the location of the incident or the information was not conveyed to the appropriate dispatcher, or both. In order to prevent the recurrence of such accidents, FRA and CSX Transportation agreed that CSX Transportation would require: continued emphasis on education of truckers; restricted speeds in zones where a highway-rail crossing collision may be imminent; precise identification of highway-rail crossings and immediate notification of hazards; a safety briefing for its dispatchers and supervisors on the scenario of the accident of October 9, 1997; and operational testing of its dispatchers and supervisors concerning avoidance of any possible collisions while the precise location of an obstruction or other hazard at a rail-highway crossing is being determined.

Consistent with the above discussion, FRA has revised the rule text to require that control center personnel receive territorial familiarization. FRA is aware that the railroad industry has a variety of methods available in order to accomplish this objective. These methods include, but are not limited to: review of trackage charts and operating timetables; familiarization train rides by train dispatchers through the territories in which they dispatch; and viewing of videotapes containing narration that describes the physical characteristics of the territory. FRA also expects each railroad's emergency preparedness plan to provide for a high degree of coordination and interface during all internal communications between personnel within the control center, particularly whenever a potential or actual emergency situation exists.

Initial Training Schedule

FRA recognizes that even after a railroad receives conditional approval of its emergency preparedness plan under § 239.201, the initial training of individual employees on their responsibilities under the emergency preparedness plan cannot occur immediately. Accordingly, new subparagraphs (iii) and (iv) have been substituted in § 239.101(a)(2) in order to establish an implementation schedule for this initial training. While each railroad will be held responsible by FRA for all other applicable provisions of its emergency preparedness plan that it can fully comply with immediately after the date of conditional approval (e.g., equipping each passenger car with one fire extinguisher in accordance with § 239.101(a)(6)(i)(A) or conducting a debriefing and critique session after a passenger train emergency simulation under § 239.105, the initial training can be spread out over a longer time period. In addition, during this implementation phase, the on-board staffing requirements of subparagraph (vi) of § 239.101(a)(2) will not apply.

During the Working Group meeting held on August 28, 1997, FRA did not receive any specific recommendations from members of the group on a precise implementation timetable for inclusion in the final rule. However, the Working Group agreed that the final rule needed to reflect the fact that railroads could not provide emergency preparedness training to every employee on the same day, and that the railroads would instead modify their other ongoing training programs to fulfill this new requirement. Upon careful consideration of this issue, FRA recognizes that smaller railroads (i.e., those whose operations include less than 150 route miles and less than 200 million passenger miles annually) generally operate less frequent service and employ fewer individuals in less hierarchical environments than do larger railroads and providers of intercity passenger service, and will therefore have an easier time providing emergency preparedness training from a logistical standpoint than will those larger service providers.

FRA anticipates that these smaller entities will also be able to offer this training to informal groups of employees without the need for carefully planned and organized training sessions. In addition, under the terms of the final rule, intercity service providers also have the added requirement to conduct training for persons performing on-board functions in a sleeping car or coach car (other than

food, beverage, or security service). Accordingly, the final rule provides larger railroads and intercity railroads with more time in which to fully train their employees than it does smaller railroads in order to recognize the more complex organizational structure of these larger companies.

In the case of a railroad providing commuter or other short-haul passenger train service and whose operations include less than 150 route miles and less than 200 million passenger miles annually, the final rule permits the training to be completed up to 21 months after the effective date of the rule, which will be approximately one year after FRA grants conditional approval to the railroad. In the case of a railroad providing commuter or other short-haul passenger train service and whose operations include 150 or more route miles and 200 million or more passenger miles annually, or a railroad providing intercity passenger service (regardless of the number of route miles or passenger miles), the final rule permits the training to be completed up to 33 months after the effective date of the rule, which will be approximately two years after FRA grants conditional approval to the railroad. In addition, while each freight railroad hosting any category of passenger train service receives up to 21 months after the effective date of the final rule to train its employees, the implementation schedule for a passenger railroad hosting such service (e.g., Amtrak hosting the operations of NJTR in the state of New Jersey) is governed by subparagraphs (A)–(C) of § 239.101(a)(2)(iii), based upon either route miles and passenger miles or whether that host railroad provides intercity service. Accordingly, under a scenario of Amtrak hosting the operations of NJTR, Amtrak would receive up to 33 months in which to train its employees on their hosting responsibilities under the joint emergency preparedness plan covering the NJTR passenger operation.

In accordance with the implementation schedule, a railroad beginning passenger operations after the effective date of the final rule has either 90 or 180 days after beginning service, depending on the size or type of its operation, to train its employees on their responsibilities under the emergency preparedness plan. Any new employees who are hired by a railroad to perform either on-board or control center functions after the date on which the railroad receives conditional approval under § 239.201(b)(1), must receive their initial training within 90 days after commencing employment.

During this 90-day time period, these employees would be permitted to function as crewmembers even though they had not yet become qualified under the emergency preparedness plan to perform the functions for which they will be responsible.

Periodic Training

The final rule affords the passenger railroad operator a time period of up to two years to provide each session of "periodic" training after the operator provides initial training in the emergency preparedness plan's provisions to its employees. The periodic training requirement is intended to inform railroad personnel of changes in procedures and equipment and ensure that their skills remain at a level that enables them to effectively execute their responsibilities under the emergency preparedness plan. In addition, the recurrent training will reinforce segments of the emergency preparedness plan for individuals who have not performed properly.

FRA concludes that the unique operating characteristics of all the different railroads subject to the final rule, as well as the financial costs involved with providing training, would make it impractical to include a calendar year or other more restrictive or specific requirement for periodic training in the final rule. As FRA recognized in drafting the NPRM, while the final rule places an upper limit of the term "periodic" at two years, anytime the provisions of an emergency preparedness plan are invoked during an actual emergency, that railroad receives an additional opportunity to evaluate the level of knowledge of its affected employees. However, since the final rule does not permit any level of activation of the railroad's emergency preparedness plan to count toward the training requirement, the railroad cannot count the event toward the periodic training requirement for those involved employees. However, FRA recognizes that affected railroad employees who receive "real life" training will still benefit from the experience, particularly whenever all five of the requirements of § 239.101(a)(2)(i) are addressed during the emergency and the employees also participate in the debriefing and critique session.

In the NPRM, FRA requested comments from railroads on the costs of implementing the on-board personnel training requirements of the rule. Specifically, FRA wanted to determine the extent of the current training that railroads already provide to their on-board employees (including emergency

preparedness training) as part of regular operating rules training programs. Comments were also requested concerning the estimated dollar amount of the incremental additional costs connected with modifying existing training programs to comply with this proposal. FRA was interested in ascertaining whether the training requirements would merely add *de minimis* costs to each railroad's existing training program or if compliance would entail moderate or significant additional costs.

The majority of the organizations that submitted comments on § 239.101(a)(2) recommended that FRA modify the requirement for employee training and qualification by permitting each railroad to provide periodic training at least once every three years, instead of at least once every two years. In this regard, Amtrak recommended that the periodic training requirement be changed to at least once every three years, to coincide with Amtrak's interval for refresher training on first aid. Although Amtrak stated that three years would provide sufficient frequency, it did not provide a reason. Amtrak also noted that railroads will provide their employees with interim updates when major changes to their emergency response programs occur.

APTA offered no comment on the frequency of periodic training for on-board personnel, but recommended a training cycle of three years for control center personnel. Consistent with the requirements of 49 CFR part 240 (Qualification and Certification of Locomotive Engineers), APTA stated that a three-year training cycle better fits the training programs of all commuter railroads, especially the larger ones. APTA also argued that a three-year training cycle would permit better scheduling of funding outlays for this important training activity.

CALTRAIN commented that a three-year cycle of formal training is preferable, since existing training drills regularly provide much of the required materials. CALTRAIN also stated that since formal training may require reassignment, a three-year training cycle better allows for budgeting and personnel reassignments during austere fiscal times.

The LIRR stated that a three-year qualification period for emergency preparedness training would meet the criteria set forth in the rule. However, the LIRR offered no supporting data for this assertion.

Rationale for Requiring Two-year Interval

In rejecting the request of various commenters to raise the time interval between periodic training cycles for on-board and control center employees to three years, FRA carefully considered both financial cost issues and the safety ramifications of weakening an integral element of emergency preparedness. Based upon FRA's analysis, the agency recognizes that railroads providing and hosting passenger train service will experience cost increases by being required to train their employees at least once every two years. However, FRA concludes that the effective and efficient management of passenger train emergencies begins with properly trained and knowledgeable railroad employees onboard the trains and in the control centers capable of quickly obtaining the assistance of emergency responders and ensuring the safety of the passengers. FRA believes that in order to maximize a railroad's level of emergency preparedness, frequent refresher training is essential, and any periodic requirement longer than at least once every two years increases the probability that a certain number of employees would become unfamiliar with their crucial emergency preparedness roles.

As discussed in the analysis of § 239.103, FRA requires railroads operating passenger train service to conduct full-scale emergency simulations to evaluate their overall emergency response capabilities and ensure that emergency preparedness plans, procedures, and equipment address the particular needs of various types of passengers. Emergency simulations can help railroads achieve these goals through careful selection of the time and location of the simulation and participation by personnel from the railroads, outside emergency responder organizations, and "volunteer passengers." In addition to classroom training, simulations provide employees with a practical and realistic understanding of rules, procedures, trains, and right-of-way structures/wayside facilities as they relate to emergency response. FRA expects that the employee training provided in accordance with § 239.101(a)(2) will include instruction on the importance of full-scale emergency simulations in achieving successful implementation of the emergency preparedness plan.

First-Aid and CPR Training

Although § 239.101(a)(6)(ii) has been added to require railroads providing intercity service to equip each train with

at least one first-aid kit (see the section-by-section analysis of this issue under the "On-board emergency equipment" heading for a detailed discussion of this requirement), the final rule does not require on-board personnel to receive training in first-aid or in CPR. Although FRA initially considered including these items as training requirements in the rule, or at least mandating that railroads offer employees the opportunity to receive this training, the consensus of the Working Group during the drafting of the NPRM was that both first-aid and CPR training should be excluded from the rule. The Working Group stressed that the goal of the rule is to ensure that emergency responders arrive promptly at the scene of an emergency, not to train on-board personnel to act as emergency responders. The Working Group also stated that even if FRA requires a railroad to offer first-aid and CPR training, no railroad can literally force an on-board crewmember to assist an ailing passenger. Further, trains with heavier passenger loadings are likely to have on board one or more medical professionals whose skills will be more extensive, and better practiced, than those of a crewmember whose primary and recurring duties do not include medical emergencies.

During the Working Group meeting on February 7, 1996, Amtrak stated that it is spending between \$2.5 to \$3 million by fiscal year 1998 to train the chiefs of on-board service and to provide for at least one employee on every train being trained to administer first-aid and perform CPR. Under the Amtrak plan, employees will not be required to use this training, merely to receive it. Despite the extent of Amtrak's commitment to voluntarily providing extensive first-aid and CPR training, Amtrak did not want these items required in the final rule. Another member of the Working Group, METROLINK, stated that it has served approximately eight million passengers in three years of operation, and has never had a passenger require CPR. METROLINK also noted that commuter railroads generally operate in populated areas, with professional emergency responders in most cases only minutes away. The LIRR stated that it offers CPR training to newly hired employees and shows a refresher film to employees every five years, but acknowledged that it cannot force employees to administer CPR. The railroad also noted that it would never want the engineer to leave the controls of the locomotive during an emergency. NJTR indicated that its train crews already have many duties to

perform during an emergency and that first-aid and CPR should be performed by emergency medical services personnel.

FRA invited commenters to submit their views on whether the final rule should include the issues of first-aid and CPR training. FRA noted that one option was to mandate that railroads offer their employees first-aid and CPR training, without requiring employees to actually use this training during an emergency. Under this scenario, a railroad employee who offered no assistance during an emergency, because he or she feared coming into contact with an injured or ill passenger's bodily fluids, would not violate these regulations. (The experience of the American Red Cross is that volunteers who receive first-aid and CPR training, and appropriate equipment, are motivated to provide needed assistance when the time comes.) The second option was to require not only that railroads train their employees in first-aid and CPR, but also mandate that employees use this training during an emergency.

The UTU commented that the final rule should make CPR training and first-aid training mandatory on a biannual basis, and require anyone who is properly trained and given proper equipment to offer assistance in an emergency. The UTU argued that each car should contain a first-aid kit and that each train should contain a doctor's kit in case a doctor is on board a train during an emergency situation. The UTU indicated that conductors on MARC trains receive a thorough emergency training program that includes CPR and first-aid training, and recommended that one conductor or assistant conductor be trained in emergency procedures for every 50 passengers on board a train. The UTU also noted that there would not be a delay in calling for help if the call is made quickly and the first-aid or CPR is then started. The UTU stated that employees who have not been trained with CPR will not be able to identify serious medical emergencies that truly require intervention by properly trained and equipped emergency personnel. Finally, the UTU expressed its doubt about METROLINK's assertion that none of its 8 million riders over the last three years had required CPR, and wondered about METROLINK's documentation for this statement.

CALTRAIN commented that employer-provided CPR training should be excluded from the final rule, due to potential liability issues. The Littleton, Colorado Fire Department stated that the final rule should require railroads to

provide rail emergency and first-aid training to crewmembers on board both Amtrak and privately-operated passenger trains, as well as for the operating crews of all freight trains. Finally, the BLE noted that it was not opposed to a qualified person having skills in first-aid and CPR, but stated that although the engineer would benefit tremendously from first-aid training and CPR training, the engineer should remain on the locomotive and not be the principal person providing that response.

At the Working Group meeting held on August 28, 1997, the issue of requiring first-aid and CPR training was once again fully discussed. Although the UTU representative continued to recommend that FRA mandate that railroads provide this training and require its use in the event of an emergency situation, the preponderant recommendation to FRA from the railroad commenters (i.e., that this training remain optional) was unchanged from the NPRM stage of this proceeding. In making the decision to exclude first-aid and CPR training for railroad employees from the minimum requirements of emergency preparedness planning, FRA recognizes that the main objective of this rule is to ensure the prompt arrival of professional emergency responders at the scene if an emergency, not risk potential delays by encouraging on-board crewmembers to perform heroic efforts that may assist one individual passenger at the expense of the safety of the entire train. In addition, FRA is confident that since many members of the general public (including railroad employees) voluntarily obtain first-aid and CPR training, it is likely that someone knowledgeable will be aboard the train and available to assist in the event that medical professionals are delayed in responding to the emergency. However, FRA will continue to evaluate this issue through program review.

Passenger Manifests

The final rule also does not require railroads to record the number of passengers riding on their trains at any given time or to record how many people get on and off at each train stop. Although lack of an exact passenger manifest may delay emergency responders in determining when every passenger has been removed from a derailed or disabled train, the frequency with which many passenger trains pick up and discharge passengers would create logistical difficulties for a train operator. A train crew can usually provide a good estimate to emergency responders, so that they can respond

with the necessary personnel and equipment. Moreover, it is doubtful that emergency responders would simply trust an exact passenger count provided by a train crew and cease looking for additional survivors of an emergency. Commenters were invited in the NPRM to offer proposals for training on-board crewmembers to track the exact number of passengers present on a train at any given moment, and to include suggestions on cost-efficient technology for achieving this goal. Since no comments were received, FRA has not included any passenger manifest requirement in the final rule.

Testing

The term "accurately measure" is used in § 239.101(a)(2)(v)(A) relative to employee qualification in a broad sense to mean that the test will show to the railroad whether the employee has sufficient understanding of the emergency preparedness plan subject area for which he or she is responsible, and whether the employee can perform the duties required under the plan in a safe and effective manner. Proficiency must be demonstrated by successful completion of a written examination, but in addition may be illustrated by an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with this section.

This section permits railroads discretion to design the tests that will be employed (which for most railroads will entail some modification of their existing "book of rules" examination to include new subject areas), provided that the design addresses all relevant elements of the emergency preparedness plan. This section does not specify things like the number of questions to be asked or the passing score to be obtained. It does, however, contain the requirement that the test not be conducted with open reference books unless use of such materials is part of a test objective. This section also requires that the test be in writing. In deciding to require a written test, FRA is aware that the test-taking skills of some individuals may be deficient and that some persons may have literacy problems. However, FRA believes that minimum reading and comprehension skills are needed to assure proper execution of an emergency preparedness plan.

On-Board Staffing

Section 239.101(a)(2)(vi) has been revised and renumbered from the NPRM to require, as a general rule, that all on-board crewmembers be qualified to

perform the functions for which they are responsible under the applicable provisions of the railroad's emergency preparedness plan. For example, in the year 2002 (a date beyond the deadline for the completion of initial training under § 239.101(a)(2)(iii) by all existing railroads providing intercity passenger service), a train on an intercity railroad is scheduled to travel from Washington, D.C. to Atlanta, Georgia with a four-person operating crew fully trained under the applicable provisions of the railroad's emergency preparedness plan. However, the train crew also includes someone assigned to perform service as an attendant in a sleeping car (and not as a new railroad employee for purposes of § 239.101(a)(2)(iv)) who is not yet qualified under the plan's provisions to perform assigned functions. Although this train already has a fully trained and qualified crew operating the train, the intercity railroad would still not be in full compliance with the final rule since the crew includes one on-board crewmember who is not qualified under the emergency preparedness plan. (See the preceding "Discussion of Comments and Conclusions" portion of this document under the heading of item number 1 for a detailed discussion of FRA's decision to revise the definition of "crewmember" in § 239.7 and increase the on-board staffing requirements.) The one exception to the general rule, as set forth in subparagraph (B), applies if, for example, a fully-trained passenger train crew turns over the operation of its train to a freight railroad train crew that is not qualified under the passenger railroad's emergency preparedness plan. Provided that the passenger train is operated by the freight crew with at least one on-board crewmember of the passenger train present who is qualified under the passenger railroad's emergency preparedness plan and available to perform excess service under the Federal hours of service laws in the event of a passenger train emergency, there would be no violation of the final rule.

Joint Operations

Section 239.101(a)(3) has been revised from the NPRM, and now contains the requirement that each freight or passenger railroad hosting passenger train service shall communicate with that service's provider or operator or both and coordinate applicable portions of the one jointly-adopted emergency preparedness plan for that passenger service. One significant difference to the language of paragraph (a)(3) from the NPRM stage, is that the final rule prohibits a host railroad from utilizing

a separate emergency preparedness plan in order to address its emergency preparedness responsibilities involving the service being hosted. (See the preceding "Discussion of Comments and Conclusions" portion of this document under the heading of item number 5 for a detailed discussion of the requirement that a joint emergency preparedness plan be submitted for each passenger train operation by all railroads involved with providing, operating, or hosting such passenger service.) The final rule also recognizes that while hosts of passenger train service are generally freight railroads, passenger railroads (e.g., Amtrak) may also serve as hosts.

The host railroads must prepare sections of the emergency preparedness plans addressing instances when they host the operations of rail passenger service over their lines. Even though freight railroads may neither provide nor operate rail passenger service themselves, and therefore not be subject to most requirements of the proposed rule, these railroads still have certain significant emergency preparedness responsibilities. The emergency preparedness plan sections addressing hosting by both freight and passenger railroads must, at a minimum, include procedures for making emergency responder notifications, and discuss general capabilities for rendering assistance to the involved hosted passenger railroads during emergency situations. The hosting railroads must address any physical and operating characteristics of their rail lines that may affect the safety of the hosted rail passenger operations, e.g., evacuating passengers from a train stalled in a tunnel or on an elevated structure.

FRA expects a railroad that operates rail passenger service over the line of another railroad to review all of the requirements imposed by the final rule with the host railroad, and coordinate their respective roles in implementing a coherent response to an emergency situation. While FRA presumes that the host railroad will bear primary responsibility for ensuring the emergency preparedness of any railroad permitted to operate intercity passenger or commuter trains over its line, the final rule does not restrict the host railroad and the operating railroad from assigning responsibility for compliance with this part via a private contractual arrangement. FRA is including the coordination requirement to ensure that all railroads involved in a particular rail passenger service operation understand each other's crucial role in planning for emergency preparedness.

Tunnels

Section 239.101(a)(4)(i) addresses FRA's requirements for compliance with this part by railroads with operations that include tunnels of considerable length, where immediate passenger egress is not feasible. Since FRA did not receive any comments on this issue, paragraph (a)(4) is adopted as proposed.

In order to limit the number of structures covered by this paragraph to the longer ones that could be expected to present more impediments to the safe and orderly withdrawal of passengers from a disabled train, tunnels of less than 1,000 feet are excluded. This limitation is reasonable, considering that intercity passenger trains seldom consist of less than four cars and often have many more cars than this, implying a minimum total train length of 400 or more feet. Most likely, a train of this or greater length will have either the head or rear end close to or outside of a tunnel portal should an unplanned stop occur in a tunnel less than 1,000 feet long.

Over the years, passenger train emergencies have occurred in tunnels where existing emergency procedures and tunnel characteristics, such as lighting and communication capabilities, were determined to be inadequate. In order to better evaluate tunnel safety issues related to emergency preparedness, FRA requested additional information from the railroad industry. The results were summarized in a report entitled "Tunnel Safety Analysis" (Tunnel Report), which was published by FRA in February 1990. A copy of the report was also made available to the rail passenger railroads for their information and guidance, and has been placed in the docket for this rulemaking. FRA encourages all railroads required to address tunnel safety in their emergency preparedness plans to consult the Tunnel Report for guidance. FRA is also aware that many State and local jurisdictions already impose site-specific regulations to address tunnel safety, and that most railroads with operations involving tunnels have long-standing internal emergency tunnel procedures.

Other Operating Considerations

FRA also did not receive any comments on § 239.101(a)(4)(ii), and has adopted paragraph (a)(4)(ii) as proposed. The paragraph requires that railroads operating on elevated structures, over drawbridges, and in electrified territory, incorporate emergency preparedness procedures into their plans to address these unique physical characteristics. For example, in an emergency in

electrified territory, the control center must be responsible for issuing instructions to deenergize the electrical power. Also, the train crew and emergency responders must know how, when, and when not to remove on-board power from the train, including traction power, train-lined (head-end) power to individual cars, and battery-source power. The prudent approach for everyone connected with a passenger train emergency, especially those individuals who have not received training in power isolation procedures, is to always assume that the electrical power is in the "on" position.

Also, railroad operations over bridges and trestles that cross over wetlands, lakes, rivers, or other bodies of water or over ravines (particularly those in isolated areas with no nearby roads) pose particular access problems for emergency responders. Helicopters or boats may provide the only logical approach to these locations.

Parallel Operations

Section 239.101(a)(4)(iii) recognizes that the emergency preparedness plans of certain freight and passenger railroads will need to address the unique safety concerns posed by adjacent rail modes of transportation. In commenting on paragraph (a)(4)(iii) as proposed, APTA stated that the final rule should not place the entire responsibility for the parallel operation on the passenger railroad, and should properly account for the shared responsibilities of both the passenger operation and the hosting freight railroad. Although coordination is required under the proposal, APTA argued that the NPRM did not provide a method to ensure cooperation with the freight railroad to coordinate emergency efforts. APTA noted that if a freight railroad refuses to cooperate, a commuter railroad lacks recourse, and could still face assessment of civil penalties for failing to coordinate with an unwilling freight railroad host. APTA requested that the final rule delete the words "provide for coordination" and replace them with the words "shall seek to coordinate." APTA also indicated that the proposal did not take into account light and rapid transit rail operations that often run parallel to commuter operations.

In response to APTA's concerns, the final rule has been revised to include a requirement that all railroads that are parties to a passenger train operation's emergency preparedness plan must initiate reasonable and prudent actions to coordinate emergency efforts when adjacent rail modes of transportation run parallel to any of these railroads. By

adding the words "reasonable" and "prudent," FRA recognizes that coordination efforts may not always be successful if one of the railroad parties to the arrangement is unwilling to cooperate. While FRA will not penalize railroads that make good faith efforts to establish appropriate working relationships with adjacent rail modes of transportation, FRA expects each railroad to demonstrate that it made the necessary coordination attempts. In addition, upon notification and request, FRA will intervene to assist any railroad that is having difficulty coordinating emergency efforts, and help mediate a solution.

In response to APTA's comment that the proposal did not address light and rapid transit rail operations running parallel to commuter operations, FRA notes that the term "rail modes of transportation" is intended to cover all types of transit operations by rail or magnetic guideways running parallel to passenger railroad operations and their hosts. Accordingly, no change to the final rule was necessary.

In accordance with the requirements of this paragraph, employees of a host freight railroad to which this part applies, who have knowledge of or observe an emergency in a common corridor, e.g., fire, derailment, or intrusion by rapid transit rail equipment or motor vehicles, must be required by the emergency preparedness plan for the passenger operation to immediately convey that knowledge or information to the control center. The control center must attempt to determine the exact location of the incident, any condition that would affect safe passage by affected trains or road vehicles, and whether hazardous materials are involved, and then initiate appropriate responsive action. Under the terms of this revised paragraph, coordination of emergency efforts is required regardless of whether the host railroad is a freight railroad or another passenger operation.

Liaison With Emergency Responders

Many emergencies require response from outside emergency responder organizations in addition to the railroad. Proper coordination of roles between all of the organizations that may respond to an emergency is essential to ensure timely and effective response, since the number of passengers carried and the railroad operating environment may be quite different according to the type of service and routes. Paragraph 229.101(a)(5) recognizes that the successful implementation of any emergency preparedness plan depends upon the affected railroads maintaining current working relationships with the

emergency responder organizations, so that each party can learn of the full preparedness capabilities that the other can offer during an emergency. In this regard, each railroad's emergency preparedness plan must provide for distribution to emergency responders of railroad equipment diagrams and manuals, right-of-way maps, information on physical characteristics such as tunnels, bridges, and electrified territory, and other related materials. In order to continually reinforce the familiarization of the emergency responder organizations with the railroads' protocols, procedures, operations, and equipment, the final rule requires railroads to periodically distribute applicable portions of the plan to emergency responders at least once every three years, even if no changes have been implemented. Further, since the knowledge and ability to carry out procedures and use emergency equipment are essential to the success of emergency response actions, the final rule requires the railroads to promptly notify emergency responders whenever material alterations to the plan occur (e.g., revisions to emergency exit information, pertinent changes in system route characteristics or railroad equipment operated on the system, or updates to names and telephone numbers of relevant contact officials on the railroad).

FRA wants to ensure that the emergency responders will receive the maximum amount of available information about a railroad's operations in advance of an emergency, and hopes that emergency responders will voluntarily study the material distributed and participate in emergency simulations. However, the final rule only requires that affected railroads make the operations information available to emergency responders, and that the responders merely be invited to participate in emergency simulations. FRA has no authority to penalize an emergency responder organization if it chooses to ignore the distributed information or refuses to attend simulations with the railroad. Likewise, the final rule does not hold a railroad accountable for an emergency responder organization's unwillingness to enter into a liaison relationship, provided that the railroad employed its best efforts to make the liaison opportunities known and available to the responders.

In addition to the requirement to periodically distribute applicable portions of the emergency preparedness plan to emergency responders (which has been moved from paragraph (a)(5)(i)

in the NPRM to paragraph (a)(5)(iii) in the final rule), FRA has added a new requirement as paragraph (a)(5)(i) mandating that each affected railroad develop and make available a training program for all on-line emergency responders who might be called upon to respond to an emergency. As set forth in the preceding "Discussion of Comments and Conclusions" portion of this document under the heading of item number 2, in conjunction with FRA's decision to scale back the simulation requirement of § 239.103 to involve only one meaningful full-scale simulation (performed either annually or every two years depending on the size of the railroad), FRA has added the training program provision in order to maximize the opportunity of the emergency responder community to obtain familiarity with railroad equipment, location of railroad facilities, and communications interface.

In paragraph (a)(5)(ii) of the final rule (which has been revised and renumbered from paragraph (a)(5)(iii) of the NPRM) FRA requires railroads to invite emergency responders to participate in emergency simulations. Since § 239.103 has been revised in the final rule to prohibit a railroad from counting a tabletop exercise toward the simulation requirement, any railroad electing to voluntarily conduct a tabletop exercise is not required by paragraph (a)(5)(ii) to invite members of the emergency responder community to attend. However, a railroad must employ its best efforts to invite all appropriate emergency responders to attend all of its full-scale simulations. Moreover, FRA expects each railroad to extend invitations to all full-scale simulations even if the railroad does not intend to count a particular simulation toward the minimum number required by § 239.103(b).

FRA recognizes that not every potential outside emergency responder will have the opportunity to attend a full-scale simulation or otherwise obtain realistic exposure to the unique emergency response challenges posed by railroad emergencies. In addition, even assuming that every affected railroad diligently distributes the pertinent portions of its current and updated emergency preparedness plan to appropriate members of the emergency responder community, descriptive information set forth in written materials is no substitute for formal training that includes meaningful hands-on experience with railroad equipment and an opportunity to ask questions of a live instructor.

In commenting on § 239.101(a)(5), APTA stated that all commuter railroads

already attempt to share information with appropriate local emergency responders, and that this determination is based upon such factors as railroad operations and emergency responder capabilities. APTA argued that the proposed rule eliminates that discretion and flexibility and places a tremendous burden on commuter railroads to affirmatively seek out every emergency responder organization, whether or not that entity is a logical choice. APTA noted, for example, that paragraph (a)(5)(iii) of the proposed rule (which has been redesignated as paragraph (a)(5)(ii) in the final rule) would require MARC to invite the Washington, D.C. fire department to every simulation conducted on both of its main lines, even though the simulation is intended to benefit emergency responders in West Virginia. Instead, APTA indicated that MARC should be able to group emergency responders by region.

In addition, APTA requested clarification in the final rule of the requirement in § 239.101(a)(5)(ii) of the NPRM to maintain "an awareness of each emergency responders' capabilities." APTA asked whether this requirement included the type of equipment, hazardous material capabilities, ambulance service, emergency medical technicians, and size of fire and police departments. Since each emergency responder determines the level and type of response to provide during an emergency, which may or may not reflect the limits of its capabilities, APTA also questioned how maintaining this information will benefit the railroad.

In its comments, METRA questioned how it could be expected to become aware of, much less maintain an awareness of, the capabilities of each emergency responder throughout six of the most densely populated counties in the country. METRA suggested that to maintain an awareness it could establish a program through its liaison, as mandated in the regulation, that any community involved with METRA's service would have to tell METRA if it upgraded or downgraded its facilities or equipment. A railroad should know if one community has a type of equipment needed for a rescue, for example, but need not know the internal workings of the community facilities.

A member of the public commented that there needs to be better coordination between emergency response teams and railroad operators. Although not all railroad accidents can be prevented, the commenter stated that coordination with emergency responders can save the lives of

passengers experiencing health difficulties while riding trains, such as heart attacks.

CALTRAIN stated that while it works closely with local on-line emergency responders, it believes that rail properties are unable to know the detailed capabilities of each agency. CALTRAIN indicated that it relies on responders to summon the appropriate help, based in part upon the information provided to them by the railroad.

NICTD commented that it had already conducted two simulation drills with emergency responders during calendar year 1996. NICTD stated that it was already in the process of developing a training program with manuals on emergency evacuation of passengers from equipment for all emergency responder organizations servicing NICTD.

The Des Plaines, Illinois Fire Department stated that emergency telephone numbers are of paramount importance so that the fire department can establish contact and stop the trains so that responders can go down the rail lines in both directions. This commenter also noted that receipt of hands-on training is important.

The LIRR commented that members of the emergency responder community do not need the railroads to show them how to put out fires or splint fractures. Instead, the railroads need to train the responders on railroad equipment.

The UTU stated that it is important that emergency plans be updated and be distributed to the host railroads and emergency responders. The UTU believed that doing so would shorten response time, and make emergency responders more familiar with the railroad's physical characteristics and equipment.

In its comments, METROLINK stated that it operates through the jurisdictions of 33 different fire districts, over 50 ambulance companies, and 45 police agencies. METROLINK argued that it should not be a railroad's function to maintain an awareness of the capabilities of each emergency responder, and noted that it lacks the technical ability to know or understand when a "significant change" occurs in a responder's capability. METROLINK also noted that the proposed rule imposed no reciprocal responsibility on local emergency responders to notify railroads when their capabilities change. METROLINK contended that the emergency responders should be responsible for establishing mutual aid with other local agencies when situations outside their capacity arise.

Based upon the comments received, FRA concludes that it would be

impractical to require railroads to directly monitor the emergency preparedness and response capabilities of all of its on-line emergency responders, and has deleted the "maintaining-awareness" requirement of paragraph (a)(5)(ii) of the NPRM from the final rule. FRA recognizes that since the rule imposes no burden on emergency responders to advise railroads of their staffing capabilities or their inventories of specialized rescue equipment, the railroads would be hindered in their ability to immediately determine the most appropriate emergency response organizations to request assistance from after a passenger train emergency situation develops. Moreover, FRA expects that the central location of the emergency response contact (e.g., the 911 emergency operations center) will be fully aware of the capabilities of the nearest and/or best-equipped emergency responders, thereby being able to send the most appropriate responders to the location of a passenger train emergency. Accordingly, if a train derailed and falls from a bridge into a river, FRA would expect the emergency responder organization that is contacted to summon a rescue company trained in water rescues if one is available.

In commenting on the proposal, Amtrak stated that while it agreed that it is reasonable to expect that the emergency preparedness plan information should be made available to any affected emergency responder, the final rule should permit railroads to fulfill this requirement by providing the information to entities that perform centralized functions of collecting information and disseminating it to emergency service providers, when and as needed. Amtrak recommended that the final rule not designate acceptable information repositories, but rather provide latitude for railroads to communicate effectively with local emergency responders through centralized communication entities rather than individually. Amtrak stressed that since its nationwide route system interfaces with over 15,000 emergency response agencies, it would not be feasible to keep all of them supplied with written instructions. Even if the final rule permitted electronic transmission of plan information, Amtrak urged that direct communication between individual railroads and each emergency responder organization not be required.

Subsequent to the public hearings, Amtrak submitted additional comments to FRA on July 1, 1997 concerning distribution of emergency preparedness plans to emergency responders. Amtrak

stated that it agreed that applicable portions of the emergency preparedness plan should be readily available to any affected emergency responder, but believed that the regulations should not require direct communication between each individual emergency response agency and the railroad. Entities that perform centralized functions of information collection can disseminate this information to emergency responders as needed. Amtrak noted that these entities include the National Fire Protection Association (NFPA), the International Association of Police Chiefs (IAPC), the International Association of Fire Chiefs (IAFC), organizations for emergency medical services and emergency management agencies, and national trade magazines. These organizations could provide an effective conduit through which railroads can communicate with the emergency response agencies in the local communities to advise them of the availability of emergency plans.

FRA is aware of the great number of jurisdictions that intercity trains operate through, and that it is neither simple nor inexpensive for passenger train operators to provide material and familiarization to every outside emergency response organization within all individual communities along each route. Some commuter train operators have developed booklets and videotapes to illustrate equipment and describe entry and evacuation procedures for its trains and certain right-of-way facilities. However, FRA recognizes, based on Amtrak's statements made at both the pre-NPRM Working Group meetings and in its written comments, that because Amtrak operates through thousands of jurisdictions with thousands of potential emergency responder organizations located throughout the United States, it would have difficulty complying with this paragraph.

While FRA considers the establishment of liaison relationships between railroads involved with rail passenger operations and emergency responders crucial to achieving the goals of the proposed rule, the agency is also fully aware of the unique circumstances of Amtrak's operations. FRA had invited public comments on how Amtrak could best comply with the emergency responder liaison requirement, as set forth in the proposed rule. FRA asked whether the final rule should establish a different standard for railroads that operate in territories with large numbers of potential emergency responders to contact, and requested that any commenter proposing two or more sets of standards should also suggest what numerical or mileage

criteria should be used to distinguish the railroads, and state how these differing standards would still ensure adequate levels of safety and emergency preparedness. Regrettably, the only commenter addressing this issue was Amtrak, and its comments dated July 1, 1997 are summarized above.

On September 2, 1997, six FRA representatives convened a meeting with seven members of Amtrak's management team at Amtrak's offices in Washington, D.C. to discuss issues relating to the final rule on Radio Communications as well as to emergency preparedness. A representative from the UTU was also in attendance. Minutes of that meeting have been placed in the public dockets of both rulemakings.

In pertinent part, FRA challenged Amtrak to provide information to FRA on how the railroad would ensure that the training materials and emergency preparedness plan information would reach the literally thousands of emergency responder organizations who might potentially respond to an emergency occurring along Amtrak's many routes. FRA recognizes that smaller commuter operations will be capable of training the limited number of potential emergency responders along their routes on their railroad equipment, but that Amtrak lacks the financial resources and personnel to directly contact thousands of organizations. At the conclusion of this meeting, FRA requested that Amtrak submit a proposal to FRA on how it expects to achieve compliance with the requirements of this paragraph.

In a letter dated October 27, 1997, Amtrak stated that it operates intercity passenger trains on a route system of more than 20,000 miles and reiterated that as many as 20,000 organizations provide emergency response services in the territories through which its trains operate. While Amtrak noted that it was not feasible to directly deal with all of these agencies, it acknowledged the importance of communication concerning Amtrak's emergency response plans, both before and during an emergency situation. To accomplish this objective, Amtrak proposed a process for advising these local entities of the availabilities of Amtrak's plans, distributing copies of these plans promptly when requested, and providing opportunities for dialogue concerning these plans. Amtrak also stressed that the process must provide an independent check to determine whether the emergency service responders are aware of the availability of Amtrak's materials and how they can

communicate with Amtrak about them during an emergency.

Amtrak stated that the wide dispersal of its operations is markedly different from those of commuter services, which are localized in relatively discrete urban areas. Amtrak encouraged FRA to develop a different standard for distribution of Amtrak's materials from that set forth in paragraph (a)(5)(i). In this regard, Amtrak recommended that this paragraph provide for consultation between Amtrak and FRA concerning the effectiveness of initial communication efforts and appropriate modifications for adoption over time.

Amtrak indicated that its emergency preparedness plan will be able via the Internet to emergency response agencies, as well as through printed documents. Amtrak will develop specific procedures to ensure reasonable security of the information so that it is not distributed without some reasonable assurance of the status and responsibility of the receiving party. Notice of future material changes in the emergency preparedness plan will be provided specifically to any parties that have previously indicated an interest in Amtrak's emergency response plans. Under Amtrak's proposal, emergency response agencies that have not contacted Amtrak would, upon accessing Amtrak's emergency response plans, not be alerted to changes. Amtrak believes that such specific notice would be unnecessary because these agencies had no specific prior understanding. However, agencies that had prior knowledge would be alerted to changes in facts or procedures as they occur.

Amtrak also stated that it will establish a dedicated toll-free telephone number, in operation 24 hours per day, that will deal only with actual emergencies and provide information concerning its emergency preparedness plan. General requests for information will be responded to on the next business day.

In order to alert local agencies to the availability of Amtrak's emergency preparedness plan, Amtrak requested inclusion of its contact telephone number in DOT's publication entitled "North American Emergency Response Guidebook" (ERG). Amtrak noted that the ERG is in the hands of virtually every emergency response agency in the United States, including fire and rescue, emergency medical services, law enforcement, and emergency management. Amtrak contended that just as CHEMTREC and CHEM-TEL are listed in the ERG, the Amtrak emergency preparedness and response toll-free telephone numbers should be included so that local agencies will

know how to obtain information to familiarize themselves with Amtrak's operations on a proactive basis and where to turn during an emergency situation. Amtrak will also obtain paid advertising and other publicity through articles in trade publications for fire and rescue, emergency medical services, law enforcement, and similar agencies outlining emergency procedures and providing the railroad's contact telephone number. Another resource that Amtrak noted it uses in major metropolitan centers on the Northeast Corridor and other parts of the United States is Operation Respond. Operation Respond distributes software outlining floor plans and schematics of emergency procedures for Amtrak rolling stock and overhead views of the Northeast Corridor right-of-way.

To ensure the effectiveness of the types of efforts it has outlined, Amtrak believes that it should implement a specific sampling technique with which it could determine whether emergency agencies selected at random are aware of how to contact Amtrak in the event of an emergency, and obtain the type of information needed to promptly and effectively respond. Amtrak proposed conducting this sampling on an annual basis. Amtrak stated that the sampling could determine the degree to which agencies are aware of how to obtain such information and the type of actions that Amtrak may need to take in order to improve the awareness of agencies in general concerning the availability of information about Amtrak's emergency preparedness plan. However, Amtrak stressed that inclusion in the ERG is the most critical component of any effort to provide a focal point for contacting Amtrak.

FRA has carefully reviewed the contents of Amtrak's letter dated October 27, 1997, and is fully cognizant of Amtrak's desire that FRA reasonably regulate the need to effectively communicate with local emergency responder organizations concerning Amtrak's emergency preparedness plan without imposing an undue burden on the railroad. Because of the large number of emergency responders dispersed throughout Amtrak's territories of operation, FRA concludes that it is vitally important that Amtrak and the host freight railroads enter into close coordination and keep up-to-date instructions on how emergency response information is to be reported to emergency responders. In order for any railroad to successfully fulfill the requirements of this paragraph, positive communication links must exist between the railroad, its hosts (if applicable), and the emergency

responder community. In this regard, the maintenance of accurate emergency telephone numbers for use by control centers in making emergency notifications in accordance with paragraph (a)(1)(ii) is even more crucial on a railroad the size of Amtrak.

FRA expects that in making its training program information and materials available to national or state training institutes, firefighter organizations, or police academies, as well as when it distributes applicable portions of its emergency preparedness plan, Amtrak will contact individuals in these organizations at the lowest possible levels that are feasible. FRA concludes that merely mailing this information to the main address for organization will be ineffective at achieving the local outreach efforts to the emergency responder community required by this final rule. While FRA acknowledges that for the rule to fully succeed Amtrak must have the assistance of these organizations starting at the highest levels, Amtrak may not delegate the responsibility for communication with local personnel to the top officials of these entities. FRA expects Amtrak to employ its best efforts to reach, whether directly or through the assistance of the hierarchy of national and state emergency response organizations, the local emergency responders along its rail lines who could reasonably be called upon to respond to an emergency situation.

In working with Amtrak as part of the review and approval process of § 239.201, FRA will fully consider all appropriate ideas and suggestions from the railroad on how it proposes to achieve the necessary liaison relationships with its on-line responders. While FRA will not impose unreasonable expectations on Amtrak, FRA will not permit Amtrak to ignore the vast number of potential emergency responder organizations with which the railroad must establish at least a minimal liaison contact.

Finally, in response to Amtrak's request to include its contact telephone number in DOT's ERG, FRA notes that the ERG is a guidebook published by the Research and Special Programs Administration (RSPA) (a modal administration within DOT) for firefighters, police and other emergency services personnel who may be the first to arrive during the initial phase of a transportation incident involving hazardous materials or dangerous goods. Although the ERG is not intended for use in a transportation incident involving only a passenger train, absent the additional involvement of hazardous

materials or dangerous goods, its wide distribution makes it an effective vehicle for reaching the emergency responder community. Accordingly, at FRA's request, RSPA has agreed to include this information in the next version of the ERG.

On-Board Emergency Equipment

The requirements of § 239.101(a)(6)(i) remain unchanged from the proposal: each railroad's emergency preparedness plan shall indicate the types of emergency equipment placed on board each passenger train and the location of such equipment on each passenger car. Although the final rule requires a minimum of only one fire extinguisher and one pry bar per passenger car, and one flashlight per on-board crewmember, FRA strongly encourages each railroad to voluntarily supplement this list of on-board emergency equipment. Further, FRA recognizes that there may be special local interests that might need to be accommodated, particularly in cases of public authorities operating passenger train service within only one territory. While national uniformity to the extent practicable of laws, regulations, and orders related to railroad safety is important, FRA does not wish to decrease the level of emergency preparedness already in place on a passenger railroad.

In reaching the decision to retain the same on-board emergency equipment requirements as proposed in the NPRM, FRA considered three sets of comments. The first commenter, APTA, said that since the use of metal pry bars by non-railroad personnel on electrified territory may create a significant safety hazard, the final rule should prohibit public access to them. APTA also noted that theft, tampering, and destruction of on-board emergency equipment are big problems for commuter railroads, and asked that the rule impose a Federal penalty for theft, vandalism, or tampering with emergency equipment, similar to penalties imposed by the Federal Aviation Administration for tampering with smoke detectors on airplanes. The second commenter, a private citizen, commented that in light of the number of possible unpreventable health emergencies that can occur on a train, the types of on-board emergency equipment should be expanded. He believed that this equipment, along with better emergency training of railroad employees, can save many lives.

The third commenter, the LIRR, indicated that while it supports the idea of having one fire extinguisher per passenger car, the LIRR's diesel fleet does not have any fire extinguishers at

the present time, except on locomotives. The LIRR stated, however, that its entire diesel passenger coach fleet is scheduled to be replaced beginning in 1997. The LIRR noted that the Electric MU fleet operates in married pairs; the M1 fleet (758 total) was built between 1968-1972 and has one fire extinguisher per married pair, while the M3 fleet (174 total) was built in 1985-86 and has a fire extinguisher opposite each operating cab in every car. The modification of 758 M1 cars will require funding and time. The age of the M1 car fleet is reaching its useful life, and LIRR stated that it is beginning preparation of a capital investment to replace the M1 portion of the electric fleet. LIRR asked for relief for both the diesel and M1 fleet.

Regarding the issue of pry bars, the LIRR noted that it operates in an area 100 miles long with 11 branches, with 181 fire departments throughout Long Island, New York. The LIRR stated that the average response time of emergency responders is only approximately 10 minutes, and indicated that the responders are trained on LIRR equipment and have state-of-the-art rescue equipment. The LIRR believed that retrofitting of all LIRR equipment would not provide a higher level of safety than what is already provided by the responders, and thought that pry bars would be difficult to keep or maintain on railroad equipment open to the public. If LIRR is subject to the pry bar requirement, the railroad stated that it will seek relief through the waiver process.

In order to assist the agency in determining whether to revise the requirements of § 239.101(a)(6)(i), FRA asked for comment about whether special circumstances exist in local jurisdictions throughout the country on a categorical basis, requiring railroads to meet more stringent requirements than the minimum quantities of on-board emergency equipment set forth in the proposed rule. Specifically, FRA invited comments on what types and quantities of on-board emergency equipment railroads are currently required to carry pursuant to laws in the local jurisdictions in which they operate, and was curious as to the reasons for these more stringent requirements. Depending on the comments received, FRA noted that it might adopt the minimums set forth in the text of the proposed rule or decide to broaden the coverage of paragraph (a)(6)(i) by specifying additional types or quantities, or both, of on-board emergency equipment that some or all railroads must carry on each passenger car. FRA's decision to adopt paragraph (a)(6)(i) as proposed is based

largely upon the fact that FRA received little public comment on this issue.

FRA recognizes that since the focus of this rule is to ensure that emergency responders arrive promptly at the scene of an accident, rather than to train on-board personnel to act as emergency responders, the rule must not impose onerous, irrelevant, or duplicative emergency equipment requirements on railroads. FRA is aware that emergency responder units will generally arrive at the scene of a passenger train emergency fully equipped with pry bars, pick axes, fire fighting equipment, and other assorted specialized rescue items. However, in deciding to mandate in the final rule that railroads must carry fire extinguishers, pry bars, and flashlights on board trains, FRA concluded that certain emergency situations can prove so life-threatening and time-sensitive that train crews and passengers must take immediate action to maximize the likelihood of survival.

Certainly, in the event of a small fire taking place on board a passenger train, the availability of a working fire extinguisher in each passenger car could prevent a minor problem from turning into a tragic event before emergency responders are able to respond to the emergency. Also, a fire may start in a small area or limited location on a train, where crewmembers or passengers might be capable of containing the fire (e.g., a smoldering cigarette on a passenger coach seat), thereby avoiding the need to involve outside emergency responders at all. While FRA recognizes that firefighters carry all sorts of rescue equipment, including pry bars, sometimes the threat from an emergency is so immediate and severe that there is no opportunity to wait for emergency responders to arrive and rescue people. Accordingly, the availability of a pry bar in each passenger car will enable crewmembers and passengers to exit the train through an emergency window exit in the event that the rubber stripping cannot be removed accordingly to plan and circumstances do not permit awaiting the arrival of emergency responders. Also, for example, a pry bar can be useful in prying open an end door on a passenger car that is lying on its side after a derailment. Finally, since emergencies can happen at night in isolated locations, a flashlight is an important tool for guiding passengers safely off the train during an evacuation and minimizing the likelihood of people tripping in the dark, unfamiliar landscape. In addition, flashlights can prove invaluable in the event that a train's primary and backup electrical

systems fail during the course of an emergency situation.

FRA recognizes that some railroads will have unique problems associated with meeting the minimum requirements of this paragraph, either due to certain atypical aspects of their operations, concerns about theft or vandalism, or compliance with laws in the local jurisdictions in which they currently operate. While FRA expects each railroad to make every effort to incorporate these minimum requirements into its emergency preparedness plan, FRA acknowledges that situations may arise where requiring strict adherence to the requirements of this paragraph may prevent or impede rail passenger transportation that is in the public interest. As a result, FRA intends that the emergency planning approach allow railroads to develop approaches to providing safe rail passenger transportation that do not meet all of the on-board emergency equipment standards, but compensate by providing alternatives that afford equivalent levels of safety. Accordingly, any railroad that believes it cannot or should not have to comply with the specific requirements of paragraph (a)(6)(i), may submit a waiver request to FRA in accordance with 49 CFR part 211. While submission of such a request does not guarantee it will be granted, every waiver request will be duly considered.

This paragraph does not require railroads to instruct their passengers about either the location or use of the on-board emergency equipment. As anticipated in the NPRM, FRA has crafted a final rule that avoids micromanagement of the provisions of a railroad's emergency preparedness plan. FRA recognizes that passengers might benefit from receiving routine instructions about the location and operation of on-board emergency equipment during each train trip, in the event that the crewmembers are injured or otherwise unable to access the equipment before the outside emergency responders arrive. However, FRA is also aware from its consultations with the Working Group that pilferage of on-board emergency equipment is a serious problem on many passenger railroads, and that specifically focusing the attention of passengers on where the equipment is located would only exacerbate the problem. Clearly, the equipment can only help both crewmembers and passengers during an emergency if it is available for proper use. Also, members of the Working Group stressed that regular riders on intercity or commuter operations are probably already familiar with the on-

board emergency equipment by virtue of their frequent presence on the train, and would not benefit from any additional required information.

First-aid Kits on Intercity Passenger Trains

FRA has added as a new requirement to the final rule in paragraph 239.101(a)(6)(ii) concerning first-aid kits on intercity passenger trains. In commenting on the NPRM, the UTU requested that all passenger trains be equipped with a first-aid kit as an emergency tool, and urged that the kit contain personal protection equipment for the trained personnel who will be rendering first aid and CPR. At the very least, the UTU stated that the kit should contain rubber gloves, and the plastic gloves and the mouth shields for CPR. At the working group meeting held in Washington, D.C. on August 28, 1997, many of the members agreed that while commuter trains may operate in densely populated areas that are close to emergency medical services, intercity trains often operate through sparsely populated remote regions of the United States that have limited road access for use by emergency responders. Accordingly, to recognize the unique operational challenges presented by the operation of intercity service, FRA believes that crewmembers onboard each of these trains must have access to at least one first-aid kit that contains the necessary supplies to clean and dress a minor wound until professional responders can arrive at the scene.

Since FRA does not intend for the first-aid kit to substitute for appropriate medical attention from a physician or hospital, the final rule limits the minimum required contents of the first-aid kit to only gauze pads, bandages, wound cleaning agent, scissors, tweezers, adhesive tape, and latex gloves. Since proper use of these items should be self evident to both members of a train crew and the traveling public, the final rule does not impose any specific requirement on railroads to train their employees on the use of first-aid kits. Of course, FRA does not intend to discourage railroads from voluntarily incorporating such training into its emergency preparedness program.

In response to APTA's concern about theft, tampering, and vandalism of on-board emergency equipment by both railroad passengers and other members of the public, FRA has included language in the section-by-section analysis of § 239.11 to remind the general public that FRA may impose a civil penalty upon any individual who willfully causes a railroad to be in violation of any requirement of this part.

Take for example, a railroad that supplies each of its passenger cars with one fire extinguisher and one pry bar, and provides each of its on-board crewmembers with one flashlight. By equipping its train with all of these items, the railroad would then be in full compliance with the minimum requirements of § 239.101(a)(6)(i). Accordingly, if, unbeknownst to the railroad, a vandal pilfers a fire extinguisher from one of the passenger cars while the train is in service FRA can impose a civil penalty upon that vandal for causing the railroad to be in violation of 49 CFR part 239.

For purposes of enforcement by FRA of § 239.101(a)(6)(i) and (ii), the phrase "in service" means a passenger car that is in passenger service, i.e., the passenger car is carrying, or available to carry, fare-paying passengers. A passenger car is not in service if it is: being hauled for repairs and is not carrying passengers; in a repair shop or on a repair track; on a storage track and is not carrying passengers in deadhead status. FRA will impose a civil penalty for passenger equipment that is missing on-board emergency equipment or first-aid kits (in the case of railroads providing intercity passenger train service) only if the railroad had actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising reasonable care would have had that knowledge. Accordingly, since FRA is not employing a strict liability standard in enforcing § 239.101(a)(6), FRA would ordinarily not impose a civil penalty on the railroad for the actions of a vandal. However, once the railroad personally discovers or is otherwise notified that a piece of emergency equipment or a first-aid kit is missing, FRA expects the railroad to replace the missing item before the passenger car (or train, as appropriate) is again placed in service on a subsequent calendar day. In this regard, FRA will expect each railroad to ensure its compliance with § 239.101(a)(6) by performing whatever daily interior mechanical inspection requirements that eventually result from the rulemaking on passenger equipment safety standards. See proposed § 238.305 of this chapter. 62 FR 49772, 49773, and 49808.

On-board Emergency Lighting

The rulemaking on passenger equipment safety standards will address the issue of permanent emergency lighting on passenger rail cars. Whatever requirements eventually appear in the new set of regulations at 49 CFR part 238, § 239.101(a)(6)(iii) states that

auxiliary portable lighting must be available for assistance in an emergency and should be routinely maintained and replaced as necessary. Section 239.101(a)(6)(ii) has been renumbered in the final rule due to addition of the requirement for first-aid kits on intercity passenger trains. Further, the final rule specifies the duration times for both brilliant illumination and continuous or intermittent illumination after the onset of an emergency situation. The final rule does not require that every rail passenger car have such lighting, but the train itself must carry enough portable lighting to facilitate orderly passenger evacuation.

In its comments on this issue at the NPRM stage of this proceeding, METROLINK stated that FRA needed to define the clause "auxiliary portable lighting must be accessible," and questioned whether a flashlight is an acceptable form of such lighting. FRA intends for a handheld flashlight, such as a "D" cell flashlight, to be one of the means of satisfying the auxiliary portable lighting requirement; the final rule text has been expanded to include a handheld flashlight as an example of an auxiliary portable lighting source. Further, FRA considers auxiliary portable lighting as accessible when the lighting sources are reasonably available for use by a train's crew and its passengers within several minutes of the onset of the emergency. Since every emergency situation is unique, FRA cannot expect a railroad to determine in advance precise locations for locating the auxiliary portable lighting so that every passenger and crewmember on the train is always within immediate reach of the lighting. Accordingly, FRA expects each railroad to act reasonably and make its best educated guess, based upon its types of rail equipment and the nature of its operations, on where to place auxiliary lighting so that it will likely be accessible after the onset of an emergency.

Omniglow commented that chemiluminescence is the production of light from a non-heat generating chemical reaction, and utilizes a fluorescent molecule, a key intermediate, and a catalyst. Omniglow stated that the key chemical components are separated by a specially designed capsule contained within a larger, translucent plastic form, and that when light is desired, the outer plastic container is manipulated by the consumer, breaking the inner ampule, which allows the ingredients to mix and produce light. After arguing that each rail passenger car should be equipped with portable lighting capable of fostering passenger evacuation, and

noting that FRA will permit a handled flashlight, such as a flashlight with a "D" cell, to be one of the means of satisfying the auxiliary portable lighting requirement. Omniglow stated that its 15" high intensity lightstick would satisfy this requirement. In this regard, Omniglow observed that its lightstick is a high-intensity, non-explosive, non-hazardous, weatherproof light source, with a four year shelf life.

FRA will not endorse the product of a specific company by determining whether a railroad's use of that product will enable it to comply with the emergency lighting requirements of this paragraph. The only issue before FRA in evaluating whether a source of auxiliary portable lighting satisfies a railroad's emergency planning need is whether the lighting is both accessible during an emergency and provides the requisite levels and time intervals of illumination, as specified in paragraph 239.101(a)(6)(iii)(A) and (B). If a railroad can satisfy the regulatory parameters of this paragraph by using Omniglow's lightsticks, FRA will take no exception to the product's use.

Safety-Awareness Programs for Passengers

Finally, paragraph 239.101(a)(7) requires railroads to make passengers aware of emergency procedures to follow before an emergency situation develops, thus enabling them to respond properly during the emergency. All passenger awareness efforts must emphasize that passengers must follow the directions of the train crew during an emergency. If passengers are on a disabled train, but are not injured or facing imminent danger, they could safely await the arrival of trained emergency responders with appropriate evacuation equipment. However, in a serious emergency involving smoke or fire, passengers may have to evacuate the train before emergency responders arrive. Thus, operators of rail passenger service should take steps to increase passenger awareness about basic evacuation procedures. Since passengers could inadvertently jeopardize their own safety, it is appropriate for them to take the initiative only if the crewmembers are incapacitated.

Passenger railroads must educate passengers about their role in cooperating in emergencies by conspicuously and legibly posting emergency instructions inside each passenger car, and by utilizing at least one or more additional methods, including those designated in this paragraph, to provide safety awareness information. The suggested methods

include distributing pamphlets, posting information in stations on signs or on video monitors, and the review of procedures by crewmembers via public address announcements. However, as set forth in the preceding "Discussion of Comments and Conclusions" portion of this document under the heading of item number 3, FRA also encourages railroads to pursue alternative innovative means of conveying passenger safety information. All brochures and signage must emphasize that passengers must follow the directions of the train crew during an emergency.

Although paragraph 239.101(a)(7)(ii)(A) permits a railroad to fulfill the secondary passenger education requirement of the final rule by making on-board announcements, FRA does not specify the frequency with which these announcements should be made during a train run. FRA believes that, with regard to intercity service, announcements are appropriate after at least each major passenger pick-up point, and commenters were invited in the NPRM to suggest ways of providing safety information to all new riders without becoming repetitious to the remaining passengers. Since no public comments were received on this specific issue, FRA has elected to permit broad flexibility to railroads in determining the appropriate frequency of on-board announcements in the event that they select this secondary method to disseminate information to passengers. In addition, while the final rule requires railroads to utilize only one additional method to distribute safety awareness information to the traveling public, FRA encourages railroads to employ as many of the options as possible based on operating and budgetary considerations.

Despite FRA's encouragement of the use of innovative techniques, the information in the various sources of passenger safety awareness information must be consistent in content and sufficient for first-time users of the railroad, but not so overwhelming as to arouse undue concern. All information must be printed or spoken in English, but railroads serving large non-English speaking communities should consider providing information in other languages as well. Materials for persons who are visually impaired should be printed in large type format and in braille. Finally, for persons with other types of disabilities, appropriate passenger awareness materials should provide information about evacuation policies and procedures and other emergency actions, to the extent practicable.

Passenger awareness education should include information that may permit passengers to accomplish the following:

- Recognize and immediately report potential emergencies to crewmembers;
- Recognize hazards;
- Recognize and know how and when to operate appropriate emergency-related features and equipment, such as fire extinguishers, train doors, and emergency exits; and
- Recognize the potential special needs of fellow passengers during an emergency, such as children, the elderly, and disabled persons.

FRA had asked for public comment on whether the final rule should include fixed timeframes in which railroads must provide their passengers with additional methods of safety awareness information, and urged commenters to supply scientific or sociological data and/or cost estimates in support of their suggested time intervals. The general recommendation of the commenters was that the final rule should leave the features of the awareness programs to each railroad's discretion, and that the key component of this requirement should be flexibility so that railroads can utilize the right mix of passenger communication techniques.

Based upon FRA's consideration of this issue, instead of specifying fixed maximum time intervals between utilizing the additional forms of program activity, FRA will allow the railroads to determine the optimal frequency that best serves their passengers and their operations. FRA expects that as the traveling public grows more accustomed to reading and understanding the emergency instructions posted inside all passenger cars on bulkhead signs, seatback decals, or seat cards the need for redundant reminders (e.g., on-board announcements, ticket envelope safety information, or public service announcements), especially at frequent time intervals, will greatly diminish. Moreover, depending on the additional method selected, different time intervals may be appropriate. For example, while it may be suitable for a railroad to distribute safety awareness information on a seat drop every three months, the railroad may conclude that it should arrange for public service announcements on a weekly basis.

Passenger Surveys

Paragraph 239.101(a)(7)(iii) of the NPRM would have required railroads to perform surveys of their passengers in order to learn how successful the passenger awareness program activities are in apprising passengers of the

procedures that must be followed during an emergency. As set forth in the preceding "Discussion of Comments and Conclusions" portion of this document under the heading of item number 3, the survey requirement and its accompanying recordkeeping burden have been deleted from the final rule.

13. Passenger Train Emergency Simulations: Section 239.103

Section 239.103 recognizes that one of the most effective training techniques is a simulation of specific emergency scenarios. Simulations may vary from a small-scale drill or tabletop exercise for just one train crew or control center operator, to a full-scale emergency exercise involving several levels of railroad management that includes the voluntary participation of fire departments, ambulance and emergency medical service units, local police, sheriff and state police organizations, local emergency auxiliary groups, and state and federal regulatory agencies. While simulations are primarily designed to demonstrate that railroad employees can quickly and efficiently manage an emergency situation to ensure that emergency responders arrive quickly, simulations are also intended to determine whether train crews are properly trained to get passengers out of an imperiled train.

As FRA noted in the NPRM, the tabletop exercise is the simplest to stage, as it involves only a meeting room and knowledgeable managers and employees from the passenger train operator and the appropriate responding organizations who voluntarily participate. For an imaginary emergency, the actions to be taken by the appropriate personnel are described; the time, equipment, and personnel necessary are estimated; and potential problems are predicted. Conflicts of functional areas, lack of equipment, procedural weaknesses or omissions, communication difficulties, and confusing terminology are among the problems which can be identified.

Passenger train operators can drill their train crews, other on-board personnel, supervisors, and control center operators on emergency operating procedures by posing a hypothetical emergency for employees to resolve without dispatching emergency responders to the scene. A drill could also involve the voluntary participation of personnel of a particular response organization, e.g., a fire department. The same type of problems as indicated for the tabletop exercise can be identified, and the actual response capabilities of personnel in terms of their knowledge of

procedures and equipment can be evaluated.

FRA recognizes that full-scale emergency exercises require weeks of carefully organized plans involving all participating organizations and involve the expenditure of funds for both the training and the actual full-scale exercise. Recording or videotaping the scenes and conversations in key areas of the exercise itself can serve as valuable classroom training for later years. A full-scale exercise is the total application of the resources of the passenger railroad operator and the voluntarily participating emergency response organizations. Such an exercise can reveal the degree of familiarity of both the passenger train system and emergency response organization personnel with train operations, the physical layout of trains, right-of-way structures and wayside facilities, emergency exits, and emergency equipment. Thus, shortcomings in the emergency preparedness plan and specific response protocols and procedures, as well as equipment, can be identified and corrected.

In the NPRM, FRA questioned whether tabletop exercises should be afforded the same weight in the final rule as full-scale simulations for purposes of demonstrating the readiness of a railroad to successfully react to a passenger train emergency. FRA also stated that the final rule might require that each railroad conduct a minimum number of its simulations as full-scale exercises. In this regard, FRA was skeptical as to whether a tabletop exercise could equal the comprehensiveness of a full-scale exercise and be a highly effective means of determining whether a railroad is adequately prepared for the likely variety of emergency scenarios that could occur on its lines, as well as an important training tool for the train crews, control center employees, and members of the emergency responder community who elect to participate. In contemplating during the NPRM stage of this proceeding whether to strengthen the emergency simulation requirement, FRA was aware that realistic full-scale simulations that enable all participants to practice using the on-board emergency equipment and emergency exits (and encourage the emergency responders to become personally familiar with passenger equipment and applicable railroad operations) could prove invaluable in helping railroads and the emergency responder community to manage real emergencies in ways that tabletop exercises cannot. However, FRA was also aware that the financial and logistical costs of

conducting full-scale simulations are undoubtedly higher, including the need to close railroad tracks during the hours of the simulation, opportunity costs for the railroads due to lost use of the passenger equipment that is employed in the simulations, unavailability of firefighting and rescue equipment for other emergencies while the simulations are being conducted, and salary costs for many or all of the simulation participants.

In order to best determine whether the final rule should require full-scale emergency simulations in conjunction with tabletop exercises, or perhaps in place of such exercises, FRA noted that it would carefully weigh the expected costs and potential benefits of all available options. FRA sought public comment on the perceived effectiveness of both full-scale emergency simulations and tabletop exercises, including a discussion of whether tabletop exercises can achieve the equivalent level of emergency preparedness as full-scale simulations. FRA was particularly interested in receiving comments from the emergency responder community, especially from those members who have participated in either emergency simulations or actual emergency situations with railroads.

Based upon FRA's review of the public comments and our careful consideration of the significant issues concerning emergency simulations, FRA has modified § 239.103 to require that all of the simulations that a railroad must perform are done full scale. While FRA still encourages railroads to supplement their emergency preparedness planning by voluntarily conducting tabletop exercises in addition to full-scale emergency simulations, FRA concludes that the safety objectives of emergency-preparedness planning are best served by railroads conducting at least a minimal number of comprehensive, full-scale exercises. FRA believes that the combination of full-scale simulations and the requirement contained in § 239.101(a)(5) for each railroad to develop a training program available to all on-line emergency responders who could reasonably be expected to respond during a passenger train emergency situation, enable railroads to best prepare for the likely varieties of emergency scenarios that could occur on their lines. A detailed discussion of the change in the simulation requirement from the NPRM stage of this proceeding, as well as a general discussion of the new requirement that railroads develop training programs for emergency responders and their organizations, is included in the

preceding "Discussion of Comments and Conclusions" portion of this document under item number 2.

To achieve a maximum level of effectiveness, full-scale drills and exercises should reinforce classroom training in emergency response and passenger evacuation for the passenger train operator personnel and the emergency response units who voluntarily participate. Procedures should also be included to teach personnel to identify the emergency and distinguish its unique demands, and to follow through with the appropriate responses. In addition, the full-scale drills and exercises should be planned to minimize hazards which could create an actual emergency or cause injuries and to provide a mechanism for simultaneous testing and reinforcement of emergency operating procedures for specific types of emergencies and evacuation procedures. Moreover, the full-scale drills and exercises should test the communication capabilities and coordination of the passenger operator with the emergency responders, as well as the operability and effectiveness of emergency equipment.

Paragraph (b) has been modified to require each railroad that provides commuter or other short-haul passenger train service to conduct a full-scale emergency simulation at least once during every two calendar years, provided that its operations include less than 150 route miles and less than 200 million passenger miles annually. For larger commuter or other short-haul passenger operations, i.e., those whose operations include at least 150 route miles or at least 200 million passenger miles annually, a full-scale simulation is required at least once during each calendar year. For all intercity passenger operations, regardless of the number of route miles or passenger miles, a full-scale simulation is required at least once during each calendar year. The final rule does not distinguish on the basis of major lines for purposes of permitting railroads to select locations for their emergency simulations. However, in crafting the final rule to limit the number of required simulations, FRA recognizes that full-scale simulations carry higher financial and logistical costs than do tabletop exercises, and that railroads will reach a greater representative sample of the emergency responder community by offering training programs in accordance with § 239.101(a)(5) to responders who may lack opportunities to partake in actual simulations.

Since FRA has determined that a train crew on a commuter or other short-haul operation will usually operate a train

along the same line for an extended period of time, and that emergency responder organization personnel tend to be line-specific in terms of their familiarity with a railroad's operations, it is crucial that each affected railroad provide adequate opportunities along all of its major lines for its employees and the responder community to obtain emergency response information and training opportunities. While FRA anticipates that each commuter or short-haul railroad will conduct full-scale emergency simulations as frequently as possible on its entire system, the final rule supplements the revised simulation requirement with the comprehensive liaison requirements of § 239.101(a)(5) so that each railroad can best reach the most heavily traveled portions of its system while conserving limited resources. In this regard, FRA recognizes that while emergency responder organizations tend to be densely located along the major lines of commuter and short-haul railroad operations, it is not necessary for each railroad to run full-scale simulations on all of its major lines according to a fixed timetable, provided that the railroad maintains proper liaison relationships with the affected responders.

In addition to the final rule setting forth the requirement for each affected railroad to perform its full-scale emergency simulations without regard to whether the railroad specifically includes all of its major lines, FRA also does not expect the railroad to require all of its employees who are trained under the emergency preparedness plan to attend the simulations. Moreover, FRA does not expect each railroad to invite all potential emergency responders to participate who are located along the portion of the railroad subject to the simulation. While FRA hopes that over the long term all railroad employees involved in the operation of passenger train service, as well as all applicable members of the emergency responder community, will have the opportunity to participate in this valuable training exercise and enhance their individual emergency preparedness skills, the simulations are also intended to identify shortcomings in each railroad's emergency preparedness plan and specific response protocols and procedures. The railroad must discuss the identified weaknesses and overall effectiveness of the emergency preparedness plan with the simulation participants at the debriefing and critique session held under § 239.105, and then initiate any appropriate improvements and/or amendments to the plan. As part of this

review process, the railroad is also expected to revise its employee training program under § 239.101(a)(2) and modify its liaison relationships with members of the emergency responder community established under § 239.101(a)(5), based upon the identified shortcomings of the railroad's emergency-preparedness planning. Accordingly, while the final rule does not mandate that affected railroads conduct numerous simulations along all of its major lines so as to include every possible participant, FRA concludes that the lessons learned from the mandatory debriefing and critique sessions and the interactions that occur within the required liaison relationships will have far reaching benefits.

In order to ensure that each affected railroad evaluates its overall emergency response capabilities through careful selection of the appropriate scenarios and locations on its lines for the emergency simulations, the final rule requires each railroad to organize simulations that will adequately test the performance of the railroad's program over time under the variety of emergency situations that could reasonably be expected to occur on the operation. For example, a railroad operating in territory that includes underground tunnels will need to conduct simulations to test the railroad's ability to ensure employee and passenger safety during an emergency situation occurring in this unique environment. Adequate lighting and sources of air in tunnels and underwater tubes are critical for successful passenger evacuation during emergencies. Further, emergency responders depend on sufficient lighting for visibility during fire suppression and rescue operations. If the railroad intends to evacuate passengers by using cross passages and/or fire doors leading to the opposite track area, or a separate center passageway between the adjacent track areas, the simulation should include practice in the requisite evacuation protocols and procedures.

In the case of a railroad providing intercity passenger service involving a number of lines operated over long distances, such as the coast-to-coast service provided by Amtrak, the need for the railroad to carefully plan its simulations and concurrently examine the effectiveness of its emergency preparedness plan under a variety of scenarios becomes crucial. Many of Amtrak's lines run for hundreds of miles through remote locations that could include risks from tunnel mishaps, natural disasters (e.g., fires, floods, and earthquakes), hazardous material leaks, and/or acts of terrorism.

Further, because of the length of time required to travel these lines, the same train will be operated by more than one crew and may involve operation over the line of a freight railroad. Since Amtrak's lines traverse numerous populated communities throughout the United States, an emergency situation could require the assistance of any number of potentially thousands of emergency responders from these locations.

While FRA is not requiring operators of intercity service to conduct additional emergency simulations along its lines in order to reach a greater proportion of employees and members of the emergency response community, we do expect such railroads to plan simulations that sufficiently test the elements of their emergency preparedness plan under the variety of circumstances that could occur in intercity service. Although FRA recognizes that the length and diversity of Amtrak's operations limit the potential benefits from resources spent on conducting emergency simulations, the final rule requires Amtrak to conduct a minimum of only one full-scale emergency simulation per calendar year on any selected portion of its entire system, without regard to whether the simulation takes place on a particular business unit or other major organizational element. Although FRA considered imposing more rigorous requirements in the final rule on Amtrak (and other operators of intercity service) in order to ensure the requisite level of emergency preparedness, FRA will instead rely upon the thoroughness of the liaison activities and programs initiated by Amtrak in accordance with § 239.101(a)(5).

A detailed discussion of FRA's liaison-relationship expectations for Amtrak is included in the preceding "Section-by-Section Analysis" portion of this document under § 239.101(a)(5). That discussion section outlines Amtrak's September 2, 1997 meeting with FRA, during which the participants discussed the issue of developing a program for distributing Amtrak's emergency preparedness plan to emergency service providers located in areas through which Amtrak operates, and also summarizes Amtrak's written submission to FRA dated October 27, 1997 addressing the same topic.

By considering each of the emergency scenarios that could possibly occur on the different segments of the railroad (e.g., simulations of a derailment at a remote location where emergency responder assistance is not immediately available, an on-board fire inside a

tunnel or on a bridge, a derailment involving a freight train carrying a hazardous materials spill, etc.), Amtrak can carefully design a program to fulfill its overall emergency response needs. By combining optimal use of the required minimum number of emergency simulations with a comprehensive training program offered to emergency responders as part of the liaison relationship, FRA concludes that a passenger railroad as diverse as Amtrak (which operates coast-to-coast service under a wide variety of operating conditions through the jurisdictions of numerous emergency responders) can best achieve the emergency preparedness goals of this rule throughout its entire system without expending a disproportionate amount of its limited resources.

Since FRA has decided to scale back the simulation requirement to involve only one meaningful full-scale simulation (performed either annually or every two years depending on the size of the railroad), FRA believes it is imperative that all railroads be required to study and evaluate their emergency response capabilities in controlled settings enabling them to carefully plan their full-scale emergency scenarios. Accordingly, FRA has modified the final rule to prohibit a railroad from counting either a tabletop exercise or the activation of its emergency preparedness plan during an actual emergency situation toward the simulation requirement.

However, since FRA recognizes that full-scale emergency exercises require extensive planning and commitment of human resources, the final rule permits a railroad to postpone a scheduled full-scale simulation for up to 180 days beyond the applicable calendar year completion date if the railroad has activated its emergency response plan after a major emergency. The postponement period permits the railroad to properly deal with the aftermath of an actual major emergency, defined in paragraph (d) to cover an unexpected event related to passenger operations that results in serious injury or death to one or more persons combined with reportable property damage, without the added stress or logistical burden of immediately conducting a simulation. During this postponement, FRA expects the railroad to measure the effectiveness of its emergency preparedness plan in conjunction with the debriefing and critique session held pursuant to § 239.105, and then improve or amend its plan, or both, as appropriate, in accordance with the information developed. Paragraph (c) also requires

the railroad to modify the rescheduled simulation, if appropriate, based upon the lessons learned from its response to the actual emergency.

Although paragraph (c) allows a limited exception under which a railroad may postpone a scheduled full-scale simulation, the calendar timetable remains the same. Take, for example, a commuter railroad whose operations include 250 million passenger miles annually and has a full-scale emergency simulation scheduled for December 1 of calendar year 2001, but has a major emergency situation occur on November 15. In accordance with the terms of § 239.103(b)(2), the railroad is required to conduct a minimum of one full-scale emergency simulation during calendar year 2001 and another one during calendar year 2002. Although, § 239.103(c) permits the railroad the option of postponing its full-scale simulation for calendar year 2001 from December 1, 2001 until June 29, 2002, the deadline for the full-scale simulation for calendar year 2002 (assuming that the postpone exception of paragraph (c) does not become an issue during calendar year 2002) remains at December 31, 2002.

14. *Debriefing and Critique: Section 239.105*

Section 239.105 recognizes the value of conducting a formal evaluation process after the occurrence of either an actual emergency situation or a full-scale emergency simulation exercise to determine what lessons can be learned. To increase the effectiveness of the evaluation of an emergency simulation, railroad personnel should be designated as evaluators to provide a perspective on how well the emergency preparedness plan and procedures were carried out. Although not required by the final rule, railroads are also encouraged to invite outside emergency response organizations and other outside observers to participate as evaluators. Evaluators should be given copies of the railroad's emergency preparedness plan before the simulation is conducted, and a preliminary meeting should be held to familiarize the evaluators with the drill or exercise and assign functional areas of concern for evaluation (e.g., communications, evacuation times). Depending on the elaborateness of the simulation, evaluators may also choose to use video cameras to record the sequence of events, actions of personnel, and use of emergency equipment.

FRA did not propose a specific deadline in the NPRM by which each railroad must conduct its debriefing and critique session after each passenger

train emergency situation or full-scale simulation. In addition, FRA did not receive any public comments or recommendations from members of the Working Group on an appropriate timeframe. In order to encourage railroads to conduct the required debriefing and critique sessions in a timely and reasonable period of time, thereby maximizing the railroad's emergency-preparedness benefits from the experience, FRA has revised the final rule to require that these sessions be held no later than 60 days after the emergency situation or simulation takes place. Of course, while FRA is providing a maximum timeframe of 60 days, FRA expects that, in the majority of cases, railroads will hold these valuable sessions within only 30 days of the emergency situation or simulation.

The purpose of a debriefing and critique session is to review with railroad personnel the reports of evaluators, to present comments or observations from other persons, and to assess the need for any remedial action, either to correct deficiencies or to generally improve the effectiveness of the emergency operations and procedures. In addition, the debriefing and critique session provides an excellent opportunity for the railroad to determine the effectiveness of its passenger awareness program activities. For example, if an emergency situation requires passengers to evacuate the train, the session should determine if everyone onboard correctly followed the safety instructions of the crewmembers and was aware of the emergency window and door exit locations and their means of operation.

Persons responsible for conducting the sessions should be instructed by the railroad to ask questions that will test emergency preparedness procedures, assess training, and evaluate equipment. After a simulation, these persons shall debrief all participants (including simulated victims, if any) who can offer valuable insights and thus help the railroad to revise its procedures. The debriefing session should help to determine what emergency preparedness or response procedures could not be used because of the special circumstances of either the train or the passengers, and whether coordination between the railroad and the emergency responders requires improvement.

The above method of conducting post-simulation debriefing and critique sessions should also be used by railroads to evaluate reactions to actual emergencies. Weaknesses in emergency preparedness procedures and equipment and areas for improving training should be identified, and the

railroad shall amend its emergency preparedness plan in accordance with § 239.201. All persons involved shall be debriefed.

Although FRA did not receive any substantive comments on the need to conduct debriefing and critique sessions in order to accomplish the stated goal of improving the effectiveness of emergency preparedness plans, some commenters did request that FRA explicitly state in the rule text the circumstances under which the requirement to conduct a debriefing and critique session would be triggered. In this regard, Amtrak commented that debriefing and critique sessions can be useful in determining the effectiveness of emergency response procedures and in developing improvements, but represent substantial undertakings by railroad personnel (possibly including both an operating and host railroad) and representatives of emergency response agencies. Amtrak recommended that FRA not require full debriefing and critique sessions after accidents where no threat to passengers on the train requiring a possible evacuation or other similar major response existed. Where there was such a threat, Amtrak suggested that FRA require a full debriefing and critique session only after situations during which the Incident Command System (ICS), or an equivalent multi-jurisdictional emergency response system, was activated. Amtrak noted that the ICS was originally developed by the National Fire Academy, and had been endorsed by FEMA, EPA, and DOT. When such systems are activated, the participation and resources of numerous local emergency response agencies and the railroad must be coordinated; this coordination is the most meaningful test of an emergency response plan's effectiveness.

Amtrak stated that for situations when the ICS was not activated, a smaller-scale debriefing and critique session might be appropriate. Amtrak acknowledged that the proposal did not require a debriefing and critique session after each grade crossing or trespasser accident, but requested that this exception be stated explicitly in the rule text. Amtrak also requested that the rule text exclude a debriefing and critique session when there is no risk to persons on the train that would require the type of evacuation or other emergency response contemplated by the regulations. Amtrak opined that there is little benefit to performing post-accident evaluations when there was no risk to persons on the train that required a prompt, coordinated response involving both railroads and emergency

responders. Since Amtrak is involved in approximately one grade crossing or trespasser incident every other day, a requirement to conduct a debriefing and critique session after such occurrences would be burdensome.

CALTRAIN commented that the debriefing requirement fails to establish the threshold or norms that trigger a debriefing and critique session. CALTRAIN argued that this decision should be made by railroad management, with the exception of simulation drills and tabletop exercises, which typically conclude with a debriefing and critique.

APTA commented that under the proposal, a commuter railroad must conduct a debriefing after every passenger train emergency. APTA suggested that FRA revise the rule to add a threshold before the debriefing requirement is triggered, and recommended that the requirement be triggered only when a major emergency affects five or more passengers. As proposed, APTA argued that the provision would be costly to comply with and annoy passengers, without any corresponding benefit to rail safety. For example, a passenger heart attack would trigger the debriefing requirement. In addition, APTA noted that the opportunity for passenger fraud is much greater, since a passenger being debriefed may attempt to collect money from the railroad for a nonexistent injury.

Although METROLINK did not address the issue of establishing a threshold level in the final rule that would trigger the debriefing and critique requirement, it did comment before issuance of the NPRM that if a commuter railroad did a tabletop exercise or simulation, it could not follow the criteria of the proposal for a debriefing. During a table exercise or simulation, a railroad does not usually notify the emergency responders via the normal means of communication, does not respond via normal emergency conditions (code three with lights and sirens), and does not involve real passengers in the simulation. As noted in FRA's preceding "Discussion of Comments and Conclusions" portion of this document (item number 2), as well as in the sectional analysis of § 239.103, the final rule prohibits a railroad from counting a tabletop exercise toward the simulation requirement of the final rule. Accordingly, METROLINK's concern is no longer relevant.

A substituted paragraph (b) has been added to § 239.105 to set forth the limited circumstances under which a debriefing and critique session is not required after a railroad has activated its

emergency preparedness plan. Upon review of the comments, FRA recognizes the potentially significant commitment of resources that such a session can involve, and does not wish to impose this obligation on railroads unless the evaluation process would focus on ways to improve the effectiveness of the emergency preparedness plan in ways that would benefit passengers on board the train. Since emergency situations involving significant threats to the safety or health of train passengers that require immediate attention may entail a variety of unique fact patterns, the railroad employees and passengers involved in the invaluable debriefing and critique exercise can help individuals involved in future incidents benefit from a prompt and coordinated response from the railroad and the emergency responder community. However, because collisions of the type set forth in paragraph (b) occur with greater regularity and involve more predictable fact patterns (e.g., a motor vehicle at a gated crossing circumvents a lowered gate arm and is hit by a passenger train, with no one on the train suffering an injury), debriefing and critique sessions after these incidents would quickly become repetitive in nature. Accordingly, FRA would burden the railroads, yet achieve only a marginal benefit to rail safety.

In accordance with the above change in the final rule, while the term "emergency or emergency situation" is defined in § 239.7 of this part to include a collision with a person, including suicides, FRA does expect a railroad to conduct a debriefing and critique session after every grade crossing accident. Although the railroad would still be expected to invoke its emergency preparedness plan in the event of any grade crossing accident, the goal of this final rule is to ensure that railroads effectively and efficiently manage passenger train emergencies. Accordingly, FRA does not intend for the debriefing and critique requirements of this section to apply when an emergency situation involves only a motorist or pedestrian who has been injured or killed, but does not affect the passengers onboard the train. Of course, if a grade crossing accident leads to an evacuation of the passenger train (e.g., a gasoline truck collides with the side of a passenger train, and diesel fuel begins to leak from the locomotive, creating the risk of a fire or an explosion), then a railroad must conduct a post-accident debriefing and critique session. In addition, a railroad cannot count its activation of the emergency

preparedness plan under these circumstances, or any other circumstances, for purposes of satisfying the emergency simulation requirements of § 239.103.

While a significant derailment with one or more injured passengers or a fire on a passenger train would undoubtedly involve significant threats to passenger safety, and therefore require a debriefing and critique session, the proposed rule left open the question of what other types of emergency situations would trigger the requirements of this section. The NPRM sought public comment on what sorts of situations, or "significant threats," FRA should include in the final rule under the definition of "emergency" or "emergency situation" set forth in § 239.7. Although no comments were received, FRA has revised the definition of "emergency" or "emergency situation" in § 239.7 to include: derailments; a fatality at a grade crossing; a passenger or employee fatality, or an illness or injury to one or more crewmembers or passengers requiring admission to a hospital; an evacuation of a passenger train; and a security situation (e.g., a bomb threat).

The final rule does not prescribe an FRA form or other substantive questionnaire to be used at the debriefing and critique sessions, or set forth specific questions to be asked after a full-scale simulation or actual emergency. Paragraph (c) simply requires the railroad to determine, by whatever means it selects, the effectiveness of its emergency preparedness plan; specifically, the functional capabilities of the on-board communications equipment, the timeliness of the required emergency notifications, and the overall efficiency of the emergency responders and the emergency egress of the passengers. Although the requirements of paragraph (c) were included in the NPRM as paragraph (b), the requirements remain essentially unchanged under its new designation, except for some minor stylistic changes.

In the NPRM, FRA had invited comments on whether the final rule should specify additional types of issues that must be addressed by railroads at debriefing and critique sessions (in addition to the five issues required to be addressed in paragraph (c)), or whether each railroad should retain some flexibility to develop its own approach to conducting these sessions. FRA did not receive any comments on this issue. Upon further deliberation, FRA concludes that if a railroad rigorously analyzes its emergency response scenario in accordance with the five required subparagraphs to paragraph (c),

and corrects all relevant deficiencies identified by the debrief and critique session, there is no need to impose any additional requirements in the final rule. Nevertheless, still FRA encourages railroads to voluntarily discuss any or all of the following questions at their debriefing and critique sessions:

- Did on-board personnel try to initiate a radio call immediately?
- How long did it take for on-board personnel to reach and inform the control center of the emergency situation?
- What was the method of notification to the control center? Was the method an on-board radio or a wayside radio (if equipped)?
- Was there adequate radio communication equipment? Was it used properly? Did it work properly?
- Did on-board personnel know the proper emergency telephone number to call from the wayside telephone?
- Did on-board personnel identify him/herself to the control center by name and location?
- Did on-board personnel report the number (approximate or actual, as appropriate) and status of the passengers?
- Did on-board personnel make audible, appropriate announcements to passengers? How many minutes elapsed after the simulation or emergency began before the first announcement was made?
- Did on-board personnel properly operate the fire extinguishers?
- Did on-board personnel request deenergization of the third rail or catenary power?
- Did on-board personnel request the halting of train movements?
- How long did it take for the first emergency response unit to arrive at the emergency scene?
- How long did it take to completely evacuate the train or right-of-way structure or wayside facility or extinguish a fire (real or simulated), or both?

Of course, during the course of FRA's review of the implementation and effectiveness of the debriefing and critique requirement in the final rule, FRA will analyze whether this requirement, as written, achieves the desired improvements in emergency preparedness. This review will determine whether the experiences of railroad employees, railroad passengers, and members of the emergency response community indicate that FRA should require railroads to consider any or all of the above questions during their debriefing and critique sessions. Based on FRA's evaluation, the agency may initiate further rulemaking activity or

other appropriate action to ensure that this element of emergency preparedness planning is sufficiently addressed.

In order to achieve the goals of this section, and to comply with the debriefing and critique recordkeeping requirement of paragraph (d), evaluators should be provided with critique sheets, to be collected and used in the debriefing and critique sessions conducted by the railroads. At a minimum, whatever documentation the railroad selects to comply with paragraph (d) shall contain the date(s) and location(s) of the simulation and the debriefing and critique session, and should include the names of all participants at each session. Under the final rule, the critique sheets, or equivalent records, must be maintained by the railroad at its system and applicable division headquarters for two calendar years after the end of the calendar year to which they apply, and be made available for FRA and State inspection and copying during normal business hours. Although the requirements of paragraph (d) were set forth in the NPRM as paragraph (c), the requirements remain essentially unchanged under its new designation. One notable distinction is that while the NPRM was silent as to how long the debriefing and critique records needed to be retained, the final rule imposes a retention period of two years. A second distinction is that while the NPRM was silent on what specific information the records of the debriefing and critique sessions needed to include, the final rule states that each record must include the: date and location of the passenger train emergency situation or full-scale simulation; date and location of the debriefing and critique session; and names of all participants in the debriefing and critique session.

15. Emergency Exits: Section 239.107

In the course of normal passenger train operations, persons enter and exit passenger cars at a station platform through doors on the side of the train. However, when a disabled train cannot be moved to the nearest station, alternative evacuation methods must be employed. Emergency access to and egress from a passenger car may be achieved through outside doors, end doors, and windows. In some emergencies, such as when a fire is confined to a single passenger car, persons may be moved through the end door(s) to an adjacent car. In other emergencies, transfer of all the passengers from the disabled train may be required.

Not all passenger cars have vestibule side doors on both ends, and in some

equipment, operation of these doors has required considerable effort, including hand tools. If a power loss occurs, crewmembers may be unable to open either or both of the car vestibule side doors from the normal key control station in the car. If side-door emergency controls permit opening of only one sliding door, it could prove difficult to move certain individuals through it. Also, if the vestibule side doors cannot be opened immediately from either the inside or the outside, persons may panic and could be injured as others attempt to leave the car.

As FRA noted in the NPRM stage of this proceeding, commuter railroads have agreed to FRA's request that arrangements requiring hand tools (coins and pencils) be retrofitted. The issue of relocation of manual releases is being addressed in the rulemaking on Passenger Equipment Safety Standards (FRA Docket No. PCSS-1), and the Passenger Equipment Safety Standards Working Group will be evaluating other improvements in door design and operation. Section 239.107(a) requires that all doors intended by a railroad to be used during an emergency situation be properly marked inside and outside, and that the railroad post clear and understandable instructions for their use at the designated locations. However, in contrast to the broad definition of "passenger car" contained in part 223 of this chapter, the text of the final rule has been revised to reflect the fact that the marking requirements for emergency door exits on passenger cars do not apply to self-propelled passenger cars designed to carry baggage, mail, or express.

Section 239.107(a)(1) requires that the emergency egress exits be conspicuously and legibly marked on the inside of the car with luminescent material or be properly lighted. FRA realizes that during an emergency the main power supply to the passenger cars may become inoperative and that crewmembers with portable flashlights may be unavailable. Since lack of clear identification or lighting could make it difficult for passengers to find the emergency door exits, the final rule requires luminescent material on all emergency egress door exits (or secondary auxiliary lighting near these exits) to assist and speed passenger egress from the train during an emergency. The marking of the emergency door exits must be conspicuous enough so that a reasonable person, even while enduring the stress and potential panic of an emergency evacuation, can determine where the closest and most accessible emergency route out of the car is

located. In addition, while this section does not prescribe a particular brand, type, or color of luminescent paint or material that a railroad must use to identify an exit, FRA intends each railroad to select a material durable enough to withstand the daily effects of passenger traffic, such as the contact that occurs as passengers enter and leave the cars.

Section 239.107(a)(2) requires that the emergency door exits intended for emergency access by emergency responders for extrication of passengers be marked with retroreflective material, so that the emergency responders can easily distinguish them from the nonaccessible doors simply by shining their flashlights or other portable lighting on the marking or symbol selected by the railroad. Again, while this section does not prescribe that a railroad use a particular brand, type, or color of retroreflective material to identify an access location, FRA intends each railroad to select a material durable enough to withstand the daily effects of weather and passenger contact, and capable of resisting, to the extent possible, the effects of heat and fire. If all doors are equally operable from the exterior, no designation would be useful, nor would any be required. In the separate rulemaking on passenger equipment safety standards, FRA is addressing appropriate requirements for periodic maintenance and replacement of the emergency door exit markings.

The final rule requires railroads to post clear and understandable instructions at designated locations describing how to operate the emergency door exits. This section does not mandate that railroads use specific words or phrases to guide the passengers and emergency responders. Instead, each railroad should evaluate the operational characteristics of its emergency door exits, and select key words or diagrams that adequately inform the individuals who must use them. While railroads are encouraged to post comprehensive instructions, FRA also realizes that during an emergency situation every additional moment devoted to reading and understanding access or egress information places lives at risk. In addition, FRA would already expect passengers and emergency responders to be familiar with the location and operation of the railroad's emergency door exits as a result of emergency responder liaison activities and passenger awareness programs conducted in accordance with proposed § 239.101(a)(5) and (a)(7).

In deciding to require that railroads must mark all door exits intended for emergency access and post access

instructions, FRA carefully considered concerns expressed by members of the Working Group that this requirement would enable vandals to gain easy or casual entry into passenger cars left overnight in rail yards, particularly adolescents who might otherwise not know how to operate specialized door mechanisms. In addition to FRA's desire to avoid unnecessary expenses to railroads for repairing vandalized or damaged rail equipment, FRA does not wish to see on-board emergency equipment disappear from unattended trains due to the acts of individuals who learned how to gain illegal access to the equipment courtesy of a Federal regulation. FRA also recognizes that under § 239.101(a)(5), railroads are required to develop training programs available to all on-line emergency responders who could reasonably be expected to respond to an emergency situation, with an emphasis upon access to railroad equipment, location of railroad facilities, and communications interface, and that such comprehensive training information may lessen the need for railroads to place markings on every emergency door or post detailed access instructions. However, FRA realizes that not every potential emergency responder will choose to participate in the training program, and that not everyone who participated will recall all of the imparted information on access to the equipment while in the midst of responding to a major railroad accident or incident. FRA is confident that railroads will find ways of protecting their unattended equipment through appropriate security measures, and the agency will not risk loss of human life from delays in emergency responder rescue efforts merely because of the possibility that financial losses from vandalism will increase. Accordingly, the comprehensive marking and operating instruction requirements proposed in the NPRM remain unchanged.

Paragraph (b) requires each railroad operating passenger train service to properly consider the nature and characteristics of its operations and passenger equipment to plan for routine and scheduled inspection, maintenance, and repair of all windows and door exits intended for either emergency egress or rescue access by emergency responders. In the case of emergency window exits, the inspection, maintenance, and repair activities must be performed consistent with the requirements of part 223 of this chapter. While the final rule does not require railroads to perform these tasks in accordance with a specific timetable or methodology, except with respect to

the periodic sampling requirement for emergency window exits discussed below, FRA expects each railroad to develop and implement procedures for achieving the goals of this paragraph. Visual inspections must be performed periodically to verify that no emergency exit has a broken release mechanism or other overt sign that would render it unable to function in an emergency. Maintenance, including lubrication or scheduled replacement of depreciated parts or mechanisms, must be performed in accordance with standard industry practice and/or manufacturer recommendations. All emergency exits that are found during the course of an inspection or maintenance cycle to be broken, disabled, or otherwise incapable of performing their intended safety function must be repaired before the railroad may return the car to passenger service.

For purposes of enforcement by FRA of § 239.107, the phrase "in service" means a passenger car that is in passenger service, i.e., the passenger car is carrying, or available to carry, fare-paying passengers. A passenger car is not in service if it is: being hauled for repairs and is not carrying passengers; in a repair shop or on a repair track; on a storage track and is not carrying passengers; or has been delivered in interchange but has not been accepted by the receiving railroad. FRA will impose a civil penalty for passenger equipment that is missing an emergency-exit marking or has an inoperable emergency exit only if the railroad had actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising reasonable care would have had that knowledge. Accordingly, since FRA is not employing a strict liability standard in enforcing § 239.107, FRA would ordinarily not impose a civil penalty on the railroad for the actions of a vandal. However, once the railroad personally discovers or is otherwise notified that a marking is missing or an emergency exit is inoperative, FRA expects the railroad to replace the missing marking or repair the inoperative exit before the passenger car (or train, as appropriate) is again placed in service on a subsequent calendar day. In this regard, FRA will expect each railroad to ensure its compliance with § 239.107(b) by performing whatever daily exterior and interior mechanical inspection requirements that eventually result from the rulemaking on passenger equipment safety standards. See proposed §§ 238.303 and 238.305 of this chapter.

Carrying forward requirements currently contained in FRA's Emergency

Order No. 20, the final rule also requires each railroad to periodically test a representative sample of emergency window exits on its passenger cars to verify their proper operation. The sampling of these emergency window exits must be conducted in conformity with either of two commonly recognized alternate methods, which will provide a degree of uniformity industry wide. Both methods require sampling meeting a 95-percent confidence level that all emergency window exits operate properly (i.e., the methods do not accept a defect rate of 5 percent). Rather than require railroads to test all window exits on a specific type or series of car if one car has a defective window exit, the final rule permits the railroads to use commonly accepted sampling techniques to determine how many additional windows to test. In general, these principles require that the greater the percentage of window exits that a railroad finds defective, the greater the percentage of windows that the railroad will have to test. Specifically, sampling must be conducted to meet a 95-percent confidence level that no defective units remain in the universe and be in accord with either Military Standard MIL-STD-105(D) Sampling for Attributes or American National Standards Institute ANSI-ASQC Z1.4-1993 Sampling Procedures for Inspections by Attributes. Defective units must be repaired before the passenger car is returned to service.

The final specifies that a railroad must test a representative sample of emergency window exits on its cars at least once during every 180 days to verify their proper operation. Although commenters were encouraged to address this issue by indicating whether the sampling should occur on an annual basis, or on a less frequent basis, no comments were received. Accordingly, the level of frequency remains unchanged from the NPRM stage of this proceeding.

The inspection, maintenance, and repair records concerning emergency window and door exits must be retained at the system headquarters for the railroad and at the division headquarters for each division where the inspections, maintenance, or repairs are performed (i.e., the records availability must be division specific). The records must be retained for two calendar years after the end of the year to which they relate. The records can consist of multiple documents, and may contain separate sections covering inspection, maintenance, and repair or separate sections covering different types of passenger equipment. Additionally, railroads must make these

inspection, maintenance, and repair records available to duly authorized representatives of FRA and States participating under part 212 of this chapter for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

METROLINK commented that in order to avoid the unnecessary burden of maintaining duplicate records, the rule should require railroads to store all of the maintenance records for the emergency window and door exits at the site of the inspections. In METROLINK's case, that site would be the applicable division headquarters, which is no more than 15 miles from its system headquarters. METROLINK also noted that paragraph 239.107(c) does not indicate for how long the inspection records must be retained, and recommended that since the current rule calls for major service inspections to be retained for 180 days (or until the next inspection is performed) the final rule should establish a similar timeframe.

In response to METROLINK's comment concerning the lack of a timeframe for the retention of inspection records, FRA has revised the final rule to require a two-year retention period for each railroad's records of inspection, maintenance, and repair of its emergency window and door exits. Despite METROLINK's preference for a shorter timeframe, FRA concludes that two years is necessary to allow FRA an adequate opportunity to perform meaning compliance audits and determine if a railroad's overall pattern of compliance with this section is sufficient. In addition, while FRA recognizes the additional expense of retaining copies of inspection records at both the system and divisional levels, this dual approach enables FRA's regional inspection forces to perform division-specific inspections, while also permitting FRA to study the compliance of a railroad's entire system. However, as METROLINK illustrates by describing its own operational characteristics, at least one member of the railroad population has only one central maintenance facility which solely performs all of the inspection, maintenance, and repair of its entire fleet of passenger cars. Under this limited scenario, FRA agrees that it would be redundant to require a railroad to maintain duplicate sets of records at both its system and divisional offices. Accordingly, the single central maintenance facility would be an acceptable repository for all of the inspection, maintenance, and repair records for such a railroad.

FRA has added paragraph (d) to the final rule to authorize railroads to retain their records of inspection, maintenance, and repair of emergency window and door exits by electronic recordkeeping, subject to the conditions set forth in this provision. This provision provides an alternative for railroads retaining certain information, as required in paragraph (c). FRA realizes that requiring railroads to retain the information in paper form would impose additional administrative and storage costs, and that computer storage of these documents would also enable railroads to immediately update any amendments to their operational testing programs.

Each participating railroad must have the essential components of a computer system, i.e., a desktop computer and either a facsimile machine or a printer connected to retrieve and produce records for immediate review. The material retrieved in hard copy form must contain relevant information organized in usable format to render the data completely understandable. The documents must be made available for FRA or participating State inspectors during normal business hours, which FRA interprets as the times and days of the week when railroads conduct their regular business transactions. Nevertheless, FRA reserves the right to review and examine the documents prepared in accordance with the Passenger Train Emergency Preparedness regulations at any reasonable time if situations warrant.

Additionally, each railroad must provide adequate security measures to limit employee access to its electronic data processing system and must prescribe who can create, modify, or delete data from the database. Although FRA does not identify the management job position capable of instituting changes in the database, each railroad must indicate the source authorized to make such changes. Each railroad must also designate who will be authorized to authenticate the hard copies produced from the electronic format. In short, each railroad electing to retain its records electronically must ensure the integrity of the information and prevent possible tampering with data, enabling FRA to fully execute its enforcement responsibilities.

16. Emergency Preparedness Plan; Filing and Approval; Section 239.201

Section 239.201 specifies the process for review and approval by FRA of each passenger railroad's jointly-adopted emergency preparedness plan. The intent of the review and approval is to be constructive, rather than restrictive.

It is anticipated that the passenger railroads, in conjunction with the railroads hosting these operations (when applicable), will develop and implement varied plans based upon the special circumstances involving their individual operations. Under the final rule, FRA requires that each affected railroad summarize its internal discussions and deliberative processes to explain how the railroad's unique and individual operating characteristics determined how each issue for the passenger train operation was finally addressed in the emergency preparedness plan. Specifically, FRA expects each railroad to participate, as appropriate, in preparing a review of the analysis that led to each element of the emergency preparedness plan that the passenger operation submits to FRA for approval, including a consideration of the expected monetary costs and anticipated safety benefits associated with each section of the plan.

In its comments, METROLINK stated that the term "analysis" in the phrase "shall include a summary of the railroad's analysis supporting each plan element and describing how each condition on the railroad's property is addressed in the plan" is vague and lacking in direction. METROLINK then asked whether FRA expects to receive a cost benefit analysis, systems approach, or safety value analysis. In addition, METROLINK questioned whether the term "condition on the railroad's property" concerns elements of the plan such as earthquakes, wind, and power outages.

In response to METROLINK's comments, FRA notes that the word "analysis" means that FRA expects each railroad to identify all vulnerabilities that exist on its property in terms of potential risks to rail safety and emergency preparedness planning. In the context of identifying the known risks, each railroad should undertake a systems approach in order to explain how it will mitigate the level of each risk to an acceptable level. FRA does not consider earthquakes, wind, or power outages, in and of themselves, to be "conditions on the railroad's property." However, if a railroad requires electrical power to operate, and its operations run across a trestle without walkways, then the emergency preparedness plan must address how the railroad will mitigate the risk connected with one of its trains becoming stranded on a trestle during a power outage.

FRA will conduct a review of each plan so that there can be an open discussion of the plan's provisions from which all concerned parties can benefit. However, in order to ensure compliance

with minimum plan requirements FRA will first conduct a preliminary review of each plan in accordance with revised paragraph (b)(1), and then conduct a comprehensive and detailed review of each plan in accordance with revised paragraph (b)(2) prior to final approval and implementation. A detailed discussion of the issue of preliminary and final review of emergency preparedness plans is included in the preceding "Discussion of Comments and Conclusions" portion of this document under item number 4.

FRA expects to involve members of the Passenger Train Emergency Preparedness Working Group in developing benchmark criteria for plan approvals to simplify plan development and approval. It is anticipated that this criteria will address program elements that include the following:

- Specific course content for training programs of on-board personnel, control center personnel, and other key employees;
- Minimum requirements for full-scale emergency exercises, including frequency and content of drills with emergency responders and simulations to determine rapidity of emergency evacuations under varying scenarios;
- Specific means for providing emergency safety information to passengers, similar to on-board briefings provided in commercial aviation;
- Detailed requirements for tunnel safety, including lighting and equipment; and
- Additional attention to emergency equipment, by recommending types and numbers of various kinds of equipment that may be useful under varying operating scenarios.

FRA will also review all plan amendments prior to their going into effect. FRA had requested comments on whether there are any categories of plan amendments that should be permitted to go into effect immediately, prior to review and approval, because they constitute improvements for which implementation delay should be avoided. Since FRA did not receive any comments on this issue, the final rule requires that all proposed plan amendments be submitted for review before the railroad may revise its emergency preparedness plan. Within 45 days of receipt of a railroad's proposed amendment to its plan, FRA will review the proposal and notify the railroad's primary contact person of the results of the review and identify any deficiencies found. If FRA discovers a deficiency, the railroad must correct it before the amendment may go into effect.

All persons, such as contractors, who perform any action on behalf of a railroad are required to conform to the emergency preparedness plans in effect on the railroads upon which they are working. Persons whose employees are working under a railroad's approved emergency preparedness plan need not submit a separate plan to FRA for review and approval. For example, if a passenger railroad hires an outside independent contractor to conduct an emergency simulation pursuant to § 239.103, the contractor must perform this task in accordance with the passenger operation's plan. However, if a freight railroad train crew operates a passenger train for a commuter rail authority, the freight railroad must coordinate the applicable portions of the emergency preparedness plan with the commuter rail authority. While an assignment of responsibility for compliance made under § 239.101(a)(3) must be clearly stated in the plan, the assignor shall not be relieved of responsibility for compliance with this part.

Although the final rule has been revised to state that the final review process will include ongoing dialogues with rail management and labor representatives, the rule does not specifically require the direct involvement of railroad employees or their representatives in the process of designing the emergency preparedness plan. In this regard, FRA notes that the responsibility for having a plan that conforms with this rule lies with the employer. However, it should be noted that the success of an emergency preparedness plan requires the willing cooperation of all persons whose duties or personal safety are affected by the plan.

17. Retention of Emergency Preparedness Plan; Section 239.203

Although FRA did not receive any comments, this section has been modified to reflect the new requirement in § 239.201 that each passenger railroad jointly adopt a single emergency preparedness plan with all railroads hosting its passenger service (if applicable). The single emergency preparedness plan prepared by the passenger railroad and all of its applicable host railroads, as well as all subsequent amendments to the single plan, must be retained at the system headquarters for each railroad and at the division headquarters for each division on each affected railroad where the plan is in effect (i.e., the records availability must be division specific). The emergency preparedness plan may consist of multiple documents or

booklets and may contain separate sections covering the varying job functions and plan responsibilities of on-board and control center personnel. Additionally, railroads must make the emergency preparedness plan records available to duly authorized FRA representatives for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

18. Operational (Efficiency) Tests: Section 239.301

Section 239.301 contains the requirement that railroads monitor the routine performance of employees who have individual responsibilities under the emergency preparedness plan to verify that the employee can perform the duties required under the plan in a safe and effective manner. It permits the railroad to test proficiency by requiring the employee to complete a written or oral examination, an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with this section. This testing may also involve check rides and control center visits, along with unannounced, covert observation of the employees.

This section requires a railroad to keep a record of the date, time, place, and result of each operational (efficiency) test that was performed in accordance with its emergency preparedness plan. Each record must identify the railroad officer administering the test of each employee. Accordingly, by identifying the specific data points that each record must provide, this section will promote the examination of relevant information from captured data sources, enabling FRA to better determine the effectiveness of a railroad's emergency preparedness plan. A written or electronic records of each operational (efficiency) test must be kept for one calendar year after the end of the year in which the test was conducted, and must be made available for inspection and copying by FRA and participating States during normal business hours.

FRA received only one comment concerning the requirements of this section. APTA expressed a general concern that a commuter railroad operating over a host railroad may not be able to convince the freight railroad's dispatcher to provide track time for

efficiency tests, especially on busy freight corridors. APTA offered to work with FRA to help in the implementation of this section.

FRA recognizes both the operational complexities and logistical realities of commuter railroads sharing trackage rights with freight railroads on the general railroad system of transportation. While FRA remains confident that dispatchers on host railroads will fully cooperate with commuter operations and provide them with safe and adequate opportunities to perform on-the-job verifications to evaluate individual employee performance under the emergency preparedness plan, the rule does permit a railroad to utilize formal examinations, interactive computer programs, and practical demonstrations to measure the success of its training program. Nevertheless, FRA will intervene as appropriate to ensure the successful and effective implementation of each railroad's emergency preparedness plan.

19. Electronic Recordkeeping: Section 239.303

FRA did not receive any comments on this section, which is adopted as proposed. Section 239.303 authorizes railroads to retain their operational (efficiency) test records by electronic recordkeeping, subject to the conditions set forth in this provision. This provision provides an alternative for railroads retaining certain information, as required in § 239.301. FRA realizes that requiring railroads to retain the information in paper form would impose additional administrative and storage costs, and that computer storage of these documents would also enable railroads to immediately update any amendments to their operational testing programs.

Each participating railroad must have the essential components of a computer system, i.e., a desktop computer and either a facsimile machine or a printer connected to retrieve and produce records for immediate review. The material retrieved in hard copy form must contain relevant information organized in usable format to render the data completely understandable. The documents must be made available for FRA or participating State inspectors during normal business hours, which FRA interprets as the times and days of the week when railroads conduct their

regular business transactions. Nevertheless, FRA reserves the right to review and examine the documents prepared in accordance with the Passenger Train Emergency Preparedness regulations at any reasonable time if situations warrant.

Additionally, each railroad must provide adequate security measures to limit employee access to its electronic data processing system and must prescribe who can create, modify, or delete data from the database. Although FRA does not identify the management job position capable of instituting changes in the database, each railroad must indicate the source authorized to make such changes. Each railroad must also designate who will be authorized to authenticate the hard copies produced from the electronic format. In short, each railroad electing to retain its records electronically must ensure the integrity of the information and prevent possible tampering with data, enabling FRA to fully execute its enforcement responsibilities.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. Due to considerable public interest in the subject matter of the rule, the rule is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. It may be inspected and photocopied at the Office of Chief Counsel, FRA, Seventh Floor, 1120 Vermont Avenue, N.W., in Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, Mail Stop 10, 400 Seventh Street, S.W., Washington, D.C. 20590.

As part of the benefit-cost analysis, FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the rule. The Net Present Value (NPV) of the total 20-year costs which the industry is expected to incur is \$6.3 million. Following is a breakdown of the costs by requirement.

Section	Requirement	Cost
239.101,201,203	Emergency Prep. Plan	\$199,085
	Control Center Notification	969-1,569
	Training:	

Section	Requirement	Cost
	—Onboard Personnel Training	1,400,684
	—Control Center Personnel Training	134,014
	—Initial Program Development	51,822
	Joint Operations	22,954
	Parallel Operations	1,526-1,865
	Emergency Responder Liaison:	
	—Training Program	423,096
	—Provide EPP—Commuter	11,646
	—Provide EPP—Amtrak	403,365
	Onboard Emergency Equipment:	
	—One Fire Extinguisher/Car	147,801
	—One Pry Bar/Car	66,571
	—Instruction on Pry Bar Use	279,576
	Passenger Safety Awareness:	
	—Permanent Onboard Posting	64,597
239.103, 105	Pass Train Emergency Simulations	231,172
239.107	Emergency Exits:	
	—Marking—Interior	447,571
	—Marking—Exterior	1,336,679
	—Inspection/Record keep.	397,091
239.301	Operational Efficiency Tests	683,909
Total		6,304,128-6,305,067

The history of passenger train accidents shows that the potential for injury and loss of life arising from a single incident can be significant. In the last 11 years there have been seven passenger train accidents which resulted in a significant loss of life. FRA believes that the value (as a result of these requirements) of averting three or more fatalities, or an economic-equivalent number of permanently disabling injuries among rail passengers over the next twenty years will exceed the cost to rail carriers of implementing these rules.

While FRA cannot determine whether the monetary value of the benefits to railroads affected by this rule will exceed the estimated costs of implementing the rule, the agency believes it is reasonable to expect that the economic benefit from saving at least three lives as a result of implementing these standards will exceed the costs of implementing this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires an assessment of the impacts of proposed rules on small entities. FRA has conducted a regulatory flexibility assessment of this final rule's impact on small entities, and the assessment has been placed in the public docket for this rulemaking; FRA certifies that the final rule will not have a substantial impact on a significant number of small

entities. This final rule affects intercity and commuter passenger railroads, as well as rapid transit operations that operate over the general railroad system of transportation. Commuter railroads and rapid transit systems are part of larger transit organizations that receive Federal funds. The American Public Transit Association (APTA) represents the interests of commuter railroads and rapid transit systems in regulatory matters. Further, the final standards were developed by FRA in consultation with a Working Group that included representatives from Amtrak, individual commuter railroads, and APTA.

Entities impacted by the final rule are governmental jurisdictions or transit authorities, none of which are small for purposes of the United States Small Business Administration (i.e., no entity operates in a locality with a population of under 50,000 people). No small commuter railroads or rapid transit systems will be affected disproportionately. The level of costs incurred by each organization should vary in proportion to the organization's size. For instance, railroads with fewer employees and fewer passenger cars will have lower costs associated with both employee efficiency testing and emergency exit inspections.

Small passenger rail operations such as tourist, scenic, excursion, and historic railroads are excepted from the final rule. The final rule does not affect small entities.

A joint FRA/industry working group formed by the RSAC is currently developing recommendations regarding the applicability of FRA regulations, including this one, to tourist, scenic, historic, and excursion railroads. After appropriate consultation with the excursion railroad associations takes place, emergency preparedness requirements for these operations may be proposed by FRA that are different from those affecting other types of passenger train operations. These requirements may be more or less onerous, or simply different in detail, depending in part on the information gathered during FRA's consultation process.

Paperwork Reduction Act

The rule contains information collection requirements. FRA has submitted these information collection requirements to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*). FRA has endeavored to keep the burden associated with the final rule as simple and minimal as possible. FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number. The sections that contain the new and/or revised information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
223.9d/239.107: A. Emergency egress.	18 RRs	1,950 new decals	4 minutes	664 hours	\$19,920
		4,575 replace decals	7 minutes		
		1,300 new decals	4 minutes		
B. Emergency access.	18 RRs	6,320 replace decals	7 minutes	824 hours	24,720
239.107(b)	18 RRs	3,600 tests	20 minutes (18 minutes to perform test and 2 minutes for recordkeeping).	1,200 hours	36,000
239.101/239.201	18 RRs	18 plans	158 hours	2,844 hours	115,416
	18 RRs	18 amendments	1.6 hours	29 hours	986
239.101(1)(i)	18 RRs	N/A	Usual and customary procedure—No new paperwork.	N/A	N/A
239.101(1)(ii)	18 RRs	N/A	Usual and customary procedure—No new paperwork.	N/A	N/A
239.101(1)(iii)	5 RRs	5 updates of records	1 hour	5 hours	140
239.101(a)(3)	29 RR Pairs	29 negotiations	16 hours	464 hours	22,040
239.101(a)(7)(ii)	5 RRs	1,300 passenger cars	5 minutes per bulkhead card	108 hours	3,240
		5 safety messages	1 hour per RR to develop safety message.	5 hours	170
239.105	18 RRs	5 sessions	27 hours per session	33 hours	924
239.301/239.303	18 RRs	11,075 tests	8 minutes per test	135 hours	6,255
239.101(a)(5)	17 RRs	18 responses to distribute info to emergency responders.	6 hours per mailing	102 hours	9,588
	1 RR		100 hours per mailing	180 hours	
	1 RR (Amtrak)	1 response to distribute info to emergency responders.	100 hours	100 hours	2,800
	16 RRs	16 updates of emergency responder records.	30 minutes per updated	8 hours	224
	1 RR (Amtrak)	1 update of emergency responder records.	5 hours hours per mailing	5 hours	140

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the information collection request submitted to OMB, please contact Ms. Brenda Moscoso at 202-632-3335. The final rule responds to public comments on the information collection requirements contained in the NPRM. The requirements in this final rule have been approved by OMB under OMB control number 2130-0545.

Environmental Impact

FRA has evaluated this final rule in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This final rule meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment. The fundamental policy decision providing that Federal regulations should govern aspects of service provided by municipal and public benefit corporations (or agencies) of State governments is embodied in the statute quoted above. FRA has made every effort to provide reasonable flexibility to State-level decision making and has included commuter authorities as full partners in development of this proposed rule.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) each federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Sec. 201. Section 202 of the Act further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local,

and tribal governments, in the aggregate, or by the private sector, of \$ 100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * * detailing the effect on State, local and tribal governments and the private sector. The final rules issued today will not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year, and thus preparation of a statement was not required.

List of Subjects in 49 CFR Part 223

Glass and glass products, Penalties, Railroad safety, Reporting and recordkeeping requirements.

List of Subjects in 49 CFR Part 239

Passenger train emergency preparedness, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, chapter II, subtitle B, of title 49, Code of Federal Regulations is amended as follows:

1. The authority citation for part 223 is revised to read as follows:

Authority: 49 U.S.C. 20102-20103, 20105-20114, 20133, 20701, 21301-21302, and 21304; Sec. 215, Pub. L. No. 103-440, 108 Stat. 4623-4624 (49 U.S.C. 20133); and 49 CFR 1.49(c), (g), (m).

2. By revising § 223.5 to read as follows:

§ 223.5 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Caboose means a car in a freight train intended to provide transportation for crewmembers.

Certified glazing means a glazing material that has been certified by the manufacturer as having met the testing requirements set forth in Appendix A of this part and that has been installed in such a manner that it will perform its intended function.

Designated service means exclusive operation of a locomotive under the following conditions:

(1) The locomotive is not used as an independent unit or the controlling unit is a consist of locomotives except when moving for the purpose of servicing or repair within a single yard area;

(2) The locomotive is not occupied by operating or deadhead crews outside a single yard area; and

(3) The locomotive is stenciled "Designated Service—DO NOT OCCUPY".

Emergency responder means a member of a police or fire department, or other organization involved with public safety charged with providing or coordinating emergency services, who responds to a passenger train emergency.

Emergency window means that segment of a side facing glazing location which has been designed to permit rapid and easy removal during a crisis situation.

End facing glazing location means any location where a line perpendicular to the plane of the glazing material makes a horizontal angle of 50 degrees or less with the centerline of the locomotive, caboose or passenger car. Any location which, due to curvature of the glazing material, can meet the criteria for either a front facing location or a side facing location shall be considered a front facing location.

FRA means the Federal Railroad Administration.

Locomotive means a self-propelled unit of equipment designed primarily

for moving other equipment. It does not include self-propelled passenger cars.

Locomotive cab means that portion of the superstructure designed to be occupied by the crew while operating the locomotive.

Passenger car means a unit of rail rolling equipment intended to provide transportation for members of the general public and includes self-propelled cars designed to carry baggage, mail, express or passengers. This term includes a passenger coach, cab car, and an MU locomotive. This term does not include a private car.

Passenger train service means the transportation of persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) in intercity passenger service or commuter or other short-haul passenger service in a metropolitan or suburban area.

Person means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including—

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation and

(2) A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Railroad means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation and

(2) A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Rebuilt locomotive, caboose or passenger car means a locomotive, caboose or passenger car that has undergone overhaul which has been identified by the railroad as a capital expense under Surface Transportation Board accounting standards.

Side facing glazing location means any location where a line perpendicular to the plane of the glazing material makes an angle of more than 50 degrees with the centerline of the locomotive, caboose or passenger car.

Windshield means the combination of individual units of glazing material of the locomotive, passenger car, or caboose that are positioned in an end facing glazing location.

Yard is a system of auxiliary tracks used exclusively for the classification of passenger or freight cars according to commodity or destination; assembling of cars for train movement; storage of cars; or repair of equipment.

Yard caboose means a caboose that is used exclusively in a single yard area.

Yard locomotive means a locomotive that is operated only to perform switching functions within a single yard area.

3. In § 223.9, paragraph (d) is added to read as follows:

§ 223.9 Requirements for new or rebuilt equipment.

(d) **Marking.** Each railroad providing passenger train service shall ensure that for each passenger car, except for self-propelled cars designed to carry baggage, mail, or express:

(1) Each emergency window is conspicuously and legibly marked with luminescent material on the inside of each car to facilitate passenger egress. Each such railroad shall post clear and legible operating instructions at or near each such exit.

(2) Each window intended for emergency access by emergency responders for extrication of passengers is marked with a retroreflective, unique, and easily recognizable symbol or other clear marking. Each such railroad shall post clear and understandable window-access instructions either at each such window or at each end of the car.

4. By revising appendix B to part 223 to read as follows:

Appendix B to Part 223—Schedule of Civil Penalties¹

Section	Violation	Willful violation
223.9 New or rebuilt Equipment:		
(a) Locomotives	\$2,500	\$5,000
(b) Caboosees	2,500	5,000
(c) Passenger cars	2,500	5,000
(d) (1), (d)(2):		
(i) Window not marked or instructions not posted	2,500	5,000
(ii) Window improperly marked or instructions improperly posted	1,000	2,000
223.11(c) Existing locomotives	2,500	5,000
(d) Repair of window	1,000	2,000
223.13(c) Existing cabooses	2,500	5,000
(d) Repair of window	1,000	2,000
223.15(c) Existing passenger cars	2,500	5,000
(d) Repair of window	1,000	2,000
223.17 Identification of units	1,000	1,500

5. Part 239 is added to read as follows:

**Part 239—PASSENGER TRAIN
EMERGENCY PREPAREDNESS**

Subpart A—General

- Sec.
239.1 Purpose and scope.
239.3 Application.
239.5 Preemptive effect.
239.7 Definitions.
239.9 Responsibility for compliance.
239.11 Penalties.
239.13 Waivers.
239.15 Information collection.

Subpart B—Specific Requirements

- 239.101 Emergency preparedness plan.
239.103 Passenger train emergency simulations.
239.105 Debriefing and critique.
239.107 Emergency exits.

**Subpart C—Review, Approval, and
Retention of Emergency Preparedness
Plans**

- 239.201 Emergency preparedness plan:
filing and approval.
239.203 Retention of emergency
preparedness plan.

**Subpart D—Operational (Efficiency) Tests;
Inspection of Records and Recordkeeping**

- 239.301 Operational (efficiency) tests.
239.303 Electronic recordkeeping.

**Appendix A to Part 239—Schedule of Civil
Penalties**

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 49 U.S.C. 20133; 28 U.S.C. 2461 note; and 49 CFR 1.49(c), (g), (m).

Subpart A—General

§ 239.1 Purpose and scope.

(a) The purpose of this part is to reduce the magnitude and severity of

casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage passenger train emergencies.

(b) This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, and requires each affected railroad to instruct its employees on the provisions of its plan. This part does not restrict railroads from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 239.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all:

(1) Railroads that operate intercity or commuter passenger train service on standard gage track which is part of the general railroad system of transportation;

(2) Railroads that provide commuter or other short-haul rail passenger train service in a metropolitan or suburban area (as described by 49 U.S.C. 20102(1)), including public authorities operating passenger train service; and

(3) Passenger or freight railroads hosting the operation of passenger train service described in paragraph (a)(1) or (a)(2) of this section.

(b) This part does not apply to:

(1) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation;

(2) Operation of private cars, including business/office cars and circus trains; or

(3) Tourist, scenic, historic, or excursion operations, whether on or off the general railroad system.

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$22,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A. Further designations, not found in the CFR citation and used to expedite imposition of civil penalties for violations, FRA reserves the right, should litigation become

necessary, to substitute in its complaint the CFR citation in place of the combined designation cited in the penalty demand letter.

§ 239.5 Preemptive effect.

Under 49 U.S.C. 20106 (formerly section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of this part preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce.

§ 239.7 Definitions.

As used in this part—

Adjacent rail modes of transportation means other railroads, trolleys, light rail, heavy transit, and other vehicles operating on rails or electromagnetic guideways which are expressly identified in a railroad's emergency preparedness plan.

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Control center means a central location on a railroad with responsibility for directing the safe movement of trains.

Crewmember means a person, other than a passenger, who is assigned to perform either:

(1) On-board functions connected with the movement of the train (i.e., an employee of a railroad, or of a contractor to a railroad, who is assigned to perform service subject to the Federal hours of service laws during a tour of duty) or

(2) On-board functions in a sleeping car or coach assigned to intercity service, other than food, beverage, or security service.

Division headquarters means the location designated by the railroad where a high-level operating manager (e.g., a superintendent, division manager, or equivalent), who has jurisdiction over a portion of the railroad, has an office.

Emergency or emergency situation means an unexpected event related to the operation of passenger train service

involving a significant threat to the safety or health of one or more persons requiring immediate action, including:

- (1) A derailment;
- (2) A fatality at a grade crossing;
- (3) A passenger or employee fatality, or a serious illness or injury to one or more passengers or crewmembers requiring admission to a hospital;
- (4) An evacuation of a passenger train; and
- (5) A security situation (e.g., a bomb threat).

Emergency preparedness plan means one or more documents focusing on preparedness and response in dealing with a passenger train emergency.

Emergency responder means a member of a police or fire department, or other organization involved with public safety charged with providing or coordinating emergency services, who responds to a passenger train emergency.

Emergency window means that segment of a side facing glazing location which has been designed to permit rapid and easy removal in an emergency situation.

FRA means the Federal Railroad Administration.

Joint operations means rail operations conducted by more than one railroad on the same track, except as necessary for the purpose of interchange, regardless of whether such operations are the result of:

- (1) Contractual arrangements between the railroads;
- (2) Order of a governmental agency or a court of law; or
- (3) Any other legally binding directive.

Passenger train service means the transportation of persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) by railroad in intercity passenger service or commuter or other short-haul passenger service in a metropolitan or suburban area.

Person includes all categories of entities covered under 1 U.S.C. 1, including, but not limited to, a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any passenger; any trespasser or nontrespasser; any independent contractor providing goods or services to a railroad; any volunteer providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Private car means a rail passenger car used to transport non-revenue passengers on an occasional contractual

basis, and includes business or office cars and circus trains.

Qualified means a status attained by an employee who has successfully completed any required training for, has demonstrated proficiency in, and has been authorized by the employer to perform the duties of a particular position or function involving emergency preparedness.

Railroad means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including—

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation and

(2) A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Railroad officer means any supervisory employee of a railroad.

System headquarters means the location designated by the railroad as the general office for the railroad system.

§ 239.9 Responsibility for compliance.

Although the requirements of this part are stated in terms of the duty of a railroad, when any person, including a contractor to a railroad, performs any function required by this part, that person (whether or not a railroad) shall perform that function in accordance with this part.

§ 239.11 Penalties.

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Any person who knowingly and willfully falsifies a record or report required by this part

may be subject to criminal penalties under 49 U.S.C. 21311 (formerly codified in 45 U.S.C. 438(e)). Appendix A contains a schedule of civil penalty amounts used in connection with this part.

§ 239.13 Waivers.

(a) Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 239.15 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*), and have been assigned OMB control number 2130–0545.

(b) The information collection requirements are found in the following sections: §§ 239.101, 239.103, 239.105, 239.107, 239.201, 239.203, 239.301, and 239.303.

Subpart B—Specific Requirements

§ 239.101 Emergency preparedness plan.

(a) Each railroad to which this part applies shall adopt and comply with a written emergency preparedness plan approved by FRA under the procedures of § 239.201. The plan shall include the following elements and procedures for implementing each plan element.

(1) *Communication.* (i) *Initial and on-board notification.* An on-board crewmember shall quickly and accurately assess the passenger train emergency situation and then notify the control center as soon as practicable by the quickest available means. As appropriate, an on-board crewmember shall inform the passengers about the nature of the emergency and indicate what corrective countermeasures are in progress.

(ii) *Notifications by control center.* The control center shall promptly notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials that a passenger train emergency has occurred.

Each railroad shall designate an employee responsible for maintaining current emergency telephone numbers for use in making such notifications.

(2) *Employee training and qualification.* (i) *On-board personnel.* The railroad's emergency preparedness plan shall address individual employee responsibilities and provide for initial training, as well as periodic training at least once every two calendar years thereafter, on the applicable plan provisions. As a minimum, the initial and periodic training shall include:

- (A) Rail equipment familiarization;
- (B) Situational awareness;
- (C) Passenger evacuation;
- (D) Coordination of functions; and
- (E) "Hands-on" instruction

concerning the location, function, and operation of on-board emergency equipment.

(ii) *Control center personnel.* The railroad's emergency preparedness plan shall require initial training of responsible control center personnel, as well as periodic training at least once every two calendar years thereafter, on appropriate courses of action for each potential emergency situation. As a minimum, the initial and periodic training shall include:

- (A) Dispatch territory familiarization; and
- (B) Protocols governing internal communications between appropriate control center personnel whenever an imminent potential emergency situation exists.

(iii) *Initial training schedule for current employees.* The railroad's emergency preparedness plan shall provide for the completion of initial training of all on-board and control center employees who are employed by the railroad on the date that the plan is conditionally approved under § 239.201(b)(1), in accordance with the following schedule:

(A) For each railroad that provides commuter or other short-haul passenger train service and whose operations include less than 150 route miles and less than 200 million passenger miles annually, not more than one year after January 29, 1999, or not more than 90 days after commencing passenger operations, whichever is later.

(B) For each railroad that provides commuter or other short-haul passenger train service and whose operations include at least 150 route miles or at least 200 million passenger miles annually, not more than two years after January 29, 1999, or not more than 180 days after commencing passenger operations, whichever is later.

(C) For each railroad that provides intercity passenger train service,

regardless of the number of route miles or passenger miles, not more than two years after January 29, 1999, or not more than 180 days after commencing passenger operations, whichever is later.

(D) For each freight railroad that hosts passenger train service, regardless of the number of route miles or passenger miles of that service, not more than one year after January 29, 1999, or not more than 90 days after the hosting begins, whichever is later.

(iv) *Initial training schedule for new employees.* The railroad's emergency preparedness plan shall provide for the completion of initial training of all on-board and control center employees who are hired by the railroad after the date on which the plan is conditionally approved under § 239.201(b)(1). Each employee shall receive initial training within 90 days after the employee's initial date of service.

(v) *Testing of on-board and control center personnel.* A railroad shall have procedures for testing a person being evaluated for qualification under the emergency preparedness plan. The types of testing selected by the railroad shall be:

- (A) Designed to accurately measure an individual employee's knowledge of his or her responsibilities under the plan;
- (B) Objective in nature;
- (C) Administered in written form; and
- (D) Conducted without reference by the person being tested to open reference books or other materials, except to the degree the person is being tested on his or her ability to use such reference books or materials.

(vi) *On-board staffing.* (A) Except as provided in paragraph (a)(2)(vi)(B), all crewmembers on board a passenger train shall be qualified to perform the functions for which they are responsible under the provisions of the applicable emergency preparedness plan.

(B) A freight train crew relieving an expired passenger train crew en route is not required to be qualified under the emergency preparedness plan, provided that at least one member of the expired passenger train crew remains on board and is available to perform excess service under the Federal hours of service laws in the event of an emergency.

(3) *Joint operations.* (i) Each railroad hosting passenger train service shall address its specific responsibilities consistent with this part.

(ii) In order to achieve an optimum level of emergency preparedness, each railroad hosting passenger train service shall communicate with each railroad that provides or operates such service and coordinate applicable portions of the emergency preparedness plan. All of

the railroads involved in hosting, providing, and operating a passenger train service operation shall jointly adopt one emergency preparedness plan that addresses each entity's specific responsibilities consistent with this part. Nothing in this paragraph shall restrict the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part among those railroads through a joint operating agreement or other binding contract. However, the assignor shall not be relieved of responsibility for compliance with this part.

(4) *Special circumstances.* (i) *Tunnels.* When applicable, the railroad's emergency preparedness plan shall reflect readiness procedures designed to ensure passenger safety in an emergency situation occurring in a tunnel of 1,000 feet or more in length. The railroad's emergency preparedness plan shall address, as a minimum, availability of emergency lighting, access to emergency evacuation exits, benchwall readiness, ladders for detrainment, effective radio or other communication between on-board crewmembers and the control center, and options for assistance from other trains.

(ii) *Other operating considerations.* When applicable, the railroad's emergency preparedness plan shall address passenger train emergency procedures involving operations on elevated structures, including drawbridges, and in electrified territory.

(iii) *Parallel operations.* When applicable, the railroad's emergency preparedness plan shall require reasonable and prudent action to coordinate emergency efforts where adjacent rail modes of transportation run parallel to either the passenger railroad or the railroad hosting passenger operations.

(5) *Liaison with emergency responders.* Each railroad to which this part applies shall establish and maintain a working relationship with the on-line emergency responders by, as a minimum:

- (i) Developing and making available a training program for all on-line emergency responders who could reasonably be expected to respond during an emergency situation. The training program shall include an emphasis on access to railroad equipment, location of railroad facilities, and communications interface, and provide information to emergency responders who may not have the opportunity to participate in an emergency simulation. Each affected railroad shall either offer the training directly or provide the program information and materials to state

training institutes, firefighter organizations, or police academies;

(ii) Inviting emergency responders to participate in emergency simulations; and

(iii) Distributing applicable portions of its current emergency preparedness plan at least once every three years, or whenever the railroad materially changes its plan in a manner that could reasonably be expected to affect the railroad's interface with the on-line emergency responders, whichever occurs earlier, including documentation concerning the railroad's equipment and the physical characteristics of its line, necessary maps, and the position titles and telephone numbers of relevant railroad officers to contact.

(6) *On-board emergency equipment.* (i) *General.* Each railroad's emergency preparedness plan shall state the types of emergency equipment to be kept on board and indicate their location(s) on each passenger car that is in service. Effective May 4, 1999, or not more than 120 days after commencing passenger operations, whichever is later, this equipment shall include, at a minimum:

- (A) One fire extinguisher per passenger car;
- (B) One pry bar per passenger car; and
- (C) One flashlight per on-board crewmember.

(ii) Effective May 4, 1999, or not more than 120 days after commencing passenger operations, whichever is later, each railroad that provides intercity passenger train service shall also equip each passenger train that is in service with at least one first-aid kit accessible to crewmembers that contains, at a minimum:

- (A) Two small gauze pads (at least 4x4 inches);
- (B) Two large gauze pads (at least 8x10 inches);
- (C) Two adhesive bandages;
- (D) Two triangular bandages;
- (E) One package of gauge roller bandage that is at least two inches wide;
- (F) Wound cleaning agent, such as sealed moistened towelettes;
- (G) One pair of scissors;
- (H) One set of tweezers;
- (I) One roll of adhesive tape;
- (J) Two pairs of latex gloves; and
- (K) One resuscitation mask.

(iii) *On-board emergency lighting.* Consistent with the requirements of part 238 of this chapter, auxiliary portable lighting (e.g., a handheld flashlight) must be accessible and provide, at a minimum:

- (A) Brilliant illumination during the first 15 minutes after the onset of an emergency situation; and
- (B) Continuous or intermittent illumination during the next 60 minutes

after the onset of an emergency situation.

(iv) *Maintenance.* Each railroad's emergency preparedness plan shall provide for scheduled maintenance and replacement of first-aid kits, on-board emergency equipment, and on-board emergency lighting.

(7) *Passenger safety information.* (i) *General.* Each railroad's emergency preparedness plan shall provide for passenger awareness of emergency procedures, to enable passengers to respond properly during an emergency.

(ii) *Passenger awareness program activities.* Each railroad shall conspicuously and legibly post emergency instructions inside all passenger cars (e.g., on car bulkhead signs, seatback decals, or seat cards) and shall utilize one or more additional methods to provide safety awareness information including, but not limited to, one of the following:

- (A) On-board announcements;
- (B) Laminated wallet cards;
- (C) Ticket envelopes;
- (D) Timetables;
- (E) Station signs or video monitors;
- (F) Public service announcements; or
- (G) Seat drops.

§ 239.103 Passenger train emergency simulations.

(a) *General.* Each railroad operating passenger train service shall conduct full-scale emergency simulations, in order to determine its capability to execute the emergency preparedness plan under the variety of scenarios that could reasonably be expected to occur on its operation, and ensure coordination with all emergency responders who voluntarily agree to participate in the emergency simulations.

(b) *Frequency of the emergency simulations.* Except as provided in paragraph (c) of this section:

(1) Each railroad that provides commuter or other short-haul passenger train service and whose operations include less than 150 route miles and less than 200 million passenger miles annually, shall conduct a minimum of one full-scale emergency simulation during every two calendar years.

(2) Each railroad that provides commuter or other short-haul passenger train service and whose operations include at least 150 route miles or at least 200 million passenger miles annually, shall conduct a minimum of one full-scale emergency simulation during each calendar year.

(3) Each railroad that provides intercity passenger train service, shall conduct a minimum of one full-scale

emergency simulation during each calendar year, regardless of the number of route miles or passenger miles.

(c) *Actual emergency situations.* Neither a tabletop exercise nor the activation of its emergency preparedness plan during an actual emergency situation may be credited toward the minimum number of full-scale emergency simulations required under paragraph (b) of this section. However, a railroad that has activated its emergency preparedness plan in response to a major emergency may elect to postpone a scheduled full-scale simulation for up to 180 calendar days beyond the applicable calendar year completion date in order to evaluate the effectiveness of its plan during that major emergency and, as appropriate, modify the rescheduled simulation.

(d) *Definition.* As used in this section, *major emergency* means an unexpected event related to the operation of passenger train service that results in serious injury or death to one or more persons and property damage greater than the current reporting threshold of part 225 of this chapter to railroad on-track equipment, signals, tracks, track structures, or roadbeds, including labor costs and the costs for acquiring new equipment and material.

§ 239.105 Debriefing and critique.

(a) *General.* Except as provided in paragraph (b) of this section, each railroad operating passenger train service shall conduct a debriefing and critique session after each passenger train emergency situation or full-scale simulation to determine the effectiveness of its emergency preparedness plan, and shall improve or amend its plan, or both, as appropriate, in accordance with the information developed. The debriefing and critique session shall be conducted within 60 days of the date of the passenger train emergency situation or full-scale simulation.

(b) *Exceptions.* (1) No debriefing and critique session shall be required in the case of an emergency situation involving only a collision between passenger railroad rolling stock and: a pedestrian; a trespasser; or a motor vehicle or other highway conveyance at a highway-rail grade crossing, provided that the collision does not result in: a passenger or employee fatality, or an injury to one or more crewmembers or passengers requiring admission to a hospital; or the evacuation of a passenger train. (2) For purposes of this section, *highway-rail grade crossing* means a location where a public highway, road, street, or private roadway, including associated

sidewalks and pathways, crosses one or more railroad tracks at grade, and trespasser means a person who is on that part of railroad property used in railroad operation and whose presence is prohibited, forbidden, or unlawful.

(c) *Purpose of debriefing and critique.* The debriefing and critique session shall be designed to determine, at a minimum:

(1) Whether the on-board communications equipment functioned properly;

(2) How much time elapsed between the occurrence of the emergency situation or full-scale simulation and notification to the emergency responders involved;

(3) Whether the control center promptly initiated the required notifications;

(4) How quickly and effectively the emergency responders responded after notification; and

(5) How efficiently the passengers exited from the car through the emergency exits.

(d) *Records.* (1) Each railroad shall maintain records of its debriefing and critique sessions at its system headquarters and applicable division headquarters for two calendar years after the end of the calendar year to which they relate, including the following information:

(i) Date and location of the passenger train emergency situation or full-scale simulation;

(ii) Date and location of the debriefing and critique session; and

(iii) Names of all participants in the debriefing and critique session.

(2) These records shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

§ 239.107 Emergency exits.

For additional requirements related to emergency window exits, see part 223 of this chapter.

(a) *Marking.* Each railroad operating passenger train service shall determine for each passenger car that is in service, except for self-propelled cars designed to carry baggage, mail, or express:

(1) That all door exits intended for emergency egress are either lighted or conspicuously and legibly marked with luminescent material on the inside of the car and that clear and understandable instructions are posted at or near such exits.

(2) That all door exits intended for emergency access by emergency responders for extrication of passengers are marked with retroreflective material and that clear and understandable

instructions are posted at each such door.

(b) *Inspection, maintenance, and repair.* Consistent with the requirements of part 223 of this chapter, each railroad operating passenger train service shall:

(1) Provide for scheduled inspection, maintenance, and repair of emergency window and door exits;

(2) Test a representative sample of emergency window exits on its cars at least once every 180 days to verify that they are operating properly; and

(3) Repair each inoperative emergency window and door exit on a car before returning the car to service.

(c) *Records.* Each railroad operating passenger service shall maintain records of its inspection, maintenance, and repair of emergency window and door exits at its system headquarters and applicable division headquarters for two calendar years after the end of the calendar year to which they relate. These records shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

(d) *Electronic recordkeeping.* Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in paragraph (b) of this section, provided that all of the following conditions are met:

(1) The railroad adequately limits and controls accessibility to such information retained in its database system and identifies those individuals who have such access;

(2) The railroad has a terminal at the system headquarters and at each division headquarters;

(3) Each such terminal has a desk-top computer (i.e., monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by representatives of FRA and States participating under part 212 of this chapter;

(4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(5) The railroad provides representatives of FRA and States participating under part 212 of this chapter with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

§ 239.201 Emergency preparedness plan; filing and approval.

(a) *Filing.* Each passenger railroad to which this part applies and all railroads hosting its passenger train service (if applicable) shall jointly adopt a single emergency preparedness plan for that service and the passenger railroad shall file one copy of that plan with the Associate Administrator for Safety, Federal Railroad Administration, Mail Stop 25, 400 Seventh Street, S.W., Washington, D.C. 20590, not more than 180 days after May 4, 1998, or not less than 45 days prior to commencing passenger operations, whichever is later. The emergency preparedness plan shall include the name, title, address, and telephone number of the primary person on each affected railroad to be contacted with regard to review of the plan, and shall include a summary of each railroad's analysis supporting each plan element and describing how every condition on the railroad's property that is likely to affect emergency response is addressed in the plan. Each subsequent amendment to a railroad's emergency preparedness plan shall be filed with FRA by the passenger railroad not less than 60 days prior to the proposed effective date.

(b) *Approval.* (1) *Preliminary review.* (i) Within 90 days of receipt of each proposed emergency preparedness plan, and within 45 days of receipt of each plan for passenger operations to be commenced after the initial deadline for plan submissions, FRA will conduct a preliminary review of the proposed plan to determine if the elements prescribed in § 239.101 are sufficiently addressed and discussed in the railroad's plan submission. FRA will then notify the primary contact person of each affected railroad in writing of the results of the review, whether the proposed plan has been conditionally approved by FRA, and if not conditionally approved, the specific points in which the plan is deficient.

(ii) If a proposed emergency preparedness plan is not conditionally approved by FRA, the affected railroad or railroads shall amend the proposed plan to correct all deficiencies identified by FRA (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice that the proposed plan was not conditionally approved.

(2) *Final review.* (i) Within 18 months of receipt of each proposed plan, and within 180 days of receipt of each proposed plan for passenger operations

to be commenced after the initial deadline for plan submissions, FRA will conduct a comprehensive review of the conditionally approved plan to evaluate implementation of the elements included. This review will include ongoing dialogues with rail management and labor representatives, and field analysis and verification. FRA will then notify the primary contact person of each affected railroad in writing of the results of the review, whether the conditionally approved plan has been finally approved by FRA, and if not approved, the specific points in which the plan is deficient.

(ii) If an emergency preparedness plan of a railroad or railroads is not finally approved by FRA, the affected railroad or railroads shall amend the plan to correct all deficiencies (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice that the plan was not finally approved.

(3) *Review of amendments.* (i) FRA will review each proposed plan amendment within 45 days of receipt. FRA will then notify the primary contact person of each affected railroad of the results of the review, whether the proposed amendment has been approved by FRA, and if not approved, the specific points in which the proposed amendment is deficient.

(ii) If the amendment is not approved, the railroad shall correct any deficiencies identified by FRA and file the corrected amendment prior to implementing the amendment.

(4) *Reopened review.* Following initial approval of a plan, or amendment, FRA may reopen consideration of the plan, or amendment, for cause stated.

§ 239.203 Retention of emergency preparedness plan.

Each passenger railroad to which this part applies, and all railroads hosting its passenger train service (if applicable), shall each retain one copy of the emergency preparedness plan required by § 239.201 and one copy of each subsequent amendment to that plan at the system and division headquarters of each, and shall make such records available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

§ 239.301 Operational (efficiency) tests.

(a) Each railroad to which this part applies shall periodically conduct operational (efficiency) tests of its on-board and control center employees to determine the extent of compliance with its emergency preparedness plan.

(b) Each railroad to which this part applies shall maintain a written record of the date, time, place, and result of each operational (efficiency) test that was performed in accordance with paragraph (a) of this section. Each record shall also specify the name of the railroad officer who administered the test, the name of each employee tested, and sufficient information to identify the relevant facts relied on for evaluation purposes.

(c) Each record required by paragraph (a) of this section shall be retained at the system headquarters of the railroad and at the division headquarters for the division where the test was conducted for one calendar year after the end of the calendar year to which the test relates.

Each such record shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

§ 239.303 Electronic recordkeeping.

Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in § 239.301, provided that all of the following conditions are met:

(a) The railroad adequately limits and controls accessibility to such information retained in its database system and identifies those individuals who have such access;

(b) The railroad has a terminal at the system headquarters and at each division headquarters;

(c) Each such terminal has a desk-top computer (i.e., monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by representatives of FRA and States participating under part 212 of this chapter;

(d) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(e) The railroad provides representatives of FRA and States participating under part 212 of this chapter with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

Appendix A to Part 239—Schedule of Civil Penalties¹

Section	Violation	Willful violation
Subpart B—Specific Requirements:		
239.101(a) Failure of a railroad to adopt a written emergency preparedness plan	\$7,500	\$11,000
(a)(1) Failure of the plan to provide for:		
(i) Initial or on-board notifications by an on-board crewmember	2,500	5,000
(ii) Notification of outside emergency responders by control center	2,500	5,000
(a)(2) Failure of the plan to provide for:		
(i) Initial or periodic training of on-board personnel	2,500	5,000
(ii) Initial or periodic training of control center personnel	2,500	5,000
(iii) Completion of initial training of all on-board and control center personnel by the specified date	2,500	5,000
(iv) Completion of initial training of all newly hired on-board and control center personnel by the specified date	2,500	5,000
(v) Adequate procedures to evaluate and test on-board and control center personnel for qualification under the emergency preparedness plan	2,500	5,000
(vi) Adequate on-board staffing	2,500	5,000

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$22,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A. Further designations, not found in the CFR citation for certain provisions, are FRA Office of Chief Counsel computer codes added as a suffix to the CFR citation and used to expedite imposition of civil penalties for violations. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined designation cited in the penalty demand letter.

Section	Violation	Willful violation
(a)(3) Failure of a host railroad involved in joint operations to coordinate applicable portions of the emergency preparedness plan with the railroad or railroads providing or operating a passenger train service operation	3,000	6,000
(a)(4) Failure of the plan to address:		
(i) Readiness procedures for emergencies in tunnels	2,500	5,000
(ii) Readiness procedures for emergencies on an elevated structure or in electrified territory	2,500	5,000
(iii) Coordination efforts involving adjacent rail modes of transportation	2,500	5,000
(a)(5) Failure of the plan to address relationships with on-line emergency responders by providing for:		
(i) The development and availability of training programs	3,000	6,000
(ii) Invitations to emergency responders to participate in emergency simulations	3,000	6,000
(iii) Distribution of applicable portions of the current emergency preparedness plan	3,000	6,000
(a)(6) Failure of the plan to provide for, or the railroad to include on board each train and maintain and replace:		
(i) Emergency equipment	2,500	5,000
(ii) First-aid kits	2,500	5,000
(iii) Emergency lighting	2,500	5,000
(a)(7) Failure of the plan to provide for emergency instructions inside each passenger car or to include additional safety awareness information	3,500	7,000
239.103 Failure to conduct a required full-scale simulation in accordance with the frequency schedule	5,000	7,500
239.105 Debriefing and critique		
(a) Failure to conduct a debriefing and critique session after an emergency or full-scale simulation	4,000	7,500
(d)(1) Failure to maintain a record	2,500	5,000
(i) Failure to include date or location of the emergency or simulation	1,000	2,000
(ii) Failure to include date or location of the debriefing and critique session	1,000	2,000
(iii) Failure to include names of participants in the debriefing and critique session	1,000	2,000
(d)(2) Failure to make record available	1,000	2,000
239.107 Emergency exits		
(a)(1), (a)(2):		
(i) Door not marked or instructions not posted	2,500	5,000
(ii) Door improperly marked or instructions 1,000-2,000-improperly posted	2,500	5,000
(b)(1) Failure to provide for scheduled inspection, maintenance, and repair of emergency windows and doors	5,000	7,500
(b)(2):		
(i) Failure to test a representative sample of emergency windows	3,000	6,000
(ii) Emergency windows tested too infrequently	1,500	3,000
(b)(3) Failure to repair an inoperative emergency window or door exit	3,500	7,000
(c):		
(i) Failure to maintain a record	2,500	5,000
(ii) Failure to make record available	1,000	2,000
(d)(1) Insufficient limits or controls on accessibility to records	2,500	5,000
(d)(2) Missing terminal	1,000	2,000
(d)(3) Inability of railroad to produce information in a usable format for immediate review	1,000	2,000
(d)(4) Failure by railroad to designate an authorized representative	1,000	2,000
(d)(5) Failure to make record available	1,000	2,000
Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans:		
239.201 Filing and approval		
(a):		
(i) Failure of a railroad to file a written emergency preparedness plan	5,000	7,500
(ii) Failure to designate a primary person to contact for plan review	1,000	2,000
(iii) Failure of a railroad to file an amendment to its plan	2,500	5,000
(b)(1), (b)(2):		
(i) Failure of a railroad to correct a plan deficiency	2,500	5,000
(ii) Failure to provide FRA with a corrected copy of the plan	1,000	2,000
(b)(3):		
(i) Failure of a railroad to correct an amendment deficiency	2,500	5,000
(ii) Failure to file a corrected plan amendment with FRA	1,000	1,000
239.203 Retention of emergency preparedness plan		
(1) Failure to retain a copy of the plan or an amendment to the plan	2,500	5,000
(2) Failure to make record available	1,000	2,000
Subpart D—Operational (efficiency) tests; Inspection of Records and Recordkeeping:		
239.301 Operational (efficiency) tests		
(a) Testing Program	5,000	7,500
(b)(1) Failure to maintain a record	2,500	5,000
(b)(2) Record improperly completed	1,000	1,000
(c)(1) Failure to retain a copy of the record	2,500	5,000
(c)(2) Failure to make record available	1,000	2,000
239.303 Electronic recordkeeping		
(a) Insufficient limits or controls on accessibility to records	2,500	5,000
(b) Missing terminal	1,000	2,000
(c) Inability of railroad to produce information in a usable format for immediate review	1,000	2,000
(d) Failure by railroad to designate an authorized representative	1,000	2,000
(e) Failure to make record available	1,000	2,000

Issued in Washington, D.C., on April 14, 1998.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 98-11393 Filed 4-29-98; 8:45 am]

BILLING CODE 4910-06-P

federal register

Monday
May 4, 1998

Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210 and 220
National School Lunch Program and
School Breakfast Program: Additional
Menu Planning Alternatives; Proposed
Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584-AC38

National School Lunch Program and School Breakfast Program: Additional Menu Planning Alternatives

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The National School Lunch Act requires that schools that are participating in the National School Lunch or School Breakfast Programs claim reimbursements only for lunches or breakfasts which meet the nutrition standards of the National School Lunch Act, including compliance with the Dietary Guidelines for Americans. The Healthy Meals for Children Act expanded the number of menu planning alternatives available to school food authorities participating in the National School Lunch and School Breakfast Programs. In accordance with that legislation, this proposed rulemaking would reinstate the menu planning system in effect for School Year 1994-95 (the traditional meal pattern) as one of the menu planning alternatives available to local school food authorities. In addition, this proposal would permit school food authorities to use "any reasonable approach" to plan menus to meet the nutrition standards. The Department is also proposing to clarify and simplify several State agency monitoring responsibilities associated with the implementation of the nutrition standards of the National School Lunch Act.

DATES: To be assured of consideration, comments must be postmarked or e-mail comments dated on or before November 2, 1998.

ADDRESSES: Comments must be sent to: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302 or via the Internet at CNDProposal@FCS.USDA.GOV. All written submissions will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie at the above address or by telephone at 703-305-2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and is subject to review by the Office of Management and Budget under Executive Order 12866.

Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. However, a Regulatory Cost/Benefit Assessment is provided in the Appendix to this preamble.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Under Secretary for Food, Nutrition and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities. The Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact on local schools as the proposal would expand the number of options available to plan menus for school meals.

Executive Order 12372

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (7 CFR Part 3015, Subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of Food and Nutrition Service (FNS) findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, this notice invites the general public and other public agencies to comment on the information collection.

Written comments must be received on or before July 6, 1998.

Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 3208, New Executive Office Building, Washington, DC, 20503, Attention: Laura Oliven, Desk Officer for FNS. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their information collection requirements comments from their comments on the remainder of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation

between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 7 CFR Part 210, National School Lunch Program.

OMB Number: 0584-0006.

Expiration Date: October 31, 1999.

Type of Request: Revision of currently approved collection.

Abstract: The National School Lunch Act requires that schools that are participating in the school lunch program claim reimbursements only for lunches under the program which meet

the nutrition standards of the Act, including compliance with the Dietary Guidelines for Americans. The Healthy Meals for Children Act expanded the number of menu planning alternatives available to school food authorities participating in the NSLP. In accordance with that legislation, this proposed rulemaking would reinstate the menu planning system in effect for school year 1994-95 (the traditional meal pattern) as one of the menu planning alternatives available to local school food authorities. In addition, this proposal would permit school food authorities to use "any reasonable approach" to meet the requirements.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the information collection requirements of the proposed rule as noted below:

BILLING CODE 3410-30-U

Estimated Annual Recordkeeping Burden:

	Section	Annual Number of Respondents	Annual Frequency	Average Burden per Response	Annual Burden Hours
State agency establishes guidelines and approves school food authorities menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	58	1	1	58
State agency modifies menu planning alternatives or develops menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	5	1	20	100
School food authorities adopt menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	2,500	1	10.5	26,250
School food authorities modify menu planning alternatives or develop menu planning alternatives and submit them to the State agency for approval:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	100	1	20	2,000
Total Recordkeeping Burden:					
Total Existing	0				
Total Proposed	+28,408				
Change	+ 28,408				

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Background

On June 13, 1995, USDA published a final rule (60 FR 31188) updating the nutrition standards for the National School Lunch Program (NSLP) and School Breakfast Program (SBP). That rulemaking was the foundation of the Department's School Meals Initiative for Healthy Children, an integrated, comprehensive plan for promoting the health of the Nation's school children by updating the nutrition standards for school meals and by providing State agencies and local food service operators with the technical assistance to meet these standards. In addition to announcing a fundamental change in the direction of the school meals programs, the rulemaking implemented section 106(b) of Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994, which was enacted on November 2, 1994. That provision amended section 9(f) of the National School Lunch Act (NSLA) (42 U.S.C. 1758(f)) to require that school meals meet the Dietary Guidelines for Americans (hereinafter referred to as the Dietary Guidelines) by School Year 1996/1997, unless an implementation waiver of up to two years was approved by the State agency. The rule also established specific minimum standards for key nutrients (protein, calcium, iron, Vitamin A and Vitamin C), and calories which school meals must meet. (As discussed later, these standards are now also included in section 9(f) of the NSLA.)

To assist schools with implementation of the updated nutrition standards, the School Meals Initiative (SMI) rule provided three menu planning alternatives: Nutrient Standard Menu Planning (NSMP), Assisted Nutrient Standard Menu Planning (ANSMP) and a food-based menu planning alternative. After publication of the final SMI rule, Public Law 104-149, the Healthy Meals for Children Act, was enacted on May 29, 1996. It expanded the number of menu planning alternatives which school food authorities have available to them by including the menu planning system that was in effect for School Year 1994-95, as a permanent option as well as "any reasonable approach, within guidelines established by the Secretary"

Before a proposed rule to implement Public Law 104-149 could be published, Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, was enacted on August 22, 1996. This law further amended section 9(f)(1)(B) of the NSLA to mandate that school

lunches and breakfasts provide, over a week, one-third and one-fourth, respectively, of the Recommended Dietary Allowances (RDA) established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Because these requirements are already included in the regulations establishing the new specific nutrition standards for school lunches and breakfasts (§ 210.10(b) and § 220.8(a), respectively), this proposal would only add the appropriate RDA requirements for the traditional meal pattern.

Menu Planning Systems

The sole menu planning system that was in effect for School Year 1994-95 was a meal pattern (the "traditional" meal pattern) which stipulated the food components (meat/meat alternate, fruits/vegetables, bread/bread alternate, and milk) and the minimum quantities of those components that had to be offered to children of specific age/grade groups. This meal pattern was virtually unchanged since the establishment of the NSLP in 1946 and, until the June 13, 1995, rulemaking, was the only menu planning system available to school food authorities.

In order to provide flexibility as well as the tools that school food authorities would need to meet modern nutrition standards for children, the Department developed new menu planning alternatives designed to facilitate compliance with the Dietary Guidelines and the other nutrition-related requirements of section 9(f) of the NSLA. NSMP and ANSMP provide menu planners with more flexible approaches by eliminating the strict component and quantity requirements. Also, NSMP and ANSMP provide actual nutrient information, including fat and saturated fat levels, to menu planners on an on-going basis. In addition, after the initial proposal in 1994, the Department developed the enhanced food-based menu planning option which increased the minimum number of servings over a week's time for the fruits/vegetables and grains/breads components in order to maintain calorie levels while keeping the percentages of calories from fat and saturated fat to 30 percent and less than 10 percent, respectively, as required. School food authorities were given the option of choosing which of these menu planning alternatives best suited their particular circumstances.

The Department developed these menu planning alternatives with the Dietary Guidelines nutrition standards of the NSLA as the fundamental element. The Department continues to believe that the enhanced food-based,

NSMP and ANSMP alternatives best support compliance with the Dietary Guidelines. However, the Department acknowledges that some school food authorities are progressing toward meeting the Dietary Guidelines under the traditional meal pattern. Therefore, the Department has concluded that, with increased emphasis on vegetables, fruits and grain products and with appropriate modifications to preparation techniques and product specifications, the traditional meal pattern may support all of the nutrition standards required by the NSLA. In recognition of this potential, the President signed Public Law 104-149 which amended section 9(f) of the NSLA to authorize the traditional meal pattern as a permanent menu planning alternative as well as any other reasonable approaches to menu planning under guidelines established by the Secretary.

The remainder of this preamble discusses the proposed implementation of the recent statutory amendments. This proposal also clarifies monitoring procedures for assessing compliance with the Dietary Guidelines and the other nutrition standards for all menu planning alternatives.

The 1994-95 Meal Pattern (The Traditional Meal Pattern)

This proposal would reinstate the menu planning system in effect for School Year 1994-1995 as a permanent alternative for planning school menus under the NSLP and SBP. The SMI final rulemaking did not allow continued use of the traditional meal pattern after June 30, 1996, the latest date that school food authorities could be authorized to delay compliance with the Dietary Guidelines. Therefore, the provisions for the traditional meal pattern for the NSLP were moved to a separate section (§ 210.10a) so that schools could continue using the traditional meal pattern until the newer menu planning alternatives had been fully implemented. Similarly, the traditional meal pattern for the SBP was redesignated as § 220.8a.

Now that Public Law 104-149 has reinstated the traditional meal pattern as a permanent, food-based menu planning alternative, this proposal would incorporate it into paragraphs (d) and (k) of § 210.10 and into paragraphs (c) and (g) of § 220.8 where the requirements for the food-based menu planning alternative established by the June 13, 1995, final rule are set forth. Sections 210.10a and 220.8a would be removed. Please note that, due to the statutory amendment made after publication of the final rule, the

traditional menu planning approach will remain in effect after the July 1, 1998, implementation deadline in § 210.10 (o) and § 220.8(m). To distinguish between the two food-based systems, the meal pattern in effect for School Year 1994/1995 would be formally renamed the "traditional food-based menu planning alternative." The food-based menu planning alternative established in the June 13, 1995, rulemaking would be renamed the "enhanced food-based menu planning alternative."

RDA for the Traditional Food-Based Menu Planning Alternative

One proposed revision to § 210.10(d) of the NSLP regulations would add a chart indicating the amounts of calories and required nutrients that equal one-third of the RDA for key nutrients and calories for the age/grade groups of the traditional food-based menu planning alternative. A similar chart showing one-fourth of the RDA for key nutrients and calories for breakfasts would be added to § 220.8(c). These additional charts are necessary as the traditional food-based menu planning alternative follows different age/grade groupings than used for the NSMP, ANSMP, and enhanced food-based menu planning alternatives.

The Department recognizes the importance of offering meals that provide a proportionate share of the nutritional needs of the nation's schoolchildren, and that determination of whether those needs are being met must be based on the most accurate data available. To this end, the Department has calculated the RDA for each age group using computer software specifically designed for this purpose. In creating the enhanced food-based menu planning alternative, the Department developed age/grade groupings that were averaged to more precisely meet the calorie and nutrient levels at each age or stage of development. Uniform groupings, based as closely as possible on the actual nutritional needs of the various ages, for the two food-based systems would be preferable. However, section 9(f)(4)(A)(i) of the NSLA requires the availability of the traditional meal pattern as it existed in the 1994-1995 school year. The Department, therefore, does not want to add complexity to the traditional approach by proposing to make more precise age/grade groupings apply to both food-based menu planning alternatives. While this means menu planners using the traditional meal pattern may continue to meet a single set of quantity requirements for all children in the school, regardless of

their age or grade, the Department is concerned that this practice could undermine the nutrition goals of the programs, since the food service would not be as responsive to respond to the varying needs of children of different ages. The Department recognizes the need to provide the traditional approach without additional requirements but is also concerned with the need to meet the appropriate nutrition standards. Therefore, interested parties in the food service, nutrition and scientific communities may wish to comment on the appropriateness of allowing a single age/grade grouping and the associated nutrition standards.

"Any Reasonable Approach"

Public Law 104-149 amended section 9(f)(4) of the NSLA to permit school food authorities to use "any reasonable approach" to menu planning not specifically delineated in section 9(f)(3) and (4) of the NSLA. The law makes it clear, however, that "reasonable approaches" must meet guidelines established by the Secretary. In developing appropriate guidelines, the Department believes there will be two distinct classes of proposed alternative approaches. First, some proposed alternatives will consist of relatively minor modifications to one or another of the four existing menu planning systems. For this type of suggested alternative, the Department is proposing to allow State agencies to establish a general policy allowing school food authorities to adopt such approaches without prior Departmental approval. The second class of alternatives will involve unique proposals that depart significantly from existing systems. The Department is proposing to redesignate § 210.10(l) through (o) as § 210.10(m) through (p) and to add a new § 210.10(l) to establish basic requirements for authorizing both classes of alternate menu planning approaches. For the SBP, § 220.8(h) through (m) would be redesignated as § 220.8(i) through (n) and § 220.8(h) would provide for alternate menu planning approaches.

Minor "Pre-Approved" Modifications

The first proposed class of alternate approaches is specific, minor modifications to provisions of the existing menu planning alternatives and would be added at § 210.10(l)(1) and § 220.8(h)(1). While the State agency may require prior approval or may establish additional guidelines for their adoption, these modifications would be considered "pre-approved" in that State agencies may allow their use without any additional review. Of course, as part of their general oversight

responsibilities under the NSLA, State agencies must ensure that the school food authority's operations, including these "pre-approved" options, are consistent with the NSLP and SBP regulatory standards, even if State agencies do not require pre-approval. The modifications are: a weekly meat/meat alternate standard (for the NSLP only) and flexible age/grade groupings for the food-based menu planning alternatives (for both the NSLP and SBP). While only two modifications are proposed, the Department solicits suggestions on similar variations that could be included under this category of other approaches.

The Department was also asked to consider extending a policy currently applicable only to lunches planned under the enhanced food-based menu planning approach to the traditional food-based menu planning approach. This policy, at § 210.10(k)(2), allows menu planners to credit up to one grain-based dessert daily towards the weekly grain/bread requirements. This policy was established to provide additional flexibility for menu planners as the number of required grain/bread items increased substantially over the number required for the traditional food-based menu planning approach. For example, for grades 7-12, the traditional food-based alternative required eight servings (but recommended 10) while 15 servings are required for the enhanced food-based approach.

The Department gave this suggestion serious consideration. However, crediting up to one grain-based dessert daily as a serving of grains/breads for the traditional food-based menu planning alternative is too significant a proportion of the total number of required grain/bread items. A child selecting a grains-based dessert on a daily basis would have the majority of their grains/breads component over the week met through the consumption of dessert. Given this concern, the Department is not proposing to extend this policy to the traditional food-based menu planning approach. However, the Department would appreciate comments on this issue.

1. Weekly Meat/Meat Alternate Quantity Standard

Some food service directors have indicated that it is not always practical to offer the full daily minimum portion of the meat/meat alternate component required for the NSLP under the food-based menu planning alternatives. For example, a serving of less than the required four tablespoons of peanut butter or two ounces of cheese in a sandwich may produce a more

appealing entree while the full amount required can lead to waste. To address this situation, those school food service directors have suggested that schools using either of the food-based menu planning systems be allowed the flexibility to vary the quantity of meat/meat alternate on a daily basis as long as the total amount served over the course of the school week equals the minimum daily quantity multiplied by the number of serving days in the week. For example, the amount of meat/meat alternate served on a given day could be only one ounce or the equivalent provided that the full 10 ounces (for grades 4-12) or equivalent of meat/meat alternate were available over a five day week. This alternative would enable meal planners using a food-based alternative much of the same flexibility enjoyed by their counterparts using NSMP while still ensuring that minimum quantities of essential foods were offered to children over a week's time.

After considering this suggestion, the Department agrees that it could provide additional flexibility without compromising the nutritional integrity of the meals served over the course of the school week. However, the Department does not believe that the school food authority's ability to vary the quantity of this component should be completely unrestricted. Therefore, the Department is proposing to require that a minimum of one ounce or its equivalent of meat/meat alternate be offered daily. This proposal would ensure that the amount of meat/meat alternate offered to the student will be reasonably consistent each day while still providing menu planners with enhanced flexibility. The Department emphasizes that the option to vary the size of the meat component would not apply to those situations in which the minimum quantity requirement is one ounce or less.

The Department is not proposing to extend this option to the meat/meat alternate-grains/breads component of school breakfasts because flexibility is already provided under the food-based menu planning alternatives. However, comments are requested on whether extending the weekly meat/meat alternate to the SBP would be useful and appropriate.

In proposing this option, the Department recognizes that there will be complexities with its implementation, especially in schools that offer multiple entree choices, since children may not select items over the week that equal the full weekly meal component requirement. Therefore, comments are particularly requested on these and

other potential difficulties as well as any suggestions on ways to ensure that the nutritional integrity of the meal service is not compromised. The modification for the meat/meat alternate component is proposed at § 210.10(l)(1)(i).

2. Flexible Age-Grade Groupings for Food-Based Alternatives

Children enrolled in a given school may span different age/grade groupings for purposes of the nutrient and calorie level requirements and corresponding portion sizes for components under the food-based menu planning alternatives. Under the NSMP and ANSMP menu planning alternatives, if only one age or grade is outside the established nutrient and calorie level requirements for the majority of children, schools are permitted, under § 210.10(i)(1)(ii) and § 220.8(e)(1)(ii), to use the nutrition standards for that majority. In the interests of consistency and flexibility, the Department is proposing to extend this option to the food-based alternatives as well.

Under the proposal, schools using the enhanced food-based alternatives would be permitted to plan menus using the minimum quantity requirements applicable to the majority of children provided that no more than one age or grade falls outside the requirements for the majority of children. For example, if a school following the enhanced food-based menu planning alternative serves children in grades 6, 7 and 8, the school may, if it chooses, plan menus meeting the nutrient levels and quantities for grades 7 through 12 in lieu of varying the menus and portion sizes for the children in grade 6. This option would eliminate the need to meet two sets of nutrient and calorie levels as well as portion requirements when only a limited number of children are affected. The Department notes that this option will generally be applicable to schools using the enhanced food-based alternative since it is not needed for the traditional food-based menu planning alternative because of the broader range of the groups and because schools may use the portion sizes for the grades 4-12 group when the school has a large number of grades. However, under the proposal, this option could be adopted by schools using either food-based menu planning alternative. This proposed change would be found at § 210.10(l)(1)(ii) for the lunch program and at § 220.8(h)(1) for the breakfast program.

The Department believes that school food authorities should plan menus and offer meals that best meet the nutrient and calorie levels for each age or grade

group of all of the children. The age/grade groupings are geared to best meet the recommended levels of calories and other nutrients for a particular period in a child's development. However, the Department also recognizes that allowing the proposed option for schools using the food-based alternatives provides increased flexibility.

Major Changes or New Alternatives

The second class of alternate approaches concerns major changes to one of the existing menu planning systems and may be developed by either school food authorities or State agencies. Within this second class, the regulations, as proposed, would require that any major change or new alternative developed by a school food authority be subject to State agency review and approval. State agency approval is critical because major variations developed and used only by a school food authority need to be carefully assessed to gauge potential impact on the delivery of meals to children, both nutritionally and fiscally. Further, school food authority-level approaches would not have the benefit of the State agency's expertise when forming their approach. State agency-developed alternatives would be subject to Departmental review and approval unless there was an on-going State agency/school food authority partnership and enough school food authorities intending to adopt the alternate approach to warrant the significant involvement of the State agency.

Written Submissions

The Department is proposing that any alternate approach developed by either a school food authority or State agency be committed to writing prior to its implementation. The written description must outline the intended procedures as well as indicate how the required elements for alternate approaches (as proposed under § 210.10(l)(3) and § 220.8(h)(3) for the lunch and breakfast programs, respectively) will be met. For those approaches subject to prior review, a written submission is needed to ensure a comprehensive review. For those approaches not subject to prior review, a written description needs to be available for monitoring purposes. The Department is not, however, proposing any specific format or requiring a formal plan, other than proposing that the intended procedures and the required elements be addressed in writing for any proposed alternative approach. This

provision is proposed at § 210.10(l)(2) and § 220.8(h)(2).

State Agency-Developed Systems: Approval Procedures

Some State agencies have developed or intend to develop their own menu planning alternatives for use by their school food authorities. State agency-developed alternatives could involve either extensive modifications to one of the existing menu planning alternatives or development of an altogether new alternative. As mentioned above, the Department is proposing different approval procedures for State agency-developed approaches depending on whether there is on-going, operational support from the State agency.

For the purpose of approval, the first type of a State-agency developed alternate approach is one that the State agency develops and then makes available to its school food authorities without on-going support and assistance. Because the State agency will not have any on-going operational role in such approaches, the Department believes independent review is essential prior to implementation of an alternate approach by any school food authority. This review would ensure that the changes or the new alternative adequately meets program requirements and goals. Therefore, the Department is proposing to require State agencies to submit this type of alternate approach to the Food and Nutrition Service (FNS) for review and approval before implementation. The approval procedures are proposed at § 210.10(l)(2) and § 220.8(h)(2), respectively, for the lunch and breakfast programs.

The second type of alternate approach would also involve either extensive modifications to one of the existing menu planning alternatives or development of an altogether new alternative. The Department is proposing that these approaches not be subject to approval by FNS when the State agency is an active and on-going partner with the school food authorities, if there are a sufficient number of school food authorities adopting it to warrant the State agency's commitment of resources necessary to its successful operation and the State agency issues an announcement notifying the public of the alternate approach. With the State agency's active involvement, there is oversight as well as the ability to promptly adjust the policies and procedures of the approach to ensure efficient and effective operation and compliance with all applicable requirements. The Department is proposing that these approaches must

be adopted by at least five school food authorities within the State. The proposed requirement for a public announcement allows for review of the State agency's approach by any concerned parents, students, program administrators, etc. In addition to the public announcement, the Department considered requiring that State agencies hold public hearings (in accordance with established State procedures) on these types of alternative approaches. The Department would appreciate comments on whether public hearings, in addition to the public announcement, are a more effective way to notify the public and whether the benefits of conducting a hearing outweigh the costs to the State agency.

This type of State agency-developed alternate approach is intended to allow innovative, large-scale State agency-sponsored menu planning systems to operate without prior approval. An example of a large-scale system that extensively modifies current regulatory requirements (specifically the weighting component and software requirements for NSMP) is the Shaping Health as Partners in Education (SHAPE) program, which has been successfully operated in California for several years. Because the SHAPE program is already operational, the requirement for issuing a public announcement is not applicable.

The Department emphasizes that the different approval requirements for the State agency-developed alternate approaches are based on the differing degrees of State agency involvement. When the State agency is acting as a partner and is routinely assisting school food authorities and providing technical assistance, it can, if needed, quickly determine if implementation at the local level is not successful or if the system itself needs to be modified to meet the required elements such as compliance with the nutrition standards. In the other situations, there is no continuous State agency presence. Instead, the State agency simply makes the system available to local school food authorities as another option from which they may choose and would only be able judge its effectiveness under normal review procedures. Therefore, the Department is proposing, at § 210.10(l)(2)(iii) and § 220.8(h)(2)(iii), that any State-agency developed system is not subject to prior FNS approval if five or more school food authorities adopt the approach, if the State agency maintains on-going oversight including making adjustments to the approach's policies and procedures, as needed, to ensure compliance with the nutritional and other meal service requirements, and if the State agency makes a public

announcement concerning the alternate menu planning approach prior to its implementation by any school food authority. Please keep in mind, though, that all alternate approaches would be subject to the proposed minimum requirements discussed below.

Required Elements for Alternate Approaches

In devising the guidelines for reasonable approaches other than the proposed "pre-approved" modifications, the Department balanced the necessity to foster innovation and flexibility with the equally compelling need to maintain program accountability administratively, fiscally and nutritionally. The basic consideration is that every menu planning alternative, regardless of the source or the level of approval, must meet all statutory requirements. Also, the Department is proposing to include a limited number of guidelines that are based on discretionary regulatory procedures that the Department feels are essential to effective and efficient program management unless the alternate approach is one of the distinct situations with on-going State involvement (the second type discussed above). With this extra involvement and oversight by the State agency, school food authorities would be provided additional flexibility.

Offering Fluid Milk

Section 9(a)(2) of the NSLA (42 U.S.C. 1758(a)(2)) requires that school food authorities offer fluid milk to children participating in the NSLP. Section 4(e)(1)(A) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1773 (e)(2)), requires that a combination of foods be served in the SBP and that breakfasts " * * * meet minimum nutritional requirements prescribed by the Secretary * * *". The provision of fluid milk is one of the minimum nutritional requirements established for the SBP under § 220.8(h). Therefore, any alternate menu planning approach must also offer fluid milk for both the NSLP and SBP. The provisions requiring milk to be offered in the school programs for any alternate approach are proposed at § 210.10(l)(3)(i) and § 220.8(h)(3)(i), for the NSLP and SBP, respectively.

Offer Versus Serve (OVS)

Section 9(a)(3) of the NSLA (42 U.S.C. 1758(a)(3)) requires that schools implement OVS in the NSLP for senior high school children; at local option, school food authorities may adopt OVS in the lunch program for lower grades as well. Under section 4(e)(2) of the CNA (42 U.S.C. 1773 (e)(2)), local

school food authorities may also implement OVS for the SBP. OVS encourages children to make selections that they prefer, thus helping to reduce plate waste. Because of the statutory mandate, any menu planning alternative designed by a school food authority or State agency for use in the NSLP must include OVS for senior high school children. OVS will continue to be optional at the discretion of school food authorities in the SBP.

While OVS would continue to be required for senior high school students, school food authorities and State agencies would be permitted by this rulemaking to propose alternatives to the OVS approaches currently permitted in the regulations. Such approaches must be based on the existing regulatory OVS structures as much as possible. For example, OVS for alternate food-based systems must be patterned on the OVS requirements in § 210.10(k)(6) and § 220.8(g)(3), while those for alternate NSMP approaches must be based on the requirements of § 210.10(i)(2)(ii) and § 220.8(e)(2)(ii).

If the existing OVS procedures in § 210.10(k)(6)/§ 220.8(g)(3) or § 210.10(i)(2)(ii)/§ 220.8(e)(2)(ii) are not followed, the description of the alternate approach must indicate what age/grade groups are included, how plate waste would be reduced and how the meal, as taken, will provide a reasonable level of nutrients and calories. As discussed in more detail below, any modifications to the existing OVS procedures must include the number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable meal. These provisions on OVS in alternate menu planning approaches are proposed at § 210.10(l)(3)(ii) and § 220.8(h)(3)(vi) for the lunch and breakfast programs, respectively.

Nutrition Standards

As discussed earlier, the NSLA requires school lunches to approximate, over a week's time, one-third of the RDA needed by growing children of different ages. School breakfasts must provide one-fourth of the RDA. In addition, the menus must comply with the recommendations of the Dietary Guidelines. These requirements cannot be modified.

Therefore, any alternate menu planning approach must ensure that these standards, as implemented in § 210.10(b)(1)–(b)(4) for the NSLP and § 220.8(a)(1)–(a)(4) for the SBP, would be met or exceeded for the age/grade groups to be served. In addition, the alternate approach must indicate how the proposal is designed to meet these

standards. The requirements are proposed at § 210.10(l)(3)(iii) and § 220.8(h)(3)(ii).

Competitive Foods

For both the NSLP and SBP, Section 10(a) of the CNA (42 U.S.C. 1779(a)), requires regulations " * * * relating to the service of food * * * in competition with the [school meals] programs * * *". To implement this provision, § 210.11(b) and § 220.12(a) prohibit the sale of foods of "minimal nutritional value" in the cafeteria area during the service of meals. Appendix B to each of these parts lists the foods considered to be foods of minimal nutritional value. Any alternate approach may not alter this statutory provision and the implementing regulations. This restriction is proposed at § 210.10(l)(3)(iv) and § 220.8(h)(3)(iii) for the lunch and breakfast programs, respectively.

Crediting Foods Under Food-Based Type Approaches

Paragraphs (k)(3)–(k)(5) and (m) of § 210.10; § 220.8(g)(2) and (i); and the Appendices to Parts 210 and 220 provide the basic crediting policies for food items offered in the school meals programs for food-based menu planning alternatives. These crediting policies are expanded upon in FNS instructions and guidance. This proposal would require that any alternate food-based menu planning approaches follow the existing food crediting policies for school meals. The Department's standards for crediting food items are designed to maintain the nutritional integrity of school meals by ensuring that foods used to satisfy quantity and component requirements provide a sufficient amount of the component or its equivalent to count toward meeting the meal requirements.

To be credited, foods must be both present in the minimum required quantities and identifiable as at least one of the required food components of the meal pattern (meat/meat alternate, fruits/vegetables, grains/breads and fluid milk). These foods may be served as single food items or as combinations in recipes or in commercially processed foods. To assist in the identification of the definition of the basic foods, the Department relies on government and industry standards of identity and/or specifications. These standards are essential to ensuring that the individual meal merits Federal reimbursement and that the meal service, over time, complies with the programs' nutrition standards. Therefore, the Department is proposing at § 210.10(l)(3)(v) and § 220.8(h)(3)(v) that the minimum

quantities established to credit food items as components under the food-based menu planning systems be adhered to in any food-based menu planning alternate approach.

Identification of a Reimbursable Meal

The concept of a reimbursable meal is essential to program integrity. Sections 210.10 and 220.8 of the regulations establish definitions of a reimbursable meal for the four menu planning alternatives currently recognized by the NSLA. Under the traditional meal pattern and the enhanced food-based menu planning system for lunches, the school food authority must offer minimum quantities of a meat/meat alternate, a grain/bread item, two separate fruits/vegetables and fluid milk as a beverage. This requirement is found at § 210.10(k). Under NSMP and ANSMP, the school must offer an entree, fluid milk and at least one additional menu item for lunches. This requirement is found at § 210.10(i)(2)(i) for the NSLP. The parallel requirements for the SBP are at § 220.8 (e) and (g).

This proposal would require that any alternate approach comply with the current requirements for reimbursable meals to the extent possible. When the existing procedures are not followed, the proposed alternate approach must detail what constitutes a reimbursable meal, including the number and type of item (and if applicable, the quantities for each item) and how a reimbursable meal is to be identified at the point of service by the children, the cashiers, and any reviewers. The proposals appear at § 210.10(l)(3)(vi) and § 220.8(h)(3)(v), respectively, for the school lunch and breakfast programs.

Monitoring Compliance

Section 210.18 of the regulations establishes methods for determining if school food authorities are meeting the administrative requirements for the school meals programs while § 210.19 provides for reviewing compliance with the nutrition standards. In determining the essential elements for any alternate approach, the Department believes that these monitoring aspects must be incorporated so that the State agency can determine if reimbursable meals are being offered, accepted, and properly counted and if the meal service is in compliance with all of the nutrition and administrative standards.

The Department expects that, in most cases, alternate approaches can be monitored within the existing criteria for both coordinated review effort (CRE) and nutrition reviews. As discussed below, some aspects of Performance Standard 2 in § 210.18 must be modified

to take into account the flexibility for alternate approaches. However, the Department does not believe that the procedures for conducting CRE reviews will need to be revised in order to accommodate alternate approaches. Therefore, this rule would require, in § 210.10(l)(vii) and § 220.8(h)(3)(vi), that the alternate approach be subject to CRE reviews under the current procedures provided in § 210.18.

However, in some cases, the proposed alternate approach may not lend itself to the established nutrition review methods. Therefore, to allow the State agency to ensure that an alternate approach can be reviewed adequately for compliance with the nutrition standards, any alternate approach must include either an explanation of how the alternate approach could be monitored within the existing criteria in § 210.19 or a comprehensive nutrition monitoring plan that the State agency could follow. As part of this plan, the alternate approach must include a description of the records it will maintain to document compliance with administrative and nutrition requirements. This provision is proposed at § 210.10(l)(3)(vii) and § 220.8(h)(3)(vi) for both the administrative and nutrition review aspects. Conforming amendments are also proposed to § 210.19(a) and are discussed in greater detail later in this preamble.

Weighted Averages for NSMP/ANSMP

Sections 210.10(i)(5) and 220.8(e)(5) require school food authorities using NSMP or ANSMP to conduct nutrition analyses by weighting all foods planned as part of the reimbursable meal service. This weighting is done according to the frequency with which each food is actually offered. The purpose of weighting is to assist in ensuring that meals actually offered to children meet the nutrition standards. The Department acknowledges that weighted averages are not the only way to ensure compliance with the nutrition standards. In fact, in order to make the transition to the updated menu planning methods easier and to ensure that every avenue for promoting sound nutrition is explored, the Department has authorized temporary waivers of this regulatory requirement. The waivers allow the Department the opportunity to evaluate weighted and unweighted averages to determine their accuracy in indicating determinations of compliance with the nutrition standards. The Department believes that this temporary postponement through a State agency waiver is the appropriate way to ease implementation and to permit further

evaluation of this requirement. As part of this evaluation process, the Department is particularly interested in receiving comments on the use of a weighted nutrient analysis versus nonweighted approaches. Comments from operators using nutrient analysis and their experiences with weighting would be especially helpful. The Department would also like comments from State agency reviewers and their experiences with weighting when evaluating meal services.

However, until the Department determines that alternatives to weighted averages adequately ensure that meals comply with the nutrition standards, weighted averages continue to be required for NSMP systems other than those for which a waiver has been granted. Accordingly, the Department is proposing to require compliance with the weighting requirements for alternate NSMP-type approaches. However, the Department is proposing to provide added flexibility in those instances in which the State agency has developed the alternate approach and is a partner with at least five school food authorities and maintains on-going oversight of the operation and evaluation. The level and consistency of the State agency's involvement coupled with a more rapid response to problems in order to make needed adjustments allows for further innovation. These provisions are proposed at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vi).

Approved Software for NSMP and ANSMP

Sections 210.10(i)(4) and 220.8(e)(4) require menu planners using NSMP or ANSMP to conduct or to have their analyses conducted using software that incorporates the National Nutrient Database for Child Nutrition Programs and is approved by FNS. The software must meet the minimum requirements established by FNS such as having the capability to perform all functions required after the basic data has been entered, including calculating weighted averages, and the optional combining of the analyses of the NSLP and SBP. The Department is aware that there are many nutrition software packages available; however, many of these are for individuals or for clinical settings such as hospitals. The software approved by FNS is designed to meet the needs of school food service professionals and fulfills two essential criteria—the ability to perform all the requirements of the regulations and the achievement of uniform results. The Department also notes that the number and variety of software packages approved to date ensures that school food authorities

have extensive flexibility in choosing a package that best meets their individual needs. Therefore, this proposal would require, at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vii), that any alternate approach use approved software.

Again, however, the Department is proposing to allow modification of the required specifications for software for any alternate approach under the same limited circumstances allowing for modification of weighted analysis. In those situations in which the State agency developed the alternate approach and remains an active partner and five or more school food authorities adopt the alternate approach, the Department is proposing, at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vii), to permit the use of software which does not meet the regulatory requirements. While this means that the software would not need to incorporate the National Nutrient Database nor would it be required to have prior FNS approval, the alternate approach would still need to meet all the nutrition standards. Again, the Department believes that the on-going State agency oversight provides sufficient assurance that any software will provide appropriate nutrient analysis and, to the extent that deficiencies are identified, that they will be rapidly addressed.

The Department also wishes to emphasize that weighted analyses and standard software packages do not, in and of themselves, determine the kinds and amounts of foods provided. Rather, they are fundamentals in the internal monitoring system which enables schools, school food authorities, and State agencies to measure the success of the food service in complying with the nutrition standards. Consequently, modification of these requirements, without substantial care and involvement by the State agency, may undermine the accuracy of the nutrition analysis and compromise the ability of menu planners to make necessary adjustments. This is the basis for the Department's decision to not apply the weighting and software specification requirements to those situations in which there will be substantial State agency involvement and oversight.

Monitoring Requirements for Compliance With the Nutrition Standards

The Department is proposing to clarify some aspects of the nutrition monitoring requirements in order to ensure appropriate State agency oversight of all menu planning alternatives. In addition, some conforming amendments are proposed due to the reinstatement of the

traditional food-based menu planning alternative and the availability of alternate approaches.

Monitoring Procedures for the Traditional System and for Alternate Approaches

The current monitoring provisions for the food-based and nutrient standard menu planning alternatives are found at § 210.18 and § 210.19. As discussed earlier, any alternate approach must be capable of being monitored under § 210.18. In addition, if the alternate approach cannot be monitored under § 210.19, there must be a description of alternate monitoring procedures to ensure compliance with the fiscal, administrative and nutrition standards.

This proposed rule would amend § 210.18 and § 210.19 to make clear that the existing monitoring requirements apply to the traditional food-based menu planning alternative as well as to the enhanced food-based and nutrient standard menu planning systems. In addition, technical amendments are made to modify the terminology in § 210.18 and § 210.19 related to Performance Standard 2 which establishes review criteria to assure that the lunches served by schools are reimbursable. In other words, any school lunch must contain whatever meal elements that are required for reimbursable lunches under each of the menu planning alternatives. In order to clarify that all the various menu planning approaches are subject to Performance Standard 2, technical amendments are proposed to § 210.18(b)(2)(ii), (g)(2), and (i)(3)(ii) and to § 210.19(c)(6)(i) to reference the various terms used to stipulate the elements in a reimbursable meal.

Finally, § 210.19 would be amended to make clear that the nutrition review procedures for food-based and nutrient standard alternate approaches are the same as those for food-based and nutrient standard menu planning systems, respectively, except for those alternate approaches that do not lend themselves to existing nutrition review procedures. In those cases, the nutrition review procedures are those review procedures developed under § 210.10(l).

Adjustments to Review Periods

The Department is proposing to adjust the review period for nutrition reviews. Currently, paragraphs (a)(1)(i) and (ii) of § 210.19 stipulate that the State agency is to review the school's nutrition analysis or conduct an independent analysis for the last completed week prior to the review. The intent of this provision was to ensure that the analysis reflected the current state of the

meal service. However, some State agencies have noted that, under CRE, as detailed in § 210.18, State agencies select the month prior to the month of the review as the sample period. Consequently, State agencies which would elect to conduct nutrition reviews concurrently with CRE reviews will likely need to look at two different review periods during the same visit. Therefore, in the interests of efficiency, this proposal would permit reviewers to conduct the assessment of compliance with nutrition standards for any week of the current school year prior to the month of the review. However, the week selected must continue to represent the current state of the meal service. The State agency could select, for example, a week for the nutrition review that was in the same month in which a CRE was scheduled. The Department believes that this proposed provision will still allow State agencies to determine whether the program is in compliance with the nutrition standards and, if necessary, prescribe appropriate steps for improvements by requiring review of a relatively current period that is typical of the on-going meal service. This change is proposed at § 210.19(a)(1)(i).

Extent of Reviews

Another proposal would amend § 210.19(a) to clarify that, during the review cycle, State agencies must review at least one school for each type of menu planning alternative used by the school food authority. For example, if eight schools in a school food authority use the traditional meal pattern, three use the enhanced food-based system and five use NSMP, the State would select at least one school from each category. The Department recognizes that, in some cases, this requirement would result in more schools being visited for nutrition compliance than are required to be reviewed under CRE. The Department believes, however, that this coverage is essential to ensure that the school food authority is following all alternatives correctly. For example, a school food authority may be achieving great success with the enhanced food-based system but may not be conducting NSMP properly. The only way for the State agency to identify this problem, provide appropriate technical assistance and require corrective action is to examine the school food authority's experience with all alternatives in use. This amended is proposed at § 210.19(a)(1).

The proposal would also clarify that State agencies are required to perform the necessary nutrition review on only the lunch program unless the school

food authority uses a particular menu planning alternative only for the breakfast program. For example, if all of the schools in a school food authority use either NSMP or the enhanced food-based system for lunch, and at least some of the schools use the traditional food-based menu planning alternative for breakfast, the State agency would need to conduct two lunch reviews (one of a school using NSMP and one of a school using the enhanced food-based system) and one review of a breakfast program which uses the traditional meal pattern. However, if all three of these alternatives are used for the lunch program in the school food authority, no review of the breakfast program would be needed. The Department cautions, however, that if the lunch review indicates that the school food authority needs technical assistance and/or corrective action, the State agency may wish to review a breakfast program as well to determine if the school food authority needs to take specific corrective action for that program as well. In these cases, the review of the breakfast program could be done either at the time of the initial lunch review or as part of any follow-up needed to further evaluate the results of technical assistance or corrective action.

Conforming Review Cycles

Finally, the Department is proposing a minor technical amendment to § 210.19(a)(1)(i) to make the cycle for nutrition reviews consistent with the cycle for administrative reviews under CRE. The SMI rule established a five-year cycle for reviews of nutrition compliance and intended that cycle to run concurrently with the CRE cycle so that those States electing to conduct nutrition reviews at the same time as administrative reviews could do so efficiently. The regulation currently stipulates that the first five-year cycle would begin on July 1, 1996, unless the State agency authorized a temporary waiver of compliance with the nutrition standards, in which case the first year of the cycle could begin as late as July 1, 1998. Consequently, the first five-year cycle would end as early as June 30, 2001 or as late as June 30, 2003, depending upon actual implementation. The current CRE cycle ends on June 30, 1998, however, and the next cycle will end on June 30, 2003. Therefore, the two review cycles would be out of sequence for State agencies which implement the regulations before School Year 1998/1999.

While State agencies are not required to conduct nutrition reviews at the same time as administrative reviews, the Department proposes to make the two

review cycles coincide so that State agencies may avail themselves of this option efficiently. To achieve this goal, therefore, the Department is proposing to establish an initial cycle of seven years for nutrition reviews, from July 1, 1996 through June 30, 2003. Thereafter, review cycles would be five years in length. This expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

The Department notes that the extended time frame for completing nutrition reviews increases the need for State agencies to identify school food authorities that may have menu planning difficulties in order to schedule visits to them as early as possible in the cycle. The Department also would like State agencies to comment on any increased potential for noncompliance that might result from this extension and whether or not the Department should consider establishing intermediate review goals within the cycle.

Updating the Dietary Guidelines and Other Technical Changes

Section 9(f)(1)(A) of the NSLA requires that schools offer meals consistent with the goals of the "most recent Dietary Guidelines for Americans." The June 13, 1995, SMI rulemaking incorporated the 1990 edition of the Dietary Guidelines as program requirements because they were, at that time, the latest official version. The Department indicated, however, that later editions would be incorporated to reflect any revisions to the recommendations. In December 1995, the Department, in partnership with the Department of Health and Human Services, issued the 1995 edition. While there were no substantive differences between the 1995 edition and the 1990 edition, there were some minor language revisions. Therefore, the Department is taking this opportunity to propose amending § 210.10(b)(3) and § 220.8(a)(3) to incorporate the minor wording changes of the 1995 guidelines, and to change references to the 1990 guidelines to 1995.

The 1995 Dietary Guidelines also include the suggestion that the diets of children between the ages of two and five should be gradually altered so that, by age five, they receive no more than 30 percent of their calories from fat. Since the Dietary Guidelines do not treat this suggestion as a formal recommendation, the Department is not incorporating it into § 210.10(b)(3) or § 220.8(a)(3), where the Dietary Guidelines' recommendations are

enumerated. However, a footnote containing this information would be added to the charts in § 210.10(c)(1), § 210.10(c)(2), § 210.10(d), § 220.8(b)(1), § 220.8(b)(2) and § 220.8(c)(1). The Department is also aware that the RDA are in the process of being reviewed and that an update is scheduled to be released in 1999. At that time, the Department will propose any needed revisions to the key nutrient and calorie levels.

The name of the database used in the nutrient analysis software has been changed from the "National Nutrient Database for the Child Nutrition Programs" to the "Child Nutrition Database." This proposal would, therefore, update the references to the database in § 210.10(i) and § 220.8(e).

It was brought to the Department's attention that there was a misstatement in the preamble of the final regulation published on June 13, 1995. The regulation, Child Nutrition Programs: School Meal Initiatives for Healthy Children, was published in the *Federal Register* at 60 FR 31188. The erroneous statement at 60 FR 31203 was:

... program regulations (§ 210.11(a) and § 220.12(a)) prohibit the sale of certain foods of minimal nutritional value in the food service area between the start of school and the last lunch period of the day.

The correct policy is contained in § 210.11(b) for the NSLP. The correct policy is:

Such rules or regulations [established by State agencies or school food authorities] shall prohibit the sale of foods of minimal nutritional value, as listed appendix B of this part, in the food service areas during the lunch periods.

(Emphasis added)

This policy may found for the SBP at § 220.12(a).

Although the statement in the preamble was incorrect, the actual regulatory language contained in § 210.11 (b) was correct. The Department regrets any confusion this error may have caused.

Appendix to Preamble—Regulatory Cost/Benefit Assessment

1. Title: National School Lunch Program and School Breakfast Program: Additional Menu Planning Alternatives.

2. Background:

a. Need for Action: Public Law 104-149, the Healthy Meals for Children Act, amended the National School Lunch Act by expanding the number of alternatives available to plan menus for the school meals programs. Section 9(f) of the National School Lunch Act was amended to allow schools to continue using the meal planning system in effect in School Year 1994-95 as well as the other meal planning alternatives already available. In addition, the Act was amended to allow

schools to use "... any reasonable approach, within guidelines established by the Secretary ..."

The menu planning system in effect in School Year 1994-95 was the "traditional pattern" which has been in use for many years, and which requires four components (meat/meat alternate, breads/grains, fruits/vegetables and milk) and five items. Because this alternative was to be deleted from the regulations at the end of the implementation period (July 1, 1998), this proposal would reinstate this alternative permanently. In addition, this proposal would establish the guidelines for "any reasonable approach" to ensure that schools continue to serve reimbursable meals and provide proper accountability for Federal reimbursement while still having the flexibility to design a menu planning alternative that meets their particular needs.

Before the Department issued a proposal to implement Public Law 104-149, Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was enacted on August 22, 1996. This law further amended the National School Lunch Act to mandate that school lunches provide, over a week, one-third of the Recommended Dietary Allowances (RDA) and that school breakfasts provide one-fourth of the RDA. These requirements are, however, already included in the school programs' regulations.

b. Affected parties: The entities affected by this proposal are State agencies, school food authorities, the nation's school children, and the Food and Nutrition Service.

c. Promotes the President's Priorities: This proposal would promote the President's commitment to flexibility for program administrators while continuing to support the objectives of providing meals to the nation's school children that meet the Dietary Guidelines for Americans and other established nutrition standards.

3. Statutory Authority: Public Law 104-149.

4. Cost-Benefit Assessment of Economic and Other Effects:

Reinstatement of the Traditional Meal Pattern

Background: The proposed regulation would reinstate the meal pattern in effect in School Year 1994-1995 as one menu planning alternative. The meal pattern would be incorporated into the section of the regulation establishing the food-based menu planning alternatives and would be entitled the "traditional food-based menu planning alternative." The food-based alternative implemented in the June 5, 1995, final rule would be renamed "the enhanced food-based menu planning alternative." The provision would provide a table with the minimum levels of nutrients (calories, protein, calcium, iron, Vitamin A, and Vitamin C) for the age/grade groups of the meal pattern. Further, the provision makes minor conforming amendments to allow for monitoring compliance with the nutrition standards for this additional menu planning alternative.

Effects of Reinstating the Traditional Meal Pattern

Benefits: The provision permanently reinstating the meal pattern in effect during

School Year 1994-1995 will allow schools to use a meal pattern with which they are familiar. Extensive experience with the traditional meal pattern has allowed schools to successfully develop menus that meet program requirements and are popular with students. The reinstatement of the traditional meal pattern provides schools with an additional menu planning option and even greater flexibility in meeting the nutritional needs of students.

The rule extends nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. School lunches are required to provide, over a week's time, one-third of the RDA for key nutrients (protein, calcium, iron, vitamin A and vitamin C) and calories needed by growing children of different ages. School breakfasts are required to provide, over a week's time, one-fourth of the RDA for key nutrients (protein, calcium, iron, vitamin A and vitamin C) and calories needed by growing children. In addition, schools should be making progress towards providing meals which comply with the Dietary Guidelines, including the recommendations that no more than 30 percent of calories come from fat and that saturated fat be limited to less than 10 percent of calories. The extension of this provision to the traditional food-based meal planning systems will ensure that children in schools using this system will receive meals of comparable nutritional quality as children in schools using the enhanced food-based menu plan. This provision does not require any additional burden of school food authorities as regulations require any menu planning system to provide comparable levels of RDAs for key nutrients and comply with the Dietary Guidelines.

Costs: The 1993 USDA School Nutrition Dietary Assessment Study (SNDA) assessed the nutritional quality of lunches served under the traditional meal pattern. SNDA found that the amount of nutrients in the average school lunch provided under the traditional meal pattern exceeded the standard of one-third of the daily RDA for the age groups at the elementary, middle, and high school level for most nutrients.

However, the average percentage of food energy from total fat offered in school lunches was 38 percent, compared with the Dietary Guideline goal of not more than 30 percent; the percentage from saturated fat was 15 percent, compared with the Dietary Guideline of less than 10 percent.¹ In addition, the Continuing Survey of Food Intake by Individuals (CSFII), 1989-91 found that school-age children have average daily intakes of 33.7 to 34.7 percent of calories from fat, and 12.6 to 13.3 percent of calories from saturated fat depending on age-sex group.

The SNDA and CSFII findings heightened awareness of the need to improve the nutritional quality of school meals. In response the Department initiated the School Meals Initiative for Healthy Children, the

¹ Burghardt, J.C., A. Gordon, N. Chapman, P. Gleason, T. Frazer (1993). The School Nutrition Dietary Assessment Study: School Food Service, Meals, and Dietary Intakes. October 1993.

first program-wide reform of the school meals program since its establishment in 1946. Since the introduction of the School Meals Initiative the Department has provided training and technical assistance designed to assist school food service personnel in implementing the Dietary Guidelines. FNS has sponsored training on the preparation of healthier meals; provided recipes which are lower in fat and sodium; and issued grants to assist State agencies in establishing statewide training systems to assist local agencies in implementing the Dietary Guidelines. The Department has also increased efforts to provide lower fat commodities to local school districts.

Even with increased efforts by the Department, State agencies and school food authorities to provide schools with the knowledge and skills necessary to successfully implement the Dietary Guidelines, the possibility still exists that it might prove difficult for some schools using the traditional food-based meal pattern to comply with the recommendations. In these instances, it may be necessary for the school food authority or the State agency to provide further training of the school food service personnel to enable them to successfully develop meal patterns which comply with the Dietary Guidelines.

The State agency will be responsible for monitoring progress towards meeting the Dietary Guidelines and nutrition standards and for making adjustments in procedures that schools follow in order to ensure effective progress toward eventual compliance with the updated nutritional requirements. Should a number of schools using the traditional food-based menu pattern encounter difficulty in meeting the Dietary Guidelines, the State agency will need to cooperate with the school food authority in designing corrective action to rectify the deficiencies. Additionally, the State agency will need to monitor the execution of corrective action taken by the school food authority to ensure that progress is being made towards meeting the Dietary Guidelines.

Since most State agencies used the 1996-1997 school year to train staff to conduct the nutrient analyses, the number of analyses that were actually completed was fewer than expected. As a result, there is no data available on the number of school food authorities that fail to meet the nutrient standards and need to take corrective action.

Any Reasonable Approach to Meal Planning

Benefits: Public Law 104-149 permits school food authorities to use "any reasonable approach" to menu planning not specifically delineated in the regulations. The law makes it clear, however, that approval of other "reasonable approaches" must be in accordance with guidelines established by the Secretary. In developing appropriate guidelines, the Department considers that there are two classes of additional reasonable approaches. The first class of reasonable approaches consists of alternatives which are essentially relatively minor modifications to one or another of the existing menu planning systems. The second class of alternatives would involve unique

proposals that depart significantly from the existing systems.

Minor Modifications

The Department believes that minor modifications to existing meal planning systems do not pose significant questions about nutritional content or program integrity. Therefore, to reduce unnecessary paperwork, the Department is proposing to authorize State agencies to permit their school food authorities to choose any of the following adaptations without applying to the State agency for approval. The decision to authorize any or all of these modifications rests entirely with the State agency. State agencies may establish a general policy allowing school food authorities to adopt any or all of these approaches without prior approval or chose to review requests from school food authorities. The preapproved approaches are:

1. Weekly Meat/Meat Alternate Quantity Standard: Schools using one of the food-based menu planning systems would be allowed the flexibility to vary the quantity of the meat/meat alternate on a daily basis as long as the total amount served over the course of the school week equals the minimum daily quantity multiplied by the number of serving days in the week. Schools would still be required to serve a minimum of one ounce of meat/meat alternate daily.

2. Flexible Age-Grade Groupings for Food-Based Systems: Under the analysis-based menu planning options, if only one age or grade in a school is outside the established RDA and calorie requirements for the majority of students, schools are permitted to use the nutrition standards for that majority. In the interests of consistency and flexibility, the Department is proposing to extend this option to the food-based systems as well.

Innovative Approaches

The second class of other reasonable approaches involves innovative systems that are not currently established in program regulations and guidance. These innovative menu planning systems could be developed by school food authorities for use in their schools, or developed by State agencies and made available to their school food authorities. The Department envisions two approaches that State agencies could take in developing menu planning systems. It would be possible for a State to develop a unique menu planning system and then refrain from being involved in the operation or evaluation of the system. In these cases, the system would have to be submitted to the Department for approval before implementation. The second scenario involves systems developed by the State, used by multiple school food authorities (at least five) within the State, and the State agency remains an active partner in the operation and evaluation of the system on an ongoing basis and issues an announcement notifying the public of the alternate menu planning approach. In this case, the State would not be required to submit the system to the Department for approval prior to implementation.

Any meal planning system proposed by a school food authority or a State agency

would have to be assessed for its potential impact on the delivery of meals to children, both nutritionally and fiscally. To achieve these goals, the Department is proposing to establish a framework and criteria for consideration and approval of such requests. Any approach developed by a State agency or a school food authority would need to ensure that the following areas, which are critical to the proper and efficient operation of the program, be satisfied:

1. **Identification of Reimbursable Meals:** The definition of a reimbursable meal is essential to program integrity. The four menu planning systems specifically recognized by the statute have specific requirements for a reimbursable lunch or breakfast. In keeping with these principles, the school food authority would need to outline, in any proposed menu planning alternative, what constitutes a reimbursable meal; how these will be identified by the students in the line and by food service staff at the point of service; and how reviewers will be able to document compliance. Likewise, the State agency must determine that the reimbursable meal will offer sufficient nutrition on a daily basis to justify Federal reimbursement.

2. **Provide for Offer versus Serve:** When developing a menu planning alternative, school food authorities must provide for offer versus serve (OVS), as appropriate. Section 9(a)(4) of the NSLA requires that schools implement OVS in the NSLP for senior high students; at local option, school food authorities may adopt OVS in the lunch program for lower grades as well. Local school food authorities may also implement OVS for the SBP. The purpose of OVS is to encourage students to make selections that they prefer, thus helping to reduce plate waste. Therefore, because of the statutory mandate, any menu planning approach proposed by a school food authority or State agency must include OVS for senior high students at a minimum.

3. **Compliance with Nutrition Standards:** By law, school lunches are required to provide, over a week's time, one-third of the RDA for key nutrients and one-third of the calories needed by growing children of different ages. In addition, the meals must comply with the recommendations of the Dietary Guidelines. School breakfasts must provide one-fourth of the RDA and calorie needs and also must comply with the Dietary Guidelines. Under no circumstances can these requirements be modified. Therefore, any request to employ an alternate menu planning approach would need to demonstrate, to the satisfaction of the State agency, that the menus would continue to meet or exceed these standards. Furthermore, because the RDA can vary by age and/or grade group, the school food authority would need to specify which age/grade groups will be served and indicate what the appropriate RDA and calorie levels are for each age/grade group.

4. **Ability to Monitor:** Any alternate approach must be capable of being monitored by the State agency to determine that reimbursable meals are being offered, accepted, and properly counted and that the meal service is in compliance with all of the nutrition standards.

While the Department wishes to provide school food authorities with maximum flexibility to develop alternate menu planning approaches, this proposed rule would prohibit State agencies from approving modifications to the existing four menu planning options beyond those discussed above as automatic options. The Department considers that certain requirements governing these options must remain intact except for limited exceptions for special State-wide systems. Consequently, the following operational components of the established menu planning systems may not be modified except as discussed below:

1. **Weighted Averages for NSMP/ANSMP:** The regulations require schools employing NSMP or ANSMP to conduct their analyses by weighting all foods planned as part of the reimbursable meal service according to the amount of each food actually intended to be produced, based on production records or experience. However, in order to make the transition to updated menu planning methods as smooth as possible and to ensure that every avenue for promoting sound nutrition while minimizing burden is explored, the Department authorized a delay in implementing this regulatory requirement for all schools adopting NSMP until the Department has the opportunity to evaluate the ability of weighted and unweighted averages to provide accurate determinations of compliance with the nutrition standards.

2. **Use of Approved Software for NSMP and ANSMP:** The regulations also require menu planners electing to use NSMP or ANSMP to conduct or to have their analyses conducted using software approved by the Department. The Department is aware that there are many nutrition software packages available; however, many of these are for individuals or for clinical settings such as hospitals. The software approved by USDA is designed to meet the needs of school food service professionals and fulfills essential school-based needs.

3. **Crediting Requirements for Food-Based Alternatives:** This proposed rule would prohibit State agencies from disregarding any of the Department's crediting policies for schools electing to use a food-based menu planning system. The Department's standards for crediting food items are designed to maintain the nutritional integrity of school meals by ensuring that foods used to satisfy quantity and component requirements provide a sufficient amount of the component or its equivalent to count toward meeting the meal requirements, standards of identity and/or specifications.

4. **Foods of Minimal Nutritional Value:** The Department also wishes to emphasize that States may not, under any circumstances, approve the sale of foods of minimal nutritional value as defined in program regulations.

However, the Department is also proposing that, in certain limited situations, menu planning systems, supported by the knowledge and resources of a State agency, can operate with modifications beyond those available to school food authorities while maintaining the necessary control over the nutritional content of their meals. Therefore, this proposal would authorize modification

in some menu planning systems of the provisions on weighted nutrient analysis and approved software, provided that: these systems are operated under policies and procedures developed or adopted by a State agency; the State agency remains an active participant in the operation and evaluation of the project on an ongoing basis; and the system is used by multiple school food authorities (at least five) within the State and the State agency issues a public announcement concerning the alternative menu planning approach.

Effects of Implementing "Any Reasonable Means"

Benefits: The provision permitting the use of "any reasonable approach" to menu planning will provide school food authorities with even greater flexibility in developing a menu service which meets the needs and preferences of local children. The rule contains a provision allowing school food authorities to make minor modifications to existing meal planning systems. The rule also contains provisions which allow school food authorities or States to make extensive modifications to existing menu planning systems or to develop innovative systems that are not currently established in program regulations and guidance.

The rule proposes that certain minor modifications by a school food authority to one or another of the existing meal systems would be allowed, at the discretion of the State agency, without prior approval. An example of the additional flexibility to be gained by individual schools is the ability to vary the amount of meat/meat alternate served on daily basis. This provision provides schools with an option that allows them to produce a more appealing entree or to reduce the amount of plate waste while still meeting the minimum weekly serving requirement of a meat/meat alternate.

A school food authority desiring to make more than minor modifications would be permitted to develop a proposal which differs significantly from the existing meal planning systems. The authority to develop their own menu planning systems will allow school food authorities to take into consideration any unique local food preferences or dietary needs when planning such systems.

The provisions of this rule allow State agencies to develop their own menu planning alternatives and make them available to local school food authorities. State agencies will have the opportunity to develop, in consultation with school food authorities within their State, a menu planning system designed to meet the specific needs of the children of their State rather than one designed for the tastes and needs of the national student population.

The rule allows such a menu planning system to use alternate weighting procedures and software while continuing to operate within normal regulatory authority, provided that the system is used by at least five school food authorities within the State, the State agency remains an active participant in the

operation and evaluation of the system on an ongoing basis and notifies the public about their alternative menu planning approach. This provision would provide State agencies with increased flexibility in the selection of software used to conduct the nutrient analyses.

Costs: While it is entirely possible that local menu planners may devise systems which produce nutritious meals which are appealing to children, these innovative systems are, by their very nature, untested and subject to unforeseen consequences. Any unique meal planning system will be required to serve meals which provide the same level of key nutrients as any of the prescribed meal patterns. It is possible that a locally developed system might have difficulty complying with the recommendations. In these instances, school food authorities and States might find it necessary to provide additional training and technical assistance to those schools failing to meet the nutrition requirements. However, it is also reasonable to expect that innovation may result in lower costs methods being devised. In either case, the nutrient standards remain the same; and the anticipated impacts on agriculture and the children's health are verifiable.

As noted previously, the percentage of total calories from fat consumed by school aged children in the late 1980's and early 1990's was above what was recommended by the Dietary Guidelines for Americans. Because States will conduct reviews once every five years, several years may pass before problems in meeting the nutritional guidelines will be detected. If schools fail to meet the nutrient standards using innovative systems, it is possible that the nutritional quality of some school meals may be deficient for a period of up to five years. However, FNS has anecdotal evidence that school food authorities have made improvements in their ability to meet the Dietary Guidelines.

As with the traditional meal pattern, the State agency will still be responsible for monitoring the progress these locally developed systems make toward complying with the Dietary Guidelines and nutrition standards. Should any such system or systems fail to comply with these standards, the State agency would need to work with the school food authorities to devise corrective action that would ensure that the menu planning systems would make progress towards, and eventually comply with, the Dietary Guidelines. If locally developed systems prove to have difficulty meeting the required nutritional requirements, the State agency would be faced with an increased monitoring burden without a concomitant reduction in any other monitoring burdens.

At this time it is impossible to determine the additional burden that will be required of State agencies as a result of school food authorities developing their own menu planning systems and failing to meet the nutrition standards. As stated earlier, the 1996-1997 school year is the first one in which States have been required to conduct the nutrient analyses so no data is available as to the number of schools failing to meet the standards. Additionally, FNS has no indications as to how many local agencies

might choose to develop their own menu planning systems. It is also impossible to determine the additional nutritional risk placed on children in schools that have difficulty meeting the Dietary Guidelines. However, because there is a certain amount of uncertainty regarding the ability of schools to meet the nutritional requirements under innovative systems, FNS acknowledges that nutritional risk exists.

Miscellaneous Monitoring Provisions

Background: The Department is also proposing a number of amendments to the requirements for nutrition monitoring designed to ensure appropriate State agency oversight of all menu planning alternatives and to clarify some existing provisions.

First, the nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option would be extended to reviews of schools using the traditional meal pattern and other reasonable approaches. As part of these reviews, the State agency must conduct a nutrient analysis using the regulatory procedures schools follow for NSMP.

Second, the Department is proposing to redefine the review period for nutrition reviews which is currently the last completed week prior to the review in order to expedite concurrent reviews of the nutrition standards and reviews for compliance with serving reimbursable meals and free/reduced price application requirements as conducted under coordinated review effort (CRE) reviews. The proposal would permit reviewers to conduct the nutrition review for any week prior to the month of review as is allowed in other reviews.

A third proposed provision would clarify that State agencies must conduct at least one review of every menu planning option employed by the school food authority. The proposal also clarifies that State agencies would be required to review only the lunch program unless the school food authority uses a particular menu planning option for breakfast but not for lunch, in which case at least one school's breakfast program would need to be reviewed.

A fourth proposed change would require State agencies to ensure that there are appropriate methods for monitoring compliance with the nutrition standards in schools using approved reasonable approaches. At a minimum, nutrition monitoring in these schools would be required to include a nutrient analysis by the State agency using software approved for NSMP.

Finally, the Department is proposing a minor technical amendment to make the cycle for nutrition reviews consistent with the cycle for administrative reviews under CRE. The cycle for conducting nutrition standard reviews was intended to run concurrently with the CRE cycle so that those States electing to conduct nutrition reviews at the same time as administrative reviews could do so efficiently. While State agencies are not required to conduct nutrition reviews at the same time as administrative reviews, the Department intended to make the two review cycles coincide so that State agencies could avail themselves of this option

efficiently. To achieve this goal, therefore, the Department is proposing to establish an initial cycle for nutrition reviews as seven years, from July 1, 1996 through June 30, 2003. Thereafter, review cycles would be five years in length. This expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

Effects of Miscellaneous Monitoring Provisions

Benefits: The rule contains minor provisions which provide State agencies with greater flexibility in scheduling of nutrition reviews. The rule allows States to conduct the nutrient analysis based on one week in the month prior to the month of review. Current regulations require that the week chosen for analysis be the last completed week prior to review. Allowing the State agency to choose a week in any month prior to the month of review allows the States to coordinate their nutrition review with the CRE administrative reviews.

The rule proposes to alter the nutrition review cycles so that States wishing to conduct their nutrition reviews at the same time as their CRE administrative reviews will be able to do so. The June 13, 1995 final rule established a five-year cycle for reviews of nutrition compliance. The regulation stipulated that the first five-year cycle could begin as early as July 1, 1996 or as late as July 1, 1998. As a result, the first cycle could end as soon as June 30, 2001, or as late as June 30, 2003, depending upon implementation. The current CRE cycle ends on June 30, 1998 and the following cycle will end June 30, 2003. So that the two cycles might coincide, the rule proposes to establish an initial cycle for nutrition reviews of seven years, from July 1, 1996 to June 30, 2003. The expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

Costs: When the June 13, 1995 final rule established reviews of nutrition compliance, the Department did not anticipate that the traditional meal pattern would continue to be an option after June 30, 1998, so no provision was made requiring a nutrient analysis for schools using this meal pattern. The proposed rule extends nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. The requirement that a nutritional analysis be conducted on schools using the traditional meal plan does not place any additional burden on State agencies.

The rule requires that State agencies must conduct at least one review of every menu planning option employed by the school food authority. This requirement could result in more schools being reviewed for nutrition compliance than would be required to be reviewed under CRE. For each school it takes one staff person approximately one and a half days to complete a CRE review. This would come at the approximate cost of \$216 for

each additional school.² The Department believes this coverage is necessary to ensure that the school food authority is employing all menu planning systems correctly. The only way for the State agency to identify problems and provide technical assistance is to examine the school food authorities experience with all systems. It is impossible to determine how many more schools State agencies will have to review for nutrition compliance than would be required for CRE as the Department has no data on how many school food authorities use multiple menu planning systems.

Other Effects of the Proposed Regulation

Effects of Rule on NSLP Participation

The provisions of this rule may have a small effect on participation in the National School Lunch Program. The provisions of this rule may have the effect of making meals more appealing which may increase participation. Implementation of the rule is not expected to increase meal prices or decrease meal acceptability. The rule allows schools to continue to use the current meal pattern. Additionally, school food authorities and States are now able to develop menu plans that they feel would be even more appealing to their student population than the menu plans prescribed by the Department.

Effects of Rule on Program Costs

The provisions in this proposed rule will provide increased flexibility to State or local program operators but have no budgetary impact.

Effects on Small Entities

This proposal will not have significant economic impact on a substantial number of small entities. This proposal does not add any new requirements and there are no required additional costs. School food authorities and schools may experience some positive effects from this proposed rule as noted previously.

Summary of the Effects of the Proposed Rule

The proposed rule provides school food authorities and State agencies with increased choices and flexibility in selecting a menu planning system by permanently reinstating the meal pattern in effect during the 1994-1995 school year and providing guidelines for approval of other reasonable approach alternatives that schools may develop. The proposed rule contains minor monitoring provisions. It extends monitoring provisions pertaining to

² Cost calculated assuming 12 hours to review each school at a wage rate of \$18 an hour.

reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. It provides State agencies with greater flexibility in selection of the week to be reviewed for nutrient compliance. Further, the proposed rule alters the nutrition review cycle so that it coincides with the CRE administrative review cycle. This will allow State agencies to more easily conduct nutrient reviews at the same time as administrative reviews.

The proposed rule is not expected to have any impact on program participation, nor is the rule expected to have any budgetary impact. The rule will not have a significant economic impact on a substantial number of small entities.

5. Public Comments: This proposal will provide a 180-day comment period.

List of Subjects

7 CFR Part 210

Commodity School Program, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR Parts 210 and 220 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751-1760, 1779.

§ 210.2 [Amended]

2. In § 210.2:

a. the definition of "Food component" is amended by removing the words "or one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and vegetable/fruit under § 210.10a";

b. the definition of "Food item" is amended by removing the words "or one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and two (2) servings of vegetables, fruits, or a combination of both for the purposes of § 210.10a"; and

c. the definition of "Lunch" is amended by removing the words "§ 210.10(k)(2) or the school lunch pattern for specified age/grade groups of children as designated in § 210.10a" and adding in their place the words "§ 210.10(k)(1) or § 210.10(k)(2), whichever is applicable".

§ 210.4 [Amended]

3. In § 210.4, paragraph (b)(3) introductory text is amended by removing the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable" and adding in their place a reference to "§ 210.10 (o)(1)".

§ 210.7 [Amended]

4. In § 210.7:

a. paragraph (c)(1)(v) is amended by removing the words "or § 210.10a(b), whichever is applicable"; and
b. paragraph (d) is amended by removing the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable" and adding in their place a reference to "§ 210.10(o)(1)".

§ 210.9 [Amended]

5. In § 210.9:

a. paragraph (b)(5) is amended by removing the words "or 210.10a, whichever is applicable";
b. paragraph (c) introductory text is amended by removing the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable" and adding in their place a reference to "§ 210.10(o)(1)"; and
c. paragraph (c)(1) is amended by removing the words "or § 210.10a, whichever is applicable".

6. In § 210.10:

a. paragraph (a)(1) is amended by revising the first sentence and by adding a new sentence at the end of the paragraph;

b. the second sentence of paragraph (a)(3) is amended by removing the word "or" and adding in its place a comma and by adding the words "or those developed under paragraph (l)" after the reference to "paragraph (i)(1)"; the third sentence of paragraph (a)(3) is amended by removing the third occurrence of the word "or" and adding in its place a comma, and adding the words "or those developed under paragraph (l)" after the reference to "paragraph (i)(1)";

c. paragraph (b)(1) is amended by making the word "paragraph" plural, by removing the second occurrence of the word "or" and adding in its place a comma and by adding the words "or (l)" after the reference to "(i)(1)";

d. paragraph (b)(2) is amended by removing the second occurrence of the word "or" and adding in its place a comma, and by adding the words "or (l)" after the reference to "(i)(1)";

e. paragraph (b)(3) is revised;
f. paragraph (b)(4) introductory text is amended by removing the reference to "1990" and adding in its place a reference to "1995";

g. the first sentence of paragraph (b)(5) is revised;

h. the table in paragraph (c)(1) is revised;

i. the table in paragraph (c)(2) is revised;

j. paragraph (d) is revised;
k. the heading of paragraph (i)(4) and paragraph (i)(9) are amended by removing the words "National Nutrient Database" and adding in their place the words "Child Nutrition Database";

l. paragraphs (i)(4) and (i)(8) are amended by removing the words "National Nutrient Database for the Child Nutrition Programs" wherever they appear and by adding the words "Child Nutrition Database" in their place;

m. the heading of paragraph (k) is revised and introductory text is added;

n. paragraph (k)(1) is revised;

o. the heading of paragraph (k)(2) and the introductory text before the chart are revised;

p. the first two sentences of paragraph (k)(4) are redesignated as paragraph (k)(4)(i) and the last sentence of paragraph (k)(4) is redesignated as paragraph (k)(4)(ii) and is revised;

q. paragraph (k)(5) is amended by adding a new paragraph (k)(5)(iii);

r. paragraph (k)(5)(ii) is amended by adding two new sentences between the second and third sentences;

s. paragraphs (l) through (o) are redesignated as paragraphs (m) through

(p), respectively, and a new paragraph (l) is added;

t. newly redesignated paragraph (o)(3)(iv) is amended by removing the reference to "(n)(3)" and adding in its place a reference to "(o)(3)"; and

u. in newly redesignated paragraph (p), the reference to "1990" is removed and a reference to "1995" is added in its place.

The additions and revisions read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

(a) General requirements for school lunches. (1) In order to qualify for reimbursement, all lunches served to children age 2 and older, as offered by participating schools, shall, at a minimum, meet the nutrition standards provided in paragraph (b) of this section and the appropriate levels of calories and nutrients provided in: paragraph (c) or paragraph (i)(1) of this section for nutrient standard menu planning and assisted nutrient standard menu planning; paragraph (d)(1) of this section for the traditional food-based menu planning alternative; paragraph (d)(2) of this section for the enhanced food-based menu planning alternative; or as developed in accordance with the provisions in paragraph (l) of this section for other menu planning alternatives, whichever is applicable.

* * * In addition, those school food authorities that use menu planning approaches as allowed under paragraph (l) of this section shall ensure that sufficient quantities of food are planned and produced to meet the provisions in

paragraph (b) of this section and any minimum standards for food/menu items and quantities.

* * * * *
(b) Nutrition standards for reimbursable lunches. * * *

(3) The applicable recommendations of the 1995 Dietary Guidelines for Americans which are:

(i) Eat a variety of foods;

(ii) Limit total fat to 30 percent of calories;

(iii) Limit saturated fat to less than 10 percent of calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of grain products, vegetables, and fruits;

(vi) Choose a diet moderate in salt and sodium; and

(vii) Choose a diet moderate in sugars.

* * * * *

(5) School food authorities have several alternatives for menu planning in order to meet the nutrition standards of this paragraph and the applicable nutrient and calorie levels: nutrient standard menu planning as provided for in paragraph (i) of this section; assisted nutrient standard menu planning as provided for in paragraph (j) of this section; traditional food-based menu planning as provided for in paragraph (d)(1) of this section; enhanced food-based menu planning as provided for in paragraph (d)(2) of this section; or other menu planning approaches as provided for in paragraph (l) of this section.

(c) Nutrient levels for school lunches/nutrient analysis.

(1) * * *

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Minimum requirements			Optional
	Preschool	Grades K-6	Grades 7-12	Grades K-3
Energy allowances (calories)	517	664	825	633
Total fat (as a percentage of actual total food energy)	(¹)	(²)	(²)	(²)
Total saturated fat (as a percentage of actual total food energy)	(¹)	(³)	(³)	(³)
RDA for protein (g)	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for Iron (mg)	3.3	3.5	4.5	3.3
RDA for Vitamin A (RE)	150	224	300	200
RDA for Vitamin C (mg)	14	15	18	15

¹ The dietary guidelines recommend that after 2 years of age * * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.

² Not to exceed 30 percent over a school week.

³ Less than 10 percent over a school week.

(2) * * *

OPTIONAL NUTRIENT LEVELS FOR SCHOOL LUNCHES—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Ages 3-6	Ages 7-10	Ages 11-13	Ages 14 and above
Energy allowances (calories)	558	667	783	846

OPTIONAL NUTRIENT LEVELS FOR SCHOOL LUNCHES—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)—Continued

Nutrients and energy allowances	Ages 3–6	Ages 7–10	Ages 11–13	Ages 14 and above
Total fat (as a percentage of actual total food energy)	(1,2)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1,3)	(2)	(2)	(2)
RDA for protein (g)	7.3	9.3	15.0	16.7
RDA for calcium (mg)	267	267	400	400
RDA for iron (mg)	3.3	3.3	4.5	4.5
RDA for Vitamin A (RE)	158	233	300	300
Vitamin C (mg)	14.6	15.0	16.7	19.2

¹ The dietary guidelines recommend that after 2 years of age " " children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.

² Not to exceed 30 percent over a school week.

³ Less than 10 percent over a school week.

(d) *Minimum nutrient levels for school lunches/food-based menu planning alternatives.*

(1) *Traditional food-based menu planning alternative.* For the purposes of the traditional food-based menu planning alternative, as provided for in paragraph (k)(1) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school lunches offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES—ENHANCED FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Minimum requirements		Optional	
	Preschool	Grades K–6	Grades 7–12	Grades K–3
Energy allowances (calories)	517	664	825	633
Total fat (as a percentage of actual total food energy)	(1)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1)	(2)	(2)	(2)
RDA for protein (g)	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for iron (mg)	3.3	3.5	4.5	3.3
RDA for Vitamin A (RE)	150	224	300	200
RDA for Vitamin C (mg)	14	15	18	15

¹ The dietary guidelines recommend that after 2 years of age " " children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.

² Not to exceed 30 percent over a school week.

³ Less than 10 percent over a school year.

(k) *Food-based menu planning alternatives.* School food authorities may choose to plan menus using either the traditional or enhanced food-based menu planning alternatives. Under these alternatives, specific food components shall be offered as provided in either paragraphs (k)(1) or (k)(2) of this section, whichever is applicable, and in paragraphs (k)(3) through (k)(5) of this section, as appropriate.

(1) *Minimum quantities-traditional food-based menu planning alternative.* (i) At a minimum, school food authorities choosing to plan menus using the traditional food-based menu planning alternative shall offer all five required food items in the quantities provided in the following chart:

TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE

Food components and food items	Minimum quantities				Recommended quantities
	Group 1, ages 1-2 preschool	Group II, ages 3-4 preschool	Group III, ages 5-8 K-3	Group IV, ages 9 and older grades 4-12	
Milk (as a beverage)	6 fl. oz.	6 fl. oz.	8 fl. Oz.	8 fl. oz.	8 fl. oz.
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish	1 oz.	1½ oz.	1½ oz.	2 oz.	3 oz.
Cheese	1 oz.	1½ oz.	1½ oz.	2 oz.	3 oz.
Large egg	½	¾	¾	1	1½.
Cooked dry beans or peas	¼ cup	¾ cup	¾ cup	½ cup	¾ cup.
Peanut butter or other nut or seed butters.	2 Tbs	3 Tbs	3 Tbs	4 Tbs	6 Tbs.
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					

TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE—Continued

Food components and food items	Minimum quantities				Recommended quantities
	Group 1, ages 1-2 preschool	Group II, ages 3-4 preschool	Group III, ages 5-8 K-3	Group IV, ages 9 and older grades 4-12	
Peanuts, soybeans, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 oz. of nuts/seeds=1 oz. of cooked lean meat, poultry, or fish).	½ oz.=50%	¾ oz.=50%	¾ oz.=50%	1 oz.=50%	1½ oz.=50%.
Yogurt, plain or flavored, unsweetened or sweetened.	4 oz. or ½ cup	6 oz. or ¾ cup	6 oz. or ¾ cup	8 oz. or 1 cup	12 oz. or 1½ cup.
Vegetable or Fruit: 2 or more servings of vegetables, fruits or both.	½ cup	½ cup	½ cup	¾ cup	¾ cup
Grains/Breads: (Servings per week): Must be enriched or whole grain or made from flour which may include bran and/or germ. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 per week—minimum of ½ day.	8 per week—minimum of 1 per day.	8 per week—minimum of 1 per day.	8 per week—minimum of 1 per day.	10 per week—minimum of 1 per day.

(ii) Schools able to provide the appropriate quantities of food to children of each age/grade group should do so. Schools that cannot serve children of each age or grade level shall provide all school age children Group IV portions as specified in the table presented in this paragraph. Schools serving lunches to children of more than one age or grade level shall plan and produce sufficient quantities of food to provide Groups I–IV no less than the amounts specified for those children in the table presented in this paragraph, and sufficient quantities of food to provide Group V no less than the specified amounts for Group IV. It is recommended that such schools plan and produce sufficient quantities of food to provide Group V children the larger amounts specified in the table. Schools that provide increased portion sizes for Group V may comply with children's requests for smaller portion sizes of the food items; however, schools shall plan and produce sufficient quantities of food to at least provide the serving sizes required for Group IV.

(2) *Minimum quantities-enhanced food-based menu planning alternative.* At a minimum, school food authorities choosing to plan menus using the enhanced food-based menu planning alternative shall offer all five required

food items in the quantities provided in the following chart:

* * * * *

(4) *Vegetables and fruits.* * * *

(i) Under the enhanced food-based menu planning alternative, the requirement for this component is based on minimum daily servings *plus* an additional one-half cup in any combination over a five day period for children in kindergarten through grade six.

(5) *Grains/breads.* * * *

(i) * * * Schools serving lunch 6 or 7 days per week should increase the weekly quantity by approximately 20 percent (1/5) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (1/5) for each day less than five. * * *

(iii) Under the traditional food-based menu planning alternative, schools shall serve daily at least one-half serving of bread or bread alternate to children in Group I and at least one serving to children in Groups II–V. Schools which serve lunch at least 5 days a week shall serve a total of at least five servings of bread or bread alternate to children in Group I and eight servings per week to children in Groups II–V.

* * * * *

(1) *Other menu planning alternatives.*

(1) *Modifications.* School food authorities may adopt any or all of the following menu planning alternatives.

State agencies may require prior approval for adopting the alternatives, may establish guidelines for their adoption, or may permit their adoption without prior approval.

(i) Under the traditional or enhanced food-based menu planning alternatives provided for in paragraph (k) of this section, the meat/meat alternate component may be provided as a weekly total with a one ounce (or its equivalent for certain meat alternates) minimum daily amount, except that this provision does not apply if the minimum serving of meat/meat alternate is less than one ounce; or

(ii) Under the traditional or enhanced food-based menu planning alternatives, if only one age or grade is outside the established levels, schools may use the levels for the majority of children for both portions and the Recommended Dietary Allowances and lunchtime energy allowances.

(2) *Major changes or new alternatives: use and approval.* Subject to the applicable requirements of paragraph (h)(3) of this section, school food authorities or State agencies may modify one of the menu planning alternatives established in paragraphs (i) through (k) of this section or may develop their own menu planning approach. Any such alternate menu planning approaches shall be in writing for review and monitoring purposes, as applicable. No formal plan is required; the written

alternate approach may be in the form of guidance, protocol, or the like. The alternate approach shall address how the provisions in paragraph (j)(3) shall be met.

(i) Any school food authority-developed menu planning approach must have prior State agency review and approval.

(ii) Except as noted in paragraph (j)(2)(iii), any State agency-developed menu planning approach must have prior FNS approval.

(iii) Any State agency-developed menu planning approach is not subject to FNS review if:

(A) Five or more school food authorities within the State use the approach;

(B) The State agency maintains ongoing oversight of the operation and evaluation of the alternative menu planning approach including making adjustments to the approach's policies and procedures, as necessary, to ensure compliance with the applicable provisions in paragraph (j)(3) of this section as needed; and

(C) The State agency issues an announcement notifying the public concerning the alternate menu planning approach prior to the implementation of the approach by any school food authority; such announcement shall be issued in a manner consistent with State procedures for public notification.

(3) *Major changes or new alternatives: required elements.* The following requirements shall be met by any alternate menu planning approach:

(i) The service of fluid milk, as provided in paragraph (m) of this section;

(ii) Offer versus serve for senior high students. To the extent possible, the offer versus serve procedures for an alternate approach shall follow the procedures in paragraphs (i)(2)(ii) and (k)(6) of this section, as appropriate. Any alternate approach which deviates from the provisions in paragraphs (i)(2)(ii) or (k)(6) of this section shall, at a minimum, indicate what age/grade groups are included in offer versus serve and establish the number and type of items, (and, if applicable, the quantities for the items) that constitute a reimbursable meal under offer versus serve. In addition, the alternate offer versus serve procedures shall include an explanation of how such procedures will reduce plate waste and provide a reasonable level of calories and nutrients for the meal as taken;

(iii) The nutrition standards in paragraphs (b)(1) through (b)(4) of this section. Any alternate approach shall indicate the age/grade groups to be served and how such approach is

designed to meet these requirements for those age/grade groups;

(iv) The requirements for competitive foods in § 210.11 and Appendix B to this part.

(v) For alternate food-based menu planning approaches, the requirements for crediting food items and products provided for in paragraphs (k)(3) through (k)(5) and paragraph (m) of this section, in the appendices to this part, and in instructions and guidance issued by FNS;

(vi) Identification of a reimbursable meal at the point of service. To the extent possible, the procedures provided in paragraph (i)(2)(i) of this section for nutrient standard or assisted nutrient standard menu planning alternatives or for food-based menu planning alternatives provided in paragraph (k) of this section shall be followed. In addition, any instructions or guidance issued by FNS that further defines the elements of a reimbursable meal shall be followed when using the existing regulatory provisions. Any alternate approach that deviates from the provisions in paragraph (i)(2)(i) or paragraph (k) of this section shall indicate what constitutes a reimbursable meal, including the number and type of items (and, if applicable, the quantities for the items) which comprise the meal, and how a reimbursable meal is to be identified at the point of service.

(vii) An explanation of how the alternate approach can be monitored under the applicable provisions of § 210.18 and § 210.19, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, to the extent that the procedures under § 210.19 are inappropriate for monitoring the alternate approach, the alternate approach shall include a description of review procedures which will enable the State agency to assess compliance with the nutrition standards in paragraphs (b)(1) through (b)(4) of this section; and

(viii) the requirements for weighted analysis and for approved software for nutrient standard menu planning as required by paragraphs (i)(4) and (i)(5) of this section unless a State agency-developed approach meets the criteria in paragraph (j)(2)(iii) of this section.

§ 210.10a [Removed]

7. Section 210.10a is removed.

§ 210.15 [Amended]

8. In § 210.15:

a. paragraph (b)(2) is amended by removing the words "menu records as

required under § 210.10a and production and"; and

b. paragraph (b)(3) is amended by removing the words "or § 210.10a(b), whichever is applicable".

§ 210.16 [Amended]

9. In § 210.16, paragraph (b)(1) is amended by removing the words "or § 210.10a, whichever is applicable," wherever they appear.

§ 210.18 [Amended]

10. In § 210.18:

a. paragraph (b)(2)(ii) is revised;

b. the heading of paragraph (g)(2) introductory text is amended by removing the words "food items/components as required by Program regulations" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

c. Paragraph (g)(2)(i) is amended by removing the words "required food items/components" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

d. Paragraph (g)(2)(ii) is amended by removing the words "the required number of food items/components" and adding in their place the words "the number of meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

e. Paragraph (g)(2)(iii) is amended by removing the words "required food items/components" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

f. paragraph (h)(2) is amended by removing the words "food items/components in the quantities required under § 210.10 or § 210.10a, in whichever is applicable" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10"; and

g. paragraph (i)(3)(ii) is amended by removing the words "required food items/components" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10".

The revision reads as follows:

§ 210.18. Administrative reviews.

• • • • •

(b) *Definitions.* • • • • •

(2) • • • • •

(ii) Performance Standard 2—Meal Elements. Lunches claimed for

reimbursement within the school food authority contain meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

• • • • •

11. In § 210.19:

a. the first sentence of paragraph (a)(1) introductory text is amended by removing the reference to "§ 210.10(o)" and by adding in its place a reference to "§ 210.10(p)", and by removing the words "or (d)," and adding in their place the words "(d), or (i)(1) or the procedures developed under § 210.10(l)";

b. the second sentence of paragraph (a)(1) introductory text is amended by removing the words "At a minimum, these evaluations shall be conducted once every 5 years and" and adding in their place the words "These evaluations";

c. paragraph (a)(1) introductory text is further amended by adding five sentences at the end;

d. paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) are redesignated as paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(v), and (a)(1)(vi), respectively, and new paragraphs (a)(1)(i) and (a)(1)(iv) are added;

e. the first sentence of newly redesignated paragraph (a)(1)(ii) is revised;

f. newly redesignated paragraph (a)(1)(iii) introductory text is revised;

g. paragraph (a)(3) is amended by removing the words "or § 210.10a, whichever is applicable,"; and

h. paragraph (c)(6)(i) is amended by removing the words "food item required under the meal pattern in § 210.10a or the food-based menu planning alternative in § 210.10(k), whichever is applicable" and adding in their place the words "meal element (food item/component, menu item or other items, as applicable) as required under § 210.10".

The additions and revisions read as follows:

§ 210.19. Additional responsibilities.

(a) *General Program management.*

• • • • •

(1) *Compliance with nutrition standards.* • • • • • At a minimum, the State agency shall review at least one school for each type of menu planning alternative used in the school food authority. Review activity may be confined to the National School Lunch Program unless a menu planning alternative is used exclusively in the School Breakfast Program. The review must examine compliance with the nutrition standards in § 210.10(b) and § 210.10(c), (d), (i)(1), or (l), and § 220.10

(a), (c), (e)(1), or (h), as appropriate. State agencies are encouraged to review the School Breakfast Program as well if the school food authority requires technical assistance from the State agency to meet the nutrition standards or if corrective action is needed. Such review shall determine compliance with the appropriate requirements in § 220.8 and may be done at the time of the initial review or as part of a follow-up to assess compliance with the nutrition standards.

(i) At a minimum, State agencies shall conduct evaluations of compliance with the nutrition standards in § 210.10(b) and § 210.10(c), (d), (i)(1), or (l), as appropriate, at least once during each 5-year review cycle provided that each school food authority is evaluated at least once every 6 years, except that the first cycle shall begin July 1, 1996, and shall end on June 30, 2003. The compliance evaluation for the nutrition standards shall be conducted on the menu for any week of the current school year prior to the month in which such evaluation is conducted. The week selected must continue to represent the current menu planning system.

(ii) For school food authorities choosing the nutrient standard or assisted nutrient standard menu planning alternatives provided in § 210.10(i), § 210.10(j), or § 220.8(e), or § 220.8(f), or developed under the procedures in § 210.10(l) or § 220.8(h), the State agency shall assess the nutrient analysis to determine if the school food authority is properly applying the methodology in § 220.8(e), or § 220.8(f), or developed under the procedures in § 210.10(l) or § 220.8(h), as appropriate. • • • • •

(iii) For school food authorities choosing the food-based menu planning alternatives provided in § 210.10(k) or § 220.8(g) or developed under the procedures in § 210.10(l) or § 220.8(h), the State agency shall determine if the nutrition standards set forth in § 210.10(b) and § 210.10(d) are met. The State agency shall conduct a nutrient analysis in accordance with the procedures in § 210.10(i) or § 220.8(e), as appropriate, except that the State agency may:

• • • • •

(iv) For school food authorities following an alternate approach as provided under § 210.10(l) or § 220.8(h) that does not allow for use of the monitoring procedures in paragraphs (a)(1)(ii) or (a)(1)(iii), the State agency shall monitor compliance following the procedures developed in accordance

with § 210.10(l) or § 220.8(h), whichever is appropriate.

• • • • •

Appendix A—Amended

12. In Appendix A to Part 210—Alternate Foods for Meals:

a. under Enriched Macaroni Products with Fortified Protein, paragraph 1.(a) is amended by removing the words "or § 210.10a, whichever is applicable,";

b. under Vegetable Protein Products, paragraph 1. introductory text is amended by removing the words "or § 210.10a, whichever is applicable";

c. under Vegetable Protein Products, paragraph 1.(d) is amended by removing the words "or § 210.10a, whichever is applicable";

d. under Vegetable Protein Products, paragraph 1.(e) is amended by removing the words "or § 210.10a, whichever is applicable";

e. under Vegetable Protein Products, paragraph 3. is amended by removing the words "or § 210.10a, whichever is applicable".

Appendix C—Amended

13. In Appendix C to Part 210—Child Nutrition Labeling Program:

a. paragraph 2.(a) is amended by removing the words "or § 210.10a, whichever is applicable";

b. paragraph 3.(c)(2) is amended by removing the words "or § 210.10a, whichever is applicable" and by removing the words "or § 220.8a, whichever is applicable";

c. paragraph 6. introductory text is amended by removing the words "or § 210.10a, whichever is applicable" and by removing the words "or § 220.8a, whichever is applicable".

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

§ 220.2 [Amended]

2. In § 220.2:

a. paragraph (b) is amended by removing the words "or § 220.8a, whichever is applicable,"; and

b. paragraph (f) is amended by removing the words "or § 220.8, whichever is applicable".

§ 220.7 [Amended]

3. In § 220.7, paragraph (e)(2) is amended by removing the words "or § 220.8a, whichever is applicable,".

4. In § 220.8:

a. paragraph (a)(1) is amended by removing the second occurrence of the

word "or" and adding in its place a comma and by adding the words "or (h)" after the reference to "(e)(1)";

b. paragraph (a)(2) is amended by removing the second occurrence of the word "or" and adding in its place the words "or (h)" after the reference to "(e)(1)";

c. paragraph (a)(3) is revised;

d. paragraph (a)(4) is amended by removing the reference to "1990" and adding in its place a reference to "1995";

e. the first sentence of paragraph (a)(5) is revised;

f. the first sentence of paragraph (a)(6) is amended by removing the word "or" and adding in its place a comma and by adding the words "or those developed under paragraph (h)" after the reference to "paragraph (e)(1)" and the second sentence of paragraph (a)(6) is amended by removing the third occurrence of the word "or" and adding in its place a comma and by adding the words "or those developed under paragraph (h)" after the reference to "paragraph (e)(1)";

g. the table in paragraph (b)(1) is revised;

h. the table in paragraph (b)(2) is revised;

i. paragraph (c) is revised;

j. the heading of paragraph (e)(4) and paragraph (e)(9) are amended by

removing the words "National Nutrient Database" and adding in their place the words "Child Nutrition Database";

k. paragraphs (e)(4) and (e)(8) are amended by removing the words "National Nutrient Database for the Child Nutrition Programs" wherever they appear and by adding the words "Child Nutrition Database" in their place;

l. the heading of paragraph (g) is revised and introductory text is added;

m. the introductory text of paragraph (g)(1) is amended by removing the words "in the table in paragraph (g)(2) of this section" and adding in their place the words "either in the table in paragraph (g)(2) or (g)(3) of this section, whichever is applicable";

n. paragraph (g)(2) is revised;

o. paragraphs (h) through (m) are redesignated as paragraphs (i) through (n), respectively, and a new paragraph (h) is added; and

p. in newly redesignated paragraph (n), the reference to "1990" is removed and a reference to "1995" is added in its place.

The additions and revisions are as follows:

§ 220.8 Nutrition standards for breakfast and menu planning alternatives.

(a) *Nutrition standards for breakfasts for children age 2 and over.* * * *

(3) The applicable recommendations of the 1995 Dietary Guidelines for Americans which are: eat a variety of foods; limit total fat to 30 percent of calories; limit saturated fat to less than 10 percent of calories; choose a diet low in cholesterol; choose a diet with plenty of grain products, vegetables, and fruits; choose a diet moderate in salt and sodium; and choose a diet moderate in sugars.

(5) School food authorities have several alternatives for menu planning in order to meet the requirements of this paragraph including the appropriate nutrient and calorie levels: nutrient standard menu planning as provided for in paragraph (e) of this section; assisted nutrient standard menu planning as provided for in paragraph (f) of this section; traditional food-based menu planning as provided for in paragraph (g)(1) of this section; enhanced food-based menu planning as provided for in paragraph (g)(2) of this section; or other menu planning approaches as provided for in paragraph (h) of this section.

(b) *Nutrient levels/nutrient analysis.*
(1) * * *

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Minimum requirements		Optional
	Preschool	Grades K-12	Grades 7-12
Energy allowances (calories)	388	554	618
Total fat (as a percentage of actual total food energy)	(¹)	(²)	(³)
Total saturated fat (as a percentage of actual total food energy)	(¹)	(³)	(³)
RDA for protein (g)	5	10	12
RDA for calcium (mg)	200	257	300
RDA for iron (mg)	2.5	3.0	3.4
RDA for Vitamin A (RE)	113	197	225
RDA for Vitamin C (mg)	11	13	14

¹ The dietary guidelines recommend that after 2 years of age * * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.

² Not to exceed 30 percent over a school week.

³ Less than 10 percent over a school week.

(2) * * *

OPTIONAL NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Ages 3-6	Ages 7-10	Ages 11-13	Ages 14 and above
Energy allowances (calories)	419	500	588	625
Total fat (as a percentage of actual total food energy)	(^{1,2})	(³)	(³)	(³)
Total saturated fat (as a percentage of actual total food energy)	(^{1,3})	(³)	(³)	(³)
RDA for protein (g)	5.50	7.00	11.25	12.50
RDA for calcium (mg)	200	200	300	300
RDA for iron (mg)	2.5	2.5	3.4	3.4
RDA for Vitamin A (RE)	113	175	225	225

OPTIONAL NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)—Continued

Nutrients and energy allowances	Ages 3-6	Ages 7-10	Ages 11-13	Ages 14 and above
Vitamin C (mg)	11.00	11.25	12.50	14.40

¹ The dietary guidelines recommend that after 2 years of age * * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.

² Not to exceed 30 percent over a school week.

³ Less than 10 percent over a school week.

(c) *Minimum nutrient levels for school breakfasts/food-based menu planning alternatives.* (1) *Traditional food-based menu planning alternative.* For the purposes of the traditional food-based menu planning alternative, as provided for in paragraph (g)(2) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—TRADITIONAL FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Age 2	Ages 3, 4, 5	Grades K-12
Energy allowances (calories)	325	388	554
Total fat (as a percentage of actual total food energy)	(¹)	(¹)	(²)
Total saturated fat (as a percentage of actual total food energy)	(¹)	(¹)	(³)
RDA for protein (g)	4	5	10
RDA for calcium (mg)	200	200	257
RDA for iron (mg)	2.5	2.5	3.0
RDA for Vitamin A (RE)	100	113	197
RDA for Vitamin C (mg)	10	11	13

¹ The dietary guidelines recommend that after 2 years of age * * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.

² Not to exceed 30 percent over a school week.

³ Less than 10 percent over a school week.

(2) *Enhanced food-based menu planning alternative.* For the purposes of the enhanced food-based menu planning alternative, as provided for in paragraph (g)(1) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFAST—ENHANCED FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Required for		Option for
	Preschool	Grades K-12	Grades 7-12
Energy allowances (calories)	388	554	618
Total fat (as a percentage of actual total food energy)	(^{1,2})	(²)	(²)
Total saturated fat (as a percentage of actual total food energy)	(^{1,3})	(³)	(³)
RDA for protein (g)	5	10	12
RDA for calcium (mg)	200	257	300
RDA for iron (mg)	2.5	3.0	3.4
RDA for Vitamin A (RE)	113	197	225
Vitamin C (mg)	11	13	14

¹ The dietary guidelines recommend that after 2 years of age * * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.

² Not to exceed 30 percent over a school week.

³ Less than 10 percent over a school week.

(g) *Food-based menu planning alternatives.* School food authorities may choose to plan menus using either the traditional or enhanced food-based menu planning alternatives. Under these alternatives, specific food components shall be offered as provided in either paragraphs (g)(1) or (g)(2) of this section, whichever is applicable, and in paragraphs (g)(3) and (g)(4) of this section, as appropriate.

(2) *Minimum quantities-food-based menu planning alternatives.* (i) At a minimum, schools using the traditional food-based menu planning alternative shall serve breakfasts in the quantities provided in the following chart:

MINIMUM REQUIREMENTS—TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE

Meal component	Ages 1-2	Ages 3, 4, and 5	Grades K-12
Milk (Fluid) (As a beverage, on cereal or both)	4 fl. oz	6 fl. oz	8 fl. oz.
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	1/4 cup	1/2 cup	1/2 cup.

MINIMUM REQUIREMENTS—TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE—Continued

Meal component	Ages 1-2	Ages 3, 4, and 5	Grades K-12
Select One Serving From Each of the Following Components or Two From One Component:			
Grains/Breads: one of the following or an equivalent combination:			
Whole-grain or enriched bread	1/2 slice	1/2 slice	1 slice.
Whole-grain or enriched biscuit, roll, muffin, etc	1/2 serving	1/2 serving	1 serving.
Whole-grain, enriched or fortified cereal	1/4 cup or 1/8 oz.	1/3 cup or 1/2 oz.	3/4 cup or 1 oz.
Meat or Meat Alternates:			
Meat/poultry or fish	1/2 oz.	1/2 oz.	1 oz.
Cheese	1/2 oz.	1/2 oz.	1 oz.
Egg (large)	1/2	1/2	1/2.
Peanut butter or other nut or seed butters	1 Tbsp.	1 Tbsp.	2 Tbsp.
Cooked dry beans and peas	2 Tbsp.	2 Tbsp.	4 Tbsp.
Nuts and/or seeds (as listed in program guidance). ¹	1/2 oz.	1/2 oz.	1 oz.
Yogurt, plain or flavored, unsweetened or sweetened	2 oz. or 1/4 cup	2 oz. or 1/4 cup	4 oz. or 1/2 cup.

¹ No more than 1 ounce of nuts and/or seeds may be served in any one meal.

(ii) At a minimum, schools using the enhanced food-based menu planning alternative shall serve breakfasts in the quantities provided in the following chart:

MINIMUM REQUIREMENTS—ENHANCED FOOD-BASED MENU PLANNING ALTERNATIVE

Meal Component	Required for		Operation for	
	Ages 1-2	Preschool	Grades K-12	Grades 7-12
Milk (Fluid) (As a beverage, on cereal or both).	4 fl. oz.	6 fl. oz.	8 fl. oz.	8 fl. oz.
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	1/4 cup	1/2 cup	1/2 cup	1/2 cup.
Select One Serving From Each of the Following Components or Two From One Component:				
Grain/Breads: one of the following or an equivalent combination:				
Whole-grain or enriched bread	1/2 slice	1/2 slice	1 slice	1 slice.
Whole-grain or enriched biscuit, roll, muffin, etc.	1/2 serving	1/2 serving	1 serving	1 serving.
Whole-grain, enriched or fortified cereal	1/4 cup or 1/8 oz.	1/3 cup or 1/2 oz.	3/4 cup or 1 oz.	3/4 cup or 1 oz. Plus an additional serving of one of the Grains/Breads above.
Meat or Meat Alternates:				
Meat/poultry or fish	1/2 oz.	1/2 oz.	1 oz.	1 oz.
Cheese	1/2 oz.	1/2 oz.	1 oz.	1 oz.
Egg (large)	1/2	1/2	1/2	1/2.
Peanut butter or other nut or seed butters	1 Tbs.	1 Tbs.	2 Tbs.	2 Tbs.
Cooked dry beans and peas	2 Tbs.	2 Tbs.	4 Tbs.	4 Tbs.
Nuts and/or seeds (as listed in program guidance). ¹	1/2 oz.	1/2 oz.	1 oz.	1 oz.
Yogurt, plain or flavored, unsweetened or sweetened.	2 oz. or 1/4 cup	2 oz. or 1/4 cup	4 oz. or 1/2 cup	4 oz. or 1/2 cup.

¹ No more than 1 ounce of nuts and/or seeds may be served in any one meal.

(h) Other menu planning alternatives.

(1) *Modification.* Under the traditional or enhanced food-based menu planning alternatives, school food authorities may, if only one age or grade is outside the established levels, use the levels for the majority of children for both portions and the Recommended Dietary Allowances and breakfast energy allowances. State agencies may require prior approval for adopting this

alternative, may establish guidelines for its adoption, or may permit its adoption without prior approval.

(2) *Major changes or new alternatives: use and approval.* Subject to the requirements of paragraphs (h)(3) of this section, school food authorities or State agencies may modify one of the menu planning alternatives established in paragraphs (e) through (g) of this section or may develop their own menu planning approach. Any such alternate

menu planning approaches shall be in writing for review and monitoring purposes, as applicable. No formal plan is required; the written alternate approach may be in the form of guidance, protocol, or the like. The alternate approach shall address how the provisions in paragraph (h)(3) shall be met.

(i) Any school food authority developed menu planning approach

shall have prior State agency review and approval.

(ii) Except as noted in paragraph (h)(2)(iii), any State agency-developed menu planning alternative shall have prior FNS approval.

(iii) Any State agency developed alternative is not subject to FNS review if:

(A) Five or more school food authorities within the State use the approach;

(B) The State agency maintains ongoing oversight of the operation and evaluation of the alternative menu planning approach including making adjustments to the approach's policies and procedures, as necessary, to ensure compliance with the applicable provisions in paragraph (h)(3) of this section as needed; and

(C) The State agency issues an announcement notifying the public concerning the alternate menu planning approach prior to the implementation of the approach by any school food authority; such announcement shall be issued in a manner consistent with State procedures for public notification.

(3) *Major changes or new alternatives: required elements.* The following requirements shall be met by any alternate menu planning approach:

(i) Service of fluid milk, as provided in paragraph (h)(1) of this section;

(ii) The nutrition standards in paragraphs (a)(1) through (a)(4) of this section. Any alternate approach shall indicate the age/grade groups to be served and how such approach is designed to meet these requirements for those age/grade groups.

(iii) The requirements for competitive foods in § 220.12 and appendix B to this part;

(iv) For alternate food-based menu planning approaches, the requirements for crediting food items and products provided for in paragraphs (g)(2) and (i) of this section, in the appendices to this part, in § 210.10(k)(3) through (k)(5), § 210.10 (m) and in the instructions and guidance issued by FNS;

(v) Identification of a reimbursable meal at the point of service. To the extent possible, the procedures provided in paragraph (e)(2)(i) of this

section for nutrient standard or assisted nutrient standard-type menu planning approaches or in paragraph (g) of this section for food-based-type menu planning approaches shall be followed. In addition, any instructions or guidance issued by FNS that further defines the elements of a reimbursable meal shall be followed when using the existing regulatory provisions. Any alternate approach that deviates from the provisions in paragraph (e)(2)(i) or paragraph (g) of this section shall indicate what constitutes a reimbursable meal, including the number and type of items (and, if applicable, the quantities for these items) which comprise the meal, and how a reimbursable meal is to be identified at the point of service. Further, if the alternate approach provides for offer versus serve as allowed under paragraph (e)(2)(ii) of this section for nutrient standard or assisted nutrient standard-type menu planning approaches or in paragraph (g)(3) of this section for food-based-type menu planning approaches, the alternate approach shall follow those provisions to the extent possible. Any alternate approach that deviates from the provisions in paragraph (e)(2)(ii) or (g)(3) of this section shall, at a minimum, indicate what age/grade groups are included in offer versus serve and establish the number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable meal under offer versus serve. In addition, the alternate offer versus serve procedures shall include an explanation of how such procedures will reduce plate waste and provide a reasonable level of calories and nutrients for the meal as taken;

(vi) An explanation of how the alternate approach can be monitored under the applicable provisions of § 210.18 and § 210.19, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, to the extent that the procedures under § 210.19 are inappropriate for monitoring the alternate approach, the alternate approach shall include a description of review procedures which

will enable the State agency to assess compliance with the nutrition standards in paragraphs (a)(1) through (a)(4) of this section; and

(vii) The requirements for weighted analysis and for approved software for nutrient standard menu planning as required by paragraphs (e)(4) and (e)(5) of this section unless a State agency developed approach meets the criteria in paragraph (h)(2)(iii) of this section.

§ 220.8a [Removed]

5. Section 220.8a is removed.

§ 220.9 [Amended]

6. In § 220.9, paragraph (a) is amended by removing the words "or § 220.8a, whichever is applicable,".

§ 220.14 [Amended]

7. In § 220.14, paragraph (h) is amended by removing the words "or § 220.8a(a)(1), (b)(2), and (b)(3), whichever is applicable".

Appendix A Amended

8. In Appendix A to Part 220—Alternate Foods for Meals, paragraph 1.(a) is amended by removing the words "or 220.8a, whichever is applicable".

Appendix C Amended

9. In Appendix C to Part 220—Child Nutrition (CN) Labeling Program:

a. paragraph 2.(a) is amended by removing the words "or 210.10a, whichever is applicable";

b. paragraph 3.(c)(2) is amended by removing the words "or 210.10a, whichever is applicable" and is further amended by removing the words "or 220.8a, whichever is applicable"; and

c. paragraph 6. is amended by removing the words "or 210.10a, whichever is applicable" and is further amended by removing the words "or 220.8a, whichever is applicable".

* * * * *

Dated: April 27, 1998.
Shirley R. Watkins,
Under Secretary for Food, Nutrition and
Consumer Services.
[FR Doc. 98-11654 Filed 5-1-98; 8:45 am]
BILLING CODE 3410-30-U

federal register

Monday
May 4, 1998

Part V

**Department of
Health and Human
Services**

National Institutes of Health

Recombinant DNA Advisory Committee
Meeting; Notice

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory
Committee; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on June 18-19, 1998. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on June 18, 1998, at approximately 9 a.m., and will recess at approximately 5 p.m. The meeting will reconvene on June 19, 1998, at approximately 9:00 a.m. and will adjourn at approximately 5:00 p.m. The meeting will be open to the public. Agenda items will include: (1) Discussions of recently submitted human gene transfer protocols, (2) discussions of novel gene therapy issues, (3) data management activities related to human gene transfer clinical

trials, (4) discussions related to the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496), and (5) other matters to be considered by the Committee.

Attendance by the public will be limited to space available.

Debra W. Knorr, Acting Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, Phone (301) 496-9838, FAX (301) 496-9839, will provide summaries of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knorr in advance of the meeting.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its

announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: April 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-11674 Filed 5-1-98; 8:45 am]

BILLING CODE 4140-01-M

Monday
May 4, 1998

Part VI

Department of
Education

List of Correspondence; Office of Special
Education and Rehabilitative Services;
Notice

federal register

DEPARTMENT OF EDUCATION

List of Correspondence—Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: List of Correspondence from June 4, 1997 through September 30, 1997.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the *Federal Register* "a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act."

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Rhonda Weiss. Telephone: (202) 205-5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205-5465 or the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotope, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205-8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued between June 4, 1997, the effective date of the Individuals with Disabilities Education Act Amendments of 1997, Public Law 105-17 (IDEA Amendments of 1997), and September 30, 1997.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602 Definitions

Topic Addressed: Educating Children With Particular Disabilities

- Letter dated July 15, 1997 to an individual, (personally identifiable information redacted), regarding students with deafness and hearing impairments.
- Letter dated July 21, 1997 to an individual, (personally identifiable information redacted), regarding requirements for evaluating students suspected of having Attention Deficit Disorder (ADD) and for serving eligible students with ADD.
- Letter dated September 23, 1997 to an individual, (personally identifiable information redacted), regarding a student who has cancer and has been unable to attend school.

Section 607 Requirements For Prescribing Regulations

Topic Addressed: Scope of Department's Responsibility To Disseminate Reports Developed Pursuant to Section 607(d) of IDEA

- Letter dated August 12, 1997 to Jed Oliver, Austin, Texas.

Part B—Assistance for Education of All Children With Disabilities

Section 612 State Eligibility

Topic Addressed: Free Appropriate Public Education for Eligible Youth With Disabilities Incarcerated in Adult Prisons

- Letter dated June 30, 1997 to Thomas M. Maddock, California Department of Corrections.
- Letter dated September 4, 1997 to State of California Governor Pete Wilson, regarding responsibilities of all States to serve this population.
- Letter dated September 12, 1997 to Mr. Jack E. Shook, Illinois State Board of Education, concerning a State's responsibility to resolve a complaint filed under Part B of IDEA on behalf of an incarcerated youth with a disability.

Topic Addressed: Interagency Coordination and Role of State Medicaid Agency: Confidentiality Rights

- Letter dated July 22, 1997 to John T. Benson, Superintendent, Wisconsin Department of Public Instruction.

Topic Addressed: Personnel Standards

- Letter dated June 9, 1997 to Mr. Joseph Fisher, Assistant Commissioner, Tennessee Department of Education, regarding the applicability of the public participation provisions of IDEA-97 to a

proposal that modifies information contained in a prior year's Part B State plan.

- Letter dated August 18, 1997 to Kimberly K. McClanahan, Austin, Texas, regarding State licensure for school psychologists.

Topic Addressed: Participation of Children With Disabilities in State and District-Wide Assessments

- Dear Colleague letter dated September 29, 1997, from Judith E. Heumann, Assistant Secretary for the Office of Special Education and Rehabilitative Services, and Norma V. Cantu, Assistant Secretary for the Office for Civil Rights.

Section 614 Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations

- Letter dated September 9, 1997 to Dr. Dennis Clarkson, East Helena, Montana, regarding criteria for administration of standardized tests.

Section 615 Procedural Safeguards

Topic Addressed: Independent Educational Evaluations

- Letter dated September 9, 1997 to Jerri Katzerman and Kathleen Ross, Phoenix, Arizona, regarding disclosure to school district of the results of an independent educational evaluation without parental consent.

Topic Addressed: Authority of Due Process Hearing Officers and State-Level Review Officers

- Letter dated June 11, 1997 to Mike Armstrong, Director, Division of Exceptional Children's Services, Kentucky Department of Education, regarding the authority of due process hearing officers and State-level review officers to impose financial penalties and sanctions, to issue an order against the State educational agency (SEA) even if the SEA is not a party to the hearing, and to determine what placement constitutes a child's current educational placement when agreement cannot be reached.

- Letter dated June 11, 1997 to Mr. Richard Steinke, former Director of Special Education, Maryland Department of Education, and

- Letter dated June 11, 1997 to an individual (personally identifiable information redacted), regarding the authority of due process hearing officers to compel the attendance of witnesses.

Topic Addressed: Pendency Placement

- Letter dated July 1, 1997 to Mr. Howard Klebanoff, Fairfield, Connecticut, regarding whether a school district is required to maintain a placement developed for a two-year-old child with a disability under the Part H program during the pendency of a due process hearing conducted under Part B of IDEA.

Topic Addressed: Suspensions of up To Ten School Days

- Letter dated July 15, 1997 to U.S. Congressman Robert C. Scott and Letter dated September 4, 1997 to U.S. Senator William Frist.

Electronic Access to This Document:

Anyone may view this document, as well as all other Department of Education documents published in the *Federal Register*, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>
<http://www.ed.gov/news.html>

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1-888-293-6498.

Anyone may also view these documents in text copy only on an

electronic bulletin board of the Department. Telephone: (202) 219-1511 or, toll free, 1-800-222-4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the *Federal Register*.

Dated: April 28, 1998.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98-11708 Filed 5-1-98; 8:45 am]

BILLING CODE 4000-01-P

federal register

Monday
May 4, 1998

Part VII

Department of Education

National Institute on Disability and
Rehabilitation Research; Notice of
Proposed Funding Priorities for Fiscal
Years 1998-1999 for Rehabilitation
Research and Training Centers

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priorities for Fiscal Years 1998-1999 for Rehabilitation Research and Training Centers

SUMMARY: The Secretary proposes funding priorities for two Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998-1999. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before June 3, 1998.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202-2645. Comments may also be sent through the Internet: comments@ed.gov

You must include the term "Mental Retardation-RRTC's" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205-5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-2742. Internet: Donna_Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities under the Disability and Rehabilitation Research Projects and Centers Program for two RRTCs related to: aging with mental retardation and disability statistics.

These proposed priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

The Secretary will announce the final priorities in a notice in the Federal Register. The final priorities will be

determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the Federal Register concurrent with or following the publication of the notice of final priorities.

Rehabilitation Research and Training Centers

The authority for RRTCs is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760-762). Under this program, the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations, for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new

knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Proposed General RRTC Requirements

The Secretary proposes that the following requirements apply to these RRTCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these proposed requirements will be assessed using applicable selection criteria in the peer review process. The Secretary is interested in receiving comments on these proposed requirements:

The RRTC must provide: (1) Applied research experience; (2) training on research methodology; and (3) training to persons with disabilities and their families, service providers, and other appropriate parties in accessible formats on knowledge gained from the Center's research activities.

The RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

The RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities.

Proposed Priority 1: Aging With Mental Retardation

Background

There are an estimated 550,000 adults 40 years and older with mental retardation (McNeil, J., "Special Report on Mental Retardation and Mental Illness," Bureau of the Census, Survey of Income and Program Participation, 1997). This population has aging-related health and social care needs specific to their condition (McCarthy, J. and Mullan, E., "The Elderly with a Learning Disability (Mental Retardation): An Overview," *International Psychogeriatrics*, 8 (3), pgs. 489-501, 1996).

Current research has begun to identify secondary conditions that are causally related to aging with mental retardation. For instance, there is evidence that persons aging with mental retardation and a lifelong history of certain medications (e.g., psychotropic, anti-seizure) have a higher risk of developing secondary conditions such as osteoporosis or tardive dyskinesia (Adlin, M., "Health Care Issues," *Older Adults with Developmental Disabilities: Optimizing Choice and Change*, Baltimore, Paul H. Brookes Pub. Co., pgs. 49-60, 1993). Persons with Downs Syndrome have a higher prevalence of Alzheimer's disease at an earlier age than the general population (Janicki, M., "Practice Guidelines for the Clinical Assessment and Care Management of Alzheimer's Disease and Other

Dementias Among Adults with Intellectual Disability," *Journal of Intellectual Disability Research*, 40, pgs. 374-382, 1996). In addition, persons aging with mental retardation experience aging-related conditions like hypertension, osteoarthritis, heart disease, obesity, and high cholesterol levels. Treating such conditions in persons aging with mental retardation is complicated by difficulty in communicating about nutrition, exercise, and prescribed treatment protocols (Edgerton, R., "Some People Know How to Be Old," *Life Course Perspectives on Adulthood and Old Age*, American Association on Mental Retardation Monograph Series, pgs. 53-66, 1994) and by poor health maintenance practices (Edgerton, R. et al., "Health Care for Aging People with Mental Retardation," *Mental Retardation*, 32 (2), pgs. 146-150, April, 1994).

The health status and needs of older women with mental retardation have received little research attention and merit special consideration. We have limited information on the availability of screening for breast or cervical cancers, onset and reactions to menopause, and treatment for osteoporosis in menopausal and post-menopausal women, or the general health status of women with mental retardation as they age (Murphy, L., *Aging with Developmental Disabilities: Women's Health Issues*, Texas ARC, 1997).

Approximately 80 percent of adults with mental retardation live at home, often with their families of origin, and many are known to the service system (Seltzer, M., "Aging Parents with Co-Resident Adult Children: The Impact of Lifelong Caregiving," *Life Course Perspectives on Adulthood and Old Age*, American Association on Mental Retardation, pgs. 3-18, 1994). A major issue facing older family caregivers is planning for the future of their children aging with mental retardation. A shortage of alternative living arrangements and the aging of family members contribute to this concern (Heller, T., "Support Systems, Well-being, and Placement Decision-making Among Older Parents and Their Adult Children with Developmental Disabilities," *Older Adults with Developmental Disabilities: Optimizing Choice and Change*, pgs. 107-122, 1993). For many families, planning for the future financial needs of their members with mental retardation is a particular concern.

There has been little research examining family caregiving throughout the life of the person aging with mental

retardation, particularly analysis of sibling roles in the caregiving process. Cross-sectional studies have suggested that older family caregivers perceive less personal burden than do younger caregivers (Hayden, M., "Support, Problem-Solving/Coping Ability, and Personal Burden of Younger and Older Caregivers of Adults with Mental Retardation," *Mental Retardation*, 35, pgs. 364-372, 1997). With increasing age, there appears to be greater acceptance of the family member and greater reciprocity in caregiving as the child with mental retardation takes on caregiving roles with aging parents (Heller, T., "Adults with Mental Retardation as Supports to their Parents: Effects on Parental Caregiving Appraisal," *Mental Retardation*, 35, pgs. 338-346, 1997).

For adults living in residential settings, family involvement has been low. However, such involvement has many benefits for the adult including increasing social interaction, oversight of residential conditions, provision of recreational opportunities, assistance with financial planning activities (Feinstein, C., "A Survey of Family Satisfaction with Regional Treatment Centers and Community Services to Persons with Mental Retardation in Minnesota," Philadelphia: Conroy and Feinstein Associates, 1988). Older adults with mental retardation have lower rates of family involvement than younger adults (Hill, B., *Living in the Community: A Comparative Study of Foster Homes and Small Group Homes for People with Mental Retardation*, Minneapolis: University of Minnesota, Center for Residential and Community Services, 1989).

Approximately 40 percent of working age persons with mental retardation work outside the home (McNeil, J., "Current Population Reports: Americans With Disabilities," U.S. Census Bureau, P70-61, 1997). Research indicates that as persons with mental retardation grow older, they experience new work-related problems because of functional decline and changing job requirements. Furthermore, many individuals with mental retardation and their employers are unaware of the resources and services available to help them solve these problems (Parent, W., "Social Integration in the Workplace: An Analysis of the Interaction Activities of Workers with Mental Retardation and their Co-workers," *Education and Training in Mental Retardation*, 27, pgs. 28-37, 1992).

Many individuals aging with mental retardation have limited access to assistive technology that might help them cope with aging-related functional

limitations such as decreased mobility. Assistive technology has generally been underutilized by persons with mental retardation of all ages because few devices successfully incorporate accommodations that assist persons with cognitive impairments in their use (Wehmeyer, M., "The Use of Assistive Technology by People with Mental Retardation and Barriers to This Outcome: A Pilot Study," *Technology and Disability*, 4, pgs. 195-204, 1995). Also, staff and families often are insufficiently aware of assistive technology solutions or of options for its funding.

Information on health care utilization rates and educational and employment status of persons with mental retardation is not readily available. Although a number of Federal agencies, some States, and private research institutions collect mental retardation data, too often these data are unanalyzed. Secondary analysis of existing data on mental retardation would help identify research questions and gaps in service for persons with mental retardation and their families.

Proposed Priority 1

The Secretary proposes to establish an RRTC on Aging with Mental Retardation to assist individuals aging with mental retardation and their families to prevent secondary conditions, maintain general overall health, plan for the future, and maximize independence. The RRTC shall:

- (1) Identify, develop, and evaluate programs that promote health, including early recognition and treatment of secondary conditions, with special emphasis on the needs of women aging with mental retardation;
- (2) Investigate determinants of the role played by the family of origin in providing care for persons aging with mental retardation, with special emphasis on adults in residential settings and the role of siblings in the caregiving process;
- (3) Identify, develop, and evaluate techniques that assist individuals with mental retardation and their families plan for future needs, including future financial needs;
- (4) Analyze and disseminate information from national data sets and public health surveillance data on adults with mental retardation to identify health care utilization, educational, and employment patterns;
- (5) Identify, develop, and evaluate accommodations that help maintain employment;
- (6) Identify best practices in the use of assistive technology or universal design to compensate for physical and

psychological consequences of aging with mental retardation.

In carrying out these purposes, the RRTC must:

- Coordinate with other relevant research and demonstration activities sponsored by the National Center on Medical Rehabilitation Research at the National Institutes of Health, the National Institute on Mental Health, the National Institute on Aging, the Rehabilitation Services Administration, the Department of Veteran Affairs, the Social Security Administration, the Health Care Financing Administration, and the Rehabilitation Research Training Centers on Managed Care and Personal Assistance Services.

Proposed Priority 2

Background

A number of Federal, State, and private agencies collect information on persons with disabilities. While some of this information is analyzed, significant amounts of unanalyzed data are generated. The National Health Interview Survey, the Survey of Income and Program Participation, the California Work and Health Survey, other surveys, population data, information on program participation, data on institutions, and market research profiles provide many indicators about the lives of persons with disabilities. Policy makers, program directors, and others need information on the incidence, prevalence and distribution of disabilities, as well as the integration of persons with disabilities into society. Likewise, reliable information on use of services such as long-term care, transportation, vocational rehabilitation and personal care assistance is extremely valuable to individuals with disabilities and their organizations, planners, researchers and policy makers.

The 1994-95 National Health Interview Survey on Disability (NHIS-D) conducted by the National Center for Health Statistics was developed, in part, to meet the demands for data from numerous agencies (Verbrugge, L.M., "The Disability Supplement to the 1994-95 National Health Interview Survey," for the National Center for Health Statistics). The 1994-95 NHIS-D offers an excellent opportunity to analyze many variables related to persons with disabilities. Researchers can use the NHIS-D to determine access to health care and personal services, use of assistive technologies, and community participation, among other key descriptors.

The major Federal agencies that routinely collect information on disability publish only a small fraction of statistical information derived from that data. Most agency data collections are driven by statutory requirements and agencies report statistics about receipt of program services and subsets of eligible individuals. These constraints limit the usefulness of the data that are collected. Easier access to a full range of data on disability for policy makers and others may be assured, in part, by providing a central resource for disability statistics and information and an organized and comprehensive system for the collection, analysis, and synthesis of the data. A disability statistics center can use existing data to conduct meta-analyses focused on problems such as employment, use of health care and social services, household situations, family composition, and educational levels.

Researchers, policy makers and others have begun to work within the framework of the "New Paradigm of Disability," a contextual model of disability that recognizes the role of the built environment and of social and cultural factors in the disablement-enabling process. Most national surveys fail to measure the role of environmental factors in the operational definitions of disability used, tending to focus solely on health problems as the locus of disability. (Kirchner, C., "Looking Under the Streetlamp: Inappropriate Use of Measures Just Because They Are There" *Journal of Disability Policy Studies*, 7:77-90, 1996). The Americans with Disabilities Act (ADA) emphasizes barrier removal, accessibility, and reasonable accommodations. Barriers may be physical or may involve programmatic exclusions and other social obstacles. Despite increasing recognition that data systems must be enhanced to meet newly developing information needs, such as those suggested by the New Paradigm of Disability and the ADA, there is a lack of environmental measures that have been tested for accuracy and reliability. This has been an impediment to the development of survey and census measures of disability at the national and State levels.

New survey measures must be developed to accurately and reliably depict disability in the context of individual health and environmental factors. The resulting questions must take into account the interaction between the individual and the environment and examine the effects of that interaction on the ability to carry

out daily activities and normative social roles. This includes examination of the immediate living arrangements of the person's household and the larger community environment. Architectural accessibility features, assistive technologies, transportation, and other accommodations and supports must be addressed.

With increased global interest in disability, researchers must be aware of new developments in the World Health Organization sponsored International Committee on Impairments, Disabilities, and Handicaps, and consider international data sets for purposes of comparison with U.S. data and, as appropriate, to generate hypotheses to be tested against U.S. data.

Given these needs and opportunities in the promotion and use of disability statistics, a Center that can identify major sources and perform secondary analyses of existing data, including meta-analyses on important topics, will be a cornerstone of a future disability data initiative. The Center can also contribute to the future of disability research through the development, testing, and dissemination of data collection items that address the New Paradigm of Disability.

Proposed Priority 2

The Secretary proposes to establish an RRTC to improve collection and analysis of disability statistics to guide development of disability policies. The RRTC shall:

- (1) Conduct secondary analyses of critical and relevant data sets, including estimates of the incidence, prevalence, and distribution of various disabilities, and disseminate analytical reports;
- (2) Develop new measures, designed for inclusion in general population

surveys, addressing the effect of physical, policy, and social environments on persons with disabilities; and disseminate these to survey designers, researchers, and statistical agencies;

(3) Conduct meta-analyses on key variables such as, but not limited to, employment, income and health status, using a range of relevant existing data sets on disability; and analyze the policy implications based upon the results of these analyses;

(4) Identify major gaps in demographic and program data on the disabled population and develop strategies for addressing those gaps; and

(5) Serve as a resource to researchers, consumers and consumer groups, planners, and policy makers for statistical information on disability and develop and implement a marketing plan to support dissemination of that information.

In carrying out the purposes of the priority, the RRTC must coordinate with relevant activities sponsored by the Centers for Disease Control and Prevention, the Office of the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services, the Bureau of the Census, the Department of Labor, and the National Institutes of Health.

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Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Parts 350 and 353.

Program Authority: 29 U.S.C. 760-762. (Catalog of Federal Domestic Assistance Numbers 84.133B, Rehabilitation Research and Training Centers)

Dated: April 28, 1998.

Judith E. Heumann,
 Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98-11709 Filed 5-1-98; 8:45 am]

BILLING CODE 4000-01-P

federal register

Monday
May 4, 1998

Part VIII

Department of Education

Office of Special Education and Office of
Rehabilitative Services; Notice of Final
Priorities and Notice Inviting Applications
for New Awards for Fiscal Year 1998;
Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice of Final Priorities

SUMMARY: The Secretary announces final priorities for two programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act (IDEA), as amended. The Secretary may use these priorities to support grants in Fiscal Year 1998 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. These final priorities are intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: These priorities take effect on June 3, 1998.

FOR FURTHER INFORMATION CONTACT: The Department address and telephone number to contact for information on each final priority is listed under the appropriate priority.

SUPPLEMENTARY INFORMATION: This notice contains three final priorities under two Special Education programs authorized by the Individuals with Disabilities Education Act: Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (two proposed priorities); and Research and Innovation to Improve Services and Results for Children with Disabilities (one proposed priority).

On February 19, 1998, the Secretary published a notice of proposed priorities for these programs in the *Federal Register* (63 FR 8530).

These final priorities support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the *Federal Register*.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, six parties submitted

comments. An analysis of the comments and of the changes in the proposed priorities follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Priority 1—Center for Positive Behavioral Interventions and Supports

Comment: One commenter recommended that the priority use the exact, broad, language of IDEA, i.e., "strategies, including positive behavioral interventions and supports", rather than the term "positive behavioral support", which the commenter believed would narrow the scope of interventions, strategies and supports that can be studied by the Center.

Discussion: It is the Secretary's intent to support a broad view of possible interventions. The language in the priority has been changed to be consistent with this intent.

Changes: The priority has been revised to refer to positive behavioral interventions and supports throughout.

Comment: One commenter suggested that the State policies, which the Center must evaluate, should include policies that support family involvement in the provision of services.

Discussion: The Secretary agrees with the commenter that family participation in the development and implementation of behavioral supports is important. The proposed priority would not have precluded projects from addressing this issue. Paragraph (a) purposely does not delineate the specific areas of State and local policy on school-wide positive behavioral supports and interventions that the Center must address. Applicants have the discretion to identify and evaluate the critical areas.

Changes: None.

Comment: One commenter suggested that the coordinated network under paragraph (b) be broadened to include, "related services and other mental health professionals", to ensure that the priority did not exclude contributions made to the mental health of children by school psychologists, school social workers, and other related services personnel.

Discussion: The term mental health professional as used in the proposed priority was not intended to exclude related services personnel who provide mental health services. The Secretary agrees that referring to "related services professionals" as part of the coordinated network would add further clarity.

Changes: The proposed priority has been revised to include related services professionals under paragraph (b).

Comment: One commenter suggested that the list of agencies with which the Center may conduct outreach activities under paragraph (b) include Child Mental Health Services and Maternal and Child Health at the Department of Health and Human Services since both programs fund demonstration projects and sponsor school health clinics.

Discussion: The priority lists some of the relevant agencies and federally supported technical assistance and information agencies and projects with which the Center may conduct outreach activities. While the list is not meant to be exhaustive, and applicants may identify additional collaborative agencies, the Secretary agrees that the two agencies identified by the commenter should be included among those listed in the priority.

Changes: The proposed priority has been revised to include OHS' Child Mental Health Services, and Maternal and Child Health.

Comment: One commenter recommended that information exchanges under paragraph (c) involve an array or menu of methods for reporting positive behavioral interventions, strategies, and supports.

Discussion: It is the Secretary's intent to provide for a range of methods for exchanging information. While the proposed priority did not preclude such a range, the Secretary agrees that an array of methods should be required.

Changes: Paragraph (c) of the proposed priority has been revised to require that informational exchanges include an array of methods for sharing information.

Comment: One commenter recommended that the information dissemination efforts described in paragraph (e) include steps toward implementation, methods to sustain efforts, and mechanisms for ensuring increased replication and effective dissemination.

Discussion: The priority is intended to promote awareness of the value of school-wide positive behavioral supports and interventions and to build the necessary knowledge base, momentum, and resource network to encourage their widespread application. To the extent the Center acquires information regarding replication of supports and interventions, it may share that information with the field. However, requiring the Center to develop guidelines for replication are beyond the work scope of the priority. Implementation, on the other hand, will be conducted by the coordinated network under paragraph (b).

Changes: None.

Comment: One commenter suggested that the blueprint described in paragraph (f) include underlying components necessary to institute an effective program.

Discussion: Paragraph (f) is intended to support the development of a blueprint that the Secretary may use to provide future technical assistance to LEAs and SEAs in implementing positive behavioral interventions and support programs. The components of the blueprint are left to the discretion and expertise of the Center.

Changes: The priority has been modified to clarify that the blueprint developed under paragraph (f) shall be submitted to the Secretary for purposes of providing future technical assistance on positive behavioral interventions and supports.

Comment: One commenter suggested that the focus of the results-based evaluation under paragraph (h) be clarified.

Discussion: The Secretary agrees that the proposed priority did not sufficiently identify the focus of the results-based evaluation and has clarified the language.

Changes: Paragraph (h) has been revised to clarify that the results-based evaluation must be supported by evaluation data gathered from the project of the technical assistance provided under paragraphs (b), (c), (d), and (e) of the proposed priority.

Priority 2—Notional Center on Dispute Resolution

Comment: One commenter suggested that the priority include additional clarification regarding expectations associated with specific tasks, especially those with fiscal implications.

Discussion: The Secretary prefers to afford applicants the discretion to determine how best to accomplish the activities specified in the priority, including how (or if) to budget for certain tasks. Moreover, the Secretary believes it would be inappropriate to specify additional estimated costs in the priority.

Change: None.

Priority—Directed Research Projects

Focus 1—Beacons of Excellence

Comment: One commenter suggested that Focus 1—Beacons of Excellence under the proposed Directed Research Projects priority be changed to make explicit that the prime criterion for a beacon school is student performance measured in a valid and reliable manner.

Discussion: The priority as proposed required that projects "identify and

study schools or programs achieving exemplary results for students with disabilities." The commenter's suggested change may strengthen the emphasis on student results that are measured in a rigorous manner.

Changes: The priority has been changed to require that schools or programs be identified on the basis of valid and reliable measures of student results.

Focus 2—The Sustainability of Promising Innovations

Comment: One commenter suggested that Focus 2 be broadened to include research documenting the effectiveness of applying assistive technology to help students benefit from their educational experience.

Discussion: The Secretary agrees with the commenter that research documenting the extent to which assistive technology benefits students with disabilities is important, however, Focus 2 is primarily interested in issues of sustainability of innovations that hold positive results for children with disabilities within a school restructuring/reform context. OSEP supports research related to assistive technology under the Special Education—Technology and Media Services for Individuals with Disabilities program. The closing date for applications under that program for the fiscal year 1998 competition for the Steppingstones of Technology Innovations for Students with Disabilities priority, is May 8, 1998.

Changes: None.

Focus 6—Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice

Comment: One commenter suggested that the syntheses areas included in paragraphs (a)-(f) be rewritten to address the "Method and effects of interventions on . . .", so that the syntheses projects will not only identify and synthesize positive outcomes, but will also identify and synthesize those "things" which lead to positive outcomes. The commenter further suggested that the project assess what the field currently knows regarding self-determination and develop an agenda of future research questions.

Discussion: The Secretary believes that the concerns of the commenter are taken into account when rigorous research methods are applied in the design and execution of the meta-analysis for the synthesis project. With regard to the commenter's suggestion that the project assess what the field currently knows regarding self-determination and develop an agenda of

future research questions, the Secretary emphasizes that it is the purpose of the synthesis project to assess what is known from research and report the findings. However, it is not the intent of this priority to develop an agenda of future research questions.

Change: None.

Focus 8—Educating Children with Disabilities in Inclusive Settings

Comment: One commenter suggested that assistive technology be listed as a systems change strategy worthy of investigation under Focus 8.

Discussion: The Secretary agrees with the commenter that assistive technology is a strategy worthy of investigation under this priority. As Focus 8 is written, there is nothing that precludes an applicant from using assistive technology as a strategy to promote access and inclusion of students with disabilities in regular classrooms.

Change: None.

Special Education—Technical Assistance and Dissemination To Improve Services and Results For Children With Disabilities

Purpose of Program

The purpose of this program is to provide technical assistance and information through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and to address systemic-change goals and priorities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under these competitions only applications that meet one of these absolute priorities:

Absolute Priority 1—Center for Positive Behavioral Interventions and Supports

Background

Problem behaviors are one of the most common reasons children with disabilities are excluded from school, community, and work. Research on positive behavioral interventions and supports is rapidly developing and demonstrates how school-wide approaches to these interventions and supports can enable students with disabilities who exhibit problem behaviors to achieve independence and become participants and contributing

members in school, community, and work.

Despite this growing body of knowledge, however, awareness of the value of these approaches and their use in the educational environment remains limited. There is clearly a need to develop a greater awareness on the part of educators and others of the important contribution that positive behavioral interventions and supports can make in achieving successful results for children with disabilities who exhibit challenging problem behaviors and for improving the overall climate of schools.

Part B of IDEA includes provisions intended to guide and assist schools in cases in which the behavior of a child with a disability impedes learning. For example, the Act specifies that teams developing individualized education programs (IEPs) consider, when appropriate, positive behavioral interventions and supports and other strategies to address behavior problems. The following priority is intended to assist schools in designing and implementing effective school-wide positive behavioral intervention and support programs by creating a greater awareness of these research-based approaches, including identifying effective State and local policies which support the approaches, and by building the necessary knowledge base, momentum, and resource network to encourage their widespread application.

Priority

The Secretary establishes an absolute priority for the purpose of supporting a Center for Positive Behavioral Interventions and Supports that builds awareness and motivation for schools to design and implement school-wide support for children with disabilities who exhibit challenging problem behaviors. The Center must, at a minimum:

(a) Evaluate the state of policy and practice regarding school-wide positive behavioral interventions and supports, including relevant State and local policies and guidelines, and financing and cross-agency coordination strategies for supporting behavioral intervention and support services. Develop and apply criteria for identifying exemplary programs of school-wide positive behavioral interventions and supports. Identify and publicize schools implementing such programs.

(b) Establish a coordinated network of researchers, educators, parents, related services, and mental health professionals, and policy makers who will serve as resources to schools and each other in designing and

implementing school-wide positive behavioral intervention and support programs. Conduct outreach activities with relevant federally supported technical assistance and information activities and projects (e.g., the National Institute of Disability and Rehabilitation Research programs, the Federal Resource Center, Regional Resource Centers, the Office of Educational Research and Improvement (OERI), the Office of Elementary and Secondary Education's Safe and Drug Free Schools program, the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, the Department of Health and Human Services' Child Mental Health Services and Maternal and Child Health programs), State and local organizations, and other relevant organizations and projects to promote public awareness of positive behavioral intervention and support practices and the availability of information, supports, and services.

(c) Provide for information exchanges between researchers and practitioners who direct exemplary behavioral intervention and support programs and educators who seek to design and implement effective school-wide programs. Information must be exchanged through an array of methods, including, but not limited to, two regional forums during each of the first four years of the project, and a national forum in the fifth year. The forums must be designed to expand the coordinated network, develop awareness of research-based practices, and create a dialogue about school-wide positive behavioral intervention and support programs. The forums must include examples and descriptions of exemplary school-wide programs and effective State and local policies, and may include other appropriate activities such as visits to exemplary sites.

(d) Provide information to the national information center for children with disabilities. Collaborate with the national information center for children with disabilities on the development and dissemination of materials on positive behavioral interventions and supports. Establish linkages with the national information center for children with disabilities to ensure timely and accurate dissemination of information to customers.

(e) Organize, synthesize, and report information to teachers, administrators, parents, and other interested parties regarding research, policy, and practice advances on positive behavioral interventions and supports. Develop and disseminate products that are easy to use and accessible (e.g., print and electronic formats). Respond to written

and telephone inquiries with research-based information.

(f) Develop, and submit to the Secretary, a blueprint for providing further technical assistance to local educational agencies (LEAs) and State educational agencies (SEAs), which includes alternative designs of effective school-wide positive behavioral intervention and support programs and alternative approaches to delivering technical assistance in their implementation. Identify barriers to assisting school districts across the country in developing and implementing school-wide positive behavioral interventions and support programs and develop strategies for overcoming these barriers.

(g) Budget for two trips annually to Washington, D.C., for: (1) A two-day Research to Practice Division Project Directors' meeting; and (2) a meeting to collaborate with the Research to Practice Division project officer and the other related projects, and to share information and discuss findings and methods of dissemination.

(h) Conduct, every two years, a results-based evaluation supported by evaluation data gathered from the project of the technical assistance provided under activities (b), (c), (d), and (e). Such an evaluation must be conducted by a review team consisting of three experts approved by the Secretary, and must measure elements such as—

(1) The type of technical assistance provided and the perception of its quality by the target audience;

(2) The changes that occurred as a result of the technical assistance provided; and

(3) The review team will examine the progress that the Center has made with respect to the objectives in its application.

The services of the review team, including a two-day site visit to the Center is to be performed during the last half of the Center's second and fourth years and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the Center's budget for years two and four. These costs are estimated to be approximately \$4,000 for each evaluation cycle.

Under this priority, the Secretary will make one award for cooperative agreements with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the center for the fourth and fifth years of the project

period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(b) The degree to which the Center's design and methodology demonstrates the potential for advancing significant new knowledge.

Absolute Priority 2—National Center on Dispute Resolution

Background

Disputes within the education community affect systemic change and results for children with disabilities. An alternative dispute resolution process such as mediation is less costly to schools and families, can help to minimize adverse effects on a child's progress in school, and is more apt to foster positive relationships between families and educators than would litigation. Technical assistance that focuses primarily on alternative dispute resolution procedures would assist State educational agencies (SEAs), local educational agencies (LEAs), and families to resolve their differences in a less adversarial and more responsive manner than through standard due process hearing procedures, while enabling State and local entities to achieve systemic change and promoting improved early intervention, educational, and transitional results for children with disabilities. This priority would support a national center to provide technical assistance to SEAs, LEAs, and families on resolving their differences. The center would provide technical assistance on mediation and other effective dispute resolution procedures that do not impede parental rights under IDEA or otherwise conflict with the statute. As such, the center would provide technical assistance as needed in order to facilitate the effective use of due process procedures. The chief aim of the center, however, would be to provide needed technical assistance to enable parties to effectively resolve their disputes through more expedient and less confrontational means, including mediation.

Priority

The Secretary establishes an absolute priority to support a national technical assistance center on dispute resolution procedures, including mediation. The center must—

(a) Provide technical assistance on dispute resolution procedures (with an emphasis on procedures other than due process hearings) to all States, outlying

areas, and the freely associated States (to the extent such States participate in Parts B or C of IDEA), and the Bureau of Indian Affairs. At a minimum, the center must—

(1) Conduct annual needs assessments;

(2) Develop technical assistance agreements with each entity; and

(3) Provide technical assistance, training, and on-going consultation based on the technical assistance agreements (including technical assistance, training, and on-going consultation at the local level, as appropriate).

(b) Coordinate with the existing technical assistance to parent project to provide technical assistance to all parent training and information centers and community parent resource centers on dispute resolution procedures;

(c) Develop informational exchanges about dispute resolution procedures between the center and other technical assistance and information dissemination systems;

(d) Establish an advisory group of persons with complementary expertise on dispute resolution procedures to advise the center on its technical assistance activities;

(e) Collect information on the use and effectiveness of mediation and other dispute resolution procedures. The effectiveness of any such procedure would be based on the degree to which all parties feel satisfied with the result and agree that an efficient and expeditious process has been followed;

(f) Identify, and disseminate information on, best practices in dispute resolution;

(g) Maintain an information data base that includes: (1) State practices on dispute resolution, including information on mediator training and the implementation of the mediation requirements in Parts B and C of IDEA; and (2) research, literature, and products about dispute resolution procedures.

(h) Examine the effectiveness of State efforts regarding mediation and other dispute resolution proceedings. Analyze information on the number of due process hearings, mediation sessions, and other dispute resolution proceedings conducted and on the outcome of each such hearing, session, or proceeding;

(i) Collaborate with the national information center on children with disabilities regarding the dissemination of information to respond to information needs. Establish linkages with the national information center on children with disabilities to ensure timely and

accurate dissemination of information to customers;

(j) Serve as a clearinghouse for information on dispute resolution procedures;

(k) Conduct an annual forum each year of the project that identifies the unique features of dispute resolution procedures, the strengths of the procedures, and the potential for adopting the procedures. At least one forum must address the specific needs of underrepresented and underserved populations; another must address dispute resolution procedures (including mediator training issues) in the context of general education reform;

(l) Evaluate the impact of the center's technical assistance system and its components relative to the—

(1) Assessed needs of States and jurisdictions;

(2) Needs of parents; and

(3) Linkages with other technical assistance and information dissemination systems; and

(m) Budget for two trips annually to Washington, D.C., for: (1) a two-day Research to Practice Division Project Directors' meeting; and (2) a meeting to collaborate with the Research to Practice Division project officer and the other related projects to share information, and to discuss findings and methods of dissemination.

(n) Conduct, every two years, a results-based evaluation of the technical assistance provided. Such an evaluation must be conducted by a review team consisting of three experts approved by the Secretary and must measure elements such as—

(1) The type of technical assistance provided and the perception of its quality by the target audience; and

(2) The changes that occurred as a result of the technical assistance provided; and

(3) The progress that the center has made with respect to the objectives in its application.

The services of the review team, including a two-day site visit to the center, are to be performed during the last half of the center's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the center's budget for year two. These costs are estimated to be approximately \$4,000.

Under this priority, the Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to

continue the center for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the center.

(b) The degree to which the center's design and methodology demonstrates the potential for advancing significant new knowledge.

FOR FURTHER INFORMATION CONTACT: For further information on the priorities under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, SW., room 3527, Switzer Building, Washington, DC 20202-2641.

Telephone: (202) 205-8038. FAX: (202) 205-8105. Internet:

Debra_Sturdivant@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205-8953.

Program Authority: Section 685 of IDEA.

Special Education—Research and Innovation To Improve Services and Results For Children With Disabilities

Purpose of Program

To produce, and advance the use of, knowledge to: (1) Improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority.

Absolute Priority—Directed Research Projects

This priority provides support for projects that advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children with disabilities in regular education environments and natural environments, to provide those children effective instruction and interventions that enable them to learn and develop

successfully. Under this priority, projects must support innovation, development, exchange of information, and use of advancements in knowledge and practice designed to contribute to the improvement of early intervention, instruction, and learning of infants, toddlers, and children with disabilities.

A research project must address one of the following focus areas, and the Secretary intends to award at least one project in each focus area:

Focus 1—Beacons of Excellence

Research projects supported under Focus 1 must identify and study schools or programs achieving exemplary results for students with disabilities in the context of efforts to achieve exemplary results for all students. Projects must develop and apply procedures and criteria to identify these schools or programs on the basis of valid and reliable measures of student results. Projects must also identify factors contributing to exemplary learning or developmental results, and examine how those factors and other factors relate to achieving exemplary learning or developmental results for children with disabilities. Projects may focus on early intervention, preschool, elementary, or secondary levels, or a combination of levels. Following the second year of the project, the Secretary may fund an optional six-month period for additional dissemination activities.

Focus 2—The Sustainability of Promising Innovations

A growing body of practice-based research and model demonstration work in schools, local districts, and early intervention programs, including projects supported by the Office of Special Education Programs (OSEP), has focused on meeting the needs of, and improving results for, children with disabilities in schools, districts, or early intervention programs involved in reform and restructuring initiatives. Some of this work is yielding promising positive results for children with disabilities. However, little is known about the extent to which the innovations developed and implemented in these efforts are sustained in project sites beyond the term of time-limited external support and assistance.

Focus 2 supports projects to study the implementation of practices that have been found to be effective in meeting the needs of children with disabilities by reform and restructuring initiatives in local and district schools, or early intervention programs. The study must address: (a) The extent to which practices that have been shown to be

effective have been sustained beyond the existence of the projects; and (b) factors that influence the level of sustainability. Factors to be studied may include, but are not limited to: (a) The nature of the innovations and the extent to which the innovations have undergone adaptation or alteration over time; (b) the type and extent of support strategies employed during initial implementation stages and over time; (c) planned and unplanned changes in agency, school organizational or structural contexts, or both; (d) the level of penetration of the innovation; (e) the actual or perceived, or both, cost and benefit for participants; (f) constancy of site leadership, staff, and policy requirements; (g) the extent of consonance or dissonance between critical features of the innovations and existing (and emerging) school and district or agency practices and policies; and (h) resource access and allocation. Projects must provide comprehensive descriptions of the targeted effective practices to be studied, and evidence of positive results for children with disabilities. In addition, projects must dedicate the bulk of support requested to research on the issues of sustainability including the ability to sustain the project results beyond the life of the project. The Secretary particularly encourages an in-depth case study research design where the site or sites to be studied is the case (unit of analysis).

Focus 3—Research on Improving Reading Comprehension Results for Children with Learning Disabilities

In recent years, research has advanced our understanding of how skilled readers comprehend and instructional strategies that support children with learning disabilities to comprehend text. Comprehension is not merely a text-based process where meaning resides in the text and the role of the reader is to get the meaning. Meaning comes from both the text and the reader. Many children with learning disabilities need an instructional program that: (a) Teaches them how to access prior knowledge (e.g., strategies such as story grammar elements, semantic mapping, or think aloud sheets); (b) motivates and supports persistence on a task (e.g., including expressions of a student's own thoughts when reading and writing, questioning the expert or inquiry, or using technology or grouping practices); and (c) teaches them cognitive and metacognitive strategies for reading with understanding, including how to monitor one's own progress (e.g., summarizing, generating questions, mnemonics, or imagery).

Therefore, becoming a skilled reader is not automatic. Teachers need to teach reading comprehension, and, in particular, children with learning disabilities need effective instructional approaches.

Under Focus 3, a research project must pursue a systematic program of applied research that focuses on one or more issues related to improving reading comprehension results of children with learning disabilities related to reading. These issues include, but are not limited to:

(a) The extent to which children with learning disabilities need differential strategies to comprehend narrative and expository text;

(b) The types of effective comprehension instruction for children with learning disabilities in grades K-2, 3-5, and 6-8 inclusive; the components of particularly effective programs for children with learning disabilities; the basal materials, supplemental materials, and instructional strategies used by teachers; and how families support the instructional program;

(c) The types of effective questioning strategies used by teachers, peers, and experts affecting comprehension; and

(d) The kind of contexts that promote critical analysis and evaluation for comprehension and learning, and the grouping practices, instructional strategies, and curricula that promote comprehension and problem solving.

Focus 4—Studying Models That Bridge the Gap Between Research and Practice

Educational research most often includes the following phases: (1) Planning and preparation; (2) information gathering; (3) analysis and interpretation; (4) reporting and dissemination; and (5) use of findings. In traditional research models, the researcher is solely or primarily responsible for all phases but the last. Using research findings is seen as a job for the practitioner. However, it has been observed that research knowledge rarely translates directly into practice.

In recent years, a variety of promising models have been developed to bridge the gap between research and practice by altering the roles of researchers and practitioners for one or more phases of the research. In some models (e.g., interactive research and development, practitioner-researcher, partnership research) researchers and practitioners collaborate in all phases of the research process. Some of these models include parents on their site-based research teams. In other models, practitioners, working individually (e.g., practitioner-research linkers), in groups (e.g., practitioner study groups), or in pairs

(e.g., peer coaching) interpret extant research to understand how to integrate research into practice. In some models, teachers conduct research (e.g., action research, or collegial experimentation). To date there have been few systematic examinations of the effectiveness of the various models to improve practice in special education or early intervention.

Under Focus 4, research projects must implement and examine a model or models for using research knowledge to improve educational practice and results for children with disabilities.

In studying a model or models, projects must apply methodologies with the capacity to determine the effectiveness of the model or models as implemented in practice settings. The projects must identify the knowledge utilization model or models to be studied, specify the components of the knowledge utilization model or models selected or created, the supports and policies necessary to support the model or models, both alterable and unalterable factors affecting practice improvement, and the effect of the model or models to improve organizational culture, practitioner attitudes and practices, and child results. In judging effectiveness, the projects must address improvements for researchers, practitioners, and children with disabilities.

The projects must report their findings in a manner which can serve as a "blueprint" so that practitioners in other school districts or agencies can implement the model using research knowledge to improve practice in special education or early intervention.

Focus 5—Inclusion of Students With Disabilities in Large-Scale Assessment Programs

IDEA includes a number of provisions to ensure the participation of students with disabilities in general State and district-wide assessment programs. Students with disabilities must participate in large-scale assessment programs if they are to benefit from the educational accountability and reforms that are linked to these assessments. While much information has been gained from prior efforts to include disabled students in assessments such as the National Assessment of Educational Progress, applied research is needed to build on this base of information in order to provide technical and implementation information to guide the effective inclusion of students with disabilities in large-scale assessment programs.

Focus 5 supports projects that pursue systematic programs of applied research to determine how State and local

educational programs can best meet one or more of the following requirements: (a) Including students with disabilities in either general State or district-wide assessment programs or both;

(b) Developing and using appropriate accommodations for students with disabilities on general State or district-wide assessments, or both;

(c) Developing and using alternate assessments for students with disabilities who cannot participate in State and district-wide assessment programs;

(d) Reporting on the participation or performance of both of students with disabilities in either general assessment programs, or on alternate assessments, or both; and

(e) Making decisions during the development of individualized education programs concerning individual modifications in the administration of State or district-wide assessments, or individual participation in alternate assessments.

Focus 6—Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice

Traditionally researchers have communicated their findings from individual research projects and systematic lines of research through journal publications and conference presentations. These findings are communicated to other researchers and engage researchers in dialogues. These dialogues contribute to innovation and development in special education and early intervention. In recent years the OSEP has sought to expand these traditional approaches. While continuing to support innovation and development, OSEP has established a goal to foster the use of a professional knowledge base by professionals who serve children with disabilities and parents who are involved in the education and development of their children with disabilities.

Focus 6 supports projects that synthesize and communicate an extant professional knowledge base on curricular, instructional, early intervention, or organizational strategies and approaches that would contribute to professional practice as a means for achieving better results for children with disabilities. In past years, the Department has supported syntheses on positive behavioral supports of children who exhibit challenging behaviors, grouping practices in reading, differences between children with learning disabilities and low achieving students, instructional approaches for special education students who speak English as a second language,

generalization strategies for using augmentative communication devices, interventions for children with learning disabilities, and effects of setting on social and academic outcomes. Building upon these previous efforts, the Secretary intends to support and fund a limited number of new syntheses in other areas such as—

(a) Effects of self-determination and self-advocacy interventions on children with disabilities;

(b) Effects of interventions on children with disabilities that promote generalization of academic or developmental skills;

(c) Effects of teacher or practitioner efficacy on children with disabilities' achievement or development;

(d) Effects of technology for improving literacy results for children with disabilities;

(e) Effects of school-wide approaches for improving reading results of children with disabilities; or

(f) Effects of school-wide approaches for improving math results of children with disabilities.

Under Focus 6, a synthesis project must—

(a) Identify the topical focus and the relevant and irrelevant concepts under review, and pose hypotheses around which the synthesis would be conducted;

(b) Identify and implement rigorous social science methods for synthesizing the professional knowledge base (e.g., integrative reviews (Cooper, 1982), best-evidence synthesis (Slavin, 1989), meta-analysis (Glass, 1977), multi-vocal approach (Ogawa & Malen, 1991), and National Institute of Mental Health consensus development program (Huberman, 1977));

(c) Develop hypotheses with input from potential consumers of the synthesis to enhance the usability and validity of project efforts. Consumers include researchers, technical assistance providers, policy makers, educators, other relevant practitioners, individuals with disabilities, and parents;

(d) Develop linkage of synthesis with technical assistance providers and disseminators and prepare products for use by practitioners, technical assistance providers, and disseminators;

(e) Implement procedures for locating and organizing the extant literature and ensure that these procedures address and guard against potential threats to the integrity, including generalization of findings;

(f) Establish criteria and procedures for judging the appropriateness of studies;

(g) Meet with the Office of Special Education Programs to review the

project's topical focus and methodological approach for conducting the synthesis prior to the start of its synthesis;

(h) Analyze and interpret the professional knowledge base, including identification of general trends in the literature, points of consensus and conflict among the findings, and areas of evidence where the literature base is lacking. The interpretation of the literature base must address the contributions of the findings for improving the practice of professionals serving children with disabilities; and

(i) Submit a draft report in the 21st month of the project and, based on peer reviews, revise and submit a final report of the synthesis in the 24th month. During the second year of the project, the Secretary may fund an optional six-month period for additional dissemination activities.

Focus 7—Improving the Delivery of Special Education and Related Services or Early Intervention Services to Children who are English Language Learners

Appropriate instruction and intervention for children with disabilities who are limited in their English language proficiency can be achieved in a variety of ways. Ultimately, the responsibility for assuring that the English language learner is receiving appropriate access to the curriculum or intervention rests with the school district or agency in its provision of necessary training and ongoing support to the teachers or practitioners. Providing native speakers of the child's language in the classroom or intervention program, including parents, may not be sufficient to assure delivery of appropriate education or interventions. Limitations of resources and availability of qualified bilingual personnel to provide special education, related services, or early intervention services throughout the Nation suggest that other approaches should be investigated that will enhance the availability and assurance of the provision of meaningful education.

Under Focus 7 projects must pursue a systematic program of applied research that focuses on one or more areas related to improved approaches to the delivery of special education and related services or early intervention services to children who are English language learners. These areas may include, for example—

(a) Examination of early reading practices (K-3) for children with learning and behavior issues who are limited in their English proficiency;

(b) Improvement of reading comprehension in content area instruction in grades 4-8;

(c) Examination of alternatives in the delivery of services to children with disabilities who are English language learners (e.g., is placement optimal in regular classes or programs with support from special education resources or is the child better served in placements with other children with similar disabilities with support from bilingual resources?);

(d) The role cultural issues play in the provision of services (e.g., how do the perceptions of families regarding disabilities and services affect delivery of services?);

(e) The preferred strategies to support the transition from bilingual to mainstream English speaking classes or programs (e.g., what teaching or intervention strategies are most effective?);

(f) Examination of specific instructional approaches that promote problem solving and comprehension in reading, science, math, and social studies;

(g) Examination of instructional or intervention approaches for growth in English language learning for these children;

(h) Factors that improve the effectiveness of cooperative learning and classwide peer tutoring for English language learners;

(i) The techniques that improve the transfer of proven practices to practitioner; and

(j) The qualitative differences that exist in implementation of proven practices with practitioner and children who are English language learners who are located in inner-city schools or served through inner-city agencies (e.g., what is the involvement of families?).

Focus 8—Educating Children With Disabilities in Inclusive Settings

Focus 8 supports research projects to (a) identify new or improved systems change strategies that provide all children with disabilities, including children with severe disabilities, effective access to the general curriculum in regular classrooms as well as to nonsegregated extracurricular activities, and (b) describe how these school inclusion efforts as identified in (a) are aligned with systemic reform and school improvement strategies for all students.

Each project will identify, describe, and examine: (1) The efficacy and linkages of existing systemic reform and school inclusion strategies; (2) how school systems provide administrative and other supports in general education

settings to meet the needs of students with disabilities and other diverse learners; (3) how standards established for all children and authentic assessment practices are implemented for students with disabilities, and (4) social support strategies, including peer mediated strategies, that promote positive interactions among students with disabilities and their same-aged peers to foster cohesive school and classroom communities.

To be considered for funding under Focus 8, a research project must—

(a) Identify specific interventions or strategies to be investigated;

(b) Design the research activities in a manner that is likely to improve services for all students in inclusive classrooms, including students with severe disabilities;

(c) Conduct the research in schools pursuing systemic education reform and school inclusion; and

(d) Use methodological procedures designed to produce findings useful to program implementers and policy makers regarding the impact and interaction effects of systemic reform and school inclusion strategies in State and local contexts and demonstrate the benefits to students including the reciprocal benefits of inclusive schooling for all students.

Program Authority: Section 672 of IDEA.

Requirements for All Directed Research Projects:

In addition to addressing one of the above mentioned focus areas, projects must—

(a) Apply rigorous research methods (qualitative or quantitative, or both) to identify approaches contributing to improved results for children with disabilities;

(b) Provide a conceptual framework, based on extant research and theory to serve as a basis for the issues to be studied, the research design, and the target population;

(c) Prepare dissemination materials for both researcher and practitioner audiences and develop linkages with U.S. Department of Education dissemination and technical assistance providers, in particular those supported under the Individuals with Disabilities Education Act, to communicate research findings and distribute products; and

(d) Budget for two trips annually to Washington, D.C., for: (1) a two-day Research to Practice Division Project Directors' meeting; and (2) another meeting to collaborate with the Research to Practice Division project officer and the other projects funded under this priority, and to share information and

discuss findings and methods of dissemination.

FOR FURTHER INFORMATION CONTACT: For further information on the priority under the Research and Innovation to Improve Services and Results for Children with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, SW., room 3527, Switzer Building, Washington, DC 20202-4641. Telephone: (202) 205-8038. FAX: (202) 205-8105. Internet: Debra Sturdivant@ed.gov

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Note: The official version of a document is the document published in the **Federal Register**.

Intergovernmental Review

The programs (except for the Research and Innovation Projects) included in this notice are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Dated: April 28, 1998.

(Catalog of Federal Domestic Assistance Numbers: Research and Innovation to Improve Services and Results for Children with Disabilities, 84.324; and Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities, 84.326)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98-11720 Filed 5-1-98; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards for Fiscal Year 1998

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1998 competitions under two programs authorized by the Individuals with Disabilities Education Act (IDEA), as amended. This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Note: The Department of Education is not bound by any estimates in this notice.

Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities [CFDA No. 84.326]

Purpose of Program

The purpose of this program is to provide technical assistance and information through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and to address systemic-change goals and priorities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) the selection criteria included in regulations for these programs in 34 CFR 320.30.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Absolute Priority 1—Center for Positive Behavioral Interventions and Supports (84.326S)

The priority for the Center for Positive Behavioral Interventions and Supports in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications Available: May 12, 1998.
Deadline for Transmittal of Applications: July 2, 1998.

Deadline for Intergovernmental Review: August 31, 1998.

Estimated Number of Awards: 1.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding \$650,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 70 double-spaced pages using the following standards: (1) A "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides); and (2) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Project Period: Up to 60 months.

Absolute Priority 2—National Center on Dispute Resolution (84.326D)

The priority for the National Center on Dispute Resolution in the notice of

final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications Available: May 12, 1998.

Deadline for Transmittal of Applications: July 2, 1998.

Deadline for Intergovernmental Review: August 31, 1998.

Estimated Number of Awards: 1.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding \$500,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 70 double-spaced pages using the following standards: (1) A "page" is 8½" x 11" (on one side only) with one-inch margins (top, bottom, and sides); and (2) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Project Period: Up to 60 months.

Program Authority: Section 685 of IDEA.

Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities (CFDA No. 84.324)

Purpose of Program: To produce, and advance the use of, knowledge to: (1) improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities;

and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 324.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Absolute Priority: Directed Research Projects (84.324D). The priority for Directed Research Projects in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Under this Directed Research Projects priority, a research project must address one of the eight focus areas. Following is the pertinent information for each focus area:

Applications Available: May 12, 1998.

Deadline for Transmittal of Applications: June 19, 1998.

Deadline for Intergovernmental Review: August 20, 1998.

Focus 1—Beacons of Excellence

Estimated Number of Awards: 3.

Project Period: Up to 36 months. Following the second year of the project, the Secretary may fund an optional six-month period for additional dissemination activities.

Focus 2—The Sustainability of Promising Innovations

Estimated Number of Awards: 3.

Project Period: Up to 48 months.

Focus 3—Research on Improving Reading Comprehension Results for Children with Learning Disabilities

Estimated Number of Awards: 3.

Project Period: Up to 36 months.

Focus 4—Studying Models That Bridge the Gap Between Research and Practice

Estimated Number of Awards: 3.

Project Period: Up to 48 months.

Focus 5—Inclusion of Students with Disabilities in Large-Scale Assessment Programs

Estimated Number of Awards: 3.

Project Period: Up to 36 months.

Focus 6—Synthesize and Communicate a Professional Knowledge

Base: Contributions to Research to Practice.

Estimated Number of Awards: 3.

Project Period: Up to 24 months.

During the second year of the project, the Secretary may fund an optional six-month period for additional dissemination activities.

Focus 7—Improving the Delivery of Special Education and Related Services or Early Intervention Services to Children Who Are English Language Learners

Estimated Number of Awards: 3.

Project Period: Up to 36 months.

Focus 8—Educating Children with Disabilities in Inclusive Settings

Estimated Number of Awards: 3.

Project Period: Up to 36 months.

Maximum Award for All Focus Areas:

The Secretary rejects and does not consider an application that proposes a budget exceeding \$200,000 for any single budget period of 12 months. This maximum award applies to any application for any Focus area. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits for All Focus Areas: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 50 double-spaced pages using the following standards: (1) A "page" is 8" x 11" (on one side only) with one-inch margins (top, bottom, and sides); and (2) all text in the application narrative, including titles, headings, footnotes,

quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Program Authority: Section 672 of IDEA.

For Application Information Contact: For the priorities under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities and the Special Education—Research and Innovation to Improve Results for Children with Disabilities, contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 3527, Switzer Building, Washington, D.C. 20202-2734. Telephone: (202) 205-8038. FAX: (202) 205-8105. Internet: Debra_Sturdivant@ed.gov

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Note: The official version of a document is the document published in the **Federal Register**.

Dated: April 28, 1998.

(Catalog of Federal Domestic Assistance Numbers: Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities, 84.324; and Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities, 84.326)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98-11721 Filed 5-1-98; 8:45 am]

BILLING CODE 4000-01-P

federal register

Monday
May 4, 1998

Part IX

Department of Housing and Urban Development

24 CFR Part 203

Authority To Reduce FHA Mortgage
Insurance Premium (MIP) for Mortgages
on Single Family Properties in Central
Cities; Proposed Rule

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR-4284-P-01]

RIN 2502-AH07

Authority To Reduce FHA Mortgage
Insurance Premium for Mortgages on
Single Family Properties in Central
CitiesAGENCY: Office of the Assistant
Secretary for Housing—Federal Housing
Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides express authority for a reduced FHA single family mortgage insurance premium (MIP) for properties located in central cities. The purpose of this rule is to help increase the homeownership rate in areas of the country where the homeownership rate is low.

DATES: Comment due date: July 6, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each comment submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) eastern time at the above address.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Office of Insured Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (voice) (202) 708-3046. (This is not a toll-free number.) Hearing-impaired or speech-impaired individuals may access the voice telephone listed by calling the Federal Information Relay Service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Three times during President Clinton's administration, FHA has reduced the up-front mortgage insurance premium (MIP) for single family mortgages below the level permitted by statute. In 1994 (through Mortgagee Letter 94-14), FHA reduced the MIP from the then-applicable statutory maximum of 3.0% to 2.25%. FHA further reduced the up-front MIP for first-time homebuyers who have received homeownership counseling to 2.00 (Mortgagee Letter 96-

48) and from 2.00 to 1.75% (Mortgagee Letter 97-37). These measures were designed to boost the Nation's homeownership rate, particularly among those who are most likely to have difficulty paying closing costs, without adversely affecting the actuarial soundness of the Mutual Mortgage Insurance Fund. The homeownership rate for 1997 was 65.7 percent, the highest annual rate in American history, due in part to these and other measures adopted as part of the National Homeownership Strategy of the National Partners in Homeownership initiated by HUD.

The homeownership rate in cities, however, continues to lag far behind the rate in suburbs—49.8 % compared to 72.1% as of June 1997. President Clinton addressed this problem in his June 23, 1997 remarks to the United States Conference of Mayors in which he announced an Urban Homestead initiative to help Americans become homeowners in cities. In announcing one part of the initiative, President Clinton stated:

But you and I know not enough homes are in our cities. In the last 4 years, we've reduced FHA mortgage premiums three times, to lower the average closing cost on a new home by \$1,200. That's made a lot of difference to a lot of young people, and I'm proud of that. Today, we're going to cut the premium another \$200 for people if they buy homes in our central cities. This will bring the total reduction, since we took office, of closing costs to those families to \$1,400.¹

In this rule, FHA proposes to carry out the President's pledge of an additional \$200 estimated savings for a typical central city homebuyer by authorizing a reduced premium—for those who would otherwise qualify for the 1.75% premium—of 1.50% for homeowners in a central city. The rule would not establish a specific MIP level for central cities, but would generally permit FHA to establish an MIP level for a central city property that would be up to 25 basis points lower than the MIP that would otherwise be due. The rule would define a central city as any city or county that meets the definition of "metropolitan city" or "urban county" for purposes of HUD's Community Development Block Grant (CDBG) program; i.e., any CDBG entitlement grantee.

This definition is deliberately broad to ensure that all areas that may experience a lower homeownership rate due to urban location will benefit from a reduction in MIP level. Because the definition is based on well-established boundaries for existing governmental

jurisdictions that are already used for a major HUD program, the definition will avoid the confusion that might arise if new lines were drawn solely for MIP purposes. The definition proposed in the rule is clear and concise and—unlike some other possible approaches that were considered—lends itself to effective computer tracking that will enable FHA to study and evaluate the effect of the MIP reduction.

FHA has concluded that the proposed definition of central cities will permit FHA to reduce the upfront MIP to 1.50% for a first-time homebuyer who has received pre-purchase counseling, while also permitting FHA to maintain the Mutual Mortgage Insurance Fund on an actuarially sound basis and in excess of the statutory capital requirement.

Findings and Certifications*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. In this rule, FHA proposes to carry out the President's pledge of an additional \$200 estimated savings for a typical central city homebuyer by authorizing a reduced premium—for those who would otherwise qualify for the 1.75% premium—of 1.50% for homeowners in a central city. The rule will have no adverse or disproportionate economic impact on small entities. Small entities are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATE** and **ADDRESSES** sections in the preamble of this proposed rule.

Environmental Impact

This proposed rule is exempt from environmental review requirements under 24 CFR 50.19(c)(6). That exemption applies to various rate and cost determinations and related administrative or fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites. The sole impact of the proposed rule would be to permit a reduced MIP level for homes in central cities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have

substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog

The Catalog of Federal Domestic Assistance number for the basic FHA single family mortgage insurance program is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, the Department proposes to amend 24 CFR part 203 as follows:

**PART 203—SINGLE FAMILY
MORTGAGE INSURANCE**

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b and 1715u; 42 U.S.C. 3535(d).

2. Section 203.284 is amended by adding a new paragraph (i) to read as follows:

§ 203.284 Calculation of up-front and annual MIP on or after July 1, 1991.

(i) *Central cities.* If the mortgage is on property in a central city, the Secretary may establish the percentage used to calculate up-front MIP level at a rate that is up to 25 basis points lower than the rate used to calculate MIP for a

comparable mortgage on property that is not in a central city. For purposes of this section, "central city" means any city or county that is included in the definitions of "metropolitan city" or "urban county" in sections 102(4) and 102(6) of the Housing and Community Development Act of 1974, 42 U.S.C. 5302(4) and 5302(6).

3. Section 203.285(c) is revised to read as follows:

§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.

(c) *Applicability of certain provisions.* The provisions of §§ 203.261, 203.262, 203.264, 203.265, 203.266, 203.267, 203.268, 203.269, 203.280, 203.282, 203.284(c), 203.284(g) and 203.284(i) are applicable to mortgages subject to premiums under this section.

Dated: March 27, 1998.

Art Agnos,
Acting General Deputy Assistant Secretary
for Housing-Deputy Federal Housing
Commissioner.

[FR Doc. 98-11792 Filed 5-1-98; 8:45 am]
BILLING CODE 4210-27-P

¹ Weekly Compilation of Presidential Documents, Vol. 33, No. 26, page 938, at page 944.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It

may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/ledreg>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1116/P.L. 105-169

To provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District and the Fabens Independent School District. (Apr. 24, 1998; 112 Stat. 46)

H.R. 2843/P.L. 105-170

Aviation Medical Assistance Act of 1998 (Apr. 24, 1998; 112 Stat. 47)

H.R. 3226/P.L. 105-171

To authorize the Secretary of Agriculture to convey certain lands and improvements in the State of Virginia, and for other purposes. (Apr. 24, 1998; 112 Stat. 50)

S. 493/P.L. 105-172

Wireless Telephone Protection Act (Apr. 24, 1998; 112 Stat. 53)

S. 1178/P.L. 105-173

To amend the Immigration and Nationality Act to modify and extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General. (Apr. 27, 1998; 112 Stat. 56)

Last List April 23, 1998

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

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³The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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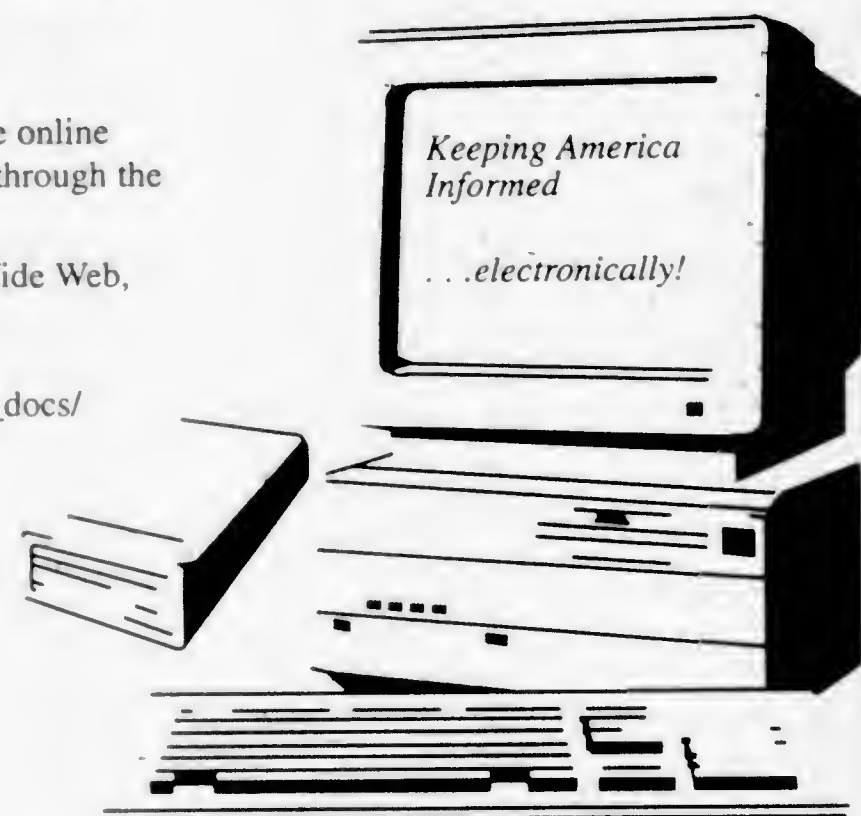
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Federal Register

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Tuesday, May 5, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule.

SUMMARY: This interim final rule implements Pub. L. 105-135, enacted on December 2, 1997, with respect to SBA financing in the pilot Premier Certified Lenders Program (PCLP). The interim final rule extends the pilot to October 1, 2000, and expands the authority of a Certified Development Company (CDC) participating in the PCLP (Premier CDC).

DATES: This rule is effective May 4, 1998. Comments must be submitted on or before July 6, 1998. SBA will publish a final rule after the end of the comment period.

ADDRESSES: Comments should be mailed to Jane Palsgrove Butler, Acting Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, 202-205-6485.

SUPPLEMENTARY INFORMATION: Pub. L. 105-135, the "Small Business Reauthorization Act of 1997" (1997 legislation), enacted on December 2, 1997, amends Section 504 of the Small Business Investment Act of 1958 (15 U.S.C. 601 *et seq.*) and requires SBA to promulgate regulations to carry out the amendments. SBA is promulgating this regulation in interim final rule form to enable qualified CDCs to participate in the PCLP Program as soon as possible. Because this regulation merely implements provisions contained in the 1997 legislation, SBA is satisfied that the interim final rule poses no risk to SBA's PCLP program. SBA is seeking comments in regards to this interim

final regulation. After the 60 day comment period has expired, SBA will issue a final rule.

Changes to PCLP

- The current SBA PCLP is limited to 15 CDCs. The interim final rule will open the program to all qualified CDCs.

- The interim final rule expands and clarifies the authority of a Premier CDC to foreclose, litigate, and liquidate 504 loans made under PCLP.

- The interim final rule clarifies that SBA makes the eligibility determination regarding 504 loans and Borrowers. The Premier CDC makes all other determinations regarding loan approval.

- The interim final rule requires that if there is a default on a Debenture issued under PCLP, the Premier CDC must reimburse SBA for 10 percent of any loss incurred as a result of the default. The amount for which a CDC is liable is referred to as "Exposure." To cover its Exposure, a Premier CDC must maintain a loss reserve of segregated assets. This interim final rule codifies SBA's current interpretation of a loan loss reserve and, in addition, permits a Premier CDC to use irrevocable letters of credit to fund the loss reserve. The criterion for an eligible letter of credit is based on its terms and the strength of the institution making the commitment. The interim final rule defines an eligible letter of credit as one that: (1) is issued by a "well capitalized bank" as defined by the Federal Deposit Insurance Corporation (FDIC); (2) has a term equal to or greater than the term of the financings it secures; and (3) is otherwise acceptable to SBA. SBA plans to review the terms of each irrevocable letter of credit to ensure that SBA is protected adequately against loss.

- Currently a Premier CDC is required to maintain a loss reserve equal to the greater of its historic loss rate on its Debentures or 10 percent of its Exposure. The interim final rule limits the calculation of the loss reserve to 10 percent of the Premier CDC's Exposure or 1 percent of the Debentures it issues under PCLP. The Premier CDC must contribute 50 percent of required funds to the loss reserve when a 504 Debenture is closed, 25 percent within 1 year after the Debenture is closed, and 25 percent within 2 years after the Debenture is closed.

- Although a Premier CDC's Exposure is 10 percent of any loss incurred by SBA from a default on a 504 Debenture

processed through PCLP, the CDC must contribute only 10 percent of its Exposure (which is only 1 percent of SBA's loss from the default) on each Debenture to the loss reserve. The interim final rule amends the current regulations to clarify that SBA may use all assets in a Premier CDC's loss reserve to reimburse the Agency for the full 10 percent of its loss. If there is not enough in the loss reserve, the interim final rule requires that a Premier CDC pay SBA, within 45 days of demand for the payment, the difference between the Premier CDC's Exposure and the amount withdrawn by SBA from the loss reserve.

- The interim final rule specifies that a Premier CDC must replenish withdrawn loss reserve assets within 30 days with an equivalent amount of assets.

- The interim final rule requires SBA to allow a Premier CDC to withdraw loss reserve assets attributable to any paid off Debenture.

- The interim final rule extends the pilot PCLP to October 1, 2000.

- The interim final rule requires a CDC seeking to participate in PCLP to apply to the SBA field office in which it is most active.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this interim final rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this interim final rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Last year, SBA made approximately four thousand 504 loans. Currently there are approximately 300 CDCs, less than 15 of which are Premier CDCs. While the 1997 legislation removes the limit on the number of CDCs that can become Premier CDCs, SBA anticipates that, at most, only half of the CDCs would be affected by this rule. Thus the changes to the PCLP implementing the 1997

legislation do not constitute a significant impact on a substantial number of small businesses.

SBA certifies that this interim final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

For purposes of Executive Order 12612, SBA certifies that this interim final rule has no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this interim final rule is drafted, to the extent practicable, to accord with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

Accordingly, pursuant to authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends part 120, chapter I, title 13, Code of Federal Regulations as follows:

PART 120—BUSINESS LOANS

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Revise § 120.845 to read as follows:

§ 120.845 Premier Certified Lenders Program (PCLP).

The SBA has established a pilot program to designate a number of CDCs as Premier Certified Lenders ("Premier CDCs"), and to authorize them to approve, close, service, foreclose, litigate, and liquidate 504 loans subject to SBA regulations, procedures, and policies. A Premier CDC's authority to approve loans under the Program is subject to SBA's determination that the loan and Borrower meet SBA's eligibility requirements.

(a) *PCLP loan approvals.* A Premier CDC notifies SBA of its approval of a PCLP loan by submitting appropriate documentation to SBA's loan processing center. SBA will notify the Premier CDC of the SBA loan number (if it does not identify a problem with eligibility, and funds are available).

(b) *Premier CDC Exposure.* A Premier CDC must reimburse SBA for 10 percent of any loss incurred by SBA as a result of a default by the Premier CDC on a Debenture issued under the PCLP ("Exposure").

(c) *Loss reserve.* A Premier CDC must establish a loss reserve to pay its Exposure to SBA.

(1) *Assets.* A Premier CDC's loss reserve must be composed of any

combination of: segregated funds on deposit in one or more federally insured depository institutions; or irrevocable letters of credit. All loss reserve deposits and letters of credit must be assigned by the Premier CDC to SBA in a manner acceptable to SBA. A Premier CDC's loss reserve deposits in an institution may exceed the institution's insured amount, but only if the institution is "well capitalized" as defined in regulations of the Federal Deposit Insurance Corporation, as amended (12 CFR 325.103) ("well capitalized bank"). A loss reserve irrevocable letter of credit must (i) be issued by a well capitalized bank, (ii) have a term equal to or longer than the term of the financings it secures, and (iii) be otherwise acceptable to the SBA.

(2) *Contributions.* A Premier CDC's loss reserve must total 1 percent of the Debentures it issues under the PCLP Program. A Premier CDC must contribute 50 percent of the required loss reserve attributable to each financing when the Debenture it issues to fund the financing is closed, 25 percent within 1 year after the Debenture is closed, and 25 percent within 2 years after the Debenture is closed.

(3) *Reimbursement.* SBA determines a Premier CDC's Exposure on a loan and withdraws the amount necessary to cover the Exposure. If, after full use of any assets in the loss reserve, there are not enough loss reserve assets to cover a Premier CDC's Exposure, the Premier CDC must pay SBA any difference between the Exposure and the loss reserve assets withdrawn by SBA to cover the Exposure within 45 days of a demand for payment by SBA.

(4) *Replenishment.* If SBA withdraws assets from the loss reserve to cover a Premier CDC's Exposure, the CDC must replace the withdrawn loss reserve assets within 30 days of the withdrawal with contributions equal to or greater than the amount of the assets withdrawn.

(5) *Withdrawal.* A Premier CDC may withdraw loss reserve assets attributable to any repaid Debenture upon written approval by SBA.

(d) *Review.* SBA will review a Premier CDC's financings annually.

(e) *Suspension and revocation.* The AA/FA may suspend or revoke a CDC's Premier designation upon written notice stating the reasons for the suspension or revocation at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA, failure to meet loss reserve or eligibility criteria, or violations of applicable

statutes, regulations, or published SBA policies and procedures. A Premier CDC may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

(f) *Applications.* A CDC may obtain information concerning this pilot program from the Office of Program Development in the Office of Financial Assistance at SBA's Headquarters. A CDC may submit its application to the SBA field office in which it is most active. The SBA field office will send the application with its recommendation to the AA/FA for a final decision.

(g) *Acceptance into program.* When determining a CDC's application, SBA will consider the CDC's ability to work with the local SBA office and the quality of past performance.

(h) *Program period.* The PCLP pilot program ends on October 1, 2000.

Dated: April 28, 1998.

Aida Alvarez,
Administrator.

[FR Doc. 98-11848 Filed 5-4-98; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-300-AD; Amendment 39-10511; AD 98-09-30]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A330-301 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330-301 series airplanes. This action requires a one-time visual inspection to measure clearances between the engine forward feed pipe and shroud sleeve in the engine pylon; and repetitive operational tests for fuel leakage, and replacement of the shroud sleeve with a new improved part, if necessary. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent fuel from leaking into the pylon primary structure and into the engine

nacelle core zone, which could result in a fire in the engine.

DATES: Effective May 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 97-NM-300-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330-301 series airplanes. The DGAC advises that it has received reports of insufficient overlap between the fuel feed pipe and the shroud sleeve. The insufficient overlap has been attributed to an error during manufacturing of the shroud sleeve. Such insufficient overlap could cause an improper O-ring seal between the fuel feed pipe and the shroud sleeve. In the event of a leak in the fuel feed pipe, such insufficient overlap could permit fuel to leak into the pylon primary structure and into the engine nacelle core zone. This condition, if not corrected, could result in a fire in the engine.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330-28-3046, Revision 01, dated November 12, 1996, which describes procedures for a one-time visual inspection to measure clearances of the overlap between the engine forward feed pipe and shroud sleeve in the engine pylon, and repetitive operational

tests for fuel leakage. The DGAC classified this service bulletin as mandatory, and issued French airworthiness directive 96-174-034(B)R1, dated January 2, 1997, in order to assure the continued airworthiness of these airplanes in France.

Airbus also has issued Service Bulletin A330-28-3045, dated August 9, 1996, which describes procedures for replacing the shroud sleeve with a newly designed shroud sleeve. The DGAC approved this service bulletin.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

None of the Airbus Model A330-301 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 4 work hours to accomplish the required actions, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of this AD would be \$240 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM-300-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-09-30 Airbus: Amendment 39-10511. Docket 97-NM-300-AD.

Applicability: Airbus Model A330-301 series airplanes equipped with Pratt & Whitney or General Electric engines on which Airbus Modification 44649 has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel from leaking into the pylon primary structure and into the engine nacelle

core zone, which could result in a fire in the engine; accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, perform a one-time visual inspection to measure the clearances between the engine forward feed pipe and the shroud sleeve of the left- and right-hand engine pylons, in accordance with Airbus Service Bulletin A330-28-3046, Revision 01, dated November 12, 1996. If the measured clearance is greater than 6 millimeters (mm), no further action is required by this AD.

(b) If the measured clearance is less than or equal to 6 mm, prior to further flight, perform an operational test to check for fuel leaks in accordance with Airbus Service Bulletin A330-28-3046, Revision 01, dated November 12, 1996.

(1) If no leaking is found, repeat the operational test thereafter at intervals not to exceed 500 flight hours until the requirements of paragraph (c) of this AD are accomplished.

(2) If any leaking is found, prior to further flight, replace the shroud sleeve with a new improved part in accordance with Airbus Service Bulletin A330-28-3045, dated August 9, 1996. Accomplishment of this replacement constitutes terminating action for the repetitive operational testing requirements of this AD.

(c) For any airplane on which the measured clearance is less than or equal to 6 mm and no leaking is found during any operational test required by paragraph (b) of this AD: Within 1 year after the effective date of this AD, replace the shroud sleeve with a new improved part in accordance with Airbus Service Bulletin A330-28-3045, dated August 9, 1996. Accomplishment of this modification constitutes terminating action for the repetitive operational testing requirements of paragraph (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The replacement shall be done in accordance with Airbus Service Bulletin A330-28-3045, dated August 9, 1996. The inspection and operational test (if accomplished) shall be done in accordance with Airbus Service Bulletin A330-28-3046, Revision 01, dated November 12, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus

Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96-174-034(B)R1, dated January 2, 1997.

(g) This amendment becomes effective on May 20, 1998.

Issued in Renton, Washington, on April 24, 1998.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-11563 Filed 5-4-98; 8:45 am] BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-131-AD; Amendment 39-10512; AD 98-10-01]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes. This action requires a revision of the Airplane Flight Manual to alert the flightcrew that both flight management computers (FMC's) must be installed and operational. This AD also requires an inspection to determine the serial number of the FMCs, and follow-on corrective actions, if necessary. This amendment is prompted by a report indicating that, due to incorrect multiplexers that were installed in the flight management computer system (FMC'S) during production, certain data busses failed simultaneously during a ground test. The actions specified in this AD are intended to prevent loss of airspeed and altitude indications on both primary flight displays in the cockpit, and/or loss or degradation of the autopilot functionality due to installation of incorrect multiplexers, and consequent failure of the data busses.

DATES: Effective May 20, 1998.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of May 20, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-131-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5350; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION: The FAA received a report indicating that, during a routine ground test on an Airbus Model A310 series airplane, which included a power-down test of the Honeywell Flight Management Computer System (FMCS), multiple ARINC 429 data busses failed simultaneously. Investigation revealed that a batch of incorrect multiplexers were installed in the FMCS during production, which can cause loading of the ARINC 429 data busses when the flight management computer (FMC) is de-energized. This condition, if not corrected, could result in loss of airspeed and altitude indications on both primary flight displays in the cockpit and/or loss or degradation of the autopilot functionality.

Similar Airplanes

The FMCS of Airbus Model A310 series airplanes is similar in design to that of McDonnell Douglas Model MD-11 series airplanes. Therefore, the FAA has determined that Model MD-11 series airplanes may be subject to the

same unsafe condition. The FAA has been advised that the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, may consider issuing a parallel French airworthiness directive to correct the identified unsafe condition on Airbus Model A310 series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11-34A083, dated April 6, 1998, which describes procedures for a visual inspection to determine the serial number of the FMC's, and follow-on corrective actions, if necessary. The follow-on corrective actions include, for any airplane on which an affected serial number is found, a visual inspection to determine the part number of the multiplexer, and modification of certain multiplexers. In addition, the alert service bulletin describes procedures for a functional test of the FMC in the flight compartment to determine if an incorrect multiplexer is installed, and corrective actions, if necessary.

McDonnell Douglas Alert Service Bulletin MD11-34A083, dated April 6, 1998, references Honeywell Service Bulletin 4059050-34-0011, dated March 12, 1998, as an additional source of service information.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent loss of airspeed and altitude indications on both primary flight displays in the cockpit, and/or loss or degradation of the autopilot functionality as a result of incorrect multiplexers installed in the FMCS. This AD requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to alert the flightcrew that, prior to dispatch, both FMC's must be installed and operational.

This AD also requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin describes procedures for a functional test, this AD does not require that functional test. The FAA has determined that the functional test does not positively indicate that an incorrect multiplexer is installed.

Interim Action

This is considered to be interim action. The FAA is considering further rulemaking action to supersede this AD to require modification of any FMC that does not have an affected serial number (i.e., Condition 2 of the Work Instructions in the referenced alert service bulletin). However, the planned compliance time for these actions is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-131-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-10-01 McDonnell Douglas: Amendment 39-10512. Docket 98-NM-131-AD.

Applicability: Model MD-11 series airplanes, manufacturer's fuselage numbers 0447 through 0552 inclusive, and 0554 through 0621 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airspeed and altitude indications on both primary flight displays in the cockpit and/or loss or degradation of the autopilot functionality, due to installation of incorrect multiplexers in the flight management computer system (FMCS), accomplish the following:

(a) Within 5 days after the effective date of this AD, revise Section 1, page 5-1 of the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

"Prior to dispatch of the airplane, both Flight Management Computer 1 (FMC-1) and FMC-2 must be installed and operational."

(b) Within 45 days after the effective date of this AD, perform a visual inspection to determine the serial number of the flight management computers (FMC), in accordance with McDonnell Douglas Alert Service Bulletin MD11-34A083, dated April 6, 1998. After this inspection is accomplished, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(1) If no affected serial number is found, no further action is required by this paragraph.

(2) If any affected serial number is found, prior to further flight, perform a visual inspection to determine the part number (P/N) of the multiplexer, in accordance with the alert service bulletin. If any affected P/N is found, prior to further flight, modify the multiplexer in accordance with the alert service bulletin.

Note 2: McDonnell Douglas Alert Service Bulletin MD11-34A083, dated April 6, 1998, references Honeywell Service Bulletin 4059050-34-0011, dated March 12, 1998, as an additional source of service information.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

a location where the requirements of this AD can be accomplished.

(e) Except as provided for in paragraph (a) of this AD, the actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11-34A083, dated April 6, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 20, 1998.

Issued in Renton, Washington, on April 28, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. 98-11808 Filed 5-4-98; 8:45 am]

BILLING CODE 4910-13-01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AWP-9]

Modification of Class D Airspace; Mountain View, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D surface area at Mountain View, CA by revising the vertical limit within its geographic boundary up to, but not including 2,500 feet MSL, excluding the San Jose (SJC) Class C surface area. A review of airspace classification made this action necessary in order to achieve compliance with criteria stated in FAA Order 7400.2D. This action will ensure that the Class D surface area at Mountain View, CA will be of sufficient size to allow for and contain the safe and efficient handling of operations at Moffett Federal Airfield (NUQ).

EFFECTIVE DATE: 0901 UTC August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region,

Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6611.

SUPPLEMENTARY INFORMATION:

History

On March 12, 1998, the FAA proposed to amend 14 CFR part 71 by modifying the Class D surface area at Mountain View, CA (63 FR 12043). This action will revise the vertical limit within the current geographic boundary of the Mountain View Class D surface area up to, but not including 2,500 feet MSL, excluding the San Jose (SJC) Class C surface area. This action will achieve compliance with criteria stated in FAA Order 7400.2D by ensuring that the Mountain View Class D surface area is of sufficient size to allow for and contain the safe and efficient handling of operations at Moffett Federal Airfield (NUQ).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D airspace designations for airports are published in paragraph 5000 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class D surface area at Mountain View, CA. A review of airspace classification made it necessary to revise the vertical limit of the Mountain View, CA Class D surface area within its current geographic boundary up to, but not including 2,500 feet MSL, excluding the San Jose (SJC) Class C surface area. The effect of this action will be provision of adequate airspace to allow for and contain the safe and efficient handling of operations at Moffett Federal Airfield (NUQ).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a

routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000—Subpart D—Class D Airspace

AWP CA D Mountain View, CA [Revised]
Moffett Federal Airfield, CA
(lat. 37°24'55"N, long. 122°02'54"W)
San Jose International Airport, CA
(lat. 37°21'42"N, long. 121°55'43"W)
Palo Alto of Santa Clara County Airport, CA
(lat. 37°27'40"N, long. 122°06'54"W)

That airspace extending upward from the surface to but not including 2,500 feet MSL within a 4.3-mile radius of Moffett Federal Airfield, excluding that airspace within the San Jose, CA, Class C airspace area, and excluding the portion within the Palo Alto of Santa Clara County Airport, CA, Class D airspace area during the specific dates and times it is effective. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on April 22, 1998.

John G. Clancy,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98-11856 Filed 5-4-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-AWP-4]

Establishment of Class E Airspace; Borrego Springs, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Borrego Springs, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 25 at Borrego Valley Airport has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 25 SIAP at Borrego Valley Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations Borrego Valley Airport, Borrego Springs, CA.

EFFECTIVE DATES: 0901 UTC August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6539.

SUPPLEMENTARY INFORMATION:

History

On March 9, 1998, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Borrego Springs, CA (63 FR 11382). The establishment of a GPS RWY 25 SIAP to Borrego Valley Airport has made this action necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing instrument operations at Borrego Valley Airport. This action will provide adequate controlled airspace for aircraft executing the GPS RWY 25 SIAP at Borrego Valley Airport, Borrego Springs, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10,

1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Borrego Springs, CA. Additional controlled airspace extending upward from 700 feet above the surface was required for aircraft executing instrument operations at Borrego Valley Airport. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 25 SIAP at Borrego Valley Airport, Borrego Springs, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AWP CA E5 Borrego Springs, CA [New]

Borrego Valley Airport, CA (lat. 33°15'33" N, long. 116°19'16" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Borrego Valley Airport.

Issued in Los Angeles, California, on April 22, 1998.

John G. Clancy,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98-11857 Filed 5-4-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

United States Customs Service

19 CFR Part 101

[T.D. 98-37]

Abolishment of Boca Grande as a Port of Entry

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by abolishing the port of entry of Boca Grande, Florida, in order for Customs to obtain more efficient use of its personnel, facilities and resources and to provide better service to carriers, importers and the general public.

EFFECTIVE DATE: June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, 202-927-0196.

SUPPLEMENTARY INFORMATION

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers, and the general public, Customs proposed to amend § 101.3(b)(1), Customs Regulations (19 CFR 101.3(b)(1)), by abolishing the port of Boca Grande, Florida. A Notice of Proposed Rulemaking to this effect was published in the *Federal Register* (62 FR 37526) on July 14, 1997. The port was proposed to be abolished because there is not sufficient activity at the port to maintain the facility, and there are other nearby active ports such as Sarasota and Tampa which are available to handle any Customs transactions in that geographical area.

Determination

No comments either supporting or opposing the proposal were received. After further consideration of the proposal, Customs has determined to abolish the port of Boca Grande, Florida.

Authority

This change is made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Regulatory Flexibility Act

Customs establishes, expands and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document was issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

Because this document relates to agency organization and management, it is not subject to E.O. 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

Amendment to the Regulations

Accordingly, Part 101 of the Customs Regulations is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for Part 101 and the specific authority citation for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624. Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

2. Section 101.3(b)(1) is amended by removing, under the State of Florida, the

entry "Boca Grande" in the "Ports of entry" column.

Connie J. Fenchel,

Acting Commissioner of Customs.

Approved: April 20, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98-11840 Filed 5-4-98; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010-AC13

Royalty Relief for Producing Leases and Certain Existing Leases in Deep Water

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule, correction.

SUMMARY: MMS published in the *Federal Register* of Friday, January 16, 1998 (63 FR 2605), a final rule establishing conditions for reducing royalties on producing leases; providing for suspensions of royalty payments on certain deep water leases issued as the result of lease sales held before November 28, 1995; and describing the information required for a complete application for royalty relief. This document makes corrections to the final rule.

DATES: This correction is effective February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Chief, Economics Division, at (703) 787-1536.

SUPPLEMENTARY INFORMATION:

Correction

1. On Page 2616 in the first column the title *Subpart A—General Requirements* is corrected to read *Subpart A—General Provisions*.

2. On page 2622 in the second column, in § 203.74(b)(2) on the fifth line "most recently approved" is

corrected to read "most recent, complete" in § 203.74(c) beginning on the seventh line "most recently approved" is corrected to read "most recent, complete."

Dated: April 27, 1998.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98-11885 Filed 5-4-98; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD. ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS DONALD COOK (DDG 75) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 17, 1998.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the

Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS DONALD COOK (DDG 75) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii) pertaining to the vertical placement of task lights; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS DONALD COOK:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

	Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS DONALD COOK	DDG 75	1.90 meters.	

3. Table Four, Paragraph 16 of §706.2 is amended by adding, in numerical order, the following entry for USS DONALD COOK:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

Vessel	Number	Obstruction angle relative ship's headings
USS DONALD COOK	DDG 75	102.00 thru 112.50.

4. Table Five of §706.2 is amended by adding, in numerical order, the following entry for USS DONALD COOK:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions, annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship, annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward mast-head light, annex I, sec. 3(a)	Percentage horizontal separation attained
USS DONALD COOK	DDG 75	X	X	X	14.0

Dated: April 17, 1998.
R. R. Pixa,
Captain, JAGC, U.S. Navy, Deputy Assistant
Judge Advocate, General (Admiralty).
[FR Doc. 98-11884 Filed 5-4-98; 8:45 am]
BILLING CODE 3810-FF-P

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Parts 52 and 81

[FRL-5980-8]

Technical Amendments To Approval
and Promulgation of Implementation
Plans; Wisconsin; Correction of
Effective Date Under Congressional
Review Act (CRA)

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule; correction of
effective date under CRA.

SUMMARY: On July 23, 1997 (62 FR 39446), the Environmental Protection Agency published in the **Federal Register** a final rule concerning the temporary delay of the ozone attainment date for Manitowoc County from 1996 to 2007. This action suspended the automatic reclassification of Manitowoc County from moderate to serious nonattainment, which established an effective date of August 22, 1997. This document corrects the effective date of the rule to May 5, 1998 to be consistent with section 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 5, 1998.

FOR FURTHER INFORMATION CONTACT:

Tom Eagles, Office of Air, at (202) 260-5595.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 23, 1997, **Federal Register** document, by operation of law, the rule did not take effect on August 22, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends

the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 23, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 23, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on

May 5, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,
Administrator.

[FR Doc. 98-11541 Filed 5-4-98; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Part 63

[AD-FRL-6007-5]

RIN 2060-A104

National Emission Standards for
Hazardous Air Pollutants: Halogenated
Solvent Cleaning

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule; Notice of temporary
stay.

SUMMARY: Today's action announces a 3-month stay of certain national emission standards for hazardous air pollutants (NESHAP) for certain sources. The effectiveness of the provisions for "National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning," December 2, 1994) for continuous web cleaning machines using halogenated hazardous air pollutant (HAP) solvents is stayed for 3 months for good cause pursuant to section 553(b)(3)(B) of the Administrative Procedure Act. Since the compliance date for existing affected sources covered by this NESHAP was December 2, 1997, it is not practical to propose and take public comment on this 3-month stay.

This action also revises the definition of the term "part" and adds a definition for continuous web cleaning machine to § 63.461. A continuous web cleaning machine is one that cleans parts such as film, coils, wire, and metal strips at speeds in excess of 11 feet per minute. Parts are generally uncoiled, cleaned such that the same part is simultaneously entering and exiting the solvent cleaning machine, and then recoiled or cut.

Elsewhere in the Proposed Rules Section of today's **Federal Register**, the EPA proposes to extend the compliance date for sources affected by today's stay for 1 year in order to complete the rulemaking pertaining to control of

emissions from continuous web cleaning machines.

This stay affects only those sources which meet the criteria describing a continuous web cleaning machine using halogenated HAP solvents.

EFFECTIVE DATE: May 5, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almodovar at (919) 541-0283, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information regarding the applicability of this action to a particular entity, contact Mrs. Tracy Back, Manufacturing Branch, Office of Compliance (2223A), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 564-7076.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are owners or operators of continuous web cleaning machines using any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, or chloroform, or any combination of these halogenated HAP solvents, in a concentration greater than 5 percent by weight, as a cleaning or drying agent. Regulated categories include:

Category	Examples of regulated entities
Industry	Facilities engaging in cleaning operations using halogenated solvent cleaning machines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that the EPA is now aware of that potentially could be regulated by this action. Other types of entities not listed in the table also could be regulated. To determine whether your facility [company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in § 63.460 of the NESHAP for halogenated solvent cleaning operations that was promulgated in the **Federal Register** on December 2, 1994 (59 FR 61801) and codified at 40 CFR part 63, subpart T. If you have questions regarding the applicability of this action to a particular entity, consult Mrs. Tracy Back at the address listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

On December 2, 1994, the EPA promulgated NESHAP for halogenated solvent cleaning operations (59 FR

61801). These standards were codified as subpart T in 40 CFR part 63. These standards established equipment and work practice standards for individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines using any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, or chloroform, or any combination of these halogenated HAP solvents in a concentration greater than 5 percent by weight, as a cleaning or drying agent.

Since promulgation of the halogenated solvent cleaning NESHAP on December 2, 1994, the EPA has become aware of the existence of various sources cleaning parts such as film, coils, wire, and metal strips at speeds in excess of the 11 feet per minute limit in the NESHAP using halogenated cleaning solvents. Parts are generally uncoiled, cleaned such that the same part is simultaneously entering and exiting the solvent cleaning machine, and then recoiled or cut. These solvent cleaning machines are typically referred to as continuous web cleaning machines. The design and operation, and therefore, the emission characteristics of these machines are different from the solvent cleaning machines (e.g., batch cold cleaners, in-line cleaners) that the EPA analyzed during the NESHAP rule development process. Therefore, in order for the EPA to properly address emission characteristics and controls, and to better regulate HAP emissions from continuous web cleaning machines, the Agency is staying the effectiveness of the provisions of the NESHAP for continuous web cleaning machines using halogenated HAP solvents. The EPA will take this time to further evaluate these types of operations, their emission characteristics, and the effectiveness of various control measures in order to determine equivalent methods of control for them.

In addition, the EPA is also revising the definition of the term "part" and adding a definition for continuous web cleaning machine to § 63.461.

II. Issuance of Stay

The EPA hereby issues a 3-month stay of the effectiveness of the NESHAP for halogenated solvent cleaning machines applicable to continuous web cleaning machines using halogenated HAP. The EPA will also reconsider the compliance dates in the rule and, following the notice and comment procedures of section 307(d) of the Clean Air Act, will take appropriate action.

III. Authority for Stay

The stay announced by this notice is being issued pursuant to section 553(b)(3)(B) of the Administrative Procedure Act.

The grounds for staying the requirements of this rule for continuous web cleaning machines arose after the public comment period and close to the compliance date for this rule. The impracticability of requiring compliance by continuous web cleaning machines with the provisions of the NESHAP became apparent after the final rule had been promulgated. Therefore, the EPA is staying the effectiveness of the rule for 3 months in order to allow time to evaluate equivalent methods of control for continuous web cleaning machines using halogenated HAP solvents.

Because the need for a stay was only realized recently, and the compliance date for the rule was December 2, 1997, it is both impracticable and contrary to the public interest to provide an opportunity for comment before issuing the stay. The EPA, therefore, finds that there is good cause in accordance with section 553(b)(3)(B) of the Administrative Procedures Act to publish this temporary stay without prior opportunity for public comment.

IV. Proposed Compliance Extension

The EPA may not be able to complete the equivalent methods of control determination for continuous web cleaning machines within the 3-month period expressly provided for in this action. Therefore, EPA is proposing to temporarily extend the applicable compliance dates. In the Proposed Rule Section of today's *Federal Register*, the EPA proposes a temporary extension of the compliance dates beyond 3 months in order to complete the equivalent methods of control determinations and revisions of the rules in question.

V. Administrative Requirements

A. Paperwork Reduction Act

There are no additional information collection requirements associated with this temporary stay. Therefore, approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is not required. b. Executive Order 12866

B. Executive Order 12866

Under Executive Order 12866, the EPA is required to determine whether a regulation is "significant," and therefore, subject to Office of Management and Budget review and the requirements of this Executive Order to prepare a regulatory impact analysis. The Executive Order defines

"significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not a "significant regulatory action" within the meaning of the Executive Order because this action provides a temporary stay of the effectiveness of the rule to allow time to evaluate equivalent methods of control for continuous web cleaning machines using halogenated HAP solvents.

C. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, the EPA has made such a good cause finding, including the reasons therefore, and established an effective date of May 5, 1998. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

D. Regulatory Flexibility

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action

will not have a significant economic impact on a substantial number of small business entities because the requirements of the rule are being stayed for continuous web cleaning machines.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small

governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's rule is not subject to the requirements of section 203 of the UMRA.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 27, 1998.

Carol M. Browner,
Administrator.

Title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart T—[Amended]

2. Section 63.461 is amended by adding in alphabetical order the definition for "continuous web cleaning machine" and by revising the definition for "part" to read as follows:

§ 63.461 Definitions.

* * * * *

Continuous web cleaning machine means a solvent cleaning machine in which parts such as film, coils, wire, and metal strips are cleaned at speeds in excess of 11 feet per minute. Parts are generally uncoiled, cleaned such that the same part is simultaneously entering and exiting the solvent cleaning machine, and then recoiled or cut.

* * * * *

Part means any object that is cleaned in a solvent cleaning machine. Parts include, but are not limited to, discrete parts, assemblies, sets of parts, and parts cleaned in a continuous web cleaning machine (i.e., continuous sheets of metal, film).

* * * * *

3. Section 63.470 is added to Subpart T to read as follows:

§ 63.470 Stay of effective date.

Notwithstanding any other provision of this subpart, the effectiveness of §§ 63.460 thru 63.469 of subpart T is stayed until August 3, 1998 as applied to continuous web cleaning machines using halogenated HAP solvents.

[FR Doc. 98-11753 Filed 5-4-98; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 980225048-8099-03; I.D. 021898B]

RIN 0648-AK58

Pacific Halibut Fisheries; Retention of Undersized Halibut in Regulatory Area 4E

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA); Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that would allow the retention of halibut less than 32 inches (81.3 cm) with the head on, or less than 24 inches (61 cm) with the head off (undersized halibut) caught with setline gear in International Pacific Halibut Commission (IPHC) Regulatory Area 4E for personal use. Commercial sale of undersized halibut would remain prohibited. This action is necessary to implement the recommendation of the North Pacific Fishery Management Council (Council) to allow the legal harvest of undersized halibut by persons using Community Development Quota (CDQ) in Regulatory Area 4E. This action is intended to provide for the continued existence of the customary and traditional food practices of indigenous inhabitants by allowing them to retain all halibut caught with setline gear in Regulatory Area 4E.

DATES: This final rule is effective June 4, 1998.

ADDRESSES: The final Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773-773k), in section 5, provides that the Regional Fishery Management Council having authority for the geographical area concerned may recommend management measures governing Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. The IPHC is the body authorized by the Convention between the United States and Canada for the

Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea (Convention) to promulgate regulations for the conservation and management of the Pacific halibut fishery. Section 5 of the Halibut Act also provides that the Secretary of Commerce (Secretary) shall have the general responsibility for carrying out the Convention, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NOAA (AA).

In 1996, the Council was requested by Alaska Native tribal organizations to review the prohibition on retaining undersized halibut caught with authorized commercial gear. This request was made on behalf of Alaska Native fishermen of Yupik descent who were retaining undersized halibut harvested along with CDQ halibut of commercial length in Regulatory Area 4E. Traditionally, fishermen of Yupik descent have kept all fish caught and have endeavored to utilize that fish to the fullest extent possible. This practice is in keeping with traditional Yupik belief that a fish, as well as the stock of fish to which a captured fish is returned, is irreparably harmed by its capture and release.

In June 1997, the Council recommended that regulations be developed that would allow the retention of undersized halibut caught with authorized commercial gear in Regulatory Area 4E for personal use. The IPHC, at its annual meeting during the week of January 26, 1998, relaxed its existing regulation on the minimum size retention limit to allow CDQ fishermen in Regulatory Area 4E to land undersized halibut caught with authorized commercial gear for personal use. NMFS published a proposed rule consistent with the IPHC regulation on

March 9, 1998 (63 FR 11401), that would revise its current fishing regulations to allow the retention of undersized halibut caught with authorized commercial gear in Regulatory Area 4E for personal use. The public comment period for this proposed rule ended on March 24, 1998. No public comments were received concerning this action.

This final rule revises regulations that were in conflict with the customary and traditional fishing practices of the fishermen of Yupik descent. Three changes are made to the final rule to make it consistent with the IPHC annual management measures, published on March 17, 1998 (63 FR 13000). These changes are not considered substantive in nature. First, the term "setline" is added to the final rule. This term is added to confirm that undersized halibut could be retained while commercial fishing with setline gear, the only gear that is authorized for commercial fishing. Second, the final rule is made effective only through December 31, 1999, because the IPHC anticipates that a comprehensive solution to the subsistence issue for the halibut fishery will be developed by that date. Finally, minor editorial changes are made to the final rule to make it conform more closely to the text of the IPHC annual management measures.

Classification

The Council prepared an EA/RIR for this action that describes the management background, the purpose and need for action, the management action alternatives, and the environmental and the socio-economic impacts of the alternatives. The AA has concluded that this action is not likely to significantly affect the quality of the human environment, or expected to have significant impacts on endangered or threatened species, or marine mammals. A copy of the EA/RIR can be obtained from NMFS (see ADDRESSES).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: April 29, 1998.

Rolland A. Schmitt,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 300 is amended to read as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart E continues to read as follows:

Authority: 16 U.S.C. 773–773k.

2. In § 300.63, paragraph (c) is added to read as follows:

§ 300.63 Catch sharing plans and domestic management measures.

(c) (Applicable through December 31, 1999). A person may retain halibut taken with setline gear in Area 4E that are smaller than the size limit specified in the annual management measures published pursuant to § 300.62, provided that no person may sell or barter such halibut.

[FR Doc. 98–11894 Filed 5–4–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement Pub. L. 104–208, enacted on September 30, 1996, and Pub. L. 105–135, enacted on December 2, 1997, with respect to SBA financing in the 504 Program, and would clarify existing regulations. In the 504 program, the proposed regulations would authorize multiple businesses to obtain SBA financing for a specific 504 Project, allow a 504 Borrower to lease long term no more than 20 percent of the 504 Project, describe how much a Borrower must contribute to a 504 Project, and modify allowable fees paid by a Borrower, Third Party Lender, and CDC. In addition, the proposed rule would allow certain fees incurred by a CDC in the closing of a 504 loan, up to \$2,500 per closing, to be eligible administrative costs.

DATE: Comments must be submitted on or before July 6, 1998.

ADDRESS: Comments should be mailed to Jane Palsgrove Butler, Acting Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Michael J. Dowd, 202–205–6660.

SUPPLEMENTARY INFORMATION: Public Law 105–135, the "Small Business Reauthorization Act of 1997" (1997 legislation), enacted on December 2, 1997, and Public Law 104–208 (1996 legislation), enacted on September 30, 1996, amended the Small Business Investment Act of 1958 (15 U.S.C. 601 *et seq.*). These proposed regulations would implement the amendments required by the 1996 legislation and some of the amendments required under

the 1997 legislation, and make other changes.

Changes to the 504 Program

The 1997 legislation and the 1996 legislation require SBA to amend its regulations to implement the statutes. SBA is also proposing some other program changes.

- Section 502 of the Act authorizes SBA to provide financial assistance through a CDC to assist a small business concern to acquire, construct, convert, or expand its plant facility as a 504 Project pursuant to section 504 of the Act. SBA interpreted the statute to permit the Agency to assist only one identifiable business for any particular project. The 1997 legislation authorizes SBA to provide such financial assistance to more than one identifiable small business. SBA proposes to amend Section 120.801 of its regulations to allow SBA to work with a CDC to assist multiple small businesses for any specific 504 Project, allowing two or more unrelated small businesses to seek SBA financial assistance for a qualified 504 Project.

- SBA is also proposing to amend its regulations with respect to Eligible Passive Companies in order to make that rule consistent with the 1997 legislation. Current 13 CFR 120.111 allows SBA to assist an Eligible Passive Company to use loan proceeds to acquire property to lease to an Operating Company. SBA is proposing to amend 13 CFR 120.111 to authorize SBA to provide financing to an Eligible Passive Company which could use the proceeds to lease property to multiple unrelated Operating Companies. This proposed change would make the Eligible Passive Company provision consistent with the proposed change to 13 CFR 120.801.

- The 1996 legislation amended the Act with respect to the amount of a Borrower's contribution to the financing of a 504 Project. SBA is proposing to amend 13 CFR 120.910 of its regulations to require the Borrower to contribute at least 15 percent of the total cost of the 504 Project if the Borrower (or Operating Company if the Borrower is an Eligible Passive Company) has been in business for 2 years or less, or if the Project is the acquisition, construction, conversion, or expansion of a limited or single purpose building. The Borrower must contribute at least 20 percent of

the total cost of the Project if both these conditions exist.

- The 1996 legislation requires that not less than 50 percent of a Project's cost must be financed by a Third Party Lender if the Borrower's contribution is made under the conditions described above for proposed 13 CFR 120.910. This proposed revision of 13 CFR 120.920 implements that change.

- The 1997 legislation amended the Act to permit a 504 Borrower to lease long term no more than 20 percent of a new 504 Project if the Borrower would immediately occupy no less than 60 percent of the property. To comply with the 1997 legislation, SBA is proposing to amend 13 CFR parts 120.131 and 120.870 to authorize a Borrower to lease long term up to 20 percent of the rentable space in a 504 Project to third parties when the Borrower will occupy at least 60 percent of the rentable space with plans to occupy another 20 percent of the rentable space within 3 years. The present law allows a Borrower in a 504 Project to lease up to 33 percent of a new facility if the Borrower can show that it will need additional space within 3 years and that it will fully use the facility within 10 years. Under the proposed rule, the Borrower will have the option of showing that it will ultimately use 80 percent of the rentable space within 3 years, and that it plans to lease long term 20 percent of the space to others. The effect of this change will be to allow a business to construct a building in a good location without being compelled to show that it will use all of the space. Thus, the proposed rule will alleviate the present strict restrictions on the use of property.

- 13 CFR 120.862(b) sets forth specific public policy goals a CDC may use to qualify a 504 Project or support an increased amount of 504 financing. 13 CFR 120.862(b)(3) lists expanding Minority Enterprise Development as one of the public policy goals. SBA is proposing to amend 13 CFR 120.862(b)(3) to direct the reader to the correct section in SBA's regulation designating the specific minority groups to which the subsection applies. 13 CFR 120.862(b)(7) lists as one of the public policy goals the assistance of businesses affected by Federal budget reductions. SBA is proposing to amend 13 CFR 120.862(b)(7) by clarifying that the public policy goal is to assist any eligible small business in an area

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affected by such reductions, not only those businesses which can show that they were affected adversely by the budget reduction. Therefore, if a geographic area has been adversely affected by Federal budget reductions, SBA can assist a business located in that area or moving to that area without showing that the particular business was affected.

- The 1996 legislation requires SBA to charge the Borrower a fee of not more than 0.9375 percent on the unpaid principal balance of the loan as determined at 5-year anniversary intervals. SBA is amending 13 CFR 120.971 of its regulations to implement this change. In addition, 13 CFR 120.971(a)(3) raises the minimum servicing fee from .5 percent to .625 percent.

- SBA is proposing to insert a new Section 120.972 in 13 CFR to implement the 1996 legislation which requires SBA to collect a one-time fee equal to 50 basis points on the total participation in a Project by a Third Party Lender when that Third Party Lender occupies a senior credit position to that of SBA. In addition, under the proposed regulation, SBA will collect an annual fee from each CDC equal to 0.125 percent of the outstanding principal balance of any Debenture guaranteed by SBA after September 30, 1996. The CDC must pay the fee from the servicing fees collected by the CDC and not from additional fees imposed on the Borrower.

- Currently, under 13 CFR 120.921(d), any future advance by a Third Party Lender in excess of the outstanding balance and accrued interest must be subordinated to the CDC/SBA lien unless the future advance is to collect payments, maintain collateral, or protect the Third Party Lender's lien position on the Third Party Loan. SBA has been unable at times to realize the full benefit of its lien position, despite its regulations requiring future advances to be subordinate to the CDC/SBA lien.

Moreover, if a Third Party Lender wants to make additional capital available to a 504 Borrower, it easily can do so through another loan. SBA is proposing to revise 13 CFR 120.921(d) to state that the Third Party Loan cannot be open-ended as to amount, and after completion of the 504 Project, a Third Party Lender may only make a future advance under the Third Party Loan to collect amounts due on the Third Party Loan note, maintain collateral or protect its lien.

- SBA also has been unable to realize the full benefit of its lien position because of prepayment penalties, late fees, and escalated interest after default

due under the Third Party Loan.

Accordingly, SBA also proposes to add a new paragraph (e) to 13 CFR 120.921 that would state that the Third Party Lender's lien is subordinate to the CDC/SBA lien with respect to prepayment penalties, late fees, and escalated interest after default due under the Third Party lien.

- When a small business defaults on a Third Party Loan, SBA may choose to assume the obligations of the Borrower. The 1996 legislation amended the Act to ensure that when SBA assumes such obligation for Projects approved after September 30, 1996, it only will pay the interest rate on the note in effect immediately prior to the date of the Borrower's default. SBA is proposing to redesignate and revise present paragraph (e) of Section 120.921 of 13 CFR to become new paragraph (f) stating that SBA only will pay the interest rate in effect immediately prior to the date of the Borrower's default with respect to a Project approved after September 30, 1996.

- SBA is proposing to amend 13 CFR 120.802 to clarify the definition for Third Party Loan and 13 CFR 120.801(c)(3) to reflect that definition.

- Currently, Section 120.870(c)(1) of 13 CFR requires the term of a lease of the Project premises to be at least equal to the terms of the Debenture. However, this may not be necessary if the Project is only machinery and equipment. Therefore, SBA proposes to delete machinery and equipment from the definition to clarify that the length of a lease for machinery and equipment is a credit issue.

Changes to CDC Closing Fees

Section 120.883 of 13 CFR sets forth administrative costs which may be paid with the proceeds of a loan funded by a 504 Debenture rather than out of the Borrower's own resources. Section 120.971 of 13 CFR sets forth the fees that a CDC may charge a Borrower.

Throughout the history of the 504 Program, most of the services required to prepare 504 loan documents and close a 504 loan have been performed for CDCs, at CDC cost, by legal counsel, paralegals, and CDC staff. The CDC has then charged its Borrower a fee at closing to reimburse the CDC for these expenses ("CDC Closing Fee"). Although this CDC Closing Fee reimburses the CDC for expenses the CDC pays to its own lawyers, the Borrower is not considered to be paying a legal fee, since the Borrower is not represented by CDC counsel. The Borrower pays separately the legal fees of its legal counsel.

Under the 504 Program, loan proceeds may be used to pay eligible Project costs and eligible administrative costs.

Eligible Project costs are costs directly attributable to the Project including professional fees essential to the Project for services such as architecture, engineering, and environmental studies. The Borrower's legal fees for Project-related matters such as zoning, title searches, and recording fees, as well as interest and points on the interim construction loan, are eligible Project costs. The Borrower's legal fees associated with the closing are not eligible Project costs.

Eligible administrative costs are amounts the Borrower pays for services connected with closing, but not directly attributable to the Project itself. These include SBA's guarantee fee, the CDC's processing fee, and 504 closing agent fees. The Borrower's legal fees associated with the closing are not eligible administrative costs. Until March 1, 1996, the CDC Closing Fee was an eligible administrative cost. By regulation, the Borrower could pay the CDC Closing Fee out of the proceeds of a 504 loan up to a maximum of \$2,500. Since then, SBA has not recognized the CDC Closing Fee as an eligible administrative cost, and Borrowers must reimburse the CDC out of their own resources.

CDCs, Borrowers, and SBA share a common interest in minimizing legal fees to reduce costs to the Borrower. During the period before March 1, 1996, some in the 504 industry felt that SBA's regulation influenced the market rate for legal fees and other miscellaneous expenses associated with 504 Closings. They argued that attorney fees charged CDCs by CDC counsel were maintained at an artificially high level because the CDC Closing Fee was an eligible administrative cost financed out of the loan proceeds. They further argued that the reference in the regulation to a \$2,500 limitation established a minimum base for the attorney fees.

SBA received 15 comments concerning these issues during the comment period following publication of its proposed rule changes in 60 FR 64356 on December 15, 1995. Most of them supported retaining the CDC Closing Fee as an eligible administrative cost. SBA believed, however, that legal expenses associated with the 504 Closing should be determined by the competitive marketplace and that there was some merit in the contention that the eligibility of the CDC Closing Fee as an administrative cost resulted in higher attorney fees. Despite the opposition expressed in most of the comments received, SBA decided to exclude the

CDC Closing Fee from eligible administrative costs and eliminated the \$2,500 reference in its final rule published in 61 FR 3226, dated January 31, 1996.

SBA expected that these regulatory changes would reduce attorney fees. It also anticipated downward competitive pressure on such fees as more attorneys became designated to perform expedited 504 loan closings.

CDCs have been closing loans under the new rules for nearly 2 years. Approximately 140 attorneys are now enrolled as designated closing attorneys, and more than 50 percent of all 504 loans close under the expedited process. Yet fees associated with 504 closings charged CDCs by CDC counsel do not appear to have decreased.

Legislation enacted since the rule became effective has imposed additional fees upon Borrowers. Industry representatives indicate that the combination of increased fees and the inability to pay the CDC Closing Fee out of the Debenture proceeds has reduced access by small businesses to the 504 Program. Because the fees now are not eligible administrative costs, they must be paid by the Borrowers from other resources. Not all Borrowers can afford to pay these costs without use of the Debenture proceeds.

In an effort to assist its small business customers, SBA is proposing to make CDC Closing Fees eligible administrative costs up to a maximum of \$2,500 per Closing.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Last year, SBA made approximately four thousand 504 loans. Currently there are approximately 300 CDCs, less than 15 of which are Premier CDCs. While the 1997 legislation removes the limit on the number of CDCs that can become Premier CDCs, SBA anticipates that, at most, only half of the CDCs would be affected by this rule. Thus the changes to the Program

in the proposed rule, including the changes to the Closing Fee provisions and the changes implementing P.L. 104-208 and P.L. 105-135 will not constitute a significant impact on a substantial number of small businesses.

SBA certifies that this proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, to accord with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

Accordingly, pursuant to authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 120, chapter I, title 13, Code of Federal Regulations as follows:

PART 120—BUSINESS LOANS

1. The authority citation for Part 120 would continue to read as follows:

Authority: 15 U.S.C. 634 (b)(6) and 636(a) and (b).

2. Amend § 120.111 by revising the first sentence to read as follows:

§ 120.111 What conditions must an Eligible Passive Company satisfy?

An Eligible Passive Company must use loan proceeds to acquire or lease, and/or improve or renovate real or personal property (including eligible refinancing) that it leases to one or more Operating Companies for the conduct of the Operating Company's business (references to one Operating Company include multiple Operating Companies, as applicable). * * *

3. Amend § 120.131(a) by adding a new sentence at the end to read as follows:

§ 120.131 Leasing part of new construction or existing building to another business.

(a) * * * (See § 120.870(c) for an exception with respect to 504 Projects.) * * *

4. Amend § 120.801 by revising the first sentence of paragraph (a) and paragraph (c)(3) to read as follows:

§ 120.801 How is a 504 Project financed?

(a) One or more small businesses may apply for 504 financing through a CDC serving the area in which the 504 Project is located. * * *

(c) * * *

(3) *Third Party Loan* comprising the balance of the financing, collateralized by a first lien on the Project property (see section 120.920).

5. Amend § 120.802 by revising the definition of Third Party Loan to read as follows:

§ 120.802 Definitions.

Third Party Loan is a loan from a commercial or private lender, investor, or Federal (non-SBA), State or local government source that is part of the Project financing.

6. Amend § 120.862 by revising the parenthetical clause in paragraph (b)(3) and by revising paragraph (b)(7) to read as follows:

§ 120.862 Other economic development objectives.

(b) Public Policy goals: * * *

(3) * * * (See § 124.105(b) for minority groups who qualify for this description.):

(7) Assisting businesses in or moving to areas affected by Federal budget reductions, including base closings, either because of the loss of Federal contracts in the area or the reduction in revenues in the area due to a decreased Federal presence.

7. Amend § 120.870 by revising paragraph (a)(1) and adding a new paragraph (c) to read as follows:

§ 120.870 Leasing Project Property.

(a) * * *

(1) The remaining term of the lease, including options to renew, exercisable solely by the lessee, equals or exceeds the term of the Debenture;

(c) If the Project is for new construction, a Borrower may lease long term no more than 20 percent of the rentable property in the Project to one or more tenants if the Borrower immediately occupies not less than 60 percent of the rentable property with plans to occupy the remaining 20 percent within 3 years.

8. Revise § 120.883 to read as follows:

§ 120.883 Eligible administrative costs for 504 loans.

The following administrative costs are not part of Project costs, but may be paid with the proceeds of the 504 loan and the Debenture (see § 120.971):

- (a) SBA guarantee fee;
- (b) Funding fee (to cover the cost of a public issuance of securities and the Trustee);
- (c) CDC processing fee;
- (d) Borrower's out-of-pocket costs associated with the closing of the 504 loan (other than legal fees);
- (e) CDC Closing Fee (see § 120.971(a)(2)) up to a maximum of \$2,500; and
- (f) Underwriters' fee.

9. Revise § 120.910 to read as follows:

§ 120.910 How much must the Borrower contribute?

(a) The Borrower must contribute to the Project cash (or property acceptable to SBA obtained with the cash) or land (that is part of the Project Property), in an amount equal to the following percentage of the Project cost, exclusive of administrative cost:

- (1) At least 15 percent, if the Borrower (or Operating Company if the Borrower is an Eligible Passive Company) has been in operation for 2 years or less;
- (2) At least 15 percent, if the Project involves the acquisition, construction, conversion, or expansion of a limited or single purpose building or structure;
- (3) At least 20 percent, if the Project involves both of the conditions described in paragraphs (a) (1) and (2) of this section; or
- (4) At least 10 percent, in all other circumstances.

(b) The source of the contribution may be a CDC or any other source except an SBA business loan program (see § 120.913 for SBIC exception).

10. Revise § 120.920 to read as follows:

§ 120.920 Required participation by the Third Party Lender.

(a) *Amount of Third Party Loans.* A Project financing must include one or more Third Party Loans totaling at least as much as the 504 loan. However, the Third Party Loans must total at least 50 percent of the total cost of the Project if:

- (1) The Borrower (or Operating Company, if the Borrower is an Eligible Passive Company) has been in operation for 2 years or less, or
- (2) The Project is for the acquisition, construction, conversion, or expansion of a limited or single purpose asset.

(b) *Third Party Loan collateral.* Third Party Loans usually are collateralized by a first lien on the Project property. They cannot be guaranteed by SBA.

11. In § 120.921 revise and redesignate paragraphs (d) and (e) as paragraphs (e) and (f) and add a new paragraph (d) to read as follows:

§ 120.921 Terms of Third Party Loans.

(d) *Future advances.* The Third Party Loan must not be open-ended. After completion of the Project, the Third Party Lender may not make future advances under the Third Party Loan except expenditures to collect amounts due the Third Party Loan notes, maintain collateral, and protect the Third Party Lender's lien position on the Third Party Loan.

(e) *Subordination.* The Third Party Lender's lien will be subordinate to the CDC/SBA lien as to any prepayment penalties, late fees, and increased default interest due under the Third Party Loan.

(f) *Escalation upon default.* A Third-Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate set forth in paragraph (b) of this section. With respect to any Project approved after September 30, 1996, SBA will only pay the interest rate on the note in effect prior to the date of the Borrower's default.

12. Amend § 120.971 by revising the first sentence of paragraph (a)(2) and paragraphs (a)(3), and (d)(2) to read as follows:

§ 120.971 Allowable fees paid by Borrower.

(a) * * *

(2) *Closing fee.* The CDC may charge a reasonable closing fee in an amount sufficient to reimburse it for the expenses of its in-house or outside legal counsel, and other miscellaneous closing costs (CDC Closing Fee). * * *

(3) *Servicing fee.* The CDC will charge a monthly servicing fee of not less than 0.625 percent per annum nor more than 2 percent per annum on the unpaid balance of the loan as determined at 5-year anniversary intervals. A servicing fee in excess of 1.5 percent in a Rural Area and 1 percent everywhere else requires SBA's prior written approval, based on evidence of substantial need. The servicing fee may be paid only from loan payments received. The fees may be accrued without interest and collected from the CSA when the payments are made.

(d) * * *

(2) For loans approved by SBA after September 30, 1996, SBA charges a fee of not more than 0.9375 percent per annum on the unpaid principal balance

of the loan as determined at 5-year anniversary intervals.

13. In part 120 redesignate § 120.972 as § 120.973, and add a new § 120.972 to read as follows:

§ 120.972 Third Party Lender participation fee and Development company fee.

(a) *Participation fee.* For loans approved by SBA after September 30, 1996, SBA must collect a one-time fee from the Third Party Lender equal to 50 basis points on its total participation in a Project when the Third Party Lender occupies a senior credit position to SBA in the project.

(b) *Development company fee.* For loans approved by SBA after September 30, 1996, SBA must collect an annual fee from the CDC equal to 0.125 percent of the outstanding principal balance of the debenture. The fee must be paid from the servicing fees collected by the CDC and cannot be paid from any additional fees imposed on the Borrowers.

Dated: April 28, 1998.

Aida Alvarez,
Administrator.

[FR Doc. 98-11910 Filed 5-4-98; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 97-CE-148-AD]

RIN 2120-AA64

Airworthiness Directives: Raytheon Aircraft Company Models A200CT, B200, B200C, B200CT, 200T/B200T, 300, B300, and B300C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Raytheon Aircraft Company (Raytheon) Models A200CT, B200, B200C, B200CT, 200T/B200T, 300, B300, and B300C airplanes. The proposed action would require replacing the main landing gear left and right actuator clevis assembly. Reports of main landing gear failure on two of the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent failure of the actuator clevis assembly in the main landing gear, which could result in loss

of control of the airplane during landing operations.

DATES: Comments must be received on or before July 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-148-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 625-7043 or (316) 676-4556. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4146; facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-148-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-148-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received two reports of failed main landing gear (MLG) on Raytheon Models B200 and B200C airplanes. Further investigation shows the MLG actuator clevis in these airplanes failed from fatigue cracking in the threaded shank portion of the clevis. The MLG actuator clevis assembly that is currently installed in these Raytheon airplanes could also fracture causing collapse of the MLG while landing.

Relevant Service Information

Raytheon Aircraft has issued Mandatory Service Bulletin No. 2728, Issued: June 1997, Revision No. 1, dated February 1998, which specifies replacing the left and right MLG actuator clevis assembly with a new MLG actuator clevis assembly of improved design.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent failure of the actuator clevis assembly in the main landing gear, which, if not corrected, could result in loss of control of the airplane during landing operations.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models A200CT, B200, B200C, B200CT, 200T/B200T, 300, B300, and B300C of the same type design, the proposed AD would require replacing the left and right MLG actuator clevis assembly with a new actuator clevis assembly of improved design.

Cost Impact

The FAA estimates that 897 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately \$60 an hour. Parts cost approximately \$581 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$790,257, or \$881 per

airplane. The manufacturer has informed the FAA that 105 owners/operators of these airplanes have already accomplished the proposed action; therefore, the total cost impact of the proposed AD on U.S. operators would be reduced by \$92,505 from \$790,257 to \$697,752.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 97-CE-148-AD.

Applicability: Airplane models listed below, certificated in any category.

Model	Serial No.
B200	BB-1158, BB-1167, BB-1193 through BB-1263, BB-1265 through BB-1286, BB-1287, BB-1288, BB-1290 through BB-1300, BB-1302 through BB-1425, BB-1427 through BB-1447, BB-1449, BB-1450, BB-1453, BB-1455, BB-1456, and BB-1458 through BB-1559.
B200C	BL-124 through BL-140.
B200CT (FW-II)	FG-1 and FG-2.
200T/B200T	BT-31 through BT-38.
300	FA-1 through FA-230 and FF-1 through FF-19.
B300	FL-1 through FL-159.
B300C	FM-1 through FM-9 and FN-1.
A200CT (C-12D)	BP-46 through BP-51.
A200CT (C-12F)	BP-52 through BP-63.
A200CT (RC-12K)	FE-1 through FE-9.
A200CT (RC-12N)	FE-10 through FE-24.
A200CT (RC-12P)	FE-25 through FE-31, FE-33, FE-35.
A200CT (RC-12Q)	FE-32, FE-34, FE-36.
B200C (C-12F)	BP-64 through BP-71, BL-73 through BL-112, and BL-118 through BL-123.
B200C (UC-12F)	BU-1 through BU-10.
B200CT (RC-12F)	BU-11 and BU-12.
B200C (UC-12M)	BV-1 through BV-10.
B200C (RC-12M)	BV-11 and BV-12.
B200C (C-12R)	BW-1 through BW-29.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished. To prevent failure of the actuator clevis rod in the main landing gear, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Replace the left and right main landing gear actuator clevis assembly with a new MLG actuator clevis assembly of improved design in accordance with the Accomplishment Instructions section in Raytheon Aircraft Mandatory Service Bulletin No. 2728, Issued: June, 1997, Revision No. 1, February, 1998.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Issued in Kansas City, Missouri, on April 29, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-11887 Filed 5-4-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-103-AD]

RIN 2120-AA64

Airworthiness Directives; Dornier Model 328-100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328-100 series airplanes. This proposal would require modification of the ground cooling fan. This proposal is prompted by issuance of mandatory continuing airworthiness

information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the ground cooling fan, which could result in smoke in the flight deck and cabin and consequent inability of the flight crew to perform duties or possible passenger injury due to smoke inhalation.

DATES: Comments must be received by June 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-103-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D-82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-103-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-103-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328-100 series airplanes. The LBA advises that it has received reports of smoke in the flight deck and cabin. The cause of the smoke has been attributed to an overheating condition caused by oil contamination of the heat exchangers and the failure of the ground cooling fans to dispel the smoke from the flight deck and cabin. This condition, if not corrected, could result in inability of the flight crew to perform duties or possible passenger injury due to smoke inhalation.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB-328-21-227, dated July 16, 1997, which describes procedures for modification of the ground cooling fan. The modification involves incorporation of a modified check valve and rotation of the valve 90 degrees from its present

position. (The service bulletin references EG&G Rotron Service Bulletin 011389500-21-1, dated April 30, 1997, as an additional source of service information to accomplish the modification.) Accomplishment of the actions specified in the Dornier service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 97-243, dated August 28, 1997, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed modification, at an average labor rate of \$60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$3,000, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GmbH: Docket 98-NM-103-AD.

Applicability: Model 328-100 series airplanes, serial numbers 3005 through 3095 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or

repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance Required as indicated, unless accomplished previously.

To prevent failure of the ground cooling fan, which could result in smoke in the flight deck and cabin and consequent inability of the flight crew to perform duties or possible passenger injury due to smoke inhalation, accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the ground cooling fan and rotate the modified check valve, in accordance with Dornier Service Bulletin SB-328-21-227, dated July 16, 1997.

Note 2: The service bulletin references EG&G Rotron Service Bulletin 011389500-21-1, dated April 30, 1997, as an additional source of service information to accomplish the actions required by this AD.

(b) As of the effective date of this AD, no person shall install on any airplane a ground cooling fan, part number 011389500, unless it has been modified in accordance with Dornier Service Bulletin SB-328-21-227, dated July 16, 1997.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in German airworthiness directive 97-243, dated August 28, 1997.

Issued in Renton, Washington, on April 29, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service [FR Doc. 98-11888 Filed 5-4-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-18-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require repetitive inspections to detect fatigue cracking of the front spar vertical stringers on the wings; and repair, if necessary. This proposal also provides for an optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the front spar vertical stringers on the wings, which could result in reduced structural integrity of the airframe.

DATES: Comments must be received by June 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-18-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-18-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-18-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that, during full-scale fatigue testing on a Model A320 test article, fatigue cracking occurred at 116,151 simulated flights on the front vertical stringer on the wing at frame 36. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airframe.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320-57-1016, Revision 1, dated December 6, 1995, which describes procedures for repetitive eddy current

inspections to detect fatigue cracking of the front spar vertical stringers on the wings.

In addition, Airbus has issued Service Bulletin A320-57-1017, Revision 01, dated March 17, 1997, which describes procedures for modification of the front spar vertical stringers on the wings. The modification includes the installation of new shims and new fasteners on the front spar vertical stringers on the wings. Accomplishment of this modification would eliminate the need for the repetitive inspections described in Airbus Service Bulletin A320-57-1016, Revision 1.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified Airbus Service Bulletin A320-57-1016, Revision 1, dated December 6, 1995, as mandatory and issued French airworthiness directive 97-311-105(B), dated October 22, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the inspections specified in Airbus Service Bulletin A320-57-1016, Revision 1, dated December 6, 1995, except as discussed below. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety

will be adequately assured by accomplishing the repetitive inspections to detect fatigue cracking before it represents a hazard to the airplane.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although Airbus Service Bulletin A320-57-1016, Revision 1, dated December 6, 1995, specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Differences Between Proposed Rule and Foreign AD

Operators should note that, unlike the procedures described in French airworthiness directive 97-311-105(B), dated October 22, 1997, this proposed AD would not permit further flight if fatigue cracks are detected on the front spar vertical stringers of the wings. The FAA has determined that, because of the safety implications and consequences associated with such fatigue cracking, any subject front spar vertical stringer that is found to be cracked must be repaired prior to further flight in accordance with a method approved by the FAA or the DGAC (or its delegated agent).

Cost Impact

The FAA estimates that 16 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 2 work hours per airplane to accomplish the proposed inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be \$1,920, or \$120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating modification, rather than continue the repetitive inspections, it would require

approximately 6 work hours to accomplish it, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$700 per airplane. Based on these figures, the cost impact of the optional terminating modification proposed by this AD on U.S. operators is estimated to be \$1,060 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98-NM-18-AD.

Applicability: Model A320 series airplanes on which Airbus Modification 21290 (reference Airbus Service Bulletin A320-57-

1017, Revision 01, dated March 17, 1997) has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the front spar vertical stringers on the wings, which could result in reduced structural integrity of the airframe, accomplish the following:

(a) Prior to the accumulation of 24,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later: Perform an eddy current inspection to detect fatigue cracking of the front spar vertical stringers on the wings, in accordance with Airbus Service Bulletin A320-57-1016, Revision 1, dated December 6, 1995.

(1) If no crack is detected, repeat the eddy current inspection thereafter at intervals not to exceed 14,000 flight cycles.

(2) If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent). Thereafter, repeat the eddy current inspection at intervals not to exceed 14,000 flight cycles.

(b) Modification of the front spar vertical stringers on the wings, in accordance with Airbus Service Bulletin A320-57-1017, Revision 01, dated March 17, 1997, constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97-311-105(B), dated October 22, 1997.

Issued in Renton, Washington, on April 29, 1998.

John J. Hickey,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 98-11889 Filed 5-4-98; 8:45 am]
BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-10-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-90-30 and MD-88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC-9-80 series airplanes and Model MD-90-30 and MD-88 airplanes. This proposal would require a one-time inspection of the harness assembly of the tailcone emergency evacuation slide to determine the diameter of the swaged balls; reidentification of the harness assembly; and reinstallation or replacement of the assembly with a new assembly, if necessary. This proposal is prompted by a failed deployment of the tailcone emergency evacuation slide during a system test conducted by the manufacturer. The actions specified by the proposed AD are intended to prevent failure of the tailcone emergency evacuation slide to deploy automatically due to incorrect diameter of the swaged balls on the wire rope of the harness assembly.

DATES: Comments must be received by June 19, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-10-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from

The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846. Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5338; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-10-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-10-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

During an FAA-required system test of the tailcone emergency evacuation slide conducted by the manufacturer, the slide failed to deploy automatically. Reports indicate that the swaged ball on the deployment harness of the slide pulled off the wire rope, thus preventing the automatic deployment of the slide. An analysis of this incident revealed that the swaged ball on the harness assembly had pulled off the wire rope due to incorrect diameter of the swaged ball. This condition, if not corrected, could result in failure of the tailcone emergency evacuation slide to deploy automatically.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletins MD80-25A364 (for Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) series airplanes, and Model MD-88 airplanes); and MD90-25A030 (for Model MD-90-30 airplanes); both dated October 30, 1997; which describe procedures for a one-time inspection of the harness assembly (container deployment harness) of the tailcone emergency evacuation slide to determine the diameter of the swaged balls; reidentification of the harness assembly; and reinstallation or replacement of the assembly with a new assembly, if necessary. For airplanes on which the diameter of the swaged ball is within specified limits, the alert service bulletins describe procedures for reinstallation of the reidentified harness assembly. However, for airplanes on which the diameter of the swaged ball is outside specified limits, the alert service bulletins describe procedures for replacement of the harness assembly with a new harness assembly. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletins described previously.

Cost Impact

There are approximately 943 airplanes of the affected design in the worldwide fleet. The FAA estimates that 570 airplanes of U.S. registry would be affected by this proposed AD, that it

would take approximately 2 work hours per airplane to accomplish the proposed action and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$68,400, or \$120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 98-NM-10-AD.

Applicability: All Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) series airplanes; and Model MD-88 and MD-90-30 airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tailcone emergency evacuation slide to deploy automatically due to incorrect diameter of the swaged balls on the wire rope of the harness assembly, accomplish the following:

(a) Within 180 days after the effective date of this AD, perform a one-time inspection of the harness assembly of the tailcone emergency evacuation slide to determine the diameter of the swaged balls; in accordance with McDonnell Douglas Alert Service Bulletin MD80-25A364 (for Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) series airplanes, and Model MD-88 airplanes); or MD90-25A030 (for Model MD-90-30 airplanes); both dated October 30, 1997.

(1) If the swaged balls are within the limits specified in the applicable alert service bulletin, prior to further flight, reidentify and reinstall the harness assembly in accordance with the applicable alert service bulletin.

(2) If the swaged balls are outside the limits specified in the applicable alert service bulletin, prior to further flight, replace the harness assembly having part number (P/N) 8370024-3 with a new harness assembly having P/N 8370024-9 or 8370024-3H, as applicable, in accordance with the applicable alert service bulletin.

(b) As of the effective date of this AD, no person shall install a harness assembly (P/N) 8370024-3, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 29, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-11890 Filed 5-4-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ANM-23]

RIN 2120-AA66

Proposed Alteration of VOR Federal Airway; Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing an amendment to its airspace regulations to modify two Federal airways, V-165 and V-287, located in the State of Washington (WA), due to the newly commissioned Penn Cove Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) navigational aid. Federal Airway V-165 would be modified to provide a route from the Olympia Very High Frequency Omnidirectional Range/Tactical Air Navigation System (VORTAC), to Penn Cove VOR to Bellingham, WA. Federal Airway V-287 would be modified to provide a route from the Paine VORTAC to Penn Cove VOR. The FAA is proposing this action to improve the management of air traffic operations in the State of Washington.

DATES: Comments must be received on or before June 4, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 97-ANM-23, Federal Aviation Administration, 1601 Lind Avenue, Renton, WA 98055-4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the

office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 97-ANM-23." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339) or the Government Printing Office's electronic bulletin board service (telephone: 202-512-1661). Internet users may reach the Government Printing Office's web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents in the Federal Register.

Any person may also obtain a copy of this NPRM by submitting a request to

the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 71 to modify two Federal airways, V-287 and V-165, due to the commissioning of the Penn Cove, WA, VOR/DME. Federal Airway V-165 would be modified to provide a route between Olympia and Bellingham, WA. Federal Airway V-287 would be modified to provide a route from the Paine VORTAC to Penn Cove VOR. This proposal would enhance air traffic procedures by providing air traffic controllers with added flexibility for routing air traffic in the State of Washington.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airways listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed action: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V-165 [Revised]

From Mission Bay, CA; INT Mission Bay 270° and Oceanside, CA, 177° radials; Oceanside, 24 miles, 6 miles wide, Seal Beach, CA; 6 miles wide, INT Seal Beach 287° and Los Angeles, CA, 138° radials; Los Angeles; INT Los Angeles 357° and Lake Hughes, CA, 154° radials; Lake Hughes; INT Lake Hughes 344° and Shafter, CA, 137° radials; Shafter; Porterville, CA; INT Porterville 339° and Clovis, CA, 139° radials; Clovis; 68 miles, 50 miles, 131 MSL, Mustang, NV; 40 miles, 12 AGL, 7 miles, 115 MSL, 54 miles, 135 MSL, 81 miles, 12 AGL, Lakeview, OR; 5 miles, 72 miles, 90 MSL, Deschutes, OR; 16 miles, 19 miles, 95 MSL, 24 miles, 75 MSL, 12 miles, 65 MSL, Newberg, OR; 32 miles, 45 MSL, INT Newberg 355° and Olympia, WA, 195° radials; Olympia; Penn Cove, WA; to Bellingham, WA.

* * * * *

V-287 [Revised]

From Fort Jones, CA, via INT Fort Jones 041° and Rouge Valley, OR, 157° radials; Rouge Valley; North Bend, OR; Newberg, OR; Battle Ground, WA; 20 miles, 51 miles, 45 MSL, Olympia, WA; INT Olympia 005°T (346.32°M) and Paine, WA, 256°T (236°M) radials; Paine; to Penn Cove, WA.

* * * * *

Issued in Washington, DC, on April 27, 1998.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 98-11855 Filed 5-4-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-121755-97]

RIN 1545-AV86

Reorganizations; Nonqualified Preferred Stock; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on notice of proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the receipt of nonqualified preferred stock in certain exchanges.

DATES: The public hearing originally scheduled for Tuesday, May 5, 1998, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is under section 356(e) of the Internal Revenue Code. A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing appearing in the *Federal Register* on Tuesday, January 6, 1998 (63 FR 453), announced that the public hearing on the proposed rulemaking would be held on Tuesday, May 5, 1998, beginning at 10:00 a.m., in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington DC.

The public hearing scheduled for Tuesday, May 5, 1998, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel, (Corporate).

[FR Doc. 98-11804 Filed 5-4-98; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-8007-4]

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; proposed compliance extension.

SUMMARY: On December 2, 1994, the EPA issued the "National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning". Elsewhere in today's *Federal Register*, the EPA is announcing an immediate 3-month stay of the effectiveness of that standard for continuous web cleaning machines using halogenated hazardous air pollutant (HAP) solvents for good cause pursuant to section 553(b)(3)(B) of the Administrative Procedures Act.

This action proposes a temporary extension of the applicable compliance date beyond the 3 months of the stay for up to 1 year to complete analysis of equivalent methods of control for continuous web cleaning machines using halogenated HAP solvents.

DATES: Comments. Comments must be received on or before June 4, 1998, unless a hearing is requested by May 15, 1998. If a hearing is requested, written comments must be received by June 19, 1998.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than May 15, 1998. If a hearing is held, it will take place on May 20, 1998, beginning at 10:00 a.m.

ADDRESSES: Comments. Interested parties may submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention, Docket No. A-92-39, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments on the proposed changes to the national emission standards for hazardous air pollutants (NESHAP) also may be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mrs. Kim Teal, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541-5580.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards and the proposed changes, contact Mr. Paul Almódovar, Coatings and Consumer Products Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541-0283. For information regarding the applicability of this action to a particular entity, contact Mrs. Tracy Back, Manufacturing Branch, Office of Compliance (2223A), U.S. EPA, 401 M Street, SW,

Washington, DC 20460; telephone (202) 564-7076.

SUPPLEMENTARY INFORMATION:

Electronic Comment Submission

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments also will be accepted on diskette in WordPerfect 5.1 or ASCII file format. All comments in electronic form must be identified by the docket number A-92-39. No confidential business information should be submitted through e-mail. Electronic comments may be filed on-line at many Federal Depository Libraries.

Regulated Entities

Entities potentially regulated by this action are owners or operators of individual continuous web cleaning machines using any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, or chloroform, or any combination of these halogenated HAP solvents in a concentration greater than 5 percent by weight, as a cleaning or drying agent. Regulated categories include:

Category	Examples of regulated entities
Industry	Facilities engaging in cleaning operations using halogenated solvent cleaning machines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that the EPA is now aware potentially could be regulated by this action. Other types of entities not listed in the table also could be regulated. To determine whether your facility [company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in § 63.460 of the NESHAP for halogenated solvent cleaning operations that was promulgated in the **Federal Register** on December 2, 1994 (59 FR 61801) and codified at 40 CFR part 63, subpart T. If you have questions regarding the applicability of this action to a particular entity, consult Mrs. Tracy Back at the address listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented below is organized as follows:

- I. Background
- II. Summary of and Rationale for Proposed Compliance Extension
- III. Proposed Compliance Extension
- IV. Solicitation of Comments
- V. Administrative Requirements

- a. Docket
- b. Paperwork Reduction Act
- c. Executive Order 12866
- d. Regulatory Flexibility
- e. Regulatory Review
- f. Unfunded Mandates Act

I. Background

On December 2, 1994 (59 FR 61801), the EPA promulgated the NESHAP for halogenated solvent cleaning operations. These standards were codified as subpart T in 40 CFR part 63. These standards established equipment and work practice standards for individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines using any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, or chloroform, or any combination of these halogenated HAP solvents in a concentration greater than 5 percent by weight, as a cleaning or drying agent.

Under § 63.469 of the halogenated solvent cleaning NESHAP, the Administrator may approve the use of equipment or procedures that have been demonstrated to be equivalent in terms of reducing emissions of methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, or chloroform to the atmosphere, to those prescribed for compliance within a specified paragraph of the NESHAP. Since the rule was promulgated, two owners and operators of affected halogenated solvent cleaning machines have requested approval for equivalent methods of control determinations for their continuous web cleaning machines because the rule does not presently address their situation. In addition, the EPA has become aware of several other continuous web cleaning machines experiencing difficulties in determining how to comply with the NESHAP. In each case, the emission control requirements specified by the NESHAP would be difficult or impossible to implement due to the operating and emission characteristics of these machines. Case-by-case equivalency determinations would be required to ensure that each machine is applying alternative control measures that achieve the same or better emission reductions as the NESHAP-required controls. Such a case-by-case approach would be unduly burdensome for both the affected sources and the EPA. Therefore, the EPA is conducting an evaluation of methods of control for all continuous web cleaning machines to determine which emission control

measures would be equivalent to the NESHAP.

II. Summary of and Rationale for Proposed Extension

As indicated above, since promulgation of the halogenated solvent cleaning NESHAP on December 2, 1994, the EPA has become aware of the existence of various sources cleaning parts such as film, coils, wire, and metal strips at speeds in excess of the 11 feet per minute limit in the NESHAP using halogenated cleaning machines. Parts are generally uncoiled, cleaned such that the same part is simultaneously entering and exiting the solvent cleaning machine, and then recoiled or cut. These solvent cleaning machines are typically referred to as continuous web cleaning machines. The design and operation, and therefore, the emission characteristics of these machines are different from the solvent cleaning machines (e.g., batch cold cleaners, in-line cleaners) that the EPA analyzed during the NESHAP rule development process.

In-line cleaning machines have automated parts handling systems, such as conveyors, to move parts through the cleaning machine. Continuous web cleaning machines do not have a "true" automated parts handling system; instead the whole part (the coil, wire, film, etc.) is pulled through the solvent cleaning machine. The halogenated solvent cleaning NESHAP requires that the automated parts handling system on an in-line cleaning machine be capable of moving the parts at 11 feet per minute or less as a basic design requirement. However, process speeds for the continuous web cleaning processes that the EPA has information on range between 40 feet per minute and 1,200 feet per minute.

Air emissions from continuous web cleaning machines are primarily due to solvent drag-out or solvent carry-out on the cleaned parts. The controls required by the halogenated solvent cleaning NESHAP to reduce drag-out emissions require that parts be held inside the solvent cleaning machine for a specified period of time, depending on the part being cleaned, until solvent dripping stops. This technique is called dwell time. Dwelling parts when using a continuous web cleaning machine is not technically feasible due to the high rates of speed at which the parts are being cleaned. Continuous web cleaning machines generally use squeegees, rubber stoppers, or fabric pads to remove pooled solvent from the surface of the parts being cleaned before they exit the machine.

In order for the EPA to evaluate methods of emission control for continuous web cleaning machines using halogenated HAP solvents, and therefore, better regulate HAP emissions from these machines, the Agency is proposing a temporary extension of the applicable compliance dates.

III. Proposed Compliance Extension

Elsewhere in today's **Federal Register**, the EPA is announcing a 3-month stay from the requirements of the halogenated solvent cleaning machine NESHAP for continuous web cleaning machines using halogenated HAP solvents for good cause pursuant to section 553(b)(3)(B) of the Administrative Procedures Act. However, the EPA may not be able to complete evaluation of equivalent methods of control for continuous web cleaning machines and any appropriate curative regulatory action to the rule within 3 months. If the EPA does not complete the equivalency determination and rulemaking in this timeframe, then it will be necessary to temporarily extend the applicable compliance dates until the EPA completes final rulemaking action. By this action the EPA proposes, pursuant to section 301(a)(1) of the Clean Air Act (CAA), 42 U.S.C. 7601(a)(1), a temporary extension of the compliance dates for continuous web cleaning machines using halogenated HAP solvents. The EPA is proposing to extend the compliance dates to August 3, 1999, 1 year after the 3-month stay.

IV. Solicitation of Comments

The EPA specifically requests comment on the following issues:

1. Applications in which continuous web cleaning machines are used. Information supplied should include industries that use these machines, types of products cleaned (e.g., material out of which parts are made, size of parts), types of solvents used for cleaning, and a general description of the cleaning process.
2. Design and operational parameters of continuous web solvent cleaning machines. Information supplied should include machine dimensions, solvent capacity, rate of speed at which parts are cleaned, estimate of solvent usage on a yearly basis, solvent application method (e.g., spraying, flooding), and any other information relevant to the design and operation of the solvent cleaning machine.
3. Emission reduction techniques/controls used on continuous web cleaning machines. Information supplied should include control efficiencies, monitoring parameters and

procedures, and costs of the controls (e.g., capital costs, operating costs).

V. Administrative Requirements a. Docket

A. Docket

A-92-39 is an organized and complete file of all of the information submitted to, or otherwise considered by, the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to readily identify and locate documents to enable them to participate effectively in the rulemaking process. The contents of the docket serves as the record in case of judicial review (except for interagency review materials) (§ 307(d)(7)(A) of the CAA, 42 U.S.C. 7607(d)(7)(A)).

B. Paperwork Reduction Act

There are no additional information collection requirements contained in this proposal. Therefore, approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is not required.

C. Executive Order 12866

Under Executive Order 12866, the EPA is required to determine whether a regulation is "significant," and therefore, subject to Office of Management and Budget review and the requirements of this Executive Order to prepare a regulatory impact analysis. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not a "significant regulatory action" within the meaning of the Executive Order because it proposes a temporary extension of the applicable compliance dates beyond the 3 months of the stay for up to 1 year to

complete evaluation of equivalent methods of control for continuous web cleaning machines using halogenated HAP solvents.

D. Regulatory Flexibility

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I certify that this rule will not have a significant economic impact on a substantial number of small entities. This notice proposes a temporary extension of the applicable compliance dates beyond the 3 months of the stay for up to 1 year to complete equivalent methods of control determinations for continuous web cleaning machines using halogenated HAP solvents. This proposal will not place any additional requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

Under the Regulatory Flexibility Act, an agency is not required to prepare a regulatory flexibility analysis for a rule that the agency head certifies will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required and has not been prepared.

E. Regulatory Review

In accordance with sections 112(d)(6) and 112(f)(2) of the CAA, 42 U.S.C. 7412(d)(6) and 7412(f)(2), this regulation will be reviewed within 8 years of the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods of control, enforceability, improvements in emission control technology and health data, and recordkeeping and reporting requirements.

F. Unfunded Mandates Act

The economic impact analysis performed for the original rule showed that the economic impacts from implementation of the promulgated standards would not be "significant" as defined in Executive Order 12866. No changes are being made in these amendments that would increase the economic impacts. The EPA prepared the following statement of the impact of the original rule in response to the requirements of the Unfunded Mandates Reform Act.

There are no Federal funds available to assist State, local, and Tribal governments in meeting these costs. There are important benefits from volatile organic compounds and HAP emission reductions because these

compounds have significant adverse impacts on human health and welfare, and on the environment. The rule does not have any disproportionate budgetary effects on any particular region of the nation, State, local, or Tribal government, or urban, rural, or other type of community. Moreover, the rule will not have a material effect on the national economy.

Throughout the regulatory development process prior to issuing the final rule on December 2, 1994, the EPA provided numerous opportunities for consultations with interested parties (e.g., public comment period; opportunity for a public hearing [none was requested]; meetings with industry, trade associations, State and local air pollution control agency representatives, environmental groups, State, local, and Tribal governments, and concerned citizens). Although small governments are not significantly or uniquely affected by this rule, these procedures, as well as additional public conferences and meetings, gave small governments an opportunity to give meaningful and timely input and obtain

information, education, and advice on compliance.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Halogenated solvent cleaning machines, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 27, 1998.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart T—National Emission Standards for Halogenated Solvent Cleaning

2. Section 63.460 is amended by revising paragraphs (c) and (d), and adding paragraph (g) to read as follows:

§ 63.460 Applicability and designation of source.

(c) Except as provided in paragraph (g) of this section, each solvent cleaning machine subject to this subpart that commences construction or reconstruction after November 29, 1993 shall achieve compliance with the provisions of this subpart immediately upon start-up or by December 2, 1994, whichever is later.

(d) Except as provided in paragraph (g) of this section, each solvent cleaning machine subject to this subpart that commenced construction or reconstruction on or before November 29, 1993 shall achieve compliance with the provisions of this subpart no later than December 2, 1997.

(g) Each continuous web cleaning machine subject to this subpart shall achieve compliance with the provisions of this subpart no later than August 3, 1999.

[FR Doc. 98-11752 Filed 5-4-98; 8:45 am]

BILLING CODE 6560-50-P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request an extension of currently approved information collections for a regulation used in support of the FSA Farm Loan Program (FLP) (formerly Farmer Programs of the Farmers Home Administration (FmHA)). This renewal does not involve any revisions to the program rules.

DATES: Comments on this notice must be received on or before July 6, 1998, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: For additional information contact Phillip Elder, Senior Loan Officer, USDA, Farm Service Agency, Loan Servicing Division, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20013-0523; Telephone (202) 690-4012; Electronic mail: pelder@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 1951, subpart T, Disaster Set-Aside Program.

OMB Control Number: 0560-0164.

Expiration Date of Approval: August 31, 1998.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: The Disaster Set-Aside program (DSA) is made available through the authority granted the Secretary of Agriculture under the Consolidated Farm and Rural Development Act (7 U.S.C.1981a) (The Act). The set-aside program is designed

to assist borrowers in financial distress who operated a farm or ranch in an area that was declared or designated a disaster area. As provided in Section 331A of the Act, the Secretary has the authority to defer principal and interest at the request of the borrower on a loan made by USDA under the Act. Under this program, FSA farm loan program borrowers can receive immediate financial relief by moving one annual installment for each loan to the end of the loan term. DSA allows eligible borrowers who are unable to make the payments to quickly eliminate their immediate financial stress.

The public reporting burden imposed by this subpart requires borrowers who request DSA to document that their income will be reduced to an amount that will prevent payment of living and operating expenses, and amounts due FSA and other creditors. The information is required of FSA farm borrowers and collected by loan servicing officials to support approval of a set-aside request. The information to be collected will primarily be financial data not already on file, such as borrower asset values, expenses and income. This information will be analyzed expeditiously to determine that disaster victims need payment relief.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 18 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 10,700.

Estimated Number of Responses per Respondent: 1.75.

Estimated Total Annual Burden on Respondents: 5,646 hours.

The Agency is soliciting comments on the burden of all of the above subparts regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20250-0523. Copies of the information collections may be obtained from Mr. Elder at the above address. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, D.C., on April 28, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 98-11886 Filed 5-4-98; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Forest Service

Goose Creek Watershed Projects, Payette National Forest, Adams County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service is proposing to harvest and regenerate timber, improve watershed conditions, restore flammulated owl habitat, and expand the Grouse Campground in the Goose Creek watershed. The projects will be administered jointly by the New Meadows and McCall Ranger Districts of the Payette National Forest. The Goose Creek watershed is located on both the New Meadows and McCall Ranger Districts, roughly halfway between New Meadows and McCall, Idaho.

The Payette Forest completed scoping on the Goose Creek Watershed Projects in April 1997, with the intent of analyzing effects on issues and resources in an environmental assessment. However, the Forest has since decided to complete the analysis in an environmental impact statement due to the high intensity of public use

and interest in this watershed, and the potential for the proposed action to produce significant effects.

DATES: The Forest Service expects to release a Draft Environmental Impact Statement for the Goose Creek Watershed Projects in July 1998. A Final EIS and Record of Decision are expected in October 1998.

ADDRESSES: Written comments or requests for the above documents can be sent to David Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed projects should be directed to Sue Dixon, Team Leader, phone no. (208) 347-0331; or Kimberly Brandel, New Meadows District Ranger, phone no. (208) 347-0300.

SUPPLEMENTARY INFORMATION: The Proposed Action (Alternative B) would manage forest vegetation to improve growth, health, and species composition on an estimated 3,940 acres using tractor, skyline, and helicopter logging systems. Silvicultural prescriptions would include 1,910 acres of commercial thinning, 730 acres of free selection thinning, 620 acres of sanitation salvage, 580 acres of clearcuts with reserve trees, 50 acres of seed tree cuts, and 50 acres of overstory removal.

Thinning treatments in lower-elevation stands would be designed to mimic historic stand conditions and restore habitat for flammulated owl, a Region 4 sensitive species that is known to occur in the watershed.

Treatment of harvest-generated fuels would include 560 acres of broadcast burning, 400 acres of tractor piling and burning, and 261 acres of excavator piling and burning. Reforestation of ponderosa pine, Douglas-fir, western larch, Engelmann spruce, and lodgepole pine seedlings would occur on 580 acres. An additional 50 acres would be monitored for natural regeneration.

An estimated 6.6 miles of new road would be constructed to support vegetation management. Another 45 miles of existing roads would be improved. Improvements include graveling 14.3 miles of native-surfaced roads with gravel from two existing developed sources. All roads would have surfaces graded and shaped, and drainage structures improved or installed as needed. Road stream crossings would be designed to meet PACFISH standards and to minimize potential effects to stream channels and water quality.

An estimated 7.9 miles of existing road would be obliterated to improve soil productivity and hydrologic

function. Obliteration would include combinations of the following: partial recontouring, pulling of culverts, reshaping drainages at culvert sites, ripping and revegetating road surfaces, placing slash and coarse wood on disturbed areas, and restricting motorized access. Post-sale road management would include closing an additional 68.7 miles of existing road to public motorized access to improve elk habitat and water quality within the watershed.

The Grouse Campground near Goose Lake would be relocated to reduce impacts to riparian areas, and expanded to accommodate increasing recreation use in the area.

The Proposed Action would require three non-significant amendments to the Forest Plan; one for exceeding the forage opening size and distance to cover for big game; one for not meeting the Elk Habitat Effectiveness target level, and one for temporarily changing the Recreation Opportunity Spectrum setting in one harvest unit (162 acres) from non-motorized to motorized.

The Draft EIS will include at least two other alternatives, including Alternative A, No Action (continue current management in the watershed), and Alternative C, which would differ mainly from the Proposed Action by treating less acres (1,600) with timber harvest, constructing less new road (3.1 miles), obliterating more existing roads (30.6 miles), and restoring dispersed camp sites near Goose Lake and Brundage Reservoir.

The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest.

Dated: April 27, 1998.

David F. Alexander,
Forest Supervisor.

[FR Doc. 98-11883 Filed 5-4-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff briefing for the board of directors.

TIME AND DATE: 3 p.m., Thursday, May 14, 1998.

PLACE: Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving the 1996 Telecom Act and universal service; the upcoming

Board of Directors election, and administrative issues.

ACTION: Board of directors meeting.

TIME AND DATE: 9 a.m., Friday, May 15, 1998.

PLACE: The Williamsburg Room, Room 104-A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on the February 19, 1998, Minutes.
3. Report on loans approved in the second quarter of FY 1998.
4. Summary of financial activity for the second quarter of FY 1998.
5. Discussion concerning the allowance for loan losses reserve.
6. Status report on the creation of a Performance-Based Organization.
7. Consideration of resolution to adopt a schedule for various actions in connection with the November 1998 Board of Directors election.
8. Consideration of resolution to appoint Tellers for the November 1998 Board of Directors election.
9. Establish date and location of next regular Board meeting.
10. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Orren Cameron, III, Acting Assistant Governor, Rural Telephone Bank, (202) 720-9554.

Dated: April 30, 1998.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 98-11996 Filed 5-1-98; 12:25 pm]

BILLING CODE 3410-15-P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: May 12-13, 1998.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Closed. Open: 3:00-4:00 p.m. May 12.

MATTERS TO BE CONSIDERED:

Closed Meeting:

1. Review and Accept Minutes of Closed Meeting.
2. Review of Assassination Records.
3. Other Business.

Open Meeting:

1. Discussion of Final Report.
2. Review and Accept Minutes of April 24 Open Meeting.

3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724-0088; Fax: (202) 724-0457.

T. Jeremy Gunn,

General Counsel.

[FR Doc. 98-11978 Filed 5-1-98; 10:40 am]

BILLING CODE 8118-01-P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: National Employers Survey—School-to-Work Supplement.

Form Number(s): NES-1.

Agency Approval Number: 0607-0787.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 167 hours.

Number of Respondents: 1,000.

Avg Hours Per Response: 10 minutes.

Needs and Uses: As part of the Census

Bureau's continuing research into how the human resources practices of United States businesses affect business performance, the Census Bureau has conducted three National Employers Surveys (NES) over the past 4 years. In the NES III we collected information on partnerships between businesses and schools. The School-to-Work Supplement, sponsored by the Institute for Research in Higher Education of the University of Pennsylvania, will be conducted as a follow-up to the NES III and will provide specific and unique longitudinal information on employers' hiring and human resources practices and particularly their participation in school-to-work partnership activities. The information we collect will enable analysts to measure the impact of participation in school-to-work programs on participating establishments and the prospects for making school-to-work partnerships an integral part of the way the workforce is developed in the U.S. Primary Governmental interest in survey results comes from the Department of Education's Office of Educational Research and Improvement (OERI) and the Bureau of Labor Statistics.

A sample of employers who reported participation in school-to-work

programs in the NES III, as well as a comparable sample of employers who reported they didn't, will be asked to participate in the supplemental telephone inquiry.

Affected Public: Businesses or other for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C.,

Sections 8 & 9.

OMB Desk Officer: Nancy Kirkendall, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 29, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-11919 Filed 5-4-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Certificate of Eligibility for Atlantic Billfishes.

Agency Form Number: N/A.

OMB Approval Number: 0648-0216.

Type of Request: Extension of a currently approved collection.

Burden: 43 hours.

Avg. Hours Per Response: 20 minutes for completion of certificate and 2 minutes for recordkeeping.

Number of Respondents: 53 respondents (400 annual responses).

Needs and Uses: Billfishes are managed under the Atlantic Billfish Fishery Management Plan (FMP). The primary objective of the FMP is to maintain the highest availability of billfishes to the traditional U.S. recreational fishery. Under the FMP, the sale of billfish caught in the management area is prohibited. To

enforce this prohibition, a billfish in trade must have a "Certificate of Eligibility" accompany it so that enforcement agents will know that it was not harvested from the Atlantic Ocean management unit.

Affected Public: Businesses or other for-profit organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker,

(202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20230.

Dated: April 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-11924 Filed 5-4-98; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Bureau of the Census

1997 Distribution of Sales by Class of Customer; Proposed Information Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 6, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judy Dodds, Assistant Chief for Census and Related Programs,

Bureau of the Census, Room 2101, FB-4, Washington, DC 20233, Telephone (301) 457-4587.

SUPPLEMENTARY INFORMATION:

I. Abstract

The 1997 Distribution of Sales by Class of Customer is part of, and supplemental to, the 1997 Census of Manufactures. The report is done on a 10 year cycle for years ending in "7." The data tabulated from this survey are used by the Government, the academic community, and the private sector. The Bureau of Economic Analysis (BEA) is the principal Government user. The BEA uses the data as input to its National Income and Product Accounts.

Respondents, chosen from the 1997 Census of Manufactures, will receive report forms with their total product shipments data imprinted on the forms based on data they reported in the census. Multi-unit establishments are asked what portion of their shipments were to other establishments of their company and what portion of their shipments were to establishments not of their company. They are further asked to break out these data for the portions going to wholesale, retail, manufacturing, government, and other. The single-unit form is similar, except respondents are not asked about other establishments of their company.

II. Method of Collection

Data are collected using two survey forms, one for single-unit establishments and the other for multi-unit establishments. The panel is chosen from all mailed establishments in the 1997 Census of Manufactures using probability proportionate to size. The panel is also stratified by single-unit/multi-unit by 6-digit North American Industry Classification (NAICS) industry to assure that all NAICS industries are properly represented.

III. Data

OMB Number: Not available.
Form Numbers: MC-9601, MC-9602.
Type of Review: Regular.
Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden

Hours: 20,000.

Estimated Total Annual Cost:

\$258,600 at \$12.93 per hour.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., Sections 131 and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-11920 Filed 5-4-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Sensors and Instrumentation Technical Advisory Committee will be held May 19, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M-2, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Update on Wassenaar Arrangement List review.
3. Presentation of papers or comments by the public.

Executive Session

4. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the

extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482-2583.

Dated: April 30, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98-11836 Filed 5-4-98; 8:45 am]

BILLING CODE 3510-33-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-802]

Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Request for comments.

SUMMARY: The Department of Commerce is hereby providing interested parties an opportunity to comment on proposed procedures to administer and enforce the uranium matched sales annual quotas. All Comments are due to the

Department of Commerce within 30 days of publication of this notice.

EFFECTIVE DATE: May 5, 1998.

FOR FURTHER INFORMATION CONTACT:

James Doyle or Letitia Kress, AD/CVD Enforcement Group III, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482-0159 or (202) 482-6412, respectively.

Background: Under the matched sale amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (57 FR 15373), the Department has been administering quotas on a quota year basis, April 1 through March 31. On March 6, 1998, the Department received a request from the Nuclear Energy Institute (NEI) on behalf of certain of its members requesting that the Department revise its practice and administer the matched-sales quota on a calendar year basis, January 1 through December 31 (see attached annex for details).

The Department is soliciting comments of parties regarding this change in administrative practice, and the two subsidiary issues which would be generated. The first is the effect the change would have on the existing allocations of quota, and the second would be the necessity to arrive at a proper accounting for the periods April 1, 1996 through December 31, 1996 and January 2004 through March 2004.

Quota year based accounting	QY volume used	Calendar year based accounting	CY volume used	Quota limitations
4/1/96-3/31/97	1,056,132	4/1/96-12/31/96	448,632	1,930,000
4/1/97-3/31/98	645,879	1/1/97-12/31/97	1,253,379	2,710,000
4/1/98-3/31/99	1,150,121	1/1/98-12/31/98	1,150,121	3,600,000
4/1/99-3/31/00	722,001	1/1/99-12/31/99	722,001	4,040,000
4/1/00-3/31/01	685,001	1/1/00-12/31/00	685,001	4,230,000
4/1/01-3/31/02	150,000	1/1/01-12/31/01	150,000	4,040,000
4/1/02-3/31/03	.....	1/1/02-12/31/02	.....	4,890,000
4/1/03-3/31/04	.....	1/1/03-3/31/04	.....	4,300,000
Total	4,409,134	.....	4,409,134	.....

As set forth in the March 11, 1994 amendment to the Suspension Agreement, matched sales delivery quotas began April 1, 1996, and will expire March 31, 2004. However, neither the period April 1, 1996, through December 31, 1996 nor the period January 1, 2004 through March 31, 2004, which are currently seamlessly covered under the Department's existing quota year methodology, can fit a calendar year

methodology absent modification. To resolve this issue, NEI proposed designating 1996 as a "short" quota year, starting April 1, 1996 and ending December 31, 1996. In addition, NEI proposed that 2003 be designated a "long" quota year, beginning January 1st of that year and ending March 31, 2004. This accounting method is reflected in

Dated: April 29, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for Antidumping Countervailing Duty—Group III.

Annex—Proposed Procedures for Changing the Matched Sales Delivery Year From a Quota Year Method to a Calendar Year Basis

Under the current matched sales system, the Department has been

administering quota years running from April 1st to March 31st of the following year. On March 6, 1998, NEI noted in its submission that a calendar-year quota would make tracking operational or contractual flexibilities for both buyers and sellers of uranium more consistent with their other internal tracking systems. Therefore, NEI proposed that the current quota year be changed to a calendar-year basis (January 1st through December 31st year). (See letter from NEI to Department on March 6, 1998, on record at the Department of Commerce room B-099.) In implementing such a change, two issues arise. The first is the change to the existing allocations of used quota. The second is the proper treatment of two specific periods, April 1, 1996 through December 31, 1996, and January 1, 2004 through March 31, 2004.

Table 1 illustrates how the Department would reconcile the used quota limitations under the existing and proposed systems. Though the amount of used quota allocated to two periods, 1996 and 1997, would change under the new system, the overall totals do not. NEI notes that this reconciliation of historical transactions specifying deliveries in 1996 and 1997 does not affect the commercial balance among competing suppliers as marketing opportunities have long passed. Furthermore, no quota limitations would be exceeded in the reallocation. Table 1:

the CY Volume Used column in Table 1.

[FR Doc. 98-11918 Filed 5-4-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Cooperative Charting Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 6, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Harold M. Schantz, Customer Affairs Branch, N/CS28, National Ocean Service, NOAA, 1315 East-West Hwy, Silver Spring, MD 20910-3282, (301-713-2729).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's National Ocean Service produces nautical charts to ensure safe navigation. A cooperative charting program has been established with the United States Power Squadrons and the U.S. Coast Guard Auxiliary for their members to voluntarily submit chart correction data.

II. Method of Collection

Forms are provided to the cooperative charting program organizations for use by their members.

III. Data

OMB Number: 0648-0022.
Form Number: NOAA Forms 77-4 and 77-5.

Type of Review: Regular Submission.
Affected Public: Individuals, not-for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time Per Response: 3 hours.

Estimated Total Annual Burden Hours: 45,000.

Estimated Total Annual Cost to Public: \$0 (no capital expenditures).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 30, 1998.

Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-11923 Filed 5-4-98; 8:45 a.m.]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020498B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fisheries for Dolphin and Wahoo

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request that NMFS designate the South Atlantic Fishery Management Council to prepare a fishery management plan (FMP) and subsequent FMP amendments (amendments) for dolphin and wahoo; reopening of public comment period.

SUMMARY: On March 9, 1998, NMFS published a notice in the *Federal Register* advising of and requesting comments on the request of the South Atlantic Fishery Management Council (South Atlantic Council) to be designated by NMFS, under procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as the Regional Fishery Management Council (Council) to prepare an FMP and amendments for the fisheries for dolphin, *Coryphaena hippurus*, and

wahoo, *Acanthocybium solanderi*, throughout their range in the exclusive economic zone (EEZ) of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. NMFS is reopening the public comment period to afford the Gulf of Mexico Fishery Management Council (Gulf Council) and other members of the public more time to consider the South Atlantic Council's proposal.

DATES: The comment period reopens May 5, 1998; comments must be submitted by June 19, 1998.

ADDRESSES: Comments should be directed to Dr. Andrew J. Kemmerer, Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 813-570-5305.

SUPPLEMENTARY INFORMATION: At the request of the Gulf Council, NMFS reopens the public comment period and requests comments on the South Atlantic Council's request to be designated by NMFS, under Magnuson-Stevens Act procedures, as the Council to prepare an FMP and amendments for the fisheries for dolphin and wahoo throughout their range in the EEZ of the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. A notice previously published in the *Federal Register* (63 FR 11422, March 9, 1998) described the details of the South Atlantic Council's request and requested comments on that proposal through April 8, 1998. The Gulf Council has requested more time to more fully consider the issues and impacts of the proposal at its meeting during the week of May 11-15, 1998, in Destin, Florida. Reopening the public comment period will allow the Gulf Council the requested time to consider, develop, and submit to NMFS more specific and extensive comments on the proposal. By publishing this notice in the *Federal Register*, NMFS also affords other concerned or potentially impacted entities further opportunity for comment.

NMFS again requests public comments on the South Atlantic Council's proposal to be designated as the Council to prepare a new FMP to manage dolphin and wahoo throughout the Atlantic Ocean. Written comments received from both this and the previous notice will be reviewed and considered prior to NMFS' decision on this request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 28, 1998.

Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 98-11893 Filed 5-4-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042798E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Buyback Committee will hold a work session which is open to the public.

DATES: The meeting will begin on Tuesday, May 19, 1998, at 8:30 a.m., and will continue throughout the day, as necessary.

ADDRESSES: The meeting will be held at the Red Lion's Sacramento Inn, 1401 Arden Way, Sacramento, CA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to revise the current groundfish trawl permit buyback program document in preparation for the June Council meeting.

Although other issues not contained in this agenda may come before this Committee for discussion, according to the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Larry Six at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: April 28, 1998.

Richard W. Surdi,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 98-11892 Filed 5-4-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042898A]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Precious Corals Plan Team.

DATES: The meeting will be held on June 4, 1998, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the NMFS Honolulu Laboratory, 2570 Dole St., Honolulu, HI, Rm. 112; telephone: 808-943-1221.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION: The Precious Corals Plan Team will discuss and may make recommendations to the Council on the following agenda items: (1) the provisions of the Sustainable Fisheries Act pertaining to Essential Fish Habitat, Bycatch, Fishing Sectors, Fishing Communities, and Overfishing; (2) the use of remotely operated vehicles to harvest deep water precious corals; and (3) other issues as required.

Although other issues not contained in this agenda may come before this Plan Team for discussion, according to the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220

(voice) or 808-522-8226 (fax), at least 5 days prior to meeting date.

Dated: April 28, 1998.

Richard W. Surdi,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 98-11891 Filed 5-4-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Teleconference

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of meeting by teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference of the Executive Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. The public is being given less than 15 days notice of this meeting because the Committee is required to make a response to a Board contracting initiative within a limited time.

DATES: May 7, 1998.

TIME: 1:30-2 p.m. EDT.

LOCATION: Room 100, 80 F St., NW, Washington, DC 20208-7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208-7564. Tel.: (202) 219-2065; fax: (202) 219-1528; e-mail: Thelma.Leenhouts@ed.gov, or nerppb@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The teleconference is open to the public. The Executive Committee acts on behalf of the Board during the interim between full meetings of the

Board. The Executive Committee will approve the awarding of a contract for logistical support for panels being convened by the National Academy of Education under a previous contract with the Board.

A final agenda will be available from the Board office on May 4, 1998. Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208-7564.

Dated: April 30, 1998.

Eve M. Bither,

Executive Director.

[FR Doc. 98-11850 Filed 5-4-98; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Rocky Flats Environmental Technology Site; Notice of Intent To Solicit Competitive Application/Proposals for Financial Assistance

AGENCY: Rocky Flats Environmental Technology Site, Department of Energy.

ACTION: Notice of intent to solicit competitive applications/proposals for financial assistance.

SUMMARY: The Rocky Flats Environmental Technology Site (RFETS) of the Department of Energy (DOE) is entrusted to contribute to the welfare of the nation by providing the scientific foundation, technology, policy and institutional leadership necessary to achieve efficiency in energy use, diversity in energy sources, a more productive and competitive economy, improved environmental quality, and a secure National defense. RFETS intends to fund a series of grants in special emphasis programs to encourage programs to train Native American, African American, Hispanic American, Asian-Pacific American, Women and Disabled Students to pursue training in the fields of sciences and engineering; and to fund local community projects contributing to diversity-related programs.

DATES: Applications may be submitted at any time within 30 days from the date of this announcement. Applications received within 30 days from the date of this announcement, will be considered; applications received after that date may or may not be considered depending on the status of proposal review and selection.

ADDRESSES: Mail Applications To: Department of Energy, Rocky Flats Environmental Technology Site,

Contracts and Assets Management Division, PO Box 928, B460, Golden, Colorado 80402-0928.

FOR FURTHER INFORMATION CONTACT: Mary Dillon, Critique, Inc., Rocky Flats Field Office, (303) 966-3659, or Susan Cook (303) 966-5310 for application forms and additional information. Completed applications or proposals must be sent to the addresses heading.

SUPPLEMENTARY INFORMATION: There have been six (6) previous awards out of this program. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications/proposals. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications/proposals submitted in response to this notice.

Availability of Fiscal Year 1998 Funds

With this publication, DOE RFETS is announcing the availability of up to \$300,000 in grant funds for fiscal year 1998. RFETS anticipates that multiple grants will be made for a grand total not to exceed \$300,000. The awards will be made through a competitive process. Projects may cover a period of up to 3 years.

Restricted Eligibility

Eligible applicants for the purposes of funding under this notice include organizations residing in Colorado proposing to implement minority science and engineering projects in Colorado as described in the summary section of this announcement. Applicants are encouraged to propose project cost-sharing or sharing of in-kind services or resources. The awards will be made through a competitive process to organizations and institutions located in the State of Colorado. The Catalog of Federal Domestic Assistance (CFDA) number assigned to this program is 81.116.

Evaluation Criteria

Applications will be reviewed by a panel composed of Department of Energy RFETS representatives. Successful proposal(s) will be selected on the opinion of panel members of proposals most able to meet the objectives listed in the summary section of this announcement and best able to meet the needs of this office.

DOE RFETS hereby reserves the right to fund, in part or whole, any, all, or none of the proposals submitted in response to this request. All applicants will be notified in writing of the action taken on their applications. Applicants should allow approximately 90 days for DOE evaluation. The status of any application during the evaluation and

selection process will not be discussed with applicants. Unsuccessful applications will not be returned to the applicant.

Issued in Golden, Colorado, on April 22, 1998.

Clyde B. Railsback,

Contracting Officer.

[FR Doc. 98-11851 Filed 5-4-98; 8:45 am]

BILLING CODE 0450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98-363-000, CP98-364-000, and CP98-365-000]

Etowah LNG Company, L.L.C.; Notice of Application

April 29, 1998.

Take notice that on April 20, 1998, Etowah LNG Company, L.L.C. (Etowah), AmSouth-Sonat Tower, 1900 Fifth Avenue North, Birmingham, Alabama 35203, filed in Docket Nos. CP98-363-000, CP98-364-000, and CP98-365-000, applications pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for (1) a certificate of public convenience and necessity authorizing Etowah to construct and operate a new liquefied natural gas (LNG) storage facility and associated pipeline facilities in Polk County, Georgia, (2) a blanket certificate pursuant to Part 284 Subpart G of the Commission's regulations authorizing the storage of gas for others, and (3) a blanket certificate under Part 157 Subpart F of the Commission's regulations authorizing certain construction of facilities and abandonments, all as more fully set forth in application which is on file with the Commission and open to public inspection.

Etowah states that it is a limited liability corporation in which Southern Natural Gas Company (Southern) and AGL Peaking Services, Inc. (AGL Peaking) hold memberships.

Etowah says that the proposed facilities will consist of: one double wall metal tank capable of storing 2.5 Bcf of natural gas; a pretreatment and liquefaction system, a boil-off recompression system; a LNG trucking system; a vaporization and send out system; and associated control and hazard protection systems. In addition to the LNG facilities Etowah proposes to construct a 12.5 mile, 12.75-inch diameter pipeline and a meter station connecting the proposed LNG facility

with Southern's interstate pipeline in Polk County, Georgia and a meter station connecting the proposed LNG facility with a non-jurisdictional pipeline to be constructed by Atlanta Gas Light Company (AGLC). Etowah estimates that the proposed facilities will cost approximately \$91.1 million.

Etowah says that the proposed facility will be capable of liquefying 15 Mmcf per day, vaporizing 300 Mmcf per day, and delivering 20,000 gallons per hour through the truck loading facility. Etowah proposed to offer a 8.33 day peaking service under a single rate schedule as described in its pro-forma tariff. Storage customers would be allowed to deliver gas for liquefaction through the proposed interconnect with Southern and receive vaporized gas through either the Southern of AGLC interconnects.

Any person desiring to be heard or making any protest with reference to said application should on or before May 20, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order.

However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the

Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advise, it will be unnecessary for Etowah to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11810 Filed 5-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-371-000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

April 19, 1998.

Take notice that on April 23, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP98-371-000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the National Gas Act (18 CFR 157.205 and

157.212) for authorization to construct, own and operate a new point of delivery in Gilchrist County, Florida to accommodate a request for additional deliveries of natural gas to the State of Florida's Lancaster Correctional Facility. FGT makes such request under its blanket certificate issued in Docket No. CP-82-553-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, FGT proposes to construct, own and operate a new tap, electronic flow measurement equipment and approximately 100 feet of 2-inch connecting pipeline, to deliver natural gas to a new meter station to be constructed, owned, and operated by TECO Peoples Gas Inc. (TECO). It is stated that the proposed new delivery point, PGS-Trenton, will be added to the existing FTS-1 Service Agreement between FGT and the State of Florida.

The PGS-Trenton point is slated to receive up to 300 MMBtu per day at line pressure. It is averred that the new delivery point will not increase the contractual gas quantities nor increase the current certificated level of service under the existing FTS-1 Service Agreement.

FGT estimates it will cost approximately \$70,000 to construct the requested facilities, and states that the cost will be reimbursed by the State of Florida. It is stated that the end-use of the gas will be for industrial purposes.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11811 Filed 5-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-374-000]

Koch Gateway Pipeline, L.P. and Koch Gateway Pipeline Company; Notice of Application

April 29, 1998.

Take notice that on April 23, 1998 Koch Gateway Pipeline, L.P. (Koch Gateway) and Koch Gateway Pipeline Company (KGPC) (Applicants), both at 600 Travis Street, Houston, Texas, 77002, filed in the above docket, pursuant to Sections 7(c) and (b) of the Natural Gas Act, a joint application for a certificate of public convenience and necessity and for an order granting permission and approval by August 1, 1998 to transfer facilities and services. By this application, Koch Gateway requests a certificate of public convenience and necessity authorizing it to acquire the facilities and perform the services of KGPC, and to gather, transport and store natural gas in interstate commerce in the same manner as currently authorized and conducted by KGPC in accordance with the terms of existing certificates of public convenience and necessity issued to KGPC.

Further, KGPC requests companion authority to transfer all of its assets, operations, and services to Koch Gateway. In addition, Koch Gateway requests that it be substituted for KGPC in all pending proceedings in which KGPC is a party, all as more fully set forth in the Application. The Joint Application requests that authorizations be made effective as of August 1, 1998, the first day of operation after the jurisdictional assets are conveyed to Koch Gateway.

Applicants state that a Partnership Agreement was entered into whereby Koch Gateway was formed. The Partnership Agreement is attached to the application. The partnership is composed of two corporate partners, KGPC as the general partner and Koch Energy, Inc. as the Limited Partner. Under the partnership agreement, and upon Commission approval, KGPC will transfer its assets, facilities, operations, and services to the partnership.

Under the partnership agreement KGPC as general partner will continue the operations of the pipeline system in an uninterrupted manner. KGPC seeks companion authority to transfer, pursuant to Section 7(b), its jurisdictional facilities and operations to Koch Gateway. Further, Koch Gateway will adopt the tariff of KGPC that is on

file with the Commission and in effect on the date of the approval of this Application.

Applicants state that the sole purpose of this application is to change the legal structure of the natural gas company from a corporation to a partnership so as to provide the natural gas company with additional financial flexibility in operating its business and will not adversely impact any of the rates of KGPC's customers or any of the services they receive on the pipeline.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before May 20, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch Gateway or Koch Gateway KGPC to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11812 Filed 5-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-194-000]

NorAm Gas Transmission Company; Notice of Proposed Change in FERC Gas Tariff

April 20, 1998.

Take notice that on April 24, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC GAS Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective May 24, 1998:

Title Sheet

First Revised Sheet No. 2
Third Revised Sheet No. 239
First Revised Sheet No. 239A
Third Revised Sheet No. 324
First Revised Sheet No. 343

NGT states that the purpose of this filing is to reflect ministerial changes resulting from the merger of NGT's parent with Houston Industries Incorporated and the relocation of NGT's Houston corporate offices, as well as the additional segregation of NGT's marketing affiliate offices as described in Section 17 of the General Terms and Conditions of NGT's tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11818 Filed 5-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-193-000]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 29, 1998.

Take notice that on April 24, 1998, Shell Gas Pipeline Company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Tariff Sheet Nos. 245, 256, 267, 293, 294, 304 and 318, to become effective May 24, 1998.

SGPC states that the purpose of this filing is to reflect an address and telephone change for the corporate office of SGPC.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11817 Filed 5-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP92-236-013]

Williston Basin Interstate Pipeline Company; Notice of Reconciliation Filing and Refund Report

April 29, 1998.

Take notice that on April 24, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Commission, its Rate Schedule IT-1 Revenue Crediting Reconciliation Filing and Nomination Variance Credits Report made as a result of the Commission's Letter Order issued March 25, 1998, in the above referenced dockets and Subsections 45.1.2 and

15.13.4 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Williston Basin states that in accordance with Subsection 45.1.2 of the General Terms and Conditions of its Tariff, it is submitting its reconciliation filing comparing annual revenues received for Rate Schedule IT-1 transportation service, based on the final approved Rate Schedule IT-1 rates in Docket Nos. RP92-236-000, *et al.*, to the annual costs approved to be allocated to Rate Schedule IT-1 transportation service for the applicable reporting periods covered by such dockets.

Williston Basin also states that on April 24, 1998, pursuant to Subsection 15.13.4 of the General Terms and Conditions of its Tariff, refunds related to calculated nomination variance charges incurred by Williston Basin's affiliates for the period November 1, 1993 through December 31, 1995 were made to all qualified shippers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 5, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11816 Filed 5-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

April 29, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- Type of Application: Amendment of License.
- Project No.: 184-056.
- Date Filed: 04/15/98 and supplemented 04/22/98.
- Applicant: Pacific Gas & Electric Co.
- Name of Project: El Dorado Power Project.

f. Location: On the South Fork American River, El Dorado, Amador, and Alpine Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Terry Morford, Manager, Hydro Generation Department, Pacific Gas & Electric Co., P.O. Box 770000, Mail Code N11C, San Francisco, CA 94177, (415) 973-7145.

i. FERC Contact: J.W. Flint, (202) 219-2667.

j. Comment Date: June 10, 1998.

k. Description Amendment: PG&E proposes to delete a non-jurisdictional transmission line and its associated facilities from their license. Studies of PG&E's transmission system shows that the line proposed for deletion carries energy from other electric generating sources and is no longer a primary line. Removing this line from the project license will not result in any physical change to these transmission facilities or to their operation.

The Commission is presently processing an application to transfer the license to the El Dorado Irrigation District. We request comments regarding primary/non-primary status of this transmission line under section 3(11) of the Federal Power Act and Subpart H, Section 4.3 of our regulations.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11813 Filed 5-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

April 29, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 184-057.

c. *Date filed:* April 17, 1998.

d. *Applicants:* Pacific Gas and Electric Company and El Dorado Irrigation District.

e. *Name of Project:* El Dorado.

f. *Location:* On the South Fork American River, in El Dorado, Alpine, and Amador Counties, California, partially within the Eldorado National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:* Ms. Annette Faraglia, Pacific Gas and Electric Company, 77 Beale Street, Mail Code: B30A, P.O. Box 7442, San Francisco, CA 94120, (415) 973-7145. Mr. William T. Hetland, El Dorado Irrigation District, 2890 Mosquito Road, Placerville, CA 95667, (916) 622-4513.

i. *FERC Contact:* James Hunter, (202) 219-2839.

j. *Comment Date:* June 10, 1998.

k. *Description of Transfer:* Transfer of the license for this project is being sought in connection with the sale of the project from PG&E to EID. The requested transfer does not include 1111 miles of transmission line that PG&E seeks to delete from the project in an amendment filed April 14, 1998.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11814 Filed 5-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

April 29, 1998.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2851-012.

c. *Date Filed:* March 26, 1998.

d. *Applicants:* The Fonda Group, Inc. and Cellu-Tissue Corporation-Natural Dam.

e. *Name of Project:* Natural Dam Hydroelectric Project.

f. *Location:* On the Oswegatchie River, Village of Gouverneur, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791 (a)-825(r).

h. *Contacts:* Mr. Harvey L. Friedman, The Fonda Group, Inc., 115 Stevens Avenue, Valhalla, NY 10593-1252, 1-(800) 723-6876 Ex. 226, or (914) 747-2600.

Edward P. Foote, President, Cellu-Tissue Corporation-Natural Dam, Two Forbes Street, East Hartford, CT 06018, (806) 289-7496.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 219-2671.

j. *Comment Date:* June 10, 1998.

k. *Description of the Application:* The Licensee, jointly and severally with Cellu-Tissue Corporation-Natural Dam (CTC), requests Commission approval to transfer the project license to CTC.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E.,

Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11815 Filed 5-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting

April 29, 1998.

Take notice that on May 28-29, 1998, the Commercial Practices Working Group (CPWG), will conduct its monthly meeting at the Commission's offices at 888 First Street, NE., Washington, DC 20426. The CPWG is a voluntary industry group with a diverse membership that has made recommendations to the Commission on the Open Access Same-time Information System (OASIS) and related matters. It is expected that the CPWG will discuss OASIS and reliability-related issues at the meetings. The meetings will be open to interested participants and the public.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-11846 Filed 5-4-98; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6009-7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Regulation of Fuels and Fuel Additives, Gasoline Volatility Rule ICR Renewal

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Regulation of Fuels and Fuel additives, Gasoline Volatility Rule; EPA ICR # 1367.05; OMB No. 2060-0178; expires 8/31/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 6, 1998.

ADDRESSES: All comments concerning this Notice should be addressed to Ervin Pickell, Western Field Office, U.S. Environmental Protection Agency, 12345 West Alameda Parkway, Suite 214, Denver, Colorado 80228. Copies of the ICR can be obtained free of charge by contacting Ervin Pickell as provided below.

FOR FURTHER INFORMATION CONTACT:

Ervin Pickell, Telephone: (303) 969-6485; Facsimile number: (303) 969-6490; E-MAIL:

pickell.erv@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are distributors of gasoline containing ethanol between May 1 and September 15 each year.

Title: Regulation of Fuels and Fuel Additives, Gasoline Volatility Rule (OMB Control number 2060-0178; EPA ICR # 1367.05.) expiring 08/31/98.

Abstract: Section 211(h) of the Clean Air Act (Act), as amended in 1990, required the Administrator to promulgate regulations prohibiting the supply or selling of gasoline exceeding certain volatility standards during the high ozone season. The Act provides that the Reid vapor pressure (RVP) standard for gasoline not containing 10% ethanol is one pound per square inch (psi) greater than the applicable RVP standard for gasoline not containing 10% ethanol. It is important for parties receiving gasoline during the high ozone season to know whether it contains ethanol and the ethanol concentration. Otherwise, gasoline containing 10% ethanol may be commingled with gasoline not containing ethanol, resulting in a RVP measurement greater than the non-ethanol standard, but not eligible for the 10% ethanol one psi waiver.

Therefore, under 40 CFR 80.27(d)(3) gasoline invoices, loading tickets, bills of lading and delivery tickets for gasoline containing ethanol must state that the gasoline contains ethanol and the ethanol percentage. There is no retention requirement for these

documents and reporting to EPA is not required. In addition, this requirement may be met using pre-printed or computer-generated documents.

This information is necessary to inform gasoline transferees of which gasoline contains ethanol and the specific ethanol content. The presence of this information on gasoline transfer documents reduces the frequency of gasoline testing that otherwise would be necessary to assure compliance with the RVP standards.

The recordkeeping requirement is mandatory for this limited category of gasoline transfers and is authorized by section 211 of the Act 42 U.S.C. 7545, section 114 of the Act, 42 U.S.C. 7414 and section 208 of the Act, 42 U.S.C. 7542 and 40 CFR 80.29. Confidentiality provisions are found at 40 CFR part 2. The requirement, which has been in effect for over 5 years, imposes almost no measurable annual burden on the affected parties. Startup costs have been completed. The proposed ICR utilizes assumptions that are the same as the previous ICR.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

In addition to this information, you may obtain a copy of the draft ICR supporting statement as provided above.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and

(iii) Enhance the quality, utility, and clarity of the information to be collected.

Burden Statement: For gasoline distributors the average hourly burden per year per respondent is about 0.15 hour (an average of about 2 seconds per transaction; for most distributors there is no measurable burden on a per document basis) for the recordkeeping requirement associated with the rule. It is a mandatory requirement for those transactions to which it applies. There are about 8,792 entities that distribute ethanol gasoline. The frequency of response is estimated to be about 307

loads of fuel transferred per year per distributor. Total burden for all distributors is about 1,319 hours per year. There are no annual operating costs, purchased service costs or capital costs. Startup costs have been completed.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 23, 1998.
Sylvia K. Lowrance,
Principal Deputy Assistant Administrator,
Office of Enforcement and Compliance
Assurance.

[FR Doc. 98-11875 Filed 5-4-98; 8:45 am]
BILLING CODE 6560-60-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6009-6]

**Agency Information Collection
Activities: Renewal Comment Request;
Acid Rain Program**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Acid Rain Program ICR, EPA ICR Number: 1633.12, OMB Control Number: 2060-0258, Expiration Date: January 31, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 6, 1998.

ADDRESSES: The current ICR is available on the internet at www.epa.gov/acidrain. For further information contact

Kenon Smith (202-564-9164). Send written comments (in duplicate) regarding these burden estimates or any other aspect of this information collection, including suggestions for reducing this burden, to Kenon Smith, 401 M Street, SW., 6204J, Washington, DC 20460 using regular or certified mail, or Kenon Smith, USEPA (6204J), 501 3rd Street, NW., Washington, DC 20001 using overnight mail.

FOR FURTHER INFORMATION CONTACT: Contact Kenon Smith at (202-564-9164) or (smith.kenon@epa.gov).

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which participate in the Acid Rain Program.

Title: Acid Rain Program ICR; (OMB Control No. 2060-0258; EPA ICR No. 1633.12) expiring 1/31/1999.

Abstract: The Acid Rain Program was established under Title IV of the 1990 Clean Air Act Amendments. The program calls for major reductions of the pollutants that cause acid rain while establishing a new approach to environmental management. This information collection is necessary to implement the Acid Rain Program. It includes burden hours associated with developing and modifying permits, transferring allowances, obtaining allowances from the conservation and renewable energy reserve and small diesel refinery program, monitoring emissions, participating in the annual auctions, completing annual compliance certifications, participating in the Opt-in program, and complying with Nox permitting requirements. Most of this information collection is mandatory under 40 CFR parts 72-78. Some parts of it are voluntary or to obtain a benefit, such as participation in the annual auctions under 40 CFR part 73, subpart E. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Ch. 15. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 273 hours per response and 3,344 hours per respondent. The annual operation and maintenance (O&M) costs are an estimated \$61,431 per respondent. All the O&M costs and most of the burden hours are associated with the collection and reporting of continuous emission data, which is the foundation for the allowance trading system. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 849.

Estimated Number of Respondents: 849.

Frequency of Response: Varies by task.

Estimated Total Annual Hour Burden: 2,839,120 hours.

Estimated Total Annualized Cost Burden (All O&M): \$44,660,000.

Dated: April 28, 1998.

Brian J. McLean,
Director, Acid Rain Division.

[FR Doc. 98-11876 Filed 5-4-98; 8:45 am]
BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6009-8]

**National Ambient Air Quality
Standards for Sulfur Oxides (Sulfur
Dioxide); Intervention Level Program**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is announcing today the following actions:

(1) The schedule for responding to the remand of the final decision on the national ambient air quality standards (NAAQS) for sulfur dioxide (SO₂) published on May 22, 1996, and any final action on the proposed intervention level program (ILP) for the reduction of SO₂ emissions published on January 2, 1997.

(2) The interim actions EPA will take to address 5-minute peak SO₂ levels that may pose risk to sensitive asthmatic individuals.

(3) The solicitation of comments and associated information and analyses on 5-minute peak SO₂ concentrations in the ambient air, with emphasis on the characterization of the likelihood of exposure of sensitive asthmatic individuals to peak SO₂ concentrations at 0.6 parts per million (ppm) and above during exercise.

DATES: (1) The EPA will propose its response to the SO₂ NAAQS remand for public comment in the summer of 1999 and take final action no later than December 2000. The EPA will take any final action on the proposed ILP, consistent with its final action on the SO₂ NAAQS, no later than December 2000.

(2) In the interim, until such final actions are taken, EPA will now begin taking actions to address known problem areas with high 5-minute peak SO₂ levels that may pose risk to sensitive asthmatic individuals.

(3) Comments and associated information and analyses should be submitted on or before November 1, 1998.

ADDRESSES: Comments and associated information and analyses should be submitted to Ms. Susan Lyon Stone, U.S. Environmental Protection Agency, MD-15, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Lyon Stone at the above address or telephone (919) 541-1146 on matters pertaining to 5-minute peak SO₂ levels and the SO₂ NAAQS remand. For information on the interim actions EPA plans to take to address 5-minute peak SO₂ levels and the ILP, contact Mr. Eric Crump at the same address or telephone (919) 541-4719.

SUPPLEMENTARY INFORMATION:

On May 22, 1996, EPA announced its final decision that revisions of the SO₂ NAAQS were not appropriate (61 FR 25566). At issue in making that decision was whether a new 5-minute NAAQS was appropriate to protect sensitive asthmatic individuals from the risk posed by exposure to 5-minute SO₂

levels of 0.6 ppm or above. Given the available health effects information; information as to the localized, infrequent, and site-specific nature of risk involved; and the advice of the Clean Air Scientific Advisory Committee (CASAC), the Administrator concluded that short-term peak concentrations of SO₂ do not constitute the type of ubiquitous public health problem for which the establishment of a NAAQS would be appropriate.

Because of the localized, infrequent, and site-specific nature of the risk, as characterized in its final decision notice (61 FR 25575-25576), the Administrator further concluded that the residual health risk posed by short-term SO₂ concentrations remaining after attainment of the current SO₂ NAAQS are most appropriately addressed by the States. It was the Administrator's judgment that the States are in a far better position than EPA to assess the highly localized and site-specific factors that determine whether occurrences of 5-minute peak SO₂ concentrations in a given area pose a significant risk to sensitive asthmatic individuals in the local population, and if so, to fashion an appropriate remedial response. In light of its characterization of the nature of 5-minute peak SO₂ concentrations and the likelihood that these peaks would result in exposure conditions that could cause significant health effects in sensitive asthmatic individuals during exercise, EPA also announced that it intended to propose a new program and associated guidance to assist States in determining whether 5-minute peak concentrations of SO₂ in the range of 0.6 ppm to 2.0 ppm posed a significant health risk to sensitive asthmatic individuals in the local population, and if so, to identify appropriate remedial responses.

Consistent with its final SO₂ NAAQS decision, EPA subsequently proposed for comment the intervention level program (ILP) for the reduction of SO₂ emissions on January 2, 1997 (62 FR 210). This proposed ILP was intended to supplement the protection provided by the existing primary and secondary SO₂ NAAQS.

A key element of the proposed ILP was the establishment (to be codified in part 51 of the CFR) of a concern level of 0.6 ppm, 5-minute average SO₂ concentration, and an endangerment level of 2.0 ppm, 5-minute average. The proposed ILP would require that State and tribal plans contain the authority to take whatever action is necessary to prevent further exceedances of such concern and endangerment levels when the State/tribe determines that intervention is appropriate. The proposed ILP includes a discussion of

the factors that the State/tribe should consider in making such determinations, including the magnitude and frequency of peak concentrations exceeding these levels, the history and nature of any citizen complaints, available information on potential exposure of sensitive asthmatic individuals, and information about the source(s) causing the peak SO₂ concentrations. Based on the above factors, the proposed ILP provides for flexibility for the State/tribe to determine the nature and degree of intervention that is warranted in any area. The States/tribes are also given the flexibility in the proposed ILP to relocate existing monitors to areas where 5-minute peak concentrations may be of concern through changes to SO₂ monitoring requirements. The proposed ILP recognizes that authority to take such actions, when justified on a case-by-case basis, currently exists under section 303 of the Clean Air Act. Building upon this authority, the proposed ILP codifies the health benchmarks for such actions (i.e., the concern and endangerment levels) and provides guidance to assist States/tribes in identifying and taking appropriate actions.

SO₂ NAAQS Remand

In July 1996, the American Lung Association and the Environmental Defense Fund petitioned the District of Columbia Court of Appeals for judicial review of EPA's decision not to establish a new 5-minute NAAQS. On January 30, 1998, the court issued a decision in that case *American Lung Association v. Browner*, No. 96-1251 (D.C. Cir.). The court found that EPA failed to provide an adequate explanation for its determination that no revision to the SO₂ NAAQS was appropriate. As a result, the court remanded the case to permit EPA to more fully explain its decision not to set a standard for short-term peak SO₂ levels of 0.6 ppm or greater.

Schedule for EPA Final Actions

In remanding the case to EPA, the court did not establish a deadline for EPA to take action consistent with the remand. In lieu of pursuing further litigation to seek a court-ordered schedule for EPA's response to the SO₂ NAAQS remand, the petitioners in the case initiated discussions with EPA to establish such a schedule for EPA's response. Based on these discussions, it was agreed that EPA would take final action no later than December 2000. In order to meet this date for final action, EPA intends to propose for public comment its response to the remand by

the summer of 1999. In conjunction with taking final action on its response to the SO₂ NAAQS remand, EPA also intends to take any final action on the ILP no later than December 2000. In so doing, EPA will draw upon its response to the remand on the SO₂ NAAQS decision so as to ensure consistency between these actions.

Interim Actions

Between now and when final action on the SO₂ NAAQS remand and the ILP is taken, EPA intends to work with States/tribes with known areas of high 5-minute peak SO₂ concentrations to undertake a number of actions. These actions include the following: determining whether the existing SO₂ NAAQS and State Implementation Plan (SIP) requirements are being met in such areas; taking regulatory action in such areas where appropriate (e.g., SIP calls); and initiating enforcement review/action to ensure SIP requirements are met. The EPA also plans to issue monitoring and other guidance to States/tribes/regions to assist them in identifying and addressing high 5-minute peak problems.

Solicitation of Information on 5-Minute Peak SO₂ Concentrations

To supplement its current information on 5-minute peak SO₂ concentrations and exposures of sensitive asthmatic individuals to peak levels of concern, EPA is soliciting comments and analyses on such 5-minute peak SO₂ concentrations. The EPA will consider this information in the context of the interim actions described above and in its response to the remand and in its final ILP decision. More specifically, EPA solicits information and analyses on the following: sources or source types and the nature of events that are most likely to give rise to short-term peak SO₂ levels; the magnitude and frequency of such peaks; the time of day of the occurrence of such peaks; meteorological conditions in the area in which such peaks occur; the density of the population near the source(s) involved; and the frequency with which asthmatic individuals would likely be exposed to peak SO₂ concentrations at 0.60 ppm and above while at elevated ventilation rates (i.e., during exercise).

Dated: April 29, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98-11874 Filed 5-4-98; 8:45 am]

BILLING CODE 5590-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6009-4]

Environmental Laboratory Advisory Board, Meeting Date and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Protection Agency (EPA) will convene an open meeting of the Environmental Laboratory Advisory Board (ELAB) on June 4, 1998, from 2 p.m. to 5 p.m. This meeting will be conducted by teleconference. The public is invited to join Ms. Ramona Trovato in Room 911, West Tower, Waterside Mall, 401 M Street, SW., Washington, DC.

The agenda will include discussion on the newly established working group on Third Party Assessors; Consensus Position from EPA's Environmental Monitoring Management Council; Continuation of ELAB vs. former NELAC Coordination Committee; Conflict-of-Interest Issues with respect to the Accreditation Authorities; Training of Assessors; Method Specific Checklists; Simultaneous Approval of Laboratories; and the Agenda for July 1, 1998, meeting at NELAC IV.

The public is encouraged to attend. Time will be allotted for public comment. Written comments are encouraged and should be directed to Ms. Jeanne Mourrain; Designated Federal Officer; USEPA; NCERQA (MD-75); Research Triangle Park, NC 27711. If questions arise, please contact Ms. Mourrain at 919/541-1120, fax 919/541-4261, or e-mail mourrain.jeanne@epamail.epa.gov.

Dated: April 24, 1998.

Nancy W. Wentworth,

Director, Quality Assurance Division.

[FR Doc. 98-11877 Filed 5-4-98; 8:45 am]

BILLING CODE 5590-50-P

ENVIRONMENTAL PROTECTION AGENCY

Joint EPA/State Agreement To Pursue Regulatory Innovation

[FRL-6008-7]

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Joint EPA/State Innovation Agreement.

SUMMARY: The U.S. Environmental Protection Agency (EPA) and senior State environmental officials recently signed an agreement entitled Joint EPA/

State Agreement to Pursue Regulatory Innovation (hereafter "Innovations Agreement"). The purpose of the Innovations Agreement is to improve environmental protection in the United States, improve EPA/State environmental management practices, and provide timely decision-making on good ideas. These goals will be achieved through innovation proposals by States, with the intent that many successful innovations will lead to system-wide improvements in environmental protection.

The Innovations Agreement embodies a set of general principles and a process for EPA/State innovation activities that includes:

- Statements of purpose and scope of the agreement;
- Over-arching principles that will govern joint EPA/State regulatory innovation activities;
- The process EPA and the States will use to identify good ideas, including both the continuation of existing State/EPA interactions to start innovation projects, and the establishment of a new mechanism for making decisions on innovative proposals that do not fit into ongoing reinvention programs; and
- Guidelines for how EPA and the States will evaluate the success of innovation activities carried out under this agreement.

This Innovations Agreement builds on the many reinvention efforts that are underway in the States and EPA. It is intended to ensure joint decision-making, timely review, broad public involvement, and continued progress in fostering and implementing ideas that are good for our environment and the people we serve.

ADDRESSES: An electronic version of the Innovations Agreement is available on EPA's Office of Reinvention internet home page at <http://www.epa.gov/reinvent>. Interested parties can obtain a single copy of the report by contacting Louise McLaurin (phone 202-260-4261 or e-mail mclaurin.louise@epamail.epa.gov).

FOR FURTHER INFORMATION CONTACT: For questions on the joint EPA/State Innovations Agreement, please contact John Glenn, U.S. Environmental Protection Agency, Office of Reinvention, (1803), 401 M Street, S.W., Washington, DC, 20460, phone 202-260-5029, e-mail glenn.john@epamail.epa.gov; or Bruce Brott, Minnesota Pollution Control Agency, phone 612-297-8380, e-mail bruce.brott@pca.state.mn.us.

SUPPLEMENTARY INFORMATION: To find new, better, and more efficient and

effective ways to improve environmental protection, the Environmental Council of the States (ECOS) and EPA Administrator Carol Browner formed a Task Group to develop a joint agreement on EPA/State regulatory innovation. The Task Group developed the draft Joint EPA/State Agreement to Pursue Regulatory Innovation ("Innovations Agreement"), which was published for public comment last fall in the *Federal Register* (62 FR 56182-89; October 29, 1997). A balanced set of eleven comments with 31 signatories representing industry, environmental interest groups, and government were submitted. All comments were considered in preparing the final draft of the Innovations Agreement. At the ECOS meeting on March 25, 1998, the State officials present voted unanimously to approve the Innovations Agreement. In late April, EPA and senior State environmental officials signed the joint Agreement. The full text of the Innovations Agreement and the EPA/State Response to Comments follow.

Part 1

Joint EPA/State Agreement To Pursue Regulatory Innovation

" * * * We must encourage innovation by providing flexibility with an industry-by-industry, place-by-place approach to achieving standards. * * *. But we will require accountability that such standards be met. Rather than focusing on pollutant-by-pollutant approaches, attention must shift to integrated strategies for whole facilities, whole economic sectors, and whole communities." [Excerpt from President Clinton's "Reinventing Environmental Regulation," March 16, 1995]

The U.S. Environmental Protection Agency and senior State environmental officials (hereafter referred to as "States") agree on the need to experiment with new approaches to improve our nation's environment. These new approaches can help us identify cleaner, cheaper, smarter ways to ensure that all Americans enjoy a clean environment and healthy ecosystems. Through this joint commitment, EPA and the States agree to encourage, evaluate, implement, and disseminate ideas that seek better ways of achieving our environmental goals. This agreement presumes that EPA and the States will find ways to help good ideas succeed, and that joint EPA and State efforts to promote and test new ideas will result in the maximum benefit to the American people and their environment.

Two years ago, EPA and the States entered into an historic agreement to

establish the National Environmental Performance Partnership System (NEPPS). That agreement recognized that we have achieved significant progress since environmental protection programs were created more than 25 years ago. Yet to meet today's new challenges, we agreed that States and EPA must manage for environmental results, increase public involvement, and use environmental indicators to track our progress. We agreed that States and EPA must become true partners in implementing federal programs, and that different State programs need different levels of federal involvement.

This new partnership creates an environment in which State and local regulatory innovations can, and should, flourish. As the primary, front-line delivery agent for environmental programs, States are a natural laboratory for testing new ideas. State and local environmental professionals are closest to environmental problems and communities, and can often develop the most practical solutions. These professionals should be encouraged to seek innovative solutions that may not fit within the traditional approaches. We agree that our efforts to promote innovation must, in the end, be directed toward achieving our public health and environmental goals in a more efficient or effective way.

EPA also seeks to promote regulatory innovations at all levels. This agreement complements, but does not supplant, other national or State efforts to develop regulatory innovations. Its purposes are to: improve environmental protection in the United States; to improve EPA/State environmental management practices; and to provide timely decision-making on good ideas.

States and EPA agree that the following principles should guide us as we develop, test and implement regulatory innovations:

Experimentation: Innovation involves change, new ideas, experimentation and some risk of failure. Experiments that will help us achieve environmental goals in better ways are worth pursuing when success is clearly defined, costs are reasonable, and environmental and public health protections are maintained.

Environmental Performance: Innovations must seek more efficient and/or effective ways to achieve our environmental and programmatic goals, with the objective of achieving a cleaner, healthier environment and promoting sustainable ecosystems.

Smarter Approaches: To reinvent environmental regulation, regulators should seek creative ways to remedy environmental problems and improve

the environmental protection system, and be receptive to innovative, common sense approaches.

Stakeholder Involvement: Effective stakeholder involvement produces better innovation projects and catalyzes public support for new approaches. Stakeholders must have an opportunity for meaningful involvement in the design and evaluation of innovations. Stakeholders may include other State/local government agencies, the regulated community, citizen organizations, environmental groups, and individual members of the public. Stakeholder involvement should be appropriate to the type and complexity of the innovation proposal.

Measuring and Verifying Results: Innovations must be based on agreed-upon goals and objectives with results that can be reliably measured in order to enable regulators and stakeholders to monitor progress, analyze results, and respond appropriately.

Accountability/Enforcement: For innovations that can be implemented within the current regulatory framework, current systems of accountability and mechanisms of enforcement remain in place. For innovations that involve some degree of regulatory flexibility, innovators must be accountable to the public, both for alternative regulatory requirements that replace existing regulations and for meeting commitments that go beyond compliance with current requirements. Regulators will reserve full authority to enforce alternative regulatory requirements to ensure that public health and environmental protections are maintained, and must be willing to explore new approaches to establish accountability for beyond-compliance commitments.

State-EPA Partnership: The States and EPA will promote innovations at all levels to increase the efficiency and effectiveness of environmental programs. We must work together in the design, testing, evaluation and implementation of innovative ideas and programs, utilizing each other's strengths to full advantage.

EPA agrees to establish a process that ensures timely review and decision-making on State innovation proposals based on implementation of the above seven principles. The States agree to consult early with EPA, to develop proposals consistent with the above principles, and to involve stakeholders. EPA and the States agree on the need for a clearinghouse of regulatory innovations so that promising ideas can be shared across state lines and within EPA.

We agree that the principles and process described in this agreement should be open to continual improvement. As part of ongoing review and evaluation, EPA and the States agree to evaluate the need to further institutionalize the broad principles and process to help future innovations succeed.

Through this agreement, as detailed in Part 2, States and EPA are committed to work together and with all stakeholders to apply the lessons learned from successful innovations in creating the best possible system to achieve greater environmental protection at a reasonable cost.

We agree to encourage innovation that will prepare us for meeting our environmental challenges well into the 21st century.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

Robert C. Shinn, Jr.,

Commissioner, New Jersey Department of Environmental Protection, President of ECOS.

Fred Hansen,

Deputy Administrator, U.S. Environmental Protection Agency.

Robert W. Varney,

Commissioner, New Hampshire Department of Environmental Services, Vice President of ECOS.

J. Charles Fox,

Associate Administrator for Reinvention, U.S. Environmental Protection Agency.

Peder Larson,

Commissioner, Minnesota Pollution Control Agency, and Co-Chair, ECOS Regulatory Innovations Task Group.

Randall Mathis,

Commissioner, Arkansas Department of Pollution Control and Ecology, and Co-Chair, ECOS Regulatory Innovations Task Group.

Dated: April 1998.

Part 2

I. Overview of This Agreement

This agreement embodies a set of general principles and a process for EPA/State innovation activities. This agreement includes:

- Statements of purpose and scope of the agreement;
- Over-arching principles that will govern joint EPA/State regulatory innovation activities;
- The process EPA and the States will use to identify good ideas, including both the continuation of existing State/EPA interactions to start innovation projects, and the establishment of a new mechanism for making decisions on innovative proposals that do not fit into ongoing reinvention programs; and

—Guidelines for how EPA and the States will evaluate the success of innovation activities carried out under this agreement.

This agreement builds on the many reinvention efforts that are underway in the States and EPA. It is intended to ensure joint decision-making, timely review, broad public involvement, and continued progress in fostering and implementing ideas that are good for our environment and the people we serve.

II. Purpose and Scope of the Agreement

A. Purpose

The Administrator of the U.S. Environmental Protection Agency (EPA) and senior State environmental officials agree to three purposes for this effort: to improve environmental protection in the United States; to improve EPA/State environmental management practices; and to provide timely decision-making on good ideas. These purposes will be achieved through State proposals for innovation, with the intent that many successful innovations will lead to system-wide improvements in environmental protection.

1. Improved Environmental Protection

The Administrator of the U.S. Environmental Protection Agency (EPA) and senior State environmental officials agree that the States and EPA need to encourage, seek out, and try innovative approaches to improve our nation's environment. These innovative approaches can offer mechanisms that are more cost-effective, less adversarial and contentious, and have a better environmental impact. While we have made significant progress in environmental protection, much remains to be done and no backsliding can be permitted. Innovative approaches offer us tools to improve current environmental protection programs and to tackle the environmental problems of the future.

Innovation can support sustainable development and continuous environmental improvement by offering new approaches that harmonize our progress toward environmental, economic, and societal goals. Some innovations may address only one of these goals. Innovation proposals that address more than one of these goals are desirable. For example, innovations which facilitate a transition to pollution prevention and product stewardship as primary methods of achieving environmental goals can also have significant economic or societal benefits. To support sustainable development and continuous

environmental improvement, innovations should utilize pollution prevention methods rather than pollution control whenever possible.

2. Improved EPA/State Environmental Management Practices

Through this agreement, EPA and the States will test and implement innovative approaches that lead to improved environmental programs. This agreement is consistent with the concepts embodied in the National Environmental Performance Partnership System (NEPPS). In fact, NEPPS was established, in part, to encourage innovative approaches by States, consistent with agreed-upon environmental goals and indicators. The agreement recognizes that states and local governments are natural laboratories for testing new ideas and that EPA has an important role in promoting innovation at all levels, while continuing to ensure that the States provide fundamental public health and environmental protection. This agreement identifies how we will work together to identify and promote innovative ideas and better ways of doing business. It is intended to help us communicate and evaluate such ideas and to encourage joint decision-making on how such innovations can be fostered, designed and implemented.

3. Timely Decision-Making on Good Ideas

Finding better ways to accomplish our environmental goals is part of the everyday practice of good government. Current processes through which many successful State innovations have been carried out should continue. We recognize that the most challenging regulatory innovation proposals have been difficult to address. This agreement establishes an optional avenue for prompt consideration and evaluation of innovation proposals.

EPA and States may conclude that some successful regulatory innovation projects demonstrate that changes in EPA regulations, policies, guidance, or interpretations are needed to improve the nation's environmental protection system. Where such changes can be made under existing law, EPA will initiate the process for making the changes—following applicable procedures. EPA and States may also initiate policy discussions on potential statutory changes that may be needed to enable nation-wide adoption of innovative approaches.

B. Scope of the Agreement

As used in this agreement, "regulatory innovation" is a broad concept. It

encompasses the process of proposing, testing, evaluating, refining and sharing innovative approaches to environmental regulation in order to achieve national, regional, state, tribal, and local environmental objectives. Regulatory innovations should be more efficient and/or provide greater environmental protection than current approaches, foster cooperation, and include opportunities for strong stakeholder involvement.

Many types of innovations are possible, and potential innovations will vary in scope, complexity, ease of implementation, environmental benefits, and other characteristics. At this point in time, it is difficult to design a single system or process that is appropriate for all potential innovations. Innovations should be accomplished through the normal course of business whenever possible. This agreement provides a clear pathway for innovative proposals that need extra attention or are too complex to be handled through normal channels. Proposals that are less complex can be implemented more quickly, leading to early success, while more difficult projects will likely need more analysis and stakeholder participation. This agreement builds on and complements other innovation activities, but is not intended to replace them.

This agreement signals the commitment of EPA and State environmental agencies to work together on innovations. It does not create any legal obligations for EPA or the States, and does not alter EPA's or States' statutory responsibilities or the nature of authorized or delegated State programs. Any innovations under this agreement will be implemented within our existing legal authorities using appropriate procedures.

III. Principles for EPA/State Regulatory Innovation

EPA and the States agree to a set of basic overarching principles that will guide our joint regulatory innovation activities. There are seven overarching principles relating to regulatory innovation activities—Experimentation, Environmental Performance, Smarter Approaches, Stakeholder Involvement, Measuring and Verifying Results, and Accountability/Enforcement, and State-EPA Partnership.

A. Experimentation

Innovation involves change, new ideas, experimentation, and some risk of failure. Experiments that will help us achieve environmental goals in better ways are worth pursuing when success is clearly defined, costs are reasonable,

and environmental and public health protections are maintained.

1. The States and EPA should recognize the value of prudent risk-taking through experiments designed to achieve improved results.

2. The States and EPA should seek ways to make good ideas work, presuming that innovations to help meet environmental goals are worth our investment.

3. The States and EPA should carefully monitor and manage innovations to ensure that problems are immediately identified and remedied. Experimentation should be based on sound judgment, reasoning and common sense.

4. If a promising experiment encounters difficulties that likely can be corrected and that do not jeopardize environmental protection, project sponsors should be allowed to fix problems before the experiment is abandoned in favor of the traditional approach.

5. Experimentation does not include relaxing health or environmental standards or reducing protection of public health or the environment.

6. Experiments should be designed to test new approaches and as appropriate lessons learned should be used to improve the current system of environmental protection.

B. Environmental Performance

Innovations must seek more efficient and/or effective ways to achieve our environmental and programmatic goals, with the objective of achieving a cleaner, healthier environment and promoting sustainable ecosystems.

1. Protecting public health and the environment are the primary goals of both EPA and State environmental agencies, and we agree that innovations can help us find cleaner, cheaper, smarter ways of improving our nation's environment. Innovations that facilitate a transition to pollution prevention and product stewardship as primary methods of achieving environmental goals are highly desirable and can have significant economic or societal benefits to support sustainable development.

2. Many opportunities exist to improve environmental protection through innovations that have the clear potential to provide environmental and ecosystem benefits. In addition, innovations may be designed primarily to improve the cost effectiveness of achieving environmental goals; these projects must ensure that there is no adverse impact on: environmental protection, public access to information, and public access to the decision-making process.

3. For projects that have a greater uncertainty of the environmental outcome, or that involve experimental technologies or approaches, innovations should be expected to have the clear potential to provide increased environmental protection, promote ecosystem sustainability, or both. EPA and the State agency, in their best judgment and in consultation with stakeholders, will determine whether such proposals have the clear potential to produce appropriate gains in environmental protection, improved sustainability of the ecosystem, or both.

4. Innovations may be designed to fit local and regional conditions, as long as local solutions do not create environmental problems for other localities, such as undesired downwind and downstream effects, or undermine national standards.

5. No population group should be subjected to disproportionately high and adverse human health or environmental impacts as a result of the innovation.

C. Smarter Approaches

To reinvent environmental regulation, regulators should seek creative ways to remedy environmental problems and improve environmental protection, and be receptive to innovative, common sense approaches.

1. Regulators should work with industry and communities to solve environmental problems by identifying ways to remove barriers that prevent prudent, common sense solutions.

2. Regulators should be professional, accountable and deserving of the public's trust.

3. Regulators should seek to understand all perspectives, and help stakeholders find common ground.

4. Regulators should act promptly to evaluate, and implement, proposals that are straightforward, technically achievable, and have clear advantages, while ensuring adequate opportunities for public involvement and review.

D. Stakeholder Involvement

Effective stakeholder involvement produces better innovation projects and catalyzes public support for new approaches. Stakeholders must have an opportunity for meaningful involvement in the design and evaluation of innovations. Stakeholders may include other State/local government agencies, the regulated community, citizen organizations, environmental groups, and individual members of the public. Stakeholder involvement should be appropriate to the type and complexity of the innovation proposal.

1. Innovations should include opportunities for early, open, and

inclusive stakeholder involvement in project development, specifically including those who may be affected by the decisions. Stakeholders should be provided adequate time to review proposals and participate in the process. When an innovation has the potential to result in significant policy changes, additional efforts, that could include incentives and assistance, should be made to provide additional opportunities so that affected and interested stakeholders can be meaningfully involved.

2. Consistent with the principle of providing meaningful opportunity for stakeholder involvement, each State should have the flexibility to use its own stakeholder participation process, as long as applicable federal and State procedural requirements are met or exceeded. EPA and States will identify national program issues and ensure opportunities for active involvement from national and regional stakeholder groups, especially where decisions on regional, state, or local issues have broader impacts.

3. Project proposals and the process for their consideration should be made transparent to stakeholders so that the benefits of the proposed change can be fully evaluated. Information needed to understand the proposed innovation and to verify compliance and environmental performance should be publicly available in an understandable form. EPA and States commit to provide regular analysis of the types of innovations implemented and their environmental impacts.

4. Because some stakeholder groups (e.g., small businesses, public interest groups) often have a limited capacity to participate in innovation projects, EPA and States will explore different approaches to facilitating stakeholder involvement.

5. In circumstances where local governments share regulatory responsibility, they should participate as partners with the State in developing and implementing the innovation.

E. Measuring and Verifying Results

Innovations must be based on agreed-upon goals and objectives with results that can be reliably measured in order to enable regulators and stakeholders to monitor progress, analyze results and respond appropriately.

1. The success of innovations should be judged by the results they achieve. Goals and objectives should be established in advance, measurable, and based on the desired results.

2. Results should be verifiable by reliable measurements and both process

and results should be understandable to regulators and the public.

3. Regulators should have access to high quality information sufficient to verify the environmental performance of an innovation.

4. Regulators and the public should have a full understanding of the differences between the innovation and traditional approaches, including expectations for the project, accountability for performance, and any potential risks.

F. Accountability/Enforcement

For innovations that can be implemented within the current regulatory framework, current systems of accountability and mechanisms of enforcement remain in place. For innovations that involve some degree of regulatory flexibility, innovators must be accountable to the public, both for alternative regulatory requirements that replace existing regulations and for meeting commitments that go beyond compliance with current requirements. Regulators will reserve full authority to enforce alternative regulatory requirements to ensure that public health and environmental protections are maintained, and must be willing to explore new approaches to establish accountability for beyond-compliance commitments.

1. For persons or activities not covered by the innovation project, applicable statutory and regulatory requirements remain in effect and fully enforceable.

2. If a promising innovation project encounters difficulties that likely can be corrected and that do not jeopardize environmental protection, regulatory agencies should evaluate the circumstances and use judgment in allowing project sponsors to correct problems before a project is abandoned in favor of the traditional approach.

3. Regulators must have authority to address such circumstances as imminent and substantial endangerment, actual harm, or criminal conduct.

4. Innovations may include both: (a) Enforceable "alternative regulatory requirements" that provide protection equivalent to that provided by otherwise applicable environmental standards or requirements, and (b) other "beyond-compliance commitments" that seek to exceed otherwise applicable standards or requirements. Alternative regulatory requirements and beyond-compliance commitments should be clearly distinguished in advance.

Alternative Regulatory Requirements:

—Alternative regulatory requirements should be enforceable with all the remedies available under current law.

—Regulators should consider the circumstances and use their judgment in choosing remedies when a facility fails to meet alternative regulatory requirements.

—Potential responses for failure to meet such alternative regulatory requirements should be identified in advance.

Beyond-Compliance Commitments:

—As part of an innovation, facilities may agree to beyond-compliance commitments in exchange for regulatory flexibility or some other incentive.

—Potential responses for failure to meet such beyond-compliance commitments should be defined in advance.

—Responses for failure to meet beyond-compliance commitments should fit the circumstances. They may include: a series of interim accountability measures short of project termination, trying a different approach, modifying the innovative approach, or reverting to the traditional approach.

5. Innovations should not undermine the state's, federal government's, or citizens' authority or capacity to enforce delegated or authorized state programs.

G. State-EPA Partnership

The States and EPA will promote innovations at all levels to increase the efficiency and effectiveness of environmental programs. We must work together in the design, testing, evaluation and implementation of innovative ideas and programs, utilizing each other's strengths to full advantage.

1. As the primary front-line managers of many environmental protection programs, the States and local governments are natural laboratories for innovations. The States should manage their own programs, adapt to local conditions, and test new approaches for delivering more environmental protection for less.

2. The federal government should ensure good science, strong national health and environmental standards, and should work in partnership with the States by providing analysis, expertise, and facilitating learning among the States. EPA should promote innovation at all levels (national, regional, state, tribal, place-based, community, and in the private sector). EPA retains its role to set national standards and measures, implement programs not delegated to states or tribes, address interstate issues, apply and interpret national statutes and

regulations, and ensure fair and effective enforcement, thus ensuring that all states provide fundamental public health and environmental protection and a level playing field.

3. EPA and state roles in innovations must be clearly designed to utilize each party's unique strengths and avoid duplication. Decision makers should be clearly identified.

4. Assigned roles and responsibilities should be honored and respected, and joint problem-solving should be encouraged.

5. Communication must be open, honest, frank and frequent. The States and EPA should work to understand each other's perspectives, achieve consensus on major issues, make decisions in a timely manner, and resolve conflicts quickly and efficiently.

IV. Process for Considering State Innovations Proposals

EPA and the States are engaged in many successful efforts to reinvent environmental regulation. These efforts should continue unimpeded. EPA and the States agree that, where procedures currently exist, innovation proposals should be handled through normal EPA/State program activities or other ongoing reinvention activities. Proposals that do not fit into an existing pathway can be handled via the new process established under this agreement.

The process of developing Performance Partnership Agreements (PPAs) under National Environmental Performance Partnership System offers one opportunity for States and EPA, working with stakeholders, to agree on innovative approaches to pursue. However, participation in a PPA is not the only avenue for States and EPA to work on innovative approaches. Memorandum of Agreements and/or Work Plans can serve the same function as a PPA. Inclusion of anticipated innovative approaches in the PPAs or other agreements will allow the States and EPA to allocate staff resources and establish priorities for innovative projects. For example, individual States may choose to place higher priority on innovation projects which promote clear cost or environmental benefits for the public. It is envisioned that States will include in the PPAs or other agreements a discussion of potential innovative activities, indicating how the innovations link to environmental goals and providing a picture of proposed changes.

A. Use Existing Pathways

This agreement is designed to supplement, rather than replace, ongoing innovation activities underway

in EPA and the States. Such innovation activities should continue. State innovations that do not require a change to Federal guidance, regulations or statutes can proceed without EPA review. EPA's role will consist of support and advice, if requested. EPA and States should continue to work together on innovations that may involve using existing flexibilities in current law and regulation, and on existing innovation programs such as Project XL.

B. New Process Established Under This Agreement

The States and EPA agree to establish an optional process, which States may use to get timely decisions on innovation proposals. This process includes senior-level management attention and specific time frames to ensure prompt decisions by EPA. The following process establishes a management framework so that actions and next steps, along with interested participants and decision-makers, can be clearly identified and taken into account. EPA's Regional Administrators are responsible for ensuring that the process moves forward; individual States are expected to establish similar senior-level points of contact to manage the State's role in the innovation process.

This process is intended to be flexible. For example, EPA Regional Offices, EPA Headquarters Offices, and the States are encouraged to maintain open lines of communication at both staff and management levels beyond the formal process described below, and States are encouraged to invite EPA into the early discussion stages of any project. Early consultation between EPA and the States is important in identifying obstacles early and in determining who needs to be involved so that the project can move forward expeditiously.

EPA will also work with individual States as needed to establish priorities in the review of proposals based on guidance developed in the Performance Partnership Agreement or other EPA/State agreed mechanism. EPA and the States recognize that the success of this process will be affected by the quality and clarity of proposals and the effectiveness of communication between EPA, the State, and stakeholders. The States and EPA are committed to working together to ensure that communications are frequent, open, honest, and directed to finding means to allow innovations to succeed.

While one of the objectives of the innovation proposals is efficiency, the very act of designing an experiment,

testing the hypothesis, and evaluating the results may be resource intensive for all parties. The optimum management of resources by EPA and the State will help ensure the success of the review process, the implementation of the projects, and adherence to time lines.

1. Stage One—Developing Quality Proposals

States and EPA recognize that clear, well-developed proposals will facilitate review and speed decision-making. States are encouraged to consult with EPA as early as possible in the development of a proposal. The States should be able to use this early consultation process to develop a clear understanding of their proposals with EPA and key stakeholders.

During the early consultation, the State and EPA will identify issues that need attention, possible barriers to implementation, uncertainties regarding risks, and value added to all parties. These discussions will be open and candid and will provide the State with information that will be important and useful for the development of the proposal. While early consultation is encouraged, not all proposals will require the same degree of discussion and/or consultation.

EPA and States will bring a positive, constructive approach to consideration of proposals and seek ways to help good ideas to succeed.

States will prepare proposals that: a) are consistent with the principles described in this agreement, and b) clearly present the objective of the proposal, the expected benefits, a description of the activities, and a determination as to whether the proposal may require a change to Federal guidance, policy, past practices or rule interpretation, but not regulations or statutes; may require a change to or waiver from Federal regulations, but not statutes; or, may require a change to a Federal statute.

EPA will: (a) Provide clear statements of its position, along with timely and authoritative answers to questions about what changes, variances, or associated approvals a particular proposal may require; and (b) work with the State to identify the most efficient path by which a particular proposal could be implemented.

In addition, States will provide meaningful opportunities for stakeholder involvement in the design and development of regulatory innovation proposals. The degree of stakeholder involvement depends on the nature of the proposal. Where a proposal would involve a change in or variance from existing national

guidance, regulations, or statutes, early consultation among EPA, States, and national stakeholder groups can help identify critical issues that need to be addressed. If EPA believes that broader stakeholder involvement is warranted, in accordance with the Stakeholder Involvement Principle, EPA will contact the State and identify, in partnership with the State, an approach to obtain such involvement as early in the process as possible.

The Senior State Environmental Official or their designee then submits a written description of the regulatory innovation proposal to the EPA Regional Administrator, who then initiates the review process described below. The State will designate a high-level official as the single point of contact for each project.

2. Stage Two—Review of Proposal and Decision

a. EPA Review. The EPA Regional Office will have primary responsibility for review of the innovation proposal. This responsibility includes proposal distribution within the Region and to the affected EPA National Program Managers and the Office of Reinvention; review and response to the State; and appropriate stakeholder involvement. In cases where national policy or regulatory issues are involved, the Regional Administrator must ensure complete review by relevant national program offices.

EPA will consider several factors in the review of the innovative proposals, including:

- (1) Consistency with the principles in this agreement;
- (2) Comments from stakeholders;
- (3) Type of flexibility from federal guidance or regulation needed to implement the proposal;
- (4) Clear presentation and analysis of issues;
- (5) Expected benefits of the innovation (including net improvements in environmental, ecosystem, and efficiency results);
- (6) Potential benefits of the innovation as compared to the investment of time and resources required for implementation, and impact on agencies' resources and workloads.

The review process is intended to be flexible. EPA and the State should maintain open lines of communication at all levels—staff and management—to ensure that questions and concerns are raised and discussed. During the review process, EPA may seek input from other States and stakeholders, including environmental groups and the regulated community, to fully identify the

strengths and weaknesses of the proposal.

b. EPA decision. Upon completion of the consultation and review period, the Regional Administrator will make a decision to accept or reject a proposal. If a proposal involves a national policy or regulatory issue, the decision will be made jointly with relevant National Program Managers and the Office of Reinvention. This decision will be communicated verbally and in a written form to the designated Senior State Environmental Official. The written decision will include the rationale for the determination.

EPA and the State will determine the category into which the proposal falls. The type of proposal will have an impact on the time frame for implementation. The categories are:

Category 1: Straight-forward, transparent proposal with clear advantages, few obstacles, technically achievable, and minimum environmental risk.

Category 2: Experimental proposal that has a greater uncertainty of environmental outcome; requires more attention to design, implementation, and evaluation; and may involve some risk of failure. The unpredictability of the experiment means that it will be more resource intensive and may require more time.

Category 3: Strategic proposal that involves broad-based, new approaches (e.g., statutory changes) and requires policy discussion to further develop concepts. Proposals may be assigned to an existing policy forum for discussion or a new forum could be established.

If the proposal requires changes of interpretation or substance regarding national statutes, regulations or policies before proceeding with an innovation project, both EPA and the State will reach agreement on all proposed changes. These projects will be accomplished through mechanisms available under Federal law and regulation, which may include variances, site-specific rules, legal interpretations, or other means.

c. Appeals. In the event that a dispute arises during this process or a State disagrees with a Region's decision, the State may appeal in writing to the EPA Deputy Administrator. The State may also request a review by a panel consisting of EPA Senior Managers and State Commissioners. The panel will review the proposal, the issues, and merits of the dispute, and submit recommendations to the EPA Deputy Administrator for a final decision.

d. Time frames for decision. EPA and the States are committed to working

together to ensure timely responses to State proposals.

Initial response to proposal: EPA will respond to the State with follow-up questions, clarifications, and initial reactions including an initial identification of obstacles to approval within four weeks of its receipt of a written innovation proposal from the State.

Decision to proceed with proposal: EPA will make a preliminary decision to accept or reject a proposal within 3 months of the receipt of a proposal from the State. If, during the review, EPA determines that additional information is needed from the State, EPA will promptly notify the State, and EPA and the State will agree on an appropriate schedule for completing the review.

Decisions on proposals may be reached more quickly for proposals that are straight-forward, with clear advantages, widely supported, technically achievable, and implementable in the short-term. A preliminary decision to accept a proposal will be accompanied by an explanation of subsequent actions needed before a final decision can be made or implementation can begin. For example, a proposal that involves amending an EPA regulation would require a notice and comment process in accordance with the Administrative Procedures Act.

V. Measuring and Evaluating Success

Before an approved proposal is implemented, we must define success and how we will measure it. This can help eliminate misunderstandings about whether or not the process and innovation as a whole is progressing effectively, and if it is not, what steps need to be taken to correct any problems.

Therefore, EPA and the States agree on the importance of evaluating the success of regulatory innovation activities that flow through the process outlined in Section IV. The challenge is to develop useful measures without choking the very creativity we seek to stimulate. We want to ensure that a variety of ideas are being proposed, that robust stakeholder participation processes are utilized, that decisions are made in a timely fashion, and that the most promising innovations are being implemented successfully. To accomplish this, we must measure both the success of the innovations and the success of our decision-making process. Performance measures that emphasize environmental results, including pollution prevention, are most desirable, although we may have to rely

more on process measures in the near term.

A. Measuring the Innovation's Impact

The success of the innovation project's impact will depend on how well it was designed and the results achieved. Successful innovation project designs should be clearly described so successful projects can be used to improve the entire system, and/or adapted to other site specific situations. The quality of the projects implemented can be measured by: (1) Environmental impact, (2) efficiency, and (3) other relevant indicators. In addition to providing information about the success of an individual innovation project, these measurements also provide guidance on improving future innovation projects. States and EPA should agree in advance who is responsible for collecting and disseminating this information.

The proposed measures in Appendix A provide a starting point for discussion in terms of a framework and some common criteria for innovations. Common criteria allow the States and EPA to evaluate the progress in innovations state-wide and nationally.

B. Measuring the Process

We must ensure that the decision making process is effective, or the process will not be used. The success of the process depends on the effectiveness of the communications between EPA and the States and the timeliness of decisions. Measurements include: (1) The number and quality of innovation projects proposed, (2) the number and quality of innovations implemented, (3) the timeliness of the actions taken in the process, (4) the number of proposals appealed, and (5) the speed with which information about successful innovations are disseminated to other States. The success of the process is enhanced by the development of effective partnerships across all interested and affected stakeholder groups to design innovations which will meet multiple objectives and to build broad support for their implementation. EPA and States will evaluate factors that are difficult to measure but are critically important to successful outcomes, including the degree of EPA-State cooperation and stakeholder participation. EPA should collect this information and make it available at a central location so it can be used by the States, EPA, and stakeholders. Within 60 days of signing this agreement, EPA and the Environmental Council of the States (ECOS) will designate a central location.

VI. Information Sharing

Accepted State innovation proposals and completed projects are most valuable when widely available to State and local regulators, the regulated community, environmental organizations and the public at large. We agree on the need to share information, track commonalities and analyze barriers to promising State innovations. Knowledge of both successes and failures will help the States, EPA and stakeholders develop better approaches for achieving our environmental goals. Because sharing information and innovative ideas among the States is key to the success of this agreement, the States, through ECOS, will set up a regulatory innovation clearinghouse that serves to notify potentially affected States of innovation proposals and highlights the results of this agreement and other State/EPA innovations that EPA Reinvention Ombudsmen or State Commissioners deem appropriate.

VII. Next Steps

EPA and the States agree on the following steps to ensure prompt implementation of the agreement:

A. Joint Evaluation

By October 1999, States, EPA and other interested parties will begin to evaluate the success of regulatory activities that have been reviewed under the new process. The evaluation will consider both the environmental and efficiency benefits derived from each innovation, and the efficiency of the new review process. The results of the evaluation will be shared with EPA, the States and stakeholders.

B. Modifications to the Agreement

If the evaluation indicates a need to modify or amend this agreement, EPA and the States agree to discuss such modifications or amendments and make needed changes by January 2000.

Attachments

A. Proposed Core Performance Measures

B. Examples of Regulatory Innovations

Attachment A—EPA/State Environmental Regulatory Innovations, Proposed Core Performance Measures

Environmental Goal

A sustainable environment with healthy communities and ecosystems

Environmental Objectives

- Air quality improvements
- Water quality improvements
- Land quality improvements

Program Objectives (Outcomes)

- More effective and efficient environmental regulatory systems
- reductions in releases to the environment
- reductions in resources expended to implement the regulatory process, by regulators, regulated entities, other stakeholders; time, work years, money
- increased stakeholder participation in the regulatory process
- Large majority of high priority, high quality innovation projects are successfully implemented
- Successful results of innovation projects are: clearly described, widely disseminated, adopted in other site specific situations, used to improve entire systems

Program Activities (Outputs)

- Number of innovation projects proposed
- Number of innovation projects implemented
- Quality of projects implemented: environmental, efficiency, other indicators
- Stakeholder participation
- Timeliness of actions taken in process

Attachment B—Examples of Regulatory Innovations

To encourage creative thinking and the development of good regulatory innovation proposals, EPA and the States have developed the attached examples of regulatory innovation projects. Four examples of potential regulatory innovations are provided. Examples 1, 2 and 3 are suggestions of innovative ideas that States have developed—they are intended to illustrate the kinds of proposals that may be developed. These examples have not been reviewed or accepted by EPA as projects for this process. Example 4 describes an innovative proposal that was recently implemented in North Carolina.

Example 1: Mercury in Wastewater Effluent

Objective: Substitute sludge testing and limit requirements for mercury in place of effluent limits and monitoring requirements in NPDES permits for municipalities.

Description and expected benefits: Mercury cannot be detected accurately in municipal wastewater effluent. Dilution of mercury in effluent leads to non-detectable monitoring results. In addition, mercury test methods at the low levels seen in municipal effluent can easily pick up contamination of sampling and analysis and lead to false positives. As a result, most municipalities can show compliance with mercury effluent limits and need take no steps to reduce mercury in their effluent.

This proposal would eliminate effluent limits from NPDES permits for municipalities, and instead substitute sludge monitoring (where mercury concentrates in the wastewater treatment process). If mercury in sludge exceeds federal clean sludge levels, municipalities would be required to develop mercury source reduction programs. Since mercury can be more accurately detected in sludge, this would lead to better targeting of

the municipalities that need to develop mercury source reduction programs.

Federal obstacle halting or hindering progress: Requires changes in either federal statute or variance/change in federal regulations. Attorneys state that sludge requirements as proposed cannot be tied to surface water standards.

Additional background information: This proposal was strongly supported by municipalities, environmental groups, Wisconsin DNR staff, and EPA staff. All saw that this proposal would lead to greater environmental benefits than the current NPDES system.

State: Wisconsin Department of Natural Resources, Bureau of Watershed Management.

Example 2: Continuous Emissions Monitoring for Air Pollutants

Objective: Create a flexible approach to compliance demonstration for air emission limits that have been consistently achieved. In exchange, install continuous emissions monitoring for other toxic pollutants for which more data is needed. This approach would reward facilities which have demonstrated superior environmental performance with simplified compliance demonstration requirements.

Description and expected benefits:

- Federal guidance on practical enforceability requires that compliance demonstration schemes use available technology which produces verification of compliance data as frequently as practically possible.
- A facility is required to use continuous emission monitors (CEMs) to show compliance with an air emission limit. Data has been gathered for several years and it shows consistent emission levels at or lower than 50% of the limit. In addition, other surrogate process parameters are continuously monitored.
- The permittee wishes to show compliance by an alternative compliance method which requires periodic testing to assure continued compliance. The surrogate parameters will continue to be monitored and will be used to ensure that the operating conditions remain within the range under which compliance has been demonstrated by periodic testing.
- In exchange, the facility agrees to install CEM for certain toxic organics from certain processes. The nature and levels of these toxics are not very well defined based on mass balance approaches. The information generated by these CEMs will be useful for an air toxics analysis being conducted in the area.

Federal obstacle halting or hindering progress: Requires change or deviation from established EPA policies regarding federal enforceability as a practical matter on emission limits. However, the demonstrated level of confidence on compliance warrants a less rigorous approach, particularly because it includes a periodic verification process.

Additional background information: The permittees believe that it is important to build a trust relationship with regulators to be able to re-direct resources to areas where

the need is greater to realize further improvements or to generate new information on environmental matters.

State: Minnesota Pollution Control Agency, Air Quality Division, Permits Section.

Example 3: Tiered Permitting System for Hazardous Waste Facilities

Objective: Create a permitting system for hazardous waste (HW) management facilities that are presently exempt from the existing RCRA Part B permitting system but still pose a potential threat to human health and the environment if improperly designed and operated.

Description and expected benefits:

- Current RCRA regulations exempt recycling facilities from any permitting requirements, but require a Part B permit if HW is stored prior to recycling.
- Environmentally safe recycling is preferable to disposal and should be encouraged.
- Recycling facilities can be as complicated as treatment and disposal facilities and require some oversight to ensure that they are protective of human health and the environment.
- Requiring the standard Part B permit for recycling facilities creates a disincentive and may greatly limit the number of recycling facilities.
- A less onerous tiered permit provides regulatory oversight and does not pose the same disincentive as a Part B permit for recycling facilities.
- The tiered permit incorporates performance standards and financial assurance as appropriate and is custom tailored to the facility without requiring all of the elaborate features of a Part B permit.

Federal obstacle halting or hindering progress: May require a variance from federal statutes and regulations that prescribe standards and require a Part B permit for storage of HW depending on what type of storage activities are covered under the tiered permit.

Additional background information: State legislation required fluorescent lamp recyclers to be permitted. Rules are in the development stage with extensive regulated community involvement. The tiered permitting system will be extended to all types of HW facilities for which a Part B permit is not required or not appropriate, including recyclers and some types of storage facilities.

State: Minnesota Pollution Control Agency, Hazardous Waste Division, Regulatory Compliance Section.

Example 4: River Basin-Based Planning and Permitting

Objective: To coordinate stream modeling and permitting on a river-basin or sub-basin scale instead of in a piecemeal fashion.

Description and expected benefits: River-basin based planning and permitting would:

- Enable better planning and resource allocation
- Increase consistency between permits

- Increase consideration of basin-wide pollutant inputs (point and nonpoint) for better decision-making and planning
- Improve efficiency of modeling, data collection for modeling, and permitting activities
- Provide opportunity for greater stakeholder involvement in the planning process

Federal statutes prohibit permits with a term greater than five years

To synchronize NPDES permit renewal for an entire river basin, the State had to issue five year permits followed by an additional short-term permit. The burden on permitting and modeling staff was further increased because EPA Region IV was also pressing NC to address its permit backlog. The State lacked sufficient modeling resources to address the existing backlog and also issue short term permits in selected basins. The State proposed to reissue the short-term permits with existing limits without modeling and to refocus its permitting staff away from the permit backlog and toward the basin-wide permitting approach. Region IV was hesitant to endorse the basin-wide concept.

Contact with EPA Headquarters (Office of Water) convinced EPA to hire a facilitator to help the State develop an implementation strategy for the basin-wide planning and permitting approach. EPA Headquarters also sponsored a workshop to obtain input from surrounding States. This involvement allowed the State to develop a convincing strategy, and subsequently, Region IV agreed to the proposal. EPA also provided a 104(b)(3) grant to increase monitoring and modeling in the Tar-Pamlico River Basin to help pilot the approach.

Federal obstacle halting or hindering progress: Required change in EPA past practice.

Additional background information: At first, permittees reacted to the short-term permits due to the extra burden of completing permit applications and paying application fees. However, the concerns of permittees were quelled by pointing out the long-term improvements in consistency among permits in the river basin and in efficiency of issuing these permits. Environmental stakeholders were supportive of the approach from the start due to a greater opportunity for involvement in the planning process.

State: North Carolina.

Joint EPA/State Agreement to Pursue Regulatory Innovation, Response to Comments

Purpose of the Agreement and Environmental Performance

Summary of Comments: A number of commenters were concerned that the agreement did not emphasize the importance of innovation as means to move toward environmental sustainability. They suggested focusing the agreement on holistic pollution prevention and product stewardship approaches, because these approaches can help address the root causes of pollution and move toward a more

sustainable system. Also, these commenters felt that the agreement emphasized efficiency over environmental gains, rather than advocating innovations that can simultaneously achieve environmental, economic, and social goals. These commenters felt that environmental gain should be a key factor in prioritizing innovations. An opposing view was expressed by some commenters, that the agreement should put more emphasis on economic gains as incentives for innovation. A number of commenters expressed support for "efficiency only" projects that would achieve the same level of environmental quality. Conflicting comments were received about whether better environmental performance should be required in proportion to any regulatory flexibility granted.

Response: EPA and the states agree that the concept of innovations leading to environmental sustainability should be emphasized (added language to Purpose section and Environmental Performance sub-principle on this concept). Innovations that simultaneously address environmental, economic and social objectives are highly desirable. However, the agreement recognizes that, in some cases, it will make sense to pursue innovations that are primarily targeted at efficiency improvement, as long as environmental protections are fully maintained. The agreement does not include a specific "proportionality" test that would require increased environmental performance in return for regulatory flexibility. However, innovations which have a greater uncertainty of the environmental outcome, or are more experimental in nature, will be expected to have the potential for improved environmental results. Also, as proposals are reviewed, the potential benefits of a proposal will be weighed against the resources needed to implement the proposal, and if resource limitations become an issue, priority will be given to proposals that appear to have a greater return on investment.

Specific Comments

Comment: The agreement speaks several times of innovations that have the clear potential to provide environmental benefits. Other principles are not similarly qualified in the agreement. The italicized phrase should be replaced with a positive concept such as "clearly."

Response: The phrase "have the clear potential" is appropriate for projects that have a greater uncertainty of the environmental outcome, or that involve

experimental technologies or approaches. However, we agree that it is important that the intent of the project is to achieve better environmental results, even if those results cannot be guaranteed, and we expect that experimental projects will be designed to achieve increased environmental protection.

Comment: A commenter said that the agreement will result in numerous waivers of EPA requirements, based only on "equivalency," and will eliminate incentives to achieve superior environmental performance.

Response: EPA and the states are not entering into this agreement simply in order to provide a pathway for obtaining waivers of regulatory requirements. The purposes of this agreement are clearly stated: to improve environmental protection, to improve EPA/State environmental management practices, and to provide timely decision-making on good ideas. We believe that this agreement will foster cooperative exploration of innovative approaches that can potentially lead to substantial improvements in both our management system and in the level of human health and environmental protection. It is not our intent to undermine incentives for achieving superior environmental performance. For example, EPA's Project XL offers regulatory flexibility in return for superior environmental performance, stakeholder involvement, and several other criteria. If under this agreement, EPA receives proposals that are more appropriate for Project XL (e.g., proposals requesting significant regulatory flexibility for a single facility) then EPA will recommend that those proposals will be directed to the XL process.

Experimentation

Summary of Comments: A commenter said that the agreement should more clearly acknowledge that "experimental" efforts may at some future time be incorporated into the mainstream of environmental protection. Other commenters said that the agreement speaks of "maintaining" or "not jeopardizing" environmental protections, rather than enhancing them, and doesn't address the value of interim incentives or enforcement responses.

Response: EPA and the states agree that a main purpose of experimentation is to test approaches that may later be appropriate to be applied more broadly. A sub-principle has been added to the Experimentation principle which states "Experiments should be designed to test new approaches and as appropriate lessons learned should be used to

improve the current system of environmental protection." The idea of using interim accountability measures has been added to the Accountability/Enforcement principle.

Stakeholder Involvement

Summary of Comments: Many commenters addressed the issue of stakeholder involvement in the development of innovation proposals. A number of commenters agreed that "stakeholder involvement should be appropriate to the type and complexity of the innovation proposal." Some commenters raised concerns that stakeholder processes can become too elaborate or can delay a project for too long, and that consensus should not be required. Other commenters emphasized that the agreement did not convey a true partnership approach, lacking elements such as: firm requirements for inclusiveness, addressing the need for technical assistance, and success measures that evaluate the effectiveness of the stakeholder process. These commenters also felt that the linkage between stakeholder involvement and the process for different categories of projects should be addressed.

Response: EPA and the states believe that stakeholder involvement is important to successful innovation projects, and we are adding a clear statement to the Stakeholder Involvement principle that stakeholder involvement is important because it produces better innovations. We believe that the stakeholder principle provides sufficient flexibility for EPA and States to design stakeholder processes that are appropriate for different types of innovations and as appropriate, allows states to use existing stakeholder participation processes. There is a range of opportunities for stakeholder involvement that may be appropriate, depending on the type and complexity of the innovation. For a straight-forward innovation designed to streamline an existing process, providing opportunity for participation and comment may be sufficient. For proposals with significant policy implications, the need for public involvement will likely be greater, and it is the responsibility of government agencies to take extra steps so that active involvement can occur. Some changes were made to the stakeholder principle and sub-principles to clarify this intent.

EPA and the states realize that it is often difficult for some parties, such as small businesses and public interest groups, to actively participate in stakeholder processes. EPA and the states will try different approaches to

facilitating stakeholder involvement, such as: providing easily-accessible information about new project proposals (e.g. via the Internet), providing assistance in understanding proposals to help focus on priority issues and projects, and pursuing other creative mechanisms that foster participation. Issues such as technical assistance for stakeholder participants will be addressed on a project-by-project basis. Also, language was added to the section on "Measuring and Evaluating Success" to emphasize the need to evaluate the effectiveness of the stakeholder process.

Specific Comments

Comment: A commenter expressed the need for affirmative language on all levels of government working together and to more clearly recognize and define the role of local governments in the regulatory system and in innovation.

Response: EPA and the States agree that local governments are essential partners in innovations that come under the jurisdiction of local regulatory authorities. A sub-principle has been added to the Stakeholder Involvement principle to recognize the importance of working cooperatively with local governments.

Comment: Several commenters stated that the reference to involving national stakeholder groups to examine national issues should be broadened to recognize the important role of state groups, and the interest of national groups in important state and local issues. Criteria, and an accountability mechanism, are needed to help identify cases where national (or state) stakeholder involvement is needed.

Response: EPA and the states agree that stakeholders should have the opportunity to be involved in design and development of proposals, and that both national and regional groups may be interested in important regional, state, and local issues that are likely to have broader impacts (added clarifying language to stakeholder sub-principle). At this time, we do not think it appropriate to develop specific criteria for national stakeholder involvement. We will make every effort to make information available and to keep stakeholders informed about proposals under this agreement, so that stakeholders will have the opportunity to participate. As we gain experience with the process, we will consider whether it is possible and appropriate to develop criteria for national stakeholder involvement.

Comment: Several commenters pointed to the need for special efforts to involve stakeholders such as small business and public interest groups in

innovations, due to their limited resources.

Response: EPA and the States agree that creative approaches to foster such involvement should be encouraged. A new sub-principle was added to Stakeholder Involvement to encourage these efforts.

Comment: A commenter expressed concern that the EPA review process includes the active solicitation of comments after the stakeholder process has been completed.

Response: EPA and the states agree that in cases where there has been a robust stakeholder process, that no additional input would be needed.

However in some cases, such as a proposal that comes to EPA in a preliminary stage of development, EPA may need to consult with stakeholders to ensure that all points of view are considered, prior to making a decision. In cases where a federal or state regulation will be changed, public notice and comment may be part of the required legal process that would occur following the preliminary decision.

Comment: A commenter asked for clarification about subprinciple D.2 (the requirement that stakeholder processes meet or exceed applicable state and federal requirements) and whether this refers to procedural or environmental requirements.

Response: The language has been added to indicate that this statement refers to procedural requirements.

Smarter Approaches

Comment: A commenter pointed out the need to ensure that proposed innovations do not undermine the original purpose of "regulatory barriers."

Response: EPA and the states agree that the underlying regulatory objectives of a "regulatory barrier" need to be carefully considered in the development of innovations. The language in the "Smarter Approaches" subprinciple indicates that the purpose of removing "regulatory barriers" is to solve environmental problems. In deciding whether a proposed innovation is helping to solve an environmental problem, regulators will need to ensure that the underlying environmental purpose of the "regulatory barrier" will still be achieved.

Accountability/Enforcement

Summary of Comments: Some commenters raised concerns that all conditions that are integral to an innovation project should be enforceable, and that accountability could be strengthened by including a series of interim accountability

measures as part of the project design. Another commenter suggested that EPA and the states should not pursue traditional enforcement mechanisms such as penalties if problems are encountered during implementation of an innovation project.

Response: EPA and the States agree that accountability and enforcement remedies should be used that are appropriate to the circumstances of an innovation project, and the language of the Accountability/Enforcement section has been clarified to reflect this intent. For example, it may be appropriate for project participants to agree on a series of interim accountability measures that will be tracked as the project is implemented. In order to preserve enforcement authority for use in serious circumstances, we cannot rule out the use of penalties. The agreement indicates that "alternative regulatory requirements" will be enforceable with all the remedies available under current law. "Beyond compliance commitments" may also be part of some innovation agreements, and accountability measures for these commitments should be determined when the innovation is designed. In some cases, if innovations include a set of activities, it may be difficult to distinguish between "alternative regulatory requirements" and "beyond compliance commitments." In these cases, EPA and the state will carefully evaluate all proposed activities and determine an appropriate requirement category based on the projected net result of the proposed activities.

Specific Comments

Comment: A commenter said that clarification was needed to convey that current requirements are enforceable only to the extent that they are not modified by an approved innovation project.

Response: EPA and the States agree that the intent of the agreement is that all applicable statutory and regulatory requirements, other than those included in the innovation project, remain in effect for all entities and are fully enforceable.

Roles of Project Proponents and Stakeholders

Summary of Comments: Several commenters raised questions about whether sponsors other than a state could initiate projects. A commenter suggested that more incentives for industry to participate should be provided. Several commenters also raised the issue of appeals, and whether parties other than the state could appeal an EPA decision on a proposal.

Response: We are committed to working with partners in the regulated community, and other stakeholders, to develop successful innovation projects and have a variety of mechanisms in place to do so. The focus of this agreement is to facilitate state proposals for innovative environmental management approaches. States are co-regulators with EPA and are responsible for implementation of delegated or authorized environmental programs. We encourage non-state sponsors to partner with states in moving innovations forward under the agreement. Other pathways (such as Project XL) are available for other sponsors to work with directly with EPA on innovation projects. Similarly, because this agreement is designed for state proposals, states are the appropriate parties to appeal decisions. Input of interested stakeholders will be considered throughout the review and appeals processes.

Relationship of Categories of Projects and Application of Principles

Summary of Comments: A number of commenters stated that the agreement should include objective criteria for deciding how projects should be classified and where certain principles may vary based on the category.

Response: While the principles articulated in this agreement will set a standard for all innovation proposals, we expect some principles or sub-principles to be more relevant to certain types of projects. For example, while stakeholder input will be important for all innovations, we anticipate increasing levels of stakeholder involvement in Categories 2 and 3, as compared to Category 1. In terms of environmental performance, cost-effectiveness projects would generally be expected to fit in Category 1. More experimental proposals that fall in category 2 would generally be expected to have the potential to provide increased environmental protection. Other principles may also vary somewhat in their applicability across categories.

EPA Review and Decision on Proposals Review Criteria

Comments: A commenter stated that the agreement should further define the decisional criteria that EPA will use to approve or disapprove a proposal. Several commenters said that the criteria addressing resources should also include impact on stakeholders' resources and workloads.

Response: The agreements lists several criteria EPA will use in reviewing proposals. We believe these

criteria can only be refined through some direct experience in evaluating project proposals. The first criterion is "consistency with the principles in the agreement." Evaluation of proposals against this criterion will include an evaluation of whether stakeholder involvement in design and development of the innovation is consistent with the Stakeholder Involvement principle.

Statutory Change

Comments: A commenter said that where statutory impediments are identified, EPA should be willing to entertain statutory revisions and, together with states, advocate these revisions to Congress. Another commenter said that EPA should not indicate that it will reach agreement with all the states before pursuing any changes in interpretation or statutes.

Response: EPA and the states believe that exploration of innovative approaches may, in some cases, point to the need for regulatory or statutory change. Where such changes will promote effective, common sense solutions to environmental problems, EPA is committed to pursuing change through appropriate mechanisms. In all cases, we believe there must be an open process and full public discussion and debate.

Handling Numerous Proposals and Setting Priorities

Comments: A commenter pointed out that the management of numerous state innovation proposals may become an overwhelming task for EPA, the states, and interested stakeholders, and therefore, EPA and ECOS should focus first on those innovation proposals having the greatest potential for success.

Response: EPA is concerned about the difficulty of managing appropriate participation and review for numerous proposals while upholding high standards of review and meeting ambitious time frames for decisions. EPA will strive to address all State innovative proposals promptly and carefully. It is difficult to anticipate how many projects may be proposed. If a large number of projects are submitted, EPA will likely need to use a screening and priority-setting process to ensure that available resources are used effectively.

Time Frames for Decision

Comments: One commenter suggested that the agreement include a forcing function to ensure that deadlines are met, such as a default mechanism that the project is approved if time expires. Another commenter said that the agreement should clarify that the 3-

month decision is a definitive decision by EPA to accept or reject the proposal.

Response: EPA is committed to responding as promptly as possible to innovation proposals, as reflected in the ambitious 3-month target for decision-making. However, the 3-month deadline will not be met in all cases—a great deal will depend on the quality and completeness of the proposal, and, in a number of cases, more information will likely be needed to augment the initial proposal submission. EPA and the state will jointly agree on extending the deadline as appropriate to the circumstances. Additionally, the 3-month decision is a preliminary decision to go forward with a project. EPA must follow all legal requirements that are applicable in each situation in order to reach a final decision and begin implementation. Thus, "default approval," in cases where EPA does not meet the target, is not possible. For example, a proposal that involves change to a regulation must be carried out through notice-and-comment rulemaking, and under the law, EPA cannot make a final decision until public comment has been considered.

Other Comments

Stakeholder Evaluation of Proposals and Results

Comments: A commenter recommended establishing a national advisory committee, perhaps including stakeholder representatives from the local, state, and national level, that would evaluate proposals, analyze ongoing progress with innovations, and evaluate the transferability of successful results.

Response: The Stakeholder Involvement principle provides for the participation of stakeholders in the evaluation of project proposals. EPA and the states agree that stakeholders also need to be involved in evaluating the success of innovations implemented under this agreement. The Next Steps section has been modified to say that EPA, states, and other interested parties will work jointly on evaluating both the results of innovations and the process for review and implementation of the projects.

Confidential Business Information

Comments: A commenter said that information sharing is an important part of the process, however, the agreement lacks guidance regarding protection of confidential business information.

Response: EPA and the states feel that there are adequate provisions in place, outside of this agreement, in federal and state law and regulation, to adequately

protect confidential business information. As we move forward with implementing the agreement, we will develop procedures to ensure that information shared in the development of proposals but designated as confidential business information remains confidential.

Measuring Success/Core Performance Measures

Comments: A commenter said that core performance measures should emphasize environmental results (e.g., fewer diseases from pollution) over bean counting (i.e., number of projects). Another commenter said that the three environmental objectives (air, water, land quality improvements) are not inclusive of all ecosystem improvements, and that the measures should take a broader holistic approach towards improving environmental quality.

Response: EPA and the states agree that success measures should look more broadly at improving human health and environmental quality. The set of measures in Attachment A of the agreement is provided as a starting point for discussion. As implementation of the agreement gets underway, EPA and the states, working with stakeholders, will further develop the set of performance measures that will be used for evaluating success.

Specific Comment

Comment: A commenter said that the provisions under the Measuring/Verifying Results principle do not require measurement and monitoring.

Response: EPA and the states believe that the intent of this language is clear—that innovations must have results that are measurable and verifiable.

Legal Status of the Agreement

Comment: A commenter stated that it is inappropriate for EPA to enter into an informal agreement with a non-profit organization (ECOS) that would subvert EPA's legal obligations.

Response: A paragraph has been added to the agreement to clarify its legal status. The paragraph says, "This agreement signals the commitment of EPA and state environmental agencies to work together on innovations. It does not create any legal obligations for EPA or the states, and does not alter EPA's or states' statutory responsibilities or the nature of authorized or delegated state programs. Any innovations under this agreement will be implemented within our existing legal authorities using appropriate procedures."

Dated: April 29, 1998.

J. Charles Fox,
Associate Administrator, Office of
Reinvention.
[FR Doc. 98-11799 Filed 5-4-98; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. 98F-FRL-6008-8]

Final EPA Supplemental Environmental Projects Policy Issued

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a revised, final *EPA Supplemental Environmental Projects Policy*. This Policy supersedes the May 1995 *Interim Revised Supplemental Environmental Projects Policy*. Based on experience gained implementing the Interim Revised SEP Policy, EPA has refined and clarified this Policy to better assist it in exercising its enforcement discretion to establish appropriate settlement penalties and supplemental environmental projects (SEPs) that secure significant environmental and public health improvements. **DATES:** EPA will implement this Policy effective May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ann Kline, 202-564-0119, Office of Regulatory Enforcement, Mail Code 2248-A, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: These final revisions to the EPA Supplemental Environmental Projects (SEP) Policy refine and clarify the 1995 Interim Revised Supplemental Environmental Projects Policy for easier implementation. The basic structure and operation of the Policy remains unchanged. The primary purpose of this Policy is to obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy. The final Policy retains the 1995 Policy framework for determining whether a proposed project can be considered in establishing an appropriate settlement penalty. In addition, this Policy also sets out clear legal guidelines, well-defined categories of acceptable projects and simple easy-to-apply rules for calculating and applying the cost of a SEP in determining an appropriate settlement penalty.

The most significant changes made to the 1995 Interim Revised Policy include: (1) Explicit encouragement of community input into the development of SEPs in appropriate cases; (2) a prohibition on using SEPs to mitigate claims for stipulated penalties except in extraordinary circumstances; and (3) the creation of an "other" category, under which projects that do not fit within a defined category of this Policy but otherwise meet all other criteria of the Policy may be approved under certain procedural requirements. A full copy of this Policy is set forth below and also may be found at U.S. EPA's Web site at <http://www.epa.gov/oeca/sep>.

Dated: April 10, 1998.

Steven A. Herman,
Assistant Administrator, Office of
Enforcement and Compliance Assurance,
United States Environmental Protection
Agency.

A. Introduction

1. Background

In settlements of environmental enforcement cases, the U.S. Environmental Protection Agency (EPA) requires the alleged violators to achieve and maintain compliance with Federal environmental laws and regulations and to pay a civil penalty. To further EPA's goals to protect and enhance public health and the environment, in certain instances environmentally beneficial projects, or Supplemental Environmental Projects (SEPs), may be part of the settlement. This Policy sets forth the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP, and the terms and conditions under which they may become part of a settlement. The primary purpose of this Policy is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy.

In settling enforcement actions, EPA requires alleged violators to promptly cease the violations and, to the extent feasible, remediate any harm caused by the violations. EPA also seeks substantial monetary penalties in order to deter noncompliance. Without penalties, regulated entities would have an incentive to delay compliance until they are caught and ordered to comply. Penalties promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties help ensure a national level playing field by

ensuring that violators do not obtain an unfair economic advantage over their competitors who made the necessary expenditures to comply on time. Penalties also encourage regulated entities to adopt pollution prevention and recycling techniques in order to minimize their pollutant discharges and reduce their potential liabilities.

Statutes administered by EPA generally contain penalty assessment criteria that a court or administrative law judge must consider in determining an appropriate penalty at trial or a hearing. In the settlement context, EPA generally follows these criteria in exercising its discretion to establish an appropriate settlement penalty. In establishing an appropriate penalty, EPA considers such factors as the economic benefit associated with the violations, the gravity or seriousness of the violations, and prior history of violations. Evidence of a violator's commitment and ability to perform a SEP is also a relevant factor for EPA to consider in establishing an appropriate settlement penalty. All else being equal, the final settlement penalty will be lower for a violator who agrees to perform an acceptable SEP compared to the violator who does not agree to perform a SEP.

The Agency encourages the use of SEPs that are consistent with this Policy. SEPs may not be appropriate in settlement of all cases, but they are an important part of EPA's enforcement program. While penalties play an important role in environmental protection by deterring violations and creating a level playing field, SEPs can play an additional role in securing significant environmental or public health protection and improvements. SEPs may be particularly appropriate to further the objectives in the statutes EPA administers and to achieve other policy goals, including promoting pollution prevention and environmental justice.

2. Pollution Prevention and Environmental Justice

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq., November 5, 1990) identifies an environmental management hierarchy in which pollution "should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort" (42 U.S.C. 13103).

Selection and evaluation of proposed SEPs should be conducted generally in accordance with this hierarchy of environmental management, i.e., SEPs involving pollution prevention techniques are preferred over other types of reduction or control strategies, and this can be reflected in the degree of consideration accorded to a defendant/respondent before calculation of the final monetary penalty.

Further, there is an acknowledged concern, expressed in Executive Order 12898 on environmental justice, that certain segments of the nation's population, i.e., low-income and/or minority populations, are disproportionately burdened by pollutant exposure. Emphasizing SEPs in communities where environmental justice concerns are present helps ensure that persons who spend significant portions of their time in areas, or depend on food and water sources located near, where the violations occur would be protected. Because environmental justice is not a specific technique or process but an overarching goal, it is not listed as a particular SEP category; but EPA encourages SEPs in communities where environmental justice may be an issue.

3. Using this Policy

In evaluating a proposed project to determine if it qualifies as a SEP and then determining how much penalty mitigation is appropriate, Agency enforcement and compliance personnel should use the following five-step process:

- (1) Ensure that the project meets the basic definition of a SEP. (Section B)
- (2) Ensure that all legal guidelines, including nexus, are satisfied. (Section C)
- (3) Ensure that the project fits within one (or more) of the designated categories of SEPs. (Section D)
- (4) Determine the appropriate amount of penalty mitigation. (Section E)
- (5) Ensure that the project satisfies all of the implementation and other criteria. (Sections F, G, H, I and J)

4. Applicability

This Policy revises and hereby supersedes the February 12, 1991 *Policy on the Use of Supplemental Environmental Projects in EPA Settlements* and the May 1995 *Interim Revised Supplemental Environmental Projects Policy*. This Policy applies to settlements of all civil judicial and administrative actions filed after the effective date of this Policy, and to all pending cases in which the government has not reached agreement in principle

with the alleged violator on the specific terms of a SEP.

This Policy applies to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations that EPA administers. It also may be used by EPA and the Department of Justice in reviewing proposed SEPs in settlement of citizen suits. This Policy also applies to federal agencies that are liable for the payment of civil penalties. Claims for stipulated penalties for violations of consent decrees or other settlement agreements may not be mitigated by the use of SEPs.¹

This is a *settlement* Policy and thus is not intended for use by EPA, defendants, respondents, courts or administrative law judges at a hearing or in a trial. Further, whether the Agency decides to accept a proposed SEP as part of a settlement, and the amount of any penalty mitigation that may be given for a particular SEP, is purely within EPA's discretion. Even though a project appears to satisfy all of the provisions of this Policy, EPA may decide, for one or more reasons, that a SEP is not appropriate (e.g., the cost of reviewing a SEP proposal is excessive, the oversight costs of the SEP may be too high, the defendant/respondent may not have the ability or reliability to complete the proposed SEP, or the deterrent value of the higher penalty amount outweighs the benefits of the proposed SEP).

This Policy establishes a framework for EPA to use in exercising its enforcement discretion in determining appropriate settlements. In some cases, application of this Policy may not be appropriate, in whole or part. In such cases, the litigation team may, with the advance approval of Headquarters, use an alternative or modified approach.

B. Definition and Key Characteristics of a SEP

Supplemental environmental projects are defined as **ENVIRONMENTALLY BENEFICIAL PROJECTS** which a defendant/respondent agrees to undertake in

¹ In extraordinary circumstances, the Assistant Administrator may consider mitigating potential stipulated penalty liability using SEPs where: (1) Despite the circumstances giving rise to the claim for stipulated penalties, the violator has the ability and intention to comply with a new settlement agreement obligation to implement the SEP; (2) there is no negative impact on the deterrent purposes of stipulated penalties; and (3) the settlement agreement establishes a range for stipulated penalty liability for the violations at issue. For example, if a respondent/defendant has violated a settlement agreement which provides that a violation of X requirement subjects it to a stipulated penalty between \$1,000 and \$5,000, then the Agency may consider SEPs in determining the specific penalty amount that should be demanded.

SETTLEMENT OF AN ENFORCEMENT ACTION, but which the defendant/respondent is *not otherwise legally required to perform*. The three bolded key parts of this definition are elaborated below.

Environmentally beneficial means a SEP must improve, protect, or reduce risks to public health, or the environment at large. While in some cases a SEP may provide the alleged violator with certain benefits, there must be no doubt that the project primarily benefits the public health or the environment.

In settlement of an enforcement action means: (1) EPA has the opportunity to help shape the scope of the project before it is implemented; and (2) the project is not commenced until after the Agency has identified a violation (e.g., issued a notice of violation, administrative order, or complaint).²

Not otherwise legally required to perform means the project or activity is not required by any federal, state or local law or regulation. Further, SEPs cannot include actions which the defendant/respondent is likely to be required to perform:

(a) As injunctive relief³ in the instant case;

(b) As injunctive relief in another legal action EPA, or another regulatory agency could bring;

(c) As part of an existing settlement or order in another legal action; or, d) By a state or local requirement.

SEPs may include activities which the defendant/respondent will become legally obligated to undertake two or more years in the future, if the project will result in the facility coming into compliance earlier than the deadline. Such "accelerated compliance" projects are not allowable, however, if the regulation or statute provides a benefit (e.g., a higher emission limit) to the

² Since the primary purpose of this Policy is to obtain environmental or public health benefits that may not have occurred "but for" the settlement, projects which the defendant has previously committed to perform or have been started before the Agency has identified a violation are not eligible as SEPs. Projects which have been committed to or started before the identification of a violation may mitigate the penalty in other ways. Depending on the specifics, if a regulated entity had initiated environmentally beneficial projects before the enforcement process commenced, the initial penalty calculation could be lower due to the absence of recalcitrance, no history of other violations, good faith efforts, less severity of the violations, or a shorter duration of the violations.

³ The statutes EPA administers generally provide a court with broad authority to order a defendant to cease its violations, take necessary steps to prevent future violations, and to remediate any harm caused by the violations. If a court is likely to order a defendant to perform a specific activity in a particular case, such an activity does not qualify as a SEP.

defendant/respondent for early compliance.

Also, the performance of a SEP reduces neither the stringency nor timeliness requirements of Federal environmental statutes and regulations. Of course, performance of a SEP does not alter the defendant/respondent's obligation to remedy a violation expeditiously and return to compliance.

C. Legal Guidelines

EPA has broad discretion to settle cases, including the discretion to include SEPs as an appropriate part of the settlement. The legal evaluation of whether a proposed SEP is within EPA's authority and consistent with all statutory and Constitutional requirements may be a complex task. Accordingly, this Policy uses five legal guidelines to ensure that our SEPs are within the Agency's and a federal court's authority, and do not run afoul of any Constitutional or statutory requirements.⁴

1. A project cannot be inconsistent with any provision of the underlying statutes.

2. All projects must advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and must have adequate nexus. Nexus is the relationship between the violation and the proposed project. This relationship exists only if:

a. The project is designed to reduce the likelihood that similar violations will occur in the future; or

b. The project reduces the adverse impact to public health or the environment to which the violation at issue contributes; or

c. The project reduces the overall risk to public health or the environment potentially affected by the violation at issue.

Nexus is easier to establish if the primary impact of the project is at the site where the alleged violation occurred or at a different site in the same ecosystem or within the immediate geographic⁵ area. Such SEPs may have sufficient nexus even if the SEP addresses a different pollutant in a different medium. In limited cases, nexus may exist even though a project

⁴ These legal guidelines are based on federal law as it applies to EPA. States may have more or less flexibility in the use of SEPs depending on their laws.

⁵ The immediate geographic area will generally be the area within a 50 mile radius of the site on which the violations occurred. Ecosystem or geographic proximity is not by itself a sufficient basis for nexus; a project must always satisfy subparagraph a, b, or c in the definition of nexus. In some cases, a project may be performed at a facility or site not owned by the defendant/respondent.

will involve activities outside of the United States.⁶ The cost of a project is not relevant to whether there is adequate nexus.

3. EPA may not play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP. Nor may EPA retain authority to manage or administer the SEP. EPA may, of course, perform oversight to ensure that a project is implemented pursuant to the provisions of the settlement and have legal recourse if the SEP is not adequately performed.

4. The type and scope of each project are defined in the signed settlement agreement. This means the "what, where and when" of a project are defined by the settlement agreement. Settlements in which the defendant/respondent agrees to spend a certain sum of money on a project(s) to be defined later (after EPA or the Department of Justice signs the settlement agreement) are not allowed.

5. a. A project cannot be used to satisfy EPA's statutory obligation or another federal agency's obligation to perform a particular activity.

Conversely, if a federal statute prohibits the expenditure of federal resources on a particular activity, EPA cannot consider projects that would appear to circumvent that prohibition.

b. A project may not provide EPA or any federal agency with additional resources to perform a particular activity for which Congress has specifically appropriated funds. A project may not provide EPA with additional resources to perform a particular activity for which Congress has earmarked funds in an appropriations committee report.⁷ Further, a project cannot be used to satisfy EPA's statutory or earmark obligation, or another federal agency's statutory obligation, to spend funds on a particular activity. A project, however, may be related to a particular activity for which Congress has specifically appropriated or earmarked funds.

c. A project may not provide additional resources to support specific activities performed by EPA employees or EPA contractors. For example, if EPA has developed a brochure to help a segment of the regulated community comply with environmental requirements, a project may not directly,

⁶ All projects which would include activities outside the U.S. must be approved in advance by Headquarters and/or the Department of Justice. See section j).

⁷ Earmarks are instructions for changes to EPA's discretionary budget authority made by appropriations committee in committee reports that the Agency generally honors as a matter of policy.

or indirectly, provide additional resources to revise, copy or distribute the brochure.

d. A project may not provide a federal grantee with additional funds to perform a specific task identified within an assistance agreement.

D. Categories of Supplemental Environmental Projects

EPA has identified seven specific categories of projects which may qualify as SEPs. In order for a proposed project to be accepted as a SEP, it must satisfy the requirements of at least one category plus all the other requirements established in this Policy.

1. Public Health

A public health project provides diagnostic, preventative and/or remedial components of human health care which is related to the actual or potential damage to human health caused by the violation. This may include epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/ tissue samples, medical treatment and rehabilitation therapy.

Public health SEPs are acceptable only where the primary benefit of the project is the population that was harmed or put at risk by the violations.

2. Pollution Prevention

A pollution prevention project is one which reduces the generation of pollution through "source reduction," i.e., any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

Source reduction may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water or other materials. "In-process recycling," wherein waste materials produced during a manufacturing process are returned directly to production as raw

materials on site, is considered a pollution prevention project.

In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water or other materials. This is consistent with the *Pollution Prevention Act of 1990* and the Administrator's "Pollution Prevention Policy Statement: New Directions for Environmental Protection," dated June 15, 1993.

3. Pollution Reduction

If the pollutant or waste stream already has been generated or released, a pollution reduction approach—which employs recycling, treatment, containment or disposal techniques—may be appropriate. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as "pollution prevention." This may include the installation of more effective end-of-process control or treatment technology, or improved containment, or safer disposal of an existing pollutant source. Pollution reduction also includes "out-of-process recycling," wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site.

4. Environmental Restoration and Protection

An environmental restoration and protection project is one which enhances the condition of the ecosystem or immediate geographic area adversely affected.⁸ These projects may be used to restore or protect natural environments (such as ecosystems) and man-made environments, such as facilities and buildings. This category also includes any project which protects the ecosystem from actual or potential damage resulting from the violation or improves the overall condition of the ecosystem.⁹ Examples of such projects

⁸ If EPA lacks authority to require repair of the damage caused by the violation, then repair itself may constitute a SEP.

⁹ Simply preventing new discharges into the ecosystem, as opposed to taking affirmative action directly related to preserving existing conditions at a property, would not constitute a restoration and protection project, but may fit into another category such as pollution prevention or pollution reduction.

include: Restoration of a wetland in the same ecosystem along the same avian flyway in which the facility is located; or purchase and management of a watershed area by the defendant/respondent to protect a drinking water supply where the violation (e.g., a reporting violation) did not directly damage the watershed but potentially could lead to damage due to unreported discharges. This category also includes projects which provide for the protection of endangered species (e.g., developing conservation programs or protecting habitat critical to the well-being of a species endangered by the violation).

In some projects where a defendant/respondent has agreed to restore and then protect certain lands, the question arises as to whether the project may include the creation or maintenance of certain recreational improvements, such as hiking and bicycle trails. The costs associated with such recreational improvements may be included in the total SEP cost provided they do not impair the environmentally beneficial purposes of the project and they constitute only an incidental portion of the total resources spent on the project.

In some projects where the parties intend that the property be protected so that the ecological and pollution reduction purposes of the land are maintained in perpetuity, the defendant/respondent may sell or transfer the land to another party with the established resources and expertise to perform this function, such as a state park authority. In some cases, the U.S. Fish and Wildlife Service or the National Park Service may be able to perform this function.¹⁰

With regard to man-made environments, such projects may involve the remediation of facilities and buildings, provided such activities are not otherwise legally required. This includes the removal/mitigation of contaminated materials, such as soils, asbestos and lead paint, which are a continuing source of releases and/or threat to individuals.

5. Assessments and Audits

Assessments and audits, if they are not otherwise available as injunctive relief, are potential SEPs under this category. There are three types of projects in this category: a. Pollution prevention assessments; b. environmental quality assessments; and

¹⁰ These federal agencies have explicit statutory authority to accept gifts of land and money in certain circumstances. All projects with these federal agencies must be reviewed and approved in advance by legal counsel in the agency, usually the Solicitor's Office in the Department of the Interior.

c. compliance audits. These assessments and audits are only acceptable as SEPs when the defendant/respondent agrees to provide EPA with a copy of the report. The results may be made available to the public, except to the extent they constitute confidential business information pursuant to 40 CFR part 2, subpart B.

a. *Pollution prevention assessments* are systematic, internal reviews of specific processes and operations designed to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes. To be eligible for SEPs, such assessments must be conducted using a recognized pollution prevention assessment or waste minimization procedure to reduce the likelihood of future violations. Pollution prevention assessments are acceptable as SEPs without an implementation commitment by the defendant/respondent. Implementation is not required because drafting implementation requirements before the results of an assessment are known is difficult. Further, many of the implementation recommendations may constitute activities that are in the defendant/respondent's own economic interest.

b. *Environmental quality assessments* are investigations of: The condition of the environment at a site not owned or operated by the defendant/respondent; the environment impacted by a site or a facility regardless of whether the site or facility is owned or operated by the defendant/respondent; or threats to human health or the environment relating to a site or a facility regardless of whether the site or facility is owned or operated by the defendant/respondent. These include, but are not limited to: investigations of levels or sources of contamination in any environmental media at a site; or monitoring of the air, soil, or water quality surrounding a site or facility. To be eligible as SEPs, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken. Expanded sampling or monitoring by a defendant/respondent of its own emissions or operations does not qualify as a SEP to the extent it is ordinarily available as injunctive relief.

Environmental quality assessment SEPs may not be performed on the following types of sites: sites that are on the National Priority List under CERCLA section 105, 40 CFR part 300, appendix B; sites that would qualify for an EPA removal action pursuant to CERCLA section 104(a) and the National

Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.415; and sites for which the defendant/respondent or another party would likely be ordered to perform a remediation activity pursuant to CERCLA section 106, RCRA section 7003, RCRA 3008(h), CWA section 311, or another federal law.

c. *Environmental compliance audits* are independent evaluations of a defendant/respondent's compliance status with environmental requirements. Credit is only given for the costs associated with conducting the audit. While the SEP should require all violations discovered by the audit to be promptly corrected, no credit is given for remedying the violation since persons are required to achieve and maintain compliance with environmental requirements. In general, compliance audits are acceptable as SEPs only when the defendant/respondent is a small business or small community.^{11, 12}

6. Environmental Compliance Promotion

An environmental compliance promotion project provides training or technical support to other members of the regulated community to: (1) identify, achieve and maintain compliance with applicable statutory and regulatory requirements or (2) go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. For these types of projects, the defendant/respondent may lack the experience, knowledge or ability to implement the project itself, and, if so, the defendant/respondent should be required to contract with an appropriate expert to develop and implement the compliance promotion project. Acceptable projects may include, for example, producing a seminar directly related to correcting widespread or prevalent violations within the defendant/respondent's economic sector.

Environmental compliance promotion SEPs are acceptable only where the primary impact of the project is focused on the same regulatory program

¹¹ For purposes of this Policy, a small business is owned by a person or another entity that employs 100 or fewer individuals. Small businesses could be individuals, privately held corporations, farmers, landowners, partnerships and others. A small community is one comprised of fewer than 2,500 persons.

¹² Since most large companies routinely conduct compliance audits, to mitigate penalties for such audits would reward violators for performing an activity that most companies already do. In contrast, these audits are not commonly done by small businesses, perhaps because such audits may be too expensive.

requirements which were violated and where EPA has reason to believe that compliance in the sector would be significantly advanced by the proposed project. For example, if the alleged violations involved Clean Water Act pretreatment violations, the compliance promotion SEP must be directed at ensuring compliance with pretreatment requirements. Environmental compliance promotion SEPs are subject to special approval requirements per Section J below.

7. Emergency Planning and Preparedness

An emergency planning and preparedness project provides assistance—such as computers and software, communication systems, chemical emission detection and inactivation equipment, HAZMAT equipment, or training—to a responsible state or local emergency response or planning entity. This is to enable these organizations to fulfill their obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA) to collect information to assess the dangers of hazardous chemicals present at facilities within their jurisdiction, to develop emergency response plans, to train emergency response personnel and to better respond to chemical spills.

EPCRA requires regulated sources to provide information on chemical production, storage and use to State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs) and Local Fire Departments (LFDs). This enables states and local communities to plan for and respond effectively to chemical accidents and inform potentially affected citizens of the risks posed by chemicals present in their communities, thereby enabling them to protect the environment or ecosystems which could be damaged by an accident. Failure to comply with EPCRA impairs the ability of states and local communities to meet their obligations and places emergency response personnel, the public and the environment at risk from a chemical release.

Emergency planning and preparedness SEPs are acceptable where the primary impact of the project is within the same emergency planning district or state affected by the violations and EPA has not previously provided the entity with financial assistance for the same purposes as the proposed SEP. Further, this type of SEP is allowable only when the SEP involves non-cash assistance and there are violations of EPCRA, or reporting violations under CERCLA section 103, or CAA section 112(r), or violations of

other emergency planning, spill or release requirements alleged in the complaint.

8. Other Types of Projects

Projects determined by the case team to have environmental merit which do not fit within at least one of the seven categories above but that are otherwise fully consistent with all other provisions of this Policy, may be accepted with the advance approval of the Office of Enforcement and Compliance Assurance.

9. Projects Which Are Not Acceptable as SEPs

The following are examples of the types of projects that are not allowable as SEPs:

- General public educational or public environmental awareness projects, e.g., sponsoring public seminars, conducting tours of environmental controls at a facility, promoting recycling in a community;
- Contributions to environmental research at a college or university;
- Conducting a project, which, though beneficial to a community, is unrelated to environmental protection, e.g., making a contribution to a non-profit, public interest, environmental, or other charitable organization, or donating playground equipment;
- Studies or assessments without a requirement to address the problems identified in the study (except as provided for in § D.5 above);
- Projects which the defendant/respondent will undertake, in whole or part, with low-interest federal loans, federal contracts, federal grants, or other forms of federal financial assistance or non-financial assistance (e.g., loan guarantees).

E. Calculation of the Final Penalty

Substantial penalties are an important part of any settlement for legal and policy reasons. Without penalties there would be no deterrence, as regulated entities would have little incentive to comply. Additionally, penalties are necessary as a matter of fairness to those regulated entities that make the necessary expenditures to comply on time. Violators should not be allowed to obtain an economic advantage over their competitors who complied.

As a general rule, the net costs to be incurred by a violator in performing a SEP may be considered as one factor in determining an appropriate settlement amount. In settlements in which defendant/respondents commit to conduct a SEP, the final settlement penalty must equal or exceed either: (a) The economic benefit of noncompliance

plus 10 percent of the gravity component; or (b) 25 percent of the gravity component only; whichever is greater.

Calculating the final penalty in a settlement which includes a SEP is a five step process. Each of the five steps is explained below. The five steps are also summarized in the penalty calculation worksheet attached to this Policy.

Step 1: Settlement Amount Without a SEP

a. The applicable EPA penalty policy is used to calculate the economic benefit of noncompliance.

b. The applicable EPA penalty policy is used to calculate the gravity component of the penalty. The gravity component is all of the penalty other than the identifiable economic benefit amount, after gravity has been adjusted by all other factors in the penalty policy (e.g., audits, good faith, litigation considerations), except for the SEP.

c. The amounts in steps 1.a and b are added. This sum is the minimum amount that would be necessary to settle the case without a SEP.

Step 2: Minimum Penalty Amount With a SEP

The minimum penalty amount must equal or exceed the economic benefit of noncompliance plus 10 percent of the gravity component, or 25 percent of the gravity component only, whichever is greater. The minimum penalty amount is calculated as follows:

- Calculate 10 percent of gravity (multiply amount in step 1.b by 0.1).
- Add economic benefit (amount in step 1.a) to amount in step 2.a.
- Calculate 25 percent of gravity (multiply amount in step 1.b by 0.25).
- Identify the minimum penalty amount: the greater of step 2.c or step 2.b.¹³

Step 3. Calculate the SEP Cost

The net present after-tax cost of the SEP, hereinafter called the "SEP COST," is the maximum amount that EPA may take into consideration in determining an appropriate penalty mitigation for performance of a SEP. In order to facilitate evaluation of the SEP COST of a proposed project, the Agency has developed a computer model called PROJECT.¹⁴ There are three types of

¹³ Pursuant to the February 1995 Revised Interim Clean Water Act Settlement Penalty Policy, section V, a smaller minimum penalty amount may be allowed for a municipality.

¹⁴ A copy of the PROJECT computer program software and PROJECT User's Manual may be purchased by calling the National Technology Information Service at (800) 553-6847, and asking

costs that may be associated with performance of a SEP (which are entered into the PROJECT model): capital costs (e.g., equipment, buildings); one-time nondepreciable costs (e.g., removing contaminated materials, purchasing land, developing a compliance promotion seminar); and annual operation costs and savings (e.g., labor, chemicals, water, power, raw materials).¹⁵

To use PROJECT, the Agency needs reliable estimates of the costs associated with a defendant/respondent's performance of a SEP, as well as any savings due to such factors as energy efficiency gains, reduced materials costs, reduced waste disposal costs, or increases in productivity. For example, if the annual expenditures in labor and materials of operating a new waste recycling process is \$100,000 per year, but the new process reduces existing hazardous waste disposal expenditures by \$30,000 per year, the net cost of \$70,000 is entered into the PROJECT model (variable 4).

In order to run the PROJECT model properly (i.e., to produce a reasonable estimate of the net present after-tax cost of the project), the number of years that annual operation costs or savings will be expended in performing the SEP must be specified. At a minimum, the defendant/respondent must be required to implement the project for the same number of years used in the PROJECT model calculation. (For example, if the settlement agreement requires the defendant/respondent to operate the SEP equipment for two years, two years should be entered as the input for number of years of annual expense in the PROJECT model.) If certain costs or savings appear speculative, they should not be entered into the PROJECT model. The PROJECT model is the primary method to determine the SEP COST for purposes of negotiating settlements.¹⁶

for Document #ITB 98-500408GEL, or they may be downloaded from the World Wide Web at "http://www.epa.gov/oeca/models/".

¹⁵ The PROJECT calculated SEP Cost is a reasonable estimate, and not an exact after-tax calculation. PROJECT does not evaluate the potential for market benefits which may accrue with the performance of a SEP (e.g., increased sales of a product, improved corporate public image, or improved employee morale). Nor does it consider costs imposed on the government, such as the cost to the Agency for oversight of the SEP, or the burden of a lengthy negotiation with a defendant/respondent who does not propose a SEP until late in the settlement process; such factors may be considered in determining a mitigation percentage rather than in calculating after-tax cost.

¹⁶ See PROJECT User's Manual, January 1995. If the PROJECT model appears inappropriate to a particular fact situation, EPA Headquarters should be consulted to identify an alternative approach. For example, PROJECT does not readily calculate

EPA does not offer tax advice on whether a regulated entity may deduct SEP expenditures from its income taxes. If a defendant/respondent states that it will not deduct the cost of a SEP from its taxes and it is willing to commit to this in the settlement document, and provide the Agency with certification upon completion of the SEP that it has not deducted the SEP expenditures, the PROJECT model calculation should be adjusted to calculate the SEP Cost without reductions for taxes. This is a simple adjustment to the PROJECT model: just enter a zero for variable 7, the marginal tax rate. If a business is not willing to make this commitment, the marginal tax rate in variable 7 should not be set to zero; rather the default settings (or a more precise estimate of the business' marginal tax rates) should be used in variable 7.

If the PROJECT model reveals that a project has a negative cost during the period of performance of the SEP, this means that it represents a positive cash flow to the defendant/respondent and is a profitable project. Such a project is generally not acceptable as a SEP. If a project generates a profit, a defendant/respondent should, and probably will, based on its own economic interests, implement the project. While EPA encourages regulated entities to undertake environmentally beneficial projects that are economically profitable, EPA does not believe violators should receive a bonus in the form of penalty mitigation to undertake such projects as part of an enforcement action. EPA does not offer subsidies to complying companies to undertake profitable environmentally beneficial projects and it would thus be inequitable and perverse to provide such subsidies only to violators. In addition, the primary goal of SEPs is to secure a favorable environmental or public health outcome which would not have occurred but for the enforcement case settlement. To allow SEP penalty mitigation for profitable projects would thwart this goal.¹⁷

¹⁷ The cost of an accelerated compliance SEP. The cost of such a SEP is only the additional cost associated with doing the project early (ahead of the regulatory requirement) and it needs to be calculated in a slightly different manner. Please consult with the Office Of Regulatory Enforcement for directions on how to calculate the costs of such projects.

¹⁸ The penalty mitigation guidelines provide that the amount of mitigation should not exceed the net cost of the project. To provide penalty mitigation for profitable projects would be providing a credit in excess of net costs.

Step 4: Determine the SEP Mitigation Percentage and then the Mitigation Amount

Step 4.a: Mitigation Percentage. After the SEP COST has been calculated, EPA should determine what percentage of that cost may be applied as mitigation against the amount EPA would settle for but for the SEP. The quality of the SEP should be examined as to whether and how effectively it achieves each of the following six factors listed below. (The factors are not listed in priority order.)

- **Benefits to the Public or Environment at Large.** While all SEPs benefit public health or the environment, SEPs which perform well on this factor will result in significant and quantifiable reduction in discharges of pollutants to the environment and the reduction in risk to the general public. SEPs also will perform well on this factor to the extent they result in significant and, to the extent possible, measurable progress in protecting and restoring ecosystems (including wetlands and endangered species habitats).

- **Innovativeness.** SEPs which perform well on this factor will further the development, implementation, or dissemination of innovative processes, technologies, or methods which more effectively: reduce the generation, release or disposal of pollutants; conserve natural resources; restore and protect ecosystems; protect endangered species; or promote compliance. This includes "technology forcing" techniques which may establish new regulatory "benchmarks."

- **Environmental Justice.** SEPs which perform well on this factor will mitigate damage or reduce risk to minority or low income populations which may have been disproportionately exposed to pollution or are at environmental risk.

- **Community Input.** SEPs which perform well on this factor will have been developed taking into consideration input received from the affected community. No credit should be given for this factor if the defendant/respondent did not actively participate in soliciting and incorporating public input into the SEP.

- **Multimedia Impacts.** SEPs which perform well on this factor will reduce emissions to more than one medium.
- **Pollution Prevention.** SEPs which perform well on this factor will develop and implement pollution prevention techniques and practices.

The better the performance of the SEP under each of these factors, the higher the appropriate mitigation percentage. The percent of penalty mitigation is within EPA's discretion; there is no

presumption as to the correct percentage of mitigation. The mitigation percentage should not exceed 80 percent of the SEP COST, with two exceptions:

(1) For small businesses, government agencies or entities, and non-profit organizations, this mitigation percentage of the SEP COST may be set as high as 100 percent if the defendant/respondent can demonstrate the project is of outstanding quality.

(2) For any defendant/respondent, if the SEP implements pollution prevention, the mitigation percentage of the SEP COST may be set as high as 100 percent if the defendant/respondent can demonstrate that the project is of outstanding quality.

If the government must allocate significant resources to monitoring and reviewing the implementation of a project, a lower mitigation percentage of the SEP COST may be appropriate.

In administrative enforcement actions in which there is a statutory limit (commonly called "caps") on the total maximum penalty that may be sought in a single action, the cash penalty obtained plus the amount of penalty mitigation credit due to the SEPs shall not exceed the limit.

Step 4.b: SEP Mitigation Amount.

The SEP COST (calculated pursuant to step 3) is multiplied by the mitigation percentage (step 4.a) to obtain the SEP mitigation amount, which is the amount of the SEP cost that may be used in potentially mitigating the preliminary settlement penalty.

Step 5: Final Settlement Penalty

5.a. The SEP mitigation amount (step 4.b) is then subtracted from the settlement amount without a SEP (step 1.c).

5.b The greater of step 2.d or step 5.a is the minimum final settlement penalty allowable based on the performance of the SEP.

F. Liability for Performance

Defendants/respondents (or their successors in interest) are responsible and legally liable for ensuring that a SEP is completed satisfactorily. A defendant/respondent may not transfer this responsibility and liability to someone else, commonly called a third party. Of course, a defendant/respondent may use contractors or consultants to assist it in implementing a SEP.¹⁸

¹⁸ Non-profit organizations, such as universities and public interest groups, may function as contractors or consultants.

G. Oversight and Drafting Enforceable SEPS

The settlement agreement should accurately and completely describe the SEP. (See related legal guideline 4 in § C above.) It should describe the specific actions to be performed by the defendant/respondent and provide for a reliable and objective means to verify that the defendant/respondent has timely completed the project. This may require the defendant/respondent to submit periodic reports to EPA. The defendant/respondent may utilize an outside auditor to verify performance, and the defendant/respondent should be made responsible for the cost of any such activities. The defendant/respondent remains responsible for the quality and timeliness of any actions performed or any reports prepared or submitted by the auditor. A final report certified by an appropriate corporate official, acceptable to EPA, and evidencing completion of the SEP and documenting SEP expenditures, should be required.

To the extent feasible, defendant/respondents should be required to quantify the benefits associated with the project and provide EPA with a report setting forth how the benefits were measured or estimated. The defendant/respondent should agree that whenever it publicizes a SEP or the results of a SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.

The drafting of a SEP will vary depending on whether the SEP is being performed as part of an administrative or judicial enforcement action. SEPs with long implementation schedules (e.g., 18 months or longer), SEPs which require EPA review and comment on interim milestone activities, and other complex SEPs may not be appropriate in administrative enforcement actions. Specific guidance on the proper drafting of settlement documents requiring SEPs is provided in a separate document.

H. Failure of a SEP and Stipulated Penalties

If a SEP is not completed satisfactorily, the defendant/respondent should be required, pursuant to the terms of the settlement document, to pay stipulated penalties for its failure. Stipulated penalty liability should be established for each of the scenarios set forth below as appropriate to the individual case.

1. Except as provided in paragraph 2 immediately below, if the SEP is not completed satisfactorily, a substantial stipulated penalty should be required.

Generally, a substantial stipulated penalty is between 75 and 150 percent of the amount by which the settlement penalty was mitigated on account of the SEP.

2. If the SEP is not completed satisfactorily, but the defendant/respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, no stipulated penalty is necessary.

3. If the SEP is satisfactorily completed, but the defendant/respondent spent less than 90 percent of the amount of money required to be spent for the project, a small stipulated penalty should be required. Generally, a small stipulated penalty is between 10 and 25 percent of the amount by which the settlement penalty was mitigated on account of the SEP.

4. If the SEP is satisfactorily completed, and the defendant/respondent spent at least 90 percent of the amount of money required to be spent for the project, no stipulated penalty is necessary.

The determinations of whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of the agreement) and whether the defendant/respondent has made a good faith, timely effort to implement the SEP should be reserved to the sole discretion of EPA, especially in administrative actions in which there is often no formal dispute resolution process.

I. Community Input

In appropriate cases, EPA should make special efforts to seek input on project proposals from the local community that may have been adversely impacted by the violations.¹⁹ Soliciting community input into the SEP development process can: Result in SEPs that better address the needs of the impacted community; promote environmental justice; produce better community understanding of EPA enforcement; and improve relations between the community and the violating facility. Community involvement in SEPs may be most appropriate in cases where the range of possible SEPs is great and/or multiple SEPs may be negotiated.

¹⁹ In civil judicial cases, the Department of Justice already seeks public comment on lodged consent decrees through a Federal Register notice. See 28 CFR 50.7. In certain administrative enforcement actions, there are also public notice requirements that are followed before a settlement is finalized. See 40 CFR part 22.

When soliciting community input, the EPA negotiating team should follow the four guidelines set forth below.

1. Community input should be sought after EPA knows that the defendant/respondent is interested in doing a SEP and is willing to seek community input, approximately how much money may be available for doing a SEP, and that settlement of the enforcement action is likely. If these conditions are not satisfied, EPA will have very little information to provide communities regarding the scope of possible SEPs.

2. The EPA negotiating team should use both informal and formal methods to contact the local community. Informal methods may involve telephone calls to local community organizations, local churches, local elected leaders, local chambers of commerce, or other groups. Since EPA may not be able to identify all interested community groups, a public notice in a local newspaper may be appropriate.

3. To ensure that communities have a meaningful opportunity to participate, the EPA negotiating team should provide information to communities about what SEPs are, the opportunities and limits of such projects, the confidential nature of settlement negotiations, and the reasonable possibilities and limitations in the current enforcement action. This can be done by holding a public meeting, usually in the evening, at a local school or facility. The EPA negotiating team may wish to use community outreach experts at EPA or the Department of Justice in conducting this meeting. Sometimes the defendant/respondent may play an active role at this meeting and have its own experts assist in the process.

4. After the initial public meeting, the extent of community input and participation in the SEP development process will have to be determined. The amount of input and participation is likely to vary with each case. Except in extraordinary circumstances and with agreement of the parties, representatives of community groups will not participate directly in the settlement negotiations. This restriction is necessary because of the confidential nature of settlement negotiations and because there is often no equitable process to determine which community group should directly participate in the negotiations.

J. EPA Procedures

1. Approvals

The authority of a government official to approve a SEP is included in the official's authority to settle an

enforcement case and thus, subject to the exceptions set forth here, no special approvals are required. The special approvals apply to both administrative and judicial enforcement actions as follows:

a. Regions in which a SEP is proposed for implementation shall be given the opportunity to review and comment on the proposed SEP.

b. In all cases in which a project may not fully comply with the provisions of this Policy (e.g., see footnote 1), the SEP must be approved by the EPA Assistant Administrator for Enforcement and Compliance Assurance. If a project does not fully comply with all of the legal guidelines in this Policy, the request for approval must set forth a legal analysis supporting the conclusion that the project is within EPA's legal authority and is not otherwise inconsistent with law.

c. In all cases in which a SEP would involve activities outside the United States, the SEP must be approved in

advance by the Assistant Administrator and, for judicial cases only, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice.

d. In all cases in which an environmental compliance promotion project (section D.6) or a project in the "other" category (section D.8) is contemplated, the project must be approved in advance by the appropriate office in OECA, unless otherwise delegated.

2. Documentation and Confidentiality

In each case in which a SEP is included as part of a settlement, an explanation of the SEP with supporting materials (including the PROJECT model printout, where applicable) must be included as part of the case file. The explanation of the SEP should explain how the five steps set forth in Section A.3 above have been used to evaluate the project and include a description of the expected benefits associated with

the SEP. The explanation must include a description by the enforcement attorney of how nexus and the other legal guidelines are satisfied.

Documentation and explanations of a particular SEP may constitute confidential settlement information that is exempt from disclosure under the Freedom of Information Act, is outside the scope of discovery, and is protected by various privileges, including the attorney-client privilege and the attorney work-product privilege. While individual Agency evaluations of proposed SEPs are confidential, privileged documents, this Policy is a public document and may be released to anyone upon request.

This Policy is primarily for the use of U.S. EPA enforcement personnel in settling cases. EPA reserves the right to change this Policy at any time, without prior notice, or to act at variance to this Policy. This Policy does not create any rights, duties, or obligations, implied or otherwise, in any third parties.

ATTACHMENT.—SEP PENALTY CALCULATION WORKSHEET

[This worksheet should be used pursuant to section E of the Policy. Specific Applications of this Worksheet in a Case Are Privileged, Confidential Documents]

Step	Amount
STEP 1: CALCULATION OF SETTLEMENT AMOUNT WITHOUT A SEP	
1.a. BENEFIT: The applicable penalty policy is used to calculate the economic benefit of noncompliance	\$
1.b. GRAVITY: The applicable penalty policy is used to calculate the gravity component of the penalty; this is gravity after all adjustments in the applicable policy.	\$
1.c. SETTLEMENT AMOUNT without a SEP: Sum of step 1.a plus 1.b	\$
STEP 2: CALCULATION OF THE MINIMUM PENALTY AMOUNT WITH A SEP	
2.a. 10% of GRAVITY: Multiply amount in step 1.b by 0.10	\$
2.b. BENEFIT PLUS 10% of GRAVITY: Sum of step 1.a plus step 2.a	\$
2.c. 25% of GRAVITY: Multiply amount in step 1.b by 0.25	\$
2.d. MINIMUM PENALTY AMOUNT: Select greater of step 2.c or step 2.b	\$
STEP 3: CALCULATION OF THE SEP COST USING PROJECT MODEL	
STEP 4: CALCULATION OF MITIGATION PERCENTAGE AND MITIGATION AMOUNT	
4.a. SEP Cost Mitigation Percentage. Evaluate the project pursuant to the 6 mitigation factors in the Policy. Mitigation percentage should not exceed 80% unless one of the exceptions applies.	Percent
4.b. SEP Mitigation Amount. Multiply step 3 by step 4.a	\$
STEP 5: CALCULATION OF THE FINAL SETTLEMENT PENALTY	
5.a. Subtract step 4.b from step 1.c	\$
5.b. Final Settlement Penalty: Select greater of step 2.d or step 5.a	\$

[FR Doc. 98-11881 Filed 5-4-98; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6007-9]

Selections for Total Maximum Daily Load Development for the State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for public comment of the selection of two waterbodies for Total Maximum Daily

Load (TMDL) development in the state of West Virginia.

SUMMARY: Pursuant to the Consent Decree filed with the court resolving a citizen suit filed against EPA, *Ohio Valley Environmental Coalition, Inc., West Virginia Highlands Conservancy et al. v. Browner et al.*, (C.A. No. 2:95-5029 and 2:96-0091 (S.D.WV)), EPA must establish TMDLs for seven water quality limited segments ("WQLS") of waterbodies in West Virginia by September 30, 1998, if the State of West Virginia fails to establish these TMDLs itself. The Consent Decree, in Paragraph 18, contemplates that, in the first

instance, West Virginia will select the waterbodies for TMDL development, but that EPA may select alternative waterbodies, if EPA is establishing the TMDLs in cooperation with West Virginia.

West Virginia, with EPA's concurrence, is in the process of announcing the selection of the following five WQLS for TMDL development for 1998: Lost River, Hurricane Lake, Mountwood Park Lake, Tomlinson Run Lake, and Burches Run Lake. Pursuant to Paragraph 18 of the Consent Decree, EPA today is providing notice that EPA has selected two additional waterbodies for TMDL

development in West Virginia. EPA has selected Ten Mile Creek of the Buckhannon River and the mainstem of the Buckhannon River in Upshur County, West Virginia, in lieu of the Cheat River and Paint Creek, which were the selections proposed by West Virginia.

This notice is intended to inform interested persons of EPA's intention to develop TMDLs for Ten Mile Creek and Buckhannon River, in lieu of the Cheat River and Paint Creek. Interested persons may provide comment on this selection to EPA. Comments should be received no later than 30 days after the date of this Notice and should be sent to the person listed in the following FOR INFORMATION CONTACT section.

FOR FURTHER INFORMATION CONTACT: Carol Ann Davis, Office of Watersheds (3WP12), USEPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, at (215) 566-5738, or by email at davis.carolann@epamail.epa.gov.

Dated: April 27, 1998.

Joseph Piotrowski,

Acting Director, Water Protection Division, EPA Region III.

[FR Doc. 98-11880 Filed 5-4-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6008-4]

Notice of Transfer of Jurisdiction of National Pollutant Discharge Elimination System (NPDES) General Permit in Louisiana to Louisiana Department of Environmental Quality (LDEQ) and in Oklahoma to Oklahoma Department of Environmental Quality (ODEQ)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Transfer of Jurisdiction of NPDES General Permits.

SUMMARY: EPA Region 6 proposed and solicited comments on NPDES General Permits for Discharges Resulting From Implementing Corrective Action Plans for Cleanup of Petroleum UST Systems in Louisiana (LAG830000) and in Oklahoma (OKG830000) at 61 FR 37894 (July 22, 1996). Those permits were subsequently issued November 14, 1997 (62 FR 61116). Today, EPA Region 6 gives notice that jurisdiction over NPDES General Permit No. LAG830000 is being transferred to LDEQ and jurisdiction over NPDES General Permit No. OKG830000 is being transferred to ODEQ.

DATES: The effective date of transfer of jurisdiction of these permits is May 5, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7516.

SUPPLEMENTARY INFORMATION: EPA Region 6 and LDEQ have a Memorandum of Agreement (MOA), with effective date of August 27, 1996, establishing policies, responsibilities and procedures defining the manner in which the NPDES will be administered by the State of Louisiana through the LDEQ as the Louisiana Pollutant Discharge Elimination System (LPDES) program. Section II of this MOA (Jurisdiction over Permits) states that EPA shall retain permit decision-making authority over permits which are currently (as of the MOA's effective date) at EPA's public notice stage until final permit issuance. EPA will then transfer jurisdiction of those permits to LDEQ. EPA has a similar MOA with ODEQ, with an effective date of November 19, 1996, defining the manner in which the NPDES will be administered by the State of Oklahoma through the ODEQ as the Oklahoma Pollutant Discharge Elimination System (OPDES).

These two NPDES general permits were at the public notice stage on the effective dates of the Louisiana and Oklahoma MOA's; therefore, EPA retained decision-making authority over those permits and issued the final decision on the permits. EPA is now transferring jurisdiction of those permits to the respective State agencies.

After the effective date of this transfer of jurisdiction, all subsequent notifications of intent to be covered, discharge monitoring reports, and other reports required by these two permits shall no longer be sent to EPA Region 6, but shall be sent, for LAG830000, to:

Assistant Secretary for Water, Water Pollution Control Division, Louisiana Department of Environmental Quality, P.O. Box 82215, Baton Rouge, LA 70884-2215

and, for OKG830000, to:

Director, Oklahoma Department of Environmental Quality, 1000 NE 10th Street, Oklahoma City, OK 73117-1212,

William B. Hathaway,

Director, Water Quality Protection Division EPA Region 6.

[FR Doc. 98-11755 Filed 5-4-98; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved by Office of Management and Budget

April 29, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Jerry Cowden, Federal Communications Commission, (202) 418-0447.

Federal Communications Commission.

OMB Control No.: 3060-0562.

Expiration Date: 4/30/2001.

Title: Section 76.916 Petition for recertification.

Form Number: Not applicable.

Estimated annual burden: 100 hours; 10 hours per response; 10 respondents.

Description: Section 76.916 provides that a franchising authority wishing to assume jurisdiction to regulate basic service and associated equipment rates after its request for certification has been denied or revoked may file a petition for recertification with the Commission. The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification.

OMB Control No.: 3060-0570.

Expiration Date: 4/30/2001.

Title: Section 76.982 Continuation of rate agreements.

Form Number: Not applicable.

Estimated annual burden: 13 hours;

0.5 hour per response; 25 respondents.

Description: Section 76.982 provides that franchise authorities who were regulating basic cable rates pursuant to a rate agreement executed before July 1, 1990, may continue to regulate rates during the remainder of the agreement. Franchise authorities must notify the Commission of their intentions to continue regulating rates under the rate agreement.

OMB Control No.: 3060-0609.

Expiration Date: 4/30/2001.

Title: Section 76.934(e) Petitions for extension of time.

Form Number: Not applicable.

Estimated annual burden: 140 hours; 4 hours per response; 35 respondents.

Description: Section 76.934(e) states that small cable systems may obtain an extension of time to establish compliance with rate regulations provided that they can demonstrate that timely compliance would result in severe economic hardship. Requests for extension of time are addressed to local franchising authorities concerning rates for basic service tiers and to the Commission concerning rates for cable programming service tiers.

OMB Control No.: 3060-0610.

Expiration Date: 4/30/2001.

Title: Section 76.958 Notice to Commission of rate change while complaint is pending.

Form Number: Not applicable.

Estimated annual burden: 200 hours; 0.5 hour per response; 400 respondents.

Description: Section 76.958 states that a regulated cable operator that proposes to change any rate while a cable service tier complaint is pending before the Commission shall provide the Commission at least 30 days notice of the proposed change.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 98-11842 Filed 5-4-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:37 a.m. on Tuesday, April 28, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Julie Williams (Acting Comptroller of the Currency), concurred in by Ms. Carolyn Buck, acting in place and stead of Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters

in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Dated: April 30, 1998.

Federal Deposit Insurance Corporation

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98-11986 Filed 5-1-98; 11:06 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Debt Collection Financial

Statement.

Form Number: 22-13, Debt Collection Financial Statement

Type of Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067-0122.

Abstract: Under FEMA's debt collection regulations, 44CFR 11.36(b), Debt Collections Officers (DCO's) are required to maintain current credit data on FEMA debtors. FEMA Form 22-13, Debt Collection Financial Statement is used to collect data from individual debtors by FEMA DCO's for debts due to the United States and arising from operation of FEMA programs. The collection of this information will allow DCO's to evaluate whether to allow debtors to pay the FEMA debts under installment repayment agreement and if so under what terms and amounts. The data collected will also allow the FEMA DCO to make the determination whether FEMA should suspend or terminated efforts or compromise the respondents debts. Information requested from the debtor on FEMA Form 22-13 is voluntary. However, if the debtor does

not provide the information requested by FEMA, the DCO may use more severe collections methods.

Changes in the total estimated burden hours are due to an increase in the number of users of the form; no changes have been made to the information provided in the form, which is used to make determinations or the suspension, termination efforts, or compromise of debts.

Affected Public: Individuals and households.

Number of Respondents: 2,000.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 1,500.

Frequency of Response: One-time.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to Dennis Marvich, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

Dated: April 27, 1998.

Reginald Trujillo,

Director, Program Services Division,
Operations Support Directorate.

[FR Doc. 98-11861 Filed 5-4-98; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This notice seeks comments concerning the Implementation of the Coastal Barrier Resources Act as is outlined in 44 CFR Part 71.

The Coastal Barrier Resources Act (CBRA Public Law 97-3480) and the Coastal Barrier Improvement Act (CBRA Pub.L. 101-591) are federal laws that were enacted on October 1, 1982, and November 16, 1990, respectively. The laws provide protection by prohibiting all federal expenditures or financial assistance or commercial development in areas identified within the system. The legislation was implemented as part of a Department of Interior (DOI) initiative to preserve ecological integrity to areas DOI designates as coastal barriers and otherwise protected areas. When an application for flood insurance is submitted for buildings located in CBRS communities, documentation of eligibility must be submitted.

Title: Implementation of Coastal Barrier Resources Act.

Type of Collection: Reinstatement, without change, of a previously approved collection that has expired.

OMB Number: 3067-0120.

Abstract: When an application for flood insurance is submitted for buildings located in CBRS communities, Section 71.4 of the Code of Federal Regulations Title 44, requires documentation that a building is neither a new construction nor a substantial improvement. One of the following types of documentation must be submitted as evidence of eligibility:

- Certification from a community official stating the building is not located in a designated CBRS area.
- A legally valid building permit or certification from a community official stating that the building's start of construction date preceded the date that the community was identified in the system.
- Certification from the governmental body overseeing the area indicating that the building is used in a manner consistent with the purpose for which the area is protected.

Affected Public: Individuals or households; Business or other for-profit; Not-For-Profit Institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 50.

Hours Per Response: 1.5 hours.

Estimated Time per Respondent: The estimated time per respondent is 1.5 hours, which includes the time to obtain the required documentation from local officials, make telephone calls, prepare and submit written request(s) for the document, and/or make a trip to a local office to obtain the document.

Estimated Total Annual Burden Hours: 75 hours.

Frequency of Response: One-Time.

COMMENTS: Interested persons are invited to submit written comments on

the proposed information collection to Dennis Marvich, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

Dated: April 27, 1998.

Reginald Trujillo,

Director, Program Services Division,
Operations Support Directorate.

[FR Doc. 98-11862 Filed 5-4-98; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

(FEMA-1008-DR)

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-1008-DR), dated January 17, 1994, and related determinations.

EFFECTIVE DATE: April 14, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Christina Lopez of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Leland Wilson as Federal Coordinating Officer for this declared disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98-11863 Filed 5-4-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

(FEMA-1203-DR)

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-1203-DR), dated February 9, 1998, and related determinations.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 30, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98-11865 Filed 5-4-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

(FEMA-1203-DR)

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-1203-DR), dated February 9, 1998, and related determinations.

EFFECTIVE DATE: April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael W. Lowder of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Dorothy M. Lacey as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,
Director.

[FR Doc. 98-11866 Filed 5-4-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1209-DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA-1209-DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of

Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Lumpkin, Murray, and Pickens Counties for Individual Assistance and Public Assistance.
Barrow and Wayne Counties for Public Assistance.

Bartow, Cherokee, Dade, Walker, and Paulding Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98-11864 Filed 5-4-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1209-DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA-1209-DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Barrow and Wayne Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis

Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98-11870 Filed 5-4-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1193-DR]

Guam; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Government of Guam (FEMA-1193-DR), dated December 17, 1997, and related determinations.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William B. Carwile of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Dale R. Peterson as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98-11869 Filed 5-4-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1215-DR]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA-1215-DR), dated April 20, 1998, and related determinations.

EFFECTIVE DATE: April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1998:

Hawkins and Jefferson Counties for Individual Assistance and Public Assistance.

Cheatham, Giles, Hardin, Macon, Monroe, Sumner, and Williamson Counties for Individual Assistance.

Grainger and Roane Counties for Public Assistance.

Knox, Loudon, Morgan, and Maury Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98-11867 Filed 5-4-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1215-DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA-1215-DR), dated April 20, 1998, and related determinations.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 20, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms, tornadoes and flooding beginning on April 16, 1998 and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Campbell, Davidson, Lawrence, Maury, Pickett, and Wayne Counties for Individual Assistance.

Davidson, Pickett, and Wayne Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for

assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,
Director.

[FR Doc. 98-11868 Filed 5-4-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

NAME: Federal Interagency Committee on Emergency Medical Services (FICEMS).

DATE OF MEETING: June 4, 1998.

PLACE: Room N-309, Building N, National Emergency Training Center (NETC), 16825 South Seton Avenue in Emmitsburg, Maryland 21727.

TIME: 10:00 a.m.

PROPOSED AGENDA: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; presentation of member agency reports; reports of other Interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact William Troup, United States Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, (301) 447-1231, on or before Monday, June 1, 1998.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on September 3, 1998.

Dated: April 28, 1998.
Carye B. Brown,
U.S. Fire Administrator.
[FR Doc. 98-11860 Filed 5-4-98; 8:45 am]
BILLING CODE 8718-08-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 203-010982-023.
Title: Florida-Bahamas Shipowners and Operators Association.
Parties: Tropical Shipping & Construction Co., Ltd., Pioneer Shipping Ltd., Savoy Shipping Company, Crowley American Transport, Inc., Arawak Bahamas Line, Ltd., Seaboard Marine, Ltd.
Synopsis: The proposed amendment would establish service contract rules for the Agreement.

By Order of the Federal Maritime Commission.
Dated: April 29, 1998.
Joseph C. Polking,
Secretary.
[FR Doc. 98-11826 Filed 5-4-98; 8:45 am]
BILLING CODE 8730-01-M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 28, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. FMB Bankshares, Inc., Madison, South Dakota; to merge with Canton Bancshares, Inc., Canton, South Dakota, and thereby indirectly acquire First American Bank, Canton, South Dakota.

In connection with this application, Applicant has also applied to acquire Fairview Insurance Agency, Canton, South Dakota; and thereby engage in general insurance activities in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that has a population not exceeding 5,000, pursuant to § 225.28(b)(1)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 29, 1998.
William W. Wiles,
Secretary of the Board.
[FR Doc. 98-11807 Filed 5-4-98; 8:45 am]
BILLING CODE 8210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention
[INFO-98-18]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To

request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received on or before July 6, 1998.

Proposed Projects

1. The purpose of this study is to evaluate the reliability and validity of existing instruments that measure stress and stressful life events in black women of reproductive age. Eligible subjects will be black women who live in the Atlanta metropolitan area. Subjects will be recruited from flyers, newspaper announcements, hospitals and clinics in the metropolitan Atlanta area. Subjects will be screened and selected based on age (18-30 or 31-45 years), years of education (12, 13-15, 16 or more), and pregnancy status (pregnant, not pregnant). A maximum of thirty women will be selected for each combination of age, education and pregnancy status. The minimum age for participation will be 18 to avoid the complications due to requirement of parental consent. Women will be excluded if they use illicit drugs, such as heroin, cocaine and marijuana because these substances may alter the metabolism of cortisol. The contact, timing and spacing of the interviews and laboratory collection are based on the methodology developed and used for conducting reliability and validity tests. Approximately one half of the women will be pregnant at the time of data collection.

Women enrolled in the study respond to a series of face-to-face and self-administered demographic and psychosocial questionnaires. Women are also asked to provide a saliva sample so that we can correlate reported levels of stress with biological measures of stress.

Participation in this study is voluntary and participants will receive compensation of \$35 for their time. A

written informed consent will be obtained and oversight will be provided by local institutional review board.

This project should take two years. One hundred fifteen (115) women will participate only in the validity study and thirty-nine (39) women will participate in the validity and reliability study. The validity study requires one interview and one salivary sample. The reliability study requires a second interview and a second salivary specimen, approximately two weeks after the first interview.

During the first three months of the study, the Project Director will set up the office, hire staff and student

assistants and provide interviewer and data entry training. The Project Director will also make contacts and explore potential sites for recruiting women for the study. During the next nine months, all of the interviews (approximately 115 validity subjects and 39 reliability subjects remaining) will be conducted and data entry of the quantitative instruments (i.e. Demographic Lifestyle Questionnaire, Cohen Perceived Stress Scale, Life Experience Survey (LES), ARIC/BAECKE Questionnaire of Habitual Physical Activity, Center for Epidemiologic Studies Depression Scale (CES-D), Profile of Mood States, Multiple Affect Adjustive Checklist,

Speilberger Trait Anxiety Inventory-Self Evaluation Questionnaire) will be completed. Scoring for the qualitative instruments (i.e. Structured Event Probe and Narrative Rating Method (SEPARATE) and Life Events and Difficulties Schedule (LEDS) will be initiated during year 1, but the bulk of the qualitative scoring will be completed during Year 2. The data entry of the qualitative data will be completed during Year 2. Preliminary analyses will be conducted during Year 2, with the technical assistance of CDC. The total estimated cost to respondents is \$6,755 (39 reliability participants @ \$70 and 115 validity participants @ \$35).

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Reliability Study Group:				
African-American women for the ages of 18 to 45	39	2	3	234
Validity Study Group:				
African-American women for the ages of 18 to 45	115	1	3	345
Total				579

2. Expanded National Surveillance for Antimicrobial Resistance, Pilot. The Hospital Infections Program, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), is proposing a surveillance system to identify patients with infections with antimicrobial resistant pathogens of critical public health importance. As a pilot project, we will first study glycopeptide intermediate-resistant *Staphylococcus aureus*. Approximately 1/3 of *S. aureus* infections are now resistant to multiple antibiotics leaving only vancomycin, the only Food and Drug Administration (FDA) approved glycopeptide antibiotic available in the United States, for treatment of these infected patients. CDC's Hospital Infections Program recommended that all staphylococci

possibly resistant to glycopeptides (minimum inhibitory concentration [MIC] ≥ 4 µg/mL) be sent to CDC if the MIC is unchanged or higher. The incidence of these resistant pathogens is thought to be rare, and to date only one additional glycopeptide intermediate-resistant *S. aureus* (GRS) has been identified. Clinicians caring for patients with infections due to GRS have extremely limited treatment options for their patients, and scientists are in need of adequate clinical specimens to create informed hypotheses about mechanisms of resistance to aid in drug discovery and treatment options.

To confirm and characterize GRS, we propose building on the existing Emerging Infections Network of the Infectious Disease Society of America (IDSA EIN, a pool of approximately 200 infectious disease specialists), clinical

microbiologists participating in CLINMICRONET (a pool of approximately 100 microbiologists), the infection control community, and industry, and CDC will serve as a reference laboratory. The objectives of this surveillance system are to (1) obtain epidemiologic and clinical data on patients with GRS infections so that risk factors for infection and clinical impact of infection can be studied, and (2) obtain GRS isolates to confirm identity and susceptibility, create library of molecular fingerprints (pulsed field gel electrophoresis [PFGE]), and study resistance mechanisms.

Number of respondents and burden to complete forms for possible isolates (number of respondents is estimated since the actual incidence of these pathogens is thought to be very low).

Form	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Emerging Infections Network	20	1	0.50	10
ClinMicronet	20	1	0.50	10
Industry/infection control community	40	1	0.50	20
Total				40

Charles W. Gollmar,
Acting Associate Director for Policy Planning
and Evaluation, Centers for Disease Control
and Prevention (CDC).
[FR Doc. 98-11823 Filed 5-4-98; 8:45 am]
BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section NIOSH Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health (NIOSH).
Times and dates: 8 a.m.-5:30 p.m., June 18, 1998; 8 a.m.-5:30 p.m., June 19, 1998.
Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314.
Status: Open 8 a.m.-8:30 a.m., June 18, 1998; Closed 8:30 a.m.-5:30 p.m., June 18, 1998; Closed 8 a.m.-5:30 p.m., June 19, 1998.
Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be discussed: The meeting will convene in open session from 8-8:30 a.m., on June 18, 1998, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c) (4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92-463.

Agenda items are subject to change as priorities dictate.

Contact person for more information:
Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural

Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505.
Telephone 304/285-5979.

Dated: April 28, 1998.

Nancy C. Hirsch,
Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-11820 Filed 5-4-98; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96F-0348]

MacMillan Bloedel, Ltd.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 6B4520) proposing that the food additive regulations be amended to provide for the safe use of ethylene glycol as a component of a pulp bleaching medium used in the manufacture of paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT:

Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3095.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 7, 1996 (61 FR 52454), FDA announced that a food additive petition (FAP 6B4520) had been filed by MacMillan Bloedel, Ltd., c/o Camplong & Associates, Inc., P.O. Box 238, Schomberg, ON L0G 1T0, Canada. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of ethylene glycol as a pulp bleaching agent for paper and paperboard intended for use in contact with food. Upon further review, FDA has determined that the petition proposed the use of ethylene glycol as a component of a pulp bleaching medium used in the manufacture of food-contact paper and paperboard. MacMillan Bloedel, Ltd., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: April 10, 1998.

Laura M. Tarantino,
Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98-11805 Filed 5-4-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting may be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on May 26 and 27, 1998, 8 a.m. to 5:45 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-0314, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will: (1) Consider the safety and efficacy of a new vaccine from SmithKline for the prevention of Lyme disease; (2) consider the safety and efficacy of a live, oral, attenuated vaccine for the prevention of cholera; and (3) discuss issues relating to the potential inclusion of a boxed warning on the package insert for live polio virus vaccine.

Procedure: On May 26 and 27, 1998, from 9 a.m. to 5:45 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 19, 1998. Oral

presentations from the public will be scheduled between approximately 9 a.m. and 9:15 a.m., and between approximately 3:30 p.m. and 3:45 p.m., on May 26, 1998, and between approximately 9 a.m. and 9:15 a.m., and between approximately 1:30 p.m. and 1:45 p.m., and between approximately 3:30 p.m. and 3:45 p.m., on May 27, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 19, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On May 26 and 27, 1998, from 8 a.m. to 9 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). These portions of the meeting will be closed to discuss pending investigational new drug applications or pending product licensing applications.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 28, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98-11806 Filed 5-4-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D-0149]

Guidance for Industry on National Uniformity for Nonprescription Drugs—Ingredient Listing for OTC Drugs; Availability; Clarification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; clarification.

SUMMARY: The Food and Drug Administration (FDA) is clarifying an administrative error relating to a notice that appeared in the Federal Register of April 9, 1998 (63 FR 17429). The notice announced the availability of a guidance for industry entitled "National Uniformity for Nonprescription Drugs—Ingredient Listing for OTC Drugs." The agency displayed the incorrect draft of the guidance. This document clarifies that error.

FOR FURTHER INFORMATION CONTACT:
Thomas C. Kuchenberg, Center for Drug

Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 9, 1998 (63 FR 17429), FDA published a notice, announcing the availability of a guidance for industry entitled "National Uniformity for Nonprescription Drugs—Ingredient Listing for OTC Drugs." The agency, however, inadvertently put on display a working draft of the guidance dated February 1998, rather than the version the agency intends to implement, which is dated April 1998. This notice clarifies that error by announcing the availability of the April 1998 version of the guidance document and by withdrawing the February 1998 draft. Additionally, on February 19, 1998, FDA inadvertently put the working draft dated February 1998 on the Internet at <http://www.fda.gov/cder/guidance/index.htm>. The agency intends to replace the working draft that is on the Internet with the April 1998 version in the near future.

Dated: April 27, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98-11841 Filed 5-4-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service (PHS) Funding Is Sought

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director (OD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service (PHS) Funding Is Sought: 42 CFR Part 50; 45 CFR Part 94. *Type of Information Collection Request:* Extension of OMB No. 0925-0417, expiration date 09/30/98. *Need and Use of Information Collection:* This is a request for OMB

approval for the information collection and recordkeeping requirements contained in the final rule 42 CFR Part 50 and 45 CFR Part 94. The purpose of the regulations is to protect the objectivity with which PHS-funded research is conducted. The regulations require disclosure of financial interests related to PHS-funded research by personnel who have decision-making responsibilities that could affect the outcome of the research. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government. *Type of Respondents:* Any public or private entity or organization. The annual reporting burden is as follows: *Estimated Number of Respondents:* 57,235; *Estimated Number of Responses per Respondent:* 10; *Average Burden Hours per Response:* 20; and *Estimated Total Annual Burden Hours Requested:* 171,110. The annualized costs to respondents is estimated at: \$5,068,850. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request For Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Thomas F. McCormack, Ph.D., Assistant Grant's Policy Officer, Office of Extramural Research, Office of Policy for Extramural Research Administration, 6701 Rockledge Drive, Bethesda, MD 20892, or call non-toll-free number (301) 435-0935 or E-mail your request,

including your address to:
TM102d@NIH.gov

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before July 8, 1998.

Dated: April 28, 1998.

Geoffrey Grant,
Director, Office of Policy for Extramural
Research Administration
[FR Doc. 98-11931 Filed 5-4-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Hazardous Waste Worker Training

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Hazardous Waste Worker Training—42 CFR part 65. **Type of Information Collection Request:** Revision of OMB No. 0925-0348, expiration date 09/30/98. **Need and Use of Information Collection:** This request for OMB review and approval of the information collection is required by regulation 42 CFR part 65(a)(6). The National Institute of Environmental Health Sciences (NIEHS) has been given major responsibility for initiating a worker safety and health training program under Section 126 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) for hazardous waste workers and emergency responders. A network of non-profit organizations that are committed to protecting workers and their communities by delivering high-quality, peer-reviewed safety and health curricula to target populations of hazardous waste workers and emergency responders has been developed.

During the first ten years of the NIEHS Worker Training program (FY 1987-97), the NIEHS has successfully supported 20 primary grantees who have trained

over 1,140,000 workers across the country and presented nearly 60,000 classroom and hands-on training courses, which have accounted for almost 20 million contact hours of actual training. Generally, the grant will initially be for one year, and subsequent continuation awards are also for one year at a time.

Grantees must submit a separate application to have the support continued for each subsequent year. Grantees are to provide information in accordance with S65.4 (a), (b), (c), and 65.6(a) on the nature, duration, and purpose of the training, selection criteria for trainees' qualifications, and competency of the project director and staff, cooperative arrangements in the case of joint applications, the adequacy of training plans and resources, including budget and response to meeting training criteria in OSHA's Hazardous Waste Operations and Emergency Response Regulations (29 CFR 1910.120 and 29 CFR 1910.121). The information collection is used by the Director through officers, employees, experts, and consultants to evaluate applications based on technical merit to determine whether to make awards. **Frequency of Response:** Biannual. **Affected Public:** Non-profit organizations. **Type of Respondents:** Grantees. The annual reporting burden is as follows: **Estimated Number of Responses per Respondent:** 2; **Average Burden Hours per Response:** 8; and **Estimated Total Annual Burden Hours Requested:** 320. The annualized costs to respondents is estimated at: \$7,000. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Joseph T. Hughes, Jr., Director, Worker Education and Training Program, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541-0217 or E-mail your request, including your address to hughes3@niehs.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before July 6, 1998.

Dated: April 22, 1998.

Samuel Wilson,
Deputy Director, NIEHS.
[FR Doc. 98-11932 Filed 5-4-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Human Research Subjects Payment Survey

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, which provides for an opportunity for public comment on proposed data collection projects, the Department of Clinical Bioethics (DCB), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

The Department of Clinical Bioethics, Warren Grant Magnuson Clinical Center (CC), National Institutes of Health (NIH), intends to seek approval to conduct a survey aimed at payers of human research subjects, including drug companies, medical device manufacturers and academic research institutions, concerning the amount they pay to subjects of human medical research and what factors they consider in determining how much to pay subjects. Data collected will be used to assess methods for the determination of payments to research subjects. Results of the survey will be reported confidentially, in the aggregate and stripped of individual identifiers.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 30 minutes per respondent.

Respondents: United States payers of human medical research subjects, including drug companies, medical device manufacturers and academic research institutions.

Estimated number of respondents: 30.
Estimated total annual burden on respondents: 15 hours.

Request for Comments

Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to David Wendler, Department of Clinical Bioethics, Clinical Center, National Institutes of Health, 10 Center Drive, Building 10, Room 1C124, Bethesda, MD 20892. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

For Further Information

To request more information on the proposed collection or to obtain a copy of data collection plans and the survey instrument, contact David Wendler at the address above or call (non-toll-free number) 301-435-8726.

Comments Due Date

Comments regarding this information collection should be submitted on or before July 6, 1998.

Dated: April 28, 1998.

David K. Henderson,
Deputy Director for Clinical Care, Warren
Grant Magnuson Clinical Center.
[FR Doc. 98-11934 Filed 5-4-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Organ Procurement Survey

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, which provides for an opportunity for public comment on proposed data collection projects, the Department of Clinical Bioethics (DCB), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

The Department of Clinical Bioethics, Warren Grant Magnuson Clinical Center (CC), National Institutes of Health (NIH), intends to seek approval to conduct a survey aimed at United States organ procurement organizations and transplant surgeons. The survey asks for information about procedures used for organ donation and implementation of wishes specified in advance care directives. The data collected will help the NIH to serve patients and research subjects who are enrolled in protocols at the CC and are interested in the option of organ donation and the impact of including organ donation provisions in advance care directives. The data collected will also assist the respondents in understanding the practice of organ donation nationwide. The results of the survey will be reported confidentially, in the aggregate and stripped of individual identifiers.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 30 minutes per respondent.

Respondents: United States organ procurement organization and transplant surgeons.

Estimated total annual burden on respondents: 99 hours.

Request for Comments

Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to David Wendler, Department of Clinical Bioethics, Clinical Center, National Institutes of Health, 10 Center Drive, Building 10, Room 1C124, Bethesda, MD 20892. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

For Further Information

To request more information on the proposed collection or to obtain a copy of data collection plans and the survey instrument, contact David Wendler at the address above or call (non-toll-free number) 301-435-8726.

Comments Due Date

Comments regarding this information collection should be submitted on or before July 6, 1998.

Dated: April 28, 1998.

David K. Henderson,
Deputy Director for Clinical Care, Warren
Grant Magnuson Clinical Center.
[FR Doc. 98-11936 Filed 5-4-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: May 4, 1998.

Time: 12:30 p.m.

Place: NIH, Rockledge 2, Room 5192 Telephone Conference.

Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, Maryland 20892, (301) 435-1278.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Multidisciplinary Sciences.

Date: June 10-12, 1998.

Time: 6:00 p.m.

Place: Sage Howard Johnson Motel, Cambridge, MA.

Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435-1177.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.876, 93.892, 93.893, National Institutes of Health, HHS)

Dated April 28, 1998.

LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98-11926 Filed 5-4-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of
Closed Meetings

Pursuant to Section 10(d) of the
Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice
is hereby given of the following
meetings that are being held to review
grant applications:

Study section/Contact person	June-July 1998 meetings	Time	Location
BIOBEHAVIORAL AND SOCIAL SCIENCES INITIAL REVIEW GROUP			
Behavioral Medicine, Ms. Carol Campbell, 301-435-1257.	June 24-25	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Community Prevention & Control, Dr. Robert Weller, 301-435-1259.	June 11-12	8:00 a.m.	Governor's House Hotel, Washington, DC.
Human Development & Aging—1, Dr. Anita Miller Sostek, 301-435-1260.	June 11-12	9:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging—2, Dr. Michael Micklin, 301-435-1258.	June 24-25	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Human Development & Aging—3, Dr. Anita Miller Sostek, 301-435-1260.	June 25-26	9:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Social Sciences & Population, Dr. Robert Weller, 301-435-1259.	June 18-19	8:00 a.m.	Governor's House Hotel, Washington, DC.
BIOCHEMICAL SCIENCES INITIAL REVIEW GROUP			
Biochemistry, Dr. Chhanda Ganguly, 301-435-1739.	June 25-26	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Medical Biochemistry, Dr. Alexander Liacouras, 301-435-1740.	June 16-17	8:30 a.m.	Wyndham Bristol Hotel, Washington, DC.
Pathobiochemistry, Dr. Zakir Bengali, 301-435-1742.	June 5-6	8:30 a.m.	Holiday Inn, Bethesda, MD.
Physiological Chemistry, Dr. Richard Panniers, 301-435-1741.	June 11-12	8:00 a.m.	Wyndham Bristol Hotel, Washington, DC.
BIOPHYSICAL AND CHEMICAL SCIENCES INITIAL REVIEW GROUP			
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, 301-435-1728.	June 25-26	9:00 a.m.	Holiday Inn, Chevy Chase, MD.
Biophysical Chemistry, Dr. Donald Schneider, 301-435-1727.	June 18-19	8:30 a.m.	Holiday Inn, Silver Spring, MD.
Medicinal Chemistry, Dr. Ronald Dubois, 301-435-1722.	June 24-26	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Metallobiochemistry, Dr. John Bowers, 301-435-1725.	June 25-26	8:30 a.m.	St. James Hotel, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, 301-435-1726.	June 11-12	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Physical Biochemistry, Dr. Gopa Rakhit, 301-435-1721.	June 29-30	8:30 a.m.	DoubleTree Hotel, Rockville, MD.
CARDIOVASCULAR SCIENCES INITIAL REVIEW GROUP			
Cardiovascular, Dr. Gordon Johnson, 301-435-1212.	June 8-10	8:00 a.m.	Holiday Inn, Silver Spring, MD.
Cardiovascular & Renal, Dr. Anthony Chung, 301-435-1213.	July 7-8	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Experimental Cardiovascular Sciences, Dr. Anshumali Chaudhari, 301-435-1210.	June 15-16	8:00 a.m.	DoubleTree Hotel, Rockville, MD.
Hematology—1, Dr. Robert Su, 301-435-1195.	June 4-5	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Hematology—2, Dr. Jerrold Fried, 301-435-1777.	June 17-18	8:30 a.m.	Holiday Inn, Bethesda, MD.
Pathology A, Dr. Larry Pinkus, 301-435-1214.	June 2-3	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Pharmacology, Dr. Jeanne Ketley, 301-435-1789.	June 25-26	8:00 a.m.	American Inn, Bethesda, MD.
CELL DEVELOPMENT AND FUNCTION INITIAL REVIEW GROUP			
Biological Sciences—2, Dr. Anthony Carter, 301-435-1024.	June 29-30	8:30 a.m.	Holiday Inn-Old Town, Alexandria, VA.
Cellular Biology and Physiology—1, Dr. Gerald Greenhouse, 301-435-1023.	June 3-4	8:00 a.m.	Sheraton Reston Hotel, Reston, VA.

Study section/Contact person	June-July 1998 meetings	Time	Location
Cellular Biology and Physiology—2, Dr. Gerhard Ehrensbeck, 301-435-1022.	June 10-11	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Human Embryology & Development—2, Dr. Sherry Dupere, 301-435-1021.	June 4-5	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
International & Cooperative Projects, Dr. G. B. Warren, 301-435-1019.	July 27	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Molecular Biology, Dr. Anthony Carter, 301-435-1024.	June 11-12	8:30 a.m.	Holiday Inn-Old Town, Alexandria, VA.
Molecular Cytology, Dr. Ramesh Nayak, 301-435-1026.	June 4-5	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
ENDOCRINOLOGY AND REPRODUCTIVE SCIENCES INITIAL REVIEW GROUP			
Biochemical Endocrinology, Dr. Michael Knecht, 301-435-1046.	June 11-12	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Endocrinology, Dr. Syed Amir, 301-435-1043.	June 22-23	8:30 a.m.	New Orleans Marriott, New Orleans, LA.
Human Embryology & Development—1, Dr. Michael Knecht, 301-435-1046.	June 25-26	8:30 a.m.	Ramada Inn, Bethesda, MD.
Reproductive Biology, Dr. Dennis Leszczynski, 301-435-1044.	June 8-9	8:30 a.m.	Washington Plaza Hotel, Washington, DC.
Reproductive Endocrinology, Dr. Abubakar Shaikh, 301-435-1042.	June 8-9	8:00 a.m.	Embassy Square Suites, Washington, DC.
GENETIC SCIENCES INITIAL REVIEW GROUP			
Biological Sciences—1, Dr. Nancy Pearson, 301-435-1047.	June 8-10	9:00 a.m.	St. James Hotel, Washington, DC.
Genetics, Dr. David Remondini, 301-435-1038.	June 11-12	9:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Genome, Dr. Cheryl Corsaro, 301-435-1045.	June 25-26	9:00 a.m.	Holiday Inn-Old Town, Alexandria, VA.
Mammalian Genetics, Dr. Camilla Day, 301-435-1037.	June 16-17	8:30 a.m.	Wyndham Bristol Hotel, Washington, DC.
HEALTH PROMOTION AND DISEASE PREVENTION INITIAL REVIEW GROUP			
Epidemiology & Disease, Control—1, Dr. Scott Osborne, 301-435-1782.	June 17-19	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Epidemiology & Disease, Control—2, Dr. H. Mac Stiles, 301-435-1785.	June 29-July 2	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, 301-435-1784.	June 8-9	8:30 a.m.	DoubleTree Hotel, Rockville, MD.
IMMUNOLOGICAL SCIENCES INITIAL REVIEW GROUP			
Allergy & Immunology, Dr. Gene Zimmerman, 301-435-1220.	June 18-19	8:30 a.m.	Holiday Inn, Silver Spring, MD.
Experimental Immunology, Dr. Calbert Laing, 301-435-1221.	June 11-12	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Immunobiology, Dr. Betty Hayden, 301-435-1223.	June 17-19	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Calbert Laing, 301-435-1221.	June 17-19	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
INFECTIOUS DISEASES AND MICROBIOLOGY INITIAL REVIEW GROUP			
Bacteriology & Mycology—1, Dr. Timothy Henry, 301-435-1147.	June 18-19	8:30 a.m.	Marriott Residence Inn, Bethesda, MD.
Bacteriology & Mycology—2, Dr. William Branche, Jr., 301-435-1148.	June 17-18	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett Keefer, 301-435-1152.	June 22-23	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics—1, Dr. Martin Slater, 301-435-1149.	June 10-12	8:30 a.m.	DoubleTree Hotel, Rockville, MD.
Microbial Physiology & Genetics—2, Dr. Gerald Liddel, 301-435-1150.	June 10-11	8:30 a.m.	Holiday Inn, Bethesda, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, 301-435-1146.	June 11-12	8:30 a.m.	Holiday Inn, Bethesda, MD.
Virology, Dr. Rita Anand, 301-435-1151.	June 22-23	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
MUSCULOSKELETAL AND DENTAL SCIENCES INITIAL REVIEW GROUP			
General Medicine A—1, Dr. Harold Davidson, 301-435-1776.	June 8-9	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.

Study section/Contact person	June-July 1998 meetings	Time	Location
General Medicine B, Dr. Shirley Hilden, 301-435-1198.	June 16-17	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Geriatrics & Rehabilitative Medicine, Ms. Jo Pelham, 301-435-1786.	June 16-17	8:00 a.m.	The Georgetown Inn, Washington, DC.
Oral Biology & Medicine-1, Dr. Priscilla Chen, 301-435-1787.	June 16-17	8:30 a.m.	Holiday Inn-Old Town, Alexandria.
Oral Biology & Medicine-2, Dr. Priscilla Chen, 301-435-1787.	June 1-2	8:30 a.m.	Holiday Inn-Old Town, Alexandria.
Orthopedics & Musculoskeletal, Dr. Daniel McDonald, 301-435-1215.	June 22-23	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
NUTRITIONAL AND METABOLIC SCIENCES INITIAL REVIEW GROUP			
Metabolism, Dr. Krish Krishnan, 301-435-1041.	July 1-2	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Nutrition, Dr. Sooja Kim, 301-435-1780	June 18-19	8:30 a.m.	Holiday Inn, Bethesda, MD.
ONCOLOGICAL SCIENCES INITIAL REVIEW GROUP			
Chemical Pathology, Dr. Edmund Copeland, 301-435-1715.	June 17-19	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Therapeutics-1, Dr. Philip Perkins, 301-435-1718.	June 25-26	8:30 a.m.	Hyatt Hotel, Key Bridge, Arlington, VA.
Experimental Therapeutics-2, Dr. Marcia Litwack, 301-435-1719.	July 1-3	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Metabolic Pathology, Dr. Marcelina Powers, 301-435-1720.	June 29-July 1	8:00 a.m.	Holiday Inn-Old Town, Alexandria, VA.
Pathology B, Dr. Martin Padarathsingh, 301-435-1717.	June 17-19	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Radiation, Dr. Paul Strudler, 301-435-1716	June 15-17	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
PATHOPHYSIOLOGICAL SCIENCES INITIAL REVIEW GROUP			
General Medicine A-2, Dr. Mushtaq Khan, 301-435-1778.	June 15-16	8:30 a.m.	ANA Hotel, Washington, DC.
Lung Biology & Pathology, Dr. Andrea Harabin, 301-435-1017.	June 17-18	8:00 a.m.	St. James Hotel, Washington, DC.
Respiratory & Applied Physiology, Dr. Everett Sinnett, 301-435-1016.	June 22-23	8:30 a.m.	ANA Hotel, Washington, DC.
SENSORY SCIENCES INITIAL REVIEW GROUP			
Hearing Research, Dr. Joseph Kimm, 301-435-1249.	June 8-9	8:00 a.m.	One Washington Circle Hotel, Washington, DC.
Visual Sciences A, Dr. Luigi Giacometti, 301-435-1246.	June 18-19	8:30 a.m.	Holiday Inn, Bethesda, MD.
Visual Sciences B, Dr. Leonard Jakubczak, 301-435-1247.	June 17-18	8:30 a.m.	Radisson Barcelo Hotel, Washington, DC.
Visual Sciences C, Dr. Carole Jelsema, 301-435-1248.	June 10-11	8:00 a.m.	Georgetown Suites Hotel, Washington, DC.
SURGERY, RADIOLOGY AND BIOENGINEERING INITIAL REVIEW GROUP			
Diagnostic Radiology, Dr. Eileen Bradley, 301-435-1178.	June 24-25	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Surgery & Bioengineering, Dr. Lee Rosen, 301-435-1171.	June 15-16	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Surgery, Anesthesiology & Trauma, Dr. Gerald Becker, 301-435-1750.	June 22-23	1:00 p.m.	Georgetown Holiday Inn, Washington, DC.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with

the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 28, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98-11937 Filed 5-4-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Specialized Clinical Fellowship and Mentored Specialized Clinical Investigator Award (Teleconference).
Date: May 12, 1998.

Time: 4:30 p.m.—adjournment.
Place: 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852.

Contact Person: Gopal Bhatnagar, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301-496-1485.

Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institute of Health, HHS)

Dated: April 28, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-11925 Filed 5-4-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of Sep: ZDK1 GRB-6 (01 P).

Date: June 8-10, 1998.

Time: 6:00 PM.

Place: Omni New Haven Hotel, 155 Temple Street, New Haven, Connecticut 06510, Telephone: (203) 772-6664.

Contact: Neal Musto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS-37A, National Institutes of Health, Bethesda, Maryland 20892-6600, Phone: (301) 594-7798.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: April 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-11927 Filed 5-4-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting of the National Advisory Council on Aging

Notice is hereby given of a change in the agenda for the meeting of the National Advisory Council on Aging, National Institute on Aging, May 21-22, 1998, to be held at the National Institutes of Health, Building 31, Conference Room 6, Bethesda, Maryland published in the *Federal Register* on April 21, 1998, (63 FR 19737). This meeting was scheduled to be open to the public on Thursday, May 21, from 1:30 to 4:15 p.m. and Friday, May 22, from 8:00 a.m. until adjournment. The meeting was scheduled to be closed on Thursday, May 21 from 4:15 p.m. to recess.

The meeting will now be closed to the public on Thursday, May 21, from 2:30 p.m. until recess. The meeting will be open on Friday, May 22 from 8:00 a.m. to adjournment.

Dated: April 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-11928 Filed 5-4-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting.

Name of SEP: ZDK1 GRB-8 03 P.

Date: May 27-29, 1998.

Time: 6:00 PM.

Place: Union Station Hotel, 1001 Broadway, Nashville, Tennessee 37203, Telephone: (615) 726-1001.

Contact: Roberta Haber, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS-25N, National Institutes of Health, Bethesda, Maryland 20892-6600, Phone: (301) 594-8898.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: April 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-11929 Filed 5-4-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Meeting: Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on June 3-5, 1998, at the Historic Inns of Annapolis Maryland Inn, 58 State Circle, Annapolis, Maryland.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on

June 3 to discuss administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities, which will include a discussion of budgetary matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sections 10(d) of Public Law 92-463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. on June 3 until adjournment on June 5. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301-496-7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Kevin M. Callahan, Scientific Review Administrator, Allergy, Immunology, and Transplantation Research Committee, NIAID, NIH, Solar Building, Room 4C20, Bethesda, Maryland, telephone 301-496-8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93-855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health.)

Dated: April 28, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98-11930 Filed 5-4-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Highly Informative Microsatellite Repeat Polymorphic DNA Markers

AGENCY: National Institutes of Health, Public Health Service, DHHS.
ACTION: Notice.

SUMMARY: This is a notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the inventions embodied in U.S. Patent Application Serial No. 07/799,828 (issued as Patent No. 5,378,602 on January 3, 1995), entitled "Twenty-Seven Highly Informative Microsatellite Repeat Polymorphic DNA Markers"; U.S. Patent Application Serial No. 07/922,723 (issued as Patent No. 5,369,004 on November 29, 1994), entitled "Five Highly Informative Microsatellite Repeat Polymorphic DNA Markers"; U.S. Patent Application Serial No. 07/952,277, entitled "Eleven Highly Informative Microsatellite Repeat Polymorphic DNA Markers"; U.S. Patent Application Serial No. 08/074,275 (issued as Patent No. 5,468,610 on November 21, 1995), entitled "Three Highly Informative Microsatellite Repeat Polymorphic DNA Markers"; and U.S. Patent Application Serial No. 08/480,366 (issued as Patent No. 5,721,100 on February 24, 1998), entitled, "Three Highly Informative Microsatellite Repeat Polymorphic DNA Markers" to Lifecodes Corporation, having a place of business in Stamford, Connecticut. The patent rights in these inventions have been assigned to the United States of America.

The field of use would be DNA profiling assays for detecting polymorphisms of forensic and medical samples including blood, semen, tissue hair, saliva, urine, and mixtures of body fluids.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 6, 1998, will be considered.

ADDRESSES: Requests for a copy of the patents, patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Charles Maynard, M.P.H., Technology Licensing Specialist, Office of Technology Transfer, National

Institutes of Health, 6011 Executive Boulevard, Box 13, Rockville, MD 20852-3804; Telephone: (301) 496-7735, ext. 243; Facsimile: (301) 402-0220. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

SUPPLEMENTARY INFORMATION: A novel group of microsatellite repeat polymorphic deoxyribonucleic acid (DNA) markers is valuable for rapidly identifying and differentiating between individual human DNA sequences for forensic, genetic, and human DNA mapping studies. These nucleotides can also be used for paternity and prenatal screening, and genetic mapping. These new microsatellite DNA markers can be used as primers for rapid polymerase chain reaction (PCR) amplification of unique human DNA polymorphisms, which are naturally occurring mutations in DNA sequences that are often unique on the basis of as little as a single nucleotide sequence. Assays using these nucleotides are based on PCR and therefore need only small amounts of test DNA. The assays are easy to perform and relatively inexpensive and results can be obtained in less than 24 hours, compared with 3 or 4 days for other similar tests. Accordingly, the invention also relates to an improved PCR procedure and a PCR assay kit which comprise nucleotides according to the invention. The invention describes a method of the steps involved in extracting DNA from a sample to be tested, amplifying the extracted DNA and identifying the amplified extension products for each different sequence. Each different sequence is differentially labeled. The method is applicable to a wide variety of forensic and medical samples as stated above.

DNA identity testing has revolutionized the field of forensic analysis of biological materials. The forensic test compares the genetic material in biologic specimens from a crime scene to that taken from a suspect. DNA testing transforms the DNA found in blood, serum, or other tissue from a crime scene or an individual into a unique genetic profile. The profile may serve as a means of making a positive identification in a rape, murder, or other violent crime. A number of loci in this application may also be useful in identity testing by discerning a DNA pattern that is unique to an individual.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C.

209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the exclusive field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 9, 1998.

Jack S. Spiegel,
Director, Division of Technology Development and Transfer, Office of Technology Transfer.
[FR Doc. 98-11933 Filed 5-4-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Management Objectives for the Endangered Fishes of the Upper Colorado River for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of Draft Interim Management Objectives for the Endangered Fishes of the Upper Colorado River and supporting draft document "Modeling population dynamics of Colorado squawfish, razorback sucker, and humpback chub: for management objective development." These interim management objectives serve as the first step in determining recovery goals by identifying approximate minimum population sizes for current and restored stocks of endangered fish in order to achieve recovery. The Service solicits review and comment from the public on this draft interim management objectives and supporting modeling document.

DATES: Comments on the draft management objectives must be received on or before June 4, 1998 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft management objectives may

obtain a copy by contacting the Associate Manager Utah, Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Written comments and materials regarding this plan should be sent to the Associate Manager Utah at the Denver address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Shanks, Fish and Wildlife Associate Manager (see ADDRESSES above), at telephone (303) 236-8154.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort of Upper Colorado River endangered fishes, the Recovery Implementation Program, with the Service as a participant, is determining interim management objectives to guide the development of recovery goals. This first step is to determine the necessary minimum numbers in a population of endangered Upper Colorado River fishes to maintain quantifiable genetic integrity. The interim management objective documents the methods used to determine effective population size, sex ratios and numbers of fish that would successfully contribute their genetics to the next spawning population.

Biologists have been charged with developing quantifiable recovery objectives that are scientifically based. Generally, there is a lack of sufficient information on species habitat needs, population genetics, and population demographics to establish sound quantifiable objectives. Where scientists have attempted to establish quantifiable objectives for recovery, they have tended to be relatively conservative. For these reasons, and others, quantifiable recovery objectives have never been established for endangered fish in the Upper Colorado River Basin.

In the Upper Basin, four endemic fish species are federally listed as endangered: Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), razorback sucker (*Xyrauchen texanus*), and bonytail (*Gila elegans*). The original draft recovery plan for Colorado squawfish written in 1978 called for the development of quantifiable recovery

objectives. Following the establishment of the Upper Basin Recovery Implementation Program in 1986, the need for quantification of objectives for each species was reiterated. The current recovery plans for all four endangered Colorado River fish, however, still call for the establishment of quantifiable objectives. Additionally, quantifiable management objectives are needed by the Upper Basin Recovery Implementation Program to evaluate actions taken to recover endangered fish in the Upper Basin.

The purpose of the draft document is to outline quantifiable interim management objectives for all Colorado River endangered fish and to describe how the interim management objectives were developed. Interim management objectives are based on a minimum genetic effective population size (N_e) and population demographic parameters described in the model developed by Crowl and Bouwes (1997). Their achievement is dependent upon a multitude of environmental conditions and management actions. The term "interim" is being used because they will require refinement at regular intervals as new information is obtained. The application of interim management objectives will be primarily within the Upper Basin Recovery Implementation Program to evaluate progress towards recovery of these endangered fish. In this light, the interim management objectives will provide a framework for prioritizing short-term actions needed for recovery and guidelines for obtaining the information needed to define quantifiable long-term recovery objectives.

Public Comments Solicited

The Service solicits written comments on the draft interim management objectives described above. All comments received by the date specified in the DATES section above will be considered prior to approval of the interim management objectives.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 24, 1998.

Terry Terrel,
Regional Director, Denver, Colorado.
[FR Doc. 98-11609 Filed 5-4-98; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Maxwell Irrigation District Canal Relocation Project, Colusa County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that the Maxwell Irrigation District (District) has applied to the Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize the incidental take of the giant garter snake (*Thamnophis gigas*), federally listed as threatened, and modification of its habitat during construction of a new water conveyance canal and associated facilities in Colusa County, California. The permit would be in effect for 2 years.

The Service announces the receipt of the District's incidental take permit application and the availability of the proposed Canal Relocation Habitat Conservation Plan (Plan), which accompanies the incidental take permit application, for public comment. The Plan fully describes the proposed project and the measures the District would undertake to minimize and mitigate project impacts to the giant garter snake. The Service has determined that the District's Plan qualifies as a "low-effect" Habitat Conservation Plan as defined by the Service's Habitat Conservation Planning Handbook (November 1996). The Service has further determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This notice is provided pursuant to section 10(c) of the Act. **DATES:** Written comments on the permit application and Plan should be received on or before June 4, 1998.

ADDRESSES: Comments regarding the permit application or the Plan should be addressed to the Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821-6340. Individuals wishing copies of the application and the Plan for review should immediately contact the above office. Documents also will be available

for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Rinek or Mr. William Lehman, Sacramento Fish and Wildlife Office; telephone (916) 979-2129.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulation prohibit the "take" of a species listed as endangered or threatened, respectively (take is defined under the Act, in part, as to kill, harm, or harass). However, the Service, under limited circumstances, may issue permits to authorize "incidental take" of listed species (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

The District proposes to construct a new 2,500-foot long conveyance canal adjacent to an existing District canal and the Colusa Basin Drain (Colusa Drain), and a new siphon running underneath the Colusa Drain, to provide water for distribution directly to the District's service area. Currently, the District's existing canal runs west from its Sacramento River diversion for approximately 2.5 miles, where it meets the Colusa Drain. The District's water is then discharged into the Colusa Drain from the existing District canal, where it is co-mingled with water drained from approximately 450,000 acres of non-District agricultural lands; the water is then pumped from the Colusa Drain into the District's distribution system and then to its service area. As a result of irrigating with the co-mingled fresh and drain water from the Colusa Drain, crop productivity (mostly rice) on agricultural lands served by the District has declined due to warm water temperatures and poor water quality. The purpose of the proposed project is to permit the District to convey water directly to its service area without going through the Colusa Drain. The proposed project is located in Colusa County approximately 9.5 miles north of the town of Colusa and approximately two miles west of the Sacramento River and State Highway 45. The project site is bordered on the north, south, and east by private agricultural lands (rice farming) and on the west by the Delevan National Wildlife Refuge.

The new canal will convey water at 80 cubic feet per second and will end at the new siphon structure. The siphon

structure will convey the water from the new District canal, beneath the Colusa Drain, to the existing District canal opposite the Colusa Drain. The proposed project will enhance crop productivity by ensuring high quality water for approximately 6,275 acres of agriculture in the District's service area. The proposed project would also provide a more reliable water supply.

In May, 1997, the proposed project area was surveyed for potential habitat for rare, threatened, or endangered species and other biological features that could be affected by the project. Only one federally listed species, the threatened giant garter snake, has the potential to occur on the project site and to be directly impacted by the proposed project. The District has agreed to implement the following measures to minimize and mitigate impacts that may result from incidental take of the giant garter snake: (1) Conduct construction activities during time periods when take of the giant garter snake is less likely to occur; (2) ensure that a qualified biologist is present to monitor for snakes, and, if necessary, to remove from the project site any snakes encountered during construction; (3) ensure that dewatered channels remain dry for at least 15 consecutive days prior to any construction activity; (4) ensure that construction personnel receive worker awareness training; (5) install silt screens and fences to prevent erosion; (6) ensure that all excavated materials are prevented from washing into any watercourses; and (7) ensure that construction equipment disturbance will be minimized.

The Service has determined that the Plan qualifies as a "low-effect" Habitat Conservation Plan as defined by the Service's Habitat Conservation Planning Handbook (November 1996). Low-effect Habitat Conservation Plans are those involving: (1) Minor or negligible effects on federally listed and candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Plan qualifies as a low-effect Habitat Conservation Plan for the following reasons:

1. Approval of the Plan would result in minor or negligible effects on the giant garter snake and its habitat. The Service does not anticipate significant direct or cumulative effects to the giant garter snake resulting from construction of the new conveyance canal.

2. Approval of the Plan would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Plan would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). No further National Environmental Policy Act documentation will therefore be prepared.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the giant garter snake during the District's canal relocation project. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: April 28, 1998.

Thomas J. Dwyer,
Acting Regional Director, Region 1, Portland,
Oregon.

[FR Doc. 98-11821 Filed 5-4-98; 8:45 am]

BILLING CODE 4310-65-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Public Involvement Opportunities for the Modification of the Habitat Conservation Plan on Lands Administered by Plum Creek Timber Company in the State of Washington

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meetings.

SUMMARY: This notice advises the public that the Fish and Wildlife Service and National Marine Fisheries Service

(hereinafter "the Services") will conduct meetings with the U.S. Forest Service regarding the potential land exchange in the Interstate-90 corridor of Washington. The U.S. Forest Service will address the potential land exchange, and the Services will provide information and receive comments or questions regarding a potential modification to the Plum Creek Timber Company's Habitat Conservation Plan. On June 27, 1996, Plum Creek Timber Company, L.P., was issued Permit PRT-808398 which authorizes the take of federally listed species, under the provisions of section 10(a)(1)(B) of the Endangered Species Act. If the proposed land exchange takes place, Plum Creek Timber Company would likely request to amend their Habitat Conservation Plan to reflect the change in land base.

DATES: Public meetings will be held from 7:00 to 9:00 p.m. on May 13, 14, 20, and 21, 1998.

ADDRESSES: Public meetings will be held at the following locations: May 13, Hal Holmes Community Center, 201 North Ruby, Ellensburg, Washington; May 14, Cavanaugh's at Yakima Center, 607 East Yakima Avenue, Yakima, Washington; May 20, Mount Si High School, 8651 Meadow Brook Way, S.E., Snoqualmie, Washington; May 21, Cowlitz Valley Ranger Station, 10024 U.S. Highway 12, Randle, Washington.

FOR FURTHER INFORMATION CONTACT: William Vogel, Wildlife Biologist, Western Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 101, Lacey, Washington 98503, (360) 753-4367; or Matt Longenbaugh, Fishery Biologist, National Marine Fisheries Service, at the same address.

Interested parties may contact the Services at the address listed above to receive additional information, including a map for the public meeting location.

Dated: April 29, 1998.

Thomas J. Dwyer,
Acting Regional Director, Region 1, Portland,
Oregon.

[FR Doc. 98-11824 Filed 5-4-98; 8:45 am]

BILLING CODE 4310-65-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988,

Pub. L. 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact Between the State of California and the Pala Band of Mission Indians which was executed on March 6, 1998.

DATES: This action is effective May 5, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219-4068.

Dated: April 25, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98-11895 Filed 5-4-98; 8:45 am]

BILLING CODE 4310-02-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-07-1210-00]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands near Blythe, California on Thursday, June 11, 1998, from 7:30 a.m. to 3 p.m., and meet in formal session on Friday, June 12 from 8 a.m. to 5 p.m., and Saturday, June 13 from 8 a.m. to 11:30 a.m. The Friday and Saturday public meetings will be held in the Blythe City Council Chambers, located at 220 North Spring Street, Blythe, California.

The Council and members of the public will assemble for the field tour at The Hampton Inn parking lot at 7:15 a.m., and depart at 7:30 a.m. The Hampton Inn is located at 9000 West Hubson Way, Blythe, California. The tour will focus on the southeastern portion of the proposed Chuckwalla Desert Wildlife Management Area within the Northern and Eastern Colorado Desert (NECO) Coordinated Management Planning Area. Presentations will include discussions on routes of travel, checkerboard land ownership, recreation, and plant and wildlife biological values.

The public is welcome to participate in the field tour, but should dress

appropriately and plan on providing their own transportation, food, and beverage. Anyone interested in participating in the field tour should contact BLM public affairs at (909) 697-5217/5220 for more information.

Agenda topics will include briefings and discussions on the NECO Plan, budget, the Northern and Eastern Mojave Planning Effort, rangeland standards and guidelines, the California Desert District pilot recreation fee program, and a review of wilderness boundary maps.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507-0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Carole Levitzky at (909) 697-5217 or Doran Sanchez at (909) 697-5220, BLM California Desert District Public Affairs.

Dated: April 28, 1998.

Carole Levitzky,

Assistant District Manager, External Affairs.

[FR Doc. 98-11822 Filed 5-4-98; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Southern Arizona in the Possession of the California Department of State Parks, Sacramento, CA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the California Department of State Parks, Sacramento, CA.

A detailed assessment of the human remains was made by California

Department of Parks and Recreation (DPR) professional staff in consultation with representatives of the Ak-Chin Indian Community of Papago Indians of the Maricopa, the Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, the Hopi Tribe, and the Tohono O'odham Nation.

In 1963, human remains representing one individual were purchased as part of a large Native American collection from John M. Sheedy by the DPR. No known individuals were identified. The five associated funerary objects include an cremation olla and pieces of charcoal.

The majority of the collection of which these human remains were a part was collected between 1880-1915 by Charles Wilcomb from several museums. The remainder of the collection were collected by various members of the Hall and Sheedy family. Donor information indicates this olla with human remains was collected at an unknown site in Southern Arizona. Based on manner of interment, these human remains have been identified as Native American. The form and style of the olla is consistent with Hohokam practice in Southern Arizona during 300 B.C. to 1450 A.D. Consultation evidence provided by the Ak-Chin Indian Community of Papago Indians of the Maricopa, the Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, the Hopi Tribe, and the Tohono O'odham Nation indicates these Indian tribes are the present-day descendants of the Hohokam in Southern Arizona.

Based on the above mentioned information, officials of the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the California Department of Parks and Recreation have also determined that, pursuant to 43 CFR 10.2 (d)(2), the five objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains

and associated funerary objects and the Ak-Chin Indian Community of Papago Indians of the Maricopa, the Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, the Hopi Tribe, and the Tohono O'odham Nation.

This notice has been sent to officials of the Ak-Chin Indian Community of Papago Indians of the Maricopa, the Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, the Hopi Tribe, and the Tohono O'odham Nation.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Robert M. Wood, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 1431, Sacramento, CA 95814; telephone (916) 653-7976; before June 4, 1998. Repatriation of the human remains and associated funerary objects to the culturally affiliated tribes may begin after that date if no additional claimants come forward.

Dated: April 29, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98-11838 Filed 5-4-98; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Patrick's Point State Park, Humboldt County, CA in the Possession of the California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the California Department of Parks and Recreation, Sacramento, CA.

A detailed assessment of the human remains was made by California Department of Parks and Recreation

professional staff in consultation with representatives of the Big Lagoon Rancheria of Smith River Indians, the Cher-Ae Heights Indian Community of the Trinidad Rancheria, and the Yurok Tribe of the Yurok Reservation.

In 1948, human remains representing one individual were recovered from site CA-HUM-118 during excavations conducted by the Archaeological Research Facility, University of California-Berkeley under the direction of Robert F. Heizer. The resulting collections from site CA-HUM-118 were returned to Patrick's Point State Park in 1949. In 1981, the human remains and associated funerary objects were turned over to local Yurok people for reburial. In 1992, additional human remains from the individual, and funerary objects were found in an artifact tray with DPR's Archaeology Lab. No known individuals were identified. The two associated funerary objects are an olivella bead and a silicate cobble.

Based on material culture, site CA-HUM-118 has been identified as a Gunther Pattern (ancestral Yurok) occupation dating from after 1310 A.D. to possibly as late as the 1850s. Archeological evidence indicates Yurok presence in this area since about 1100 A.D.

Based on the above mentioned information, officials of the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the California Department of Parks and Recreation have also determined that, pursuant to 43 CFR 10.2 (d)(2), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Big Lagoon Rancheria of Smith River Indians, the Cher-Ae Heights Indian Community of the Trinidad Rancheria, and the Yurok Tribe of the Yurok Reservation.

This notice has been sent to officials of the Big Lagoon Rancheria of Smith River Indians, the Cher-Ae Heights Indian Community of the Trinidad Rancheria, and the Yurok Tribe of the Yurok Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these

human remains and associated funerary objects should contact Robert M. Wood, NAGPRA Coordinator, California Department of Parks and Recreation, 1416 9th Street, Room 1431, Sacramento, CA 95814; telephone (916) 653-7976; before June 4, 1998.

Repatriation of the human remains and associated funerary objects to the Big Lagoon Rancheria of Smith River Indians, the Cher-Ae Heights Indian Community of the Trinidad Rancheria, and the Yurok Tribe of the Yurok Reservation may begin after that date if no additional claimants come forward.

Dated: April 29, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98-11839 Filed 5-4-98; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains From New York in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania Museum professional staff in consultation with representatives of the Cayuga Nation of New York. Requests by phone and correspondence for consultation with the Seneca-Cayuga Tribe of Oklahoma have not been successful.

In 1997, the control of human remains representing one individual was transferred from the Academy of Natural Sciences, Philadelphia, PA to the University of Pennsylvania Museum. Based on archival documentation, this individual has been identified as "Wan-Yun-ta, Chief of the Cayuga Tribe" from New York State. Currently, no lineal descendants have been identified by the Cayuga Nation of New York. No associated funerary objects are present.

Based on accession information, this individual has been identified as Native American. Archival information from the Academy of Natural Sciences indicates these remains were collected by Dr. Z. Pitcher during the 19th century in New York State.

In 1997, the control of human remains representing one individual was transferred from the Academy of Natural Sciences, Philadelphia, PA to the University of Pennsylvania Museum. No known individual was identified. No associated funerary objects are present.

Based on accession information, this individual has been identified as Native American. Archival information from the Academy of Natural Sciences indicates these remains were excavated from a burial of a "young Cayuga Iroquois chief" near Union Springs, Cayuga County, NY in 1894 by William W. Adams.

Based on the above mentioned information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Pennsylvania Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Cayuga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Jeremy Sabloff, the Charles K. Williams II Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104-6324; telephone: (215) 898-4051, fax (215) 898-0657, before June 4, 1998. Repatriation of the human remains to the Cayuga Nation of New York may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: April 29, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98-11837 Filed 5-4-98; 8:45 am]

BILLING CODE 4310-70-F

FOREIGN CLAIMS SETTLEMENT COMMISSION

Sunshine Act Meeting

[F.C.S.C. Meeting Notice No. 9-98]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Tuesday, May 12, 1998, 1:30 p.m.

Subject Matter: Proposed Decisions on claims against Albania

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, N.W., Room 6002, Washington, DC 20579. Telephone: (202) 616-6988.

Dated at Washington, DC, May 1, 1998.

Judith H. Lock,

Administrative Officer.

[FR Doc. 98-12009 Filed 5-1-98; 12:09 pm]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,163]

Coast Converters Inc., Los Angeles, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 20, 1998 in response to a worker petition which was filed on January 2, 1998 on behalf of workers at Coast Converters Inc., located in Los Angeles, California.

The petitioners requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 8th day of April, 1998.

Grant D. Beale,

Acting, Office of Trade Adjustment Assistance

[FR Doc. 98-11908 Filed 5-4-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34, 278 and TA-W-34, 278A]

Georgia Pacific Pulp & Paper Mill and Georgia Pacific CNS, Woodland, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 2, 1998 in response to a worker petition which was filed on behalf of workers at Georgia Pacific Pulp and Paper Mill, and Georgia Pacific CNS, Woodland, Maine.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 21st day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-11902 Filed 5-4-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,369]

Heritage Hills Tustin, California; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 30, 1998 in response to a worker petition which was filed on March 13, 1998, on behalf of workers at Heritage Hills, Tustin, California. The subject firm is a division of Kimball International.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 8th day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-11907 Filed 5-4-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Levi Strauss & Company; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48888). The certification was subsequently amended to include the subject firm workers at El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997, and published in the **Federal Register** on September 30, 1997 (62 FR 51155). The certification was subsequently amended to include the subject firm workers at facilities in Fayetteville and Harrison, Arkansas and the Dallas, Texas Regional Levi Strauss Office. This amendment was issued on December 9, 1997 and published in the **Federal Register** on December 18, 1997 (62 FR 66393).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations for those workers engaged in the manufacture of Dockers have also occurred, as well as separations from companies doing contract work at these Levi Strauss locations. Based on this new information, the Department is amending the certification to cover the subject firm's Dockers workers as well as contract workers at the approved Levi Strauss facilities.

The intent of the Department's certification is to include all workers of Levi Strauss and Company, as well as contract workers, who were adversely affected by increased imports.

The amended notice applicable to TA-W-33,513 is hereby issued as follows:

All workers of Levi Strauss and Company, including Dockers and temporary or contract workers at the following facilities, who became totally or partially separated from employment on or after May 13, 1996 through August 7, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA-W-33,513P Centerville Plant and Adams Janitorial Services, Centerville, TN 37033 and Franks Vending Services, Pulaski, TN

TA-W-33,513Q Knoxville Sewing Plant, Canteen Food Services, and Guardsmark, Inc., Knoxville, TN 37917 and IH Services, Inc., Greenville, SC
TA-W-33,513R Knoxville Finishing Plant, Canteen Food Services, and Master America, Knoxville, TN 37917 and Guardsmark, Memphis, TN
TA-W-33,513S Mountain City Plant, Mountain City, TN 37683
TA-W-33,513T Powell Plant, Powell, TN 37849

Signed in Washington, D.C. this 15th day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-11899 Filed 5-4-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Levi Strauss & Company; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Texas

TA-W-33,513 Goodyear Cutting Facility 1440 Goodyear El Paso, TX 79936
TA-W-33,513A Pellicano Finishing Facility 11460 Pellicano Dr. El Paso, TX 79936
TA-W-33,513B Lomaland Plant, Window Pros, Guardsmark, Inc. and Independent EAP Counselor El Paso, TX 79935 and Judith's Cafeteria Clint, TX 79836
TA-W-33,513C Eastside Plant and Texas Commission for the Blind El Paso, TX 79915
TA-W-33,513D Cypress Plant 2101 Cypress Ave El Paso, TX 79905
TA-W-33,513E Airway Plant, Texas Commission for the Blind Office of Janitorial Services, and Independent EAP Counselor 1633 Airway Blvd. El Paso, TX 79935
TA-W-33,513F Amarillo Finishing Plant 4724 24th St., NE Amarillo, TX 79107
TA-W-33,513G Brownsville Plant 2500 Billy Mitchell Blvd Brownsville, TX 78521
TA-W-33,513H Harlingen Plant

Industrial Air Park Harlingen, TX 78550
TA-W-33,513I San Angelo Plant and Classic Food Service 1500 U.S. Highway 67 San Angelo, TX 76905
TA-W-33,513J San Antonio Finishing Center San Antonio, TX 78227
TA-W-33,513V San Antonio Plant San Antonio, TX 78227
TA-W-33,513W Kastrin Street Plant El Paso, TX 79907
TA-W-33,513X San Benito Plant San Benito, TX 78586
TA-W-33,513AA Dallas CF Regional Office Dallas, TX 75252

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48888). The certification was subsequently amended to include the subject firm workers at El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997, and published in the **Federal Register** on September 30, 1997 (62 FR 51155). The certification was subsequently amended to include the subject firm workers at facilities in Fayetteville and Harrison, Arkansas and the Dallas, Texas Regional Levi Strauss Office. This amendment was issued on December 9, 1997 and published in the **Federal Register** on December 18, 1997 (62 FR 66393).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows the worker separations for those workers engaged in the manufacture of Dockers have also occurred, as well as separations from companies doing contract work at these Levi Strauss locations. Based on this new information, the Department is amending the certification to cover the subject firm Dockers workers as well as contract workers at the approved Levi Strauss facilities.

The intent of the Department's certification is to include all workers of Levi Strauss and Company, as well as contract workers, who were adversely affected by increased imports.

The amended notice applicable to TA-W-33,513 is hereby issued as follows:

All workers of Levi Strauss and Company, including Dockers and temporary or contract workers at the following facilities, who became totally or partially separated from employment on or after May 13, 1996 through August 7, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA-W-33,513 Goodyear Cutting Facility, El Paso, TX 79936
TA-W-33,513A Pellicano Finishing Facility, El Paso, TX 79936
TA-W-33,513B Lomaland Plant, including Window Pros, Guardsmark, Inc., EAP Independent Counselor, and Judith's Cafeteria, El Paso, TX 79935
TA-W-33,513C Eastside Plant, including Texas Commission for the Blind, El Paso, TX 79915
TA-W-33,513D Cypress Plant, El Paso, TX 79905
TA-W-33,513E Airway Plant, including Texas Commission for the Blind, Office of Janitorial Services, and Independent EAP Counselor, El Paso, TX 79925
TA-W-33,513F Amarillo Finishing Plant, Amarillo, TX 79107
TA-W-33,513G Brownsville Plant, Brownsville, TX 78521
TA-W-33,513H Harlingen Plant, Harlingen, TX 78550
TA-W-33,513I San Angelo Plant including Classic Food Service, San Angelo, TX 76905
TA-W-33,513J San Antonio Finishing Center, San Antonio, TX 78227
TA-W-33,513V San Antonio Plant, San Antonio, TX 78227
TA-W-33,513W Kastrin Street Plant, El Paso, TX 79907
TA-W-33,513X San Benito Plant, San Benito, TX 78586
TA-W-33,513AA Dallas CF Regional Office, Dallas, TX 75252.

Signed in Washington, DC, this 14th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-11901 Filed 5-4-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Levi Strauss & Company; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

California

TA-W-33,513K San Francisco Plant 250 Valencia St San Francisco, CA 94103

Georgia

TA-W-33,513L Blue Ridge Plant 215 Industrial Blvd Blue Ridge, GA 30513
TA-W-33,513M

Valdosta Plant
2220 East Hill Ave
Valdosta, GA 31601

New Mexico
TA-W-33,513N
Roswell Plant and
Ron's Place
3701 S. Main St
Roswell, NM 88201
TA-W-33,513O
Albuquerque Plant and
The Pit Stop
8725 Pan American Freeway, NE
Albuquerque, NM 87113

Virginia
TA-W-33,513U
Warsaw Plant
15683 History Land Highway
Warsaw, VA 22572

Arkansas
TA-W-33,513Y
Fayetteville Plant and
Lifestyles
1800 Stirman Avenue
Fayetteville, AR 72701, and
Office for the Blind & Visually
Impaired
of the State of Arkansas
Little Rock, AR
TA-W-33,513Z
Harrison Plant and
Stan Partridge Cafeteria
Services
608 Highway 6265 North
Harrison, AR 72601

Florida
TA-W-33,513AB
Levi Strauss Print Shop
5979 N.W. 151 St.
Miami Lakes, FL 33014

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the *Federal Register* on September 17, 1997 (62 FR 48888). The certification was subsequently amended to include the subject firm workers at El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997, and published in the *Federal Register* on September 30, 1997 (62 FR 51155). The certification was subsequently amended to include the subject firm workers at facilities in Fayetteville and Harrison, Arkansas and the Dallas, Texas Regional Levi Strauss Office. This amendment was issued on December 9, 1997 and published in the *Federal Register* on December 18, 1997 (62 FR 66393).

At the request of the company, the Department reviewed the certification for workers for the subject firm. New information received by the company shows that worker separations for those workers engaged in the manufacture of Dockers have also occurred, as well as

separations from companies doing contract work at these Levi Strauss locations. Based on this new information, the Department is amending the certification to cover the subject firm's Dockers workers as well as contract workers at the approved Levi Strauss facilities.

The intent of the Department's certification is to include all workers of Levi Strauss and Company, as well as contract workers, who were adversely affected by increased imports.

The amended notice applicable to TA-W-33,513 is hereby issued as follows:

All workers of Levi Strauss and Company, including Dockers and temporary or contract workers at the following facilities, who became totally or partially separated from employment on or after May 13, 1996 through August 7, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA-W-33,513K San Francisco Plant, San Francisco, CA 94103
TA-W-33,513L Blue Ridge Plant, Blue Ridge, GA 30513
TA-W-33,513M Valdosta Plant, Valdosta, GA 31601
TA-W-33,513N Roswell Plant including Ron's Place, Roswell, NM 88201
TA-W-33,513O Albuquerque Plant including The Pit Stop, Albuquerque, NM 87113
TA-W-33,513U Warsaw Plant, Warsaw, VA 22572.
TA-W-33,513Y Fayetteville Plant including Lifestyles, and Office for the Blind & Visually Impaired of the State of Arkansas, Fayetteville AR
TA-W-33,513Z Harrison Plant including Stan Partridge Cafeteria Services, Harrison, AR
TA-W-33,513AB Levi Strauss Print Shop, Miami Lakes, FL.

Signed in Washington, D.C. this 15th day of April, 1998

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-11904 Filed 5-4-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Levi Strauss & Company; Notice of Termination of Investigation

Tennessee
TA-W-34,101
Mountain City Plant
Cold Springs Road, Route #1
Mountain City, Tennessee 37683
TA-W-34,101A
Powell Plant
2307 Beaver Creek Drive
Powell, Tennessee 37849

TA-W-34,101B
Knoxville Laundry Facility
2700 Hoitt Avenue
Knoxville, Tennessee 37917

Texas

TA-W-34,101C
Harlingen Plant
Industrial Air Park
Harlingen, Texas 78553
TA-W-34,101D
Amarillo Finishing Center
4724 N.E. 24th Street
Amarillo, Texas 78553
TA-W-34,101E
San Antonio Finishing Center
5827 Highway 90 West
San Antonio, Texas 78227

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 15, 1997 in response to a worker petition which was filed September 9, 1997 on behalf of workers at Levi Strauss in Mountain City, TN (TA-W-34,101), Powell, TN (TA-W-34,101A), Knoxville, TN (TA-W-34,101B), Harlingen, TX (TA-W-34,101C), Amarillo, TX (TA-W-34,101D), and San Antonio, TX (TA-W-34,101E).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA-W-34,513). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-11909 Filed 5-4-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,779, Caguas, TA-W-33,779B, Anasco, TA-W-33,779C, Rincon, TA-W-33,779D, Mayaguez, and TA-W-33,779E, Juana Diaz, Puerto Rico]

Maidenform, Worldwide, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Adjustment Assistance on February 2, 1998, applicable to all workers of Maidenform, Inc., located in Caguas, Puerto Rico. The notice was published in the *Federal Register* on March 16, 1998 (63 FR 12831).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The company reports that Maidenform's production facilities in Puerto Rico are known as "Maidenform Worldwide, Inc.". Worker separations have occurred at the following Puerto Rico locations: Anasco, Rincon, Mayaguez and Juana Diaz. Separations at these locations began in early 1998 and will continue through April 1998. The workers are engaged in employment related to the production of women's intimate apparel.

The intent of the Department's certification is to include all workers of Maidenform Worldwide, Inc. adversely affected by increased imports of women's intimate apparel.

The amended notice applicable to TA-W-33,779 is hereby issued as follows:

All workers of Maidenform Worldwide, Inc., Caguas, Puerto Rico (TA-W-33,779) Anasco, Puerto Rico (TA-W-33,779B), Rincon, Puerto Rico (TA-W-33,779C), Mayaguez, Puerto Rico (TA-W-33,779D) and Juana Diaz, Puerto Rico (TA-W-33,779E) engaged in employment related to the production, production control or warehousing of women's intimate apparel who became totally or partially separated from employment on or after August 21, 1996 through February 2, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 16th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-11900 Filed 5-4-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,142 and TA-W-34,142A]

Red Kap Industries, Ripley, MS and Tompkinsville, KY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 6, 1998, applicable to all workers of Red Kap Industries located in Ripley, Mississippi. The notice was published in the *Federal Register* on March 16, 1998 (63 FR 12831).

At the request of petitioners, the Department reviewed the certification

for workers of the subject firm. New findings show that worker separations will occur at the subject firm's Tompkinsville, Kentucky plant. The workers are engaged in employment related to the production of work uniforms and jeans.

The intent of the Department's certification is to include all workers of Red Kap Industries who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of Red Kap Industries in Tompkinsville, Kentucky.

The amended notice applicable to TA-W-34,142 is hereby issued as follows:

"All workers of Red Kap Industries, Ripley, Mississippi (TA-W-34,142) and Tompkinsville, Kentucky (TA-W-34,142A) who became totally or partially separated from employment on or after December 18, 1996 through February 6, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 16th day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-11905 Filed 5-4-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,747 and TA-W-33,747A]

Stuffed Shirt, Inc., Slidell, LA and Pass Christian, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 11, 1997, applicable to all workers of Stuffed Shirt, Inc. located in Slidell, Louisiana. The notice was published in the *Federal Register* on October 14, 1997 (62 FR 53348).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations will occur at the subject firm's Pass Christian, Mississippi location. The workers are engaged in employment related to the production of denim garments.

The intent of the Department's certification is to include all workers of Stuffed Shirt, Inc. who were affected by increased imports. Accordingly, the

Department is amending the worker certification to include the workers of Stuffed Shirt, Inc. in Pass Christian, Mississippi.

The amended notice applicable to TA-W-33,747 is hereby issued as follows:

"All workers of Stuffed Shirt, Inc., Slidell, Louisiana (TA-W-33,747) and Pass Christian, Mississippi (TA-W-33,747A) who became totally or partially separated from employment on or after July 24, 1996 through September 11, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 16th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-11903 Filed 5-4-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Levi Strauss & Company; Notice of Termination of Investigation

Tennessee
NAFTA-02075
Mountain City Plant
Cold Springs Road, Route #1
Mountain City, Tennessee 37683
NAFTA-02075A
Powell Plant
2307 Beaver Creek Drive
Powell, Tennessee 37849
NAFTA-02075B
Knoxville Laundry Facility
2700 Hoitt Avenue
Knoxville, Tennessee 37917

Texas

NAFTA-02075C
Harlingen Plant
Industrial Air Park
Harlingen, Texas 78553
NAFTA-02075D
Amarillo Finishing Center
4724 N.E., 24th Street
Amarillo, TX 78553
NAFTA-02075E
San Antonio Finishing Center
5827 Highway 90 West
San Antonio, Texas 78227

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 15, 1997 in response to a worker petition which was filed December 9, 1997 on behalf of workers at Levi Strauss in Mountain City, TN (NAFTA-02075), Powell, TN (NAFTA-02075A), Knoxville, TN

(NAFTA-02075B), Harlingen, TX (NAFTA-02075C), Amarillo, TX (NAFTA-02075D), and San Antonio, TX (NAFTA-02075E).

The petitioning group of workers are covered under an existing NAFTA-TAA certification (NAFTA-01807). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 15th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance

[FR Doc. 98-11906 Filed 5-4-98; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Notice of Public Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of public meeting.

DATES: Wednesday, May 20, 1998, 8:30 a.m. to 5:30 p.m. and Thursday, May 21, 1998, 8:00 a.m. to 6:15 p.m.

ADDRESSES: The meeting site will be: James R. Thompson Center, Auditorium, Concourse Level, 100 West Randolph, Chicago, IL 60601.

Written comments can be sent to the Commission at 800 North Capitol Street, N.W., Suite 450, Washington, D.C. 20002.

STATUS: The meeting will be open to the public both days. However, the Commission will enter executive session during its lunch period from 12:00 p.m. to 2:30 p.m. on Thursday, May 21.

SUMMARY: At its third on-site meeting the National Gambling Impact Study Commission, established under Pub. L. 104-169, dated August 3, 1996, will hear presentations from invited panels of speakers, conduct site visits, receive public comment, and conduct its normal meeting business.

CONTACT PERSONS: For further information contact Amy Ricketts at (202) 523-8217 or write to 800 North Capitol St., N.W., Suite 450, Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The meeting agenda will include presentations from State and local officials; staff briefings on riverboat gambling and Internet gambling; testimony from invited panels of speakers on riverboat gambling, the regulatory structure of financial markets, and Internet gambling; normal

meeting business; executive session; and an open forum period for public comment.

An open forum for public participation will be held from 4:00 p.m. to 5:30 p.m. on May 20 on issues relevant to the Commission's work. Anyone wishing to make an oral presentation at the meeting must contact Dr. Timothy Kelly by telephone only at (202) 523-8217 no later than 5:00 p.m., May 14, 1998. No requests will be accepted before 9:00 a.m. (EST) the day this notice appears in the **Federal Register**.

Open forum participants will be asked to provide name, organization (if applicable), address, and daytime telephone number. No requests will be accepted via mail, facsimile, e-mail, or voice mail. A waiting list will be compiled once the allotted number of slots becomes filled. Oral presentations will be limited to three (3) minutes per speaker. If this is not enough time to complete comments, please restrict to three minutes a summary of your comments and bring a typed copy of full comments to file with the Commission. Persons speaking at the forum are requested, but not required, to supply twenty (20) copies of their written statements to the registration desk prior to the afternoon session on May 20. Members of the public, on the waiting list or otherwise, are always invited to send written comments to the Commission at any time. However, if individuals wish to have their written comments placed into the official record of the meeting, the Commission must receive them by June 10, 1998. Each speaker is kindly asked to be prepared prior to their presentation; to refrain from any use of profanity, vulgar language, or obscene signage; to refrain from making any comments or disrupting sounds during the presentation of another speaker; and to remain seated. If visual aids are necessary during the course of a speaker's presentation, each speaker is responsible for providing the equipment to run the visual aid. A complete list of guidelines is available on the Commission's web site: www.ngisc.gov.

Nancy Mohr Kennedy,
Executive Director.
[FR Doc. 98-11896 Filed 5-4-98; 8:45 am]

BILLING CODE 6802-ET-P

NUCLEAR REGULATORY COMMISSION

Detroit Edison Company Notice of Withdrawal of Application for Amendment to Facility Operating License

[Docket No. 50-341]

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Detroit Edison Company (the licensee) to withdraw its July 29, 1993, application for proposed amendment to Facility Operating License No. NPF-43 for the Fermi 2 facility located in Monroe County, Michigan.

The proposed amendment would have revised the technical specifications to extend certain instrumentation calibration intervals.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 6, 1995 (60 FR 29873). However, by letter dated July 30, 1996, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 29, 1993, as supplemented November 7, 1995, and the licensee's letter dated July 30, 1996, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC, and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 28th day of April 1998.

For The Nuclear Regulatory Commission.
Andrew J. Kugler,

Project Manager, Project Directorate III-1,
Division of Reactor Projects—III/IV, Office of
Nuclear Reactor Regulation.

[FR Doc. 98-11912 Filed 5-4-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-1374]

Consideration of License Renewal Request for the Idaho State University, Pocatello, Idaho, and Opportunity for Hearing

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Consideration of License Renewal Request for the Idaho

State University and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission (NRC) is considering a license renewal of Special Nuclear Material License SNM-1373, issued to Idaho State University (ISU). Renewal will allow ISU to continue to receive and use uranium-235 in the form of fuel plates and foils. Work performed under this license includes the study of subcritical assembly and nondestructive assay. The work is conducted for education and research to strengthen the existing undergraduate and graduate programs in the area of nuclear science and engineering.

Prior to approving the renewal application, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report. The licensing of the ISU activities is for research and education purposes, therefore, in accordance with 10 CFR Section 51.22(c)(14)(v), neither an Environmental Assessment nor an Environmental Impact Statement is warranted for this action. The renewal of the license will be documented in the issuance of a renewed SNM-1373 license.

The NRC hereby provides notice that this is a proceeding on an application for renewal of a license falling within the scope of Subpart L, "Informal Hearing Procedure for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing processing in 10 CFR Part 2. Pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of the **Federal Register** notice.

The request for a hearing must be filed with the Office of Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738; or
2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Services Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in Section 2.1205(h).

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for a hearing is timely in accordance with Section 2.1205(d).

In accordance with 10 CFR Section 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, Idaho State University, College Of Engineering, ISU Box 8060, Pocatello, Idaho, 83209; Attention: Dr. John S. Bennion, Reactor Administrator; and
2. The NRC staff, by delivering to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the NRC's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR Part 2, Subpart L.

For further details with respect to this action, the license renewal application dated September 30, 1997, is available for inspection at the NRC's Public Document Room, 2120 L Street N.W., Washington, DC 20555. Questions should be referred to NRC's project manager for the Idaho State University, Edwin Flack, at (301) 415-8115.

Dated at Rockville, Maryland, this 26th day of April 1998.

For the Nuclear Regulatory Commission.
Michael F. Weber,
Chief, Licensing Branch, Division of Fuel
Cycle Safety and Safeguards, NMSS.

[FR Doc. 98-11916 Filed 5-4-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-17711-EA; ASLBP No. 98-739-02-EA]

NDT Services, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being

established to preside over the following proceeding.

NDT Services, Inc.

Order Suspending License (Effective Immediately)

[EA 98-108]

In accordance with 10 C.F.R. § 202, this Board is established as a result of an April 14, 1998, request by the petitioner, NDT Services, Inc. of Caguas Puerto Rico, for a hearing on a March 27, 1998, NRC Order. That Order, *inter alia*, suspended, effective immediately, NDT's authority to perform radiographic operations under License No. 52-19438-01.

The Board is comprised of the following administrative judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555
Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555
Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

All correspondence, documents and other materials in this proceeding shall be filed with the Judges in accordance with 10 C.F.R. 2.701.

Issued at Rockville, Maryland, this 28th day of April 1998.

B. Paul Cotter, Jr.,
Chief Administrative Judge, Atomic Safety
and Licensing Board Panel.

[FR Doc. 98-11897 Filed 5-4-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Northeast Nuclear Energy Company; Establishment of Atomic Safety and Licensing Board

[Docket No. 50-423-LA; ASLBP No. 98-740-02-LA]

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Northeast Nuclear Energy Company

Millstone Nuclear Power Station, Unit No. 3

This Board is being established pursuant to a petition to intervene

submitted by the Citizens Regulatory Commission. The petition to intervene was filed in response to a notice of a proposed determination by the NRC staff that the issuance of a license amendment to the Northeast Nuclear Energy Company for the Millstone Nuclear Power Station, Unit No. 3 would involve no significant hazards considerations. The amendment would eliminate the requirement to have the recirculation spray system directly inject into the reactor coolant system following a design basis accident. The notice was published in the **Federal Register** at 63 Fed. Reg. 14482, 14487 (March 25, 1998).

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555
 Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555
 Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 C.F.R. 2.701.

B. Paul Cotter, Jr.,
 Chief Administrative Judge, Atomic Safety and Licensing Board Panel

Issued at Rockville, Maryland, this 29th day of April 1998.

[FR Doc. 98-11898 Filed 5-4-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-423]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

By letter dated October 15, 1997, as supplemented by letter dated December 17, 1997, Northeast Nuclear Energy Company (NNECO) proposed to amend the Millstone Nuclear Power Station, Unit 3, Operating License No. NPF-49. The proposed amendment would have revised Technical Specification 3/4.4.3, "Pressurizer," to replace the pressurizer maximum water inventory requirement with a pressurizer maximum indicated level requirement. The proposed amendment would have also made editorial changes and modifications to the associated Bases section.

Subsequently, by letter dated April 7, 1998, NNECO superseded its original amendment request with a new request. Therefore, the Commission has approved the withdrawal of NNECO's October 15, 1997, application, as supplemented December 17, 1997, for proposed amendment.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 3, 1997 (62 FR 63979).

For further details with respect to this action, see the application for amendment dated October 15, 1997, as supplemented December 17, 1997, and NNECO's letter dated April 7, 1998, which superseded the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 27th day of April 1998.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 98-11915 Filed 5-4-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 70-7001, and 70-7002]

United States Enrichment Corporation, Paducah and Portsmouth Gaseous Diffusion Plants, Notice of Receipt of Application for Certification Renewal For the Gaseous Diffusion Plants and Notice of Public Comment Period

I. Receipt of Application and Availability of Documents

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC or the Commission) has received by letters dated April 15, 1998, applications from the United States Enrichment Corporation (USEC) for the renewal of the certification of the gaseous diffusion plants (GDPs) located near Paducah, Kentucky and Piketon, Ohio. The NRC issued the initial certification for the GDPs on November 26, 1996 and assumed regulatory

oversight for the GDPs on March 3, 1997. The USEC renewal requests are for a five-year period. The USEC applications for renewal do not contain any changes to the existing documentation; previous applications, statements, and reports are incorporated by reference into the renewal application. The USEC application for the renewal of the Paducah Gaseous Diffusion Plant is based on USEC's previous Application, as revised through Revision 24 dated April 15, 1998, and USEC's previous Compliance Plan, as revised through Revision 7 dated March 20, 1998. No additional changes to the application or Compliance Plan are being requested. The USEC application for the renewal of the Portsmouth Gaseous Diffusion Plant is based on USEC's previous application, as revised through Revision 19 dated April 15, 1998, and USEC's previous Compliance Plan, as revised through Revision 6 dated March 12, 1998. No additional changes to the Application or Compliance Plan are being requested.

Copies of the renewal application for certification (except for classified and proprietary portions which are withheld in accordance with 10 CFR 2.790, "Availability of Public Records") are available for public inspection and copying at the Commission's Public Document Room (PDR) in the Gelman Building, 2120 L Street, NW, Washington, DC 20555 and in the Local Public Document Rooms (LPDRs) established for these facilities. A copy of the application for the Paducah plant is available at the Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003. A copy of the application for the Portsmouth plant is available at the Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662. Copies of related correspondence and staff evaluations (except for portions withheld in accordance with 10 CFR 2.790) will also be made available at these public document rooms.

II. Notice of Comment Period

Any interested party may submit written comments on the renewal application for certification for either the Paducah plant or the Portsmouth plant for consideration by the staff. To be certain of consideration, comments must be received by June 19, 1998.

Comments received after the due date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Written comments on the application should be mailed to the Chief, Rules Review and

Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand delivered to 11545 Rockville Pike, Rockville, MD 20852 between 7:45 a.m. and 4:15 p.m. Federal workdays. Comments should be legible and reproducible, and include the name, affiliation (if any), and address of the commentator. All comments received by the Commission will be made available for public inspection at the Commission's Document Room located in Washington, DC and the Local Public Document Rooms located in Paducah, Kentucky and Portsmouth, Ohio. In accordance with 10 CFR 76.62 and 76.64, a member of the public must submit written comments to petition the Commission requesting review of the Director's decision on certification renewal.

FOR FURTHER INFORMATION CONTACT: Ms. Merri Horn, (301) 415-8126 or Mr. Yawar Faraz, (301) 415-8113; Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 28th day of April 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98-11913 Filed 5-4-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of May 4, 11, 18, and 25, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 4

Wednesday, May 6

1:30 p.m.

Affirmation Session (PUBLIC MEETING) (if needed)

Week of May 11—Tentative

Wednesday, May 13

10:30 a.m.

Affirmation Session (PUBLIC MEETING) (if needed)

Week of May 18—Tentative

Thursday, May 21

11:30 a.m.

Affirmation Session (PUBLIC MEETING) (if needed)

Week of May 25—Tentative

There are no meetings the week of May 25.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Bill Hill (301) 415-1661.

ADDITIONAL INFORMATION:

By a vote of 4-0 on April 30, the Commission determined pursuant to U.S.C. 552b(c)(1) and 10 CFR Sec. 9.104(a)(1) of the Commission's rules that "Affirmation of LOUISIANA ENERGY SERVICES (CLAIRBORNE ENRICHMENT CENTER); APPLICANT'S MOTION TO WITHDRAW ITS LICENSE APPLICATION AND TERMINATE THE PROCEEDING" be held on April 30, and on less than one week's notice to the public.

By a vote of 4-0 on April 30, the Commission determined pursuant to U.S.C. 552b(c)(1) and 10 CFR Sec. 9.104(a)(1) of the Commission's rules that "Affirmation of REVISED DRAFT OF INTERNATIONAL URANIUM ORDER" be held on April 30, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at:

<http://www.nrc.gov/SECY/smj/schedule.htm>

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98-12047 Filed 5-1-98; 2:20 pm]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-1078 (which should be mentioned in all correspondence concerning this draft guide), is titled "Standard Format and Content of License Termination Plans for Nuclear Power Reactors." The guide is intended for Division 1, "Power Reactors." This draft guide is being developed to provide guidance on developing license termination plans for nuclear power reactor licensees who wish to terminate their licenses and release their sites.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on Draft Regulatory Guide DG-1078. Comments may be accompanied by additional relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by June 30, 1998.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (<http://www.nrc.gov>). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905; e-mail CAG@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public

Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Reproduction and Distribution Services Section; or by fax at (301) 415-5272. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23rd day of April 1998.

For the Nuclear Regulatory Commission.

John W. Craig,

Director, Division of Regulatory Applications,
Office of Nuclear Regulatory Research.

[FR Doc. 98-11914 Filed 5-4-98; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review;
Comment Request for Reclearance of
an Information Collection: Form RI 20-80

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for reclearance of an information collection, RI 20-80, Alternative Annuity Election, is used for individuals who are eligible to elect whether to receive a reduced annuity and a lump-sum payment equal to their retirement contributions (alternative form of annuity) or an unreduced annuity and no lump sum.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 200 RI 20-80 forms are completed annually. We estimate it takes approximately 20 minutes to complete the form. The annual burden is 67 hours. For copies of this proposal, contact Jim Farron on (202) 418-3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received by July 6, 1998.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606-0623.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

[FR Doc. 98-11845 Filed 5-4-98; 8:45 am]

BILLING CODE 5325-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23162; 812-10690]

Brinson Supplementary Trust, et al.; Notice of Application

April 29, 1998.

AGENCY: Securities and Exchange
Commission ("SEC").

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit The Brinson Funds, the Brinson Relationship Funds (the "Relationship Funds") Fort Dearborn Income Securities, Inc. ("Ft. Dearborn," together with The Brinson Funds, and the Relationship Funds, the "Funds"), private accounts ("Private Accounts") managed by Brinson Partners, Inc. (the "Adviser"), and collective trusts ("Collective Trusts") which have Brinson Trust Company as a trustee to (a) use cash collateral received from the borrowers of their portfolio securities to purchase shares ("Shares") of the Brinson Supplementary Trust (the "Trust"), an affiliated private investment company, and (b) use uninvested cash to purchase Shares of Trust.

APPLICANTS: Funds, Trust, and the Adviser.

FILING DATES: The application was filed on June 3, 1997, and amended on February 20, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 26, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 209 South LaSalle Street, Chicago, IL 60604-1295.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

Applicants' Representations

1. The Brinson Funds and the Relationship Funds are registered under the Act as open-end management investment companies and are organized as Delaware business trusts. The Brinson Funds currently offers eight series. The Relationship Funds currently offers sixteen series.¹

2. Ft. Dearborn is registered under the Act as a closed-end management investment company and is incorporated under Illinois law. Shares of Ft. Dearborn are listed on the New York Stock Exchange ("NYSE").

¹ The Relationship Funds currently offers a money market fund series, Brinson U.S. Cash Management Prime Fund, which is not included as an applicant and does not intend to rely upon the order.

3. The Collective Trusts are collective investment trusts for which Brinson Trust Company serves as trustee. The Collective Trusts contain exclusively assets of public and private employee pension plans. The Collective Trusts have been established in accordance with section 3(c)(11) under the Act.

4. The Adviser, a Delaware corporation, is registered under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Funds. The Adviser also manages the daily investment and business affairs of the Collective Trusts and Private Accounts. The Adviser is entitled to receive monthly management fees from the Funds, other than the Relationship Funds, (the "Advisory Fees") but has agreed irrevocably to waive the Advisory Fees and reimburse expenses of certain of The Brinson Funds so that the total annual operating expenses of each of these Funds will not exceed a certain percentage of such Fund's average daily net assets.

5. The Trust is organized as a Delaware business trust and will initially consist of two series: The Brinson Supplementary Trust-U.S. Cash Management Mutual Fund Trust (the "Mutual Fund Series") and the Brinson Supplementary Trust-U.S. Cash Management Fund (the "Cash Fund Series"). The Trust will be a private investment company relying on section 3(c)(7) of the Act. At all times at least 40% of the board of trustees of the Trust ("Board") will not be "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"). The Trust currently has three trustees, all of whom are Independent Trustees.

6. The Trust will retain the Adviser to manage the investments of the Cash Fund Series and the Mutual Fund Series. The Adviser will receive no compensation for managing the assets of the Cash Fund Series, but will receive a monthly fee at the annual rate of .0025% of the average daily net assets of the Mutual Fund Series for its services with respect to that series ("Trust Management Fee").

7. The Funds, Collective Trusts, and Private Accounts may have uninvested cash ("Uninvested Cash"). Such Uninvested Cash may result from a variety of sources, including reserves held for temporary defensive purposes, pending investment in securities or debt obligations, to cover an obligation or commitment of a Fund to purchase securities or other assets at a later date, or to be invested on a strategic investment management basis.

8. The Funds, Collective Trusts, and Private Accounts may also participate in a securities lending program

("Program") to increase their income by lending portfolio securities to registered broker-dealers or institutional investors deemed by the Adviser to be qualified. The Funds, Collective Trusts, and Private Accounts may have cash collateral ("Cash Collateral") posted by borrowers in connection with the Program.

9. Applicants seek an order under the Act to permit the Funds² to use Uninvested Cash and Cash Collateral to purchase and redeem Shares of the Trust. By investing in Shares, applicants anticipate that the Funds will be able to reduce transaction costs, create more liquidity, enjoy greater returns on the Uninvested Cash and Cash Collateral, and achieve greater diversification with respect to investment of Uninvested Cash and Cash Collateral.

10. It is currently anticipated that Shares of the Mutual Fund Series will be sold to The Brinson Funds and Ft. Dearborn and Shares of the Cash Fund Series will be sold to the Relationship Funds, Collective Trusts, and Private Accounts. The Trust will offer redemption of its Shares at the current net asset value per Share on each business day on which the NYSE is open. Each of the Trust Series which will sell its Shares to investment companies registered under the Act will comply with all requirements of rule 2a-7 under the Act and will use the amortized cost method of valuation to determine its net asset value per share.

Applicants' Legal Analysis

1. Sections 17(a)(1) and 17(a)(2) of the Act make it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in any joint enterprise or arrangement in which the investment company is a participant, unless the SEC has issued an order authorizing the arrangement.

2. Section 2(a)(3) of the Act defines an affiliated person of an investment

² Applicants also request relief for registered management investment companies and series thereof (except for an investment company or series thereof that holds itself out as a money market fund) that in the future are advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser. Each registered investment company that currently intends to rely on the order has been named as an applicant. Any registered investment company that in the future seeks to rely on the order will do so only in accordance with the terms and conditions of the application.

company to include, among others: (i) Any person that owns 5% or more of the outstanding voting securities of the investment company; (ii) any investment adviser of the investment company; and (iii) any person directly or indirectly controlling, controlled by, or under common control with that person. The Funds and the Trust share a common investment adviser and thus may be deemed to be under common control. The Trust also may be considered an affiliated person of a Fund to the extent that a Fund owns 5% or more of the Shares. As a result, section 17(a) would prohibit the sale of Shares to the Funds, and the redemption of the Shares by the Trust. Applicants also believe that the Funds, Collective Trusts, and Private Accounts by purchasing Shares of the Trust; the Adviser, by managing the Funds, Collective Trusts, and Private Accounts; and the Trust, by selling Shares to and redeeming Shares from the Funds, Collective Trusts, and Private Accounts could be deemed to be "joint participants" in a "joint enterprise or joint arrangement" within the meaning of section 17(d) of the Act and rule 17d-1 under the Act.

3. Section 17(b) of the Act authorizes the SEC to exempt a transaction for section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the SEC to exempt persons or transactions from any provision of the act, if the exemption is necessary or appropriate in the public interests and consistent with the protection of investors and the purposes of fairly intended by the policy and provisions of the Act. Applicants submit, for the reasons discussed below, that their request for relief satisfies these standards.

4. Applicants state that the Funds will be treated like all other shareholders of the Trust and will purchase and redeem Shares on the same terms and on the same basis as Shares are purchased and redeemed by all other shareholders of the Trust, including the Private Accounts and Collective Trusts.

5. Applicants further state that shareholders of the Funds will not be subject to duplicative management fees. As long as the Trust Management Fee is charged, an amount of Advisory Fee equal to the net asset value of Shares of the Mutual Fund Series that are held by a Fund multiplied by the applicable

Trust Management Fee rate charged by the Adviser, will be waived in the calculation of the overall advisory fees paid by such Fund.³

6. The Trust will comply with the prohibitions on affiliated transactions set forth in sections 17(a), (d), and (e) of the Act, except to the extent necessary to permit the Funds to invest Uninvested Cash and Cash Collateral in the Trust as described in the application. The Trust will also comply with the prohibitions against leveraging and issuing senior securities set forth in section 18 of the Act and the requirements of section 22(e) of the Act which governs rights of redemption. Applicants thus argue that permitting the Funds to invest Uninvested Cash and Cash Collateral in Shares of the Trust will enable the Funds to invest in a vehicle that is similar to a registered investment company in terms of liquidity, diversity, and quality of its investments at a cost that is expected to be significantly lower than the cost typically incurred when investing in a registered investment company.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. A majority of the board of directors or trustees of a Fund (including a majority of the directors or trustees who are not "interested persons" of the Fund within the meaning of section 2(a)(19) of the Act) will initially and at least annually thereafter determine that the investment of Uninvested Cash and Cash Collateral in Shares of the Trust is in the best interests of the Fund and its shareholders.

2. With respect to any Fund that invests in the Trust, the Adviser will reduce its Advisory Fees⁴ charged to such Fund by an amount (the "Reduction Amount") equal to the net asset value of such Fund's holdings in the Trust multiplied by the rate at which advisory fees are charged by the Adviser to the Trust. Any fees remitted or waived pursuant to this condition will not be subject to recoupment by the Adviser or its affiliated persons at a later date.

3. If the Adviser waives any portion of its fees or bears any portion of the expenses of a Fund (an "Expense Waiver"), the adjusted fees for such Fund (gross fees less Expense Waiver) will be calculated with reference to the

³ The Relationship Funds do not pay any advisory fees and no calculation will be necessary for such Funds.

⁴ The Relationship Funds do not pay any advisory fees and no calculation will be necessary for such Funds.

Reduction Amount. Adjusted fees then will be reduced by the Reduction Amount. If the Reduction Amount exceeds adjusted fees, the Adviser will reimburse such Fund in an amount equal to such excess.

4. Investment in Shares will be in accordance with each Fund's respective investment restrictions and will be consistent with its policies as recited in its registration statement and prospectus.

5. Each Fund will invest Uninvested Cash in, and hold Shares of, the Trust only to the extent that the Fund's aggregate investment of Uninvested Cash in the Trust does not exceed 25% of the Fund's total assets.

6. The Trust will comply with the requirements of sections 17(a), 17(d), and 18 of the Act as if the Trust were a registered open-end management investment company. With respect to all redemption requests made by a Fund, the Trust will comply with section 22(e) of the Act. The Trust's Board will adopt procedures designed to ensure that the Trust complies with sections 17(a), 17(d), 17(e), 18, and 22(e) of the Act. The Trust's Board will also periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii), and 31a-1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and its staff.

7. Each of the Trust Series which will sell its Shares to investment companies registered under the Act will comply with rule 2a-7 under the Act. For each such Trust Series, the Trust will value the Shares, as of the close of business on each business day, using the "amortized cost method," as defined in rule 2a-7 under the Act, to determine the net asset value per share of such Trust Series. For each such Trust Series, the Trust will, subject to approval by the Board, adopt the monitoring procedures described in rule 2a-7(c)(6) under the Act and the Adviser will comply with such procedures and take such other actions as are required to be taken pursuant to such procedures.

8. The Shares will not be subject to a sales load, redemption fee, asset-based sales charge, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.).

9. Each Fund will purchase and redeem Shares of a Trust Series as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Trust Series. A separate account will be established in the shareholder records of the Trust for the account of each Fund.

10. Each Fund, the Trust, and any future registered management investment company that may rely on the order will be advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser.

11. A majority of the directors or trustees of each Fund will not be "interested persons" as that term is defined in section 2(a)(19) of the Act.

12. The Trust will not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

13. The securities lending program of each Fund will comply with all present and future applicable SEC and SEC staff positions regarding securities lending arrangements (including, without limitation, the type and amount of collateral, voting of loaned securities, limitations on the percentage of portfolio securities on loan, prospectus disclosure, termination of loans, receipt of dividends or other distributions, and compliance with fundamental policies).⁵

14. The net asset value per share with respect to Shares of the Trust will be determined separately for each Trust Fund Series, less the liabilities of the Trust Series, by the number of Shares outstanding with respect to Trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-11847 Filed 5-4-98; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities; Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with PL. 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information

⁵ See, e.g., SIFE Trust Fund (pub. avail. Feb. 17, 1982).

collection(s) listed below have been submitted to OMB:

1. *Nursing Home Reporting Requirements Related to Supplemental Security Income (SSI) Recipients—0960—New.* Public Law 103-387 requires long term, intermediate care and nursing home administrators to report SSI recipient admissions to SSA. SSA uses the information to determine whether SSI benefits should be reduced. The respondents are long term, intermediate care and nursing home administrators.

Number of Respondents: 16,000.
Frequency of Response: 2 per year.
Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 8,000 hours.

2. *Survey of Interest in International Social Security Agreements—0960—NEW.* Section 233 of the Social Security Act authorizes the U.S. to enter into agreements with foreign countries for the purpose of eliminating double social security coverage and taxation and closing gaps in benefit protection for workers who have divided their careers between the U.S. and another country. SSA negotiates these agreements for the U.S. SSA is now planning its agreement negotiating agenda for the next several years. Since U.S. businesses with overseas operations are primary stakeholders in these agreements, SSA needs to survey these companies to determine which countries they believe would be good candidates for new Social Security agreements. SSA uses the information, together with estimates of potential foreign tax savings and benefit payments, to determine priorities for new Totalization agreement negotiations for fiscal years 1999 through 2003. The respondents are U.S. businesses with overseas operations who have requested certificates of U.S. coverage from SSA.

Number of Respondents: 600.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 150 hours.
Written comments and

recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503, and
(SSA) Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965-4125 or write to him at the address listed above.

Dated: April 27, 1998.

Nicholas E. Tagliareni,
Reports Clearance Officer, Social Security Administration.

[FR Doc. 98-11944 Filed 5-4-98; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-1998-3797]

Office of Vessel Traffic Management

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard is holding a public meeting to invite ideas, comments, questions, and interest by individuals and operations on the Port and Waterways Safety Systems (PAWSS) port risk analyses, Vessel Traffic Service (VTS) using Automatic Identification Systems (AIS), and public-private partnerships for operating VTS's. The first public meetings on these topics were held from January to March of 1997. This additional meeting is meant to discuss progress to date and future plans for the PAWSS project.

DATES: The meeting will be held on May 20, 1998, from 9 a.m. to 5 p.m.; however, the meeting may be concluded early if its business is finished. Anyone planning to attend the meeting and intending to express views is encouraged to arrive early and make that intention known to Mr. Mike Sollosi at the telephone number or address provided under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Marine Board of the National Academy of Sciences, 2001 Wisconsin Avenue, NW., Washington, DC 20007.

The Docket Management Facility maintains the public docket for this notice. Comments and documents as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL-401, located on the Plaza Level of the Nassif Building at 400 Seventh Street SW., Washington, DC 20590-0001 between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

For information concerning PAWSS or VTS, contact Mr. Mike Sollosi, Coast Guard Office of Vessel Traffic Management, telephone 202-267-1539. You may also contact Mr. Peter Johnson, Marine Board, National Academy of Sciences, about the meeting, telephone 202-334-3157. For questions on the public docket for this notice, contact Ms. Carol Kelly, Coast Guard Dockets Team Leader, or Ms. Paulette Twine, Chief, Documentary Services Division, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Background Information

As a part of its Ports and Waterways Safety System (PAWSS) project, the Coast Guard is developing a port risk assessment tool to determine which ports require a Vessel Traffic Service (VTS) and to identify the minimum capabilities a VTS must have to meet the needs of a given port or waterway. This port analysis tool is intended to evaluate various risk criteria such as traffic density, prevailing weather, port geography, and environmental concerns. The tool will also evaluate the effectiveness of risk mitigation factors, such as VTS.

The PAWSS project is based on a VTS that uses the automatic identification system (AIS) and that takes advantage of readily available, off-the-shelf and open architecture systems that are inexpensive and easy to build and operate. Further, the Coast Guard is developing a proposal for public-private partnerships in the VTS/Vessel Traffic Information Service arena. The Coast Guard is seeking stakeholder validation before this proposal is published in a notice of proposed rulemaking.

Public Meeting

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the persons listed under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting.

Information on Service for Individuals with Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Mr. Mike Sollosi at the address or phone number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: April 29, 1998.

R.C. North,
Rear Admiral, U.S. Coast Guard, Assistant
Commandant for Marine Safety and
Environmental Protection.

[FR Doc. 98-11854 Filed 5-4-98; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-97-7]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of petitions for
exemption received and of dispositions
of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking
provisions governing the application,
processing, and disposition of petitions
for exemption (14 CFR part 11), this
notice contains a summary of certain
petitions seeking relief from specified
requirements of the Federal Aviation
Regulations (14 CFR Ch. I), dispositions
of certain petitions previously received,
and corrections. The purpose of this
notice is to improve the public's
awareness of, and participation in, this
aspect of FAA's regulatory activities.
Neither publication of this notice nor
the inclusion or omission of information
in the summary is intended to affect the
legal status of any petition or its final
disposition.

DATES: Comments on petitions received
must identify the petition docket
number involved and must be received
on or before May 26, 1997.

ADDRESSES: Send comments on any
petition in triplicate to: Federal
Aviation Administration, Office of the
Chief Counsel, Attn: Rule Docket (AGC-
200), Petition Docket No. _____,
800 Independence Avenue, SW.,
Washington, DC 20591

Comments may also be sent
electronically to the following internet
address: 9-NPRM-CMTS@faa.dot.gov.

The petition, any comments received,
and a copy of any final disposition are
filed in the assigned regulatory docket
and are available for examination in the
Rules Docket (AGC-200), Room 915G,
FAA Headquarters Building (FOB 10A),
800 Independence Avenue, SW.,
Washington, DC 20591; telephone (202)
267-3132.

FOR FURTHER INFORMATION CONTACT:
Tawana Matthews (202) 267-9783 or
Terry Stubblefield (202) 267-7624

Office of Rulemaking (ARM-1), Federal
Aviation Administration, 800
Independence Avenue, SW.,
Washington, DC 20591.

This notice is published pursuant to
paragraphs (c), (e), and (g) of § 11.27 of
part 11 of the Federal Aviation
Regulations (14 CFR part 11).

Issued in Washington, DC., on April 29,
1998.

Joseph A. Conte,
Acting Assistant Chief Counsel for
Regulations.

Petitions for Exemption

Docket No.: 144CE.

Petitioner: Sino Swearingen Aircraft
Company.

Sections of the FAR Affected: 14 CFR
23.35; 23.29; 23.235; 23.471; 23.473;
23.477; 23.479; 23.481; 23.483; 23.485;
23.493; 23.499; 23.723; 23.725; 23.726;
23.727; 23.959; 23.1583(c)(1), (2),
Appendix C23, and Appendix D23.1.

Description of Relief Sought: To
permit Sino Swearingen Aircraft
Company to modify the SJ30-2 airplane
landing gear loads and associated
airframe loads.

Docket No.: 29175.

Petitioner: Associated Air Center.
Regulations Affected: § 25.813(e).

Description of Petition: To exempt
Associated Air Center from the
requirements of 14 CFR 25.813(e), to
permit installation of doors between
passenger compartments on a Boeing
737-39A Airplane intended for non-
revenue use only.

Docket No.: 29192.

Petitioner: Air Transport Association.
Regulations Affected: 119.21(a)(1).

Description of Petition: The Air
Transport Association requests an
exemption on behalf of Hawaii Airlines,
Aloha Airlines, and Aloha Islandair
from § 119.21(a)(1) of Title 14, Code of
Federal Regulations to allow those air
carriers to conduct inter-island flights
within the State of Hawaii as flag
operations, rather than conducting those
flights as domestic operations under
subpart U of part 121.

Dispositions of Petitions

Docket No.: 28881.

Petitioner: Douglas Aircraft Company,
McDonnell Douglas Corporation.

Sections of the FAR Affected: 14 CFR
25.785(d), 25.807(c)(1), 25.857(e), and
25.1447(c)(1).

Description of Relief Sought/
Disposition: To permit type certification
of the DC-10 freighter aircraft with a
Class E cargo compartment, with
accommodation for up to four
supernumeraries immediately aft of the
cockpit, in the two configurations

proposed, when the airplane is
equipped with two floor-level
emergency exits with escape slide/rafts
within the immediate vicinity of the
occupied area, subject to certain
conditions.

GRANT, April 21, 1998, Exemption
No. 6752.

Docket No.: 29057.

Petitioner: McDonnell Douglas
Corporation.

Sections of the FAR Affected: 14 CFR
25.785(d), 25.807(c)(1), 25.857(e), and
25.1447(c)(1).

Description of Relief Sought/
Disposition: To permit type certification
of the MD-11 freighter aircraft with a
Class E cargo compartment, with
accommodation for up to five
supernumeraries immediately aft of the
cockpit, in the configuration proposed,
when the airplane is equipped with two
floor-level emergency exits with escape
slide/rafts within the immediate vicinity
of the occupied area, subject to certain
conditions.

GRANT, April 21, 1998, Exemption
No. 6753.

Docket No.: 29129.

Petitioner: Ilyushin Aviation
Complex.

Sections of the FAR Affected: 14 CFR
25.1435(b)(1).

Description of Relief Sought/
Disposition: To permit type certification
of the Model IL-96T by conducting a
test of the complete hydraulic system at
240±5 atm (the system relief pressure),
all hydraulic components testing at 1.5
times the operating pressure (315 atm)
per the current § 25.1435(a)(2), and a
test of the complete hydraulic system
during flight and ground tests at
operating pressure.

GRANT, April 21, 1998, Exemption
No. 6754.

Docket No.: 581.

Petitioner: Department of the Air
Force.

Sections of the FAR Affected: 14 CFR
91.159(c).

Description of Relief Sought/
Disposition: To permit the USAF to
operate its U-2 aircraft at or above flight
level 600 without maintaining the
appropriate cruising altitudes as
required under 91.159(c).

GRANT, April 23, 1998, Exemption
No. 130D.

Docket No.: 581.

Petitioner: Department of the Air
Force.

Sections of the FAR Affected: 14 CFR
91.159.

Description of Relief Sought/
Disposition: To permit the USAF to
conduct nontraining photographic
reconnaissance missions that require

flying a series of tracks at a constant
altitude, without maintaining the
appropriate cruising altitude required
under 91.159.

GRANT, April 23, 1998, Exemption
No. 134I.

Docket No.: 28454.

Petitioner: Civil Air Patrol.

Sections of the FAR Affected: 14 CFR
part 91, subpart F.

Description of Relief Sought/
Disposition: To permit Civil Air Patrol
(CAP) to operate small aircraft under
subpart F of part 91 and receive limited
reimbursement for certain flights within
the scope of and incidental to the CAP's
corporate purposes and U.S. Air Force
Auxiliary status.

GRANT, April 13, 1998, Exemption
No. 6485A.

Docket No.: 27577.

Petitioner: Avall.

Sections of the FAR Affected: 14 CFR
145.445(f).

Description of Relief Sought/
Disposition: To permit Avall to
maintain one copy of its repair station
Inspection Procedures Manual (IPM) at
each facility, rather than give a copy of
the IPM to each of its supervisory and
inspection personnel.

GRANT, April 8, 1998, Exemption No.
5940B.

Docket No.: 28479.

Petitioner: Strong Enterprises, Inc.
Sections of the FAR Affected: 14 CFR
105.43(a).

Description of Relief Sought/
Disposition: To permit Strong
Enterprises, Inc., and Strong Certified
Tandem Instructors to conduct
parachute jumps while wearing a dual-
harness, dual-parachute pack, having at
least one main parachute and one
auxiliary parachute. This exemption
also authorizes the pilot-in-command of
aircraft involved in these operations to
allow such persons to make tandem
parachute jumps.

GRANT, April 8, 1998, Exemption No.
6474B.

Docket No.: 29092.

Petitioner: Pratt & Whitney Engine
Services, Inc..

Sections of the FAR Affected: 14 CFR
145.45(f).

Description of Relief Sought/
Disposition: To permit the petitioner to
assign copies of its Inspection
Procedures Manual (IPM) to key
individuals within its departments and
key areas within its shop and
functionally place an adequate number
of IPM's for access to all employees,
rather than provide a copy of the IPM
for each of its Supervisory and
inspection personnel.

GRANT, April 13, 1998, Exemption
No. 6750.

Docket No.: 28144.

Petitioner: Perris Valley Skydiving.
Sections of the FAR Affected: 14 CFR
105.43(a).

Description of Relief Sought/
Disposition: To permit nonstudent
parachutist who are foreign nationals to
participate in PVS-sponsored events
without complying with the parachute
equipment and packing requirements of
the Federal Aviation Regulations.

GRANT, March 23, 1998, Exemption
No. 6745.

GRANT, April 13, 1998, Exemption
No. 64750.

Docket No.: 29108.

Petitioner: Skydrive Dallas, Inc.

Sections of the FAR Affected: 14 CFR
105.43(d).

Description of Relief Sought/
Disposition: To permit nonstudent
parachutist who are foreign nationals to
participate in Skydrive Dallas-sponsored
events without complying with the
parachute equipment and packing
requirements of 105.43(a).

GRANT, March 23, 1998, Exemption
No. 6744.

Docket No.: 28628.

Petitioner: Mr. William W. Webb.

Sections of the FAR Affected: 14 CFR
91.109(a).

Description of Relief Sought/
Disposition: To permit Mr. Webb to
conduct certain flight instruction in
Beechcraft Bonanza airplanes equipped
with a functioning throwover control
wheel instead of functioning dual
controls.

GRANT, April 24, 1998, Exemption
No. 6544A

[FR Doc. 98-11858 Filed 5-4-98; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration,
DOT.

ACTION: Notice of intent to transfer
Federally assisted land or facility.

SUMMARY: 49 U.S.C. Section 5334(g)
(formerly Section 12(k)) of the Federal
Transit Act, as amended) permits the
Administrator of the Federal Transit
Administration (FTA) to authorize a
recipient of FTA funds to transfer land
or a facility to a local public body for
any public purpose with no further
obligation to the Federal Government if,
among other things, no Federal agency
is interested in acquiring the asset for
Federal use. Accordingly, FTA is

issuing this Notice to advise Federal
agencies that the Tri-County
Metropolitan Transportation District of
Oregon (Tri-Met) intends to transfer
railroad right-of-way (RROW) between
N.W. Division Street and Spring Water
Trail (formerly Linneman Junction) in
the City Of Gresham, Oregon. The
RROW has been abandoned and
declared surplus.

EFFECTIVE DATE: Any Federal agency
interested in acquiring the land or
facility must notify the FTA Region 10
Office of its interest, by June 4, 1998.

ADDRESSES: Interested parties should
notify the Regional Office by writing
FTA Region 10, 915 Second Avenue,
Room 3142, Seattle, Washington 98174-
1002.

FOR FURTHER INFORMATION CONTACT:
Michael J. Williams, Regional Engineer
at (206) 220-7965; or Pat Berkley, FTA
Headquarters Office of Program
Management at (202) 366-6470.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. Section 5334(g) provides
guidance on the transfer of capital
assets. Specifically, if a recipient of FTA
assistance decides an asset acquired
under this chapter, at least in part with
that assistance, is no longer needed for
the purpose for which it was acquired,
the Secretary of Transportation may
authorize the recipient to transfer the
asset to a local governmental authority
to be used for a public purpose with no
further obligation to the Government.

Determinations

The Secretary may authorize a
transfer to a local governmental
authority for a public purpose other
than mass transportation only if the
Secretary decides—

(A) The asset will remain in public
use for not less than 5 years after the
date of the transfer;

(B) There is no purpose eligible for
assistance under this chapter for which
the asset should be used;

(C) The overall benefit of allowing the
transfer is greater than the interest of the
Government in liquidation and return of
the financial interest of the Government
in the asset, after considering fair
market value and other factors; and

(D) Through an appropriate screening
or survey process, that there is interest
in acquiring the asset for Government
use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the
requirements of 49 U.S.C. Section
5334(g) (formerly Section 12(k)) of the

Federal Transit Act, as amended). Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in 49 U.S.C. Section 5334(g)(1)(A) through (1)(D) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The property is a portion of the RROW originally acquired as part of the Banfield Light Rail Project. The RROW consists of six (6) contiguous parcels totaling 14,232 acres, more or less, along 6,400 linear feet, between N.W. Division Street and Spring Water Trail in the City of Gresham, Oregon. Tri-Met purchased this property on December 13, 1983, from the Southern Pacific Railroad Company and the Union Pacific Railroad Company.

Issued: April 22, 1998.

Helen M. Knoll,

Regional Administrator.

[FR Doc. 98-11852 Filed 5-4-98; 8:45 am]

BILLING CODE 4910-67-U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-402 (Sub-No. 5X)]

Fox Valley & Western Ltd.— Abandonment Exemption—In Kewaunee County, WI

On April 15, 1998, Fox Valley & Western Ltd. (FVW),¹ filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad, known as the Luxemburg-Kewaunee Line, extending from milepost 18.9 near Luxemburg to milepost 35.6 at the end of the line near Kewaunee, a distance of 16.7 miles, in Kewaunee County, WI. The line traverses U.S. Postal Service ZIP Codes 54205, 54216, and 54217, and includes the stations of Casco Junction at milepost 23.3 and Kewaunee at milepost 34.0.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's

¹ FVW is a wholly owned subsidiary of Wisconsin Central Transportation Corporation.

possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 3, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 26, 1998. Each trail use request must be accompanied by a \$150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-402 (Sub-No. 5X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001; and (2) Michael J. Barron, Jr., Fox Valley & Western Ltd., 6250 N. River Road, Suite 9000, Rosemont, IL 60018.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1545. [TDD for the hearing impaired is available at (202) 565-1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: April 27, 1998.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98-11871 Filed 5-4-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 198X)]

Norfolk and Western Railway Company—Abandonment Exemption— in Lynchburg, VA

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.74-mile line of its railroad between milepost L-0.20 and milepost L-0.94 in Lynchburg, VA. The line traverses United States Postal Service Zip Code 24501.

NW has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 4, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-*

file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 15, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 26, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 8, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NW's filing of a notice of consummation by May 5, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: April 23, 1998.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98-11518 Filed 5-4-98; 8:45 am]

BILLING CODE 4910-00-P

of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-541X]

Portland & Western Railroad, Inc.— Abandonment Exemption—In Washington County, OR

On April 15, 1998, Portland & Western Railroad, Inc. (P&W) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon three segments of its line of railroad extending: (1) from milepost 20.05 to milepost 21.09, a distance of 1.04 miles; (2) from milepost 21.09 to milepost 21.26, a distance of 0.17 mile; and (3) from milepost 21.50 to milepost 22.0, a distance of 0.5 mile, all located at or near Hillsboro, in Washington County, OR.¹ The lines traverse U.S. Postal Service Zip Code 97124 and include the stations of Merle located near milepost 20.8 and Orenco Junction located near milepost 21.5.

The line does not contain federally granted rights-of-way. Any documentation in P&W's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 3, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

¹ Abandonment authority for the segments from milepost 21.09 to milepost 21.26 (0.17 mile) and from milepost 21.50 to milepost 22.09 (0.5 mile) was previously granted to Burlington Northern Railroad Company (BNSF) in *Burlington Northern Railroad Company—Abandonment Exemption—In Washington County, OR*, Docket No. AB-6 (Sub-No. 363X) (ICC served Dec. 5, 1994). Thereafter, P&W filed a notice of exemption to acquire and operate all three segments proposed here to be abandoned in *Portland & Western Railroad, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33502 (STB served Nov. 24, 1997). In that proceeding, P&W acquired the rail, track materials, and other personal property necessary for rail service and an exclusive rail easement over the underlying property; BNSF retained the real property with the intent to donate the need to seek abandonment authority for the segments previously abandoned by BNSF because P&W states that it never exercised its authority because of the absence of traffic.

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 26, 1998. Each trail use request must be accompanied by a \$150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-541X and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001, and (2) Sebastian Ferrer, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381-0796. Replies to the P&W petition are due on or before May 26, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1545. [TDD for the hearing impaired is available at (202) 565-1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: April 27, 1998.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98-11872 Filed 5-4-98; 8:45 am]

BILLING CODE 4915-00-P

UNITED STATES INFORMATION AGENCY

AGENCY: United States Information Agency.

ACTION: Notice of meeting of the Cultural Property Advisory Committee.

In accordance with the provisions of the Convention on Cultural Property

Implementation Act (19 U.S.C. 2603 *et seq.*) there will be a meeting of the Cultural Property Advisory Committee on May 19, 1998, from approximately 9:30 AM to approximately 3:30 PM, at the United States Information Agency, Washington, D.C. A portion of the meeting, approximately 9:30 AM to 10:00 AM, will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). The Committee will go into open session at approximately 10:00 AM until approximately 12:30 PM during which it will receive a briefing on the Agreement Between the Government of the United States of America and the Government of Canada concerning the Imposition of Import Restrictions on Certain Categories of Archaeological and Ethnological Material. The Committee will also be briefed by its Chairman on recent interactions with representatives of the

antiquities dealer community. The Committee will recess at approximately 12:30 PM and will reconvene in open session at approximately 1:30 PM to receive briefings from organizations regarding their work in cultural heritage preservation as it relates to Central America and the furtherance of provisions in bilateral cultural property agreements having to do with long-term strategies to protect cultural resources for scientific, educational and cultural purposes.

Seating is limited. Persons wishing to attend open portions of the meeting must notify Cultural Property staff at (202) 619-6612 by 12:00 Noon (EST), May 18, 1998, to arrange for admission.

Dated: April 30, 1998.

Penn Kemble,
Deputy Director, United States Information Agency.

Determination to Close a Portion of the Meeting of the Cultural Property Advisory Committee

May 19, 1998.

In accordance with 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h), I hereby determine that a portion of the Cultural Property Advisory Committee meeting on May 19, 1998, during which there will be discussions involving information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action, will be closed.

Dated: April 30, 1998.

Penn Kemble,
Deputy Director, United States Information Agency.

[FR Doc. 98-11859 Filed 5-4-98; 8:45 am]

BILLING CODE 8230-01-M

Corrections

Federal Register

Vol. 63, No. 86

Tuesday, May 5, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. OR-1-0001; FRL-5852-3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oregon

Correction

In rule document 97-18082, beginning on page 36995, in the issue of Thursday, July 10, 1997, make the following correction:

§ 62.9505 [Corrected]

On page 36997, in the third column, in the undesignated center heading, in the third line "Frp," should read "From".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4340-N-01]

Super Notice of Funding Availability (SuperNOFA) for Housing and Community Development Programs

Correction

In notice document 98-8102 beginning on page 15490 in the issue of Tuesday, March 31, 1998, make the following corrections:

1. On page 15587, in the first column, in paragraph (c)(iii), in the second line "24,000" should read "25,000".

2. On the same page, in the second column, in the first line "\$250,000 per unit" should read "\$250.00 per unit".

BILLING CODE 1505-01-D

federal register

Tuesday
May 5, 1998

Part II

Department of Housing and Urban Development

24 CFR Part 888

Fair Market Rents for the Section 8
Housing Assistance Payments Program—
Fiscal Year 1999; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

(Docket No. FR-4362-N-01)

Fair Market Rents for the Section 8 Housing Assistance Payments Program—Fiscal Year 1999

AGENCY: Office of the Secretary, HUD.
ACTION: Notice of proposed fiscal year (FY) 1999 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate Program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify their use. Today's notice proposes revised FMRs that reflect estimated 40th percentile rent levels trended to April 1, 1999.

DATES: Comments due date: July 6, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's estimates of the FMRs as published in this Notice to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section. To ensure that the information is fully considered by all of the reviewers, each commenter is requested to submit two copies of its comments, one to the Rules Docket Clerk and the other to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Operations Division, Office of Rental Assistance, telephone (202) 708-0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Alan Fox, Economic and Market Analysis Division, Office of Economic

Affairs, telephone (202) 708-0590, Extension 5863 (e-mail: alan_fox@hud.gov.). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1-800-877-8339. (Other than the "800" TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by FMRs established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Publication of FMRs

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. The Department's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment and, after evaluating the public comments, publish the final FMRs (see 24 CFR 888.115). Schedule B of the proposed FY 1999 FMR schedules at the end of this document lists the FMR levels for Section 8 existing housing. Schedule D lists FMRs for the rental of manufactured home spaces in the Section 8 certificate program in areas where modifications based on public comments have been approved for FMRs greater than 30 percent of the 2-bedroom FMR.

Method Used To Develop FMRs

FMR Standard

FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 40th percentile rent, the dollar amount below which 40 percent of the standard quality rental housing units rent. The 40th percentile rent is

drawn from the distribution of rents of units which are occupied by recent movers (renter households who moved into their unit within the past 15 months). Newly built units less than two years old are excluded, and adjustments have been made to correct for the below market rents of public housing units included in the data base.

Data Sources

HUD used the most accurate and current data available to develop the FMR estimates. The sources of survey data used for the base-year estimates are:

(1) The 1990 Census, which provides statistically reliable rent data for all FMR areas;

(2) The Bureau of the Census' American Housing Surveys (AHSs), which are used to develop between-Census revisions for the largest metropolitan areas and which have accuracy comparable to the decennial Census; and

(3) Random Digit Dialing (RDD) telephone surveys of individual FMR areas, which are based on a sampling procedure that uses computers to select statistically random samples of rental housing.

The base-year FMRs are updated using trending factors based on Consumer Price Index (CPI) data for rents and utilities or HUD regional rent change factors developed from RDD surveys. Annual average CPI data are available individually for 99 metropolitan FMR areas. RDD regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions. The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

State Minimum FMRs

FMRs are established at the higher of the local 40th percentile rent level or the Statewide average of nonmetropolitan counties, subject to a ceiling rent cap. The State minimum also affects a small number of metropolitan areas whose rents would otherwise fall below the State minimum.

Bedroom Size Adjustments

FMRs have been calculated separately for each bedroom size category. For areas whose FMRs are based on the State minimums, the rents for each bedroom size are the higher of the rent for the area or the Statewide average of nonmetropolitan counties for that bedroom size. For all other FMR areas, the bedroom intervals are based on data

for the specific area. Exceptions have been made for some areas with local bedroom size rent intervals below an acceptable range. For those areas the intervals selected were the minimums determined after outliers had been excluded from the distribution of bedroom intervals for all metropolitan areas. Higher ratios continue to be used for three-bedroom and larger size units than would result from using the actual market relationships. This is done to assist the largest, most difficult to house families in finding program-eligible units. The FMRs for unit sizes larger than 4 bedroom are calculated by adding 15 percent to the 4 bedroom FMR for each extra bedroom. For example, the FMR for a 5 bedroom unit is 1.15 times the 4 bedroom FMR, and the FMR for a 6 bedroom unit is 1.30 times the 4 bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0 bedroom FMR.

RDD Surveys

RDD surveys are used to obtain statistically-reliable FMR estimates for selected FMR areas. This survey technique involves drawing random samples of renter units occupied by recent movers. RDD surveys exclude public housing units, units built in the past two years, seasonal units, non-cash rental units, and those owned by relatives. A HUD analysis has shown that the slight downward RDD survey bias caused by including some rental units that are in substandard condition is almost exactly offset by the slight upward bias that results from surveying only units with telephones.

Approximately 8,000-12,000 telephone numbers need to be contacted to achieve the target survey sample level of 200 eligible recent mover responses. RDD surveys have a high degree of statistical accuracy; there is a 95 percent likelihood that the recent mover rent estimates developed using this approach are within 3 to 4 percent of the actual rent value. Virtually all of the estimates are within 5 percent of the actual value.

Today's notice proposes FMRs based on RDD surveys conducted in late-1997 and early-1998 for the following areas:

Proposed FMR Increase Above Normal Update Factor

Early-1998 RDD:

San Francisco, CA
San Jose, CA
Fulton County, IL
Champaign-Urbana, IL
Evansville-Henderson, IN-KY
Finney County, KS
Ford County, KS
Grant County, KS
Seward County, KS

Goodhue County, MN
Kandiyohi County, MN
McLeod County, MN
Meeker County, MN
Wabasha County, MN
Winona County, MN
Asheville, NC
Omaha, NE-IA
Dayton-Springfield, OH
Salt Lake City-Ogden, UT
Green Bay, WI
Morgan County, WV
Raleigh County, WV
Berkeley County, WV
Charleston, WV
Jefferson County, WV

Proposed FMR Decrease

Late-1997 RDD:

Chicago, IL
Bergen-Passaic, NJ
Newark, NJ
Buffalo-Niagara Falls, NY

Early-1998 RDD:

Fresno, CA
Santa Cruz-Watsonville, CA
Bridgeport, CT
Honolulu, HI
Jersey City, NJ
Newburgh, NY-PA
McAllen-Edinburg-Mission, TX

Proposed FMR Increase by Normal Update Factor

Late-1997 RDD:

Riverside-San Bernardino, CA
San Diego, CA
Louisville, KY-IN
Monmouth-Ocean, NJ
Syracuse, NY
Philadelphia, PA-NJ
Milwaukee-Waukesha, WI
Early-1998 RDD:
Oakland, CA
Vallejo-Fairfield-Napa, CA
Ventura, CA
Sarasota-Bradenton, FL
West Palm Beach-Boca Raton, FL
Boise City, ID
Mason County, IL
South Bend, IN
Stevens County, KS
Albany-Schenectady-Troy, NY
Hamilton-Middletown, OH
Tulsa, OK
Eugene-Springfield, OR
Bryan-College Station, TX

AHS Areas

AHSs cover the largest metropolitan areas on a four-year cycle. The 40th percentile rents for these areas are calculated from the distributions of two-bedroom units occupied by recent movers. Public housing units, newly constructed units, and units that fail a housing quality test are excluded from the rental housing distributions before the FMRs are calculated. The proposed

FY 1999 FMRs incorporate the results of the 1996 AHSs, as follows:

Proposed FMR Increase Above Normal Update Factor

Cleveland-Lorain-Elyria, OH
Oklahoma City, OK
Memphis, TN-AR-MS

Proposed FMR Decrease

Sacramento, CA

Proposed FMR Increase by Normal Update Factor

Hartford, CT
Atlanta, GA
Indianapolis, IN
St Louis, MO-IL
Seattle-Bellevue-Everett, WA

Manufactured Home Space FMRs

FMRs for the rental of manufactured home spaces are 30 percent of the applicable Section 8 existing housing program FMR for a two-bedroom unit. HUD accepts public comments requesting modifications of these FMRs where the 30 percent FMRs are thought to be inadequate. In order to be accepted as a basis for revising the FMRs, comments must contain statistically valid survey data that show the 40th percentile space rent (excluding the cost of utilities) for the entire FMR area. HUD uses the same FMR area definitions for manufactured home space rental in the Section 8 certificate program as are used to develop the FMRs for Section 8 existing housing (Schedule B.) Manufactured home space FMR revisions are published as final FMRs in Schedule D. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to update the Rental Certificate program FMRs.

FMRs for Federal Disaster Areas

Under the authority granted in 24 CFR part 899, the Secretary finds good cause to waive and hereby waives the regulatory requirements that govern requests for geographic area exception rents for areas that are declared disaster areas by the Federal Emergency Management Agency (FEMA). HUD is prepared to grant disaster-related exceptions up to 10 percent above the applicable FMRs in those areas. HUD field offices are authorized to approve such exceptions for: (1) single-county FMR areas and for individual county parts of multi-county FMR areas that qualify as disaster areas under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; if (2) the PHA certifies that damage to the rental housing stock as a result of the disaster

is so substantial that it has increased the prevailing rent levels in the affected area. Such exception rents must be requested in writing by the responsible PHAs. Exception rents approved by HUD during FY 1999 will remain in effect until superseded by the publication of the final FY 2001 FMRs.

Request for Comments

HUD seeks public comments on FMR levels for specific areas. Comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used) to justify any proposed changes. Changes may be proposed in all or any one or more of the bedroom-size categories on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area.

HUD recommends use of professionally-conducted Random Digit Dialing (RDD) telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of \$10,000–\$12,000. Areas with 500 or more program units usually meet this criterion, and areas with fewer units may meet it if actual two-bedroom rents are significantly different from the FMRs proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of \$5,000 or less.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties. All grouped county surveys must be approved in advance by HUD. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties whose FMRs are based on the State minimum will not have their FMRs revised unless the grouped survey results show a revised FMR above the State minimum level.

PHAs that plan to use the RDD survey technique should obtain a copy of the appropriate survey guide. Larger PHAs should request HUD's survey guide entitled "Random Digit Dialing Surveys: A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments." Smaller PHAs should obtain a guide entitled "Rental Housing Surveys: A Guide to Assist Smaller

Public Housing Agencies in Preparing Fair Market Rent Comments." These guides are available from HUD USER on 1-800-245-2691, or from HUD's Worldwide Web site, in WordPerfect format, at the following address: <http://www.huduser.org>.

HUD prefers, but does not mandate, the use of RDD telephone surveys, or the more traditional method described in the survey guide intended for small PHAs along with the simplified RDD methodology. Other survey methodologies are acceptable as long as the surveys submitted provide statistically reliable, unbiased estimates of the 40th percentile gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single-family, duplex and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means to verify whether the sample is representative of the FMR area's rental housing stock.

Local rental housing surveys conducted with alternative methods must include the following documentation:

- Identification of the 40th percentile gross rent (gross rent is rent including the cost of utilities) and the actual distribution (or distributions if more than one bedroom size is surveyed) of the surveyed units, rank-ordered by gross rent.
- An explanation of how the rental housing sample was drawn and a copy of the survey questionnaire, transmittal letter, and any publicity materials.
- An explanation of how the contract rents of the individual units surveyed were converted to gross rents. (For RDD-type surveys, HUD requires use of the Section 8 utility allowance schedule.)
- An explanation of how the survey excluded units built within two years prior to the survey date.
- The date the rent data were collected so that HUD can apply a trending factor to update the estimate to the midpoint of the applicable fiscal year. If the survey has already been trended to this date, the date the survey was conducted and a description of the trending factor used.

—Copies of all survey sheets.

Since FMRs are based on standard quality units and units occupied by recent movers, both of which are difficult to identify and survey, HUD will accept surveys of all rental units and apply appropriate adjustments.

Most surveys cover only one- and two-bedroom units, in which case HUD will make the adjustments for other size units consistent with the differentials established on the basis of the 1990 Census data for the FMR area. When three- and four-bedroom units are surveyed separately to determine FMRs for these unit size categories, the commenter should multiply the 40th percentile survey rents by 1.087 and 1.077, respectively, to determine the FMRs. The use of these factors will produce the same upward adjustments in the rent differentials as those used in the HUD methodology.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(d).

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this Notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, *Federalism*, has determined that this Notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will be codified in 24 CFR part 888, are amended as follows:

Dated: April 29, 1998.

Andrew Cuomo,
Secretary.

Fair Market Rents for the Section 8 Housing Assistance Payments Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. *Metropolitan Areas.*—FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition. The FMRs shown in Schedule B are determined for the same areas as the Office of Management and Budget's (OMB) most current definitions of metropolitan areas, with the exceptions discussed in paragraph b. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions.

b. *Exceptions to OMB Definitions.*—The exceptions are counties deleted from several large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the "Metropolitan FMR Areas" listing:

Metropolitan Area and Counties Deleted

Chicago, IL: DeKalb, Grundy and Kendall Counties
Cincinnati-Hamilton, OH-KY-IN: Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX: Henderson County
Flagstaff, AZ-UT: Kane County, UT
New Orleans, LA: St. James Parish
Washington, DC: Berkeley and Jefferson Counties in West Virginia; and

Clarke, Culpeper, King George and Warren counties in Virginia

c. Nonmetropolitan Area FMRs.

FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states, and for FMR areas in Puerto Rico, the Virgin Islands, and the Pacific Islands. Nonmetropolitan area FMRs are set at the higher of the local 40th percentile rent level or the Statewide average of nonmetropolitan counties. (The State minimum also affects a small number of metropolitan areas whose rents would otherwise fall below the State minimum.)

d. *Virginia Independent Cities.*—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan county. The complete definitions of these areas including the independent cities are as follows:

Virginia Nonmetropolitan County FMR Area and Independent Cities Included

County and Cities

Alleghany: Clifton Forge and Covington
Augusta: Staunton and Waynesboro
Carroll: Galax
Frederick: Winchester
Greensville: Emporia
Henry: Martinsville
Montgomery: Radford
Rockbridge: Buena Vista and Lexington
Rockingham: Harrisonburg
Southampton: Franklin
Wise: Norton

2. Bedroom Size Adjustments

Schedule B shows the FMRs for 0-bedroom through 4-bedroom units. The FMRs for unit sizes larger than 4 bedrooms are calculated by adding 15

percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0 bedroom FMR.

3. FMRs for Manufactured Home Spaces

FMRs for Section 8 manufactured home spaces in the Section 8 certificate program are 30 percent of the two-bedroom Section 8 existing housing program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been modified on the basis of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that are updated annually using the same data used to estimate the Section 8 existing housing FMRs. The FMR area definitions used for the rental of manufactured home spaces in the Section 8 certificate program are the same as the area definitions used for Section 8 existing FMRs.

4. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

BILLING CODE 4210-62-P

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

A L A B A M A

METROPOLITAN FMR AREAS

METROPOLITAN FMR AREAS							
	O	BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Anniston, AL MSA.....	258	305	381	532	603	Calhoun	
Birmingham, AL MSA.....	366	413	481	653	724	Blount, Jefferson, St. Clair, Shelby	
Columbus, GA-AL MSA.....	348	387	464	607	658	Russell	
Decatur, AL MSA.....	342	346	436	564	674	Lawrence, Morgan	
Dodman, AL MSA.....	310	317	394	542	550	Dale, Houston	
Florence, AL MSA.....	290	333	429	535	600	Colbert, Lauderdale	
Gadsden, AL MSA.....	258	315	384	472	581	Etowah	
Huntsville, AL MSA.....	359	421	518	690	822	Limestone, Madison	
Mobile, AL MSA.....	377	421	482	649	762	Baldwin, Mobile	
Montgomery, AL MSA.....	393	420	496	675	813	Autauga, Elmore, Montgomery	
Tuscaloosa, AL MSA.....	339	363	482	663	701	Tuscaloosa	

	O	BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR
Barbour.....	245	291	347	450	516		Bibb.....	245	291	347	450	516	
Bullock.....	245	291	347	450	516		Butler.....	245	291	347	450	516	
Chambers.....	245	291	347	450	516		Cherokee.....	245	291	347	450	516	
Chilton.....	253	291	347	450	516		Choctaw.....	245	291	347	450	516	
Clarke.....	245	291	347	450	516		Clay.....	245	291	347	450	516	
Cleburne.....	245	291	347	450	516		Coffee.....	245	344	447	622	698	
Conecuh.....	245	291	347	450	516		Coosa.....	245	291	347	450	516	
Covington.....	245	291	347	450	516		Crenshaw.....	245	291	347	450	516	
Cullman.....	245	291	347	450	516		Dallas.....	245	291	347	450	516	
Dekalb.....	245	291	347	450	516		Escambia.....	245	291	347	450	516	
Fayette.....	245	291	347	450	516		Franklin.....	245	291	347	450	516	
Geneva.....	245	291	347	450	516		Greene.....	245	291	347	450	516	
Hale.....	245	291	347	450	516		Henry.....	245	291	347	450	516	
Jackson.....	264	291	347	450	552		Lamar.....	245	291	347	450	516	
Lee.....	258	361	463	602	761		Lowndes.....	245	291	347	450	516	
Macon.....	267	300	400	501	561		Marengo.....	245	291	347	450	516	
Marion.....	245	291	347	450	516		Marshall.....	281	291	354	490	580	
Monroe.....	245	291	347	450	516		Perry.....	245	291	347	450	516	
Pickens.....	245	291	347	450	516		Pike.....	250	291	347	450	524	
Randolph.....	245	291	347	450	516		Suwanee.....	245	291	347	450	516	
Talladega.....	245	291	347	450	516		Tallapoosa.....	246	291	347	450	516	
Walker.....	245	302	356	460	585		Washington.....	245	291	347	450	516	
Wilcox.....	245	291	347	450	516		Winston.....	245	291	347	450	516	

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

A L A S K A

METROPOLITAN FMR AREAS

METROPOLITAN FMR AREAS							O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE										
Anchorage, AK MSA.....							493	583	773	1075	1270	Anchorage					
NONMETROPOLITAN COUNTIES							O BR 1 BR 2 BR 3 BR 4 BR:	NONMETROPOLITAN COUNTIES							O BR 1 BR 2 BR 3 BR 4 BR		
Aleutian East.....							518	584	659	822	1077	Aleutian West.....	444	502	563	706	790
Bethel.....							669	837	1060	1327	1485	Bristol Bay.....	537	619	696	968	1053
Dillingham.....							646	657	874	1094	1225	Fairbanks North Star.....	408	555	728	1001	1180
Haines.....							482	597	680	925	952	Juneau.....	720	832	1059	1409	1464
Kenai Peninsula.....							438	559	673	935	1104	Ketchikan Gateway.....	529	647	866	1206	1269
Kodiak Island.....							689	757	983	1230	1595	Lake & Peninsula.....	414	670	753	940	1055
Matanuska-Susitna.....							462	626	705	957	1130	Nome.....	681	843	946	1317	1486
North Slope.....							773	792	979	1362	1587	Northwest Arctic.....	819	922	1034	1440	1698
Pr. Wales-Outer Ketchikan							361	575	661	917	969	Sitka.....	570	677	759	1057	1247
Skagway-Yakutat-Angoon..							442	450	583	730	819	Southeast Fairbanks.....	454	476	575	719	807
Valdez-Cordova.....							541	663	736	940	1119	Wade Hampton.....	387	583	657	821	920
Wrangell-Petersburg.....							394	581	706	899	987	Yukon-Koyukuk.....	516	582	656	820	949

A R I Z O N A

METROPOLITAN FMR AREAS

METROPOLITAN FMR AREAS							Counties of FMR AREA within STATE						
	O	BR 1	BR 2	BR 3	BR 4	BR		O	BR 1	BR 2	BR 3	BR 4	BR
Flagstaff, AZ.....	423	458	594	797	957	Coconino							
Las Vegas, NV-AZ MSA.....	491	582	693	965	1139	Mohave							
Phoenix-Mesa, AZ MSA.....	417	505	634	882	1039	Maricopa, Pinal							
Tucson, AZ MSA.....	365	438	582	810	956	Pima							
Yuma, AZ MSA.....	365	423	563	782	788	Yuma							
NONMETROPOLITAN COUNTIES							NONMETROPOLITAN COUNTIES						
Apache.....	360	379	481	628	746	Cochise.....	360	379	481	628	746		
Gila.....	360	379	481	628	746	Graham.....	360	379	481	628	746		
Greenlee.....	360	379	481	628	746	La Paz.....	360	379	481	628	746		
Navajo.....	360	379	481	628	746	Santa Cruz.....	360	399	494	628	746		
Yavapai.....	383	399	532	742	817								

A R K A N S A S

METROPOLITAN FMR AREAS

	O	BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
METROPOLITAN FMR AREAS							
Fayetteville-Springdale-Rogers, AR MSA.....	306	385	506	684	708	Benton, Washington	
Fort Smith, AR-OK MSA.....	303	307	404	540	567	Crawford, Sebastian	
Jonesboro, AR MSA.....	310	337	397	547	578	Craighead	
Little Rock-North Little Rock, AR MSA.....	377	418	497	688	803	Faulkner, Lonoke, Pulaski, Saline	
Memphis, TN-AR-MS MSA.....	387	451	530	736	774	Crittenden	

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

ARKANSAS continued

METROPOLITAN FMR AREAS		O BR 1 BR 2 BR 3 BR 4 BR				Counties of FMR AREA within STATE			
Pine Bluff, AR MSA	288	342	450	568	737	Jefferson			
Texarkana, TX-Texarkana, AR MSA	307	375	458	604	641	Miller			
NONMETROPOLITAN COUNTIES		O BR 1 BR 2 BR 3 BR 4 BR				NONMETROPOLITAN COUNTIES			
Arkansas	260	282	361	493	535	Ashey	237	282	361 478 566
Baxter	237	302	401	516	628	Boone	281	286	379 528 623
Bradley	237	282	361	478	535	Calhoun	237	282	361 478 535
Canroll	279	305	361	478	572	Chicot	237	282	361 478 535
Clerk	260	282	366	478	578	Clay	237	282	361 478 535
Cleburne	269	282	361	478	542	Cleveland	237	282	361 478 535
Columbia	237	282	361	478	535	Conway	237	293	392 489 549
Cross	246	312	361	485	573	Dallas	237	282	361 478 535
DeSha	237	282	361	478	535	Drew	237	307	410 567 577
Franklin	248	282	361	478	535	Fulton	245	282	361 478 535
Garland	237	302	404	564	666	Grant	246	293	361 478 540
Greene	254	282	361	478	535	Hempstead	237	282	361 478 535
Hot Spring	237	282	361	478	535	Howard	237	282	361 478 535
Independence	249	289	361	478	535	Izard	237	282	361 478 535
Jackson	245	282	361	478	535	Johnson	237	282	361 478 535
Lafayette	248	282	361	478	535	Lawrence	237	282	361 478 535
Lee	261	282	361	478	535	Lincoln	256	282	367 490 535
Little River	237	282	361	478	535	Logan	248	282	361 478 535
Madison	271	282	367	478	535	Marion	237	282	361 478 535
Mississippi	270	293	392	517	580	Monroe	241	282	361 478 535
Montgomery	237	282	361	478	535	Nevada	237	282	361 494 535
Newton	237	282	361	478	535	Ouachita	277	282	361 498 588
Perry	237	282	361	478	535	Phillips	237	282	361 478 535
Pike	237	282	361	478	535	Polk	237	282	361 478 535
Polk	237	282	361	478	535	Pope	237	310	392 544 627
Prairie	237	282	361	478	535	Randolph	237	282	361 478 535
St. Francis	237	288	361	488	575	Scott	237	282	361 478 535
Searcy	237	282	361	478	535	Sevier	259	282	361 478 535
Sharp	237	282	361	478	535	Stone	237	282	361 478 535
Union	297	314	377	506	619	Van Buren	237	282	361 478 591
White	237	282	361	494	535	Woodruff	237	282	361 478 535
Yell	246	282	361	478	535				

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

CALIFORNIA

METROPOLITAN FMR AREAS		O BR 1 BR 2 BR 3 BR 4 BR				Counties of FMR AREA within STATE			
Bakersfield, CA MSA	360	405	508	706	781	Kern			
Chico-Paradise, CA MSA	330	424	564	773	924	Butte			
Fresno, CA MSA	374	419	500	695	802	Fresno, Madera			
Los Angeles-Long Beach, CA PMSA	494	592	749	1011	1206	Los Angeles			
Merced, CA MSA	393	443	538	743	878	Merced			
Modesto, CA MSA	435	468	572	797	939	Stanislaus			
Oakland, CA PMSA	567	686	861	1180	1410	Alameda, Contra Costa			
Orange County, CA PMSA	645	704	871	1212	1349	Orange			
Redding, CA MSA	374	415	519	722	850	Shasta			
Riverside-San Bernardino, CA PMSA	439	489	597	829	980	Riverside, San Bernardino			
Sacramento, CA PMSA	434	490	613	850	1002	El Dorado, Placer, Sacramento			
Salinas, CA MSA	529	619	746	1038	1089	Monterey			
San Diego, CA MSA	495	566	708	984	1161	San Diego			
San Francisco, CA PMSA	713	923	1167	1601	1693	Marin, San Francisco, San Mateo			
San Jose, CA PMSA	808	922	1139	1561	1753	Santa Clara			
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	507	573	727	1009	1192	San Luis Obispo			
Santa Barbara-Santa Maria-Lompoc, CA MSA	616	684	867	1207	1362	Santa Barbara			
Santa Cruz-Watsonville, CA PMSA	600	714	954	1326	1554	Santa Cruz			
Santa Rosa, CA PMSA	564	640	829	1153	1361	Sonoma			
Stockton-Lodi, CA MSA	408	461	592	823	971	San Joaquin			
Vallejo-Fairfield-Napa, CA PMSA	543	617	753	1045	1234	Napa, Solano			
Ventura, CA PMSA	545	627	793	1055	1228	Ventura			
Visalia-Tulare-Porterville, CA MSA	365	388	506	706	806	Tulare			
Yolo, CA PMSA	470	537	664	920	1088	Yolo			
Yuba City, CA MSA	325	379	488	680	786	Sutter, Yuba			
NONMETROPOLITAN COUNTIES		O BR 1 BR 2 BR 3 BR 4 BR				NONMETROPOLITAN COUNTIES			
Alpine	306	458	518	720	775	Anador	421	464	620 863 961
Calaveras	369	427	569	752	934	Colusa	334	374	481 671 775
Del Norte	313	428	569	793	936	Glenn	306	374	481 671 775
Humboldt	315	436	572	798	944	Imperial	345	431	531 740 775
Inyo	316	427	548	719	775	Kings	354	411	514 715 842
Lake	344	437	584	736	957	Lassen	374	379	492 671 775
Mariposa	330	419	539	706	833	Mendocino	422	509	625 870 876
Modoc	334	374	481	671	775	Mono	466	559	743 1033 1221
Nevada	383	523	696	968	1122	Plumas	337	374	481 671 775
San Benito	458	539	675	941	1101	Sierra	306	409	504 700 827
Stakiyou	320	374	481	671	775	Tehama	319	374	481 671 775
Trinity	343	374	481	671	775	Tuolumne	338	461	615 856 1009

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

C O L O R A D O

METROPOLITAN FMR AREAS

	O BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA.....	499	598	766	1067	1258	Boulder
Colorado Springs, CO MSA.....	435	467	623	868	1025	El Paso
Denver, CO PMSA.....	418	499	664	922	1088	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA.....	430	531	656	911	1076	Larimer
Grand Junction, CO MSA.....	396	411	515	693	825	Mesa

Greeley, CO PMSA.....	418	462	582	807	955	Weld
Pueblo, CO MSA.....	417	432	540	727	867	Pueblo

NONMETROPOLITAN COUNTIES

	O BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	O BR 1	BR 2	BR 3	BR 4	BR
Alamosa.....	382	396	495	667	795	Archuleta.....	456	500	591	797	948
Baca.....	382	396	495	667	795	Bent.....	382	396	495	667	795
Chaffee.....	382	396	495	667	795	Cheyenne.....	382	396	495	667	795
Clear Creek.....	382	445	504	701	826	Conejos.....	382	396	495	667	795
Costilla.....	382	396	495	667	795	Crowley.....	382	396	495	667	795
Custer.....	382	396	495	667	795	Delta.....	382	396	495	667	795
Dolores.....	382	396	495	667	795	Eagle.....	513	559	746	1038	1223
Elbert.....	421	487	534	667	875	Fremont.....	382	396	495	667	795
Garfield.....	443	475	600	749	981	Glenn.....	382	507	644	851	941
Grand.....	453	457	579	725	877	Gunnison.....	382	396	495	667	795
Hinsdale.....	382	403	495	667	795	Huerfano.....	382	396	495	667	795
Jackson.....	382	396	495	667	795	Kiowa.....	382	396	495	667	795
Kit Carson.....	382	396	495	667	795	Lake.....	382	396	495	667	795
La Plata.....	499	551	727	1012	1194	Las Animas.....	382	407	495	667	795
Lincoln.....	382	396	495	667	795	Logan.....	382	396	495	667	795
Mineral.....	382	396	495	667	795	Moffat.....	382	396	495	667	795
Montezuma.....	382	396	495	667	795	Montrose.....	382	396	501	694	818
Morgan.....	382	396	495	667	795	Otero.....	382	396	495	667	795
Murray.....	382	396	501	667	810	Park.....	382	422	550	763	868
Phillips.....	382	396	495	667	795	Pitkin.....	572	783	1044	1376	1564
Provers.....	382	396	495	667	795	Rio Blanco.....	382	396	495	667	795
Rio Grande.....	382	396	495	667	795	Routt.....	382	461	610	847	998
Saguache.....	382	396	495	667	795	San Juan.....	382	396	495	667	795
San Miguel.....	702	1014	1114	1392	1796	Sedgwick.....	382	396	495	667	795
Summit.....	492	589	754	1050	1292	Teller.....	382	452	603	838	845
Washington.....	382	396	495	667	795	Yuma.....	382	396	495	667	795

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

C O N N E C T I C U T

METROPOLITAN FMR AREAS

	O BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA.....	448	583	703	878	1096	Fairfield county towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town

Danbury, CT PMSA.....	605	725	905	1194	1376	New Haven county towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town, Fairfield county towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town, Litchfield county towns of Bridgewater town, New Milford town, Roxbury town, Washington town, Hartford county towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town
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Hartford, CT PMSA.....	435	541	692	868	1054	Litchfield county towns of Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town, Windham town
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New Haven-Meriden, CT PMSA.....	517	634	785	1005	1164	Middlesex county towns of Clinton town, Killingworth town, New Haven county towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town
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New London-Norwich, CT-RI MSA.....	491	594	723	905	1034	Middlesex county towns of Old Saybrook town, Middlesex county towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town
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Windham county towns of Canterbury town, Plainfield town						
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Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.						
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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

CONNECTICUT continued

METROPOLITAN FMR AREAS	O BR 1 BR 2 BR 3 BR 4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA.....	774 906 1106 1482 1637	Fairfield county towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Westport town, Wilton town
Waterbury, CT MSA.....	439 594 735 917 1027	Litchfield county towns of Bethlem town, Thomaston town, Waterbury town, Woodbury town
		New Haven county towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town
Worcester, MA-CT.....	418 506 632 789 884	Windham county towns of Thompson town
NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	Towns within non metropolitan counties
Hartford.....	360 582 657 913 1076	Hartland town
Litchfield.....	418 570 760 949 1080	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex.....	620 702 938 1304 1538	Chester town, Deep River town, Essex town, Westbrook town
New London.....	525 643 730 943 1196	Lyme town, Voluntown town
Tolland.....	360 582 657 913 919	Union town
Windham.....	414 507 657 822 1032	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	O BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE
Over, DE MSA.....	486 538 613 795 904	Kent
Wilmington-Newark, DE-MD PMSA.....	436 576 671 911 1100	New Castle
NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES O BR 1 BR 2 BR 3 BR 4 BR
Sussex.....	427 454 579 761 812	
DIST. OF COLUMBIA		
METROPOLITAN FMR AREAS	O BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA.....	615 699 820 1118 1347	District of Columbia

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

FLORIDA

METROPOLITAN FMR AREAS					Counties of FMR AREA within STATE						
	O BR	1 BR	2 BR	3 BR	4 BR		O BR	1 BR	2 BR	3 BR	4 BR
Daytona Beach, FL MSA.....	387	453	580	770	817	Flagler, Volusia					
Fort Lauderdale, FL PMSA.....	479	564	698	971	1143	Broward					
Fort Myers-Cape Coral, FL MSA.....	416	479	578	807	842	Lee					
Fort Pierce-Port Lucie, FL MSA.....	462	507	657	854	921	Martin, St. Lucie					
Fort Walton Beach, FL MSA.....	404	440	500	678	799	Okaloosa					
Gainesville, FL MSA.....	404	440	536	734	867	Alachua					
Jacksonville, FL MSA.....	422	472	569	752	836	Clay, Duval, Nassau, St. Johns					
Lakeland-Winter Haven, FL MSA.....	387	424	479	594	648	Polk					
Melbourne-Titusville-Palm Bay, FL MSA.....	387	452	566	758	883	Brevard					
Miami, FL PMSA.....	449	563	702	965	1118	Dade					
Naples, FL MSA.....	432	609	732	1018	1135	Collier					
Ocala, FL MSA.....	404	440	500	657	771	Marion					
Orlando, FL MSA.....	501	569	678	891	1087	Lake, Orange, Osceola, Seminole					
Panama City, FL MSA.....	404	440	500	638	684	Bay					
Pensacola, FL MSA.....	404	440	500	669	789	Escambia, Santa Rosa					
Punta Gorda, FL MSA.....	404	463	616	855	1009	Charlotte					
Sarasota-Bradenton, FL MSA.....	405	514	654	841	915	Manatee, Sarasota					
Tallahassee, FL MSA.....	413	457	603	788	949	Gadsden, Leon					
Tampa-St. Petersburg-Clearwater, FL MSA.....	396	472	584	776	940	Hernando, Hillsborough, Pasco, Pinellas					
West Palm Beach-Boca Raton, FL MSA.....	495	578	715	950	1175	Palm Beach					
NONMETROPOLITAN COUNTIES						NONMETROPOLITAN COUNTIES					
Baker.....	385	421	476	591	642	Bradford.....	385	421	476	591	642
Calhoun.....	385	421	476	591	642	Citrus.....	385	421	476	591	642
Columbia.....	385	421	476	591	642	DeSoto.....	385	421	476	591	642
Dixie.....	385	421	476	591	642	Franklin.....	385	421	476	591	642
Gilchrist.....	385	421	476	591	642	Glades.....	385	421	476	591	642
Gulf.....	385	421	476	591	642	Hamilton.....	385	421	476	591	642
Hardee.....	385	421	476	591	642	Hendry.....	385	421	490	615	689
Highlands.....	385	421	476	593	662	Holmes.....	385	421	476	591	642
Indian River.....	385	481	619	774	866	Jackson.....	385	421	476	591	642
Jefferson.....	385	421	476	591	642	Lafayette.....	385	421	476	591	642
Levy.....	385	421	476	591	642	Liberty.....	385	421	476	591	642
Madison.....	385	421	476	591	642	Monroe.....	551	622	799	1101	1310
Okeechobee.....	385	421	476	591	648	Putnam.....	385	421	476	591	642
Sumter.....	385	421	476	591	642	Suwannee.....	385	421	476	591	642
Taylor.....	385	421	476	591	643	Union.....	385	421	476	591	642
Wakulla.....	385	421	476	591	642	Walton.....	385	421	476	613	766
Washington.....	385	421	476	591	642						

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Albany, GA MSA	301	353	431	588	636	Dougherty, Lee
Athens, GA MSA	371	400	517	708	850	Clarke, Madison, Oconee
Atlanta, GA MSA	530	590	688	916	1109	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton
Augusta-Aiken, GA-SC MSA	357	427	503	683	808	Columbia, McDuffie, Richmond
Chattanooga, TN-GA MSA	364	425	510	659	751	Catoosa, DeKalb, Walker
Columbus, GA-AL MSA	348	387	464	607	658	Chattahoochee, Harriett, Muscogee
Macon, GA MSA	389	434	504	695	715	Bibb, Houston, Jones, Peach, Twiggs
Savannah, GA MSA	363	450	524	707	735	Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES

O BR 1 BR 2 BR 3 BR 4 BR

Appling	280	337	412	534	607	Atkinson	280	337	412	534	607
Bacon	280	337	412	534	607	Baker	280	337	412	534	607
Baldwin	280	358	437	559	611	Banks	280	337	412	534	607
Ben Hill	280	337	412	534	615	Berrien	280	337	412	534	607
Bleckley	280	337	412	534	607	Brentley	280	337	412	534	607
Brooks	280	337	412	534	607	Bulloch	337	342	440	566	719
Burke	280	337	412	534	607	Butts	280	370	491	657	689
Calhoun	280	337	412	534	607	Camden	391	443	495	689	814
Candler	280	337	412	534	607	Charlton	280	337	412	534	607
Chattahoochee	280	337	412	534	607	Clay	280	337	412	534	607
Clinch	280	337	412	534	607	Coffee	280	337	412	534	615
Colquitt	280	337	412	534	607	Cook	280	337	412	534	607
Crawford	280	337	412	534	607	Crisp	283	337	412	534	607
Dawson	280	364	484	606	747	Decatur	280	337	412	534	607
Dodge	280	337	412	534	607	Dooly	280	337	412	534	607
Early	280	337	412	534	607	Echols	280	337	412	534	607
Elbert	280	337	412	534	607	Emmanuel	280	337	412	534	607
Evans	280	337	412	534	607	Fannin	280	337	412	534	607
Floyd	280	337	413	545	607	Franklin	280	337	412	534	607
Gilmer	280	337	412	534	607	Glenn	280	337	412	534	607
Glynn	390	437	494	683	813	Gordon	332	337	420	542	692
Grady	285	337	412	534	607	Greene	280	337	412	534	607
Habersham	300	337	412	534	612	Hall	296	450	529	662	739
Hancock	280	337	412	534	607	Haralson	280	337	412	534	607
Hart	280	337	412	534	607	Heard	280	337	412	534	607
Irwin	280	337	412	534	607	Jackson	311	337	423	534	696
Jasper	280	337	417	566	607	Jeff Davis	280	337	412	534	607
Jefferson	280	337	412	534	615	Jenkins	280	337	412	534	607

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

For example, 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A continued

NONMETROPOLITAN COUNTIES

O BR 1 BR 2 BR 3 BR 4 BR

Johnson	280	337	412	534	607	Lamar	280	346	412	534	653
Lanier	280	337	412	534	607	Laurens	286	337	412	534	607
Liberty	348	388	442	614	619	Lincoln	280	337	412	534	607
Long	280	364	412	534	607	Lowndes	313	379	458	643	711
Lumpkin	280	377	424	567	696	McIntosh	280	337	412	534	607
Macon	280	337	412	534	607	Merion	280	337	412	534	607
Marion	280	337	412	534	607	Miller	280	337	412	534	607
Mitchell	280	337	412	534	607	Monroe	280	337	412	543	607
Montgomery	280	337	412	534	607	Morgan	280	337	427	534	607
Murray	280	337	412	534	607	Oglethorpe	280	337	412	534	607
Pierce	280	337	412	534	607	Pike	325	352	446	621	625
Polk	280	337	412	557	607	Pulaski	280	337	412	534	607
Putnam	280	337	412	534	615	Quitman	280	337	412	534	607
Rabun	280	337	412	534	607	Randolph	280	337	412	534	607
Schley	280	337	412	534	607	Scriven	280	337	412	534	607
Seminole	280	337	412	534	607	Stephens	280	337	412	534	607
Stewart	280	337	412	534	607	Sumter	280	342	412	534	607
Talbot	280	337	412	534	607	Taliaferro	280	337	412	534	607
Tattnall	280	337	412	534	607	Taylor	280	337	412	534	607
Telfair	280	337	412	534	607	Terrell	280	337	412	534	607
Thomas	280	347	412	534	607	Tift	280	337	412	534	607
Toombs	280	337	412	534	607	Towns	280	337	412	534	607
Treutlen	280	337	412	534	607	Troup	280	381	429	536	607
Turner	280	337	412	534	607	Union	280	337	430	539	607
Upson	289	337	412	534	607	Ware	309	347	412	534	641
Warren	280	337	412	534	607	Washington	280	337	412	534	607
Wayne	289	337	412	534	607	Webster	280	337	412	534	607
Wheeler	280	337	412	534	607	White	280	337	412	534	621
Whitfield	280	367	442	564	665	Wilcox	280	337	412	534	607
Wilkes	280	337	412	534	607	Wilkinson	280	337	412	534	607
Worth	280	337	412	534	607						

H A W A I I

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Honolulu, HI MSA	613	733	863	1167	1262	Honolulu
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Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

For example, 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

HAWAII continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hawaii.....	477	622	715	950	1170	Kauai.....	609	910	1108	1466	1585
MauI.....	770	955	1165	1505	1704						

IDAHO

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA.....	390	445	540	750	887	Ada, Canyon					
Pocatello, ID MSA.....	279	324	417	568	671	Bannock					

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams.....	278	323	416	551	652	Beaer Lake.....	278	323	416	551	652
Benewah.....	278	323	416	551	652	Bingham.....	296	323	416	551	652
Blaine.....	430	473	630	879	1035	Boise.....	278	358	416	551	652
Bonner.....	320	396	490	679	781	Bonneville.....	283	356	490	659	804
Boundary.....	278	323	416	551	652	Butte.....	278	323	416	551	652
Camas.....	278	323	416	551	652	Carlisle.....	278	323	416	551	652
Cassia.....	278	323	416	551	652	Clark.....	278	323	416	551	652
Clearwater.....	278	323	416	551	652	Custer.....	278	323	416	551	652
Elmore.....	278	323	416	551	652	Franklin.....	278	323	416	551	652
Fremont.....	278	323	416	551	652	Gem.....	278	323	416	551	652
Gooding.....	278	323	416	551	652	Idaho.....	278	323	416	551	652
Jefferson.....	286	323	416	551	652	Jerome.....	278	323	416	551	652
Kootenai.....	353	416	544	757	895	Latah.....	278	323	416	551	652
Lehigh.....	278	323	416	551	652	Lewis.....	278	323	416	551	652
Lincoln.....	278	323	416	551	652	Madison.....	278	323	416	551	652
Minidoka.....	278	323	416	551	652	Nez Perce.....	283	323	416	551	652
Oneida.....	279	323	416	551	652	Owyhee.....	278	323	416	551	652
Payette.....	278	323	416	551	652	Power.....	278	323	416	551	652
Shoshone.....	278	323	416	551	652	Teton.....	303	323	416	563	666
Twin Falls.....	278	323	421	555	652	Valley.....	289	323	416	551	652
Washington.....	278	323	416	551	652						

ILLINOIS

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA.....	337	411	551	765	807	McLean
Champaign-Urbana, IL MSA.....	371	455	589	808	968	Champaign
Chicago, IL.....	516	619	737	922	1031	Cook, Dupage, Kane, Lake, McHenry, Will
Oakbrook-Forest, IL MSA.....	279	385	477	617	668	Henry, Rock Island

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

ILLINOIS continued

METROPOLITAN FMR AREAS

Counties of FMR AREA within STATE	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Decatur, IL MSA.....	268	347	447	604	626	Macon
De Kalb County, IL.....	426	496	628	873	1012	DeKalb
Grundy County, IL.....	372	430	571	754	802	Grundy
Kankakee, IL MSA.....	338	409	546	697	765	Kankakee
Kendall County, IL.....	514	586	706	983	988	Kendall
Peoria-Pekin, IL MSA.....	374	412	553	735	903	Peoria, Tazewell, Woodford
Rockford, IL MSA.....	358	459	559	703	819	Boone, Ogle, Winnebago
St. Louis, MO-IL MSA.....	317	386	501	652	721	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA.....	309	383	510	679	773	Menard, Sangamon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams.....	259	291	374	491	596	Alexander.....	259	291	374	491	551
Bond.....	259	291	374	491	551	Brown.....	259	291	374	491	551
Bureau.....	259	291	374	491	551	Calhoun.....	259	291	374	491	551
Carroll.....	259	291	374	491	551	Cass.....	260	291	374	491	551
Christian.....	279	291	376	493	551	Clerk.....	259	291	374	491	551
Clay.....	259	291	374	491	551	Coles.....	274	325	433	575	680
Crawford.....	259	291	374	491	551	Cumberland.....	259	291	374	491	551
De Witt.....	263	291	374	495	551	Douglas.....	277	291	374	491	551
Edgar.....	259	291	374	491	551	Edwards.....	259	291	374	491	551
Effingham.....	259	300	374	491	551	Fayette.....	259	291	374	491	551
Ford.....	246	346	450	577	631	Franklin.....	259	291	374	491	551
Fulton.....	267	299	385	505	567	Gallatin.....	259	291	374	491	551
Greene.....	259	291	374	491	551	Hamilton.....	259	291	374	491	551
Hancock.....	259	291	374	491	551	Hardin.....	259	291	374	491	551
Henderson.....	259	291	374	491	551	Iroquois.....	259	291	374	491	551
Jackson.....	314	315	398	564	632	Jasper.....	259	293	374	491	551
Jefferson.....	260	305	381	520	551	Jo Daviess.....	287	310	374	491	551
Johnson.....	259	291	374	491	551	Knox.....	259	291	374	491	551
La Salle.....	259	303	405	547	613	Lawrence.....	259	291	374	491	551
Lee.....	289	297	397	496	557	Livingston.....	259	319	426	549	599
Logan.....	290	308	410	514	644	McDonough.....	259	296	374	491	590
Macoupin.....	259	291	374	491	551	Marion.....	264	291	374	491	551
Marshall.....	259	291	374	491	551	Mason.....	259	291	374	491	551
Massac.....	260	291	374	491	551	Mercer.....	259	291	374	491	551
Montgomery.....	259	291	374	491	551	Morgan.....	259	328	436	581	612
Moultrie.....	259	291	374	504	551	Perry.....	260	291	374	491	551
Platt.....	259	315	409	558	573	Pike.....	259	291	374	491	551
Pope.....	259	291	374	491	551	Pulaski.....	259	291	374	491	551
Putnam.....	259	291	374	491	551	Randolph.....	259	291	374	491	551

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

ILLINOIS continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Richland.....	259	291	374	491	551	Saline.....	259	291	374	491	551
Schuyler.....	259	291	374	491	551	Scott.....	259	291	374	491	551
Shelby.....	259	291	374	491	551	Stark.....	259	291	374	491	551
Stephenson.....	274	313	396	495	555	Union.....	259	291	374	491	551
Vernation.....	259	330	412	516	577	Wabash.....	259	291	374	491	582
Warren.....	274	291	374	491	551	Washington.....	259	310	413	518	672
Wayne.....	259	291	374	491	551	White.....	259	291	374	491	551
Whiteside.....	274	311	414	519	584	Williamson.....	259	291	376	523	551

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA.....	366	474	631	876	1035	Monroe
Cincinnati, OH-KY-IN.....	309	397	531	712	769	Dearborn
Elkhart-Goshen, IN MSA.....	370	421	533	682	783	Elkhart
Evansville-Henderson, IN-KY MSA.....	317	377	489	612	685	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA.....	317	404	501	646	702	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA.....	378	497	620	778	870	Lake, Porter
Indianapolis, IN MSA.....	381	453	545	682	765	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison
Kokomo, IN MSA.....	340	403	525	675	735	Marion, Morgan, Shelby
Lafayette, IN MSA.....	344	438	583	811	958	Howard, Tipton
Louisville, KY-IN MSA.....	316	406	498	687	725	Clinton, Tippecanoe
Muncie, IN MSA.....	294	366	434	588	695	Clark, Floyd, Harrison, Scott
Ohio County, IN.....	287	322	412	531	584	Delaware
South Bend, IN MSA.....	318	422	556	694	779	St. Joseph
Terre Haute, IN MSA.....	286	335	427	533	595	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bartholomew.....	397	427	516	644	847	Benton.....	280	315	403	519	570
Blackford.....	280	315	415	520	582	Brown.....	280	371	489	679	703
Carroll.....	280	315	403	519	570	Cass.....	280	315	403	519	570
Crawford.....	280	315	403	519	570	Daviess.....	280	315	403	519	570
Decatur.....	280	341	436	564	614	Dubois.....	280	315	403	519	588
Fayette.....	280	315	404	519	611	Fountain.....	280	315	403	519	570
Franklin.....	280	315	403	519	638	Fulton.....	308	322	403	542	570
Gibson.....	280	315	403	519	570	Grant.....	295	315	403	521	570
Greene.....	280	315	403	519	570	Henry.....	280	315	403	519	570
Jackson.....	343	359	444	587	631	Jasper.....	280	339	403	519	570
Jay.....	280	315	403	519	570	Jefferson.....	280	315	403	519	570

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

INDIANA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Jennings.....	292	315	403	519	570	Knox.....	285	315	408	519	571
Kosciusko.....	280	370	447	579	626	Lagrange.....	285	328	418	544	633
La Porte.....	285	344	461	590	645	Lawrence.....	280	315	403	523	570
Marshall.....	331	336	447	562	626	Martin.....	280	315	403	519	570
Miami.....	280	315	403	519	570	Montgomery.....	326	343	428	543	601
Newton.....	292	315	403	519	570	Noble.....	322	329	409	528	584
Orange.....	280	315	403	519	570	Owen.....	280	315	403	519	597
Parke.....	280	315	403	519	596	Perry.....	280	315	403	519	570
Pike.....	280	315	403	519	570	Pulaski.....	280	315	403	519	570
Putnam.....	304	354	435	584	589	Randolph.....	280	315	403	519	570
Ripley.....	280	315	403	527	597	Rush.....	288	315	403	519	597
Spencer.....	280	315	403	519	570	Starke.....	280	315	403	519	570
Steuben.....	342	386	462	577	645	Sullivan.....	280	315	403	519	570
Switzerland.....	280	315	403	519	570	Union.....	280	315	403	519	570
Wabash.....	280	315	403	519	570	Warren.....	280	315	403	519	570
Washington.....	280	315	403	519	570	Wayne.....	280	315	403	519	570
White.....	280	315	403	519	630						

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA.....	272	384	494	688	738	Linn
Davenport-Moline-Rock Island, IA-IL MSA.....	279	385	477	617	668	Scott
Des Moines, IA MSA.....	354	447	551	715	751	Dallas, Polk, Warren
Dubuque, IA MSA.....	290	354	455	581	709	Dubuque
Iowa City, IA MSA.....	342	441	567	787	930	Johnson
Omaha, NE-IA MSA.....	334	458	578	758	850	Pottawattamie
Sioux City, IA-NE MSA.....	340	408	509	635	725	Woodbury
Waterloo-Cedar Falls, IA MSA.....	269	344	430	573	673	Black Hawk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair.....	264	326	409	519	573	Adams.....	264	326	409	519	573
Alfama.....	264	326	409	525	601	Appanoose.....	264	326	409	519	577
Audubon.....	264	326	409	519	573	Benton.....	271	326	409	519	573
Boone.....	264	326	409	525	622	Bremer.....	264	326	409	519	609
Buchanan.....	278	326	409	519	573	Buena Vista.....	279	326	409	519	573
Butler.....	281	326	409	519	573	Calhoun.....	264	326	409	519	573
Carroll.....	264	326	409	519	573	Cass.....	264	326	409	519	573
Cedar.....	264	330	409	519	573	Cerro Gordo.....	264	345	428	570	598
Cherokee.....	264	326	409	519	573	Chickasaw.....	264	326	409	519	573

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Clarksburg	271	326	409	519	573	Clay	264	326	409	519	573
Clayton	264	326	409	519	573	Clinton	264	326	415	519	581
Crawford	264	326	409	519	573	Davis	264	326	409	519	573
Decatur	264	326	409	519	573	Delaware	264	326	409	519	573
Des Moines	264	336	433	542	605	Dickinson	264	326	409	519	573
Emmet	264	326	409	519	573	Fayette	264	326	409	519	573
Floyd	287	328	409	519	573	Franklin	271	328	409	519	573
Frederick	290	326	409	519	603	Greene	264	326	409	519	573
Grundy	264	326	409	519	589	Guthrie	264	326	409	519	602
Hamilton	301	341	414	519	580	Hancock	264	326	409	519	573
Hardin	264	326	409	519	573	Harrison	264	326	409	519	573
Henry	264	334	425	531	601	Howard	264	326	409	519	598
Humboldt	264	326	409	519	573	Ide	271	326	409	519	573
Iowa	264	326	409	519	573	Jackson	264	326	412	519	577
Jasper	264	334	424	529	593	Jefferson	264	333	444	578	729
Jones	273	326	409	519	573	Keokuk	264	326	409	519	573
Kossuth	264	326	409	519	573	Lee	264	326	422	528	592
Louisa	264	326	409	519	573	Lucas	264	326	409	519	573
Lyon	264	326	409	519	573	Madison	264	326	426	545	597
Madaska	264	326	409	519	573	Marion	264	362	444	555	622
Marshall	264	326	409	519	573	Mills	264	352	416	522	583
Mitchell	264	326	409	519	573	Monroe	264	326	409	519	573
Monroe	264	343	409	519	603	Montgomery	290	327	409	519	573
Muscatine	264	326	433	576	805	O'Brien	264	326	409	519	573
Osceola	264	326	409	519	573	Page	264	326	409	519	573
Palo Alto	264	326	409	519	573	Plymouth	264	326	428	534	598
Pocahontas	264	326	409	519	573	Poweshiek	279	346	444	555	622
Ringgold	264	326	409	519	573	Sec	264	326	409	519	573
Shelby	264	326	409	519	573	Sioux	264	326	409	519	573
Story	343	417	492	681	780	Tama	264	326	409	519	573
Taylor	264	326	409	519	574	Union	264	326	409	519	603
Van Buren	264	326	409	519	573	Vapello	264	326	413	519	578
Washington	264	326	409	519	603	Wayne	264	326	409	519	573
Webster	264	326	415	522	582	Winnebago	264	331	409	519	573
Winneshiek	264	326	409	519	573	Worth	264	326	409	519	582
Wright	264	326	409	519	573						

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Kansas City, MO-KS MSA	353	444	534	739	819	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	352	421	541	752	866	Douglas
Topeka, KS MSA	330	380	494	688	753	Shawnee
Wichita, KS MSA	324	389	521	704	761	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES O BR 1 BR 2 BR 3 BR 4 BR

Allen	269	305	391	504	561	Anderson	269	305	391	504	561
Atchison	269	305	391	504	601	Barber	269	305	391	504	561
Barton	269	305	391	504	561	Bourbon	269	305	391	504	561
Brown	269	305	391	504	561	Chase	269	305	391	504	561
Chautauqua	269	305	391	504	561	Cherokee	269	305	391	504	561
Cheyenne	269	305	391	504	561	Clark	269	305	391	504	561
Clay	269	305	391	504	561	Cloud	269	305	391	504	561
Coffey	278	305	391	504	586	Comanche	269	305	391	504	561
Cowley	287	305	391	516	561	Crawford	269	305	398	504	561
Decatur	269	305	391	504	561	Dickinson	269	305	391	504	561
Doniphan	269	305	391	504	561	Edwards	269	305	391	504	561
Elk	269	305	391	504	561	Ellis	269	305	391	504	561
Ellsworth	269	305	391	504	561	Finney	352	376	482	628	794
Ford	309	365	455	573	645	Franklin	281	305	394	504	615
Gary	330	347	435	561	608	Gove	269	305	391	504	561
Graham	269	305	391	504	561	Grant	279	353	405	554	604
Gray	269	305	391	504	561	Grealey	269	305	391	504	561
Greenwood	269	305	391	504	561	Hamilton	269	305	391	504	561
Harper	269	305	391	504	561	Haskell	269	312	391	504	561
Hodgeman	269	305	391	504	561	Jackson	269	305	391	504	561
Jefferson	269	305	398	528	561	Jewell	269	305	391	504	561
Kearny	299	305	402	541	594	Kingman	269	305	391	504	561
Kiowa	269	305	391	504	561	Labette	269	305	391	504	561
Lane	269	305	391	504	561	Lincoln	269	305	391	504	561
Linn	269	305	391	504	561	Logan	269	305	391	504	561
Lyon	269	305	391	504	598	McPherson	271	305	391	504	561
Marion	269	305	391	504	561	Marshall	269	305	391	504	561
Meade	269	305	391	504	561	Mitchell	269	305	391	504	561
Montgomery	269	305	391	504	561	Morris	269	305	391	504	561
Morton	269	327	391	504	561	Nemaha	269	305	391	504	561
Neosho	269	305	391	504	561	Ness	269	305	391	504	561
Norton	269	305	391	504	561	Osage	269	305	391	504	561
Osborne	269	305	391	504	562	Ottawa	269	305	391	504	561
Pawnee	269	305	391	504	561	Phillips	269	305	391	504	561

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pottawatomie.....	269	305	391	504	574	Pratt.....	269	305	391	514	561
Rawlins.....	269	305	391	504	561	Reno.....	269	305	391	504	609
Republic.....	269	305	391	504	561	Rice.....	269	305	391	504	561
Riley.....	333	367	489	610	741	Rooks.....	269	305	391	504	561
Push.....	269	305	391	504	561	Russell.....	269	305	391	504	561
Saline.....	351	363	479	662	670	Scott.....	269	305	391	514	591
Seward.....	324	353	470	589	657	Sheridan.....	269	305	391	504	561
Sherman.....	269	305	391	504	561	Smith.....	269	305	391	504	561
Stafford.....	269	305	391	504	561	Stanton.....	269	305	391	504	561
Stevens.....	269	306	391	504	577	Suwanee.....	269	305	391	528	561
Thomas.....	269	305	391	504	561	Trego.....	269	305	391	504	561
Wabaunsee.....	269	305	391	504	561	Wallace.....	269	305	391	504	561
Washington.....	269	305	391	504	561	Wichita.....	269	305	402	504	626
Wilson.....	269	305	391	504	561	Woodson.....	269	305	391	504	561

K E N T U C K Y

METROPOLITAN FMR AREAS

	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN.....	309	397	531	712	769	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSAs.....	337	278	443	605	621	Christian
Evansville-Henderson, IN-KY MSAs.....	317	377	489	612	685	Henderson
Gallatin County, KY.....	257	351	429	538	703	Gallatin
Grant County, KY.....	256	305	404	564	667	Grant
Huntington-Ashland, WV-KY-OH MSAs.....	302	354	437	557	613	Boyd, Carter, Greenup
Lexington, KY MSAs.....	342	426	521	711	802	Bourbon, Clark, Fayette, Jessamine, Madison, Scott
Louisville, KY-IN MSAs.....	316	406	498	687	725	Bullitt, Jefferson, Oldham
Owensboro, KY MSAs.....	298	309	406	545	570	Daviess
Pendleton County, KY.....	258	299	399	501	560	Pendleton

NONMETROPOLITAN COUNTIES

	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair.....	249	304	359	475	522	Allen.....	249	290	359	464	522
Anderson.....	274	290	376	469	527	Ballard.....	249	290	359	464	522
Barren.....	249	301	359	464	522	Bath.....	249	290	359	464	522
Bell.....	249	290	362	464	522	Boyle.....	296	300	400	501	561
Bracken.....	249	290	359	464	522	Breathitt.....	249	290	359	464	522
Breckinridge.....	249	290	359	464	522	Butler.....	249	290	359	464	522
Caldwell.....	249	290	359	464	522	Callaway.....	249	290	359	464	522
Carlisle.....	249	290	359	464	522	Carroll.....	249	290	359	464	522
Casey.....	249	290	359	464	522	Clay.....	249	290	359	464	522
Clinton.....	249	290	359	464	522	Crittenden.....	249	290	359	464	522

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cumberland.....	249	290	359	464	522	Edmonson.....	249	290	359	464	522
Elliot.....	249	290	359	464	522	Estill.....	249	290	359	464	522
Fleming.....	249	290	359	464	522	Floyd.....	262	319	359	498	572
Franklin.....	249	366	449	579	732	Fulton.....	249	290	359	464	522
Garrard.....	249	290	359	464	522	Graves.....	249	290	359	464	522
Grayson.....	249	290	359	464	522	Green.....	249	290	359	464	522
Hancock.....	249	290	359	468	555	Hardin.....	309	318	397	535	634
Harlan.....	249	378	431	562	663	Harrison.....	249	291	368	464	568
Hart.....	249	290	359	464	522	Henry.....	249	290	359	464	522
Hickman.....	249	290	359	464	522	Hopkins.....	249	290	359	464	527
Jackson.....	249	290	359	464	522	Johnson.....	249	290	359	464	522
Knott.....	249	290	359	464	522	Knox.....	249	344	441	552	678
Larue.....	249	290	359	464	522	Laurel.....	325	367	436	587	609
Lawrence.....	249	290	359	464	522	Lee.....	249	290	359	464	522
Leslie.....	249	290	359	464	522	Letcher.....	249	290	359	464	522
Lewis.....	249	290	359	464	522	Lincoln.....	249	290	359	464	522
Livingston.....	287	290	387	538	542	Logan.....	249	290	359	473	522
Lyon.....	249	290	359	464	522	McCracken.....	282	303	379	485	623
McCreary.....	249	290	359	464	522	McLean.....	249	290	359	464	522
Magoffin.....	249	290	359	464	522	Marion.....	249	290	359	464	522
Marshall.....	249	296	359	464	558	Martin.....	249	290	359	464	522
Mason.....	249	290	359	464	522	Meade.....	257	320	368	486	606
Menifee.....	249	290	359	464	522	Mercer.....	249	290	359	473	522
Metalife.....	249	290	359	464	522	Monroe.....	249	290	359	464	522
Montgomery.....	249	290	359	464	522	Morgan.....	249	290	359	464	522
Muhlenberg.....	249	290	359	464	522	Nelson.....	273	290	370	484	522
Nicholas.....	249	290	359	464	522	Ohio.....	249	290	359	464	522
Owen.....	249	290	359	464	535	Owsley.....	249	290	359	464	522
Perry.....	279	290	374	467	524	Pike.....	267	305	370	464	548
Powell.....	249	290	359	464	522	Pulaski.....	273	290	368	465	522
Robertson.....	249	290	359	464	522	Rockcastle.....	249	290	359	464	522
Rowan.....	249	290	359	464	542	Russell.....	249	290	359	464	522
Shelby.....	250	329	368	514	522	Simpson.....	249	311	364	465	522
Spencer.....	249	296	359	464	522	Taylor.....	300	355	397	532	601
Todd.....	249	290	359	464	522	Trigg.....	249	290	359	464	522
Trimble.....	249	290	359	464	522	Union.....	249	290	359	464	522
Warren.....	249	322	430	537	621	Washington.....	249	294	359	464	522
Wayne.....	249	290	359	464	522	Webster.....	249	290	359	464	522
Whitley.....	249	290	359	464	522	Wolfe.....	249	290	359	464	522

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

LOUISIANA

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Alexandria, LA MSA..... 279 349 438 607 617 Rapides
Baton Rouge, LA MSA..... 303 376 467 648 765 Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA..... 275 322 413 574 679 Lafourche, Terrebonne
Lafayette, LA MSA..... 292 336 400 551 652 Lafayette, Acadia, St. Landry, St. Martin
Lake Charles, LA MSA..... 375 436 553 725 908 Calcasieu

Monroe, LA MSA..... 302 338 451 608 632 Ouachita
New Orleans, LA..... 364 417 520 708 856 Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles
St. James Parish, LA..... 274 311 414 518 579 St. John the Baptist, St. Tammany
Shreveport-Bossier City, LA MSA..... 340 387 486 650 797 Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES

O BR 1 BR 2 BR 3 BR 4 BR

Allen..... 268 291 358 469 523 Assumption..... 293 315 373 469 523
Avoyelles..... 268 291 358 469 523 Beauregard..... 326 355 421 550 605
Bienville..... 268 291 358 475 562 Calcasieu..... 268 291 358 469 523
Cameron..... 268 291 358 469 523 Catahoula..... 268 291 358 469 523
Claiborne..... 268 291 358 469 523 Concordia..... 268 291 358 469 523
De Soto..... 268 291 358 469 523 East Carroll..... 268 291 358 469 523
East Feliciana..... 268 291 358 469 523 Evangeline..... 268 291 358 469 523
Franklin..... 268 291 358 469 523 Grant..... 268 291 358 469 523
Iberia..... 283 295 366 469 523 Iberville..... 268 291 358 469 523
Jackson..... 268 291 358 469 523 Jefferson Davis..... 268 291 358 469 523
La Salle..... 268 291 358 469 523 Lincoln..... 315 317 395 542 650
Madison..... 268 291 358 469 523 Morehouse..... 268 291 358 469 523
Natchitoches..... 286 293 378 524 527 Pointe Coupee..... 268 291 358 469 523
Red River..... 268 291 358 469 527 Richland..... 268 291 358 469 527
Sabine..... 268 298 358 469 552 St. Helena..... 268 291 358 469 523
St. Mary..... 293 314 394 537 560 Tangipahoa..... 287 298 383 502 535
Tensas..... 268 291 358 469 523 Union..... 268 291 358 469 527
Vermilion..... 268 291 358 469 523 Vernon..... 307 342 390 505 596
Washington..... 268 291 358 469 523 West Carroll..... 268 291 358 469 523
West Feliciana..... 268 348 466 583 654 Winn..... 268 291 358 469 523

MAINE

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Components of FMR AREA within STATE

Bangor, ME MSA..... 347 424 543 709 761 Penobscot county towns of Bangor city, Brewer city
Eddington town, Glenburn town, Hampden town, Hermon town
Holden town, Kenduskeag town, Milford town
Old Town city, Orono town, Orrington town
Penobscot Indian I., Veazie town

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MAINE continued

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR

Lewiston-Auburn, ME MSA..... 319 385 495 620 703
Portland, ME MSA..... 378 487 641 802 899

Portsmouth-Rochester, NH-ME MSA..... 458 548 705 903 1108
Waldo county towns of Winterport town
Androscoggin county towns of Auburn city, Greene town
Lewiston city, Lisbon town, Mechanic Falls town
Poland town, Sebattus town, Turner town, Wales town
Cumberland county towns of Cape Elizabeth town, Casco town
Cumberland town, Falmouth town, Freeport town
Gorham town, Gray town, North Yarmouth town
Portland city, Raymond town, Scarborough town
South Portland city, Standish town, Westbrook city
Windham town, Yarmouth town
York county towns of Buxton town, Hollis town
Limaington town, Old Orchard Beach
York county towns of Berwick town, Eliot town
Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES

O BR 1 BR 2 BR 3 BR 4 BR

Androscoggin..... 319 394 523 654 732
Aroostook..... 319 374 480 611 703
Cumberland..... 467 476 634 862 989

Franklin..... 326 374 480 611 703
Hancock..... 344 421 521 657 729
Kennebec..... 332 414 498 625 703
Knox..... 319 411 533 711 749
Lincoln..... 415 462 525 730 862

Oxford..... 319 374 480 611 703
Penobscot..... 319 374 480 611 703

Towns within non metropolitan counties

Durham town, Leeds town, Livermore town
Livermore Falls town, Minot town
Baldwin town, Bridgton town, Brunswick town
Harpaswell town, Harrison town, Naples town
New Gloucester town, Pownal town, Sebago town

Alton town, Argyle unorg., Bradford town, Bradley town
Burlington town, Carmel town, Carroll plantation
Charleston town, Chester town, Clifton town
Corinna town, Corinth town, Dexter town, Dixmont town
Drew plantation, East Central Penob., East Millinocket t
Edinburg town, Enfield town, Etna town, Exeter town
Garland town, Greenbush town, Greenfield town
Howland town, Hudson town, Kingman unorg., Lagrange town
Lakeville town, Lee town, Levant town, Lincoln town
Lowell town, Mattawamkeag town, Maxfield town
Medway town, Millinocket town, Mount Chase town
Newburgh town, Newport town, North Penobscot un
Passadumkeag town, Patten town, Plymouth town
Prentiss plantation, Sebobeis plantation, Springfield town
Stacyville town, Stetson town, Twombly unorg.
Webster plantation, Whitney unorg., Winn town
Woodville town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MAINE continued

NONMETROPOLITAN COUNTIES

	O BR 1	BR 2	BR 3	BR 4	BR	Towns within non metropolitan counties
Piscataquis.....	319	374	480	611	703	Belfast city, Belmont town, Brooks town, Burnham town
Sagadahoc.....	449	514	634	843	1041	Frankfort town, Freedom town, Islesboro town
Somerset.....	334	381	480	611	721	Jackson town, Knox town, Liberty town, Lincolnville town
Waldo.....	319	374	480	611	703	Monroe town, Montville town, Morrill town
						Northport town, Palermo town, Prospect town
						Searsport town, Stockton Springs t
						Swanville town, Thorndike town, Troy town, Unity town
						Waldo town

Washington.....	319	374	480	611	703	Acton town, Alfred town, Arundel town, Biddeford city
York.....	394	451	604	756	845	Corinth town, Dayton town, Kennebunk town
						Kennebunkport town, Lebanon town, Limerick town
						Lyman town, Newfield town, North Berwick town
						Ogunquit town, Parsonsfield town, Saco city
						Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND

METROPOLITAN FMR AREAS

	O BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Baltimore, MD.....	421	515	628	831	951	Anne Arundel, Baltimore, Carroll, Harford, Howard
						Queen Anne's, Baltimore city
Columbia, MD.....	566	760	885	1170	1462	Columbia
Cumberland, MD-WV MSA.....	334	402	497	657	750	Allegany
Hagerstown, MD PMSA.....	330	397	495	649	741	Washington
Washington, DC-MD-VA.....	615	699	820	1118	1347	Calvert, Charles, Frederick, Montgomery, Prince George's
Washington-Newark, DE-MD PMSA.....	436	576	671	911	1100	Cecil

NONMETROPOLITAN COUNTIES

	O BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES
Caroline.....	367	396	495	649	737	O BR 1 BR 2 BR 3 BR 4 BR
Garrett.....	328	440	495	645	813	Dorchester.....
St. Mary's.....	501	595	686	956	1093	Kent.....
Talbot.....	434	460	613	768	1006	Somerset.....
Worcester.....	328	396	496	689	737	Wicomico.....

MASSACHUSETTS

METROPOLITAN FMR AREAS

	O BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA.....	465	623	831	1040	1165	Barnstable county towns of Barnstable town, Brewster town
						Chatham town, Dennis town, Eastham town, Harwich town
						Marshpee town, Orleans town, Sandwich town, Yarmouth town

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MASSACHUSETTS continued

METROPOLITAN FMR AREAS

	O BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA.....	643	723	906	1132	1329	Bristol county towns of Berkley town, Dighton town
						Mansfield town, Norton town, Taunton city
						Essex county towns of Amesbury town, Beverly city
						Danvers town, Essex town, Gloucester city, Hamilton town
						Ipswich town, Lynn city, Lynnfield town, Manchester town
						Marblehead town, Middleton town, Nahant town
						Newbury town, Newburyport city, Peabody city
						Rockport town, Rowley town, Salem city, Salisbury town
						Saugus town, Swampscott town, Topsfield town
						Wenham town
						Middlesex county towns of Acton town, Arlington town
						Ashland town, Ayer town, Bedford town, Belmont town
						Boxborough town, Burlington town, Cambridge city
						Carlisle town, Concord town, Everett city
						Framingham town, Holliston town, Hopkinton town
						Hudson town, Lexington town, Lincoln town
						Littleton town, Malden city, Marlborough city
						Maynard town, Medford city, Melrose city, Needham town
						Newton city, North Reading town, Reading town
						Sherborn town, Shirley town, Somerville city
						Stoughton town, Sturley town, Sudbury town, Townsend town
						Wakefield town, Waltham city, Watertown town
						Weymouth town, Weston town, Wilmington town
						Winchester town, Woburn city
						Norfolk county towns of Bellingham town, Braintree town
						Brookline town, Canton town, Cohasset town, Dedham town
						Dorchester county towns of Franklin town, Millis town
						Holbrook town, Needham town, Norfolk town, Norwood town
						Plainville town, Quincy city, Randolph town, Sharon town
						Stoughton town, Walpole town, Wellesley town
						Westwood town, Weymouth town, Wrentham town
						Plymouth county towns of Carver town, Duxbury town
						Hanover town, Hingham town, Hull town, Kingstons town
						Marshfield town, Norwell town, Pembroke town
						Plymouth town, Rockland town, Scituate town
						Wareham town
						Suffolk county towns of Boston city, Chelsea city
						Revere city, Winthrop town
						Worcester county towns of Berlin town, Blackstone town
						Bolton town, Harvard town, Hopedale town, Lancaster town
						Mendon town, Millis town, Millville town
						Southborough town, Upton town
						Bristol county towns of Easton town, Raynham town
						Norfolk county towns of Avon town
						Plymouth county towns of Abington town, Bridgewater town
						Brockton city, East Bridgewater t, Halifax town

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MASSACHUSETTS continued

METROPOLITAN FMR AREAS

	O	BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Fitchburg-Leominster, MA MSA.....	337	473	614	790	858		Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater t., Whitman town, Worcester county towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town, Essex county towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimack town, Methuen town, North Andover town, West Newbury town, Middlesex county towns of Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
Laurence, MA-NH PMSA.....	432	522	656	820	1009		Bristol county towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city, Plymouth county towns of Marion town, Mattapoisett town, Rochester town
Lowell, MA-NH PMSA.....	472	610	737	924	1033		Berkshire county towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lenox town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
New Bedford, MA MSA.....	452	552	628	785	881		Bristol county towns of Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Pittsfield, MA MSA.....	320	454	560	702	870		Franklin county towns of Sunderland town, Hampden county towns of Agawam town, Chicopee city, East Longmeadow t., Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield t., Wilbraham town
Providence-Fall River-Warwick, RI-MA PMSA.....	405	551	662	831	1024		Hampshire county towns of Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town
Springfield, MA MSA.....	416	514	649	811	997		Hampden county towns of Holland town, Worcester county towns of Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield t., Grafton town, Holden town, Leicester town, Milbury town, Northborough town, Northbridge town, North Brookfield t., Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town
Worcester, MA-CT.....	418	508	632	789	884		

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MASSACHUSETTS continued

METROPOLITAN FMR AREAS

	O	BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
NONMETROPOLITAN COUNTIES							Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield t., Worcester city
Barnstable.....	449	616	821	1026	1149		Towns within non metropolitan counties
Berkshire.....	378	460	542	744	891		Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Dukes.....	607	617	822	1027	1152		Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington t., Hancock town, Monterey town, Mount Washington t., New Ashford town, New Marlborough t., North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge t., Williamstown town, Windsor town
Franklin.....	408	506	647	810	978		Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden.....	412	561	749	996	1229		Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town, Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Hampshire.....	577	584	780	977	1094		Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town
Nantucket.....	729	977	1303	1629	1824		
Worcester.....	459	479	638	799	893		
MICHIGAN							
METROPOLITAN FMR AREAS							
Ann Arbor, MI PMSA.....	467	568	698	915	1026		Counties of FMR AREA within STATE
Benton Harbor, MI MSA.....	375	379	497	622	698		Lenawee, Livingston, Washtenaw
Detroit, MI PMSA.....	386	525	634	793	889		Berrien
Flint, MI PMSA.....	366	416	521	666	729		Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Grand Rapids-Muskegon-Holland, MI MSA.....	392	458	559	701	784		Genesee
Jackson, MI MSA.....	295	397	502	628	704		Allegan, Kent, Muskegon, Ottawa
Kalamazoo-Battle Creek, MI MSA.....	348	420	530	664	741		Jackson
Lansing-East Lansing, MI MSA.....	393	462	597	780	901		Kalamazoo, Van Buren

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I C H I G A N continued

METROPOLITAN FMR AREAS

Saginaw-Bay City-Midland, MI MSA..... 342 378 502 628 704 Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES

Alcona..... 289 329 417 542 618

Alpena..... 289 329 417 542 618

Arenac..... 289 329 417 542 618

Barry..... 289 329 417 542 618

Benzie..... 289 329 417 542 618

Branch..... 289 329 417 542 618

Charlevoix..... 351 355 450 611 633

Chippewa..... 289 329 417 542 618

Crawford..... 316 329 426 582 618

Dickinson..... 289 329 417 542 618

Gladwin..... 289 329 417 542 618

Grand Traverse..... 382 409 546 683 766

Hillsdale..... 289 329 417 542 618

Huron..... 289 329 417 542 618

Isabella..... 322 344 461 622 755

Isabella..... 322 344 461 622 755

Keweenaw..... 289 329 417 542 618

Leelanau..... 391 423 495 647 812

Mackinac..... 289 329 417 542 618

Marquette..... 289 329 417 542 618

Mecosta..... 289 329 417 542 618

Missaukee..... 304 329 417 542 618

Montmorency..... 289 329 417 542 618

Oceana..... 308 329 417 542 618

Ontonagon..... 289 329 417 542 618

Oscoda..... 289 329 417 542 618

Presque Isle..... 289 329 417 542 618

St. Joseph..... 289 329 417 542 618

Schoolcraft..... 289 329 417 542 618

Tuscola..... 314 342 457 570 638

M I N N E S O T A

METROPOLITAN FMR AREAS

Duluth-Superior, MN-WI MSA..... 277 357 459 613 714 St. Louis

Fargo-Moorhead, ND-MN MSA..... 331 456 550 763 817 Clay

Grand Forks, ND-MN MSA..... 342 408 536 739 825 Polk

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I N N E S O T A continued

METROPOLITAN FMR AREAS

La Crosse, WI-MN MSA..... 281 362 461 617 747 Houston

Minneapolis-St. Paul, MN-WI MSA..... 405 521 666 901 1020 Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey

Rochester, MN MSA..... 310 435 569 788 884 Olmsted

St. Cloud, MN MSA..... 322 415 491 621 791 Benton, Stearns

NONMETROPOLITAN COUNTIES

Aitkin..... 269 348 464 581 649

Beltrami..... 265 339 454 594 635

Blue Earth..... 361 436 543 696 883

Carlton..... 265 322 409 513 586

Chippewa..... 265 322 409 513 586

Cook..... 314 322 421 575 599

Crow Wing..... 265 322 409 513 586

Douglas..... 265 322 409 513 586

Fillmore..... 265 322 409 513 586

Goodhue..... 306 393 525 669 735

Hubbard..... 271 322 409 513 586

Jackson..... 265 322 409 513 586

Kandiyohi..... 326 412 502 629 757

Koochiching..... 320 326 434 542 711

Lake..... 265 322 409 513 586

Le Sueur..... 265 322 409 513 586

Lyon..... 265 322 409 513 586

Mahnomon..... 265 322 409 513 586

Martin..... 265 322 409 513 586

Mille Lacs..... 282 322 410 571 673

Mower..... 265 322 409 513 586

Nicollet..... 332 355 473 627 663

Norman..... 265 322 409 513 586

Pennington..... 265 322 409 513 586

Pipestone..... 265 322 409 513 586

Red Lake..... 265 322 409 513 586

Renville..... 265 322 409 513 586

Rock..... 265 322 409 513 586

Sibley..... 265 322 409 513 586

Stevens..... 302 381 430 538 603

Todd..... 265 322 409 513 586

Wabasha..... 287 349 442 554 633

Waseca..... 345 379 481 603 690

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR
Wilkin.....	265 322 409 513 586	Winona.....	309 402 510 637 714
Yellow Medicine.....	265 322 409 513 586		

MISSISSIPPI

METROPOLITAN FMR AREAS

	O BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagoula, MS MSA.....	355 417 479 688 788	Hancock, Harrison, Jackson
Hattiesburg, MS MSA.....	265 325 398 534 637	Forrest, Lamar
Jackson, MS MSA.....	361 412 504 670 707	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA.....	387 451 530 736 774	Desoto

NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR
Adams.....	248 294 366 468 597	Alcorn.....	248 294 364 468 527
Amite.....	248 294 364 468 527	Attala.....	248 294 364 468 527
Benton.....	248 294 364 468 527	Bolivar.....	282 294 379 473 541
Calhoun.....	248 294 364 468 527	Carroll.....	248 294 364 468 527
Chickasaw.....	248 294 364 468 527	Choctaw.....	248 294 364 468 527
Claiborne.....	248 294 364 468 527	Clarke.....	248 294 364 468 527
Clay.....	248 294 364 468 527	Coahoma.....	288 294 388 487 545
Copiah.....	248 294 364 468 527	Covington.....	248 294 364 468 527
Franklin.....	251 294 364 468 527	George.....	248 294 364 468 527
Greene.....	248 294 364 468 527	Grenada.....	248 295 364 497 527
Holmes.....	248 294 364 468 527	Humphreys.....	248 294 364 468 527
Issaquena.....	260 358 475 595 666	Itawamba.....	248 294 364 468 527
Jasper.....	248 294 364 468 527	Jefferson.....	248 294 364 468 527
Jefferson Davis.....	248 294 364 468 527	Jones.....	248 294 364 468 527
Kemper.....	250 294 364 468 527	Lafayette.....	251 344 458 574 642
Lauderdale.....	248 320 402 522 564	Lawrence.....	248 294 364 468 527
Leake.....	248 294 364 468 527	Lee.....	310 334 402 503 564
Leflore.....	248 294 364 468 527	Lincoln.....	248 294 364 468 527
Lowndes.....	306 330 391 490 553	Marion.....	248 294 364 468 527
Marshall.....	248 294 364 468 527	Monroe.....	248 294 364 468 527
Montgomery.....	248 294 364 468 527	Neshoba.....	248 294 364 468 527
Newton.....	248 294 364 468 527	Noxubee.....	252 294 364 468 527
Oktibbeha.....	304 317 387 538 635	Panola.....	256 294 364 468 527
Pearl River.....	260 294 364 470 527	Perry.....	248 294 364 468 527
Pike.....	252 294 364 468 527	Pontotoc.....	248 294 364 468 527
Prentiss.....	251 294 364 468 527	Quitman.....	248 294 364 468 527
Scott.....	248 294 364 468 527	Sharkey.....	252 294 364 468 527
Simpson.....	251 294 364 468 527	Smith.....	248 294 364 468 527

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032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR
Stone.....	248 294 364 468 527	Sunflower.....	274 298 364 468 559
Tallahatchie.....	248 294 364 468 527	Tate.....	248 335 387 485 637
Tippah.....	248 294 364 468 527	Tishomingo.....	248 294 364 468 527
Tunica.....	248 294 364 468 527	Union.....	248 294 364 468 527
Walthall.....	248 294 364 468 527	Warren.....	248 324 404 558 669
Washington.....	268 319 428 550 606	Wayne.....	248 294 364 468 527
Webster.....	250 294 364 468 527	Wilkinson.....	248 294 364 468 527
Winston.....	248 294 364 468 527	Yalobusha.....	250 294 364 468 527
Yazoo.....	252 294 364 468 527		

MISSOURI

METROPOLITAN FMR AREAS

	O BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA.....	259 365 475 660 778	Boone
Joplin, MO MSA.....	253 293 388 511 550	Jasper, Newton
Kansas City, MO-KS MSA.....	353 444 534 739 819	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA.....	243 295 393 496 551	Andrew, Buchanan
St. Louis, MO-IL MSA.....	317 386 501 652 721	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln
Springfield, MO MSA.....	265 336 435 601 626	St. Charles, St. Louis, Warren, St. Louis city
		Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR
Adair.....	238 297 394 496 595	Atchison.....	238 274 352 458 525
Audrain.....	254 274 352 476 550	Barry.....	238 283 352 458 525
Barton.....	238 274 352 458 525	Bates.....	238 274 352 458 535
Benton.....	268 274 364 458 525	Bollinger.....	238 274 352 458 525
Butler.....	238 274 352 458 525	Caldwell.....	238 276 371 464 525
Callaway.....	281 285 379 481 623	Camden.....	313 316 422 586 689
Cape Girardeau.....	245 301 400 533 654	Carroll.....	238 274 352 458 525
Carter.....	238 274 352 458 525	Cedar.....	238 274 352 458 525
Chariton.....	238 274 352 458 525	Clark.....	238 274 352 458 525
Cole.....	238 314 418 558 585	Cooper.....	238 274 352 458 525
Crawford.....	261 314 353 466 525	Dade.....	238 274 352 458 525
Dallas.....	238 274 352 458 525	Davies.....	238 274 352 458 525
Dekalb.....	246 274 352 458 525	Dent.....	238 274 352 458 525
Douglas.....	238 274 352 458 525	Dunklin.....	238 274 352 458 525
Gasconade.....	238 274 352 458 525	Gentry.....	238 274 352 458 525
Grundy.....	238 274 352 458 525	Harrison.....	238 274 352 458 525
Henry.....	271 276 368 461 605	Hickory.....	238 274 352 458 525
Holt.....	238 274 352 458 525	Howard.....	238 274 352 458 527
Howell.....	238 274 352 458 525	Iron.....	238 274 352 458 525

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Johnson.....	286	319	416	551	652	Knox.....	238	274	352	458	525
Laclede.....	238	274	352	461	525	Lawrence.....	252	281	352	458	525
Levick.....	238	274	352	458	525	Linn.....	238	274	352	458	525
Livingston.....	238	274	353	458	525	McDonald.....	238	274	352	458	525
Macon.....	238	274	352	458	525	Madison.....	238	274	352	458	525
Marion.....	238	274	352	458	525	Marion.....	238	274	352	458	525
Mercer.....	238	274	352	458	525	Miller.....	261	314	352	461	545
Mississippi.....	238	274	352	458	525	Moniteau.....	238	274	352	458	525
Monroe.....	238	274	352	458	525	Montgomery.....	238	274	352	458	525
Morgan.....	238	274	352	458	525	New Madrid.....	238	274	352	458	525
Nodaway.....	251	304	374	475	573	Oregon.....	238	274	352	458	525
Osage.....	238	274	352	458	525	Ozark.....	238	274	352	458	525
Pemiscot.....	238	274	352	458	525	Perry.....	276	281	375	499	525
Pettis.....	255	299	400	503	602	Phelps.....	246	295	378	513	557
Pike.....	238	274	352	458	552	Polk.....	238	275	352	458	550
Pulaski.....	238	333	374	495	552	Putnam.....	238	274	352	458	525
Ralls.....	238	274	352	458	525	Randolph.....	238	274	352	458	525
Reynolds.....	238	274	352	458	525	Ripley.....	238	274	352	458	525
St. Clair.....	238	274	352	458	525	Ste. Genevieve.....	238	283	384	468	590
St. Francois.....	251	316	400	502	658	Saline.....	238	274	362	458	525
Schuyler.....	238	274	352	458	525	Scotland.....	238	274	352	458	525
Scott.....	286	288	385	519	598	Shannon.....	238	274	352	458	525
Shelby.....	238	274	352	458	525	Stoddard.....	238	274	352	458	525
Stone.....	276	294	365	466	525	Sullivan.....	238	274	352	458	525
Taney.....	269	297	389	525	617	Texas.....	238	274	352	458	525
Vernon.....	238	274	352	469	525	Washington.....	278	336	377	471	528
Wayne.....	238	274	352	458	525	Worth.....	238	274	352	458	525
Wright.....	238	274	352	458	525						

M O N T A N A

METROPOLITAN FMR AREAS

	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA.....	322	374	501	673	816	Yellowstone
Great Falls, MT MSA.....	322	372	491	639	761	Cascade

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M O N T A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaverhead.....	295	341	450	585	683	Big Horn.....	295	341	450	585	683
Blaine.....	295	341	450	585	683	Broadwater.....	295	341	450	585	729
Carbon.....	295	346	450	585	683	Carter.....	295	362	450	585	683
Chouteau.....	295	341	450	585	683	Custer.....	295	341	450	585	683
Daniels.....	295	362	450	585	683	Dawson.....	295	341	450	585	683
Deer Lodge.....	295	341	450	585	683	Fallon.....	295	341	450	585	683
Fergus.....	295	341	450	585	683	Flathead.....	295	342	457	637	750
Gallatin.....	364	424	569	731	935	Garfield.....	295	341	450	585	683
Glacier.....	295	341	450	585	683	Golden Valley.....	295	361	450	585	683
Granite.....	295	341	450	585	683	Hill.....	304	341	450	585	683
Jefferson.....	311	341	450	585	683	Judith Basin.....	295	362	450	585	683
Lake.....	321	341	450	585	683	Lewis and Clark.....	328	385	511	711	842
Liberty.....	295	341	450	585	683	Lincoln.....	321	341	450	585	683
McCone.....	295	360	450	585	683	Madison.....	301	341	450	585	683
Meagher.....	295	362	450	585	683	Mineral.....	295	341	450	585	683
Missoula.....	322	378	504	649	825	Musselshell.....	300	341	450	585	683
Park.....	295	341	450	585	691	Petroleum.....	295	341	450	585	683
Phillips.....	295	341	450	585	683	Pondera.....	295	361	450	585	683
Powder River.....	295	346	450	585	683	Powell.....	300	341	450	585	683
Prairie.....	295	341	450	585	683	Ravalli.....	295	341	450	585	683
Richland.....	295	369	450	585	683	Roosevelt.....	308	341	450	585	683
Rosebud.....	295	341	450	585	683	Sanders.....	295	341	450	585	683
Sheridan.....	303	341	450	585	683	Silver Bow.....	295	341	450	585	683
Stillwater.....	301	341	450	585	683	Sweet Grass.....	318	341	450	585	683
Teton.....	295	341	450	585	683	Toole.....	301	341	450	585	683
Treasure.....	295	341	450	585	683	Valley.....	295	341	450	585	683
Wheatland.....	295	341	450	585	683	Wibaux.....	295	362	450	585	683

N E B R A S K A -

METROPOLITAN FMR AREAS

	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA.....	310	398	525	697	813	Lancaster
Omaha, NE-IA MSA.....	334	458	578	758	850	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA.....	340	408	509	635	725	Dakota

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR
Adams.....	247	330	437	547	656	566	Antelope.....	237	320	389	500	566	566
Arthur.....	237	305	389	497	566	566	Banner.....	237	305	389	498	566	566
Blaine.....	237	305	389	497	566	566	Boone.....	237	305	389	497	589	589
Box Butte.....	257	305	389	498	588	588	Boyd.....	237	318	389	497	566	566
Brown.....	237	305	389	497	578	578	Buffalo.....	255	369	463	578	598	598
Burt.....	237	305	389	497	566	566	Butler.....	237	305	389	497	566	566
Cedar.....	237	305	389	497	566	566	Chase.....	237	321	389	497	593	593
Cherry.....	237	320	389	500	589	589	Cheyenne.....	265	305	389	497	566	566
Clay.....	237	305	389	497	566	566	Colfax.....	258	317	389	497	566	566
Cuming.....	237	321	389	497	566	566	Custer.....	265	307	389	497	588	588
Dawes.....	253	305	389	501	591	591	Dawson.....	260	317	389	501	566	566
Deuel.....	237	305	389	497	566	566	Dixon.....	264	305	389	497	566	566
Dodge.....	237	305	401	528	566	566	Dundy.....	237	305	389	497	566	566
Fillmore.....	237	305	389	497	566	566	Franklin.....	237	305	389	502	566	566
Frontier.....	266	305	389	497	566	566	Furness.....	237	305	389	497	589	589
Gage.....	237	306	396	504	566	566	Garden.....	237	317	389	500	591	591
Garfield.....	237	305	389	497	566	566	Gasper.....	237	305	389	497	573	573
Grant.....	237	305	389	497	566	566	Greeley.....	237	305	389	497	576	576
Hall.....	284	374	498	656	734	734	Hamilton.....	237	305	389	501	566	566
Harlan.....	237	305	389	498	566	566	Hayes.....	237	319	389	497	589	589
Hitchcock.....	237	305	389	497	566	566	Holt.....	237	305	389	497	566	566
Hooker.....	237	319	389	498	566	566	Howard.....	237	305	389	497	566	566
Jefferson.....	237	305	389	497	566	566	Johnson.....	237	309	389	497	566	566
Kearney.....	237	305	389	497	591	591	Kelth.....	237	305	389	497	566	566
Keya Paha.....	237	305	389	497	566	566	Kimball.....	237	305	389	498	591	591
Knox.....	237	316	389	497	566	566	Lincoln.....	243	317	389	497	566	566
Logan.....	237	305	389	497	592	592	Loup.....	237	305	389	497	590	590
McPherson.....	237	305	389	498	566	566	Madison.....	243	319	422	546	566	566
Merrick.....	237	305	389	497	566	566	Morrill.....	237	307	389	497	589	589
Nance.....	237	305	389	497	566	566	Nemaha.....	237	305	389	497	566	566
Nuckolls.....	237	305	389	497	566	566	Otoe.....	237	305	389	497	592	592
Pawnee.....	237	305	389	501	566	566	Perkins.....	237	305	389	497	566	566
Phelps.....	265	305	389	498	591	591	Pierce.....	237	305	389	497	566	566
Platte.....	237	305	389	543	566	566	Polk.....	237	305	389	497	566	566
Red Willow.....	237	305	389	497	576	576	Richardson.....	237	305	389	497	566	566
Rock.....	237	312	389	497	566	566	Saline.....	237	318	389	497	566	566
Saunders.....	237	305	389	497	566	566	Scotts Bluff.....	241	316	401	497	589	589
Seward.....	294	305	397	497	566	566	Sheridan.....	237	305	389	497	567	567
Sherman.....	237	307	389	497	592	592	Sioux.....	237	305	389	497	591	591
Stanton.....	237	305	389	497	566	566	Thayer.....	237	320	389	497	566	566

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR
Thomas.....	237	305	389	497	566	566	Thurston.....	237	305	389	497	566	566
Valley.....	237	305	389	497	566	566	Wayne.....	271	305	389	497	589	589
Webster.....	237	305	389	497	566	566	Wheeler.....	237	305	389	498	566	566
York.....	237	305	394	497	566	566							

METROPOLITAN FMR AREAS	O	BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA.....	491	582	693	965	1139	1139	Clark, Nye
Reno, NV MSA.....	475	551	708	986	1165	1165	Washoe

NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR
Churchill.....	438	445	595	820	973	973	Douglas.....	394	574	720	999	1112	1112
Elko.....	399	455	607	801	997	997	Esmeralda.....	422	527	594	740	830	830
Eureka.....	323	527	594	739	827	827	Humboldt.....	475	498	601	788	843	843
Lander.....	326	505	594	742	972	972	Lincoln.....	324	487	594	743	831	831
Lyon.....	387	462	594	826	973	973	Mineral.....	328	448	597	782	978	978
Pershing.....	449	455	607	759	868	868	Storey.....	455	461	607	845	997	997
White Pine.....	324	446	594	801	842	842	Carson City.....	341	466	623	866	1022	1022

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	O	BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA.....	643	723	906	1132	1329	1329	Rockingham county towns of Seabrook town
Lawrence, MA-NH PMSA.....	432	522	656	820	1009	1009	South Hampton town
							Rockingham county towns of Atkinson town, Chester town
							Danville town, Derry town, Fremont town, Hampstead town
							Kingston town, Newton town, Plaistow town, Raymond town
							Salem town, Sandown town, Windham town
							Hillsborough county towns of Pelham town
							Hillsborough county towns of Bedford town, Goffstown town
							Manchester city, Weare town
							Merrimack county towns of Allenstown town, Hooksett town
							Rockingham county towns of Auburn town, Candia town
							Londonderry town
							Hillsborough county towns of Amherst town, Brookline town
							Greenville town, Hollis town, Hudson town
							Litchfield town, Mason town, Merrimack town
							Milford town, Mont Vernon town, Nashua city
							New Ipswich town, Wilton town
							Rockingham county towns of Brentwood town
							East Kingston town, Epping town, Exeter town
							Greenland town, Hampton town, Hampton Falls town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Components of FMR AREA within STATE

Kensington town, New Castle town, Newfields town
 Newington town, Newmarket town, North Hampton town
 Portsmouth city, Rye town, Stratham town
 Strafford county towns of Barrington town, Dover city
 Durham town, Farmington town, Lee town, Madbury town
 Milton town, Rochester city, Rollinsford town
 Somersworth city

Towns within non metropolitan counties

Belknap..... 428 495 651 879 1069
 Carroll..... 358 491 654 819 1022
 Cheshire..... 444 527 674 878 1041
 Coos..... 306 374 480 626 741
 Grafton..... 394 476 634 819 1035

Hillsborough..... 420 525 700 926 1114

Antrim town, Bennington town, Deering town
 Francetown town, Greenfield town, Hancock town
 Hillsborough town, Lyndeborough town, New Boston town
 Peterborough town, Sharon town, Temple town
 Windsor town

Merrimack..... 442 528 659 844 943

Andover town, Boacaven town, Bow town, Bradford town
 Canterbury town, Chichester town, Concord city
 Danbury town, Dunbarton town, Epsom town, Franklin city
 Henniker town, Hill town, Hopkinton town, Loudon town
 Newbury town, New London town, Northfield town
 Pembroke town, Pittsfield town, Salisbury town
 Sutton town, Warner town, Webster town, Wilnot town
 Deerfield town, Northwood town, Nottingham town
 Middleton town, New Durham town, Strafford town

Rockingham..... 459 537 719 997 1151
 Strafford..... 406 551 735 922 1033
 Sullivan..... 427 434 563 740 789

NEW JERSEY

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Atlantic-Cape May, NJ PMSA..... 488 555 739 926 1058
 Bergen-Passaic, NJ PMSA..... 615 749 878 1170 1443
 Jersey City, NJ PMSA..... 565 666 776 986 1085
 Middlesex-Somerset-Hunterdon, NJ PMSA..... 702 769 960 1304 1506
 Monmouth-Ocean, NJ PMSA..... 578 693 879 1168 1370
 Newark, NJ PMSA..... 533 681 820 1033 1306
 Philadelphia, PA-NJ PMSA..... 475 584 722 903 1132
 Trenton, NJ PMSA..... 477 665 810 1097 1325
 Vineland-Millville-Bridgeton, NJ PMSA..... 471 573 692 862 969

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NEW MEXICO

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Albuquerque, NM MSA..... 392 467 584 805 950
 Las Cruces, NM MSA..... 292 367 436 598 705
 Santa Fe, NM MSA..... 422 599 740 993 1124

NONMETROPOLITAN COUNTIES O BR 1 BR 2 BR 3 BR 4 BR

Catron..... 271 317 393 528 596
 Cibola..... 282 308 393 528 596
 Curry..... 271 315 412 528 596
 Eddy..... 278 307 393 528 614
 Guadalupe..... 271 307 393 528 600
 Hidalgo..... 271 307 393 528 596
 Lincoln..... 307 315 415 547 684
 McKinley..... 271 340 433 539 604
 Otero..... 271 307 393 548 596
 Rio Arriba..... 317 324 398 528 596
 San Juan..... 306 328 409 568 673
 Sierra..... 271 307 393 528 596
 Taos..... 465 471 628 785 1034
 Union..... 271 330 393 528 596

NEW YORK

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Albany-Schenectady-Troy, NY MSA..... 397 488 601 754 843
 Binghamton, NY MSA..... 356 400 498 634 710
 Buffalo-Niagara Falls, NY PMSA..... 346 421 507 634 710
 Dutchess County, NY PMSA..... 559 710 877 1140 1332
 Elmira, NY MSA..... 356 400 490 621 740
 Glens Falls, NY MSA..... 356 464 565 707 791
 Jamestown, NY MSA..... 356 400 480 621 710
 Nassau-Suffolk, NY PMSA..... 752 906 1105 1537 1647
 New York, NY PMSA..... 704 785 891 1114 1249
 Westchester County, NY..... 676 881 1073 1395 1665
 Newburgh, NY-PA PMSA..... 448 582 712 903 1030
 Rochester, NY MSA..... 383 498 606 777 849
 Syracuse, NY MSA..... 381 460 569 726 806
 Utica-Rome, NY MSA..... 356 400 489 621 710

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NEW YORK continued

NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR
Allegany.....	355	399	479	620	709		Cattaraugus.....	355	399	479	620	709	
Chemung.....	378	399	479	620	709		Columbia.....	355	399	479	620	709	
Columbia.....	444	466	598	783	838		Cortland.....	355	399	479	620	709	
Delaware.....	355	399	479	620	709		Essex.....	355	399	479	620	709	
Franklin.....	355	399	479	620	709		Fulton.....	355	399	479	620	709	
Greene.....	355	460	552	713	869		Hamilton.....	355	427	491	620	709	
Jefferson.....	382	451	530	664	743		Levi.....	355	399	479	620	709	
Otsego.....	355	420	483	624	792		St. Lawrence.....	355	399	479	620	709	
Schuyler.....	384	409	486	677	797		Seneca.....	379	407	492	636	709	
Stauben.....	367	418	479	627	709		Sullivan.....	460	516	629	869	881	
Tompkins.....	463	499	641	894	1054		Ulster.....	436	606	729	949	1195	
Wyoming.....	355	399	479	620	709		Yates.....	355	399	479	620	709	

NORTH CAROLINA

METROPOLITAN FMR AREAS

ASHEVILLE, NC MSA.....	O	BR 1	BR 2	BR 3	BR 4	BR	COUNTIES OF FMR AREA WITHIN STATE	O	BR 1	BR 2	BR 3	BR 4	BR
Asheville, NC MSA.....	341	413	538	701	756		Buncombe, Madison	341	413	538	701	756	
Charlotte-Gastonia-Rock Hill, NC-SC MSA.....	434	489	551	726	870		Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union	434	489	551	726	870	
Fayetteville, NC MSA.....	374	425	476	659	784		Cumberland	374	425	476	659	784	
Goldensboro, NC MSA.....	306	353	429	552	644		Wayne	306	353	429	552	644	
Greensboro-Winston-Salem-High Point, NC MSA.....	405	461	550	756	771		Alamance, Davidson, Davila, Forsyth, Guilford, Randolph	405	461	550	756	771	
Greenville, NC MSA.....	400	405	525	708	866		Stokes, Yadkin	400	405	525	708	866	
Hickory-Morganton, NC MSA.....	386	421	488	615	730		Pitt	386	421	488	615	730	
Jacksonville, NC MSA.....	349	407	460	638	755		Alexander, Burke, Caldwell, Catawba	349	407	460	638	755	
Norfolk-Virginia Beach-Port News, VA-NC MSA.....	433	487	576	803	944		Onslow	433	487	576	803	944	
Raleigh-Durham-Chapel Hill, NC MSA.....	453	550	645	866	1021		Chatham, Durham, Franklin, Johnston, Orange, Wake	453	550	645	866	1021	
Rocky Mount, NC MSA.....	326	353	429	568	626		Edgecombe, Nash	326	353	429	568	626	
Wilmington, NC MSA.....	447	491	602	823	981		Brunswick, New Hanover	447	491	602	823	981	

NONMETROPOLITAN COUNTIES

NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR
Allegheny.....	292	342	409	527	624		Anson.....	292	337	409	527	598	
Ashe.....	292	337	409	527	598		Avery.....	326	367	447	560	626	
Beaufort.....	292	337	409	527	598		Bertie.....	292	337	409	527	598	
Bladen.....	292	337	409	527	598		Camden.....	292	337	409	527	598	
Carteret.....	331	362	442	614	683		Caswell.....	292	337	409	527	598	
Cherokee.....	292	337	409	527	598		Chowan.....	292	337	409	527	598	
Clay.....	292	337	409	527	598		Cleveland.....	292	343	409	542	598	
Columbus.....	292	337	409	527	598		Craven.....	292	365	440	575	616	
Dare.....	303	480	553	758	775		Duplin.....	292	337	409	527	598	
Gates.....	292	337	409	527	598		Graham.....	292	337	409	527	598	

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.20 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR
Granville.....	308	337	409	542	613		Greene.....	292	337	409	527	598	
Halifax.....	292	337	409	527	598		Harnett.....	292	337	409	527	598	
Haywood.....	304	346	421	585	615		Henderson.....	278	389	481	640	737	
Hertford.....	292	337	409	527	598		Hoke.....	292	337	409	527	598	
Hyde.....	292	337	409	527	598		Iredell.....	394	404	533	666	745	
Jackson.....	292	337	409	527	598		Jones.....	292	337	409	527	598	
Lee.....	292	373	442	572	620		Lenoir.....	292	337	409	527	598	
McDowell.....	292	356	427	583	691		Mecon.....	292	349	409	527	598	
Martin.....	292	337	409	527	598		Mitchell.....	292	382	439	599	626	
Montgomery.....	292	337	409	527	598		Moore.....	292	352	420	574	689	
Northampton.....	292	337	409	527	598		Pamlico.....	292	337	409	527	598	
Pasquotank.....	337	360	449	624	630		Pender.....	292	354	409	527	644	
Perquimans.....	292	337	409	527	598		Person.....	292	337	439	572	670	
Polk.....	292	370	415	527	598		Richmond.....	292	337	409	527	598	
Robeson.....	292	344	409	527	598		Rockingham.....	292	337	409	527	598	
Rutherford.....	295	337	409	527	598		Sampson.....	292	337	409	527	598	
Scotland.....	292	337	409	527	598		Stanly.....	292	337	415	560	598	
Surry.....	292	337	409	527	598		Swain.....	292	337	409	527	598	
Tennessee.....	338	361	457	606	648		Tyrrell.....	292	337	409	527	598	
Vance.....	309	350	409	527	598		Warren.....	292	337	409	527	598	
Washington.....	292	337	409	527	598		Watauga.....	381	457	578	787	949	
Wilkes.....	332	374	421	582	654		Wilson.....	305	337	414	527	598	
Yancey.....	292	343	409	527	617								

NORTH DAKOTA

METROPOLITAN FMR AREAS

BISMARCK, ND MSA.....	O	BR 1	BR 2	BR 3	BR 4	BR	COUNTIES OF FMR AREA WITHIN STATE	O	BR 1	BR 2	BR 3	BR 4	BR
Bismarck, ND MSA.....	337	377	503	700	828		Burleigh, Morton	337	377	503	700	828	
Fargo-Moorhead, ND-MN MSA.....	331	456	550	763	817		Cass	331	456	550	763	817	
Grand Forks, ND-MN MSA.....	342	408	536	739	825		Grand Forks	342	408	536	739	825	

NONMETROPOLITAN COUNTIES

NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR
Adams.....	227	285	368	478	558		Barnes.....	227	287	380	497	558	
Benson.....	256	285	368	478	558		Billing.....	247	285	368	478	558	
Bottineau.....	227	285	368	478	558		Bowman.....	227	285	368	478	558	
Burke.....	247	285	368	478	558		Cavalier.....	227	293	391	487	601	
Otkey.....	227	285	368	478	558		Divide.....	227	285	368	478	558	
Dunn.....	227	285	368	478	558		Eddy.....	227	285	368	478	558	
Emmons.....	227	285	368	478	558		Foster.....	227	285	370	478	558	
Golden Valley.....	227	292	389	488	558		Grant.....	227	285	368	478	558	

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.20 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES	O BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	O BR 1	BR 2	BR 3	BR 4	BR
Griggs.....	227	285	368	478	558	Hettinger.....	227	285	368	478	558
Kiowa.....	227	285	368	478	558	Lacourse.....	227	285	368	478	558
Logan.....	227	285	368	478	558	McHenry.....	227	285	368	478	558
McIntosh.....	227	285	368	478	558	McKenzie.....	227	285	368	478	558
McLean.....	241	285	368	478	558	Mercer.....	227	285	368	478	558
Mountain.....	251	285	368	478	558	Nelson.....	227	285	368	478	558
Oliver.....	227	285	368	478	558	Pembina.....	227	285	368	478	558
Pierce.....	227	285	368	478	558	Ramsey.....	234	312	416	521	681
Ransom.....	232	285	368	478	558	Renville.....	263	285	368	478	558
Richland.....	239	285	375	478	558	Rollette.....	246	313	378	478	558
Sargent.....	227	285	368	478	558	Sheridan.....	227	285	368	478	558
Sioux.....	227	285	368	478	558	Slope.....	227	285	368	478	558
Stark.....	227	285	368	478	558	Steele.....	227	285	368	478	558
Stutsman.....	272	285	372	518	611	Towner.....	260	292	389	486	639
Trail.....	239	303	368	478	558	Wahkiakum.....	302	323	401	503	562
Ward.....	227	312	416	563	671	Wells.....	242	285	368	478	558
Williams.....	227	285	368	478	558						

O H I O

METROPOLITAN FMR AREAS

	O BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Akron, OH MSA.....	356	432	554	693	778	Portage, Summit
Brown County, OH.....	286	336	419	543	599	Brown
Canton-Massillon, OH MSA.....	284	370	472	590	663	Carrroll, Stark
Cincinnati, OH-KY-IN.....	309	397	531	712	769	Clermont, Hamilton, Warren
Cleveland-Lorain-Elyria, OH MSA.....	382	480	594	755	851	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA.....	364	431	553	702	807	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton-Springfield, OH MSA.....	379	424	542	700	785	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH MSA.....	311	442	566	708	793	Butler
Huntington-Ashland, WV-KY-OH MSA.....	302	354	437	557	613	Lawrence
Lima, OH MSA.....	284	340	448	571	627	Allen, Auglaize
Mansfield, OH MSA.....	284	340	433	541	606	Crawford, Richland
Parkersburg-Marion, WV-OH MSA.....	304	384	417	541	586	Washington
Steubenville-Weirton, OH-WV MSA.....	284	335	419	535	597	Jefferson
Toledo, OH MSA.....	355	432	528	680	738	Fulton, Lucas, Wood
Wheeling, WV-OH MSA.....	310	339	419	535	597	Belmont
Youngstown-Warren, OH MSA.....	297	350	438	552	628	Columbiana, Mahoning, Trumbull

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

O H I O continued

NONMETROPOLITAN COUNTIES	O BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES	O BR 1	BR 2	BR 3	BR 4	BR
Adams.....	278	329	410	524	586	Ashland.....	278	329	433	541	606
Athens.....	328	371	438	571	702	Champaign.....	278	338	440	549	615
Canton.....	278	356	428	596	601	Coshocton.....	278	329	410	524	586
Darke.....	305	329	413	524	586	Defiance.....	280	329	434	547	608
Erie.....	278	370	462	623	755	Fayette.....	302	329	410	524	586
Gallia.....	278	329	410	524	586	Guernsey.....	278	329	410	524	586
Hancock.....	352	358	451	575	630	Hardin.....	278	329	410	524	586
Harrison.....	278	329	410	524	586	Henry.....	300	332	414	534	608
Highland.....	278	329	410	524	586	Hocking.....	278	329	410	524	586
Holmes.....	278	329	410	524	586	Huron.....	321	350	436	575	612
Jackon.....	278	329	410	524	586	Knox.....	326	359	461	595	658
Logan.....	325	330	426	573	597	Marion.....	278	329	410	524	586
Meigs.....	278	329	410	524	586	Mercer.....	278	329	410	524	603
Monroe.....	278	329	410	524	586	Morgan.....	278	334	410	524	586
Morrow.....	278	329	410	524	586	Muskingum.....	278	329	410	524	586
Noble.....	278	329	410	524	586	Ottawa.....	278	410	472	642	686
Paulding.....	278	329	410	524	586	Perry.....	278	329	410	524	586
Pike.....	292	347	431	552	616	Preble.....	285	337	420	538	601
Putnam.....	288	329	410	524	586	Ross.....	321	335	410	524	586
Sandusky.....	278	360	462	582	644	Scioto.....	278	329	410	524	586
Seneca.....	279	329	410	528	586	Shelby.....	278	338	452	563	632
Tuscarawas.....	278	329	430	538	603	Union.....	278	384	507	634	734
Van Wert.....	278	333	410	524	586	Vinton.....	278	329	410	524	586
Wayne.....	278	367	452	573	632	Williams.....	295	329	410	524	586
Wyandot.....	278	329	410	524	586						

O K L A H O M A

METROPOLITAN FMR AREAS

	O BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Enid, OK MSA.....	296	300	398	554	634	Garfield
Fort Smith, AR-OK MSA.....	303	307	404	540	567	Sequoyah
Lawton, OK MSA.....	366	388	469	651	713	Cowanche
Oklahoma City, OK MSA.....	331	361	468	651	728	Canadian, Cleveland, Logan, McClain, Oklahoma
Tulsa, OK MSA.....	332	397	520	724	853	Pottawatomie
						Creek, Osage, Rogers, Tulsa, Wagoner

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

O K L A H O M A continued

NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR
Adair.....	247 284 354 471 540	Alfalfa.....	247 284 354 471 540
Atoka.....	247 284 354 471 540	Beaver.....	247 284 354 471 540
Beckham.....	251 284 354 471 540	Blaine.....	247 284 354 471 540
Bryan.....	247 284 354 471 540	Caddo.....	247 284 354 471 540
Carter.....	247 286 357 497 540	Cherokee.....	259 293 354 471 548
Choctaw.....	247 284 354 471 540	Ciarron.....	247 284 354 471 540
Coal.....	247 284 354 471 540	Cotton.....	247 284 354 471 540
Craig.....	247 284 354 471 540	Custer.....	247 284 354 471 540
Delaware.....	247 284 354 471 540	Dewey.....	247 284 354 471 540
Ellis.....	247 284 354 471 540	Garvin.....	247 284 354 471 540
Grady.....	271 284 367 499 602	Grant.....	247 284 354 471 540
Greer.....	247 284 354 471 540	Harmon.....	247 284 354 471 540
Harper.....	247 284 354 471 540	Haskell.....	247 284 354 471 540
Hughes.....	247 284 354 471 540	Jackson.....	247 321 391 514 580
Jefferson.....	247 284 354 471 540	Johnston.....	247 284 354 471 540
Kay.....	274 290 381 531 622	Kingfisher.....	247 292 362 474 540
Kiowa.....	247 284 354 471 540	Latimer.....	247 284 354 471 540
Le Flore.....	247 284 354 471 540	Lincoln.....	265 284 354 471 540
Love.....	247 284 354 471 540	McCurtain.....	247 284 354 471 540
McIntosh.....	247 284 354 471 540	Major.....	247 297 354 491 540
Marshall.....	247 284 354 471 540	Mayer.....	247 286 383 483 540
Murray.....	247 284 354 471 540	Muskogee.....	268 301 354 489 540
Noble.....	247 284 354 471 540	Nowata.....	247 284 354 471 540
Okfuskee.....	247 284 354 471 540	Okmulgee.....	251 284 354 471 540
Ottawa.....	266 284 354 471 540	Pawnee.....	279 284 367 472 540
Payne.....	286 337 432 596 669	Pittsburg.....	247 284 354 471 540
Pontotoc.....	247 284 354 471 540	Pushmataha.....	247 284 354 471 540
Roger Mills.....	247 284 354 471 540	Seminole.....	247 284 354 471 540
Stephens.....	251 284 354 471 562	Texas.....	247 294 354 472 540
Tillman.....	247 284 354 471 540	Washington.....	247 339 413 548 640
Washita.....	247 284 354 471 540	Woods.....	247 284 354 471 540
Woodward.....	247 284 354 471 540		

O R E G O N

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Eugene-Springfield, OR MSA.....	334 458 597 833 963 Lane
Medford-Ashtland, OR MSA.....	343 450 601 835 931 Jackson
Portland-Vancouver, OR-WA PMSA.....	425 523 645 897 974 Clackamas, Columbia, Multnomah, Washington, Yamhill

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

O R E G O N continued

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Salem, OR PMSA.....	376 443 568 782 819 Marion, Polk
NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR
Baker.....	311 368 477 657 732
Clatsop.....	358 425 556 758 851
Crook.....	311 368 477 657 732
Deschutes.....	384 441 590 822 951
Gilliam.....	311 392 477 657 732
Harney.....	311 368 477 657 732
Jefferson.....	311 368 477 657 732
Klamath.....	311 368 477 657 777
Lincoln.....	377 383 510 710 771
Malheur.....	311 368 477 657 732
Sherman.....	311 368 477 657 732
Umatilla.....	311 368 477 657 732
Wallowa.....	311 368 477 657 732
Wheeler.....	311 368 477 657 732
NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR
Benton.....	371 481 610 918 975
Coos.....	311 379 503 701 732
Curry.....	311 423 561 718 883
Douglas.....	311 368 477 657 782
Grant.....	311 368 477 657 732
Hood River.....	342 385 523 680 804
Josephine.....	311 377 485 657 766
Lake.....	311 368 477 657 732
Linn.....	373 443 575 790 881
Morrow.....	311 368 477 657 732
Tillamook.....	311 368 477 657 732
Union.....	311 368 477 657 732
Wasco.....	378 468 524 714 802

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Allentown-Bethlehem-Easton, PA MSA.....	414 562 669 871 979 Carbon, Lehigh, Northampton
Altoona, PA MSA.....	283 359 431 562 628 Blair
Erie, PA MSA.....	287 374 441 569 636 Erie
Harrisburg-Lebanon-Carlisle, PA MSA.....	340 436 559 704 784 Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA.....	287 364 439 569 636 Cambria, Somerset
Lancaster, PA MSA.....	377 462 576 752 809 Lancaster
Newburgh, NY-PA PMSA.....	448 582 712 903 1030 Pike
Philadelphia, PA-NJ PMSA.....	475 584 722 903 1132 Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA.....	335 411 495 620 693 Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA.....	298 441 544 679 766 Berks
Scranton-Wilkes-Barre-Hazleton, PA MSA.....	287 401 480 599 724 Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA.....	315 364 439 569 636 Mercer
State College, PA MSA.....	412 504 624 818 875 Centre
Williamsport, PA MSA.....	287 366 441 569 636 Lycoming
York, PA MSA.....	320 439 544 678 759 York

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR
Adams.....	282 379 503 652 825	Armstrong.....	286 378 429 560 704
Bedford.....	282 358 429 560 626	Bradford.....	286 362 442 578 633
Cameron.....	282 358 429 560 626	Clarion.....	282 358 429 560 626
Cleaverfield.....	282 358 429 560 626	Clinton.....	282 358 429 560 626
Crawford.....	282 358 429 560 626	Elk.....	282 358 429 560 626
Forest.....	282 358 429 560 626	Franklin.....	282 358 435 599 626
Fulton.....	282 358 429 560 626	Greene.....	282 358 429 560 626
Huntingdon.....	282 358 429 560 626	Indiana.....	323 360 429 560 626
Jefferson.....	282 358 429 560 626	Juniata.....	282 358 429 560 626
Lawrence.....	282 358 429 560 626	Mc Kean.....	282 360 429 560 626
Mifflin.....	313 358 429 560 626	Monroe.....	451 537 664 907 1013
Montour.....	333 358 451 626 739	Northumberland.....	298 376 460 611 680
Potter.....	282 358 429 560 626	Schuylkill.....	282 358 447 560 626
Snyder.....	339 358 430 560 626	Sullivan.....	282 358 429 560 626
Susquehanna.....	337 358 429 560 665	Tioga.....	282 358 429 560 626
Union.....	340 452 584 708 788	Venango.....	282 358 429 560 626
Warren.....	282 358 429 560 626	Wayne.....	283 437 515 656 843

RHODE ISLAND

METROPOLITAN FMR AREAS	O BR 1 BR 2 BR 3 BR 4 BR	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA.....	491 594 723 905 1034	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA MSA.....	405 551 662 831 1024	Bristol county towns of Barrington town, Bristol town
		Warren town
		Kent county towns of Coventry town, East Greenwich town
		Warwick city, West Greenwich town, West Warwick town
		Newport county towns of Jamestown town
		Little Compton town, Tiverton town
		Providence County towns of Burrillville town
		Central Falls city, Cranston city, Cumberland town
		East Providence city, Foster town, Glocester town
		Johnston town, Lincoln town, North Providence t
		North Smithfield t, Pawtucket city, Providence city
		Scituate town, Smithfield town, Woonsocket city
		Washington county towns of Charlestown town, Exeter town
		Narragansett town, North Kingstown town, Richmond town
		South Kingstown town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

RHODE ISLAND continued

NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	Towns within non metropolitan counties
Newport.....	554 646 829 1038 1161	Middletown town, Newport city, Portsmouth town
Washington.....	655 737 828 1069 1177	New Shoreham town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	O BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA.....	357 427 503 683 808	Aiken, Edgefield
Charleston-North Charleston, SC MSA.....	401 465 534 710 827	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA.....	434 489 551 726 870	York
Columbia, SC MSA.....	430 473 544 719 827	Lexington, Richland
Florence, SC MSA.....	325 362 470 587 658	Florence
Greenville-Spartanburg-Anderson, SC MSA.....	354 428 483 609 716	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA.....	422 429 549 686 769	Horry
Sumter, SC MSA.....	344 381 433 592 703	Sumter

NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR
Abbeville.....	287 335 407 523 598	Allendale.....	287 335 407 523 598
Bamberg.....	287 335 407 523 598	Barnwell.....	302 335 409 523 598
Beaufort.....	410 503 579 723 810	Calhoun.....	287 335 407 523 598
Chester.....	287 335 407 523 598	Chesterfield.....	287 335 407 523 598
Clarendon.....	287 335 407 523 598	Colleton.....	287 335 407 523 598
Darlington.....	287 335 407 523 598	Oillon.....	287 335 407 523 598
Fairfield.....	287 385 439 547 613	Georgetown.....	287 365 410 523 623
Greenwood.....	288 335 407 523 598	Hampton.....	287 335 407 523 598
Jasper.....	287 335 407 523 598	Kershaw.....	287 335 407 523 598
Lancaster.....	301 336 407 523 598	Laurens.....	287 335 407 523 598
Lee.....	287 335 407 523 598	McCormick.....	287 335 407 523 637
Marion.....	287 335 407 523 598	Marlboro.....	287 335 407 523 598
Newberry.....	287 335 407 523 598	Oconee.....	287 335 407 523 598
Orangeburg.....	287 335 407 523 598	Saluda.....	287 335 407 523 598
Union.....	287 335 407 523 598	Williamsburg.....	287 335 407 523 598

SOUTH DAKOTA

METROPOLITAN FMR AREAS	O BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA.....	349 415 553 752 909	Pennington
Sioux Falls, SD MSA.....	337 466 591 748 859	Lincoln, Minnehaha

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR
Aurora.....	252 337 419 555 642	Beadle.....	252 334 419 555 642
Bennett.....	252 334 419 555 642	Bon Homme.....	280 334 419 555 642
Brookings.....	270 427 474 640 755	Brown.....	252 334 419 555 642
Brule.....	252 334 419 555 642	Buffalo.....	252 334 419 555 648
Butte.....	290 396 526 688 811	Campbell.....	252 334 419 555 642
Charles Mix.....	252 334 419 555 642	Clark.....	252 334 419 555 642
Clay.....	252 334 419 555 689	Codington.....	252 334 419 555 642
Corson.....	252 334 419 555 642	Custer.....	252 334 419 555 642
Davison.....	264 334 419 562 642	Day.....	281 334 419 555 642
Deuel.....	252 334 419 555 642	DeWey.....	252 334 419 555 642
Douglas.....	280 334 419 555 642	Edwards.....	252 334 419 555 642
Fall River.....	287 334 419 555 842	Faulk.....	252 334 442 555 642
Grant.....	252 334 419 555 642	Gregory.....	253 334 419 555 642
Hakon.....	252 342 419 555 642	Hamlin.....	252 334 419 555 642
Hand.....	252 334 419 555 642	Hanson.....	256 350 466 586 655
Harding.....	252 342 419 555 642	Hughes.....	277 334 442 582 689
Hutchinson.....	252 334 419 555 642	Hyde.....	252 340 419 555 642
Jackson.....	252 339 419 555 642	Jerauld.....	252 337 419 555 642
Jones.....	252 334 419 555 642	Kingaury.....	275 334 419 555 642
Lake.....	252 339 419 555 642	Lawrence.....	288 415 522 716 810
Lyman.....	252 334 419 555 642	McCook.....	252 334 419 555 642
McPherson.....	252 334 419 555 642	Marshall.....	297 334 419 555 642
Meade.....	354 399 532 697 823	Melette.....	300 339 419 555 642
Miner.....	252 339 419 555 642	Moody.....	252 334 419 555 642
Parkins.....	252 334 419 555 642	Potter.....	252 334 419 555 642
Roberts.....	252 334 419 555 642	Sanborn.....	252 334 419 555 642
Shannon.....	252 339 419 555 642	Spink.....	274 334 426 555 642
Stanley.....	252 342 419 555 642	Sully.....	252 334 419 555 642
Todd.....	278 334 419 555 642	Tripp.....	252 334 419 555 642
Turner.....	252 334 419 555 642	Union.....	265 334 419 555 642
Walworth.....	252 342 419 555 642	Yankton.....	252 334 419 555 642
Ziebach.....	252 334 419 555 642		

T E N N E S S E E

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Chattanooga, TN-GA MSA.....	364 425 510 559 751
Clarksville-Hopkinsville, TN-KY MSA.....	337 378 443 605 621
Jackson, TN MSA.....	262 345 462 639 643

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E N N E S S E E continued

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Johnson City-Kingsport-Bristol, TN-VA MSA.....	303 362 447 561 688
Knoxville, TN MSA.....	303 373 468 624 750
Memphis, TN-AR-MS MSA.....	387 451 530 736 774
Nashville, TN MSA.....	425 508 626 853 958

Sumner, Williamson, Wilson

Carter, Hawkins, Sullivan, Union, Washington

Anderson, Blount, Knox, Loudon, Sevier, Union

Fayette, Shelby, Tipton

Cheatham, Davidson, Dickson, Robertson, Rutherford

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E N E S S E E continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Weakley.....	257	279	352	463	519	White.....	242	279	352	463	519
T E X A S											
METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE	O BR	1 BR	2 BR	3 BR	4 BR
Abilene, TX MSA.....	333	371	479	646	785	Taylor	333	371	479	646	785
Amarillo, TX MSA.....	282	356	443	618	729	Potter, Randall	282	356	443	618	729
Austin-San Marcos, TX MSA.....	434	525	699	970	1147	Bastrop, Caldwell, Hays, Travis, Williamson	434	525	699	970	1147
Beaumont-Port Arthur, TX MSA.....	321	389	474	628	665	Hardin, Jefferson, Orange	321	389	474	628	665
Brazoria, TX MSA.....	444	495	619	862	1014	Brazoria	444	495	619	862	1014
Brownsville-Harlingen-San Benito, TX MSA.....	338	426	532	666	831	Cameron	338	426	532	666	831
Bryan-College Station, TX MSA.....	376	437	553	771	909	Brazos	376	437	553	771	909
Corpus Christi, TX MSA.....	352	432	552	752	888	Nueces, San Patricio	352	432	552	752	888
Dallas, TX.....	487	560	718	994	1175	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall	487	560	718	994	1175
El Paso, TX MSA.....	397	445	527	730	865	El Paso	397	445	527	730	865
Fort Worth-Arlington, TX MSA.....	417	453	588	820	967	Hood, Johnson, Parker, Tarrant	417	453	588	820	967
Galveston-Texas City, TX MSA.....	436	448	562	780	920	Galveston	436	448	562	780	920
Henderson County, TX.....	292	347	424	579	695	Henderson	292	347	424	579	695
Houston, TX MSA.....	413	486	601	837	986	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller	413	486	601	837	986
Killeen-Temple, TX MSA.....	396	412	522	726	797	Bell, Coryell	396	412	522	726	797
Laredo, TX MSA.....	320	369	485	606	682	Webb	320	369	485	606	682
Longview-Marshall, TX MSA.....	317	358	439	599	654	Gregg, Harrison, Upshur	317	358	439	599	654
Lubbock, TX MSA.....	304	385	499	695	770	Lubbock	304	385	499	695	770
Mc Allen-Edinburg-Mission, TX MSA.....	267	365	418	522	586	Hidalgo	267	365	418	522	586
Odessa-Midland, TX MSA.....	304	351	469	652	756	Ector, Midland	304	351	469	652	756
San Angelo, TX MSA.....	282	360	437	600	708	Tom Green	282	360	437	600	708
San Antonio, TX MSA.....	371	428	554	771	911	Bexar, Comal, Guadalupe, Wilson	371	428	554	771	911
Sherman-Denison, TX MSA.....	282	386	466	595	712	Grayson	282	386	466	595	712
Texas-Kana, TX-Texas-Kana, AR MSA.....	307	375	458	604	641	Bowie	307	375	458	604	641
Tyler, TX MSA.....	353	390	476	660	698	Smith	353	390	476	660	698
Victoria, TX MSA.....	349	353	446	619	698	Victoria	349	353	446	619	698
Waco, TX MSA.....	307	376	495	659	694	McLennan	307	376	495	659	694
Wichita Falls, TX MSA.....	338	378	456	607	716	Archer, Wichita	338	378	456	607	716

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson.....	330	372	417	581	587	Andrews.....	275	318	383	514	587
Angelina.....	300	348	392	544	641	Araucaria.....	275	338	451	627	631
Armstrong.....	275	318	415	521	587	Atascosa.....	275	318	383	514	587
Austin.....	275	318	383	525	587	Bailey.....	275	318	383	514	587
Bandera.....	295	318	383	521	587	Baylor.....	275	318	383	514	587
Bee.....	275	318	383	514	587	Blanco.....	275	318	405	565	595
Borden.....	275	318	383	514	587	Bosque.....	275	318	383	514	587
Brewster.....	275	318	383	518	620	Briscoe.....	275	318	383	514	587
Brooks.....	275	318	383	514	587	Brown.....	275	318	384	516	630
Burleson.....	275	318	402	544	663	Burnet.....	275	318	391	543	635
Calhoun.....	294	318	383	530	627	Callahan.....	275	318	383	514	587
Camp.....	372	377	471	590	659	Carson.....	275	318	383	514	587
Cass.....	275	318	383	514	587	Castro.....	277	318	383	514	587
Cherokee.....	307	319	390	514	587	Childress.....	275	318	383	514	587
Clay.....	275	324	383	514	598	Cochran.....	275	318	383	514	587
Coke.....	275	318	383	514	587	Coleman.....	275	318	383	514	587
Collingsworth.....	275	318	383	514	587	Colorado.....	275	318	383	514	587
Conanche.....	275	318	383	514	587	Concho.....	275	318	383	514	587
Cooke.....	298	318	403	548	608	Cottle.....	275	318	383	514	587
Crane.....	275	318	383	514	587	Crockett.....	275	318	383	514	587
Crosby.....	275	318	383	514	587	Culberson.....	275	318	383	514	587
Dallam.....	275	318	383	514	587	Daveon.....	275	318	383	514	587
Dallas.....	275	318	383	514	587	Delta.....	275	329	383	514	587
Dawson.....	275	318	383	514	587	Dickens.....	275	318	383	514	587
Deaf Smith.....	275	318	383	514	587	Donley.....	275	318	383	514	587
Dewitt.....	275	318	383	514	587	Eastland.....	275	318	383	514	587
Dimmit.....	275	318	383	514	587	Erath.....	285	323	417	540	587
Duval.....	275	318	383	514	587	Fannin.....	279	318	383	514	587
Edwards.....	275	318	383	514	587	Fisher.....	275	318	383	514	587
Falls.....	275	318	383	514	587	Foard.....	275	318	383	514	587
Fayette.....	275	318	383	514	587	Freestone.....	275	318	383	514	587
Floyd.....	275	318	383	514	587	Gaines.....	281	318	383	514	587
Franklin.....	275	318	383	530	587	Gillespie.....	275	346	449	617	629
Frio.....	275	318	383	514	587	Goliad.....	275	318	383	514	587
Garza.....	275	318	383	514	587	Gray.....	301	318	408	514	606
Gillespie.....	275	318	383	514	587	Hale.....	275	318	383	514	587
Glasscock.....	275	318	383	514	587	Hamilton.....	275	318	383	514	587
Gonzales.....	275	318	383	514	587	Hardeman.....	275	318	383	514	587
Grimes.....	275	318	383	518	611	Haskell.....	275	318	383	514	587
Hall.....	275	318	383	514	587	Hill.....	275	318	383	514	587
Hansford.....	275	318	383	514	602						
Hartley.....	275	318	383	514	587						
Hemphill.....	275	354	396	553	587						

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR
Hockley.....	281	328	383	519	587	
Houston.....	275	318	383	514	587	
Hudspeth.....	331	374	417	524	688	
Irion.....	275	318	383	514	587	
Jackson.....	275	319	383	514	587	
Jeff Davis.....	275	318	383	514	587	
Jim Wells.....	275	318	383	514	594	
Karnes.....	275	318	383	514	587	
Kenedy.....	275	318	383	514	587	
Kerr.....	275	356	445	619	730	
King.....	275	318	383	514	587	
Kleberg.....	334	346	422	590	694	
Lamar.....	275	341	401	561	663	
Lampasas.....	275	318	383	521	615	
Lavaca.....	275	318	383	514	587	
Leon.....	275	353	395	514	651	
Lipscomb.....	275	318	383	514	587	
Llano.....	275	354	471	591	774	
Lynn.....	275	318	383	514	587	
McMullen.....	275	318	383	514	587	
Marion.....	275	318	383	514	608	
Mason.....	275	318	383	514	587	
Maverick.....	275	318	383	514	587	
Menard.....	275	318	383	514	587	
Mills.....	275	318	383	514	587	
Montague.....	275	318	383	514	587	
Morris.....	275	318	383	514	587	
Nacogdoches.....	290	350	454	567	670	
Newton.....	275	318	383	514	587	
Ochiltree.....	275	318	383	514	587	
Palo Pinto.....	275	318	383	514	610	
Parmer.....	275	318	383	514	587	
Poik.....	307	335	390	525	637	
Rains.....	275	356	431	597	602	
Real.....	275	318	383	514	587	
Reeves.....	275	318	383	514	587	
Roberts.....	275	321	383	514	587	
Runnels.....	275	318	383	514	587	
Sabine.....	275	318	383	514	587	
San Jacinto.....	288	325	383	514	600	

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR
Schleicher.....	275	318	383	514	587	
Shackelford.....	275	318	383	514	587	
Sherman.....	275	318	383	514	587	
Starr.....	275	318	383	514	587	
Sterling.....	275	318	383	514	587	
Sutton.....	275	318	383	514	587	
Tarrant.....	275	318	383	514	587	
Throckmorton.....	275	318	383	514	587	
Trinity.....	286	323	383	514	587	
Upton.....	275	318	383	514	587	
Val Verde.....	275	365	430	536	632	
Walker.....	371	394	482	640	676	
Washington.....	341	348	465	581	763	
Wheeler.....	275	318	383	514	587	
Willacy.....	275	318	383	514	587	
Wise.....	275	321	385	537	587	
Yoakum.....	275	362	445	556	730	
Zapata.....	275	318	383	514	587	

U T A H

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Kane County, UT.....	306	378	470	630	759	Kane
Provo-Orem, UT MSA.....	423	447	553	766	908	Utah
Salt Lake City-Ogden, UT MSA.....	432	501	635	884	1036	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES

NONMETROPOLITAN COUNTIES	O	BR 1	BR 2	BR 3	BR 4	BR
Beaver.....	295	362	453	607	730	
Cache.....	329	404	507	678	816	
Daggett.....	321	439	583	731	819	
Emery.....	295	362	453	607	730	
Grand.....	295	362	453	607	730	
Juab.....	295	362	453	607	730	
Morgan.....	295	362	453	607	730	
Rich.....	295	362	453	607	730	
Sanpete.....	295	362	453	607	730	
Summit.....	437	539	673	908	1104	
Uintah.....	295	362	453	607	730	
Washington.....	364	448	595	795	973	

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

VERMONT

METROPOLITAN FMR AREAS

	O BR 1	BR 2	BR 3	BR 4	BR	Components of FMR AREA within STATE
Burlington, VT MSA.....	424	519	692	943	1138	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williamston town, Windsor city Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES

	O BR 1	BR 2	BR 3	BR 4	BR	Towns within non metropolitan counties
Addison.....	418	505	587	818	918	
Barnington.....	371	468	602	765	891	
Caledonia.....	329	393	480	605	694	
Chittenden.....	384	621	700	972	1146	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex.....	322	387	480	605	694	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomey town, Richford town Sheldon town
Franklin.....	346	391	480	609	700	Albany town, Isle La Motte town, North Hero town
Grand Isle.....	322	387	480	605	694	
Lamoille.....	334	464	553	758	869	
Orange.....	347	455	560	740	829	
Orleans.....	322	387	480	605	694	
Rutland.....	375	487	595	746	835	
Washington.....	360	446	602	753	844	
Windham.....	407	471	625	793	873	
Windsor.....	438	495	619	795	942	

VIRGINIA

METROPOLITAN FMR AREAS

	O BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA.....	427	504	645	857	981	Albemarle, Fluvanna, Greene, Charlottesville city
Clark County, VA.....	305	430	556	764	780	Clarke
Culpeper County, VA.....	375	548	637	842	1008	Culpeper
Danville, VA MSA.....	291	366	431	578	697	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA.....	303	362	447	581	688	Scott, Washington, Bristol city
King George County, VA.....	369	491	551	766	772	King George
Lynchburg, VA MSA.....	346	381	440	578	697	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
Norfolk-Virginia Beach-Neport News, VA-NC MSA..	433	487	576	803	944	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

VIRGINIA continued

METROPOLITAN FMR AREAS

	O BR 1	BR 2	BR 3	BR 4	BR	Counties of FMR AREA within STATE
Richmond-Petersburg, VA MSA.....	470	533	620	863	1018	Suffolk city, Virginia Beach city, Williamsburg city Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA.....	293	366	475	610	760	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA.....	298	408	544	713	891	Warren
Washington, DC-MD-VA.....	615	699	820	1118	1347	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES

NONMETROPOLITAN COUNTIES					O BR 1	BR 2	BR 3	BR 4	BR	NONMETROPOLITAN COUNTIES					O BR 1	BR 2	BR 3	BR 4	BR				
Accomack.....	339	366	428	568	685	Allegany.....	298	360	423	568	685	Appomattox.....	286	360	423	568	685	Bath.....	286	360	423	568	685
Amelia.....	286	360	423	568	685	Augusta.....	286	370	450	592	721	Brunswick.....	286	360	423	568	685	Buckingham.....	286	360	423	568	685
Caroline.....	405	410	546	728	767	Carroll.....	286	360	423	568	685	Craig.....	286	360	423	568	685	Dickinson.....	286	360	423	568	685
Charlotte.....	286	360	423	568	685	Cumberland.....	286	392	455	568	685	Floyd.....	286	360	423	568	685	Frederick.....	388	448	538	737	883
Essex.....	286	402	475	661	779	Franklin.....	286	360	423	568	685	Grayson.....	286	360	423	568	685	Halifax.....	286	360	423	568	685
Giles.....	286	360	423	568	685	Greenesville.....	286	370	423	568	685	Highland.....	286	360	423	568	685	King William.....	286	392	439	568	685
Henry.....	286	360	423	568	685	King and Queen.....	286	410	462	577	685	Lee.....	286	360	423	568	685	Lunenburg.....	286	360	423	568	685
Lancaster.....	357	401	453	603	734	Louisiana.....	286	372	459	637	685	Mecklenburg.....	286	360	423	568	685	Montgomery.....	294	386	454	630	745
Louisiana.....	286	372	459	637	685	Madison.....	286	426	480	601	786	Northampton.....	286	360	423	568	685	Nottoway.....	286	360	423	568	685
Middlesex.....	286	362	423	568	685	Nelson.....	286	360	423	568	685	Page.....	332	374	423	568	685	Prince Edward.....	320	362	423	568	685
Northumberland.....	286	360	423	568	685	Orange.....	317	431	577	803	942	Rappahannock.....	290	470	528	733	865	Rockbridge.....	286	360	423	568	685
Patrick.....	286	360	423	568	685	Pulaski.....	286	360	423	568	685	Russell.....	286	360	423	568	685	Smyth.....	286	360	423	568	685
Richmond.....	286	381	427	568	702	Rockingham.....	286	396	501	687	805	Surry.....	297	360	423	568	685	Tazewell.....	286	360	423	568	685
Shenandoah.....	376	386	476	659	748	Shenandoah.....	376	386	476	659	748	Smyth.....	286	360	423	568	685	Surry.....	297	360	423	568	685
Southampton.....	286	360	423	568	685	Sussex.....	286	360	423	568	685	Tazewell.....	286	360	423	568	685						

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

For example, 032598.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

VIRGINIA continued

NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR	NONMETROPOLITAN COUNTIES	O BR 1 BR 2 BR 3 BR 4 BR
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Westmoreland..... 286 386 513 645 835
Wythe..... 299 360 423 568 685

WASHINGTON

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Bellingham, WA MSA..... 395 512 682 942 1117 Whatcom
Bremerton, WA MSA..... 415 479 620 838 1019 Kitsap
Olympia, WA MSA..... 427 524 655 901 1062 Thurston
Portland-Vancouver, OR-WA MSA..... 425 523 645 897 974 Clark
Richland-Kennewick-Pasco, WA MSA..... 492 564 675 940 1103 Benton, Franklin
Seattle-Bellevue-Everett, WA MSA..... 478 582 736 1022 1208 Island, King, Snohomish
Spokane, WA MSA..... 318 430 519 705 790 Spokane
Tacoma, WA MSA..... 369 440 586 815 921 Pierce
Yakima, WA MSA..... 356 438 543 728 760 Yakima

NONMETROPOLITAN COUNTIES O BR 1 BR 2 BR 3 BR 4 BR

Adams..... 315 377 490 647 718 Asotin..... 315 377 490 647 718
Chelan..... 315 377 490 647 718 Clallam..... 367 454 578 743 812
Columbia..... 315 377 490 647 718 Cowlitz..... 353 395 509 707 718
Douglas..... 368 389 490 647 718 Ferry..... 315 377 490 647 718
Garfield..... 315 377 490 647 718 Grant..... 338 377 490 647 718
Grays Harbor..... 322 377 495 668 770 Jefferson..... 315 407 500 678 718
Kittitas..... 315 377 490 647 718 Klickitat..... 315 377 490 647 718
Lewis..... 315 377 490 647 718 Lincoln..... 315 377 490 647 718
Mason..... 357 443 545 716 770 Okanogan..... 315 377 490 647 718
Pacific..... 315 377 490 647 718 Pend Oreille..... 315 377 490 647 861
San Juan..... 389 531 708 933 1110 Skagit..... 429 524 618 772 863
Skamania..... 315 377 490 647 718 Stevens..... 315 377 490 647 718
Wahkiakum..... 315 377 490 647 718 Walla Walla..... 315 377 490 656 775
Whitman..... 339 388 514 714 845

WEST VIRGINIA

METROPOLITAN FMR AREAS

Berkeley County, WV..... 401 428 504 629 707 Berkeley
Charleston, WV MSA..... 285 386 490 673 736 Kanawha, Putnam
Cumberland, MD-WV MSA..... 334 402 497 657 750 Mineral
Huntington-Ashland, WV-KY-OH MSA..... 302 354 437 557 613 Cabell, Wayne
Jefferson County, WV..... 406 449 556 723 819 Jefferson

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

WEST VIRGINIA continued

METROPOLITAN FMR AREAS

Parkersburg-Marletta, WV-OH MSA..... 304 364 417 541 586 Wood
Steubenville-Weirton, OH-WV MSA..... 284 335 419 535 597 Brooke, Hancock
Wheeling, WV-OH MSA..... 310 339 419 535 597 Marshall, Ohio

NONMETROPOLITAN COUNTIES O BR 1 BR 2 BR 3 BR 4 BR

Barbour..... 254 322 360 464 539 Boone..... 254 310 360 464 539
Braxton..... 254 310 360 464 539 Calhoun..... 254 310 360 464 539
Clay..... 254 310 360 464 539 Doddridge..... 263 310 360 464 539
Fayette..... 254 310 360 464 539 Gilmer..... 279 310 360 464 539
Grant..... 254 310 360 464 539 Greenbrier..... 254 350 373 466 539
Hampshire..... 254 310 362 477 539 Hardy..... 254 310 360 464 539
Harrison..... 279 343 396 484 593 Jackson..... 254 317 360 493 539
Lewis..... 254 339 360 464 539 Lincoln..... 254 310 360 464 539
Logan..... 260 310 360 467 552 McDowell..... 254 310 360 464 539
Marion..... 254 320 395 506 584 Mason..... 254 310 360 464 554
Mercer..... 254 310 360 464 539 Mingo..... 254 310 360 464 546
Monongalia..... 319 353 430 553 701 Monroe..... 254 310 360 464 539
Morgan..... 345 389 436 547 610 Nicholas..... 254 310 360 464 539
Pendleton..... 254 310 360 464 539 Pleasants..... 262 310 360 464 553
Pocahontas..... 254 310 360 464 539 Preston..... 254 325 360 464 539
Raleigh..... 293 345 402 518 606 Randolph..... 254 310 360 464 539
Ritchie..... 254 310 360 464 539 Roane..... 254 310 360 464 539
Summers..... 254 310 360 464 539 Taylor..... 311 335 366 464 539
Tucker..... 254 310 360 464 539 Tyler..... 254 310 379 475 539
Upshur..... 254 310 362 464 539 Webster..... 254 310 360 464 539
Wetzel..... 287 310 389 486 613 Wirt..... 254 310 360 464 539
Wyoming..... 254 310 360 464 539

WISCONSIN

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA..... 317 390 495 625 720 Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA..... 277 357 459 613 714 Douglas
Eau Claire, WI MSA..... 341 372 488 626 705 Chippewa, Eau Claire
Green Bay, WI MSA..... 375 413 530 736 740 Brown
Janesville-Beloit, WI MSA..... 348 440 545 682 765 Rock
Kenosha, WI MSA..... 379 470 577 794 893 Kenosha
La Crosse, WI-MN MSA..... 281 362 461 617 747 La Crosse
Madison, WI MSA..... 433 545 658 914 1078 Dane

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 032598

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

W I S C O N S I N continued

METROPOLITAN FMR AREAS

	O BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA.....	368 482 605 758 847	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA.....	405 521 666 901 1020	Pierce, St. Croix
Racine, WI PMSA.....	327 405 535 691 756	Racine
Sheboygan, WI MSA.....	302 389 475 593 736	Sheboygan
Wausau, WI MSA.....	371 384 460 654 725	Marathon

NONMETROPOLITAN COUNTIES O BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES		0 BR	1 BR	2 BR	3 BR	4 BR
Adams.....	275	320	408	521	587	
Barron.....	275	320	408	521	587	
Buffalo.....	275	320	408	521	587	
Clark.....	275	320	408	521	587	
Crawford.....	275	320	408	521	587	
Door.....	275	340	422	543	659	
Florence.....	275	320	408	521	587	
Forest.....	275	320	408	521	587	
Green.....	280	320	408	549	587	
Iowa.....	285	320	408	536	587	
Jackson.....	275	320	408	521	587	
Juneau.....	281	320	408	521	587	
Lafayette.....	280	320	408	521	587	
Lincoln.....	275	320	408	521	587	
Marquette.....	275	320	408	521	587	
Menominee.....	275	320	408	521	587	
Oconto.....	275	320	408	521	587	
Pepin.....	275	320	408	521	587	
Portage.....	334	353	458	571	707	
Richland.....	275	320	408	521	587	
Sauk.....	321	332	443	552	619	
Shawano.....	280	320	408	521	587	
Trempealeau.....	275	320	408	521	587	
Vilas.....	275	320	408	521	587	
Washburn.....	275	320	408	521	587	
Waushara.....	275	320	408	521	587	
Ashland.....	300	332	408	521	587	
Bayfield.....	275	320	408	521	587	
Burnett.....	275	320	408	521	587	
Columbia.....	275	326	429	562	631	
Dodge.....	348	353	464	581	649	
Dunn.....	275	320	419	560	692	
Fond du Lac.....	319	432	512	696	718	
Grant.....	279	320	408	521	587	
Green Lake.....	275	320	408	521	587	
Iron.....	275	320	408	521	587	
Jefferson.....	275	364	473	611	668	
Kewaunee.....	275	320	408	521	587	
Langlade.....	275	320	408	521	587	
Manitowoc.....	278	320	408	521	587	
Marquette.....	275	320	408	521	587	
Monroe.....	275	320	408	544	587	
Oneida.....	275	321	408	525	629	
Polk.....	275	320	415	521	587	
Price.....	275	320	408	521	587	
Rusk.....	275	320	408	521	587	
Sawyer.....	275	320	408	521	587	
Taylor.....	275	320	408	521	587	
Vernon.....	275	320	408	521	587	
Walworth.....	287	403	524	682	766	
Waupaca.....	275	320	408	521	617	
Wood.....	298	341	423	531	596	

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

W Y O M I N G

METROPOLITAN FMR AREAS

	O BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE
Casper, WY MSA.....	316 367 468 642 759	Natrona
Cheyenne, WY MSA.....	357 448 598 764 928	Laramie

NONMETROPOLITAN COUNTIES O BR 1 BR 2 BR 3 BR 4 BR

NONMETROPOLITAN COUNTIES					METROPOLITAN COUNTIES						
	0 BR	1 BR	2 BR	3 BR	4 BR		0 BR	1 BR	2 BR	3 BR	4 BR
Albany.....	305	383	510	709	838	Big Horn.....	290	334	428	568	653
Campbell.....	314	334	428	570	673	Carbon.....	290	334	428	568	653
Converse.....	290	334	428	568	653	Crook.....	290	334	428	568	653
Fremont.....	290	334	428	568	653	Goshen.....	290	334	428	568	653
Hot Springs.....	290	334	428	568	653	Johnson.....	290	334	428	568	653
Lincoln.....	290	334	428	568	653	Niobrara.....	290	334	428	568	653
Park.....	290	334	428	568	660	Platte.....	290	334	428	568	653
Sheridan.....	290	334	428	568	660	Sublette.....	323	364	428	568	653
Sweetwater.....	302	334	428	570	673	Teton.....	388	494	655	881	961
Uinta.....	304	334	428	569	688	Washakie.....	290	334	428	568	653
Weston.....	290	334	428	568	653						

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES O BR 1 BR 2 BR 3 BR 4 BR

Pacific Islands.....	680 818 968 1214 1366
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P U E R T O R I C O

METROPOLITAN FMR AREAS

	O BR 1 BR 2 BR 3 BR 4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA.....	210 256 304 378 426	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR MSA.....	227 275 323 406 456	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR MSA.....	265 319 377 474 527	Caguas Municipio, Cayey Municipio, Cidra Municipio
Mayaguez, PR MSA.....	250 304 361 448 505	Guayama Municipio, San Lorenzo Municipio
Ponce, PR MSA.....	248 303 357 446 501	Hormigueros Municipio, Cabo Rojo Municipio
San Juan-Bayamon, PR PMSA.....	333 407 480 601 674	Sabana Grande Municipio, Mayaguez Municipio
		San German Municipio
		Penuelas Municipio, Juana Diaz Municipio
		Yauco Municipio
		Agua Buena Municipio, Barceloneta Municipio
		Bayamon Municipio, Canovanas Municipio
		Carolina Municipio, Catano Municipio, Ceiba Municipio
		Comerio Municipio, Corozal Municipio, Dorado Municipio
		Fajardo Municipio, Florida Municipio, Guaynabo Municipio
		Humacao Municipio, Juncos Municipio
		Las Piedras Municipio, Loiza Municipio
		Luquillo Municipio, Manati Municipio, Morovis Municipio

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

P U E R T O R I C O continued

METROPOLITAN FMR AREAS

O BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Naguabo Municipio, Naranjito Municipio
 Rio Grande Municipio, San Juan Municipio
 Toa Alta Municipio, Toa Baja Municipio
 Trujillo Alto Municipio, Vega Alta Municipio
 Vega Baja Municipio, Yabucoa Municipio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adjuntas Municipio.....	200	247	289	365	404
Arroyo Municipio.....	200	247	289	365	404
Ciales Municipio.....	200	247	289	365	404
Culebra Municipio.....	200	247	289	365	404
Guayama Municipio.....	200	247	289	365	404
Jayuya Municipio.....	200	247	289	365	404
Lares Municipio.....	200	247	289	365	404
Maricao Municipio.....	200	247	289	365	404
Orocovis Municipio.....	200	247	289	365	404
Quebradillas Municipio..	200	247	289	365	404
Salinas Municipio.....	200	247	289	365	404
Santa Isabel Municipio..	200	247	289	365	404
Vieques Municipio.....	200	247	289	365	404

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. Croix.....	477	579	683	853	956

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. John/St. Thomas....	613	743	875	1094	1225

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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Schedule D: FY 1999 40th Percentile Fair Market Rents
 For Manufactured Home Spaces In The Section 8 Certificate Program

Area Name	Space Rent
<u>California</u>	
Mendocino County, CA	\$245
Orange County, CA PMSA	\$458
San Diego, CA MSA	\$405
Vallejo-Fairfield-Napa, CA PMSA	\$300
<u>Colorado</u>	
Boulder-Longmont, CO PMSA	\$327
Denver, CO PMSA	\$311
<u>Delaware</u>	
Dover, DE MSA	\$175
Sussex County, DE	\$121
<u>Maryland</u>	
Hagerstown, MD PMSA	\$215
St. Mary's County, MD	\$264
<u>Minnesota</u>	
Minneapolis-St. Paul, MN-WI MSA	\$268
<u>New York</u>	
Dutchess County, NY PMSA	\$360
Jamestown, NY MSA	\$175
Newburgh, NY-PA PMSA	\$338
Rochester, NY MSA	\$244
Utica-Rome, NY MSA	\$218
Tompkins County, NY	\$204
<u>Oregon</u>	
Salem, OR PMSA	\$227
Portland-Vancouver, OR-WA MSA	\$274
Benton County, OR	\$207
Linn County, OR	\$187
<u>Utah</u>	
Provo-Orem, UT MSA	\$219
<u>Vermont</u>	
Washington County, VT	\$209
<u>West Virginia</u>	
Berkeley County, WV	\$141
Jefferson County, WV	\$145
Morgan County, WV	\$140

federal register

Tuesday
May 5, 1998

Part III

Department of Education

Office of Elementary and Secondary
Education

The Native Hawaiian Curriculum
Development, Teacher Training, and
Recruitment Program; Notices

DEPARTMENT OF EDUCATION

(CFDA No.: 84-297A)

Office of Elementary and Secondary Education; The Native Hawaiian Curriculum Development, Teacher Training, and Recruitment Program

AGENCY: Department of Education.

ACTION: Notice of Final Priorities.

SUMMARY: The Secretary announces final priorities for fiscal year (FY) 1998 under the Native Hawaiian Curriculum Development, Teacher Training, and Recruitment Program. The priorities are intended to focus activities in one of three major areas in which there is a need for additional support: (1) waste management innovation; (2) Native Hawaiian language revitalization curricula and teacher training and recruitment activities; and (3) prisoner education programs.

EFFECTIVE DATE: June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Beth Baggett, U.S. Department of Education, 600 Independence Avenue, SW, Portals 4500, Washington, D.C. 20202-6140. Telephone (202) 260-2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person.

SUPPLEMENTARY INFORMATION: On March 6, 1998, the Secretary published in the *Federal Register* (63 FR 11329-11330) a notice of proposed funding priorities announcing that the Secretary intended to use \$2 million of the FY 1998 funds available under this program to fund one or two projects in each of the three priority categories: (1) waste management innovation; (2) Native Hawaiian language revitalization curricula and teacher training and recruitment; and (3) prisoner education programs that target juvenile offenders and/or youth at risk of becoming juvenile offenders.

In response to the Secretary's notice of proposed funding priorities, eight parties submitted comments. Five of the comments specifically addressed the proposed funding priorities, and were generally supportive of the priorities. Included in these comments were recommendations for specific program design elements. The Secretary believes that many of these recommendations, which form the basis for the additional

program design information provided in the notice inviting applications for new awards published elsewhere in this issue of the *Federal Register*, can be incorporated into applications as part of the proposed projects.

Three commenters requested the Secretary to reinstate aquaculture education as a funding priority. Aquaculture education remains a very significant part of the Native Hawaiian Curriculum Development, Teacher Training, and Recruitment Program. The Department is currently funding three aquaculture education projects and, as discussed in the notice of proposed funding priorities, has reserved funds to continue these projects. The remaining funds available for this program will be used to support projects in the new priority areas.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the *Federal Register*.

Absolute Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that focus entirely on activities in one of the following three areas:

(1) Waste management innovation to study and document traditional Hawaiian practices of sustainable waste management and to prepare teaching materials for educational purposes and for demonstration of the use of native Hawaiian plants and animals for waste treatment and environmental remediation;

(2) Native Hawaiian language revitalization curricula and teacher training and recruitment activities, including K-12 language immersion programs, preservice and inservice teacher training programs, and programs designed to increase the number of Native Hawaiian teachers; or

(3) Prisoner education programs that target juvenile offenders and/or youth at risk of becoming juvenile offenders. Comprehensive and culturally sensitive strategies for reaching the target population will include family counseling, basic education/job skills training, and the involvement of community elders as mentors.

The Secretary funds under the FY 1998 competition under this program only applicants that meet one of these absolute priorities.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the *Federal Register*, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>
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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the pdf, call the U.S. Government Printing Office toll free at 1-888-293-6498.

Program Authority: 20 U.S.C. 7909.

Dated: May 1, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 98-11991 Filed 5-4-98; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

(CFDA No.: 84.297A)

Office of Elementary and Secondary Education; The Native Hawaiian Curriculum Development, Teacher Training, and Recruitment Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1998.

Purpose of Program:

To award grants to Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language for: (1) The development of curricula to address the needs of Native Hawaiian elementary and secondary students, which may include programs of instruction conducted in the Native Hawaiian language and mathematics and science curricula incorporating the relevant application of Native Hawaiian culture and traditions; (2) preservice teacher

training to ensure that student teachers within the State, particularly those who are likely to be employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions; (3) inservice teacher training to ensure that teachers, particularly those employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions; and (4) teacher recruitment programs to enhance teacher recruitment within communities with a high concentration of Native Hawaiian students and to increase the numbers of teachers who are of Native Hawaiian ancestry. Consistent with this statutory purpose, the Secretary has established absolute priorities that will govern the distribution of funds under this program.

Eligible Applicants: Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Deadline for Transmittal of Applications: June 18, 1998.

Deadline for Intergovernmental Review: August 18, 1998.

Applications Available: May 5, 1998.

Available Funds: \$2 million.

Estimated Number of Awards: 1 to 2 awards in each of the three priority categories.

Estimated Size of Awards: \$660,000.

Estimated Range of Awards: \$330,000 to \$660,000.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations. The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

Absolute Priorities. The Secretary has published elsewhere in this issue of the *Federal Register* a notice of final priorities, which establishes absolute priorities in the following areas: (1) waste management innovation; (2) Native Hawaiian language revitalization curricula and teacher training and recruitment activities; and (3) prisoner education programs. Under 34 CFR 75.105(c)(3), the Secretary will fund under this competition only applicants that meet one of the absolute priorities.

Statutory Priorities. In accordance with section 9209(b) of the Elementary and Secondary Education Act, the Secretary gives priority to awarding grants for activities that —

(1) Focus on the needs of at-risk youth; or

(2) Employ a program of instruction conducted in the Native Hawaiian language.

These statutory priorities are included in the selection criteria for this competition.

SUPPLEMENTARY INFORMATION:

Applications will be reviewed on the basis of the absolute priorities and the selection criteria included in this notice. All funded projects must meet one of the absolute priorities. While applicants have discretion in determining how best to address the absolute priorities, the Secretary is particularly interested in receiving quality proposals that include the components described below. Funded proposals may lack some of these specific components, but address the absolute priorities in other effective ways.

(1) Waste management treatment programs

The Secretary believes that quality waste management treatment programs should investigate, describe, and document traditional Hawaiian practices of sustainable waste management. A successful applicant should have specific knowledge of the capacities of Native Hawaiian plants and animals to contribute to the management of modern waste materials. The applicant should have experience in educational programming, especially for elementary and secondary school grades, so that knowledge about traditional Hawaiian methods of sustainable waste management can be developed and used. The applicant should develop curricular materials based on the demonstration and use of Native Hawaiian plants and animals for waste treatment and environmental remediation, and have the capacity to develop operational demonstration projects that would show how traditional Hawaiian sustainable environmental methods can be adapted to modern waste treatment needs.

(2) Native Hawaiian language revitalization curricula, teacher recruitment, and training programs

The Secretary believes that applicants seeking funding for activities relating to Native Hawaiian language revitalization curricula, teacher recruitment, and training should coordinate these activities statewide to provide access to materials, training, and appropriate

lexical development throughout the State. Applicants should provide evidence of demonstrated expertise in the production, illustration, field testing, proofreading, publishing, and distribution of quality printed, audio, video, and computerized Hawaiian language materials. Funded applicants should employ innovative strategies, including the modeling of total immersion in the Native Hawaiian language.

(3) Prisoner education programs

In Hawaii, the number of incarcerated Native Hawaiians, including Native Hawaiian juveniles, far exceeds their relative percentage in the State's population. The Secretary believes that a successful prisoner education program would target Native Hawaiian youth in districts with a high percentage and number of school dropouts and youth offenders. A funded applicant should have experience in working with and in encouraging the re-integration of youth offenders into the community in a culturally sensitive manner. To help ensure success of the program, funded applicants should work in partnership with the Hawaii State Department of Labor and Industrial Relations, the Office of Youth Services, and other appropriate agencies. A strong prisoner education program should focus on activities that will help re-integrate Native Hawaiian juvenile offenders and those at risk of becoming juvenile offenders into a school setting or into a career path.

Selection Criteria

The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition. Under the criterion "Quality of the project design", the factors are weighed in accordance with the points indicated. With respect to the other criteria, the factors under each criterion are weighed equally. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion, and the factors within each criterion, are as follows:

- (a) *Significance (15 points).* (1) The Secretary considers the significance of the proposed project.
- (2) In determining the significance of the proposed project, the Secretary considers the following factors:
- (i) The significance of the problem or issue to be addressed by the proposed project.
- (ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of the project design (35 points)*. (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements. (10 points)

(ii) The extent to which the proposed project represents an exceptional approach to the priorities established for the competition. (10 points)

(iii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

(iv) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points)

(c) *Quality of project personnel (10 points)*. (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(d) *Adequacy of resources (5 points)*. (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(e) *Quality of the management plan (15 points)*. (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(f) *Quality of the project evaluation (20 points)*. (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

FOR APPLICATIONS OR INFORMATION CONTACT: Beth Baggett, U.S. Department of Education, 600 Independence Avenue, S.W., Portals 4500, Washington, D.C. 20202-6140. Telephone (202) 260-2502. Individuals who use a telecommunications device

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Program Authority: 20 U.S.C. 7909.

Dated: May 1, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 98-11992 Filed 5-4-98; 8:45 am]

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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.
WHO: Sponsored by the Office of the Federal Register.
WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.
WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 19, 1998 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202-523-4538

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-09-AD; Amendment 39-10508; AD 98-09-27]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce, plc RB211 Trent 768 and 772 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce, plc RB211 Trent 768 and 772 series turbofan engines. This action requires initial and repetitive visual inspections of thrust reverser hinge lugs and attachment ribs for cracks, and, if necessary, removal from service and replacement with serviceable parts. This amendment is prompted by aircraft certification testing which revealed that stresses on the thrust reverser hinge were higher than had been anticipated during engine certification. The actions specified in this AD are intended to prevent thrust reverser hinge failure, possibly resulting in liberation of the thrust reverser cowl duct from the engine nacelle, which could result in impact damage to other sections of the aircraft.

DATES: Effective May 21, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 21, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-09-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone (317) 230-3995, fax (317) 230-4743. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7176, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on Rolls-Royce, plc (R-R) RB211 Trent 768 and 772 series turbofan engines. The CAA advises that test measurements of the pylon to thrust reverser cowl duct hinge loads revealed lower than expected hinge lug load carrying capability. In the event of failure of one of the thrust reverser cowl duct hinges, there is a reduced fatigue life capability on the adjacent hinge. This could lead to premature failure of the thrust reverser cowl duct hinges, resulting in liberation of the cowl duct from the aircraft. There are currently no affected engines operated on aircraft of U.S. registry. This AD, then, is necessary to require accomplishment of the required actions for engines installed on aircraft currently of foreign registry that may someday be imported into the U.S. Accordingly, the FAA has determined that notice and prior opportunity for comment are unnecessary and good cause exists for making this amendment effective in less than 30 days. This condition, if not corrected, could result in thrust reverser hinge failure, possibly resulting in

liberation of the thrust reverser cowl duct from the engine nacelle, which could result in impact damage to other sections of the aircraft.

R-R has issued Service Bulletin (SB) No. RB.211-78-B115, Revision 1, dated March 14, 1997, that specifies procedures for visual inspections of thrust reverser hinge lugs and attachment ribs for cracks. The CAA classified this SB as mandatory and issued AD 008-03-97 in order to assure the airworthiness of these engines in the UK.

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, this AD requires initial and repetitive visual inspections of thrust reverser hinge lugs and attachment ribs for cracks, and, if necessary, removal from service and replacement with serviceable parts. The actions would be required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted

in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-ANE-09-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation

under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-09-27 Rolls-Royce, plc: Amendment 39-10508. Docket 98-ANE-09-AD.

Applicability: Rolls-Royce, plc (R-R) RB211 Trent 768 and 772 series turbofan engines, installed on but not limited to the Airbus A330-341 and A330-342 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification,

alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent thrust reverser hinge failure, possibly resulting in liberation of the thrust reverser cowl duct from the engine nacelle, which could result in impact damage to other sections of the aircraft, accomplish the following:

(a) Perform initial and repetitive visual inspections of thrust reverser hinge lugs and attachment ribs for cracks, and, if necessary, remove from service and replace with serviceable parts, in accordance with R-R Service Bulletin (SB) No. RB.211-78-B115, Revision 1, dated March 14, 1997, as follows:

(1) Perform the initial inspection at the earlier of the following:

(i) 250 hours time in service (TIS) after the effective date of this AD; or

(ii) 1,200 flight cycles since new (CSN).

(2) Thereafter, perform visual inspections at intervals not to exceed 1,200 flight cycles in service (CIS) since last inspection.

(3) If thrust reverser hinge lugs or attachment ribs are found cracked, remove from service and replace with serviceable parts, in accordance with R-R Service Bulletin (SB) No. RB.211-78-B115, Revision 1, dated March 14, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(d) The actions required by this AD shall be performed in accordance with the following R-R SB:

Issued in Burlington, Massachusetts, on April 23, 1998.
Jay J. Pardee,
Manager, Engine and Propeller Directorate,
Aircraft Certification Service.
[FR Doc. 98-11437 Filed 5-5-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-ANE-28-AD; Amendment 39-10496; AD 98-09-15]

RIN 2120-AA64

Airworthiness Directives; General Electric Company Model GE90-76B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) Model GE90-76B turbofan engines, that requires reduced life limits for certain rotating components. This amendment is prompted by the results of a refined life analysis performed by the manufacturer which revealed minimum calculated low cycle fatigue lives lower than the published low cycle fatigue retirement lives for certain rotating components. The actions specified by this AD are intended to prevent a low cycle fatigue failure of a rotating component and possibly an uncontained engine failure.

DATES: Effective July 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 6, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Company Technical Services, Attention: Leader for distribution/microfilm, 10525 Chester Road, Cincinnati, OH 45215, telephone (513) 672-8400 Ext. 114, Fax (513) 672-8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7192, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) Model GE90-76B turbofan engines was published in the Federal Register on September 24, 1997

(62 FR 49179). That action proposed to require reduced life limits for certain rotating components.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter supports the rule as proposed.

Since publication of the Notice of Proposed Rulemaking (NPRM), GE has provided the FAA with additional analysis that substantiates the original cyclic life for the stage 7 disks (part numbers 350-000-656-0 and 350-000-657-0) of 10,000 cycles. These disks are exempted from this AD based on recent FAA approval of GE's refined life analysis substantiating the original cyclic life of 10,000 cycles for this engine model. The latest revision of the GE90 Engine Manual, Chapter 05-11-00, Life Limits 001, restored the stage 7 disk lives for the model to 10,000 cycles.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 24 engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are currently no engines installed on aircraft of U.S. registry that would be affected by this AD. Therefore, there is no associated cost impact on U.S. operators as a result of this AD.

The FAA estimates that the most representative engines will have 3 of the 6 life-limited-reduced components installed. Assuming the 3 components are the High Pressure Compressor Rotor (HPCR) 2-6 spool, HPCR CDP seal, and the Low Pressure Turbine cone shaft and that the parts cost is proportional to the reduction of the low cycle fatigue retirement lives, the required parts will cost approximately \$181,993 per engine. Based on these figures, the FAA estimates that if an engine were imported to the U.S., the total cost impact of this AD would be \$181,993 per engine.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-09-15 General Electric Company: Amendment 39-10496. Docket No. 97-ANE-28-AD.

Applicability: General Electric Company (GE) GE90-76B Model turbofan engines, installed on but not limited to Boeing 777 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Document No.	Pages	Revision	Date
RB.211-78-B115	1-6	1	March 14, 1997.
Total pages: 6.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone (317) 230-3995, fax (317) 230-4743. Copies may be inspected at the FAA, New England Region, Office of the Regional

Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 21, 1998.

Compliance: Required as indicated, unless accomplished previously.

To prevent a low cycle fatigue failure of a rotating component and possibly an uncontained engine failure, accomplish the following:

(a) Remove from service those components listed in Table 1 of GE90 Alert Service Bulletin (ASB) No. 72-A318, dated June 27, 1997, [except as noted in paragraph (b) of this AD] and replace with a serviceable component, prior to exceeding the new cyclic life limits established in paragraph 1.D. (1) of GE90 ASB No. 72-A318, dated June 27, 1997.

(b) GE has provided the FAA with additional analysis that substantiates the original cycle life for the stage 7 disks (part numbers 350-000-656-0 and 350-000-657-0) of 10,000 cycles. These disks are exempted from this AD based on recent FAA approval of GE's refined life analysis substantiating the original cycle life of 10,000 cycles for this engine model.

Note 2: The revised component life limits noted in GE90 ASB No. 72-A318, dated June 27, 1997, were added to the GE90 Engine Manual Chapter 05-11-00, Life Limits 001, in the August 1, 1997, revision. The latest revision of the GE90 Engine Manual, Chapter 05-11-00, Life Limits 001, restored the stage 7 disk lives for the model to 10,000 cycles.

(c) Except as provided in paragraph (d) of this AD, no replacement times may be approved for these parts.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following GE90 ASB:

Document No.	Pages	Date
72-A318	1-5	June 27, 1997.
Total Pages: 5.		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company Technical Services, Attention: Leader for distribution/microfilm, 10525 Chester Road, Cincinnati, OH 45215, telephone (513) 672-8400 Ext. 114, Fax (513) 672-8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or

at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 6, 1998.

Issued in Burlington, Massachusetts, on April 20, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98-11440 Filed 5-5-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-138-AD; Amendment 39-10510; AD 98-09-29]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, that requires removal and reconfiguration of the battery grounds of the auxiliary power unit (APU). This amendment is prompted by reports of smoke or fire coming from the APU due to battery grounds that were not installed or maintained properly. The actions specified by this AD are intended to prevent overheating and heat damage of the APU battery grounds due to improper installation of the APU battery ground, which could result in heat damage and consequent smoke or fire on the airplane.

DATES: Effective June 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Senior Aerospace

Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2790; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747-400 series airplanes was published in the *Federal Register* on November 25, 1997 (62 FR 62726). That action proposed to require removal and reconfiguration of the battery grounds of the auxiliary power unit (APU).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposal.

Request To Extend the Compliance Time

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the proposed compliance time be extended to allow the modification to be accomplished within 12 months, rather than 6 months. This ATA member operates the largest number of U.S.-registered 747-400 airplanes. The ATA member claims that such an extension is warranted in light of the amount of time required for preparation and accomplishment of the actions required by this proposed AD, and in light of the results of inspections to detect discrepancies of the APU battery grounds performed subsequent to receipt of and in accordance with Boeing telex M-7240-96-0927, dated May 24, 1996. The ATA member maintains that the results of this inspection indicated that the APU grounds on its airplanes that are the subject of the unsafe condition of this proposed AD were retorqued and found to be free of discrepancies.

The FAA concurs with the commenter's request to extend the compliance time from 6 months to 12 months. In light of the information presented by the commenter, the FAA finds that such an extension will allow the modification to be performed with minimal effect on the maintenance schedule and no adverse effect on safety. Paragraph (a) of the final rule has been revised to specify a compliance time of 12 months.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 359 airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$1,325 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$59,410, or \$2,285 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-09-29 Boeing: Amendment 39-10510. Docket 97-NM-138-AD.

Applicability: Model 747-400 series airplanes, as listed in Boeing Alert Service Bulletin 747-24A2214, dated June 19, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the auxiliary power unit (APU) from overheat and heat damage due to an improperly installed/maintained APU battery ground, accomplish the following:

(a) Within 12 months after the effective date of this AD, reconfigure the APU battery grounds to a dual-direct ground, single-lug configuration, in accordance with Boeing Alert Service Bulletin 747-24A2214, dated June 19, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 747-24A2214, dated June 19, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 10, 1998.

Issued in Renton, Washington, on April 24, 1998.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-11562 Filed 5-5-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-199-AD; Amendment 39-10513; AD 98-10-02]

RIN 2120-AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that requires replacement of certain wheel tie bolts with new bolts; and placing a life limit on these wheel tie bolts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent metal fatigue failure of the wheel tie bolts, which could result in a tire burst or loss of the main wheel/tire assembly, and consequent reduced controllability of the airplane.

DATES: Effective June 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Al(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes was published in the Federal Register on February 23, 1998 (63 FR 8881). That action proposed to require replacement of certain wheel tie bolts with new bolts; and placing a life limit on these wheel tie bolts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD; however, wheel tie bolts must be removed and reinstalled during each tire change, therefore no additional work hours would be required as a result of this AD. Required parts will be supplied by the manufacturer at no charge. Based on this information, the cost impact of the AD on U.S. operators is estimated to be negligible.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-10-02 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39-10513. Docket 97-NM-199-AD.

Applicability: Jetstream Model 4101 airplanes equipped with main wheels having part number (P/N) AHA1837, certificated in any category.

Note 1. This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent metal fatigue failure of the wheel tie bolts, which could result in a tire burst or loss of the main wheel/tire assembly, and consequent reduced controllability of the airplane, accomplish the following:

(a) At the next tire change after the effective date of this AD, remove main wheel tie bolts having P/N BAC-B30M516 (DSR4528-1216), and replace them with new tie bolts in accordance with Jetstream Service Bulletin J41-32-058, dated May 9, 1997. Repeat this replacement thereafter at every fifth tire change.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Jetstream Service Bulletin J41-32-058, dated May 9, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Al(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 002-05-97.

(e) This amendment becomes effective on June 10, 1998.

Issued in Renton, Washington, on April 28, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. 98-11809 Filed 5-5-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 270

[Docket No. 970822201-7202-00]

Procedures for the Evaluation of Energy-related Inventions; Removal of Regulations

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The National Institute of Standards and Technology (NIST) is terminating the current NIST program which evaluated inventions as a service to the Department of Energy's (DOE) Energy-Related Inventions Program (ERIP). During the twenty-plus years of the evaluation program's existence, NIST transmitted recommendations based on its evaluations to the Department of Energy, which used the recommendations in its decision-making for DOE's award of grants to inventors and small businesses for further development of the NIST-recommended inventions.

The Department of Energy will continue the Energy Related Inventions Program with a newly designed evaluation process consistent with a competitive procurement. The DOE has renamed ERIP as part of the DOE-operated Inventions and Innovation Program. DOE will issue a solicitation for proposals to be evaluated by DOE under the new program, beginning on May 1, 1998.

Since DOE will now process evaluations through a competitive procurement and since evaluations made by NIST under 15 CFR part 270 will no longer be used in the award selection process, there is no function for the NIST Energy-Related Invention Evaluation Program to perform, and the NIST evaluation program is being terminated.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Michael E. McCabe at telephone number (301) 975-5504.

SUPPLEMENTARY INFORMATION: Title 15 part 270 of the Code of Federal Regulations prescribes procedures for the evaluation of energy-related inventions. These procedures were issued in 1976 to partially implement section 14 of the Federal Non-nuclear Energy Research and Development Act of 1974, Pub. L. 93-577 (codified as amended at 42 U.S.C. 5901, *et seq.* hereinafter referred to as the Act). The

Act established a comprehensive national program for research and development of all potentially beneficial energy sources and utilization technologies. Section 14 of the Act directed the National Bureau of Standards (now the National Institute of Standards and Technology) to give particular attention to the evaluation of all promising energy-related inventions, especially those submitted by individual inventors and small companies for the purpose of obtaining direct grants from the Administrator of the Energy Research and Development Administration which was later incorporated into the Department of Energy.

Since 1975 NIST has been providing the prescribed evaluation services to the Department of Energy, which has overall management and budgetary responsibility for the Energy-Related Inventions Program (ERIP). NIST has completed all processing for the 33,430 requests for evaluation which were received on or before August 2, 1997. Evaluation was not performed for requests received after that date.

Of the evaluation requests received on or before August 2, 1997, 17,482 were not accepted for evaluation, largely due to inadequate documentation, obvious technical flaws in projected invention operation, or insufficient energy relation. Of the 15,948 accepted, 14,239 were rejected in a first-stage evaluation, which included commentary generally by at least two consultants, usually for lack of competitive advantage. Of the 1709 remaining (not rejected in the first stage) 741 were recommended for DOE support. The continuous multi-stage evaluation process yielded, on average, two to three recommendations per month. For each of the 15,207 cases which were not recommended, a report was provided to the inventor commenting on the technology and giving reasons why DOE support was not warranted.

The DOE will continue to evaluate inventions under its new Inventions and Innovation Program. DOE has issued a solicitation for proposals to be evaluated under the new program beginning on May 1, 1998.

NIST finds good cause to issue this rule in final without opportunity for notice and comment and delayed effective date because those procedures are unnecessary pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), since the Department of Energy is continuing the program in its entirety.

Executive Order 12866

It has been determined that this Rule is "not significant" under section 3(f) of E.O. 12866.

List of Subjects in 15 CFR Part 270

Energy, Inventions and patents.

Accordingly, under the authority of 15 U.S.C. 271 *et seq.*, part 270 is removed from Title 15 of the Code of Federal Regulations.

Dated: April 30, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98-12043 Filed 5-5-98; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 911

[Docket No. 970725178-8087-02]

RIN 0648-AK04

Policies and Procedures Regarding Use of the NOAA Space-Based Data Collection Systems

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is issuing a final rule that revises its policies and procedures for authorizing the use of its space-based Data Collection Systems (DCS) which operate on NOAA's Geostationary Operational Environmental Satellites (GOES) and Polar-orbiting Operational Environmental Satellites (POES). This final rule revises the current policy on the use of the GOES DCS, and formalizes a new policy for the use of the Argos Data Collection and Location System (Argos DCS) which flies on the POES. The rule harmonizes, as much as practicable, the system use policies for the two systems, which in the past have been disparate. The fundamental principle underlying this rule is that the Government will not allow its space-based DCS to be used where there are commercial space-based services available that fulfill users' requirements. **DATES:** Effective June 5, 1998.

ADDRESSES: Send comments on the collection information to Dane Clark, NOAA, National Environmental Satellite, Data, and Information Service, Direct Services Division (E/SP3), 4700 Silver Hill Road, Stop 9909, Room 3320,

Washington, DC 20223-9909, and to the Office of Management and Budget (OMB) at the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dane Clark at (301) 457-5681, e-mail: satinfo@nesdis.noaa.gov; or Kira Alvarez at (301) 713-0053, e-mail: Kira.Alvarez@noaa.gov.

SUPPLEMENTARY INFORMATION: For general background on NOAA's Data Collection Systems (Argos DCS and GOES DCS), please refer to the notice of proposed rulemaking published in the *Federal Register* on September 9, 1997, at 62 FR 47388.

In 1996, NOAA recognized that a commercial industry was starting to emerge in the area of data collection and location services (e.g., Mobile Space Services). Guided by the U.S. Government's long-standing policy against competing with the private sector, NOAA, in October 8, 1996, (61 FR 52775), announced that it would no longer promote the use of the Argos DCS for commercial non-environmental applications. NOAA, moreover, has been eager to explore new opportunities for meeting mission requirements that are presented by the development of private space-based DCS. To explore these opportunities, NOAA initiated a dialogue among users of the systems and both public and private sector service providers by hosting a public meeting in December 1996. This meeting brought together more than 100 individuals representing current and planned space-based data collection service providers and users to present, discuss and document pertinent information necessary to reevaluate and reexamine government practice and policy.

As demonstrated at the public meeting, there are operational and soon-to-be operational commercial DCS. However, the government users of the current NOAA-provided systems require an established operational capability that meets users' requirements from the private sector service providers before contemplating a change away from these government-provided systems. Based on the representations, both oral and written, made at the public meeting, the commercial providers are currently unable to provide such a capability to the vast majority of government users. Consequently, there is still a need for the Government to provide a space-based data collection system for government use until such a time as the government's requirements can be met by the commercial sector. However,

given the evolving state of the commercial industry, government users must take into account the progress and development of these commercial systems. As a result, any new system use policy should be focused on meeting the requirements of the government users, while also encouraging them to canvass the commercial marketplace on a periodic basis.

The participants expressed interest in the issuance of new consolidated regulations that clarify the system use policies for the Argos DCS and the GOES DCS and that build in the incentive to investigate the opportunities available from the private sector. The participants indicated that new regulations establishing a clear set of criteria for allowing access to the government systems would accord them the predictability and transparency necessary to make rational business decisions.

On September 9, 1997, (62 FR 47388), NOAA published a proposed rule in the *Federal Register*. Comments on the proposed rule were invited through November 10, 1997. A total of eight letters of comment on the proposed rule were received.

Response to Comments

Comment 1: The statements in the notice of proposed rulemaking that commercial providers are currently unable to provide a demonstrated operational capability to the vast majority of government users and that consequently, there is still a need for the Government to provide a DCS for government use until such time as the Government's requirements can be met by the commercial sector, are categorically incorrect.

Response: NOAA has determined that there is still a need for the Government to provide a space-based DCS. This determination was made with the consultation of a U.S. Government (USG) users group, which advised NOAA on the government requirements for space-based DCS. These government agencies determined their own current and future requirements and then conveyed the same to NOAA. NOAA and the user group assessed the commercial alternatives available and compared them with the existing government services and determined that no commercial service currently available had the requisite demonstrated operational capability to meet all of the USG user requirements. Nonetheless, this rulemaking serves notice that this situation will not be indefinite and viable commercial space-based alternatives may eventually obviate the

need for NOAA to operate its own space-based DCS.

Comment 2: The 1991 U.S. Space Policy encouraging U.S. agencies to promote access to excess U.S. space-based assets is "outdated and no longer applicable."

Response: NOAA agrees, and in this regard, announced in the *Federal Register* on October 8, 1996, (61 FR 52775), that it was no longer promoting commercial use of the Argos System.

Comment 3: A major point of contention is the degree to which particular applications are conducted for environmental protection versus economic considerations. NOAA must recognize that certain applications may serve both purposes. What is the definition of cost-effectiveness? Full cost accounting should be used, including the full cost of providing the NOAA DCS service. NOAA should not use user switching costs in this assessment.

Response: Cost-effectiveness is only a valid criterion to be considered in the case of government agencies. Furthermore, it is the individual agency that determines what is cost-effective for their particular agency, as a user of the system. It is not a valid consideration for non-governmental entities. Moreover, for non-governmental entities, not only must the use be environmental, but there is the additional criterion that there must be government interest in the collection of the data.

Comment 4: In section 911.1, Purpose, change the italicized language: "The regulations are intended to facilitate the collection of environmental data as well as other such data which the Government is interested in collecting, while at the same time not disadvantaging the development of the commercial space-based services in this sector." The following is proposed as a replacement: "The regulations are intended to facilitate the collection of environmental data as well as other such data which the Government is interested in collecting, and to allow for the use of commercial space-based services where possible while precluding all direct or indirect government competition with such services."

Response: The proposed change is inaccurate because it implies that NOAA has the authority to disallow the use of commercial services by other USG agencies. Moreover, NOAA has not taken any steps to discourage the use of commercial services. However, the language will be changed to clarify NOAA's position as follows:

"The regulations are intended to facilitate the collection of

environmental data as well as other such data which the Government is interested in collecting. In those instances where space-based commercial systems do not meet users' requirements, the intent is to not disadvantage the development of the commercial space-based services in this sector."

Comment 5: "The revised regulations should explicitly state that all non-government users of government spectrum must be licensed by the Federal Communications Commission (FCC). This NOAA must include as an integral part of its review and approval process for Argos System use certification that the candidate user of Argos has met these requirements."

Response: While an explicit statement in the regulations that non-government users subject to U.S. jurisdiction must be licensed by the FCC is appropriate, it would be inconsistent with Administration regulatory policy to include a certification requirement pertaining to FCC license procedures that essentially duplicates existing requirements. However, it should be noted that System Use Agreements will include an obligation that users must obtain authorization from the appropriate national agencies, in the case of the United States—the FCC, to transmit on the assigned frequencies and to comply with all applicable national telecommunications laws and regulations.

Comment 6: NOAA should set up a vetting process similar to the FCC's, which includes the publication at designated intervals, of a Request for Information in the Commerce Business Daily, that would include the details of user requests since the previous notice, and would allow for timely comment by commercial providers before the signing of any agreements.

Response: Requiring the completion of such an administrative process before allowing access to the NOAA DCS would create an unfair burden on potential users and, in some cases would interfere with the ability of certain users to have timely access to data which may be mission critical. Under the USG's current regulatory reform program, any new regulatory burdens on the public must be kept to the minimum necessary to achieve the stated goal and this proposed administrative process would clearly be contrary to this policy.

Comment 7: The scope of the regulations is too narrow and these regulations should be applicable globally. As a result, include in § 911.2, Scope, the following language: "regardless of whether an applicant is

subject to the jurisdiction and control of the United States."

Response: This proposed statement overreaches the territorial jurisdiction of the United States, and as such is inappropriate. However, NOAA agrees with the observation that the Argos DCS is a global system which should be operated under a consistent and uniform set of globally applicable rules. As a result, the Argos Operations Committee has adopted these regulations as part of the governing rules for the system.

Comment 8: Under which category of users would international government users fall?

Response: International government users would fall under the definition of government users.

Comment 9: "Government Interest" is defined too ambiguously.

Response: By necessity, this definition is broad. It would be impractical to give the exhaustive list of the relevant missions of all government agencies that utilize these data for operational and research purposes.

Comment 10: The definitions of "Environmental Data," "Environmental Protection Data," and "Environmental Measurement Data" are too broad. In addition, the definitions of "Environmental Measurement Data" and "Environmental Protection Data" should include the following statement: "It is recognized that in many cases, commercial services may be available that adequately address user requirements and that these user needs may be motivated by reasons in addition to environmental-related concerns. Instances of such cases will be viewed as non-environmental applications for the purposes of these regulations."

Response: These definitions accurately reflect the environmental stewardship mission requirements of the primary USG agencies for which these systems are operated. And because these systems are primarily operated for environmental purposes, these definitions serve as a primary justification for use of the system. However, we do understand the concerns expressed in the comment, and that is why NOAA also requires that, for non-governmental use of the system, the user show that there is a government interest in the collection of the data. We note, though, that the statement of policy proposed in the comment is inappropriate in the definition section of a regulation. Such a statement, moreover, concerns the use of the system for cost-effective purposes, and as we noted in comment 3 above, except in the case of government agencies, cost-effectiveness is not an

appropriate consideration for potential users of the system. We feel that the operative sections of the regulations already take into account the concerns expressed in the commenter's proposed statement.

Comment 11: It is unclear what types of events fall under the definition of Episodic Use. Please clarify with examples.

Response: NOAA agrees, and as a result, examples of such uses have been added to the final rule. These examples include: Arctic expeditions and scientific campaigns into remote areas, which represent events in which there is a significant possibility for the loss of life.

Comment 12: Who decides whether there are commercial services that meet the users' requirements? How will NOAA validate user requirements?

Response: Users determine whether there are commercial space-based services that meet their program's requirements. Not only are the users asked to provide the reasons why they have determined that they need to use the Argos System, but they must also certify that there are no commercial space-based services which meet their requirements.

Comment 13: Why was an explanation of the factors of the users' requirements that may not be met by commercial space-based services included in the preamble, but not in the actual proposed rule?

Response: NOAA agrees that the factors should be included in the text of the rule; as a result, these factors have now been incorporated into § 911.4(b).

Comment 14: The reduction in non-environmental use of the system, while "well intended," * * * fails to address the real issue that, in the majority of cases, non-environmental user requirements can be met by commercial providers."

Response: We reiterate the fact that the primary requirement for use of the system is that there be no commercial space-based services which meet the users' requirements. Only after a user has determined that fact, and certified to it, will NOAA apply the other criteria to determine if they are qualified to use the system. For non-environmental use of the system there are only two instances where use of the system is allowed: (1) For episodic uses, where there is the significant possibility of loss of life, which is consonant with NOAA's (and all USG agencies' inherent) public safety mission(s); and (2) for government users and non-profit users where there is a governmental interest. For government users there may be instances where the use of commercial services is not

appropriate due to the sensitive nature of the applications (such as for national security or law enforcement purposes); however, this is a determination made by the individual agency, not NOAA.

As we have stated previously, NOAA will monitor the commercial sector to determine whether they are developing and implementing the necessary capabilities. We encourage service providers to continue to interact with NOAA and keep us informed of their progress. We are committed to facilitating government-industry interface and dialogue. In fact we are already aware of several government agencies that are testing and using commercial space-based services.

Comment 15: All agreements for non-governmental, non-environmental use should be terminated upon publication of a final rule and no new non-governmental, non-environmental use agreements should be signed from this point forward.

Response: NOAA cannot arbitrarily terminate all non-governmental, non-environmental agreements upon publication of the final rule. However, we have stated previously that such agreements will not be renewed and will terminate upon expiration. We have also stated previously that no new non-governmental, non-environmental agreements will be approved, with the exception of those for episodic use, which are consonant with our public safety mission.

Comment 16: Section 911.7(a) should be amended; the following language should be included at the end:

"However, the existence of viable commercial space-based alternatives may eventually obviate the need for NOAA to operate its own satellite-based DCS."

Response: NOAA agrees that it must convey a strong signal that it is determined not to compete with viable commercial providers of space-based DCS services. NOAA has incorporated the suggested language, with a slight modification; § 911.7(a) now reads: "NOAA expects to continue to operate DCS on its geostationary and polar-orbiting satellites, subject to the availability of future appropriations. However, viable commercial space-based alternatives may eventually obviate the need for NOAA to operate its own space-based DCS."

Comment 17: What is the reasoning behind limiting non-environment users to 5 percent of the terminals in use for the Argos DCS. With the expected decline in users, the non-environment users will continually need to remove terminals from the system. What will be the selection process in removing those

terminals (which users will be impacted)? the existing limit has never created a problem for the operation of the system.

Response: NOAA established these systems to further its environmental stewardship responsibilities. Moreover, the radio spectrum frequencies within which these systems operate are allocated primarily for environmental use. Thus by strictly limiting the nonenvironmental use of the system to 5 percent of total system use, the integrity of the use of the allocated frequencies is maintained, while also accomplishing the additional goal of not competing unfairly with the private sector.

In accordance with this rule, current non-governmental, non-episodic, non-environmental agreements will not be renewed. Terminals operating under expired agreements should be deactivated at the end of the current agreement. Since any remaining non-environmental uses of the system will only be approved for one year terms, this will allow for an orderly decrease in the non-environmental use of the system.

Comment 18: There is concern that the statement: "The fundamental principle underlying these regulations is that the Government will not allow its space-based DCS to be used where there are commercial services available that fulfill the users' requirements", indicates not only that users will have to convert to commercial services when/where available, but also an eventual retreat by the Government from providing a data collection service without a definite discussion of how and when that would happen.

Response: Government user requirements will continue to dictate which instruments fly on government assets. Moreover, it is inappropriate for the Government to compete unfairly with the private sector. At this point in time, NOAA, in consultation with government users, has determined that there are no commercial providers of space-based services that can meet the government's needs, and so the Government will continue to operate its own systems. While this rulemaking serves notice that this situation will not be indefinite, it is impossible given the state of development in the commercial marketplace to determine with any accuracy when or how the full transition to the private sector will take place. When such a transition is warranted, NOAA will provide, to the maximum extent practicable, advance notice to the affected users to allow for an orderly transition."

Comment 19: We believe that canvassing the market every 3-5 years is not enough. Also, what level of diligence does this require?

Response: NOAA has decreased the duration of the System Use Agreements in order to create a forcing function to make the users periodically reassess their requirements and their options for meeting them. This creates a dynamic process wherein applications and renewals have varying durations for 6 months to 5 years, and are received on a continuing basis. Hence, the canvassing of the commercial marketplace will take place on a continuing basis.

For existing users of the system, the following outlines the schedule for transitioning to new system use agreements:

1. Government and non-profit, environmental users of the Argos DCS shall be required to submit a new system use agreement within 3 years from the effective date of this rule or upon expiration of their current system use agreement, whichever occurs first;
2. Government, non-profit, and non-government, environmental users of the GOES DCS shall be required to submit a new system use agreement within 5 years from the effective date of this rule, or upon expiration of their current system use agreement, whichever occurs first;
3. Government and non-profit, non-environmental users of the Argos DCS shall be required to submit a new system use agreement within 1 year from the effective date of this rule or upon expiration of their current system use agreement, whichever occurs first;
4. Non-government, environmental users of the Argos DCS shall be required to submit a new system use agreement within 1 year from the effective date of this rule, or upon expiration of their current agreement, whichever comes first; and
5. Non-government, non-environmental users of the Argos DCS will be required to submit new system use agreements within 1 year from the effective date of this rule, or upon expiration of their current agreement, whichever comes first.

Please note, however, that submission of a new system use agreement does not imply acceptance of such an agreement, especially for non-governmental, non-environmental uses.

As to the level of diligence, NOAA requires a certification for each user that the use of the NOAA DCS is required because there are no commercial space-based services that meet its program requirements.

Comment 20: There needs to be further detail provided on what the "platform compatibility" factor is and how it is determined.

Response: NOAA agrees that this term should be defined. The "platform compatibility" factor addresses the compatibility of the platform with the space segment of the system and includes elements such as message length and composition, signal strength, as well as transmission protocol (e.g., continuous versus event driven).

Comment 21: These proposed rules do not support the needs of small businesses, the commercialization of space, the needs of the environmental users and the Government's requirements to allow access to underutilized assets of the Government to non-governmental users.

Response: As noted in the notice of proposed rulemaking, NOAA had previously made the excess capacity of its DCS available to non-NOAA users. This was consistent with the National Space Policy then in effect, which encouraged government agencies to promote commercial access to excess U.S.C. space-based assets in order to promote the growth of the emerging U.S. commercial space industry. However, by 1996, NOAA recognized that a commercial industry was starting to emerge in the area of space-based data collection and location services. Given the U.S. Government's long-standing policy against competing with the private sector, NOAA undertook a reassessment of its role in this market sector. This reassessment eventually led to those new regulations.

Changes from the Proposed Rule

For a description of the proposed rule, see 62 FR 47388. The following seven changes have been made to the text of the proposed rule in response to comments.

In § 911.1, language was added to clarify the intent of these regulations.

The definition of "episode use" in § 911.3, was clarified with further examples.

The definition of "government use" in § 911.3 was clarified, and now specifies that government approval is necessary in advance.

The definition of "government user" in § 911.3 was clarified to specify that international government users are included.

A definition of "platform compatibility" was added to § 911.3.

Section 911.4(b)(2) was added, which lists the factors that help users determine when commercial space-based services meet their requirements, was included. This list was included in

the preamble of the notice of proposed rulemaking, but not in the actual rule.

A statement was added at the end of § 911.8(a) which qualifies the first sentence and states that while NOAA expects to continue to operate a DCS, in the future, the existence of viable commercial space-based systems may eventually obviate this need.

Additional Technical Changes to the Proposed Rule

A definition of "Director" was added to § 911.3, which defines the term as the Director of the Office of Satellite Data Processing and Distribution of the National Environmental Satellite, Data, and Information Service.

The term "space-based" was included in § 911.4(b) to modify the term "commercial services" to clarify the fact that NOAA will be looking at whether other space-based alternatives to the use of the NOAA DCS are available. This allows the comparison between systems to be a more accurate "apples to apples" comparison.

The requirements of former § 911.4(d) have now been incorporated into § 911.4(c). These sections were rearranged after some consideration, because the new arrangement leads to a more logical flow and makes the regulatory scheme easier to understand.

The section previously classified as § 911.4(c)(4), and which is now classified as § 911.4(c)(5), was revised to specify that the experimental use provisions applied to both NOAA DCS services. The name of this category was also changed from "experimental use" to "testing use" to better reflect the nature of the use; this change was also made in §§ 911.4(d)(5) and 911.5(e)(2).

Section 911.5(a)(2) was added, which directs persons who are interested in using the NOAA DCS to contact the Director.

A language change in § 911.5(b)(3) reflects that it is not by choice, but rather by necessity that a user requires access to the NOAA DCS.

Section 911.5(d)(5) was added; this is a conforming change that was necessary in order to reflect that the experimental use of the Argos System is also allowed. As a result, it was necessary to indicate the length of time of approval of agreements for this category of use of the system.

Appendix B was added to map out the system use policy for the GOES DCS and has been included to help users understand how the regulations apply to that system.

Classification

A. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As such, no final regulatory flexibility analysis has been prepared.

B. Paperwork Reduction Act of 1995 (35 U.S.C. 3500 et seq.)

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB Control Number 0648-0157.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Public reporting burden for this collection of information is estimated to average 3 hours per GOES agreement and 30 minutes per Argos agreement, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of information to Dane Clark, NOAA, National Environmental Satellite, Data, and Information Service, Direct Services Division (E/SP3), 4700 Silver Hill Road, Stop 9909, Room 3320, Washington, DC 20233-9909, and to OMB at the Office of Information and Regulatory Affairs, Washington, DC 20503 (Attention: NOAA Desk Officer).

C. National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Publication of the final regulations does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

D. Executive Order 12866

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 15 CFR part 911

Scientific equipment, Space transportation and exploration.

Dated: April 28, 1998.

Robert S. Winokur,
Assistant Administrator for Satellite and Information Services.

Accordingly, for the reasons set forth above part 911 of Title 15 of the Code of Federal Regulations is revised to read as follows:

PART 911—POLICIES AND PROCEDURES CONCERNING USE OF THE NOAA SPACE-BASED DATA COLLECTION SYSTEMS

Sec.

911.1 Purpose.

911.2 Scope.

911.3 Definitions.

911.4 Use of the NOAA Data Collection Systems.

911.5 NOAA Data Collection Systems Use Agreements.

911.6 Treatment of data.

911.7 Continuation of the NOAA Data Collection Systems.

911.8 Technical requirements.

Appendix A to Part 911—Argos DCS Use Policy Diagram

Appendix B to Part 911—GOES DCS Use Policy Diagram

Authority: 15 U.S.C. 313, 49 U.S.C. 44720; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 552.

§ 911.1 Purpose.

These regulations set forth the procedural, informational and technical requirements for use of the NOAA Data Collection Systems (DCS). In addition, they establish the criteria NOAA will employ when making determinations as to whether to authorize the use of its space-based DCS. The regulations are intended to facilitate the collection of environmental data as well as other such data which the Government is interested in collecting. In those instances where space-based commercial systems do not meet users' requirements, the intent is to not disadvantage the development of the commercial space-based services in this sector. Obtaining a system use agreement to operate data collection platforms pursuant to these regulations does not affect related licensing requirements of other Federal agencies such as the Federal Communications Commission.

§ 911.2 Scope.

(a) These regulations apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate data collection platforms to be used with the NOAA DCS either directly or through an affiliate or subsidiary. For the purposes of these regulations a person is subject

to the jurisdiction or control of the United States if such person is:

(1) An individual who is a U.S. citizen; or

(2) A corporation, partnership, association, or other entity organized or existing under the laws of any state, territory, or possession of the United States.

(b) These regulations apply to all existing Geostationary Operational Environmental Satellite (GOES) and Argos DCS users as well as all future applications for NOAA DCS use.

§ 911.3 Definitions.

For purposes of this part:

(a) *Approving authority* means NOAA for the GOES DCS; and it means the Argos Participating Agencies, via the Argos Operations Committee, for the Argos DCS.

(b) *Argos DCS* means the system which collects data from fixed and moving platforms and provides platform location data. This system consists of platforms, the Argos French instrument on the Polar-orbiting Operational Environmental Satellites (POES) and other international satellites; a ground processing system; and telemetry ground stations.

(c) *Argos participating agencies* means those agencies of the United States and other countries that participate in the management of the Argos DCS.

(d) *Assistant Administrator* means the Assistant Administrator for Satellite and Information Services, NOAA, or his/her designee.

(e) *Director* means the Director of the Office of Satellite Data Processing and Distribution for the National Environmental Satellite, Data, and Information Service of NOAA.

(f) *Environmental data* means environmental measurement data for the purpose of using the GOES DCS; and it means environmental measurement and environmental protection data for the purpose of using the Argos DCS.

(g) *Environmental measurement data* means data that relate to the characteristics of the Earth and its natural phenomena by helping to better understand, evaluate, or monitor its natural resources.

(h) *Environmental protection data* means data that relate to the characteristics of the Earth and its environment (including its ecosystems and the species which inhabit them) by helping to protect against any unreasonable adverse effects thereto.

(i) *Episodic use* means the use of the system for short events where there is a significant possibility of loss of life, such as for Arctic expeditions or scientific campaigns into remote areas.

(j) *Government interest* means that the use is determined in advance to be of interest to one or more governmental entities of the United States, France or, once they have become an Argos Participating Agency, Japan or a European Organization for the Exploitation of Meteorological Satellites (EUMETSAT) member state; or also, in the case of the GOES DCS, a state or local government.

(k) *Government user* means agencies of international governmental organizations, national government or any subdivision thereof, or any of those agencies' contractors or grantees, so long as the contractor is using the data collected by the NOAA DCS to fulfill its contractual obligations to the government agency or in the case of a grantee that these data are being used in accordance with the statement of work for the award.

(l) *NOAA DCS* means the GOES and Argos space-based DCS.

(m) *Non-profit user* means a not-for-profit academic, research, or other non-governmental organization, which is using these data, for education and/or scientific, non-commercial purposes.

(n) *Operational use* means the use of data in a situation where the utility of the data are significantly reduced if not collected or delivered in a specific time window. This includes situations where extensive preparation work is in place and a delay in acquisition of data would jeopardize the project.

(o) *Platform compatibility* means the compatibility of the platform with the space segment of the system, and includes elements such as message length and composition, signal strength, and transmission protocol (e.g., continuous versus event drive).

(p) *Testing use* means the use of the NOAA DCS by manufacturers of platforms for use in conjunction with the NOAA DCS by manufacturers of platforms for use in conjunction with the NOAA DCS, for the limited purpose of testing and certifying the compatibility of new platforms with the technical requirements of the NOAA DCS.

(q) *User* means the entity and/or organization which owns or operates user platforms for the purpose of collecting and transmitting data through the NOAA DCS.

(r) *User platform* means devices, designed in accordance with the specifications delineated and approved by the Approving Authority, used for the in-situ collection and subsequent transmission of data via the NOAA DCS. Those devices which are used in conjunction with the GOES DCS are

referred to as data collection platforms (DCP) and those which are used in conjunction with the Argos DCS are referred to as Platform Transmitter Terminals (PTT). For purposes of these regulations, the terms "user platform," "DCP" and "PTT" are interchangeable.

(s) *User requirement* means the requirement expressed and explained in the System Use Agreement.

§ 911.4 Use of the NOAA Data Collection Systems.

(a) Use of the NOAA DCS will only be authorized in accordance with the conditions and requirements set forth in paragraphs (b), (c), (d), (e), and (f) of this section.

(b)(1) Use of the NOAA DCS will only be authorized where it is determined that there are no commercial space-based services available that meet the user's requirements.

(2) A determination under paragraph (b)(1) of this section must be based on such factors as satellite coverage, accuracy, data throughput, platform power consumption, size and weight, service continuity and reliability, platform compatibility, system access mode, and, in the case of government agencies, cost-effectiveness.

(c)(1) Except as provided in paragraphs (c)(2), (3), (4), and (5) of this section, NOAA DCS shall only be used for the collection of environmental data by governmental and/or non-profit users.

(2) Non-governmental, environmental use of the NOAA DCS is only authorized where there is a Government interest in the collection and/or receipt of the data.

(3) Except as provided in paragraph (c)(4) of this section, non-environmental use of the Argos DCS is only authorized for government use and non-profit users where there is a government interest. Non-environmental use of the system shall not exceed five percent of the system's total use.

(4) Episodic use of the Argos DCS may also be authorized in specific instances when there is a significant possibility for loss of life. Such use shall be closely monitored.

(5) Testing use of the NOAA DCS will only be authorized for manufacturers of NOAA DCS platforms, that require access to the system in order to test and certify prototype and production models.

(d) Because of capacity limitations on the GOES DCS, system applicants will be admitted to use the GOES system in accordance with the following priority:

(1) NOAA programs or users whose data are required for implementation of NOAA programs, as determined by the

Assistant Administrator, will be accorded first priority.

(2) Users whose data are desired to support NOAA programs will be accorded second priority.

(3) Users whose data and/or use of the GOES DCS will further a program of an agency or department of the U.S. Government, other than NOAA, will be accorded third priority.

(4) Users whose data are required by a state or local Government of the United States will be accorded fourth priority.

(5) Testing users of the system will be accorded fifth priority.

(6) No other usage will be authorized for the GOES DCS.

(e) In the event that Argos DCS capacity limitations require that priority determinations be made, priority will be given to those platforms that provide environmental data of broad international interest, especially of an operational nature, and to those requiring the unique capabilities of the Argos DCS, such as platform location or polar coverage.

§ 911.5 NOAA Data Collection Systems Use Agreements.

(a)(1) In order to use a NOAA DCS, each user must have an agreement with the approving authority for that system.

(2) Persons interested in entering into a system use agreement should contact the Director.

(b) These agreements will address, but may not be limited to, the following matters:

(1) The period of time the agreement is valid and procedures for its termination.

(2) The authorized use(s), and its priorities for use.

(3) The extent of the availability of commercial space-based services which meet the user's requirements and the reasons for necessitating the use of the Government system.

(4) Any applicable government interest in the data.

(5) Required equipment standards.

(6) Standards of operation.

(7) Conformance with applicable ITU and FCC agreements and regulations.

(8) Reporting time and frequencies.

(9) Data formats.

(10) Data delivery systems and schedules.

(11) User-borne costs.

(c) The Director shall evaluate user requests and conclude agreements for use of the NOAA DCS.

(d)(1) Agreements for the collection, via the Argos DCS, of environmental data by government agencies or non-profit institutions shall be valid for 3 years from the date of initial in-situ

deployment of the platforms, and may be renewed for additional 3-year periods.

(2) Agreements for the collection of environmental data, via the Argos DCS, by non-government users shall be valid for 1 year from the date of initial in-situ deployment of the platforms, and may be renewed for additional 1-year periods, but only for so long as there exists a governmental interest in the receipt of these data.

(3) Agreements for the collection of non-environmental data, via the Argos DCS, by government agencies, or non-profit institutions where there is a government interest, shall be valid for 1 year from the date of initial in-situ deployment of the platforms, and may be renewed for additional 1-year periods.

(4) Agreements for the episodic collection of non-environmental data, via the Argos DCS under § 911.4(c)(4), shall be of short, finite duration not to exceed 1 year without exception, and usually shall not exceed 6 months. These agreements shall be closely monitored and shall not be renewed.

(5) Agreements for the testing use of the Argos DCS by equipment manufacturers shall be valid for 1 year from the date of initial testing, and may be renewed for additional 1-year periods.

(e)(1) Agreements for the collection of data, by the GOES DCS, shall be valid for 5 years from the date of initial in-situ deployment, and may be renewed for additional 5-year periods.

(2) Agreements for the testing use of the GOES DCS, by equipment manufacturers, shall be valid for 1 year from the date of initial testing, and may be renewed for additional 1-year periods.

911.6 Treatment of Data.

(a) All NOAA DCS users must agree to permit NOAA and other agencies of the U.S. Government the full, open and timely use of all data collected from their platforms; this may include the international distribution of environmental data under the auspices of the World Meteorological Organization. Any proprietary data will be protected in accordance with applicable laws.

§ 911.7 Continuation of the NOAA Data Collection Systems.

(a) NOAA expects to continue to operate DCS on its geostationary and polar-orbiting satellites, subject to the availability of future appropriations. However, viable commercial space-based alternatives may eventually

obviate the need for NOAA to operate its own space-based DCS.

(b) If use of the system in support of NOAA programs increases, it eventually may be necessary to the further restrict system usage by other users. If such restrictions on use become necessary, or in the event that NOAA discontinues operation of GOES and/or POES, NOAA will provide, to the maximum extent

practicable, advance notice and an orderly transition.

(c) NOAA will not be responsible for any losses resulting from the nonavailability of the NOAA DCS.

§ 911.8 Technical requirements.

(a) All platform operators of the NOAA DCS must use a data collection platform radio set whose technical and

design characteristics are certified to conform to applicable specifications and regulations.

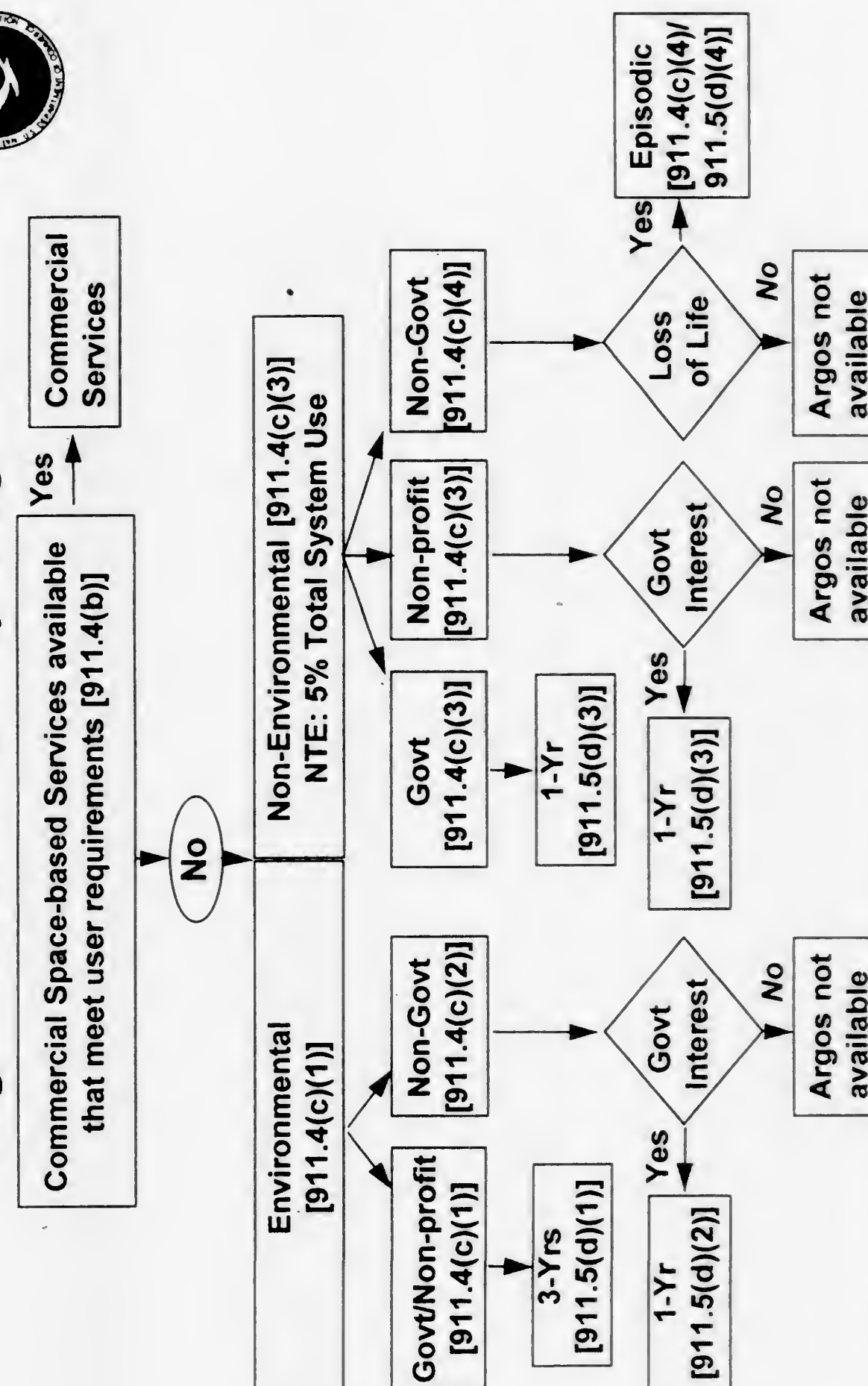
(b) All platform operators are responsible for all costs associated with the procurement and operation of the platforms, and for the acquisition of data from those platforms, either directly from the satellite or from the applicable data processing center.

BILLING CODE 3510-12-M

Appendix A to Part 911—Argos DCS Use Policy Diagram



Argos DCS Use Policy Diagram



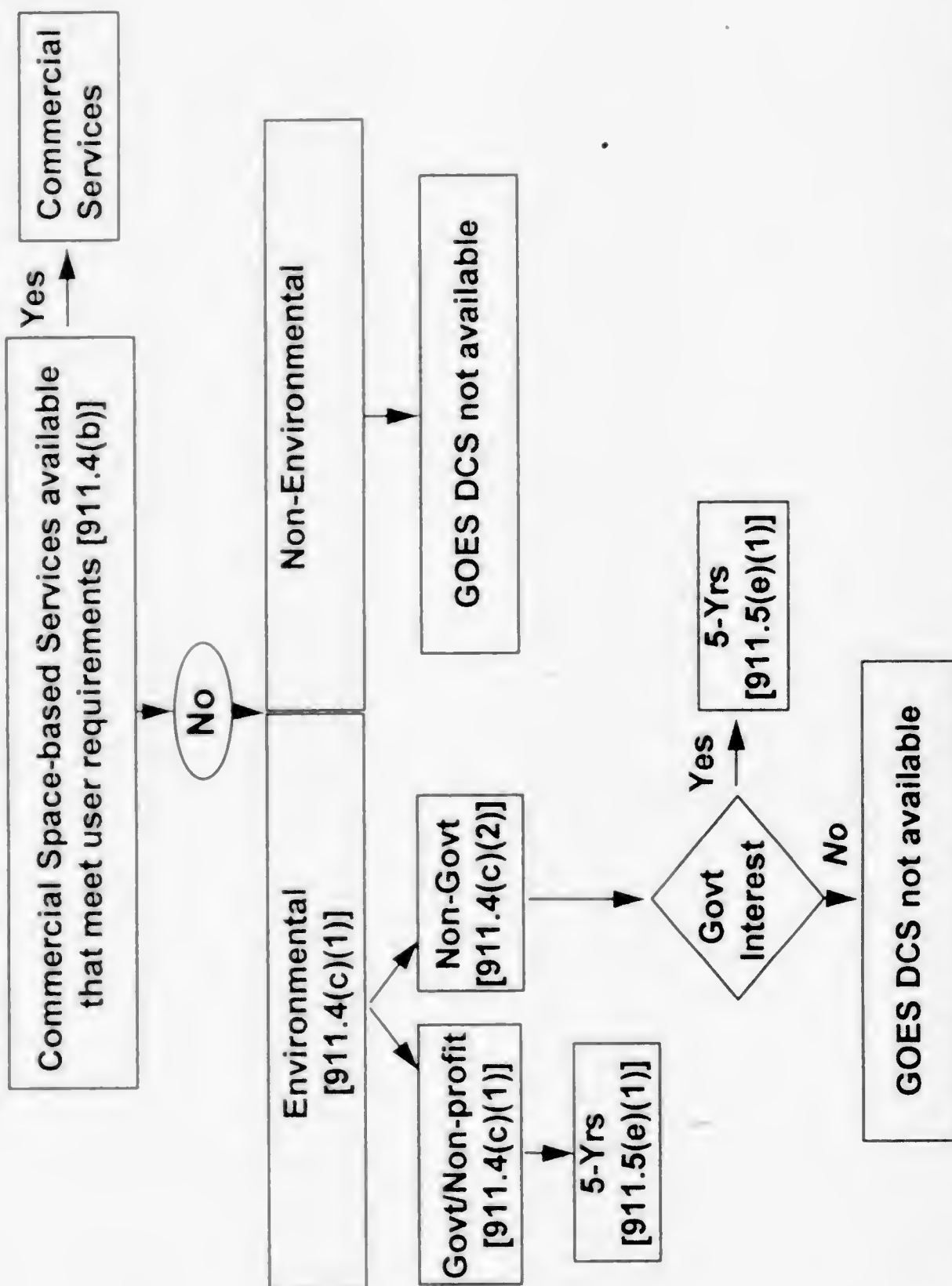
Note: Testing Use permitted as per [911.4(c)(5)] for up to 1-Yr [911.5(d)(5)]

Appendix A

Appendix B to Part 911—GOES DCS Use Policy Diagram



GOES DCS Use Policy Diagram



Note: Testing Use permitted as per [911.4(c)(5)] for up to 1-Yr [911.5(e)(2)]

Appendix B

[FR Doc. 98-11970 Filed 5-5-98; 8:45 am]

BILLING CODE 3510-12-C

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960-AE74

Federal Old-Age, Survivors, and Disability Insurance Benefits; Supplemental Security Income for the Aged, Blind, and Disabled; Organization and Procedures; Application of Circuit Court Law

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final regulations revise the current regulations governing how we apply holdings of the United States Courts of Appeals (circuit courts) that we determine conflict with our interpretation of the Social Security Act or regulations in adjudicating claims under title II and title XVI of the Social Security Act (the Act). The regulations explain the new goal we have adopted to ensure that Acquiescence Rulings (ARs) are developed and issued promptly and the new procedures we are implementing to identify claims pending in the administrative review process that might be affected by ARs.

EFFECTIVE DATES: These amendments are effective June 5, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695 for information about these rules. For information on eligibility or claiming benefits, call our national toll free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION: On January 11, 1990, (55 FR 1012) we published final regulations, set out at 20 CFR 404.985 and 416.1485, to implement a revised policy explaining how we apply circuit court holdings that we determine conflict with our interpretation of the Act or regulations to subsequent claims within that circuit involving the same issue. Under those regulations, we prepare ARs which explain the circuit court holdings and provide instructions to adjudicators, at all levels of the administrative review process, on how to apply the circuit court's holding to subsequent claims within the circuit involving the same issue. Those regulations reflected the agency's decision in 1985 to abandon its prior policy of applying circuit court holdings that we determined conflicted with our interpretation of the Act or

regulations only to the named party or parties to the decision, rather than to other cases pending in the administrative review process involving the same issue or issues.

On July 2, 1996, we issued Social Security Ruling (SSR) 96-1p (61 FR 34470) clarifying and reaffirming the rules established in the 1990 regulations. Since that time, we have reviewed our rules and our implementing procedures to determine what changes could be instituted to further improve the acquiescence process. Based upon that review, on September 18, 1997, we published at 62 FR 48963, proposed revisions to the acquiescence regulations, which we are now publishing as final rules.

The proposed rules provided the addition of new paragraphs 404.985(b)(1) and 416.1485(b)(1) to establish a general goal for issuing ARs no later than 120 days from the date of our receipt of a precedential circuit court decision. The proposed rules also provided, by the addition of new paragraphs 404.985(b)(3) and 416.1485(b)(3), for new procedures to identify claims pending within SSA which may be affected by an AR that may subsequently be issued. These same sections also provided that, once an AR is issued, we will send notices to those individuals whose claims have been identified as potentially being affected by the AR informing them of their right to request a readjudication, as described in paragraphs 404.985(b)(2) and 416.1485(b)(2) of the rules.

The Final Rules

The Role of Litigation in the Policymaking Process

Our review indicated that it is important to reaffirm the principle that our goal in administering our programs is to have uniform, national program standards. Our procedures, which provide for acquiescence within the circuit when a circuit court issues a precedential decision containing a holding that we determine conflicts with our interpretation of the Act or regulations, result in differing rules in different sections of the country. This situation is not desirable and ordinarily should not, if possible, continue indefinitely.

Therefore, we wish to make it clear that generally ARs are temporary measures. When we receive a precedential circuit court decision containing a holding that we determine conflicts with our interpretation of the Act or regulations, we consider whether the rules at issue should be changed on a nationwide basis to conform to the

court's holding. If we continue to believe that our interpretation of the statute or regulations at issue is correct and we seek further judicial review of the circuit court's decision, we will stay further development of the AR until the judicial review process runs its course. If our assessment shows that we should change our rules and adopt a circuit court's holding nationwide, we will, at the time we publish the AR, have determined the steps necessary to do so. This may require changing our regulations or rulings; it may also require seeking a clarifying legislative change to the Act. We would then proceed to issue an AR because changing our nationwide rules through legislation or rulemaking may require a significant period of time.

Similarly, if our assessment shows that our rules represent a reasonable interpretation of the Act or regulations, but we are unable to resolve the matter by seeking further judicial review, we will issue an AR and at the time we publish the AR have determined the appropriate steps to attempt to address the issue which was the subject of the circuit court's holding. This may mean issuing clarifying regulations or seeking legislation. There are certain instances when an issue cannot be resolved, such as a constitutional issue which the Supreme Court chooses not to review or legislation is required but not enacted and, therefore, an AR may remain in effect.

Although our goal to have uniform national standards is implicit in the current regulations, we are including in this preamble an explicit statement of our commitment to maintaining a uniform nationwide system of rules. In addition to making minor editorial corrections to the current regulations, these rules amend the regulations in two substantive areas, as follow:

Establishing a Timeliness Goal for Issuing ARs

A common criticism regarding the acquiescence process has involved the length of time it has taken for us to prepare and issue an AR. As a result, we have reassessed our procedures and have decided to place in our regulations our goal to release an AR for publication in the **Federal Register** no later than 120 days from the time we receive a precedential circuit court decision for which the AR is being issued, unless further judicial review of that decision is pending. This timeframe will also not apply when publication of an AR requires such coordination with the Department of Justice and/or other Federal agencies that it becomes no longer feasible. We are adding new

paragraphs 404.985(b)(1) and 416.1485(b)(1) so that the public is fully informed of this new timeframe.

Identifying Pending Claims Which May Be Affected by an AR

When we published the 1990 acquiescence regulations, we noted that a number of commenters on the 1988 proposed regulations (53 FR 46628 (November 18, 1988)) urged that we take action to identify and list pending claims that might be affected by an AR. In the response to that comment, we stated at 55 FR at 1013:

As a matter of operational necessity, some time will always elapse between the date of a court decision and the time that we could notify all adjudicators to begin listing cases which might be affected by its holding. Thus, a substantial number of cases would not be listed for later readjudication. The process which these comments suggest presumes instantaneous, comprehensive identification of all cases, which operationally we cannot accomplish. Therefore, despite the fact that requiring claimants to seek readjudication does require some action on their part, we have concluded that this is the most efficient and effective way to proceed and have not adopted these comments in the final regulations.

The basic facts noted in that response remain valid. Despite improved technology, it is still operationally impossible for us to identify all pending claims that might be affected by an AR. However, we have reassessed this situation and have now decided that it would be appropriate to identify pending claims that might be affected by an AR, as expeditiously as possible, even though we may not be able to identify all such claims.

Therefore, as described in paragraphs 404.985(b)(3) and 416.1485(b)(3), we are implementing the following procedures. As soon as possible after we receive a precedential circuit court decision that we find may contain a holding that conflicts with our interpretation of the Act or regulations, we will develop and provide our adjudicators with criteria that they will use to identify pending claims we are deciding within the relevant circuit that might be affected, if we subsequently determine that an AR is required. If an AR is subsequently released, a notice will be sent informing the claimants in these cases that might be affected by the AR that an AR has been issued that might affect the claim. The notice to the claimant will also explain the procedures for obtaining a readjudication of the claim under the AR. If we develop criteria and begin identifying claims, but subsequently determine that an AR is not required, the notices will not be sent.

We will notify adjudicators of the appropriate criteria to be used to identify claims no later than 10 days after we receive a circuit court decision that we determine may contain a holding which conflicts with our interpretation of the Act or regulations. Although we believe that the new procedure to identify pending claims within the relevant circuit that might be affected will greatly reduce the number of claimants who would have to learn of the issuance of the AR through the *Federal Register* publication of it or otherwise, the new procedure will likely not identify all individuals whose claims may be subject to the AR. For this reason, we have retained the readjudication procedure in paragraphs 404.985(b)(2) and 416.1485(b)(2) to ensure the protection of all claimants. Additionally, if a claimant or an adjudicator brings to our attention that a claim could potentially be affected by a circuit court decision that might become the subject of an AR, we will, if appropriate, identify that case pending a decision as to whether an AR is necessary in the circuit court decision in question.

These regulations do not apply to current and reopened claims governed by the court-approved settlement in *Stieberger v. Sullivan*, 801 F. Supp. 1079 (S.D. N.Y. 1992), to the extent that the regulations are inconsistent with the settlement.

Public Comments

These regulatory provisions were published in the *Federal Register* as a notice of proposed rulemaking (NPRM) on September 18, 1997 (62 FR 48963). We provided the public a 60-day comment period. We received a total of five statements containing multiple comments in response to this NPRM, two from individuals who are attorney representatives of claimants and three from legal services organizations.

Comment: One commenter recommended that the 120-day timeframe for publishing an AR specified in the NPRM be reduced to coincide with the date of the issuance of the circuit court's mandate under Rule 41 of the Federal Rules of Appellate Procedure. The commenter stated that this would allow SSA at least 52 days to prepare and release an AR. Another commenter stated that an AR should be effective as of the date of the order of the circuit court for which the AR is being issued.

Response: We have not adopted these comments. By necessity, some time will always elapse between the date of a court decision and the date that we publish an AR for that decision, due to

the practical impossibility of immediately taking all the steps necessary for implementing a circuit court decision. Because, as we note below, interpreting and applying a circuit court's holding may not be a simple matter, we have decided that 120 days from the date we receive the court's decision is the appropriate timeframe for us to thoroughly analyze the decision, determine that it contains a holding conflicting with our interpretation of the Act or regulations, and develop an AR to provide as specific a statement as possible explaining SSA's interpretation of the holding and how SSA will apply the holding when adjudicating claims within the applicable circuit. Therefore, ARs will generally continue to be effective as of the date of publication, and the readjudication procedures will continue to be available with respect to claims decided between the date of the court decision and publication of the AR. The new provision in the regulation for identifying pending claims potentially affected by the court's holding will further protect the rights of claimants whose claims are adjudicated during the period prior to the effective date of the AR. We relied on similar reasoning in not adopting a comment on the 1990 acquiescence regulations, 55 FR at 1016, which suggested that ARs should be effective as of the date of the circuit court decision.

Comment: One commenter stated that the regulations establishing the process for identifying claims affected by precedential circuit court holdings should provide a procedure for "listing" affected claims (including those decided beyond the 120-day timeframe if publication of an AR is delayed) and should provide our adjudicators with instructions for readjudicating these claims. The same commenter asked who would be responsible for identifying the affected claims and suggested that the regulations assign this responsibility to specific SSA personnel.

Response: The regulations establish a new process for identifying pending claims that may be affected by publication of an AR. We will begin to list identified claims no later than 10 days after the date the precedential circuit court decision is received by SSA. Identification criteria and instructions will be issued to all of our adjudicators in the circuit who will be responsible for deciding, in accordance with those criteria and instructions, whether a particular claim may be affected by the court's holding. We believe that adjudicators are best suited to identify these claims because ARs apply to all levels of adjudication, not

only to the ALJ and Appeals Council levels, unless a court holding by its nature applies to only certain levels of adjudication. If publication of an AR is delayed beyond the 120-day timeframe, the identification process will continue until the AR is issued. After an AR is published, additional instructions for each AR will be issued to all adjudicators in the circuit as needed.

Comment: One commenter stated that paragraph 404.985(b)(3) of the regulations should explicitly reflect the timeframe which was contained in the preamble to the NPRM that, within 10 days after SSA receives a circuit court decision for which it determines an AR may be required, SSA will provide instructions to adjudicators on the criteria for identifying pending claims that might be subject to readjudication if an AR is subsequently published for that court decision.

Response: Ordinarily we do not include operational processing time goals in regulations. However, because of our commitment to the timely publication of ARs, we have provided in these regulations that, in general, an AR will be released for publication in the *Federal Register* no later than 120 days from receipt of the court's decision. We believe the operational steps necessary for identifying pending claims are appropriately placed in the various detailed instructions that will be issued to adjudicators. Since the specific elements of the identification process are an operational matter, we have not placed it within the regulations. When we issue implementing instructions, they will contain the operational details necessary for us to inform adjudicators and others in the claims process of the appropriate criteria to be used to identify claims no later than 10 days after we receive a circuit court decision that we determine may contain a holding which conflicts with our interpretation of the Act or regulations.

Comment: One individual suggested that any process that does not provide for notice to all claimants, including claimants who received determinations between the date of the circuit court decision and the date we start identifying claimants who could potentially be affected by an AR (generally 10 days after our receipt of the circuit court decision), is "wholly inadequate."

Response: As we pointed out in the NPRM, we recognize that the new procedure may not identify all individuals who could be affected by an AR. Consequently, we have retained the readjudication procedures in paragraphs 404.985(b)(2) and 416.1485(b)(2) to ensure the protection of all claimants.

We expect that, generally, very few claims that could potentially be affected by an AR will be adjudicated during the relatively short period before we begin to identify claimants. However, claimants can bring to our attention and adjudicators can identify such claims during this period. While the procedures contained in our regulations require some action on the claimant's part, we have concluded that, from an operational standpoint, we cannot always accomplish instantaneous, comprehensive identification of all claims. We believe the new procedure represents the best balance we can strike between service to claimants and operational limitations.

Comment: Two commenters suggested that we publish our decision not to issue an AR for a circuit court holding that we determine does not conflict with our interpretation of the Act or regulations. One of these commenters also suggested that we should publish a notice in the *Federal Register* whenever we are unable to meet the 120-day timeframe for publishing an AR.

Response: We have not adopted these comments. We review approximately 600 circuit court decisions each year to determine whether an AR is required. We believe that publishing notices in the *Federal Register* for each of these decisions is an inefficient and costly way to inform the public and the courts about our conclusions with respect to acquiescence. We also do not believe it would be efficient to require SSA to publish a notice whenever issuance of an AR is delayed beyond the 120-day timeframe. We believe that we will provide the highest quality service to the public by focusing our limited resources on publishing ARs within the 120-day timeframe specified in these regulations and on notifying individual claimants identified under the procedure in paragraphs 404.985(b)(3) and 416.1485(b)(3) about circuit court decisions that may affect their claims.

Comment: One commenter suggested that the regulations should not limit readjudications under an AR to the particular issue addressed by the AR but instead should allow de novo review of the entire claim.

Response: Claims pending administrative review will receive de novo review when adjudicated under an AR. Under the 1990 acquiescence regulations, which we have not changed in this regard, other claims in which administrative appeal rights have lapsed are readjudicated based upon a consideration of the issues covered by the AR. To the extent that those issues covered by the AR affect other issues in the claim, those other issues will also be

addressed as part of the readjudication. However, we do not believe that the Act requires us to automatically afford lapsed claims being readjudicated the opportunity for de novo review.

Comment: One commenter suggested that the regulations should permit full appeal rights as to a finding that a claim is not subject to readjudication under an AR.

Response: This question was addressed in the preamble to the 1990 acquiescence regulations, 55 FR at 1014. We do not believe that permitting further review on the question of whether or not an AR applies to a pending claim is appropriate. Once we conclude that readjudication is not necessary, the next step should be an appeal on the substantive merits of the claim itself, not the readjudication question. When a decision is reached on appeal concerning the substantive issue(s), the readjudication issue will be resolved. In cases where a person did not appeal timely and subsequently becomes aware of an AR that may apply to his or her claim, the readjudication procedure is available. Also, claimants may request to have their lapsed claims reopened and we may do so if the grounds for reopening are met.

We continue to believe that the combination of appeal, readjudication, and reopening provides a fair process that protects the rights of claimants.

Comment: One commenter expressed the view that paragraph 404.985(b)(2) should not require claimants to identify the appropriate AR when seeking readjudication. The commenter suggests that a claimant should be allowed to seek readjudication by identifying the appropriate circuit court decision, without also identifying the AR.

Response: We have adopted this comment and modified the new paragraphs under 404.985(b)(2) and 416.1485(b)(2) to specify that the claimant may request application of the AR to his or her case by either citing the AR or, in the alternative, by specifying the holding or portion of a circuit court decision which could change the prior determination in their case. It should be noted, however, that the 1990 regulations provided under paragraphs 404.985(b) and 416.1485(b) that one way a claimant may obtain a readjudication was by submitting a statement which cited the AR; the regulations did not state that this was, and we did not intend this to be, an absolute requirement for obtaining readjudication.

Regulation paragraphs 404.985(b)(3) and 416.1485(b)(3) provide for the identification by SSA of pending claims which might be affected by the issuance

of an AR. When an AR is published, we will send individual notices for those claims. In addition, as stated in the preamble to the NPRM, a claimant or an adjudicator may bring to our attention a claim that could be potentially affected by a circuit court decision and we will, if appropriate, identify that claim pending our decision as to whether an AR is necessary for the circuit court decision in question.

Comment: One individual observed that the regulations result in the application of differing rules in different sections of the country, which is not desirable, and the regulations can cause the differing rules to continue indefinitely without restoring national uniformity. The commenter suggested that we establish a formal process to oversee litigation and to make changes in national rules whenever a district or circuit court decision conflicted with our rules.

Response: As discussed in the preamble to the 1990 acquiescence regulations, 55 FR at 1012-1013, a number of studies on the subject of Federal acquiescence have noted that nationwide adoption of the decision of the first circuit court to address an issue (intercircuit acquiescence) would preclude other circuit courts from considering the issue. In 1984, when Congress considered legislation that would have required SSA to acquiesce in circuit court decisions, the Solicitor General of the United States expressed similar concerns, stating that the practical effect of that legislation would be to require the Department of Justice to consider seeking Supreme Court review of the first adverse decision on an issue by any court of appeals. The Department of Justice reiterated these concerns in 1997 when Congress was again considering legislation to address the issue of acquiescence by Federal agencies.

An approach that would require nationwide adoption of the first circuit court decision on a particular issue would not improve SSA's adjudicatory and policy making processes, but would instead result in the first circuit that happened to rule on an issue setting SSA's national rules on that subject. In effect, the circuit court that would rule first would rule last. This result could hardly be intended by any reasonable interpretation of acquiescence and would undermine the advantages, which have been recognized by the Supreme Court, of having issues considered by more than one circuit court.

Moreover, we acquiesce only in the holdings of Federal circuit courts and not in holdings of Federal district courts

within a circuit. See SSR 96-1p (61 FR 34470). This is consistent with the well-recognized principle that one district court's decision does not constitute binding precedent applicable to other claims arising within that district. There is no such thing as the "law of the district." Indeed, even within the same district, one judge may disagree with the holding in a decision by another judge. Thus, despite a district court holding in a decision that may conflict with our interpretation of the Act or regulations, we will continue to apply our nationwide rules when adjudicating claims within that district court's jurisdiction unless the court directs otherwise such as may occur in a class action.

Comment: Several commenters expressed the opinion that we have not fully implemented our existing acquiescence policy because, in reviewing circuit court holdings to determine whether they conflict with our rules, we read the holdings too narrowly and, thus, incorrectly decide that an AR is not necessary. The commenters suggested that this was caused by a lack of specific standards for determining when a circuit court holding conflicts with our rules. One commenter said that it was inappropriate for us to interpret circuit court holdings and that we should be limited to merely implementing the "policy directive" stated by the court.

Response: We review every circuit court decision to determine whether a circuit court's holding conflicts with our interpretation of the Act or regulations. Since our acquiescence policy became effective in 1985, we have published 68 ARs. There has been a dramatic decline in litigation based on allegations that we have refused to acquiesce in specific circuit court decisions since the adoption of the 1990 acquiescence regulations.

As discussed in the preamble to the 1990 acquiescence regulations, 55 FR at 1012, the vast majority of adverse circuit court decisions do not conflict with our interpretation of the Act and regulations; they are based either on the issue of whether substantial evidence supports SSA's final administrative decision or on the issue of whether the final administrative decision adheres to established agency rules. A court holding based on the adjudicator's failure to follow established rules does not conflict with the rules themselves. Identifying the holding of a particular circuit court decision and determining whether or not the holding conflicts with our interpretation of the Act and regulations are not always clear or simple matters, and this may account

for the concern expressed by these commenters about how we implement acquiescence policy.

Establishing specific standards for evaluating whether a court holding conflicts with our interpretation of the Act and regulations would be impractical because of the diversity and complexities both of the programs and policies we administer and of the court decisions concerning these programs and policies. For example, the policies and issues considered in adjudicating disability claims usually involve technical medical and vocational concepts, which are very different from the benefit computation and family relationship questions frequently considered in retirement and survivors claims. Because explaining how we will apply the circuit court holding within the circuit is also not a clear and simple matter, we do not believe that a standard for analyzing all circuit court holdings would be feasible. Consequently, we have declined to adopt this comment.

By statute, establishing rules and procedures governing SSA's programs is the responsibility of the Commissioner of Social Security. Furthermore, court decisions generally resolve individual claims and neither address similar circumstances, nor are written in a way that necessarily instructs our adjudicators how to apply the courts' holdings to other claims. We believe that to ensure uniform and consistent adjudication procedures necessary for the administration of a national program, SSA must analyze and interpret circuit court holdings that we determine conflict with SSA's nationwide rules to provide our adjudicators as specific a statement as possible of how to apply the holding in the course of adjudicating other claims.

If a person believes that we have overlooked or misconstrued a holding in a court of appeals decision, that person may bring this matter to our attention and we will respond appropriately.

Comment: Two commenters suggested that SSA should amend the current acquiescence regulations to direct adjudicators to follow circuit court precedent whether or not an AR has been issued. It was also suggested that SSR 96-1p, which sets forth a different policy from that suggested by the commenters, be withdrawn immediately.

Response: Both the preamble to the 1990 acquiescence regulations, 55 FR at 1013, and SSR 96-1p, published on July 2, 1996, explain the basis for our longstanding policy that SSA adjudicators are to follow SSA's nationwide rules until the

Commissioner determines that a circuit court holding is in conflict with our national rules and publishes an AR instructing adjudicators on how the decision is to be followed within the applicable circuit. Circuit court decisions generally resolve individual claims and are not necessarily written in a way that instructs our adjudicators on how to consistently apply the courts' holdings to other claims, particularly when the numerous possible situations to which they may apply are considered. The meaning and scope of a court holding are not always clear and can be subject to disparate interpretations.

If each of SSA's over 15,000 adjudicators were permitted to apply his or her own interpretation of a circuit court decision in resolving these difficult questions, rather than relying on guidance from the Commissioner in the form of an AR, it could result in conflicting standards being used by decisionmakers, even within the same circuit. Furthermore, the Commissioner has the responsibility by statute to administer the Social Security programs and establish the agency's rules and procedures. If the Commissioner abdicated that responsibility by allowing individual adjudicators to decide claims according to his or her individual interpretation of the law, it would be impossible for the Commissioner to carry out his responsibility to administer the Social Security programs in an effective and efficient manner on a nationwide basis, and to ensure consistent and uniform application of SSA's rules. Indeed, some adjudicators might apply the circuit court's decision in ways less favorable to claimants than the court intended. Furthermore, it would not necessarily be apparent what standard was applied by an individual adjudicator; therefore, unlike the standards established by the Commissioner in an AR, the interpretation of a circuit court decision by an individual adjudicator might not be readily susceptible to judicial scrutiny.

In addition, adjudicators at the initial and reconsideration levels of review generally do not have any legal training in interpreting and applying circuit court decisions. If authority to apply circuit court decisions in the absence of an AR was extended only to ALJs and the Appeals Council, it would further undermine uniformity in decisionmaking by creating different standards of adjudication at different levels of administrative review.

For all these reasons, we continue to believe that the AR is the fairest and most effective method to achieve a

uniform acquiescence in circuit court holdings that conflict with SSA's nationwide rules. This approach is consistent with the longstanding legal principle that it is the responsibility of the Commissioner, not individual adjudicators, to establish SSA's rules and policies (including how to apply a circuit court holding which conflicts with SSA's nationwide rules). Any erosion of this legal principle would represent a radical change in the Federal administrative structure, and would undermine a Federal department or agency head's accountability for the administration of the agency's programs. Therefore, it is the role and responsibility of individual adjudicators to decide claims by applying the rules and policies established by the Commissioner to the facts of an individual case.

Comment: One individual suggested that we clarify our longstanding regulatory language setting forth SSA's authority to rescind an AR when we subsequently publish a new regulation addressing an issue not previously included in our regulations.

Response: This provision has been in the regulations since 1990 and courts have not found that it has been misapplied. We do not believe there is a need for a clarifying amendment to this particular provision at this time.

Comment: One commenter questioned the legality of relitigating in the same circuit an issue addressed by an AR. Another questioned whether the regulations permit SSA to relitigate an issue within the same circuit after publication of an AR if we later publish a nationwide regulation reaffirming our original position on the issue.

Response: These final rules make no changes in our relitigation policies and procedures which were set forth in the 1990 acquiescence regulations. We do not believe that a Federal agency is legally precluded from relitigating an issue within a circuit that has previously issued a ruling adverse to the Government's position. When we published the 1990 acquiescence regulations, we discussed some of the authorities supporting our position on relitigation and stated that we would not use relitigation as a primary means for resolving conflicts in statutory and regulatory interpretation. To date, we have never used the relitigation procedures outlined in the 1990 regulations. Those regulations state that if we do decide to relitigate an issue, we will publish a notice of our intention in the *Federal Register* and also provide a notice explaining our action to all affected claimants.

As discussed in the preamble to the 1990 acquiescence regulations, 55 FR at 1015, when we determine that a circuit court holding conflicts with our interpretation of the Act and regulations, we generally expect to resolve the conflict by actively pursuing our right to seek further judicial review, revisiting the same issue in related litigation, clarifying our regulations, or seeking statutory amendments. The regulations outline a process for relitigating a court's holding within the same circuit after publication of an AR, which requires certain specific activating events. Publication of a regulation, by itself, is not an activating event for relitigation.

Based on our analysis of the comments, and for the reasons set forth above, we are publishing the proposed rules as final rules with the changes to paragraphs 404.985(b)(2) and 416.1485(b)(2) discussed above. We have also made minor editorial and technical changes for clarification and consistency.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they are not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations contain information collection requirements in paragraphs 404.985(b) and 416.1485(b). We have received approval for these requirements from OMB under OMB No. 0960-0581 which expires November 30, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.003, Social Security-Special Benefits for Persons Aged 72 and Over; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability

benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements Supplemental Security Income (SSI).

Dated: April 27, 1998.

Kenneth S. Apfel,

Commissioner of Social Security

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

20 CFR part 404, subpart J, is amended as follows:

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A, sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Section 404.985 is revised to read as follows:

§ 404.985 Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) *General.* We will apply a holding in a United States Court of Appeals decision that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations unless the Government seeks further judicial review of that decision or we relitigate the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. We will apply the holding to claims at all levels of the administrative review process within the applicable circuit unless the holding, by its nature, applies only at certain levels of adjudication.

(b) *Issuance of an Acquiescence Ruling.* When we determine that a United States Court of Appeals holding conflicts with our interpretation of a provision of the Social Security Act or regulations and the Government does not seek further judicial review or is unsuccessful on further review, we will

issue a Social Security Acquiescence Ruling. The Acquiescence Ruling will describe the administrative case and the court decision, identify the issue(s) involved, and explain how we will apply the holding, including, as necessary, how the holding relates to other decisions within the applicable circuit. These Acquiescence Rulings will generally be effective on the date of their publication in the **Federal Register** and will apply to all determinations and decisions made on or after that date unless an Acquiescence Ruling is rescinded as stated in paragraph (e) of this section. The process we will use when issuing an Acquiescence Ruling follows:

(1) We will release an Acquiescence Ruling for publication in the **Federal Register** for any precedential circuit court decision that we determine contains a holding that conflicts with our interpretation of a provision of the Social Security Act or regulations no later than 120 days from the receipt of the court's decision. This timeframe will not apply when we decide to seek further judicial review of the circuit court decision or when coordination with the Department of Justice and/or other Federal agencies makes this timeframe no longer feasible.

(2) If we make a determination or decision on your claim between the date of a circuit court decision and the date we publish an Acquiescence Ruling, you may request application of the published Acquiescence Ruling to the prior determination or decision. You must demonstrate that application of the Acquiescence Ruling could change the prior determination or decision in your case. You may demonstrate this by submitting a statement that cites the Acquiescence Ruling or the holding or portion of a circuit court decision which could change the prior determination or decision in your case. If you can so demonstrate, we will readjudicate the claim in accordance with the Acquiescence Ruling at the level at which it was last adjudicated. Any readjudication will be limited to consideration of the issue(s) covered by the Acquiescence Ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. Our denial of a request for readjudication will not be subject to further administrative or judicial review. If you file a request for readjudication within the 60-day appeal period and we deny that request, we shall extend the time to file an appeal on the merits of the claim to 60 days after the date that we deny the request for readjudication.

(3) After we receive a precedential circuit court decision and determine that an Acquiescence Ruling may be required, we will begin to identify those claims that are pending before us within the circuit and that might be subject to readjudication if an Acquiescence Ruling is subsequently issued. When an Acquiescence Ruling is published, we will send a notice to those individuals whose cases we have identified which may be affected by the Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under that Acquiescence Ruling, as described in paragraph (b)(2) of this section. It is not necessary for an individual to receive a notice in order to request application of an Acquiescence Ruling to his or her claim, as described in paragraph (b)(2) of this section.

(c) *Relitigation of court's holding after publication of an Acquiescence Ruling.* After we have published an Acquiescence Ruling to reflect a holding of a United States Court of Appeals on an issue, we may decide under certain conditions to relitigate that issue within the same circuit. We may relitigate only when the conditions specified in paragraphs (c)(2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this section occurs.

(1) *Activating events:*

(i) An action by both Houses of Congress indicates that a circuit court decision on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law;

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again;

(iii) Subsequent circuit court precedent in other circuits supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court holding upon which we base an Acquiescence Ruling.

(2) The General Counsel of the Social Security Administration, after consulting with the Department of Justice, concurs that relitigation of an issue and application of our interpretation of the Social Security Act or regulations to selected claims in the

administrative review process within the circuit would be appropriate.

(3) We publish a notice in the **Federal Register** that we intend to relitigate an Acquiescence Ruling issue and that we will apply our interpretation of the Social Security Act or regulations within the circuit to claims in the administrative review process selected for relitigation. The notice will explain why we made this decision.

(d) *Notice of relitigation.* When we decide to relitigate an issue, we will provide a notice explaining our action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply our interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, we will maintain a listing of all claimants who receive this notice and will provide them with the relief ordered by the court.

(e) *Rescission of an Acquiescence Ruling.* We will rescind as obsolete an Acquiescence Ruling and apply our interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occurs:

(1) The Supreme Court overrules or limits a circuit court holding that was the basis of an Acquiescence Ruling;

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling;

(3) A Federal law is enacted that removes the basis for the holding in a decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) We subsequently clarify, modify or revoke the regulation or ruling that was the subject of a circuit court holding that we determined conflicts with our interpretation of the Social Security Act or regulations, or we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue(s) was the subject of a circuit court holding that conflicted with our interpretation of the Social Security Act or regulations and that holding was not compelled by the statute or Constitution.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

20 CFR part 416, subpart N, is amended as follows:

1. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

2. Section 416.1485 is revised to read as follows:

§ 416.1485 Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) *General.* We will apply a holding in a United States Court of Appeals decision that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations unless the Government seeks further judicial review of that decision or we relitigate the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. We will apply the holding to claims at all levels of the administrative review process within the applicable circuit unless the holding, by its nature, applies only at certain levels of adjudication.

(b) *Issuance of an Acquiescence Ruling.* When we determine that a United States Court of Appeals holding conflicts with our interpretation of a provision of the Social Security Act or regulations and the Government does not seek further judicial review or is unsuccessful on further review, we will issue a Social Security Acquiescence Ruling. The Acquiescence Ruling will describe the administrative case and the court decision, identify the issue(s) involved, and explain how we will apply the holding, including, as necessary, how the holding relates to other decisions within the applicable circuit. These Acquiescence Rulings will generally be effective on the date of their publication in the **Federal Register** and will apply to all determinations, redeterminations, and decisions made on or after that date unless an Acquiescence Ruling is rescinded as stated in paragraph (e) of this section. The process we will use when issuing an Acquiescence Ruling follows:

(1) We will release an Acquiescence Ruling for publication in the **Federal Register** for any precedential circuit court decision that we determine contains a holding that conflicts with our interpretation of a provision of the Social Security Act or regulations no later than 120 days from the receipt of the court's decision. This timeframe will

not apply when we decide to seek further judicial review of the circuit court decision or when coordination with the Department of Justice and/or other Federal agencies makes this timeframe no longer feasible.

(2) If we make a determination or decision on your claim between the date of a circuit court decision and the date we publish an Acquiescence Ruling, you may request application of the published Acquiescence Ruling to the prior determination or decision. You must demonstrate that application of the Acquiescence Ruling could change the prior determination or decision in your case. You may demonstrate this by submitting a statement that cites the Acquiescence Ruling or the holding or portion of a circuit court decision which could change the prior determination or decision in your case. If you can so demonstrate, we will readjudicate the claim in accordance with the Acquiescence Ruling at the level at which it was last adjudicated. Any readjudication will be limited to consideration of the issue(s) covered by the Acquiescence Ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. Our denial of a request for readjudication will not be subject to further administrative or judicial review. If you file a request for readjudication within the 60-day appeal period and we deny that request, we shall extend the time to file an appeal on the merits of the claim to 60 days after the date that we deny the request for readjudication.

(3) After we receive a precedential circuit court decision and determine that an Acquiescence Ruling may be required, we will begin to identify those claims that are pending before us within the circuit and that might be subject to readjudication if an Acquiescence Ruling is subsequently issued. When an Acquiescence Ruling is published, we will send a notice to those individuals whose cases we have identified which may be affected by the Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under that Acquiescence Ruling, as described in paragraph (b)(2) of this section. It is not necessary for an individual to receive a notice in order to request application of an Acquiescence Ruling to his or her claim, as described in paragraph (b)(2) of this section.

(c) *Relitigation of court's holding after publication of an Acquiescence Ruling.* After we have published an Acquiescence Ruling to reflect a holding

of a United States Court of Appeals on an issue, we may decide under certain conditions to relitigate that issue within the same circuit. We may relitigate only when the conditions specified in paragraphs (c)(2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this section occurs.

(1) Activating events:

(i) An action by both Houses of Congress indicates that a circuit court decision on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law;

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again;

(iii) Subsequent circuit court precedent in other circuits supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court holding upon which we base an Acquiescence Ruling.

(2) The General Counsel of the Social Security Administration, after consulting with the Department of Justice, concurs that relitigation of an issue and application of our interpretation of the Social Security Act or regulations to selected claims in the administrative review process within the circuit would be appropriate.

(3) We publish a notice in the *Federal Register* that we intend to relitigate an Acquiescence Ruling issue and that we will apply our interpretation of the Social Security Act or regulations within the circuit to claims in the administrative review process selected for relitigation. The notice will explain why we made this decision.

(d) *Notice of relitigation.* When we decide to relitigate an issue, we will provide a notice explaining our action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply our interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that

affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, we will maintain a listing of all claimants who receive this notice and will provide them with the relief ordered by the court.

(e) *Rescission of an Acquiescence Ruling.* We will rescind as obsolete an Acquiescence Ruling and apply our interpretation of the Social Security Act or regulations by publishing a notice in the *Federal Register* when any of the following events occurs:

(1) The Supreme Court overrules or limits a circuit court holding that was the basis of an Acquiescence Ruling;

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling;

(3) A Federal law is enacted that removes the basis for the holding in a decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) We subsequently clarify, modify or revoke the regulation or ruling that was the subject of a circuit court holding that we determined conflicts with our interpretation of the Social Security Act or regulations, or we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue(s) was the subject of a circuit court holding that conflicted with our interpretation of the Social Security Act or regulations and that holding was not compelled by the statute or Constitution.

[FR Doc. 98-11945 Filed 5-5-98; 8:45 am]

BILLING CODE 4190-11-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N-0119]

21 CFR Part 801

Natural Rubber-Containing Medical Devices; User Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; interpretation.

SUMMARY: The Food and Drug Administration (FDA) is providing notice that it does not intend to apply to combination products currently regulated under human drug or biologic labeling provisions its September 30, 1997, final rule requiring certain labeling statements for all medical devices that contain or have packaging that contains natural rubber that

contacts humans. FDA is taking this action, in part, in response to a citizen petition and other communications from industry that the agency has received since the publication of the final rule. FDA intends to initiate a proceeding to propose natural rubber labeling requirements for drugs and biologics, including combination products that are currently regulated under drug and biologic labeling provisions. Such a proceeding may include a combination of rulemaking and guidance and will offer opportunity for public comment.

EFFECTIVE DATE: September 30, 1998.

FOR FURTHER INFORMATION CONTACT:

Brian L. Pendleton, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5649; or Robert A. Yetter, Center for Biologics Evaluation and Research (HFM-10), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-827-0737.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of September 30, 1997 (62 FR 51021), FDA published a final rule to be codified at 21 CFR 801.437 requiring certain labeling statements on medical devices that contain or have packaging that contains natural rubber that contacts humans. The labeling statements alert users that a product contains either dry natural rubber or natural rubber latex, and for products containing natural rubber latex that the presence of this material may cause allergic reactions. The final rule, which becomes effective September 30, 1998, was adopted because natural rubber may cause a significant health risk to persons who are sensitized to natural latex proteins.

In response to a comment on the proposed latex labeling regulation (61 FR 32618, June 24, 1996) about the applicability of the requirements to combination products, FDA stated in the preamble to the final rule that it intended to require combination products (i.e., drug/device and biologic/device combinations) that contain natural rubber device components to be labeled in accordance with § 801.437 (62 FR 51021 at 51026). Because the entities that comprise a combination product meet more than one jurisdictional definition, the agency may apply one or more sets of regulatory provisions to such products, as specified in the Intercenter Agreement Between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health and the Intercenter Agreement Between the Center for Biologics Evaluation and Research and the Center for Devices and

Radiological Health (the Intercenter Agreements).

Concerning the implementation of the final rule for these combination products, the FDA stated that natural rubber combination products that are listed in the Intercenter Agreements as being regulated under device labeling provisions will be required to comply with the final rule on the effective date. FDA stated that natural rubber combination products that are listed in the Intercenter Agreements as being regulated under drug or biologic labeling provisions will be subject to the labeling requirements on September 30, 1998, or when FDA amends the Intercenter Agreements to provide that these types of combination products are subject to the requirements, whichever is later. FDA stated that it would provide notice in the *Federal Register* of the amendments to the Intercenter Agreements to apply the labeling requirements to all natural rubber combination products regulated under drug and biologic provisions. FDA also stated then that: "the agency anticipates that the Drug/Device Intercenter Agreement will be amended to reflect that prefilled drug vial containers, transdermal patches, infusion pumps, and prefilled syringes that presently are regulated under drug authorities are also subject to this regulation" (62 FR 51021 at 51026).

The agency has received numerous inquiries about, and objections to, the application of the natural rubber labeling requirements to combination drug/device products and to combination biologic/device products that currently are regulated under drug and biologic labeling provisions. These include a citizen petition submitted by the Health Industry Manufacturers Association (Docket No. 98P-0012/CP1). One concern was that some combination products may raise different labeling issues than single-entity device products. In addition, a concern was raised that adequate notice and opportunity for comment was not provided with regard to the applicability of the rule to combination products that currently are regulated

under drug and biologic labeling provisions.

FDA believes that the notice provided was legally sufficient. However, upon consideration of these comments and the need to provide a uniform labeling approach for all drug and biological products, including combination products currently regulated under drug and biologic labeling provisions, FDA has decided that further opportunity for public comment should be provided on how natural rubber labeling requirements should be applied to all products regulated as drugs and biologics. FDA believes that it would benefit from additional public comment on whether there are labeling issues that are unique to products regulated as drugs and biologics as well as on whether the agency should adopt rules and guidance that would apply to all natural rubber-containing products regulated under the drug and biologic labeling provisions rather than only to combination products.

Therefore, FDA is announcing that it does not intend to amend the Intercenter Agreements as stated in the preamble to the final rule. Instead, FDA intends to initiate a proceeding to propose requirements for labeling statements on products regulated as drugs and biologics, including combination products currently regulated under drug and biologic labeling provisions, that contain natural rubber that contacts humans. Such a proceeding may include a combination of proposed rulemaking and guidance and will offer opportunity for public comment. In the interim, FDA is providing notice that it does not intend to apply to combination products regulated under human drug or biologic labeling provisions its September 30, 1997, final rule requiring certain labeling statements for all medical devices that contain or have packaging containing natural rubber that contacts humans.

Dated: April 30, 1998.

William B. Schultz,
Deputy Commissioner for Policy.

[FR Doc. 98-11982 Filed 5-5-98; 8:45 am]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR-67-7282, OR-70-7285; FRL-5976-5]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to procedures described in the January 19, 1989 *Federal Register*, EPA recently approved two minor State Implementation Plan (SIP) revisions submitted by the Oregon Department of Environmental Quality (ODEQ). These revisions include: changes to the definition of Volatile Organic Compounds (VOC) in the Oregon Administrative Rules (OAR) consistent with changes made in the federal definition and delisting certain compounds no longer considered VOCs; and, changes in the OAR that increase Air Contaminant Discharge Permit Fees for stationary sources to recover costs of operating the state permit program. This document lists the revisions EPA has approved and incorporates the relevant material into the Code of Federal Regulations.

EFFECTIVE DATE: June 5, 1998.

ADDRESSES: Copies of Oregon's State SIP revision requests and EPA's letter notices of approval are available for public inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101; State of Oregon Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ-107), EPA, Seattle, Washington, (206) 553-1388.

SUPPLEMENTARY INFORMATION: EPA Region 10 has approved the following minor SIP revision requests under section 100(a) of the Clean Air Act (Act):

State	Subject matter	Date of submission	Date of approval
OR	Changes to the definition of VOC in the OAR consistent with changes in the federal definition. Delisting perchloroethylene, acetone, HFC 43-10mee and HCFC 225ca and cb which are no longer considered VOCs.	5-22-97	6-16-97
OR	Changes in the OAR that increase the Air Contaminant Permit Fees for stationary sources and allow the state to recover the costs of operating the permit program.	11-13-97	2-13-98

EPA has determined that each of these SIP revisions complies with all applicable requirements of the Act and EPA policy and regulations concerning such revisions. Due to the minor nature of these revisions, EPA concluded that conducting notice-and-comment rulemaking prior to approving the revisions would have been "unnecessary and contrary to the public interest" and hence not required by the Administrative Procedure Act, 5 U.S.C. 553(b). Each of these SIP approvals became final and effective on the date of EPA approval as listed in the chart above.

I. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the

aggregate, or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping

requirements, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: February 20, 1998.

Chuck Findley,

Acting Regional Administrator, Region X.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: U.S.C. 7401 et seq.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(123) to read as follows:

§ 52.1970 Identification of plan.

(c) . . .

(123) On May 22, 1997, ODEQ submitted changes to the definition of Volatile Organic Compounds (VOC) in the Oregon Administrative Rules (OAR) consistent with changes made in the federal definition and delisted certain compounds no longer considered VOCs under the new definition. On November 13, 1997, ODEQ submitted changes in the OAR that increased Air Contaminant Discharge Permit Fees for stationary sources to recover costs of operating the state permit program.

(i) Incorporation by reference.

(A) Oregon Administrative Rules 340-022-0102(73) and 340-028-0110(129), effective May 9, 1997; Oregon Administrative Rule 340-028-1750, effective August 27, 1997.

[FR Doc. 98-11882 Filed 5-5-98; 8:45 am]

BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300649; FRL-5787-9]

RIN 2070-AB78

Various Inert Ingredients; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance exemptions for residues of 2-

propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate when used as inert ingredients in pesticide formulations applied to growing crops, crops after harvest, and/or animals. EPA is establishing this regulation on its own initiative.

DATES: This regulation is effective May 6, 1998. Objections and requests for hearings must be received by EPA on or before July 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300649], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300649], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300649]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Division 7505W, Office of Pesticide

Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-8380, e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of October 1, 1997 (62 FR 51397) (FRL-5746-3), EPA proposed the establishment of an exemption from the requirement of a tolerance for residues of 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate when used as inert ingredients in pesticide formulations applied to growing crops, raw agricultural commodities after harvest and/or animals on its own initiative pursuant to section 408(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e). This proposal noted that these chemicals were the subject of proposed rules published prior to the enactment of the Food Quality Protection Act of 1996. Summaries of each of those initial proposed rules were also included. There were no comments received in response to the proposed rule.

Based on the information and data considered and the findings set forth in the preamble to the proposed rule, EPA is establishing exemptions from the requirement of a tolerance as set forth in this document.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the

objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300649] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898,

entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

The Regulatory Flexibility Act (RFA) 5 U.S.C. 605(b), as amended, Pub. L. 104-121, 110 Stat. 847, generally requires an agency to prepare a regulatory flexibility analysis of the impact of any notice and comment rulemaking on small entities unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, pursuant to section 605(b) of the RFA, EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no final regulatory flexibility analysis under section 604(a) of the Act is required.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 22, 1998.

Peter Caulkins,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:
- Authority: 21 U.S.C. 346a and 371.
2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredients, and the table in paragraph (d) is amended by removing the entry for "Maleic anhydride diisobutylene copolymer, sodium salt" to read as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

(c) * * *

Inert ingredients	Limits	Uses
Maleic anhydride-diisobutylene copolymer, sodium salt (CAS Reg. No. 37199-81-8), minimum number average molecular weight (in amu) 5,000-18,000.		Suspending agent and dispersing agent.
Polyvinylpyrrolidone butylated polymer (CAS Reg. No. 26160-96-3), minimum number average molecular weight (in amu) 9,500.		Surfactants, related adjuvant of surfactants and binder.
2-Propene-1-sulfonic acid sodium salt, polymer with ethenol and ethenyl acetate, number average molecular weight (in amu) 6,000 - 12,000.		Binding agent.
Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate, minimum number average molecular weight (in amu) 20,000.		Water soluble resin.

Inert ingredients	Limits	Uses
Vinyl pyrrolidone-acrylic acid copolymer (CAS Reg. No. 28062-44-4), minimum number average molecular weight (in amu) 6,000.		Adhesive, dispersion stabilizer and coating for sustained release granules.
Maleic anhydride-diisobutylene copolymer, sodium salt (CAS Reg. No. 37199-81-8), minimum number average molecular weight (in amu) 5,000-18,000.		Suspending agent and dispersing agent.
Polyvinylpyrrolidone butylated polymer (CAS Reg. No. 26160-96-3), minimum number average molecular weight (in amu) 9,500.		Surfactants, related adjuvant of surfactants and binder.
2-Propene-1-sulfonic acid sodium salt, polymer with ethenol and ethenyl acetate, number average molecular weight (in amu) 6,000 - 12,000.		Binding agent.
Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate, minimum number average molecular weight (in amu) 20,000.		Water soluble resin.
Vinyl pyrrolidone-acrylic acid copolymer (CAS Reg. No. 28062-44-4), minimum number average molecular weight (in amu) 6,000.		Adhesive, dispersion stabilizer and coating for sustained release granules.

[FR Doc. 98-11765 Filed 5-5-98; 8:45 am]
BILLING CODE 5500-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300650; FRL-5788-1]

RIN 2070-AB78

Safener HOE-107892; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: This rule extends time-limited tolerances for residues of the herbicide safener HOE-107892 and its metabolites in or on wheat grain at 0.01 part per million (ppm) and wheat straw at 0.05 ppm for an additional 18-month period, to February 1, 2000. This action is in response to EPA's granting of an

emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide fenoxaprop with the safener HOE-107892 (trade name Puma®) on durum wheat. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective May 6, 1998. Objections and requests for hearings must be received by EPA, on or before July 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP-300650], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees

accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300650], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII

file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP-300650]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 278, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-9367; e-mail: ertman.androw@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the *Federal Register* of August 8, 1997 (62 FR 42678) (FRL-5731-7), which announced that on its own Initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established time-limited tolerances for the residues of herbicide safener HOE-107892 and its metabolites in or on wheat grain at 0.01 ppm and wheat straw at 0.05 ppm, with an expiration date of August 1, 1998. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of fenoxaprop with the safener HOE-107892 on durum wheat for this year's growing season because the registered alternatives for use on durum wheat are not providing reliable, season-long control of green and yellow foxtail. In addition, documented cases of trifluralin resistant green foxtail have been reported by North Dakota. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of Puma (fenoxaprop with the safener HOE-107892) on durum wheat for control of green and yellow foxtail in North Dakota and Montana.

EPA assessed the potential risks presented by residues of the herbicide safener HOE-107892 in or on wheat grain and wheat straw. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 8, 1997. Based on the data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 18-month period. Although these tolerances will expire and are revoked on February 1, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on wheat grain and wheat straw after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the

grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received

and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

This final rule extends time-limited tolerances that were previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any unenforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

Since this extension of existing time-limited tolerances does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's *Federal Register*. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 22, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.509 [Amended]

2. In § 180.509, the table in paragraph (b) is amended by changing the date "August 1, 1998" to read "2/1/00", wherever it appears.

[FR Doc. 98-11763 Filed 5-5-98; 8:45 am]

BILLING CODE 6560-60-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300653; FRL-5788-5]

RIN 2070-A-878

Cymoxanil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the fungicide, cymoxanil, 2-cyano-N-[(ethylamino)carbonyl]-2-(methoxyimino)acetamide, in or on potatoes. E.I. DuPont de Nemours & Company submitted a petition under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170) requesting this tolerance.

DATES: This regulation is effective May 6, 1998. Objections and requests for hearings must be received by EPA on or before July 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300653], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300653], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300653]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Acting Product Manager (PM) 21, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9354, e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of (July 25, 1997, 62 FR 40075)(FRL-5726-4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petition (PP 7F4805) for a tolerance by E.I. DuPont de Nemours and Company, E. I. DuPont Agricultural Products, Walker's Mill,

Barley Mill Plaza, P.O. Box 80038, Wilmington, Delaware, 19880-0038. This notice included a summary of the petition prepared by E.I. DuPont de Nemours & Company, the registrant. No comments were received in response to the notice of filing.

The petition requested that 40 CFR 180.503 be amended by establishing a tolerance for residues of the fungicide cymoxanil, 2-cyano-N-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide, in or on potatoes at 0.05 parts per million (ppm).

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario.

Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population

subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup

(children 1 to 6 years old) was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of cymoxanil to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of cymoxanil 2-cyano-N-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide in or on potatoes. EPA's assessment of the dietary exposures and risks associated with establishing this tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cymoxanil is discussed below.

1. *Acute toxicity.* A battery of acute toxicity studies resulted in an acute oral LD₅₀ = 760 milligrams/kilograms (mg/kg) for males and LD₅₀ = 1,200 mg/kg for females; an acute dermal LD₅₀ > 2,000 mg/kg for both sexes; an acute inhalation LC₅₀ > 5.06 for both sexes; no ocular irritation; slight dermal irritation and a finding that the cymoxanil is not a dermal sensitizer.

2. *Subchronic toxicity.* a. A subchronic oral toxicity/neurotoxicity study in rats fed cymoxanil at dose levels of 0, 100, 750, 1,500, or 3,000 ppm (0, 6.54, 47.6, 102, or 224 mg/kg/day for males, and 0, 8.0, 59.9, 137, or 333 mg/kg/day for females) for approximately 97 days. A group of 10 rats/sex/dose were evaluated for subchronic systemic toxicity and a group of 10 rats/sex/dose underwent neurobehavioral testing at pre-test, 5, 9, and 13 weeks. The control and high-dose groups were assessed for neuropathology. The LOEL for subchronic systemic toxicity is 1,500 ppm based on decreases in body weights, body weight gains, and food efficiency in the females, and body weight decreases and testicular and epididymal changes in the males. The no-observed-effect level (NOEL) for subchronic systemic toxicity is 750 ppm.

b. A subchronic oral study in mice fed doses of 50, 500, 1,750, 3,500, or 7,000

ppm (average 8.25, 82.4, 294, 566, or 1,306 mg/kg/day, for males; 11.3, 121, 433, 846, or 1,130 mg/kg/day, for females) for 98 days showed a decrease in body weight gains in males dosed at 500, 1,750, and 3,500 ppm. An increase in the absolute liver and spleen weights was seen in females fed doses of 1,750 and 3,500 ppm. The NOEL was established at 50 ppm for males and 500 ppm for females; the LOEL was 500 ppm for males and 1,750 ppm for females.

c. A subchronic oral toxicity study was conducted in dogs fed doses of 100 or 200 ppm (3 or 5 mg/kg/day) for 13 weeks, or at 250 ppm (5 mg/kg/day) for 2 weeks followed by 500 ppm (11 mg/kg/day) for 11 weeks. The 250/500 ppm males had lower epididymal and testicular weights, and aspermatogenesis was observed. The LOEL is 3 mg/kg body weight/day (100 ppm) for dogs based on decreased body weights and food consumption in females. The NOEL was not established.

d. In a 28-day dermal toxicity study, cymoxanil was applied to the shaved backs of rats for 6 hrs/day at doses of 50, 500, and 1,000 mg/kg/day. There were no demonstrated effects and no compound-related histopathology. The NOEL for systemic toxicity and dermal irritation was 1,000 mg/kg/day, the highest dose tested (HDT).

3. *Chronic toxicity.* a. A combined chronic/carcinogenicity study was conducted in rats fed cymoxanil at doses of 0, 50, 100, 700, or 2,000 ppm (0, 1.98, 4.08, 30.3, and 90.1 mg/kg/day for males, and 0, 2.71, 5.36, 38.4, and 126 mg/kg/day for females) for 23 months. A satellite group was included and terminated at 52 weeks. Because of poor survival in controls and treated rats, the study was terminated after 23 months. Survival was 24-45 percent and 21-40 percent in the male and female groups, respectively.

Chronic toxicity observed at 126 mg/kg/day in females included significant decreases in mean body weight and body weight gains, a decrease in food efficiency, and increased incidences of non-neoplastic lesions in several organ systems including the lungs, intestines, and mesenteric lymph nodes. In females receiving 38.4 mg/kg/day, chronic toxicity was characterized by increased incidences of non-neoplastic lesions of the lungs, liver, sciatic nerve, and eyes (retinal atrophy). Chronic toxicity in the males dosed at 30.3 or 90.1 mg/kg/day included aggressiveness and/or hyperactivity, decreased mean body weight and body weight gain, decreased food efficiency, and increased incidence of elongate spermatid degeneration and retinal atrophy. No important effects

were observed in the low- and low-mid-dose groups. No increases in the incidences of any neoplasm was observed in dosed animals. The chronic LOEL was 30.3 mg/kg/day for males and 38.4 mg/kg/day females based on histologic changes detected in several organs of the females and decreased body weight, body weight gains, and food efficiency observed in the males and females. The chronic NOEL is 4.08 mg/kg/day for males and 5.36 mg/kg/day for females. Under the conditions of this study, there was no evidence of carcinogenic potential.

b. A chronic toxicity study was conducted in dogs fed cymoxanil at doses of 25, 50, or 100 ppm for males (0.7, 1.6, or 3.1 mg/kg/day) and 50, 100, or 200 ppm for females (1.8, 3.0, or 5.7 mg/kg/day) for 52 weeks. The only effect seen in females in the 100 ppm treatment group was weight loss during the first week of the study. No effect was observed in females in the 25 or 50 ppm group, or in males in the 50 or 100 ppm group. The LOEL was 200 ppm for males, based on depressed weight gains through week 12 and changes in hematology and blood chemistry. No LOEL was established for females. The NOEL was 100 ppm.

4. **Carcinogenicity.** a. A combined chronic/carcinogenicity study, conducted in rats (described in the Chronic Toxicity Section, above, Unit II.A.3.) showed no evidence of carcinogenic potential.

b. A carcinogenicity study was conducted in mice fed cymoxanil at doses of 30, 300, 1,500, and 3,000 ppm (4.19, 42.0, 216, and 446 mg/kg/day for males; 5.83, 58.1, 298, and 582 mg/kg/day for females) for approximately 80 weeks. Two additional groups were sacrificed at 31–32 days for cell proliferation and biochemical evaluation.

Males and females dosed at 300 ppm and above exhibited alterations in organ weights and microscopic pathology. Affected organs were the testes and epididymis in males, the gastrointestinal tract in females, and the liver in both sexes. Male mice fed 300 ppm exhibited treatment-related increased frequency of sperm cyst/cystic dilation, tubular dilation, and increased lymphoid aggregate. Centrilobular apoptotic hepatocytes, pigment-containing macrophages, and granuloma were detected in males dosed with 300 ppm. Elevated centrilobular hepatocellular hypertrophy and associated significant increases in liver weight in males dosed with 300 ppm was considered a pharmacologic response to cymoxanil. Hyperplastic gastropathy increased significantly in

300 ppm female mice and cystic enteropathy of the small intestine showed a significant positive trend. At the 1,500 ppm dose, decreases in body weight, body weight gain, and food efficiencies were observed in males and females. In addition to the testicular and epididymal abnormalities observed at the lower dose, the 1,500 ppm males exhibited increased incidence of sperm granuloma and bilateral oligospermia. Females at 1,500 ppm exhibited the microscopic liver abnormalities seen in males at the lower dose. Cystic enteropathy was observed in males at 1,500 ppm. At 3,000 ppm, there were significant reductions in body weight, body weight gain, food consumption, and food efficiencies in males and females. Survival over 18 months was decreased in the 3,000 ppm females, 57 percent compared to 69 percent in controls. Early deaths among high-dose females were attributed to pancreatic acinar cell necrosis and/or stress, evidenced by splenic and thymic atrophy and bone marrow congestion. The 3,000 ppm females exhibited increased frequency of pallor, weakness, and hunching over. Male mice fed 3,000 ppm showed hematological signs of decreased circulating erythrocyte mass at the 12-month evaluation. The high dose also resulted in gross and microscopic pathology of the liver, gastrointestinal tract, and testes. Dosing was considered adequate based on decreased body weight gains and an increase in non-neoplastic lesions in both sexes relative to the controls at the highest dose level.

The LOEL was 300 ppm, based on toxicity to the testes and epididymides in males and toxicity to the gastrointestinal mucosa in females. The NOEL was 30 ppm. Under the conditions of this study, there was no evidence of a carcinogenic effect.

5. **Developmental toxicity.** a. A prenatal developmental toxicity study was conducted in rats gavaged with cymoxanil on days 7–16 of gestation at dose levels of 0, 10, 25, 75, or 150 mg/kg/day. The maternal LOEL was 25 mg/kg/day, based upon reduced body weight, body weight change, and food consumption. The maternal NOEL was 10 mg/kg/day. The developmental LOEL was 25 mg/kg/day, based upon a significant increase in overall malformations and a generalized dose-related delay in skeletal ossification. Fetal body weights were significantly decreased at 75, 150 and 150 mg/kg/day. Increased early resorptions resulted in reduced litter sizes. The developmental NOEL was 10 mg/kg/day.

b. A prenatal developmental toxicity study was conducted in rabbits gavaged

with cymoxanil on days 6–18 of gestation at dose levels of 0, 4, 8, or 16 mg/kg/day. There was no evidence of treatment-related maternal or developmental toxicity. A maternal and developmental LOEL was not determined; the maternal and developmental NOEL was ≥ 16 mg/kg/day. When considered along with other prenatal developmental toxicity studies in rabbits, this study provides acceptable information that assists in determining the overall maternal and developmental NOEL and LOEL for cymoxanil in a nonrodent species.

c. A prenatal developmental toxicity study was conducted in rabbits gavaged with cymoxanil on days 6–18 of gestation at dose levels of 0, 1, 4, 8, or 32 mg/kg/day. Uncertainties regarding the source of the parental rabbits substantially reduced the confidence that any observed skeletal effects were solely related to treatment.

d. A prenatal developmental toxicity study was conducted in rabbits gavaged with cymoxanil on days 6–18 of gestation at dose levels of 0, 1, 4, 8, or 32 mg/kg/day. The females showed significant posttreatment increases in body weight gain at 8 and 32 mg/kg/day. The maternal LOEL was 8 mg/kg/day, based upon a significant dose-related rebound in maternal body weight. The maternal NOEL was 4 mg/kg/day. The developmental LOEL was 8 mg/kg/day, based upon an increase in skeletal malformations of the cervical and thoracic vertebrae and ribs; and, at 32 mg/kg/day, cleft palate was observed. The developmental NOEL was 4 mg/kg/day.

6. **Reproductive toxicity.** A two-generation reproduction study was conducted in rats fed cymoxanil at doses of 100, 500, or 1,500 ppm (equivalent to 6.5, 32.1, or 97.9 mg/kg/day in males and 7.9, 40.6, or 130 mg/kg/day in females) over two consecutive generations. No effects of treatment were observed at 100 ppm. The parental systemic LOEL was 500 ppm based upon reduced pre-mating body weight, body weight gain, and food consumption for F₁ males; and decreased gestation and lactation body weight for F₁ females. The parental systemic NOEL was 100 ppm. The offspring LOEL was 500 ppm based upon decreased F₁ pup viability on postnatal days 0–4 and on a significant reduction in F₂ pup weight. The offspring NOEL was 100 ppm.

7. **Neurotoxicity.** a. The neurotoxicity portion of the subchronic/neurotoxicity study in rats demonstrated no effects on the functional observation battery or on motor activity after 5, 9, and 13 weeks of dietary doses of cymoxanil at 0, 100,

750, 1,500, or 3,000 ppm (0, 6.54, 47.6, 102, or 224 mg/kg/day for males, and 0, 8.0, 59.9, 137, or 333 mg/kg/day for females) for 97 days. There were no treatment-related gross or microscopic findings detected in the nervous system or skeletal muscles. Grip strength and foot splay measurements were decreased (non-significantly) in males at 224 mg/kg/day in the 13-week subchronic neurotoxicity study in rats, although these findings occurred in conjunction with decreased body weight. A LOEL for neurobehavioral and neuropathic effects was not established. The NOEL for neurotoxicity was 3,000 ppm.

b. In the combined chronic toxicity/carcinogenicity study in rats, increased incidence of sciatic nerve axon/myelin degeneration was observed in females fed cymoxanil at doses of 38.4 and 126 mg/kg/day for 104 weeks. Also, increased incidence and severity of retinal atrophy was observed in males at 30.3 and 90.1 mg/kg/day as well as in females at 38.4 and 126 mg/kg/day. These two findings demonstrated a dose-related effect. In addition, clinical observations of hyperactivity and aggressiveness were reported in males at 700 and 2,000 ppm (30.3 and 90.1 mg/kg/day).

c. In the carcinogenicity study in mice, absolute brain weight was decreased in both sexes at 1,500 and 3,000 ppm (216/298 mg/kg/day and 446/582 mg/kg/day for males/females, respectively).

d. No evidence of developmental anomalies of the fetal nervous system were observed in the prenatal developmental toxicity studies in either rats, or rabbits, at maternally toxic oral doses up to 25 and 32 mg/kg/day, respectively. In addition, there was no evidence of behavioral or neurological effects on the offspring in the two-generation reproduction study in rats.

e. There were no major data gaps for the assessment of potential neurotoxicological effects due to cymoxanil. However, following a weight-of-the-evidence review of the database, which suggested that neuropathological lesions, changes in brain weight, axon/myelin degeneration, and retinal atrophy could result from long-term exposure to cymoxanil, the Agency will require a confirmatory developmental neurotoxicity study in rats.

8. **Mutagenicity.** Mutagenicity studies with cymoxanil included gene mutation assays in bacterial and mammalian cells, a mouse micronucleus assay and an *in vivo/in vitro* unscheduled DNA synthesis (UDS) assay in rats. These studies did not demonstrate

mutagenicity. An *in vitro* unscheduled DNA synthesis assay-primary rat hepatocytes was positive from 5–500 µg/mL and cytotoxicity was seen at concentrations of ≥ 500 µg/mL. A chromosome aberrations in human lymphocytes assay was also positive at 100–1,500 µg/mL, positive at 1,250 and 1,500 µg/mL -S9, and 850–1,500 µg/mL +S9.

9. **Metabolism.** A metabolism study was conducted by gavaging rats with single doses of radiolabeled cymoxanil at 2.5 or 120 mg/kg, or as a single dose (2.5 mg/kg) following a 14-day pretreatment with unlabeled cymoxanil (2.5 mg/kg/day). Radiolabeled cymoxanil was readily absorbed through the intestinal tract. Maximum plasma concentrations were attained within 3–5 hours of dosing, then declined steadily. Dose rate and pretreatment did not appear to affect absorption.

Elimination was not dependent on sex or dosing regimen; occurring predominantly in the urine (63.8–74.8 percent), during the first 24 hours (58–66 percent). Fecal excretion accounted for 15.7–23.6 percent of the dose, and radioactivity in the tissues and carcasses accounted for <1 percent of the dose at sacrifice for all three dosing regimens. A pilot study indicated that approximately 3 percent of the dose would be expected to be respired as ¹⁴CO₂.

For each dosing regimen, there was also no difference between male and female rats in the distribution of radioactivity in tissues. No accumulation of radioactivity was observed over time in any tissues. However, in comparison, concentrations of radioactivity were highest in liver and kidney and lowest in brain tissue at 96 hours post-dosing sacrifice.

Peak plasma concentrations for the low and high dose groups were attained within 3–5 hours of dosing, and both dose groups had similar elimination half-lives from plasma, suggesting that the metabolic process was not saturated by the high dose. In addition, there was a fortyfold difference in the area under the curve for plasma from the low and high dose groups, approximating the 48-fold difference in the dose levels.

The metabolite profile in urine and feces was similar between sexes and among dose groups. In the urine, the majority of the radioactivity (36.7–55 percent of the dose) was free and/or conjugated [¹⁴C]glycine, and 2-cyano-2-methoxyiminoacetic acid (IN-W3595) (6.5–33 percent of the dose) was also found. Intact [¹⁴C]cymoxanil was not detected. In the feces, trace levels (<1 percent of the dose) of [¹⁴C]cymoxanil and IN-W3595 were detected, but the majority of radioactivity was the free

and conjugated [¹⁴C]glycine (8.5–13.1 percent of the dose). The data indicate that the principal pathway for the elimination of cymoxanil from rats is via renal elimination.

Based on the data, the proposed metabolic pathway involves hydrolysis of cymoxanil to IN-W3595, which is then degraded to glycine. Subsequently, glycine is incorporated into natural constituents or further metabolized.

10. **Other toxicological considerations.** The submitted mutagenicity test battery satisfied the new mutagenicity initial testing battery guidelines and the available studies indicate that cymoxanil is not mutagenic in bacterial or cultured mammalian cells. There is, however, confirmed evidence of clastogenic activity and UDS induction *in vitro*. In contrast, cymoxanil was neither clastogenic nor aneuploidogenic in mouse bone marrow cells and did not induce a genotoxic response in rat somatic or germinal cells. Accordingly, the negative results from the mouse bone marrow micronucleus assay support the lack of carcinogenic effect in the rat and mouse long-term feeding study.

Similarity of clinical signs were observed in the micronucleus and *in vivo* UDS assay, but the confidence in the negative findings of the *in vivo* UDS assay was not high because of a failure to demonstrate that test material reached either target tissue. It was concluded that the test may have been inadequate because of the short interval between dosing and cell harvest. Therefore, the Agency will be requiring that a supplemental rat dominant lethal assay be conducted to determine if any effects are noted which are associated with genetic damage to male germinal cells.

B. Toxicological Endpoints

1. **Acute toxicity-females 13+.** To assess acute dietary exposure, the Agency used a NOEL of 4 mg/kg/day from prenatal developmental toxicity studies in rabbits based on an increase in skeletal malformations of the cervical and thoracic vertebrae and ribs at 8 mg/kg/day. EPA determined that the 10x factor to account for enhanced sensitivity of infants and children (required by FQPA) should be reduced to 3x. An MOE of 300 is required for the acute dietary assessment to protect the sub-population of concern, "Females 13+," due to neuropathological lesions seen in the chronic toxicity study in rats and the need for an additional developmental neurotoxicity study.

Acute toxicity-general population. An acute dose and endpoint was not selected for the general population and

the sub-population including "infants and children" because there were no observable effects in oral toxicology studies, and no maternal toxicity in the developmental toxicity studies in rats or rabbits attributable to a single dose.

2. *Short- and intermediate-term residential toxicity.* The Agency determined that this dose and endpoint was not applicable for risk assessment because no dermal or systemic toxicity was seen in a 28 day dermal toxicity study, at the limit dose.

3. *Chronic residential toxicity.* Based on the use pattern, chronic dermal exposure is not anticipated and long-term dermal risk assessment is not required.

4. *Chronic dietary toxicity.* An RfD of 0.013 mg/kg/day was established based on a chronic feeding study in rats with a NOEL of 4.08 mg/kg/day and an uncertainty factor of 300.

5. *Carcinogenicity.* Based on the lack of evidence of carcinogenicity in mice and rats, EPA has classified cymoxanil as a "not likely" human carcinogen, according to EPA's Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996).

C. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances of 0.05 ppm have been established in the 40 CFR 180.503(b) for residues of cymoxanil in or on potatoes and tomatoes under section 18 of FIFRA. In today's action, a tolerance will be established for residues of cymoxanil in or on potatoes at 0.05 ppm under section 3 of FIFRA in 40 CFR 180.503(a) and the section 18 tolerance for potatoes will be removed. Risk assessments were conducted by EPA to assess dietary exposures and risks from cymoxanil as follows:

a. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study indicates an effect of concern may occur as a result of a 1-day or single exposure. For the subpopulation of concern, females 13+, the estimated acute MOE of 5,000 demonstrates no acute dietary concern.

b. *Chronic exposure and risk.* The chronic dietary risk analysis used the RfD of 0.013 mg/kg/day. Chronic dietary exposure estimates utilized tolerance level residues on potatoes and tomatoes and assumed 100 percent of the crops were treated. The risk assessment resulted in use of <1 percent of the RfD for the general population, including infants (< 1 year old), and < 2 percent of the RfD for children (1-6 or 7-12 years old).

2. *From drinking water.* No monitoring data are currently available

to perform a quantitative drinking water risk assessment. Cymoxanil appears to be mobile in soils, although its rapid environmental dissipation precludes extensive leaching. Cymoxanil was not detected below 0-15 cm of soil. Degradates of cymoxanil are mobile, but short-lived, and are not expected to pose a threat to ground water.

EPA estimated surface water exposure using the Generic Expected Environmental Concentration (GENEEC) model, a screening level model for determining concentrations of pesticides in surface water. GENEEC uses the soil/water partition coefficient, hydrolysis half life, and maximum label rate to estimate surface water concentration. In addition, the model contains a number of conservative underlying assumptions. Therefore, the drinking water concentrations derived from GENEEC for surface water are likely to be overestimated. Surface water estimates derived from GENEEC assumed 7 applications of 0.12 lbs. active ingredient/acre would be applied. The model indicated that cymoxanil in surface water could reach 4.13 parts per billion (ppb) (peak concentration) and 0.19 ppb (average 56 day concentration).

a. *Acute exposure and risk.* EPA calculated drinking water levels of concern (DWLOC) for acute exposure by using the acute toxicity endpoint. The acute dietary food exposure (from the DRES analysis) was subtracted from the ratio of the acute NOEL (used for acute dietary assessments) to the "acceptable" MOE for aggregate exposure to obtain the acceptable acute exposure to cymoxanil in drinking water.

EPA has calculated DWLOCs for acute exposure to cymoxanil in drinking water for females (13+ years old) to be 380 ppb. The maximum estimated concentrations of cymoxanil in surface and ground water are below EPA's levels of concern for cymoxanil in drinking water as a contribution to acute aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of cymoxanil in drinking water do not contribute significantly to the aggregate acute human health risk.

b. *Chronic exposure and risk.* Chronic (non-cancer), drinking water levels of concern are 450 ppb for the U.S. population and 130 ppb for children (1-6 years old). The estimated average concentrations of cymoxanil in surface and ground water are less than EPA's levels of concern for cymoxanil in drinking water as a contribution to chronic aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of cymoxanil in drinking water do not contribute

significantly to the aggregate chronic human health risk.

3. *From non-dietary exposure.* Cymoxanil is not registered for use on residential non-food sites. Therefore, no non-occupational, non-dietary exposure and risk are expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which

case common mechanism of activity will be assumed).

At this time, EPA does not have available data to determine whether cymoxanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Cymoxanil is structurally related to metazachlor, dimethenamid and amiphos. Of these pesticides, only dimethenamid is currently registered for use in the United States. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cymoxanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cymoxanil has a common mechanism of toxicity with other substances and that structurally-related chemicals will not have common toxic metabolites to cymoxanil.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The MOE for the acute dietary (food only) risk assessment for the population subgroup of concern, females 13+ years, was estimated at 5,000. This risk estimate does not exceed the Agency's level of concern. EPA has calculated drinking water levels of concern (DWLOCs) for acute exposure to cymoxanil in drinking water for females (13+ years old) to be 380 ppb. Chronic (non-cancer), drinking water levels of concern are 450 ppb for the U.S. population and 130 ppb for children (1-6 years old). Therefore, EPA concludes with reasonable certainty that the potential risks from aggregate acute exposure (food & water) would not exceed the Agency's level of concern.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to cymoxanil from food will utilize <1 percent of the RfD. The estimated average concentrations of cymoxanil in surface and ground water are less than EPA's levels of concern for cymoxanil in drinking water as a contribution to chronic aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of cymoxanil in drinking water do not contribute significantly to the potential aggregate chronic human health risk at the present time, considering the present uses and those proposed in this action.

E. Aggregate Cancer Risk for U.S. Population

EPA has classified cymoxanil as a "not likely" human carcinogen, based

on the lack of evidence of carcinogenicity in mice and rats, and therefore has a reasonable certainty that no harm will result from exposure to residues of cymoxanil.

F. Aggregate Risks and Determination of Safety for Infants and Children

Safety factor for infants and children - in general. In assessing the potential for additional sensitivity of infants and children to residues of cymoxanil, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

The Agency determined that for cymoxanil, the 10x factor for the protection of infants and children (as required by FQPA) should be reduced to 3x, based on the following weight of the evidence considerations: (1) No increased sensitivity in fetuses as compared to maternal animals was observed following *in utero* exposures in developmental studies in rats and rabbits; (2) no increased sensitivity in pups when compared to adults was seen in the two-generation reproduction study in rats; (3) the toxicology data base is complete except for the requirement to submit a developmental neurotoxicity study; and (4) no frank neurotoxicity was seen in the 90-day

neurotoxicity study. The Agency has determined that a MOE of 300 is required because of the observance of neuropathological lesions in the chronic toxicity study in rats and the need for a developmental neurotoxicity study.

III. Other Considerations

A. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1996) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

B. Metabolism in Plants and Animals

Plants. Based on a metabolism study on potatoes, the nature of the residue is adequately understood. Only the parent cymoxanil compound is of regulatory concern.

Animals. Based on a metabolism study in lactating goats, the nature of the residue in animals is adequately understood. Only the parent cymoxanil compound is of regulatory concern.

C. Analytical Enforcement Methodology

An adequate enforcement method, AMR 3705-95, is available to enforce the tolerance on potatoes. Quantitation is by HPLC/UV. These methods have been submitted for publication in PAM I. The methods are available to anyone who is interested in pesticide residue enforcement from: Calvin Furlow, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 101FF, 1921 Jefferson Davis Hwy., Arlington, VA (703) 305-5229.

D. Magnitude of Residues

Residues of cymoxanil resulting from the proposed use will not exceed 0.05 ppm in potatoes. The tolerance on potatoes is for the raw agricultural commodity as defined in 40 CFR 180.1(j)(1). For risk assessment purposes, it was concluded that

residues resulting from the proposed use will not exceed 0.05 ppm in potatoes.

E. International Residue Limits

There are no Codex or Canadian residue limits established for cymoxanil on potatoes but a Mexican maximum residue limit (MRL) of 0.05 ppm is established for potatoes. Therefore, no compatibility problems exist for the proposed tolerance on potatoes.

F. Rotational Crop Restrictions

The confined rotational crop studies provided adequate results to conclude that a 30-day plant back interval is sufficient for all crops.

IV. Conclusion

Therefore, the tolerance is established for residues of cymoxanil, 2-cyano-N-[(ethylamino)carbonyl]-2-(methoxyimino)acetamide, in or on the raw agricultural commodity, potatoes, at 0.05 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the EPA docket for this rule making. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A

request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP-300653] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper

record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions was published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 22, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.503 is amended by adding text to paragraph (a) to read as follows and by removing the entry for "potatoes" in paragraph (b).

§ 180.503 Cymoxanil; tolerances for residues.

(a) *General*. A tolerance is established for residues of the fungicide, cymoxanil, 2-cyano-N-[(ethylamino)carbonyl]-2-(methoxyimino)acetamide, in or on the following food commodity.

Commodity	Parts per million
Potatoes	0.05

* * * * *

[FR Doc. 98-11764 Filed 5-5-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300654; FRL-5789-3]

RIN 2070-AB78

Peroxyacetic Acid; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide peroxyacetic acid up to 100 ppm, in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. Ecolab, Inc. requested this exemption under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170).

DATES: This regulation is effective May 6, 1998. Objections and requests for hearings must be received by EPA on or before July 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300654], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300654], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, QM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300654]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Product

Manager 33, Antimicrobials Division (7510W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive, 6th Floor, Arlington, VA, 22202, 703-308-6341, e-mail: swindell.marshall@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 14, 1998 (63 FR 2232) (FRL-5759-6), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) 7F4808 for tolerance by Ecolab, Inc., 370 Wabasha Street, St. Paul, MN 55102. This notice included a summary of the petition prepared by Ecolab, Inc., the registrant. There were no comments received in response to the notice of filing.

Subsequently, the proposed tolerance exemption was amended to delete meat, meat by-products, poultry, milk, and eggs. This was done because at the low proposed use concentrations, no residues of toxicological concern are expected on any animal feeds that may be exposed to peroxyacetic acid. Therefore, no residues of toxicological concern are anticipated either in animals that may consume these feeds, or in associated animal by-products.

In addition, the proposed tolerance exemption was amended to include a maximum residue limit of 100 ppm for peroxyacetic acid. This limitation was added because of Agency concerns that a high use concentration could result in measurable residues of peroxyacetic acid. Residue data will be needed to increase or remove this limitation.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance or exemption from the requirement of a tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure.

Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide

chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health.

An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA.

EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal

study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of the Food Quality Protection Act of 1996 (FQPA), this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available.

In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because

of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization.

Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance.

In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the

assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances.

If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant sub-population group.

Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant sub-populations including several regional groups, to pesticide residues. For peroxyacetic acid, based on the lack of any residues of toxicological concern, it is unlikely that significant exposure through the proposed use would occur to any sub-population although sensitive sub-populations may exist (e.g., catalase deficient individuals).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of peroxyacetic acid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for an exemption of a requirement for a tolerance for residues of peroxyacetic acid up to 100 ppm, in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as

the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by peroxyacetic acid ($C_2H_4O_3$) are discussed below.

Ecolab, Inc. has requested a waiver of all toxicology testing requirements for peroxyacetic acid. This includes waivers for all acute, 90-day sub-chronic, chronic, carcinogenicity, developmental, reproductive, mutagenicity, neurotoxicity and metabolism requirements. Ecolab's rationale for waivers in each of these areas is similar, and are summarized by the following four arguments:

1. Available data at the Agency are sufficient to estimate the potential human health hazard of the end use product.

2. Peroxyacetic acid reacts rapidly on contact with material such as food and is degraded to moieties which present no toxicological concern. The primary degradation products of peroxyacetic acid are acetic acid, which is generally regarded as safe (GRAS) according to the Food and Drug Administration (21 CFR 184.1005), water, and oxygen.

Based on the chemical reactivity of this compound and the unstable nature of the peroxide bond, conduct of long term residue or metabolism studies would be extremely difficult and unreliable. This peroxyacetic acid petition is also the companion to a similar tolerance petition being ruled on for hydrogen peroxide. Peroxyacetic acid and hydrogen peroxide are classified as peroxy compounds and have similar characteristics for degradation, residue chemistry, dose-relationship toxicology, and risk of exposure with the proposed food contact uses.

The published Reregistration Eligibility Document for Peroxy Compounds (Case 4072, December, 1993), has waived all further toxicology testing requirements for peroxyacetic acid.

The Agency has reviewed the data waivers requested and concurs that no additional acute short term or long term toxicology or mutagenicity testing will be needed for peroxyacetic acid for the following reasons.

1. Peroxyacetic acid is highly reactive and short lived because of the inherent instability of the peroxide bond (i.e., the O-O bond). Agitation or contact with rough surfaces, sunlight, organics, and metals can accelerate decomposition. The instability of peroxyacetic acid to exist as itself, along with detoxifying

enzymes found in cells (e.g., catalase, glutathione peroxidase), makes it very difficult to find any residues of peroxyacetic acid in or on foods (at the proposed use levels), by conventional analytical methods.

The proposed food contact applications utilize very low concentrations of peroxyacetic acid. Therefore, food residues produced by the proposed uses are expected to be short-lived, based on half-lives for peroxyacetic acid which can be as short as a few minutes. The primary degradates are acetic acid, oxygen, and water, and these degradates are not of toxicological concern.

2. There are acceptable acute generic data referenced in the Reregistration Eligibility Document for Peroxy Compounds (December 1993, Case 4072). Peroxyacetic acid was found to be corrosive and severely irritating to the eyes, skin, and mucous membranes but only when high concentrations were used. The proposed food contact use patterns are not expected to result in any residue levels of toxicological concern. The RED document waived all additional non-acute toxicology data requirements for peroxyacetic acid.

3. No data exists for the subchronic, chronic, carcinogenicity, mutagenicity, developmental and reproductive toxicity of peroxyacetic acid. However, peroxyacetic acid shares similar chemical characteristics with hydrogen peroxide which has a more extensive toxicology data base. For example, peroxyacetic acid and hydrogen peroxide both decompose into two identical degradates that do not pose any toxicological concern. These two degradates are oxygen and water. Acetic acid is the third additional residue degradate of peroxyacetic acid which also does not pose any toxicological concern.

Peroxyacetic acid and hydrogen peroxide also show similar chemical characteristics for corrosivity, pH, rapid peroxide bond dissociation, and production of oxygen molecules. Because of these similar chemical characteristics, and low expected exposures with the proposed uses, the dose-response toxicology relationships (i.e., adverse effects experienced only at very high doses) shown by the data for hydrogen peroxide, can also be expected with peroxyacetic acid. The remaining toxicology testing requirements for peroxyacetic acid were waived because of the similar chemical characteristics, similar expected dose-response relationships with hydrogen peroxide, low exposure levels under the proposed uses, and for the reasons given above.

The following generic acute toxicology data for peroxyacetic acid were cited in the 1993 RED document.

Acute studies for peroxyacetic acid—
i. A study on rats showed an acute oral LD₅₀ of 1,540 milligrams/kilogram (mg/kg).

ii. A study on rabbits showed an acute dermal LD₅₀ of 1,410 mg/kg.

iii. A study on rats showed an acute inhalation LC₅₀ of 0.450 mg/L.

iv. An eye irritation study on rabbits produced severe irritation.

v. A dermal irritation study on rabbits showed hydrogen peroxide was corrosive.

B. Toxicological Endpoints

1. *Acute toxicity.* The Agency has concluded that with the proposed food contact uses of peroxyacetic acid, no apparent toxicity endpoint exists to suggest any evidence of significant toxicity from a one-day or single-event exposure.

2. *Short- and intermediate-term toxicity.* The Agency has concluded that for the proposed food contact uses of peroxyacetic acid, based on the similarity and commonality in the peroxide bond chemistry, residues, degradates, and also with the dose-response relationships with hydrogen peroxide, no apparent toxicity endpoint would be expected from short and intermediate term exposure.

3. *Chronic toxicity.* A RID for peroxyacetic acid has not been established because of its short half life and lack of any residues and degradates of toxicological concern. As discussed in the December 1993 Reregistration Eligibility Document for Peroxy Compounds, and in this final rule, under the proposed and existing dietary related use patterns (i.e., raw and processed agricultural commodities, food processing equipment in breweries, wineries, and beverage plants), there is also expected to be a lack of any residues and degradates of toxicological concern.

4. *Carcinogenicity.* The Agency believes that based on the known chemistry of peroxy compounds, toxic effects occur as a result of species formed either during spontaneous decomposition or enzymatic conversion of the peroxy bond (i.e., O-O bond). These effects occur only after long term administration of high dose levels, where the parent compound is continually present. Available data show that peroxyacetic acid rapidly breaks down into oxygen, water, and acetic acid. Because of this rapid decomposition, the Agency does not expect residues of the parent compound on the treated commodities.

Based on the proposed use concentrations for peroxyacetic acid, and data indicating a lack of residues of concern on food, exposure to peroxyacetic acid under the proposed food contact use concentrations is not likely to result in any adverse clinical effects, including promotion of carcinogenesis. This conclusion is supported by the rapid decomposition of peroxyacetic acid into oxygen, water, and acetic acid, which are not of toxicological concern, and the existence of specific enzymes in the human body (i.e., catalase and glutathione peroxidase) which also can break down peroxyacetic acid.

C. Exposures and Risks

1. *From food and feed uses.* An exemption from the requirement of a tolerance is being established (40 CFR 180.1196) for the residues of peroxyacetic acid up to 100 ppm, in or on a variety of (raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

There are no existing tolerances or exemptions from tolerances in title 40 of the CFR for peroxyacetic acid for direct food and feed contact uses. The following 21 CFR tolerances and/or exemptions from tolerances are noted:

Under 21 CFR 184.1005, the acetic acid degradate of peroxyacetic acid is GRAS as a direct food additive substance when used in baked goods, cheeses, dairy product analogs, chewing gum, condiments, relishes, fats, oils, gravies, sauces, and meat products. Under 21 CFR 178.1010, peroxyacetic acid is approved for use as a sanitizing solution for use on food processing equipment and utensils, and on dairy processing equipment. It is also approved for use in sterilizing polymeric food-contact surfaces. Under 21 CFR 173.315, peroxyacetic acid is approved for use in washing or to assist in the lye peeling of fruits and vegetables.

Risk assessments were conducted by EPA to assess dietary exposures and risks from peroxyacetic acid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No acute exposure and risk assessment is applicable for peroxyacetic acid because no acute toxicological effects of concern are anticipated with the proposed food contact uses for peroxyacetic acid. This is due to the lack of any residues of

toxicological concern as a result of the rapid decomposition of peroxyacetic acid into acetic acid, oxygen, and water.

ii. *Chronic exposure and risk.* Residues of peroxyacetic acid are not expected to remain on the surface of materials which it contacts. Therefore, the risk from dietary exposure is expected to be negligible. No chronic exposure and risk assessment is applicable because no chronic toxicological effects are anticipated with the proposed food contact uses for peroxyacetic acid. This is due to the lack of any residues of toxicological concern as a result of the rapid decomposition of peroxyacetic acid into acetic acid, oxygen, and water.

2. *From drinking water.* Although the proposed food contact uses for peroxyacetic acid may result in transfer of peroxyacetic acid to potential drinking water sources, no risk assessment is applicable because of: (a) the rapid degradation of peroxyacetic acid into acetic acid, oxygen, and water, and (b) there are not expected to be any residues of toxicological concern. Information from the EPA Office of Water also indicates that when used for potable water disinfection, no measurable residues of peroxyacetic acid were present by the time the water is pumped through the distribution system and arrived at the tap.

3. *From non-dietary exposure.* Peroxyacetic acid is currently registered by EPA for a wide variety of uses including: agricultural premises and equipment; food handling/storage establishments premises and equipment; commercial, institutional and industrial premises and equipment; residential and public access premises; medical premises and equipment; materials preservation; and industrial processes and water systems. The Agency does not know of all approved or actual uses for peroxyacetic acid. However, non-dietary exposures are not expected to pose any quantifiable added risk because of the lack of any expected residues and degradates of toxicological concern. Minimal residues and degradates are expected due to previously discussed unique chemistry associated with peroxide bond chemistry.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way.

EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

The Agency does not at this time have data specifically either to support, or to refute a common mechanism of toxicity for peroxy compounds (i.e., hydrogen peroxide, peroxyacetic acid). The Agency believes that based on the known common chemistry of peroxy compounds, toxic effects occur as a result of species formed either during spontaneous decomposition or enzymatic conversion of the peroxy bond (i.e., O-O bond). These effects occur only after long term administration of high dose levels, where the parent compound is

continually present. Although a common mechanism of toxicity may or may not be inferred, the Agency's concerns for cumulative risk is mitigated by the lack of any measurable residues of the parent compound (peroxyacetic acid) at proposed use levels, and by the rapid decomposition of the parent compound into products which are not of toxicological concern (i.e., oxygen and water). As data become available, the Agency may require further studies on the peroxy compounds to determine whether a cumulative risk assessment is warranted.

The Agency does not have, at this time, available data to determine whether peroxyacetic acid shares a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, EPA has not assumed that peroxyacetic acid has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute, short term and intermediate risk.* The Agency has concluded that no toxicological endpoint exists for peroxyacetic acid with the proposed food contact uses to suggest any evidence of significant toxicity from acute, short term or intermediate term exposures. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

The Agency concludes that there is a reasonable certainty of no harm for acute, short term, and intermediate risk from aggregate exposure to peroxyacetic acid under the proposed use concentrations.

2. *Chronic risk.* Low residues of peroxyacetic acid are expected from the proposed food contact uses and these residues are expected to convert rapidly into the harmless degradates of acetic acid, oxygen, and water. Therefore, the chronic risk from dietary exposure is expected to be negligible. No chronic exposure and risk assessment is applicable because no chronic toxicological effects are anticipated with the proposed food contact uses for peroxyacetic acid.

The Agency concludes that there is a reasonable certainty of no harm for chronic risk from aggregate exposure to peroxyacetic acid under the proposed use concentrations.

E. Aggregate Cancer Risk for U.S. Population

The Agency believes that based on the known chemistry of peroxy compounds, toxic effects occur as a result of species formed either during spontaneous decomposition or enzymatic conversion of the peroxy bond (i.e., O-O bond). These effects occur only after long term administration of high dose levels, where the parent compound is continually present. Available data show that peroxyacetic acid rapidly breaks down into oxygen, water, and acetic acid. Because of this rapid decomposition, the Agency does not expect residues of the parent compound on the treated commodities.

Based on the proposed use concentrations for peroxyacetic acid, and data indicating a lack of residues of concern on food, exposure to peroxyacetic acid under the proposed food contact use concentrations is not likely to result in any adverse clinical effects, including promotion of carcinogenesis. This conclusion is supported by the rapid decomposition of peroxyacetic acid into oxygen, water, and acetic acid, which are not of toxicological concern, and the existence of specific enzymes in the human body (i.e., catalase and glutathione peroxidase) which also can break down peroxyacetic acid.

The Agency concludes that cancer cancer risk for the U.S. population from aggregate exposure to peroxyacetic acid is negligible under the proposed food contact use concentrations.

F. Aggregate Risks and Determination of Safety for Infants and Children

Safety factor for infants and children. In assessing the potential for additional sensitivity of infants and children to residues of peroxyacetic acid, EPA considered data from developmental and reproductive toxicity studies available on hydrogen peroxide from the scientific literature and summarized by the Office of Water. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database, unless EPA determines that a different margin

of safety will be safe for infants and children.

Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOEL in the animal study appropriate to the particular risk assessment. This 100-fold uncertainty factor/margin of exposure is designed to account for inter-species extrapolation and intra-species variability.

In the case of the proposed food contact uses for peroxyacetic acid, because of the lack of any significant residues of toxicological concern, a NOEL was not identified for risk assessment purposes, and the uncertainty (safety) factor approach was not used for assessing any risk level by peroxyacetic acid. For the same reason, an additional safety factor to protect infants and children is unnecessary. Additionally, based on the following information, no increased susceptibility to infants or children is expected to occur.

1. Three studies on the developmental and reproductive effects of hydrogen peroxide (and by similarity, peroxyacetic acid) are available. The data from these studies indicates that no apparent developmental or reproductive effects were observed from administration of hydrogen peroxide at concentrations up to 1% (1,000 mg/kg).

2. Peroxyacetic acid is a highly reactive and short lived molecule because of the inherent instability of the peroxide bond (i.e., the O-O bond). Agitation or contact with rough surfaces, sunlight, organics, and metals accelerates dissociation. The instability of peroxyacetic acid to exist as itself, along with natural detoxifying enzymes found in plant and animal cells (e.g., catalase, glutathione peroxidase), makes it very difficult to find any residues of peroxyacetic acid in or on foods (at proposed use levels), by conventional analytical methods. The proposed food contact applications utilize very low concentrations of peroxyacetic acid (ppm). Food residues are expected to be short-lived and are not expected to accumulate. This is because peroxyacetic acid dissociates rapidly into acetic acid, oxygen, and water. The Agency has no toxicological concern with acetic acid, oxygen, and water.

3. A waiver was granted for all the remaining toxicology testing requirements because of the reasons given in items a and b above.

Therefore, because of the rapid decomposition of peroxyacetic acid residues into degradates that are of no toxicological concern (i.e., oxygen, water, acetic acid), the Agency concludes that there is a reasonable certainty of no harm for infants and children from exposure to peroxyacetic acid under the proposed food contact use concentrations.

III. Other Considerations

A. Endocrine Disruption

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inert) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect..." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed three years from the passage of the FQPA (August, 1999) to implement this program. At that time, the EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. There is no current evidence to suggest that peroxyacetic acid acts in a manner similar to any known hormone or that it acts as an endocrine disrupter.

B. Analytical Enforcement Methodology

Because an exemption from the requirement of a tolerance is being granted for peroxyacetic acid, an enforcement analytical method is not needed. However, an adequate analytical method (called QATM 202 by Ecolab, Inc., a redox titration procedure), is available in the interim. Because of the long lead time from establishing a tolerance or exemption to publication of the enforcement methodology in the Pesticide Analytical Manual, Volume II, the analytical method is being made available to anyone interested in pesticide enforcement when requested from Norm Cook, Antimicrobials Division (7510W), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, 6th Floor, Arlington, VA 22202, 703-308-6411.

C. Magnitude of Residues

Residues of peroxyacetic acid are short lived on treated crops and are not

expected to bioaccumulate in livestock and/or poultry that consume treated feedstuffs. Because of the lack of any residues of toxicological concern, the Agency has waived this data requirement.

D. International Residue Limits

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for peroxyacetic acid.

IV. Conclusion

Therefore, the exemption from the requirement of a tolerance is established for residues of peroxyacetic acid up to 100 ppm in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

It should be understood that the Agency may take appropriate regulatory action, and/or require the submission of additional data to support the exemption from the requirement of a tolerance for peroxyacetic acid, if new relevant adverse effects information comes to the Agency's attention.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25).

Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of

the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27).

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300654] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comment may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are

received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 1998.

Frank Sanders,
Director, Antimicrobials Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1196 is added to read as follows:

§ 180.1196 Peroxyacetic acid; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of peroxyacetic acid up to 100 ppm in or on raw agricultural commodities, in processed commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

[FR Doc. 98-12036 Filed 5-5-98; 8:45 am]
BILLING CODE 5550-60-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300655; FRL-5789-4]

RIN 2070-AB78

Hydrogen Peroxide; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a

tolerance for residues of the antimicrobial pesticide hydrogen peroxide up to 120 ppm, in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. Ecolab, Inc. requested this exemption under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170).

DATES: This regulation is effective May 6, 1998. Objections and requests for hearings must be received by EPA on or before July 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300655], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300655], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300655]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Product Manager 33, Antimicrobials Division 7510W, Office of Pesticide Programs, Environmental Protection Agency,

401M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive, 6th Floor, Arlington, VA, 22202, 703-308-6341, e-mail: swindell.marshall@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 14, 1998 (63 FR 2235) (FRL-5759-7), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) 7F4834 for tolerance by Ecolab, Inc., 370 Wabasha Street, St. Paul, MN 55102. This notice included a summary of the petition prepared by Ecolab, Inc., the registrant. There were no comments received in response to the notice of filing.

Subsequently, the proposed tolerance exemption was amended to delete meat, meat by-products, poultry, milk, and eggs. This was done because at the low proposed use concentrations, no residues of toxicological concern are expected on any animal feeds that may be exposed to hydrogen peroxide. Therefore, no residues of toxicological concern are anticipated either in animals that may consume these feeds, or in associated animal by-products.

In addition, the proposed tolerance exemption was amended to include a maximum residue limit of 120 ppm for hydrogen peroxide. This limitation was added because of Agency concerns that a high use concentration could result in measurable residues of hydrogen peroxide. Residue data will be needed to increase or remove this limitation.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance or exemption from the requirement of a tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure.

Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will

result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health.

An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted.

Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same

rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of the Food Quality Protection Act of 1996 (FQPA), this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated.

High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built

into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization.

Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.

The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the

crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant sub-population group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant sub-populations including several regional groups, to pesticide residues. For hydrogen peroxide, based on the lack of any residues of toxicological concern, it is unlikely that significant exposure through the proposed use would occur to any sub-population although sensitive sub-populations may exist (e.g., catalase deficient individuals).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of hydrogen peroxide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for an exemption of a requirement for a tolerance for residues of hydrogen peroxide up to 120 ppm, in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the

sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by hydrogen peroxide (H_2O_2) are discussed below.

Ecolab, Inc. has requested a waiver of all toxicology testing requirements for hydrogen peroxide. This includes waivers for all acute, 90-day subchronic, chronic, oncogenicity, developmental, reproductive, mutagenicity, neurotoxicity and metabolism requirements for hydrogen peroxide. Ecolab's rationale for waivers in each of these areas is similar, and are summarized by the following four arguments:

1. Available data at the Agency are sufficient to estimate the potential human health hazard of the end use product.

2. Hydrogen peroxide is generally recognized as safe (GRAS) according to the Food and Drug Administration (21 CFR part 178) when used on food-processing equipment, utensils, and food contact articles.

3. Based on the chemical reactivity of this compound and its unstable nature, conduct of long term or metabolism studies would be extremely difficult and unreliable.

4. The published Reregistration Eligibility Document for Peroxy Compounds (Case 4072, December, 1993), has waived all further toxicology testing requirements for peroxy compounds.

The Agency has reviewed the data waivers requested and concurs that no generic toxicology testing will be needed for hydrogen peroxide for the following reasons:

1. Hydrogen peroxide is highly reactive and short lived because of the inherent instability of the peroxide bond (i.e., the O-O bond). Agitation or contact with rough surfaces, sunlight, organics and metals accelerates decomposition. The instability of hydrogen peroxide to exist as itself, along with detoxifying enzymes found in cells (e.g., catalase, glutathione peroxidase), makes it very difficult to find any residues of hydrogen peroxide in or on foods (at proposed use levels), by conventional analytical methods.

The proposed food contact applications also utilize very low concentrations of hydrogen peroxide. Therefore, food residues are expected to be short-lived, based on half-lives for hydrogen peroxide as short as about 4 minutes under certain conditions. Residues are not of toxicological concern because hydrogen peroxide decomposes rapidly into oxygen and water. The Agency has no toxicological concern with oxygen and water.

2. There are acceptable acute generic data referenced in the Reregistration Eligibility Document for Peroxy Compounds (December 1993, Case 4072). Hydrogen peroxide was found to be corrosive and severely irritating to the eyes, skin, and mucous membranes but only when high concentrations were used. The proposed use patterns are expected to result in a lack of any residues of toxicological concern.

3. A waiver was granted for all the remaining toxicology testing requirements because of the reasons given above, and because there is an extensive data base assembled by the Agency's Office of Water. Although the Office of Water's data does show toxicological effects in experimental animals only at high concentrations, the Agency is not concerned because of the rapid decomposition of hydrogen peroxide into oxygen and water.

Therefore, the lack of any residues of toxicological concern and the existence of toxicological effects only at high dose levels in experimental animals minimizes any concern for exposure to the very low doses that may be present as a result of the proposed uses.

The Agency also recognizes that commercially available 3% hydrogen peroxide solutions have been used for many years for personal and medical uses. The use directions for some of these products state that these 3% solutions can be used as a sanitizing mouthwash. Other food contact and medicinal uses for hydrogen peroxide include applications for wines and liquors (artificial aging), dentifrices, sanitary lotions, and pharmaceutical preparations.

The long use history of hydrogen peroxide and weight of empirical evidence and experimental data has led the FDA to put hydrogen peroxide on the GRAS list when used on food processing equipment, utensils, and food contact articles (21 CFR 178). Potential symptoms of acute overexposure to medium or high concentrations of hydrogen peroxide include irritation of eyes, nose and throat, corneal ulceration, erythema, vesicles on skin, and bleaching of hair.

The following is a summary of the existing generic data base for acute, subchronic, chronic, mutagenic, developmental, reproductive, and carcinogenic effects of hydrogen peroxide in mammalian test animals. These data show that significant toxicological effects of hydrogen peroxide in mammalian test systems are measurable only at high doses. The proposed food contact use patterns are not expected to result in residues of toxicological concern due to the rapid

decomposition of hydrogen peroxide into oxygen and water. The following generic acute toxicology data for hydrogen peroxide were cited in the 1993 RED for hydrogen peroxide. The subchronic, chronic, carcinogenicity, developmental, and reproductive toxicology, along with the mutagenicity data are summarized from the Office of Water data base.

1. *Acute studies*—i. A study on mice showed an acute oral LD_{50} of 2,000 milligrams/kilogram (mg/kg).

ii. A study on rats showed an acute dermal LD_{50} of 4,060 mg/kg.

iii. A study on mice showed an acute inhalation LC_{50} of 227 ul/L.

iv. An eye irritation study on rabbits produced severe irritation.

v. A dermal irritation study on rabbits showed hydrogen peroxide was corrosive.

2. *Subchronic exposure*—i. Weanling Osborne-Mendel rats were exposed to a 0.45% (560 mg/kg/day) aqueous solution of hydrogen peroxide in drinking water for 3 weeks. When corrected for differences observed in water intake between control and treated rats, there were no significant differences observed in absolute and relative organ weights of the kidney, spleen, heart, or testes. A NOEL of 560 mg/kg/day was determined, although a lowest-observed-effect level (LOEL) was not.

ii. Young male Holtzman rats were administered doses of 0, 500, 1,000, or 1,500 mg/kg/day hydrogen peroxide in water for 8 weeks. Increased mortality was noted at the high dose. Increased incidence of dental caries and pathological changes in the periodontium were also noted at the mid and high dose. A LOEL of 500 mg/kg/day was determined, but a NOEL was not established.

iii. Male and female C57BL/6N, DBA/2N, and BALB/cAnN mice were given hydrogen peroxide at 0, 0.1, or 0.4% in drinking water for 30 or 60 days. Equivalent doses (assuming water intake of 150 ml/kg/day) were 0, 150, or 600 mg/kg/day. The high dose resulted in erosion of the glandular stomach in 29% of mice treated for 30 days and in 40% of mice treated for 60 days. Duodenal lesions, but no frank nodules, were also observed at the high dose. A LOEL of 600 mg/kg/day was determined, but due to the lack of data reported at the 150 mg/kg/day dose, a NOEL could not be definitively assigned.

3. *Chronic exposure*—i. Wistar rats were administered 30 or 60 mg/kg/day hydrogen peroxide for 100 days by oral intubation. After 100 days, decreases in plasma protein, hematocrit, and plasma catalase were observed. Administration

of the same dose levels in feed had no effects. A NOEL of 30 mg/kg/day could be determined from this study.

ii. Three-week old mice (strain not specified) were administered 0.15% hydrogen peroxide in drinking water for 35 weeks, presumed equivalent to 150 mg/kg/day. Degenerative changes in the liver and kidney, as well as inflammation, irregularity and slight necrosis of the stomach wall were observed. The LOEL was determined to be 150 mg/kg/day in this study, but a NOEL was not identified.

iii. Male and female C57BL/6N mice were administered 0, 0.1, or 0.4% hydrogen peroxide in drinking water for up to 700 days. Doses of 0, 150, and 600 mg/kg/day were calculated based on assumed intake of 150 mL/kg/day water. The gastrointestinal tract was examined over the course of the study through serial sacrifice at time points between 90-700 days. Gastric lesions consisting of erosion and hyperplastic nodules were detected in the stomach and duodenum after 1-2 years exposure. The LOEL was determined to be 150 mg/kg/day from this study.

4. *Carcinogenicity*—i. Gastric carcinogenesis was investigated in male Wistar rats. Twenty-one rats received the initiator MNNG in drinking water for 8 weeks at 100 mg/L, while uninitiated rats (10 animals) received plain drinking water. After 8 weeks, both groups received 1% hydrogen peroxide in drinking water from week 8 through week 40. Two other groups (30 and 10 rats, respectively) were chosen as initiated and uninitiated controls. Surviving rats were sacrificed and necropsied at 40 weeks. Erosion and ulceration along the limiting ridge of the fundic mucosa was observed. Initiated rats showed an increased incidence of adenomatous hyperplasia in this stomach area. There were no adenocarcinomas induced in the stomach or duodenum. Papillomas of the forestomach were induced by hydrogen peroxide alone.

ii. Three month old Syrian hamsters were administered either: twice weekly applications of 30% hydrogen peroxide in the left buccal pouch, twice weekly buccal application of 0.25% 9,10 dimethyl-1,2-benzanthracene with either 30% or 3% hydrogen peroxide (hydrogen peroxide applied on a different day than the DMBA), or DMBA only. Buccal pouches were examined for tumor development at 19 and 22 weeks after sacrifice. No epidermoid carcinomas were observed after 22 weeks of treatment with hydrogen peroxide alone. All three groups receiving DMBA treatment did develop tumors. The tumors in the group

receiving the 30% hydrogen peroxide and DMBA were reported to be more anaplastic with deeper penetration of tissue. It was concluded that hydrogen peroxide may augment oral carcinogenesis induced by DMBA.

iii. Male and female weanling C57BL/6J mice were administered 0, 0.1, or 0.4% hydrogen peroxide in drinking water for up to 108 weeks. Erosion of the glandular stomach was observed in 20% and 42% of dosed mice at the 0.1% and 0.4% dose levels, respectively, compared to 4% in controls. Duodenal nodules were observed in treated mice and were classified into hyperplasia, adenoma, and carcinoma. Hyperplasia was significantly increased at the 0.1% and 0.4% dose levels (40% and 62% of treated mice respectively), as was the incidence of duodenal carcinoma, observed in 5 of 99 high dose animals, 1 of 101 low dose animals, and absent in controls.

iv. Various strains of mice (C57BL/6N, DBA/2N, BALB/c) were exposed to 0.4% hydrogen peroxide in drinking water over their lifetime. Appearance of duodenal lesions (plaques and nodules) was noted in all strains after 90 days of treatment. Temporary withdrawal of hydrogen peroxide produced apparent reversibility in C57BL/6N mice only after 30 days of no treatment. After 150 days of treatment, C57BL/6N mice appeared to have an increased incidence of duodenal lesions relative to the other two strains. After 420-740 days of treatment, the incidence of duodenal carcinoma was 0, 1%, and 5% in control, low, and high dose, respectively. This study did not present concurrent control data, and used varying numbers of mice for examination at the various time points. Therefore, results from this study are considered equivocal.

v. Strains of mice differing in catalase activities of the duodenum, blood, and liver (in order of decreasing activity: C3H/HeN, B6C3F1, C57BL/6N, C3H/C) were given a solution of 0.4% hydrogen peroxide in drinking water for approximately 6 months. The duodenum was examined for the incidence and total lesions in each strain. Approximately 18-22 mice per strain were examined. The data suggested that the number of duodenal lesions per mouse and total incidence was inversely correlated with catalase activity.

vi. Recent experimental evidence (Upham, et al., Carcinogenesis 18(1): 37-42, 1997) has implicated hydrogen peroxide in the inhibition of gap junctional intercellular communication in rat liver epithelial cells (a significant step in production of tumors). These

recent data lend support to the above studies in the implication of high levels of hydrogen peroxide as a promotor of tumorigenesis. The International Agency for Research in Cancer (IARC) has designated hydrogen peroxide as not classifiable as to carcinogenicity, based on the data noted above.

5. *Developmental and reproductive toxicity*. Three older studies on the developmental and reproductive effects of hydrogen peroxide are available. These data indicate no apparent developmental or reproductive effects observed from administration of hydrogen peroxide at concentrations up to 1% (1000 mg/kg).

6. *Mutagenicity*—i. In a standard plate incorporation assay, hydrogen peroxide (concentrations not stated) was weakly mutagenic to strains TA98, TA97, and TA1537 for frame shift mutations and to strain TA102 for oxidative mutations, but was not mutagenic to strains TA100 and TA1538.

ii. Using isolated hepatocytes from Female Fischer rats, hydrogen peroxide was incubated at concentrations from 0.01 to 1.0mM for 1 hour at 37 degrees Celsius. Overt cytotoxicity was observed at 1mM. A concentration dependent increase in single strand DNA breaks was observed at all other exposure levels. No double strand DNA breaks or DNA cross-links were observed.

iii. In a human bronchial epithelial cell system, nucleic acid synthesis was observed to be significantly decreased after exposure to hydrogen peroxide at 1.2mM for six hours followed by a cell growth period of 7-9 days. At 100 m, single strand DNA breaks and DNA-protein cross links were observed, with single strand breaks predominating. DNA strand breakage has also been observed in other test systems (hamster V79 cells and bovine pulmonary artery and aortic endothelial cells).

iv. Cell killing and DNA damage were examined in Chinese hamster fibroblast cells (V79-379A). After incubation of cells with 1-100 mM hydrogen peroxide at ice cold temperatures for 10 or 20 minutes, single strand breaks were observed at 1 mM hydrogen peroxide. Double strand breaks and cell killing were observed at higher (10mM) concentrations of hydrogen peroxide.

B. Toxicological Endpoints

1. *Acute toxicity*. The Agency has concluded that for the proposed food contact uses, no apparent toxicity endpoint exists to suggest any evidence of significant toxicity from a one-day or single-event exposure.

2. *Short - and intermediate - term toxicity*. The Agency has concluded that

for the proposed food contact uses, no apparent toxicity endpoint exists to suggest any evidence of significant toxicity from short and intermediate term exposure.

3. *Chronic toxicity.* A RfD for hydrogen peroxide has not been established because of its short half life and lack of any residues of toxicological concern. As discussed in the December 1993 Reregistration Eligibility Document for Peroxy Compounds, and in this final rule, under the proposed and existing dietary related use patterns (i.e., raw and processed agricultural commodities, food processing equipment in breweries, wineries, and beverage plants), there is expected to be a lack of any residues of toxicological concern.

4. *Carcinogenicity.* The Agency believes that based on the known chemistry of peroxy compounds, toxic effects occur as a result of species formed either during spontaneous decomposition or enzymatic conversion of the peroxy bond (i.e., O-O bond). These effects occur only after long term administration of high dose levels, where the parent compound is continually present. Available data show that hydrogen peroxide rapidly breaks down into oxygen and water. Because of this rapid decomposition, the Agency does not expect residues of the parent compound on the treated commodities.

Based on the proposed use concentrations for hydrogen peroxide, and data indicating a lack of residues of concern on food, exposure to hydrogen peroxide under the proposed food contact use concentrations is not likely to result in any adverse clinical effects, including promotion of carcinogenesis. This conclusion is supported by the rapid decomposition of hydrogen peroxide into oxygen and water, which are not of toxicological concern, and the existence of specific enzymes in the human body (i.e., catalase and glutathione peroxidase) which also can break down hydrogen peroxide.

C. Exposures and Risks

1. *From food and feed uses.* An exemption from the requirement of a tolerance is being established (40 CFR 180.1197) for the residues of hydrogen peroxide up to 120 ppm, in or on a variety of (raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

There are no existing food or feed use tolerances or exemptions from the requirement of a tolerance in title 40 of

the CFR for hydrogen peroxide. The following 21 CFR tolerances and/or exemptions from tolerances are noted:

Under 21 CFR 184.1366, hydrogen peroxide is GRAS when used on milk intended for use in cheese making (maximum treatment level of 0.05%), whey, during preparation of modified whey by electrodialysis methods (maximum treatment level of 0.04%), dried eggs, dried egg whites, and dried egg yolks, tripe, beef feet, herring, wine, starch (maximum treatment level of 0.15%), instant tea, corn syrup (maximum treatment level of 0.15%), colored cheese whey (maximum treatment level of 0.05%), wine vinegar, and emulsifiers containing fatty acid esters (maximum treatment level of 1.25%).

Under 21 CFR 178.1010, hydrogen peroxide is approved for use as a sanitizing solution for use on food processing equipment and utensils, and on dairy processing equipment. It is also approved for use in sterilizing polymeric food-contact surfaces.

Under 21 CFR 173.315, hydrogen peroxide is approved for use in washing or to assist in the lye peeling of fruits and vegetables.

Risk assessments were conducted by EPA to assess dietary exposures and risks from hydrogen peroxide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No acute exposure and risk assessment is applicable because no acute toxicological effects of concern are anticipated with the proposed food contact uses for hydrogen peroxide. This is due to the lack of any residues of the automatic and rapid decomposition of hydrogen peroxide into oxygen and water.

ii. *Chronic exposure and risk.* Residues of hydrogen peroxide are not expected to remain on the surface of materials which it contacts. Therefore, the risk from dietary exposure is expected to be negligible. No chronic exposure and risk assessment is applicable because no chronic toxicological effects are anticipated with the proposed food contact uses for hydrogen peroxide. This is due to the lack of any residues of toxicological concern as a result of the automatic and rapid decomposition of hydrogen peroxide into oxygen and water.

2. *From drinking water.* Although the proposed food contact uses for hydrogen peroxide acid may result in transfer of

minor amounts of residues to potential drinking water sources, no risk assessment is warranted because of: (i) the rapid degradation of hydrogen peroxide into oxygen, and water, and (ii) these degradates are not of toxicological concern. Information from the EPA Office of Water also indicates that when used for potable water disinfection, no residues of hydrogen peroxide acid are present by the time the water is pumped through a distribution system.

3. *From non-dietary exposure.* Hydrogen peroxide is currently registered by EPA for a wide variety of uses including: agricultural premises and equipment; food handling/storage establishments premises and equipment; commercial, institutional and industrial premises and equipment; residential and public access premises; medical premises and equipment; materials preservation; and industrial processes and water systems.

Hydrogen peroxide is also approved for a variety of medicinal uses including sanitization of scrapes, cuts, and burns to human and animal skin, and as a human oral sanitizing mouthwash. It is also used by medical doctors for general cleansing and sanitization of surgical areas of the body after operations. Hydrogen peroxide use in homes is medicinal and exposures are expected to be infrequent and at extremely short topical duration. The Agency does not know of all approved or actual uses for hydrogen peroxide. However, non-dietary exposures are not expected to pose any quantifiable added risk because of a lack of any significant residues of toxicological concern.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning

common mechanism of toxicity in a meaningful way.

EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

The Agency does not at this time have data specifically either to support, or to refute a common mechanism of toxicity for peroxy compounds (i.e., hydrogen peroxide, peroxyacetic acid). The Agency believes that based on the known common chemistry of peroxy compounds, toxic effects occur as a result of species formed either during spontaneous decomposition or enzymatic conversion of the peroxy bond (i.e., O-O bond). These effects occur only after long term administration of high dose levels, where the parent compound is continually present. Although a common mechanism of toxicity may or may not be inferred, the Agency's concerns for cumulative risk is mitigated by the lack of residues of the parent compound (hydrogen peroxide) at proposed use levels, and by the rapid decomposition of the parent compound into products which are not of toxicological concern (i.e., oxygen and water). As data become available, the Agency may require further studies on the peroxy compounds to determine whether a cumulative risk assessment is warranted.

EPA does not have, at this time, available data to determine whether hydrogen peroxide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, hydrogen peroxide does not appear to produce toxic metabolites. For the purposes of this exemption from the requirement of a tolerance, EPA has not assumed that hydrogen peroxide has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute, short- and intermediate-term risk.* The Agency has concluded that no endpoint exists to suggest any evidence of significant toxicity from acute, short term or intermediate term exposures from the proposed food contact uses of hydrogen peroxide. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

The Agency concludes that there is a reasonable certainty of no harm for acute, short term, and intermediate risk from aggregate exposure to hydrogen peroxide under the proposed use concentrations.

2. *Chronic risk.* Residues of hydrogen peroxide are expected to dissociate rapidly on the surface of materials which it contacts. Therefore, the chronic risk from dietary exposure is expected to be negligible. No chronic exposure and risk assessment is required because no chronic toxicological effects are anticipated with the proposed food contact uses for hydrogen peroxide. This is due to the lack of any residues of toxicological concern as a result of the automatic and rapid decomposition of hydrogen peroxide in air into oxygen and water.

The Agency concludes that there is a reasonable certainty of no harm for chronic risk from aggregate exposure to hydrogen peroxide under the proposed use concentrations.

E. Aggregate Cancer Risk for U.S. Population

Available data suggest that hydrogen peroxide acts as a promoter of carcinogenesis at relatively high doses (in excess of 600 mg/kg) after chronic administration in drinking water to experimental animals. Epidemiological reports indicate that the major effect

from accidental ingestion of high doses of hydrogen peroxide in humans (i.e., 1,000 mg/kg) is acute and severe clinical toxicity, which in a few cases resulted in death.

Based on the proposed use concentrations for hydrogen peroxide, and data indicating negligible residues on food, exposure to hydrogen peroxide under the proposed food contact use concentrations is not likely to result in any adverse clinical effects, including promotion of carcinogenesis. This conclusion is supported further by the rapid decomposition of hydrogen peroxide into oxygen and water, which are not of toxicological concern, and the existence of specific enzymes (i.e., catalase and glutathione peroxidases) for breakdown of hydrogen peroxide.

The Agency concludes that the cancer risk for the U.S. population from aggregate exposure to hydrogen peroxide is negligible under the proposed food contact use concentrations.

F. Aggregate Risks and Determination of Safety for Infants and Children

Safety factor for infants and children. In assessing the potential for additional sensitivity of infants and children to residues of hydrogen peroxide, EPA considered data from developmental and reproductive toxicity studies available from the scientific literature and summarized by the Office of Water. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database, unless EPA determines that a different margin of safety will be safe for infants and children.

Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOEL in the animal study appropriate to the particular risk assessment. This 100-fold uncertainty factor/margin of exposure is designed to account for inter-species

extrapolation and intra-species variability.

In the case of the proposed food contact uses for hydrogen peroxide, because of the lack of any residues of toxicological concern, a NOEL was not identified for risk assessment purposes, and the uncertainty (safety) factor approach was not used for assessing any risk level by hydrogen peroxide. For the same reason, an additional safety factor to protect infants and children is unnecessary. Additionally, based on the following conditions, no increased susceptibility to infants or children is expected to occur.

1. Three older studies on the developmental and reproductive effects of hydrogen peroxide are available. The data from these studies indicates that no apparent developmental or reproductive effects were observed from administration of hydrogen peroxide at concentrations up to 1% (1,000 mg/kg).

2. Hydrogen peroxide is highly reactive and short lived because of the inherent instability of the peroxide bond (i.e., the O-O bond). Agitation or contact with rough surfaces and metals accelerates dissociation. The proposed food contact applications utilize very low concentrations of hydrogen peroxide (i.e., ppm). Food residues are expected to be short-lived and are not expected to accumulate. This is because hydrogen peroxide dissociates rapidly in air into oxygen and water. The Agency has no toxicological concern with oxygen and water.

3. A waiver was granted for all the remaining toxicology testing requirements because of the reasons given in items a and b above, and because there is an extensive data base assembled by the Agency's Office of Water showing toxicological effects in experimental animals only at high concentrations, which are not expected with the proposed use patterns.

4. The Agency also recognizes that commercially available 3% hydrogen peroxide solutions have been used for many years for personal and medical uses. The use directions for some of these products state that these solutions can be used as a sanitizing mouthwash. The long use history of hydrogen peroxide and weight of empirical and experimental data has led the FDA to put it on the Generally Recognized As Safe (GRAS) list when used on food processing equipment, utensils, and food contact articles (21 CFR part 178).

Therefore, because of the rapid decomposition of hydrogen peroxide residues into degradates that are of no toxicological concern (i.e., oxygen, water), the Agency concludes that there is a reasonable certainty of no harm for

infants and children from exposure to hydrogen peroxide under the proposed food contact use concentrations.

III. Other Considerations

A. Endocrine Disruption

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inert) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect..." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed three years from the passage of the FQPA (August, 1999) to implement this program. At that time, the EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. There is no current evidence to suggest that hydrogen peroxide acts in a manner similar to any known hormone or that it acts as an endocrine disrupter.

B. Analytical Enforcement Methodology

Because an exemption from the requirement of a tolerance is being granted for hydrogen peroxide, an enforcement analytical method is not needed. However, an adequate analytical method (designated QATM 202 by Ecolab, Inc., a redox titration procedure) is available in the interim. Because of the long lead time from establishing a tolerance or exemption of the requirement of a tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Volume II, the analytical method is being made available to anyone interested in pesticide enforcement when requested from Norm Cook, Antimicrobials Division (7510W), Office of Pesticide Programs, US Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, 6th Floor, Arlington, VA 22202, 703-308-6411.

C. Magnitude of Residues

Residues of hydrogen peroxide are short lived on treated crops and are not expected to bioaccumulate in livestock and/or poultry that consume treated feedstuffs. Because of the lack of any residues of toxicological concern, the Agency has waived this data requirement.

D. International Residue Limits

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for hydrogen peroxide.

IV. Conclusion

Therefore, the exemption from the requirement of a tolerance is established for residues of hydrogen peroxide up to 120 ppm in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

It should be understood that the Agency may take appropriate regulatory action, and/or require the submission of additional data to support the exemption from the requirement of a tolerance for hydrogen peroxide, if new relevant adverse effects information comes to the Agency's attention.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25).

Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27).

A request for a hearing will be granted if the Administrator determines that the

material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300655] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia

address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993).

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 1998.

Frank Sanders,
Director, Antimicrobials Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1197 is added to read as follows:

§ 180.1197 Hydrogen peroxide; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of hydrogen peroxide up to 120 ppm in or on raw agricultural commodities, in processed commodities, when such residues result from the use of hydrogen peroxide as an antimicrobial agent on fruits, tree nuts, cereal grains, herbs, and spices.

[FR Doc. 98-12037 Filed 5-5-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 279

[FRL-5969-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Today's direct final rule eliminates errors and clarifies ambiguities in the used oil management standards. Specifically, this rule clarifies when used oil contaminated with polychlorinated biphenyls (PCBs) is regulated under the used oil management standards and when it is not, that the requirements applicable to releases of used oil apply in States that

are not authorized for the RCRA base program, that mixtures of conditionally exempt small quantity generator (CESQG) wastes and used oil are subject to the used oil management standards irrespective of how that mixture is to be recycled, and that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. Today's rule also amends three incorrect references to the pre-1992 used oil specifications in the provisions which address hazardous waste fuel produced from, or oil reclaimed from, oil bearing hazardous wastes from petroleum refining operations.

The U.S. Environmental Protection Agency (EPA) is issuing this regulation as a direct final rule. In the Proposed Rules section of today's **Federal Register**, EPA is proposing identical amendments and soliciting public comment on them. For more information on the direct final rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: This direct final rule will become effective on July 6, 1998 unless EPA is notified by May 20, 1998 that any person intends to submit relevant adverse comment and such comment is submitted by June 5, 1998. If the Agency receives such comment, it will publish timely notification in the **Federal Register** withdrawing the amendment(s) that was the subject of adverse comment.

ADDRESSES:

Intent To Submit Comments

Persons wishing to notify EPA of their intent to submit adverse comments on this action should contact Alex Schmandt by mail at Office of General Counsel (2366), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (202) 260-1708, by fax at (202) 260-0584, or by Internet e-mail at schmandt.alex@epamail.epa.gov.

Submitting Comments

Commenters must send an original and two copies of their comments referencing docket number F-98-CUOP-FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov.

Comments in electronic format should also be identified by the docket number F-98-CUOP-FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Viewing Docket Materials

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F-98-CUOP-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT:

RCRA Hotline. For general information, contact the RCRA Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412-9810 or TDD (703) 412-3323.

Rulemaking Details. For more detailed information on specific aspects of this rulemaking, contact Tom Rinehart by mail at Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by phone at (703) 308-4309, or by Internet e-mail at rinehart.tom@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Direct Final Rulemaking Process

EPA is issuing this regulation as a direct final rule. In the Proposed Rules section of today's **Federal Register**, EPA is proposing identical amendments and soliciting public comment on them. If relevant adverse comment is received on one or more of the amendments in the rulemaking, EPA will publish timely notification in the **Federal Register** withdrawing the amendment(s) that is the subject of adverse comment. Any amendments in today's rulemaking that

do not receive relevant adverse comment will become effective on the date set out above, notwithstanding any adverse comment on other portions of today's rulemaking. A relevant comment will be considered to be any comment substantively criticizing an amendment. The accompanying notice of proposed rulemaking may serve as the basis of a subsequent final rule if an amendment is withdrawn as described above. For instructions on notifying EPA of your intent to comment and for instructions on how to submit comments, please see the **ADDRESSES** section above.

Internet Availability

This rule and the following supporting materials are available on the Internet:

Docket Item: Petition for Review.
From: Edison Electric Institute, et al.
To: U.S. Court of Appeals for the District of Columbia Circuit.
Docket Item: Petitioners' Preliminary and Non-binding Statement of Issues to be Raised on Appeal.
From: Edison Electric Institute, et al.
To: U.S. Court of Appeals for the District of Columbia Circuit.
Docket Item: Letter describing Edison Electric Institute's outstanding issues and proposals for resolving these issues.
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Letter describing Edison Electric Institute's issues including a request that EPA issue a technical correction to 40 CFR 279.10(i).
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Letter requesting that EPA resolve outstanding issues.
From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Settlement Agreement.
From: Edison Electric Institute, et al., U.S. Environmental Protection Agency, and U.S. Department of Justice.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Memorandum that describes an abbreviated state authorization revision application procedure for state rule changes in response to minor federal rule changes or corrections.

From: Michael Shapiro, Director, Office of Solid Waste.
To: Regional Waste Management Division Directors.

Follow these instructions to access this information electronically:

WWW URL: <http://www.epa.gov/epaoswer/hazwaste/usedoil/index.htm>.

FTP: [ftp.epa.gov](ftp://ftp.epa.gov).

Login: anonymous.

Password: your Internet e-mail address.

Path: /pub/epaoswer.

Note: The official record for this action will be kept in paper form and maintained at the address in the **ADDRESSES** section above.

Outline of Today's Document

- I. Authority
- II. Background and Summary of Rule
- III. Regulatory Amendments
 - A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil
 - B. Response to Releases of Used Oil
 - C. Mixtures of CESQG Wastes and Used Oil
 - D. Reference to the Used Oil Fuel Specification
 - E. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil
- IV. State Authority
- V. Regulatory Requirements
 - A. Executive Order No. 12866
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
 - D. Unfunded Mandates Reform Act
 - E. Submission to Congress and the General Accounting Office
- VI. Effective Date

I. Authority

These regulations are issued under the authority of sections 1004, 1006, 2002(a), 3001 through 3007, 3010, 3013, 3014, 3016 through 3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil Recycling Act, as amended, 42 U.S.C. 6901, 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937 through 6939 and 6974.

TABLE 1.—REGULATION OF USED OIL CONTAINING PCBs THAT IS TO BE BURNED FOR ENERGY RECOVERY UNDER 40 CFR PART 279 OF RCRA AND 40 CFR PART 761 OF TSCA

Range of PCB contamination levels in used oil (ppm)	Does RCRA regulate this used oil if it is to be burned for energy recovery?	Does TSCA regulate this used oil if it is to be burned for energy recovery?
Demonstrated to contain less than 2	Yes	No.
2 to less than 50	Yes	Yes.
50 and greater	No	Yes.

* Used oil that is to be burned for energy recovery is presumed to contain 2 ppm or greater of PCBs unless shown otherwise by testing or other information.

Used oil containing less than 50 ppm PCBs that is recycled other than being burned for energy recovery is not generally subject to the TSCA requirements. See 40 CFR 761.3 (definition of excluded PCB products);

II. Background and Summary of Rule

Today's direct final rule provides technical corrections and clarifies ambiguities to existing regulatory language concerning used oil at 40 CFR part 279 and 40 CFR part 261. The clarification of the applicability of the used oil management standards to PCB contaminated used oil is undertaken as part of a settlement agreement in response to a lawsuit challenging EPA's final rule promulgated on May 3, 1993, (58 FR 26420). *Edison Electric Institute v. U.S. EPA* (D.C. Circuit No. 93-1474). The May 1993 rule corrected technical errors and provided clarifying amendments to the used oil management standards promulgated on September 10, 1992 (57 FR 41566). In addition, the Agency found several errors and ambiguities during review of the existing regulatory language concerning used oil. Today's rule eliminates these mistakes and clarifies ambiguities in the used oil management standards.

These clarifications and corrections are presented in four separate sections, through which the Agency is (1) clarifying that used oil containing 50 ppm or greater PCBs is not subject to regulation under the used oil management standards at 40 CFR Part 279; (2) clarifying that the response requirements at 40 CFR part 279 for releases of used oil apply in states without RCRA base program authorization; (3) clarifying that mixtures of CESQG waste and used oil are subject to the used oil management standards regardless of how that mixture is to be recycled; (4) amending the references to the used oil management standards in 40 CFR Part 261 to make them consistent with the standards at 40 CFR Part 279; and (5) clarifying that the initial marketer of

used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil.

III. Regulatory Amendments

A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil

Today's rule amends 40 CFR 279.10(i) to clarify the applicability of the used oil management standards of 40 CFR part 279 to used oil containing PCBs. The revised language reflects EPA's intent that used oil that contains less than 50 ppm of PCBs is subject to regulation under the used oil management standards. Used oil that contains 50 ppm or greater of PCBs is not subject to regulation under the used oil management standards, because the TSCA regulations at 40 CFR part 761 provide comprehensive management of such used oil.

Table 1 shows the applicability of the RCRA and TSCA regulations as they pertain to used oil containing PCBs that is to be burned for energy recovery. Used oil that contains PCBs in the range of 2 ppm and greater and less than 50 ppm that is burned for energy recovery is regulated by both the TSCA regulations at 40 CFR 761.20(e) and the used oil management standards at 40 CFR part 279. Please note, under the TSCA regulations at 40 CFR 761.20(e)(2), used oil that is to be burned for energy recovery is presumed to contain 2 ppm or greater of PCBs unless shown otherwise by testing or other information. Used oil that is to be burned for energy recovery and has been shown to contain less than 2 ppm PCBs is not regulated under TSCA and is solely regulated under RCRA.

761.20(a)(1); and 761.20(c). However, 40 CFR 761.20(d) prohibits the use of used oil that contains any detectable concentration of PCBs as a sealant, coating, or dust control agent. This prohibition specifically includes road

oiling and general dust control. Use of used oil as a dust suppressant is prohibited under RCRA except in a state that has received authorization from EPA to allow use of used oil as a dust suppressant. Currently no states have

received such authorization. In the event that a state were authorized to use used oil as a dust suppressant pursuant to 40 CFR 279.82, the prohibition in 40 CFR 761.20(d) would still apply.

Used oil that contains PCBs may not be diluted to obtain PCB concentrations less than 50 ppm. See 40 CFR 761.1(b). PCB-containing used oils that have been diluted so that their concentrations are less than 50 ppm are still subject to regulation under TSCA as used oil that contains PCB concentrations of 50 ppm or greater. These diluted used oils are subject to comprehensive management under TSCA and, therefore, are not regulated under the RCRA used oil management standards.

RCRA's used oil management standards have historically applied to used oil containing less than 50 ppm PCBs and not to used oil containing concentrations of 50 ppm or greater. Prior to the promulgation of Part 279 in September 1992, the used oil management standards applied to used oil that contained less than 50 ppm PCBs pursuant to 40 CFR Part 266, subpart E. The preamble to the September 1992 rule that recodified the provisions from the old Part 266 clearly indicates EPA's intent not to regulate PCB-contaminated used oil at levels of 50 ppm and greater under the RCRA used oil management standards (see 57 FR 41566, 41569, 41583; September 10, 1992), but the text of the rule did not reference the 50 ppm standard. Instead, the regulatory text at 40 CFR 279.10(i) purported to exclude from the used oil management standards those PCB-contaminated used oils already "regulated under" the TSCA PCB regulations at 40 CFR Part 761, which as explained above is a potentially broader universe of material. Because the September 10, 1992 RCRA rule excluded PCB-contaminated used oil already "regulated under" the TSCA regulations, it could have been interpreted as excluding used oil containing PCBs at less than 50 ppm from the RCRA used oil management standards.

The May 3, 1993 RCRA rule (58 FR 26420) sought to clarify that the Part 279 standards apply to used oils containing less than 50 ppm PCBs, but did so in a manner that inadvertently created the impression that the used oil management standards also applied to PCB-contaminated used oils at levels of 50 ppm and greater. Today's rule clarifies the scope of the RCRA used oil management standards as EPA has consistently interpreted them.

B. Response to Releases of Used Oil

Today's rule amends 40 CFR 279.22(d), 279.45(h), 279.54(g) and 279.64(g) to clarify that the response requirements for releases of used oil apply in states that are not authorized for the RCRA base program pursuant to RCRA Section 3006, 42 U.S.C. 6926, and, hence, that are not authorized for the used oil management standards. (Base program authorization refers to the RCRA program initially made available for final authorization, reflecting Federal regulations as of July 26, 1982.) At this time, Alaska, Hawaii, Iowa, Puerto Rico, the Virgin Islands, the Northern Mariana Islands and American Samoa do not have an authorized RCRA base program.

The text and the 1992 preamble discussion of the four provisions enumerated above appear to limit the cleanup requirements for a release of used oil to those states and territories that have an authorized used oil management program. Specifically, §§ 279.22(d), 279.45(h), 279.54(g) and 279.64(g) provide that the cleanup requirements apply to releases of used oil that "occurred after the effective date of the authorized used oil program for the State in which the release is located" (emphasis added). Furthermore, the preamble discussion of these provisions state that "[T]his requirement does not apply to past releases of used oil that occurred prior to the effective date of the used oil program within an authorized state in which the facility is located." 57 FR 41566 at 41586, 41592, 41596, 41600, September 10, 1992 (emphasis added).

Notwithstanding any ambiguity in the regulatory text, EPA's intent in limiting the cleanup requirements—to releases of used oil that occurred after the effective date of the authorized used oil program for the State in which the release is located—was to provide a temporal limitation on when the response to release requirements were to take effect. The federal used oil management standards incorporated into Part 279 created for the most part a new regulatory scheme for the management of used oil. (If these standards were to include cleanup requirements for spills of used oil it was important to clarify that such cleanup requirements would only apply to spills that occurred after the new requirements were in effect.) The language in §§ 279.22(d), 279.45(h), 279.54(g) and 279.64(g) provided a temporal limitation by imposing the cleanup requirements on those releases that occur "after the effective date of the authorized used oil program for the State in which the release is located."

The 1992 preamble discussion of the response to releases requirements makes this point explicitly in stating that "[T]his requirement does not apply to past releases of used oil that occurred prior to the effective date of the used oil program within an authorized state in which the facility is located." 57 FR 41566 at 41586, 41592, 41596, 41600, September 10, 1992. The language, therefore, clarified that the regulation applied prospectively only and that other authorities would be used for pre-existing releases.

Today's rule clarifies that the cleanup requirements apply to releases of used oil that occurred after the effective date of the recycled used oil management program in effect in the State in which the facility is located. In states that do not have RCRA authorization, the recycled used oil management program in effect is the federal program of used oil management standards at 40 CFR Part 279, which became effective in these states on March 8, 1993. See 58 FR 26420, May 3, 1993. In authorized RCRA states, only states that are authorized for the used oil management standards have a recycled used oil management program in effect; these programs take effect on the effective date of the final rule that authorizes the state for the used oil management standards.

C. Mixtures of CESQG Wastes and Used Oil

Today's rule harmonizes the applicability of 40 CFR Part 261 and Part 279 to mixtures of conditionally exempt small quantity generators (CESQG) wastes and used oil that are to be recycled. Although CESQG wastes are not regulated as hazardous wastes, mixtures of CESQG wastes and used oil that are to be recycled are regulated as used oil under the used oil management standards. Notwithstanding EPA's regulatory intent, the CESQG provision, 40 CFR 261.5(j), that references the applicability of the used oil management standards to mixtures of CESQG wastes and used oil that are to be recycled, appears to limit the applicability of the used oil management standards to mixtures that are to be recycled by burning for energy recovery. Section 261.5(j), therefore, incorrectly suggests that mixtures of CESQG wastes and used oil that are to be recycled in a manner other than by burning for energy recovery, such as by re-refining, would not be subject to the used oil management standards. Indeed, because CESQG wastes are not regulated as hazardous wastes, § 261.5(j) would suggest that such mixtures that are re-refined would not be subject to

regulation under RCRA Subtitle C or the used oil management standards.

The used oil management standards, however, apply to used oil to be recycled irrespective of what form of recycling is to be employed. By its terms, the presumption in 40 CFR 279.10(a) that used oil is to be recycled (such that used oil is presumptively subject to the used oil management standards, unless it is disposed or sent for disposal), encompasses any type of recycling. The recycling presumption does not, for instance, condition the applicability of the used oil management standards on whether used oil is recycled by burning for energy recovery or by re-refining. To the extent that Part 279 applies to used oil that is to be recycled without regard to how the used oil is to be recycled, Part 279 applies equally to mixtures of used oil and CESQG wastes that are to be recycled irrespective of how that mixture is to be recycled.

The regulatory provisions that address mixtures of CESQG wastes and used oil to be recycled, § 261.5(j) and § 279.10(b)(3), are both intended to clarify that mixtures of CESQG wastes and used oil are subject to the used oil management standards, notwithstanding the conditional exemption of small quantity generator wastes from regulation as a hazardous waste. The apparent limitation contained in § 261.5(j), which would limit the applicability of the used oil management standards to mixtures to be burned for energy recovery, is an artifact of the pre-1992 used oil regulations at 40 CFR Part 266, which only regulated the burning of used oil. When the expanded used oil management standards were promulgated on September 10, 1992, the Agency inadvertently failed to amend § 261.5(j) to reflect the broader scope of the new Part 279. Indeed, the corresponding provision in Part 279 that addresses mixtures of CESQG wastes and used oil to be recycled, § 279.10(b)(3), does not contain the apparent limitation found in § 261.5(j) that would limit the applicability of the used oil management standards to mixtures to be burned for energy recovery. Today's rule amends § 261.5(j) as it should have been amended in 1992 to reflect the greater scope of Part 279 and to eliminate any potential ambiguity over the applicability of the used oil management standards to mixtures of CESQG wastes and used oil to be recycled.

D. References to the Used Oil Fuel Specification

Today's rule amends 40 CFR 261.6(a)(3)(iv)(A)-(C) to reflect the recodification of the used oil requirements at 40 CFR Part 279. The three provisions address hazardous waste fuel produced from, or oil reclaimed from, oil bearing hazardous wastes from petroleum refining operations. All three provisions incorrectly reference the pre-1992 used oil fuel specification provision, § 266.40(e), which was recodified in 1992 at § 279.11. These provisions should have been amended in 1992.

E. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil

Today's rule amends 40 CFR 279.74(b) to clarify that the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification (on-specification used oil) must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The preamble to the November 29, 1985 rule (50 FR 49164 at 49189) clearly describes the agency's intent to only track on-specification used oil that is to be burned for energy recovery one step beyond the initial marketer. When these recordkeeping requirements were recodified at 40 CFR 279.74(b) (57 FR 41566, September 10, 1992), the regulations required that a marketer must keep a record of each shipment of used oil to an on-specification used oil burner. However, the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification might choose not to market the used oil directly to an on-specification used oil burner (i.e. a non-industrial oil burner). Instead, the on-specification used oil might be marketed to a fuel oil distributor for subsequent sale as fuel oil. In this situation, § 279.74(b) could be interpreted to require the initial marketer of the on-specification used oil to keep a record of all subsequent shipments of that used oil until the on-specification used oil reaches a used oil burner. Today's rule clarifies that the initial marketer of on-specification used oil must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The initial marketer need not keep a record of any subsequent transfers of this used oil. For example, the initial marketer would need to keep a record of a shipment of on-specification used oil to a fuel oil distributor, but the initial marketer would not need to keep records of

shipments of this used oil from the fuel oil distributor to fuel oil burners or other fuel oil distributors.

IV. State Authority

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under Sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Today's amendments are not imposed pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA). Therefore, these corrections and clarifications will become effective immediately only in those States without interim or final authorization, not in authorized States.

Today's rule corrects and clarifies the scope of certain regulatory requirements and is, therefore, considered to be no more stringent than the existing federal standards. Authorized States are only required to modify their programs when EPA promulgates federal regulations that are more stringent or broader in scope than the existing federal regulations. Therefore, States that are authorized for the used oil management standards are not required to modify their programs to adopt today's rule. However, EPA strongly urges States to do so.

Given the minor scope of today's amendments, those States that are authorized for the used oil management standards may submit an abbreviated authorization revision application to the Region for today's amendments. This application should consist of a letter from the State to the appropriate Regional office, certifying that it has adopted provisions equivalent to and no less stringent than today's final rule (see the December 19, 1994, memorandum from Michael Shapiro, Director of the Office of Solid Waste, to the EPA Regional Division Directors that is in the docket for today's rule). The State should also submit a copy of its final rule or other authorizing authority. Revisions to the revised Program Description, Memorandum of Agreement, and Attorney General's statement are not necessary because today's rule merely corrects and clarifies the scope of certain regulatory requirements (§ 271.21(b)(1)). EPA expects that this simplified process will expedite the review of the authorization submittal for this rule.

V. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has reviewed this rule and has determined it to be "not significant" under the terms of the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-602, requires that Federal agencies examine the impacts of their regulations on "small entities". If a rulemaking will have a significant impact on a substantial number of small entities, agencies must consider regulatory alternatives that minimize economic impact.

EPA believes that today's rule will not impact any small entity because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's rule eliminates errors and clarifies ambiguities in the used oil management standards so as to restore the Agency's intended result. Therefore, I certify pursuant to 5 U.S.C. 601 *et seq.*, that this rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-

4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When a written statement is needed for any EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's rule eliminates errors and clarifies ambiguities in the used oil management standards so as to restore the Agency's intended result. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the

U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

VI. Effective Date

Because the regulated community does not need 6 months to come into compliance with this rule, EPA finds, pursuant to RCRA section 3010(b)(1), that this rule can be made effective in less than six months.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 279

Conditionally exempt small quantity generator (CESQG), Environmental protection, Hazardous waste, Polychlorinated biphenyls (PCBs), Solid waste, Recycling, Response to releases, Used oil, Used oil specification.

Dated: April 20, 1998.

Carol Browner,
Administrator.

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

§ 261.5 [Amended]

2. Section 261.5(j) is amended by removing both phrases, "if it is destined to be burned for energy recovery".

§ 261.6 [Amended]

3. In § 261.6 paragraphs (a)(3)(iv)(A)-(C) are amended by revising the reference "266.40(e)" to read "279.11".

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

4. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and Sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

5. Section 279.10 is amended by revising paragraph (i) to read as follows:

§ 279.10 Applicability.

(i) *Used oil containing PCBs.* Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this part. Used oil subject to the requirements of this Part may also be subject to the prohibitions and requirements found at 40 CFR Part 761, including § 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this part, but is subject to regulation under 40 CFR part 761.

6. Section 279.22 is amended by revising paragraph (d) to read as follows:

§ 279.22 Used oil storage.

(d) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a generator must perform the following cleanup steps:

- (1) Stop the release;
- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

7. Section 279.45 is amended by revising paragraph (h) to read as follows:

§ 279.45 Used oil storage at transfer facilities.

(h) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, the owner/operator of a transfer facility must perform the following cleanup steps:

- (1) Stop the release;
- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

8. Section 279.54 is amended by revising paragraph (g) to read as follows:

§ 279.54 Used oil management.

(g) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, an owner/operator must perform the following cleanup steps:

- (1) Stop the release;
- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

9. Section 279.64 is amended by revising paragraph (g) to read as follows:

§ 279.64 Used oil storage.

(g) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a burner must perform the following cleanup steps:

- (1) Stop the release;
- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

10. Section 279.74 is amended by revising paragraph (b) to read as follows:

§ 279.74 Tracking.

(b) *On-specification used oil delivery.* A generator, transporter, processor/refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under § 279.11 must keep a record of each shipment of used oil to the facility to which it delivers the used oil. Records for each shipment must include the following information:

- (1) The name and address of the facility receiving the shipment;
- (2) The quantity of used oil fuel delivered;
- (3) The date of shipment or delivery; and
- (4) A cross-reference to the record of used oil analysis or other information used to make the determination that the

oil meets the specification as required under § 279.72(a).

[FR Doc. 98-11376 Filed 5-5-98; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AC67

Disaster Assistance; Public Assistance Program Appeals; Hazard Mitigation Grant Program Appeals

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Correction of final rule.

SUMMARY: This document corrects the final rule published on Wednesday, April 8, 1998 (63 FR 17108). The rule pertains to review and disposition of appeals related to Public Assistance grants and the Hazard Mitigation Grant Program.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3619, (facsimile) (202) 646-3104, about HMGP appeals; or Melissa M. Howard, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3053, facsimile (202) 646-3304, about Public Assistance appeals.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency published a final rule on April 8, 1998 that changed from three to two the number of appeals allowed from decisions made about Public Assistance grants and the Hazard Mitigation Grant Program. As published the final rule contained two incorrect citations, the one in the Supplementary Information, and the other in the rule. In the Background statement of the Supplementary Information, the text read 44 CFR 202.206 and should have read 44 CFR 206.206. In the rule, § 206.206(e)(2) read 44 CFR 206.440 and should have read 44 CFR 206.206.

Accordingly, the final rule published as FR Doc. 98-9207 on April 8, 1998, 63 FR 17108, is corrected as follows:

(a) On page 17108, in the third column, under Supplementary Information, Background, in the first paragraph the second sentence is corrected to read as follows:

Background

Current FEMA regulations at 44 CFR 206.206 and 206.440 provide for a three-stage appellate process, with appeals directed to the Regional Director, the Associate Director, and to the Director.

(b) On page 17111, in the first column, § 206.206(e)(2) is corrected to read as follows:

§ 206.206 Appeals

(e) * * *

(2) Appeals pending from a decision of an Associate Director/Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.206 as it existed before May 8, 1998 (44 CFR, revised as of October 1, 1997).

Dated: April 28, 1998.

James L. Witt,
Director.

[FR Doc. 98-12007 Filed 5-5-98; 8:45 am]

BILLING CODE 8710-02-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 94-76, 94-77, and 95-51, RMs-8470, 8477, 8523, 8524, and 8591]

Radio Broadcasting Services; Chester, Shasta Lake City, Alturas, McCloud, Weaverville, and Shingletown, California.

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission denied the petitions for reconsideration, filed by JAYNE sawyer d/b/a m. JAYNE enterprises of the *Report and Order* in MM Dockets No. 94-76 and 94-77, 61 FR 24242, published May 14, 1996, and of the *Report and Order* in MM Docket 95-51, 61 FR 40746, published August 6, 1996. It also affirms both *Report and Orders* and their respective allotting of FM channels to six California communities, which accommodated all requests for FM channels made by each of the petitioners for rule making. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 6, 1998.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418-2180.

SUPPLEMENTAL INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket Nos. 94-76, 94-77, and 95-51, adopted April 15, 1998 and released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-11950 Filed 5-5-98; 8:45 am]

BILLING CODE 8712-01-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 971229312-7312-01; I.D. 042398C]

Fisherles off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Increases

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to the restrictions to the Pacific Coast groundfish limited entry and open access fisheries for widow rockfish, yellowtail rockfish, Dover sole, thornyheads, and sablefish (taken with trawl or fixed gear); and in the open access fishery for bocaccio taken with hook-and-line or pot gear, and for thornyheads caught in the pink shrimp trawl fishery. These restrictions are intended to extend the fisheries as long as possible during the year and to keep landings within the 1998 harvest guidelines (HGs) and allocations for these species. This document also corrects an error in the annual specifications and management measures for the Pacific Coast fishery published January 6, 1998.

DATES: Effective 0001 hours local time (l.t.) May 1, 1998, except for the trip limit for vessels operating in the "B" platoon, which will become effective at 0001 hours l.t. May 16, 1998. Effective at 0001 hours l.t. May 3, 1998, for vessels operating in the limited entry, fixed gear sablefish fishery south of 36° N. lat. These changes are in effect, unless modified, superceded or rescinded, until the effective date of the 1999 annual specifications and management measures for the Pacific Coast Groundfish fishery, which will be published in the *Federal Register*. Comments will be accepted through May 21, 1998.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070; or William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, NMFS, 206-526-6140; or Svein Fougner, Southwest Region, NMFS, 562-980-4040.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its April 6 to 10, 1998, meeting in Portland, OR.

Increases to Limited Entry 2-Month Cumulative Limits

El Nino climate changes have created unusually severe winter weather conditions off the Pacific Coast. Hazardous weather has led to lower groundfish landings than the Council had expected when it recommended the 1998 limited entry cumulative trip limits at its November 1997 meeting. Preliminary landing estimates for the first quarter of 1998 indicate, that if the fishery were to continue under current restrictions, the groundfish fleet would not achieve the HGs or allocations for several of the groundfish species managed with cumulative trip limits. For this reason, the Council recommended at its April 1998 meeting to raise the 2-month cumulative trip limits by 20 percent for some of the major groundfish species landed by the limited entry fishery, which also results in increases to the 60 percent limits in the limited entry fishery and to the 50 percent limits in the open access fishery. (For more information, see

annual specifications at 63 FR 419, January 6, 1998.) The adjusted trip limits are calculated to provide a year-long fishing opportunity. Pacific coast groundfish landings will be monitored throughout the year, and further adjustments to the cumulative trip limits will be made as necessary.

Widow Rockfish

The limited entry fishery for widow rockfish currently is managed under a 2-month cumulative trip limit of 25,000 lb (11,340 kg). The best available information at the April 1998 Council meeting indicated that 464 mt of widow rockfish had been taken through March 31, 1998, and that the 4,276 mt HG would not be met by the end of 1998 at the current cumulative trip limit level. Therefore, the Council recommended for the above reasons that the 2-month cumulative trip limit for widow rockfish be increased coastwide on May 1, 1998, to 30,000 lb (13,608 kg).

The Sebastes Complex (Including Yellowtail Rockfish, Canary Rockfish, and Bocaccio)

The limited entry fishery for the *Sebastes* complex currently is managed under 2-month cumulative trip limits of yellowtail rockfish (north of Cape Mendocino), 11,000 lb (4,990 kg); canary rockfish (coastwide), 15,000 lb (6,804 kg), and bocaccio (south of Cape Mendocino), 2,000 lb (907 kg). The overall 2-month cumulative trip limit for the *Sebastes* complex north of Cape Mendocino is 40,000 lb (18,144 kg). South of Cape Mendocino, the *Sebastes* complex 2-month cumulative trip limit is 150,000 lb (68,039 kg). The best available information at the April 1998 Council meeting indicated that 259 mt of yellowtail rockfish had been taken through March 31, 1998, and that the HG for yellowtail rockfish would not be met by the end of 1998 at the current cumulative trip limit levels. Therefore, the Council recommended that the 2-month cumulative trip limit for yellowtail rockfish landed north of Cape Mendocino be increased on May 1, 1998, to 13,000 lb (5,897 kg). The 40,000 lb (18,144 kg) cumulative limit for the *Sebastes* complex north of Cape Mendocino will not increase.

DTS Complex (Dover Sole, Thornyheads, and Trawl-caught Sablefish)

The limited entry fishery for the Dover sole, thornyheads, and trawl-caught sablefish (DTS complex) is managed under 2-month cumulative trip limits of Dover sole, 18,000 lb (8,165 kg); longspine thornyheads, 10,000 lb (4,536 kg); shortspine thornyheads,

4,000 lb (1,814 kg), and trawl-caught sablefish, 5,000 lb (2,268 kg). There is an overall DTS complex 2-month cumulative trip limit of 37,000 lb (16,783 kg). The best available information at the April 1998 Council meeting indicated that 292 mt of trawl-caught sablefish, 1,678 mt of Dover sole, 361 mt of longspine thornyheads, and 178 mt of shortspine thornyheads had been taken through March 31, 1998. Landing levels for each of these species are well below November 1997 projections for landings in this fishery during the January through March 1998 period. Therefore, the Council recommended increasing the 2-month cumulative limits within the DTS complex on May 1, 1998 to: Dover sole, 22,000 lb (9,979 kg); longspine thornyheads, 12,000 lb (5,443 kg); shortspine thornyheads, 5,000 lb (2,268 kg), and; trawl-caught sablefish, 6,000 lb (2,722 kg).

At the April 1998 Council meeting, the Council's Enforcement Consultants also noted that having an overall cumulative limit for the DTS complex could lead to double prosecutions where fishers are cited for both exceeding the cumulative trip limit of a species within the DTS complex and for exceeding the overall DTS complex cumulative trip limit. For this reason, and because the Council saw no merit in retaining an overall DTS complex limit that equals the sum of the cumulative trip limits of the species in the complex, the Council recommended removing the overall DTS complex cumulative limit from the annual specifications and management measures.

Changes to Limited Entry and Open Access Fixed Gear Limits for Sablefish, North and South of 36°00' N. lat.

Limited Entry North of 36°00' N. Lat.

The limited entry, fixed gear sablefish fishery is managed with a short, intense primary season consisting of two openings (regular and mop-up), during which the majority of the limited entry, fixed gear sablefish allocation is taken for the year. Outside the regular and mop-up seasons, there is a small daily trip limit fishery to allow fixed gear vessels to make incidental sablefish landings throughout the year. Currently, the limited entry, fixed gear sablefish fishery north of 36°00' N. lat. is managed with a 300-lb (136-kg) daily trip limit and a cumulative limit of 1,500 lb (680 kg) per 2-month period (excluding any harvest in the regular or mop-up seasons). As with the limited entry trawl fisheries, landings have been low in this fishery due to the severe

winter weather. For this reason, the Council recommended increasing the limited entry, fixed gear cumulative limit to 1,800 lb (816 kg) per 2-month period, beginning on May 1, 1998, but retaining the 300 lb (136 kg) daily limit.

Limited Entry South of 36° N. Lat.

The limited entry, fixed gear fishery for sablefish south of 36° N. lat. is currently managed with a daily trip limit of 350 lb (159 kg). There is no cap on the amount of sablefish that can be landed under the daily trip limit in the area south of 36° N. lat. At the April 1998 Council meeting, fixed gear fishers who take sablefish south of 36° N. lat. asked the Council to reinstate a management measure from 1997, where a vessel was allowed to choose to either land up to 350 lb (159 kg) per day or to make one landing per week above 350 lb (159 kg) but not to exceed 1,050 lb (476 kg). This choice of limits was successful in 1997 as it did not result in increased fishing pressure and allowed fish to be landed that otherwise would have been discarded. The Council recognized that this measure would allow greater flexibility for fixed gear fishers who target groundfish on fishing trips of several days in duration, but that it would not be so liberal as to allow fishers to exceed the 425 mt HG for this area. Therefore, the Council recommended allowing limited entry fixed gear fishers landing sablefish south of 36° N. lat. to choose each week whether to make landings of sablefish of up to 350 lb (159 kg) per day or to make a single landing exceeding 350 lb (159 kg), but not to exceed 1,050 lb (476 kg), beginning on May 3, 1998. For the purposes of this measure, a week is 7 consecutive days, from 0001 hours l.t. Sunday through 2400 hours l.t. Saturday. The projected limited entry and open access sablefish landings in the area south of 36° N. lat. will be monitored throughout the year. This weekly landing option may be revised or rescinded if projected landings for the area south of 36° N. lat. increase to a level where it is anticipated that the HG would be achieved before the end of the year. Because this measure offers an option for fishers to make a single large landing within a week that begins at 0001 hours l.t. on Sunday, this measure will not take effect until May 3, 1998, at 0001 hours l.t.

Open Access North of 36° N. Lat.

Currently, the open access, fixed gear sablefish fishery north of 36°00' N. lat. is managed with a 300-lb (136-kg) daily trip limit and a cumulative limit of 600 lb (271 kg) per 2-month period (excluding any harvest in the regular or

mop-up seasons). As with the limited entry, fixed gear fishery for sablefish, landings have been low in this fishery due to the severe winter weather. For this reason, the Council recommended increasing the open access, fixed gear cumulative limit to 700 lb (318 kg) per 2-month period, beginning on May 1, 1998. This change is unusual because it does not allow another full daily trip limit to be landed within the 2-month period, although it does reflect the Council's intent to retain the incidental harvest character of open access sablefish landings. The Council determined that, while the pace of open access sablefish landings in the January-March 1998 period had been slow enough to allow an increase in the cumulative limit level, there was not enough sablefish in the open access allocation north of 36° N. lat. to increase the 2-month cumulative limit to 900 lb (408 kg), which would accommodate another complete daily trip limit.

Groundfish Other Than Sablefish Taken in Open Access Fisheries

Bocaccio Taken by Hook-and-Line or Pot Gear

Landings in the open access fishery for yellowtail, canary rockfish, bocaccio, and the *Sebastes* complex as a whole are constrained by the 50-percent monthly limit, which counts toward the open access limit for rockfish. However, there are additional restrictions specific to hook-and-line or pot gear landing rockfish in the open access fishery that include (1) a 10,000 lb (4,536 kg) limit of rockfish per vessel per fishing trip, and (2) south of Cape Mendocino, a 1-month cumulative trip limit for bocaccio of 1,000 lb (454 kg) (the 50 percent monthly trip limit), and a per trip limit of 250 lb (113 kg) of bocaccio. At the April 1998 Council meeting, the Council recommended to increase the per trip limit for bocaccio to 500 lb (227 kg) on May 1, 1998, to reduce discards for those fishers whose incidental bocaccio catch exceeds 250 lb (113 kg). The 1-month cumulative limit of 1,000 lb (454 kg) would remain in place.

Thornyheads Landed in the Pink Shrimp Trawl Fishery Open access. Currently, a vessel engaged in fishing for pink shrimp may land, per trip, up to 500 lb (227 kg) of groundfish, multiplied by the number of days of the fishing trip, and with a daily trip limit of 300 lb (136 kg) for sablefish coastwide and a daily trip limit of 50 lb (23 kg) for thornyheads landed south of Pt. Conception. The daily trip limits for sablefish and thornyheads may not be multiplied by the number of days of the fishing trip. No open access landings of

thornyheads currently are allowed north of Pt. Conception. At the April 1998 Council meeting, the Oregon Department of Fish and Wildlife (ODFW) noted that the prohibition on landing thornyheads north of Pt. Conception is leading to thornyhead discards in the pink shrimp trawl fishery. ODFW further noted that, under a 100 lb (45 kg) trip limit, only 2 mt of shortspine thornyheads would be landed, accounting for 94 percent of the shortspine thornyheads that currently are caught and discarded due to the prohibitions against landing thornyheads in the pink shrimp fishery. Therefore, the open access shortspine thornyhead allocation of 3 mt would not be exceeded if vessels fishing for pink shrimp were allowed to land thornyheads under a limit of 100 lb (45 kg) per trip. Therefore, the Council recommended setting a limit of 100 lb (45 kg) per trip for vessels engaged in fishing for pink shrimp, which would be counted against the overall groundfish trip limit, beginning on May 1, 1998. The 100 lb (45 kg) per trip limit for thornyheads would not be multiplied by the number of days in the fishing trip.

In rule document 97-34234, on page 440, in the issue of January 6, 1998 (63 FR 419), make the following correction:

1. In the first column, in paragraph (A), in the tenth line, "(V.A.(1)(c)(i) do not apply)" should read "(IV.A.(1)(c)(i) do not apply)".

NMFS Action

For the reasons stated above, NMFS concurs with the Council's recommendations and announces the following changes to the 1998 annual management measures (63 FR 419, January 6, 1998 as amended). The trip limit changes for the limited entry fishery may also affect the open access fishery, including exempt trawl gear used to harvest pink shrimp and prawns, California halibut, and sea cucumbers. As stated in paragraph III. of the annual management measures: "(A) vessel operating in the open access fishery, besides being constrained by specific open access limits, must not exceed in any calendar month 50 percent of any 2-month cumulative trip limit for the same area in the limited entry fishery, called the '50-percent monthly limit.'" The annual management measures are modified as follows:

1. In section IV, under B. *Limited Entry Fishery*, paragraphs B.(i); (2)(b) and (2)(c); (4)(c)(i) and (ii); (4)(d)(ii)(A) and (4)(d)(ii)(B) are revised to read as follows:

B. Limited Entry Fishery

(1) *Widow Rockfish* (commonly called brownies). The cumulative trip limit for widow rockfish is 30,000 lb (13,608 kg) per vessel per 2-month period. The 60-percent monthly limit, which is the maximum amount of widow rockfish that may be taken and retained, possessed, or landed in either month in a 2-month period, is 18,000 lb (8,165 kg).

(2) * * *

(b) *Cumulative trip limits*. The cumulative trip limit for the *Sebastes* complex is 40,000 lb (18,144 kg) north of Cape Mendocino or 150,000 lb (68,039 kg) south of Cape Mendocino, per vessel per 2-month period. Within the cumulative trip limit for the *Sebastes* complex, no more than 13,000 lb (5,897 kg) may be yellowtail rockfish taken and retained north of Cape Mendocino, no more than 2,000 lb (907 kg) may be bocaccio taken and retained south of Cape Mendocino, and no more than 15,000 lb (6,804 kg) may be canary rockfish.

(c) The 60-percent monthly limits, which are the maximum amounts that may be taken and retained, possessed, or landed in either month in a 2-month period, are: For the *Sebastes* complex, 24,000 lb (10,866 kg) north of Cape Mendocino, and 90,000 lb (40,823 kg) south of Cape Mendocino; for yellowtail rockfish, 7,800 lb (3,538 kg) north of Cape Mendocino; for bocaccio, 1,200 lb (544 kg) south of Cape Mendocino; and for canary rockfish coastwide, 9,000 lb (4,082 kg).

(4) * * *

(c) * * *

(i) The 2-month cumulative trip limits for species in the Dover sole, thornyheads, and trawl-caught sablefish complex are: for Dover sole, 22,000 lb (9,979 kg); for longspine thornyheads, 12,000 lb (5,443 kg); for shortspine thornyheads, 5,000 lb (2,268 kg); for trawl-caught sablefish, 6,000 lb (2,722 kg).

(ii) The 60-percent monthly limits, which are the maximum amounts that may be taken and retained, possessed or landed in either month in a 2-month period, are: for trawl-caught sablefish, 3,600 lb (1,633 kg); for Dover sole, 13,200 lb (5,987 kg); for longspine thornyheads, 7,200 lb (3,266 kg); and for shortspine thornyheads, 3,000 lb (1,361 kg).

(d) * * *

(ii) * * *

(A) The daily trip limit for sablefish taken and retained with nontrawl gear

north of 36° N. lat. is 300 lb (136 kg), which counts toward a cumulative trip limit of 1,800 lb (816 kg) per 2 month period. (Landings from the regular or mop-up seasons do not count toward this cumulative limit, and the 60-percent monthly limits described at paragraph IV.A.(1)(c)(i) do not apply.)

(B) The daily trip limit for sablefish taken and retained with nontrawl gear south of 36° N. lat. is (1) 350 lb (159 kg) with no cumulative limit on the amount of sablefish that may be retained in a month; or (2) one landing of sablefish per week above 350 lb (159 kg) but not to exceed 1,050 lb (476 kg). A week is 7 consecutive days, from 0001 hours l.t. Sunday through 2400 hours l.t. Saturday.

2. In section IV, under C. *Trip limits in the Open Access Fishery*, the following paragraphs: C.(1)(a)(i), (ii), and (iv)(A); the first two sentences of (1)(b)(i); paragraphs (2)(a)(i) and (2)(b); and paragraphs (4) and (5) introductory text and (5) (a) are revised to read as follows.

C. Trip Limits in the Open Access Fishery

(1) * * *

(a) * * *

(i) *Thornyheads*. Thornyheads (shortspine and longspine) may not be taken and retained, possessed, or landed north of Pt. Conception, the daily trip limit for thornyheads is 100 lb (45 kg) for vessels engaged in fishing for pink shrimp. South of Pt. Conception, the daily trip limit for thornyheads is 50 lb (23 kg). (The 50-percent monthly limit is not relevant for thornyheads taken in the open access fishery because it is much larger than the amount that could be taken under daily trip limits.)

(ii) *Widow rockfish*. The 50-percent monthly limit for widow rockfish is 15,000 lb (6,804 kg).

(iv) * * *

(A) *Yellowtail rockfish*. The 50-percent monthly limit for yellowtail rockfish is 6,500 lb (2,948 kg).

(b) * * *

(i) *Hook-and-line or pot gear*. 10,000 lb (4,536 kg) of rockfish per vessel per fishing trip, of which no more than 500 lb (227 kg) may be bocaccio taken and retained south of Cape Mendocino. As stated in paragraph IV.C (1) (iv)(B) above, no more than 1,000 lb (454 kg) cumulative per month may be bocaccio taken and retained south of Cape Mendocino. * * *

(2) * * *

(a) * * *

(i) *North of 36°00' N. lat.* North of 36°00' N. lat., the daily trip limit for sablefish is 300 lb (136 kg), which counts toward a cumulative trip limit of 700 lb (318 kg) per 2-month period. The 2-month cumulative trip limit may be taken at any time during the 2-month period; there is no 60-percent monthly limit for the open access fishery.

(b) *Exempted trawl gear*. The 50-percent monthly limit of 3,000 lb (1,361 kg) applies to sablefish taken and retained with exempted trawl gear.

(4) *Dover sole*. The 50-percent monthly trip limit for Dover sole is 11,000 lb (4,990 kg), and applies to all open access gear.

(5) *Groundfish taken by shrimp or prawn trawl*. The daily trip limits, which count toward the trip limit for groundfish, are: For sablefish coastwide, 300 lb (136 kg); and for thornyheads south of Pt. Conception, 50 lb (23 kg). The limits in paragraphs IV.C(1)(a), (2)(b), (3), and (4) also apply.

(a) *Pink shrimp*. The trip limit for a vessel engaged in fishing for pink shrimp is 500 lb (227 kg) of groundfish, multiplied by the number of days of the fishing trip. The daily trip limits for sablefish and thornyheads may not be multiplied by the number of days of the fishing trip. North of 36° N. lat., a trip limit of 100 lb (45 kg) of thornyheads also applies, which may not be multiplied by the number of days of the fishing trip, and is counted toward the groundfish trip limit.

Classification

These actions are authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see ADDRESSES) during business hours. Because of the need for immediate action to implement these changes at the beginning of the May through June 2-month cumulative limit period and because the public had an opportunity to comment on the action at the April 1998 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR

660.323 (b)(1), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: April 30, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries.

[FR Doc. 98-11964 Filed 5-1-98; 3:28 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980429110-8110-01; I.D. 042398B]

RIN 0648-AK25

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 1998 Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Annual management measures for the ocean salmon fishery; request for comments.

SUMMARY: NMFS establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for 1998 and 1999 salmon seasons opening earlier than May 1, 1999. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (3-200 nautical miles) off Washington, Oregon, and California. These management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian and non-treaty commercial and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and inside fisheries.

DATES: Effective from 0001 hours Pacific Daylight Time (P.d.t.), May 1, 1998, until the effective date of the 1999 management measures, as published in the *Federal Register*. Comments must be received by May 15, 1998.

ADDRESSES: Comments on the management measures and the related

environmental assessment (EA) may be sent to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115-0070; or William Hogarth, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213. Copies of the EA and other documents cited in this document are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 S.W. Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William Robinson at 206-526-6140, or Svein Fougner at 562-980-4040.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries off Washington, Oregon, and California are managed under a "framework" fishery management plan entitled the Pacific Coast Salmon Plan (FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notification in the Federal Register.

These management measures for the 1998 and pre-May 1999 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 6 to 10, 1998, meeting.

Schedule Used To Establish 1998 Management Measures

In accordance with the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, "Review of 1997 Ocean Salmon Fisheries," summarizes the 1997 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1997. The second report, "Preseason Report I Stock Abundance Analysis for 1998 Ocean Salmon Fisheries" (PRE I), provides the 1998 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 1997 regulations or regulatory procedures were applied to the 1998 stock abundances.

The Council met from March 9 to 13, 1998, in Millbrae, CA, to develop proposed management options for 1998. Three commercial and three recreational fishery management options were proposed for analysis and public comment. These options presented various combinations of management measures designed to protect numerous

weak stocks of coho and chinook salmon and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the STT and Council staff economist prepared a third report, "Preseason Report II Analysis of Proposed Regulatory Options for 1998 Ocean Salmon Fisheries" (PRE II), which analyzes the effects of the proposed 1998 management options. This report also was made available to the Council, its advisors, and the public.

Public hearings on the proposed options were held on March 30, 1998 in Westport, WA, North Bend, OR, and Moss Landing, CA; on March 31, 1998 in Tillamook, OR and Eureka, CA; and on April 1, 1998 in Sacramento, CA.

The Council met on April 6 to 10, 1998, in Portland, OR, to adopt its final 1998 recommendations. Following the April Council meeting, the STT and Council staff economist prepared a fourth report, "Preseason Report III Analysis of Council-Adopted Management Measures for 1998 Ocean Salmon Fisheries" (PRE III), which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was made available to the Council, its advisors, and the public.

Resource Status

Aside from salmon species listed and proposed for listing under the Endangered Species Act (ESA) discussed below, the primary resource concerns are for Klamath River fall chinook, lower Columbia River fall chinook stocks, Oregon coastal natural coho, and Washington coastal and Puget Sound natural coho. Management of all of these stocks is affected by interjurisdictional agreements among tribal, State, Federal, and/or Canadian managers.

Chinook Salmon Stocks

California Central Valley fall chinook stocks are abundant compared to other chinook stocks of the Pacific coast. The Central Valley Index of abundance of combined Central Valley chinook stocks is projected to be 1,051,000 for 1998, the highest ever predicted and about the same as the postseason estimate of the index for 1997 (PRE I, February 1998). The spawning escapement of Sacramento River adult fall chinook was 323,900 adults in 1997 (PRE III, May 1998), well above the escapement goal range of 122,000 to 180,000 adult spawners.

Winter chinook from the Sacramento River are listed under the ESA as an endangered species (59 FR 440, January 4, 1994). The 1997 spawning run size

was estimated to be approximately 480 adults, 3.1 times the estimated 1994 adult escapement. Neither preseason nor postseason estimates of ocean abundance are available for winter chinook; however, the run is expected to remain depressed in 1998 (PRE I).

Klamath River fall chinook ocean abundance is projected to be 126,600, age-3 and age-4, fish at the beginning of the fishing season. The abundance forecast is 19 percent below the 1997 pre-season abundance estimate and 49 percent below the average of post-season estimates for 1988-1997 (PRE I). The spawning escapement goal for the stock is 33 to 34 percent of the potential natural adults, but no fewer than 35,000 natural spawners (fish that spawn outside of hatcheries). The natural spawning escapement in 1997 was 46,000 adults (PRE III).

Oregon coastal chinook stocks include south-migrating and localized stocks primarily from southern Oregon streams and north-migrating chinook stocks which generally originate in central and northern Oregon streams. Abundance of south-migrating and localized stocks is expected to be similar to the levels observed in 1997 (PRE I). These stocks are important contributors to ocean fisheries off Oregon and northern California. The generalized expectation for north-migrating stocks is for an above-average abundance of age-5 fish and a below-average abundance of age-3 and age-4 fish (PRE I). These stocks contribute primarily to ocean fisheries off British Columbia and Alaska. It is expected that the aggregate Oregon coastal chinook spawning escapement goal of 150,000 to 200,000 naturally spawning adults will be met in 1998 (PRE I).

Estimates of Columbia River chinook abundance vary by stock as follows:

(1) *Upper Columbia River spring and summer chinook.* Numbers of upriver spring chinook predicted to return to the river in 1998 are 36,200 fish, less than one-third of the 1997 return of 114,100 adult fish (PRE I). The 1998 forecast indicates a return to recent year escapement levels and the continued depressed status of this stock. In recent years, the natural component of this stock generally has comprised less than one-third of the upriver spring chinook run, compared to approximately 70 percent of the run when the original escapement goal was developed. The 1997 return of 114,100 fish was at least two-thirds of hatchery origin. The natural stock component remains severely depressed, with Snake River spring/summer chinook listed as threatened under the ESA. The 1997 return of 28,000 adult summer chinook

was 68 percent above the preseason expectation and the largest return since 1990 (PRE III). Expected ocean escapement of adult upriver summer chinook is 11,200 adult fish (PRE III). The 1998 stock status remains extremely depressed, with a forecast return of 11,200 fish being only 14 percent of the lower end of the spawning escapement goal range of 80,000 to 90,000 adults counted at Bonneville Dam. Upriver summer chinook migrate to the far north and are not a major contributor to ocean fisheries off Washington and Oregon. Snake River spring and summer chinook are listed as threatened under the ESA (57 FR 14653, April 22, 1992).

(2) *Willamette River spring chinook.* Willamette River spring chinook returns are projected to be 32,800 fish, close to the 1997 return of 34,300 fish (PRE I), and the fifth consecutive year that the adult return is less than 50,000 fish.

Lower Columbia River spring chinook stocks are important contributors to Council area fishery catches north of Cape Falcon; Willamette River spring chinook stocks generally contribute to Canadian and Alaskan ocean fisheries.

(3) *Columbia River fall chinook.* Abundance estimates are made for five distinct fall chinook stock units, as follows:

(a) *Upriver bright fall chinook ocean escapement* is expected to be 141,800 adults, 15 percent below the 1997 observed return of 167,900 adults (PRE III). This stock has a northern ocean migratory pattern and constitutes less than 10 percent of Council area fisheries north of Cape Falcon.

(b) *Lewis River wild chinook ocean escapement* is forecast at 7,000 adults, 49 percent below the 1997 run size of 13,800 adults (PRE III).

(c) *Lower river hatchery (Tules) fall chinook ocean escapement* is forecast at 22,500 adults, 60 percent below the 1997 observed return of 56,700 adults (PRE III). This stock has declined sharply since the record high return in 1987. Lower Columbia River fall chinook stocks normally account for more than half the total catch in Council area fisheries north of Cape Falcon, with lower river hatchery fall chinook being the single largest contributing stock.

(d) *Spring Creek hatchery (Tules) fall chinook ocean escapement* is projected to be 14,200 adults, 44 percent below the 1997 observed return of 25,200 adults (PRE III). The Spring Creek hatchery fall chinook stock generally has been rebuilding slowly since the record low return in 1987, but this year's projection of 14,200 adults is very low.

(e) *Mid-Columbia bright fall chinook ocean escapement* is projected to be

44,900 adults, 21 percent below the 1997 return of 57,000 adults (PRE III).

(4) *Snake River wild fall chinook.* Snake River wild fall chinook are listed under the ESA as a threatened species (57 FR 14653, April 22, 1992). Information on the stock's ocean distribution and fishery impacts are not available. Attempts to evaluate fishery impacts on Snake River fall chinook have used the Lyons Ferry Hatchery stock to represent Snake River wild fall chinook. The Lyons Ferry stock is widely distributed and harvested by ocean fisheries from southern California to Alaska.

Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

Coho Salmon Stocks

There are indications that the 1997 preseason abundance predictors for coho were optimistic, because they did not anticipate abnormally low marine survival associated with the current El Niño event. Postseason estimates of abundance for Columbia River, Washington Coastal, and Puget Sound stocks were substantially below expectations after allowances for lower than anticipated impacts by ocean fisheries were considered.

Impacts on growth and survival prior to the fall of 1997 returns were automatically incorporated into sibling-based predictors currently employed for several stocks. For instance, jack returns for most Columbia River chinook and coho stocks were at, or near, record low levels, and fish condition was noticeably poor. During the 1982-1983 El Niño, the STT incorporated an adjustment factor in anticipation of abnormally high over-winter mortality with widely varying success. The STT considered and rejected incorporating a 1998 adjustment factor to compensate for abnormally high over-winter mortality that may result from the current El Niño event. The current El Niño developed more rapidly and at different times than previous events so there is a general lack of information that can be usefully employed to quantify the degree to which adjustments should be made to the estimates of survival of salmon stocks. The STT, however, was of the opinion that the abundance forecasts presented for this season's report for coho and Columbia River chinook stocks could likely prove to be optimistic.

Central California coast coho and southern Oregon/northern California coast coho are listed as threatened species under the ESA (61 FR 56138,

October 31, 1996, and 62 FR 24588, May 6, 1997). Coho populations in California have not been monitored closely in the past, and no forecasts of the ocean abundance of listed coho originating from California are available; these runs have been generally at low abundance levels for many years.

Oregon coastal and Columbia River coho stocks are the primary components of the Oregon Production Index (OPI), an annual index of coho abundance from Leadbetter Point, WA, to the U.S.-Mexico border. The 1998 OPI is forecast to be 136,500 coho, 71 percent below the 1997 preseason forecast of 463,800 coho, and 44 percent below the 1997 observed level of 243,400 coho (PRE I). The 1998 estimate for OCN is 47,200 coho, 45 percent below the 1997 preseason forecast of 86,400 coho, and 70 percent above the 1997 observed level of 27,800 coho (PRE I). The 1997 spawning escapement of the OCN stock was 27,800 fish, the smallest for at least the last 5 years.

Most Washington coastal natural coho stocks and Puget Sound combined natural coho stocks are expected to be less abundant in 1998 than forecast in 1997. The 1998 Willapa Bay hatchery total ocean stock abundance forecast is 20,800 adults, approximately 71 percent less than 1997 (PRE I). The prediction is based upon an average terminal area return per release (1992-1997) adjusted by a mean jack return rate for the same brood years. Willapa Bay coho production is predominately hatchery origin, and until 1998, only hatchery abundance was predicted. This year, the estimate of natural coho is 3,300. The estimate of Grays Harbor natural stock ocean abundance for 1998 is 30,100 adults, an increase of 15 percent from the 1997 preseason expected abundance (PRE I). The estimate of hatchery stock ocean abundance is 25,600 adults, a decrease of 75 percent from the preseason 1997 estimate (PRE I). The Quinalt natural coho ocean run size is 6,500 fish, an increase of 225 percent from the 1997 projected level (PRE I). The Quinalt hatchery coho ocean run size is forecast at 3,900 fish, a decrease of 24 percent compared to the 1997 level (PRE I). The Queets natural coho ocean run size is 4,200 fish, a decrease of 2 percent from the 1997 projected level (PRE I). The Queets hatchery coho ocean run size is forecast at 4,600 fish, a decrease of 71 percent compared to the 1997 level (PRE I). The Hoh River natural coho ocean run size is 3,400 fish, an increase of 21 percent from the 1997 projected level (PRE I). There is no hatchery production projected for the Hoh system for 1998. The 1998 forecast abundance of Quillayute River natural

and hatchery components are 10 percent and 52 percent, respectively, below the 1997 forecast levels (PRE I).

Pink Salmon Stocks

Major pink salmon runs return to the Fraser River and Puget Sound only in odd-numbered years. In 1997, abundance was 8.2 million Fraser River pink salmon, Puget Sound pink salmon abundance is not yet available.

Management Measures for 1998

The Council recommended allowable ocean harvest levels and management measures for 1998 designed to apportion the burden of protecting the weak stocks previously discussed equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations responsive to the goals of the FMP, the requirements of the resource, and the socio-economic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-Stevens Act and other applicable law, including the ESA and U.S. obligations to Indian tribes with Federally recognized fishing rights. Accordingly, NMFS hereby adopts them.

North of Cape Falcon, Oregon, the management measures implement the smallest chinook and coho quotas since 1994 to protect depressed Washington coastal, Puget Sound, and Oregon Coastal Natural (OCN) coho stocks. South of Cape Falcon, the retention of coho is prohibited for the fourth consecutive year, and chinook fisheries are constrained primarily to meet the Klamath River fall chinook natural spawner escapement floor and ESA standards for Sacramento River winter chinook. These constraints also limit impacts on threatened Snake River fall chinook, Southern Oregon/Northern California Coast coho, and Central California coho. Size limit, gear, and seasonal restrictions are intended to reduce harvest impacts on endangered Sacramento River winter chinook. The management measures include a small selective recreational fishery for marked hatchery coho in the ocean off the mouth of the Columbia River.

A. South of Cape Falcon

In the area south of Cape Falcon, the management measures in this rule reflect primarily the need to achieve the minimum spawning escapement goal floor for Klamath River fall chinook and the ESA requirements for Sacramento River winter chinook, southern Oregon/northern California coast coho and central California coast coho.

Since completion of the April 30, 1997, supplement to the March 8, 1996, opinion, NMFS has listed four populations of steelhead as threatened under the ESA (62 FR 43937, August 18, 1997, and 63 FR 13347, March 19, 1998) and proposed seven populations of chinook for listing (63 FR 11482, March 9, 1998). In a March 4, 1998, letter to the Council, NMFS provided guidance on protective measures for listed species for the 1998 season. NMFS required that Council fisheries be managed so that the total ocean exploitation rate on listed coho from the California component of the southern Oregon/northern California coast coho environmentally significant unit be constrained to 13 percent or less, the lowest exploitation rate specified under the rebuilding provisions of the Council's recommended Amendment 13 to the FMP. In addition, the retention of coho in recreational and commercial fisheries off California is prohibited. In accordance with the NMFS guidance, the Council's recommendations result in a 12-percent exploitation rate impact for Rogue/Klamath coho, and retention of coho south of Cape Falcon is prohibited for the fourth consecutive year.

Sacramento River winter chinook are listed as an endangered species under the ESA. A March 8, 1996, biological opinion and a February 18, 1997, addendum require that NMFS reduce all harvest-related impacts to the Sacramento River winter chinook salmon population by a level that would achieve at least a 31-percent increase in the spawner-to-spawner replacement rate over a base period of 1989 through 1993. The increase in the spawner-to-spawner replacement rate projected for 1998 is 31.1 percent, which achieves the minimum 31 percent rate over the base period.

NMFS concluded that incidental fishery impacts that occur in the ocean salmon fishery proposed for the period from May 1, 1998, through April 30, 1999 (or until the effective date of the 1999 management measures), will not jeopardize the continued existence of populations of chinook proposed for listing.

The Council recommended the continued use of an increase in the minimum size limit in the recreational fishery to 24 inches (61.0 cm) south of Horse Mountain in conjunction with restricted seasons to reduce incidental ocean harvest of Sacramento River winter chinook. The Council reviewed a recent California Department of Fish and Game study on the mortality rate of salmon released in the California recreational fishery and revised the hooking mortality rates associated with mooching using circle and J hooks

consistent with the study results. The Council recommended the continuation of gear restrictions for recreational fisheries off California, with certain modifications, to minimize hooking mortality.

The Council recommended a July 1 through September 7 recreational fishery between Point Arena and Pigeon Point in which the bag limit will be the first two fish caught (excluding coho) with no minimum size limit. Any coho salmon caught must be released.

The Council also recommended a commercial troll test fishery operating inside six nautical miles from July 5 through July 31 between Fort Ross and Point Reyes under a 3,000 fish quota. The test fishery is designed to assess the relative contribution of Klamath River fall chinook to the catch of a near-shore commercial fishery in the test area.

Commercial Troll Fisheries

Retention of coho salmon is prohibited in all areas south of Cape Falcon. All seasons listed below are restricted to all salmon species except coho salmon. Off California, no more than six lines are allowed per vessel. Off Oregon, no more than four spreads are allowed per line.

From Point Sur, CA, to the U.S.-Mexico border, the commercial fishery will open May 1 through September 30.

From Point San Pedro, CA, to Point Sur, CA, the commercial fishery will open May 1 through May 31, then reopen June 16 through September 30.

From Point Reyes to Point San Pedro, CA, the commercial fishery will open July 1 through September 30.

From Fort Ross (38°31'00" N. lat.) to Point Reyes, CA, a test troll commercial fishery inside 6 nautical miles will open July 5 through the earlier of July 31 or an overall 3,000 chinook quota. For all salmon except coho, the season is to be opened as follows: July 5 through the earlier of July 11 or 1,000 chinook quota; July 12 through the earlier of July 18 or 1,000 chinook quota; and July 19 through the earlier of July 25 or the lesser of a 1,000 chinook quota or the remainder of the overall 3,000 chinook quota. If sufficient overall quota remains, the fishery will reopen on July 26 through the earlier of July 31 or achievement of the overall 3,000 chinook quota. There is a landing limit of no more than 30 fish per day. All fish caught in this area must be landed in Bodega Bay within 24 hours of each closure. Fish taken outside this test fishery may not be landed at Bodega Bay during the time authorized for the test fishery landings. These restrictions are necessary to assure the data collected from the test fishery are valid.

From Point Arena to Point Reyes, CA, the commercial fishery will open August 1 through September 30.

From Horse Mountain to Point Arena, CA, the commercial fishery will open September 1 through September 30.

From the Oregon-California border to Humboldt South Jetty, CA, the commercial fishery will open September 1 and continue through the earlier of September 30 or attainment of the 6,000 chinook quota. Restrictions include a landing limit of no more than 30 fish per day; all fish caught in this subarea must be landed within the subarea; and closure of the Klamath Control Zone. Under the State of Oregon regulations, vessels with fish on board from this area that are temporarily moored in Brookings, Oregon, prior to landing in California must first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the name of the vessel, number of fish on board, and estimated time of arrival.

From Sisters Rocks to Mack Arch, OR, the commercial fishery will open August 1 and continue through the earlier of August 31 or attainment of the 1,400 chinook quota. The fishery will follow a cycle of 2 days open and 2 days closed. The days open may be adjusted inseason, if necessary, to manage the fishery. The open area is restricted to only 0 to 4 nautical miles (7.4 km) off shore. All salmon must be landed and delivered to Gold Beach, Port Orford, or to Brookings within 24 hours of each closure.

From Humbug Mountain, OR, to the Oregon-California border, the commercial fishery opened April 15 and will continue through the earlier of May 31 or attainment of the 3,600 chinook quota.

From Heceta Banks (43°58'00" N. lat.) to Humbug Mountain, OR, the commercial fishery opened April 15 and will continue through June 30, then reopen August 1 through August 26, and then reopen September 1 through October 31.

From Cape Falcon to Heceta Banks (43°58'00" N. lat.), the commercial fishery opened on April 15 and will continue through June 30, then reopen August 1 through August 28, and then reopen September 1 through October 31. See Oregon State regulations for a description of the time and area closures at the mouth of Tillamook Bay.

Recreational Fisheries

Retention of coho salmon is prohibited in all areas south of Cape Falcon. All seasons listed below are restricted to all salmon species except coho salmon. North of Point

Conception, persons fishing for salmon and persons fishing from a boat with salmon on board are restricted to no more than one rod per angler. From Horse Mountain to Point Conception, CA, the following restrictions apply:

If angling by any other means than trolling, then no more than two single point, single shank, barbless circle hooks shall be used. The distance between the two hooks must not exceed 5 in (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). A circle hook is defined as a hook with a generally circular shape and a point which turns inwards, pointing directly to the shank at a 90 degree angle. Trolling is defined as: Angling from a boat or floating device that is moving forward by means of a source of power (other than drifting by means of the prevailing water current or weather conditions) except when landing a fish.

Exception: Circle hooks are not required when artificial lures are used without bait.

From Pigeon Point, CA, to the U.S.-Mexico border, the recreational fishery which opened on March 14 will continue through September 7 with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit.

From Point Arena to Pigeon Point, CA, the recreational fishery which opened on March 28 will continue through November 1 with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit. Except from July 1 through September 7, the bag limit will be the first two fish other than coho and no size limit. Sacramento Control Zone will be closed from the season opening through March 31.

From Horse Mountain to Point Arena, CA, the recreational fishery which opened on February 14 will continue through July 5, then reopen August 1 through November 15 (the nearest Sunday to November 15) with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit for both seasons.

From Humbug Mountain, OR, to Horse Mountain, CA, the recreational fishery will open May 23 through June 10, then reopen June 21 through July 5 and August 11 through September 13. All seasons include a one-fish daily bag limit, but no more than four fish in seven consecutive days; the Klamath Control Zone closed in August.

From Cape Falcon to Humbug Mountain, OR, the recreational fishery, which opened April 15, will continue through July 5, then reopen August 1 through October 31. Both seasons include a 2-fish daily bag limit, but no

more than six fish in 7 consecutive days. Legal gear is limited to artificial lures and plugs of any size, or bait no less than 6 inches (15.2 cm) long (excluding hooks and swivels). All gear must have no more than two single point, single shank barbless hooks; divers are prohibited; and flashers may be used only with downriggers.

B. North of Cape Falcon

From the U.S.-Canada border to Cape Falcon, ocean fisheries are managed to protect depressed lower Columbia River fall chinook salmon and Washington coastal and Puget Sound natural coho salmon stocks and to meet ESA requirements for Snake River fall chinook salmon. Ocean treaty and non-treaty harvests and management measures were based in part on negotiations between Washington State fishery managers, commercial and recreational fishing groups, and the Washington coastal, Puget Sound, and Columbia River treaty Indian tribes as authorized by the U.S. District Court in *U.S. v. Washington*, *U.S. v. Oregon*, and *Hoh Indian Tribe v. Boldrige*.

All non-treaty commercial troll and recreational ocean fisheries will be limited by either an overall 10,000 chinook quota, or impacts on critical Washington coastal and Puget Sound natural stocks equivalent to the preseason coho quota of 16,000. A preseason trade was made of 4,000 coho from the commercial troll fishery to the recreational fishery for 1,500 chinook. Between Leadbetter Point and Cape Falcon, the recreational coho fishery will be a selective fishery for marked hatchery coho.

Commercial Troll Fisheries

The commercial troll fishery for all salmon except coho will open between the U.S.-Canada border and Cape Falcon, OR, on May 1 and continue through June 15 or attainment of the 6,500 chinook quota. The Columbia Control Zone is closed.

Recreational Fisheries

Recreational fisheries are divided into four subareas: Opening dates, subarea quotas, bag limits, and area and gear restrictions are described below. The fisheries in open subareas will begin on August 3 and continue through the earlier of September 24 or attainment of the respective subarea coho quota. The recreational fisheries will be limited by overall catch quotas of 3,500 chinook and 16,000 coho. Chinook guidelines for the three subareas between Cape Alava, WA, and Cape Falcon, OR, will provide a basis for inseason management

measures to restrain chinook harvest but will not serve as quotas.

From Leadbetter Point, WA, to Cape Falcon, OR, the fishery will be for all salmon with a 8,000 coho subarea quota (1,000 coho of this quota are allocated to hook-and-release mortality due to the selective fishery regulation), open Sunday through Thursday only, with a 2-fish daily bag limit, but no more than 1 chinook a day. All retained coho must have a healed adipose fin clip, no more than four fish may be retained in a calendar week (Sunday through Saturday), and the area is closed in the Columbia Control Zone. Inseason management may be used to sustain season length and keep harvest within a guideline of 1,050 chinook.

From the Queets River to Leadbetter Point, WA, the fishery will be for all salmon with a 7,400 coho subarea quota, open Sunday through Thursday only, with a two-fish daily bag limit, but no more than 1 chinook and no more than four fish in a calendar week (Sunday through Saturday), and closed 0 to 3 miles (4.8 km) off shore. Inseason management may be used to sustain season length and keep harvest within a guideline of 2,350 chinook.

From Cape Alava to the Queets River, WA, the fishery will be for all salmon with a 600 coho subarea quota, open 7 days per week with a 2-fish daily bag limit. Inseason management may be used to sustain season length and keep harvest within a guideline of 100 chinook.

From the U.S.-Canada border to Cape Alava, WA, the fishery will be closed.

Treaty Indian Fisheries

Ocean salmon management measures proposed by the treaty Indian tribes are part of a comprehensive package of treaty Indian and non-treaty salmon fisheries in the ocean and inside waters agreed to by the various parties. Treaty troll seasons, minimum length restrictions, and gear restrictions were developed by the tribes and agreed to by the Council. Treaty Indian troll fisheries north of Cape Falcon are governed by quotas of 15,000 chinook (10,000 for the May-June chinook-directed fishery and 5,000 for the August-September all-salmon fishery) and 10,000 coho. The all-salmon-except-coho seasons open May 1 and extend through June 30 or until the overall harvest guideline of 10,000 chinook is reached, whichever is earlier. The all-salmon seasons open August 1 and extend through the earliest of September 15 or attainment of the chinook or coho quotas. If the chinook quota from the May-June fishery is not fully utilized, the excess fish may not be rolled into the later all-salmon season. The minimum length restrictions for all treaty ocean fisheries, excluding ceremonial and subsistence harvest, is 24 in (61.0 cm) for chinook and 16 in (40.6 cm) for coho.

1999 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1, of the same year. Therefore, 1999 fishing season openings earlier than May 1 are also established in this notification. The

Council recommended and NMFS concurs that the following seasons will open off California in 1999. The following recreational seasons have two-fish daily bag limits and a minimum size limit of 24 in (61.0 cm) for chinook salmon (see special gear restrictions B.5). From Pigeon Point to the U.S.-Mexico border, a recreational fishery for all salmon except coho will open on March 13. From Point Arena to Pigeon Point, a recreational fishery for all salmon, except coho, will open on March 27. From Horse Mountain to Point Arena, a recreational fishery for all salmon, except coho, will open on February 13. An experimental fishery will open between Point Sur and the U.S.-Mexico Border for all salmon, except coho, from April 2 through the earlier of April 29 or achievement of a chinook quota. The experimental fishery is intended to evaluate the contribution of Sacramento River winter chinook to the commercial catch south of Point Sur during the month of April. Details regarding the season, the chinook quota, and participating vessels will be determined through an inseason recommendation of the Council at the November 1998 meeting. At the March 1999 meeting, the Council will consider in season recommendations to establish or modify management measures for an all-salmon-except-coho fishery prior to May 1, in areas off Oregon.

The following tables and text are the management measures recommended by the Council and approved by NMFS for 1998 and, as specified, for 1999.

TABLE 1.—COMMERCIAL MANAGEMENT MEASURES FOR 1998 OCEAN SALMON FISHERIES

[Note: This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.]

A. SEASON DESCRIPTION

North of Cape Falcon

U.S.-Canada Border to Cape Falcon

May 1 through earlier of June 15 or 6,500 chinook quota. All salmon except coho. Following any closure of this fishery, vessels must land and deliver the fish within 48 hours of the closure. Columbia Control Zone is closed (C.7.).

South of Cape Falcon

Cape Falcon to Heceta Banks (43°58'00" N. lat.)

April 15 through June 30; August 1 through August 28; and September 1 through October 31. All salmon except coho. See Oregon State regulations for a description of the time and area closures at the mouth of Tillamook Bay. See gear restriction (C.3.a.).

Heceta Banks (43°58'00" N. lat.) to Humbug Mountain

April 15 through June 30; August 1 through August 26; and September 1 through October 31. All salmon except coho. See gear restriction (C.3.a.).

Humbug Mountain to the Oregon-California Border

April 15 through earlier of May 31 or 3,600 chinook quota. All salmon except coho. See gear restriction (C.3.a.).

Sisters Rocks to Mack Arch

August 1 through earlier of August 31 or 1,400 chinook quota. All salmon except coho. Season to follow a cycle of 2 days open/2 days closed (August 1-2; 5-6; 9-10; 13-14; 17-18; etc.) and may be modified inseason. Open only 0-4 nautical miles (7.4 km) off shore. All salmon must be landed and delivered to Gold Beach, Port Orford or Brookings within 24 hours of each closure. See gear restriction (C.3.a.).

Oregon-California Border to Humboldt South Jetty

TABLE 1.—COMMERCIAL MANAGEMENT MEASURES FOR 1998 OCEAN SALMON FISHERIES.—Continued

[Note: This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.]

September 1 through earlier of September 30 or 6,000 chinook quota. All salmon except coho. Landing limit of no more than 30 fish per day. Klamath Control Zone closed (C.7.). All fish caught in this area must be landed within this area. Under the State of Oregon regulations, vessels with fish on board from this area that are temporarily moored in Brookings, Oregon prior to landing in California must first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the name of the vessel, number of fish on board, and estimated time of arrival. See gear restriction (C.3.b.).

Horse Mountain to Point Arena

September 1 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Point Arena to Point Reyes

August 1 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Fort Ross (38°31'00" N. lat.) to Point Reyes (test fishery inside 6 nautical miles (11.1 km))

July 5 through earlier of July 31 or an overall 3,000 chinook quota. All salmon except coho. Season to be opened as follows: July 5 through earlier of July 11 or 1,000 chinook quota; July 12 through earlier of July 18 or 1,000 chinook quota; and July 19 through earlier of July 25 or the lesser of a 1,000 chinook quota or the remainder of the overall 3,000 chinook quota. If sufficient overall quota remains, the fishery will reopen on July 26 through the earlier of July 31 or achievement of the overall quota. Open only inside 6 nautical miles (11.1 km) off shore. Landing limit of no more than 30 fish per day. All fish caught in this area must be landed in Bodega Bay within 24 hours of each closure. Fish taken outside the test fishery may not be landed at Bodega Bay during the time authorized for test fishery landings. See gear restriction (C.3.b.).

Point Reyes to Point San Pedro

July 1 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Point San Pedro to Point Sur (36°18'00" N. lat.)

May 1 through May 31; June 16 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Point Sur (36°18'00" N. lat.) to U.S.-Mexico Border

May 1 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Point Sur (36°18'00" N. lat.) to U.S.-Mexico Border in 1999

April 2 through the earlier of April 29 or achievement of a chinook quota. All salmon except coho. The details of the season and the chinook quota will be determined through an inseason recommendation of the Council at its November 1998 meeting. See gear restriction (C.3.b.).

B. MINIMUM SIZE LIMITS (INCHES)

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon	28.0	21.5			None.
Cape Falcon to Oregon-California Border *	26.0	19.5			None.
South of Oregon-California Border *	26.0	19.5			None.

* Chinook not less than 26 inches (19.5 inches head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon.

Metric equivalents for chinook: 28.0 inches=71.1 cm, 26.0 inches=66.0 cm, 21.5 inches=54.6 cm, 19.5 inches=49.5 cm.

C. SPECIAL REQUIREMENTS, DEFINITIONS, RESTRICTIONS, OR EXCEPTIONS

- C.1. *Hooks*—Single point, single shank barbless hooks are required.
- C.2. *Spread*—A single leader connected to an individual lure or bait.
- C.3. *Line, Spread and Gear Restrictions*:
 - a. Off Oregon south of Cape Falcon, no more than 4 spreads are allowed per line.
 - b. Off California, no more than 6 lines are allowed per vessel.
- C.4. *Compliance with Minimum Size or Other Special Restrictions*—All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.
- C.5. *Transit Through Closed Areas with Salmon on Board*—It is unlawful for a vessel to have troll gear in the water while transiting any area closed to salmon fishing while possessing salmon.
- C.6. *Notification When Unsafe Conditions Prevent Compliance with Regulations*—A vessel is exempt from meeting special management area landing restrictions if prevented by unsafe weather conditions or mechanical problems from meeting those restrictions, and it complies with the State of Washington's, Oregon's, or California's requirement to notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board and the estimated time of arrival.
- C.7. *Control Zone Definitions*:

Columbia Control Zone—The ocean area at the Columbia River mouth bounded by a line extending for 6 nautical miles (11.1 km) due west from North Head along 46°18'00" N. lat. to 124°13'18" W. long., then southerly to 46°13'24" N. lat. and 124°11'00" W. long. (green, Columbia River Entrance Lighted Bell Buoy #1), then southerly to 46°13'06" N. lat. and 124°11'00" W. long. (red, Columbia River Approach Lighted Whistle Buoy), then northeast along red buoy line to the tip of the south jetty.

Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38'48" N. lat. (approximately 6 nautical miles (11.1 km) north of the Klamath River mouth), on the west by 124°23'00" W. long. (approximately 12 nautical miles (22.2 km) off shore), and on the south by 41°26'48" N. lat. (approximately 6 nautical miles (11.1 km) south of the Klamath River mouth).
- C.8. *Incidental Halibut Harvest*—The operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. Incidental harvest is authorized only during May and June troll seasons and after July 31 if quota remains and if announced on the NMFS hotline (phone 800-662-9825).

Incidental harvest: license holders may land no more than 1 halibut per each 8 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 25 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 inches (81.3 cm). The Oregon Department of Fish and Wildlife and the Washington Department of Fish and Wildlife will monitor landings and if they are projected to exceed the 25,344 pound (11.5 mt) preseason allocation or the Area 2A non-Indian commercial total allowable catch of halibut, NMFS will take inseason action to close the incidental halibut fishery.

License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (phone 206-634-1838). Applicants must apply prior to April 1 of each year.

- C.9. *Inseason Management*—In addition to standard inseason actions or inseason modifications already noted under the season description, the Council will consider inseason recommendations to: (1) establish the chinook quota season opening April 2 and modify other season restrictions for the fishery off California between Point Sur and the U.S.-Mexico border, and (2) open the commercial season for all salmon except coho prior to May 1 in areas off Oregon.
- C.10. Consistent with Council management objectives, the State of Oregon may establish additional late-season, chinook-only fisheries in state waters. Check state regulations for details.
- C.11. For the purposes of California Department of Fish and Game Code, Section 8232.5, the definition of the Klamath management zone for the ocean salmon season shall be that area from Humboldt Mountain, Oregon to Horse Mountain, California.

D. QUOTAS

- D.1. *North of Cape Falcon*—All non-treaty troll and recreational ocean fisheries will be limited by overall quotas of either 10,000 chinook or 16,000 coho. Preseason species trade of 4,000 coho to the recreational fishery for 1,500 chinook to the commercial fishery. Therefore, the troll fishery will be limited by overall catch quotas of 6,500 chinook and 0 coho.
- D.2. *Humboldt Mountain to Oregon-California Border*—The troll fishery will be limited by a catch quota of 3,600 chinook.
- D.3. *Sisters Rocks to Mack Arch*—The troll fishery will be limited by a catch quota of 1,400 chinook.
- D.5. *Oregon-California Border to Humboldt South Jetty*—The troll fishery will be limited by a catch quota of 6,000 chinook.
- D.6. *Fort Ross to Point Reyes*—The troll fishery will be limited by an overall catch quota of 3,000 chinook.
- D.7. *Point Sur to U.S.-Mexico Border*—The troll fishery in April 1999 will be limited by a chinook catch quota to be determined by the Council at its November 1998 meeting.

TABLE 2.—RECREATIONAL MANAGEMENT MEASURES FOR 1998 OCEAN SALMON FISHERIES

[Note: This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.]

A. SEASON DESCRIPTION

North of Cape Falcon

U.S.-Canada Border to Cape Alava
Closed.

Cape Alava to Queets River

August 3 through earlier of September 24 or 600 coho subarea quota. All salmon. Open 7 days per week. 2 fish per day. 1 rod per angler. Inseason management (C.6.) may be used to sustain season length and keep harvest within a guideline of 100 chinook.

Queets River to Leadbetter Point

August 3 through earlier of September 24 or 7,400 coho subarea quota. All salmon. Open Sunday through Thursday 2 fish per day, but no more than 1 chinook per day and no more than 4 fish per calendar week (Sunday through Saturday). Closed 0-3 miles (4.8 km) off shore. 1 rod per angler. Inseason management (C.6.) may be used to sustain season length and keep harvest within a guideline of 2,350 chinook.

Leadbetter Point to Cape Falcon

August 3 through earlier of September 24 or 7,000 coho subarea quota (D.2.). All salmon. Open Sunday through Thursday 2 fish per day, but no more than 1 chinook per day and all retained coho must have a healed adipose fin clip. No more than 4 fish per calendar week (Sunday through Saturday). 1 rod per angler. Columbia Control Zone is closed (C.5.). Inseason management (C.6.) may be used to sustain season length and keep harvest within a guideline of 1,050 chinook.

South of Cape Falcon

Cape Falcon to Humboldt Mountain

April 15 through July 5 and August 1 through October 31. All salmon except coho. Two fish per day. No more than 6 fish in 7 consecutive days. 1 rod per angler. Legal gear limited to: artificial lures and plugs of any size or bait no less than 6 inches (15.2 cm) long (excluding hooks and swivels). All gear must have no more than 2 single point, single shank barbless hooks. Divers are prohibited and flashers may only be used with downriggers. See Oregon State regulations for a description of a closure at the mouth of Tillamook Bay.

In 1999, the season does not open until May 1, or another date specified in the 1999 management measures, unless it is opened by inseason management (C.6.).

Humboldt Mountain to Horse Mountain

May 23 through June 10; June 21 through July 5; August 11 through September 13. All salmon except coho. One fish per day. No more than 4 fish in 7 consecutive days. Klamath Control Zone (C.5.) closed in August. One rod per angler (C.2.).

Horse Mountain to Point Arena

February 14 through July 5 and August 1 through November 15 (nearest Sunday to November 15). All salmon except coho. 2 fish per day. Chinook minimum size limit 24 inches. Special gear restriction C.3. (number and type of hooks when angling by means other than trolling). One rod per angler (C.2.).

In 1999, the season will open February 13 (nearest Saturday to February 15) through April 30 for all salmon except coho, 2 fish per day, same gear and minimum size restrictions as in 1998.

Point Arena to Pigeon Point

March 28 through November 1 (nearest Sunday to November 1). All salmon except coho. 2 fish per day, chinook minimum size limit 24 inches, except—from July 1 through September 7, the bag limit will be the first 2 fish (excluding coho) (no size limit). One rod per angler (C.2.). Sacramento Control Zone (C.5.) closed from season opening through March 31. Special gear restriction C.3. (number and type of hooks when angling by means other than trolling).

In 1999, the season will open March 27 (last Saturday in March) through April 30 with the same regulations that were in effect at the end of 1998.

TABLE 2.—RECREATIONAL MANAGEMENT MEASURES FOR 1998 OCEAN SALMON FISHERIES—Continued

[Note: This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.]

Pigeon Point to U.S.-Mexico Border

March 14 through September 7. All salmon except coho. Two fish per day. Chinook minimum size limit 24 inches. One rod per angler north of Point Conception (C.2.). Special gear restriction north of Point Conception C.3. (number and type of hooks when angling by means other than trolling).

In 1999, the season will open March 13 (nearest Saturday to March 15) through April 30 with the same regulations that were in effect at the end of 1998.

B. MINIMUM SIZE LIMITS

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None.
Cape Falcon to Horse Mountain	20.0	.....	None, except 20.0 off California.
South of Horse Mountain	*24.0	.....	20.0.

*Except July 1 through September 7 during the "first 2 fish bag limit" south of Point Arena to Pigeon Point.

Metric equivalents for chinook: 24.0 inches=61.0 cm, 20.0 inches=50.8 cm.

Metric equivalents for coho: 16.0 inches=40.6 cm.

Metric equivalents for pink: 20.0 inches=50.8 cm.

C. SPECIAL REQUIREMENTS, DEFINITIONS, RESTRICTIONS, OR EXCEPTIONS

- C.1. *Hooks*—Single point, single shank barbless hooks are required for all fishing gear north of Point Conception, California. Oregon Department of Fish and Wildlife regulations in the state-water fishery off Tillamook Bay may allow the use of barbed hooks to be consistent with inside regulations.
- C.2. *Restriction on Number of Fishing Rods North of Point Conception, California*—All persons fishing for salmon, and all persons fishing from a boat with salmon on board, may use no more than one rod per angler.
- C.3. *Special Gear Restrictions Between Horse Mountain and Point Conception, California*:
If angling by any other means than trolling, then no more than 2 single point, single shank, barbless circle hooks shall be used. The distance between the 2 hooks must not exceed 5 inches (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). A circle hook is defined as a hook with a generally circular shape and a point which turns inwards, pointing directly to the shank at a 90° angle. *Trolling defined*: Angling from a boat or floating device that is moving forward by means of a source of power (other than drifting by means of the prevailing water current or weather conditions) except when landing a fish.
Exception: Circle hooks are not required when artificial lures are used without bait.
- C.4. *Compliance with Minimum Size or Other Special Restrictions*—All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.
- C.5. *Control Zone Definitions*:
Columbia Control Zone—The ocean area at the Columbia River mouth bounded by a line extending for 6 nautical miles (11.1 km) due west from North Head along 46°18'00" N. lat. to 124°13'18" W. long., then southerly to 46°13'24" N. lat. and 124°11'00" W. long. (green, Columbia River Entrance Lighted Bell Buoy #1), then southerly to 46°11'06" N. lat. and 124°11'00" W. long. (red, Columbia River Approach Lighted Whistle Buoy), then northeast along red buoy line to the tip of the south jetty.

D. QUOTAS

Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38'48" N. lat. (approximately 6 nautical miles (11.1 km) north of the Klamath River mouth), on the west by 124°23'00" W. long. (approximately 12 nautical miles (22.2 km) off shore), and on the south by 41°26'48" N. lat. (approximately 6 nautical miles (11.1 km) south of the Klamath River mouth).

Sacramento Control Zone—The ocean area bounded by a line commencing at Bolinas Point (Marin County, 37°54'17" N. lat., 122°43'35" W. long.) southerly to Duxbury Buoy (37°51'37" N. lat., 122°41'43" W. long.) to Channel Buoy 1 (37°46'10" N. lat., 122°37'56" W. long.) to Channel Buoy 2 (37°45'48" N. lat., 122°37'44" W. long.) to Point San Pedro (San Mateo County, 37°35'40" N. lat., 122°31'10" W. long.).

- C.6. *Inseason Management*—Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines and season duration. Actions could include modifications to bag limits or days open to fishing, and extensions or reductions in areas open to fishing. At the March 1999 meeting, the Council will consider an inseason recommendation to open seasons for all salmon except coho prior to May 1 in areas off Oregon.

The procedure for inseason coho transfer among recreational subareas north of Cape Falcon will be:

After conferring with representatives of the affected ports and the Salmon Advisory Subpanel recreational representatives north of Cape Falcon, NMFS may transfer coho inseason among recreational subareas to help meet the recreational season duration objectives (for each subarea). Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

- C.7. *Additional Seasons in State Territorial Waters*—Consistent with Council management objectives, the states of Washington and Oregon may establish limited seasons in state waters. Oregon state-water fisheries are limited to chinook salmon. Check state regulations for details.

- D.1. *North of Cape Falcon*—All non-treaty troll and recreational ocean fisheries will be limited by overall quotas of either 10,000 chinook or 16,000 coho. Preseason species trade: 1,500 chinook to the commercial fishery are exchanged for 4,000 coho to the recreational fishery. Therefore, the recreational fishery will be limited by overall catch quotas of 3,500 chinook and 16,000 coho.

Note: A coho allocation for the subarea from the U.S.-Canada border to Cape Alava would be too small to allow a one-day fishery. Representatives from this subarea agreed to allocate all of the ocean quota of coho for the subarea north of the Queets River to the subarea from Cape Alava to the Queets River in view that the area north of Cape Alava has access to the fishery in Washington State Statistical Area 4B.

- D.2. *Leadbetter Point to Cape Falcon*—The coho allocation for this subarea is 8,000 coho. However, 1,000 coho of this quota are allocated to hook-and-release mortality due to the selective fishery regulation. Therefore, the recreational fishery will be limited by a subarea catch quota of 7,000 coho.

TABLE 3.—TREATY INDIAN MANAGEMENT MEASURES FOR 1998 OCEAN SALMON FISHERIES

[Note: This table contains important restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.]

A. SEASON DESCRIPTIONS					
Tribe and area boundaries	Open seasons	Salmon species	Minimum size limit (inches *)		Special restrictions by area
			Chinook	Coho	
MAKAH—That portion of the Fishery Management Area north of 48°02'15" N. lat. (Norwegian Memorial) and east of 125°44'00" W. long.	May 1 through earlier of June 30 or chinook quota. August 1 through earliest of September 15 or chinook or coho quota.	All except coho All	24 24	..... 16	Barbless hooks. No more than 8 fixed lines per boat or no more than 4 hand-held lines per person.
QUILEUTE—That portion of the FMA between 48°07'36" N. lat. (Sand Pt.) and 47°31'42" N. lat. (Queets River) and east of 125°44'00" W. long.	May 1 through earlier of June 30 or chinook quota. August 1 through earliest of September 15 or chinook or coho quota.	All except coho All	24 24	..... 16	Barbless hooks. No more than 8 fixed lines per boat.
HOH—That portion of the FMA between 47°54'18" N. lat. (Quillayute River) and 47°21'00" N. lat. (Quinault River) and east of 125°44'00" W. long.	May 1 through earlier of June 30 or chinook quota. August 1 through earliest of September 15 or chinook or coho quota.	All except coho All	24 24	..... 16	Barbless hooks. No more than 8 fixed lines per boat.
QUINULT—That portion of the FMA between 47°40'06" N. lat. (Destruction Island) and 46°53'18" N. lat. (Point Chehalis) and east of 125°44'00" W. long.	May 1 through earlier of June 30 or chinook quota. August 1 through earliest of September 15 or chinook or coho quota.	All except coho All	24 24	..... 16	Barbless hooks. No more than 8 fixed lines per boat.
*Metric equivalents: 24 inches=61.0 cm, 16 inches=40.6 cm.					
B. SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS					
B.1.	All boundaries may be changed to include such other areas as may hereafter be authorized by a federal court for that tribe's treaty fishery.				
B.2.	Applicable lengths, in inches, for dressed, head-off salmon, are 18 inches (45.7 cm) for chinook and 12 inches (30.5 cm) for coho. Minimum size and retention limits for ceremonial and subsistence harvest are as follows: Makah Tribe—None Quileute, Hoh and Quinault tribes—Not more than 2 chinook longer than 24 inches in total length may be retained per day. Chinook less than 24 inches total length may be retained.				
B.3.	The area within a 6-mile (9.7 km) radius of the mouths of the Queets River (47°31'42" N. lat.) and the Hoh River (47°45'12" N. lat.) will be closed to commercial fishing. A closure within 2 miles (3.2 km) of the mouth of the Quinault River (47°21'00" N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.				
C. QUOTAS					
C.1.	The overall treaty troll ocean quotas are 15,000 chinook and 10,000 coho. The overall chinook quota is divided into 10,000 chinook for the May-June all-salmon-except-coho fishery and 5,000 chinook for the August-September all-salmon season. If the chinook quota from the May-June fishery is not fully utilized, the excess fish may not be rolled into the later all-salmon season. These quotas include troll catches by the S'Klallam and Makah tribes in Washington State Statistical Area 4B.				

Halibut Retention

Under the authority of the Northern Pacific Halibut Act, regulations governing the Pacific halibut fishery were published in the *Federal Register* on March 18, 1997 (62 FR 12759). These regulations appear at 50 CFR part 300. The regulations state that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate International Pacific Halibut Commission (IPHC) license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual

salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved. The operator of a vessel who has been issued an incidental halibut harvest license by the IPHC may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. Incidental harvest is authorized only during May and June troll seasons and after July 31 if halibut quota remains and if announced on the NMFS hotline (phone

800-622-9825). License holders may land no more than 1 halibut per each 8 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 25 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 inches (81.3 cm). The Oregon Department of Fish and Wildlife and Washington Department of Fish and Wildlife will monitor landings and, if they are projected to exceed the 25,344-pound (11.5-mt) preseason allocation or the Area 2A non-Indian commercial total allowable catch of halibut, NMFS will take inseason action to close the incidental halibut fishery. License

applications for incidental harvest must be obtained from the IPHC. Applicants must apply prior to April 1 of each year.

Gear Definitions and Restrictions

In addition to the gear restrictions shown in Tables 1, 2, and 3, the following gear definitions and restrictions will apply.

Troll Fishing Gear

Troll fishing gear for the fishery management area (FMA) is defined as one or more lines that drag hooks behind a moving fishing vessel. In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with no more than one artificial lure or natural bait attached. In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon and no person fishing from a boat with salmon on board may use more than one rod and line.

Fishing includes any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Geographical Landmarks

Wherever the words "nautical miles off shore" are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Cape Alava	48°10'00" N. lat.
Queets River	47°31'42" N. lat.
Leadbetter Point	46°38'10" N. lat.
Cape Falcon	45°46'00" N. lat.
Heceta Banks	43°58'00" N. lat.
Humboldt Mountain	42°40'30" N. lat.
Sisters Rocks	42°35'45" N. lat.
Mack Arch	42°13'40" N. lat.
Oregon-California Border	42°00'00" N. lat.
Humboldt South Jetty	40°45'53" N. lat.
Horse Mountain	40°05'00" N. lat.

Point Arena	38°57'30" N. lat.
Fort Ross	38°31'00" N. lat.
Point Reyes	37°59'44" N. lat.
Point San Pedro	37°35'40" N. lat.
Pigeon Point	37°11'00" N. lat.
Point Sur	36°18'00" N. lat.
Point Conception	34°27'00" N. lat.

Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206-526-6667 or 800-662-9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the *Federal Register* as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification

This notification of annual management measures is exempt from review under E.O. 12866. Section 660.411 of title 50, Code of Federal Regulations, requires NMFS to publish an action implementing management measures for ocean salmon fisheries each year and, if time allows, invite public comment prior to the effective date. Section 660.411 further states that if, for good cause, an action must be filed without affording a prior opportunity for public comment, the measures will become effective; however, public comments on the action will be received for a period of 15 days after filing of the action with the Office of the Federal Register.

Because many ocean salmon seasons are scheduled to start May 1, the management measures must be in effect by this date. Each year the schedule for establishing the annual management measures begins in February with the compilation and analysis of biological and socio-economic data for the previous year's fishery and salmon stock abundance estimates for the current year. These documents are made available and distributed to the public for review and comment. Two meetings of the Council follow, one in March and one in April. These meetings are open to the public and public comment on the salmon management measures is encouraged. In 1998, the Council recommended management measures near the conclusion of its meeting on

April 10, which resulted in a short time frame for implementation.

In some areas, the season in 1998, compared with 1997, starts later than May 1; the season starts on May 1 in 1998 where no season existed in 1997; or the season started before May 1 in 1998 and continuing regulations are required to prevent disruption of the fishery. A delay in implementation of the management measures would allow inappropriate openings or closures in some areas, thereby disregarding the needs of the various stocks and causing adverse impacts not contemplated in the design of the 1998 management measures. In light of the limited available time and the adverse effect of delay, it is contrary to the public interest to delay implementation of the management measures. Therefore, NMFS has determined that good cause exists to waive the requirements of 50 CFR 660.411 and 5 U.S.C. 553(b) for prior notice and opportunity for prior public comments. For the same reasons, NMFS has determined that good cause exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. For this action, NMFS will receive public comments for 15 days from the date of filing this action with the Office of the Federal Register.

The Council's Salmon Technical Team (STT) analyzed the impact of the ocean commercial and recreational salmon seasons on the Sacramento River winter chinook (listed as endangered in January 1994), Snake River wild fall chinook (listed as threatened in April 1992), and southern Oregon/northern California coast coho (listed as threatened in April 1997).

In a March 8, 1996, biological opinion and in a February 18, 1997, addendum, NMFS considered the impacts to salmon species listed under the ESA resulting from fisheries conducted in conformance with the FMP. A supplemental biological opinion and conference were issued April 30, 1997, which addressed impacts to newly listed species of coho and steelhead for the period May 1, 1997, through April 30, 1998. Since the issuance of the April 30, 1997, opinion, NMFS has listed four additional populations of steelhead as threatened under the ESA and proposed seven populations of chinook for listing. NMFS prepared a supplemental biological opinion dated April 30, 1998, which addresses the potential effects of ocean salmon fisheries to newly listed species under the ESA, which concludes that incidental fishery impacts that occur in the ocean salmon fishery will not jeopardize the continued existence of central California coast coho, southern Oregon/northern

California coast coho, Umpqua River searun cutthroat trout, or any of the listed populations of steelhead. In addition, NMFS sent a March 4, 1998, letter to the Council, summarizing its guidance on protective measures for listed species and species that may be listed during the 1998 fishing season.

The Council's recommended management measures comply with NMFS guidance, reasonable and prudent alternatives of jeopardy decisions, and the incidental take conditions in the biological opinions. For Snake River fall chinook, the STT estimated a 53 percent Snake River fall chinook index for the ocean exploitation rate for all ocean fisheries under the Council's recommended management measures compared to NMFS jeopardy standard of ≤ 70 percent of the 1988–1993 average. For Sacramento River winter chinook, it is expected that the required 31 percent increase in the spawner-to-spawner replacement rate over the 1989–1993 base period will be achieved. The Council's recommended management measures result in a 12 percent exploitation rate for Rogue/Klamath hatchery coho stocks, and no retention of coho in all areas south of Cape Falcon for the fourth consecutive year.

Authority: 16 U.S.C. 1801 *et seq.*
Dated: April 30, 1998.

Rolland A. Schmitten,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.
[FR Doc. 98–11957 Filed 4–30–98; 4:34 pm]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 050198A]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-water Species Fishery by Vessels using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the second seasonal bycatch allowance of Pacific halibut apportioned to the shallow-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 2, 1998, until 1200 hrs, A.l.t., July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7447.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The prohibited species bycatch mortality allowance of Pacific halibut for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) for the second season, which ends June 30, 1998, as 100 mt.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 1998 Pacific halibut bycatch mortality allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic

trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species".

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the second seasonal bycatch allowance of Pacific halibut apportioned to the shallow-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the second seasonal bycatch allowance of Pacific halibut. Further delay would only result in the 1998 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA being exceeded. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 1, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 98–12002 Filed 5–1–98; 3:00 pm]

BILLING CODE 3510–22–F

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 278 and 279

RIN 0584–AC46

Food Stamp Program: Retailer Integrity, Fraud Reduction and Penalties

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule

SUMMARY: The purpose of this proposed rule is to implement the Food Stamp Program retailer provisions included in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, as well as the retailer provision included in the Federal Agriculture Improvement and Reform Act. While a number of amendments to the current regulations are proposed in order to meet the objectives of streamlining the regulations in response to the Departmental review of the regulations, the majority of the proposed changes included in this proposal are derived from the retailer provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Most of the provisions in this proposed rule are nondiscretionary and required by law. The intent of this rule is to strengthen integrity and eliminate fraud in the Food Stamp Program by ensuring that only legitimate stores participate in the program, by improving the Department's ability to monitor authorized firms, and by strengthening penalties against firms that violate program rules.

DATES: Comments must be received by July 6, 1998 to be assured of consideration. Comments on the discretionary provisions identified in this rule are encouraged. Comments will not affect implementation of those provisions identified as nondiscretionary that are mandated by law and over which the Secretary has no discretion.

ADDRESSES: Comments should be addressed to Suzanne Fecteau, Chief, Redemption Management Branch, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302–1594. All written comments will be open for public inspection at the office of the Food and Consumer Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) in Room 706, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Suzanne Fecteau, Chief, Redemption Management Branch, Benefit Redemption Division, Food Stamp Program, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant under Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. § 601–612). Yvette S. Jackson, the Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule may have an effect on a limited number of retail food stores and other entities that are shown to be negligent in effectuating the purposes of the FSP by committing violations or fraud in the program. However, we do not believe this will have a significant effect on most small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice

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announces our intent to submit revised application procedures and associated burden estimates to OMB for approval relative to the application(s) completed by retail food stores and meal service providers to request authorization and/or continued authorization to participate in the Food Stamp Program (FSP). We also intend to request OMB approval of the revised estimates for 3 years.

Comments on this notice must be submitted by July 6, 1998.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Laura Oliven, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (a copy may also be sent to Suzanne M. Fecteau, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Va. 22302. **FOR FURTHER INFORMATION,** or for copies of the information collection, please contact Ms. Fecteau at the above address.)

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

For Further Information Contact: Suzanne M. Fecteau, (703) 305–2418.

Title: Food Stamp Program Store Applications.

OMB Number: 0584–0008.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal agency responsible for the FSP. The Food

Stamp Act of 1977, as amended (the Act) (7 U.S.C. 2011-2036), requires that the Agency determine the eligibility of firms and certain food service organizations to accept and redeem food stamp benefits and to monitor them for compliance and continued eligibility.

Part of FNS' responsibility is to accept applications from retail food establishments and meal service programs that wish to participate in the FSP, review the applications in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem food stamp benefits. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the firms or services continue to meet eligibility requirements.

There are currently 3 application forms approved under OMB No. 0584-0008. Together these forms are used by retailers, wholesalers, meal service providers, certain types of group homes, shelters, and state-contracted restaurants, to apply to FNS for authorization to participate in the FSP. Form FNS-252, Food Stamp Application For Stores, is generally used by stores, excluding facilities which provide meal services such as communal dining, shelters, restaurant and other meal service programs, which are newly applying for authorization; Form FNS-252R, Food Stamp Program Application For Stores-Reauthorization, is used by the majority of currently authorized stores to apply for reauthorization, excluding facilities which provide meal services such as communal dining, shelters, restaurants and other meal service programs; and Form FNS-252-2, Application to Participate in the Food Stamp Program for Communal Dining Facility/Other, generally used by communal dining and restaurant facilities and other food service programs which are newly applying or applying for reauthorization. In a few cases, at the discretion of the FNS field offices, some stores would be required to complete Form FNS-252 to apply for reauthorization. Section 9(c) of the Act provides the necessary authorization(s) to collect the information contained in these forms.

The proposed revisions to the authorization process contained in § 278.1(a) of this proposed rule do not impose new information collection, reporting or recordkeeping requirements. There are 3 application forms used by firms who wish to participate in the program. These forms and associated burden hours have been

approved by OMB under OMB No. 0584-0008 through October 31, 1999. We are proposing to adjust the current burden estimates based on more recent data and a technical correction to capture a change in application requirements for private restaurants that was inadvertently omitted from the hourly burden estimates when last submitted to OMB and an error in estimating the average hourly burden time for Form FNS-252-2. Comments are solicited on the adjusted burden estimates as discussed in the following paragraphs and reflected in the summary chart at the end of this section of the preamble.

We do not collect information on the number of FSP applications received annually. Current burden estimates associated with these 3 application forms are determined from information maintained in STARS (Store Tracking and Redemption System) based on the total number of currently authorized stores or the number of newly authorized stores. The number of expected applications is divided between initial applications from new applicants and applications for reauthorization from currently authorized stores.

Adjustments—Re-estimates Based on More Recent Data and Corrections

For burden estimates associated with new applicants (initial authorizations), we used the number of stores (all types) newly authorized/approved currently estimated at 20,696; (rounded to 20,700) based on FY 1997 year-end data from STARS and inflated this number by 10% (2,070) to capture a total of 22,770 applications expected to be received and processed from stores annually. It is estimated that 98% (22,315) of the 22,770 applications expected to be received would be on Form FNS-252 and 2% (455) would be on Form FNS-252-2. Due to a technical correction discussed later in this section of the preamble, the number of expected applications would be further changed to reflect an expected total of 22,347 applications using Form FNS-252 and 423 applications using Form FNS-252-2.

For burden estimates associated with applications for reauthorization, we used the total number of stores (all types) authorized (184,300) as of December 1997. Generally, authorized stores are subject to reauthorization at least once every 4 years. Thus, it is estimated that 25% (46,000) of all authorized stores would be subject to reauthorization in any given year. Using the number of authorized stores as of December 1997, it is estimated that

46,000 reauthorization applications would be expected to be received annually. Of the 46,000 reauthorization applications expected, it is estimated that 96% (44,160) will be on Form FNS-252R, 3% (1,380) will be on Form FNS-252-2, and 1% (460) will be on Form FNS-252.

Hourly burden time per response varies by type of application and includes the time to review instructions, search existing data resources, gather and copy the data needed, complete and review the application, and submit the form and documentation to FNS. It should be noted that the number of applicant and authorized stores has been declining over the past few years due to several program changes, such as changes in eligibility requirements, stronger sanctions against violators, and implementation of Electronic Benefit Transfer systems. These declines have resulted in a reduction in the overall number of respondents and ultimately a reduction in the overall proposed burden hours reflected in the following summary chart.

Currently, private restaurants applying for FSP participation in the State-administered special restaurant program use Form FNS-252-2 to apply for participation. This category of applicant represents about 7% of the number of current applicants using Form FNS-252-2. Over time, it has been determined that we need additional information from such private restaurants to ensure that they meet necessary requirements of operation to carry out the intent of the FSP. The additional information needed would be captured by having these respondents, estimated at about 32, complete Form FNS-252 rather than Form FNS-252-2. We estimate that these restaurants will spend an estimated 10 minutes of additional burden time using the longer Form FNS-252, however, this contributes to a negligible amount to the increase in the average hourly burden rate reflected in the summary chart because the number of respondents is so small. This change is a technical correction rather than a re-estimate based on more recent data, and is reflected in the number of initial applications expected to be received as shown in the summary chart.

As currently approved by OMB, the hourly burden rate per response for Form FNS-252 is 20 to 68 minutes, with the average being 27 minutes and 10 to 20 minutes for Form FNS-252-2, with the average being 10 minutes. These hourly burden rates are not affected by the re-estimated number of applications expected to be received or the technical correction. However, previous estimates

to OMB erroneously reflected the average burden time for Form FNS-252-2 as 10 minutes. The average time is 12 minutes and this correction appears in

the proposed estimates in the summary chart. Total number of respondents completing at least one of the 3

applications in question, taking into consideration the adjustments discussed above, would be as follows:

FNS-252:					
New authorizations	22,347	(22,770 × .98 + 32)			
Reauthorizations	460	(184,000 × .25 × .01)			
	22,807				
FNS-252-2:					
New authorizations	434	(22,770 × .02 - 32)			
Reauthorizations	1,380	(184,000 × .25 × .03)			
	1,803				
FNS-252R:					
Reauthorizations	44,160	(184,000 × .25 × .01 - 1,380 - 460)			
Total Responses	68,770				

The existing estimates, as approved by OMB through May 1999 and shown on the following chart, reflect the total annual number of responses as 80,613 and the annual burden hours as 18,396. The proposed number of responses would be 68,700 with total burden hours of 15,777 hours. The net effect of

the proposed burden estimates is an overall decrease in burden hours of 2,619 hours annually. Affected Public: Food Retail and Wholesale Firms, Meal Service Programs, certain types of Group Homes, Shelters, and State-contracted Restaurants.

Estimated Number of Respondents: 68,770.
Estimated Number of Responses per respondent: 1.
Estimated Time per Response: 0.229416.
Estimated Total Annual Burden: 15,777.

SUMMARY OF PROPOSED BURDEN ESTIMATES FOR FORMS FNS-252, 252-2 AND 252R

Title	Number of respondents	Responses per respondent	Total annual responses	Burden hours per response	Total annual burden hours
Form FNS-252:					
Existing	26,431	1	26,431	.4500	11,894
Proposed	22,807	1	22,807	.4500	10,263
Difference	-3,624	1	-3,624		-1,631
Form FNS-252-2:					
Existing	2,592	1	2,592	.1855	481
Proposed	1,803	1	1,803	.2000	361
Difference	-789		-789	+.0145	-120
Form FNS-252R:					
Existing	51,590	1	51,590	.1167	6,021
Proposed	44,160	1	44,160	.1167	5,153
Difference	-7,430		-7,430		-868
Totals:					
Existing	80,613		80,613		18,396
Proposed	68,770		68,770		15,777
Difference	-11,843		-11,843		-2,619

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect except as specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the

application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) for Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020 (e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. § 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR 283 (for rules related to QC liabilities); (3) for program

retailers and wholesalers-administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments, and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit

analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates under the regulatory provision of Title II of the UMRA for State, local and tribal governments or the private sector of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) was enacted on August 22, 1996, and contains a number of provisions directly affecting the participation of retailers, wholesalers and other entities eligible to be authorized to participate in the Food Stamp Program (FSP). All of the provisions of the law addressed in this rulemaking were effective on the date of enactment. Five of the provisions are nondiscretionary and were immediately implemented in the program through an implementing memorandum issued on September 16, 1996. While these five provisions are incorporated into this proposed rule, they are identified as nondiscretionary in this preamble. Such nondiscretionary provisions are statutory requirements that the Secretary has no authority to change; therefore, such provisions or their implementation cannot be modified by public comment. The PRWORA provides discretion in the implementation of the remaining provisions of the law, and these provisions are being proposed for public comment in this proposed rulemaking. The Department encourages all interested parties to comment on the discretionary provisions as set forth in this proposed rule.

The PRWORA and this proposed rulemaking include the following discretionary and nondiscretionary provisions:

- Revision in the definition of "coupon" (nondiscretionary);
- Establishment of a minimum six month waiting period before stores that initially fail to meet authorization criteria can reapply to participate in the program (nondiscretionary), and the

establishment of longer periods of time, including permanent prohibition from participation, which reflects the severity of the basis for the denial of the firm's application or a firm's reauthorization in the program (discretionary);

- Requirement that USDA, or its designees, conduct preauthorization visits to applicant firms as specified by the Secretary (discretionary);
- Authority for USDA to disqualify firms based on inconsistent redemption data and suspicious account activity as documented through EBT system data (nondiscretionary);
- Authority to suspend the program participation of violating firms subject to a permanent disqualification pending the outcome of administrative or judicial review (nondiscretionary);
- Authority for USDA to establish authorization periods for the participation of retailers in the program (discretionary);
- Authority to disqualify retailers who intentionally submit falsified applications, including permanent disqualification of such retailers (discretionary); and
- Authority to disqualify retailers that have been disqualified by State agencies responsible for the administration of USDA's Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (discretionary), extension of the periods for disqualification of such FSP retailers and elimination of the FSP administrative and judicial review rights of such retailers (nondiscretionary).

This proposed rulemaking also includes a provision of the Federal Agriculture Improvement and Reform Act (FAIR), Pub.L. 104-127, which provides a limitation on the mandatory permanent disqualification actions that may be taken by USDA for retailers found to be trafficking. Conforming and minor editorial revisions in response to the National Performance Review Regulatory Planning and Reform Initiative are also included in this rule.

FAIR Provision—Eligibility for Trafficking Civil Money Penalties

Section 401 of the FAIR limits mandatory permanent disqualifications for food coupon trafficking (with no possibility of avoiding disqualification by paying a trafficking civil money penalty) to instances in which (1) owners are aware of violations or participate in the conduct of such food coupon trafficking violations or (2) it is the second investigation in which a trafficking violation was committed by firm management.

This provision amends the current automatic ineligibility of a firm for a civil money penalty (CMP) in lieu of permanent disqualification if the ownership or management of the firm was aware of, approved, benefited from or was involved in the conduct of the food coupon trafficking violations (§ 278.6(i)). The FAIR amendment expands the number of firms that may be eligible for such a CMP in lieu of permanent disqualification. The law provides that if such a violation represents first-time management food coupon trafficking, the firm may be considered eligible for the imposition of a CMP, if the firm documents that it meets all of the eligibility requirements for the CMP as specified in § 278.6 (i).

This rulemaking proposes that the provision be applicable to firm management in general, regardless of whether or not the same individual manager committed trafficking violations previously. For example, if an individual manager previously was dismissed from the position for committing trafficking violations, but a different manager of the same firm subsequently commits food coupon trafficking violations, the firm would not be eligible for a second CMP in lieu of permanent disqualification. However, the expansion of eligibility for a CMP in lieu of permanent disqualification as stipulated in the FAIR does not apply to firms where it is shown that ownership or management was involved in trafficking in ammunition, firearms, explosives or controlled substances.

This provision was effective on April 4, 1996, the date of enactment of the statute. It was implemented upon the date on which Food and Nutrition Service (FNS) offices received the implementing memorandum, and is applicable to all firms issued a final determination letter subsequent to receipt of the implementing memorandum by FNS offices. The implementing memorandum was issued on September 16, 1996. The amendment to § 278.6(i) of this proposed regulation reflects this change. Comments are invited, however, on the proposed restriction which prohibits a CMP in lieu of permanent disqualification the second time management personnel of a firm commit trafficking violations, regardless of whether it was the same person in the management position that committed the previous violation(s).

Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)

The provisions of the PRWORA related to retailer participation in the FSP represent a three-tiered approach to

enhancing retailer compliance and integrity in order to further the purposes of the FSP and to reduce fraud in this critically important domestic food program. The provisions greatly reinforce USDA's efforts to effectively administer the FSP by improving the ability of the Department to screen applicant retailers prior to authorization, to control retailer performance subsequent to FSP authorization and to impose stiffer penalties against those firms found to be violating the public trust by committing FSP violations and defrauding the program.

Pre-Authorization Screening

The participation of retailers in the FSP is a privilege, not a right. The PRWORA and the provisions of this proposed rulemaking will serve to increase the Department's ability to cut off fraud and abuse at the source by allowing more in-depth pre-authorization screening of applicant firms and verification of the qualifications and continued eligibility of currently authorized firms to participate in the FSP.

Condition Precedent for Approval of Retail Food Stores and Wholesale Food Concerns

Section 831 of the PRWORA provides authority for USDA, its designee or State or local government officials designated by the Department, to conduct preauthorization visits to selected firms, and provides discretion to the Secretary to designate such firms on the basis of size, location and types of items sold. Amendments to § 278.1(a) of the regulation reflect the Secretary's authority to conduct such preauthorization visits as contained in the statute. It is anticipated that firm types subject to preauthorization visits will be determined by the FNS on an annual basis, as priorities and resources permit.

Waiting Period for Firms That Fail To Meet Authorization Criteria

Section 834 of the PRWORA amends section 9(d) of the Food Stamp Act to require that a firm that does not qualify for authorization because the firm fails to meet the eligibility criteria for approval be prohibited from submitting a new application to participate in the FSP for a minimum period of 6 months. The statute also allows the Secretary to establish longer time periods, including a permanent prohibition from participation, that is reflective of the severity of the basis for the denial of the application.

Section 278.1(k) of the regulation is proposed to be revised to include the minimum 6-month prohibition from reapplication, which applies to those firms that are shown to not meet Criterion A or Criterion B of the eligibility requirements of the Food Stamp Act, (7 U.S.C. 2012(k)) and, for co-located wholesale/retail firms, the requirements of § 278.1(b)(1)(iv). Criteria A and B were incorporated into the definition of "retail food store" in the Food Stamp Act, as amended by the Pub. L. 103-225, the Food Stamp Program Improvements Act of 1994. While this change in the definition was effective immediately upon enactment of the law and has been implemented, a proposed rule incorporating this statutory change specifically in the regulations is currently in Departmental clearance.

Currently, there is no waiting period for stores that wish to reapply to participate in the FSP after their application is denied because the stores fail to meet basic eligibility criteria for authorization. Such stores can adjust the types of staple food items that they offer for sale in order to meet minimal standards and reapply immediately, and then decrease their inventory after obtaining authorization. Such firms tend to be stores that do not effectuate the purpose of the FSP. The implementation of the 6-month waiting period will reduce the number of firms that temporarily stock minimum requirements of food items solely for the purpose of becoming authorized in the program and then engage in food stamp trafficking as their primary business. This provision applies to initial applicants as well as to those firms being reviewed for the purpose of reauthorization, or any other purpose, that are found not to meet program eligibility requirements. At the time of initial application and reauthorization, firms will be provided notice of this provision. This 6-month prohibition is nondiscretionary.

This rulemaking also proposes to implement the Secretary's authority to establish longer periods of time during which a firm would be restricted from reapplying for program authorization. Section 834 of the PRWORA provides that the Secretary may establish such time restrictions, up to a permanent denial, of a firm's ability to reapply for program authorization depending upon the severity of the reason for the denial of such a firm's initial application or subsequent application for authorization or reauthorization. Section 278.1(b)(3) sets out the criteria discussed below that are proposed to be used by FNS to make determinations regarding reapplication

restrictions against firms that are denied authorization or reauthorization, or are otherwise withdrawn from the program. Section 278.1(k) details the proposed periods of time for which a firm will be denied authorization in the program in response to the criteria set out in § 278.1(b)(3). It is proposed that these provisions be applicable to denials of initial authorization and reauthorization in the FSP, as well as to the continued authorization of a firm for participation in the program.

Section 9 of the Food Stamp Act, as amended, provides the Secretary with the authority to consider the business integrity and reputation of program applicants when determining the qualifications of such applicants for participation in the program. The business integrity of a firm is critically important to the effective operation of the FSP. Therefore, the criteria in this proposed rulemaking focus on the business integrity and reputation of the ownership, management and other personnel of those firms seeking authorization or reauthorization in the program. Fraudulent activity in the FSP or other government programs, or in business-related activities in general, reflects on the ability of a firm to effectuate the purposes of the FSP and abide by the rules governing the program. Therefore, this rulemaking proposes that a firm be permanently denied the opportunity for reapplication if a firm is denied authorization or reauthorization in the program on the basis of criminal convictions or a finding of civil liability of the ownership or management of an applicant firm for reasons that affect the business integrity of such firms. If personnel of the firm have been criminally convicted or found civilly liable for reasons related to business integrity, the firm will be denied the opportunity for reapplication to the program for as long as that person is employed by the firm. Examples of such business integrity matters include conviction or civil liability for offenses such as insurance fraud, tax fraud, and embezzlement.

In addition, this proposal stipulates that firms that have been removed from other federal, State or local government programs shall be prohibited from applying for the FSP during the period of removal from such programs. Such action in the FSP would be taken, for example, if a firm is removed from the WIC Program, or had their State or local liquor or lottery license suspended.

It is also proposed that firms for which it is found that an attempt has been made to circumvent a period of disqualification, a civil money penalty

or a fine imposed for FSP violations, or firms for which evidence exists of prior violative behavior which is not related to the FSP, shall be denied the opportunity to apply for the program for a period of 3 years. For example, a firm fined for lottery or liquor license infractions, but not removed from the State or local program through suspension, would be restricted from participation in the FSP for 3 years, commencing from the effective date of the FSP denial.

Further, this rulemaking proposes that firms in which violations of the program have been committed but a sanction has not been served, shall be denied the opportunity to apply for the program for a period of time equivalent to the appropriate sanction period that should have been served. This provision would apply, for example, when a firm goes out of business prior to FNS' sanctioning the firm for FSP violations that were uncovered prior to its going out of business. If the same owner seeks authorization for a different store, such a store would not be immediately authorized in the FSP and would be subject to a waiting period equivalent to the period of time that the previously investigated firm under that ownership would have been disqualified. This waiting period would be applicable whether or not the previously investigated firm was authorized in the FSP or was an unauthorized firm found to be violating the FSP.

This provision also applies to persons who are owners or officers of multi-unit firms, as well as management and personnel who are employed by the owner of a multi-unit firm. If an owner or officer of a multi-unit firm personally committed FSP violations at one unit of a multi-unit firm, and a sanction was not served, it is proposed that an applicant firm under that same ownership would be denied authorization for a period of time that should have been served for the previously committed violations. Moreover, as currently provided in the FSP regulations, the authorization of other units of such multi-unit firms may be withdrawn in response to violations of the FSP by ownership.

If management or personnel of such multi-unit firms commit sanctionable violations at more than one location, this would indicate that such actions are reflective of the overall operating practice of the firm, thus indicating a lack of business integrity on the part of ownership. If such violations occur and an appropriate penalty was not served, the applicant firm will be denied or restricted from applying for authorization in the FSP for the period

of time that should have been served by the firm for violations committed at these other locations under the same ownership. The period would be equivalent to the longest sanction period that would have been served for the most serious of violations committed by any one of the associated firms.

Finally, it is proposed that firms for which any other evidence exists that negatively impacts on the business integrity or reputation of the firm shall be denied the opportunity to apply for authorization in the FSP for one year from the effective date of the denial. Firms adversely affected by any such actions would be entitled to appeal rights provided by section 14 of the Food Stamp Act.

This proposal also makes an editorial change unrelated to the PRWORA provisions to conform the language of § 278.1(k), *Denying authorization*, and § 278.1(l), *Withdrawing authorization*. An additional editorial change is also being made to § 278.1(m) so as to conform this section with § 278.1(k) and § 278.1(l). These revisions do not result in any substantive change in the program, but simply clarify the intent that the provisions are applicable to both denials and withdrawals in the program. In addition, language is proposed to be added in § 278.1(k) and § 278.1(l) that reflects the current prohibition against participation in the program as specified in the current rule at § 278.6(f)(4), which prohibits authorization for participation of firms that have outstanding transfer of ownership civil money penalties owed to FNS.

Authority To Establish Authorization Periods

Section 832 of the PRWORA provides authority for the Secretary to establish specific periods of time during which a firm may be authorized to accept food stamps. The intent of this provision is to eliminate the current open-ended authorization of firms in the program. Further, it is intended to protect the integrity of the FSP by requiring a firm to re-apply periodically for continued participation and thereby ensuring that only legitimate and eligible firms are authorized to accept FSP benefits.

It is proposed that no firm be assigned an authorization period for participation in the FSP for longer than 5 years. Moreover, the FNS Officer in Charge may assign a lesser period of authorization, depending on the circumstances. Such circumstances may include the fact that a store is a new firm with unknown sales history, an additional outlet of a chain grocery store

with an inconsistent FSP compliance record or a firm that only minimally meets the eligibility criteria for participation in the FSP.

The Department believes that the five year maximum authorization period, after which a firm is required to apply to be reauthorized in the program, is reasonable and necessary for the effective administration of the program, and will ensure that the eligibility of all firms are routinely and periodically reviewed.

The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm or concern for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with program regulations. The Department will develop administrative procedures to ensure that, prior to the time of expiration of a firm's authorization period, the firm will be provided with reauthorization materials and be given the opportunity to submit such materials and information to enable FNS to evaluate the firm's qualifications for continued participation in the FSP. This proposal is included in § 278.1(j) of the regulation.

Post-Authorization Controls and Stiffer Penalties in the Program

Retailers that abuse the privilege of authorization in the FSP will have that privilege revoked. The PRWORA includes a number of significant tools that will enhance the Department's ability to enforce the effectiveness of the FSP and the monitoring of retailers.

Authority to Suspend Stores Violating Program Requirements Pending Administrative and Judicial Review

Section 845 of the PRWORA amends section 14 of the Food Stamp Act to require that a permanent disqualification of a firm from the FSP be effective from the date of the firm's receipt of the notice of disqualification. The PRWORA also provides that if such an administrative action by FNS is reversed through administrative or judicial review, the Secretary is not liable for the value of any revenues lost by the firm during such a disqualification period. This provision is nondiscretionary and was effective upon the date of enactment of the law. This provision pertains to firms that are subject to permanent disqualification for trafficking in the program, as well as to those firms subject to permanent disqualification for having been sanctioned twice before for violations of the program. Changes reflecting this

provision of the law have been made at § 278.6(b). Editorial revisions have also been made to § 278.8(a), § 279.7(a) and § 279.10(d). Since this provision is nondiscretionary, its implementation cannot be affected by public comment. It is important to note that the statute specifically refers only to permanent disqualification actions. Therefore, firms that request and are found to be eligible for a civil money penalty in lieu of permanent disqualification for trafficking are not affected by the immediate suspension requirement of the statute nor would such firms be expected to pay the civil money penalty pending appeal and may continue to participate in the program pending appeal.

Investigations

Section 278.6(a) of the regulation is proposed to be amended in accordance with section 841 of the PRWORA to make an editorial change that stipulates that findings of program violations and the subsequent suspension or disqualification of a firm may be made based on evidence established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system. This supports current practice in the program and the current authority provided to the Secretary to enforce program compliance. The provision is nondiscretionary.

Disqualification of Retailers Disqualified From the WIC Program

Section 843 of the PRWORA amends section 12 of the Food Stamp Act to require the Secretary to develop standards by which firms disqualified from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) are to be reciprocally disqualified from participation in the FSP. Currently, FSP regulations provide for the withdrawal of such firms from the FSP in response to WIC disqualification action. Such withdrawals must run for a concurrent period of time. This has proven to be problematic in that it is sometimes difficult for the Food Stamp withdrawal action to catch up to the WIC disqualification, particularly if the WIC disqualification is for a 6 month period or less. Under the current regulations, a firm has the right to appeal the Food Stamp action, and often, by the time the firm has appealed the FSP withdrawal, the WIC disqualification period is ending. Thus, the impact of reciprocal withdrawal is not significant. The change in the law provides that the FSP disqualification period (1) shall be for

the same period of time as the WIC disqualification period; (2) may run consecutive to the WIC disqualification; and (3) shall not be subject to FSP administrative or judicial review. These provisions of the statute are nondiscretionary.

In addition, the law stipulates that the Secretary establish criteria for such reciprocal disqualification actions. Current regulations set forth the types of WIC violations that will result in withdrawal of a firm from participation in the FSP.

The Department proposes to retain these same criteria, with some editorial changes to ensure that trafficking violations are fully covered in the listed violations. The WIC violations included here, therefore, represent very serious violations of the WIC Program that are comparable to serious violations of the FSP. These violations best represent the potential risk of violations of a similar nature being committed by unscrupulous firms in the FSP, thus necessitating reciprocal FSP action to protect the integrity of the FSP. The Department solicits comments on the reciprocal disqualification standards set out in § 278.6(e)(8).

Conforming changes to restrict those firms subject to reciprocal disqualification from eligibility for FSP administrative and judicial review are made to § 278.6(n), § 278.8(a), § 279.3(a)(2) and § 279.10(a) of this regulation. The changes made to these sections are nondiscretionary and will not be affected by public comment.

Disqualification of Retailers Who Intentionally Submit Falsified Applications

Section 842 of the PRWORA amends section 12(b) of the Food Stamp Act to authorize the Secretary to disqualify, including permanently disqualify, participating retailers who knowingly submit applications that contain false information about substantive issues. This proposed rule proposes to subject a firm to permanent disqualification if it is found that false information directly related to the eligibility of the firm for authorization is knowingly submitted on the application. In addition, this rule proposes that in cases in which any false information is knowingly submitted that would impact on the ability of FNS to monitor and identify potentially violative firms, the firm shall be disqualified for three years.

This proposed rule outlines examples of the type of information that would be considered "substantive" for the purpose of determining eligibility, as well as the type of information that is considered to be substantive from a

monitoring standpoint. These examples, however, are not inclusive of all of the information that, if fraudulently submitted, may result in disqualification of a firm.

This rule also proposes to deny authorization of any such firm which is found to have knowingly submitted such false information on the application at the time of initial application processing. It is proposed that such firms be denied for the same period of time for which they would be disqualified under § 278.6(e). The Department encourages comments on this discretionary provision.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 278

Administrative practice and procedure, Banks, banking, Claims, Food stamps, Groceries—retail, Groceries, General line—wholesaler, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, Groceries—retail, Groceries, General line—wholesaler.

Accordingly, 7 CFR parts 271, 278 and 279 are proposed to be amended as follows:

1. The authority citation for parts 271, 278 and 279 continues to read as follows:

Authority:
7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definition of "coupon" is revised to read as follows:

§ 271.2 Definitions.

* * * * *

Coupon means any coupon, stamp, type of certificate, authorization card, cash or check issued in lieu of a coupon, or access device, including an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food Stamp Act of 1977, as amended, for the purchase of eligible food.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

3. In § 278.1:

a. Paragraph (a) is revised;
b. Paragraph (b)(3) is revised;
c. Paragraph (j) is revised;
d. Paragraph (k) is amended by revising the first sentence of paragraph (k)(2) and redesignating the paragraph (k)(2) as paragraph (k)(7), and adding new paragraphs (k)(2), (k)(3), (k)(4), (k)(5) and (k)(6);

e. Paragraph (l) is amended by redesignating paragraphs (l)(1)(iii) through (l)(1)(v) as (l)(1)(v) through (l)(1)(vii), respectively, revising newly redesignated paragraph (l)(1)(vi), and adding new paragraphs (l)(1)(iii) and (l)(1)(iv);

f. The introductory text of paragraph (m) is revised;

g. Paragraph (o) is removed, and paragraphs (p) through (u) are redesignated as paragraphs (o) through (t), respectively; and

h. Newly redesignated paragraph (o) is revised and newly redesignated paragraph (q) is amended by removing references to (r)(2), (r)(3), (r)(1)(ii), (r)(1)(i), (r)(2)(ii), (r)(2)(iv), (r)(3)(iv) and (r), wherever they appear, and adding in their place references to (q)(2), (q)(3), (q)(1)(ii), (q)(1)(i), (q)(2)(ii), (q)(2)(iv), (q)(3)(iv) and (q), respectively.

The revisions and additions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

(a) *Application.* Any firm desiring to participate or continue to be authorized in the program shall file an application as prescribed by FNS. Such an application shall contain information which will permit a determination to be made as to whether such an applicant qualifies, or continues to qualify, for authorization under the provisions of the program. FNS may require that a retail food store or wholesale food concern be visited to confirm eligibility for program participation prior to such store or concern being authorized or reauthorized in the program. FNS shall determine, based on factors that include size, location, and types of items sold, which stores or concerns shall be visited. Required visits shall be conducted by an authorized employee of the Department, a designee of the Secretary, or an official of the State or local government designated by the Secretary. FNS shall deny or approve the application, or request additional information from the applicant firm, within 30 days of receipt of the initial application.

(b) *Determination of authorization.*

(3) *The business integrity and reputation of the applicant.* FNS shall deny the authorization of any firm from

participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows:

(i) Criminal conviction records reflecting on the business integrity of owners, officers, managers, or other personnel of the applicant firm;

(ii) Judicial determinations in civil litigation adversely reflecting on the business integrity of owners, officers, managers or other personnel of the applicant firm;

(iii) Official records of removal of the applicant firm from other Federal, State or local government programs;

(iv) Evidence of an attempt by the applicant firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act and program regulations;

(v) Evidence (other than a record of a civil or criminal conviction) of prior fraudulent behavior of owners, officers, managers, or other personnel of the applicant firm that is not Food Stamp Program related for which a Food Stamp Program sanction had not been previously imposed and satisfied;

(vi) Previous Food Stamp Program violations by owners, officers, managers, or other personnel of the applicant firm for which a sanction had not been previously imposed and satisfied;

(vii) Evidence of prior Food Stamp Program violations personally committed by the owner(s) or the officer(s) of the firm at one or more units of a multi-unit firm, or evidence of prior Food Stamp Program violations committed by management or other personnel at other units of multi-unit firms which would indicate a lack of business integrity on the part of ownership and for which sanctions had not been previously imposed and satisfied; or

(viii) Any other evidence adversely reflecting on the business integrity or reputation of the applicant firm.

(j) *Authorization.* Upon approval, FNS shall issue a nontransferable authorization card to the firm. The authorization card shall be valid only for the time period for which the firm is authorized to accept and redeem coupons under the program. The authorization card shall be retained by the firm until such time as the authorization period has ended, authorization in the program is superseded, or the card is surrendered or revoked as provided in this part. No firm may be assigned an authorization

period in the program of longer than 5 years; however, the FNS Officer in Charge may assign a lesser period for authorization of a firm, depending on the circumstances of such firm. The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm or concern for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with this part.

(k) *Denying authorization.* * * *

(2) The firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in the Food Stamp Act of 1977, as amended; or, for co-located wholesale/retail firms, the firm fails to meet the requirements of paragraph (b)(1)(iv) of this section. Any firm that has been denied authorization on these bases shall not be eligible to submit a new application for authorization in the program for a minimum period of six months from the effective date of the denial;

(3) The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. Such firms shall be denied authorization in the program for the following period of time:

(i) Firms for which criminal conviction records reflecting on the business integrity of owners, officers, or managers exist shall be denied authorization permanently; firms for which such records exist with regard to other personnel employed by the firm shall be denied for as long as such person continues to be employed by the firm;

(ii) Firms for which judicial determinations in civil litigation adversely reflecting on the business integrity of owners, officers or managers of the firm have been made shall be denied authorization permanently; firms for which such determinations have been made with regard to other personnel employed by the firm shall be denied authorization for as long as such person continues to be employed by the firm;

(iii) Firms which have been officially removed from other Federal, State or local government programs shall be denied for a period equivalent to the period of removal from any such programs;

(iv) Firms for which evidence exists of an attempt to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act and program regulations shall be denied for a period

of three years from the effective date of denial;

(v) Firms for which evidence exists of prior fraudulent behavior of owners, officers, or managers of the firm which is not Food Stamp Program related and for which a Food Stamp Program sanction had not been previously imposed and satisfied shall be denied for a period of three years from the effective date of denial; firms for which such fraudulent behavior was committed by personnel employed by the firm shall be denied authorization for as long as such person continues to be employed by the firm;

(vi) Firms for which evidence exists of prior Food Stamp Program violations by owners, officers, managers, or other personnel of the firm for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;

(vii) Firms for which evidence exists of prior Food Stamp Program violations at other units of multi-unit firms for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;

(viii) Firms for which any other evidence exists which reflects negatively on the business integrity or reputation of the applicant firm shall be denied for a period of one year from the effective date of denial;

(4) The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3);

(5) The firm's participation in the program will not further the purposes of the program;

(6) The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership;

(7) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7, any fines assessed under § 278.6(l) or § 278.6(m), or a transfer of ownership civil money penalty assessed under § 278.6(f). * * *

(l) *Withdrawing authorization.* (1)

(iii) The firm fails to meet the requirements for eligibility under Criterion A or Criterion B, as specified in the Food Stamp Act of 1977, as

amended, or, for co-located wholesale/retail firms, the firm fails to meet the requirements of paragraph (b)(1)(iv) of this section, for the time period specified in paragraph (k)(2) of this section;

(iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings;

(vi) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7 or any fines assessed under § 278.6(l) or § 278.6(m) or a transfer of ownership civil money penalty assessed under § 278.6(f) or

(m) *Refusal to accept correspondence or to respond to inquiries.* FNS may withdraw or deny the authorization of any firm which:

(o) *Applications containing false information.* The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action.

4. In Section 278.6:

a. Paragraph (a) is revised;

b. Paragraph (b)(1) is amended by adding one new sentence to the end of the paragraph;

c. Paragraph (b)(2)(i) is amended by adding two new sentences to the end of the paragraph;

d. Paragraph (c) is amended by adding three new sentences to the end of the paragraph;

e. Paragraph (e) is amended by adding new paragraphs (e)(1)(iii), (e)(3)(vi) and (e)(8);

f. Paragraph (i) is amended by removing the first sentence of Criterion 4 and adding three new sentences in its place, and by removing the words "or management" in paragraph (i)(1)(v); and

g. Paragraph (n) is revised.

The revisions and additions read as follows:

§ 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

(a) *Authority to disqualify or subject to a civil money penalty.* FNS may disqualify any authorized retail food store or authorized wholesale food concern from further participation in the program if the firm fails to comply with the Food Stamp Act or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system, or the disqualification of a firm from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), as specified in paragraph (e)(8) of this section. Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. Any firm which has been disqualified and which wishes to be reinstated at the end of the period of disqualification or at any later time shall file a new application under § 278.1 so that FNS may determine whether reauthorization is appropriate. The application may be filed no earlier than 10 days before the end of the period of disqualification. FNS may, in lieu of a disqualification, subject a firm to a civil money penalty of up to \$10,000 for each violation if FNS determines that a disqualification would cause hardship to participating households. FNS may impose a civil money penalty of up to \$20,000 for each violation in lieu of a permanent disqualification for trafficking, as defined in § 271.2 of this chapter, in accordance with the provisions of paragraphs (i) and (j) of this section.

(b) *Charge letter.* (1) * * * In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the charge letter shall inform such firm that the disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

(2) *Charge letter for trafficking.* (i) * * * The charge letter shall also advise the firm that the permanent disqualification shall be effective immediately upon the date of receipt of the notice of determination, regardless of whether a request for review is filed in accordance with § 279.5 of this chapter. If the disqualification is

reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period.

(c) * * * In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with § 279.5 of this chapter. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period. In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the determination notice shall inform such firm that the disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

(e) *Penalties.* * * *

(1) * * *

(iii) It is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to:

- (A) Eligibility requirements under § 278.1(b),(c),(d),(e),(f),(g) and (h);
- (B) Staple food stock;
- (C) Annual gross sales for firms seeking to qualify for authorization under Criterion B as specified in the Food Stamp Act, as amended;
- (D) Annual staple food sales;
- (E) Total annual gross retail food sales for firms seeking authorization as co-located wholesale/retail firms;
- (F) Ownership of the firm;
- (G) Employer Identification Numbers and Social Security Numbers;
- (H) Food Stamp Program history, business practices, business ethics, WIC disqualification or authorization status, when the store did (or will) open for business under the current ownership, business, health or other licenses, and whether or not the firm is a retail and wholesale firm operating at the same location; or
- (I) Any other information of a substantive nature that could affect the eligibility of a firm.

(3) * * *

(vi) Personnel of the firm knowingly submitted information on the

application that contained false information of a substantive nature related to the ability of FNS to monitor compliance of the firm with FSP requirements, such as, but not limited to, information related to:

- (A) Annual eligible retail food sales;
- (B) Store location and store address and mailing address;
- (C) Financial institution information; or
- (D) Store name, type of ownership, number of cash registers, and non-food inventory and services.

(8) FNS shall disqualify from the Food Stamp Program any firm which is disqualified from the WIC Program:

(i) Based in whole or in part on any act which constitutes a violation of that program's regulation and which is shown to constitute a misdemeanor or felony violation of law, or for any of the following specific program violations:

(A) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time;

(B) Exchanging WIC food instruments for cash, credit or consideration other than eligible food; or the exchange of firearms, ammunition, explosives or controlled substances, as defined in section 802 of title 21 of the United States Code, for food instruments;

(C) Receiving, transacting and/or redeeming WIC food instruments outside of authorized channels;

(D) Accepting WIC food instruments from unauthorized persons;

(E) Exchanging non-food items for a WIC food instrument;

(F) Charging WIC customers more for food than non-WIC customers or charging WIC customers more than the current shelf price; or

(G) Charging for food items not received by the WIC customer or for foods provided in excess of those listed on the food instrument.

(ii) FNS shall not disqualify a firm from the Food Stamp Program on the basis of a WIC disqualification unless:

(A) Prior to the time prescribed for securing administrative review of the WIC disqualification action, the firm was provided individual and specific notice that it could be disqualified from the Food Stamp Program based on the WIC violations committed by the firm;

(B) A signed and dated copy of such notice is provided to FNS by the WIC administering agency; and

(C) A determination is made in accordance with § 278.6(a) that such action will not cause a hardship for participating Food Stamp households.

(iii) Such a Food Stamp disqualification:

(A) Shall be for the same length of time as the WIC disqualification;

(B) May begin at a later date than the WIC disqualification; and

(C) Shall not be subject to administrative or judicial review under the Food Stamp Program.

(i) *Criteria for eligibility for a civil money penalty in lieu of permanent disqualification for trafficking.* * * *

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm. Upon the second occasion of trafficking involvement by any member of firm management uncovered during a subsequent investigation, a firm shall not be eligible for a civil money penalty in lieu of permanent disqualification. Notwithstanding the above provision, if trafficking violations consisted of the sale of firearms, ammunition, explosives or controlled substances, as defined in 21 U.S.C. 802, and such trafficking was conducted by the ownership or management of the firm, the firm shall not be eligible for a civil money penalty in lieu of permanent disqualification.

(n) *Review of determination.* The determination of FNS shall be final and not subject to further administrative or judicial review unless a written request for review is filed within the period stated in § 279.5. Notwithstanding the aforementioned, any FNS determination made on the basis of paragraph (e)(8) of this section shall not be subject to further administrative or judicial review.

5. In § 278.8, paragraph (a) is revised to read as follows:

§ 278.8 Administrative review—retail food stores and wholesale food concerns.

(a) *Requesting review.* A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 may, within the period stated in § 279.5 of this chapter, file a written request for review of the administrative action with the review officer, except that disqualification actions taken against firms in accordance with § 278.6(e)(8) shall not be subject to administrative or judicial review. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review by the review officer, except in the case of a permanent disqualification as

specified in § 278.6(e)(1). A disqualification for failure to pay a civil money penalty shall not be subject to administrative review.

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

6. In § 279.3, paragraph (a)(2) is revised to read as follows:

§ 279.3 Authority and jurisdiction.

(a) *Jurisdiction.* * * *

(2) Imposition of a fine under § 278.6(l) of this chapter or § 278.6 (m) of this chapter or disqualification from participation in the program or imposition of a civil money penalty under § 278.6 of this chapter, except for disqualification actions imposed under § 278.6(e)(8) of this chapter;

7. In § 279.7, paragraph (a) is amended to add two new sentences after the first sentence to read as follows:

§ 279.7 Action upon receipt of a request for review.

(a) *Holding action.* * * * However, in cases of permanent disqualification under § 278.6(e)(1) of this chapter, such administrative action shall not be held in abeyance pending such a review determination. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be held liable for the value of any sales lost during the disqualification period.

8. In § 279.10, the first sentence of paragraph (a) and paragraph (d) are revised to read as follows:

§ 279.10 Judicial review.

(a) *Filing for judicial review.* Except for firms disqualified from the program in accordance with § 278.6(e)(8) of this chapter, a firm aggrieved by the determination of the food stamp review officer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction.

(d) *Stay of action.* During the pendency of any judicial review, or any appeal therefrom, the administrative action under review shall remain in force unless the firm makes a timely application to the court and after hearing thereon, the court stays the administrative action after a showing

that irreparable injury will occur absent a stay and that the firm is likely to prevail on the merits of the case. However, permanent disqualification actions taken in accordance with § 278.6(e)(1) of this chapter shall not be subject to such a stay of administrative action. If the disqualification action is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period.

Dated: April 24, 1990.

Yvette S. Jackson,

Administrator, Food and Nutrition Service.

[FR Doc. 98-12038 Filed 5-5-98; 8:45 am]

BILLING CODE 3410-30-U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710 and 1714

Prioritizing the Queue for Hardship Rate and Municipal Rate Loans to Electric Borrowers

AGENCY: Rural Utilities Service, Agriculture.

ACTION: Extension of public comment period.

SUMMARY: On April 8, 1998, the Rural Utilities Service (RUS) published in the *Federal Register* an Advanced Notice of Proposed Rulemaking for Prioritizing the Queue for Hardship Rate and Municipal Rate Loans to Electric Borrowers. RUS wishes to extend the comment period for this proposed rule.

The RUS makes hardship rate and municipal rate loans to electric borrowers who meet certain statutory requirements. All applicants from borrowers for these loans are usually considered for approval on a first-come first-served basis. RUS now has a significant shortfall between the total dollar amount of qualified applicants and loan authority for both hardship rate and municipal rate loans. This shortfall has resulted in long waits in the queues for loan approval. RUS is considering making changes to its administrative procedures to prioritize the applications for hardship rate and municipal rate loans, separately, in order to offer these loans to borrowers in greater need of assistance before offering them to other borrowers in the loan queues.

DATES: The date by which written comments must arrive at the address given below is extended from May 8, 1998, to June 8, 1998.

ADDRESSES: Submit written comments to F. Lamont Heppe, Jr., Director,

Program Development and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, Stop 1522, 1400 Independence Avenue, SW, Washington, D.C. 20250-1522. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.4(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Deputy Assistant Administrator-Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Stop 1560, 1400 Independence Avenue, SW, Washington, D.C. 20250-1560. Telephone: 202-720-9545. FAX: 202-690-0717.

Blaine C. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 98-11995 Filed 5-5-98; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AEA-02]

Proposed Amendment to Class E Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Philadelphia, PA. The amendment of a Standard Instrument Approach Procedure (SIAP) based on an Instrument Landing System (ILS) at Philadelphia International Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before June 5, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA-520, Docket No. 98-AEA-02, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA-7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA-520, F.A.A. Eastern region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA-520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98-AEA-02." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA-7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of

Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Philadelphia, PA. The ILS RWY 9R SIAP has been amended for the Philadelphia International Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, dated

September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA PA E5 Philadelphia, PA [Revised]

Philadelphia International Airport, PA (Lat 39°52'13" N., long 75°14'42" W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Philadelphia International Airport extending clockwise from the 095° bearing from the airport to the 225° bearing from the airport and within a 15-mile radius of Philadelphia International Airport extending from the 225° bearing from the airport clockwise to the 095° bearing from the airport, excluding the portions that coincide with the Berlin, NJ, Cross Keys, NJ, Wrightstown, NJ, Toughkenamon, PA, North Philadelphia, PA, and Wilmington, DE, Class E airspace areas.

Issued in Jamaica, New York, on April 10, 1998.

Franklin D. Hatfield,
Manager, Air Traffic Division, Eastern Region.
[FR Doc. 98-12041 Filed 5-5-98; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Ch. I

Interpretation of Rules and Guides for Electronic Media; Request for Comment

AGENCY: Federal Trade Commission.

ACTION: Notice. Request for public comments.

SUMMARY: The Federal Trade Commission ("Commission") seeks comment on its proposal to issue a policy statement regarding the applicability of its rules and guides to newer forms of electronic media, such as e-mail, CD-ROMs, and the Internet (hereinafter collectively referred to as "electronic media"). This **Federal Register** Notice (hereinafter "Notice") does not contain a proposed policy statement. This Notice is intended to provide a discussion of the issues that would be addressed in a future policy statement and to solicit public comment on these issues. The Commission believes that such a policy statement would (1) clarify the extent to which the Commission's rules and guides apply to representations disseminated through, and activities occurring on, electronic media; (2) provide guidance to the public as to how to comply with the Commission's rules and guides in

advertising products and services and conducting commercial activities using electronic media; (3) interpret certain terms in light of the use of electronic media and provide guidance regarding how electronic media could be used to comply with the affirmative disclosure requirements of the rules and guides; and (4) advise how disclosures required or recommended by the Commission's rules and guides should be made in advertising and other commercial transactions in electronic media. The Commission also solicits comment regarding interest in participating in or attending a workshop to discuss the issues raised in this Notice.

DATES: Comments must be submitted on or before July 7, 1998.

ADDRESSES: Written comments should be submitted to: Secretary, Federal Trade Commission, Room H-159, Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. 20580. The Commission requests that the original comment be filed with five copies, if feasible. The Commission also requests, if possible, that the comment be submitted in electronic form on a computer disk. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) The disk label should identify the commenter's name and the name and version of the word processing program used to create the comment. Alternatively, the Commission will accept comments submitted to the following e-mail address: <ElecMedia@ftc.gov>. All submissions should be captioned: "Interpretation of Rules and Guides for Electronic Media—Comment, FTC File No. P974102."

FOR FURTHER INFORMATION CONTACT: Laura J. DeMartino, Attorney, Federal Trade Commission, Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. 20580, telephone (202) 326-3030, e-mail (for questions or information only) <Ldemartino@ftc.gov>.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission proposes issuing a policy statement in the future regarding the applicability of its rules and guides to electronic media. The Commission is using the term "electronic media" in this Notice to refer to the newer forms of electronic media, such as e-mail, CD-ROMs, and the Internet.¹ This Notice

¹ The Internet encompasses the World Wide Web as well as other electronic information-exchanging features, including "Telnet," "FTP" (File Transfer Protocol), and USENET newsgroups. The Commission is using the term the "Internet" to

does not contain a proposed policy statement. It is intended to provide a discussion of the issues that would be addressed in an expected policy statement and to solicit public comment on these issues. The purpose of the proposed policy statement would be to eliminate or reduce any uncertainty as to whether the Commission's rules and guides apply to electronic media.²

The proposed policy statement also would clarify how the rules and guides apply to these new media. Many of the Commission's rules and guides, for example, use terms that may be more commonly associated with print media. The Commission, however, believes these terms apply to electronic media. The proposed policy statement also would discuss the use of electronic media as a means of complying with some of the requirements or recommendations of the rules and guides.³

The unique features of electronic media present special challenges and opportunities for making disclosures effectively. The proposed policy statement, therefore, would provide guidance on how the Commission would evaluate whether disclosures in electronic media are clear and conspicuous. The Commission believes that such guidance will encourage voluntary compliance by industry and promote industry self-regulation. This Notice discusses the Commission's approach to achieve these goals, which would form the basis of a future policy statement.

The issue of Commission guidance and public input on electronic media issues arose during the Commission's review of the Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("900-Number Rule"), 16 CFR part 308.⁴ During a public workshop on the 900-Number Rule, workshop participants suggested that the Commission conduct a separate proceeding that would

encompass the Internet and proprietary online services, such as America Online and Prodigy.

² Some traditional forms of electronic media, such as television and radio, have been used for advertising and marketing purposes for years. This Notice is not intended to affect the requirements of the Commission's rules and guides for television or radio advertisements.

³ Other federal agencies, such as the U.S. Securities and Exchange Commission, also have considered whether new technology may be used to comply with the laws they enforce, and have issued interpretive guidance and rule amendments to clarify these issues and assist industry. See, e.g., 60 FR 53458 (Oct. 13, 1995); 61 FR 24652 (May 15, 1996).

⁴ 62 FR 11749 (Mar. 12, 1997) (soliciting comment, *inter alia*, on whether the 900-Number Rule's disclosure requirements are adequate for Internet advertisements).

address the issue of making clear and conspicuous disclosures on the Internet and provide an opportunity for all interested parties to submit comments.⁵ Accordingly, the Commission has determined to publish this notice and seek public comment from all interested parties on the Commission's proposed policy statement. The Commission believes that public comment will be helpful because of the challenging issues presented by electronic media and the pace at which technological developments are occurring.⁶

A. Background

1. Technological Advances

Significant technological advances in recent years are dramatically changing the global marketplace. With approximately 62 million people in the United States having access to the Internet, it is becoming an increasingly popular medium for advertising goods and services and for conducting commercial transactions.⁷ It is estimated that businesses spent \$906.5 million for advertising on the Internet in 1997.⁸ Advertisements on the World Wide Web ("Web"), the graphical segment of the Internet, often contain "pages" which may contain text, pictures, video, sound, interactive graphics, or a combination of all of these features.⁹

⁵ Transcript of the Workshop on the 900-Number Rulemaking (Day 2, June 20, 1997), Volume 2, pp. 559-579. The transcript is available in the Public Reference Room, Room 130, of the Commission and on the Commission's Web site <http://www.ftc.gov>. Some commenters stated that the Commission's determination regarding how clear and conspicuous disclosures should be made in Internet advertisements pursuant to the 900-Number Rule would have broad implications for all Internet advertisements. Therefore, it was argued that all interested parties, and not simply those persons interested in the 900-Number Rule, should have notice of the review of this issue and the opportunity to submit comments. *Id.*

⁶ The Commission recognizes the usefulness of maintaining a dialogue with the public regarding these issues in order to benefit both consumers and industry. See Commission staff report, *Anticipating the 21st Century: Consumer Protection Policy in the New High-Tech Global Marketplace*, p. 7 (May 1996) (summarizing testimony presented during hearings regarding the need for a continuing dialogue).

⁷ IntelliQuest Information Group, Inc. (Feb. 5, 1998) <http://www.intelliquest.com> (number of users as of the fourth quarter, 1997).

⁸ Internet Advertising Bureau (Apr. 6, 1998) <http://www.iab.net/news/breaksource.html>.

⁹ A "Web site" is a collection of linked electronic "pages." The main "page" within the Web site is often referred to as a "home page," from which links are provided to electronic pages within the overall Web site. Frequently, the home page or other pages within the site will provide links to other Web sites as well. This linkage is possible because the Web allows users to navigate or transfer from one electronic document to another—in actuality viewing files stored on various

Continued

Consumers are able to purchase goods or services directly over the Internet.¹⁰ Businesses also use CD-ROMs to disseminate information about their products to consumers. In addition, businesses use e-mail and facsimiles to communicate directly with consumers.

2. The Commission's Role in the New Marketplace

The Commission believes that the use of this new technology should be encouraged. The Internet provides consumers and businesses with access to a global marketplace. Consumers have instant access to a large amount of information and a greater array of products and services. These newer forms of electronic media also provide businesses with different ways of advertising, selling goods, and communicating with customers. At the same time, the use of this new technology for commercial activities raises consumer protection concerns.¹¹ The Commission agrees with the statement by the Interagency Working Group on Electronic Commerce, that "[i]n order to realize the commercial and cultural potential of the Internet, consumers must have confidence that the goods and services offered are fairly represented, that they will get what they pay for, and that recourse or redress is available if they do not."¹² As a result, the Commission believes that enforcement of consumer protection laws is necessary to ensure the vitality and viability of the Internet as a new marketplace.¹³

computers—through the use of electronically coded links called hypertext.

¹⁰ Estimates of online sales vary dramatically. One survey, however, estimates that as of the fourth quarter, 1997, 37.2 million users were shopping online and 10.5 million users were purchasing online. IntelliQuest Information Group, Inc. (Feb. 5, 1998) <<http://www.intelliquest.com>>.

¹¹ The Commission examined consumer protection issues raised by technological developments during hearings in November 1995. The Commission staff report on the hearings describes the technological developments, the challenges faced by law enforcement agencies to address consumer protection issues without stifling the use of new technology, and various proposed strategies for resolving consumer protection concerns. Commission staff report, *Anticipating the 21st Century: Consumer Protection Policy in the New High-Tech Global Marketplace* (May 1996).

¹² A Framework for Global Electronic Commerce, p. 17 (July 1, 1997) <<http://www.whitehouse.gov/WH/New/Commerce>>. "Truthful and accurate advertising shall be the cornerstone of advertising on all media, including the Internet." *Id.* at 16.

¹³ See Commission staff report, *Anticipating the 21st Century: Consumer Protection Policy in the New High-Tech Global Marketplace*, pp. 27, 30–31 (May 1996). The Commission already has brought a number of cases against companies engaged in unfair or deceptive practices on the Internet. See, e.g., *Global World Media Corp.*, Docket No. C-3772 (Oct. 17, 1997) (alleged false claims about an herbal supplement in advertising on the Internet and other

3. Legal Authority

This Notice addresses the applicability of certain rules and guides issued pursuant to section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(a), and other statutes enforced by the Commission to electronic media. Section 5 of the FTC Act gives the Commission broad authority over the advertising and marketing of products and services through its prohibition on "unfair or deceptive acts or practices in or affecting commerce." The Commission has issued policy statements to provide guidance on how it evaluates whether acts or practices are "unfair or deceptive" under section 5 of the FTC Act and on how it will enforce the legal requirement that advertisers possess a reasonable basis for objective claims about their products and services.¹⁴

The Commission rules addressed in this Notice prohibit specific unfair or deceptive acts or practices and "may include requirements prescribed for the purpose of preventing such acts or practices."¹⁵ The Commission may initiate civil actions, seeking civil penalties, against any person who violates a rule "with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule."¹⁶ The Commission also promulgates rules pursuant to specific Acts of Congress.¹⁷ The remedies available to enforce these rules vary.

media); *FTC v. Audiotex Connection, Inc.*, CV-97-0728 (E.D.N.Y. filed Feb. 13, 1997) (Internet Web site program allegedly disconnected consumer's access provider without consent or adequate disclosure and re-connected computer to an international access provider that billed consumers over \$2 per minute); *FTC v. Fortune Alliance, L.L.C.*, Civ. No. C96-799M (W.D. Wash. filed May 23, 1996) (alleged illegal pyramid investment scheme marketed on the Internet); *FTC v. Brandzel, 96C 1440* (N.D. Ill. filed Mar. 13, 1996) (computer memory chips advertised on the Internet allegedly were paid for but not delivered in violation of section 5 of the FTC Act and the Mail or Telephone Order Merchandise Rule, 16 CFR part 435).

¹⁴ Federal Trade Commission Policy Statement on Deception, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984) (hereinafter "Deception Statement"); Federal Trade Commission Policy Statement on Unfairness appended to *International Horvater Co.*, 104 F.T.C. 949 1070 (1984) (superseded by 15 U.S.C. 45(n)); Federal Trade Commission Policy Statement Regarding Advertising Substantiation, 48 FR 10471 (Mar. 11, 1983).

¹⁵ 15 U.S.C. 57a(a)(1)(B). The Commission is empowered to promulgate rules which define with specificity unfair or deceptive acts or practices when it has reason to believe that certain unfair or deceptive acts or practices are prevalent. *Id.*

¹⁶ 15 U.S.C. 45(m)(1)(A). The Commission also may seek redress for consumers. 15 U.S.C. 57b(a)(1).

¹⁷ For example, the Energy Policy and Conservation Act, 42 U.S.C. 8201, *et seq.*, as amended, requires the Commission to prescribe rules for energy consumption and efficiency

The Commission's guides are "administrative interpretations of the laws administered by the Commission" and are intended to assist the public in voluntarily complying with the law (e.g., by providing guidance on how to avoid unfair or deceptive acts or practices).¹⁸ Although guides do not have the force and effect of law, failure to comply with them may result in corrective action under applicable statutory provisions (e.g., a proceeding pursuant to section 5(a) of the FTC Act).¹⁹

B. Scope of the Proposed Policy Statement

The proposed policy statement would address those rules and guides issued by the Commission that solely pertain to consumer protection issues.²⁰ These rules and guides are listed in the Appendix. Other consumer protection rules and guides will not be addressed in this proceeding.²¹ These rules and guides either may not apply to electronic media or contain provisions that preclude uniform treatment in a

labeling of certain appliances. See Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule"), 16 CFR part 305.

¹⁸ 16 CFR 1.5. Section 18(a)(1)(A) of the FTC Act authorizes the Commission to issue "interpretative rules and general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. 57a(a)(1)(A).

¹⁹ 16 CFR 1.5.

²⁰ The Commission is not addressing antitrust issues or the Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR part 240. In this Notice, further, this Notice does not address the Commission's rules of practice, 16 CFR parts 1–4. Other issues relating to the use of electronic media generally, such as privacy and electronic payment technologies, are being examined in different proceedings. See 62 FR 10271 (Mar. 8, 1997) (regarding previous Commission workshops on consumer information privacy issues and children's online privacy); 62 FR 19173 (Apr. 18, 1997) and 62 FR 29392 (May 30, 1997) (discussing public meetings held by the Interagency Consumer Electronic Payments Task Force on consumer issues raised by emerging electronic money and payment technology).

²¹ Rule and Regulations Under the Hobby Protection Act (16 CFR part 304); Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (16 CFR part 307); Test Procedures and Labeling Standards for Recycled Oil (16 CFR part 311); Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking (16 CFR part 408); Care Labeling of Textile Wearing Apparel and Certain Piece Goods (16 CFR part 423); Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (16 CFR part 429); Funeral Industry Practices Rule (16 CFR part 453); Ophthalmic Practice Rules (16 CFR part 456); Rules, Regulations, Statements of General Policy or Interpretation and Exemptions Under the Fair Packaging and Labeling Act (16 CFR parts 500–503); and Procedures for State Application for Exemption from the Provisions of the Fair Debt Collection Practices Act (16 CFR part 901).

policy statement and need to be examined separately. The Commission also is not addressing regulations issued by the Federal Reserve Board and enforced by the Commission.²²

In addition, the Commission is currently reviewing certain rules and guides as a part of its ongoing regulatory review process.²³ In some of these reviews, the Commission is examining, among other things, the effect of new technology on the provisions of those rules and guides.²⁴ Comments regarding specific amendments to those rules and guides in light of new technology should be submitted in the course of those particular reviews. To the extent that the broad policy issues addressed in this Notice impact on those rules or guides, however, interested persons also should submit comments in this proceeding. For example, if a rule or guide under review requires or recommends that disclosures be clear and conspicuous (which will be addressed in the context of electronic media in this proposal), commenters should provide a submission in this proceeding even if they have already commented in the other review.

This Notice and the proposed policy statement also are not intended to address all of the substantive issues specific to certain rules or guides that may arise because of the use of electronic media. For example, this Notice addresses the applicability of the Guides Concerning Use of Endorsements and Testimonials in Advertising ("Endorsement Guides"), 16 CFR part 255, to electronic media and proposes factors the Commission would use to evaluate the effectiveness of disclosures that accompany endorsements in electronic media.

²² Regulation B, 12 CFR part 202; Regulation E, 12 CFR part 205; Regulation M, 12 CFR part 213; Regulation Z, 12 CFR part 226. The Federal Reserve Board has issued an interim rule amending Regulation E and proposed rules amending Regulations B, E, M and Z regarding the use of electronic disclosures for matters covered by those Regulations. 63 FR 14526, 14538, 14548, 14552, 14555 (Mar. 25, 1998).

²³ In 1992, the Commission implemented a regulatory reform program to assess, at least once every ten years, the continued need and usefulness of its rules and guides and revise or, as necessary, rescind outdated rules and guides. See 63 FR 1802 (Jan. 12, 1998). To date under this program, the Commission has reviewed 19 guides of which it has repealed 15, and 28 rules of which it has repealed 13. Many of the retained rules and guides have been amended to reduce compliance burdens while still achieving their intended purpose.

²⁴ See 900-Number Rule, 16 CFR part 308, 62 FR 11749 (Mar. 12, 1997); Rule Regarding the Use of Negative Option Plans by Sellers in Commerce, 16 CFR part 425, 62 FR 15135 (Mar. 31, 1997); Rule Regarding Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 CFR part 436, 62 FR 9115 (Feb. 28, 1997).

Developments in electronic media, however, may raise new issues unique to the Endorsement Guides regarding what is—or is not—an "endorsement." The Commission will address issues that are unique to a particular rule or guide on a case-by-case basis or during the regular review of the rule or guide.

The Commission does not consider the issuance of this proposal, or any future policy statement that may result from this proceeding, to constitute either a new rule or a substantive amendment of its current rules. The policy statement would not create any new rights, duties, obligations, or defenses, but instead would clarify the rights, duties, obligations, or defenses that currently exist pursuant to the rules and guides. Further, the Commission would retain its discretion for determining how to proceed in particular cases. The Commission will follow the rulemaking procedures required to substantively amend a rule, if such amendments are necessary to extend a particular rule's coverage to electronic media. Additionally, this proposal or any future policy statement will not affect the Commission's jurisdiction.²⁵

C. Public Workshop

To assist in developing its proposed enforcement policy statement, the Commission is soliciting comment from all interested parties regarding the issues raised in this Notice. The Commission also seeks comment as to the advisability of convening a public workshop to discuss the issues raised in this Notice. A workshop would afford Commission staff and interested parties a further opportunity to discuss issues related to the applicability of the Commission's rules and guides to electronic media. The workshop would not be intended to achieve a consensus among participants, or between participants and Commission staff, with regard to any issue raised in this Notice. Persons interested in attending or participating in such a workshop are requested to notify Commission staff in the comment submitted in response to this proposal. If the Commission decides to convene a public workshop, it will announce the date, time and location of the workshop in a separate Notice in the *Federal Register*.

II. Proposals for an Enforcement Policy Statement

A. The Applicability of Rules and Guides to New Forms of Electronic Media

One objective of the proposed policy statement would be to reduce any uncertainty regarding whether specific Commission rules and guides apply to electronic media. The Commission's rules and guides generally address representations made about certain products or services²⁶ and other commercial activities.²⁷ The proposed policy statement would clarify that (1) rules and guides that apply to representations generally without reference to, or limitation on, the medium used to disseminate them apply equally to representations disseminated through electronic media; and (2) rules and guides that specify how or where representations are disseminated are broad enough to apply to representations disseminated through electronic media.

1. Rules and Guides That Apply to Representations Generally

Many rules and guides are not limited to any media or mode of dissemination. Rather, they apply generally to representations or any form of advertising.

Example 1: The Guides for the Jewelry, Precious Metals, and Pewter Industries ("Jewelry Guides"), 16 CFR 23.0(c), apply to "claims and representations about industry products included in labeling, advertising, promotional materials, and all other forms of marketing * * *."

Example 2: The Guides for Select Leather and Imitation Leather Products ("Leather Guides"), 16 CFR 24.2(g), state that disclosures should be made "in all advertising of such products irrespective of the media used."

Example 3: The Rule Concerning Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets ("TV Picture Size Rule"), 16 CFR 410.1, addresses "designations" used to refer to television picture sizes without specifying how or where the designation is made (e.g., orally, in television advertisements, in print advertisements, etc.).

For this category, the plain language of each rule and guide applies to

²⁶ See, e.g., Guides for the Use of Environmental Marketing Claims, 16 CFR part 260 (addressing environmental claims made about products and services).

²⁷ See, e.g., Rule Concerning the Preservation of Consumers' Claims and Defenses, 16 CFR part 433 (requiring that consumer credit contracts contain certain provisions).

²⁵ See 15 U.S.C. 44, 45(a)(2); Section 2 of the McCarran-Ferguson Act, 15 U.S.C. 1012(b).

representations and claims in any medium, including electronic media. The policy statement would merely clarify that when a rule or guide does not limit how covered representations are communicated to consumers, how advertising is disseminated, or where commercial activities occur, the provisions of the rule or guide apply to such activities in electronic media.²⁸

2. Rules and Guides Referencing Specific Modes of Communication

Some rules and guides specify where or how representations or other information are disseminated, e.g., referring to "written" advertisements or "direct mail promotional materials," or specifying that information needs to be provided to others "in writing."

Example 1: The disclosure obligations of the Telemarketing Sales Rule, 16 CFR part 310, are triggered when consumers call telemarketers in response to direct mail solicitations (unless certain disclosures appear in the direct mail solicitation).²⁹ The term "direct mail solicitations" is not defined in the Rule. (See, discussion at II. B. 2.)

Example 2: The Rule Concerning Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles ("Alternative Fuels Rule"), 16 CFR 309.11, 309.13, requires industry members to certify the fuel rating of certain alternative fuels when they transfer fuel to anyone who is not a consumer.³⁰ The Rule states that certifications may be made by delivery ticket, or by a letter or "written statement."

As discussed in greater detail below, the Commission believes that these

²⁸ The Mail and Telephone Order Merchandise Rule ("Mail Order Rule"), 16 CFR part 435, applies to orders for merchandise made using certain media, such as the telephone. The Mail Order Rule defines the term "telephone" broadly, so that the Rule covers orders placed by facsimile or by computer through telephone modems. 16 CFR 435.2(b). Thus, this Rule expressly encompasses electronic media because information is transmitted over the telephone infrastructure. Another provision of the Mail Order Rule states that mail or telephone order sales occur regardless of "the method used to solicit the order." 16 CFR 435.2(a). Thus, the Rule covers any means of soliciting orders, including those solicitations via electronic media.

²⁹ During the promulgation of the Telemarketing Sales Rule, the Commission stated that it did not have sufficient information to justify coverage of online services under the Rule's requirements, and thus, this Rule does not apply to transactions conducted entirely on the Internet. 60 FR 30406, 30411 (June 8, 1995). Any modification to this general coverage will be handled separately, if needed.

³⁰ The Rule also requires labels to be placed on fuel dispensers and on alternative fueled vehicles. Since these requirements do not raise concerns regarding the use of electronic media, they are not addressed in this Notice.

illustrated specifications include the use of electronic media and that such inclusion is consistent with the intention of rules and guides containing such specifications. Moreover, in certain instances, it may be beneficial for firms to use electronic media to comply with the requirements of the rules and guides. Thus, it is proposed that the policy statement would clarify that those rules and guides apply equally to electronic media.

B. Interpretation of Terms Used in Rules and Guides

The Commission's rules and guides use certain terms that may be more commonly used in a paper-based context. With the increasing use of computers, the meaning of such terms already has evolved to take into account new technologies. The proposed policy statement would clarify that the Commission interprets these terms in light of the use of new technologies so that industry members understand their obligations under the Commission's rules and guides.

1. The Terms "Writing," "Written" and "Printed"

Many of the Commission's rules and guides use the terms "writing," "written," or "printed" with reference to certain documents.³¹ For example, the Appliance Labeling Rule, 16 CFR 305.4(d), states that it is unfair or deceptive to make any representation "in writing (including a representation on a label) or in any broadcast advertisement," with respect to energy use or efficiency of certain products, unless the product has been tested in accordance with the Rule.³² Neither the Rule nor the enabling statute, the Energy Policy and Conservation Act, defines the term "in writing." The Appliance Labeling Rule also requires that certain disclosures be made in catalogs, which are defined as "printed material which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product." 16 CFR 305.2(m), 305.14. The Rule does not define the term "printed."

With the use of new technology, the terms "writing," "written," and "printed" are not merely associated with communications on paper. The proposed policy statement would clarify

³¹ The rules and guides discussed in this section are used as examples and not as an exhaustive list of the rules and guides that use the described terms.

³² This provision simply restates section 323(c) of the Energy Policy and Conservation Act, 42 U.S.C. 6201, which states that such representations are considered unfair or deceptive acts or practices in violation of the FTC Act.

that, when used in the Commission's rules and guides, the terms "written," "writing," and "printed" refer to information that is capable of being preserved in a tangible form and read, as opposed to an oral statement that is intangible and transitory. As with information presented on paper, consumers using electronic media can read the information and preserve it for possible later review either by printing it on paper, saving it on disk, or by some other means.

Using this interpretation, the Appliance Labeling Rule's substantiation requirements for energy efficiency representations made "in writing . . . or in any broadcast advertisement" would apply to representations in electronic media that are capable of being preserved and read, such as representations on CD-ROMs or on the Internet. Further, the Commission would interpret the Rule's definition of catalog ("printed material") to include any material that is capable of being preserved in tangible form and read, and that also meets the remainder of the Rule's definition (e.g., from which a retail consumer can order a covered product).

The Commission solicits comment on its proposed interpretation of the terms "written," "writing," and "printed" that apply to the use of electronic media. The Commission seeks information on whether the interpretation adequately reflects the understanding of the terms and the underlying purpose of the rules and guides that use them, and accounts for technological developments.

2. The Term "Direct Mail"

The understanding of other terms also has evolved with the advent of new technology. The concept of "mail," for example, is understood to encompass electronic mail through the Internet as well as traditional mail delivery.³³ Some of the Commission's rules and guides refer to "direct mail," in the context of direct mail solicitations. For example, the Telemarketing Sales Rule, 16 CFR 310.6(e), applies to telephone calls initiated by consumers in response to "direct mail solicitations," unless specified information is disclosed in the solicitation.³⁴

Where the Commission's rules or guides refer to "direct mail," the

³³ Traditional mail includes mail delivered by the United States Postal Service as well as by private mail carriers.

³⁴ The Rule always applies to consumer telephone calls in response to direct mail solicitations for certain types of products and services, regardless of the disclosures made in the solicitation. See 16 CFR part 310 for the full text of the Rule.

proposed policy statement would state that the term refers to private communications, i.e., traditional mail as well as electronic communications that are individually addressed and capable of being received privately. This interpretation would clarify that direct mail includes those communications that are directed to particular individuals, such as facsimiles or e-mail, but not directed to the public at large, as are Internet bulletin boards.³⁵

E-mail, for example, requires that the sender address the message to individual recipients' e-mail addresses (which is true even if the sender addresses a single e-mail to multiple individuals at their personal e-mail addresses) and is capable of being received privately by the recipients. Therefore, telemarketers or sellers who send individually addressed e-mail that provides a telephone number for consumers to call may be subject to the provisions of the Telemarketing Sales Rule, 16 CFR part 310.

The Commission solicits comment regarding whether its proposed interpretation of the term "direct mail" adequately reflects the understanding of the term and appropriately encompasses the electronic equivalents of "direct mail." The Commission also solicits comment on whether targeted advertising on the Internet should be considered as the electronic equivalent of "direct mail." For example, some Internet advertisers track users' interests through their click patterns or use of search terms. These advertisers may then target advertisements to a particular user. Although this advertising appears on a Web site, which generally may be considered to be a public forum, the targeted advertisement is addressed to a particular user's computer and is capable of being received privately by that user.

3. Use of Electronic Media To Comply With Affirmative Requirements

Some rules and guides require or recommend that businesses provide information in writing to another person. The Commission recognizes that it may be easier, more efficient and less costly for industry members to comply with various requirements by using electronic media. This is consistent with the Commission's intention that its rules and guides should not discourage the use of electronic media.

The Automotive Fuel Ratings, Certification and Posting Rule, 16 CFR

³⁵ Messages posted on Internet bulletin boards, however, may be considered to be advertising for the purposes of the Telemarketing Sales Rule, 16 CFR 310.6(e), and other rules and guides.

306.6, for example, requires that industry members certify the fuel's octane rating when they transfer fuel to anyone who is not a consumer.³⁶ The Rule permits industry members to do this in two ways: Members may include with each transfer, a delivery ticket or other paper such as an invoice or "any other written proof of transfer," or they may "(g)ive the person a letter or other written statement" that contains certain information. 16 CFR 306.6(a) and (b). With the Commission's interpretation of the term "written," described above, the transferor could deliver information in a form that is capable of being preserved in a tangible form and read. Thus, the transferor could use electronic media, such as e-mail or facsimile, to give the person "a letter or other written statement."³⁷

The requirement that certain information should be provided to another person implies that such information actually be received by that person. Therefore, although it may be advantageous to use new technology to comply with affirmative requirements, industry members should be mindful of certain issues. For example, the requirement to give, mail, deliver or furnish information would not be met if the intended recipient does not have the technological capabilities of receiving or viewing the information. In certain circumstances, industry members may need to obtain the recipient's consent to deliver information by a certain electronic method, inform the recipient of any particular media applications needed to view the information, or deliver the information on paper. Because there may be technological difficulties that could impede the electronic delivery of information, it may be necessary for industry members to confirm that the recipient in fact received the information. Most facsimile machines routinely confirm when the facsimile has been successfully transmitted. Senders, for example, might require recipients to confirm receipt by return e-mail or verify in some manner the recipients' access to information posted on a Web site. The Commission seeks comment on what, if any, guidance is necessary regarding the use of electronic media to comply with affirmative disclosure requirements.

4. Other Terms

Where other terms are reasonably susceptible of being interpreted as

³⁶ As mentioned above, the Alternative Fuels Rule, 16 CFR part 309, contains a similar requirement.

³⁷ Even if electronic media is used to provide certain "written" information, the Rule's record-keeping requirements would continue to apply.

applying to, or occurring within the realm of, electronic media, the proposed policy statement would clarify that the terms are to be read broadly and inclusively so as to apply to electronic media. The Guides Against Bait Advertising ("Bait Advertising Guides"), 16 CFR 238.1, for example, advise that advertisements containing an offer to sell a product should not be published unless the offer is a bona fide effort to sell the advertised product. The Commission interprets the term "publish" to include information that is made available to the public in online catalogs or other Web pages.³⁸ The Commission solicits comment on this general proposal and whether there are additional terms that should be specifically addressed by the Commission in a policy statement.

C. Clear and Conspicuous Disclosures in Electronic Media

The application of the Commission's rules and guides to electronic media advertising presents new issues regarding the evaluation of disclosures.³⁹ Many rules and guides contain disclosure requirements mandating or advising that disclosures be "clear and conspicuous." Numerous Commission precedents offer guidance on the meaning of the clear and conspicuous standard in traditional advertising media. Electronic media advertisements, however, incorporate both traditional and unique features that raise new issues in evaluating the effectiveness of disclosures. In proposing guidance in this area, the Commission is attempting to provide consumers with comprehensible disclosures to prevent deception, while not imposing undue burdens or restrictions on businesses in complying with the disclosure requirements.

1. Disclosures Required or Advised by Rules and Guides

The rules and guides that contain disclosure requirements generally require or recommend that material information be disclosed to consumers to prevent deception, to ensure that consumers receive complete information regarding the terms of a transaction, or to further public policy goals. For example, the Endorsement Guides, 16 CFR 255.2, protect against

³⁸ This Interpretation is consistent with the Guides' definition of the term "advertising" as including "any form of public notice however disseminated or utilized." 16 CFR 238, n. 1.

³⁹ The Commission discusses the Internet specifically in this section because the examples are most pertinent to disclosures on Web sites. The guidance proposed by the Commission below, however, also may be applicable to disclosures in other electronic media.

deception by advising that advertisers disclose what performance consumers can generally expect with a product when an endorsement is not representative of that performance. In addition, the Guides for the Advertising of Warranties and Guarantees ("Warranty Guides"), 16 CFR 239.2(a), provide for complete disclosure of warranty information by advising that if an advertisement mentions a product warranty, a disclosure should be made that consumers may review the complete details of the warranty prior to purchase at the place where the product is sold. The required energy efficiency disclosures in the Appliance Labeling Rule, 16 CFR 305.4, further the statutory policy goal of promoting energy conservation.

Some disclosures are required when a certain term, representation or claim (i.e., a "triggering representation") is made. The Leather Guides, 16 CFR 24.2, for example, advise that the term "leather" (the triggering term) be qualified when used to describe a product that is not composed in all substantial parts of leather. Other disclosure requirements may not be linked to a specific triggering term, but nonetheless are necessary to prevent deception, e.g., the Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry ("Used Auto Parts Guides"), 16 CFR 20.1(b), advise that it is unfair or deceptive to offer for sale or sell used auto parts unless the fact that the parts are used is disclosed in advertising and on invoices. In other cases, rules and guides advise that information be disclosed to consumers prior to the completion of the transaction, e.g., the Credit Practices Rule, 16 CFR 444.3, requires that certain information be disclosed to a cosigner prior to becoming obligated.

2. The Clear and Conspicuous Standard in Traditional Media

In all cases the required or advised disclosures must be effectively communicated to consumers. To achieve this general performance standard, the Commission's rules and guides require that disclosures be "clear and conspicuous," using that term or other conceptually similar articulations.⁴⁰ The Commission views

⁴⁰ The following are examples of other articulations found in the Commission's rules and guides: "clearly, adequately, and conspicuously," "clearly, conspicuously, and non-deceptively," "adequate and non-deceptive" (Guides for the Nursery Industry ("Nursery Guides"), 16 CFR 18.8(b)), "sufficiently clear and prominent" (Jewelry Guides, 16 CFR 23.1 n.2); "of such conspicuousness and clarity" (Leather Guides, 16 CFR 24.2(g)), and Guides for the Watch Industry, 16 CFR 245.3(o)), "clearly and adequately" (Tire

such terms as synonymous, and this Notice collectively refers to them as the "clear and conspicuous" standard. Other, more specific disclosure standards, such as "equally prominent," and "in close proximity to," are discussed below.

In order to determine whether the disclosure is effectively communicated, the Commission considers the disclosure in the context of all of the elements of the advertisement.⁴¹ Ordinarily, a disclosure is clear and conspicuous, and therefore is effectively communicated, when it is displayed in a manner that is readily noticeable, readable and/or audible (depending on the medium), and understandable to the audience to whom it is disseminated.⁴²

The Commission examines a number of factors to determine whether disclosures in traditional media (e.g., print, television, and radio) meet this general performance standard. Thus, in print or other visual media, the Commission may consider a disclosure's type size, placement, color contrast to background, duration, and timing, as well as the existence of any images that detract from the effectiveness of the message. In audio messages, such as those delivered over the radio, the Commission may examine the volume, cadence, and placement of a disclosure, as well as the existence of any sounds that detract from the effectiveness of the message.⁴³ In all media, the Commission

Advertising and Labeling Guides ("Tire Guides"), 16 CFR 228.14(b)(3); Bait Advertising Guides, 16 CFR 238.3(c); Retail Food Store Advertising and Marketing Practices Rule, 16 CFR 424.1; "of sufficient clarity and conspicuousness" (Guides for the Decorative Wall Paneling Industry ("Wall Paneling Guides"), 16 CFR 243.1(c)(4)); "legible and conspicuous" (Rules and Regulations Under Fur Products Labeling Act, 16 CFR 301.36(a)(1)); and "conspicuous" (Tire Guides, 16 CFR 228.11).

⁴¹ This approach is set out in the Commission's general policy on deception. "[T]he Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances to the consumer's detriment." *Deception Statement*, 103 F.T.C. at 176. In evaluating an advertisement or other promotional message, the Commission focuses not on the individual elements of the message in isolation, but on its "overall" or "net" impression. *Id.* at 175, n. 4. See also *American Home Products*, 98 F.T.C. 136, 374 (1981), *aff'd* 695 F.2d 681 (3d Cir. 1982).

⁴² *Deception Statement*, 103 F.T.C. at 180-181. "Qualifying disclosures must be legible and understandable. In evaluating such disclosures, the Commission recognizes that in many circumstances, reasonable consumers do not read the entirety of an ad or are directed away from the importance of the qualifying phrase by the acts or statements of the seller."

⁴³ E.g., *Kraft, Inc.*, 114 F.T.C. 40, 124 (1991), *aff'd*, 970 F.2d 311 (7th Cir. 1992), *cert. denied*, 507 U.S. 909 (1993); *Thompson Medical Co.*, 104 F.T.C. 648, 797-98 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987); See also Commission consent orders in *European Body Concepts, Inc.*, Docket No. C-3590 (June 23, 1995);

further evaluates the language and syntax of the disclosure to determine whether it is likely to be understood by the relevant audience.

3. Special Issues in Electronic Media

Because the newer forms of electronic media transmit information in writing and through audio and visual messages, the same factors considered by the Commission in applying the clear and conspicuous standard in traditional media apply. The special attributes of advertising on electronic media, however, may call for additional guidance. Many Internet advertisements, for example, include scroll bars to maneuver down pages that usually exceed one screen in length. They also often include hyperlinks, both to other pages on a Web site as well as directly to other Web sites. On the Internet and in other electronic media, new graphics technologies create messages that scroll, blink, spin, pop-up, relocate, etc.

These unique features may require the Commission to give special consideration to certain factors in determining whether a disclosure is effectively communicated on electronic media.⁴⁴ As is true for any medium, the specific elements necessary to effectively communicate a disclosure may vary depending on the nature of the advertisement and the nature of the claim.⁴⁵ The focus on, or the weight given to, any specific factor will vary accordingly.

4. Factors Used To Evaluate Clear and Conspicuous Disclosures on Electronic Media

a. *Unavoidability.* The Commission believes that, to ensure effectiveness, disclosures ordinarily should be unavoidable by consumers acting reasonably. On the Internet or other electronic media, this means that consumers viewing an advertisement should necessarily be exposed to the disclosure in the course of a communication without having to take affirmative action, such as scrolling down a page, clicking on a link to other

Eggland's Best, Inc., Docket No. C-3520 (Aug. 15, 1994).

⁴⁴ Certain rules and guides expressly include factors that are analyzed in determining the adequacy of a disclosure. For example, the Used Auto Parts Guides require that disclosures be "of such size or color contrast and so placed as to be readily noticeable." 16 CFR 20.1(b)(2). Such specific articulations are consistent with the general "clear and conspicuous" standard and would continue to inform the analysis of whether the disclosure is effectively communicated.

⁴⁵ For example, some e-mail messages or facsimiles may contain only text, while Web pages or CD-ROMs may contain text, graphics, video and audio.

pages, activating a "pop up," or entering a search term to view the disclosure.

b. *Access to Disclosures.* The Commission believes that in order to be effectively communicated, disclosures should remain accessible by consumers at all times during the communication. Therefore, after initially viewing a Web page that contains disclosures, a consumer who hyperlinks to another page should not be prevented from returning to the page containing the disclosures.

c. *Proximity and Placement.* Internet and other electronic media advertisements often include many pages and the length of each individual page can far exceed that of a traditional off-line page. Consumers may choose not to scroll completely through each page and not to link to each available page on the Web site, thus possibly missing important disclosures.

Based on its experience in evaluating disclosures in traditional media, the Commission believes that the effectiveness of disclosures is ordinarily enhanced by their proximity to the representation they qualify. This is especially important for disclosures that are made because of a triggering representation. For example, disclosures on the same screen as the triggering representation are likely to be more effective than those on separate screens. For those disclosures that are not required in response to a triggering representation, the disclosure nevertheless is likely to be more effective if it is proximate to relevant information.

The Commission also recognizes that electronic media offers new ways of placing claims in advertisements as compared to advertisements on paper. For example, some Web pages may use frames to separate the screen. Although a consumer may scroll down the Web page, a frame can remain constant on the side, top or bottom of the screen. The Commission solicits comment on whether consumers generally notice disclosures placed within a separate frame and the effectiveness of such placement as compared to disclosures that appear elsewhere on a Web page.

d. *Prominence.* Disclosures that are large in size and/or emphasized through a sharply contrasting color, and remain visible or audible for a sufficiently long duration, are likely to be more effective than those lacking such prominence. Electronic media affords new possibilities for adding to (or detracting from) the prominence of disclosures through animated graphics, graphics that facilitate segregating certain claims, and displays that remain on the screen for a long or indefinite duration.

Disclosures that are supported by new display technologies such as animation, or that are distinguished from (i.e., not embedded within) surrounding text, such as within a border, may or may not be more prominent. The Commission solicits comment on whether these technologies, and other technologies unique to electronic media advertisements add to or detract from the prominence of disclosures.

e. *Non-Distracting Factors.* Even if a disclosure is large in size and long in duration, other elements of an advertisement may distract consumers so that they fail to notice, read, or listen to the disclosure. For example, Web pages may contain large flashing images, background sounds, or other items that are separate from the disclosure and may reduce the prominence of the disclosure. The Commission solicits comment on whether there are specific display technologies that distract consumers and reduce the effectiveness of disclosures.

f. *Repetition.* The repetition of a disclosure in conjunction with the claim that triggers it tends to enhance the likelihood of consumers noticing and understanding them. This is particularly relevant to Internet advertisements which can be extremely lengthy, with many and/or long Web pages.

g. *Audio and Visual Presentation.* Some electronic media advertisements contain both visual⁴⁶ and audio elements. The Commission believes that disclosures are likely to be more effective if they are presented in the same mode (audio or visual) in which a triggering or relevant claim is presented. In addition, research suggests that disclosures that are made in both visual and audio modes generally are more effectively communicated than disclosures made in either mode alone.⁴⁷ Therefore, the Commission also believes that the display of disclosures both visually and in audio, for those promotions that are presented in both modes, is likely to be more effective than disclosures in only one.

The Commission solicits comment on all of the factors set forth above. In

⁴⁶ The Commission is using the term "visual" in this Notice to include both static visual displays (e.g., a fixed image) and non-static video displays (e.g., moving video clips).

⁴⁷ Maria Grubbs Hoy & Michael J. Stankey, *Structural Characteristics of Televised Advertising Disclosures: A Comparison with the FTC Clear and Conspicuous Standard*, J. Advertising, June 1993, at 47, 50; Todd Barlow & Michael S. Wogalter, *Alcoholic Beverage Warnings in Magazine and Television Advertisements*, 20 J. Consumer Res. 147, 151, 153 (1993); Noel M. Murray, et al., *Public Policy Relating to Consumer Comprehension of Television Commercials: A Review and Some Empirical Results*, 16 J. Consumer Pol'y 145, 164 (1993).

particular, the Commission solicits comment on (1) its underlying assumptions about consumer perceptions regarding Internet and other electronic media advertisements, (2) the discussion of the state of technology, including any existing or reasonably foreseeable technology that is not addressed in this Notice, and (3) the costs and benefits of applying the factors discussed above. The Commission also requests comment on specific questions listed in Part III, below.

5. Additional Specific Standards Contained in Rules and Guides

Some of the Commission's rules and guides specify in more detail the manner in which the disclosure should be made, instead of simply stating that the disclosure should be clear and conspicuous. In these instances, the underlying objective of the rule or guide is the same: the effective communication of the disclosure. Thus, the Commission intends to draw on the factors described above, as embellished by the specific requirements of the individual rule or guide, in evaluating compliance with the disclosure provisions of the rules and guides in advertising on electronic media.

For example, certain rules and guides specify a particular type-size in which the disclosure should appear or contain language such as "of equal size and conspicuousness," "of equal conspicuousness," and "more prominently."⁴⁸ The Commission proposes that these rules and guides be interpreted as requiring compliance with the general effective communication performance standard, as well as the specific size and prominence criteria listed in the rule or guide. Other rules and guides state that disclosures should be clear and conspicuous and in close conjunction or proximity to a designated claim.⁴⁹ The Commission will evaluate whether the disclosure is effectively communicated, following the factors described above, with a special focus on the placement of the disclosure.

⁴⁸ See, e.g., Rule Concerning the Preservation of Consumers' Claims and Defenses, 16 CFR 433; Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR 303.41(b); Jewelry Guides, 16 CFR 23.4; and Rule Concerning Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR 432.2.

⁴⁹ See, e.g., Leather Guides, 16 CFR 24.2(g); Guides Against Deceptive Labeling and Advertising of Adhesive Compositions, 16 CFR 235.7; Wall Paneling Guides, 16 CFR 243.1(c)(4); Guides for the Household Furniture Industry, 16 CFR 250.1(b)(2); and Guide Concerning Use of the Word "Free" and Similar Representations, 16 CFR 251.1(c).

With respect to rules and guides that call for the placement of certain disclosures in a specific context, the Commission will consider interpreting the language in these rules and guides to permit alternate ways of disclosing information using electronic media, so long as the disclosure is effectively communicated to consumers and is consistent with the underlying objective of the rule or guide.⁵⁰

Similarly, when rules and guides contain specific disclosure provisions that may not translate precisely to the Internet, the Commission proposes to interpret these requirements for Internet advertising in a manner that is consistent, to the extent possible, with both the requirements of the rule or guide and the underlying objective of effective communication.⁵¹

The Commission solicits comment on these approaches to applying specific standards in rules and guides to electronic media marketing, and whether additional guidance regarding the specific standards is necessary.

6. Perspective of the Reasonable Consumer

In determining if representations or practices are deceptive, in any and all media, the Commission examines them from the perspective of a reasonable consumer. A representation or practice directed to a particular group, such as children, is evaluated from the perspective of a reasonable consumer within that group.⁵² The same "reasonable consumer" standard applies

⁵⁰For example, in the consent orders issued in *Americo Online, Inc.*, Docket No. C-3787, *Prodigy Services Corporation*, Docket No. C-3788, and *CompuServe, Inc.*, Docket No. C-3789, (Mar. 16, 1998), advertisements of a "free" offer must contain a disclosure directing consumers to the location where the terms and conditions of the offer can be found, and full disclosure of the terms, conditions, and obligations of the offer can occur during the online registration process, prior to consumers incurring any financial obligation.

⁵¹For example, the TV Picture Size Rule, 16 CFR 410.1, n. 2, prohibits the disclosure of required information in a footnote to which reference is made by an asterisk. Following the principles stated herein, this Rule would be interpreted as not allowing asterisked footnotes as well as their functional Internet equivalent—placing the disclosure in a separate location accessed by clicking on an icon or hyperlinking to a separate page. This is consistent with the Commission's proposal, discussed above, that disclosures should be unavoidable by consumers acting reasonably.

⁵²*Deception Statement*, 103 F.T.C. at 175, 179. Some rules and guides define the relevant audience for analyzing the adequacy of disclosures, e.g., "purchasers or prospective purchasers," "purchasers and prospective purchasers . . . casually reading, or listening to, such advertising," and "prospective purchasers." See *Nursery Guides*, 16 CFR 18.2; *Leather Guides*, 16 CFR 24.2(g); and *Warranty Guides*, 16 CFR 239.2(b), respectively. Other rules and guides do not address the issue.

to disclosures required by the rules and guides in electronic media advertising.

III. Request for Comments

The Commission solicits comments on the issues discussed in this Notice. Comments should, if appropriate, suggest specific alternatives to various proposals and indicate why alternative approaches would better serve the Commission's statutory mandate of protecting consumers against unfairness and deception. The Commission also seeks comment on the following specific questions:

Applicability of Rules and Guides to Electronic Media

1. Does the Commission's proposal to clarify the applicability of its rules and guides to electronic media provide adequate guidance to industry and to the public?
2. What are the costs and benefits to consumers of the Commission's proposed policy regarding the applicability of its rules and guides to electronic media?
3. What significant burdens or costs, including costs of compliance, would the proposed policy impose on firms subject to the provisions of a rule or guide? Would the proposed policy provide benefits to such firms?
 - a. What are the costs, burdens, and benefits of the proposed policy for small businesses in particular?
 - b. What changes should be made to the proposal to reduce the burdens or costs imposed on firms subject to the admonitions of the rules and guides?
 - c. How would these changes affect the benefits provided by the proposal?

Interpretations of Terms

4. Do the Commission's proposed interpretations of the terms "written," "writing," "printed," and "direct mail" provide adequate guidance to the public?
5. What are the costs and benefits of the proposed interpretations?
6. Do the Commission's proposed interpretations of the terms listed encompass all the newer forms of electronic media?
7. Are there more appropriate alternatives to the various interpretations of the terms proposed by the Commission? If so, please explain the alternative interpretation and the benefits of the alternative.
8. Does the Commission's discussion of "direct mail" adequately address the various new means of electronic communication, e.g., e-mail, facsimiles or list servers, and adequately account for the differences inherent in these various formats?

9. Should the Commission's interpretation of the term "direct mail" be limited to communications that are capable of being received privately? Should individually addressed communications posted on Internet Bulletin Boards or USENET groups be considered "direct mail"?

10. Should Web page or banner advertisements that are targeted to certain consumers on consumer preference information be characterized as "direct mail"? If so, are such advertisements adequately addressed by the Commission's proposed interpretation? To what extent should specific forms of online targeted marketing (e.g., push technology or consumer-selected "channels") be considered "direct mail"?

11. What issues, if any, need to be addressed by the Commission regarding the use of electronic media to deliver information required to be provided in writing by a rule or guide?

- a. How should the Commission address those issues?
- b. Under what circumstances, if any, should the Commission advise that information be provided on paper and not electronically?

12. Are there other terms in the rules and guides that should be specifically addressed by the Commission in the context of electronic media? If so, how should the terms be interpreted and why?

Disclosures

13. Do the proposed factors for evaluating disclosures provide adequate guidance to industry regarding making disclosures in electronic media?

14. What are the costs and benefits of applying the factors proposed by the Commission to evaluate disclosures required or recommended by the rules and guides?

15. To what extent will an individual consumer's Web browser or computer capabilities affect the format of an advertisement (e.g., Web page), and therefore, the format of a disclosure? Should the Commission advise that advertisers take these differences into account in designing their advertising to ensure that disclosures are clear and conspicuous?

16. What technologies exist to prevent or hinder consumers from accessing a disclosure after initially viewing it? What are the costs and benefits of advising against their use?

17. Are the Commission's underlying assumptions about consumers' perceptions with respect to Internet and other electronic media advertisements accurate? Are there surveys, copytests,

or other direct evidence of consumer behavior that will aid the analysis?

a. How do consumers behave in navigating through a Web site, reading e-mail or viewing a CD-ROM?

i. Do consumers generally scroll completely through Web pages or e-mail?

ii. Do consumers generally link to each available page on the Web site?

b. Under what circumstances are consumers more likely to examine the top of a Web page, rather than the middle or the bottom of a Web screen or page?

c. Are consumers more likely to notice information that is placed within a separate frame on a Web page or in other electronic media advertisements?

d. In what circumstances, if any, must a disclosure appear multiple times to be effectively communicated?

18. What features and technologies particular to advertising on electronic media enhance or detract from the prominence, and therefore the effectiveness, of a disclosure?

a. Do disclosures with graphical elements, such as pop-up features, animation, blinking, or borders surrounding disclosures, enhance or detract from the effectiveness of disclosures?

b. What features can appear in Internet advertisements that may distract consumers from noticing, reading, or listening to disclosures?

19. Could the interactive nature of the Internet present an opportunity to assure that disclosures are noticed and understood by the consumer (i.e., could a consumer be required to click on an "Understood" button following the

disclosure before being permitted to link to other information)? What are the costs and benefits of using such features?

General

21. Are there new technologies that are not adequately addressed by the Commission's proposals? If so, how should these technological changes be addressed by the Commission?

22. Are there other issues that the Commission should address in clarifying the applicability of its rules and guides to electronic media?

By direction of the Commission.

Donald S. Clark,
Secretary.

APPENDIX

Titles	CFR parts
Guides for the Nursery Industry	16 CFR 18
Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry	16 CFR 20
Guides for the Jewelry, Precious Metals, and Pewter Industries	16 CFR 23
Guides for Select Leather and Imitation Leather Products	16 CFR 24
Tire Advertising and Labeling Guides	16 CFR 228
Guides Against Deceptive Pricing	16 CFR 233
Guides Against Deceptive Labeling and Advertising of Adhesive Compositions	16 CFR 235
Guides Against Bait Advertising	16 CFR 238
Guides for the Advertising of Warranties and Guarantees	16 CFR 239
Guides for the Dog and Cat Food Industry	16 CFR 241
Guides for the Decorative Wall Paneling Industry	16 CFR 243
Guides for the Watch Industry	16 CFR 245
Guides for the Household Furniture Industry	16 CFR 250
Guide Concerning Use of the Word "Free" and Similar Representations	16 CFR 251
Guides for the Feather and Down Products Industry	16 CFR 253
Guides for Private Vocational and Home Study Schools	16 CFR 254
Guides Concerning Use of Endorsements and Testimonials in Advertising	16 CFR 255
Guides for the Law Book Industry	16 CFR 256
Guides Concerning Fuel Economy Advertising for New Automobiles	16 CFR 259
Guides for the Use of Environmental Marketing Claims	16 CFR 260
Rules and Regulations Under the Wool Products Labeling Act of 1939	16 CFR 300
Rules and Regulations Under Fur Products Labeling Act	16 CFR 301
Rules and Regulations Under the Textile Fiber Products Identification Act	16 CFR 303
Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act.	16 CFR 305
Automotive Fuel Ratings, Certification and Posting	16 CFR 306
Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992	16 CFR 308
Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles	16 CFR 309
Telemarketing Sales Rule	16 CFR 310
Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets	16 CFR 410
Retail Food Store Advertising and Marketing Practices	16 CFR 424
Use of Negative Option Plans by Seller in Commerce	16 CFR 425
Power Output Claims for Amplifiers Utilized in Home Entertainment Products	16 CFR 432
Preservation of Consumers' Claims and Defenses	16 CFR 433
Mail or Telephone Order Merchandise Rule	16 CFR 435
Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures	16 CFR 436
Credit Practices Rule	16 CFR 444
Used Motor Vehicle Trade Regulation Rule	16 CFR 455
Labeling and Advertising of Home Insulation	16 CFR 460
Interpretations of Magnuson-Moss Warranty Act	16 CFR 700
Disclosure of Written Consumer Product Warranty Terms and Conditions	16 CFR 701
Pre-Sale Availability of Written Warranty Terms	16 CFR 702
Informal Dispute Settlement Procedures	16 CFR 703

[FR Doc. 98-11942 Filed 5-5-98; 8:45 am]
BILLING CODE 8750-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 59

[FRL-6010-2]

RIN 2020-AA13

Reopening of Public Comment Period for Proposed Revisions of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period for the proposed rule entitled "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" that was published in the *Federal Register* of February 25, 1998. Several commenters requested additional time to analyze the proposed changes. In response, the Agency is reopening the comment period. The original comment period closed April 27, 1998.

DATES: Written comments must be submitted on or before June 5, 1998.

ADDRESSES: Comments should be submitted in writing to Enforcement and Compliance Docket and Information Center (2201A), Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460 or via electronic mail to crop-comments@epamail.epa.gov. Comments submitted on paper must be submitted in triplicate.

EPA will make available, both in paper form and on the internet, a record of comments received in response to this document. The official docket will be a paper record of all comments received in writing or by electronic mail. This record may be reviewed at room 4033 of the Ariel Rios Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20044. Persons interested in reviewing the comments must make advance arrangements to do so by calling 202-564-2614. A reasonable fee may be charged by EPA

for copying docket materials. The Agency also will publish a copy of the official docket on the Office of Enforcement and Compliance Assurance's internet home page at <http://www.epa.gov/oeca/regstat2.html>. The Agency intends that this internet docket should duplicate the official paper record, however, if technological or resource limitations make it infeasible to include one or more comments on the internet docket, the internet docket will identify those comments available only in the official paper docket.

FOR FURTHER INFORMATION CONTACT: Scott Garrison (202-564-4047), Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement (2248A), U.S. Environmental Protection Agency, Washington, D.C. 20460.

List of Subjects

40 CFR Part 22

Environmental protection, Administrative practice and procedure.

40 CFR Part 59

Environmental protection, Administrative practice and procedure, Rules governing hearings on field citations.

Dated: April 28, 1998.

Eric V. Schaeffer,

Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance.

[FR Doc. 98-12034 Filed 5-5-98; 8:45 am]
BILLING CODE 8560-60-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 279

[FRL-5969-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's proposal would eliminate errors and clarify ambiguities in the used oil management standards. Today's proposal, if promulgated, would make clear when used oil contaminated with polychlorinated biphenyls (PCBs) is regulated under the used oil management standards and when it is not, that the requirements applicable to releases of used oil apply in States that are not authorized for the RCRA base program, that mixtures of

conditionally exempt small quantity generator (CESQG) wastes and used oil are subject to the used oil management standards irrespective of how that mixture is to be recycled, and that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. Today's proposal would also amend three incorrect references to the pre-1992 used oil specifications in the provisions which address hazardous waste fuel produced from, or oil reclaimed from, oil bearing hazardous wastes from petroleum refining operations.

In the Final Rules section of today's *Federal Register*, the U.S. Environmental Protection Agency (EPA) is also publishing a parallel direct final rule containing identical amendments which will become effective unless relevant adverse comments are received in response to this rulemaking. For more information on the direct final rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: Comments on this proposed rule must be received on or before June 5, 1998 and notice of intent to file adverse comments must be received on or before May 20, 1998.

ADDRESSES:

Intent To Submit Comments

Persons wishing to notify EPA of their intent to submit adverse comments on this action should contact Alex Schmandt by mail at Office of General Counsel (2366), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (202) 260-1708, by fax at (202) 260-0584, or by Internet e-mail at schmandt.alex@epamail.epa.gov.

Submitting Comments

Commenters must send an original and two copies of their comments referencing docket number F-98-CUOP-FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F-98-CUOP-FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Viewing Docket Materials

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket

Identification Number is F-98-CUOP-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT:

RCRA Hotline. For general information, contact the RCRA Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412-9810 or TDD (703) 412-3323.

Rulemaking Details. For more detailed information on specific aspects of this rulemaking, contact Tom Rinehart by mail at Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (703) 308-4309, or by Internet e-mail at rinehart.tom@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Direct Final Rulemaking Process

In the Final Rules Section of today's *Federal Register*, EPA is issuing a direct final rule with identical amendments which will become effective unless relevant adverse comments are received in response to this rulemaking. If relevant adverse comment is received on one or more of the amendments, EPA will publish timely notification in the *Federal Register* withdrawing the amendment(s) that is the subject of adverse comment. Any amendments in this rulemaking that do not receive relevant adverse comment will become effective on the date set out in the accompanying direct final rule, notwithstanding any adverse comment on other portions of this rulemaking. A

relevant comment will be considered to be any comment substantively criticizing an amendment. This notice of proposed rulemaking may serve as the basis of a subsequent final rule if an amendment that is the subject of adverse comment is withdrawn as described above. For instructions on notifying EPA of your intent to comment and for instructions on how to submit comments, please see the **ADDRESSES** section above.

Internet Availability

This proposed rule and the following supporting materials are available on the Internet:

Docket Item: Petition for Review.

From: Edison Electric Institute, et al.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Petitioners' Preliminary and Non-binding Statement of Issues to be Raised on Appeal.

From: Edison Electric Institute, et al.
To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Letter describing Edison Electric Institute's outstanding issues and proposals for resolving these issues.

From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Letter describing Edison Electric Institute's issues including a request that EPA issue a technical correction to 40 CFR 279.10(i).

From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Letter requesting that EPA resolve outstanding issues.

From: Edison Electric Institute, et al.
To: U.S. Environmental Protection Agency.

Docket Item: Settlement Agreement.
From: Edison Electric Institute, et al.
U.S. Environmental Protection Agency, and U.S. Department of Justice.

To: U.S. Court of Appeals for the District of Columbia Circuit.

Docket Item: Memorandum that describes an abbreviated state authorization revision application procedure for state rule changes in response to minor federal rule changes or corrections.

From: Michael Shapiro, Director, Office of Solid Waste.

To: Regional Waste Management Division Directors.

Follow these instructions to access this information electronically:

WWW URL: <http://www.epa.gov/epaoswer/hazwaste/usedoil/index.htm>.
FTP: <ftp://ftp.epa.gov>.
Login: anonymous.

Password: your Internet e-mail address.

Path: [/pub/epaoswer](http://pub.epaoswer).

Official Record

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Response to Comments

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the *Federal Register* or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Outline of Today's Document

- I. Authority
- II. Background and Summary of Proposed Rule
- III. Regulatory Amendments
 - A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil
 - B. Response to Releases of Used Oil
 - C. Mixtures of CESQG Wastes and Used Oil
 - D. Reference to the Used Oil Fuel Specification
 - E. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil
- IV. Regulatory Requirements
 - A. Executive Order No. 12866
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
 - D. Unfunded Mandates Reform Act

I. Authority

These regulations are issued under the authority of sections 1004, 1006, 2002(a), 3001 through 3007, 3010, 3013, 3014, 3016 through 3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil Recycling Act, as amended, 42 U.S.C. 6901, 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937 through 6939 and 6974.

II. Background and Summary of Proposed Rule

Today's proposal would make technical corrections and clarify ambiguities to existing regulatory language concerning used oil at 40 CFR Part 279 and 40 CFR Part 261. The

clarification of the applicability of the used oil management standards to PCB contaminated used oil is undertaken as part of a settlement agreement in response to a lawsuit challenging EPA's final rule promulgated on May 3, 1993, (58 FR 26420). *Edison Electric Institute v. U.S. EPA* (D.C. Circuit No. 93-1474). The May 1993 rule corrected technical errors and provided clarifying amendments to the used oil management standards promulgated on September 10, 1992 (57 FR 41566). In addition, the Agency found several errors and ambiguities during review of the existing regulatory language concerning used oil. Today's proposal would eliminate these mistakes and clarify ambiguities in the used oil management standards.

These clarifications and corrections are presented in four separate sections, through which the Agency proposes to (1) clarify that used oil containing 50 ppm or greater PCBs is not subject to regulation under the used oil management standards at 40 CFR Part 279; (2) clarify that the response requirements at 40 CFR Part 279 for releases of used oil apply in states without RCRA base program authorization; (3) clarify that mixtures of CESQG waste and used oil are subject to the used oil management standards regardless of how that mixture is to be recycled; (4) amend the references to the used oil management standards in 40 CFR Part 261 to make them consistent with the standards at 40 CFR Part 279; and (5) clarify that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil.

III. Regulatory Amendments

A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil

Today's proposal would amend 40 CFR 279.10(i) to clarify the applicability of the used oil management standards of 40 CFR Part 279 to used oil containing PCBs. The proposed language reflects EPA's intent that used oil that contains less than 50 ppm of PCBs is subject to regulation under the used oil management standards. Used oil that contains 50 ppm or greater of PCBs is not subject to regulation under the used oil management standards, because the TSCA regulations at 40 CFR Part 761 provide comprehensive management of such used oil. The history of, and rationale for, this change are discussed in the recycled used oil notice in the

Final Rule section of today's **Federal Register**.

B. Response to Releases of Used Oil

Today's proposal would amend 40 CFR 279.22(d), 279.45(h), 279.54(g) and 279.64(g) to clarify that the response requirements for releases of used oil apply in states that are not authorized for the RCRA base program pursuant to RCRA Section 3006, 42 U.S.C. 6926, and, hence, that are not authorized for the used oil management standards. (Base program authorization refers to the RCRA program initially made available for final authorization, reflecting Federal regulations as of July 26, 1982.) At this time, Alaska, Hawaii, Iowa, Puerto Rico, the Virgin Islands, the Northern Mariana Islands and American Samoa do not have an authorized RCRA base program. The history of, and rationale for, these changes are discussed in the recycled used oil notice in the Final Rule section of today's **Federal Register**.

C. Mixtures of CESQG Wastes and Used Oil

Today's proposal would amend 40 CFR 261.5(j) to clarify that the regulatory provisions that address mixtures of CESQG wastes and used oil that are to be recycled, § 261.5(j) and § 279.10(b)(3), do not limit the applicability of the used oil management standards to such mixtures. Both provisions are intended to indicate that mixtures of CESQG wastes and used oil are subject to the used oil management standards, notwithstanding the conditional exemption of small quantity generator wastes from regulation as a hazardous waste. The history of, and rationale for, this change are discussed in the recycled used oil notice in the Final Rule section of today's **Federal Register**.

D. Reference to Used Oil Fuel Specification

Today's proposal would amend 40 CFR 261.6(a)(3)(iv)(A)-(C) to reflect the recodification of the used oil requirements at 40 CFR part 279. The three provisions address hazardous waste fuel produced from, or oil reclaimed from, oil bearing hazardous wastes from petroleum refining operations. All three provisions incorrectly reference the pre-1992 used oil fuel specification provision, § 266.40(e), which was recodified in 1992 at § 279.11. These provisions should have been amended in 1992.

E. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil

Today's proposal would amend 40 CFR 279.74(b) to clarify that the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification (on-specification used oil) must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The history of, and rationale for, this change are discussed in the recycled used oil notice in the Final Rule section of today's **Federal Register**.

IV. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
 - (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
 - (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.
- OMB has reviewed this rule and has determined it to be not significant under the terms of the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-602, requires that Federal agencies examine the impacts of their regulations on "small entities". If a rulemaking will have a significant impact on a substantial number of small entities, agencies must consider regulatory alternatives that minimize economic impact.

EPA believes that today's proposal will not impact any small entity because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's proposal eliminates errors and clarifies ambiguities in the used oil management standards so as to restore the Agency's

intended result. Therefore, I certify pursuant to 5 U.S.C. 601 *et seq.*, that this rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This proposal will not impose any new information collection requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When a written statement is needed for any EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because it does not impose regulatory requirements or

otherwise substantively change existing requirements. Today's proposal would eliminate errors and clarify ambiguities in the used oil management standards so as to restore the Agency's intended result. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA. Similarly, EPA has determined that this proposal contains no regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 279

Conditionally exempt small quantity generator (CESQG), Hazardous waste, Polychlorinated biphenyls (PCBs), Solid waste, Recycling, Response to releases, Used oil, Used oil specification.

Dated: April 20, 1998.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

§ 261.5 [Amended]

2. Section 261.5(j) is amended by removing both phrases, "if it is destined to be burned for energy recovery".

§ 261.6 [Amended]

3. In § 261.6 paragraphs (a)(3)(iv)(A)-(C) are amended by revising the reference "266.40(e)" to read "279.11".

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

4. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and Sections 901(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

5. Section 279.10 is amended by revising paragraph (i) to read as follows:

§ 279.10 Applicability.

* * *

(i) *Used oil containing PCBs.* Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this Part. Used oil subject to the requirements of this Part may also be subject to the prohibitions and requirements found at 40 CFR Part 761, including § 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this Part, but is subject to regulation under 40 CFR Part 761.

6. Section 279.22 is amended by revising paragraph (d) to read as follows:

§ 279.22 Used oil storage.

* * *

(d) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of Part 280, Subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a generator must perform the following cleanup steps:

- (1) Stop the release;
- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

7. Section 279.45 is amended by revising paragraph (h) to read as follows:

§ 279.45 Used oil storage at transfer facilities.

* * *

(h) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, the owner/operator of a transfer facility must perform the following cleanup steps:

- (1) Stop the release;
- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

8. Section 279.54 is amended by revising paragraph (g) to read as follows:

§ 279.54 Used oil management.

* * *

(g) *Response to releases.* Upon detection of a release of used oil to the

environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, an owner/operator must perform the following cleanup steps:

- (1) Stop the release;
- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

9. Section 279.64 is amended by revising paragraph (g) to read as follows:

§ 279.64 Used oil storage.

(g) *Response to releases.* Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a burner must perform the following cleanup steps:

- (1) Stop the release;
- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

10. Section 279.74 is amended by revising paragraph (b) to read as follows:

§ 279.74 Tracking.

(b) *On-specification used oil delivery.* A generator, transporter, processor/refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under § 279.11 must keep a record of each shipment of used oil to the facility to which it delivers the used oil. Records for each shipment must include the following information:

- (1) The name and address of the facility receiving the shipment;
- (2) The quantity of used oil fuel delivered;
- (3) The date of shipment or delivery; and
- (4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under § 279.72(a).

[FR Doc. 98-11377 Filed 5-5-98; 8:45 am]

BILLING CODE 5550-50-P

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

44 CFR Part 206

RIN 3067-AC82

**Extensions of the Application Period
for Temporary Housing Assistance**

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize the Associate Director/Executive Associate Director for Response and Recovery to extend beyond the standard 60-day limit the application period for assistance provided under the Disaster Housing Program.

DATES: Comments will be accepted until July 6, 1998.

ADDRESSES: Please send comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) 202-646-4536, or e-mail rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Laurence W. Zensinger, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3642, (facsimile) 202-646-2730.

SUPPLEMENTARY INFORMATION: 44 CFR 206.101(e) currently provides that the Regional Director may grant additional time to submit applications for temporary housing "in order to achieve uniformity of application periods in contiguous States" (44 CFR 206.101(e)(1)). There are, however, other disaster-specific circumstances under which an extension of the application period would be appropriate, including when the volume of anticipated applicants in a catastrophic disaster cannot be registered within 60 days or when disaster-related damage may not be ascertained sooner than 60 days from the declaration date. This proposed rule would provide the Associate Director/Executive Associate Director with the authority to extend the application period for disaster housing assistance when circumstances warrant this measure and, thereby, would better serve the disaster-affected public. For consistency of implementation, this ad hoc authority will be given to the Associate Director/Executive Associate Director, Response and Recovery Directorate at FEMA Headquarters.

National Environmental Policy Act.

This proposed rule would be categorically excluded from the

requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review.

This proposed rule would not be a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735. To the extent possible, this proposed rule adheres to the regulatory principles set forth in E.O. 12866 and the Office of Management and Budget has not reviewed it under the provisions of E.O. 12866.

Paperwork Reduction Act.

This proposed rule would not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule would not involve any policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule would meet the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Housing.

Accordingly, FEMA proposes to amend 44 CFR part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

Subpart D—Temporary Housing Assistance

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

Section 206.101(e)(1) is revised to read as follows:

§ 206.101 Temporary housing assistance.

(e) *Applications—(1) Application period.* In general, applications for disaster housing assistance will be the 60 days following the date an incident is declared a major disaster or an

emergency by the President. The Mortgage and Rental Assistance application period will be a 6-month period following the declaration. When warranted by disaster-specific circumstances, the Associate Director/Executive Associate Director may extend the application periods as appropriate. Applications filed after the established period will not be processed unless the applicant can provide justification for the delay in applying.

Dated: April 30, 1998.

Lacy E. Suiter,

Executive Associate Director, Response and Recovery.

[FR Doc. 98-12006 Filed 5-5-98; 8:45 am]

BILLING CODE 5718-02-P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of Total Amount and Quota Period for Tariff-Rate Quota for Raw Cane Sugar

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: This notice sets forth the establishment of the aggregate quantity of 1,600,000 metric tons, raw value, of raw cane sugar that may be entered under subheading 1701.11.10 during fiscal year (FY) 1998, with 400,000 metric tons subject to possible cancellation. This notice does not affect the previously established aggregate quantity of 50,000 metric tons (raw value basis) for certain sugars, syrups and molasses that may be entered under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the Harmonized Tariff Schedule of the United States (HTS) during FY 1998.
EFFECTIVE DATE: May 6, 1998.

ADDRESSES: Inquiries may be mailed or delivered to the Import Policy and Programs Division Director, Foreign Agricultural Service, Room 5531, South Building, U.S. Department of Agriculture, Washington, D.C. 20250-1000.
FOR FURTHER INFORMATION CONTACT: Stephen Hammond (Division Director, Import Policies and Programs Division), 202-720-2916.

SUPPLEMENTARY INFORMATION: Paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS provides, in pertinent part, as follows:

The aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 1,117,195 metric tons, as shall be established by the Secretary of Agriculture * * *, and

the aggregate quantity of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 22,000 metric tons, as shall be established by the Secretary. With either the aggregate quantity for raw cane sugar or the aggregate quantity for sugars, syrups and molasses other than raw cane sugar, the Secretary may reserve a quota quantity for the importation of specialty sugars as defined by the United States Trade Representative.

These provisions of paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS authorize the Secretary of Agriculture to establish the total amounts (expressed in terms of raw value) for imports of raw cane sugar and certain other sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties of the tariff-rate quotas for entry during the fiscal year beginning October 1.

The Secretary originally established the FY 1998 raw sugar TRQ at 1,800,000 metric tons raw value. Of that quantity, the U.S. Trade Representative allocated 1,200,000 metric tons on September 17, 1997, and the remaining 600,000 metric tons was held in reserve for the allocation or cancellation of 200,000 metric tons in January, March, and May. The stocks-to-use ratio published in the January 1998 World Agricultural Supply and Demand Estimates report was 15.7 percent. Because this stocks-to-use ratio is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar has been canceled. The size of the raw cane TRQ is now being established at 1,600,000 metric tons. Of that quantity, 400,000 metric tons is being held in reserve for the allocation or cancellation of 200,000 metric tons in March and May.

Notice

Notice is hereby given that I have determined, in accordance with paragraph (a) of additional U.S. note 5 to chapter 17 of the HTS, that an aggregate quantity of up to 1,600,000 metric tons, raw value, of raw cane sugar described in subheading 1701.11.10 of the HTS may be entered

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or withdrawn from warehouse for consumption during the period from October 1, 1997, through September 30, 1998. Of this quantity, 1,200,000 metric tons was allocated by the United States Trade Representative, and the remaining 400,000 metric tons will be held in reserve.

If the stocks-to-use ratio published in the March 1998 World Agricultural Supply and Demand Estimates (WASDE) is equal to, or less than, 15.5 percent (rounded to the nearest tenth), an additional 200,000 metric tons of the reserved quantity for raw cane sugar will be available for allocation. If the stocks-to-use ratio published in the March 1998 WASDE is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar will automatically be canceled without further notice.

If the stocks-to-use ratio published in the May 1998 WASDE is equal to, or less than, 15.5 percent, an additional 200,000 metric tons of the reserved quantity for raw cane sugar will be available for allocation. If the stocks-to-use ratio published in the May 1998 WASDE is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar will automatically be canceled without further notice.

I will issue Certificates of Quota Eligibility (CQEs) to allow the Philippines, Brazil, and the Dominican Republic to ship up to 25 percent of each country's allocation at the low-tier tariff during each quarter of FY 1998. Australia, Guatemala, Argentina, Peru, Panama, El Salvador, Colombia, South Africa, and Nicaragua will be allowed to ship up to 50 percent of their initial allocations in the first six months of FY 1998. Unentered allocations, during any quarter or six month period, may be entered in any subsequent period. For all other countries, CQEs corresponding to each country's allocation may be entered at the low-tier tariff at any time during the fiscal year. Should country allocations result from the March, and May blocks, they may be entered subsequent to their allocation by the United States Trade Representative.

Signed at Washington, DC, on April 29, 1998.

Dan Glickman,
Secretary of Agriculture.
[FR Doc. 98-11994 Filed 5-5-98; 8:45 am]
BILLING CODE 3410-10-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. CN-98-005]

Advisory Committee on Universal Cotton Standards; Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the Advisory Committee on Universal Cotton Standards.

DATES: June 11, 1998, at 9:00 a.m. to 5:00 p.m. and on June 12, 1998, at 9:00 a.m. until the review is complete.

PLACE: June 11, Peabody Hotel, 149 Union Avenue, Memphis, Tennessee 38103. Phone (901) 529-4000.

June 12 at USDA, Agricultural Marketing Service, Cotton Programs offices at 3275 Appling Road, Memphis, Tennessee 38133. Phone (901) 384-3000. The meeting is open to the public.

FOR FURTHER INFORMATION, CONTACT: Don West, Standardization and Quality Assurance Branch, Cotton Programs, AMS, USDA, 3275 Appling Road, Memphis, Tennessee 38133; Phone: (901) 384-3015.

SUPPLEMENTARY INFORMATION: The committee includes representatives of all segments of the U.S. cotton industry and the twenty-one overseas associations that are signatories to the Universal Cotton Standards Agreement which is authorized under the United States Cotton Standards Act (U.S.C. 51-65). The purpose of the meeting is: (1) to recommend to the Secretary of Agriculture any changes considered necessary to the Universal Standards; and (2) to review freshly prepared sets of Universal Cotton Standards for conformity with existing standards.

The meeting is open to the public. Written comments may be submitted in advance or following the meeting to Mr. West. Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law No. 92-463).

Dated: April 15, 1998.
Mary E. Atienza,
Deputy Administrator, Cotton Program.
[FR Doc. 98-11993 Filed 5-5-98; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet on May 28 and 29, 1998, at the Mateel Community Center in Redway, CA. The meeting will be held from 8:30 a.m. to 5:00 p.m. May 28 and 8:30 a.m. to 4:30 p.m. May 29. The Mateel Community Center is located at 59 Rusk Lane in Redway. Agenda items to be covered include: (1) Subcommittee meetings; (2) Coho Subcommittee report and recommendations; (3) Recreation/tourism Subcommittee report and recommendations; (4) PAC/SCERT Subcommittee report; (5) 3 PAC meeting follow-up; (6) Monitoring Subcommittee report and recommendations; (7) Presentation on 15% retention guidelines; (8) Work on the Ground Subcommittee report and recommendations; (9) Public/Private/Tribal Partnership Opportunities Subcommittee report and recommendations; (10) Presentation on Forest Service roads policy; and (11) Open public forum. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisory, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934-3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934-3116.

Dated: April 28, 1998.

Daniel K. Chisholm,
Forest Supervisor.
[FR Doc. 98-11939 Filed 5-5-98; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Atlantic Bluefin Tuna

Mandatory Catch Reporting.

Agency Form Number: None.

OMB Approval Number: 0648-0328 and merges 0648-0339 and 0648-0238.

Type of Request: Revision of a currently approved collection.

Burden: 723 hours.

Avg. Hours Per Response: Ranges between 5 and 10 minutes depending on the reporting requirement.

Number of Respondents: 7,735.

Needs and Uses: The purpose of this collection of information is to comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975. As a member nation of the International Commission for the Conservation of Atlantic Tunas, the U.S. is required to take part in the collection of biological statistics for research purposes. The information collection for the mandatory catch reporting program (0648-0328) would be extended to include the reporting of trophy-size Atlantic bluefin tuna throughout the recreational fishery (currently cleared under 0648-0239). In addition, the North Carolina catch card program currently cleared under 0648-0339 would be merged into this collection. Anglers reporting under the North Carolina program will be exempt from the normal call-in requirements. The angler reports provides essential information for management of the fishery and ensures that the U.S. complies with its international obligations.

Affected Public: Individuals.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: April 30, 1998.
Linda Engelmeier,
Departmental Forms Clearance Officer
[FR Doc. 98-11998 Filed 5-5-98; 8:45 am]
BILLING CODE 3610-22-P

DEPARTMENT OF COMMERCE

Submission for OMB Review;
Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Recovery and Implantation of Archival Tags.

Agency Form Number: N/A.

OMB Approval Number: 0648-0338.

Type of Request: Revision of a currently approved collection.

Burden: 14 hours.

Avg. Hours Per Response: 1.5 hours for implantation of tags and 30 minutes for report on recovery of a tag.

Number of Respondents: 18.

Needs and Uses: To investigate the migratory patterns of Atlantic bluefin tuna, a program has been undertaken to implant archival tags in selected tuna. Under a scientific research exemption, any person may catch, possess, retain, and land any regulated species in which an archival tag has been affixed or implanted, provided that the person immediately reports the landing of such fish. In addition, any person affixing or implanting an archival tag into a regulated species is required to provide written notification to the National Marine Fisheries Service in advance of commencing the activity, and upon completion of the activity, must provide a written report.

Affected Public: Individuals, businesses or other for-profit organizations, and not-for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20230.

Dated: April 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-11999 Filed 5-5-98; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Generic Clearance for Customer
Satisfaction Surveys

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 6, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joanne Dickinson, U.S. Bureau of the Census, Room 3019-3, Washington, DC 20233-0800, and 301-457-4081.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting an extension of the generic clearance to conduct customer satisfaction research surveys which may be in the form of mailed or electronic questionnaires and/or focus groups or personal interviews.

The Census Bureau has ranked a customer focused environment as one of its most important strategic planning objectives. The Bureau routinely needs to collect and analyze customer feedback about its products and services to better align them to its customers' needs and preferences. Several products and distribution channels have been designed/redesigned based on feedback from its various customer satisfaction research efforts.

Each research design is reviewed for content, utility, and user-friendliness by a variety of appropriate staff (including research design and subject-matter

specialists). The concept and design are tested by internal staff and a select sample of respondents to confirm its appropriateness, user-friendliness, and to estimate burden (including hours and cost) of the proposed collection of information. Collection techniques are discussed and included in the research concept design discussions to define the most time-, cost-efficient and accurate collection media.

The clearance operates in the following manner: a block of hours is reserved at the beginning of each year, and the particular activities that will be conducted under the clearance are not specified in advance. The Census Bureau provides information to OMB about the specific activities on a flow basis throughout the year. OMB is notified of each activity in a letter that gives specific details about the activity, rather than by means of individual clearance packages. At the end of each year, a report is submitted to OMB that summarizes the number of hours used as well as the nature and results of the activities completed under the clearance.

Some modifications of the clearance from previous years are planned. The number of hours is expanded from 3,500 per year to 3,750 to allow for larger-scale research efforts with increased analytical power. In addition, incentives as a survey procedure may also be the subject of research under the clearance.

II. Method of Collection

This research may be in the form of mailed or electronic questionnaires and/or focus groups or personal interviews.

III. Data

OMB Number: 0607-0760.

Form Number: Various.

Type of Review: Regular.

Affected Public: Individuals or households, State or local governments, farms, businesses or other for-profit organizations, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 45,000.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 3,750 hours.

Estimated Total Annual Cost: There is no cost to respondents, except for their time to answer the questions posed.

Respondent's Obligation: Voluntary.

Legal Authority: Executive Order 12862.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12000 Filed 5-5-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical
Advisory Committee; Notice of Closed
Meeting

A meeting of the Information System Technical Advisory Committee (ISTAC) will be held May 21, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M-2, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW, Washington, DC. The ISTAC advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the

Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482-2583.

Dated: April 30, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98-12008 Filed 5-5-98; 8:45 am]

BILLING CODE 3510-33-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of
Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98-022. *Applicant:* Texas A&M University, Plant Genome Mapping Laboratory, Heep Center for SCSC, Room 610, College Station, TX 77843-2474. *Instrument:* Robot, Model X8000. *Manufacturer:* Genetix Ltd., United Kingdom. *Intended Use:* The instrument is intended to be used for studies of recombinant bacteria containing cloned DNA inserts from flowering plants (for example cotton, sorghum or rice) or other non-infectious sources. Experiments will be conducted which involve the identification of specific bacterial clones that contain DNA which corresponds to particular genes or related DNA elements previously assigned to a "map position" along the chromosomes of the source organism (flowering plant). In addition, the instrument will be used for

educational purposes in the courses: (a) GENE 485: Undergraduate Research, (b) GENE 691: Postgraduate Research and (c) GENE 654: Analysis of Complex Genomes. Application accepted by Commissioner of Customs: April 20, 1998.

Docket Number: 98-023. *Applicant:* University of Iowa, Department of Ophthalmology, 200 Hawkins Drive, 11190E PFP, Iowa City, IA 52242. *Instrument:* Electron Microscope, Model JEM-1220. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument is intended to be used for studies of ocular tissues and cells from humans and animals to determine the extent of, and to quantitate, pathological changes in ocular tissues of human donors afflicted with age-related macular degeneration and animal models of this disease. Application accepted by Commissioner of Customs: April 21, 1998.

Frank W. Creel

Director, Statutory Import Programs Staff.

[FR Doc. 98-12046 Filed 5-5-98; 8:45 am]

BILLING CODE 3510-05-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

[D. 041598A]

Small Takes of Marine Mammals
Incidental to Specified Activities;
Offshore Seismic Activities in the
Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the BP Exploration (Alaska), 900 East Benson Boulevard, Anchorage, AK 99519 (BPXA) for a renewal of an authorization to take small numbers of marine mammals by harassment incidental to conducting seismic surveys in the Beaufort Sea in state and Federal waters. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize BPXA to incidentally take, by harassment, small numbers of bowhead whales and other marine mammals in the above mentioned areas during the open water period of 1998.

DATES: Comments and information must be received no later than June 5, 1998.

ADDRESSES: Comments on the application should be addressed to

Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application, a 1996 environmental assessment (EA), the 1997 informal section 7 consultation, BPXA's 1997 90-day Report, and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (301) 713-2055, Brad Smith, (907) 271-5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On March 26, 1998, NMFS received an application from BPXA requesting a 1-year renewal of its authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the Beaufort Sea between Harrison Bay and Camden Bay/Flaxman Island, AK. Weather permitting, the survey is expected to take place between approximately July 1 and October 20, 1998. A detailed description of the work proposed for 1998 is contained in the

application (BPXA, 1998) and is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammal Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in the EA prepared for this authorization (BPXA, 1996b) or in other documents (Minerals Management Service (MMS), 1992, 1996). This information is incorporated by reference and need not be repeated here. A copy of the EA is available upon request (see **ADDRESSES**).

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), belukha (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species and of others can be found in several other documents (BPXA, 1996b, 1998; Lentfer, 1988; MMS, 1992, 1996; Small and DeMaster, 1995; Hill *et al.*, 1997). Please refer to those documents for information on these species.

Potential Effects of Seismic Surveys on Marine Mammals

Disturbance by seismic noise is the principal means of taking by this activity. Support vessels and aircraft will provide a secondary source of noise. The physical presence of vessels and aircraft could also lead to non-acoustic effects involving visual or other cues.

Seismic surveys are used to obtain data about formations several thousands of feet deep. The proposed seismic operation is an ocean bottom cable (OBC) survey. OBC surveys involve dropping cables from a ship to the ocean bottom, forming a patch consisting of 6 cables 5.9 kilometers (km) (3.7 mi) long, separated 660 m (2,165 ft) from each other. Sensors (hydrophones) are attached to the cables. These hydrophones are used to detect seismic energy reflected back from underground rock strata. The original source of this energy is a submerged acoustic source, called a seismic airgun array, that releases compressed air into the water, creating an acoustical energy pulse that is directed downward toward the seabed. Normally, 27 seismic lines are run for each patch, covering an area 7.3 km by 8.6 km (4.5 mi by 5.3 mi), centered over the patch.

After sufficient data have been recorded to allow accurate mapping of

the rock strata, the cable is lifted onto the deck of a cable-retrieval vessel, moved to a new location (ranging from several hundred to a few thousand feet away), and placed onto the seabed again. For a more detailed description of the seismic operation, including the sizes of the various airguns, and for numbers of vessels planned for this survey, please refer to the application (BPXA, 1998).

Depending upon ambient conditions and the sensitivity of the receptor, underwater sounds produced by open water seismic operations may be detectable a substantial distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or of masking a signal of comparable frequency (BPXA, 1998). An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source, the seismic vessel, other vessels, or aircraft react to the generated sounds or to visual cues.

Seismic pulses are known to cause bowhead whales to behaviorally respond within a distance of several kilometers (Richardson *et al.*, 1995). Although some limited masking of low-frequency sounds (e.g., whale calls) is a possibility, the intermittent nature of seismic source pulses (1 second in duration every 6 to 12 seconds) will limit the extent of masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.*, 1986). Masking effects are expected to be absent in the case of belukhas, given that sounds important to them are predominantly at much higher frequencies than are airgun sounds (BPXA, 1998).

Hearing damage is not expected to occur during the project. It is not known whether a marine mammal very close to an airgun array would be at risk of temporary or permanent hearing impairment, but temporary threshold shift is a theoretical possibility for animals within a few hundred meters (Richardson *et al.*, 1995) of the source. However, planned monitoring and mitigation measures (described later in this document) are designed to detect marine mammals occurring near the array and to avoid exposing them to sound pulses that have any possibility of causing hearing damage.

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions (BPXA, 1998). The levels, frequencies, and types of noise that will elicit a response vary between

and within species, individuals, locations, and seasons. Behavioral changes may be subtle alterations in surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening (BPXA, 1998).

Bowhead Whales

Various studies (Reeves *et al.*, 1984; Fraker *et al.*, 1985; Richardson *et al.*, 1986; Ljungblad *et al.*, 1988) have reported that, when an operating seismic vessel approaches within a few kilometers, most bowhead whales exhibit strong avoidance behavior and changes in surfacing, respiration, and dive cycles. Bowheads exposed to seismic pulses from vessels more than 7.5 km (4.5 mi) away rarely showed observable avoidance of the vessel, but their surface, respiration, and dive cycles appeared altered in a manner similar to that observed in whales exposed at a closer distance (BPXA, 1996a, 1996b, 1998).

Within a 6-99 km (3.7-60 mi) range, it has not been possible to determine a specific distance at which subtle behavioral changes no longer occur (Richardson and Malme, 1993), given the high variability observed in bowhead whale behavior (BPXA, 1996a, 1996b). Analysis of the results from BPXA's 1996 seismic monitoring program does not provide conclusive evidence about the radius of avoidance of bowheads to the seismic program. The peak number of bowhead sightings was 10-20 km (6.2-12.3 mi) from shore during no-seismic periods and 20-30 km (12.3-18.6 mi) from shore during periods that may have been influenced by seismic noise. This difference was not statistically significant, but the low numbers of sightings preclude meaningful interpretation (BPXA, 1998).

Inupiat whalers believe that migrating bowheads are sometimes displaced at distances considerably greater than 6 to 8 km (3.7 to 5.0 mi) (Rexford, 1996). Scientific studies done to date have limitations as discussed in part by Moore and Clark (1992) and MMS (1996). It is possible that, when additional data are available, it will be demonstrated that bowheads sometimes do avoid seismic vessels at distances beyond 6 to 8 km (3.7 to 5.0 mi). Also,

whalers have mentioned that bowheads sometimes seem more "skittish" and more difficult to approach when seismic exploration is underway in the area. This "skittish" behavior may be related to the observed subtle changes in the behavior of bowheads exposed to seismic pulses from distant seismic vessels (Richardson *et al.*, 1986).

Gray Whales

The reactions of gray whales to seismic pulses are similar to those of bowheads. Migrating gray whales along the California coast were noted to slow their speed of swimming, turn away from seismic noise sources, and increase their respiration rates. Malme *et al.* (1983, 1984, 1988) concluded that approximately 50 percent showed avoidance when the average received pulse level was 170 dB (re 1 μ Pa @ 1 m). By some behavioral measures, clear effects were evident at average pulse levels of 160+dB; less consistent results were suspected at levels of 140-160 dB.

Belukha

The belukha is the only species of toothed whale (Odontoceti) expected to be encountered in the Beaufort Sea. Because their hearing threshold at frequencies below 100 Hz (where most of the energy from airgun arrays is concentrated) is poor (125 dB re 1 μ Pa @ 1 m) or more depending upon frequency (Johnson *et al.*, 1989; Richardson *et al.*, 1991, 1995), belukha are not predicted to be strongly influenced by seismic noise. However, because of the high source levels of seismic pulses, airgun sounds may be audible to belukha at distances of 100 km (Richardson and Wursig, 1997). The reaction distance for belukha, although presently unknown, is expected to be less than that for bowheads, given the presumed poorer sensitivity of belukhas than that of bowheads for low-frequency sounds (BPXA, 1998).

Ringed, Largha and Bearded Seals

No detailed studies of reactions by seals to noise from open water seismic exploration have been published (Richardson *et al.*, 1995). However, there are some data on the reactions of seals to various types of impulsive sounds (J. Parsons as quoted in Greene, *et al.* 1985; Anon., 1975; Mate and Harvey, 1985). These studies indicate that ice seals typically either tolerate or habituate to seismic noise produced from open water sources.

Underwater audiograms have been obtained using behavioral methods for three species of phocinid seals, ringed, harbor, and harp seals (*Pagophilus groenlandicus*). These audiograms were

reviewed in Richardson *et al.* (1995). Below 30-50 kHz, the hearing threshold of phocinids is essentially flat down to at least 1 kHz and ranges between 60 and 85 dB (re 1 μ Pa @ 1 m). There are few data on hearing sensitivity of phocinid seals below 1 kHz. NMFS considers harbor seals to have a hearing threshold of 70-85 dB at 1 kHz (60 FR 53753, October 17, 1995), and recent measurements for a harbor seal indicate that, below 1 kHz, its thresholds deteriorate gradually to 97 dB (re 1 μ Pa @ 1 m) at 100 Hz (Kastak and Schusterman, 1995a, b).

Because no studies to date have focused on pinniped reaction to underwater noise from pulsed, seismic arrays in open water (Richardson *et al.*, 1991, 1995), as opposed to in-air exposure to continuous noise, substantive conclusions are not possible at this time. However, assuming a sound pressure level of 80-100 dB over its threshold is needed in order to cause annoyance and 130 dB for injury (pain), as is the current thought based upon human studies (Advanced Research Projects Agency and NMFS, 1995), it appears unlikely that pinnipeds would be harassed or injured by low frequency sounds from a seismic source unless they were within close proximity of the array. For permanent injury, pinnipeds would likely need to remain in the high-noise field for extended periods of time. Existing evidence also suggests that, while they may be capable of hearing sounds from seismic arrays, seals appear to tolerate intense pulsatile sounds without known effect once they learn that there is no danger associated with the noise (see, for example, NMFS/Washington Department of Wildlife, 1995). In addition, they will apparently not abandon feeding or breeding areas due to exposure to these noise sources (Richardson *et al.*, 1991) and may habituate to certain noises over time. Since seismic work is fairly common in Beaufort Sea waters, pinnipeds have been previously exposed to seismic noise and may not react to it after initial exposure.

Other Effects

For a discussion on the anticipated effects of ships, boats, aircraft, and smaller acoustic devices, such as single airguns, sparkers, sub-bottom profilers, side-scan sonar, and bathymetric sounders, on marine mammals and their food sources, please refer to the application (BPXA, 1998). Information on these effects is incorporated in this document by reference (see BPXA, 1998). Numbers of Marine Mammals Expected to be Taken

BPXA estimates that the following numbers of marine mammals may be

subject to Level B harassment, as defined in 50 CFR 216.3:

Species	Population size	Harassment takes in 1998	
		Possible	Probable
Bowhead	8,000	800	<400
Gray whale	23,000	<10	0
Belukha	41,610	250	<150
Ringed seal	1-1.5 million	400	<400
Spotted seal	>200,000	10	<5
Bearded seal	>300,000	50	<30

Effects of Seismic Noise and Other Activities on Subsistence Needs

The disturbance and potential displacement of marine mammals by sounds from seismic activities are the principle concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, ringed seals, and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities (BPXA, 1998). In particular, if migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to seismic noise (BPXA, 1998).

Nuiqsut is the community closest to the area of the proposed activity, and it harvests bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take zero to four whales each season (BPXA, 1998). Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principle field camp location for Nuiqsut whalers, is located within the general area of the proposed seismic area. Thus, the possibility and timing of potential seismic operations in the Cross Island area requires BPXA to provide NMFS with a Plan of Cooperation (also called the Communications and Avoidance Agreement) with North Slope Borough residents to avoid any unmitigable adverse impact on subsistence needs.

Whalers from the village of Kaktovik search for whales east, north, and west of the village. Kaktovik is located 60 mi (38 km) east of the easternmost end of the planned seismic exploration area. The westernmost reported harvest location was about 21 km (13 mi) west of Kaktovik, near 70°10'N, 144°W (Kaleak, 1996). That site is approximately 40 km (25 mi) east of the

closest part of the planned seismic exploration area for 1998 (BPXA, 1998).

Whalers from the village of Barrow search for bowhead whales much further from the planned seismic area, >200 km (>125 mi) west (BPXA, 1998).

The location of the proposed seismic activity is south of the center of the westward migration route of bowhead whales, but there is some overlap. BPXA (1998) believes that, although whales may be able to hear the sounds emitted by the seismic array out to a distance of 50 km (30 mi) or more, it is unlikely that changes in migration route will occur at distances of >25 km (>15 mi). Alternatively, whalers believe that bowheads begin to divert from their normal migration path more than 48 km (35 mi) away (MMS, 1996).

It is recognized that it is difficult to determine the maximum distance at which reactions occur (Moore and Clark, 1992). As a result, BPXA is developing a Communications and Avoidance Agreement with the whalers to reduce potential interference with the hunt. Also, it is believed that the monitoring plan proposed by BPXA (LGL Ltd. and Greeneridge Sciences Inc., 1998) will provide information that will help resolve uncertainties about the effects of seismic exploration on the accessibility of bowheads to hunters.

While seismic exploration has some potential to influence subsistence seal hunting activities, the peak season for seal hunting is during the winter months when the harvest consists almost exclusively of ringed seals (BPXA, 1998). In summer, boat crews hunt ringed, spotted and bearded seals (BPXA, 1998). The most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island (BPXA, 1998). This area overlaps with the westernmost portion of the planned seismic area. In this area, during summer, sealing occurs by boat when hunters apparently concentrate on bearded seals (BPXA, 1998).

Mitigation

BPXA proposes to continue the mitigation program carried out in 1996 and 1997. BPXA plans to use biological observers to monitor marine mammal presence in the vicinity of the seismic array. To avoid the potential for serious injury to marine mammals, BPXA will power down the seismic source if pinnipeds are sighted within the area delineated by the 190 dB isopleth or:

- (1) within 60 m (197 ft) of a single airgun or an array of ≤60 in³;
- (2) within 110 m (361 ft) of an array >60 in³ and ≤720 in³ operating at <2.5 m (8.3 ft) depth;
- (3) within 190 m (623 ft) of an array >60 in³ and ≤720 in³ operating at ≥2.5 m (8.3 ft) depth;
- (4) within 150 m (492 ft) of an array >720 in³ and ≤840 in³ operating at <2.5 m (8.3 ft) depth;
- (5) within 250 m (820 ft) of an array >720 in³ and ≤840 in³ operating at ≥2.5 m (8.3 ft) depth;
- (6) within 260 m (853 ft) of an array >840 in³ operating at ≥2.5 m (8.3 ft) depth; and
- (7) within 130 m (426 ft) of an array >840 in³ operating at >2.5 m (8.3 ft) depth.

BPXA will power down the seismic source if bowhead, gray, or belukha whales are sighted within the area delineated by the 180 dB isopleth or:

- (1) within 160 m (525 ft) of a single airgun or an array of ≤60 in³;
- (2) within 600 m (1,928 ft) of an array >60 in³ and ≤720 in³ at >2.5 m (8.3 ft) depth;
- (3) within 800 m (2,625 ft) of an array >60 in³ and ≤720 in³ operating at ≤2.5 m (8.3 ft) depth;
- (4) within 700 m (2,298 ft) of an array >720 in³ and ≤840 in³ operating at <2.5 m (8.3 ft) depth;
- (5) within 900 m (2,953 ft) of an array >720 in³ and ≤840 in³ operating at ≤2.5 m (8.3 ft) depth;
- (6) within 1020 m (3,346 ft) of an array >840 in³ operating at ≥2.5 m (8.3 ft) depth; and

(7) within 640 m (2,100 ft) of an array >840 in³ operating at >2.5 m (8.3 ft) depth.

In addition, BPXA proposes to ramp-up the seismic source to operating levels at a rate no greater than 6 dB/min. If the array includes airguns of different sizes, the smallest gun will be fired first. Additional guns will be added at intervals appropriate to limit the rate of increase in source level to a maximum of 6 dB/min.

Monitoring

As part of its application, BPXA provided a monitoring plan for assessing impacts to marine mammals from seismic surveys in the Beaufort Sea. This monitoring plan is described in detail in BPXA (1998) and LGL Ltd. and Greeneridge Sciences Inc. (1998). As required by the MMPA, this monitoring plan will be subject to a peer-review panel of technical experts prior to formal acceptance by NMFS.

Preliminarily, BPXA plans to conduct the following

Vessel-Based Visual Monitoring

A minimum of two biologist-observers aboard each seismic vessel will search for and observe marine mammals whenever seismic operations are in progress, and for at least 30 minutes prior to planned start of shooting. These observers will scan the area immediately around the vessels with reticulated binoculars during the daytime and with night-vision equipment during the night (prior to mid-August, there are no hours of darkness). Individual watches will normally be limited to no more than 4 consecutive hours.¹

When mammals are detected within a safety zone designated to prevent injury to the animals (see Mitigation), the geophysical crew leader will be notified so that shutdown procedures can be implemented immediately.

Aerial Surveys

From September 1, 1998, until 3 days after the seismic program ends, aerial surveys will be conducted daily, weather permitting. The primary objective will be to document the occurrence, distribution, and movements of bowhead and belukha whales in and near the area where they might be affected by the seismic pulses. These observations will be used to estimate the level of harassment takes

¹ Because individual watches will normally be limited to no more than 4 consecutive hours, NMFS believes that no seismic vessel (including those conducting shallow-hazards surveys) will be able to operate with fewer than two observers, unless surveys are shorter than 4 consecutive hours.

and to assess the possibility that seismic operations affect the accessibility of bowhead whales for subsistence hunting. Pinnipeds will be recorded when seen. Aerial surveys will be at an altitude of 300 m (1,000 ft) above sea level. BPXA proposes to avoid overflights of the Cross Island area where whalers from Nuiqsut are based during their fall whale hunt.

Consistent with the 1996 and 1997 aerial surveys, the daily aerial surveys are proposed to cover two grids: (1) A grid of 12 north-south lines spaced 8 km (5 mi) apart and extending from about 20 km (12.5 mi) west of the western side of the then-current seismic exploration area to 50 km (30 mi) east of its eastern edge, and from the barrier islands north to approximately the 100 m (328 ft) depth contour; and (2) a grid of 4 survey lines within the above region, also spaced 8 km (5 mi) apart and mid-way between the longer lines, to provide more intensive coverage of the area of the seismic operations and immediate surrounding waters.

When the seismic program is relocated east or west along the coast during the 1998 season, both survey grids will be relocated a corresponding distance along the coast. Information on the survey program can be found in BPXA (1998) and in LGL Ltd. and Greeneridge Sciences Inc. (1998), which are incorporated herein by reference.

Acoustical Measurements

The acoustic measurement program proposed for 1998 is designed to be a sequel to the program conducted in 1996 and 1997 (see BPXA, 1996a, 1997, and 1998; LGL Ltd. and Greeneridge Sciences Inc., 1996, 1997, and 1998). The acoustic measurement program is planned to include (1) retrieval of autonomous seafloor acoustic recorders (ASARs) deployed and not recovered in 1997 and analysis of usable data contained in those recorders, (2) deployment of ASARs during the 1998 seismic program to provide continuous acoustic data for extended periods, (3) boat-based acoustic measurements, (4) OBC-based acoustic measurements, and (5) use of air-dropped sonobuoys.

The boat-based acoustical measurement program is proposed for a 7-day period in August 1998. The objectives of this survey will be as follows: (1) To measure the levels and other characteristics of the horizontally propagating seismic survey sounds from the type(s) of airgun array(s) to be used in 1998 as a function of distance and aspect relative to the seismic source vessel(s) and to water depth.

(2) To measure the levels and frequency composition of the vessel

sounds emitted by vessels used regularly during the 1998 program, excluding vessels whose sounds were characterized adequately in previous years.

(3) To obtain additional site-specific ambient noise data, which determine signal-to-noise ratios for seismic and other acoustic signals at various ranges from their sources. This aspect of the monitoring is described in more detail in BPXA (1998) and LGL Ltd. and Greeneridge Sciences Inc. (1998).

Estimates of Marine Mammal Take

Estimates of takes by harassment will be made through vessel and aerial surveys. Preliminarily, BPXA will estimate the number of (a) marine mammals observed within the area ensounded strongly by the seismic vessel; (b) marine mammals observed showing apparent reactions to seismic pulses (e.g., heading away from the seismic vessel in an atypical direction); (c) marine mammals subject to take by type (a) or (b) above when no monitoring observations were possible; and (d) bowheads displaced seaward from the main migration corridor.

Reporting

BPXA will provide an initial report on 1998 activities to NMFS within 90 days of the completion of the seismic program. This report will provide dates and locations of seismic operations, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A final technical report will be provided by BPXA within 20 working days of receipt of the document from the contractor, but no later than April 30, 1999. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

Consultation

Under section 7 of the Endangered Species Act (ESA), NMFS completed an informal consultation on the issuance of an incidental harassment authorization for this activity on June 26, 1997. A copy of that document is available upon request (see ADDRESSES). If an authorization to incidentally harass listed marine mammals is issued under the MMPA, NMFS will issue an Incidental Take Statement under section 7 of the ESA.

National Environmental Policy Act (NEPA)

In conjunction with the 1996 notice of proposed authorization (61 FR 26501,

May 28, 1996), NMFS released an EA that addressed the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. No comments were received on that document and, on July 18, 1996, NMFS concluded that neither implementation of the proposed authorization to BPXA for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the U.S. Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. As a result, the preparation of an environmental impact statement on this action is not required by section 102(2) of NEPA or its implementing regulations. A copy of the EA is available upon request (see ADDRESSES).

This year's activity is a continuation of the seismic work conducted in 1996 and 1997. For BPXA's 1998 application, NMFS has conducted a review of the impacts expected from the issuance of an Incidental Harassment Authorization in comparison to those impacts evaluated in 1996. As assessed in detail in this document, NMFS has preliminarily determined that there will be no more than a negligible impact on marine mammals from the issuance of the harassment authorization and that there will not be any unmitigable impacts to subsistence communities, provided the mitigation measures required under the authorization are implemented. Because the activity is substantially the same as the one conducted in 1996 and no new impacts on the environment have been identified, a new EA is not warranted.

Conclusions

NMFS has preliminarily determined that the short-term impact of conducting seismic surveys in the U.S. Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans and possibly pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have a negligible impact on the animals.

As the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of seismic operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed seismic activity in waters generally too shallow and distant from the edge of the pack ice for

most marine mammals of concern, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Because bowhead whales are east of the seismic area in the Canadian Beaufort Sea until late August/early September, seismic activities are not expected to impact subsistence hunting of bowhead whales prior to that date. After August 31, 1998, BPXA will initiate aerial survey flights for bowhead whale assessments. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between BPXA and subsistence users.

Also, while open-water seismic exploration in the U.S. Beaufort Sea has some potential to influence seal hunting activities by residents of Nuiqsut, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville Delta, and (3) the zone of influence by seismic sources on belukha and seals is fairly small, NMFS believes that BPXA's seismic survey will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for the 1998 Beaufort Sea open water season for a seismic survey provided the above mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed seismic activity would result in the harassment of only small numbers of bowhead whales, gray whales, and possibly belukha whales, bearded seals, and largha seals; would have a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, and information, concerning this request (see ADDRESSES).

Dated: May 1, 1998.

Patricia A. Montano,
Deputy Director, Office of Protected
Resources, National Marine Fisheries Service.
[FR Doc. 98-12001 Filed 5-5-98; 8:45 am]
BILLING CODE 3510-22-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:
Commodity Futures Trading
Commission.

TIME AND DATE: 2:00 p.m., Thursday,
May 28, 1998.

PLACE: 1155 21st St., N.W., Washington,
D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202-418-5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 98-12118 Filed 5-4-98; 10:46 am]
BILLING CODE 8351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment
request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense
Federal Acquisition Regulation
Supplement (DFARS) Appendix I,
Department of Defense Pilot Mentor-
Protégé Program; OMB Number 0704-
0332.

Type of Request: Extension.
Number of Respondents: 124.
Responses Per Respondent: 2.
Annual Responses: 248.
Average Burden Per Response: 1 hour
response; 2 recordkeeping hours.
Annual Burden Hours: 496 (Includes
248 recordkeeping hours.)

Needs and Uses: In order to evaluate
whether the purposes of the DoD Pilot
Mentor-Protégé Program (established
under Section 831 of Public Law 101-
510, National Defense Authorization Act
for Fiscal Year 1991, as amended) have
been attained, Appendix I of the DFARS
requires that companies participating in

the Program as mentors, keep records
and report on progress in achieving the
developmental assistance objectives
under each mentor-protégé agreement.
Participation in the program is
voluntary and is open to companies
with at least one active subcontracting
plan negotiated with DoD or another
Federal agency. The report is used by
the Government to assess whether the
purposes of the Program have been
attained. It requires mentor firms to
report semiannually by attaching to
their SF 295, Summary Subcontract
Report: (1) A statement that includes
the number of active mentor-protégé
agreements in effect and the progress in
achieving developmental assistance
objectives under each agreement; and
(2) a copy of the SF 294, Subcontracting
Report for Individual Contracts, for each
contract where developmental
assistance was credited, with a
statement identifying the amount of
dollars credited to the small
disadvantaged business subcontract goal
as a result of developmental assistance;
an explanation as to the relationship
between the developmental assistance
provided the protégé firm(s) under the
Program and the activities under the
contract covered by the SF 294(s); and
the number and dollar value of
subcontractors awarded to the protégé
firm(s).

Affected Public: Business or other for-
profit; not-for-profit institutions.

Frequency: Semiannually.

Respondent's Obligation: Required to
obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and
recommendations on the proposed
information collection should be sent to
Mr. Weiss at the Office of Management
and Budget, Desk Officer for DoD, Room
10236, New Executive Office Building,
Washington, DC 20503.

DOD Clearance Officer: Mr. Robert
Cushing.

Written request for copies of the
information collection proposal should
be sent to Mr. Cushing, WHS/DIOR,
1215 Jefferson Davis Highway, Suite
1204, Arlington, VA 22202-4302.

Dated: April 30, 1998.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 98-11985 Filed 5-5-98; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on
Defense Acquisition Reform (Phase
IV), R&D Subpanel

ACTION: Notice of Advisory Committee
meetings.

SUMMARY: The Defense Science Board
Task Force on Defense Acquisition
Reform (Phase IV), R&D Subpanel will
meet in closed session on May 14-15,
June 10-11, July 15-16, September 2-3,
and October 20, at the Pentagon,
Arlington, Virginia; and on August 10-
11, 1998 at the Beckman Center, Irvin,
California. The mission of the Defense
Science Board is to advise the Secretary
of Defense through the Under Secretary
of Defense for Acquisition and
Technology on scientific and technical
matters as they affect the perceived
needs of the Department of Defense. At
these meetings the Task Force will
review the current status of reform
implementation and appropriate set of
metrics, and recommend further actions
for the Department to accelerate
progress. A particular focus of this effort
should be the development and
implementation of metrics that could be
used by the DoD to periodically measure
success in the effectiveness of the
overall acquisition reform efforts.

In accordance with Section 10(d) of
the Federal Advisory Committee Act,
Public Law 92-463, as amended (5
U.S.C. App. II, (1994)), it has been
determined that these DSB Task Force
meetings, concerns matters listed in 5
U.S.C. 552b(c)(1) (1994), and that
accordingly these meetings will be
closed to the public.

Dated: May 1, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 98-12049 Filed 5-5-98; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on
Defense Acquisition Reform (Phase IV)

ACTION: Notice of Advisory Committee
meetings.

SUMMARY: The Defense Science Board
Task Force on Defense Acquisition
Reform (Phase IV) will meet in closed
session on May 13, June 12, July 17,
September 4, October 19, December 14,

1998, and January 22, 1999 at the
Pentagon, Arlington, Virginia.

The mission of the Defense Science
Board is to advise the Secretary of
Defense through the Under Secretary of
Defense for Acquisition and Technology
on scientific and technical matters as
they affect the perceived needs of the
Department of Defense. At these
meetings the Task Force will review the
current status of reform implementation
and appropriate set of metrics, and
recommend further actions for the
Department to accelerate progress. A
particular focus of this effort should be
the development and implementation of
metrics that could be used by the DoD
to periodically measure success in the
effectiveness of the overall acquisition
reform efforts.

In accordance with Section 10(d) of
the Federal Advisory Committee Act,
Public Law 92-463, as amended (5
U.S.C. App. II, (1994)), it has been
determined that these DSB Task Force
meetings, concerns matters listed in 5
U.S.C. 552b(c)(1) (1994), and that
accordingly these meetings will be
closed to the public.

Dated: May 1, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 98-12050 Filed 5-5-98; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment
request.

SUMMARY: The Acting Deputy Chief
Information Officer, Office of the Chief
Information Officer, invites comments
on the proposed information collection
requests as required by the Paperwork
Reduction Act of 1995.

DATES: Interested persons are invited to
submit comments on or before July 6,
1998.

ADDRESSES: Written comments and
requests for copies of the proposed
information collection requests should
be addressed to Patrick J. Sherrill,
Department of Education, 600
Independence Avenue, S.W., Room
5624, Regional Office Building 3,
Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT:
Patrick J. Sherrill (202) 708-8196.
Individuals who use a
telecommunications device for the deaf
(TDD) may call the Federal Information

Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 1, 1998.

Hazel Fiers,
Acting Deputy Chief Information Officer,
Office of the Chief Information Officer.

Office for Civil Rights

Type of Review: Reinstatement.

Title: Fall 1998 Elementary and Secondary School Civil Rights Compliance Report.

Frequency: Biennially.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 60,950. Burden Hours: 293,419.

Abstract: The Elementary and Secondary School Civil Rights Compliance Report is the vehicle for the Office for Civil Rights (OCR), U.S. Department of Education, to acquire source material in the form of data and information regarding the civil rights compliance issues in the nation's public elementary and secondary schools. Information from the Elementary and Secondary School Civil Rights Compliance Report is used by OCR field offices when they consider public school districts for compliance reviews, and as source material when civil rights compliance investigations are conducted.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Talent Search and Educational Opportunity Centers Programs Annual Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden: Responses: 500. Burden Hours: 3,000.

Abstract: Talent Search and Educational Opportunity Centers grantees are required to submit annual performance reports to the Department so that ED personnel can evaluate the grantees' performance and assess prior experience points.

Office of Postsecondary Education

Type of Review: New.

Title: Study of the Outcomes of Diversity in Higher Education.

Frequency: One time.

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden: Responses: 12,475. Burden Hours: 2,782.

Abstract: This study focuses on outcomes of diversity in higher education for students and faculty; it also examines the effect of diversity on institutional policies and programs. This is a three-year, 10-institution case study effort that includes interviews with administrators and faculty and focus group discussions with students, as well as a survey of samples of faculty and students.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: 1998-1999 Field Test for Schools and Staffing Survey (SASS): Local Educational Agency (LEA),

Administrator, School, Teacher and Library/Media Center, 1999-2000 Teacher Listing Form, 1999-2000 Full Scale SASS: LEA, Administrator, School, Teacher and Library/Media Center

Frequency: One time.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping: Responses: 104,341. Burden Hours: 107,802.

Abstract: The National Center for Education Statistics (NCES) will use the field test to assess data collection procedures and survey instruments that are planned for the full scale SASS in 1999-2000. Policy makers, researchers and practitioners at the national, state and local events use SASS data. Respondents include public and private school principals, teachers, and school, LEA and library/media center staff persons.

[FR Doc. 98-12005 Filed 5-5-98; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Conveyance and Transfer of Certain Land Tracts Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, NM

AGENCY: U.S. Department of Energy.
ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS) to assess the potential environmental impacts of conveying and transferring certain land tracts located within the Incorporated Counties of Los Alamos and Santa Fe and at Los Alamos National Laboratory (LANL) in north central New Mexico. This EIS for the proposed Conveyance and Transfer of Certain Land Tracts (Conveyance and Transfer EIS) will evaluate the action mandated by Congress to convey fee title to lands allocated for conveyance to Los Alamos County (County) and transfer to the Secretary of the Interior, in trust for the San Ildefonso Pueblo (Pueblo), administrative jurisdiction of parcels of land to be determined by agreement pursuant to Section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Public Law 105-119. The EIS will analyze the potential impacts of up to

three uses of land for the individual tracts: (1) Historic, cultural, or environmental preservation purposes, (2) economic diversification purposes, or (3) community self-sufficiency purposes. The EIS will also analyze any connected actions regarding the relocation of existing site tenants and the No Action Alternative of retaining the land tracts in their current state with the continuance of the existing uses of land. DOE invites individuals, organizations, and agencies to present oral or written comments concerning the scope of the EIS, including the environmental issues and alternatives that the EIS should address.

DATES: The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until June 30, 1998. DOE will consider all comments received or postmarked by that date in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable. Public scoping meetings are scheduled to be held as follows:

May 19, 1998, 2:00-5:00 p.m. and 6:00-8:00 p.m., U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, New Mexico.

May 20, 1998, 2:00-5:00 p.m. and 6:00-8:00 p.m., Double Tree Hotel, 3347 Cerrillos Road, Santa Fe, New Mexico.

May 21, 1998, 2:00-5:00 p.m. and 6:00-8:00 p.m., Northern New Mexico Community Center, 921 Paseo de Onate, Española, New Mexico.

The DOE will publish additional notices on the date, times, and location of the scoping meetings in local newspapers in advance of the scheduled meetings. Any necessary changes will be announced in the local media.

ADDRESSES: Written comments or suggestions concerning the scope of the Conveyance and Transfer EIS or requests for more information on the EIS and public scoping process should be directed to: Ms. Elizabeth Withers, EIS Document Manager, U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, New Mexico, 87544, facsimile at (505) 667-4872, or E-mail at ewithers@doe.lanl.gov.

In addition to providing oral comments at the public scoping meetings, all interested parties are invited to record their comments, ask questions concerning the EIS, or request to be placed on the EIS mailing or document distribution list by leaving a message on the EIS Hotline at (toll free) 1-800-791-2280. The Hotline will have

instructions on how to record comments and requests.

FOR FURTHER INFORMATION CONTACT: For information on DOE's NEPA process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH-42), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-4600, or leave a message at 1-800-472-2756.

SUPPLEMENTARY INFORMATION:

Background

Los Alamos National Laboratory (LANL) is located in north-central New Mexico, 60 miles north-northeast of Albuquerque, 25 miles northwest of Santa Fe, and 20 miles southwest of Española in Los Alamos and Santa Fe Counties. It is located between the Jemez Mountains to the west and the Sangre de Cristo Mountains and Rio Grande to the east. LANL occupies an area of approximately 27,832 acres or approximately 43 square miles and is operated for DOE by a contractor, the University of California. It is a multidisciplinary, multipurpose institution engaged in theoretical and experimental research and development. LANL has mission responsibilities in national security, energy resources, environmental quality, and science.

Section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Public Law (P.L.) 105-119, enacted November 26, 1997, established certain actions and reports to be completed by the DOE. It requires that the Secretary of Energy (Secretary) take certain actions with respect to the conveyance of certain suitable tracts of land at or in the vicinity of LANL, which are under the jurisdiction or administrative control of the Secretary, to the Incorporated County of Los Alamos, or their designee in fee title, and that administrative jurisdiction over certain other of these tracts be transferred to the Secretary of the Interior in trust for the Pueblo of San Ildefonso. The legislation provides that the purpose of these conveyances and transfers is to fulfill the obligations of the United States with respect to LANL under sections 91 and 94 of the Atomic Energy Community Act of 1955 (42 U.S.C. 2391, 2394). Upon completion of these conveyances and transfers, the legislation also directs that the Secretary shall make no further payments with respect to LANL under sections 91 or 94 of the Atomic Energy Community Act of 1955.

The Secretary is required to undertake the preliminary identification of parcels of land under the jurisdiction or administrative control of the Secretary or in the vicinity of LANL for conveyance or transfer. The criteria established in Public Law 105-119 for land to be considered as being suitable for conveyance or transfer is that it is: (1) not required to meet the national security mission of the DOE or will not be required for that purpose before the end of a 10-year period beginning on the date of enactment of the law; (2) likely to be conveyable or transferable, as the case may be, not later than the end of such period; and (3) suitable for use either for historic, cultural, or environmental preservation purposes, for economic diversification purposes, or for community self-sufficiency purposes.

The Secretary of Energy has completed the preliminary identification of such parcels of land considered to be suitable and a report to Congress on this action was submitted in April 1998. The report, entitled Land Transfer, A Preliminary Identification of Parcels of Land in Los Alamos, New Mexico for Conveyance or Transfer, summarizes, for each of nine parcels identified for potential conveyance or transfer, the tract's location, size, boundaries, historical DOE use, existing use, functional support of LANL's mission, urban infrastructure present, known environmental and cultural issues associated with the tracts, economic potential, and estimated DOE preparation costs prior to transfer. The report includes maps of parcels with pertinent physical features (such as roads, topography, buildings, fences and major utility corridors). The total acreage of the tracts being considered for transfer is about 4,646 acres (roughly equal to about 16 percent of the DOE-controlled land in the LANL area). About 3,000 acres are located within Santa Fe County and about 1,646 acres are located within Los Alamos County. The nine parcels identified in the report are as follows:

1. The Technical Area (TA) 21 Tract consists of approximately 243.8 acres and is located east of the Los Alamos Townsite. This occupied site is remote from the main LANL area. Relocation of operations and site workers would need to take place.
2. The DP Road (North, South and West) Tract consists of 49.8 acres. It is generally undeveloped except for the West section where the LANL Archives are currently located.
3. The DOE Los Alamos Area Office Site Tract consists of 12.9 acres. It is also within the Los Alamos Townsite

and is readily usable. Relocation of site employees would need to take place.

4. The Airport Tract consists of 198 acres. Located east of the Los Alamos Townsite, it is close to the East Gate Business park.

5. The White Rock Site Tract consists of 98.7 acres. It is undeveloped except for utility lines and a water pump station.

6. Rendija Canyon Site Tract consists of 908.7 acres. The canyon is undeveloped except for the shooting range that serves the local community and is currently under lease from the DOE to the community.

7. The White Rock Y Site Tract consists of 435.1 acres. It is undeveloped and is associated with the major transportation routes connecting Los Alamos with northern New Mexico.

8. Two miscellaneous sites, Site 22 and The Manhattan Monument Site, consist of 0.27 acres. Site 22 is a small, Townsite parcel located on the edge of the mesa overlooking Los Alamos Canyon. The Manhattan site is a small, rectangular site located within Los Alamos County land and adjacent to Ashley Pond where most of the first Laboratory work was conducted.

9. The TA-74 Site Tract consists of 2,698.4 acres. It is a large, remote site located east of the Los Alamos Townsite. This parcel was restored to the public domain by Presidential Proclamation 3539 on May 27, 1963. Because it is public domain land, additional legislative action may be required to transfer it out of Federal government control.

A copy of the report may be obtained from Mr. Dennis Martinez, U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, New Mexico, 87544, telephone (505) 667-6146, or E-mail at dmartinez@doe.lanl.gov.

The Role of the Conveyance and Transfer EIS in the DOE NEPA Compliance Strategy

The Conveyance and Transfer EIS will be prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's (CEQ) NEPA regulations (40 CFR Parts 1500-1508), and the DOE NEPA regulations (10 CFR Part 1021). The purpose of this EIS is to provide DOE decisionmakers and stakeholders with information on the projected environmental impacts that would result from the proposed conveyance and transfer of certain land tracts to the County and to the Pueblo respectively, as prescribed by Congress in P.L. 105-119, for the following future uses: (1)

historic, cultural, or environmental preservation, (2) economic diversification, or (3) community self-sufficiency. Specific future land uses associated with each broad use category will be established through consultation with the recipient parties.

The EIS will provide an analysis of any reasonable alternatives identified through public scoping. The EIS will provide a baseline for DOE to use as a basis of comparison for environmental effects of proposed future changes in programs and activities, and could be a tiering (reference) document for future NEPA analysis of agency plans, functions, programs, and resource utilization.

Proposed Action and Alternatives

The proposed action is to convey and transfer land that is not required to meet the national security mission of DOE or will not be required for that purpose within the next 10 years. An alternative under consideration is the Conveyance and Transfer of All Tracts Alternative, which would be to convey and transfer to the County and/or the Pueblo all of the land identified. Another alternative, the Partial Conveyance and Transfer of Tracts Alternative, would involve the conveyance and transfer of most of the tracts with the retention by DOE of any land that cannot be cleaned up within the next 10 years. As information is obtained through the analysis process, the Partial Conveyance and Transfer of Tracts Alternative may be refined and analyzed thoroughly or it may be eliminated from detailed analysis. Each alternative would analyze the impacts of up to three potential uses of land depending on information on the intended use provided by the County and Pueblo. The following future uses could be analyzed for each land tract: (1) historic, cultural, or environmental preservation purposes, (2) economic diversification purposes, or (3) community self-sufficiency purposes. Follow-on actions involving the relocation of current tenants will be analyzed to the extent that the information is available. As required by the CEQ NEPA regulations, a No Action alternative will also be evaluated. The No Action alternative would be to continue the current use of the land tracts without the conveyance or transfer of any of the tracts to the identified parties.

Potential Issues for Analysis

Issues tentatively identified for analysis in this EIS include the socioeconomic impacts of development of the land tracts and their subsequent use; potential impacts to protected

threatened, endangered, or sensitive species of animal or plants, or their critical habitat; potential impacts to cultural or historic resources; potential human health impacts to site occupants and the general public; potential effects on air, soil, and water quality from development and cleanup of the subject parcels and subsequent anticipated uses; potential irreversible and irretrievable commitment of resources, including the ultimate loss of LANL lands and land occupied and used as a result of conveyance and transfer actions; potential effects on members of the public, including minority and low-income populations from the development of the subject parcels and subsequent anticipated uses; and cumulative environmental impacts related to past, present and future development of the land and actions anticipated by neighboring land managers.

Related NEPA Reviews

Following is a summary of recent NEPA documents that may be considered in the preparation of this EIS and from which this EIS may be tiered. The Conveyance and Transfer EIS will include relevant information from each of these documents.

The Los Alamos National Laboratory (LANL) Draft Site-Wide Environmental Impact Statement (SWEIS) (DOE/EIS-0238) (in preparation). The Draft SWEIS analyzes four levels of operations alternatives for LANL to meet its existing and potential future program assignments: the No Action Alternative, the Expanded Operations Alternative, the Reduced Operations Alternative, and the Greener Alternative. The SWEIS also provides project specific analysis for two proposed projects: the Expansion of TA-54/Area G Low Level Waste Disposal Area; and Enhancement of Plutonium Pit Manufacturing. The SWEIS does not analyze changing the size or configuration of the LANL reserve through land conveyance or transfer.

The DP Road Tract EA (DOE/EA-1184) analyzed the proposed transfer of 28 acres of land located along the south side of DP Road next to the Los Alamos Townsite. The property is currently part of LANL's TA-21 and has been used most recently as a vacant buffer area. Previous uses of the tract include use of part of the tract as a mobile home park and playground. Portions of the tract are now wooded with mixed saplings and mature trees; the portion of the tract contiguous with DP Road is covered with native grasses and broadleaf plants. Should this land tract be transferred to the County, the County has indicated

that its preferred use of the land tract would be to develop the property within 5 to 10 years for its own use with the construction of a new office building to house County employees, paved parking areas, and new warehouses, garages, and support buildings for the transfer of the school bus yard, equipment maintenance, and school supply warehousing activities to the site. A maximum of about 800 employees would be expected to occupy the site. A Finding of No Significant Impact (FONSI) was issued on January 23, 1997, although no action has yet taken place.

The Research Park EA (DOE/EA-1212) analyzed the proposed lease of about 60 acres of land located next to the main administration portion of LANL, at the edges of TA-3 and TA-62. The property is currently a combination of wooded land and land used for parking lots. This tract is bounded in general by Diamond Drive on the east, West Jemez Road on the south, West Road on the west, and Los Alamos Canyon on the north. The land would be leased to the County to establish a research park. The term of the lease is expected to be 55 years with options for renewal depending upon final agreements between the County and DOE. The tract of land would be developed by the County or third parties within 5 to 10 years of the date of the lease. Research parks are professional developments that allow a wide range of companies to work within the same geographic location and to benefit from a well-planned environment suited to business needs. The County recommended that the type of research park best suited for Los Alamos would include freestanding buildings with landscaping and a possible atrium arrangement between related structures. About 10 buildings are planned for the research park and about 1,500 employees would be expected to occupy the site. A FONSI was issued on October 8, 1997, although no action has yet taken place.

Scoping Process

The scoping process is an opportunity for the public to assist the DOE in determining the alternatives and issues for analysis. The purpose of the scoping meetings is to receive oral and written comments from the public. The meetings will use a format to facilitate dialogue between DOE and the public and will be an opportunity for individuals to provide written or oral statements. DOE welcomes specific comments or suggestions on the content of these alternatives, or on other alternatives that could be considered.

The above list of issues to be considered in the EIS analysis is tentative and is intended to facilitate public comment on the scope of this EIS. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The Conveyance and Transfer EIS will describe the potential environmental impacts of the alternatives, using available data where possible and obtaining additional data where necessary. Copies of written comments and transcripts of oral comments will be available at the following locations: Los Alamos Outreach Center, 1350 Central Avenue, Suite 101, Los Alamos, New Mexico, 87544; and the Albuquerque Technical-Vocational Institute (TVI), Montoya Campus Library, 4700 Morris NE, Albuquerque, New Mexico 87111.

Issued in Washington, D.C., this 30th day of April 1998.

Peter N. Brush,

Acting Assistant Secretary Environment, Safety and Health.

[FR Doc. 98-11990 Filed 5-5-98; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management; Safe Routine Transportation and Emergency Response Training; Technical Assistance and Funding; Correction

AGENCY: Department of Energy.

ACTION: Notice of revised proposed policy and procedures; Correction.

Correction

In notice document 98-11520, beginning on page 23753, in the issue of Thursday, April 30, 1998, make the following corrections:

1. On page 23754, first column, 2nd paragraph beginning with Note:, in the 2nd line, change the words "final policy" to read "revised proposed policy".

2. On page 23765, third column, last heading, beginning with Appendix, in the 2nd line, change the words "Notice of Final Policy" to read "Notice of Revised Proposed Policy and Procedures".

Issued in Washington, D.C. on April 30, 1998.

Ronald A. Milner,

Acting Deputy Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 98-11989 Filed 5-5-98; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-2045-000]

Conectiv Energy Supply, Inc.; Notice of Issuance of Order

April 30, 1998.

Conectiv Energy Supply, Inc. (CES) filed an application for authorization to engage in wholesale sales of electric capacity and/or energy at market-based rates, and for certain waivers and authorizations. In particular, CES requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by CES. On April 29, 1998, the Commission issued an Order Conditionally Accepting For Filing Proposed Tariff For Market-Based Power Sales And Reassignment Of Transmission And Ancillary Service Rights (Order), in the above-docketed proceeding.

The Commission's April 29, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to pretest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CES should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, CES is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of CES, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CES's issuance of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 29, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-11953 Filed 5-5-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-99-000]

Tennessee Gas Pipeline Company; Notice Following Technical Conference

April 30, 1998.

Following the technical conference held in this proceeding on April 8, 1998, Tennessee Gas Pipeline Company (Tennessee), circulated to the parties a memorandum dated April 22, 1998, which included *pro forma* tariff sheets revising its proposed Rate Schedule FT-BH. Tennessee requested that the Commission establish a procedural schedule for initial and reply comments regarding its revised proposal.

Tennessee is directed to file its *pro forma* tariff sheets with the Commission and to serve the *pro forma* tariff sheets on the parties to this proceeding no later than May 7, 1998. The parties may file initial comments concerning Tennessee's proposal no later than May 13, 1998, and reply comments may be filed no later than May 30, 1998.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-11954 Filed 5-5-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98-66-000, et al.]

Electric Rate and Corporate Regulation Filings; Geddes Cogeneration Corporation, et al.

April 29, 1998.

Take notice that the following filings have been made with the Commission:

1. Geddes Cogeneration Corporation

[Docket No. EG98-66-000]

Take notice that on April 24, 1998, Geddes Cogeneration Corporation (Geddes), of One Upper Pond Road, Parsippany, New Jersey, filed with the Federal Energy Regulatory Commission an application for determination of

exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a New York corporation which is a general partner of Onondaga Cogeneration Limited Partnership, a New York limited partnership which owns a topping-cycle cogeneration facility (the Facility). All electricity produced by the Facility is sold at wholesale to Niagara Mohawk Power Corporation.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Indiana Michigan Power Company

[Docket No. ER98-443-000 and ER98-444-000]

Take notice that on April 24, 1998, Indiana Michigan Power Company submitted for filing proposed accounting procedures for settlement proceeds in compliance with the Commission's March 25, 1998, order in the above dockets.

AEP requests an effective date of March 1, 1998. Copies were served upon the parties to these dockets and the Public Service Commissions of Indiana and Michigan.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. The Furst Group, Inc.

[Docket No. ER98-2423-000]

Take notice that on April 24, 1998, The Furst Group, Inc. (Furst), filed an amended petition to the Commission for acceptance of Furst Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Furst intends to engage in wholesale electric power and energy purchases and sales as a marketer. Furst is not in the business of generation or transmitting electric power.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER98-2667-000]

Take notice that on April 24, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a Borderline Agreement between Niagara Mohawk and Central Vermont Public Service Corporation (CVPS).

Copies of the filing have been served on CVPS, the Vermont Department of

Public Service, and the Public Service Commission of the State of New York.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Energy Oakland LLC

[Docket No. ER98-2669-000]

Take notice that on April 24, 1998, in accordance with the provisions of Section 205 of the Federal Power Act and Section 35.12 of the Commission's Regulations, Duke Energy Oakland LLC (DEO), submitted for filing a Rate Schedule to establish the terms and conditions of the Reliability Must-Run Services which DEO intends to provide to the California Independent System Operator Corporation (California ISO) when DEO acquires the Oakland Generating Plant from Pacific Gas & Electric Company (PG&E); to establish the rates applicable to those services; and to set forth the conditions under which revenue credits will be provided to the California ISO.

DEO requests that the Rate Schedule be permitted to become effective on June 23, 1998, subject to the condition that it has become the owner of the Oakland generating plant.

Copies of the filing were served upon the California ISO and the Public Utilities Commission of the State of California.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Sparc, L.L.C.

[Docket No. ER98-2671-000]

Take notice that on April 24, 1998, Sparc, L.L.C. (Sparc) applied to the Commission for acceptance of Sparc Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Sparc intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. NGE Generation, Inc.

[Docket No. ER98-2672-000]

Take notice that on April 24, 1998, NGE Generation, Inc. (NGE Gen), tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.15, a notice of cancellation (Cancellation) of Rate Schedule FERC No. 98 (Rate Schedule) between NGE Gen and Long Island Lighting Company (LILCO).

NGE Gen requests that the Cancellation be deemed effective as of April 23, 1998. To the extent required to give effect to the Cancellation, NGE Gen requests waiver of the notice requirements pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15.

NGE Gen served copies of the filing upon the New York State Public Service Commission and LILCO.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas and Electric Company

[Docket No. ER98-2675-000]

Take notice that on April 24, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing summary information on transactions that occurred during the period January 1, 1998 through March 31, 1998, pursuant to its Market Based Rate Sales Tariff accepted by the Commission in Docket No. ER96-2734-000.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER98-2676-000]

Take notice that on April 24, 1998, New England Power Company tendered for filing Notice of Cancellation for Schedule III-C to its FERC Electric Tariff, Original Volume No. 1.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Gas Company

[Docket No. ER98-2678-000]

Take notice that on April 24, 1998, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Tenaska Power Services Company as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon TPSC and the South Carolina Public Service Commission.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Moss Landing LLC

[Docket No. ER98-2680-000]

Take notice that on April 24, 1998, Duke Energy Moss Landing LLC (Moss

Landing), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. Moss Landing proposes that its Rate Schedule No. 1 become effective on June 23, 1998 or on the date its acquisition of the Moss Landing Facility, a generation facility in California, closes, whichever is later.

Moss Landing intends to sell energy and capacity from the Moss Landing Facility at market based rates and may also engage in electric power and energy transactions as a marketer and a broker. In transactions where Moss Landing sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Morro Bay LLC

[Docket No. ER98-2681-000]

Take notice that on April 24, 1998, Duke Energy Morro Bay LLC (Morro Bay), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. Morro Bay proposes that its Rate Schedule No. 1, become effective on June 23, 1998 or on the date its acquisition of the Morro Bay Facility, a generation facility in California, closes, whichever is later.

Morro Bay intends to sell energy and capacity from the Morro Bay Facility at market based rates and may also engage in electric power and energy transactions as a marketer and a broker. In transactions where Morro Bay sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Energy Oakland LLC

[Docket No. ER98-2682-000]

Take notice that on April 24, 1998, Duke Energy Oakland LLC (Oakland), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1. Oakland proposes that its Rate Schedule No. 1, become effective on June 23, 1998 or on the date its acquisition of the Oakland Facility, a generation facility in California, closes, whichever is later.

Oakland intends to sell energy and capacity from the Oakland Facility at

market based rates and may also engage in electric power and energy transactions as a marketer and a broker. In transactions where Oakland sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Nicole Energy Services

[Docket No. ER98-2683-000]

Take notice that on April 24, 1998, Nicole Energy Services (NES), petitioned the Commission for acceptance of NES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

NES intends to engage in wholesale electric power and energy purchases and sales as a marketer. NES is not in the business of generating or transmitting electric power. NES is a wholly-owned subsidiary of Nicole Gas Marketing, Inc., which, through its affiliates, explores for, produces and markets natural gas and associated products and services.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. LG&E Energy Marketing Inc., Western Kentucky Energy Corp. and WKE Station Two Inc.

[Docket No. ER98-2684-000]

Take notice that on April 24, 1998, LG&E Energy Marketing Inc. (LEM), Western Kentucky Energy Corp., and WKE Station Two Inc., submitted for filing, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Part 35 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.12, a rate schedule setting forth the rates, terms and conditions for LEM's sale of certain generation-based ancillary services at cost-based rates. LEM has agreed to provide these ancillary services to Big Rivers Electric Corporation (Big Rivers), two of Big Rivers' member distribution cooperatives (Member Cooperatives), namely Green River Electric Corporation and Henderson Union Electric Cooperative Corp., and the City of Henderson, Kentucky (City).

Copies of the filing were served upon Big Rivers and its counsel, the Member Cooperatives and their counsel, the City and its counsel and the Kentucky Public Service Commission.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Electric Power Company
[Docket No. ER98-2685-000]

Take notice that on April 24, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a revision to the Emergency Energy Service Schedule of its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). The revision would allow the cost of Wisconsin Electric's retail interruptible service options to be recovered in its provision of Emergency Energy to utility members of the Mid America Interconnected Network (MAIN). The modification to the Emergency Energy service schedule is in order to be prepared for any unusual electric supply and delivery challenges faced by utilities throughout the Midwest region this summer.

Wisconsin Electric respectfully requests an effective date May 1, 1998 and a termination date of September 30, 1998 when the conventional definition of "out-of-pocket cost" would then be restored. Wisconsin Electric requests waiver of the Commission's advance notice requirements.

Copies of the filing have been served on the investor owned utility members of MAIN, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Electric and Gas Company

[Docket No. ER98-2686-000]

Take notice that on April 24, 1998, Public Service Electric and Gas Company, of Newark, New Jersey (PSE&G), tendered for filing an agreement for the sale of capacity and energy to NGE Generation, Inc. (NGE), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of March 25, 1998.

Copies of the filing have been served upon NGE and the New Jersey Board of Public Utilities.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Electric and Gas Company

[Docket No. ER98-2687-000]

Take notice that on April 24, 1998, Public Service Electric and Gas

Company of Newark, New Jersey (PSE&G), tendered for filing an agreement for the sale of capacity and energy to SCANA Energy Marketing Inc. (SCANA), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of March 25, 1998.

Copies of the filing have been served upon SCANA and the New Jersey Board of Public Utilities.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Electric and Gas Company

[Docket No. ER98-2688-000]

Take notice that on April 24, 1998, Public Service Electric and Gas Company of Newark, New Jersey (PSE&G), tendered for filing an agreement for the sale of capacity and energy to Morgan Stanley Capital Group Inc. (Morgan), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of March 25, 1998.

Copies of the filing have been served upon Morgan and the New Jersey Board of Public Utilities.

Comment date: May 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-11956 Filed 5-5-98; 8:45 am]

BILLING CODE 8717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-2657-000, et al.]

Electric Rate and Corporate Regulation Filings; Wisconsin Public Service, et al.

April 28, 1998.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service

[Docket No. ER98-2657-000]

Take notice that on April 23, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Minnesota Power Co., under its Market-Based Rate Tariff.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Portland General Electric Company

[Docket No. ER98-2655-000]

Take notice that on April 23, 1998, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96-137-000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Grays Harbor PUD.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93-2-002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective March 31, 1998.

A copy of this filing was caused to be served upon Grays Harbor PUD as noted in the filing letter.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corporation

[Docket No. ER98-2656-000]

Take notice that on April 23, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with LG&E Power Marketing, Inc., under its Market-Based Rate Tariff.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. UtiliCorp United Inc.

[Docket No. ER98-2652-000]

Take notice that on April 23, 1998, UtiliCorp United Inc. (UtiliCorp), filed

service agreements with The Dayton Power and Light Company for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER98-2664-000]

Take notice that on April 23, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a contribution in aid of construction agreement between Niagara Mohawk and Hydro Development Group, Inc., (HDG).

Copies of the filing have been served on HDG and the Public Service Commission of the State of New York.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas and Electric Corporation

[Docket No. ER98-2663-000]

Take notice that on April 23, 1998, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a service agreement between CHG&E and NGE Generation, Inc. The terms and conditions of service under this agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. OA97-479-000. CHG&E also has requested waiver of the 60-day notice provisions pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER98-1808-000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Continental Energy Services, L.L.C., the Oklahoma Corporation Commission, the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the

Indiana Office of Utility Consumer Counselor.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98-1810-000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the New Energy Ventures, L.L.C., the Department of Public Utilities, the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Office of Utility Consumer Counselor.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER98-1481-000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Board of Public Utilities of Kansas City, Kansas, the Kansas State Corporation Commission, the Indiana Utility Regulatory Commission, the Indiana Office of Utility Consumer Counselor, the Kentucky Public Service Commission and the Public Utilities Commission of Wisconsin.

10. Cinergy Services, Inc.

[Docket No. ER98-1811-000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Entergy Power Marketing Corp., the Texas Public Utility Commission, the Indiana Utility Regulatory Commission, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER98-2086-000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon Strategic Energy Limited, the

Pennsylvania Public Utility Commission, the Indiana Utility Regulatory Commission, the Indiana Office of Utility Consumer Counselor, the Kentucky Public Service Commission and the Public Utilities Commission of Ohio.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER98-1716-000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon CNG Energy Services Corporation, the Pennsylvania Public Utility Commission, the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Office of Utility Consumer Counselor.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER98-1797-000]

Take notice that on April 23, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Griffin Energy Marketing, L.L.C., the Public Service Commission of Wisconsin, the Indiana Utility Regulatory Commission, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER98-2249-000]

Take notice that on April 23, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), filed revised Service Agreements for transmission and wholesale requirements services in conjunction with an electric retail access pilot program that was established by the New York Public Service Commission effective November 1, 1997. The Service Agreement for transmission services is under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3; as modified by an Order of the Commission in this proceeding dated November 7, 1997. The Service Agreement for wholesale requirements

services is under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4; as modified by an Order of the Commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is Eastern Power Distribution, Inc., (Eastern Power).

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98-2662-000]

Take notice that on April 23, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with South Jersey Energy Company and Columbia Power Marketing Corporation under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER98-2661-000]

Take notice that on April 23, 1998, Southern California Edison Company (Edison), tendered for filing executed Service Agreements for Wholesale Distribution Service with Mountain Vista Power Generation L.L.C., Ocean Vista Power Generation L.L.C., and Oeste Power Generation L.L.C., under Edison's Wholesale Distribution Access Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER98-2660-000]

Take notice that on April 23, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Merchant Energy Group of the Americas, Inc., under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97-3561-001. Under the tendered Service Agreement, Virginia Power will provide services to Merchant Energy Group of the Americas, Inc., under the rates, terms and conditions of the applicable Service Schedules

included in the Tariff. Virginia Power requests an effective date of April 23, 1998, for the Service Agreement.

Copies of the filing were served upon Merchant Energy Group of the Americas, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PP&L, Inc.

[Docket No. ER98-2659-000]

Take notice that on April 23, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated March 25, 1998, with American Electric Power Service Corporation (AEPSC), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds AEPSC as an eligible customer under the Tariff.

PP&L requests an effective date of April 23, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to AEPSC and to the Pennsylvania Public Utility Commission.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of New Mexico

[Docket No. ER98-2658-000]

Take notice that on April 23, 1998, Public Service Company of New Mexico (PNM), submitted for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Tenaska Power Services Company (2 agreements, dated April 2, 1998, for Non-Firm and Short Term Firm Service) and Columbia Power Marketing Corporation (2 agreements dated April 13, 1998, for Non-Firm and Short Term Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Energy Moss Landing LLC

[Docket No. ER98-2668-000]

Take notice that on April 24, 1998, in accordance with the provisions of Section 205 of the Federal Power Act and Section 35.12 of the Commission's Regulations, Duke Energy Moss Landing LLC (DEML), submitted for filing a Rate Schedule to establish the terms and conditions of the Reliability Must-Run

Services which DEML intends to provide to the California Independent System Operator Corporation (California ISO), when DEML acquires the Moss Landing Generating Plant from Pacific Gas & Electric Company (PG&E); to establish the rates applicable to those services; and to set forth the conditions under which revenue credits will be provided to the California ISO.

In addition to an allocated share of routine operation and maintenance costs, depreciation, return and taxes, the rates to the California ISO also reflect an allocated share of the costs which DEML incurred to acquire the Moss Landing facilities in excess of the amounts reflected on the books of PG&E prior to the acquisition (acquisition adjustment) and special revenue credits associated with the recovery of the acquisition adjustment.

DEML requests that the Rate Schedule be permitted to become effective on June 23, 1998, subject to the condition that it has become the owner of the Moss Landing generating plant.

Copies of the filing were served upon the California ISO and the Public Utilities Commission of the State of California.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER98-2312-000]

Take notice that on April 14, 1998, Niagara Mohawk Power Corporation tendered for filing notice of cancellation of FERC Rate Schedule No. 245, effective date May 13, 1996, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Toledo Edison Company.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-11955 Filed 5-5-98; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6010-1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Postponing Consumption: An Examination of Individual and Household Preferences

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Postponing Consumption: An Examination of Individual and Household Preferences.

Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 6, 1998.

ADDRESSES: Melonie Williams (2172) Office of Policy, Planning and Evaluation, US EPA, 401 M St. SW, Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by calling Melonie Williams at 202-260-7978 or via e-mail at williams.melonie@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Melonie Williams at 202-260-7978 or via e-mail at williams.melonie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are (i) those individuals who are contacted and asked to participate in the study and (ii) those who voluntarily agree to participate in the study. Residents in the Atlanta, GA area will be contacted by telephone (random-digit dialing), students at an as-yet-undetermined university will be contacted by e-mail (via group mailing lists) and posted announcements.

Title: Postponing Consumption: An Examination of Individual and Household Preferences.

Abstract: This information collection exercise is a pilot study designed to examine individual and household discount rates and individual preferences over intergenerational distributions of wealth.

Currently, market interest rates are used as proxies for individual and social discount rates in economic analyses of EPA programs. Considerable evidence indicates, however, that these discount rates may bear no relationship to market rates. Instead, individual discount rates appear to vary with respect to time horizon, socio-demographic characteristics, and the nature of the good being traded across time.

This study will use the experimental laboratory to examine individual and household discount rates. Experiment participants will be asked to make intertemporal trade-offs and discount rates will be inferred from their choices. Participants will also be asked to provide information on their socio-demographic characteristics and financial market activities. Ultimately, these data will be used to (i) generate individual and household discount rates for use in economic models involving intertemporal components and (ii) examine the appropriateness of using market interest rates as social discount rates in economic analyses of public programs.

Moreover, the choice of a particular discount rate to be used in economic analyses of EPA programs is likely to have consequences for the intergenerational distribution of wealth. Thus, equity issues may influence individual preferences over the discount rate used to evaluate EPA programs.

This study will use the experimental laboratory to examine individual preferences over income distributions. Laboratory incentives will be designed to create alternative social decision mechanisms under which subjects choose among different income distributions that determine subject payments. The characteristics defining these alternative social decision mechanisms correspond to equity issues similar to those arising from EPA policies. By observing individual preferences over income distributions under alternative decision rules, we can provide EPA policymakers with evidence on public preferences over intergenerational distributions of wealth.

Laboratory incentives will involve real (as opposed to hypothetical) economic commitments. Participation in these experiments will be informed

and voluntary. Participants will be able to terminate participation at any time without penalty. Well-established procedures will be in place to ensure the participants' anonymity and the confidentiality of their responses. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: 330 subjects will participate in those experiments examining discount rates. Subjects will convene in groups at an Atlanta conference center. Each subject will participate in one experimental session and each experimental session will last approximately 1.5 hours inclusive of time to sign informed-consent forms, answer questionnaires, read experimental instructions and record decisions. Subjects will incur an estimated average of 45 minutes travel time. Assuming a 75% show-up rate, Haigler-Bailly, who is likely to conduct the experiments, has estimated that 440 subjects should be recruited to obtain a final sample size of 330. Recruiting is by telephone and Haigler-Bailly estimates that 2000 completed contacts are necessary to obtain 440 recruits. The phone calls will last from 2 minutes (for those who refuse to participate) to 4 minutes (for those who agree to participate). Hence, the estimated burden for these experiments is 824 hours.

260 subjects will participate in those experiments examining preferences over income distributions. Subjects will convene in groups on a university campus. Each subject will participate in

one experimental session and each experimental session will last approximately 1.25 hours inclusive of time to sign informed-consent forms, answer questionnaires, read experimental instructions and record decisions. Since subjects are located at the site, travel time will be negligible. Moreover, the recruitment burden will be negligible, so no separate burden estimate is calculated. Hence, the estimated burden for these experiments is 325 hours. Total burden for the pilot study is thus 1149 hours. Labor costs were estimated based on the Bureau of Labor Statistics April 18, 1997 release of weekly earnings of wage and salary workers. Using median earnings (\$504/wk), the total burden cost is estimated at \$14,477.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 30, 1998.

Melanie B. Williams,

Economist.

[FR Doc. 98-12035 Filed 5-5-98; 8:45 am]

BILLING CODE 6560-60-U

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6009-5]

Air Pollution Control; Proposed Action on Clean Air Act Grant to the South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that reductions in expenditures of non-Federal funds for the South Coast Air Quality Management District (SCAQMD) in Diamond Bar, California are a result of non-selective reductions in

expenditures. This determination, when final, will permit the SCAQMD to be awarded financial assistance for FY-98 by EPA, under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by June 5, 1998.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: R. Michael Stenborg, Grants and Program Integration Office (Air-8), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901; FAX (415) 744-1076.

FOR FURTHER INFORMATION CONTACT: R. Michael Stenborg, Grants and Program Integration Office (Air-8), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901 at (415) 744-1182.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance (grants) to the SCAQMD, whose jurisdiction includes Los Angeles and Orange Counties in southern California, to aid in the operation of its air pollution control programs. In FY-97, EPA awarded the SCAQMD \$4,844,967, which represented approximately 5.1% of the SCAQMD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that "[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY-98 § 105 grant application the SCAQMD projected MOE of \$63,763,496. This amount represents a shortfall of \$11,450,587 from the actual FY-97 MOE of \$75,214,083. In order for the SCAQMD to be eligible to be

awarded its FY-98 grant, EPA must make a determination under § 105(c)(2).

The SCAQMD is a single-purpose agency whose primary source of funding is emission fee revenue. It is the "unit of Government" for § 105(c)(2) purposes. The SCAQMD submitted documentation to EPA which shows that over the last six years emission reductions brought on by a combination of regulated and voluntary emission reductions and actions to minimize fee increases on businesses have reduced fee revenues from stationary sources from a high of \$66,914,362 in 1991-1992 to approximately \$50,724,900 in 1997-1998. As a result, the SCAQMD has instituted hiring/salary freezes, furloughs, and layoffs, has reduced its equipment purchases and contract expenditures, and has instituted new programs to reduce costs such as permit streamlining, computer-assisted permit processing, and privatization efforts.

Therefore, the SCAQMD's MOE reduction resulted from a loss of fee revenues due to circumstances beyond its control. EPA proposes to determine that the SCAQMD's lower FY-98 MOE level meets the § 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SCAQMD to be awarded financial assistance for FY-98.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by June 5, 1998 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by June 5, 1998.

If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the *Federal Register*, copies of the determination can be obtained by sending a written request to R. Michael Stenborg at the above address.

Dated: April 20, 1998.

Steven Frey,

Acting Director, Air Division, U.S. EPA, Region 9.

[FR Doc. 98-12031 Filed 5-5-98; 8:45 am]

BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6009-9]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Gulf of Mexico Program Policy Review Board.

SUMMARY: The Gulf of Mexico Program's Policy Review Board will hold a meeting at the Adam's Mark Hotel, Mobile, Alabama.

DATES: A meeting of the Gulf of Mexico Program Policy Review Board will be held at the Adam's Mark Hotel, Mobile, Alabama. The committee will meet from 1:00 P.M. to 5:00 P.M. on May 26 and from 9:00 A.M. to 3:00 P.M. on May 27. Agenda items will include: Overview of key environmental indicators for Gulf Coast estuaries; Status of Management Committee and Gulf Program restructuring and Overview of Current Initiatives; Focus Team Progress (Panel Report); Mid-Year Strategic Evaluation. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103,

Room 202, Stennis Space Center, MS 39529-6000 at (228) 688-1172.

Bryon O. Griffith,

Deputy Director, Gulf of Mexico Program.

[FR Doc. 98-12033 Filed 5-5-98; 8:45 am]

BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66250; FRL 5784-1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency. (EPA)

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by November 2, 1998, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C),

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the *Federal Register* before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 54 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000334-00245	Hysan "006" Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil
		Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester
000352 OR-88-0005	Vendex 50 Wettable Powder Miticide	Hexakis(2-methyl-2-phenylpropyl)distannoxane
000769-00686	SMCP Diazinon Insect Spray	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769-00688	SMCP Diazinon 4S	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769-00691	SMCP Diazinon RP 12.5 E Insecticide	Aromatic petroleum derivative solvent
		O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769-00693	SMCP Diazinon RP 25E	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769-00695	SMPC Diazinon 6-S	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
		Aliphatic petroleum hydrocarbons
000769-00708	SMPC Diazinon 12.5% Insect Spray	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
		Xylene range aromatic solvent
000769-00749	Insecticide Liquid, Diazinon, 1%	O,O-Diethyl, O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769-00820	Diazinon 4AG	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769-00864	Pratt Diazinon 18E Insect Spray	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769-00959	Pratt Diazinon Ag4E Insect Spray	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000802-00438	Miller's Whack Wasp-Hornet-Ant-Roach Killer	o-isopropoxyphenyl methylcarbamate
000892-00026	Germotox Disinfectant Deodorant	2-Benzyl-4-chlorophenol
		4-tert-Amylphenol
		Sodium o-phenylphenate
		Isopropanol
001839-00082	Disinfectant Pump Spray	Alkyl* dimethyl benzyl ammonium chloride *(60%C ₁₄ , 30%C ₁₆ , 5%C ₁₈ , 5%C ₁₂)
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C ₁₂ , 32%C ₁₄)

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
004787 OR-96-0003 004822-00131	Fylanon ULV Raid Aqueous Ant and Roach Killer	<i>O,O</i> -Dimethyl phosphorodithioate of diethyl mercaptosuccinate <i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004822-00156 004822-00171	Raid Water-Based Residual Liquid Raid Roach & Ant Killer	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate <i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
004822-00175	Raid Formula 34 Insect Spray	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004822-00176 004822-00177 004822-00178	Raid Formula 33 Insect Spray Raid Formula 32 Insect Spray Raid Formula 36 Insect Spray	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate <i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate <i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004822-00179 004822-00182	Insect Spray for Crawling Insects Raid Household Roach & Ant Killer	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate <i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
004822-00213	Raid Formula D147 for Crawling Insects	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
004822-00218	Raid Roach & Ant Killer Formula III	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
004822-00219	Raid Roach & Ant Killer Formula IV	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate Pyrethrins
004822-00285	Raid Flea Killer VI Plus	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Isopropyl (2 <i>E</i> ,4 <i>E</i>)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate
004822-00291	Raid Flea Killer V Plus	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Ethyl 2-(<i>p</i> -phenoxyphenoxy)ethyl carbamate
004822-00322	Raid Ant & Roach Killer 5	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
010182 OR-94-0003 010182 OR-94-0004	Dyfonate II 15-G Granular Insecticide Dyfonate II 15-G Granular Insecticide	<i>O</i> -Ethyl <i>S</i> -phenyl ethylphosphonodithioate <i>O</i> -Ethyl <i>S</i> -phenyl ethylphosphonodithioate
010370-00163 028293-00034 028293-00051 028293-00238 028293-00257	Flea, Tick, & Mange Dip Unicorn Dursban Flea Spray for Dogs Unicorn Chlorpyrifos Dog Dip Unicorn Dursban Flea & Tick Dog Dip Unicorn Dursban Room Fogger	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate <i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate <i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate <i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate <i>N</i> -Octyl bicycloheptene dicarboximide <i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
034704-00515	Azinphos Methyl 50 W	<i>O,O</i> -Dimethyl <i>S</i> -((4-oxo-1,2,3-benzotriazin-3(4 <i>H</i>)-yl)methyl) phosphorodithioate
050534 FL-95-0004	Bravo 720	Tetrachloroisophthalonitrile

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
051036-00186 056228 TX-95-0002	Micro Flo Dyfonate 2-G Zinc Phosphide Concentrate for Mouse Control	<i>O</i> -Ethyl <i>S</i> -phenyl ethylphosphonodithioate Zinc phosphide (Zn3P2)
057908 GA-92-0004 059639-00030 062719-00194 062719-00195 062719-00196	Daylonate 11 15-G Granular Insecticide Orthene Specialty Concentrate Tapp Powdered Pyrethrum B & G Tapp 1.3 B&g SYN-PY-TE-35 Transparent Emulsion Spray	<i>O</i> -Ethyl <i>S</i> -phenyl ethylphosphonodithioate <i>O,S</i> -Dimethyl acetylphosphoramidothioate Pyrethrins Pyrethrins (5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
062719-00199 062719-00201	Dursban 1 D B & G Pyrenone General Purpose Spray	<i>O,O</i> -Diethyl <i>O</i> -(3,5,6-trichloro-2-pyridyl) phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
062719-00202 062719-00204 062719-00205	Tapp General Purpose Residual Spray Syn-Perm Insecticide for Plants B & G Flexi - Dust	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-, Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-, (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
063244-00001	Roof Saver	Copper (metallic) Zinc
066249-00001	Bug Master Strips	Oil of citronella

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000334	Hysan, A Division of Specialty Chemical Resources, 9055 Freeway Drive, Macedonia, OH 44056.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000769	Sureco Inc., An Indirect Subsidiary of Ringer Corporation, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
000802	Chas H. Lilly Co., Box 83179, Portland, OR 97283.
000892	Pioneer Mfg. Co., 4529 Industrial Parkway, Cleveland, OH 44135.
001839	Stepan Co., 22 W. Frontage Rd., Northfield, IL 60093.
004787	Cheminova Agro A/S, 1700 Route 23, Suite 210, Wayne, NJ 07470.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010370	AgrEvo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762.
034704	Cherie Garner, Agent For: Platte Chemical Co Inc., Box 667, Greeley, CO 80632.
050534	ISK Biosciences Corp., 5966 Heisley Rd., Box 8000, Mentor, OH 44061.
051036	Micro-Flo Co., Box 5948, Lakeland, FL 33807.
056228	U.S. Department of Agriculture, Animal & Plant Health Inspection Service, 4700 River Rd., Unit 152, Riverdale, MD 20737.
057908	Metam Sodium Task Force, c/o Stauffer Chemical Co., 1200 South 47th St., Richmond, CA 94804.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.
063244	Greg Ripke, Box 475, Veneta, OR 97487.
066249	Bug Master Products, 50 Hollworthy St., Rochester, NY 14606.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before November 2, 1998. This written withdrawal of the request for cancellation will apply only to the applicable 6(1)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in *Federal Register* [56 FR 29362] June 26, 1991; [FRL 3846-4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: April 13, 1998.

Linda A. Travers,
Director, Information Resources and Services
Division, Office of Pesticide Programs.

[FR Doc. 98-11760 Filed 5-5-98; 8:45 am]
BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPP-181061; FRL 5787-1]

Carbofuran; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arkansas State Plant Board hereafter referred to as the "Applicant" to use the pesticide flowable Carbofuran (Furadan 4F Insecticide/Nematicide) (EPA Reg. No. 279-2876) to treat up to 1 million acres of cotton, to control cotton aphids. The Applicant proposes the use of a chemical which has been the subject of a Special Review within EPA's Office of Pesticide Programs. The granular formulation of carbofuran was the subject of a Special Review between the years of 1986-1991, which resulted in a negotiated settlement whereby most of the registered uses of granular carbofuran were phased out. While the flowable formulation of carbofuran is not the subject of a Special Review, EPA believes that the proposed use of flowable carbofuran on cotton could pose a risk similar to the risk assessed by EPA under the Special Review of granular carbofuran. Additionally, in 1997 EPA denied requests made under provisions of section 18 for this use of flowable carbofuran. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 21, 1998.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-181061," should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instruction under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be included in the public record by EPA without prior notice.

The public docket is available for public inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-308-9358); e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of carbofuran on cotton to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the state of Arkansas is likely to experience non-routine infestations of aphids during the 1998 cotton growing season. The applicant further claims that, without a specific exemption of FIFRA for the use of flowable carbofuran on cotton to control cotton aphids, cotton growers in the state will suffer significant economic losses. The applicant also details a use program designed to minimize risks to pesticide handlers and applicators, non-target organisms (both Federally-listed endangered species, and non-listed species), and to reduce the possibility of drift and runoff.

The Applicant proposes to make no more than two applications of flowable carbofuran on cotton at the rate of 0.25 lb. active ingredient (a.i.) [(8 fluid oz.)] in a minimum of 2 gallons of finished spray per acre by air, or 10 gallons of finished spray per acre by ground application. The total maximum proposed use during the 1998 growing season June 1, 1998 until September 30, 1998 would be 0.5 lb. a.i. (16 fluid oz.) per acre. The applicant proposes that the maximum acreage which could be treated under the requested exemption would be 1 million acres, with approximately half of that acreage requiring a second application. If all the proposed acres were treated at the maximum proposed rate, then 375,000 lbs. a.i. would be used in Arkansas.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a chemical (i.e., an active ingredient) which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar to the risk assessed by EPA under the previous Special Review. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP-181061] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-181061]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received

during the comment period in determining whether to issue the emergency exemption requested by the Arkansas State Plant Board.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: April 23, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98-11761 Filed 5-5-98; 8:45 am]
BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-6010-4]

Contaminated Sediment Management Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of EPA's Contaminated Sediment Management Strategy, an Agency workplan issued in support of EPA's regulatory and policy initiatives. The Strategy does not propose new regulation and is Agency guidance only. Also available for review is the Comment and Response Document.

EPA's Contaminated Sediment Management Strategy describes the cross-program policy framework in which EPA intends to promote consideration and reduction of ecological and human health risks posed by sediment contamination. The Strategy establishes four goals to manage the problem of contaminated sediment, and describes actions the Agency intends to take to accomplish those goals. The four goals are: (1) Prevent the volume of contaminated sediment from increasing; (2) reduce the volume of existing contaminated sediment; (3) ensure that sediment dredging and dredged material disposal are managed in an environmentally sound manner; and (4) develop scientifically sound sediment management tools for use in pollution prevention, source control, remediation, and dredged material management.

ADDRESSES: Requests for copies of EPA's Contaminated Sediment Management Strategy (EPA document number EPA 823-R-98-001) should be sent to: U.S. Environmental Protection Agency, National Center for Environmental Publications and Information, P.O. Box

42419, Cincinnati, Ohio 45242; telephone: 1-800-490-9198, fax: 513-489-8695. EPA's Contaminated Sediment Management Strategy may be viewed or downloaded from the Office of Science and Technology's homepage on the Internet at <http://www.epa.gov/OST/>. The Contaminated Sediment Management Strategy and Comment and Response Document are available for public inspection and copying from 9:00 am to 4:00 pm at the Water Docket, East Tower Basement, Environmental Protection Agency, Mail Code 4101, 401 M Street, S.W., Washington, D.C. 20460. Also available are related docket materials which include: the proposed Strategy, all public comments received on the Strategy as well as those received on an earlier proposal for discussion, and the proceedings of three national public forums held to discuss development of the Strategy. For an appointment to review Docket materials, call the Water Docket Clerk at 202-260-3027 between 9 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Jane M. Farris, Risk Assessment and Management Branch, Office of Science and Technology, Mail Code 4305, 401 M Street, S.W., Washington, D.C. 20460, Telephone: 202-260-8897.

SUPPLEMENTARY INFORMATION: EPA accepted written comments on the proposed Contaminated Sediment Management Strategy for 90 days after publication of the notice of availability in the *Federal Register* on August 30, 1994, and publication of a notice of extension of comment period in the *Federal Register* on October 28, 1994. At the close of the comment period on November 30, 1994 through 1997, EPA's Office of Science and Technology within the Office of Water developed responses to comments received from 126 organizations. The Strategy and comment/response document have been reviewed and revised by four staff workgroups of the EPA Sediment Steering Committee who also drafted the proposed Strategy.

Executive Summary—EPA's Contaminated Sediment Management Strategy

Reinventing Government to Streamline Decision-making

Contaminated sediment poses ecological and human health risks in many watersheds throughout the United States. In these watersheds, sediment serves as a contaminant reservoir from which fish and bottom dwelling organisms can accumulate toxic compounds and pass them up the food

chain. Sediment contaminants can be passed to fish, birds, and mammals until they accumulate to levels that may be toxic. Such toxic effects may include neurological, developmental, and reproductive impacts. Toxic chemicals come from discharges from industrial waste and sewage; storm water runoff from waste dumps, city streets and farms; air pollutants contained in rainwater; contaminants in ground water; discharges to surface water; and from natural sources. The magnitude of the sediment contamination problem in the United States is evidenced in more than 2,100 State advisories that have been issued against consuming fish. Sediments were identified as a potential source of contamination at many of the sites where consumption of fish may pose health risks. EPA has studied sediment quality data from 1,372 of the 2,111 watersheds in the continental U.S. Of these, EPA has identified 96 watersheds that contain "areas of probable concern" where potential adverse effects of sediment contamination are more likely to be found.

More than ten Federal statutes provide authority to many EPA program offices to address the problem of contaminated sediment. This has resulted in fragmented, and in some cases duplicative, efforts to complete the necessary research, technology development, and pollution control activities required to effectively manage contaminated sediment. Often it has been difficult for EPA programs to agree even upon the fundamental question of whether sediment at a particular site poses ecological or human health risks. EPA's Contaminated Sediment Management Strategy was developed to streamline decision-making within and among the Agency's program offices by promoting and ensuring: the use of consistent sediment assessment practices, consistent consideration of risks posed by contaminated sediment, the use of consistent approaches to management of contaminated sediment risks, and the wise use of scarce resources for research and technology development.

Goals of the Contaminated Sediment Management Strategy

EPA's Contaminated Sediment Management Strategy describes actions that the Agency intends to take to accomplish the following four strategic goals: (1) Prevent the volume of contaminated sediment from increasing; (2) reduce the volume of existing contaminated sediment; (3) ensure that sediment dredging and dredged material disposal are managed in an

environmentally sound manner; (4) develop scientifically sound sediment management tools for use in pollution prevention, source control, remediation, and dredged material management.

What the Strategy Does

The Contaminated Sediment Management Strategy is comprised of six component sections: assessment, prevention, remediation, dredged material management, research, and outreach. In each section, EPA describes actions that the Agency intends to take to accomplish the four broad strategic goals.

In the assessment section of the Strategy EPA proposes that Agency program offices all use standard sediment toxicity test methods and chemical-specific sediment quality criteria to determine whether sediments are contaminated. Actions that EPA has taken to develop a biennial national inventory of sites and sources of sediment contamination (the National Sediment Quality Survey and National Sediment Inventory Database) are described in the assessment section of the Strategy. EPA plans to use the National Sediment Inventory Database (NSI) to identify sites that may be associated with adverse effects to human health and the environment. These assessment actions should enable EPA to focus on cleaning up the most contaminated waterbodies and ensuring that further sediment contamination is prevented. The National Sediment Quality Survey is a screening-level assessment of sediment quality data and sources of pollution that will be used by various EPA programs.

EPA's plan to stop sediment contaminants from reaching the environment is described in the prevention section of the Strategy. In order to regulate the use of pesticides and toxic substances that accumulate in sediment, EPA proposes the use of acute sediment toxicity tests to support registration of chemicals under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the evaluation of chemicals under the Toxic Substances Control Act (TSCA). In the prevention section of the Strategy EPA also proposes: considering sediment contamination as a factor in determining which industries should be subject to new and revised effluent guidelines; using pollution prevention policies to reduce or eliminate sediment contamination resulting from noncompliance with permits; developing guidelines for design of new chemicals to reduce bioavailability and partitioning of toxic chemicals to sediment; and implementing point and

nonpoint source controls to protect sediment quality. EPA's prevention actions would minimize further contamination of sediment and reduce ecological and human health risks.

In the remediation section of the Strategy EPA proposes using multiple statutes to require contaminated sediment remediation by parties responsible for pollution. These statutes include the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), TSCA, the Rivers and Harbors Act, and the Oil Pollution Act. The Agency will consider whether a combination of pollution prevention and source controls will allow contaminated sediments to recover naturally without unacceptable impacts to human health and the environment. On a site-specific basis, cleanup programs intend to consider natural attenuation. EPA's remediation actions would clean up existing sediment contamination that adversely affects the Nation's waterbodies.

In the dredged material management section, EPA describes its commitment to continue to work with the Corps of Engineers to ensure that dredged materials are managed in an environmentally sound manner. Physical, chemical and biological test methods will continue to be used to guide disposal and management decisions.

In the research section of the Strategy, EPA proposes a program of investigative research that is needed to: develop and validate chemical-specific sediment criteria and other sediment assessment methods; improve EPA's understanding of the transfer of sediment contaminants through the food chain; and develop and evaluate a range of technologies for remediating contaminated sediments. EPA's proposed research program would support improved assessment, prevention, and remediation of contaminated sediment.

The outreach section of the Strategy describes actions that EPA intends to take to demonstrate, through public involvement, the Agency's commitment to, and accountability for, sediment management efforts. EPA plans to produce, and make available to the public, status reports on sediment management activities as part of the biennial updates of the National Sediment Quality Survey Reports.

Next Steps Toward Implementation of a Federal Agency Contaminated Sediment Management Strategy

EPA intends to begin tracking activities of the Agency's program offices as they implement the Contaminated Sediment Management Strategy. Future updates of Agency-wide contaminated sediment activities will be included in the biennial National Sediment Quality Survey Report to Congress.

EPA's National Sediment Inventory is a screening-level assessment of sediment quality and sources of pollution that can be used in various programs. This data base can be used by Federal, State, and local agencies to target their pollution prevention and remediation efforts on the sites where sediment may be contaminated.

EPA's Contaminated Sediment Management Strategy will promote EPA and COE research to develop technologies for remediation of contaminated sediment under authority of the CWA, CERCLA, RCRA, TSCA, the Rivers and Harbors Act, the Oil Pollution Act, and WRDA.

Guidance provided in future updates of the Strategy will facilitate the coordination of dredged material management activities among Federal agencies and nongovernmental organizations. Coordination of dredged material management activities has been called for in the December 1994 action plan, "The Dredging Process in the United States: An Action Plan for Improvement," developed by the Federal Interagency Working Group on the Dredging Process (U.S. DOT, 1994). The Working Group was convened by the Secretary of Transportation in the Fall of 1993. The Group has held a series of outreach sessions throughout the country to solicit ideas on improving the dredging process. The Working Group identified important activities needed to improve the dredging process. These activities include: enhanced research and monitoring to improve dredged material disposal decision making, identification of opportunities to control sources of sediment contaminants, and effective education and communication with the public on the risks and impacts associated with dredged material disposal. Future updates of the Contaminated Sediment Management Strategy will address these issues.

Listing of Actions Identified in EPA's Contaminated Sediment Management Strategy

EPA's Contaminated Sediment Management Strategy proposes that

Agency program offices take the following actions.

Assessment

All EPA program offices intend to use standard sediment testing methods to determine whether sediments are contaminated. The Office of Water (OW) intends to use standard sediment toxicity and bioaccumulation test methods for monitoring, interpretation of narrative water quality standards, and dredged material disposal testing. The Office of Pesticide Programs (OPP) and the Office of Pollution Prevention and Toxics (OPPT) intend to use standard sediment toxicity tests to assess the toxicity of pesticides when registering or re-registering these chemicals for use and for evaluating new and existing chemicals under TSCA. The Office of Emergency and Remedial Response (OERR) intends to use standard sediment toxicity and bioaccumulation test methods for Superfund Remedial Investigation/Feasibility Studies. The Office of Solid Waste (OSW) intends to use biological sediment toxicity test methods for site-specific risk assessments and monitoring at hazardous waste facilities.

Where appropriate, EPA program offices intend to use sediment quality criteria, when they are published, to assess contaminated sediment sites. All EPA programs conducting sediment monitoring intend to use the criteria to interpret sediment chemistry data. Upon publication, the criteria may be used along with appropriate test endpoints from chronic sediment bioassays to interpret the narrative state water quality standard of "no toxics in toxic amounts". National Pollutant Discharge Elimination System (NPDES) permit limits would be based on applicable water quality standards which may include the State's narrative standard. EPA intends to use the sediment criteria (as appropriate) with other information to make site-specific decisions concerning corrective action at hazardous waste facilities, and to assess Superfund sites. The Agency has begun to develop a more detailed "User's Guide for Multi-Program Implementation of Sediment Quality Criteria in Aquatic Ecosystems," describing how the Agency's programs intend to use these criteria. This document will be submitted for public review when it is drafted.

EPA program offices intend to use the NSI as a screening-level assessment tool of sediment quality and sources of pollution. The NSI can be used by the various EPA program offices to identify sites for further assessment. The inventory can be used to: identify

potentially contaminated sediment sites for consideration for remedial action; identify sites for further assessment that may be candidates for injunctive relief or supplemental enforcement projects; identify problem pesticides and toxic substances that may require further regulation or be evaluated for possible enforcement action; identify impaired waters for National Water Quality Inventory reports or possible development of Total Maximum Daily Loads; target watersheds for nonpoint source best management practices; and help select industries for effluent guidelines development.

Prevention

In order to regulate the use of pesticides that may accumulate to toxic levels in sediment, EPA intends to propose that acute sediment toxicity tests be included in procedures required to support registration, re-registration, and special review of pesticides likely to sorb to sediment. In fiscal year 1996, EPA proposed incorporating acute toxicity bioassays and spiking protocols into the Agency's pesticide assessment guidelines (40 CFR Part 158). To prevent other toxic substances from accumulating in sediment, EPA also intends to propose incorporating acute sediment toxicity tests and sediment bioaccumulation tests into routine chemical review processes required under TSCA. In addition, EPA intends to develop guidelines for design of new chemicals to reduce bioavailability and partitioning of toxic chemicals to sediment.

EPA's Office of Enforcement and Compliance Assurance (OECA) plans to take action to prevent sediment contamination by negotiating, in appropriate cases of noncompliance with permits, enforceable settlement agreements to require source recycling and source reduction activities. The Office of Regulatory Enforcement within OECA also intends to monitor the progress of Federal facilities toward the goal of halving toxic emissions by the year 1999 and plans to monitor the reporting of toxic releases to the public.

OW and other EPA program offices intend to work with nongovernmental organizations and the States to prevent point and nonpoint source contaminants from accumulating in sediments. EPA intends to: (1) Promulgate new and revised technology-based effluent guidelines for industries that discharge sediment contaminants; (2) encourage the States to use biological sediment test methods and sediment quality criteria to interpret the narrative standard of "no toxics in toxic amounts;" (3) encourage

the States to develop Total Maximum Daily Loads for impaired watersheds specifying point and nonpoint source load reductions necessary to protect sediment quality; (4) use the NSI to identify point sources of sediment contaminants for potential permit compliance tracking after further evaluation using program-specific criteria to confirm sediment quality problems; (5) ensure that discharges from CERCLA sites and RCRA facilities subject to NPDES permits comply with future NPDES permit requirements to protect sediment quality; and (6) use the NSI to identify watersheds where technical assistance and grants could effectively be used to reduce nonpoint source loads of sediment contaminants.

Remediation

OW, OERR, and OECA intend to use the NSI to help target sites for further study which may lead to enforcement action requiring contaminated sediment remediation. EPA plans to use standard sediment toxicity, bioaccumulation tests, and site-specific field-based methods to identify potential sites for remediation, to assist in determining clean-up goals for contaminated sites, and to monitor the effectiveness of remedial actions. RCRA Corrective Action sites are generally determined by facilities seeking a RCRA permit, not by the program identifying contaminated areas, except in enforcement under 7003 orders.

Dredged Material Management

Guidance provided in future updates of the Strategy will facilitate the coordination of dredged material management activities among Federal agencies and nongovernmental organizations.

Research

EPA's Office of Research and Development (ORD), through its Environmental Monitoring and Assessment Program (EMAP), intends to continue to collect new chemical and biological data on sediment quality. These data would be included in the Agency's NSI. ORD is developing: new biological methods to assess the ecological and human health effects of sediment contaminants, chemical-specific sediment quality criteria, methods to conduct sediment toxicity identification evaluations and methods to identify bioaccumulative chemicals in sediment. ORD intends to develop dredged material disposal fate and transport models, sediment wasteload allocation models, and technologies for remediation of contaminated sediment.

Outreach

EPA plans to undertake a program of outreach and technology transfer to educate target audiences about contaminated sediment risk management. Target audiences would include: other Federal agencies, State and local agencies, the regulated community, the scientific community, environmental advocacy groups, the news media, and the general public. EPA plans to provide technical and nontechnical information to these audiences by developing a range of outreach products. Future updates to the Strategy will be reported in biennial updates of the National Sediment Quality Survey Report to Congress.

Dated: April 30, 1998.

Carol M. Browner,
Administrator.

[FR Doc. 98-12032 Filed 5-5-98; 8:45 am]
BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-44648; FRL-5788-9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on alkyl glycidyl ether (CAS No. 120547-52-6) and tertiary amyl methyl ether (TAME) (CAS No. 994-05-8). These data were submitted pursuant to enforceable testing consent agreements/orders issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA. **FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for alkyl glycidyl ether were submitted by the Society of the Plastics Industry, Inc. (SPI) Epoxy Resin Systems Alkyl Glycidyl Ether Task Force. The report was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and was received by EPA on March 18, 1998. The submission includes a final report entitled "In Vitro Mammalian Cell Gene Mutation Test with an Independent Repeat Assay." This chemical is used as an epoxy resin additive and as a modifier for other epoxides in flooring adhesives.

Test data for tertiary amyl methyl ether were submitted by the American Petroleum Institute (API), on behalf of the Tertiary Amyl Methyl Ether (TAME) Consortium. The report was also submitted pursuant to a TSCA section 4 enforceable consent agreement/order at 40 CFR 799.5000. EPA received the report on March 27, 1998. The submission includes a final report entitled "Two-Generation Reproductive Toxicity Evaluation of Inhaled Tertiary Amyl Methyl Ether (TAME) Vapor in CD (Sprague-Dawley) Rats." This chemical is widely seen as a possible additive to gasoline.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44648). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B-607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260-5069 or e-mail: oppt.ncic@epamail.epa.gov.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: April 27, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98-12029 Filed 5-5-98; 8:45 am]

BILLING CODE 6560-60-F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-51897; FRL-5786-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the *Federal Register* each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from February 23, 1998 to February 27, 1998.

ADDRESSES: Written comments, identified by the document control number "[OPPTS-51897]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG-099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS-51897]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS-51897]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at: oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the *Federal Register* reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject.

In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can

be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260-1532, TDD (202) 554-0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received

will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 8 Premanufacture Notices Received From: 02/23/98 to 02/27/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-98-0508	02/23/98	05/24/98	CBI	(G) Coating resin, open, non-dispersive use	(G) Polyester polyurethane acrylic copolymer
P-98-0509	02/24/98	05/25/98	Bush Boake Allen Inc.	(S) Fragrance for air fresheners; fragrance for liquid laundry detergent; fragrance for liquid surface cleaners; fragrance for soaps; fragrance for shampoo / shower gel; fragrance for household products	(S) Propanoic acid, z-methyl-1,7,7-trimethylbicyclo [2.2.1] hept-yl ester, exo-
P-98-0510	02/23/98	05/24/98	CBI	(G) Highly dispersive	(G) Disubstituted alkenol
P-98-0511	02/23/98	05/24/98	Wacker Silicones Corporation	(S) Pigment	(G) Siloxanes modified polymethacrylate
P-98-0512	02/25/98	05/26/98	CBI	(G) Coating of metal substrates	(G) Modified epoxy resin copolymer of epoxy with acrylic monomers modifiers acrylic copolymer
P-98-0513	02/25/98	05/26/98	NOF America Corporation	(G) Additive	(G) Methacrylate copolymer
P-98-0514	02/25/98	05/26/98	Olin Corporation	(S) Film-forming polymer	(G) Polyamic acid, acrylate ester, ethyl ester
P-98-0515	02/27/98	05/28/98	CBI	(G) Adhesive additive, paper additive, printing plate additive	(G) Amines modified poly (vinyl alcohol)

II. 8 Notices of Commencement Received From: 02/23/98 to 02/27/98

Case No.	Received Date	Commencement/Import Date	Chemical
P-95-1332	02/25/98	02/09/98	(G) Secondary aliphatic alcohol
P-97-0316	02/27/98	02/12/98	(S) Silane, hexadecyltrimethoxy
P-97-0552	02/24/98	01/27/98	(G) Metal ester
P-97-0553	02/24/98	01/27/98	(G) Metal ester
P-97-0809	02/23/98	02/06/98	(G) Isocyanate terminated polyurethane
P-97-0856	02/23/98	01/28/98	(G) Hydroxyl terminated polyetherol
P-98-0004	02/26/98	01/29/98	(G) Acrylate polymer
P-98-0194	02/27/98	02/24/98	(G) Cycloolefin polymer

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 30, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98-12030 Filed 5-5-98; 8:45 am]

BILLING CODE 6560-50-F

EXPORT-IMPORT BANK OF THE UNITED STATES

[Federal Register Notice No. 32]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the Paperwork Reduction Act of 1995, The Export-Import Bank of the United States (Ex-Im Bank) invites comments on the following information collection for which Ex-Im Bank intends to request

approval from the Office of Management and Budget (OMB).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank) is announcing an opportunity for public comment on the proposed survey questionnaire.

DATES: Interested persons are invited to submit comments on or before July 6, 1998.

ADDRESSES: Please address written comments to Bernard Lubran, Export-Import Bank of the United States, Business Development, Room 919, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565-3603.

FOR FURTHER INFORMATION CONTACT: Copies of this submission and any other information may be obtained from Daniel Garcia, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565-3335.

SUPPLEMENTARY INFORMATION: This survey is used to comply with Executive Order 12862 that requires federal agencies to measure its ability to deliver quality services to its customers.

Burden Statement Summary

Type of Request: Extension of expiration date.

OMB Number: 3048-0011.

Form Number: EIB 95-7.

Title: Export-Import Bank of the United States Customer Service Satisfaction Survey.

Frequency of Use: Annual. Respondents: Exporters of U.S. goods and services.

Estimated total number of annual responses: 1,200.

Estimated total number of hours needed to fill out the form: 20 minutes.

Dated: May 1, 1998.

Dan Garcia, Agency Clearance Officer.

[FR Doc. 98-12039 Filed 5-5-98; 8:45 am]

BILLING CODE 6660-01-M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

April 30, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance

the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 5, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202-418-0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0793.

Title: Procedures for States Regarding Lifeline Consents, Adoption of Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; state, local or tribal governments.

Number of Respondents: 865.

Estimated Time Per Response: 1.12 hours.

Frequency of Response: On occasion and annual reporting requirement.

Cost to Respondents: N/A.

Total Annual Burden: 970 hours.

Needs and Uses: In the Report and Order on Universal Service, adopted May 7, 1997 and released May 8, 1997, the Commission adopted rules that are designed to implement the universal service provisions of section 254. Specifically, the Order addresses: (1) universal service principles; (2) services eligible for support; (3) affordability; (4) carriers eligible for universal service support; (5) support mechanisms for rural, insular, and high costs areas; (6) support for low-income consumers; (7) support for schools and libraries, and health care providers; (8) interstate subscriber line charge and common line cost recovery; and (9) administration of support mechanisms. All the requirements contained in the Order are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to verify that particular carriers and other respondents are

eligible to receive universal service support.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-12045 Filed 5-5-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 20, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Clanton Investments LP, Jerry N. Clanton, and Janys M. Clanton, all of Louisville, Kentucky; to acquire voting shares of Magnolia Bancshares, Inc., Hodgenville, Kentucky, and thereby indirectly acquire Bank of Magnolia, Magnolia, Kentucky.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Myron L. Mulder, Prinsburg, Minnesota; to acquire voting shares of PSB Financial Shares, Inc., Prinsburg, Minnesota, and thereby indirectly acquire Prinsburg State Bank, Prinsburg, Minnesota.

Board of Governors of the Federal Reserve System, April 30, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-11977 Filed 5-5-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *First American Corporation*, Nashville, Tennessee; to acquire 100 percent of the voting shares of Peoples Bank, Dickson, Tennessee.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *First Commerce Bancshares, Inc.*, Lincoln, Nebraska; to acquire 100 percent of the voting shares of Western Nebraska National Bank, Valentine, Nebraska.

Board of Governors of the Federal Reserve System, April 30, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-11975 Filed 5-5-98; 8:45 am]

BILLING CODE 3210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *The Bank of Nova Scotia*, Toronto, Canada; to acquire American Securities Transfer & Trust Incorporated, Denver, Colorado, and thereby engage in certain shareholder services, including acting as a stock transfer and dividend disbursing agent and providing similar custodial or agency services, pursuant to § 225.28(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *First Chicago NBD Corporation*, Chicago, Illinois; to acquire indirectly through First Chicago Trust Company, New York, New York, 50 percent of the voting shares of Boston EquiServe, L.P., Canton, Massachusetts, and thereby engage in the nonbanking activities of providing data processing services and performing trust company operations pursuant to §§ 225.28(b)(14) and 225.28(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 30, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-11976 Filed 5-5-98; 8:45 am]

BILLING CODE 3210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, May 11, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
 2. Any items carried forward from a previously announced meeting.
- CONTACT PERSON FOR MORE INFORMATION:** Joseph R. Coyne, Assistant to the Board; 202-452-3204.
- SUPPLEMENTARY INFORMATION:** You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.bog.frb.fed.us> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 1, 1998

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-12097 Filed 5-1-98; 5:08 pm]

BILLING CODE 3210-01-P

FEDERAL TRADE COMMISSION

Survey of Rent-to-Own Customers; Proposed Information Collection

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed information collection; comment request.

SUMMARY: The FTC invites comments on a proposed telephone survey before submitting a request for OMB review under the Paperwork Reduction Act. **DATES:** Comments on the proposed survey must be submitted on or before July 6, 1998.

ADDRESSES: Written comments should be addressed to Elaine W. Crockett,

Attorney, Office of the General Counsel, Room 598, 6th Street & Pennsylvania Avenue, N.W., Washington, DC 20850. Telephone: (202) 326-2453. E-mail: ECrockett@FTC.gov.

FOR FURTHER INFORMATION CONTACT: Signe-Mary McKernan, Economist, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, DC 20580. Telephone: (202) 326-3480. E-mail: SMcKernan@FTC.gov.

SUPPLEMENTARY INFORMATION: The FTC seeks comments concerning a proposed telephone survey of consumers in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) Evaluate the accuracy of the FTC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Survey of Rent-to-Own Customers.

Type of review: New.

Frequency: Once.

Affected public: Consumers.

Response Hour Burden:

Pre-test questionnaire: approximately 10 minutes x 50 people=8 hours.

Screening question: One initial question within a survey of 20,000 people (other topics are also submitted from third party entities). Approximately 30 seconds x 20,000 people=167 hours.

Questionnaire response:

Approximately 300-500 consumers x 10 minutes=83 hours.

Total burden hours: Approximately 260.

Abstract: The FTC proposes to survey rent-to-own customers in order to evaluate their experiences with rent-to-own transactions. This information will be used to assess reported consumer protection concerns and in consideration of possible future Commission actions. All information will be collected on a voluntary basis and the identities of respondents will remain confidential.

If OMB approves, the FTC will contract with a survey firm to identify

300 to 500 rent-to-own consumers and to briefly obtain information about their experience with the rent-to-own industry. Survey respondents will be identified through screening questions included in a preexisting random digit dialing survey of a nationally representative sample of approximately 1,000 individuals. The screening survey will include routine demographic questions as well as specific questions contracted by other firms and organizations. Given the low (roughly 2%) incidence rate of rent-to-own customers within the general population, the FTC estimates that approximately 20,000 people will be screened in order to obtain a sample of 300 to 500 customers.

The survey questionnaire will be pretested on approximately 50 respondents to ensure that all questions are easily understood. The pretest will take approximately 10 minutes apiece, for a total of 8 hours. The final survey will involve 300-500 respondents, again for approximately 10 minutes apiece, for a total of 83 hours.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98-11941 Filed 5-5-98; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

"Year 2000" Consumer Issues; Request for Comment

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission ("Commission") seeks comment on the various types of "Year 2000" problems that consumers are likely to face. The term "Year 2000 problems" (hereinafter "Y2K problems") as used in this *Federal Register* Notice (hereinafter "Notice") refers to problems caused by the inability of software and/or electronic products, including personal computers (hereinafter "PCs") and other computer systems, to process, store, display, or otherwise utilize dates correctly beginning in the year 2000. This inability usually stems from a failure to distinguish between the year 2000 (and subsequent years) and the year 1900 (and subsequent years). Additionally, it might include an inability to recognize the year 2000 as a leap year.

Specifically, the Commission seeks comment on what types of consumer software and electronic products are likely to experience Y2K problems, as well as what steps have been taken or

will be taken by software publishers, electronics manufacturers, and others to notify consumers of any anticipated Y2K problems and to remedy any such problems. The Commission also seeks comment on potential Y2K problems likely facing various segments of the consumer financial services industry, such as finance entities, consumer reporting agencies (some of which are commonly referred to as credit bureaus), and other businesses involved in consumer financial services. Lastly, the Commission seeks comment regarding interest in participating in or attending one or more workshops to discuss the issues raised in this Notice.

DATES: Comments must be submitted on or before June 22, 1998.

ADDRESSES: Written comments should be submitted to: Secretary, Federal Trade Commission, Room H-159, Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. 20580. The Commission requests that the original comment be filed with five copies, if feasible. The Commission also requests, if possible, that the comment be submitted in electronic form on a computer disk. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) The disk label should identify the commenter's name and the name and version of the word processing program used to create the comment. Alternatively, the Commission will accept comments submitted to the following e-mail address <y2k@ftc.gov>. All submissions should be captioned: "Year 2000 Consumer Issues—Comment, FTC File No. P984238."

FOR FURTHER INFORMATION CONTACT: For questions concerning consumer software or electronic products: Jonathan M. Cowen, Attorney, Division of Enforcement, Federal Trade Commission, Sixth Street & Pennsylvania Ave., NW, Washington, DC 20580, telephone 202-326-2533, e-mail (for questions or information only) <jcowen@ftc.gov>. For questions concerning consumer financial services: Rolando Berrelez, Attorney, Division of Credit Practices, Federal Trade Commission, Sixth Street & Pennsylvania Ave., NW, Washington, DC 20580, telephone 202-326-3211, e-mail (for questions or information only) <rberrelez@ftc.gov>.

SUPPLEMENTARY INFORMATION:

Background

The Commission believes that consumers might potentially experience

Y2K problems¹ related to PC software, electronic products,² and consumer financial services provided by finance entities,³ consumer reporting agencies,⁴ and other businesses. These consumer issues have been explored to some extent in Congressional hearings⁵ and

¹ Cf. related definitions in Exec. Order No. 13,073, 63 FR 6,467 (1998) ("Y2K problem" defined with respect to "computer systems and other electronic devices"); 48 CFR 39.002 ("Year 2000 compliant" defined with respect to "information technology"); Letter from Kevin Thurm, Deputy Secretary of the U.S. Department of Health and Human Services, to Biomedical Equipment Manufacturers, Enclosure (Jan. 21, 1998) ("Year 2000 compliant" defined with respect to "medical devices and scientific laboratory equipment").

² The Commission is using the term *electronic products* in this Notice to refer broadly to all products that contain one or more embedded microchips. It has been suggested that only electronic products whose microchips possess a date function with a year component might potentially experience Y2K problems. Specific examples of consumer electronic products that it has been suggested might experience Y2K problems include, non-exhaustively, the following products: PCS, videocassette recorders (hereinafter "VCRs"), programmable thermostats, home security systems, home automation systems, digital wristwatches, camcorders, cameras, and fax machines. It has also been suggested that Global Positioning System (hereinafter "GPS") receivers might experience problems related to use of a 10-bit field for weeks since January 1980—sometimes called "Week 1024" problems—that might occur beginning in August 1999. For purposes of GPS receivers, the Commission is using the term "Y2K problems" to include such problems.

³ The Commission is using the term *finance entities* in this Notice to refer broadly to nonfederally chartered or nonfederally insured entities—such as mortgage companies, finance companies, leasing companies, vehicle manufacturers or dealerships, retailers, and others—who may extend and/or advertise "consumer credit" or "consumer leases," as those terms are defined under § 226.2 of Regulation Z, 12 CFR 226.2, as amended, or § 213.2 of Regulation M, 12 CFR 213.2, as amended, respectively.

⁴ The term *consumer reporting agency*, as used in this notice, is defined in Section 1681a of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681a, as amended. The term generally refers to any person, which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. The term *consumer report* as used in this notice, is also defined in Section 1681a of the FCRA. Generally, *consumer report* refers to any written, oral, or other communication of any information by a consumer reporting agency which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer's eligibility for credit, insurance, or employment.

⁵ Hearing on "Year 2000 Risks: What Are The Consequences Of Information Technology Failure?" Before the Subcomm. on Technology of the House Science Comm. and the Subcomm. on Government Management, Information and Technology of the House Government Reform and Oversight Comm. (1997); Hearing on "The Year 2000 Problem" Before the House Comm. on Banking and Financial Services (1998); Hearing on "Financial Institutions and the Year 2000 Problem" Before the Subcomm.

by other federal agencies. For example, the Food and Drug Administration has sought information from manufacturers of biomedical equipment concerning the Y2K compliance of their products, some of which might be in the possession of consumers.⁶ Also, the Federal Financial Institutions Examination Council has issued safety and soundness guidance to federally-chartered or federally-insured financial institutions on potential Y2K risks.⁷

With respect to software and information-technology-related electronic products, there have also been some efforts by both private and government entities to disseminate available information on specific products. For example, some commercial off-the-shelf (hereinafter "COTS") software and PC manufacturers have made Y2K compliance information available to the business community and consumers on the Internet. This information has in turn been aggregated to varying degrees by other entities, who have also made their COTS compilations available on the Internet. A comprehensive compilation is the COTS database maintained by Mitre Corp. (hereinafter "Mitre").⁸ Mitre's database describes many of the Y2K problems that individual software and PC manufacturers have already disclosed and sometimes also directs readers to the availability of software "patches" (i.e., fixes) that can be downloaded from the manufacturers' own Internet sites. The Year 2000 Subcommittee of the Chief Information Officers Council has established a similar Internet database that provides COTS compliance information collected from vendors and federal agencies.⁹

Furthermore, with respect to financial issues, at least one trade association has surveyed its membership regarding their Y2K preparedness and posted a variety of Y2K-related materials on its Internet site.¹⁰ The survey did not, however, directly seek information related to

on Financial Services and Technology of the Senate Banking, Housing and Urban Affairs Comm. (1997).

⁶ Letter from Kevin Thurm, Deputy Secretary of the U.S. Department of Health and Human Services, to Biomedical Equipment Manufacturers (Jan. 21, 1998).

⁷ Safety and Soundness Guidelines Concerning the Year 2000 Business Risk, Federal Financial Institutions Examination Council (Dec. 17, 1997).

⁸ Mitre Corporation, *COTS Companies and Product Information Database* (1998) <http://www.mitre.org/research/cots/VENDOR_LIST.html>.

⁹ Chief Information Officers Council, *Federal Year 2000 Commercial Off-the-Shelf (COTS) Product Database* (1998) <<http://y2k.policyworks.gov>>.

¹⁰ Securities Industry Association, *Year 2000 Financial Service Industry Scorecard* (1997) <<http://www.sia.com>>.

consumer financial services, such as credit issues.

The Commission believes that it would be useful to solicit public comment on the Y2K problems that consumers will likely face in order to obtain more complete information on these potential problems. The Commission also believes that aggregating information on these seemingly disparate issues might help businesses and consumers alike to avert otherwise unforeseen problems.¹¹ In addition, potential remedies for problems that might occur could also be identified. With regard to consumer software and electronic products, these could range from downloadable software patches to rebates or refunds.¹²

Legal Authority

Section 5 of the Federal Trade Commission Act (hereinafter "FTC Act"), 15 U.S.C. 45(a), gives the Commission broad authority over the advertising and marketing of products and services through its prohibition on "unfair or deceptive acts or practices in or affecting commerce." The Commission has issued policy statements to provide guidance on how it evaluates whether acts or practices are "unfair or deceptive" under section 5 of the FTC Act and on how it will enforce the legal requirement that advertisers possess a reasonable basis for objective claims about their products and services.¹³

Additionally, the Commission has enforcement authority under the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.*, and has promulgated rules, regulations, statements, and interpretations pursuant thereto. 16 CFR parts 700–703. The Commission also has enforcement authority under the Consumer Credit Protection Act.¹⁴

¹¹ Obtaining and disseminating reliable information also could help correct any misinformation that might inadvertently have been disseminated in the popular press and elsewhere.

¹² Conceivably, manufacturers, retailers, and/or consumer groups might consider establishing alternative dispute resolution (hereinafter "ADR") mechanisms, in particular to deal with electronic product problems. An ADR program might have the flexibility to effectively handle remedy issues that could be complicated by factors such as the age of the product at issue and its expected useful life.

¹³ Federal Trade Commission Policy Statement on Deception, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984); Federal Trade Commission Policy Statement on Unfairness, appended to *International Harvester Co.*, 104 F.T.C. 949, 1070 (1984) (superseded by 15 U.S.C. 45(n)); Federal Trade Commission Policy Statement Regarding Advertising Substantiation, 48 FR 10,471 (Mar. 11, 1983).

¹⁴ The Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.* includes, *inter alia*, the Truth in Lending Act, 15 U.S.C. 1601–1667 *et seq.*, and its

Public Workshops

The Commission seeks public comment as to the advisability of convening one or more public workshops to assist in gathering information and to provide an opportunity for public dialogue regarding the issues raised in this Notice. The Commission believes that software and microchip/electronic product issues could likely be discussed in a single workshop, while consumer financial service issues might require a separate workshop. Any workshops would not be intended to achieve a consensus among participants, or between participants and Commission staff, with regard to issues raised in this Notice. Persons interested in attending or participating in such workshops are requested to notify Commission staff in the comment submitted in response to this Notice. If the Commission decides to convene one or more public workshops, it will announce the subject matter, date, time, and location of the workshop(s) in a separate notice in the *Federal Register*.

Request for Comment

Interested parties are requested to submit written comments on any issue of fact, law or policy that may inform the Commission regarding the issues raised in this Notice. Please provide copies of any studies, surveys, research, or other empirical data referenced in responses. The Commission also seeks comment on the following specific questions:¹⁵

Software and Electronic Products

Software

- 1.1 What types¹⁶ of consumer software process, store, display, or otherwise utilize dates? How are the dates utilized?
- 1.2 What types of consumer software, if any, are marketed as Y2K

Implementing Regulation Z, 12 CFR part 226; the Consumer Leasing Act, 15 U.S.C. 1667–1667e, and its implementing Regulation M, 12 CFR part 213, the Equal Credit Opportunity Act, 15 U.S.C. 1691–1691f and its implementing Regulation B, 12 CFR part 202, the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* and its implementing Regulation E, 12 CFR part 205, the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, as amended, and the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*

¹⁵ Questions concerning software, microchips, and electronic products should be construed as limited to such items that could still be in use by consumers now.

¹⁶ With respect to software, the Commission is using the term *type* to refer to categories such as spreadsheet programs, database programs, schedulers, communications programs, etc. The Commission also requests information on specific software titles, to the extent that such information is available.

compliant? What is meant by this claim?

- 1.3 What types of consumer software, if any, are likely to have Y2K problems? What is the nature of the problems?
- 1.4 For each type of consumer software likely to have Y2K problems, is software with such problems currently being marketed? If so, what percentage of the software of this type currently being marketed has Y2K problems? If not, when did marketing end?
 - a. What percentage of the software of this type being marketed two years ago had Y2K problems? Five years ago?
- 1.5 For each type of consumer software likely to have Y2K problems, how frequently do consumers typically upgrade or replace the software? What percentage of consumers who use this type of software typically use a version that is more than two years old? More than five years old? More than ten years old?
- 1.6 For each type of consumer software likely to have Y2K problems, what, if anything, has been done or will be done to notify consumers of these problems? If notification is planned but has not yet occurred, when will it occur?
- 1.7 For each type of consumer software likely to have Y2K problems, is a software fix a practical solution? What is the nature of the fix?
 - a. What, if anything, has been done or will be done to notify consumers of any practical software fixes? If notification is planned but has not yet occurred, when will it occur?
 - b. How is the fix being made available to consumers? How much, if anything, are consumers expected to pay to obtain the fix? What is the cost of the fix to software publishers?
- 1.8 What types of consumer software, if any, are able to avert Y2K problems provided the consumer takes some specific action (e.g., resetting the clock)?
 - a. Does the software prompt the user with a message suggesting the necessary action?
 - b. If not, what, if anything, has been done or will be done to notify consumers of the necessary action?
- 1.9 For each type of consumer software likely to have Y2K problems, if software fixes are impractical, have consumers been offered or will they be offered any refunds (full or partial), replacement software, or other

compensation (e.g., discounts off replacement software)? If so, how have consumers been notified or will they be notified of such refunds, replacements, or other compensation?

Microchips

- 2.1 What types¹⁷ of microchips that are embedded in consumer electronic products process, store, or otherwise utilize dates? How are the dates utilized?
- 2.2 Are there circumstances under which a microchip might utilize dates indirectly (e.g., checking the date circuit to determine whether a product is turned on)? If so, how are the dates utilized?
- 2.3 What types of microchips, if any, are marketed as Y2K compliant? What is meant by this claim?
- 2.4 What types of microchips that are embedded in consumer electronic products, if any, are likely to have Y2K problems? What is the nature of the problems?

Electronic Products

- 3.1 What types¹⁸ of consumer electronic products contain microchips that process, store, or otherwise utilize dates? How are the dates utilized?
- 3.2 Are there circumstances under which a consumer electronic product might contain a microchip that utilizes dates indirectly (e.g., checking the date circuit to determine whether a product is turned on)? If so, how are the dates utilized?
- 3.3 What types of consumer electronic products, if any, are marketed as Y2K compliant? What is meant by this claim?
- 3.4 What types of consumer electronic products, if any, are likely to have Y2K problems? What is the nature of the problems?
- 3.5 For each type of consumer electronic product likely to have Y2K problems, are products with such problems currently being marketed? If so, what percentage of the products of this type currently being marketed has Y2K problems? If not, when did marketing end?

¹⁷ With respect to microchips, the Commission is using the term *type* to refer to categories such as clock speed, amount of memory and cache, bus speed, special purchase, general purpose, programmability, etc. The Commission also requests information on specific models, to the extent that such information is available.

¹⁸ With respect to electronic products, the Commission is using the term *type* to refer to categories such as VCRs, PCS, fax machines, etc. The Commission also requests information on specific models, to the extent that such information is available.

- a. What percentage of the products of this type being marketed two years ago had Y2K problems? Five years ago?
- 3.6 For each type of consumer electronic product likely to have Y2K problems, how frequently do consumers typically replace the product? What percentage of consumers who use this type of product typically use a model that is more than two years old? More than five years old? More than ten years old?
- 3.7 For each type of consumer electronic product likely to have Y2K problems, what, if anything, has been done or will be done to notify consumers of these problems? If notification is planned but has not yet occurred, when will it occur?
- 3.8 For each type of consumer electronic product likely to have Y2K problems, is a software fix a practical solution? What is the nature of the fix?
- a. What, if anything, has been done or will be done to notify consumers of any practical software fixes? If notification is planned but has not yet occurred, when will it occur?
- b. How is the fix being made available to consumers? How much are consumers expected to pay to obtain the fix? What is the cost of the fix to product manufacturers?
- 3.9 For each type of consumer electronic product likely to have Y2K problems, is a hardware fix a practical solution? What is the nature of the fix?
- a. What, if anything, has been done or will be done to notify consumers of any practical hardware fixes? If notification is planned but has not yet occurred, when will it occur?
- b. How is the fix being made available to consumers? How much, if anything, are consumers expected to pay to obtain the fix? What is the cost of the fix to product manufacturers?
- 3.10 For each type of consumer electronic product likely to have Y2K problems, if software or hardware fixes are impractical, have consumers been offered or will they be offered any refunds (full or partial), replacement products, or other compensation (e.g., discounts off replacement products)? If so, how have consumers been notified or will they be notified of such refunds, replacements, or other compensation?

Retailers Selling Software or Electronic Products

- 4.1 To what extent are retailers concerned that consumers will return software or electronic products that have Y2K problems? To what extent are retailers working with software publishers and electronic product manufacturers to handle anticipated returns?
- 4.2 To what extent are retailers working with software publishers and electronic product manufacturers to ensure that consumer software and electronic products will not have Y2K problems?
- 4.3 To what extent would alternative dispute resolution programs be able to remedy Y2K problems that consumers have with software and electronic products? What other remedies can retailers identify?

Consumer Financial Services

Finance Entities

- 5.1 What types¹⁹ of computer or other automated systems used by finance entities in connection with consumer credit or leasing transactions process, store, display, or otherwise utilize dates? How are the dates utilized?
- 5.2 What types of systems used by finance entities in connection with consumer credit or leasing transactions, if any, are likely to have Y2K problems? What is the nature of the problems?
- 5.3 For each type of system used by finance entities in connection with consumer credit or leasing transactions that is likely to have Y2K problems, what has been done or will be done to fix the problem? If a fix is planned but has not yet occurred, when will it occur?
- 5.4 Are there computer systems used by finance entities in connection with consumer credit or leasing transactions for which likely Y2K problems cannot or will not be fixed before January 1, 2000? If so, why can't or won't such problems be fixed?
- a. When is it planned that the problems with these systems will be fixed? How will they be fixed?
- b. What percentage of consumer accounts is likely to be affected by

¹⁹ With respect to consumer financial services, the Commission is using the term "type" to refer to categories of automated systems, including software or computer hardware categories such as spreadsheet programs, database programs, PCS, mainframes, etc. The Commission also requests information on specific software titles or hardware models, to the extent that such information is available.

- these unfixed Y2K problems? What will be the consequences for consumers? For creditors, lessors, and/or advertisers?
- c. What, if any, steps are being taken to identify and notify consumers whose accounts will be affected?
- d. Will the unfixed Y2K problems affect a creditor, lessor, and/or advertiser's compliance with federal consumer credit (or lease) protection statutes? If so, how?
- e. Will the unfixed Y2K problems result in erroneous information being reported to or from third parties such as consumer reporting agencies or debt collection agencies? What, if any, steps are being taken to avert such erroneous reporting?

Consumer Reporting Agencies

- 6.1 What types of computer or other automated systems used by consumer reporting agencies in connection with assembling or evaluating consumer information or furnishing consumer reports process, store, display, or otherwise utilize dates? How are the dates utilized?
- 6.2 What types of systems used by consumer reporting agencies in connection with assembling or evaluating consumer information or furnishing consumer reports, if any, are likely to have Y2K problems? What is the nature of the problems?
- 6.3 For each type of system used by consumer reporting agencies in connection with assembling or evaluating consumer information or furnishing consumer reports that is likely to have Y2K problems, what has been done or will be done to fix the problem? If a fix is planned but has not yet occurred, when will it occur?
- 6.4 Are there computer systems used by consumer reporting agencies in connection with assembling or evaluating consumer information or furnishing consumer reports for which likely Y2K problems cannot or will not be fixed before January 1, 2000? If so, why can't or won't such problems be fixed?
- a. When is it planned that the problems with these systems will be fixed? How will they be fixed?
- b. What percentage of consumer accounts is likely to be affected by these unfixed Y2K problems? What will be the consequences for consumers? For consumer reporting agencies? For third parties?
- c. What, if any, steps are being taken to identify and notify consumers whose accounts will be affected?

- d. Will the unfixed Y2K problems affect a consumer reporting agency or third party's compliance with federal consumer credit protection statutes? If so, how?
- e. Will the unfixed Y2K problems result in erroneous information being reported to or from third parties? What, if any, steps are being taken to avert such erroneous reporting? What, if any, steps are being taken to handle consumer complaints related to such erroneous reporting?

Retailers and Other Businesses Involved in Consumer Financial Services²⁰

- 7.1 What types of computer or other automated systems (including cash registers, credit/debit card equipment, other electronic fund transfer devices, etc.) used by retailers and others in connection with third-party credit/leasing transactions, electronic fund transfers, other forms of payments, or other types of consumer financial services process, store, display, or otherwise utilize dates? How are the dates utilized?
- 7.2 What types of systems used by retailers and others in connection with third-party credit/leasing transactions, electronic fund transfers, other forms of payments, or other types of consumer financial services, if any, are likely to have Y2K problems? What is the nature of the problems?
- 7.3 For each type of system used by retailers and others in connection with third-party credit/leasing transactions, electronic fund transfers, other forms of payments, or other types of consumer financial services, that is likely to have Y2K problems, what has been done or will be done to fix the problem? If a fix is planned but has not yet occurred, when will it occur? If a fix cannot or will not occur before January 1, 2000, why not?

Availability of Submissions

All submissions received in response to this Notice will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, 16 CFR 4.9, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Room 130, Federal Trade Commission, Sixth Street & Pennsylvania Ave., NW., Washington, DC 20580. The

²⁰ To the extent that a retailer or other business involved in consumer financial services might also be a finance entity, these questions are in addition to those directed to all finance entities.

Commission will make this Notice, and to the extent technically possible, all submissions received in response to this Notice, available to the public through the Internet at the following address: <<http://www.ftc.gov>>.

Confidentiality

Persons submitting material in response to this Notice may designate that material or portions of it confidential and request that it be withheld from the public record. No such material or portions of material will be placed on the public record until the General Counsel has ruled on the request for confidential treatment and provided any prior notice to the submitter required by law. All requests for confidential treatment shall be supported by a showing of justification in light of applicable statutes, rules, orders of the Commission or its administrative law judges, orders of the courts, or other relevant authority.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 98-11943 Filed 5-5-98; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections - projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690-6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Proposed Projects 1. Study of Frail Elders in Medicare Managed Care, New

The Office of the Assistant Secretary for Planning and Evaluation is proposing to conduct a study of how managed care delivery systems can meet the needs of elderly beneficiaries with disabilities and chronic illnesses. A survey of Medicare beneficiaries will be conducted to identify ways in which managed care can add value and barriers to realizing added value. *Respondents:* Individuals or households; *Number of Responses:* 3264; *Average Burden per Response:* 35.57 minutes; *Total Burden:* 1,935 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC 20201. Written comments should be received within 60 days of this notice.

Dated: April 28, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98-11962 Filed 5-5-98; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Supporting Field Initiated Teen Pregnancy Prevention Evaluation

AGENCY: Office of the Assistant Secretary for Planning and Evaluation; DHHS.

ACTION: Announcement of the availability of funds and request for applications to enhance existing evaluations on teen pregnancy prevention programs.

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces that applications are being accepted for funding to augment existing evaluations of teen pregnancy prevention interventions that are rigorous in design and already have funding. The primary goal of the proposed grants is to further the understanding of teen pregnancy prevention interventions and the extent to which these interventions meet their goal of reducing teenage pregnancies. Federal funding under this announcement is intended to support evaluation exclusively, not program operation or service provision. Projects funded under this announcement are

intended to complement other aspects of the Department's National Strategy to Prevent Teen Pregnancy.

Organizations eligible to apply for this federal funding include public entities; private for profit organizations (if fee is waived); and public or private nonprofit organizations, including universities that are either in the process of conducting a rigorous evaluation of a teen pregnancy prevention program or that have completed an evaluation of such program within the past three years and would be appropriate for a follow-up.

It is anticipated that two to three grants totaling approximately \$300,000 will be awarded. Project duration is 12 months from date of award.

Legislative Authority

This grant is authorized by section 1110 of the Social Security Act (42 U.S.C.).

CLOSING DATE: The closing date for submitting applications under this announcement is July 6, 1998.

MAILING ADDRESS: Application instructions and forms should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 690-8794. Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page <http://aspe.os.dhhs.gov>. You may fax your request to (202) 690-6518 to the attention of the Grants Officer. Application submissions may not be faxed or sent electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete. Requests for forms and questions (administrative and technical) will be accepted and responded to up to 30 days prior to closing date of receipt of applications.

FOR FURTHER INFORMATION: Technical questions should be directed to Barbara Broman DHHS, ASPE, Telephone, (202) 690-6461 or E-Mail, bbroman@osaspe.dhhs.gov. Questions may also be faxed to (202) 690-5514.

Written technical questions should be addressed to Ms. Broman at the following address: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Ave, SW, Room 450G, Washington, DC 20201.

Part I. Background

Although teen birth rates in the United States are declining, the teen birth rate continues to range between two and seven times higher than the teen birth rate in comparable Western industrialized nations. However, before large scale pregnancy prevention initiatives can be implemented, the current knowledge base on pregnancy prevention programs must be expanded to delineate which strategies are the most promising, which aspects of which programs demonstrate the strongest impact, and which programs are successful in affecting behavior across various communities and population characteristics, such as ethnicity and socioeconomic status. This project is designed to augment existing rigorous evaluations of teen pregnancy prevention interventions to further the understanding of the extent to which these interventions meet their goal of reducing teenage pregnancy.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193) signed by President Clinton on August 22, 1996 called for additional efforts to prevent teenage pregnancies and to assure that communities engage in local efforts to prevent teen pregnancy. DHHS responded to this call from Congress and the President by releasing the National Strategy to Prevent Teen Pregnancy in January 1997. The National Strategy builds on existing public and private-sector efforts and on initiatives in the new welfare law by helping provide the tools needed to develop more strategic and targeted approaches to preventing teen pregnancies. The goals of the Strategy include: Strengthening ongoing efforts across the nation through increasing opportunities through welfare reform; supporting promising approaches; building partnerships; improving data collection, research, and evaluation; and disseminating information on innovative and effective practices.

The Department supports a variety of programs to help communities develop teen pregnancy prevention strategies. However, since the multiple challenges adolescents face are often interrelated, programs that emphasize other high-risk behaviors (e.g., alcohol and drug abuse, school dropout) are also related to teen

pregnancy prevention. Current Department efforts include family planning grants, maternal and child health programs, abstinence education, adolescent health programs, runaway and homeless youth programs, and alcohol and drug abuse prevention programs.

Department research, evaluation, and data activities in this area are extensive. Agencies involved include the Centers for Disease Control and Prevention/ National Center Health Statistics (NCHS), National Institutes of Health /National Institute of Child Health and Human Development (NICHD), and ASPE. Specifically, in 1995, ASPE funded Child Trends, Inc. to do a comprehensive review of the most recent literature on teen sexual behavior, pregnancy, and parenthood and the effectiveness of teen pregnancy prevention programs (*Beginning Too Soon: Adolescent Sexual Behavior, Pregnancy and Parenthood*). ASPE, along with NICHD and NCHS, also prepared the September 1995 *Report to Congress on Out-of-Wedlock Childbearing* requested by Senator Moynihan. The report includes the current status and trends in nonmarital childbearing and presents a series of supplemental papers from experts from various social science disciplines. DHHS' statistical and surveillance activities provide much needed data that support research throughout the country. However, there is still a great need to know more about which programs focused on preventing teen pregnancy change sexual behavior and what makes them achieve their program goals.

Numerous programs have been implemented, ranging from abstinence education to comprehensive, multi-faceted interventions that offer education, counseling, and a variety of support services. As documented in the Child Trends report referenced above, several broad conclusions can be drawn about the current state of the field of pregnancy prevention programs. First, interventions have generally not been informed by basic research studies or by theory, and this accounts for the incomplete state of the current knowledge regarding the success of interventions intended to affect adolescent sexual behavior and pregnancy. Second, most of the evaluations that have been conducted have been lacking in methodological and statistical rigor. Douglas Kirby's 1997 report *No Easy Answers*, prepared for the National Campaign to Prevent Teen Pregnancy, also concludes there is a need to continue to explore, develop and rigorously evaluate promising

approaches. This announcement looks to build on current evaluation studies, such as those included in the reports noted above, that are based on theory and existing research, using rigorous methods.

Part II—Purpose and Project Design

A. Purpose

The primary purpose of this announcement is to enhance existing teen pregnancy prevention program evaluations. As part of the DHHS' National Strategy to Prevent Teen Pregnancy we strive to better understand the effects of these programs by providing additional support to evaluations already in place. We are primarily interested in supporting enhancements to existing evaluations (e.g., follow-up to completed studies or nearly completed studies or enhanced data analysis). We do not expect to provide full funding for any study.

B. Project Design

Funding under this announcement is expected to be used to support existing rigorous evaluations of teen pregnancy prevention interventions. Given that we know there is no "magic bullet" in preventing teen pregnancy, ASPE does not prescribe specific types of interventions for evaluation, but rather invites varied approaches to advance understanding of teen pregnancy prevention efforts. While the methods for evaluations may differ, projects must be well designed and the methods must be adequate and appropriate to address the questions identified.

As discussed below in the Evaluation Criteria section, applicants must demonstrate prior experience in conducting evaluations of the scope, scale and topic area proposed. In making funding decisions, ASPE will consider an applicant organization's experience and the qualifications of researchers and staff.

There is a wide range of teen pregnancy prevention programs aimed at delaying the initiation of sexual activity, improving contraceptive use among sexually active adolescents, and preventing subsequent births among adolescent parents. Programs targeting each of these issues range from traditional sex education programs and interventions designed to improve an adolescent's decisionmaking and interpersonal skills, to contraceptive services programs designed to meet needs of young clients, to multi-faceted initiatives targeting a wide range of adolescent needs. Regardless of the type of approach, ASPE is interested in two main questions: First, have the targeted

behaviors changed during the time period under study for the population targeted? Second, are there other possible causes for the behavior changes, if any are noted?

ASPE also seeks evidence as to which aspects of which programs demonstrate the strongest impact, and which programs are successful in affecting behavior across various populations that are diverse with respect to ethnicity and socioeconomic status.

As indicated above, we expect to provide funding to augment existing evaluations which already examine a specific type of teen pregnancy prevention intervention. However, ASPE does not intend to fund evaluations of abstinence-only programs under this announcement, given that a competitive contract award will be made to conduct an intensive rigorous evaluation of a selected number of abstinence-only programs funded under Section 510 of the Maternal and Child Health Block Grant. We are seeking to enhance evaluations of other programs including for example: curriculum-based sex education, school-based health centers, multi-component or youth development programs. These approaches are meant for illustrative purposes and to demonstrate our desire for additional evaluation information on a wide variety of teen pregnancy interventions.

Grantees must deliver a final report to ASPE at the completion of the project that can be disseminated by ASPE or its designee(s). The report must be reviewed for quality of content, formatting, and readability. The report, at a minimum, should contain a table of contents, executive summary, and full report.

In addition to the printed copies required under this grant, the contents of all reports must be delivered in a digital form that is reproducible on personal computers and office printers.

Electronic copy shall be delivered on 3 1/2" disks formatted in the DOS (FAT) format.

Text shall be entered and formatted in any of the commonly available commercial word processing programs marketed by the IBM®, Corel®, or Microsoft® Corporations. Lengthy documents should be organized into chapters and a separate file should be provided for each chapter. The title page, table of contents, and other front matter shall be in a separate file.

Tables of data shall be delivered in a commonly available commercial spreadsheet program marketed by the IBM®, Corel®, or Microsoft® Corporations. Each table shall be delivered as a separate file on the disk

and not embedded in the word processing file even though tables may have been merged with the text to form a single file for printing purposes. File names should contain consecutive numbers that correspond to the numerical labels used in the printed version. For example, Chapter 4, Table 7 could be designated C4T7.tbl.

Graphic figures such as bar and line charts, diagrams, and other drawings shall be delivered in the Graphics Interchange Format (GIF) or the JPG (Joint Photographic Experts Group) format. Even though the graphical elements may have been merged with the text to form a single file for printing purposes, each graphical image shall be delivered as a separate file on the disk and must not be embedded in a word processing, spreadsheet, slide show or other composite file.

Documents that have been designed to include visually complex elements, two or more colors, specialized drawings, photographic images, or other artwork, or which have been specially prepared for offset printing, shall be delivered in electronic form as one or more Postscript® files. All the files necessary for reproduction shall be provided including templates, indices, etc.

C. Eligible Applicants and Funding

ASPE anticipates providing up to a total of \$300,000 for two to three approved projects in FY 98, subject to the availability of funds. All grants will be awarded by September 30, 1998. We expect to make one-time awards for projects. There are currently no budgeted future year costs to this initiative, though if funding becomes available in FY 1998 or FY 1999 additional grants could be funded or some of this year's grants could be extended to allow additional analysis.

Applications may be submitted by for-profit and non-profit organizations, public and private, such as universities, colleges, hospitals, laboratories, units of State and local governments, health boards, public health departments, volunteer organizations or clinics that are either in the process of conducting an evaluation of a teen pregnancy prevention intervention or that have completed an evaluation of such program within the past three years and would be appropriate for follow-up. However, to reach scientifically valid conclusions about effectiveness, evaluations most appropriate for this funding should include the following criteria: (1) A sufficiently large sample size, (2) long-term follow-up, (3) measures of behavior rather than just attitudes and beliefs, (4) a comparison or control group (5) proper statistical

analyses, and 6) independent evaluators. Applicant should explain further in narrative if any of these criteria are not met.

ASPE does not expect to fully fund a new evaluation. To maximize the benefit of the Federal investment to advance knowledge about teen pregnancy prevention, applicants must provide evidence of other sources of funding for the project (e.g., applicant resources or private foundation funding). The applicant should provide budget statements from previous awards that contribute to the completion of the evaluation. The applicant should describe the level, sources and duration of non-Federal funds or resources committed to the project, and should clearly state how ASPE funds will be used to enhance the evaluation.

Part III. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, on the forms necessary for submission, and on the evaluation criteria under which the applications will be reviewed. Potential applicants should read this section carefully in conjunction with information provided above. The application must contain the required federal forms, title page, table of contents, and the sections listed below. All pages of the narrative should be numbered. The application should include the following elements:

1. **Abstract:** A one page summary of the proposed project.

2. **Goals and objectives of the project:** An overview that describes (1) specific research questions to be investigated, (2) the project and methods to be employed, and (3) knowledge and information to be gained from the project by the applicant, the government, and the research community.

3. **Methodology and Design:** Provide a description and justification of how the proposed evaluation enhancement will be implemented, including methodologies, chosen approach, data, and proposed evaluation and analytic plans including a description of the overall project and how the enhancement relates to the overall project. Address the ability to generalize the findings from this study to the national problem. Identify theoretical or empirical basis for the methodology and approach proposed. Specify how the study will protect the confidentiality of subjects and the information they provide. Describe how the project will address potential difficulties in studying the youth population such as

recruitment and retention as well as language and cultural differences, if applicable. Indicate the types of assurances that are provided regarding protection of human subjects, in areas like confidentiality, informed consent, etc.

4. **Experience, capacity, qualifications, and use of staff:** Briefly describe the applicant's organizational capabilities and experience in conducting pertinent evaluation projects. Identify key staff who are expected to carry out the proposed evaluation enhancement and provide a curriculum vita for each person. Provide a discussion of which key staff are already involved in the existing evaluation project and a detailed description of additional responsibilities of that staff for the enhancement or additional staff, if applicable. If the applicant plans to contract for outside staff for this project, the relationship and commitment of these people to the applicant organization should be demonstrated. Applicants should demonstrate access to computer hardware and software for storing and analyzing their data necessary to complete this project.

5. **Work plan:** A work plan should be included which describes the start and end dates of the overall project and the proposed enhancement, the responsibilities of each of the key staff, and a time line which indicates the sequence of tasks necessary for the completion of the overall evaluation and the proposed enhancement. It should identify other time commitments of key staff members such as other projects and/or teaching or managerial responsibilities. The work plan should include a discussion of plans for dissemination of the results of the study including the findings from the enhancement, e.g., articles in journals and presentations at conferences.

6. **Budget:** Applicants must submit a request for federal funds using Standard Form 424A and include a detailed breakdown of Federal line items. A narrative explanation of the budget should be included which explains fund usage in more detail. The applicant should clearly state how the funds associated with this announcement will be used and describe how these funds will be used for purposes that would not otherwise be incorporated within the project. The applicant should document equipment purchase, if applicable. The applicant should also document the level of funding from other sources and how these funds have been or will be utilized. The applicant should provide budget statements from previous

award/s that contribute to the completion of the evaluation.

Review Process and Funding Information

A independent review panel will review and score all applications that are submitted by the deadline date and which meet the screening criteria (all information and documents as required by this Announcement.) The panel will review the application using the evaluation criteria listed below to score each application. These review results will be the primary element used by the Assistant Secretary in making funding decisions. The Department reserves the option to discuss applications with other Federal or State staff, specialists, experts and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

State Single Point of Contact (E.O. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Deadline for Submission of Applications

The closing date for submission of applications under this announcement is July 6, 1998. Applications must be postmarked or hand delivered to the application receipt point no later than 5 p.m. on July 6, 1998. Hand-delivered applications will be accepted Monday through Friday, excluding federal holidays, prior to and on July 6, 1998, during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW. in Washington, DC. When hand-delivering an application, call (202) 690-8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before July 6, 1998, or (2) postmarked before midnight of the deadline date, July 6, 1998 and received in time to be considered during the competitive review process.

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a

commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date (Applicants are cautioned that express/overnight mail services do not always deliver as agreed). If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

A. Late Applications

Applications which do not meet the July 6, 1998 deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

B. Extension of Deadlines

DHHS reserves the right to extend the deadline for all proposals due to acts of God, such as floods, hurricanes, or earthquakes; or if there is a widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

C. Initial Screening

Applications will be initially screened for compliance with the timeliness, completeness, and cost-sharing requirements. If judged in compliance, the application then will be reviewed by government personnel, augmented by outside experts where appropriate.

Mailing Address and Application Forms

Application instructions and forms should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 405F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 690-8794. Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page <http://aspe.os.dhhs.gov>. You may fax your request to (202) 690-6518 to the attention of the Grants Officer. Application submissions may not be faxed or sent electronically.

The printed Federal Register notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page

containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete. Requests for forms and questions (administrative and technical) will be accepted and responded to up to 30 days prior to closing date of receipt of applications.

Also see section entitled "Components of a Complete Application." All of these documents must accompany the application package.

Length of Application

Applications should be as brief as possible but should assure successful communication of the applicant's proposal to the reviewers. In no case shall an application (excluding the resumes, appendix and other appropriate attachments) be longer than 20 single spaced pages. Applications should be neither unduly elaborate nor contain voluminous supporting documentation. Videotapes and cassette tapes may not be included as part of a grant application for panel review. A signed original and two (2) copies of each application are required. Applicants are encouraged to send an additional four (4) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included. The application's Form 424 must be signed by the applicant's representative authorized to act with the full authority on behalf of the applicant.

Review Process and Evaluation Criteria

Selection of the successful applicant will be based on the technical and financial criteria described in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The review panel will prepare a summary of all applicant score and strengths/weaknesses and recommendations and submit it to ASPE for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications. Applications will be

judged according to the criteria set forth below:

1. **Goals, Objectives, and Potential Usefulness of the Analyses (20 points).** The potential usefulness of the project and how the anticipated results of the proposed project will advance knowledge and development in the field of teen pregnancy prevention. Applicants will be judged on the extent to which the proposed evaluative approach addresses the interests of ASPE and whether findings will contribute to the current knowledge base on teen pregnancy prevention programs and which strategies are the most promising.

2. **Quality and Soundness of Methodology and Evaluation Design (40 points).** The appropriateness, soundness, and cost effectiveness of the methodology, including the evaluation design, statistical techniques, analytical strategies, selection of existing data sets, and other procedures. Reviewers will judge the overall program/intervention that is being evaluated, the existing evaluation design and the proposed enhancement to that evaluation funded by this announcement. Reviewers will consider the following about the program/intervention: (1) Period of time the program has been in existence, (2) target population, (3) theoretical base of program, (4) geographical location, and (5) intensiveness.

Reviewers will consider the following in assessing the existing evaluation and the proposed enhancement to the evaluation: (1) A sufficiently large sample size, (2) long-term follow-up, (3) measures of behavior rather than just attitudes and beliefs, (4) a comparison or control group (5) proper statistical analyses, and an (6) independent evaluators. Applicant should explain further if any of these criteria are not met.

Reviewers will also judge the ability of the applicant's proposed methodology to reliably attribute impacts. Reviewers will consider if the types of assurances regarding protection of human subjects, in areas like confidentiality, informed consent, etc. are provided.

3. **Qualifications of Personnel and Organizational Capacity (20 points).** The qualifications of the project personnel for conducting the proposed evaluation as evidenced by professional training and experience, and the capacity of the organization to provide the infrastructure and support necessary for the project. Reviewers will evaluate the applicant's principal investigator and staff on evaluation experience and their demonstrated evaluation skills. Principal investigator and staff time

commitments also will be a factor in the evaluation.

4. *Ability of the Work Plan and Budget to Successfully Achieve the Project's Objectives (20 points).* Reviewers will examine if the work plan and budget are reasonable and sufficient to ensure timely implementation and completion of the evaluation enhancement and whether the applicant demonstrates an adequate level of understanding by the applicant of the practical problems of conducting such a project. Reviewers will judge whether there is an "added benefit" from providing these funds. In other words, is the applicant using federal funds for purposes that would not otherwise be funded? Reviewers will also consider whether the budget assures an efficient and effective allocation of funds to achieve the objectives of this solicitation and whether the application has additional funding from other sources. Eligible projects must document sufficient funding for program operation during the period of the evaluation and also document sufficient funding for the existing evaluation component. The applicant should provide budget statements from previous award/s that contribute to the completion of the evaluation. Applicants without these funds or the documentation that certifies these funds will be ineligible to receive any points in this category. Reviewers will judge if the applicant has adequately demonstrated its ability to present findings and produce a final report that can be widely disseminated by ASPE or its designee (s).

Disposition of Applications

1. Approval, Disapproval, or Deferral

On the basis of the review of the application, the Assistant Secretary will either: (a) Approve the application as a whole or in part; (b) disapprove the application; or defer action on the application for such reasons as lack of funds or a need for further review. However, nothing commits the Assistant Secretary to making an award or limits the ability to make multiple award.

2. Notification of Disposition

The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the grant award will be sent to the business office named in the ASPE checklist.

Federal Domestic Assistance Catalog

The Catalog of Federal Domestic Assistance number is 93-239.

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. Budget Information—Non-construction Programs (Standard Form 424A);
3. Assurances—Non-construction Programs (Standard Form 424B);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-Profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement;
8. Project Narrative Statement;
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel
14. Application for Federal Assistance Checklist

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 98-11963 Filed 5-5-98; 8:45 am]
BILLING CODE 4151-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy

Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and Its Subcommittees

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS on June 15-18, 1998, at the Madison Hotel, Washington, DC. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Monday, June 15, Tuesday, June 16, Wednesday, June 17 and Thursday, June 18 from 8:30 am to 5:30 pm at the Madison Hotel, Fifteenth and M Streets, NW, Washington, DC 20005. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentations from the Council's subcommittees, Research, Services, Prevention, International, Discrimination, Communities for

African and Latino Descent, and Prison Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW, Washington, D.C. 20503, Phone (202) 456-2437, Fax (202) 456-2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ann Borlo at (301) 986-4870 no later than May 15, 1998.

Dated: April 24, 1998.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy.

[FR Doc. 98-11960 Filed 5-5-98; 8:45 am]
BILLING CODE 3195-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Aid to Families With Dependent Children, Medicaid, and Aid to Aged, Blind, or Disabled Persons for October 1, 1997 Through October 1, 1998 and for October 1, 1998 Through September 30, 1999; Clarification and Correction

ACTION: Notice of clarification and correction.

SUMMARY: This Notice clarifies the status of Alaska and the District of Columbia shown in the Tables of Federal Medical Assistance percentages calculated for determining the amount of Federal matching in State welfare and medical expenditures for Fiscal Years 1998 and 1999 and corrects an error for the District of Columbia for 1999. For Medicaid and for the Child Health Insurance Program, the percentages given in the notices are correct. For other uses, including the remaining Title IV programs, the Alaskan percentage for 1998 should be 50.00% and for 1999 should be 52.26%. The District of Columbia percentage should be 50.00% for both years.

EFFECTIVE DATES: The corrected percentages will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1997 and ending September 30, 1998 and for each of the 4 quarter-year periods in the period beginning October 1, 1998 and ending September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Moyer, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201, Telephone (202) 690-7861.

SUPPLEMENTARY INFORMATION: The Balanced Budget Act, passed in July 1997, specified new Federal Medical Assistance Percentages for Alaska and for the District of Columbia for fiscal years 1998, 1999, and 2000. On January 29, 1997, in Notice 97-2231 beginning on page 4293, the Department published the 1998 percentages. On September 12, 1997, in Notice 97-24324 beginning on page 48098, the Department published updated percentages for Alaska and the District of Columbia for purposes of Medicaid and the New Children's Health Insurance Program. On November 24, 1997, in Notice 97-30832 beginning on page 62613, the Office of the Secretary announced the percentages for use in determining the amount of Federal matching in State welfare and medical expenditures for October 1, 1998 through September 30, 1999. The FY1999 Notice provided a Table on pages 62614-62615 that listed Federal Medical Assistance percentages and Enhanced Federal Medical Assistance percentages for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The Federal Medical Assistance Percentage for Alaska is listed as 59.80% and for the District of Columbia as 70.00%. The enhanced percentages were 71.86% for Alaska and 79.00% for the District of Columbia. These are the correct percentages for Medicaid and Children's Health Insurance. For Title IV and perhaps some other programs, the percentages for Alaska and the District of Columbia were to be calculated in the usual way.

The FY 1999 Notice recognized this for the State of Alaska. The second sentence in the second footnote to the table read "For other purposes, the percentage for Alaska is 52.26%." The error was that the sentence should have included the District of Columbia and should have been more specific about the uses of the standard rates. The sentence should have read "For other purposes, including programs remaining in Title IV of the Act, the percentage for Alaska is 52.26% and for the District of Columbia is 50.00%."

Dated: April 19, 1998.

Neil J. Stillman,

Assistant Secretary for Information Resource Management.

[FR Doc. 98-11959 Filed 5-5-98; 8:45 am]
BILLING CODE 4110-00-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 98036]

Violence Against Women Prevention Research Center (VAWPRC) Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 1998 cooperative agreement funds to establish a Violence Against Women Prevention Research Center (VAWPRC). This program addresses the Healthy People 2000 priority area of Violent and Abusive Behavior.

The purposes of the Prevention Research Center are to:

1. Support research on prevention and policy issues relevant to Violence Against Women;
2. Encourage professionals from a spectrum of disciplines such as public health, criminal justice, health care, behavioral and social sciences, education, law enforcement, and others to undertake and collaborate in research and evaluation activities for preventing violence against women;
3. Foster interdisciplinary collaboration for the purpose of developing integrated theoretical and scientific models about the nature of violence against women, its relationship to other forms of violence and injury, and effective prevention strategies;
4. Integrate research on child maltreatment and other forms of violence into the study of violence against women;
5. Foster creative and innovative approaches to collaborative research and evaluation efforts among research institutions and sexual assault and intimate partner violence service providers;
6. Develop a knowledge base for evaluating current and new programs, strategies, and policies designed to prevent or control violence against women;
7. Create training programs that develop interdisciplinary knowledge and expertise among new investigators and investigators retraining in the field.

These efforts should emphasize training researchers in evaluation methodology and developing the research skills of scientists from racial and ethnic minorities and other historically under represented and underserved groups;

8. Provide technical assistance to other investigators around methodological issues related to the field of violence against women; and

9. Provide a national focus for interdisciplinary public fora designed to disseminate research knowledge about violence against women.

For additional information please see Addendum 2, Background and Definitions (included in the application package).

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies. Thus, universities, colleges, research institutions, hospitals, and other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations.

Note: Pub. L. 104-65, which became effective January 1, 1996, states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately \$600,000 is available in FY 1998 to fund one (1) cooperative agreement. It is expected that the award will begin on or about September 1, 1998 and will be made for a 12-month budget period within a project period not to exceed five (5) years. Funding estimates may vary and are subject to change and availability of funds.

Non-competing continuation awards for new budget periods within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and site visits.

D. Program Requirements

1. Applicants must provide a Principal Investigator (Director) who has specific authority and responsibility to carry out the project. Applicants must demonstrate high level institutional support for the Prevention Research Center (e.g., from the dean of a school, vice-president of a university, or a commissioner of health). The Principal Investigator must have no less than 20 percent effort devoted solely to this

project with an anticipated range of 20 to 50 percent of time.

2. Applicants must provide assurances that a full-time Program Manager will be hired and will devote 100 percent time to this project.

E. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Design, implement, and assess a Violence Against Women Prevention Research Center;

b. Foster creative and innovative approaches to collaborative research and evaluation efforts among research institutions and service providers;

c. Develop and disseminate a knowledge base for evaluating current and new programs, strategies, and policies designed to prevent violence against women;

d. Develop interdisciplinary knowledge and expertise among new investigators, and investigators retraining in this field. Emphasis should be given to training investigators from racial and ethnic minorities and other historically under represented and underserved groups;

e. Foster interdisciplinary collaboration for developing integrated theoretical and sound scientific models about the nature of violence against women, its relationship to other forms of violence and injury, and effective prevention strategies; and

f. Collaborate with the CDC on these activities, and the activities listed below.

2. CDC Activities

a. Collaborate in establishing research and evaluation priorities, designing program protocols, and evaluating the cost, process(es), and outcomes resulting from the Center's activities.

b. Collaborate in establishing reporting systems to monitor the progress of the Center's activities.

c. Collaborate with Center staff in identifying up-to-date scientific and programmatic information about violence against women prevention.

F. Application Content

Use the information in the Program Requirements, Other Requirements, Evaluation Criteria sections and the Errata Sheet (Addendum 3, included in the application package) to develop the application content. Your application will be evaluated on the criteria listed

so it is important to follow them in laying out your program plan. Each application should be limited to 40 pages, excluding attachments.

The application should include the following sections:

1. Abstract: (page 2-PHS398).

A summary of the proposed Prevention Research Center, outlining its goals and objectives, its working partners and collaborators, the proposed research, evaluation, training and collaborative activities which will be undertaken, and the procedure by which the Center will assess the achievement of its goals.

2. Research Capacity: (Research Plan items A-I:PHS398).

The applicant should provide details about the Center's capacity for conducting a Violence Against Women research program. In particular, the applicants should:

(a) Demonstrate their experience in successfully designing, implementing, and evaluating Violence Against Women prevention programs, and/or conducting, publishing, and disseminating Violence Against Women research and evaluation studies.

(b) Outline the vision of the Center and how the proposed collaboration between researchers will contribute to the overall goals and objectives of the Center; describe how the collaborative activities of the applicants were or will be developed and how the proposed Center will expand and develop on work that has already been undertaken by the applicant(s) and other researchers.

(c) Describe the proposed focus of the Center's research and its relevance to the field of VAW, particularly in terms of the proposed interdisciplinary collaboration. Provide sufficient detail to allow assessment of the scientific merit of the research activities. Indicate how results of the proposed research program will advance the field and have relevance for the prevention and control of violence against women.

Within this section, applications must include the following: *Women, Racial, and Ethnic Minorities*: describing the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

3. Training Capacity

The applicant should outline plans for attracting and involving high quality students (undergraduate, graduate and postdoctoral) in Center activities, and identify how participants will receive interdisciplinary training and experience using multiple research methodologies. The applicant should

emphasize how scientists from racial and ethnic minorities and other under represented and underserved populations will be encouraged to participate in activities of the Center.

4. Management Capacity

The applicant should provide a description of the key staff, their qualifications and experience in the field of violence against women, and the role each person will play in designing, implementing, and assessing the Prevention Research Center's activities. The applicant should clearly describe how disciplines will be integrated to achieve the goals and objectives of the Prevention Research Center. The applicant should provide resumes of key staff as an appendix. An organizational chart should be included that shows the Center's proposed program structure, its relationship to the broader institution of which it is a part, and if applicable, operational lines of authority with collaborating organizations. If following the Consortium model, the applicant should outline the procedures for focusing consortium activities, selecting and integrating research across institutions, allocating funds and other resources, and managing the involvement of other research groups. The applicant should show where Consortium partners are housed within existing organizations.

5. Plan of Operation

The applicant should provide a plan of operations which indicates how the goals and objectives of the Prevention Research Center will be met. The goals and objectives should be specific, relevant, achievable, time-phased, and should be related to the purposes of this announcement (see PURPOSE section). The plan of operation should describe the program activities for achieving the Prevention Research Center's goals and objectives, and specifically who among the core staff and collaborating partners is responsible for doing what and when. A detailed timeline should be provided illustrating concurrent activities.

Applicants should also demonstrate that the facilities and resources are sufficient to conduct the Center's research and training activities and should include: sufficient office space to house staff and conduct training, adequate furniture to accommodate staff, conduct seminars; adequate training equipment for presentations, such as overhead and slide projectors, and video cassette recorder; and computer hardware and software resources for data entry, storage, analysis, and retrieval.

6. Assessment Plan

The applicant should include a detailed plan for assessing the Violence Against Women Prevention Research Center's progress toward achieving its stated goals and objectives, as they relate to the purposes of this announcement. (See PURPOSE section)

7. Collaboration

The applicant should specify the exact nature of the contribution each of the working partners makes to the Prevention Research Center's program, e.g., program planning and design, training, space, instructors and other faculty, curriculum development and evaluation, program evaluation activities, etc. Applicants drawn from different disciplines is not, in itself, sufficient evidence of multidisciplinary collaboration. A more important indicator is the extent to which research from different disciplines will be integrated.

The application must also show evidence of collaboration with practitioners and victim advocates working in the intimate partner violence and sexual assault field. This collaboration may be with organizations such as National/State Domestic Violence and Sexual Assault Coalitions. Collaboration may also be undertaken with governmental agencies, other institutions of higher learning, and other organizations making substantive contributions to advancing the field of violence against women.

Letters of support or memoranda of understanding should state the specific contribution, activities to be undertaken, or resources to be provided by all collaborators.

8. Proposed Budget

The application must provide a detailed proposed first-year budget and a narrative justification. The budget requests should be reasonable and consistent with the intended use of cooperative agreement funds.

9. Human Subjects

Indicate whether human subjects will be involved, and if so, how they will be protected, and describe the review process which govern their participation.

G. Submission and Deadline

Submit the original and five copies of PHS 398 (OMB Number 0925-0001) and adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit.

On or before June 30, 1998, submit to: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch,

Procurement and Grants Office Announcement #98036, Centers for Disease Control and Prevention (CDC) Mailstop E-13, Room 300, 255 East Paces Ferry Road, N.E., Atlanta, Georgia 30305-2209.

Applications shall be considered as meeting the deadline if they are received at the above address on or before the deadline date, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

H. Evaluation Criteria

Each application will be evaluated individually against the following criteria: (maximum 100 points):

1. Research Capacity (25 points)

The degree to which the applicant:

- demonstrates experience in successfully designing, implementing, and evaluating Violence Against Women prevention programs, and/or conducting, publishing, and disseminating Violence Against Women research and evaluation studies.

- outlines the vision of the Center and how the proposed collaboration will contribute to the overall goals and objectives of the Center.

- describes how the collaborative activities of the applicants were or will be developed and how the proposed Center will expand and develop on work that has already been undertaken by the applicants and other researchers.
- describes the proposed focus of the Center's research and its relevance, particularly in terms of the proposed interdisciplinary collaboration, integration of fields of violence research, and multiple methodologies.

- provides sufficient detail to allow assessment of the scientific merit of the research activities and indicated how results of the proposed research program will advance the violence against women field and have relevance for the prevention and control of violence against women.
- describes the facilities available for conducting the planned research and supporting research staff (e.g., computer facilities, office space, data management and statistical support).

- The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, and ethnic and racial groups in the proposed center.

2. Training Capacity (20 points)

The degree to which the applicant:

- outlines plans for attracting and involving high quality students (undergraduate, graduate and postdoctoral) in Center activities and how participants will receive interdisciplinary training and experience using multiple research methodologies.

- addresses the needs of scientists from racial and ethnic minorities and other under-represented and underserved populations and will encourage them to participate in activities of the Center.

- describes the facilities available for delivering training and supporting students (e.g., computer facilities, office space, audiovisual and other training related equipment).

3. Management Capacity (10 points)

The degree to which the applicant:

- demonstrates that the Principal Investigator has the vision, professional standing, research expertise and managerial qualifications to lead the Center.

- describes the qualifications and experience of key staff and outlined the role each person will play in designing, implementing, and assessing the Center's activities.

- describes how disciplines will be integrated to achieve the goals and objectives of the Center.

- illustrates the Center's proposed program structure (organizational chart), its relationship to the broader institution of which it is a part, and if applicable, operational lines of authority with collaborating organizations. If following the Consortium model, how effectively did the applicant outline the procedures for focusing consortium activities, selecting and integrating research across institutions, allocating funds and other resources, and managing the involvement of other research groups.

4. Plan of Operation (15 points)

The degree to which the applicant:

- outlines goals and objectives that are specific, relevant, achievable, time-phased, and related to the purposes of this program announcement (See Purpose section).

- describes the program activities for achieving the Center's goals and objectives, and specifically who among the core staff and collaborating partners is responsible for doing what and when.

- provides a timeline which illustrates proposed concurrent activities.

5. Assessment Plan (10 points)

The degree to which the applicant provides a detailed plan for assessing the Violence Against Women Prevention Research Center's progress toward achieving its stated goals and objectives.

6. Collaboration (20 points)

The degree to which the applicant: a. describes the collaboration they will undertake with sexual assault and intimate partner violence service providers, victim advocates, policy makers, and other key stakeholders in the field.

b. includes letters of support or memoranda of understanding stating the specific contribution that each collaborator intends to make to the Center's program.

7. Proposed Budget: (Not Scored)

Did the application provide a detailed proposed first-year budget and a narrative justification? Are budget requests reasonable and consistent with the intended use of cooperative agreement funds? (See PURPOSE section)

8. Human Subjects (Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

Other Requirements**Technical Reporting Requirements.**

Provide CDC with original plus two copies of:

1. progress report semi-annually;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention (CDC), Mailstop E-13, Room 300, 255 East Paces Ferry Road, N.E. Atlanta, Georgia 30305-2209.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 (included in the application package).

- AR98-1 Human Subjects Certification.
AR98-2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research.
AR98-9 Paperwork Reduction Act Requirements.
AR98-10 Smoke-Free Workplace Requirement.

- AR98-11 Healthy People 2000.
AR98-12 Lobbying Restrictions.
AR98-13 Prohibition on Use of CDC funds for Certain Gun Control Activities.

Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 391(a) and 393(a) of the Public Health Service Act, (42 U.S.C. 280b(a), and 280b-1a) as amended. The catalog of Federal Domestic Assistance number is 93.136.

Where To Obtain Additional Information

Please refer to Program Announcement 98036 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance contact: Lisa T. Garbarino, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention (CDC) Mailstop E-13, Room 300, 255 East Paces Ferry Road, N.E. Atlanta, Georgia 30305-2209, Telephone: (404) 842-6796. See also the CDC home page on the Internet: <http://www.cdc.gov>.

For program technical assistance contact: Denise Johnson and Joyce McCurdy, Centers for Disease Control and Prevention (CDC), National Center for Injury Prevention and Control, Division of Violence Prevention, Mailstop K-60, 1600 Clifton Road, N.E., Atlanta, Georgia, 30333, Telephone: (770) 488-4410.

Dated: April 30, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-11967 Filed 5-5-98; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****ICD-9-CM Coordination and Maintenance Committee Meeting; National Center for Health Statistics (NCHS), Data Policy and Standards Staff Announces the Following Meeting**

Name: ICD-9-CM Coordination and Maintenance Committee Meeting (Vols. 1, 2 & 3 (Diagnosis & Procedures)).

Time And Dates: 9 a.m.-4 p.m., Thursday, June 4, 1998.

Place: Health Care Financing Administration, Auditorium, 7500 Security Boulevard, Baltimore, Maryland.
Status: Open to the public.

Purpose: The ICD-9-CM Coordination and Maintenance (C&M) Committee will hold its first meeting of the 1998 cycle on Thursday June 4, 1998. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters To Be Discussed: Agenda items include:

Update on ICD-10-CM
Nodular prostate
Status-post prematurity
Amputee NOS
Uterine size-date discrepancy
Unspecified adverse effect of drug
Adult failure to thrive
Reason for visit to dialysis centers
Addenda
Report on final draft of ICD-10-PCS and testing results.

Contracts for Additional Information: Amy L. Blum, 301/436-7050 ext. 164 (diagnosis), or Amy Gruber 410/786-1542 (procedures), NCHS, CDC, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782.

Dated: April 30, 1998.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC)

[FR Doc. 98-11974 Filed 5-5-98; 8:45 am]

BILLING CODE 4160-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families****Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)**

Title: TANF High Performance Bonus Report for Fiscal Year 1999 and Emergency TANF Data Report [previously approved OMB Number 0970-0164].

OMB No.: New.

Description: Pub. L. 104-193 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) established the Temporary Assistance for Needy Families (TANF) Program. It also included provisions for rewarding States which attain the highest levels of success in achieving the legislative goals of that program. The purpose of this collection is to obtain data upon which to base the computations for measuring State performance in meeting those goals and for allocating the bonus grant funds appropriated under the law.

Respondents: States, Puerto Rico, Guam, the Virgin Islands, and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden per respondent	Total burden hours
TANF High Performance Bonus Report (ACF-200)	54	4	14	3,024
Emergency TANF Data Report (ACF-198)	17	4	218.5	14,858

Estimated Total Burden Hours: 17,882.

Note: Competition for a High Performance Bonus is optional. This estimate assumes that all 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands would apply and be required to submit the TANF High Performance Bonus Report; however, only those competing jurisdictions operating separate State programs comparable to TANF would be required to submit the Emergency TANF Data Report for those separate State programs; those competing jurisdictions where the separate State programs are not comparable to the TANF program or would be required to submit other supplement data.

Additional Information

ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by June 1, 1998. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Acting Reports Clearance Officer, Bob Sargis at (202) 690-7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs prior to June 1, 1998, Attn: OMB Desk Officer of ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street N.W., Washington, D.C. 20503, (202) 690-7275.

Dated: April 29, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98-11961 Filed 5-5-98; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. 97N-0451]

Microbial Safety of Produce; Notice of Public Meetings

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

three public meetings to discuss the President's initiative to ensure the safety of imported and domestic fruits and vegetables and other foods, and specifically the microbial safety of produce. The meetings are intended to give an overview of, and obtain comment on, the general draft guide entitled "Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables" (the proposed guide). One of the meetings will focus primarily on obtaining comment from the international audience.

DATES: See Table 1 in the SUPPLEMENTARY INFORMATION section of this document.

ADDRESSES: Submit written comments on the meetings and on the proposed guide to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Submit written requests for single copies of the proposed guide to Lou Carson, Center for Food Safety and Applied Nutrition, 200 C St. SW., rm. 3812, Washington, DC 20204, 202-260-8920. Send one self-adhesive address label to assist that office in processing your request. Comments on the meetings or on the proposed guide should be identified with the docket number found in brackets in the heading of this document.

The meetings will be at the addresses and on the dates listed in Table 1. Registration is not required.

FOR FURTHER INFORMATION CONTACT: Camille E. Brewer, Center for Food Safety and Applied Nutrition (HFS-32), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-260-1784, FAX 202-260-9653, e-mail cbrewer@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On October 2, 1997, the President announced the "Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables" (fresh produce safety initiative). As part of the fresh produce safety initiative, the President directed the Secretary of Health and Human Services (DHHS) and the Secretary of

the U.S. Department of Agriculture (USDA), in cooperation with the agricultural community, to issue, within 1 year, guidance on good agricultural practices and good manufacturing practices for fresh fruits and vegetables. FDA is coordinating the effort for DHHS.

As part of this effort, FDA and USDA held a series of public meetings between November 17, 1997, and December 12, 1997, to provide the details on a broad approach on how to minimize microbial contamination through the control of water, manure, worker health and hygiene, field and facility sanitation, and transportation. A draft guide entitled "Working Draft: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruit and Vegetables" was made available on FDA's World Wide Web (WWW) home page (<http://www.fda.gov>) and at each public meeting. Transcripts of these meetings and all comments received on the working draft of the proposed guide are on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document and are accessible via the FDA home page on the WWW (<http://www.fda.gov/ohrms/dockets/default.htm>).

In the Federal Register of April 13, 1998 (63 FR 18029), FDA published a notice of availability of the proposed guide that responded to comments received on the working draft of the guide. The revised draft entitled "Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables" is available on the FDA home page on the WWW (<http://www.fda.gov/ohrms/dockets/default.htm>).

The public meetings will include an overview of the President's fresh produce safety initiative and a review of the proposed guide. The meetings are intended to obtain comment on the specific recommendations made in the

proposed guide and how the recommendations might best be applied.

II. Requests for Comments

Interested persons may submit written comments on the meetings and on the proposed guide to the Dockets Management Branch (address above). Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the proposed guide and received comments are

available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Transcripts

Transcripts of the meetings may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, approximately 15 working days after each meeting at a cost of 10 cents per page. The transcripts of the meetings will be available for public examination

at the Dockets Management Branch (address above).

Persons requiring a sign language interpreter or other special accommodations should notify the contact person referenced above by February 19, 1998.

IV. Electronic Access

Transcripts of the meetings will be available on the Internet using the WWW (<http://www.fda.gov/ohrms/dockets/default.htm>). The proposed guide is available at the same address.

Table 1.—Public Meetings

Meeting address	Date and local time	FDA contact person
WASHINGTON, DC: Department of Health and Human Services, Hubert Humphrey Bldg., rm. 800, 200 and Independence Ave., Washington, DC 20201.	May 19, 1998, Tuesday, 10 a.m. to 5 p.m.	Marilyn Veek, Food and Drug Administration, Office of International Affairs (HFI-35), 5600 Fishers Lane, Rockville, MD 20857, 301-827-0906
MIAMI: Miami Dade County Cooperative Extension Service Agriculture Center, 18710 SW. 288th St., Homestead, FL 33033.	May 21, 1998, Thursday, 10 a.m. to 5 p.m.	Estela Niella-Brown, Food and Drug Administration, P.O. Box 59-2256, Miami, FL 33159-2256, 305-526-2800, ext. 930.
SAN DIEGO: Malcolm X Branch Library Multipurpose Room, 5148 Market St., San Diego, CA 92114.	May 27, 1998, Wednesday, 10 a.m. to 5 p.m.	Rosario Quintanilla Vior, Food and Drug Administration, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612-2445, 714-798-7607.

Dated: May 1, 1998.
William K. Hubbard,
Associate Commissioner for Policy
Coordination.
[FR Doc. 98-12116 Filed 5-4-98; 1:10 pm]
BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Food and Drug Administration

Surveillance Updates and Trends;
Notice of Workshops

AGENCY: Food and Drug Administration,
HHS.
ACTION: Notice.

The Food and Drug Administration (FDA), (Office of Regulatory Affairs, Atlanta and Florida District Offices, and the Center for Biologics Evaluation and Research) is announcing two Workshops entitled "Surveillance Updates and Trends," for persons involved in licensed and unlicensed blood banks, plasma centers, and transfusion services served by FDA's Southeast Regional Office. The purpose of these workshops is to provide industry with information regarding regulations, surveillance updates, and trends on error and accident reporting, recalls, and fatalities.

Date and Time: The workshops will be held on Tuesday, June 23, 1998, 8

a.m. to 5:30 p.m., Doraville, GA (Atlanta area), and on Thursday, June 25, 1998, 8 a.m. to 5:30 p.m., Altamonte Springs, FL (Orlando area).

Location: On June 23, 1998, the workshop will be held at the Ramada Plaza Hotel, 4001 Presidential Pkwy., Doraville, GA, 770-216-9500. On June 25, 1998, the workshop will be held at the Orlando North Hilton, 350 S. North Lake Blvd., Altamonte Springs, FL, 407-830-1985.

Contact: Barbara Ward-Groves, Food and Drug Administration, 60 Eighth St. NE., Atlanta GA 30309, 404-347-4001, ext. 5256, FAX 404-347-4349, or Sharon Schneider, Center for Biologics Evaluation and Research, Food and Drug Administration (HFM-43), 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-827-3840, FAX 301-827-3843.

Registration: For the June 23, 1998, Atlanta area workshop, fax registration information (including name, title, firm name, address, telephone, and fax number) to Vincent Williams, Registration Coordinator at 404-347-1913 or 404-347-4206 by May 15, 1998. For the June 25, 1998, Orlando area workshop, fax registration information (including name, title, firm name, address, telephone, and fax number) to Ron Jackson, Registration Coordinator at 407-475-4768 by May 15, 1998. There is no registration fee for these

workshops. Space is limited; therefore, interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: These workshops comply with the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104-121) that requires outreach activities by Government agencies directed to small businesses. These workshops are intended to provide an exchange of information between FDA and the biologics industry on updates and trend information regarding surveillance functions. The topics to be discussed include the following: (1) The current regulation and proposed rule for error and accident reporting; (2) recall definitions, i.e., differences between FDA and firm-initiated recalls, and (3) the current regulation for reporting fatalities, to include information pertaining to the investigative followup. Trend information will identify the types of events occurring in the past few years in each of the above three areas.

Dated: April 29, 1998.
William K. Hubbard,
Associate Commissioner for Policy
Coordination.
[FR Doc. 98-11983 Filed 5-5-98; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

[Docket No. FR-4183-N-03]

Announcement of Funding Awards;
Indian HOME Program for Indian
Applicants Fiscal Year 1997

AGENCY: Office of the Assistant
Secretary for Public and Indian
Housing, HUD.

ACTION: Announcement of funding
awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1997 for the Indian HOME Program for Indian applicants. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide assistance to the Indian applicants under the HOME Program.

FOR FURTHER INFORMATION CONTACT:
Jennifer Bullough, Office of Native
American Programs, Office of Public
and Indian Housing, Department of
Housing and Urban Development, Room
4126, 451 Seventh Street SW,
Washington, DC 20410. Telephone (202)
401-7914 (this is not a toll-free
number). Hearing- or speech-impaired
persons may use the
Telecommunications Devices for the
Deaf (TDD) by contacting the Federal
Information Relay Service at 1-800-
877-8339.

SUPPLEMENTARY INFORMATION: The
Indian HOME Program funding for
Fiscal Year 1997 is authorized by the
HOME Investment Partnerships Act (the
HOME Act) signed into law on
November 28, 1990 (Pub. L. 101-625).
The HOME Act was amended by the
Housing and Community Development
Act of 1992 (Pub. L. 102-550, approved
October 28, 1992) and the Multifamily
Housing Property Disposition Reform
Act of 1994 (Pub. L. 102-233, approved
April 11, 1994).

This Notice announces FY 1997
funding of \$20,001,378 to be used to
assist in the funding to Indian tribes to
expand the supply of affordable housing
for very low-income and low-income
persons. The FY 1997 awards
announced in this Notice were selected
for funding consistent with the
provisions in the Notice of Funding
Availability (NOFA) published in the
Federal Register on April 11, 1997 (62
FR 17992).

The Indian HOME Program for Indian
Applicants is listed in the Catalog of
Federal Domestic Assistance as number
14.239.

In accordance with section
102(a)(4)(C) of the Department of
Housing and Urban Development
Reform Act of 1989 (103 Stat. 1987, 42
U.S.C. 3545), the Department is hereby
publishing the names, addresses, and
amounts of those awards as shown in
Appendix A.

Dated: April 29, 1998.
Deborah Vincent,
General Deputy, Assistant Secretary for Public
and Indian Housing.

Appendix A

HOME SET-ASIDE FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES; RECIPIENTS OF FUNDING DECISIONS

[Fiscal Year 1997]

Funding recipient (name and address)	Amount approved
Eastern/Woodlands ONAP	
Red Lake Band of Chippewa, Hwy 1, P.O. Box 219, Red Lake, MN 56671	398,040
Ho-Chunk Nation, P.O. Box 667, Black Falls, WI 54615-0667	661,500
Poach Band of Creek, 5811 Jack Springs Road, Atmore, AL 36502-6502	103,533
Menominee Indian Tribe of Wisconsin, P.O. Box 910, Keshena, WI 54135	100,000
Oneida Tribe of Indians of Wisconsin, P.O. Box 365, Oneida, WI 54135	324,677
Southern Plains ONAP	
Chickasaw Nation, P.O. Box 1548, Ada, OK 74821	1,096,778
Citizen Potawatomi Nation, 1901 South Gordon Cooper Dr., Shawnee, OK 74801	1,281,350
Osage Nation of Oklahoma, P.O. Box 53, Pawhuska, OK 74056	391,542
Seminole Tribe of Oklahoma, P.O. Box 1498, Wewoka, OK 74884	325,000
Wyandotte Tribe of Oklahoma, P.O. Box 250, Wyandotte, OK 74370	903,480
Northern Plains ONAP	
Spirit Lake Sioux Tribe, Fort Totten, SD 58335	1,000,000
Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, SD 57548	571,524
Oglala Sioux Tribe, P.O. Box H, Pine Ridge, SD 57770	510,466
Northern Arapho, P.O. Box 396, Fort Washakie, WY 82514	145,081
Turtle Mountain Band of Chippewa, P.O. Box 900, Belcourt, ND 58316	97,000
Yankton Sioux Tribe, P.O. Box 248, Marty, SD 57361	425,961
Cheyenne River Sioux Tribe, P.O. Box 590, Eagle Butte, SD 57625	345,000
Assiniboine and Sioux Tribes of Fort Peck, P.O. Box 1027, Poplar, MT 59255	229,418
Southwest ONAP	
Jicarilla Apache Tribe, P.O. Box 507, Dulce, NM 87528	500,000
San Carlos Apache Tribe, P.O. Box 0, San Carlos, AZ 85550	500,000
Ysleta del Sur Pueblo, P.O. Box 17579, Ysleta Station El Paso, TX 79917	1,339,119
Colorado River Indian Tribes, Rt. 1, Box 23-B, Parker, AZ 85344	123,000
Karuk Tribe of California, P.O. Box 1016, Happy Camp, CA 96039	541,489
Mechoopda Tribe of Chico Rancheria, 1507-F Mangrove Ave., Chico, CA 95926-2392	1,426,799

HOME SET-ASIDE FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES; RECIPIENTS OF FUNDING DECISIONS—Continued
(Fiscal Year 1997)

Funding recipient (name and address)	Amount approved
Fort McDermitt Paiute and Shoshone Tribe, P.O. Box 457, McDermitt, NV 89421	1,180,200
Cocopah Tribe of Arizona, Bin "G", Somerton, AZ 85350	1,250,550
Zuni Tribe of New Mexico, P.O. Box 339, Zuni, NM 87327	968,980
Redding Rancheria, 2000 Rancheria Road, Redding, CA 96001	625,441
Northwest ONAP	
Coeur d'Alene Tribe, P.O. Box 197, Plummer, ID 83851	600,000
Shoshone Bannock Tribe of Fort Hall, P.O. Box 306, Fort Hall, ID 83203	360,000
Alaska ONAP	
Cook Inlet Tribal Council, P.O. Box 93330, Anchorage, AK 99509	500,000
Orutsararmiut Native Council, P.O. Box 927, Bethel, AK 99559	1,175,450

[FR Doc. 98-11971 Filed 5-5-98; 8:45 am]
BILLING CODE 4210-33-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for
the Arroyo Southwestern Toad for
Review and Comment

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the Arroyo Southwestern Toad. This toad occurs in coastal montane regions from Monterey County, California, to Baja California.

DATE: Comments received on the draft recovery plan by August 4, 1998, will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805/644-1766); U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008 (phone: 760/431-9440). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, at the above Ventura address.

FOR FURTHER INFORMATION CONTACT: Dr. Grace S. McLaughlin, Herpetologist, at the Ventura address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

This species is listed as endangered. As of 1994, the arroyo southwestern toad (*Bufo microscophus californicus*) (referred to as arroyo toad) was known

from 22 river basins with a total estimated breeding population of fewer than 3,000 individuals. The arroyo toad is endemic to primarily the coastal plain and mountains of central and southern California and northwestern Baja California. These toads breed in stream channels and use stream terraces and surrounding uplands for foraging and wintering. Direct habitat loss due to urbanization, agriculture, and dam construction is the main cause for the decline of arroyo toads. Other threats include water diversions, road building, livestock grazing, mining, recreational activities, loss of habitat due to exotic plants, and predation by introduced species. Although the species evolved and has survived in an environment periodically impacted by fire, flood, and drought, the interactions of such natural events with human alterations of the habitat may lead to the extirpation of local populations.

The objective of this plan is to provide a framework for the recovery of the arroyo toad so that protection by the Act is no longer necessary. The recovery strategy for the arroyo toad is focused on providing sufficient breeding and upland habitat to maintain self-sustaining populations of arroyo toads throughout the historic range of the species in California, and minimizing or eliminating impacts and threats to arroyo toad populations. This plan describes a five-part recovery strategy with specific tasks necessary to maintain healthy aquatic, riparian and adjacent upland ecosystems that provide habitat for arroyo toads. The tasks, when implemented, will stabilize and maintain populations throughout the range of the arroyo toad in California by protecting sufficient breeding and nonbreeding habitat, monitor the status of existing populations to ensure

recovery actions are successful, identify and secure additional suitable arroyo toad habitat and populations, conduct research to determine the population dynamics and ecology of the species to guide management efforts and determine the best methods for reducing threats, and develop and implement an outreach program.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Michael J. Spear,
Regional Director, U.S. Fish and Wildlife
Service, Region 1, Portland, Oregon.
[FR Doc. 98-11972 Filed 5-5-98; 8:45 am]
BILLING CODE 4310-55-U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft
Recovery Plan for the Least Bell's
vireo (*Vireo bellii pusillus*) for Review
and Comment

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the least Bell's vireo (*Vireo bellii pusillus*). The breeding distribution of the least Bell's vireo is limited to eight counties in southern California and portions of northern Baja California, Mexico. Historically, this species was widespread throughout riparian woodlands in the Central Valley and low elevation riverine valleys of California and northern Baja California. Least Bell's vireos winter in southern Baja California, Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 6, 1998, to be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may receive a copy by contacting the Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments and material regarding the plan should also be addressed to the same address above.

Comments and material received are available on request for public inspection, by appointment, during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Jon Avery, U.S. Fish and Wildlife Service (see ADDRESSES) at 760/431-9440).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for reclassifying them from endangered to threatened or removing them from the list, and estimate the time and cost for implementing the needed recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) Requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The least Bell's vireo was listed as endangered on May 2, 1986. Critical habitat for the species was designated on February 2, 1994. The least Bell's vireo is an obligate riparian species during the breeding season, preferring early successional habitat. This species typically inhabits structurally diverse woodlands along watercourses. Extensive breeding habitat loss and degradation and brood parasitism by the brown-headed cowbird (*Molothrus ater*) have resulted in a rangewide decline of the least Bell's vireo. The objective of this plan is the reclassification of the least Bell's vireo to threatened and ultimately, delisting through recovery.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All

comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 30, 1998.

Michael J. Spear,

Regional Director, Region 1.

[FR Doc. 98-11973 Filed 5-5-98; 8:45 am]

BILLING CODE 4310-55-U

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's
Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation,
Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet to discuss several issues including: status of the May 1998 Proposal Solicitation Package, the development of the other programs for FY 98 funding, revised planning process, funding coordination, CVPIA FY 98 budget and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The BDAC Ecosystem Roundtable meeting will be held from 9:00 a.m. to 1:00 p.m. on Friday, May 15, 1998.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Cindy Darling, CALFED Bay-Delta Program, at (916) 657-2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653-6952 or TDD (916) 653-6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The

State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual work plans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 30, 1998.

Kirk Rodgers,

Deputy Regional Director, Mid-Pacific Region.
[FR Doc. 98-11969 Filed 5-5-98; 8:45 am]

BILLING CODE 4310-94-M

INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission ("Commission") has issued an annual report on the status of its practice with respect to violations of its administrative protective orders ("APOs") in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than Title VII and violations of the Commission's rule on bracketing business proprietary information ("BPI") (the "24-hour rule"), 19 CFR 207.3(c). This notice provides a summary of investigations of breaches and violations of the 24-hour rule for the period ending in 1997. The Commission intends that this report educate representatives of parties to Commission proceedings as to some specific types of APO breaches and 24-hour rule violations encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810. General information concerning the Commission can also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations conducted under Title VII of the Tariff Act of 1930 may enter into APOs that permit them, under strict conditions, to obtain access to BPI of other parties. See 19 U.S.C. 1677f; 19 CFR 207.7. The discussion below describes APO breach investigations that the Commission has completed including a description of actions taken in response to breaches. The discussion covers breach investigations completed during calendar year 1997.

Since 1993, the report has also included a summary of the Commission's investigations involving violations of the 24-hour rule, which provides that during the 24-hour period after a Commission deadline for a party submission in an antidumping or countervailing duty proceeding, changes are permitted to the proprietary version to correct the bracketing of BPI; no other changes are permitted under that rule. See 19 CFR 207.3(c). The discussion below covers investigations of violations of this rule completed during 1997.

In recent years, the Commission has expanded the report to include APO breaches in other types of proceedings as well. In 1997, no APO investigations were completed in proceedings other than Title VII investigations.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the "24-hour" rule. See 56 FR 4846 (Feb. 6, 1991); 57 FR 12,335 (Apr. 9, 1992); 58 FR 21,991 (Apr. 26, 1993); 59 FR 16,834 (Apr. 8, 1994); 60 FR 24,880 (May 10, 1995); 61 FR 21,203 (May 9, 1996), and 62 FR 13,164 (March 19, 1997). This report does not provide an exclusive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in April 1996 a revised edition of *An Introduction to Administrative Protective Order Practice in Antidumping and Countervailing Duty Investigations* (Pub. No. 2961). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205-2000.

I. In General

The current APO form for antidumping and countervailing duty investigations, which the Commission has used since March 1995, requires the applicant to swear that he or she will:

- (1) Not divulge any of the BPI obtained under the APO and not otherwise available to him, to any person other than—
 - (i) Personnel of the Commission concerned with the investigation,
 - (ii) The person or agency from whom the BPI was obtained,
 - (iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and
 - (iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the

direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for the interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the Commission investigation (or for binational panel review of such Commission investigation or until superceded by a judicial protective order in a judicial review of the proceeding);

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials (e.g., documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit such document containing BPI disclosed under this APO:

- (i) with a cover sheet identifying the document as containing BPI,
- (ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,
- (iii) if the document is to be filed by a deadline, with each page marked "Bracketing of BPI not final for one business day after date of filing," and
- (iv) if by mail, within two envelopes, the inner one sealed and marked "Business Proprietary Information—To be opened only by [name of recipient]", and the outer one sealed and not marked as containing BPI;
- (7) Comply with the provision of this APO and section 207.7 of the Commission's rules;
- (8) Make true and accurate representations in the authorized

applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (e.g., change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of protective order may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission; and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedure. Consequently, they are not subject to the requirements of the APO with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face potentially severe penalties for noncompliance. See 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's rules relating to BPI is the "24-hour" rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes—other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amendment document pursuant to Rule 201.14(b)(2).

II. Investigations of Alleged APO Breaches

An investigation of an alleged APO breach in an antidumping or countervailing duty investigation commences when the Secretary, acting under delegated authority, issues to the alleged breacher a letter of inquiry to ascertain the alleged breacher's views on whether a breach has occurred. If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating or aggravating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission has determined that although a breach has occurred, sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. The Commission retains sole authority to determine whether a breach has occurred and, if so, the appropriate action to be taken.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, Section 135(b) of the Customs and Trade Act of 1990, and 19 U.S.C. 1677f(g).

The breach most frequently investigated by the Commission involves the APO's prohibition on the dissemination of BPI to unauthorized persons. Such dissemination usually

occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or of transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included: the failure to properly bracket BPI in proprietary documents filed with the Commission; the failure to immediately report known violations of an APO; and the failure to adequately supervise non-legal personnel in the handling of BPI.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI in the Commission as a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, "the effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation." H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI. The Commission considers whether there are prior breaches within the previous two-year period and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit economists or consultants to obtain access to BPI under the APO if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C). Economists and consultants who obtain access to BPI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and

control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

III. Specific Investigations in Which Breaches Were Found

The Commission presents the following case studies to educate users about the types of APO breaches found by the Commission. The case studies provide the factual background, the actions taken by the Commission, and the factors considered by the Commission in determining the appropriate actions. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

Case 1: Counsel for a party to a Commission investigation filed a submission with International Trade Administration, Department of Commerce ("Commerce") in a Commerce investigation and served copies of the submission on the parties to the Commerce investigation. The submission contained BPI which counsel had obtained under a Commission APO. The Commission determined that one attorney did not breach the APO because he did not participate in the preparation or review of the Commerce submission and his name did not appear on the submission. The Commission determined that two attorneys who prepared and reviewed the submission filed with Commerce breached the APO. In reaching its decision to issue private letters of reprimand, the Commission considered that the BPI was viewed by an unauthorized person employed at Commerce. In addition, unauthorized persons may have viewed the BPI at the various law firms that were served copies of the submission. At least one person authorized to review BPI released under Commerce APOs was not authorized to review BPI released under the Commission's APO. The Commission noted that an even more important consideration was the admission by the attorneys that they were not aware of the explicit condition of the APO that information obtained under a Commission APO may not be

used in any other investigation including the companion Commerce inquiry. This lack of awareness called into question the level of care that the attorneys exercised in regard to their obligations under the APO. In reaching its decision, the Commission also considered the mitigating factors that the two attorneys had not previously breached a Commission APO and that both reported and attempted to correct the breach promptly.

Case 2: Counsel in an investigation submitted a public version of a document in which certain BPI contained in footnotes was not bracketed or redacted. The text to which the footnotes referred was bracketed. The BPI in question was contained in an attachment to a questionnaire response. The Commission staff discovered the possible breach, and the Secretary contacted counsel to inquire about the failure to bracket and redact the information in the footnote. Counsel responded immediately by submitting corrected pages to the Commission and persons on the service list, and instructing the recipients that the original pages be destroyed. In response to the Commission's inquiry about the possible breach, counsel argued that the information was available in the public domain because the information in question was not marked as confidential and was not bracketed. The Commission's consistent practice with regard to information submitted in connection with a questionnaire response is that it must be treated as confidential unless the party served with the response can establish that the material is elsewhere available in the public domain. Counsel failed to establish that the unbracketed and unredacted material was available in the public domain at the time that they filed the document in question. Thus, the Commission disagreed and determined that counsel breached the APO and issued warning letters. In reaching its decision, the Commission took into account that the attorneys had not previously breached an APO; there was no bad faith or willful conduct involved in connection with this breach; and they moved promptly to mitigate the breach once informed about it by the Secretary. It did not appear that any non-signatory to the APO had reviewed the BPI.

Case 3: Two attorneys filed the public version of an *in camera* hearing submission with bracketed but unredacted BPI. They discovered the breach the following day, immediately reported it to the Commission, retrieved all copies from parties on the service list and the Commission, and obtained from each party a certification that no copies

were reviewed by non-signatories to the APO. The public version retrieved from the Commission's files had not been reviewed by any member of the public. The Commission determined that the two attorneys breached the APO and issued warning letters to them. In reaching its decision not to sanction the attorneys, the Commission considered that they had not been involved in prior breaches and they took action immediately after discovering the breach to limit the possibility of disclosure to unauthorized persons.

A second alleged breach occurred on the same day when four attorneys from the same firm filed the public version of a brief which contained three items of what appeared to be unredacted BPI. The Commission Secretary's office notified counsel that the submission appeared to contain unredacted BPI. The law firm retrieved copies of the pages in question and filed corrected versions with the Commission, as requested by the Secretary. The Commission determined that two of the attorneys committed a breach of the APO when they failed to redact one item of BPI from the brief. In deciding to issue warning letters, the Commission considered that the attorneys had not been involved in prior breaches and took appropriate action upon discovering the breach. The Commission also noted that the information in question was disclosed publicly by the submitter very shortly after the breach.

The Commission determined that disclosure of the other two items in question was not a breach of the APO because the information was not BPI. One item was publicly available and the other item was obtained directly from the client and not under the APO. The Commission determined that two of the attorneys did not breach the APO because they did not participate in the final review of the public version of the brief.

Case 4: Employees for an economic consulting firm prepared and distributed documents containing bracketed but unredacted BPI at a public hearing. A signatory of the APO, an attorney for another party, noticed that BPI had not been redacted from the documents and immediately informed the Secretary, the law firm, and the consulting firm. All copies of the handout were retrieved immediately and all persons at the hearing who had copies of the handout in their possession, with the exception of the attorney who first noticed the BPI, stated that they did not review the BPI contained in the handouts. The Commission determined that two

consultants breached the APO and issued private letters of reprimand. In reaching the decision that the breach had occurred, the Commission noted that the actual receipt and review of BPI by unauthorized persons is not a precondition for a finding of a violation of the APO. Failure to follow the rules which are protective of the information by leaving the information unprotected and potentially releasable is sufficient to constitute a breach of the APO. In reaching its decision to issue private letters of reprimand, the Commission considered that this was the second time in two years that the consultants had breached an APO. In reaching its decision, the Commission also considered the mitigating factors that the breach was inadvertent, the Commission was promptly informed of the breach, and the consultant took immediate steps to mitigate any possible damage from the breach.

The Commission found that two other consultant firm employees, identified as clerical personnel in the APO applications, did not breach the APO because their work in preparing the documents was subject to review by the senior consultants. Although the consultants were under the direction and control of the lead attorney at a law firm, the Commission determined that no attorney at the firm was responsible for the breach because the consulting firm employees revised the documents after the attorneys had reviewed what they thought were the final versions, and no one advised the attorneys of the revision or requested that the attorneys review the revised documents.

Case 5: (See Case B of the 24-hour rule.) Attorneys, signatories to the APO in an investigation, failed to bracket and redact BPI from a footnote in the public version of a brief. The Commission sent a letter of inquiry to three attorneys but determined that one of them did not breach the APO because he was not involved in the drafting of the public version of the brief or in any review or appraisal of data included in the submission. The Commission determined that two attorneys breached the APO and issued one attorney a letter of reprimand and the other a warning letter. In reaching its decision to issue a private letter of reprimand to one of the attorneys, the Commission took into account the principal aggravating circumstance that it was the second time within a few months that this first attorney had breached an APO by failing to bracket and redact BPI from a submission. The Commission also considered that there was no evidence of willful disregard of the APO. However, the breach was not the result

of an accident or inadvertence, but the result of a conscious decision not to bracket information which the attorney continued to maintain was justified. The Secretary's office discovered the breach and, once advised that there had been a breach, the attorney moved promptly to mitigate the breach by retrieving the offending pages of the brief and replacing them with corrected pages.

In reaching its decision to issue a warning letter to the second attorney, the Commission took into consideration that he had no prior APO violations. This attorney was involved in the preparation of the documents, but did not make bracketing decisions with respect to the submission and was not in a position to countermand the attorney who made those decisions.

Case 6: Four attorneys were named as possibly breaching the APO by filing a submission before the Department of Commerce (Commerce) containing BPI obtained under the Commission APO and by labeling the submission public even though it contained BPI. The BPI in question had been obtained from the confidential version of the petition to which counsel had access under the Commission's APO but had not yet gained access to it under the Commerce APO. The day after the submission of the document to Commerce, the attorneys informed the Commission in writing of the potential breaches stemming from the submission to Commerce and took immediate steps to retrieve the submission and prevent the improper disclosure to unauthorized individuals.

The Commission found that two of the attorneys did not breach the APO because they played no role in either the preparation or filing of the submission. The Commission determined that the two other attorneys committed two distinct breaches of the APO by including Commission BPI in a Commerce submission and by incorrectly labeling that document as a public document. The Commission issued private letters of reprimand to the two attorneys and reminded them that information obtained under the Commission's APO is not to be used in other agency proceedings without first obtaining the written consent of the Secretary of the Commission and the party from whom the BPI was obtained. The Commission considered as mitigating factors the fact that the attorneys had no previous breaches; they reported and corrected the breach promptly; and the firm strengthened its APO procedures subsequent to the breaches. Moreover, it appeared that the mislabeling of the document was unintentional and due to mistake or

oversight. In reaching its decision to issue private letters of reprimand, the Commission considered that there were two separate breaches in the same investigation and that the document was placed in a public file at Commerce where it may have been viewed by unauthorized persons.

Case 7: Two attorneys, an economist, and a secretary from a law firm representing a party in an investigation failed to certify within a Commission deadline that APO documents in their possession had been destroyed and to attest to their good faith belief that there was no unauthorized access by any person to the APO materials. Pursuant to the APO, counsel was required to destroy the BPI documents and provide certification to that effect within 60 days of the termination of the investigation. However, since counsel appealed the Commission's determination to the U.S. Court of International Trade, the firm was permitted to retain the documents pending its application for a Judicial Protective Order (JPO). If a JPO is not sought, signatories to the APO in the law firm are required to destroy the documents and to provide certification promptly after 150 days have elapsed from the termination of the investigation. Counsel did not apply for a JPO and failed to provide the certification promptly after the 150 days had passed. In their response to the Commission's inquiry, counsel provided the required certification indicating that the documents had been destroyed immediately after the termination of the investigation. The Commission determined that the two attorneys and the economist breached the APO by not providing the certification within the required time period, and issued warning letters. In reaching a decision to issue warning letters, the Commission considered that there was no access to the APO documents by any unauthorized person; the breach appeared to have been unintentional; the attorney and economist took prompt action to remedy the breach; and they had no prior APO breach violations within the last two years. The Commission concluded that the secretary did not breach the APO as the Commission generally has not held clerical personnel responsible for breaches unless they have played a direct role in the circumstances contributing to a breach.

Case 8: An attorney representing a party to a Commission investigation filed a letter with the Commission which was designated as public, although it contained bracketed but undeleted BPI. The Commission Secretary notified the attorney about the

possible breach. In response, the attorney filed a revised letter and immediately took steps to retrieve the document from the other parties. Two weeks later the attorney filed a public version of a prehearing brief which contained BPI in one of the exhibits. Again, the Secretary notified the attorney who immediately took steps to retrieve the document from the other parties and prevent unauthorized disclosure. The Commission determined that breaches had occurred and issued a private letter of reprimand. In reaching its decision to issue a private letter of reprimand the Commission considered that, although the attorney had committed no prior breaches, the attorney had committed two separate breaches in the same investigation within weeks of each other. The Commission also considered the mitigating factors that, when informed of the breaches, the attorney took immediate steps to retrieve the information and prevent its unauthorized disclosure; the breaches were unintentional; and the law firm took action to prevent future violations of this nature.

IV. Investigations Involving the 24-Hour Rule

Under Commission rule 207.3(c), parties that submit a proprietary version of a document with the Commission pursuant to a Commission deadline have one business day in which to check and correct bracketing of BPI before filing the nonproprietary version of the document. The rule expressly states however, that *only* bracketing changes may be made without leave of the Commission in the one business day interval between the filing of the confidential and the filing of the nonconfidential document. A party desiring to make any other changes, including correction of typographical errors, must request leave of the Commission to do so.

Case A: Counsel to a party in an investigation filed a public version of the postconference brief which contained text which was not present in the confidential version of the brief. Leave of the Commission was not sought to make the non-bracketing change, nor was any mention of the additional material made when the public version of the brief was filed. The Commission determined that counsel violated Commission Rule 207.3 and issued a warning letter to each of the four attorneys who were signatories on the brief. In its letter, the Commission, noting that counsel's letter responding to the Commission inquiry stated that the change was made within one

business day, advised counsel that the rule permits only bracketing changes and deletion of confidential information. Parties must request leave of the Commission to make a late filing to make any other changes to a previously filed document.

In reaching its decision to issue warning letters, the Commission considered that the addition of text appeared to be inadvertent and counsel had no previous record of violating the 24-hour rule.

Case B: (See Case 5 of the APO Breaches.) Two attorneys representing a party to a Commission investigation made changes to a submission that did not involve bracketing of information without receiving prior leave of the Commission. The Commission determined that the two attorneys had violated the 24-hour rule by making the non-bracketing changes to submissions without seeking prior leave from the Commission. The Commission also found that the attorneys had breached the APO in the same investigation, but determined not to impose any additional sanction upon the attorneys for violation of rule 207.3, the 24-hour rule. One attorney received a warning letter for the APO breach and the 24-hour rule violation. The Commission issued a private letter of reprimand to the second attorney for the APO breach and the 24-hour rule violation because it was his second breach violation within several months.

The Commission determined not to hold a third attorney at the firm responsible for violation of the 24-hour rule because he played no role in the preparation of the brief.

Case C: Three attorneys submitted a change to the filing of the public version of their prehearing brief prior to being granted leave to make the change. The Commission determined that the attorneys violated Commission Rule 207.3(c) and issued warning letters. In determining to issue warning letters, the Commission considered that the three attorneys had no previous record of having violated Rule 207.3(c). In addition, since the attorneys had sought to make the change in their BPI version of the brief, filing the change to the public version prior to approval of this leave appeared to be an inadvertent procedural error.

By order of the Commission.

Issued: April 29, 1998.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-12010 Filed 5-5-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation 332-393]

Ammonium Nitrate: A Comparative Analysis of Factors Affecting Global Trade

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: April 27, 1998.

SUMMARY: Following receipt of a request on April 2, 1998, from the Senate Committee on Finance, the Commission instituted investigation No. 332-393, Ammonium Nitrate: A Comparative Analysis of Factors Affecting Global Trade, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Ms. Elizabeth Nesbitt (202-205-3355), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202-205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205-1810.

Background:

In its report, the Commission will, as requested by the Committee in its letter, provide a comparative analysis of factors affecting global trade in ammonium nitrate, with special emphasis on the industries in the United States, the European Union, and Russia. As requested, the Commission will provide the following information, to the extent information is available, with data presented for the most recent five-year period, or except as noted:

- An overview of the world ammonium nitrate market, including examination of consumption (for the most recent 10-year period), import, and export trends, and information on future consumption in the major markets;
- Industry profiles of the principal manufacturers and traders, their pattern of ownership and investment, including the extent to which government programs may affect production and may impede trade in ammonium nitrate between the specified countries. Examples of such programs cited by the Committee are farm policies, industrial policies, economic policies, trade policies, and other governmental measures that may affect the cost of raw materials and transportation;

- An overview of the ammonium nitrate production process, with information on costs of production, including those of its major raw material components, and the principal sources of these feedstocks; and
- Information on trends in domestic and export prices of ammonium nitrate.

In its request letter the Committee noted that the United States is a major producer and consumer of nitrogenous fertilizers, including urea and ammonium nitrate. The Committee stated that it has recently come to its attention that U.S. ammonium nitrate producers have concerns about competitive conditions affecting their industry, including increased imports of ammonium nitrate from Russia. The producers believe that these increased imports are the indirect result of the European Union's (EU) imposition of an antidumping order in 1995 on EU imports of ammonium nitrate from Russia. The letter continues by stating that moreover, the producers are concerned about additional imports of Russian ammonium nitrate into the United States as a result of the EU's recent institution of a review of the original order.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on June 16, 1998. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., June 2, 1998. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., June 4, 1998; the deadline for filing post-hearing briefs or statements is 5:15 p.m., June 30, 1998. In the event that, as of the close of business on June 2, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202-205-1816) after June 2, 1998, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter

desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m. on June 30, 1998. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

List of Subjects

Ammonium nitrate, ammonia, natural gas, urea.

Issued: April 28, 1998.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-12012 Filed 5-5-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 753-TA-34]

In the Matter of Extruded Rubber Thread from Malaysia; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondents in the above-captioned investigation, the Commission has determined to conduct a portion of its hearing scheduled for May 5, 1998 in camera. See Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 CFR 207.23(d), 201.13(m) and 201.35(b)(3)). The remainder of the hearing will be open to the public. The Commission has

determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3087, e-mail mbernstein@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that the respondents have justified the need for a closed session. A full discussion of information relating to the condition of the domestic industry, domestic and subject import shipment data, and pricing can only occur if a portion of the hearing is held in camera. Because much of this information is not publicly available, any discussion of issues relating to this information will necessitate disclosure of business proprietary information (BPI). Thus, such discussions can only occur if a portion of the hearing is held in camera. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition, the hearing will include an in camera session for a confidential presentation by respondents and for questions from the Commission relating to the BPI, followed by an in camera rebuttal presentation by petitioner. For any in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34, may be closed to the public to prevent the disclosure of BPI.

Issued: May 1, 1998.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-12014 Filed 5-5-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-383 (Bond Forfeiture/Return Proceeding)]

In the Matter of Certain Hardware Logic Emulation Systems and Components Thereof; Notice of Referral to Administrative Law Judge of Complainant's Motion for Forfeiture of Respondents' Bonds and Respondents' Motion for Return of Their Bonds

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has referred to the presiding administrative law judge complainant's motion for forfeiture of respondents' bonds posted during the temporary relief and Presidential review periods, and respondents' motion for return of those bonds in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3152. General information concerning the Commission may also be obtained by accessing the Commission's Internet server (<http://www.usitc.gov>)

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.50, 19 CFR 210.50.

This patent-based section 337 investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 FR 9486. The respondents are Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta") (collectively "respondents"). On July 8, 1996, the presiding administrative law judge ("ALJ") issued an initial determination ("ID") granting Quickturn's motion for temporary relief. On August 5, 1996, the Commission determined not to modify or vacate the ID, issued a temporary limited exclusion order against respondents and a temporary cease and desist order against Mentor, and determined that the amount of

respondents' bond during the pendency of temporary relief should be 43 percent of the entered value of imported hardware logic emulation systems and components thereof. On September 24, 1997, the Commission determined to modify respondents' temporary relief bond. Respondents' temporary relief bond remained at 43 percent of the entered value of the subject imported articles when the articles are appraised at transaction value (as defined in applicable U.S. Customs Service regulations), but increased to 180 percent of the entered value of the subject imported articles when the articles are appraised at other than transaction value.

On July 31, 1997, the ALJ issued a final ID finding that respondents have violated section 337 by infringing claims of all five of Quickturn's asserted patents. On that same date, the ALJ issued a recommended determination ("RD") recommending the issuance of a permanent exclusion order and a cease and desist order. On October 2, 1997, the Commission issued its notice of the decision not to review the ALJ's final ID, thereby finding that respondents are in violation of section 337. On December 3, 1997, the Commission issued a permanent limited exclusion order directed to Meta and a permanent cease and desist order against domestic respondent Mentor.

On February 26, 1998, Quickturn filed a motion for forfeiture of respondents' temporary relief bonds. On March 13, 1998, respondents filed an opposition to Quickturn's motion and a motion for the return of their bonds. On that same date, the Commission investigative attorneys filed a response in support of Quickturn's motion. The Commission has referred these motions to Administrative Law Judge Paul Luckern for adjudication in an initial determination to be issued within nine months. Pursuant to rule 210.50(d) (19 CFR 210.50(d)), the ALJ's initial determination shall have a 45-day effective date and shall be subject to review under the provisions of Commission rules 210.42 through 210.45, 19 CFR 210.42-210.45.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information

concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

Issued April 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98-12011 Filed 5-5-98; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE (DOJ)

President's Advisory Board on Race; Meeting

ACTION: President's Advisory Board on Race; notice of meeting.

SUMMARY: The President's Advisory Board on Race will meet from approximately 9:00 am to Noon on May 19, 1998 in Washington, D.C. at a site to be determined to discuss issues relating to race and crime and the administration of justice. The meeting will include a panel discussion with national experts.

The public is welcome to attend the Advisory Board meeting on a first-come, first-seated basis. Members of the public may also submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, facsimile, or electronic mail, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any. The address of the President's Initiative on Race is 750 17th Street, N.W., Washington, D.C. 20503. The electronic mail address is <http://www.whitehouse.gov/Initiatives/OneAmerica>.

FOR FURTHER INFORMATION: Contact our main office number, (202) 395-1010, for the exact time and location of the meetings. Other comments or questions regarding this meeting may be directed to Randy D. Ayers, (202) 395-1010, or via facsimile, (202) 395-1020.

Dated: May 1, 1998.

Randy Ayers,

Executive Officer.

[FR Doc. 98-12040 Filed 5-5-98; 8:45 am]

BILLING CODE 4410-13-M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 98-CIV-2716]

Proposed Final Judgment and Competitive Impact Statement United States of America, State of New York, and State of Illinois v. Sony Corporation of America, LTM Holdings, Inc. d/b/a Loews Theatres, Cineplex Odeon Corporation, and J.E. Seagram Corp.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of New York, Case No. 98-CIV-2716. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h).

The United States, the State of New York, and the State of Illinois filed a civil antitrust Complaint on April 16, 1998, alleging that the proposed merger of LTM Holdings, Inc. ("Loews") and Cineplex Odeon Corporation ("Cineplex") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the proposed merger would have combined the first and second largest theatre chains in Manhattan and Chicago. In Manhattan and Chicago, the combined chains would have had market shares, by revenue, of 67 percent and 77 percent, respectively. The complaint states that the merger would have reduced competition in both markets, leading to higher ticket prices and reduced theatre quality for first-run movies. It also would have allowed the newly merged firm to reduce competition by lowering film rentals paid to distributors for first-run movies.

The prayer for relief seeks: (a) Adjudication that the proposed merger would violate Section 7 of the Clayton Act; (b) permanent injunctive relief preventing the consummation of the proposed merger; (c) an award to each plaintiff of the costs of the action; and (d) such other relief as is proper.

A Stipulation and Order and a proposed Final Judgment were filed with the court at the same time the Complaint was filed. The proposed Final Judgment requires Loews and Cineplex to divest 14 theatres in Manhattan and 11 theatres in the Chicago area to a buyer or buyers, acceptable to the United States (after

consultation with the State of New York or the State of Illinois as the case may be), that will continue to operate them as movie theatres. Unless the United States grants a time extension, the divestitures must be completed within one-hundred and eighty (180) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later.

If the divestitures are not completed within the divestiture period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, Loews and Cineplex must maintain and operate the 25 theatres to be divested as active competitors, maintain the management, staffing, sales, and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations. Further, the proposed Final Judgment requires defendants to give the United States prior notice regarding future motion picture theatre acquisitions in Manhattan or Cook County, Illinois.

The plaintiffs and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, N.W., Suite 4000, Washington, DC 20530 (telephone: 202-307-0001).

Copies of the Complaint, Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, N.W., Washington, DC 20530 (telephone: 202-514-2481) and at the office of the Clerk of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, NY 10007.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,
Director of Operations and Merger
Enforcement Antitrust Division.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Southern District of New York;

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

3. The defendants (as defined in paragraph II (B)-(F) of the proposed Final Judgment attached hereto) shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, and shall, from the date of the filing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court;

4. Defendants shall not consummate their transaction before the Court has signed this Stipulation and Order;

5. In the event plaintiff United States withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding;

6. Loews and Cineplex represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Loews and Cineplex will later raise no claims of hardship or difficulty

as grounds for asking the Court to modify any of the divestiture provisions contained therein;

7. All parties agree that this agreement can be signed in multiple counterparts.

Dated: April 16, 1998.

For Plaintiff United States:

Allen P. Grunes (AG 4775),
U.S. Department of Justice, Antitrust
Division, Merger Task Force, 1401 H Street,
NW, Suite 4000, Washington DC 20530, (202)
307-0001.

For Plaintiff State of New York:

Dennis C. Vacco, Attorney General.
By: Stephen D. Houck (SH 0959),
Assistant Attorney General in Charge,
Antitrust Bureau, Office of the Attorney
General, State of New York, 120 Broadway,
New York, NY 10271, (212) 416-8280.

For Plaintiff State of Illinois:

James E. Ryan, Attorney General.
By: Christine H. Rosso (CR 3708),
Chief, Antitrust Bureau, Office of the
Attorney General, State of Illinois, 100 West
Randolph Street, 13th Floor, Chicago, Illinois
60601, (312) 814-5610.

For Defendants Sony Corporation of
America and LTM Holdings, Inc.:

Ira S. Sacks (IS 2861),
Fried, Frank, Harris, Shriver & Jacobson, One
New York Plaza, New York, NY 10004, (212)
859-8000.

For Defendant Cineplex Odeon
Corporation:

Alan J. Weinschel (AW 5659),
Weil, Gotshal & Manges LLP, 767 Fifth
Avenue, New York, NY 10153, (212) 310-
8000.

For Defendant J. E. Seagram Corp.:
Kenneth R. Logan (KL 7745),
Simpson Thacher & Bartlett, 425 Lexington
Avenue, New York, NY 10017, (212) 455-
2000.

So ordered:
United States District Judge

Final Judgment

Whereas, plaintiffs, the United States of America, the State of New York, and the State of Illinois filed their Complaint in this action on April 16, 1998, and plaintiffs and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, plaintiffs intend Loews and Cineplex, as hereinafter defined, to be required to preserve competition by promptly divesting the 14 theatres in Manhattan and 11 theatres in Chicago identified below;

And whereas, plaintiffs required Loews and Cineplex to make the divestitures for the purpose of establishing one or more viable competitors in both Manhattan and Chicago in the exhibition of first-run motion pictures;

And whereas, Loews and Cineplex have represented to the plaintiffs that the divestitures ordered herein can and will be made and that Loews and Cineplex will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged, And Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim by the plaintiffs upon which relief may be granted against the defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *DoJ* means the Antitrust Division of the United States Department of Justice.

B. *Loews* means defendant LTM Holdings, Inc. d/b/a/ Loews Theatres, a Delaware corporation with its headquarters in New York, New York, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. *Cineplex* means Cineplex Odeon Corporation, an Ontario corporation with its headquarters in Toronto, Canada, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. *Sony* means defendant Sony Corporation of America, a New York corporation with its headquarters in New York, New York, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

E. *Seagram* means defendant J.E. Seagram Corp., a Delaware corporation with its headquarters in New York, New York, and its successors, assigns, subsidiaries (including but not limited to Universal Studios, Inc.), divisions, groups, affiliates, partnerships and joint

ventures, and directors, officers, managers, agents, and employees.

F. *Defendants* means Loews, Cineplex, Sony and Seagram.

G. *The Manhattan theatre assets* means the motion picture theatre businesses operated by Loews and Cineplex under the following names at the following addresses in Manhattan, New York:

- i. Chelsea, 260 West 23rd Street.
- ii. Chelsea West, 333 West 23rd Street.
- iii. 62nd & First, 400 East 62nd Street.
- iv. Ziegfeld, 141 West 54th Street.
- v. Park & 86th Street, 125 East 86th Street.
- vi. Waverly Twin, 323 Sixth Avenue.
- vii. Olympia, 2770 Broadway.
- viii. Art Greenwich, 97 Greenwich Avenue.
- ix. Metro Twin, 2626 Broadway.
- x. Beekman, 1254 Second Avenue.
- xi. Regency, 1987 Broadway.
- xii. 62nd Street & Broadway, 1871 Broadway.
- xiii. 59th Street East, 239 East 59th Street.
- xiv. 34th Street Showplace, 238 East 34th Street.

The term *Manhattan theatre assets* includes all tangible and intangible assets used in the operation of these theatres including: All real property (owned or leased); all personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, and other tangible property or improvements used in the operation of the theatres; all licenses, permits and authorizations issued by any governmental organization relating to the operation of the theatres; and all contracts, agreements, leases, licenses, commitments and understandings pertaining to the theatres including supply agreements and licenses to exhibit motion pictures.

H. *The Chicago theatre assets* means the motion picture theatre businesses operated by Loews and Cineplex under the following names at the following addresses in Cook County, Illinois:

- i. 600 North Michigan, 600 N. Michigan Ave., Chicago.
- ii. 900 North Michigan, 900 N. Michigan Ave., Chicago.
- iii. Biograph, 2433 N. Lincoln Ave., Chicago.
- iv. Bricktown, 6420 W. Fullerton, Chicago.
- v. Watertown 1-4, 845 N. Michigan Ave., Chicago.
- vi. Watertown 5-7, 175 East Chestnut, Chicago.
- vii. Burnham Plaza, 826 S. Wabash, Chicago.
- viii. Broadway, 3175 N. Broadway, Chicago.
- ix. Hyde Park Quad, 5238 S. Harper, Chicago.
- x. River Run Eightplex, 16621 Torrence Ave., Lansing.
- xi. Old Orchard Quad, 9400 Skokie Blvd., Skokie.

The term *Chicago theatre assets* includes all tangible and intangible assets used in the operation of these theatres including: All real property (owned or leased); all personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, and other tangible property or improvements used in the operation of the theatres; all licenses, permits and authorizations issued by any governmental organization relating to the operation of the theatres; and all contracts, agreements, leases, licenses, commitments and understandings pertaining to the theatres including supply agreements and licenses to exhibit motion pictures.

I. *Acquirer* means the entity or entities to whom Loews and Cineplex divest the Manhattan theatre assets or the Chicago theatre assets under this Final Judgment.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in its business of operating motion picture theatres in either Manhattan or Cook County, Illinois, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment; provided, however, that Loews and Cineplex need not obtain such an agreement from an Acquirer in connection with the divestiture of the Manhattan theatre assets or the Chicago theatre assets.

IV. Divestiture

A. Loews and Cineplex are hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Manhattan theatre assets to an Acquirer or Acquirers acceptable to DoJ in its sole discretion after consultation with the State of New York and divest the Chicago theatre assets to an Acquirer or Acquirers acceptable to DoJ in its sole discretion after consultation with the State of Illinois.

B. Loews and Cineplex shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible. DoJ, in its sole discretion, may extend the time period for any divestiture for two (2) additional thirty (30) day periods of time, not to exceed sixty (60) calendar days in total.

C. In accomplishing the divestitures ordered by this Final Judgment, Loews and Cineplex promptly shall make known, by usual and customary means, the availability of the Manhattan theatre assets and the Chicago theatre assets described in this Final Judgment. Loews and Cineplex shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Loews and Cineplex shall also offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information regarding the Manhattan theatre assets and the Chicago theatre assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Loews and Cineplex shall make available such information to DoJ at the same time that such information is made available to any other person.

D. Loews and Cineplex shall permit prospective Acquirers of the Manhattan theatre assets and the Chicago theatre assets to have reasonable access to personnel and to make such inspection of the physical facilities of the Manhattan theatre assets and the Chicago theatre assets and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. The defendants shall not take any action that will impede in any way the operation of the Manhattan theatre assets or the Chicago theatre assets.

F. Unless DoJ otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Manhattan theatre assets and Chicago theatre assets and be accomplished by selling or otherwise conveying the Manhattan theatre assets and Chicago theatre assets to an Acquirer or Acquirers in such a way as to satisfy DoJ in its sole discretion (after consultation with the State of New York or the State of Illinois as the case may be), that the Manhattan theatre assets and the Chicago theatre assets can and will be used by the Acquirer(s) as part of a viable, ongoing business of exhibition of first-run films. Divestiture of the

Manhattan theatre assets and the Chicago theatre assets may be made to one or more Acquirers provided that in each instance it is demonstrated to the sole satisfaction of DoJ (after consultation with the State of New York or the State of Illinois as the case may be) that the Manhattan theatre assets and the Chicago theatre assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment: (1) Shall be made to an Acquirer or Acquirers who it is demonstrated to DoJ's sole satisfaction (after consultation with the State of New York or the State of Illinois as the case may be) has or have the intent and capability (including the necessary managerial, operational, and financial capability) of competing effectively in the business of exhibition of first-run films; (2) shall be accomplished so as to satisfy DoJ, in its sole discretion (after consultation with the State of New York or the State of Illinois as the case may be), that none of the terms of any agreement between an Acquirer and Loews or Cineplex give Loews or Cineplex the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. In the event that Loews and Cineplex have not divested the Manhattan theatre assets and the Chicago theatre assets within the time specified in Section IV(A) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by DoJ to effect the divestiture of the Manhattan theatre assets and the Chicago theatre assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Manhattan theatre assets and the Chicago theatre assets. The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and X of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Loews and Cineplex any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be

accountable solely to the trustee. The trustee shall have the power and authority to accomplish the Manhattan theatre assets divestitures at the earliest possible time to an Acquirer or Acquirers acceptable to DoJ in its sole discretion (after consultation with the State of New York), and the Chicago theatre assets divestitures at the earliest possible time to an Acquirer or Acquirers acceptable to DoJ in its sole discretion (after consultation with the State of Illinois), and shall have such other powers as this Court shall deem appropriate. Loews and Cineplex shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Loews and Cineplex must be conveyed in writing to plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of Loews and Cineplex, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Loews and Cineplex and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Loews and Cineplex shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary consents and regulatory approvals. The trustee, and any consultants, accountants, attorneys and other persons retained by the trustee, shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Loews and Cineplex shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Loews and Cineplex shall permit prospective Acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial,

operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered pursuant to this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the business to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by DoJ.

VI. Notice

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), defendants, without providing advance notification to DoJ, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any then-existing motion picture theatre in either

Manhattan in the State of New York or in Cook County in the State of Illinois. Such notification shall be provided to the DoJ in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5-9 of the instructions must be provided only with respect to defendants' motion picture theatre operations in Manhattan in the State of New York or in Cook County in the State of Illinois. Notification shall be provided at least thirty (30) days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of DoJ make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

VII. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Sections IV or V of this Final Judgment, Loews and Cineplex or the trustee, whichever is then responsible for effecting the divestitures, shall notify DoJ, and, as the case may be, in the State of New York or the State of Illinois of the proposed divestitures. If the trustee is responsible, it shall similarly notify Loews and Cineplex. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by DoJ of

notice, DoJ may request from Loews or Cineplex, the proposed Acquirer, or any other third party additional information concerning the proposed divestitures and the proposed Acquirer. Loews and Cineplex and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after DoJ has been provided the additional information requested from Loews and Cineplex, the proposed Acquirer, and any third party, whichever is later, DoJ shall provide written notice to Loews and Cineplex and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If DoJ provides written notice to Loews and Cineplex and the trustee that DoJ does not object, then the divestitures may be consummated, subject only to Loews and Cineplex's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that DoJ does not object to the proposed Acquirer or upon objection by DoJ, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Loews and Cineplex under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Loews and Cineplex shall deliver to DoJ an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period coverage by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Loews and Cineplex have taken to solicit a buyer for the relevant assets and to provide required information to prospective Acquirers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Loews and Cineplex shall

deliver to DoJ an affidavit which describes in detail all actions they have taken and all steps they have implemented on an on-going basis to preserve the Manhattan theatre assets and the Chicago theatre assets pursuant to Section IX of this Final Judgment. The affidavit also shall describe, but not be limited to, the efforts of Loews and Cineplex to maintain and operate the Manhattan theatre assets and the Chicago theatre assets as active competitors, maintain the management, staffing, sales, and marketing of the Manhattan theatre assets and the Chicago theatre assets, and maintain the Manhattan and the Chicago theatre assets in operable condition at current capacity configurations. Loews and Cineplex shall deliver to DoJ an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Loews and Cineplex shall preserve all records of all efforts made to preserve the business to be divested and effect the divestitures.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished, Loews and Cineplex shall take all steps necessary to maintain and operate the Manhattan theatre assets and the Chicago theatre assets as active competitors, maintain the management, staffing, sales, and marketing of the Manhattan theatre assets and the Chicago theatre assets, and maintain the Manhattan theatre assets and the Chicago theatre assets in operable condition at current capacity configurations. Defendants shall take no action that would jeopardize the divestitures described in this Final Judgment.

X. Financing

The defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer or Acquirers made pursuant to Sections IV or V of this Final Judgment.

XI. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiffs, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, the New York Attorney General or the Illinois Attorney General, and on

reasonable notice to the defendants made to their principal offices, shall be permitted:

1. Access during office hours of the defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendants and without restraint or interference from any of them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, the New York Attorney General, or the Illinois Attorney General made to the defendants' principal offices, the defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Sections VIII or XI of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, or of each state government, except in the course of legal proceedings to which at least one of the plaintiffs is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendants to the plaintiffs, the defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the plaintiffs to the defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendants are not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply

to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____

United States District Judge

Competitive Impact Statement

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Plaintiffs the United States, the State of New York, and the State of Illinois filed a civil antitrust Complaint on April 16, 1998, alleging that a proposed merger of LTM Holdings, Inc. ("Loews") and Cineplex Odeon Corp. ("Cineplex") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Loews and Cineplex both operate motion picture theatres throughout the United States, and that they each operate first-run motion picture theatres in Manhattan and Chicago. The merger would combine the two leading theatre circuits in both Manhattan and Chicago and give the newly merged firm a dominant position in both localities: In Manhattan, the newly merged firm would have a 67% market share (by revenue) and in Chicago, the newly merged firm would have a 77% market share (by revenue). As a result, the combination would substantially lessen competition and tend to create a monopoly in the markets for theatrical exhibition of first-run films in both Manhattan and Chicago.

The prayer for relief seeks: (1) an adjudication that the proposed merger described in the Complaint would violate Section 7 of the Clayton Act; (b) permanent injunctive relief preventing the consummation of the transaction; (c) an award to each plaintiff of the costs

of this action; and (d) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits Loews to complete its merger with Cineplex, yet preserved competition in the markets in which the transactions would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment orders Loews and Cineplex to divest 14 theatres in Manhattan and 11 theatres in the Chicago area to an acquirer acceptable to the United States. Unless the United States grants a time extension, the divestitures must be completed within one-hundred and eighty (180) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later.

If the divestitures are not completed within the divestiture period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, the defendants must maintain and operate the 25 theatres to be divested as active competitors, maintain the management, staffing, sales, and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations. Further, the proposed Final Judgment requires defendants to give the United States prior notice regarding future motion picture theatre acquisitions in Manhattan or Cook County, Illinois.

The plaintiffs and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Sony Corporation of America is a New York corporation with its headquarters in New York, New York.

LTM Holdings, Inc. is a Delaware corporation which does business under the name Loews Theatres and has its principal executive offices in New York, New York. Loews is an indirect wholly

owned subsidiary of Sony Pictures Entertainment Inc., itself an indirect wholly owned subsidiary of Sony Corporation of America, which in turn is an indirect wholly owned subsidiary of Sony Corporation, a Japanese company. Loews currently operates 139 theatres with 1,035 screens in 16 states. Its annual revenues for the fiscal year ending February 28, 1997 were approximately \$375 million.

Cineplex is a Canadian corporation headquartered in Toronto, Ontario. It currently operates a total of 312 theatres with 1,723 screens in the United States, Canada and Hungary. Its United States operations consist of 911 screens at 175 locations in 13 states and the District of Columbia. Cineplex had annual revenues of approximately \$500 million in 1996.

J.E. Seagram Corp. is a Delaware corporation headquartered in New York, New York. Its subsidiary, Universal Studios, Inc., is the largest shareholder of Cineplex.

B. Description of the Events Giving Rise to the Alleged Violations

On September 30, 1997, Sony Pictures Entertainment Inc., LTM Holdings, Inc. and Cineplex entered into a merger agreement. Pursuant to the agreement, Cineplex will become a wholly owned subsidiary of LTM Holdings, Inc., and Sony Pictures Entertainment will transfer all of its U.S. theatre assets not owned by LTM Holdings, Inc. to LTM Holdings, Inc. or its subsidiaries. LTM Holdings, Inc. will then be renamed Loews Cineplex Entertainment Corporation ("LCE"). Following the merger, Sony Pictures Entertainment Inc. will own approximately 51% of LCE and Universal Studios, Inc. will own approximately 26% of LCE.

Loews and Cineplex compete in the theatrical exhibition of first-run films in Manhattan and Chicago. They compete to obtain films from film distributors and to attract movie-goers to their theatres. The proposed merger, and the threatened loss of competition that would be caused thereby, precipitated the government's suit.

C. Anticompetitive Consequences of the Proposed Transaction

The Complaint alleges that the theatrical exhibition of first-run films in Manhattan and Chicago each constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. First-run films differ significantly from other forms of entertainment. The experience of viewing a film in a theatre is an inherently different experience from a live show, a sporting event, or viewing

a videotape in the home. Ticket prices for first-run films are also generally very different than for other forms of entertainment. A small but significant increase in the price of tickets for first-run films would not cause a sufficient shift to other forms of entertainment to make the increase unprofitable.

From a movie-goer's standpoint, theatres outside Manhattan and Chicago are not acceptable substitutes for theatres within those areas. A small but significant increase in the price of tickets for first-run films would not cause a sufficient shift to theatres outside Manhattan or Chicago to make the increase unprofitable.

From a distributor's standpoint, there is no alternative to screening its first-run films in first-run theatres. Given the high population densities and number of significant critics in both Manhattan and Chicago, "passing" (i.e., not playing a film in) Manhattan and Chicago is not a viable option. From the distributor standpoint as well, a small but significant decrease in prices (i.e., a decrease in film rental fees) would not cause a sufficient shift by distributors to other locations to make the decrease unprofitable to exhibitors.

The Complaint alleges that the merger of Loews and Cineplex would lessen competition substantially and tend to create a monopoly in the markets for exhibition of first-run films in Manhattan and Chicago. The proposed transaction would create further market concentration in already highly concentrated markets, and the merged firm would control a majority of box office revenues in those markets. In Manhattan, the market share possessed by the largest theatre circuit would rise from 46% percent to 67% percent of box office revenues after the proposed transaction. According to the Herfindahl-Hirschman Index ("HHI"), a widely-used measure of market concentration defined and explained in Appendix A, the merged firm's post-transaction HHI in Manhattan would be 4815, representing an increase of 1911 points. In Chicago, the market share possessed by the largest theatre circuit would rise from 47% percent to 77% percent of box office revenues after the proposed transaction. The post-transaction HHI would equal 6438, representing an increase of 2874 points. These substantial increases in concentration would likely lead the merged firm to raise ticket prices.

Distributors and exhibitors often break the Manhattan and Chicago markets into "zones" that reflect various neighborhoods—such as, in Manhattan, the Upper East Side, the East Side, the West Side, Broadway-Times Square,

Chelsea, and Greenwich Village, and in Chicago, Downtown, Near North, North, Far North, West, South, and Far South. Movies typically will open and play at only one theatre within a zone. The merger would convert a number of film zones in which Loews and Cineplex compete with each other into zones in which there would be no competition. For instance, in the downtown Chicago zone, the combined entity would control all seven theatres. The same is true in the north zone (Old Orchard/ Orchard Gardens), the west zone (Bricktown Square/Norridge) and the far south zone (River Run/River Oaks).

By reducing non-price competition, the merger would also likely lead to lower quality theatres by reducing the incentive to maintain, upgrade and renovate theatres in Manhattan and Chicago, thus reducing the quality of the viewing experience for movie-goer. It also may allow the merged entity to reduce the number of shows as there no longer would be competitive pressure to continue early and late shows.

Finally, the merger would also likely lead to distributors receiving less in revenue for the exhibition of their pictures, either in the form of reduced (or eliminated) guarantees, higher overhead allowances for the exhibitors, or a less favorable percentage of the box office receipts. The reduced revenue remitted to the distributors could lead to fewer films being produced, or less money being expended on high quality films, to the ultimate detriment of movie-goers.

New entry into the Manhattan and Chicago markets for exhibition of first-run films would be highly unlikely to eliminate the anticompetitive effects of this transaction. Manhattan and Chicago are two of the most difficult markets in the country to enter. Available theatre sites are scarce, real estate and construction costs are among the highest in the nation, and acquiring the necessary permits and approvals can be difficult and time-consuming. Identifying a site, planning the development, and constructing a theatre in Manhattan or Chicago takes several years.

For all of these reasons, plaintiff has concluded that the proposed transaction would lessen competition substantially in the exhibition of first-run films in Manhattan and Chicago, eliminate actual and potential competition between Loews and Cineplex, and likely result in increased ticket prices and lower quality theatres in both Manhattan and Chicago. The merger would also likely reduce the rental fees paid to distributors for films. The

proposed merger therefore violates Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve existing competition in the theatrical exhibition of first-run films in both Manhattan and Chicago. It requires the divestiture of 14 theatres in Manhattan: 13 Cineplex theatres (Chelsea, Chelsea West, 1st and 62nd, Ziegfeld, Park & 86th Street, Waverly Twin, Olympia, Art Greenwich, Metro Twin, Beekman, Regency, 62nd & Broadway, and 59th Street East) and one Loews theatre (34th Street Showplace); and 11 theatres in the Chicago area: 8 Cineplex Odeon theatres (600 North Michigan, 900 North Michigan, Biograph, Bricktown, Watertown 1-4, Watertown 5-7, Burnham Plaza, and Broadway) and 3 Loews theatres (Hyde Park Quad, River Run Eightplex, and Old Orchard Quad). The divested theatres constitute slightly more in box office revenue in Manhattan and in Chicago than the leading firm is acquiring in each market and, as a result, will reduce the leading firm's share back to (or actually slightly less than) pre-merger levels in both markets. The divestitures will preserve choices for distributors and movie-goers and make it less likely that ticket prices will increase, rental fees paid to distributors will decrease, and theatre quality will decline in Manhattan and Chicago as a result of the transaction.

Two of the divestitures in the Chicago area are outside of the city limits: Old Orchard Quad and the River Run Eightplex. In a case like this, where theatres are geographically differentiated and consumers' willingness to travel is varied, some movie-goers near the border have options outside the city limits. Accordingly, we have negotiated relief that includes two theatres outside of Chicago. Both of these theatres are in close proximity to the city, are near major highways, and are in zones that would be rendered non-competitive by the merger.

Unless the United States grants an extension of time, the divestitures must be completed within one-hundred and eighty (180) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. Until the divestitures take place, Loews and Cineplex must maintain and operate the 25 theatres to be divested as active competitors, maintain the management, staffing, sales, and marketing of the theatres, and maintain the theatres in operable

condition at current capacity configurations.

The divestitures must be to a purchaser or purchasers acceptable to the United States in its sole discretion, after consultation with the State of New York or the State of Illinois as appropriate. Unless the United States otherwise consents in writing, the divestitures shall include all the assets of the theatres being divested, and shall be accomplished in such a way as to satisfy the United States that such assets can and will be used as viable, ongoing first-run theatres.

If defendants fail to divest these theatres within the time periods specified in the Final Judgment, the Court, upon application of the United States, is to appoint a trustee nominated by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Loews and Cineplex will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the theatres remaining to be divested, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished. After appointment, the trustee will file monthly reports with the parties and the Court, setting for the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee has not accomplished the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment also prohibits the defendants from acquiring any other theatres in Manhattan or Cook County, Illinois without providing at least thirty (30) days' notice to the U.S. Department of Justice. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino ("HSR") premerger notification statute.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suite in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that plaintiff United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW; Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff United States considered, as an alternative to the proposed Final

Judgment, a full trial on the merits of its Complaint against defendants. Plaintiff is satisfied, however, that the divestiture of the Manhattan theatre assets and the Chicago theatre assets and other relief contained in the proposed Final Judgment will preserve viable competition in the first-run exhibition of motion pictures in Manhattan and Chicago. Thus, the proposed Final Judgment would achieve the relief the government might have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e).

As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448, 1461-62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."¹ Rather,

¹ 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71, 980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted valuation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *Citing United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1460-62. Precedent requires that,

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.²

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" ³

court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9 (1974), reprinted in U.S.C.A.N. 6535, 6538.

² *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); See *BNS*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. See also *Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'") (citations omitted).

³ *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom.*

This is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: April 16, 1998.

Respectfully submitted,
Allen P. Grunes (AG 4775),

U.S. Department of Justice, Antitrust Division, 1401 H Street, NW; Suite 4000, Washington, D.C. 20530, (202) 307-0001, Attorney for Plaintiff the United States.

Exhibit A Definition of HHI and Calculations for Market

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is $2600\ 30^2 + 30^2 + 20^2 + 20^2 = 2600$. The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

Certificate of Service

I, Allen P. Grunes, hereby certify that on April 16, 1998, I caused the foregoing document to be served on defendants by having a copy mailed, first-class, postage prepaid, to:

Ira S. Sacks,
Fried, Frank, Harris, Shriver & Jacobson, One New York Plaza, New York, NY 10004, (212) 859-8000.

Maryland v. United States, 460 U.S. 1001 (1983), quoting *Gillette Co.*, 406 F. Supp. at 716 (citations omitted); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Attorney for defendants Sony Corporation of America and LTM Holdings, Inc.
Alan J. Weinschel,
Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, (212) 310-8000.

Attorney for defendant Cineplex Odeon Corporation.

Kenneth R. Logan,
Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017, (212) 455-2000.

Attorney for defendant J.E. Seagram Corp.
Allen P. Grunes.

[FR Doc. 98-11958 Filed 5-5-98; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1918-98]

English Language, American History and Civics, Standardized Naturalization Test

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces the termination of the Immigration and Naturalization Service (Service) Standardized Citizenship Testing Program, currently conducted by five non-government companies on behalf of the Service. The program, established under a 1991 Notice of Program in the Federal Register, will end at midnight on August 30, 1998. After the August 30 termination date, the Service will commence citizenship testing at the newly opened Application Support Centers as part of the ongoing effort to re-engineer and streamline the entire naturalization process.

DATES: The Citizenship Testing Program will terminate effective at midnight, Eastern Daylight Time, August 30, 1998.

FOR FURTHER INFORMATION CONTACT: Craig Howie, Immigration and Naturalization Service, Office of Naturalization Operations, 801 I Street, NW., Suite 900, Washington, DC 20536. Telephone: (202) 305-0539.

SUPPLEMENTARY INFORMATION:

What Is the Standard Citizenship Testing Program?

The Service established a standardized citizenship testing program pursuant to a Notice of Program published in the Federal Register on June 28, 1991, at 56 FR 29714-15. The program's model was similar to the testing program used with Legalization applicants as provided in section 254A(b)(1)(D) of the Immigration

and Nationality Act (the Act). The citizenship testing program was designed to facilitate the naturalization of persons who otherwise might be hesitant to apply for naturalization.

Section 312 of the Act requires most applicants for naturalization to demonstrate a basic understanding of the English language and an understanding of United States history and government. Traditionally, applicants are tested on English and United States history and government as part of the mandatory naturalization interview. The 1991 Notice established criteria that non-government organizations were required to meet in order to be authorized to conduct citizenship testing on behalf of the Service. These criteria included requirements for the administration of a multiple choice test on United States history, government, and written English. Naturalization applicants who take and pass one of these tests normally are not questioned on these topics during the mandatory naturalization interview before an officer of the Service.

Since publication of the 1991 Notice, the Service approved six national organizations to administer citizenship tests. Five national organizations currently are administering citizenship tests through networks of local testing centers across the United States. The Service has no contractual or financial ties with any of the companies authorized to conduct citizenship testing.

Why Has the Service Decided To Terminate the Current Testing Program?

The Service has been engaged in a complete re-engineering of the naturalization process. Part of this process involves developing new methods for applicants to demonstrate compliance with various naturalization requirements under the Act. For example, last year the Service embarked upon a new method for applicant fingerprinting. Fingerprints for all Service applications or petitions are now taken at Application Support Centers (ASCs). The Service now plans to commence citizenship testing at the ASCs so that applicants may fulfill these particular requirements at one time, with one visit. The Service anticipates publishing a proposed rule in the Federal Register later this year, outlining our regulatory proposal for citizenship testing at the ASCs. The authority for this decision to end the current testing program is found in section 332(a) of the Act which

authorizes the Service to determine an applicant's admissibility to citizenship.

How Long Will Testing Certificates Issued by the Current Testing Organizations Be Valid?

The Service will allow the current testing organizations to continue administering tests through midnight, Eastern Daylight Time, August 30, 1998. Test certificates issued noting a testing date on or before August 30, 1998, will be honored in accordance with Service regulations found at 8 CFR 312.3(a)(1). For example, an applicant who is tested on August 30, 1998, passes, and is issued a certificate, has until August 30, 1999, to file an N-400, Application for Naturalization, in order for the certificate to be honored. If the applicant has already filed an N-400 and is awaiting an interview, the certificate will be valid until a final determination on the application has been made, regardless of how long the time period is between the date of the test and the date of the final determination on the application. Service officers interviewing naturalization applicants will retest persons presenting certificates only if the officer has reason to believe that the certificate was either fraudulently issued or otherwise inappropriately granted. While not a requirement, the Service urges all applicants desiring to be tested by the current testing organizations to submit a copy of the passing certification as an attachment to the N-400 at the time of filing, and to bring the original certificate to the naturalization interview.

Dated: April 15, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98-12004 Filed 5-5-98; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office for Victims of Crime; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Reinstatement, with change, of a previously approved collection for which approval has expired; Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

This proposed information collection is published to obtain comments from

the public and affected agencies. Comments are encouraged and will be accepted until July 6, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Does the proposed information collection instrument include all relevant program performance measures;

(2) Does the proposed information to be collected have practical utility;

(3) Does the proposed information to be collected enhance the quality and clarity of the information to be collected; and

(4) Does the proposed information to be collected minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Toni Thomas, 202-616-3579, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531. You may also contact the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514-1590.

Overview of this information

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State government.

Other: None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 52 respondents to complete an annual report in 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 104 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: April 30, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98-11965 Filed 5-5-98; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of April, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the

separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determination for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-34,156; Pennacle Micro, Inc., Colorado Springs, CO

TA-W-34,284; Munkata America, Inc., Dalton, GA

TA-W-34,274; Copes-Vulcan, Inc., Sootblowers Div., Lake City, PA

TA-W-34,291; Hofer Logging Co., Inc., LaGrande, OR

TA-W-34,231; Eagle Veneer, Inc., Harrisburg Plywood Div., Harrisburg, OR

TA-W-34,296; Doehler-Jarvis, Toledo, OH

TA-W-34,303, A & B; Young Morgan Lumber, Lyons, OR, Hanel Lumber, Hood River, OR and Hood Lumber Co., Mill City, OR

TA-W-34,273; Harris Enterprises, Inc., Marshfield, MO

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-34,390; Don Mart Clothes, Inc., Philipsburg, PA

TA-W-34,424; The Penn Traffic Co., Insalaco Distribution Center, Scranton, PA

TA-W-34,328; Mexicana Airlines, San Antonio, TX

TA-W-34,421; Weyerhaeuser Co., Coos Bay Services Div., North Bend, OR

TA-W-34,402; Energy Transportation Corp., New York, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-34,267; Block Drug Co., Inc., South Brunswick, NJ

TA-W-34,305 & A; Sara Lee Underwear, Winston-Salem, NC and

Yadkinville, NC

TA-W-34,304; Electro-Motive Div., General Motors Corp., Commerce, CA

TA-W-34,271; Danly Machine L.P., Cicero, IL

TA-W-34,180; Comac Enterprises, Columbia, TN

TA-W-34,225; BTR Automotive Sealing Systems, West Unity, OH

TA-W-34,406; Moore Document Solutions, LDK Department, Stillwater, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-34,341; Koch Refining Co LP, Corpus Christi, TX

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA-W-34,420; Samsonite Corp., Tucson, AZ: February 2, 1997
 TA-W-34,283; American Safety Razor Co., Verona, VA: September 5, 1997.
 TA-W-34,289; Leon Levin Sons, Inc., Long Island City, NY: February 18, 1997.
 TA-W-34,263; Kwikset Corp and Remedy Intelligent Staffing, Anaheim, CA: January 26, 1997.
 TA-W-34,302; Sharp Manufacturing Co., Inc., Rancho Cucamonga, CA: February 19, 1997.
 TA-W-34,234; Unimark Foods, Inc., Flavor Fresh Div., Lawrence, MA: January 26, 1997.
 TA-W-34,136; Stanley Blacker, Inc., Vidalia, GA: March 11, 1997.
 TA-W-34,281; Trico Products Corp., Vanceboro, NC: February 11, 1997.
 TA-W-34,397; Carpenter Technology Corp., Orangeburg, SC: March 6, 1997.
 TA-W-34,115; Hibbing Taconite Co., Hibbing, MN: December 12, 1996.
 TA-W-34,323; Cranston Print Works Co., Fletcher, NC: February 24, 1997.
 TA-W-34,280; Jandy Apparel, Hellam, PA: February 20, 1997.
 TA-W-33,950; Mario Casuals, Inc., New York, NY: October 16, 1996.
 TA-W-34,266; Bladen Sportswear, Tarheel Knitwear Div., Wilmington, NC: February 19, 1997.
 TA-W-34,368; Lyle Wood Products, Tacoma, WA: March 17, 1997.
 TA-W-34,384; VF Jeanswear, Inc., Arab, AL: March 10, 1997.
 TA-W-34,380; Aventura, Inc., Including Temporary & Contract Employees From Interim Personnel, Olsten Temporaries and H.L. Yoh, Tucson, AZ: March 16, 1997.
 TA-W-34,329; Jostens, Inc., Attleboro, MA: March 4, 1997.

TA-W-34,293; Ideal Reel Co., Inc., Paducah, KY: February 24, 1997.
 TA-W-34,219; Powers Holdings, Inc., Milwaukee, WI: January 15, 1997.
 TA-W-34,312; The Ertle Co., Dyersville, IA: February 26, 1998.
 TA-W-34,268; Foot-Tec Industries, Inc., Miami Lakes, FL: February 17, 1997.
 TA-W-34,405; Spalding & Sons, Inc., Grants Pass, OR: March 18, 1997.
 TA-W-34,347; Westwood Lighting, Inc., El Paso, TX: December 16, 1996.
 TA-W-34,429; Superior Pants Co., Men's Apparel Group, Athens, GA: January 25, 1998.
 TA-W-34,275; U.P. Jacket Co., Inc., Menominee, MI: February 12, 1997.
 TA-W-34,241; Chamberdoor Industries, Inc., Hot Springs, AR: January 26, 1997.
 TA-W-34,190; Lovington Manufacturing Co., Inc., Staunton, VA: January 19, 1997.
 TA-W-34,417; Gent-J Mfg, Inc., Plymouth, PA: March 24, 1997.
 TA-W-34,373; Key Tronic Corp., Spokane, WA: March 26, 1998.
 TA-W-34,324; Paragon Trade Brands, Waco, TX: February 24, 1997.
 TA-W-34,319; Parson and Rives, Inc., Independence, VA: March 3, 1997.
 TA-W-34,150; A. Koral Fashion, Inc., Men's Division, Schuylkill Haven, PA: December 18, 1996.
 TA-W-34,435; Ram Manufacturing, Inc., Roanoke, AL: March 31, 1997.
 TA-W-34,317; Sports Spectacular International, Inc., Philipsburg, PA: March 2, 1997.
 TA-W-34,316; Pinewood Casuals, Inc., Philipsburg, PA: March 2, 1997.
 TA-W-34,315; Northside Mfg, Inc., Philipsburg, PA: March 2, 1997.
 TA-W-34,370; Vishay-Sprague, Inc., Sanford, ME: April 16, 1998.
 TA-W-34,286 & A; Hasbro Manufacturing Services, El Paso, TX and Amsterdam, NY: April 17, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the months of April, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the

workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-02233; Electro-Motive Division, General Motors Corp., Commerce, CA
 NAFTA-TAA-02254; Parson and Rives, Inc., Independence, VA
 NAFTA-TAA-02239; Cranston Print Works Co., Fletcher, NC
 NAFTA-TAA-02238; U.P. Jacket Co., Inc., Menominee, MI
 NAFTA-TAA-02107; Rich Products, Saugatuck, MI
 NAFTA-TAA-02230 & A, B; Young Morgan Lumber, Lyons, OR, Hanel Lumber, Hood River, OR and Hood Lumber Co., Mill City, OR
 NAFTA-TAA-02208; Wagner Electronic Products, Inc., Rouge River, OR
 NAFTA-TAA-02256; Interbake Foods, Tacoma, WA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA-TAA-02275; Don Mart Clothes, Inc., Philipsburg, PA
 NAFTA-TAA-02305; The Penn Traffic Co., Insalaco Distribution Center, Scranton, PA
 NAFTA-TAA-02215; Universal Transport, Inc., Riddle, OR
 NAFTA-TAA-02241; Georgia Pacific Corp., Distribution Center, Spokane, WA

NAFTA-TAA-02329; Penske Logistics, Inc., Bloomington, IN

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA-TAA-02250; Koch Refining Co. LP, Corpus Christi, TX

The investigation revealed that criteria (2) and criteria (4) have not been met. Sales or production, or both, of such firm or subdivision have not decreased. There has not been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-02091; Hibbing Taconite Co., Hibbing, MN: December 12, 1996.

NAFTA-TAA-01926; General Electric Co., Salem, VA: August 18, 1996.

NAFTA-TAA-02276; Harrison Alloys, Inc., Spartanburg, SC: March 24, 1997.

NAFTA-TAA-02210; Trico Products Corp., Vanceboro, NC: February 11, 1997.

NAFTA-TAA-02293; Jostens, Inc., Attleboro, MA: March 26, 1997.

NAFTA-TAA-02234; Sharp Manufacturing Co., Inc., Rancho Cucamonga, CA: January 9, 1997.

NAFTA-TAA-02277; Babcock and Wilcox Co (Including Workers

Employed by Manpower Temporary Services), Paris, TX: March 27, 1997.

NAFTA-TAA-02294; Gent-J Mfg., Inc., Plymouth, PA: March 24, 1997.

NAFTA-TAA-02263; Samsonite Corp., Tucson, AZ: March 12, 1997.

NAFTA-TAA-02163; Jantzen, Inc., Seneca, SC: January 28, 1997.

NAFTA-TAA-02240; Paragon Trade Brands, Waco, TX: February 24, 1997.

NAFTA-TAA-02182; Chamberdoor Industries, Inc., Hot Springs, AR: February 2, 1997.

NAFTA-TAA-02158; Lovington Manufacturing Co., Inc., Staunton, VA: January 27, 1997.

NAFTA-TAA-02245; Pinewood Casuals, Inc., Philipsburg, PA: March 2, 1997.

NAFTA-TAA-02244; Northside Mfg., Inc., Philipsburg, PA: March 2, 1997.

NAFTA-TAA-02246; Sports Spectacular International, Inc., Philipsburg, PA: March 2, 1997.

NAFTA-TAA-02319; Ram Manufacturing, Inc., Roanoke, AL: April 7, 1997.

NAFTA-TAA-02264; Delphi Automotive Systems, Delphi Automotive and Lighting Brea Operations, Brea, CA: March 17, 1997.

I hereby certify that the aforementioned determinations were issued during the months of March and April 1998. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 27, 1998.

Grant D. Beale,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-12019 Filed 5-5-98; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a)

APPENDIX
(Petitions Instituted on 04/13/98)

TA-W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
34,431	Boeing Company (The) (Co.)	Mesa, AZ	04/01/98	Commercial Helicopters.
34,432	American West Trading (Co.)	Waverly, TN	03/30/98	Boots and Shoes.
34,433	Champion Products, Inc (Co.)	Dunn, NC	03/24/98	Professional/College Licensed Sweatshirt.
34,434	No. American Refractories (USWA)	Curwensville, PA	03/30/98	Hi-Tech Refractory Products.
34,435	RAM Manufacturing, Inc (Co.)	Roanoke, AL	03/31/98	Ladies' Jackets and Vests.
34,436	American Powder-Coating (Wkrs)	El Paso, TX	04/01/98	Metal Furniture.
34,437	Golden City Hosiery Mill (Wkrs)	Villa Rica, GA	03/30/98	Hosiery.
34,438	ADH Manufacturing (Co.)	Farner, TN	03/31/98	Ladies'/Children T-Shirts, Shorts, Pants.
34,439	Polaroid Corp (Wkrs)	Waltham, MA	03/24/98	Instant Photographic Film.
34,440	Taylor Lumber & Treating (IAM)	Sheridan, OR	04/01/98	Lumber.
34,441	TRW Steering Wheel System (Co.)	Yaphank, NY	03/23/98	Automotive Parts.

of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 18, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 18, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 13th day of April, 1998.

Grant D. Beale,
Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—Continued
[Petitions Instituted on 04/13/98]

TA-W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
34,442	Sea Watch International (Wkrs)	Easton, MD	03/26/98	Seafood.
34,443	Hart's Textiles (Co.)	Sikeston, MO	03/30/98	Custom Shade Cloth.
34,444	Covington Industries (Co.)	OPP, AL	03/13/98	Jeans and Trousers.
34,445	B and W Manufacturing (Wkrs)	Indiana, PA	03/30/98	Ladies' Sport Skirts, Pants, Shorts.
34,446	Springs Industries (UNITE)	Rock Hill, SC	03/26/98	Prints and Finish Fabrics.
34,447	OilTanking Houston, Inc (Co.)	Elkins, WV	03/26/98	Met Coal.
34,448	Iowa Beef Processors (Wkrs)	Luverne, MN	03/18/98	Beef.
34,449	Midstate Garment (Wkrs)	McMinnville, TN	03/31/98	Ladies' Pants, Shorts, Blouses.
34,450	Mann Edge Tool Co (Wkrs)	Lewiston, PA	03/30/98	Striking Tools.
34,451	Richfield Apparel Co (Wkrs)	Richfield, PA	03/30/98	Shirts.
34,452	Louisiana Pacific (Wkrs)	Libby, MT	04/02/98	Lumber Studs, Wood Chips.
34,453	Tops Malibu (Co.)	Eugene, OR	03/31/98	Decorative Candles.
34,454	Vogue Originals (Wkrs)	Miami, FL	04/01/98	Ladies' Sportswear.
34,455	Emerson Boot (Wkrs)	Cuba, MO	03/30/98	English Riding Boots.
34,456	Weyerhaeuser Co (Wkrs)	Alameda, CA	03/11/98	Corrugated Containers.
34,457	Pre-Con Corp (IBT)	Kalamazoo, MI	03/31/98	Precast Concrete Panels.
34,458	S and S Sewing Center (Co.)	Spartanburg, SC	04/02/98	Ladies' and Childrens' Knit Tops.
34,459	Delhi Gas Pipeline (Wkrs)	Oklahoma City, OK	04/02/98	Natural Gas.
34,460	Westmark Garment Mfg. (Wkrs)	Magazine, AK	03/25/98	Coats.
34,461	ARC-USA (Co.)	Pauls Valley, OK	04/02/98	Rubber Keypads.
34,462	General Dynamics Defense (Co.)	Pittsfield, MA	03/16/98	Defense Equipment for Army, Navy.

[FR Doc. 98-12023 Filed 5-5-98; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34, 246]

General Electric Company (Appliance Parts Distribution Center), New Concord, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at General Electric Company, Appliance Parts Distribution Center, New Concord, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-34, 246: General Electric Company, Appliance Parts Distribution Center, New Concord, Ohio (April 20, 1998)

Signed at Washington, D.C. this 22nd day of April, 1998.

Grant D. Beale,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-12027 Filed 5-5-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33, 876, TA-W-33-876A and TA-W-33-876B]

Jansport, Incorporated and Burlington, WA, et al; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 26, 1997, applicable to all workers of JanSport, Incorporated located in Burlington, Washington. The notice was published in the *Federal Register* on November 7, 1997 (62 FR 60279).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company official and the State agency show that worker separations will occur at JanSport's sewing operations in Everett, Washington and the production facility in Wenatchee, Washington. The workers are engaged in employment related to the production of backpacks and equipment products. Based on this new information, the Department is amending the certification to include workers at the sewing operations in Everett, Washington and the production facility in Wenatchee, Washington.

The intent of the Department's certification is to include all workers of

the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA-W-33, 876 is hereby issued as follows:

"All workers of JanSport, Incorporated, Burlington, Washington (TA-W-33, 876); the Sewing Operations in Everett, Washington (TA-W-33, 876A); and Wenatchee, Washington (TA-W-33, 876B), who became totally or partially separated from employment on or after September 22, 1996 through October 26, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 16th day of April, 1998.

Grant D. Beale,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-12021 Filed 5-5-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,401 and 34,401A]

Newell Company, Acme Frame—a/k/a Intercraft; TA-W-34,401 Mundelein, IL and TA-W-34, 401A Waukegan, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 6, 1998 in response to a worker petition which was filed on behalf of workers at Newell Company, Acme Frame, a/k/a Intercraft,

Mundelein, Illinois and Waukegan, Illinois.

All workers of the subject firm are covered under an existing certification (TA-W-34,378 and 34,378A). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 24th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-12020 Filed 5-5-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a)

of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivisions of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address

show below, not later than May 18, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 18, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 6th day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX
[Petitions Instituted on 04/06/98]

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,398	Semitool (Comp)	Kalispell, MT	03/14/98	Process Equipment for Semiconductors.
34,399	Kennecott Utah Copper OPETU)	Magna, UT	03/20/98	Mining concentrating & smelting copper.
34,400	Apocalypse, Inc (Wkrs)	Elmhurst, NY	03/15/98	Snowboards and Accessories.
34,401	Intercraft Burnes (Wkrs)	Mundelein, IL	03/14/98	Picture Frames.
34,402	Energy Transportation (Wkrs)	New York, NY	01/05/98	Transportation Services.
34,403	Max Kahn Curtain Corp (Comp)	Evergreen, AL	03/20/98	Drapes, Bedspreads and Comforters.
34,404	Chic by H.I.S. (Comp)	Saltville, TN	03/17/98	Men's and Women's Cotton Slacks Shorts.
34,405	Spalding and Son, Inc (Wkrs)	Grants Pass, OR	03/18/98	Dimensional and Structural Lumber.
34,406	Moore Document Solutions (Wkrs)	Stillwater, OK	03/17/98	Purified Acme.
34,407	General Die Cast (UAW)	Oak Park, MI	03/19/98	Zinc Die Cast Auto Parts.
34,408	Budd Co. (Wkrs)	Philadelphia, PA	03/17/98	Automotive Stampings.
34,409	Wiegand Appliance (Comp)	Vernon, AL	03/24/98	Heating Elements for Appliances.
34,410	Quantum Corp (Comp)	Shrewsbury, MA	03/26/98	Disk Drive Mass Storage Devices.
34,411	Magnecomp Corp (Comp)	Temecula, CA	03/20/98	Computer Hard Drive Assemblies.
34,412	Hit Apparel, Inc (Comp)	Athens, TN	03/18/98	Cutting and Sewing Sportswear.
34,413	Babcock and Wilcox (BBF)	Paris, TX	03/26/98	Fabrication of Boiler Components.
34,414	Bensal Fashions, Inc (UNITE)	Bronx, NY	03/16/98	Pants, Skirts, Shorts.
34,415	Superior Design Co (Wkrs)	Liverpool, NY	03/27/98	Piece Parts and Assembly Drawings.
34,416	Lynley Designs, Inc (Comp)	Jefferson, LA	03/25/98	Children's Clothing.
34,417	Gent J. Manufacturing (UNITE)	Plymouth, PA	03/24/98	Ladies' Blazers and Jackets.
34,418	Cole-Haan Manufacturing (Wkrs)	Sandford, ME	03/26/98	Belts, Sm. Leather Goods, Handbags.
34,419	Kodak Polychrome Graphics (IUE)	Clark, NJ	03/27/98	Graphic Arts Film and Chemical Products.
34,420	Samsonite Corp (Wkrs)	Tucson, AZ	02/02/98	Pull and Carry Luggage.
34,421	Weyerhaeuser Co (IAM)	North Bend, OR	03/03/98	Packaging and Distribution Services.
34,422	Leedo Furniture (Wkrs)	Corinth, MS	03/26/98	Furniture.
34,423	Collins Products LC (IAM)	Klamath Falls, OR	03/24/98	Plywood, Particle Board.
34,424	Penn Traffic Co (Wkrs)	Scranton, PA	03/24/98	Warehouse and Distribution.
34,425	Ludwick Well Service (Comp)	Sterling, KS	03/26/98	Oil Well Services.
34,426	Bay City Fashions (Wkrs)	Bay City, MI	03/25/98	Infant's and Toddlers' Clothing.
34,427	Sterling Commerce (Wkrs)	Wayne, PA	03/20/98	CD Rom Catalogs.
34,428	Denise Lingerie	Johnson City, TN	03/23/98	Sportswear, Skirts, and Dresses.
34,429	Superior Pants Co (Comp)	Athens, GA	03/25/98	Men's & Boys' Formalwear and Tailored Wear.
34,430	Alcoa Fujikura Ltd (Comp)	Del Rio, TX	03/27/98	Electrical Distribution Boxes.

[FR Doc. 98-12022 Filed 5-5-98 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training
AdministrationJob Training Partnership Act and Work
Opportunity Tax Credit; Lower Living
Standard Income Level

AGENCY: Employment and Training
Administration, Labor.

ACTION: Notice of determination of lower
living standard income level.

SUMMARY: The Job Training Partnership
Act (JTPA) provides that the term
"economically disadvantaged" may be
defined as 70 percent of the "lower
living standard income level" (LLSIL).
To provide the most accurate data
possible, the Department of Labor is
issuing revised figures for the LLSIL.
The Internal Revenue Code also
provides that the term "economically
disadvantaged" may be defined as 70
percent of the LLSIL for purposes of the
Work Opportunity Tax Credit (WOTC).
EFFECTIVE DATE: This notice is effective
on May 6, 1998.

ADDRESSES: Send written comments to:
Mr. Ron Putz, Office of Employment
and Training Programs, Employment
and Training Administration,
Department of Labor, Room N-4463,
200 Constitution Avenue NW.,
Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr.
Ron Putz, Telephone: 202-219-5229
(this is not a toll free number).

SUPPLEMENTARY INFORMATION: It is a
purpose of the Job Training Partnership
Act (JTPA) "to establish programs to
prepare youth and adults facing serious
barriers to employment for participation
in the labor force by providing job
training and other services that will
result in increased employment and
earnings, increased educational and
occupational skills, and decreased
welfare dependency, thereby improving
the quality of the work force and
enhancing the productivity and
competitiveness of the Nation." JTPA
Section 2 and 20 CFR 626.1. JTPA
Section 4(8) defines, for the purposes of
JTPA eligibility, the term "economically
disadvantaged" in part by reference to
the "lower living standard income
level" (LLSIL).

The LLSIL figures published in this
notice shall be used to determine
whether an individual is economically
disadvantaged for applicable JTPA
purposes. JTPA Section 4(16) defines
the LLSIL as follows: The term "lower
living standard income level" means
that income level (adjusted for regional,
metropolitan, urban, and rural
differences and family size) determined

annually by the Secretary [of Labor]
based on the most recent "lower living
family budget" issued by the Secretary.
Internal Revenue Code (I.R.C.) Section
51 established the Work Opportunity
Tax Credit (WOTC) for a portion of the
wages paid by employers from
"targeted" groups. The LLSIL figures
published in this notice shall be used to
determine whether an individual is a
member of one of the targeted groups for
applicable WOTC purposes.

The most recent lower living family
budget was issued by the Secretary in
the fall of 1981. Using those data, the
1981 LLSIL was determined for
programs under the now-repealed
Comprehensive Employment and
Training Act, and for the WOTC. The
four-person urban family budget
estimates previously published by the
Bureau of Labor Statistics (BLS)
provided the basis for the Secretary to
determine the LLSIL for training and
employment program operators. BLS
terminated the four-person family
budget series in 1982, after publication
of the Fall 1981 estimates.

Under JTPA, the Employment and
Training Administration (ETA)
published the 1997 updates to the LLSIL
in the **Federal Register** of April 25,
1997, 62 FR 20205. ETA has again
updated the LLSIL to reflect cost of
living increases for 1997 by applying the
percentage change in the December
1997 Consumer Price Index for All
Urban Consumers (CPI-U), compared
with the December 1996 CPI-U, to each
of the April 25, 1997, LLSIL figures.
Those updated figures for a family of
four are listed in Table 1 below by
region for both metropolitan and
nonmetropolitan areas. Since eligibility
is determined by family income at 70
percent of the LLSIL, pursuant to
Section 4(8) of JTPA, those figures are
listed below as well.

Jurisdictions included in the various
regions, based generally on Census
Divisions of the U.S. Department of
Commerce, are as follows:

Northeast	
Connecticut	New York
Maine	Pennsylvania
Massachusetts	Rhode Island
New Hampshire	Vermont
New Jersey	Virgin Islands
Midwest	
Illinois	Missouri
Indiana	Nebraska
Iowa	North Dakota
Kansas	Ohio
Michigan	South Dakota
Minnesota	Wisconsin
South	
Alabama	Kentucky

American Samoa	Louisiana
Arkansas	Marshall Islands
Delaware	Maryland
District of Columbia	Mississippi
Florida	Micronesia
Georgia	North Carolina
Northern Marianas	Tennessee
Oklahoma	Texas
Palau	Virginia
Puerto Rico	West Virginia
South Carolina	

West	
Arizona	New Mexico
California	Oregon
Colorado	Utah
Idaho	Washington
Montana	Wyoming
Nevada	

Additionally, separate figures have
been provided for Alaska, Hawaii, and
Guam as indicated in Table 2 below.

For Alaska, Hawaii, and Guam, the
1998 figures were updated by creating a
"State Index" based on the ratio of the
urban change in the State (using
Anchorage for Alaska and Honolulu for
Hawaii and Guam) compared to the
West regional metropolitan change, and
then applying that index to the West
regional nonmetropolitan change.

Data on 25 selected Metropolitan
Statistical Areas (MSAs) are also
available. These are based on monthly,
bimonthly or semiannual CPI-U
changes for a 12-month period ending in
December 1997. The updated LLSIL
figures for these MSAs, and 70 percent
of the LLSIL, rounded to the next
highest ten, are set forth in Table 3
below.

Table 4 below is a listing of each of
the various figures at 70 percent of the
updated 1998 LLSIL for family sizes of
one to six persons. For families larger
than six persons, an amount equal to the
difference between the six-person and
the five-person family income levels
should be added to the six-person
family income level for each additional
person in the family. Where the poverty
level for a particular family size is
greater than the corresponding LLSIL
figure, the figure is indicated in
parentheses.

Section 4(8) of JTPA defines
"economically disadvantaged" as,
among other things, an individual
whose family income was not in excess
of the higher of the poverty level or 70
percent of the LLSIL. The Department of
Health and Human Services published
the annual update of the poverty-level
guidelines at 63 FR 9235 (February 24,
1998).

Use of These Data

Based on these data, Governors
should provide the appropriate figures
to service delivery areas (SDAs). State
Employment Security Agencies, and

employers in their States to use in
determining eligibility for JTPA and
WOTC. The Governor should designate
the appropriate LLSILs for use within
the State from Tables 1 through 3. Table
4 may be used with any of the levels
designated.

Information may be provided by
disseminating information on MSAs and
metropolitan and nonmetropolitan areas
within the State, or it may involve
further calculations. For example, the
State of New Jersey may have four or
more figures: metropolitan,
nonmetropolitan, for portions of the
State in the New York City MSA, and
for those in the Philadelphia MSA. If an
SDA includes areas that would be

covered by more than one figure, the
Governor may determine which is to be
used. Pursuant to the JTPA regulations
at 20 CFR 627.200, guidelines,
interpretations, and definitions adopted
by the Governor shall be accepted by the
Secretary to the extent that they are
consistent with the JTPA and the JTPA
regulations.

Disclaimer on Statistical Uses

It should be noted that the publication
of these figures is only for the purpose
of determining eligibility for applicable
JTPA and WOTC programs. BLS has not
revised the lower living family budget
since 1981, and has no plans to do so.
The four-person urban family budget
estimates series has been terminated.

The CPI-U adjustments used to update
the LLSIL for this publication are not
precisely comparable, most notably
because certain tax items were included
in the 1981 LLSIL, but are not in the
CPI-U.

Thus, these figures should not be used
for any statistical purposes, and are
valid only for eligibility determination
purposes under the JTPA and WOTC
programs.

Signed at Washington, DC, this 27th day of
April, 1998.

Charles Atkinson,

Deputy Administrator, Office of Job Training
Programs.

BILLING CODE 4510-30-P

Appendix

Table 1 -- Lower Living Standard Income Level By Region¹

Region	1998 Adjusted LLSIL	70 percent LLSIL
Northeast		
Metro.....	28,210	19,750
Non-Metro.....	27,900	19,530
Midwest		
Metro.....	26,160	18,310
Non-Metro.....	24,820	17,370
South		
Metro.....	24,790	17,350
Non-Metro.....	23,520	16,470
West		
Metro.....	27,740	19,420
Non-Metro.....	27,460	19,230

¹ For ease of calculation, these figures have been rounded to the next highest ten dollars.

Table 2 -- Lower Living Standard Income Level -- Alaska, Hawaii and Guam¹

Region	1998 Adjusted LLSIL	70 percent LLSIL
Alaska:		
Metro.....	35,430	24,800
Non-Metro.....	34,480	24,140
Hawaii-Guam:		
Metro.....	37,470	26,230
Non-Metro.....	36,810	25,770

¹ Rounded to the next highest ten dollars.

Table 3 -- Lower Living Standard Income Level -- 25 MSAs¹

Region MSA	1998 Adjusted LLSIL	70 percent LLSIL
Anchorage, AK.....	35,430	24,800
Atlanta, GA.....	24,870	17,410
Baltimore, MD.....	25,890	18,130
Boston--Lawrence--Salem, MA/NH.....	29,730	20,810
Buffalo--Niagara Falls, NY.....	25,730	18,010
Chicago--Gary--Lake County, IL/IN/WI.....	27,440	19,210
Cincinnati--Hamilton, OH/KY/IN.....	26,090	18,270
Cleveland--Akron--Lorain, OH.....	27,070	18,950
Dallas--Ft Worth, TX.....	23,570	16,500
Denver--Boulder, CO.....	27,190	19,040
Detroit--Ann Arbor, MI.....	25,240	17,670
Honolulu, HI.....	37,470	26,230
Houston--Galveston--Brazoria, TX.....	23,110	16,180
Kansas City, MO/KS.....	25,520	17,870
Los Angeles--Anaheim-- Riverside, CA.....	28,200	19,740
Milwaukee, WI.....	26,350	18,450
Minneapolis--St Paul, MN/WI.....	25,550	17,890
New York--Northern N.J.-- Long Island, NY/NJ/CT.....	29,460	20,620
Philadelphia--Wilmington-- Trenton, PA/NJ/DE/MD.....	27,540	19,280
Pittsburgh--Beaver Valley, PA.....	26,390	18,470
St Louis--East St Louis, MO/IL.....	25,270	17,690
San Diego, CA.....	28,520	19,960
San Francisco--Oakland-- San Jose, CA.....	28,800	20,160
Seattle--Tacoma, WA.....	30,120	21,080
Washington, DC/MD/VA.....	29,810	20,870

¹ Rounded to the next highest ten dollars.Table 4 -- SEVENTY PERCENT OF UPDATED 1998 LLSIL, BY FAMILY SIZE¹

Family of One	Two	Three	Four	Five	Six
(5,830)	(9,550)	(13,110)	(16,180)	(19,100)	22,330
(5,930)	(9,720)	(13,350)	16,470	19,440	22,730
(5,940)	(9,740)	(13,370)	16,500	19,470	22,770
(6,250)	(10,240)	14,060	17,350	20,780	23,950
(6,260)	(10,250)	14,070	17,370	20,500	23,980
(6,270)	(10,280)	14,110	17,410	20,550	24,030
(6,370)	(10,430)	14,320	17,670	20,860	24,390
(6,370)	(10,440)	14,330	17,690	20,880	24,420
(6,440)	(10,550)	14,480	17,870	21,090	24,670
(6,440)	(10,560)	14,500	17,890	21,110	24,690
(6,490)	(10,630)	14,590	18,010	21,260	24,860
(6,530)	(10,700)	14,690	18,130	21,400	25,020
(6,580)	(10,780)	14,800	18,270	21,560	25,220
(6,600)	(10,810)	14,840	18,310	21,610	25,270
(6,650)	10,890	14,950	18,450	21,780	25,470
(6,650)	10,900	14,970	18,470	21,800	25,490
(6,830)	11,190	15,350	18,950	22,370	26,160
(6,860)	11,240	15,430	19,040	22,470	26,280
(6,920)	11,340	15,560	19,210	22,670	26,510
(6,930)	11,350	15,580	19,230	22,700	26,540
(6,950)	11,380	15,620	19,280	22,750	26,610
(7,000)	11,460	15,730	19,420	22,920	26,800
(7,040)	11,530	15,820	19,530	23,050	26,960
(7,110)	11,650	15,990	19,740	23,300	27,250
(7,110)	11,660	16,000	19,750	23,310	27,260
(7,190)	11,780	16,170	19,960	23,560	27,550
(7,260)	11,900	16,330	20,160	23,790	27,830
(7,430)	12,170	16,710	20,620	24,340	28,460
(7,500)	12,280	16,860	20,810	24,560	28,720
(7,520)	12,320	16,910	20,870	24,630	28,810
(7,590)	12,440	17,080	21,080	24,880	29,090
8,690	14,250	19,560	24,140	28,490	33,320
8,930	14,640	20,090	24,800	29,270	34,230
9,280	15,210	20,880	25,770	30,410	35,570
9,450	15,480	21,250	26,230	30,960	36,200

¹ Figures provided in Tables 1-3 of this notice are for a family of four persons. To use Table 4, the appropriate figure should be found in the Family of Four column. Then one may read across the row for family sizes other than four in the appropriate column.

DEPARTMENT OF LABOR

Employment and Training
AdministrationInvestigations Regarding Certifications
of Eligibility To Apply for NAFTA
Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Acting Director of the

Office Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of P.L. 103-182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S.

Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Acting Director of OTAA not later than May 16, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than May 16, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C-4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of April, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Subject firm	Location	Date received at Governor's office	Petition number	Articles produced
Babcock and Wilcox (BBF)	Paris, TX	03/27/1998	NAFTA-2,277	boiler components.
Superior Pants (Co.)	Athens, GA	03/23/1998	NAFTA-2,278	formalwear pants.
Hit Apparel (Wkrs)	Athens, GA	03/18/1998	NAFTA-2,279	cutting and sewing sportswear.
Denise Lingerie (UNITE)	Johnson City, TN	03/25/1998	NAFTA-2,280	sportswear, jogging suits, pants, tops.
Collins Products (IAMAW)	Klamath Falls, OR	03/25/1998	NAFTA-2,281	plywood, particle board and hardboard.
Georgia Pacific (IBU)	Eugene, OR	03/26/1998	NAFTA-2,282	softwood dimension lumber.
Dana Corporation (BBF)	Marion, OH	03/20/1998	NAFTA-2,283	truck axles.
IBP (Wkrs)	Luverne, MN	03/26/1998	NAFTA-2,284	beef processing plant.
Delta Woodside Industrial (Co.)	Wallace, NC	03/25/1998	NAFTA-2,285	knit fabrics.
Lane Plywood (Wkrs)	Portland, OR	03/27/1998	NAFTA-2,286	BC millimeter.
Heritage Hills (Co.)	Tustin, CA	03/25/1998	NAFTA-2,287	television cabinets.
Chic by H.I.S. (Wkrs)	Monticello, KY	03/27/1998	NAFTA-2,288	jeans and casual pants.
Weyerhaeuser (Wkrs)	Alameda, CA	03/30/1998	NAFTA-2,289	container board.
Golden City Hosiery Mill (Wkrs)	Villa Rica, GA	03/30/1998	NAFTA-2,290	socks.
Crown Pacific (Wkrs)	Gilchrist, OR	03/26/1998	NAFTA-2,291	timber products.
Caliber Logistics (Wkrs)	Vancouver, WA	03/25/1998	NAFTA-2,292	ink jet printers & circuit boards.
Jostens (Wkrs)	Attleboro, MA	03/26/1998	NAFTA-2,293	high school class rings.
Gent J (UNITE)	Plymouth, PA	03/31/1998	NAFTA-2,294	ladies' blazers/jackets & sportswear.
Alcoa Fujikura (Co.)	Del Rio, TX	03/31/1998	NAFTA-2,295	electrical junction boxes for automobile.
Dale Electronics (Co.)	Yankton, SD	03/27/1998	NAFTA-2,296	electronic components.
Russell-Newman (Co.)	Cisco, TX	03/31/1998	NAFTA-2,297	ladies sleepwear, underwear and robes.
Superior Design (Wkrs)	Liverpool, NY	03/30/1998	NAFTA-2,298	piece parts and assembly drawings.
Richfield Apparel (Wkrs)	Richfield, PA	03/31/1998	NAFTA-2,299	garments.
Action West (Wkrs)	El Paso, TX	03/31/1998	NAFTA-2,300	sportswear pants.
Boeing Company (The) (Co.)	Mesa, AZ	04/03/1998	NAFTA-2,301	commercial light helicopters.
V.F. Corporation—Red Kap Industries (Wkrs)	Nashville, TN	04/02/1998	NAFTA-2,302	workshirts & coveralls (uniform apparel).
General Dynamics Defense Systems (IUE)	Pittsfield, MA	03/31/1998	NAFTA-2,303	transmissions.
Metex (Co.)	Edison, NJ	03/24/1998	NAFTA-2,304	seals for exhaust systems.
Penn Traffic (Wkrs)	Scranton, PA	04/01/1998	NAFTA-2,305	warehouse and distribution services.
Covington Industries (Co.)	OPP, AL	04/1/1998	NAFTA-2,306	jeans and trousers.
Westark Garments (Wkrs)	Magazine, AR	03/30/1998	NAFTA-2,307	coats.
Southport Aviation (Wkrs)	Kansas City, MO	03/31/1998	NAFTA-2,308	transportation services.
Harry G. Kramer III (Co.)	Pittsburgh, PA	04/03/1998	NAFTA-2,309	construction work.
North American Refractories (USWA)	Curwensville, PA	04/03/1998	NAFTA-2,310	refractories for steel.
B and W Manufacturing (Wkrs)	Indiana, PA	04/03/1998	NAFTA-2,311	women's skirts, denim pants, dress pants.
TRW Steering Wheel Systems (Co.)	Yaphank, NY	04/01/1998	NAFTA-2,312	steering wheels, airbag covers.
Champion Products (Co.)	Dunn, NC	04/01/1998	NAFTA-2,313	t-shirts, sweatshirts.
Applied United Industries (IAM)	Beloit, WI	04/02/1998	NAFTA-2,314	stainless steel tubular products.
Beloit Corporation (IAM)	Francis, WI	04/02/1998	NAFTA-2,315	pulp & papermaking machinery & systems.
Taylor Lumber & Treating (IAM)	Sheridan, OR	04/02/1998	NAFTA-2,316	dimensional lumber, beams.
Emerson Boot (Wkrs)	Cuba, MO	04/01/1998	NAFTA-2,317	english riding boots.
American West Trading (Co.)	Waverly, TN	04/01/1998	NAFTA-2,318	boots and shoes.
RAM Manufacturing (Co.)	Roanoke, AL	04/06/1998	NAFTA-2,319	women's jackets and vest.

Subject firm	Location	Date received at Governor's office	Petition number	Articles produced
Eastman Kodak (Wkrs)	Rochester, NY	04/13/1998	NAFTA-2,320	CD writable data storage disks.
Garment Finishers International (Co.)	El Paso, TX	04/13/1998	NAFTA-2,321	stone washing of jeans, jackets, vests.
American Powder—Coatings (Wkrs)	El Paso, TX	04/08/1998	NAFTA-2,322	metal furniture (beds, chairs).
Walls Industries (Co.)	Hamilton, TX	04/07/1998	NAFTA-2,323	insulated clothing.
ADH Manufacturing (Co.)	Famer, TN	04/07/1998	NAFTA-2,324	ladies & childrens pants and tops.
T.L. Edwards (Co.)	Statesville, NC	04/08/1998	NAFTA-2,325	tank tops, knit t-shirts, sweatershirts.
Bugatti New England Leather (Wkrs)	Rochester, NH	04/09/1998	NAFTA-2,326	Leather goods, bags, belts, etc.
Lone Star Cutting Services (Wkrs)	El Paso, TX	04/08/1998	NAFTA-2,327	cutting of pants, shorts.
Larcan—TTC (Co.)	Louisville, CO	04/09/1998	NAFTA-2,328	broadcast transmitters equipment.
Penske Logistics—Leaseaway Trucking (IBT)	Reading, PA	04/06/1998	NAFTA-2,329	trucking.
Young Morgan Trucking (Co.)	Mill City, OR	04/09/1998	NAFTA-2,330	transport of lumber products.
Ocean Beauty (UFCW)	Astoria, OR	04/09/1998	NAFTA-2,331	bottom fish, crock, cod, snapper.
Northrop Grumman (Wkrs)	Fleetville, PA	04/10/1998	NAFTA-2,332	electronic components.
Procter and Gamble (Co.)	Greenville, SC	04/16/1998	NAFTA-2,333	prescription drugs.
Marshall Electric (Co.)	Rochester, IN	04/14/1998	NAFTA-2,334	automotive ignition coils.
American Cemwood (Co.)	Albany, OR	04/14/1998	NAFTA-2,335	wood fiber, cement product.
Springs Industries (UNITE)	Rock Hill, SC	04/16/1998	NAFTA-2,336	printed and finished textile fabrics.
Kaufman Footwear (Wkrs)	Dushore, PA	04/17/1998	NAFTA-2,337	nylon and leather boot uppers.
Johnson Wholesale (Wkrs)	Punta Gorda, FL	04/15/1998	NAFTA-2,338	distribution center.
Eagle Precision Technology (Co.)	Jackson, MI	04/02/1998	NAFTA-2,339	endforming equipment.
NEPECO (Co.)	Byron, WY	04/21/1998	NAFTA-2,340	oil.
DRS Ahead Technology (Co.)	Dassel, MN	04/20/1998	NAFTA-2,341	magnetic tape heads.

[FR Doc. 98-12028 Filed 5-5-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training
Administration

[NAFTA-02291]

Crown Pacific Crescent Creek Logging
Gilchrist, OR; Notice of Termination of
Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on March 26, 1998 in response to a petition filed on behalf of workers at Crescent Creek Logging, located in Gilchrist, Oregon (NAFTA-02291).

The Department of Labor has determined that the petitioner is covered by an existing certification, as amended (NAFTA 02030B). Consequently, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 23rd day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-12026 Filed 5-5-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training
Administration

[NAFTA-02266]

Intercraft, Mundelein, IL; Notice of
Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-183) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on March 18, 1998 in response to a petition filed on behalf of workers at Intercraft, Mundelein, Illinois (NAFTA-02089A).

The Department of Labor has determined that the petitioners are covered by an existing certification, as amended (NAFTA-02089A). Consequently, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 24th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-12025 Filed 5-5-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training
Administration

[NAFTA-02144]

Powers Holdings, Incorporated Curtis
Industries Division Milwaukee, WI;
Amended Certification Regarding
Eligibility To Apply for NAFTA-
Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on April 8, 1998, applicable to all workers of Powers Holdings, Incorporated located in Burlington, Washington. The notice was will soon be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings on review show that there are two divisions of Powers Holdings operating at the Milwaukee plant. Workers, subject of the petition investigation, producing terminal blocks, along with some production of controls, RFI filters, and sockets are affiliated with the Curtis Industries Division of the subject firm. Accordingly, the Department is amending the adjustment assistance certification to reflect this matter.

The amended notice applicable to NAFTA-02144 is hereby issued as follows:

All Workers of Powers Holdings, Incorporated, Curtis Industries Division, Milwaukee, Wisconsin, who became totally or partially separated from employment on or after January 15, 1997 through April 8, 2000, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 28th day of April, 1998.

Grant D. Beale,

Acting Director, Office Trade of Adjustment Assistance.

[FR Doc. 98-12024 Filed 5-5-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning eight information collections: (1) Regulations, 29 CFR Part 547, Requirements of a Bona Fide Thrift or Savings Plan; (2) Regulations, 29 CFR Part 549, Requirements of a Bona Fide Profit-Sharing Plan or Trust; (3) Regulations, 29 CFR Part 4, Labor Standards For Federal Service Contracts; (4) OFCCP Complaint Form (CC-4); (5) Employers First Report of Injury or Occupational Illness (LS-202), Employer's Supplementary Report of Accident or Occupational Illness (LS-210), and Physician's Report on Impairment of Vision (LS-205); (6) Medical Refund Travel Request (CM-957); (7) Request for State or Federal Worker's Compensation Information (CM-905); and (8) Application for Approval of a Representative's Fee in a Black Lung Claim Proceeding Conducted by the

U.S. Department of Labor (CM-972). Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 8, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEES: Contact Ms. Patricia Forkel at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-3201, Washington, D.C. 20210, telephone (202) 219-7601. The Fax number is (202) 219-6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Regulations, 29 CFR Part 547, Requirements of a Bona Fide Thrift or Savings Plan

I. Background

Section 7(e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay for payments on behalf of an employee to a bona fide thrift or savings plan. Regulations require that information necessary to support a thrift or savings plan's qualifications as a bona fide plan, as defined in the Fair Labor Standards Act, be maintained by employers. Regulations, 29 CFR Part 547 set forth the requirements for a bona fide thrift or savings plan.

II. Current Actions

The Department of Labor is seeking extension of approval of this recordkeeping requirement in order to enable investigators to determine whether or not a given thrift or savings plan is in compliance with section

7(e)(3)(b) of the Fair Labor Standards Act. A prudent employer establishing a thrift or savings plan would set forth the plan in writing, describing eligibility requirements, a definite formula for saving, and the amount of the employer's contributions, even if not required to do so by the regulations. Therefore, this requirement imposes no additional recordkeeping burden on employers. The annual recordkeeping burden for this information collection is estimated at one hour as a "placeholder" only.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Regulations, 29 CFR Part 547, Requirements of a Bona Fide Thrift or Savings Plan.

OMB Number: 1215-0119.

Agency Numbers: None.

Affected Public: Individuals or households; Businesses or other for-profit; State, local or Tribal Government; Not-for-profit institutions.

Total Respondents: 2,072 million.

Frequency: Recordkeeping only.

Total Responses: 2,072 million.

Average Time Per Response:

Recordkeeping only.

Total Burden Hours (recordkeeping):

1.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): 0.

Regulations, 29 CFR Part 549, Requirements of a Bona Fide Profit-Sharing Plan or Trust

I. Background

Section 7(e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay for payments on behalf of an employee to a bona fide profit-sharing plan or trust. Regulations require that information necessary to support a profit-sharing plan or trust's qualifications as a bona fide plan or trust, as defined in the Fair Labor Standards Act, be maintained by employers. Regulations, 29 CFR Part 549 set forth the requirements for a bona fide profit-sharing plan or trust.

II. Current Actions

The Department of Labor is seeking extension of approval of this recordkeeping requirement in order to enable investigators to determine whether or not a given profit-sharing plan or trust is in compliance with section 7(e)(3)(b) of the Fair Labor Standards Act. A prudent employer establishing a profit-sharing plan or trust would set forth the plan in writing,

outlining a definite program for distributing to the employees a share of the company's profits, as well as describing eligibility requirements for participation, even if not required to do so by the regulations. Therefore, this requirement imposes no additional recordkeeping burden on employers. The annual recordkeeping burden for this information collection is estimated at one hour as a "placeholder" only.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Regulations, 29 CFR Part 549, Requirements of a Bona Fide Profit-Sharing Plan or Trust.

OMB Number: 1215-0122.

Agency Number: None.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government.

Total Respondents: 888,000.

Frequency: Recordkeeping only.

Total Responses: 888,000.

Average Time per Response:

Recordkeeping only.

Total Burden Hours (recordkeeping):

1.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

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Total Burden Cost (operating/maintenance): 0.

Regulations, 29 CFR Part 4, Labor Standards for Federal Service Contracts

I. Background

The Service Contract Act (SCA) imposes certain recordkeeping and incidental reporting requirements applicable to employers performing on service contracts with the Federal government. The basic payroll recordkeeping requirements contained in this regulation (sections 4.6(g)(1)(i) through (iv)) have been previously approved under OMB number 1215-0017, which constitutes the basic recordkeeping regulations for all laws administered by the Wage and Hour Division, and the remaining SCA requirements under 1215-0150. This information collection contains three additional requirements not cleared under either of the above information collections. They are: a vacation benefit seniority list, which is used by the contractor to determine vacation fringe benefits entitlements earned and accrued by service employees who were

employed by predecessor contractors; a conformance record report, which is used by Wage and Hour to determine the appropriateness of the conformance and compliance with the SCA and its regulations; and a collective bargaining agreement, submitted by the contracting agency to Wage and Hour to be used in the issuance of wage determinations for successor contracts subject to section 2(a) and 4(c) of SCA.

II. Current Actions

The Department of Labor seeks extension of approval of this information collection in order to carry out the provisions of the Service Contract Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Regulations, 29 CFR Part 4, Labor Standards For Federal Service Contracts.

OMB Number: 1215-0150.

Agency Number: None.

Affected Public: Businesses or other for-profit; Federal government.

Total Respondents: 61,789.

Frequency: On occasion.

Requirement	Respondents	Average time per response	Burden hours
Vacation Benefit Seniority List	59,055	1 hour	59,055
Conformance Record	204	1/2 hour	102
Collective Bargaining Agreements	2,530	5 minutes	211

Total Burden Hours: 59,368.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

OFCCP Complaint Form (CC-4)

I. Background

The Office of Federal Contract Compliance Programs (OFCCP) administers three equal employment opportunity programs: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and 38 U.S.C. 4212, the Vietnam Era Veteran's Readjustment Assistance Act. These programs require affirmative action by Federal contractors and subcontractors and prohibit discrimination on the basis of race, color, sex, religion, national origin, disability, or veteran status. All three programs give individuals the right to file complaints. The CC-4 Complaint Form is used to file complaints under all three programs. The form is used as the first step in the initiation of a complaint investigation.

II. Current Actions

The Department of Labor seeks an extension of approval of this information collection in order to collect information necessary to investigate complaints of discrimination.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: OFCCP Complaint Form.

OMB Number: 1215-0131.

Agency Number: CC-4.

Affected Public: Individuals or households.

Total Respondents: 1,150.

Frequency: On occasion.

Total Responses: 1,150.

Average Time per Response: 1.28 hours.

Total Burden Hours: 1,472.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): \$402.50.

Employer's First Report of Injury or Occupational Illness (LS-202), Employer's Supplementary Report of Accident or Occupational Illness (LS-210), Physician's Report on Impairment of Vision (LS-205)

I. Background

The Longshore and Harbor Workers' Compensation Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing or building a vessel. The LS-202, Employer's First Report of Injury or Occupational Illness, is used by employers to report injuries that have occurred under the Longshore Act and its related statutes. The LS-210, Employer's Supplementary Report of Accident or Occupational Illness, is used to report additional periods of lost time from work. The LS-205, Physician's Report on Impairment of Vision, is a medical report based on a comprehensive examination of visual impairment.

II. Current Actions

The Department of Labor seeks an extension of this information collection in order to ensure that employers are complying with the reporting requirements of the Act and to ensure that injured claimants receive all

compensation benefits to which they are entitled.

Type of Review: Extension.
Agency: Employment Standards Administration.

Title: Employer's First Report of Injury or Occupational Illness (LS-202); Employer's Supplementary Report of Accident or Occupational Illness (LS-

210); Physician's Report on Impairment of Vision (LS-205).

OMB Number: 1215-0031.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 29,990.

Frequency: On occasion.

Form	Respondents	Average time per response	Burden hours
LS-202	27,000	25 hour	6,750
LS-205	90	.75 hour	68
LS-210	2,900	25 hour	725

Total Burden Hours: 7,543.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): \$11,846.05.

Medical Refund Travel Request (CM-957)

I. Background

When a coal miner files an application for black lung benefits under the Black Lung Benefits Act, the miner is scheduled for medical determination testing. The Black Lung Trust fund is required to pay for this determination testing and associated travel costs. The CM-957 is used by the miner to record travel expenses incurred while traveling to and from the testing facility.

II. Current Actions

The Department of Labor seeks an extension of this information collection in order to identify and reimburse miners for out-of-pocket medical travel expenses associated with black lung related medical testing.

Type of Review: Extension.
Agency: Employment Standards Administration.

Title: Medical Travel Refund Request.
OMB Number: 1215-0054.
Agency Number: CM-957.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Total Respondents: 8,700.
Frequency: On occasion.
Total Responses: 8,700.
Average Time per Response: 10 minutes.

Total Burden Hours: 1,450.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): \$3,045.

Request for State or Federal Workers' Compensation Information (CM-905)

I. Background

The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C.

922(b) and 20 CFR 725.535, direct that DOL Black Lung benefit payments to a beneficiary for any month be reduced by any other payments of state or federal benefits for workers compensation due to black lung disease. This form collects information regarding the status of any state or Federal workers' compensation claim, including dates of payments, weekly or lump sum amounts paid, and other fees or expenses paid out of this award, such as attorney fees and related expenses associated with black lung disease.

II. Current Actions

The Department of Labor seeks an extension of this information collection in order that state or Federal workers' compensation programs may notify DCMWC that a claimant is receiving benefits that must be offset, of any rate changes, or of cessation of compensation benefits.

Type of Review: Extension.
Agency: Employment Standards Administration.

Title: Request for State or Federal Workers' Compensation Information.
OMB Number: 1215-0060.

Agency Number: CM-905.
Affected Public: Federal Government; State, Local or Tribal Government.

Total Respondents: 3,986.
Frequency: On occasion.
Total Responses: 3,986.
Average Time per Response: 15 minutes.

Total Burden Hours: 996.
Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): \$12,197.16.

Application for Approval of a Representative's Fee in a Black Lung Claim Proceeding Conducted by the U. S. Department of Labor (CM-972)

I. Background

Individuals filing for benefits under the Black Lung Benefits Act may elect

to be represented or assisted by an attorney or other representative. The fee charged by the representative must be approved for payment by the Division of Coal Mine Worker's Compensation. Regulation 20 CFR 725.365-6 establishes certain information and documentation criteria which must be submitted in order for the Program to evaluate the fee request. This form provides a standardized format for submission of the information required by the regulation.

II. Current Actions

The Department of Labor seeks an extension of this information collection in order to carry out its responsibility to evaluate and approve a fee for services rendered.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Approval of a Representative's Fee in Black Lung Claim Proceeding Conducted by the U. S. Department of Labor.

OMB Number: 1215-0171.

Agency Number: CM-972.

Affected Public: Businesses or other for-profit.

Total Respondents: 1,000.

Frequency: As needed.

Total Responses: 1,000.

Average Time per Response: 42 minutes.

Total Burden Hours: 700.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 30, 1998.

Cecily A. Rayburn,

Director, Division of Financial Management,
Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 98-12015 Filed 5-5-98; 8:45 am]

BILLING CODE 4510-27-P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act (USERRA)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Veterans' Employment and Training Service is soliciting comments concerning the proposed extension of the information collection request for the Eligibility Data Form, USERRA 38 U.S.C., Chapter 43. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques.

DATES: Written comment must be submitted by June 5, 1998.

ADDRESSES: Comments are to be submitted to Hary Puente-Duany, Director, Office of Agency Management and Budget, Veterans' Employment and Training Service, U.S. Department of Labor, Room S-1310A, 200 Constitution Ave. NW, Washington, D.C. 20210, telephone: (202) 219-6350. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 219-7341.

FOR FURTHER INFORMATION CONTACT: Robert Wilson, Chief, Compliance Programs, Veterans' Employment and Training Service, U.S. Department of Labor, Room S-1316, 200 Constitution Ave., NW, Washington, D.C. 20210, telephone (202) 219-8611. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies of telephoning Robert Wilson at (202) 219-8611.

SUPPLEMENTARY INFORMATION:

I. Background

The purposes of the Uniformed Services Employment and Reemployment Rights Act and this information collection requirement include: protect and facilitate the employment and prompt reemployment of members of the uniformed services (to include National Guard and Reserves); to minimize disruption to the lives of persons who perform service in the uniformed services and their civilian employers; and to encourage individuals to participate in non-career uniformed service. Also, to prohibit discrimination in employment and acts of reprisal against persons because of their obligation in the uniformed services, prior services, filing a USERRA claim, seeking assistance concerning an alleged violation, testifying in a proceeding, or otherwise participating in an investigation.

II. Current Actions

This notice request an extension of the current Office of Management and Budget approval of the paperwork requirements in the Uniformed Services Employment and Reemployment Rights Act. Extension is necessary to fulfill the statutory requirements for this program.

Type of Review: Extension.

Agency: Veterans' Employment and Training Service.

Title: Uniformed Services Employment and Reemployment Rights Act.

OMB Number: 1293-0002.

Affected Public: Individuals or households.

Total Respondents: 4,215.

Frequency: On occasion.

Total Responses: 4,215.

Average Time per Response: 0.30 hour.

Estimated Total Burden Hours: 632.

Total Annualized capital/startup costs: 0.

Total initial annual costs: 0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: April 30, 1998.

Hary Puente-Duany,

Director, Office of Agency Management and Budget.

[FR Doc. 98-12016 Filed 5-5-98; 8:45 am]

BILLING CODE 4510-79-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98-061]

NASA Advisory Council (NAC), Space Science Advisory Committee (SSAC), Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Subcommittee.

DATES: Thursday, June 18, 1998, 8:30 a.m. to 5:00 p.m.; and Friday June 19, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, MIC 5A, Room 5H46 300 E Street, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Carl Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358-2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

- Convene goals of meeting
- Personnel, budget, and programs
- Mission and technology programs
- Outer Solar System/Solar Probe

- Strategic planning process
- CONTOUR and Genesis mission summaries
- Mars Program review
- New Millennium program update, plans
- DS-4/Champlion mission overview
- Campaign strategy working group.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 30, 1998.

Matthew M. Crouch,
Advisory Committee Management Officer,
National Aeronautics and Space
Administration.

[FR Doc. 98-11946 Filed 5-5-98; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Electronic Records Work Group; Notice of Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of meeting.

SUMMARY: NARA will hold a public meeting of the Electronic Records Work Group on May 18, 1998, to present an update of the Work Group's progress in developing recommendations for replacing NARA's General Records Schedule (GRS) 20 for Electronic Records, and to obtain public comments and questions. Additional information about the Electronic Records Work Group is available on NARA's GRS 20 Internet Web page at <<http://www.nara.gov/records/grs20/>>.

DATES: The meeting will be held on May 18, 1998, from 9 a.m. to noon.

ADDRESSES: The meeting will be held in the Theater at the National Archives Building, 7th Street and Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lisa Haralampus at 301-713-6677, extension 266. NARA requests that you call Ms. Haralampus to reserve a seat at the presentation. When you call, please leave your name and phone number so that a package of background materials can be made available to you prior to the presentation.

Dated: May 1, 1998.

Lewis J. Bellardo,
Deputy Archivist of the United States.

[FR Doc. 98-12003 Filed 5-5-98; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Pub. L. 103-227. The 27-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

TIME & PLACE: The meeting will be held from 8:30 a.m. to approximately 1:30 p.m. on Friday, May 29, 1998 in Salons I and II of the Ritz-Carlton* Pentagon City located at 1250 South Hayes Street, Arlington, VA 22202.

AGENDA: The agenda for the Board Meeting will include: an update on the Board's Strategic Plan, updates from the Board's committees; and presentations from Voluntary Partnership for Manufacturing, Installation and Repair and the Convening Groups representing the following industries: Business & Administrative Services; Construction; Education and Training; Finance & Training; Restaurants, Lodging, Hospitality & Tourism, and Amusement & Recreation; Retail Trade, Wholesale Trade, Real Estate & Personal Services; and Telecommunications, Computers, Arts & Entertainment, and Information.

PUBLIC PARTICIPATION: The meeting, from 8:30 a.m. to 1:30 p.m., is open to the public. Seating is limited and will be available on a first-come first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Pat Warfield at (202) 254-8628 extension 24, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT:

Tracy Marshall, Manager of Program Operations at (202) 254-8628 extension 13.

Signed at Washington, DC, this 29th day of April, 1998.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 98-12018 Filed 5-5-98; 8:45 am]

BILLING CODE 4510-23-M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR 35.32 and 35.33 "Quality Management Program and Misadministrations".
2. Current OMB approval number: 3150-0171.
3. How often the collection is required:

For quality management program (QMP):

Reporting: New applicants for medical use licenses, who plan to use byproduct material in limited diagnostic and therapy quantities under Part 35, must develop a written QMP and submit a copy of it to NRC. When a new modality involving therapeutic quantities of byproduct material is added to an existing license, current licensees must submit QMP modifications.

This ICR burden estimate is inflated by the one-time cost for the development and submission of QMPs for approximately 2000 Agreement States licensees in ten Agreement States who have not adopted the rule and are not required to.

Recordkeeping: Records of written directives, administered dose or dosage, annual review, and recordable events for 3 years.

For Misadministrations:

Reporting: Whenever a misadministration occurs.

Recordkeeping: Records of misadministrations for 5 years.

4. Who is required or asked to report: NRC Part 35 licensees who use byproduct material in limited diagnostic and therapeutic ranges and similar type of licensees regulated by Agreement States.

5. An estimate of the number of respondents: 5276 (for both reporting and recordkeeping)

6. The number of hours needed annually to complete the requirement or

request: 34,743 hours for applicable licensees (Reporting: 24,400 hr/yr, and Recordkeeping: 10,343 hrs/yr).

7. Abstract: In the medical use of byproduct material, there have been instances where byproduct material was not administered as intended or was administered to a wrong individual, which resulted in unnecessary exposures or inadequate diagnostic or therapeutic procedures. The most frequent causes of these incidents were: insufficient supervision, deficient procedures, failure to follow procedures, and inattention to detail. In an effort to reduce the frequency of such events, the NRC requires licensees to implement a quality management program (§ 35.32) to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by an authorized user physician.

Collection of this information enables the NRC to ascertain whether misadministrations are investigated by the licensee and that corrective action is taken. Additionally, NRC has a responsibility to inform the medical community of generic issues identified in the NRC review of misadministrations.

The NRC is currently revising 10 CFR Part 35, including 10 CFR 35.32 and 35.33. NRC sought early input and will continue to seek input on the rulemaking through Federal Register notices, open meetings, public workshops, and by putting documents on the internet. The proposed rule will be published for comment for 75 days, and NRC plans to hold three public meetings during the formal comment period to facilitate public comment.

Submit, by July 6, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (<http://www.nrc.gov>) under the FedWorld collection link on the home page tool bar. The document will be available on

the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-6 F33, Washington, DC, 20555-0001, or by telephone at 301-415-7233, or by Internet electronic mail at BJSh1@NRC.GOV.

Dated at Rockville, Maryland, this 21st day of April 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,
NRC Clearance Officer, Office of the Chief
Information Officer.

[FR Doc. 98-11981 Filed 5-5-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-409]

Dairyland Power Cooperative La Crosse Boiling Water Reactor; Notice of Receipt of the La Crosse Post-Shutdown Decommissioning Activities Report and Public Meeting

The NRC is in receipt of the La Crosse Boiling Water Reactor (LACBWR) Post-Shutdown Decommissioning Activities Report (PSDAR), as previously submitted by Dairyland Power Cooperative (the licensee) as the "LACBWR Decommissioning Plan." Therefore, in order to inform the public of the NRC's regulations regarding decommissioning and licensee's plans to decommission the LACBWR facility, the NRC staff will conduct a public meeting at the Viroqua High School, Middle School Complex—Large Lecture Hall, 100 Blackhawk, Viroqua, WI 54665, on May 13, 1998. The doors will open at 6:30 p.m. with the public meeting starting at 7:00 p.m. Mr. Geoffrey Banta, Sheriff, Vernon County, will chair the meeting. The meeting agenda includes a presentation by the NRC staff on the decommissioning regulatory process and the conduct of NRC inspections and a presentation by a Dairyland Power representative on the licensee's plans for the decommissioning of the LACBWR facility. Following the presentations, there will be an opportunity for members of the public to make comments or ask questions to the NRC staff and/or Dairyland Power representatives. This public meeting will be transcribed.

On April 30, 1987, LACBWR permanently ceased reactor power operations and on June 11, 1987, all

nuclear fuel was removed from the reactor vessel and placed in the Fuel Element Storage Well (FESW or spent fuel pool). Then, on December 21, 1987, the licensee submitted their Decommissioning Plan, Preliminary DECON Plan, and Supplement to the Environmental Report for the Post-Operating License Stage—SAFSTOR (Accession No. 8801150072, Microfiche No. 44034-1643). Within this submittal, the licensee described their plans to maintain the LACBWR facility in long-term storage until March 29, 2031, when license termination activities would commence. Dairyland Power then submitted an application for amendment of their Provisional License DPR-45 (Accession No. 8803020068, Microfiche No. 44547-332) on February 22, 1988, to reflect the permanently shutdown and defueled status of the LACBWR facility. The NRC staff published a "Notice of Consideration of Issuance of Amendment and Opportunity for Hearing" in the *Federal Register* on April 8, 1988 (53 FR 11718) and on August 7, 1991, the "Order to Authorize Decommissioning and Amendment No. 66 to Possession Only License No. 45 for La Crosse Boiling Water Reactor," was issued approving the LACBWR Decommissioning Plan. No request for hearing or petition to intervene was filed following notice of the proposed action.

Notwithstanding NRC approval of the LACBWR Decommissioning Plan, Parts 2, 50, and 51 of Title 10 to the Code of Federal Regulations (10 CFR parts 2, 50, and 51) were amended (61 FR 39278, dated July 29, 1996) changing some of the regulations governing the decommissioning of nuclear power facilities. The revised regulations (10 CFR 50.82) stated, in part, that for power reactor licensees who, before the effective date of the amended rule (August 28, 1996) possess an approved decommissioning plan (such as LACBWR), the plan is considered to be a Post-Shutdown Decommissioning Activities Report (PSDAR) in accordance with 10 CFR 50.82(a)(4)(i). Additionally, the NRC staff shall notice receipt of the PSDAR, make this report available for public comment, and shall conduct a public meeting in the vicinity of the licensee's facility (10 CFR 50.82(a)(4)(ii)). The NRC staff notes that Dairyland Power continues to maintain the LACBWR facility in long-term storage and that the licensee has not made significant changes to their decommissioning plans.

Copies of the PSDAR, as revised by the licensee, are available to the public from the NRC Public Document Room, Gelman Building, 2120 L Street NW,

Washington, DC 20037, telephone number at (202) 634-3273 or (800) 397-4209. For more information, contact Mr. Paul W. Harris, Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001, telephone number at (301) 415-1169.

Dated at Rockville, Maryland, this 29th day of April 1998.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

(A) Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98-11979 Filed 5-5-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-648]

UMETCO Minerals Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact; notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA-648 to authorize the licensee, Umetco Minerals Corporation (Umetco), to reclaim the commercial heap leach area, located in Natrona County, Wyoming, according to the 1996 Reclamation Plan, as amended. This license currently authorizes Umetco to receive, acquire, possess, and transfer uranium at the Umetco East Gas Hills site, which is located approximately 50 miles (80 kilometers) southeast of the town of Riverton, Wyoming. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of Umetco's license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Brummett, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7-99, Washington, D.C. 20555. Telephone 301/415-6606.

SUPPLEMENTARY INFORMATION:

Background

The Umetco Mineral Corporation (Umetco) site is licensed by the U.S. Nuclear Regulatory Commission (NRC) under Materials License SUA-648 to possess byproduct material in the form of uranium waste tailings as well as other radioactive wastes generated by past milling operations. The mill has been dismantled and current site activities include completion of reclamation of three disposal areas and continuation of the ground water corrective action program.

The commercial heap leach operations began in March 1980. The operations were extended in November 1982 as permitted by Amendment No. 17 of the license and operated until December 1984. Operations were restarted in May 1987 and finally shut down in January 1988. In 1992, to control radon emission, windblown tailings, and water infiltration, Umetco placed 2 feet (61 cm) of cover on the Heap Leach Disposal Area, based on their 1991 proposed cover design.

Umetco submitted reclamation plans or modifications to the plan for the Heap Leach Area in 1991, 1994, and 1996. The 1996 plan also included reclamation of Evaporation Pond No. 2, next to the heap leach, by extension of the Heap Leach Area cover. However, the data available to date related to the evaporation pond reclamation was determined to be insufficient to support a final design, and thus, the proposed design for the pond was approved only as a preliminary design. The pond reclamation will be addressed in a separate amendment, but is included in the area addressed by the EA for this licensing action. The staff also determined that additional clarification and modifications were required for the Heap Leach Area design, and these concerns were not completely addressed until February 1998. The design includes the earthen cover for the heap leach area, construction testing and inspection, stability, erosion protection, site drainage, and quality control procedures.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the reclamation plan for the Heap Leach Area, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. The license amendment would authorize Umetco to stabilize and cover the Heap Leach Area as proposed. In conducting its appraisal, the NRC

staff considered the following information: (1) Umetco's 1996 license amendment request, as amended; (2) previous environmental evaluations of the facility; (3) data contained in required semiannual environmental monitoring reports; (4) existing license conditions; (5) results of NRC staff site visits and inspections of the Umetco facility; and (6) consultations with the U.S. Fish and Wildlife Service, the U.S. Bureau of Land Management, and the Wyoming State Historic Preservation Officer. The technical aspects of the reclamation plan are discussed separately in a Technical Evaluation Report (TER) that will accompany the final agency licensing action.

The results of the staff's appraisal are documented in an EA placed in the docket file. Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Conclusions

The NRC staff has examined actual and potential impacts associated with the reclamation of the Heap Leach Area, and has determined that the requested amendment of Source Material License SUA-648, authorizing implementation of the reclamation plan, will: (1) Be consistent with requirements of 10 CFR Part 40, Appendix A; (2) not be inimical to the public health and safety; and (3) not have long-term detrimental impacts on the environment. The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

1. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents from facility operations have been and are expected to remain below the regulatory limits;

2. Present and potential health risks to the public and risks of environmental damage from the proposed reclamation were assessed. Given the remote location, limited activities requested, small area of impact, and past activities on the site, the staff determined that the risk factors for health and environmental hazards are insignificant.

Because the staff has determined that there will be no significant impacts associated with approval of the license amendment, there can be no disproportionately high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of Environmental Justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and

Safeguards Policy and Procedures Letter 1-50, Revision 1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to amend NRC Source Material License SUA-648, for reclamation of the Heap Leach Area, as requested by Umetco. Therefore, the principal alternatives available to NRC are to:

1. Approve the license amendment request as submitted; or
2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or
3. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of Umetco's future operations or the denial of the license amendment. Additionally, in the TER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for reclamation, specified in 10 CFR Part 40, Appendix A, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed renewal of NRC Source Material License SUA-648. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of

this Federal Register notice. The request for a hearing must be filed with the Office of the Secretary either:

- (1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or
- (2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

- (1) The applicant, Umetco Mineral Corporation, P.O. 1029, Grand Junction, CO 81502;
- (2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or
- (3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

- (1) The interest of the requestor in the proceeding;
- (2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);
- (3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
- (4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 30th day of April 1998.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98-11980 Filed 5-5-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 10 through April 24, 1998. The last biweekly notice was published on April 22, 1998 (63 FR 19964).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the *Federal Register* a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 5, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or

petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996, as supplemented by letters dated October 13, 1997, February 26, 1998, and March 13, 1998.

Description of amendment request: Associated with a Carolina Power & Light Company (the licensee) application to convert from the Current Technical Specifications (CTS) for the Brunswick Steam Electric Plant, Units 1 and 2, to Improved Technical Specifications (ITS), as contained in Revision 1 of NUREG-1433, "Standard Technical Specification General Electric Plants, BWR/4," the licensee proposed removing a restriction on a surveillance test described below.

CTS 4.8.1.1.b requires that the offsite electrical power circuits be demonstrated OPERABLE, at least once per 18 months during shut down, by manually transferring the unit power supply from the normal circuit to the alternate circuit. As proposed, ITS SR 3.8.1.8.b will not contain the restriction to perform the Surveillance "during shutdown." Currently, this test is performed by momentarily paralleling the 230 kV offsite alternating current (AC) power sources. The licensee has stated that paralleling offsite AC power sources is a controlled evolution and the increased risk associated with the performance of this test while the unit is at power is not significant for the following reasons: (1) the frequency and voltages are verified to be within the required range prior to paralleling the two offsite AC power sources; (2) breaker interlocks ensure that the alternate circuit is connected to the load prior to opening the preferred circuit; (3) the test does not result in de-energization of any 4.16 kV emergency bus and the potential for electrical perturbations on the grid system is the same whether performing the transfer while the unit is at power or while shutdown; and (4) operating history indicates that transferring offsite AC power sources while the units were in Operational Conditions 1 (power operation) or 2 (startup) has been performed satisfactorily without electrical distribution system perturbations. The licensee has further pointed out that Generic Letter 91-04, "Changes in Technical Specifications to Accommodate a 24-Month Fuel Cycle," states that licensees may omit the Technical Specification qualification that a refueling interval surveillance is to be performed "during shutdown."

Therefore, consistent with the guidance provided in Generic Letter 91-04, the licensee proposed deletion of the requirement to perform this Surveillance "during shutdown" as part of the conversion from CTS 4.8.1.1.b to ITS SR 3.8.1.8.b.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change would remove a specific restriction to perform the verification of the manual transfer of the unit power supply from the normal circuit to the alternate circuit "during shutdown." The transfer of the unit power supply from the normal circuit to the alternate circuit is not an initiator of any previously analyzed accident. Therefore, this change does not significantly increase the frequency of such accidents. Currently, this test is performed by momentarily paralleling the 230 kV offsite AC power sources. Paralleling offsite AC power sources is a controlled evolution and the increased risk associated with the performance of this test while the unit is at power is not significant for the following reasons: (1) The frequency and voltages are verified to be within the required range prior to paralleling the two offsite AC power sources; (2) breaker interlocks ensure that the alternate circuit is connected to the load prior to opening the preferred circuit; (3) the test does not result in de-energization of any 4.16 kV emergency bus and the potential for electrical perturbations on the grid system is the same whether performing the transfer while the unit is at power or while shutdown; and (4) operating history indicates that transferring offsite AC power sources while the units were in MODE (Operational Condition) 1 or 2 has been performed satisfactorily without electrical distribution system perturbations. The appropriate plant conditions for performance of the Surveillance will continue to be controlled to assure the potential consequences are not significantly increased. This control method has been previously determined to be acceptable as indicated in Generic Letter 91-04. Therefore, this change does not significantly increase the consequences of any previously analyzed accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

This change removes a specific restriction on the plant conditions for performing a Surveillance, but does not change the method of performance. The appropriate plant conditions for performance of the Surveillance will continue to be controlled to assure the possibility for a new or different kind of accident are not created. This control method has been previously determined to be acceptable as indicated in Generic Letter 91-04. Therefore, this change does not create the

possibility of a new or different kind of accident from any previously analyzed accident.

3. Does this change involve a significant reduction in a margin of safety? The margin of safety considered in determining the appropriate plant conditions for performing the Surveillance will continue to be controlled to assure that there is no significant reduction. This control method has been previously determined to be acceptable as indicated in Generic Letter 91-04. Therefore, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Pao-Tsin Kuo

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: April 3, 1998.

Description of amendment request: The Carolina Power & Light Company, licensee for the Brunswick Steam Electric Plant (BSEP), Unit Nos. 1 and 2, proposed amendments to the Technical Specifications (TS) to change the specified total volume of the condensate storage tank (CST) from 150,000 gallons to 228,200 gallons. During a recent review of industry operating experience, the licensee determined that information contained in TS 3.5.3.1, Core Spray System (CSS), and the associated bases regarding water inventory in the CST was incorrect. Specifically, the minimum CST volume requirement contained in TS 3.5.3.1 would not assure the availability of 50,000 gallons of water for the CSS, as indicated in TS Bases section 3/4.5.3.1 for the CSS.

The licensee has concluded that the proposed license amendments do not involve a Significant Hazards Consideration. In support of this determination, an evaluation of each of the three standards set forth in 10 CFR 50.92 is provided below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change revises the minimum CST (Condensate Storage Tank) water volume required for OPERABILITY of the Core Spray system (CSS) in OPERATIONAL CONDITIONS 4 AND 5 when the suppression pool is inoperable. The proposed change does not alter the operation of any plant system or component; does not involve a physical modification to any structure, system, or component; and does not affect an initiator to any accident previously evaluated. The minimum CST water level is being increased to assure the availability of 50,000 gallons of water for use by the CSS. Therefore, the proposed license amendments do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed TS change revises the minimum CST water volume required for OPERABILITY of the CSS in OPERATIONAL CONDITIONS 4 and 5 when the suppression pool is inoperable. The proposed change does not alter the operation of any plant system or component; does not involve a physical modification to any structure, system, or component; and does not affect an initiator to any accident previously evaluated. The proposed change does not add or modify equipment or components related to the CSS and will, therefore, not create new failure modes or common failure modes. The minimum CST water level is being increased to assure the availability of 50,000 gallons of water for use by the CSS. Therefore, the proposed license amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety. The proposed license amendments increase the minimum CST water level to assure the availability of 50,000 gallons of water for use by the CSS. These volumes ensure the validity of existing analyses, and ensure that the existing TS Bases are satisfied. The proposed change does not involve a physical modification to any structure, system, or component, and does not modify the operation of any existing equipment. Therefore, the proposed license amendments do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendments request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602
NRC Project Director: Pao-Tsin Kuo (Acting)

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: March 31, 1998.

Description of amendment request: Unreviewed Safety Question involving use of Station Blackout (SBO) diesel generators (DGs) and use of a mobile safe shutdown (SSD) battery cart in the 10 CFR part 50, appendix R, Safe Shutdown Safety Analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The licensee has provided a separate no significant hazards consideration determination for the SBO DGs and the battery cart under this amendment request. The following is the determination for the SBO DGs:

(1) No significant increase in the probability or consequences of an accident previously evaluated is involved because of the following:

Two types of previously evaluated accidents are relevant to this criterion: (1) A fire; (2) other accident evaluated in the UFSAR. For these previously evaluated accidents, the change would not result in an increase in either their probabilities of occurrence or the consequences of their occurrence, for the following reasons.

The use of the SBO DGs in lieu of the (Emergency Diesel Generators) EDGs does not change the probability or consequences of a fire. The likelihood of a fire is unchanged. Use of the SBO DGs does not significantly change the fire loading nor introduce significant new ignition sources. The consequences of a fire are unchanged because use of the SBO DGs continues to support the station's ability to achieve and maintain shutdown in the event of a fire.

Use of the SBO DGs for non-fire purposes is unchanged by use of the SBO DGs for post-fire safe shutdown in the event of a fire in areas requiring alternate shutdown capability. Accordingly there is no change in the probability or consequences of a

previously evaluated accident involving the SBO DGs. Similarly, there is no change to the probability or consequences of other accidents that have been previously evaluated because they are independent of this change in use of the SBO DGs.

(2) The possibility of a new or different kind of accident from any accident previously evaluated is not created because:

The proposed change does not create the possibility of a new or different kind of accident from that previously evaluated for Quad Station. Although the SBO DGs will be used for a new function, there is no significant change in the operation of the SBOs for a non-fire event. Moreover, the overall use of the SBO DGs as an AC power source is not significantly different from the use of the EDGs. The SBO DGs buses provide power to the same buses that are powered from the EDGs. No new modes of operation are introduced by the proposed changes. The use of the SBO DGs provides a slightly different but effective method for achieving and maintaining post-fire safe shutdown for areas requiring alternate shutdown capability. As such, the proposed change does not create the possibility of a new or different kind of accident.

(3) No significant reduction in the margin of safety is involved because:

A change in the fire protection program does not result in a significant reduction in the margin of safety if the change does not result in a significant adverse impact on the plant's ability to achieve and maintain safe shutdown in the event of a fire. The proposed use of the SBO DGs instead of the EDGs to achieve and maintain safe shutdown within 72 hours change does not significantly affect the capability or reliability of the equipment assumed to operate in the safety analysis.

The demonstrated capability and reliability of the SBO and EDGs are not significantly different. Indeed, the SBO DGs represent a safety improvement due to their physical separation from the postulated fire areas, and the operational benefits provided by their greater capacity. Any narrow reduction in margin associated with the need to manually start the SBO DGs is offset by the reduction in manual actions necessary to reduce electrical loads powered from the EDGs. The lack of Class 1E qualification for the SBO DGs is not significant from a safety perspective because the demonstrated reliability of the SBO DGs is comparable to the reliability of the EDGs. The lack of seismic qualification and single failure protection do not constitute a significant reduction in margin since neither of these attributes is required by Appendix R. Accordingly, the Commission has already determined that these attributes are not part of the Appendix R acceptance criterion. Any reduction in margin associated with the greater fuel consumption rate of the SBO DGs is partially offset by the increased flexibility in powering equipment to achieve and maintain post fire safe shutdown.

Additionally, onsite fuel storage and manual transfer capabilities provide for at least 72 hours of SBO DG operation. Within 72 hours, deliveries of diesel fuel from offsite supplies is expected. Therefore, the use of the SBO DGs as an onsite AC power source for

equipment necessary to achieve and maintain post-fire safe shutdown in areas requiring alternate capabilities does not involve a significant reduction in margin.

The licensee has evaluated the use of the mobile SSD battery cart to provide the power source for the Automatic Depressurization System (ADS) valves under certain scenarios where the valves are needed to achieve cold shutdown and determined that it does not involve a significant hazards consideration for the reasons discussed below.

(1) No significant increase in the probability or consequences of an accident previously evaluated is involved.

The accident previously evaluated is the postulated fire requiring alternate shutdown capability. The probability of a previously evaluated fire is not increased significantly because the mobile SSD batteries do not create significant new ignition sources or any other fire initiators. The consequences of a previously evaluated fire are not increased significantly because the mobile SSD batteries do not significantly increase the fire loading in the plant, do not interfere with the plant's ability to extinguish a fire, and are fully capable of fulfilling the designed safety function.

The associated systems related to this proposed change are not affected in a way that could impact the initiation of any accident sequence for the Quad Cities Station. No modes of operation are introduced by the proposed change such that adverse consequences result.

The probability of an accident involving the use of the mobile SSD batteries would not be increased significantly by this proposed use because the use is not significantly different from the alternative manual attachment of a power source to the ADS valves.

The consequences of an accident involving the use of the mobile SSD batteries are not increased because the only significant consequences would be a delay in achieving cold shutdown and that would have no different consequences than would a delay due to an accident related to the currently used manual power source.

(2) The possibility of a new or different kind of accident from any accident previously evaluated is not created.

The proposed change for the Quad Cities Station does not create the possibility of a new or different kind of accident from that previously evaluated. Because the mobile SSD batteries simply provide a different form of manually connecting a source of power to the ADS valves, the use of the mobile SSD batteries does not present new or different kinds of accidents related to such manual actions. Finally, because no new modes of operation are introduced by the proposed change, the change does not create the possibility of a new or different kind of accident that could be related to new modes of operation.

(3) No significant reduction in the margin of safety is involved.

The analytic framework for determining the extent to which a proposed change affects

the margin of safety has been discussed above and, so will not be repeated here. In this case, a review of the proposed changes shows that they will not have an adverse impact on the ability to achieve and maintain safe shutdown. Several features associated with the use of the mobile SSD batteries show, as discussed above, that it provides an effective method for achieving and maintaining safe shutdown following a fire. In particular, use of the mobile SSD batteries reduces the overall complexity of the cold shutdown repairs required to supply power to the ADS valves and is familiar to plant personnel from their training on its use for other purposes.

Design calculations regarding capabilities of the mobile SSD batteries show they will be capable in fulfilling their intended safety function for their design basis Appendix R scenario. Reliability of the mobile SSD batteries will be maintained by augmented quality standards. This will entail the conduct of appropriate maintenance and surveillance which is designed to ensure that the mobile batteries will function as intended. Reliability of this power source is further enhanced by the circumstance that there are two mobile SSD batteries, thus permitting one to act as a backup to the other.

Under these circumstances, the margin of safety for achieving cold shutdown using the ADS valves is not reduced significantly, if at all, by the use of non-safety related mobile SSD batteries to power the ADS valves. Although safety-related station batteries had previously been used in this function, the method for attaching those batteries was more prone to human error than the method which has been developed for the mobile SSD batteries. Moreover, substantial steps have been taken to provide a high level of reliability for the mobile SSD batteries. Overall, therefore, the ability to achieve and maintain safe shutdown in the event of a fire has not been reduced by this change in the source of power to the ADS valves.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021
Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Stuart A. Richards

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: March 30, 1998.

Description of amendment request: The proposed amendments would restore the Zion Custom Technical

Specifications (CTS) that had been replaced with Improved Technical Specification by a previous amendment and would reinstate License Conditions that were deleted by that previous amendment. The proposed amendment would also modify the CTS to allow the use of Certified Fuel Handlers to satisfy shift staffing requirements and would change management titles and responsibilities to reflect the permanently shutdown organization.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

With a plant permanently shutdown and defueled the spectrum of accidents and events that remain credible is significantly reduced. As discussed below the proposed changes do not affect the probability or consequences of any accidents that do remain credible.

The restoration of the CTS which were replaced with the ITS by Amendments 178/165 cannot increase the probability or consequences of any event or accident because the amendment was never implemented. The CTS have been maintained as the legally binding Technical Specifications in effect at Zion Station. The reinstatement of the five License Conditions deleted by Amendments 178/165 is an administrative change in that the requirements contained in the License Conditions had been relocated elsewhere and are now being restored exactly as they were before the amendment was issued. Since the actual requirements have not changed there can be no change in the probability or consequences of any accident or event.

The changes in management titles and responsibilities will not increase the probability or consequences of any accident or event because these changes are administrative and will not result in any decrease in the quality of management applied to Zion Station. The changes are commensurate with the significant reduction in site activities, site staffing, and risk to public health and safety that occurs when an operational nuclear power plant transitions to a permanently shutdown and defueled plant. Responsible individuals will have the authority to commit the personnel and resources necessary to fulfill their obligations for safe storage and handling of nuclear fuel. The change of position designations will have no effect on the frequency of occurrence of accident or event initiators, or on their consequences.

The changes to allow use of Certified Fuel Handlers in lieu of personnel licensed in accordance with 10 CFR part 55 will not increase the probability or consequences of an accident or event because the Certified Fuel Handler Training and Retraining program (which will be approved by the

NRC) has been developed using a Systems Approach to Training as defined in 10 CFR 55.4. This approach provides assurance that the Certified Fuel Handlers have the knowledge, skills, and abilities that are commensurate with the tasks to be performed (i.e., the proper monitoring, handling, storage, and cooling of nuclear fuel). Therefore the frequency of occurrence of accident or event initiators is not increased and the consequences of the accidents or events are unaffected.

The changes in shift staffing numbers and crew composition will not increase the probability or consequences of an accident or event. These staffing changes are commensurate with the quantity, complexity, and hazard level of the activities required for storage and handling of nuclear fuel. The elimination of the Shift Control Room Engineer does not affect any accident or event initiator or consequence since the previous specification would not have required that the position be manned with both units shut down. The elimination of the requirement for a Radiation Protection Person on shift will have no effect on the frequency of occurrence of accidents or events, nor on the consequences of the accident or event.

The changes in verbiage to eliminate any implication that units are operational will not increase the probability or consequences of an accident or event because they are largely editorial changes and do not increase the frequency of occurrence of [or] event initiators, nor do they increase the consequences.

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The changes proposed by this amendment do not involve new structures, systems, or components, or the use of existing structures, systems, or components in a new manner. Consequently no new failure mechanisms are introduced. The design and operation of structures, systems, or components is unaffected by:

The restoration of CTS,

The reinstatement of the five License

Conditions deleted by Amendments 178/165, The changes in management titles and responsibilities,

The changes to allow use of Certified Fuel Handlers in lieu of 10 CFR [Part] 55 licensed personnel,

The changes in shift staffing numbers and crew composition, or

The changes in verbiage to eliminate any implication that units are operational.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

One of the License Conditions that would be reinstated by this amendment establishes limits that help ensure that the assumptions of the fuel handling accident analysis remain valid. License Condition 2.C.(7).b limits the

weight of loads carried over fuel stored in the spent fuel pool to the weight of a single fuel assembly plus the tool for moving that assembly. This weight limit ensures that the number of fuel rods broken in a fuel handling accident does not exceed the maximum number of fuel rods assumed to break in the accident analysis. Consequently, this change continues to provide assurance that the margin of safety involving the number of fuel rods broken in the accident will not be reduced.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location:
Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Stuart A. Richards

Duke Energy Corporation (DEC), et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: May 27, 1997, as supplemented by a letter dated April 20, 1998.

Description of amendment request:

The proposed amendments would revise the Technical Specifications (TS) of each unit to conform with NUREG-1431, Revision 1, "Standard Technical Specifications—Westinghouse Plants." The Commission had previously issued a Notice of Consideration of Issuance of Amendments in the *Federal Register* on July 14, 1997 (62 FR 37628) covering all the proposed changes that were indeed within the scope of NUREG-1431. In DEC's May 27, 1997, submittal, there are proposed changes that are beyond the scope of NUREG-1431, which were thus not covered by the staff's July 14, 1997, notice. The following descriptions and no significant hazard analyses cover only those beyond-scope changes. Associated with each change are administrative/editorial changes such that the new or revised requirements would fit into the format of NUREG-1431.

1. This proposed change affects the surveillance requirement currently contained in Sections 4.6.6.1 and 4.6.6.2, regarding the containment valve injection water system. The requirement to assure adequate capacity to maintain system pressure for at least 30 days

would be deleted, the required system pressure of 16.2 pounds per square inch gauge (psig) would be replaced with a surge tank pressure of 36.4 psig, and the system would be tested at lower pressures and more restrictive leak rates.

2. Section 3.9.2.1, regarding the boron dilution mitigating system, currently requires both trains to be operable in Mode 6 (refueling). DEC proposed to add a note stating that the system may be blocked during core reloading until two assemblies are loaded into the core. Adequate shutdown margin will continue to be controlled and verified by other specifications. This blocking would prevent inadvertent actuation of the system, which could distract the operating personnel, but would not diminish the monitoring function of the system.

3. DEC proposed to change the definition of 'dose equivalent iodine-131.' Subsequently, this proposed change was withdrawn by letter dated April 20, 1998.

4. DEC proposed to change Section 3.3.3.6 regarding accident monitoring instrumentation. Specifically, the change would (a) increase the time allowed to return the required number of channels to operable; and (b) permit continued operation if one channel is inoperable given certain conditions are met, instead of requiring shutdown.

5. DEC proposed to change Section 4.6.4.1 regarding surveillance requirements for the hydrogen monitors (combustible gas control). Specifically, this would eliminate the channel operational test, and extend the channel check frequency from once per 12 hours to once per 31 days.

6. DEC proposed to change Section 3.4.6.1 regarding reactor coolant leakage detection systems; a system comprising diverse instruments such as gaseous radioactivity monitoring, containment floor and equipment sump monitoring, etc. In addition to the instruments specified by this section, the plant has other installed instruments such as monitors for humidity, temperature, etc., which can provide indication for reactor coolant leakage. Currently, this specification allows operation up to 30 days if the containment floor and equipment sump monitoring system is inoperable. The change would impose a requirement to perform a precision water balance of the reactor coolant system every 24 hours during this period. The change would also reduce the number of monitors required operable provided compensatory measures are performed or diverse instruments continue to be available.

7. DEC proposed to change Section 4.5.4.b, which currently requires verification of the refueling water storage tank temperature to be within the allowed range once per 24 hours if the outside air temperature is less than 70 degrees or greater than 100 degrees Fahrenheit. The proposed change would simply require that the tank temperature be verified within range every 24 hours regardless of outside air temperature.

8. DEC proposed to revise Table 3.7-1, which imposes limits on the maximum allowable power range neutron flux high setpoint for various numbers of inoperable safety valves on any operating steam generator. The revision would reduce the setpoints, making them more conservative.

9. Section 3.7.6, regarding the condensate storage system, currently only exists in the Unit 2 TS. DEC proposed to impose these requirements also on Unit 1.

10. Several electrical busses and inverters currently covered by Section 3.8.3.1 are qualified by a footnote, which specifies the conditions under which the inverter may be disconnected from its direct current source. DEC proposed to delete this footnote because it is not needed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analyses of the issue of no significant hazards consideration for each of the above proposed changes. The NRC staff has reviewed the licensee's analyses against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

For changes 1, 2, 4, 5, 6, 7, 8, 9, and 10, the answer is "no." The proposed changes will not affect the safety function of the subject systems. There will be no direct effect on the design or operation of any plant structures, systems, or components. No previously analyzed accidents were initiated by the functions of these systems, and the systems were not factors in the consequences of previously analyzed accidents. Therefore, the proposed changes will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

For changes 1, 2, 4, 5, 6, 7, 8, 9, and 10, the answer is "no." The proposed changes would not lead to any hardware or operating procedure change. Hence,

no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the change involve a significant reduction in a margin of safety?

For changes 1, 2, 4, 5, 6, 7, 8, 9, and 10, the answer is "no." Margin of safety is associated with confidence in the design and operation of the plant. The proposed changes to the TS do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for each of the proposed changes. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:
York County Library, 138 East Black Street, Rock Hill, South Carolina
Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Project Director: Herbert N. Berkow

Duke Energy Corporation (DEC), et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 8, 1998.

Description of amendment request: The proposed amendments would revise Section 3.6.5.1 and 4.6.5.1 of the Technical Specifications (TS) of each unit to relax ice condenser stored ice weight requirements by approximately 6 percent. The proposed change is based mainly on DEC's gathered data showing lower sublimation rate than originally anticipated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analyses of the issue of no significant hazards consideration for the proposed changes. The NRC staff has reviewed the licensee's analyses against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Will the changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes will not affect the safety function of the ice condenser in that there will be no changes to the design or operation of any plant structures, systems, or components. No previously analyzed accidents were initiated by the

functions of the ice condenser, and the ice condenser will remain fully capable of performing its design accident mitigation function. Therefore, the proposed changes will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the changes create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes would not lead to any hardware or operating procedure change. Reducing the required ice weight will not have any impact on other plant systems that were assumed to be accident initiators. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the changes involve a significant reduction in a margin of safety? No. Margin of safety is associated with confidence in the design and operation of the plant; specifically, the ability of the fission product barriers to perform their design functions during and following an accident. The proposed changes regarding required ice weight do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for the proposed changes. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:
York County Library, 138 East Black Street, Rock Hill, South Carolina
Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Project Director: Herbert N. Berkow

Duke Energy Corporation (DEC), Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 27, 1997.

Description of amendment request: The proposed changes would lower the minimum required diesel generator (DG) air start receiver pressure from 220 per square inch gauge (psig) to 210 psig with a monthly verification, and would include an allowed outage time of 48 hours for a degraded air receiver provided the redundant air receiver is maintained at equal to or greater than 210 psig. These proposed changes are associated with DEC's application to convert to the Improved Technical

Specifications. Also, they are considered less restrictive requirements because of the lower required minimum pressure and the allowance of continued operation with a degraded starting air system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each change, which is presented below:

1. (Do the changes) involve a significant increase in the probability or consequence of an accident previously evaluated?

The proposed changes provide Actions for degraded capabilities of the diesel starting air subsystems for the DG. The proposed Actions establish limits for the DG starting air subsystems of 210 psig. (are) allowed to decrease below the required value for 48 hours(, and are verified every 31 days.) The Completion Times are based on the amount of capability remaining, and the time needed to correct any deficient condition. If the Completion Times are exceeded, the specification requires the associated DG to be declared inoperable immediately, consistent with the current TS (technical specifications). Since the new Actions continue to assure that the associated DG remains capable of performing its design safety function, the proposed (changes do) not significantly affect the probability or consequences of an accident previously evaluated.

2. (Do the changes) create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed (changes do) not permit operation in a new or different mode, or permit the installation of a new or different type of equipment. The proposed changes provide Actions for degraded capabilities of the DG starting air subsystems. The proposed Actions establish Conditions, Required Actions, and Completion Times to be entered when in a degraded condition. The DG remains capable of performing its design safety function. Therefore, the proposed (changes do) not create the possibility of a new or different kind of accident from those previously evaluated.

3. (Do these changes) involve a significant reduction in a margin of safety?

The proposed (changes do) not significantly increase the probability or consequences of an accident previously evaluated. The changes provide assurance that timely action will be initiated to restore DG starting air subsystem when inoperabilities exist, without unnecessarily forcing plant shutdown. Based on the limit for the starting air subsystem for the DG, the limited time allowed is acceptable to restore the parameter to within the requirements without unnecessary plant shutdown. Therefore, (these changes do) not involve a significant (reduction in) a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:

J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Project Director: Herbert N. Berkow

Duke Energy Corporation (DEC), Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 27, 1997.

Description of amendment request:

The two proposed changes are associated with DEC's application to convert to the Improved Technical Specifications and are considered as administrative changes. The first change would delete a current requirement to only verify the refueling water storage tank temperature once every 24 hours if the outside air temperature is less than 70 degrees or greater than 100 degrees Fahrenheit, and would require that the tank temperature be verified within range every 24 hours regardless of the outside air temperature value. The second change would delete the current requirement that 32 of 33 hydrogen igniters be operable on each train, and would require that 34 igniters per train to be operable. The actual design contains 35 igniters per train. This change would correct an inadvertent error in the current Technical Specifications (TS). The number of igniters was increased to 35 after the first refueling outage of each unit. This change would correct the TS to reflect the requirements stated in Safety Evaluation Report Supplement 7.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each of the above proposed changes. The NRC staff has reviewed the licensee's analyses against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes will not affect the safety function of the subject systems. There will be no direct effect on the design or operation of any plant structures, systems, or components. No

previously analyzed accidents were initiated by the functions of these systems, and the systems were not factors in the consequences of previously analyzed accidents. Therefore, the proposed changes will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes would not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the change involve a significant reduction in a margin of safety?

Margin of safety is associated with confidence in the design and operation of the plant. The proposed changes to the TS do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for each of the proposed changes. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:

J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Project Director: Herbert N. Berkow

Duke Energy Corporation, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 27, 1997.

Description of amendment request:

The proposed change would allow two charging pumps or safety injection pumps capable of injecting into the Reactor Coolant System (RCS) when the RCS is depressurized and an RCS vent of at least 4.5 square inches is established. This proposed change is associated with the licensee's application to convert to the Improved Technical Specifications and results in a requirement less restrictive than the current requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration for each change, which is presented below:

1. Does the change involve a significant increase in the probability or consequence of an accident previously evaluated?

The proposed change will provide an additional alternative for low temperature (overpressure) relief capacity when two charging pumps or safety injection pumps are capable of injecting into the RCS. The low temperature (overpressure) protection is not considered to be an initiator of any analyzed event, therefore, the proposed change does not increase the probability of a previously analyzed event.

The proposed change provides an equivalent vent size to the existing two open PORVs (power-operated relief valves). Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the manner in which the plant is operated. The proposed change adds an additional alternative to overpressure protection equivalent to the current requirements. Therefore, the proposed change will not create the possibility of a new or different kind of accident than any previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

As described above, the proposed change adds an additional alternative to overpressure protection equivalent to the current requirements. The inclusion of additional alternatives provides the operating staff with additional flexibility in meeting low temperature overpressure protection requirements. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:

J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina

NRC Project Director: Herbert N. Berkow

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 25, 1998

Description of amendment request:

Revise Technical Specification (TS) 3.9.8.1, "Shutdown Coolant and Coolant Circulation High Water Level," and TS 3.9.8.2, "Shutdown Cooling and Coolant Circulation Low Water Level," to change the minimum water level above the fuel assemblies seated in the reactor vessel at which the Shutdown Cooling (SDC) System is required to be maintained operable, or be in operation. In addition, TS 3.8.1.2, "Electric Power Systems, A.C. Sources, Shutdown," and Technical Specification Bases 3/4.9.8, "Shutdown Cooling and Coolant Circulation," have been changed to make the wording consistent with TS 3.9.8.1 and TS 3.9.8.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequence of any accident?

Response: No. The operation of the facility in accordance with this change does not involve an increase in the probability of any accident.

Changing the water level at which the Shutdown Cooling (SDC) System is required to be maintained operable or be in operation will not increase the probability or consequences of an accident. The design, operation, or configuration of the SDC system will not be changed.

At least one shutdown cooling train will be in operation to ensure sufficient cooling capacity is available to remove decay heat and maintain the water in the reactor pressure vessel below 140 degree F as required during the refueling mode.

At least one shutdown cooling train will be in operation to ensure sufficient coolant circulation is maintained through the reactor core to minimize the effects of a boron dilution incident and prevent boron stratification. Technical Specification 3.9.10.1, "Refueling Operations Water Level—Reactor Vessel Fuel Assemblies," will be complied with, and therefore, the assumptions related to iodine removal and the fuel handling accident will be preserved.

Sufficient time, approximately 1.00 hours, will be available to the operators to initiate compensatory measures to preclude the initiation of core boiling in the unlikely event SDC should be lost.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not affect the design, configuration, or operation of the SDC system, and therefore there are no new modes of failure introduced.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No. Operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The calculation of the time to the initiation of boiling based on 23 feet above the top of the fuel seated in the reactor vessel, at four days after shutdown, demonstrates there is significant time available, approximately 1.00 hour, to the operators within which to take compensatory measures to preclude the initiation of boiling. The calculation shows that based on 23 feet of water above the reactor flange there is 2.04 hours to the initiation of boiling. Although there is a reduction in the time to the initiation of boiling, compensatory measures could be taken within a few minutes to restore SDC, and thus, there is still a significant margin available to the operators within which to preclude the initiation of boiling. Thus, the margin of safety is not significantly reduced.

The time to core uncover was determined to be 27.74 hours based on four days after shutdown and water level twenty-three (23) feet above the fuel assemblies seated in the reactor vessel.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location:

University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn, 1400 L Street N.W., Washington DC 20005-3502
NRC Project Director: John N. Hannon

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: March 20, 1998.

Description of amendment request:

The proposed amendment requests editorial changes to the Improved Technical Specifications (ITS) Safety Limits and Administrative Controls to replace the titles of the Senior Vice President, Nuclear Operations (SVPNO) and the Vice President, Nuclear Production (VPNP) with the position of Chief Nuclear Officer (CNO). The CNO combines the duties of the SVPNO and VNP as currently described in ITS and is required to be an officer of the company. The proposed change is

intended to allow upgrading the position of the corporate officer responsible for overall nuclear operations without limiting the title.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the deletion and updating of individual titles does not affect plant operation. No design basis accidents are affected by the proposed administrative and editorial changes and, as such, there are no physical changes to the facility or its operation.

Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed ITS changes are administrative and editorial in nature. No changes to the facility structures, systems and components or their operation will result. The design and design basis of the facility remain unchanged. The plant safety analyses remain current and accurate. No new or different failure mechanisms are introduced. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not introduced.

Does not involve a significant reduction in the margin of safety.

The proposed ITS changes are administrative and editorial in nature. The proposed safety margins established through the design and facility license including the Improved Technical Specifications remain unchanged. In addition, the proposed amendment ensures continued emphasis and assignment of responsibility for overall nuclear safety. Therefore, all margins of safety are maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC-A5A, P.O. Box 14042, St. Petersburg, Florida 33733-4042

NRC Project Director: Frederick J. Hebdon

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: March 20, 1998.

Description of amendment request: The proposed amendment would change the Inservice Inspection Program described in Improved Technical Specification (ITS) 5.6.2.8.c. This ITS currently states that the reactor coolant pump (RCP) motor flywheels will be inspected during the "Spring 1998 refueling outage," which would have been refueling outage 11. Due to a recent 17-month extended outage, refueling outage 11 has been deferred until Fall 1999. The proposed change is intended to accurately reflect the new refueling outage 11 schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

The proposed change will not significantly increase the probability or consequences of an accident previously evaluated.

The safety function of the RCP flywheels is to provide a coastdown period during which the RCPs would continue to provide reactor coolant flow to the reactor after loss of power to the RCPs. The maximum loading on the RCP motor flywheel results from overspeed following a large loss of coolant accident (LOCA). The estimated maximum obtainable speed in the event of a Reactor Coolant System piping break was established conservatively. The proposed one-time editorial change to remove the words "Spring 1998 refueling outage" and replace them with "to coincide with Refueling Outage 11R" does not affect that analysis. The proposed change in dates is editorial in that it merely reflects the new date for cycle 11. The usage time for the flywheels is bounded by the original estimates. The proposed editorial change does not affect the amount of radioactive material available for release or modify any systems used for mitigation of such releases during accident conditions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed editorial change will not change the design, configuration, or method of operation of the plant. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change will not involve a significant reduction in any margin of safety.

The proposed Amendment is an editorial change to reflect that CR-3's operating cycle

is not ending in spring 1998, but in fall 1999. The proposed change does not affect the methods of inspection or its acceptance criteria. Therefore, the margins of safety defined in RG [Regulatory Guide] 1.14 are not changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC-A5A, P.O. Box 14042, St. Petersburg, Florida 33733-4042

NRC Project Director: Frederick J. Hebdon

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 15, 1998.

Description of amendment request: The proposed amendment would update the existing pressure-temperature curves with new curves with values from 18 to 32 effective full power years based on the testing and analysis of reactor pressure vessel surveillance materials.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The pressure-temperature limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed by the ASME B&PV Code and 10 CFR part 50 appendices G and H as restrictions on normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the reactor coolant pressure boundary.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The amendment will merely update the pressure-temperature curves (and associated SRs and Bases) already existing in the plant Improved Technical Specifications to provide limits from 18 to 32 EFPY of operation, which are based upon evaluation and analysis of actual in-vessel material specimens, per 10 CFR part

50, appendices G and H. The pressure-temperature curves are established to the requirements of 10 CFR part 50, appendix G to assure that brittle fracture of the reactor vessel is prevented.

(3) The proposed amendment will not involve a significant reduction in a margin of safety. 10 CFR part 50, appendix G specifies fracture toughness requirements to provide adequate margins of safety during operation over the service lifetime. The values of adjusted reference temperature and upper shelf energy determined as a result of the 10 CFR part 50, appendices G and H analysis are expected to remain within the limits of Regulatory Guide 1.99, Revision 2 and appendix G of 10 CFR part 50 (less than 200° F and greater than 50 ft-lbs respectively) for at least 32 EFPY of operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:

Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401

Attorney for licensee: Jack Newman, Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036-5869

Acting NRC Project Director: Richard P. Savio

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 27, 1997.

Description of amendment request: The proposed amendment, included as part of the proposed conversion from the current Technical Specifications (TS) to improved TS, would establish Allowable Values for the instrumentation included in Section 3.3, as a result of the plant-specific application of the General Electric Instrument Setpoint Methodology to the Cooper Nuclear Station (CNS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change in selected Allowable Values for the instrumentation included in proposed Section 3.3 of the Technical Specifications is the result of application of the CNS instrumentation setpoint methodology. This methodology incorporates the guidance of ISA Recommended Practice ISA-RP67.04, Part II,

"Methodologies for the Determination of Setpoints for Nuclear Safety-Related Instrumentation," September 1994. Application of this methodology results in instrumentation selected Allowable Values which more accurately reflect total instrumentation loop accuracy as well as that of test equipment and setpoint drift between Surveillances. The proposed change will not result in any hardware changes. The instrumentation included in proposed Section 3.3 of the Technical Specifications is not assumed to be an initiator of any analyzed event. Existing operating margin between plant conditions and actual plant setpoints is not significantly reduced due to this change. As a result, the proposed change will not result in unnecessary plant transients.

The role of the proposed Section 3.3 instrumentation is in mitigating and thereby limiting the consequences of accidents. The Allowable Values have been developed to ensure that the design and safety analysis limits will be satisfied. The methodology used for the development of the Allowable Values ensures the affected instrumentation remains capable of mitigating design basis events as described in the safety analyses and that the results and consequences described in the safety analyses remain bounding. Additionally, the proposed change does not alter the plant's ability to detect and mitigate events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change is the result of application of the CNS instrumentation setpoint methodology and do not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged. The use of the proposed Allowable Values does not impact safe operation of CNS in that the safety analysis limits will be maintained. The proposed Allowable Values involve no system additions or physical modifications to systems in the station.

These Allowable Values were developed using a methodology to ensure the affected instrumentation remains capable of mitigating accidents and transients. Plant equipment will not be operated in a manner different from previous operation, except that setpoints may be changed. Since operational methods remain unchanged and the operating parameters have been evaluated to maintain the station within existing design basis criteria, no different type of failure or accident is created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change does not involve a reduction in a margin of safety. The proposed changes have been developed using a methodology to ensure safety analysis limits are not exceeded. As such, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602-0499
NRC Project Director: John N. Hannon

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 27, 1997.

Description of amendment request: The proposed amendment, included as part of the proposed conversion from the current Technical Specifications (CTS) to the improved Technical Specifications (ITS), would add an additional action statement to a limiting condition for operation (LCO). The LCO is in the Improved Standard Technical Specifications (ISTS, NUREG-1433, Revision 1) 3.6.2.3 on the residual heat removal suppression pool cooling subsystems. The requirements in the proposed ITS 3.6.2.3 on the subsystems do not exist in the CTS. The Action B for ITS 3.6.2.3 would require that if the two such subsystems were inoperable, one subsystem would have to be restored to operability within 8 hours or the plant would be in ITS 3.0.3. ITS 3.0.3 governs plant operation if an LCO (i.e., ISTS 3.6.2.3) and the associated action statement are not met (i.e., Action B to ISTS 3.6.2.3).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event and do not alter assumptions relative to (the) mitigation of an accident or transient event. The more restrictive requirements continue to ensure . . . systems, and components ((i.e., the residual heat removal suppression pool cooling subsystems)) are maintained consistent with the safety analyses and licensing basis. Therefore, this (the proposed)

change does not involve a significant (an) increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed change does impose different requirements. However, this change is consistent with the assumptions in the safety analyses and licensing basis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The imposition of more restrictive requirements either has no impact on or increases the margin of plant safety. As provided in the discussion of the change, each change in this category (i.e., more restrictive requirements) is, by definition, providing additional restrictions to enhance plant safety. The change maintains requirements (systems and components) within the safety analyses and licensing basis. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:
Auburn Memorial Library, 1810
Courthouse Avenue, Auburn, NE
68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602-0499
NRC Project Director: John N. Hannon

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 27, 1997.

Description of amendment request: The proposed amendment, included as part of the proposed conversion from the current Technical Specifications (CTS) to the improved Technical Specifications (ITS), would add an additional test (i.e., water and sediment content within limits) of diesel fuel oil that could be used in place of a current test (i.e., clear and bright appearance with proper color) in the diesel fuel oil testing program. The current tests are listed in CTS 4.9.A.2.d/e. The testing program will be in the new ITS 5.5.9. The additional test is change number 25 to Section 5.0 of the Improved Standard Technical Specifications (NUREG-1433, Revision 1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides more stringent requirements for operation of the facility. (This more stringent requirement) do(es) not result in operation that will increase the probability of initiating an analyzed event and do(es) not alter assumptions relative to (the) mitigation of an accident or transient event. The more restrictive requirement) continue(s) to ensure * * * systems and components (i.e., the diesel generators) are maintained consistent with the safety analyses and licensing basis. Therefore, the proposed change does not involve an increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. However, this change is consistent with the assumptions in the safety analyses and licensing basis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The imposition of more restrictive requirements either has no impact on or increases the margin of plant safety. As provided in the discussion of the change, each change in this category (i.e., a more restrictive requirement) is, by definition, providing additional restrictions to enhance plant safety. The change maintains (systems and components) within the safety analyses and licensing basis. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:
Auburn Memorial Library, 1810
Courthouse Avenue, Auburn, NE
68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602-0499

NRC Project Director: John N. Hannon

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 27, 1997.

Description of amendment request: The proposed amendment, included as part of the proposed conversion from the current Technical Specifications (TS) to improved TS for the Cooper Nuclear Station (CNS), would relocate the Trip Level Settings for the Rod Block Monitor from Table 3.2.C of the current TS to the Core Operating Limits Report. Also, details relating to the Alternate Shutdown system design and operation are proposed to be relocated from current TS 3.2.I and 4.2.I to the improved TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three criteria of 10 CFR 50.92(c), and has determined the following:

The proposed changes relocate certain details from the Technical Specifications to the Bases and the Core Operating Limits Report (COLR). The Bases and the COLR containing the relocated information will be maintained in accordance with 10 CFR 50.59. In addition, the Bases and COLR are subject to the applicable change control provisions of Chapter 5.0, "Administrative Controls", of the proposed improved Technical Specifications. Since any changes to the Bases or the COLR will be evaluated per the requirements of 10 CFR 50.59 or other applicable change control provisions, no increase in the probability or consequences of an accident previously evaluated will result. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve any physical alterations to the plant (no new or different type of equipment will be installed), or changes in the methods governing normal plant operation. The proposed changes will not impose or eliminate any requirements, and adequate control of the information will be maintained. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. In addition, the details to be transposed from the TS to the Bases

and the COLR are unchanged. Since any future changes to these details in the Bases or the COLR will be evaluated per the requirements of 10 CFR 50.59 or other applicable change control provisions, no reduction in a margin of safety will result. As such, these proposed changes do not involve a significant reduction in a margin of safety.

Based on the above discussion, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:
Auburn Memorial Library, 1810
Courthouse Avenue, Auburn, NE
68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602-0499
NRC Project Director: John N. Hannon

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 8, 1998.

Description of amendment request: The proposed change would revise Technical Specifications (TSs) 4.4.5.3, Steam Generators—Inspection Frequencies, and 3.4.6.2.c, Reactor Coolant System (RCS) Leakage, and the associated bases to accommodate fuel cycles of up to 24 months with respect to the allowed time interval between steam generator inservice inspections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Extending Surveillance Requirement (SR) 4.4.5.3 to accommodate a 24 month cycle for inspection of steam generator tubes structural integrity, as well as, imposing a more restrictive Limiting Condition for Operation (TS 3.4.6.2.c) for reactor coolant system leakage through Category C-2 steam generators, will neither exacerbate nor significantly increase the probability or consequences of an accident previously evaluated in the Seabrook Station [updated final safety analysis report] UFSAR.

The proposed changes to SR 4.4.5.3 do not alter the intent or method by which the surveillances are conducted, do not involve physical changes to the plant, do not alter the way structures, systems or components

(SSCs) function, and do not modify the manner in which the plant is operated.

The proposed change to TS 3.4.6.2.c imposes more restrictive limits on plant operations due to RCS leakage through steam generators. The proposed change does not involve physical changes to the plant or alter the way a SSC functions.

The proposed changes to SR 4.4.5.3 and TS 3.4.6.2.c, and their associated Bases, will not adversely affect the ability of the steam generators to perform their intended safety function. Furthermore, the proposed changes do not adversely affect the physical protective boundaries of the plant. The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of SSCs to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative in nature and do not change the level of programmatic controls or the procedural details associated with aforementioned surveillance requirements. While the proposed changes will lengthen the interval between surveillances, the increase in interval has been evaluated; and based on the reviews of the steam generator tube eddy current test (ECT) inspections, it is concluded that the wear growth rate of the only active degradation mechanism (Anti-Vibration Bar (AVB) wear) identified to date at Seabrook Station is such that sufficient margin exists between the plugging criteria and structural limit such that no tubes are predicted to exceed the structural limit even with the longer surveillance interval.

Since there are no changes to previous accident analyses, the radiological consequences associated with these analyses remain unchanged, therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Therefore, the proposed changes will not significantly increase the probability or consequences of any previously analyzed accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to TS 3.4.6.2 and SR 4.4.5.3, and associated Bases, do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. There are no changes to the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. Existing system and component redundancy is not being changed by the proposed changes. The proposed changes have no impact on component or system interactions. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details associated with the aforementioned surveillance requirements. Therefore, since there are no changes to the design assumptions, conditions,

configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change () to the surveillance intervals for SR 4.4.5.3 is still consistent with the basis for the interval. The intent or method of performing the surveillances remains unchanged. The more restrictive limit for leakage through any one steam generator placed in Category C-2, as well as, the requirement to do an engineering assessment of steam generator tube integrity, provides additional margin of ensuring safe plant operation.

In addition, there is no adverse affect on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details associated with the aforementioned surveillance requirements. While the proposed changes will lengthen the interval between surveillances, the increase in interval has been evaluated; and based on the reviews of the steam generator tube ECT inspections, it is concluded that the wear growth rate of the only active degradation mechanism (AVB wear) identified to date at Seabrook Station is such that sufficient margin exists between the plugging criteria and structural limit such that no tubes are predicted to exceed the structural limit even with the longer surveillance interval. Therefore, extension of the current surveillance intervals to accommodate a 24 month cycle will not significantly degrade the ability, the availability or the reliability of the steam generators to perform their intended safety function, thus, it is concluded that there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:
Exeter Public Library, Founders Park,
Exeter, NH 03833

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, PO Box 270, Hartford, CT 06141-0270
NRC Project Director: Cecil O. Thomas

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: April 6, 1998.

Description of amendment request: The proposed amendment will modify

the Technical Specifications (TSs) by (1) adding a surveillance requirement to verify pressurizer heater capacity to TS 3.4.4, "Reactor Coolant System—Pressurizer," (2) moving the identification of the location of the containment air temperature detectors from the surveillance requirements portion of TS 3.6.1.5, "Containment Systems—Air Temperature," to the TS Bases for Containment Systems, Section 3/4.4.6.1.5, "Air Temperature," and (3) modifying the action statements and surveillance requirements of TS 3.7.1.5, "Plant Systems—Main Steam Isolation Valves." The TS Bases would also be updated to include the list of containment air temperature detectors and reflect the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to add a surveillance requirement (SR) 4.4.4.2 to verify pressurizer heater capacity will help ensure the pressurizer will be able to function as designed to maintain Reactor Coolant System pressure. There will be no effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to modify the wording of SR 4.6.1.5 and to relocate the list of containment air temperature detectors from SR 4.6.1.5 to the Bases will not affect the Technical Specification limit for containment temperature or the frequency of verification of this limit. The proposed changes do not alter the way any structure, system, or component functions. The initial assumption for containment temperature used in the design basis accident analysis will remain the same. There will be no effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the action statements and surveillance requirements of Technical Specification 3.7.1.5 will not affect the operability requirements of the main (steamline) isolation valves (MSIVs). There will be no effect on any design basis accident previously evaluated or on any equipment important to safety. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes have no adverse effect on any of the design basis accidents previously evaluated or on any equipment

important to safety. Therefore, the License Amendment Request does not impact the probability of an accident previously evaluated nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will add SR 4.4.4.2 to verify pressurizer heater capacity, relocate the list of containment temperature detectors used to verify containment temperature from SR 4.6.1.5 to the associated Bases, and modify the action statements and surveillance requirements of Technical Specification 3.7.1.5.

These changes will have no adverse effect on equipment important to safety. This equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction in the margin of safety as defined in the Bases for the technical Specifications affected by these proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut
NRC Deputy Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: April 13, 1998

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) by adding a new TS 3.5.5,

"Emergency Core Cooling Systems—Trisodium Phosphate (TSP)." Also, the surveillance requirements in TSs 4.5.2.c.3 and 4.5.2.c.4 would be relocated to new TS 3.5.5 as TS 4.5.5.1 and TS 4.5.5.2, respectively. The applicable TS Index page and Bases sections will be updated to reflect the proposed changes.

Changes to the current requirements for the TSP are also proposed. The TSP requirements in TS 4.5.2.c.3 would become the limiting conditions for operation in the new TS; the amount of TSP required would increase from "equal to or greater than 110 cubic feet" to "equal to or greater than 282 cubic feet" based on the new calculations; the applicability would be expanded to include all of Mode 3; the action statement would allow 48 hours to restore the TSP volume; and changes would also be made to the required tests and specific details would be relocated to the applicable TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to relocate the current trisodium phosphate (TSP) dodecahydrate Technical Specification requirements from the surveillance requirements for the Emergency Core Cooling System to a new TSP Technical Specification will not change the requirement to store TSP inside containment. The proposed changes will require a large quantity of TSP to be stored inside containment. This large quantity, based on a recently revised calculation, will ensure sufficient TSP is available for containment sump water pH control. These proposed changes do not alter the way any structure, system, or component functions. There will be no adverse effect on any design basis accident previously evaluated, on any equipment important to safety, or on the radiological consequences of any design basis accident. Therefore, this License Amendment Request does not impact the probability of an accident previously evaluated nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to increase the TSP volume stored inside containment will require two of the wire mesh TSP baskets inside containment to be replaced by two new and larger wire mesh baskets. The design of the new baskets has been evaluated and it is consistent with the requirements for equipment installed in containment. The replacement of the two wire mesh baskets

will not result in any significant change in plant configuration and will not require any new or unusual operator actions. It will alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated. It will not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will relocate the current Technical Specification requirements for TSP to a new Technical Specification. The minimum required volume will be increased to reflect the results of a new calculation performed to support the current requirement to raise containment sump pH [equal to or greater than] 7.0. These changes will have no adverse effect on equipment important to safety. This equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction of the margin of safety as defined in the Bases for the Technical Specifications affected by these proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:

Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut
NRC Deputy Director: Phillip F. McKee

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: April 11, 1997 (supersedes July 26, 1996, application)

Description of amendment request:

The proposed amendment would modify the Monticello Technical Specifications (TS) sections 3.6.C, Coolant Chemistry, and 3/4.17.B, Control Room Emergency Filtration System. The changes were proposed to establish TS requirements consistent with modified analysis inputs used for the evaluation of the radiological consequences of the main steam line break accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

A limit is established in the plant Technical Specifications for steady state radioiodine concentration in the reactor coolant to ensure that in the event of a release of radioactive material to the environment due to a postulated high energy line break up to and including a design basis Main Steam Line Break Accident, radiation doses are maintained within the guidelines of 10 CFR part 100. The steady state radioiodine concentration in the reactor coolant is an input for analysis of the radiological consequences of an accident due to a Main Steam Line Break outside of containment and postulated high energy line breaks. In addition, requirements are established in the Technical Specifications for control room habitability. During an accident, the control room emergency filtration system provides filtered air to pressurize the Control Room to minimize the activity, and therefore the radiological dose, inside the control room.

A change is proposed for the steady state radioiodine concentration. This value is conservative with respect to the value used in the Main Steam Line Break dose consequences analysis and is consistent with the dose consequences evaluation of a postulated Reactor Water Cleanup (RWCU) line break. Changes are proposed to the limiting conditions for operation and surveillance requirements for the Control Room Emergency Filtration Train iodine removal efficiency. These changes are consistent with the inputs used in the analysis of the radiological consequences of the postulated RWCU line break and the Main Steam Line Break Accident. These proposed requirements maintain operating restrictions for analytical inputs used in the analysis of the Main Steam Line Break Accident. Evaluation of these events has demonstrated that the postulated radiological consequences will remain within the licensing basis established in the AEC [Atomic Energy Commission] Provisional Operating License Safety Evaluation Report, dated March 18, 1970, thus the proposed changes do not result in an increase in the consequences of previously evaluated accidents.

The analysis of the Main Steam Line Break Accident performed using a reactor coolant radioiodine concentration of 2 (microcuries)/gm dose equivalent Iodine-131 and a control room ventilation filter efficiency consistent with the proposed Technical Specifications changes demonstrated that radiological consequences of the Main Steam Line Break are not changed significantly. The radiological consequences of the Main Steam Line Break Accident remain within the exposure guidelines of 10 CFR part 100 and 10 CFR part 50 appendix A, General Design

Criterion 19. The offsite dose consequences remain bounded by the licensing basis provided in the AEC Provisional Operating License Safety Evaluation Report, dated March 18, 1970. The control room doses calculated for the hot standby Main Steam Line Break Accident using the TID-14844 dose conversion factors remain bounded by the dose consequences of the comparable design basis loss of coolant accident.

The evaluation of the postulated RWCU line break, performed using a reactor coolant radioiodine concentration of 0.25 (microcuries)/gm dose equivalent Iodine-131 and a control room ventilation filter efficiency consistent with the proposed Technical Specifications changes, demonstrated that the radiological consequences of this event remain within the exposure guidelines of 10 CFR part 100 and 10 CFR part 50 Appendix A, General Design Criterion 19. The offsite dose consequences remain bounded by the Main Steam Line Break as established in the licensing basis provided in the AEC Provisional Operating License Safety Evaluation Report, dated March 18, 1970.

The proposed Technical Specification changes do not introduce new equipment operating modes, nor do the proposed changes alter existing system inter-relationships. The proposed changes do not introduce new failure modes. The system improvements to reduce bypass leakage during postulated accidents do not have an adverse effect on control room habitability. Therefore, this amendment will not cause a significant increase in the probability of an accident previously evaluated for the Monticello plant.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed Technical Specification changes do not introduce new equipment operating modes, nor do the proposed changes alter existing system inter-relationships. Operator action to mitigate the consequences of the postulated RWCU line break is conservative based on the very limited action required by the operator to close the containment isolation valves and the availability of control room indications to alert the operator to the postulated break. The use of a ten (10) minute operator response time to take manual actions in response to postulated events is consistent with Monticello's licensing basis for similar events. The use of operator actions and all available equipment is consistent with current regulatory guidance for mitigating the consequences of postulated line breaks.

The proposed change to the specification for reactor coolant dose equivalent radioiodine is conservative with respect to the re-evaluation of the Main Steam Line Break Accident for the more conservative hot standby initial condition for the postulated accident. The proposed change to the specification for reactor coolant dose equivalent radioiodine is consistent with the postulated high energy line break of a Reactor Water Cleanup line. The proposed changes to the limiting conditions for operation and

surveillance requirements for the control room emergency filtration train iodine removal efficiency are consistent with the inputs used in the evaluation of the radiological consequences of the postulated RWCU line break and the Main Steam Line Break Accident. The system improvements to reduce bypass leakage during postulated accidents do not have an adverse effect on control room habitability. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Surveillance data has demonstrated the proposed requirements are within the current capability of the facility. The proposed changes maintain margins of safety. These proposed requirements maintain operating restrictions for analytical inputs used in the analysis of the bounding postulated high energy line break of a Reactor Water Cleanup line and the Main Steam Line Break Accident. The proposed change to the specification for reactor coolant dose equivalent radioiodine is conservative with respect to the re-evaluation of the Main Steam Line Break Accident for the more conservative hot standby initial condition for the postulated accident. The proposed change to the specification for reactor coolant dose equivalent radioiodine is consistent with the postulated high energy line break of a Reactor Water Cleanup line. The evaluation of these postulated events determined that the radiological consequences remain within the exposure guidelines of 10 CFR part 100 and of 10 CFR part 50 Appendix A, General Design Criterion 19. The proposed changes to the limiting conditions for operation and surveillance requirements for the control room emergency filtration train iodine removal efficiency provide assurance that the system will perform at the filter efficiency as used in the evaluation of the radiological consequences of the postulated events. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Cynthia A. Carpenter

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: April 10, 1998.

Description of amendment request:

The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise TS 6.2.2.g and 6.3 to change the name of the Operations Manager to Operations Director and to change the requirement for the Operations Director to hold a senior reactor operator (SRO) license.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to revise the title of the Operations Manager to Operations Director is an administrative change that clarifies the Technical Specification (TS) to reflect current position titles.

The proposed change provides assurance that the Operations Director will continue to have knowledge of pressurized water reactor (PWR) operation and emergency event mitigation. The proposed change does not detract from the Operations Director's ability to perform his primary responsibilities. In this case, by having previously held a senior reactor operator (SRO) license, the Operations Director has achieved the necessary training, skills, and experience to fully understand the operation of plant equipment and the watch requirements for operators. In summary, the proposed change does not affect the ability of the Operations Director to provide the plant oversight required of his position.

Additionally, another off-shift individual that holds an SRO license for Diablo Canyon Power Plant (DCPP) directs the licensed activities of licensed operators (an Operations middle manager) will have specific knowledge of operation and emergency event mitigation at DCPP. This will assure that the change in qualification of the Operations Director does not affect the probability of an operator initiating an accident or increasing the consequences of an accident due to improper direction from management. The training and qualification programs for operators on shift will not be affected by the proposed changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of

accident from any accident previously evaluated.

The proposed change to revise the title of the Operations Manager to Operations Director is an administrative change that clarifies the TS to reflect current position titles.

The proposed change to TS 6.2.2.g and 6.3 do not affect the design or function of any plant system, structure, or component, nor does it change the way plant systems are operated. It does not affect the performance of NRC licensed operators since the proposed changes do not impact the training or qualification of any operator on shift. Operation of the plant in conformance with TS and other license requirements will continue to be supervised by personnel who hold an SRO license. The proposed change to TS 6.2.2.g and 6.3 ensures that the Operations Director will be a knowledgeable and qualified individual by requiring the individual to have held an SRO license at a PWR.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to revise the title of the Operations Manager to Operations Director is an administrative change that clarifies the TS to reflect current position titles.

The proposed change involves an administrative control that is not related to the margin of safety. The proposed change does not reduce the level of knowledge or experience required of an individual who fills the Operations Director position, nor does it affect the conservative manner in which the plant is operated. The on-shift licensed operators will continue to be supervised by personnel who hold an SRO license in accordance with 10 CFR 50.54(l).

Therefore, neither of the proposed changes involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room Location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for Licensee: Christopher J. Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: William H. Bateman

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 26, 1998.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3/4.8.2.1, "AC Distribution—Operating," to add operability conditions and action statements for the 115-volt vital instrument bus (VIB) D and inverter. The proposed amendments complete the recommended action from NRC Generic Letter 91-11, Resolution of Generic Issues 48, "LCOs for Class 1E Vital Instrument Buses," and 49, "Interlocks and LCOs for Class 1E Tie Breakers" pursuant to 10 CFR 50.54(f), dated July 18, 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change, as described above, does not make any physical changes to the plant or components, nor changes the manner in which the plant or components are operated as a result of the addition of the Note and the D VIB and Inverter to the TS. The proposed change incorporates the operating requirements of the Technical Specification Interpretation (TSI) developed in response to GL 91-11 into the Salem Unit 1 and 2 Technical Specifications. Incorporating this interpretation into the Technical Specifications eliminates the need for the TSI.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not introduce any design or physical configuration change to the plants, change the function of the 115 Volt D VIBs and inverters, or the manner in which they are maintained or tested.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed Action Times associated with the incorporation of the D VIB into the Technical Specifications are consistent with the current Action Times for the A, B, and C VIBs for a loss of an AC bus. Adding the note to the Salem Unit 1 Technical Specification brings consistency between

Salem Units 1 and 2, and is also consistent with NUREG 1431, Vol. 1, Rev 1 "Standard Technical Specifications Westinghouse Plants."

The outage duration limit of 72 hours for the D inverter is acceptable based on the following: (1) the proposed 72 hours Action Time to restore the inoperable inverter to operable is supported by a PSA [probabilistic safety assessment] assessment. NRC Draft SRP [Standard Review Plan] Chapter 16.1, Revision 13, "Risk-Informed Decision making: Technical Specifications" notes that an incremental conditional core damage probability (ICCDP) of 5.0 E-7 is considered very small. The proposed 72 hour allowable outage time was calculated utilizing the NRC incremental conditional core damage probability (ICCDP), and (2) the inoperability of the D VIB inverter will not affect the operation of any Safeguard Equipment Cabinet (SEC) or Emergency Diesel Generator (EDG).

Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079
Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038

NRC Project Director: Robert A. Capra.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: April 18, 1997, as supplemented by letters dated October 10, 1997, and February 27, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3/4.7.6, "Plant Systems—Control Room Emergency Ventilation System." Additional Limiting Conditions for Operation would be added related to the availability of the station vent normal range radiation monitoring instrumentation. The associated TS bases would also be modified consistent with these changes. The staff's proposed no significant hazards consideration determination for the requested change was published on June 4, 1997 (62 FR 30646).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1, in accordance with this change would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions, or assumptions are affected by the proposed changes.

The proposed change to Limiting Condition for Operation (LCO) 3.7.6.1 would include new required Action statements in the event that one or both channels of Station Vent Normal Range Radiation Monitoring instrumentation become inoperable. Under the proposed Action statements for inoperable Station Vent Normal Range Radiation Monitoring instrumentation, should the control room normal ventilation system be isolated and at least one train of the control room emergency ventilation system be placed in operation, these systems would be in a state equivalent to that which they would be in following an actual high radiation condition. These proposed changes have no bearing on the probability of an accident.

The proposed change to the terminology utilized in Surveillance Requirement (SR) 4.7.6.1.e is an administrative change made to make the terminology consistent with the proposed new Action statements. The proposed changes to Bases 3/4.7.6 are administrative changes consistent with the proposed changes to LCO 3.7.6.1. These changes have no bearing on the probability of an accident.

Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not change the source term, containment isolation, or allowable releases.

As described above, under the proposed Action statements for inoperable Station Vent Normal Range Radiation Monitoring instrumentation, should the control room normal ventilation system be isolated and at least one train of the control room emergency ventilation system be placed in operation, these systems would be in a state equivalent to that which they would be in following an actual high radiation condition. Therefore, in the unlikely event of an accident requiring control room isolation while in this condition, the dose consequences to control room operators would be unchanged.

The proposed change to the terminology utilized in Surveillance Requirement (SR) 4.7.6.1.e is an administrative change made to make the terminology consistent with the proposed new Action statements. The proposed changes to Bases 3/4.7.6 are administrative changes consistent with the proposed changes to LCO 3.7.6.1. These changes have no bearing on the consequences of an accident.

2. Not create the possibility of a new or different kind of accident from any accident

previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes.

As described above, under the proposed Action statements for Inoperable Station Vent Normal Range Radiation Monitoring instrumentation, should the control room normal ventilation system be isolated and at least one train of the control room emergency ventilation system be placed in operation, these systems would be in a state equivalent to that which they would be in following an actual high radiation condition. Operation of the equipment and components in this manner would not introduce the possibility of any new or different kinds of accidents.

The proposed change to the terminology utilized in Surveillance Requirement (SR) 4.7.6.1.e is an administrative change made to make the terminology consistent with the proposed new Action statements. The proposed changes to Bases 3/4.7.6 are administrative changes consistent with the proposed changes to LCO 3.7.6.1. These changes would not introduce the possibility of any new or different kinds of accidents.

3. Not involve a significant reduction in a margin of safety because the proposed changes to the Action under LCO 3.7.6.1 ensure that control room isolation capability is maintained in the event a station vent radiation monitor is inoperable. The proposed allowable outage time of seven days for one inoperable channel is consistent with the presently allowable outage time for one inoperable CREVS. The proposed Action to place at least one CREVS train in operation within one hour, in the event both channels of radiation monitoring become inoperable, is more conservative than the present Action which requires that a plant shutdown commence within one hour, but does not require the CREVS be placed in operation.

The proposed change to the terminology utilized in Surveillance Requirement (SR) 4.7.6.1.e is an administrative change made to make the terminology consistent with the proposed new Action statements. The proposed changes to Bases 3/4.7.6 are administrative changes consistent with the proposed changes to LCO 3.7.6.1. These changes would not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Acting Project Director: Richard P. Savio

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: March 9, 1998.

Description of amendment request:

The proposed amendment application would revise Technical Specification 3/4.5.2b.1 and its associated Bases to add clarification in regard to venting the emergency core cooling system (ECCS) pump casings and accessible discharge piping high points. Technical Specification 3/4.5.2b.1 requires verification that the ECCS piping is full of water at least once per 31 days by venting the ECCS pump casings, i.e., the safety injection pump, residual heat removal pump, and centrifugal charging pump casings and accessible discharge piping high points. The centrifugal charging pump (CCP) casings do not have installed casing vents. Instead of a casing vent, the suction and discharge piping is installed as vertical runs attached to the top-mounted suction and discharge nozzles of each CCP pump. Information provided by the pump manufacturer indicates that the vertical configuration of the piping is sufficient to prevent the accumulation of noncondensable gases that could cause gas binding. Therefore the CCP casings are effectively vented by vents on the CCP discharge lines. The proposed amendment application would revise Technical Specification 3/4.5.2b.1 and associated Bases to require the residual heat removal and safety injection pump casings and accessible ECCS discharge piping high points be vented to ensure the ECCS piping is full of water.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will align the surveillance requirements with the installed system design and normal operating conditions. The performance of surveillances required by Technical Specifications is not postulated to initiate an accident. The intent of the surveillance ensures OPERABILITY of the ECCS by verifying that the ECCS piping is full of water and not subjected to gas binding or water hammer. The design of the CCPs is such that significant noncondensable gases do not collect in the pumps, whether they are running or not. Therefore, it is unnecessary to require periodic pump casing venting to ensure the CCPs will remain OPERABLE. In addition, operating experience has shown that no significant

voiding has occurred in the affected piping which will continue to be vented at a high point every 31 days per Surveillance Requirement 4.5.2b.1). Therefore, no increase in the probability or consequences of an accident will occur as a result of this change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not result in new failure modes because there are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The design of the CCPs is such that significant noncondensable gases do not collect in the pumps, whether they are running or not. Therefore, it is not necessary to require periodic pump casing venting to ensure the equipment will remain OPERABLE. Manual venting operations will be performed to minimize the potential for voids in system piping. Accordingly, this change will not create the possibility of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety. The proposed change does not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protective functions. There will be no impact on any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201-5149

Attorney for licensee: Gerald Chamoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: William H. Bateman

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: December 18, 1997.

Description of amendment request:

The proposed changes revise the Technical Specifications (TS) to clarify the terminology used to describe equipment surveillances performed with a refueling interval frequency. Currently the TS are somewhat ambiguous in the wording in this regard, and the proposed changes would adhere to the improved Standard TS

and make it clear whether the reactor must be shutdown when performing the test, or whether a "refueling interval" frequency (e.g., 18 months) is intended. All of the clarifications are in Section 4 of the TS. In addition, minor typographical errors are being corrected, and an obsolete reference is proposed to be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Operation of Surry Units 1 and 2 in accordance with the proposed Technical Specifications change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident is not increased as a result of the proposed Technical Specification change since surveillance intervals are being clarified, not changed, and will continue to validate system/component availability, operability and performance during the appropriate unit mode. The proposed change is administrative in nature, therefore, station operations are not being affected. The consequences of an accident previously evaluated are not increased since station operations are not being changed, and no physical modifications are being made to plant systems or components.

Criterion 2—The proposed Technical Specifications change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As noted above, the proposed change is administrative in nature. A new or different type of accident is not being created since no new accident precursors are being introduced and equipment surveillances will continue to be performed as required to ensure proper system/component operation. Plant systems are not being modified, system operations are not being affected, and equipment surveillance intervals are not being increased. Consequently, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The proposed Technical Specifications change does not involve a significant reduction in a margin of safety.

This is an administrative change. Clarification of refueling surveillance interval terminology to ensure consistency in application does not affect plant equipment performance. Surveillance intervals are not being increased, and equipment surveillance tests performed on a refueling interval frequency (i.e. once per 18 months) will continue to ensure system/component performance as assumed in the existing safety analyses. Therefore, the proposed Technical Specification change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185
Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: P.T. Kuo, Acting
Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: March 25, 1998.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) Sections 6.1.A; 6.1.A.2; 6.1.C.1.a and b; 6.1.C.1.f.1,4 and 8; 6.1.C.1.g.1 and 3; 6.8.A.2; and 6.8.B.2 for Units 1 and 2, changing the title of Station Manager to Site Vice President, and the titles of the Assistant Station Managers to Manager-Station Operations and Maintenance and Manager-Station Safety and Licensing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has reviewed the proposed Technical Specifications changes against the criteria of 10 CFR 50.92 and has concluded that the changes do not pose a significant hazards consideration. Specifically, station operations in accordance with the proposed Technical Specifications changes will not:

a. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature. The overall responsibility for safe operation and review of plant operations is not being changed. There are no changes to the operation of any plant system or its design as a result of these changes. Therefore, neither the probability of occurrence nor the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report are increased.

b. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature. The overall responsibility for safe operation and review of plant operations is not being changed. There are no changes to the operation of any plant system or its

design that could create any new modes of operation or accident precursors. Therefore, it is concluded that no new or different kind of accident or malfunction from any previously evaluated has been created.

c. The proposed changes do not result in a significant reduction in margin of safety as defined in the basis for any Technical Specifications.

The proposed changes are administrative in nature. The overall responsibility for safe operation and review is not being changed. There are no changes to the operation of any plant system or its design as a result of these changes. Safety systems are maintained operable as required by Technical Specifications. Therefore, the margin of safety is not changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185
Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: P.T. Kuo, Acting
Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 8, 1998.

Description of amendment request: The change would reduce allowable reactor coolant system (RCS) specific activity from 1.0 microcurie/gram to 0.35 microcurie/gram dose equivalent I-131.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated.

The change implements a more restrictive RCS activity limit. Specific RCS activity is an initial plant condition and, therefore, is not an accident initiator and can not cause the occurrence of or increase the probability of an accident. The change also lowers the curve of Figure TS 3.1-3 which restricts operation with high specific activity. The new value for specific activity is justified by

the Westinghouse calculation which demonstrates acceptable offsite and control room doses following a (main steamline break) MSLB with a maximum allowable primary to secondary leak rate. By lowering the RCS specific activity and maintaining leakage within the projected maximum allowable, 10 CFR 100 and GDC 19 criteria are satisfied. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the RCS specific activity limit will not significantly effect operation of the plant nor will it alter the configuration of the plant. There will be no additional challenges to the main steam system or the reactor coolant system pressure boundary and no new failure modes are introduced. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety.

Reduction of the RCS specific activity limit allows an increase in the MSLB allowable primary to secondary leakage. The net effect is no reduction in the margin of safety provided by 10 CFR part 100 and GDC 19 criteria. The maximum allowable leakage is the leakage limit for projected SG leakage following SG tube inspection and repair. Reducing specific activity to increase projected leak rate follows guidance given by GL 95-05 and effectively takes margin available in the specific activity limits and applies it to the projected SG leak rate. This has been determined to be an acceptable means for accepting higher projected leak rates while still meeting the applicable limits of 10 CFR part 100 and GDC 19 criteria with respect to offsite and control room doses. Additionally, monitoring of the specific activity and compliance with the required actions remains unchanged. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

For consistency, the value of secondary coolant activity in Table TS 4.1.2 is being corrected from 1.0 microcurie/gram to 0.1 microcurie/gram. This is consistent with a previously submitted and approved amendment, therefore, no significant hazards exist for this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:
University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311-7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701-1497
NRC Project Director: Richard P. Savio

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 15, 1998.

Description of amendment request: The revisions in the proposed Technical Specification amendment are part of the licensee's fuel and reload change plan for Cycle 23. The revisions implement changes associated with a new fuel design and also reflect changing plant conditions due to steam generator tube plugging and repair. The Technical Specifications (TS) would be modified as follows:

(1) Figure 2.1-1 would be revised to reflect the recently approved High Thermal Performance (HTP) Critical Heat Flux (CHF) correlation and corresponding Departure from Nucleate Boiling Ratio (DNBR) limit of 1.14. The figure would also reflect changes in peak rod power and minimum reactor coolant flow.

(2) TS 3.10.b—new hot channel factors would be incorporated for the new fuel design and the corresponding increase in peaking factors. The limits for Height Dependent Nuclear flux Hot Channel Factor are specified in TS 3.10.b.1 and the limits for Nuclear Enthalpy Rise Hot Channel Factor are specified in 3.10.b.2.

(3) TS 3.10.k—the specification for the maximum Reactor Coolant System (RCS) Inlet Temperature would be replaced with a specification for the maximum Reactor Coolant System (RCS) Average Temperature.

(4) TS 3.10.l—the statement "During 100% steady-state power operation" would be revised in the specification for minimum Reactor Coolant System (RCS) pressure and replaced with "During steady-state power operation."

(5) TS 3.10.m—the minimum Reactor Coolant Flow is being decreased to 85,500 gallons per minute per loop.

(6) TS 3.10.n—would be revised to reflect the new Minimum DNBR limit.

(7) Figure TS 3.10-1—the Required Shutdown Reactivity vs. Boron Concentration would be revised to reflect the change to an 18 month fuel cycle.

(8) Figure TS 3.10-2, the Hot Channel Factor Normalized Operating Envelope would be revised to reflect the values used in the new safety analyses.

(9) The Table of Contents and the Basis sections would be revised to accommodate the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

Figure TS 2.1-1: The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety limits curves are not accident initiators. Therefore, the change will not increase the probability of an accident previously evaluated. The proposed changes to the safety limits curves do not alter the plant configuration, operating set points, or overall plant performance. The safety limits curves reflect the changes to the DNBR limit, CHF correlation, RCS flow peaking factors and fuel design. The significant hazards determinations for these parameters are evaluated later in this submittal. Therefore, the change will not increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes in the safety limits curves do not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

Operation in the acceptable regions (i.e., below and to the left of the safety limit curves) in combination with the reactor protection and engineered safety systems designed into the plant will ensure that the safety limits are not exceeded during normal operation or during anticipated design basis operational transients. The core will be operated in the nucleate boiling heat transfer regime. Departure from nucleate boiling (DNB) will not occur and therefore fuel cladding integrity will be assured.

The revised safety limit curves have been developed using operating parameters at their bounding values (e.g., rod powers at the peaking factor limits, reactor coolant flow at the minimum operating limit). The revised curves will bound plant operation with Siemens Power Corporation standard or heavy fuel. Therefore, this change will not involve a significant reduction in safety margin.

TS 3.10.b: The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Peaking factor limits are input assumptions to the safety analyses and are not accident initiators. Therefore, this change would not increase the probability of occurrence of an accident previously evaluated.

The safety analyses input assumptions are designed to bound actual plant operation. Changing the safety analysis input assumption for the increased peaking factor limits does not change the underlying progression of design basis accidents evaluated in the safety analyses. All safety analysis acceptance criteria are satisfied in the increased peaking factor limit conditions. Additionally, the radiological consequences

are bounded by existing analysis at the increased peaking factor limits. Therefore, this change will not significantly increase the consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This change incorporates the safety analyses assumptions for core peaking factor limits for Siemens Power Corporation heavy fuel. The change does not alter plant equipment, set points or plant performance. Therefore, changing the peaking factor limits for analysis purposes will not create a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

Results of the safety analyses and of radiological consequences indicate that all acceptance criteria are satisfied. The peaking factor limits assumed in the safety analyses are consistent with the proposed revised limits and these revised limits are established to bound actual plant operation. Therefore, this change will not involve a significant reduction in the margin of safety.

TS 3.10.k: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The RCS average temperature limit is not an accident initiator. Changing the technical specification limit consistent with the accident analyses will not increase the probability of an accident previously evaluated.

The proposed change limits the maximum reactor coolant system average temperature to 568.8 °F. The design basis safety analyses, the Large and Small Break LOCA accidents and the non-LOCA accidents, have been analyzed and/or evaluated consistent with the revised RCS average temperature. The re-analysis and evaluation have demonstrated that all safety analysis acceptance criteria are satisfied at the specified temperature. Therefore, the change will not increase the consequences of an accident previously evaluated.

The proposed technical specification limit for maximum allowed RCS average temperature was decreased below the analytical limit to account for instrument error.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed change is consistent with the safety analyses. All safety analyses acceptance criteria are satisfied at the revised reactor coolant system average temperature. The TS limit will bound actual plant operation. Therefore, there is no significant reduction in the margin of safety.

TS 3.10.l: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The RCS pressure limit is not an accident initiator. By removing the 100% value from the specification, the assumptions in the safety analyses are not changed. Changing the technical specification to remove the 100% power criteria will not increase the probability of an accident previously evaluated.

The design basis safety analyses have been analyzed and/or evaluated at the specified RCS pressure. The analyses and evaluations have demonstrated that all safety analyses acceptance criteria are satisfied at this pressure. Therefore, the change would not increase the consequences of an accident previously evaluated.

The proposed technical specification limit for minimum allowed RCS pressure was increased above the analytical limit to account for instrument error.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed change is consistent with the safety analyses. All safety analyses acceptance criteria are satisfied at the reactor coolant system pressure. The limit will bound actual plant operation. Therefore, there is no significant reduction in the margin of safety.

TS 3.10.m: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The RCS flow limit is not an accident initiator. Changing the technical specification limit consistent with the accident analysis will not increase the probability of an accident previously evaluated.

The proposed change limits the minimum reactor coolant flow. The design basis safety analyses have been analyzed and/or evaluated at the revised RCS flow. The re-analysis and evaluation have demonstrated that all safety analysis acceptance criteria are satisfied at the specified flow. Therefore, the change will not significantly increase the consequences of an accident previously evaluated.

The proposed technical specification limit for minimum allowed RCS flow was increased above the analytical limit to account for instrument error.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed change is consistent with the safety analyses. All safety analyses acceptance criteria are satisfied at the revised reactor coolant system flow. The limit will bound actual plant operation.

TS 3.10.j: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

transients determined all safety requirements of KNPP accident analyses were still met at the reduced RCS flow rate limit. Therefore, this proposed change does not significantly reduce the margin of safety.

TS 3.10.n: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Departure from Nucleate Boiling Ratio (DNBR) is not an accident initiator. Therefore, the change in the DNBR will not increase the probability of an accident previously evaluated.

The proposed change to the DNBR value does not change plant configuration, operating set points, or overall plant performance. Therefore, the change will not increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

All safety analyses acceptance criteria are satisfied using the HTP CHF correlation. The DNBR limits assumed in the safety analyses will bound actual plant operation and assures at 95/95 that DNBR will not occur. Therefore, there is no reduction in the margin of safety.

TS Figure 3.10-1: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Required Shutdown Reactivity vs. Boron Concentration was revised to reflect the longer cycle length and the resulting increase in boron concentration. The Required Shutdown Reactivity vs. Boron Concentration is not an accident initiator. Extending the boron concentrations to account for longer fuel cycles will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed change is consistent with the cycle length and core physics analyses for longer fuel cycles. Operation within the limits specified in the figure will assure all core safety evaluation acceptance criteria are satisfied. The limit will bound actual plant operation. Therefore, there is no reduction in the margin of safety.

TS Figure 3.10-2: The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Hot Channel Factor Normalized Operating Envelope figure was revised to reflect the values used in the safety analyses.

The Hot Channel Factor Normalized Operating Envelope figure is not an accident initiator. Changing the technical specification figure consistent with the assumptions of the accident analyses will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating set points, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed change is consistent with the safety analyses. Operation within the limits specified in the figure will assure all safety analyses acceptance criteria are satisfied. The limit will bound actual plant operation. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311-7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701-1497
NRC Project Director: Richard P. Savio

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 2, 1995, October 12, 1995, March 26, 1996, and December 15, 1997 (TSCR 172)

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Table 15.4.1-1, "Minimum Frequencies for Checks, Calibrations, and Tests of Instrument Channels," to change the test frequencies for radiation monitors as discussed in Generic Letter 93-05 ("Line-Item Technical Specifications Improvements To Reduce Surveillance Requirements For Testing During Power Operation"). remove the radiation monitoring system as item 36, revise note(s), and add those radiation monitors and their surveillance requirements that support current TS or meet the requirements of 10 CFR 50.36. Additionally, several typographical and nomenclature errors would be corrected. This amendment request was initially

noticed in the **Federal Register** on June 6, 1995 (60 FR 29890).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Operation of this facility under the proposed TS will not create a significant increase in the probability or consequences of an accident previously evaluated.

The probabilities of accidents previously evaluated are based on the probability of initiating events for these accidents. Initiating events for accidents previously evaluated for the Point Beach Nuclear Plant (PBNP) include control rod withdrawal and drop, chemical volume control system malfunction (boron dilution), startup of an inactive reactor coolant loop, reduction in feedwater enthalpy, excessive load increase, losses of reactor coolant flow, loss of external electrical load, loss of normal feedwater, loss of all alternating current (ac) power to the auxiliaries, turbine overspeed, fuel handling accidents, accidental releases of waste liquid or gas, steam generator tube rupture, steam pipe rupture, control rod ejection, and primary coolant system ruptures.

These proposed changes do not cause an increase in the probabilities of any accidents previously evaluated because these changes will not cause an increase in the probability of any initiating events for accidents previously evaluated. In particular, these changes affect the radiation monitoring system surveillance requirements and make administrative changes that will not result in changing accident initiators.

The consequences of the accidents previously evaluated in the Final Safety Analysis Report (FSAR) are determined by the results of analyses that are based on initial conditions of the plant, the type of accident, transient response of the plant, and the operation and failure of equipment and systems.

The proposed changes reduce the burden associated with radiation monitoring system required surveillance by establishing surveillances for only the necessary monitors (i.e., elimination of the testing requirement for monitors that do not perform a required function) and changing the testing frequency for these monitors from monthly to quarterly. The proposed changes do not increase the probability of failure of this equipment or its ability to operate as required for the accidents previously

evaluated in the PBNP FSAR. The proposed changes to correct typographical errors and correct nomenclature are administrative only and do not increase the probability of an accident previously evaluated nor do they affect the consequences of any accident previously evaluated.

Therefore, these proposed license amendments do not affect the consequences of any accident previously evaluated in the PBNP FSAR because the factors that are used to determine consequences of accidents are not being changed.

2. Operation of this facility under the proposed TS change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

New or different kinds of accidents can only be created by new or different accident initiators or sequences. The changes proposed by this license amendment request do not create any new or different accident initiators or sequences because the revisions to TS Table 15.4.1-1, "Minimum Frequencies for Checks, Calibrations, and Tests of Instrument Channels," will not cause failures of equipment or accident sequences different than the accidents previously evaluated. The proposed changes to correct typographical errors and correct nomenclature are administrative only. Therefore, these proposed TS changes do not create the possibility of an accident of a different type than any previously evaluated in the Point Beach FSAR.

3. Operation of this facility under the proposed TS change will not create a significant reduction in a margin of safety.

The margins of safety for Point Beach are based on the design and operation of the reactor and containment and the safety systems that provide their protection. The changes proposed by this license amendment request provide the appropriate surveillance requirements for the radiation monitoring system. The revised surveillance requirements will continue to ensure that the required radiation monitors will operate as required. The design and operation of the reactor and containment are not affected by these proposed changes. The proposed changes to correct typographical errors and correct nomenclature are administrative only. Therefore, the margins of safety for Point Beach are not being reduced because the design and operation of the reactor and containment are not being changed.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards considerations.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037
NRC Project Director: Cynthia A. Carpenter

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: February 23, 1998, as supplemented March 27, 1998.

Brief description of amendment: The proposed amendment would allow addition of a footnote to the Safety Limit Minimum Critical Power Ratio value in the Technical Specifications and the associated action statement.

Date of publication of individual notice in the Federal Register: April 10, 1998 (63 FR 17900).

Expiration date of individual notice: May 11, 1998.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Detroit Edison Company, Docket No. 50-341, Fermi 2, Monroe County, Michigan

Date of amendment request: April 3, 1998, and related application dated November 22, 1995, as supplemented

February 19, April 19, May 3, June 12, and December 4, 1996, and January 30 and August 7, 1997.

Description of amendment request: The proposed amendment would revise Technical Specification 3.8.1.1 to change the emergency diesel generator allowed outage time from 3 to 7 days. This would be a one-time amendment, effective from the date of issuance until September 30, 1998.

Date of publication of individual notice in Federal Register: April 13, 1998 (63 FR 18048).

Expiration date of individual notice: May 13, 1998.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 9, 1998, TXX-98107.

Description of amendment request: The proposed amendment would allow on a one time basis, the verification of the proper operation of the Unit 2 load shed seal-in contacts and the diesel generator trip bypass contacts at power and crediting performance of Surveillance Requirements (SR) 4.8.1.1.2f.4(a) and 4.8.1.1.2f.6(a), at power as opposed to "during shutdown" as currently required by those SR. The proposed amendment would also allow on a one time basis the verification of the proper operation of the Unit 2 lockout relays and contacts to be deferred until the startup from 2RFO4 or earlier outage to at least MODE 3.

Date of individual notice in the Federal Register: April 20, 1998.

Expiration date of individual notice: May 5, 1998.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate

findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendment.

-Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: March 17, 1997, as supplemented April 13, 1998. The April 13, 1998, submittal contained clarifying information only, and did not change the proposed no significant hazards consideration.

Brief description of amendment: The amendment revises Technical Specifications 4.1.2.2.c, 4.5.2.e, 4.6.2.1.c, 4.6.2.2.c, 4.6.3.2, 4.7.1.2.1.b, 4.7.3.b, and 4.7.4.b to delete specific restrictions in the text of the surveillances that the tests must be done while the unit is shut down.

Date of issuance: April 14, 1998.

Effective date: April 14, 1998

Amendment No.: 77.

Facility Operating License No. NPF-63: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 23, 1997 (62 FR 19826)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: December 12, 1997.

Brief description of amendments: The amendments modify the bypass logic for Main Steam Line Isolation Valve Isolation Actuation Instrumentation on Condenser Low Vacuum as stated in Technical Specification Tables 3.3.2-1 and 4.3.2-1.

Date of issuance: April 14, 1998.

Effective date: Immediately, to be implemented prior to startup from L1F35 for Unit 1 and from L2R07 for Unit 2.

Amendment Nos.: 124 and 109. **Facility Operating License Nos. NPF-11 and NPF-18:** The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 11, 1998 (63 FR 6982).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Duke Energy Corporation, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 18, 1997, as supplemented by letter dated January 26, 1998.

Brief description of amendments: The amendments revise the operating license of Unit 1 and Unit 2 to (1) delete license conditions that have been fulfilled; (2) delete exemptions that have expired; (3) update information to reflect current plant status and regulatory requirements; and (4) make other corrections and editorial changes.

Date of issuance: April 23, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1-164; Unit 2-156.

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Operating Licenses.

Date of initial notice in Federal Register: February 11, 1998 (63 FR 6983).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina

Duke Energy Corporation, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 3, 1998.

Brief description of amendments: The amendments revise the Technical Specifications to change the qualification requirements for the members of the Safety Review Group.

Date of issuance: April 27, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1-165; Unit 2-157.

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 25, 1998 (63 FR 14486).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: August 28, 1997. Supplement January 22, February 19, March 19, and April 6, 13, and 17, 1998.

Brief description of amendments: The amendments incorporate new testing and operability requirements related to the installation of new systems and upgrades associated with the Emergency Condenser Circulating Water System. Review of the system for this amendment also includes a review of the new design features incorporated into the upgrade and its acceptability as a safety grade system.

Date of Issuance: April 24, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1-229; Unit 2-230; Unit 3-226

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications and Appendix C of the Operating Licenses.

Date of initial notice in Federal Register: September 24, 1997 (62 FR 50002).

The January 22, 1998, February 19, March 19, and April 6, 13, and 17, 1998, letters provided clarifying information that did not change the scope of the August 28, 1997, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: March 16, 1998.

Brief description of amendments: These amendments add a new Limiting Condition for Operation (LCO) 3.0.6 to TS Section 3/4.0, "APPLICABILITY." The new LCO 3.0.6 provides specific guidance for returning equipment to service under administrative control to perform testing required to demonstrate OPERABILITY.

Date of issuance: April 15, 1998.

Effective date: Both units, effective immediately, to be implemented within 30 days.

Amendment Nos.: 213 and 90.

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (63 FR 14142, March 24, 1998). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by April 23, 1998, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 15, 1998.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 26, 1997, as supplemented by letter dated September 11, 1997.

Brief description of amendment: The amendment changes the Appendix A TSs by modifying Tables 3.7-1 and 3.7-2. The revision to Table 3.7-1 changes the Main Steam Safety Valves (MSSVs) orifice size from 26 square inches to 28.27 square inches and relocates the orifice size from the TS Table to the TS Bases. The change to correct the orifice size is an editorial change to make the TS consistent with plant design. The changes to Table 3.7-2 delete the provisions that allows continued plant operation with three MSSVs inoperable. The proposed amendment will also revise TS Bases 3/4.7.1.1 to remove the equation used for determining the reduced maximum allowable linear power level-high reactor trip settings of TS Table 3.7-2.

Date of issuance: April 20, 1998.

Effective date: April 20, 1998, to be implemented within 30 days.

Amendment No.: 142.

Facility Operating License No. NPF-38: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 16, 1997 (62 FR 38135).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1998. No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

GPU Nuclear, Inc. and Saxton Nuclear Experimental Corporation (SNEC), Docket No. 50-146, Saxton Nuclear Experimental Facility (SNEF)

Date of application for amendment: November 25, 1996, as supplemented on May 30, June 4 and 16, August 21 and September 16, 1997, and February 3 and 9, 1998, and March 31, 1998. During the amendment request review, the staff also referred to the SNEF Decommissioning Environmental Report dated April 17, 1996, licensee responses to NRC questions about the environmental report dated July 18, 1996, and March 3 and 31, 1998, the SNEC Facility Updated Safety Analysis Report, Revision 0, submitted on October 25, 1996, Revision 1, submitted

on August 21, 1997, and Revision 2, submitted on February 3, 1998, and the SNEC Facility Decommissioning Quality Assurance Plan submitted by letter dated November 8, 1996, as supplemented on May 30, 1997, and February 3 and 9, 1998.

Brief description of amendment: The amendment allows decommissioning of the SNEF. The changes to the license and Technical Specifications (TSs) (1) accommodate decommissioning activities at the SNEF, (2) establish specific TS controls over decommissioning activities, (3) establish limiting conditions for performing decommissioning activities, (4) extend exclusion area controls to include the SNEF Decommissioning Support Facility, (5) establish requirements for a Radiological Environmental Monitoring Program, and an Offsite Dose Calculation Manual, and (6) establish requirements for technical and independent safety reviews. In addition, the amendment authorizes other administrative and editorial changes to the TSs associated with the changes described above.

Date of issuance: April 20, 1998.

Effective date: April 20, 1998.

Amendment No.: 15.

Amended Facility License No. DPR-4: Amendment changed the Amended Facility License and TSs.

Date of initial notice in Federal Register: March 12, 1997 (62 FR 11494).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1998. No significant hazards consideration comments received: No.

Local Public Document Room Location: Saxton Community Library, Front Street, Saxton, Pennsylvania 16678

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1 (TMI-1), Dauphin County, Pennsylvania

Date of application for amendment: December 16, 1996, as supplemented September 11, 1997 and March 25, 1998.

Brief description of amendment: The amendment (1) reflects the change in the legal name of the operator of TMI-1 from GPU Nuclear Corporation to GPU Nuclear, Inc., and (2) reflects in the TMI-1 Facility Operating License the registered trade name of GPU Energy now used by the owners of the facility. **Date of Issuance:** April 24, 1998. **Effective Date:** As of the date of issuance to be implemented within 30 days.

Amendment No.: 207.

Facility Operating License No. NPF-50: Amendment revised the Facility

Operating License and the Technical Specifications.

Date of initial notice in Federal Register: January 29, 1997 (62 FR 4350).

The September 11, 1997 and March 25, 1998, submittals provided clarifying information and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Oswego County, New York

Date of application for amendment: October 7, 1997.

Brief description of amendment: The amendment revised the Technical Specifications surveillance requirements to change setpoints for the refueling platform main hoist overload cutoff, loaded interlock, and redundant loaded interlock due to planned modifications to the refueling platform mast.

Date of issuance: April 16, 1998.

Effective date: As of the date of issuance to be implemented upon completion and acceptance of design modifications to the refueling platform mast.

Amendment No.: 81.

Facility Operating License No. NMF-69: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: December 31, 1997 (62 FR 68309).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: March 13, 1998, as supplemented March 25, 1998.

Brief description of amendment: The amendment modifies the Technical Specification requirements associated with the Minimum Critical Power Ratio (MCPR) safety limits for Cycle 19 based on the cycle-specific analysis of the current mixed core of GE [General Electric] 11, GE10, four GE12 lead use assemblies, and eight SPC [Siemens Power Corporation] ATRIUM-9B assemblies.

Date of issuance: April 20, 1998.

Effective date: April 20, 1998.

Amendment No.: 100.

Facility Operating License No. DPR-22: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 20, 1998 (63 FR 13704).

The March 25, 1998, letter provided clarifying information in response to the staff's request for additional information during a teleconference. This information was within the scope of the original application and did not change the staff's initial proposed no significant hazards considerations determination. Therefore, renoticing was not warranted.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: October 14, 1997, as supplemented on March 26, 1998.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.4.6.3, "Primary Coolant System Pressure Isolation Valves Limiting Condition for Operation," to add additional pressure isolation valves, establish the operability and testing requirements for the pressure isolation valves, and make this section more consistent with Salem Unit 2 TSs.

Date of issuance: April 20, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 210.

Facility Operating License No. DPR-70: This amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: November 19, 1997 (62 FR 61845).

The March 26, 1998, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: January 26, 1998.

Brief description of amendments: The proposed amendments would (1) modify the requirement to hold a Susquehanna Steam Electric Station (SSES) Senior Reactor Operator (SRO) license in Section 6.3.1 for the Manager-Nuclear Operations (MNO), (2) replace the position of MNO with Operations Supervisor—Nuclear in the Section 6.2.2g requirement to hold an SSES SRO license and (3) renumber existing TS Section 6.3.1 to include 6.3.1.1, 6.3.1.2, and 6.3.1.3.

Date of issuance: April 10, 1998.

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos.: 175 and 147.

Facility Operating License Nos. NPF-14 and NPF-22: The amendments revised the Technical Specifications.

Date of initial notice in Federal

Register: February 24, 1998 (63 FR 9270).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: January 11, 1996, as supplemented March 16, 1998.

Brief description of amendment: This amendment changes the TSs to preclude the need to enter into Limiting Condition for Operation 3.0.3 to allow performance of certain emergency diesel generator testing.

Date of issuance: April 10, 1998.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 148.

Facility Operating License No. NPF-22: This amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: March 13, 1996 (61 FR 10397).

The February 15, 1996, letter corrected the no significant hazards (NSH) determination. The NSH determination was used in the March 13, 1996 (61 FR 10397) notice. The March 24, 1998, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: January 12, 1998.

Brief description of amendment: This amendment revises TS Table 4.4.6.1.3-1 to change the withdrawal schedule for the first capsule to be withdrawn from 10 Effective Full Power Years (EFPY) to 15 EFPY. In addition, TS Surveillance Requirement 4.4.6.1.4 will be revised to remove the references to flux wire removal and analysis that was originally required following the first cycle of operation and replaced with a new surveillance requirement. The new requirement refers to the flux wires that are located within the surveillance capsules, which will be removed and analyzed in accordance with the surveillance capsule removal schedule located in Table 4.4.6.1.3-1.

Date of issuance: April 15, 1998.

Effective date: As of the date of issuance.

Amendment No.: 126.

Facility Operating License No. NPF-39: This amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: February 11, 1998 (63 FR 6988).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: February 27, 1998.

Brief description of amendment: The amendment changes the Technical Specifications by revising the pressure-temperature curves to extend heatup and cooldown limits from 11 to 13.3 effective full-power years, provides the corresponding overpressure protection system limits, and makes some minor changes to ensure specification clarity and conservatism.

Date of issuance: April 10, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 179.

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: March 9, 1998 (63 FR 11456).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: February 26, 1998, as supplemented by letter dated March 20, 1998.

Brief description of amendment: This amendment revises Technical Specification (TS) Section 3/4.4.5, "Reactor Coolant System—Steam Generators," TS Section 3/4.4.6.2, "Reactor Coolant System—Operational Leakage," and the associated bases to allow use of the "repair roll" steam generator tube repair process.

Date of issuance: April 14, 1998.

Effective date: April 14, 1998.

Amendment No.: 220.

Facility Operating License No. NPF-3: Amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: March 9, 1998 (63 FR 11460).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1998.

No significant hazards consideration comments received: No. The

supplemental information submitted by the licensees did not affect the proposed no significant hazards consideration determination.

Local Public Document Room location:

University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: June 24, 1997.

Brief description of amendment: This amendment revises TS Section 3/4.3.2.1, "Safety Features Actuation System Instrumentation," TS Section 3/4.6.1.7, "Containment Ventilation System," TS Section 3/4.6.3.1, "Containment Isolation Valves," and TS Section 3/4.9.4, "Refueling Operations—Containment Penetrations," and the associated TS Bases. Valve position requirements have been added, and certain containment radiation monitor requirements, valve isolation verification requirements, and containment radiation monitor optional uses have been deleted. Administrative changes have also been made.

Date of issuance: April 15, 1998.

Effective date: April 15, 1998.

Amendment No.: 221.

Facility Operating License No. NPF-3: Amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: July 30, 1997 (62 FR 40858).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment requests:

February 25, 1998, (TXX-98050) as supplemented by letter dated March 9, 1998, (TXX-98066) for License Amendment Request (LAR) 98-002, March 12, 1998, (TXX-98076) for LAR 98-003, and March 18, 1998, (TXX-98079) for LAR 98-004.

Brief description of amendments: This amendment is the result of three Notice of Enforcement Discretions (NOEDs) dated February 24, March 13, and 17,

1998. These NOEDs although distinct actions changed the same page of the CPSES TS therefore the single amendment is being issued to cover the three parts of this amendment.

The first part of the amendment would be a temporary change to the TSs to remove the requirement to demonstrate the load shedding feature of MCC XEB4-3 as part of Surveillance Requirements (SRs) 4.8.1.1.2f.4a) and 4.8.1.1.2f.6a) until the plant startup subsequent to the next refueling outage for Unit or until an outage of 24 hour in duration.

The second part of the amendment would provide a temporary Technical Specification change for SRs

4.8.1.1.2f.4b) and 4.8.1.1.2f.6b) to allow the verification of the auto connected shut-down loads through the load sequencer to be performed at power for fuel cycle 6 on Unit 1 and fuel cycle 4 on Unit 2.

The third part of the amendment would allow on a one time basis, crediting performance of Surveillance Requirements (SR) 4.8.1.1.2f.4a) and 4.8.1.1.2f.6a), during POWER OPERATIONS as opposed to "during shutdown." Note that the bus tie breaker for MCC XEB4-3 for Unit 2 was not tested during the last surveillance test and was the subject of part one of this amendment.

Date of issuance: April 20, 1998.

Effective date: April 20, 1998.

Amendment Nos.: Unit 1—

Amendment No. 58; Unit 2—

Amendment No. 44.

Facility Operating License Nos. NPF-87 and NPF-89: The amendments revised the Technical Specifications.

Date of initial notice in Federal

Register: March 9, 1998 (63 FR 11458), March 27, 1998 (63 FR 14974) and April 2, 1998 (63 FR 16287).

The Commission's related evaluation of the amendment, finding of exigent circumstances and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location:

University of Texas at Arlington Library, Government Publications/Maps, 702 College, PO Box 19497, Arlington, TX 76019

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: October 31, 1997, as supplemented by letter dated February 27, 1998.

Brief description of amendment: The amendment revises the Callaway Plant,

Unit 1 Technical Specifications to change setpoint and allowable stress values of certain reactor trip system (RTS) and engineered safety features actuation system (ESFAS) functional units.

Date of issuance: April 13, 1998.

Effective date: April 13, 1998, to be implemented within 30 days from the date of issuance.

Amendment No.: 125.

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 14, 1998 (63 FR 2283).

The February 27, 1998, supplemental letter provided additional clarifying information that did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201-5149

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: December 11, 1997, as supplemented on March 3, 1998.

Brief description of amendment: The amendment revises the values for the safety limit minimum critical power ratio for Cycle 20 operation.

Date of Issuance: April 10, 1998.

Effective date: April 10, 1998, to be implemented within 30 days.

Amendment No.: 159.

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 11, 1998, (63 FR 7000).

The March 3, 1998 supplement did not change the original proposed no significant hazards consideration.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: September 11, 1996, as supplemented by letter dated December 8, 1997.

Brief description of amendment: The amendment involves a change to the safety and relief valve setpoint tolerance and power operation with an inoperable safety relief valve.

Date of Issuance: April 15, 1998.

Effective date: April 15, 1998, to be implemented within 30 days.

Amendment No.: 160.

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 9, 1997 (62 FR 17241).

The information provided in the December 8, 1997, submittal did not change the original proposed no significant hazards determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 26, 1996.

Brief description of amendments: The proposed action would revise the Technical Specifications (TS) to eliminate the records retention requirements from Section 6.10 of the TS since these requirements have already been relocated to the Operational Quality Assurance program, Chapter 17, in revision 32 of the Updated Final Safety Analysis Report.

Date of issuance: April 13, 1998.

Effective date: April 13, 1998.

Amendment Nos.: 208 and 189.

Facility Operating License Nos. NPF-4 and NPF-7: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 2, 1997 (62 FR 132).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: February 3, 1998.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Surveillance Requirement Tables 3.3-1 and 4.3-1 for both units, modifying the testing requirements for the reactor trip bypass breaker.

Date of issuance: April 14, 1998.

Effective date: April 14, 1998.

Amendment Nos.: 209 and 190.

Facility Operating License Nos. NPF-4 and NPF-7: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 11, 1998 (63 FR 11925).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 18, 1997.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Surveillance Requirements 4.7.1.7.2.a.1 and 4.7.1.7.2.a.2 for both units, modifying the testing frequency of the Turbine throttle and Governor valves.

Date of issuance: April 16, 1998.

Effective date: April 16, 1998.

Amendment Nos.: 210 and 191.

Facility Operating License Nos. NPF-4 and NPF-7: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 17, 1997 (62 FR 66146)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: February 3, 1998.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Surveillance Requirement 4.4.10.1.1, modifying the inspection requirements for the Reactor Coolant Pump (RCP) flywheels for both units and eliminating the examination requirements for the flow straighteners in each steam generator to the RCP elbow on Unit 1.

Date of issuance: April 22, 1998.

Effective date: April 22, 1998.

Amendment Nos.: 211 and 192.

Facility Operating License Nos. NPF-4 and NPF-7: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 11, 1998 (63 FR 11924)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498

Dated at Rockville, Md., this 29th day of April 1998.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation. [FR Doc. 98-11911 Filed 5-5-98; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Oryx Technology Corp., Common Stock, \$0.001 Par Value; Common Stock Warrants) File No. 1-12680

April 30, 1998.

Oryx Technology Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The reasons cited in the application for withdrawing the Securities from

listing and registration include the following:

The Securities of the Company have been listed for trading on the Exchange and, pursuant to a Registration Statement of Form 8-A, effective on April 5, 1994, the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). Trading in the Company's Securities on the NASDAQ commenced at the opening of business on April 6, 1994, and concurrently therewith on the PCX.

The Company has complied with Exchange Rule 3.4(b) by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Securities from listing and registration on the PCX and by setting forth in detail to the Exchange the reasons for and facts supporting the proposed delisting. In deciding to withdraw its Securities from listing and registration of the PCX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Securities on the NASDAQ and the PCX. The Company does not see any particular advantage in the dual trading of its Securities and believes that dual listing will fragment the market for its Securities.

By letter, the Exchange informed the Company that it has no objection to the withdrawal of the Company's Securities from listing and registration on the PCX.

By reason of Section 12 of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before May 21, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-11988 Filed 5-5-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

Solucorp Industries, Ltd.; Order of Suspension of Trading

April 30, 1998

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Solucorp Industries Ltd. ("Solucorp") because of questions regarding the accuracy of assertions by Solucorp in documents sent to and statements made to market makers of the stock of Solucorp, other broker dealers, and to investors concerning, among other things: (1) the negotiation, existence and terms of contracts entered into by Solucorp during the period July 1, 1995 through the present; (2) revenues purportedly accrued under a license agreement with Smart International Ltd. and reported in financial statements for the quarter ended September 30, 1997 and the six-month period ended December 31, 1997, which were included in a registration statement and transition report filed with the Commission in December 1997 and April 1998, respectively; and (3) revenues projected in press releases on August 27, 1997, October 24, 1997 and April 16, 1998.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, May 1, 1998 through 11:59 p.m. EST, on May 14, 1998.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-12060 Filed 5-1-98; 3:53 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39928; File No. SR-AMEX-98-01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to Flexible Exchange Index Options

April 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 14, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On March 2, 1998, the Exchange filed Amendment No. 1 to the proposal with the Commission.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand the listing and trading of Flexible Exchange options ("FLEX Options") to all of the Exchange's Broad Stock Index Groups and Stock Index Industry Groups. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 20, 1993, the Commission, pursuant to Section 19(b)(2) of the Act and Rule 19b-4 thereunder, approved the Exchange's FLEX™ Options⁴ framework permitting the Exchange to list and trade FLEX Options based on the Major Market ("XMI"), Institutional ("XII") and Standard & Poor's Corporation ("S&P") MidCap ("MID") Indices.⁵ On December 1, 1993, the Commission approved the listing and trading of FLEX Options on the Exchange's Japan Index ("JPN").⁶

The Exchange now proposes to expand approval for FLEX Options trading to all of its indices, including all Broad Stock Index Groups (other than the ones currently approved as noted above)⁷ and all Stock Index Industry Groups.⁸

Broad Stock Index Group FLEX Options. As noted above, the Exchange currently provides for the trading of FLEX Options on XMI, XII, MID and JPN indices. The Exchange now proposes to expand the ability to trade FLEX Options to include all of its Broad Stock Index Group indices, including the EUROTOP 100, Hong Kong Option, Morgan Stanley Consumer and Morgan Stanley Cyclical Indices. All of the Exchange's rules applicable to FLEX Index Options will apply to the

additional Broad Stock Index Group FLEX Options. In addition, the Exchange proposes to apply its current position and exercise limits of 200,000 contracts on the same side of the market for FLEX Options on broad indices to FLEX Options on the additional Broad Stock Index Group indices. The Exchange is proposing this expansion in response to requests from market participants to make available FLEX Options on various additional broad indices. In addition, the Exchange believes that expansion of trading in FLEX Options to all of its Broad Stock Index Group indices will provide new and important trading opportunities which are currently unavailable to market participants. Further, it will increase the Exchange's competitiveness with the over-the-counter market place as well as with other exchanges which have continued to expand FLEX Options trading on indices.⁹ Rules currently in place for FLEX Options on indices shall apply to the FLEX Options on these additional broad indices.

Stock Index Industry Group FLEX Options. The Exchange also proposes to provide for the trading of FLEX Options on all of its Stock Index Industry Group indices ("Industry Indices"). As with its Broad Stock Index Group indices, the Exchange has received requests to provide for the trading of FLEX Options on its Industry Indices and believes this expansion will provide new and important trading opportunities currently unavailable to market participants while increasing the Exchange's competitiveness with the over-the-counter market place and other exchanges which have continued to expand FLEX Options trading on their indices.

In addition to applying its existing FLEX Index Options rules to the trading of Industry Index FLEX Options, the Exchange proposes to establish position limits for these FLEX Options at four times the position limits for standard options on the respective underlying Industry Index (36,000, 48,000 and 60,000 contracts on the same side of the market). The Exchange believes such position limits are appropriate given the institutional nature and use of FLEX Index Options. Further, the proposed

⁹ On January 14, 1998, the Commission approved the Philadelphia Stock Exchange's proposal to establish Rule 1079 providing for the trading of FLEX Options on equities and narrow and broad indices. Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998). On September 3, 1997, the Commission approved the Chicago Board Options Exchange's proposal to list FLEX Options on the Dow Jones Industrial Average. Securities Exchange Act Release No. 39011 (September 3, 1997), 62 FR 47841 (September 11, 1997).

⁴ The term "FLEX" is a trademark of the Chicago Board Options Exchange, Inc.

⁵ Securities Exchange Act Release No. 32781 (August 20, 1993), 58 FR 45360 (August 27, 1993).

⁶ Securities Exchange Act Release No. 33262 (December 1, 1993), 58 FR 64622 (December 8, 1993).

⁷ Amex Broad Stock Index Group Options currently consist of the following: EUROTOP 100 Index, Hong Kong Options Index, Institutional Index, Japan Index, Major Market Index, S&P MidCap 400 Index, Morgan Stanley Consumer Index and Morgan Stanley Cyclical Index.

⁸ Amex Stock Index Industry Group Options currently consist of the following: Airline Index, Gold BUGS Index, Biotechnology Index, Computer Technology Index, de Jager Year 2000 Index, Disk Drive Index, Interactive Week Internet Index, Mexico Index, M.S. Commodity Related Index, M.S. Healthcare Payor Index, M.S. Healthcare Product Index, M.S. Healthcare Provider Index, M.S. High Technology 35 Index, Natural Gas Index, The NatWest Energy Index, Networking Index, North American Telecommunications Index, Oil Index, Pharmaceutical Index, Securities Broker/Dealer Index and Tobacco Index.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter fromcott VanHatten, Legal Counsel, Derivative Securities, Amex to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC dated February 27, 1998 ("Amendment No. 1"). In Amendment No. 1, the Exchange adds language to Rule 903G indicating that FLEX options may only be traded on an equity or index that was previously approved for non-FLEX trading. In addition, the Exchange represents that it will request Commission approval before trading FLEX options on indices not yet approved for FLEX options trading.

position limits are the same as those recently adopted by the Philadelphia Stock Exchange, Inc.¹⁰

Finally, the Exchange proposes to adopt \$5 million Underlying Equivalent Value as the minimum value size for opening transactions and Request for Quotes in Stock Index Industry Group Flex Index Options for any series with no open interest, \$1 million Underlying Equivalent Value for any series with open interest and \$1 million Underlying Equivalent Value, or the remaining Underlying Equivalent Value for a closing transaction, whichever is less. Similar to the proposed position limits for Stock Index Industry Group Flex Options, the Exchange believes such minimum value sizes for opening and closing transactions and Requests for Quotes are appropriate given the institutional nature and use of FLEX Index Options and they are the same minimum value sizes proposed by the Philadelphia Stock Exchange, Inc. in its proposal to trade FLEX Options on narrow based indices.¹¹

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)¹² that an Exchange have rules that are designed to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements

¹⁰ Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998).

¹¹ Id.

¹² 15 U.S.C. 78f(b)(5).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-AMEX-98-01 and should be submitted by May 27, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(5)¹³ and 11A¹⁴ of the Act. Specifically, consistent with Section 11A of the Act, the proposal should encourage fair competition among brokers and dealers and the exchange markets, by allowing the Exchange to compete more effectively with the growing OTC market in customized index options.

The Commission believes that the Exchange's proposal reasonably addresses its desire to better meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs. Additionally, the Commission believes that the Exchange's proposal will help promote the maintenance of a fair and orderly market, consistent with Sections 6(b)(5) and 11A of the Act, because the purpose of the proposal is to facilitate the extension of the benefits of a listed exchange market to a wider variety of index options that are more flexible than current listed options and that currently trade OTC. The benefits of the Exchange's options market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.¹⁵

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78k-1.

¹⁵ In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

The Commission believes that the Exchange's proposal to designate all currently approved Amex Industry and Broad Stock Group Indices as eligible for FLEX index options trading is consistent with the Act. The Commission notes, however, that when submitting a Section 19(b) proposal to list and trade a new non-FLEX index options product, the Exchange must, in the same filing, specifically propose to list and trade the FLEX index options. If the Exchange is not prepared at that time to seek approval for the listing of FLEX options overlying the proposed index, then the Exchange should submit a rule filing pursuant to Section 19(b) of the Act proposing to list and trade FLEX options on that index at an appropriate time in the future.

In addition, the Commission believes that it is reasonable for the Exchange to apply its existing position limit of 200,000 contracts on the same side of the market to the additional Broad Stock Index Group indices approved for FLEX Options trading pursuant to this proposal. The Commission also believes that it is reasonable for the Exchange to establish position limits for Amex Industry Index FLEX Options at four times the position limits for standard options on the respective underlying Industry Index (36,000, 48,000 and 60,000 contracts on the same side of the market). The Commission notes that these position limits are identical to those recently adopted by the Philadelphia Stock Exchange.¹⁶

Finally, the Commission believes that it is reasonable for the Amex to require a \$5 million underlying equivalent value for an opening transaction in Amex Industry Index FLEX options.¹⁷ The Commission believes that this large underlying equivalent value requirement should help to ensure that transactions in FLEX index options remain of substantial size and, therefore, that the product is geared to an institutional, rather than a retail market.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, as noted above, the Exchange's proposal is substantially similar to a recently approved proposal by the Philadelphia

¹⁶ Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998).

¹⁷ The Commission notes that this underlying equivalent value requirement is identical to that recently approved by the Commission for the Philadelphia Stock Exchange. See Phlx Rule 1079(a)(8)(A)(i).

Stock Exchange.¹⁸ Therefore, the Commission believes that Amendment No. 1 does not raise any new regulatory issues.

Accordingly, the Commission believes, consistent with Section 6(b)(5) and Section 19(b)(2) of the Act, that good cause exists to grant accelerated approval to the proposed rule change.¹⁹ *It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-AMEX-98-01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-11952 Filed 5-5-98; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (98-03-C-00-CPR) to impose and use the revenue from a passenger facility charge (PFC) at the Natrona County International Airport, submitted by the County of Natrona, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Natrona County International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 5, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager, Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249-6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dan E. Mann, Airport Manager, at the following address: Natrona County International

Airport, 8500 Airport Parkway, Casper, Wyoming 82604.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Natrona County International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342-1258; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249-6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (98-03-C-00-CPR) to impose and use the revenue from a PFC at Natrona County International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 29, 1998, the FAA determined that the application to impose and use a PFC submitted by the County of Natrona, Wyoming, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 29, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: October 1, 1998.

Proposed charge expiration date: August 1, 2003.

Total requested for use approval: \$774,857.00.

Brief description of proposed projects: Rehabilitate water tank for airport rescue fire fighting (ARFF) use, terminal modifications, rehabilitate Runway 8/26, rehabilitate ARFF building ventilation.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Natrona County International Airport.

Issued in Renton, Washington on April 29, 1998.

David A. Field,
Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98-12042 Filed 5-5-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-6 (Sub-No. 379X)]

The Burlington Northern and Santa Fe Railway Company; Abandonment Exemption; in Garfield and Logan Counties, OK

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 42.80 miles of its line of railroad between milepost 73.60 near Fairmont and milepost 116.40 near Guthrie including the stations of Douglas at milepost 82.4, Marshall at milepost 88.4, Lovell at milepost 95.1, and Crescent at milepost 102.8, in Garfield and Logan Counties, OK. The line traverses United States Postal Service Zip Codes 73736, 73733, 73056, 73028 and 73044.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 5, 1998, unless stayed

pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 18, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 26, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. A copy of any petition filed with the Board should be sent to applicant's representative: Sarah Whitley Bailiff, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, Fort Worth, TX 76131.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 11, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 6, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: April 29, 1998.

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 98-12048 Filed 5-5-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 193X)]

Norfolk and Western Railway Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Waynesboro, VA

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 0.14-mile line of its railroad between Station 60+00 and Station 67+56 and for discontinuance of trackage rights over a 1.12-mile line of CSX Transportation, Inc. (CSXT), between Station 0+64 and Station 60+00 in Waynesboro, VA. The line traverses United States Postal Service Zip Code 22980.¹

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d)

¹ CSXT received abandonment authority for the 1.12-mile segment in *The Chesapeake and Ohio Railway Company—Exemption—Abandonment and Discontinuance of Trackage Rights in Waynesboro, VA*, AB-18 (Sub-No. 86X) (ICC served Dec. 16, 1986, subject to the condition that CSXT not consummate the abandonment until NW receives authority or an exemption to discontinue its trackage rights over the CSXT line.

must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 6, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR

1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 18, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 26, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NW has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 11, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its 0.14-mile line. Pursuant to the same provisions, CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted to it to fully consummate abandonment of its 1.12-

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

³ Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

¹⁸ See Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998). The Commission notes that this proposal was published for the full notice and comment period during which no comments were received.

¹⁹ 15 U.S.C. 78f(f)(5) and 78s(b)(2).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.3-3(a)(12).

mile line now that NW has received an exemption to permit it to discontinue trackage rights operation over CSXT's line. If consummation has not been effected by NW's filing of a notice of consummation of abandonment as to its line and by CSXT's filing of a notice of consummation of abandonment as to its line by May 6, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.⁴

Decided: April 29, 1998.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 98-11997 Filed 5-5-98; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Economy Fire & Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

⁴NW shall serve a copy of this notice on CSXT within 5 days after its publication, and certify to the Board that it has done so.

ACTION: Notice.

SUMMARY: This is Supplement No. 17 to the Treasury Department Circular 570; 1997 Revision, published July 1, 1997, at 62 FR 35584.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6779.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1997 Revision, on page 35557 to reflect this addition:

Economy Fire & Casualty Company

Business Address: 500 Economy Court, Freeport, IL 61032. Phone: (815) 233-2000. Underwriting Limitation b/: \$19,392,000. Surety Licenses c/: AL, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SD, UT, WV, WI, WY. Incorporated In: Illinois.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with

details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at <http://www.fms.treas.gov/c570/index.html> or through our computerized public bulletin board system (FMS Inside Line) at (202) 874-6887. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, telephone (202) 512-1800. When ordering the Circular from GPO, use the following stock number: 048000-00509-8.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: April 29, 1998.

Charles F. Schwan III,

Director, Funds Management Division,
Financial Management Service.

[FR Doc. 98-11968 Filed 5-5-98; 8:45 am]

BILLING CODE 4810-36-M

federal register

Wednesday
May 6, 1998

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 285

Administrative Wage Garnishment; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510-AA67

Administrative Wage Garnishment

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule implements the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA). Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies administratively to garnish the disposable pay of an individual to collect delinquent nontax debts owed to the United States in accordance with regulations issued by the Secretary of the Treasury.

DATES: This rule is effective June 5, 1998.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, Debt Management Services, at (202) 874-6660 or James Regan, Attorney-Advisor, at (202) 874-6680, Financial Management Service, Department of the Treasury, 401 14th Street SW, Washington, DC 20227. This document is available for downloading from the Financial Management Service web site at the following address: <http://www.fms.treas.gov>.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements the wage garnishment provision in section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (Apr. 26, 1996), codified at 31 U.S.C. 3720D. Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies administratively to garnish up to 15% of the disposable pay of a debtor to satisfy delinquent nontax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees. Section 31001(o) of the DCIA preempts State laws that prohibit wage garnishment or otherwise govern wage garnishment procedures.

As authorized by the DCIA, a Federal agency collecting delinquent nontax debt may garnish administratively a delinquent debtor's wages in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA.

In accordance with the requirements of the DCIA, this final rule establishes the following rules and procedures:

1. Notice

At least 30 days before an agency initiates garnishment proceedings, the agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of the agency to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. Rights of the Debtor

The agency will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule. A hearing must be held prior to the issuance of a withholding order if the debtor's request is timely received. For hearing requests that are not received in the specified time frame, an agency need not delay issuance of the withholding order prior to conducting a hearing. An agency may not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the burden of informing the agency of the circumstances surrounding an involuntary separation from employment.

3. Employer's Responsibilities

The agency will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to the Federal Government. This final rule requires the debtor's employer to certify certain payment information about the debtor. Employers will not be required to vary their normal pay cycles in order to comply with the garnishment order.

The DCIA prohibits employers from taking disciplinary actions against the debtor based on the fact that the debtor's wages are subject to administrative garnishment. In addition, the DCIA

authorizes an agency to sue an employer for amounts not properly withheld from the wages payable to the debtor.

Discussion of Comments

General

In response to its Notice of Proposed Rulemaking (NPRM) concerning Administrative Wage Garnishment (62 FR 62458, Nov. 21, 1997), FMS received comments from Federal agencies, private collection agencies, an umbrella organization for organizations that support the activities of the Federal Family Education Loan Programs, and a private citizen. Many of the commenters have been involved in implementing a similar administrative wage garnishment provision that authorizes the U.S. Department of Education (Education) to garnish 10% of the disposable pay of employed individuals who have defaulted on their student loan obligations. See 20 U.S.C. 1095a; 34 CFR 682.410. FMS drafted the NPRM after consultation with the Departments of Education and Justice about their experience implementing wage garnishment to collect student loans. The comments received in response to the NPRM based on the commenters' experience with Education's program have been helpful in drafting the final rule. It is important to note that Education's wage garnishment program is applicable to the collection of one type of debt subject to a single statutory scheme. The DCIA wage garnishment provision and this rule, on the other hand, are applicable to all Federal agencies collecting all types of debt, the collection of which is subject to a variety of statutory provisions. Therefore, as explained below, while some of the suggestions have been incorporated into the final rule, others do not apply to a government-wide wage garnishment program involving all Federal agencies with various types of debts.

A review of the comments is provided in the following Comment Analysis which includes a discussion of FMS' determination whether to incorporate specific suggestions in the final rule. The Comment Analysis is organized by reference to the paragraphs in the NPRM.

NPRM § 285.11(a) Purpose

No changes were made to NPRM § 285.11(a). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(b) Scope

One commenter suggested that FMS incorrectly interpreted the DCIA in the NPRM by not limiting the applicability

of administrative wage garnishment to the collection of only those debts evidenced by written agreements. The commenter believes that the language contained in 31 U.S.C. 3720D(a) authorizing wage garnishment "if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual" so limits the use of wage garnishment. FMS disagrees with the commenter. There is nothing in the plain language of the statute to indicate that the referenced phrase limits the applicability of wage garnishment to debts evidenced by a written agreement. The term "debt," as defined in 31 U.S.C. 3701(b)(1), as amended by the DCIA, is not limited to debts evidenced by a written agreement between the debtor and the Government.

One commenter suggested that the rule establish a minimum threshold amount for garnishment based on a cost estimate of the garnishment procedure. This is unnecessary since the use of the administrative wage garnishment tool by agencies is voluntary and should be used by agencies in appropriate situations. Agencies may set their own policies regarding minimum thresholds.

NPRM § 285.11(c) Definitions

One commenter suggested that the definition of agency under NPRM § 285.11(c) be expanded to authorize agents or vendors of Federal agencies to garnish debtors' wages in accordance with this rule. Whether or not an agent or vendor can perform a particular function on behalf of a Federal agency is beyond the scope of this rule. While the use of contractors for the collection of debt generally is authorized by law, agencies may not contract out "inherently governmental functions." See Office of Management and Budget (OMB) Circular A-76. This is not to say that contractors cannot assist agencies in conducting administrative wage garnishment. For example, contractors could be hired to mail notices and garnishment orders authorized by the agency, receive documents from the debtor and the employer, and document agency-approved repayment agreements with the debtor.

NPRM § 285.11(d) General Rule

One commenter suggested that FMS clarify a statement in the NPRM preamble concerning NPRM § 285.11(d) involving the use of wage garnishment by Treasury-designated debt collection centers. In addition to agencies that administer the program that gives rise to the debt, agencies that pursue the recovery of the debt for those agencies, such as the Department of the Treasury,

Treasury-designated debt collection centers, and the Department of Justice, are authorized to conduct administrative wage garnishment. See, e.g., the definition of "agency" in NPRM § 285.11(c), unchanged in the final rule.

NPRM § 285.11(e) Notice Requirements

The suggestion by one commenter that the rule specifically prohibit the combination of an agency's notice of intention to garnish a debtor's wages with other notices to the debtor has not been incorporated into this rule. The rule gives agencies the flexibility to combine notices where appropriate. In many circumstances, the debtor can be informed clearly in a single communication of all debt collection remedies available to the Federal agency and the opportunities available to the debtor to be heard concerning the existence or amount of the debt.

One commenter's suggestion that FMS develop a standard administrative wage garnishment notice for government-wide use has not been incorporated in the final rule. Because agency-specific laws applicable to debt collection have to be considered in drafting a notice, a standard government-wide form would not be appropriate.

One commenter suggested that the rule exempt private collection professionals acting on behalf of agencies or vendors of Federal agencies from the liability provisions of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692 *et seq.*, provided that such entities comply with the terms of this rule and use notices and forms developed by Treasury or other agencies. The extent to which the FDCPA may apply to any entity, particularly private collection agencies, is outside the scope of this rule.

Several commenters suggested that the rule should clearly state that the certificate of service may be retained electronically. Other commenters suggested that a certificate of service is unnecessary. The final rule retains the requirement that an agency keep a certificate of service as evidence of mailing. However, NPRM §§ 285.11(e)(3) and 285.11(g)(3) have been amended to indicate more clearly that the certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

NPRM § 285.11(f) Hearing

One Federal agency asked that the rule address whether an agency needs to publish its own regulation before it can engage in administrative wage garnishment under the DCIA. Another commenter questioned how an agency's

existing hearing procedures for debt determination relate to the wage garnishment requirements contained in the DCIA and NPRM. The phrase "consistent with this section" was added to NPRM § 285.11(f)(1) in this final rule to clarify that agency regulations must follow the minimum requirements for wage garnishment hearings as set forth in this rule. Each agency is responsible for prescribing hearing procedures in accordance with the statutory and regulatory requirements of this rule and other requirements applicable to that agency's debt collection hearing procedures. Those agencies with hearings procedures which meet the requirements established under this rule and agency-specific statutory and other requirements need not develop new hearing procedures. Agencies should seek legal advice from their agency counsel to determine whether existing agency procedures meet the requirements established under this rule and whether the agency is required to publish new or amended regulations. Section 285.11(b)(6) has been added to the final rule to further clarify that "(n)othing in this section requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations."

The final rule does not incorporate one commenter's suggestion that the Department of the Treasury or the Department of Justice be required to review agencies' wage garnishment procedures and regulations prior to allowing an agency to initiate a wage garnishment program. Unique statutory requirements apply to every Federal program that gives rise to delinquent debt. Thus, the agency administering the program that gives rise to the debt is in the best position to know what is required. The Departments of Treasury and Justice will continue, however, to provide guidance to agencies concerning debt collection practices and procedures.

One commenter recommended amending NPRM § 285.11(f)(4) by establishing that a debtor has 15 "calendar" days, rather than 15 "business" days, to request a hearing. FMS was concerned that 15 calendar days would not allow sufficient time for a debtor to request a hearing prior to the issuance of a garnishment order given that 15 calendar days could include four to seven weekend days or holidays. For this reason, NPRM § 285.11(f)(4) has not been changed.

Several comments addressed the hearing procedures proposed in the NPRM. The final rule incorporates the comment from two commenters

suggesting that the requirement in NPRM § 285.11(f)(8)(ii) that a debtor prove by "clear and convincing evidence" that no debt exists or that the amount of the debt is incorrect is too burdensome. In the final rule at § 285.11(f)(8)(ii), FMS replaced the "clear and convincing" standard with the less burdensome "preponderance of the evidence" standard.

One commenter suggested that proving the terms of the repayment schedule are "unreasonable," as required at NPRM § 285.11(f)(8)(ii), is too vague and that the debtor should be required to show that the terms of the repayment schedule would cause a "financial hardship" to the debtor. The final rule incorporates this suggestion.

In response to a commenter's suggestion, NPRM § 285.11(f)(8)(ii) has been amended to clarify that the debtor may present evidence that collection of the debt may not be pursued due to operation of law, e.g., enforcement of the order is subject to the automatic stay imposed at the time of a bankruptcy filing pursuant to 11 U.S.C. 362.

Two commenters suggested that this rule restrict hearing officials to those individuals not under the supervision or control of the head of the agency. The commenters suggested that the rule, without such a change, could result in inequitable wage garnishment hearing decisions since an agency, and its qualified hearing officer, have a vested interest in the outcome. FMS disagrees for three reasons. First, Congress did not intend to require that hearing officials be independent. Unlike other statutes, see, e.g., 5 U.S.C. 5514(a)(2) (concerning Federal salary offset), the DCIA does not require an independent hearing official. Second, the rule explicitly sets forth minimum hearing procedures that ensure the debtor has a meaningful opportunity to be heard and minimize the risk of erroneous deprivation of the debtor's property interest in his or her wages. Finally, any final hearing decision by the agency on wage garnishment is subject to judicial review under the Administrative Procedure Act. See, e.g., 5 U.S.C. 706 (concerning judicial review of an agency's actions).

NPRM § 285.11(g) Wage Garnishment Order

One commenter noted that the provision under NPRM § 285.11(g) requiring agencies to submit a wage garnishment order to a debtor's employer within 30 days of a hearing decision (or within 30 days after the debtor fails to make a timely request for a hearing) should be reconciled with the 20 day period provided under Education's wage garnishment

regulation at 34 CFR 682.410(b)(10)(H). Such a reconciliation with Education's rule is not warranted or necessary. The time period in this rule accommodates a broad range of agencies' requirements and is consistent with the goal of issuing a wage garnishment order promptly after notice and an opportunity to be heard have been provided to the debtor.

The final rule does not incorporate one commenter's suggestion that NPRM § 285.11(g)(2) be amended to delete the requirement that the wage garnishment order be signed by the head of the agency or his/her designee. The commenter suggested that issuance of the wage garnishment order on agency letterhead including the agency's seal is sufficient to demonstrate official issuance. This rule requires a signature to authenticate a wage withholding order. Failure to include a signature on a wage withholding order could result in employer uncertainty as to the validity of the order and could result in delay, and possible loss, of garnishment payments to which the Government is entitled.

As noted in the NPRM and as suggested by a commenter, FMS is developing a wage garnishment order form. It is anticipated that the use of a standard wage garnishment order form by agencies will make it easier for private sector employers to recognize and comply with agency wage garnishment order requirements. This form will be available from FMS at the address listed above and will be available for downloading from the FMS web site at the following address: www.fms.treas.gov.

One commenter suggested that rather than require the agency to keep a certificate of service indicating the date of the mailing of a garnishment order, the rule should require the debtor's employer to verify receipt. The commenter's rationale is that the DCIA (31 U.S.C. 3720D(f)(2)(A)) and NPRM § 285.11(o) authorize the agency to sue the employer for noncompliance with the wage garnishment order. The final rule does not incorporate this comment because the Government need only show that the order was mailed, not whether it actually was received. *Nelson v. Diversified Collection Services*, 961 F.Supp. 863, 868-69 (D. Md. 1997). By requiring an agency to retain a copy of the certificate of service, the agency can produce evidence that the order was mailed without having to place an additional burden on the employer.

One commenter suggested that the requirement to comply with the wage garnishment order should be waived under circumstances when a small

employer (with less than five employees) would be subject to a major hardship (financial or otherwise) as a result of complying with the order. Such a change to the rule is unnecessary since the use of the wage garnishment collection tool by agencies is not mandated under the DCIA. Agencies can set their own policies on when it is appropriate to utilize the administrative wage garnishment process.

NPRM § 285.11(h) Certification by Employer

The final rule did not incorporate the recommendation of two commenters to delete the requirement under NPRM § 285.11(h) requiring the debtor's employer to complete and return a certification form to the agency. The commenters suggested this provision is unduly burdensome and that an employer's failure to complete and return the form could unnecessarily delay the garnishment process. The certification form serves multiple purposes. One, the form provides the agency with information necessary to monitor the employer's compliance with the wage garnishment order in accordance with the requirements of the DCIA and applicable laws. The form also will provide information so the agency can calculate anticipated collection amounts to determine whether to pursue other collection tools. Finally, the form will assist the employer in calculating the amount to be garnished from the debtor's disposable pay. It is noted that the employer's failure to complete the certification form as required does not affect the employer's responsibility to withhold the appropriate garnishment amount within a "reasonable time" in accordance with this rule. See NPRM § 285.11(i)(7), renumbered as § 285.11(i)(8) in the final rule.

NPRM § 285.11(i) Amounts Withheld

Two commenters recommended clarifying the impact of the Consumer Credit Protection Act's (CCPA) minimum disposable pay requirement on the wage garnishment provisions of the DCIA and this rule. See CCPA, § 303(a)(2), codified at 15 U.S.C. 1673(a)(2) (maximum allowable garnishment). NPRM § 285.11(i) has been amended to clarify that the amount of garnishment is limited by the CCPA. Under section 285.11(i) of the final rule, the amount of garnishment is the lesser of the amount indicated on the garnishment order up to 15% of the debtor's disposable pay or the amount set forth in 15 U.S.C. 1673(a)(2). The amount set forth in 15 U.S.C. 1673(a)(2) is the amount by which a debtor's

disposable pay exceeds an amount equivalent to thirty times the minimum wage. For example, if a debtor receives disposable pay of \$160.00 per week and thirty times the minimum wage is \$154.50, the amount that may be garnished weekly is the lesser of \$24.00 (15% of \$160) or \$5.50 (\$160.00 - \$154.50 = \$5.50). See 29 CFR 870.10(b)(1) for information on calculating an amount equivalent to thirty times the minimum wage.

Section 285.11(i)(3) of the final rule is the same as NPRM § 285.11(i)(2) except that § 285.11(i)(3)(iii) has been added to clarify the amount of garnishment for a debtor who owes multiple debts to a single creditor agency. Under section 285(i)(3)(iii) of the final rule, an agency may issue multiple withholding orders so long as the total amount garnished from the debtor's pay for such orders does not exceed the garnishment amount permitted under § 285.11(i)(2). For purposes of § 285.11(i)(3)(iii), the term "agency" refers to the agency that is owed the debt.

One commenter suggested deleting the language in NPRM § 285.11(i)(7) (renumbered as § 285.11(i)(8) in the final rule) requiring that the wage garnishment order "indicate a reasonable period of time within which the employer is required to commence wage withholding" because garnishment orders in all other contexts typically require immediate compliance. This suggestion was not incorporated into the final rule. The "reasonable period of time" given to employers allows employers adequate time to calculate garnishment withholding payroll data involving a debtor employee without disrupting the normal payroll cycle. It is anticipated that a "reasonable period of time" generally will mean that the employer will commence withholdings within two pay cycles following receipt of the garnishment order. This may vary given an employer's circumstances.

NPRM § 285.11(j) Exclusions From Garnishment

No changes were made to the NPRM § 285.11(n). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(k) Financial Hardship

The final rule does not incorporate one commenter's suggestion that NPRM § 285.11(k) be amended further to define the standards for agency review of a debtor's request for an adjustment in the amount withheld under a wage garnishment order due to "financial hardship" based on "materially changed circumstances." NPRM § 285.11(k), unchanged in the final rule, provides

illustrative examples of the type of events which may give rise to financial hardship due to "materially changed circumstances," such as disability, divorce, or catastrophic illness. However, whether financial hardship exists must be determined by an agency's review of the particular facts and circumstances of a given case.

NPRM § 285.11(l) Ending Garnishment

The final rule does not incorporate a commenter's suggestion that the rule clarify whether collection costs need to be collected before terminating the garnishment action. NPRM § 285.11(l), unchanged in the final rule, clearly requires termination of garnishment only after the agency "has fully recovered the amounts owed by the debtor, including interest, penalties and administrative costs consistent with the FCCS (Federal Claims Collection Standards)." See 31 U.S.C. 3717(e) and 4 CFR 102.13 regarding the collection of administrative costs associated with a debt.

NPRM § 285.11(m) Actions Prohibited by the Employer

No changes were made to NPRM § 285.11(m). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(n) Refunds

No changes were made to NPRM § 285.11(n). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(o) Right of Action

The final rule does not incorporate a commenter's suggestion that NPRM § 285.11(o) be amended to remove the requirement that a Federal agency must "terminate collection action" as a prerequisite to commencing suit against a debtor's employer for failure to withhold amounts from wages pursuant to a wage garnishment order. The DCIA specifically provides that "suit (against an employer) may not be filed before the termination of the collection action, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period." 31 U.S.C. 3720D(f)(2)(B).

However, FMS has amended NPRM § 285.11(o) in the final rule to incorporate a suggestion by another commenter that the rule be changed to clarify that "termination of the collection action" merely refers to the particular debtor/employee, rather than the debt. This change gives agencies flexibility to terminate collection action against one of the debtors and file suit against that debtor's employer for failing to withhold that debtor's wages pursuant to a wage garnishment order.

At the same time, the agency could continue collection efforts involving the other debtors who are jointly and severally liable to the agency on the debt.

Regulatory Analysis

This rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this regulation, including the certification referenced in this final rule (see paragraph (h) of this section), will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to this regulation and to the certification requirement in this rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served with withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this rule.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Hearing and appeal procedures, Salaries, Wages.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for part 285 is revised to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720D; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.11 is added to Subpart B to read as follows:

§ 285.11 Administrative wage garnishment.

(a) *Purpose.* This section provides procedures for Federal agencies to collect money from a debtor's

disposable pay by means of administrative wage garnishment to satisfy delinquent nontax debt owed to the United States.

(b) *Scope.* (1) This section applies to any Federal agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(2) This section shall apply notwithstanding any provision of State law.

(3) Nothing in this section precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 4 CFR parts 101-105.

(4) The receipt of payments pursuant to this section does not preclude a Federal agency from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent nontax debt owed to the United States. A Federal agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This section does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

(6) Nothing in this section requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations.

(c) *Definitions.* As used in this section the following definitions shall apply:

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations. For purposes of this section, agency means either the agency that administers the program that gave rise to the debt or the agency that pursues recovery of the debt.

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

Certificate of service means a certificate signed by an agency official indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is

a Saturday, a Sunday, or a Federal legal holiday.

Debt or claim means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by an individual, including debt administered by a third party as an agent for the Federal Government. *Delinquent nontax debt* means any nontax debt that has not been paid by the date specified in the agency's initial written demand for payment, or applicable agreement, unless other satisfactory payment arrangements have been made. For purposes of this section, the terms "debt" and "claim" are synonymous and refer to delinquent nontax debt.

Debtor means an individual who owes a delinquent nontax debt to the United States.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

(d) *General rule.* Whenever an agency determines that a delinquent debt is owed by an individual, the agency may initiate proceedings administratively to garnish the wages of the delinquent debtor.

(e) *Notice requirements.* (1) At least 30 days before the initiation of garnishment proceedings, the agency shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention of the agency to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(iii) An explanation of the debtor's rights, including those set forth in paragraph (e)(2) of this section, and the time frame within which the debtor may exercise his or her rights.

(2) The debtor shall be afforded the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) To enter into a written repayment agreement with the agency under terms agreeable to the agency; and

(iii) For a hearing in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (e)(2)(ii) of this section.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the notice. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(f) *Hearing.*—(1) *In general.* Agencies shall prescribe regulations for the conduct of administrative wage garnishment hearings consistent with this section or shall adopt this section without change by reference.

(2) *Request for hearing.* The agency shall provide a hearing, which at the agency's option may be oral or written, if the debtor submits a written request for a hearing concerning the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under paragraph (e)(2)(ii) of this section).

(3) *Type of hearing or review.* (i) For purposes of this section, whenever an agency is required to afford a debtor a hearing, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(ii) If the agency determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the agency. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel

expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(iii) In those cases when an oral hearing is not required by this section, an agency shall nevertheless accord the debtor a "paper hearing," that is, an agency will decide the issues in dispute based upon a review of the written record. The agency will establish a reasonable deadline for the submission of evidence.

(4) *Effect of timely request.* Subject to paragraph (f)(13) of this section, if the debtor's written request is received by the agency on or before the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall not issue a withholding order under paragraph (g) of this section until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (f)(10) and (f)(11) of this section has been rendered.

(5) *Failure to timely request a hearing.*

If the debtor's written request is received by the agency after the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall provide a hearing to the debtor. However, the agency will not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order.

(6) *Hearing official.* A hearing official may be any qualified individual, as determined by the head of the agency, including an administrative law judge.

(7) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

(i) The date and time of a telephonic hearing;

(ii) The date, time, and location of an in-person oral hearing; or

(iii) The deadline for the submission of evidence for a written hearing.

(8) *Burden of proof.* (i) The agency will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the

debtor, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official must maintain a summary record of any hearing provided under this section. A hearing is not required to be a formal evidentiary-type hearing, however, witnesses who testify in oral hearings will do so under oath or affirmation.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the agency. If an agency is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) The agency may not issue a withholding order until the hearing is held and a decision rendered; or

(ii) If the agency had previously issued a withholding order to the debtor's employer, the agency must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(11) *Content of decision.* The written decision shall include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(13) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (f)(4) of this section will be deemed as not having timely filed a request for a hearing.

(g) *Wage garnishment order.* (1)

Unless the agency receives information that the agency believes justifies a delay or cancellation of the withholding order, the agency shall send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (i.e., within 15 business days after the mailing of the notice described in paragraph (e)(1) of this section), or, if a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the agency to proceed with garnishment.

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury on the

agency's letterhead and signed by the head of the agency or his/her delegatee. The order shall contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the order. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(h) *Certification by employer.* Along with the withholding order, the agency shall send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the agency within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) *Amounts withheld.* (1) After receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (i)(2) of this section.

(2)(i) Subject to the provisions of paragraphs (i)(3) and (i)(4) of this section, the amount of garnishment shall be the lesser of:

(A) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(B) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(3) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (i)(2) of this section and shall have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order

issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (i)(2) of this section, or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(iii) If a debtor owes more than one debt to an agency, the agency may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (i)(2) of this section. For purposes of this paragraph (i)(3)(iii), the term *agency* refers to the agency that is owed the debt.

(4) An amount greater than that set forth in paragraphs (i)(2) and (i)(3) of this section may be withheld upon the written consent of debtor.

(5) The employer shall promptly pay to the agency all amounts withheld in accordance with the withholding order issued pursuant to this section.

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the agency to discontinue wage withholding. The garnishment order shall indicate a reasonable period of

time within which the employer is required to commence wage withholding.

(j) *Exclusions from garnishment.* The agency may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the agency of the circumstances surrounding an involuntary separation from employment.

(k) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. Agencies shall consider any information submitted in accordance with procedures and standards established by the agency.

(3) If a financial hardship is found, the agency shall downwardly adjust, by an amount and for a period of time agreeable to the agency, the amount garnished to reflect the debtor's financial condition. The agency will notify the employer of any adjustments to the amounts to be withheld.

(l) *Ending garnishment.* (1) Once the agency has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the agency shall send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, an agency shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(3) of this section, determines that a debt is not legally due and owing to the United States, the agency shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(o) *Right of action.* The agency may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with paragraphs (g) and (i) of this section. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the agency has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

Dated: April 30, 1998.

Richard L. Gregg,
Commissioner.

[FR Doc. 98-11966 Filed 5-5-98; 8:45 am]

BILLING CODE 4810-35-P

Wednesday
May 6, 1998

Part III

The President

Proclamation 7089—Asian/Pacific
American Heritage Month, 1998

Proclamation 7090—Law Day, U.S.A.,
1998

Proclamation 7091—Loyalty Day, 1998

Proclamation 7092—Older Americans
Month, 1998

federal register

Presidential Documents

Title 3—

Proclamation 7089 of April 30, 1998

The President

Asian/Pacific American Heritage Month, 1998

By the President of the United States of America

A Proclamation

Like millions of others who left their homelands to come to America, the first Asian and Pacific Island immigrants who arrived here in the 19th century were seeking a better life than the one they left behind. Many were poor; many had suffered oppression; but all were strengthened by a rich culture, an ancient heritage, a belief in freedom's promise, and a willingness to work for their share of the American Dream.

For many, however, that dream was deferred. These courageous men and women from Asia and the Pacific Islands were met in America by prejudice as they strived to make a living and establish a home in their adopted country.

These brave new Americans would prevail over every hardship. Whether working in the gold fields of California, laboring on the sugar and pineapple plantations of Hawaii, constructing the transcontinental railway, or creating their own businesses, Asian and Pacific Americans succeeded in building new lives for themselves and their families.

Today, Asian and Pacific Americans are helping to build a vibrant America. They are leaders in medical and scientific research, in the halls of Congress, in the classrooms of our educational institutions, in business, labor, the arts, and every other human endeavor. They are building economic and technological bridges across the Pacific and beyond, which will ensure America's leadership well into the next millennium. These sons and daughters of Cambodia, China, Indonesia, India, Japan, Korea, Laos, the Philippines, Thailand, Vietnam, and so many other Asian and Pacific lands have enriched our national life and culture with their energy and talents, with their commitment to family and community, and with their enduring reverence for freedom.

As we approach the 21st century, Asian and Pacific Americans are playing an increasingly important role in the life of our Nation, helping us to maintain our leadership in the global economy. More important, they are inspiring us to embrace the wider world, to recognize and appreciate the blessing of our great diversity, and to become one America.

To honor the accomplishments of Asian and Pacific Americans and to recognize their many contributions to our Nation, the Congress, by Public Law 102-450, has designated the month of May as "Asian/Pacific American Heritage Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1998 as Asian/Pacific American Heritage Month. I call upon the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William Clinton

[FR Doc. 98-12218
Filed 5-5-98; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7090 of May 1, 1998

Law Day, U.S.A., 1998

By the President of the United States of America

A. Proclamation

In 1787, when the founders of this great Nation set forth the guiding principles of our new democracy in the Preamble to the Constitution, among their primary goals was to "establish justice." These visionary American leaders revered the law, understanding that its proper practice would simultaneously free us and protect us, enabling us to steer a steady course between the opposing dangers of tyranny and anarchy. Today, our country, built upon the foundation of equal justice for all, is renowned throughout the world for legally enshrining fundamental human rights. Recognizing the importance of law to the life of our Nation, we set aside one day each year to reflect on our judicial system and to celebrate both the security and the freedom it guarantees.

Our laws ensure that the rights set forth in the Constitution and its Amendments are protected in our everyday lives: our right to worship as we choose, to speak freely, to vote in free elections, to be safe from arbitrary arrest. Justice for all is central to our democracy, and we must strive to ensure that all Americans have equal access to the judicial system. Unfortunately, each year many of our most vulnerable citizens are denied the legal assistance they need because they cannot afford it.

I am proud that our Federal Government is making an investment to address this problem through the work of the Legal Services Corporation (LSC). For almost 25 years, the LSC has funded local offices that give our citizens access to the legal help they need to secure child support, escape domestic violence, or fight unscrupulous lenders. Last year alone, 4 million poor Americans, the majority of whom were women and children, were helped by LSC offices.

Without laws, our democracy would wither; without access to our legal system, there can be no true justice. We must affirm and strengthen our national legal services system to ensure that all Americans have an equal opportunity to enjoy the rights and liberties guaranteed in our Constitution. As we observe Law Day, let us reaffirm our faith in the rule of law and strive to secure justice for all our people.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with Public Law 87-20 of April 7, 1961, do hereby proclaim May 1, 1998, as Law Day. I urge the people of the United States to consider anew how our laws protect our freedoms and contribute to our national well-being. I call upon members of the legal profession, civic associations, educators, librarians, public officials, and the media to promote the observance of this day with appropriate programs and activities. I also call upon public officials to display the flag of the United States on all government buildings throughout the day.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98-12217
Filed 5-5-98; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7091 of May 1, 1998

Loyalty Day, 1998

By the President of the United States of America

A Proclamation

More than two centuries ago, our Nation's founders, with clear vision and courageous hearts, fashioned a new form of government for our new country. They created a government that honors human dignity and protects individual rights—a democracy strong enough to withstand external threats, secure enough to allow dissent from within, and responsive enough to help our citizens achieve their dreams. In doing so, America's founders created a Nation that inspired loyalty from its citizens and gave hope to oppressed peoples around the world.

Since then, generations of Americans have reaffirmed their loyalty and devotion to our country. During times of war, Americans have fought and died to defend our liberty and promote the ideals of democracy. In times of peace, we have strived to preserve the rights secured for us in the Constitution and to ensure that every American enjoys the full protection of those rights. And throughout the decades, Americans have strived to build upon the "more perfect Union" envisioned by our country's founders.

On Loyalty Day, as we formally acknowledge our faith in America and in this great democracy, let us rededicate ourselves to the continuing quest for a more perfect union. Let us have the courage not only to recognize our differences, but also to build on the dreams we share and on the values we hold in common. Let us reaffirm our belief in freedom, equality, justice, and opportunity for all of our people. And let us show to all the world that our diversity is a source of lasting strength and renewal.

The Congress, by Public Law 85-529, has designated May 1 of each year as "Loyalty Day" to remind us of the many blessings we enjoy as citizens of this great land.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1, 1998, as Loyalty Day. I urge all Americans to recognize the heritage of American freedom, to honor the memory of those who have served and sacrificed in defense of that freedom, and to express our loyalty to our Nation through appropriate patriotic programs, ceremonies, and activities. I also call upon Government officials to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98-12218
Filed 5-5-98; 8:45 am]
Billing code 3195-01-P

Presidential Documents**Proclamation 7092 of May 4, 1998****Older Americans Month, 1998****By the President of the United States of America****A Proclamation**

In just over a decade from now, the first of America's 77 million baby boomers will celebrate their 65th birthdays. Fortunately, visionary programs like Social Security, Medicare, and the Older Americans Act will help to make life easier for them as they reach this milestone.

For more than 60 years, Social Security has provided our older citizens with a measure of economic security. For more than 30 years, Medicare has given them access to quality health care and the latest in medical advances. And older Americans in need of greater assistance have been able to look to programs under the Older Americans Act for the critical home and community-based care services that have enabled millions of elderly men and women to live independently. Together, these farsighted measures have played a major role in dramatically reducing the poverty rate and extending the longevity of older Americans, allowing our citizens to grow old with dignity and peace of mind.

This year's Older Americans Month celebration centers around the theme "Living Longer; Growing Stronger in America." As we enter a new century and address the challenges of an aging America, we must commit ourselves to the health and welfare of our older Americans and to protecting and strengthening Medicare and Social Security. One of the most important achievements of the Balanced Budget Act that I signed last summer was its unprecedented reform of the Medicare program. This bipartisan effort extends the life of the Medicare Trust Fund for a decade, includes new health plan choices, and adds coverage of preventive benefits. The legislation also established the National Bipartisan Commission on the Future of Medicare to, among other things, review and analyze the financial condition of Medicare so that it remains as strong for our children as it has been for our parents.

We must respond with equal resolve to the increasing strains on the Social Security system. Now that we have succeeded in dramatically reducing the Federal budget deficit, I have called on the Congress to reserve all of the anticipated budget surplus until we have a comprehensive plan to strengthen Social Security for the 21st century. We are holding a series of regional conferences throughout the year to engage in a national discussion on the future of Social Security, both to raise awareness of the problem and to allow all Americans to contribute their ideas for a solution. At the end of the year, I will host a bipartisan White House Conference on Social Security to summarize the lessons we learn from this dialogue and to map out an effective strategy that will enable us to ensure that Social Security will be there for future generations of Americans.

During Older Americans Month—and throughout the year—I encourage all Americans to pay tribute to our older citizens and to follow their example by planning for the future. As individuals, we should take care of our health through proper diet, exercise, and appropriate preventive care, and we should plan for our future financial security by participating in retirement and savings programs. As families and communities, we can help older Americans to remain active and independent members of our communities.

And as a Nation, we must recognize our obligation to those who will come after us by preserving and strengthening Medicare and Social Security for the 21st century and beyond.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 1998 as Older Americans Month. I call upon Government officials, businesses, communities, educators, volunteers, and all the people of the United States to acknowledge the contributions older Americans have made, and continue to make, to the life of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98-12219
Filed 5-5-98; 8:45 am]
Billing code 3195-01-P

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LIST OF PUBLIC LAWS

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H.R. 3579/P.L. 105-174

1998 Supplemental Appropriations and Rescissions Act (May 1, 1998; 112 Stat. 58)

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5-7-98
Vol. 63 No. 88

Thursday
May 7, 1998

Journal of Federal Register

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5-7-98
Vol. 63 No. 88
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WASHINGTON, DC

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WHERE: Office of the Federal Register
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800 North Capitol Street, NW,
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202-523-4538

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97-056-10]

Mediterranean Fruit Fly; Quarantined Areas; Clarification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rules; clarification.

SUMMARY: This document clarifies the status of amendments contained in two interim rules effective the same day. In an interim rule effective April 17, 1998, and published in the *Federal Register* on April 22, 1998 (63 FR 19797-19798, Docket No. 97-056-9), we amended the Mediterranean fruit fly regulations by removing the quarantined area in Hillsborough County, FL, from the list of quarantined areas. Also, in an interim rule effective April 17, 1998, and published in the *Federal Register* on April 23, 1998 (63 FR 20053-20054, Docket No. 98-046-1), we amended the Mediterranean fruit fly regulations by adding a portion of Dade County, FL, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined area.

DATES: Effective April 17, 1998, the only area quarantined for the Mediterranean fruit fly in the continental United States is a portion of Dade County, FL.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 1998, we published in the *Federal Register* (63 FR 19797-19798, Docket No. 97-056-9) an interim rule that amended the Mediterranean fruit fly (Medfly) regulations by removing the quarantined area in Hillsborough County, FL, from the list of quarantined areas. Also, on April 23, 1998, we published in the *Federal Register* (63 FR 20053-20054, Docket No. 98-046-1) another interim rule that amended the Medfly regulations by adding a portion of Dade County, FL, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined area. Both the dockets were signed and became effective on April 17, 1998.

In the interim rule that removed Hillsborough County, FL, from the list of quarantined areas, we inadvertently failed to delete the statement saying that, as a result of this action, there were no longer any areas in the continental United States quarantined because of Medfly. While this would have been true if no additional Medflies had been found, because of the finding of Medfly in Dade County, FL, that statement was incorrect at the time the docket was signed. The interim rule that added Dade County, FL, to the list of areas quarantined because of the Medfly quarantined a described area of Dade County, FL.

The purpose of this notice is to clarify our Medfly quarantine regulations. Effective April 17, 1998, the only area quarantined for the Medfly in the continental United States is a portion of Dade County, FL.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 30th day of April 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-12123 Filed 5-6-98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97-100-2]

Pine Shoot Beetle; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the pine shoot beetle regulations by adding 78 counties in Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin to the list of quarantined areas. The interim rule was necessary to prevent the spread of the pine shoot beetle, a pest of pine products, into noninfested areas of the United States. This final rule makes one change to the map of regulated counties that appeared in the interim rule to add a county that mistakenly was not included on the map.

EFFECTIVE DATE: May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Christine K. Markham, Regional Program Manager, PPQ, APHIS, 505 South Lenola Road, Suite 201, Moorestown, NJ, 08057-1549, (609) 753-5073; or Ms. Coanne O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8717, E-mail: cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective on December 3, 1997, and published in the *Federal Register* on December 9, 1997 (62 FR 64677-64680, Docket No. 97-100-1), we amended the pine shoot beetle regulations in 7 CFR part 301 by adding 78 counties in Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin to the list of quarantined areas in § 301.50-3(c).

Comments on the interim rule were required to be received on or before February 9, 1998. We did not receive any comments.

We are making one change to the interim rule to correct an error. The

interim rule added Boone County, IL, to the list of quarantined areas in § 301.50-3(c). However, we mistakenly neglected to also add Boone County, IL, to the map of quarantined areas in § 301.50-3(d). We have corrected this error in this final rule.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Effective Date

This document makes final an interim rule that amended the pine shoot beetle regulations by adding 78 counties in Illinois, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin to the list of quarantined areas. This final rule makes one change to the map of regulated counties that appeared in the interim rule. We are adding to the map one county that was added to the list of quarantined areas but was mistakenly not included on the map. This is not a substantive change. Therefore, in accordance with the administrative procedure provisions in 5 U.S.C. 553, we are making this rule effective less than 30 days after publication in the *Federal Register*. Specifically, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the *Federal Register*.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic impact of this rule on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C.

150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

The pine shoot beetle (PSB) regulations impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of PSB into noninfested areas of the United States. The interim rule amended these regulations by adding 78 counties in 9 States to the list of quarantined areas. This action was necessary to prevent the spread of PSB, a pest of pine products, into noninfested areas of the United States. In our Initial Regulatory Flexibility Analysis, we solicited comments on the potential effects of the interim rule on small entities. In particular, we sought data and other information to determine the number and kinds of small entities that may incur benefits or costs from implementation of the interim rule. We received no comments on the Initial Regulatory Flexibility Analysis contained in the interim rule.

Currently, there are approximately 1,046 nursery operations in the 78 newly regulated counties. Of those, approximately 717 are considered small entities. We have not determined the size of the remaining 329 nursery operations in the following 6 counties: Boone County, IL; Muskegon and Ottawa Counties, MI; Wayne County, NY; Allen County, OH; and Indiana County, PA. Small nurseries are defined as those entities with annual sales of less than \$150,000. Most of these nurseries, both large and small, specialize in production of deciduous landscape products, but some also produce rooted pine Christmas trees and some pine nursery stock. Most of the nurseries that produce rooted pine Christmas trees and pine nursery stock will not be notably affected by this rule, either because these commodities comprise a very minor share of their products or because they serve largely local populations.

Other Christmas tree producers and logging operations in the 78 newly regulated counties may also be affected by this rule. In the interim rule, we explained that we were unable to determine the number of these types of

small entities in the newly regulated counties, and invited comments to help us make that determination. However, as stated previously, we did not receive any comments.

Affected businesses can maintain markets outside the regulated areas by arranging for inspections and the issuance of certificates or limited permits, or by fumigating or cold treating the regulated articles. Inspection is provided at no cost during normal business hours. However, there may be imputed costs to the businesses in preparing for the inspections and possible marketing delays. Such costs and inconveniences may be more likely for producers of live pine nursery stock, since inspection is required of each live plant before it may be moved to a nonregulated area. For producers in these counties who already have their trees inspected for other pests, another inspection may be a relatively small burden, especially when compared to the societal benefits of minimizing the human-assisted movement of PSB.

The alternative to the interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because the quarantine of the 78 counties listed in the interim rule is necessary to prevent the artificial spread of PSB.

This rule contains no reporting or recordkeeping requirements.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.50-3, paragraph (d) is amended by revising the map to read as follows:

§ 301.50-3 Quarantined areas.

* * * * *

(d) * * *

BILLING CODE 3410-34-P



Done in Washington, DC, this 30th day of April 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-12124 Filed 5-6-98; 8:45 am]

BILLING CODE 3410-34-C

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11 and 25

RIN 3150-AF90

Access Authorization Fee Schedule for Licensee Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the fee schedule for background investigations of licensee personnel who require access to National Security Information and/or Restricted Data and access to or control over Special Nuclear Material. These amendments comply with current regulations that provide that the NRC will publish fee adjustments upon notifications of any changes in the rate charged the NRC by the Office of Personnel Management (OPM) for conducting investigations.

EFFECTIVE DATE: May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Beth Bradshaw, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6540, or by Internet electronic mail at MBB1@NRC.GOV.

SUPPLEMENTARY INFORMATION: The OPM conducts access authorization background investigations for the NRC and sets the rates charged for these investigations. Effective October 1, 1997, OPM changed the rates it charges NRC for conducting access authorization background investigations. Because the fees that NRC charges its licensees for special nuclear material access authorizations and personnel security clearances are determined by the rates charged by OPM for conducting the background investigations, the fee schedules in NRC regulations must be amended to reflect the OPM rate changes. The NRC is passing these rate changes to NRC licensees. These revisions comply with current regulations that provide that NRC will publish fee adjustments upon notification of any changes in the rates charged the NRC by OPM for conducting the investigations. See 10 CFR 11.15(e)(2)(1997) and 10 CFR 25.17(e)(1997).

Because these are amendments dealing with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A)(1997). The

amendments are effective upon publication in the *Federal Register*. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with rate changes to the NRC fee schedules.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1)(1997). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.* (1997)). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0046 and 3150-0062.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. Single copies of the analysis may be obtained from Beth Bradshaw, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: (301) 415-6540.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule and a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109 (1997).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* (1997) and 15 U.S.C. 657 (1997), the NRC has determined that this action is not a major rule and has verified this

determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 11 and 25.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15 paragraph (e)(1) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission, according to the following schedule:

i. NRC-U requiring full field investigation	\$3,275
ii. NRC-U requiring full field investigation (expedited processing)	3,800
iii. NRC-U based on certification of comparable full field background investigation	10
iv. NRC-U or R renewal	80
v. NRC-R	80
vi. NRC-R based on certification of comparable investigation	20

¹ If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of \$3,275 will be assessed prior to the conduct of the investigation.

² If the NRC determines, based on its review of available data, that a National Agency Check and Credit investigation is necessary, a fee of \$80.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC, based on its review of available data, a fee of \$3,275 will be assessed prior to the conduct of the investigation.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959-1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 396.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

4. Appendix A to Part 25 is revised to read as follows:

APPENDIX A TO PART 25—FEES FOR NRC ACCESS AUTHORIZATION

Category	Fee
Initial "L" Access Authorization	180
Reinstatement of "L" Access Authorization	80
Extension or Transfer of "L" Access Authorization	80
Initial "Q" Access Authorization	3,275
Initial "Q" Access Authorization (expedited processing)	3,800
Reinstatement of "Q" Access Authorization	3,275
Reinstatement of "Q" Access Authorization (expedited processing)	3,800
Extension or Transfer of "Q"	3,275
Extension or Transfer of "Q" (expedited processing)	3,800

¹ If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of \$3,275 will be assessed prior to the conduct of the investigation.

² Full fee will only be charged if investigation is required.

Dated at Rockville, Maryland, this 13th day February, 1998.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 98-12180 Filed 5-6-98; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Ch. III

Statement of Policy on the Development and Review of Regulations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Revision of statement of policy.

SUMMARY: The FDIC is revising its Statement of Policy entitled "Development and Review of Regulations" (Policy). The revisions streamline the Policy and focus it more sharply on the basic principles that underlie the Board's approach to regulation. The provisions of the Policy that established internal procedures or merely restated the law have been deleted. The revisions also expand the scope of the Policy to include written statements of policy adopted by the FDIC Board of Directors and revise its title accordingly.

EFFECTIVE DATE: May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, Assistant Executive Secretary (202/898-3907); or Nancy Schucker Recchia, Counsel (202/898-8885).

SUPPLEMENTARY INFORMATION: The FDIC is revising its Statement of Policy entitled "Development and Review of Regulations." The existing Policy has stated the Board's commitment to basic principles of sound regulation and established internal administrative procedures for FDIC staff to follow when developing and reviewing regulations. Pursuant to section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the Policy was reviewed to streamline it and to remove inconsistencies and outmoded and duplicative provisions. As a part of this review, the FDIC has given careful consideration to the continuing need for this Policy and how its content might be presented to best inform the public with respect to the FDIC's development and review of regulations and written statements of policy. The revised Policy reflects the Board's continuing commitment to improving the quality of its regulations and policies, to minimizing regulatory burdens on the public and the banking industry, and generally to ensuring that its regulations and policies achieve legislative goals effectively and effectively.

The revised Policy recognizes that the Board carries out its regulatory function through two separate processes of public notice: the promulgation of

regulations pursuant to the requirements of the Administrative Procedure Act, and the issuance of less formal written statements of policy. Like regulations, written statements of policy may affect the banking industry and the public. Because the Board believes it is important to inform all interested parties of its approach to the development of written statements of policy, the scope of the revised Policy has been augmented to include an explanation of the principles by which the FDIC develops and reviews written statements of policy, and the title of the Policy has been revised to reflect the expanded scope.

The revisions streamline the Policy and focus it more sharply on the following basic principles that underlie the Board's approach to regulation:

- Burdens imposed on the banking industry should be minimized.
- Regulations should be clearly and understandably written.
- The public should have a meaningful opportunity to participate in the rulemaking process.
- Common statutory and supervisory mandates should be implemented by Federal financial institutions regulator in a uniform way.
- Regulations and statements of policy should be reviewed periodically.

The revised Policy has been streamlined to remove those provisions that established internal procedures or merely restated the applicable provisions of law. As part of the CDRI review, the FDIC gave careful consideration to the most useful and efficient format for presenting all of the information relevant to regulation and written policy statement development and review. It was determined to separate these fundamental guiding principles from the more technical or procedural requirements. The guiding principles which the Board believes are relevant to public understanding of its process are contained in the revised Policy. The technical and procedural requirements are contained in a newly developed handbook on Development and Review of FDIC Regulations and Policy Statements. The handbook provides comprehensive guidance to FDIC managers and staff involved in developing and reviewing FDIC regulations and statements of policy and can be revised easily to reflect changes in statutory requirements and in the FDIC's organizational arrangements.

Text

The text of the revised statement of policy follows:

Development and Review of FDIC Regulations and Policies

Statement of Policy

Purpose and Scope. The Federal Deposit Insurance Corporation is committed to continually improving the quality of its regulations and policies, to minimizing regulatory burdens on the public and the banking industry, and generally to ensuring that its regulations and policies achieve legislative goals effectively and efficiently. The purpose of this statement of policy (Policy) is to establish basic principles which guide the FDIC's promulgation and review of regulations and written statements of policy. The scope of this Policy is limited to regulations and written statements of policy issued by the Board of Directors of the FDIC.

Principles For the Development and Review of Regulations and Statements of Policy. The following principles guide the FDIC in its development of regulations and written policies:

- Burdens imposed on the banking industry and the public should be minimized. Before issuing a regulation or written statement of policy the FDIC gives careful consideration to the need for such an issuance. Frequently a regulation is required by statute. Alternatively, the FDIC may identify a need for a supervisory tool to implement its statutory obligations, or to clarify its policy for the benefit of the banking industry or the public. Once the need for a regulation or statement of policy is determined, the FDIC seeks to minimize to the extent practicable the burdens which such issuance imposes on the banking industry and the public. New reporting and recordkeeping requirements imposed by a regulation are carefully analyzed. The effect of the regulation or statement of policy on competition within the industry is considered. Particular attention is focused on the impact that a regulation will have on small institutions and whether there are alternatives to accomplish the FDIC's goal which would minimize any burden on small institutions. Prior to issuance, the potential benefits associated with the regulation or statement of policy are weighed against the potential costs.

- Regulations and policies should be clearly and understandably written. The Board seeks to make its regulations and statements of policy as clear and as understandable as possible to those persons who are affected by them. In developing or reviewing existing regulations and statements of policy, the Board considers the document's organizational structure as well as the specific language used; both are

important components to achieving a clear and useful statement.

- The public should have a meaningful opportunity to participate in the rulemaking process. The Board seeks to improve its regulations and statement of policy during the development phase. Whether a new regulation is being promulgated or an existing one revised, the Board gives careful consideration to the implications of its actions as public policy. Public participation in the rulemaking process is an opportunity for the Board to hear directly from affected members of the public with important experience and thoughtful insights related to the pertinent issues. A person or organization may petition the Board for the issuance, amendment, or repeal of any regulation or policy by submitting a written petition to the Executive Secretary of the FDIC. The petition should include a complete and concise statement of the petitioner's interest in the subject matter and the reasons why the petition should be granted.

All rulemaking is carried out in accordance with the APA, by which the Board provides the public with notices of proposed rulemaking and opportunities to submit comments on the proposals. The Board will often seek public comment on proposed statements of policy as well. All comments and proposed alternatives received during the comment period are considered prior to the issuance of a final rule or statement of policy. The Board takes final action on proposed regulations and policies as promptly as circumstances allow. If a significant period of time elapses following the publication of a proposed rule or policy without final action, the Board will consider withdrawing the proposal or republishing it for comment. If the Board decides to reconsider a proposed regulation or statement of policy that has been withdrawn, it will begin the rulemaking or policy development process anew.

- Common statutory and supervisory requirements should be implemented by the Federal financial institutions regulators in a uniform way. The FDIC has many statutory and supervisory requirements that are common to the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and/or the National Credit Union Administration. The more uniform the Federal financial institutions regulators can be in their regulations, policies and approaches to supervision, the easier it will be for the industry and the public to comply with the regulators' requirements. The FDIC

is a member of the Federal Financial Institutions Examination Council (FFIEC) and works with the other federal financial institutions regulators through the FFIEC to make uniform those regulations and policies that implement common statutory or supervisory policies.

- Regulations and statements of policy should be reviewed periodically. To ensure that the FDIC's regulations and written statements of policy are current, effective, efficient and continue to meet the principles set forth in this Policy, the FDIC will periodically undertake a review of each regulation and statement of policy. The Executive Secretary of the FDIC will, consistent with applicable laws and in coordination with other financial institutions regulators, establish a schedule and procedures for the reviews. Factors to be considered in determining whether a regulation or written policy should be revised or eliminated include: the continued need for the regulation or policy; opportunities to simplify or clarify the regulation or policy; the need to eliminate duplicative and inconsistent regulations and policies; and the extent to which technology, economic conditions, and other factors have changed in the area affected by the regulation or policy. The result of this review will be a specific decision for each regulation and statement of policy to either revise, rescind or retain the issuance in its then-current form. The principles of regulation and statement of policy development, as articulated at the beginning of this Policy, will apply to the periodic reviews as well.

By order of the Board of Directors.

Dated at Washington, D.C. this 28th day of April, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 98-12059 Filed 5-6-98; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-SW-49-AD; Amendment 39-10515; AD 98-10-04]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model SA-365N1, AS-365N2, and SA-366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France (Eurocopter) Model SA-365N1, AS-365N2, and SA-366G1 helicopters, that requires initial and repetitive inspections of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar) for cracks or delaminations. This amendment is prompted by a report of delamination of a Kevlar tie-bar. The actions specified by this AD are intended to detect cracks that could lead to delamination of the Kevlar tie-bar, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective June 11, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 11, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111, telephone (817) 222-5123, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Eurocopter Model SA-365N1, AS-365N2, and SA-366G1 helicopters was published in the **Federal Register** on March 13, 1998 (63 FR 12419). That action proposed to require initial and repetitive inspections of the tail rotor blade Kevlar tie-bar for cracks or delaminations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The sole commenter states that the proposed AD is more restrictive than either Eurocopter France Service Bulletin 05.00.34R3, dated November 14, 1996, or Direction Generale De L'Aviation Civile (DGAC) AD 92-185-033(B)R4, dated December 4, 1996, which allow operation of a helicopter

having cracks that are within a certain tolerance. The commenter states that not all cracks warrant replacement of the part, and that the proposed AD should give the same parameters for the cracks as given in the Eurocopter France service bulletin and the DGAC AD. The FAA does not concur. Any crack or delamination of the Kevlar tie-bar could initiate a failure and lead to loss of control of the helicopter. The FAA considers any crack in a flight critical part to be unsafe, and the part must be replaced prior to further flight.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 47 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$3,000 per blade. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$152,280 to replace one blade and perform one inspection on each helicopter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98-10-04 Eurocopter France:

Amendment 39-10515. Docket No. 97-SW-49-AD.

Applicability: SA-365N1, AS-365N2, and SA-366G1 model helicopters, with tail rotor blade (blade), Part Number 365A12-010-all dash numbers, 365A12-0020-00, 365A33-2131-all dash numbers, or 365A12-0020-20, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks that could lead to delamination of the tail rotor blade Kevlar tie-bar (Kevlar tie-bar), loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 250 hours TIS, inspect each Kevlar tie-bar for a crack or delamination in accordance with paragraph B, perational Procedure, of Eurocopter France Service Bulletin 05.00.34, Revision 3, dated November 14, 1996.

(b) If any delamination or cracking is found during any of the inspections required by paragraph (a) of this AD, remove the blade and replace it with an airworthy blade before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through

an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement, if necessary, shall be done in accordance with Eurocopter France Service Bulletin 05.00.34, Revision 3, dated November 14, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 11, 1998.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 92-185-033(B)R4 dated December 4, 1996.

Issued in Fort Worth, Texas, on April 30, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.

[FR Doc. 98-12114 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29214; Amdt. No. 1866]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of

new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, and 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same

reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports,
Navigation (Air).

Issued in Washington, DC on May 1, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

Part 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DMA, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective June 18, 1998

Anchorage, AK, Anchorage Intl, RADAR-1, Amdt 9A, CANCELLED
McGrath, AK, McGrath, GPS RWY 16, Orig

Albertville, AL, The Albertville Muni-Thomas J Brumlik Fld, GPS RWY 5, Orig

Greenville, AL, Greenville Muni, GPS RWY 14, Orig

Greenville, AL, Greenville Muni, GPS RWY 32, Orig

McCall, ID, McCall, GPS RWY 34, Orig
McCall, ID, McCall, NDB RWY 34, Orig

McCall, ID, McCall, NDB OR GPS-A, Orig, CANCELLED

Osceola, IA, Osceola Muni, GPS RWY 18, Orig

Osceola, IA, Osceola Muni, GPS RWY 36, Orig

Vinton, IA, Vinton Veterans Meml Arpk, NDB RWY 27, Amdt 4

Vinton, IA, Vinton Veterans Meml Arpk, GPS RWY 9 Orig

Vinton, IA, Vinton Veterans Meml Arpk, GPS RWY 27, Orig

Atchison, KS, Amelia Earhart, VOR/DME OR GPS-A, Amdt 3,

CANCELLED

Atchison, KS, Amelia Earhart, VOR/DME RNAV OR GPS RWY 16, Amdt 4

Atchison, KS, Amelia Earhart, VOR/DME RWY 16, Orig

Hagerstown, MD Washington County Regional, ILS RWY 27, Amdt 8

Newberry, MI, Luce County, VOR OR GPS RWY 11, Amdt 11

Newberry, MI, Luce County, VOR OR GPS RWY 29, Amdt 11

Minneapolis, MN, Minneapolis-St. Paul Intl/Wold Chamberlain, ILS PRM RWY 12L, (Simultaneous Close

Parallel), Amdt 2

Minneapolis, MN, Minneapolis-St. Paul Intl/Wold Chamberlain, ILS PRM RWY 12R, (Simultaneous Close

Parallel), Amdt 2

Minneapolis, MN, Minneapolis-St. Paul Intl/Wold Chamberlain, ILS PRM RWY 30L, (Simultaneous Close

Parallel), Amdt 3

Minneapolis, MN, Minneapolis-St. Paul Intl/Wold Chamberlain, ILS PRM RWY 30R, (Simultaneous Close

Parallel), Amdt 3

Perryville, MO, Perryville Muni, VOR/DME RNAV OR GPS RWY 20, Amdt 3

Burwell, NE, Cram Field, NDB RWY 15, Orig

Burwell, NE, Cram Field, NDB OR GPS RWY 15, Amdt 4, CANCELLED

Burwell, NE, Cram Field, GPS RWY 33, Orig

Batavia, NY, Genesee County, VOR/DME OR GPS-A, Amdt 5

Batavia, NY, Genesee County, ILS RWY 28, Amdt 4

Fulton, NY, Oswego County, GPS RWY 24, Orig

Palmyra, NY, Palmyra Airpark, VOR OR GPS-A, Amdt 1

Philadelphia, PA, Northeast Philadelphia, GPS RWY 15, Orig

Philadelphia, PA, Northeast Philadelphia, GPS RWY 33, Orig

Pittsburgh, PA, Pittsburgh Intl, ILS RWY 10L, Amdt 23

Providence, RI, Theodore Francis Green State, ILS RWY 5, Amdt 16

Providence, RI, Theodore Francis Green State, ILS RWY 23, Amdt 4

Fort Worth, TX, Fort Worth Meacham Intl, NDB OR GPS RWY 34R, Amdt 6, CANCELLED

Fort Worth, TX, Fort Worth Meacham Intl, GPS RWY 34R, Orig

Fort Atkinson, WI, Fort Atkinson, GPS RWY 3, Orig

Ravenswood, WV, Jackson County, GPS RWY 4, Orig

Ravenswood, WV, Jackson County, GPS RWY 22, Orig

* * * Effective AUGUST 13, 1998
Helena/West Helena, AR, Thompson-Robbins, NDB RWY 17, Amdt 5

[FR Doc. 98-12135 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29215; Amdt. No. 1867]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale

by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC—/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large numbers of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (24 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a

"significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 87

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on May 1, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC LOC/DME, LDA, LDA/DME, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME, MLS/ RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective Upon Publication

FDC Date	State	City	Airport	FDC Number	SIAP
04/17/98	PA	Coatesville	Chester County G.O. Carlson	FDC 8/2299	LS RWY 29 AMDT 6A
04/20/98	LA	New Orleans	New Orleans Intl (Moisant Field)	FDC 8/2332	ILS RWY 1, AMDT 16A
04/21/98	VA	Abingdon	Virginia Highlands	FDC 8/2361	VOR/DME OR GPS-B AMDT 5
04/22/98	TN	Nashville	Nashville Intl	FDC 8/2382	LS RWY 2C ORIG-A
04/23/98	AR	West Memphis	West Memphis Muni	FDC 8/2426	GPS RWY 17, ORIG

FDC Date	State	City	Airport	FDC Number	SIAP
04/23/98	AR	West Memphis	West Memphis Muni	FDC 8/2427	NDB RWY 17, AMDT 10
04/23/98	IN	North Vernon	North Vernon	FDC 8/2421	GPS RWY 23, ORIG
04/23/98	MD	Salisbury	Ocean City Wicomico Regional	FDC 8/2416	ILS RWY 32, AMDT 5A
04/23/98	NC	Charlotte	Charlotte/Douglas Intl	FDC 8/2397	ILS RWY 36R (CAT I, II AND III), AMDT 8
04/23/98	NH	Concord	Concord Muni	FDC 8/2429	ILS RWY 35, AMDT 1
04/23/98	NJ	Teterboro	Teterboro	FDC 8/2399	ILS RWY 6, AMDT 28
04/23/98	NJ	Teterboro	Teterboro	FDC 8/2400	COPTER ILS RWY 6, ORIG
04/23/98	NJ	Teterboro	Teterboro	FDC 8/2401	NDB OR GPS RWY 6, AMDT 17A
04/23/98	NJ	Teterboro	Teterboro	FDC 8/2402	VOR/DME OR GPS-B, AMDT 2
04/23/98	VA	Franklin	Franklin Muni—John Beverly Rose	FDC 8/2442	VOR/DME OR GPS RWY 27, AMDT 9
04/23/98	WV	Charleston	Yeager	FDC 8/2415	ILS RWY 5, AMDT 4
04/24/98	LA	New Orleans	New Orleans Intl (Moisant Field)	FDC 8/2468	LOC RWY 19, ORIG
04/24/98	NH	Lebanon	Lebanon Muni	FDC 8/2463	ILS RWY 18 AMDT 4
04/27/98	NY	New York	John F. Kennedy Intl	FDC 8/2536	ILS RWY 31L AMDT 9A
04/28/98	FL	Jacksonville	Jacksonville Intl	FDC 8/2567	ILS RWY 25 ORIG-A
04/28/98	TN	Jackson	McKellar-Sipes Regional	FDC 8/2568	LOC BC RWY 20 AMDT 5A
04/23/98	DH	Whitefield	Mount Washington Regional	FDC 8/2430	LOC RWY 10, AMDT 4

[FR Doc. 98-12134 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 529

Certain Other Dosage Form New Animal Drugs; Competitive Exclusion Culture

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by BioScience Division of Milk Specialties Co. The NADA provides for use of a competitive exclusion culture (lyophilized bacterial cultures) for early establishment of intestinal microflora in chickens to reduce *Salmonella* colonization.

EFFECTIVE DATE: May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1659.

SUPPLEMENTARY INFORMATION: BioScience Division of Milk Specialties Co., Illinois and Water Sts., P.O. Box 278, Dundee, IL 60118, is sponsor of NADA 141-101 that provides for the use of Preempt™, a competitive exclusion culture (lyophilized bacterial cultures), for the early establishment of intestinal microflora in chickens to reduce *Salmonella* colonization. The NADA is approved as of March 13, 1998, and the regulations are amended by adding 21 CFR 529.469 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, BioScience Division of Milk Specialties Co. has not been previously listed in the animal drug regulations as sponsor of an approved application. At this time, 21 CFR 510.600(c)(1) and (c)(2) are amended to add entries for the firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and

information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval for food-producing animals qualifies for 5 years of marketing exclusivity beginning March 13, 1998, because no active ingredient (including any salt or ester of the active ingredient) has been approved in any other application.

The agency has determined under 21 CFR 25.33(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling.

Reporting and recordkeeping requirements.

21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "BioScience Division of Milk Specialties Co." and in paragraph (c)(2)

by numerically adding an entry for "032761" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

(c) * * *
(1) * * *

Firm name and address	Drug labeler code
BioScience Division of Milk Specialties Co., Illinois and Water Sts., P.O. Box 278 Dundee, IL 60118	032761

(2) * * *

Drug labeler code	Firm name and address
032761	BioScience Division of Milk Specialties Co., Illinois and Water Sts., P.O. Box 278, Dundee, IL 60118.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 529.469 is added to read as follows:

§ 529.469 Competitive exclusion culture.

(a) *Specifications.* Each packet of lyophilized culture contains either 2,000 or 5,000 doses in frozen pellets to be reconstituted for use.

(1) For 2,000-dose packet, add contents of one 2,000-dose packet of reconstitution powder to 490 milliliters of deionized water. Mix. Add contents of one 2,000-dose packet of lyophilized culture. Mix thoroughly.

(2) For 5,000-dose packet, add contents of one 5,000-dose packet of reconstitution powder to 1,250 milliliters of deionized water. Mix. Add contents of one 5,000-dose packet of lyophilized culture. Mix thoroughly. Allow to stand for 45 minutes before use. Use within 5 hours of reconstitution.

(b) *Sponsor.* See No. 032761 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use. Chickens—(1) Amount.* Apply 25 milliliters of reconstituted culture as a topical spray on each tray of 100 chicks (0.25 milliliter per chick).

(2) *Indications for use.* For early establishment of intestinal microflora in chickens to reduce *Salmonella* colonization.

(3) *Limitations.* Administer as soon as possible after hatch, preferably at less than 1 day of age. Expose chicks to light for at least 5 minutes after spray treatment to encourage preening for oral uptake of the organisms. Provide access to feed and water as soon as possible after treatment. Do not administer antibiotics to treated chickens.

Dated: April 22, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.
[FR Doc. 98-12056 Filed 5-6-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-08-015]

RIN 2115-AA97

Safety Zone; Greenwood Lake Powerboat Classic, Greenwood Lake, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a powerboat race located on Greenwood Lake, New Jersey. This safety zone is in effect from 10 a.m. until 7 p.m. on Saturday, May 16, and Sunday, May 17, 1998. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the southern end of Greenwood Lake, New Jersey.

DATES: This temporary final rule is effective from 10 a.m. until 7 p.m. on Saturday, May 16, and Sunday, May 17, 1998.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01-98-015), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Alma Kenneally, Waterways Oversight Branch, Coast Guard Activities New York (718) 354-4195.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after Federal Register publication. Due to the date this application was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with high speed power boats racing in confined waters.

Background and Purpose

The Greenwood Lake Powerboat Association and the West Milford Chamber of Commerce submitted an Application For Approval of Marine Event to hold a powerboat race on the waters of Greenwood Lake. This safety zone encompasses all waters of Greenwood Lake, New Jersey, south of 41°09' N, and north of 41°08' N (NAD 1983). The northern boundary will be marked by 6 temporary buoys. The southern boundary will be marked by four temporary buoys. The shoreline comprises the eastern and western boundaries. The safety boundaries. The safety zone is in effect from 10 a.m. until 7 p.m. on Saturday, May 16, and Sunday, May 17, 1998. This safety zone prohibits all vessels not participating in the event from transiting this portion of Greenwood Lake and is needed to

protect boaters from the hazards associated with high speed powerboats racing in confined waters. Participating vessels include race participants and race committee craft. All other vessels, swimmers, and personal watercraft of any nature are prohibited from entering or moving within the safety zone.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone will restrict vessel traffic in the south end of Greenwood Lake, New Jersey on Saturday, May 16, and Sunday, May 17, 1998, from 10 a.m. until 7 p.m., unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation prevents traffic from transiting this area, the effect of this regulation will not be significant for several reasons: the limited duration of the race, the event is taking place of an inland lake which has no commercial traffic, it is an annual event with local support, and notifications will be made to the local maritime community via facsimile. Vessels, swimmers, and personal watercraft of any nature not participating in this event, will be unable to transit through, or around, the safety zone during this event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a

small entity and that this rule will have significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically effect it.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. Add temporary 165.T01-015 to read as follows:

§ 165.T01-015 Safety Zone; Greenwood Lake Powerboat Classic, Greenwood Lake, NJ.

(a) *Location.* The following area is a safety zone: all waters of Greenwood Lake, NJ, south of 41°09' N, and north of 41°08' N (NAD 1983). The shoreline comprises the eastern and western boundaries.

(b) *Effective period.* This section is effective from 10 a.m. until 7 p.m. on

Saturday, May 16, and Sunday, May 17, 1998.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) Vessels not participating in this event, swimmers, and personal watercraft of any nature are prohibited from entering or moving within the safety zone.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 20, 1998.

R.C. Vlaun,
Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 98-12139 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-15-M

POSTAL SERVICE

39 CFR Part 241

Expansion, Relocation, Construction of New Post Offices

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: This interim rule establishes procedures by which the Postal Service notifies local citizens and public officials of facility projects, and solicits and considers the community's input before making a final decision to expand an existing facility, relocate to a new building, or start new construction. The purpose of the interim rule is to build into the facility project planning process specific opportunities and adequate time for the community to be a partner in the decision-making process and to have its views considered.

DATES: Effective: May 7, 1998. Comments must be received by June 8, 1998.

ADDRESSES: Please submit written comments to Louis Norris, Manager, Real Estate, U.S. Postal Service, Facilities, 4301 Wilson Boulevard, Suite 300, Arlington, VA 22203-1861.

FOR FURTHER INFORMATION CONTACT: John Soronson, U.S. Postal Service, Facilities, 4301 Wilson Boulevard, Suite 300, Arlington, VA 22203-1861; phone (703) 526-2782.

SUPPLEMENTARY INFORMATION: This interim rule adds a new § 241.4 to 39

CFR part 241 to require that both local public officials and local citizens be notified and invited to comment at critical stages of the planning to enlarge or relocate a postal customer service facility. In addition, the rule requires postal officials to take into account community input, including alternative recommendations.

Throughout the towns and villages of America, people have long viewed their post office as much more than a place to send and receive mail. A community's post office is a vital part of its infrastructure—a place to greet old friends, make new ones, and exchange information. With more than 35,000 leased and owned postal facilities, the Postal Service takes seriously its commitment to be a good neighbor and a vital part of every community.

Adding new facilities and upgrading or replacing existing ones is a continuing activity that is influenced by population growth and shifts, the increasing automation of mail processing, aging and deteriorating building stock, and changing environmental and energy conservation requirements. In order to fulfill its role as a member of virtually every U.S. community, the Postal Service believes that, to the maximum extent possible, it should undertake its most locally significant projects—to relocate a post office, to build a new one, or to expand an existing facility—in partnership with the local community.

This has long been Postal Service policy. These community relations guidelines are being published to help ensure that communities and local public officials, as well as postal employees, will have the most up-to-date policy and procedures for projects that involve expansion, relocation, or new construction of a post office, and to help ensure that all such projects are handled in accordance with the guidelines.

The rule also formalizes the Postal Service's long-standing policy of complying with local zoning and land use ordinances and building codes when it can do so consistent with prudent business practices and unique postal requirements.

This interim rule reflects existing policy and procedures and, in any event, imposes no burden on members of the public; therefore, it is effective immediately. Although exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address and will consider any

comments received before issuing a final rule.

Accordingly, the Postal Service amends, on an interim basis, 39 CFR part 241, as follows:

List of Subjects in 39 CFR Part 241

Organization and functions
(Government agencies).

PART 241—[AMENDED]

1. The authority citation for 39 CFR part 241 continues to read as follows:

Authority: 39 U.S.C. 401.

2. Effective May 7, 1998, 39 CFR part 241 is amended by adding § 241.4, as follows:

§ 241.4 Expansion, relocation, and construction of post offices

(a) *Application.* (1) This section applies when the Postal Service contemplates any one of the following projects that provides retail services to customers: expansion, relocation to another existing building, or new construction, except when the project is to meet an emergency requirement or is for temporary use.

(2) This section does not apply when the project under consideration is limited to repair and alterations, such as:

- (i) Painting, no matter how extensive;
- (ii) Repairs, no matter how extensive;
- (iii) Replacement or upgrade of structural or functional elements of a postal building or of its equipment, no matter how extensive the work;
- (iv) Paving, striping, or other repair of parking areas;
- (v) Landscaping.

(b) *Purpose.* The purpose of the procedures required by this section is to ensure increased opportunities for members of the communities who may be affected by certain Postal Service facility projects, along with local officials, to convey their views concerning the contemplated project and have them considered prior to any final decision to expand, relocate to another existing building, or construct a new building.

(c) *Expansion, relocation, new construction.* When an expansion, relocation, or new construction of a retail facility (whether leased or owned) is planned, postal representatives responsible for the project will take the following steps in accordance with the time schedule shown:

(1) Personally visit one or more of the highest ranking local public officials (generally, individuals holding elective office) at least 45 days before any public advertising. During the visit, the postal representatives will:

(i) Describe the project fully, explain the process by which the Postal Service will solicit and consider input from the affected community, and solicit a working partnership with the community officials for the success of the project.

(ii) Emphasize that in meeting a need for increased space, the first priority is to expand the existing facility, the second priority is to find an existing building in the same area as the current facility, and the third option is to build on a new site that will be either owned or leased.

(iii) Ask that a Postal Service presentation of the project be placed on the regular agenda of a public meeting or hearing. If no such meeting is planned within the next 60 days or the agenda of a planned meeting cannot accommodate the project, the Postal Service will schedule a public hearing concerning the project and will advertise the hearing in a local general circulation newspaper.

(iv) Give the local officials a letter describing the intended project.

(2) Notify the lessor of the affected facility in writing.

(3) Send an initial appropriate press release to local news media.

(4) Except as provided herein, attend or conduct one or more public hearings to describe the project to the community, invite questions, solicit written comment, and describe the process by which community input will be considered. If it is known at the time that the existing facility is not able to be expanded or that expansion is impracticable, that fact will be disclosed and the project file documented as to the reasons expansion is not possible or practical. Exception: If circumstances prevent postal representatives from attending or conducting a public meeting or hearing on the planned project within a reasonable time, the Postal Service must distribute a notification card to all affected customers, seeking their comment or other feedback. In addition, if the decision is to distribute notification cards, the project file must document the circumstances that prevented postal representatives from conducting or attending a public hearing or meeting within a reasonable time; in no event shall a lack of public interest or objection constitute a qualifying circumstance.

(5) Review comments and notify local officials of decision. After the date of the most recent public meeting or the date of distribution of notification cards, make a decision (e.g., relocation to another building, new construction, or expansion of the existing facility) that

takes into account community input and is consistent with prudent business practices and postal objectives, and notify local officials in writing. Take no action on the decision for at least 15 days following notification of local officials.

(6) Advertise for sites and existing buildings, in accordance with the decision.

(d) *New site or existing buildings—historic preservation.* (1) It is the policy of the Postal Service, by virtue of Board of Governors Resolution No. 82-7, to comply with Section 106 of the general provisions of the National Historic Preservation Act, (16 U.S.C. 470 *et seq.*), Executive Order 13006, and, through it, Executive Order 12072. Therefore, when the decision is to relocate to another existing building, that building will be selected in accordance with Section 106 of the National Historic Preservation Act and applicable provisions of the executive orders identified above.

(2) When the decision is to advertise for sites and existing buildings, once such sites have been identified, advise local officials of all contending sites and with respect to all sites not selected, provide an explanation.

(3) Once a site or existing building has been selected, notify local officials of the selection decision.

(4) Take no final action to acquire or lease the new location for 15 days.

(e) *Planning, zoning, building codes.* It is the policy of the Postal Service to comply with local planning and zoning requirements and building codes to the maximum extent feasible consistent with postal needs and objectives. To promote a partnership with local officials and ensure conformance with local building codes, plans and drawings will be sent to appropriate building department or other officials for review. The Postal Service will give local public officials written notice of any timely, written objections or recommendations that it does not plan to adopt or implement.

(f) *Continuing communication.* During construction, whether renovation or new construction, the postmaster will keep local officials and the community informed via letters and news releases. The postmaster and other postal officials will plan, conduct, and invite the community and local officials to any "grand opening."

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 98-12064 Filed 5-6-98; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA041-4069; FRL-6009-3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Conditional Limited Approval of the Pennsylvania VOC and NOx RACT Regulation; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an error in the amendatory instruction in a final rule pertaining to the Pennsylvania VOC and NOx RACT Regulation.

EFFECTIVE DATE: April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 566-2180 or by e-mail at stahl.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA published a document on March 23, 1998 (63 FR 13789) inadvertently adding paragraph (e) to § 52.2026 when that paragraph already existed. The intent of the rule was to amend that section by adding a paragraph (f). This document corrects the erroneous amendatory language.

Correction

In the final rule published in the *Federal Register* on March 23, 1998 (63 FR 13789), on page 13794 in the third column, the fourth amendatory instruction is corrected to read—"4. Section 52.2026 is amended by adding a paragraph (f) to read as follows:" and the new text is designated as paragraph (f).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this corrective rulemaking action is not subject to notice-and-comment requirements under the

Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule for the Pennsylvania VOC and NOx RACT Regulation is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: April 27, 1998.

Andrew Carlin,

Acting Regional Administrator, Region III.

[FR Doc. 98-11878 Filed 5-6-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[OPPTS-00238; FRL-5785-2]

Labeling Requirements for Pesticides; Respirator Compliance Policy Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy statement.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) has developed changes to the regulations at 42 CFR part 84 that set forth certification standards for non-powered air-purifying particulate respirators. EPA has determined that all 42 CFR part 84 respirators meet or exceed all 30 CFR part 11 respirator (hereinafter part 11 and part 84 respirators) requirements, and that respirators certified under part 84 will be considered the equivalent of a respirator certified under part 11. EPA will allow pesticide handlers to use either part 11 or part 84 respirators to satisfy non-powered, air-purifying respirator requirements for pesticide applications. The Agency will publish an amendment to 40 CFR 156.212 to reflect the NIOSH changes in particulate respirator designations and a Pesticide Registration (PR) Notice to direct registrants on how to modify product labels.

EFFECTIVE DATE: This document is effective April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Yvette Hellyer, Toxics and Pesticides Enforcement Division (2245A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-564-4033, E-mail: hellyer.yvette@epa.gov; or, Judy Smith, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 703-305-5621, E-mail: smith.judy@epa.gov.

I. Background

On July 10, 1995, NIOSH modified its existing regulation, 30 CFR part 11, and changed the certification standards for non-powered, air-purifying particulate filters. The NIOSH change was made to update and upgrade certification tests developed in the 1930's by the Bureau of Mines. The new regulation, 42 CFR part 84, requires that respirators certified under 42 CFR part 84 undergo a different test using a more penetrating particle size than in the past and takes into account the presence of oil in the contaminant.

The NIOSH certification changes require that manufacture and certification of part 11 respirators cease on July 10, 1998; however, distributors and other respiratory protection product sellers can continue to sell their existing supplies. In terms of additional NIOSH certification changes, canister type respirators that are certified for use with pesticides will not be made after July 10, 1998. Combination respirators, those certified for use for paints and pesticides, will also not be made after July 10, 1998. Certification requirements for all other respirator types, such as powered air-purifying respirators (PAPR) were transferred from 30 CFR part 11 to 42 CFR part 84 without change.

To minimize the impact of the manufacturing transition from part 11 to part 84 respirators, all particulate respirator manufacturers now sell part 84 respirators and are now phasing out part 11 respirators. Manufacturers cannot precisely estimate when the existing supply of part 11 respirators will be exhausted, but a general consensus in the industry estimates this will occur in 3 years.

II. NIOSH Certification Changes and EPA Determination

NIOSH certifies part 84 respirators using a more rigorous testing method, and EPA has determined that part 84 respirators provide at least as much protection to pesticide handlers,

applicators, and users as part 11 respirators. As a result, a pesticide user may substitute a part 84 non-powered, air-purifying particulate respirator for a part 11 respirator even though the pesticide product label requires use of a part 11 respirator, and EPA will not initiate an enforcement action for misuse of the product. This substitution will only be allowed until the pesticide product label change from part 11 to part 84 respirator requirements have been completed. Following the pesticide product label change to part 84 respirators, this substitution will no longer apply.

III. Information for Registrants

EPA plans to require label changes for pesticide products because of the NIOSH certification changes, and this will impact pesticide registrants. EPA will issue a Pesticide Registration (PR) Notice that will call for registrants to add 42 CFR part 84 language to the existing respirator language (30 CFR part 11) on current product labels. The Agency also intends to amend 40 CFR 156.212 to incorporate the new NIOSH designations for dust/mist filtering respirators and organic vapor-removing cartridge respirators. The revised rule will affect the pesticide product labels with part 11 respirator requirements, i.e., those requiring either a Mine Safety and Health Administration (MSHA)/NIOSH-approved dust filtering respirator (known as a TC-21C) or a MSHA/NIOSH-approved organic vapor removing cartridge respirator with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), and will require the addition of 42 CFR part 84 language to the product label.

IV. Information for Pesticide Applicators

Given that both part 11 or part 84 respirators meet respiratory protection requirements for pesticide products, the Agency is confident that allowing pesticide handlers to use part 84 respirators will assure applicators of an adequate supply of acceptable respirators.

V. Compliance and Enforcement

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 12(a)(2)(G) states that it is unlawful "to use any registered pesticide in a manner inconsistent with its labeling." EPA has determined that both part 11 or part 84 respirators will provide adequate protection for users. Therefore, EPA considers the part 84 respirator to be the equivalent of part 11 respirators for the purpose of complying with the label of

pesticide products for application-related activities. EPA will not consider the substitution of a part 84 for a part 11 respirator a misuse. Furthermore, EPA requires pesticide handlers, applicators, and users to comply with all the requirements of 40 CFR 170.240 regardless of whether the respirator is part 11 or part 84.

VI. Conclusion

EPA recognizes that part 84 respirators offer applicators equivalent levels of respiratory protection, and the supply of part 11 respirators will be exhausted in the next 1 to 3 years. EPA also recognizes that pesticide handlers must have an adequate supply of respirators that provide adequate respiratory protection during application. Effective immediately, EPA will not find misuse violations against applicators who use either part 11 or part 84 respirators to satisfy existing product labels that require part 11 respirators.

VII. Regulatory Assessment Requirements

This action does not impose any requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

List of Subjects in Part 156

Environmental protection, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 24, 1998.

Jesse Baskerville,

Director, Toxics and Pesticides Enforcement Division, Office of Regulatory Enforcement and Policy Assurance.

[FR Doc. 98-12151 Filed 5-6-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-6009-2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Pomona Oaks Residential Wells site and the Vineland State School site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Pomona Oaks Well Contamination Site in Pomona, New Jersey and the Vineland State School Site in Vineland, New Jersey from the National Priorities List (NPL).

The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended. EPA and the State of New Jersey have determined that the sites pose no significant threat to public health or the environment and, therefore, no remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Matthew Westgate, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th floor, New York, N.Y. 10007-1866, (212) 637-4422.

ADDRESSES: Comprehensive information about the Pomona Oaks Site is available for viewing at the Administrative Record Repository located at Galloway Township Municipal Building, 300 East Jimmie Leeds Road, Absecon, New Jersey 08201, Attn: Mr. Andrew Katz, Township Manager.

Comprehensive information about the Vineland State School (Developmental Center) Site is available for viewing at the Administrative Record Repository located at Vineland City Library, 1058 East Landis Ave., Vineland, New Jersey 08360, Attn: Mr. Anthony Agnesino, Reference Director.

SUPPLEMENTARY INFORMATION: The sites to be deleted from the NPL are: Pomona Oaks Well Contamination, Pomona, New Jersey and the Vineland State School (Developmental Center), Vineland, New Jersey.

A Notice of Intent to Delete was published on July 15, 1996 (61 FR 36858). The closing date for comments on the Notice of Intent to Delete was August 14, 1996. There were no comments received for the Vineland State School Site; therefore, no responsiveness summary was prepared. EPA received two letters from residents of the Pomona Oaks subdivision. Both of the residents asked that EPA reconsider the deletion of the Pomona Oaks Site based on their belief that the source of the groundwater contamination has not been cleaned up and the once suspected underground gas tanks are still in the ground. They also inquired about additional testing of groundwater. EPA never positively identified the source of the groundwater contamination when the problems were discovered in 1982. Comprehensive sampling conducted as part of the Remedial Investigation in 1988 and afterwards demonstrated that the contamination was due to a singular event and had dispersed over time through natural attenuation and/or biodegradation. EPA concluded there was no ongoing source of contamination in the subdivision based on sampling conducted in 1990 and 1992.

The commentors expressed concerns about the health effects from the exposure to chemicals in their drinking water. EPA, the Agency for Toxic Substances and Disease Registry (ATSDR) as well as the state and local health departments were involved in assessing the health effects due to exposure to benzene in 1982. No acute effects were noted during the 1982 to 1985 period and no long-term health effects have been reported.

Finally, the residents asked that the site remain under investigation. Long-term groundwater monitoring was included as part of the No Action Record of Decision.

EPA provided detailed responses to these comments in a Responsiveness Summary, which is contained in the Deletion Docket. The Responsiveness Summary and entries in the Deletion

Docket may be reviewed at the EPA Region II office at 290 Broadway, New York, N.Y. or at the information repositories listed above.

The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund financed remedial actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Dated: April 20, 1998.

Jeanne Fox,
Regional Administrator, Region II.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300 [AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580; 52 FR 02923; 3 CFR, 1987 Comp., p. 193.

Table 1 to Appendix B [Amended]

2. Table 1 of appendix B to part 300 is amended by removing the sites Pomona Oaks Residential Wells, Galloway Township, New Jersey and Vineland State School, Vineland, New Jersey.

[FR Doc. 98-11879 Filed 5-6-98; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 96-28; FCC 97-270]

Connection of Customer-Provided Terminal Equipment to the Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The FCC published in the Federal Register of November 19, 1997 (62 FR 61649), final rules to Part 68 of Title 47, Code of Federal Regulations. Those rules govern the terms and conditions under which customer-provided terminal equipment may be connected to the telephone network without causing harm to the public switched network. This document corrects the typographical errors and omissions found in that document.

EFFECTIVE DATE: May 7, 1998.

FOR FURTHER INFORMATION CONTACT: William Howden, (202) 418-2343 or e-mail at whowden@fcc.gov.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

In rule FR Doc. 97-29925, published on November 19, 1997, (62 FR 61649) make the following corrections:

1. On page 61654, paragraph 31, in the first column, correct the effective date to read April 20, 1998.

§ 68.2 [Corrected]

2. On page 61654, in § 68.2, first column, last line insert a comma "," between the words "lines" and "automatic".

3. On page 61654, amendatory instruction two, column one, lines 3 and 4, are corrected to read "and adding new paragraphs (d)(4) and (j)(3)".

3a. On page 61654, column 2, following the second line of asterisks the "(j)" is corrected to "(j) *** (3)".

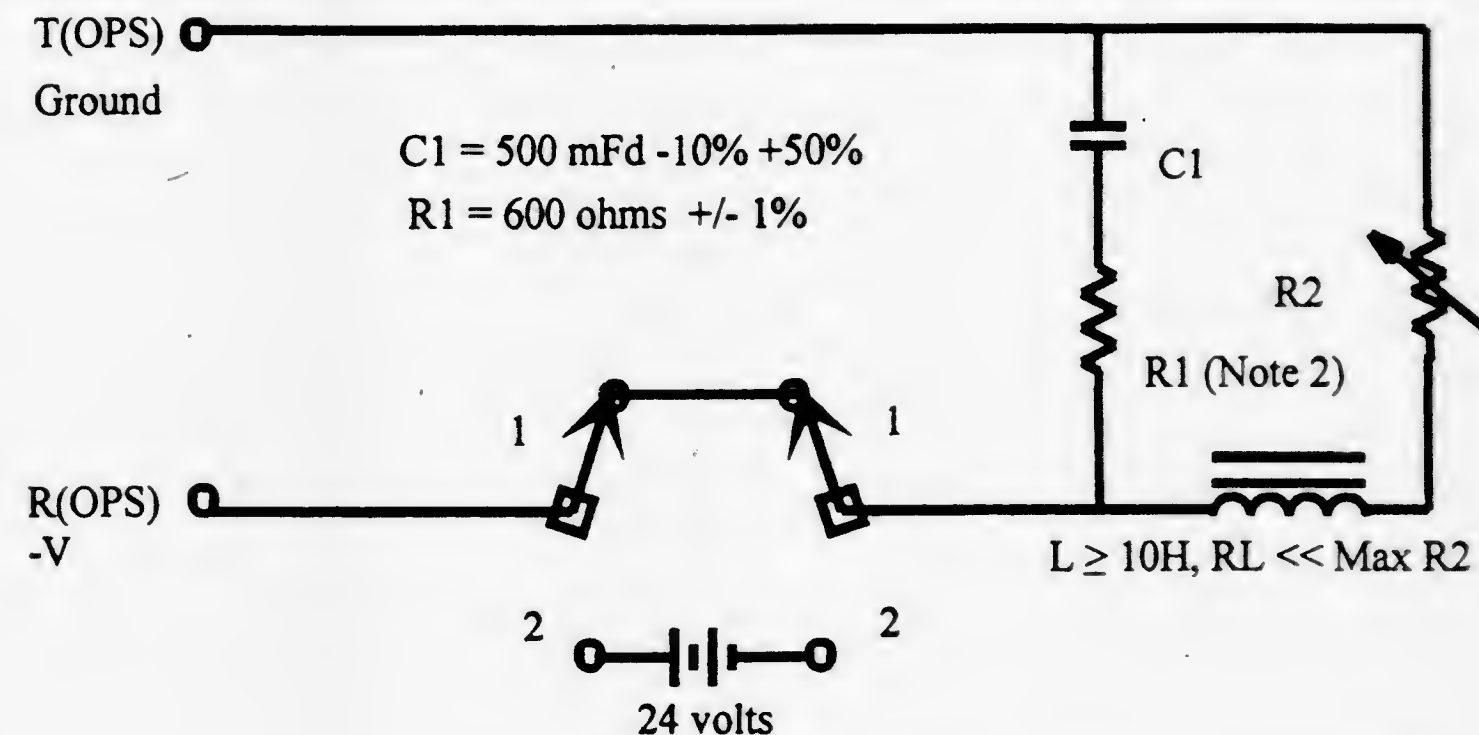
4. On page 61654, in newly redesignated paragraph (j)(3), correct the date "April 20, 1997" to read "April 20, 1998".

§ 68.3 [Corrected]

5. On page 61654, in the instruction to § 68.3, second column, after "in the definition for Tie Trunk Transmission Interfaces, by removing paragraph (c)" add the following instruction "and redesignate paragraphs (d), (e) and (f) as (c), (d) and (e)".

6. On page 61657, in § 68.3 remove "Figure 68.3(f)", and add in its place the revised "Figure 68.3(f)" as follows:

BILLING CODE 6712-01-M



R2 + RL continuously variable over the following range

Condition	Switch Position for Test	Class A	Class B	Class C
1	1	up to 200 ohms	up to 800 ohms	up to 1800 ohms
2	2	N.A.	200 to 2300 ohms	900 to 3300 ohms

The minimum current for all resistance ranges shall be 16 ma.

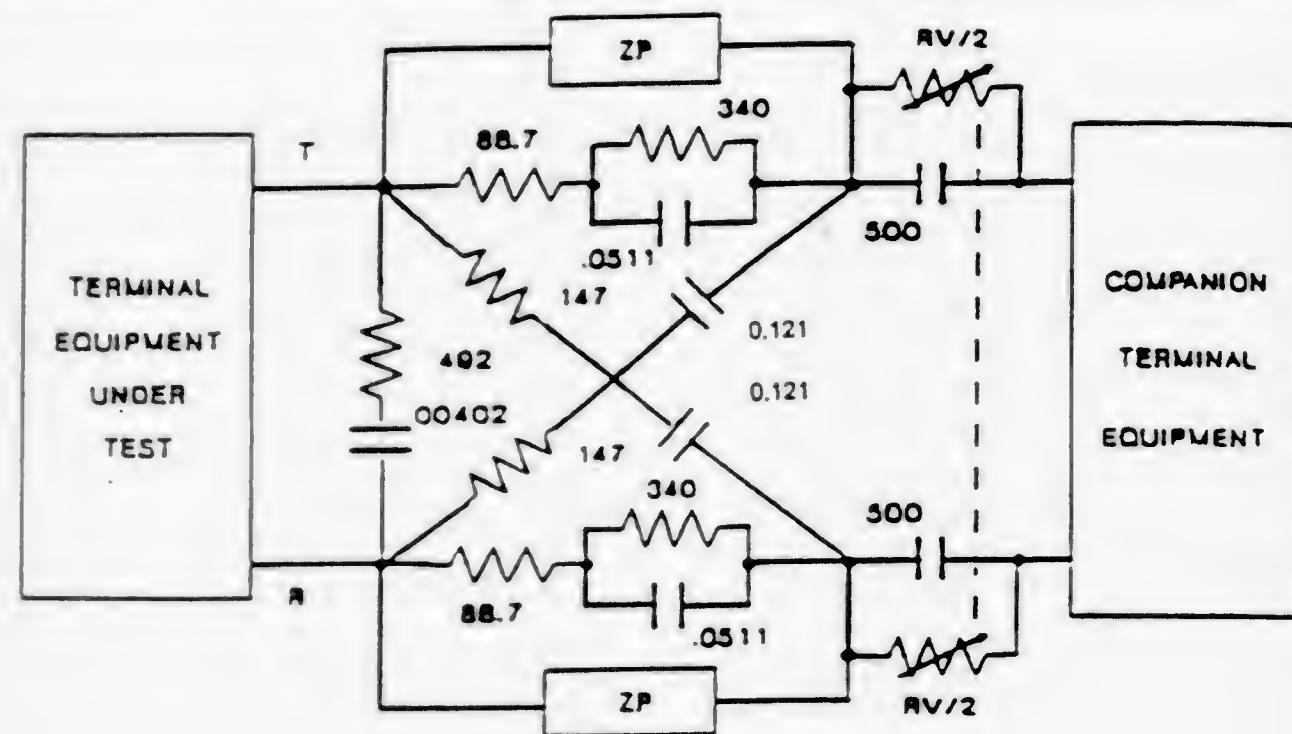
Notes: (1) Means shall be used to generate, at the point of tip (T OPS) and ring (R OPS) connections to the PBX, the range of resistance and impedance which are employed by the illustrative circuit depicted above.

(2) In the transverse balance limitations, Section 68.310, the use of the dc portion of the loop simulator is specified. In such cases R1 and C1 shall be removed.

(3) Tests for compliance may be made with either $R1 = 600 \text{ ohms}$ or R1 replaced by the alternative termination specified in Figure 68.3(g).

Off Premises Loop Simulator - Figure 68.3(f)

7. On page 61660, in § 68.3, remove "Figure 68.3(i)", and add in its place the revised "Figure 68.3(i)" as follows:



Resistances (Ohms), Capacitances (uF), Tolerances $\pm 2\%$.

RV + RP = 50 thru 3000 Ohms.

ZP is the magnitude of the lowpass filter impedance which is (25 Ohm dc;) 3 Kohm from 10 Hz to 6 KHz.

RP/2 = dc resistance of lowpass filter, ZP in parallel with 428.7 Ohm.

Figure 68.3(i) LADC Impedance Simulator for Metallic Voltage Tests

8. On page 61663, in § 68.3, remove "Figure 68.3(m)".

§ 68.302 [Corrected]

9. On page 61664, in § 68.302, column 2, line 8 in the Note to paragraph (b)(1), remove "10 ms" and add in its place "10 μ s (microseconds)".

10. On page 61664, in § 68.302, column 3, lines 4 and 8 in the Note to paragraph (b)(2), remove "10 ms" and add in its place "10 μ s (microseconds)".

11. On page 61664, in § 68.302, column 3, line 4 in the Note to paragraph (b)(2), remove "(t₄)" and add in its place "(t₁)".

12. On page 61664, in § 68.302, column 3, lines 5 and 9 in the Note to paragraph (b)(2), remove "160 ms" and add in its place "160 μ s".

13. On page 61665, in § 68.302, first column, line 4 of the Note to paragraph (c)(1), remove "9 ms" and add in its place "9 μ s".

14. On page 61665, in § 68.302, first column, line 8 of the note to paragraph (c)(1), remove "5 ms" and add in its place "5 μ s".

15. On page 61665, in § 68.302, second column, line 29, in paragraph (c)(2)(iii) add "as for example" after "sources".

16. On page 61665, in § 68.302, third column, line 1, in paragraph (c)(2)(iii) remove "if so configured".

17. On page 61666, in § 68.302, in the titles to figures, "Fig. 68.302(a)", "Fig. 68.302(b)" and "Fig. 68.302(c)" remove the "x" in each title.

18. On page 61670, in § 68.306, add the title "Figure 68.306(a), Illustration of Ring Trip Requirement" below the figure.

19. On page 61671, in § 68.306, first column, remove the entire paragraph (e) and replace with the following test:

(e) Intentional paths to ground (as required by § 68.304). (1) Connections

with operational paths to ground. Registered terminal equipment and registered protective circuitry having an intentional dc conducting path to earth ground at operational voltages that was excluded during the leakage current test of § 68.304 shall have a dc current source applied between the following points:

- (i) Telephone connections, including tip, ring, tip 1, ring 1, E&M leads and auxiliary leads, and
- (ii) Earth grounding connections.

Note to paragraphs (e)(1)(i) and (e)(1)(ii): For each test point, gradually increase the current from zero to 1 ampere, then maintain the current for one minute. The voltage between paragraph (e)(1)(i) and paragraph (e)(1)(ii) of this section shall not exceed 0.1 volt at any time. In the event there is a component or circuit in the path to ground, the requirement shall be met between the grounded side of the component or circuit and the earth grounding connection.

(2) Connections with protection paths to ground. Registered terminal equipment and protective circuitry having an intentional dc conducting path to earth ground for protection purposes at the leakage current test voltage that was removed during the leakage current test of § 68.304 shall, upon its replacement, have a 50 or 60 Hz voltage source applied between the following points:

- (i) Simplex telephone connections, including tip and ring, tip 1 and ring 1, E&M leads and auxiliary leads, and
- (ii) Earth grounding connections.

Note to paragraphs (e)(2)(i) and (e)(2)(ii): Gradually increase the voltage from zero to 120 volts rms for registered terminal equipment, or 300 volts rms for protective circuitry, then maintain the voltage for one minute. The current between (e)(2)(i) and (e)(2)(ii) of this section shall not exceed 10 mA peak at any time. As an alternative to carrying out this test on the complete equipment or device, the test may be carried

out separately on components, subassemblies, and simulated circuits, outside the unit, provided that the test results would be representative of the results of testing the complete unit.

§ 68.308 [Corrected]

20. On page 61672, in § 68.308, third column, add three rows at the end of Table 68.308(a) as follows:

Programming resistor (Rp)* (ohms)	Programmed data equipment signal power output
9200	-10 dBm.
19800	-11 dBm.
Open	-12 dBm.

21. On page 61673, in § 68.308, beginning in column one, after the note, correct the five equations for "Return Loss" to read as follows:

$$RL \triangleq 20 \log_{10} \left| \frac{Z_{PBX} + Z_{ref}}{Z_{PBX} - Z_{ref}} \right|$$

$$RL_i \triangleq 20 \log_{10} \left| \frac{Z_{PBX(input)} + Z_{ref}}{Z_{PBX(input)} - Z_{ref}} \right|$$

$$RL_o \triangleq 20 \log_{10} \left| \frac{Z_{PBX(output)} + Z_{ref}}{Z_{PBX(output)} - Z_{ref}} \right|$$

$$tI_f \triangleq 20 \log_{10} \left| \frac{I_i}{I_r} \right|$$

$$tI_r \triangleq 20 \log_{10} \left| \frac{I_i}{I_r} \right|$$

22. On page 61673, in § 68.308, column two, correct paragraphs (b)(6)(i) and (b)(6)(ii), to read as follows:

- (i) For the two-wire interface:

$$RL \geq \begin{cases} 9 - 3 \frac{\log(f/200)}{\log(2.5)} \text{ dB} & ; \text{ for } 200 \text{ Hz} \leq f \leq 500 \text{ Hz} \\ 6 \text{ dB} & ; \text{ for } 500 \text{ Hz} \leq f \leq 3200 \text{ Hz} \end{cases}$$

(ii) For the four-wire lossless interface:

$$t_{lf} \geq \begin{cases} 10 - 4 \frac{\log(f/200)}{\log(2.5)} \text{ dB} & ; \text{ for } 200 \text{ Hz} \leq f \leq 500 \text{ Hz} \\ 6 \text{ dB} & ; \text{ for } 500 \text{ Hz} \leq f \leq 3200 \text{ Hz} \end{cases}$$

 $t_{lf} > 40 \text{ dB}$
 $RL_i, RL_o \geq 3 \text{ dB}$

23. On page 61673, in § 68.308, second column, add paragraph (b)(7)(ii)(C) and "R2+RL" table as follows:

• • • • •
(b) • • •
(7) • • •
(ii) • • •

(C) Except for Class A OPS interfaces, the dc current into the OPS line simulator circuit must be at least 20 mA

for the following conditions (see Figure 68.3(f)):

R2+RL		
Condition	Class B	Class C
1	600	1300
2	1800	2500

• • • • •

24. On page 61674, in § 68.308, third column, line 7, correct the paragraph

METALLIC VOLTAGE 4 KHZ TO 270 KHZ

Center frequency (f) of 8 kHz band	Max voltage in all 8 kHz bands	Metallic terminating impedance
8 kHz to 12 kHz	-(6.4 + 12.6 log f) dBV	300 ohms.
12 kHz to 90 kHz	(23-40 log f) dBV	135 ohms.
90 kHz to 266 kHz	-55 dBV	135 ohms.

27. On page 61674, in § 68.308, third column, add paragraph (e)(1)(ii) as follows:

• • • • •
(e) • • •
(1)(i) • • •

(ii) 270 KHz to 6 MHz. The rms value of the metallic voltage components in the frequency range of 270 kHz to 6 MHz shall, averaged over 2 microseconds, not exceed -15 dBV. This limitation applies with a metallic

designation for paragraph (e)(1) and add a paragraph (e)(1)(i) to read as follows:

(1) Metallic voltage.
(i) 4 kHz to 270 kHz:

25. On page 61674, in § 68.308, third column, line 3, correct the paragraph designation for paragraph "(e)(1)" to read paragraph "(e)(1)(i)".

26. On page 61674, in § 68.308, after paragraph (e)(1)(i), correct the table to read as follows:

LONGITUDINAL VOLTAGE 4KHZ TO 270 KHZ

Center frequency (f) of 8kHz band	Max voltage in all 8 kHz bands	Longitudinal terminating impedance
8 kHz to 12 kHz	-(18.4 +20 log f) dBV	500 ohms.
12 kHz to 42 kHz	(3 - 40 log f) dBV	90 ohms.
42 kHz to 266 kHz	-62 dBV 90	ohms.

29. On page 61675, in § 68.308, paragraph (f)(3), second column, remove lines 5 through 16, beginning with "Frequencies below 4KHz:"

30. On page 61675, in § 68.308, first column, remove text beginning with "paragraph (d)" through page 61677.

31. On page 61680, in § 68.308, correct Table 68.308(e), by revising the fourth value "29" to read "28".

32. On page 61680, in § 68.308, in paragraph (h)(1)(iii), first column, line 8 after the Table, revise the reference to

"Table 68.308(b)" to read "Table 68.308(c)".

§ 68.310 [Corrected]

33. On page 61682, in § 68.310, first column, correct the table immediately following paragraph (b), to read as follows:

State	Frequency (f)	Balance
Off-hook	200 Hz ≤ f ≤ 4000 Hz	≥40 dB.
On-hook	200 Hz ≤ f ≤ 1000 Hz	≥60 dB.
On-hook	1000 Hz ≤ f ≤ 4000 Hz	≥40 dB.

34. On page 61682, in § 68.310, second column, line 7, revise "<f₂" to read "f₂".

35. On page 61682, in § 68.310, second column, lines 10 and 26, after the table, correct the reference to "Figure 68.310(b)" to read "Figure 68.310(f)".

36. On page 61682, in § 68.310, third column, line 17, after the table, remove the "," and add "and a longitudinal impedance of 500 ohms. Figure 68.310(c) shows this termination."

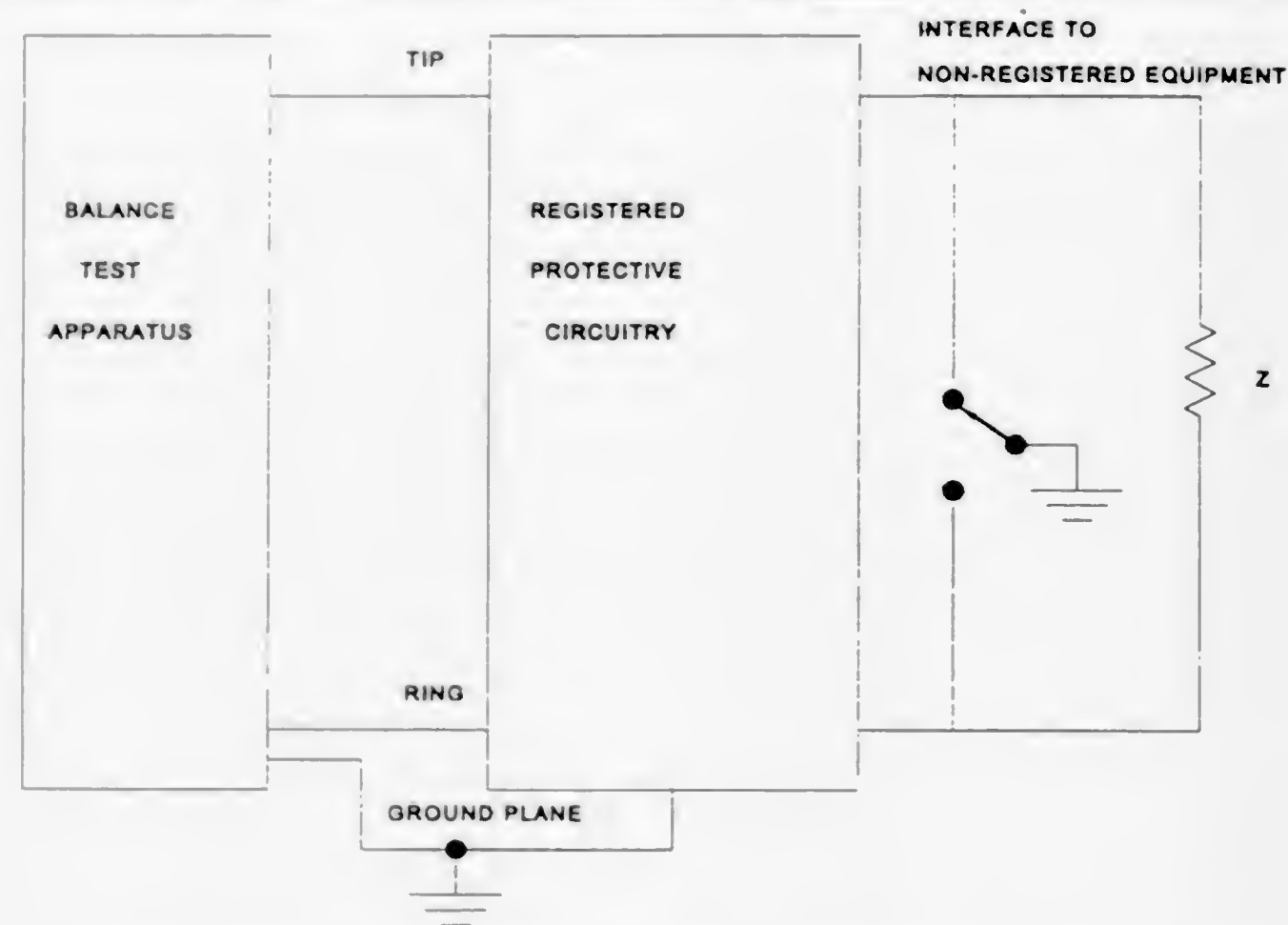
37. On page 61683, in § 68.310, correct the table heading to read "Table 68.310(b)—Frequency Ranges of

Transverse Balance Requirements for Digital Services".

38. On page 61688, in § 68.310, Figure 68.310(e), remove reference to "1.544kHz" and add in its place "1.544MHz".

39. On page 61689, in § 68.310, add new Figure 68.310(f) as follows:

BILLING CODE 6712-01-M



Z - Selected so that the reflected impedance at tip and ring is 600 Ω , 135 Ω , or 100 Ω depending on the service type of EUT

FIGURE 68.310 (f)
REQUIRED TERMINATION FOR CONNECTIONS TO NON-REGISTERED EQUIPMENT

Federal Communications Commission.
Geraldine A. Matise,
Chief, Network Services Division.
[FR Doc. 98-12127 Filed 5-6-98; 8:45 am]
BILLING CODE 6712-01-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: One-year Finding for a Petition To List the Harlequin Duck (*Histrionicus histrionicus*) in Eastern North America as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of one-year petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) under the Endangered Species Act of 1973, as amended (Act), announces a one-year finding on a petition to add the harlequin duck (*Histrionicus histrionicus*) in eastern North America to the List of Endangered and Threatened Wildlife. After review of all available scientific and commercial information, the Service finds that listing the harlequin duck is not warranted at this time.

The Service has based this finding on the following: (1) Prohibition of hunting since 1990 throughout the harlequin duck's entire range in eastern North America; (2) lack of substantial information indicating that the species' breeding, wintering, or staging habitat is likely to be curtailed, modified or destroyed; (3) lack of substantial information indicating that overutilization for commercial, recreational, scientific or educational purposes is significantly affecting the species; (4) lack of information indicating that disease or predation is causing a significant loss of individuals of the species; (5) lack of adequate information on population discreteness, size, and other parameters to indicate the species is likely at or below a minimum viable population size; (6) additional protective measures undertaken by the States of Maine and Rhode Island which decrease the likelihood of occurrence or the potential severity of an oil spill in the species' wintering areas; (7) limited population trend data indicating that the population has stabilized and is not declining; and (8) current regulatory mechanisms which, under the documented threats, adequately provide for the protection and conservation of the species.

DATES: The finding announced in this notice was made on April 30, 1998. Comments and information may be submitted until further notice.

ADDRESSES: Comments and materials regarding the petition finding may be submitted to the Endangered Species Coordinator, Northeast Regional Office, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. The 12-month petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Nickerson at the above address or telephone 413/253-8615.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), for any petition to revise the Lists of Endangered or Threatened Wildlife and Plants that presents substantial scientific and commercial information, the Service is required to make a finding within 12 months of the date of receipt of the petition. The finding is based on whether the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Such 12-month findings are to be published promptly in the **Federal Register**.

In a petition dated September 21, 1995, and received by the Service on September 25, 1995, the Northern Rockies Biodiversity Project and the Biodiversity Legal Foundation requested the Service to list the eastern North America population of the harlequin duck as endangered or threatened. The petition cited numerous threats to this taxon and its breeding and feeding habitats, including: (1) Destruction of riparian areas along breeding area streams; (2) destruction of watershed stability and stream flow regime in breeding areas by mining, road construction, or timber harvest; (3) inundation or elimination of breeding habitat by river impoundment and/or diversion; and (4) destruction of the larval insect food base through biting fly control programs in the northeast. The petition states that oil spills, chronic oil releases, and other coastal pollution pose a threat to the harlequin duck's wintering habitat. The petition also suggests that illegal and indiscriminate harvest is an imminent threat to the population. The Service made an administrative finding on August 7, 1997 (62 FR 42473), that the petition contained substantial information indicating that the requested action may be warranted.

Harlequin ducks are unique waterfowl in that they breed along fast-flowing, turbulent rivers and streams. In eastern North America, the species breeds along rivers in eastern Canada including the areas of Hudson, James, and Ungava bays, and Labrador south to Newfoundland. In winter, harlequin ducks are found exclusively in marine waters, occurring at the outer headlands/raised shoals where they forage in shallow water and rest, preen, and loaf in deeper water. The majority of harlequin ducks in eastern North America winter in Maine, with smaller numbers wintering south to Massachusetts and Rhode Island. Occasionally, scattered individuals can be found south to Virginia and North Carolina.

Until recently, harlequin ducks in eastern North America were thought to be one of four separate populations. The others are the Pacific population, estimated at over 1 million individuals; the Greenland population, estimated at 5000 breeding pairs; and the Iceland population estimated at 3000-5000 breeding pairs. Recent limited data indicate that the eastern North America population, estimated at 1500-2000 individuals, may have some interchange with the Greenland population.

The petitioners cited threats to the species' breeding and feeding habitats. However, available information does not substantiate that these threats currently exist or that there is a significant probability that they will occur. As an example, the petition mentions that nesting habitat could be inundated by hydroelectric development in northern Quebec and Labrador. While the Service recognizes that past hydroelectric development may have inundated harlequin duck nesting habitat, the petitioners did not identify any proposed projects within the species' known breeding range. The Service is aware of a previously proposed hydroelectric project, the James Bay II Bienville in northern Quebec, which would have impacted harlequin ducks. Of at least 153 breeding pairs found in the study area, 56 breeding pairs would have been displaced by flooding and other related alterations to the area's hydrology. However, the Quebec government has abandoned this project. The Service also found no documentation to support that timber harvest, mining, and construction activities impact breeding or foraging habitat. These impacts are identified as "potential," but specific information on where these impacts have occurred, are occurring, or may yet occur is not available.

The potential impact of a chemical or oil spill to wintering harlequin ducks is dependent on several factors such as the location, time of year, and type of chemical. The State of Maine may support up to 800 wintering harlequin ducks or 50 percent of the known eastern North America wintering population. The State has updated its procedures for responding to spills to minimize environmental impacts. These procedures were adopted following the Exxon Valdez oil spill in Alaska in order to decrease the probability of such a disaster occurring in Maine. The State of Rhode Island adopted new procedures following the North Cape spill that occurred off the Rhode Island coast in 1996. The State's Department of Environmental Management has implemented procedures to manage single-hull tankers as they enter Rhode Island waters. Legislation is pending that would require, by the year 2001, all single-hull tankers to be escorted by a tugboat through Rhode Island waters.

The Service finds that the species continues to occur throughout its historical range in eastern North America. There is no evidence of range reduction. Of the approximately 800 harlequin ducks that winter in Maine, approximately 200 winter around Isle au Haut. The portion of Isle au Haut where these ducks winter is part of Acadia National Park. Approximately 95–120 birds winter in Rhode Island off Sachuest Point, a National Wildlife

Refuge. Federal ownership of these areas provides some additional protection from threats such as illegal hunting and habitat development, to the wintering harlequin duck population.

Since 1990, hunting for harlequin ducks has been prohibited throughout the species' entire eastern North America range. Recent analysis of population trend data indicate that the number of birds wintering in Maine stopped declining between 1991 and 1992. Trends for the last 2 years show the population gradually increasing. The Service believes that the cessation of legal hunting has eliminated a significant threat to the harlequin duck population and is likely largely responsible for the recent increase in numbers of wintering harlequin ducks in Maine. The petitioners state, and the Service acknowledges, that some illegal harvest likely still occurs. However, the petitioners provided no sources for their information and no estimate on the actual numbers of harlequin ducks illegally taken. The Service was not able to locate any data indicating that the extent of this illegal harvest is significantly impacting, or is likely to impact, the harlequin duck population.

On the basis of the best available scientific and commercial information, the Service finds that listing the harlequin duck in eastern North America is not warranted at the present time because the species is not currently in danger of extinction and is not likely

to become so in the foreseeable future. Notwithstanding this finding, the Service through its many programs (e.g., Migratory Birds and the North American Waterfowl Management Plan) intends to continue to gather data, participate in genetic studies and cooperate with the States of Maine and Rhode Island and with Canada to ensure that the species continues to receive adequate protection. Should new information become available indicating that the species faces greater threats than currently exist, this decision will be revisited to determine whether protection under the Act is appropriate.

References Cited

A complete list of references used in the preparation of the 12-month finding is available upon request from the Northeast Regional Office (see ADDRESSES section).

Author

The primary author of this notice is Diane Lynch, Northeast Regional Office (see ADDRESSES section).

Authority

The authority for this section is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 30, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98-12171 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-55-P

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-21-AD]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) JT9D series turbofan engines. This proposal would require a one-time acid etch inspection of the turbine exhaust case (TEC) wall between and on either side of the "R" and "S" rails in the engine mount lug area (top quadrant of the case) for the presence of weld material, and if weld material is detected, removal from service and replacement with serviceable parts. This proposal is prompted by reports of weld rework performed in the outer case wall of the TEC, in the mount lug fillet area, during original production to address local under minimum wall thickness conditions which have left the TEC's structural capability compromised. The actions specified by the proposed AD are intended to prevent TEC structural failure under abnormal operating conditions, which could result in reduced main mount load capability, which could result in an engine separating from the wing and subsequent loss of control of the aircraft. **DATES:** Comments must be received by July 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-21-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments

may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565-6600, fax (860) 565-4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7130, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-ANE-21-AD." The

Federal Register

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Thursday, May 7, 1998

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-21-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of weld rework performed in the outer case wall of the turbine exhaust case (TEC), in the mount lug fillet area, during original production to address local under minimum wall thickness conditions which have left the TEC's structural capability compromised on certain Pratt & Whitney (PW) Models JT9D-7, -7A, -7H, -7AH, -7F, -7J, -20, -20J, -7Q, -7Q3, -59A, -70A, and -7R4D turbofan engines. The investigation identified 24 TECs as having a weld rework performed to the case wall during original production to address local under minimum wall thickness conditions. Rework procedure authorization did not limit welding locations on the circumference of the case wall and permitted welding either on the inner diameter or the outer diameter of the part. A weld rework may or may not have been performed in the mount area on the 24 turbine exhaust cases, only 11 of which have been identified by serial number (S/N). The FAA has determined that possibly other TECs that had the welding rework procedure have a quality review order (QRO) number marked on it next to the part. At this time one of the 24 turbine exhaust cases (S/N JC4708) has been located and removed from service. Engine manual repair allowances were never intended to authorize welding in the vicinity of the engine mount lugs due to structural concerns for engine mount integrity under abnormal engine operating conditions. The FAA believes that the majority of these parts have been installed in engines; however, there may be some that are presently not installed. The manufacturer regards weld repairs in the turbine exhaust case wall on either side of the "R" and "S" rails in the engine mount lug area unacceptable and does not authorize or accept case wall weld repairs in the

engine mount lug area. This condition, if not corrected, could result in TEC structural failure under abnormal operating conditions, which could result in reduced main mount load capability, which could result in an engine separating from the wing and subsequent loss of control of the aircraft.

The FAA has reviewed and approved the technical contents PW Alert Service Bulletin (ASB) No. JT9D-A6322, Revision 1, dated March 19, 1998, and ASB No. JT9D-7R4-A72-546, Revision 1, dated March 19, 1998, that describe procedures for acid etch inspections of the TEC wall between and on either side of the "R" and "S" rails in the engine mount lug area (top quadrant of the case) for the presence of weld material, and if that material is detected, removal from service and replacement with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require, at the next removal of the TEC from the low pressure turbine case "P" flange for maintenance after the effective date of this AD, a one-time acid etch inspection of TEC wall between and on either side of the "R" and "S" rails in the engine mount lug area (top quadrant of the case) for the presence of weld material, and if that material is detected, removal from service and replacement with serviceable parts. The actions would be required to be accomplished in accordance with the ASBs described previously.

There are approximately 2,720 engines of the affected design in the worldwide fleet. The FAA estimates that 1,125 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1.4 work hours per engine to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$94,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not

a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 98-ANE-21-AD.

Applicability: Pratt & Whitney (PW) Models JT9D-7, -7A, -7H, -7AH, -7F, -7J, -20, -20J, -7Q, -7Q3, -59A, -70A, and -7R4D turbofan engines. These engines are installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas DC-10 series, and Airbus Industrie A300 and A310 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent turbine exhaust case (TEC) structural failure under abnormal operating conditions, which could result in reduced main mount load capability, which could

result in an engine separating from the wing and subsequent loss of control of the aircraft, accomplish the following:

(a) At the next removal of the TEC from the low pressure turbine case "P" flange for maintenance after the effective date of this AD, accomplish the following in accordance with PW Alert Service Bulletin (ASB) No. JT9D-A6322, Revision 1, dated March 19, 1998, or ASB No. JT9D-7R4-A72-546, Revision 1, dated March 19, 1998, as applicable:

(1) Perform a one-time acid etch inspection of TEC wall between and on either side of the "R" and "S" rails in the engine mount lug area (top quadrant of the case) for the presence of weld material.

(2) If weld material is found, remove from service the TEC and replace with a serviceable part.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 29, 1998.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98-12062 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-SW-43-AD]

Airworthiness Directives; Eurocopter France SA 330F, G, and J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA 330F, G, and J helicopters. This proposal would require removal and replacement of each tail rotor electrical bonding braid (bonding braid). This proposal is prompted by one in-service report of

failure of a bonding braid. The actions specified by the proposed AD are intended to prevent failure of a bonding braid due to fatigue, resulting impact with the tail rotor blades, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW-43-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5121, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-SW-43-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW-43-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA 330F, G, and J helicopters. The DGAC advises that, in order to improve the in-service resistance of the bonding braids and to limit the risks of their impacting the blades, the bonding braids and their attachment clamps were to be removed and replaced before September 1, 1995.

Eurocopter France has issued Eurocopter France Service Bulletin SA 330 No. 65.73 R3, dated June 22, 1995. The DGAC classified this service bulletin as mandatory and issued AD 95-153-072(B), dated July 19, 1995, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to his bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA 330F, G, and J helicopters of the same type design registered in the United States, the proposed AD would require replacing the bonding braids. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 2 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$250 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$740.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules docket. A copy of it may be obtained by contacting the Rules docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 97-SW-43-AD.

Applicability: Model SA330F, G, and J helicopters with tail rotor electrical bonding

braids, part number (P/N) 332A031.1276.00, that have not been modified in accordance with AMS 332A07-66-003 or AMS 33207-66-072, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within the next 60 calendar days, unless accomplished previously.

To prevent failure of a tail rotor electrical bonding braid (bonding braid) due to fatigue, resulting impact with the tail rotor blades, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the bonding braids, P/N 332A31.1276.00, and replace them with airworthy bonding braids, P/N 332A31.1276.01 in accordance with paragraphs B and C of the Operating Procedure of Eurocopter France Service Bulletin SA 330 No. 65.73 R3, dated June 22, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale L'Aviation Civile (France) AD 95-153-072(B), dated July 19, 1995.

Issued in Fort Worth, Texas, on April 29, 1998.

Eric Bries,
Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.

[FR Doc. 98-12113 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-SW-36-AD]

Airworthiness Directives; Eurocopter France Model AS 332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332C, L, and L1 helicopters. This proposal would require replacing main rotor blades with modified main rotor blades. This proposal is prompted by reports of an investigation that found broken braids on main rotor blade de-icers. The actions specified by the proposed AD are intended to prevent loss of the de-icing capabilities of the main rotor blades, adverse performance during flight in icing conditions, and subsequent loss of control of the helicopter.

DATES: Comments must be received by July 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW-36-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5121, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-SW-36-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW-36-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France AS 332C, L, and L1 helicopters. The DGAC advises that replacing the de-icers on these helicopters is necessary to prevent loss of the de-icing function due to damaged electric return braids.

Eurocopter France has issued Telex Service Number (No.) 10002, dated January 17, 1994, which specifies modification of the main rotor blade within specified time intervals. The DGAC classified the Technical Directive No. 230 referenced in the telex as mandatory and issued AD 95-029-054(B) in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section

21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France AS 332C, L, and L1 helicopters of the same type design registered in the United States, the proposed AD would require replacing main rotor blades with modified main rotor blades. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts will be provided at no cost by the manufacturer. Based on these figures the total cost impact of the proposed AD on U.S. operators is estimated to be \$1200 per helicopter.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rule Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 97-SW-36-AD.

Applicability: Model AS 332C, L, and L1 helicopters, with main rotor blades, part number (P/N) 332A11-030-03 or 332A11-030-04, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the de-icing capabilities of the main rotor blades, adverse performance during flight in icing conditions, and subsequent loss of control of the helicopter, accomplish the following:

(a) From available helicopter records, within the next 10 calendar days, determine the time-in-service (TIS) on each main rotor blade.

(b) Replace each main rotor blade with a main rotor blade that has been modified and reidentified in accordance with Eurocopter Technical Instruction Number (No.) 230b (referenced in Telex Service No. 10002, dated January 17, 1994) in accordance with the following schedule:

- (1) If the TIS is equal to or greater than 2,000 hours, replace within the next 50 hours TIS.
- (2) If the TIS is equal to or greater than 1,850 hours and less than 2,000 hours,

replace on or before attaining 2,050 hours TIS.

(3) If the TIS is equal to or greater than 1,500 hours and less than 1,850 hours, replace within the next 200 hours TIS.

(4) If the TIS is equal to or greater than 1,400 hours and less than 1,500 hours, replace on or before attaining 1,700 hours TIS.

(5) If the TIS is greater than 700 hours and less than 1,400 hours, replace within the next 300 hours TIS.

(6) If the TIS is equal to or less than 700 hours, replace within the next 1,000 hours TIS.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in DGAC (France) AD 95-029-054(B), dated February 1, 1995.

Issued in Fort Worth, Texas, on April 29, 1998.

Eric Bries,
Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.

[FR Doc. 98-12112 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Rules of Procedure

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (the "Commission") is an independent adjudicatory agency that provides trial and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (1994) (the "Mine Act"). The Commission's rules of procedure govern practice and procedure in Commission proceedings at both trial and review levels. The Commission is proposing to revise several of its present rules of procedure.

The Commission's present rules of procedure were adopted in June 1979

(see 44 FR 38227 (June 29, 1979)), and last amended in May 1993 (see 58 FR 12158 (March 3, 1993)). The Commission has determined that certain procedural rules require further revision to address various problems that were unforeseen in 1993, in a further effort to ensure "the just, speedy, and inexpensive determination of all proceedings" before the Commission (29 CFR 2700.1(c)).

DATES: Written comments must be submitted on or before August 5, 1998.

ADDRESSES: Comments may be mailed to Norman Gleichman, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006. Persons submitting comments shall provide an original and three copies of their comments.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, Office of the General Counsel, 1730 K Street, NW, 6th Floor, Washington, DC 20006, telephone 202-653-5610 (202-566-2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission initially adopted rules of procedure to practice before it in June 1979. See 44 FR 38227 (June 29, 1979). The rules were revised only minimally until March 1993. In March 1993, the Commission published the revised procedural rules, which became effective on May 3, 1993. See 58 FR 12158 (March 3, 1993). Those rules embodied significant changes brought about by a reexamination of the rules in light of more than ten years' practical experience with their operation and evolving Commission case law.

Since March 1993, the Commission has become aware of several rules that require further revision, clarification, or expansion. These revisions were the subject of consideration by the Commission's administrative law judges, who preside at hearings at the trial level, and Commissioners at the review level.

In the proposed rules, the Commission has revised requirements related to motion practice before the Commission. See proposed §§ 2700.9, 2700.10, 2700.70(d), 2700.75(d) and (f). For example, in order to increase efficiency in the Commission's disposition of procedural motions, the Commission proposes requiring a moving party to confer or make reasonable efforts to confer with other parties in a proceeding and to state in the motion whether any party does or

does not oppose the motion. See proposed § 2700.10. In addition, the Commission proposes changing the deadline for filing requests for extensions of time and allowing such motions and oppositions to those motions to be filed and served by facsimile transmission. See proposed §§ 2700.5(d), 2700.7, 2700.9, 2700.75(d). The Commission also proposes instituting a deadline for filing motions requesting extensions of page limits. See proposed §§ 2700.70(d), 2700.75(f).

Furthermore, the Commission proposes expanding the requirements for certain pleadings. For instance, under the proposed rules, the Commission would require page numbering for all pleadings. See proposed § 2700.5(c). The Commission would also institute a page limit for petitions for discretionary review. See proposed § 2700.70(d).

In addition, the Commission proposes to revise and clarify procedures for filing pleadings in temporary reinstatement proceedings. The proposed revisions include the addition of a captioning requirement for petitions for review of temporary reinstatement orders and modifications to the requirements regarding the manner and date of filing pleadings. See proposed §§ 2700.5(d), 2700.7, 2700.45(a) and (f). The Commission proposes to clarify the pleadings on which it will base its ruling and the standard for granting a motion to stay the effect of a temporary reinstatement order. See proposed § 2700.45(f).

Because the proposed changes do not constitute a major revision to the Commission's procedural rules, the Commission has not proposed revising § 2700.84, which provides in pertinent part that the procedural rules in part 2700 are effective on May 3, 1993. Notice of the effective date of the amended rules will be published in the **Federal Register** when the rules are published as final rules.

Although these rules are procedural in nature and do not require notice and comment publication under the Administrative Procedure Act (see 5 U.S.C. 553(b)(3)(A)), the Commission is inviting and will consider public comment before adopting in final form any revisions to the existing rules. Comments may be mailed to the Commission's General Counsel at the address previously stated. It is requested that comments be filed no later than August 5, 1998. A section-by-section explanation of the proposed changes is set forth below.

II. Section-by-Section Analysis

General Provisions

Section 2700.5 General requirements for pleadings and other documents; status or informational requests.

In order to eliminate unnecessary confusion, paragraph (c) adds the requirement that all documents include page numbers. In addition, consistent with proposed revisions to §§ 2700.9 and 2700.45(f), paragraph (d) adds the provision that the filing of a motion for an extension of time and a petition for review of a temporary reinstatement order is effective upon receipt rather than upon mailing.

Section 2700.7 Service.

Consistent with the proposed changes to §§ 2700.9 and 2700.45(f), paragraph (c) has been revised to specify the circumstances under which requests for extensions of time and petitions for review of temporary reinstatement orders may be served by facsimile transmission. In addition, paragraph (c) has been revised to clarify that service by mail is effective upon mailing for all types of mail, including first class, express, or registered or certified mail, return receipt requested.

Section 2700.9 Extensions of time.

As currently written, § 2700.9 requires that a request for an extension of time be filed before the expiration of the time allowed for filing or serving of the document. The Commission occasionally receives a request for an extension of time on or shortly before the due date for filing or serving of the document. In such instances, the Commission must dispose of the motion prior to the expiration of the time for a response to the motion. The Commission proposes to amend the rule to require that a motion for an extension of time be filed no later than three days prior to the expiration of the time allowed for the filing or serving of the document, and to allow the motion and any opposition of the motion to be filed and served by facsimile transmission. In addition, in accordance with the proposed revisions to § 2700.10, the moving party must confer or make reasonable efforts to confer with other parties and shall state in the motion for a time extension, whether any other party opposes or does not oppose the motion. Finally, in accordance with the proposed revisions to § 2700.10, the Commission may decide that circumstances warrant ruling on the motion prior to the expiration of the time for a response.

Paragraph (b) adds a provision allowing the Commission to grant a

motion for an extension of time in exigent circumstances, even though the request was filed late. In such circumstances, the moving party must show, in writing, the reasons for the party's failure to timely file the request.

Section 2700.10 Motions.

Currently, § 2700.10 does not require that a moving party confer with parties to ascertain whether there is opposition to the motion, or to inform the Commission of any opposition or lack of opposition. As a result, before the Commission disposes of a procedural motion, it must wait for the expiration of the time period for filing a statement in opposition. For some motions requiring prompt or immediate disposition, the Commission must contact other parties or, if such parties are unavailable, dispose of the motion without a response. In order to more efficiently and fairly dispose of such motions, the Commission proposes to amend the rule to require a moving party, prior to filing a procedural motion, to confer or make reasonable efforts to confer with the other parties and to state in the motion if any other party opposes or does not oppose the motion. In addition, the Commission would add the provision that, where circumstances warrant, a motion may be ruled upon prior to the expiration of the time for response, and that a party adversely affected by the ruling may seek reconsideration.

Complaints of Discharge, Discrimination or Interference

Section 2700.45 Temporary reinstatement proceedings.

As currently written, § 2700.45(f) does not differentiate between petitions for review filed pursuant to § 2700.70 and petitions for review of judges' temporary reinstatement decisions. The two types of appeals are, however, procedurally distinct. To highlight this distinction, the Commission proposes to amend the rule to require that petitions filed under § 2700.45(f) be captioned "Petition for Review of Temporary Reinstatement Order."

Under section 105(c)(2) of the Mine Act, the Commission is directed to expedite temporary reinstatement proceedings. 30 U.S.C. 815(c)(2). In furtherance of this directive, the Commission proposes to amend § 2700.45(f) as follows: (1) To allow any pleadings in a temporary reinstatement proceeding to be filed and served by facsimile transmission; (2) to provide that the filing of a petition for review of a temporary reinstatement order is effective upon receipt; (3) to require that any response to a petition must be filed

within 5 days following service of the petition, rather than 5 days following receipt of the petition, as the rule currently provides; and (4) to clarify that the Commission's ruling on a petition shall be based on the petition and any response, and that any further briefing will be entertained only at the express direction of the Commission. Proposed § 2700.45(f) also clarifies that the petition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the petition. The proposed revision allowing pleadings filed under § 2700.45(f) to be served by facsimile transmission is also reflected in proposed § 2700.45(a).

Current § 2700.8, which the Commission does not propose to revise, applies to proposed § 2700.45(f), as well as other sections. Accordingly, if a petition for review of a temporary reinstatement order is served by mail, under current § 2700.8, 5 days would be added to the time allowed by proposed § 2700.45(f) for the filing of any response to the petition.

Presently, a petition for review under § 2700.45(f) does not stay the effect of a judge's temporary reinstatement order. Although operators have moved to stay the effect of the order when filing a petition, in *Secretary of Labor on behalf of Bowling v. Perry Transport, Inc.*, 15 FMSHRC 196 (February 1993), the Commission, in denying such a motion, stated that "[a]bsent some extraordinary circumstance, yet to be advanced, the granting of such a motion would eviscerate the temporary reinstatement provision of the Mine Act." *Id.* at 198. The Commission proposes to codify this holding of *Perry Transport* by explicitly providing in § 2700.45(f) that the Commission will grant a motion to stay the effect of a temporary reinstatement order only under extraordinary circumstances.

Review by the Commission

Section 2700.70 Petitions for discretionary review.

Paragraph (a) has been revised to clarify that procedures governing petitions for review of temporary reinstatement orders may be found in proposed § 2700.45(f). In addition, paragraph (d) adds a 35-page limit for petitions for discretionary review. Under the present rule, there is no page number limitation for petitions for discretionary review. In order to promote brevity and concision in pleading, the Commission would set a page limit for petitions for discretionary review identical to the page limit for a petitioner's opening brief. Consistent with proposed changes to § 2700.75, the

Commission also proposes revising § 2700.70(d) to institute a deadline for filing a motion requesting an extension of the 35-page limit, and to provide that an extension in page limit will be permitted by the Commission for good cause shown.

Section 2700.75 Briefs.

Under the present rule, a motion for an extension of time to file a brief must be filed within the time limit prescribed for filing the brief. The Commission would revise § 2700.75 to require that such motions comply with the proposed revisions to § 2700.9. See proposed § 2700.75(d).

In addition, the Commission would revise § 2700.75 to institute a deadline for filing a motion requesting an extension of page limit for a brief. See proposed § 2700.75(f). The Commission often receives a motion requesting an extension of page limit and an attached brief that exceeds the page limit on, or shortly before, the date that the brief is due to be filed. In such instances, the Commission must contact other parties to determine whether the motion is opposed or, if such parties are unavailable, dispose of the motion without a response. If the Commission were to deny the motion, the filing party would have little time, if any, to file another brief that conforms to the page limit. In order to avoid this harsh result, the Commission on occasion has been effectively denied an opportunity to give full consideration to whether a page extension is necessary and, if so, the amount that the limit should be exceeded. Therefore, the Commission proposes to amend the rule by requiring that a motion requesting an extension of page limit: (1) Be filed not less than 10 days prior to the date that the brief is due to be filed; (2) state the approximate length of the extension required; and (3) comply with the requirements of proposed section 2700.10, including the requirement that a motion state whether any other party opposes or does not oppose the motion. Finally, the Commission would revise § 2700.75(c) to specify that an extension in page limit will be permitted by the Commission for good cause shown.

Section 2700.76 Interlocutory review.

Paragraph (a) has been revised to clarify that procedures governing petitions for review of temporary reinstatement orders may be found in proposed § 2700.45(f).

Matters of Regulatory Procedure

The Commission has determined that these rules are not subject to Office of

Management and Budget Review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601-612) that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Ex parte communications, Lawyers, Penalties.

For the reasons set out in the preamble, it is proposed to amend 29 CFR part 2700 as follows:

PART 2700—PROCEDURAL RULES

1. The authority citation for part 2700 continues to read as follows:

Authority: 30 U.S.C. 815 and 823.

2. Section 2700.5 is amended by revising paragraphs (c) and (d) to read as follows:

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

(c) *Necessary information.* All documents shall be legible and shall clearly identify on the cover page the filing party by name. All documents shall be dated and shall include the assigned docket number, page numbers, and the filing person's address and telephone number. Written notice of any change in address or telephone number shall be given promptly to the Commission or the Judge and all other parties.

(d) *Manner and date of filing.* A notice of contest of a citation or order, a petition for assessment of penalty, a complaint for compensation, a complaint for discharge, discrimination or interference, an application for temporary relief shall be filed by personal delivery, including courier service, or by registered or certified mail, return receipt requested. All subsequent documents that are filed with a Judge or the Commission may be filed by first class mail, including express mail, or by personal delivery. When filing is by personal delivery, filing is effective upon receipt. When filing is by mail, filing is effective upon

mailing, except that the filing of a petition for discretionary review, a petition for review of a temporary reinstatement order, and a motion for extension of time is effective upon receipt. See §§ 2700.9, 2700.45(f), and 2700.70. Filing by facsimile transmission is permissible only when specifically permitted by these rules (see §§ 2700.9, 2700.45(f), 2700.52 and 2700.70), or when otherwise allowed by a Judge or the Commission. Filing by facsimile transmission is effective upon receipt.

3. Section 2700.7 is amended by revising paragraph (c) to read as follows:

§ 2700.7 Service.

(c) *Methods of service.* A notice of contest of a citation or order, a proposed penalty assessment, a petition for assessment of penalty, a complaint for compensation, a complaint of discharge, discrimination or interference, an application for temporary reinstatement, and an application for temporary relief shall be served by personal delivery, including courier service, or by registered or certified mail, return receipt requested. All subsequent papers may be served by personal delivery or by first class mail, including express mail service, except as specified in §§ 2700.9 and 2700.45 (extensions of time and temporary reinstatement proceedings). Service by mail, including first class, express, or registered or certified mail, return receipt requested, is effective upon mailing. Service by personal delivery is effective upon receipt. When filing by facsimile transmission (see § 2700.5(d)), the filing party must also serve by facsimile transmission or by a means as expeditious as facsimile. Service by facsimile transmission is effective upon receipt.

4. Section 2700.9 is revised to read as follows:

§ 2700.9 Extensions of time.

(a) The time for filing or serving any document may be extended for good cause shown. Filing of a motion requesting an extension of time, including a facsimile transmission, is effective upon receipt. A motion requesting an extension of time shall be received no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and shall comply with § 2700.10. The motion shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion. A motion requesting an

extension of time and a statement in opposition to such a motion may be filed and served by facsimile.

(b) In exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired.

5. Section 2700.10 is amended by redesignating paragraph (c) as (d), revising newly redesignated paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 2700.10 Motions.

(c) Prior to filing a procedural motion, the moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion.

(d) A statement in opposition to a written motion may be filed by any party within 10 days after service upon the party. Unless otherwise ordered, oral argument on motions will not be heard. Where circumstances warrant, a motion may be ruled upon prior to the expiration of the time for response; a party adversely affected by the ruling may seek reconsideration.

6. Section 2700.45 is amended by revising paragraphs (a) and (f) to read as follows:

§ 2700.45 Temporary reinstatement proceedings.

(a) *Service of pleadings.* A copy of each document filed with the Commission in a temporary reinstatement proceeding shall be served on all parties by personal delivery, including courier service, by certified or registered mail, return receipt requested or, as specified in paragraph (f) of this section, by facsimile transmission.

(f) *Review of order.* Review by the Commission of a Judge's written order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition, which shall be captioned "Petition for Review of Temporary Reinstatement Order," with supporting arguments, within 5 days following receipt of the Judge's written order. The filing of any such petition is effective upon receipt. The petition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the petition.

The filing and service of any pleadings under this rule may be made by facsimile transmission. The filing of a petition shall not stay the effect of the Judge's order unless the Commission so directs; a motion for such a stay will be granted only under extraordinary circumstances. Any response shall be filed within 5 days following service of a petition. The Commission's ruling on a petition shall be made on the basis of the petition and any response (any further briefs will be entertained only at the express direction of the Commission), and shall be rendered within 10 days following receipt of any response or the expiration of the period for filing such response. In extraordinary circumstances, the Commission's time for decision may be extended.

7. Section 2700.70 is amended by revising paragraphs (a) and (d) to read as follows:

§ 2700.70 Petitions for discretionary review.

(a) *Procedure.* Any person adversely affected or aggrieved by a Judge's decision or order may file with the Commission a petition for discretionary review within 30 days after issuance of the decision or order. Filing of a petition for discretionary review, including a facsimile transmission, is effective upon receipt. Two or more parties may join in the same petition; the Commission may consolidate related petitions. Procedures governing petitions for review of temporary reinstatement orders are found at § 2700.45(f).

(d) *Requirements.* Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record, when assignments of error are based on the record, and by statutes, regulations, or other principal authorities relied upon. Except by permission of the Commission and for good cause shown, petitions for discretionary review shall not exceed 35 pages. A motion requesting an extension of the page limit shall be filed not less than 10 days prior to the date the petition for discretionary review is due to be filed, shall state the approximate length of the extension required, and shall comply with § 2700.10. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the Judge had not been afforded an opportunity to pass.

8. Section 2700.75 is amended by revising paragraphs (c) and (d), by

redesignating paragraph (f) as (g), and by adding a new paragraph (f) to read as follows:

§ 2700.75 Briefs.

(c) *Length of brief.* Except by permission of the Commission and for good cause shown, opening briefs shall not exceed 35 pages, response briefs shall not exceed 25 pages, and reply briefs shall not exceed 15 pages. A brief of an amicus curiae shall not exceed 25 pages. A brief of an intervenor shall not exceed the page limitation applicable to the party whose position it supports in affirming or reversing the Judge, or if a different position is taken, such brief shall not exceed 25 pages. Tables of contents or authorities shall not be counted against the length of a brief.

(d) *Motion for extension of time.* A motion for an extension of time to file a brief shall comply with § 2700.9. The Commission may decline to accept a brief that is not timely filed.

(f) *Motion for extension of page limit.* A motion requesting an extension of the page limit for a brief shall be filed not less than 10 days prior to the date the brief is due to be filed, shall state the approximate length of the extension required, and shall comply with § 2700.10.

9. Section 2700.76 is amended by revising paragraph (a) to read as follows:

§ 2700.76 Interlocutory review.

(a) *Procedure.* Interlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission. Procedures governing petitions for review of temporary reinstatement orders are found at § 2700.45(f).

Mary Lu Jordan,
Chairman, Federal Mine Safety and Health Review Commission.
[FR Doc. 98-12157 Filed 5-6-98; 8:45 am]
BILLING CODE 6735-01-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 218, 250, and 256

RIN 1010-AC32

Postlease Operations Safety

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This notice extends to July 17, 1998, the deadline for submitting comments on the proposed rule on Postlease Operations Safety.

DATES: We will consider all comments received by July 17, 1998, and we may not fully consider comments received after July 17, 1998.

ADDRESSES: Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia 20170-4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Operations Division, at (703) 787-1600.

SUPPLEMENTARY INFORMATION: MMS was asked to extend the deadline for submitting comments on the proposed Postlease Operations Safety rule published on February 13, 1998 (63 FR 7335) and the correction to the proposed rule published on March 9, 1998 (63 FR 11385). The request explains that the proposed rule has a number of important changes that require careful consideration for comprehensive comments. Because the proposed rule was rewritten in "plain English" and sections, paragraphs, and sentences do not have the same order and numbering sequence as the current regulations in 30 CFR part 250, subpart A, additional time was requested to sort out the proposed rule for comparison.

Dated: May 1, 1998.

E. P. Danenberger,
Chief, Engineering and Operations Division.
[FR Doc. 98-12057 Filed 5-6-98; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07-98-024]

RIN 2115-AE46

Special Local Regulations; Deerfield Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish permanent special local regulations for the Annual Deerfield Beach Super Boat Grand Prix powerboat race. This event will be held annually offshore Deerfield Beach on the third Sunday of July, between 12:30 p.m. and 4 p.m. Eastern Daylight Time (EDT). These regulations are necessary to

provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before June 8, 1998.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Group Miami, 100 MacArthur Causeway Miami Beach, Florida 33139, or may be delivered to the Operations Department at the same address between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (305) 535-4448. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: QMCST. T. Kjerulff, Coast Guard Group Miami, FL at (305) 535-4448.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify the rulemaking (CGD07-98-024) and the specific section of this proposal to which each comment applies, and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the *Federal Register*.

Background and Purpose

Each year in July, Super Boat International Productions Inc., sponsors a high speed power boat race with approximately thirty-five (35) race boats, ranging in length from 24 to 50 feet, participating in the event. There are approximately two hundred (200) spectator craft. The race takes place in the Atlantic Ocean 1,000 feet off Deerfield Beach. The race boats compete at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways. These regulations will prohibit entry into the regulated area by non-participating vessels, and will establish spectator craft areas for boaters to safely watch the race.

Regulatory Evaluation

This is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 4.5 hours annually on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdiction with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as the regulations would only be in effect for approximately 4.5 hours for one day each year in a limited area offshore Deerfield Beach. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.a (CE #34(h)) of Commandant Instruction M16475.1C, and has determined that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.733 is added to read as follows:

§ 100.733 Annual Deerfield Beach Super Boat Race, Deerfield Beach, FL

(a) *Regulated areas.*—(1) *Regulated Areas.* An area within a line joining the following points:

Corner point 1: 26-19.7N-080-04.4W
Corner point 2: 26-19.7N-080-03.9W
Corner point 3: 26-15.7N-080-04.4W
Corner point 4: 26-15.7N-080-04.9W. All coordinates reference Datum: NAD 83.

(2) *Spectator Area.* A spectator area is established in the vicinity of the regulated area for spectator traffic and is defined by a line joining the following points:

Corner point 1: 26-15.7N-080-03.9W
Corner point 2: 26-15.7N-080-04.1W
Corner point 3: 26-19.7N-080-03.7W
Corner point 4: 26-19.7N-080-03.5W. All coordinates reference Datum: NAD 83.

(3) *Buffer Zone.* A buffer zone of 406 yards separates the racecourse and the spectator fleet.

(b) *Special local regulations.* (1) Entry into the regulated area by other than event participants is prohibited unless otherwise authorized by the Patrol Commander. At the completion of scheduled races and the departure of participants from the regulated area, traffic may resume normal operations. Traffic may be permitted to resume normal operations between scheduled racing events at the discretion of the Patrol Commander.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any

and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) Spectators required to maintain a safe distance from the racecourse at all times.

(b) *Effective Date:* This section becomes effective annually at 12 p.m. and terminates at 4:30 p.m. EDT, on the third Sunday of July.

Dated: April 24, 1998.

R.C. Olsen, Jr.,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 98-12138 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11-98-005]

RIN 2115-AA97

Safety/Security Zone; San Francisco Bay, San Pablo Bay, Carquinez Straits, and Suisun Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a moving safety/security zone around vessels transporting foreign research reactor spent nuclear materials on the navigable waters of San Francisco Bay, San Pablo Bay, Carquinez Straits, and Suisun Bay, CA. The zone will extend 200 yards ahead and astern, and 100 yards to each side of each vessel carrying the nuclear materials, during transit from buoys 7 and 8 in the San Francisco Bay Traffic Lane to the Weapons Support Facility Seal Beach Detachment Concord on Suisun Bay. When the vessel is safely moored at the Weapons Support Facility, the zone will close to encompass all waters within 100 yards of the vessels and will remain so until all nuclear materials cargo handling operations have been completed.

The purpose of this safety/security zone are two-fold: To ensure the safety of the participant transport vessels and crew, and of all other vessels and crew in the vicinity of the participant transport vessels; and to ensure the security of the participant transport vessels, and of the property of the United States Government contained on those vessels, against sabotage or other subversive and/or disruptive acts. No persons or vessels will be allowed to

enter, operate, or anchor within this zone, except as may be authorized by Commander, Eleventh Coast Guard District, or his designated representative.

DATES: Comments must be received on or before July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mark Dix, Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073, between the hours of 7:30 a.m. and 4 p.m. PDT, Monday through Friday, except federal holidays.

ADDRESSES: U.S. Coast Guard Marine Safety Office San Francisco Bay, Building 14, Coast Guard Island, Alameda, CA 94501-5100.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identifying this proposal by docket number (CGD11-98-005) and the specific section of this proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposed rule may be changed in light of comments received. No public hearing on this proposal is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity for oral presentation will enhance the rulemaking process.

Background and Purpose

As part of a major national security objective to further the objectives of the 1968 Treaty On Non-Proliferation of Nuclear Weapons, the United States Department of Energy (DOE) will be receiving shipments of foreign research reactor spent nuclear fuel at the Weapons Support Facility Seal Beach Detachment Concord in Concord, CA. As such, DOE is responsible for the shipments necessitating promulgation of this safety/security zone.

The Coast Guard proposes to establish a moving safety/security zone around each vessel transporting these foreign research reactor spent nuclear materials on behalf of DOE and the United States Government on the navigable waters of San Francisco Bay, San Pablo Bay, Carquinez Straits, and Suisun Bay, CA,

and at the Weapons Support Facility Seal Beach Detachment Concord.

The Coast Guard does not anticipate that maritime traffic will be significantly impacted by the promulgation of this safety/security zone because DOE has advised that there will be irregular and infrequent shipments, and that expeditious transits will be scheduled for days and times of light maritime traffic so as to maximize safety and minimize any delay or inconvenience caused by the shipments. The purposes of this safety/security zone are two-fold: (1) Pursuant to 33 CFR 165.23, to ensure that safety of the participant transport vessels and crew, and of all other vessels and crew in the vicinity of the participant transport vessels; and, (2) pursuant to 33 CFR 165.33, to ensure the security of the participant transport vessels, and of the property of the United States Government contained on those vessels, against sabotage or other subversive and/or disruptive acts.

Discussion and Proposed Rule

The proposed safety/security zone will extend 200 yards ahead and astern, and 100 yards to each side of vessels carrying the nuclear materials, during transit from buoys 7 and 8 in the San Francisco Bay Traffic Lane (LLNR 4190 & 4195, positions 37°46.9'N, 122°35.4'W & 37°46.5'N, 122°35.2'W, respectively) to the Weapons Support Facility Seal Beach Detachment Concord on Suisun Bay (position 38°03.3'N, 122°02.5'W). Once the vessel is safely moored, the zone will close to encompass all waters within 100 yards of the vessel and will remain so until all nuclear materials cargo handling operations have been completed. No persons or vessels will be allowed to enter, operate, or anchor, including any emergency mooring or anchoring, within this zone during the vessel's transit and subsequent cargo handling operations except as may be authorized by Commander, Eleventh Coast Guard District, or his designated representative.

DOE anticipates that these shipments will take place at irregular intervals for an undetermined period of years. Thus, the actual dates and times that this safety/security zone will be activated are not known by the Coast at this time. The Eleventh Coast Guard District Commander will cause notice of the activation of this safety/security zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the *Federal Register* as practicable, in accordance with the provisions of 33 CFR 165.7(a); such means of announcement may include, but are not limited to,

Broadcast Notice to Mariners. The Coast Guard will also issue a Broadcast Notice to Mariners notifying the public when nuclear materials cargo handling has been completed.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Maritime traffic will not be significantly impacted because of the infrequent transits necessitating activation of this safety zone, and the limited duration of the zone during transit and cargo operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact LCDR Mark Dix, Coast Guard Marine Safety Office, San Francisco Bay, at the address listed in ADDRESSES.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking in accordance with Figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.1C, and has determined that this particular action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist is in file in the rulemaking docket, and is available for inspection at the address shown above in the paragraph entitled FOR FURTHER INFORMATION CONTACT.

A copy of DOE's "Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel" has also been placed in the rulemaking docket and is available for inspection at the address shown above in the paragraph entitled FOR FURTHER INFORMATION CONTACT. To request your own copy of this document, contact: Charles Head, Program Manager, Office of Spent Nuclear Fuel Management (EM-67), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of \$100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of \$100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend subpart F of part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 150.5; 49 CFR 1.46.

2. A new § 165.1115 is added to read as follows:

§ 165.1115 **Safety/Security Zone: San Francisco Bay, San Pablo Bay, Carquinez Straits, and Suisun Bay, CA.**

(a) *Regulated area.* The following area is established as a safety/security zone:

(1) All waters 200 yards ahead and astern and 100 yards to each side of every vessel transporting nuclear materials on behalf of the United States Department of Energy while such vessels transit from a line drawn between buoys 7 and 8 in the San Francisco Bay Traffic Lane (LLNR 4190 & 4195, positions 37°46.9'N, 122°35.4'W & 37°46.5'N, 122°35.2'W, respectively) until safely moored to the Weapons Support Facility Seal Beach Detachment Concord on Suisun Bay (position 38°03.3'N, 122°02.5'W).

All coordinates referenced use datum: NAD 1983.

(2) All waters within 100 yards of each vessel described in paragraph (a)(1) of this section while moored at the Weapons Support Facility Seal Beach Detachment Concord until all nuclear materials cargo handling operations have been completed.

(b) *Notification.* Commander, Eleventh Coast District, will cause notice of the activation of this safety/security zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the **Federal Register** as practicable, in accordance with the provisions of 33 CFR 165.7(a); such means of announcement may include, but are not limited to, Broadcast Notice to Mariners. The Coast Guard will issue a Broadcast Notice to Mariners notifying the public when nuclear materials cargo handling has been completed.

(c) *Effective Period.* The safety/security zone will be effective

commencing at the time any vessel described in paragraph (a)(1) of this section enters the zone described in paragraph (a)(1) of this section and will remain in effect until all spent nuclear materials cargo handling operations have been completed at Weapons Support Facility Seal Beach Detachment Concord.

(d) *Regulations.* The general regulations governing safety and security zones contained in both 33 CFR 165.23 and in 33 CFR 165.33 apply. Entry into, transit through, or anchoring within this safety/security zone is prohibited unless authorized by Commander, Eleventh Coast Guard District, or his designated representative.

Dated: April 21, 1998.

J.C. Card,
Vice Admiral, U.S. Coast Guard Commander,
Eleventh Coast Guard District.

[FR Doc. 98-12137 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-15-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 047-1047; FRL-6010-8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the state of Missouri to broaden the current visible emission rule exceptions to include smoke generating devices. This revision would allow smoke generators to be used for military and other types of training when operated under applicable requirements.

DATES: Comments must be received on or before June 8, 1998.

ADDRESSES: Comments may be mailed to Kim Johnson, U.S. Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551-7975.

SUPPLEMENTARY INFORMATION: This amendment broadens the current visible emission rule exceptions to include smoke generating devices in general, when a required permit or a written determination that a permit is not required has been issued. The visible

emission rule 10 CSR 10-3.080 is a general limit on opacity from all contaminated sources located in certain geographic areas in Missouri. The amendment adds certain categories such as smoke-generating devices to the list of sources exempted from the opacity limit. The amendment defines a smoke generating device as a specialized piece of equipment which is not an integral part of a commercial, industrial, or manufacturing process, and whose sole purpose is the creation and dispersion of fine solid or liquid particles in a gaseous medium. This revision would allow smoke generators to be used for military training at such facilities as Fort Leonard Wood, as long as such facilities are subject to applicable permit requirements.

A modeling analysis was used to predict air quality impacts for Fort Leonard Wood Smoke Training School. Based on the modeling analysis, the proposed smoke training at Fort Leonard Wood, if operated under the requirements listed in the prevention of significant deterioration (PSD) permit, will not exceed the maximum allowable PSD PM₁₀ increment of 30 µg/m³ based on a 24-hour average, and will not cause or contribute to a violation of the PM₁₀ national ambient air quality standards.

The amendment only exempts units which are subject to permit limits containing restrictions which ensure that air quality standards will not be violated, and units with *de minimis* emissions which have been determined by Missouri to be exempt from permitting. The EPA believes that the exemption will not interfere with attainment and maintenance of the ambient air quality standards.

Proposed Action

The EPA is proposing to approve as a revision to the SIP the amendment to rule 10 CSR 10-3.080, "Restriction of Emission of Visible Air Contaminants," submitted by the state of Missouri on July 10, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act (CAA) do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no

additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 14, 1998.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 98-12149 Filed 5-6-98; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 63, No. 88

Thursday, May 7, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 1, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Economic Research Service

Title: USDA County Based Project Customer Survey.

OMB Control Number: 0536-NEW.

Summary of Collection: The Economic Research Service is managing, on behalf of the Secretary of Agriculture, a study of county-based agency operations. The goal of the project is the articulation of alternative approaches to organizing and staffing USDA's county-based operations in delivering services that are clearly linked to the Federal policy and program priorities and that can be transparently managed to meet Federal budget targets. During the study, consultants under contract with ERS will visit ten selected county office sites around the county. The consultant also plans to conduct a telephone survey of USDA customers associated with each site to gather a better understanding of customer interaction with the offices' business processes.

Need and Use of the Information: ERS, through its contract consultant, plans to conduct approximately 335 telephone interviews to gather information on customer interactions and experiences, and perceptions of service. The survey will be conducted one time only. The data collected from the survey will be used primarily by the project team as input to the workload measurement and business process modeling activities.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 770.

Frequency of Responses: Reporting: Other (one time collection).

Total Burden Hours: 254.

Food and Consumer Service

Title: The Integrity Profile.

OMB Control Number: 0584-0401.

Summary of Collection: The Food and Nutrition Service (FNS) administers the Woman, Infant, and Childrens (WIC) Program on behalf of the Secretary of Agriculture. In recent years, the Office of Inspector General (OIG), has performed audits of FNS' vendor management and recommended FNS (1) develop criteria to identify vendors suspected of abuse (high-risk vendors) and (2) require State agencies to perform a minimum number of compliance investigations in order to provide

sufficient evidence on whether vendors are overcharging the Program or violating other regulatory requirements. Accordingly, FNS requires State agencies to report annually on their vendor monitoring efforts. The data collected from the States serves as a management tool to provide Congress, OIG senior program managers, as well as the general public, assurances that program funds are being spent appropriately and that every reasonable effort is being made to prevent, detect and eliminate fraud, waste and abuse.

Need and Use of the Information: The information collected is analyzed and a report is prepared by FNS annually that (1) assesses State agency progress in eliminating abusive vendors, (2) assesses the level of activity that is being directed to ensuring program integrity, and (3) analyzes trends over a 5-year period. The information is used at the national level in formulating program policy and regulations. At the FNS regional office level, the data is reviewed to identify possible vendor management deficiencies so that technical assistance can be provided to States, as needed. At the State level, the information is used to provide assurances to the Governor's office, and other interested parties, that WIC issues are being addressed.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 88.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,836.

Agricultural Marketing Service

Title: Cotton Classing, Testing, and Standards.

OMB Control Number: 0581-0008.

Summary of Collection: The U.S. Cotton Standards Act, 7 U.S.C. 51, 53 and 55, directs and authorizes the USDA to supervise the various activities directly associated with the classification or grading of cotton, cotton lint, and cottonseed based on official USDA Standards. The Cotton Division of the Agricultural Marketing Service carries out this supervision and is responsible for the maintenance of the functions to which these forms relate.

Need and Use of the Information: The Agricultural Marketing Service uses the following forms to collection information: Form CN-357 is submitted by owners of cotton to request cotton classification services. The request

contains information for USDA to ascertain proper ownership of the samples submitted, distribute classification results, and bill for services. Information about the origin and handling of the cotton is necessary in order to properly evaluate and classify the samples.

Form CN-246 is submitted by cotton gins and warehouses seeking to serve as licensed samplers. The license period is five years. Licenses issued by the USDA-AMS Cotton Division authorize the warehouse/gin to draw and submit samples to insure the proper application of standards in the classification of cotton and to prevent deception in their use.

Form CN-383 is submitted to cotton producers, ginners, warehousemen, cooperatives, manufacturers, merchants, and crushers interested in acquiring a set of cotton grade and staple standards for Upland and Pima cotton.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 307.

Frequency of Responses: Reporting: Annually; Other (every 5 yrs).

Total Burden Hours: 100.

Farm Service Agency

Title: Standards for Approval of Warehouses-7 CFR 1421, 1423 and 1427

OMB Control Number: 0560-0052

Summary of Collection: The Farm Service Agency (FSA), under Public Law 80-806, the Commodity Credit Corporation (CCC) Charter Act, is authorized to enter into storage contracts with commercial warehouse operators. Specifically, the Act permits FSA to enter into various types of contracts as are necessary in the conduct of its business and directs FSA to utilize the usual and customary channels, facilities and arrangements of trade and commerce in its functions of purchasing, warehousing, transporting, processing, or handling of agricultural commodities. FSA must collect information in order to develop and maintain a List of Approved Warehouses (Approved List) to store CCC-owned or loan commodities. The use of warehouses on the Approved List reduces the risk of loss faced by CCC by using only those facilities which meet the financial, physical, and managerial requirements of CCC. The information will be collected by mail which is necessary because these agreements must be legal and binding.

Need and Use of the Information: The information collected on various forms is necessary to establish and maintain the Approved List, follow accepted warehousing practices, and represent

the minimum burden to carry out various mandatory price support programs. The forms will be reviewed by FSA contracting officers at the Kansas City Commodity Office (KCCO) in order to maintain an Approved List for the storage of CCC-owned or CCC-loan commodities.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3,380.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 423,864.

Farm Service Agency

Title: End-Use Certificate Program—7 CFR Part 782.

OMB Control Number: 0560-0151.

Summary of Collection: Public Law 103-182, Section 321 (f) of the North American Free Trade Agreement Implementation Act mandates that the Secretary of Agriculture shall implement, in coordination with the Commissioner of Customs, a program requiring that end-use certificates be included in the documentation covering the entry into the United States of any wheat originating from Canada.

Need and Use of the Information: The end-use certificate program was designed to ensure that Canadian wheat does not benefit from USDA or CCC-assisted export programs. The information collected on the end-use certificate is used in conjunction with USDA's domestic origin compliance review process doing quarterly audits of contractors involved in foreign food assistance programs. The form FSA-750 "End-Use Certificate for Wheat" is used by approximately 200 importers of Canadian wheat to report entry into the United States. The FSA-751 "Wheat Consumption and Resale Report" is used by approximately 225 millers, exporters, and other users of Canadian wheat to report final disposition of Canadian wheat in the United States.

Description of Respondents: Business or other for-profit.

Number of Respondents: 430.

Frequency of Responses: Reporting: On occasion; Quarterly.

Total Burden Hours: 5,971.

Nancy Sternberg,

Departmental Information Clearance Officer. [FR Doc. 98-12141 Filed 5-6-98; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97-130-2]

AgrEvo USA Co.; Availability of Determination of Nonregulated Status for Sugar Beet Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that AgrEvo USA Company's sugar beet designated as Transformation Event T120-7, which has been genetically engineered for tolerance to the herbicide glufosinate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by AgrEvo USA Company in its petition for a determination of nonregulated status and an analysis of other scientific data. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: April 28, 1998.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, and the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690-2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-6774. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734-4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1997, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 97-336-01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, seeking a determination that sugar beet

(*Beta vulgaris* L.) designated as Transformation Event T120-7 (event T120-7), which has been genetically engineered for tolerance to the herbicide glufosinate, does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On February 6, 1998, APHIS published a notice in the *Federal Register* (63 FR 6148-6149, Docket No. 97-130-1) announcing that the AgrEvo petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject sugar beet and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether this sugar beet posed a plant pest risk. The comments were to have been received by APHIS on or before April 7, 1998. APHIS received no comments on the subject petition during the designated 60-day comment period. Analysis

Event T120-7 sugar beet has been genetically engineered to contain a synthetic version of the *pat* gene derived from *Streptomyces viridochromogenes*. The *pat* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. Expression of the *pat* gene is controlled by 35S promoter and terminator sequences derived from the plant pathogen cauliflower mosaic virus. Event T120-7 sugar beet also contains the *aph(3')/II* or *nptII* marker gene used in plant transformation.

Expression of the *nptII* gene is controlled by gene sequences derived from *Agrobacterium tumefaciens*, and analysis indicates that the NPTII protein is expressed in certain parts of the subject sugar beet plants. The *A. tumefaciens* method was used to transfer the added genes into the parental sugar beet line.

The subject sugar beet has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, evaluation of field data reports from field tests of this sugar beet conducted under APHIS permits since 1994 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the environmental release of event T120-7 sugar beet.

Determination

Based on its analysis of the data submitted by AgrEvo, and a review of

other scientific data and field tests of the subject sugar beet, APHIS has determined that event T120-7: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than sugar beet developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that the subject sugar beet and any progeny derived from crosses with other sugar beet varieties will be as safe to grow as sugar beet in traditional breeding programs that are not subject to regulation under 7 CFR part 340.

The effect of this determination is that AgrEvo's event T120-7 sugar beet is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject sugar beet or its progeny. However, importation of event T120-7 sugar beet or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319. National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that AgrEvo's event T120-7 sugar beet and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 30th day of April, 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-12125 Filed 5-6-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98-032-1]

AgrEvo USA Co.; Extension of Determination of Nonregulated Status to Soybean Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to extend to one additional soybean line our determination that certain soybean lines developed by AgrEvo USA Company, which have been genetically engineered for glufosinate herbicide tolerance, are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our decision is based on our evaluation of data submitted by AgrEvo USA Company in its request for an extension of a determination of nonregulated status and an analysis of other scientific data. This notice also announces the availability of an environmental assessment and finding of no significant impact.

EFFECTIVE DATE: June 8, 1998.

ADDRESSES: The extension request and an environmental assessment and finding of no significant impact may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690-2817.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-4882. To obtain a copy of the extension request or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734-4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or

produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request shall include information to establish the similarity of the antecedent organism and the regulated article in question.

Background

On January 14, 1998, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 98-014-01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, for a soybean line designated as transformation event A5547-127 (event A5547-127), which has been genetically engineered for resistance, or tolerance, to the herbicide glufosinate. The AgrEvo request seeks an extension of a determination of nonregulated status that was issued for certain lines of glufosinate tolerant soybean (antecedent organisms) in response to APHIS petition number 96-068-01p (61 FR 42581-42582, August 16, 1996, Docket No. 96-019-2). Based on the similarity of event A5547-127 to the antecedent organisms, AgrEvo requests a determination that glufosinate tolerant soybean event A5547-127 does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

Analysis

Event A5547-127 soybean contains a synthetic version of the *pat* gene derived from *Streptomyces viridochromogenes*, which encodes the PAT enzyme and confers tolerance to glufosinate. Expression of the synthetic *pat* gene is controlled by a 35S promoter and terminator derived from the plant pathogen cauliflower mosaic virus. While the subject soybean event contains fragments of the *b10* marker gene, tests indicate this gene is not expressed in the plant. The particle acceleration method was used to transfer the added genes into the parental *Glycine max* A5547 cultivar. Event A5547-127 soybean was transformed with the same plasmid vector and in the same manner as certain antecedent organisms described

in APHIS petition number 96-068-01p, and differs from them only in the copy number and extent of integrated DNA.

The subject soybean line has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from a plant pathogen. However, evaluation of field data reports from field tests of this soybean conducted under APHIS notifications since 1996 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of its environmental release.

Determination

Based on an analysis of the data submitted by AgrEvo and a review of other scientific data and field tests of the subject soybean line, APHIS has determined that event A5547-127 soybean: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than soybean lines developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that the subject soybean line and any progeny derived from crosses with other soybean varieties will be as safe to grow as soybeans in traditional breeding programs that are not subject to regulation under 7 CFR part 340.

The effect of this determination is that AgrEvo's event A5547-127 soybean is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject soybean line or its progeny. However, importation of the subject soybean line or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3)

USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that AgrEvo's event A5547-127 soybean and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 1st day of May 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-12126 Filed 5-6-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Anchor Hill Project, Gilt Edge Mine, Environmental Impact Statement Supplement, Black Hills National Forest, SD

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a draft supplement to a final environmental impact statement.

SUMMARY: J. Thomas Millard, Spearfish/Nemo District Ranger, of the Black Hills National Forest gives notice of the agency's intent to prepare a Draft Supplement to the Final Environmental Impact Statement for the Anchor Hill Project of the Gilt Edge Mine. The responsible official for this project is John C. Twiss, Forest Supervisor, Black Hills National Forest.

DATES: The Draft Supplement should be available for public comment by the end of April 1998. The Final Supplement should be ready for public review in July of 1998.

ADDRESSES: Send written comments to District Ranger, Spearfish/Nemo District, P.O. Box 407, Deadwood, SD 57732.

FOR FURTHER INFORMATION CONTACT: Don Murray Lands and Minerals Staff on the Spearfish/Nemo Ranger District, (605) 578-2744.

SUPPLEMENTARY INFORMATION: The Draft Supplement will provide additional information and clarification of items in the Final Environmental Impact Statement for the Anchor Hill Project published in November 1997. The Anchor Hill Project is the proposed expansion of an existing open pit gold

mine on to 37 acres of land in the Black Hills National Forest, which is located four miles southeast of Deadwood, South Dakota.

The comment period on the draft supplement to the final environmental impact statement will be a minimum of 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft supplements to the final environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft supplement to the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplement to the final environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft supplement. Comments may also address the adequacy of the draft supplement to the final environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 3, 1998.

J. Thomas Millard,
District Ranger.

[FR Doc. 98-12089 Filed 5-6-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region; Telluride Ski Area Expansion—Supplemental Analysis, Grand Mesa, Uncompahgre and Gunnison National Forests, San Miguel County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare a Supplemental Environmental Impact Statement (SFEIS) to the Final Environmental Impact Statement Telluride Ski Area Expansion (FEIS) to address the adequacy of the FEIS and to disclose new information. The Final Record of Decision (ROD) on the Telluride Ski Area Expansion released in July 1996 was subsequently withdrawn pending further analysis required by the Appeal Deciding Officer and a civil complaint. The SFEIS will address the points raised by the Appeal Deciding Officer and the civil complaint as well as any applicable new information. The FEIS disclosed potential impacts on a proposal to develop six new ski lifts with associated runs and five new restaurants at the Telluride Ski Area on the Norwood District of the Grand Mesa, Uncompahgre and Gunnison National Forests within San Miguel County, Colorado.

DATES: The draft SFEIS is scheduled for publication in June 1998 and the final in September 1998.

ADDRESSES: Send written comments to Dick Cook, Norwood Ranger District, Grand Mesa, Uncompahgre and Gunnison National Forests, P.O. Box 388, Norwood, Colorado 81423. Robert L. Storch, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, is the Responsible Official for this EIS.

FOR FURTHER INFORMATION CONTACT: Arthur Bauer, Project Coordinator, Norwood Ranger District—(970) 728-9351 or (970) 327-4261.

SUPPLEMENTARY INFORMATION: The EIS process for the Telluride Ski Area Expansion began with a Notice of Intent in the **Federal Register** on June 18, 1993. The proposal includes the

construction of six new lifts and associated trails, five new restaurants, and the expansion of additional off-season recreational activities. A draft EIS was published in March 1994 and a supplement to the draft EIS was published in December 1994. The FEIS for the Telluride Ski Area Expansion was prepared and released in February 1996 and the ROD was released in July 1996.

The ROD was the subject of an appeal to the Rocky Mountain Regional Forester on September 6, 1996. The ruling made on October 22, 1996 by the Appeal Deciding Officer directed the Forest Supervisor to: (1) Disclose the socio-economic impacts, including community infrastructure and services, to communities outside of San Miguel County but within the employee commuting area of Telluride; (2) specify the required best management practices for erosion and sedimentation control; (3) disclose the instream flows of the San Miguel River resulting from the proposed action with the existing flows, the associated effects including cumulative effects of water depletions, and specify required mitigation; and (4) analyze and disclose the environmental effects of off-season operation and use of any chairlift, other than Lift #10.

Subsequent to the ruling by the Appeal Deciding Officer, a civil complaint was filed against the USFS in March 1997 and was subsequently amended on April 22, 1997. The claims made by the plaintiffs included four counts which dealt with potential inadequacies in the FEIS, the exclusion of two transportation exhibits in the Appeal Record, concerns that potential bias in the analysis may have tainted the process, and the possible violation of the Clean Air Act by the issuance of the conformity Determination.

On June 30, 1997, the Forest Supervisor of the GMUG National Forests withdrew the decision on the Telluride Ski Area expansion pending further analysis required by the Appeal Deciding Officer and the points raised in the civil complaint. The ROD released in July 1996 is no longer considered valid. Once the Supplement has been finalized, a new decision will be issued by the Forest Supervisor. The new decision will consider all the findings of the Supplement as well as those released in the FEIS. All elements and alternatives displayed in the FEIS will be reconsidered in the Record of Decision associated with the supplement.

The Deciding Official will be Robert L. Storch, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison

National Forests, 2250 Highway 50, Delta, Colorado 81416.

Dated: April 27, 1998.
Robert L. Storch,
Forest Supervisor.
[FR Doc. 98-12161 Filed 5-6-98; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Friday, May 15, 1998, in Woodland, Washington, at the Oak Tree Restaurant (1020 Atlantic Street). The meeting will begin at 8 a.m. and continue until 3 p.m. The purpose of the meeting is to: (1) Provide information on Forest Implementation and Effectiveness Monitoring, (2) Relate the status of National Forest land exchanges, (3) Provide information about the Recreation Fee Program, and (4) Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (4) of this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891-5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 N.E. 51st Circle, Vancouver, WA 98682.

Dated: April 30, 1998.
Ted C. Stubblefield,
Forest Supervisor.
[FR Doc. 98-12061 Filed 5-6-98; 8:45 am]
BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and

regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m. on May 29, 1998, at the Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Room 331, Chicago, Illinois 60604. The purpose of the meeting is to hold a conference on "Civil Rights Issues Facing the Blind in Illinois."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Joseph Mathewson, 312-360-1110, or Constance M. Davis, Director of the Midwestern Regional Office, 312-353-8311 (TDD 312-353-8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 29, 1998.
Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 98-12156 Filed 5-6-98; 8:45 am]
BILLING CODE 6336-01-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104-13.

Bureau: International Trade Administration (ITA).
Title: NATO International Competitive Bidding (ICB) Bidders List Application.

Agency Form Number: ITA 4023P.
OMB Number: 0625-0055.
Type of Request: Regular Submission.
Burden: 60 hours.
Number of Respondents: 60.
Avg. Hours Per Response: 1 hour.
Needs and Uses: Opportunities for contracts under NATO Security Investment Program (NSIP) are only open to firms of member NATO countries. NSIP procedures for international competitive bidding (AC/4-D/2261) require that each NATO country certify that their respective firms are eligible to bid such contracts. This is done through the issuance of a "Declaration of Eligibility". The U.S.

Department of Commerce/ITA is the executive agency responsible for certifying U.S. firms. ITA-4023P is the application form used by USDOC/ITA to collect information needed to ascertain the eligibility of a US firm. ITA reviews the application for completeness and accuracy and determines a company's eligibility based on its financial viability, technical capability, and security clearances with the Department of Defense.

Affected Public: Businesses or other for-profit, not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.
OMB Desk Officer: Dennis Marvich, (202) 395-5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dennis Marvich, OBM Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 30, 1998.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 98-12087 Filed 5-6-98; 8:45 am]
BILLING CODE 3510-04-U

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 980427107-8107-01]

Designation of an Urbanized Area for Flagstaff, AZ

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of designation.

SUMMARY: Based on the results of a special census conducted April 1, 1995, the Bureau of the Census designated Flagstaff, Arizona, as an urbanized area under criteria published October 22, 1990 in the Federal Register (55 FR 42592-42596, Oct. 22, 1990). The Flagstaff, Arizona, urbanized area has a population of 53,355.

FOR FURTHER INFORMATION CONTACT: Dr. Joel L. Morrison, Chief, Geography Division, Bureau of the Census, Washington, DC 20233-7400, telephone (301) 457-1132.

SUPPLEMENTARY INFORMATION: Based on the results of a special census conducted April 1, 1995, the Bureau of

the Census designated Flagstaff, Arizona, as an urbanized area effective March 13, 1996. The major geographic

components of the urbanized area and the population and land area of each appear below:

Urbanized area	Population	Land area	
		Sq. miles	Sq. kilometers
Flagstaff, AZ	53,355	26.23	67.94
In Central Place	52,507	25.60	66.32
Flagstaff City (pt.), AZ	52,507	25.60	66.32
Urban Fringe	848	0.63	1.62
Coconino County (pt.)	848	0.63	1.62
Coconino Division (pt.)	848	0.63	1.62

Since 1986, the Census Bureau has allowed the delineation of new urbanized areas based on a special census taken in the intercensal period. The Census Bureau delineates urbanized areas every 10 years as part of the decennial census of population and housing or following a special census.

Dated: April 27, 1998.
James F. Holmes,
Acting Director, Bureau of the Census.
[FR Doc. 98-12132 Filed 5-6-98; 8:45 am]
BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Export Materials, Inc. and Thane-Coat International, Ltd.; Decision and Order on Renewal of Temporary Denial Order

In the matters of: Export Materials, Inc., 3727 Greenbrier Drive, No. 108, Stafford, Texas 77477, and Thane-Coat International, Ltd., Suite C, Regent Centre, Explorers Way, P.O. Box F-40775, Freeport, The Bahamas, Respondents.

On October 31, 1997, Acting Assistant Secretary for Export Enforcement Frank W. Deliberti issued a Decision and Order on Renewal of Temporary Denial Order (hereinafter "Order" or "TDO"), renewing for 180 days a May 5, 1997 Order naming Thane-Coat, Inc.; Jerry Vernon Ford, president, Thane-Coat, Inc.; Preston John Engebretson, vice-president, Thane-Coat, Inc.; Export Materials, Inc.; and Thane-Coat International, Ltd. (Export Materials, Inc. and Thane-Coat, International, Ltd. hereinafter collectively referred to as the "Respondents" and Thane-Coat, Inc., Ford, and Engebretson, the "affiliated parties"), as persons temporarily denied all U.S. export privileges. 62 FR 60063-60065 (November 6, 1997). The Order will expire on April 29, 1998.

On April 9, 1998, pursuant to Section 766.24 of the Export Administration Regulations (15 C.F.R. Parts 730-774

(1997)) (hereinafter the "Regulations"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. sections 2401-2420 (1991 & Supp. 1998)) (hereinafter the "Act"),¹ the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), requested that the Assistant Secretary for Export Enforcement renew the Order against Thane-Coat International, Inc. and Export Materials, Inc. for an additional 180 days.

In its request, BXA stated that, as a result of an ongoing investigation, it had reason to believe that, during the period from approximately June 1994 through approximately July 1996, Thane-Coat, Inc., through Ford and Engebretson, and using its affiliated companies, Thane-Coat International, Ltd. and Export Materials, Inc., made approximately 100 shipments of U.S.-origin pipe coating materials, machines, and parts to the Dong Ah Consortium in Benghazi, Libya. These items were for use in coating the internal surface of prestressed concrete cylinder pipe for the Government of Libya's Great Man-Made River Project.² Moreover, BXA's investigation gave it reason to believe that the Respondents and the affiliated parties employed a scheme to export U.S.-origin products from the United States, through the United Kingdom, to Libya, a country subject to a comprehensive economic sanctions program, without the authorizations

required under U.S. law, including the Regulations. The approximate value of the 100 shipments at issue was \$35 million. In addition, the Respondents and the affiliated parties undertook several significant and affirmative actions in connection with the solicitation of business on another phase of the Great Man-Made River Project.

BXA has stated that it believes that the matters under investigation and the information obtained to date in that investigation support renewal of the TDO issued against the Respondents.³ BXA believes that a temporary denial order is necessary to give notice to companies in the United States and abroad that they should cease dealing with Thane-Coat International, Inc. and Export Materials, Inc. in export-related transactions involving U.S.-origin goods.

Based on BXA's showing, I find that it is appropriate to renew the order temporarily denying all U.S. export privileges of Thane-Coat International, Ltd. and Export Materials, Inc. I find that such renewal is necessary in the public interest to prevent an imminent violation of the Regulations and to give notice to companies in the United States and abroad to cease dealing with these persons in any commodity, software, or technology exported or to be exported from the United States and subject to the Export Administration Regulations, or in any other activity subject to the Regulations. Moreover, I find such renewal is in the public interest in order to reduce the substantial likelihood that Thane-Coat International, Inc. and Export Materials, Inc. will engage in activities which are in violation of the Regulations.

Accordingly, it is therefore ordered: First, that Thane-Coat International, Ltd., and all of its successors or assigns, officers, representatives, agents, and

³ On April 17, 1998, BXA requested that the Assistant Secretary for Export Enforcement renew the October 31, 1997 TDO against Thane-Coat, Inc., Jerry Vernon Ford, and Preston John Engebretson.

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. 1701-1706 (1991 & Supp. 1998)).

² BXA understands that the ultimate goal of this project is to bring fresh water from wells drilled in southeast and southwest Libya through prestressed concrete cylinder pipe to the coastal cities of Libya. This multibillion dollar, multiphase engineering endeavor is being performed by the Dong Ah Construction Company of Seoul, South Korea.

employees when acting on its behalf, and Export Materials, Inc., and all of its successors or assigns, officers, representatives, agents, and employees when acting on its behalf (hereinafter referred to collectively as the "denied persons"), may not directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported, or to be exported, from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition, or attempted acquisition, by any denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby any denied person acquires, or attempts to acquire, such ownership, possession or control;

C. Take any action to acquire from, or to facilitate the acquisition or attempted acquisition from any denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from any denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by any denied

person, or service any item, of whatever origin, that is owned, possessed or controlled by any denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment, as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to any denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

This order, which constitutes final agency action in this matter, is effective immediately and shall remain in effect for 180 days.

A copy of this Order shall be served on each Respondent and this Order shall be published in the **Federal Register**.

Entered this 29th day of April, 1998.

F. Amanda, DeBusk,

Assistant Secretary for Export Enforcement.

Certificate of Service

I hereby certify that, on April 30, 1998, I caused the foregoing Decision and Order on Renewal of Temporary Denial Order to be mailed first-class, postage prepaid to: Export Materials, Inc., 3727 Greenbriar Drive, No. 108, Stafford, Texas 77477.

I hereby certify that on April 30, 1998, I caused the foregoing Decision and Order on renewal of Temporary Denial Order to be mailed registered mail, return receipt requested to: Thane-Coat International, Ltd., Suite C, Regent Centre, Explores Way, P.O. Box F-40775, Freeport, The Bahamas.

Lucinda G. Maruca,

Secretary, Office of the Assistant Secretary for Export Enforcement.

[FR Doc. 98-12188 Filed 5-6-98; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee (RPTAC) will be held May 27, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Open Session

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Discussion of the National Defense Authorization Act computer control regulation.
4. Discussion of the Wassenaar Arrangement implementation regulation.
5. Discussion on the encryption regulation.
6. Update on the license process review initiative.
7. Discussion on the "deemed export" rule.
8. Update on Foreign Trade Statistics Regulations and Export Administration Regulations conforming regulations for export clearance requirements.
9. Reports from RPTAC working groups.

Closed Session

10. Discussion of matter properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA

MS: 3886C, 15th St. & Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 16, 1996, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, call Lee Ann Carpenter at (202) 482-2582.

Dated: May 1, 1998.

Lee Ann Carpenter,
Director, Technical Advisory Committee Unit.
[FR Doc. 98-12122 Filed 5-6-98; 8:45 am]
BILLING CODE 3510-33-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke Export Trade Certificate of Review No. 85-00014.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Grays Harbor Exporting Trading Company. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent Grays Harbor Exporting Trading Company.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to

issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on December 20, 1985 to Grays Harbor Exporting Trading Company.

A certificate holder is required by law (section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§§ 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent multiple reminder letters and made several telephone calls to Grays Harbor Exporting Trading Company regarding their failure to submit annual reports as required. The Department has received no written response to any of these letters or telephone calls.

On May 1, 1998 and in accordance with § 325.10(c)(1) of the regulations, a letter was sent by certified mail to notify Grays Harbor Exporting Trading Company that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the regulations, each certificate holder has 30 days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a 30-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate.

If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (§ 325.10(c)(2) of the regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon

request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (§ 325.10(c)(3) of the regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (§ 325.10(c)(4) of the regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** §§ 325.10(c)(4) and 325.11 of the regulations).

Dated: May 1, 1998.

Morton Schnabel,
Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98-12082 Filed 5-6-98; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 980413093-8093-01]

Notice of Termination of Validation Services for Federal Information Processing Standards (FIPS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; termination of validation services.

SUMMARY: The NIST is terminating validation services for the following Federal Information Processing Standards:

- FIPS 21-4, COBOL
- FIPS 69-1, Fortran
- FIPS 113, Computer Data Authentication
- FIPS 171, Key Management Using ANSI X9.17-1985.

The NIST announced on October 10, 1997, (62 FR 52976) that it would terminate validation services for FIPS 21-4, COBOL, and FIPS 69-1, Fortran, by September 30, 1998, or earlier if private industry validation services were established. Since such services are now available, NIST is terminating these validation services effective June 7, 1998.

NIST is also terminating validation services for FIPS 113 and FIPS 171 on June 7, 1998. Neither service has been used over the past few years. Verification of proper implementation

for these two standards will now be performed as part of the Cryptographic Module Validation Program (CMVP). Accredited Cryptographic Module Testing (CMT) Laboratories shall perform testing related to FIPS 113 and FIPS 171—if applicable—for cryptographic modules undergoing FIPS 140-1 validation testing, in accordance with guidance provided by NIST.

A Directory of Conformance Testing Programs, Products, and Services is available on the World Wide Web (WWW) at the Universal Resource Locator (URL)—<http://www.nist.gov/ctdirectory.html>. NIST test suites and testing procedures are distributed freely and are accessible from the Directory. Additional conformance testing information is available on the URL—<http://www.nist.gov/div897/ctg>.

EFFECTIVE DATE: June 7, 1998.

FOR FURTHER INFORMATION CONTACT:

For FIPS 21-4 and FIPS 69-1: Lynne S. Rosenthal, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3353, e-mail lsr@nist.gov.

For FIPS 113 and FIPS 171: James G. Foti, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-5237, e-mail james.foti@nist.gov.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 5131 of the Information Technology Management Reform Act of 1996, and the Computer Security Act of 1987, as amended, (Pub. L. 104-106).

Dated: April 29, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98-12140 Filed 5-6-98; 8:45 am]

BILLING CODE 3510-CN-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Transshipment Charges for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

May 5, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transshipments to 1998 limits.

EFFECTIVE DATE: May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Lori Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In a notice published in the *Federal Register* on September 11, 1996 (61 FR 47892), CITA announced that Customs would be conducting other investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that textile products in certain categories, produced or manufactured in China and entered into the United States with the incorrect country of origin, were entered in circumvention of the Bilateral Textile Memorandum of Understanding (MOU) dated February 1, 1997 between the Governments of the United States and the People's Republic of China. Consultations were held between the Governments of the United States and the People's Republic of China on this matter November 5-7, 1997 and January 15-16, 1998. Pursuant to paragraph 13(E) of the February 1, 1997 MOU between the Governments of the United States and the People's Republic of China, the United States may charge three times the amounts transshipped to China's negotiated quantitative limits, with the amounts distributed equally over the remaining term of the agreement. Accordingly, charges will be made to each of the 1998, 1999 and 2000 quota years for Categories 331, 341, 347/348, 351, 352, 631, 636, 641, 647, 649 and 652. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1998 quota levels:

Category	Amounts to be charged
331	82,122 dozen pairs.
341	80 dozen.
347/348	518 dozen.
351	62 dozen.
352	7,692 dozen.
631	30,700 dozen pairs.
636	101 dozen.
641	1,309 dozen.
647	25 dozen.
649	3,061 dozen.
652	6,372 dozen.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States.

Any charges resulting from these investigations will be published in the *Federal Register*.

The U.S. Government is taking this action pursuant to the February 1, 1997 MOU between the Governments of the United States and the People's Republic of China.

A description of the textile and apparel categories in terms of HTS numbers is available in the *CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States* (see *Federal Register* notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67827, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 5, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Textile Memorandum of Understanding dated February 1, 1997, between the Governments of the United States and the People's Republic of China, I request that, effective on May 7, 1998, you charge the following amounts to the following categories for the 1998 restraint period (see directive dated December 22, 1997):

Category	Amounts to be charged
331	82,122 dozen pairs.
341	80 dozen.
347/348	518 dozen.
351	62 dozen.
352	7,692 dozen.
631	30,700 dozen pairs.
636	101 dozen.
641	1,309 dozen.
647	25 dozen.
649	3,061 dozen.
652	6,372 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98-12271 Filed 5-6-98; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Quota, Visa and ELVIS (Electronic Visa Information System) Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

May 1, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending quota, visa and ELVIS requirements.

EFFECTIVE DATE: May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1962, as amended.

In exchange of notes dated December 8, 1997, January 20, 1998, February 6, 1998 and April 8, 1998, the Governments of the United States and Thailand agreed that discharge printed fabric classified in Harmonized Tariff Schedule (HTS) numbers 5208.52.3035, 5208.52.4035, 5209.51.6032 (Category 313), 5209.51.6015 (Category 314), 5208.52.4055 (Category 315), 5208.59.2085 (Category 317), 5208.59.2015, 5209.59.0015, 5211.59.0015 (Category 326), 5516.14.0005, 5516.14.0025 and 5516.14.0085 (Category 611) which is produced or manufactured in Thailand and imported on or after May 7, 1998 will no longer be subject to visa and ELVIS (Electronic Visa Information System) requirements and will not be subject to 1998 limits. The new designations for Categories 313, 314, 315, 317, 326, 317/326 and 611 will be part-category 313-O, 314-O, 315-O, 317-O, 326-O, 317-O/326-O and 611-O, respectively. The 1998 quota levels established for Categories 313, 314, 315, 317/326 and 611 remain the same for the newly established part-categories.

Also effective on May 7, 1998, products in Categories 313, 314, 315, 317, 326 and 611, produced or manufactured in Thailand and exported from Thailand on or after April 8, 1998 must be accompanied by a 313-O, 314-O, 315-O, 317-O, 326-O and 611-O part-category visa and ELVIS transmission. Products currently visaed as 317/326 which are exported from

Thailand on or after April 8, 1998 must be accompanied by either a 317-O/326-O merged part-category visa 317/326 and ELVIS transmission, or the correct part-category visa and ELVIS transmission (317-O or 326-O) corresponding to the actual shipment. There will be a grace period from April 8, 1998 through June 7, 1998 during which products exported from Thailand in Categories 313, 314, 315, 317/326 and 611 may be accompanied by the whole or new part-category visa and ELVIS transmission. During the grace period, products visaed in merged Categories 317-O/326-O may be accompanied by a 317-O/326-O merged part-category visa and ELVIS transmission, a 317/326 merged whole category visa or the correct whole or part-category visa and ELVIS transmission (317, 326, 317-O or 326-O).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the export quota, visa and ELVIS requirements.

A description of the textile and apparel categories in terms of HTS numbers is available in the *CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States* (see *Federal Register* notice 62 FR 66057, published on December 17, 1997). Also see 42 FR 5994, published in February 1, 1977; 57 FR 2713, published on January 23, 1992; and 62 FR 60829, published on November 13, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 1, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which begins on January 1, 1998 and extends through December 31, 1998.

Effective on May 7, 1998, discharge printed fabric classified in Harmonized Tariff Schedule (HTS) numbers 5208.52.3035, 5208.52.4035, 5209.51.6032 (Category 313), 5209.51.6015 (Category 314), 5208.52.4055 (Category 315), 5208.59.2085 (Category 317), 5208.59.2015, 5209.59.0015, 5211.59.0015 (Category 326), 5516.14.0005, 5516.14.0025 and 5516.14.0085 (Category 611) which is produced or manufactured in Thailand and

imported on or after May 7, 1998 will no longer be subject to visa and ELVIS (Electronic Visa Information System) requirements and will not be subject to 1998 limits, regardless of the date of export, pursuant to exchange of notes dated December 8, 1997, January 20, 1998, February 6, 1998 and April 8, 1998. The new designations for Categories 313, 314, 315, 317, 326, 317/326 and 611 will be part-Categories 313-O¹, 314-O², 315-O³, 317-O⁴, 326-O⁵, 317-O/326-O and 611-O⁶, respectively.

The 1998 quota levels established for Categories 313, 314, 315, 317/326 and 611 remain the same for the newly established part-Categories 313-O, 314-O, 315-O, 317-O/326-O and 611-O.

Also effective on May 7, 1998, you are directed to amend further the directive dated January 16, 1992 to require a part-category visa and ELVIS transmission for Categories 313-O, 314-O, 315-O, 317-O, 326-O and 611-O, produced or manufactured in Thailand and exported on or after April 8, 1998. Products currently visaed as merged Categories 317/326 which are exported from Thailand on or after April 8, 1998 must be accompanied by either a 317-O/326-O merged part-category visa and ELVIS transmission or the correct part-category visa and ELVIS transmission (317-O or 326-O) corresponding to the actual shipment. There will be a grace period from April 8, 1998 through June 7, 1998 during which products exported from Thailand in Categories 313, 314, 315, 317/326 and 611 may be accompanied by the whole or new part-category visa and ELVIS transmission. During the grace period, products visaed in merged Categories 317-O/326-O may be accompanied by a 317-O/326-O merged part-category visa and ELVIS transmission, a 317/326 merged whole category visa and ELVIS transmission, or the correct whole or part-category visa and ELVIS transmission (317, 326, 317-O or 326-O).

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa and ELVIS transmission shall be denied entry and a new visa and ELVIS transmission must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98-12084 Filed 5-6-98; 8:45 am]

BILLING CODE 3510-DR-F

¹ Category 313-O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

² Category 314-O: all HTS numbers except 5209.51.6015.

³ Category 315-O: all HTS numbers except 5208.52.4055.

⁴ Category 317-O: all HTS numbers except 5208.59.2085.

⁵ Category 326-O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

⁶ Category 611-O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the defense Logistics Agency (DLA) Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership of the DLA PRB.

SUMMARY: This notice announces the appointment of the members of the PRBs of the Defense Logistics Agency. The publication of PRB composition is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Logistics Agency, with respect to pay level adjustments and performance awards.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT:

Ms. Donna Arellano, Workforce Effectiveness and Development Group, Human Resources, Defense Logistics Agency, Department of Defense, Ft. Belvoir, Virginia, (703) 767-6427.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of Defense Logistics Agency personnel appointed to serve as members of the PRBs. Members will serve a 1-year renewable term, effective upon publication of this notice.

1st Level PRB:

Chair: Ms. Roberta Eaton, Special Assistant for Integrity in Contracting, General Counsel
Member: Mr. Frank Lotts, Deputy Commander, Defense Supply Center, Richmond
Mr. Thomas Brunk, Executive Director, Operational Assessment and Programming, Defense Contract Management Command

2nd Level PRB:

Chair: Mr. Gary Thurber, Deputy Commander, Defense Contract Management Command
Member: Ms. Linda Furiga, Comptroller, Mr. George Allen, Deputy Commander, Defense Support Center Philadelphia.

A.C. Ressler,

Director, Corporate Administration, Defense Logistics Agency.

[FR Doc. 98-12186 Filed 5-6-98; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98-37-000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 1, 1998.

Take notice that on April 29, 1998, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective May 30, 1998:

Second Revised Sheet No. 15

Algonquin states that the purpose of the filing is to update the system map to reflect its current principal pipeline facilities and the points at which service is rendered, as required by Section 154.106 of the Commission's Regulations.

Algonquin states that copies of the filing were mailed to affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12066 Filed 5-6-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-196-000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 1, 1998.

Take notice that on April 29, 1998, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to become effective May 31, 1998:

Thirty First Revised Sheet No. 20A
Original Sheet No. 98K

Algonquin states that the filing is submitted pursuant to Section 37.1(f), Transition Costs Relating to Retained Capacity, of the General Terms and Conditions of its FERC Gas Tariff. Algonquin states that the purpose of the filing is to provide for the recovery of upstream transition costs of \$5,519.88 billed to Algonquin by Texas Eastern Transmission Corporation.

Algonquin states that the upstream transition costs to be recovered pursuant to this filing are allocated to Algonquin's customers in accordance with Section 37.1(f) of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Fourth Revised Volume No. 1.

Algonquin states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12069 Filed 5-6-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN98-3-000]

Consumers Energy Company; Notice of Informal Settlement Conference

May 1, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, May 21, 1998 at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket. If necessary, the conference will continue to Friday, May 22, 1998.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Gerald L. Richman at (202) 208-2036.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12067 Filed 5-6-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98-36-000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

May 1, 1998.

Take notice that on April 29, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective January 1, 1998:

Third Revised Sheet No. 3
Second Revised Sheet No. 3A
Second Revised Sheet No. 3B
Second Revised Sheet No. 3C

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to Section 154.106(c) of the Commission's regulations. The revisions to the maps reflect the addition of the Clearbrook meter station to Great Lakes' system, the name change of several interconnect operators, and the correction of minor errors.

Any persons desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12065 Filed 5-6-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-142-008]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

May 1, 1998.

Take notice that on April 28, 1998, K N Interstate Gas Transmission Co. (KNI), tendered for filing as part of its FERC Gas Tariff, the following actual tariff sheets, to be effective November 1, 1997:

Third Revised Volume No. 1-B

Second Revised Sheet No. 5
Second Revised Sheet No. 6
Second Revised Sheet No. 19
Second Revised Sheet No. 20
First Revised Sheet No. 20A
First Revised Sheet No. 23
First Revised Sheet No. 24
First Revised Sheet No. 72
First Revised Sheet No. 73

First Revised Volume No. 1-D

Second Revised Sheet No. 4
Second Revised Sheet No. 5
Second Revised Sheet No. 18
First Revised Sheet No. 18A
First Revised Sheet No. 18B
Original Sheet No. 18C
First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 60
Second Revised Sheet No. 61

KNI states that the above referenced actual tariff sheets are being filed in compliance with the Commission's July 3, 1997 order, in Docket No. RP97-142-003, to be effective November 1, 1997. The July 3 order approved the ProForma

sheets filed on May 1, 1997, and directed KNI to file actual tariff sheets. On October 1, 1997, in Docket No. RP97-142-006, KNI filed actual Second Revised Sheet No. 89A, Third Revised Volume No. 1-B, and Second Revised Sheet No. 71A, First Revised Volume No. 1-D, in compliance with the Commission's order and which were subsequently approved. However, due to an administrative oversight, the tariff sheets referenced above in this filing were not included in the October 1 filing as required. Therefore, KNI is hereby submitting for filing and accepted, the above referenced tariff sheets, to be effective November 1, 1997.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12076 Filed 5-6-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-125-001]

MIGC, Inc.; Notice of Amendment

May 1, 1998.

Take notice that on April 23, 1998, MIGC, Inc. (MIGC), 12200 N. Pecos Street, Denver, Colorado 80234, filed in Docket No. CP98-125-001 an amendment to the pending application filed on December 9, 1997, in Docket No. CP98-125-000, pursuant to Section 7(c) of the Natural Gas Act (NGA), to reflect a change in compression facilities for which certificate authorization is sought, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

By the pending application in Docket No. CP98-125-000, MIGC proposes to

install and operate compression, and related appurtenant facilities, at the Hilight Processing Plant in Campbell County, Wyoming and at the Platte River Compressor Station in Converse County, Wyoming, in order to alleviate an existing capacity constraint on MIGC's system.

In the subject amendment, MIGC seeks to modify its original request for certificate authority by requesting authorization to install two 1610 hp reciprocating compression units at the Hilight Processing Plant in place of the two 1360 hp reciprocating compression units originally sought. In addition, MIGC requests authorization to install one 3300 hp centrifugal (gas turbine-driven) compression unit at the Platte River Compressor Station in place of the two 7042 hp reciprocating compression units originally requested.

MIGC states that the revised cost of the proposed project is estimated to be \$6,197,000. In addition, MIGC states that the request for rolled-in rate treatment for the facilities will not result in any rate increase to existing customers.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 22, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need to file again.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 98-12074 Filed 5-6-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2901-000 and 2902-000]

Nekoosa Packaging Corporation; Notice of Commission Staff Meeting With Nekoosa Packaging Corporation on Re-Licensing of Big Island and Holcomb Rock Hydroelectric Projects

May 1, 1998.

Nekoosa Packaging Corporation (Nekoosa), a wholly owned subsidiary of Georgia-Pacific Corporation is preparing License Applications and a Draft Environmental Assessment (DEA) for the Big Island and Holcomb Rock Hydroelectric Projects (Project Nos. 2901 and 2902, respectively) located on the James River, in Bedford and Amherst Counties, Virginia. The DEA is being prepared in coordination with representatives from various federal, state and local agencies, non-governmental organizations, and local interest groups. The DEA and license applications will be filed with the Commission no later than December 31, 1998.

Nekoosa mailed a copy of Sections 5 and 6 of the preliminary DEA, and a copy of Scoping Document 2, to all parties, including the Commission, on April 27, 1998. Commission staff has reviewed the documents and will attend a meeting, as follows, to discuss and make recommendations to be included in the preliminary DEA.

Meeting Date: May 12, 1998, 9 a.m.

Location: Georgia-Pacific Corporation's big Island Mills compound, Highway 501 North, Big Island, Virginia 24526

Interested parties are welcome to attend this meeting. For further information please contact the following individuals:

C. Richard Judy, Nekoosa Packaging Corporation, Big Island, Virginia 24526, (804) 299-5911

James T. Griffin, Federal Energy Reg. Comm., 888 First Street, NE, Mailstop HL-11.3, Washington, DC 20426, (202) 219-2799

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 98-12073 Filed 5-6-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA97-25-000, OA97-606-000, ER98-1890-000, ER98-2060-000, EL98-40-000]

Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin); Notice of Initiation of Proceeding and Refund Effective Date

May 1, 1998.

Take notice that on April 30, 1998, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL98-40-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL98-40-000 will be 60 days after publication of this notice in the *Federal Register*.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 98-12071 Filed 5-6-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-372-000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

May 1, 1998.

Take notice that on April 23, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP98-372-000, a request, pursuant to §§ 157.205, 157.216, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, and 157.211), for authorization to abandon by removal its existing Moses Lake Meter Station and its existing U&I Sugar Meter Station in Grant County, Washington and to construct and operate a new combined, replacement Moses Lake Meter Station at the same site to better accommodate existing natural gas delivery requirements to Cascade Natural Gas Corporation (Cascade), under Northwest's blanket certificate authorization issued in Docket No. CP82-433-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest reports that the new Moses Lake Meter Station will have a maximum design capacity of approximately 27,911 Dth per day at 300 psig, which is sufficient to accommodate the combined existing firm delivery obligations at the two existing meter stations. Northwest relates that the removed facilities will either be returned to stock, scrapped or salvaged for reuse in the new Moses Lake Meter Station. Northwest asserts that no abandonment of service will occur. Northwest states it has sent a copy of this filing to the Washington Transportation and Utilities Commission which has regulatory authority over gas deliveries to customers served through the affected delivery meters.

Northwest estimates the total cost of the proposed new Moses Lake Meter Station to be approximately \$556,809. Because this investment is necessary for Northwest to better accommodate existing delivery requirements to cascade, Northwest indicates that it will not require any cost reimbursement from Cascade.

Northwest states that any deliveries made to Cascade through the new Moses Lake Meter Station will be transportation gas delivered either for Cascade or other shippers for whom Northwest is authorized to transport gas. Northwest says that any volumes delivered to the Moses Lake delivery point will be within the authorized entitlement of such shippers. Northwest states that its tariff does not prohibit the addition or modification of delivery point facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 98-12075 Filed 5-6-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97-4345-000]

OGE Energy Resources, Inc., Notice of Filing

May 1, 1998.

Take notice that on February 4, 1998, OGE Energy Resources, Inc. (OERI), filed a notification of a change in status to reflect certain departures from the facts the Commission relief upon in granting market-based rate authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before May 11, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 98-12119 Filed 5-6-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-195-000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

May 1, 1998.

Take notice that on April 28, 1998, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2, the tariff sheets listed on Appendix A attached to the filing to be effective May 29, 1998.

Southwest states that the purpose of this filing is to move Rate Schedule S-1 from Southwest's Original Volume No. 1 tariff to Southwest's Original Volume No. 2 tariff. In accordance with Section 154.112 of the Commission's Regulations, Southwest is (1) modifying Sheet Nos. 1, 4 and 5 of its Original Volume No. 1 FERC Gas Tariff to delete Rate Schedule S-1 and (2) resubmitting the contents of Rate Schedule S-1 as its Original Volume No. 2 FERC Gas Tariff. The text of Rate Schedule S-1 is unchanged. This tariff filing will segregate Southwest's open access Rate Schedules FSS and ISS from its individually certificated service provided under Rate Schedule S-1.

Southwest is also including on the electronic version of the Original Volume No. 1 tariff sheets, three sheets to complete the Commission's FASTR database for Southwest's Original Volume No. 1 tariff—the Title Page, Original Sheet No. 2 and Original Sheet No. 3.

Southwest states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 98-12068 Filed 5-6-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-1767-002]

Tenaska Frontier Partners, Ltd.; Notice of Filing

May 1, 1998.

Take notice that on April 8, 1998, Tenaska Frontier Partners, Ltd., filed

supplemental information to Rate Schedule No. 1 to comply with Ordering Paragraph (F) of the Commission's order issued March 30, 1998, in Tenaska Frontier Partners, Ltd., Docket No. ER97-1767-000 (82 FERC ¶ 61,323).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before May 11, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 98-12120 Filed 5-6-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-1767-001]

Tenaska Frontier Partners, Ltd., Notice of Filing

May 1, 1998.

Take notice that on April 8, 1998, Tenaska Frontier Partners, Ltd., filed supplemental information to Rate Schedule No. 1 to comply with Ordering Paragraph (F) of the Commission's order issued March 30, 1998, in Tenaska Frontier Partners, Ltd., Docket No. ER97-1767-000 (82 FERC ¶ 61,323).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before May 11, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12121 Filed 5-6-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98-198-000 and RP85-177-126]

Texas Eastern Transmission Corporation; Notice of Stipulation and Agreement

May 1, 1998.

Take notice that on April 28, 1998, pursuant to Rule 602 of the Rules of Practice and Procedure of the Commission, 18 CFR 385.602 Texas Eastern Transmission Corporation (Texas Eastern) and the Sponsoring Parties submit a Joint Stipulation and Agreement Amending Global Settlement (offer of Settlement) as a limited amendment to the Stipulation and Agreement approved by the Commission in Texas Eastern Transmission Corporation, Docket Nos. RP95-177 (Global Settlement).

Texas Eastern states that the offer of settlement is designed as a limited modification of the Global Settlement in response to concerns of Texas Eastern and Texas Eastern's customers relating to restructuring at the local level and the increased competitive environment in the marketplace. Texas Eastern also states that the offer of settlement is also designed to reduce and, thus, render more competitive Texas Eastern's rates in the near future, to the benefit of Texas Eastern, its customers and consumers.

Texas Eastern states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding.

Pursuant to Rule 602, Initial Comments must be filed on or before May 18, 1998 and Reply Comments will be due on May 28, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 18, 1998. Persons who are already a party to the Docket No. RP85-177-000, *et al.*, proceeding,

do not have to file a motion to intervene. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12072 Filed 5-6-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-197-000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 1, 1998.

Take notice that on April 29, 1998, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective June 1, 1998:

Eleventh Revised Sheet No. 6
Fourth Revised Sheet No. 6A
Fourth Revised Sheet No. 14
Second Revised Sheet No. 15D
Fifth Revised Sheet No. 19
Fourth Revised Sheet No. 24
Fourth Revised Sheet No. 29
Fifth Revised Sheet No. 39
Fifth Revised Sheet No. 87
Original Sheet No. 87A

Viking states that the purpose of this filing is to establish a tariff mechanism to allow Viking to adjust annually Fuel and Loss Retention Percentages (FLRP) in accordance with § 154.403 of the Commission's Rules and Regulations. 18 C.F.R. § 154.403 (1997). Viking is proposing that it make annual adjustments in place of the seasonal rates it currently uses because annual numbers more accurately reflect Viking's experience than seasonal numbers. Viking is also filing proposed FLRPs derived in accordance with its proposed tariff mechanism. Finally, Viking is filing to correct its tariff to reflect the incorporation of FLRPs on Sheet No. 6A.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12070 Filed 5-6-98; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL ELECTION COMMISSION

Sunshine Act

AGENCY: Federal Election Commission.

* * * * *

FEDERAL REGISTER NUMBER: 98-10197.

PREVIOUSLY ANNOUNCED DATE & TIME: Tuesday, April 28, 1998, 10:00 a.m., meeting closed to the public.

This meeting was cancelled.

* * * * *

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, April 30, 1998, 10:00 a.m., meeting closed to the public.

Meeting time changed to 2:00 p.m.

* * * * *

DATE & TIME: Tuesday, May 12, 1998 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, May 14, 1998 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes. Advisory Opinion 1998-07: Pennsylvania Democratic Party by C.M. Tartaglione, Acting Chairman.

Advisory Opinion 1998-08: Iowa Democratic Party by Michael Peterson, Chairman.

Soft Money: Notice of Proposed Rulemaking (continued from meeting of April 30, 1998).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer.
Telephone: (202) 694-1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98-12244 Filed 5-5-98; 10:54 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Freight Connection Incorporated, 324 Garden Road, Springfield, PA 19064, Officers: Angela Wilson, President, Francis Wilson, Vice President.

Millennium Shipping Company, 4100 East 51st Street, Suite 104, Tulsa, OK 74135, Officers: Steven C. Reynolds, President, Charles L. Harmon, Vice President.

Express Air Cargo, Inc., 5242½ W. 104th Street, Los Angeles, CA 90045, Officers: Tom Aoyagi, President, Karen Aoyagi, Secretary/Treasurer.

AG World Transport, Inc. d/b/a Air & Ground World Transport, 402 Grandview Drive, South San Francisco, CA 94080, Officers: Edwin Chow, President, Gregory McLaughlin, Vice President.

Trans-Ocean International, Inc., 150 North Santa Anita Avenue, Suite #580, Arcadia, CA 91006, Officer: Ying Diao, President.

Cypress Cargo, Corp., 2740 W. 63 Street, #205m Hialeah, FL 33016, Officers: Ana R. Saavedra, President, Eric Gonzalez, Vice President.

Global Logistics International Inc., 1207 N.W., 93rd Ct., Miami, FL 33172, Officers: Evelyn A. Damian, President, Guillermo Damian, Vice President.

Tur Enterprises Inc. d/b/a Seven Winds Shipping, 8443 N.W., 68th Street, Miami, FL 33166, Officers: Miriam Z. Tur, President, Miriam Tur Ruenes, Vice President.

Dated: May 4, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98-12115 Filed 5-6-98; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. *Community First Bankshares, Inc.*, Fargo, North Dakota; to merge with Western Bancshares of Las Cruces, Carlsbad, New Mexico, and thereby indirectly acquire Western Bank, Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, May 4, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98-12191 Filed 5-6-98; 8:45 am]
BILLING CODE 3210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 22, 1998.

A. Federal Reserve Bank of Atlanta
(Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *Republic Bancshares, Inc.*, St. Petersburg, Florida; to engage *de novo* through its subsidiary, Republic Bank, F.S.B., St. Petersburg, Florida (in organization), in operating a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 4, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98-12192 Filed 5-6-98; 8:45 am]
BILLING CODE 3210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 1998.

A. Federal Reserve Bank of Minneapolis
(Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. *North Country Financial Corporation*, Manistique, Michigan (formerly known as First Manistique Corporation); to acquire 62.5 percent of the voting shares of North Country Bank-Southwest, Scottsdale, Arizona, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 1, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98-12083 Filed 5-6-98; 8:45 am]
BILLING CODE 3210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following technical review committee to meet during the month of May 1998:

Name: Technical Review Committee on the Agency for Health Care Policy and Research SBIR Topic 1000—Assisting Purchasers to Use Information on Health Plan Performance.

Date and Time: May 18, 1998, 8:30 a.m.—5 p.m.

Place: Ramada Inn, 8400 Wisconsin Avenue, Conference Room: TBA, Bethesda, Maryland 20814.

This meeting will be closed to the public.

Purpose: The Technical Review Committee's charge is to provide, on behalf of the Agency for Health Care Policy and Research (AHCPR) Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposals regarding the AHCPR Research Topic 1000, SBIR—Assisting Purchasers to Use Information on Health Plan Performance, that was published in the Commerce Business Daily on January 20, 1998.

The purpose of these contracts is to study and identify the information about health care plan quality and performance needed by purchasers and to consider if the information required varies by type and size of purchasers: e.g. individual vs. corporate consumers (large and small). In Phase I of the SBIR program, contractors are to examine, evaluate, and report on the scientific, technical and commercial merit and feasibility of a proposed research or R&D plan related to the above-described topic. Reported findings under Phase I will be considered in determining the availability of funds for the proposed research or research and development as Phase II.

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above-referenced Request for Proposals.

The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during this meeting, and to protect the free exchange of views, and avoid undue interference with Committee and Department operations. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, implementing regulations, 41 CFR 101-6.1023 and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Sandra

Robinson, Center for Quality Measurement & Improvement, Agency of Health Care Policy and Research, 2101 East Jefferson Street, Suite 501, Rockville, Maryland 20852, telephone (301) 594-1349.

Dated: April 30, 1998.

John M. Eisenberg,
Administrator.
[FR Doc. 98-12051 Filed 5-6-98; 8:45 am]
BILLING CODE 4160-00-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following technical review committee to meet during the month of May 1998:

Name: Technical Review Committee on the Agency for Health Care Policy and Research SBIR Topic 2000—Assisting Chronic Care Management.

Date and Time: May 15, 1998, 8 a.m.—5 p.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Conference Room: TBA, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose: The Technical Review Committee's charge is to provide, on behalf of the Agency for Health Care Policy and Research (AHCPR) Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposals regarding the AHCPR Research Topic 2000, SBIR—Assisting Chronic Care Management, that was published in the Commerce Business Daily on January 20, 1998.

The purpose of these contracts is to study and determine factors important in self care of chronic disease, and the role these factors play in determining the categories of skills and information needed for chronic care management and whether the kinds of information needed differs by population groups. In Phase I of the SBIR program, contractors are to examine, evaluate, and report on the scientific, technical and commercial merit and feasibility of a proposed research or R&D plan related to the

above-described topic. Reported findings under Phase I will be considered in determining the availability of funds for the proposed research or research and development as Phase II.

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above-reference Request for Proposals.

The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during this meeting, and to protect the free exchange of views, and avoid undue interference with Committee and Department operations.

This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, implementing regulations, 41 CFR 101-6.1023 and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Sandra Robinson, Center for Quality Measurement & Improvement, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 501, Rockville, Maryland 20852, telephone (301) 594-1349.

Dated: April 30, 1998.

John M. Eisenberg,
Administrator.
[FR Doc. 98-12052 Filed 5-6-98; 8:45 am]
BILLING CODE 4160-00-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Project: Early Head Start Evaluation.

OMB No: New Request.

Description: The Head Start Reauthorization Act of 1994 established a special initiative creating funding for services for families with infants and toddlers. In response the Administration on Children, Youth and Families (ACYF) designed the Early Head Start (EHS) program. In September 1995, ACYF awarded grants to 68 local programs to serve families with infants

and toddlers. ACYF has subsequently awarded grants to an additional 107 local programs, for a total of 175 EHS programs.

EHS programs are designed to produce outcomes in four domains: (1) Child development, (2) family development, (3) staff development, and (4) community development. The Reauthorization required that this new initiative be evaluated. To study the effect of the initiative, ACYF awarded a contract through a competitive procurement to Mathematica Policy Research, Inc. (MPR) with a subcontract to Columbia University's Center for Young Children and Families. The evaluation will be carried out from October 1, 1995 through September 30, 2000. Data collection activities that are the subject of this Federal Register notice are intended for the third and final phase of the EHS evaluation.

The sample for the child and family assessments will be approximately 3,000 families who include a pregnant woman or a child under 12 months of age, in 17 EHS study sites. Each family will be randomly assigned to a treatment group or a control group. The sample for the child care assessments will include the primary child care provider for the focal child in each of the 3,000 study sample families. The surveys and assessments will be conducted through computer-assisted telephone and personal interviewing, pencil and paper self-administered questionnaires, structured observations and videotaping. All data collection instruments have been designed to minimize the burden on respondents by minimizing interviewing and assessment time. Participation in the study is voluntary and confidential.

The information will be used by government managers, Congress and others to identify the features and evaluate the effectiveness of the EHS program.

Respondents: Applicants to the Early Head Start program and child care providers for Early Head Start families and control group families.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
36-Month Parent Interview, Child Assessment, and Videotaping Protocol	576	1	2.0	1,152
Child Care Provider Interview:				
Child Care Centers:				
Center Directors	161	1	.25	40
Direct Provider	161	1	.17	27
Classroom Staff	161	1	.17	27
Family Child Care Providers	40	1	.5	20

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Family Provider Assistants	9	1	.17	1
Relative Care Providers	113	1	.5	57
Relative Provider Assistants	25	1	.17	4
Child Care Provider Observation Protocol:				
Child Care Centers:				
Family Child Care Providers	161	1	2	321
Relative Care Providers	40	1	2	79
Staff Questionnaire	113	1	2	227
Estimated Total Annual Burden Hours	190	1	1	190
				2,146

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management, 370 L'Enfant Promenade, SW., Washington, DC 20047, Attn.: ACF Reports Clearance Officer. All requests should be identified by title.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance to quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted on or before July 6, 1998.

Dated April 30, 1998.

Bob Sargis,
Acting Reports Clearance Officer.
[FR Doc. 98-12085 Filed 5-6-98; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F-0291]

Asahi Denka Kogyo K.K.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Asahi Denka Kogyo K.K., has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of sodium 2,2'-methylenebis(4,6-di-tert-butylphenyl)phosphate as a clarifying agent in olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4592) has been filed by Asahi Denka Kogyo K.K., 5-2-13, Shirahata, Urawa City, Saitama 336, Japan. The petition proposes to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the expanded safe use of sodium 2,2'-methylenebis(4,6-di-tert-butylphenyl)phosphate as a clarifying agent in olefin polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: April 24, 1998.

Laura M. Tarantino,
Office of Premarket Approval, Center for Food Safety and Applied Nutrition.
[FR Doc. 98-12117 Filed 5-6-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F-0290]

The Dow Chemical Company; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of certain olefin basic copolymers, derived from ethylene and alpha monomers with eight or fewer carbon atoms, as articles or as components of articles intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by June 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS-205), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4586) has been filed by the Dow Chemical Co., 2030 Dow Center, Midland, MI 48674. The petition proposes to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of certain olefin basic copolymers derived from ethylene and alpha olefin monomers with eight or fewer carbon atoms, as articles or as

components of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before June 8, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the *Federal Register*. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: April 24, 1998.

Laura M. Tarantino,
Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98-12169 Filed 5-6-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F-0288]

Mitsui Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsui Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to expand the safe use of propylene/butene-1 copolymers containing greater than 15

but not more than 35 weight percent of polymer units derived from butene-1 for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by June 8, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3091.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4590) has been filed by Mitsui Chemicals, Inc., c/o Keller & Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to expand the safe use of propylene/butene-1 copolymers containing greater than 15 but not more than 35 weight percent of polymer units derived from butene-1 for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before June 8, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the *Federal Register*. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the

Federal Register in accordance with 21 CFR 25.40(c).

Dated: April 24, 1998.

Laura M. Tarantino,
Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98-12168 Filed 5-6-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81G-0035]

Dairy Crest Food, Ltd.; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 1G0273) proposing that the use of immobilized lactase composite is generally recognized as safe (GRAS) for use in the production of low-lactose whey.

FOR FURTHER INFORMATION CONTACT: Valerie M. Davis, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3181.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of March 3, 1981 (46 FR 14970), FDA announced that a petition (GRASP 1G0273) had been filed by Corning Glass Works, Corning, NY. The petition proposed affirmation that the use of immobilized lactase composite is GRAS for producing low-lactose whey.

In a letter dated January 8, 1988, a law firm, on behalf of Corning Glass Works, informed the agency that sponsorship of the petition was transferred to Dairy Crest Food, Ltd., Dairy Crest House, Portsmouth Rd., Surbiton, Surrey KT6 5QL, England.

On May 29, 1996, the agency contacted the attorney of record for Dairy Crest Foods, Ltd., and inquired whether Dairy Crest Foods, Ltd., was still pursuing the petition, given that the last communication from the petitioner was 5 years previously. This inquiry was prompted by an agency initiative to remove those petitions that are no longer being pursued from FDA's petition inventory. No response was received.

By letter of May 29, 1997, FDA again contacted Dairy Crest Food, Ltd.'s,

attorney to reiterate the agency's initiative to remove from its pending petition inventory those petitions that are no longer being pursued by the petitioner. In that letter, the agency stated that if Dairy Crest Foods, Ltd., wished to pursue the petition, the agency would continue to work on it. However, if Dairy Crest Food, Ltd., did not wish to pursue the petition, the agency requested that Dairy Crest Food, Ltd., withdraw the petition without prejudice to a future filing. FDA asked that the petitioner inform the agency of its decision within 30 days of the date of the letter; the agency added that failure to respond within that time would be considered approval to withdraw the petition. As of this date, Dairy Crest Food, Ltd., has not responded to FDA in any way. Therefore, the agency is announcing that it considers this petition to be withdrawn by the firm, without prejudice to a future filing (21 CFR 171.7).

Dated: April 27, 1998.
William K. Hubbard,
Associate Commissioner for Policy
Coordination.
[FR Doc. 98-12055 Filed 5-6-98; 8:45 am]
BILLING CODE 4190-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on June 5, 1998, 9 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2053, or

FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12396, or the World Wide Web (WWW) at <http://www.fda.gov>. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an excimer laser for the correction of myopia using laser in-situ keratomileusis. FDA staff will present to the committee the clinical requirements section of the proposed International Standards Organization standard for ophthalmic viscosurgical devices.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 29, 1998. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m., and between approximately 1 p.m. and 1:30 p.m. An additional 30-minute time period will be given for public comment at the end of the panel discussion on the PMA. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 29, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 30, 1998.
Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 98-12170 Filed 5-6-98; 8:45 am]
BILLING CODE 4190-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-2567-A]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and

Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Statement of Deficiencies and Plan of Correction and Supporting Regulations in 42 CFR 486.301-.325; **Form No.:** HCFA-2567-A (OMB# 0938-0391); **Use:** This Paperwork package provides information regarding deficiencies for Organ Procurement Organizations (OPO) as well as deficiencies noted during periodic facility and laboratory certification surveys. This information is used to make decisions concerning OPO redesignation, certification/recertification of health care facilities participating in the Medicare/Medicaid Programs, and laboratories regulated by the Clinical Laboratory Improvement Amendments; **Frequency:** Biennially and Annually; **Affected Public:** Business or other for-profit, not-for-profit institutions, Federal Government, and State, local or tribal government; **Number of Respondents:** 49,200; **Total Annual Responses:** 98,400; **Total Annual Hours:** 196,800.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2-26-17, 7500 Security

Boulevard, Baltimore, Maryland 21244-1850.

Dated: April 28, 1998.

John P. Burke III,
HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.
[FR Doc. 98-12092 Filed 5-6-98; 8:45 am]
BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-116, HCFA-R-148, and HCFA-R-231]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Revision of a currently approved collection; **Title of Information Collection:** Clinical Laboratory Improvement Amendments (CLIA) Application Form and Supporting Regulations in 42 CFR 493.1-.2001; **Form No.:** HCFA-116 (OMB# 0938-0581); **Use:** These certification requirements have been established for any entity that performs testing on human beings for diagnostic or treatment purposes. If a laboratory conducts relatively simple tests that are categorized as waived or provider performed microscopy test procedures (PPMP), it must obtain a certificate of waiver or certificate of PPMP. If the laboratory conducts any tests outside of these two categories, it must apply for

a certificate of compliance or certificate of accreditation and initially obtain a registration certificate. These certificates ensure that laboratories are in compliance with CLIA.; **Frequency:** Biennially; **Affected Public:** Business or other for-profit, not for profit institutions, Federal Government, and State, local or tribal government; **Number of Respondents:** 16,000; **Total Annual Responses:** 16,000; **Total Annual Hours:** 20,000.

2. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Limitation on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals; Medicaid and Supporting Regulations in 42 CFR 433.68, 433.74, 447.74 and 447.272; **Form No.:** HCFA-R-148 (OMB# 0938-0618); **Use:** These information collection requirements specify limitations on the amount of Federal financial participation available for medical assistance expenditures in a fiscal year. States receive donated funds from providers and revenues are generated by health care related taxes. These donations and revenues are used to fund medical assistance programs.; **Frequency:** Quarterly; **Affected Public:** State, Local, or Tribal Government; **Number of Respondents:** 51; **Total Annual Responses:** 51; **Total Annual Hours:** 3,892.

3. Type of Information Request: Revision of a currently approved collection; **Title of Information Collection:** Medicare+Choice (M+C) Providers Sponsored Organization (PSO) Waiver Request Form and Supporting Regulations in 42 CFR 422.374; **Form Number:** HCFA-R-231; **Use:** The PSO waiver request form is for use by PSO's that do not have a State risk-bearing entity license and that wish to enter into a M+C contract with HCFA to provide prepaid health care services to eligible Medicare beneficiaries. HCFA will use the information requested on this form to determine whether the applicant is eligible for a waiver of the state licensure requirement for M+C organizations as allowed under section 1855(a)(2) of the Social Security Act.; **Frequency:** One-time.; **Affected Public:** Business or other for-profit, not-for-profit institutions, and Federal Government.; **Annual Number of Respondents:** 30.; **Total Annual Responses:** 30.; **Total Annual Hours Requested:** 300.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at [http://www.hcfa.gov/](http://www.hcfa.gov/regs/prdact95.htm)

[regs/prdact95.htm](http://www.hcfa.gov/regs/prdact95.htm), or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2-26-17, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: April 24, 1998.

John P. Burke III,
HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.
[FR Doc. 98-12094 Filed 5-6-98; 8:45 am]
BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-R-235]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; **Title of Information Collection:** Data Use Agreement Information Collection Requirements, model agreement, and Supporting regulations; **Form No.:**

HCFA-R-235; *Use:* The agreement addresses the conditions under which HCFA will disclose and the User will maintain HCFA data that are protected by the Privacy Act of 1974, 552a. *Frequency:* On occasion; *Affected Public:* Business of other for-profit, Not-for-profit institutions; *Number of Respondents:* 1,500; *Total Annual Responses:* 1,500; *Total Annual Hours:* 750.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2-26-17, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: April 30, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98-12160 Filed 5-6-98; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Announcement of Office of Management and Budget (OMB) Control Numbers for Agency Information Collections Approved Under the Paperwork Reduction Act of 1995

AGENCY: Health Care Financing Administration, HHS.

This notice announces and displays OMB control numbers for Health Care Financing Administration (HCFA) information collections that have been approved by OMB.

Under OMB's regulations implementing the Paperwork Reduction Act (PRA), 44 U.S.C. 3501, each agency that proposes to collect information

must submit its proposal for OMB review and approval in accordance with 5 CFR Part 1320. Once OMB has approved an agency's proposed collection of information and issues a control number, the agency must display the control number.

OMB regulations provide for alternative methods of displaying OMB control numbers. In the case of collections of information published in regulations, display is to be "provided in a manner that is reasonably calculated to inform the public." To meet this requirement an agency may display such information in the *Federal Register* by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information.

To comply with this requirement HCFA has chosen to publish this notice announcing OMB approval of the collections of information published in regulations. As stated above, this notice announces and displays the assigned OMB control numbers for HCFA's information collections that have been approved by OMB.

42 CFR:

	OMB control Nos.
403.210	0938-0640.
405.262	0938-0267.
405.374	0938-0270.
405.427	0938-0155.
405.711	0938-0045.
405.807	0938-0033.
405.821	0938-0034.
405.1632	0938-0454.
405.1701-1726	0938-0273.
405.2100-2171	0938-0386.
405.2110, 405.2112	0938-0657 and 0658.
405.2133	0938-0046 and 0447 and 0448.
405.2135-2171	0938-0360.
405.2401	0938-0685.
406.13	0938-0080.
406.15	0938-0501.
406.28, 407.27	0938-0025.
407.10, 407.11	0938-0245.
407.18	0938-0679.
407.40	0938-0035.
408.6	0938-0041.
409.40-50	0938-0357.
410.1	0938-0679.
410.36	0938-0357.
410.38	0938-0534.
410.40	0938-0042 and 0685.
410.69	0938-0685.
410.170	0938-0357.
411.4-15	0938-0357.
411.15	0938-0224 and 0357.
411.20-411.206	0938-0565.
411.372, 411.373, 411.378	0938-0714.
411.404, 411.406	0938-0465.
411.408	0938-0566.
412.20-32	0938-0358.
412.40-62	0938-0359.

	OMB control Nos.
412.44, 412.46	0938-0445.
412.92	0938-0477.
412.105	0938-0456.
412.106	0938-0691.
412.116	0938-0269.
412.256	0938-0573.
413.13	0938-0463.
413.16	0938-0583.
413.17, 413.20	0938-0202.
413.20, 413.24	0938-0022 and 0037 and 0050 and 0102 and 0107 and 0301 and 0463 and 0511.
413.56	0938-0463.
413.64	0938-0269.
413.157	0938-0463.
413.170	0938-0296.
413.198, 413.200	0938-0236.
414.40	0938-0008.
414.330	0938-0372.
414.451, 414.452, 414.456, 414.460	0938-0685.
416.43	0938-0506.
416.47	0938-0266 and 0506.
417.1-106	0938-0469.
417.124	0938-0472.
417.126	0938-0701.
417.143	0938-0470.
417.162	0938-0469.
417.408	0938-0470.
417.436	0938-0610.
417.470	0938-0701.
417.479, 417.500	0938-0700.
417.801	0938-0610.
418.22, 418.24, 418.28, 418.30, 418.56, 418.58, 418.70, 418.74, 418.80, 418.83, 418.96, 418.100	0938-0302.
420.200-206	0938-0086.
421.100	0938-0357.
422.430	0938-0390.
424.5	0938-0534.
424.20	0938-0454.
424.22	0938-0357 and 0489.
424.32	0938-0008.
424.57	0938-0685.
424.73	0938-0685.
424.123	0938-0484.
424.124	0938-0042.
430.10-20	0938-0193.
430.12	0938-0610 and 0673.
431.20	0938-0610.
431.1-431.865	0938-0062.
431.17	0938-0467.
431.110	0938-0390.
431.107	0938-0610.
431.306	0938-0502.
431.630	0938-0445.
431.800	0938-0094 and 0300.
431.802-822	0938-0246.
431.814	0938-0146 and 0147.
431.820	0938-0144.
431.865	0938-0094 and 0246.
431.940-431.965	0938-0467.
433.68, 433.74	0938-0618.
433.110-131	0938-0487.
433.110, 433.112-433.114, 433.116, 433.117, 433.119, 433.121, 433.122, 433.127, 433.130, 433.131	0938-0247.
433.138	0938-0502.
433.139	0938-0502.
434.27	0938-0572.
434.28	0938-0610.
434.44, 434.67, 434.70	0938-0700.
435.1-435.1011	0938-0062.
435.217, 435.726, 435.735	0938-0449.
435.940-965	0938-0467.
440.1-270	0938-0062.
440.10	0938-0449.
440.30	0938-0685.

	OMB control Nos.
440.167	0938-0193.
440.180	0938-0272.
441.16	0938-0713.
441.250-300	0938-0481.
441.300-305	0938-0272.
441.302	0938-0449.
442.1-119	0938-0062 and 0379.
442.10-119	0938-0355.
442.30	0938-0678.
447.31	0938-0287.
447.53	0938-0429.
447.253	0938-0523.
447.272	0938-0618.
447.280	0938-0624.
447.299	0938-0618.
447.500-542	0938-0676.
447.550	0938-0676.
455.100-106	0938-0086.
456.650-657	0938-0061.
456.654	0938-0445.
456.700, 456.705, 456.709, 456.711, 456.712	0938-0659.
466.71, 466.73, 466.74, 466.78, 466.80, 466.94	0938-0445.
473.18, 473.34, 473.38, 473.42	0938-0443.
476.104, 476.105, 476.116, 476.134	0938-0426.
482.1-66	0938-0380.
482.2-57	0938-0382.
482.12, 482.22	0938-0328.
482.27	0938-0328 and 0698.
482.41	0938-0242.
482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60-62	0938-0328 and 0378.
482.66	0938-0328 and 0624.
483.10	0938-0610.
483.70	0938-0242.
483.400-480	0938-0062 and 0678.
483.470	0938-0242.
484.1-52	0938-0365.
484.10	0938-0610.
484.18	0938-0357.
484.48	0938-0519.
484.52	0938-0687.
485.56, 485.58, 485.60, 485.64, 485.66	0938-0267.
485.701-729	0938-0273 and 0065.
485.709, 485.711, 485.717, 485.719, 485.721, 487.723, 485.725, 485.727, 485.729	0938-0336.
486.100-110	0938-0338.
486.150-163	0938-0258 and 0071.
486.155, 486.161, 486.163	0938-0336.
486.301-325	0938-0391, 0512 and 0688.
488.1-28	0938-0355.
488.4	0938-0690.
488.18	0938-0667.
488.26	0938-0379.
488.60	0938-0360.
489.20	0938-0667.
489.21	0938-0357.
489.24	0938-0667.
489.27	0938-0692.
489.28	0938-0713.
489.40-41	0938-0383.
489.66, 489.67	0938-0713.
489.102	0938-0610.
491.1-11	0938-0074.
491.2	0938-0685.
491.9	0938-0334.
493.1-2001	0938-0151, 0170, 0544, 0581, 0612 and 0653.
493.501, 493.506, 493.513, 493.515	0938-0686.
493.1840	0938-0655.
498.40-95	0938-0486 and 0567.
1003.100, 1003.101, 1003.103	0938-0700.
1004.40, 1004.50, 1004.60, 1004.70	0938-0444.
45 CFR:	
96.70-74	0938-0481.
146.111, .115, .117, .150, .152, .160, .180	0938-0702.

	OMB control Nos.
148.120, .122, .124, .128	0938-0703.

Dated: April 28, 1998.

John P. Burke III,
HCFA Reports Clearance Officer, HCFA Office
of Information Services, Information
Technology Investment Management Group,
Division of HCFA Enterprise Standards.
[FR Doc. 98-12095 Filed 5-6-98; 8:45 am]
BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: VHL and MET Mutation Detection Technology: Opportunities for Cooperative Research and Development Agreements (CRADAs) for the Joint Evaluation and Development of Methods to Detect Mutation in Both Gene Sequences Using Nucleic Acid Array Technology

The methods may include but are not limited to spectroscopic partitioning techniques and DNA chip technology. The NCI is looking for multiple CRADA Collaborators to develop independently different aspects of this VHL and MET mutation detection technology.

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice for CRADA Opportunities.

SUMMARY: Pursuant to Federal Technology Transfer Act of 1986 (FTTA), 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks Cooperative Research and Development Agreements (CRADAs) with pharmaceutical or biotechnology companies to evaluate and develop methods to detect mutations in both the MET and VHL gene sequences using nucleic acid array technology. Any CRADA for the biomedical use of this technology will be considered. The CRADAs would have an expected duration of one (1) to five (5) years. The goals of the CRADAs include the rapid publications of research results and timely commercialization of products, diagnostics and treatments that result from the research. The CRADA

Collaborators will have an option to elect a non-exclusive or exclusive commercialization license to subject inventions arising under the CRADAs that are related to the DNA array technology of the collaborators, which are the subject of the CRADA Research Plan, for diagnostics and research supply and can apply for background licenses to the existing patents listed below, subject to any pre-existing licenses already issued for other fields of use. Licensing by NIH is subject to 35 U.S.C. 207 and 37 CFR Part 404.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Dr. Thomas M. Stackhouse, Technology Development & Commercialization Branch, National Cancer Institute-Frederick Cancer Research & Development Center, Fairview Center, Room 502, Frederick, MD 21701 (phone: 301-846-5465, fax: 301-846-6820).

Scientific inquiries—Dr. Berton Zbar, Chief, Laboratory of Immunobiology, National Cancer Institute-Frederick Cancer Research & Development Center, P.O. Box B, Building 560, Room 12-68, Frederick MD, 21702-1201 (phone: 301-846-1288 FAX: 301-846-6145).

EFFECTIVE DATE: Inquiries regarding licensing and scientific matters may be forwarded at any time. Confidential CRADA proposals, preferably one page or less, must be submitted to NCI on or before July 6, 1998. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents who have been selected. SUPPLEMENTARY INFORMATION:

Technology Available

DHHS scientists have identified mutations in the proto-oncogene c-MET, and the von Hippel-Lindau disease (VHL) tumor suppressor gene in human cancers. c-MET is the receptor for hepatocyte growth factor/scatter factor. Germline mutations in the MET gene have been detected in affected members of families with an inherited predisposition to develop papillary renal carcinomas; somatic mutations in the MET gene have been detected in a subset of papillary renal carcinomas. All mutations detected in the MET gene to date were located in the tyrosine kinase domain; all mutations were missense.

The VHL gene is mutated in patients with von Hippel-Lindau disease, and in sporadic clear cell carcinomas of the

kidney. Disease-causing mutations include gender deletions (partial or complete), missense and nonsense and frame shift mutations.

About 30,000 individuals develop kidney cancer each year. We anticipate that the novel mutation detection techniques for the MET and VHL genes will be used in patients with sporadic and inherited predispositions to renal cancer. Possible uses would include diagnosis and prognosis of kidney cancer. In addition, these new methods might be applied to the study of other types of human neoplasia.

DHHS now seeks collaborative arrangements for the joint evaluation and development of methods to detect mutations in both gene sequences using nucleic acid array technology. The methods may include but are not limited to spectroscopic partitioning techniques and DNA chip technology. For collaborations with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide equitable distribution of intellectual property rights developed under the CRADA. The successful CRADA partner will collaboratively develop and test known mutations within the genes from samples provided by the government. CRADA aims will include rapid publication of research results as well as full and timely exploitation of any commercial opportunities.

NCI's VHL/MET Patents and Patent Applications

1. Von Hippel-Lindau (VHL) Disease Gene and Corresponding cDNA and Methods for Detecting Carriers of the VHL Disease Gene; United States Patent 5,654,138, issued August 5, 1997.

The role of the National Cancer Institute in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.

2. Providing the Collaborator with samples of the subject gene sequences for evaluation.

3. Planning research studies and interpreting research results.

4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.

2. Planning research studies and interpreting research results.

3. Providing technical expertise and/or financial support for (e.g. facilities, personnel and expertise) for CRADA-related Government activities.

4. Accomplishing objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

5. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.

6. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.

8. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

9. The agreement to be bound by the appropriate DHHS regulating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions.

Dated: April 26, 1998.

Kathleen Sybert,
Acting Director, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 98-12110 Filed 5-6-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging: Opportunity for a Cooperative Research and Development Agreement (CRADA) To Develop a Vaccine for Pneumonia

AGENCY: National Institutes of Health (NIH), PHS, DHHSNIA, NIH, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institute on Aging (NIA) is seeking a Collaborator to participate in a Cooperative Research and Development Agreement (CRADA) to develop a vaccine for pneumonia. The term of the CRADA will be up to five (5) years.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Bruce D. Goldstein, J.D., Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., EPS Suite 450, Rockville, Maryland

20852, telephone number 301-496-0477, FAX number 301-402-2117.

DATES: interested parties are advised to notify this office in writing of their intent to file a formal proposal no later than FIFTEEN (15) days from the date of this advertisement. Formal proposals must be submitted to this office no later than TWENTY (20) days from the date of this notice.

SUPPLEMENTARY INFORMATION: A CRADA is the anticipated joint agreement to be entered into by NIA pursuant to the Federal Technology Transfer Act of 1986, as amended by the National Technology Transfer Act (Pub. L. 104-113 (Mar. 7, 1996)) and by Executive Order 12591 of April 10, 1987. The NCI owns U.S. Patent No. 4,455,032, concerning the use of phosphocholine hapten conjugates in vaccines, which presently is not licensed. NIA is now planning to develop a vaccine for pneumonia utilizing the invention in the NCI patent.

Under the present proposal, the specific goals of the CRADA will be the development of the following technology:

- Development of one or more vaccines utilizing the phosphocholine hapten technology;
- and preclinical evaluation of the candidate vaccines.

Party Contributions

The role in NIA includes the following:

- (1) Develop, in cooperation with the Collaborator, candidate pneumonia vaccines;
- (2) Conduct preclinical trials of candidate vaccines in small mammal models;
- (3) Provide staff, expertise, & materials for the development and testing of promising vaccines, and provide work space and equipment for testing of the prototype vaccines; and
- (4) Jointly evaluate and publish the data generated with Collaborator.

The role of the successful Collaborator will include the following:

- (1) Provide an adequate supply of at least one mutually agreeable, GMP-grade carrier system, and provide expertise and assistance in the development and use of its vaccine carrier system(s);
- (2) Provide resources, staff, expertise, and funding, as necessary, in support of the research goals; and
- (3) Develop and market any promising vaccines.

Selection Criteria

Proposals submitted for consideration should fully address each of the following qualifications:

(1) Expertise:

A. Demonstrated expertise in developing and producing high quality pharmaceutical compositions;

B. Demonstrated ability to secure national and/or international marketing and distribution of pharmaceutical compositions;

C. Demonstrated intellectual ability to guide development of product line which addresses the requirements of NIA;

(2) Reputation: The successful Collaborator must be recognized in the pharmaceutical industry for:

A. Producing quality pharmaceutical products;

B. Indications of satisfaction by industry experts with the Collaborator's products; and

C. Commitment to the research and development of new pharmaceuticals.

(3) Physical Resources:

A. An established headquarters with offices, space, and equipment;

B. Access to the organization during business hours by telephone, mail, e-mail, the Internet, and other evolving technologies; and

C. Sufficient financial resources to support, at a minimum, the current activities of the CRADA to meet the needs of NIA.

Dated: April 26, 1998.

Kathleen Sybert,
Acting Director, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 98-12109 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: May 12, 1998.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435-1148.

Name of SEP: Clinical Sciences.

Date: May 13, 1998.

Time: 9:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435-1215

Name of SEP: Microbiological and Immunological Sciences.

Date: May 13, 1998.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435-1148.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Behavioral and Neurosciences.

Date: May 21, 1998.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5172, Telephone Conference.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435-1247.

Name of SEP: Behavioral and Neurosciences.

Date: June 16-18, 1998.

Time: 8:30 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Syed Hussain, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435-1224.

Name of SEP: Behavioral and Neurosciences.

Date: June 23-25, 1998.

Time: 8:30 a.m.

Place: Radisson Barcelo, Washington, DC.

Contact Person: Dr. Gabrielle LeBlanc, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892, (301) 435-1218.

Name of SEP: Multidisciplinary Sciences.

Date: June 25, 1998.

Time: 12:00 p.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435-1171.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 29, 1998.

LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98-12099 Filed 5-6-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: May 12, 1998.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 5172, Telephone Conference.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435-1247.

Name of SEP: Behavioral and Neurosciences.

Date: May 18, 1998.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 5172, Telephone Conference.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435-1247.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Chemistry and Related Sciences.

Date: June 23-24, 1998.

Time: 8:00 a.m.

Place: Hyatt Regency Hotel, Bethesda, MD.

Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892, (301) 435-1180.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 1, 1998.

LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98-12101 Filed 5-6-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: MR Guided Therapy.

Date: May 26-28, 1998.

Time: May 26-7:00 p.m. to Recess, May 27-8:00 a.m. to Recess, May 28-8:00 a.m. to Adjournment.

Place: The Inn at Longwood Medical, 342 Longwood Avenue, Boston, MA 02115.

Contact Person: Ray Bramhall, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 643B, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892-7405, Telephone: 301/496-3428.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: April 30, 1998.

LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98-12107 Filed 5-6-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Research Centers in Minority Institutions.

Date: June 1, 1998.

Time: 5:00 p.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852, (301) 468-1100.

Contact Person: Dr. Bela J. Gulyas, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892-7965, (301) 435-0811.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program No. 93.398, Research Centers in Minority Institutions, National Institutes of Health, HHS)

Dated: April 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12100 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the National Center for Research Resources Initial Review Group and the Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities, National Center for Research Resources (NCRR), for May and June 1998. These meetings will be open to the public as indicated below to discuss program planning; program accomplishments; administrative matters such as previous meeting minutes; the report of the Director, NCRR; review of budget and legislative updates; and special reports or other issues relating to committee business. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and

evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Cheryl A. Fee, Committee Management Officer, NCRR, National Institutes of Health, One Rockledge Centre, Room 5170, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892-7965, 301-435-1827, will provide summaries of meetings and rosters of committee members. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed below, in advance of the meetings.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date of Meeting: May 27-29, 1998.

Place of Meeting: The Bethesda Ramada, Embassy Three, 8400 Wisconsin Avenue, Bethesda, MD 20814, 301-654-1000.

Open: May 27, 8:00 a.m.-9:30 a.m.

Closed: May 27, 9:30—Until Adjournment.

Scientific Review Administrator: Dr. D.G. Patel, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892-7965, Telephone: 301-435-0824.

Name of Committee: National Center for Research Resources Initial Review Group—Comparative Medicine Review Committee.

Date of Meeting: June 1-2, 1998.

Place of Meeting: Holiday Inn Georgetown, Kaleidoscope Room, 2101 Wisconsin Avenue, NW, Washington, DC 20007, 202-338-4600.

Open: June 1, 8:00 a.m.-9:30 a.m.

Closed: June 2, 9:30—Until Adjournment.

Scientific Review Administrator: Dr. Raymond O'Neill, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892-7965, Telephone: 301-435-0820.

Name of Committee: National Center for Research Resources Initial Review Group—Research Centers in Minority Institutions Review Committee.

Date of Meeting: June 1-3, 1998.

Place of Meeting: Doubletree Hotel, Twinbrook Room, 1750 Rockville Pike, Rockville, MD 20852, 301-468-1100

Open: June 1, 8:30 a.m.-10:30 a.m.

Closed: June 1, 10:30 a.m.—Until Adjournment.

Scientific Review Administrator: Dr. John Meyers, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892-7965, Telephone: 301-435-0820.

Name of Committee: National Center for Research Resources Initial Review Group—General Clinical Research Centers Review Committee.

Date of Meeting: June 17-18, 1998.

Place of Meeting: Ramada Inn, Rockville, 1775 Rockville Pike, Montrose Room, Rockville, MD 20852, 301-881-2300.

Open: June 17, 8:00 a.m.-9:45 a.m.

Closed: June 18, 9:45 a.m.—Until Adjournment.

Scientific Review Administrator: Dr. Charles Hollingsworth, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892-7965, Telephone: 301-435-0818.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.389, Research Centers in Minority Institutions; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health)

Dated: April 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12103 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Data Coordination Center for the NIH-DC Initiative to Reduce Infant Mortality in Minority Populations.

Date: May 13, 1998.

Time: 2:00 p.m.—adjournment.

Place: 6100 Executive Boulevard, 6100 Executive Building, Room 5E01, Rockville, MD, 20852.

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301-496-1485.

Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institute of Health, HHS)

Date: April 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12098 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: May 1, 1998 (Telephone Conference).

Time: 12:00 P.M. to adjournment.

Place of Meeting: Willco Building, 6000 Executive Boulevard, Suite 409, Rockville, MD 20892-7003.

Contact Person: Sean O'Rourke, 6000 Executive Boulevard, Suite 409, Rockville, MD 20892-7003, 301-443-2861.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The proposal and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance, Program Nos. 93.271, Alcohol Research Career Development Awards for Scientist and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: April 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12104 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, June 5, 1998, in Building 31, Room 2A52.

This meeting will be open to the public from 8:00 a.m. to 12 noon on June 5 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 5 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Catherine O'Connor, Senior Biomedical Research Program Assistant, NICHD, Building 31, Room 2A50, National Institutes of Health, Bethesda, Maryland, 20892-2425, 301-496-2133, will provide a summary of the meeting, a roster of Board members, and substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. O'Connor in advance of the meeting.

Dated: April 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12105 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code

Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Initial Review Group (IRG) meeting:

Name of IRG: Biomedical Research and Research Training Subcommittee B.

Date: June 16, 1998.

Time: 8:30 a.m.—adjournment.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Dr. Irene Glowinski, Scientific Review Administrator, NIGMS, Natcher Building—Room 1A5-13, Bethesda, Maryland 20892, Telephone: 301-594-2772.

Purpose/Agenda: To evaluate and review research training grant applications.

The meeting will be closed in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers (MARC); and 93.375, Minority Biomedical Research Support (MBRS)], National Institutes of Health)

Dated: April 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12106 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of a Meeting of the National Advisory Dental Research Council

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on June 9-10, 1998, Conference Rooms E1-E2, Building 45, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:30 until 11:15 a.m. on June 9, 1998, for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on June 10, 9:00

a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and information concerning individuals associated with the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal applications and reports, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, (telephone (301) 496-9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: May 4, 1998.

LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98-12174 Filed 5-6-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Alcohol Abuse and Alcoholism, Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review and evaluate a grant application.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: May 4, 1998 (Telephone Conference).

Time: 1:30 P.M. to adjournment.

Place of Meeting: Wilco Building, 6000 Executive Boulevard, Suite 409, Rockville, MD 20892-7003.

Contact Person: Sean O'Rourke, 6000 Executive Boulevard, Suite 409, Rockville MD 20892-7003, 301-443-2861.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs.

552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The proposal and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance, Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: May 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12175 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism, Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism on June 3-4, 1998.

The meeting will be open to the public, as noted below, to discuss Institute programs and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ida Nestorio at 301-443-4376.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C. and sec. 10(d) of Public Law 92-463 for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and the roster of committee members may be obtained from: Ms. Ida Nestorio, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Wilco Building, Suite 409, 6000

Executive Blvd., Rockville, MD 20892-7003, Telephone: 301-443-4376. Other information pertaining to the meeting may be obtained from the contact person indicated.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Executive Secretary: James F. Vaughan, 6000 Executive Blv., Suite 409, Bethesda, MD 20892-7003, 301-443-4375.

Dates of Meeting: June 3-4, 1998.

Places of Meeting: (June 3) Pooks Hill Marriott Hotel, Bethesda, MD 20814; (June 4), Conference Room E1 & E2, Building 45 (Natcher), NIH Campus, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: June 3, 1998—7:00 p.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Open: June 4, 1998—8:30 a.m.—3:00 p.m.

Agenda: Discussion of Institute extramural research programs, and other program and peer review issues relevant to Council activities.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: May 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12176 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Electric and Magnetic Fields Research and Public Information Dissemination (EMF RAPID) Program; Notice of Meeting

Background

The National Institute of Environmental Health Sciences (NIEHS) and the Department of Energy (DOE) are coordinating the implementation of the Electric and Magnetic Fields (EMF) Research and Public Information Dissemination (RAPID) Program. The EMFRAPID Program was established by the 1992 Energy Policy Act (Section 2118 for Public Law 102-486) which was signed in October 1992. This five-year effort is designed to determine the potential effect from exposure to 60 Hz electric and magnetic fields on biological systems, especially those produced by the generation, transmission, and use of electric energy. The RAPID Program requires the NIEHS to report on the extent to which exposure to electric and magnetic fields

adversely affects human health. Additional details of this program are found in **Federal Register** December 16, 1997, (Volume 62, No. 241, pp. 65814-65815).

Working Group Meeting on EMF Health Effects Research Open to the Public

The next phase of the NIEHS report development process includes a Working Group meeting of scientists from multiple disciplines. The Working Group members are tasked with writing a comprehensive review of the literature on the potential for extremely low frequency EMF to affect human health. This document will draw conclusions on the strength and robustness of the data and its implications for human health effects and disease etiology. This meeting is scheduled for June 15-24, 1998, at the Northland Inn, Brooklyn Park, Minnesota, and is open to the public.

Detailed information about the EMFRAPID Program is found on the world wide web at www.niehs.nih.gov/emfrapid/home.htm. For additional information about the Working Group meeting, send a request by fax to 919-541-0144 or by mail to EMFRAPID Program, LCBRA, NIEHS, NIH, PO Box 12233 MS EC-16, Research Triangle Park, NC 27709, or call 919-541-7534.

Dated: April 30, 1998.

Samuel H. Wilson,

National Institute of Environmental Health Sciences.

[FR Doc. 98-12177 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Notice of Meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, May 27, 1998. The Board of Governors will meet at the National Institutes of Health, Clinical Center (Building 10), Medical Board Room (2C116), 9000 Rockville Pike, Bethesda, Maryland, from 9:00 a.m. until approximately 12:30 p.m.

The entire meeting will be open to the public and will include review of the minutes of the March 23, 1998 Executive Committee meeting, updates on the budget, strategic planning, and the Clinical Research Center.

Attendance by the public will be limited to space available.

For further information, contact Ms. Maggi Stakem, Office of the Director, Warren Grant Magnuson Clinical Center, Building 10, Room 2C146, Bethesda, Maryland 20892, (301) 496-4114.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Stakem in advance of the meeting.

Dated: May 1, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12102 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Container for Drying Biological Samples, Method of Making Such Container, and Method of Using Same

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the invention embodied in U.S. Patent Applicant SN 08/717,114 entitled "Container for Drying Biological Samples, Method of Making Such Container, and Method of Using Same" and related U.S. and foreign patent applications to Whatman, Incorporated of Clifton, New Jersey. The patent rights in this invention have been assigned to the United States of America.

It is anticipated that this license may be limited to the field of sales to; biotechnology laboratories, and original equipment manufacturers of diagnostics.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 6, 1998 will be considered.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: David R. Sadowski, Technology Transfer Specialist, Office of

Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852; Telephone (301) 496-7056 extension 288; Facsimile: (301) 401-0220; E-mail ds27a@nih.gov. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

SUPPLEMENTARY INFORMATION: The patent application describes a method (and associated device) for venting a sample which is in a container, the method comprising: providing a container having an opening, the opening being sealed substantially with a filter. The filter permitting permeation therethrough of at least one gas and substantially preventing permeation therethrough of microbes. Wherein said container is configured to withstand high speed centrifugation of 50 or more times the force of gravity. Thus, gas is permitted to enter or exit the container by permeating the filter, thereby affording venting of the sample without substantial contamination of the sample with microbes. More broadly, this invention permits the lyophilization or venting or other permeation of gas into, or out of, a container, while preventing contamination of a sample which is within the container.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted in response to this notice will be not made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 29, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98-12108 Filed 5-6-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.
ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: <http://www.health.org>

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414-328-7840 (formerly: Bayshore Clinical Laboratory)
Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615-255-2400
Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800-541-4931 / 334-263-5745
Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513-569-2051 (formerly: Jewish Hospital of Cincinnati, Inc.)
American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703-802-6900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119-5412, 702-733-7866 / 800-433-2750
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787 / 800-242-2787
Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-202-2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305-325-5784
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215-2802, 800-445-6917
Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800-876-3652 / 417-269-3093 (formerly: Cox Medical Centers)
Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88-6819, Great Lakes, IL 60088-6819, 847-688-2045 / 847-688-4171
Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941-418-1700 / 800-735-5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912-244-4468
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800-898-0180 / 206-386-2672, (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215-674-9310
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601-236-2609
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608-267-6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102-5037, 860-545-6023
LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919-672-6900 / 800-833-3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901-795-1515/800-223-6339 (Formerly: MedExpress/National Laboratory Center)
LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913-888-3927 / 800-728-4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702-334-3400, (formerly: Sierra Nevada Laboratories, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800-437-4986 / 908-526-2400 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504-361-8989 / 800-433-3823
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715-389-3734 / 800-331-3734
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419-381-5213
Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302-655-5227
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800-832-3244 / 612-636-7466
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317-929-3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800-752-1835 / 309-671-5199
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503-413-4512, 800-950-5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612-725-2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805-322-4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361 / 801-268-2431
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440-0972, 541-341-8092
Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310-312-0056, (formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509-926-2400 / 800-541-7891
PharmChem Laboratories, Inc., 1505-A O'Brien Dr., Menlo Park, CA 94025, 650-328-6200 / 800-446-5177
PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817-595-0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913-339-0372 / 800-821-3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619-279-2600 / 800-882-7272
Premier Analytical Laboratories, 15201 East I-10 Freeway, Suite 125, Channelview, TX 77530, 713-457-3784 / 800-888-4063 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800-473-6640
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810-373-9120 / 800-444-0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410-536-1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800-526-0947 / 972-916-3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220-3610, 800-574-2474 / 412-920-7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800-288-7293 / 314-991-1311, (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108-4406, 800-446-4728 / 619-686-3200, (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201-393-5590, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630-595-3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804-378-9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800-749-3788 / 254-771-8379

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505-727-8800 / 800-999-LABS
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770-452-1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-637-7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352-787-9006, (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800-877-7484 / 610-631-4600, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847-447-4379/800-447-4379, (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818-989-2520 / 800-877-2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219-234-4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602-438-8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517-377-0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405-272-7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573-882-1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305-593-2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818-226-4373 / 800-966-2211, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800-492-0800 / 818-996-7300, (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915-561-8851 / 888-953-8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555-0551, 409-772-3197
The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratories for the conduct of forensic urine drug testing required by Department of Transportation regulations:
Dynacare Kasper Medical Laboratories, 14940-123 Ave., Edmonton, Alberta,

Canada TSV 1B4, 800-661-9876 / 403-451-3702
Gamma-Dynacare Medical Laboratories, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519-679-1630
MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905-890-2555 (formerly: NOVAMANN (Ontario) Inc.)
The following laboratory is voluntarily withdrawing from the National Laboratory Certification Program on May 1, 1998:
Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800-725-3784 / 915-563-3300 (formerly: Harrison & Associates Forensic Laboratories)
Richard Kopanda,
Executive Officer, Substance Abuse and Mental Health Services Administration.
[FR Doc. 98-12167 Filed 5-6-98; 8:45 am]
BILLING CODE 4160-20-U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Comprehensive Conservation Plans; Availability, Etc.: Noxubee National Wildlife Refuge, MS

ACTION: Notice of intent to prepare a comprehensive conservation plan for Noxubee National Wildlife Refuge in Noxubee, Winston, and Oktibbeha counties, Mississippi, and notice of meeting to seek public participation.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and an environmental document (environmental assessment) for Noxubee National Wildlife Refuge in Noxubee, Winston, and Oktibbeha counties, Mississippi. The Service is furnishing this notice in compliance with Service comprehensive conservation plan policy and the National Environmental Policy Act and implementing regulations to achieve the following:

- (1) advise other agencies and the public of our intentions, and
- (2) obtain suggestions and information on the scope of issues, opportunities, and concerns for inclusion in the environmental documents.

DATES: The Service will hold a public scoping meeting at 7 p.m., May 12, 1998, in the Tully Auditorium, Forestry and Wildlife Building, Mississippi State University, Starkville, Mississippi. A second public meeting will be held to review the draft comprehensive conservation plan. It is anticipated that the draft will be available for public

review by August 1998. An announcement of the meeting will appear in the Federal Register.

ADDRESSES: Address comments and requests for more information to: Refuge Manager, Noxubee National Wildlife Refuge, Route 1, Box 142, Brooksville, Mississippi 39739.

SUPPLEMENTARY INFORMATION: It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired conditions of the refuge and how the Service will implement management strategies. The Service began the comprehensive management planning process for Noxubee National Wildlife Refuge in March 1998.

Some of the issues to be addressed in the plan include the following:

- (a) public use management;
- (b) habitat management;
- (c) wildlife population management; and
- (d) cultural resource identification and protection.

Alternatives that address the issues and management strategies associated with these topics will be included in the environmental document.

The refuge was established in 1940, to provide a refuge and breeding ground for migratory birds and other wildlife. The refuge is located in eastern Mississippi and consists of 47,879 acres.

Dated: May 1, 1998.

Sam D. Hamilton,
Regional Director.

[FR Doc. 98-12238 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Programmatic Environmental Impact Statement/ Environmental Impact Report on the Natural Community Conservation Plan/Habitat Conservation Plan for the South Subregion of Orange County, CA; and Announcement of Public Scoping Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; notice of public meeting.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) intends to gather information necessary to prepare a joint Environmental Impact Statement/ Environmental Impact Report (Impact Statement/Report) for an anticipated incidental take permit application from the Environmental Management Agency, County of Orange (County), California. The Service has been notified by the County that they intend to prepare a Natural Community Conservation Plan/Habitat Conservation Plan (Conservation Plan) to conserve coastal sage scrub and adjacent habitats in the South Subregion of Orange County. Interested persons are encouraged to attend a public scoping meeting to identify and discuss issues and alternatives that should be addressed in the Conservation Plan and in the Impact Statement/Report. This notice is provided as required by the Endangered Species Act of 1973, as amended, and the National Environmental Policy Act regulations.

DATES: A joint public scoping meeting will be held on May 14, 1998, from 7:00 p.m. to 9:00 p.m. Written comments related to the scope and content of the Conservation Plan and Impact Statement/Report should be received by the Service at the Carlsbad address below by June 8, 1998.

ADDRESSES: The public meeting will be held at San Clemente High School, Little Theater, 700 Avenida Pico, San Clemente, California 92673. Oral and written comments will be taken at the meeting. Written comments also may be mailed to Mr. Jim Bartel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008; or sent by facsimile to (760) 431-9624.

FOR FURTHER INFORMATION CONTACT: Mr. John Bradley, Fish and Wildlife Biologist, Carlsbad Fish and Wildlife Office, Carlsbad, California; telephone (760) 431-9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Background material may be obtained by contacting the County Environmental Management Agency, Planning and Zoning Administrator, 300 N. Flower Street, Santa Ana, California 92702. Documents also will be available for public inspection by appointment during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday), at the Service's Carlsbad office (see ADDRESSES).

Background

The County intends to prepare a Conservation Plan pursuant to the State of California's Natural Community Conservation Planning Act of 1991 and the Endangered Species Act of 1973, as amended. The purpose of the statewide Natural Community Conservation Planning Program is to provide for subregional and regional protection of natural diversity, while allowing compatible and appropriate development within the Natural Community Conservation Planning subregion. This program intends that these goals be achieved through the development and implementation of Natural Community Conservation Plans. The program is designed to provide an alternative to single-species conservation efforts by formulating natural community-based habitat protection programs on a regional basis to protect the numerous species inhabiting each of the targeted communities. The Natural Community Conservation Planning process is sponsored jointly by the California Resources Agency and California Department of Fish and Game, and is conducted in cooperation with the Service pursuant to a Memorandum of Understanding between Fish and Game and the Service dated December 4, 1991.

The proposed Conservation Plan would identify those actions necessary to maintain the viability of the remaining coastal sage scrub habitat for the three "target species" residing in coastal sage scrub habitats in accordance with the State's Conservation Guidelines. The target species are the threatened California gnatcatcher (*Poliophtila californica californica*), cactus wren (*Campylorhynchus brunneicapillus*), and orange-throated whiptail lizard (*Cnemidophorus hypsigrathus beldingi*). The Conservation Plan would treat the three target species as listed species and would be subject to the standards set forth in section 10(a)(1)(B) of the Endangered Species Act, and 50 CFR 17.32(b) and 17.22(b). In addressing the habitat needs of the three target species, the Conservation Plan would benefit other species that may be addressed as species receiving regulatory coverage pursuant to the provisions of the Natural Community Conservation Planning Act and section 10(a)(1)(B) of the Endangered Species Act. The Natural Community Conservation Plan would function as a multiple species conservation plan that could establish the basis for maintaining the viability of the remaining coastal sage scrub

ecosystem and other habitats at the community level.

If the Conservation Plan is approved by the Service, the Service would authorize incidental take of the coastal California gnatcatcher through the special section 4(d) rule (60 FR 36010) via the Service's issued written concurrence that the Conservation Plan meets the standards set forth in 50 CFR 17.32(b)(2). In addition, the Service, at the request of the County, would simultaneously issue an Endangered Species Act section 10(a)(1)(B) permit. The Conservation Plan, coupled with an implementation agreement, likely would form the basis for issuing an incidental take permit for the cactus wren and orange-throated whiptail lizard, and any additional species proposed for regulatory coverage should these species subsequently be listed.

The proposed agenda for the facilitated public meeting includes a summary of the proposed action, status of and threats to subject species, tentative issues, concerns, opportunities and alternatives. Attendees of the scoping meeting will have an opportunity to discuss the specific coastal sage scrub conservation goals and conservation planning alternatives and other aspects of the proposed Conservation Plan and related Impact Statement/Report. Submittal of independent written comments is encouraged.

This notice is provided as required by the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*, 50 CFR 17.22), and National Environmental Policy Act (40 CFR 1501.7) regulations.

Dated: May 1, 1998.

David J. Wesley,
Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98-12111 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-65-P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986; Cooperative Research and Development Agreement With U.S. Army Topographic Engineering Center, Alexandria, VA and EarthData Technologies, LLC, Hagerstown, MD

AGENCY: Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and

Development Agreement (CRADA) with the U.S. Army Topographic Engineering Center, Alexandria, Virginia and EarthData Technologies, LLC, Hagerstown, Maryland. The purpose of the CRADA is to jointly research and develop a camera calibration methodology and capability for digital airborne cameras. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Acting Chief of Research, U.S. Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648-4643, facsimile (703) 648-4706; Internet "ebrunson@usgs.gov".

FOR FURTHER INFORMATION CONTACT: Ernest B. Brunson, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: April 20, 1998.

Richard E. Witmer,
Chief, National Mapping Division.

[FR Doc. 98-12091 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-350-4210-01]

Extension of Approved Information Collection, OMB Number 1004-0107

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request an extension of existing approval to collect certain information from respondents identified in 43 CFR 2800 and 2880. This information is in addition to that collected on the Form SF-299, OMB No. 1004-0060, and is necessary for those large complex projects which require a right-of-way. The authorization for such collection is provided by the 2800 and 2880 regulations. On multi-million dollar energy production and transmission projects, and complex communication sites for which a right-of-way is required, information over and above that provided on the application form is required such as construction and other plans; a more detailed map; specific certificates, permits, and approvals from other agencies; and any

other necessary information relative to the completion of the project.

DATES: Comments on the proposed information collection must be received by July 6, 1998, to be assured of consideration.

ADDRESSES: Comments may be mailed to: Director (420), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WoComment@wo.blm.gov. Please include "Attn: 1004-0107" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Carl C. Gammon, (202) 452-7777.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the Federal Register concerning a collection of information contained in a published current rule to solicit comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The BLM will review and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

BLM grants rights-of-way on public lands through the authority of Title V of the FLPMA, 90 Stat. 2776, 43 U.S.C. 1761 and the Mineral Leasing Act (MLA) of 1920, as amended, 30 U.S.C. 185. Information in addition to that collected on the right-of-way form (SF-299) is needed for large complex projects. There is no standard form for the collection of this required additional information. The authorization for such collection is provided by the 2800 and

2880 regulations. The information required in 43 CFR Parts 2800 and 2880 is needed to enable the BLM to determine whether or not a right-of-way may be granted, to establish the terms and conditions of the grant and to administer the grant when it is made.

Additional information in the form of construction and other plans; detailed maps; certification, permits and approvals required by other agencies; and other information necessary for the completion of the project are authorized by 43 CFR 2802.4, 2881.2, and 2882.3. Each right-of-way is an individual situation and the information collected is specific to that individual proposal and only available from the applicant. Additional information in the form of a plan may be required. This plan is a product of the NEPA requirements. It is a useful working tool that enables both the BLM and the applicant to have a common understanding on how the project will proceed. An as-built map may also be required. These maps show greater detail than the basic location map required to be submitted with the application. A more exact location of the holder's right-of-way and related facilities will give the holder more protection for their improvements. The BLM also requires assurance that certifications, permits, and approvals required by others and identified during the NEPA analysis process have been obtained. A detailed description of alternative routes considered by the applicant when developing the proposal may be required and is used by the BLM to gain insight into the complexities and conflicts of the proposals. Statements of need and economic feasibility and of the environmental, social, and economic effects of the proposal may be requested and assist the BLM in evaluating the proposal with respect to NEPA compliance. If the BLM fails to properly collect the required information including plans, construction schedules, maps specific certificates, permits, and approvals necessary for the completion of the project, the BLM will reject the right-of-way application.

Based on BLM's experience administering the activities described above, approximately 25 percent of the 4,000 applications the BLM receives annually require additional information collection. The applicants are usually large companies that seek to construct large complex projects on public lands which require a right-of-way. The public reporting burden for the information collected is estimated to average 16.8 hours per response. The frequency of response is once. The estimated total annual burden on new respondents is about 16,800 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 29, 1998.

Carol J. Smith,

Bureau of Land Management Clearance Officer.

[FR Doc. 98-12164 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-938-6330-01 24 1A]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below of the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.). On February 26, 1998, BLM published a notice in the *Federal Register* (63 FR 9857) requesting comments on this proposed collection. The comment period ended on April 28, 1998. No comments were received from the public in response to that notice. Copies of the proposed collection of information and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the proposed requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004-0173), Office of Information and Regulatory Affairs, Washington, D.C. 20503, telephone: (202) 395-7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO-630), 1849 C St., N.W., Washington, D.C. 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether collecting the information is necessary for BLM's proper functioning, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Jobs-in-the-Woods Employment Evaluation.

OMB Approval Number: 1004-0173.

Abstract: The Jobs-in-the-Woods Program is part of the Administration's Northwest Forest Initiative. It seeks to reduce the impact of loss of jobs caused by decreased logging on Federal forests in the Pacific Northwest by providing money for contracts to restore the environment. The BLM asks for four items of information in each Jobs-in-the-Woods Program contract that if issues. Each contractor asks for four items of information in each Jobs-in-the-Woods Program contract that if issues. Each contractor provides information at the close of the contract, as a condition of receiving final payment, about the number of workers employed on the contract, including managers; the number of days those workers worked on the contract; the total amount of wages and benefits paid to the workers; and the number of workers, if any, considered to be displaced timber workers. The BLM uses the information to gauge the effectiveness of the program in employing displaced timber workers.

Bureau Form Number: None.

Frequency: Once, at the closing of the contract.

Description of Respondents: Respondents are holders of contracts funded by the Jobs-in-the-Woods Program, generally small businesses.

Annual Responses: 200.

Annual Burden Hours: 100.

Collection Clearance Officer: Carole Smith, (202) 452-0367.

Dated: April 29, 1998.

Carole Smith,

Bureau of Land Management, Information Clearance Officer.

[FR Doc. 98-12163 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-060-1040-00]

Call for Nominations for the San Pedro Riparian National Convention Area Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for the San Pedro Riparian National Conservation Area Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill seven positions on the San Pedro Riparian National Conservation Area Advisory Committee, which was established pursuant to Section 104 of the Arizona-Idaho Conservation Act of 1988, Pub. L. 100-696.

DATES: Nominations must be received by June 30, 1998.

ADDRESSES: Bureau of Land Management, Tucson Field Office, 12661 E. Broadway Blvd., Tucson, AZ 85748.

FOR FURTHER INFORMATION CONTACT: Bill Childress, Program Manager, at (520) 458-3559.

SUPPLEMENTARY INFORMATION: The Committee is comprised of seven members. Nominees to fill some of these positions will serve three-year terms ending December 31, 2001. Other members will serve shorter terms consistent with the committee's staggered-term arrangement.

Nominations for two positions of the seven positions will be submitted by the Arizona Governor's Office and the Cochise County Board of Supervisors. Anyone interested in filling either of those two positions should submit their name to those offices for consideration. The Secretary of the Interior, pursuant to this call, will ensure continued representation of specific categories of interest on the Committee. Nominees must be persons with recognized expertise in recreation, wildlife conservation, archaeology, paleontology, water resources, riparian ecology or other disciplines directly related to the primary purpose for which the conservation area was created.

The purpose of the Committee is to provide informed advice to the BLM's Tucson Field Manager on the management of the San Pedro Riparian National Conservation Area, as required by Section 103 of the Arizona-Idaho Conservation Act of 1988, Pub. L. 10-696.

Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for government employees. The Committee normally meets at least twice yearly. Additional meetings may be called by the Field Manager or representative in connection with special needs for advice.

Persons wishing to serve on the Committee, or to nominate individuals to serve, must do so in writing. Each

nomination must include the name, address, and phone number of the nominee along with biographical information such as education, profession, experience, and interests related to management of the Conservation Area. Nominations should be addressed to the Bureau of Land Management, Tucson Field Office, Tucson Field Manager, 12661 E. Broadway Blvd., Tucson, AZ 85748.

Dated: April 28, 1998.

Jesse J. Juen,

Field Manager.

[FR Doc. 98-12088 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-050-1120-00: GP8-0180]

Notice of availability Northeast Oregon assembled land exchange Final Environmental Impact Statement

AGENCY: Prineville District Office, Central Oregon Resource Area.

ACTION: Notice of availability, Northeast Oregon assembled land exchange Final Environmental Impact Statement (FEIS).

SUMMARY: In accordance with section 102(c) of the National Environmental Policy Act, the Prineville and Vale Districts have prepared a FEIS analyzing the potential environmental impacts of a proposed land exchange in Grant, Umatilla, Morrow, Wheeler and Union counties. The FEIS is expected to be available for review on or about May 20, 1998.

Clearwater Land Exchange has proposed to trade lands within and adjacent to both the North and South Forks of the John Day River for scattered tracts of public land located in the above mentioned counties. Other tracts yet to be identified would be acquired within the Vale District in future phases of the exchange.

DATES: This notice announces the beginning of the 30 day comment period. The comment period will officially close 30 days from the date the U.S. Environmental Protection Agency publishes its notice of availability of the FEIS.

ADDRESSES: Comments on the FEIS should be sent to James Hancock, Prineville District Manager, BLM, P.O. Box 550, Prineville, OR. 97754.

FOR FURTHER INFORMATION CONTACT: To obtain additional information or to get a copy of the FEIS, contact Steve Davidson at (541)-523-1349 or Ron Lane at (541)-416-6752.

SUPPLEMENTARY INFORMATION: Those individuals, organizations, Native American tribes, agencies and other governments with a known interest in the proposal have been sent a copy of the FEIS.

Dated: April 28, 1998.

James L. Hancock,

District Manager,

[FR Doc. 98-12162 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-958-1430-01; GP7-0070; OR-22155 (WA)]

Public Land Order No. 7328; Revocation of Executive Order Dated October 29, 1910; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order in its entirety, as it affects the remaining 20.36 acres of public lands withdrawn for Bureau of Land Management Powersite Reserve No. 158. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 11.38 acres to surface entry. The remaining 8.98 acres are included in an overlapping withdrawal and will remain closed to surface entry. All of the lands have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-952-6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated October 29, 1910, which established Powersite Reserve No. 158, is hereby revoked in its entirety:

Willamette Meridian

T. 32 N., R. 9 E.,

Sec. 24, lots 15 to 19, inclusive, and those portions of lots 9 and 12 lying in the W $\frac{1}{2}$ NE $\frac{1}{4}$.

The areas described aggregate approximately 20.36 acres in Snohomish County.

2. The following described lands are included in the Skagit Wild and Scenic River withdrawal, and will remain closed to surface entry:

Willamette Meridian

T. 32 N., R. 9 E.,

Sec. 24, lots 16 to 19, inclusive, and a portion of lot 12.

The areas described aggregate approximately 8.98 acres in Snohomish County.

3. At 8:30 a.m. on August 6, 1998, the lands described in paragraph 1, except as provided by paragraph 2, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on August 6, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The State of Washington has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994).

Dated: April 17, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98-12159 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[MT-926-08-1420-00]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior

ACTION: Notice.

SUMMARY: The plats of survey of the following described land are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

The plat, representing the survey of an island in the Missouri River, Township 2 North, Range 2 East, Principal Meridian, Montana, was accepted April 16, 1998.

The plat, in two sheets, representing the dependent resurvey of a portion of the south and east boundaries, a portion of the subdivisional lines, the adjusted original meanders of the right and left banks of the Missouri River through sections 12, 22, and 34, the subdivision of sections 12, 22, and 34, and the

survey of certain islands in the Missouri River, Township 3 North, Range 2 East, Principal Meridian, Montana, was accepted April 16, 1998.

The plat, in two sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, the adjusted original meanders of the right and left banks of the Missouri River through sections 2, 12, and 24, the subdivision of sections 2, 12, and 24, and the survey of certain islands in the Missouri River, Township 4 North, Range 2 East, Principal Meridian, Montana. This same plat, in two sheets, also representing the dependent resurvey of a portion of the subdivisional lines, the adjusted original meanders of the right and left banks of the Missouri River through sections 6 and 18, the subdivision of sections 6 and 18, and the survey of certain islands in the Missouri River, Township 4 North, Range 3 East, Principal Meridian, Montana, was accepted April 16, 1998.

The plat, representing the survey of certain islands in the Missouri River, Township 5 North, Range 2 East, Principal Meridian, Montana, was accepted April 16, 1998.

The plat, representing the dependent resurvey of portions of the First Standard Parallel North, the west boundary, the subdivisional lines, the adjusted original meanders of the right and left banks of the Missouri River, and the subdivision of section 31, Township 5 North, Range 3 East, Principal Meridian, Montana, was accepted April 16, 1998.

The plat, representing the dependent resurvey of portions of the north boundary, subdivisional lines, and certain boundaries of Amended Mineral Survey Nos. 5090A and 5090B, Placers, Township 6 North, Range 1 East, Principal Meridian, Montana, was accepted April 16, 1998.

The plat, in two sheets, representing the dependent resurvey of portions of the west boundary, subdivisional lines, the adjusted original meanders of the right and left banks of the Missouri River through sections 7, 8, 17, 18, 20, and 28, the subdivision of sections 7, 17, 20, and 28, and the survey of certain islands in the Missouri River, Township 6 North, Range 2 East, Principal Meridian, Montana, was accepted April 16, 1998.

This survey was executed at the request of the Bureau of Land Management, Headwaters Resource Area and was necessary to identify omitted islands. Copies of the preceding described plats will be immediately placed in the open files and will be

available to the public as a matter of information.

If a protest against this survey, as shown on these plats, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107-6800.

Dated: April 28, 1998.

Steven G. Schey,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 98-12185 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-DN-P

DEPARTMENT OF THE INTERIOR**Minerals Management Service****Preparation of an Environmental Assessment for Proposed Outer Continental Shelf Oil and Gas Lease Sale 172 in the Central Gulf of Mexico (March 1999)**

AGENCY: Minerals Management Service.

ACTION: Preparation of an environmental assessment (EA).

SUMMARY: The Minerals Management Service (MMS) is beginning preparation of an environmental assessment (EA) for proposed Outer Continental Shelf (OCS) Oil and Gas Lease Sale 172 (scheduled for March 1999) in the Central Gulf of Mexico Planning Area (CPA). In August 1996, the MMS issued a Call for Information and Nominations/Notice of Intent to Prepare an EIS (Call/NOI) for all five proposed Central Gulf of Mexico oil and gas sales in the current 5-year leasing program. In 1997, MMS prepared a single EIS for all five sales. The multisale final EIS, filed in November 1997, included an analysis of a single, "typical" oil and gas sale and a cumulative analysis that included the effects of holding all five sales, as well as the cumulative effects of the long-term development of the planning area. The MMS stated in the EIS that an EA would be prepared for each lease sale after the first sale covered in the EIS (Sale 169).

The preparation of this EA is the first step in the prelease decision process for Sale 172. The proposed action and alternatives for Sale 172 were identified by the Director of MMS in November 1996 following the Call/NOI and were analyzed in the Central Gulf multisale

EIS, which is available from the Gulf of Mexico OCS Region's Public Information Office at 1-800-200-GULF. The proposed action to be analyzed in this EA is the offering of all available unleased acreage in the CPA. The EA will also analyze alternatives to defer blocks south and within 15 miles of Baldwin County, Alabama, and to defer blocks containing topographic features with sensitive biological resources, as well as analyzing the no action alternative. The analysis in the EA will reexamine the potential environmental effects of the proposed action and alternatives based on any new information regarding potential impacts and issues that was not available at the time the final EIS was prepared.

The MMS requests interested parties to submit comments regarding any such new information or issues that should be addressed in the EA to the Minerals Management Service (MS 5410), Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394 by June 5, 1998. After completion of the EA, MMS will determine whether to prepare a Finding of No Significant Impact (FONSI) or a supplemental EIS. The MMS will then prepare and send to the affected States consistency determinations, which the States will review to determine whether the proposed sale is consistent with federally-approved State coastal zone management programs. The MMS will also send a proposed Notice of Sale to the Governors for their comments on the size timing, and location of the proposed sale. The tentative schedule for the steps in the prelease decision process for Sale 172 is listed below:

Comments due to MMS, June 5, 1998;

EA/FONSI or Supplemental EIS, October 1998;

Proposed Notice of Sale sent to Governors, October 1998;

Consistency Determinations sent to States, October 1998;

Final Notice of Sale, February 1999; and

Sale, March, 1999.

FOR FURTHER INFORMATION: Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Mr. George Hampton, Telephone (504) 736-2465.

Dated: May 1, 1998.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 98-12184 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-MR-U

DEPARTMENT OF THE INTERIOR**Minerals Management Service****Notice for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board**

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting cancellation.

SUMMARY: The meeting of the Royalty Policy Committee, on the Minerals Management Advisory Board, scheduled for May 19, 1998, in Lakewood, Colorado, at the Sheraton Denver West is canceled and will be rescheduled for July 1998. The location and dates of the July meeting will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Miller, Chief, Program Services Office, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3060, Denver, CO 80225-0165, telephone number (303) 231-3413, fax number (303) 231-3362.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of the Interior (Department) has established a Royalty Policy Committee, on the Minerals Management Advisory Board, to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals related policies. Committee membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, the general public, and Federal Department.

The May 19, 1998, meeting, which was announced in the *Federal Register* on April 22, 1998 (63 FR 19939), is hereby canceled. The location and dates of future meetings will be published in the *Federal Register*. The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available.

These meetings are being held by the authority of the Federal Advisory Committee Act, Pub. L. No. 92-463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A-63, revised.

Dated: May 1, 1998.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 98-12154 Filed 5-6-98; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-98-007]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 18, 1998 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
 2. Minutes
 3. Ratification List
 4. Inv. Nos. 731-TA-794-796 (Preliminary) (Emulsion Styrene Butadiene Rubber from Brazil, Korea, and Mexico)—briefing and vote.
 5. Outstanding action jackets: none
- In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting:

By order of the Commission.

Issued: May 4, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98-12239 Filed 5-5-98; 10:55 am]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-98-006]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 15, 1998 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
 2. Minutes
 3. Ratification List
 4. Inv. Nos. 701-TA-375 and 731-TA-783 (Preliminary) (Extruded Rubber Thread from Indonesia)—briefing and vote.
 5. Inv. Nos. 701-TA-376-379 and 731-TA-788-793 (Preliminary) (Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan)—briefing and vote.
 5. Outstanding action jackets: none
- In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting:

By order of the Commission.

Issued: May 4, 1998.

Donna R. Koehnke,

Secretary

[FR Doc. 98-12240 Filed 5-5-98; 10:55 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Office of the Secretary

President's Committee on the International Labor Organization; Closed Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is hereby given of a meeting of the President's Committee on the ILO:

Name: President's Committee on the International Labor Organization.

Date: Wednesday, May 20, 1998.

Time: 2 p.m.

Place: U.S. Department of Labor, Third & Constitution Ave., N.W., Room S-2508, Washington, DC 20210.

Purpose: The meeting will include a review and discussion of current issues relating to United States' negotiating positions with member nations of the International Labor Organization. The meeting will concern matters the disclosure of which would seriously compromise the Government's negotiating objectives and bargaining positions. Accordingly, the meeting will be closed to the public, pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B).

For Further Information Contact: Mr. Andrew J. Samet, President's Committee on the International Labor Organization, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-2235, Washington, DC 20210, Telephone (202) 219-6043.

Signed at Washington, DC, this 1st day of May 1998.

Alexis M. Herman,
Secretary of Labor.

[FR Doc. 98-12130 Filed 5-6-98; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Publication of Amendments to an Existing System of Records

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of amendments to an existing system of records.

SUMMARY: The Privacy Act of 1974 requires that each agency publish notice of all of the systems of records that it maintains. This document proposes to revise the Routine Uses Category for one

of the Department's existing systems of records. The proposed routine uses provide additional protection to the privacy interests of the participants in the studies which are conducted by system managers from the Department's Bureau of Labor Statistics (BLS). Finally, various administrative (non-substantive) changes are being made to this same system of records, including a change of name.

DATES: Persons wishing to comment on the proposed new routine uses may do so by June 8, 1998.

Effective Date: The proposed routine uses will become effective as proposed without further notice on June 16, 1998. The remaining amendments to this system are administrative (non-substantive), and therefore, will become effective on May 7, 1998.

ADDRESSES: Written comments may be mailed or delivered to Robert A. Shapiro, Associate Solicitor, Division of Legislation and Legal Counsel, 200 Constitution Avenue, NW., Room N-2428, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N-2428, Washington, DC 20210, telephone (202) 219-8188.

SUPPLEMENTARY INFORMATION: Pursuant to section three of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby proposes to amend the Routine Uses Category for one of the Department's existing systems of records. This document supplements this Department's last publication in full of all of its Privacy Act systems of records. On September 23, 1993, in Volume 58 at Page 49548 of the *Federal Register*, we published a notice containing 138 systems of records which were maintained under the Act. Subsequent publications of new systems were made on April 15, 1994 (59 FR 18156) (two new systems); on May 10, 1995 (60 FR 24897) (one new system); on June 15, 1995 (60 FR 31495) (one new system); on April 7, 1997 (62 FR 16610) (one new system); and on October 14, 1997 (62 FR 53343) (one new system).

1. The Department hereby proposes to amend an existing system of records, DOL/BLS-14, so that a revised Routine Uses Category can be substituted into this system of records. The revised Routine Uses Category will provide additional protection to the privacy interests of the participants in the various studies which are conducted by the system managers from the Bureau of

Labor Statistics (BLS). These studies are conducted by the Behavioral Science Research Laboratory, a unit within BLS. This additional privacy protection, for the participants in the studies, is achieved by making several of the Universal Routine Uses, contained within the General Prefatory Statement, inapplicable to this system of records. DOL/BLS-14 was last published on September 23, 1993 at 58 FR 49593.

2. This document makes various administrative (non-substantive) changes to the above discussed system, DOL/BLS-14. Since these administrative amendments are non-substantive, public comment is not required. These changes merely refine the system. Included in these changes is a revised name for the system, which will be more descriptive than its current name.

Universal Routine Uses

In its September 23, 1993 publication, the Department gave notice of eleven paragraphs containing routine uses which apply to all of its systems of records, except for DOL/OASAM-5 and DOL/OASAM-7. These eleven

paragraphs were presented in the General Prefatory Statement for that document, and it appeared at Pages 49554-49555 of Volume 58 of the *Federal Register*. Those eleven paragraphs were republished in an April 15, 1994 document in order to correct grammatical mistakes in the September 23, 1993 version. In the May 10, 1995, June 15, 1995, and April 7, 1997 publications, the General Prefatory Statement was republished as a convenience to the reader of the document. In an October 14, 1997 publication, the General Prefatory Statement was again republished in order to make a syntactical change to paragraph 10. It was also republished as a convenience to the reader on January 15, 1998 (63 FR 2417). We are again republishing the General Prefatory Statement as a convenience to the reader.

The public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on the proposed amendment in this document. A report on the proposed revision to DOL/BLS-14, has been provided to OMB and to the Congress, as required by OMB Circular A-130, Revised, and 5 U.S.C. 552a(r). The administrative (non-substantive) amendments do not have to be submitted for comment to OMB and to the Congress.

General Prefatory Statement

The following routine uses apply to and are incorporated by reference into this system of records published below unless the text of a particular notice of a system of records indicates otherwise. These routine uses do not apply to DOL/OASAM-5, Rehabilitation and Counseling File, nor to DOL/OASAM-7, Employee Medical Records.

1. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when: (a) The agency or any component thereof; (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

2. It shall be a routine use of the records in this system of records to disclose them in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive

responsibility of the receiving entity, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. A record from this system of records may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. Records from this system of records may be disclosed to the National Archives and Records Administration or to the General Services Administration, for records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. Disclosure may be made to agency contractors, or their employees, consultants, grantees, or their employees, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity.

Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; see also 5 U.S.C. 552a(m).

7. The name and current address of an individual may be disclosed from any system of records to the parent locator service of the Department of HHS or to other authorized persons defined by Pub. L. 93-647 for the purpose of locating a parent who is not paying required child support.

8. Disclosure may be made to any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

9. Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the

issuance or retention of a license, grant, or other benefit.

10. A record from any system of records set forth below may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation and the legislative coordination and clearance process.

11. Disclosure may be made to a debt collection agency that the United States has contracted with for collection services to recover debts owed to the United States.

I. Publication of a Proposed Amendment and Publication of Administrative (Non-Substantive) Changes

DOL/BLS-14, currently named as "Collection Procedures Research Lab Project Files", is proposed to be amended by revising the category for Routine Uses to read as set forth below. For the convenience of the reader, the entire system is being republished in full. At this time, the various administrative (non-substantive) amendments are being published as set forth below. One of the amendments revises the name of the system.

DOL/BLS-14

SYSTEM NAME:

BLS Behavioral Science Research Laboratory Project Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Offices in the Bureau of Labor Statistics National Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual respondents who participate in studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include respondent's name, name of study, biographic/personal information on the respondent, and test results and observations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. sec. 2.

PURPOSE(S):

Biographic/personal information is used by BLS to select participants for studies. Test results and observations are used by BLS to better understand the behavioral and psychological processes of individuals, as they reflect on the accuracy of BLS information collections.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None, except for those routine uses listed in the General Prefatory Statement

to this document with the following limitations: The Routine Uses listed at paragraphs 3, 4, 7, 8, 9, and 11 in the General Prefatory Statement to this document are not applicable to this system of records. The records also may be disclosed where required by law.

DISCLOSURE TO CONSUMER REPORTING

AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, and some electronic files stored on floppy disks and/or video tapes.

RETRIEVABILITY:

Respondent name and study title.

SAFEGUARDS:

Available to authorized personnel only. Files are kept in locked offices.

RETENTION AND DISPOSAL:

One to three years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, CPRL, Office of Research and Evaluation, Room 4915, Postal Square Building, 2 Massachusetts Ave., NE, Washington, DC 20212.

NOTIFICATION PROCEDURE:

Mail all inquiries or present in writing to System Manager at above address.

RECORD ACCESS PROCEDURES:

As in notification procedure.

CONTESTING RECORD PROCEDURES:

As in notification procedure.

RECORD SOURCE CATEGORIES:

From individual respondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Signed at Washington, DC this 30th day of April, 1998.

Alexis M. Herman,
Secretary of Labor.

[FR Doc. 98-12129 Filed 5-6-98; 8:45 am]

BILLING CODE 4510-23-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98-062]

National Environmental Policy Act; Stardust mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has made a finding of no significant impact (FONSI) with respect to the proposed Stardust mission, which would involve a flight to the comet 81-P/Wild-2 and return of cometary and interstellar dust samples to Earth. The baseline mission calls for the Stardust spacecraft to be launched aboard a Delta II 7426 from Cape Canaveral Air Station (CCAS), Florida, in February 1999, and to return the sample return canister (SRC) to Utah Test and Training Range (UTTR) approximately 65 kilometers (40 miles) southwest of Salt Lake City, Utah in January 2006.

DATE: Comments in response to this notice must be provided in writing to NASA on or before June 8, 1998.

ADDRESSES: Comments in response to this FONSI should be addressed to Mr. Mark Dahl, NASA Headquarters, Code SD, 300 E Street SW, Washington, DC 20546. The Environmental Assessment (EA) prepared for the Stardust mission which supports this FONSI may be reviewed at:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW, Washington, DC 20546

(b) NASA, Spaceport USA, Room 2001, John F. Kennedy Space Center, Florida, 32899 (407-867-2622). Please call Lisa Fowler beforehand at 407-867-2468 so that arrangements can be made.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818-354-5179)

The EA may also be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (415-604-4191)

(e) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805-258-2663)

(f) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301-483-6255)

(g) NASA, Johnson Space Center, Houston, TX 77058 (281-483-8612)

(h) NASA, Langley Research Center, Hampton, VA 23665 (757-864-2497)

(i) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216-433-2755)

(j) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256-544-5549)

(k) NASA, Stennis Space Center, MS 39529 (601-688-2164)

A limited number of copies of the EA are available for persons wishing a copy by contacting Mr. Dahl, at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT:

Mark Dahl, 202-358-1544.

SUPPLEMENTARY INFORMATION: NASA has reviewed the EA prepared for the Stardust mission and has determined that it represents an accurate and adequate analysis of the scope and level of associated environmental impacts. The EA is hereby incorporated by reference in this FONSI.

NASA is proposing to launch the Stardust mission, which would deliver a single spacecraft within 150 to 1000 kilometers (km) (93 to 620 miles (mi)) of the 81-P/Wild-2 comet nucleus during a flyby in 2004 to gather 1000 dust particles from the comet's coma. The proposed action calls for using a Delta II 7426 launch vehicle with a Star 37FM upper stage to inject the Stardust spacecraft into its initial heliocentric orbit in February 1999. The proposed mission design calls for the Stardust spacecraft to swing by Earth once during its seven-year tour. This gravity assist would allow the spacecraft to gain the additional energy required to intercept the comet Wild-2. During its flight, Stardust would transmit pictures of the Earth and Moon taken during the Earth swingby, transmit pictures of the comet nucleus and coma taken during comet encounter, nondestructively capture interstellar and cometary dust particles, and return these samples to Earth for study by the international scientific community. Neither the spacecraft nor the return canister would carry radioactive material.

The primary science objective for the Stardust mission is to non-destructively collect comet dust particles greater than 15 microns (μ m) in size, at an encounter velocity of less than 6.5 km/second (s) (4 mi/s), and return them to Earth for scientific study.

Secondary and tertiary scientific objectives include the collection of intact particles from the Interstellar Dust Stream impinging into our solar system; provide multiple images of Wild-2, with ten times the resolution of any comet image to date, taken within 2000 km (1240 mi) of the comet nucleus; provide in-situ particulate analysis capable of resolving abundant elements in cometary fields for dust particulates during the coma fly-through; provide in-situ particulate analysis for interstellar dust particles and planetary dust; collect comet coma molecules and return them to Earth; provide dust flux

measurement of particulates having a mass less than 1 gram; and measure the dust mass flux, number of large particulates, and comet mass upper limit. The Stardust mission is proposed to gather interstellar and cometary material and return it to Earth where the world scientific community can systematically analyze it with powerful research equipment in their laboratories.

Samples from Wild-2 would offer a glimpse of the best preserved fundamental building blocks out of which our Solar System formed. In addition, during its first two orbits about the Sun on its way to Wild-2, the Stardust spacecraft would collect approximately 100 interstellar dust particulates. This would provide the international scientific community its first opportunity to collect and analyze these interstellar dust grains.

Alternatives that were evaluated include: (1) No-Action (i.e., no Stardust mission); (2) launch vehicles options, including the Space Shuttle, Taurus, and Atlas configurations, as well as other Delta configurations; and (3) alternative landing sites. Failure to undertake the Stardust mission would disrupt the execution of NASA's Solar System Exploration Program as defined by the Agency's Solar System Exploration Committee. The scientific value of having actual bona-fide, relatively pristine comet samples is high. While environmental impacts would be avoided by cancellation of the proposed mission, the loss of the scientific knowledge and database from carrying out the mission could be substantial. Of the launch vehicles evaluated, the Delta II 7426/Star 37 FM most closely matches the Stardust mission requirements, and minimizes adverse environmental impacts within the cost constraints of this Discovery Mission.

Expected impacts to the human environment associated with the mission arise almost entirely from the normal launch of the Delta II 7426, and to a much lesser extent, the entry, descent, landing, and recovery operations of the sample return. Air emissions from the exhaust produced by the solid propellant graphite epoxy motors (GEMs) and liquid first stage primarily include carbon monoxide, hydrochloric acid, aluminum oxide in soluble and insoluble forms, carbon dioxide, and deluge water mixed with propellant by-products. Air impacts will be short-term and not substantial. Short-term water quality and noise impacts, as well as short-term effects on wetlands, plants, and animals, would occur in the vicinity of the launch complex. These short-term impacts are of a nature to be

self-correcting, and none of these effects would be substantial. There could be no impact on threatened or endangered species or critical habitat, cultural resources, or floodplains at or in the vicinity of CCAS. Accident scenarios have also been addressed and would not result in substantial environmental impacts.

The second stage would be ignited at an altitude of 118 kilometers (74 miles), which is in the ionosphere. Although the second stage would achieve orbit, its orbital decay time would fall below the limit NASA has set for orbital debris consideration. After burning its propellant to depletion, the second stage would remain in low Earth orbit (LEO) until its orbit eventually decayed. The second stage is designed to burn up as it reenters Earth's atmosphere. The Stardust Project will follow the NASA guidelines regarding orbital debris and minimizing the risk for uncontrolled reentry into the Earth's atmosphere.

The level and scope of environmental impacts associated with the launch of the Delta II 7426 vehicle are well within the envelope of impacts that have been addressed in previous FONSI's concerning other launch vehicles and spacecraft.

At capture, the comet and interstellar dust particles would be traveling at very high speed relative to the spacecraft collector and would be stopped in 1 to 3 centimeters (cm) of glass (aerogel) within microseconds. The particles would undergo extreme heating during impact and capture. This is a much more severe environment than any known sterilization techniques these particles might be subjected to on Earth. Because there is little possibility of biological contamination during sample collection, and thus an insignificant chance of returning any living organism to Earth (known as back-contamination), the Stardust project has requested and received certification from NASA's Planetary Protection Officer as a Planetary Protection Category V mission, "Unrestricted Earth Return," for the inbound mission phase.

Upper altitude emissions associated with reentry of the sample return capsule (SRC) would include ablation products of the thermal protection system on the forebody. The SRC would enter the earth's atmosphere directly above UTTR's South Range with a velocity of approximately 13 km/s (8 mi/s). It would decelerate to 600 meters/s (m/s) (1962 feet/s (ft/s)) in two minutes. The material baselined to be used for the forebody heatshield is Phenolic Impregnated Ceramic Ablator (PICA), recently developed at NASA's Ames Research Center. Due to friction, the

peak heating would occur at approximately 54 seconds after reentry begins, which corresponds to an altitude of approximately 60 km (196,860 ft) above the earth. The ablation would continue for about twenty seconds. Models conservatively predict that less than 22 percent of the total PICA material would ablate during reentry, and that ablation would cease at approximately 46.5 km (152,566 ft) above the earth. The total mass of the PICA material would be about 8.5 kg (18.7 pounds (lb)); of this, a maximum of 1.86 kg (4.09 lb) would be ablated during reentry. The chemical species produced during ablation would be dissipated in the shock wave behind the SRC. Two of the chemical species produced in small amounts during ablation, hydrogen cyanide and cyanide (37 grams (g) and 149 g, respectively), are considered to be acutely toxic to humans when inhaled. The ablation process and thus the production of these species would cease more than 46 km (150,000 ft) above the earth. Therefore, these concentrations would disperse in the large volume of air in the upper atmosphere and would not constitute a danger to health or life on earth. The SRC heatshield would be rapidly cooling during the subsonic portion of the descent, and would not be emitting into the lower atmosphere.

UTTR is primarily used by the U.S. Air Force as a bombing and artillery test and training range. The entry, descent, landing, and recovery operations for the 42.6 kilogram (93.7 lb) SRC would be well within the bounds of the day-to-day operations carried on at UTTR. There would be no impact on threatened or endangered species or critical habitat, cultural resources, wetlands or floodplains at UTTR. Off-nominal recovery scenarios have also been addressed. No other impacts of potential environmental concern have been identified.

On the basis of the Stardust EA, NASA has determined that the environmental impacts associated with the mission would not individually or cumulatively have a significant impact on the quality of the human environment. NASA will take no final action prior to the expiration of the 30-day comment period.

Earle K. Huckins III,

Deputy Associate Administrator for Space Science.

[FR Doc. 98-12155 Filed 5-6-98; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:*

NRC Form 327—Special Nuclear Material (SNM) and Source Material (SM) Physical Inventory Summary Report;

NUREG/BR-0096—Instructions and Guidance for Completing Physical Inventory Summary Reports.

2. *Current OMB approval number:*

3150-0139.
3. *How often the collection is required:* The frequency of reporting corresponds to the frequency of required inventories, which depends essentially on the strategic significance of the SNM covered by the particular license. Certain licensees possessing strategic SNM are required to report inventories every 2 months. Licensees possessing SNM of moderate strategic significance must report every 6 months. Licensees possessing SNM of low strategic significance must report annually.

4. *Who is required or asked to report:* Fuel facility licensees possessing special nuclear material.

5. *The number of annual respondents:*

10.
6. *The number of hours needed annually to complete the requirement or request:* 98 (an average of approximately 4.25 hours per response for 23 responses).

7. *Abstract:* NRC Form 327 is submitted by fuel facility licensees to account for special nuclear material. The data is used by NRC to assess licensee material control and accounting programs and to confirm the absence of (or detect the occurrence of) special nuclear material theft or diversion. NUREG/BR-0096 provides specific guidance and instructions for completing the form in accordance with the requirements appropriate for a particular licensee.

Submit, by July 6, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (<http://www.nrc.gov>) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-6 F33, Washington, DC, 20555-0001, or by telephone at 301-415-7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 30th day of April, 1998.

For the Nuclear Regulatory Commission,
Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98-12172 Filed 5-6-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

1. *Type of submission:* Revision.
2. *The title of the information collection:* "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Current Licensing Basis," Regulatory Guides RG-1.174 through RG-1.178.
3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Use of the new risk-informed methodology for making changes in the licensing basis of operating plants in the areas of inservice inspection (ISI), inservice testing (IST), graded quality assurance (GQA), and technical specifications (TS), is available to all licensees but is not required. Licensees may make voluntary submittals when, and if, in their judgment, it is to their advantage to do so (for example, to improve plant safety, reduce costs, gain operating flexibility).

5. *Who will be required or asked to report:* Licensees of nuclear power plants may report when, and if, in their judgment, it is to their advantage to do so.

6. *An estimate of the number of responses:* ISI: 6, IST: 3, QA: 1, TS: 20.

7. *The estimated number of annual respondents:* ISI: 6, IST: 3, QA: 1, TS: 20.

8. *An estimate of the total number of hours needed annually to complete the requirement or request (per respondent):* ISI: 6,200, IST: 5,200, QA: 4,000, TS: 1,060.

9. *An indication of whether Section 3507(d), Pub. L. 104-13 applies:* Not applicable.

10. *Abstract:* In the specific areas of ISI, IST, GQA, and TS, a new series of Regulatory Guides provides a risk-informed method for licensees to use in requesting changes to their current licensing bases (CLB). No changes or additions have been made to any rules or regulations in conjunction with the issuance of this series of guides. The new method will be a voluntary alternative to the deterministically-based CLB change method previously used (which will remain acceptable as an alternative to the new risk-informed method).

The new risk-informed alternative method will allow licensees to concentrate on plant equipment and operations that are most critically important to plant safety so as to achieve a savings in total effort and greater operating flexibility with an insignificant change in overall safety. The guides specify the records, analyses, and documents that licensees

are expected to prepare in support of risk-informed changes to their CLB in the specified areas.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (<http://www.nrc.gov>) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by June 8, 1998: Erik Godwin, Office of Information and Regulatory Affairs (3150-0011), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 1st day of May 1998.

For the Nuclear Regulatory Commission,

Brenda Jo. Shelton,
NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98-12173 Filed 5-6-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[IA 98-002]

Mr. Thomas C. Johnson; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Thomas C. Johnson (Mr. Johnson) was formerly employed as a contractor employee at the Niagara Mohawk Power Corporation (NMPC), Nine Mile Point nuclear facility as a computer programmer. NMPC holds Facility License Nos. DPR-63 and NPF-69 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize NMPC to operate the Nine Mile Point facilities, Units 1 and 2, in accordance with the conditions specified therein.

II

In May 1996, NMPC initiated an investigation into whether Mr. Johnson and others were involved in the alteration of a computer code used to select individuals for random drug and alcohol testing. Based on the evidence

developed during the NMPC investigation, as well as a subsequent review by the NRC Office of Investigations (OI), OI concluded that Mr. Johnson and another contractor computer programmer intentionally altered the fitness-for-duty (FFD) computer program to ensure that certain individuals (including themselves) would be excluded from random FFD screening. Specifically, a patch had been inserted into the computer program to ensure certain individuals would not be selected. Moreover, the two individuals planned and executed a scheme (and a number of precautions) to elude detection and prevent tracing. These actions caused NMPC to violate 10 CFR 26.24, which requires that individuals be tested in a statistically random and unpredictable manner. As a result of this violation, Mr. Johnson, the other contractor, and others, were prevented from being selected for random FFD testing.

Although Mr. Johnson, in an interview with NMPC investigators on May 15, 1996, denied knowledge of this matter, during a subsequent interview by NMPC investigators on May 22, 1996, Mr. Johnson admitted that he was involved in a joint effort with another individual in altering the computer program for FFD testing selection. Mr. Johnson was offered an opportunity for an enforcement conference with the NRC, but declined.

III

Based on the above, the NRC has concluded that Mr. Johnson engaged in deliberate misconduct. Mr. Johnson's actions constitute a violation of 10 CFR 50.5(a)(1), which prohibits an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. In this case, Mr. Johnson caused the Licensee to be in violation of 10 CFR 26.24. Specifically,

10 CFR Part 26.24, requires, in part, that as a means to deter and detect substance abuse, the licensee shall implement a testing program that includes unannounced drug and alcohol testing that is to be imposed in a statistically random and unpredictable manner so that all persons in the population subject to the testing shall have an equal probability of being selected and tested.

Contrary to the above, at some time prior to May 1996, Mr. Johnson and another contractor computer programmer altered the FFD computer program used to ensure that individuals were tested for drugs and alcohol in a statistically random and unpredictable manner, resulting in certain individuals

being excluded from random FFD screening. As a result, for an indeterminate period prior to May 1996, individuals were selected for testing in a manner that was not statistically random and unpredictable.

The NRC must be able to rely on the Licensee, its contractors, and the Licensee and contractor employees to comply with NRC requirements. Mr. Johnson's action in altering the FFD program, and his collusion with another individual to hide that alteration, constitute deliberate violations of Commission regulations, and by doing so, raises serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC Licensees and their contractors in the future, and raises doubt about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Johnson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Johnson be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, for a period of three years after the five year period of prohibition has expired, Mr. Johnson is required to notify the NRC of his acceptance of each employment offer involving NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Johnson's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

A. Thomas C. Johnson is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

B. For a period of three years after the five year period of prohibition has expired, Mr. Johnson shall, within 20 days of his acceptance of each

employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Johnson shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Johnson of good cause.

V

In accordance with 10 CFR 2.202, Mr. Johnson must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Johnson or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Johnson if the answer or hearing request is by a person other than Mr. Johnson. If a person other than Mr. Johnson requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely

affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Johnson or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Johnson may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 28th day of April 1998.

For the Nuclear Regulatory Commission.
James Lieberman,
Director, Office of Enforcement.
[FR Doc. 98-12182 Filed 5-6-98; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[IA 98-001]

Mr. Albert M. Nardslico, Jr.; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Albert M. Nardslico (Mr. Nardslico) was formerly employed as a contractor employee at the Niagara Mohawk Power Corporation (NMPC) Nine Mile Point nuclear facility as a computer programmer. NMPC holds Facility License Nos. DPR-63 and NPF-69 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. These licenses authorize NMPC to operate the Nine Mile Point facilities, Units 1 and 2, in accordance with the conditions specified therein.

II

In May 1996, NMPC initiated an investigation into whether Mr. Nardslico and others were involved in the alteration of a computer code used to select individuals for random drug and alcohol testing. Based on the evidence developed during the NMPC investigation, as well as a subsequent review by the NRC Office of Investigations (OI), OI concluded that Mr. Nardslico and another contractor computer programmer intentionally altered the fitness-for-duty (FFD) computer program to ensure that certain individuals (including themselves) would be excluded from random FFD screening. Specifically, a patch had been inserted into the computer program to ensure certain individuals would not be selected. Moreover, the two individuals planned and executed a scheme (and a number of precautions) to elude detection and prevent tracing.

These actions caused NMPC to violate 10 CFR 26.24, which requires that individuals be tested for drugs and alcohol in a statistically random and unpredictable manner. As a result of this violation, Mr. Nardslico, the other contractor employee involved in planning the scheme, and others, were prevented from being selected for random FFD testing. In addition, during the time in which his name was excluded from random selection, Mr. Nardslico had access to the site protected area, which was also at a time when Mr. Nardslico may have been using marijuana offsite. (Mr. Nardslico admitted, during the predecisional enforcement conference in the NRC Region I office on February 13, 1998, and during a June 21, 1996 interview with NMPC investigators, that he had used marijuana while employed at Nine Mile Point. While he did not recall the periods of such use, he was unable to confirm that he did not use marijuana while his name had been excluded from the FFD testing pool.)

During his interviews with NMPC, as well as during the predecisional enforcement conference with the NRC, Mr. Nardslico denied that he was involved in the alteration of the computer program. Notwithstanding Mr. Nardslico's denials, another contractor computer programmer, who had admitted his involvement in the alteration, implicated Mr. Nardslico as also being involved in the alteration. Specifically, in transcribed interviews under oath, the other contract computer programmer indicated: (1) That the corruption of the FFD computer code was a joint effort of him and Mr. Nardslico; (2) that he and Mr. Nardslico

in the July/August 1993 timeframe "fleshed out" a way to make changes to the fitness for duty program through the use of the "C" program; (3) that Mr. Nardslico had suggested adding additional persons' names to the scheme to "disperse" suspicion; and (4) that he had observed Mr. Nardslico use marijuana on at least one occasion subsequent to the September 1993 code corruption. In addition, Mr. Nardslico admitted that he was aware of the computer code alteration, was also aware that his name was one of those eliminated from the FFD testing pool as part of the alteration, and was further aware that he was subject to FFD random testing because of his having access to the Nine Mile Point site. Nonetheless, Mr. Nardslico did not take appropriate action to remedy the situation or ensure that his management was made aware that the computer code had been altered, as he admitted during the predecisional enforcement conference.

Finally, some of Mr. Nardslico's statements on this matter lack credibility. For example, in his first interview with NMPC on May 20, 1996, he denied any involvement in, or knowledge of, the alteration of the FFD computer code; however, in a subsequent interview with NMPC on June 21, 1996, as well as during the predecisional enforcement conference with the NRC on February 13, 1998, Mr. Nardslico admitted his knowledge of the alteration of the computer code. Also, although Mr. Nardslico indicated that he did not inform a licensee Purchasing Supervisor of the alteration shortly after he stated he became aware of it, that individual denied Mr. Nardslico's assertion, and Mr. Nardslico admitted that he did not raise this issue with anyone else in the NMPC organization. In addition, although Mr. Nardslico indicated that he was not familiar with the "C" programming language, which was the language used for the FFD computer code, his resume listed the "C" language as one of the languages with which he was familiar, and others testified that Mr. Nardslico was familiar with this language. Further, Mr. Nardslico, during his interviews with NMPC, expressed a willingness to enter into business relationships with the other individual who was involved with the alteration of the computer code, while at the same time indicating that he was disturbed by the other individual's actions and lack of judgment.

III

Based on the above, the NRC has concluded that Mr. Nardslico engaged

in deliberate misconduct. Mr. Nardslico's actions constitute a violation of 10 CFR 50.5(a)(1), which prohibits an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. In this case, Mr. Nardslico caused the Licensee to be in violation of 10 CFR 26.24. Specifically,

10 CFR Part 26.24, requires, in part, that as a means to deter and detect substance abuse, the licensee shall implement a testing program that includes unannounced drug and alcohol testing that is to be imposed in a statistically random and unpredictable manner so that all persons in the population subject to the testing shall have an equal probability of being selected and tested.

Contrary to the above, at some time prior to May 1996, the actions of Mr. Nardslico and another contractor computer programmer resulted in the licensee maintaining an altered FFD computer program used to ensure that individuals were tested for drugs and alcohol in a statistically random and unpredictable manner, resulting in certain individuals (including Mr. Nardslico) being excluded from random FFD screening. As a result, for an indeterminate period prior to May 1996, individuals were selected for testing in a manner that was not statistically random and unpredictable.

The NRC must be able to rely on the Licensee, its contractors, and the Licensee and contractor employees to comply with NRC requirements. Mr. Nardslico's involvement in the altering of the FFD program, including his collusion with another contractor employee to hide that alteration, constitute a deliberate violation of Commission regulations, and by doing so, raises serious doubt as to whether he can be relied upon to comply with NRC requirements, and raises doubt about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Nardslico were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Nardslico be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, for a period of three years after the five year period of prohibition has expired, Mr. Nardslico is required to notify the NRC of his acceptance of each employment offer involving NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202,

I find that the significance of Mr. Nardslico's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to Sections 103, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

A. Albert M. Nardslico Jr. is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of three years after the five year period of prohibition has expired, Mr. Nardslico shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Nardslico shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Nardslico of good cause.

V

In accordance with 10 CFR 2.202, Mr. Nardslico must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or

affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Nardslico or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Nardslico if the answer or hearing request is by a person other than Mr. Nardslico. If a person other than Mr. Nardslico requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Nardslico or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Nardslico may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 28th day of April 1998.

For the Nuclear Regulatory Commission,
James Lieberman,
Director, Office of Enforcement.
[FR Doc. 98-12181 Filed 5-6-98; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-282, 50-306]

Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2); Exemption

I

Northern States Power Company (NSP, the licensee) is the holder of Facility Operating License Nos. DPR-42 and DPR-60, which authorize operation of Prairie Island Nuclear Generating Plant, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors located at the licensee's site in Goodhue County, Minnesota.

II

In its letter dated March 6, 1998, the licensee requested an exemption from specific requirements of Title 10 of the Code of Federal Regulations Part 50, Section 60, and Appendix G. Specifically, NSP proposed to use American Society of Mechanical Engineers (ASME) Code Case N-514 to permit setting the pressure setpoint of each unit's overpressure protection system (OPPS) so that the pressure-temperature (P-T) limits required by 10 CFR Part 50, Appendix G, could be exceeded by 10 percent during a low temperature pressure transient.

The NRC has established requirements in 10 CFR Part 50 to protect the integrity of the reactor coolant system pressure boundary. As a part of these, 10 CFR Part 50, Appendix G, requires that P-T limits be established for reactor pressure vessels during normal operation, including anticipated operational occurrences and vessel hydrostatic testing and as stated in Appendix G, "The appropriate requirements on . . . the pressure-temperature limits . . . must be met for all conditions." In order to ensure these P-T limit curves are not exceeded and provide pressure relief during low temperature overpressurization events, pressurized-water reactor licensees have installed protection systems (OPPS) as part of the reactor coolant system pressure boundary. NSP is required as

part of the Prairie Island Units 1 and 2 Technical Specifications to develop, update, and submit reactor vessel P-T limits and OPPS setpoints for NRC review and approval.

By letter dated March 6, 1998, NSP submitted an exemption request to enable the use of ASME Code Case N-514 as an alternative method for determining the OPPS pressure setpoint. NSP determined that the exemption request from the provisions of 10 CFR 50.60 and Appendix G was necessary since these regulations require, as noted above, that the reactor vessel conditions not exceed the P-T limits established by Appendix G. In referring to 10 CFR 50.12 on specific exemptions, NSP cited special circumstances as stated in 10 CFR 50.12(a)(2)(ii) on achieving the underlying purpose of the regulations as its basis for requesting this exemption.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

The underlying purpose of 10 CFR Part 50, Appendix G, is to establish fracture toughness requirements for the RCS pressure boundary to provide adequate margins of safety during any condition of normal operation. NSP stated that the OPPS provides a physical means of protecting the vessel by not exceeding the limits. NSP proposed that establishing the OPPS pressure setpoint per the N-514 provisions such that the vessel pressure would not exceed 110 percent of the P-T limit allowables would still provide an acceptable level of safety and mitigate the potential for an inadvertent actuation of the OPPS. The finding of an "acceptable level of safety" while using N-514 was made based on the conservatisms that have been explicitly incorporated into the procedure for developing the P-T limit curves. This procedure, referenced from Appendix G to Section XI of the ASME Code, includes the following conservatisms: (1) A safety factor of 2 on the pressure stresses, (2) a margin factor applied to the determination of RT_{NDT}

[reference temperature nil ductility temperature] (using Regulatory Guide 1.99 "Radiation Embrittlement of Reactor Vessel Materials," Revision 2), and (3) a limiting material toughness curve based on bounding dynamic crack initiation and crack arrest data.

In addition, NSP explained that plant operators must operate the plant between the minimum pressure required to preserve reactor coolant pump seals and a maximum pressure that does not challenge the power-operated relief valve setpoint. Without the application of ASME Code Case N-514, Prairie Island would have an operating window that is too narrow to permit reasonable system makeup and pressure control. NSP continued by stating that further reduction of the OPPS pressure setpoint below 500 psig would increase the probability that the reactor coolant pump's no. 1 seal will fail as a result of OPPS operation, and that such a seal failure could produce a breach in the reactor coolant system boundary that could not be isolated. Therefore, inadvertent OPPS actuation could lead to a small break loss-of-coolant accident and the unnecessary release of reactor coolant inside containment.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for OPPS events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that the application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

The NRC staff agreed with NSP's determination that an exemption would be required to approve the use of Code Case N-514. The NRC staff examined NSP's rationale to support the exemption request and concluded that the use of Code Case N-514 would also meet the underlying intent of the regulations. Based upon a consideration of the conservatisms that are explicitly defined in the Appendix G methodology (as listed in Section III above), the staff concluded that permitting the OPPS setpoint to be established such that the vessel pressure would not exceed 110 percent of the limit defined by the P-T limit curves would provide an adequate margin of safety against brittle failure of the reactor vessel. This is also consistent with the determination that the staff has reached for other licensees under

similar conditions based on the same considerations. Therefore, requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) was found to be appropriate. The staff also agrees that limiting the potential for inadvertent OPPS actuation (and limiting the potential for reactor coolant pump seal damage) may improve plant safety.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 and Appendix G to allow NSP to apply the methods in ASME Code Case N-514 for the determination of the Prairie Island Nuclear Generating Plant Units 1 and 2 pressure setpoints.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (63 FR 23477).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of April 1998.

For the Nuclear Regulatory Commission,
Samuel J. Collins,
Director, Office of Nuclear Reactor Regulation.
[FR Doc. 98-12183 Filed 5-6-98; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-259; License No. DPR-33]

Tennessee Valley Authority; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by petition dated April 5, 1998, the Union of Concerned Scientists, (or Petitioner), has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Browns Ferry Nuclear Plant, Unit No. 1. Petitioner requests (1) that the operating license for Browns Ferry Unit 1 be revoked and (2) that the NRC require the Tennessee Valley Authority (TVA) to submit either a decommissioning plan or a lay-up plan for Browns Ferry Unit 1. Petitioner further requests a hearing on this petition to present new information on Browns Ferry Unit 1 that would include a discussion of the licensing basis reconstitution that would be required to support restart, and certain financial

aspects that might be a consideration for the TVA's decision for retaining the Browns Ferry Unit 1 operating license.

As the basis for this request, the Petitioner asserts that revocation of the operating license and requiring relicensing if TVA later decides to restart Unit 1 is a better, safer process than is the current Inspection Manual Chapter 0350 restart process. Further, the petition asserts that requiring a decommissioning plan would provide assurance that the irradiated fuel is stored safely and that Units 2 and 3 are sufficiently independent of Unit 1 for safe operation.

The petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations and has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time.

By letter dated April 29, 1998, the Director acknowledged receipt of the petition and denied Petitioner's request for a public hearing to present new information.

A copy of the petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, D.C. 20555.

Dated at Rockville, Maryland, this 29th day of April 1998.

For the Nuclear Regulatory Commission,
Samuel J. Collins,
Director, Office of Nuclear Reactor Regulation.
[FR Doc. 98-12178 Filed 5-6-98; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-390]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-90, issued to the Tennessee Valley Authority (TVA or the licensee) for operation of the Watts Bar Nuclear Plant (WBN), Unit 1 located in Rhea County, Tennessee.

WBN currently has two containment hydrogen ignitors that are inoperable due to an apparent fault in the common circuit supplying these ignitors. This condition renders Train A of the WBN

hydrogen mitigation system (HMS) inoperable in accordance with TS limiting condition for operation (LCO) 3.6.8. The condition was discovered during routine surveillance testing to the Train A ignitors on April 3, 1998, at which time WBN entered Condition A of limiting condition for operation (LCO) 3.6.8. The ignitors are located in a very high radiation and temperature area of lower containment and cannot be repaired until the reactor is taken offline. WBN's next scheduled outage for refueling is in February 1999. The proposed amendment would revise the TS LCO 3.6.8 to provide temporary requirements for hydrogen ignitors to address the two Train A ignitors which are currently out of service. The revision would apply until the next shutdown to MODE 3 following which time ignitor repairs would be performed to restore the HMS to an operable status.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has concluded that operation of WBN in accordance with the proposed change to the TS does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation in accordance with 10 CFR 50.91(a)(1) of the three standards set forth in 10 CFR 50.92(c).

(A) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed temporary technical specification would permit two specific Train A ignitors (30A and 31A) in non-adjacent regions to be out of service until the next WBN entry into MODE 3. In this condition, the remaining 32 of 34 ignitors, in combination with thorough containment air mixing and with the hydrogen collection function of the air return system, will maintain the ability to burn hydrogen such that containment hydrogen remains low

following a degraded core accident. Thus, the design basis of the HMS will be maintained such that a controlled hydrogen burn may occur at the lower flammability concentration following a degraded core accident. In addition, although a loss of Train B power could result in loss of ignitors in two regions of lower containment, the short duration allowed by the proposed amendment for this condition (not to exceed 72 hours) minimizes the likelihood of a concurrent accident requiring the ignitors. The WBN PSA [probabilistic safety assessment] establishes a probability of 3.6×10^{-7} events per reactor-year of a degraded core event based on 72 hours, with the probability more remote for an accident that would generate hydrogen in amounts equivalent to a metal-water reaction of 75% of core cladding for which the HMS is intended. Additionally, sufficient ignition capability in adjacent regions combined with containment air mixing would provide capability by flame propagation to the regions with no operable ignitors. Thus the failure of the two specific ignitors should not result in any change to the post-accident hydrogen burn profiles. Since the hydrogen concentration would remain low and pocketing which could lead to rapid burns and challenge containment is unlikely, the original design continues to be met. Thus the probability of a containment failure and associated radiological release is insignificantly altered. Because the containment response will not change, the proposed TS will not result in an increase in the probability or consequences of any accident previously evaluated in the WBN FSAR.

(B) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, with the two Train A ignitors out of service, the remaining 32 of 34 ignitors in combination with containment air mixing will maintain the design basis of the HMS such that a controlled hydrogen burn may be accomplished following a degraded core accident, including a short time period of 72 hours for which a loss of Train B power could result in loss of ignitors in two regions of lower containment. Since the failure of the ignitors should not result in any change to the post-accident hydrogen burn profiles and because the containment response will not change, the proposed TS will not result in any new or different kind of accident from any accident previously evaluated.

(C) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in margin of safety.

Although the HMS is not provided for a design basis accident (DBA), the Bases of the WBN TS define the design function of the HMS as having the capability to burn hydrogen in a controlled manner at the lower flammability concentration following a degraded core accident. An ignitor train is currently considered OPERABLE with at least 33 of 34 ignitors in service and each containment region having at least one operable ignitor. Although the proposed TS

change would allow two specific Train A ignitors to be out of service and their associated containment regions to be without any ignitors for a short duration (72 hours), the remaining 32 of 34 ignitors will maintain the design basis of the HMS such that a controlled hydrogen burn may be accomplished following a degraded core accident. Although small increases in the hydrogen flammability concentration may occur, deflagration would still be expected to occur in a controlled manner and prior to a high hydrogen concentration. As stated earlier, failure of the two ignitors should not result in any change to the post-accident hydrogen burn profiles or containment response. Therefore, the proposed TS change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the *Federal Register* a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays.

Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 8, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the

proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to General Counsel, Tennessee Valley Authority, ET 10H, 400 East Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 29, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 1st day of May 1998.

For the Nuclear Regulatory Commission
Robert E. Martin,
Project Manager, Project Directorate II-3,
Division of Reactor Projects—II, Office of
Nuclear Reactor Regulation.

[FR Doc. 98-12179 Filed 5-6-98; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23167; 812-10392]

Extended Stay America, Inc.; Notice of Application

April 30, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant Extended Stay America, Inc. requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing,

reinvesting, owning, holding, or trading in securities.

FILING DATES: The application was filed on October 11, 1996, and amended on June 4, 1997, and April 14, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 26, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 450 East Las Olas Boulevard, Suite 1100, Fort Lauderdale, Florida 33301.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942-0571, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation). **SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch (450 5th Street, NW., Washington, DC 20549; (202) 942-8090).

Applicant's Representations

1. Applicant was incorporated in the state of Delaware for the purpose of developing, owning, and managing extended stay lodging facilities that are designed to appeal to value-conscious guests. Applicant's EXTENDED STAYAMERICA Efficiency Studios brand of lodging facilities is designed to offer quality accommodations to guests at substantially lower rates than most other extended stay lodging providers. Applicant's facilities feature fully furnished rooms that are rented generally on a weekly basis to guests such as business travelers, professionals on temporary work assignment, persons between domestic situations, and persons relocating or purchasing a home, with most guests staying for multiple weeks.

2. Applicant's goal is to become a national provider of economy extended stay lodging. Applicant intends to achieve this goal by rapidly developing

properties in selected markets, providing high value accommodations for its guests, actively managing its properties to increase revenues and reduce operating costs, and increasing awareness of the economy extended stay concept. Applicant's Crossland Economy Studios, EXTENDED STAYAMERICA Efficiency Studios, and StudioPLUS Deluxe Studios brands of lodging facilities compete in the budget, economy, and mid-price segments, respectively, of the extended stay lodging market.

3. The development cycle for a lodging facility from identification of a suitable site through completion of construction and commencement of operations is eighteen to twenty-four months. To ensure that applicant is able to meet its financial obligations for the development of these facilities and to facilitate the planned rapid growth of applicant, applicant has raised a significant amount of money since its organization in 1995. Applicant has raised, in addition to its \$60 million of initial development capital, \$572 million in aggregate net proceeds from offerings of common stock in December 1995 and June 1996 and the private placement of common stock in February 1997. In addition, in March 1998, applicant consummated an offering of senior subordinated notes that raised approximately \$194 million in cash, and increased and restructured its bank credit facility, pursuant to which applicant is required to borrow an additional \$250 million over the next several months. Pending the use of this money to finance capital expenditures and current operations, the money has been invested in high quality short-term investments. Applicant represents that, depending upon market conditions, it may raise additional capital and/or conduct additional financings that would have the effect of substantially increasing its short-term investments.

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Section 3(a)(2) of the Act defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries

of the owner which are not investment companies and which are not excepted from the definition of investment company by section 3(c)(1) or section 3(c)(7) of the Act.

2. Section 3(b)(1) of the Act provides that, notwithstanding section 3(a)(1)(C), any issuer primarily engaged in a business or businesses other than investing, reinvesting, owning, holding, or trading in securities is not an investment company. Applicant believes that it qualifies for the exemption under section 3(b)(1). Applicant states that the application was filed, nonetheless, because others might view differently the facts or the applicability of certain provisions of the Act to those facts.

3. Section 3(b)(2) of the Act provides that the SEC may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

4. Applicant states that approximately 0.1% of its total assets as of December 31, 1997 consisted of investment securities. Applicant believes that this percentage may rise above 40% following subsequent fundraising and pending utilization of those funds in its operations.¹ Applicant seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities, and therefore is not an investment company within the meaning of the Act.

5. In determining whether a company is "primarily engaged" in a non-investment company business under section 3(b)(2), the SEC considers the following factors: (a) the company's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.²

a. *Historical Development.* Applicant contends that its efforts during its brief history have been devoted solely towards the development of its extended stay lodging business. As of December 31, 1997, applicant had 185 operating facilities, 84 facilities under construction, and 146 sites under option. Applicant states that it has raised a significant amount of money since its organization in 1995 to ensure

¹ Applicant states that it will not be able to rely on rule 3a-1 under the Act in the future without changing significantly the way it does business and sharply curtailing its expansion plans so that it can meet the asset and income tests of the rule.

² See *Tanopah Mining Company of Nevada*, 26 S.E.C. 426, 427 (1947).

that it is able to meet its financial obligations for the development of its extended stay facilities and to facilitate its planned rapid growth. Applicant states that pending the use of that money to finance capital expenditures and current operations, the money has been invested in high quality short-term investments.

b. *Public Representations of Policy.* Applicant asserts that it has not made any public representations that would suggest that it is engaged in any business other than its extended stay lodging business. Applicant states that its prospectuses, reports to shareholders, and other filings with the SEC have exclusively focused on its lodging business. Applicant also states that all of its marketing and advertising has focused entirely on its extended stay lodging business.

c. *Activities of Officers and Directors.* Applicant represents that its directors and executive officers dedicate virtually all of their efforts toward furthering applicant's efforts in developing, owning, and managing extended stay lodging facilities. Applicant has approximately 2,900 employees. Applicant states that its short-term investments are managed by an assistant to its Chief Financial Officer. Applicant represents that the assistant devotes less than 25% of his working time to these activities, and the Chief Financial Officer spends less than 2% of his time supervising that activity. Applicant states that no other employee is involved in the management of the short-term investments.

d. *Nature of Assets.* Applicant indicates that its short-term investments, which are limited to bank deposits, U.S. Government securities, and short-term, high quality fixed income corporate/Government obligations maturing in less than 90 days from the date of investment, constituted approximately 0.1% of applicant's total assets as of December 31, 1997. Applicant also represents that if the proceeds of its March 1998 financings had been included in applicant's assets at December 31, 1997, applicant would have had short-term investments of approximately 29% of its total assets. Furthermore, applicant asserts that, depending upon market conditions, it may raise additional capital and/or conduct additional financings that would increase substantially the ratio of its short-term investments to total assets. Applicant states that its short-term investments and total assets are valued at fair value in accordance with the requirements of section 2(a)(41) of the Act.

e. *Sources of Income.* Applicant indicates that, as of December 31, 1997, it derived approximately 0.8% of its total revenues from investment income. Applicant states that it may significantly increase its short-term investments, as well as the ratio of income from these investments to total revenues, if it conducts additional capital raising transactions or financings.

6. Applicant thus believes that it meets the factors that the SEC considers in determining whether an issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-12148 Filed 5-6-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23166]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 30, 1998.

The following is a notice of applicants for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April, 1998. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549 (tel. 202-942-8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 26, 1998, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. For Further Information Contact: Diane L. Titus, at (202) 942-0564, SEC, Division of Investment Management, Office of Investment Company

Regulation, Mail Stop 5-6, 450 Fifth Street, N.W., Washington, DC 20549.

InterCapital Managed Municipal Trust [File No. 811-7187], TCW/DW Term Trust 2001 [File No. 811-8222], TCW/DW Emerging Markets Government Income Trust [File No. 811-8310]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Each applicant has never made a public offering of its shares and does not propose to make a public offering or engage in business of any kind.

Filing Dates: Each application was filed on March 24, 1998.

Applicants' Address: Two World Trade Center, New York, New York 10048.

Putnam Capital Growth and Income Fund [File No. 811-7063]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 6, 1995, applicant made a liquidating distribution to its sole shareholder of record at net asset value. All other shareholders redeemed or exchanged their shares of applicant at net asset value prior to February 6, 1995. Applicant did not incur any expenses in connection with the liquidation, and unamortized organizational expenses were paid by applicant's investment adviser.

Filing Dates: The application was filed on October 3, 1995 and amended on April 2, 1996, September 17, 1996 and March 17, 1998.

Applicant's Address: One Post Office Square, Boston, MA 02109.

Fortis Benefits Separate Account A [File No. 811-2445]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant is a separate account organized as a unit investment trust. No assets are currently retained in Applicant; all assets were redeemed at net asset value. No expenses were incurred by Applicant in connection with the redemption of its assets.

Filing Date: The application was filed on March 23, 1998.

Applicant's Address: 500 Bielenberg Drive, Woodbury, MN 55125.

Fortis Benefits Separate Account B [File No. 811-2446]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant is a separate account organized as a unit investment trust. No assets are currently retained in Applicant; all assets were

redeemed at net asset value. No expenses were incurred by Applicant in connection with the redemption of its assets.

Filing Date: The application was filed on March 23, 1998.

Applicant's Address: 500 Bielenberg Drive, Woodbury, MN 55125.

Management of Managers Municipal Bond Fund [File No. 811-3755]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 1987, applicant transferred all of its assets and liabilities to the Municipal Bond Fund, a series of Management of Managers Group of Funds, based on the relative net asset values. The expenses of the reorganization were borne by applicant.

Filing Dates: The application was filed on November 12, 1997 and amended on April 22, 1998.

Applicant's Address: 25 Sylvan Road, Westport, CT 06880

Burridge Funds [File No. 811-7801]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 30, 1997, applicant made a liquidating distribution to its shareholder at the net asset value per share. Applicant's investment adviser, The Burridge Group LLC, has agreed to pay all expenses incurred in connection with the liquidation, which are expected to be between \$20,000 and \$25,000.

Filing Dates: The application was filed on February 13, 1998, and amended on April 23, 1998.

Applicant's Address: 115 South LaSalle Street, Chicago, Illinois 60603.

The Garzarelli Funds [File No. 811-7877]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By December 10, 1997, applicant distributed its assets to its securityholders at the net asset value per share. Expenses of \$127,194 incurred in connection with the liquidation will be borne by applicant's investment adviser.

Filing Date: The application was filed on December 30, 1997.

Applicant's Address: 100 South Wacker Drive, Suite 2100, Chicago, Illinois 60606-4002.

AAHSA Trust [811-8680]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant consists of two separate series, the Money Market Fund and the Short-Term Bond Fund. On November 27, 1996 all

shares of the Money Market Fund were redeemed at net asset value and seed money was returned to the sponsor. A public offering of shares of the Short-Term Bond fund was not made and applicant does not propose to make a public offering of shares of this Fund. No expenses were incurred in the liquidation of applicant.

Filing Date: The application was filed on December 19, 1997 and applicant has agreed to file an amendment during the notice period.

Applicant's Address: 901 E Street, N.W., Washington, D.C. 20004.

The Pilot Funds [811-3517]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 16, 1997, pursuant to the applicable Reorganizing Agreements, applicant's eleven series, Pilot Equity Income Fund, Pilot Short-Term U.S. Treasury Fund, Pilot Short-Term Diversified Assets Fund, Pilot Diversified Bond Income Fund, Pilot Growth Fund, Pilot Growth And Income Fund, Pilot Intermediate Municipal Bond Fund, Pilot Intermediate U.S. Government Securities Fund, Pilot Missouri Short-Term Exempt Fund, Pilot Municipal Bond Fund, and Pilot Short-Term Tax-Exempt Diversified Fund, transferred their assets and stated liabilities into corresponding Acquiring Funds of Nations Fund, Inc. and Nations Fund Trust based on the net asset value per share. On May 23, 1997, pursuant to applicable Reorganizing Agreements, applicant's three series, Pilot International Equity Fund, Pilot Small Capitalizing Equity Fund and Pilot U.S. Government Securities Fund, transferred all of their assets and stated liabilities to corresponding Acquiring Funds of Nations Fund, Inc. and Nations Fund Trust based on the net asset value per share. Each Reorganizing Fund distributed Acquiring Fund Share to its shareholders in liquidation of the Reorganizing Fund. NationsBanc Advisors, Inc. and its affiliates bore approximately \$1,348,000, and the remaining Acquiring Funds bore \$141,000, in expenses in connection with the transaction.

Filing Date: The application was filed on April 2, 1998 and applicant has agreed to file an amendment during the notice period.

Applicant's Address: 3435 Stelzer Road, Columbus, Ohio 43219.

Allied Financial Corporation II [File No. 811-6345], Allied Investment Corporation II [File No. 811-6354]

Summary: Each applicant requests an order declaring that it has ceased to be an investment company. On December

31, 1997, Allied Financial Corporation II merged into Allied Capital Financial Corporation ("Financial I"), and Allied Investment Corporation II merged into Allied Investment Corporation ("Investment I") collectively, the "Mergers"). The shares of common stock of each applicant issued and outstanding were converted into the right to receive cash, in the aggregate, in the amount of \$0.05. At the time of the Mergers, Financial I and Investment I were each registered under the Act as a closed-end management investment company. Subsequently, on January 5, 1998, Financial I and Investment I each elected to be regulated as a business development company under the Act. At the time of the Mergers, applicants, Financial I, and Investment I were wholly-owned subsidiaries of Applied Capital Corporation ("ACC"), a business development company. Expenses incurred in connection with the Mergers totaled approximately \$700 for each applicant and were borne by ACC.

Filing Dates: Each application was filed on January 14, 1998. Each applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

Applicants' Address: 1666 K Street, N.W., 9th Floor, Washington, D.C. 20006-2803.

Allied Development Corporation [File No. 811-3553]

Summary: Applicant requests an order declaring that it has ceased to be an investment company. On December 18, 1997, applicant merged into its sole shareholder, Allied Capital Corporation ("ACC"), a business development company (the "Merger"). On that date, each share of applicant's outstanding common stock was canceled. Expenses incurred in connection with the Merger totaled approximately \$700 and were borne by ACC.

Filing Dates: The application was filed on January 14, 1998. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

Applicant's Address: 1666 K Street, N.W., 9th Floor, Washington, D.C. 20006-2803.

Colonial Value Investing Portfolios—Equity Portfolio [File No. 811-5461]

Summary: Applicant requests an order declaring that it has ceased to be an investment company. On June 5, 1992, applicant's three series, Diversified Return Fund, Inflation Hedge Fund, and Growth Fund, transferred their assets and liabilities to corresponding series of Colonial Trust

III based on the relative net asset value per share. Applicant paid approximately \$60,878 in expenses related to the reorganization.

Filing Dates: The application was filed on April 23, 1997 and amended on April 16, 1998.

Applicant's Address: One Financial Center, Boston, Massachusetts 02111.

The Brazilian Investment Fund, Inc. [File No. 811-6248]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By December 31, 1997, applicant completed a liquidating distribution to its stockholders as net asset value. Expenses incurred in connection with the liquidation totaled \$281,530 and were borne by applicant.

Filing Dates: The application was filed on January 7, 1998. Applicant has agreed to file an amendment during the notice period, the substance of which is incorporated in this notice.

Applicant's Address: c/o Morgan Stanley Asset Management Inc., 1221 Avenue of the Americas, New York, New York 10020.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-12147 Filed 5-6-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39933; File No. SR-AMEX-98-15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., and Amendment No. 1 Thereto Relating to a Reduction in the Value of, and Increase in Position and Exercise Limits for, the Institutional Index

April 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 7, 1998, the American Stock Exchange, Inc. (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 20, 1998, the Amex filed an

amendment to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval for the proposed rule.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to split the Institutional Index (the "Index" or "XII") to one-half its current value and correspondingly amend Exchange Rule 904C to double the position and exercise limits for XII options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change. No written comments were solicited or received with respect to the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

On August 28, 1986, the Commission granted the Exchange approval to permit the trading of options on the Institutional Index, a broad market index based on the 75 major stocks currently held in the highest dollar amounts in institutional portfolios that have a market value of more than \$100 million in investment funds.⁴ Initially, the aggregate value of the stocks contained in the Institutional Index was reduced by a divisor to establish an index benchmark value of 250. Since its creation, and as of the date of this filing, the level of the Institutional Index has increased nearly fivefold from 250 to 1218.

As a consequence of the Index's rising value, premium levels for the Institutional Index options have also

risen. These higher premium levels have been cited as a principal factor that has discouraged retail investors and some small market professionals from trading these Index options. As a result of the foregoing, the Exchange is proposing to decrease the Institutional Index to one-half of its present value. The Exchange believes that decreasing the Index value may make the Index options more attractive to retail investors and other market professionals and therefore more competitive with other products in the marketplace.

To decrease the Index's value, the Exchange will double the divisor used in calculating the Index. The Exchange suggests that the lower valued Index will result in a substantial lowering of the dollar values of options premiums for the Institutional Index contracts. The Exchange plans to adjust outstanding series similar to the manner in which equity options are adjusted for a 2-for-1 stock split.⁵ On the effective date of the split "ex-date," the number of outstanding Institutional Index option contracts will be doubled and strike prices halved. No other changes are proposed as to the components of the Index, its method of calculation (other than the change in the divisor), expiration style of the options or any other Index specification.

a. Position and Exercise Limits. Currently, position and exercise limits for the Institutional Index equal 100,000 contracts on the same side of the market of which no more than 25,000 contracts may be used to realize any differential in price between the Institutional Index and the securities underlying the Index. Although the limitation of up to 25,000 contracts for purposes of realizing any differential in price between the Institutional Index and the securities underlying the Index will remain unchanged, the Exchange proposes to double the Index's position and exercise limits to 200,000 contracts on the same side of the market. The change in position and exercise limits will be made in conjunction with the simultaneous reduction of the Index's value and the doubling of the number of contracts. Accordingly, an investor who is currently at the 100,000 contract limit will, as a result of doubling the number of contracts, automatically hold 200,000

¹ See letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission (April 20, 1998) ("Amendment No. 1"). Amendment No. 1 specifies that on April 16, 1998, the Exchange's Board of Governors approved the submission of the instant proposed rule change to the Commission.

² Exchange Act Release No. 23573 (August 28, 1986), 51 FR 31859 (September 5, 1986).

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ Consistent with customary Exchange practice, at least two weeks prior to the implementation of the proposed change to the Institutional Index value and the resulting adjustments to the outstanding Institutional Index options contracts, the Exchange will issue an information circular to its members setting forth the Index's current and new divisors, the manner in which the Index will be adjusted, the adjusted contract symbols, amounts and strike prices for outstanding XII series and the effective date of the adjustments.

contracts based on the lowered Index value. Similar to the treatment approved concerning the recent split of the Standard & Poor's 100 Stock Index,⁶ thus, market participants will be able to maintain their current level of investment in XII options following the split of the Index.

The new limits will be economically equivalent to the Index's present limits in that the dollar value represented by the contracts at the new position limit will remain the same as before the split. In addition, the existing Index components will remain the same and maintain their existing respective weights in the Index. Further, existing surveillance procedures will continue to apply to the Index. Therefore, the Exchange believes that there will be no additional potential for manipulation of the Index or the underlying securities resulting from the doubling of position limits in conjunction with the halving of the Index level.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.⁹

⁶ Exchange Act Release No. 39338 (November 19, 1997), 62 FR 63209 (November 26, 1997).

⁷ U.S.C. 78f(b).

⁸ U.S.C. 78f(b)(5).

⁹ U.S.C. 78s(b)(2).

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that reducing the value of the Index will serve to promote the public interest and help remove impediments to a free and open securities market by providing a broader range of investors with a means of hedging exposure to market risk associated with securities representing highly capitalized companies. Doubling the Index divisor should result in the Index options premiums being more affordable, enabling more retail investors and other market professionals to utilize this trading vehicle, resulting in a more active and liquid trading environment.

The Commission also believes that Amex's adjustments to its position and exercise limits are appropriate and consistent with the Act. In particular the Commission believes that the position and exercise limits are reasonable in light of the fact that the size of the contract on the Index will be halved. Doubling the position and exercise limits, therefore will permit market participants to maintain, after the split of the Index, their current level of investment in XII options.

Furthermore, the Commission believes that doubling the Index's divisor will not have an adverse market impact or make trading in Index options susceptible to manipulation. After the split, the Index will continue to be comprised of the same stocks with the same weightings and will be calculated in the same manner, except for the proposed change in the divisor. The commission notes that the Amex's surveillance procedures will also remain the same.

The Commission also notes that the Exchange will provide notice of the proposed changes to the Index and the XII contracts to its membership through an information circular.¹⁰

The Commission believes that the Amex information circular will provide adequate notice to market participants regarding this change to Index value and the XII contract prior to its implementation.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register*. Accelerating approval of this proposal will extend the noted benefits of the proposal as quickly as possible to market

¹⁰ See *supra* note 5.

participants. The Commission further believes that the proposed change of the Index's divisor does not substantially change the character of the Index options as approved by the Commission on August 28, 1986,¹¹ and otherwise does not raise any new or unique regulatory issues. Accordingly, the Commission believes it is consistent with Sections 19(b)(2)¹² and 6(b)(5)¹³ of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by May 28, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-Amex-98-15) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jonathan G. Katz,

Secretary.

[FR Doc. 98-12144 Filed 5-6-98; 8:45]

BILLING CODE 8010-01-M

¹¹ See *supra* note 4.

¹² 15 U.S.C. 78s(b)(2).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39941; File No. SR-Amex-98-11]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to a Reduction in the Value of the de Jager Year 2000 and Amex Airline Indices

May 1, 1998.

I. Introduction

On February 23, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to split the de Jager Year 2000 ("de Jager Index"), Amex Securities Broker/Dealer Index ("Broker/Dealer Index") and Amex Airline ("Airline Index") Indices to one-half of their current values. On March 11, 1998, the Amex filed Amendment No. 1 to the proposed rule change.³ On March 20, 1998, the Amex filed Amendment No. 2 to the proposed rule change.⁴

On March 26, 1998, the proposed rule change and Amendment No. 1 were

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 10, 1998 ("Amendment No. 1"). In Amendment No. 1, the Amex requests expedited review and accelerated effectiveness of the proposed rule change with respect to the provisions concerning the Broker/Dealer Index. In addition to correcting a clerical error, Amendment No. 1 also makes clear that the position and exercise limits, which are proposed to be initially doubled, will revert to their original limits at the expiration of the furthest expiration month for non-long term options series ("LEAPs") as established on the date of the split.

⁴ See Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Division of Market Regulation, dated March 19, 1998 ("Amendment No. 2"). In Amendment No. 2, the Amex represents that, in connection with the splitting of the Airline, Broker/Dealer and de Jager Indices, it will issue: (1) a circular to its members at least two weeks prior to the split, disclosing the pre- and post-reduction values, the doubling of the number of contracts, and the temporary doubling of the position limits for the options overlying such Indices; (2) a second notice to its members just prior to implementing the index reductions setting forth the new divisor and other relevant information; and (3) a circular at least one month prior to the expiration of the furthest non-LEAP options reminding members that the position limits are scheduled to revert to the original levels.

published for comment in the *Federal Register*⁵ and the Commission granted accelerated approval to the portion of the proposal relating to the Broker/Dealer Index. No comments were received on the proposal. This order approves the portions of the proposed rule change relating to the de Jager Index and Airline Index (collectively, "de Jager and Airline Indices") and approves Amendment No. 2 on an accelerated basis.

II. Description of the Proposal

The Commission granted the Exchange approval to list and trade options on the de Jager⁶ and the Airline⁷ Indices on February 19, 1997 and December 12, 1994, respectively. Initially, the aggregate value of the stocks contained in the de Jager and Airline Indices was reduced by divisors to establish index benchmark values of 250 and 200, respectively. Over the past two years, the index value of the Airline Index has more than tripled in value from 200 to 728. Moreover, since its creation, the index value of the de Jager Index has nearly doubled in value from 250⁸ to 413.

As a consequence of the rising values of the Indices, premium levels for options on the de Jager and Airline Indices have also risen. According to the Exchange, these higher premium levels have been cited as the principal factor that has discouraged retail investors and some small market professionals from trading these index options. As a result, the Exchange is proposing to decrease the de Jager and Airline Indices to one-half of their respective present values.

To decrease the values of the Indices, the Exchange will double the divisor used in calculating the de Jager and Airline Indices. The Amex proposes no other changes to the components of the Indices, their methods of calculation (other than the change in the divisor), expiration style of the options or any other Index specification.

The Amex believes that lower values Indices will result in substantial lowering of the dollar values of options premiums for options contracts on the de Jager and Airline Indices. The Exchange plans to adjust outstanding

⁵ See Securities Exchange Act Release No. 39775 (March 20, 1998) 63 FR 14741.

⁶ See Securities Exchange Act Release No. 36307 62 FR 8469 (February 25, 1997) (order approving File No. SR-Amex-97-04).

⁷ See Securities Exchange Act Release No. 35084 59 FR 65419 (December 19, 1994) (order approving File No. SR-Amex-94-54).

⁸ As originally filed, the proposal incorrectly listed the de Jager's benchmark index value as 200. This clerical error was corrected by the Exchange in Amendment No. 1. See Amendment No. 1, *supra* note 3.

series similar to the manner in which equity options are adjusted for a 2-for-1 stock split. On the effective date of the split "ex-date," the number of outstanding options contracts on the de Jager and Airline Indices will be doubled and the associated strike prices halved.

Position and Exercise Limits

Currently, position and exercise limits for the de Jager Index equal 12,000 contracts, while position and exercise limits for the Airline Index equal 15,000 contracts, on the same side of the market. The Exchange proposes to double the position and exercise limits to 24,000 contracts for the de Jager Index and to 30,000 contracts for the Airline Index on the same side of the market. This change will be made simultaneously with the proposed reduction of the Indices' values and the doubling of the number of contracts.

Since the new position and exercise limits will be equivalent to the Indices' present limits, the Exchange believes there is no additional potential for manipulation of the Indices or the underlying securities. Further, an investor who is currently at the de Jager (12,000) or Airline (15,000) Indices' contract limit will, as a result of the Index value reductions, automatically hold 24,000 or 30,000 contracts, respectively, to correspond with the lowered Index values. These increased position and exercise limits will revert to their original limits at the expiration of the furthest expiration month for non-LEAPs as established on the date of the split.

III. Discussion

The Commission finds that the proposed rule change, as amended, relating to the de Jager and Airline Indices is consistent with the requirements of Section 6 of the Act⁹ and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ Specifically, the Commission believes that the provisions of the proposed rule change pertaining to the de Jager and Airline Indices are consistent with and further the objectives of Section 6(b)(5) of the Act¹¹ in that the proposed reduction in value of the de Jager and Airline Indices and the associated temporary increases in the position and exercise limits should remove impediments to and perfect the mechanism of a free and open market in

⁹ 15 U.S.C. 78f.

¹⁰ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

a manner consistent with the protection of investors and the public interest.

By reducing the value of the de Jager and Airline Indices, the Commission believes that a broader range of investors will be provided with a means to hedge their exposure to the market risk associated with the stocks underlying the Indices. Similarly, the Commission believes that reducing the value of the de Jager and Airline Indices may attract additional investors, thus creating a more active and liquid trading market.

The Commission also believes that Amex's proposed adjustments to its position and exercise limits applicable to the de Jager and Airline Indices are appropriate and consistent with the Act. In particular, the Commission believes that the temporary doubling of the position and exercise limits are reasonable in light of the fact that the size of the options contracts on the de Jager and Airline Indices will be halved and that, as a result, the number of outstanding options contracts an investor holds will be doubled. The temporary doubling of the position and exercise limits, therefore, will ensure that investors will not potentially be in violation of the lower existing position and exercise limits while permitting market participants to maintain, after the split of the de Jager and Airline Indices, their current level of investment in the de Jager and Airline Index options contracts. As noted above, the increased position and exercise limits of 24,000 and 30,000 contracts will revert to their original limits of 12,000 and 15,000 contracts, respectively, at the expiration of the furthest expiration month for non-LEAPs as established on the date of the split.¹²

The Commission further believes that doubling the de Jager and Airline Indices' divisors will not have an adverse market impact on the trading in these options. After the split, the de Jager and Airline Indices will continue to be composed of the same stocks with the same weightings and will be calculated in the same manner, except for the proposed change in the divisors. The Commission notes that the Amex's surveillance procedures also will remain the same.

¹² According to the Amex, January 1999 and February 1999 will be the furthest expiration months for non-LEAPs on the Airline and de Jager Indices, respectively, for purposes of the reversion of position and exercise limits to their original levels. Per telephone conversation between Scott Hatten, Legal Counsel, Derivative Securities, Amex, and Deborah Flynn, Division, Commission, on April 29, 1998.

Finally, the Commission notes that, prior to implementing the proposed changes, the Exchange will provide advance notice of the proposed changes to the de Jager and Airline Indices to its membership.¹³ The de Jager and Airline Indices are expected to be reduced by one-half immediately following the May 15, 1998 expiration.¹⁴ The Amex has committed to provide notice to its membership at least two weeks prior to the implementation of the proposed changes to the values of the de Jager and Airline Indices and the resulting adjustments to the outstanding options contracts on the de Jager and Airline Indices.¹⁵ In addition, the Commission notes that the Exchange has agreed to issue a second notice to its members just prior to implementing the Index reductions setting forth the new divisor and other relevant information.¹⁶ Finally, the Exchange has agreed to issue a circular to its members at least one month prior to the expiration of the furthest non-LEAP options on the de Jager and Airline Indices reminding its member firms that the respective position and exercise limits will revert to their original levels.¹⁷ The Commission believes that the proposed time frames should allow for adequate notice to be provided to the holders of all open positions in options on the de Jager and Airline Indices and other market participants.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after publication in the *Federal Register*. The Commission notes that Amendment No. 2 merely codifies the notification procedures that the Amex had agreed to verbally prior to the Commission's grant of partial accelerated approval to the reduction in value of the Broker/Dealer Index. The Commission believes that Amendment No. 2 should ensure that market participants will receive adequate notice prior to the implementation of the adjustments to the values of the de Jager and Airline Indices and the eventual reversion to the original position and exercise limits. Accordingly, the Commission finds that good cause exists, consistent with Section 6(b)(5) of the Act,¹⁸ to accelerate approval of

¹³ See Amendment No. 2, *supra* note 5.

¹⁴ Per telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, and Deborah Flynn, Division, Commission, on May 1, 1998.

¹⁵ See Amendment No. 2, *supra* note 5.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 15 U.S.C. 78f(b)(5).

Amendment No. 2 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File Number SR-Amex-98-11 and should be submitted by May 28, 1998.

V. Conclusion

For the foregoing reasons, the Commission finds that the Amex's proposal, as amended, to reduce the value of the de Jager and Airline Indices by one-half and to temporarily double the corresponding position and exercise limits, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the portions of the amended proposed rule change (SR-Amex-98-11) relating to the de Jager and Airline Indices are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Jonathan G. Katz,
Secretary.

[FR Doc. 98-12145 Filed 5-6-98; 8:45 am]

BILLING CODE 8010-01-M

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39936; File No. SR-NASD-98-26]

Self-Regulatory Organization; Notice of Filing and Order Granting Accelerated Partial Approval to Amendment No. 3 to Proposed Rule Changes by the National Association of Securities Dealers, Inc. to Institute, on a Pilot Basis, New Primary Nasdaq Market Maker Standards for Nasdaq National Market Securities

April 30, 1998.

I. Introduction

On March 19, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² proposed rule changes to: (a) Implement, on a pilot basis, new Primary Nasdaq Market Maker ("PMM") standards for all Nasdaq National Market ("NNM") securities; (b) extend the NASD's Short Sale Rule pilot until November 1, 1998; and (c) extend the suspension of existing PMM standards until May 1, 1998. On March 30, 1998, the Commission issued notice of the filing and approved, on an accelerated basis, the portions of the filing extending the NASD's Short Sale Rule pilot and the suspension of existing PMM standards.³

On April 29, 1998, Nasdaq filed Amendment No. 3 to the proposal,⁴ proposing to: (a) Extend the comment period by 30 days to May 27, 1998; (b) continue to suspend the current PMM standards until July 1, 1998; (c) extend the NASD's Short Sale Rule pilot until January 4, 1999; (d) change the dates during which the PMM pilot will run to July 1, 1998, through January 4, 1999. Nasdaq also is proposing to amend subparagraph (g) of NASD Rule 4612 to change the method for determining how market makers that are not managers or co-managers in an underwriting

syndicate of a secondary offering may qualify as PMMs. Nasdaq has requested accelerated approval of the suspension of the current PMM standards.

Background

Present, NASD Rule 4612 provides that a member registered as a Nasdaq market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards. The implementation of new Order Execution Rules⁵ and the concurrent move towards a more order-driven, rather than a quote-driven, market raised questions about the continued relevance of those PMM standards. As a result, such standards were suspended beginning in early 1997.⁶ Currently, all market makers are designated as PMMs.

Since February 1997, Nasdaq has worked to develop PMM standards that are more meaningful in an increasingly order-driven environment and that better identify firms engaged in responsible market making activities deserving of the benefits associated with being a PMM, such as being exempt from NASD Rule 3350, the NASD's short sale rule. The NASD now proposes to suspend the existing PMM standards and to implement new standards on a pilot basis from July 1, 1998, until January 4, 1999. The NASD intends the new standards to better evaluate whether a market maker provides meaningful liquidity to the market. To determine whether a particular market maker is such a provider liquidity, Nasdaq will analyze that market maker's trading activity using a new test.

For the reasons discussed below, the Commission has determined to grant accelerated approval of Nasdaq's request to continue to suspend the current PMM standards until July 1, 1998, as requested in Amendment No. 3. Further, given the proposal's complexity and the Commission's desire to give the public sufficient time to consider the proposal,

⁵ On August 29, 1996, the Commission promulgated a new rule, the Limit Order Display Rule (Exchange Act Rule 11Ac1-4) and adopted amendments to the Quote Rule (Exchange Act Rule 11Ac1-1), which together are designated to enhance the quality of published quotations for securities and promote competition and pricing efficiency in U.S. securities markets (collectively, the "Order Execution Rules"). See Securities Exchange Act Release No. 37619A (September 6, 1996) 61 FR 48290 (September 12, 1996) ("Order Execution Rules Adopting Release").

⁶ See Exchange Act Release No. 38294 (February 14, 1997) 62 FR 8289 (February 24, 1997) (approving temporary suspension of PMM standards); Exchange Act Release No. 39198 (October 3, 1997) 62 FR 53365 (October 14, 1997) (extending suspension through April 1, 1998); Exchange Act Release No. 39819 (March 30, 1998) 63 FR 16841 (April 6, 1998) (extending suspension through May 1, 1998).

the Commission has extended the comment period for the proposed rule changes, as amended, to May 27, 1998.

II. Proposed Rule Changes

As discussed in detail in Exchange Act Release No. 39819, Nasdaq is proposing a new set of PMM standards. In the current filing, Nasdaq is proposing an adjustment to the PMM standards with respect to markets that are not managers or co-managers in an underwriting syndicate of a secondary offering. In particular, Nasdaq proposes to amend subparagraph (g)(2) of NASD Rule 4612 to change the method for determining how market makers that are not managers or co-managers in an underwriting syndicate of a secondary offering may qualify as PMMs. Under the previous rule, a market maker could become a PMM after the secondary offering had been announced or a registration statement had been filed with the Commission if the market maker was registered in the security and satisfied the PMM standards for 40 days or until the registration became effective, whichever occurred first. Thus, for secondary offerings the rule contained a variable "review period," during which a market maker was required to meet PMM standards. Due to technological constraints and the fact that PMM calculations under the proposed rule are more complex than they were under the previous rule, Nasdaq, in developing the PMM pilot, has been unable to build a system that is able to make the PMM calculation using a variable review period. Additionally, it has become clear that the existing rule for secondary public offerings may be rendered less meaningful because PMM status under the proposed new standards is determined by comparing and examining market makers' share volume and number of trades during definite time periods. Thus, introducing a variable time period could have consequences that were not foreseen when the new standards were crafted.

Nasdaq recognizes, however, that market makers should be held to a more stringent standard before they may trade secondary offerings as PMMs. Accordingly, Nasdaq proposes to amend NASD Rule 4612 so that a market maker that wishes to register and become a PMM in a secondary offering will have to fulfill the following two conditions. First, the market maker must register and become a market maker in a security for 40 days or until the registration becomes effective, whichever occurs first. Second, at the time the registration becomes effective or 40 days passes, the market maker

must be a PMM in 80% or more of the Nasdaq National Market securities in which it is registered ("80% Firm"). This proposal provides a meaningful measure as to whether a market maker should be a PMM after a secondary offering has been announced because it will require market makers to register and be in a stock for a meaningful time period (which may be as long as 40 days) and to be an 80% Firm before it may qualify as a PMM. Furthermore, Nasdaq notes that this approach is in line with the provisions of NASD rule 4612 regarding initial registration situations and initial public offerings ("IPO").

Nasdaq also proposes to amend subparagraph (g)(2)(B) of NASD rule 4612, to clarify the timing for the imposition of a 10 day prohibition from participating in an IPO ("Over 10 Day Penalty"). This amendment would codify an interpretation of subparagraph (g)(2)(B) of NASD Rule 4612, that was announced in a *For Your Information* included in the June 1996 edition of the NASD's *Notice to Members*. Specifically, the amendment would clarify that if a PMM in an IPO withdraws on an unexcused basis in the first review period, the 10 Day Penalty will commence on the next business day after the unexcused withdrawal. Additionally, if a PMM in an IPO fails to meet the applicable PMM thresholds during the first review period, the 10 Day Penalty will begin on the day the market loses its PMM designation (the third business day of a month).

The proposed rule language follows. Additions are italicized; deletions are bracketed.

Rule 4612

(a)-(f) No Change
(g) In registration situations:
(1) No Change
(2) Notwithstanding paragraph (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed with the Securities and Exchange Commission, no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:
(A) For secondary offerings:
(i), the secondary offering has become effective [and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective] or 40 days have elapsed since the market maker registered in the security (whichever occurs first), and at such time, the market maker is a Primary Nasdaq Market Maker in 80%

or more of the Nasdaq National Market Maker securities in which it is registered; provided, however, that if the member is a manager or co-manager of the underwriting syndicate for the secondary offering and it is a [PMM] Primary Nasdaq Market Maker in 80% or more of the Nasdaq National Market securities in which it is registered, the member is eligible to become a [PMM] Primary Nasdaq Market Maker in the issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering; or

(ii) the market maker has satisfied the qualification criteria for 40 calendar days].

(BN) For initial public offerings (IPOs):

(i) the market maker may register in the offering and immediately become a Primary Nasdaq Market Maker if it is a Primary Nasdaq Market Maker in 80% of the securities in which it has registered; provided however, that if, at the end of the first review period, the Primary Nasdaq Market Maker has withdrawn on an unexcused basis from the security at any time during the first review period or has not satisfied the [qualification criteria] applicable thresholds at the end of the first review period, it shall not be afforded a Primary Nasdaq Market Maker designation on any subsequent initial public offerings for the next 10 business days following the unexcused withdrawal or the next 10 business days following the day on which the Primary Nasdaq Market Maker is notified that it failed to satisfy the applicable thresholds for the first review period (as applicable); or

(ii) No Change.

(C) No Change.

(3) No Change

(h) [The Board of Governors may modify the threshold standards set forth in paragraphs (a) and (b) above if it finds that maintenance of such standards would result in an adverse impact on a class of investors or on Nasdaq.] This rule shall be in effect beginning July 1, 1998, and remain in effect until January 4, 1999.

NASD Rule 3350

(a)-(k) No Changes
(1) This Rule shall be in effect until [November 1, 1998] January 4, 1999.

III. Discussion

After careful consideration, the Commission has concluded, for the

reasons set forth below, that the extension of the current suspensions of existing PMM standards through July 1, 1998, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. As the Commission discussed in its previous order relating to the PMM pilot,⁷ extending the suspension of the current PMM standards to accommodate implementing the new pilot is consistent with Section 15A(b)(6)⁸ of the Exchange Act. Section 15A(b)(6) of the Exchange Act requires that the NASD's rules be designed, among other things, to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The Commission believes that continued suspension of the current PMM standards will facilitate Nasdaq's efforts in implementing more meaningful PMM standards which should help to enhance market liquidity by rewarding those market makers that meet the new standards. As a result, continuing the suspension of the current PMM standards is consistent with Section 15A(b)(6) of the Exchange Act.

In finding that the suspension of the existing PMM standards is consistent with the Exchange Act, the Commission reserves judgment on the merits of the Short Sale Rule, any market maker exemptions to that rule and the proposed new PMM standards. The Commission recognizes that the current Short Sale Rule already has generated significant public comment. Such commentary, along with any further comment on the interaction of the Short Sale Rule with the proposed new PPM standards, will help guide the Commission's evaluation of the Short Sale Rule and new PMM standards. During the PMM pilot period, the Commission anticipates that the NASD will continue to address the Commission's questions and concerns and provide the Commission staff with any relevant information about the practical effects and the operation of the revised PMM standards and possible interaction between those standards and the NASD's Short Sale Rule.

As proposed, the new PMM standards will become effectively July 1, 1998, when the suspension of the existing PMM standards, under Amendment No. 3, expires. Nasdaq notes that currently all market makers registered in a security are PMMs due to the suspension of the previous PMM standards, and will continue to be so

⁷ See Exchange Act Release No. 39819 (March 30, 1998) 63 FR 16841 (April 6, 1998) (extending suspension through May 1, 1998).

⁸ 15 U.S.C. 78o-3(b)(6).

designed on the pilot's proposed start date of July 1, 1998. Under the one-month look-back provision in the PMM pilot program, Nasdaq will consider the previous calendar month and the current month to determine a market maker's continued PMM eligibility if the market maker attained PMM status in a security during the previous month, but fails to meet the applicable thresholds for the current month. Nasdaq recognizes that once the pilot begins on July 1, 1998, PMMs will not have the ability to avail themselves of the one-month look-back provision because there will be no meaningful trading to analyze prior to July 1, 1998. Thus, to give PMMs the full benefit of the one-month look-back period and to allow market makers time to adjust their trading activity to the new standards, Nasdaq proposes to implement the new standards so that no market maker that is designated as a PMM when the pilot begins on July 1, 1998, will lose its PMM status—based on a failure to meet the new PMM standards—until September 3, 1998. Nasdaq believes, and the Commission agrees, that it is fair to give market makers this time to make necessary adjustments to their trading activity to help them maintain their PMM designation, particularly since PMM standards have been suspended for more than a year and the new PMM standards are more stringent than the previous standards. The PMM pilot, pursuant to Amendment No. 3, would run until January 4, 1999.

The Commission finds good cause for approving the extension of the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of filing thereof. It could be disruptive to market making to reintroduce outdated PMM standards for a brief period prior to implementing a new PMM pilot. Further, the current PMM standards have been suspended until May 1, 1998, at which time the old PMM standards—which are not a meaningful measure of a market maker's liquidity-providing activity—would be used again to determine market makers' PMM status. To ensure continuity in the PMM standards and the regulation of short selling activity, to maintain orderly markets, and to avoid confusion, it is necessary to continue the suspension of the prior PMM standards until the new standards are implemented on July 1, 1998.

IV. Solicitation of Comments

Given the proposal's complexity and the Commission's desire to give the public sufficient time to consider the proposal, the Commission hereby grants Nasdaq's request to extend the comment

period for the proposed rule changes, as amended, to May 27, 1998. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-26 and should be submitted by May 27, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,⁹ that Amendment No. 3 to the proposed rule change, SR-NASD-98-26, which extends, on an accelerated basis, the suspension of the current PMM standards to July 1, 1998, be and hereby is approved.¹⁰

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jonathan G. Katz,
Secretary.

[FR Doc. 98-12142 Filed 5-6-98; 8:45 am]

BILLING CODE 8010-01-M

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ In approving the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. The proposal likely will provide the Commission with data necessary to enable it to evaluate the impact of the proposed PMM standards on the Nasdaq market and market participants. 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39934; File No. SR-PCX-98-20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Discontinue the Exchange's SCOR Marketplace

April 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 16, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.³ The Exchange has designated this proposal as one that does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and by its terms does not become operative for 30 days after the date of the filing. In addition, the Exchange gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. As a result, the proposal is effective upon filing under Exchange Act Section 19(b)(3)(A)(iii) and Rule 19b-4(e)(6) thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to discontinue its Small Corporate Offering Registration ("SCOR") Marketplace and to remove its rules on the SCOR Marketplace from the Rules of the Exchange. The text of the proposed rule change is attached as Exhibit A.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange also submitted a technical amendment to the proposed rule change to correct typographical errors in the original filing. See Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, Exchange, to Jeffrey Schwartz, Special Counsel, Division of Market Regulation, Commission, dated April 28, 1998.

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

On April 19, 1995, the Commission approved an Exchange proposal to permit the Exchange to list and trade SCOR securities, i.e., single classes of common or preferred stock that were issued pursuant to either Regulation A ("Reg. A") or Rule 504 under the Securities Act of 1933 ("Securities Act").⁴ The proposal was approved as a three-year pilot program, which expired on April 19, 1998. At the time this proposed rule change was filed with the Commission, there were no SCOR securities listed or traded on the Exchange and there were no applications pending for participation in the SCOR program.

The SCOR Marketplace was created as a secondary market for small companies sponsoring direct public offerings (DPOs), selling stock directly to investors under federal Reg. A standards, or state laws for SCOR issues. These federal and state programs are intended to help small businesses raise public capital, without following the rigorous filing and reporting requirements normally applied to securities offerings sponsored by larger companies, and without the support of a securities underwriter. Reg. A offerings are limited to \$5 million; SCOR offerings to \$1 million.

The Exchange was approached in 1992 by small business advocates who believed that the two programs were not being fully used, in part due to the absence of a well regulated, liquid

⁴ See Exchange Act Release No. 35628 (April 19, 1995) 60 FR 20787 (April 27, 1995) (order approving SR-PSE-94-31); see also Exchange Act Release No. 35638 (April 21, 1995) 60 FR 20781 (April 27, 1995) (order approving new listing fees for SCOR Securities, SR-PSE-95-03).

secondary market for the trading of SCOR and Reg. A stocks. At that time, secondary market activity in these offerings was limited to the Nasdaq Bulletin Board, or to a single stock broker (usually operating in the sponsoring company's hometown) willing to keep a physical record of potential buyers and sellers. The PCX spend nearly three years working with state and federal securities regulators to develop the SCOR Marketplace, which was approved by the Commission in 1995.⁵

From 1996 through the middle of 1997, 178 companies completed SCOR or Reg. A offerings, according to statistics compiled by PCX staff. Many of these firms contacted the PCX about listing on the SCOR Marketplace. None, however, completed the listing application process at the Exchange, and only a handful were listed by other markets: two on the Nasdaq Small Cap market, one on the Toronto Stock Exchange, five on the OTC bulletin board, and one on the Pink Sheets. Although one company applied to list its SCOR securities on the PCX, it later withdrew its application.

Accordingly, the Exchange has determined, after careful consideration, to discontinue its SCOR Marketplace.

Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Exchange Act, in general, and Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities, promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange does not believe that the proposal will affect the protection of investors or the public interest because no securities are currently listed or traded under the SCOR Marketplace. In addition, the Exchange does not believe that discontinuing the program will impose any burden on competition because the rule change will not establish any new rules or requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

⁵ See note 3 above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change shall become operative 30 days after the date of filing, pursuant to subparagraph (e)(6)(iii) of Exchange Act Rule 19b-4. At any time within 60 days of the date of filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.⁶

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-98-20 and should be submitted by May 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

⁶ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. The proposal likely will not affect efficiency, competition, or capital formation given that no securities are traded on the SCOR Marketplace and none were likely to do so in the near future. 15 U.S.C. 78c(f).

⁷ 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

Exhibit A

Text of the Proposed Rule Change*

RULE 3

LISTINGS

§ 356 General Provisions and Definitions

Rule 3.1(a). No change.

Rule 3.1(b) Definitions. The following terms used in Rules 3.2 through 3.5 shall, unless otherwise indicated, have the meanings herein specified:

[(14) The term "Small Corporate Offering Registration Securities" ("SCOR Securities") means a single class of an issuer that has been designated as common stock and/or preferred stock issued pursuant to:

(i) Regulation A under the Securities Act of 1933 ("Securities Act") and using the prescribed form as applicable; or

(ii) Rule 504 under the Securities Act and using Form U-7 of the North American Securities Administrators Association ("NASAA") (or state variation of such form with substantially similar requirements).

(15) Once SCOR Securities have been accepted for listing on the Exchange, all securities of that class shall be considered to be SCOR Securities for purposes of this rule 3.1(b)(14), except those securities of the class that are subject to restrictions (i.e., securities restricted pursuant to federal or state securities laws, by any other law, by agreement, or in any other manner) that make them ineligible for trading on the Exchange.]

§ 3567 Applications to List

Rule 3.2(a) No change.

Listing Requirements

General

Rule 3.2(b) The Exchange has a [multi-tiered] two-tier listing structure. Any security listed pursuant to this Rule 3.2, paragraphs (c) through (j), and any equity option listed in accordance with Rule 3.6 and any index product listed in accordance with Rules 7 or 8 shall be designated as a Tier I security except for any security listed under Tier II [or SCOR] listing requirements; provided, however, that a security that is convertible into or carries a right to subscribe to purchase common stock

* Proposed new text is italicized, deleted text is bracketed.

will be a Tier II security unless the common stock into which it is convertible qualifies for inclusion under the Tier I designation. Furthermore, in cases where a company's security does not qualify for inclusion under the Tier I designation, yet the security is listed or has been approved for listing on either the New York Stock Exchange ("NYSE"), American Stock Exchange ("AMEX") (except for so-called "ECM" securities), or NASDAQ National Market System ("NASDAQ/NMS"), the Exchange may list such security under Tier II in reliance upon the listing requirements of the applicable exchange (or association).

A listing under the Tier I designation generally signifies that the company has achieved maturity and high status in its industry in terms of assets, earnings and shareholder interest and acceptance. The Tier II designation is limited, except for specific circumstances as discussed above, to the listing of common stock, preferred stock, bonds and debentures, and warrants. A listing under the Tier II designation generally signifies that the company has limited commercial operations, lower capitalization, and lacks a demonstrated earnings history. [Any security listed under the SCOR listing requirements constitute a third tier, however, solely for purposes of the application of "exchange listing" exemptions applicable to "issuer" transactions under the securities laws of the various states and territories of the United States, SCOR securities are not deemed to be "listed" on the Exchange.]

Designation of Tier I Securities Initial Listing Requirements

Common Stock—Select Market Companies

Rule 3.2(c) No change.

Basic Listing Requirements

No change.

Alternate Listing Requirements

No change.

Preferred Stock and Similar Issues

Rule 3.2(d) No change.

Bonds and Debentures

Rule 3.2(e) No change.

Warrants

Rule 3.2(f) No change.

Contingent Value Rights ("CVRs")

Rule 3.2(g) No change.

Unit Investment Trusts ("UTs")

Rule 3.2(h) No change.

Limited Partnerships

Rule 3.2(i) No change.

Other Securities

Rule 3.2(j)(1) No change.

Paragraphs (k) through (m). Reserved.

Designation of Tier II Securities

Initial Listing Requirements

Common Stock—Development Stage Companies

Rule 3.2(n) No change.

Basic Listing Requirements

No change.

Alternate Listing Requirements

No change.

Rule 3.2(o) No change.

Bonds and Debentures

Rules 3.2(p) No change.

Warrants

Rule 3.2(q) No change.

[Rule 3.2(r)—Deleted]
Paragraphs (r), (s) and (t). Reserved.

§ 3573 Corporate Governance and Disclosure Policies

Rule 3.3. The Exchange shall require that specific corporate governance and disclosure policies be established by domestic issuers of any equity security listed pursuant to Rule 3.2. The Exchange, however, will not require an issuer of such security under [either] the Tier II [or SCOR] designation[s] to comply with the provision for an audit committee as set forth in this Rule 3.3(b).

Corporate Governance

Rule 3.3(a) No change.

Rule 3.3(b) No change.
 Rule 3.3(c) No change.
 Rule 3.3(d) No change.
 Rule 3.3(e) No change.
 Rule 3.3(f) No change.
 Rule 3.3(g) No change.
 Rule 3.3(h) No change.
 Paragraphs (i) through (s). Reserved.

Disclosure Policies

Rule 3.3(t) No change.

§3579 Suspension of Issuer Withdrawal from Listing

Rule 3.4(a). No change.
 Rule 3.4(b). No change.

§3585 Maintenance Requirements and Delisting Procedures

Rule 3.5(a). No change.

Tier I Securities

Maintenance Requirements

Common Stock—Select Market Companies

Rule 3.5(b) No change.

Preferred Stock and Similar Issues

Rule 3.5(c) No change.

Bonds and Debentures

Rule 3.5(d) No change.

Warrants

Rule 3.5(e) No change.

Contingent Value Rights ("CVRs")

Rule 3.5(f) No change.

Unit Investment Trusts ("UITs")

Rule 3.5(g) No change.

Paragraphs (h) through (l). Reserved.

Tier II Securities

Maintenance Requirements

Common Stock—Development Stage Companies

Rule 3.5(m) No change.

Preferred Stock and Similar Issues

Rule 3.5(n) No change.

Bonds and Debentures

Rule 3.5(o) No change.

Warrants

Rule 3.5(p). No change.

Paragraphs (q) and (r). Reserved.
 [Rule 3.5(r)—Deleted]

Other Reasons for Suspending or Delisting

Rule 3.5(s) No change.

Delisting Procedures

Rule 3.5(t) No change.

Options

§3591

Rule 3.6 No change.

Rule 3.6(a) No change.

Rule 3.6(b) No change.

Rule 3.6(c) No change.

Rule 3.6(d) No change.

§3598 Withdrawal of Approval of Underlying Securities

Rule 3.7(a). No change.

Rule 3.7(b). No change.

[SCOR Marketplace]

Original Listings

The Original Listing fees are fixed fees and issuers are not charged by the number of shares being listed.

Common Stock—\$5,000.00

Preferred Stock—\$5,000.00

Processing Fee

*Per Original Listing Application—\$500.00

Name Change—\$250.00

Change in Par Value—\$250.00

* This is a fixed charge for the review of potential listings and is non-refundable. Issues approved for listing may have this charge credited toward the original listing fee.

* This fee schedule was part of a previous Exchange rule filing. See Exchange Act Release No. 35636 (April 21, 1995) 60 FR 20781 (April 27, 1995) [order approving new listing fees for SCOR Securities, SR-PSE-95-03].

Substitution of Original Listing

Per Application: Fixed charge of \$750.00

Substitution may occur as a result of a change in state of incorporation, reincorporation under laws of same state, a reverse stock split, recapitalizations, or similar events.

Listing of Additional Shares

Per Application: \$.0025 per share

Minimum charge of \$500.00

Maximum charge of \$2,500.00

Maximum charge of \$5,000.00 per annum

Annual Maintenance Fee

For one issue—\$1,000.00

For each additional issue—\$500.00

Payable January of each year following listing.

Conversion Fee

Conversion from the SCOR Marketplace to Tiers I or II.

Common Stock—\$15,000.00

[FR Doc. 98-12143 Filed 5-6-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39940; International Series Release No. 1131; File No. SR-PHLX-98-17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Listing and Trading Options on the European Currency Unit

April 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 6, 1998, the Philadelphia Stock Exchange ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PHLX. On April 27, 1998, the Exchange filed Amendment No. 1 to the proposed rule change.³ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the PHLX proposes to amend its filing so that the position limits for the European Currency Unit will be 200,000 contracts on the same side of the market, rather than 100,000 contracts, as originally proposed. In addition, in Amendment No. 1, the PHLX agrees that it will consult with the Commission, prior to the conversion to the Euro on January 1, 1999, to determine whether a Rule 19b-4 filing is necessary.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is granting accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The Exchange proposes to relist for trading options on the European Currency Unit ("ECU"). The Exchange seeks to trade this product prior to the European Summit scheduled for May 2 and 3, 1998, in order to attract order flow based on a renewed interest in the events surrounding the eventual introduction of a single European currency, the Euro. The text of the proposed rule change is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PHLX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In July 1997, the Exchange delisted options on the ECU from the non-customized environment.⁴ Specifically, Rule 1009 provides that options on the ECU are only available as customized options traded pursuant to Rule 1069. However, with the advent of the Euro, customers as well as the membership have expressed interest in reintroducing options on the ECU in the non-customized environment. In January of 1999, the ECU is scheduled to convert to the Euro on a one-to-one basis. During the Summit planned for early May 1998, the European Council Heads of State should determine which member states fulfill the necessary

See Letter from Nandita Yagnik, Counsel, PHLX, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated April 23, 1998.

⁴ See Securities Exchange Act Release No. 38764 (June 24, 1997) 62 FR 35535 (July 1, 1997) (SR-PHLX-97-26).

conditions outlined in the Maastricht Treaty and will participate in the European Monetary Union ("EMU") in January of 1999. On January 1, 1999, the conversion rate will be set for all European currencies which are participating in the EMU. The ECU should thus convert to the "Euro" at that time.⁵ In order to provide a trading opportunity for investors, the Exchange proposes to list for trading European⁶ and relist American⁷ style options on the ECU.⁸

With respect to the ECU option proposed at this time, the contract size for the ECU will be 62,500 ECUs.⁹ The premium will be \$.0044 per unit or \$275 for an option contract having a unit of trading of 62,500, pursuant to Rule 1033. Pursuant to Rule 1014, the bid-ask differential for the ECU options will be \$.0005 between the bid and the offer for each option contract for which the bid is \$.0050 or less; no more than \$.0010 where the bid is more than \$.0050 but does not exceed \$.0200; and no more than \$.0015 where the bid is more than \$.0200. The initial margin for the ECU would be 4%,¹⁰ as it was prior to delisting and is currently in the customized environment.

2. Statutory Basis

The Exchange believes that re-listing the ECU option allows investors to take

⁵ The Exchange agrees that before trading in Euro options, it will consult with the Commission to determine whether a Rule 19b-4 filing pursuant to Section 19(b) of the Act is necessary. See Amendment No. 1, *supra* note 3.

⁶ See PHLX Rule 1000(b)35, which defines European style as an option contract that may be exercised only on the day that it expires.

⁷ See Rule 1000(b)34, which defines American style as an option contract that may be exercised at any time until its expiration.

⁸ According to the Exchange, although the PHLX had been granted approval to list and trade both European and American style non-customized options on the ECU, only American style non-customized options had been listed and traded by the Exchange. Telephone conversation between Nandita Yagnik, Counsel, PHLX, and Deborah Flynn, Attorney, Division, Commission, on April 28, 1998.

⁹ The specifications for the proposed ECU options are identical to those applied to the ECU options previously traded on the PHLX. In addition, we note that the same option trading rules that applied to trading the former ECU contract will apply to the new contract.

¹⁰ Currently, the consumer margin requirement, composed of an add-on percentage for all PHLX currency options, is 4% of the underlying contract value (with the exception of the Italian lira and the Spanish peseta, which is 7%, and the Mexican peso, which is 17%). A proposed rule change has been filed with the Commission to calculate the add-on percentage based on the three-year historical volatility of the respective currency. In the case of the ECU, the anticipated customer margin levels using the proposed methodology would be 3% at this time. See Securities Exchange Act Release No. 39856 (April 13, 1998) 63 FR 19554 (April 20, 1998) (SR-PHLX-97-63).

advantage of the planned conversion to the Euro at a time when the European markets are the most volatile. In addition, the advent of the Euro should promote trading and investment in the global currency markets. For the reasons above, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act¹¹ in general, and in particular with Section 6(b)(5),¹² in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on the Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received at the time of the filing.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR-PHLX-98-17, and should be submitted by May 28, 1998.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,¹⁴ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that relisting and trading non-customized ECU options should benefit investors, as it will provide investors with greater opportunity to take advantage of the planned conversion to the Euro at a time interest in the ECU may be high. The Commission believes that trading options on the ECU should provide investors with an efficient and effective means of hedging the risks associated with the ECU. In addition, in approving the reintroduction of the non-customized ECU options, we note that they will be trading under the same terms and conditions and the previously traded ECU options. Thus, the reintroduction of ECU options has not raised any new regulatory issues.

The Commission notes, however, that this approval order does not grant the Exchange approval to trade options on the Euro. Instead, the PHLX has agreed that before trading in options on the Euro, it will consult with the Commission to determine whether a Rule 19b-4 filing under Section 19(b) of the Act is necessary.¹⁵ In addition, the Commission notes that, assuming the terms and conditions of the Euro remain the same as those of the ECU, the Exchange still would need to address the manner in which the ECU would be converted to the Euro.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after its publication in the *Federal Register*. The Commission notes that accelerated approval will enable the Exchange to trade in non-customized ECU options prior to the European Summit scheduled for May 2 and 3, 1998. As noted above, relisting options on the

ECU under the same terms, conditions, and subject to the same trading rules as the previous ECU options contracts raises no new issues of regulatory concern. For the foregoing reasons, the Commission believes that good cause exists pursuant to Section 19(b)(2) of the Act¹⁶ to approve the proposed rule change, as amended, on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the amended proposed rule change (SR- PHLX-98-17) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jonathan G. Katz,
Secretary.

[FR Doc. 98-12146 Filed 5-6-98; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3076, Amdt. 1]

State of Alabama

In accordance with notices from the Federal Emergency Management Agency dated April 17, 18, and 20, 1998, the above-numbered Declaration is hereby amended to include Covington and Cullman Counties in the State of Alabama as a disaster area due to damages caused by severe storms and tornadoes, and to establish the incident period for this disaster as beginning on April 8, 1998 and continuing through April 20, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Butler, Coffee, Conecuh, Crenshaw, Ecambia, Geneva, Lawrence, Marshall, Morgan, and Winston in Alabama, and Okaloosa and Walton Counties in Florida may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 8, 1998 and for economic injury the termination date is January 11, 1999.

The economic injury number for Florida is 985200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ Id.

¹⁵ 17 CFR 200.30-3(a)(12).

Dated: April 28, 1998.

Bernard Kulik,
Associate Administrator for Disaster Assistance.

[FR Doc. 98-12077 Filed 5-6-98; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3045, Amdt. 8]

State of Florida

In accordance with notices from the Federal Emergency Management Agency dated April 17 and April 24, 1998, the above-numbered Declaration is hereby amended to include Bay County, Florida as a disaster area due to damages caused by severe storms, high winds, tornadoes, and flooding. This Declaration is further amended to establish the incident period for this disaster as beginning on December 25, 1997 and continuing through April 24, 1998.

All counties contiguous to the above-named county have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 6, 1998 and for economic injury the termination date is October 6, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 29, 1998.

James E. Rivera,
Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98-12079 Filed 5-6-98; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3069, Amdt. 6]

State of Georgia

In accordance with notices from the Federal Emergency Management Agency dated April 24, 1998, the above-numbered Declaration is hereby amended to include the following counties in the State of Georgia as a disaster area due to damages caused by severe storms and flooding beginning on February 14, 1998 and continuing: Barrow, Bartow, Cherokee, Dade, Lumpkin, Murray, Paulding, Pickens, Walker, and Wayne.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Catoosa, Clarke, and Oconee Counties in Georgia; Jackson and De Kalb Counties in Alabama; and Bradley,

Hamilton, Marion, and Polk Counties in Tennessee. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The economic injury number for Tennessee is 985100.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 10, 1998 and for economic injury the termination date is December 11, 1998.

Dated: April 27, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Bernard Kulik,
Associate Administrator for Disaster Assistance.

[FR Doc. 98-12078 Filed 5-6-98; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9846]

State of Oregon and Contiguous Counties in California

Coos and Curry Counties and the contiguous Counties of Douglas and Josephine in the State of Oregon, and Del Norte County in the State of California constitute an economic injury disaster area due to the effects of the warm water current known as El Nino beginning in August 1997. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on January 28, 1999 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for California is 984700.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 28, 1998.

Aida Alvarez,
Administrator.

[FR Doc. 98-12080 Filed 5-6-98; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3078]

State of Tennessee

As a result of the President's major disaster declaration on April 20, 1998, and amendments thereto on April 22 and 23, I find that the following counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on April 16, 1998 and continuing: Anderson, Bradley, Campbell, Claiborne, Crockett, Davidson, Dickson, Dyer, Hancock, Knox, Lawrence, Loudon, Maury, Morgan, Pickett, Rhea, Robertson, Sevier, Union, Wayne, and Wilson. Applications for loans for physical damages may be filed until the close of business on June 19, 1998, and for loans for economic injury until the close of business on January 20, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bledsoe, Blount, Cannon, Cheatham, Clay, Cocke, Cumberland, Decatur, DeKalb, Fentress, Gibson, Giles, Grainger, Hamilton, Hardin, Hawkins, Haywood, Hickman, Houston, Humphreys, Jefferson, Lake, Lauderdale, Lewis, Madison, Marshall, McMinn, Meigs, Monroe, Montgomery, Obion, Overton, Perry, Polk, Roane, Rutherford, Scott, Smith, Sumner, Trousdale, and Williamson Counties in Tennessee; Bell Clinton, Logan, McCreary, Simpson, Todd, Wayne, and Whitley Counties in Kentucky; Lauderdale and Limestone Counties in Alabama; Lee and Scott Counties in Virginia; Haywood and Swain Counties in North Carolina; and Catoosa, Murray, and Whitfield Counties in Georgia.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	7.000
Homeowners without credit available elsewhere	3.500
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000

	Percent
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 307812. For economic injury the numbers are 983800 for Tennessee, 983900 for Kentucky, 984000 for Alabama, 984800 for Virginia, 984900 for North Carolina, and 985000 for Georgia.

Dated: April 28, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Bernard Kulik,
Associate Administrator for Disaster Assistance.

[FR Doc. 98-12081 Filed 5-6-98; 8:45 am]
BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Public Law 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Representative Payee Report—0960-0068. Forms SSA-6230 and SSA-623 are used by the Social Security Administration (SSA) to determine the continuing suitability of an individual/organization to serve as representative payee. Form SSA-6230 is sent to parents, stepparents and grandparents with custody of minor children receiving Social Security benefits.

Form SSA-623 is sent to all other payees with or without custody of the beneficiary. The respondents are individuals and organizations who serve as representative payees for SSI and Social Security beneficiaries.

	SSA-623	SSA-6230
Number of Respondents	3,350,875	2,099,298

¹³ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 5 U.S.C. 78f(b)(5).

¹⁵ See Amendment No. 1, *supra* note 3.

	SSA-623	SSA-6230
Frequency of Response	1	1.
Average Burden Per Response	15 minutes	15 minutes.
Estimated Annual Burden	837,719 hrs	524,824 hrs.

2. Request for Social Security Earnings Statement—0960-0525. The information on Form SSA-7050 is used by SSA to identify the requestor, to define the earnings information being requested, and to inform the requestor of the fee for such information. Based on the information provided, SSA produces the requested statement. The respondents are individuals and organizations that use this form to request statements of earnings from SSA.

Number of Respondents: 44,000.
Frequency of Response: 1.
Average Burden Per Response: 11 minutes.
Estimated Average Burden: 8,067 hours.

3. Request for Change in Time/Place of Disability Hearing—0960-0348. The information on Form SSA-769 is used by the Social Security Administration (SSA) to provide claimants with a structured format to exercise their right to request a change in the time or place of a scheduled disability hearing. The information will be used as a basis for granting or denying requests for changes and for rescheduling hearings. The respondents are claimants who wish to request a change in the time or place of their disability hearing.

Number of Respondents: 7,483.
Frequency of Response: 1.
Average Burden Per Response: 8 minutes.

Estimated Average Burden: 998 hours.

4. Request for Reconsideration—Disability Cessation—0960-0349. The information on Form SSA-789 is used by SSA to schedule hearings and to develop additional evidence for individuals who have received an initial or revised determination that their disability ceased, did not exist, or is no longer disabling. The respondents are disability beneficiaries who file a claim for reconsideration.

Number of Respondents: 15,015.
Frequency of Response: 1.
Average Burden Per Response: 12 minutes.

Estimated Average Burden: 3,003 hours.

5. Summary of Evidence—0960-0430. The information on Form SSA-887 is used by State Disability Determination Services (DDS) to provide claimants with a list of medical/vocational reports pertaining to their disability. The form

will aid claimants in reviewing the evidence in their folders and will be used by hearing officers in preparing for and conducting hearings. The respondents are State DDSs that make disability determinations.

Number of Respondents: 22,024.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Average Burden: 5,506 hours.

6. Report of Work Activity—Notice of Continuing Disability—0960-0108. The information collected on Form SSA-3945 will be used by SSA to determine whether an individual's work after entitlement to disability is cause for that entitlement to end. The respondents are individuals who report earnings after their entitlement to disability benefits.

Number of Respondents: 140,000.
Frequency of Response: 1.
Average Burden Per Response: 45 minutes.

Estimated Average Burden: 105,000 hours.

7. Employee Identification Statement—0960-0473. The information on Form SSA-4156 is used by SSA to resolve situations where two or more individuals have used the same Social Security Number (SSN), and an employer has erroneously reported earnings under an SSN. The respondents are employers involved in erroneous wage reporting.

Number of Respondents: 4,750.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.

Estimated Average Burden: 792 hours.
Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1-A-21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Disability Hearing Officer's Report of Disability—0960-0507. The information on Form SSA-1204-BK is used by the Disability Hearing Officer (DHO) to conduct and document disability hearings and to provide a structured format that covers all conceivable issues relating to SSI claims for disabled children. The completed Form SSA-1204-BK will aid the DHO in preparing the disability decision and will provide a record of what transpired at the hearing. The respondents are DHOs in the State Disability Determination Services (DDS).

Number of Respondents: 100,000.
Frequency of Response: 1.
Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 100,000 hours.

2. Disability Hearing Officer's Report of Disability Hearing—0960-0440. The information on Form SSA-1205 is used by DHOs to conduct and record disability hearings for adults. The form serves as a guide in conducting the hearings and ensures that all pertinent issues are considered. The respondents are DHOs in the State DDSs.

Number of Respondents: 100,000.
Frequency of Response: 1.
Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 100,000 hours.

3. Disability Hearing Officer's Decision—0960-0441. The DHO uses the information on Form SSA-1207 and the supplements—which apply to the type of claim involved—in preparing the disability decision. The form will aid the DHO in addressing the crucial elements of the case in a sequential and logical fashion. The respondents are DHOs in the State DDSs.

Number of Respondents: 100,000.
Frequency of Response: 1.
Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 75,000 hours.

4. Chinese Custom Marriage Statement (By One or Both of the Parties); and Statement Regarding Chinese Custom Marriage—0960-0086. The information on Forms SSA-1344 and 1345 is used by SSA to determine if an alleged spouse of the

numberholder is legally married, in order to be paid Social Security benefits. The respondents are individuals applying for benefits based upon a Chinese custom marriage or individuals who attended the marriage ceremony.

	SSA-1344	SSA-1345
Number of Respondents	100	100.
Frequency of Response	1	1.
Average Burden Per Response	14 minutes	14 minutes.
Estimated Annual Burden	23 hours	23 hours.

5. Student's Statement Regarding School Attendance—0960-0105. The information on Form SSA-1372 is used by SSA to determine if a claimant is entitled to Social Security benefits as a student. The respondents are student claimants for Social Security benefits.

Number of Respondents: 200,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 33,333 hours.

6. Application for Benefits under the Italy-U.S. International Social Security Agreement—0960-0445. The information on Form SSA-2528 is used by SSA to determine if a resident of Italy is eligible for Social Security benefits under the Italy-U.S. Social Security agreement. The respondents are Italian residents who file for U.S. benefits with the Italian Social Security Agency.

Number of Respondents: 200.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 67 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA) Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965-4125 or write to him at the address listed above.

Date: May 1, 1998.
Nicholas E. Tagliareni,
Reports Clearance Officer, Social Security Administration.

[FR Doc. 98-12152 Filed 5-6-98; 8:45 am]

BILLING CODE 4190-29-U

SOCIAL SECURITY ADMINISTRATION

Testing Modifications to Initial Disability Claim Procedures and Disability Determination Procedures; Test Sites for Disability Claim Manager Positions

AGENCY: Social Security Administration (SSA).

ACTION: Notice of test sites and the duration of tests involving a disability claim manager.

SUMMARY: SSA is announcing the locations and the duration of additional tests that it will conduct under the current rules at 20 CFR 404.906 and 416.1406. Those rules authorize the testing of several modifications to the disability determination procedures and disability claim procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and claims for supplemental security income (SSI) payments based on disability under title XVI of the Act. This notice announces the test sites and duration of tests involving use of a disability claim manager (DCM).

FOR FURTHER INFORMATION CONTACT: Richard Fussell, DCM Test Lead, Office of the Commissioner, Disability Process Redesign Team, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland, 21235, 410-965-9230.

SUPPLEMENTARY INFORMATION: Current regulations at §§ 404.906 and 416.1406 authorize us to test several different modifications to the disability determination procedures. In our regulations, we explained that prior to commencing each test or group of tests, we would publish a notice in the *Federal Register* describing the model(s) that we will test, where the test sites will be and the duration of the tests. SSA is announcing the locations and the duration of tests involving a DCM that it will conduct under the authority of these regulations. On or about May 11, 1998, we will begin testing the DCM process at the test sites listed below (some of which are located at federal sites and some of which are located at state sites).

Under SSA's *Plan for a New Disability Claim Process* approved by the Commissioner of Social Security in September 1994 (the disability redesign plan), the DCM will be the focal point for medical and non-medical claim activities from the time an initial claim for disability benefits is filed until an initial determination is made on the claim. The DCM may be either a State agency employee or a Federal employee and may be assisted by other individuals. When an application for benefits based on disability is handled by a DCM, the DCM will explain the disability programs and how we determine whether all the requirements for disability benefits are met. The DCM will explain what will be expected of the applicant during the claims process and provide information or assistance to the applicant, as necessary. The DCM will also provide information regarding the claimant's right to representation and will provide appropriate referral sources for representation.

The DCM will manage the case from intake to point of determination. He/she may work in a team environment with access to experts such as medical or vocational consultants and technicians such as specialist coaches for advice and guidance. A Claims Support Specialist (CSS) may also provide assistance in the non-medical aspects of the disability workload for the Federal and State DCM. DCM cases will be limited to initial adult title II and title XVI disability claims that can be fully processed through SSA's automated systems.

The DCM will make the initial disability determination, after any appropriate consultation with a medical or psychological consultant, and will obtain the forms used to certify the medical consultant's concurring signature on the disability determination to SSA. The DCM will also determine whether other conditions of eligibility (for benefits for disability cases associated with programs administered by SSA) are met. However, when the DCM is a State agency employee, a Federal employee will make the final determination regarding whether the other conditions for

entitlement to benefits are met (as required by law).

We will continue the tests for approximately 36 months. We plan to test the use of a DCM in 35 sites located in 15 states. The sites selected represent a mix of geographic areas and case loads. We will publish another notice in the *Federal Register* if we extend the duration of the test or expand the test sites. For the purpose of these tests, a DCM will be either an employee of the State agency that makes disability determinations for SSA or an SSA employee. The testing of the DCM in the sites listed below are separate from, and in addition to, the testing of the Full Process Model which we previously announced on April 4, 1997 (62 FR 16209, 62 FR 16210) and August 1, 1997 (62 FR 41457). Tests of the DCM position will be held at the following locations:

Social Security Administration, Field Office, 2600 Mount Ephraim Ave, Camden, NJ 08104
 Social Security Administration, Field Office, 22 Sussex Street, Hackensack, NJ 07302
 Social Security Administration, Field Office, Capitol Center Bldg., 2nd Floor, 50 East State Street, Trenton, NJ 08608
 Social Security Administration, Field Office, 52 Charles Street, New Brunswick, NJ 08901
 Social Security Administration, Field Office, 970 Broad Street, Room 1035, Newark, NJ 07102
 Social Security Administration, Field Office, 3733 W University Boulevard, Suite 100, Jacksonville, FL 32217
 Social Security Administration, Field Office, 1395 S Marietta Parkway, Building 100, Room 130, Marietta, GA 30067
 Social Security Administration, DCM Unit, 100 West Capitol Street, Room 401, Jackson, MS 39201
 Social Security Administration, Field Office, 9 St. Emanuel Street, Mobile, AL 36602
 Social Security Administration, Field Office, Worthman Mall, Suite 235, 5800 Fairfield Avenue, Fort Wayne, IN 46807
 Social Security Administration, Field Office, 575 N Pennsylvania Avenue, Room 617, Indianapolis, IN 46204
 Social Security Administration, Field Office, 6951 E 30th Street, Indianapolis, IN 46219
 Social Security Administration, Field Office, 2715 W Monroe Street, Springfield, IL 62704
 Social Security Administration, Field Office, 1673 S 9th Street, 5th Floor, Milwaukee, WI 53204

Social Security Administration, Field Office, 4120 Oakwood Hills Parkway, Eau Claire, WI 54701
 Social Security Administration, Field Office, 850 Nebraska Avenue, Kansas City, KS 66101
 Social Security Administration, Field Office, 210 Walnut Street, Federal Building, Room 293, Des Moines, IA 50309
 Social Security Administration, DCM Unit, 1616 Champa Street, 4th Floor, Denver, CO 80202
 Social Security Administration, DCM Unit, 46 West 300 South, Suite 100, Salt Lake City, UT 84104
 Social Security Administration, DCM Unit, 301 South Park, Room 138, Helena, MT 59626
 Social Security Administration, Field Office, 7227 North 16th Street, Suite 190, Phoenix, AZ 85020
 Social Security Administration, Field Office, McNamara Building, Room 1550, 477 Michigan Avenue, Detroit, MI 48226
 Social Security Administration, Field Office, 525 Munson Avenue, Traverse City MI 49686
 State of New Jersey, Division of Disability Determination, 506 Jersey Avenue, New Brunswick NJ 08901
 State of Alabama, Division of Disability Determinations, 2545 Rocky Ridge Lane, Birmingham AL 35216
 State of Georgia, Dept of Human Resources, Div of Rehab Svcs, Disability Adjudication Sec., 330 W Ponce de Leon Avenue, Decatur GA 30030
 State of Florida, Div of Voc Rehab, Div of Disability Determinations, 4140 Woodcock Drive, Jacksonville FL 32254
 State of Wisconsin, Div of Voc Rehab, Disability Determination Bureau, 1st Floor Olds Seed Building, 722 Williamson Street, Madison WI 53703
 State of Indiana, Div of Aging & Rehab, Disability Determination Bureau, 225 New Jersey Street, Indianapolis IN 46204
 State of Illinois, Dept of Rehab Svcs, Bureau of Disab Determination Svcs, 100 N 1st Street, 5th Floor, Springfield IL 62702
 State of Michigan, Disability Determination Services, 315 East Front Street, Traverse City MI 49684
 State of Michigan, Disability Determination Services, 1200 Sixth Street, 10th Floor, Detroit MI 48226
 State of Kansas, Dept of Social & Rehab Svcs, Disability Deter & Referral Svcs, Suite 100, 3640 SW Topeka Blvd., Topeka KS 66611
 State of Iowa, Div of Voc Rehab Svcs, Disability Determination Services, 510 East 12th Street, Des Moines IA 50319

State of Arizona, Disability Determination Services, 3310 N 19th Avenue, Phoenix AZ 85016

Not all disability cases received in the test sites listed above will be handled under the test procedures. During the test, DCM cases will be randomly selected from initial adult title II and title XVI disability claims that can be fully processed through SSA's automated systems. When a claim is handled by a DCM as part of the test, the claim will be processed under the procedures established under the regulations cited above.

Dated: April 30, 1998.

Sue C. Davis,
 Director, Disability Process Redesign Team.
 [FR Doc. 98-12153 Filed 5-6-98; 8:45 am]
 BILLING CODE 4190-29-P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2799]

Determination With Respect to the Assistance Program for Ukraine

Pursuant to the authority vested in me by subsection (k) under the heading "Assistance for the New Independent States of the former Soviet Union" in Title II of the foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Pub. L. 105-118), I hereby determine and certify that the Government of Ukraine has made significant progress toward resolving complaints made by United States investors to the United States Embassy prior to April 30, 1997.

This determination shall be provided to the Congress and published in the *Federal Register*.

Dated: April 28, 1998.

Madeline Albright,
 Secretary of State.

Memorandum of Justification Regarding Certification Under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Pub. L. 105-118)

In reviewing complaints made by twelve U.S. investors or businesses to the United States Embassy in Kiev prior to April 30, 1997, concerning specific problems affecting their operations in Ukraine, the Secretary of State has found that the Government of Ukraine has made significant progress toward resolving those complaints. Our review of these cases found resolution or significant progress towards resolution in seven of the twelve cases. This

finding will allow the Administration to obligate certain funds for assistance to Ukraine which until now had been withheld from obligation under Title II of Pub. L. 105-118, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.

Ukraine has demonstrated its commitment to strategic partnership with the U.S. and integration into the West. Recent Ukrainian actions on non-proliferation have built on a record of responsible conduct in the security and foreign policy issues that merit continued U.S. support.

The Administration remains seriously concerned, however, about the investment climate and prospects for economic reform in Ukraine. Despite progress on specific complaints by certain U.S. investors, some complaints have not been resolved, and new cases have arisen. In addition, we have seen no evidence of improvement in Ukraine's investment climate and only limited progress toward economic reform. Because a large share of U.S. assistance to Ukraine is provided to support economic reform, and because improvement of Ukraine's investment climate is critical to achieving sustainable economic growth, lack of progress in these areas raises concerns about the usefulness of U.S. assistance to the Government of Ukraine in these sectors.

After reviewing the status of economic reform in Ukraine, we have concluded that assistance currently allocated to support the implementation of specific reforms by the Government of Ukraine would not be used effectively in the absence of concrete progress on economic reform. This includes funds originally intended to provide technical assistance to the Government of Ukraine in such areas as fiscal and budgetary reform, bankruptcy reform, energy sector reform, and the creation of a private agricultural sector. We are therefore withholding these funds from obligation and will reprogram them in a few months to more productive uses within Ukraine unless the Government of Ukraine implements the necessary reforms in these sectors and takes additional steps to resolve outstanding U.S. business cases in Ukraine.

We will continue to monitor progress in Ukraine on reform and in the investment climate, including treatment of U.S. investors in Ukraine, with the goal of ensuring that all U.S. assistance is used effectively to encourage and promote the reforms needed to stimulate sustainable economic growth. We will also continue to monitor the complaints made by U.S. investors which are

subject to the certification requirement, as well as other cases which have arisen, to ensure that progress is sustained.

[FR Doc. 98-12158 Filed 5-6-98; 8:45 am]
 BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193; Terrain and Airport Databases; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Corrections.

SUMMARY: In notice document 98-10681 on page 19997 in the issue of Wednesday, April 22, 1998 (Vol. 63, No. 77), make the following corrections:

On page 19997 in the first column, under (4) Review Proposed Terms of Reference, add: a. EUROCAE Working Group 44 Terms of Reference; b. Proposed Terms of Reference, RTCA Paper No. 075-98/PMC-006. In the second column, under (7), add a. Summary of Activities Already Performed by Working Group 44 Subgroup 2; b. Review of Previous Working Group 44 Subgroup 2 Meeting Minutes and Action Items. Add a new item: Industry Requirements for Terrain and Obstacle Information for Aeronautical Use: a. Proposed Table of Contents and Applicable Working Papers; b. Areas to be Covered by This Document; c. Potential Applications; d. Data User Requirements; e. Potential Sources of Data; f. Methods of Data Origination and Compilation; g. Target Date for Completion.

Issued in Washington, DC, on May 1, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98-12133 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Valley International Airport, Harlingen, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a PFC at Valley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). DATES: Comments must be received on or before June 8, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, Fort Worth, Texas 76193-0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jon Mathiasen, Director of Aviation, of Valley International Airport at the following address: Jon E. Mathiasen, A.A.E., Director of Aviation, Valley International Airport, Airport Terminal Building, Harlingen, Texas 78550.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, Fort Worth, Texas 76193-0610, (817) 222-5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Valley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 27, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 22, 1998. The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: November 1, 1998.

Proposed charge expiration date:
October 1, 2001.

Total estimated PFC revenue:
\$4,024,979.00.

PFC application number: 98-01-C-
00-HRL.

Brief description of proposed projects:

Projects To Impose and Use PFC's

Groove Runway 13/31, Airfield Signage, Reconstruct South Apron, Airfield Drainage, Land Acquisition, Part 150 Land Acquisition, Access Roads, Runway and Taxiway Improvements, ARFF Suits, Storm Water Prevention Plan, Replace Access Control System, Reconstruct Air Freight Aprons—North & South, Replace ARFF Vehicles (2), Terminal Jet Bridges (3), Overlay Runway 17L/35R, Concourse Carpet Replacement, FIDS and PA System, PFC Development, Overlay GA Ramps, Overlay Taxiways Bravo and Foxtrot, Joint Seal Air Carrier Parking Apron, Part 150 and Master Plan Update, Airport Entrance Road (Iwo Jima Blvd.), Improve Terminal Drainage, Terminal Roadway Signs, Terminal Upgrade/Improvement, Security Fencing, Runway Sweeper, and Terminal Entrance Road and Arcade Sidewalk.

Proposed class or classes of air carriers to be exempted from collecting PFC's:

All Air Taxi/Commercial Operators filing FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, 2601 Meacham Blvd., Fort Worth, Texas 76137-4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Valley International Airport.

Issued in Fort Worth, Texas on April 27, 1998.

Edward N. Agnew,

Acting Manager, Airports Division.

[FR Doc. 98-12136 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA) / Joint Planning Advisory Group (JPAG)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of April 23-24, 1998 meeting with VISA participants.

On April 23-24, 1998, the Maritime Administration (MARAD) and the United States Transportation Command (USTRANSCOM) co-hosted a meeting of the Voluntary Intermodal Sealift Agreement (VISA) Joint Planning Advisory Group (JPAG) at the United States Transportation Command, Scott Air Force Base, Illinois.

Meeting attendance was by invitation only, due to the nature of the information discussed and the need for a government-issued security clearance. Of the 27 U.S.-flag carrier corporate participants enrolled in VISA at the time of the meeting, 9 were represented, as well as representatives from the Department of Defense (DoD) and the Department of Transportation (DOT).

Government representatives provided operational briefs for the USTRANSCOM command post exercise Turbo Challenge 98 which was the principal focus of the JPAG. During the exercise, VISA Stage III was activated and VISA capacity was allocated. In addition to evaluating previously developed Concepts of Operation, the exercise tested VISA carriers' ability to position vessel capacity to meet VISA Stage III requirements for a major regional contingency.

The full text of the VISA program is published in 62 FR 6837-6845, dated February 13, 1997. One of the program requirements is that MARAD periodically publish a list of VISA participants in the *Federal Register*. As of April 28, 1998, the following commercial U.S.-flag vessel operators are enrolled in VISA with MARAD: Alaska Cargo Transport, Inc., American Auto Carriers, Inc., American Automar, Inc., American President Lines, Ltd., American Ship Management, LLC, Central Gulf Lines, Inc., Crowley Maritime Corporation, Dixie Fuels II, Ltd., Falgout Brothers, Inc., Farrell Lines Incorporated, First American Bulk Carrier Corp., Lykes Lines Limited, L.L.C., Maersk Line Limited, Matson Navigation Company, Inc., Moby Marine Corporation, NPR, Inc., OSG Car Carriers, Inc., Osprey Shipholding Corp., LLC, RR & VO L.L.C., Sealift, Inc., Sea-Land Service, Inc., Smith Maritime, Totem Ocean Trailer Express, Inc., Trailer Bridge, Inc., TransAtlantic Lines LLC, Van Ommen Shipping (USA) LLC, and Waterman Steamship Corporation.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Raymond R. Barberesi, Director, Office of Sealift Support, (202) 366-2323.

Dated: May 4, 1998.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 98-12128 Filed 5-6-98; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33407]

Dakota, Minnesota & Eastern Railroad Corporation Construction Into the Powder River Basin¹

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of issuance of procedural schedule.

SUMMARY: The Board has received public comments on the proposed procedural schedule for issuing a decision on the transportation merits of the application and applicant's reply to those comments, and the Board is issuing a final procedural schedule. This schedule provides for issuance of a decision within 180 days of the effective date of this decision that will address the transportation issues relating to this construction application and whether the proposal satisfies the criteria of 49 U.S.C. 10901. Any approval would be conditioned upon completion of the environmental review process and consideration of environmental issues, which would be considered in a final decision on whether to authorize the construction.

DATES: The effective date of this decision is May 7, 1998. Pleadings must be filed in accordance with the attached schedule. All filings, except notices of intent to participate, must be concurrently served on all parties of record and must be accompanied by a certificate of service.

ADDRESSES: Send an original and 10 copies of all pleadings referring to STB Finance Docket No. 33407 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1225 K Street, N.W., Washington, DC 20423. To permit concurrent service of pleadings on all parties of record, a service list containing the names and addresses of all parties of record will be issued by the Board in a subsequent notice.

¹ This case was formerly entitled Dakota, Minnesota & Eastern Railroad Corporation—Construction and Operation—in Campbell, Converse, Niobrara, and Weston Counties, WY, Custer, Fall River, Jackson, and Pennington Counties, SD, and Blue Earth, Nicollet, and Steele Counties, MN. We have shortened the title for the sake of simplicity.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 565-1600.
[TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: By decision served March 11, 1998, as corrected, the Board published notice of a construction and operation application filed by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E)² and requested comments on a procedural schedule based on one proposed by DM&E for consideration of the transportation issues regarding the application.³ That decision also required DM&E to cause to be published notices: (1) Advising that comments would not be due until the Board establishes a procedural schedule; and (2) after a schedule has been adopted by the Board, setting forth the schedule, including the due date for comments on the merits of the proposed transaction.

We received over two hundred comments on the proposed procedural schedule. Comments were filed by landowners, environmental groups, shipper organizations, shippers and receivers (including electric utilities), railroads, government entities, and rail labor unions. We have reviewed all of these comments but, in light of their number, will not mention each comment individually here.

For the most part, the parties opposing the proposed schedule state that the original 35-day comment period is insufficient. One group of similar letters⁴ (over 50) asks that we allow comments throughout the EIS process. The other time period mentioned most frequently is an increase in the initial public comment period to 180 days. There are also a few suggestions for comment periods of up to 400 days.

The rationale for extending the time period for submitting comments is, generally, that the proposal is extensive and that more time is needed to study

² DM&E seeks authority to construct and operate 280.09 miles of new railroad line, which would extend DM&E's existing rail lines into the Powder River Basin coal fields in northeastern Wyoming, and DM&E also plans several related projects. Notice of the application was published in the *Federal Register* on March 13, 1998 (63 FR 12576).

³ DM&E's proposed schedule also would have covered the carrying out of the environmental review process. Our March 11, 1998 decision found that it would be premature to establish any sort of environmental review schedule, but directed our Section of Environmental Analysis (SEA) to initiate the environmental review process. On March 27, 1998, SEA published a notice of intent to prepare an Environmental Impact Statement (EIS), scheduling agency and public scoping meetings between April 29 and June 30, 1998.

⁴ The second largest group of similar letters (over 30) does not specifically address the procedural schedule; rather, these letters argue against conditional approval.

it and to seek help in asserting the parties' positions in opposition. These parties argue that copies of the application are not readily available to many landowners, and that the application set out on the Internet is incomplete.⁵ These parties also claim that DM&E has had years to prepare its arguments and that they deserve time to counter these arguments and fully understand the public convenience and necessity claims of DM&E. There are also numerous requests for local hearings, contentions that consideration of the transportation criteria in 49 U.S.C. 10901 prior to completion of the analysis of the potential environmental impacts is not appropriate, and assertions that there is no public need for another rail line to serve the Powder River Basin.

There is one specific proposal for an alternative procedural schedule. It is offered by the 777 Ranch.⁶ This proposal would significantly extend the due dates for the various pleadings⁷ and ultimately postpone the issuance of a decision on transportation issues by slightly more than 9 months, for a total of approximately 15 months until the decision on the transportation issues is made.

Numerous parties support the 180 day schedule.⁸ These parties emphasize that this schedule is reasonable and provides adequate time for submitting evidence and for informed decision making by the Board.

In support of the proposed schedule, DM&E argues that many of the opposing comments appear to be from parties "implacably" against the project who see delay as a desirable end in itself. DM&E also claims that many of the opposing comments are directed to environmental concerns, while others address the merits of the proposal rather than the amount of time needed to provide adequate opportunity for public participation and for development of a sufficient record on the transportation merits of the application. DM&E adds that it has attempted to ensure the broad

⁵ DM&E placed a copy of the application on the Internet at "WWW.DMERAIL.COM."

⁶ The 777 Ranch and the Mid-States Coalition for Progress list the same PO box and phone number, and their pleadings are quite similar. The SMS Ranch Partnership also submitted essentially identical comments.

⁷ The 777 Ranch would make these changes to the proposed schedule (where P signifies the date of this decision): comments due from P + 35 to P + 180; STB decision setting modified procedure/oral hearing from P + 70 to P + 215; opposing evidence and argument from P + 115 to P + 395; and STB decision from P + 180 to P + 460.

⁸ These parties also frequently mention their support for the construction project and request expedited consideration of the environmental issues.

availability of the application and that it went well beyond Board regulations in this regard.

Turning to the specific requests for lengthening the proposed schedule, DM&E notes that the commenters apparently did not take into account that, after the initial 35-day comment period, there would be a further 80-day period in which to submit transportation evidence and argument in opposition. In addition, DM&E points out that, even before a specific schedule is adopted, interested parties will have already had nearly 2 months since the application was filed to begin preparation of their transportation comments.

We have reviewed all the comments received on the proposed procedural schedule and are aware of the concerns parties have raised regarding the amount of time necessary to prepare their cases as well as the desire of DM&E to have an expedited schedule. Balancing these competing concerns, and with fairness to all parties in mind, we have decided to adopt the proposed 180-day procedural schedule for consideration of transportation issues. This schedule will ensure that all parties are accorded due process. It will allow for adequate public participation and the development of a sufficient record on which to consider the transportation implications of applicant's construction proposal under 49 U.S.C. 10901. As we explained in our previous decision, any approval granted would be conditioned upon consideration of the environmental impacts of the proposed construction. Thus, we will issue a subsequent decision after completion of the EIS process, and only at that point would we allow construction to begin, if appropriate, based on a consideration of the potential environmental impacts of the proposed transaction. The courts have found that it does not violate the environmental laws for an agency to conditionally approve an action before the completion of environmental review. *City of Grapevine v. DOT*, 17 F.3d 1502 (D.C. Cir. 1994). See generally *Missouri Mining Inc. v. ICC*, 33 F.3d 980 (8th Cir. 1994) (affirming construction authorization that had first been conditionally granted).

Although numerous parties have requested that we extend the various time periods set forth in the proposed schedule, none of these requests shows any specific need for additional time in order to address transportation issues under the statutory standards of section 10901. We believe the proposed schedule, which allows almost 4 months (a total of 115 days) in addition

to the time already elapsed since the application was filed, affords ample opportunity to file evidence and argument in opposition to the application.

In addition, we note that many of the pleadings we received in response to our request for comments on the procedural schedule for consideration of transportation issues instead raise concerns with environmental issues. As noted, we will separately address environmental issues in a subsequent decision after completion of the EIS process. Other comments are directed more to the transportation merits of the application than the procedural schedule.

As mentioned, our previous decision required DM&E to cause to be published new notices setting forth the schedule we are adopting here and certifying to us that it has done so. We are reiterating that requirement here.

In addition to setting forth the procedural schedule, the new notices must clearly set forth the filing requirements we established here, which we are modifying slightly from those originally contemplated. These filing requirements are: first, anyone who intends to file comments in this proceeding and to participate fully as a party of record (POR) must file with the Secretary of the Board an original and 10 copies of a notice of intent to participate in the proceeding by May 27, 1998. The Board will then issue a list of those persons who have given notice of their intent to participate.* All documents (including comments) filed under the procedural schedule must be served on each person identified on this service list as a POR and each person making a filing must certify to the Secretary of the Board that he or she has done so. Persons not participating as a POR may obtain copies of pleadings through the Board's copy contractor, DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289-4357. [Assistance for the hearing impaired is available through TDD Services (202) 565-1695.] Second, so that all PORs may have the benefit of receiving all comments, we are requiring that, in order to be considered, any previously submitted comments addressing the transportation merits of the proposed construction must be resubmitted and properly

* The Office of the Secretary will start compiling the official service list in this proceeding after service of this decision adopting a procedural schedule. Persons named on any earlier service list will not automatically be placed on the official service list for this proceeding. Therefore, any person who wishes to be a POR must file a notice of intent to participate by May 27, 1998.

served on all PORs once we issue the service list. Previously submitted transportation comments will not be considered unless resubmitted and served. We recognize that this will create duplicate pleadings in some circumstances, but feel it is necessary to ensure complete dissemination of all comments.¹⁰

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: April 30, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

Procedural Schedule

In the following schedule, the term "P" designates the date that the Board issues this procedural schedule and "P + n" means "n" days following that date.

P—Procedural schedule established by the Board.

P+7—Due date for publication by DM&E of newspaper notice announcing the procedural schedule.

P+20—Due date for notices of intent to participate as a party of record

P+35—Due date for written comments on transportation aspects of the Application.

P+40—Due date for DM&E's replies to written comments on transportation aspects of the Application.

P+70—Board decision ordering hearing under modified procedures.

P+115—Due date for evidence and argument in opposition to the transportation aspects of the Application.

P+135—Due date for DM&E's reply evidence and argument in support of the transportation aspects of the Application.

P+180 (or earlier)—Service of preliminary decision on whether the transportation criteria of section 10901 have been met.

[FR Doc. 98-12165 Filed 5-6-98; 8:45 am]

BILLING CODE 4915-00-P

¹⁰ We emphasize that interested persons that do not wish to participate formally in this phase of the proceeding addressing the transportation merits of the application need not become a POR to participate fully in the environmental phase of the proceeding. We note that cross service of comments is not ordinarily required in the environmental review process.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98-36]

Customs Accreditation of Herguth Laboratories, Inc. as an Accredited Laboratory

AGENCY: Customs Service, Department of the Treasury

ACTION: Notice of accreditation of Herguth Laboratories, Inc. as a commercial accredited laboratory.

SUMMARY: Herguth Laboratories, Inc., of Vallejo, California, has applied to U.S. Customs for an extension of accreditation to perform petroleum analysis methods under § 151.13 of the Customs Regulations (19 CFR 151.13) to their Vallejo, California facility. Customs has determined that Herguth Laboratories, Inc. meets all of the requirements for accreditation as a Commercial Laboratory to perform (1) API Gravity, (2) Sediment, (3) Distillation, (4) Reid Vapor Pressure (5) Saybolt Universal Viscosity, (6) Sediment by Extraction, (7) Percent by Weight of Sulfur and (8) Percent by Weight of Lead. Therefore, in accordance with § 151.13(f) of the Customs Regulations, Herguth Laboratories, Inc., is granted accreditation to perform the analysis methods listed above.

LOCATION: Herguth Laboratories, Inc. accredited site is located at: 101 Corporate Place, Vallejo, California 94590-6968

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.5-B, Washington, DC 20229 at (202) 927-1060.

Dated: April 27, 1998.

George D. Heavey,
Director, Laboratories and Scientific Services.
[FR Doc. 98-12090 Filed 5-6-98; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 88-30 and Notice 88-132

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning two existing notices, Notice 88-30, Diesel Fuel and Aviation Fuel Imposed at Wholesale Level, and Notice 88-132, Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89.

DATES: Written comments should be received on or before July 6, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notices should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice 88-30, Diesel Fuel and Aviation Fuel Imposed at Wholesale Level; Notice 88-132, Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89.

OMB Number: 1545-1043.

Notice Number: Notice 88-30 and Notice 88-132.

Abstract: Notice 88-30 and Notice 88-132 require certain persons involved with diesel or aviation fuel (1) to be registered with the Internal Revenue Service, (2) to maintain certain records, and (3) to provide certificates to support exempt purchases. Because of the Code amendments made by the Omnibus Budget Reconciliation Act of 1993, these requirements now apply only with respect to aviation fuel.

Current Actions: There are no changes being made to the notices at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 1 hour, 6 minutes.

Estimated Total Annual Burden Hours: 3,850.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 1, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98-12189 Filed 5-6-98; 8:45 am]

BILLING CODE 4830-01-J

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL-45-86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an

existing final regulation, INTL-45-86 (TD 8125), Foreign Management and Foreign Economic Processes Requirements of a Foreign Sales Corporation (§ 1.924).

DATES: Written comments should be received on or before July 6, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Foreign Management and Foreign Economic Processes Requirements of Foreign Sales Corporation.

OMB Number: 1545-0904.

Regulation Project Number: INTL-45-86.

Abstract: This regulation provides rules for complying with foreign management and foreign economic process requirements to enable foreign sales corporations to produce foreign trading gross receipts and qualify for reduced tax rates. Section 1.924(d)-1(b)(2) of the regulation requires that records must be kept to verify that the necessary activities were actually performed outside the United States.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 11,001.

Estimated Time Per Recordkeeper: 2 hours.

Estimated Total Recordkeeping: 22,001.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 1, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98-12190 Filed 5-6-98; 8:45 am]

BILLING CODE 4830-01-U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Queens and Commoners of Egypt's New Kingdom"

(See list ¹), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Charleston Museum, Charleston, South Carolina from on or about October 1, 1998, through June 30, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: April 29, 1998.

Les Jin,

General Counsel.

[FR Doc. 98-12086 Filed 5-6-98; 8:45 am]

BILLING CODE 8230-01-M

¹ A copy of this list may be obtained by contacting Ms. Carol Epstein, Assistant General Counsel, at 202/619-6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, D.C. 20547-001.

federal register

Thursday
May 7, 1998

Part II

Department of Health and Human Services

Health Care Financing Administration

45 CFR Part 142

Health Insurance Reform: Standards for
Electronic Transactions; National
Standard Health Care Provider Identifier;
Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 142

(HCFA-0149-P)

RIN 0938-A158

Health Insurance Reform: Standards for Electronic Transactions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes standards for eight electronic transactions and for code sets to be used in those transactions. It also proposes requirements concerning the use of these standards by health plans, health care clearinghouses, and health care providers.

The use of these standard transactions and code sets would improve the Medicare and Medicaid programs and other Federal health programs and private health programs, and the effectiveness and efficiency of the health care industry in general, by simplifying the administration of the system and enabling the efficient electronic transmission of certain health information. It would implement some of the requirements of Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 6, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration,
U.S. Department of Health and
Human Services, Attention: HCFA-
0149-P, P.O. Box 31850, Baltimore,
MD 21207-8850.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey
Building, 200 Independence Avenue,
SW., Washington, DC 20201,
or

Room C5-09-26, 7500 Security
Boulevard, Baltimore, MD 21244-
1850.

Comments may also be submitted electronically to the following e-mail address: transact@osaspe.dhhs.gov. E-mail comments should include the full name and address of the sender and

must be submitted to the referenced address to be considered. All comments should be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-0149-P and the specific section of this proposed rule. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890). Electronic and legible written comments will also be posted, along with this proposed rule, at the following web site: <http://aspe.os.dhhs.gov/admsimp>.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-1800 or by faxing to (202) 512-2250. The cost for each copy is \$8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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FOR FURTHER INFORMATION CONTACT:

Pat Brooks, (410) 786-5318, for medical diagnosis, procedure, and clinical code sets.

Joy Glass, (410) 786-6125, for the following transactions: Health claims or equivalent encounter information; health care payment and remittance advice; coordination of benefits; and health care claim status.

Marilyn Abramovitz, (410) 786-5939, for the following transactions: Enrollment and disenrollment in a health plan; eligibility for a health plan; health plan premium payments; and referral certification and authorization.

SUPPLEMENTARY INFORMATION:**I. Background**

[Please label written or e-mailed comments about this section with the subject: Background]

Electronic data interchange (EDI) is the electronic transfer of information, such as electronic media health care claims, in a standard format between trading partners. EDI allows entities within the health care system to exchange medical, billing, and other information and process transactions in a manner which is fast and cost effective. With EDI there is a substantial reduction in handling and process time, and the risk of lost paper documents is eliminated. EDI can eliminate the inefficiencies of handling paper documents, which will significantly reduce the administrative burden, lower operating costs and improve overall data quality.

The health care industry recognizes the benefits of EDI and many entities in that industry have developed proprietary EDI formats. Currently, there are about 400 formats for electronic health care claims being used in the United States. The lack of standardization makes it difficult to develop software, and the efficiencies and savings for health care providers and health plans that could be realized if formats were standardized are diminished.

Adopting national standard EDI formats for health care transactions would greatly decrease the burden on health care providers and their billing services, as would standardized data content. Standard EDI format allows data interchange using a common interchange structure, thus eliminating the need for users to reprogram their data processing systems for multiple formats. Standardization of the data content within the interchange structure involves: (1) Uniform definitions of the data elements that will be exchanged in each type of electronic transaction, and

(2) for some data elements, identification of the specific codes or values that are valid for each data element. The code sets needed for EDI in the health care industry include large coding and classification systems for medical diagnoses, procedures, and drugs, as well as smaller sets of codes for such items as types of facility, types of currency, types of units, and specified State within the United States. Standardized data content is essential to accurate and efficient EDI between the many producers and users of administrative health data transactions.

A. Legislation

The Congress included provisions to address the need for electronic transactions and other administrative simplification issues in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, which was enacted on August 21, 1996. Through subtitle F of title II of that law, the Congress added to title XI of the Social Security Act a new part C, entitled "Administrative Simplification." (Public Law 104-191 affects several titles in the United States Code. Hereafter, we refer to the Social Security Act as the Act; we refer to the other laws cited in this document by their names.) The purpose of this part is to improve the Medicare and Medicaid programs in particular and the efficiency and effectiveness of the health care system in general by encouraging the development of a health information system through the establishment of standards and requirements to facilitate the electronic transmission of certain health information.

Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose several requirements on HHS, health plans, health care clearinghouses, and certain health care providers concerning the electronic transmission of health information.

The first section, section 1171 of the Act, establishes definitions for purposes of part C of title XI for the following terms: code set, health care clearinghouse, health care provider, health information, health plan, individually identifiable health information, standard, and standard setting organization.

Section 1172 of the Act makes any standard adopted under part C applicable to (1) all health plans, (2) all health care clearinghouses, and (3) any health care providers that transmit any health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act.

This section also contains requirements concerning standard setting.

- The Secretary may adopt a standard developed, adopted, or modified by a standard setting organization (that is, an organization accredited by the American National Standards Institute (ANSI)) that has consulted with the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association (ADA).

- The Secretary may also adopt a standard other than one established by a standard setting organization, if the different standard will reduce costs for health care providers and health plans, the different standard is promulgated through negotiated rulemaking procedures, and the Secretary consults with each of the above-named groups.
- If no standard has been adopted by any standard setting organization, the Secretary is to rely on the recommendations of the National Committee on Vital and Health Statistics (NCVHS) and consult with the above-named groups.

In complying with the requirements of part C of title XI, the Secretary must rely on the recommendations of the NCVHS, consult with appropriate State, Federal, and private agencies or organizations, and publish the recommendations of the NCVHS in the **Federal Register**.

Paragraph (a) of section 1173 of the Act requires that the Secretary adopt standards for financial and administrative transactions, and data elements for those transactions, to enable health information to be exchanged electronically. Standards are required for the following transactions: health claims, health encounter information, health claims attachments, health plan enrollments and disenrollments, health plan eligibility, health care payment and remittance advice, health plan premium payments, first report of injury, health claim status, and referral certification and authorization. In addition, the Secretary is required to adopt standards for any other financial and administrative transactions that are determined to be appropriate by the Secretary.

Paragraph (b) of section 1173 of the Act requires the Secretary to adopt standards for unique health identifiers for all individuals, employers, health plans, and health care providers and requires further that the adopted standards specify for what purposes unique health identifiers may be used.

Paragraphs (c) through (f) of section 1173 of the Act require the Secretary to

establish standards for code sets for each data element for each health care transaction listed above, security standards for health care information systems, standards for electronic signatures (established together with the Secretary of Commerce), and standards for the transmission of data elements needed for the coordination of benefits and sequential processing of claims. Compliance with electronic signature standards will be deemed to satisfy both State and Federal requirements for written signatures with respect to the transactions listed in paragraph (a) of section 1173 of the Act.

In section 1174 of the Act, the Secretary is required to adopt standards for all of the above transactions, except claims attachments, within 24 months after enactment. The standards for claims attachments must be adopted within 30 months after enactment. Generally, after a standard is established it cannot be changed during the first year except for changes that are necessary to permit compliance with the standard. Modifications to any of these standards may be made after the first year, but not more frequently than once every 12 months. The Secretary must also ensure that procedures exist for the routine maintenance, testing, enhancement, and expansion of code sets and that there are crosswalks from prior versions.

Section 1175 of the Act prohibits health plans from refusing to process or delaying the processing of a transaction that is presented in standard format. The Act's requirements are not limited to health plans, however; instead, each person to whom a standard or implementation specification applies is required to comply with the standard within 24 months (or 36 months for small health plans) of its adoption. A plan or person may, of course, comply voluntarily before the effective date. A person may comply by using a health care clearinghouse to transmit or receive the standard transactions. Compliance with modifications to standards or implementation specifications must be accomplished by a date designated by the Secretary. This date may not be earlier than 180 days after the notice of change.

Section 1176 of the Act establishes a civil monetary penalty for violation of the provisions in part C of title XI of the Act, subject to several limitations. Penalties may not be more than \$100 per person per violation and not more than \$25,000 per person per violation of a single standard for a calendar year. The procedural provisions in section 1128A of the Act, "Civil Monetary Penalties," are applicable.

Section 1177 of the Act establishes penalties for a knowing misuse of unique health identifiers and individually identifiable health information: (1) A fine of not more than \$50,000 and/or imprisonment of not more than 1 year; (2) if misuse is "under false pretenses," a fine of not more than \$100,000 and/or imprisonment of not more than 5 years; and (3) if misuse is with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a fine of not more than \$250,000 and/or imprisonment of not more than 10 years.

Under section 1178 of the Act, the provisions of part C of title XI of the Act, as well as any standards established under them, supersede any State law that is contrary to them. However, the Secretary may, for statutorily specified reasons, waive this provision.

Finally, section 1179 of the Act makes the above provisions inapplicable to financial institutions or anyone acting on behalf of a financial institution when "authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments for a financial institution".

(Concerning this last provision, the conference report, in its discussion on section 1178, states:

"The conferees do not intend to exclude the activities of financial institutions or their contractors from compliance with the standards adopted under this part if such activities would be subject to this part. However, conferees intend that this part does not apply to use or disclosure of information when an individual utilizes a payment system to make a payment for, or related to, health plan premiums or health care. For example, the exchange of information between participants in a credit card system in connection with processing a credit card payment for health care would not be covered by this part. Similarly sending a checking account statement to an account holder who uses a credit or debit card to pay for health care services, would not be covered by this part. However, this part does apply if a company clears health care claims, the health care claims activities remain subject to the requirements of this part.") (H.R. Rep. No. 736, 104th Cong., 2nd Sess. 268-269 (1996))

B. Process for Developing National Standards

The Secretary has formulated a 5-part strategy for developing and implementing the standards mandated under part C of title XI of the Act:

1. To ensure necessary interagency coordination and required interaction with other Federal departments and the private sector, establish

interdepartmental implementation teams to identify and assess potential standards for adoption. The subject matter of the teams includes claims/encounters, identifiers, enrollment/eligibility, systems security, and medical coding/classification. Another team addresses cross-cutting issues and coordinates the subject matter teams. The teams consult with external groups such as the NCVHS' Workgroup on Data Standards, WEDI, ANSI's Healthcare Informatics Standards Board (HISB), the NUCC, the NUBC, and the ADA. The teams are charged with developing regulations and other necessary documents and making recommendations for the various standards to the HHS' Data Council through its Committee on Health Data Standards. (The HHS Data Council is the focal point for consideration of data policy issues. It reports directly to the Secretary and advises the Secretary on data standards and privacy issues.)

2. Develop recommendations for standards to be adopted.

3. Publish proposed rules in the *Federal Register* describing the standards. Each proposed rule provides the public with a 60-day comment period.

4. Analyze public comments and publish the final rules in the *Federal Register*.

5. Distribute standards and coordinate preparation and distribution of implementation guides.

This strategy affords many opportunities for involvement of interested and affected parties in standards development and adoption by enabling them to:

- Participate with standards setting organizations.
- Provide written input to the NCVHS.
- Provide written input to the Secretary of the HHS.
- Provide testimony at NCVHS' public meetings.
- Comment on the proposed rules for each of the proposed standards.
- Invite HHS staff to meetings with public and private sector organizations or meet directly with senior HHS staff involved in the implementation process.

The implementation teams charged with reviewing standards for designation as required national standards under the statute have defined, with significant input from the health care industry, a set of principles for guiding choices for the standards to be adopted by the Secretary. These principles are based on direct specifications in HIPAA and the purpose of the law, principles that support the regulatory philosophy set

forth in Executive Order 12866 and the Paperwork Reduction Act of 1995. To be designated as a HIPAA standard, each standard should:

1. Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or improvements in benefits from electronic health care transactions.
2. Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses.
3. Be consistent and uniform with the other HIPAA standards—their data element definitions and codes and their privacy and security requirements—and, secondarily, with other private and public sector health data standards.
4. Have low additional development and implementation costs relative to the benefits of using the standard.
5. Be supported by an ANSI-accredited standards developing organization or other private or public organization that will ensure continuity and efficient updating of the standard over time.
6. Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster.
7. Be technologically independent of the computer platforms and transmission protocols used in electronic health transactions, except when they are explicitly part of the standard.
8. Be precise and unambiguous, but as simple as possible.
9. Keep data collection and paperwork burdens on users as low as is feasible.
10. Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology.

A master data dictionary providing for common data definitions across the standards selected for implementation under HIPAA will be developed and maintained. We intend for the data element definitions to be precise, unambiguous, and consistently applied. The transaction-specific reports and general reports from the master data dictionary will be readily available to the public. At a minimum, the information presented will include data element names, definitions, and appropriate references to the transactions where they are used.

C. ANSI-Accredited Standards Committee Standard Setting Process

ANSI chartered the X12 Accredited Standards Committee (ASC) a number of years ago to design national electronic

standards for a wide range of business applications. A separate ASC X12N Subcommittee was in turn chartered to develop electronic standards specific to the insurance industry, including health care insurance. Volunteer members of the ASC X12N Subcommittee, including health care providers, health plans, bankers, and vendors involved in software development/billing/transmission of health care data and other business aspects of health care administrative activities, worked to develop standards for electronic health care transactions. ANSI accredits standards setting organizations to ensure that the procedures used meet certain due process requirements and that the process is voluntary, open, and based on obtaining consensus. Both Accredited Standards Committee (ASC) X12 and the National Council for Prescription Drug Programs (NCPDP) are ANSI-accredited standards developers.

Each of the two standards setting organizations has written procedures for the establishment of, and revisions to, established standards. All of the X12 Subcommittee N: Insurance (to which we refer hereafter as X12N) standard implementations mentioned in this regulation are ASC X12 standards and are published under the designation "Draft Standard for Trial Use (DSTU)". These standards are fully accepted and published national standards for use in electronic data exchanges. The DSTU designation is used to distinguish ASC X12 standards from those standards that have been forwarded to the American National Standards Institute for acceptance as American National Standards. ASC X12 creates a family of standards that are related and therefore only forwards standards to ANSI every five years. Although the official designation of X12 standards includes the word "Draft", these standards are final, published national standards.

The ASC X12 development process involves negotiation and consensus building, resulting in approval and publication of DSTU and American National Standards. The ASC X12 committee maintains current standards, proposes new standards and embraces new ideas.

The ASC X12N Subcommittee is the decision-making body responsible for obtaining consensus, which is necessary for approval of American National Standards in the field of insurance. The ASC X12N Subcommittee has the responsibility for specific standards development and standards maintenance activities, but its work must be ratified by the membership of ASC X12 as a whole.

Members of the ASC X12 committee are eligible to vote on ASC X12N issues. ASC X12N votes technical issues by letter ballot. Administrative issues may be voted by letter ballot or at general sessions during ASC X12N meetings.

The NCPDP Telecommunication Standard 3.2 specifies the rules regarding the creation of a new version and release. The NCPDP standards development process involves additions of new data elements or additional values to existing data elements. Updated documentation of existing or new data elements and a new version is created with changes to: (1) The definition of an existing data element, (2) deletions of values of an existing data element, (3) deletions of existing data elements, (4) major structural changes to the formats, (5) changes in the size of data elements, or (6) changes in the formats of data elements.

These rules were confirmed by the Board of Trustees in June, 1995 and ensure that the health plan explicitly knows which Data Dictionary to apply to the transaction when processing the claim. Likewise, the pharmacy needs to know what are the acceptable fields in the response returned from the health plan.

In addition, the Telecommunication Standard Format Version/Release changes anytime there is an approved change to the Professional Pharmacy Services (PPS) standard, Drug Utilization Review (DUR) standard, Billing Unit standard or to the data elements for the claim itself.

All NCPDP implementation guides must be reviewed and approved by the Maintenance and Control Work Group prior to release to the membership. All proposed standards will have an implementation guide developed and approved prior to the proposed standard being balloted. Once balloted, the originating committee may work with individual disapproval votes to accommodate their concerns and convert their votes to approval. If the changes made to accommodate disapproval votes are considered substantial, then the item under consideration must be balloted again.

After the originating group has reviewed all comments received during the letter ballot period, the Co-Chairs of the originating group make a written request to the Board of Trustees for the ballot results collected from the Standardization Co-chairs and the Board of Directors. The Board of Trustees retains final authority over the certification of these ballot results.

Two types of code sets are required for data elements in ASC X12N and NCPDP health transaction standards: (1)

Large coding and classification systems for medical data elements (for example, diagnoses, procedures, and drugs), and (2) smaller sets of codes for data elements such as type of facility, type of units, and specified State within address fields. Federal agencies (NCHS, HCFA, FDA) and some private organizations (the AMA and the ADA) have developed and maintained standards for large medical data code sets. In the past, these code sets have been mandated for use in some Federal and State programs, such as Medicare and Medicaid, and the ASC X12N and NCPDP standards setting organizations have adopted these code sets for use in their standards. For the smaller sets of codes needed for various transaction data elements they have designated other *de facto* standards, such as the 2-character state abbreviations used by the U.S. Postal Service, or developed code sets specifically for their transaction standards.

This proposed rule would establish the standards for code sets to be used in seven of the transactions specified in section 1173(a)(2) of the Act, and for a transaction for coordination of benefits. We anticipate publishing several regulations documents altogether to promulgate the various standards required under the HIPAA. The other proposed regulations cover security standards, the seventh and ninth transactions specified in the Act (first report of injury and claims attachments), and the four identifiers.

II. Provisions of the Proposed Regulations

[Please label written comments or e-mailed comments about this section with the subject: Provisions]

In this proposed rule, we propose standards for eight transactions and for code sets to be used in the transactions. We also propose requirements concerning the implementation of these standards. This proposed rule would set forth requirements that health plans, health care clearinghouses, and certain health care providers would have to meet concerning the use of these standards.

We propose to add a new part to title 45 of the Code of Federal Regulations for health plans, health care providers, and health care clearinghouses in general. The new part would be part 142 of title 45 and would be titled "Administrative Requirements." Subparts J through R would contain the provisions specifically concerning the standards proposed in this rule.

A. Applicability

Section 262 of HIPAA applies to all health plans, all health care clearinghouses, and any health care providers that transmit any health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act. Our proposed rules (at 45 CFR 142.102) would apply to the health plans and health care clearinghouses as well, but we would clarify the statutory language in our regulations for health care providers: we would have the regulations apply to any health care provider only when electronically transmitting any of the transactions to which section 1173(a)(1) of the Act refers.

Electronic transmissions would include transmissions using all media, even when the transmission is physically moved from one location to another using magnetic tape, disk, or CD media. Transmissions over the Internet (wide-open), Extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, and private networks are all included. Telephone voice response and "faxback" systems would not be included.

Our regulations would apply to health care clearinghouses when transmitting transactions to, and receiving transactions from, any health care provider or health plan that transmits and receives standard transactions (as defined under "transaction") and at all times when transmitting to or receiving transactions from another health care clearinghouse.

Entities that offer on-line interactive transmission must comply with the standards. The HyperText Markup Language (HTML) interaction between a server and a browser by which the data elements of a transaction are solicited from a user would not have to use the standards, although the data content must be equal to that required for the standard. Once the data elements are assembled into a transaction by the server, the transmitted transaction would have to comply with the standards.

The law would apply to each health care provider when transmitting or receiving any of the specified electronic transactions. Transactions for certain services that are not normally considered health care services, but which may be covered by some health plans, would not be subject to the standards proposed in this rule. These services would include, but not be limited to: nonemergency

transportation, physical alterations to living quarters for the purpose of accommodating disabilities, and case management. Other services may be added to this list at the discretion of the Secretary.

We invite comments on this list and ask for identification of other types of services that may fall into this category. We will publish a complete list of these services and a process to request an exemption in the final rule.

The law applies to health plans for all transactions.

Section 142.104 would contain the following provisions (from section 1175 of the Act):

If a person conducts a transaction (as defined in § 142.103) with a health plan as a standard transaction, the following apply:

(1) The health plan may not refuse to conduct the transaction as a standard transaction.

(2) The health plan may not delay the transaction or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction.

(3) The information transmitted and received in connection with the transaction must be in the form of standard data elements of health information.

As a further requirement, we would provide that a health plan that conducts transactions through an agent assure that the agent meets all the requirements of part 142 that apply to the health plan.

Section 142.105 would state that a person or other entity may meet the requirements of § 142.104 by either—

(1) Transmitting and receiving standard data elements, or

(2) Submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse and receiving standard data elements through the health care clearinghouse.

Health care clearinghouses would be able to accept nonstandard transactions for the sole purpose of translating them into standard transactions for sending customers and would be able to accept standard transactions and translate them into nonstandard formats for receiving customers. We would state in § 142.105 that the transmission of nonstandard transactions, under contract, between a health plan or a health care provider and a health care clearinghouse would not violate the law.

Transmissions within a corporate entity would not be required to comply with the standards. A hospital that is wholly owned by a managed care

company would not have to use the standards to pass encounter information back to the home office, but it would have to use the standard claims transaction to submit a claim to another health plan. Another example might be transactions within Federal agencies and their contractors and between State agencies within the same State. For example, Medicare enters into contracts with insurance companies and common working file sites that process Medicare claims using government furnished software. There is constant communication, on a private network, between HCFA Central Office and the Medicare carriers, intermediaries and common working file sites. This communication may continue in nonstandard mode. However, these contractors must comply with the standards when exchanging any of the transactions covered by HIPAA with an entity outside these "corporate" boundaries.

Although there are situations in which the use of the standards is not required (for example, health care providers may continue to submit paper claims and employers are not required to use any of the standard transactions), we stress that a standard may be used voluntarily in any situation in which it is not required.

B. Definitions

Section 1171 of the Act defines several terms and our proposed rules would, for the most part, simply restate the law. The terms that we are defining in this proposed rule follow:

1. ASC X12 stands for the Accredited Standards Committee chartered by the American National Standards Institute to design national electronic standards for a wide range of business applications.

2. ASC X12N stands for the ASC X12 subcommittee chartered to develop electronic standards specific to the insurance industry.

3. Code set.

We would define "code set" as section 1171(1) of the Act does: "code set" means any set of codes used for encoding data elements, such as tables of terms, medical concepts, medical diagnosis codes, or medical procedure codes.

4. Health care clearinghouse.

We would define "health care clearinghouse" as section 1171(2) of the Act does, but we are adding a further, clarifying sentence. The statute defines a "health care clearinghouse" as a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements. We would

further explain that such an entity is one that currently receives health care transactions from health care providers and other entities, translates the data from a given format into one acceptable to the intended recipient, and forwards the processed transaction to appropriate health plans and other health care clearinghouses, as necessary, for further action.

There are currently a number of private clearinghouses that perform these functions for health care providers. For purposes of this rule, we would consider billing services, repricing companies, community health management information systems or community health information systems, value-added networks, and switches performing these functions to be health care clearinghouses.

5. Health care provider.

As defined by section 1171(3) of the Act, a "health care provider" is a provider of services as defined in section 1861(u) of the Act, a provider of medical or other health services as defined in section 1861(s) of the Act, and any other person who furnishes health care services or supplies. Our regulations would define "health care provider" as the statute does and clarify that the definition of a health care provider is limited to those entities that furnish, or bill and are paid for, health care services in the normal course of business.

For a more detailed discussion of the definition of health care provider, we refer the reader to our proposed rule, HCFA-0045-P, Standard Health Care Provider Identifier, published elsewhere in this *Federal Register*.

6. Health information.

"Health information," as defined in section 1171 of the Act, means any information, whether oral or recorded in any form or medium, that—

- Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

- Relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

We propose the same definition for our regulations.

7. Health plan.

We propose that a "health plan" be defined essentially as section 1171 of the Act defines it. Section 1171 of the Act cross refers to definitions in section 2791 of the Public Health Service Act (as added by Public Law 104-191, 42

U.S.C. 300gg-91); we would incorporate those definitions as currently stated into our proposed definitions for the convenience of the public. We note that many of these terms are defined in other statutes, such as the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93-406, 29 U.S.C. 1002(7) and the Public Health Service Act. Our definitions are based on the roles of plans in conducting administrative transactions, and any differences should not be construed to affect other statutes.

For purposes of implementing the provisions of administrative simplification, a "health plan" would be an individual or group health plan that provides, or pays the cost of, medical care. This definition includes, but is not limited to, the 13 types of plans listed in the statute. On the other hand, plans such as property and casualty insurance plans and workers compensation plans, which may pay health care costs in the course of administering nonhealth care benefits, are not considered to be health plans in the proposed definition of health plan. Of course, these plans may voluntarily adopt these standards for their own business needs. At some future time, the Congress may choose to expressly include some or all of these plans in the list of health plans that must comply with the standards.

Health plans often carry out their business functions through agents, such as plan administrators (including third party administrators), entities that are under "administrative services only" (ASO) contracts, claims processors, and fiscal agents. These agents may or may not be health plans in their own right; for example, a health plan may act as another health plan's agent as another line of business. As stated earlier, a health plan that conducts HIPAA transactions through an agent is required to assure that the agent meets all HIPAA requirements that apply to the plan itself.

"Health plan" includes the following, singly or in combination:

a. "Group health plan" (as currently defined by section 2791(a) of the Public Health Service Act). A group health plan is a plan that has 50 or more participants (as the term "participant" is currently defined by section 3(7) of ERISA) or is administered by an entity other than the employer that established and maintains the plan. This definition includes both insured and self-insured plans. We define "participant" separately below.

Section 2791(a)(1) of the Public Health Service Act defines "group health plan" as an employee welfare benefit plan (as currently defined in

section 3(1) of ERISA) to the extent that the plan provides medical care, including items and services paid for as medical care, to employees or their dependents directly or through insurance, or otherwise.

It should be noted that group health plans that have fewer than 50 participants and that are administered by the employer would be excluded from this definition and would not be subject to the administrative simplification provisions of HIPAA.

b. "Health insurance issuer" (as currently defined by section 2791(b) of the Public Health Service Act).

Section 2791(b)(2) of the Public Health Service Act currently defines a "health insurance issuer" as an insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance.

c. "Health maintenance organization" (as currently defined by section 2791(b) of the Public Health Service Act).

Section 2791(b) of the Public Health Service Act currently defines a "health maintenance organization" as a Federally qualified health maintenance organization, an organization recognized as such under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such a health maintenance organization. These organizations may include preferred provider organizations, provider sponsored organizations, independent practice associations, competitive medical plans, exclusive provider organizations, and foundations for medical care.

d. Part A or Part B of the Medicare program (title XVIII of the Act).

e. The Medicaid program (title XIX of the Act).

f. A "Medicare supplemental policy" as defined under section 1882(g)(1) of the Act.

Section 1882(g)(1) of the Act defines a "Medicare supplemental policy" as a health insurance policy that a private entity offers a Medicare beneficiary to provide payment for expenses incurred for services and items that are not reimbursed by Medicare because of deductible, coinsurance, or other limitations under Medicare. The statutory definition of a Medicare supplemental policy excludes a number of plans that are generally considered to be Medicare supplemental plans, such as health plans for employees and former employees and for members and former members of trade associations and unions. A number of these health plans may be included under the

definitions of "group health plan" or "health insurance issuer", as defined in a. and b. above.

g. A "long-term care policy," including a nursing home fixed-indemnity policy. A "long-term care policy" is considered to be a health plan regardless of how comprehensive it is. We recognize the long-term care insurance segment of the industry is largely unautomated and we welcome comments regarding the impact of HIPAA on the long-term care segment.

h. An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers. This includes plans and other arrangements that are referred to as multiple employer welfare arrangements ("MEWAs") as defined in section 3(40) of ERISA.

i. The health care program for active military personnel under title 10 of the United States Code.

j. The veterans health care program under chapter 17 of title 38 of the United States Code.

This health plan primarily furnishes medical care through hospitals and clinics administered by the Department of Veterans Affairs for veterans with a service-connected disability that is compensable. Veterans with non-service-connected disabilities (and no other health benefit plan) may receive health care under this health plan to the extent resources and facilities are available.

k. The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in 10 U.S.C. 1072(4).

CHAMPUS primarily covers services furnished by civilian medical providers to dependents of active duty members of the uniformed services and retirees and their dependents under age 65.

l. The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*).

This program furnishes services, generally through its own health care providers, primarily to persons who are eligible to receive services because they are of American Indian or Alaskan Native descent.

m. The Federal Employees Health Benefits Program under 5 U.S.C. chapter 89.

This program consists of health insurance plans offered to active and retired Federal employees and their dependents. Depending on the health plan, the services may be furnished on a fee-for-service basis or through a health maintenance organization.

Note: Although section 1171(5)(M) of the Act refers to the "Federal Employees Health Benefit Plan," this and any other rules adopting administrative simplification standards will use the correct name, the Federal Employees Health Benefits Program. One health plan does not cover all Federal employees; there are over 350 health plans that provide health benefits coverage to Federal employees, retirees, and their eligible family members. Therefore, we will use the correct name, the Federal Employees Health Benefits Program, to make clear that the administrative simplification standards apply to all health plans that participate in the Program.

n. Any other individual or group health plan, or combination thereof, that provides or pays for the cost of medical care.

We would include a fourteenth category of health plan in addition to those specifically named in HIPAA, as there are health plans that do not readily fit into the other categories but whose major purpose is providing health benefits. The Secretary would determine which of these plans are health plans for purposes of title II of HIPAA. This category would include the Medicare Plus Choice plans that will become available as a result of section 1855 of the Act as amended by section 4001 of the Balanced Budget Act of 1997 (Pub. L. 105-33) to the extent that these health plans do not fall under any other category.

8. Medical care.

"Medical care," which is used in the definition of health plan, would be defined as current section 2791 of the Public Health Service Act defines it: the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any body structure or function of the body; amounts paid for transportation primarily for and essential to these items; and amounts paid for insurance covering the items and the transportation specified in this definition.

9. Participant.

We would define the term "participant" as section 3(7) of ERISA currently defines it: a "participant" is any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan that covers employees of such an employer or members of such organizations, or whose beneficiaries may be eligible to receive any such benefits. An "employee" would include an individual who is treated as an employee under section 401(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 401(c)(1)).

10. Small health plan.

We would define a "small health plan" as a group health plan with fewer than 50 participants.

The HIPAA does not define a "small health plan" but instead leaves the definition to be determined by the Secretary. The Conference Report suggests that the appropriate definition of a "small health plan" is found in current section 2791(a) of the Public Health Service Act, which is a group health plan with fewer than 50 participants. We would also define small individual health plans as those with fewer than 50 participants.

11. Standard.

Section 1171 of the Act defines "standard," when used with reference to a data element of health information or a transaction referred to in section 1173(a)(1) of the Act, as any such data element or transaction that meets each of the standards and implementation specifications adopted or established by the Secretary with respect to the data element or transaction under sections 1172 through 1174 of the Act.

Under our definition, a standard would be a set of rules for a set of codes, data elements, transactions, or identifiers promulgated either by an organization accredited by ANSI or the HHS for the electronic transmission of health information.

12. Transaction.

"Transaction" would mean the exchange of information between two parties to carry out financial and administrative activities related to health care. A transaction would be (a) any of the transactions listed in section 1173(a)(2) of the Act and (b) any determined appropriate by the Secretary in accordance with section 1173(a)(1)(B) of the Act. We present them below in the order in which we propose standards for them in the regulations text.

A "transaction" would mean any of the following:

a. Health claims or equivalent encounter information.

This transaction may be used to submit health care claim billing information, encounter information, or both, from health care providers to health plans, either directly or via intermediary billers and claims clearinghouses.

b. Health care payment and remittance advice.

This transaction may be used by a health plan to make a payment to a financial institution for a health care provider (sending payment only), to send an explanation of benefits or a remittance advice directly to a health care provider (sending data only), or to

make payment and send an explanation of benefits remittance advice to a health care provider via a financial institution (sending both payment and data).

c. Coordination of benefits.

This transaction can be used to transmit health care claims and billing payment information between health plans with different payment responsibilities where coordination of benefits is required or between health plans and regulatory agencies to monitor the rendering, billing, and/or payment of health care services within a specific health care/insurance industry segment.

In addition to the nine electronic transactions specified in section 1173(a)(2) of the Act, section 1173(f) directs the Secretary to adopt standards for transferring standard data elements among health plans for coordination of benefits and sequential processing of claims. This particular provision does not state that there should be standards for electronic transfer of standard data elements among health plans. However, we believe that the Congress, when writing this provision, intended for these standards to apply to the electronic form for coordination of benefits and sequential processing of claims. The Congress expressed its intent on these matters generally in section 1173(a)(1)(B), where the Secretary is directed to adopt "other financial and administrative transactions * * * consistent with the goals of improving the operation of the health care system and reducing administrative costs."

d. Health claim status.

This transaction may be used by health care providers and recipients of health care products or services (or their authorized agents) to request the status of a health care claim or encounter from a health plan.

e. Enrollment and disenrollment in a health plan.

This transaction may be used to establish communication between the sponsor of a health benefit and the health plan. It provides enrollment data, such as subscriber and dependents, employer information, and health care provider information. The sponsor is the backer of the coverage, benefit or product. A sponsor can be an employer, union, government agency, association, or insurance company. The health plan refers to an entity that pays claims, administers the insurance product or benefit, or both.

f. Eligibility for a health plan.

This transaction may be used to inquire about the eligibility, coverage, or benefits associated with a benefit plan, employer, plan sponsor, subscriber, or a

dependent under the subscriber's policy. It also can be used to communicate information about or changes to eligibility, coverage, or benefits from information sources (such as insurers, sponsors, and health plans) to information receivers (such as physicians, hospitals, third party administrators, and government agencies).

g. Health plan premium payments.

This transaction may be used by, for example, employers, employees, unions, and associations to make and keep track of payments of health plan premiums to their health insurers.

h. Referral certification and authorization.

This transaction may be used to transmit health care service referral information between health care providers, health care providers furnishing services, and health plans. It can also be used to obtain authorization for certain health care services from a health plan.

i. First report of injury.

This transaction may be used to report information pertaining to an injury, illness, or incident to entities interested in the information for statistical, legal, claims, and risk management processing requirements. Although we are proposing a definition for this transaction, we are not proposing a standard for it in this **Federal Register** document. (See section E.9 for a more in-depth discussion.) We will publish a separate proposed rule for it.

j. Health claims attachments.

This transaction may be used to transmit health care service information, such as subscriber, patient, demographic, diagnosis, or treatment data for the purpose of a request for review, certification, notification, or reporting the outcome of a health care services review. Although we are proposing a definition for this transaction, we are not proposing a standard for it in this **Federal Register** document because the legislation gave the Secretary an additional year to designate this standard. We will publish a separate proposed rule for it.

k. Other transactions as the Secretary may prescribe by regulation.

Under section 1173(a)(1)(B) of the Act, the Secretary shall adopt standards, and data elements for those standards, for other financial and administrative transactions deemed appropriate by the Secretary. These transactions would be consistent with the goals of improving the operation of the health care system and reducing administrative costs.

C. Effective Dates—General

Health plans would be required by Part 142 to comply with our requirements as follows:

1. Each health plan that is not a small health plan would have to comply with the requirements of Part 142 no later than 24 months after the effective date of the final rule.

2. Each small health plan would have to comply with the requirements of Part 142 no later than 36 months after the effective date of the final rule.

Health care providers and health care clearinghouses would be required to begin using the standard by 24 months after the effective date of the final rule.

(The effective date of the final rule will be 60 days after the final rule is published in the **Federal Register**.)

Provisions of trading partner agreements that stipulate data content, format definitions or conditions that conflict with the adopted standard would be invalid beginning 36 months from the effective date of the final rule for small health plans, and 24 months from the effective date of the final rule for all other health plans.

If HHS adopts a modification to an implementation specification or a standard, the implementation date of the modification would be no earlier than the 180th day following the adoption of the modification. HHS would determine the actual date, taking into account the time needed to comply due to the nature and extent of the modification. HHS would be able to extend the time for compliance for small health plans. This provision would be at § 142.106.

The law does not address scheduling of implementation of the standards; it gives only a date by which all concerned must comply. As a result, any of the health plans, health care clearinghouses, and health care providers may implement a given standard earlier than the date specified in the subpart created for that standard. We realize that this may create some problems temporarily, as early implementers would have to be able to continue using old standards until the new ones must, by law, be in place.

At the WEDI Healthcare Leadership Summit held on August 15, 1997, it was recommended that health care providers not be required to use any of the standards during the first year after the adoption of the standard. However, willing trading partners could implement any or all of the standards by mutual agreement at any time during the 2-year implementation phase (3-year implementation phase for small health plans). In addition, it was recommended

that a health plan give its health care providers at least 6 months notice before requiring them to use a given standard.

We welcome comments specifically on early implementation as to the extent to which it would cause problems and how any problems might be alleviated.

D. Data Content

[Please label any written comments or e-mailed comments about this section with the subject: Data Content]

We propose standard data content for each adopted standard. There are two aspects of data content standardization: (1) Standardization of data elements, including their formats and definition, and (2) standardization of the code sets or values that can appear in selected data elements. A telephone number is an example of a data element that has a standard definition and format, but does not have an enumerated set of valid codes or values. A patient's diagnosis is an example of a data element that has a standard definition, a standard format, and a set of valid codes. Information that would facilitate data content standardization, while also facilitating identical implementations, would consist of implementation guides, data conditions, and data dictionaries, as noted in the addenda to this proposed rule, and the standard code sets for medical data that are part of this rule. Data conditions are rules that define the situations when a particular data element or record/segment can be used. For example, "the name of the tribe" applies only to Indian Health Service claims. The defining rule for that data element would be "must be entered if claim is Indian Health Service".

1. Data Element and Record/Segment Content

Once we publish the final rule in the Federal Register and it is effective, there will be no additional data element or record/segment content modifications in any of the transactions for at least one year.

In our evaluation and recommendation for each proposed standard transaction, we have tried to meet as many business needs as possible while retaining our commitment to the guiding principles. We encourage comments on how the standards may be improved.

It is important to note that all data elements would be governed by the principle of a maximum defined data set. No one would be able to exceed the data sets defined in the final rule, until that rule is amended one or more years from the effective date of the final rule. This means that if a transaction has all

of the data possible—based on the appropriate implementation guide, data content and data conditions specifications, and data dictionary—then a health plan would have to accept the transaction and process it. This does not mean, however, that the health plan would have to store or use information that it does not need in order to process a claim or encounter, except for audit trail purposes or for coordination of benefits if applicable. It does mean that the health plan would not be able to require additional information, and it does mean that the health plan would not be able to reject a transaction because it contains information the health plan does not want. This principle applies to the data elements of all transactions proposed for adoption in this proposed rule.

2. Code Sets

[Please label any written comments or e-mailed comments about this section with the subject: Code Sets]

a. Background

The administrative simplification provisions of HIPAA require the Secretary of HHS to adopt standards for code sets for administrative and financial transactions. Two types of code sets are required for data elements in the transaction standards to be established under HIPAA: (1) Large code sets for medical data, including coding systems for:

- Diseases, injuries, impairments, other health related problems, and their manifestations;
- Causes of injury, disease, impairment, or other health-related problems;
- Actions taken to prevent, diagnose, treat, or manage diseases, injuries, and impairments and any substances, equipment, supplies, or other items used to perform these actions; and (2) smaller sets of codes for other data elements such as race/ethnicity, type of facility, and type of unit.

A separate HIPAA implementation team co-chaired by representatives from HCFA, the Centers for Disease Control/National Center for Health Statistics, and the National Institutes of Health/National Library of Medicine, and including members from other interested HHS agencies and Federal Departments, was established to recommend the code sets that should become HIPAA standards for medical data. HHS efforts to identify candidate medical data code sets were coordinated with the NCVHS Subcommittee on Health Data Needs, Standards, and Security. The smaller sets of codes for other data elements in transactions

standards are part of the transaction standards themselves and are specified in their implementation guides.

The following medical data code sets are already in use in administrative and financial transactions:

ICD-9-CM: The International Classification of Diseases, Ninth Revision, Clinical Modification, classifies both diagnoses (Volumes 1 and 2) and procedures (Volume 3). All hospitals and ambulatory care settings use it to capture diagnoses for administrative transactions. The procedure system is used for all inpatient procedure coding for administrative transactions. The ICD-9-CM was adopted for use in January 1979.

The ICD-9-CM Coordination and Maintenance Committee is a Federal interdepartmental committee charged with maintaining and updating the ICD-9-CM. Requests for modification are handled through the ICD-9-CM Coordination and Maintenance Committee; no official changes are made without being brought before this committee. Suggestions for modifications come from both the public and private sectors and interested parties are asked to submit recommendations for modification prior to a scheduled meeting.

Modifications are not considered without the expert advice of clinicians, epidemiologists, and nosologists (both public and private sectors). The meetings are open to the public and are announced in the Federal Register; all interested members of the public are invited to attend and submit written comments. Meetings are held twice each year.

Approved modifications become effective October 1 of the following year. Changes to ICD-9-CM are published on the NCHS and HCFA websites, as well as by the American Hospital Association (AHA) and other private sector vendors.

CPT: Physicians' Current Procedural Terminology is used by physicians and other health care professionals to code their services for administrative transactions. CPT is level one of the Health Care Financing Administration Procedure Coding System (HCPCS).

CPT codes are updated annually by the AMA. The CPT Panel is comprised of 15 physicians, 10 nominated by the AMA and one each nominated by Blue Cross/Blue Shield of America (BCBSA), HIAA, HCFA, and AHA. Meetings are not open to the public.

Alpha-numeric HCPCS: Alpha-numeric Health Care Financing Administration Procedure Coding System (HCPCS) contains codes for medical equipment and supplies;

prosthetics and orthotics; injectable drugs; transportation services; and other services not found in CPT. Alpha-numeric codes are level 2 of HCPCS. Its use is generally limited to ambulatory settings. The Omnibus Budget Reconciliation Act of 1986 requires the use of HCPCS in the Medicare program for services in hospital outpatient departments.

Level II of HCPCS is updated annually and is maintained jointly by the BCBSA, the Health Insurance Association of America and HCFA.

HCFA's regional offices assure coordination of local code assignments among the payers in a State; local codes must be approved by HCFA's central office to assure they do not duplicate national codes in CPT or Level II of HCPCS.

Decisions regarding additions, deletions and revisions to Level II of HCPCS are made by the Alpha-Numeric Editorial Panel. This Panel, which meets three times a year, is comprised of representatives of the BCBSA, HIAA, and HCFA; the meetings are not open to the public. There are formal mechanisms to coordinate this Panel's activities with CPT and the American Dental Association's (ADA) procedure coding system.

The revised HCPCS is available free of charge as a public use file.

CDT: Current Dental Terminology is used in reporting dental services. CDT codes are also included in alpha-numeric HCPCS with a first character of D.

Codes are revised on a five-year cycle by the ADA through its Council on Dental Benefits Program. Meetings are not open to the public.

NDC: National Drug Codes are used in reporting prescription drugs in pharmacy transactions and some claims by health care professionals. The codes are assigned when the drugs are approved or repackaged and may be found on the packaging of drugs.

i. Candidates for the Standards

The principal sources of input to the recommendations for medical data code sets were:

(a) The ANSI HISB Standards Inventory.

The inventoried code sets are:

ICD-9-CM, which consists of both diagnoses and procedure sections. The diagnosis system is widely used in the health care industry. All hospitals and ambulatory care settings use it to capture diagnoses. The procedure system is used for all inpatient procedure coding.

ICD-10-CM for diagnosis, which is under development as a replacement to

the diagnosis section of ICD-9-CM and not yet in use in this country. ICD-10 was developed by the World Health Organization and has been implemented in approximately 37 countries to report mortality data. These are data that are taken and coded from death certificates. However, since our country's need for morbidity data cannot be satisfied by ICD-10, the United States is preparing a clinical modification of ICD-10 (ICD-10-CM). The public has been given an opportunity to review and comment on the current draft of ICD-10-CM. The final draft should be available in the summer of 1998.

• **ICD-10-PCS for procedures**, which is under development for use in the U.S. only as a replacement to the procedure section of ICD-9-CM.

• **CPT**, which is used by all physicians and many other practitioners to code their services. It is also used by hospital outpatient departments to code certain ambulatory services.

• **SNOMED (Systematized Nomenclature of Medicine)**, which is being used by the developers of computer-based patient record systems. It is not used in administrative transactions.

• **CDT**, which is used by all practicing dentists to code their services for administrative transactions.

• **NIC (Nursing Interventions Classification)**, which is not used in administrative transactions in this country.

• **LOINC (Logical Observation Identifier Names and Codes)**, which is being used in a pilot-test by the Centers for Disease Control to report tests as evidence of a communicable disease. It is also being tested in electronic transactions involving detailed clinical laboratory tests and results. It is not used in administrative transactions.

• **HHCC (Home Health Care Classification system)**, which is not being used as a reporting system in this country.

(b) A more extensive inventory of existing coding and classification systems prepared by the coding and classification implementation team itself and evaluated against the general HIPAA standards evaluation criteria (as found in section I.B., Process for developing standards for this proposed rule).

This larger inventory (which will be placed on the home page of the National Center for Health Statistics at: <http://www.cdc.gov/nchswww/nchshome.htm>) does not include any additional viable candidates for the initial standards for administrative code sets to be established under this proposed rule. It does contain some

additional systems that may be applicable to elements of the claims attachments standard (to be issued on a later timetable) and to eventual HIPAA recommendations to the Congress regarding full electronic medical records.

(c) The oral and written testimony submitted at an NCVHS public hearing to discuss medical/clinical coding and classification issues in connection with the requirements of HIPAA on April 15-16, 1997. The following entities presented testimony at the hearing:

AMA, AHA, American Health Information Management Association, American College of Obstetricians and Gynecologists, American Academy of Pediatrics, American Nurses Association, National Association for Home Care, ADA, Family Practice Primary Care Work Group, National Association of Children's Hospitals and Related Institutions, Food and Drug Administration, College of American Pathologists, the Omaha System, developers of new nomenclature systems, research groups, publishers, consultants in coding, managed care organizations, software vendors, and informatics specialists.

(d) The NCVHS' recommendations to the Secretary, HHS regarding codes and classifications.

(e) Comments received in response to presentations at professional meetings and at the July 9, 1997, public meeting held by HHS on progress on selecting the initial HIPAA standards.

For the hearing on April 15-16, 1997, the NCVHS invited interested organizations representing both the users and developers of medical/clinical classification systems to present written and/or oral testimony responding to the following questions.

"What medical/clinical codes and classifications do you use in administrative transactions now? What do you perceive as the main strengths and weaknesses of current methods for coding and classification of encounter and/or enrollment data?"

"What medical/clinical codes and classifications do you recommend as initial standards for administrative transactions, given the time frames in the HIPAA? What specific suggestions would you like to see implemented regarding coding and classification?"

"Prior to the passage of HIPAA, the National Center for Health Statistics initiated development of a clinical modification of the International Classification of Diseases-10 (ICD-10-CM), and HCFA undertook development of a new procedure coding system for inpatient procedures (called ICD-10-PCS), with a plan to implement them simultaneously in the year 2000. On the pre-HIPAA schedule, they will be released to the field for

evaluation and testing by 1998. If some version of ICD is to be used for administrative transactions, do you think it should be ICD-9-CM or ICD-10-CM and ICD-10-PCS, assuming that field evaluations are generally positive?

"Recognizing that the goal of P.L. 104-191 is administrative simplification, how, from your perspective, would you deal with the current coding environment to improve simplification, reduce administrative burden, but also obtain medically meaningful information?

"How should the ongoing maintenance of medical/clinical code sets and the responsibility, intellectual input and funding for maintenance be addressed for the classification systems included in the standards? What are the arguments for having these systems in the public domain versus in the private sector, with or without copyright?

"What would be the resource implications of changing from the coding and classification systems that you currently are using in administrative transactions to other systems? How do you weigh the costs and benefits of making such changes?

"A Coding and Classification Implementation Team has been established within the Department of Health and Human Services to address the requirements of P.L. 104-191: the Team's charge is enclosed. Does your organization have any concerns about the process being undertaken by the Department to carry out the requirements of the law in regard to coding and classification issues? If so, what are those concerns and what suggestions do you have for improvements?"

In general, those testifying at the April 15-16 hearing recommended that systems currently in use be designated as standards for the year 2000, since potential replacements were not yet fully tested and could not be implemented throughout the health care system by 2000. Testimony supported moving to ICD-10-CM for medical diagnoses after the year 2000 (different timetables were mentioned). Testimony provided by representatives from the American Psychiatric Association described the ongoing efforts to make the Diagnostic and Statistical Manual of Mental and Behavioral Disorders (DSM) completely compatible with ICD. The American Psychiatric Association has crosswalked the appropriate ICD-9-CM codes to what appear in the DSM for its diagnostic categories and is doing the same for ICD-10-CM for diagnosis. The mapping between DSM and ICD-10-CM for diagnosis is more precise than is possible for ICD-9-CM so the APA favors moving to ICD-10-CM for diagnosis as soon as possible.

Many of those testifying emphasized the need to change to a less fragmented, overlapping, and duplicative approach to procedure coding, but sometime after the year 2000. Different potential

approaches to achieving a more integrated procedure coding system were mentioned. Many identified current variations in the implementation of coding systems and the use of local HCPCS codes as problems that should be addressed.

In general, those testifying approved the implementation team's charge, which includes an initial focus on the administrative standards for the year 2000 and longer term attention to recommendations for the more clinically-detailed vocabulary needed for full electronic medical records. Some of the developers of vocabularies and classifications who presented testimony emphasized the potential usefulness of their systems for full computer-based patient records, rather than for the administrative transactions that are the focus of the initial HIPAA standards.

Comments on codes and classifications sets made at the June 3-4, 1997, Health Data Needs, Standards and Security Subcommittee hearings in San Francisco, California echoed those heard at the April hearing.

On June 25, 1997, the NCVHS submitted the following recommendations to the Secretary of HHS regarding standards for codes and classifications for administrative transactions:

The Committee recommends that diagnosis and procedure coding continue to use the current code sets because replacements will not be ready for implementation by the year 2000. ICD-9-CM diagnosis codes, ICD-9-CM volume 3 procedure codes, and HCPCS (including Current Procedural Terminology (CPT) and Current Dental Terminology (CDT)) procedure codes should be adopted as the standards to be implemented by the year 2000. Annual updates to ICD-9-CM and HCPCS should continue to follow the schedule currently used. In addition, we recommend that you advise industry to build and modify their information systems to accommodate a change to ICD-10-CM diagnosis coding in the year 2001 and a major change to a unified approach to coding procedures (yet to be defined) by the year 2002 or 2003. We recommend that you identify and implement an approach for procedure coding that addresses deficiencies in the current systems, including issues of specificity and aggregation, unnecessary redundancy, and incomplete coverage of health care providers and settings.

At the July 9, 1997, public meeting on progress on selecting the HIPAA standards, the implementation team presented an overview of its planned recommendations for coding and classification standards for the year 2000. The team's recommendations were similar to those of the NCVHS but included the use of NDC codes for pharmacy transactions that the NCVHS

did not address. The implementation team did not recommend a specific timetable for changes in the standards after the year 2000. The team believed that its recommendations for changes after the year 2000 should await the results of field testing of ICD-10-CM for diagnosis and ICD-10-PCS for procedures (which should be available in March 1998) and further consideration of options for moving toward a more integrated approach to procedure coding.

One of the coding systems that the implementation team considered to be promising for future implementation was the Universal Product Numbers (UPNs) system. The UPN system is a product numbering technology that uses human readable and bar code formats to identify products. A bar code and human readable number, which is unique to a particular product, is printed on the label or box as part of the production line process. There are currently two separate and different UPN coding systems that are generally accepted and recognized for health care products. One is numeric, a fixed 14 digit number, and the other an alpha-numeric format, a variable length number 8 to 20 digits. The numeric format is the system of the Health Care Uniform Code Council (UCC) and the alpha-numeric format is used by the Health Industry Business Communications Council (HIBCC). The first series of digits are assigned by one of these two private companies and identify the manufacturer or a repackager. The remaining digits are assigned by the manufacturer or repackager and are assigned according to the user's own standards and specifications. A manufacturer or repackager can apply to either one of these companies to use its system. The application fees, which are collected by either UCC or HIBCC, vary based on the manufacturer's or repackager's sales volume.

The Department of Defense has started to use UPNs for its prime vendor program. Currently, there are purchasers and providers of medical equipment that are using the UPN system for inventory purposes, but, at this time, there are no insurers that pay for health care products using the UPN system. California Medicaid, however, has plans to begin using UPNs as part of its system.

At this time, approximately 30 percent of the health care products do not have a UPN assigned to them. For this reason, in addition to the fact that no insurer currently uses UPNs for reimbursement, UPNs were not included in the initial list of standards.

However, it is a coding system that bears close examination during the next few years as a possible replacement for alpha-numeric HCPCS codes for health care products. Some consideration is being given to conducting a demonstration study in the Medicare program on the use of UPNs for reimbursement.

Comments on the use of the UPNs as a national coding system are being sought. In particular, comments on issues such as timing of implementation, any complications presented by the existence of multiple bodies issuing UPN codes, the acceptability of varying lengths and formats, and the frequent changes in manufacture and packaging size would be helpful.

ii. Changes to HCPCS for Implementation in the Year 2000

In proposing the use of the existing coding systems as the standards for the year 2000, many participants at public meetings voiced concern about overlaps in several of the coding systems, problems with HCPCS local codes, differences in implementation of NDC codes in different systems, and differences between the CDT codes in HCPCS and those issued by the ADA. It was repeatedly suggested that these issues be resolved and overlaps be eliminated for standards adopted in the year 2000. After careful consideration of all public input and of the options for modifying HCPCS in the relatively near term, the implementation team is recommending that changes be implemented in HCPCS in the year 2000 to reduce its overlap with other coding systems.

HCPCS contains three levels. Level 1, CPT, is developed and maintained by the AMA and captures physician services. Level 2, alpha-numeric HCPCS, contains codes for products, supplies, and services not included in CPT. Level 3, local codes, includes all the codes developed by insurers and agencies to fulfill local needs.

We are proposing the adoption of HCPCS levels 1 and 2 for implementation in the year 2000. In addition, we are proposing to modify HCPCS level 3 for the year 2000 to eliminate overlaps and duplications.

Most third-party public and private health insurers (such as Medicare contractors, Medicaid program and fiscal agents, and private commercial health insurers) use HCPCS as a basis for paying claims for medical services provided on a fee-for-service basis and for monitoring the quality and utilization of care. In addition, integrated health systems, such as

managed care organizations, also use HCPCS as a basis for monitoring utilization and quality of care and for negotiating prospective fees and capitated payments. Research organizations use the HCPCS data collected by health insurers to monitor and evaluate these programs and regional/national patterns of care.

As previously stated, HCPCS alpha-numeric codes capture products, supplies, and services not included in CPT. The "D" codes in the HCPCS system are dental codes created by the ADA and published as CDT. However, in HCPCS, the first digit "0" in CDT is replaced by a "D" to eliminate confusion and overlap with certain CPT codes. The ADA has agreed to replace their first digit "0" with a "D" so that CDT can become the national standard. There would no longer be dental codes within HCPCS. Consequently, CDT codes will no longer be issued within HCPCS as of the year 2000. The ADA will be the sole source of the authoritative version of CDT.

The "J" codes within alpha-numeric HCPCS are for drugs. A separate coding system, the NDC developed by the Food and Drug Administration, is also used to report drug claims in the ANSI X12N 837—Health Care Claim: Professional and in pharmacy transactions. The NDC system, which has 11-digit codes, is more precise and more current than the HCPCS "J" codes. NDC identifies drugs prescribed down to the manufacturer, product name and package size. NDC codes are assigned on a continuous basis throughout the year as new drug products are issued; "J" codes are assigned on an annual basis. Many providers are currently forced to maintain both "J" and NDC codes to provide data to different insurers. The majority of the local codes currently created were developed because of the lack of a "J" code for a new drug. Local codes are level 3 of the HCPCS and are assigned by local insurers or agencies where there is no national code. By eliminating "J" codes from alpha-numeric HCPCS codes and utilizing only NDC codes for drugs, greater national uniformity can be achieved, the workload of providers who previously had to utilize two drug coding systems will be reduced, and the need for local codes will diminish substantially.

HHS is, therefore, proposing that NDC codes become the national standard in the year 2000 for all types of transactions requiring drug codes and that "J" codes be deleted from alpha-numeric HCPCS. This would require those handling electronic administrative transactions to process 11-digit NDC codes in the year 2000.

Level 3 of HCPCS is intended to meet local needs and is established on a local basis by health insurers. There is no national registry for these local codes. We propose that, beginning in the year 2000, local codes be eliminated and that a national process be established for reviewing and approving codes that are needed by any public or private health insurer.

The first step in this process would be to ask public and private health insurers to review the local codes they use and to immediately eliminate those that duplicate a national HCPCS code or NDC code already in existence. (See the previous section for a discussion of NDC codes.) They would also be asked to eliminate those local codes for which there are few claims submissions (for example, fewer than 50 per year) and that could reasonably and effectively be reviewed by the health insurer. Health insurers would also be asked to eliminate those local codes which were established for administrative purposes, to facilitate claims payment, rather than to identify and describe medical services, supplies and procedures. (A code for "administration of immunization at public health clinic" is an example of a code that includes administrative information in addition to information about the clinical content of the service.) This purging would result in the elimination of the vast majority of local codes now in use. Any remaining local codes would then have to be submitted by the health insurer to HCFA for review and approval as temporary codes. The HCPCS panel currently meets every two to three months to approve requests for temporary codes. This process will be re-examined to determine if more frequent meetings are required.

The process would be modeled after the one that is currently used to review and approve code requests from Medicare and its contractors. Codes that are approved by HCFA would be established as national temporary codes that would be posted electronically and would be available for use by all health insurers. National temporary codes would be reviewed on an annual basis to make sure they are not duplicative of CPT codes or alpha-numeric codes that are newly established.

This new centralized process for establishing national temporary codes would run parallel to the process for establishing national CPT codes, alpha-numeric HCPCS codes, and NDC codes. It is expected that most of the codes submitted for approval by HCFA in this process would be for new medical technologies and services not yet approved for codes by CPT or the alpha-

numeric process or for other medical services/procedures covered by health insurers which have no associated CPT or alpha-numeric codes.

These recommendations are based on the following:

As stated earlier, many participants at public meetings voiced concerns about overlaps in codes that are used and the proliferation of local codes. Local codes that are duplicative of national codes create extra work and confusion for providers who must submit different codes to different health insurers. Local codes also make it more difficult for researchers and programs such as Medicaid and Medicare to evaluate and monitor patterns of care and the utilization and quality of care on a regional or national basis.

The use of local codes established for administrative purposes, to facilitate claims payment rather than to identify medical services, supplies and procedures, is contrary to the intent of the medical coding system, which is intended to describe medical services used to prevent, diagnose, treat or manage diseases, injuries, and impairments. Administrative functions necessary to process and facilitate claims by health insurers can be achieved by using "administrative" codes placed in fields other than those used for medical diagnosis and procedure codes or by attaching a modifier to a medical code. Because the need for new temporary codes is not unique to an individual health insurer, the new codes that are created as a result of this centralized process would be useful not just to the health insurer who submitted the original request for a code but also to many other health insurers across the country. By eliminating duplicative and otherwise unnecessary local codes and adding national temporary codes through the centralized process discussed above, we believe we are being consistent with the intent of HIPAA to simplify the administration of the claims review, payment and monitoring process.

We welcome comments and suggestions on this proposal for eliminating unnecessary local codes and establishing a centralized, national process for establishing national temporary codes. We seek input specifically on the problems and barriers to creating this type of process. We are also specifically looking for examples of the kinds of local codes that are now being used that would have to be replaced with national codes or for alternatives to the above-described process.

iii. Recommended Standards and Implementation Guides

The proposed standard code sets for different types of medical data are outlined below:

(a) Diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury, disease, impairment, or other health-related problems.

The proposed standard code set for these conditions is the International Classification of Diseases, 9th edition, Clinical Modification, (ICD-9-CM), Volumes 1 and 2, as maintained and distributed by the National Center for Health Statistics, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services. The specific data elements for which ICD-9-CM is the required code set are enumerated in the implementation guides for the transactions standards that require its use.

An area of weakness of the ICD-9-CM is that it is not always precise or unambiguous. However, there are no viable alternatives for the year 2000. Many problems cannot be resolved within the current structure, but are being addressed in the development of ICD-10-CM for diagnosis, which is expected to be ready for implementation some time after the year 2000.

The official coding guidelines for this proposed standard code set are in the public domain and available at no cost on the NCHS website at: <http://www.cdc.gov/nchswww/about/otheract/icd9/icd9hp2.htm>. Users without access to the Internet may purchase the official version of ICD-9-CM on CD-ROM from the Government Printing Office (GPO) at 1-202-512-1800 or fax 1-202-512-2250. The CD-ROM contains the ICD-9-CM classification and the coding guidelines. The guidelines are also included in code books and coding manuals published by not-for-profit (for example, the American Hospital Association and the American Health Information Management Association) and other private sector vendors.

(b) Procedures or other actions taken to prevent, diagnose, treat, or manage diseases, injuries and impairments.

(1) Physician Services

The proposed standard code set for these entities is the Current Procedural Terminology (CPT) (level 1 of HCPCS) as maintained and distributed by the AMA. The specific data elements for which CPT (including codes and modifiers) is a required code set are enumerated in the implementation

guides for the transaction standards that require its use.

Narrative coding guidelines are presented at the beginning of each of the six sections of print edition of CPT and, in addition, special instructions for specific codes or groups of codes appear throughout CPT. CPT is available from the AMA at a charge as well as from several not-for-profit and other private sector vendors.

An area of weakness of the CPT is that it is not always precise or unambiguous. However, there are no viable alternatives for the year 2000.

(2) Dental Services

The proposed standard code set for these services is the Current Dental Terminology (CDT) as maintained and distributed by the ADA for a charge. The specific data elements for which CDT is a required code set are enumerated in the implementation guides for the transaction standards that require its use.

The official implementation guidelines for this standard appear in CDT as descriptors that explain the appropriate use of the codes. Copies of the ADA Current Procedural Terminology Second Edition (CDT-2) may be obtained by calling 1-800-947-4746. The ADA is in the process of developing CDT-3 for introduction in the year 2000.

(3) Inpatient Hospital Services

The proposed standard code set for these services is the International Classification of Diseases, 9th edition, Clinical Modification, Volume 3, as maintained and distributed by the Health Care Financing Administration, U.S. Department of Health and Human Services. The specific data elements for which ICD-9-CM, Volume 3, is a required code set are enumerated in the implementation guides for the transactions standards that require its use.

As stated earlier, an area of weakness of the ICD-9-CM is that it is not always precise or unambiguous. However, there are no viable alternatives for the year 2000 that are more precise or less ambiguous. Many problems cannot be resolved within the current structure but are being addressed in the development of ICD-10-PCS for procedures, which is expected to be ready for implementation some time after the year 2000.

The official coding guidelines for this standard are in the public domain and available at no cost on the NCHS website at <http://www.cdc.gov/nchswww/about/otheract/icd9/icd9hp2.htm>. Users without access to

the Internet may purchase the official version of ICD-9-CM on CD-ROM from the Government Printing Office at 1-202-512-1800 or fax 1-202-512-2250. The CD-ROM contains the ICD-9-CM classification and the coding guidelines. The guidelines are also included in code books and coding manuals published by not-for-profit (for example, the American Hospital Association and the American Health Information Management Association) and private sector vendors.

(c) Other Health-Related Services

The proposed standard code set for other health-related services is the Health Care Financing Administration Procedure Coding System (alpha-numeric HCPCS) as maintained and distributed by the Health Care Financing Administration, U.S. Department of Health and Human Services. We are proposing to make significant modifications to alpha-numeric HCPCS for the year 2000. These modifications are described in Section II.D.2.a.ii of this proposed rule.

The specific data elements for which alpha-numeric HCPCS (including codes and modifiers) is a required code set are enumerated in the implementation guides for the transaction standards that require its use.

Alpha-numeric HCPCS codes meet all but one of the guiding principles for choosing standards. An area of weakness is that it is not always precise or unambiguous. However, there are no viable alternatives for the year 2000 that are more precise or less ambiguous. Some of the areas of ambiguity in HCPCS (the "J" codes for drugs, local codes, variant CDT codes) have been addressed in the changes recommended for the year 2000.

The 1998 alpha-numeric HCPCS file (excluding the D procedure codes copyrighted by the ADA) is available from the HCFA website at <http://www.hcfa.gov/stats/pufiles.htm>. Users can also access this page by taking the Stats and Data link to the Browse/Download available PUFs link. The 1998 alpha-numeric HCPCS file is on the HCFA Public Use Files page under the Utilities/Miscellaneous heading.

The HCPCS is in an executable format, which includes 1998 alpha-numeric HCPCS in both Excel® and text, the 1998 Alpha-Numeric Index in both Portable Document Format® (PDF) and text, the 1998 Table of Drugs in both PDF and text, the 1998 HCPCS record layout in WordPerfect® and text, and a read me file in WordPerfect® and text.

(d) Drugs

The proposed standard code set for these entities is the National Drug Codes as maintained and distributed by the Food and Drug Administration, U.S. Department of Health and Human Services, in collaboration with drug manufacturers. The specific data elements for which NDC is a required code set are enumerated in the implementation guides for the transaction standards that require its use.

NDC codes as established by the Food and Drug Administration are made available on the individual drug package inserts and product labeling. The Food and Drug Administration, Center for Drug Evaluation and Research, Office of Management, Division of Database Management, prepares an annual update, with periodic cumulative supplements of the Approved Drug Products with Therapeutic Equivalence Evaluations for prescription drug products, over the counter drug products and discontinued drug products. The supplements are available on diskette, on a quarterly basis, from the National Technical Information Service at 703-487-6430. The files are also available on the Internet's World Wide Web on the CDER Home Page at <http://www.fda.gov/cder>. The NDC codes are also published in such drug publications as the Physicians' Desk Reference under the individual drug product listings and "How supplied."

(e) Other Substances, Equipment, Supplies, or Other Items Used in Health Care Services

The proposed standard code set for these entities is the Health Care Financing Administration Procedure Coding System (alpha-numeric HCPCS) as maintained and distributed by the Health Care Financing Administration, U.S. Department of Health and Human Services. We are proposing to make significant modifications to alpha-numeric HCPCS for the year 2000. These modifications are described in Section II.D.2.a.ii of this proposed rule. The specific data elements for which alpha-numeric HCPCS is a required code set are enumerated in the implementation guides for the transactions standards that require its use.

The recommended code sets adhere to the principles for guiding choices for the standards to be adopted under HIPAA as follows:

- Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or

improvements in benefits from electronic health care transactions.

Improvements in efficiency and effectiveness over the current *status quo* will result from: (a) The requirement for all those exchanging electronic transactions to use a single official implementation guide for each recommended code set; and (b) the proposed changes to HCPCS, which will eliminate overlap between NDC and HCPCS, eliminate one of the two current versions of CDT codes, and eliminate the use of local HCPCS codes that are known only to institutions that developed them.

- Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses.

The recommended code sets meet some of the needs of the community. To meet all of the community's needs (e.g., elimination of overlap in procedure coding systems and better coverage of nursing and allied health services) will require changes to the code sets recommended or their replacement by newer systems, once these have been fully tested and revised. Essentially all segments of the health care community testified that there was no practical alternative to the recommended code sets for the year 2000, although they recommended changes after that time.

- Be consistent and uniform with the other HIPAA standards—their data element definitions and codes and their privacy and security requirements—and, secondarily, with other private and public sector health data standards.

All of the recommended code sets are required for selected data elements in more than one of the recommended transaction standards.

- Have low additional development and implementation costs relative to the benefits of using the standard.

The recommended code sets are currently used by many segments of the health care community.

- Be supported by an ANSI-accredited standards developing organization or other private or public organization that will ensure continuity and efficient updating of the standard over time.

All of the recommended code sets are supported by U.S. government agencies or private sector organizations that have demonstrated a commitment to maintaining them over time.

- Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster.

All of the recommended code sets have existing procedures for updating at

least annually. NDC updates continually throughout the year.

- Be technologically independent of the computer platforms and transmission protocols used in electronic health transactions, except when they are explicitly part of the standard.

All of the recommended code sets are technologically independent of computer platforms and transmission protocols.

- Be precise and unambiguous, but as simple as possible.

There are some problems with lack of precision and ambiguity in all the recommended code sets, but there are no viable alternatives for the year 2000. In the case of ICD-9-CM, many problems cannot be resolved within the current structure but are being addressed in the development of ICD-10-CM for diagnosis and ICD-10-PCS for procedures, which are expected to be ready for implementation some time after 2000. Some of the sources of ambiguity in HCPCS (the "J" codes for drugs, local codes, variant CDT codes) have been addressed in the changes recommended for the year 2000. The movement to a single framework for procedure coding, sometime after the year 2000, will address other known problems with the procedure codes.

- Keep data collection and paperwork burdens on users as low as is feasible.

Because the recommended code sets are currently used throughout the health care community, they should not add substantially to data collection or paperwork burdens.

- Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology.

Some of the recommended code sets lack a desirable level of flexibility; e.g., they use hierarchical codes and may therefore "run out of room" for additional codes required by advances in medicine and health care. Since they appear to be the only feasible alternatives for the year 2000, steps should be taken to improve their flexibility—or replace them with more flexible options—sometime after the year 2000.

iv. Probable Changes to Coding and Classification Standards After 2000

Although the exact timing and precise nature of changes in the code sets designated as standards for medical data are not yet known, it is inevitable that there will be changes to coding and classification standards after the year 2000. As indicated in testimony at the NCVHS hearings previously discussed,

changes will be required to address current coding system deficiencies that adversely affect the efficiency and quality of administrative data creation and to meet international treaty obligations. For example, ICD-10-CM for diagnosis is highly likely to replace ICD-9-CM as the standard for diagnosis data, possibly in 2001. When any of the standard code sets proposed in this rule are replaced by wholly new or substantially revised systems, the new standards may have different code lengths and formats. The current draft of ICD-10-CM for diagnoses contains 6 digit codes; the longest ICD-9-CM codes have 5 digits. In addition to accommodating the initial code sets standards for the year 2000, those that produce and process electronic administrative health transactions should build the system flexibility that will allow them to implement different code formats beyond the year 2000.

As also clearly expressed in the hearings and other input to HHS, any major change in administrative coding systems involves significant initial costs and dislocations, as well as some level of discontinuity in data collected before and after the change. These factors must be weighed against expected improvements in the efficiency of data creation and in the accuracy and utility of the data collected. In the future, more flexible health data systems may assist in reducing the costs of implementing changes in administrative coding and classification standards, especially if administrative codes can be generated automatically from more granular clinical data.

b. Requirements

In § 142.1002, we would state that health plans, health care clearinghouses, and health care providers must use in electronic transactions the diagnosis and procedure code sets as prescribed by HHS. The names of these diagnosis and procedure code sets are published in a notice in the *Federal Register*. The implementation guides for the transaction standards in part 142, subparts K through R would specify which of the standard medical data code sets should be used in individual data elements within those transaction standards.

In § 142.1004, we would specify that the code sets in the implementation guide for each transaction standard in part 142, subparts K through R, are the standard for the coded nonmedical data elements present in that transaction standard.

In § 142.1010, The requirements sections of part 142, subparts K through R, would specify that those who

transmit electronic transactions covered by the transaction standards must use the appropriate transaction standard, including the code sets that are required by that standard. These sections would further specify that those who receive electronic transactions covered by the transaction standards must be able to receive and process all standard codes, without regard to local policies regarding reimbursement for certain conditions or procedures, coverage policies, or need for certain types of information that are not part of a standard transaction.

E. Transaction Standards

The HISB prepared an inventory of candidate standards to be considered by HHS in the standards adoption process. HHS wrote letters to the NUBC, the NUCC, the ADA, and WEDI in order to consult with them as required by the Act. HHS also consulted with them informally and received their support on all the transactions at various meetings and at the public meeting we held on July 9, 1997, in Bethesda, Maryland. The NCVHS held public hearings during which any person could present his or her views. There also were opportunities for those who could not attend the public hearings to provide written advice, and many did take advantage of that opportunity. In addition, HHS welcomed informal advice from any industry member, and that advice was taken into consideration during the decision making process.

Recommendations for enrollment and disenrollment in a health plan, eligibility for a health plan, health care payment and remittance advice, health plan premium payments, first report of injury, health claim status, and referral certification and authorization were overwhelmingly in favor of ASC X12N implementations. Also, the recommendation for the National Council of Prescription Drug Programs (NCPDP) version 3.2 telecommunication standard format was not controversial and was nearly unopposed.

The recommendations for the professional and institutional claims were quite controversial, with some factions supporting the *de facto* flat file standards that have been in use for many years and others supporting X12N standards.

(A flat file is a file that has fixed-length records and fixed-length fields.) Some associations proposed dual standards with the flat file claim standards (National Standard Format for professional claims and electronic UB-92 for institutional claims) to sunset on a specified date, at which time the parallel ASC X12N claim implementations would become the sole standards to be used.

The HHS claims implementation team recommended, and we are proposing for adoption, the following standards as implemented through the appropriate implementation guides, data content and data conditions specifications, and data dictionary:

- Health care claim and equivalent encounter:

- + Retail drug: NCPDP

Telecommunication Claim version 3.2 or equivalent NCPDP Batch Standard Version 1.0.

- + Dental claim: ASC X12N 837—Health Care Claim: Dental.

- + Professional claim: ASC X12N 837—Health Care Claim: Professional.

- + Institutional claim: ASC X12N 837—Health Care Claim: Institutional.

- Health care payment and remittance advice: ASC X12N 835—Health Care Payment/Advice.

- Coordination of benefits:

- + Retail drug: NCPDP

Telecommunication Standard Format version 3.2 or equivalent NCPDP Batch Standard Version 1.0.

- + Dental claim: ASC X12N 837—Health Care Claim: Dental.

- + Professional claim: ASC X12N 837—Health Care Claim: Professional.

- + Institutional claim: ASC X12N 837—Health Care Claim: Institutional.

- Health claim status: ASC X12N 276/277—Health Care Claim Status Request and Response.

- Enrollment and disenrollment in a health plan: ASC X12 834—Benefit Enrollment and Maintenance.

- Eligibility for a health plan: ASC X12N 270/271—Health Care Eligibility Benefit Inquiry and Response.

- Health plan premium payments: ASC X12 820—Payment Order/Remittance Advice.

- Referral certification and authorization: ASC X12N 278—Health Care Services Review—Request for Review and Response.

We chose version 4010 of X12 for each ASC X12N transaction. Later in this proposed rule is a list of candidates for most transactions. The ASC X12N transactions listed as candidate standards in this section were originally specified as version 3070 because at the time of HISB inventory version 3070 was the most current DSTU version.

However, we are proposing that version 4010 would be proposed in lieu of version 3070 for the following reasons:

- Version 4010 is millennium ready.
- Version 4010 allows for up-to-date changes to be incorporated into the standards.

We will propose a claims attachment standard in a separate document as the statute gives the Secretary an additional year to designate this standard. The attachment standards are likely to be drafted so that health care providers using Health Level 7 (HL7) for their in-house clinical systems would be able to send HL7 clinical data to health plans. Anyone wishing to use the HL7 may want to consider a translator that supports the administrative transactions proposed in this proposed rule and the HL7.

We will also propose a standard for first report of injury transactions in a later rule for reasons explained in depth under section IIE.9.

1. Standard: Health Claims or Equivalent Encounter Information (Subpart K)

(Please label any written comments or e-mailed comments about this section with the subject: Health Claims)

a. Background

By the mid-1970s, several health care industry associations had formed committees to attempt to standardize paper health care claim or equivalent encounter forms. By the mid-1980s, those committees were standardizing electronic formats with equivalent data. By the early 1990s, some of these committees were working with the ASC X12N Subcommittee. Nevertheless, many health plans continued to require local formats, revising the formats to suit their own purposes rather than following procedures in order to revise the standards. As a result, it is not unusual for health care providers to support many electronic health care claim formats, either directly or by using clearinghouse services, in order to do business with the many health plans covering their patients.

The committees that pursued organizational goals (such as a more cost-efficient environment for the provision of health care, more time and resources for patient care, and fewer resources for administration) were usually sponsored by health care provider associations such as the National Council of Prescription Drug Programs, the AMA, the American Hospital Association, and the ADA. Each association contributed to the development of the four corresponding accredited claims standards proposed

for adoption, with content based on *de facto* standards derived over time.

i. Candidates for the Standard

The HISB developed an inventory of health care information standards for HHS to consider for adoption. The candidate standards for health claims or equivalent encounter information were:

- Retail drug: NCPDP

Telecommunications Standard Format Version 3.2.

- Dental claim: ASC X12N 837—health care claim: dental, version 3070 implementation.

- Professional claim: ASC X12N 837—health care claim: Professional, version 3070 implementation and HCFA National Standard Format (NSF), version 002.00.

- + Institutional claim: ASC X12N 837—health care claim: institutional, version 3070 implementation and HCFA Uniform Bill (UB-92) version 4.1

ii. Recommended Standards

The four standards for claims or equivalent encounter information we are proposing in this proposed rule are:

- Retail drug: NCPDP

Telecommunications Standard Format Version 3.2 and equivalent NCPDP Batch Standard Version 1.0.

The NCPDP was formed in 1977 as the result of a Senate Ad Hoc Committee to study standardization within the pharmacy industry. The NCPDP was specifically named in HIPAA as a standards setting organization accredited by ANSI. The first NCPDP Telecommunications Standard was developed in 1988 and allowed pharmacists to process claims in an interactive environment. The NCPDP developed the Telecommunications Standard Format for electronic communication of claims between pharmacy providers, insurance carriers, third-party administrators, and other responsible parties. The standard addresses the data format and content, the transmission protocol, and other appropriate telecommunications requirements. The NCPDP received input from all aspects of the prescription drug industry and designed the standard to be easy to implement and flexible enough to respond to the changing needs of the industry. The NCPDP also provides changes and additions to the standard to support unique requirements included in government mandates.

The NCPDP telecommunications standard for claim and equivalent encounter data is on-line interactive. There is also a batch implementation of this standard, the NCPDP Batch Standard Version 1.0. The

telecommunications standard data set includes eligibility/enrollment, claim, and remittance advice information. When the transaction is complete, the sending pharmacy knows whether the customer is covered by the health plan, the health plan knows all of the details of the claim, the pharmacy knows whether the claim will be paid, and how much it will be paid, and any pertinent details regarding the amount of payment or the reason for denial of payment. This standard met all 10 of the criteria used to assess standards.

Since retail drug claims are a specialized class and the NCPDP structure contains claims, enrollment/eligibility and remittance advice data, we did not recommend the ASC X12N 837 for the retail drug standard.

• Dental claim: ASC X12N 837—Health Care Claim: Dental.

The ADA recommended adoption of the ASC X12N 837, version 3070. This standard met all of the criteria used to assess standards.

Professional claim: ASC X12N 837—Health Care Claim: Professional.

HHS consulted with external groups in accordance with the legislation. These groups included the NCVHS, WEDI, the NUCC, the NUBC, the ADA, and many others.

In a letter, dated March 12, 1997, the NUCC stated,

The NUCC recommends to the Secretary of HHS that the ANSI ASC X12 837 transaction be adopted as a standard for electronically transmitting professional claims or equivalent encounters, including coordination of benefits information, as per the Administrative Simplification provision of the HIPAA.

The NUCC recommends that a migration plan be adopted to allow current trading partners who use the National Standard format (NSF) to convert to a standard NSF, which will be implemented by the Secretary per the HIPAA, by February 2000 and to convert to the standard ANSI ASC X12 837 by February 2003.

The AMA also supported the NUCC recommendation. However, the NCVHS and WEDI recommended adoption of the ASC X12N 837 transaction. The claims implementation team decided that, since the NUCC was clear that it wanted the ASC X12N 837 transaction in the end, it would be better to invest in migrating to that, rather than support two standards and take more time for the transition.

Our recommendation takes into account the advice we received from organizations that we consulted directly and indirectly and from those who testified before the NCVHS subcommittee on Health Data Needs, Standards, and Security. These

organizations included entities representing all parts of the health care industry—health care providers, health plans, and vendors/clearinghouses—to which the standard will apply.

The ASC X12N 837 standard met all 10 criteria used to assess standards. The NSF met 5 of the criteria. The NSF does not improve the efficiency and effectiveness of the health care system (#1) because a standard implementation does not exist. The NSF meets the needs of many users, particularly Medicare, but not all of the needs of the user community (#2). It is not supported by an ANSI-accredited SDO (#5). There are no testing or implementation procedures in place (#6). Due to its fixed-length structure, it does not incorporate flexibility to adapt easily to change (#10).

Institutional claim: ASC X12N 837—Health Care Claim—Institutional.

HHS consulted with the groups identified under our discussion of the standard for professional claims above in this section and also consulted with the NUBC on the selection of an institutional standard. In a letter dated March 11, 1997, the NUBC stated,

The NUBC recommends the use of the EMC V.4 (UB-92) as the single electronic standards transaction for institutional health claims and encounters. We recommend the EMC V.4 for the following reasons:

- Nearly all institutional providers already use the EMC V.4 with a high level of success.
- The EMC V.4 has been in full production for over four years.
- There is no additional cost for providers to adopt the EMC V.4.
- It reduces the risks associated with the adoption of a new, complex and relatively untested transaction.
- It allows for a more successful transition to the 837.

We agree with HCFA that coordination of benefits transactions (COB) do not require a fully separate transaction for the health care claim or encounter. The NUBC also believes that the EMC V.4 should be used as the platform for transmitting COB data elements.

At the present time, the NUBC cannot recommend the use of the 837 as the electronic institutional claim standard.

We recommend that larger scale testing of the 837 proceed. Once the transaction has proven that it can successfully handle the claim/encounter, the NUBC will consider endorsing the 837 as a successor standard.

The American Hospital Association also supported NUBC's recommendation. The NCVHS and WEDI recommended adoption of the ASC X12N 837 transaction.

Due to the batch nature of the ASC X12N transactions, each transaction type and its corresponding data elements are separated by function. The adoption of the transactions for those

functions (such as claims and remittance advice), with the exception of the NCPDP transaction, have all been recommended to be ASC X12N transactions. The ASC X12N 837 met all 10 criteria used to assess the standards. The UB-92 met 5 of the criteria. The UB92 does not improve the efficiency and effectiveness of the health care system (#1) because a standard implementation does not exist. The UB92 is not supported by an ANSI-accredited SDO (#5). There are no testing or implementation procedures in place (#6). The UB92 documentation is ambiguous in some instances and not always precise (#8). Due to its fixed-length structure, it does not incorporate flexibility to adapt easily to change (#10). The NUBC stated it would consider the 837, once successfully tested. For these reasons, we have concluded that the ASC X12N 837 should be adopted as the standard format implementation of the institutional claim.

For the most part, a health care provider would use only one of these four health care claim implementations, although a large institution might use the institutional claim for inpatient and outpatient claims, the professional claim for staff physicians who see private patients within the institution, and the retail pharmacy claim, if applicable, which typically would be administered separately from the rest of the institution.

Data elements for the various standards and other information may be found in Addendum 1.

b. Requirements

In § 142.1102, we would specify the exact standards we are adopting: the NCPDP Telecommunications Standard Format Version 3.2 and equivalent NCPDP Batch Standard Version 1.0; the ASC X12N 837—Health Care Claim: Dental, the ASC X12N 837—Health Care Claim: Professional, and the ASC X12N 837—Health Care Claim: Institutional. We would specify where to find the implementation guide and incorporate it by reference.

i. Health plans.

In § 142.1104, Requirements: Health plans, we would require health plans to accept only the standards specified in § 142.1102 for electronic health claims or equivalent encounter information.

ii. Health care clearinghouses.

We would require in § 142.1106 that each health care clearinghouse use the standard specified in § 142.1102 for health claims or equivalent encounter information transactions.

iii. Health care providers.

In § 142.1108, Requirements: Health care providers, we would require each health care provider that transmits health claims and encounter equivalent electronically to use the standard specified in § 142.1102.

c. Implementation Guide and Source

The source of implementation guides for the NCPDP telecommunication claim version 3.2 and equivalent NCPDP Batch Standard Version 1.0 is the National Council for Prescription Drug Programs, 4201 North 24th Street, Suite 365, Phoenix, AZ, 85016; telephone 602-957-9105; FAX 602-955-0749. The web site address is: <http://www.ncdp.org>.

NCPDP standards are available to the public on a 3½" diskette for a fee. A set is defined as containing the Telecommunications Standard, Standard Claims Billing Tape Format, Eligibility Verification and Response, and Enrollment. Membership in the NCPDP is not a requirement for obtaining the standards and associated implementation guides. The website contains information and instructions for obtaining these documents.

The implementation guides for the ASC X12N standards are available at no cost from the Washington Publishing Company site at the following Internet address: <http://www.wpc-edi.com/hipaa/>.

Users without access to the Internet may purchase implementation guides from Washington Publishing Company directly: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878; telephone 301-590-9337; FAX: 301-869-9460. The data definitions and description of data conditions may also be obtained from this website.

The names of the implementation guides are:

- ASC X12N 837—Health Care Claim: Professional (004010X098)
- ASC X12N 837—Health Care Claim: Institutional (004010X096)
- ASC X12N 837—Health Care Claim: Dental (004010X097)

2. Standard: Health Care Payment and Remittance Advice (Subpart L)

[Please label any written comments or e-mailed comments about this section with the subject: Payment]

a. Background

The filing of claims for reimbursement (especially when a large number of patients have more than one insurer), control of those claims, association of payments, denials or rejections received with the patient records, posting of adjudication data to

those records, reconciliation of payments sent to financial institutions, and storage and retrieval of patient accounts is a very labor intensive process when conducted manually. The process is further complicated by the diverse requirements and processes for activities such as billing, payment, and notification of the large number of health plans, which requires that health care provider staff stock multiple types of forms, be trained in the variety of requirements, be able to interpret the wide range of coding schemes used by each health plan, and maintain billing and payment manuals for each health plan.

We believe that automation can greatly reduce the labor required for these processes, especially if every health plan becomes automated around a standard model so that health care providers are not required to deal with different requirements and software. Automation of the payment and remittance advice process can provide many benefits: health care providers can post claim decisions and payments to accounts without manual intervention, eliminating the need for re-keying data; payments can be automatically reconciled with patient accounts; and resources are freed to address patient care rather than paper and electronic administrative work.

The ASC X12N Subcommittee established a workgroup in late 1991 to develop the ASC X12N 835—Health Care Claim Payment/Advice, since there was no existing standard capable of handling the large datasets necessary for health care.

i. Candidates for the Standards

Prior to development of the ASC X12N 835, there were very few electronic formats available for the health care claim payment and remittance advice function. As researched by the HISB, existing standards that could be considered for national implementation under HIPAA for health care claim payment/remittance advice included:

ASC X12N 835—Health Care Claim Payment/Advice, version 3070; ASC X12N 820 Payment Order/Remittance Advice; and the National Standard Format (NSF) for Remittance Version 2.0

ii. Recommended Standard

The standard for remittance advice proposed in this proposed rule is the ASC X12N 835 Health Care Claim Payment/Advice.

HHS chose this standard primarily because of advice received from industry members. Health care

providers and health plans in the ASC X12N Subcommittee rejected the ASC X12N 820 due to its lack of health care specific information for this function. The X12N 820 is used for electronic payment of health insurance premiums by employers. Although the NSF is used by a large number of Medicare providers, we rejected it because it is not an ANSI-accredited standard and it lacks an independent, nongovernmental body for maintenance.

The ASC X12N 835 may be used in conjunction with payment systems relying either on electronic funds transfer or the creation of paper checks. It may be sent through the banking system or it may be split with the electronic funds transfer portion directed to a bank, and the data portion sent either directly or through a health care clearinghouse to the individual for whom the funds are intended. If paper checks are used, the entire transaction is sent either directly or through a health care clearinghouse to the individual for whom the funds are intended. In all cases, however, the health care provider may use the electronic data in its own system, gaining efficiency by means of automatic posting of patient accounts. Uniformity is just as important as it is for health care claims, since there would be little gain in efficiency for the health care provider who must adapt to multiple formats and multiple data contents for remittance advice. This transaction is suitable for use only in batch mode.

HHS, based on recommendations, has determined that the ASC X12N 835—Health Care Claim Payment/Advice is the best candidate for adoption under HIPAA. A wide range of the health care community participated in its initial design, and the ASC X12N is ANSI-accredited. Whereas the NSF met 5 of the criteria against which we evaluated the standards, the ASC X12N standards met all 10. The NSF does not improve the efficiency and effectiveness of the health care system (#1) because a standard implementation does not exist. The NSF was developed primarily for Medicare and, therefore, does not meet all of the needs of the user community (#2). It is not supported by an ANSI-accredited SDO (#5). There are no testing or implementation procedures in place (#6). Due to its fixed-length structure, it does not incorporate flexibility to adapt easily to change (#10).

Data elements for the standard and other information may be found in Addendum 2.

h. Requirements

In § 142.1202, we would specify the ASC X12N 835 Health Care Claim Payment/Advice (004010X091) as the standard for payment and remittance advice transactions. We would also specify the source of the implementation guide and incorporate it by reference.

i. Health plans.

In § 142.1204, Requirements: Health plans, we would require health plans to use only the standard specified in § 142.1202 for electronically transmitting payment and remittance advice transactions.

ii. Health care clearinghouses.

We would require in § 142.1206 that each health care clearinghouse use the standard specified in § 142.1202 for payment and remittance advice transactions.

c. Implementation Guide and Source

The implementation guide for the ASC X12N 835 (004010X091) is available at no cost from the Washington Publishing Company site at the following Internet address: <http://www.wpc-edi.com/hipaa/>.

Users without access to the Internet may purchase implementation guides from Washington Publishing Company directly: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD 20878; telephone 301-590-9337; FAX: 301-869-9460. The data definitions and description of data conditions may also be obtained from this website.

3. Standard: Coordination of Benefits (Subpart M)

(Please label any written comments or e-mailed comments about this section with the subject: COB)

a. Background

In an effort to provide better service to their customers, many health plans have made arrangements with each other to send claims electronically in the order of payment precedence, thus saving the customer the process of waiting for another health plan's notice. Each health plan in the chain wishes to see the original claim as well as the details of its adjudication by prior health plans that dealt with it. We believe that there should be a coordination of benefits standard to facilitate the interchange of this information between health plans.

Adoption of a standard for electronic transmission of standard data elements among health plans for coordination of benefits and sequential processing of claims would serve these goals expressed by the Congress. Currently,

the coordination of benefits for patients covered by multiple health plans is a burdensome chore. The COB transaction differs somewhat from the others because there are two models in existence for conducting it. The first model is provider-to-plan, where the provider submits the claim to the primary insurer, receives payment, and resubmits the claim (with the remittance advice from the primary insurer) to the secondary insurer. The second model is plan-to-plan, where the provider supplies the primary insurer with information needed for the primary insurer to then submit the claim directly to the secondary insurer. The choice of model has been made between the providers and plans. Where the first model is used, the primary insurer essentially has no role in the COB transaction. Put another way, in the first model there is no separate COB transaction. Instead, the COB function is accomplished by a health care provider submitting a series of individual claims. This succession of transactions from health care provider to primary health plan to health care provider to secondary health plan, which often involves the production, reproduction, and mailing of paper forms and multiple claim formats, is time consuming and administratively costly. In some instances, it becomes even more burdensome when the provider shifts responsibility for these administrative tasks to the patient. Health plans have been unwilling to take on the full responsibility for coordinating benefits because of the many different forms and formats used for these transactions.

Administrative simplification and electronic standards can simplify and smooth this onerous process. The four products of administrative simplification—(1) The uniform standards for electronic claims submissions; (2) an electronic transmission standard for coordination of benefits; (3) a uniform national standard for the data elements necessary for coordination of benefits among health plans; and (4) uniform health plan and provider identification numbers to efficiently route electronic transactions—would combine to remove the barriers that health plans currently face in carrying out transactions. These products would facilitate the process of the second model, direct health plan to health plan coordination of benefits. Once these standards are implemented, coordination of benefits could be completed without provider or patient intervention and at a lower cost to all parties than under current practice.

Primary insurers are not required to participate in COB transactions as

described in the second model. If, however, a plan does conduct COB through the second model, then it would be required to use the standard format. Primary insurers may determine whether they wish to participate in COB transactions (i.e., use the second model) based on their normal business practices. Where primary insurers do perform COB (using the second model) they must conduct the transaction electronically as standard transactions.

The ASC X12N 837 Health Care Claim (refer to E.1. above) is designed to facilitate coordination of benefits. Each health plan responsible for the claim passes the claim on to the next health plan responsible for the claim. This transaction describes the original claim and how previous health plans adjudicated the claim. In October 1994, the ASC X12N Subcommittee modified the ASC X12N 837 Health Care Claim to fully support coordination of benefits.

i. Candidates for the Standard

- Retail drug: NCPDP Telecommunications Standard Format version 3.2.
- Dental claim: ASC X12N 837—Health Care Claim: Dental, version 3070.
- Professional claim: ASC X12N 837—Health Care Claim: Professional, version 3070.
- Institutional claim: ASC X12N 837—Health Care Claim: Institutional, version 3070; and the Uniform Bill (UB-92) version 4.1.

ii. Recommended Standard

The standards for the coordination of benefits exchange we are proposing are:

- Retail drug: NCPDP Telecommunications Standard Format version 3.2 and the equivalent NCPDP Batch Standard Version 1.0.
- Dental claim: ASC X12N 837—Health Care Claim: Dental (004010X097).
- Professional claim: ASC X12N 837—Health Care Claim: Professional (004010X098).
- Institutional claim: ASC X12N 837—Health Care Claim: Institutional (004010X096).

Since all recommended transactions for claims or equivalent encounters and the remittance advice are ASC X12N, with the exception of the NCPDP, it was determined that this transaction was the best candidate for national implementation, as it will increase the synergistic effect of the other ASC X12N standards.

All health plans who perform COB, using the second model described above, would have to send and receive these standards for coordination of benefits. The data elements added to

explain the prior payments on the claim are shown in the implementation guide, data conditions, and data dictionary. This transaction accommodates coordination of benefits through the tertiary health plan. The NCPDP telecommunication claim version 3.2 is interactive. The three X12 standards are designed for use only in batch mode.

HHS chose these standards primarily because of advice received from industry members.

Data elements for the various standards and other information may be found in Addendum 3.

b. Requirements

In § 142.1302, we would specify the following as the standards for coordination of benefits: the NCPDP Telecommunications Standard Format Version 3.2 and equivalent NCPDP Batch Standard Version 1.0; the ASC X12N 837—Health Care Claim: Dental (004010X097); the ASC X12N 837—Health Care Claim: Professional (004010X098); and the ASC X12N 837—Health Care Claim—Institutional (004010X096). We would specify where to find the implementation guide and incorporate it by reference.

i. Health plans.

In § 142.1304, Requirements: Health plans, we would require health plans who perform COB to use only the standards specified in § 142.1302 for electronic coordination of benefits transactions.

ii. Health care clearinghouses.

We would require in § 142.1306 that each health care clearinghouse use the standards specified in § 142.1302 for coordination of benefits.

c. Implementation Guide and Source

The source of implementation guides for the NCPDP telecommunication claim version 3.2 and equivalent Standard Claims Billing Tape Format is the National Council for Prescription Drug Programs, 4201 North 24th Street, Suite 365, Phoenix, AZ, 85016; Telephone 602-957-9105, FAX 602-955-0749. The web site address is: <http://www.ncdp.org>. NCPDP standards are available to the public on a 3½" diskette. A set is defined as containing the Telecommunications Standard, Standard Claims Billing Tape Format, Eligibility Verification and Response, and Enrollment. Membership in the NCPDP is not a requirement for obtaining the standards and associated implementation guides. The website contains information and instructions for obtaining these formats.

The implementation guides for the three ASC X12N health care claim standard implementations are available

at no cost from the Washington Publishing Company site at the following Internet address: <http://www.wpc-edi.com/hipaa/>. The data definitions and description of data conditions may also be obtained from this website.

Users without access to the Internet may purchase implementation guides from Washington Publishing Company directly: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878; Telephone 301-590-9337; FAX: 301-869-9460.

The names of the implementation guides are:

- ASC X12N 837—Health Care Claim: Professional (004010X098)
- ASC X12N 837—Health Care Claim: Institutional (004010X096)
- ASC X12N 837—Health Care Claim: Dental (004010X097)

4. Standard: Health Claim Status (Subpart N)

(Please label any written comments or e-mailed comments about this section with the subject: Status)

a. Background

Health care providers need the ability to obtain up to date information on the status of claims submitted to health plans for payment, and the health plans need a mechanism to respond to these requests for information. The current processes are complicated by the diverse processes within health plan adjudication systems, which permit nonstandard information to be provided on the status of claims submitted. Most health care providers currently request claims status information manually. This requires health plans to provide information through various procedures that are costly and time consuming for all.

With the paper model of claims processing, inquirers who want to know the status of a claim they have submitted to a health plan call the health plan. An operator looks up the status via computer terminal or some other means and explains the status to the caller. The health claim status tells the inquirer whether the claim has been received, whether it has been paid, or whether it is stopped in the system because of edit failures, suspense for medical review or some other reason.

Many health plans have devised their own electronic claims status transactions since this is a function that is cheaper, easier, and faster to do electronically. This transaction eases administrative burden for both health plan and health care provider.

The ASC X12N Subcommittee established a workgroup (Workgroup 5 Claims Status) to develop a standard implementation with standard data content for all users of the ASC X12N 276/277 Health Care Claim Status Request and Response (004010X093).

The ASC X12N 276 is used to transmit request(s) for status of specific health care claim(s). Authorized entities involved with processing the claim need to track the claim's current status through the adjudication process. The purpose of generating an ASC X12N 276 is to obtain the current status of the claim. Status information can be requested at various levels. The first level would be for the entire claim. A second level of inquiry would be at the service line level to obtain status of a specific service within the claim.

The ASC X12N 277 Health Care Claim Status Response is used by the health plan to transmit the current status within the adjudication process. This can include status in various locations within the adjudication process, such as pre-adjudication (accepted/rejected claim status), claim pending development, suspended claim(s) information, and finalized claims status.

Prior to the development of the ASC X12N 276/277 Health Care Claim Status Request and Response, there were very few proprietary or other electronic formats available for this type of claims status, and none were in widespread use. No existing standard was accepted for national use by the health care community. As researched by the HHSB, only one standard could be considered for national implementation under HIPAA for health care claim status request and response: the ASC X12N 276/277 Health Care Claim Status Request and Response, version 3070.

i. Candidates for the Standard

The candidate standard for health care claim status is:

ASC X12N 276/277 Health Care Claim Status Request and Response, version 3070.

ii. Standard Selected

We propose to adopt ASC X12N 276/277 Health Care Claim Status Request and Response (004010X093), as the national standard for uniform use by health plans and health care providers for health care claims status.

HHS chose this standard primarily because of advice received from industry members. It met all 10 of the criteria used for assessing standards.

Data elements for the standard, and other information, may be found in Addendum 4.

b. Requirements

In § 142.1402, we would specify the following as the standard for health care claims status: ASC X12N 276/277 Health Care Claim Status Request and Response (004010X093). We would specify where to find the implementation guide and incorporate it by reference.

i. Health plans.

In § 142.1404, Requirements: Health plans, we would require health plans to use only the standards specified in § 142.1402 for electronic health care claims status transactions.

ii. Health care clearinghouses.

We would require in § 142.1406 that each health care clearinghouse use the standards specified in § 142.1402 for health care claims status.

iii. Health care providers.

In § 142.1408, Requirements: Health care providers, we would require each health care provider that transmits health care claim status requests electronically to use standards specified in § 142.1402 for those transactions.

c. Implementation Guide and Source

The implementation guide for the standard is available at no cost from the Washington Publishing Company site at the following Internet address: <http://www.wpc-edi.com/hipaa/>. The data definitions and description of data conditions may also be obtained from this website.

Users without access to the Internet may purchase implementation guides from Washington Publishing Company directly: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878; telephone 301-590-9337; FAX: 301-869-9460.

5. Standard: Enrollment and Disenrollment in a Health Plan (Subpart O)

[Please label any written comments or e-mailed comments about this section with the subject: Enrollment]

a. Background

Currently, employers and other sponsors conduct transactions with health plans to enroll and disenroll subscribers and other individuals in a health insurance plan. The transactions are rarely done electronically.

However, the ASC X12 834, Benefit Enrollment and Maintenance has been in widespread use within the insurance industry at large since February 1992 when ANSI approved it as a draft standard for trial use. Variants of this transaction standard have been widely used by employers to advise insurance companies of enrollment and

maintenance information on their employees for insurance products other than health. It has rarely been used within the health care industry.

i. Candidates for the Standard. According to the inventory conducted for HHS by the HISB, only two standards developed and maintained by a standards developing organization for the enrollment transaction exist. The first is the ANSI ASC X12 834. The second is the Member Enrollment Standard developed by the NCPDP.

ii. Recommended Standard. The ANSI ASC X12 834—Benefit Enrollment and Maintenance is the standard proposed for electronic exchange of individual, subscriber, and dependent enrollment and maintenance information between sponsors and health plans, either directly or through a vendor, such as a health care clearinghouse. In some instances, this transaction may be used also to exchange enrollment and maintenance information between sponsors and health care providers or between health plans and health care providers.

The NCPDP standard, which was developed to enhance the enrollment verification process for pharmaceutical claims, rather than for transmitting information between health plan and sponsor, is not being proposed for adoption in this rule. The NCPDP standard pertains to these specific uses and is therefore not suitable in its current form for the more general uses needed for the enrollment transaction.

With the implementation of the ASC X12 834 for health care, sponsors would be able to transmit information on enrollment and maintenance using a single, electronic format; health plans would be required to accept only the standard transaction; neither sponsors nor health plans would have to continue to maintain and use multiple proprietary formats or resort to paper.

Adoption of this standard would benefit sponsors, especially, by providing them the ability to convert to electronic transmission formats where paper is still being used today. Many of these sponsors already use X12 standards in their core business activities (for example, purchasing) unrelated to the provision of health care benefits to employees. The utility of this particular standard for health care transactions would be synergistic when considered in combination with the other standards in this proposed rule (for example, ASC X12 820) and other rules (PAYERID, national provider identifier) promulgated under HIPAA.

In addition to being the only relevant standard for the enrollment and maintenance process designed for use

by sponsors, the ANSI ASC X12 834 met all of the 10 criteria deemed to be applicable in evaluating this potential standard.

1. It will improve the efficiency of enrollment transactions by prescribing a single, standard format.

2. It was designed to meet the needs of health care providers, health plans, and health care clearinghouses by virtue of its development within the ASC X12 consensus process, in which representatives of health care providers, health plans, and health care clearinghouses participate.

3. It is consistent with the other X12 standards detailed in this proposed rule.

4. Its development costs are relatively low, given the ASC X12 development process; its implementation costs would be relatively low as it can be implemented along with a suite of X12 transaction sets, often with a single translator.

5. It was developed and will be maintained by the ANSI-accredited standards setting organization ASC X12.

6. It is ready for implementation, with the official implementation guide to which we refer in Addendum G to this proposed rule.

7. It was designed to be technology neutral by ASC X12.

8. Precise and unambiguous definitions for each data element in the transaction set are documented in the implementation guides.

9. The transaction is designed to keep data collection requirements as low as is feasible.

10. All X12 transactions, including the X12 834, are designed to make it easy to accommodate constantly changing business requirements through flexible data architecture and coding systems.

iii. Uses of the ANSI ASC X12 834.

Transaction data elements in the implementation guide for the ASC X12 834 are defined as either required or conditional, where the conditions are clearly stated. This transaction would be used to enroll and disenroll not only the subscriber, but also any covered dependents. In some instances, this would be an enhancement to enrollment information maintained by sponsors or health plans, compared with the common practice today of maintaining detailed records on the subscriber alone. In an increasingly value-conscious health care environment, detailed information on subscribers and covered dependents is necessary for the effective management of their health care utilization.

Administrative and financial health care transactions such as the ASC X12 834 enrollment transaction may have

other, secondary uses that may be important to consider as well. For example, secondary uses of health care claims data are common and include analyses of health care utilization, quality, and cost. The ASC X12 834 enrollment transaction has been discussed (for example, by the NCVHS) as a means to collect demographic information on individuals for use by public health, State data organizations, and researchers. Typically, demographic data elements would be used in combination with information obtained from other health care transactions, such as health care claims and equivalent encounter transactions, and from other sources.

Proponents of this approach and these uses have expressed their beliefs that the enrollment transaction includes patient demographic data elements and that this would provide more reliable data on patient demographics than are available currently from health care claims and encounter databases. Proponents also believe that the availability of demographic information is in jeopardy because the X12 837 health care claim transaction proposed elsewhere in this rule includes minimal patient demographic data elements. The use of this standard would be a change from current practice in many States where the health care claim is the vehicle for collecting such information. Some proponents also have indicated a desire to expand the number of demographic data elements contained in the ASC X12 834 enrollment transaction to serve these secondary uses.

Opponents of this approach argue that the ASC X12 834 enrollment transaction is not a suitable vehicle for collecting demographic information for these secondary purposes. They also assert that such information would never be available on the uninsured and, since there is no obligation on the part of sponsors to adopt the electronic transactions, would be only intermittently available on the insured. They also state that, although some demographic elements are already contained in the ASC X12 834 enrollment transaction, no business need has been identified that would support the addition of other such data elements. Finally, the opponents argue that secondary uses, while legitimate, should not be allowed to subvert the primary purposes of these transactions nor the goal of administrative simplification.

We welcome comments on the practical utility of the ASC X12 834 enrollment transaction as a vehicle for collecting demographic information on individuals and its value as an adjunct

to claims and encounter data in this regard.

The data elements for this transaction, and other information, may be found in Addendum 5.

b. Requirement

In § 142.1502, we would specify the ASC X12 834 Benefit Enrollment and Maintenance (004010X095) as the standard for enrollment and disenrollment transactions. We would also specify the source of the implementation guide and incorporate it by reference.

i. Health plans.

In § 142.1504, Requirements: Health plans, we would require health plans to use only the standard specified in § 142.1502 for electronic enrollment and disenrollment transactions.

ii. Health care clearinghouses.

We would require in § 142.1506 that each health care clearinghouse use the standard specified in § 142.1502 for enrollment and disenrollment transactions.

iii. Sponsors.

There would be no requirement for sponsors to use the standard: they are not one of the entities subject to the requirements of HIPAA. However, to the extent a sponsor uses an electronic standard, it would benefit that sponsor to use the standard we adopt for the reasons discussed earlier. In addition, HIPAA contains no provisions that would prohibit a health plan requiring sponsors with which it conducts transactions electronically to use the adopted standard.

c. Implementation Guide and Source

The implementation guide for the ASC X12N 834 (004010X095) is available at no cost from the Washington Publishing Company site on the World Wide Web at the following address: <http://www.wpc-edi.com/hipaa/>. The data definitions and description of data conditions may also be obtained from this website.

Users without access to the Internet may purchase implementation guides from Washington Publishing Company directly: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878; telephone 301-590-9337; FAX: 301-869-9460.

6. Standard: Eligibility for a Health Plan (Subpart P)

[Please label any written comments or e-mailed comments about this section with the subject: Eligibility]

a. Background

Often, health care providers may need to verify not only that a patient has

health insurance coverage but also what specific benefits are included in that coverage. Having such information helps the health care provider to collect correct patient deductibles, co-insurance amounts, and co-payments and to provide an accurate bill for the patient and all pertinent health plans, including secondary payers.

In addition, simple economics dictates that the out-of-pocket cost to the patient may affect treatment choices. The best case is when there are two equally effective treatment options and coverage is only available for one. More often, the question may be whether a particular treatment is covered or not. Here is an example: Jane Doe has cancer and a bone marrow transplant is the treatment of last resort. Since insurance coverage does not extend to "experimental therapies," the question becomes: Does Jane's insurance cover a bone marrow transplant for her diagnosis? If she has leukemia, the treatment may be covered; if she has cervical cancer, it may not be. Whether Jane could afford to pay out-of-pocket for such a treatment could affect her treatment choice.

The value of eligibility information is enhanced if it can be acquired quickly. Traditional methods of communication (that is, by phone or mail) are highly inefficient. Patients and health plans find it disturbing when the deductible and co-pays are not correctly applied.

When insurance inquiries of this sort are transmitted electronically, health care providers can receive the information from the health plan almost immediately. However, in current practice, each health plan may require that the health care provider's request be in a preferred format, which often does not match the format required by any other health plan. This means that the health care provider must maintain the hardware and software capability to send multiple inquiry formats and receive multiple response formats. Because of this situation, adoption of electronic methods for inquiries has been inhibited, and reliance on paper forms or the telephone for such inquiries has continued.

i. Candidates for the Standard

The HISB developed an inventory of health care information standards to be considered by the Secretary of HHS in the adoption of standards. The ANSI ASC X12N 270—Health Care Eligibility Benefit Inquiry and companion 271—Health Care Eligibility Benefit Response, the ASC X12N Interactive Health Care Eligibility/Benefit Inquiry (IHCEBI) and its companion the Interactive Health Care Eligibility/Benefit Response

(IHCEBR), the NCPDP Telecommunications Standard Format, and the NCPDP Telecommunication Claim Standard for Pharmaceutical Professional Services are the standards available for the electronic exchange of patient eligibility and coverage information.

ii. Recommended Standard

We propose to adopt the ANSI ASC X12N 270—Health Care Eligibility Benefit Inquiry and the companion ASC X12N 271—Health Care Eligibility Benefit Response as the standard for the eligibility for a health plan transaction.

When evaluated against the criteria (discussed earlier) for choosing a national standard, the ASC X12 Transaction Sets 270/271 met the criteria more often than did the ASC X12 interactive or the NCPDP transactions. The ASC X12N 270/271 transaction set is supported by an accredited standards setting organization ASC X12 (criteria #5). By comparison with the alternatives, the ASC X12N 270/271 would have relatively low additional development and implementation costs and would be consistent with other standards in this proposed rule (criteria #4 and #3). The NCPDP standards, because they are specific to pharmacy transactions, were rejected because they would not meet the needs of the rest of the health care system (criteria #2), whereas the ASC X12N 270/271 would.

The X12N subcommittee and its Workgroup 1, which is responsible for the eligibility transaction, recommended in June 1997 that the ASC X12N 270/271 be adopted as the HIPAA standard (criteria #5).

There are specific, technical reasons against adoption of the IHCEBI/IHCEBR at this time. The IHCEBI/IHCEBR is based on UNEDIFACT, not ASC X12N syntax. Because of concurrent changes in UNEDIFACT design rules, the IHCEBI/IHCEBR is not a complete or consistent standard. It has not been classified by UNEDIFACT as ready to implement. In X12N, the current version of IHCEBI/IHCEBR is 3070, and we believe that current use is centered on a prior version (3051), which is not millennium compliant. The IHCEBI/IHCEBR transaction is not ready to be moved into version 4 (4010), as are the other transactions being recommended in this proposed rule. We also believe that current use is quite limited, and not consistent across users; in effect, current uses of this transaction have been implemented in proprietary format(s). For all these reasons, the IHCEBI/IHCEBR is neither technically ready nor stable and cannot be recommended as a

standard at this time. Thus, the IHCEBI/IHCEBR would require higher additional development and implementation costs (criteria #4), and they would not be consistent or uniform with the other standards selected (criteria #3).

If an interactive eligibility transaction standard were ratified by an accredited standards setting organization sometime in the future, then it could be considered for adoption as a HIPAA standard. However, at this time, we expect that any future standard for an interactive eligibility transaction is likely to differ substantially from the current IHCEBI/IHCEBR and the time to readiness could be substantial as well (criteria #6).

The goal of administrative simplification, as expressed in the law, is to improve the efficiency and effectiveness of the health care system (criteria #1). Whereas it might seem that the interactive message would yield greater efficiencies in terms of time saved, similar efficiencies are available with the ASC X12N 270/271. In fact, the ASC X12N 270 can be used to submit a single eligibility inquiry electronically for a very quick turnaround 271 response. Response times, measured in seconds, would compare favorably to a true "interactive" transaction and would be a substantial improvement over telephone inquiries or paper methods of eligibility determination.

Transactions concerning eligibility for a health plan would be used only to verify the patient's eligibility and benefits; they would not provide a history of benefit use. The electronic exchange using these standards would occur usually between health care providers and health plans, but the standard would support electronic inquiry and response among other entities. In addition to uses by various health care providers (for example, hospitals, laboratories, and physicians), the ASC X12N 270/271 can be used by an insurance company, a health maintenance organization, a preferred provider organization, a health care purchaser, a professional review organization, a third-party administrator, vendors (for example, billing services), service bureaus (such as value-added networks), and government agencies (Medicare, Medicaid, and CHAMPUS).

The eligibility transaction is designed to be used for simple status requests as well as more complex requests that may be related to specific clinical procedures. General requests might include queries for: all benefits and coverage conditions, eligibility status (whether the patient is active in the

health plan), maximum benefits (policy limits), exclusions, in-plan/out-of-plan benefits, coordination of benefits information, deductibles, and copayments. Specific requests might include procedure coverage dates; procedure coverage maximum; amounts for deductible, co-insurance, co-payment, or patient responsibility; coverage limitations; and noncovered amounts.

Another part of the ASC X12N 271 is designed to handle requests for eligibility "rosters," which are essentially lists of entities—subscribers and dependents, health care providers, employer groups, health plans—and their relationships to each other. For example, this transaction might be used by a health plan to submit a roster of patients to a health care provider to designate a primary care physician or to alert a hospital about forthcoming admissions. We are not recommending this use of the ASC X12N 270/271 at this time because the roster implementation guide is not millennium compliant and the standards development process for the implementation guide is not completed. After the standards development process for the roster implementation guide is completed, it may be considered for adoption as a national standard.

The data elements for this transaction, and other information, may be found in Addendum 6.

b. Requirements

i. Health plans.

In § 142.1604, Requirements: Health plans, we would require health plans to use only the standard specified in § 142.1602 for electronic eligibility transactions.

ii. Health care clearinghouses.

We would require in § 142.1606 that each health care clearinghouse use the standard specified in § 142.1602 for eligibility transactions.

iii. Health care providers.

In § 142.1608, Requirements: Health care providers, we would require each health care provider that transmits any health plan eligibility transactions electronically to use the standard specified in § 142.1602 for those transactions.

c. Implementation Guide and Source

The implementation guide is available for the ASC X12N 270/271 (004010X092) at no cost from the Washington Publishing Company site on the World Wide Web at the following address: <http://www.wpc-edi.com/hipaa/>. The data definitions and

description of data conditions may also be obtained from this website.

Users without access to the Internet may purchase implementation guides from Washington Publishing Company directly. Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878; telephone 301-590-9337; FAX: 301-869-9460.

7. Standard: Health Plan Premium Payment (Subpart Q)

[Please label any written comments or e-mailed comments about this section with the subject: Premium]

a. Background

Electronic payment methods have become commonplace for consumers who pay their monthly mortgage, power, or telephone bills electronically. Yet, electronic payment of health insurance premiums by employers is not common at all.

Adoption of a standard for electronic payment of health plan premiums would benefit employers and other sponsors, especially, by providing the opportunity to convert to a single electronic transmission format where paper forms and premium payment formats may vary from health plan to health plan. Many of these sponsors already use X12 standards in their core business activities (for example, purchasing) unrelated to the provision of health care benefits to employees. Federal and State governments when acting as employers and other government agencies that transmit premium payments to outside organizations (for example, State Medicaid agencies that pay premiums to outside organizations such as managed care organizations) would also benefit from these electronic transactions.

i. Candidates for Standard.

According to the inventory conducted for HHS by the HISB, only one standard developed and maintained by a standards developing organization for health plan premium payment transaction exists. It is the ASC X12 820—Payment Order/Remittance Advice.

ii. Recommended Standard.

The standard we are proposing to adopt for health plan premium payment transactions is the ASC X12 820—Payment Order/Remittance Advice. If we adopt the ASC X12 820, health plans would be able to transmit premium payments either as a summary payment or with individual payment detail, or as payment amount and adjustment amount, using a single, electronic format. Health plans would be required to accept the standard transaction as the

electronic transmission; neither sponsors nor health plans would have to continue to maintain and use multiple proprietary premium payment formats or resort to paper.

Although the premium order/remittance advice (ASC X12 820), used for health plan premium payments, can be paired with the ASC X12N 811—Consolidated Service Invoice/Statement, which is used for health plan premium billing, our proposal and the focus of the statute is on a standard only for health plan premium payments.

In addition to being the only relevant standard designed for use by sponsors, the ANSI ASC X12 820 met 9 of the 10 criteria deemed to be applicable in evaluating this potential standard. It would improve the efficiency of premium payment transactions by prescribing a single, standard format. It was designed to meet the needs of health care providers, health plans, and health care clearinghouses by virtue of its development within the ASC X12 consensus process, in which representatives of health care providers, health plans, and health care clearinghouses participate. It is consistent with the other ASC X12 standards detailed in this proposed rule. Its development costs are relatively low, given the X12 development process; its implementation costs would be relatively low as it can be implemented along with a suite of X12 transaction sets, often with a single translator. It was developed and will be maintained by the ANSI-accredited standards setting organization X12. It is ready for implementation, with the official implementation guide to which we refer in Addendum 7 to this proposed rule. It was designed to be technology neutral by X12. Precise and unambiguous definitions for each data element in the transaction set are documented in the implementation guides.

The ANSI ASC X12 820—Payment Order/Remittance Advice is currently used in applications other than health care. However, it is currently not in widespread use in the health insurance industry because most health plan premium payments are not done electronically. However, some large organizations are using the ASC X12 820 to meet other business requirements, such as automated purchasing. The ASC X12 820 is used in the health care industry for premium payment information exchanged between the sponsor and the health plan; it should not be confused with the ASC X12 834, which includes additional nonpremium payment information. The ASC X12 820 is not

intended to be used to carry enrollment or other eligibility information.

The data elements for this transaction, and other information, may be found in Addendum 7.

b. Requirements

In § 142.1702, we would specify the following as the standard for health plan premium payment: ASC X12 820—Payment Order/Remittance Advice (004010X061). We would specify where to find the implementation guide and incorporate it by reference.

i. Health plans.

In § 142.1704, Requirements: Health plans, we would require health plans to accept only the standard specified in § 142.1702 for electronic health plan premium payments.

ii. Health care clearinghouses.

We would require in § 142.1706 that each health care clearinghouse use the standards specified in § 142.1702 for health plan premium payment transactions.

iii. Sponsors.

There would be no requirement for sponsors to use the standard; they are not one of the entities subject to the requirements of HIPAA. However, to the extent a sponsor uses an electronic standard, it would benefit that sponsor to use the standard we adopt for the reasons discussed earlier. In addition, HIPAA contains no provisions that would prohibit a health plan requiring sponsors with which its conducts transactions electronically to use the adopted standard.

c. Implementation Guide and Source

The implementation guide for this transaction is the ASC X12N 820—Payroll Deducted and Other Group Premium Payment for Insurance Products (004010X061).

The implementation guide is available at no cost from the Washington Publishing Company site on the World Wide Web at the following address: <http://www.wpc-edi.com/hipaa/>.

Users without access to the Internet may purchase implementation guides from Washington Publishing Company directly. Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878; telephone 301-590-9337; FAX: 301-869-9460.

8. Standard: Referral Certification and Authorization (Subpart R)

[Please label any written comments or e-mailed comments about this section with the subject: Referral]

a. Background

Increasingly, the delivery of health care is focused on achieving greater

value from each health care dollar, and rigorous monitoring of health care utilization has become a common method adopted by health plans for achieving their value goals. Traditional methods of communication between health care providers and health plans or their designates, which rely on a combination of paper forms and telephone calls, are neither efficient nor cost effective and may impede the delivery of care. The burden and inefficiencies of these communications could be reduced by the adoption of standardized and electronic methods for making the requests and receiving responses.

i. **Candidates for Standard.**
According to the inventory of standards produced by the HISB for HHS, there is only one standard available for referral certification and authority. It is the ASC X12N 278, Health Care Services Review Information.

ii. **Recommended Standard.**
The ANSI ASC X12N 278—Health Care Services Review Information is the standard proposed for electronic exchange of requests and responses between health care providers and review organizations.

These exchanges of information can be initiated by either the health care provider or the health plan. The health care provider requests from a designated review entity authorization or certification for a patient to receive a particular health care service. In turn, the review entity receives and responds to the health care provider's request. In addition to direct electronic inquiry and response, the ASC X12N 278 can be used in connection with point of service terminals.

Many different types of organizations may act as a review entity in such an exchange. These include health plans, insurance companies, health maintenance organizations, preferred provider organizations, health care purchasers, managed care organizations providing coverage to Medicare and Medicaid beneficiaries, professional review organizations, other health care providers, and benefit management organizations, to name a few.

These requests and responses may pertain to many different health care events, including reviews for: treatment authorization, specialty referrals, pre-admission certifications, certifications for health care services (such as home health and ambulance), extension of certifications, and certification appeals.

As with all the other ASC X12 transactions being proposed in this rule, the ASC X12N 278 was developed with widespread input from health care

industry representatives in a consensus process taking into account business needs. Further, the standard is fully compatible with the other ASC X12 standards and can be translated to and from native application systems using off-the-shelf software (commonly referred to as "translators") that is readily available and used by all industries utilizing ASC X12 standards.

The data elements for this transaction, and other information, may be found in Addendum 8.

b. Requirements

In § 142.1802, we would specify the following as the standard for referral certifications and authorizations: ASC X12N 278—Request for Review and Response (004010X094). We would specify where to find the implementation guide and incorporate it by reference.

i. Health plans.

In § 142.1804, Requirements: Health plans, we would require health plans to accept and transmit only the standard specified in § 142.1802 for electronic referral certifications and authorizations.

ii. Health care clearinghouses.

We would require in § 142.1806 that each health care clearinghouse use the standard specified in § 142.1802 for referral certifications and authorizations.

iii. Health care providers.

In § 142.1808, Requirements: Health care providers, we would require each health care provider that transmits referral certifications and authorizations electronically to use the standard specified in § 142.1802 for the transactions.

c. Implementation Guide and Source

The implementation guide for the ASC X12N 278 (004010X094) is available at no cost from the Washington Publishing Company site on the World Wide Web at the following address: <http://www.wpc-edi.com/hipaa/>.

Users without access to the Internet may purchase implementation guides from Washington Publishing Company directly. Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878; telephone 301-590-9337; FAX: 301-869-9460.

9. Standard: First Report of Injury

[Please label any written comments or e-mailed comments about this section with the subject: Injury]

Background

"First report of injury" is not a general term or transaction in the health

care insurance industry. Upon investigation, we found that the property and casualty insurance industry, among whose lines of business is workers compensation insurance, had developed a standard transaction entitled "Report of Injury, Illness or Incident" (ASC X12N 148). This transaction set was developed within ASC X12N to encompass more than 30 functions and exchanges that occur among the numerous parties to a workers compensation claim. The transaction can be used by an employer, first, to report an employee injury or illness to the State government agency that administers workers compensation and, second, to report to the employer's workers compensation insurance carrier so that a claim can be established to cover the employee's losses (income, health care, disability). When the employer is the Federal government, the transaction is used to report to the Department of Labor's Office of Workers Compensation Programs. In a few States, the transaction can also be used by health care providers to report an employee's work-related injury to employers and/or the employer's workers compensation insurance carrier. The transaction can be used by State agencies responsible for monitoring the disposition of a workers compensation claim. Other uses include summary reporting of employee injuries and illness to State workers compensation boards, commissions, or agencies; the Federal Bureau of Labor Statistics; the Federal Occupational Safety and Health Administration; and the Federal Environmental Protection Agency.

The current, approved version of this transaction is 3070, which is not millennium compliant. There is no approved implementation guide for version 4010, which would be millennium compliant. The ASC X12N workgroup is developing a version 4010 or higher implementation guide and data dictionary. The workgroup hopes to secure ASC X12N approval for its revised standard and implementation guide in the spring of 1998. Current workgroup planning is for a single implementation guide that covers all of the business uses to which we refer above.

Recommendation:

We do not recommend that the ASC X12N 148—Report of Injury, Illness or Incident be adopted at this time, for the following reasons:

a. There is no millennium-compliant version of an implementation guide for this transaction.

b. There is no complete data dictionary for this transaction.

c. The implementation guide under development covers more business requirements and functions than the "first report of injury" specified in the statute.

d. Consultation with the transaction's extensive user community is necessary to establish a consensus regarding the scope of the transaction set, and this is not possible in the time available to the Secretary for promulgating a final regulation.

e. An alternative to the ASC X12N 148 has been brought to our attention and must be evaluated.

The alternative EDI format is that developed and maintained by the International Association of Industrial Accident Boards and Commissions (IAIABC). The IAIABC EDI format was not identified in the ANSI HISB inventory of standards developed for HHS because the IAIABC is not an ANSI-accredited standards setting organization.

Under the law, a standard adopted under the administrative simplification provisions of HIPAA is required to be "a standard that has been developed, adopted, or modified by a standard setting organization" (section 1172(c) of the Act) (if a standard exists). The Secretary may adopt a different standard if it would substantially reduce administrative costs to health care providers and health plans when compared to the alternatives (section 1172(c)(2)(A)).

Accordingly, the IAIABC EDI format must be evaluated before a national standard for first report of injury transactions is adopted because it is reported to be widely used. The IAIABC will be requested to submit documentation so that its first report of injury format can be evaluated according to the ten criteria applied to all other standards.

In assessing the utility of this alternative standard, we will follow the Guiding Principles for selecting a standard to evaluate the IAIABC EDI format against that developed and maintained by ANSI ASC X12N. The following questions about the IAIABC standard will be of particular importance:

a. To what extent is this format widely accepted and used by organizations performing these transactions?

b. Is this format millennium-compliant?

c. Does this standard meet the requirements set forth in the Administrative Simplification provisions of HIPAA for improving the efficiency and effectiveness of the health care system?

d. Is this a format developed, maintained, or modified by a standard setting organization as specified in Section 1171 (8) or does it meet the exceptions specified in Section 1172 (c)(2) of the Act?

We do not recommend that the IAIABC format be adopted at this time. We have asked that the IAIABC provide documentation for their format.

In view of these facts, HHS will take the following actions with regard to adopting a standard for "first report of injury":

a. Continue to monitor the progress of the ASC X12N subcommittee toward development of a final, complete, millennium-compliant standard, implementation guide, and data dictionary for this transaction.

b. Request that ASC X12N review the ASC X12N 148 to determine whether all of its broad functionality should be included in a standard to be adopted under HIPAA authority or whether the scope of the transaction should be limited by dividing the functions into separate implementation guides.

c. Review and evaluate documentation from the IAIABC on its format so that it can be evaluated according to the ten criteria used to evaluate candidate standards and in relation to the ASC X12N 148 as described above.

d. After the ASC X12N subcommittee has completed its standard setting role and approved a 4010 version or higher implementation guide and data definitions for the ASC X12N 148 and after analysis of the IAIABC alternative standard, issue a subsequent proposed rule promulgating a standard for "first report of injury".

III. Implementation of the Transaction Standards and Code Sets

A. Compliance Testing

We have identified three levels of testing that must be addressed in connection with the adoption and implementation of the standards we are proposing and their required code sets:

Level 1—Developmental Testing—This is the testing done by the standards setting organization during the development process. The conditions for, and results of, this testing are made public by the relevant standards bodies, and are available at the following Internet web site: <http://www.disa.org>

The information on the web site is provided at the discretion of the standards setting organization and could, among other things, refer to pilot, limited, or large-scale production if appropriate. Information regarding code

set testing will also be posted to a website. This website will be advertised on the HCFA home page.

Level 2—Validation Testing—This is testing of sample transactions to see whether they are being written correctly. We expect that private industry will provide commercial testing at this level. This level of testing would give the participants a sense of whether they are meeting technical specifications of structure and syntax for a transaction, but it may not necessarily test for valid data. This type of testing would inform individuals that the transaction probably meets the specifications. These edits would be less rigorous than those that might be applied by a health plan before payment (in the case of a claim) or by a health care provider prior to posting (in the case of a health care claim payment/advice). The test conditions and results from this level are generally shared only between the parties involved.

Level 3—Production Testing—This tests a transaction from a sender through the receiver's system. The test information is exposed to all of the edits, lookups, and checks that the transaction would undergo in a production situation. The test conditions and results from this level are generally shared only between the parties involved.

Pilot production—Billions of dollars change hands each year as a result of health care claims processing alone. For that reason, we believe the industry should sponsor pilot production projects to test transaction standards that are not currently in full production prior to the effective date for adoption. Pilot production tests are not necessary for the NCPDP retail pharmacy claim since it is already in widespread use. On the other hand, some of the ASC X12N implementations have not yet been placed in general production. We believe that pilot production results should be posted on a website and show information of general interest to potential users. The information given is at the discretion of the entities conducting the pilot and might contain information regarding the number of claims processed, the identity of the entities participating in the pilot, and the name, telephone number or e-mail address of an individual willing to answer questions from the public.

It would be useful to all participants if pilot production projects and the results were posted to a web site for all transactions. For the claim and equivalent encounter transactions, we believe that posting pilot production projects and results to a web site must be mandatory.

B. Enforcement

Failure to comply with standards may well result in monetary penalties. The Secretary is required by statute to impose penalties of not more than \$100 per violation on any person who fails to comply with a standard, except that the total amount imposed on any one person in each calendar year may not exceed \$25,000 for violations of one requirement.

We are not proposing any enforcement procedures at this time, but we will do so in a future Federal Regulations document, once the industry has some experience with using the standards.

We are at this time, however, soliciting input on appropriate mechanisms to permit independent assessment of compliance. We are particularly interested in input from those engaging in health care EDI as well as from independent certification and auditing organizations addressing issues of documentary evidence of steps taken for compliance; need for/desirability of independent verification, validation, and testing of systems changes; and certifications required for off-the-shelf products used to meet the requirements of this regulation.

IV. New and Revised Standards**A. New Standards**

To encourage innovation and promote development, we intend to develop a process that would allow an organization to request a replacement to any adopted standard or standards.

An organization could request a replacement to an adopted standard by requesting a waiver from the Secretary of HHS to test a new standard. The organization, at a minimum, must demonstrate that the new standard clearly offers an improvement over the adopted standard. If the organization presents sufficient documentation that supports testing of a new standard, we want to be able to grant the organization a temporary waiver to test it while remaining in compliance with the law. We do not intend to establish a process that would allow organizations to request waivers as a tool to avoid using any adopted standard.

We would welcome comments on the following: (1) How we should establish this process, (2) the length of time a proposed standard should be tested before we decide whether to adopt it, and (3) other issues and recommendations we should consider in developing this process.

Following is one possible process:

- Any organization that wishes to replace an adopted standard must

submit its waiver request to an HHS evaluation committee (not currently established or defined). The organization must do the following for each standard it wishes to replace:

- + Provide a detailed explanation, no more than 10 pages in length, of how the replacement would be a clear improvement over the current standard in terms of the principles listed in section I.D., *Process for developing national standards*, of this preamble.

- + Provide specifications and technical capabilities on the new standard, including any additional system requirements.

- + Provide an explanation, no more than 5 pages in length, of how the organization intends to test the standard, including the number and types of health care plans and health care providers expected to be involved in the test, geographical areas, and beginning and end dates of the test.

- The committee's evaluation would, at a minimum, be based on the following:

- + A cost-benefit analysis.
- + An assessment of whether the proposed replacement demonstrates a clear improvement to an existing standard.

- + The extent and length of time of the waiver.

- The evaluation committee would inform the organization requesting the waiver within 30 working days of the committee's decision on the waiver request. If the committee decides to grant a waiver, the notification may include the following:

- + Committee comments such as the following:

- The length of time for which the waiver applies if it differs from the waiver request.

- The sites the committee believes are appropriate for testing if they differ from the waiver request.

- Any pertinent information regarding the conditions of an approved waiver.

- Any organization that receives a waiver would be required to submit a report containing the results of the study, no later than 3 months after the study is completed.

- The committee would evaluate the report and determine whether the proposed new standard meets the 10 guiding principles and whether the advantages of a new standard would significantly outweigh the disadvantages of implementing it and make a recommendation to the Secretary.

B. Revised Standards

We recognize the very significant contributions that the traditional content committees (the NUCC, the NUBC, the ADA, and the National Council for Prescription Drug Programs) have made to health care transaction content over the years and, in particular, the work they contributed to the content of the standards proposed in this proposed rule. Other Federal and private entities (the National Center for Health Statistics, the Health Care Financing Administration, the AMA, and the ADA) have developed and maintained the medical data code sets proposed as standards in this proposed rule. In a letter dated June 10, 1997, WEDI recommended that the NUBC, NUCC and ADA be recognized as the appropriate organizations to specify data content. We expect that these current committees would continue to play an important role in maintenance of data content for standard health care transactions. The organizations assigned responsibility for maintenance of data content for standard health care transactions will work with X12N data maintenance committees, ensuring that implementation documentation is updated in a consistent and timely fashion.

We intend that the private sector, with public sector involvement, continue to have responsibility for defining the data element content of the administrative transactions. Both Federal agencies and private organizations will continue to be responsible for maintaining medical data code sets. The current data content committees are focused on transactions that involve health care providers and health plans. There may be some organizations that represent employers or other sponsors and health plans and are interested in assuming the burden of maintenance of the data content standards for the X12 820 and 834.

We propose to designate content committees in the final rule and to specify the ongoing activities of these content committees pertaining to the data maintenance of all X12N standards identified in this rule, as well as attachments. All approved changes, not including medical code sets, would need to fit into the appropriate ASC X12N implementation guide(s) and receive ASC X12N approval, with the exception of the NCPDP standard. The NCPDP would continue to operate as currently for data content.

It is important that data content revisions be made timely in this new standards environment. The Secretary of HHS may not revise any standard more

frequently than once a year and must permit no fewer than 180 days for implementation for all participants after adopting a revised standard. New values could be added to the code sets for certain data elements in transaction standards more frequently than once a year. For example, alpha-numeric HCPCS and NDC, two of the proposed standard code sets for medical data, now have mechanisms for ongoing addition to new codes as needed to reflect new health services and new drugs. Such ongoing update mechanisms would continue to be needed in the year 2000 and beyond.

The private sector organizations charged with data element content maintenance would have to ensure that the revised standard contains the most recent data maintenance items that have been brought to them and that those new data requirements are adequately documented and communicated to the public. We believe that, at minimum, the data maintenance documentation needs to include the data name, data definition, the status of the data name (that is, required or conditional), written conditions regarding the circumstances under which the data would have to be supplied, a rationale for the new or revised data item, and its placement in an implementation guide. We believe that any data request approved by a body three or more months prior to the adoption of a new or revised standard would have to be included in that new standard implementation, assuming that no major format restructuring would have to be done. (A new data element, code, or segment would not constitute major restructuring.)

We believe that any body with responsibility for maintaining a standard under this proposed rule must allow public access to their decision making processes. We plan to engage standards setting organizations and other organizations responsible for maintenance of data element content and standard code sets to establish a process that will enable timely standards development/updates with appropriate industry input. One approach may be as follows:

- Each of the data maintenance bodies has biannual meetings with the public welcome to attend and participate without payment of fees.

- + These public meetings are announced to the broadest possible audience, at minimum by means of a website. The announcements of the meetings may also be available via widely read publications, such as the *Commerce Business Daily* or the *Federal Register*.

- + Annual public meeting schedules are posted on a website not later than 90 days after the effective date of the final rule, and annually on that date thereafter.

- + The data maintenance body establishes a central contact (name and post office and e-mail addresses) to which the public could submit correspondence (such as agenda items or data requests).

- + During these two open meetings, the public has the opportunity to voice concerns and suggest changes.

- + Each data maintenance body drafts procedures for the public to follow in regard to its meeting protocols.

- Each data maintenance body drafts procedures for the public to submit requests for data or for revisions to the standard. These draft procedures are easy to use and are adequately communicated to the public.

- Each designated data maintenance body is also responsible for communicating actions taken on requests to the requestor and the public, in addition to communicating any changes made to a standard. This may be done via mail, e-mail, publications, or newsletters but, at a minimum, are published on the website. (We believe the Internet is the most cost effective way of communicating this type of information.)

- Each data maintenance body responds definitively to each request it receives no later than three months after the request is received.

An alternative approach would be to require an organization which desired to be designated by the Secretary as the official data content maintenance body for a particular transaction to meet the ANSI criteria for due process found at http://www.ansi.org/proc_1.html. Not only would these criteria meet the intent of HIPAA to advocate an open, balanced, consensus process, but once an organization met these criteria, it would be able to apply for ANSI accreditation if it so desired.

It is not our intention to increase any current burdens on data maintenance bodies. Our concern is that the public have a voice in the data maintenance process and that changes to a standard be timely and adequately communicated to the industry. We welcome any comments regarding the approach outlined above and recommendations for data maintenance committees for each X12N transaction standard identified in this rule.

We also solicit comments on the appropriateness of ongoing Federal oversight/monitoring of maintenance processes and procedures.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the *Federal Register* and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.

- The accuracy of our estimate of the information collection burden.

- The quality, utility, and clarity of the information to be collected.

- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Subpart K—Health Claims or Equivalent Encounter Information Standard

142.1104 Requirements: Health plans.

142.1108 Requirements: Health care providers.

Subpart L—Health Care Payment and Remittance Advice

142.1204 Requirements: Health plans.

Subpart M—Coordination of Benefits

142.1304 Requirements: Health plans.

Subpart N—Health Claims Status

142.1404 Requirements: Health plans.

142.1408 Requirements: Health care providers.

Subpart O—Enrollment and Disenrollment in a Health Plan

142.1504 Requirements: Health plans.

Subpart P—Eligibility for a Health Plan

142.1604 Requirements: Health plans.

142.1608 Requirements: Health care providers.

Subpart Q—Health Plan Premium Payments

142.1704 Requirements: Health plans.

Subpart R—Referral Certification and Authorization

142.1804 Requirements: Health plans.

142.1808 Requirements: Health care providers.

Discussion: In summary, each of the sections identified above require health care plans, and/or health care providers to use any given standard proposed in this regulation for all electronically transmitted standard transactions that require it on and after the effective date given to it.

The emerging and increasing use of health care EDI standards and

transactions raises the issue of the applicability of the PRA. The question arises whether a regulation that adopts an EDI standard used to exchange certain information constitutes an information collection subject to the PRA. However, for the purpose of soliciting useful public comment we provide the following burden estimates.

In particular, the initial burden on the estimated 4 million health plans and 1.2 million health care providers to modify their current computer systems software would be 10 hours/\$300 per entity, for a total burden of 52 million hours/\$1.56 billion. While this burden estimate may appear low, on average, we believe it to be accurate. This is based on the assumption that these and the other burden calculations associated with the HIPAA administrative simplification systems modifications may overlap. This average also takes into consideration that: (1) One or more of these standards may not be used; (2) some of the these standards may already be in use by several of the estimated entities; (3) modifications may be performed in an aggregate manner during the course of routine business and/or; (4) modifications may be made by contractors such as practice management vendors, in a single effort for a multitude of affected entities.

We solicit comment on whether the requirements to which we refer above constitute a one-time or an ongoing, usual and customary business practice as defined 5 CFR 1320.3(b)(2), the Paperwork Reduction regulations.

We invite public comment on the issues discussed above. If you comment on these information collection and recordkeeping requirements, please e-mail comments to JBurke1@hcf.gov (Attn: HCFA-0149) or mail copies directly to the following:

Health Care Financing Administration,
Office of Information Services,
Information Technology Investment
Management Group, Division of
HCFA Enterprise Standards, Room
C2-26-17, 7500 Security Boulevard,
Baltimore, MD 21244-1850. Attn:
John Burke HCFA-0149

and
Office of Information and Regulatory
Affairs, Office of Management and
Budget, Room 10235, New Executive
Office Building, Washington, DC
20503, Attn: Allison Herron Eydt,
HCFA Desk Officer.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them

individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and, if we proceed with a subsequent document, we will respond to comments in the preamble to that document.

VII. Impact Analysis

As the effect of any one standard is affected by the implementation of other standards, it can be misleading to discuss the impact of one standard by itself. Therefore, we did an impact analysis on the total effect of all the standards in the proposed rule concerning the national provider identifier (HCFA-0045-P), which can be found elsewhere in this *Federal Register*.

We intend to publish in each proposed rule an impact analysis that is specific to the standard or standards proposed in that rule, but the impact analysis will assess only the relative cost impact of implementing a given standard. Thus, the following discussion contains the impact analysis for each of the transactions proposed in this rule. As stated in the general impact analysis in HCFA-0045-P, we do not intend to associate costs and savings to specific standards.

Although we cannot determine the specific economic impact of the standards being proposed in this rule (and individually each standard may not have a significant impact), the overall impact analysis makes clear that, collectively, all the standards will have a significant impact of over \$100 million on the economy. Also, while each standard may not have a significant impact on a substantial number of small entities, the combined effects of all the proposed standards may have a significant effect on a substantial number of small entities. Therefore, the following impact analysis should be read in conjunction with the overall impact analysis.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

Guiding Principles for Standard Selection

The implementation teams charged with designating standards under the statute have defined, with significant input from the health care industry, a set of common criteria for evaluating potential standards. These criteria are based on direct specifications in the HIPAA, the purpose of the law, and principles that support the regulatory philosophy set forth in Executive Order 12866 of September 30, 1993, and the

Paperwork Reduction Act of 1995. In order to be designated as a standard, a proposed standard should:

- Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or improvements in benefits from electronic HIPAA health care transactions. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses. This principle supports the regulatory goal of cost-effectiveness.
- Be consistent and uniform with the other HIPAA standards (that is, their data element definitions and codes and their privacy and security requirements) and, secondarily, with other private and public sector health data standards. This principle supports the regulatory goals of consistency and avoidance of incompatibility, and it establishes a performance objective for the standard.
- Have low additional development and implementation costs relative to the benefits of using the standard. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.
- Be supported by an ANSI-accredited standards developing organization or other private or public organization that would ensure continuity and efficient updating of the standard over time. This principle supports the regulatory goal of predictability.
- Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster. This principle establishes a performance objective for the standard.
- Be technologically independent of the computer platforms and transmission protocols used in HIPAA health transactions, except when they are explicitly part of the standard. This principle establishes a performance objective for the standard and supports the regulatory goal of flexibility.
- Be precise and unambiguous but as simple as possible. This principle supports the regulatory goals of predictability and simplicity.
- Keep data collection and paperwork burdens on users as low as is feasible. This principle supports the regulatory goals of cost-effectiveness and avoidance of duplication and burden.
- Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology. This principle

supports the regulatory goals of flexibility and encouragement of innovation.

General

The effect of implementing standards on health care clearinghouses is basically the same for all the standards. Currently, health care clearinghouses receive and transmit various transactions using a variety of formats. The implementation of standard transactions may reduce the variability in the data received from some groups, such as health care providers. The implementation of any standard will require some one-time changes to health care clearinghouse systems. Health care clearinghouses should be able to make modifications that meet the deadlines specified in the legislation, but some temporary disruption of processing could result. Once the transition is made, health care clearinghouses may have less ongoing system maintenance. Costs may vary according to the complexity of the standard, but costs may be recouped from customers.

Health care clearinghouses would face impacts (both positive and negative) similar to those experienced by health plans (which we discuss in more detail in the discussions for specific transactions). However, implementation would likely be more complex, because health care clearinghouses deal with many health care providers and health plans and may have to accommodate additional nonstandard formats (in addition to those formats they currently support), as well as standards we adopt. (The additional nonstandard formats would be from those health care providers that choose to stop submitting directly to an insurer and submit through a health care clearinghouse.) This would also mean increased business for the health care clearinghouse.

Converting to any standard will result in one-time conversion costs for health care providers, health care clearinghouses, and health plans as well. Some health care providers and health plans would incur those costs directly and others may incur them in the form of a fee from health care clearinghouses or, for health care providers, other agents.

Each standard compares favorably with typical ASC X12 standards in terms of complexity and ease of use. No one in the ASC X12 subcommittee assumes that every entity that sends or receives an ASC X12 transaction has reprogrammed its information systems in order to do so. Every transaction is designed, and the technical review process assures, that it will be

compatible with the commercial, off-the-shelf translator programs that are widely available in the United States. These translators significantly reduce the cost and complexity of achieving and maintaining compliance with all ASC X12 standards. Universal communication with all parties in the health care industry is thus assured.

Specific technology limitations of existing systems could affect the complexity of conversion. Also, some existing health care provider systems may not have the resources to house a translator to convert from one format to another.

Following is the portion of the impact analysis that relates specifically to the standards that are the subject of this regulation.

A. Code Sets—Specific Impact of Adoption of Code Sets for Medical Data Affected Entities

Standard codes and classifications are required in some segments of administrative and financial transactions. Those that create and process administrative transactions must implement the standard codes according to the official implementation guides designated for each coding system and each transaction. Those that receive standard electronic administrative transactions must be able to receive and process all standard codes (and modifiers, in the cases of HCPCS and CPT), irrespective of local policies regarding reimbursement for certain conditions or procedures, coverage policies, or need for certain types of information that are part of a standard transaction.

The adoption of standard code sets and coding guidelines for medical data supports the regulatory goals of cost-effectiveness and the avoidance of duplication and burden. The code sets that are being proposed as initial HIPAA standards are all de facto standards already in use by most health plans, health care clearinghouses, and health care providers.

Health care providers currently use the recommended code set for reporting diagnoses and one or more of the recommended procedure coding systems for reporting procedures/services. Since health plans can differ on the codes they accept, many health care providers use different coding guidelines for dealing with different health plans, sometimes for the same patient. (Anecdotal information leads us to believe that use of other codes is widespread, but we cannot quantify the number.) Some of these differences reflect variations in covered services

that will continue to exist irrespective of data standardization. Others reflect differences in a health plan's ability to accept as valid a claim that may include more information than is needed or used by that health plan. The requirement to use standard coding guidelines will eliminate this latter category of differences and should simplify claims submission for health care providers that deal with multiple health plans.

Currently, there are health plans that do not adhere to official coding guidelines and have developed their own plan-specific guidelines for use with the standard code sets, which do not permit the use of all valid codes. (Again, we cannot quantify how many health plans do this, but we are aware of some instances.) When the HIPAA code set standards become effective, these health plans would have to receive and process all standard codes, irrespective of local policies regarding reimbursement for certain conditions or procedures, coverage policies, or need for certain types of information that are part of a standard transaction.

We believe that there is significant variation in the reporting of anesthesia services, with some health plans using the anesthesia section of CPT and others requiring the anesthesiologist or nurse anesthetist to report the code for the surgical procedure itself. When the HIPAA code sets become effective, health plans following the latter convention will have to begin accepting codes from the anesthesia section.

We note that by adopting standards for code sets we are requiring that all parties accept these codes within their electronic transactions. We are not requiring payment for all these services. Those health plans that do not adhere to official coding guidelines must therefore undertake a one-time effort to modify their systems to accept all valid codes in the standard code sets or engage a health care clearinghouse to preprocess the standard claims data for them. Health plans should be able to make modifications to meet the deadlines specified in the legislation, but some temporary disruption of claims processing could result.

There may be some temporary disruption of claims processing as health plans and health care clearinghouses modify their systems to accept all valid codes in the standard code sets.

B. Transaction Standards**1. Specific Impact of Adoption of the National Council of Prescription Drug Programs (NCPDP) Telecommunication Claim****a. Affected Entities**

Health care providers that submit retail pharmacy claims, and health care plans that process retail pharmacy claims, currently use the NCPDP format. The NCPDP claim and equivalent encounter is used either in on-line interactive or batch mode. Since all pharmacy health care providers and health plans use the NCPDP claim format, there are no specific impacts to health care providers.

b. Effects of Various Options

The NCPDP format met all the principles and there are no known options for a standard retail pharmacy claim transaction.

2. Specific Impact of Adoption of the ASC X12N 837 for Submission of Institutional Health Care Claims, Professional Health Care Claims, Dental Claims, and Coordination of Benefits**a. Affected Entities**

All health care providers and health plans that conduct EDI directly and use other electronic format(s), and all health care providers that decide to change from a paper format to an electronic one, would have to begin to use the ASC X12N 837 for submitting electronic health care claims (hospital, physician/supplier and dental). (Currently, about 3 percent of Medicare providers use this standard for claims; it is used less for non-Medicare claims.)

There would be a potential for disruption of claims processes and timely payments during a particular health plan's transition to the ASC X12N 837. Some health care providers could react adversely to the increased cost and revert to submitting hard copy claims.

After implementation, health care providers would no longer have to keep track of and use different electronic formats for different insurers. This would simplify provider billing systems and processes and reduce administrative expenses.

Health plans would be able to schedule their implementation of the ASC X12N 837 in a manner that best fits their needs, thus allaying some costs (through coordination of conversion to other standards) as long as they meet the deadlines specified in the legislation. Although the costs of implementing the ASC X12N 837 are generally one-time costs related to conversion, the systems

upgrades for some smaller health care providers, health plans, and health care clearinghouses may be cost prohibitive. Health care providers and health plans have the option of using a clearinghouse.

The cost may also cause some smaller health plans that have trading partner agreements today to discontinue that partnership. That same audience of health care providers, health care clearinghouses, and health plans could conceivably be forced out of the partnerships of transmitting and accepting claims data. In these instances patients may be affected, in that, without trading partner agreements for electronic crossover of claims data for the processing of the supplemental benefit, the patient may be responsible for filing his or her own supplemental claims that are filed electronically today.

Coordination of Benefits

Once the ASC X12N 837 has been implemented, health plans that perform coordination of benefits would be able to eliminate support of multiple proprietary electronic claim formats, thus simplifying claims receipt and processing as well as reducing administrative costs. Coordination of benefits activities would also be greatly simplified because all health plans would use the same standard format. There is no doubt that standardization in coordination of benefits will greatly enhance and improve efficiency in the overall claims process and the coordination of benefits.

From a nonsystems perspective, we do not foresee an impact to the coordination of benefits process. The COB transaction will continue to consist of the incoming electronic claim and the data elements provided on a remittance advice. Standardization in the coordination of benefits process will clearly increase efficiency in the electronic processes utilized by the health care providers, health care clearinghouses, and health plans as they work with standardized codes and processes.

b. Effects of Various Options

We assessed the various options for a standard claim transaction against the principles, listed at the beginning of this impact analysis above, with the overall goal of achieving the maximum benefit for the least cost. We found that the ASC X12N 837 for institutional claims, professional claims, dental claims, and coordination of benefits met all the principles, but no other candidate standard transaction met all the principles.

Since the majority of dental claims are submitted on paper and those submitted electronically are being transmitted using a variety of proprietary formats, the only viable choice of a standard is the ASC X12N 837. The American Dental Association (ADA) also recommended the ASC X12N 837 for the dental claim standard.

The ASC X12N 837 was selected as the standard for the professional (physician/supplier) claim because it met the principles above. The only other candidate standard, the National Standard Format, was developed primarily by HCFA for Medicare claims. While it is widely used, it is not always used in a standard manner. Many variations of the National Standard Format are in use. The NUCC, the AMA, and WEDI recommended the ASC X12N 837 for the professional claim standard.

The ASC X12N 837 was selected as the standard for the institutional (hospital) claim because it met the principles above. The only other candidate standard is the UB-92 Format. While it is widely used, it is not always used in a standard manner.

The selection of the ASC X12N 837 does not impose a greater burden on the industry than the nonselected options because the nonselected formats are not used in a standard manner by the industry and they do not incorporate flexibility in order to adapt easily to change. The ASC X12N 837 presents significant advantages in terms of universality and flexibility.

3. Specific Impact of Adoption of the ASC X12N 835 for Receipt of Health Care Remittance**a. Affected Entities**

Health care providers that conduct EDI with health plans and do not wish to change their internal systems would have to convert the ASC X12N 835 transactions received from health plans into a format compatible with their internal systems. Health plans that want to transmit remittance advice directly to health care providers and that do not use the ASC X12N 835 would also incur costs to convert. Many health care providers and health plans do not use this standard at this time. (We do not have information to quantify the standard's use outside the Medicare program. However, in 1996, 15.9 percent of part B health care providers and 99.4 percent of part A health care providers were able to receive this standard. All Medicare contractors must be able to send the standard.)

There would be a potential for the delay in payment or the issuance of electronic remittance advice

transactions during a particular health plan's transition to the ASC X12N 835. Some health care providers could react adversely to the increased cost and revert to use of hard copy remittance advice notices in lieu of an electronic transmission.

After implementation, health care providers would no longer have to keep track of or accept different electronic payment/remittance advice formats issued by different health care payers. This would simplify automatic posting of all electronic payment/remittance advice data, reducing administrative expenses. This would also reduce or eliminate the practice of posting payment/remittance advice data manually from hard copy notices, again reducing administrative expenses. Most manual posting occurs currently in response to the problem of multiple formats, which the standard would eliminate.

Once the ASC X12N 835 has been implemented, health plans' coordination of benefits activities, which would use the ASC X12N 837 format supplemented with limited data from the ASC X12N 835, would be greatly simplified because all health plans would use the same standard format.

Health plans would be able to schedule their implementation of the ASC X12N 835 in a manner that best fits their needs, thus allaying some costs (through coordination of conversion to other standards), as long as they meet the deadlines specified in the legislation.

The selection of the ASC X12N 835 does not impose a greater burden on the industry than the nonselected option because the nonselected formats are not used in a standard manner by the industry and they do not incorporate flexibility in order to adapt easily to change. The ASC X12N 835 presents significant advantages in terms of universality and flexibility.

b. Effects of Various Options

We assessed the various options for a standard payment/remittance advice transaction against the principles listed above, with the overall goal of achieving the maximum benefit for the least cost. We found that the ASC X12N 835 met all the principles, but no other candidate standard transaction met all the principles, or even those principles supporting the regulatory goal of cost-effectiveness.

The ASC X12N 835 was selected as it met the principles above. The only other candidate standard, the ASC X12N 820, was not selected because, although it was developed for payment

transactions, it was not developed for health care payment purposes. The ASC X12N subcommittee itself recognized this in its decision to develop the ASC X12N 835.

4. Specific Impact of Adoption of the ASC X12N 276/277 for Health Care Claim Status/Response**a. Affected Entities**

Most health care providers that are currently using an electronic format (of which there are currently very few) and that wish to request claim status electronically using the ASC X12N 276/277 will incur conversion costs. We cannot quantify the number of health care providers that would have to convert to the proposed standard, but we do know that no Medicare contractors use it; thus, we assume that few health care providers are able to use it at this time.

After implementation, health care providers would be able to request and receive the status of claims in one standard format, from all health care plans. This would eliminate their need to maintain redundant software and would make electronic claim status requests and receipt of responses feasible for small providers, eliminating their need to manually send and review claim status requests and responses.

Health care plans that do not currently directly accept electronic claim status requests and do not directly send electronic claims status responses would have to modify their systems to accept the ASC X12N 276 and to send the ASC X12N 277. No disruptions in claims processing or payment would occur.

After implementation, health care plans would be able to submit claim status responses in one standard format to all health care providers. Administrative costs incurred by supporting multiple formats and manually responding to claim status requests would be greatly reduced.

b. Effects of Various Options

There are no known options for a standard claims status and response transaction.

5. Specific Impact of Adoption of the ASC X12N 834 for Enrollment and Disenrollment in a Health Plan**a. Affected Entities**

The ASC X12N 834 may be used by an employer or other sponsor to electronically enroll or disenroll its subscribers into or out of a health plan. Currently, most small and medium size employers and other sponsors conduct their subscriber enrollments using paper

forms. (We cannot quantify how many of these sponsors use paper forms, but anecdotal information indicates that most use paper.) We understand that large employers and other sponsors are more likely to conduct subscriber enrollment transactions electronically because of the many changes that occur in a large workforce; for example, hirings, firings, retirements, marriages, births, and deaths, to name a few. To do this, the large employers must use the proprietary electronic data interchange formats that differ among health plans. Nonetheless, it is our understanding, based on anecdotal information, that health plans still use paper to conduct most of their enrollment transactions.

We expect that the impact of the ASC X12N 834 transaction standard would differ, at least in the beginning, according to the current use of electronic transactions. As stated earlier, most small and medium size employers and other sponsors do not use electronic transactions currently and would therefore experience little immediate impact from adoption of the ASC X12N 834 transaction. The ASC X12N 834 would offer large employers that currently conduct enrollment transactions electronically the opportunity to shift to a single standard format. A single standard will be most attractive to those large employers that offer their subscribers choices among multiple health plans. Thus, we expect that the early benefits of the ASC X12N 834 would accrue to large employers and other sponsors that would be able to eliminate redundant hardware, software, and human resources required to support multiple proprietary electronic data interchange formats. In the long run, we expect that the standards would lower the cost of conducting enrollment transactions and make it possible for small and medium size companies to convert from paper to electronic transactions and achieve significant additional savings.

Overall, employers and other sponsors, and the health plans with which they deal, stand to benefit from adoption of the ASC X12N 834 and electronic data interchange. The ASC X12N 834 and electronic data interchange would facilitate the performance of enrollment and disenrollment functions. Further, the ASC X12N 834 supports detailed enrollment information on the subscriber's dependents, which is often lacking in current practice. Ultimately, reductions in administrative overhead may be passed along in lower premiums to subscribers and their dependents.

We invite commenters to provide us with data on the extent to which

employers and other sponsors conduct their health plan enrollments using paper proprietary formats rather than the ASC X12N 834 electronic data interchange standards.

b. Effects of Various Options

The only other option, the NCPDP Member Enrollment Standard, does not meet the selection criteria and would not be implementable.

6. Specific Impact of Adoption of the ASC X12N 270/271 for Eligibility for a Health Plan

a. Affected Entities

The ASC X12N 270/271 transaction may be used by a health care provider to electronically request and receive eligibility information from a health care plan prior to providing or billing for a health care service. Many health care providers routinely verify health insurance coverage and benefit limitations prior to providing treatment or before preparing claims for submission to the insured patient and his or her health plan. Currently, health care providers secure most of these eligibility determinations through telephone calls, proprietary point of sale terminals, or using proprietary electronic formats that differ from health plan to health plan. Since many health care providers participate in multiple health plans, these health care providers must maintain redundant software, hardware, and human resources to obtain eligibility information. This process is inefficient, often burdensome, and takes valuable time that could otherwise be devoted to patient care.

We believe that the lack of a health care industry standard may have imposed a cost barrier to the widespread use of electronic data interchange. The ASC X12N 270/271 is used widely, but not exclusively, by health care plans and health care providers. This may be due, in part, to the lack of an industry-wide implementation guide for these transactions in health care. We expect that adoption of the ASC X12N 270/271 and its implementation guide would lower the cost of using electronic eligibility verifications. This would benefit health care providers that can move to a single standard format and, for the first time, make electronic data interchange feasible for small health plans and health care providers that rely currently on the telephone, paper forms, or proprietary point of sale terminals and software.

b. Effect of Various Options

There were two other options, the ASC X12N IHCEBI, and its companion,

IHCEBR, and the NCPDP Telecommunications Standard Format. None of these meet the selection criteria and thus they would not be implementable.

7. Specific Impact of Adoption of the ASC X12N 820 for Payroll Deducted and Other Group Premium Payment for Insurance Product

a. Affected Entities

The ASC X12N 820 may be used by an employer or sponsor to electronically transmit a remittance notice to accompany a payment for health insurance premiums in response to a bill from the health plan. Payment may be in the form of a paper check or an electronic funds transfer transaction. The ASC X12N 820 can be sent with electronic funds transfer instructions that are routed directly to the Federal Reserve System's automated health care clearinghouses or with payments generated directly by the employer's or other sponsor's bank. The ASC X12N 820 transaction is very widely used by many industries (manufacturing, for instance) and government agencies (Department of Defense) in addition to the insurance industry in general. However, the ASC X12N 820 is not widely used in the health insurance industry and is not widely used by employers and other sponsors to make premium payments to their health insurers. This may be due, in part, to the lack of an implementation guide specifically for health insurance.

Currently, most payment transactions are conducted on paper, and those that are conducted electronically use proprietary electronic data interchange standards that differ across health plans. (We cannot quantify how many of these transactions are conducted on paper, but anecdotal information suggests that most are.) We believe that the lack of a health care industry standard may have imposed a cost barrier to the use of electronic data interchange; larger employers and other sponsors, that often transact business with multiple health plans, need to retain redundant hardware, software, and human resources to support multiple proprietary electronic premium payment standards. We expect that adoption of national standards will lower the cost of using electronic premium payments. This will benefit large employers that can move to a single standard format, and, for the first time, will make electronic transmissions of premium payments feasible for smaller employers and other sponsors whose payment transactions today are performed almost exclusively using paper.

At some point, an organization's size and complexity will require it to consider switching its business transactions from paper to electronic. The ASC X12N 820 would facilitate that by eliminating redundant proprietary formats that are certain to crop up when there are no widely accepted standards. By eliminating the software, hardware, and human resources associated with redundancy, a business may reach the point where it becomes cost beneficial to convert from paper to electronic transactions. Those other sponsors and health care plans that already support more than one proprietary format would incur some additional expense in the conversion to the standard, but they would enjoy longer term savings that result from eliminating the redundancies.

We invite comments on the extent to which employers and other sponsors conduct their health plan premium payments using paper versus proprietary formats, compared to the ASC X12N 820 electronic data interchange standards.

b. Effects of Various Options

There are no known options for premium payment transactions.

8. Specific Impact of Adoption of ASC X12N 278 for Referral Certification and Authorization

a. Affected Entities

The ASC X12N 278 may be used by a health care provider to request and receive approval from a health plan through an electronic transaction prior to providing a health care service. Prior approvals have become standard operating procedure for most hospitals, physicians and other health care providers due to the rapid growth of managed care. Health care providers secure most of their prior approvals through telephone calls, paper forms or proprietary electronic formats that differ from health plan to health plan. Since many health care providers participate in multiple managed care plans, they must devote redundant software, hardware, and human resources to obtaining prior authorization. This process is often untimely and inefficient.

We believe that the lack of a health care industry standard may have imposed a cost barrier to the widespread use of electronic data interchange. The ASC X12N 278 is not widely used by health care plans and health care providers, which may be due, in part, to the lack of an industry-wide implementation guide for it. We expect that adoption of ASC X12N 278 and its

implementation guide would lower the cost of using electronic prior authorizations. This would benefit health care providers that can move to a single standard format and, for the first time, make electronic data interchange feasible for smaller health plans and health care providers that perform these transactions almost exclusively using the telephone or paper.

At some point, an organization's size and complexity will require it to consider switching its business transactions from paper to electronic. The ASC X12N 278 would facilitate that by eliminating redundant proprietary formats that are certain to crop up when there are no widely accepted standards. By eliminating the software, hardware, and human resources associated with redundancy, a business may reach the point where it becomes cost beneficial to convert from paper to electronic transactions. Health care plans and health care providers that already support more than one proprietary format would incur some additional expense in the conversion to the standard but would enjoy longer term savings that result from eliminating the redundancies.

b. Effects of Various Options

There are no known options for referral and certification authorization transactions.

List of Subjects in 45 CFR Part 142

Administrative practice and procedure, Health facilities, Health insurance, Hospitals, Incorporation by reference, Medicare, Medicaid.

Accordingly, 45 CFR subtitle A, subchapter B, would be amended by adding Part 142 to read as follows:

Note to Reader: This proposed rule and another proposed rule found elsewhere in this *Federal Register* are two of several proposed rules that are being published to implement the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996. We propose to establish a new 45 CFR Part 142. Proposed Subpart A—General Provisions is exactly the same in each rule unless we have added new sections or definitions to incorporate additional general information. The subparts that follow relate to the specific provisions announced separately in each proposed rule. When we publish the first final rule, each subsequent final rule will revise or add to the text that is set out in the first final rule.

PART 142—ADMINISTRATIVE REQUIREMENTS

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- 142.1204 Requirements: Health plans.
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- 142.1304 Requirements: Health plans.
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- 142.1308 Effective dates of the initial implementation of the standard for coordination of benefits.

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- 142.1402 Standard for health claim status.
- 142.1404 Requirements: Health plans.
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- 142.1408 Requirements: Health care providers.
- 142.1410 Effective dates of the initial implementation of the standard for health claims status.

Subpart O—Enrollment and Disenrollment in a Health Plan

- 142.1502 Standard for enrollment and disenrollment in a health plan.
- 142.1504 Requirements: Health plans.
- 144.1506 Requirements: Health care clearinghouses.
- 142.1508 Effective dates of the initial implementation of the standard for enrollment and disenrollment in a health plan.

Subpart P—Eligibility for a Health Plan

- 142.1602 Standard for eligibility for a health plan.
- 142.1604 Requirements: Health plans.
- 144.1606 Requirements: Health care clearinghouses.
- 142.1608 Requirements: Health care providers.
- 142.1610 Effective dates of the initial implementation of the standard for eligibility for a health plan.

Subpart Q—Health Plan Premium Payments

- 142.1702 Standard for health plan premium payments.
- 142.1704 Requirements: Health plans.
- 144.1706 Requirements: Health care clearinghouses.
- 142.1708 Effective dates of the initial implementation of the standard for health plan premium payments.

Subpart R—Referral Certification and Authorization

- 142.1802 Referral certification and authorization.
- 142.1804 Requirements: Health plans.
- 144.1806 Requirements: Health care clearinghouses.
- 142.1808 Requirements: Health care providers.
- 142.1810 Effective dates of the initial implementation of the standard for referral certifications and authorizations.

Authority: Sections 1173 and 1175 of the Social Security Act (42 U.S.C. 1320d-2 and 1320d-4)

Subpart A—General Provisions

§ 142.101 Statutory basis and purpose.

Sections 1171 through 1179 of the Social Security Act, as added by section 262 of the Health Insurance Portability and Accountability Act of 1996, require HHS to adopt national standards for the electronic exchange of health information in the health information system. The purpose of these sections is to promote administrative simplification.

§ 142.102 Applicability.

(a) The standards adopted or designated under this part apply, in whole or in part, to the following:

- (1) A health plan.
 - (2) A health care clearinghouse when doing the following:
 - (i) Transmitting a standard transaction (as defined in § 142.103) to a health care provider or health plan.
 - (ii) Receiving a standard transaction from a health care provider or health plan.
 - (iii) Transmitting and receiving the standard transactions when interacting with another health care clearinghouse.
 - (3) A health care provider when transmitting an electronic transaction as defined in § 142.103.
- (b) Means of compliance are stated in greater detail in § 142.105.

§ 142.103 Definitions.

For purposes of this part, the following definitions apply:

ASC X12 stands for the Accredited Standards Committee chartered by the American National Standards Institute to design national electronic standards for a wide range of business applications.

ASC X12N stands for the ASC X12 subcommittee chartered to develop electronic standards specific to the insurance industry.

Code set means any set of codes used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

Health care clearinghouse means a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements. The entity receives transactions from health care providers, health plans, other entities, or other clearinghouses, translates the data from a given format into one acceptable to the intended recipient, and forwards the processed transaction to the appropriate recipient. Billing services, repricing companies, community health management information systems, community health information systems, and "value-added" networks and switches are considered to be health care clearinghouses for purposes of this part.

Health care provider means a provider of services as defined in section 1861(u) of the Social Security Act, a provider of medical or other health services as defined in section 1861(s) of the Social Security Act, and any other person who furnishes or bills and is paid for health care services or supplies in the normal course of business.

Health information means any information, whether oral or recorded in any form or medium, that—

(1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

Health plan means an individual or group plan that provides, or pays the cost of, medical care. Health plan includes the following, singly or in combination:

(1) Group health plan. A group health plan is an employee welfare benefit plan

(as currently defined in section 3(l) of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002(l)), including insured and self-insured plans, to the extent that the plan provides medical care, including items and services paid for as medical care, to employees or their dependents directly or through insurance, or otherwise, and

(i) Has 50 or more participants; or

(ii) Is administered by an entity other than the employer that established and maintains the plan.

(2) Health insurance issuer. A health insurance issuer is an insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance.

(3) Health maintenance organization. A health maintenance organization is a Federally qualified health maintenance organization, an organization recognized as a health maintenance organization under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such a health maintenance organization.

(4) Part A or Part B of the Medicare program under title XVIII of the Social Security Act.

(5) The Medicaid program under title XIX of the Social Security Act.

(6) A Medicare supplemental policy (as defined in section 1882(g)(1) of the Social Security Act).

(7) A long-term care policy, including a nursing home fixed-indemnity policy.

(8) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.

(9) The health care program for active military personnel under title 10 of the United States Code.

(10) The veterans health care program under 38 U.S.C., chapter 17.

(11) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in 10 U.S.C. 1072(4).

(12) The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*).

(13) The Federal Employees Health Benefits Program under 5 U.S.C. chapter 89.

(14) Any other individual or group health plan, or combination thereof, that provides or pays for the cost of medical care.

Medical care means the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid

for the purpose of affecting any body structure or function of the body; amounts paid for transportation primarily for and essential to these items; and amounts paid for insurance covering the items and the transportation specified in this definition.

Participant means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan that covers employees of that employer or members of such an organization, or whose beneficiaries may be eligible to receive any of these benefits.

"Employee" includes an individual who is treated as an employee under section 401(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 401(c)(1)).

Small health plan means a group health plan or individual health plan with fewer than 50 participants.

Standard means a set of rules for a set of codes, data elements, transactions, or identifiers promulgated either by an organization accredited by the American National Standards Institute or HHS for the electronic transmission of health information.

Transaction means the exchange of information between two parties to carry out financial and administrative activities related to health care. It includes the following:

(1) Transactions specified in section 1173(a)(2) of the Act, which are as follows:

(i) Health claims or equivalent encounter information.

(ii) Health care payment and remittance advice.

(iii) Health claims status.

(iv) Enrollment and disenrollment in a health plan.

(v) Eligibility for a health plan.

(vi) Health plan premium payments.

(vii) First report of injury.

(viii) Referral certification and authorization.

(ix) Health claims attachments.

(2) Other transactions as the Secretary may prescribe by regulation. Coordination of benefits is a transaction under this authority.

§ 142.104 General requirements for health plans.

If a person conducts a transaction (as defined in § 142.103) with a health plan as a standard transaction, the following apply:

(a) The health plan may not refuse to conduct the transaction as standard transaction.

(b) The health plan may not delay the transaction or otherwise adversely

affect, or attempt to adversely affect, the person or the transaction on the basis that the transaction is a standard transaction.

(c) The health information transmitted and received in connection with the transaction must be in the form of standard data elements of health information.

(d) A health plan that conducts transactions through an agent must assure that the agent meets all the requirements of this part that apply to the health plan.

§ 142.105 Compliance using a health care clearinghouse.

(a) Any person or other entity subject to the requirements of this part may meet the requirements to accept and transmit standard transactions by either—

(1) Transmitting and receiving standard data elements, or

(2) Submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse and receiving standard data elements through the health care clearinghouse.

(b) The transmission, under contract, of nonstandard data elements between a health plan or a health care provider and its agent health care clearinghouse is not a violation of the requirements of this part.

§ 142.106 Effective dates of a modification to a standard or implementation specification.

If HHS adopts a modification to a standard or implementation specification, the implementation date of the modified standard or implementation specification may be no earlier than 180 days following the adoption of the modification. HHS determines the actual date, taking into account the time needed to comply due to the nature and extent of the modification. HHS may extend the time for compliance for small health plans.

§ 142.110 Availability of implementation guides.

The implementation guides specified in subparts K through R of this part are available as set forth in paragraphs (a) through (c) of this section. Entities requesting copies or access for inspection must specify the standard by name, number, and version.

(a) The implementation guides for ASC X12 standards may be obtained from the Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878; telephone 301-590-9337; and FAX: 301-869-9460. They are also available,

at no cost, through the Washington Publishing Company on the Internet at <http://www.wpc-edi.com/hipaa/>.

(b) The implementation guide for pharmacy claims may be obtained from the National Council for Prescription Drug Programs, 4201 North 24th Street, Suite 365, Phoenix, AZ, 85016; telephone 602-957-9105; and FAX 602-955-0749. It may also be obtained through the Internet at <http://www.ncdp.org>.

(c) A copy of the guides may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC and at the Health Care Financing Administration.

Subparts B—[Reserved]**Subpart J—Code Sets****§ 142.1002 Medical data code sets.**

Health plans, health care clearinghouses, and health care providers must use on electronic transactions the diagnostic and procedure code sets as prescribed by HHS. These code sets are published in a notice in the *Federal Register*. The implementation guides for the transaction standards in part 142, Subparts K through R specify which of the standard medical data code sets are to be used in individual data elements within those transaction standards.

§ 142.1004 Code sets for nonmedical data elements.

The code sets for nonmedical data that must be used in a transaction specified in subparts K through R of this part are the code sets described in the implementation guide for the transaction standard.

§ 142.1010 Effective dates of the initial implementation of code sets.

(a) **Health plans.** (1) Each health plan that is not a small health plan must comply with the requirements of §§ 142.104, 142.1002, and 142.1004 by (24 months after the effective date of the final rule in the *Federal Register*).

(2) Each small health plan must comply with the requirements of §§ 142.104, 142.1002, and 142.1004 by (36 months after the effective date of the final rule in the *Federal Register*).

(b) **Health care clearinghouses and health care providers.** Each health care clearinghouse and health care provider must begin to use the standards specified in §§ 142.1002 and 142.1004 by (24 months after the effective date of the final rule in the *Federal Register*).

Subpart K—Health Claims or Equivalent Encounter Information**§ 142.1102 Standards for health claims or equivalent encounter information.**

The health claims or equivalent encounter information standards that must be used under this subpart are as follows:

(a) For pharmacy claims, the NCPDP Telecommunications Standard Format Version 3.2 and equivalent Standard Claims Billing Tape Format batch implementation, version 2.0. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(b) and (c) of this part.

(b) The ASC X12N 837—Health Care Claim: Dental, Version 4010, Washington Publishing Company, 004010X097. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(a) and (c) of this part.

(c) The ASC X12N 837—Health Care Claim: Professional, Version 4010, Washington Publishing Company, 004010X098. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(a) and (c) of this part.

(d) The ASC X12N 837—Health Care Claim—Institutional, Version 4010, Washington Publishing Company, 004010X096. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(a) and (c) of this part.

§ 142.1104 Requirements: Health plans.

Each health plan must accept the standard specified in § 142.1102 when conducting transactions concerning health claims and equivalent encounter information.

§ 142.1106 Requirements: Health care clearinghouses.

Each health care clearinghouse must use the standard specified in § 142.1102 when accepting or transmitting health claims or equivalent encounter information transactions.

§ 142.1108 Requirements: Health care providers.

Any health care provider that transmits health claims or equivalent encounter information electronically must use the standard specified in § 142.1102.

§ 142.1110 Effective dates of the initial implementation of the health claim or equivalent encounter information standard.

(a) *Health plans.* (1) Each health plan that is not a small health plan must comply with the requirements of §§ 142.104 and 142.1104 by (24 months after the effective date of the final rule in the Federal Register).

(2) Each small health plan must comply with the requirements of §§ 142.104 and 142.1104 by (36 months after the effective date of the final rule in the Federal Register).

(b) *Health care clearinghouses and health care providers.* Each health care clearinghouse and health care provider must begin to use the standard specified in § 142.1102 by (24 months after the effective date of the final rule in the Federal Register).

Subpart L—Health Claims and Remittance Advice

§ 142.1202 Standard for health claims and remittance advice.

The standard for health claims and remittance advice that must be used under this subpart is the ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, Washington Publishing Company, 004010X091. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(a) and (c) of this part.

§ 142.1204 Requirements: Health plans.

Each health plan must transmit the standard specified in § 142.1202 when conducting health claims and remittance advice transactions.

§ 142.1206 Requirements: Health care clearinghouses.

Each health care clearinghouse must use the standard specified in § 142.1202 when accepting or transmitting health claims and remittance advice.

§ 142.1210 Effective dates of the initial implementation of the health claims and remittance advice.

(a) *Health plans.* (1) Each health plan that is not a small health plan must comply with the requirements of §§ 142.104 and 142.1204 by (24 months after the effective date of the final rule in the Federal Register).

(2) Each small health plan must comply with the requirements of §§ 142.104 and 142.1204 by (36 months after the effective date of the final rule in the Federal Register).

(b) *Health care clearinghouses.* Each health care clearinghouse must begin to use the standard specified in § 142.1204

by (24 months after the effective date of the final rule in the Federal Register).

Subpart M—Coordination of Benefits

§ 142.1302 Standard for coordination of benefits.

The coordination of benefits information standards that must be used under this subpart are as follows:

(a) For pharmacy claims, the NCPDP Telecommunications Standard Format Version 3.2 and equivalent Standard Claims Billing Tape Format batch implementation, version 2.0. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(b) and (c) of this part.

(b) For dental claims, the ASC X12N 837—Health Care Claim: Dental, Version 4010, Washington Publishing Company, 004010X097. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(a) and (c) of this part.

(c) For professional claims, the ASC X12N 837—Health Care Claim: Professional, Version 4010, Washington Publishing Company, 004010X098. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(a) and (c) of this part.

(d) For institutional claims, the ASC X12N 837—Health Care Claim—Institutional, Version 4010, Washington Publishing Company, 004010X096. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(a) and (c) of this part.

§ 142.1304 Requirements: Health plans.

Each health plan that performs coordination of benefits must accept and transmit the standard specified in § 142.1302 when accepting or transmitting coordination of benefits transactions.

§ 142.1306 Requirements: Health care clearinghouses.

Each health care clearinghouse must use the standard specified in § 142.1302 when accepting or transmitting coordination of benefits transactions.

§ 142.1308 Effective dates of the initial implementation of the standard for coordination of benefits.

(a) *Health plans.* (1) Each health plan that performs coordination of benefits and is not a small health plan must comply with the requirements of §§ 142.104 and 142.1304 by (24 months after the effective date of the final rule in the Federal Register).

(2) Each small health plan that performs coordination of benefits must comply with the requirements of §§ 142.104 and 142.1304 by (36 months after the effective date of the final rule in the Federal Register).

(b) *Health care clearinghouses.* Each health care clearinghouse must begin to use the standard specified in § 142.1302 by (24 months after the effective date of the final rule in the Federal Register).

Subpart N—Health Claim Status

§ 142.1402 Standard for health claim status.

The standard for health claim status that must be used under this subpart is the ASC X12N 276/277 Health Care Claim Status Request and Response, Version 4010, Washington Publishing Company, 004010X093. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(a) and (c) of this part.

§ 142.1404 Requirements: Health plans.

Each health plan must accept and transmit the standard specified in § 142.1402 when accepting or transmitting health claim status in transactions with health care providers.

§ 142.1406 Requirements: Health care clearinghouses.

Each health care clearinghouse must use the standard specified in § 142.1402 when accepting or transmitting health claims status transactions.

§ 142.1408 Requirements: Health care providers.

Any health care provider that transmits or accepts health claims status electronically must use the standard specified in § 142.1402.

§ 142.1410 Effective dates of the initial implementation of the standard for health claims status.

(a) *Health plans.* (1) Each health plan that is not a small health plan must comply with the requirements of §§ 142.104 and 142.1404 by (24 months after the effective date of the final rule in the Federal Register).

(2) Each small health plan must comply with the requirements of

§§ 142.104 and 142.1404 by (36 months after the effective date of the final rule in the Federal Register).

(b) *Health care clearinghouses and health care providers.* Each health care clearinghouse and health care provider must begin to use the standard specified in § 142.1402 by (24 months after the effective date of the final rule in the Federal Register).

Subpart O—Enrollment and Disenrollment in a Health Plan

§ 142.1502 Standard for enrollment and disenrollment in a health plan.

The standard for enrollment and disenrollment in a health plan that must be used under this subpart is the ASC X12 834—Benefit Enrollment and Maintenance, [date], Version 4010, Washington Publishing Company, (004010X095). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.110(a) and (c).

§ 142.1504 Requirements: Health plans.

Each health plan must accept the standard specified in § 142.1502 when accepting transactions for enrollment and disenrollment in a health plan.

§ 142.1506 Requirements: Health care clearinghouses.

Each health care clearinghouse must use the standard specified in § 142.1502 when accepting or transmitting transactions for enrollment and disenrollment in a health plan.

§ 142.1508 Effective dates of the initial implementation of the standard for enrollment and disenrollment in a health plan.

(a) *Health plans.* (1) Each health plan that is not a small health plan must comply with the requirements of §§ 142.104 and 142.1504 by (24 months after the effective date of the final rule in the Federal Register).

(2) Each small health plan must comply with the requirements of §§ 142.104 and 142.1504 by (36 months after the effective date of the final rule in the Federal Register).

(b) *Health care clearinghouses.* Each health care clearinghouse must begin to use the standard specified in § 142.1502 by (24 months after the effective date of the final rule in the Federal Register).

Subpart P—Eligibility for a Health Plan

§ 142.1602 Standard for eligibility for a health plan.

The standard for eligibility for a health plan transaction that must be

used under this subpart is ASC X12N 270—Health Care Eligibility Benefit Inquiry and ASC X12N 271—Health Care Eligibility Benefit Response, [date], Version 4010, Washington Publishing Company, (004010X092). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(a) and (c) of this part.

§ 142.1604 Requirements: Health plans.

Each health plan must accept and transmit the standard specified in § 142.1602 when accepting or transmitting transactions for eligibility for a health plan.

§ 142.1606 Requirements: Health care clearinghouses.

Each health care clearinghouse must use the standard specified in § 142.1602 when accepting or transmitting transactions for eligibility for a health plan.

§ 142.1608 Requirements: Health care providers.

Any health care provider that transmits or receives transactions for eligibility for a health plan electronically must use the standard specified in § 142.1602.

§ 142.1610 Effective dates of the initial implementation of the standard for eligibility for a health plan.

(a) *Health plans.* (1) Each health plan that is not a small health plan must comply with the requirements of §§ 142.104 and 142.1604 by (24 months after the effective date of the final rule in the Federal Register).

(2) Each small health plan must comply with the requirements of §§ 142.104 and 142.1604 by (36 months after the effective date of the final rule in the Federal Register).

(b) *Health care clearinghouses and health care providers.* Each health care clearinghouse and health care provider must begin to use the standard specified in § 142.1602 by (24 months after the effective date of the final rule in the Federal Register).

Subpart Q—Health Plan Premium Payments

§ 142.1702 Standard for health plan premium payments.

The standard for health plan premium payments that must be used under this subpart is the ASC X12 820—Payment Order/Remittance Advice, [date], Version 4010, Washington Publishing Company, (004010X061). The Director of the Federal Register approves this

incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(a) and (c) of this part.

§ 142.1704 Requirements: Health plans.

Each health plan must accept the standard specified in § 142.1702 when accepting electronically transmitted health plan premium payments.

§ 142.1706 Requirements: Health care clearinghouses.

Each health care clearinghouse must use the standard specified in § 142.1702 when accepting or transmitting health plan premium payments.

§ 142.1708 Effective dates of the initial implementation of the standard for health plan premium payments.

(a) *Health plans.* (1) Each health plan that is not a small health plan must comply with the requirements of §§ 142.104 and 142.1704 by (24 months after the effective date of the final rule in the Federal Register).

(2) Each small health plan must comply with the requirements of §§ 142.104 and 142.1704 by (36 months after the effective date of the final rule in the Federal Register).

(b) *Health care clearinghouses.* Each health care clearinghouse must begin to use the standard specified in § 142.1702 by (24 months after the effective date of the final rule in the Federal Register).

Subpart R—Referral Certification and Authorization

§ 142.1802 Referral certification and authorization.

The standard for referral certification and authorization transactions that must be used under this subpart is the ASC X12N 278—Request for Review and Response, [date], Version 4010, Washington Publishing Company, (004010X094). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The guide is available at the addresses specified in § 142.108(a) and (c) of this part.

§ 142.1804 Requirements: Health plans.

Each health plan must accept and transmit the standard specified in § 142.1802 when accepting or transmitting referral certifications and authorizations.

§ 142.1806 Requirements: Health care clearinghouses.

Each health care clearinghouse must use the standard specified in § 142.1802

when accepting or transmitting referral certifications and authorizations.

§ 142.1808 Requirements: Health care providers.

Any health care provider that transmits or accepts referral certifications and authorizations electronically must use the standard specified in § 142.1902.

§ 142.1810 Effective dates of the initial implementation of the standard for referral certifications and authorizations.

(a) *Health plans.* (1) Each health plan that is not a small health plan must comply with the requirements of §§ 142.104 and 142.1804 by (24 months after the effective date of the final rule in the Federal Register).

(2) Each small health plan must comply with the requirements of §§ 142.104 and 142.1804 by (36 months after the effective date of the final rule in the Federal Register).

(b) *Health care clearinghouses and health care providers.* Each health care clearinghouse and health care provider must begin to use the standard specified in § 142.1802 by (24 months after the effective date of the final rule in the Federal Register).

Dated: March 27, 1998.

Donna E. Shalala,

Secretary.

Note: These Addenda will not appear in the Code of Federal Regulations.

Addendum 1—Health Claims or Equivalent Encounter Information

A. Retail Drug Claim or Equivalent Encounter

The transactions selected for retail drug claims are accredited by the American National Standards Institute (ANSI). The transactions are: NCPDP Telecommunications Standard Format version 3.2 and the equivalent NCPDP Batch Standard Version 1.0.

1. Implementation Guide and Source

The source of the implementation guide for the NCPDP Telecommunication Standard Format Version 3.2 and the equivalent NCPDP Batch Standard Version 1.0 is the National Council for Prescription Drug Programs, 4201 North 24th Street, Suite 365, Phoenix, AZ, 85016, Telephone 602-957-9105, FAX 602-955-0749. The web site address is <http://www.ncdp.org>

2. Data Elements

Accumulated Deductible Amount
Additional Message Information
Adjustment/reject Code—1
Adjustment/reject Code—2
Adjustment/reject Code—3
Alternate Product Code
Alternate Product Type
Amount Attributed to Sales Tax
Amount Billed
Amount of Co-pay/co-insurance
Amount Rejected
Amt. Applied to Periodic Deduct

Amt. Attrib. To Prod. Selection
Amt. Exceed. Periodic Benefit Max
Authorization Number
Basis of Cost Determination
Basis of Days Supply Determination
Basis of Reimb. Determination
Batch Number
Bin Number
Cardholder First Name
Cardholder Id Number
Cardholder Last Name
Carrier Address
Carrier Correction Notice Fields
Carrier Identification Number
Carrier Location City
Carrier Location State
Carrier Name
Carrier Telephone Number
Carrier Zip Code
Claim Count
Claim/reference Id Number
Clinic Id Number
Co-pay Amount
Comments-1
Comments-2
Compound Code
Contract Fee Paid
Customer Location
Date Filled
Date of Birth
Date of Injury
Date Prescription Written
Days Supply
Destination Name
Destination Processor Number
Diagnosis Code
Diskette Record Id
Dispense as Written (Daw)
Dispensing Fee Submitted
Dollar Count
Dollars Adjusted
Dollars Billed
Dollars Rejected
Drug Name
Drug Type
Dur Conflict Code
Dur Intervention Code
Dur Outcome Code
Dur Response Data
Eligibility Clarification Code
Employer City Address
Employer Contact Name
Employer Name
Employer Phone Number
Employer State Address
Employer Street Address
Employer Zip Code
Fee or Markup
Gross Amount Due
Group Number
Home Plan
Host Plan
Incentive Amount Submitted
Incentive Fee Paid
Ingredient Cost Billed
Ingredient Cost Paid
Ingredient Cost
Level of Service
Master Sequence Number
Message
Metric Decimal Quantity
Metric Quantity
Ndc Number
New/refill Code
Number of Refills Authorized
Other Coverage Code

Other Payor Amount
Patient City Address
Patient First Name
Patient Last Name
Patient Paid Amount
Patient Pay Amount
Patient Phone Number
Patient Social Security
Patient State Address
Patient Street Address
Patient Zip Code
Payment Processor Id
Person Code
Pharmacy Address
Pharmacy Count
Pharmacy Location City
Pharmacy Location State
Pharmacy Name
Pharmacy Number
Pharmacy Telephone Number
Pharmacy Zip Code
Plan Identification
Postage Amount Claimed
Postage Amount Paid
Prescriber Id
Prescriber Last Name
Prescription Denial Clarification
Prescription Number
Prescription Origin Code
Primary Prescriber
Prior Authorization/medical Certification Code And Number
Processor Address
Processor Control Number
Processor Location City
Processor Location State
Processor Name
Processor Number
Processor Telephone Number
Processor Zip Code
Record Identifier
Reject Code
Reject Count
Relationship Code
Remaining Benefit Amount
Remaining Deductible Amount
Response Data
Response Status
Resubmission Cycle Count
Run Date
Sales Tax Paid
Sales Tax
Sex Code
System Id
Terminal Id
Third Party Type
Total Amount Paid
Transaction Code
Unit Dose Indicator
Usual And Customary Charge
Version Release Number

B. Professional Health Claim or Equivalent Encounter

The transaction selected for the professional (non-institutional) health claim or equivalent encounter information is ASC X12N 837—Health Care Claim: Professional (004010X098)

1. Implementation Guide and Source

The source of the implementation guide for the professional health care claim or equivalent encounter is: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-

9460. The web site address is <http://www.wpc-edi.com/hipaa/>

2. Data Elements

Accident Date
Acute Manifestation Date
Additional Submitter or Receiver Name
Adjudication or Payment Date
Adjusted Repriced Claim Reference Number
Adjusted Repriced Line Item Reference Number
Adjustment Amount
Adjustment Quantity
Adjustment Reason Code
Agency Qualifier Code
Allowed Amount
Ambulatory Patient Group Number
Amino Acid Name
Amount Qualifier Code
Anesthesia or Oxygen Minute Count
Approved Ambulatory Patient Group Amount
Approved Ambulatory Patient Group Code
Approved Service Unit Count
Arterial Blood Gas Quantity
Arterial Blood Gas Test Date
Assigned Number
Assumed or Relinquished Care Date
Attachment Control Number
Attachment Description Text
Attachment Report Type Code
Attachment Transmission Code
Auto Accident State or Province Code
Benefits Assignment Certification Indicator
Billing Provider Additional Name
Billing Provider City Name
Billing Provider Contact Name
Billing Provider Credit Card Identifier
Billing Provider First Address Line
Billing Provider First Name
Billing Provider Identifier
Billing Provider Last or Organizational Name
Billing Provider Middle Name
Billing Provider Name Suffix
Billing Provider Postal Zone or ZIP Code
Billing Provider Second Address Line
Billing Provider State or Province Code
Bundled or Unbundled Line Number
Certification Form Number
Certification Period Projected Visit Count
Certified Registered Nurse Anesthetist Supervision Indicator
Claim Adjustment Group Code
Claim Encounter Identifier
Claim Filing Indicator Code
Claim Frequency Code
Claim Note Text
Claim Payment Remark Code
Claim Submission Reason Code
Clinical Laboratory Improvement Amendment Number
Code Category
Code List Qualifier Code
Coinsurance Amount
Communication Number Qualifier
Communication Number
Complication Indicator
Condition Codes
Condition Indicator
Contact Function Code
Contact Inquiry Reference
Continuous Passive Motion Date
Contract Amount
Contract Code
Contract Percentage
Contract Type Code
Contract Version Identifier

Country Code
Coverage Certification Period Count
Creation Date
Credit or Debit Card Holder Additional Name
Credit or Debit Card Holder First Name
Credit or Debit Card Holder Last or Organizational Name
Credit or Debit Card Holder Middle Name
Credit or Debit Card Holder Name Suffix
Credit or Debit Card Maximum Amount
Credit or Debit Card Number
Credit/Debit Flag Code
Currency Code
Current Illness or Injury Date
CHAMPUS Non-availability Indicator
Daily Amino Acid Gram Use Count
Daily Amino Acid Prescription Milliliter Use Count
Daily Dextrose Prescription Milliliter Use Count
Daily Prescribed Nutrient Calorie Count
Daily Prescribed Product Calorie Count
Date of Surgical Procedure
Date Time Period Format Qualifier
Date/Time Qualifier
Deductible Amount
Diagnosis Associated Amount
Diagnosis Code Pointer
Diagnosis Code
Disability Type Code
Disability-From Date
Disability-To Date
Discipline Type Code
Drug Formulary Number
Drug Unit Price
Emergency Indicator
Emergency Medical Technician (EMT) or Paramedic First Name
Emergency Medical Technician or Paramedic Middle Name
Emergency Medical Technician or Paramedic City Name
Emergency Medical Technician or Paramedic First Address Line
Emergency Medical Technician or Paramedic Last Name
Emergency Medical Technician or Paramedic Name Additional Text
Emergency Medical Technician or Paramedic Primary Identifier
Emergency Medical Technician or Paramedic Second Address Line
Emergency Medical Technician or Paramedic Secondary Identifier
Emergency Medical Technician or Paramedic State Code
Emergency Medical Technician or Paramedic ZIP Code
Employment Status Code
End Stage Renal Disease Payment Amount
Enteral or Parenteral Indicator
Entity Identifier Code
Entity Type Qualifier
Exception Code
Exchange Rate
Explanation of Benefits Indicator
EPSDT Indicator
Facility Type Code
Family Planning Indicator
Feeding Count
File Creation Time
First Visit Date
Fixed Format Information
Functional Status Code
Group or Policy Number
Hierarchical Child Code

Hierarchical ID Number
Hierarchical Level Code
Hierarchical Parent ID Number
Hierarchical Structure Code
Homebound Indicator
Hospice Employed Provider Indicator
HCPCS Payable Amount
Identification Code Qualifier
Immunization Status Code
Immunization Type Code
Independent Lab Charge Amount
Individual Relationship Code
Information Release Code
Information Release Date
Ingredient Cost Claimed Amount
Initial Treatment Date
Insurance Type Code
Insured Employer Additional Name
Insured Employer City Name
Insured Employer Contact Name
Insured Employer First Address Line
Insured Employer First Name
Insured Employer Identifier
Insured Employer Middle Name
Insured Employer Name Suffix
Insured Employer Name
Insured Employer Second Address Line
Insured Employer State Code
Insured Employer ZIP Code
Insured Group Name
Insured Group Number
Investigational Device Exemption Identifier
Laboratory or Facility City Name
Laboratory or Facility Contact Name
Laboratory or Facility First Address Line
Laboratory or Facility Name Additional Text
Laboratory or Facility Name
Laboratory or Facility Postal ZIP or Zonal Code
Laboratory or Facility Primary Identifier
Laboratory or Facility Second Address Line
Laboratory or Facility Secondary Identifier
Laboratory or Facility State or Province Code
Last Certification Date
Last Menstrual Period Date
Last Seen Date
Last Worked Date
Last X-Ray Date
Legal Representative Additional Name
Legal Representative City Name
Legal Representative First Address Line
Legal Representative First Name
Legal Representative Last or Organization Name
Legal Representative Middle Name
Legal Representative Second Address Line
Legal Representative State Code
Legal Representative Suffix Name
Legal Representative ZIP Code
Line Item Control Number
Line Note Text
Mammography Certification Number
Measurement Qualifier
Measurement Reference Identification Code
Medical Justification Text
Medical Record Number
Medicare Assignment Code
Medicare Coverage Indicator
Multiple Procedure Indicator
National Drug Code
National Drug Unit Count
Nature of Condition Code
Non-Payable Professional Component Billed Amount
Non-Visit Code
Note Reference Code

Nutrient Administration Method Code
Nutrient Administration Technique Code
Onset Date
Ordering Provider City Name
Ordering Provider Contact Name
Ordering Provider First Address Line
Ordering Provider First Name
Ordering Provider Identifier
Ordering Provider Last Name
Ordering Provider Middle Name
Ordering Provider Name Additional Text
Ordering Provider Name Suffix
Ordering Provider Second Address Line
Ordering Provider Secondary Identifier
Ordering Provider State Code
Ordering Provider ZIP Code
Original Line Item Reference Number
Originator Application Transaction Identifier
Other Employer Additional Name
Other Employer City Name
Other Employer First Address Line
Other Employer First Name
Other Employer Last or Organization Name
Other Employer Middle Name
Other Employer Second Address Line
Other Employer State Code
Other Employer ZIP Code
Other Insured Additional Identifier
Other Insured Additional Name
Other Insured Birth Date
Other Insured City Name
Other Insured First Address Line
Other Insured First Name
Other Insured Gender Code
Other Insured Identifier
Other Insured Last Name
Other Insured Middle Name
Other Insured Name Suffix
Other Insured Plan Name or Program Name
Other Insured Second Address Line
Other Insured State Code
Other Insured ZIP Code
Other Payer Additional Name Text
Other Payer City Name
Other Payer Covered Amount
Other Payer Discount Amount
Other Payer Federal Mandate Amount
Other Payer First Address Line
Other Payer Interest Amount
Other Payer Last or Organization Name
Other Payer Patient Paid Amount
Other Payer Patient Responsibility Amount
Other Payer Per Day Limit Amount
Other Payer Pre-Tax Claim Total Amount
Other Payer Primary Identifier
Other Payer Second Address Line
Other Payer Secondary Identifier
Other Payer State Code
Other Payer Tax Amount
Other Payer ZIP Code
Oxygen Saturation Quantity
Oxygen Saturation Test Date
Paid Service Unit Count
Paramedic Contact Name
Patient Account Number
Patient Additional Name
Patient Age
Patient Amount Paid
Patient Birth Date
Patient City Name
Patient Death Date
Patient Facility Additional Name Text
Patient Facility City Name
Patient Facility First Address Line
Patient Facility Name
Patient Facility Second Address Line

Patient Facility State Code
Patient Facility ZIP Code
Patient First Address Line
Patient First Name
Patient Gender Code
Patient Height
Patient Last Name
Patient Marital Status Code
Patient Middle Name
Patient Name Suffix
Patient Primary Identifier
Patient Second Address Line
Patient Secondary Identifier
Patient Signature Source Code
Patient State Code
Patient ZIP Code
Pay-to Provider Additional Name
Pay-to Provider City Name
Pay-to Provider Contact Name
Pay-to Provider First Address Line
Pay-to Provider First Name
Pay-to Provider Identifier
Pay-to Provider Last or Organizational Name
Pay-to Provider Middle Name
Pay-to Provider Name Suffix
Pay-to Provider Second Address Line
Pay-to Provider State Code
Pay-to Provider ZIP Code
Payer Additional Identifier
Payer Additional Name
Payer City Name
Payer First Address Line
Payer Identifier
Payer Name
Payer Paid Amount
Payer Responsibility Sequence Number Code
Payer Second Address Line
Payer State Code
Payer ZIP Code
Period Count
Place of Service Code
Policy Compliance Code
Postage Claimed Amount
Prescription Amino Acid Concentration Percent
Prescription Date
Prescription Dextrose Concentration Percent
Prescription Lipid Concentration Percent
Prescription Lipid Milliliter Use Count
Prescription Number
Prescription Period Count
Pricing Methodology
Prior Authorization Number
Procedure Modifier
Product Name
Product/Service ID Qualifier
Product/Service Procedure Code
Prognosis Code
Property Casualty Claim Number
Provider or Supplier Signature Indicator
Provider Code
Provider Identifier
Provider Organization Code
Provider Signature Date
Provider Specialty Certification Code
Provider Specialty Code
Purchase Price Amount
Purchase Service Charge Amount
Purchase Service Provider Identifier
Purchase Service State Code
Purchased Service Provider City Name
Purchased Service Provider Contact Name
Purchased Service Provider First Address Line
Purchased Service Provider Last or Organization Name

Purchased Service Provider Middle Name
Purchased Service Provider Name Additional Text
Purchased Service Provider Second Address Line
Purchased Service Provider Secondary Identifier
Purchased Service Provider State Code
Purchased Service Provider ZIP Code
Quantity Qualifier
Record Format Code
Reference Identification Qualifier
Referral Number
Referring Provider City Name
Referring Provider Contact Name
Referring Provider First Address Line
Referring Provider First Name
Referring Provider Identification Number
Referring Provider Last Name
Referring Provider Middle Name
Referring Provider Name Additional Text
Referring Provider Name Suffix
Referring Provider Second Address Line
Referring Provider Secondary Identifier
Referring Provider State Code
Referring Provider ZIP Code
Reimbursement Rate
Reject Reason Code
Related Hospitalization Admission Date
Related Hospitalization Discharge Date
Related Nursing Home Admission Date
Related-Causes Code
Rendering Provider City Name
Rendering Provider Contact Name
Rendering Provider First Address Line
Rendering Provider First Name
Rendering Provider Identifier
Rendering Provider Last Name
Rendering Provider Middle Name
Rendering Provider Name Additional Text
Rendering Provider Name Suffix
Rendering Provider Second Address Line
Rendering Provider Secondary Identifier
Rendering Provider State Code
Rendering Provider ZIP Code
Rental Equipment Billing Frequency Code
Rental Price Amount
Repriced Claim Reference Number
Repriced Line Item Reference Number
Repricing Organization Identifier
Repricing Per Diem or Flat Rate Amount
Resource Utilization Group Number
Resubmission Number
Retirement or Insurance Card Date
Review By Code Indicator
Sales Tax Amount
Sample Selection Modules
Saving Amount
School City Name
School Contact Name
School First Address Line
School Name Additional Text
School Name
School Primary Identifier
School Second Address Line
School State Code
School ZIP Code
Second Admission Date
Second Discharge Date
Service Date
Service From Date
Service Line Paid Amount
Service Type Code
Service Unit Count
Ship/Delivery or Calendar Pattern Code
Ship/Delivery Pattern Time Code

Shipped Date
Similar Illness or Symptom Date
Special Program Indicator
Statement Covers Period End Date
Statement Covers Period Start Date
Student Status Code
Submittal Date
Submitted Charge Amount
Submitter or Receiver Address Line
Submitter or Receiver City Name
Submitter or Receiver Contact Name
Submitter or Receiver First Name
Submitter or Receiver Identifier
Submitter or Receiver Last or Organization Name
Submitter or Receiver Middle Name
Submitter or Receiver State Code
Submitter or Receiver ZIP Code
Submitter Additional Name
Subscriber or Dependent Death Date
Subscriber Additional Identifier
Subscriber Birth Date
Subscriber Contact Name
Subscriber First Name
Subscriber Gender Code
Subscriber Identifier
Subscriber Last Name
Subscriber Marital Status Code
Subscriber Middle Name
Subscriber Name Suffix
Subscriber Postal ZIP Code
Subscriber Second Address Line
Subscriber State
Supervising Provider City Name
Supervising Provider Contact Name
Supervising Provider First Address Line
Supervising Provider First Name
Supervising Provider Identification Number
Supervising Provider Last Name
Supervising Provider Middle Name
Supervising Provider Name Additional Text
Supervising Provider Name Suffix
Supervising Provider Second Address Line
Supervising Provider Secondary Identifier
Supervising Provider State Code
Supervising Provider ZIP Code
Supporting Document Question Identifier
Supporting Document Response Code
Surgical Procedure Code
Terms Discount Percentage
Test Performed Date
Test Results
Time Period Qualifier
Total Claim Charge Amount
Total Purchased Service Amount
Total Visits Rendered Count
Transaction Segment Count
Transaction Set Control Number
Transaction Set Identifier Code
Transaction Set Purpose Code
Treatment or Therapy Date
Treatment Length
Unit or Basis for Measurement Code
Value Added Network Trace Number
Version Identification Code
Version Identifier
Weekly Prescription Lipid Use Count
Work Return Date
X-Ray Availability Indicator Code

C. Institutional Claim or Equivalent Encounter

The transaction selected for the institutional health care claim or equivalent encounter information is ASC X12N 837—Health Care Claim: Institutional (004010X096).

1. Implementation Guide and Source

The source of the implementation guide for the institutional health care claim or equivalent encounter is: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-9460. The web site address is <http://www.wpc-edi.com/hipaa/>

2. Data Elements

Activities Permitted
Adjusted Repriced Claim Reference Number
Adjustment Amount
Adjustment Quantity
Adjustment Reason Code
Admission Date and Hour
Admission Source Code
Admission Type Code
Allowed Amount
Amount Qualifier Code
Approved Amount
Approved Diagnosis Related Group Code
Approved HCPCS Code
Approved Revenue Code
Approved Service Unit Count
Assigned Number
Attachment Control Number
Attachment Description Text
Attachment Report Type Code
Attachment Transmission Code
Attending Physician First Name
Attending Physician Last Name
Attending Physician Middle Name
Attending Physician Primary Identifier
Auto Accident State or Province Code
Benefits Assignment Certification Indicator
Billing Note Text
Billing Provider City Name
Billing Provider Contact Name
Billing Provider First Address Line
Billing Provider Identifier
Billing Provider Last or Organizational Name
Billing Provider Postal Zone or ZIP Code
Billing Provider Second Address Line
Billing Provider State or Province Code
Certification Condition Indicator
Certification Type Code
Claim Adjustment Group Code
Claim Days Count
Claim Disproportionate Share Amount
Claim DRG Amount
Claim DRG Outlier Amount
Claim Encounter Identifier
Claim ESRD Payment Amount
Claim Filing Indicator Code
Claim Frequency Code
Claim HCPCS payable amount
Claim Indirect Teaching Amount
Claim MSP Pass-through amount
Claim Note Text
Claim Original Reference Number
Claim Payment Remark Code
Claim PPS capital amount
Claim PPS capital outlier amount
Claim Total Denied Charge Amount
Code Associated Amount
Code Associated Date
Code Associated Quantity
Code Category
Code List Qualifier Code
Contact Function Code
Contract Amount
Contract Code
Contract Percentage
Contract Type Code

Contract Version Identifier
Cost Report Day Count
Country Code
Covered Days or Visits Count
Creation Date
Credit or Debit Card Authorization Number
Credit or Debit Card Holder First Name
Credit or Debit Card Holder Last or Organizational Name
Credit or Debit Card Holder Middle Name
Credit or Debit Card Maximum Amount
Credit or Debit Card Number
Currency Code
Date Time Period Format Qualifier
Date/Time Qualifier
Diagnosis Date
Discharge Hour
Discipline Type Code
Document Control Identifier
Employer Identification Number
Employment Status Code
Entity Identifier Code
Entity Type Qualifier
Estimated Amount Due
Estimated Claim Due Amount
Exception Code
Explanation of Benefits Indicator
Facility Code Qualifier
Facility Type Code
File Creation Time
Frequency Number
Functional Limitation Code
Group or Policy Number
Hierarchical Child Code
Hierarchical ID Number
Hierarchical Level Code
Hierarchical Parent ID Number
Hierarchical Structure Code
Home Health Certification Period
HCPCS Modifier Code
HCPCS/CPT-4 Code
Identification Code Qualifier
Implant Date
Implant Status Code
Implant Type Code
Individual Relationship Code
Industry Code
Information Release Code
Insurance Type Code
Insured Employer First Address Line
Insured Employer First Name
Insured Employer Identifier
Insured Group Name
Insured Group Number
Investigational Device Exemption Identifier
Last Admission Date
Last Visit Date
Leads Left In Patient Indicator
Legal Representative City Name
Legal Representative Contact Name
Legal Representative First Address Line
Legal Representative First Name
Legal Representative Last or Organization Name
Legal Representative Middle Name
Legal Representative Second Address Line
Legal Representative State Code
Legal Representative ZIP Code
Lifetime Psychiatric Days Count
Lifetime Reserve Days Count
Line Charge Amount
Line Item Denied Charge or Non-Covered Charge Amount
Manufacturer Identifier
Medicare Coverage Indicator
Medicare Paid at 100% Amount

Medicare Paid at 80% Amount
Mental Status Code
Model Number
Non-Covered Charge Amount
Non-Insured Employer City Name
Non-Insured Employer First Address Line
Non-Insured Employer First Name
Non-Insured Employer Identifier
Non-Insured Employer Last or Organization Name
Non-Insured Employer Middle Name
Non-Insured Employer Second Address Line
Non-Insured Employer State Code
Non-Insured Employer ZIP Code
Note Reference Code
Old Capital Amount
Operating Physician First Name
Operating Physician Last Name
Operating Physician Middle Name
Operating Physician Primary Identifier
Ordering Provider Identifier
Ordering Provider Last Name
Originator Application Transaction Identifier
Other Employer City Name
Other Employer First Address Line
Other Employer First Name
Other Employer Last or Organization Name
Other Employer Second Address Line
Other Employer Secondary Identifier
Other Employer State Code
Other Employer ZIP Code
Other Insured Additional Identifier
Other Insured Birth Date
Other Insured City Name
Other Insured First Address Line
Other Insured First Name
Other Insured Gender Code
Other Insured Identifier
Other Insured Last Name
Other Insured Middle Name
Other Insured Plan Name or Program Name
Other Insured Second Address Line
Other Insured State Code
Other Insured ZIP Code
Other Payer City Name
Other Payer First Address Line
Other Payer Last or Organization Name
Other Payer Patient Paid Amount
Other Payer Primary Identifier
Other Payer Second Address Line
Other Payer Secondary Identifier
Other Payer State Code
Other Payer ZIP Code
Other Physician First Name
Other Physician Identifier
Other Physician Last Name
Other Physician Middle Name
Paid From Part A Medicare Trust Fund Amount
Paid From Part B Medicare Trust Fund Amount
Patient Account Number
Patient Amount Paid
Patient Birth Date
Patient City Name
Patient Discharge Facility Type Code
Patient First Address Line
Patient First Name
Patient Gender Code
Patient Last Name
Patient Liability Amount
Patient Marital Status Code
Patient Middle Name
Patient Name Suffix
Patient Primary Identifier
Patient Second Address Line
Patient Secondary Identifier
Patient State Code
Patient ZIP Code
Period Count
Physician Contact Date
Physician Order Date
Policy Compliance Code
Pricing Methodology
Prior Authorization Number
Procedure Modifier
Product/Service ID Qualifier
Product/Service Procedure Code
Professional Component Amount
Prognosis Code
PPS-Capital DSH DRG Amount
PPS-Capital Exception Amount
PPS-Capital FSP DRG Amount
PPS-Capital HSP DRG Amount
PPS-Capital IME amount
PPS-Operating Federal Specific DRG Amount
PPS-Operating Hospital Specific DRG Amount
Quantity Qualifier
Reference Identification Qualifier
Reimbursement Rate
Reject Reason Code
Related-Causes Code
Repriced Claim Reference Number
Repricing Organization Identifier
Repricing Per Diem or Flat Rate Amount
Returned to Manufacturer Indicator
Saving Amount
School City Name
School First Address Line
School Name
School Primary Identifier
School Second Address Line
School State Code
School ZIP Code
Serial Number
Service Date
Service From Date
Service Line Paid Amount
Service Line Rate
Service Line Revenue Code
Service Unit Count
Statement From or To Date
Submission or Resubmission Number
Submitted Charge Amount
Submitter or Receiver Contact Name
Submitter or Receiver Identifier
Submitter or Receiver Last or Organization Name
Subscriber Additional Identifier
Subscriber Birth Date
Subscriber First Address Line
Subscriber First Name
Subscriber Gender Code
Subscriber Last Name
Subscriber Marital Status Code
Subscriber Middle Name
Subscriber Second Address Line
Subscriber State
Surgery Date
Surgical Procedure Code

Terms Discount Percentage
Time Period Qualifier
Total Claim Charge Amount
Total Medicare Paid Amount
Total Visits Projected This Certification Count
Transaction Segment Count
Transaction Set Control Number
Transaction Set Identifier Code
Transaction Set Purpose Code
Unit or Basis for Measurement Code
Value Added Network Trace Number
Version Identification Code
Visits Prior to Recertification Date Count
Warranty Expiration Date 1861J1 Facility Indicator

D. Dental Claim or Equivalent Encounter

The transaction selected for the dental health care claim or equivalent encounter is: ASC X12N 837—Health Care Claim: Dental (004010X097).

1. Implementation Guide and Source

The source of the implementation guide for the dental health care claim or equivalent encounter is: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-9460. The web site address is <http://www.wpc-edi.com/hipaa/>

2. Data Elements

Accident Date
Adjudication or Payment Date
Adjustment Amount
Adjustment Quantity
Adjustment Reason Code
Admission Date or Start of Care Date
Amount Qualifier Code
Anesthesia Unit Count
Appliance Placement Date
Assigned Number
Assistant Surgeon City Name
Assistant Surgeon First Address Line
Assistant Surgeon First Name
Assistant Surgeon Last Name
Assistant Surgeon Middle Name
Assistant Surgeon Primary Identification Number
Assistant Surgeon Second Address Line
Assistant Surgeon State Code
Assistant Surgeon Suffix Name
Assistant Surgeon ZIP Code
Attachment Control Number
Attachment Report Type Code
Attachment Transmission Code
Auto Accident State or Province Code
Benefits Assignment Certification Indicator
Billing Provider City Name
Billing Provider Credit Card Identifier
Billing Provider First Address Line
Billing Provider First Name
Billing Provider Identifier
Billing Provider Last or Organizational Name
Billing Provider Middle Name
Billing Provider Name Suffix
Billing Provider Postal Zone or ZIP Code
Billing Provider Second Address Line
Billing Provider State or Province Code
Claim Adjustment Group Code
Claim Encounter Identifier
Claim Filing Indicator Code
Claim
Submission Reason Code
Clinical Laboratory Improvement Amendment Number

Code List Qualifier Code
Contact Function Code
Coordination of Benefits Code
Country Code
Creation Date
Credit or Debit Card Authorization Number
Credit or Debit Card Holder First Name
Credit or Debit Card Holder Last or Organizational Name
Credit or Debit Card Holder Middle Name
Credit or Debit Card Holder Name Suffix
Credit or Debit Card Maximum Amount
Credit or Debit Card Number
Credit/Debit Flag Code
Currency Code
Date Time Period Format Qualifier
Date/Time Qualifier
Destination Payer Code
Diagnosis Code
Diagnosis Date
Diagnosis Type Code
Discharge Date/End Of Care Date
Entity Identifier Code
Entity Type Qualifier
Facility Code Qualifier
Facility Type Code
File Creation Time
Group or Policy Number
Hierarchical Child Code
Hierarchical ID Number
Hierarchical Level Code
Hierarchical Parent ID Number
Hierarchical Structure Code
Identification Code Qualifier
Individual Relationship Code
Information Release Code
Information Release Date
Initial Placement Date
Insured Employer First Address Line
Insured Employer First Name
Insured Employer Identifier
Insured Employer Middle Name
Insured Employer Name Suffix
Insured Group Name
Insured Group Number
Laboratory or Facility City Name
Laboratory or Facility First Address Line
Laboratory or Facility Name
Laboratory or Facility Postal ZIP or Zonal Code
Laboratory or Facility Primary Identifier
Laboratory or Facility Second Address Line
Laboratory or Facility State or Province Code
Legal Representative or Responsible Party Identifier
Legal Representative City Name
Legal Representative First Address Line
Legal Representative First Name
Legal Representative Last or Organization Name
Legal Representative Middle Name
Legal Representative Second Address Line
Legal Representative State Code
Legal Representative Suffix Name
Legal Representative ZIP Code
Line Charge Amount
Medicare Assignment Code
Oral Cavity Designation Code
Originator Application Transaction Identifier
Orthodontic Treatment Months Count
Orthodontic Treatment Months Remaining Count
Other Insured Birth Date
Other Insured City Name
Other Insured First Address Line
Other Insured First Name

Other Insured Gender Code
Other Insured Identifier
Other Insured Last Name
Other Insured Middle Name
Other Insured Name Suffix
Other Insured Second Address Line
Other Insured State Code
Other Insured ZIP Code
Other Payer Covered Amount
Other Payer Discount Amount
Other Payer Last or Organization Name
Other Payer Patient Paid Amount
Other Payer Patient Responsibility Amount
Other Payer Primary Identifier
Patient Account Number
Patient Amount Paid
Patient Birth Date
Patient City Name
Patient First Address Line
Patient First Name
Patient Gender Code
Patient Last Name
Patient Marital Status Code
Patient Middle Name
Patient Name Suffix
Patient Primary Identifier
Patient Second Address Line
Patient Signature Source Code
Patient State Code
Patient ZIP Code
Pay-to-Provider City Name
Pay-to-Provider First Address Line
Pay-to-Provider First Name
Pay-to-Provider Identifier
Pay-to-Provider Last or Organizational Name
Pay-to-Provider Middle Name
Pay-to-Provider Name Suffix
Pay-to-Provider Second Address Line
Pay-to-Provider State Code
Pay-to-Provider ZIP Code
Payer Additional Identifier
Payer City Name
Payer First Address Line
Payer Identifier
Payer Name
Payer Paid Amount
Payer Responsibility Sequence Number Code
Payer Second Address Line
Payer State Code
Payer ZIP Code
Periodontal Charting Measurement Policy Name
Predetermination of Benefits Identifier
Predetermination of Benefits Indicator
Prior Authorization Number
Prior Placement Date
Procedure Count
Procedure Modifier
Product/Service ID Qualifier
Product/Service Procedure Code
Prosthesis, Crown or Inlay Code
Provider or Supplier Signature Indicator
Provider Signature Date
Quantity Qualifier
Reference Identification Qualifier
Referring Provider City Name
Referring Provider First Address Line
Referring Provider First Name
Referring Provider Identification Number
Referring Provider Last Name
Referring Provider Middle Name
Referring Provider Name Suffix
Referring Provider Second Address Line
Referring Provider State Code
Referring Provider ZIP Code
Related-Causes Code

Rendering Provider City Name
Rendering Provider First Address Line
Rendering Provider First Name
Rendering Provider Identifier
Rendering Provider Last Name
Rendering Provider Middle Name
Rendering Provider Name Suffix
Rendering Provider Second Address Line
Rendering Provider State Code
Rendering Provider ZIP Code
Replacement Date
Retirement or Insurance Card Date
School City Name
School First Address Line
School Name
School Primary Identifier
School Second Address Line
School State Code
School ZIP Code
Service Date
Service Line Paid Amount
Student Status Code
Submitter or Receiver Address Line
Submitter or Receiver City Name
Submitter or Receiver Contact Name
Submitter or Receiver First Name
Submitter or Receiver Identifier
Submitter or Receiver Last or Organization Name
Submitter or Receiver Middle Name
Submitter or Receiver State Code
Submitter or Receiver ZIP Code
Subscriber Birth Date
Subscriber First Address Line
Subscriber First Name
Subscriber Gender Code
Subscriber Identifier
Subscriber Last Name
Subscriber Marital Status Code
Subscriber Middle Name
Subscriber Name Suffix
Subscriber Postal ZIP Code
Subscriber Second Address Line
Subscriber State
Title XIX Identification Number
Tooth Code
Tooth Number
Tooth Status Code
Tooth Surface
Total Claim Charge Amount
Transaction Segment Count
Transaction Set Control Number
Transaction Set Identifier Code
Transaction Set Purpose Code
Unit or Basis for Measurement Code

Addendum 2—Health Care Payment and Remittance Advice

The transaction selected for the health care payment and remittance advice is ASC X12N 835—Health Care Claim Payment/Advice (004010X091).

A. Implementation Guide and Source

The source of the implementation guide for the ASC X12N 835—Health Care Claim Payment/Advice (004010X091) is: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-9460. The website address is <http://www.wpc-edi.com/hipaa/>

B. Data Elements

Account Number Qualifier
Additional Payee Identifier

Adjustment Amount
Adjustment Quantity
Adjustment Reason Code
Amount Paid to Patient
Amount Qualifier Code
Assigned Number
Average DRG length of stay
Average DRG weight
Century
Check or EFT Trace Number
Check/EFT Issue Date
Claim Adjustment Group Code
Claim Contact Communications Number
Claim Contact Name
Claim Date
Claim Disproportionate Share Amount
Claim ESRD Payment Amount
Claim Filing Indicator Code
Claim Frequency Code
Claim HCPCS payable amount
Claim Indirect Teaching Amount
Claim MSP Pass-through amount
Claim Payment Remark Code
Claim PPS capital amount
Claim PPS capital outlier amount
Claim Status Code
Claim Supplemental Information Amount
Claim Supplemental Information Quantity
Code List Qualifier Code
Communication Number Extension
Communication Number Qualifier
Contact Function Code
Corrected Insured Identification Indicator
Corrected Patient or Insured First Name
Corrected Patient or Insured Last Name
Corrected Patient or Insured Middle Name
Corrected Patient or Insured Name Prefix
Corrected Patient or Insured Name Suffix
Corrected Priority Payer Identification Number
Corrected Priority Payer Name
Cost Report Day Count
Covered Days or Visits Count
Credit/Debit Flag Code
Crossover Carrier Identifier
Crossover Carrier Name
Currency Code
Date/Time Qualifier
Depository Financial Institution (DFI) Identifier
Depository Financial Institution (DFI) ID Number Qualifier
Description Text
Diagnosis Related Group (DRG) Weight
Diagnosis Related Group (DRG)
Discharge Fraction
Entity Identifier Code
Entity Type Qualifier
Exchange Rate
Facility Type Code
Fiscal Period Date
Identification Code Qualifier
Lifetime Psychiatric Days Count
Line Item Provider Payment Amount
Location Identification Code
Location Qualifier
National Uniform Billing Committee Revenue Code
Old Capital Amount
Original Service Unit Count
Originating Company Supplemental Code
Other Claim Related Identifier
Patient Control Number
Patient First Name
Patient Last Name
Patient Liability Amount
Patient Middle Name
Patient Name Prefix
Patient Name Suffix
Patient Status Code
Payee City Name
Payee First Line Address
Payee Identification Code
Payee Name
Payee Postal Zip Code
Payee Second Line Address
Payee State Code
Payer City Name
Payer Claim Control Number
Payer Contact Communication Number
Payer Contact Name
Payer First Address Line
Payer Identifier
Payer Name
Payer Process Date
Payer Second Address Line
Payer State Code
Payer ZIP Code
Payment Format Code
Payment Method Code
Procedure Modifier
Product/Service ID Qualifier
Product/Service Procedure Code Text
Product/Service Procedure Code
Production Date
Professional Component Amount
Provider Adjustment Amount
Provider Adjustment Identifier
Provider First Name
Provider Identifier
Provider Last or Organization Name
Provider Middle Name
Provider Name Prefix
Provider Name Suffix
PPS-Capital DSH DRG Amount
PPS-Capital Exception Amount
PPS-Capital FSP DRG Amount
PPS-Capital HSP DRG Amount
PPS-Capital IME amount
PPS-Operating Federal Specific DRG Amount
PPS-Operating Hospital Specific DRG Amount
Quantity Qualifier
Receiver or Provider Account Number
Receiver Identifier
Receiver/Provider Bank ID Number
Reference Identification Qualifier
Reimbursement Rate
Remark Code
Sender Account Number
Sender DFI Identifier
Service Date
Service Supplemental Amount
Service Supplemental Quantity Count
Submitted Charge Amount
Submitted Line Charges Paid
Subscriber First Name
Subscriber Identifier
Subscriber Last Name
Subscriber Middle Name
Subscriber Name Prefix
Subscriber Name Suffix
Total Actual Provider Payment Amount
Total Blood Deductible
Total Capital Amount
Total Claim Charge Amount
Total Claim Count
Total Coinsurance Amount
Total Contractual Adjustment Amount
Total Cost Outlier Amount
Total Cost Report Day Count
Total Covered Charge Amount
Total Covered Day Count
Total Day Outlier Amount
Total Deductible Amount
Total Denied Charge Amount
Total Discharge Count
Total Disp. Share Amount
Total DRG Amount
Total Federal-Specific Amount
Total Gramm-Rudman Reduction Amount
Total Hospital-Specific Amount
Total HCPCS Payable Amount
Total HCPCS Reported Charge Amount
Total Indirect Medical Education Amount
Total Interest Amount
Total MSP Pass-Through Amount
Total MSP Patient Liability Met Amount
Total MSP Payer Amount
Total Non-Covered Charge Amount
Total Non-Lab Charge Amount
Total Noncovered Charge Amount
Total Noncovered Day Count
Total Outlier Day Count
Total Patient Reimbursement Amount
Total Professional Component Amount
Total Provider Payment Amount
Total PIP Adjustment Amount
Total PIP Claim Count
Total PPS Capital FSP DRG Amount
Total PPS Capital HSP DRG Amount
Total PPS DSH DRG Amount
Trace Type Code
Transaction Handling Code
Transaction Segment Count
Transaction Set Control Number
Transaction Set Identifier Code
Units of Service Paid Count
Version Identifier

Addendum 3—Coordination of Benefits

A. Professional Claim Coordination of Benefits

The transaction selected for the professional claim coordination of benefits is ASC X12N 837—Health Care Claim: Professional (004010X098).

1. Implementation Guide and Source

The source of the implementation guide for the professional claim coordination of benefits transaction set is: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-9460. The web site address is <http://www.wpc-edi.com/hipaa/>

2. Data Elements

Data elements are found in addendum 1, B.2.

B. Institutional Claim Coordination of Benefits

The transaction selected for the institutional claim coordination of benefits is ASC X12N 837—Health Care Claim: Institutional (004010X096).

1. Implementation Guide and Source

The source of the implementation guide for the institutional claim coordination of benefits transaction set is: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-9460. The web site address is <http://www.wpc-edi.com/hipaa/>

2. Data Elements

Data elements are found in Addendum 1, C.2.

C. Dental Claim Coordination of Benefits

The transaction selected for the dental claim coordination of benefits is ASC X12N 837—Health Care Claim: Dental (004010X097).

1. Implementation Guide and Source

The source of implementation guide for the dental claim coordination of benefits transaction set is: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-9460. The web site address is <http://www.wpc-edi.com/hipaa/>

2. Data Elements

See Addendum 1, D.2.

D. Retail Drug Claim Coordination of Benefits

The transactions selected for retail drug coordination of benefits is NCPDP Telecommunications Standard Format version 3.2 and the equivalent NCPDP Batch Standard Version 1.0.

1. Implementation Guide and Source

The source of implementation guide for the retail drug claim coordination of benefits transaction set is: National Council for Prescription Drug Programs, 4201 North 24th Street, Suite 365, Phoenix, AZ, 85016, Telephone 602-957-9105, FAX 602-955-0749. The web site address is <http://www.ncdp.org>

2. Data Elements

See Addendum 1, A.2.

Addendum 4—Health Claim Status

The transaction selected for the health claim status is ASC X12N 276/277—Health Care Claim Status Request and Response (004010X093).

A. Implementation Guide and Source

The source of the implementation guide for the health claim status transaction set is: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-9460. The website address is <http://www.wpc-edi.com/hipaa/>

B. Data Elements

Adjudication or Payment Date

Amount Qualifier Code

Bill Type Identifier

Check or EFT Trace Number

Check/EFT Issue Date

Claim Payment Amount

Claim Service Period

Creation Date

Date Time Period Format Qualifier

Date/Time Qualifier

Entity Identifier Code

Entity Type Qualifier

Extra Narrative Data

Health Care Claim Status Category Code

Health Care Claim Status Code

Hierarchical Child Code

Hierarchical ID Number

Hierarchical Level Code

Hierarchical Parent ID Number

Hierarchical Structure Code

Identification Code Qualifier

Information Receiver Additional Address

Information Receiver Address

Information Receiver City

Information Receiver First Name

Information Receiver Identification Number

Information Receiver Last or Organization Name

Information Receiver Middle Name

Information Receiver Name Prefix

Information Receiver Name Suffix

Information Receiver Specific Location

Information Receiver State

Information Receiver ZIP Code

Line Charge Amount

Line Item Control Number

Line Item Service Date

Location Qualifier

Original Service Unit Count

Originator Application Transaction Identifier

Patient Control Number

Patient First Name

Patient Last Name

Patient Middle Name

Patient Name Prefix

Patient Name Suffix

Payer City Name

Payer Claim Control Number

Payer First Address Line

Payer Identifier

Payer Name

Payer Second Address Line

Payer State Code

Payer ZIP Code

Payment Method Code

Procedure Modifier

Product/Service ID Qualifier

Provider First Name

Provider Identifier

Provider Last or Organization Name

Provider Middle Name

Provider Name Prefix

Provider Name Suffix

Reference Identification Qualifier

Revenue Code

Service Identification Code

Service Line Date

Service Unit Count

Status Information Effective Date

Subscriber Birth Date

Subscriber City

Subscriber First Address Line

Subscriber First Name

Subscriber Gender Code

Subscriber Identifier

Subscriber Last Name

Subscriber Middle Name

Subscriber Name Prefix

Subscriber Name Suffix

Subscriber Postal ZIP Code

Subscriber Second Address Line

Subscriber State

Total Claim Charge Amount

Trace Type Code

Transaction Segment Count

Transaction Set Control Number

Transaction Set Identifier Code

Transaction Set Purpose Code

Transaction Type Code

[Direct Comments to Judy Ball, Enrollment and Eligibility IT]

Addendum 5—Benefit Enrollment and Maintenance

The transaction selected for benefit enrollment and maintenance is ASC X12N

834—Benefit Enrollment and Maintenance Transaction Set (004010X095).

A. Implementation Guide and Source

The source of the implementation guide for the benefit enrollment and maintenance transaction set is: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-9460. The web site address is <http://www.wpc-edi.com/hipaa/>

B. Data Elements

Label—name of elements

Account Address Information

Account City Name

Account Communication Number

Account Contact Inquiry Reference Number

Account Contact Name

Account Country Code

Account Effective Date

Account Identification Code

Account Monetary Amount

Account Number Qualifier

Account Postal ZIP Code

Account State Code

Action Code

Additional Account Identifier

Additional Other Coverage Identifier

Adjustment Amount

Adjustment Reason Code Characteristic

Adjustment Reason Code

Amount Qualifier Code

Assigned Number

Benefit Account Number

Benefit Status Code

Birth Sequence Number

Card Count

Citizenship Status Code

Code List Qualifier Code

Communication Number Qualifier

Communication Number

Consolidated Omnibus Budget Reconciliation Act (COBRA) Qualifying Event Code

Contact Function Code

Contact Inquiry Reference

Coordination of Benefits Code

Coordination of Benefits Date

Country Code

Coverage Level Code

Creation Date

Credit/Debit Flag Code

Current Health Condition Code

Date Time Period Format Qualifier

Date/Time Qualifier

Dependent Employer Identification Code

Dependent Employer Name

Dependent Employment Date

Dependent School Date

Dependent School Identification Code

Dependent School Name

Description Text

Diagnosis Code

Disability Eligibility Date

Disability Maximum Entitlement Amount

Disability Type Code

Employment Status Code

Enrollment Control Total

Entity Identifier Code

Entity Relationship Code

Entity Type Qualifier

File Creation Time

First Diagnosed Date

Frequency Code

Gender Code

Group or Policy Number

Health Coverage Eligibility Date
Health-Related Code
Identification Card Type Code
Identification Code Qualifier
Individual Relationship Code
Industry Code
Insurance Eligibility Date
Insurance Group Number
Insurance Line Code
Insurer Contact Inquiry Reference
Insurer Contact Name
Insurer Contact Number
Insurer Entity Relationship Code
Insurer Identification Code
Insurer Name
Issuing State
Last Visit Reason Text
Late Reason Code
Location Qualifier
Maintenance Reason Code
Maintenance Type Code
Marital Status Code
Master Policy Number
Medicare Plan Code
Member Additional Address
Member City Name
Member Contact Name
Member Postal Code
Member State or Province Code
Monetary Amount
Occupation Code
Other Insurance Company Identification Code
Other Insurance Company Name
Payer Responsibility Sequence Number Code
Plan Coverage Description Text
Policy Name
Pre-disability Work Days Count
Premium Contribution Amount
Previous Transaction Identifier
Primary Insured Collateral Dependent Count
Primary Insured Sponsored Dependent Count
Product Option Code
Product/Service ID Qualifier
Provider Code
Provider Communications Number
Provider Contact Inquiry Reference
Provider Contact Name
Provider Eligibility Date
Provider First Name
Provider Identifier
Provider Last or Organization Name
Provider Middle Name
Provider Name Prefix
Provider Name Suffix
Quantity Count
Quantity Qualifier
Race or Ethnicity Code
Reference Identification Qualifier
Sponsor Additional Name
Sponsor City Name
Sponsor Contact Name
Sponsor Country Code
Sponsor Identifier
Sponsor Name
Sponsor State Code
Sponsor Street Address
Sponsor Zip Code
Student Status Code
Subscriber or Dependent Death Date
Subscriber Additional Identifier
Subscriber Birth Date
Subscriber City
Subscriber County Code
Subscriber Current Weight
Subscriber First Address Line

Subscriber First Name
Subscriber Height
Subscriber Identifier
Subscriber Last Name
Subscriber Middle Name
Subscriber Name Prefix
Subscriber Name Suffix
Subscriber Postal ZIP Code
Subscriber Previous Weight
Subscriber Second Address Line
Subscriber State
Time Zone Code
Transaction Segment Count
Transaction Set Control Number
Transaction Set Identifier Code
Transaction Set Purpose Code
TPA or Broker Account Address
TPA or Broker Account Amount
TPA or Broker Account City Name
TPA or Broker Account Contact
Communication Number
TPA or Broker Account Contact Inquiry Reference
TPA or Broker Account Contact Name
TPA or Broker Account Number
TPA or Broker Account Postal Code
TPA or Broker Account State or Province Code
TPA or Broker Additional Account Reference Identification Number
TPA or Broker Additional Name
TPA or Broker Communication Number
TPA or Broker Contact Inquiry Reference Number
TPA or Broker Country Code
TPA or Broker Identification Code
TPA or Broker Name
TPA or Broker State Code
Underwriting Decision Code
Version Identification Code
Weight Change Text
Work Intensity Code
Yes/No Condition or Response Code

Addendum 6—Eligibility for a Health Plan

The transaction selected for the eligibility for a health plan is ASC X12N 270/271—Health Care Eligibility Inquiry and Response (004010X092).

A. Implementation Guide and Source

The source of the implementation guide for eligibility for a health plan transaction set is: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-9460. The website address is <http://www.wpc-edi.com/hipaa/>

B. Data Elements

Labels
Agency Qualifier Code
Amount Qualifier Code
Authorization Indicator Code
Benefit Coverage Level Code
Benefit Used or Available Amount
Birth Sequence Number
Communication Number Qualifier
Communication Number
Contact Function Code
Country Code
Coverage Level Code
Creation Date
Date/Time Period Format Qualifier
Date/Time Qualifier
Dependent Additional Identification Text
Dependent Additional Identifier

Dependent Benefit Date
Dependent Birth Date
Dependent City Name
Dependent Communications Number
Dependent Contact Name
Dependent First Line Address
Dependent First Name
Dependent Gender Code
Dependent Identification Code
Dependent Last Name
Dependent Middle Name
Dependent Name Suffix
Dependent Postal Zip Code
Dependent Second Line Address
Dependent State Code
Dependent Trace Number
Description Text
Eligibility or Benefit Amount
Eligibility or Benefit Information
Eligibility or Benefit Percent
Entity Identifier Code
Entity Type Qualifier
File Creation Time
Follow-up Action Code
Free-Form Message Text
Handicap Indicator Code
Hierarchical Child Code
Hierarchical ID Number
Hierarchical Level Code
Hierarchical Parent ID Number
Hierarchical Structure Code
Identification Code Qualifier
Individual Relationship Code
Information Receiver Additional Address
Information Receiver Additional Identifier
Information Receiver Address
Information Receiver City
Information Receiver Contact Name
Information Receiver First Name
Information Receiver Identification Number
Information Receiver Last or Organization Name
Information Receiver Middle Name
Information Receiver Name Suffix
Information Receiver State
Information Receiver Trace Number
Information Receiver ZIP Code
Information Source Contact Name
Information Source Process Date
Insurance Eligibility Date
Insurance Type Code
Insured Indicator
Location Identification Code
Location Qualifier
Loop Identifier Code
Maintenance Reason Code
Maintenance Type Code
Network Services Code
Originating Company Identifier
Originating Company Secondary Identifier
Period Count
Plan Coverage Description Text
Plan Sponsor Name
Printer Carriage Control Code
Prior Authorization Number
Prior Authorization Text
Procedure Coding Method
Procedure Modifier
Product/Service ID Qualifier
Provider Address 1
Provider Address 2
Provider City
Provider Code
Provider Contact Name
Provider Contact Number
Provider First Name

Provider Identifier
Provider Last or Organization Name
Provider Middle Name
Provider Name Suffix
Provider Specialty Certification Code
Provider Specialty Code
Provider State
Provider Zip
Quantity Qualifier
Receiver Additional Identifier Description Text
Receiver Additional Identifier
Receiver Provider Additional Identifier Type Code
Receiver Provider Additional Identifier
Receiver Trace Number
Reference Identification Qualifier
Reject Reason Code
Relationship To Insured Code
Sample Selection Modulus
Service Type Code
Service Unit Count
Ship/Delivery or Calendar Pattern Code
Ship/Delivery Pattern Time Code
Source Additional Reference Identifier
Source City Name
Source Organization Name
Source Postal Zip Code
Source Primary Identification Number
Source State Code
Source Street Address
Spend Down Amount
Student Status Code
Subscriber Additional Identifier
Subscriber Additional Information Text
Subscriber Benefit Date
Subscriber Birth Date
Subscriber Card Issue Date
Subscriber City
Subscriber Contact Name
Subscriber Contact Phone Number
Subscriber First Address Line
Subscriber First Name
Subscriber Gender Code
Subscriber Identifier
Subscriber Last Name
Subscriber Middle Name
Subscriber Name Suffix
Subscriber Postal ZIP Code
Subscriber Second Address Line
Subscriber State
Time Period Qualifier
Trace Assigning Entity Additional Number
Trace Assigning Entity Number
Trace Number
Trace Type Code
Transaction Segment Count
Transaction Set Control Number
Transaction Set Identifier Code
Transaction Set Purpose Code
Transaction Type Code
Unit or Basis for Measurement Code
Valid Request Indicator Code
Value Added Network Trace Number

Addendum 7—Health Plan Premium Payment

The transaction selected for the health plan premium payment is ASC X12N 820—Payment Order/Remittance Advice Transaction Set (004010X061).

A. Implementation Guide and Source

The source of the implementation guide for the health plan premium payment transaction set is: Washington Publishing

Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-9460. The website address is <http://www.wpc-edi.com/hipaa/>

B. Data Elements

Account Number Qualifier
Adjustment Reason Code
Assigned Number
Billed Premium Amount
Contact Function Code
Contract or Invoice or Account Number
Country Code
Coverage Period Date
Credit/Debit Flag Code
Currency Code
Date/Time Period Format Qualifier
Date/Time Qualifier
Depository Financial Institution (DFI) Identifier
Depository Financial Institution (DFI) ID Number Qualifier
Employee Identification Number
Entity Identifier Code
Exchange Rate
Funds Issued Date
Head Count
Identification Code Qualifier
Individual Identifier
Information Only Indicator Code
Information Receiver City
Information Receiver Last or Organization Name
Information Receiver State
Information Receiver ZIP Code
Insurance Policy or Plan Identifier
Line Item Control Number
Organization Premium Identification Code
Originating Company Identifier
Originating Company Supplemental Code
Payer Additional Name
Payer City Name
Payer Contact Name
Payer Identifier
Payer Name
Payer Process Date
Payer Second Address Line
Payer State Code
Payer ZIP Code
Payment Action Code
Payment Format Code
Payment Method Code
Payroll Processor Additional Name
Payroll Processor City Name
Payroll Processor Contact Name
Payroll Processor First Address Line
Payroll Processor Identifier
Payroll Processor Name
Payroll Processor Second Address Line
Payroll Processor State Code
Payroll Processor ZIP Code
Policy Level Individual Name
Premium Delivery Date
Premium Payment Amount
Premium Receiver First Address Line
Premium Receiver Reference Identifier
Premium Receiver Second Address Line
Receiver Account Number
Receiver Additional Name
Receiver Identifier
Reference Identification Qualifier
Sender Account Number
Trace Number
Trace Type Code
Transaction Handling Code
Transaction Segment Count

Transaction Set Control Number
Transaction Set Identifier Code
Unit or Basis for Measurement Code

Addendum 8—Referral Certification and Authority

The transaction selected for the referral certification and authority is ASC X12N 278—Health Care Services Review Information (004010X094).

A. Implementation Guide and Source

The source of the implementation guide for the referral certification and authority is: Washington Publishing Company, 806 W. Diamond Ave., Suite 400, Gaithersburg, MD, 20878, Telephone 301-590-9337, FAX: 301-869-9460. The website address is <http://www.wpc-edi.com/hipaa/>

B. Data Elements

Action Code
Admission Source Code
Admission Type Code
Agency Qualifier Code
Ambulance Transport Code
Ambulance Transport Reason Code
Ambulance Trip Destination Address
Ambulance Trip Origin Address
Arterial Blood Gas Quantity
Certification Condition Indicator
Certification Expiration Date
Certification Number
Certification Type Code
Chiropractic Series Treatment Number
Citizenship Status Code
Code Category
Code List Qualifier Code
Communication Number Qualifier
Complication Indicator
Condition Codes
Contact Function Code
Country Code
Creation Date
Current Health Condition Code
Daily Oxygen Use Count
Date/Time Period Format Qualifier
Date/Time Qualifier
Delay Reason Code
Dependent Additional Identification Text
Dependent Additional Identifier
Dependent Birth Date
Dependent Citizenship Country Code
Dependent First Name
Dependent Gender Code
Dependent Identification Code
Dependent Last Name
Dependent Marital Status Code
Dependent Middle Name
Dependent Name Prefix
Dependent Name Suffix
Dependent Trace Number
Diagnosis Code
Diagnosis Date
Diagnosis Type Code
Entity Identifier Code
Entity Type Qualifier
Equipment Reason Description
Facility Code Qualifier
Facility Type Code
File Creation Time
Follow-up Action Code
Free-Form Message Text
Full Destination Address
Full Origin Address
Hierarchical Child Code
Hierarchical ID Number

Hierarchical Level Code
 Hierarchical Parent ID Number
 Hierarchical Structure Code
 Home Health Certification Period
 Identification Code Qualifier
 Information Release Code
 Insured Indicator
 Last Admission Date
 Last Visit Date
 Level of Service Code
 Medicare Coverage Indicator
 Monthly Treatment Count
 Nature of Condition Code
 Nursing Home Residential Status Code
 Originator Application Transaction Identifier
 Oxygen Delivery System Code
 Oxygen Equipment Type Code
 Oxygen Flow Rate
 Oxygen Saturation Quantity
 Oxygen Test Condition Code
 Oxygen Test Findings Code
 Oxygen Use Period Hour Count
 Patient Condition Description Text
 Patient Discharge Facility Type Code
 Patient Status Code
 Patient Weight
 Period Count
 Physician Contact Date
 Physician Order Date
 Portable Oxygen System Flow Rate
 Previous Certification Identifier
 Procedure Date
 Procedure Monetary Amount
 Procedure Quantity
 Product/Service ID Qualifier
 Product/Service Procedure Code Text
 Product/Service Procedure Code
 Prognosis Code
 Proposed Admission Date
 Proposed Discharge Date
 Proposed Surgery Date
 Provider Code
 Provider Contact Name
 Provider Identifier
 Provider Service State Code
 Provider Specialty Certification Code
 Provider Specialty Code
 Quantity Qualifier
 Race or Ethnicity Code
 Reference Identification Qualifier
 Reject Reason Code
 Related-Causes Code
 Relationship To Insured Code
 Request Category Code
 Requester Address First Address Line
 Requester Address Second Address Line
 Requester City Name
 Requester Contact Communication Number
 Requester Contact Name
 Requester Country Code
 Requester First Name
 Requester Identifier
 Requester Last or Organization Name
 Requester Middle Name
 Requester Name Prefix
 Requester Name Suffix
 Requester Postal Code
 Requester State or Province Code
 Requester Supplemental Identifier
 Respiratory Therapist Order Text
 Round Trip Purpose Description Text
 Sample Selection Modulus
 Second Surgical Opinion Indicator
 Service Authorization Date
 Service From Date
 Service Provider City Name

Service Provider Contact Communication Number
 Service Provider Country Code
 Service Provider First Address Line
 Service Provider First Name
 Service Provider Identifier
 Service Provider Last or Organization Name
 Service Provider Middle Name
 Service Provider Name Prefix
 Service Provider Name Suffix
 Service Provider Postal Code
 Service Provider Second Address Line
 Service Provider State or Province Code
 Service Provider Supplemental Identifier
 Service Trace Number
 Service Type Code
 Service Unit Count
 Ship/Delivery or Calendar Pattern Code
 State Code
 Stretcher Purpose Description Text
 Subluxation Level Code
 Subscriber Additional Identifier
 Subscriber Additional Information Text
 Subscriber Birth Date
 Subscriber Citizenship Country Code
 Subscriber First Name
 Subscriber Gender Code
 Subscriber Identifier
 Subscriber Last Name
 Subscriber Marital Status Code
 Subscriber Middle Name
 Subscriber Name Prefix
 Subscriber Name Suffix
 Subscriber Trace Number
 Surgery Date
 Surgical Procedure Code
 Time Period Qualifier
 Trace Type Code
 Transaction Segment Count
 Transaction Set Control Number
 Transaction Set Identifier Code
 Transaction Set Purpose Code
 Transaction Type Code
 Transport Distance
 Treatment Count
 Treatment Period Count
 Treatment Series Number
 Unit or Basis for Measurement Code
 Utilization Management Organization (UMO) or Last Name
 Utilization Management Organization (UMO) First Address Line
 Utilization Management Organization (UMO) First Name
 Utilization Management Organization (UMO) Middle Name
 Utilization Management Organization (UMO) Name Prefix
 Utilization Management Organization (UMO) Name Suffix
 Utilization Management Organization (UMO) Second Address Line
 Utilization Management Organization (UMO) City Name
 Utilization Management Organization (UMO) Contact Communication Number
 Utilization Management Organization (UMO) Contact Name
 Utilization Management Organization (UMO) Country Code
 Utilization Management Organization (UMO) Identifier
 Utilization Management Organization (UMO) Postal Code
 Utilization Management Organization (UMO) State or Province Code

Valid Request Indicator Code
 Version/Release/Industry Identifier
 X-Ray Availability Indicator Code 1861J1
 Facility Indicator

[FR Doc. 98-11691 Filed 5-1-98; 9:04 am]
 BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 142

[HCFA-0045-P]

RIN 0938-AH99

National Standard Health Care Provider Identifier

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes a standard for a national health care provider identifier and requirements concerning its use by health plans, health care clearinghouses, and health care providers. The health plans, health care clearinghouses, and health care providers would use the identifier, among other uses, in connection with certain electronic transactions.

The use of this identifier would improve the Medicare and Medicaid programs, and other Federal health programs and private health programs, and the effectiveness and efficiency of the health care industry in general, by simplifying the administration of the system and enabling the efficient electronic transmission of certain health information. It would implement some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 6, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-0045-P, P.O. Box 26585, Baltimore, MD 21207-0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Comments may also be submitted electronically to the following e-mail address: NPI@osaspe.dhhs.gov. E-mail comments should include the full name, postal address, and affiliation (if applicable) of the sender and must be submitted to the referenced address to be considered. All comments should be incorporated in the e-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-0045-P and the specific section or sections of the proposed rule. Both electronic and written comments received by the time and date indicated above will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890). Electronic and legible written comments will also be posted, along with this proposed rule, at the following web site: <http://aspe.os.dhhs.gov/admsimp/>.

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communications software and modem to call 202-512-1661; type swais, then login as guest (no password required).

FOR FURTHER INFORMATION CONTACT: Patricia Peyton, (410) 786-1812.

SUPPLEMENTARY INFORMATION:

I. Background

[Please label written and e-mailed comments about this section with the subject: Background.]

In order to administer their programs, the Department of Health and Human Services, other Federal agencies, State Medicaid agencies, and private health plans assign identification numbers to the providers of health care services and supplies with which they transact business. These various agencies and health plans, all of which we will refer to as health plans in this proposed rule, routinely, and independently of each other, assign identifiers to health care providers for program management and operations purposes. The identifiers are frequently not standardized within a single health plan or across plans. This lack of uniformity results in a single health care provider having different numbers for each program and often multiple billing numbers issued within the same program, significantly complicating providers' claims submission processes. In addition, nonstandard enumeration contributes to the unintentional issuance of the same identification number to different health care providers.

Most health plans have to be able to coordinate benefits with other health plans to ensure appropriate payment. The lack of a single and unique identifier for each health care provider within each health plan and across health plans, based on the same core data, makes exchanging data both expensive and difficult.

All of these factors indicate the complexities of exchanging information on health care providers within and among organizations and result in increasing numbers of claims-related problems and increasing costs of data processing. As we become more dependent on data automation and proceed in planning for health care in the future, the need for a universal, standard health care provider identifier becomes more and more evident.

In addition to overcoming communication and coordination difficulties, use of a standard, unique provider identifier would enhance our ability to eliminate fraud and abuse in health care programs.

• Payments for excessive or fraudulent claims can be reduced by standardizing enumeration, which

would facilitate sharing information across programs or across different parts of the same program.

• A health care provider's identifier would not change with moves or changes in specialty. This facilitates tracking of fraudulent health care providers over time and across geographic areas.

• A health care provider would receive only one identifier and would not be able to receive duplicate payments from a program by submitting claims under multiple provider identifiers.

• A standard identifier would facilitate access to sanction information.

A. National Provider Identifier Initiative

In July 1993, the Health Care Financing Administration (HCFA) undertook a project to develop a provider identification system to meet Medicare and Medicaid needs and ultimately a national identification system for all health care providers to meet the needs of other users and programs. Representatives from the private sector and Federal and State agencies were invited to participate. Active participants included:

- Department of Defense, Office of Civilian Health and Medical Program of the Uniformed Services.
- Assistant Secretary for Planning and Evaluation, HHS.
- Department of Labor.
- Department of Veterans Affairs.
- Office of Personnel Management.
- Public Health Service, HHS.
- Drug Enforcement Administration.
- State Medicaid agencies and health departments including those of Alabama, California, Maryland, Minnesota and Virginia.

• Medicare carriers and fiscal intermediaries.

• Professional and medical associations, including the National Council for Prescription Drug Programs.

One of the group's first tasks was to decide whether to use an existing identifier or to develop a new one. They began by adopting criteria recommended for a unique provider identifier by the Workgroup for Electronic Data Interchange (WEDI), Technical Advisory Group in October 1993, and recommended by the American National Standards Institute (ANSI), Healthcare Informatics Standards Planning Panel, Task Group on Provider Identifiers in February 1994. The workgroup then examined existing identifiers and concluded that no existing identifier met all the criteria that had been recommended by the WEDI and ANSI workgroups.

Because of the limitations of existing identifiers, the workgroup designed a

new identifier that would be in the public domain and that would incorporate the recommendations of the WEDI and ANSI workgroups. This identifier, which we call the national provider identifier, or NPI, is an 8-position alphanumeric identifier.

B. The Results of the NPI Initiative

As a result of the project on the NPI, and before legislation required the use of the standard identifier for all health care providers (see section I.C. Legislation, below), HCFA and other participants accepted the workgroup's recommendation, and HCFA decided that this new identifier would be implemented in the Medicare program. HCFA began work on developing a national provider system (NPS) that would contain provider data and be equipped with the technology necessary to maintain and manage the data. Plans for the NPS included assigning the NPI and storing the data necessary to identify each health care provider uniquely. The NPI was designed to have no embedded intelligence. (That is, information about the health care provider, such as the type of health care provider or State where the health care provider is located, would not be conveyed by the NPI. This information was to have been recorded by the NPS in each health care provider's record but would not be part of the identifier.)

The NPS was designed so that it could also be used by other Federal and State agencies and private health plans to enumerate their health care providers that do not participate in Medicare.

C. Legislation

The Congress included provisions to address the need for a standard identifier and other administrative simplification issues in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, which was enacted on August 21, 1996. Through subtitle F of title II of that law, the Congress added to title XI of the Social Security Act a new part C, entitled "Administrative Simplification." (Public Law 104-191 affects several titles in the United States Code. Hereafter, we refer to the Social Security Act as the Act; we refer to the other laws cited in this document by their names.) The purpose of this part is to improve the Medicare and Medicaid programs in particular and the efficiency and effectiveness of the health care system in general by encouraging the development of a health information system through the establishment of standards and requirements to facilitate the electronic

transmission of certain health information.

Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose several requirements on HHS, health plans, health care clearinghouses, and certain health care providers concerning electronic transmission of health information.

The first section, section 1171 of the Act, establishes definitions for purposes of part C of title XI for the following terms: code set, health care clearinghouse, health care provider, health information, health plan, individually identifiable health information, standard, and standard setting organization.

Section 1172 of the Act makes any standard adopted under part C applicable to (1) all health plans, (2) all health care clearinghouses, and (3) any health care providers that transmit any health information in electronic form in connection with the transactions referred to in section 1173(a)(1) of the Act.

This section also contains requirements concerning standard setting.

- The Secretary may adopt a standard developed, adopted, or modified by a standard setting organization (that is, an organization accredited by the American National Standards Institute (ANSI)) that has consulted with the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), WEDI, and the American Dental Association (ADA).

- The Secretary may also adopt a standard other than one established by a standard setting organization, if the different standard will reduce costs for health care providers and health plans, the different standard is promulgated through negotiated rulemaking procedures, and the Secretary consults with each of the above-named groups.

- If no standard has been adopted by any standard setting organization, the Secretary is to rely on the recommendations of the National Committee on Vital and Health Statistics (NCVHS) and consult with each of the above-named groups.

In complying with the requirements of part C of title XI, the Secretary must rely on the recommendations of the NCVHS, consult with appropriate State, Federal, and private agencies or organizations, and publish the recommendations of the NCVHS in the *Federal Register*.

Paragraph (a) of section 1173 of the Act requires that the Secretary adopt standards for financial and administrative transactions, and data

elements for those transactions, to enable health information to be exchanged electronically. Standards are required for the following transactions: health claims, health encounter information, health claims attachments, health plan enrollments and disenrollments, health plan eligibility, health care payment and remittance advice, health plan premium payments, first report of injury, health claim status, and referral certification and authorization. In addition, the Secretary is required to adopt standards for any other financial and administrative transactions that are determined to be appropriate by the Secretary.

Paragraph (b) of section 1173 of the Act requires the Secretary to adopt standards for unique health identifiers for all individuals, employers, health plans, and health care providers and requires further that the adopted standards specify for what purposes unique health identifiers may be used.

Paragraphs (c) through (f) of section 1173 of the Act require the Secretary to establish standards for code sets for each data element for each health care transaction listed above, security standards for health care information systems, standards for electronic signatures (established together with the Secretary of Commerce), and standards for the transmission of data elements needed for the coordination of benefits and sequential processing of claims. Compliance with electronic signature standards will be deemed to satisfy both State and Federal requirements for written signatures with respect to the transactions listed in paragraph (a) of section 1173 of the Act.

In section 1174 of the Act, the Secretary is required to adopt standards for all of the above transactions, except claims attachments, within 18 months of enactment. The standards for claims attachments must be adopted within 30 months of enactment. Generally, after a standard is established it cannot be changed during the first year except for changes that are necessary to permit compliance with the standard. Modifications to any of these standards may be made after the first year, but not more frequently than once every 12 months. The Secretary must also ensure that procedures exist for the routine maintenance, testing, enhancement, and expansion of code sets and that there are crosswalks from prior versions.

Section 1175 of the Act prohibits health plans from refusing to process or delaying the processing of a transaction that is presented in standard format.

The Act's requirements are not limited to health plans; however, each person to whom a standard or implementation

specification applies is required to comply with the standard within 24 months (or 36 months for small health plans) of its adoption. A health plan or other entity may, of course, comply voluntarily before the effective date. Entities may comply by using a health care clearinghouse to transmit or receive the standard transactions. Compliance with modifications and implementation specifications to standards must be accomplished by a date designated by the Secretary. This date may not be earlier than 180 days after the notice of change.

Section 1176 of the Act establishes a civil monetary penalty for violation of the provisions in part C of title XI of the Act, subject to several limitations. The Secretary is required by statute to impose penalties of not more than \$100 per violation on any person who fails to comply with a standard, except that the total amount imposed on any one person in each calendar year may not exceed \$25,000 for violations of one requirement. The procedural provisions in section 1128A of the Act, "Civil Monetary Penalties," are applicable.

Section 1177 of the Act establishes penalties for a knowing misuse of unique health identifiers and individually identifiable health information: (1) A fine of not more than \$50,000 and/or imprisonment of not more than 1 year; (2) if misuse is "under false pretenses," a fine of not more than \$100,000 and/or imprisonment of not more than 5 years; and (3) if misuse is with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, a fine of not more than \$250,000 and/or imprisonment of not more than 10 years.

Under section 1178 of the Act, the provisions of part C of title XI of the Act, as well as any standards established under them, supersede any State law that is contrary to them. However, the Secretary may, for statutorily specified reasons, waive this provision.

Finally, section 1179 of the Act makes the above provisions inapplicable to financial institutions or anyone acting on behalf of a financial institution when "authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments for a financial institution."

(Concerning this last provision, the conference report, in its discussion on section 1178, states:

"The conferees do not intend to exclude the activities of financial institutions or their contractors from compliance with the standards adopted under this part if such

activities would be subject to this part. However, conferees intend that this part does not apply to use or disclosure of information when an individual utilizes a payment system to make a payment for, or related to, health plan premiums or health care. For example, the exchange of information between participants in a credit card system in connection with processing a credit card payment for health care would not be covered by this part. Similarly sending a checking account statement to an account holder who uses a credit or debit card to pay for health care services, would not be covered by this part. However, this part does apply if a company clears health care claims, the health care claims activities remain subject to the requirements of this part.") (H.R. Rep. No. 736, 104th Cong., 2nd Sess. 268-269 (1996))

D. Process for Developing National Standards

The Secretary has formulated a 5-part strategy for developing and implementing the standards mandated under Part C of title XI of the Act:

1. To ensure necessary interagency coordination and required interaction with other Federal departments and the private sector, establish interdepartmental implementation teams to identify and assess potential standards for adoption. The subject matter of the teams includes claims/encounters, identifiers, enrollment/eligibility, systems security, and medical coding/classification. Another team addresses cross-cutting issues and coordinates the subject matter teams. The teams consult with external groups such as the NCVHS' Workgroup on Data Standards, WEDI, ANSI's Health Informatics Standards Board, the NUCC, the NUBC, and the ADA. The teams are charged with developing regulations and other necessary documents and making recommendations for the various standards to the HHS' Data Council through its Committee on Health Data Standards. (The HHS Data Council is the focal point for consideration of data policy issues. It reports directly to the Secretary and advises the Secretary on data standards and privacy issues.)

2. Develop recommendations for standards to be adopted.

3. Publish proposed rules in the *Federal Register* describing the standards. Each proposed rule provides the public with a 60-day comment period.

4. Analyze public comments and publish the final rules in the *Federal Register*.

5. Distribute standards and coordinate preparation and distribution of implementation guides.

This strategy affords many opportunities for involvement of

interested and affected parties in standards development and adoption:

- Participate with standards development organizations.
- Provide written input to the NCVHS.
- Provide written input to the Secretary of HHS.
- Provide testimony at NCVHS' public meetings.
- Comment on the proposed rules for each of the proposed standards.
- Invite HHS staff to meetings with public and private sector organizations or meet directly with senior HHS staff involved in the implementation process.

The implementation teams charged with reviewing standards for designation as required national standards under the statute have defined, with significant input from the health care industry, a set of principles for guiding choices for the standards to be adopted by the Secretary. These principles are based on direct specifications in HIPAA and the purpose of the law, principles that are consistent with the regulatory philosophy set forth in Executive Order 12866 and the Paperwork Reduction Act of 1995. To be designated as a HIPAA standard, each standard should:

1. Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or improvements in benefits from electronic health care transactions.
2. Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses.
3. Be consistent and uniform with the other HIPAA standards—their data element definitions and codes and their privacy and security requirements—and, secondarily, with other private and public sector health data standards.
4. Have low additional development and implementation costs relative to the benefits of using the standard.
5. Be supported by an ANSI-accredited standards developing organization or other private or public organization that will ensure continuity and efficient updating of the standard over time.
6. Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster.
7. Be technologically independent of the computer platforms and transmission protocols used in electronic transactions, except when they are explicitly part of the standard.
8. Be precise and unambiguous, but as simple as possible.
9. Keep data collection and paperwork burdens on users as low as is feasible.

10. Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology.

A master data dictionary providing for common data definitions across the standards selected for implementation under HIPAA will be developed and maintained. We intend for the data element definitions to be precise, unambiguous, and consistently applied. The transaction-specific reports and general reports from the master data dictionary will be readily available to the public. At a minimum, the information presented will include data element names, definitions, and appropriate references to the transactions where they are used.

This proposed rule would establish the standard health care provider identifier and is the first proposed standard under HIPAA. The remaining standards will be grouped, to the extent possible, by subject matter and audience in future regulations. We anticipate publishing several more separate documents to promulgate the remaining standards required under HIPAA.

II. Provisions of the Proposed Regulations

[Please label written and e-mailed comments about this section with the subject: Provisions.]

In this proposed rule, we propose a standard health care provider identifier and requirements concerning its implementation. This rule would establish requirements that health plans, health care providers, and health care clearinghouses would have to meet to comply with the statutory requirement to use a unique identifier in electronic transactions.

We propose to add a new part to title 45 of the Code of Federal Regulations for health plans, health care providers, and health care clearinghouses in general. The new part would be part 142 of title 45 and would be titled "Administrative Requirements." Subpart D would contain provisions specific to the NPI.

A. Applicability

Section 262 of HIPAA applies to all health plans, all health care clearinghouses, and any health care providers that transmit any health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act. Our proposed rules (at 45 CFR 142.102) would apply to the health plans and health care clearinghouses as well, but we would clarify the statutory language in our regulations for health care

providers; we would have the regulations apply to any health care provider only when electronically transmitting any of the transactions to which section 1173(a)(1) of the Act refers.

Electronic transmissions would include transmissions using all media, even when the transmission is physically moved from one location to another using magnetic tape, disk, or CD media. Transmissions over the Internet (wide-open), Extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, and private networks are all included. Telephone voice response and "faxback" systems would not be included. The "HTML" interaction between a server and a browser by which the elements of a transaction are solicited from a user would not be included, but once assembled into a transaction by the server, transmission of the full transaction to another corporate entity, such as a health plan, would be required to comply.

Our regulations would apply to health care clearinghouses when transmitting transactions to, and receiving transactions from, a health care provider or health plan that transmits and receives standard transactions (as defined under "transaction") and at all times when transmitting to or receiving electronic transactions from another health care clearinghouse. The law would apply to each health care provider when transmitting or receiving any electronic transaction.

The law applies to health plans for all transactions.

Section 142.104 would contain the following provisions (from section 1175 of the Act):

If a person desires to conduct a transaction (as defined in § 142.103) with a health plan as a standard transaction, the following apply:

(1) The health plan may not refuse to conduct the transaction as a standard transaction.

(2) The health plan may not delay the transaction or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction.

(3) The information transmitted and received in connection with the transaction must be in the form of standard data elements of health information.

As a further requirement, we would require that a health plan that conducts transactions through an agent assure that the agent meets all the requirements of part 142 that apply to the health plan.

Section 142.105 would state that a person or other entity may meet the requirements of § 142.104 by either—

(1) Transmitting and receiving standard data elements, or
(2) Submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse and receiving standard data elements through the clearinghouse.

Health care clearinghouses would be able to accept nonstandard transactions for the sole purpose of translating them into standard transactions for sending customers and would be able to accept standard transactions and translate them into nonstandard formats for receiving customers. We would state in § 142.105 that the transmission of nonstandard transactions, under contract, between a health plan or a health care provider and a health care clearinghouse would not violate the law.

Transmissions within a corporate entity would not be required to comply with the standards. A hospital that is wholly owned by a managed care company would not have to use the standards to pass encounter information back to the home office, but it would have to use the standard claims transaction to submit a claim to another health plan. Another example might be transactions within Federal agencies and their contractors and between State agencies within the same State. For example, Medicare enters into contracts with insurance companies and common working file sites that process Medicare claims using government furnished software. There is constant communication, on a private network, between HCFA Central Office and the Medicare carriers, intermediaries and common working file sites. This communication may continue in nonstandard mode. However, these contractors must comply with the standards when exchanging any of the transactions covered by HIPAA with an entity outside these "corporate" boundaries.

B. Definitions

Section 1171 of the Act defines several terms and our proposed rules would, for the most part, simply restate the law. The terms that we are defining in this proposed rule follow:

1. Code set.

We would define "code set" as section 1171(1) of the Act does: "code set" means any set of codes used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

2. Health care clearinghouse.

We would define "health care clearinghouse" as section 1171(2) of the Act does, but we are adding a further, clarifying sentence. The statute defines a "health care clearinghouse" as a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements. We would further explain that such an entity is one that currently receives health care transactions from health care providers and other entities, translates the data from a given format into one acceptable to the intended recipient and forwards the processed transaction to appropriate health plans and other clearinghouses, as necessary, for further action.

There are currently a number of private clearinghouses that perform these functions for health care providers. For purposes of this rule, we would consider billing services, repricing companies, community health management information systems or community health information systems, value-added networks, and switches performing these functions to be health care clearinghouses.

3. Health care provider.

As defined by section 1171(3) of the Act, a "health care provider" is a provider of services as defined in section 1861(u) of the Act, a provider of medical or other health services as defined in section 1861(s) of the Act, and any other person who furnishes health care services or supplies. Our regulations would define "health care provider" as the statute does and clarify that the definition of a health care provider is limited to those entities that furnish, or bill and are paid for, health care services in the normal course of business.

The statutory definition of a health care provider is broad. Section 1861(u) contains the Medicare definition of a provider, which encompasses institutional providers such as hospitals, skilled nursing facilities, home health agencies, and comprehensive outpatient rehabilitation facilities. Section 1861(s) defines other Medicare facilities and practitioners, including assorted clinics and centers, physicians, clinical laboratories, various licensed/certified health care practitioners, and suppliers of durable medical equipment. The last portion of the definition encompasses any appropriately licensed or certified health care practitioners or organizations, including pharmacies and nursing homes and many types of therapists, technicians, and aides. It also includes any other individual or organization that furnishes health care

services or supplies. We believe that an individual or organization that bills and is paid for health care services or supplies is also a health care provider for purposes of the statute.

Section 1173(b)(1) of the Act requires the Secretary to adopt standards for unique identifiers for all health care providers. The definition of a "health care provider" at section 1171(3) includes all Medicare providers and "any other person furnishing health care services and supplies." These two provisions require that provider identifiers may not be limited to only those health care providers that bill electronically or those that bill in their own right. Instead provider identifiers will eventually be available to all those that provide health services. Penalties for failure to use the correct identifiers, however, are limited to those that fail to use the identifiers or other standards in the nine designated electronic transactions. As we discuss under a later section in this preamble, III. Implementation of the NPI, we do not expect to be able to assign identifiers immediately to all health care providers that do not participate in electronic transactions.

Our proposed definition of a health care provider would not include health industry workers who support the provision of health care but who do not provide health services, such as admissions and billing personnel, housekeeping staff, and orderlies.

We describe two alternatives for defining general categories of health care providers for enumeration purposes. In the first, we would categorize health care providers as individuals, organizations, or groups. In the second, we would categorize health care providers as individuals or organizations, which would include groups. The data to be collected for each category of health care provider are described in the preamble in section IV. B. Data Elements. We welcome your comments on whether group providers need to be distinguished from organization providers.

Individuals are treated differently than organizations and groups because the data available to search for duplicates (for example, date and place of birth) are different. Organizations and groups may need to be treated differently from each other because it is possible that a group is not specifically licensed or certified to provide health care, whereas an organization usually is. It may, therefore, be important to be able to link the individual members to the group. It would not be possible to distinguish one category from another by looking at the NPI. The NPS would

contain the kinds of data necessary to adequately categorize each health care provider.

The categories are described as follows:

Individual—A human being who is licensed, certified or otherwise authorized to perform medical services or provide medical care, equipment and/or supplies in the normal course of business. Examples of individuals are physicians, nurses, dentists, pharmacists, and physical therapists.

Organization—An entity, other than an individual, that is licensed, certified or otherwise authorized to provide medical services, care, equipment or supplies in the normal course of business. The licensure, certification, or other recognition is granted to the organization entity. Individual owners, managers, or employees of the organization may also be certified, licensed, or otherwise recognized as individual health care providers in their own right. Each separate physical location of an organization, each member of an organization chain, and each subpart of an organization that needs to be identified would receive its own NPI. NPIs of organization providers would not be linked within the NPS to NPIs of other health care providers. Examples of organizations are hospitals, laboratories, ambulance companies, health maintenance organizations, and pharmacies.

In the first alternative for categorizing health care providers, as described above, we would distinguish a group from an organization. We would define a group as follows:

Group—An entity composed of one or more individuals (as defined above), generally created to provide coverage of patients' needs in terms of office hours, professional backup and support, or range of services resulting in specific billing or payment arrangements. It is possible that the group itself is not licensed or certified, but the individual(s) who compose the group are licensed, certified or otherwise authorized to provide health care services. The NPIs of the group member(s) would be linked within the NPS to the NPI of the group. An individual can be a member of multiple groups. Examples of groups are (1) two physicians practicing as a group where they bill and receive payment for their services as a group and (2) an incorporated individual billing and receiving payment as a corporation.

The ownership of a group or organization can change if it is sold, consolidated, or merged, or if control changes due to stock acquisition. In many cases, the nature of the provider

itself (for example, its location, staff or types of services provided) is not affected. In general, the NPI of the provider should not change in these situations unless the change of ownership affects the nature of the provider. (Example: If a hospital is acquired and then converted to a rehabilitation center, it would need to obtain a new NPI.) There may also be circumstances where a new NPI should be issued. (Example: a physicians' group practice operating as a partnership dissolves that partnership and another partnership of physicians acquires and operates the practice.) We solicit comments on rules to be applied.

We discuss the enumeration of health care providers in more detail, in III. Implementation of the NPI, later in this preamble.

4. Health information.

"Health information," as defined in section 1171 of the Act, means any information, whether oral or recorded in any form or medium, that—

- Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

We propose the same definition for our regulations.

5. Health plan.

We propose that a "health plan" be defined essentially as section 1171 of the Act defines it. Section 1171 of the Act cross refers to definitions in section 2791 of the Public Health Service Act (as added by Public Law 104-191, 42 U.S.C. 300gg-91); we would incorporate those definitions as currently stated into our proposed definitions for the convenience of the public. We note that many of these terms are defined in other statutes, such as the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93-406, 29 U.S.C. 1002(7) and the Public Health Service Act. Our definitions are based on the roles of plans in conducting administrative transactions, and any differences should not be construed to affect other statutes.

For purposes of implementing the provisions of administrative simplification, a "health plan" would be an individual or group health plan that provides, or pays the cost of, medical care. This definition includes, but is not limited to, the 13 types of plans listed in the statute. On the other hand, plans

such as property and casualty insurance plans and workers compensation plans, which may pay health care costs in the course of administering nonhealth care benefits, are not considered to be health plans in the proposed definition of health plan. Of course, these plans may voluntarily adopt these standards for their own business needs. At some future time, the Congress may choose to expressly include some or all of these plans in the list of health plans that must comply with the standards.

Health plans often carry out their business functions through agents, such as plan administrators (including third party administrators), entities that are under "administrative services only" (ASO) contracts, claims processors, and fiscal agents. These agents may or may not be health plans in their own right; for example, a health plan may act as another health plan's agent as another line of business. As stated earlier, a health plan that conducts HIPAA transactions through an agent is required to assure that the agent meets all HIPAA requirements that apply to the plan itself.

"Health plan" includes the following, singly or in combination:

- a. "Group health plan" (as currently defined by section 2791(a) of the Public Health Service Act). A group health plan is a plan that has 50 or more participants (as the term "participant" is currently defined by section 3(7) of ERISA) or is administered by an entity other than the employer that established and maintains the plan. This definition includes both insured and self-insured plans. We define "participant" separately below.

Section 2791(a)(1) of the Public Health Service Act defines "group health plan" as an employee welfare benefit plan (as currently defined in section 3(1) of ERISA) to the extent that the plan provides medical care, including items and services paid for as medical care, to employees or their dependents directly or through insurance, or otherwise.

It should be noted that group health plans that have fewer than 50 participants and that are administered by the employer would be excluded from this definition and would not be subject to the administrative simplification provisions of HIPAA.

- b. "Health insurance issuer" (as currently defined by section 2791(b) of the Public Health Service Act).

Section 2791(b)(2) of the Public Health Service Act currently defines a "health insurance issuer" as an insurance company, insurance service, or insurance organization that is licensed to engage in the business of

insurance in a State and is subject to State law that regulates insurance.

- c. "Health maintenance organization" (as currently defined by section 2791(b) of the Public Health Service Act).

Section 2791(b) of the Public Health Service Act currently defines a "health maintenance organization" as a Federally qualified health maintenance organization, an organization recognized as such under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such a health maintenance organization. These organizations may include preferred provider organizations, provider sponsored organizations, independent practice associations, competitive medical plans, exclusive provider organizations, and foundations for medical care.

- d. Part A or Part B of the Medicare program (title XVIII of the Act).

- e. The Medicaid program (title XIX of the Act).

- f. A "Medicare supplemental policy" as defined under section 1882(g)(1) of the Act.

Section 1882(g)(1) of the Act defines a "Medicare supplemental policy" as a health insurance policy that a private entity offers a Medicare beneficiary to provide payment for expenses incurred for services and items that are not reimbursed by Medicare because of deductible, coinsurance, or other limitations under Medicare. The statutory definition of a Medicare supplemental policy excludes a number of plans that are generally considered to be Medicare supplemental plans, such as health plans for employees and former employees and for members and former members of trade associations and unions. A number of these health plans may be included under the definitions of "group health plan" or "health insurance issuer", as defined in a. and b. above.

- g. A "long-term care policy," including a nursing home fixed-indemnity policy. A "long-term care policy" is considered to be a health plan regardless of how comprehensive it is. We recognize the long-term care insurance segment of the industry is largely unautomated and we welcome comments regarding the impact of HIPAA on the long-term care segment.

- h. An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers. This includes plans and other arrangements that are referred to as multiple employer welfare

arrangements ("MEWAs") as defined in section 3(40) of ERISA.

- i. The health care program for active military personnel under title 10 of the United States Code.

- j. The veterans health care program under chapter 17 of title 38 of the United States Code.

This health plan primarily furnishes medical care through hospitals and clinics administered by the Department of Veterans Affairs for veterans with a service-connected disability that is compensable. Veterans with non-service-connected disabilities (and no other health benefit plan) may receive health care under this health plan to the extent resources and facilities are available.

- k. The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in 10 U.S.C. 1072(4).

CHAMPUS primarily covers services furnished by civilian medical providers to dependents of active duty members of the uniformed services and retirees and their dependents under age 65.

- l. The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*).

This program furnishes services, generally through its own health care providers, primarily to persons who are eligible to receive services because they are of American Indian or Alaskan Native descent.

- m. The Federal Employees Health Benefits Program under 5 U.S.C. chapter 89.

This program consists of health insurance plans offered to active and retired Federal employees and their dependents. Depending on the health plan, the services may be furnished on a fee-for-service basis or through a health maintenance organization.

(Note: Although section 1171(5)(M) of the Act refers to the "Federal Employees Health Benefit Plan," this and any other rules adopting administrative simplification standards will use the correct name, the Federal Employees Health Benefits Program. One health plan does not cover all Federal employees; there are over 350 health plans that provide health benefits coverage to Federal employees, retirees, and their eligible family members. Therefore, we will use the correct name, the Federal Employees Health Benefits Program, to make clear that the administrative simplification standards apply to all health plans that participate in the Program.)

- n. Any other individual or group health plan, or combination thereof, that

provides or pays for the cost of medical care.

We would include a fourteenth category of health plan in addition to those specifically named in HIPAA, as there are health plans that do not readily fit into the other categories but whose major purpose is providing health benefits. The Secretary would determine which of these plans are health plans for purposes of title II of HIPAA. This category would include the Medicare Plus Choice plans that will become available as a result of section 1855 of the Act as amended by section 4001 of the Balanced Budget Act of 1997 (Public Law 105-33) to the extent that these health plans do not fall under any other category.

- 6. Medical care.

"Medical care," which is used in the definition of health plan, would be defined as current section 2791 of the Public Health Service Act defines it: the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any body structure or function of the body; amounts paid for transportation primarily for and essential to these items; and amounts paid for insurance covering the items and the transportation specified in this definition.

- 7. Participant.

We would define the term "participant" as section 3(7) of ERISA currently defines it: a "participant" is any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan that covers employees of such an employer or members of such organizations, or whose beneficiaries may be eligible to receive any such benefits. An "employee" would include an individual who is treated as an employee under section 401(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 401(c)(1)).

- 8. Small health plan.

We would define a "small health plan" as a group health plan with fewer than 50 participants.

The HIPAA does not define a "small health plan" but instead leaves the definition to be determined by the Secretary. The Conference Report suggests that the appropriate definition of a "small health plan" is found in current section 2791(a) of the Public Health Service Act, which is a group health plan with fewer than 50 participants. We would also define small individual health plans as those with fewer than 50 participants.

- 9. Standard.

Section 1171 of the Act defines "standard," when used with reference to a data element of health information or a transaction referred to in section 1173(a)(1) of the Act, as any such data element or transaction that meets each of the standards and implementation specifications adopted or established by the Secretary with respect to the data element or transaction under sections 1172 through 1174 of the Act.

Under our definition, a standard would be a set of rules for a set of codes, data elements, transactions, or identifiers promulgated either by an organization accredited by the American National Standards Institute or HHS for the electronic transmission of health information.

- 10. Transaction.

"Transaction" would mean the exchange of information between two parties to carry out financial and administrative activities related to health care. A transaction would be any of the transactions listed in section 1173(a)(2) of the Act and any determined appropriate by the Secretary in accordance with section 1173(a)(1)(B) of the Act. We present them below in the order in which we propose to list them in the regulations document for these transactions that we will publish later.

A "transaction" would mean any of the following:

- a. Health claims or equivalent encounter information.

This transaction may be used to submit health care claim billing information, encounter information, or both, from health care providers to health plans, either directly or via intermediary billers and claims clearinghouses.

- b. Health care payment and remittance advice.

This transaction may be used by a health plan to make a payment to a financial institution for a health care provider (sending payment only), to send an explanation of benefits or a remittance advice directly to a health care provider (sending data only), or to make payment and send an explanation of benefits remittance advice to a health care provider via a financial institution (sending both payment and data).

- c. Coordination of benefits.

This transaction can be used to transmit health care claims and billing payment information between health plans with different payment responsibilities where coordination of benefits is required or between health plans and regulatory agencies to monitor the rendering, billing, and/or

payment of health care services within a specific health care/insurance industry segment.

In addition to the nine electronic transactions specified in section 1173(a)(2) of the Act, section 1173(f) directs the Secretary to adopt standards for transferring standard data elements among health plans for coordination of benefits and sequential processing of claims. This particular provision does not state that these should be standards for electronic transfer of standard data elements among health plans. However, we believe that the Congress, when writing this provision, intended for these standards to apply to the electronic form of transactions for coordination of benefits and sequential processing of claims. The Congress expressed its intent on these matters generally in section 1173(a)(1)(B), where the Secretary is directed to adopt "other financial and administrative transactions . . . consistent with the goals of improving the operation of the health care system and reducing administrative costs". Adoption of a standard for electronic transmission of standard data elements among health plans for coordination of benefits and sequential processing of claims would serve these goals expressed by the Congress.

d. Health claim status.

This transaction may be used by health care providers and recipients of health care products or services (or their authorized agents) to request the status of a health care claim or encounter from a health plan.

e. Enrollment and disenrollment in a health plan.

This transaction may be used to establish communication between the sponsor of a health benefit and the health plan. It provides enrollment data, such as subscriber and dependents, employer information, and primary care health care provider information. The sponsor is the backer of the coverage, benefit, or product. A sponsor can be an employer, union, government agency, association, or insurance company. The health plan refers to an entity that pays claims, administers the insurance product or benefit, or both.

f. Eligibility for a health plan.

This transaction may be used to inquire about the eligibility, coverage, or benefits associated with a benefit plan, employer, plan sponsor, subscriber, or a dependent under the subscriber's policy. It also can be used to communicate information about or changes to eligibility, coverage, or benefits from information sources (such as insurers, sponsors, and health plans) to information receivers (such as

physicians, hospitals, third party administrators, and government agencies).

g. Health plan premium payments. This transaction may be used by, for example, employers, employees, unions, and associations to make and keep track of payments of health plan premiums to their health insurers. This transaction may also be used by a health care provider, acting as liaison for the beneficiary, to make payment to a health insurer for coinsurance, copayments, and deductibles.

h. Referral certification and authorization.

This transaction may be used to transmit health care service referral information between primary care health care providers, health care providers furnishing services, and health plans. It can also be used to obtain authorization for certain health care services from a health plan.

i. First report of injury.

This transaction may be used to report information pertaining to an injury, illness, or incident to entities interested in the information for statistical, legal, claims, and risk management processing requirements.

j. Health claims attachments.

This transaction may be used to transmit health care service information, such as subscriber, patient, demographic, diagnosis, or treatment data for the purpose of a request for review, certification, notification, or reporting the outcome of a health care services review.

k. Other transactions as the Secretary may prescribe by regulation.

Under section 1173(a)(1)(B) of the Act, the Secretary shall adopt standards, and data elements for those standards, for other financial and administrative transactions deemed appropriate by the Secretary. These transactions would be consistent with the goals of improving the operation of the health care system and reducing administrative costs.

C. Effective Dates—General

In general, any given standard would be effective 24 months after the effective date (36 months for small health plans) of the final rule for that standard.

Because there are other standards to be established than those in this proposed rule, we specify the date for a given standard under the subpart for that standard.

If HHS adopts a modification to an implementation specification or a standard, the implementation date of the modification would be no earlier than the 180th day following the adoption of the modification. HHS would determine the actual date, taking

into account the time needed to comply due to the nature and extent of the modification. HHS would be able to extend the time for compliance for small health plans. This provision would be at § 142.106.

The law does not address scheduling of implementation of the standards; it gives only a date by which all concerned must comply. As a result, any of the health plans, health care clearinghouses, and health care providers may implement a given standard earlier than the date specified in the subpart created for that standard. We realize that this may create some problems temporarily, as early implementers would have to be able to continue using old standards until the new ones must, by law, be in place.

At the WEDI Healthcare Leadership Summit held on August 15, 1997, it was recommended that health care providers not be required to use any of the standards during the first year after the adoption of the standard. However, willing trading partners could implement any or all of the standards by mutual agreement at any time during the 2-year implementation phase (3-year implementation phase for small health plans). In addition, it was recommended that a health plan give its health care providers at least 6 months notice before requiring them to use a given standard.

We welcome comments specifically on early implementation as to the extent to which it would cause problems and how any problems might be alleviated.

D. NPI Standard

[Please label written and e-mailed comments about this section with the subject: NPI STANDARD.]

Section 142.402, Provider identifier standard, would contain the national health care provider identifier standard. There is no recognized standard for health care provider identification as defined in the law. (That is, there is no standard that has been developed, adopted, or modified by a standard setting organization after consultation with the NUBC, NUCC, WEDI, and the ADA.) Therefore, we would designate a new standard.

We are proposing as the standard the national provider identifier (NPI), which would be maintained by HCFA. As discussed under the Background section earlier in this preamble, the NPI is an 8-position alphanumeric identifier. It includes as the 8th position a numeric check digit to assist in identifying erroneous or invalid NPIs. The check digit is a recognized International Standards Organization (ISO) standard. The check digit algorithm must be computed from an all-numeric base

number. Therefore, any alpha characters that may be part of the NPI are translated to specific numerics before the calculation of the check digit. The NPI format would allow for the creation of approximately 20 billion unique identifiers.

The 8-position alphanumeric format was chosen over a longer numeric-only format in order to keep the identifier as short as possible while providing for an identifier pool that would serve the industry's needs for a long time. However, we recognize that some health care providers and health plans might have difficulty in the short term in accommodating alphabetic characters. Therefore, we propose to issue numeric-only identifiers first and to introduce alphabetic characters starting with the first position of the NPI. This would afford additional time for health care providers and health plans to accommodate the alphabetic characters.

1. Selection criteria.

Each individual implementation team weighted the criteria described in section I.D., Process for Developing National Standards, in terms of the standard it was addressing. As we assessed the various options for a provider identifier against the criteria, it became apparent that many of the criteria would be satisfied by all of the provider identifier candidates. Consequently, we concentrated on the four criteria (1, 2, 3, and 10) that were not satisfied by all of the options. These criteria are described below in the specific context of the provider identifier.

#1. Improve the efficiency and effectiveness of the health care system.

In order to be integrated into electronic transactions efficiently, standard provider identifiers must be easily accessible. Health plans must be able to obtain identifiers and other key data easily in order to use the identifier in electronic transactions. Existing health care provider files have to be converted to the new standard. In addition, health care providers will need to know other health care providers' identifiers (for example, a hospital needs the identifiers of all physicians who perform services in the facility). To meet this criterion, we believe the identifier should not be proprietary; that is, it should be possible to communicate identifiers freely as needed. Moreover, the issuer must be able to reliably issue each health care provider only one identifier and to issue each identifier only once.

#2. Meet the needs of the health data standards user community.

The identifier must be comprehensive. It must accommodate

all health care provider types or must be capable of being expanded to do so. Based on our definition of "health care provider", this includes individual health care providers who are employed by other health care providers and alternative practitioners who may not be currently recognized by health plans. The identifier must have the capacity to enumerate health care providers for many years without reuse of previously-assigned identifiers. To meet this criterion, we believe that, over time, the identifier must be capable of uniquely identifying at least 100 million entities.

#3. Be consistent and uniform with other HIPAA and other private and public sector health data standards in providing for privacy and confidentiality.

Confidentiality of certain health care provider data must be maintained. Certain data elements (for example, social security number and date of birth) needed to enumerate an individual health care provider reliably should not be made available to the public.

#10. Incorporate flexibility to adapt more easily to changes.

To meet this criterion, the identifier must be intelligence-free (the identifier itself should not contain any information about the health care provider). Intelligence in the identifier would require issuing a new identifier if there is a change in that information. For example, an identifier containing a State code would no longer be accurate if the health care provider moves to another State.

2. Candidate identifiers.

We assessed a number of candidate identifiers to see if they met the four specific criteria discussed above. We first assessed the identifiers listed in the inventory of standards prepared for the Secretary by the Health Informatics Standards Board. Those standards are the unique physician identification number (UPIN), which is issued by HCFA; the health industry number (HIN), which is issued by the Health Industry Business Communications Council; the National Association of Boards of Pharmacy (NABP) number, which is issued by the National Council for Prescription Drug Programs in cooperation with the NABP; and the national provider identifier (NPI), which is being developed by HCFA.

Unique physician identification numbers are currently issued to physicians, limited license practitioners, group practices, and certain noninstitutional providers (for example, ambulance companies). These numbers are issued to health care providers through Medicare carriers, and generally only Medicare providers

have them. The unique physician identification number is used to identify ordering, performing, referring, and attending health care providers in Medicare claims processing. The computer system that generates the numbers is maintained by HCFA and is able to detect duplicate health care providers. The unique physician identification number is in the public domain and could be made widely accessible to health care providers and health plans. These numbers do contain intelligence (the first position designates a provider type, e.g., physician) and are only six positions long, which would not be able to accommodate a sufficient number of future health care providers. The unique physician identification number does not meet criteria 2 and 10.

The health industry number is used for contract administration in the health industry supply chain, as a prescriber identifier for claims processing, and for market analysis. It consists of a base 7-position alpha-numeric identifier and a 2-position alpha-numeric suffix identifying the location of the prescriber. The suffix contains intelligence. Health industry numbers can enumerate individual prescribers as well as institutional providers. They are issued via a proprietary system maintained by the Health Industry Business Communications Council, which permits subscriptions to the database by data re-sellers and others. In addition, it does not collect sufficient data for thorough duplicate checking of individuals. The health industry number does not meet criteria 1, 3, and 10.

The National Association of Boards of Pharmacy number is a 7-digit numeric identifier assigned to licensed pharmacies. It is used to identify pharmacies to various payers. Its first two digits denote the State, the next four positions are assigned sequentially, and the last position is a check digit. We cannot assess data accessibility or privacy and confidentiality at this time because of the very limited applicability of the number. A 7-digit numeric identifier would not yield a sufficient quantity of identifiers, and there is intelligence in the number. This number does not meet criteria 2 and 10.

The NPI is intended to be a universal identifier, which can be used to enumerate all types of health care providers, and the supporting data structure incorporates a comprehensive list of provider types developed by an ANSI Accredited Standards Committee X12N workgroup. It is an intelligence-free 8-position alpha-numeric identifier, with the eighth position being a check digit, allowing for approximately 20

billion possible identifiers. The NPI would not be proprietary and would be widely available to the industry. The system that would enumerate health care providers would be maintained by HCFA, and data would therefore be safeguarded under the Privacy Act (5 U.S.C 552a). The system would also incorporate extensive search and duplicate checking routines into the enumeration process. The NPI meets all four of these criteria.

In addition, we examined the social security number issued by the Social Security Administration, the DEA number issued by the Drug Enforcement Administration, the employer identification number issued by the Internal Revenue Service, and the national supplier clearinghouse number issued by the Medicare program and used to identify suppliers of durable medical equipment and other suppliers. Neither the social security number nor the DEA number meets the accessibility test. The use of the social security number by Federal agencies is protected by the Privacy Act, and the DEA number must remain confidential in order to fulfill its intended function of monitoring controlled substances. The employer identification number does not meet the comprehensiveness test, because some individual health care providers do not qualify for one. The length of the national supplier clearinghouse number is 10 positions; to expand it would make it too long. Also, it is not intelligence-free, since the first portion of the identifier links health care providers together into business entities. The last four positions are reserved for subentities, leaving only the first six positions to enumerate unique health care provider entities.

Based on this analysis, we recommend the NPI be designated as the standard identifier for health care providers. It is the only candidate identifier that meets all four of the criteria above. In addition, the NPI would be supported by HCFA to assure continuity. As discussed in section VII. of this preamble, on collection of information requirements, the data collection and paperwork burdens on users would be minimal, and the NPI can be used in other standard transactions under the HIPAA. In addition, as discussed in sections III.B., Enumerators, and IX., Impact Analysis, implementation costs per health care provider and per health plan would be relatively low, and we would develop implementation procedures. The NPI would be platform and protocol independent, and the structure of the identifier has been precisely stated. The NPI is not fully operational, but it is

undergoing testing at this time, and comprehensive testing will be completed before the identifier is implemented.

3. Consultations.

In the development of the NPI, we consulted with many organizations, including those that the legislation requires (section 1172(c)(3)(B) of the Act). Subsequently, the NPI has been endorsed by several government and private organizations:

a. The NCVHS endorsed the NPI in a **Federal Register** notice on July 24, 1997 (62 FR 39844).

b. The NUBC endorsed the NPI in August 1996.

c. The ADA indicated its support, in concept, of the development of a unique, singular, national provider identifier for all health care providers in December 1996.

d. The NUCC supported the establishment of the NPI in January 1997, subject to the following issues being fully addressed:

- The business needs and rationale for each identifier be clearly established for health care, in both the private and government sectors, as part of the identifier definition process.

- The scope and nature of, and the rationale for, the entities subject to enumeration be clearly defined.

- All issues arising out of the health care industry's review of the proposed identifier, including any ambiguities in the law or proposed rule, be acknowledged and addressed.

- Distribution of identifier products/maintenance to health care providers, payers and employers be low cost and efficient. There should be no cost to have a number assigned to an individual health care provider or business.

e. WEDI indicated support for "the general concept of the NPI as satisfying the national provider identifier requirement of HIPAA" in a May 1997 letter to the Secretary. WEDI further stated that the NPI is equal to or better than alternative identifiers, but noted that it cannot provide an unqualified opinion until operational and technical details are disclosed in this regulation.

f. The State of Minnesota endorsed the NPI in Minnesota Statutes Section 62J.54, dated February 1996.

g. The Massachusetts Health Data Consortium's Affiliated Health Information Networks of New England endorsed the NPI as the standard provider locator for electronic data interchange in March 1996.

h. The USA Registration Committee approved the NPI as an International Standards Organization card issuer identifier in August 1996, for use on magnetic cards.

i. The National Council for Prescription Drug Programs indicated support for the NPI effort in an October 1996 letter to the Secretary.

E. Requirements

[Please label written and e-mailed comments about this section with the subject: Requirements.]

1. Health plans.

In § 142.404, Requirements: Health plans, we would require health plans to accept and transmit, directly or via a health care clearinghouse, the NPI on all standard transactions wherever required. Federal agencies and States may place additional requirements on their health plans.

2. Health care clearinghouses.

We would require in § 142.406,

Requirements: Health care clearinghouses, that each health care clearinghouse use the NPI wherever an electronic transaction requires it.

3. Health care providers.

In § 142.408, Requirements: Health care providers, we would require each health care provider that needs an NPI for HIPAA transactions to obtain, by application if necessary, an NPI and to use the NPI wherever required on all standard transactions that it directly transmits or accepts. The process by which health care providers will apply for and obtain NPIs has not yet been established. This proposed rule (in section III., Implementation of the NPI) presents implementation options by which health care providers will apply for and obtain NPIs. We are seeking comments on the options, and welcome other options for consideration. In one of the options we are presenting, we anticipate that the initial enumeration of health care providers that are already enrolled in Medicare, other Federal programs named as health plans, and Medicaid would be done by those health plans. Those health care providers would not have to apply for NPIs but would instead have their NPIs issued automatically. Non-Federal and non-Medicaid providers would need to apply for NPIs to a Federally-directed registry for initial enumeration. The information that will be needed in order to issue an NPI to a health care provider is discussed in this preamble in section IV. Data. Depending on the implementation option selected, Federal and Medicaid health care providers may not need to provide this information because it would already be available to the entities that would be enumerating them. In one of the options, health care providers would be assigned their NPIs in the course of enrolling in the Federal health plan or in Medicaid. Both options may require, to some degree, the

development of an application to be used in applying for an NPI.

We would require each health care provider that has an NPI to forward updates to the data in the database to an NPI enumerator within 60 days of the date the change occurs. We are soliciting comments on whether these updates should be applicable to all the data elements proposed to be included in the national provider file (NPF) or only to those data elements that are critical for enumeration. For example, we would like to know whether the addition of a credential should be required to be reported within the 60-day period, or whether such updates should be limited to name or address changes or other data elements that are required to enumerate a health care provider.

F. Effective Dates of the NPI

Health plans would be required to comply with our requirements as follows:

1. Each health plan that is not a small health plan would have to comply with the requirements of §§ 142.104 and 142.404 no later than 24 months after the effective date of the final rule.

2. Each small health plan would have to comply with the requirements of §§ 142.104 and 142.404 no later than 36 months after the effective date of the final rule.

3. If HHS adopts a modification to a standard or implementation specification, the implementation date of the modification would be no earlier than the 180th day following the adoption of the modification. HHS would determine the actual date, taking into account the time needed to comply due to the nature and extent of the modification. HHS would be able to extend the time for compliance for small health plans.

Health care clearinghouses and affected health care providers would have to begin using the NPI no later than 24 months after the effective date of the final rule.

Failure to comply with standards may result in monetary penalties. The Secretary is required by statute to impose penalties of not more than \$100 per violation on any person who fails to comply with a standard, except that the total amount imposed on any one person in each calendar year may not exceed \$25,000 for violations of one requirement. We will propose enforcement procedures in a future **Federal Register** document once the industry has more experience with using the standards.

III. Implementation of the NPI

[Please label written and e-mailed comments about this section with the subject: Implementation.]

A. The National Provider System

We would implement the NPI through a central electronic enumerating system, the national provider system (NPS). This system would be a comprehensive, uniform system for identifying and uniquely enumerating health care providers at the national level, not unlike the process now used to issue social security numbers. HCFA would exercise overall responsibility for oversight and management of the system. Health care providers would not interact directly with the NPS.

The process of identifying and uniquely enumerating health care providers is separate from the process health plans follow in enrolling health care providers in their health programs. Even with the advent of assignment of NPIs by the NPS, health plans would still have to follow their own procedures for receiving and verifying information from health care providers that apply to them for enrollment in their health programs. Unique enumeration is less expensive than plan enrollment because it does not require as much information to be collected, edited, and verified. We welcome comments on the cost of provider enrollment in a health plan.

NPIs would be issued by one or more organizations to which we refer in this preamble as "enumerators." The functions we foresee being carried out by enumerators are presented in section B. Enumerators in this preamble. The NPS would edit the data, checking for consistency, formatting addresses, and validating the social security number. It would then search the database to determine whether the health care provider already has an NPI. If so, that NPI would be displayed. If not, an NPI would be assigned. If the health care provider is similar (but not identical) to an already-enumerated health care provider, the information would be passed back to the enumerator for further analysis. Enumerators would also communicate NPIs back to the health care providers and maintain the NPS database. The number of enumerators would be limited in the interest of data quality and consistency.

Because the Medicare program maintains files on more health care providers than any other health care program in the country, we envision using data from those files to initially populate the NPF that is being built by the NPS and would be accessed by the enumerator(s). The data we are

considering for inclusion in this file are described in section IV. Data in this preamble.

B. Enumerators

The enumerator(s) would carry out the following functions: assist health care providers and answer questions; accept the application for an NPI; validate as many of the data elements as possible at the point of application to assure the submitted data are accurate and the application is authentic; enter the data into the NPS to obtain an NPI for the health care provider; research cases where there is a possible match to a health care provider already enumerated; notify the health care provider of the assigned NPI; and enter updated data into the NPS when notified by the health care provider. Some of these functions would not be necessary if the enumerator(s) is an entity that enrolls health care providers in its own health plan and would be enumerating health care providers at the time they are enrolling in the entity's health plan. For example, if a Federal health plan is an enumerator, some of the functions listed above would not have to be performed separately from what the health plan would do in its regular business.

The major issue related to the operation of this process is determining who the enumerator(s) will be.

1. Possible enumerators.

We had several choices in deciding who should enumerate health care providers. There are advantages and disadvantages to each of these choices:

• A registry:

A central registry operated under Federal direction would enumerate all health care providers. The Federally-directed registry could be a single physical entity or could be a number of agents controlled by a single entity and operating under common procedures and oversight.

For: The process would be consistent; centralized operation would assure consistent data quality; the concept of a registry is easy to understand (single source for identifiers).

Against: The cost of creating a new entity rather than enumerating as part of existing functions (for example, plan enrollment) would be greater than having existing entities enumerate; there would be redundant data required for enumeration and enrollment in a health plan.

• Private organization(s):

A private organization(s) that meets certain selection criteria and performance standards, which would post a surety bond related to the number

of health care providers enumerated could enumerate health care providers.

For: The organization(s) would operate in a consistent manner under uniform requirements and standards; failure to maintain prescribed requirements and standards could result in penalties which could include suspension or debarment from being an enumerator.

Against: A large number of private enumerators would compromise the quality of work and be difficult to manage; the administrative work required to set up arrangements for a private enumerator(s) may be significant; the cost of creating a new entity rather than enumerating as part of existing functions (for example, plan enrollment) would be greater than having existing entities enumerate; there might be redundant data required for enumeration and enrollment in a health plan; the legality of privatization would need to be researched.

• Federal health plans and Medicaid State agencies:

Federal programs named as health plans and Medicaid State agencies would enumerate all health care providers. (As stated earlier under the definition of "health plan", the Federal Employees Health Benefits Program is comprised of numerous health plans, rather than just one, and does not deal directly with health care providers that are not also health plans. Thus, the program would not enumerate health care providers but would still require the NPI to be used.)

For: These health plans already assign numbers to their health care providers; a large percentage of health care providers do business with Federal health plans and Medicaid State agencies; there would be no appreciable costs for these health plans to enumerate as part of their enrollment process; a small number of enumerators would assure consistent data quality.

Against: Not all health care providers do business with any of these health plans; there would be the question of which health plan would enumerate the health care provider that participates in more than one; we estimate that approximately 5 percent of the State Medicaid agencies may decline to take on this additional task.

• Designated State agency:

The Governor of each State would designate an agency to be responsible for enumerating health care providers within the State. The agency might be the State Medicaid agency, State licensing board, health department, or some other organization. Each State would have the flexibility to develop its most workable approach.

For: This choice would cover all health care providers; there would be a single source of enumeration in each State; States could devise the least expensive mechanisms (for example, assign NPI during licensing); license renewal cycles would assure periodic checks on data accuracy.

Against: This choice would place an unfunded workload on States; States may decline to designate an agency; there may be insufficient funding to support the costs the States would incur; State licensing agencies may not collect enough information during licensing to ensure uniqueness across States; States may not be uniform in their definitions of "providers."

• Professional organizations or training programs:

We would enlist professional organizations to enumerate their members and/or enable professional schools to enumerate their students.

For: Individuals could be enumerated at the beginning of their careers; most health care providers either attend a professional school or belong to an organization.

Against: Not all health care providers are affiliated with an organization or school; this choice would result in many enumerators and thus potentially lower the data quality; schools would not be in a position to update data once the health care provider has graduated; the choice would place an unfunded workload on schools and/or organizations.

• Health plans:

Health plans in general would have access to the NPS to enumerate any of their health care providers.

For: Most health care providers do business with one or more health plans; there would be a relatively low cost for health plans to enumerate as part of enrollment; this choice would eliminate the need for redundant data.

Against: Not all health care providers are affiliated with a health plan; this choice would be confusing for the health care provider in determining which health plan would enumerate when the health care provider is enrolled in multiple health plans; there would be a very large number of enumerators and thus potentially serious data quality problems; the choice would place unfunded workload on health plans.

• Combinations:

We also considered using combinations of these choices to maximize advantages and minimize disadvantages.

2. Options:

If private organizations, as enumerators, could charge health care

providers a fee for obtaining NPIs, this enumeration option would be attractive and more preferable than the other choices or combinations, as it would offer a way to fund the enumeration function. In researching the legality of this approach, however, we were advised that we do not have the authority to (1) charge health care providers a fee for obtaining NPIs, or (2) license private organizations that could charge health care providers for NPIs. For these reasons, we chose not to recommend private organizations as enumerators.

The two most viable options are described below. We solicit input on these options, as well as on alternate solutions.

Option 1: Registry enumeration of all health care providers.

All health care providers would apply directly to a Federally-directed registry for an identifier. The registry, while under Federal direction, would probably be operated by an agent or contractor. This option is favored by some health plans, which believe that a single entity should be given the task of enumerating health care providers and maintaining the database for the sake of consistency. It would also be the simplest option for health care providers, since enumeration activities would be carried out for all health care providers by a single entity. The major drawback to this option is the high cost of establishing a registry large enough to process enumeration and update requests for the 1.2 million current and 30,000 new (annually) health care providers that conduct HIPAA transactions. The costs of this option are discussed in section J.2.d., Enumerators, in the impact analysis in this **Federal Register** document. The statute did not provide a funding mechanism for the enumeration/update process. Federal funds, if available, could support the registry. We seek comments on funding mechanisms for the registry.

This option does not offer a clear possibility for funding some of the costs associated with the operation and maintenance of the NPS as it becomes national in scope (that is, as the NPS enumerates health care providers that are not Medicare providers). We solicit comments on appropriate methods for funding the NPS under this option.

Option 2: A combination of Federal programs named as health plans, Medicaid State agencies, and a Federally-directed registry.

Federal health plans and Medicaid State agencies would enumerate their own health care providers. Each health care provider participating in more than one health plan could choose the health

plan by which it wishes to be enumerated. All other health care providers would be enumerated by a Federally-directed registry. These latter health care providers would apply directly to the registry for an identifier.

The number of enumerators, and the number of health care providers per enumerator, would be small enough that each enumerator would be able to carefully validate data received from and about each of its health care providers. Moreover, enumerators (aside from the registry) would be dealing with their own health care providers, an advantage both in terms of cost equity and data quality. This option recognizes the fact that Federal plans and Medicaid State agencies already assign identifiers to their health care providers for their own programmatic purposes. It would standardize those existing processes and, in some cases, may increase the amount of data collected or validation performed. We have concluded that the cost of concurrently enumerating and enrolling a Medicare or Medicaid provider is essentially the same as the cost of enrollment alone because of the high degree of redundancy between the processes. While there would probably be additional costs initially, they would be offset by savings in other areas (e.g., there would be a simplified, more efficient coordination of benefits; a health care provider would only have to be enumerated once; there would be no need to maintain more than one provider number for each health care provider; and there would be no need to maintain more than one enumeration system).

The Federal Government is responsible for 75 percent of Medicaid State agency costs to enumerate and update health care providers. Because we believe that, on average, the costs incurred by Medicaid State agencies in enumerating and updating their own health care providers to be relatively low and offset by savings, there are no tangible costs involved.

Allowing these health plans to continue to enumerate their health care providers would reduce the registry workload and its operating costs. We estimate that approximately 85 percent of billing health care providers transact business with a Medicaid State agency or a Federal health plan. We estimate that 5 percent of Medicaid State agencies may decline to enumerate their health care providers. If so, that work would have to be absorbed by the registry. This expense could be offset by the discontinuation of the UPIN registry, which is currently maintained with Federal funds. The costs of this option

are discussed in section J.2.d., Enumerators, of the impact analysis.

We welcome comments on the number of health care providers that would deal directly with a registry under this option and on alternative ways to enumerate them.

This option does not offer a clear possibility for funding some of the costs associated with the operation and maintenance of the NPS as it becomes national in scope (that is, as the NPS enumerates health care providers that are not Medicare providers). We solicit comments on appropriate methods for funding the NPS under this option.

We believe that option 2 is the most advantageous and the least costly. Option 1 is the simplest for health care providers to understand but has a significant Federal budgetary impact. Option 2 takes advantage of existing expertise and processes to enumerate the majority of health care providers. This reduces the cost of the registry in option 2 to a point where it would be largely offset by savings from eliminating redundant enumeration processes.

3. Fees and costs.

Because the statute did not provide a funding mechanism for the enumeration process, Federal funds, if available, would be required to finance this function. We seek comment on any burden that various financing options might impose on the industry.

We welcome comments on possible ways to reduce the costs of enumeration.

While the NPS has been developed to date by HCFA with Federal funds, issues remain as to sources of future funding as the NPS becomes national in use. We welcome your comments on sources for this funding.

4. Enumeration phases.

We intend to implement the NPI in phases because the number of potential health care providers to be enumerated is too large to enumerate at one time, regardless of the number of enumerators. We describe in a., b., and c. below how the process would work if option 2 were selected and in d. below how implementation of option 1 would differ.

a. Health care providers that participate in Medicare (including physicians and other suppliers that furnish items and services covered by Medicare) would be enumerated first because, as the managing entity, HCFA has data readily available for all Medicare providers. Health care providers that are already enrolled in Medicare at the time of implementation would be enumerated based on existing Medicare provider databases that have

already been reviewed and validated. These health care providers would not have to request an NPI—they would automatically receive one. After this initial enumeration, new and non-Medicare health care providers not yet enumerated that wish to participate in Medicare would receive an NPI as a part of the enrollment process.

b. Medicaid and non-Medicare Federal health plans that need to enumerate their health care providers would follow a similar process, based on a mutually agreed-upon timetable. Those health plans' existing prevalidated databases could be used to avoid requiring large numbers of health care providers to apply for NPIs. If a health care provider were already enumerated by Medicare, that NPI would be communicated to the second program. After the initial enumeration, new health care providers that wish to participate in Medicaid or a Federal health plan other than Medicare would receive an NPI as a part of that enrollment process. Health care providers that transact business with more than one such health plan could be enumerated by any one of those health plans. This phase would be completed within 2 years after the effective date of the final rule.

c. A health care provider that does not transact any business with Federal health plans or Medicaid but that does conduct electronically any of the transactions stipulated in HIPAA (for example, submits claims electronically to a private health plan) would be enumerated via a Federally-directed registry. This enumeration would be done concurrently with the enumeration described in b., above. Health care providers would apply to the registry for an NPI.

After the first two phases of enumeration (that is, enumeration of health care providers enrolled or enrolling in Federal health plans or Medicaid or health care providers that do not conduct business with any of those plans but that conduct any of the HIPAA transactions electronically), the health care providers remaining would be those that do not conduct electronically any of the transactions specified in HIPAA. We refer to these health care providers as "non-HIPAA-transaction health care providers." The non-HIPAA-transaction health care providers would not be enumerated in the first two phases of enumeration. We do not intend to enumerate these health care providers until all health care providers requiring NPIs by statute are enumerated and funds are available. In some cases, these health care providers may wish to be enumerated even though

they do not conduct electronic transactions. Health plans may prefer to use the NPI for all health care providers, whether or not they submit transactions electronically, for the sake of processing efficiency. In addition, some health care providers may wish to be enumerated even though they conduct no designated transactions and are not affiliated with any health plan. Additional research is required on the time table and method by which non-HIPAA-transaction health care providers would be enumerated.

d. If option 1 were selected, the Federally-directed registry would enumerate all health care providers. With a single enumeration point (although it could consist of several agents controlled by a single entity, as stated earlier), we would envision enumeration taking place in the following phases: Medicare providers; Medicaid providers and other non-Medicare Federal providers; health care providers that do not transact any business with the aforementioned plans but that process electronically any of the transactions stipulated in HIPAA; and all other health care providers (i.e., non-HIPAA-transaction health care providers).

C. Approved Uses of the NPI

The law requires that we specify the appropriate uses of the NPI. Two years after adoption of this standard (3 years for small health plans) the NPI must be used in the health care system in connection with the health-related financial and administrative transactions identified in section 1173(a). The NPI may also be used as a cross reference in health care provider fraud and abuse files and other program integrity files (for example, the HHS Office of the Inspector General sanction file). The NPI may be used to identify health care providers for debt collection under the provisions of the Debt Collection Information Act of 1996 and the Balanced Budget Act of 1997, and for any other lawful activity requiring individual identification of health care providers. It may not be used in any activity otherwise prohibited by law.

Other examples of approved uses would include:

- Health care providers may use their own NPIs to identify themselves in health care transactions or related correspondence.
- Health care providers may use other health care providers' NPIs as necessary to complete health care transactions and on related correspondence.
- Health care providers may use their own NPIs on prescriptions (however, the NPI could not replace the DEA number or State license number where

either of those numbers is required on prescriptions).

- Health plans may use NPIs in their internal provider files to process transactions and may use them on transactions and in communications with health care providers.
- Health plans may communicate NPIs to other health plans for coordination of benefits.
- Health care clearinghouses may use NPIs in their internal files to create and process standard transactions and in communications with health care providers and health plans.
- NPIs may be used to identify treating health care providers in patient medical records.

D. Summary of Effects on Various Entities

We summarize here how the implementation of the NPI would affect health care providers, health plans, and health care clearinghouses, if option 2 were selected. Differences that would result from selection of option 1 are noted parenthetically.

1. Health care providers.
a. Health care providers interacting with Medicare, another Federal plan, or a Medicaid State agency would receive their NPIs from the NPS via one of those programs and would be required to use their NPIs on all the specified electronic transactions. Each plan would establish its own schedule for adopting the NPI, within the time period specified by the law. Whether a given plan would automatically issue the NPIs or require the health care providers to apply for them would be up to the plan. (For example, the Medicare program would issue NPIs automatically to its currently enrolled Medicare providers and suppliers; data on its future health care providers and suppliers would be collected on the Medicare enrollment application.) The Federal or State plan may impose requirements other than those stated in the regulations.

The health care providers would be required to update any data collected from them by submitting changes to the plan within 60 days of the change. Health care providers that transact business with multiple plans could report changes to any one of them. (Selection of option 1 would mean that the health care provider would obtain the NPI from, and report changes to, the Federally-directed registry.)

b. Health care providers that conduct electronic transactions but do not do so with Federal health plans or Medicaid would receive their NPIs from the NPS via the Federally-directed registry and would be required to use their NPIs on all the specified electronic transactions.

Each health plan would establish its own schedule for adopting the NPI, within the time period specified by the law. The health care providers would be required to update any data originally collected from them by submitting changes within 60 days of the date of the change to the Federally-directed registry.

c. Health care providers that are not covered by the above categories would not be required to obtain an NPI. (These health care providers are the non-HIPAA-transaction health care providers as described in section 4.c. of section B. Enumerators earlier in this preamble.) They may be enumerated if they wish, depending on availability of funds, but they would not be issued NPIs until those health care providers that currently conduct electronic transactions have received their NPIs. As stated earlier, the timetable and method by which the non-HIPAA-transaction health care providers would be enumerated must be determined. After the non-HIPAA-transaction health care providers are enumerated, they would be required to update any data originally collected from them by submitting changes within 60 days of the date of the change. Those providers would report their changes to the registry or to a Federal plan or Medicaid State agency with which they transact business at the time of the change.

2. Health plans.
a. Medicare, other Federal health plans, and Medicaid would be responsible for obtaining NPIs from the NPS and issuing them to their health care providers. They would be responsible for updating the data base with data supplied by their health care providers. (Selection of option 1 would mean that Medicare, other Federal health plans, and Medicaid would not enumerate health care providers or update their data.)

These government health plans would establish their own schedule for adopting the NPI, within the time period specified by the law. They would be able to impose requirements on their health care providers in addition to, but not inconsistent with, those in our regulations.

b. Each remaining health plan would be required to use the NPI to identify health care providers in electronic transactions as provided by the statute. Each health plan would establish its own schedule for adopting the NPI, within the time period specified by the law. They would be able to impose requirements on their health care providers in addition to, but not inconsistent with, those in our regulations.

3. Health care clearinghouses.

Health care clearinghouses would be required to use a health care provider's NPI on electronic standard transactions requiring an NPI that are submitted on the health care provider's behalf.

IV. Data

[Please label written and e-mailed comments about this section with the subject: DATA.]

A. Data Elements

The NPS would collect and store in the NPF a variety of information about a health care provider, as shown in the table below. We believe the majority of this information is used to uniquely identify a health care provider; other information is used for administrative purposes. A few of the data elements are collected at the request of potential users that have been working with HCFA in designing the database prior to

the passage of HIPAA. All of these data elements represent only a fraction of the information that would comprise a provider enrollment file. The data elements in the table, plus cease/effective/termination dates, switches (yes/no), indicators, and history, are being considered as those that would form the NPF. We have included comments, as appropriate. The table does not display systems maintenance or similar fields, or health care provider cease/effective/termination dates.

NATIONAL PROVIDER FILE DATA ELEMENTS

Data elements	Comments	Purpose
National Provider Identifier (NPI)	8-position alpha-numeric NPI assigned by the NPS	I
Provider's current name	For Individuals only. Includes first, middle, and last names	I
Provider's other name	For Individuals only. Includes first, middle, and last names. Other names might include maiden and professional names.	I
Provider's legal business name	For Groups and Organizations only	I
Provider's name suffix	For Individuals only. Includes Jr., Sr., II, III, IV, and V	I
Provider's credential designation	For Individuals only. Examples are MD, DDS, CSW, CNA, AA, NP, RNA, PSY	I
Provider's Social Security Number (SSN)	For Individuals only	I
Provider's Employer Identification Number (EIN)	Employer Identification Number	I
Provider's birth date	For Individuals only	I
Provider's birth State code	For Individuals only	I
Provider's birth county name	For Individuals only	I
Provider's birth country name	For Individuals only	I
Provider's sex	For Individuals only	I
Provider's race	For Individuals only	U
Provider's date of death	For Individuals only	I
Provider's mailing address	Includes 2 lines of street address, plus city, State, county, country, 5- or 9-position ZIP code.	A
Provider's mailing address telephone number.		A
Provider's mailing address fax number		A
Provider's mailing address e-mail address		A
Resident/Intern code	For certain Individuals only	U
Provider enumerate date	Date provider was enumerated (assigned an NPI). Assigned by the NPS	A
Provider update date	Last date provider data was updated. Assigned by the NPS	A
Establishing enumerator/agent number	Identification number of the establishing enumerator	A
Provider practice location identifier (location code)	2-position alpha-numeric code (location code) assigned by the NPS	I
Provider practice location name	Title (e.g., "doing business as" name) of practice location	I
Provider practice location address	Includes 2 lines of street address, plus city, State, county, country, 5- or 9-position ZIP code.	I
Provider's practice location telephone number.		A
Provider's practice location fax number		A
Provider's practice location e-mail address		A
Provider classification	From Accredited Standards Committee X12N taxonomy. Includes type(s), classification(s), area(s) of specialization.	I
Provider certification code	For certain Individuals only	U
Provider certification (certificate) number	For certain Individuals only	U
Provider license number	For certain Individuals only	I
Provider license State	For certain Individuals only	I
School code	For certain Individuals only	I
School name	For certain Individuals only	I
School city, State, country	For certain Individuals only	U
School graduation year	For certain Individuals only	I
Other provider number type	Type of provider identification number also/formerly used by provider: UPIN, NSC, OSCAR, DEA, Medicaid State, PIN, Payer ID.	I
Other provider number	Other provider identification number also/formerly used by provider	I
Group member name	For Groups only. Name of Individual member of group. Includes first, middle, and last names.	I
Group member name suffix	For Groups only. This is the Individual member's name suffix. Includes Jr., Sr., II, III, IV, and V.	I

NATIONAL PROVIDER FILE DATA ELEMENTS—Continued

Data elements	Comments	Purpose
Organization type control code	For certain Organizations only. Includes Government—Federal (Military), Government—Federal (Veterans), Government—Federal (Other), Government—State/County, Government—Local, Government—Combined Control, Non-Government—Non-profit, Non-Government—For Profit, and Non-Government—Not for Profit.	U

Key:
 I—Used for the unique identification of a provider.
 A—Used for administrative purposes.
 U—Included at the request of potential users (optional).

We need to consider the benefits of retaining all of the data elements shown in the table versus lowering the cost of maintaining the database by keeping only the minimum number of data elements needed for unique provider identification. We solicit input on the composition of the minimum set of data elements needed to uniquely identify each type of provider. In order to consider the inclusion or exclusion of data elements, we need to assess their purpose and use.

The data elements with a purpose of "I" are needed to identify a health care provider, either in the search process (which is electronic) or in the investigation of health care providers designated as possible matches by the search process. These data elements are critical because unique identification is the keystone of the NPS.

The data elements with a purpose of "A" are not essential to the identification processes mentioned above, but nonetheless are valuable. Certain "A" data elements can be used to contact a health care provider for clarification of information or resolution of issues encountered in the enumeration process and for sending written communications; other "A" data elements (e.g., Provider Enumerate Date, Provider Update Date, Establishing Enumerator/Agent Number) are used to organize and manage the data.

Data elements with a purpose of "U" are collected at the request of potential users of the information in the system. While not used by the system's search process to uniquely identify a health care provider, Race is nevertheless valuable in the investigation of health care providers designated as possible matches as a result of that process. In addition, Race is important to the utility of the NPS as a statistical sampling frame. We solicit comments on the statistical validity of Race data. Race is collected "as reported"; that is, it is not validated. It is not maintained, only stored. The cost of keeping this data element is virtually nil. Other data elements (Resident/Intern Code, Provider Certification Code and

Number, and Organization Type Control Code) with a purpose of "U", while not used for enumeration of a health care provider, have been requested to be included by some members of the health care industry for reports and statistics. These data elements are optional and do not require validation; many remain constant by their nature; and the cost to store them is negligible.

The data elements that we judge will be expensive to either validate or maintain (or both) are the license information, provider practice location addresses, and membership in groups. We solicit comments on whether these data elements are necessary for the unique enumeration of health care providers and whether validation or maintenance is required for that purpose.

Licenses may be critical in determining uniqueness of a health care provider (particularly in resolving identities involving compound surnames) and are, therefore, considered to be essential by some. License information is expensive to validate initially, but not expensive to maintain because it does not change frequently.

The practice location addresses can be used to aid in investigating possible provider matches, in converting existing provider numbers to NPIs, and in research involving fraud or epidemiology. Location codes, which are discussed in detail in section B, *Practice Addresses and Group/ Organization Options* below, could be assigned by the NPS to point to and identify practice locations of individuals and groups. Some potential users felt that practice addresses changed too frequently to be maintained efficiently at the national level. The average Medicare physician has two to three addresses at which he/she practices. Group providers may have many more practice locations. We estimate that 5 percent of health care providers require updates annually, and that addresses are one of the most frequently changing attributes. As a result, maintaining more than one practice address for an individual

provider on a national scale could be burdensome and time consuming. Many potential users believe that practice addresses could more adequately be maintained at local, health-plan specific levels.

Some potential users felt that membership in groups was useful in identifying health care providers. Many others, however, felt that these data are highly volatile and costly to maintain. These users felt it was unlikely that membership in groups could be satisfactorily maintained at the national level.

We welcome your comments on the data elements proposed for the NPF and input as to the potential usefulness and tradeoffs for these elements such as those discussed above.

We specifically invite comments and suggestions on how the enumeration process might be improved to prevent issuance of multiple NPIs to a health care provider.

B. Practice Addresses and Group/ Organization Options

We have had extensive consultations with health care providers, health plans, and members of health data standards organizations on the requirements for provider practice addresses and on the group and organization data in the NPS. (It is important to note that the NPS is designed to capture a health care provider's mailing address. The mailing address is a data element separate from the practice address, and, as such, is not the subject of the discussion below.) Following are the major questions relating to these issues:

- Should the NPS capture practice addresses of health care providers?
 For: Practice addresses could aid in non-electronic matching of health care providers and in conversion of existing provider number systems to NPIs. They could be useful for research specific to practice location; for example, involving fraud or epidemiology.
 Against: Practice addresses would be of limited use in the electronic identification and matching of health care providers. The large number of practice locations of some group

providers, the frequent relocation of provider offices, and the temporary situations under which a health care provider may practice at a particular location would make maintenance of practice addresses burdensome and expensive.

- Should the NPS assign a location code to each practice address in a health care provider's record? The location code would be a 2-position alphanumeric data element. It would be a data element in the NPS but would not be part of the NPI. It would point to a certain practice address in the health care provider's record and would be usable only in conjunction with that health care provider's NPI. It would not stand alone as a unique identifier for the address.

For: The location code could be used to designate a specific practice address for the health care provider, eliminating the need to perform an address match each time the address is retrieved. The location code might be usable, in conjunction with a health care provider's NPI, as a designation for service location in electronic health transactions.

Against: Location codes should not be created and assigned nationally unless required to support standard electronic health transactions; this requirement has not been demonstrated. The format of the location code would allow for a lifetime maximum of 900 location codes per health care provider; this number may not be adequate for groups with many locations. The location code would not uniquely identify an address; different health care providers practicing at the same address would have different location codes for that address, causing confusion for business offices that maintain data for large numbers of health care providers.

- Should the NPS link the NPI of a group provider to the NPIs of the individual providers who are members of the group?

For: Linkage of the group NPI to individual members' NPIs would provide a connection from the group provider, which is possibly not licensed or certified, to the individual members who are licensed, certified or otherwise authorized to provide health care services.

Against: The large number of members of some groups and the frequent moves of individuals among groups would make national maintenance of group membership burdensome and expensive. Organizations that need to know group membership prefer to maintain this information locally, so that they can ensure its accuracy for their purposes.

• Should the NPS collect the same data for organization and group providers? There would be no distinction between organization and group providers. Each health care provider would be categorized in the NPS either as an individual or as an organization. Each separate physical location or subpart of an organization that needed to be identified would receive its own NPI. The NPS would not link the NPI of an organization provider to the NPI of any other health care provider, although all organizations with the same employer identification number (EIN) or same name would be retrievable via a query on that EIN or name.

For: The categorization of health care providers as individuals or organizations would provide flexibility for enumeration of integrated provider organizations. Eliminating the separate category of group providers would eliminate an artificial distinction between groups and organizations. It would eliminate the possibility that the same entity would be enumerated as both a group and an organization. It would eliminate any need for location codes for groups. It would allow enumeration at the lowest level that needs to be identified, offering flexibility for enumerators, health plans or other users of NPS data to link organization NPIs as they require in their own systems.

Against: A single business entity could have multiple NPIs, corresponding to its physical locations or subparts.

Possible Approaches:

We present two alternatives to illustrate how answers to the questions posed above would affect enumeration and health care provider data in the NPS. Since the results would depend upon whether the health care provider is an individual, organization, or group, we refer the reader to section II.B.3., *Definitions*, of this preamble.

Alternative 1:

The NPS would capture practice addresses. It would assign a location code for each practice address of an individual or group provider. Organization and group providers would be distinguished and would have different associated data in the NPS. Organization providers could have only one location per NPI and could not have individuals listed as members. Group providers could have multiple locations with location codes per NPI and would have individuals listed as members.

For individual providers, the NPS would capture each practice address and assign a corresponding location code. The NPS would link the NPIs of

individuals who are listed as members of a group with the NPI of their group.

For organization providers, the NPS would capture the single active practice address. It would not assign a corresponding location code.

For group providers, the NPS would capture each practice address and assign a corresponding location code. The NPS would link the NPI of a group with the NPIs of all individuals who are listed as members of the group. A group location would have a different location code in the members' individual records and the group record.

Alternative 2:

The NPS would capture only one practice address for an individual or organization provider. It would not assign location codes. The NPS would not link the NPI of a group provider to the NPIs of individuals who are members of the group. Organization and group providers would not be distinguished from each other in the NPS. Each health care provider would be categorized as either an individual or an organization.

For individual providers, the NPS would capture a single practice address. It would not assign a corresponding location code.

For organization providers, each separate physical location or subpart that needed to be identified would receive its own NPI. The NPS would capture the single active practice address of the organization. It would not assign a corresponding location code.

Recent consultations with health care providers, health plans, and members of health data standards organizations have indicated a growing consensus for Alternative 2 discussed above. Representatives of these organizations feel that Alternative 2 will provide the data needed to identify the health care provider at the national level, while reducing burdensome data maintenance associated with provider practice location addresses and group membership. We welcome comments on these and other alternatives for collection of practice location addresses and assignment of location codes, and on the group and organization provider data within the NPS.

V. Data Dissemination

(Please label written and e-mailed comments about this section with the subject: Dissemination.)

We are making information from the NPS available so that the administrative simplification provisions of the law can be implemented smoothly and efficiently. In addition to the health care provider's name and NPI, it is important to make available other information

about the health care provider so that people with existing health care provider files can associate their health care providers with the appropriate NPIs. The data elements we are proposing to disseminate are the ones that our research has shown will be most beneficial in this matching process. The information needs to be disseminated to the widest possible audience because the NPIs would be used in a vast number of applications throughout the health care industry.

We propose to charge fees for the dissemination of such items as data files and directories, but the fees would not exceed the costs of the dissemination.

We would establish two levels of users of the data in the NPS for purposes of disseminating information. Some of the data that would be

collected in order to assign NPIs would be confidential and not be disclosed to those without a legitimate right of access to the confidential data.

Level I—Enumerators

Access to the NPS would be limited to approved enumerators for the system that would be specifically listed in 45 CFR part 142. We would publish "routine uses" for the data concerning individuals in a Privacy Act systems of records notice. The notice is being developed and will be available during the comment period for this proposed rule.

Enumerators would have access to all data elements for all health care providers in order to accurately resolve potential duplicate situations (that is, the health care provider may already

have been enumerated). Enumerators would be required to protect the privacy of the data in accordance with the Privacy Act.

Enumerators would have access to the on-line NPS and would also receive periodic batch update files from HCFA.

Level II—The Public

The public (which includes individuals, health care providers, software vendors, health plans that are not enumerators, and health care clearinghouses) would have access to selected data elements.

The table below lists the data comprising the NPF, as described in section IV. A. Data Elements, and indicates the dissemination level (Level I or Level II).

DISSEMINATION OF INFORMATION FROM THE NATIONAL PROVIDER FILE

Data elements	Dissemination level	Comments
National Provider Identifier (NPI)	I and II	8-position alpha-numeric NPI assigned by the NPS.
Provider's current name	I and II	For Individuals only. Includes first, middle, and last names.
Provider's other name	I and II	For Individuals only. Includes first, middle, and last names. Other names might include maiden and professional names.
Provider's legal business name	I and II	For Groups and Organizations only.
Provider's name suffix	I and II	For Individuals only. Includes Jr., Sr., II, III, IV, and V.
Provider's credential designation	I and II	For Individuals only. Examples are MD, DDS, CSW, CNA, AA, NP, RNA, PSY.
Provider's Social Security Number (SSN)	I only	For Individuals only.
Provider's Employer Identification Number (EIN)	I only	Employer Identification Number.
Provider's birth date	I only	For Individuals only.
Provider's birth State code	I only	For Individuals only.
Provider's birth county name	I only	For Individuals only.
Provider's birth country name	I only	For Individuals only.
Provider's sex	I only	For Individuals only.
Provider's race	I only	For Individuals only.
Provider's date of death	I only	For Individuals only.
Provider's mailing address	I and II	Includes 2 lines of street address, plus city, State, county, country, 5- or 9-position ZIP code.
Provider's mailing address telephone number	I only	
Provider's mailing address fax number	I only	
Provider's mailing address e-mail address	I only	
Resident/Intern code	I and II	For certain Individuals only.
Provider enumerate date	I and II	Date provider was enumerated (assigned an NPI). Assigned by the NPS.
Provider update date	I and II	Last date provider data was updated. Assigned by the NPS.
Establishing enumerator/agent number	I only	Identification number of the establishing enumerator.
Provider practice location identifier (location code)	I and II	2-position alpha-numeric code (location code) assigned by the NPS.
Provider practice location name	I and II	Title (e.g., "doing business as" name) of practice location.
Provider practice location address	I and II	Includes 2 lines of street address, plus city, State, county, country, 5- or 9-position ZIP code.
Provider's practice location telephone number	I only	
Provider's practice location fax number	I only	
Provider's practice location e-mail address	I only	
Provider classification	I and II	From Accredited Standards Committee X12N taxonomy. Includes type(s), classification(s), area(s) of specialization.
Provider certification code	I only	For certain Individuals only.
Provider certification (certificate) number	I only	For certain Individuals only.
Provider license number	I only	For certain Individuals only.
Provider license State	I only	For certain Individuals only.
School code	I only	For certain Individuals only.
School name	I only	For certain Individuals only.
School city, State, country	I only	For certain Individuals only.
School graduation year	I only	For certain Individuals only.

DISSEMINATION OF INFORMATION FROM THE NATIONAL PROVIDER FILE—Continued

Data elements	Dissemination level	Comments
Other provider number type	I and II	Type of provider identification number also/formerly used by provider: UPIN, NSC, OSCAR, DEA, Medicaid State, PIN, Payer ID.
Other provider number	I and II	Other provider identification number also/formerly used by provider.
Group member name	I and II	For Groups only. Name of Individual member of group. Includes first, middle, and last names.
Group member name suffix	I and II	For Groups only. This is the Individual member's name suffix. Includes Jr., Sr., II, III, IV, and V.
Organization type control code	I and II	For certain Organizations only. Includes Government—Federal (Military), Government—Federal (Veterans), Government—Federal (Other), Government—State/County, Government—Local, Government—Combined Control, Non-Government—Non-profit, Non-Government—For Profit, and Non-Government—Not for Profit.

Clearly, the access to the public data would have to be electronic in order to support the more frequent users. We are asking for comments on exactly what should be available in hardcopy, what types of electronic formats are necessary (for example, diskette, CD ROM, tape, cartridge, and via Internet), and frequency of update. We anticipate making these data as widely available as feasible. We note that the UPIN Directory (currently available to the public) would be discontinued and replaced with a similar document or electronic file once the NPS is in place.

We initially envisioned limiting access to the second level to health plans and other entities involved in electronic transactions and adding a third level of access, which would make a more abbreviated data set available to the general public. This was in keeping with the past policy of not disclosing physicians' practice addresses. Recent court decisions and our broader goal of beneficiary education caused us to choose a broader data dissemination strategy. We welcome comments on this point.

VI. New and Revised Standards

(Please label written and e-mailed comments about this section with the subject: Revisions.)

To encourage innovation and promote development, we intend to develop a process that would allow an organization to request a revision or replacement to any adopted standard or standards.

An organization could request a revision or replacement to an adopted standard by requesting a waiver from the Secretary of Health and Human Services to test a revised or new standard. The organization must, at a minimum, demonstrate that the revised or new standard offers an improvement over the adopted standard. If the organization presents sufficient documentation that supports testing of a

revised or new standard, we want to be able to grant the organization a temporary waiver to test while remaining in compliance with the law. The waiver would be applicable to standards that could change over time; for example, transaction standards. We do not intend to establish a process that would allow an organization to avoid using any adopted standard.

We would welcome comments on the following: (1) How we should establish this process, (2) the length of time a proposed standard should be tested before we decide whether to adopt it, (3) whether we should solicit public comments before implementing a change in a standard, and (4) other issues and recommendations we should consider in developing this process.

Following is one possible process:

- Any organization that wishes to revise or replace an adopted standard must submit its waiver request to an HHS evaluation committee (not currently established or defined). The organization must do the following for each standard it wishes to revise or replace:

- Provide a detailed explanation, no more than 10 pages in length, of how the revision or replacement would be a clear improvement over the current standard in terms of the principles listed in section I.D., *Process for developing national standards*, of this preamble.

- Provide specifications and technical capabilities on the revised or new standard, including any additional system requirements.

- An explanation, no more than 5 pages in length, of how the organization intends to test the standard.

- The committee's evaluation would, at a minimum, be based on the following:

- A cost-benefit analysis.
- An assessment of whether the proposed revision or replacement

demonstrates a clear improvement to an existing standard.

- The extent and length of time of the waiver.

- The evaluation committee would inform the organization requesting the waiver within 30 working days of the committee's decision on the waiver request. If the committee decides to grant a waiver, the notification may include the following:

- Committee comments such as the following:

- The length of time for which the waiver applies if it differs from the waiver request.

- The sites the committee believes are appropriate for testing if they differ from the waiver request.

- Any pertinent information regarding the conditions of an approved waiver.

- Any organization that receives a waiver would be required to submit a report containing the results of the study, no later than 3 months after the study is completed.

- The committee would evaluate the report and determine whether the benefits of the proposed revision or new standard significantly outweigh the disadvantages of implementing it and make a recommendation to the Secretary.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the *Federal Register* and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 142.408(a), (c) Requirements: Health Care Providers

In summary, each health care provider would be required to obtain, by application if necessary, a national provider identifier and communicate any changes to the data elements in its file in the national provider system to an enumerator of national provider identifiers within 60 days of the change.

Discussion:

We are especially interested in receiving comments on the possible methods of managing the provider enumeration process. Given the multitude of possible methods associated with managing the enumeration process, we are unable to provide an accurate burden estimate at this time. Below is the repeated provider identifier enumeration discussion, from section II., Provisions of Proposed Regulations, E. Requirements, 3. Health care providers, of this preamble.

The process by which health care providers will apply for and obtain NPIs has not yet been established. This proposed rule (in section III., Implementation of the NPI) presents implementation options by which health care providers would apply for and obtain NPIs. We are seeking comments on the options and welcome other options for consideration.

In one of the options we are presenting, we anticipate that the initial enumeration of health care providers that are already enrolled in Medicare, other Federal programs named as health plans, and Medicaid would be done by those health plans. Those health care providers would not have to apply for NPIs but would instead have their NPIs issued automatically. Non-Federal and non-Medicaid providers would need to apply for NPIs to a Federally-directed registry for initial enumeration. The information that would be needed in order to issue an NPI to a health care provider is discussed in this preamble in section IV., Data. Depending on the implementation option selected, Federal and Medicaid health care providers may not need to provide this information because it would already be available to the entities that would be enumerating

them. In one of the options, health care providers would be assigned their NPIs in the course of enrolling in the Federal health plan or in Medicaid. Both options may require, to some degree, the development of an application to be used in applying for an NPI.

We would require each health care provider that has an NPI to forward updates to the data in the database to an NPI enumerator within 60 days of the date the change occurs. We are soliciting comments on whether these updates should be applicable to all the data elements proposed to be included in the NPI or only to those data elements that are critical for enumeration. For example, we would like to know whether the addition of a credential should be required to be reported within the 60-day period or whether such updates should be limited to name or address changes or other data elements that are required to enumerate a health care provider.

Given the multitude of possible methods of implementing the enumeration process we are soliciting public comment on each of the following issues, before we submit a copy of this document to the Office of Management and Budget (OMB) for its review of these information collection requirements.

Sections 142.404 and 142.408(b) Requirements: Health Plans and Requirements: Health Care Providers

In summary, each health plan would be required to accept and transmit, either directly or via a health care clearinghouse, the NPI of any health care provider required in any standard transaction. Also, each health care provider must use NPIs wherever required on all standard transactions it accepts or transmits directly.

Discussion:

The emerging and increasing use of health care EDI standards and transactions raises the issue of the applicability of the PRA. The question arises whether a regulation that adopts an EDI standard used to exchange certain information constitutes an information collection subject to the PRA. However, for the purpose of soliciting useful public comment we provide the following burden estimates.

In particular, the initial burden on the estimated 4 million health plans and 1.2 million health care providers to modify their current computer systems software would be 2 hours/\$60 per entity, for a total burden of 10.4 million hours/\$312 million. While this burden estimate may appear low, on average, we believe it to be accurate. This is based on the assumption that these and the other

burden calculations associated with HIPAA administrative simplification systems modifications may overlap. This average also takes into consideration that (1) this standard may not be used by several of the entities included in the estimate, (2) this standard may already be in use by several of the entities included in the estimate, (3) modifications may be performed in an aggregate manner during the course of routine business and/or, (4) modifications may be made by contractors, such as practice management vendors, in a single effort for a multitude of affected entities.

We invite public comment on the issues discussed above. If you comment on these information collection and recordkeeping requirements, please e-mail comments to JBurke1@hcfa.gov (Attn:HCFA-0045) or mail copies directly to the following:

Health Care Financing Administration,
Office of Information Services,
Information Technology Investment
Management Group, Division of
HCFA Enterprise Standards, Room
C2-26-17, 7500 Security Boulevard,
Baltimore, MD 21244-1850. Attn:
John Burke HCFA-0045.

and,
Office of Information and Regulatory
Affairs, Office of Management and
Budget, Room 10235, New Executive
Office Building, Washington, DC
20503, Attn: Allison Herron Eydt,
HCFA Desk Officer.

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IX. Impact Analysis

A. Executive Summary

The costs of implementing the standards specified in the statute are primarily one-time or short-term costs related to conversion. These costs include system conversion/upgrade costs, start-up costs of automation, training costs, and costs associated with implementation problems. These costs will be incurred during the first three years of implementation. The benefits of EDI include reduction in manual data entry, elimination of postal service delays, elimination of the costs

associated with the use of paper forms, and the enhanced ability of participants in the market to interact with each other.

In our analysis, we have used the most conservative figures available and have taken into account the effects of the existing trend toward electronic health care transactions. Based on this analysis, we have determined that the benefits attributable to the implementation of administrative simplification will accrue almost immediately but will not exceed costs for health care providers and health plans until after the third year of implementation. After the third year, the benefits will continue to accrue into fourth year and beyond. The total net savings for the period 1998-2002 will be \$1.5 billion (a net savings of \$1.7 billion for health plans, and a net cost of \$0.2 billion for health care providers). The single year net savings for the year 2002 will be \$3.1 billion (\$1.6 billion for plans and \$1.5 billion for providers).

B. Introduction

We assessed several strategies for determining the impact of the various standards that the Secretary will designate under the statute. We could attempt to analyze the costs and savings of each individual standard independently or we could analyze the costs and savings of all the standards in the aggregate. We chose to base our analysis on the aggregate impact of all the standards. Assessing the cost of implementing each standard independently would yield inflated costs. The statute gives health care providers and health plans 24 months (36 months for small health plans) to implement each standard after it is designated. This will give the industry flexibility in determining the most cost-effective way of implementing the standards. A health plan may decide to implement more than one standard at a time or to combine implementation of a standard with other system changes dictated by its own business needs. As a result, overall estimates will be more accurate than individual estimates.

Assessing the benefits of implementing each standard independently would also be inaccurate. While each individual standard is beneficial, the standards as a whole have a synergistic effect on savings. For example, the combination of the standard health plan identifier and standard claim format would improve the coordination of benefits process to a much greater extent than either standard individually. Clearly, the costs and benefits described in this impact analysis are dependent upon all

of the rules being published at roughly the same time.

It is difficult to assess the costs and benefits of such a sweeping change with no historical experience. Moreover, we do not yet know enough about the issues and options related to the standards that are still being developed to be able to discuss them here. Our analysis, as a result, will be primarily qualitative and somewhat general. In order to address that shortcoming, we have added a section discussing specific issues related to the provider identifier standard. In each subsequent regulation, we will, if appropriate, include a section discussing the specifics of the standard or standards being designated in the regulation. In addition, we will update this analysis to reflect any additional cost/benefit information that we receive from the public during the comment period for the proposed rule. We solicit comments on this approach and on our assumptions and conclusions.

C. Overall Cost/Benefit Analysis

In order to assess the impact of the HIPAA administrative simplification provisions, it is important to understand current industry practices. A 1993 study by Lewin-VHI (1, p. 4) estimated that administrative costs comprised 17 percent of total health expenditures. Paperwork inefficiencies are a component of those costs, as are the inefficiencies caused by the more than 400 different data transmission formats currently in use. Industry groups such as ANSI ASC X12N have developed standards for EDI transactions, which are used by some health plans and health care providers. However, migration to these recognized standards has been hampered by the inability to develop a concerted approach, and even "standard" formats such as the Uniform Bill (UB-92), the standard Medicare hospital claim form (which is used by most hospitals, skilled nursing facilities, and home health agencies for inpatient and outpatient claims) are customized by plans and health care providers.

Several reports have made estimates of the costs and/or benefits of implementing electronic data interchange (EDI) standards. In assessing the impact of the HIPAA administrative simplification provisions, the Congressional Budget Office reported that:

"The direct cost of the mandates in Title II of the bill would be negligible. Health plans (and those providers who choose to submit claims electronically) would be required to modify their computer software to incorporate new standards as they are adopted or modified. . . . Uniform standards would generate offsetting savings

for plans and providers by simplifying the claims process and coordination of benefits." (page 4 of the Estimate of Costs of Private Sector Mandates)

The most extensive industry analysis of the effects of EDI standards was developed by WEDI in 1993, which built upon a similar 1992 report. The WEDI report used an extensive amount of information and analysis to develop its estimates, including data from a number of EDI pilot projects. The report included a number of electronic transactions that are not covered by HIPAA, such as materials management. The report projected implementation costs ranging between \$5.3 billion and \$17.3 billion (3, p. 9-4) and annual savings for the transactions covered by HIPAA ranging from \$8.9 billion and \$20.5 billion (3, pp. 9-5 and 9-6). Lewin estimated that the data standards proposed in the Healthcare Simplification and Uniformity Act of 1993 would save from 2.0 to 3.9 percent of administrative costs annually (\$2.6 to \$5.2 billion based on 1991 costs) (1, p. 12). A 1995 study commissioned by the New Jersey Legislature estimated yearly savings of \$760 million in New Jersey alone, related to EDI claims processing, reducing claims rejection, performing eligibility checks, decreasing accounts receivable, and other potential EDI applications (4, p. 316).

We have drawn heavily on the WEDI report for many of our estimates. However, our conclusions differ, especially in the area of savings, for a number of reasons. The WEDI report was intended to assess the savings from a totally EDI environment, which HIPAA does not mandate. Health care providers may still choose to conduct HIPAA transactions on paper. In addition, a significant amount of movement toward EDI has been made (especially in the claims area) since 1993, and it is reasonable to assume that EDI would have continued to grow at some rate even without HIPAA. In order to assess the true impact of the legislation and these regulations, we cannot claim that all subsequent benefits are attributable to HIPAA.

D. Implementation Costs

The costs of implementing the standards specified in the statute are primarily one-time or short-term costs related to conversion. They can be characterized as follows:

1. **System Conversion/Upgrade**—Health care providers and health plans will incur costs to convert existing software to utilize the standards. Health plans and large health care providers generally have their own information systems, which they maintain with in-

house or contract support. Small health care providers are more likely to use off-the-shelf software developed and maintained by a vendor. Examples of software changes include the ability to generate and accept transactions using the standard (for example, claims, remittance advices) and converting or crosswalking current provider files and medical code sets to chosen standards. However, health care providers have considerable flexibility in determining how and when to accomplish these changes. One alternative to a complete system redesign would be to purchase a translator that reformats existing system outputs into standard transaction formats. A health plan or health care provider could also decide to implement two or more related standards at once or to implement one or more standards during a software upgrade. We expect that each health care provider's and health plan's situation will differ and that each will select a cost-effective implementation scheme. Many health care providers use billing agents or claims clearinghouses to facilitate EDI. (Although we discuss billing agents and claims clearinghouses as separate entities in this impact analysis, billing agents are considered to be the same as clearinghouses for purposes of administrative simplification.) Those entities would also have to reprogram to accommodate standards. We would expect these costs to be passed on to health care providers in the form of fee increases or to be absorbed as a cost of doing business.

2. **Start-up Cost of Automation**—The legislation does not require health care providers to conduct transactions electronically. Those who do not currently have electronic capabilities would have to purchase and implement hardware and software and train staff to use it in order to benefit from EDI. However, this is likely to be less costly once standards are in place, because there will be more vendors supporting the standard.

3. **Training**—Health care provider and health plan personnel will require training on use of the various standard identifiers, formats, and code sets. For the most part this will be directed toward administrative personnel, but training in new code sets would be required for clinical staff as well.

4. **Implementation problems**—The implementation of any industry-wide standards will inevitably introduce additional complexity as health plans and health care providers struggle to re-establish communication and process transactions using the new formats, identifiers, and code sets. This is likely to result in a temporary increase in

rejected transactions, manual exception processing, payment delays, and requests for additional information.

While the majority of costs are one-time costs related to implementation, there are also on-going costs associated with administrative simplification. Health care providers and health plans may incur on-going costs to subscribe to or purchase documentation and implementation guides related to code sets and standard formats as well as health plan and provider identifier directories or data files. These entities may already be incurring some of these costs, and the costs under HIPAA would be incremental. We will be pursuing low-cost distribution options to keep these costs as low as possible.

In addition, EDI could affect cash flow throughout the health insurance industry. Electronic claims reach the health plan faster and can be processed faster. This has the potential to improve health care providers' cash flow situations while decreasing health plans' earnings on cash reserves.

The only known impact on individuals and employers (other than those that function as health plans) is the need to obtain an identifier.

E. Benefits of Increased Use of EDI for Health Care Transactions

Some of the benefits attributable to increased EDI can be readily quantified, while others are more intangible. For example, it is easy to compute the savings in postage from EDI claims, but attributing a dollar value to processing efficiencies is difficult. In fact, the latter may not result in lower costs to health care providers or health plans but may be categorized as cost avoidance, rather than savings. For example, a health care provider may find that its billing office staff can be reduced from four clerks to three after standards are implemented. The health care provider could decide to reduce the staff size, to reduce the billing office staff and hire additional clinical personnel, or to retain the staff and assign new duties to them. Only the first option results in a "savings" (i.e., fewer total dollars spent) for the health care provider or the health care industry. However, all three options allow health care providers to reduce administrative costs associated with billing. We are considering these to be benefits for purposes of this analysis because it is consistent with the way the industry views them.

The benefits of EDI to industry in general are well documented in the literature. One of the most significant benefits of EDI is the reduction in manual data entry. The paper processing of business transactions

requires manual data entry at the point in which the data are received and entered into a system. For example, the data on a paper health care transaction from a health care provider to a health plan have to be manually entered into the health plan's business system. If the patient has more than one health plan, the second health plan would also have to manually enter the data into its system if it cannot receive the information electronically. The potential for repeated keying of information transmitted via paper results in increased labor as well as significant opportunities for keying errors. EDI allows for direct data transmission between computer systems, which reduces the need to rekey data.

Another problem with paper-based transactions is that these documents are mostly mailed. Normal delivery times of mailings can vary anywhere from one to several days for normal first class mail. To ship paper documents more quickly can be expensive. While bulk mailings can reduce some costs, paper mailings remain costly. Using postal services can also lead to some uncertainty as to whether the transaction was received, unless more expensive certified mail options are pursued. A benefit of EDI is that the capability exists for the sender of the transaction to receive an electronic acknowledgment once the data is opened by the recipient. Also, because EDI involves direct computer to computer data transmission, the associated delays with postal services are eliminated. With EDI, communication service providers such as value added networks function as electronic post offices and provide 24-hour service. Value added networks deliver data instantaneously to the receiver's electronic mailbox.

In addition to mailing time delays, there are other significant costs in using paper forms. These include the costs of maintaining an inventory of forms, typing data onto forms, addressing envelopes, and the cost of postage. The use of paper also requires significant staff resources to receive and store the paper during normal processing. The paper must be organized to permit easy retrieval if necessary.

F. The Role of Standards in Increasing the Efficiency of EDI

There has been a steady increase in use of EDI in the health care market since 1993, and we predict that there would be some continued growth, even without national standards. However, we believe the upward trend in EDI health care transactions will be enhanced by having national standards

in place. Because national standards are not in place today, there continues to be a proliferation of proprietary formats in the health care industry. Proprietary formats are those that are unique to an individual business. Due to proprietary formats, business partners that wish to exchange information via EDI must agree on which formats to use. Since most health care providers do business with a number of plans, they must produce EDI transactions in many different formats. For small health care providers, this is a significant disincentive for converting to EDI.

National standards would allow for common formats and translations of electronic information that would be understandable to both the sender and receiver. If national standards were in place, there would be no need to determine what format a trading partner was using. Standards also reduce software development and maintenance costs that are required for converting proprietary formats. The basic costs of maintaining unique formats are the human resources spent converting data or in personally contacting entities to gather the data because of incompatible formats. These costs are reflected in increased office overhead, and a reliance on paper and third party vendors as well as communication delays and general administrative hassle. Health care transaction standards will improve the efficiency of the EDI market and will help further persuade reluctant industry partners to choose EDI over traditional mail services.

The statute directs the Secretary to establish standards and sets out the timetable for doing so. The Secretary must designate a standard for each of the specified transactions and identifiers but does have the discretion to designate alternate standards (for example, both a flat file and X12N format for a particular transaction). We have chosen to designate a single standard for each identifier and transaction. On the surface, allowing alternate standards would seem to be a more flexible approach, permitting health care providers and health plans to choose which standard best fits their business needs. In reality, health plans and health care providers generally conduct EDI with multiple partners. Since the choice of a standard transaction format is a bilateral decision between the sender and receiver, most health plans and health care providers would need to support all of the designated standards for the transaction in order to meet the needs of all of their trading partners. Single standards will

maximize net benefits and minimize ongoing confusion.

Health care providers and health plans have a great deal of flexibility in how and when they will implement standards. The statute specifies dates by which health plans will have adopted standards, but within that time period health plans can determine when and in which order they will implement standards. Health care providers have the flexibility to determine when it is cost-effective for them to convert to EDI. Health plans and health care providers have a wide range of vendors and technologies from which to choose in implementing standards and can choose to utilize a health care clearinghouse to produce standard transactions. Implementation options for transactions will be the subject of more detailed analysis in a subsequent regulation.

G. Cost/Benefit Tables

The tables below illustrate the costs for health plans and health care providers to implement the standards and the savings that will occur over time as a result of the HIPAA administrative simplification provisions. All estimates are stated in 1998 dollars—no adjustment has been made for present value.

The tables are extracted from a report prepared by our actuaries, who analyzed the impact of the HIPAA administrative simplification provisions. Using standard actuarial principles, they utilized data from a wide range of industry sources as a base for their estimates but revised them as needed to precisely reflect the impact of the legislation. For example, the number of health care providers and percentage of EDI transactions were adjusted to reflect expected 1998 levels. Where data were not available (for example, the percentage of EDI billing for hospices), estimates were developed based on assumptions. Where data from multiple sources were in conflict, the various sources were considered in developing an independent estimate. These processes are complex and are described in detail in the actuaries' report, both in narrative form and in footnotes to tables. The report is too voluminous to publish here, and it is not feasible to describe the processes used to arrive at each and every number. We are presenting here the data that are most critical to assessing the impact of HIPAA administrative simplification provisions and a general description of the processes used to develop those data. The full actuarial report is available for inspection at the HCFA document room and at the following web site: <http://aspe.os.dhhs.gov/admsimp/>.

The costs are based on estimates for the cost of a moderately complex set of software upgrades. The range of costs that health plans and health care providers will incur is quite large and is based on such factors as the size and complexity of the existing systems, ability to implement using existing low-cost translator software, and reliance on health care clearinghouses to create standard transactions. The cost of a moderately complex upgrade represents a reasonable midpoint in this range. In addition, we assume that health plans and health care providers with existing EDI systems will incur implementation costs related to manual operations to make those processes compatible with the EDI systems. For example, manual processes may be converted to recognize standard identifiers or to produce paper remittance advices that contain the same data elements as the EDI standard transaction. We have estimated those costs to equal 50 percent of the upgrade cost. Health care providers that do not have existing EDI systems will also incur some costs due to HIPAA, even if they choose not to implement EDI for all of the HIPAA transactions. For example, a health care provider may have to change accounting practices in order to process the revised paper remittance advice discussed above. Health plans must accept HIPAA transactions via EDI, but not all health plans will be called upon to accept all HIPAA transactions. For example, some health plans process only dental claims, while others process claims for institutional and noninstitutional services. We have assumed the average cost for non-EDI health care providers and health plans to be half that of already-automated health care providers and health plans.

Savings are based on the estimated increase in EDI attributable to the HIPAA administrative simplification provisions, multiplied by a per transaction savings for each type of transaction. Our estimates are much lower than those included in the WEDI report, primarily because we only recognize savings that would not have occurred without the legislation. While some industry estimates of gross savings (not net of costs) have been as high as \$32.8 billion over five years, we believed it was important to utilize the most conservative assumptions possible. It is important to view these estimates as an attempt to furnish a realistic context rather than as precise budgetary predictions. Our estimates also do not include any benefits attributable to qualitative aspects of Administrative simplification, because of the lack of reliable data. (For example, we do not

attempt to put a dollar value on improved public health practices that will result from implementation of standard identifiers.) We strongly encourage comments on how to quantitatively and qualitatively measure the efficiencies realized as a result of the HIPAA administrative simplification standards.

More detailed information regarding data sources and assumptions is provided in the explanations for the specific tables.

Table 1 below shows estimated costs and savings for health plans. The number of entities is based on the WEDI report, Department of Labor data, and various trade publications trended forward to 1998. The cost per health plan for software upgrades is based on the WEDI report, which estimated a range of costs required to implement a fully capable EDI environment. The high-end estimates ranged from two to ten times higher than the low-end

estimates. We have used the lower end of the estimates in most cases because, as explained above, HIPAA does not require as extensive changes as envisioned by WEDI. The estimated percentages of health plans that accept electronic billing are based on reports in the 1997 edition of Faulkner & Gray's Health Data Directory (5). The total cost for each type of health plan is the sum of the cost for EDI and non-EDI plans. Cost for EDI plans is computed as follows:

$$\text{Total Entities} \times \text{EDI \%} \times \text{Average Upgrade Cost} \times 1.5$$

(Note: As described above, the cost of changing manual processes is estimated to be half the cost of system changes.)

Cost for non-EDI plans is computed as follows:

$$\text{Total entities} \times (1 \times \text{EDI \%}) \times \text{Average Upgrade Cost} \times .5$$

(Note: As described above, cost to non-EDI health care providers is assumed to be half the cost of systems changes.)

The \$3.9 billion in savings is derived from Table 4, and represents savings to health plans for the first five years of implementation. The assumptions related to these savings are contained in the explanation to Table 4. The savings have been apportioned to each type of health plan based on the ratio of that health plan type's cost to the cost to all health plans. For example, a plan type that incurs ten percent of the costs would be assigned ten percent of the savings. We acknowledge that this is an imprecise method for allocating savings. We have not been able to identify a reliable method for allocating savings to specific types of health plans but nonetheless believed that it was important to present costs and savings together in order to provide a sense of how the HIPAA administrative simplification provisions would affect various entities.

Table 1.—Health Plan Implementation Costs and Savings
(in Millions—1998–2002)

Type of plan	Number of plans	Average cost	Percent EDI	Total cost (in millions)	Savings (in millions)
Large commercials	250	\$1,000,000	.90	\$350	\$620
Smaller commercials	400	500,000	.50	200	354
Blue Cross/Blue Shield	75	1,000,000	.90	106	188
Third-party administered	750	500,000	.50	375	665
HMO/PPO	1,500	250,000	.50	375	665
Self-administered	16,000	50,000	.25	600	1,063
Other employer plans	3,900,000	100	.00	195	345
Total				\$2,201	\$3,900

Table 2 illustrates the costs and savings attributable to various types of health care providers.

The number of entities (practices, not individual health care providers) is based on the 1992 Census of Services, the 1996 Statistical Abstract of the United States, and the American Medical Association survey of group practices trended forward to 1998. Estimated percentages of EDI billing are based on the 1997 edition of Faulkner & Gray's Health Data Directory or are actuarial estimates.

The cost of software upgrades for personal computers (PCS) is based on

reports on the cost of software upgrades to translate and communicate standardized claims forms. The low end is used for smaller practices and the high end for larger practices with PCS. The estimate for mainframe upgrade packages is twice the upper end for PCS. The cost per upgrade for facilities is ours after considering estimates by WEDI and estimates of the cost of new software packages in the literature. The estimates fall within the range of the WEDI estimates, but that range is quite large. For example, WEDI estimates the cost for a large hospital upgrade would be from \$50,000 to \$500,000. For an

explanation of the method for computing Total Cost, see the explanation for Table 1.

The \$3.4 billion in savings is derived from Table 4 and represents savings to health care providers for the first five years of implementation. We have included them here to provide a sense of how the HIPAA administrative simplification provisions would affect various entities. As in Table 1, the savings have been apportioned to each type of health care provider based on the ratio of that health care provider type's cost to the cost to all health care providers.

TABLE 2.—HEALTH CARE PROVIDER IMPLEMENTATION COSTS AND SAVINGS
(In millions—1998–2002)

Type of provider	Number of providers	Average cost	Percent EDI	Total cost (in millions)	Savings (in millions)
Hospitals <100 beds	2,850	\$100,000	.86	\$388	\$369
Hospitals 100+ beds	3,150	250,000	.86	1,071	1,019
Nursing facility <100 beds	27,351	10,000	.50	274	260
Nursing facility 100+ beds	8,369	20,000	.50	167	159

TABLE 2.—HEALTH CARE PROVIDER IMPLEMENTATION COSTS AND SAVINGS—Continued
(In millions—1998–2002)

Type of provider	Number of providers	Average cost	Percent EDI	Total cost (in millions)	Savings (in millions)
Home health agency	10,608	10,000	.75	133	126
Hospice	1,191	10,000	.10	7	7
Dialysis facility	1,211	10,000	.75	15	14
Specialty outpatient	7,175	10,000	.75	90	85
Pharmacy	70,100	4,000	.85	379	360
Medical labs	9,000	4,000	.85	49	46
Dental labs	8,000	1,500	.50	12	11
DME	116,800	1,500	.50	175	167
Physicians solo and groups <3	337,000	1,500	.20	354	337
Physicians groups 3+ with mainframe	17,000	8,000	.75	170	162
Physicians groups 3+ with PCS	15,000	4,000	.40	54	51
Physicians groups 3+ no automation	2,000	0	.00	0	0
Osteopaths	35,600	1,500	.10	32	30
Dentists	147,000	1,500	.14	141	134
Podiatrists	8,400	1,500	.05	7	6
Chiropractors	29,000	1,500	.05	24	23
Optometrists	18,200	1,500	.05	14	14
Other professionals	23,600	1,500	.05	20	19
Total				3,574	3,400

Table 3 shows the estimates we used to determine the portion of EDI increase attributable to the HIPAA administrative simplification provisions. The proportion of claims that would be processed electronically even without HIPAA is assumed to grow at the same rate from 1998 through 2002 as it did from 1992 to 1996, except that the rate for hospitals, which is already high, is assumed to grow at one percent

annually instead of the two percent that was observed from 1992–1996. The proportion of "other" provider claims is high because it includes pharmacies that generate large volumes of claims and have a high rate of electronic billing.

The increase attributable to HIPAA is highly uncertain and is critical to the savings estimate. Our actuary arrived at these estimates based on an analysis of

the current EDI environment. Because the rate of growth in electronic billing is already high, there is not much room for added growth. On the other hand, much of the increase that has already occurred is attributable to Medicare and Medicaid; private insurers and third party administrators still have fairly low rates of electronic billing and may benefit significantly from standardization.

TABLE 3.—PERCENT GROWTH IN EDI CLAIMS ATTRIBUTABLE TO HIPAA AS PROVISIONS
(Cumulative)

Type of Provider	1998 (percent)	1999 (percent)	2000 (percent)	2001 (percent)	2002 (percent)
Physician:					
Percent before HIPAA	45	50	55	60	65
Percent after HIPAA	45	52	59	66	73
Difference		2	4	6	8
Hospital:					
Percent before HIPAA	86	87	88	89	90
Percent after HIPAA	86	88	89	91	92
Difference		1	1	2	2
Other:					
Percent before HIPAA	75	76	77	78	79
Percent after HIPAA	75	78	81	84	87
Difference		2	4	6	8

Table 4 shows the annual costs, savings, and net savings over a five-year implementation period. We assume that the costs will be incurred within the first three years, since the statute requires health plans other than small health plans to implement within 24 months and small health plans to

implement within 36 months. As each health plan implements a standard, health care providers that conduct electronic transactions with that health plan would also implement the standard. We assume that no savings would accrue in the first year, because not enough health plans and health care

providers would have implemented the standards. Savings would increase as more health plans and health care providers implement, exceeding costs in the fourth year. At that point, the majority of health plans and health care providers will have implemented the

standards, and costs will decrease and benefits will increase as a result.

The savings per claim processed electronically instead of manually is based on the lower end of the range estimated by WEDI. We have used \$1 per claim for health plans and physicians, and \$.75 per claim for hospitals and other health care providers. These estimates are based on surveys of health care providers and health plans. Savings per EDI claim are computed by multiplying the per claim savings times the number of EDI claims attributed to HIPAA. The total number of EDI claims is used in computing the savings to health plans, while the savings for specific health care provider groups is computed using only the number of EDI claims generated by that group (for example, savings to

physicians is computed using only physician EDI claims).

WEDI also estimated savings resulting from other HIPAA transactions. The savings per transaction was higher than the savings from electronic billing, but the number of transactions was much smaller. Our estimates for transactions other than claims were derived by assuming a number of transactions and a savings per transaction relative to those assumed for the savings for electronic billing (see table 4a). In general our assumptions are close to those used by WEDI. One major difference is that we derived the number of enrollment/disenrollment transactions from Department of Labor statistics. We used their estimate of the number of events requiring a certificate to be issued, which includes such

actions as starting or leaving a firm, children "aging out" of coverage and death of policyholder. That estimate is about 45 million events. We used WEDI's estimate that the savings per transaction is about half that of billing transactions.

We also assumed that savings could be expected from simplifications in manual claims. The basic assumption is that the savings are ten percent (per transaction) of those that are projected for conversion to electronic billing. However, it is also assumed that the standards only gradually allow health care providers and health plans to abandon old forms and identifiers because of the many relationships that have been established with other entities that will require a period of overlap.

TABLE 4.—FIVE-YEAR NET SAVINGS
(in billions of dollars)

Costs and savings	1998	1999	2000	2001	2002	Total
Costs:						
Provider	1.3	1.3	1.1	0.0	0.0	3.6
Plan	0.8	0.8	0.7	0.0	0.0	2.2
Total	2.0	2.0	1.7	0.0	0.0	5.8
Savings From Claims Processing:						
Provider	0.0	0.1	0.3	0.4	0.6	1.4
Plan	0.0	0.1	0.2	0.4	0.5	1.2
Total	0.0	0.2	0.5	0.8	1.1	2.6
Savings from Other Transactions:						
Provider	0.0	0.2	0.4	0.7	1.1	2.4
Plan	0.0	0.2	0.4	0.6	0.8	2.0
Total	0.0	0.3	0.8	1.2	1.8	4.1
Savings From Manual Transactions:						
Provider	0.0	0.0	0.1	0.1	0.1	0.3
Plan	0.0	0.0	0.1	0.1	0.1	0.3
Total	0.0	0.1	0.1	0.2	0.2	0.6
Total Savings:						
Provider	(1.3)	(1.0)	(0.5)	1.0	1.5	(0.2)
Plan	(0.8)	(0.5)	0.0	1.2	1.6	1.7
Total	(2.0)	(1.4)	(0.3)	2.2	3.1	1.5

Note: Figures do not total due to rounding.

Table 4a shows the savings per nonclaim transaction as a multiple of claims savings per transaction and the ratio of transactions to number of claims. These values were used to determine the savings for nonclaims transactions.

TABLE 4A.—RELATIVE SAVINGS AND VOLUME OF OTHER TRANSACTIONS

Transaction	Savings	Volume
Claim	1.0	1.0
Claims inquiry	4.0	0.5
Remittance advice ..	1.5	0.10
Coordination of benefits	0.5	0.10
Eligibility inquiry	0.5	0.05
Enrollment/disenrollment	0.5	0.01

TABLE 4A.—RELATIVE SAVINGS AND VOLUME OF OTHER TRANSACTIONS—Continued

Transaction	Savings	Volume
Referral	0.1	0.10

H. Qualitative Impacts of Administrative Simplification

Administration simplification produces more than hard-dollar savings. There are also qualitative benefits that

are less tangible, but nevertheless important. These changes become possible when data can be more easily integrated across entities. WEDI suggests in its 1993 report that there will be a "ripple-effect" of implementing an EDI infrastructure on the whole health care delivery system in that there would be a reduction in duplicate medical procedures and processes as a patient is handled by a continuum of health care providers during an episode of care. WEDI also suggests that there will be a reduction in the exposure to health care fraud as security controls on electronic transactions will prevent unauthorized access to financial data.

We also believe that having standards in place would reduce administrative burden and improve job satisfaction. For example, fewer administrative staff would be required to translate procedural codes, since a common set of codes would be used. All codes used in these transactions will be standardized, eliminating different values for data elements (for example, place of service).

Administrative simplification would promote the accuracy, reliability and usefulness of the information shared. For example, today there are any number of claims formats and identifiers in use. We estimate that there are over 400 variations of electronic formats for claims transactions alone. As we noted earlier, these variations make it difficult for parties to exchange information electronically. At a minimum, it requires data to be translated from the sender's own format to the different formats specified by each intended receiver. Also, since industry has taken different approaches to uniquely identifying patients, health care providers and health plans (based on their individual business needs and preferences), it has become difficult to develop methods to compare services across health care providers and health plans. This mixed approach to enumeration has made it extremely difficult for health care researchers to do comparative analysis across settings and over time, and complicates identification of individuals for public health and epidemiologic purposes.

Administrative simplification greatly enhances the sharing of data both within entities and across entities. It facilitates the coordination of benefit information by having in place a standardized set of data that is known to all parties, along with standardized name and address information that tells where to route transactions. Today, health care providers are reluctant to file claims to multiple health plans on the behalf of the patient because information about a patient's eligibility

in a health plan is difficult to verify. Additionally, identifying information about health plans is not standardized or centralized for easy access. Most claims filed by patients today are submitted in hardcopy. We anticipate that more health care providers will file claims and coordinate benefits on the patient's behalf once standard identifiers are adopted and this information is made available electronically.

I. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96-354, requires us to prepare a regulatory flexibility analysis if the Secretary certifies that a proposed regulation would have a significant economic impact on a substantial number of small entities. In the health care sector, a small entity is one with less than \$5 million in annual revenues. Nonprofit organizations are considered small entities; however, individuals and States are not included in the definition of a small entity. We have attempted to estimate the number of small entities and provide a general discussion of the effects of the statute. We request comments and additional information about our estimates and discussion.

All nonprofit Blue Cross-Blue Shield Plans are considered small entities. Two percent of the approximately 3.9 million employer health plans are considered small businesses. All doctors of osteopathy, dentists, podiatrists, chiropractors, and solo and group physicians' offices with fewer than three physicians are considered small entities. Forty percent of group practices with 3 or more physicians and 90 percent of optometrist practices are considered small entities. Seventy-five percent of all pharmacies, medical laboratories, dental laboratories and durable medical equipment suppliers are assumed to be small entities.

We found the best source for information about the health data information industry to be Faulkner & Gray's Health Data Dictionary. This publication is the most comprehensive we found of its kind. The information in this directory is gathered by Faulkner & Gray editors and researchers who called all of the more than 3,000 organizations that are listed in the book to elicit information about their operations. It is important to note that some businesses are listed as more than one type of business entity. That is because in reporting the information, companies could list themselves as up to three different types of entities. For example, some businesses listed themselves as both practice management vendors as

well as claims software vendors because their practice management software was "EDI enabled."

All the statistics referencing Faulkner & Gray's come from the 1996 edition of its Health Data Dictionary. It lists 100 third party claims processors, which includes health care clearinghouses (5-33). Faulkner & Gray define third party claims processors as entities under contract that take electronic and paper health care claims data from health care providers and billing companies that prepare bills on a health care provider's behalf. The third party claims processor acts as a conduit to health plans; it batches claims and routes transactions to the appropriate health plan in a form that expedites payment.

Of the 100 third party processors/clearinghouses listed in this publication, seven processed more than 20 million electronic transactions per month. Another 14 handled 2 million or more transactions per month and another 29 handled over a million electronic transactions per month. The remaining 50 entities listed processed less than a million electronic transactions per month. We believe that almost all of these entities have annual revenues of under \$5 million and would therefore be considered small entities by our definition.

Another entity that is involved in the electronic transmission of health care transactions is the value added network. Value added networks are involved in the electronic transmission of data over telecommunication lines. We include value added networks in the definition of a health care clearinghouse. Faulkner & Gray list 23 value added networks that handle health care transactions (5, p. 544). After further discussion, the editors clarified that only 8 of the 23 would be considered "pure" value added networks. We believe that all of these companies have annual revenues of over \$5 million.

A billing company is another entity involved in the electronic routing of health care transactions. It works primarily with physicians either in office or hospital-based settings. Billing companies, in effect, take over the office administrative functions for a physician; they take information such as copies of medical notes and records and prepare claim forms that are then forwarded to an insurer for payment. Billing companies may also handle the receipt of payments, including posting payment to the patient's record on behalf of the health care provider. They can be located within or outside of the physician's practice setting.

The International Billing Association is a trade association representing

billing companies. The International Billing Association estimated that there are approximately 4500 billing companies currently in business in the United States. The International Billing Association's estimates are based on the name and address of actual billing companies that it compiled in developing its mailing list. We believe all of the 4500 billing companies known to be in business have revenues under \$5 million annually.

Software system vendors provide computer software applications support to health care clearinghouses, billing companies, and health care providers. They particularly work with health care providers' practice management and health information systems. These businesses provide integrated software applications for such services as accounts receivable management, electronic claims submission (patient billing), record keeping, patient charting, practice analysis and patient scheduling. Some software vendors are also involved in providing applications for translating paper and nonstandard computer documents into standardized formats that are acceptable to health plans.

Faulkner & Gray list 104 physician practice management vendors and suppliers (5, p. 520), 105 hospital information systems vendors and suppliers (5, p. 444), 134 software vendors and suppliers for claims-related transactions (5, p. 486), and 28 translation vendors (5, p. 534). We were unable to determine the number of these entities with revenues over \$5 million, but we assume most of these businesses would be considered small entities under our definition.

As discussed earlier in this analysis, the cost of implementing the standards specified in the statute are primarily one-time or short-term costs related to conversion. They were characterized as follows: software conversion, cost of automation, training, implementation problems, and cost of documentation and implementation guides. Rather than repeat that information here, we refer you to the beginning of this impact analysis.

1. Health care Providers and Health Plans

As a result of standard data format and content, health care providers and health plans that wish to do business electronically could do so knowing that whatever capital outlays they make are worthwhile, with some certainty of return on investment. This is because entities that exchange electronic health care transactions would be required to receive and send transactions in the

same standard formats using the same health care provider and health plan identifiers. We believe this will be an incentive to small physicians' offices to convert from paper to EDI. In a 1996 Office of the Inspector General study entitled "Encouraging Physicians to Use Paperless Claims," the Office of the Inspector General and HCFA agreed that over \$36 million in annual Medicare claims processing savings could be achieved if all health care providers submitting 50 or more Medicare claims per month submitted them electronically. Establishment of EDI standards will make it financially beneficial for many small health care providers to convert to electronic claim submissions, because all health plans would accept the same formats.

Additionally, we believe that those health care providers that currently use health care clearinghouses and billing agencies will see costs stabilize and potentially some cost reduction. This would result from the increased efficiency that health care clearinghouses and billing companies will realize from being able to more easily link with health care industry business partners.

2. Third Party Vendors

Third party vendors include third party processors/clearinghouses (including value added networks), billing companies, and software system vendors. While the market for third party vendors will change as a result of standardization, these changes will be positive to the industry and its customers over the long term. However, the short term/one time costs discussed above will apply to the third party vendor community.

a. Clearinghouses and Billing Companies

As noted above, health care clearinghouses are entities that take health care transactions, convert them into standardized formats acceptable to the receiver, and forward them on to the insurer. Billing companies take on the administrative functions of a physician's office. The market for clearinghouse and billing company services will definitely be affected by the HIPAA administrative simplification provisions; however there appears to be some debate on how the market for these services will be affected.

It is likely that competition among health care clearinghouses and billing companies will increase over time. This is because standards would reduce some of the technical limitations that currently inhibit health care providers from conducting their own EDI. For

example, by eliminating the requirement to maintain several different claims standards for different trading partners, health care providers will be able to more easily link themselves directly to health plans. This could negatively affect the market for health care clearinghouses and system vendors that do translation services; however, standards should increase the efficiency in which health care clearinghouses operate by allowing them to more easily link to multiple health plans. The increased efficiency in operations resulting from standards could, in effect, lower their overhead costs as well as attract new health care clearinghouse customers to offset any loss in market share that they might experience.

Another potential area of change is that brought about through standardized code sets. Standards would lower costs and break down logistical barriers that discouraged some health care providers from doing their own coding and billing. As a result, some health care providers may choose an in-house transaction system rather than using a billing company as a means of exercising more control over information. Conversely, health care clearinghouses may acquire some short-term increase in business from those health care providers that are automated but do not use the selected standards. These health care providers would hire health care clearinghouses to take data from the nonstandard formats they are using and convert them into the appropriate standards. Generally, we would also expect health care clearinghouses to identify opportunities to add value to transaction processing and to find new business opportunities, either in marketing promotional materials or in training health care providers on the new transaction sets. Standards would increase the efficiency of health care clearinghouses, which could in turn drive costs for these services down. Health care clearinghouses may be able to operate more efficiently or at a lower cost based on their ability to gain market share. Some small billing companies may be consumed by health care clearinghouses that may begin offering billing services to augment their health care clearinghouse activities. However, most health care providers that use billing companies would probably continue to do so because of the comprehensive and personalized services these companies offer.

Value added networks do not manipulate data but rather transmit data in its native form over telecommunication lines. We anticipate

that the demand for value added network services would increase as additional health care providers and health plans move to electronic data exchange. Standards would eliminate the need for data to be reformatted, which would allow health care providers to purchase value added network services individually rather than as a component of the full range of clearinghouse services.

b. Software Vendors

As noted above, software vendors provide computer software applications support to health care clearinghouses and health care providers. They particularly work with health care providers' practice management and health information systems. We believe these entities would be affected positively, at least in the short term. The implementation of administrative simplification would enhance their business opportunities as they would be involved in developing computerized software solutions that would allow for health care providers and other entities that exchange health care data to integrate the new transaction set into their existing systems. They may also be involved in developing software solutions to manage the crosswalk of existing health care provider and health plan identifiers to the national provider identifier and health plan identifier (PAYERID) until such time as all entities have implemented the identifiers.

J. Unfunded Mandates

We have identified costs to the private sector to implement these standards. Although these costs are unfunded, we expect that they will be offset by subsequent savings as detailed in this impact analysis.

Most costs will occur in the first 3 years following the adoption of the HIPAA standards, with savings to health care providers and health plans exceeding costs in the fourth year. Five-year costs of implementing the HIPAA standards are estimated at \$ 5.8 billion for health care providers and health plans combined. Savings to these entities over the same period in electronic claims processing, other electronic transactions (e.g., enrollments and disenrollments), and manual transactions are estimated at \$ 7.3 billion, for a net savings of \$ 1.5 billion in 5 years.

The costs to State and local governments and tribal organizations are also unfunded, but we do not have sufficient information to provide estimates of the impact of these standards on those entities. Several

State Medicaid agencies have estimated that it would cost \$1 million per state to implement all the HIPAA standards. However, the Congressional Budget Office analysis stated that "States are already in the forefront in administering the Medicaid program electronically; the only costs—which should not be significant—would involve bringing the software and computer systems for the Medicaid programs into compliance with the new standards." The report went on to point out that Medicaid State agencies have the option to compensate by reducing other expenditures and that other State and local government agencies are likely to incur less in the way of costs since most of them will have fewer enrollees. Moreover, the Federal government pays a portion of the cost of converting State Medicaid Management Information Systems (MMIS) as Federal Financial Participation—75 percent for system maintenance changes and 90 percent for new software (if approved). Many States are in the process of changing systems as they convert many of the current functions in the move to enroll Medicaid beneficiaries in managed care.

K. Specific Impact of Provider Identifier

This is the portion of the impact analysis that relates specifically to the standard that is the subject of this regulation—the health care provider identifier. This section describes specific impacts that relate to the provider identifiers. However, as we indicated in the introduction to this impact analysis, we do not intend to associate costs and savings to specific standards. In addition, this section assesses the relative cost impact of the various identifier options and implementation options set out in the regulation.

Although we cannot determine the specific economic impact of the standard being proposed in this rule (and individually each standard may not have a significant impact), the overall impact analysis makes clear that, collectively, all the standards will have a significant impact of over \$100 million on the economy. Also, while each standard may not have a significant impact on a substantial number of small entities, the combined effects of all the proposed standards may have a significant effect on a substantial number of small entities. Therefore, the following impact analysis should be read in conjunction with the overall impact analysis.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

1. Affected entities.

a. Health care providers. Health care providers that conduct electronic transactions with health plans would have to begin to use the NPI in those transactions. Health care providers that are indirectly involved in electronic transactions (for example, by submitting a paper claim that the health plan transmits electronically to a secondary payer) may also use the NPI. Any negative impact on these health care providers generally would be related to the initial implementation period. They would incur implementation costs for converting systems, especially those that generate electronic claims, from current provider identifiers to the NPI. Some health care providers would incur those costs directly and others would incur them in the form of fee increases from billing agents and health care clearinghouses.

Health care providers not only would have to include their own NPI on claims, but they would also have to obtain and use NPIs of other health care providers (for example, for referring and ordering). This would be a more significant implementation workload for larger institutional health care providers, such as hospitals, that would have to obtain the NPIs for each physician practicing in the hospital. However, these health care providers are accustomed to maintaining these types of data. There would also be a potential for disruption of claims processes and timely payments during a particular health plan's transition to the NPI. Some health care providers that do not do business with government programs may be resistant to obtaining an NPI and providing data about themselves that would be stored in a national database.

Health care providers would also have to obtain an NPI and report changes in pertinent data. Under one of the enumeration options presented in this preamble, current Medicare providers will receive their NPIs automatically, and other health care providers may be enumerated in this manner to the extent that appropriate valid data files are available. New health care providers would have to apply for an NPI. This does not impose a new burden on health care providers. The vast majority of health plans issue identifiers to the health care providers with whom they transact business in order to facilitate the electronic processing of claims and other transactions. The information that health care providers must supply in order to receive an NPI is significantly less than the information most health plans require to enroll a health care provider. There would be no new cost

burden; the statute does not support our charging health care providers to receive an NPI.

After implementation, health care providers would no longer have to keep track of and use different identifiers for different insurers. This would simplify provider billing systems and processes and reduce administrative expenses. A standard identifier would facilitate and simplify coordination of benefits, resulting in faster, more accurate payments. Under option 2 of the enumeration options, (see section IX.K.2.d. of this preamble, on enumerators), many health care providers (all those doing business with Medicare) would receive their NPIs automatically and would be able to report changes in the data contained in the NPS to a single place and have the changes made available to many health plans.

b. Health plans.

Health plans that engage in electronic commerce would have to modify their systems to use the NPI. This conversion would have a one-time cost impact on Federal, State, and private health plans alike and is likely to be more costly for health plans with complex systems that rely on intelligent provider numbers. Disruption of claims processing and payment delays could result. However, health plans would be able to schedule their implementation of the NPI and other standards in a manner that best fits their needs, as long as they meet the deadlines specified in the legislation.

Once the NPI has been implemented, health plans' coordination of benefits activities would be greatly simplified because all health plans would use the same health care provider identifier. In addition, utilization review and other payment safeguard activities would be facilitated, since health care providers would not be able to use multiple identifiers and could be easily tracked over time and across geographic areas. Health plans currently assign their own identification numbers to health care providers as part of their enrollment procedures, and this would no longer be necessary. Existing enumeration systems maintained by Federal health programs would be phased out, and savings would result.

c. Health care clearinghouses.

Health care clearinghouses would face impacts (both positive and negative) similar to those experienced by health plans. However, implementation would likely be more complex, because health care clearinghouses deal with many health care providers and health plans and would have to accommodate both old and new health care provider

identifiers until all health plans with which they deal have converted.

2. Effects of Various Options.

a. Guiding Principles for Standard Selection.

The implementation teams charged with designating standards under the statute have defined, with significant input from the health care industry, a set of common criteria for evaluating potential standards. These criteria are based on direct specifications in the HIPAA, the purpose of the law, and principles that support the regulatory philosophy set forth in Executive Order 12866 of September 30, 1993, and the Paperwork Reduction Act of 1995. These criteria also support and are consistent with the principles of the Paperwork Reduction Act of 1995. In order to be designated as a standard, a proposed standard should:

- Improve the efficiency and effectiveness of the health care system by leading to cost reductions for or improvements in benefits from electronic HIPAA health care transactions. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.

- Meet the needs of the health data standards user community, particularly health care providers, health plans, and health care clearinghouses. This principle supports the regulatory goal of cost-effectiveness.

- Be consistent and uniform with the other HIPAA standards—their data element definitions and codes and their privacy and security requirements—and, secondarily, with other private and public sector health data standards. This principle supports the regulatory goals of consistency and avoidance of incompatibility, and it establishes a performance objective for the standard.

- Have low additional development and implementation costs relative to the benefits of using the standard. This principle supports the regulatory goals of cost-effectiveness and avoidance of burden.

- Be supported by an ANSI-accredited standards developing organization or other private or public organization that will ensure continuity and efficient updating of the standard over time. This principle supports the regulatory goal of predictability.

- Have timely development, testing, implementation, and updating procedures to achieve administrative simplification benefits faster. This principle establishes a performance objective for the standard.

- Be technologically independent of the computer platforms and transmission protocols used in HIPAA health transactions, except when they

are explicitly part of the standard. This principle establishes a performance objective for the standard and supports the regulatory goal of flexibility.

- Be precise and unambiguous, but as simple as possible. This principle supports the regulatory goals of predictability and simplicity.

- Keep data collection and paperwork burdens on users as low as is feasible. This principle supports the regulatory goals of cost-effectiveness and avoidance of duplication and burden.

- Incorporate flexibility to adapt more easily to changes in the health care infrastructure (such as new services, organizations, and provider types) and information technology. This principle supports the regulatory goals of flexibility and encouragement of innovation.

We assessed the various candidates for a provider identifier against the principles listed above, with the overall goal of achieving the maximum benefit for the least cost. We found that the NPI met all the principles, but no other candidate identifier met all the principles, or even those principles supporting the regulatory goal of cost-effectiveness. We are assessing the costs and benefits of the NPI, but we did not assess the costs and benefits of other identifier candidates, because they did not meet the guiding principles. We invite your comments on the costs and benefits of the alternative candidate NPI options for the various market segments.

b. Need To Convert

Because there is no standard provider identifier in widespread use throughout the industry, adopting any of the candidate identifiers would require most health care providers, health plans and health care clearinghouses to convert to the new standard. In the case of the NPI, all health care providers would have to convert because this identifier is not in use presently. As we pointed out in our analysis of the candidates, even the identifiers that are in use are not used for all purposes or for all provider types. The selection of the NPI does not impose a greater burden on the industry than the nonselected candidates, and presents significant advantages in terms of cost-effectiveness, universality, uniqueness and flexibility.

c. Complexity of Conversion

Some existing provider identifier systems assign multiple identifiers to a single health care provider in order to distinguish the multiple identities the health care provider has in the system. For example, in these systems, the health care provider may have a

different identifier to represent each "pay-to" identity, contract or provider agreement, practice location, and specialty or provider type. Since the NPI is a unique identifier for each health care provider, it would not distinguish these multiple identities. Systems that need to distinguish these identities would need to use data other than the NPI to do so. The change to use other data would add complexity to the conversion to the NPI or to any other standard provider identifier, but it is necessary in order to achieve the goal of unique identification of the health care provider.

The complexity of the conversion would also be significantly affected by the degree to which health plans' processing systems currently rely on intelligent identifiers. For example, a health plan may route claims to different processing routines based on the type of health care provider by keying on a provider type code included in the identifier. Converting from one unintelligent identifier to another is less complex than modifying software logic to obtain needed information from other data elements. However, the use of an unintelligent identifier is required in order to meet the guiding principle of assuring flexibility.

Specific technology limitations of existing systems could affect the complexity of conversion. For example, some existing provider data systems use a telephone keypad to enter data. Data entry of alpha characters is inconvenient in these systems. In order to mitigate this inconvenience, we would implement the NPI by initially assigning numeric NPIs. After all numeric possibilities have been exhausted, we would introduce alpha characters in one position at a time. This implementation strategy would allow additional time for systems with technology limitations to overcome conversion difficulties.

In general, the shorter the identifier, the easier it is to implement. It is more likely that a shorter identifier, such as the NPI, would fit into existing data formats.

The selection of the NPI does not impose a greater burden on the industry than the nonselected candidates.

d. Enumerators

Based on the analysis discussed earlier in the preamble, we assess the two most viable combinations of choices for the entities that would enumerate health care providers. We do not assess choices that permit large numbers of enumerators (for example, all health plans, educational institutions, professional associations) because these

choices do not satisfy the critical programmatic requirements of maintaining a high degree of data quality and consistency and minimizing confusion for health care providers.

No matter which of the two enumeration options is chosen, certain costs and impacts would not vary.

- We assume that the NPS would be used in both options to generate NPIs and serve as the central enumeration system and database. We began to develop the NPS for Medicare use, and this effort, which was funded by HCFA, is now nearing completion. As the NPS becomes national in scope, we estimate that the cost of maintaining the NPS software, hardware, and telecommunications, and operating a Help Desk to deal with user questions, would cost approximately \$10.4 million over the first three years of operation and approximately \$2.9 million per year thereafter. Roughly half of these costs are attributable to telecommunications expenses. This analysis presumes the availability of Federal funds to support the development and operations of the NPS. However, we are seeking comments on how the NPS could be funded once it becomes national.

- We further assume that, in both options, the same implementation strategy of loading the NPS database using health plans' existing prevalidated files will be utilized to the extent possible. This would reduce costs by not repeating the process of soliciting, receiving, controlling, validating and keying applications from health care providers that have already been enumerated by a trusted source. For example, we would use existing Medicare provider files to initially load the NPS database. The majority of work to reformat and edit these files has already been completed.

We estimate that approximately 1.2 million current health care providers and 30,000 new health care providers annually would require NPIs because they conduct HIPAA transactions.

An additional 3 million health care providers (120,000 new health care providers annually) do not conduct HIPAA transactions, but they may choose to be enumerated at some future time. We refer to these health care providers as "non-HIPAA-transaction health care providers" (see section 4. Enumeration Phases of this preamble). These health care providers would be primarily individual practitioners such as registered nurses and pharmacists who perform services in institutions and whose services are not billed by the institution. More research is required on the time frame and process for

enumerating these health care providers.

Based on Medicare carriers' costs, we have estimated that the average cost to enumerate a health care provider should not exceed \$50. Enumeration activities would include assisting health care providers and answering questions, accepting the application for an NPI; validating as many of the data elements as possible at the point of application to assure the submitted data are accurate and the application is authentic; entering the data into the NPS to obtain an NPI for the health care provider; researching cases where there is a possible match to a health care provider already enumerated; notifying the health care provider of the assigned NPI; and entering updated data into the NPS when notified by the health care provider. The cost of processing a data update is not known, and for purposes of this analysis we are assuming an average cost of \$10 per update transaction, and that 5 percent per year of these health care providers on file would have updated data. However, we estimate that approximately 15 percent of health care providers that do not conduct business with Federal health plans or Medicaid would require updates each year. These health care providers may be unfamiliar with the terminology for some of the information they need to provide in order to be enumerated; thus, they may need to correct errors they could have made in completing the applications for NPIs or may have a need to change some of that information for other reasons. The per transaction cost would be lower if practice location addresses and membership in groups were not collected (see section IV., Data, and section IX.E., Maintenance of the Database, of this preamble) and if enumerators were already validating data as part of their own enrollment processes. The number of updates would also be affected by the practice location and group membership issues because these data are more volatile than demographic data (see IV., Data, and IX.E., Maintenance of the Database, of this preamble).

For a similarly sized commercial numbering system that uniquely identifies corporations and assigns unique identifiers, we have received independent estimates from Dun & Bradstreet (D&B) of \$7 per enumeration and \$3 per update. The D&B estimates are based on the cost of assigning and maintaining the Data Universal Numbering System (D-U-N-S) number. The D-U-N-S number is a nine-digit, non-indicative number assigned to each record in D&B's file. It uses a modulus

10 check digit in the ninth position. Over 47 million D-U-N-S numbers have been assigned, worldwide, with 22 million attributed to locations in the United States. D&B uses the D-U-N-S number to enumerate businesses, including commercial sites, sole proprietorships, cottage industries, educational institutions, not-for-profits, and government entities, but does not maintain records on private individuals. D&B estimates an average cost of \$7 to add a record to its database and assign it a unique record identifier. To establish a record and ensure uniqueness, D&B requires the entity's legal name, any "doing business as" names, physical address, telephone number, chief executive, date started, line of business, number of employees and relationship(s) with other business entities. D&B runs a daily computer process to audit all records added during the day and extracts any that may be duplicates for research by an analyst. Updates to each record are estimated at approximately \$3 but can run as high as \$30 per year for very robust database entries, some of which contain 1500 different data elements.

The D&B estimates may be understated for our purposes because the four to six data elements used to uniquely identify the enumerated corporations do not require verification. We welcome comments on which data elements are required to uniquely identify health care providers (individuals, groups, and organizations), on whether verification of the data is necessary for purposes of enumeration, and on estimates of the cost to enumerate and update that minimum data set. We understand that the cost would be lower if the number and complexity of the data elements were reduced, but this cost must be balanced against the level of confidence that can be placed in the uniqueness of the health care providers identified. Specific consideration of these tradeoffs in submitted comments will be very helpful.

The \$50 estimated average cost to enumerate a health care provider is an upper limit. The cost would decrease significantly if the second data alternative is selected (see section IV.B., Practice Addresses and Group/ Organization Options, of this preamble).

Under this alternative, the NPS would capture only one practice address for an individual or organization provider. It would not assign location codes. The NPS would not link the NPI of a group provider to the NPIs of individuals who are members of the group. Costs would decrease because we would collect significantly less data at the time of enumeration, and the data that would be collected would not need to be updated very frequently. Recent consultations with the industry reveal a growing consensus for this alternative.

Table 5 below provides estimates as to the cost of each enumeration option for start-up and outyear, with Federal, State, and private costs, for HIPAA-transaction and non-HIPAA-transaction health care providers, and the Federal costs of the NPS. We define "start-up" as the first 3 years during which the NPS becomes operational nationally and the bulk of the health care providers requiring NPIs are enumerated. "Outyear" would be each subsequent year, in which the majority of actions would be enumerations of new health care providers and provider updates. Assumptions follow the table.

TABLE 5.—ENUMERATION COSTS: FEDERAL, STATE, AND PRIVATE

Enumeration Costs: Federal, State, and Private				
Costs to:	Start-up costs HIPAA-trans- action provid- ers	Outyear costs HIPAA-trans- action provid- ers	Start-up costs non-HIPAA- transaction providers	Outyear costs non-HIPAA- transaction providers
OPTION 1—REGISTRY				
Federal for NPS	10,400,000	2,900,000	.....	.....
Federal for non-HIPAA-transaction health care providers .....	.....	.....	165,000,000	7,500,000
Federal	64,560,000	2,280,000	.....	.....
State	0	0	.....	.....
Private	0	0	.....	.....
Total	74,960,000	5,180,000	.....	.....
OPTION 2—COMBINATION OF FEDERAL HEALTH PLANS, MEDICAID STATE AGENCIES, AND FEDERALLY-DIRECTED REGISTRY				
Federal for NPS	10,400,000	2,900,000	.....	.....
Federal for non-HIPAA-transaction health care providers .....	.....	.....	165,000,000	7,500,000
Federal (if all Medicaid State agencies participate)	9,990,000	495,000	.....	.....
Federal (if 5% of Medicaid State agencies decline to participate)	10,310,000	505,000	.....	.....
State (if all Medicaid State agencies participate)	0	0	.....	.....
State (if 5% of Medicaid State agencies decline to participate)	0	0	.....	.....
Private	0	0	.....	.....
Total (if all Medicaid State agencies participate)	20,390,000	3,395,000	.....	.....
Total (if 5% of Medicaid State agencies decline to participate)	20,710,000	3,405,000	.....	.....

Assumptions

1. Definitions

a. "HIPAA-transaction health care provider" means a health care provider that we would require to have an NPI; that is, a health care provider that must

be identified in the transactions specified in HIPAA.

b. "Non-HIPAA-transaction health care provider" means a health care provider that we would not require to have an NPI.

c. "Start-up" means the first 3 years in which the NPS becomes operational nationally and the bulk of the health care providers requiring NPIs are enumerated. It is the sum of the cost of enumerating existing health care providers in the first year plus the

annual cost of enumerating new and updating existing health care providers for the 2 subsequent years.

d. "Outyear" means each subsequent year in which the majority of actions would be enumerating new health care providers and updating existing ones. It is the sum of the cost of enumerating new health care providers plus the cost of updating existing health care providers.

2. The cost to enumerate a health care provider that is not enrolled or enrolling in a Federal health plan (e.g., Medicare, CHAMPUS) or Medicaid is estimated to be \$50. (See Assumption 4.)

3. The cost to update information on a health care provider that is not enrolled or enrolling in a Federal health plan (e.g., Medicare, CHAMPUS) or Medicaid is estimated to be \$10. (See Assumption 4.)

4. The cost to Federal health plans (e.g., Medicare, CHAMPUS) and Medicaid to enumerate or update their own health care providers is relatively small as these health plans must collect the same information to enroll or update the health care providers in their own programs. Possible up-front costs to these health plans and Medicaid would be offset by simpler, more efficient coordination of benefits, elimination of the need to maintain multiple enumeration systems, and elimination of the need to maintain other provider numbers. The Federal Government pays 75 percent of Medicaid State agencies' costs to enumerate and update health care providers. Because all of these costs are relatively small and would be offset by savings, they are considered to be \$0 (zero).

5. This analysis presumes the availability of Federal funds to support the registry.

6. It is estimated that 5 percent of existing HIPAA-transaction health care providers that conduct business with Federal health plans or Medicaid require updates annually; 15 percent of the remaining HIPAA-transaction health care providers require updates annually.

7. It is estimated that 5 percent of Medicaid State agencies may decline to participate in enumerating/updating their health care providers. The registry would enumerate/update that 5 percent.

8. Non-HIPAA-transaction health care providers would not be enumerated in the initial phases of enumeration. These costs are estimated to be \$165,000,000 for start-up and \$7,500,000 for outyear. The registry would enumerate/update these health care providers only if funds are available.

Option 1 calls for all 1.2 million HIPAA-transaction health care providers to be enumerated by a

Federally-directed registry. The one-time cost for the registry to assign NPIs to existing HIPAA-transaction health care providers would depend on the extent to which existing files could be used. The cost could be as high as \$60 million (1.2 million health care providers × \$50) or as low as \$9 million (see option 2). The low estimate assumes that prevalidated provider files are available for 100 percent of all Federal and Medicaid providers. The annual outyear cost would be \$2.1 million (30,000 new health care providers × \$50 plus 60,000 updates × \$10). The Federal health plans and Medicaid State agencies would no longer have to assign their own identifiers, which would result in some savings, but they would still incur costs related to provider enrollment activities that would duplicate Federally-directed registry functions (for example, duplicate collection and verification of some information).

Option 2 calls for enumeration of HIPAA-transaction health care providers to be performed by a combination of Federal programs named as health plans, Medicaid State agencies, and a Federally-directed registry. This registry would enumerate non-Federal, non-Medicaid providers. All enumerators would receive, validate, and enter application data into the NPS and would communicate with health care providers. Data files would be available from a central source. The registry would utilize the NPS and would be operated under Federal oversight but could, if appropriate, be contracted out.

Medicare, Medicaid, CHAMPUS, and the Department of Veterans Affairs already assign identifiers to health care providers with whom they conduct business. They would simply begin to use the NPS to issue NPIs instead of using their own systems to assign the identifiers they now use. Initially, these Federal health plans and Medicaid may incur up-front costs in issuing NPIs; however, these additional costs would be offset by savings from the fact that each health care provider would only have to be enumerated once; multiple enumeration systems would not have to be maintained; other provider numbers would not have to be maintained; and coordination of benefits would be simpler and more efficient. We estimate that approximately 5 percent of Medicaid State agencies may decline to participate (that is, they would not enumerate and update their health care providers). These health care providers would need to be enumerated and updated by the Federally-directed registry; however, that cost would be

offset by savings realized by the discontinuance of UPIN assignment and maintenance of the UPIN registry. We estimate that approximately 85 percent of the health care providers that conduct HIPAA transactions would be enumerated in this manner (75 percent by Federal health plans, 10 percent by Medicaid). Additional costs, if any, to enumerate these health care providers or update their data would be insignificant.

The remaining 15 percent of health care providers that conduct HIPAA transactions (180,000) would be enumerated by a Federally-directed registry. The one-time cost of enumerating these health care providers would be \$9 million (180,000 health care providers × \$50). The cost of enumerating 4,500 new health care providers would be \$225,000 per year, and the cost to process 27,000 updates would be \$270,000, for a total registry cost of \$495,000 per outyear.

Based on the cost estimates in this analysis, option 1 is considerably more expensive than option 2. We believe option 2 to be preferable to option 1 in that Federal programs and Medicaid State agencies would enumerate and update their own health care providers. The enumeration functions of the 5 percent of Medicaid State agencies that may decline to enumerate and update their own health care providers would fall to the Federally-directed registry.

The initial and ongoing cost of developing, implementing and operating the NPS would be borne by the Federal government, depending on the availability of funds; some of this cost could be offset by ceasing current enumeration systems like Medicare's UPIN registry.

The previous analysis relates only to health care providers that are required to have an NPI to perform HIPAA transactions. The remaining health care providers would not be required to obtain an NPI but could do so if they wished to have one for other reasons. We indicated in the Implementation section of this preamble that we would not issue NPIs to these health care providers until the health care providers that needed NPIs to conduct any of the electronic transactions specified in HIPAA had been enumerated. The cost of enumerating the approximately 3 million non-HIPAA-transaction health care providers could be as high as \$150 million (3 million health care providers × \$50). We are soliciting comments on sources of information on non-HIPAA-transaction health care providers. We cannot provide a realistic estimate of the cost of enumerating these health care providers without this additional input.

e. Maintenance of the Database

Another cost implication is the maintenance of the database being developed by the NPS. (We discuss this cost implication in more detail in section IV. Data but believe the general discussion should be repeated here in the impact analysis as well.) That database, known as the National Provider File (NPF), is currently being designed to contain the data elements shown in the table entitled, "National Provider File Data Elements" in section IV. Data, A. *Data Elements*, earlier in this preamble. The majority of the information is used to uniquely identify a health care provider; other information is used for administrative purposes. A few of the data elements are collected at the request of potential users that have been working with HCFA in designing the database prior to the passage of HIPAA. All of these data elements represent only a fraction of the information that would comprise a provider enrollment file. The data elements shown in the "National Provider File Data Elements" table earlier in the preamble, plus cease/effective/termination dates, switches (yes/no), indicators, and history, are being considered as those that would form the NPF. The table includes appropriate comments. The table does not display systems maintenance or similar fields, or health care provider cease/effective/termination dates.

We need to consider the benefits of retaining all of the data elements shown in the table versus lowering the cost of maintaining the database by keeping only the minimum number of data elements needed for unique provider identification. We solicit input on the composition of the minimum set of data elements needed to uniquely identify each type of health care provider. In order to consider the inclusion or exclusion of data elements, we need to assess their purpose and use.

The data elements in the table with a purpose of "I" are being proposed to identify a health care provider, either in the search process (which is electronic) or in the investigation of health care providers designated as possible matches by the search process. These data elements are critical because unique identification is the keystone of the NPS.

The data elements in the table with a purpose of "A" are not essential to the identification processes mentioned above, but they nonetheless are valuable. Certain "A" data elements can be used to contact a health care provider for clarification of information or resolution of issues encountered in the

enumeration process and for sending written communications; other "A" data elements (e.g., Provider Enumerate Date, Provider Update Date, Establishing Enumerator/Agent Number) are used to organize and manage the data.

The data elements in the table with a purpose of "U" are collected at the request of potential users of the information in the system. While not used by the system's search process to uniquely identify a health care provider, Race (with a purpose of "U") is nevertheless valuable in the investigation of health care providers designated as possible matches as a result of that process. In addition, Race is important to the utility of the NPS as a statistical sampling frame. Race is collected "as reported"; that is, it is not validated. It is not maintained, only stored. The cost of keeping this data element is virtually nil. Other data elements (Resident/Intern Code, Provider Certification Code and Number, and Organization Type Control Code) with a purpose of "U", while not used for enumeration of a health care provider, have been requested to be included by some members of the health care industry for reports and statistics. These data elements are optional and do not require validation; many remain constant by their nature; and the cost to store them is negligible.

The data elements that we judge will be expensive to either validate or maintain (or both) are the license information, provider practice location addresses, and membership in groups. We solicit comments on whether these data elements are necessary for the unique enumeration of health care providers and whether validation or maintenance is required for that purpose.

Licenses may be critical in determining uniqueness of a health care provider (particularly in resolving identifies involving compound surnames) and are, therefore, considered to be essential by some. License information is expensive to validate initially, but it is not expensive to maintain because it does not change frequently.

The practice location addresses can be used to aid in investigating possible provider matches, in converting existing provider numbers to NPIs, and in research involving fraud or epidemiology. Location codes, which are discussed in detail in section B. *Practice Addresses and Group/ Organization Options* of this preamble, could be assigned by the NPS to point to and identify practice locations of individuals and groups. Some potential users felt that practice addresses

changed too frequently to be maintained efficiently at the national level. The average Medicare physician has two to three addresses at which he or she practices. Group providers may have many more practice locations. We estimate that 5 percent of health care providers require updates annually and that addresses are one of the most frequently changing attributes. As a result, maintaining more than one practice address for an individual provider on a national scale could be burdensome and time consuming. Many potential users believe that practice addresses could more adequately be maintained at local, health-plan specific levels.

Some potential users felt that membership in groups was useful in identifying health care providers. Many others, however, felt that these data are highly volatile and costly to maintain. These users felt it was unlikely that membership in groups could be satisfactorily maintained at the national level.

We welcome comments on the data elements proposed for the NPF and input as to the potential usefulness and tradeoffs for these elements such as those discussed above.

References

1. Dobson, Allen, Ph.D. and Bergheiser, Matthew; "Reducing Administrative Costs in a Pluralistic Delivery System through Automation;" Lewin-VHI Report prepared for the Healthcare Financial Management Association; 1993.
2. Congressional Budget Office; "Federal Cost Estimate for H.R. 3070;" 1996.
3. Workgroup for Electronic Data Interchange; "Report;" 1993.
4. "Electronic Network Solution for Rising Healthcare Costs;" New Jersey Institute of Technology and Thomas Edison State College, 1995.
5. Faulkner & Gray's Health Data Directory, 1997 Edition; Kurt T. Peters, Publisher (also earlier editions).

List of Subjects in 45 CFR Part 142

Administrative practice and procedure, Health facilities, Health insurance, Hospitals, Medicare, Medicaid.

Accordingly, 45 CFR subtitle A, subchapter B, would be amended by adding Part 142 to read as follows:

Note to Reader: This proposed rule and another proposed rule found elsewhere in this *Federal Register* are two of several proposed rules that are being published to implement the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996. We propose to establish a new 45 CFR Part 142. Proposed Subpart A—General Provisions is exactly the same in each rule unless we have added new sections or definitions to incorporate

additional general information. The subparts that follow relate to the specific provisions announced separately in each proposed rule. When we publish the first final rule, each subsequent final rule will revise or add to the text that is set out in the first final rule.

PART 142—ADMINISTRATIVE REQUIREMENTS

Subpart A—General Provisions

Sec.

- 142.101 Statutory basis and purpose.
- 142.102 Applicability.
- 142.103 Definitions.
- 142.104 General requirements for health plans.
- 142.105 Compliance using a health care clearinghouse.
- 142.106 Effective date of a modification to a standard or implementation specification.

Subparts B—C [Reserved]

Subpart D—National Provider Identifier Standard

- 142.402 National provider identifier standard.
- 142.404 Requirements: Health plans.
- 142.406 Requirements: Health care clearinghouses.
- 142.408 Requirements: Health care providers.
- 142.410 Effective dates of the initial implementation of the national provider identifier standard.

Authority: Sections 1173 and 1175 of the Social Security Act (42 U.S.C. 1320d-2 and 1320d-4).

Subpart A—General Provisions

§ 142.101 Statutory basis and purpose.

Sections 1171 through 1179 of the Social Security Act, as added by section 262 of the Health Insurance Portability and Accountability Act of 1996, require HHS to adopt national standards for the electronic exchange of health information in the health care system. The purpose of these sections is to promote administrative simplification.

§ 142.102 Applicability.

(a) The standards adopted or designated under this part apply, in whole or in part, to the following:

- (1) A health plan.
- (2) A health care clearinghouse when doing the following:
 - (i) Transmitting a standard transaction (as defined in § 142.103) to a health care provider or health plan.
 - (ii) Receiving a standard transaction from a health care provider or health plan.
 - (iii) Transmitting and receiving the standard transactions when interacting with another health care clearinghouse.
- (3) A health care provider when transmitting an electronic transaction as defined in § 142.103.

(b) Means of compliance are stated in greater detail in § 142.105.

§ 142.103 Definitions.

For purposes of this part, the following definitions apply:

Code set means any set of codes used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

Health care clearinghouse means a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements. The entity receives health care transactions from health care providers, health plans, other entities, or other clearinghouses, translates the data from a given format into one acceptable to the intended recipient, and forwards the processed transaction to the appropriate recipient. Billing services, repricing companies, community health management information systems, community health information systems, and "value-added" networks and switches that perform these functions are considered to be health care clearinghouses for purposes of this part.

Health care provider means a provider of services as defined in section 1861(u) of the Social Security Act, a provider of medical or other health services as defined in section 1861(s) of the Social Security Act, and any other person who furnishes or bills and is paid for health care services or supplies in the normal course of business.

Health information means any information, whether oral or recorded in any form or medium, that—

- (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

Health plan means an individual or group plan that provides, or pays the cost of, medical care. Health plan includes the following, singly or in combination:

- (1) Group health plan. A group health plan is an employee welfare benefit plan (as currently defined in section 3(1) of the Employee Retirement Income and Security Act of 1974, 29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care, including items

and services paid for as medical care, to employees or their dependents directly or through insurance, or otherwise, and

- (i) Has 50 or more participants; or
- (ii) Is administered by an entity other than the employer that established and maintains the plan.

(2) Health insurance issuer. A health insurance issuer is an insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance.

(3) Health maintenance organization. A health maintenance organization is a Federally qualified health maintenance organization, an organization recognized as a health maintenance organization under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as such a health maintenance organization.

(4) Part A or Part B of the Medicare program under title XVIII of the Social Security Act.

(5) The Medicaid program under title XIX of the Social Security Act.

(6) A Medicare supplemental policy (as defined in section 1882(g)(1) of the Social Security Act).

(7) A long-term care policy, including a nursing home fixed-indemnity policy.

(8) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.

(9) The health care program for active military personnel under title 10 of the United States Code.

(10) The veterans health care program under 38 U.S.C., chapter 17.

(11) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in 10 U.S.C. 1072(4).

(12) The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*).

(13) The Federal Employees Health Benefits Program under 5 U.S.C. chapter 89.

(14) Any other individual or group health plan, or combination thereof, that provides or pays for the cost of medical care.

Medical care means the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any body structure or function of the body; amounts paid for transportation primarily for and essential to these items; and amounts paid for insurance covering the items and the

transportation specified in this definition.

Participant means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan that covers employees of that employer or members of such an organization, or whose beneficiaries may be eligible to receive any of these benefits.

"Employee" includes an individual who is treated as an employee under section 401(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 401(c)(1)).

Small health plan means a group health plan or individual health plan with fewer than 50 participants.

Standard means a set of rules for a set of codes, data elements, transactions, or identifiers promulgated either by an organization accredited by the American National Standards Institute or HHS for the electronic transmission of health information.

Transaction means the exchange of information between two parties to carry out financial and administrative activities related to health care. It includes the following:

- (1) Health claims or equivalent encounter information.
- (2) Health care payment and remittance advice.
- (3) Coordination of benefits.
- (4) Health claims status.
- (5) Enrollment and disenrollment in a health plan.
- (6) Eligibility for a health plan.
- (7) Health plan premium payments.
- (8) Referral certification and authorization.
- (9) First report of injury.
- (10) Health claims attachments.
- (11) Other transactions as the Secretary may prescribe by regulation.

§ 142.104 General requirements for health plans.

If a person conducts a transaction (as defined in § 142.103) with a health plan as a standard transaction, the following apply:

- (a) The health plan may not refuse to conduct the transaction as a standard transaction.
- (b) The health plan may not delay the transaction or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction.
- (c) The health information transmitted and received in connection with the transaction must be in the form of standard data elements of health information.
- (d) A health plan that conducts transactions through an agent must

assure that the agent meets all the requirements of this part that apply to the health plan.

§ 142.105 Compliance using a health care clearinghouse.

(a) Any person or other entity subject to the requirements of this part may meet the requirements to accept and transmit standard transactions by either—

- (1) Transmitting and receiving standard data elements, or
- (2) Submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse and receiving standard data elements through the health care clearinghouse.

(b) The transmission, under contract, of nonstandard data elements between a health plan or a health care provider and its agent health care clearinghouse is not a violation of the requirements of this part.

§ 142.106 Effective date of a modification to a standard or implementation specification.

HHS may modify a standard or implementation specification after the first year in which HHS requires the standard or implementation specification to be used, but not more frequently than once every 12 months. If HHS adopts a modification to a standard or implementation specification, the implementation date of the modified standard or implementation specification may be no earlier than 180 days following the adoption of the modification. HHS determines the actual date, taking into account the time needed to comply due to the nature and extent of the modification. HHS may extend the time for compliance for small health plans.

Subpart B—C—[Reserved]

Subpart D—National Provider Identifier Standard

§ 142.402 National provider identifier standard.

(a) The provider identifier standard that must be used under this subpart is the national provider identifier, which is supported by the Health Care Financing Administration. The national provider identifier is an 8-position alphanumeric identifier, which includes as the eighth position a check digit.

(b) The file containing identifying information for each health care provider for its national provider identifier includes the following information:

- (1) The national provider identifier.

(2) Other identifiers, such as the social security number (optional), employer identification number for some provider types, and identifying numbers from other health programs, if applicable.

(3) Provider names.

(4) Addresses and associated practice location codes.

(5) Demographics (date of birth, State/country of birth, date of death if applicable, race (optional), sex).

(6) Provider type(s), classification(s), area(s) of specialization.

(7) Education for certain provider types, State licensure for certain provider types (optional), and board certification (optional for some classifications).

§ 142.404 Requirements: Health plans.

Each health plan must accept and transmit the national provider identifier of any health care provider that must be identified by the national provider identifier in any standard transaction.

§ 142.406 Requirements: Health care clearinghouses.

Each health care clearinghouse must use the national provider identifier of any health care provider that must be identified by the national provider identifier in any standard transaction.

§ 142.408 Requirements: Health care providers.

(a) Each health care provider must obtain, by application if necessary, a national provider identifier.

(b) Each health care provider must accept and transmit national provider identifiers wherever required on all transactions it accepts or transmits electronically.

(c) Each health care provider must communicate any changes to the data elements in its file in the national provider system to an enumerator of national provider identifiers within 60 days of the change.

(d) Each health care provider may receive and use only one national provider identifier. Upon dissolution of a health care provider that is a corporation or a partnership, or upon the death of a health care provider who is an individual, the national provider identifier is inactivated.

§ 142.410 Effective dates of the initial implementation of the national provider identifier standard.

(a) **Health plans.** (1) Each health plan that is not a small health plan must comply with the requirements of §§ 142.104 and 142.404 by (24 months after the effective date of the final rule in the *Federal Register*).

(2) Each small health plan must comply with the requirements of

§§ 142.104 and 142.404 by (36 months after the effective date of the final rule in the *Federal Register*).

(b) **Health care clearinghouses and health care providers.** Each health care clearinghouse and health care provider must begin using the standard specified in § 142.402 by (24 months after the effective date of the final rule in the *Federal Register*).

Authority: Sections 1173 and 1175 of the Social Security Act (42 U.S.C. 1320d-2 and 1320d-4).

Dated: March 27, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98-11692 Filed 5-1-98; 9:05 am]

BILLING CODE 4120-01-P

federal register

Thursday
May 7, 1998

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 422
Medicare Program: Waiver Requirements
and Solvency Standards for Provider-
Sponsored Organizations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 422

[HCFA-1011-IFC]

RIN 0938-A183

Medicare Program; Waiver Requirements and Solvency Standards for Provider-Sponsored Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with a request for comments implements authority to waive, in the case of provider-sponsored organizations (PSOs) that meet certain criteria, the requirement that Medicare+Choice organizations be licensed by a State as risk-bearing entities. The waivers will be approved only under certain conditions where the State has denied or failed to act on an application for licensure.

This rule also establishes solvency standards that certain entities must meet to contract as PSOs under the new Medicare+Choice program. These standards apply to PSOs that have received a waiver of the requirement that Medicare+Choice organizations be licensed by a State as risk-bearing entities.

DATES: *Effective date:* These regulations are effective on June 8, 1998.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on July 6, 1998.

ADDRESSES: Mail an original and 3 copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-1011-IFC, P.O. Box 26688, Baltimore, MD 21207-5187.

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-1011-IFC. Comments received timely will be available for public

inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

If you wish to submit comments on the information collection requirements contained in this interim final rule, you may submit comments to:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2-26-17, 7500 Security Boulevard, Baltimore, MD 21244-1850, Attn: John Burke, HCFA-1011-IFC Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

A. Current Medicare Contracting Program

Sections 1876 (g)(1) and (h)(1) of the Social Security Act (the Act) authorize the Secretary to enter into risk-sharing and cost contracts with eligible organizations to provide certain health benefits to members. Section 1876(b) of the Act requires an eligible organization, that may be a health maintenance organization (HMO) or a competitive medical plan (CMP), to be organized under the laws of a State. Additionally, section 1876(b) requires that such entities assume full financial risk on a prospective basis for the provision of health care services, and make adequate provisions against the risk of insolvency.

B. Current Regulations

Regulations at title 42 of the Code of Federal Regulations (CFR), Part 417, reflect the above requirement that Medicare contracting organizations be organized under State law, and make adequate provision against the risk of insolvency. Specifically, regulations at 42 CFR 417.120 require that Medicare contracting HMOs and CMPs have a

fiscally sound operation as demonstrated by the following:

- Total assets greater than total unsubordinated liabilities.
- Sufficient cash flow and adequate liquidity to meet obligations as they become due.
- A net operating surplus or a financial plan.
- An insolvency protection plan.
- A fidelity bond or bonds, procured and maintained by the HMO, in an amount fixed by its policy-making body but not less than \$100,000 per individual, covering each officer and employee entrusted with handling of its funds. The bond may have reasonable deductibles based upon the financial strength of the HMO.
- Insurance policies or other arrangements, secured and maintained by the HMO and approved by HCFA to insure the HMO against losses arising from professional liability claims, fire, theft, fraud, embezzlement and other casualty risks.

Since section 1876 of the Act requires that Medicare contracting HMOs and CMPs be organized under the laws of any State, these entities are subject to State laws regarding financial solvency. Many States follow the financial solvency provisions of the HMO Model Act of the National Association of Insurance Commissioners (NAIC). The financial requirements of the Model HMO Act are distinct from those of the Health Care Financing Administration (HCFA).

C. Balanced Budget Act of 1997

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Public Law 105-33), enacted August 5, 1997, added new sections 1851 through 1859 to the Act. Those sections establish a new Medicare+Choice (M+C) program under part C of title XVIII of the Act. Part C is designed to give beneficiaries access to health plan choices that go beyond the original Medicare fee-for-service program and existing Medicare HMOs. Once the M+C program is implemented, an individual entitled to Medicare Part A and Part B will be able to elect benefits either through original Medicare or an M+C plan, depending on availability in their area. Under Part C, the M+C plans that may be offered are coordinated care plans (e.g., HMOs, provider-sponsored organizations (PSOs), and preferred provider organizations (referred to as PPOs)), private-fee-for-service plans, and demonstration medical savings account (MSA) plans (that is, a combination of a high deductible, catastrophic insurance plan with a contribution to a Medicare+Choice account).

Regulations for the overall implementation of the M+C program are required by the BBA to be published by June 1, 1998. Those regulations will be incorporated into Part 422 of title 42 of the CFR. Provisions enacted by the BBA and the forthcoming M+C regulations establish broad and comprehensive requirements for contracting as an M+C plan, including basic benefits, payment, access to service, quality assurance, beneficiary hold harmless, continuation of benefits, appeals mechanisms, marketing and enrollment processes. Those overall M+C regulations will apply to PSOs as well.

Section 1851(a)(2) of the Act explicitly provides for participation of a PSO in the M+C program as a coordinated care plan. A PSO is described in section 1855(d) of the Act as a public or private entity—

- That is established or organized, and operated, by a health care provider or group of affiliated health care providers;
- That provides a substantial proportion of the health care items and services directly through the provider or affiliated group of providers; and
- With respect to which the affiliated providers share, directly or indirectly, substantial financial risk for the provision of such items and services and have at least a majority financial interest in the entity.

We recently published an interim final rule with an opportunity for public comment setting out this definition, clarifying certain terms, and establishing related requirements. (This PSO definitions rule established 42 CFR Part 422 and, more specifically, Subpart H, which is designated for the PSO provisions.) The terms and requirements related to the definition of a PSO are now found at §§ 422.350 through 422.356. Here, in this interim final rule with opportunity for public comment, we focus on two more portions of the law established specifically for PSOs and the M+C program: the Federal waiver of State licensure and the solvency standards that will apply to PSOs that have obtained such a waiver.

Section 1855(a)(2) of the Act establishes a special exception for PSOs to the otherwise applicable requirement for State licensure if certain conditions occur. This interim final rule implements the PSO waiver provisions specified in the BBA, and makes clarifications. In order to assist organizations that are considering applying to become PSOs under the M+C program, we determined that the waiver provisions should not be delayed until the June 1, 1998 regulation is published. As with the PSO definitions

rule mentioned above, early publication of these PSO provisions is desirable because of requirements that must be met before contract application.

Section 1856(a) of the Act provides that the Secretary establish through a negotiated rulemaking process the solvency standards that entities will be required to meet if they obtain a waiver of the otherwise applicable requirement that they be licensed by a State. We note here that based on §§ 422.352(a) and 422.380, State-licensed organizations that meet the PSO definition (see §§ 422.350 through 356) may qualify for the minimum enrollment standards established under Section 1857(b) of the Act but are not subject to these solvency standards.

The solvency standards in this interim final rule with comment period are a product of the negotiated rule making process. This rule does not necessarily conclude the negotiated rulemaking process because the Committee may be reconvened to consider public comments that are received.

II. Waiver of State Licensure Requirement

A. Background

1. Statutory Basis

A fundamental requirement of the M+C program, as set forth under new section 1855(a)(1) of the Act, is that an M+C organization must be "organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers an M+C plan." However, section 1855(a)(2) of the Act establishes an exception to this requirement by allowing certain organizations established or operated and controlled by providers, and known in the BBA as PSOs, to obtain from the Secretary a Federal waiver of the State licensure requirement under certain circumstances. This interim final rule with comment sets forth regulations for implementing that waiver.

Unlike the regulations contained in this rule relating to PSO solvency and capital adequacy, the waiver provisions were not developed through the negotiated rulemaking process. The regulations described in this section were developed by HCFA under its rulemaking authority.

2. State Licensure and the Medicare Program

Under section 1876(b) of the Act and implementing regulations at 42 CFR Part 417, Medicare contracting HMOs and CMPs must be organized under the laws of a State. As used in section 1876 of the

Act, the term "HMO" means a Federally qualified HMO and the term "CMP" means a prepaid health plan that is likely regulated by the State as an HMO, but is not Federally qualified. Thus a provider sponsored health plan could apply to contract with HCFA as an HMO or a CMP if it became Federally qualified or met the definition of CMP, and satisfied other section 1876 requirements. In recent years, several States have adopted licensure laws for PSOs (sometimes known as integrated or organized delivery systems), thereby creating another licensure vehicle and avenue for contracting with Medicare. (Some State PSO laws, however, are limited in scope and licensed entities would not meet the CMP requirements).

3. Federal Waivers and PSO Applications

As indicated above, section 1855(a)(1) requires that M+C organizations be licensed as risk-bearing entities under the laws of the State. Section 1855(a)(2) of the Act provides an exception to this requirement for PSOs. PSOs are the only organization eligible to participate in M+C without State licensure. It is clear from the statute, however, that all organizations, including those established by providers, must seek State licensure as the initial step toward an M+C contract. Only under specific conditions, as described below, will the organization be permitted to forego the preliminary and fundamental requirement to be State-licensed as a risk-bearing entity.

If an organization believes that the circumstances of its State application comply with one of the conditions for a waiver, it must submit to HCFA a completed waiver request form. The request form, that the Office of Management and Budget approved on April 2, 1998, (form #0938-0722) is available through HCFA, and is posted on the HCFA web site at <http://www.hcfa.gov/Medicare/implusc.htm>. HCFA will make a determination to approve or disapprove a waiver within 60 days of receipt of a substantially complete request. If the waiver request is approved, the organization will be considered eligible for a waiver, and then may submit its contract application to HCFA. (The PSO application form will be posted at the aforementioned Internet address in the near future.) It is through the application process that the organization must demonstrate to HCFA's satisfaction that it meets the PSO definitions and requirements as set forth in 42 CFR 422.350 through 422.356, as well as the solvency standards established later in this interim final rule. If it meets the

definition, the organization will be considered a PSO and remains eligible for a waiver.

Given the 60-day time period permitted HCFA to approve a waiver request under section 1855(a)(2)(F) of the Act, we felt it would be impossible in many cases to simultaneously process the waiver request and determine whether an organization is a PSO as defined under § 422.350 through § 422.356. This determination may require an extensive review and verification of the organization's structure, ownership or partnership arrangements, contracts and payment arrangements. Therefore, as described above, the 60-day maximum time period will apply to determining whether the organization is eligible for a waiver, as required by law. The determination that the organization is in fact a PSO will occur once it is eligible for a waiver and has submitted an application for an M+C contract.

B. Waiver Provisions

In this interim final rule, we are establishing new provisions at § 422.370 through § 422.378 for purposes of implementing section 1855(a)(2) of the Act. Because entities applying for a waiver as yet will not have been determined to meet the PSO definition and requirements of subpart H, the regulation text refers to these entities as "organizations."

Section 422.370 implements the authority under section 1855(a)(2)(A) of the Act to waive the State licensure requirement for M+C organizations contained in section 1855(a)(1) and restates the two basic conditions for doing this. First, the rule requires organizations interested in a waiver to file a request by no later than November 1, 2002, a time limit specified by the statute. Second, HCFA must determine whether the organization meets one of the grounds for a waiver listed in § 422.372.

Section 422.372 of the rule establishes the basis for a waiver as set forth in sections 1855(a)(2)(B), (C), and (D) of the Act. These three conditions and a fourth condition identified by HCFA are described below. In order for three of the conditions to be effectuated, the organization must have applied for a State license before requesting a waiver. By requiring that the organization apply for "the most closely appropriate" license (or authority), we are clarifying that the type of license must relate to the nature of M+C coordinated care plans; that is, health plans providing coordinated, comprehensive benefits through a health care delivery net work on a fixed, prepayment basis. We are

requiring this to ensure that organizations requesting and obtaining waivers will likely meet the PSO definition and M+C requirements during the application stage. We expect that for most States the most appropriate license available will be an HMO license, although this may change as States adopt PSO or modify current licensure laws. It is very unlikely that we will approve a PSO waiver based on an application for an indemnity insurance license, a PPO license, any license or authority to provide limited health services, or a limited license to bear risk for an HMO as a downstream contractor.

Section 422.372(a) sets out the first basis on which an organization may establish waiver eligibility, that is, the State failed to complete action on the licensing application within 90 days of the date the State received a substantially complete application. (See section 1855(a)(2)(B).) The 90-day period may begin any time after enactment of the BBA. It is counted from the date the State received a "substantially complete application." In order to clarify the term "substantially complete application," we consulted several parties for technical assistance, and intend to make determinations as follows:

(1) If the State has notified the organization, in writing, that the organization has submitted a substantially complete application, the date of that notification will be considered the date the State received a substantially complete application.

(2) If the State has not notified the organization, in writing, as to the completeness of its application within 60 days of the date of submission of an application, we will consider the date the organization submitted its initial application to be the date the State received a substantially complete application.

(3) If the organization can demonstrate to HCFA that it has submitted all of the information requested in an incompleteness notification from the State and the State still regards the application as incomplete or fails to notify the organization as to the status of its application within 30 days from the date it receives the organization's submission of the additional information requested, then HCFA will consider the date the State received the additional information requested to be the date the State received a substantially complete application.

(4) In a dispute between an organization and the State over whether the organization has submitted a

substantially complete application or over the date the State received a substantially complete application, HCFA will make the final determination based on consultation with the organization and the State.

We believe that this process for determining the date the State received a substantially complete application is consistent with Congressional intent that an organization must make an earnest attempt to become State licensed before requesting a waiver. This earnest attempt includes working with the State in good faith to submit all of the information necessary to have a license either approved or denied. At the same time, however, we also believe that State licensing agencies should be working in good faith with the organization to either approve or deny an application in a timely manner.

We believe the process outlined above balances the concerns of the States and of the organization. However, given the complexity of implementing this provision, we invite comment on this approach.

Paragraph (b) of § 422.372 establishes the second basis for a waiver. Here, waiver eligibility results from the organization experiencing discriminatory treatment in the State's denial of its application. As provided in the statute, discriminatory treatment can occur in two ways, as follows:

- The State has denied the licensure application on the basis of any material requirements, procedures or standards (other than solvency requirements) that the State does not generally apply to other entities engaged in a substantially similar business.

- The State required, as a condition of licensure, that the organization offer any product or plan other than an M+C plan.

Thus, an organization will be eligible for a waiver under this provision if the State imposes different requirements, and these different requirements are the basis of a license denial. In addition, the organization must demonstrate what requirement, procedure, or standard it failed to meet, and how this differs from what is generally applied to other similar plans. In order to demonstrate that the State does not "generally apply" the requirement on which the denial was made, the organization must show that the requirement is more of an exception and not usually applied to similar health plans. For example, if a pattern exists where most HMOs within a State are not held to a requirement, the PSO will be eligible for a waiver based on discriminatory treatment.

By "substantially similar business" we mean entities that provide and manage a comprehensive set of health

care services, and are prepaid a fixed amount in advance and without regard to the frequency or cost of services when utilized. Such entities are likely to include HMOs, and may include certain PPOs and State-licensed PSOs. We do not anticipate considering indemnity insurers, PPOs reimbursed on a discounted fee-for-service basis, or "single-service" managed care plans as being engaged in a "substantially similar business" to the waiver-requesting organization.

We considered a broader use of the term "engaged in a substantially similar business", but believe our interpretation is consistent with the PSO provisions in section 1855 of the Act. We believe an expanded interpretation, which includes all risk-bearing entities (for example, indemnity insurers) does not comply with the language of the statute. In processing waiver requests under this provision at this time, we anticipate looking to the requirements, procedures and standards that a State places on HMOs.

The second criterion for discriminatory treatment, set forth in § 422.372(b)(2), is that the State requires the organization to offer its health plan to other than the Medicare population. Here, an organization would have to demonstrate only that it was denied a license because the health plan would serve only Medicare beneficiaries. We believe this provision permits the establishment of Medicare-only PSOs, and establishes a Federal preemption over any State laws that would prevent it.

Paragraph (c) of § 422.372, the third basis for approving a waiver of the State licensure requirement, pertains to a State imposing different requirements related to financial solvency. Two conditions, or criteria are specifically addressed in this paragraph. (See 1855(a)(2)(D)(i) and (ii).) Under § 422.372(c)(1), a waiver may be granted if the State has denied the licensure application, in whole or in part, based on the organization's failure to meet solvency requirements that are different from those set forth in §§ 422.380 through 422.390. This provision incorporates the new regulatory citation for PSO solvency standards developed through negotiated rulemaking as established in this rule.

An issue arose regarding waiver eligibility when a State has adopted the Medicare PSO solvency standards and denies a license based solely on a provision of the solvency standards that give the regulator discretion. For example, it is likely that while using the same solvency standards, HCFA and States could reach different decisions

regarding the acceptance of administrative infrastructure to reduce the minimum net worth amount requirement. If a State does not permit such a reduction, the issue arose whether HCFA would consider this a basis for a waiver. We have decided to permit requests for waivers in these situations. As documentation, we will require organizations to submit all information relevant to the specific solvency requirement in question, including any State correspondence. As part of our review, we will likely seek input from the State. If we concur with the State's determination regarding the specific discretionary issue, the waiver request will be denied. However, if we make a decision, that differs from the State's, then the waiver will be approved and the organization may submit an M+C application. We considered acceding to States' decisions where a regulator's discretion is warranted under the PSO solvency rules, but concluded that this might overly restrict the availability of waivers.

The second condition, for a waiver under § 422.372(c) is that the State has imposed documentation or information requirements, or other requirements, procedures or standards related to solvency or other material requirements that are different from those imposed by HCFA in carrying out §§ 422.380 through 422.390. As with the previous condition, we believe that a PSO may seek a waiver if a State denies a license based on its exercise of discretion in requiring different information or documentation than HCFA. Therefore, documentation, information, and other requirements which may stem from such discretion can be the sole basis for granting a waiver under this particular provision. Our position on this issue is based upon the intent of the Congress, as reflected in the Conference Report accompanying the BBA, that the State not impose documentation or information requirements "that are dilatory or unduly burdensome and that are not generally applied to other entities engaged in a substantially similar business." (H.R. Rep. No. 105-217, 105th Congress, Session 632 (1997))

The fourth basis for approving a waiver of the State licensure requirement, paragraph (d) of § 422.372, is that the appropriate State licensing authority has notified the organization in writing that it will not accept their licensure application. While this grounds for approval is not in the Act, we are using our authority under section 1856(b)(1) to establish standards to add this provision based on concerns that

the Act allows for a waiver only if the PSO submits an application to the State. We have identified a concern that some State agencies may refuse to accept licensing applications from PSO-like organizations, thus preventing these organizations from requesting a waiver until 90 days have transpired.

We believe this provision facilitates the waiver process and conforms with the intent of section 1855(a)(2) of the Act. If it is clear that a State licensing agency will not act on an application as described here, both the State and the organization can save time and resources by permitting the organization to go directly to HCFA for a waiver.

In § 422.374 we clarify certain conditions and provisions related to the waiver request and approval process. Paragraph (a) clarifies section 1855(a)(2)(f) of the Act, which requires organizations seeking a waiver to submit a substantially complete waiver request. Section 422.374(a) specifies that to be substantially complete, a request must clearly demonstrate and document the organization's eligibility for a waiver. HCFA will notify the organization if the request is not complete, and will work with the organization to determine the information necessary to make a decision on the request. HCFA will have final discretion in determining whether a waiver request is substantially complete.

Paragraphs (b) and (c) of § 422.374 provide that HCFA will act promptly (within 60 days) to grant or deny a substantially complete waiver request and allow organizations that have been denied a waiver request to submit subsequent requests until November 1, 2002. (See section 1855(a)(2)(F).)

Paragraph (d) of § 422.374 establishes that the waiver will take effect upon the effective date of the M+C contract. We have added this provision to clarify that a waiver is linked to the contract and is not active, or operable, without an effective M+C contract. This provision helps organizations seeking a waiver, because the waiver is limited to a one-time, three-year period. If the waiver is made effective immediately upon approval of a waiver request and the approval of the M+C contract takes longer than anticipated, the three-year waiver period would be running and the organization could lose a significant amount of time that it is eligible to operate without a State license. If the contract application is denied, an even greater amount of time may elapse by the time the organization can develop, submit and gain approval of a revised contract application.

Paragraph (e) of § 422.374 gives HCFA the right to revoke a waiver if we

subsequently find that the organization's M+C application is significantly different from the application submitted to the State. Because Congress intended for organizations to make an earnest attempt to obtain a State license before applying for a Federal waiver, we believe that significant changes from the State application to the M+C waiver application could undermine this policy. We believe that requiring that the M+C contract application be very similar to the application submitted for a State license addresses two possible situations. First, it prevents organizations from circumventing the intent for them to achieve State licensure if possible. It also assures States the right to license an organization that has evolved or reorganized from the time of its first application; that is, the organization has undergone some significant changes and the application for all intent and purposes is "new."

Organizations that reapply for an M+C contract because they were not successful M+C applicants do not have to reapply to the State or re-submit a waiver request as long as the revised application does not invoke paragraph (e) of § 422.374.

Section 422.376 is added to establish parameters of the waiver. Paragraph (a) of this section restates section 1855(a)(2)(E)(i) of the Act, the waiver is effective only for the particular State for which it is granted and does not apply to any other State. It also clarifies that an organization must be licensed or request and gain waiver approval for each State where it wishes to operate an M+C plan.

Paragraph (b) of § 422.376 incorporates section 1855(a)(2)(E)(ii) of the Act by limiting the waiver to a 36-month period. We have modified this provision, however, to extend the period through the end of the calendar year in which the 36-month period ends unless the waiver is revoked based on paragraph (c) of this section. We made this modification because we were concerned about terminating the waiver and the M+C contract during the middle of a contract year. Such mid-year terminations are unreasonable, disruptive, costly, and could unnecessarily jeopardize the health care of beneficiaries enrolled in a PSO. By waiting until the end of the contract year to end a waiver (and thus the M+C contract), beneficiaries will be able to transition into other M+C plans through the annual enrollment process.

Paragraph (c) of § 422.376, mid-period revocation, was added to clarify that the waiver will cease before the end of the

36 month period if the organization's M+C contract is terminated or if the organization becomes State licensed. This provision emphasizes again the relationship between the waiver and the contract; namely that the waiver is not effective without a contract in effect, and the contract cannot be effective without the waiver. It also restates the Act by conditioning the waiver upon the organization's compliance with State consumer protection and quality standards as discussed further below.

The last section of the waiver provisions, § 422.378, addresses the relationship between State law and waived organizations, or PSOs. These provisions are a codification of sections 1855(a)(2)(E)(iii) and (iv), and 1855(a)(2)(G) of the Act. Section 422.378(a) establishes a general Federal preemption of any State law related to licensing the organization that interferes with contracting under the M+C program. Section 422.378(b), on the other hand, establishes the State's right to require waived organizations to comply with consumer protection and quality standards applicable to all other M+C plans in the State, as long as the standards are consistent with Medicare requirements. Paragraphs (c) and (d) of § 422.378 establish processes for ensuring compliance with § 422.378(b). We are developing a memorandum of understanding with the NAHC to implement §§ 422.378 (b), (c) and (d).

III. PSO Solvency Standards

A. Background

1. Negotiated Rulemaking Act

The Negotiated Rulemaking Act (Pub. L. 101-648), establishes a framework for the conduct of negotiated rulemaking. Negotiated rulemaking is a process whereby a rule (generally a proposed rule) is developed by a committee of representatives of interests that are likely to be significantly affected under the rule and includes a Federal government representative. The goal of the process is to reach consensus on the text or content of the rule and then publish that text for public comment. Consensus is defined in the Negotiated Rulemaking Act as unanimous concurrence among the interests represented. However, the committee could agree on another specified definition. The committee is assisted by a neutral facilitator.

The agency responsible for the rule may use the services of an impartial convener to identify potential participants in the negotiation, determine whether they are willing to participate, inform them about the process, discuss issues with potential

participants, and make recommendations regarding how to make the process work. The committee must be chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App.2).

2. Establishing the Process

To expedite the development of PSO solvency standards, Congress modified the negotiated rulemaking process by requiring that this rule be published as an interim final rule with comment, shortening the period for forming the committee, establishing a shortened period for committee negotiations, and setting a target date for publication of the interim final rule for April 1, 1998. (See section 1856(a) of the Act.)

We selected the Department of Health and Human Services Departmental Appeals Board (DAB) to serve as the convener and facilitator for these negotiations because of their reputation for impartiality, as well as their experience and availability. The DAB has familiarity with HHS programs and experience convening and facilitating negotiated rulemaking on Medicare issues such as the Medicare Hospice Wage Index and the Shared-risk Exemption to Federal Health Care Anti-Kickback Provisions. Further, a poll of parties interested in the development of PSO solvency standards indicated unanimous support for using the DAB to facilitate the negotiated rulemaking.

During the convening process, the DAB interviewed over 50 individuals from outside the Federal government, representing over 25 different associations, coalitions or companies. On September 8, 1997, the DAB issued a convening report recommending participants for the negotiated rulemaking committee (the Committee). This recommendation was based on an evaluation of the potential effects of the rule on groups that indicated a desire to serve on the Committee. When any differences among groups were identified, the convener sought information about how these differences were relevant with respect to solvency standards, whether those differences could be adequately represented by other groups, and whether there had been demonstrated concern about solvency standards during the legislative debate. The report also identified issues to be negotiated and potential barriers to consensus.

On September 23, 1997, we published in the *Federal Register* (62 FR 49649) a notice of intent to form a negotiated rulemaking committee and notice of meetings. Based on the recommendations contained in the convener's report, the notice appointed

representatives of interests likely to be affected by PSO solvency standards to the negotiated rulemaking Committee. Committee members included the—

American Association of Health Plans,
American Association of Retired Persons,
American Hospital Association,
American Medical Association,
American Medical Group Association,
Blue Cross/Blue Shield Association,
Consortium on Citizens with Disabilities,
Federation of American Health Systems,
Health Insurance Association of America,
National Association of Insurance Commissioners,
National Rural Health Association
Coalition of the Catholic Hospital Association and Premier Health Care
Coalition of the American Association of Homes and Services for the Aging, the American Health Care Association, the Home Health Services and Staffing Association, and the National Association for Home Care; and
Coalition of the Independent Practice Association of America and the National Independent Practice Association.

In addition the Committee included a representative from HCFA.

We requested public comment on whether we had identified the key solvency issues to be negotiated by the Committee; if we had identified the interests that will be affected by key issues listed; and whether the party we were proposing to serve as the neutral facilitator was acceptable. We also sought comments on several key definitions related to the negotiated rulemaking and the forthcoming rulemaking for Medicare+Choice organizations. In general, commenters supported the notice and as a result no changes were made to the Committee membership or issues to be discussed.

3. Summary of the Committee Process

The Committee met seven times from October 1997 to March 1998. Notices of meetings were published in the *Federal Register* on September 23, 1997 (62 FR 49649) and February 13, 1998 (63 FR 7359). Minutes for each of these meetings are posted on the M+C web page at <http://www.hcfa.gov/Medicare/implusc.htm>. At the first meeting, held October 20, 21, and 22, 1997, business and health industry analysts made presentations that related to health plan solvency. Also the Committee discussed how to address the principle solvency issues and how to proceed in developing solvency standards. The Committee devoted the remaining series of 3-day meetings, and a final 1-day meeting, primarily to substantive discussion of solvency standards for Federally waived PSOs.

The Committee's deliberations focused on the following issues: the stages at which to evaluate a PSO's

financial solvency, the amount, composition, and location of assets and liabilities that PSOs must maintain to be considered financially solvent; the planning and data collection necessary to track PSO solvency; and the mechanisms needed to protect beneficiaries if a PSO becomes insolvent.

On March 5, 1998, the Committee reached consensus on a PSO solvency standards proposal. All Committee members signed an agreement indicating unanimous concurrence with a written Committee statement of the Committee's recommendations for PSO solvency standards.

In the agreement, HCFA agreed that, to the maximum extent possible and consistent with legal obligations, it will draft an interim final rule consistent with the Committee statement. We believe that the PSO solvency provisions of the interim final rule published herein are fully consistent with the Committee's recommendations, with some additional clarifications. Committee members have agreed not to submit negative comments on the interim final rule. If, however, a member believes any provision of this rule incorrectly reflects the Committee statement, the member may comment on the matter. If necessary, the Committee will be reconvened at a later date.

4. Summary of the Committee's Deliberations

The Committee agreed that there are three stages at which to consider solvency standards: initially at start-up, as an ongoing business operation, and during insolvency. While these stages are only concepts that do not have exact starting or finishing points, the Committee felt that they are a useful framework for setting solvency standards at different stages of operation. These stages are translated in regulation to the application stage, the stage during which the M+C contract is in effect, and insolvency.

The initial stage represents the period of activity prior to the first day of actual operation as an M+C contracting PSO. It includes the periods when an organization will request a Federal waiver of State licensure and will apply for an M+C contract. In this preamble and the regulation, the term PSO is reserved for organizations that are: approved for a Federal waiver, determined to meet the definition and related requirements of a PSO, and awarded a Medicare+Choice contract.

The ongoing stage represents the period that begins when a PSO's M+C contract becomes effective. This is when a PSO will assume responsibility for

providing services to Medicare beneficiaries for a fixed payment. During this stage, the appropriate solvency standards are affected by the number of Medicare enrollees for which a PSO is responsible. Lastly, the insolvent stage represents the period beginning when a PSO's total liabilities exceed its total assets.

Using this three stage framework, the Committee developed alternate proposals regarding the amount, composition, and status of assets and liabilities that PSOs must maintain in order to be considered fiscally sound and financially solvent. The alternate proposals reflected the various interests of the Committee members and their constituencies. These proposals formed the basis for negotiations and the subsequent Committee statement and consensus agreement.

To develop the solvency standards, the Committee considered what financial, capital and other factors must be present to assure that a PSO is fiscally sound. Specifically, the Committee considered requirements for net worth, financial plans, liquidity, financial indicators, and beneficiary protection.

B. Net Worth Amount Requirements

The Committee considered the net worth requirements for the initial and ongoing stages. In each stage, the Committee deliberated on the appropriate amount and composition of assets to be counted toward the net worth requirement. The Committee agreed that in the initial stage an organization should have an initial minimum net worth amount of \$1,500,000. This is the same minimum net worth amount that is specified in the HMO Model Act, with a significant difference. The Committee agreed to allow HCFA to reduce the net worth requirement by up to \$500,000 if the PSO has available to it an administrative infrastructure that HCFA considers appropriate to reduce, control or eliminate start-up costs associated with the administration of the organization. Such infrastructure would include office space and equipment, computer systems, software, management services contracts and personnel recruitment fees. In recognizing a reduction of up to \$500,000 for these costs, the Committee acknowledged that the minimum net worth drops from \$1,500,000 to \$1,000,000 as soon as the PSO is approved and that the \$500,000 difference was to account for start-up costs. HCFA has the discretion to approve the administrative costs that an organization offers to obtain a reduction of up to \$500,000.

For the ongoing stage, the Committee agreed that the minimum net worth should be at least \$1,000,000. This is the minimum specified in the HMO Model Act for the ongoing stage. The difference between the ongoing minimum net worth and the initial minimum net worth reflects the Committee belief that PSOs will incur administrative costs in the initial stage that will not be repeated in the ongoing stage. While the floor on the minimum net worth amount in the ongoing stage is \$1,000,000, the Committee agreed to subject PSOs to a series of "greater of" tests to determine an appropriate minimum net worth. The "greater of" tests link the minimum net worth amount to the size of annual premium revenues, the amount of uncovered health care expenditures, and the amount of health care expenditures paid to non-capitated and non-affiliated providers. These factors are indirectly related to the size of the plan (that is, number of enrollees) and the amount of risk being assumed.

The Committee discussed whether to include, among the factors considered in setting the ongoing net worth amount for PSOs, the authorized control level (i.e., the point in a financial crisis where a State regulator is authorized to take control of an organization) capital requirement derived from the NAIC Health Care Organization Risk Based Capital (RBC) Formula. RBC is a new formula adopted by the NAIC to determine the minimum capital level that an organization should have before regulators become concerned about its solvency. The RBC level depends on the riskiness of the company's assets, investments, and products. RBC has several trigger points. As currently envisioned, if a company's actual net worth falls below the trigger point called the authorized control level, the State's insurance commissioner may take control of the company. The RBC for health organizations has not yet been adopted by States for setting minimum net worth requirements.

The RBC formula by design will be used by States to monitor the financial viability of State-regulated managed care plans. It has not yet been adopted by States in setting the minimum net worth amount requirements. The Committee agreed that HCFA should consider adding that RBC authorized control level factor to the ongoing net worth amount requirements after evaluating whether the RBC is a valid indicator of Medicare PSO solvency and after considering the manner in which States have regulated managed care plans using the RBC authorized control level. In 1999, after PSOs have begun to operate and report financial data, HCFA

will issue a notice requesting comment on adding this factor to the net worth calculation for PSOs. As part of HCFA's normal data collection process for all M+C plans, HCFA expects to be collecting information necessary to perform the RBC calculations.

With regard to the composition of the minimum net worth amount, the Committee agreed upon the following requirements—

- At least \$750,000 of the minimum net worth must be in cash or cash equivalents. After the effective date of the contract, however, the Committee agreed that \$750,000 or 40 percent of the minimum net worth amount must be in cash or cash equivalents.

- Up to 10 percent of the minimum net worth amount can be comprised of intangible assets in the initial stage. However, in the initial stage, if a PSO keeps \$1,000,000 in cash or cash equivalents and does not use the administrative reduction, then up to 20 percent of that PSO's minimum net worth can be comprised of intangible assets. In the ongoing stage, a PSO must keep the greater of \$1,000,000 or 67 percent of the ongoing minimum net worth in cash or cash equivalents to qualify for the 20 percent level on intangibles.

- Subject to the above provisions, health care delivery assets (HCDAs) may be admitted at 100 percent of their value according to generally accepted accounting principles (GAAP).

- Subject to the above provisions, other assets may be admitted according to their value under Statutory Accounting Practices (SAP).

- Subordinated debts and subordinated liabilities can be excluded from the calculation of liabilities for the purposes of determining net worth.

- Deferred acquisition costs are excluded from the net worth calculation.

The Committee also agreed that HCFA will look at SAP codification upon its completion and will consider whether to adopt codification standards on the asset concentration and quality of HCDAs for waived PSOs. SAP codification standards are currently being developed by the NAIC to make SAP more consistent among the States. HCFA will request public comment on whether to use any such standards in the notice on the NAIC RBC (see above). Meanwhile, HCFA may apply judgement in evaluating HCDAs for concentration and quality.

In the Committee's deliberations the concepts of net worth and liquidity were closely related. Some Committee members suggested that because PSOs have the potential to provide "sweat

equity," these organizations could operate under different solvency standards for net worth and liquidity than might be acceptable for other forms of integrated delivery systems. The term "sweat equity" was used to represent the value of health services that a PSO could provide directly. One premise presented to the Committee was that PSOs could continue to furnish services during financial crises because the "owners" actually provide health care services, whereas other managed care systems that contract for the delivery of care may not be able to continue to operate. In addition, PSOs could adopt contingent reimbursement arrangements with their providers. Under such arrangements, the affiliated providers' payments could be reduced until the PSO had weathered the financial crisis.

The consensus was not to explicitly recognize sweat equity in the solvency standards. This position evolved because of the difficulty in developing an administrable solvency standard based upon sweat equity. Further, the solvency standards implicitly recognize sweat equity in other areas (e.g., the financial plan).

C. Liquidity Requirements

In conjunction with a minimum net worth amount requirement, the Committee discussed a standard for meeting financial obligations on time. The Committee adopted, for both the initial and the ongoing stages, the liquidity standard that a PSO have sufficient cash flow to meet its obligations as they become due. Also, the Committee recommended that in the initial and ongoing stages HCFA should use the same factors to determine the ability of a PSO to meet the liquidity standard: (1) the timeliness of PSO payments of obligations, (2) the extent to which the current ratio is maintained at 1:1 or whether there is a change in the current ratio over a period of time, and (3) the availability to a PSO of outside financial resources to meet its obligations.

The current ratio focuses on a period that is up to one year long. It compares all assets that are convertible to cash within that period with all liabilities that will come due in that same period using the following formula:

$$\text{Current ratio} = \frac{\text{Current Assets}}{\text{Current Liabilities}}$$

The Committee agreed that PSOs should maintain a current ratio of at least 1:1. That is, current assets should be equal to or greater than current liabilities. The Committee also agreed that the current ratio is a target rather than an absolute standard. This position

recognizes that valid reasons may exist for a PSO's current ratio to go below 1:1 for short periods of time. However, there were also concerns by some Committee members that the current ratio is an important indicator of an organization's condition and a current ratio of under 1:1 should trigger some regulatory action. Therefore, the current ratio will be used to identify trends or sudden major shifts in a PSO's financial performance.

D. Financial Plan Requirements

Several presenters before the Committee identified poor planning and management control as the primary reasons for the early HMO failures. As a standard to encourage good planning and strong management, the Committee agreed that a financial plan is essential for PSOs. Further, such plans should be prospective, reasonable, and consistent. The Committee used the financial plan standard for contractors under section 1876 of the Act to develop the PSO standard, but specified certain provisions differently. The specific requirements of the financial plan are presented in the discussion of provisions, below.

The Committee believed that the financial plan standard they agreed to represents the minimum needed to monitor Federally waived PSOs. The Committee agreed that HCFA should have the discretion to modify the financial plan to require additional or different information as necessary to evaluate the financial position of a Federally waived PSO.

The Committee agreed that in the initial stage, at the time of application, organizations must submit financial plans covering the period from the most recent financial audit until 12 months after the effective date of an M+C contract. If, however, a financial plan projects losses, then the time horizon must extend further, to 12 months after the point that the financial plan projects two consecutive quarters of net operating surplus.

E. Pre-Funding of Projected Losses

One area of the financial plan that the Committee discussed considerably was a requirement that PSOs must identify all sources of funding for projected losses (and in certain circumstances actually have the cash available). A key issue in this discussion was if and how to recognize such financing methods as guarantees and letters of credit (LOC). Some Committee members expressed concern about quickly securing money that was pledged to a PSO in a guarantee or letter of credit during a financial crisis. For a PSO that is under

financial strain, the timely availability of cash is crucial to both the PSO and HCFA in attempting to protect Medicare enrollees. A delay in securing needed cash—if, for example, the guarantor stalls or reneges on its obligation—could exacerbate a financial crisis and further threaten the quality and continuity of care for enrollees.

Other Committee members contended that guarantees and LOC are a common and accepted means of obtaining capital for integrated health delivery systems. Furthermore, many providers who are candidates to become Federally waived PSOs could not participate unless guarantees or LOC, or both, are allowed. Advocates of guarantees and LOC felt that they should be admitted for two purposes: meeting the net worth requirements and funding projected losses.

As a compromise, the Committee agreed to accept guarantees, but only for funding projected losses that are reported by a PSO in its financial plan. As previously mentioned, the solvency standards contained herein require PSOs to fund all projected losses in the financial plan from the effective date of their M+C contracts until they achieve two consecutive quarters of net operating surplus. The Committee agreed that guarantees are an acceptable means to fund projected losses provided certain conditions are met. Further, the Committee agreed that each PSO's guarantee would be subject to a trial period of one-year from the effective date of the PSO's M+C contract. During this period, guarantees would be accepted, but cash or cash equivalents equaling the obligations covered by the guarantee would have to be on a PSO's balance sheet six months prior to the date actually needed. After a year, assuming that the guarantee obligations are met timely, the Committee agreed that a PSO should be permitted to notify HCFA of its intent to reduce or eliminate the pre-funding period. The Committee further agreed that HCFA should have up to 60 days after the receipt of such notice to exercise its discretion and modify or reject the notice. However, if the guarantee obligations are not properly met on a timely basis, the Committee agreed that HCFA should have the discretion to require a PSO to fund projected losses through other methods or further in advance.

HCFA presented the Committee with draft standards on guarantees. The Committee generally supported the draft with some revisions, but did not officially adopt the standards as part of the Agreement before needing to vote on consensus.

The Committee agreed that it should recognize LOC as a means to fund projected losses. To be accepted, LOC must be irrevocable, clean, and unconditional. Additionally, LOCs must be capable of being promptly paid upon presentation of a sight draft under the LOC without further reference to any other agreement, document or entity. The Committee also agreed that beginning one year after the effective date of an M+C contract, a PSO should be allowed to use the following other means to fund projected losses: (1) lines of credit from regulated financial institutions, (2) legally binding capital contribution agreements, and (3) other legally binding contracts of similar reliability.

The Committee recognized that HCFA should have discretion regarding the acceptance of guarantees, LOCs and other means to fund projected losses. Accordingly, use of these vehicles is subject to an appropriateness standard. That is, guarantees, LOCs and other means of funding projected losses may only be used in a combination or sequence that HCFA determines is appropriate.

F. Reporting

The Committee agreed that PSOs must meet HCFA requirements for compiling, maintaining and reporting such financial information as the agency determine is necessary. HCFA should have the discretion to specify the contents, method of calculation, and the schedule for reporting such financial indicators. We believe that this discretion is necessary for proper oversight of Federally waived organizations as they evolve and as market conditions evolve. The Committee recommended that the general reporting format be the NAIC's Official Annual Statement Blank—HMO Edition (the Orange Blank). HCFA will modify data obtained from this form for application to PSOs. Use of this form will not prohibit HCFA from requesting additional information if the agency determines that such information is necessary to accurately assess a PSO's financial condition.

The Committee agreed that the common practice should be to require quarterly or annual reports. If a PSO has not achieved a net operating surplus, the Committee felt that HCFA could require financial reporting as frequently as monthly. Monthly reporting would be necessary to enable HCFA to maintain better oversight of PSOs that are at heightened financial risk.

G. Insolvency Protections

The Committee's deliberation in the area of insolvency focused upon protecting beneficiaries. The Committee considered five issues regarding insolvency: an insolvency deposit requirement, a hold harmless requirement, a continuation of coverage provision, reserves for uncovered expenditures, and termination of an M+C contract.

The Committee agreed that an insolvency deposit should be required. The insolvency deposit would be used to pay for the costs associated with receivership or liquidation. Committee discussions focused on the amount of the insolvency deposit rather than the need for a deposit. For the insolvency deposit requirement, the Committee considered a range between \$100,000 and \$300,000. Committee members supporting a \$300,000 deposit contended that a lower deposit would be quickly exhausted and inadequate in a financial crisis. Committee members who supported the \$100,000 deposit countered that a higher deposit would be too onerous when combined with the cash reserves required to meet the minimum net worth amount. The consensus position was to allow the lower insolvency deposit of \$100,000, provided that the requirement for the cash portion of the minimum net worth amount be set at \$750,000. Additionally, the Committee agreed that the insolvency deposit would be counted toward the minimum net worth requirement although not toward the \$750,000 cash requirement.

With regard to uncovered expenditures, the Committee adopted the HMO Model Act standard. The Model Act requires that whenever uncovered expenditures exceed 10 percent of total health care expenditures, an entity must create a deposit equal to 120 percent of outstanding liabilities for uncovered expenditures. Rather than being available for a State Insurance commissioner, the deposit would be restricted for HCFA's use in the event of an insolvency to pay claims and administration costs.

While the Committee discussed the issues of Federal bankruptcy/State receivership, hold harmless, and continuation of coverage, they concluded that these issues were beyond the scope of the negotiations. Further, Federal bankruptcy and State receivership matters are not within the purview of HCFA. The hold harmless and continuation of benefits provisions will be considered as part of the overall

M+C regulation due to be published later this year.

H. Solvency Standards for Rural PSOs

In pre-consensus Committee discussion, there was vigorous discussion of separate solvency standards for rural PSOs. (See § 422.352(c) for a definition of rural PSO.) Some Committee members contended that rural providers would find it particularly difficult to meet the solvency standards, especially the cash requirements. Rural providers, as compared to their urban counterparts tend to have high portions of their assets concentrated in health care delivery assets and intangible assets. To rural PSOs, an excessive cash requirement may amount to an undue barrier to entry.

The Committee's consensus on this issue was to develop one solvency standard for all PSOs. The underlying premise was that the experience of an unexpected, major claim would harm rural PSOs more because rural PSOs tend to have smaller enrollments than urban PSOs, and therefore a smaller revenue base for absorbing sudden financial fluctuations. The Committee believed that financial instability in a rural PSO could be more easily triggered by lower solvency standards.

However, recognizing the unique needs of rural communities, the Committee directed HCFA to solicit public comment on the issue of separate solvency standards for rural PSOs. Thus, we are hereby seeking comments on this matter, particularly on the appropriateness of the net worth and liquidity requirements of this interim final rule for rural PSOs. HCFA is interested in the merit and appropriateness of separate standards, alternative proposals, relevant analysis, and administrative simplicity.

I. Credit for Reinsurance

As directed by the BBA, the Committee considered whether to allow a credit for reinsurance. Several Committee members advocated that reinsurance reduces the risk that PSOs will have to bear and would be particularly valuable during the initial stage where PSOs are likely to have fewer enrollees and claims are harder to predict. Committee members who opposed reinsurance argued that many HMO reinsurance contracts contain termination clauses that are triggered once an organization starts losing money. Underlying this contract issue is a broader problem; namely there would need to be provisions developed for Federal regulation and oversight of PSO reinsurers given the Federal waiver of

State licensure. Without proper regulation and safeguards, reinsurance policies could not be relied upon to protect beneficiaries in the event of a financial crisis. Opponents also indicated that reinsurance is an essential part of a sound business plan. Therefore, it should not be treated as an optional credit against the minimum net worth amount. Lastly, to the extent that reinsurance will reduce a PSO's current and projected losses, reinsurance is implicitly recognized in the financial plan. The consensus was not to admit reinsurance as a credit against the minimum net worth amount. The Committee felt that to the extent that reinsurance reduces projected losses, it is implicitly recognized in the financial plan.

J. Financial Solvency Standards Provisions

The requirements of this interim final rule are found in 42 CFR Part 422, Subpart H, Provider-Sponsored Organizations. Here we set forth the solvency requirements for organizations that are applying for and are operating under an M+C contract.

Section § 422.350, *Basis, Scope and Definitions*, is amended to include definitions and terminology for new terms related to the solvency standards for PSOs.

Section § 422.380 sets forth the general requirement that a PSO must have a fiscally sound operation that meets the requirements of the following provisions.

Section 422.382 sets forth the minimum net worth amount requirements. There is a minimum net worth amount requirement for organizations that are in the process of applying for a PSO M+C contract, and another for organizations that are operating as a PSO under an M+C contract.

Paragraph (a) of § 422.382 sets forth the requirements that must be met at the time of application. An organization must have a \$1,500,000 minimum net worth amount. This is the same amount that is specified in the HMO Model Act, except that under this regulation, HCFA has the discretion to reduce this amount by up to \$500,000 for organizations that at the time of application have available administrative infrastructure that will reduce, control or eliminate administrative costs.

Paragraph (b) of § 422.382 sets forth the requirements that must be met after the effective date of an M+C contract. A PSO must have a minimum net worth amount of at least \$1,000,000. The minimum net worth amount is determined by a "greater of" test. The

"greater of test" requires a PSO to have a minimum net worth amount equal to the greater of—

- \$1,000,000;
- Two percent of annual premium revenues up to and including the first \$150,000,000 of annual premiums and 1 percent of annual premium revenues on premiums in excess of \$150,000,000;
- An amount health care expenditures; or
- An amount equal to the sum of 8 percent of annual health care expenditures paid on a non-capitated basis to non-affiliated providers, and 4 percent of annual health care expenditures paid on a capitated basis to non-affiliated providers plus annual health care expenditures paid on a non-capitated basis to affiliated providers. Annual health care expenditures that are paid on a capitated basis to affiliated providers are not included in this calculation. In essence, the "greater of" test establishes a minimum net worth requirement above \$1,000,000 that varies in proportion to the size of the PSO's operation.

Section 422.382(c) establishes the composition of assets that are needed to meet the minimum net worth requirement. The objective of the minimum net worth requirement is to enable PSOs to avoid a financial crisis or to mitigate the effects of a crisis. To achieve this, organizations applying to become PSOs are required to have on their balance sheets a minimum level of cash or cash equivalents. In paragraph (c)(1) of § 422.382, the minimum cash requirement is set at \$750,000 at application, and at \$750,000 or 40 percent of the minimum net worth amount after the effective date of the contract. After the effective date of an M+C contract the cash requirement above \$750,000 is proportional to the minimum net worth amount. Lower cash requirements were proposed, but the Committee was unable to reach consensus on them. As discussed below, organizations that maintain a higher cash level are permitted to use a greater proportion of intangible assets to meet the minimum net worth requirement.

Other provisions of the paragraph address assets besides cash or cash equivalents that may be included in determining the minimum net worth, and limitations. Paragraph (c)(2) of § 422.382 establishes the proportion of the minimum net worth amount that may be comprised of intangible assets, depending on an organization's cash level. Intangible assets can comprise up to 10 percent of the minimum net worth amount, at the time of application for an organization with \$750,000 (and less than \$1,000,000) in cash or cash

equivalents. However, an organization that has \$1,000,000 in cash or cash equivalents at application can satisfy up to 20 percent of its minimum net worth amount requirement with intangible assets. After the effective date of the contract, an organization must maintain the greater of \$1,000,000 or 67 percent of the minimum net worth amount in cash or cash equivalents to qualify for the admission of intangible assets up to 20 percent of the minimum net worth amount.

Under paragraph (c)(3) of § 422.382, HCDAs are admissible to satisfy the minimum net worth amount requirement, subject to the cash requirement. They are valued at 100 percent of their value according to GAAP. Section 1856(a) of the Act directed the Secretary to take into account "the delivery system assets of [provider sponsored organizations]." The recognition of HCDAs under GAAP, that often times is limited under SAP, was adopted to recognize that large portions of PSOs' assets are HCDAs. The Committee agreed that if the cash requirement were set at the appropriate level, then any perceived risk from recognizing HCDAs was reduced.

Under paragraph (c)(4) of § 422.382, other assets that are not used in the delivery of health care are admissible to satisfy the minimum net worth amount. However, they are admitted at their value according to State SAP which generally are more conservative than GAAP. Because SAP are determined at the State level, organizations will have to follow the accounting methodology approved by the insurance commissioner in the State in which they operate.

As set out in paragraph (c)(5) of § 422.382, an organization does not have to include subordinated debts or subordinated liabilities for the purpose of calculating the minimum net worth. (Subordinated liability is a new concept that the Committee defined to mean claims liabilities otherwise due to providers that are retained by the PSO to meet the net worth requirements.) The Committee discussed this provision in the context of provider reimbursement arrangements that withhold a portion of payment contingent upon certain budget or utilization targets being met. The Committee agreed that if these payments are fully subordinated to all other creditors, then they should not be included in the calculation of a PSOs net worth for the purpose of meeting the minimum net worth amount requirement. We believe that this provision is another example how the

concept of sweat equity is implicitly considered in these solvency standards.

In paragraph (c)(6) of § 422.382, deferred acquisition costs are not permitted to be included in the calculation of the minimum net worth amount. The Committee believed that in an insolvency situation, these would have little or no value.

Paragraphs (a) (b) and (c) of § 422.384 sets forth the financial plan requirement. The same documents required of Medicare contracting HMOs and CMPs under section 417.120(a)(2) of the Medicare regulations are required here; namely marketing plans, statements of revenue and expense, statements of sources and uses of funds, balance sheets, detailed justifications and assumptions supporting the financial plan, and statements of the availability of financial resources to meet projected losses.

PSOs should anticipate the need to utilize the services of qualified actuaries (e.g., a member in good standing with the American Academy of Actuaries) in (a) the preparation of financial plans consistent with the PSO's business plan, (b) the development of claim costs for the benefits to be offered by the PSO and (c) the analysis of claim liabilities and the necessary liquid assets to meet obligations on a timely basis. Accordingly, the Committee agreed that the financial plan must be satisfactory to HCFA. HCFA expects and, at its discretion, will ascertain that the information contained in the financial plan has been certified by reputable and qualified actuaries.

Paragraph (d) of § 422.384 sets forth the requirement that organizations that are projecting a loss must have the resources to fund those projected losses. This section also defines the conditions under which HCFA will recognize various arrangements as acceptable funding of projected losses. The general rule is that organizations must have on their balance sheets assets that they identify to fund projected losses. Exceptions are made for guarantees, LOCs, and other means provided that certain conditions are met.

Paragraph (e) of § 422.384 sets forth the exception to the "on the balance sheet" requirement that applies when guarantees are used to fund projected losses. Guarantees are permitted, but they are subject to a trial period. For the first year after the effective date of an M+C contract any organization using a guarantee must have from the guarantor, in cash or cash equivalents, funds to cover projected losses six months in advance of when needed. For example, prior to the effective date of an M+C contract, a PSO must have funding from

the guarantor equal to the projected losses for the first two quarters (6 months) of the contract. Before the start of the second quarter, funding of projected losses through the third quarter must be added to the balance sheet of the PSO. Because of the time it takes to bring a new contractor onto the HCFA systems, the first two quarters funding will need to be in the PSO, that is, on its balance sheet at least 45 days before the effective date of the contract. Quarters, or 90-day periods, will be counted from the effective date of a PSO's M+C contract.

If guarantee funding is timely during the first year, a PSO may reduce or eliminate the period of pre-funding in future years by providing notice to HCFA. Upon receipt of such notice, HCFA will have up to 60 days in which to modify or reject any changes in the period of prefunding. If the guarantee funding is not timely, then HCFA may take appropriate action including requiring an organization to use other methods or timing to fund projected losses. Lastly, guarantors and guarantees must meet the requirements specified under § 422.390, discussed below.

Paragraph (f) of § 422.384 sets forth the exception to the "on the balance sheet" requirement that applies when LOCs are used to fund projected losses. LOCs are admissible to fund projected losses on the condition that they are provided by a high quality source and be irrevocable, unconditional and satisfactory to HCFA. Additionally, LOCs must be capable of being promptly paid upon presentation of a sight draft under the LOCs without further reference to any other agreement, document or entity. The Committee agreed that HCFA should have the discretion to accept or reject a letter of credit.

Paragraph (g) of § 422.384 sets forth the exception to the "on the balance sheet" requirement that applies when other means are used to fund projected losses. Other means of funding such as LOCs credit, legally binding capital contribution agreements, and other legally binding contracts of similar quality are admissible to fund projected losses. However, these methods are available only after an organization has had an M+C contract for at least one year.

Paragraph (h) of § 422.384 sets forth the general rule that HCFA will have the discretion to decide whether a PSO is using guarantees, LOCs or other means in a combination or sequence that HCFA deems appropriate. We note here that the BBA directed the Secretary to take into account alternative means of protecting against insolvency including

guarantees, LOCs and other means. The Committee considered whether to admit guarantees, LOCs, and other means to reduce the minimum net worth amount, as well as to fund projected losses. However, the consensus was to recognize them only toward meeting the requirement to fund projected losses.

Section 422.386(a) sets forth the general liquidity requirement that a PSO must have sufficient cash flow to meet its financial obligations as they become due and payable. This requirement is consistent with the standard that is applied to Medicare contracting HMOs and CMPs under 42 CFR § 417.120.

Paragraph (b) of § 422.386 contains three tests to determine whether an organization is able to meet its financial obligations as they become due and payable: (a) history for timeliness in meeting current obligations, (b) the extent to which a PSO maintains a current ratio of 1:1, and (c) the availability of outside financial resources to the PSO. The Committee adopted (a) because such a history is a strong signal of management's commitment to maintaining a fiscally sound organization.

The second test requires more discussion. We define "current ratio" as total current assets divided by total current liabilities, where the word "current" means less than one year. A current ratio of 1:1 means that an organization's current assets are sufficient to meet its current liabilities. The possibility exists that in the course of normal business operations PSOs may miss the current ratio slightly for short, nonrecurring periods of time. In light of this, HCFA is using a 1:1 current ratio as a target rather than as an absolute standard. Accordingly, HCFA will monitor PSOs that drop below the 1:1 ratio and act where a PSO experiences a long-term, declining trend or a sudden, large decline in its current ratio.

The use of trends in the current ratio allows HCFA to recognize certain situations where current assets do not have to equal or exceed current liabilities. For HMOs and PSOs in their early years, the reported current ratio results will likely produce misleading trends. The amount of pre-funding of projected losses "within" versus "outside" the organization may change over time, distorting trends. Changing patterns of liabilities (for example, 30-day business expenses unpaid or estimates of unreported claims) can also distort the current ratio from one based on consistent underlying data.

Consequently, the PSO has an obligation to monitor underlying true trends and to provide such information, together with

a projection of continuing current liabilities consistent with its business plans. The information should be certified by a qualified actuary and presented to HCFA prior to the filing of a timely financial report with a current ratio below standard.

The third test for evaluating liquidity highlights in several ways the importance of having outside financial resources available to a PSO. First, such resources fill a practical role by providing a cushion in the event of a financial crisis. Second, if such resources are available from a parent or affiliate organization, it signals a continuing commitment to the PSO. Third, the availability of such resources from outside the corporation, either from a private or a commercial source, indicates continuing market confidence that the organization is a viable ongoing business concern.

Paragraph (c) of § 422.386 requires that if HCFA determines that an organization is not in compliance with the liquidity requirement, it will require the organization to initiate corrective action to pay all overdue obligations.

Paragraphs (d) and (e) of § 422.386 specifies that corrective action can include requiring the organization to change the distribution of its assets, reduce its liabilities, secure additional funding, or secure funding from new funding sources.

Section 422.388 sets forth the deposit requirements to provide protection in the event of an insolvency. Paragraph (a) of § 422.388 establishes an insolvency deposit that organizations are required to make at the time of application and maintain for the duration of the M+C contract. The insolvency deposit is \$100,000. The deposit must be restricted to use in the event of insolvency to help assure continuation of services or pay costs associated with receivership or liquidation. At the time of application and thereafter, upon HCFA's request, the organization must provide HCFA with proof of the insolvency deposit, in a form that HCFA considers appropriate.

Paragraph (b) of § 422.388 establishes an uncovered expenditures deposit requirement. The amount of uncovered expenditures that a PSO experiences will vary, and this deposit is required any time that they exceed 10 percent of the PSO's total health care expenditures. The deposit must at all times have a fair market value of an amount that is 120 percent of the PSO's outstanding liability for uncovered expenditures for enrollees, including incurred, but not reported claims. The deposit must be calculated as of the first day of each month required and maintained for the remainder of each month required. If a

quarterly report is not otherwise required, a report must be filed within 45 days of the end of the calendar quarter to demonstrate compliance. The deposit must be restricted for HCFA's use to protect the interests of the PSO's Medicare enrollees and to pay the costs associated with administering the insolvency. The deposit is restricted and in trust and may be used only as provided in § 422.388.

Under paragraph (c) of § 422.388 the deposits may be used to satisfy the organization's minimum net worth requirement. Under paragraph (d) of § 422.388 all income from the deposits or trust accounts are considered assets of the organization. Upon HCFA's approval, the income from the deposits may be withdrawn.

Paragraph (e) of § 422.388 sets forth requirements that upon HCFA's written approval, the income from the deposits may be withdrawn if a substitute deposit of cash or securities of equal amount and value is made, the fair market value exceeds the amount of the required deposit, or the required deposit is reduced or eliminated.

The deposit requirement for uncovered expenditures is triggered by a historical trend analysis that indicates such expenditures are comprising an increasing portion of total health care expenditures. The Committee adopted the HMO Model Act language for the uncovered expenditures deposit.

Section 422.390 sets forth the requirements for guarantors and guarantees, which under § 422.384(e), above, can be used to fund projected losses. We are exercising caution in the use of guarantees because we will have to monitor the financial viability of the PSO and the guarantor as well. We believe we have selected a screening approach that recognizes financially strong guarantors and protects Medicare enrollees, yet permits affiliated providers or parent organizations to support the PSO with financial backing.

Paragraph (a) of § 422.390 vests HCFA with the discretion to approve or deny the use of a guarantor. Paragraph (b) of § 422.390 initiates the approval process with a request from the PSO, including financial information on the guarantor.

Paragraph (c) of § 422.390 sets forth the requirements that a guarantor must meet to be licensed and authorized to conduct business within a State or territory of the United States. The guarantor must be solvent and not be under any Federal bankruptcy or State proceedings, and have a net worth of at least three times the amount of the guarantee.

A distinction is made between guarantors that are and are not regulated

by a State insurance commissioner. If regulated by a State insurance commissioner, the guarantor's net worth calculation need only exclude from its assets the value of all guarantees, investments in and loans to organizations covered by guarantees. But, if a guarantor is not regulated by a State insurance commissioner, then it must also exclude the value of guarantees, investments and loans to related parties (i.e., subsidiaries and affiliates) from its assets to calculate its net worth. We believe these requirements ensure the stability and financial strength of the guarantor without being overly restrictive.

Paragraph (d) of § 422.390 contains provisions for the guarantee document to be submitted to HCFA by the PSO, and signed by the guarantor. This document is the written commitment of the guarantor to unconditionally fulfill its financial obligation to the PSO on a timely basis.

In paragraph (e) of § 422.390, the PSO is required to routinely report financial information on the guarantor.

Paragraph (f) of § 422.390 sets forth the requirements for modification, substitution, and termination of the guarantee. A PSO must have HCFA's approval at least 90 days before the proposed effective date of the modification, substitution, or termination; demonstrate to HCFA that insolvency will not result; and demonstrate how the PSO will meet the requirements of this section within 15 days, and if required by HCFA, meet a portion of the applicable requirements in less than the time period granted.

Paragraph (g) of § 422.390 establishes conditions that must be met if the guarantee is nullified. If at any time the guarantor or the guarantee ceases to meet the requirements of § 422.390, HCFA will notify the PSO that it ceases to recognize the guarantee document. In the event of nullification, a PSO must meet the applicable requirements of this section within 15 business days and if required by HCFA, meet a portion of the applicable requirements in less than the above time period. These requirements and conditions are not only good business practices, but also protect Medicare enrollees by ensuring that a PSO's financial backing is sound.

IV. Applicability of These Rules

The provisions of this rule apply only to certain PSOs and do not apply to any other type of Medicare applicant or contracting entity.

Organizations that may be considered PSOs and that meet any of the criteria as set forth in § 422.372 may be eligible for a waiver of State licensure. As

discussed earlier, an organization interested in entering into a contract with Medicare as a PSO must first contact the appropriate State agency and, in most cases, submit an application for a State license, or authority. A PSO that is denied licensure (and the denial is related to any of the criteria cited) or is denied the opportunity to apply for licensure, should submit a request for a waiver to HCFA. Organizations that have their waiver request approved by HCFA may then submit a PSO application. The PSO application contains provisions for demonstrating compliance with the PSO definitions and solvency requirements in addition to other contracting requirements (a supplemental application may be necessary after the June regulation is published). It is during the application process that an organization will be determined to qualify as a PSO for purposes of Medicare contracting under Part C of the Act. The waiver will take effect with signing of the M+C contract.

The solvency standards established in this rule apply to organizations which have had a waiver approved, as described above, and are applying for a Medicare PSO contract, as well as waived PSOs with a Medicare contract in effect. These rules were developed through negotiated rulemaking specifically for risk-bearing entities that will enroll primarily beneficiaries of the Medicare program. Federal and State government agencies that may contemplate use of these solvency standards for other purposes or other populations should review them carefully, and consider the nature of the health plans and the populations they will serve.

Provider-sponsored managed care plans that obtain a State license should apply directly for an M+C contract by completing the application for HMO/PPOs/State-licensed PSOs (i.e., this is the same application as used by HMOs). These entities, whether licensed as a PSO or HMO or other managed care plan recognized by the State, will not have to demonstrate compliance with the PSO definitions in § 422.350 through 356, or with the PSO solvency standards. However, State-licensed PSOs or State-licensed managed care plans that wish to meet the lower minimum enrollment standard will have to meet the definitions criteria of the PSO application. These "State-licensed PSOs" must meet the solvency standards as required by their State, not the Medicare PSO solvency standards as established in this interim final rule.

V. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this interim final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental and public health and safety effects; distributive impacts and equity). The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief for small businesses, unless we certify that the regulation would not have a significant economic impact on a substantial number of small entities. Most hospitals, and most other providers, physicians and health care suppliers are small entities either by non-profit status or by having revenues of less than \$5 million annually. The impact of this regulation will be to create a new business opportunity for such small entities to form provider sponsored organizations to contract with the Medicare program.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

We prepared this impact analysis because of the probability that these waiver requirements and solvency standards may have an impact on certain hospitals, physicians, health plans and other providers. We are preparing to publish a regulation outlining the overall provisions of the M+C program. That regulation will consider the impacts of PSOs and other new provider types in greater detail than is provided in this regulation. The following analysis, in combination with comment period, constitutes a regulatory impact analysis and a regulatory flexibility analysis.

B. Background

While the term "provider sponsored organization" has been used generally in reference to health care delivery systems that providers own or control and operate, the term has a more specific meaning for purposes of the M+C program. Accordingly, we defined, by regulation, the fundamental organizational requirements for entities seeking to be PSOs. These definitions are set forth at 42 CFR 422.350. Organizations that meet these definitional requirements can apply for a Federal waiver and a M+C contract. Having defined the term PSO in earlier regulation, this rule has two broad purposes: (1) To establish the requirements and process necessary for organizations to obtain Federal waiver of license requirements for risk-bearing entities; and (2) to establish standards for financial solvency to which such Federally waived organizations must adhere.

With regard to the impact of the waiver requirements and process, we emphasize three important underlying factors. First, waivers cannot exceed 36 months in duration and are not renewable. Second, the Secretary's authority to grant waivers ends November 1, 2002. Finally, the Secretary can grant waivers only to organizations that have first applied for a State license as a risk bearing entity, but were denied by virtue of three things: (1) States' failure to act timely on the license application; (2) States' denial of the application for "discriminatory" reasons; or (3) States' denial for failure to meet different solvency standards than are promulgated here. The first two factors (i.e., the duration of the waiver and the waiver authority) are important to this impact analysis because they indicate that, under current law, no organization will operate under a Federal waiver after November 1, 2005. The third fact regarding eligibility for a Federal waiver may have an effect on the waiver application rate.

The solvency standards have an even narrower focus than the waiver requirements because the former only effect organizations that have received a Federal waiver and are either applying for or actually have received an M+C contract. Within this smaller population, organizations will be affected differently or not at all depending upon the status of the solvency standards in their respective States. It is likely that waiver activity will be greater in States that have solvency standards that differ significantly from the standards developed in this regulation. Below we

consider the anticipated impact of this rule.

C. Anticipated Effects

1. Effects on Providers

HCFA discussion with the industry as part of the negotiated rule making process suggests widespread interest in the benefits of becoming a PSO (i.e., waiver of State licensure and lower minimum enrollment standards). This regulation benefits certain health services providers that have been denied a State risk-bearing license by creating an opportunity for them to obtain a Federal waiver of the State license requirement and participate in the M+C program as contractors. As such, this regulation provides means for such providers to gain access to a market from which they otherwise would be excluded. While clearly not possible to predict how many organizations will attempt to take advantage of this new opportunity, we have seen estimates that the first year application rate will be between 25 and 150 organizations. For several reasons, we estimate between 25 and 50 organizations will apply. In the first year many organizations will be interested, but we expect that the "learning curve" necessary to gain familiarity with this new program will restrain the first year application rate. Second, the waiver process, which for this discussion includes the prerequisite State application process, and M+C application process, are time intensive steps. At a minimum, these steps could take up to 6 six months to complete. After the first year, however, the number of applicant organizations will increasingly be a function of PSOs' performance and their reception in the market place.

We do not expect that the waiver process will create a substantial additional burden for organizations. For one thing, the waiver process is not a mandatory burden. The waiver process affects only organizations that affirmatively choose to become Federally waived PSOs. For those organizations that apply, we estimate that the waiver application will require less than 20 hours to complete. However, we do believe that waiver applicants will face the additional task of documenting their denial of a State license.

Regarding the application for an M+C contract, there are existing application requirements for organizations that seek to contract with Medicare under section 1876 of the Act. We do not believe that the M+C application process, which will be essentially the same, will be any

more burdensome than an application under section 1876 of the Act. To the extent that organizations that previously have not contracted with the Medicare program choose to seek an M+C contract, the application will be a new task. Given the new provider focus of this initiative, it is plausible to expect that many applicants have not previously contracted directly with Medicare. However, we believe that the benefit to Medicare beneficiaries gained by screening potential contractors outweighs the burden associated with having a reasonable application process in place.

2. Effects on the Market Place

We expect that the advent of PSOs will increase market competition among health care service providers, albeit only slightly. The increase in competition is expected to be limited for four reasons. First, since Federally waived PSOs are limited to serving Medicare enrollees, any changes in competition will be primarily concentrated in the Medicare sector of the health services delivery market. We note that there may be crossover effects to the extent that service providers' success with Medicare may affect their success generally.

Second, we believe that this rule, primarily concerns the structure of entities that can participate in the market for Medicare enrollees. We expect transfer effects; that is, existing providers changing corporate form in order to avail themselves of PSO status. However, we do not anticipate a significant increase in the aggregate market place capacity of providers or health service delivery assets. The providers and hospitals that will form PSOs are coming from the same pool that are currently providing services. In addition, the principle effect on revenues will be a change in the source of payment from Medicare parts A and B to the new part C.

Third, to the extent that these solvency standards are similar to existing standards, the potential transfer effect will be limited. Since standards vary greatly by State, and State standards are evolving, it is difficult to assess the relative effect of the instant standards. We note, however, that with several key exceptions (e.g., different initial minimum net worth requirement and a lower insolvency deposit) the instant standards track the HMO Model Act. Therefore, we do not believe there will be a significant transfer due to the existence of an unlevel playing field between PSOs and other entities. We believe that establishing standards of financial solvency is necessary to insure

that PSOs have the financial resources to provide adequate quality care and to reduce the possibility of disrupting beneficiary care.

Finally, in the preamble to this regulation, HCFA agreed that it will consider the NAIC's Risk Based Capital formula as well as the codification of Statutory Accounting Practices when these methodologies become available. If one or both of these methodologies are adopted for the PSO solvency standards, it would help to narrow any existing differences between State-level and Federal solvency standards.

3. Effects on States

This regulation will affect States in several ways, some of which are offsetting. First, we expect that a few States may have to reduce their application turnaround times in order to avoid tolling the 90-day limit for State review of a waiver application. However, based upon conversations with State insurance commissioners, we believe in many States the application turnaround time is at or near the 90-day limit.

The second effect will be a reduction in States' oversight burden. For PSOs that obtain a Federal waiver, responsibility for monitoring their financial solvency will be transferred from the States to HCFA. This is a temporary reduction, since waivers last only 36 months and the Secretary's authority to grant waivers ends on November 1, 2002. By the end of a PSO's waiver, it will need a State license in order to continue its M+C contract. Therefore, to ease the transition from a Federal waiver to a State license, we encourage PSOs to establish a relationship with regulators in their respective States soon after receiving a waiver. To minimize the chances of a gap in financial oversight, HCFA is negotiating with the State Insurance Commissioners via the NAIC to develop a Memorandum of Understanding regarding sharing information on the financial solvency of PSOs.

Lastly, it has been suggested that this interim final rule may pressure States to adopt solvency standards that mirror the Federal standards. Currently, we do not have a good measure of the extent to which this will occur. However, we emphasize that the negotiated rulemaking committee developed these solvency standards solely in the context of Federally waived PSOs that will provide services under an M+C contract. States are cautioned not to adopt these standards for general application without first considering their effect on

the overall health services delivery market in their jurisdictions.

4. Effects on Beneficiaries

We expect that this regulation will have a positive effect on Medicare beneficiaries since it creates a new managed care option. We expect that the principle source for enrollees for newly formed PSOs will be current Medicare fee-for-service enrollees. We expect that the advent of PSOs and M+C in general will have the effect of further mainstreaming managed care plans among Medicare enrollees. We do not anticipate an increase in the potential for service interruptions because these new PSOs will be subject to the same beneficiary hold-harmless provisions and continuation of benefits requirements as all M+C organizations. Lastly, section 1855(a)(2)(G) of the Act requires PSOs to comply with all existing State consumer protection and quality standards as if the PSO were licensed under State law.

D. Conclusion

By enacting the BBA provisions related to PSOs, Congress has indicated its belief in the potential for provider controlled organizations to improve the delivery of services to Medicare beneficiaries. While expanding the options available to Medicare beneficiaries, we believe that this regulation provides an opportunity for providers to test their ability to manage the delivery of health care services. The negotiated rulemaking Committee, which included representatives from the entire range of interested parties, reached consensus on provisions that were acceptable when considered as a whole. It is safe to say that Committee members considered the impact of these provisions on their respective constituencies during the negotiating process.

We conclude that this regulation will have an undeterminable impact on small health service providers. However the provisions of this interim final rule are expected to be favorable for the managed care community as a whole, as well as for the beneficiaries that they serve. We have also determined, and the Secretary certifies that this proposed rule will not result in a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of rural hospitals. In accordance with the provisions of Executive order 12866, this regulation was reviewed by the Office of Management and Budget.

VI. Collection of Information Requirements

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because of the statutory requirement, as set forth in section 1856 of Balanced Budget Act of 1997, to implement these requirements on June 1, 1998.

HCFA is requesting OMB review and approval of this collection within eleven working days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below, within ten working days of publication of this notice in the *Federal Register*.

During this 180-day period HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR, 1320.5.

In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

Section 422.374(a), requires an organization to submit a waiver request if it has been denied licensure as a risk-bearing entity by the State in which it operates or wishes to operate. To facilitate the implementation of the requirements of this section we developed a model waiver request form and submitted it to OMB for emergency clearance in compliance with section

3506(c)(2)(a) of Paperwork Reduction Act of 1995. OMB has concurred with the model request form, and the form and instructions are currently on view on the HCFA web site, the address of which is provided in section II.A.3 of this document. The OMB approval number is 0938-0722 and is referenced on the document.

A modification of this waiver request form is necessary to incorporate the fourth criterion for a waiver of State licensure as established in this interim final rule. The additional criterion allows a PSO-type organization to forego a lengthy application process with the State if the State informs the organization in writing that such an application will not be reviewed. As part of the waiver request, the organization will be required to submit a copy of the written communication from the State. This criterion is mentioned in the purpose section of the form, and, with publication of this rule, we can add it to the check list in section III, Waiver Eligibility. We intend to submit this modification to OMB in the near future.

Section 422.382(c) establishes the composition of assets the organization must have at the time it applies to contract with HCFA as a PSO. The organization must demonstrate that it has the required minimum net worth amount as determined under paragraph (c), demonstrate that it will maintain at least \$750,000 of the minimum net worth amount in cash or cash equivalents, and demonstrate that after the effective date of a PSO's M+C contract, a PSO will maintain the necessary minimum net worth.

Section 422.384 requires that at the time of application, an organization must submit a financial plan acceptable to HCFA. The financial plan must include a detailed marketing plan; statements of revenue and expense on an accrual basis; a cash flow statement; balance sheets; the assumptions in support of the financial plan; and if applicable, statements of the availability of financial resources to meet projected losses. The financial plan must cover the first 12 months after the estimated effective date of a PSO's M+C contract; or if the PSO is projecting losses, cover 12 months beyond the period for which losses are projected. Except for the use of guarantees, LOC, and other means as provided in paragraphs (e), (f), (g) and (h) of § 422.384, an organization must demonstrate that it has the resources for meeting projected losses on its balance sheet in cash or a form that is convertible to cash in a timely manner, in accordance with the PSO's financial plan.

Guarantees will be an acceptable resource to fund projected losses, provided that the guarantor complies with the requirements in paragraph (e)(2) of this section, and the PSO, in the third quarter, notifies HCFA and requests a reduction in the period of advance funding of projected losses.

Section 422.386 sets forth the general liquidity requirement that at the time of application the PSO must demonstrate that it has sufficient cash flow to meet its financial obligations as they become due and payable. To meet this requirement HCFA will consider: the PSO's timeliness in meeting current obligations, the extent to which the PSO's current ratio of assets to liabilities is maintained at 1:1 and whether there is a decline in the current ratio over time, and the availability of outside financial resources to the PSO.

Section 422.388 sets forth the deposit requirements to provide protection in the event of an insolvency. At the time of application, an organization must demonstrate that they have deposited \$100,000 in cash or securities (or any combination thereof) into an account in a manner that is acceptable to HCFA, and demonstrate that the deposit will be restricted only to use in the event of insolvency to help assure continuation of services or pay costs associated with receivership or liquidation.

At the time of the PSO's application for an M+C contract and, thereafter, upon HCFA's request, a PSO must provide HCFA with proof of the insolvency deposit, such proof to be in a form that HCFA considers appropriate.

If at any time uncovered expenditures exceed 10 percent of a PSO's total health care expenditures, then the PSO must demonstrate in a manner acceptable to HCFA that it has placed an uncovered expenditures deposit into an account with an organization or trustee.

The PSO must also demonstrate that, at all times the deposit will have a fair market value of an amount that is 120 percent of the PSO's outstanding liability for uncovered expenditures for enrollees, including incurred, but not reported claims; the deposit will be calculated as of the first day of each month required and maintained for the remainder of each month required; if a PSO is not otherwise required to file a quarterly report, it must file a report within 45 days of the end of the calendar quarter with information sufficient to demonstrate compliance with this section; the deposit required under this section will be restricted and in trust and may be used only as provided under this section.

As stated above, the burden associated with these provisions will be

captured as part of the M+C PSO application and/or quarterly financial reporting processes, similar to section 1876 HMO and CMP contractor applications and quarterly financial reporting processes. Based on section 1876 of the Act, we estimate the burden associated with the submission of the application to be 100 hours per application and 62 annual hours per organization to submit their quarterly financial report. Based upon the current volume of waiver reporting workload, we estimate that on an annual basis, we will receive 25 to 50 applications and 25 organizations will contract with us and will be required to submit quarterly financial reports.

Under § 422.388(d) PSOs may submit a written request to withdraw income from the solvency deposits. We anticipate that, on an annual basis, we will receive less than 10 requests. Therefore, these requirements are not subject to the Paperwork Reduction Act as defined in 5 CFR 1320.3(c).

Under § 422.388(e) a PSO may submit a written request to withdraw or substitute a deposit. We anticipate that, on an annual basis, we will receive less than 10 requests. Therefore, these requirements are not subject to the PRA as defined in 5 CFR 1320.3(c).

Under § 422.390(b), in order to apply to use the financial resources of a guarantor, a PSO must submit to HCFA, documentation that the guarantor meets the requirements for a guarantor under paragraph (c) of this section; and the guarantor's independently audited financial statements for the current year-to-date and for the two most recent fiscal years. The financial statements must include the guarantor's balance sheets, profit and loss statements, and cash flow statements. We believe that the initial burden associated with this activity is most likely incurred during the application process, for which we have previously estimated the aggregate burden. We expect that less than 10 PSOs per year will incur this burden in subsequent years. Therefore, these requirements are not subject to the Paperwork Reduction Act as defined in 5 CFR 1320.3(c).

Under § 422.390(d), if the guarantee request is approved, a PSO must submit to HCFA a written guarantee document signed by an appropriate authority of the guarantor. The guarantee document must state the financial obligation covered by the guarantee; agree to unconditionally fulfill the financial obligation covered by the guarantee and not subordinate the guarantee to any other claim on the resources of the guarantor; declare that the guarantor will act on a timely basis (that is, in not

more than 5 business days) to satisfy the financial obligation covered by the guarantee; and meet other conditions as HCFA may establish from time to time. We believe that the initial burden associated with this activity is most likely incurred during the application process, for which we have previously estimated the aggregate burden. We expect that less than 10 PSOs per year will incur this burden in subsequent years. Therefore, these requirements are not subject to the PRA as defined in 5 CFR 1320.3(c).

A PSO must submit to HCFA the current internal financial statements and annual audited financial statements of the guarantor according to the schedule, manner, and form that HCFA requests.

A PSO cannot modify, substitute or terminate a guarantee unless the PSO requests HCFA's approval at least 90 days before the proposed effective date of the modification, substitution, or termination; demonstrates to HCFA's satisfaction that the modification, substitution, or termination will not result in insolvency of the PSO; and demonstrates how the PSO will meet the requirements of this section.

The public will be afforded several subsequent comment periods in future publications of *Federal Register* notices announcing our intention to seek OMB approval for the application and quarterly reporting information collection requirements, including a modified version of the National Data Reporting Requirements (the Orange Blank), that will be submitted to OMB in the near future.

We have submitted a copy of this rule to OMB for its review of the information collection requirements above. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number and HCFA regulation identifier HCFA-1011, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

As noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designee referenced below, within ten working days of publication of this collection in the *Federal Register*:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2-26-17, 7500 Security Boulevard, Baltimore, MD 21244-1850. Attn:

John Burke HCFA-1011. Fax Number: (410) 786-1415, and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer. Fax Number: (202) 395-6974 or (202) 395-5167

VII. Waiver of Notice of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the *Federal Register* to provide a period for public comment before the provisions of a rule are made final. Section 1871(b) of the Act, however, provides that publication of a notice of proposed rulemaking is not required before issuing a final rule where a statute specifically permits a regulation to be issued in interim final form. Section 1856(a)(1) of the Act, as added by section 4001 of the BBA, directs the Secretary to establish the solvency standards for PSOs on an expedited basis using a negotiated rulemaking process. Section 1856(a)(8) provides for the publication of solvency standards as an interim final rule, with an opportunity for comment to follow. Under section 1856(a)(3), the "target date" for publication of this rule was April 1, 1998. We are promulgating the solvency provisions in this rule according to the expressed interim final rule authority in section 1856(a)(8).

Section 1856(b)(1) also provides for the publication of other standards implementing the new M+C program in Part C on an interim final basis, with an opportunity for comment to follow. The PSO waiver provisions in this rule are being promulgated according to this latter expressed interim final rule authority. In addition, we may waive publication of a notice of proposed rulemaking if we find good cause that prior notice and comment are impractical, unnecessary, or contrary to public interest. As discussed earlier in this preamble, HCFA and the Committee believe that we need to establish the PSO waiver process early in order to allow the sequence of waiver request, application, and contract signing to occur, and to have PSOs initiate operations upon implementation of the M+C program. Further, we determined that entities considering applying to become PSOs under the M+C program need to know whether and how they can qualify to participate in the program in order to establish the complex organizational structures necessary under the law prior to application. Many of these entities also need to seek State licensure or a Federal waiver.

Given the time required for these events, and the clear impetus from the Congress for implementation of the M+C program, we believe that it is impractical and contrary to the public interest to publish a notice of proposed rulemaking before establishing the Federal waiver and solvency standards set forth in this interim final rule. We are providing a 60-day period for public comment.

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 422

Health Maintenance organizations (HMO), Medicare+Choice, Provider sponsored organizations (PSO).

42 CFR Part 422 is amended as set forth below:

PART 422—MEDICARE+CHOICE PROGRAM

Subpart H—Provider-Sponsored Organizations

1. The authority citation for Part 422 continues to read as follows:

Authority: Secs. 1851, 1855 and 1856 of the Social Security Act (42 U.S.C. 1302, 1395w-21 through 1395w-27, and 1395hh).

2. Section 422.350(b) is amended by adding the following definitions in alphabetical order:

§ 422.350 Basis, scope, and definitions.

(b) . . .

Capitated basis is a payment method under which a fixed per member, per month amount is paid for contracted services without regard to the type, cost or frequency of services provided.

Cash equivalent means those assets excluding accounts receivables, which can be exchanged on an equivalent basis as cash, or converted into cash within 90 days from their presentation for exchange.

Current ratio means total current assets divided by total current liabilities.

Deferred acquisition costs are those costs incurred in starting or purchasing a business. These costs are capitalized

as intangible assets and carried on the balance sheet as deferred charges since they benefit the business for periods after the period in which the costs were incurred.

Generally accepted accounting principles (GAAP) means broad rules adopted by the accounting profession as guides in measuring, recording, and reporting the financial affairs and activities of a business to its owners, creditors and other interested parties.

Guarantor means an entity that—

(1) Has been approved by HCFA as meeting the requirements to be a guarantor; and

(2) Obligates its resources to a PSO to enable the PSO to meet the solvency requirements required to contract with HCFA as an M+C organization.

Health care delivery assets (HCDAs) means any tangible assets that are part of a PSO's operation, including hospitals and other medical facilities and their ancillary equipment, and such property as may be reasonably required for the PSO's principal office or for such other purposes as the PSO may need for transacting its business.

Insolvency means a condition where the liabilities of the debtor exceed the fair valuation of its assets.

M+C stands for Medicare+Choice.

Net Worth means the excess of total assets over total liabilities, excluding fully subordinated debt or subordinated liabilities.

Qualified Actuary means a member in good standing of the American Academy of Actuaries or a person recognized by the Academy as qualified for membership, or a person who has otherwise demonstrated competency in the field of actuarial determination and is satisfactory to HCFA.

Statutory accounting practices means those accounting principles or practices prescribed or permitted by the domiciliary State insurance department in the State that PSO operates.

Subordinated debt means an obligation that is owed by an organization, that the creditor of the obligation, by law, agreement, or otherwise, has a lower repayment rank in the hierarchy of creditors than another creditor. The creditor would be entitled to repayment only after all higher ranking creditors' claims have been satisfied. A debt is fully subordinated if it has a lower repayment rank than all other classes of creditors.

Subordinated liability means claims liabilities otherwise due to providers that are retained by the PSO to meet net

worth requirements and are fully subordinated to all other creditors.

Uncovered expenditures means those expenditures for health care services that are the obligation of an organization, for which an enrollee may also be liable in the event of the organization's insolvency and for which no alternative arrangements have been made that are acceptable to HCFA. They include expenditures for health care services for which the organization is at risk, such as out-of-area services, referral services and hospital services. However, they do not include expenditures for services when a provider has agreed not to bill the enrollee.

3. A new § 422.370 is added to read as follows:

§ 422.370 Waiver of State licensure.

For an organization that seeks to contract as an M+C plan under this subpart, HCFA may waive the State licensure requirement of section 1855(a)(1) of the Act if—

(1) The organization requests a waiver no later than November 1, 2002; and

(2) HCFA determines there is a basis for a waiver under § 422.372.

4. A new § 422.372 is added to read as follows:

§ 422.372 Basis for waiver of State licensure.

In response to a request from an organization and subject to paragraphs (a) and (e) of § 422.374, HCFA may waive the State licensure requirement if the organization has applied (except as provided for in paragraph (d) of this section) for the most closely appropriate State license or authority to conduct business as an M+C plan as set forth in section 1851(a)(2)(A) of the Act and any of the following conditions are met:

(a) *Failure to act timely on application.* The State failed to complete action on the licensing application within 90 days of the date the State received a substantially complete application.

(b) *Denial of application based on discriminatory treatment.* The State has—

(1) Denied the licensure application on the basis of material requirements, procedures, or standards (other than solvency requirements) not generally applied by the State to other entities engaged in a substantially similar business; or

(2) Required, as a condition of licensure, that the organization offer any product or plan other than an M+C plan.

(c) *Denial of application based on different solvency requirements.* (1) The State has denied the licensure

application, in whole or in part, on the basis of the organization's failure to meet solvency requirements that are different from those set forth in §§ 422.380 through 422.390; or

(2) HCFA determines that the State has imposed, as a condition of licensure, any documentation or information requirements relating to solvency or other material requirements that are different from the requirements, procedures, or standards set forth by HCFA to implement, monitor and enforce §§ 422.380 through 422.390.

(d) The appropriate State licensing authority has notified the organization in writing that it will not accept their licensure application.

5. A new § 422.374 is added to read as follows:

§ 422.374 Waiver request and approval process.

(a) *Substantially complete waiver request.* The organization must submit a substantially complete waiver request that clearly demonstrates and documents its eligibility for a waiver under § 422.372.

(b) *Prompt action on waiver request.* The organization will be notified in writing within 60 days of having submitted to HCFA a substantially complete waiver request whether the waiver request has been granted or denied.

(c) *Subsequent waiver requests.* An organization that has had a waiver request denied, may submit subsequent waiver requests until November 1, 2002.

(d) *Effective date.* A waiver granted under § 422.370 will be effective on the effective date of the organization's M+C contract.

(e) *Consistency in application.* HCFA reserves the right to revoke waiver eligibility if it subsequently determines that the organization's M+C application is significantly different from the application submitted by the organization to the State licensing authority.

6. A new § 422.376 is added to read as follows:

§ 422.376 Conditions of the waiver.

A waiver granted under this section is subject to the following conditions:

(a) *Limitation to State.* The waiver is effective only for the particular State for which it is granted and does not apply to any other State. For each State in which the organization wishes to operate without a State license, it must submit a waiver request and receive a waiver.

(b) *Limitation to 36-month period.* The waiver is effective for 36 months or through the end of the calendar year in

which the 36 month period ends unless it is revoked based on paragraph (c) of this section.

(c) *Mid-period revocation.* During the waiver period (set forth in paragraph (b) of this section), the waiver is automatically revoked upon—

(1) Termination of the M+C contract;

(2) The organization's compliance with the State licensure requirement of section 1855(a)(1) of the Act; or

(3) The organization's failure to comply with § 422.378.

7. A new § 422.378 is added to read as follows:

§ 422.378 Relationship to State law.

(a) *Preemption of State law.* Any provisions of State law that relate to the licensing of the organization and that prohibit the organization from providing coverage under a contract as specified in this subpart, are superseded.

(b) *Consumer protection and quality standards.* (1) A waiver of State licensure granted under this subpart is conditioned upon the organization's compliance with all State consumer protection and quality standards that—

(i) Would apply to the organization if it were licensed under State law;

(ii) Generally apply to other M+C organizations and plans in the State; and

(iii) Are consistent with the standards established under this part.

(2) The standards specified in paragraph (b)(1) of this section do not include any standard preempted under section 1856(b)(3)(B) of the Act.

(c) *Incorporation into contract.* In contracting with an organization that has a waiver of State licensure, HCFA incorporates into the contract the requirements specified in paragraph (b) of this section.

(d) *Enforcement.* HCFA may enter into an agreement with a State for the State to monitor and enforce compliance with the requirements specified in paragraph (b) of this section by an organization that has obtained a waiver under this subpart.

8. A new § 422.380 is added to read as follows:

§ 422.380 Solvency standards.

General rule. A PSO or the legal entity of which the PSO is a component that has been granted a waiver under § 422.370 must have a fiscally sound operation that meets the requirements of §§ 422.382 through 422.390.

9. A new § 422.382 is added to read as follows:

§ 422.382 Minimum net worth amount.

(a) At the time an organization applies to contract with HCFA as a PSO under

this part, the organization must have a minimum net worth amount, as determined under paragraph (c) of this section, of:

(1) At least \$1,500,000, except as provided in paragraph (a)(2) of this section.

(2) No less than \$1,000,000 based on evidence from the organization's financial plan (under § 422.384) demonstrating to HCFA's satisfaction that the organization has available to it an administrative infrastructure that HCFA considers appropriate to reduce, control or eliminate start-up administrative costs.

(b) After the effective date of a PSO's M+C contract, a PSO must maintain a minimum net worth amount equal to the greater of—

(1) One million dollars;

(2) Two percent of annual premium revenues as reported on the most recent annual financial statement filed with HCFA for up to and including the first \$150,000,000 of annual premiums and 1 percent of annual premium revenues on premiums in excess of \$150,000,000;

(3) An amount equal to the sum of three months of uncovered health care expenditures as reported on the most recent financial statement filed with HCFA; or

(4) Using the most recent annual financial statement filed with HCFA, an amount equal to the sum of—

(i) Eight percent of annual health care expenditures paid on a non-capitated basis to non-affiliated providers; and

(ii) Four percent of annual health care expenditures paid on a capitated basis to non-affiliated providers plus annual health care expenditures paid on a non-capitated basis to affiliated providers.

(iii) Annual health care expenditures that are paid on a capitated basis to affiliated providers are not included in the calculation of the net worth requirement under paragraphs (a) and (b)(4) of this section.

(c) *Calculation of the minimum net worth amount—*(1) *Cash requirement.* (i) At the time of application; the organization must maintain at least \$750,000 of the minimum net worth amount in cash or cash equivalents.

(ii) After the effective date of a PSO's M+C contract, a PSO must maintain the greater of \$750,000 or 40 percent of the minimum net worth amount in cash or cash equivalents.

(2) *Intangible Assets.* An organization may include intangible assets, the value of which is based on Generally Accepted Accounting Principles (GAAP), in the minimum net worth amount calculation subject to the following limitations—

(i) *At the time of application.* (A) Up to 20 percent of the minimum net worth amount, provided at least \$1,000,000 of the minimum net worth amount is met through cash or cash equivalents; or
(B) Up to 10 percent of the minimum net worth amount, if less than \$1,000,000 of the minimum net worth amount is met through cash or cash equivalents, or if HCFA has used its discretion under paragraph (a)(2) of this section.

(ii) *From the effective date of the contract.* (A) Up to 20 percent of the minimum net worth amount if the greater of \$1,000,000 or 67 percent of the minimum net worth amount is met by cash or cash equivalents; or
(B) Up to ten percent of the minimum net worth amount if the greater of \$1,000,000 or 67 percent of the minimum net worth amount is not met by cash or cash equivalents.

(3) *Health Care Delivery Assets.* Subject to the other provisions of this section, a PSO may apply 100 percent of the GAAP depreciated value of health care delivery assets (HCDAs) to satisfy the minimum net worth amount.

(4) *Other assets.* A PSO may apply other assets not used in the delivery of health care provided that those assets are valued according to statutory accounting practices (SAP) as defined by the State.

(5) *Subordinated debts and subordinated liabilities.* Fully subordinated debt and subordinated liabilities are excluded from the minimum net worth amount calculation.

(6) *Deferred acquisition costs.* Deferred acquisition costs are excluded from the calculation of the minimum net worth amount.

10. A new § 422.384 is added to read as follows:

§ 422.384 Financial plan requirement.

(a) *General rule.* At the time of application, an organization must submit a financial plan acceptable to HCFA.

(b) *Content of plan.* A financial plan must include—

- (1) A detailed marketing plan;
- (2) Statements of revenue and expense on an accrual basis;
- (3) Statements of sources and uses of funds;
- (4) Balance sheets;
- (5) Detailed justifications and assumptions in support of the financial plan including, where appropriate, certification of reserves and actuarial liabilities by a qualified health maintenance organization actuary; and
- (6) If applicable, statements of the availability of financial resources to meet projected losses.

(c) *Period covered by the plan.* A financial plan must—

(1) Cover the first 12 months after the estimated effective date of a PSO's M+C contract; or

(2) If the PSO is projecting losses, cover 12 months beyond the end of the period for which losses are projected.

(d) *Funding for projected losses.* Except for the use of guarantees, LOC, and other means as provided in § 422.384(e), (f) and (g), an organization must have the resources for meeting projected losses on its balance sheet in cash or a form that is convertible to cash in a timely manner, in accordance with the PSO's financial plan.

(e) *Guarantees and projected losses.* Guarantees will be an acceptable resource to fund projected losses, provided that a PSO—

(1) Meets HCFA's requirements for guarantors and guarantee documents as specified in § 422.390; and

(2) Obtains from the guarantor cash or cash equivalents to fund the projected losses timely, as follows—

(i) Prior to the effective date of a PSO's M+C contract, the amount of the projected losses for the first two quarters;

(ii) During the first quarter and prior to the beginning of the second quarter of a PSO's M+C contract, the amount of projected losses through the end of the third quarter; and

(iii) During the second quarter and prior to the beginning of the third quarter of a PSO's M+C contract, the amount of projected losses through the end of the fourth quarter.

(3) If the guarantor complies with the requirements in paragraph (e)(2) of this section, the PSO, in the third quarter, may notify HCFA of its intent to reduce the period of advance funding of projected losses. HCFA will notify the PSO within 60 days of receiving the PSO's request if the requested reduction in the period of advance funding will not be accepted.

(4) If the guarantee requirements in paragraph (e)(2) of this section are not met, HCFA may take appropriate action, such as requiring funding of projected losses through means other than a guarantee. HCFA retains discretion to require other methods or timing of funding, considering factors such as the financial condition of the guarantor and the accuracy of the financial plan.

(f) *Letters of credit.* Letters of credit are an acceptable resource to fund projected losses, provided they are irrevocable, unconditional, and satisfactory to HCFA. They must be capable of being promptly paid upon presentation of a sight draft under the letters of credit without further reference

to any other agreement, document, or entity.

(g) *Other means.* If satisfactory to HCFA, and for periods beginning one year after the effective date of a PSO's M+C contract, a PSO may use the following to fund projected losses—

(1) Lines of credit from regulated financial institutions;

(2) Legally binding agreements for capital contributions; or

(3) Legally binding agreements of a similar quality and reliability as permitted in paragraphs (g)(1) and (2) of this section.

(h) *Application of guarantees, Letters of credit or other means of funding projected losses.* Notwithstanding any other provision of this section, a PSO may use guarantees, letters of credit and, beginning one year after the effective date of a PSO's M+C contract, other means of funding projected losses, but only in a combination or sequence that HCFA considers appropriate.

11. A new § 422.386 is added to read as follows:

§ 422.386 Liquidity.

(a) A PSO must have sufficient cash flow to meet its financial obligations as they become due and payable.

(b) To determine whether the PSO meets the requirement in paragraph (a) of this section, HCFA will examine the following—

(1) The PSO's timeliness in meeting current obligations;

(2) The extent to which the PSO's current ratio of assets to liabilities is maintained at 1:1 including whether there is a declining trend in the current ratio over time; and

(3) The availability of outside financial resources to the PSO.

(c) If HCFA determines that a PSO fails to meet the requirement in paragraph (b)(1) of this section, HCFA will require the PSO to initiate corrective action and pay all overdue obligations.

(d) If HCFA determines that a PSO fails to meet the requirement of paragraph (b)(2) of this section, HCFA will require the PSO to initiate corrective action to—

(1) Change the distribution of its assets;

(2) Reduce its liabilities; or

(3) Make alternative arrangements to secure additional funding to restore the PSO's current ratio to 1:1.

(e) If HCFA determines that a PSO fails to meet the requirement of paragraph (b)(3) of this section, HCFA will require the PSO to obtain funding from alternative financial resources.

12. A new § 422.388 is added to read as follows:

§ 422.388 Deposits.

(a) *Insolvency deposit.* (1) At the time of application, an organization must deposit \$100,000 in cash or securities (or any combination thereof) into an account in a manner that is acceptable to HCFA.

(2) The deposit must be restricted to use in the event of insolvency to help assure continuation of services or pay costs associated with receivership or liquidation.

(3) At the time of the PSO's application for an M+C contract and, thereafter, upon HCFA's request, a PSO must provide HCFA with proof of the insolvency deposit, such proof to be in a form that HCFA considers appropriate.

(b) *Uncovered expenditures deposit.* (1) If at any time uncovered expenditures exceed 10 percent of a PSO's total health care expenditures, then the PSO must place an uncovered expenditures deposit into an account with any organization or trustee that is acceptable to HCFA.

(2) The deposit must at all times have a fair market value of an amount that is 120 percent of the PSO's outstanding liability for uncovered expenditures for enrollees, including incurred, but not reported claims.

(3) The deposit must be calculated as of the first day of each month required and maintained for the remainder of each month required.

(4) If a PSO is not otherwise required to file a quarterly report, it must file a report within 45 days of the end of the calendar quarter with information sufficient to demonstrate compliance with this section.

(5) The deposit required under this section is restricted and in trust for HCFA's use to protect the interests of the PSO's Medicare enrollees and to pay the costs associated with administering the insolvency. It may be used only as provided under this section.

(c) A PSO may use the deposits required under paragraphs (a) and (b) of this section to satisfy the PSO's minimum net worth amount required under § 422.382(a) and (b).

(d) All income from the deposits or trust accounts required under paragraphs (a) and (b) of this section, are considered assets of the PSO. Upon HCFA's approval, the income from the deposits may be withdrawn.

(e) On prior written approval from HCFA, a PSO that has made a deposit under paragraphs (a) or (b) of this section, may withdraw that deposit or any part thereof if—

(1) A substitute deposit of cash or securities of equal amount and value is made;

(2) The fair market value exceeds the amount of the required deposit; or
(3) The required deposit under paragraphs (a) or (b) of this section is reduced or eliminated.

13. A new § 422.390 is added to read as follows:

§ 422.390 Guarantees.

(a) *General policy.* A PSO, or the legal entity of which the PSO is a component, may apply to HCFA to use the financial resources of a guarantor for the purpose of meeting the requirements in § 422.384. HCFA has the discretion to approve or deny approval of the use of a guarantor.

(b) *Request to use a guarantor.* To apply to use the financial resources of a guarantor, a PSO must submit to HCFA—

(1) Documentation that the guarantor meets the requirements for a guarantor under paragraph (c) of this section; and

(2) The guarantor's independently audited financial statements for the current year-to-date and for the two most recent fiscal years. The financial statements must include the guarantor's balance sheets, profit and loss statements, and cash flow statements.

(c) *Requirements for guarantor.* To serve as a guarantor, an organization must meet the following requirements:

(1) Be a legal entity authorized to conduct business within a State of the United States.

(2) Not be under Federal or State bankruptcy or rehabilitation proceedings.

(3) Have a net worth (not including other guarantees, intangibles and restricted reserves) equal to three times the amount of the PSO guarantee.

(4) If the guarantor is regulated by a State insurance commissioner, or other State official with authority for risk-bearing entities, it must meet the net worth requirement in § 422.390(c)(3) with all guarantees and all investments in and loans to organizations covered by guarantees excluded from its assets.

(5) If the guarantor is not regulated by a State insurance commissioner, or other similar State official it must meet the net worth requirement in § 422.390(c)(3) with all guarantees and all investments in and loans to organizations covered by a guarantee and to related parties (subsidiaries and affiliates) excluded from its assets.

(d) *Guarantee document.* If the guarantor request is approved, a PSO must submit to HCFA a written guarantee document signed by an appropriate authority of the guarantor. The guarantee document must—

(1) State the financial obligation covered by the guarantee;

(2) Agree to—

(i) Unconditionally fulfill the financial obligation covered by the guarantee; and

(ii) Not subordinate the guarantee to any other claim on the resources of the guarantor;

(3) Declare that the guarantor must act on a timely basis, in any case not more than 5 business days, to satisfy the financial obligation covered by the guarantee; and

(4) Meet other conditions as HCFA may establish from time to time.

(e) *Reporting requirement.* A PSO must submit to HCFA the current internal financial statements and annual audited financial statements of the guarantor according to the schedule, manner, and form that HCFA requests.

(f) *Modification, substitution, and termination of a guarantee.* A PSO cannot modify, substitute or terminate a guarantee unless the PSO—

(1) Requests HCFA's approval at least 90 days before the proposed effective date of the modification, substitution, or termination;

(2) Demonstrates to HCFA's satisfaction that the modification, substitution, or termination will not result in insolvency of the PSO; and

(3) Demonstrates how the PSO will meet the requirements of this section.

(g) *Nullification.* If at any time the guarantor or the guarantee ceases to meet the requirements of this section, HCFA will notify the PSO that it ceases to recognize the guarantee document. In the event of this nullification, a PSO must—

(1) Meet the applicable requirements of this section within 15 business days; and

(2) If required by HCFA, meet a portion of the applicable requirements in less than the time period granted in paragraph (g)(1) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 20, 1998.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing Administration.

Dated: April 28, 1998.

Donna E. Shelala,
Secretary.

(FR Doc. 98-12058 Filed 5-4-98; 11:09 am)
BILLING CODE 4120-01-P

federal register

Thursday
May 7, 1998

Part IV

Department of Defense
General Services
Administration

National Aeronautics and
Space Administration

48 CFR Part 1, et al.
Federal Acquisition Regulation; Review of
FAR Representations; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION48 CFR Parts 1, 4, 12, 14, 19, 26, 27,
32, 41, and 52

[FAR Case 96-013]

RIN 9000-AH97

Federal Acquisition Regulation;
Review of FAR Representations

AGENCY: Department of Defense (DOD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulations Council are
proposing to amend the Federal
Acquisition Regulation (FAR) to remove
or reduce certain requirements for
representations and other statements
from offerors and contractors. This
regulatory action was not subject to
Office of Management and Budget
review under Executive Order 12866,
dated September 30, 1993. This is not a
major rule under 5 U.S.C. 804.

DATES: Comments should be submitted
on or before July 6, 1998, to be
considered in the formulation of a final
rule.

ADDRESSES: Interested parties should
submit written comments to: General
Services Administration, FAR
Secretariat (MVRs), 1800 F Street, NW,
Room 4035, Washington, DC 20405.
E-mail comments submitted over
Internet should be addressed to:
farcase.96-013@gsa.gov.

Please cite FAR case 96-013 in all
correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The
FAR Secretariat, Room 4035, GS
Building, Washington, DC 20405, (202)
501-4755 for information pertaining to
status or publication schedules. For
clarification of content, contact Mr. Paul
Linfield, Procurement Analyst, at (202)
501-1757. Please cite FAR case 96-013.

SUPPLEMENTARY INFORMATION:

A. Background

This case was initiated in response to
requests from industry to eliminate
representations required by the FAR
that place an unnecessary burden on
offerors or contractors. This case
proposes to—

1. Delete the clause at 52.214-17,
Affiliated bidders.

2. Reduce the information collection
requirements associated with the
clauses at 52.204-5, Women-Owned
Business; 52.212-3, Offeror
Representations and Certifications—
Commercial Items; 52.214-21,
Descriptive Literature; and 52.241-1,
Electric Service Territory Compliance
Representation; and

3. Reduce the level of affirmation or
substitute a contract requirement in the
clauses at 52.216-2, Economic Price
Adjustment—Standard Supplies;
52.216-3, Economic Price Adjustment—
Semistandard Supplies; 52.222-43, Fair
Labor Standards Act and Service
Contracts Act—Price Adjustment
(Multiple Year and Option Contracts);
52.222-44, Fair Labor Standards Act
and Service Contract Act—Price
Adjustment; 52.225-10, Duty-Free
Entry; 52.226-1, Utilization of Indian
Organizations and Indian-Owned
Economic Enterprises; 52.227-15,
Representation of Limited Rights Data
and Restricted Computer Software;
52.228-8, Liability and Insurance—
Leased Motor Vehicles; 52.228-9, Cargo
Insurance; 52.229-3, Federal, State and
Local Taxes; and 52.232-12, Advance
Payments.

B. Regulatory Flexibility Act

This proposed rule is not expected to
have a significant economic impact on
a substantial number of small entities
within the meaning of the Regulatory
Flexibility Act, 5 U.S.C. 601, *et seq.*
While it is expected to reduce the
administrative burden associated with
representation requirements, it does not
significantly alter the type of
information to be provided to the
Government under the amended
provisions and clauses. An Initial
Regulatory Flexibility Analysis has,
therefore, not been performed.
Comments from small entities
concerning the affected FAR subpart
will be considered in accordance with 5
U.S.C. 610 of the Act. Such comments
must be submitted separately and
should cite 5 U.S.C. 601, *et seq.* (FAR
case 96-013), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44
U.S.C. 3501, *et seq.*) is deemed to apply
because this proposed rule contains
information collection requirements that
will result in the reduction of
approximately 119,150 hours as stated
and approved under the following
Office of Management and Budget
(OMB) Control Numbers:

9000-0018, *Certification of
Independent Price Determination and
Parent Company and Identifying Data
(Deletion of 52.214-17, Affiliated
Bidders.)* Public reporting burden for
this collection of information is
estimated to average 0.1 hours per
response, including the time for
reviewing instruction, searching
existing data sources, gathering and
maintaining the data needed, and
completing and reviewing the collection
of information.

The annual reporting burden is
estimated as follows:

Respondents	Responses per respondent	Total annual responses	Preparation hours per re- sponses	Total response burden hours
64,250	20	1,285,000	.01	12,850

9000-0039, *Descriptive Literature (Revision of 52.214-21, Descriptive Literature)*. Public reporting burden for this
collection of information is estimated to average .157 hours per response, including the time for reviewing instruction,
searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection
of information.

The annual reporting burden is estimated as follows:

Respondents	Responses per respondent	Total annual responses	Preparation hours per re- sponses	Total response burden hours
3	2663	7989	.157	1,254

(c) 9000-0136, *Solicitation/Contract/Order for Commercial Items (Revision of 52.212-3, Offeror Representations and
Certifications—Commercial Items)*. Public reporting burden for this collection of information is estimated to average

.74 hr. per response, including the time for reviewing instruction, searching existing data sources, gathering and maintain-
ing the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents	Responses per respondent	Total annual responses	Preparation hours per re- sponses	Total response burden hours
500,000	20	10,000,000	.74	7,394,050

(d) 9000-0126, *Electric Service
Territory Compliance Representation
(Revision of 52.241-1, Electric Service
Territory Representations)*. Reduction
from 500 hours to approximately 230
hours. A notice for public comment was
published in the *Federal Register* at 63
FR 2218, January 14, 1998.

(e) Although OMB Clearance Number
9000-0145, use of Data Universal
Numbering System (DUNS) as Primary
Contractor Identification (FAR Case 95-
307), ostensibly covers FAR clause
52.204-5, Women-Owned Business, the
estimated burdens for that clearance
appear to be based on the information
collection requirements associated with
use of the DUNS number. Therefore,
although revisions to 52.204-5 will
significantly reduce the number of
responses required, we do not estimate
any impact on the hours approved
under 9000-0145.

Accordingly, a request for review of a
revised information collection
requirement concerning the OMB
clearance numbers noted above were
submitted to the Office of Management
and Budget under 44 U.S.C. 3501, *et
seq.*

D. Request for Comments Regarding
Paperwork Burden

Members of the public are invited to
comment on the recordkeeping and
information collection requirements and
estimates set forth above. Please send
comments to: Office of Information and
Regulatory Affairs, Office of
Management and Budget, Attention: Mr.
Peter N. Weiss, FAR Desk Officer, New
Executive Office Building, Room 10102,
725 17th Street, NW, Washington, DC
20503.

Also send a copy of any comments to
the FAR Secretariat at the address
shown under ADDRESSES. Please cite the
corresponding OMB Clearance Number
in all correspondence related to the
estimate.

List of Subjects in 48 CFR Parts 1, 4, 12,
14, 19, 26, 27, 32, 41, and 52

Government procurement.

Dated: May 1, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR
Parts 1, 4, 12, 14, 19, 26, 27, 32, 41, and
52 be amended as set forth below:

1. The authority citation for 48 CFR
Parts 1, 4, 12, 14, 19, 26, 27, 32, 41, and
52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C.
chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION
REGULATIONS SYSTEM

2. Section 1.106 is amended in the
table following the introductory
paragraph by removing the FAR
segment "52.214-17" and its
corresponding OMB Control Number
"9000-0018"; and by adding, in
numerical order, the following entries:

1.106 OMB Approval under the Paperwork
Reduction Act.

FAR segment	OMB con- trol No.
52.212-3	9000-0136
52.241-1	9000-0126

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.603 is amended by
revising paragraph (b) to read as follows:

4.603 Solicitation provisions.

(b) The contracting officer shall insert
the provision at 52.204-5, Women-
Owned Business (Other Than Small
Business), in all solicitations that are
not set aside for small business concerns
and that exceed the simplified
acquisition threshold, when the contract
is to be performed inside the United
States, its territories or possessions,
Puerto Rico, the Trust Territory of the
Pacific Islands, or the District of
Columbia.

*, * * *

PART 12—ACQUISITION OF
COMMERCIAL ITEMS

4. Section 12.503 is amended by
revising paragraph (b)(5) to read as
follows:

12.503 Applicability of certain laws to
Executive agency contracts for the
acquisition of commercial items.

* * * * *
(b) * * *
(5) 49 U.S.C. 40118, Requirement for
a clause under the Fly American
provisions (see 47.405).

* * * * *

PART 14—SEALED BIDDING

14.201-6 [Amended]

5. Section 14.201-6 is amended by
removing and reserving paragraph (k).

14.405 [Amended]

6. Section 14.405 is amended in
paragraph (d)(2) by inserting the word
"and" at the end; by removing
paragraph (e) and redesignating
paragraph (f) as (e).

PART 19—SMALL BUSINESS
PROGRAMS

7. Section 19.703 is amended by
revising the last sentence of paragraph
(b) to read as follows:

19.703 Eligibility requirements for
participating in the program.

* * * * *
(b) * * * Protests challenging a
subcontractor's representation of its
status as a women-owned small
business concern shall be filed in
accordance with Small Business
Administration procedures.

* * * * *

PART 26—OTHER SOCIOECONOMIC
PROGRAMS

26.103 [Amended]

8. Section 26.103 is amended in
paragraphs (a), (b), and (e) by removing
"self-certification" and inserting
"representation".

PART 27—PATENTS, DATA, AND
COPYRIGHTS

9. Section 27.404 is amended by
revising the first and second sentences

of paragraphs (d)(2) and of (e)(3) to read as follows:

27.404 Basic rights in data clause.

(d) * * *

(2) As an aid in determining whether the clause at 52.227-14 should be used with its Alternate II, the provision at 52.227-15, Statement of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 52.227-14, Rights in Data-General. This provision requests that an offeror state in response to a solicitation, to the extent feasible, whether limited rights data are likely to be used in meeting the data delivery requirements set forth in the solicitation. * * *

(e) * * *

(3) As an aid in determining whether the clause should be used with its Alternate III, the provision at 52.227-15, Statement of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 52.227-14, Rights in Data-General. This provision requests that an offeror state, in response to a solicitation, to the extent feasible, whether restricted computer software is likely to be used in meeting the data delivery requirements set forth in the solicitation. * * *

10. Section 27.409 is amended by revising the first sentence of paragraph (g) to read as follows:

27.409 Solicitation provisions and contract clauses.

(g) In accordance with 27.404(d)(2), if the contracting officer desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation, the contracting officer shall insert the provision at 52.227-15, Statement of Limited Rights Data and Restricted Computer Software, in any solicitation containing the clause at 52.227-14, Rights in Data-General. * * *

PART 32—CONTRACT FINANCING

11. Section 32.805 is amended by revising the introductory text of paragraph (a)(1), and paragraphs (a)(2) and (a)(3) to read as follows:

32.805 Procedure.

(a) *Assignments.* (1) Assignments by corporations shall be—

(2) Assignments by a partnership may be signed by one partner, if the assignment is accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute assignments on behalf of the partnership.

(3) Assignments by an individual must be signed by that individual and the signature acknowledged before a notary public or other person authorized to administer oaths. * * *

PART 41—ACQUISITION OF UTILITY SERVICES

12. Section 41.201 is amended by revising the last two sentences of paragraph (e) to read as follows:

41.201 Policy.

(e) * * * Proposals from alternative electric suppliers must provide a representation that service can be provided in a manner consistent with section 8093 of Public Law 100-202 (see 41.201(d)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 52.204-5 is revised to read as follows:

52.204-5 Women-Owned Business (Other Than Small Business).

As prescribed in 4.603(b), insert the following provision:

Women-Owned Business (Other Than Small Business) (Date)

(a) *Definition.* *women-owned business concern*, as used in this provision, means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it is a women-owned business concern.

(End of provision)

14. Section 52.212-3 is amended by revising the date of the provision, and paragraphs (c)(2), (c)(3), and (c)(4) to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Date)

(c) * * *

(2) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a small disadvantaged business concern.

(3) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned small business concern.

(4) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is a women-owned business concern. * * *

52.214-17 (Reserved)

15. Section 52.214-17 is removed and reserved.

16. Section 52.214-21 is amended by revising the introductory text of the provision; and by revising the date, introductory text, and paragraph (d) of Alternate I to read as follows:

52.214-21 Descriptive Literature.

As prescribed in 14.201-6(p)(1), insert the following provision:

Alternate I (DATE). As prescribed in 14.201-6(p)(2), add the following paragraphs (d) and (e) to the basic provision.

(d) The Contracting Officer may waive the requirement for furnishing descriptive literature if the bidder has supplied a product the same as that required by this solicitation under a prior contract. A bidder that requests a waiver of this requirement shall provide the following information.

Prior contract number

Date of prior contract

Contract line item number of product supplied

Name and address of Government activity to which delivery was made

Date of final delivery of product supplied

17. Section 52.216-2 is amended by revising the clause date and the first sentence of paragraph (a) to read as follows:

52.216-2 Economic Price Adjustment—Standard Supplies.

Economic Price Adjustment—Standard Supplies (Date)

(a) The Contractor states that the unit price in the Schedule for _____ [offeror insert

Schedule line item number] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. * * *

18. Section 52.216-3 is amended by revising the clause date and paragraph (a) to read as follows:

52.216-3 Economic Price Adjustment—Semistandard Supplies.

Economic Price Adjustment—Semistandard Supplies (Date)

(a) The contractor states that the supplies identified as line items _____ [offeror insert Schedule line item number] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor. The Contractor further states that, as of the date of this contract, any difference between the unit prices in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard commercial practice. * * *

19. Section 52.219-1 is amended by revising the provision date, and the introductory text of paragraph (d)(2) to read as follows:

52.219-1 Small Business Program Representations.

Small Business Program Representations (Date)

(d) * * *

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

52.219-21 (Amended)

20. Section 52.219-21 is amended by revising the provision date to read "(Date)"; and by removing the statement "Offeror represents as follows:", which follows the first parenthetical.

52.222-43 (Amended)

21. Section 52.222-43 is amended by revising the date of the clause to "read "(Date)"; and in paragraph (b) by removing "warrants" and inserting "states".

52.222-44 (Amended)

22. Section 52.222-44 is amended by revising the date of the clause to read "(Date)"; and in paragraph (b) by removing "warrants" and inserting "states".

23. Section 52.225-10 is amended by revising the introductory paragraph, the date of the clause, and paragraph (d); in paragraphs (g), (h), and (i), by removing "agrees to" and inserting "shall". The revised text reads as follows:

52.225-10 Duty-Free Entry.

As prescribed in 25.605, insert the following clause. When used in contracts of \$100,000 or less, paragraphs (b)(1) and (i)(2) shall be modified to reduce the dollar figure.

Duty-Free Entry (Date)

(d) The Contractor shall—

(1) Claim duty-free entry only for supplies that are intended to be delivered to the Government or incorporated into the end items to be delivered under this contract; and

(2) Pay duty to the extent that these supplies, or any portion of them, are diverted to non-Governmental use, other than as scrap or salvage or as a result of a competitive sale authorized by the Contracting Officer.

24. Section 52.226-1 is amended by revising the clause date and the first two sentences of paragraph (c)(1) to read as follows:

52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Date)

(c) * * *

(c) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer shall refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW., MS-334A-SIB, Washington, DC 20245. * * *

25. Section 52.227-15 is revised to read as follows:

52.227-15 Statement of Limited Rights Data and Restricted Computer Software.

As prescribed in 27.409(b), insert the following provision:

Statement of Limited Rights Data and Restricted Computer Software (Date)

(a) This solicitation sets forth the work to be performed if a contract award results, and

the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227-16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data-General clause at 52.227-14 that is to be included in this contract. Under the latter clause, a contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(b) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at 52.227-14, Rights in Data-General, the offeror shall complete paragraph (c) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(c) The offeror has reviewed the requirements for the delivery of data or software and states [offeror check appropriate block]—

None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

Note: "Limited rights data" and "Restricted computer software" are defined in the contract clauses entitled "Rights in Data-General".

26. Section 52.228-8 is amended by revising the introductory paragraph, the data and paragraph (e) of the clause to read as follows:

52.228-8 Liability and Insurance—Leased Motor Vehicles.

As prescribed in 28.312, insert the following clause:

Liability and Insurance—Leased Motor Vehicles (Date)

* * * * *

(e) The contract price shall not include any cost for insurance or contingency to cover losses, damage, injury, or death for which the Government is responsible under paragraph (a) of this clause.

(End of clause)

27. Section 52.228-9 is revised to read as follows:

52.227-9 Cargo Insurance

As prescribed in 28.313(a), insert the following clause:

Cargo Insurance (Date)

(a) The Contractor, at the Contractor's expense, shall provide and maintain, during the continuance of this contract, cargo insurance of \$_____ per vehicle to cover the value of property on each vehicle and of \$_____ to cover the total value of the property in the shipment.

(b) All insurance shall be written on companies acceptable to _____ [insert name of contracting agency], and policies shall include such terms and conditions as required by _____ [insert name of contracting agency] before commencing operations under this contract.

(c) Each cargo insurance policy shall include the following statement:
"It is a condition of this policy that the Company shall furnish—

(1) Written notice to _____ [insert name and address of contracting agency], 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) Evidence of any renewal policy to the address specified in paragraph (a) of this statement, not less than 15 days prior to the expiration of any current policy on file with _____ [insert name of contracting agency].

(End of clause)

52.229-3 [Amended]

28. Section 52.229-3 is amended by revising the date of the clause to read "(DATE)"; and in paragraph (c) by removing "warrants" and inserting "states"

29. Section 52.232-12 is amended—
(a) By revising the introductory text, the date, paragraph (j) and the introductory text of paragraph (o) of the clause;

(b) In paragraph (o)(8) by removing "representations and";

(c) By revising the date of Alternate V; and

(d) The date, paragraph (g), the introductory text of paragraph (l), and

paragraph (l)(8) of the clause following Alternate V.

The revised text reads as follows:

52.232-12 Advance Payments.

As prescribed in 32.412(a), insert the following clause:

Advance Payments (Date)

(j) *Insurance.* The Contractor shall maintain with responsible insurance carriers (1) insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workers' compensation laws. Until work under this contract has been completed and all advance payment made under the contract have been liquidated, the Contractor shall maintain this insurance; maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (l) of this clause; and furnish any evidence with respect to its insurance that the administering office may require.

(o) *Warranties.* The Contractor warrants the following:

Alternate V (Date). * * *

Advance Payment Without Special Bank Account (Date)

(g) *Insurance.* The Contractor shall maintain with responsible insurance carriers (1) insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workers' compensation laws. Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall maintain this insurance; maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under

paragraph (f) of this clause; and furnish any evidence with respect to its insurance that the administering office may require.

(1) *Warranties.* The Contractor warrants the following:

(8) These warranties shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

30. Section 52.241-1 is revised to read as follows:

52.241-1 Electric Service Territory Compliance Representation.

As prescribed in 41.501(b), insert a provision substantially the same as the following:

Electric Service Territory Compliance Representation (Date)

(a) Section 8093 of Public Law 100-202 generally requires purchases of electricity by any department, agency, or instrumentality of the United States to be consistent with State law governing the provision of electric utility service, including State utility commission rulings and electric utility franchises or service territories established pursuant to State statute, State regulation, or State-approved territorial agreements.

(b) By signing this offer, the offeror represents that this offer to sell electricity is consistent with Section 8093 of Public Law 100-202.

(c) Upon request of the Contracting Officer, the offeror shall submit support legal and factual rationale for this representation.

(End of provision)

31. Section 52.247-63 is amended by revising the date and paragraph (c) of the clause to read as follows:

52.247-63 Preference for U.S.-Flag Air Carriers.

Preference for U.S.-Flag Air Carriers (Date)

(c) In performing work under this contract, the Contractor shall use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

[FR Doc. 98-2096 Filed 5-6-98; 8:45 am]

BILLING CODE 6820-EP-M

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Rules and Regulations

Federal Register

Vol. 63, No. 89

Friday, May 8, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV98-979-1 FIR]

Melons Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the South Texas Melon Committee (Committee) under Marketing Order No. 979 for the 1997-98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess Texas melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Cynthia Cavazos or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (956) 682-2833, Fax: (956) 682-5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by

contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning October 1, 1997, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Committee for the 1997-98 and

subsequent fiscal periods from \$0.07 per carton to \$0.04 per carton.

The Texas melon marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee, in a telephone vote, unanimously recommended 1997-98 administrative expenses of \$100,000 for personnel, office, and the travel portion of the compliance budget. These expenses were approved in September 1997. The assessment rate and funding for research projects, promotion, and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on December 16, 1997, and unanimously recommended 1997-98 expenditures of \$158,200 and an assessment rate of \$0.04 per carton of melons. In comparison, last year's budgeted expenditures were \$308,000. The assessment rate of \$0.04 is \$0.03 lower than the rate previously in effect. At the former rate of \$0.07 per carton, the assessment income would have exceeded anticipated expenses by about \$112,700, and the projected reserve of \$234,269 on September 30, 1998, would have exceeded the level the Committee believes to be adequate to administer the program. The Committee voted to lower its assessment rate and use more of the reserve to cover its expenses. The

reduced assessment rate is expected to bring assessment income closer to the amount necessary to administer the program for the 1997-98 fiscal period.

Major expenses recommended by the Committee for the 1997-98 fiscal year include \$84,500 for personnel and administrative expenses, \$40,500 for compliance, \$23,200 for research projects, and \$10,000 for promotion. Budgeted expenses for these items in 1996-97 were \$84,500, \$115,500, \$108,000, and \$0, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Melon shipments for the year are estimated at 3,870,000 cartons, which should provide \$154,800 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$228,669) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 979.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The remainder of the Committee's 1997-98 budget was approved December 23, 1997, and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 33 producers of South Texas melons in the production area and approximately 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

This rule continues in effect the assessment rate of \$0.04 per carton established for the Committee and collected from handlers for the 1997-98 and subsequent fiscal periods. The Committee unanimously recommended 1997-98 expenditures of \$158,200 and an assessment rate of \$0.04 per carton of melons. In comparison, last year's budgeted expenditures were \$308,000. The assessment rate of \$0.04 is \$0.03 less than the rate previously in effect. At the former rate of \$0.07 per carton and an estimated 1998 melon production of 3,870,000 cartons, the projected reserve on September 30, 1998, would have exceeded the level the Committee believes necessary to administer the program. The Committee decided that an assessment rate of less than \$0.04 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1997-98 fiscal period include \$84,500 for personnel and administrative expenses, \$40,500 for compliance, \$23,200 for research projects, and \$10,000 for promotion. Budgeted expenses for these items in 1996-97 were \$84,500, \$115,500, \$108,000, and \$0, respectively.

Melon shipments for the year are estimated at 3,870,000 cartons, which should provide \$154,800 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$228,669) will be kept within the maximum permitted by the order

(approximately two fiscal periods' expenses; § 979.44).

Recent price information indicates that the grower price for the 1997-98 marketing season will range between \$7.00 and \$9.00 per carton of cantaloupes and between \$5.00 and \$7.00 per carton of honeydew melons. Therefore, the estimated assessment revenue for the 1997-98 fiscal period as a percentage of total grower revenue will range between .006 and .004 percent for cantaloupes and between .008 and .006 percent for honeydew melons.

This rule continues to decrease the assessment obligation imposed on handlers. While this rule imposes some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 16, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large South Texas melon handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on January 29, 1998 (63 FR 4366). The interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on March 30, 1998, and no comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule amending 7 CFR part 979 which was published at 63 FR 4366 on January 29, 1998, is adopted as a final rule without change.

Dated: May 4, 1998.

Robert C. Keeney,
Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-12291 Filed 5-7-98; 8:45 am]
BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-ANE-40-AD; Amendment 39-10514; AD 98-10-03]

RIN 2120-AA64

Airworthiness Directives; Allison Engine Company Model 250-C47B Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) 97-21-09, applicable to Allison Engine Company Model 250-C47B turboshaft engines, that currently requires replacing the engine main electrical harness assembly with an improved assembly, installing a new hydromechanical unit (HMU) and electronic control unit (ECU), removing the placard notifying the pilot that the overspeed protection system is disabled, and revising the Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC), Model 407 Rotorcraft Flight Manual (RFM). This amendment continues the requirements of the current AD, but adds the requirement to install ECUs with improved resistance to corrosion. This amendment is prompted by reports of ECUs with annunciated hard faults due to corrosion on internal connectors. The actions specified by this AD are intended to prevent uncommanded inflight engine shutdowns, which can

result in autorotation, forced landing, and possible loss of the helicopter.

DATES: Effective May 26, 1998.

The incorporation by reference of Allison Engine Company Alert Commercial Engine Bulletin (CEB) CEB-A-73-6010, dated October 15, 1996, CEB A-73-6015, Revision 1, dated July 30, 1997, and Revision 2, dated October 31, 1997, and BHTC Flight Manual BHT-407-FM-1, Revision 5, dated June 24, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 3, 1997 (62 FR 61438, November 18, 1997).

The incorporation by reference of Allison Engine Company Alert CEB-A-73-6017, Revision 1, dated February 18, 1998, and Revision 2, dated April 9, 1998, is approved by the Director of the Federal Register as of May 26, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 7, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-ANE-40-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Allison Engine Company, P.O. Box 420, Speed Code P-40A, Indianapolis, IN 46206-0420; telephone (317) 230-2720, fax (317) 230-3381. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. **FOR FURTHER INFORMATION CONTACT:** Patricia Bonnen, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294-7134, fax (847) 294-7834.

SUPPLEMENTARY INFORMATION: On November 10, 1997, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 97-21-09, Amendment 39-10162 (62 FR 61438, November 18, 1997), to require replacing the engine main electrical harness assembly with an improved assembly, installing a new hydromechanical unit (HMU) and electronic control unit (ECU), removing the placard notifying the pilot that the overspeed protection system is disabled,

and revising the Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 407 Rotorcraft Flight Manual (RFM). That action was prompted by development of overspeed protection system modifications to reactivate the overspeed solenoid (which had been disabled in accordance with AD 96-24-09 to prevent engine shutdown due to zero fuel flow when tripped) in conjunction with raising the power turbine overspeed trip point and revising the overspeed system to default to a minimum fuel flow in the event of its activation. That condition, if not corrected, could result in uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter.

Since the issuance of that AD, the FAA received reports of two BHTC 407 rotorcraft involved in incidents where there was an annunciated hard fault with the ECU. In each case, the result was a failed fixed event in which the pilot transitioned to manual mode without incident. The hard faults have been attributed to corrosion on internal connectors. Subsequent to the incidents, the manufacturer conducted an initial investigation on returned ECUs and found two additional units with corrosion on internal connectors.

The FAA has reviewed and approved the technical contents of Allison Engine Company Alert CEB-A-73-6017, Revision 1, dated February 18, 1998, and Revision 2, dated April 9, 1998, that describes procedures for installing ECUs with improved resistance to corrosion.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 97-21-09 and continues to require replacement of the engine main electrical harness assembly with an improved assembly, and, after replacing the ECU and HMU, removing the "OVRSPD SYSTEM INOP" placard required by paragraph (d) of AD 96-24-09, revising the BHTC Model 407 RFM. These actions are now required prior to further flight, if not already accomplished. In addition, this AD adds a requirement to install an ECU with improved resistance to corrosion within 45 days after the effective date of this AD, based upon the need to protect the affected engines against effects of corrosion. Installation of the improved, corrosion resistant ECU will meet the requirement to install a new ECU. The requirements of paragraph (c) of this AD have been coordinated with the Rotorcraft Directorate. The actions are required to be accomplished in

accordance with the service documents described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-ANE-40-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-10162, (62 FR 61438, November 18, 1997), and by adding a new airworthiness directive, Amendment 39-10514, to read as follows:

98-10-03 Allison Engine Company:
Amendment 39-10514. Docket 97-ANE-40-AD. Supersedes AD 97-21-09, Amendment 39-10162.

Applicability: Allison Engine Company Model 250-C47B turboshaft engines, installed on but not limited to Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 407 helicopters.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter, accomplish the following:

(a) Prior to further flight, replace the engine main electrical harness assembly, part number (P/N) 23062796, with an improved assembly, P/N 23065805, in accordance with Allison Engine Company Alert Commercial Engine Bulletin (CEB) CEB-A-73-6010, dated October 15, 1996.

(b) Prior to May 20, 1998, install a new hydromechanical control unit (HMU) and electronic control unit (ECU) in accordance with Allison Engine Company Alert CEB-A-73-6015, Revision 1, dated July 30, 1997, or Revision 2, dated October 31, 1997.

(c) After completing the requirements of paragraph (b) of this AD, and prior to further flight:

(1) Remove the "OVRSPD SYSTEM INOP" placard required by paragraph (d) of AD 96-24-09, and

(2) Revise the FAA-approved Rotorcraft Flight Manual (RFM) by removing the pages added by paragraph (f) of AD 96-24-09, and incorporate BHTC RFM BHT-407-FM-1, Revision 5, dated June 24, 1997.

(d) Within 45 days after the effective date of this AD, install a corrosion resistant electronic control unit (ECU) in accordance with Allison Engine Company Alert CEB-A-73-6017, Revision 1, dated February 18, 1998, or Revision 2, dated April 9, 1998. Installation of a corrosion resistant ECU in accordance with this paragraph will satisfy the requirement in paragraph (b) of this AD to install a new ECU.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
Allison Engine Company Alert, CEB-A-73-6010	1-7	Original	October 15, 1996.
Total pages: 7.			
BHTC Rotorcraft Flight Manual BHT-407-FM-1	Cover	5	June 24, 1997.
	NP	3	July 30, 1996.
	A/B	5	June 24, 1997.
	C/D	5	June 24, 1997.
	1-3	5	June 24, 1997.
	1-4-1-7	4	November 4, 1996.
	1-8	5	June 24, 1997.
	1-13	4	November 4, 1996.
	1-14	5	June 24, 1997.
	1-14A/14B	5	June 24, 1997.
	1-19/1-20	5	June 24, 1997.
	2-3	5	June 24, 1997.
	2-4	1	March 8, 1996.
	2-7-2-10	5	June 24, 1997.
	2-13, 2-14	5	June 24, 1997.
	3-3-3-5	5	June 24, 1997.
	3-6	2	May 9, 1996.
	3-7, 3-8	5	June 24, 1997.
	3-15	5	June 24, 1997.
	3-16	2	May 9, 1996.
	3-17-3-22	5	June 24, 1997.
	4-5, 4-6	5	June 24, 1997.
	4-9	Original	February 9, 1996.
	4-10-4-12	5	June 24, 1997.
Total pages: 40.			
Allison Engine Company Alert, CEB-A-73-6015	1-4	1	July 30, 1997.
Total pages: 4.			
Allison Engine Company Alert, CEB-A-73-6015	1-4	2	October 31, 1997.
Total pages: 4.			
Allison Engine Company Alert, CEB-A-73-6017	1-5	1	February 18, 1998.
Total pages: 5			
Allison Engine Company Alert, CEB-A-73-6017	1-5	2	April 9, 1998.
Total pages: 5			

(h) The incorporation by reference of Allison Engine Company Alert CEB-A-73-6010, dated October 15, 1996, CEB-A-73-6015, Revision 1, dated July 30, 1997, and Revision 2, dated October 31, 1997, and BHTC RFM BHT-407-FM-1, Revision 5, dated June 24, 1997, was approved previously by the Director of the Federal Register as of December 3, 1997 (62 FR 61438, November 18, 1997).

(i) The incorporation by reference of Allison Engine Company Alert CEB-A-73-6017, Revision 1, dated February 18, 1998, and Revision 2, dated April 9, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 26, 1998.

(j) Copies of these service documents may be obtained from Allison Engine Company, P.O. Box 420, Speed Code P-40A, Indianapolis, IN 46206-0420; telephone (317) 230-2720, fax (317) 230-3381. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800

North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on May 26, 1998.

Issued in Burlington, Massachusetts, on April 29, 1998.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

(FR Doc. 98-12063 Filed 5-7-98; 8:45 am)

BILLING CODE 4910-13-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[SPATS No. LA-017-FOR]

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Louisiana regulatory program (hereinafter referred to as the "Louisiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Louisiana proposed revisions to and additions of regulations pertaining to definitions, request for

hearing, permitting requirements, small operator assistance program, bond release requirements, performance standards, and enforcement procedures/civil penalties. The amendment is intended to revise the Louisiana program to be consistent with the corresponding Federal regulations. **EFFECTIVE DATES:** May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

- I. Background on the Louisiana Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Louisiana Program

On October 10, 1980, the Secretary of the Interior conditionally approved the Louisiana program. Background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the October 10, 1980, **Federal Register** (45 FR 67340). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 918.15 and 918.16.

II. Submission of the Proposed Amendment

By letter dated October 24, 1997 (Administrative Record No. LA-362), Louisiana submitted a proposed amendment to its program pursuant to SMCRA. Louisiana submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. LA-361) that OSM sent to Louisiana in accordance with 30 CFR 732.17(c).

OSM announced receipt of the proposed amendment in the November 19, 1997, **Federal Register** (62 FR 61712), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on December 19, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to Section 2725., Reclamation plan: ponds, impoundments, bank, dams and embankments, and Section 6507., Service of notices of violation and cessation orders. OSM notified Louisiana of these concerns by electronic mail dated March 12, 1998, (Administrative Record No. LA-362.07).

By letter dated March 24, 1998 (Administrative Record No. AL-362.09), Louisiana responded to OSM's concerns

by submitting additional explanatory information and revisions to its proposed program amendment. Louisiana proposed additional revisions to paragraph A. and A.2. of Section 2725., Reclamation plan: ponds, impoundments, bank, dams and embankments. Because the additional information merely clarified certain provisions of Louisiana's proposed amendment, OSM did not reopen the public comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Louisiana's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The proposed State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the proposed State regulations and the Federal regulations are nonsubstantive.

Topic	State Regulation	Federal Counterpart Regulation
Definitions: "other treatment facilities," "previously mined area," and "qualified laboratory".	Section 105	30 CFR 701.5 and 795.3.
Reclamation plan: Ponds, Impoundments, Bank, Dams and Embankments—General.	Section 2725.A, A.2., A.3., A.3.a., C.1., and F.	30 CFR 780.25(a), (a)(2), (a)(3), (a)(3)(i), (c)(3), and (f).
Prime Farmlands Issuance of Permit	Section 2907.C.5	30 CFR 785.17(e)(5).
Eligibility for Assistance	Section 3705.A.2.a. and A.2.b	30 CFR 795.6(a)(2)(i) and (a)(2)(ii).
Program Services and Data Requirements	Section 3711.A, B.1. through B.6	30 CFR 795.9(b)(1) through (b)(6).
Applicant Liability	Section 3717.A, A.2., and A.3	30 CFR 795.12(a), (a)(2), and (a)(3).
Backfilling and Grading: Thin Overburden	Section 5411.A	30 CFR 816.104(a).
Backfilling and Grading: Thick Overburden	Section 5413.A	30 CFR 816.105(a).
Prime Farmland: Soil Removal	Section 5503.A.2	30 CFR 823.12(c)(2).
Prime Farmland: Soil Replacement	Section 5507.A.4	30 CFR 823.14(d).
Service of Notices of Violation and Cessation Orders	Section 6507.A.2	30 CFR 843.14(a)(2).
Procedures for Assessment Conference	Section 6915.B.1.	30 CFR 845.18(b)(1).

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Louisiana's proposed regulations are no less effective than the Federal regulations.

B. Section 2537. Permit Application Requirements

Louisiana proposed to delete paragraph A.11. regarding cross

sections, maps, and plans from its regulations. The Director is approving this deletion because OSM deleted the Federal counterpart regulation from its regulations that was previously found at 30 CFR 779.25(a)(11) (See 59 FR 27932, dated May 27, 1994).

C. Section 3705. Eligibility for Assistance

At paragraph A.2., an applicant is eligible for assistance if his or her probable total actual and attributed production from all locations does not exceed 100,000 tons during any consecutive 12-month period either during the term of his or her permit or during the first five years after issuance

of his or her permit, whichever period is shorter. Louisiana proposed to increase the tonnage limit to 300,000 tons. The Director is approving this tonnage increase because it will result in the State regulation being no less effective than the counterpart Federal regulation at 30 CFR 795.6(a)(1).

D. Section 4501. Procedures for Seeking Release of Performance Bond

Louisiana proposed to add new paragraph A.3. that requires each application for each phase of bond release to include a notarized statement certifying that all applicable reclamation activities have been accomplished in accordance with the requirements of the State Act, the regulatory program, and the approved reclamation plan. Louisiana also proposed to redesignate old paragraph A.3 as A.4. The Director is approving the revisions because the resulting regulations will be no less effective than the counterpart Federal regulations at 30 CFR 800.40 (a)(2) and (a)(3).

E. Section 5333. Hydrologic Balance: Impoundments

Louisiana proposed to add new paragraph A.1. that requires impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (120-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," to comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 and the requirements of Section 5333. Louisiana also proposed to redesignate paragraphs A.1. through A.12. as paragraphs A.2. through A.13. The Director is approving these revisions because they will not render the State regulations less effective than the counterpart Federal regulations at 30 CFR 816.49.

F. Section 6913. Procedures for Assessment of Civil Penalties

Paragraph B. of this section pertains to procedures the State can use to serve a person, who is issued a violation notice or cessation order, a copy of the proposed civil penalties assessment and the worksheet showing the computation of the proposed assessment. Louisiana proposed to add a new and alternative provision for serving these documents. The new provision allows the State to use any means consistent with the rules governing service of a summons and complaint under the Louisiana Rules of Civil Procedure. The Director is approving the new provision because it is no less effective than the counterpart

Federal regulation at 30 CFR 843.14(a)(2).

G. Section 6917. Request for Hearing

At paragraph A., Louisiana allows a person charged with a violation 15 days, from the date of service of the conference office's action, to contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty. Louisiana proposed to change from 15 days to 30 days the amount of time for contesting the proposed penalty or the fact of the violation after the date of service of the conference office's action. The Director is approving this revision because it will make the State regulation no less effective than the counterpart Federal regulation at 30 CFR 845.19(a).

H. Section 7105. Procedure for Assessment of Individual Civil Penalty

Louisiana proposed to revise paragraph C. to read as follows:

C. Service. For purposes of this Section, service is sufficient if it would satisfy the Louisiana Rules of Civil Procedure for service of a summons and complaint. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

The Director is approving this revision because it is no less effective than the counterpart Federal regulation at 30 CFR 846.17(c).

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Louisiana program.

In a letter dated November 17, 1997 (Administrative Record No. LA-362.04), the U.S. Army Corps of Engineers responded that Louisiana's changes to its program were satisfactory to their agency. The U.S. Department of the Interior's Fish and Wildlife Service also submitted comments in a letter dated November 17, 1997 (Administrative Record No. LA-362.05), this agency stated that it had no objections to the proposed amendments to Louisiana's Surface Mining Regulations and that the changes should result in greater program consistency and should not

adversely impact fish and wildlife resources within their trusteeship.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Louisiana proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. LA-362.01). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. LA-362.02). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Louisiana on October 24, 1997, and as revised on March 24, 1998.

The Director approves the regulations as proposed by Louisiana with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 918, codifying decisions concerning the Louisiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget

(OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program

provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 28, 1997.

Brent Wahlquist,
Regional Director, Mid-Continent Regional
Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 918 is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for Part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 918.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 918.15 Approval of Louisiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
October 24, 1997	May 8, 1998	Sections 105.; 2537.A.11.; 2725.A., A.2., A.3., A.3.a., C.1., F; 2907.C.5.; 3705.A.2., A.2a., A.2.b.; 3711.A., B.1. through B.6.; 3717.A., A.2., A.3.; 4501.A.3., A.4.; 5333.A.1. through A.13.; 5411.A.; 5413.A.; 5503.A.2.; 5507.A.4.; 6507.A.2.; 6913 .B.; 6915.B.1.; 6917.A.; 7105.C.

[FR Doc. 98-12249 Filed 5-7-98; 8:45 am]
BILLING CODE 4310-05-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 96-5 CARP DSTR]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule and order.

SUMMARY: The Librarian of Congress, upon recommendation of the Register of

Copyrights, is announcing the determination of the reasonable rates and terms for the compulsory license permitting certain digital performances of sound recordings.

EFFECTIVE DATE: May 8, 1998.

ADDRESS(ES): The full text of the public version of the Copyright Arbitration Royalty Panel's report to the Librarian of Congress is available for inspection and copying during normal working hours in the Office of the General Counsel, James Madison Building, Room LM-403, First and Independence Avenue, SE., Washington, DC, 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest

Station, Washington, D.C. 20024.
Telephone (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

I. Background

The Digital Performance Right in Sound Recordings Act of 1995 (DPRSRA), Public Law 104-39, 109 Stat. 336, amended section 106 of the Copyright Act, title 17 of the United States Code, to give sound recording copyright owners an exclusive right, subject to certain limitations, to perform publicly sound recordings by digital audio transmissions. 17 U.S.C. 114. The bill affords certain digital transmission

services a compulsory license to perform digital sound recordings publicly. The purpose of the bill is "to provide copyright holders of sound recordings with the ability to control the distribution of their product by digital transmissions, without hampering the arrival of new technologies, and without imposing new and unreasonable burdens on radio and television broadcasters." S. Rep. No. 104-128, at 15 (1995).

All non-exempt digital subscription transmission services are eligible for the statutory license, provided that they are non-interactive and comply with the terms of the license. The statute requires that the service not violate the "sound recording performance complement,"¹ not publish in advance a schedule of the programming to be performed, not cause any receiving device to switch from one program channel to another, include in each transmission certain identifying information encoded in each sound recording, pay the royalty fees and comply with the associated terms, and comply with any recordkeeping requirements promulgated by the Copyright Office.² 17 U.S.C. 114(d)(2)(A)-(E) and 114(f)(2)-(5).

The reasonable terms and rates of the section 114 statutory license are determined by voluntary negotiations among the parties and, where necessary, compulsory arbitration conducted under chapter 8 of the Copyright Act, title 17, 17 U.S.C. 114(f).

II. The CARP Proceeding To Set Reasonable Rates and Terms

On December 1, 1995, the Librarian of Congress (Librarian) initiated the statutorily mandated six month

¹ (7) The "sound recording performance complement" is the transmission during any 3-hour period, on a particular channel used by a transmitting entity, of no more than—

(A) 3 different selections of sound recordings from any one phonorecord lawfully distributed for public performance or sale in the United States, if no more than 2 such selections are transmitted consecutively; or

(B) 4 different selections of sound recordings—
(i) By the same featured recording artist; or
(ii) From any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale in the United States, if no more than three such selections are transmitted consecutively. *Provided*, That the transmission of selections in excess of the numerical limits provided for in clauses (A) and (B) from multiple phonorecords shall nonetheless qualify as a sound recording performance complement if the programming of the multiple phonorecords was not willfully intended to avoid the numerical limitations prescribed in such clauses.
17 U.S.C. 114(j)(7).

² See Notice of Proposed Rulemaking, 61 FR 22004 (May 13, 1996); Notice of Proposed Rulemaking, 62 FR 34035 (June 24, 1997).

negotiation period within 30 days of the enactment of the DPRSRA, pursuant to section 114(f)(1) of the Copyright Act, with the publication of a notice initiating the voluntary negotiation process for determining reasonable terms and rates of royalty payments. See 60 FR 61655 (December 1, 1995). In the notice, the Library instructed those parties with a significant interest in the establishment of the reasonable terms and rates for the section 114 license to file a petition with the Copyright Office no later than August 1, 1996, in the event that the interested parties were unable to negotiate an agreement. *Id.*

Accordingly, the Recording Industry Association of America (RIAA) filed a petition with the Copyright Office in which it asked the Office to initiate an arbitration proceeding pursuant to chapter 8 of the Copyright Act. After making a determination that the petitioner RIAA had a significant interest in the proposed CARP proceeding, the Librarian published a notice setting the schedule for the 45-day precontroversy discovery period and announcing the date for the initiation of the 180-day arbitration period. 61 FR 40464 (August 2, 1996). The exchange of documents during the precontroversy discovery period did not proceed smoothly, requiring the Office to reschedule portions of the discovery period and vacate the scheduled date for the initiation of the CARP. See Order in Docket No. 96-5 CARP DSTR (September 18, 1996); Order in Docket No. 96-5 CARP DSTR (November 27, 1996). The Librarian announced the initiation of the 180-day arbitration period following the conclusion of the discovery period and the resolution of all pending motions. 62 FR 29742 (June 2, 1997).

The Parties

There are four parties to this proceeding: three digital audio subscription services (the Services) and the Recording Industry Association of America (RIAA).

1. The Recording Industry Association of America, Inc. (RIAA)—RIAA represents a collective, consisting of more than 275 record labels, established for the express purpose of administering the rights of these sound recording copyright owners. RIAA represents the interests of its members who are the copyright owners of more than 90% of all legitimate sound recordings sold in the United States. Record companies own the copyrights in the sound recordings.

2. Digital Cable Radio Associates (DCR)—A digital audio service

established in the United States in 1987 by the Jerrold Communications Division of General Instrument Corporation. Current partners include Warner Music, Sony Corporation, EMI, Time Warner Cable, Continental Cablevision, Comcast Cable, Cox Cable, and Adelphia Cable.

3. Digital Music Express, Inc. (DMX)—A digital music subscription service established in 1986 as International Cablecasting Technologies, Inc. In 1997, DMX merged into TCI Music, Inc., a publicly traded company with approximately 80% of its shares held by TCI, Inc.

4. Muzak, L.P.—With roots dating back to 1922, Muzak is America's oldest background music provider for businesses. In the 1920s and 1930s, Muzak was part of the consumer music market until driven out of that market by the growing popularity of radio. Muzak remained out of the market until March, 1996, when it began providing 27 channels of digital music under the name DiSHCD, as part of Echostar's satellite-based DiSH Network.

The Position of the Parties at the Commencement of the Proceeding

RIAA, representing the interests of the sound recording copyright owners, requested a royalty rate set at 41.5% of a Service's gross revenues resulting from U.S. residential subscribers, or in some circumstances, a flat rate minimum fee. Report of the Copyright Arbitration Royalty Panel (Report) ¶ 33. RIAA also agreed to be named the single entity to collect, administer, and distribute the royalty fees. Report ¶ 184. RIAA proposed additional terms concerning the timing of payments, statements of accounts, retention of records, and audits. Report ¶ 33.

The three digital audio subscription services requested a royalty rate ranging from a low of 0.5% to a high of 2.0% of gross revenues resulting from U.S. residential subscribers, and unanimously opposed a flat rate minimum fee. Report ¶¶ 34-36, 172. The Services proposed that a single private entity or a government agency be named for purposes of administering the royalty fees, but proposed submitting payments on a quarterly basis rather than a monthly basis. Report ¶¶ 184-185. In addition, the Services proposed terms concerning recordkeeping and audits, confidentiality of business records, and payment terms for distributing license fees among featured artists and nonfeatured musicians and vocalists.

The Panel's Determination of a Reasonable Rate

The Panel evaluated the four statutory objectives,³ and their component parts, in light of the evidence and determined that the digital audio subscription services should pay a royalty fee of 5% of gross revenues resulting from U.S. residential subscribers. Report ¶¶ 196, 200. This rate represents the midpoint of the range of possible license rates that the Panel considered appropriate (but not the midpoint of the parties' proposals). The Panel further concluded that there was no reason to impose a minimum license fee on the Services at this point, and consequently, it rejected RIAA's proposal to set a minimum fee based on a flat rate. Report ¶ 204.

In making this determination, the Panel followed the precedent set in prior rate adjustment proceedings conducted by the former Copyright Royalty Tribunal and other CARP panels which, as a first step, determined a range of possible rates after considering different proposed rates based on negotiated licenses or analogous marketplace models. Report ¶ 123. See also, 1980 Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, 46 FR 884 (January 5, 1981), and the 1997 Rate Adjustment of the Satellite Carrier Compulsory License Fees, 62 FR 55742 (October 28, 1997). Each party offering a "benchmark" rate contends that the rate it offers represents the cost for similar products in analogous markets. The Panel considered three benchmarks, weighing each in light of the record evidence to determine whether the proposed models shed light on how the marketplace would value a performance license in sound recordings. Once the Panel identified the useful models, it used the corresponding rate information

³ (1) to make determinations concerning the adjustment of reasonable copyright royalty rates as provided in sections 114, 115, and 116, and to make determinations as to reasonable terms and rates of royalty payments as provided in section 116. The rates applicable under section 114, 115, and 116 shall be calculated to achieve the following objectives:

(A) To maximize the availability of creative works to the public;

(B) To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions;

(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication;

(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

17 U.S.C. 801(b)(1).

to craft a range of potential royalty rates for the section 114 license, then chose the rate within the range which would further the stated statutory objectives.

RIAA and the Services proposed rates based on three distinct marketplace models in which rates are set through arms-length negotiations. Report ¶ 124. The Services proposed two benchmarks for consideration by the Panel: Negotiated license fees for a sound recording performance right and the license fees the Services pay the performing rights organizations for use of the underlying musical works. RIAA put forth a single model for the Panel's consideration: Cable television network license fees. The Panel found the Services' models helpful in setting the rate for the digital performance right, but rejected the RIAA model for the reasons stated herein.

Both RIAA and the Services seemed to agree that the best proxy for reasonable compensation is a marketplace rate. The Panel, however, noted that the DPRSRA instructs the CARP to set reasonable rates, which need not be the same as rates set in a marketplace unconstrained by a compulsory license. In support of its interpretation, the Panel cited the statutory factors which must be considered in setting the rate. See Report ¶¶ 10, 124.

The Panel's Evaluation of the RIAA Benchmark

The benchmark proposed by the recording industry analogizes the cost of programming for cable television networks with the cost of procuring the right to perform the sound recordings. The analogy, however, did not withstand scrutiny by the Panel, which reasonably found that the cable television network license fees model did not represent rates for an analogous product in a comparable marketplace. Its conclusion rested on a number of findings which described analytical deficiencies in the two studies offered in support of the 41.5% proposed royalty rate. Report ¶¶ 126–150.

The RIAA model proposed using the purchase price of programming for cable television networks to determine the price the Services would pay for the right to publicly perform sound recordings, if negotiated in a free market. RIAA's Proposed Findings of Fact and Conclusions of Law (PF) ¶ 62; RIAA Proposed Conclusions (PC) ¶ 18. RIAA presented two studies that illustrate the amount of money cable television networks pay for their

programming: (1) The Kagan study,⁴ and (2) the Wilkofsky Gruen Associates⁵ study. RIAA Exhibits (Exs.) 14 and 15, respectively. Both studies argued that the analogy between cable television networks and the digital audio services was apt because the digital audio services and the cable television networks compete head-to-head for carriage on cable and DBS systems, and for consumer time and discretionary income. Report ¶ 130.

The Kagan study analyzed data concerning the revenues and programming expenses of 31 basic cable television networks from the 1985–96 period. It concluded that a cable television network spends, on average, approximately 40% of its gross revenues for programming. RIAA Exhibit (Ex.) 14 at 7. The Panel, however, discounted the 40% figure because it represented the costs of license fees to all copyright owners, and it included the costs of programming during the start-up years, when a new cable television network may pay more than 100% of its revenues in programming costs. Report ¶¶ 127, 129, 149. Failure to adjust for these factors made it impossible for the Panel to assess the costs for the right to publicly perform the sound recordings apart from the costs of the other copyrighted works which make up the program.

Their second study, prepared by Wilkofsky Gruen Associates (WGA), analyzed only cable movie networks because Wilkofsky, the expert for the study, claimed that the "pricing characteristics and dynamics" of the cable movie networks were comparable in three fundamental ways: The lack of commercials, the generation of revenues through subscriptions, and the purchase of programming from third parties. Wilkofsky Written Direct Testimony (W.D.T.) at 3–5. This study concluded that the cable movie networks pay a weighted average of 41.5% of their revenues for programming that they acquire from outside sources and by analogy, the Services should pay the same. *Id.* at 3.

The Panel rejected the conclusion of the WGA study because it ignored the following fundamental differences in market demand and cost characteristics between the cable movie networks and the digital audio services. Report ¶¶ 133–145.

⁴ The Kagan study was prepared by Paul Kagan Associates, a media research company that tracks and publishes financial data concerning the media and entertainment industries.

⁵ Wilkofsky Gruen Associates is an economic consulting firm that specializes in the communications and entertainment industries.

1. The study provided no evidence to show that any of the movie networks directly compete with digital audio services. In fact, when people watch a movie, they devote their entire attention to the film for a period of time, and generally, do not repeat the experience with the same movie. On the other hand, subscribers to digital audio services choose to listen to the same music again and again while engaged in other activities. In other words, the subscriber chooses each service for different reasons, and therefore, they do not represent choices in the same market. Report ¶¶ 143, citing Rosenthal Written Rubutal Testimony (W.R.T.) at 13, Transcript (Tr.) 1251 (Rubinstein).

2. The cable movie networks compete against other cable and broadcast stations for exclusive rights to motion pictures. Exclusive rights are highly prized, and consequently, command a premium price, but they are not implicated in the market for digital audio transmissions. Consequently, the Panel found that RIAA's failure to adjust for this aspect grossly overstated the value of programming costs in its cable movie network analogy. Report ¶¶ 137–142.

3. The Panel further discounted the analogy because RIAA ignored the promotional benefit that flows to the record companies from the constant airplay of their sound recordings. Report ¶¶ 144–145. See also discussion *infra*.

The Panel's Determination of Reasonable Terms

In addition to establishing a reasonable rate for the sound recording performance license, the Panel must also establish reasonable terms for implementing the license. The Senate Committee Report makes clear that terms include "such details as how payments are to be made, when, and other accounting matters." S. Rep. No. 104–128, at 30 (1995).

RIAA and the Services proposed specific terms concerning minimal fees, payment schedules, late fees, statements of account, and audits. From these, the Panel adopted the following terms:

1. RIAA shall have sole responsibility for the distribution of the royalty fees to all copyright holders. Report ¶¶ 184, 205.

2. The license fee payments shall be due on the twentieth day after the end of each month, beginning with the month succeeding the month in which the royalty fees are set. Report ¶¶ 185, 206.

3. The Services shall make back payments over a 30-month period. The first back payment, 1/30th of the total

arrears, shall be delayed for six months. Report ¶¶ 187, 206(a).

4. A Service shall be subject to copyright liability if it fails to make timely payments. Liability for copyright infringement shall only come about for knowing and willful acts which materially breach the statutory license terms. Report ¶¶ 188, 206(b).

5. A late fee of 1.5% per month or the highest lawful rate, whichever is lower, will be imposed from the due date until payment is received. Report ¶¶ 189, 206(a).

6. Services shall submit monthly statements of accounts and payment to RIAA. Only information to verify the royalty payments need be provided on the monthly statements of account. Report ¶¶ 190, 205, 207.

7. Safeguards must be established to protect against disclosure of confidential financial and business information, which includes the amount of the royalty payment. Access to this information shall be limited to employees of RIAA, who are not employees or officers of the copyright owners or the recording artists, for the purpose of performing their assigned duties during the ordinary course of employment, and to independent auditors acting on behalf of RIAA. Report ¶¶ 191, 208.

8. The digital audio services shall maintain accurate records on matters directly related to the payment of the license fees for a period of three years. Report ¶¶ 192, 209.

9. Interested parties may conduct only one audit of a digital audio service during any given year. Report ¶¶ 193, 210(c).

• Interested parties must file a Notice of Intent to Conduct an Audit with the Copyright Office. Such notice shall be published in the *Federal Register*. Report ¶¶ 193, 210(a)–(b).

• RIAA must retain an auditor's report for a period of three years. Report ¶¶ 193, 210(d).

• An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, may serve as an audit for all interested parties. Report ¶¶ 194, 210(e).

• Interested parties shall pay for the cost of the audit, unless an independent auditor concludes that there was an underpayment of five (5) percent or more. Report ¶¶ 195, 210(f).

The Panel chose not to adopt RIAA's minimum fee proposal and the Services' proposed payment schedule for the distribution of royalties to the featured artists and the nonfeatured musicians and vocalists. The Panel found that the

timing of payments to the performing artists was not within the scope of the proceeding. Report ¶ 204; Report at 56 n.21.

The Panel's Evaluation of the RIAA Proposal To Adopt a Minimum Fee

RIAA proposed the imposition of a minimum fee as a means to insure a fair return to the copyright owners in light of business practices that might erode the value of the statutory license fee. RIAA PF ¶¶ 126–147. Specifically, RIAA sought a minimum fee to minimize the effect of discounts or credits, to address shifts in business models, and to avoid diluting the value of the sound recording when audio digital services add new channels to their offerings. *Id.* The Panel ultimately rejected this suggestion because it found that the rationale for a minimum fee was based on unsupported speculation about the business structure of the Services. Report ¶ 204.

III. The Parties' Reaction to the Determination of the Panel

The regulations governing the CARP proceedings allow parties to file petitions to modify or set aside the determination of the Panel within 14 days of its filing date. The petition must state the reasons for the petition, including relevant references to the parties' proposed findings of fact and conclusions of law. Parties who wish to file replies to a petition may do so within 14 days of the filing of such petition. See 37 CFR 251.55(a), (b).

Accordingly, on December 12, 1997, RIAA filed a Petition to Reject the Report of the CARP (Petition), contending that the Panel acted both contrary to the Copyright Act and arbitrarily in reaching its determination. In its petition, RIAA requests the Librarian to set aside the Panel's determination and set a new rate that should not be less than double the Services' 1996–2001 payments for the public performance of the underlying musical works.

RIAA contends that the Panel's determination was arbitrary and contrary to law for the following reasons:

1. The Panel disregarded precedent set by the former Copyright Royalty Tribunal (CRT or Tribunal) in applying the statutory criteria for determining a reasonable rate for the public performance right. Petition at 6, 14–15.

2. The Panel used the rates set in a corporate partnership agreement as a benchmark for establishing the new compulsory license rate. This was inappropriate because the public performance in sound recordings

license agreement was not negotiated independently, but as part of a larger complex agreement. *Id.* at 20-27.

3. When the Services publicly perform a sound recording, two groups of copyright owners receive royalties: The copyright owners in the underlying musical works, and for the first time, the record companies and performers. The Panel determined that the record companies and performers were not entitled to more royalties for their public performance right than those received by the copyright owners in the underlying musical works for the public performance of their works. RIAA contends that CRT precedent supports a determination that just the reverse is true. *Id.* at 14-15.

4. The compulsory license allows the Services to perform sound recordings publicly without infringing copyright prior to the setting of the royalty rate, so long as the Services agree to pay their accumulated royalty obligation once the rates are determined. The Panel created a payment schedule that allows the Services to pay these fees over a three year period. RIAA contends that this payment schedule is contrary to law. *Id.* at 7 n.1.

5. RIAA also contends that the CARP failed to provide a reasoned explanation for proper review, made conclusions inconsistent with its findings, made findings without record support, and failed to make findings in support of conclusions. *Id.* at 2.

RIAA, however, does not suggest that the Librarian disregard all the findings of the Panel. Instead, it recommends adopting the Panel's approach "to determine a reasonable rate—provided that the Librarian makes the necessary adjustments to account for the precedent and considerations that the Panel ignored." Petition at 51-52. RIAA further allows that the Librarian need not consider the cable network benchmark in its analysis, since the Panel's analysis of the remaining benchmarks supports an upward adjustment of the 5% rate of gross revenues set by the CARP. Petition at 52 n.9.

On December 29, 1997, in response to the RIAA petition to reject the CARP report, the Services filed a reply to RIAA's Petition to Reject the CARP Report (Reply to Petition). The crux of the Services' argument in support of adopting the Panel's report is that "[w]hen examined as a whole, the Panel's Report is eminently reasonable and amply supported by the record." Reply to Petition at 12. Specific arguments of the Services in support of the Panel's report are discussed below

in conjunction with RIAA's arguments to reject the report.

IV. The Librarian's Scope of Review of the Panel's Report

The Copyright Royalty Tribunal Reform Act of 1993 (the Reform Act), Public Law 103-198, 107 Stat. 2304, created a unique system of review of a CARP's determination. Typically, an arbitrator's decision is not reviewable, but the Reform Act created two layers of review that result in final orders: the Librarian of Congress (Librarian) and the United States Court of Appeals for the District of Columbia Circuit. Section 802(f) of title 17 directs the Librarian either to accept the decision of the CARP or to reject it. If the Librarian rejects it, he must substitute his own determination "after full examination of the record created in the arbitration proceeding." 17 U.S.C. 802(f). If the Librarian accepts it, then the determination of the CARP becomes the determination of the Librarian. In either case, through issuance of the Librarian's Order, it is his decision that will be subject to review by the Court of Appeals. 17 U.S.C. 802(g).

The review process has been thoroughly discussed in prior recommendations of the Register of Copyrights (Register) concerning rate adjustments and royalty distribution proceedings. Nevertheless, the discussion merits repetition because of its importance in reviewing each CARP decision.

Section 802(f) of the Copyright Act directs that the Librarian shall adopt the report of the CARP "unless the Librarian finds that the determination is arbitrary or contrary to the applicable provisions of this title." Neither the Reform Act nor its legislative history indicates what is meant specifically by "arbitrary," but there is no reason to conclude that the use of the term is any different from the "arbitrary" standard described in the Administrative Procedure Act (APA), 5 U.S.C. 706(2)(A).

Review of the case law applying the APA "arbitrary" standard reveals six factors or circumstances under which a court is likely to find that an agency acted arbitrarily. An agency action is generally considered to be arbitrary when:

1. It relies on factors that Congress did not intend it to consider;
2. It fails to consider entirely an important aspect of the problem that it was solving;
3. It offers an explanation for its decision that runs counter to the evidence presented before it;
4. It issues a decision that is so implausible that it cannot be explained

as a product of agency expertise or a difference of viewpoint;

5. It fails to examine the data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made; and

6. Its action entails the unexplained discrimination or disparate treatment of similarly situated parties.

Motor Vehicle Mfrs. Ass'n. State Farm Mutual Auto. Insurance Co., 463 U.S. 29 (1983); *Celcom Communications Corp. v. FCC*, 789 F.2d 67 (D.C. Cir. 1986); *Airmark Corp. v. FAA*, 758 F.2d 685 (D.C. Cir. 1985).

Given these guidelines for determining when a determination is "arbitrary," prior decisions of the District of Columbia Circuit reviewing the determinations of the former CRT have been consulted. The decisions of the Tribunal were reviewed under the "arbitrary and capricious" standard of 5 U.S.C. 706(2)(A) which, as noted above, appears to be applicable to the Librarian's review of the CARP's decision.

Review of judicial decisions regarding Tribunal actions reveals a consistent theme: while the Tribunal was granted a relatively wide "zone of reasonableness," it was required to articulate clearly the rationale for its award of royalties to each claimant. See *National Ass'n of Broadcasters v. Copyright Royalty Tribunal*, 772 F.2d 922 (D.C. Cir. 1985), cert. denied, 475 U.S. 1035 (1986) (*NAB v. CRT*); *Christian Broadcasting Network v. Copyright Royalty Tribunal*, 720 F.2d 1295 (D.C. Cir. 1983) (*Christian Broadcasting v. CRT*); *National Cable Television Ass'n v. Copyright Royalty Tribunal*, 689 F.2d 1077 (D.C. Cir. 1982) (*NCTA v. CRT*); *Recording Indus. Ass'n of America v. Copyright Royalty Tribunal*, 662 F.2d 1 (D.C. Cir. 1981) (*RIAA v. CRT*). As the D.C. Circuit succinctly noted:

We wish to emphasize * * * that precisely because of the technical and discretionary nature of the Tribunal's work, we must especially insist that it weigh all the relevant considerations and that it set out its conclusions in a form that permits us to determine whether it has exercised its responsibilities lawfully * * *.

Christian Broadcasting v. CRT, 720 F.2d at 1319 (D.C. Cir. 1983), quoting *NCTA v. CRT*, 689 F.2d at 1091 (D.C. Cir. 1982).

Because the Librarian is reviewing the CARP decision under the same "arbitrary" standard used by the courts to review the Tribunal, he must be presented by the CARP with a rational analysis of its decision, setting forth

specific findings of fact and conclusions of law. This requirement of every CARP report is confirmed by the legislative history to the Reform Act which notes that a "clear report setting forth the panel's reasoning and findings will greatly assist the Librarian of Congress." H.R. Rep. No. 103-286, at 13 (1993). This goal cannot be reached by "attempt(ing) to distinguish apparently inconsistent awards with simple, undifferentiated allusions to a 10,000 page record." *Christian Broadcasting v. CRT*, 720 F.2d at 1319.

It is the task of the Register to review the report and make her recommendation to the Librarian as to whether it is arbitrary or contrary to the provisions of the Copyright Act and, if so, whether, and in what manner, the Librarian should substitute his own determination. 17 U.S.C. 802(f).

V. Review and Recommendation of the Register of Copyrights

The law gives the Register the responsibility to review the CARP report and make recommendations to the Librarian whether to adopt or reject the Panel's determination. In doing so, she reviews the Panel's report, the parties' post-panel motions, and the record evidence.

After carefully reviewing the Panel's report and the record in this proceeding, the Register finds that the Panel's adoption of the DCR negotiated license fee as the starting point for making its determination is arbitrary. This conclusion compels the Register to set aside the Panel's final determination and reevaluate the record evidence before making a recommendation to the Librarian.

Section 802(f) states that "(i)f the Librarian rejects the determination of the arbitration panel, the Librarian shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be." During that 60-day period, the Register reviewed the Panel's report and made a recommendation to the Librarian not to accept the Panel's report, for the reasons cited herein. The Librarian accepted this recommendation, and on January 27, 1998, issued an order stating that the Panel's report was still under review. See Order, Docket No. 96-5 CARP DSTR (January 27, 1998).

The full review of the Register and her corresponding recommendations is presented herein. Within the limited scope of the Librarian's review of this proceeding, "the Librarian will not second guess a CARP's balance and consideration of the evidence, unless its

decision runs completely counter to the evidence presented to it." Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55757 (1997), citing 61 FR 55663 (October 28, 1996) (Distribution of 1990, 1991 and 1992 Cable Royalties). Accordingly, the Register accepts the Panel's weighing of the evidence and will not question findings and conclusions which proceed directly from the arbitrators' consideration of factual evidence.

The Register also adopts the Panel's approach in setting reasonable rates and terms for the digital performance license in sound recordings pursuant to 17 U.S.C. 114(f)(2), but sets aside those findings and conclusions that are arbitrary or contrary to law.

a. Methodology for Making Rate Determination

Use of a Marketplace Standard in Setting the Royalty Rate

The standard for setting the royalty rate for the performance of a sound recording by a digital audio subscription service is not fair market value, although CARPs and the Copyright Royalty Tribunal (CRT or Tribunal) in prior rate adjustment proceedings under sections 115 and 116 considered comparable rates negotiated under marketplace conditions when making their determinations.

In light of this practice, the Panel followed the same approach established in prior rate adjustment proceedings conducted by the Tribunal and the CARPs in making its determination. Namely, the Panel considered the parties' presentations of different rates negotiated in comparable marketplace transactions and first determined whether the proposed models mirrored the potential market transactions which would take place to set rates for the digital performance of sound recordings. Report ¶ 123. These benchmarks were then evaluated in light of the statutory objectives to determine a reasonable royalty rate. *Id.*

The Panel noted that RIAA and the Services "seem to agree that the best proxy for reasonable compensation is to look to marketplace rates." Report ¶ 124. The parties also agreed that the rates should be based on gross revenues and further agreed on the definition of "gross revenues." Report ¶ 125; RIAA PF ¶ 55; Services Joint Reply to RIAA's Proposed Findings of Fact and Conclusions of Law (Services' RF) ¶ 51.

While the Panel agreed with the parties on these two points, it noted that the statute requires the Panel to adopt reasonable rates and terms, and that reasonable rates and terms are not

synonymous with marketplace rates. Report ¶ 124. Unlike a marketplace rate which represents the negotiated price a willing buyer will pay a willing seller, see Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55742 (1997) (applying a fair market standard, as set forth at 17 U.S.C. 119(c)(3)(D), in setting royalty rates for the retransmission of broadcast signals by satellite carriers), reasonable rates are determined based on policy considerations. See *RIAA v. CRT*, 662 F.2d 1.⁶ Congress granted the record companies a limited performance right in sound recordings in order to "provide [them] with the ability to control the distribution of their product by digital transmissions," but it did so with the understanding that the emergence of new technologies would not be hampered. S. Rep. No. 104-128, at 15 (1995). Consequently, Congress specified that the terms were to be reasonable and calculated to achieve the following four specific policy objectives:

1. To maximize the availability of creative works to the public;
2. To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions;
3. To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication; and
4. To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices. 17 U.S.C. 114(f)(2) and 801(b)(1).

RIAA takes exception to this interpretation and argues that the Panel failed to follow CRT precedent that "interpreted the Section 801(b)(1) factors as requiring it to establish a market rate." Petition at 33. In support of its position, RIAA relies upon the 1982 CRT rate adjustment proceeding to determine reasonable rates and terms for the statutory noncommercial broadcasting license, 17 U.S.C. 118, where the CRT stated:

The Tribunal has consistently held that the Copyright Act does not contemplate the Tribunal establishing rates below the

⁶ In reviewing how the Tribunal analyzed the statutory criteria, the court noted that "other statutory criteria invite the Tribunal to exercise a legislative discretion in determining copyright policy in order to achieve an equitable division of music industry profits between the copyright owners and users." *Id.* at 8.

reasonable market value of the copyrighted works subject to a compulsory license.

1982 Adjustment of Royalty Schedule for Use of Certain Copyrighted Works in Connection with Noncommercial Broadcasting: Terms and Rates of Royalty Payments, 47 FR 57924 (December 29, 1982). RIAA further contends that the Panel not only ignored the CRT precedent requiring it to set marketplace rates, but improperly shifted the emphasis to ensure the financial viability of the copyright users. Petition at 33.

In response, the Services contend that the Panel's analysis comports with CRT precedent on both points, noting that the CRT did consider evidence on how a proposed rate would affect the user industry in its proceedings to set rates under sections 111 and 116. Reply to Petition at 26. For example, in the 1980 rate adjustment proceeding to set the royalty rate for jukeboxes, the CRT considered the evidence and found "only that marginal jukebox owners would be threatened by the new rate." *Id.* In fact, the Tribunal stated that it was "satisfied that adequate attention (had) been given to the small operator. * * * (and adopted) an amendment to the proposed fee schedule that was proposed for the benefit of such (small) operators." 1980 Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, 46 FR 888 (1981).

The Register finds that the Panel correctly analyzed how to determine a reasonable rate under section 114. Section 801(b)(1) states that one function of a CARP is to determine reasonable rates "as provided in sections 114, 115, and 116, and to make determinations as to reasonable terms and rates of royalty payments as provided in section 118." The provision further states that the CARP must determine the rates under sections 114, 115, and 116 to achieve the four statutory objectives. The law does not state that these objectives are applicable in a rate adjustment proceeding to determine rates under sections 111 or 118. Therefore, RIAA's reliance on CRT precedents for setting rates under section 118 is without merit. Furthermore, the Panel's analysis is consistent with the prior CRT determinations establishing rates for the section 115 and 116 licenses.

In the 1980 jukebox rate adjustment proceeding, the CRT set the rate "[o]n the basis of the marketplace analogies presented during the proceeding, taking the record as a whole, and with regard for the statutory criteria. * * * That rate takes account both of what is paid for music elsewhere under similar

circumstances and, since it is a flat rate, of the Tribunal's concern for the smaller, less profitable operators." 46 FR 889 (1981). To recognize that this rate was not a negotiated marketplace value, one need only read Commissioner James's dissent admonishing the majority for setting a rate on "an ability to pay theory." He characterized the majority's actions as follows:

In essence, the majority reached a conclusion on the premise that a true market value would result in too large an increase in fees. The majority was set on course by what they deemed were the guiding standards of the statute which referred to minimizing the disruptive impact on the economic structure of the industries involved. It was the majority view and opinion that a large increase in fees would be oppressive to the industry and would "impact on small operators."

Id., at 891 (footnote omitted).

The Court of Appeals upheld the Tribunal's approach in its 1980 jukebox rate adjustment proceeding, stating that:

In its decision, the Tribunal acknowledged that the rate which it approved could not be directly linked to marketplace parallels, but it found that such parallels served as appropriate points of reference to be weighed together with the entire record and the statutory criteria. Although we agree with ASCAP that the analogous marketplace evidence is significant, we do not believe that the Tribunal was bound by that evidence to select a fee rate within the \$70-\$140 "zone" which, according to ASCAP, governs this case. The Tribunal carefully weighed the evidence derived from the marketplace analogies and other evidence specifically in light of the four statutory criteria of section 801(b) and arrived at a royalty rate for coin-operated phonorecord players of \$50 per machine.

Amusement and Music Operators Ass'n v. Copyright Royalty Tribunal, 676 F.2d 1144, 1157 (7th Cir. 1982), cert. denied, 459 U.S. 907 (1982) (*AMO v. CRT*). The D.C. Court of Appeals engaged in a similar analysis when it considered the Tribunal's determination to raise the royalty rate for making and distributing phonorecords of copyrighted musical works from 2 cents to 4 cents. In that case, the copyright owners argued that Congress intended the Tribunal to set a high royalty rate under a bargaining room theory, which would create a rate ceiling for stimulating future negotiations outside the license. The D.C. Circuit found that while Congress had considered this possibility, it chose not to codify this approach, but rather to express its will through specific statutory criteria and allow the Tribunal to interpret and apply these objectives to the record evidence in a rate adjustment proceeding. *RIAA v. CRT*,

662 F.2d at 8-9. Furthermore, the Court ascertained that Congress did not rank the criteria in order of importance so that the Tribunal, and subsequently, the CARP, could:

To the extent that the statutory objectives determine a range of reasonable royalty rates that would serve all these objectives adequately but to differing degrees, * * * choose among those rates, and courts are without authority to set aside the particular rate chosen by the Tribunal if it lies within a "zone of reasonableness."

Id. at 9. See also *Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968); *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585-586 (1942); *Hercules, Inc. v. Environmental Protection Agency*, 598 F.2d 91, 107 (D.C. Cir. 1978).

b. Benchmarks

The Panel's Disposition of the Proposed Benchmarks

The Register has reviewed the analysis of the Panel and its disposition of the three benchmarks and finds that the Panel's primary reliance on and manipulation of the DCR negotiated license fee was arbitrary. The Register also finds that the record evidence does not support the Panel's calculation of a specific range of fees for the public performance of the musical compositions. These flaws compel the Register to reexamine the record evidence and propose a rate based on her analysis while providing deference, where appropriate, to the findings of the Panel.

The Register, however, did not evaluate further the record evidence concerning either the cable television network fee or the proposed minimum fee in her deliberations to determine the appropriate rate because no party to the proceeding challenged either of these findings or continued to rely upon these matters in presenting its arguments to the Librarian.⁷ Therefore, the Register forgoes a review of the Panel's analysis in these areas. This does not mean, however, that the Register and the Librarian will always forego an independent review of a Panel's actions. See, e.g. *Distribution of the 1992, 1993, and 1994 Musical Works Funds*, 62 FR 6558 (February 12, 1997)

⁷ RIAA strongly disagrees with the CARP's conclusion that the Services should devote a smaller percentage of their revenues to license fees than do other cable networks. While the range of percentages is large, there are no cable networks that consistently spend as little as 5 percent. Nevertheless, RIAA has not challenged the CARP's decision to reject the cable network analogy." Petition at 52 n.9 (citations omitted). Furthermore, RIAA did not raise any challenge to the Panel's decision not to grant a minimum fee.

(recommending an upward adjustment to one party's award, although no party made a request for the adjustment); Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55742 (1997) (recommending the adoption of a zero rate for local retransmission of network signals to unserved households).

The Panel's Adoption of the DCR Negotiated License Fee and its Subsequent Manipulations of This Rate to Establish a Range of Potential Royalty Rates was Arbitrary.⁸

The Panel found that the digital performance license negotiated as part of a larger partnership agreement between DCR and its two record company partners, Warner Music and Sony Music, was a useful benchmark for determining the section 114 royalty fee because it provided a "useful precedent," although there were problems with using the rate for this license fee since only 60% of the industry engaged in the negotiations setting the rate.⁹ Report ¶¶ 166, 200. To address this problem the panel adjusted the figure upward to reach a base rate figure arguably applicable to 100% of the recording industry market. *Id.* The Panel then doubled this number to account for the statutory provision which requires an equal distribution of the royalties collected pursuant to the compulsory license between the record companies and the recording artists. *Id.*; also 17 U.S.C. 114(g). While recognizing that a pure doubling of the base rate was inappropriate, the Panel determined that these manipulations of a "freely negotiated rate" set a reasonable range of rates for further consideration in light of the statutory criteria. *Id.*

RIAA opposes the use of the negotiated license fee as a benchmark for setting the compulsory license fee for the following reasons: (1) It was merely one provision in a complex transaction involving eleven interrelated agreements, RIAA PF ¶ 92; Petition at 22; Wildman¹⁰ W.R.T. at 12-15; Transcript (Tr.) 2213-14 (Wildman); (2) the record companies interested in

⁸ Negotiated license fees and certain business information, which the Register has considered throughout her review, are not being published in the Register's review because the information is subject to a protective order. See Order Docket No. 96-5 CARP DSTR (September 18, 1996).

⁹ Sony Music and Warner Music signed a partnership agreement with DCR in January 1993. A third record company, EMI, joined the partnership in April 1994, under substantially the same terms. Report ¶ 164.

¹⁰ Associate Professor of Communications Studies at Northwestern University and Director of Northwestern's program in Telecommunications Studies, Management, and Policy.

investing in the digital audio service would share the cost of a higher rate, thereby creating a strong incentive to create a low rate; (3) the license fee was not for the right to perform sound recordings publicly, but for the acknowledgement that a right should exist, RIAA PF ¶ 84; Tr. 2102 (Vidich);¹¹ (4) the record companies never viewed the established rate as precedential, citing the license provision that the rate will be superseded if Congress establishes a performance right in sound recordings, DCR Exs. 7, 8 & 15 at ¶ 9; Vidich W.R.T. at 7; Tr. 2106-2107 (Vidich); Del Beccaro¹² W.D.T. at 9, and the most favored nations clause, DCR Exs. 7, 8 & 15 at ¶ 6; (5) the record companies did not enjoy the degree of leverage in setting the rate that the Services imply in their proposed findings; (6) the fee did not represent an industry-wide agreement on the value of the performance right; instead, only three record companies, "collectively responsible for only about 35% of the sound recordings performed by DCR," negotiated the rates, RIAA's Reply to Proposed Findings and Conclusions of Law (RIAA RPF) ¶ 39; Tr. 1014 (McCarthy);¹³ and (7) the DCR digital performance license differed in significant ways from the statutory license. For example, the DCR license requires the company to pay royalties on its revenues from international sources which are not recoverable under the DPRSRA, RIAA PF ¶ 83; Tr. 965 (Del Beccaro); Tr. 1014 (McCarthy); Tr. 2137 (Vidich), and it did not contemplate a distribution of a portion of the royalties to recording artists as required under the new law, RIAA PF ¶ 82.

In response, the Services assert that the Panel "did not rely on the DCR license rate in isolation," and argue that its determination was informed by testimony from the parties who participated in the negotiations. Reply to Petition at 20. More specifically, the Services argue that the inclusion of the performance license within a larger, complex commercial agreement makes it more meaningful, because DCR did not purchase a license for the public performance of sound recordings. Rather, in exchange for a partnership agreement, DCR acknowledged that the right should exist for a particular rate. The Services neglect, however, to discuss why this observation is

¹¹ Senior Vice-President of Strategic Planning and Business Development at Warner Music Group and a member of the Board of Directors of Digital Cable Radio Associates.

¹² President and Chief Executive Officer of Digital Cable Radio Associates.

¹³ Senior Vice-President and Chief Financial Officer of Digital Cable Radio Associates.

important in their initial findings. Services RF ¶ 75-77. Later, the Services argue that the Panel's decision to use the DCR license fee as an appropriate benchmark rested on a weighing of the evidence and invoke the Panel's discretion to evaluate the testimony and fashion its decision accordingly. Reply to Petition at 20-21. The Services, however, fail to address RIAA's additional concerns about the negotiated license, except to note that the partner record companies never operated a joint advertising venture nor took advantage of the provisions which gave them some measure of control over programming. Services RF ¶¶ 80-81.

While the Register agrees with the Services that the Panel carefully considered the rationale for and the circumstances surrounding the negotiations setting the DCR license rate, she finds the Panel's adoption of this benchmark and its subsequent adjustments arbitrary. In the first instance, the benchmark offered by the Services cannot represent a license for a right to perform sound recordings, because no such legal right existed at the time of the negotiations. Woodbury¹⁴ W.D.T. at 12; RIAA PF ¶ 84; Tr. 2102 (Vidich). DCR allowed that, in fact, it did not negotiate for a performance license in sound recordings; and instead, characterized the transaction as selling "to its record company partners the recognition they sought 'that the right existed for a particular rate.'" Services PF ¶ 102. To underscore this distinction, DCR insisted on a clause which stated that the United States law did not require DCR to pay a fee or royalty for the public performance of any sound recording, even though DCR agreed, as part of a complex commercial transaction, to pay its partner record companies what it calls a public performance license fee. Services PF ¶¶ 111, 136. An article in the press announcing the deal echoed this distinction. It noted that not only did the transaction allow DCR use of the record companies' repertoire, it also required DCR to support a performance right in sound recordings. DCR Ex. 27 (Paul Verna, *Time Warner Breaks New Cable Ground; Enters Cable Radio Venture With Sony*, Billboard, Feb. 6, 1996, at 1).

Consequently, the Register rejects the Panel's premise that the rate set for a nonexistent right would represent accurately the value of the performance right once it came into existence, especially where the parties

¹⁴ A vice-president at the economic consulting firm of Charles River Associates, Inc.

acknowledge that the agreement encompassed more than the purported value of the coveted right, namely the recognition from the audio service that a performance right in sound recordings should exist. RIAA PF ¶¶ 94-95; Tr. 2209-12 (Wildman); Wildman W.R.T. at 9-12. Arguably, that recognition was more valuable consideration to the record companies than the license fee itself.

The conclusion that the DCR license fee may serve as the benchmark for setting the section 114 rates is undermined further by the very nature of the partnership agreement. All parties agree that the agreement concerning the performance right was merely one of eleven interdependent co-equal agreements which together constituted the partnership agreement between DCR and the record companies. Such strong ties between provisions in a negotiated document raise the question of how much give-and-take occurred in negotiating the final terms. Courts recognize that complex transactions encourage tradeoffs among the various provisions and lead to results that most likely differ from those that would result from a separately negotiated transaction.¹⁵ While DCR freely entered into the partnership agreement, the record contains no evidence that it would have freely entered into a separate performance license for sound recordings. To the contrary, the Service's own witness admits that it is unlikely that a stand-alone performance license would have been negotiated. Woodbury W.D.T. at 15. Accordingly, the Register concludes that it was arbitrary for the Panel to rely on a single provision extracted from a complex agreement where the evidence demonstrates that the provision would not exist but for the entire agreement. Under similar circumstances, the Southern District Court of New York found that "plucking one term out of the contract is likely to yield a fairly arbitrary result." *American Society of Composers Authors and Publishers v. Showtime/The Movie Channel, Inc.*

¹⁵ For example, in resolving a dispute between ASCAP and Showtime/The Movie Channel, Inc. over the fee for a "blanket" license, the Southern District Court of New York stated that:

It is fair to assume that in any negotiation that encompasses as many disparate issues as do the guild agreements, the negotiators will agree to tradeoffs, among the various negotiated items. . . . The process of negotiation is thus likely to yield a complex pattern of results, most of which would have been different if the individual issue had been negotiated entirely separately from the others. Accordingly, plucking one term out of the contract is likely to yield a fairly arbitrary result.

ASCAP v. Showtime/The Movie Channel, Inc., published at 912 F.2d 572, 590 (S.D.N.Y. Dec. 20, 1999) (Civ. No. 13-95 (WCC)) (footnote omitted).

(ASCAP), published at 912 F.2d 572, 590 (S.D.N.Y. December 20, 1989) (No. 13-95 (WCC)) (rejecting proposal to rely upon provisions in guild agreement concerning payment of revenues where such provisions were part of a set of terms governing compensation, benefits, and working conditions).¹⁶

Another problem with adopting the DCR license fee is that it is not an industry-wide agreement, but rather the product of negotiations among only three record companies, which together account for approximately 35% of the sound recordings performed by DCR. RIAA PF ¶ 82; RIAA RPF ¶ 39. The arbitrators understood the limited nature of the negotiations and made an adjustment to the license fee based on the mistaken assumption that the DCR license fee represented the value of the sound recordings owned by the three record companies party to the agreement, which purportedly represented 60% of the record industry. Report ¶¶ 166, 200. This assumption arose from a statement made by the Services in the summary statement contained in the Services' joint reply to RIAA's proposed findings.¹⁷ The statement, however, has no support in the record. See Petition at 21 n.3; Reply to Petition at 21-22. Consequently, the Panel's upward adjustment of the base figure on the merits of this assertion was arbitrary.

This is not to say that the fact that the DCR license fee was negotiated with companies owning rights to only 35% of the relevant works renders that license fee irrelevant. It is, however, a further deficiency which in combination with the other deficiencies discussed herein, renders the Panel's reliance on the DCR license fee as its exclusive benchmark inappropriate.

Furthermore, the Panel's decision to rely on the DCR license fee deviates from CRT precedent where that agency refused to adopt, as an industry-wide rate, a set of rates negotiated by only certain of the affected parties as part of a general understanding involving issues in addition to the rate of compensation. Use of Certain

¹⁶ This is not to say that in any case in which a CARP relied on a license fee that was part of a larger agreement containing a number of provisions unrelated to the license fee, such reliance would necessarily be arbitrary. But in light of the other deficiencies in the CARP's reliance on the DCR license, discussed herein, and especially in light of the fact that the license fee was for the exercise of a nonexistent right, the Register is compelled to conclude that in this case, the CARP's reliance on the DCR license fee as its exclusive benchmark was arbitrary.

¹⁷ DCR entered into a performance license with three record companies that represent approximately 60% of all recorded music sold in the United States." Services RF at 2.

Copyrighted Works in Connection with Noncommercial Broadcasting, 43 FR 25068 (June 8, 1978). While no Panel need slavishly adhere to the past practices of the CRT, it must articulate a reasoned explanation for its deviation from past precedent. Distribution of 1990, 1991, and 1992 Cable Royalties, 61 FR 55653, 55659 (October 28, 1996). Otherwise, its actions may be construed as arbitrary or contrary to law.¹⁸

The Register also finds that even if the 60% figure had record support, it would be arbitrary to adjust a negotiated license fee that purports to represent the market value of the digital performance right in sound recordings. Under the license agreement, DCR agreed to pay a percentage of its gross revenues for the right to perform sound recordings digitally, but only a portion of these fees were paid to each of DCR's three record company partners, allocated on the basis of the DCR playlist.¹⁹ Tr. 2123-24 (Vidich); Services PF ¶ 111. Therefore, the license fee—to the extent that it was a license fee—already accounted for all copyright fees owed to the record industry, and it was inappropriate for the Panel to make any further adjustment. The Services seem to realize the Panel's error in this respect and note that the Panel was under no obligation to make an upward adjustment, since the license fee reflected the value of the sound recording and not the sum of the percentage amount each partner record company negotiated for use of its works. Reply to Petition at 22.

Furthermore, the Register finds that the Panel's conclusion that the DCR license fee "provides a useful precedent for setting a royalty rate in this proceeding" was arbitrary. Report ¶ 200. The only support for this finding was Woodbury's testimony that the trade article announcing the deal between DCR and its new record company partners, Sony and Warner, illustrated its precedential value, at least for the record companies. Woodbury W.D.T. at

¹⁸ Section 802(c), of the Copyright Act, directs the CARP to "act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c)."

¹⁹ For example, if the DCR license fee had been 5% of gross receipts (equaling \$100,000) and 40% of the sound recordings on DCR's playlist were owned by DCR's record company partners, then DCR would pay 40% of the license fees (\$40,000) on a prorata basis to these partners. The remaining 60% (\$60,000) represents the value of the digital performance of works owned by non-partnership record companies performed during the relevant time period—a sum that DCR would not actually pay under the terms of its license agreement.

The 5% license fee value does not represent the actual value of the negotiated fee because this information is subject to a protective order. See n.8 *supra*.

16. Mr. Woodbury's statements on the precedential value of the agreement, however, are full of qualifications, and he readily acknowledged that "a successful negotiation may have required that Warner and Sony compensate Music Choice for including the performance rights payments as part of the partnership agreement. The effect of this compensation may have restrained Warner and Sony in their choice of a higher fee level." *Id.*

In addition, the partnership agreement itself fails to support the Panel's finding. It includes material redacted subject to the protective order, DCR Exs. 7, 8 & 15 at ¶ 6, and a provision that the rate will be superseded if Congress establishes a performance right in sound recordings. DCR Exs. 7, 8, & 15 at ¶ 9. Vidich W.R.T. at 7; Tr. 2106-2107 (Vidich); Del Beccaro W.D.T. at 9. Because the partnership agreement included language that undermined any precedential value of the digital performance license included therein, the Register finds that the Panel's reliance on the DCR license fee as precedent was an arbitrary action. See *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Insurance Co.*, 463 U.S. 29 (1983) (agency action is arbitrary where the agency offers an explanation for its decision that runs counter to the record evidence).

In setting a range of possible rates for the section 114 license, the Panel made further adjustments to the base figure to account for the payments to the recording artists. Under the DPRSRA, recording artists are entitled to half of the royalties collected under the compulsory license. 17 U.S.C. 114(g). RIAA argues that the DCR license fee must be adjusted to account for this provision in the law that entitles recording artists to a share of the royalties, because the record companies were under no obligation to share the royalties. RIAA RPF ¶ 40; Petition at 28. RIAA also argued for additional upward adjustments of the benchmark to compensate the record companies for certain differences between the DCR license and the compulsory license, including compensation for loss of royalties generated from foreign and commercial subscribers, and loss of revenue due to a shift in how the Services offer their product to subscribers.

RIAA anchors its arguments for these requested adjustments on the presumption that the responsibility of the Panel was "to determine the royalty [rate] that would be produced through free market negotiations, absent the compulsory license." RIAA RPF ¶ 41.

This presumption, however, misrepresents the Panel's duty, which is to establish reasonable rates and terms. See discussion *supra* concerning the use of a marketplace standard in setting the royalty rate. While RIAA may have a reasonable expectation that a Panel would make appropriate adjustments to a marketplace benchmark that the Panel adopts for further consideration in light of the statutory objectives, and that is not to say that the requested adjustments are appropriate, there is no justification for making the adjustments where the benchmark value does not fulfill that function. Therefore, having found that the DCR license fee does not represent the marketplace value of sound recordings, the Register need not consider further arguments on adjusting the rate.

For the reasons cited above, the Register finds that the Panel was arbitrary in relying on the DCR license fee for the purpose of establishing an accurate evaluation of the marketplace value for the performance right.

The Panel's Determination of a Specific Range of Fees for the Public Performance of the Musical Compositions Was Arbitrary

The Services pay separate license fees to Broadcast Music, Inc. (BMI), the American Society of Composers, Authors, and Publishers (ASCAP), and SESAC, Inc. for the public performance of the underlying musical works in the sound recordings. The Services introduced evidence on what they pay the performing rights organizations for the public performance of the musical works to illustrate the industry practice that "licensing rates ordinarily paid in the recording and music industries for the use of copyrighted works are far less than 41.5%, and generally are within the low single digit range for use of copyrighted music and sound recordings." Rosenthal ²⁰ W.R.T. at 3; Tr. 1646, 1669-70, 1674 (Massarsky).²¹

Using the license fees DMX and DCR²² pay for the right to perform

²⁰ An attorney with the law firm of Berliner, Corcoran & Rowe, L.L.P., in Washington, D.C., who represents recording artists, writers, production companies, record companies, and multimedia companies.

²¹ An economic consultant with the firm of Barry M. Massarsky Consulting, Inc.

²² The Services pay an interim rate set in 1989 to ASCAP for the performance of the musical works in its repertoire. Tr. 1029 (McCarthy); Tr. 1656 (Massarsky). DCR also pays an interim rate to BMI. These rate disputes are currently the subject of adjudication before the "rate court" in the Southern District of New York. Services RF ¶¶ 52-53; 100-105. Pending the outcome of the rate cases, DCR has agreed to pay BMI the same contractual rate that DMX pays for the musical works performance license. Tr. 1653 (Massarsky).

musical compositions in the BMI and SESAC repertoires and the anticipated payments that ASCAP will receive upon resolution of a rate dispute between itself and the Services, and not the interim rates that the Services currently pay ASCAP, which are usually lower than the final determination of the rate court, the Panel set an upper limit on the value of the performance right for the musical compositions. Report ¶¶ 167(B)-(G). In making this determination, the Panel accepted Massarsky's testimony that ASCAP license fees are "generally greater than, but at least no less than, BMI license fees," and made its calculations accordingly. Report ¶ 167(E); see also RIAA PF ¶¶ 106-108.²³ In addition to setting an upper limit on the amount the Services would pay for these performance licenses, the Panel announced a lower limit for this benchmark but provided no discussion on how it arrived at this figure.

RIAA accepts the Panel's determination for an upper limit valuation for the performance right in musical works, but challenges the Panel's determination of the lower limit of this value. Petition at 16-20. RIAA contends that because the Panel had actual figures upon which to base its calculation, it was arbitrary to set a lower limit. *Id.* at 17.

From an examination of the record, the Register cannot determine how the Panel derived the lower limit figure, but she has identified at least one way that the Panel could have settled upon the lower figure. It entails the use of the interim rates which the Services pay ASCAP currently, instead of relying on a figure equal to or greater than the rate paid to BMI. Tr. 1669 (Massarsky). Tr. 1028-1029 (McCarthy). Use of such an approach, however, is expressly

²³ CRT and judicial precedent supports the Panel's premise that ASCAP usually receives slightly higher royalty fees for the public performance of its works than does BMI. In *American Society of Composers, Authors, and Publishers v. Showtime/The Movie Channel*, 912 F.2d 563 (2nd Cir. 1990), the court affirmed the rate court decision that a "blanket" license rate for use of ASCAP works should be set slightly higher than the rate the cable network pays for a BMI license. This result reflected the agreed upon 55-45 ratio that ASCAP and BMI adopted in dividing their share of the royalties for compulsory licenses paid by cable system operators for retransmissions of broadcast signals. See also 1978 Cable Royalty Distribution Determination, 45 FR 63026 (Sept. 23, 1980) (CRT determined that of the 4.5% royalty share awarded to the music claimants' group in the 1978 cable distribution proceeding, ASCAP would receive 54%, BMI, 43%, and SESAC, 3% of the royalties.); 1987 Cable Royalty Distribution Proceeding, 55 FR 11988 (March 30, 1990) (CRT again adjusted the distribution percentages for cable royalties so that ASCAP received a 58% share of the disputed royalties and BMI received the remaining 42% share).

disavowed by two of the Services' own expert witnesses who agree that it is inappropriate to rely on interim rates to determine competitive market rates. Woodbury W.R.T. at 19 n.70; Tr. 2710-2711 (Woodbury); Tr. 1029 (McCarthy). The Register concurs with these witnesses' assertions, and therefore rejects any figure which uses an interim rate in calculating a value when specific evidence exists in the record discounting this methodology and nothing supports its use.

Nor could the Panel consider just the individual license fees which the Services pay to a single performing rights organization in setting the lower limit, having rejected a similar argument when the Services initially proposed making this comparison. Report ¶ 168. A single license fee covers only those musical works under the control of the individual performing rights organization granting the license. Therefore, a Service must obtain a "blanket" license from every performing rights organization in order to have the freedom to play virtually any musical composition without infringing its copyright. Hence, the total value attached to the performance of the underlying musical works would be the sum of the license fees paid to each of the performing rights organizations, just as the value of the digital performance right in sound recordings would be the fees paid to all record companies. See Report ¶ 168.

The Register perceives no rational connection between the Panel's factual conclusions and its decision to set a lower limit for this benchmark. Where the record provides clear evidence of what the Services actually pay for the performance licenses, and the witnesses agree that the interim rates which are currently being paid represent *de minimis* value for these licenses, the Panel need not look beyond this information to determine the value of the benchmark. For the reasons discussed above, the Register does not consider the Panel's lower limit on the performance license fees for musical compositions when proposing a royalty rate for the section 114 license.

Use of Benchmarks Approximating Marketplace Value in Setting the Section 114 Rate

A benchmark is a marketplace point of reference, and as such, it need not be perfect in order to be considered in a rate setting proceeding. In the 1980 rate adjustment proceeding for coin-operated phonorecord players, the Tribunal considered different marketplace models and found that each analogy had distinguishing characteristics, but

nevertheless considered them in conjunction with the record evidence and the statutory objectives. 1980 Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, 46 FR 884, 888 (1981) ("While acknowledging that our rate cannot be directly linked to marketplace parallels, we find that they serve as an appropriate benchmark to be weighed together with the entire record and the statutory criteria"). The U.S. Court of Appeals for the Seventh Circuit approved the Tribunal's approach, stating that:

We think that the Tribunal could properly take cognizance of the marketplace analogies while appraising them to reflect the differences in both the respective markets (e.g., with respect to volume and industry structure) and the regulatory environment. It is quite appropriate and normal in this administrative rate determination process to find distinguishing features among various analogous situations affecting the weight and appropriate thrust of evidence rather than its admissibility. No authority cited by AMOA would require the Tribunal to reject the ASCAP/SESAC analogies. Comparable rate analogies have been repeatedly endorsed as appropriate ratemaking devices.

AMOA v. CRT, 676 F.2d at 1157. See also *San Antonio v. United States*, 631 F.2d 831, 836-37 (D.C. Cir. 1980), *clarified*, 655 F.2d 1341 (D.C. Cir. 1981); *Burlington Northern, Inc. v. United States*, 555 F.2d 637, 641-43 (8th Cir. 1977).

When setting the rates for the statutory performance license in sound recordings, the benchmarks are merely the starting point for establishing an appropriate rate. The deciding body uses the appropriate marketplace analogies,²⁴ in conjunction with record evidence, and with regard for the statutory criteria, to set a reasonable rate.

In this proceeding, the Register finds that both the negotiated DCR license fee and the marketplace license fee for the performance of the musical works are useful at least in circumscribing the possible range of values under consideration for the statutory performance license in sound recordings. While the DCR license fee purports to represent a negotiated value for a right to which, by law, the record

²⁴ A Panel is free to reject a proposed benchmark that does not reflect accurately the characteristics and dynamics of the industries subject to the proposed rate. See e.g., *Use of Certain Copyrighted Works in Connection with Noncommercial Broadcasting*, 43 FR 25068-69 (1978) (CRT found voluntary license between BMI, Inc. and the public broadcasters, Public Broadcasting System and National Public Radio, of no assistance in setting rate for use of ASCAP repertoire); *Adjustment of the Royalty Rate for Cable Systems*; Federal Communications Commission's Deregulation of the Cable Industry, 47 FR 52146 (November 12, 1982).

companies were not entitled (in addition to the recognition that the right should exist), the Register acknowledges that the value of the DCR license provides minimal information as to the value of the performance right ultimately granted in the DPRSRA, although it does provide some guidance for assessing the proposed rate. See *Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords*; *Rates and Adjustment of Rates (115 Rate Adjustment Proceeding)*, 46 FR 10466, 10483 (Feb. 3, 1981) ("We find that the foreign experience is relevant—because it provides one measure of whether copyright owners in the United States are being afforded a fair return").

On the other hand, the second reference point—the negotiated license fees for the performance of music embodied in the sound recordings—offers specific information on what the Services actually pay for the already-established performance right of one component of the sound recording. The Panel recognized this reference point's usefulness and used it to further support its choice of a royalty rate. Report ¶ 201. The question, however, is whether this reference point is determinative of the marketplace value of the performance right in sound recordings; and, as the Panel determined, the answer is no. Report ¶¶ 169, 201.

Initially, neither the Services nor RIAA placed much weight on this marketplace reference point, although RIAA has consistently argued that the value of the performance right in sound recordings is greater than the value of the performance right in the underlying musical works. RIAA RPF ¶ 16, Petition at 10-16. On the one hand, the Services argue that the musical composition is the key to a successful recording. Services RF ¶ 10-12, citing Tr. 1664 (Massarsky), and on the other hand, RIAA contends that a song lacks feeling until the recording artist breathes life into the song. Morris²⁵ W.D.T. at 1-2; Petition at 12-13. Because neither side presented conclusive evidence on this point, the Panel observed only that both groups are "parents of the music." Report ¶ 169.

RIAA faults the Panel for its lack of discussion on the question of whose rights in the phonorecord are more valuable. Petition at 10-16. While the Register agrees that the Panel did not make specific citations to record evidence, its finding that "[t]here was insufficient and conflicting evidence to make a determination that the

²⁵ A country music artist who has recorded 14 albums, including five number one songs.

performers and record companies deserve a larger percentage from the Services than granted to the music works," was supported by the record evidence. Report ¶ 169.

To make its point, RIAA presented an analysis of revenues from record sales in support of its argument that the marketplace values the contributions of the record companies and the performing artists more than it values the contributions of the copyright owners in the musical compositions. RIAA's PF ¶¶ 112-120; Petition at 10-16. This evidence showed that copyright owners of the musical composition receive between 5-20% of the wholesale price for the sound recordings based on sales of CDs and cassette tapes—approximately 5% from the average wholesale price for an average CD and 12% from an average cassette.²⁶ RIAA PF ¶¶ 115, 119. Recording artists, on the other hand, receive 7-10% of the average wholesale price for a typical CD and 15-20% for a typical cassette, leaving approximately between 56-88% of the revenues from sales for the record companies. RIAA ¶ PF 116.

The Services disagreed with RIAA's interpretation of the marketplace data, contending that the reason the "(r)ecord companies receive a bigger percentage of revenues from the sale of sound recordings (is) because they have a bigger monetary investment in the record production costs, as well as the leverage to minimize the royalties paid to songwriters, music publishers, and recording artists." Services RF ¶¶ 118-120. They also oppose RIAA's implication that the record companies should receive more value from the performance right in sound recordings than the songwriters receive for a similar right because the record companies garner more revenue from the use of the mechanical license than do the songwriters and composers.

The Services accurately note that the mechanical license and the digital performance license represent different and distinct rights to the copyright holders under the law, and they make no attempt to tie the value of the rights associated with the mechanical license to the value of the digital performance right, a right newly recognized with the passage of the DPRSRA. Even RIAA, the proponent of the assertion, fails to explain why the relative value of the mechanical license to the various owners and users has any application to the determination of the value of a digital performance license in sound

²⁶ Interested parties are free to negotiate a rate below the statutory rate for the mechanical license and often do. Tr. 1660 (Massarsky).

recordings. Consequently, where no clear nexus exists between the values of different rights, the model serves no practical purpose in computing the value of the digital performance right.

Hence, RIAA's contention that the data supports its assertion that the marketplace places a higher value on the contributions of the record companies and the recording artists in the creation of the phonorecord fails, because it does not discuss the constraining effect the mechanical license has on the copyright owners in setting a value on their reproduction and distribution right. Record companies pay the copyright owners of the musical compositions no more than the statutory rate for the right to reproduce and distribute the musical composition in a phonorecord. The record company then, in turn, sells the phonorecord at a fair market price. Because both groups do not share equal power to set rates in an unfettered marketplace, it is unreasonable to compare the value of the reproduction and distribution right of musical compositions—a rate set by the government at a level to achieve certain statutory goals—with the revenues flowing to record companies from a price set in the marketplace according to the laws of supply and demand, and then to declare that the marketplace values the sound recording more than the underlying musical composition. Consequently, RIAA's evidence sheds no light on the relative value of the sound recording performance right and the musical works performance right.²⁷

In addition to the foregoing discussion, the Register notes that Congress did not intend for the license fees paid under the new digital performance license to "diminish in any respect the royalties payable to copyright owners of musical works for the public performance of their works." S. Rep. No. 104-128, at 33 (1995) (emphasis added). See also 17 U.S.C. 114(i). Although this statement does not express Congress' intent that the license be set below the value of the public performance right in the musical works, it indicates that Congress considered the possibility that such would be the outcome, and sought through express legislation to protect the current value

²⁷ Even if there was some value to the comparison, RIAA does not appear to factor into its calculations the value of the sound recordings in those phonorecords that do not show a profit. According to the record, "approximately 85 percent of all sound recordings do not recoup the costs that are spent to make and to market those recordings. Indeed, over two-thirds of all sound recordings sell less than 1,000 copies." Report ¶ 105.

of the performance right in musical works.

Based on a review of the record evidence, the Register concurs with the Panel's conclusion that there was insufficient evidence to determine that the performers and record companies deserve a larger percentage from the Services than that received by the copyright holders in the musical works. That being so, the Register finds no basis for making an upward adjustment to the musical works performance license fees to establish a broader range of potential rates.

c. Statutory Objectives

Section 801(b)(1) of the Copyright Act states that the rates for the section 114 license shall be calculated to achieve certain statutory objectives. The Panel evaluated each statutory objective and made a finding as to whether the Services or RIAA furthered that objective. If the Services contributed more to furthering the objective, the Panel gave more consideration to setting a rate at the lower end of the possible range, and conversely, if the record companies made the more significant contribution, the Panel found this to favor a rate toward the upper end. Report ¶ 19(A)-(D).

The Panel's analysis led it to set a rate toward the low end of its range, because a rate set toward the high end would thwart the statutory objectives under current market conditions. *Id.* The Panel expressly noted that a future Panel may reach an entirely different result based on the then-current economic state of the industry and new information on the Services' impact on the marketplace. Report ¶ 202.

RIAA contends that the Panel's findings that all factors favor setting a low rate is contrary to CRT precedent. Petition at 32. This contention relies on a statement from the D.C. Court of Appeals, which upon reviewing the CRT's 1980 Mechanical Rate Adjustment Proceeding concluded that the factors "pull in opposing directions." *Id.*, citing *RIAA v. CRT*, 662 F.2d at 9. But in making this statement, the court merely made an observation that the statutory objectives required the Tribunal to weigh opposing factors in determining how best to achieve each objective. It went on to say that the Tribunal had the responsibility of reconciling these factors in setting a reasonable rate, but the court did not preclude the possibility that the Tribunal might find that the application of the factors to the evidence consistently supported either a high rate or a low rate. *RIAA v. CRT*, 662 F.2d at 9.

The Register approves the Panel's basic approach in utilizing the factors to determine its rate for the digital performance right and adopts the Panel's findings where the evidence supports its conclusions.

The Panel's determination that the statutory objectives supported setting a rate favoring the Services was not arbitrary.

The Panel's ultimate conclusion that the best way to achieve the four statutory objectives was to set a low rate favoring the Services is supported by the evidence presented in this proceeding. How much weight to accord each objective is within the discretion of the Panel, which may accord more weight to one objective over the others so long as all objectives are served adequately. See *RIAA v. CRT*, 662 F.2d at 9. In *RIAA v. CRT*, the court reviewed the Tribunal's decision to raise the rate for making and distributing phonorecords from two cents to four cents. It found the copyright users' argument that the Tribunal failed to give adequate consideration to certain factors over others unavailing. In discussing the impact of the statutory objectives on the ratemaking process, the court stated:

(T)he Tribunal was not told which factors should receive higher priorities. To the extent that the statutory objectives determine a range of reasonable royalty rates that would serve all these objectives adequately but to differing degrees, the Tribunal is free to choose among those rates, and courts are without authority to set aside the particular rate chosen by the Tribunal if it lies within a "zone of reasonableness."

Id. at 9 (citations omitted). Hence, the Panel was free to find that a rate on the low end was reasonable so long as that rate fell within the "zone," and the "zone" was calculated to achieve the statutory objectives.

The Panel's analysis and application of the statutory objectives, however, are not without problems. The Register finds that on occasion, the Panel either did not perceive or misinterpreted the precedential underpinnings of the statutory objective.

A full discussion of the Panel's deliberations and the parties' responses concerning the evaluation and application of the four statutory objectives follows.

A. Maximize the Availability of Works. (17 U.S.C. 801(b)(1)(A)).

The Panel found that the digital audio services "substantially increase the availability of recordings by providing many channels of uninterrupted music of different genres," noting the diversity of the music offered by the Services. Report ¶¶ 121-122. Based on this

finding, the Panel concluded at the end of its report that "[t]o maximize the availability of creative works to the public . . . the rate should be set on the low side. A lower rate will hopefully ensure the Services' continued existence and encourage competition so that the greatest number of recordings will be exposed to the consumers." *Id.* ¶ 198(A).

RIAA alleges that the Panel misinterpreted this statutory objective because it focused on "whether the Services promote the sale of sound recordings," rather than "whether the proposed rate will maximize the availability of sound recordings." RIAA RPF ¶ 43; Petition at 37-41. In support of its position, RIAA recalls the 1980 jukebox rate adjustment proceeding, where the CRT concluded, in its discussion of section 801(b)(1)(A), that jukeboxes were not crucial to assuring the public of the availability of creative works. 1980 Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, 46 FR 884, 889 (1981). The Tribunal, however, did find that "reasonable payment for jukebox performances will add incrementally to the encouragement of creation by songwriters and exploitation by music publishers, and so maximize availability of musical works to the public." *Id.* On the strength of past CRT precedent and the courts' recurring observation that compensation to the author or artist stimulates the creative force,²⁸ RIAA disputes the Panel's conclusion, contending that the best way to maximize the availability to the public is to ensure that copyright owners receive fair compensation for their works. Petition at 38.

The Services support the Panel's findings and conclusion but offer no legal support for their position except to note that "[t]he Courts have long held that under copyright law, reward to copyright owners is a 'secondary consideration' that ultimately serves the cause of promoting public availability of copyrighted works." Reply to Petition at

27 (citations omitted). The Services assert rightfully that the primary rationale for the copyright law is to stimulate the creation of artistic works for the benefit of the public. *Twentieth Century Music v. Aiken*, 422 U.S. 151, 156 (1975), citing *Fox Film Corp. v. Doyal*, 286 U.S. 123, 127 (1932) ("The sole interest of the United States and the primary object in conferring this monopoly . . . lie in the general benefits derived by the public from the labors of authors"). But in underscoring the primary purpose for the copyright law, the Court in *Aiken* acknowledges that this aim is achieved by allowing the copyright owners to receive a fair return for their labor, the position advanced by RIAA. *Id.* ("The immediate effect of our copyright law is to secure a fair return for an 'author's' creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good"). See also *Sony Corp. America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984); *United States v. Paramount Pictures*, 334 U.S. 131 (1948). The positive interplay between compensation and creation is a basic tenet of copyright law, and as such, its contribution to stimulating the creation of additional works cannot be set aside lightly.

In such matters where the Panel failed to discuss any relevant case law or past precedent construing the statutory objective before rendering its determination, the Register finds the Panel acted in an arbitrary manner. The finding is based on the Panel's failure to consider CRT precedent and to provide a rational basis for its departure from prior proceedings construing the same statutory objective. See *Pontchartrain Broad. v. FCC*, 15 F.3d 183, 185 (D.C. Cir. 1994) ("an unexplained departure from Commission precedent would have to be overturned as arbitrary and capricious"). *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Insurance Co.*, 463 U.S. 29 (1983); *Celcom Communications Corp. v. FCC*, 789 F.2d 67 (D.C. Cir. 1986); *Airmark Corp. v. FAA*, 758 F.2d 685 (D.C. Cir. 1985).

There is no record evidence to support a conclusion that the existence of the digital transmission services stimulates the creative process. Instead, the Panel made observations concerning the development of another method for disseminating creative works to the public—a valid and vital consideration addressed in the statutory objective concerning relative contributions from each party—but fails to discuss how the creation of a new mode of distribution will itself stimulate the creation of additional works.

Because the Panel failed to reconcile its determination with past CRT precedent and case law, the Register rejects both the Panel's findings and conclusions on this point as arbitrary. Instead, the Register concludes that the record companies and the performers make the greater contribution in maximizing the availability of the creative works to the public, a conclusion consistent with past CRT precedent.

B. Relative Roles of the Copyright Owners and the Copyright Users in Making Product Available to the Public. (17 U.S.C. 801(b)(1)(C)).

The statutory objective addressing the relative roles of the parties contains five different factors, which the Panel evaluated independently. In analyzing the first component of this objective, the relative creative contribution, the Panel found that both the recording companies and the performers make substantial creative contributions to the release of a sound recording. Report ¶ 87. Its determination credited the performers and the record companies for their work in making the musical work come alive. *Id.* ¶¶ 81-83. The Services were found to make no such significant contribution to the creation of the sound recording. Instead, their contribution was seen as more limited, since it merely enhanced the presentation of the final work through unique programming concepts. *Id.* ¶¶ 84-86. On balance, the Panel found "that the artists and the record companies provide greater creative contributions to the release of sound recordings to the public than do the Services," *id.* ¶ 87, a finding supported by CRT precedent.²⁹

The Panel continued its consideration of the relative contribution of the owners vis-a-vis the users in making the product available to the public and determined that the Services made the greater contribution with respect to the four remaining factors: technological contributions, capital investment, costs and risks to industry, and the opening of new markets. Report ¶¶ 88, 93, 94, 97, 98, and 109.

In making this determination, the Panel focused on the technological developments made by the Services in opening a new avenue for transmitting sound recordings to a larger and more diverse audience, including the creation of technology to uplink the signals to

²⁸ The CRT refused to award broadcasters a share of the cable royalties for their role in formatting radio stations. The Tribunal construed the claim as one for compensation which had a *de minimis* value. The U.S. Court of Appeals for the D.C. Circuit upheld the Tribunal's determination. *NAB v. CRT*, 772 F.2d at 931.

satellites and transmit them via cable; technology to identify the name of the sound recording and the artist during the performance; and technology for programming, encryption, and transmission of the sound recording. *Id.* ¶¶ 89-92. In contrast, the Panel found that the record companies made no contributions in these areas. *Id.* ¶ 93.

The Panel also weighed the evidence presented in support of the parties' relative roles in making capital investments in equipment and technology, the third factor. The Panel determined that the Services made a substantial showing of their \$10 million investment in equipment and technology. Report ¶ 95 and cites therein, whereas RIAA did not suggest that any capital investment was required on its part. *Id.* ¶ 97.

And finally, the Panel found that the fourth factor, the relative costs and risks incurred by the parties in making the product available to the public, was greater for the Services than for the record companies and the performing artists, even though the record companies do incur substantial costs and risks in producing the product used by the Services. *Id.* ¶¶ 98-108. In making its determination, the Panel balanced the costs and risks involved in producing the sound recordings against the cost and risks associated with bringing the creative product to market in a new and novel way. *Id.* ¶¶ 99-107. In support of its findings, the Panel noted that the Services have invested significant start-up costs and are currently undergoing a shift in how they market their services. *Id.* ¶¶ 55, 73-78, 99, and 102. In addition, the Services contend, and the Panel agrees, that the Services face new competition from the internet and digital radio. Consequently, it is far from clear whether the Services can survive. *Id.* ¶¶ 72, 99.

The Panel also found that record companies face tremendous risks when producing new sound recordings, citing the record companies' submissions showing that record companies fail to recover the production costs for approximately 85% of sound recordings, much less show a profit. *Id.* ¶ 105. The Panel, however, went on to find that the record companies have adapted to the vagaries of the music business, and as an industry, have shown consistent growth in units shipped and dollar value of records, CDs, and music videos from 1982-1996. *Id.* ¶ 108.

The Panel's key finding from its analysis of the third objective was that the Services contribute more to the opening of new markets for creative expression through the development of

the digital audio services. *Id.* ¶ 109. The Panel credited the Services with opening new markets for creative expression because they expose the public to a broader range of music than does traditional over-the-air radio. Unlike traditional radio, the Services offer multiple channels for classical, jazz, traditional, alternative, and ethnic formats. *Id.* ¶ 110. Because subscribers frequently purchase new music heard for the first time on the service, the Panel found that record companies arguably benefit directly from the expanded musical formats offered by the Services. *Id.* ¶ 112. The Panel also found that the Services' future plans to offer subscribers an opportunity to purchase the sound recordings directly will "undoubtedly" open new markets for the record companies. *Id.* ¶¶ 114-115.

The record companies do not accept the Panel's findings concerning this statutory objective, and once again, take issue with the Panel's interpretation, positing that the Panel impermissively focused on "whether recording companies had made a particular contribution to the Services operations—and wholly ignored the contributions that the recording industry had made to the sound recordings themselves." Petition at 45-46. RIAA's predicate for its argument is its interpretation that the statutory phrase, "in the product made available to the public," 17 U.S.C. 801(b)(1)(C), refers only to the creation of the sound recordings and not to the Services' creation of a new means for bringing the sound recordings to the listener. Petition at 46.

In addition to this alleged fundamental flaw in interpretation, RIAA contends that the Panel "improperly collapsed (its cost/risk analysis) into a risk only (analysis)" and ignored empirical evidence in the record discounting the promotional value of the Services' offerings. *Id.* at 47-48. RIAA, however, fails to note that the Panel did acknowledge that the record companies incur significant costs and risks in their business. Report ¶¶ 105-107. But the Panel also found that the Services presented no additional risk to the record companies "unless the customers of the Services record the sound transmissions in lieu of purchasing these products at a retail store." Report ¶ 107 (emphasis added). Because the record companies introduced no evidence showing decreased overall sales of records and CDs, the Panel reasonably found that the record companies did not incur additional risk from lost sales due to the Services' activities. Report ¶¶ 107, 111.

If anything, the Panel believed that the Services decreased the risk to the recording companies because the digital audio services have substantial promotional value. The promotional value comes from the constant airplay of new types of music not readily accessible in the marketplace, which in turn stimulates record sales. Report ¶ 110. In making this finding, the Panel relied on Simon's and Rubinstein's testimony that "subscribers frequently purchase new music precisely because they heard it on one of the Services." Report ¶ 112 citing Simon³⁰ W.D.T. at 1; Rubinstein W.D.T. at 34; Tr. 1442 (Rubinstein), and on the record industries' practice of supplying complimentary copies of their products to the Services for use on the air to promote the sales of an album. Tr. 1291 (Rubinstein); Tr. 1182-83, 1201 (Talley)³¹; DMX Ex. 3. See also Tr. 2248 (Wildman) ("Is there a benefit to the record company from getting music exposed that might become a hit that wouldn't get exposed otherwise? Of course there is").

Furthermore, RIAA's reliance on the preliminary DCR survey for the proposition that the Services do not promote sound recording sales is untenable where the record clearly shows that the record companies provide promotional copies to the Services. In fact, RIAA's own expert acknowledges "there (are) promotional benefits to recording companies from having their music played on radio stations or the digital music services." Tr. 2220 (Wildman).

In contrast to RIAA's fundamental objection to the Panel's interpretation of this statutory objective, the Services contend that the Panel made a reasonable determination that the phrase, "the product made available to the public," applied to both the sound recordings and the entire digital music service. Reply to Petition at 29. This finding is consistent with the 1980 rate adjustment proceeding for the mechanical license, where the CRT credited the record companies, the users of the musical compositions for purposes of the mechanical license, with developing new markets through technological innovations, and through the creation of record clubs, mail order sales, and television advertising campaigns. 46 FR 10480-81 (1981).

In making her determination on this point, the Register reflects on the

³⁰ Senior Vice-President of Programming at Digital Cable Radio Associates.

³¹ Executive Vice-President and Chief Technical Officer of Digital Music Express who oversees research and development, and technical operations worldwide.

statutory responsibilities of the Panel which is to set reasonable rates and terms for the public performance of sound recordings by *certain digital audio services*. (emphasis added). "In deciding to grant a new exclusive right to perform copyrighted sound recordings publicly by means of digital audio transmission, the Committee was mindful of the need to strike a balance among all of the interests affected thereby." S. Rep. No. 104-128, at 15-16 (1995). By its very nature, the section 114 license contemplates weighing the contributions of the users in creating and expanding the market for the performance of the sound recording in a digital technological environment. Without dispute, the evidence reveals a large investment of capital by the Services to create a new industry that expands the offerings of the types of music beyond that which one receives over the radio, through live performances, and other traditional means of public performance. Report ¶¶ 44, 49, 52, 99, 102-104, 110, 113; Simon W.D.T. at 3-4; Rubinstein W.D.T. at 13-14; Tr. 853-54 (Del Beccaro); Tr. 1237-40 (Rubinstein); Tr. 1476-78 (Funkhouser); DMX Ex. 32. Conversely, the record companies offered little or no evidence on their contributions relating to the key factors. Report ¶¶ 93, 97, 111.

From the foregoing analysis, the Panel concluded that the record companies contributed more in only one of the five areas under consideration in evaluating this statutory objective, and consequently, the rate should be set at a minimum level in favor of the Services. Report ¶ 198(C).

C. To Minimize Any Disruptive Impact on the Structure of the Industries Involved. (17 U.S.C. 801(b)(1)(D)).

The Panel determined that a rate set too high could cause one or all of the Services to abandon the business. Report ¶¶ 117-118; Troxel³² W.R.T. 1, 5-6; Tr. 2553-2554; DMX Ex. 49(b). The Panel considered the nature of the Services' business, noting its need to increase its subscriber base just to reach a break-even point without the added obligation of paying an additional fee for a digital performance right. *Id.* ¶¶ 119(a)-(d). The Panel also calculated that the record companies would receive substantially less than a 1% increase in their gross revenues even if the rate were set at the highest proposed level (41.5% of gross revenues), underscoring the lesser impact of the license fees on the record industry. *Id.* ¶ 119.

³² Chief Executive Officer and President of Digital Music Express since July 1997.

RIAA implies that a low statutory rate for the digital performance right will have a negative impact on their future negotiations with other digital services. RIAA RPF ¶¶ 58, 105; Petition at 43. They also object to the Panel's constant reference to revenues generated from the distribution and reproduction rights and its alleged lack of consideration of CRT precedent. Petition at 43-44.

In support of the Panel's evaluation, the Services note that RIAA failed to introduce any evidence concerning the impact a low rate would have on the record companies and performing artists, in direct contrast to the abundance of financial information submitted by the Services in support of their assertion that a high rate could devastate the industry. Reply to Petition at 28.

While RIAA correctly states that the Panel considered the record companies' revenues generated from the exercise of other rights granted to them under the Copyright Act, the Panel's purpose was merely to demonstrate the financial health of the industries. The Panel never implied that the record companies should receive anything less than reasonable compensation under the DPRSRA, nor that their revenues from the exercise of the distribution and reproduction rights are meant to compensate them for the use of their creative works under the new statutory license. Rather, it determined that a reasonable rate for the digital performance right should be set at a level to allow the three companies currently doing business to continue to do so. This balance in favor of the Services supports both the statutory objective to consider the impact on the industries and Congressional intent not to hamper the arrival of new technologies. S. Rep. No. 104-128, at 15-16 (1995). The law requires the Panel, and ultimately the Librarian, to set a reasonable rate that minimizes the disruptive impact on the industry. It does not require that the rate insure the survival of every company. See 115 Rate Adjustment Proceeding, 46 FR 10486 (1981) ("We conclude that while the Tribunal must seek to minimize disruptive impacts, in trying to set a rate that provides a fair return it is not required to avoid all impacts whatsoever").

The Register acknowledges RIAA's uneasiness with the possibility that the rate which is ultimately adopted may have precedential value for their negotiations with other digital services, but such concern is misplaced. The rate under consideration applies only to the non-interactive digital audio subscription services, provided, of

course, that they are eligible under the law and comply with all legal requirements. See 17 U.S.C. 114(d)(2). Congress, fully recognizing the threat that interactive services pose to the record companies, crafted the law so that they were ineligible for the compulsory license. The result of this decision is that record companies have an opportunity to negotiate an appropriate marketplace rate for a digital performance license with these services.

Interactive services, which allow listeners to receive sound recordings "on-demand," pose the greatest threat to traditional record sales, as to which sound recording copyright owners (of sound recordings) must have the right to negotiate the terms of licenses granted to interactive services.

S. Rep. No. 104-128, at 24 (1995). Congress also included provisions in the DPRSRA to establish different rates for different types of digital audio subscription services. Section 114(f)(1) states that "(s)uch terms and rates shall distinguish among the different types of digital audio transmissions then in operation." This language gives the Panel and the parties broad discretion in setting rates for different types of digital audio services, when such distinction is warranted. Nor must the record companies accept the final rate from this determination for a new type of digital audio service which emerges before the next regularly scheduled rate adjustment proceeding. The law expressly allows for another rate-setting proceeding upon the filing of a petition. 17 U.S.C. 114(f)(4)(A)(i). Together, these provisions provide an opportunity to the record companies to make their case for a higher rate, where circumstances support such a determination.

In addition, as the market conditions change and the industry shows significant growth and profitability, another Panel will have an opportunity to make adjustments to the rate, and may well find that the changed circumstances favor an upward adjustment. In any event, the Register must make her recommendation based on the evidence in the current record before the Panel, which supports the Panel's determination that the best way to minimize the disruptive impact on the structure of the industries is to adopt a rate from the low range of possibilities. Report ¶ 198(D).

D. To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions. (17 U.S.C. 801(b)(1)(B)).

Usually this balance is struck in the marketplace through arms-length negotiations; and even in the case of a

statutory license, Congress encourages interested parties to negotiate among themselves and set a reasonable rate which inevitably affords fair compensation to all parties. 17 U.S.C. 114(f)(1), (4); 115(c)(3); 116(b); 118(b); and 119(c). A statutory rate, however, need not mirror a freely negotiated marketplace rate—and rarely does—because it is a mechanism whereby Congress implements policy considerations which are not normally part of the calculus of a marketplace rate. See 115 Rate Adjustment Proceeding, 46 FR 10466 (1981) (determining that the mechanical license regulates the price of music to lower the entry barriers for potential users of that music).

The creation of the digital performance right embodied similar considerations. It affords the copyright owners some control over the distribution of their creative works through digital transmissions, then balances the owners' right to compensation against the users' need for access to the works at a price that would not hamper their growth.

In the current proceeding, the Panel considered proposed marketplace benchmarks, including all the economic data, and weighed the record evidence in light of the statutory objectives. This process is structured so that it affords the copyright owners reasonable compensation and the users a fair income—the purpose of the second statutory objective. See 17 U.S.C. 801(b)(1)(B). Accordingly, a recommended rate so calculated achieves this final statutory objective, in that it reflects the balance between fair compensation for the owners and a fair return to the users. As fully discussed above, the Register supports the Panel's methodology in reaching its determination (although she rejects as arbitrary the Panel's application of that methodology in some respects) and has adopted the Panel's overall approach in making her recommendation to the Librarian.

d. The Register's Recommended Rate

Rate setting is not a precise science. National Cable Television Assoc. Inc., 724 F.2d 176, 182 (D.C. Cir. 1983). ("Ratemaking generally 'is an intensely practical affair.' The Tribunal's work particularly, in both ratemaking and royalty distributions, necessarily involves estimates and approximations. There has never been any pretense that the CRT's rulings rest on precise mathematical calculations; it suffices that they lie within a 'zone of reasonableness'"). It requires evaluating the marketplace points of reference and

tempering the choice of any proposed rate with the policy considerations underpinning the objectives of Congress in creating the license. Because this process requires the consideration of numerous factors, the CARPs, as the Tribunal before them, have considerable discretion in setting rates designed to achieve specific statutory objectives. See RIAA v. CRT, 662 F.2d at 9 ("To the extent that the statutory objectives determine a range of reasonable royalty rates that would serve all these objectives adequately but to differing degrees, the Tribunal is free to choose among those rates, and courts are without authority to set aside the particular rate chosen by the Tribunal if it lies within a 'zone of reasonableness'").

Discretion in setting rates, however, assumes that the underlying rationale for making a determination is sound—a finding which the Register could not make in this proceeding because the Panel's undue reliance on the rate in the DCR license agreement, and its subsequent manipulation of the license fee, were arbitrary actions. See *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968) (Rate setting agency allowed to use a variety of regulatory methods in setting rates provided that the result is not arbitrary or unreasonable). Consequently, the Register recommended that the Librarian reject the Panel's determination, which he did, and set a new rate.

In formulating her recommendation as to the appropriate rate for the digital performance license, the Register, like the Panel, considered the relevant marketplace points of reference offered into evidence.³³ These reference points guided the Register in her task of setting a reasonable rate for the performance of digital sound recordings. But unlike the Panel, the Register gave more consideration to the rates paid for the performance right in the musical compositions, because these rates represent an actual marketplace value for a public performance right in the digital arena, albeit not the digital performance right in sound recordings. The Register took this approach after finding that the DCR negotiated license fee could not reflect accurately the

³³ The values of the relevant marketplace reference points, the DCR negotiated license fee and the license fee for the performance of the musical works, are subject to a protective order, and hence, their numerical values have been omitted. Nevertheless, the values of the performance rights embodied in these licenses figure prominently in the determination of the value for the digital performance right in sound recordings. In fact, the sum of these license fees establishes the outer boundary of the "zone of reasonableness" for this proceeding.

marketplace value of the digital performance right since no such legal right existed at the time the rate was negotiated, and the negotiating parties were unwilling to enter a licensing agreement for the digital performance right absent a partnership agreement.

Nevertheless, the Register did take into account the negotiated value of the digital performance right in the DCR license in making her determination that the statutory rate should be less than the value of the performance rights of the musical compositions. This determination followed from a review of the evidence on the relative value of the sound recording component and the musical works component of a phonorecord, which failed to support the record industry's assertion that the marketplace valued the sound recording component more than the musical works component. This being so, the Register evaluated the only other relevant marketplace point of reference, the negotiated DCR license fee. Because this fee is considerably lower than the total value of the marketplace license fees which each Service pays for the right to publicly perform the musical works, and while not a true marker for the value of the digital performance right, it supports a determination that the value of the performance right in the sound recording does not exceed the value of the performance right in the musical works.

In addition to these factors, the Register considered the statutory criteria and Congress' intent in creating the license. Unlike the Panel, which found that all four factors support a low rate, the Register found that the copyright owners did more "[t]o maximize the availability of creative works to the public," see 17 U.S.C. 801(b)(1)(A), and should receive fair compensation for their contributions in this area. However, the three remaining factors, especially the fourth factor, which requires that the rate be set "[t]o minimize any disruptive impact on the structure of the industries involved," see 17 U.S.C. 801(b)(1)(D), compels the Register to consider the economic health of the digital audio transmission industry.

The evidence clearly shows that the Services have been facing an uphill battle in their struggle to achieve profitability. At this time, the digital audio industry is still struggling to create a sustainable subscriber base, and as yet, no digital audio transmission service has shown a profit nor does any service expect to reach profitability in the near future. Unfortunately, the actual state of financial health within the industry is difficult to ascertain from

the projected budgets put forward by the Services. Nevertheless, the 5% rate proposed by the Panel did not draw an objection from the Services, indicating a reasonable state of financial health to absorb at least a rate set at this level.

For the foregoing reasons, the Register recommends a rate that will not harm the industry at this critical point in its development and finds that a 6.5% rate achieves this aim and meets all other statutory objectives. This rate reflects the deference the Register accorded the value of the performance right in the musical works, the consideration of the financial health of the industry, and the recognition that copyright owners contribute the lion share's to the creation of new works for the public's enjoyment.

e. Terms

On June 2, 1997, the Services submitted general comments concerning proposed terms and conditions for the digital performance license pursuant to the March 28, 1997, Order of the Copyright Office. They later proposed specific terms concerning how the Services would make payment, how often they would pay, and procedures for verifying the accuracy of those payments, including terms on confidentiality, recordkeeping, and audits. Services PF ¶¶ 122-128; 284-304. Included in their submissions were proposed terms establishing a payment schedule for the distribution of royalties to the featured artists and the nonfeatured musicians and vocalists. Services PF ¶¶ 287-289. The Panel refused to adopt these terms because the Services failed to present any evidence or testimony to support their proposal, but more importantly, because the Panel found that "the issue of the timing of payments from the RIAA Collective to artists and other performers is not within the scope of this proceeding." Report at 56 n.21.

RIAA made similar proposals on how to administer the royalty payments, but offered two additional considerations, a minimum fee "equivalent to the rate adopted in this proceeding" and a late fee for untimely payments. RIAA PF ¶¶ 125-160. The Panel rejected the proposal to impose a minimum fee, see discussion *supra*, but accepted the RIAA proposal to impose a 1.5% late fee.

The Register supports and adopts the Panel's decision to reject the Services' proposed terms concerning further distribution of royalties to certain copyright owners by RIAA on the grounds that no evidence was introduced in support of the terms. Because this is a sufficient ground on which to reject the Services' proposed

term, the Register need not address the Panel's determination that it lacked the authority to consider a payment schedule for the performing artists. The Register also need not address the Panel's rejection of the minimum fee because no party chose to challenge the Panel's decision. See n. 7, *supra*.

The parties' reactions to the terms adopted by the Panel

The Services did not file a post-panel motion to modify or set aside the Panel's determination, thereby signaling their acceptance of the Panel's resolution of any conflict between the parties concerning the terms. However, RIAA has raised two key items for further review by the Librarian: The adoption of a term which defines when copyright infringement occurs for purposes of the statutory digital performance license and the creation of a payment schedule that allows the Services to spread out their payment for the performances made between February 1996, the effective date of the Act, and November 1997, the month the Panel filed its report with the Librarian of Congress.³⁴ Petition at 7 n. 1.

The Panel's adoption of two of its terms was either arbitrary or contrary to law

The Register has determined that the Panel had no authority to set terms which attempt to delineate the scope of copyright infringement for the digital performance license, or alter a payment schedule already set by law. See Report ¶¶ 187-189, 206(a), (b).

1. *Payment of arrears.* The Panel adopted a term which allowed the Services to make back payments over a 30-month period for use of the sound recordings between February 1, 1996, and the end of the month in which the royalty rate is set and to delay the first payment for six months. Report ¶¶ 187, 206(a). The Register has determined, however, that adoption of this term is contrary to law.

Section 114(f)(5)(B) of the Copyright Act states that "(a)ny royalty payments in arrears shall be made on or before the twentieth day of the month next succeeding the month in which the royalty fees are set." The "arrears" referenced in the statute refers to the copyright liability that accrued to the Services for those performances made since February 1, 1996, the effective date of the Act, and the end of the month in which the royalty rate is set.

³⁴ RIAA did not object to the Panel's refusal to grant its request for a minimum fee in its petition, nor does the Register find any reason to question the Panel's determination. As discussed *supra*, the Register finds the Panel's disposition on this issue to be well reasoned and supported by the evidence.

In spite of the express statutory language, the Panel fashioned a payment schedule to ease the burden on the Services in meeting this obligation.

The Panel found support for its action in the 1980 jukebox rate adjustment proceeding, in which the CRT raised the rate from \$8 to \$50, but did so in a progressive fashion. Report ¶ 186. The determination required the jukebox operators to make the first increased payment of \$25 per jukebox per year on January 1, 1982, and a second \$25 annual payment the following year. The CRT did not require the full \$50 annual rate to be paid until January 1, 1984, approximately three years after setting the rate. 46 FR 884, 888, 890 (1981). The Tribunal adopted the phase-in payment schedule relying on its duty to set rates in accordance with the statutory objectives. It found that the gradual increase in payments furthered the objective concerned with minimizing the disruptive impact on the industries. *Id.* at 889. The Panel relied upon this CRT decision in adopting its phase-in program for payment of the arrears over a 30-month period.

The Services embrace the Panel's reliance on past CRT precedent for the inclusion of the phase-in payment term and claim that RIAA also agreed to allow the Services to make the "back payments" over a period of time. Reply to Petition at 14 n. 5. This assertion, however, is inaccurate. RIAA agreed that a phase-in schedule would be appropriate for the minimum fee, but never posited such a payment schedule for the arrears. See Tr. 2829 (RIAA closing argument). By comparing RIAA's statement on the proposal for making payments of a minimal fee,

The recording industry proposes that the minimum fee be phased in to help minimize any disruptive effect from the fact that, for the first time, the services are going to be paying a fair fee—in fact, any fee at all for the performance of sound recordings.

Id. at 2829, see also RIAA PF ¶¶ 150-152, with its statement concerning the timing of the payment of arrears,

In terms of the timing of the back payment, the statute leaves absolutely no question as to when the back payment from the services is due for the period from the Act's effective date through the date on which the Panel issues its decision.

Section 114(f)(5)(B) says that "any royalty payment in arrears shall be made on or before the 20th day of the month next succeeding the month in which the royalty fees are set."

Id. at 2829-2830, see also RIAA PF ¶ 157, it is absolutely clear that RIAA never agreed to a payment scheme for the arrears that would allow the Services to make partial payments over a 30-month period.

In another attempt to support the Panel's conclusion, the Services construe the statutory provision broadly and argue that arrears refers to "any royalty payment in arrears" and "does not specifically cover the back payment for the extended period between the 1995 Act's February 1, 1996, effective date and the time the Panel sets the performance rate." Services RF ¶ 157. This assertion, however, is inconsistent with the legislative history and the plain language of the statute.

Thus, the Panel had no authority to create a graded payment schedule for the payment of the arrears because the statute expressly stated when payment was to occur. Section 114(f)(5)(B) states, without qualification, that "[a]ny royalty payments in arrears shall be made on or before the twentieth day of the month next succeeding the month in which the royalty fees are set." (emphasis added). It is a well-established principle that, in interpreting the meaning of a statute, the language of the law is the best evidence of its meaning. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989); *Norman S. Singer, Sutherland Statutory Construction* sec. 46.01 (5th ed. 1992 rev.). Because the statutory language is clear on its face, the Register finds that the Panel's and the Services' reliance on the CRT 1980 jukebox decision is arbitrary and contrary to well-established principles of law. And even if the statutory language were ambiguous, the legislative history supports the Register's and RIAA's interpretation of section 114(f)(5)(B).³⁵

Because the Panel's action exceeded its authority, the Register recommends that the Librarian reject the proposed term because its adoption would be contrary to law.

2. *Copyright infringement.* The Panel adopted a term which stated that "[i]f a Service fails to make timely payments, it will be subject to liability for copyright infringement. Such liability will only come about, however, for knowing and willful acts which materially breach the statutory license terms." Report ¶ 206(b). The Register has determined that this term is contrary to law.

RIAA contends that the Panel "usurped the authority of Article III courts by attempting to define the circumstances where the Services are liable for copyright infringement." Petition at 7 n.1. In response, the

Services argue that the DPRSRA supports the Panel's suggestion that minor technical violations should not result in an infringement action. Services Reply to Petition at 14 n.5. Specifically, the Services point to section 114(j)(7)(B) which limits complement to the performance of sound recordings from a single album, which Congress included "[t]o avoid imposing liability for programming that unintentionally may exceed the complement." S. Rep. No. 104-128, at 35 (1995).

The Register acknowledges that Congress made provisions to protect users from copyright liability for programming that unintentionally exceeds the complement, see 17 U.S.C. 114(j)(7), but she finds it impermissible to expand a particular provision of the copyright law which limits copyright liability under one set of circumstances to include additional limitations not contemplated by Congress. *Fame Publishing Co. v. Alabama Custom Tape, Inc.*, 507 F.2d 667, 670 (5th Cir.) cert. denied, 423 U.S. 841 (1975) ("We begin by noting that the compulsory license provision is a limited exception to the copyright holder's exclusive right to decide who shall make use of his composition. As such, it must be construed narrowly, lest the exception destroy, rather than prove, the rule. Thus we should neither expand the scope of the compulsory license provision beyond what Congress intended in 1909, nor interpret it in such a way as to frustrate that purpose").³⁶

But more importantly, in examining the legislative history, it is clear that Congress meant for the CARP to have limited authority in adopting reasonable terms.

By terms, the Committee means generally such details as how payments are to be made, when, and other accounting matters (such as are prescribed in section 115). In addition, the Librarian is to establish related terms under section 114(f)(2). Should additional terms be necessary to effectively implement the statutory license, the parties may negotiate such provisions or the CARPs may prescribe them.

S. Rep. No. 104-128, at 30 (1995). This language clearly indicates that the CARP had authority to set reasonable terms only so far as those terms insured the smooth administration of the license. There is no indication in the statutory language or in the legislative history that the scope of the terms should go

³⁵ S. Rep. No. 104-128, at 30 (1995) ("If the royalty fees have not been set at the time of performance, the performing entity must agree to pay the royalty fee to be determined under this subsection by the twentieth day of the month following the month in which the rates are set").

³⁶ Congress defined the scope of the digital performance right granted to the copyright owner and under what circumstances a digital audio service infringes that right. See, e.g., 17 U.S.C. 114 (d) and (e)(5).

beyond the creation of a workable administrative system and reach substantive issues, such as defining the scope of copyright infringement for those availing themselves of the statutory license.

Congress carefully delineated the scope of the digital performance right and the limitations on that right within the provisions of the statute. Section 114(d), entitled "Limitations on Exclusive Right," states with specificity when a performance by means of a digital audio transmission is not an infringement, just as section 114(f)(5) defines when a public performance of a sound recording by means of a nonexempt subscription digital transmission is not an infringement. For the Panel to fashion a term further delineating the issue of copyright infringement when Congress has already acted is an improper exercise of authority beyond that granted under the statute.

Accordingly, the Register finds that the Panel had no authority to set a term construing the meaning of copyright infringement for purposes of section 114. See Report ¶¶ 188, 206(b). Because the Panel's action exceeded its authority, the Register recommends that the Librarian reject the proposed term because its adoption would be contrary to law.

f. Other Issues

1. *Effective date.* Section 114(f)(5)(B) states that payments in arrears for the performance of sound recordings prior to the setting of a royalty rate are due on a date certain in the month following the month in which the rate is set. Both the Panel and RIAA assume that the "date the royalty rate is set" is the date the Panel submits its report to the Librarian of Congress. See Report ¶ 186; Petition at 7 n.1. The Register disagrees with this assessment.

Section 802(g) governs judicial review of the Librarian's decision with respect to CARP determinations. The section allows an aggrieved party 30 days to file an appeal with the United States Court of Appeals for the District of Columbia Circuit, but does not relieve a party of his or her obligation to make royalty payments during the pendency of the appeal. In the event that no appeal is taken, the section states that "the decision of the Librarian is final, and the royalty fee . . . shall take effect as set forth in the decision." 17 U.S.C. 802(g). Neither section 114 nor chapter 8 makes further reference to the possible effective date of royalty rates.

As discussed in an earlier order setting a rate for the satellite compulsory license, 17 U.S.C. 119, the

Register interprets the decision referenced in section 802(g) "to mean the decision of the Librarian, and not the decision of the CARP, since section 802(g) only refers to the decision of the Librarian. Consequently, the Register concludes that only the Librarian of Congress has the authority to set the effective dates of the royalty rates in this proceeding." Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55754 (1997). See also *RIAA v. CRT*, 662 F.2d at 14 ("When the statute authorizing agency action fails to specify a timetable for effectiveness of decisions, the agency normally retains considerable discretion to choose an effective date") (footnote omitted). This reasoning applies equally to the current proceeding, since no other guidance for setting the effective date is to be found in the statute or the legislative history.

The Register has pondered the question of an appropriate effective date and believes that the Panel's concern with minimizing the disruptive impact on the structure of the industries involved was well founded. See discussion supra concerning the economic health of the Services. Consequently, the Register proposes an effective date of June 1, 1998, which would require the Services to make full payment of the arrears on July 20, 1998, in addition to the payment for the month of June 1998, with subsequent payments to RIAA on the 20th day of each subsequent month. This date provides the Services with a measured amount of time to provide for any necessary adjustments in their business operations to meet their copyright obligations.

The Tribunal took a similar course when it set the effective date for implementing the rate increase for making and distributing phonorecords approximately six months after publication of its final rule. Section 115 Rate Adjustment Proceeding, 46 FR 10486 (1981). The Tribunal chose not to implement the rate change immediately in order to minimize the effect of the upward adjustment on the copyright users. The United States Court of Appeals for the District of Columbia Circuit upheld the Tribunal's decision to postpone the effective date because:

The Tribunal's opinion demonstrates its concern "to minimize disruptive impacts" on the recording industry, and its view that the effective date of a royalty adjustment should be arranged so as to be "less disruptive to the industries." Although the Tribunal concluded that a single increase to the full four-cent rate would not be unduly disruptive, it was within the Tribunal's discretion to give the industry adequate lead time to prepare for the increase.

RIAA v. CRT, 662 F.2d at 14 (citations omitted).

2. Value of an individual performance of a sound recording.

The Register notes that the Panel stopped prematurely in its consideration of the value of the public performance of a sound recording. Its entire inquiry focused on the value of the "blanket license" for the right to perform the sound recording, without once considering the value of the individual performance—a value which must be established in order for the collecting entity to perform its function not only to collect, but also to distribute royalties. Consequently, the Register has made a determination that each performance of each sound recording is of equal value and has included a term that incorporates this determination.

To do otherwise requires the parties to establish criteria for establishing differential values for individual sound recordings or various categories of sound recordings. Neither the Services nor RIAA proposed any methodology for assigning different values to different sound recordings. In the absence of an alternative method for assessing the value of the performance of the sound recording, the Register has no alternative but to find that the value of each performance of a sound recording has equal value. Furthermore, the structure of the statute contemplates direct payment of royalty fees to individual copyright owners when negotiated license agreements exist between one or more copyright owner and one or more digital audio service. To accommodate this structure in the absence of any statutory language or legislative intent to the contrary, each performance of each sound recording must be afforded equal value.

This determination does not alter the statutory provision that specifies how the copyright owner of the right to publicly perform the sound recording must allocate the statutory fees among the recording artists. See 17 U.S.C. 114(f)(2).

3. *Audit of the designated collective.* Although the membership of the collective represented by RIAA includes over 275 record labels which create more than 90 percent of all legitimate sound recordings sold in the United States, it does not represent the record companies responsible for the creation of the remaining 10% of the sound recordings. Report ¶ 20. Nevertheless, the Panel found, and the Register concurs, that the parties' suggestion to designate a single entity to collect and to distribute the royalty fees creates an efficient administrative mechanism. Report ¶ 184.

It is common practice, however, for the government body making such designations to implement safeguards to monitor the functions of the collective.³⁷ To this end, the Register recommends new terms that afford the copyright holders a right to audit the collective's practices in handling the royalty fees. The Register takes this step to insure copyright holders access to the records of the organization charged with the fiduciary responsibility of making an equitable distribution among those entitled to receive a portion of the funds, while at the same time preserving the confidentiality of the organization's business records. These terms mirror those formulated by the parties and adopted by the Panel which allow the collective to audit the business records of the Services to insure proper payment of the royalties.

4. *Deduction of administrative costs.* Neither the parties nor the Panel gave any consideration to the manner in which the collecting entity would deduct from payments to copyright owners its costs of administering the funds it receives and disburses. Nevertheless, the Panel should have addressed this key term of the compulsory license. Therefore, the Register finds it necessary to establish an additional term that permits the collecting entity to deduct from the royalties it pays to copyright owners the costs it incurs in administering the funds, so long as the costs deducted are reasonable and are no more than the actual costs incurred by the collecting entity.

5. *Unknown copyright owners.* The digital audio services will pay royalties on all sound recording performances without regard to the further disbursement of these fees to the numerous copyright holders. The collective will have little difficulty in identifying and locating the overwhelming majority of the copyright holders entitled to receive a portion of the fees, since the membership of the collective represents the interests of the copyright holders in over 90% of all sound recordings. Problems may arise, however, as RIAA attempts to identify and locate the copyright holders to the remaining 10% of the sound recordings. In anticipation of the likelihood that

³⁷ A government's general policy toward the regulation of collective administration should be to limit government intervention to only "that which is necessary to facilitate the effective operations of the collective administration organization, consistent with the private character of the rights involved, while checking possible abuses by that collective in the least intrusive manner possible within" the overall context of the society involved. David Sinacore-Guinn, *Collective Administration of Copyrights and Neighboring Rights*, 544 (1993).

RIAA will not be able to locate all copyright holders, the Register recommends the adoption of a term that segregates the fees for unknown copyright owners into a separate trust account for future distribution to the rightful owner, or in the event that the owner is not found, allows the collective to use the funds after a period of three years, see 17 U.S.C. 507(b), to offset its administrative costs associated only with the collection and distribution of royalty fees collected under the statutory license.

6. *Rates for other types of digital audio services.* The rates and terms announced in this notice apply to DCR, DMX, and Muzak, the three digital audio transmission services participating in this proceeding, and to any other digital audio transmission service that avails itself of the compulsory license, provided that the service is of the same type. The Register raises this point to avoid any confusion over the Panel's statement which implies that the rates and terms set in this proceeding "shall be binding on all copyright owners of sound recordings and entities performing sound recording(s)." Report ¶ 1, citing 17 U.S.C. 114(f)(2). A general provision, however, must be read in conjunction with more specific statutory language; in this case, section 114(f)(4)(A), which provides for additional rate adjustment proceedings upon petition from any copyright owner or entity performing sound recordings when a new type of digital audio transmission becomes or is about to become operational.

VI. Conclusion

In considering the evidence in the record, the contentions of the parties, and the statutory objectives, the Register of Copyrights recommends that the Librarian adopt a statutory rate for the digital performance of sound recordings, pursuant to 17 U.S.C. 114, of 6.5% of gross revenues from subscribers residing within the United States.

In addition, the Register recommends that the Librarian adopt the reasonable terms propounded by the Panel except for those terms concerning the payment schedule for arrears and potential limitations on the scope of copyright infringement. The Register also recommends setting June 1, 1998, as the effective date for implementing the new rate and terms in order to ease the burden on each Service on meeting its initial obligations under the statutory license.

VII. The Order of the Librarian of Congress

Having duly considered the recommendations of the Register of Copyrights regarding the Report of the Copyright Arbitration Royalty Panel in the matter to set reasonable terms and rates for the digital performance right in sound recordings, 17 U.S.C. 114, the Librarian of Congress fully endorses and adopts her recommendation to set the rate for the statutory license at 6.5% of gross revenues from U.S. residential subscribers. This rate shall apply to those digital audio services represented in this proceeding and any other eligible digital audio service of the same type that subsequently enters the market and makes use of the statutory license. The Librarian of Congress also adopts the Register's recommendation to reject the terms concerning potential limits on what constitutes copyright infringement and the proposed schedule for the payment of the arrears.

For the reasons stated in the Register's recommendation, the Librarian is exercising his authority under 17 U.S.C. 802(f) and is issuing this order which adopts new Copyright Office regulations setting reasonable terms and rates for the digital performance right in sound recordings.

List of Subjects in 37 CFR Part 260

Copyright, Digital Audio Transmissions, Performance Right, Sound Recordings

Final Regulation

In consideration of the foregoing, part 260 of 37 CFR is added to read as follows:

PART 260—USE OF SOUND RECORDINGS IN A DIGITAL PERFORMANCE

- Sec.
- 260.1 General.
- 260.2 Royalty fees for the digital performance of sound recordings.
- 260.3 Terms for making payment of royalty fees.
- 260.4 Confidential information and statements of account.
- 260.5 Verification of statements of account.
- 260.6 Verification of royalty payments.
- 260.7 Unknown copyright owners.

Authority: 17 U.S.C. 114, 801(b)(1).

§ 260.1 General.

(a) This part 260 establishes terms and rates of royalty payments for the public performance of sound recordings by nonexempt subscription digital transmission services in accordance with the provisions of 17 U.S.C. 114 and 801(b)(1).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, a nonexempt subscription digital transmission service may engage in the activities set forth in 17 U.S.C. 114.

§ 260.2 Royalty fees for the digital performance of sound recordings.

(a) Commencing June 1, 1998, the royalty fee for the digital performance of sound recordings by nonexempt subscription digital services shall be 6.5% of gross revenues resulting from residential services in the United States.

(b) A nonexempt subscription digital transmission service (the "Licensee") shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

(c)(1) For purposes of this section, gross revenues shall mean all monies derived from the operation of the programming service of the Licensee and shall be comprised of the following:

(i) Monies received by Licensee from Licensee's carriers and directly from residential U.S. subscribers for Licensee's programming service;

(ii) Licensee's advertising revenues (as billed), or other monies received from sponsors if any, less advertising agency commissions not to exceed 15% of those fees incurred to recognized advertising agency not owned or controlled by Licensee;

(iii) Monies received for the provision of time on the Programming Service to any third party;

(iv) Monies received from the sale of time to providers of paid programming such as infomercials;

(v) Where merchandise or anything of service of value is received by licensee in lieu of cash consideration for the use of Licensee's programming service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration received by Licensee from Licensee's carriers, but not including monies received by Licensee's carriers from others and not accounted for by Licensee's carriers to Licensee, for the provision of hardware by anyone and used in connection with the Programming Service;

(vii) Monies or other consideration received for any references to or inclusion of any product or service on the programming service; and

(viii) Bad debts recovered regarding paragraphs (c)(1) (i) through (vii) of this section.

(2) Gross revenues shall include such payments as are in paragraphs (c)(1) (i) through (viii) of this section to which

Licensee is entitled but which are paid to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee but not including payments to Licensee's carriers for the programming service. Licensee shall be allowed a deduction from "gross revenues" as defined in paragraph (c)(1) of this section for affiliate revenue returned during the reporting period and for bad debts actually written off during reporting period.

(d) During any given payment period, the value of each performance of each digital sound recording shall be the same.

§ 260.3 Terms for making payment of royalty fees.

(a) All royalty payments shall be made to a designated agent(s), to be determined by the parties through voluntary license agreements or by a duly appointed Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.

(b) Payment shall be made on the twentieth day after the end of each month for that month, commencing with the month succeeding the month in which the royalty fees are set.

(c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these fees to those parties entitled to receive such payment according to the provisions set forth at 17 U.S.C. 114(g).

(d) The designated agent may deduct reasonable costs incurred in the administration of the distribution of the royalties, so long as the reasonable costs do not exceed the actual costs incurred by the collecting entity.

(e) Commencing June 1, 1998, and until such time as a new designation is made, the Recording Industry Association of America, Inc. shall be the agent receiving royalty payments and statements of accounts.

§ 260.4 Confidential information and statements of account.

(a) For purposes of this part, confidential information shall include statements of account and any information pertaining to the statements of account designated as confidential by the nonexempt subscription digital transmission service filing the statement. Confidential information shall also include any information so designated in a confidentiality agreement which has been duly executed between a nonexempt subscription digital transmission service and an interested party, or between one or more interested parties; *Provided that*

all such information shall be made available, for the verification proceedings provided for in §§ 260.5 and 260.6 of this part.

(b) Nonexempt subscription digital transmission services shall submit monthly statements of account on a form provided by the agent designated to collect such forms and the monthly royalty payments.

(c) A statement of account shall include only such information as is necessary to verify the accompanying royalty payment. Additional information beyond that which is sufficient to verify the calculation of the royalty fees shall not be included on the statement of account.

(d) Access to the confidential information pertaining to the royalty payments shall be limited to:

(1) Those employees of the designated agent who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing their assigned duties during the ordinary course of business, require access to the records; and

(2) An independent and qualified auditor who is not an employee or officer of a sound recording copyright owner or performing artist, but is authorized to act on behalf of the interested copyright owners with respect to the verification of the royalty payments.

(e) The designated agent shall implement procedures to safeguard all confidential financial and business information, including but not limited to royalty payments, submitted as part of the statements of account. Confidential information shall be maintained in locked files.

(f) Books and records relating to the payment of the license fees shall be kept in accordance with generally accepted accounting principles for a period of three years. These records shall include, but are not limited to, the statements of account, records documenting an interested party's share of the royalty fees, and the records pertaining to the administration of the collection process and the further distribution of the royalty fees to those interested parties entitled to receive such fees.

§ 260.5 Verification of statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by interested parties according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C.

114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.* Interested parties may conduct a single audit of a nonexempt subscription digital transmission service during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit a particular service with the Copyright Office, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of intent to audit shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the service which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), their designated agents, or the entity designated by the copyright arbitration royalty panel in 37 CFR 260.3 to receive and to distribute the royalty fees.

§ 260.6 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.* Interested parties may conduct a single audit of the entity making the royalty payment during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Office, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the entity which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), or their designated agents.

§ 260.7 Unknown copyright owners.

If the designated collecting agent is unable to identify or locate a copyright owner who is entitled to receive a royalty payment under this part, the collecting agent shall retain the required payment in a segregated trust account for a period of three years from the date of payment. No claim to such payment shall be valid after the expiration of the three year period. After the expiration of this period, the collecting agent may use the unclaimed funds to offset the cost of the administration of the collection and distribution of the royalty fees.

Dated: April 17, 1998.

Marybeth Peters,
Register of Copyrights.

James H. Billington,
The Librarian of Congress.

[FR Doc. 98-12266 Filed 5-7-98; 8:45 am]

BILLING CODE 1410-33-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 325-6]

Approval and Promulgation of State Implementation Plans

CFR Correction

In title 40 of the Code of Federal Regulations, part 52 (§ 52.1019 to end), revised as of July 1, 1997, in appendix D to part 52, on page 610, in the first and second columns, equations d-1 and d-2 were inadvertently omitted. Additionally, the second line in the legend for Equation D-2 was incorrectly printed. The missing equations and corrected line should read as follows:

Appendix D to Part 52—Determination of Sulfur Dioxide Emissions From Stationary Sources by Continuous Monitors

$$\bar{X} = \frac{\sum_{i=1}^n x_i}{n} \quad \text{Equation D-1}$$

$$C.I._{.95} = \frac{t_{.975}}{n\sqrt{n-1}} \sqrt{n(\sum x_i^2) - (\sum x_i)^2} \quad \text{Equation D-2}$$

$$t_{.975} = t_{1-\alpha/2}, \text{ and}$$

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980318066-8066-01; I.D. 022698A]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 25; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This rule removes regulatory language inadvertently added, clarifies the raised footrope requirement for Small Mesh Area 1 & 2, and corrects an

amendatory instruction to the regulatory text of the final rule implementing Framework Adjustment 25 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) published Tuesday, March 31, 1998, and corrected on Wednesday, April 22, 1998.

DATES: Effective May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Tokarcik, 978-281-9326.

SUPPLEMENTARY INFORMATION:

Background

This document makes three corrections to the regulations implementing Framework Adjustment 25 to the FMP which was published on March 31, 1998 (63 FR 15326) and corrected on April 22, 1998 (63 FR 19850).

Section 648.80(a)(8) states that vessels fishing with mesh smaller than the minimum mesh size are subject to the raised footrope requirement specified in § 648.80(a)(8)(iv). As with the finfish excluder device required in the shrimp fishery, the intent of the raised footrope gear modification is to reduce bycatch of regulated multispecies when vessels are fishing with nets of mesh less than the minimum mesh size. Because vessels

fishing under the provisions of the Small Mesh Northern Shrimp Fishery Exemption Area, which is inclusive of Small Mesh Area 1 & 2, must properly secure a finfish excluder device in their trawl nets, this rule clarifies and corrects the intent of the Small Mesh Area 1 & 2 provision by allowing small mesh vessels to employ either a raised footrope or excluder device in their trawl gear when fishing in these two small mesh areas, depending on the species of fish targeted.

In § 648.81, paragraph (g)(1)(i) describes the Gulf of Maine Inshore Closure Area I. However, this paragraph also inadvertently refers to Inshore Closure Area III, which is described in § 648.81(g)(1)(iii). This correction document removes the reference to Inshore Closure Area III from § 648.81(g)(1)(i).

This document corrects an amendatory instruction contained in the final rule document. Amendatory instruction 6 stated that in § 648.86, paragraph (b)(1)(ii) is revised. However, NMFS only intended to revise the introductory text to § 648.86(b)(1)(ii). Therefore, this document revises the amendatory instruction to state that only the introductory text to § 648.86(b)(1)(ii) is revised.

Correction

Accordingly, in the publication on March 31, 1998, of the final regulations to implement Framework Adjustment 25 to the Northeast Multispecies FMP (I.D. 022698A) and corrected on April 22, 1998 (63 FR 19850), which was the subject of FR Doc. 98-8288, is corrected as follows:

1. On page 15330, in the second column, under § 648.80(a)(8)(i), ninth line down, insert the phrase "or (a)(3)(ii)" after the words "paragraph (a)(8)(iv)."
2. On page 15331, in the second column, under § 648.81(g)(1)(i), fifth line, remove "apply to Inshore Closure Area III".
3. On page 15332, in the second column, amendatory instruction 6 to § 648.86, third line, correct "(b)(1)(ii)" to read "(b)(1)(ii) introductory text".

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 4, 1998.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 98-12253 Filed 5-7-98; 8:45 am]

BILLING CODE 3510-22-F

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 423

Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the "Commission") is commencing a rulemaking to amend its Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods, 16 CFR Part 423 ("the Care Labeling Rule" or "the Rule"). The Commission proposes amending the Rule: (1) To require that an item that can be cleaned by home washing be labeled with instructions for home washing; (2) to allow that a garment that can be professionally wet cleaned be labeled with instructions for professional wet cleaning; (3) to clarify what can constitute a reasonable basis for care instructions; and (4) to change the definitions of cold, warm, and hot water in the Rule. The Commission is commencing this rulemaking because of the comments filed in response to its Advanced Notice of Proposed Rulemaking ("ANPR"), and other information discussed in this notice. The Commission invites interested parties to submit written data, views, and arguments. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and a description of a workshop conference that will be held to discuss the issues. The Commission will announce the time and place of the public workshop after the close of the comment period. Any persons wishing to participate in the public workshop must file a comment in response to this notice and must indicate therein their interest in participating. The comments will be available on the public record and on the Commission's web site on the

Internet (<http://www.ftc.gov>) so that interested parties can review them. After the conclusion of the workshop, the record will remain open for 30 days for additional or rebuttal comments. If necessary, the Commission will also hold hearings with cross-examination and rebuttal submissions, as specified in Section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c). Interested parties who wish to request such hearings should file a comment in response to this notice and indicate therein why they believe such hearings are necessary and how they would participate in such hearings.

DATES: Written comments must be submitted on or before July 27, 1998.

ADDRESSES: Written comments should be identified as "16 CFR Part 423—Care Labeling Rule—Comment," and sent to Secretary, Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington D.C. 20580. To facilitate prompt and efficient review and dissemination of the comments to the public, all written comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. Programs based on DOS are preferred. In order for files from other operating systems to be accepted, they should be submitted in ASCII text format.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio or James Mills, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Sixth St. and Pennsylvania Ave., N.W., S-4302, Washington, D.C. 20580, (202) 326-2966 or (202) 326-3035.

SUPPLEMENTARY INFORMATION:

Part A—Introduction

This notice is being published pursuant to Section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of

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Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Care Labeling Rule was promulgated by the Commission on December 16, 1971, 36 FR 23883 (1971). In 1983, the Commission amended the Rule to clarify its requirements by identifying in greater detail the washing or dry cleaning information to be included on care labels. 48 FR 22733 (1983). The Care Labeling Rule, as amended, requires manufacturers and importers of textile wearing apparel and certain piece goods to attach care labels to these items stating "what regular care is needed for the ordinary use of the product." (16 CFR 423.6(a) and (b)). The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions. (16 CFR 423.6(c)).

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission published a **Federal Register** notice ("FRN") on June 15, 1994, 59 FR 30733. This FRN sought comment on the costs and benefits of the Rule, and related questions such as what changes in the Rule would increase the benefits of the Rule to purchasers and how those changes would affect the costs the Rule imposes on firms subject to its requirements. The comments in response to the 1994 FRN generally expressed continuing support for the Rule, stating that correct care instructions benefit consumers by extending the useful life of the garment, by helping the consumer maximize the appearance of the garment, and/or by allowing the consumer to take the ease and cost of care into consideration when making a purchase.

Based on this review, the Commission determined to retain the Rule, but to seek additional comment on possible amendments to the Rule. The Commission published an ANPR on December 28, 1995, 60 FR 67102, which elicited 64 comments on the several possible amendments of the Rule described therein.¹ Based on the

¹ The comments were from: 41 consumers; one consumer group; four academics; one clothing retailer; one textile manufacturers association; one apparel manufacturers association; one professional cleaner; one professional cleaners association; one wet cleaning equipment manufacturer; two manufacturers of cleaning products; one cleaning products manufacturers association; one environmental protection group; one non-profit

Continued

comments and the evidence discussed herein, the Commission proposes to amend the Rule in the following ways.

Part B—Analysis of Proposed Amendments

1. Labeling for Home washing

a. Background and Discussion of Comments

The 1994 FRN noted that the Environmental Protection Agency ("EPA") had been working with the dry cleaning industry to reduce the public's exposure to perchloroethylene ("PCE" or "perc"), the most common dry cleaning solvent,² and asked whether the Rule poses an impediment to this goal. The Rule currently requires either a washing instruction or a dry cleaning instruction; it does not require both. Thus, garments that can legally be labeled with a "dry clean" instruction alone also may in some cases be washable, a fact not ascertainable from such an instruction. The 1994 FRN asked about the extent of care labeling that fails to indicate both washing and dry cleaning instructions. Finally, the 1994 FRN asked whether the use of dry cleaning solvents would be lessened, and whether consumers and cleaners could make more informed choices as to cleaning method, if the Rule were amended to require both washing and dry cleaning instructions for garments cleanable by both methods. 59 FR 30733-34.

In the 1995 ANPR, the Commission analyzed the comments submitted in response to the 1994 FRN and proposed amending the Rule to ensure that consumers are provided with information that would allow them the choice of washing garments when possible. The Commission concluded that lack of such information can result in substantial injury to consumers in the form of unnecessary expense and/or the inability to use what they regard as a more environmentally friendly method of care. 60 FR 67104-05.

clearinghouse for information on emissions control; one home appliance manufacturers trade association; one manufacturer of home appliances; one home appliance repairman; one international association for textile care labeling; one federal agency; and the Economic Union of European Countries. The comments are on the public record and are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Public Reference Room, Room 130, Federal Trade Commission, 8th and Pennsylvania Avenue, Washington, D.C. The comments are referred to in this Notice of Proposed Rulemaking ("NPR") by their name and the number assigned to each submitted comment.

² Congress designated PCE as a hazardous air pollutant in Section 112 of the Clean Air Act; many state legislatures have followed suit under state air toxics regulations.

The ANPR asked for comment on an amendment of the Rule to require a home washing instruction for all covered products for which home washing is appropriate; providing dry cleaning instructions for such washable items would be optional. Manufacturers marketing items with a "Dry Clean" instruction alone would be required to substantiate both that the items could be safely dry cleaned and that home washing would be inappropriate for them (as the Rule currently requires them to do when providing a "Dry Clean Only" instruction). This proposal would not result in the additional substantiation testing (and increased PCE use) that the comments suggested a "dual disclosure" requirement could necessitate, because a dry cleaning instruction would be optional, as would the necessary substantiation to support it. *Id.* at 67105. That is, manufacturers labeling their goods for home washing (and possessing the appropriate substantiation for that instruction) would not have to also provide a dry clean instruction or have substantiation that dry cleaning would harm the garment.

Fifty-three comments addressed whether the Commission should require a home washing instruction for items that could be safely washed at home, and only three of those opposed the proposal.³

Eighteen commenters, including individual consumers, academics, and an appliance manufacturers' trade association, contended that many manufacturers currently label items that can be both washed and dry cleaned with a "dry clean" or "dry clean only" instruction.⁴ Many commenters stressed that knowing that garments can be washed at home would save them (or consumers in general) garment care dollars.⁵ Two consumers stated that

³ Aqua Clean Systems, Inc. ("Aqua Clean") (34) pp. 8-9; Center for Emissions Control ("CEC") (44) pp. 5-6; American Apparel Manufacturers Association ("AAMA") (57) p.2.

⁴ Henry Gluckstern, Esq. (18) pp. 1-2; Bette Jo Dedic, University of Kentucky College of Agriculture Extension Service ("Univ. of KY") (20) p. 1; Vera Rines (28) p. 1; Thelma Carpenter (30) p. 1; Katherine King (32) p. 1; Ida Carpenter (33) p. 1; Margie Helton (38) pp. 1-2; Jewell Brabson (40) p. 1; Susan DuBois (42) p. 1; UCLA Pollution Prevention Education and Research Center ("UCLA PPERC") (45) p. 3; Aileen Mills (47) p. 1; Association of Home Appliance Manufacturers ("AHAM") (51) p. 2; Helen DuBois (52) p. 1; M. Adkins (54) p. 1; Teresa Mills (58) p. 1; Sarah O'Neal (59) p. 1; Frances McCarter (61) p. 1; Gladys Bebbler (62) p. 1. But see Aqua Clean (34) p. 8: "As a general observation, garments which can be home laundered or drycleaned are usually labeled with both care instructions."

⁵ Univ. of KY (20) p. 1; Vera Rines (28) p. 1; Thelma Carpenter (30) p. 1; Katherine King (32) p. 1; Ida Carpenter (33) p. 1; Carolyn Powers (35) p.

washing garments that are labeled "dry clean" or "dry clean only" but that appear washable (such as 100% cotton) is risky because, if the garment is ruined, the manufacturer will not stand behind it.⁶ AHAM, a trade association for appliance manufacturers, noted that: the cost for testing a garment fabric sample for proper care instructions is just a fraction of the consumer expense experienced by many thousands of individuals incurring ongoing dry cleaning expenses for a garment that could be washed at home.⁷

Many commenters also noted that consumers believe there are environmental benefits from home washing rather than dry cleaning washable items.⁸ Consumers Union stated, "If only one method must appear on the label, it has to be the least expensive and the least hazardous to the consumer and the environment."⁹

Three commenters recommended that both washing and dry cleaning instructions be included if both are appropriate.¹⁰ Two comments specifically opposed this type of "dual labeling," however, because of the increased levels of dry cleaning substantiation tests that would follow.¹¹

Two commenters (one of which is an association for apparel manufacturers) argued that manufacturers (having made the items) are best qualified to make the decision as to how garments can best be cleaned and urged the Commission to leave apparel manufacturers the

1: Spencer and Diana Hart (36) p. 1; Margie Helton (38) pp. 1-2; Jewell Brabson (40) p. 1; Susan DuBois (42) p. 1; Aileen Mills (47) p. 1; Joyce Rash (48) p. 1; S.K. Taylor (49) p. 1; Helen DuBois (52) p. 1; M. Adkins (54) p. 1; Teresa Mills (58) p. 1; Sarah O'Neal (59) p. 1; Frances McCarter (61) p. 1; Gladys Bebbler (62) p. 1.

⁶ Dana Dodson (4) p. 1; Margaret Petty (37) p. 1.

⁷ AHAM (51) p. 2.

⁸ Linda Smith, Tenn. State Univ. Cooperative Extension Program (3) p. 1; John & Elizabeth Gray (15) p. 1; Univ. of KY (20) p. 2; Vera Rines (28) p. 1; Thelma Carpenter (30) p. 1; Katherine King (32) p. 1; Margie Helton (38) pp. 1-2; Jewell Brabson (40) p. 1; Susan DuBois (42) p. 1; Consumers Union (46) p. 2; Aileen Mills (47) p. 1; S.K. Taylor (49) p. 1; Helen DuBois (52) p. 1; M. Adkins (54) p. 1; Teresa Mills (58) p. 1; Sarah O'Neal (59) p. 1; Frances McCarter (61) p. 1; Gladys Bebbler (62) p. 1.

⁹ Consumers Union (46) p. 2.

¹⁰ International Fabricare Institute ("IFI") (56) p. 2; Ginete (the International Association for Textile Care Labeling) (63) p. 4; European Union (64) p. 3.

¹¹ Univ. of KY (20) p. 2; Consumers Union (46) p. 2. See also the discussion of "dual disclosures" in the ANPR.

The Commission has learned from several commenters, primarily manufacturers, that requiring both washing and dry clean labels (a "dual disclosure" amendment) would require a dry cleaning instruction on virtually all washable items. According to these commenters, this would necessitate additional testing expenses for manufacturers and a resulting increase in PCE use, to the detriment of human health and the environment. (60 FR 67105, n. 30).

flexibility to decide which care instructions to use.¹² A third commenter in opposition to the proposal, a non-profit clearinghouse for information on emission control in chlorinated solvent applications, including dry cleaning, stated that there did not appear to be many instances of washable items being labeled "dry clean."¹³

b. Proposed Amendments and Reasons Therefor

Based on the comments, the Commission has reason to believe that "dry clean" labels on home-washable items are prevalent and that consumers have a preference for being told when items that they are purchasing can be safely washed at home. Moreover, the information about washability may be important to consumers for economic or environmental reasons, or both. Some consumers wish to avoid the use of PCE and clean in water when possible because they believe it is better for the environment. The record also supports the conclusion that this aspect of the Rule is an impediment to EPA's goal of reducing the use of dry cleaning solvents.¹⁴

When a garment that can be washed at home is labeled "dry clean," many consumers may be misled into believing that the garment cannot be washed at home, and they may incur the unnecessary expense of dry cleaning the garment and/or potential damage to the environment that they wish to avoid.¹⁵ Moreover, it can be extremely difficult for consumers to obtain the information about washability of an item for themselves. Although fiber content can be a guide to washability, other factors—such as the type of dye or finish used—can also determine washability, and consumers have no way of learning what dyes and finishes

¹² Aqua Clean (34) pp. 8-9; AAMA (57) p. 2, noting that "There are some garments with 'dry clean only' labels that can be washed at home . . . but if the cleaning is not done correctly, it can lead to damage."

¹³ CEC (44) p. 5.

¹⁴ EPA's comment (73) to the 1994 FRN stated, at p. 1, that the Rule should be revised to require manufacturers to state whether a garment "can be cleaned by solvent-based methods, water-based methods, or both. We believe this change is necessary to advance the use of water-based cleaning technology." EPA's comment to the 1995 FRN referred to the 1994 comment, and stressed the need for recognition in the Rule of professional wet cleaning. EPA (17) p. 1.

¹⁵ A Purdue University survey found that 89.3% of the 962 respondents indicated that they would not wash a garment labeled "dry clean." Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule (16 CFR Part 423) (May 1978), p. 141. Other surveys showed similar results. *Id.* at 142-143.

were used and whether they will survive washing.

Accordingly, the Commission proposes amending the Rule to require a home washing instruction for garments for which home washing is appropriate. This amendment would permit optional dry cleaning instructions for such washable items, provided dry cleaning would be an appropriate alternative cleaning method. The amendment would, however, require that manufacturers selling items with a "dry clean" instruction alone be able to substantiate both that the items could be safely dry cleaned and that home washing would be inappropriate for them.¹⁶

As noted in the comments, the proposed amendment would enable consumers to make a more informed purchasing choice and provide them with the option of saving money by washing at home instead of incurring the higher expenses of dry cleaning. In addition, consumers who are concerned about reducing the use of PCE will have information about the "washability" of all apparel items they are considering purchasing.

The Commission agrees, as it did in the ANPR, with the commenters (primarily manufacturers) that cautioned against a "dual labeling" instruction requiring both home washing and dry cleaning instructions if both methods are appropriate. Such an instruction would result in some manufacturers of traditionally washable products performing dry cleaning tests to substantiate that dry cleaning was an appropriate care method, which would be contrary to EPA's goal of reducing the use of dry cleaning solvents. Moreover, the comments do not indicate a consumer preference for such dual labeling. The Commission has no reason to believe at this time that it is either unfair or deceptive for a manufacturer or importer to fail to reveal that a garment labeled for washing can also be dry cleaned, and to require such dual labeling might raise costs without providing any real benefit to consumers.

The proposed amendments would permit a home washing instruction only for those covered products for which home washing—and traditional home finishing processes such as ironing—would be an appropriate method of care. Many commenters cautioned that, for

¹⁶ The Rule currently requires this level of substantiation for a "dry clean only" instruction. Under the proposed amendment, any garment for which home washing is not recommended and dry cleaning is recommended, would have to be labeled "dry clean only." In other words, a "dry clean" instruction by itself would no longer be permissible.

some items that could be washed in water, there would be many additional finishing steps required for the garment that the average consumer could not perform at home. In the case of some garments, such as suits made from wool or silk (fibers that generally can be safely washed in water), post-home washing finishing processes like steampressing and pleat and crease setting are necessary for proper refurbishing. These processes are beyond the capabilities of most consumers and the equipment available to them.¹⁷ Under the proposed amendments, a home washing instruction would not be appropriate or required for an item that could be safely washed in water with the proper cleaning agents but could not be finished properly at home by the average consumer. Moreover, the Commission recognizes that manufacturers have experience with the consumers who buy their garments, and the Commission would expect to defer to manufacturers' decisions in the case of garments that would be difficult to refurbish for some but not all consumers.¹⁸

2. The "Professionally Wet Clean" Instruction

a. Background and Discussion of Comments

The ANPR asked whether the Rule should be amended to recognize the new technology referred to as "professional wet cleaning" by requiring a professional wet cleaning instruction for products that cannot be washed at home but could be cleaned by means of this new technology.¹⁹ (Professional wet cleaning uses computer-controlled washers and dryers to achieve precise control of mechanical action, fluid levels, temperatures, and other important factors.) The ANPR asked for information on the cost of wet cleaning, the availability of wet cleaning facilities, whether the process currently could serve as a practical alternative to dry cleaning, and whether fiber

¹⁷ See Aqua Clean (34) pp. 8-9.

¹⁸ In addition, manufacturers that wished to stress that a particular garment could be refurbished at home but might be difficult for some consumers to refurbish adequately at home could add a phrase such as "For best results, dry clean."

¹⁹ In the narrative discussing this issue in the ANPR, the Commission sought information on the feasibility of a "professionally wet clean" instruction on "all covered products bearing a dry cleaning instruction." 60 FR 67105. In the Request for Comments Section of the Notice, however, the Commission limited the applicability of the question to "a garment that cannot be home laundered but can be dry cleaned." 60 FR 67107. Most of the commenters responded in the latter context.

identification should be on a permanent label. 60 FR 67105, 67107.

Twenty-nine commenters addressed the "professionally wet clean" instruction.²⁰ Only four opposed the proposal to amend the Rule to require a "professionally wet clean" instruction for wet cleanable garments that cannot be washed at home. The Soap and Detergent Association and Procter & Gamble contended that the term "professionally wet clean" may be confused with a home washing instruction by consumers.²¹ The Center for Emissions Control contended that wet cleaning is a new technology that is neither well understood nor widely available, and that a required wet cleaning instruction now would therefore be unreasonable and counterproductive.²² SDA, P&G, and CEC all recommended requiring some version of a "professionally clean" instruction that would encompass both dry cleaning and professionally wet cleaning.²³ CEC also suggested that eventually the Rule could provide for a "professionally wet clean" instruction that would be permitted, but not required, when the manufacturer thought professional wet cleaning would be appropriate.²⁴ AAMA opposed any provision in the Rule for professional wet cleaning on the ground that it is too new and that there are too few cleaners who can provide the service.²⁵

(1) *Defining Professional Wet Cleaning.*²⁶ Six organizations provided

²⁰ Joyce McCarter (14) p.1; John & Elizabeth Gray (15) p.1; Henry Gluckstein, Esq. (16) pp.1, 3; EPA (17) p.1; Linda Arant (18) p.1; Vera Rines (28) p.1; Thelma Carpenter (30) p.1; Ida Carpenter (33) p.1; Aqua Clean (34) pp. 6-7; Margie Helton (38) p.1; Jewell Brabson (40) p.1; American Textile Manufacturers Institute ("ATMI") (41) p.3; Susan DuBois (42) p.1; The Soap and Detergent Association ("SDA") (43) pp.1, 3; CEC (44) pp.1-2, 5; UCLA PPERC (45) pp.2-3; Consumers Union (46) pp.1-2; Center for Neighborhood Technology ("CNT") (55) pp.2, 4; IFI (56) p.2; AAMA (57) p.2; Teresa Mills (58) p.1; Sarah O'Neal (59) p.1; P&G (60) pp.2, 4; Frances McCarter (61) p.1; Gladys Bebbler (62) p.1; Ginetex (63) p.3.

²¹ SDA (43) pp.1, 3; Procter & Gamble ("P&G") (60) pp.2, 4.

²² CEC (44) p.5.

²³ SDA (43) pp.1, 3; CEC (44) pp.1-1, 5; P&G (60) pp.2, 4.

²⁴ CEC (44) p.5.

²⁵ AAMA (57) p.2.

²⁶ The ANPR noted that EPA had published a summary of an alternative cleaning process referred to as "Multiprocess Wet Cleaning." 60 FR 67103 (Dec. 28, 1995). According to several commenters, "multiprocess wet cleaning" is a cleaning process that involves knowledgeable individuals hand-cleaning individual garments, often employing a "spot cleaning" technique rather than full immersion, and using water, heat, steam and natural soaps instead of perchloroethylene or petroleum solvents. Aqua Clean (34) pp.1-2, noting that "Professional wet cleaning has already supplanted multiprocess wet cleaning. Indeed,

information describing the wet cleaning process.²⁷ They defined "machine wet cleaning" or "professional wet cleaning" as an automatic, water-based cleaning process that relies on the use of sophisticated, computer-controlled washers and dryers in which the washing and drying cycles, including heat, moisture, and agitation, can be precisely controlled according to the requirements of the various fiber, fabric, and garment types.²⁸

Three organizations provided information about the equipment used in professional wet cleaning.²⁹ UCLA PPERC and CNT said that five companies provide the equipment systems necessary for professional wet cleaning.³⁰ Aqua Clean provided a detailed description of the equipment needed to provide professional wet cleaning services:

All professional wet cleaning systems consist of a computer-controlled washer and dryer, wet cleaning software, and biodegradable chemicals specifically formulated to safely wet clean wool, silk, rayon, and other natural and man-made fibers. The washer always uses a frequency-controlled motor, which allows the computer to precisely control the degree of mechanical action imposed on the garments by the wet cleaning process. The computer also controls time, fluid levels, temperatures, extraction, chemical injection, drum rotation and extraction parameters, etc. The dryer always incorporates a residual moisture (or humidity) control to prevent overdrying of delicate garments. The wet cleaning chemicals are formulated from constituent chemicals which are on the EPA's public inventory of approved chemicals pursuant to the Toxic Substances Control Act (TSCA).³¹

(2) *As an Alternative to Dry Cleaning.* The ANPR asked two related questions about the feasibility of wet cleaning as a practical alternative to dry cleaning, and the extent to which items that have historically been dry cleaned could successfully be professionally wet cleaned. Five commenters responded directly to the first question. ATMI and AAMA pointed out that, while the fibers and dyes now in use will stand up to the chemical solvents used in the dry cleaning process, the textile industry does not know if they will stand up to

those cleaners (Ecofranchising, NY; Cleaner Image, CT) which initially used multiprocess wet cleaning have converted to professional wet cleaning because of the economic advantages." See also CEC (44) p.4. Consequently, Multiprocess Wet Cleaning is not addressed in the remainder of this Notice.

²⁷ Aqua Clean (34) pp.1-2; CEC (44) p.4; UCLA PPERC (45) p.3; CNT (55) p.2; IFI (56) p.2; Ginetex (63) p.3.

²⁸ Aqua Clean (34) pp.1-2; UCLA PPERC (45) p.3.

²⁹ Aqua Clean (34) pp.2-3; UCLA PPERC (45) p.3; CNT (55) p.2.

³⁰ UCLA PPERC (45) p.3; CNT (55) p.2.

³¹ Aqua Clean (34) pp.2-3.

professional wet cleaning.³² ATMI predicted that:

If consumers just assume that they can use the new cleaning method on their existing wardrobe and current clothing purchases, we would expect to see an increase in apparel damage claims. This is because the fabrics used in these clothing items have finishes and formulations designed for dry cleaning. We told EPA that the industry would need a long phase-in time (2-3 years) to adjust our dyes and finishes to work compatibly with "wet clean" processes.³³

Ginetex, which is responsible for the care labeling system used in European countries, indicated its interest in the wet cleaning technique, but said it is waiting for a standardized test method so manufacturers can test garments to determine whether wet cleaning would be a safe care method.³⁴ IFI cautioned that wet cleaning technology is new and stated its determination to undertake research into the process:

The use of machine wet cleaning is still in the investigative or infant stage. The technology originated in Europe and the most extensive analysis of these systems has been completed by two European research groups—Hohenstein and FCRA. The conclusion of these studies is that machine wet cleaning is an adjunct to dry cleaning, not a complete replacement. The Environmental Protection Agency, as a result of its evaluation of wet cleaning under its Design for the Environment Program, concludes that machine wet cleaning is not a complete replacement for drycleaning. There is still much investigative work to be done in this area. To that end, IFI has formed a partnership with Greenpeace, other industry groups, and other environmental and labor groups to explore the possibilities of wet cleaning—The Professional Wet Cleaning Partnership.³⁵

Aqua Clean estimated that 90% of garments can be safely and satisfactorily cleaned by professional wet cleaning. Aqua Clean stated that it has found no significant wetcleanability versus drycleanability differences applicable to wool, silk, rayon, acetate, linen, etc. with the exception of heavier wool suits, which are made with linings and shoulder pads that dry at a rate different from the wool, and thus require extra time.³⁶ CEC stated that estimates of the percentage of garments labeled "dry clean only" that can be successfully wet

³² ATMI (41) p.3; AAMA (57) p.2.

³³ ATMI (41) p.3.

³⁴ Ginetex (63) p.3.

³⁵ IFI (56) p.2.

³⁶ Aqua Clean (34) p.4. Aqua Clean said that it has corresponded with the International Wool Secretariat (IWS), the research and marketing arm of the wool industry, and anticipates cooperating with the IWS's announced intention to develop wool processing technologies at the mill level that will make wool garments better suited to professional wet cleaning, so they can be dried faster at higher temperatures. *Id.* at 5.

cleaned vary from 30% to 70%, with industry experts narrowing that spread to 30% to 50%.³⁷ IFI contended that it is too early to estimate the percentage with any certainty, but stated that early indications are that the percentage of "dry clean" labeled garments that could be effectively machine wet cleaned could be anywhere from 25% to 75%.³⁸ CNT estimated, based on its own research and research conducted by Environment Canada, that from 30% to 70% of clothes generally cleaned in PCE could be safely cleaned using standard commercial or domestic laundering equipment.³⁹

(3) *Businesses that Provide Wet Cleaning.* When it filed its comment in early 1996, Aqua Clean estimated that, by the end of 1996, approximately 350 businesses would have professional wet cleaning systems.⁴⁰ Three other commenters estimated that professional wet cleaning is currently being offered by 100 businesses.⁴¹ CEC also estimated that it will be several years, even at best, before a substantial number of the nation's 30,000 cleaners have purchased professional wet cleaning technology.⁴²

(4) *Costs to Consumers.* ATMI said that the additional costs incurred by textile and apparel manufacturers to substantiate a wet cleaning instruction would be passed on to consumers.⁴³ Both UCLA PPERC and CNT stated that the costs to consumers for wet cleaning services are comparable to the costs of dry cleaning.⁴⁴ CNT estimated that the range for wet cleaning a two-piece wool suit was from \$4.50 to \$9.00, and added that interviews with cleaners indicated that those who provided both types of cleaning were providing them for approximately the same cost, and that in no case were charges for wet cleaning higher than for dry cleaning.⁴⁵

Aqua Clean said that it was not aware of any cleaner charging more for wet cleaning services than for dry cleaning services, and that in some cases the cost of wet cleaning is less, because many dry cleaners impose a surcharge (typically 50 cents) to cover the rising cost of disposing of hazardous dry cleaning waste.⁴⁶

³⁷ CEC (44) p.4.

³⁸ IFI (56) p.2.

³⁹ CNT (55) p.2.

⁴⁰ Aqua Clean (34) p.3.

⁴¹ UCLA PPERC (45) p.3; CNT (55) p.3; AAMA (57) p.2.

⁴² CEC (44) p.5.

⁴³ ATMI (41) p.3.

⁴⁴ UCLA PPERC (45) p.4; CNT (55) p.4.

⁴⁵ CNT (55) p.4.

⁴⁶ Aqua Clean (34) p.5. Aqua Clean also raised an issue that was not addressed in the ANPR—consumer access to cleaning services:

Many developers and owners of strip centers and shopping centers, which is where most consumers

(5) *The Environmental Impact of the Process.* Aqua Clean and CNT stated that none of the substances used in the process are prohibited by EPA; further, Aqua Clean said that the only materials released into the environment in connection with the process are chemicals that appear on EPA's public inventory of approved chemicals under the Toxic Substances Control Act.⁴⁷ CEC suggested, however, that the primary environmental issue associated with the wet cleaning process is water consumption, because the process uses 2.5 gallons of water to clean a pound of clothes. CEC pointed out that, although this compares favorably to the 6 gallons per pound used by home clothes washers, the wet cleaning process uses more water than the dry cleaning process, which uses water primarily for cooling purposes, and typically recycles it.⁴⁸ UCLA PPERC stated that research suggests that wet cleaning is a safe alternative to dry cleaning.⁴⁹

The Commission notes that it has not made an independent assessment of the environmental desirability of the various methods of cleaning textile wearing apparel. Rather, it has noted EPA's goal of reducing the use of dry cleaning solvents and the preference of numerous consumers for information about whether garments can be cleaned in water. The Commission has prepared a proposed Environmental Assessment in which it analyzed whether the amendments to the Rule were required to be accompanied by an Environmental Impact Statement. Because the main effect of the proposed amendments is to provide consumers with additional information rather than directly to affect the environment, the Commission concluded in the proposed Environmental Assessment that an Environmental Impact Statement is not necessary. The Commission requests comment on this issue. The Environmental Assessment is on the

access cleaning services, are refusing to rent space to or renew leases for drycleaners. These landlords simply do not want to bear the legal exposure or insurance expense associated with drycleaning machines and their toxic waste stream. Aqua Clean Systems is currently negotiating with a major national shopping center owner to become their exclusive tenant for 100% perc-free cleaning facilities. At present, they refuse to allow a drycleaner in any of their 1,800 shopping centers. Similar discussions are taking place with a major chain in the Southeast. This trend will continue. If the Rule is not amended to accommodate professional wet cleaning, access to cleaning services will decline as regulatory and landlord pressures cause a decline in the number of drycleaners, which will eventually reduce competition and cause an increase in consumer prices. *Id.*, pp. 9-10.

⁴⁷ Aqua Clean (34) p.3; CNT (55) p.3.

⁴⁸ CEC (44) p.3.

⁴⁹ UCLA PPERC (45) p.4.

public record and is available for public inspection at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue, Washington, D.C. It can also be obtained at the FTC's web site at <http://www.ftc.gov> on the Internet.

(6) *The Requirement for Fiber Identification on a Permanent Label.* Eight comments addressed the desirability of a requirement for fiber identification on a permanent label, and all favored the idea.⁵⁰ Five recommended that the fiber identification be on the same label as the care instructions.⁵¹ Several commenters said that fiber information need not necessarily be on the care label but should be on a permanent label.⁵² Most of the commenters said that cleaners need fiber identification information in order to provide the best cleaning services for their customers. Aqua Clean explained as follows: [Fabric identification [should] be on a permanent label because it is essential information for all cleaners regardless of the technology employed; requiring this by regulation will merely codify a nearly uniform practice at no measurable cost to manufacturers. A secondary consideration is that individuals with allergies to certain fibers (e.g., wool) should be provided with this information. It is clear that requiring fiber identification on a permanent label should be acceptable to manufacturers and consumers because it has already become an accepted part of business at all levels of manufacture, distribution, sales, and garment care.⁵³

b. *Proposed Amendment and Reasons Therefor.* The comments show that professional wet cleaning is a process that is of interest to consumers, especially those who believe it has the potential for less negative impact on the environment than dry cleaning. Thus, the Commission is proposing amendments that will incorporate professional wet cleaning into the Rule's system of instructions for care.

Nevertheless, professional wet cleaning is a very new technology, and it does not appear to be widely available. Moreover, there is not a standardized test by which manufacturers can establish a reasonable basis for a professional wet

⁵⁰ Univ. of KY (20) p.1; Aqua Clean (34) p.7; ATMI (41) p.4; CEC (44) p.2; UCLA PPERC (45) p.3; Consumers Union (46) p.2; AHAM (51) p.2; P&G (60) p.4.

⁵¹ CEC (44) p.2; UCLA PPERC (45) p.3; Consumers Union (46) p.2; AHAM (51) p.2; P&G (60) p.4.

⁵² Univ. of KY (20) p.1; Aqua Clean (34) p.7.

⁵³ Aqua Clean (34) p.7.

cleaning instruction.⁵⁴ For these reasons, the Commission is not at this time proposing an amendment to the Rule that would require a wet cleaning instruction. Instead, the Commission is proposing amendments that would add a definition to the Rule for "professional wet cleaning" and would permit manufacturers to include a "professionally wet clean" instruction on labels for those items for which they have a reasonable basis for a professional wet cleaning instruction. The proposed amendments do not require manufacturers who label items with a "dry clean only" instruction to be able to substantiate that professional wet cleaning would be an inappropriate method of care.

The Commission also concludes that fiber identification on a permanent label is important to professional wet cleaners.⁵⁵ The record contains numerous references to the need for precise fiber content information due to the complexity of the computer-controlled equipment used in the wet cleaning process. Therefore, the proposed amendment requires that, if a care instruction recommends professional wet cleaning, the fiber content must be provided on the permanent care label along with the care instructions. The Commission seeks comment as to whether any accompanying change should be made to the Textile Rules.⁵⁶

Finally, it should be noted that at this time, the Commission proposes allowing a "professional wet clean" instruction along with a conventional care instruction because many consumers do not currently have access to professional wet cleaners. Nevertheless, because professional wet cleaning appears to be growing rapidly, the Commission seeks comment on this point.

⁵⁴ Testing is one of several types of evidence that can serve as a reasonable basis for a care instruction.

⁵⁵ The Textile Fiber Products Identification Act ("Textile Act"), 15 U.S.C. 70 et seq., requires marketers of covered textile products to mark each product with the generic names and percentages by weight of the constituent fibers present in the product. The Commission has issued Rules and Regulations under the Textile Act ("Textile Rules"). Rule 15 of the Textile Rules, 16 CFR 303.15, allows any type of label to be used as long as the label is securely affixed and durable enough to remain attached to the product until the consumer receives it; Rule 15 does not require a permanent label.

⁵⁶ Rule 18 of the Textile Rules, 16 CFR 303.18, requires, with some exceptions, that all information required by the Textile Act shall be set out on one label, and on the same side of the label. The Commission recently sought comment on modifications of the Textile Rules. 61 FR 5344 (Feb. 12, 1996).

3. The Reasonable Basis Requirement of the Rule

a. Background and Discussion of Comments

The Rule requires that manufacturers and importers of textile wearing apparel possess, prior to sale, a reasonable basis for the care instructions they provide. Under the Rule, a reasonable basis must consist of reliable evidence supporting the instructions on the label. 16 CFR 423.6(c). Specifically, a reasonable basis can consist of (1) reliable evidence that the product was not harmed when cleaned reasonably often according to the instructions; (2) reliable evidence that the product or a fair sample of the product was harmed when cleaned by methods warned against on the label; (3) reliable evidence, like that described in (1) or (2), for each component part; (4) reliable evidence that the product or a fair sample of the product was successfully tested; (5) reliable evidence of current technical literature, past experience, or the industry expertise supporting the care information on the label; or (6) other reliable evidence. *Id.*

The 1994 FRN solicited comment on whether the Commission should amend the Rule to conform with the interpretation of "reasonable basis" described in the FTC Policy Statement Regarding Advertising Substantiation. ("Advertising Policy Statement") 104 F.T.C. 839 (1984), or to change the definition of "reasonable basis" in some other manner. The comments in response to the 1994 FRN suggested that a significant number of care labels lack a reasonable basis. Based on these comments, the ANPR proposed amending the reasonable basis requirement to reduce the incidence of inaccurate and incomplete labels. The ANPR sought comment on that incidence, the extent to which it might be reduced by clarifying the reasonable basis standard, and the costs and benefits of such a clarification.

The Commission further solicited comment on whether to amend the Rule to clarify that the reasonable basis requirement applies to a garment in its entirety rather than to each of its individual components. In addition, the Commission asked for comment on whether the Rule should specify standards for determining acceptable and unacceptable changes in garments following cleaning as directed, and whether the Rule should identify properties, such as colorfastness and dimensional stability, to which such standards would apply.

The ANPR sought comment on the option of indicating in the Rule that whether one or more of the types of

evidence described in Section 423.6(c) constitutes a reasonable basis for care labeling instructions depends on the factors set forth in the Advertising Policy Statement and whether the Rule should be amended to make testing of garments the only evidence that could serve as a reasonable basis under certain circumstances. Finally, the ANPR sought comment on whether the Rule should specify particular testing methodologies to be used. Ten commenters responding to the ANPR discussed the reasonable basis provision.⁵⁷ Seven supported the modification of the Rule, arguing that the provision should be clarified and strengthened to reduce mislabeling.⁵⁸ Two maintained that the reasonable basis provision should not be amended, because the proposed changes would likely increase the cost to consumers and apparel firms without materially increasing the benefits to consumers.⁵⁹

Only two commenters provided data on the incidence of mislabeling. Both concluded that there is a high incidence of inaccurate and/or incomplete labeling. IFI cited statistics from its Garment Analysis database (which, in 1995, consisted of 25,160 damaged garments) indicating that inaccurate care labels were responsible for 40% of the damaged garments.⁶⁰ Clorox concluded from its own study that 70% of all home washing instructions provide inaccurate bleach information.⁶¹

ATMI, however, stated that most home washing labels are accurate, and that the vast majority of dry clean instruction labels are accurate, despite limited problems associated with care instructions for special items such as beaded apparel, sequins, and leather appliques.⁶² ATMI and AAMA both

⁵⁷ Univ. of KY (20) p.2; Clorox (31) pp. 4-5; ATMI (41) pp. 5-7; SDA (43) pp. 1,3; Consumers Union (46) pp. 2-3; AHAM (51) p.2; IFI (56) p. 3; AAMA (57) p. 2; P&G (60) p. 5; Ginetex (63) p.4.

⁵⁸ Univ. of KY (20) p. 2; Clorox (31) pp. 4-5; SDA (43) pp. 1,3; Consumers Union (46) pp. 2-3; AHAM (51) p. 2; IFI (56) p. 3; P&G (60) p. 5.

⁵⁹ AAMA (57) p. 2; ATMI (41) pp. 5-7. Ginetex, the European care labeling organization, stated that it gives technical advice "to give indications how to test in the case of uncertainty to choose the correct care label." Ginetex (63) p. 4.

⁶⁰ IFI (56) p.3.

⁶¹ Clorox (31) p.2.

⁶² ATMI (41) p.5. See also AAMA (57) p.3 ("There are a few problems with leather patches and some other materials attached to garments.") The Commission has litigated one case involving inaccurate care instructions that resulted in damage to garments. *FTC v. Bonnie & Company Fashions, Inc. and Bonnie Boerer, Civ. Action No. 90-4454* (D.N.J.). In addition, since that litigation, the Commission has obtained five settlements that alleged violation of the Rule due to inaccurate care instructions; in three of those five settlements, the Commission alleged that the trim on the garments was damaged when cleaned.

stated that the costs to consumers of complaining to manufacturers or retailers about garments damaged in cleaning is minimal, usually consisting of returning that item to the store, a telephone call, or postage for mailing a letter.⁶³ Moreover, according to both commenters, garment or piece goods manufacturers generally offer refunds for products damaged in cleaning despite adherence to care label directions if numerous consumers complain about an item.⁶⁴

Several commenters specifically addressed whether the Rule should require testing as a reasonable basis in certain situations. Two commenters argued that testing should be the only permissible reasonable basis.⁶⁵ Clorox stated that tests performed on a representative sample of each garment are "the most reliable evidence of care instruction accuracy," and that textbooks and manuals should not be allowed as evidence of a reasonable basis.⁶⁶ Clorox maintained that such a requirement would place little additional expense on manufacturers because "published tests on specific fabric and dye combinations are already shared among the trade."⁶⁷

Two commenters, ATMI and AAMA, however, opposed such an amendment to the Rule.⁶⁸ ATMI expressed its concern that a testing requirement would substantially increase the prices for apparel and home furnishing items.⁶⁹ AAMA noted that its members already test new styles and fabrics for use in garments; thus, it is unaware of any garments which "would need a legal requirement to be tested."⁷⁰

A number of commenters discussed whether the rule should specify testing methodologies to be used. Consumers Union asserted that the Rule should specify test methods that relate to consumer expectations, assessing "product performance after repeated cleaning, shrinkage, colorfastness, appearance retention, and at least one fabric strength test."⁷¹ In contrast, AAMA contended that requiring

⁶³ ATMI (41) p.7; AAMA (57) p.4. But see Univ. of KY (20) p.2 (consumers may not complain to stores because they are intimidated or do not think their problems will be resolved).

⁶⁴ ATMI (41) p.7 (noting that if only one consumer complains about an item "of which thousands were produced, it is likely that the damage was caused by a commercial cleaner or by the consumer"); AAMA (57) p.4.

⁶⁵ IFI (56) p. 3; Clorox (31) pp. 4-5.

⁶⁶ Clorox (31) p. 4.

⁶⁷ *Id.*

⁶⁸ ATMI (41) p. 5; AAMA (57) p. 3.

⁶⁹ ATMI (41) p. 7.

⁷⁰ AAMA (57) p. 3.

⁷¹ Consumers Union (46) p. 2.

specific test methods may impede the introduction of new fibers and fabrics.⁷²

Several commenters responded to the Commission's questions relating to whether the Rule should require a reasonable basis for a whole garment versus each component. Three commenters maintained that the Rule should require a reasonable basis for a garment in its entirety.⁷³ IFI noted that its database shows that "a large portion of the garments damaged are the result of the trim or component part of the garment failing in a specified care procedure."⁷⁴ Consumers Union also argued that "to state an instruction that excludes its applicability to garment trim is not often practical as some trim are hard to remove and reposition after cleaning."⁷⁵

Two commenters stated that the Rule should not require testing on a complete garment.⁷⁶ AAMA asserted that many garments are made of just one major fabric. Accordingly, there may not be a need to test an entire garment, as opposed to the materials used, if the other materials used in the garment are of the same fiber and basic construction.⁷⁷ Moreover, AAMA argued that it is sufficient for manufacturers to specify in care instructions that a specific trim is excluded, because consumers are thereby warned that care must be taken when refurbishing the garment.⁷⁸ ATMI stated that testing of completed garments would significantly raise the cost of manufacturing apparel, but noted that trim should be covered by the Rule, and that manufacturers should be responsible for selecting and combining component materials that can be refurbished together.⁷⁹

Many commenters responded to the Commission's request for comments on whether the Rule should refer to performance standards, concluding that it may not be feasible for the Rule to do so. Consumers Union, for example, noted that because fabrics and apparel items are continually offered and discontinued, it may not be possible for the Commission to set performance standards in a timely fashion to cover all properties and types of garments.⁸⁰

⁷² AAMA (57) p. 3.

⁷³ Univ. of KY (20) p. 2; Consumers Union (16) p. 3; IFI (56) p. 3.

⁷⁴ IFI (56) p. 3.

⁷⁵ Consumers Union (46) p. 3.

⁷⁶ AAMA (57) p. 4; ATMI (41) pp. 5-6.

⁷⁷ AAMA (57) p. 4.

⁷⁸ *Id.*

⁷⁹ ATMI (41) p. 6.

⁸⁰ Consumers Union (46) p. 2 (suggesting that the FTC implement a rule that requires manufacturers, retailers, and importers to issue refunds for products damaged in cleaning despite adherence to the label).

AAMA asserted that although there is "reason to look at minimum performance standards, including colorfastness, abrasion resistance, etc.," the Commission should not modify the reasonable basis requirement until the United States, Mexico and Canada have harmonized their labeling standards.⁸¹

Finally, two commenters stated that the Commission would improve the effectiveness of the Rule by incorporating the criteria from the Advertising Policy Statement.⁸²

b. Proposed Amendments and Reasons Thereof

Section 423.6(c)(3) of the Rule currently states that a manufacturer or importer establishes a reasonable basis for care information by "possessing prior to sale: [r]eliable evidence * * * for each component part of the product." Based on its review of the comments, the Commission proposes to amend the reasonable basis standard to make clear that the reasonable basis requirement applies to the garment in its entirety rather than to each of its individual components. The Commission believes that the record establishes that in some cases care instructions may not be accurate for the entire garment. A garment component that may be cleaned satisfactorily by itself might, for example, bleed onto the body of a garment of which it is a part. Thus, in the proposed Rule, Section 423.6(c)(3) has been amended to clarify that a manufacturer must possess a reasonable basis for the garment as a whole, including any trim.⁸³ Proposed Section 423.6(c)(3) provides that "Reliable evidence * * * for each component part of the product, in conjunction with reliable evidence for the garment as a whole" can constitute a reasonable basis for care instructions. The proposed Rule does not require testing of the entire garment if there is an adequate reasonable basis for the garment as a whole without such testing; the proposed change would clarify, however, that testing of separate components is not necessarily sufficient if problems are likely to occur when the components are combined.⁸⁴

⁸¹ AAMA (57) p. 2.

⁸² SDA (43) p. 3; P&G (60) p. 5 (also suggesting that the Commission consider methods of certification and other tools such as U.S. Customs requirements to reduce the number of mislabeled imported goods, especially those labeled "Dry Clean Only.")

⁸³ The Commission notes that an instruction to clean "exclusive of trim" is only a valid care instruction if the trim can be easily removed and easily reattached.

⁸⁴ For example, red trim that is to be placed on white fabric should be evaluated to determine if it

The Commission, however, believes that the comments do not provide sufficient reason to propose modifying other aspects of the reasonable basis provision at this time. As noted by the AAMA, the United States, Mexico, and Canada are in the process of harmonizing their labeling requirements. Until this harmonization is complete, the Commission believes that further modification of the reasonable basis provision may be premature.

4. Definitions of Water Temperatures

a. Background and Discussion of Comments

The Rule currently requires that a care label that recommends washing must also state a water temperature that may be used unless "the regular use of hot water will not harm the product." 16 CFR 423.6(b)(1)(i). The Rule also provides that if the term "machine wash" is used with no temperature indication, "hot water up to 150 degrees F (66 degrees C) can regularly be used." 16 CFR 423.1(d). This definition is repeated in Appendix 1.a. "Warm" is defined in Appendix 1.b. as ranging from 90 to 110 degrees F (32 to 43 degrees C), and "cold," in Appendix 1.c., as cold tap water up to 85 degrees F (29 degrees C).

Some comments to the 1994 FRN recommended that the Commission revise the definition of cold water. Commenters noted that tap water temperatures vary across the United States, and that such differences can cause problems because, in the winter in colder parts of the country, detergents may not fully activate during a cold wash cycle. Other comments suggested that the Rule's definition of hot water should be changed. The American Association of Textile Chemists and Colorists ("AATCC") commented that the temperatures stated in the Appendix should be changed to match the AATCC definitions, which the AATCC believes "more accurately reflect current washing machine settings and consumer practice."⁸⁵ The AATCC defines "hot" as 120 degrees F plus or minus 5 degrees (49 degrees C plus or minus 3 degrees).

The ANPR sought comment on whether the Commission should amend the Rule to change the definitions of "warm" and "hot" water, or to include

is likely to bleed onto the surrounding fabric. A company may possess reliable evidence—for example, past experience with particular dyes and fabrics—that a particular red trim does not bleed onto surrounding fabric. In such a case testing of the entire garment might not be necessary.

⁸⁵ Comment 34 to 1994 FRN, p. 1.

a new term such as "cool" or "lukewarm" in the Appendix. The Commission further sought comment on whether the Rule should be amended to state that care labels recommending "cold" wash must define the highest acceptable temperature for "cold" on the label, and on the benefits and costs to consumers and manufacturers of such an amendment.

All eleven comments received in response to the ANPR that discussed the definitions of cold, warm, and hot water favored some change.⁸⁶ ATMI stated that it is very important that the Rule's water temperature definitions be consistent with those used in standard test methods developed by AATCC because those test methods are used by the textile and apparel industries.⁸⁷ Six of the commenters also supported the idea of including a numerical temperature on the care label.⁸⁸ Consumers Union, for example, stated that consumers need to know the actual range of water temperature in which they can safely wash their clothes.

Words such as lukewarm, cold, warm or hot serve their purposes only if the consumers are aware of safe water temperature ranges. Testing laboratories have assigned temperature ranges onto each of these words. They use these "safe temperature ranges" to test products for durability to repeated cleaning. Consumers should know what these safe water temperature ranges are.⁸⁹

(1) *Definition of cold water.* As noted, six commenters favored the inclusion of a numerical temperature on the care label. Two others favored a numerical temperature when the label recommends a "cold" wash. SDA noted that in northern locations in winter, cold water washes can be as cold as 40 degrees F and that "the performance of all laundry products is seriously diminished if they are used in water temperatures below 60 degrees F."⁹⁰ SDA suggested the following care instruction, in lieu of "cold":

Wash in the warmest available water, not to exceed (approximate temperature) degrees F.

⁸⁶ Bruce Fifield (22); ATMI (41); SDA (43); Consumers Union (46); AHAM (51); Maytag Appliances ("Maytag") (53); IFI (56); AAMA (57); P&G (60); Ginetex (63); European Commission (64).

⁸⁷ ATMI (41) p. 1.

⁸⁸ Fifield (22) p. 1; Consumers Union (46) p. 1; AHAM (51) p. 1; AAMA (57) p. 1; European Commission (64) p. 2; Ginetex (63) p. 2. In a meeting with staff on August 7, 1996, AHAM indicated that it no longer favors this.

⁸⁹ Consumers Union (46) p. 1.

⁹⁰ SDA (43) p. 2. P&G (60) stated, at p. 3, that "all detergency and cleaning performance decreases substantially in cold water below 70 degrees F."

Maytag suggested that a range of 65 to 80 degrees F should be stated on the care label because

consumers are not aware that water can be too cold to activate detergents, thus they experience poor cleaning and other laundry problems. By incorporating a temperature range consumers would know exactly what temperatures will provide good results.⁹¹

P&G said that a national consumer study it had conducted showed that 78% of "cold" loads washed in January and February were in temperatures below 65 degrees F (with some as low as 34 degrees F), and that, year round, 50% of "cold" loads were washed in temperatures below 65 degrees F.⁹²

ATMI suggested that "cold" be defined consistently with the definition specified in AATCC test methods [27 degrees C plus or minus 3 degrees, or 82 degrees F plus or minus 5 degrees] and with standards developed by the American Society for Testing and Materials ("ASTM") [30 degrees C, or 86 degrees F].⁹³

(2) *Definition of warm water.* Section 1.b of the Appendix to the Rule defines warm water as 90 to 110 degrees F (32 to 42 degrees C). Several commenters recommended maintaining this definition, but adding the term "lukewarm," defined as 70 to 89 F (21 to 31 C).⁹⁴ Other commenters opposed "lukewarm," stating that it would be confusing to consumers because washing machine dials only offer the choices of cold, warm, and hot.⁹⁵ ATMI suggested a definition of 40 degrees C plus or minus 5 degrees (104 degrees F plus or minus 9 degrees), which it described as consistent with the definition established by AATCC for use in garment testing [41 degrees C plus or minus 3 degrees, or 106 degrees F plus or minus 5 degrees] and by ASTM in its standards [40 degrees C or 104 F].

(3) *Definition of hot water.*

Maytag stated that "the current definition of hot water as up to 150 degrees is unrealistic due to scald laws in some states" and because new water heaters are preset at 120 degrees F.⁹⁶ P&G also noted that hot water heaters are now usually preset at 120 F, "much less than the 140 degrees F of older models."⁹⁷ SDA estimated that "20% of today's homes have hot water heaters set at 120–125 F."⁹⁸ Maytag favored

⁹¹ Maytag (53) p. 2.

⁹² P&G (60) p. 3.

⁹³ ATMI (41) p. 2.

⁹⁴ SDA (43) p. 2; P&G (60) p. 2.

⁹⁵ ATMI (41) p. 1; AHAM (51) p. 2; Maytag (53) p. 1; AAMA (57) p. 1.

⁹⁶ Maytag (53) p. 2; see also SDA (43) p. 2, P&G (60) p. 2.

⁹⁷ P&G (60) p. 3.

⁹⁸ SDA (43) p. 2.

defining hot as 120 to 140 degrees F, and SDA and P&G favored defining hot as 111 to 140 F. ATMI recommended 50 degrees C plus or minus 5 degrees C, which it described as consistent with definitions used by AATCC [49 degrees C plus or minus 3 degrees C, or 120 F plus or minus 5 degrees F] and ASTM [50 C or 122 F].⁹⁹

Several commenters argued for the addition of "very hot."¹⁰⁰ P&G noted that some American consumers will be able to achieve the higher temperatures "as new washing machines from Europe with onboard heaters enter the U.S."¹⁰¹ IFI noted that professional laundries can achieve the higher temperatures, and that the higher temperatures are necessary to clean certain types of clothes, such as men's dress shirts.¹⁰²

b. Proposed Amendments and Reasons Therefor

The Commission believes that the definition of cold, warm, and hot water should be changed because of changes in settings on hot water heaters and in consumer washing practices in the years since the definitions were established. The AATCC has changed its definitions, which are used in textile testing, to take account of these factors, and AATCC test methods are used by much of the apparel industry. Consequently, the Commission believes that the definitions in the Rule should be changed to be consistent with the definitions used by AATCC. The Commission proposes changing the upper range of temperature definitions in the Rule to the upper range of what is allowed in tests published by AATCC. Thus, the upper range for "cold" would be 30 degrees C (86 degrees F); for "warm," 44 degrees C (111 degrees F); and for hot, 52 degrees C (125 degrees F).

Finally, the Commission proposes adding the term "very hot" to the rule, defined consistently with the AATCC definition, i.e., with an upper range of 63 degrees C (145 degrees F). The comments indicate that some garments do need to be cleaned at temperatures higher than 125 degrees F, and that some consumers have access to water hotter than 125 degrees F, either at home or through laundering by professional cleaners. The addition of the term "very hot," together with appropriate consumer education, should give notice to those consumers whose hottest water is 120 degrees F that they may have to have garments that should

⁹⁹ ATMI (41) p. 1.

¹⁰⁰ ATMI (41) p. 1.

¹⁰¹ P&G (60) p. 3.

¹⁰² P&G (60) p. 3.

be cleaned in very hot water professionally laundered. The Commission is aware, however, that the term "very hot" may be confusing to some consumers because most washing machine dials only offer the choices of "cold," "warm," and "hot." The Commission requests comment on this issue, and, in particular, on suggestions for methods of consumer education to alleviate this problem.

In addition, some comments indicate that consumers need more precise information in order to select the appropriate temperature setting on their washing machines. Consumers may be using water that is too cold to activate detergents. Similarly, the addition of a precise temperature (52 degrees C, 125 degrees F) after the word "hot" on the care label of a garment might give those consumers some notice that their hot water may be too hot for that garment.¹⁰³ An upper range for "warm" might also be helpful to consumers because on many machines the dial setting for warm simply produces a mixture of hot and cold, and if the incoming tap water is very cold, the water in the machine may be too cold to produce optimal cleaning of the clothes being washed.

The Commission does not believe, however, that the solution to these problems at this time is to require numerical temperatures on care labels. Such additional information may not be cost-effective because most American consumers do not know the temperature of the tap water entering their homes or the cold or warm water in their washing machines. Indeed, some may also lack precise information about the temperature of the hot water heated by their water heaters, and, even those who know the upper limit of their hot water may not know the temperature of the hot water that enters their washing machines given the heat loss that occurs as water is piped to washing machines.

Therefore, at this time the Commission is not proposing to modify the Rule to require that precise temperatures be listed on care labels. The Commission is interested, however, in non-regulatory solutions to this problem. Accordingly, this notice asks questions about the possibility of a consumer education campaign on these issues. The Commission solicits comment on the feasibility of such a consumer education campaign, the form

¹⁰³ Although new water heaters are being set at lower temperatures, the comments indicate that many homes still have older heaters that produce water at 140 degrees F or even hotter. A garment that has been tested in water heated to 125 degrees F may withstand washing in that temperature without damage but nevertheless be damaged by water at 140 degrees F.

it should take, and industry members and consumer groups that would be interested in participating. Moreover, should the comments provide additional information about how numerical temperatures on care labels could be of use to American consumers, the Commission is willing to reconsider that issue.

The following changes are proposed in the definitions Section of the Rule and in the Appendix to the Rule.

Section 6.(b)(1)(I) of the Rule would be modified to read as follows:

The label must state whether the product should be washed by hand or machine. The label must also state a water temperature—in terms such as cold, warm, hot, or very hot—that may be used. However, if the regular use of very hot water will not harm the product, the label need not mention any water temperature. [For example, "Machine wash" means very hot, hot, warm or cold water can be used.]

The last sentence of Section 1(d) of the Rule would be modified to read as follows:

When no temperature is given, e.g., "warm" or "cold," very hot water up to 145 degrees F (63 C) can be regularly used.

"Hot" water would be defined in Appendix 1.a as ranging from 112 to 125 degrees F [45 to 52 degrees C], "warm" water would be defined in Appendix 1.b as ranging from 87 to 111 degrees F [31 to 44 degrees C], and "cold" water would be defined in Appendix 1.c as ranging up to 86 degrees F [30 degrees C]. In addition, "very hot" water would be defined in Appendix 1.a as ranging from 126 to 145 degrees F [53 to 63 degrees C].

The Commission seeks comment on these proposed changes, their importance to consumers, the necessity for a consumer education campaign to help consumers understand and use information about water temperature, and the form such a campaign might take.¹⁰⁴

Part C—Rulemaking Procedures

The Commission has determined, pursuant to 16 CFR 1.20, to follow the procedures set forth in this notice for this proceeding. The Commission has

¹⁰⁴ Some companies have already begun to educate consumers about these issues. A consumer chart prepared by Maytag, with numerical definitions for hot, warm, and cold water, states, "The clothes washer will not ensure these temperatures because the actual water temperatures entering the washer are dependent on water heater settings and regional water supply temperatures. For example, cold water entering the home in the northern states during winter may be 40 degrees F which is too cold for effective cleaning. The water temperature in this situation will need to be adjusted by selecting a warm setting or adding some hot water to the fill."

decided to employ a modified version of the rulemaking procedures specified in Section 1.13 of the Commission's Rules of Practice. The proceeding will have a single Notice of Proposed Rulemaking, and disputed issues will not be designated.

The Commission will hold a public workshop conference to discuss the issues raised by this NPR. Moreover, if comments in response to this NPR request hearings with cross-examination and rebuttal submissions, as specified in Section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c), the Commission will also hold such hearings. After the public workshop, the Commission will publish a notice in the *Federal Register* stating whether hearings will be held in this matter, and, if so, the time and place of hearings and instructions for those desiring to present testimony or engage in cross-examination of witnesses.

Part D—Section-By-Section Description of Proposed Amendments

1. Amendments Relating to Required or Permissible Care Instructions

The Commission proposes to amend section 423.1, "Definitions" to include the following definition:

(h) *Professional wet cleaning* means a system of cleaning by means of equipment consisting of a computer-controlled washer and dryer, wet cleaning software, and biodegradable chemicals specifically formulated to safely wet clean wool, silk, rayon, and other natural and man-made fibers. The washer uses a frequency-controlled motor, which allows the computer to control precisely the degree of mechanical action imposed on the garments by the wet cleaning process. The computer also controls time, fluid levels, temperatures, extraction, chemical injection, drum rotation, and extraction parameters. The dryer incorporates a residual moisture (or humidity) control to prevent overdrying of delicate garments. The wet cleaning chemicals are formulated from constituent chemicals on the EPA's public inventory of approved chemicals pursuant to the Toxic Substances Control Act.

The Commission proposes to amend section 423.6(b) of the Rule to read as follows:

(b) Care labels must state what regular care is needed for the ordinary use of the product. In general, labels for textile wearing apparel must have either a washing instruction or a dry cleaning instruction. If an item of textile wearing apparel can be successfully washed and finished by a consumer at home, the

label must provide an instruction for washing. If a washing instruction is not included, or if washing is warned against, the manufacturer or importer must establish a reasonable basis for warning that the item cannot be washed and adequately finished at home, by possessing, prior to sale, evidence of the type described in paragraph (c) of this section. If a washing instruction is included, it must comply with the requirements set forth in paragraph (b)(1) of this section. If a dry cleaning instruction is included, it must comply with the requirements set forth in paragraph (b)(2) of this section. An instruction for professional wet cleaning may also be given. If an instruction for professional wet cleaning is given, it must comply with the requirements set forth in paragraph (b)(3) of this section. If the product cannot be cleaned by any available cleaning method without being harmed, the label must so state. [For example, if a product would be harmed both by washing and by dry cleaning, the label might say, "Do not wash—do not dry clean," or "Cannot be successfully cleaned."] The instructions for washing, dry cleaning, and professional wet cleaning are as follows:

It should be noted that, in addition to the additions to section (b) noted in bold, the following sentence has been deleted: "If either washing or dry cleaning can be used on the product, the label need have only one of these instructions."

The Commission also proposes to add the following subsection to section (b).

(3) **Professional wet cleaning.** If a professional wet cleaning instruction is included on the label, it must state at least one type of professional wet cleaning equipment that may be used to clean the garment. However, if the product can be successfully cleaned by all commercially available types of professional wet cleaning equipment, the label need not mention any type of wet cleaning equipment. A care label that recommends professional wet cleaning must list the fiber content of the garment and must recommend one other method of cleaning, such as washing or drycleaning, or must warn that the garment cannot be washed or drycleaned if such is the case.

2. Amendment of Reasonable Basis Section

The Commission proposes to amend § 423.6(c)(3) as follows:

(c) A manufacturer or importer must establish a reasonable basis for care information by possessing prior to sale:

(3) Reliable evidence, like that described in paragraph (c)(1) or (2) of

this section, for each component part of the product in conjunction with reliable evidence for the garment as a whole;

3. Amendment of Definitions of Water Temperatures

The Commission proposes to amend the last sentence of § 423.1(d) of the Rule to read as follows:

When no temperature is given, e.g., "warm" or "cold," very hot water up to 145 degrees F (63 C) can be regularly used.

The Commission proposes to amend section 423.6(b)(1)(I) of the Rule to read as follows:

The label must state whether the product should be washed by hand or machine. The label must also state a water temperature—in terms such as cold, warm, hot, or very hot—that may be used. However, if the regular use of very hot water will not harm the product, the label need not mention any water temperature. [For example, "Machine wash" means very hot, hot, warm or cold water can be used.]

The Commission proposes that Appendix A.1.a–1.c be modified to read as follows:

1. Washing. Machine Methods:
a. Machine wash—a process by which soil may be removed from products or specimens through the use of water, detergent, or soap, agitation, and a machine designed for this purpose. When no temperature is given, e.g., "warm" or "cold," very hot water up to 145 degrees F (63 degrees C) can be regularly used.

b. Hot—initial water temperature ranging from 112 to 125 degrees F [45 to 52 degrees C].

c. Warm—initial water temperature ranging from 87 to 111 degrees F [31 to 44 degrees C].

d. Cold—initial water temperature up to 86 degrees F [30 degrees C].

Part E—Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it (1) estimates that the amendment will have an annual effect on the national economy of \$100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed amendments to the Rule will not have such effects on the national

economy, on the cost of textile wearing apparel or piece goods, or on covered businesses or consumers. The Commission, however, requests comment on these effects.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses.¹⁰⁵ The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

Because the Care Labeling Rule covers manufacturers and importers of textile wearing apparel and certain piece goods, the Commission believes that any amendments to the Rule may affect a substantial number of small businesses. For example, unpublished data prepared by the U.S. Census Bureau under contract to the Small Business Administration ("SBA") show there are some 288 manufacturers of men's and boys' suits and coats (SIC Code 2311), more than 75% of which qualify as small businesses under applicable SBA size standards.¹⁰⁶ There are more than 1,000 establishments manufacturing women's and misses' suits, skirts, and coats (SIC Code 2337), most of which are small businesses. Other small businesses are likely covered by the Rule.

Nevertheless, the proposed amendments would not appear to have a significant economic impact upon such entities. The amendment to allow for labeling for professional wet cleaning simply provides an option that can be taken advantage of by businesses if they wish. The amendment to require that garments that can be safely washed at home be labeled for home washing will also not add significantly to the cost of compliance for most businesses because businesses will still only be required to provide instructions for one method of cleaning. It is true that those businesses that currently label garments for dry cleaning without investigating

whether they can be washed at home would have to make that determination. Most businesses, however, obtain information about the washability of the components of their garments from the sources of those components, and in many cases this simple inquiry will provide a reasonable basis for either a dry clean instruction or a home washing instruction. Although some businesses may have to engage in additional efforts, such as testing, to make this determination, it does not seem likely that this will be the case for most businesses. The Rule specifies that a reasonable basis can consist of various types of reliable evidence other than testing, and most businesses do not routinely test each garment style they manufacture or import. Nevertheless, the Commission specifically seeks comment regarding these amendments' potential impact on small businesses.

In addition, the Commission is proposing to amend one category of the types of evidence that can constitute a reasonable basis, i.e., evidence of testing of components of the garment, to clarify that the manufacturer or importer must also have reliable evidence that the garment as a whole can be cleaned as directed without damage. The Commission specifically has indicated that testing of the garment as a whole is not required in all instances, however; what is required is an evaluation of whether the garment as a whole can be successfully cleaned without damage in the manner recommended on the care label. The Commission views the amendment of this section of the Rule as simply a clarification of the fact that the manufacturer or importer must have a reasonable basis for the garment as a whole, not simply for the separate components.

Based on available information, the Commission certifies that amending the Care Labeling Rule as proposed will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments to accomplish the stated objectives. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

Part F—Paperwork Reduction Act

The Rule contain various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44

U.S.C. 3501 *et seq.*, Office of Management and Budget Control Number 3084–0103. As noted above, the Rule requires manufacturers and importers of textile wearing apparel to attach a permanent care label to all covered items and requires manufacturers and importers of piece goods used to make textile clothing to provide the same care information on the end of each bolt or roll of fabric. These requirements relate to the accurate disclosure of care instructions for textile wearing apparel. Although the Rule also requires manufacturers and importers to base their care instructions on reliable evidence, it does not contain any explicit recordkeeping requirements.

The Rule also provides a procedure whereby a member of the industry may petition the Commission for an exemption for products that are claimed to be harmed in appearance by the requirement for a permanent label, but only one petition, subsequently withdrawn, has been filed in recent years. A Notice soliciting public comment on extending the clearance for the Rule through December 31, 1999, was published in the *Federal Register* on August 26, 1996, 61 FR 43764. OMB has extended the clearance until December 31, 1999.

The proposed amendments would not increase the paperwork burden associated with these paperwork requirements. The Commission's proposed amendment regarding professional wet cleaning does not increase the paperwork burden because it is optional. Businesses that do not believe it is beneficial to label for professional wet cleaning are not required to do so. The proposed amendment of the Rule to require that any garment or fabric that can be washed at home be so labeled will not increase the burden for businesses because they will still need to label for only one method of cleaning.

The proposed amendment to change the numerical definition of the words "hot," "warm," or "cold," when they appear on care labels, and to add the term "very hot," will not add to the burden for businesses because they are already required to indicate the temperature in words and to have a reasonable basis for whatever water temperature they recommend. Moreover, businesses are not burdened with determining what temperature should accompany the words "very hot," "hot," "warm," or "cold"; the proposed amendment would provide the numerical temperature that should accompany each term. OMB regulations provide, at 5 CFR 1320.3(c)(2), that "the

¹⁰⁵ The RFA addresses the impact of rules on "small entities," defined as "small businesses," "small businesses," "small governmental entities," and "small (not-for-profit) organizations," 5 U.S.C. 601. The Rule does not apply to the latter two types of entities.

¹⁰⁶ SBA's revised small business size standards are published at 61 FR 3280 (Jan. 31, 1996).

public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within [the definition of collection of information.]"

Thus, the Commission concludes that the proposed amendments would not increase the paperwork burden associated with compliance with the Rule. To ensure that no significant paperwork burden is being overlooked, however, the Commission requests comments on this issue.

Part G—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Care Labeling Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

A. Requiring Instructions for Cleaning in Water

(1) Is there empirical evidence regarding whether consumers interpret a "dry clean" instruction to mean that a garment cannot be washed?

(2) How many domestic businesses provide professional wet cleaning, as defined in Part D.1. above, to the public on a regular basis?

(3) Should the Rule provide that, if an instruction for professional wet cleaning is provided, no other instruction need be given, or should a professional wet cleaning instruction only be allowed along with another cleaning instruction?

B. The Reasonable Basis Requirement of the Rule

(4) Would the amendment of Section 423.6(c)(3) of the Rule, which provides that a reasonable basis can consist of reliable evidence that each component of the garment can be cleaned according to the care instructions, to state, additionally, that a manufacturer or importer must possess a reasonable basis for the garment as a whole, clarify the reasonable basis requirements? Is any additional clarification needed?

C. Definitions of Water Temperatures

(5) How can consumers best be made aware of the approximate water temperatures in which they can safely and effectively wash their clothing? How can consumers best be made aware of how these temperatures correlate to the descriptors "hot," "warm," and "cold"? Do consumers need to determine the actual or approximate water temperature in their washing machines when they select "hot," "warm," and "cold" on their washing machine dials, and, if so, how could they easily and practically do this? Could consumers use this information to select the optimal temperature offered by their washing machines for clothes labeled for "hot," "warm," or "cold" washing?

(6) Would consumers understand an instruction to use "very hot" water? Could consumers use this information either to select the optimal temperature offered by their washing machines for clothes labeled for "very hot" washing or to determine that such clothes should be washed by a professional cleaner?

Authority: Section 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 423

Care labeling of textile wearing apparel and certain piece goods; Trade practices.

By direction of the Commission,
Commissioner Azcuenaga not participating.
Donald S. Clark,
Secretary.

[FR Doc. 98-12233 Filed 5-7-98; 8:45 am]
BILLING CODE 6750-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND-037-FOR, Amendment No. XXVI]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and

Reclamation Act of 1977 (SMCRA). The proposed amendment consists of proposed changes to North Dakota's revegetation policy document, "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments."

The changes pertain to (1) prime farmland woodland productivity standards, (2) woodland cover standards, (3) wetland standards, (4) woodland and shelterbelt standards for recreational lands, and (5) methods for sampling woodland cover. The amendment is intended to revise the North Dakota program to be consistent with SMCRA and the Federal regulations, and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., June 8, 1998. If requested, a public hearing on the proposed amendment will be held on June 2, 1998. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on May 26, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Federal Building, Room 2128, Casper, Wyoming 82601-1918, Telephone: 307/261-6550
James R. Deutsch, Director, Reclamation Division, Public Service Commission, State Capitol—600 E. Boulevard, Bismarck, North Dakota 58505-0480, Telephone: 701/328-2400.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261-6550; Internet: GPadgett@OSMRE.GOV

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be

found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated April 8, 1998, North Dakota submitted a proposed amendment (amendment number XXVI, administrative record No. ND-AA-05) (30 U.S.C. 1201 *et seq.*) North Dakota submitted the proposed amendment in response to the required program amendments at 30 CFR 934.16(aa) and (bb), and on its own initiative. The amendment consists of changes to North Dakota's revegetation success standards policy document. The rule changes included in this amendment pertain to: (1) prime farmland productivity standards, (2) woodland cover standards, (3) wetlands standards, (4) recreational land use standards, and (5) methods for sampling woodland cover.

Specifically, North Dakota proposes to modify prime farmland provisions to require that yield measurements be taken from reclaimed prime farmlands and productivity standards be met for at least 3 years before third stage (vegetation establishment) bond release can be granted. Changes are proposed to the woodland section to allow canopy and litter from woody plants to be included as part of total ground cover required for fourth-stage (final) bond release on reclaimed woodlands. Changes of the wetlands section of the revegetation document are proposed to allow more discretion in sampling prime wetlands and to reduce data requirements for reclaimed wetlands at the same time of final bond release. Changes to the other land uses section are proposed to require that applicable woodland shelterbelt standard be met for fourth stage bond release when woody planting are part of recreation land uses. Changes to the measurements section of the revegetation document are proposed to allow additional methods (the Daubermire frame and intercept line method) for sampling cover in woodlands.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., on May 26, 1998. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 29, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 98-12248 Filed 5-7-98; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH-FRL-6011-0]

National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts; Notice of Data Availability: Notice of Re-Opening of Comment Period and Public Meeting

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of re-opening of comment period and public meeting.

SUMMARY: This action provides notice of re-opening of the comment period for the National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts Notice of Data Availability published in the *Federal Register* on March 31, 1998 (63 FR 15674). USEPA solicits comment on all aspects of this Notice and the supporting record. EPA also solicits additional data and information that may be relevant to the issues discussed in the Notice. The comment period is being re-opened for an additional 30 days due to the unanticipated interest regarding the public health implications of the information presented in the Notice of Data Availability.

The Agency will hold a public meeting on May 26, 1998, to discuss the contents of the Notice. Additional details regarding the meeting are provided below.

DATES: The original comment period ended April 30, 1998. The re-opened

comment period will end on June 8, 1998. Comments should be postmarked or delivered by hand on or before June 8, 1998. Comments must be received or post-marked by midnight June 8, 1998.

ADDRESSES: Send written comments to DBP NODA Docket Clerk, Water Docket (MC-4101); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW; East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to ow-docket@epamail.epa.gov.

As noted above, EPA is holding a public meeting on May 26, 1998, from 9:00 a.m. to 4:00 p.m. to discuss the contents of the Notice of Data Availability. The public meeting will be held at the office of Resolve at 1255 23rd Street, NW; Suite 275; Washington DC 20037. In keeping with its open door policy for meetings with the public EPA is inviting all interested members of the public to attend this meeting, with seating on a first-come, first-served basis. Interested persons who wish to submit comments should do so in writing during the 30-day public comment period in the manner described in the previous sections of this Notice.

FOR FURTHER INFORMATION CONTACT: For general information contact the Safe Drinking Water Hotline, telephone (800) 426-4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time. For technical inquiries, contact Dr. Vicki Dellarco, Office of Science and Technology (MC 4304), or Mike Cox, Office of Ground Water and Drinking Water (MC 4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460; telephone (202) 260-7336 (Dellarco) or (202) 260-1445 (Cox).

Dated: May 5, 1998.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 98-12300 Filed 5-7-98; 8:45 am]

BILLING CODE 8660-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 258, 260, 261, 264, 265, 266, 270, and 279

[FRL-6011-1]

Notice of Intent To Reform Implementation of RCRA-Related Methods and Monitoring and Notice of Availability for Draft Update IVA of SW-846

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent and request for comment.

SUMMARY: The U.S. Environmental Protection Agency is providing notice of, and invites comment on, its intent to reform implementation of RCRA-related monitoring by formally adopting a performance-based measurement system (PBMS), by improving public outreach and communication, and by improving availability and distribution of the EPA-approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846. Implementation of PBMS will include a proposal to change certain RCRA regulations so that the exclusive use of SW-846 methods will no longer be required. EPA is also announcing the availability of, and requests comment on, "Draft Update IVA" to the Third Edition of SW-846, which contains new and revised methods. EPA also requests comment on deleting several individual methods and integrating them into two comprehensive methods, and removing Chapter Eleven from SW-846.

DATES: The Agency is opening the comment period for the limited purpose of obtaining information and views on the Agency's notice to reform implementation of RCRA-related monitoring, as described in this document, and on the methods and chapters of Draft Update IVA. Written comments must be submitted by June 22, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F-98-4TMA-FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, S.W., Washington, DC 20460. Courier deliveries of comments should be submitted to the RIC at the address listed below. Comments may also be submitted electronically through the Internet to: RCRA-docket@epamail.epa.gov.

Comments in electronic format should also be identified by the docket number: F-98-4TMA-FFFFF. Submit electronic comments as an ASCII file and avoid the use of special characters and any form of encryption. If possible, EPA's Office of Solid Waste (OSW) would also like to receive an additional copy of the comments on disk in Wordperfect 6.1 file format.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of the CBI must be submitted under separate cover to: Regina Magbie, RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, S.W., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RIC, located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, the public must make an appointment by calling 703-603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15 per page. The docket index and notice are available electronically. See the "Supplementary Information" section for information on accessing it.

Copies of Draft Update IVA and of the Third Edition of SW-846, as amended by Updates I, II, IIA, IIB, and III, are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 512-1800. The GPO document number for Draft Update IVA is 055-000-00593-1. Copies of the Third Edition integrated manual and its updates (including Draft Update IVA) are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (800) 553-NTIS (553-6847). The NTIS order number for Draft Update IVA is PB-98-111750.

In addition, a CD-ROM version of SW-846, Third Edition, as amended by Updates I through III, is available from NTIS. A CD-ROM of Draft Update IV is expected to be published in 1998.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703-412-9810 or TDD 703-412-3323.

For information on specific aspects of this document or the Update IVA methods, contact the Methods Information Communication Exchange (MICE) Service at 703-821-4690, e-mail

address: mice@lan828.ehsg.saic.com; or contact Kim Kirkland, Office of Solid Waste (5307W), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, 703-308-8855, e-mail address: kirkland.kim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

The docket index and the notice are available on the Internet.

Follow these instructions to access the information electronically:

From the World Wide Web (WWW), type WWW: <http://www.epa.gov/epaoswer/hazwaste/test/index.htm>

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I. Background

The EPA Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for monitoring conducted in support of subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended. Use of some of these methods is required by some of the hazardous waste regulations under subtitle C of RCRA. In other situations, SW-846 functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, to satisfy RCRA-related sampling and analysis requirements. All of these methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results.

SW-846 is a document that changes over time as new information and data are developed. Advances in analytical instrumentation and techniques are continually reviewed by the Agency's Office of Solid Waste (OSW) and periodically incorporated into SW-846

as updates to support changes in the regulatory program and to improve method performance and cost effectiveness. To date, EPA has finalized Updates I, II, IIA, IIB, and III to the SW-846 manual, and the updated and fully integrated manual contains approximately 3500 pages.

II. Notice of Agency Intent to Reform Implementation of RCRA-Related Monitoring

EPA is actively working to implement the President's program for reinventing government and reforming regulatory policy. In order to meet goals related to this important effort, EPA is considering reform of the implementation of monitoring under the RCRA Program. The goals include the timely and efficient promotion and approval of monitoring technologies, increased flexibility regarding regulatory compliance (i.e., flexibility in analytical method selection), and improvements in public communication (e.g., to educate the public regarding new efforts and to dispel any misconceptions regarding the use of SW-846).

The following subsections provide notice of and describe actions to be undertaken by EPA in an effort to meet the aforementioned goals.

A. Adoption of PBMS in the RCRA Program

On October 6, 1997, EPA published a Notice of Intent, notifying the public of the Agency's plans to implement performance-based measurement systems (PBMS) for environmental monitoring in all of its media programs to the extent feasible (see 62 FR 52098). Some members of the regulated community and Congress have suggested that EPA needs to change the way it specifies monitoring requirements in regulations and permits, in a manner which allows more flexibility and promotes the use of new technologies. EPA supports this position and is committed to incorporating the PBMS approach in media monitoring, to the extent feasible, including monitoring conducted in support of RCRA.

Basically, PBMS conveys "what" needs to be accomplished, but not prescriptively "how" to do it. EPA defines PBMS as a set of processes wherein the data quality needs, mandates or limitations of a program or project are specified, and serve as criteria for selecting appropriate methods to meet those needs in a cost-effective manner. Under a performance-based approach, the regulating entity will specify questions to be answered by the monitoring process, the decisions to

be supported by the data, the level of uncertainty acceptable for making the decisions, and the documentation to be generated to support the PBMS approach in the RCRA Program. The criteria may be published in regulations, technical guidance documents, permits, work plans, or enforcement orders. Data producers will demonstrate that a proposed sampling and analytical approach meets the monitoring criteria specified in the Quality Assurance Project Plans or Sampling and Analysis Plans for the individual projects or applications.

EPA believes that the PBMS approach will provide many benefits to both regulators and the regulated community when conducting monitoring for compliance with the RCRA regulations or for general information gathering. The benefits include flexibility in method selection, expedited approval of new and emerging technologies to meet monitoring requirements, and the development and use of cost-effective methods. Where PBMS is implemented, the regulated community will be able to select an appropriate analytical method for use in complying with EPA's RCRA regulations, including any method not found in EPA-published method manuals that is both cost-effective and meets the data quality objectives of the particular project for which it is being used.

It is EPA's intent that implementation of PBMS have the overall effect of both improving data quality and encouraging the advancement of analytical technologies. Therefore, EPA has been working at breaking down barriers to using new and innovative monitoring techniques, including requirements to use specific measurement methods or technologies when complying with some of the RCRA regulations. As part of EPA's efforts to implement PBMS, and thus reform monitoring under the RCRA Program, the following actions are planned:

- Incorporating the PBMS philosophy into new regulations.
- Establishing data quality and performance requirements for RCRA-required monitoring and including the requirements in the RCRA regulations, as necessary, to assist the regulated community in method selection and help assure successful PBMS implementation.
- Developing new sampling and testing methodologies which are compatible with the PBMS approach and encouraging use of those methods.
- Working with other regulating entities to help assure that the regulated community benefits from the flexibility of the PBMS approach at all regulating

levels of the RCRA Program, when practical and feasible.

—Fostering training and guidance to educate regulators and the regulated community regarding the flexibility of PBMS, the inherent flexibility of SW-846, and application of PBMS during RCRA-related monitoring.

—Removing some of the required uses for SW-846 methods from the RCRA regulations, where the Agency believes these requirements are not necessary (in order to facilitate PBMS implementation), and thus removing regulatory barriers to the use of new and innovative technologies for RCRA-related monitoring.

The Agency is interested in comments regarding PBMS implementation within the RCRA Program. In particular, EPA is interested in receiving public comment in response to the following questions:

1. Will EPA's implementation of PBMS provide adequate flexibility in method selection and facilitate the use of new technologies?
2. What Agency actions during the process of changing to PBMS within the RCRA Program would particularly assure a smooth transition (including actions related to public notice and the training of affected parties)?
3. What are the perceived technical and programmatic barriers to effective PBMS implementation in the RCRA Program and what Agency actions might be effective in removing these barriers?
4. What might be the economic impact (additional costs and cost savings) on the regulated community and other entities (e.g., small businesses) as a result of PBMS implementation in the RCRA Program?
5. What concerns exist regarding establishment of the data quality and performance requirements for RCRA-required monitoring that are necessary to adequately assist the regulated community in method selection and assure successful PBMS implementation?
6. How might the Agency best work with other regulating entities (e.g., states) to maximize the regulated community's benefits from the flexibility provided by the PBMS approach?
7. What concerns exist regarding the impact of PBMS implementation on state programs?
8. What concerns exist regarding the potential effect of PBMS on compliance monitoring and enforcement of RCRA-related regulatory and statutory requirements? What might be the positive or negative impacts of PBMS on compliance monitoring and enforcement, including regarding facility inspections?

9. What might be the environmental benefits that may be achieved through implementation of PBMS within the RCRA program?

B. Removing the Required Uses of SW-846 Methods From the RCRA Regulations

As noted in the previous section, EPA intends to implement PBMS to the extent feasible for RCRA-related monitoring. One barrier to successful PBMS implementation is the current requirement to use specific measurement methods or technologies in complying with regulations. Some RCRA regulations require the use of specific SW-846 methods or SW-846 in general. As explained below, EPA believes that some of these regulatory restrictions on methods may no longer be necessary and run counter to EPA's intent to adopt PBMS for RCRA-related monitoring.

Several of the regulations require the use of specific SW-846 methods for defining the particular regulatory parameters. Such requirements are referred to as "method-defined parameters." For example, 40 CFR 261.24(a) requires the use of SW-846 Method 1311, the Toxicity Characteristic Leaching Procedure, to determine if a waste exhibits the toxicity characteristic. In those cases, the method itself is the regulation and a method change or substitution cannot be accomplished without undermining the substantive requirement demonstrated by the method. These required uses of SW-846 methods are necessary.

Several other RCRA regulations require the use of SW-846 methods where those methods do not define the particular regulatory parameter. Most required uses of SW-846 methods fall under this category. An example is 40 CFR 260.22(d)(1)(i), which currently requires the use of only SW-846 methods in support of a petition to amend part 261 to exclude ("delist") a waste listed with code "T" in subpart D of 40 CFR part 261. EPA believes that these types of required uses of SW-846 methods may not be necessary.

As a result of the requirements to use SW-846 methods, all final SW-846 updates must be issued by rulemaking. This often delays the availability of needed new or revised methods. In addition, requiring the use of SW-846 methods discourages or impedes the use of new and innovative methods which are both cost-effective and capable of meeting data quality objectives.

Therefore, EPA is considering publishing in the near future a proposal in the *Federal Register* to remove

required uses of SW-846 methods from the RCRA subtitle C regulations for all purposes other than the determination of method-defined parameters. The Agency would take this action as part of its efforts to implement PBMS for RCRA-related monitoring. This action would also remove the need to engage in rulemaking for every SW-846 update and would allow the updates to be issued as revisions to a guidance document, which was what SW-846 was originally intended to be. This action should promote the timely incorporation of new and innovative technologies into the RCRA Program.

The Agency is interested in receiving comments at this time regarding its plan to remove certain required uses of SW-846 methods from the RCRA regulations, as described above. In particular, EPA is interested in public comment in response to the following questions:

1. Are any of the required uses of SW-846 methods in the RCRA regulations for other than method-defined parameters necessary?
2. What might be the economic impact on the regulated community and other entities (e.g., small businesses) as a direct result of the removal of certain required uses of SW-846 methods?
3. What concerns exist regarding implementation and enforcement of the allowed use of "other appropriate methods" in lieu of a specific SW-846 method for RCRA-related monitoring?
4. What concerns exist regarding the impact on state RCRA programs of the removal of certain required uses of SW-846 methods from the Federal RCRA regulations?

C. Changing the Approach for Releasing SW-846 Updates and Changing the Method Evaluation Process

Assuming that the rule to remove the required use of most SW-846 methods is finalized, as described in the previous section, EPA is considering the use of rulemaking only for those updates to SW-846 which include methods used for method-defined parameters. Rulemakings for those method updates will remain necessary because the required uses of those methods will remain in the RCRA regulations. All other SW-846 updates will be finalized more efficiently as guidance, such as by releasing a draft SW-846 update in conjunction with publication of a *Federal Register* document with an invitation for public comment before finalizing the update. The Agency may also use other means of update release and public notification to assure that reliable, innovative methods are

provided to the regulated community in a timely and cost-effective manner.

At a minimum, future procedures for releasing new SW-846 methods will include a critical method evaluation process, in order to continue to assure the publication of reliable methods for the RCRA Program. Peer input and review, internal and external, are already in place within the RCRA monitoring program to ensure that its products (e.g., new SW-846 methods) are based upon the best current knowledge from science and judged credible by those who deal with the products. Currently, the Agency receives peer input regarding any method considered for inclusion in SW-846 from an internal technical work group composed of national expert-level chemists and sometimes external experts, as required based on the necessary expertise. To augment this process, the Agency is considering an approach whereby additional relevant experts from outside the program are invited to evaluate new methods, through peer review or another advisory process. Such reviewers or advisors might include both internal (from within EPA) or external (outside EPA) peers of the program staff. The new process is expected to include a critical evaluation of a final new method, before its release, whereby formal comments are submitted and a review record created and maintained.

The Agency is interested in comments regarding possible alternative approaches to SW-846 update releases, if, as mentioned above, the rule to remove certain required uses of SW-846 methods is finalized. Specifically:

1. Should EPA continue to solicit public comments on SW-846 methods? Should the Agency use more timely means of releasing updates other than *Federal Register* documents and under what circumstances would such procedures be preferred or necessary?
2. What future mechanism should be used to assure adequate and quality review of methods? How could EPA best make use of peer review or another advisory process in the development of guidance and methods for RCRA-related monitoring?

D. Improving SW-846 Availability to the Public

In order to further promote the availability of RCRA-related monitoring technologies, EPA is considering an SW-846 distribution approach which offers more choices to the public for obtaining SW-846 methods. For most of the history of SW-846, the public received paper copies of SW-846 through a subscription service with the

Government Printing Office (GPO), or the public purchased paper copies of any portion of the manual at any time through the National Technical Information Service (NTIS).

In response to requests for electronic versions of the SW-846 methods, EPA published in 1996 a CD-ROM version of the manual for sale from NTIS. EPA and NTIS recently completed Version 2 of the SW-846 CD-ROM, which includes the manual as revised through Update III. The SW-846 CD uses Adobe Acrobat Reader with Search, supplied with the CD, to view the SW-846 methods and chapters. As explained below, EPA is also planning to offer all of the SW-846 methods and chapters on the Internet, without the Adobe Acrobat search feature.

The Internet is another means used today by EPA to distribute documents electronically to the general public. EPA has established a policy of placing official rulemakings and related background documents in support of the rulemakings on the Internet. The public has expressed an interest in receiving SW-846 documents for free on the Internet, and in response EPA has decided to make SW-846 available on the Internet in the near future. SW-846 is very large, both in number of documents and electronic file size (several methods contain many imported diagrams and flow charts). EPA is interested in determining whether the downloading of the entire manual from the Internet will be too timely or otherwise impractical or difficult for most Internet users. If the Agency determines that having the current SW-846 on the Internet provides a valuable service to the public, then EPA will make subsequent SW-846 updates, and other relevant testing protocols and documents, available on the Internet.

EPA is requesting comment on the effectiveness of the above means to distribute SW-846. The Agency is also interested in other ideas for making SW-846 methods more available. The Agency understands that making SW-846 available on the Internet without cost may alleviate the need to purchase paper versions of the manual.

E. Improving Public Outreach and Communication Regarding SW-846 and RCRA-Related Monitoring

The Agency currently uses many different means (e.g., *Federal Register* documents, training, and symposia) to inform the public of important activities within its programs. EPA is considering an approach which both maintains and supplements these means of public communication in a manner that

improves public outreach and communication regarding SW-846 and RCRA-related monitoring. EPA believes that improving public outreach will promote public preparedness and understanding regarding the reforms discussed in sections II.A through II.C. The Agency also believes that improved outreach efforts will help dispel any misconceptions regarding SW-846 and RCRA-related monitoring. The paragraphs to follow describe some of the communication and outreach efforts which the Agency is considering maintaining or expanding. EPA is interested in public comment regarding these efforts and suggestions for other means to improve public outreach and education.

The Agency remains open to the needs and interests of environmental laboratories and the regulated community and is interested in receiving comment on those needs and interests. Specifically, EPA wants to facilitate communication and work directly with the laboratories and the regulated community regarding the application of SW-846 methods. The Agency hopes that this increase in communication will both assure the correct interpretation of SW-846 methods and facilitate the resolution of any problems with method application. For example, EPA is currently working with the International Association of Environmental Testing Laboratories (IAETL) Section of the American Council of Independent Laboratories (ACIL) regarding the application of certain SW-846, Update III methods.

EPA also intends to continue to work with outside organizations or individuals in developing new methods for inclusion in SW-846. EPA developed and currently maintains a variety of partnerships with many sectors of the environmental analytical community (such as other Federal Agencies, private industry, State agencies, Consensus Standard Organizations, and academic institutions) to develop various analytical techniques for SW-846 such as microwave digestion, immunoassay, and field portable XRF methods, to name a few. For example, EPA is currently working with the private sector in the development of additional SW-846 screening methods for organic analytes.

As part of its efforts to increase the role of the scientific community in the implementation of monitoring under the RCRA and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Programs, EPA joined in a partnership with the American

Chemical Society to annually sponsor the Waste Testing and Quality Assurance (WTQA) Symposium. The symposium was initiated in 1985 as part of EPA's efforts to foster a partnership among EPA, the regulated community, the public, State regulatory agencies, and other members of the RCRA and CERCLA monitoring community. Attendees have an opportunity at the symposium to share new monitoring approaches and technologies and to contribute to discussions regarding regulatory issues and initiatives. The WTQA currently has three goals: (1) to serve as a forum for all interested parties to work together to solve RCRA and CERCLA environmental monitoring and waste characterization problems in a cost-effective manner, (2) to give State regulatory agencies and the public timely information about EPA activities that might affect their programs, and (3) to permit the members of the monitoring community an opportunity to exchange information and experiences in using both existing and new monitoring methods and approaches. Thus, the WTQA Symposium has always served as an effective means to educate the public and regulators regarding the inherent flexibility of SW-846 methods and to foster new technology development. It has also always served as an effective forum for feedback regarding successes and failures during monitoring and to disseminate knowledge regarding new and modified approaches and their performance in the real-world.

The Agency will continue to annually sponsor the WTQA Symposium. The WTQA Symposium will be held this year (1998) on July 13 through 15 at the Marriott Crystal Gateway in Arlington, Virginia. This year's symposium will focus on PBMS implementation and its potential impact on the regulated community and testing laboratories. EPA plans to hold issue workshops on PBMS and perhaps regarding other reforms to RCRA-related monitoring. Attendees will also learn about the newest laboratory methods associated with environmental monitoring and quality assurance/quality control (QA/QC), and about how changes regarding monitoring conducted in support of EPA's programs will affect their operations.

The Methods Information Communication Exchange (MICE) Service, or "Hotline," is another existing means that the Agency uses to communicate with the public regarding RCRA-related monitoring. The MICE Service provides timely answers to method-related questions and takes comments via the telephone, fax, or e-

mail. Chemists, ground-water specialists, and sampling experts who are knowledgeable in SW-846 procedures are directly available through the MICE Service to the public and regulators involved in RCRA-related monitoring. People interested in using the MICE Service call a voice mail answering service that is available 24 hours per day, 7 days a week. The caller can listen to several recorded messages on common SW-846 topics and subsequently leave a message containing a question regarding an SW-846 method or related topic. The messages are retrieved each working day and, after a review of the questions and any necessary research, the MICE Service provides a response.

The MICE Service also acts as an effective means to educate members of the public directly regarding inherent method flexibility and to clarify whether a method is required by a RCRA regulation. The service therefore can be used in the future to help assure the proper application of SW-846 methods from a PBMS standpoint. The MICE Service also documents existing misconceptions or issues regarding SW-846 methods, and thus serves as a first step in identification and resolution of some issues. Because of its unique and immediate means of public outreach and education, EPA will continue to sponsor the MICE Service. Instructions regarding contacting the MICE Service can be found under the section of this document entitled **FOR FURTHER INFORMATION CONTACT**.

The Agency also authors articles for publication in professional periodicals as a means to educate the public and regulators regarding news-worthy topics. The staff of EPA's Office of Solid Waste (OSW) frequently contribute articles to environmental magazines and journals regarding SW-846 and other topics related to monitoring in support of RCRA regulations. The articles educate and inform the public regarding new analytical or sampling methodologies, SW-846 and the regulatory process, the inherent flexibility of SW-846 methods, and the status of various updates to SW-846.

EPA will continue to use magazine and journal articles as a means to help dispel misconceptions by regulators and the regulated community regarding SW-846 flexibility and to clarify EPA's policy on method flexibility and PBMS. OSW has submitted articles which educate the public regarding the implementation of PBMS. Specifically, an article in "Environmental Lab" by two staff members of the Methods Team of OSW included two PBMS-related sections entitled "Method Flexibility

and the Performance-Based Measurement System (PBMS)" and "Method Flexibility and PBMS Initiatives." Other publications to which OSW submits articles include the bi-monthly "Environmental Testing and Analysis," which includes a new EPA-OSW Methods Update feature, and the bi-weekly "Environmental Laboratory Washington Report."

As another means to provide timely communications to interested parties, EPA presently lectures and conducts presentations in both this country and abroad regarding innovative analytical technologies, new analytical strategies and issues regarding RCRA-related monitoring. EPA also provides training courses regarding monitoring under the RCRA Program. The training course entitled "Analytical Strategy for the RCRA Program: A Performance-Based Approach" is currently taught by OSW staff to Regional, State and symposium (e.g., WTQA) audiences with the intent to clarify the monitoring flexibility allowed by SW-846 methods and the RCRA regulations and to promote and explain PBMS. Basically, the training course explains: (1) the regulatory aspects of RCRA analyses; (2) the role of SW-846, its organization and method format, and its correct application for RCRA-related monitoring; and (3) the factors to be considered in the selection of appropriate analytical methods, especially within the context of a PBMS approach.

EPA is considering increasing the availability of Agency-sponsored training, lectures, and presentations to the public, Regions, and States regarding SW-846 and other topics, such as PBMS, related to monitoring conducted in support of RCRA regulations. EPA is also planning to provide training regarding the implementation of PBMS to the Regions and other affected entities. In the future, EPA hopes to provide RCRA-related training to the regulated community both in person and via video or satellite broadcast.

Finally, EPA intends to use press releases and/or memoranda to announce time-sensitive milestones related to SW-846 and monitoring under the RCRA Program. For example, EPA is issuing a press release to announce the availability of Draft Update IVA of SW-846, referring the readers to this document. In addition, assuming the rule to remove certain required uses of SW-846 methods from the RCRA regulations is finalized (see section II.B above), the Agency is considering the use of workshops, peer review panels, and/or public meetings as mechanisms for disseminating information regarding

new and revised SW-846 methods and chapters.

The Agency is interested in comments from the public on all of the above means (e.g., the WTQA Symposium, MICE Service, the use of journal articles, and training courses) for improving public outreach and communication regarding RCRA-related methods and monitoring. For example, the Agency is interested in whether the public believes the WTQA Symposium would benefit from merging with other EPA programs, and is also interested in suggestions for improving the WTQA Symposium. EPA would like comments regarding increasing the effectiveness and availability of RCRA-related information and training for the public, such as through video or satellite broadcast as mentioned above.

III. Availability of Draft Update IVA and Invitation for Public Comment

This document also announces the availability of Draft Update IVA to SW-846 and invites public comment on its content. EPA is publishing this document for informational purposes only, and is not at this time formally proposing to revise SW-846 by adding Update IVA or to incorporate the update in the RCRA regulations for required uses. Therefore, this document will not be used as a basis for a final rule to update SW-846 or revise any regulation. EPA is attempting to make these Agency-reviewed methods available to the public early, for guidance purposes (i.e., the methods can be used in all applications for which the use of SW-846 methods is not mandatory and for which they are effective). In addition, as noted in section II above and explained further at the end of this section, if the rule to remove certain requirements to use SW-846 methods is finalized, the Agency will not have to finalize certain SW-846 updates (including Draft Update IVA) through the rulemaking process.

The Draft Update IVA methods have passed EPA's Technical Workgroup review, but have not been promulgated for inclusion in SW-846 and the RCRA regulations. As noted in section II of this document, several regulations under subtitle C of RCRA currently require that certain SW-846 methods be employed. Any reliable analytical method may be used to meet other requirements in 40 CFR parts 260 through 270. The methods listed in Draft Update IVA fall in the category of "any reliable method." They may currently be used in all applications for which the use of SW-846 methods is not mandatory. The methods of Draft Update IVA, however, cannot be used

for compliance with required uses of SW-846 methods. The Agency also cautions the regulated community to obtain permission from the appropriate regulating entity, if required under State or local regulations, before using these methods for non-mandatory applications.

Table 1 provides a listing of the fifteen revised SW-846 methods and five revised chapters or other SW-846 documents found in Draft Update IVA. Table 1 also identifies those parts of each method or chapters on which the Agency is interested in receiving public comment. EPA is interested in comments from the public on the identified parts because some or all of their text represents significant revisions from the promulgated version of the document currently in SW-846, as amended by Updates I through III.

(Note: Unless otherwise indicated as former sections, the section numbers in Table 1 refer to the section numbers in the Draft Update IVA version of the method.)

Significant revisions include text deletions, additions, or other revisions that change a method's procedure or the intent or meaning of the text. Significant revisions do not include typographical or grammatical corrections, table reformatting (where the information is not changed), logical outgrowths of other revisions (e.g., the renumbering of sections to account for the addition of a new section), or other edits that are not substantive changes to text intent or the analytical procedure (e.g., the replacement of "Teflon" with "PTFE"). Nonsignificant revisions also include the movement of otherwise unchanged information to another appropriate location in the method. For example, the order of some of the equipment listed in section 4.0 of Method 8321B is different from that found in section 4.0 of Method 8321A; however, much of the equipment itself has not changed. Therefore, Table 1 lists only those parts of section 4.0 of Method 8321B which have been significantly revised (e.g., new equipment specifications). The Agency will, however, consider comments on the reordering of otherwise unchanged information in the revised methods of Update IVA.

Table 2 provides a listing of the thirteen new SW-846 methods found in Draft Update IVA. Since these are new methods, EPA is interested in comments on the content of all sections or parts of the new methods.

Finally, Table 3 identifies the forty-four methods to be integrated or deleted from SW-846 as part of Draft Update IVA. All but one of these methods are individual flame or graphite furnace

atomic absorption methods. The exception is Method 3810, "Headspace", an obsolete headspace screening method which has been replaced by Method 5021, "Volatile Organic Compounds in Soils and Other Solid Matrices Using Equilibrium Headspace Analysis." The Agency expects to delete Method 3810 because it is no longer needed in SW-846 because Method 5021 was recently added to SW-846 as part of Final Update III. Method 5021 can be used for

both quantitative analysis and screening applications.

The individual atomic absorption methods are being deleted as part of Draft Update IVA because their inclusion is redundant given that their procedures and target analytes have been fully integrated into revised Method 7000B (see Table 1) or new Method 7010 (see Table 2), the general methods for the techniques. The Agency is interested in comments on these method integrations and deletions. As

mentioned earlier in section II of this notice, several regulations under subtitle C of RCRA currently require that certain SW-846 methods be employed. Therefore, the methods contained in Draft Update IVA, cannot be used for compliance with required uses of SW-846 methods and remain in effect until the rule to remove the required use of SW-846 methods has been promulgated.

TABLE 1.—REVISED METHODS AND CHAPTERS

Method No.	Method or chapter title	Sections or parts open for comment
	Table of Contents	All parts.
	Chapter Two	All parts.
	Chapter Three	All parts.
	Chapter Four	All parts.
	Chapter Five	All parts.
3015A	Microwave Assisted Acid Digestion of Aqueous Samples and Extracts.	All parts.
3051A	Microwave Assisted Acid Digestion of Sediments, Sludges, Soils, and Oils.	All parts.
3535A	Solid-Phase Extraction (SPE)	All parts.
3545A	Pressurized Fluid Extraction (PE)	1.1-1.4; 2.1; 2.2; 3.3; 5.3.4; 5.4.2; 5.4.3; 5.5.4; 5.5.6; 7.1.1; 7.1.3; 7.1.5; 7.1.6; 7.3; 7.5; 7.8.2; 7.9; 8.4; 9.4; 10.
6020A	Inductively Coupled Plasma—Mass Spectrometry	All parts.
7000B	Flame Atomic Absorption Spectrophotometry	All parts.
7471B	Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique).	7.1.
8081B	Organochlorine Pesticides by Gas Chromatography	1.10; 2.2; 7.1; 7.3.1.2; 7.7.2; 7.7.3; 7.9.2; 7.10.2; 9.1; 9.5-9.8; 10; Tables 12, 15, and 16; removal of former sec. 7.7.6.
8082A	Polychlorinated Biphenyls (PCBs) by Gas Chromatography	2.2; 2.3; 6.2; 7.1.1; 7.1.2; 7.4.1; 7.4.2; 7.4.3.1-7.4.3.3; 7.4.8; 7.4.9; 7.6.10; 7.9.2; 7.10.2; 8.3.1; 8.3.2; 9.5; 9.5.1-9.5.3; 9.6; 10; Tables 11-16; removal of former secs. 7.10.4, 7.10.5, 8.3.1.1 and 8.3.1.2.
8141B	Organophosphorus Compounds by Gas Chromatography	1.1; 1.4; 2.1-2.3; 3.5; 5.1; 7.1; 7.1.1; 7.1.2; 7.2.2; 7.2.3; 7.5.1; 7.8; 7.8.3; 7.8.4; 7.8.1-7.8.3; 8.1-8.3; 8.3.1-8.3.3; 8.4; 8.4.1-8.4.6; 8.5; 8.6; 9.3; 9.4; 10; Table 4; Tables 11-14; removal of former secs. 8.3.3.1, 8.3.3.1.1-8.3.3.1.5, 8.3.3.2, and 8.7, and 8.7.1-8.7.5.
8270D	Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS).	1.1; 1.2; 1.4.7; 7.3.6; 7.5.4; 7.5.4.1; 7.5.4.2; 9.8; 9.9; 10; Tables 16, 17, and 18.
8280B	Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans by High Resolution Gas Chromatography/Low Resolution Mass Spectrometry (HRGC/LRMS).	2.3.1; 2.3.2; 7.0; 7.3.6; 7.4.6; 7.5.4.4; 10; Table 1 (footnote).
8290A	Polychlorinated Dibenzo-dioxins (PCDDs) and Polychlorinated Dibenzofurans (PCDFs) by High-Resolution Gas Chromatography/High-Resolution Mass Spectrometry (HRGC/HRMS).	1.1; 2.3; 4.2; 4.2.1; 4.2.2; 4.3.2.1; 5.2.7; 5.4; 5.5; 5.6; 5.8; 6.4; 6.6; 6.7.1; 7.1; 7.1.1; 7.4.1.4; 7.4.2.2; 7.4.3.6; 7.4.5.3; 7.4.6.1; 7.4.6.5; 7.5.1; 7.5.1.4; 7.5.3.1-7.5.3.6; 7.7.1.4.3; 7.7.1.4.4; 7.7.4.4; 7.8.3; 7.8.4.3.1; 7.9.3; 7.9.5.2; 7.9.6; 8.3.1; 8.3.3; 9.1-9.6; 10; Table 7; Tables 12-17; Figures 1-6; removal of former secs. 5.6.1, 5.6.2, and 8.3.4.2.1.
8321B	Solvent-Extractable Nonvolatile Compounds by High Performance Liquid Chromatography/Thermo-spray/Mass Spectrometry (HPLC/TS/MS) or Ultraviolet (UV) Detection.	1.1; 1.2; 1.4; 1.5; 2.1.3; 2.1.4; 2.2.1; 2.2.3; 3.3; 3.4.2-3.4.5; 4.1.2; 4.1.3.2; 4.3; 4.3.1; 4.6.1-4.6.4; 4.7; 4.8; 4.10; 4.19; 5.8; 5.9; 5.11; 5.12; 5.16; 7.1; 7.1.3; 7.2.1.6; 7.3; 7.5.2.1; 7.5.2.2; 7.5.3.2; 7.6.1; 7.6.3; 7.7; 7.8.2.1; 7.8.2.2; 7.8.2.5; 7.8.3; 7.9; 7.9.1; 7.9.4; 7.10.2; 7.10.3; 7.11.1; 9.4; 10; Table 18; removal of former secs. 7.5.2.8, 8.2.4, 9.2, 9.2.1, and 9.2.2; removal of former Tables 3, 10, 13, 14, 17, 18, and 19.
8330A	Nitroaromatics and Nitramines by High Performance Liquid Chromatography (HPLC).	1.2; 2.3; 4.2.4; 7.1; 7.1.3; 7.3.2; 7.3.3; 7.4.2; 8.1; 8.2; 8.3; 8.4; 8.4.1-8.4.4; 8.5; 8.6; 9.7-9.9; 10; Table 2 (footnote), Tables 9-11; removal of former secs. 4.4 and 4.4.1.

TABLE 2.—NEW METHODS

Method No.	Method title
3562	Supercritical Fluid Extraction of Polychlorinated Biphenyls (PCBs) and Organochlorine Pesticides.
4500	Mercury in Soil by Immunoassay.
4670	Triazine Herbicides as Atrazine in Water by Quantitative Immunoassay.
6200	Field Portable X-Ray Fluorescence Spectrometry for the Determination of Elemental Concentrations in Soil and Sediment.
6500	Dissolved Inorganic Anions in Aqueous Matrices by Capillary Ion Electrophoresis.
6800	Elemental and Speciated Isotope Dilution Mass Spectrometry.
7010	Graphite Furnace Atomic Absorption Spectrophotometry.
7473	Mercury in Solids and Solutions by Thermal Decomposition, Amalgamation, and Atomic Absorption Spectrophotometry.
7474	Mercury in Sediment and Tissue Samples by Atomic Fluorescence Spectrometry.
9000	Determination of Water in Waste Materials by Karl Fischer Titration.
9001	Determination of Water in Waste Materials by Quantitative Calcium Hydride Reaction.
9074	Turbidimetric Screening Method for Total Recoverable Petroleum Hydrocarbons in Soil.
9216	Potentiometric Determination of Nitrite in Aqueous Samples with Ion-selective Electrode.

TABLE 3.—DELETED METHODS

Method No.	Method title
3810 ^a	Headspace.
7020 ^b	Aluminum (Atomic Absorption, Direct Aspiration).
7040 ^b	Antimony (Atomic Absorption, Direct Aspiration).
7041 ^c	Antimony (Atomic Absorption, Furnace Technique).
7060A ^c	Arsenic (Atomic Absorption, Furnace Technique).
7080A ^b	Barium (Atomic Absorption, Direct Aspiration).
7081 ^c	Barium (Atomic Absorption, Furnace Technique).
7090 ^b	Beryllium (Atomic Absorption, Direct Aspiration).
7091 ^c	Beryllium (Atomic Absorption, Furnace Technique).
7130 ^b	Cadmium (Atomic Absorption, Direct Aspiration).
7131A ^c	Cadmium (Atomic Absorption, Furnace Technique).
7140 ^b	Calcium (Atomic Absorption, Direct Aspiration).
7190 ^b	Chromium (Atomic Absorption, Direct Aspiration).

TABLE 3.—DELETED METHODS—Continued

Method No.	Method title
7191 ^c	Chromium (Atomic Absorption, Furnace Technique).
7200 ^b	Cobalt (Atomic Absorption, Direct Aspiration).
7201 ^c	Cobalt (Atomic Absorption, Furnace Technique).
7210 ^b	Copper (Atomic Absorption, Direct Aspiration).
7211 ^c	Copper (Atomic Absorption, Furnace Technique).
7380 ^b	Iron (Atomic Absorption, Direct Aspiration).
7381 ^c	Iron (Atomic Absorption, Furnace Technique).
7420 ^b	Lead (Atomic Absorption, Direct Aspiration).
7421 ^c	Lead (Atomic Absorption, Furnace Technique).
7430 ^b	Lithium (Atomic Absorption, Direct Aspiration).
7450 ^b	Magnesium (Atomic Absorption, Direct Aspiration).
7460 ^b	Manganese (Atomic Absorption, Direct Aspiration).
7461 ^c	Manganese (Atomic Absorption, Furnace Technique).
7480 ^b	Molybdenum (Atomic Absorption, Direct Aspiration).
7481 ^c	Molybdenum (Atomic Absorption, Furnace Technique).
7520 ^b	Nickel (Atomic Absorption, Direct Aspiration).
7521 ^c	Nickel (Atomic Absorption, Furnace Method).
7550 ^b	Osmium (Atomic Absorption, Direct Aspiration).
7610 ^b	Potassium (Atomic Absorption, Direct Aspiration).
7740 ^b	Selenium (Atomic Absorption, Furnace Technique).
7760A ^b	Silver (Atomic Absorption, Direct Aspiration).
7761 ^c	Silver (Atomic Absorption, Furnace Technique).
7770 ^b	Sodium (Atomic Absorption, Direct Aspiration).
7780 ^b	Strontium (Atomic Absorption, Direct Aspiration).
7840 ^b	Thallium (Atomic Absorption, Direct Aspiration).
7841 ^c	Thallium (Atomic Absorption, Furnace Technique).
7870 ^b	Tin (Atomic Absorption, Direct Aspiration).
7910 ^b	Vanadium (Atomic Absorption, Direct Aspiration).
7911 ^c	Vanadium (Atomic Absorption, Furnace Technique).
7950 ^b	Zinc (Atomic Absorption, Direct Aspiration).
7951 ^c	Zinc (Atomic Absorption, Furnace Technique).

^a—Replaced by Method 5021

^b—Integrated into Method 7000B

^c—Integrated into Method 7010

IV. Basis for Making Draft Update IVA Available and Agency Plans for Finalizing the Update

For previous updates to SW-846, EPA published a notice of proposed rulemaking in the *Federal Register*, requested public comment, and subsequently published a notice of final rulemaking. This process was necessary because, as noted above, the use of some of these methods is required by some of the hazardous waste regulations under subtitle C of RCRA. However, for Draft Update IVA, EPA is initially publishing a document of its availability and inviting public comment on the Agency-reviewed methods and chapters.

EPA believes that Draft Update IVA will be valuable to the public as guidance, and thus has taken today's action to expedite its availability, instead of delaying distribution of this update to coincide with publication of a notice of proposed rulemaking. EPA believes this approach will allow introduction of Draft Update IVA methods to the public in a more timely manner than the proposal process, without compromising the method review and approval process. EPA also believes this approach will allow greater flexibility in the use of guidance methods, for Regional, State, and local agencies as well as industry; and will allow the regulated community an opportunity to participate early in the method review process with the submittal of comments on the draft methods. The Agency will consider all comments received on Draft Update IVA.

As noted in section II of this document, the methods in SW-846 are currently required by some of the RCRA regulations. As also explained in section II, EPA is planning to formally propose in the *Federal Register* the removal from the RCRA regulations certain requirements to use SW-846 methods. The Agency notes that none of the methods in Draft Update IVA are required for use in defining the hazardous waste characteristics. EPA expects that the methods and chapters of Draft Update IVA will remain in their current Agency-reviewed form until the SW-846 deregulatory rule is finalized. EPA hopes to then revise Draft Update IVA, as appropriate, in response to public comment and plans to publish a document of availability in the *Federal Register* for the final update. The publication of a proposed and final rule in the *Federal Register* for Update IVA will not be necessary once the deregulatory rule has been finalized. Should the SW-846 deregulatory rule be proposed but not finalized in a timely

manner and should EPA determine that promulgated versions of the Update IVA methods are needed for compliance purposes, EPA will publish a notice of proposed rulemaking and a final rulemaking for the update.

V. Request for Comment on the Removal of Chapter Eleven From SW-846

The hazardous waste management regulations for permitted facilities (40 CFR 264) were promulgated in July 1982 under subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, and the Hazardous and Solid Waste Amendments of 1984 (HSWA). Subpart F under these regulations, *Releases From Solid Waste Management Units*, sets forth performance standards for ground-water monitoring systems at permitted hazardous waste land disposal facilities. A manual was prepared by the Office of Solid Waste to provide guidance for implementing the ground-water monitoring regulations for regulated units contained in 40 CFR 264, subpart F, and the permitting standards of 40 CFR 270. In 1986, EPA released two documents relating to RCRA ground-water monitoring, specifically the "RCRA Groundwater Monitoring Technical Enforcement Guidance" (TEG) and Chapter Eleven of SW-846, entitled "Groundwater Monitoring." In November 1992, the Agency's Groundwater Monitoring Program revised the technical procedures for TSDF compliance with ground-water monitoring requirements and documented the procedures in a 1992 document entitled "RCRA Groundwater Monitoring Draft Technical Guidance." However, the 1986 version of Chapter Eleven of SW-846 was not updated at that time in conjunction with the 1992 ground-water monitoring guidance, and thus the chapter remains out of date. At the present time, most of the regulated community is using the ground-water monitoring guidance issued in 1992 as the standard for RCRA ground-water monitoring compliance. Therefore, EPA would like to remove the outdated Chapter Eleven of SW-846, and replace it with a referral to the most current version of the ground-water monitoring guidance originally issued by the Office of Solid Waste in 1992. The Agency is requesting comment on this approach. EPA is currently updating the November 1992 ground-water monitoring guidance. However, Chapter 11 will remain in SW-846 until the rule to remove the required use of SW-846 has been finalized.

Dated: April 24, 1998.

Matthew Hale,
Acting Director, Office of Solid Waste.
[FR Doc. 98-12309 Filed 5-7-98; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 208, 213, 216, 217, 219, 223, 225, 237, 242, 246, 247, and 253

[DFARS Case 97-D306]

Defense Federal Acquisition Regulation Supplement; Simplified Acquisition Procedures

AGENCY: Department of Defense (DoD).
ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend Defense Federal Acquisition Regulation Supplement (DFARS) guidance on simplified acquisition procedures for consistency with the reorganization of simplified acquisition procedures in the Federal Acquisition Regulation (FAR), and for consistency with FAR amendments that implemented provisions of the Federal Acquisition Streamlining Act of 1994.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 7, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 97-D306 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Susan Schneider, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revised DFARS Part 213 to conform to the revision of FAR Part 13 that was published as Item IV of Federal Acquisition Circular 97-03 on December 9, 1997 (62 FR 64916). The rule also amends other parts of the DFARS for consistency with FAR amendments that implemented provisions of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) pertaining to simplified acquisition procedures (e.g., replacement of the term "small purchase" with the term "simplified acquisition"). The FAR amendments

were published as Item III of Federal Acquisition Circular 90-29 (60 FR 34741, July 3, 1995) and Item II of Federal Acquisition Circular 90-40 (61 FR 39189, July 26, 1996).

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily consists of conforming DFARS amendments and internal Government procedures to implement existing FAR guidance pertaining to purchases at or below the simplified acquisition threshold. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97-D306 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204, 208, 213, 216, 217, 219, 223, 225, 237, 242, 246, 247, and 253

Government procurement.
Michele Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204, 208, 213, 216, 217, 219, 223, 225, 237, 242, 246, 247, and 253 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 204, 208, 213, 216, 217, 219, 223, 225, 237, 242, 246, 247, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.670-2 is amended by revising paragraph (c) to read as follows:

204.670-2 Reportable contracting actions.

(c) Summarize on the monthly DD Form 1057, in accordance with the instruction in 253.204-71(a)(3), contracting actions that support a

contingency operation as defined in 10 U.S.C. 101(a)(13), or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7), and that obligate or deobligate funds exceeding \$25,000 but not exceeding \$200,000.

204.804-1 [Amended]

3. Section 204.804-1 is amended in paragraph (2) by removing the phrase "small purchase" and inserting in its place the phrase "simplified acquisition".

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

4. Section 208.405-2 is revised to read as follows:

208.405-2 Order placement.

(1) When ordering from schedules, ordering offices—
(i) May use DD Form 1155, Order for Supplies or Services, to place orders for—
(A) Commercial items at or below the simplified acquisition threshold; and
(B) Other than commercial items at any dollar value (see 213.307);
(ii) Shall use SF 1449, Solicitation/Contract/Order for Commercial Items, to place orders for commercial items exceeding the simplified acquisition threshold (see FAR 12.204); and
(iii) May use SF 1449 to place orders for other than commercial items at any dollar value.

(2) Schedule orders may be placed orally if—
(i) The Contractor agrees to furnish a delivery ticket for each shipment under the order (in the number of copies required by the orders office). The ticket must include the—
(A) Contract number;
(B) Order number under the contract;
(C) Date of order;
(D) Name and title of person placing the order;
(E) Itemized listing of supplies or services furnished; and
(F) Date of delivery or shipment; and
(ii) Invoicing procedures are agreed upon. Optional methods of submitting invoices for payment are permitted, such as—
(A) An individual invoice with a receipted copy of the delivery ticket;
(B) A summarized monthly invoice covering all oral orders made during the month, with receipted copies of the delivery tickets (this option is preferred if there are many oral orders); or
(C) A contracting officer statement that the Government has received the supplies.

(3) For purchases where cash payment is an advantage, the use of imprest

funds in accordance with 213.305 is authorized when—

(i) The order does not exceed the threshold at FAR 13.305-3(a); and
(ii) The contractor agrees to the procedure.

(4) The Governmentwide commercial purchase card may be used to place schedule orders in accordance with agency procedures.

5. Section 208.7204 is amended by revising paragraph (a) to read as follows:

208.7204 Procedures.

(a) Except as otherwise provided in FAR or DFARS, planned producers shall be solicited for all acquisitions of their planned items, when the acquisition exceeds the simplified acquisition threshold.

6. Section 208.7305 is amended by revising paragraph (a)(3) to read as follows:

208.7305 Contract clause.

(a) * * *
(3) For acquisitions at or below the simplified acquisition threshold.

7. Part 213 is revised to read as follows:

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 213.2—Actions at or Below the Micro-Purchase Threshold

Sec.
213.270 Use of the Governmentwide commercial purchase card.

Subpart 213.3—Simplified Acquisition Methods

213.302 Purchase orders.
213.302-3 Obtaining contractor acceptance and modifying purchase orders.
213.302-5 Clauses.
213.303 Blanket purchase agreements (BPAs).
213.303-5 Purchases under BPAs.
213.305 Imprest funds and third party drafts.
213.305-1 General.
213.305-3 Conditions for use.
213.306 SF 44, Purchase Order—Invoice—Voucher.
213.307 Forms.

Subpart 213.4—Fast Payment Procedure

213.402 Conditions for use.

Authority: 48 U.S.C. 421 and 48 CFR Chapter 1.

Subpart 213.2—Actions at or Below the Micro-Purchase Threshold

213.270 Use of the Governmentwide commercial purchase card.

(a) Do not award a purchase order or other contract in an amount at or below the micro-purchase threshold for a

commercial item unless a written determination is made by a member of the Senior Executive Service, a flag officer, or a general officer, that—
(1)(i) The source or sources available for the supply or service do not accept the Governmentwide commercial purchase card (or other methods of purchase specified in paragraphs (c)(1) through (c)(3) of this section; and

(ii) The contracting activity is seeking a source that accepts the Governmentwide commercial purchase card (or other methods of purchase specified in paragraphs (c)(1) through (c)(3) of this section); or
(2) The nature of the supply or service necessitates use of a purchase order or other contract so that terms and conditions can be specified (e.g., purchase of safety critical parts that require Government source inspection).

(b) To prevent mission delays, authority to make the written determination specified in paragraph (a) of this section may be delegated to the level of the senior local commander or director.
(c) The written determination specified in paragraph (a) of this section is not required when—
(1) Placing an order or call against an existing contract or agreement;
(2) Using a purchase method, other than a purchase order, authorized by FAR part 13;
(3) Awarding a purchase order or other contract that uses the Governmentwide commercial purchase card as the method of payment; or
(4) Awarding a purchase order or other contract that will be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) The requirements of this section do not preclude the use of required sources of supply.

Subpart 213.3—Simplified Acquisition Methods

213.302 Purchase orders.

213.302-3 Obtaining contractor acceptance and modifying purchase orders.

(1) Require written acceptance of purchase orders for classified acquisitions.
(2) Normally, unilateral modifications (see FAR 43.103) will be used for—
(i) No-cost amended shipping instructions if—
(A) The amended shipping instructions modify a unilateral purchase order; and
(B) The contractor agrees orally or in writing; and

(ii) Any change made before work begins if—
(A) The change is within the scope of the original order;

(B) The contractor agrees;

(C) The modification references the contractor's oral or written agreement; and

(D) Block 13D of Standard Form 30, Amendment of Solicitation/Modification of Contract, is annotated to reflect the authority for issuance of the modification.

(3) A supplemental agreement converts a unilateral purchase order to a bilateral agreement. If not previously included in the purchase order, incorporate the clause at 252.243-7001, Pricing of Contract Modifications, in the Standard Form 30, and obtain the contractor's acceptance by signature on the Standard Form 30.

213.302-6 Clauses.

Use the clause at 252.243-7001, Pricing of Contract Modifications, in all bilateral purchase orders.

213.303 Blanket purchase agreements (BPAs).

213.303-5 Purchases under BPAs.

(b) Individual purchases for subsistence may be made at any dollar value; however, the contracting officer shall satisfy the competition requirements of FAR part 6 for any action not using simplified acquisition procedures.

213.305 Imprest funds and third party drafts.

213.305-1 General.

(1) As a matter of policy, DoD does not support the use of cash payments from imprest funds. This policy is based, in part, on the mandatory electronic funds transfer requirements of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134).

(2) On a very limited basis, installation commanders and commanders of other activities with contracting authority may be granted authority to establish imprest funds and third party draft (accommodation check) accounts.

(3) Third party draft accounts, when established in accordance with DoD 7000.14-R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures—

(i) Provide an alternative to cash and U.S. Treasury checks when the use of Government purchase or travel cards is not feasible;

(ii) Eliminate the need for cash on hand for imprest fund transactions; and

(iii) Give issuing activities the flexibility to issue low-volume and low-dollar value payment on site.

213.305-3 Conditions for use.

(d)(i) Use of imprest funds—

(A) Must comply with the conditions stated in—

(1) DoD 7000.14-R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures; and
(2) The Treasury Financial Manual, Part 4, Chapter 3000, Section 3020; and

(B) Except as provided in paragraph (d)(ii) of this subsection, requires approval by the Director for Financial Commerce, Office of the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller).

(ii) Imprest funds are authorized for use without further approval for—

(A) Overseas transactions at or below the micro-purchase threshold in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7); and

(B) Classified transactions.

213.306 SF 44, Purchase Order-Invoice-Voucher.

(a)(1) The micro-purchase limitation applies to all purchases, except that purchases not exceeding the simplified acquisition threshold may be made for—

(A) Aviation fuel and oil;

(B) Overseas transactions by contracting officers in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7); and

(C) Transactions in support of intelligence and other specialized activities addressed by part 2.7 of Executive Order 12333.

213.307 Forms.

(a) If SF Form 1449 is not used, use DD Form 1155 in accordance with paragraph (b)(i) of this section.

(b)(i) Use DD Form 1155, Order for Supplies or Services, for purchases made using simplified acquisition procedures.

(A) The DD Form 1155 serves as a—
(i) Purchase order or blanket purchase agreement;

(ii) Delivery order or task order;

(iii) Receiving and inspection report;

(iv) Property voucher;

(v) Document for acceptance by the supplier; and

(vi) Public voucher, when used as—
(A) A delivery order;

(B) The basis for payment of an invoice against blanket purchase agreements or basic ordering agreements when a firm-fixed-price has been established; or

(C) A purchase order for acquisitions using simplified acquisition procedures.

(B) The DD Form 1155 is also authorized for use for—

(i) Orders placed in accordance with FAR Subparts 8.4, 8.6, 8.7, and 16.5; and

(ii) Classified acquisitions when the purchase is made within the United States, its possessions, and Puerto Rico. Attach the DD Form 254, Contract Security Classification Specification, to the purchase order.

(ii) Do not use Optional Form 347, Order for Supplies or Services, or Optional Form 348, Order for Supplies or Services Schedule-Continuation.

(iii) Use Standard Form 30, Amendment of Solicitation/

Modification of Contract to—

(A) Modify a purchase order; or

(B) Cancel a unilateral purchase order.

Subpart 213.4—Fast Payment Procedure

213.402 Conditions for use.

(a) Individual orders may exceed the simplified acquisition threshold for—

(i) Brand-name commissary resale subsistence; and

(ii) Medical supplies for direct shipment overseas.

PART 216—TYPES OF CONTRACTS

8. Section 216.203-4 is amended in the introductory text of paragraph (a) by adding a comma after the word "Supplies"; and by revising paragraphs (a)(i) and (b)(i) to read as follows:

216.203-4 Contract clauses.

(a) * * *

(i) The total contract price exceeds the simplified acquisition threshold; and

* * *

(b) * * *

(i) The total contract price exceeds the simplified acquisition threshold; and

* * *

PART 217—SPECIAL CONTRACTING METHODS

9. Section 217.7302 is amended by revising paragraph (b) to read as follows:

217.7302 Procedures.

* * *

(b) The requirement in paragraph (a) of this section does not apply to contracts—

(1) For commercial items; or

(2) Valued at or below the simplified acquisition threshold.

10. Section 217.7504 is amended by revising paragraph (a)(2) to read as follows:

217.7504 Limitations on price increases.

* * *

(a) * * *

(2) Departments and agencies may specify an alternate percentage or percentages for contracts at or below the simplified acquisition threshold.

* * *

PART 219—SMALL BUSINESS PROGRAMS

11. Section 219.201 is amended by revising paragraph (c)(9)(A) to read as follows:

§ 219.201 General policy.

* * *

(c) * * *

(9) * * *

(A) Reviewing and making recommendations for all acquisitions over \$10,000, except small business reservations;

* * *

12. Section 219.7001 is amended in paragraph (b) by revising the introductory text and paragraph (b)(1) to read as follows:

§ 219.7001 Applicability.

* * *

(b) Do not use the evaluation preference in acquisitions that—

(1) Use simplified acquisition procedures;

* * *

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

13. Section 223.570-4 is amended by revising paragraph (b) to read as follows:

§ 223.570-4 Contract clause.

* * *

(b) Do not use the clause in solicitations and contracts—

(1) For commercial items;

(2) When performance or partial performance will be outside the United States, its territories, and possessions, unless the contracting officer determines such inclusion to be in the best interest of the Government; or

(3) When the value of the acquisition is at or below the simplified acquisition threshold.

PART 225—FOREIGN ACQUISITION

14. Section 225.105 is amended by revising paragraph (5)(ii)(B) to read as follows:

§ 225.105 Evaluating offers.

* * *

(5) * * *

(ii) * * *

(B) "Domestically produced or manufactured products" under small

business set-asides or small business reservations; and

15. Section 225.770-3 is amended by revising paragraph (a) to read as follows:

§ 225.770-3 Exceptions.

* * *

(a) Purchases at or below the simplified threshold;

* * *

PART 237—SERVICE CONTRACTING

§ 237.7302 [Amended]

16. Section 237.7302 is amended in the third sentence by removing the reference "13.105" and inserting in its place the reference "13.003(b)(1)".

PART 242—CONTRACT ADMINISTRATION

§ 242.203 [Amended]

17. Section 242.203 is amended in paragraph (a)(i)(P) by adding, after the semicolon, the word "and"; in paragraph (a)(i)(Q) by removing "; and" and inserting a period in its place; and by removing paragraph (a)(i)(R).

PART 246—QUALITY ASSURANCE

18. Section 246.370 is amended by revising paragraph (b)(1) to read as follows:

§ 246.370 Material inspection and receiving report.

* * *

(b) * * *

(1) Contracts awarded using simplified acquisition procedures;

* * *

PART 247—TRANSPORTATION

19. Section 247.271-3 is amended by revising paragraphs (b)(1) and (b)(2)(iv)(B) to read as follows:

§ 247.271-3 Procedures.

* * *

(b) * * *

(1) Excess requirements are those services that exceed contractor capabilities available under contracts. Use simplified acquisition procedures to satisfy excess requirements.

(2) * * *

(iv) * * *

(B) Using simplified acquisition procedures.

* * *

20. Section 247.573 is amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 247.573 Solicitation provision and contract clauses.

(a) * * *

(2) Those with an anticipated value at or below the simplified acquisition threshold.

(b) * * *

(2) Those with an anticipated value at or below the simplified acquisition threshold.

* * *

PART 253—FORMS

§ 253.204-70 [Amended]

21. Section 253.204-70 is amended in the introductory text of paragraph (b)(13)(i)(E) and in the first sentence of paragraph (b)(13)(i)(G) by removing the reference "13.202(c)(3)" and inserting in its place the reference "13.303-2(c)(3)"; and in paragraph (d)(5)(iv)(A)(2) by removing the reference "13.105" and inserting in its place the reference "13.003(b)(1)".

22. Section 253.204-71 is amended by revising paragraph (a)(3) introductory text and paragraphs (g)(2)(ii)(C) and (i)(1) to read as follows:

§ 253.204-71 DD Form 1057, Monthly Contracting Summary of Actions, \$25,000 or Less.

(a) * * *

(3) report actions of \$25,000 or less in support of a contingency operation as defined in 10 U.S.C. 101(a)(13), or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7), in accordance with the instructions in paragraphs (c) through (j) of this subsection. Report actions exceeding \$25,000 but not exceeding \$200,000 in support of a contingency operation as defined in 10 U.S.C. 101(a)(13), or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7), on the monthly DD Form 1057 as follows:

* * *

(g) * * *

(2) * * *

(ii) * * *

(C) Block E2c, SB Set-Aside Using Simplified Acquisition Procedures. Enter actions pursuant to FAR 13.003(b)(1) when award is to an SDB, but a preference was not applied.

* * *

(i) * * *

(1) Enter the total number and dollar value of actions in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7). The numbers entered here are a breakout of the numbers already entered in Sections B and C.

* * *

23. Section 253.213 is amended by revising the section heading; by redesignating paragraph (e) as paragraph (f); and in newly designated paragraph

(f) by revising the introductory text and paragraph (f)(i) to read as follows:

253.213 **Simplified acquisition procedures** (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).

(f) DoD uses the DD Form 1155, Order for Supplies or Services, instead of OF 347; and Optional Form 336, Continuation Sheet, instead of OF 348.

(i) Use the DD Form 1155 as prescribed in 213.307(b)(i) and in accordance with the instructions at 253.213-70.

[FR Doc. 98-12268 Filed 5-7-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 042898B]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on May 20 and 21, 1998, to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, May 20, 1998, at 10 a.m. and on Thursday, May 21, 1998, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Seaport Inn, 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997-1281. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone (781) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Wednesday, May 20, 1998

After introductions, the Council will discuss and seek approval of the final Monkfish Fishery Management Plan (FMP) prepared jointly with the Mid-Atlantic Fishery Management Council. During the Groundfish Committee Report to follow, the committee will

recommend approval of the public hearing document for Amendment 9 to the Northeast Multispecies FMP and the accompanying Draft Supplemental Environmental Impact Statement (DSEIS). Measures in the document include revised overfishing definitions and the specification of optimum yield to be consistent with the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), a prohibition or possession limit for Atlantic halibut, a possession limit for winter flounder in the Southern New England and Mid-Atlantic stock areas, limits on the use of square mesh in the Gulf of Maine and on Georges Bank to reduce juvenile flounder bycatch, a 1-inch increase in the winter flounder minimum size, a postponement of the use of electronic vessel monitoring systems while resolving outstanding related issues, prohibition of the use of "streetsweeper" trawl gear, modification of the Gulf of Maine cod trip limit requirement that a vessel remain in port to account for an overage, and application of the Gulf of Maine cod trip limit "running clock" system to all fisheries managed under a per-day trip limit.

During the afternoon session, the Habitat Committee will seek approval of proposed essential fish habitat designations and alternatives for red hake, cod, witch flounder, ocean pout, and Atlantic herring for purposes of preparing a public hearing document. The committee chairman will also provide an update on progress to develop alternatives for other Council-managed species. Before adjourning for the day, the Aquaculture Committee will recommend final action on a framework adjustment to the Sea Scallop FMP that would extend the Westport Scallop Project closure for 18 months.

Thursday, May 21, 1998

The Council will seek approval of the Sea Scallop Amendment 7 public hearing document and DSEIS. Measures to be included in the document are: Days-at-sea (DAS) reductions, scallop area management, and a DAS leasing to be implemented by a future framework adjustment to the FMP. An industry-funded vessel buyout program will also be discussed. During the Whiting Committee Report, the Council will seek approval of measures for preparing a public hearing document and DSEIS for a whiting amendment to the Northeast Multispecies FMP. Major measures under consideration include a moratorium on commercial permits, whiting trip limits, closed areas, mesh

size restrictions, 3-inch mesh areas, changes to the Cultivator Shoal fishery regulations, and limits on the amount of fish that can be brought in with a mesh less than the minimum size.

The Council will seek approval of a public hearing document and DSEIS for the Atlantic Herring FMP. Measures will include controlled access to the fishery, spawning area closures, vessel/dealer operator permit requirements, area management, both a target total allowable catch (TAC) and TAC that triggers a management action, vessel size limits, a prohibition on fishing for the purposes of meal production, limits on fishing time, and restrictions on fishing for roe. The Dogfish Committee will review recent committee discussions. The meeting will conclude with reports from the Council Chairman, Executive Director, Administrator, Northeast Region, NMFS (Regional Administrator), Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard and the Atlantic States Marine Fisheries Commission.

Announcement of an Experimental Fishery Application

The Regional Administrator is considering the authorization of an experimental fishery for silver hake (whiting) in the Gulf of Maine. The experimental fishery would help to determine appropriate gear type, area, and season for a small mesh fishery that would meet the bycatch criteria of the Northeast multispecies exempted fishery program. This experimental fishery would include modifications of the separator trawl experimental fishery conducted in the summers of 1995, 1996, and 1997. Exempted fishing permits to conduct experimental fishing would be issued to participating vessels to exempt them from DAS, mesh size, and other gear restrictions of the Northeast Multispecies Fishery Management Plan.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see ADDRESSES) at least 5 days prior to the meeting date.

Dated: May 4, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 98-12255 Filed 5-7-98; 8:45 am]

BILLING CODE 3510-22-F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARMS CONTROL AND DISARMAMENT AGENCY

Determination to Close Meetings of the Director's Advisory Committee

May 4, 1998.

The Director's Advisory Committee (DirAC) will hold meetings in Washington, D.C., on May 11 and 12, 1998, and at Livermore, CA on June 8 and 9, 1998.

The entire agenda of these meetings will be devoted to specific national security policy and arms control issues. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 § 10(d) (1996), I have determined that the meetings may be closed to the public in accordance with 5 U.S.C. § 552b(c)(1). Materials to be discussed at the meetings have been properly classified and are specifically authorized under criteria established by Executive Order 12,958, 60 Fed. Reg. 19,825 (1995), to be kept secret in the interests of national defense and foreign policy.

This notice is being published less than 15 days before the first meeting day, because of recent changes in the location of the meetings.

John D. Holm,
Director, U.S. Arms Control and Disarmament Agency.

[FR Doc. 98-12436 Filed 5-6-98; 2:33 pm]

BILLING CODE 5820-32-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 8, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On January 5, 16, March 13 and 27, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 203, 2658, 2659, 12438 and 14897) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Federal Register

Vol. 63, No. 89

Friday, May 8, 1998

Commodities

Pen, Black, Ergonomic
M.R. 013

Pen, Push Cap, Black
M.R. 019

Pen, Retractable, Cushion Grip, Exec.
"Aristocrat"

7520-01-446-4500

7520-01-446-4503

7520-01-446-4504

7520-01-446-4505

Slacks, Woman's

8410-01-452-4900

8410-01-452-4901

8410-01-452-4902

8410-01-452-4903

8410-01-452-4904

8410-01-452-4905

8410-01-452-4906

8410-01-452-4907

8410-01-452-4908

8410-01-452-4909

8410-01-452-4910

8410-01-452-4911

8410-01-452-4912

8410-01-452-4913

8410-01-452-4914

8410-01-452-4915

8410-01-452-4916

8410-01-452-4917

8410-01-452-4918

8410-01-452-4919

8410-01-452-4920

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8410-01-452-4937

8410-01-452-4892

8410-01-452-4893

8410-01-452-4894

8410-01-452-4895

8410-01-452-4896

8410-01-452-4897

8410-01-452-4898

8410-01-452-4899

8410-01-452-6192

8410-01-452-6194

Services

Base Supply Center, (GSA Uncle Sam's Club Supply Center), Norfolk, Virginia.

Food Service, Great Lakes Naval Training Center, Galley 535, 928 and 1128, 2703 Sheridan Road, Great Lakes, Illinois.

Janitorial/Custodial, USARC Headquarters, Fort McPherson, Georgia.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98-12258 Filed 5-7-98; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 8, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center, Dyess Air Force Base, Texas

NPA: San Antonio Lighthouse, San Antonio, Texas.

Base Supply Center, Bangor Submarine Base, Bangor, Washington

NPA: Peninsula Services, Bremerton, Washington.

Base Supply Center, Naval Air Station, Whidbey Island, Washington

NPA: Peninsula Services, Bremerton, Washington.

Operation of Individual Equipment Element Store, Dyess Air Force Base, Texas

NPA: San Antonio Lighthouse, San Antonio, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98-12259 Filed 5-7-98; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Processed Product Family of Forms; Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 7, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should

be directed to Steven Koplin, Fisheries Statistics and Economic Division (F/ST1), Office of Science and Technology, National Marine Fisheries Service, 1315 East-West Hwy, Silver Spring, MD 20910. (301) 713-2328.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a survey of fish and shellfish processing plants and firms that sell these products wholesale, and it asks for information on the volume and value of products processed. Wholesalers are asked to identify the top species sold. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.) as amended. Data from this survey are used in economic analyses to estimate the capacity and extent of which U.S. fish processors utilize domestic harvest.

II. Method of Collection

Form 88-13 is conducted annually via a survey form mailed to fish and shellfish processors. Form 88-13c is conducted monthly via a form mailed to fish reduction plants during the season.

III. Data

OMB Number: 0648-0018.

Form Number: 88-13 Fishery Products Report (Annual). 88-13c Fish Meal and Oil Report (Monthly).

Type of Review: Regular submission. Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,240.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 620.

Estimated Total Annual Cost to Public: No cost to the public other than the time required to fill out the forms.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 4, 1998
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
 [FR Doc. 98-12245 Filed 5-7-98; 8:45 am]
 BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Survey of Intent and Capacity to Harvest and Process Fish and Shellfish (Northwest Region)

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).
DATES: Written comments must be submitted on or before July 7, 1998.
ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William L. Robinson, NMFS, 7600 Sand Point Way NE, Seattle, WA 98112, 206-526-6140.
SUPPLEMENTARY INFORMATION:

I. Abstract

Preseason survey information collected from the groundfish industry helps provide (1) the capacity and extent to which U.S. fishing vessels will annually harvest the optimum yield specified for a fishery; (2) the portion of that optimum yield which will not be harvested by U.S. fishing vessels, and can therefore be made available to foreign vessels; and (3) the capacity and extent to which U.S. fish processors can annually process that portion of the optimum yield that will be harvested by U.S. vessels.

Pacific whiting, the species most often available to foreign and joint venture operations in the past, recently has

become fully "Americanized" (processed by U.S. processors only). However, Americanization of other species is not assured, and therefore the need for the survey continues. In addition, there has been an increased need to determine the intent and capacity of segments of the domestic industry, particularly with respect to resource allocation among user groups. Therefore, the survey continues to be an appropriate and important tool to assist in groundfish management.

II. Method of Collection

The survey consists of a written data collection instrument for U.S. fish processors, and U.S. fishers of groundfish off the coasts of Washington, Oregon, and California. The survey form will be returned to NMFS (NWR) by mail, fax, electronic mail, or in person.

III. Data

OMB Number: 0648-0243.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit (owners or operators of vessels that catch or process fish in ocean waters 0-200 nautical miles offshore Washington, Oregon, and California).
Estimated Number of Respondents: 60.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 10.
Estimated Total Annual Cost to Public: \$0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 4, 1998.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
 [FR Doc. 98-12246 Filed 5-7-98; 8:45 am]
 BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Individual Fishing Quota Program for Pacific Halibut and Sablefish

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).
DATES: Written comments must be submitted on or before July 7, 1998.
ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Lepore, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (907-586-7228).

SUPPLEMENTARY INFORMATION:

I. Abstract

Participants of the Individual Fishing Quota Program for Pacific halibut and sablefish managed by the National Marine Fisheries Service (NMFS), Alaska Region, are required to report certain information to NMFS. This information is used for monitoring and managing Pacific halibut and sablefish caught with fixed gear in and off Alaska's waters for purposes of conservation of the fisheries and enforcement of fisheries regulations.

II. Method of Collection

Information is collected by forms and electronic reporting. Forms are used for Notification of Inheritance, Application for Transfer, Corporation or Partnership Eligibility, Registered Buyer Application, Application for Additional Card, Shipment Report, Application for

Replacement, and Appeals. Electronic reporting is used for Prior Notice of Landing, Permission to Land, Vessel Clearance, Landing Report, and Transshipment Notice.

III. Data

OMB Number: 0648-0272.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Individuals, business or other for-profit organizations.
Estimated Number of Respondents: 65,120.
Estimated Time Per Response: 4 hours for Appeals, 1 hour for Notification of Inheritance, 2 hours for Application for Transfer, 2 hours for Corporation or Partnership Eligibility, 0.5 hour for Registered Buyer Application, 0.5 hour for Application for an Additional Card, 0.2 hour for Prior Notice of Landing, 0.1 hour for Permission to Land, 0.1 hour for Vessel Clearance, 0.2 hour for Landing Report, 0.1 hour for Transshipment Notice, 0.2 hour for Shipment Report, and 0.5 hour for Application for Replacement.
Estimated Total Annual Burden Hours: 16,670 hours.
Estimated Total Annual Cost to Public: \$0 (no capital expenditures).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 4, 1998.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
 [FR Doc. 98-12247 Filed 5-7-98; 8:45 am]
 BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

International Trade Administration (A-301-602)

Certain Fresh Cut Flowers From Colombia; Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Notice of preliminary results of antidumping duty changed circumstances review.

SUMMARY: In response to a request by Flores El Talle S.A., the Department of Commerce is conducting a changed circumstances review to confirm that the revocation granted to the Flores Colombianas Group is applicable equally to Flores El Talle S.A. The antidumping duty order was revoked with respect to the Flores Colombianas Group in the fourth administrative review. In this changed circumstances review, the Department of Commerce has examined in detail Flores El Talle S.A. and its relationship with the Flores Colombianas Group. As a result of this review, the Department of Commerce preliminarily finds that Flores El Talle S.A. is a member of the Flores Colombianas Group and, as such, is subject to the revocation which applies to the Flores Colombianas Group.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Stephanie Hoffman, AD/CVD Enforcement, Office 1, Import Administration, International Trade Administration, United States Department of Commerce, Washington, DC 20230; telephone: (202) 482-5414 or (202) 482-4198, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to section 351 of the regulations of the Department of Commerce ("the Department") are to the current regulations, as published in the *Federal Register* on May 19, 1997 (62 FR 27296).

SUPPLEMENTARY INFORMATION:

Background

In the final results of the fourth administrative review (see 59 FR 15159; March 31, 1994), the antidumping duty

order on certain fresh cut flowers from Colombia was revoked with respect to the Flores Colombianas Group, based on three consecutive administrative reviews in which the Department determined that the Flores Colombianas Group was not selling the subject merchandise at less than fair value in the United States.

During the ninth administrative review, Flores El Talle S.A. ("Flores El Talle") notified the Department in an August 23, 1996, letter that the company had been created in the summer of 1991, within the context of the Flores Colombianas Group and that Flores El Talle and the Flores Colombianas Group share common ownership and management. The letter requested that the Department confirm that the revocation of the antidumping duty order with respect to the Flores Colombianas Group is applicable equally to Flores El Talle. In the final results of the ninth review, the Department determined that Flores El Talle had no entries during the POR, rescinded the review with respect to Flores El Talle, and stated that it would initiate a changed circumstances review to examine whether Flores El Talle should be subject to the revocation which applies to the Flores Colombianas Group (see, *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53303; October 14, 1997). The Department initiated the changed circumstances review on October 15, 1997 (62 FR at 53593). The Department is conducting this changed circumstances review in accordance with section 751(b) of the Act and 19 CFR 351.216(d) of the Department's regulations.

Scope of Review

The scope of the order under review is shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). Although the HTS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

Preliminary Analysis

This review covers one producer of the subject merchandise, Flores El Talle, an entity created within the context of the Flores Colombianas Group, a group of producers and exporters. The

Department has revoked the order with respect to that group. The Department has examined the question of whether Flores El Talle should be assigned a cash deposit rate equal to the "all others" rate, or be subject to Flores Colombianas Group's revocation. If the Department determines that Flores El Talle should be collapsed with the other companies comprising the Flores Colombianas Group and treated as a single entity in the production and sale of the subject merchandise, its shipments would not be subject to suspension of liquidation or antidumping duty deposit requirements under this order because the revocation applicable to the Flores Colombianas Group would be applicable equally to Flores El Talle.

As stated above, the antidumping order was revoked with respect to the Flores Colombianas Group, effective May 31, 1994. During the three consecutive review periods on which the revocation was based (March 1, 1988 to February 28, 1991) the Flores Colombianas Group was comprised of four entities: (1) Agrosaba Ltda., (2) Flores Colombianas Ltda., (3) Jardines de los Andes SA, and (4) Productos El Cartucho SA. On July 18, 1991, Flores El Talle was set up to acquire the assets and liabilities of Flores El Cielo Ltda., a company that did not produce or export subject merchandise. Flores El Talle began to produce the subject merchandise in the second half of 1991.

The question under review is whether, after its inception, Flores El Talle's affiliation with the Flores Colombianas Group and the manner in which operations were conducted were such that Flores El Talle should be collapsed with the other companies already comprising the Flores Colombianas Group and treated as a single entity and, therefore, subject to the revocation applicable to the Flores Colombianas Group.

According to section 351.401(f) of the Department's regulations, in order for the Department to collapse two producers, i.e., treat them as a single entity, the Department must find that, (1) the producers are affiliated under section 771(33) of the Act, (2) the producers have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities, and (3) there is a significant potential for the manipulation of price or production (see also, *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan*, 62 FR 51427, 51436 (October 1, 1997), ("Collated Roofing Nails From Taiwan") and *Grey Portland Cement*

and *Clinker From Mexico: Final Results of Antidumping Administrative Review*, 62 FR 17148, 17155 (April 9, 1997)).

First, we find that because Flores El Talle and the Flores Colombianas Group are under common ownership and control, these companies are affiliated under sections 771(33)(E) and (F) of the Act. (For more information on common ownership, management, and control of Flores El Talle and other members of the Flores Colombianas Group, see, Flores El Talle's August 23, 1996, submission.) Second, the evidence on the record demonstrates that Flores El Talle does have production facilities for similar or identical products. Although Flores El Talle is not currently a producer of the subject merchandise (due to soil infestation with "fusarium oxysporium," Flores El Talle ceased production of the subject merchandise in December 1995), it still has the capability of producing the subject merchandise and substantial work would not be required in order to restructure production priorities (see, *Collated Roofing Nails From Taiwan*, 62 FR at 51436).

We also determine that the third criterion of our collapsing inquiry is met. According to section 351.401(f)(2) of the Department's regulations, in determining whether there is a significant potential for manipulation of price or production, the Department may consider factors such as (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether business operations are intertwined, such as through shared sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the two enterprises.

As stated previously, Flores El Talle has common ownership, management, and control with other companies in the Flores Colombianas Group. Flores El Talle has only existed in the context of the Flores Colombianas Group, and all five companies of the Flores Colombianas Group share information, supplement sales efforts, and coordinate pricing and business strategy with one another. Sales and marketing personnel for the subject merchandise are shared by all five members of the Flores Colombianas Group, and Flores El Talle has joint offices with two other companies in the Flores Colombianas Group, Agrosaba and Flores Colombianas Ltda., to handle purchasing, accounting and communication requirements.

Preliminary Results of the Review

Applying the evidence on the record to the collapsing inquiry set forth above, we find that (1) Flores El Talle and the Flores Colombianas Group are affiliated under sections 771(33)(E) and (F) of the Act; (2) the production facilities are essentially similar so that they would not require substantial work to restructure manufacturing priorities; and (3) there are intertwined business operations, common management and board members, and coordination of the production and sales strategies such that there exists significant potential for price or production manipulation.

Based on this analysis, we preliminarily determine that it is appropriate to collapse Flores El Talle into the Flores Colombianas Group. Therefore, we intend to treat Flores El Talle as part of the Flores Colombianas Group and apply the revocation from the antidumping duty order with respect to the Flores Colombianas Group to Flores El Talle. If this revocation is applied to Flores El Talle, it will apply to all unliquidated entries of this merchandise produced by Flores El Talle, exported to the United States and entered, or withdrawn from warehouse, for consumption, on or after May 31, 1994, which is the effective date of the revocation from the order for the Flores Colombianas Group. If the final results of this changed circumstances review remain unchanged, we will instruct the U.S. Customs Service to release any cash deposit or bond and liquidate the entries without regard for antidumping duties (see, 19 CFR 351.222(g)(4)).

Interested parties may request a hearing within ten days of publication of these preliminary results. If requested, a hearing will be held the 37th day after publication. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing case briefs. The case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3)(i). The Department will publish the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments. This changed circumstances review and notice are in accordance with 19 CFR 351.216.

Dated: May 1, 1998.

Robert S. LaRussa,
Assistant Secretary for Import
Administration.

[FR Doc. 98-12205 Filed 5-7-98; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping Administrative Review.

SUMMARY: The Department of Commerce (the Department) has received a request from Ningbo Nanlian Frozen Foods Company, Ltd. (Ningbo Nanlian) to conduct a new shipper administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC), which has a September anniversary date. In accordance with the Department's current regulations, we are initiating this administrative review.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Leah Schwartz or Maureen Flannery, AD/CVD Enforcement, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3782 or (202) 482-3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997).

Background

On March 27, 1998, the Department received a timely request, in accordance with section 751 (a)(2)(B) of the Act, and section 351.214 (c) of the Department's regulations, for a new shipper review of this antidumping duty order which has a September anniversary date.

Initiation of Review

In its request of March 27, 1998, Ningbo Nanlian certified that it did not export the subject merchandise to the United States during the period of investigation (POI) (March 1, 1996 through August 31, 1996), and is not affiliated with any company which exported subject merchandise to the United States during the POI. Ningbo Nanlian further certified that its export

activities are not controlled by the central government of the PRC.

In its March 27, 1998 request for review, Ningbo Nanlian submitted a statement from Yinxian No. 2 Freezing Factory (YFF), the producer/supplier of subject merchandise to Ningbo Nanlian, certifying that it is not affiliated with any exporter or producer who exported subject merchandise during POI. YFF further certified that its export activities are not controlled by the government of the PRC.

In accordance with section 751(a)(2)(B) and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the PRC. We intend to issue the final results of these reviews not later than 270 days from the publication of this notice.

The standard period of review (POR) in a new shipper review initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semiannual anniversary month. However, the Department may define the POR to cover the first exportation of a new shipper. See *Initiation of New Shipper Antidumping Duty Administrative Review: Certain Pasta from Italy*, 62 FR 8927 (February 27, 1997), and *Fresh and Chilled Atlantic Salmon from Norway: Initiation of New Shipper Antidumping Duty Administrative Review* 62 FR 28840 (May 28, 1997). Therefore, the POR for this review has been defined to include the month of March 1998.

Antidumping duty proceeding	Period to be reviewed
The PRC: Fresh Water Crawfish Tail Meat, A-570-848: Ningbo Nanlian Frozen Foods Company, Ltd	9/01/97-3/31/98

Concurrent with publication of this notice, we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exporter by the company listed above, in accordance with 19 CFR 351.214(e).

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: April 30, 1998.

Robert S. LaRussa,
Assistant Secretary for Import
Administration.

[FR Doc. 98-12204 Filed 5-7-98; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-817]

Oil Country Tubular Goods From Mexico: Initiation of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review of the antidumping duty order on oil country tubular goods ("OCTG") from Mexico. See Notice of Final Determination; Oil Country Tubular Goods from Mexico, 60 FR 33567 (June 28, 1995).

Within the past year, the Department has received two requests to revoke the antidumping duty (AD) order covering OCTG from Mexico as it pertains to drill pipe with tool joints attached (commonly referred to as finished drill pipe). One was a request by the International Association of Drilling

Contractors that the Department self-initiate a changed circumstances review. The other request came from the leading producer of finished drill pipe in the United States, Grant Prideco. The latter request was withdrawn.

We are initiating an antidumping duty changed circumstances administrative review to determine the extent of domestic industry support for continuing the antidumping duty order on OCTG from Mexico with regard to finished drill pipe.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: John K. Drury or Richard Weible, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-3208 or (202) 482-1103, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1997, the International Association of Drilling Contractors (IADC) requested that the Department self-initiate a changed circumstances review with respect to finished drill pipe. On March 13, 1998, the Department responded to the IADC request. On January 28, 1998, Grant Prideco, Inc. requested revocation of the AD order on Mexican OCTG with respect to finished drill pipe. The Department received letters in opposition to this second request from OMSCO Industries and Drill Pipe Industries, Inc. on February 12, 1998, and February 13, 1998, respectively. On March 16, 1998, Grant Prideco withdrew its request for a changed circumstances review.

Since the Department's response to IADC on March 13, 1998, parties have raised questions regarding whether substantially all of the domestic industry supports continuation of the AD order on OCTG from Mexico with respect to finished drill pipe. Therefore, in light of the request originally filed by Grant Prideco and the information available to the Department, the Department believes a changed circumstances review is warranted. The Department intends to examine thoroughly the domestic producers of the like product to determine which companies are no longer interested in the portion of the order with respect to finished drill pipe. The Department will conduct this review as expeditiously as possible, allowing opportunity for all parties to comment. The Department will not revoke the order, in part, unless domestic producers accounting for substantially all of the like product have

expressed lack of interest in maintaining the order with respect to drill pipe. The Department interprets "substantially all" to mean at least 85 percent of domestic production of the like product. This review is to determine the level of support of domestic producers of the like product for maintaining this order with respect to finished drill pipe.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations.

Scope of the Review

The merchandise subject to this changed circumstances review, is finished oil well drill pipe with tool joints attached. This merchandise is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 8431.43.8010 as "Parts suitable for use solely or principally with the machinery of headings 8425 to 8430, [o]f machinery of heading 8426, 8429 or 8430: [p]arts for boring or sinking machinery of subheading 8430.41 or 8430.49: [o]ther: [o]f oil and gas field machinery." Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Initiation of Changed Circumstances Antidumping Duty Order Administrative Review

Pursuant to section 751(b)(1) of the Tariff Act, the Department will conduct a changed circumstances administrative review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In accordance with section 751(b) and 19 CFR 351.216(b)(4) and 19 CFR 351.216(d), we are initiating a changed circumstances administrative review. We invite all parties to provide comments on whether domestic producers of the like product no longer have an interest in maintaining the order with respect to finished drill pipe from Mexico within seven days of publication of this notice of initiation.

The Department will publish in the *Federal Register* a notice of preliminary results of changed circumstances antidumping duty administrative

review, in accordance with 19 CFR 351.216(b)(4) and 19 CFR 351.221(c)(3). The Department will issue its final results of review in accordance with 19 CFR 351.216(e). All written comments must be submitted in accordance with 19 CFR 351.303 and must be served on all interested parties on the Department's service list in accordance with the same provision.

This notice is in accordance with section 751(b)(1) of the Tariff Act and section 351.221(b)(1) of the Department's regulations.

Dated: May 1, 1998.

Robert S. LaRussa,
Assistant Secretary for Import Administration.

[FR Doc. 98-12203 Filed 5-7-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-028]

Roller Chain, Other Than Bicycle From Japan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial rescission of antidumping duty administrative review.

SUMMARY: In response to requests from the petitioner, the American Chain Association, and three manufacturers/exporters, the Department of Commerce has conducted an administrative review of the antidumping duty finding on roller chain, other than bicycle from Japan. We have preliminarily determined that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and the normal value.

Because one respondent did not permit verification of its questionnaire responses and two other respondents failed verification, we based the margins for these three companies on the facts available, in accordance with 776(a)(2) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the

issue, (2) a brief summary of the arguments not to exceed five pages, and (3) a table of statutes, regulations, and cases cited.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Cameron Werker at (202) 482-3874 or Ron Trentham at (202) 482-4793, AD/CVD Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR Part 353 (April 1, 1997).

Background

On April 12, 1973, the Department published in the *Federal Register* an antidumping finding on roller chain, other than bicycle from Japan (roller chain) (38 FR 9926). On April 2, 1997, the Department published a notice of "Opportunity to Request an Administrative Review" of this antidumping finding for the period of review (POR), April 1, 1996, through March 31, 1997 (62 FR 15655). On April 24, 1997, and April 29, 1997, we received requests for administrative review of this antidumping finding from one reseller of roller chain from Japan to the United States, Daido Tsusho Company Ltd./Daido Corporation (DT), and three manufacturers/exporters of roller chain from Japan: (1) Daido Kogyo Company Ltd. (DK); (2) Enuma Chain Mfg. Company (Enuma); and (3) Izumi Chain Mfg. Company Ltd., (Izumi). On April 28, 1997, the petitioner, the American Chain Association (ACA), requested an administrative review of these same entities, as well as six other manufacturers/exporters and five other resellers of roller chain from Japan to the United States. The six other manufacturers/exporters are: (1) Hitachi Metals Techno Ltd. (HMTL); (2) Pulton Chain Company Inc. (Pulton); (3) R.K. Excel Company Ltd. (RK); (4) Kaga Chain Manufacturer (Kaga); (5) Oriental Chain Company (OCM); and (6) Sugiyama Chain Company, Ltd. (Sugiyama). The five other resellers are:

(1) Alloy Tool Steel Inc. (ATSI); (2) HMTL/Hitachi Maxco Ltd. (Hitachi Maxco); (3) Nissho Iwai Corporation (NIC); (4) Peer Chain Company (Peer); and (5) Tsubakimoto Chain Co./U.S.-Tsubaki (Tsubakimoto). On May 21, 1997, the Department published a "Notice of Initiation of Administrative Review" (62 FR 27720) covering the POR April 1, 1996, through March 31, 1997, for the above manufacturers/exporters/resellers (collectively, the respondents).

On June 18, 1997, we issued antidumping questionnaires to the respondents. The Department received questionnaire responses in July 1997, August 1997, and September 1997. We issued supplemental questionnaires in August 1997, September 1997, and December 1997. We received responses to these supplemental questionnaires in September 1997, October 1997, December 1997, January 1998, and February 1998.

Partial Rescissions

As a result of facts examined during the course of the POR, we have determined that Peer made no shipments of subject merchandise to the United States during the POR. We confirmed with the United States Customs Service that Peer did not have entries of subject roller chain during the POR. Therefore, we are rescinding the review with respect to this company.

HMTL is affiliated to a roller chain producer subject to this annual review. During this POR, HMTL and HMTL/Hitachi Maxco made no shipments of roller chain to the United States. We confirmed with the United States Customs Service that HMTL and HMTL/Hitachi Maxco did not have entries of subject roller chain during the POR. Consequently, the issue of a separate review rate for HMTL or HMTL/Hitachi Maxco is moot and we are rescinding the review for this purpose with respect to these parties.

DT sold roller chain produced by Enuma and DK during the POR. We examined the information on the record and have determined that, with respect to sales of merchandise manufactured by Enuma, DT is not a reseller as defined in 19 CFR 353.2(s) because Enuma had knowledge at the time of sale to DT that the roller chain it produced was destined for sale in the United States. Therefore, for sales by DT of Enuma-manufactured products, we are using the prices between Enuma and DT as United States prices and including these sales in the margin calculations for Enuma. With regard to DT sales of DK-produced merchandise, since DT is affiliated with DK pursuant

to Section 771(33) of the Act, we are including all sales of DK-produced merchandise by or through DT in the margin calculations for DK. Under these circumstances, we did not have a basis to consider DT for a separate rate in this POR and are rescinding the review for this purpose with respect to DT.

RK and NIC exported, and ATSI imported, roller chain produced by RK during the POR. In selling roller chain to NIC (RK's affiliated trading company in Japan), RK has knowledge that these roller chain sales are destined for the United States. All of NIC's sales to the United States of RK-produced merchandise are made through ATSI (NIC's affiliated U.S. reseller). For purposes of these sales, we have treated RK, NIC, and ATSI as affiliated parties pursuant to section 771(33) of the Act. We used United States sales of RK-produced merchandise through NIC in our margin analysis for RK. RK also sells its merchandise directly to ATSI in the United States, who in turn sells the merchandise to unaffiliated U.S. customers. We also used these transactions in our margin analysis for RK. In the absence of other sales, we did not consider ATSI and NIC for separate rates and are rescinding the reviews for this purpose for these entities.

Preliminary Partial Rescission

Tsubakimoto received *de minimis* margins in three consecutive administrative reviews covering the period 1979-1983 and in an "update" administrative review conducted for the period 1986-1987. In the final results of the 1986-1987 review, the Department stated its intent to revoke the finding with respect to Tsubakimoto. See *Final Results of Antidumping Duty Administrative Review and Intent to Revoke in Part: Roller Chain, Other Than Bicycle, From Japan*, 54 FR 3099 (January 23, 1989). At the time of publication of its intent to revoke in part, the Department was ordered by the Court of International Trade not to revoke the finding with respect to Tsubakimoto pending a decision on a matter before the Court regarding one of the reviews for the period 1979-1983. On May 15, 1989, the Court dismissed this case, thereby allowing the Department to proceed with revocation in part, with respect to Tsubakimoto. On August 14, 1989, the Department revoked Tsubakimoto from the finding on roller chain. See *Revocation in Part of Antidumping Finding: Roller Chain, Other Than Bicycle, From Japan*, 54 FR 33259.

On April 28, 1997, the ACA requested that the Department conduct an administrative review of the sales made

by Tsubakimoto to the United States. The ACA stated that it believes Tsubakimoto is selling Japanese roller chain to U.S. customers that is manufactured by companies that are covered by the roller chain finding. The ACA stated that its request does not cover sales of roller chain produced by Tsubakimoto itself but rather is limited to roller chain manufactured by other Japanese producers. We solicited comments from Tsubakimoto and the ACA concerning this issue.

In its submissions concerning this issue, the ACA stated that the Department's revocation of Tsubakimoto applies only to merchandise that has been both produced and exported by Tsubakimoto because the 1989 revocation notice regarding Tsubakimoto stated that "[t]his partial revocation applies to all unliquidated entries of this merchandise manufactured and exported by Tsubakimoto and entered, or withdrawn from warehouse, for consumption on or after September 1, 1983." (See 54 FR 33259 (August 14, 1989)). Tsubakimoto responded by providing evidence indicating that during the 1986-1987 update review, the review upon which the Department determined to revoke in part, the Department based its *de minimis* margin calculation on sales to the United States made by Tsubakimoto of roller chain both produced by Tsubakimoto itself and purchased from two other Japanese manufacturers.

After analyzing all the comments received in regard to this issue, the Department preliminarily determines that the 1989 notice of revocation in part applies to Tsubakimoto in both its capacity as a manufacturer/exporter and reseller/exporter of roller chain. The evidence on the record demonstrates the Department revoked the company Tsubakimoto. By revoking Tsubakimoto as a company, the Department applied the revocation to the manufacturer/exporter and reseller/exporter operations the company Tsubakimoto conducts. Although the "manufactured and exported" language used by the Department in the 1989 revocation notice could be read to limit Tsubakimoto's revocation to roller chain manufactured by Tsubakimoto, the Department has preliminarily determined that Tsubakimoto's revocation also applies to its reseller function because the *de minimis* margin calculated in the 1986-1987 administrative review, which is the foundation of the revocation, included sales made by Tsubakimoto of roller chain it purchased from two other Japanese manufacturers. In addition, the Department's determinations in other

administrative proceedings concerning roller chain from Japan indicate that Tsubakimoto was revoked as a manufacturer/exporter and reseller/exporter. Therefore, the Department's revocation was based upon Tsubakimoto's pricing practices as both a manufacturer/exporter and reseller/exporter. For the reasons discussed above, we are preliminarily rescinding this review with respect to Tsubakimoto.

As provided for in section 353.54(e) of the Commerce Regulations which were in effect at the time of the tentative determination to partially revoke the order, Tsubakimoto agreed in writing to an immediate suspension of liquidation and reinstatement of the finding (as an order) if circumstances develop which indicate that roller chain, other than bicycle, manufactured and exported to the United States by Tsubakimoto is being sold by the firm at less than fair value (LTFV). See 48 FR 39674 (Sept. 1, 1983). If the Department determines, from information available to it either from submissions or other sources, that circumstances have developed which indicate subject merchandise is being sold by Tsubakimoto, or that Tsubakimoto is facilitating the sale of subject merchandise, at less than normal value in the United States, the Department will examine whether the elements necessary for reinstatement of the finding exist at that time.

Although we are preliminarily rescinding this review with respect to Tsubakimoto, the Department will continue to review this issue and encourages interested parties to comment on the appropriateness of our determination.

Extension of Deadlines

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of a preliminary determination if it determines that it is not practicable to complete the review within the statutory time limit. On August 22, 1997, the Department extended the time limit for the preliminary and final results of this case. See *Notice of Extension of Time Limits of Antidumping Duty Administrative Review*, 62 FR 44643 (August 22, 1997).

Scope of Review

The merchandise subject to this review is roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British

standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

Verification

As provided in Section 782(i) of the Act, we verified information provided by two respondents, OCM and Izumi. We used standard verification procedures, including on-site inspection of the respondents' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the verification reports placed on file in the Central Records Unit (CRU) in room B-099 of the Main Commerce Building.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use, subject to section 782(d), FA in reaching the applicable determination.

Section 782(d) provides certain conditions that must be satisfied before the Department may, subject to subsection (e), disregard all or part of the information submitted by a respondent. First, this section states that, if the Department determines that a response to a request for information

does not comply with the request, it shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. Section 782(d) continues that, if the party submits further information in response to the deficiency and the Department finds the response is still deficient or submitted beyond the applicable time limits, the Department may disregard all or part of the original and subsequent responses.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

2. Selection of Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See the Statement of Administrative Action (SAA) at 870. To examine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b), the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See e.g., *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819-53820 (October 16, 1997).

A. Total Facts Available

Pulton

In this case, Pulton submitted its questionnaire responses by the established deadlines and agreed to verification of its responses from March 16-20, 1998. Subsequently, however, prior to verification, it informed the Department that it would not allow verification of its responses. Because the Department was unable to verify the submitted information, as required by section 782(i) of the Act, the Department

had no authority to rely upon that unverified information in making its determination; thus section 776(a) of the Act mandates that the Department use facts available in making its determination vis-a-vis Pulton. Further, by refusing to allow verification, Pulton also significantly impeded the instant review, a result which section 776(a)(2)(C) and (D) require be addressed with the use of facts available. Although referenced under section 776(a), Section 782(d) of the Act concerns deficient submissions and thus is not applicable to a verification refusal.

As noted above, in selecting facts otherwise available, the Department may, pursuant to section 776(b) the Act, use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with requests for information. Where, as here, the respondent does not allow the Department officials to conduct verification of submitted information, it is deemed uncooperative, which constitutes grounds for applying adverse facts available. See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Venezuela*, 63 FR 8946, 8947 (February 23, 1998); and *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania*, 61 FR 24274, 24275 (May 14, 1996). As explained above, although Pulton responded to the Department's requests for information, it refused to undergo verification, thereby preventing the Department from verifying the accuracy and completeness of the information it had submitted. Pulton's refusal to permit the Department to verify the information in this review demonstrates that it failed to cooperate by not acting to the best of its ability particularly in light of the fact that Pulton has participated in numerous administrative reviews and is generally familiar with the verification process. As Pulton indicated, it decided not to allow verification in this review because it would require two employees to spend two weeks dealing with the verification and its preparation. Pulton did not indicate that verification was impossible. Thus, consistent with the Department's practice in cases where a respondent withdraws its participation in a proceeding, in selecting facts available for Pulton in this review, an adverse inference is warranted.

In light of *Pulton Chain Co., Inc. v. U.S.*, Slip Op. 97-162 Court No. 96-12-02877 (December 1, 1997), we are assigning to Pulton an FA margin of 42.48 percent, the rate calculated for

Kaga in the instant review. For a more detailed discussion of this issue, see the April 30, 1998, Memorandum from The Senior Director, AD/CVD Enforcement, Group II, Office IV to the Acting Deputy Assistant Secretary, Import Administration, regarding the Determination of Facts Available for Pulton Chain Co., on file in room B-099, in the main Commerce Building.

OCM

With respect to OCM, although the Department issued several supplemental questionnaires requesting that OCM report appropriate home market comparison sales and appropriate cost information, OCM failed to comply with the Department's repeated requests. Moreover, at verification, OCM was unable to explain (1) numerous discrepancies with respect to its unreported home market sales, and (2) its cost calculation methodology. Because OCM failed to provide the necessary information in the form and manner requested, and the information could not be verified, section 776(a) directs the Department to apply, subject to section 782(d), facts otherwise available.

Pursuant to section 782(d), we provided OCM the opportunity to explain its deficiencies. Although we addressed deficiencies in OCM's original questionnaire response regarding its reporting of home market sales and variable costs of manufacturing, OCM still did not report all appropriate home market sales and cost information. Specifically, we were unable to determine the extent of unreported home market sales of merchandise identical or similar to merchandise sold in the United States because of various discrepancies between the information originally submitted and what we found at verification. OCM was unable to explain these discrepancies, or to identify which home market sales had not been reported. Further, OCM only reported variable costs of manufacture (VCOMs) for certain models of chain sold in both the U.S. and home markets during the POR. Because we can not determine the extent of unreported home market sales or the extent of unreported VCOMs, we are unable to determine whether we have the most appropriate home market sales for purposes of calculating a dumping margin.

Next, as noted we were unable to verify the accuracy and completeness of OCM's costs. We could not reconcile OCM's reported material and labor costs to its internal books and records and, therefore, could not establish whether the reported costs reflect actual costs for

the POR. Thus, we were unable to establish the credibility of the information contained in OCM's questionnaire responses.

Finally, OCM has not demonstrated on the record that it acted to the best of its ability in providing the necessary information. OCM elected not to follow the Department's clear instructions, which were enunciated in several questionnaires as well as during meetings with OCM's counsel, that OCM must report all appropriate home market sales and utilize an appropriate cost methodology. For example, the company used standard cost data to report model-specific material and labor costs, even though the Department does not accept standard costs for purposes of an antidumping analysis. Although we instructed OCM to calculate a variance between its standard and actual costs for the POR, it compared data that did not reflect either the period used to calculate the standard costs (April–September 1993) or the POR (April 1996–March 1997) to calculate this variance. In addition, OCM only calculated its variance for its four highest selling models of roller chain and applied a simple average of these variances to the standard costs reported for all other models.

For the reasons stated above, the application of section 782(e) of the Act does not overcome section 776(a)'s direction to use facts otherwise available for OCM's submissions. Thus, the use of facts available is warranted in this case.

As discussed above, in selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. In this context, however, although the respondent may not act to the best of its ability, it may be deemed sufficiently "cooperative" so that the Department may determine to apply FA that are less adverse. See, e.g., *Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53291–53292 (October 14, 1997) (*Fresh Cut Flowers-Colombia* (1997)); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Review*, 62 FR 2081, 2088 (January 15, 1997) (AFBs—1997).

As discussed above, we found significant problems with OCM's submissions. Although we addressed deficiencies in OCM's original

questionnaire response regarding its reporting of home market sales and variable costs of manufacturing, OCM still did not report all appropriate home market sales and cost information. Specifically, we were unable to determine the extent of unreported home market sales of merchandise identical or similar to merchandise sold in the United States because of various discrepancies between the information originally submitted and what we found at verification. OCM was unable to explain these discrepancies at verification, or to identify which home market sales had not been reported. OCM did not provide in its questionnaire responses either the calculation methodology employed to calculate its reported costs or appropriate cost variances. In its attempts to update standard costs, OCM calculated variances based on costs that did not reflect the standard or actual costs for the POR. Accordingly, because OCM did not act to the best of its ability to comply with the request for information under section 776(b), an adverse inference is warranted. However, because OCM made substantial efforts to cooperate throughout the course of this review, we are resorting to facts available that are less adverse to the interests of OCM. See, e.g., *Fresh Cut Flowers-Colombia* (1997). Therefore, we are assigning OCM an adverse FA rate of 17.57 percent (a rate calculated for another respondent in a previous review of this proceeding). This rate is a significant increase from the company's current cash deposit rate and thus is sufficiently adverse to induce cooperation by OCM in future reviews of this proceeding. Since we are applying FA based on a margin from a prior administrative review of this finding, we have satisfied the corroboration requirements under section 776(c) of the Act. See the section below on "Corroboration of Information Used as Facts Available." For a detailed discussion of this issue, see Memorandum From The Senior Director, AD/CVD Enforcement, Group II, Office IV to the Acting Deputy Assistant Secretary, Import Administration regarding Determination of Facts Available Based on Results of Verification of Oriental Chain Manufacturing Co., (April 30, 1998), on file in room B-099, in the main Commerce Building.

Izumi

Although the Department issued several supplemental questionnaires requesting that Izumi report appropriate third country sales and appropriate cost information, Izumi failed to comply

with the Department's repeated requests. Moreover, at verification, Izumi was unable to explain: (1) numerous discrepancies with respect to its unreported third country sales; and (2) its cost calculation methodology. Because Izumi failed to provide the necessary information in the form and manner requested, and the information could not be verified, section 776(a) directs the Department to apply, subject to section 782(d), facts otherwise available.

Pursuant to section 782(d), we provided Izumi the opportunity to explain its deficiencies in our supplemental questionnaire of August 22, 1997, December 31, 1997, and December 19, 1997. In addition, we held a pre-verification conference with Izumi's counsel to ensure that Izumi understood our concerns so that its deficiencies could be remedied in time for verification.

Although Izumi submitted its questionnaire responses by the established deadlines, we were unable to verify their accuracy and completeness. First, we could not reconcile Izumi's reported material, labor, and overhead costs to its internal books and records and, therefore, could not establish whether the reported costs reflect actual costs for the POR. Thus, we were unable to establish the accuracy of the information contained in Izumi's questionnaire responses.

Second, although we addressed deficiencies in Izumi's original questionnaire response regarding its reporting of VCOM, Izumi still did not report all appropriate variable cost information. Specifically, Izumi did not report full POR costs for approximately 75 percent of its subject merchandise sold in the United States and to third countries. Izumi was unable to explain why these costs had not been reported. In addition, we discovered at verification that Izumi did not report all appropriate third country sales. Because we can not determine the extent of unreported comparison market sales of identical and similar merchandise, and we do not have accurate or complete VCOM's, we are unable to calculate constructed value (CV) or to determine whether we have the most appropriate third country sales, for purposes of calculating a dumping margin.

Finally, Izumi has not demonstrated on the record that it acted to the best of its ability in providing the necessary information. Izumi elected not to follow the Department's clear instructions, which were enunciated in several questionnaires, that Izumi must report all appropriate third country sales and an appropriate cost methodology. For

example, the company informed us at verification that it based its reported material and labor costs on outdated cost data from the initial antidumping investigation in this case (that was conducted in 1973). Izumi claimed that it updated this data to reflect POR costs. However, Izumi was unable to explain the methodology used to calculate the "updated" costs, nor was it able to provide any worksheets showing these calculations, or linking the reported costs to its POR internal books and records.

For the reasons stated above, the application of section 782(e) of the Act does not overcome section 776(a)'s direction to use facts otherwise available for Izumi's submissions. Thus, the use of facts available is warranted in this case. Further, also as discussed above, in selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information.

In this context, however, although the respondent may not act to the best of its ability, it may be deemed sufficiently "cooperative" and the Department may determine to apply FA that are less adverse. See discussion above, for OCM.

As discussed above, we found significant problems with Izumi's submissions. Although we addressed deficiencies in Izumi's questionnaire responses regarding its reporting of comparison market sales and variable costs of manufacturing, Izumi still did not report all appropriate comparison market sales and cost information. Specifically, we were unable to determine the extent of unreported comparison market sales of merchandise identical or similar to merchandise sold in the United States because of various discrepancies between the information originally submitted and what we found at verification. Izumi was unable to explain these discrepancies, and at verification only provided information regarding a portion of the unreported third country sales. Izumi did not provide in its questionnaire responses either the calculation methodology employed to calculate its reported costs or appropriate cost variances. Moreover, at verification, Izumi was unable to explain how it had attempted to update the original investigation costs to reflect POR costs. Accordingly, because Izumi did not act to the best of its ability to comply with the request for information under section 776(b), an adverse inference is warranted. However, because Izumi made substantial efforts

to cooperate throughout the course of this review, we are resorting to facts available that are less adverse to the interests of Izumi. See, e.g., *Fresh Cut Flowers-Colombia* (1997).

Therefore, we are assigning Izumi an adverse FA rate of 17.57 percent (a rate calculated for another respondent in a previous review of this proceeding). This rate is a significant increase from the company's current cash deposit rate and thus is sufficiently adverse to induce cooperation by Izumi in future reviews of this proceeding. Since we are applying FA based on a margin from a prior administrative review of this finding, we have satisfied the corroboration requirements under section 776(c) of the Act. See the section below on "Corroboration of Information Used as Facts Available." For a detailed discussion of this issue see Memorandum From The Senior Director, AD/CVD Enforcement, Group II, Office IV to the Acting Deputy Assistant Secretary, Import Administration regarding Determination of Facts Available Based on Results of Verification of Izumi Chain Manufacturing Co., Ltd., (April 30, 1998), on file in room B-099, in the main Commerce Building.

The Department also notes that the majority of Izumi's home market sales were made to an affiliated Japanese manufacturer. Due to this affiliation, the Department will be reviewing, for the purposes of the final determination of this administrative review, the appropriateness of continuing our analysis of Izumi as a separate entity.

B. Partial Facts Available DK and Enuma

In our initial questionnaire of June 18, 1997, we stated that if a respondent elected not to supply difference in merchandise (DIFMER) information and we later determined for any reason that a U.S. sale should be compared to a sale of a similar product in the comparison market, we might have to resort to the use of facts otherwise available (FA).

In response, both Daido and Enuma stated that they believed that they had identical home market (HM) sales for every U.S. model. However, both respondents admitted that a matching contemporaneous HM sale may not exist for every U.S. sale. Both Daido and Enuma contended that because of the large number of U.S. and HM sales, they had not been able to determine if there are any unmatched U.S. sales. Both respondents stated that they would "report either difference in merchandise adjustments or constructed values," if

they found that "unmatched U.S. sales exist."

In the supplemental questionnaires to Daido and Enuma dated September 2, 1997, and November 5, 1997, respectively, we again informed the respondents that if we determined that there was not a contemporaneous sale in the HM of an identical model for every model of roller chain sold in the United States, or such sales could not be used as a basis for normal value (NV) for any reason, and Daido and Enuma failed to report their DIFMER data, we might resort to FA in making our determinations. In its September 16, 1997, response, Daido stated that "[n]o response was required" while Enuma in its November 24, 1997, submission, provided no response except to state that "[t]his particular question does not require an answer." Furthermore, in an additional supplemental questionnaire, dated December 11, 1997, we again asked Daido to confirm that it had reported a contemporaneous sale of an identical or similar HM model for every sale in the U.S. market, as requested in the original questionnaire. The supplemental questionnaire pointed out that if there is not an identical or similar HM match for each Daido sale in the U.S. market, then it was Daido's responsibility to submit CV information for those U.S. models which do not have contemporaneous comparison sales in the HM. Further, we reiterated to Daido the requirement to report VCOM data for both the home market and U.S. models and the TCOM for U.S. models, if there are sales of U.S. models for which there are no contemporaneous home market sales of identical merchandise. Daido responded that it "believes that it has reported a contemporaneous home market sale of an identical model for every U.S. sale." However, in performing product comparisons for Daido and Enuma, we were unable to identify HM sales of identical products for every product sold in the United States, as claimed by the respondents.

Pursuant to 782(d), we provided Daido and Enuma the opportunity to explain their deficiencies. As noted above, Daido and Enuma failed to provide VCOM and/or CV information in response to our initial questionnaire. Each was sent a supplemental questionnaire requesting the VCOM and/or CV information. Neither Daido nor Enuma provided the requested data. Therefore, section 776(a) directs the Department to use facts otherwise available, subject to section 782(e).

Because the information at issue submitted by Daido and Enuma was so incomplete that it cannot serve as a

reliable basis for the unmatched U.S. sales, and by refusing to remedy the deficiencies in that information Daido and Enuma failed to act to best of their abilities, section 782(e) authorizes the Department to decline to consider the deficient information and resort to facts otherwise available.

The failure by Daido and Enuma to report DIFMER and/or CV data, information which we requested in our original and in our supplemental questionnaire(s) and information which they controlled, despite our warnings regarding the consequences of such an action, demonstrates that Daido and Enuma failed to cooperate to the best of their ability.

Given Daido and Enuma's lack of cooperation, we are assigning their unmatched sales an FA margin of 42.48 percent, the rate calculated for Kaga in the instant review.

Kaga

As a result of our analysis of the revised U.S. sales databases submitted by Kaga, on January 22, 1998, we identified a number of sales transactions listed in the U.S. sales databases which have missing values (e.g., VCOM, gross unit price (GRSUPRU), etc.). In letters dated March 25, 1998 and March 31, 1998, we requested that Kaga provide a revised U.S. sales tape containing the missing information we had identified. Further, we requested that Kaga check its databases to determine if any other transactions not identified in our request had missing values. If so, we asked that this information be provided as well.

On April 1, 1998, we received a call from counsel for Kaga who explained that in responding to our March 25, 1998, request for information regarding missing values, Kaga discovered other errors. We instructed Kaga to submit revised sales tapes for the United States and HM and informed Kaga that if we found errors or had difficulty in using the data on the revised tapes, we may proceed with our determination based on facts available.

On April 6, 1998, Kaga submitted revised sales data for constructed export price (CEP) sales and for export price (EP) sales to one customer but stated that it had been unable to locate any missing data for sales to the other EP customer. In addition, Kaga reported that it had made corrections with respect to packing, brokerage and handling, sale date, and freight from port to warehouse. However, in performing product comparisons for Kaga, we found several transactions with missing values in the U.S. sales

databases, including VCOM, TCOM, number of strands, and GRSUPRU.

Pursuant to 782(d), we provided Kaga the opportunity to explain its deficiencies. We sent Kaga a supplemental questionnaire addressing deficiencies in its response. Although Kaga responded to our supplemental request for information, despite our warnings that we might proceed with our determination based on facts available if we found errors or had difficulty in using Kaga's revised data, the information provided was deficient. Therefore, Section 776(a) directs the Department to use facts otherwise available, subject to Section 782(e).

The application of Section 782(e) of the Act does not overcome Section 776(a)'s direction to use facts otherwise available for Kaga's U.S. sales database. Because several transactions in Kaga's U.S. sales databases have missing values for specific variables that are necessary for matching to HM sales, we are unable to calculate a margin for these U.S. sales.

Kaga's failure to provide data for specific variables which are essential to our determination of model match (e.g., VCOM, TCOM, etc.), despite our pointing out to Kaga exactly what was missing, demonstrates that Kaga failed to cooperate to the best of its ability especially in light of Kaga's ability to provide the same type of information for other sales.

Given Kaga's lack of cooperation, we recommend assigning to Kaga's unmatched sales, an FA margin of 42.48 percent, which is the rate calculated for Kaga's other sales in the instant review and is one of the highest margins calculated in the history of this proceeding.

Sugiyama

As with the other respondents in this review, pursuant to section 782(d) of the Act, we provided Sugiyama the opportunity to explain deficiencies we noted in the responses. To that end, we issued supplemental questionnaires to Sugiyama on September 5, 1997, November 26, 1997, November 28, 1997, and December 17, 1997. We noted that in its original Section B response, Sugiyama reported that one of its affiliated home market resellers (hereafter referred to as reseller A) had sales to two customers in the home market during the POR. However, in its revised database, submitted in January 1998, in response to the Department's supplemental questionnaires, Sugiyama included previously unreported sales by reseller A to multiple additional customers. After careful review of this submission, we discovered that

Sugiyama had increased its home market sales database by more than 40 percent. Sugiyama's failure to identify the magnitude of the increased sales resulted in the Department's rejecting this submission. However, we reconsidered this decision and in March accepted the submission, stating that we were not certain how we would treat the newly reported sales. Subsequently, after the deadline had passed for submission of new factual information, Sugiyama advised the Department that several of those additional customers were affiliated with reseller A.

Given the lateness of these submissions, the extent of the additional information provided, and concerns about establishing the accuracy of the data, we are excluding this data from our preliminary margin calculations. Further, we have identified all U.S. transactions where the normal value that would have been used for comparison purposes relied in whole or in part on those newly reported home market sales and applied a margin based on the FA to the U.S. sales in question.

The preceding analysis demonstrates that Sugiyama failed to cooperate to the best of its ability. Thus, in accordance with section 776(b), in selecting among the FA for this respondent, we believe that an adverse inference is warranted. Given Sugiyama's lack of cooperation, we assigned as FA to the U.S. sales in question, the 42.48 percent rate calculated for Kaga in the instant review.

Between the preliminary and final review results, we will address the appropriateness of including the additional transactional data in our final margin analysis.

3. Corroboration of Information used as Facts Available

Section 776(b) of the Act authorizes the Department to use as adverse FA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is described in the SAA (at 870) as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."

The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has

probative value (see SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (i.e., the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act. See, e.g., *Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR at 971 (January 7, 1997) and *AFBs-1997*.

As to the relevance of the margin used for adverse FA, the Department stated in *Tapered Roller Bearings from Japan: Final Results of Antidumping Duty Administrative Review* 62 FR 47454 (Sept. 9, 1997) that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant.

Where circumstances indicate that the selected margin is not appropriate as adverse [FA], the Department will disregard the margin and determine an appropriate margin." See also *Fresh Cut Flowers from Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567.

We have determined that there is no evidence on the record of the 1987-1988 administrative review, where we calculated the 17.57 percent rate for Hitachi Metals, that would indicate that the 17.57 percent rate is irrelevant or inappropriate as an adverse FA rate for certain respondents in the instant review. Therefore, where we have applied as FA, the 17.57 margin from a prior administrative review of this finding, we have satisfied the corroboration requirements under section 776(c) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the Scope of the Review, which were produced and sold by the respondent in the home market during the POR, to be foreign like products for purposes of product comparisons to U.S. sales. Where there were no sales of identical or similar merchandise in the

home market to compare to U.S. sales, we compared U.S. sales to the CV of the product sold in the U.S. market during the comparison period.

In past segments of this proceeding, we have used the model match databases submitted by the respondents to identify identical and similar merchandise in the home market. For this review, however, we have determined it appropriate to make the analysis in this proceeding consistent with the Department's practice of defining identical and similar merchandise based on the product characteristics outlined in the antidumping questionnaire.

In the final results of the prior segment of this proceeding, we stated our intent to use the model match comments received in that review as a starting point for determining the appropriate model match criteria to be employed in future reviews. See *Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR at 60475 (November 10, 1997). Using these comments, we developed proposed model match criteria and issued the proposal to all parties in a letter dated November 26, 1997. Additional comments were received from all parties on December 12, 1997 and December 15, 1997. Based on our analysis of all comments received as well as our examination of questionnaire responses, product catalogs of various respondents in the current review, and the model matching methodology used by the Department in prior segments of this proceeding, we developed our model match criteria based on eighteen product characteristics as outlined in our supplemental questionnaire of December 19, 1997.

Fair Value Comparisons

To determine whether sales of the subject merchandise by the respondents to the United States were made at below NV, we compared the EP or CEP to the NV, as described in the "export price," "constructed export price," and "normal value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we compared, where appropriate, the EPs and CEPs of individual transactions to the monthly weighted-average NV of contemporaneous sales of the foreign like product.

Export Price

For the price to the United States, we used EP, as defined in section 772(a) of the Act, where the subject merchandise was sold directly to the first unaffiliated

purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of the record. In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for foreign inland freight from the plant to the port, foreign inland insurance, foreign brokerage and handling, international freight, and marine insurance because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery.

Constructed Export Price

The Department based its margin calculation on CEP, as defined in section 772(b) (c) and (d) of the Act, where sales to the first unaffiliated purchaser in the United States took place after importation or where CEP methodology was otherwise warranted.

In the case of RK, the company reported its sales through NIC and its direct sales to ATSI as EP sales where the price and quantity sold to unaffiliated parties were established prior to exportation and the merchandise did not enter ATSI's inventory. When sales are made prior to the date of importation through an affiliated or unaffiliated sales entity in the United States, the Department uses the following criteria to determine whether U.S. sales should be classified as EP sales: (1) whether the merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent; (2) whether direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and (3) whether the selling agent in the United States acts only as a processor of sales-related documentation and a communication link (i.e., "a paper-pusher") with the unaffiliated U.S. buyer. Where the factors indicate that the activities of the selling entity in the United States are ancillary to the sale (e.g., arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (e.g., negotiating prices), we treat the transactions as CEP sales. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain*, 63 FR 10849, 10852 (March 5, 1998).

Based on our review of the record information concerning RK's sales described above, we preliminarily determine that these sales are CEP

transactions. We note that according to RK the customary channel is to sell the merchandise prior to importation and ship the merchandise directly from RK or RK/NIC to the unaffiliated buyer in the United States without being introduced into the physical inventory of ATSI. However, during the POR, FTM & Associates (FTM), an unaffiliated U.S. sales company, acted as a selling agent for RK and RK/NIC with respect to all RK-produced merchandise sold in the United States that did not enter into ATSI's inventory. FTM was responsible for introducing potential new customers and sales to RK and its affiliates, U.S. advertising, and all customer contact. Thus, FTM acted as more than just a paper processor or communication link for sales of RK-produced merchandise. Accordingly, for purposes of these preliminary results, we are treating the sales in question as CEP sales. For a more detailed discussion of this issue, see the April 30, 1998, Memorandum to the Acting Deputy Assistant Secretary, Import Administration, regarding Treatment of Certain RK Excel U.S. Sales of Subject Merchandise as Constructed Export Price or Export Price Transactions, on file in room B-099, of the main Commerce Building.

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. Where appropriate, the Department made adjustments for discounts and rebates. Also where appropriate, we deducted credit expenses, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We also made deductions, where appropriate, for movement expenses (foreign inland freight, foreign brokerage and handling, international freight and insurance, U.S. duties, U.S. brokerage and handling, and U.S. inland-freight and insurance), and pursuant to section 772(d)(3), where applicable, we made an adjustment for CEP profit. With regard to RK and Sugiyama, the only respondents in this review who further-manufactured the merchandise in the United States, we made a deduction for the cost of further manufacturing in the United States in accordance with section 772(d)(2) of the Act.

Normal Value

Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject

merchandise, in accordance with section 773(a)(1) of the Act. For DK, Enuma, RK, Sugiyama, and Kaga, we determined that the quantity of foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States because each of these respondents made home market sales which were greater than five percent of its sales in the U.S. market.

Arms-Length Transactions for Enuma and Sugiyama

Sales to affiliated customers in the home market for Enuma and Sugiyama which were determined not to be at arms-length were excluded from our analysis. To test whether these sales were made at arms-length, we compared the starting prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts, and packing. Pursuant to 19 CFR 353.45(a) and in accordance with our practice, where the price to the affiliated party was less than 99.5 percent or more of the price to the unaffiliated party, we determined that the sales made to the affiliated party were not at arm's length. We disregarded all sales of Sugiyama's and Enuma's home market customers that did not pass the arms-length test.

Level of Trade

In accordance with section 773(a)(7) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Customer categories such as distributor, original equipment manufacturer, or reseller are commonly used by respondents to describe levels of trade but are insufficient to establish an LOT. Different levels of trade necessarily involve differences in selling functions, but differences in

selling functions, even substantial ones, are not alone sufficient to establish a difference in the levels of trade. Different levels of trade are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different selling functions in selling to them.

If we find that the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In order to determine whether a LOT adjustment or CEP offset was warranted for Kaga, RK, Enuma, DK and Sugiyama, we compared the EP and CEP sales to the HM sales in accordance with the principles discussed above. For purposes of our analysis, we examined information regarding the distribution systems in both the United States and the Japanese markets, including the selling functions, classes of customer, and selling expenses for each of the above companies.

Based on our analysis of these factors, we found for each respondent that no LOT difference existed between its U.S. and home market. Therefore, we have made no LOT adjustment for any of these respondents. For a detailed discussion of the LOT issues, see the April 30, 1998, memoranda to the Program Manager from the Team, regarding the LOT analysis for Kaga, RK, Enuma, Daido and Sugiyama.)

Constructed Value

For Sugiyama's, RK's, and Kaga's products for which we could not determine the NV based on home market sales of roller chain, because there were no contemporaneous sales of a comparable product, we compared U.S. prices to CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the cost of manufacturing (COM) of the product sold in the United States, plus amounts for home market SG&A

expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A), we used the actual amounts incurred and realized by the respective manufacturers in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate SG&A expenses and profit.

Price-to-Price Comparisons

We based NV on packed, ex-factory or delivered prices to unaffiliated purchasers in the home market. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to home market prices for discounts, rebates, inland freight, insurance, technical services, and other direct selling expenses. To adjust for differences in circumstances of sales (COS) between the home market and the EP and CEP transactions in the United States, we reduced home market prices by an amount for home market credit expenses. For comparison to EP transactions we also made an upward adjustment for U.S. credit expenses. We also made adjustments for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset), pursuant to 19 CFR 353.56(b). To adjust for differences in packing between the two markets, we adjusted the home market price by deducting HM packing costs and adding U.S. packing costs. In addition, we made adjustments, where appropriate, for differences in costs attributable to physical differences of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 353.56 for COS differences. For comparisons to EP, where appropriate, we made COS adjustments by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses. For comparisons to CEP, where appropriate, we made COS adjustments by deducting direct selling expenses incurred on home market sales. We also made adjustments, where applicable, for the commission offset in the manner described above.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates published by the Federal Reserve in

effect on the dates of the U.S. sales. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. (For a detailed explanation, see Policy Bulletin 96-1: Currency Conversions, 61 FR 9434, March 8, 1996.) The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate. We have determined that no fluctuation existed in this review, therefore, we have made currency conversions based on the daily exchange rates.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margins exist for the period April 1, 1996, through March 31, 1997:

Manufacturer/exporter	Weighted-average margin percentage
Daido Kogyo Company Ltd	0.03
Enuma Chain Mfg. Company ...	0.06
Izumi Chain Mfg. Company Ltd	17.57
Pulton Chain Company Inc	42.48
R.K. Excel Company Ltd	10.29
Kaga Kogyo/Kaga Industries	42.48
Oriental Chain Company	17.57
Sugiyama Chain Company, Ltd	31.50

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, (2) a brief summary of the argument not to exceed five pages, and (3) a table of authorities cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 180 days after the date of publication of this notice. The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. For duty assessment purposes, for CEP sales we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. For assessment of EP sales we calculated a per unit importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of subject merchandise entered during the POR for each importer.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty review for all shipments of roller chain from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those established in the final results of this review; (2) for exporters not covered in this review, but covered in the LTFV investigation or prior reviews, the cash deposit rate will continue to be the company-specific rate from the LTFV investigation or the prior review; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.92 percent, the "All Others" rate based on the first review conducted by the Department in which a new shipper rate was established in the final results of

antidumping finding administrative review (48 FR 51801, November 14, 1983). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777 (i)(1) of the Act.

Dated: April 30, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-12206 Filed 5-7-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion. The meeting will include briefings on trade priorities and issues, the Asia monetary crisis, the World Trade Organization, economic sanctions and Virtual Trade Mission activities. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 12991.

DATE: June 2, 1998.

TIME: 10:30 p.m. to 4:15 p.m.

ADDRESSES: The J.W. Marriott Hotel, Salon G, 1331 Pennsylvania Avenue, N.W., Washington, D.C., 20004. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted by May 15, 1997, to J. Marc Chittum, President's Export Council, Room 2015B, Washington, D.C., 20230. (Phone: 202-482-1124) Seating is

limited and will be on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 2015B, Washington, D.C., 20230 (Phone: 202-482-1124).

Dated: May 1, 1998.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 98-12281 Filed 5-7-98; 8:45 am]

BILLING CODE 3510-DR-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

(I.D. 042998D)

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of its Special Crustacean and Finfish Stock Assessment Panels (SAP).

DATES: A meeting of the Crustacean SAP will be held beginning at 1:00 p.m. on Monday, June 1, 1998, and will conclude by 12:00 noon on Thursday, June 4, 1998. A meeting of the Finfish SAP will be held beginning at 1:00 p.m. on Monday, June 22, 1998, and will conclude by 12:00 noon on Thursday, June 25, 1998.

ADDRESSES: The Crustacean SAP meeting will be held at the Crowne Plaza Hotel, 333 Poydras Street, New Orleans, LA. The Finfish SAP meeting will be held at the Atlantic Oceanographic Meteorologic Center, 4301 Rickebacker Causeway, Miami, FL.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist; telephone: 813-228-2815.

SUPPLEMENTARY INFORMATION: The Panels will be convened to develop alternatives for the overfishing criteria as required by the Sustainable Fisheries Act. Separate criteria will be considered for each of the stocks or stock-complexes managed under the Council's existing Fishery Management Plans (FMP) for shrimp, stone crab, and spiny lobster (Crustacean SAP), and for migratory coastal pelagics, reef fish, and red drum (Finfish SAP).

The Panels will develop proxies for expressing maximum sustainable yield and optimum yield in terms of

spawning potential ratio, spawning stock biomass per recruit, or other credible analyses as appropriate for the stocks or stock complexes of each FMP. The Panels will also develop alternatives for rebuilding periods for stocks that have been classified as overfished by NMFS. The Panels may suggest modifications to the framework procedures for specifying acceptable biological catch and total allowable catch where appropriate. Each panel will develop a report to the Council setting forth their recommendations.

Although other issues not contained in this agenda may come before the Panels for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

A copy of the agenda can be obtained by contacting the Gulf Council (see **ADDRESSES**).

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by May 22, 1998.

Dated: May 1, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98-12254 Filed 5-7-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

(I.D. 042998A)

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Allocation Committee will hold a meeting which is open to the public.

DATES: The meeting will begin on Friday, May 22, 1998, at 8 a.m. and will continue throughout the day as necessary.

ADDRESSES: The meeting will be held at the Council Office, 2130 SW Fifth Avenue, Suite 224, Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the potential allocation of lingcod and some rockfish species among the recreational and commercial fisheries and between gear sectors of the limited entry fleet. The committee will discuss, among other things, objectives of the allocations, the process requirements, available data, the basis for allocations, and implementation concerns. The committee will prepare a report to present to the Council at its June meeting.

Although other issues not contained in this agenda may come before this Committee for discussion, according to the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Larry Six at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: May 1, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98-12250 Filed 5-7-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

(I.D. 042998B)

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) Economic Subcommittee will hold a meeting which is open to the public.

DATES: The meeting will begin on Wednesday, May 27, 1998, at 10:00

a.m., and will continue through 4:00 p.m. on Thursday, May 28, 1998. The Wednesday session may go into the evening until business for the day is completed. The Thursday session will begin at 8:00 a.m. An opportunity for public comment will be provided at 4:00 p.m. on Wednesday and 3:00 p.m. on Thursday.

ADDRESSES: The meeting will be held in the conference room at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Seger, Economic Analysis Coordinator; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review a draft economic data collection plan prior to submission of the plan to the Council for adoption for public review, to review draft economic research and data needs, and, if time permits, to conduct an initial review of available materials on draft salmon, groundfish, and coastal pelagic plan amendments.

Although other issues not contained in this agenda may come before the economic subcommittee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues will not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Larry Six at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: May 1, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98-12251 Filed 5-7-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

(I.D. 042998C)

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a meeting which is open to the public.

DATES: The meeting will begin on Monday, June 1, 1998, at 1 p.m. and will continue through 4 p.m. on Thursday, June 4, 1998. The Tuesday and Wednesday sessions will begin at 8 a.m. and may go into the evening until business for the day is completed. An opportunity for public comment will be provided at 4 p.m. each day of the meeting and 3 p.m. on Thursday.

ADDRESSES: The meeting will be held in the conference room at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to finish preparation of the draft fishery management plan amendment and to prepare technical advice and reports to support Council decisions throughout the year. Specific issues the GMT will address include: (1) prepare and review sections of the draft groundfish fishery management plan amendment; (2) review inseason catch projections; (3) prepare recommendations related to groundfish research and data needs; (4) evaluate data and analysis requirements related to lingcod and rockfish allocation; (5) evaluate Pacific grenadier and rockfish landings trends; (6) develop recommendations for stock assessment priorities for 1999; (7) review analysis of voluntary observer program data; (8) review buy back program; (9) review "fish for research" emergency rule and permit conditions; and (10) development of discard estimates for lingcod.

Although other issues not contained in this agenda may come before this Team for discussion, according to the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be of formal discussion during this meeting. Action will be restricted to those issues specifically identified in the agenda in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to

Larry Six at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: May 1, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98-12252 Filed 5-7-98; 8:45 am]

BILLING CODE 3510-22-F

COMMISSION ON THE ADVANCEMENT OF FEDERAL LAW ENFORCEMENT

Hearings

AGENCY: Commission on the Advancement of Federal Law Enforcement.

ACTION: Notice of Public Hearings.

TIMES AND DATES: Monday, May 18, 1998; 9:00 A.M.-2:00 P.M.; Monday, June 22, 1998; 9:00 A.M.-4:00 P.M.; Tuesday, June 23, 1998; 9:00 A.M.-12:00 Noon; Thursday, July 9, 1998; 9:00 A.M.-4:00 P.M.; Friday, July 10, 1998; 9:00 A.M.-12:00 Noon; Monday, August 24, 1998; 9:00 A.M.-4:00 P.M.; Tuesday, August 25, 1998; 9:00 A.M.-12:00 Noon; Monday, September 14, 1998; 9:00 A.M.-4:00 P.M.; Tuesday, September 15, 1998; 9:00 A.M.-4:00 P.M.; Hearing dates for October, November and December, 1998 have yet to be determined.

SUMMARY: The Commission on the Advancement of Federal Law Enforcement was created by the Congress in Section 806 of Public Law 104-132, more commonly known as the Anti-Terrorism and Effective Death Penalty Act of 1996. Congress' charge to the Commission is extremely broad and directs the Commission to "review, ascertain, evaluate, report and recommend" action to the Congress on a broad array of issues affecting federal law enforcement priorities for the 21st century. The Commission's report will include recommendations for administrative and legislative action that the Commission considers advisable on the issues it is evaluating. The Commission announces its hearing schedule, thereby notifying the general public of their opportunity to attend the hearings and to offer testimony. These public hearings are designed to give the Commission the considered views of those testifying to assist the Commission in the preparation of its report and to give interested parties the opportunity to present to the Commission information that these parties believe will assist the Commission in its task. The Commission will include in its study of the various federal law enforcement entities their respective

functions, programs, responsibilities, and jurisdictions, along with questions involving their training, coordination, and their interaction with each other, as well as with state and local law enforcement bodies.

Date and Time: Monday, May 18, 1998; 9:00 A.M. to 4:00 P.M.

Location: The American Chemical Society (Othmer Hall) 1155 M Street, N.W., Washington, D.C. 20036.

Date and Time: Monday, June 22, 1998; 9:00 A.M. to 4:00 P.M., Tuesday, June 23, 1998; 9:00 A.M. to 12:00 Noon.

Location: Embassy Suites Hotel, 1250 22nd Street, N.W., Washington, D.C. 20037.

Date and Time: Thursday, July 9, 1998; 9:00 A.M. to 4:00 P.M., Friday, July 10, 1998; 9:00 A.M. to 12:00 Noon.

Location: The American Chemical Society (Othmer Hall), 1155 M Street, N.W., Washington, D.C. 20036.

Date and Time: Monday, August 24, 1998; 9:00 A.M. to 4:00 P.M., Tuesday, August 25, 1998; 9:00 A.M. to 12:00 Noon.

Location: The American Chemical Society (Othmer Hall), 1155 M Street, N.W., Washington, D.C. 20036.

Date and Time: Monday, September 14, 1998; 9:00 A.M. to 4:00 P.M., Tuesday, September 15, 1998; 9:00 A.M. to 4:00 P.M.

Location: The Latham Hotel (Georgetown) 3000 M Street, N.W., Washington, D.C. 20007.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, Commission on the Advancement of Federal Law Enforcement, 1615 M Street, N.W., Suite 240, Washington, D.C. 20036. Telephone (202) 634-6501. Facsimile: (202) 634-6038.

SUPPLEMENTARY INFORMATION: The Commission on the Advancement of Federal Law Enforcement was established by Public Law 104-132, dated April 24, 1996.

Carmelita Pratt,
Administrative Officer.

[FR Doc. 98-12273 Filed 5-7-98; 8:45 am]

BILLING CODE 6820-DK-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67622, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 4, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on May 8, 1998, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
338/638	1,007,499 dozen.
339/639	988,740 dozen.
342/642	550,836 dozen.

Category	Adjusted twelve-month limit ¹
347/348/647/648	2,244,019 dozen of which not more than 1,148,820 dozen shall be in Categories 647/648.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1997.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98-12270 Filed 5-7-98; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

(OMB Control Number 0704-0341)

Information Collection Requirements; Acquisition of Information Technology

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through September 30, 1998. DoD proposes that OMB extend its approval for use through September 30, 2001.

DATES: Consideration will be given to all comments received by July 7, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection requirement should be sent to: Defense Acquisition Regulations Council, Attn: Mr. Michael Pelkey, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax (703) 602-0350. Please cite OMB Control Number 0704-0341 in all correspondence related to this issue. Comments may also be provided electronically by e-mailing the comments to dfars@acq.osd.mil. Please include OMB Control Number 0704-0341 in the subject line of the e-mail.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, at (703) 602-0131. A copy of this information collection requirement is available electronically via the Internet at: <http://www.dtic.mil/dfars/> paper copies may be obtained from Mr. Michael Pelkey, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 239, Acquisition of Information Technology, and the associated clauses at DFARS 252.239-7000 and 252.239-7006; no form is used for this information collection; OMB Number 0704-0341.

Needs and Uses: This requirement provides for the collection of necessary information from contractors regarding security requirements applicable to computers used for processing of classified information; tariffs pertaining to telecommunications services; and proposals from common carriers to perform special construction under contracts for telecommunications services. The information is used by contracting officers and other DoD personnel to ensure that computer systems are adequate to protect against unauthorized release of classified information; to participate in the establishment of tariffs for telecommunications services; and to establish reasonable prices for special construction by common carriers.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 2,110.

Number of Responses: 1,871.

Responses Per Respondent: 1.02.

Average Burden Per Response: 1.13 hours.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.239-7000, Protection Against Compromising

Emanations, requires that the contractor provide, upon request of the contracting officer, documentation supporting the accreditation of the computer system to meet the appropriate security requirements.

The clause at DFARS 252.239-7006, Tariff Information, requires that the contractor provide, upon request of the contracting officer, a copy of the contractor's existing tariffs; before filing, a copy of any application to a Federal, State, or other regulatory agency for new rates, charges, services, or regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government, and, upon request, a copy of all information, material, and data developed or prepared in support of or in connection with such an application; and a notification to the contracting officer of any application submitted by anyone other than the contractor that may affect the rate or conditions of services under the agreement or contract.

DFARS 239.7408 requires that a detailed special construction proposal be obtained from a common carrier that submits a proposal or quotation that has special construction requirements related to the performance of basic telecommunications services.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 98-12267 Filed 5-7-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: Subject to timely enactment of legislation to reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act, a meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 15, 1998, at the IEA's headquarters in Paris, France to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ).

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202-586-6738.

SUPPLEMENTARY INFORMATION: Subject to timely enactment of legislation to

reinstate the antitrust defense under section 252 of the Energy Policy and Conservation Act (EPCA), the following meeting notice is provided, in accordance with section 252(c)(1)(A)(i) of the EPCA:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 15, 1998, at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, beginning at approximately 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the IEA's headquarters on May 15, including a preparatory encounter among company representatives from approximately 9:15 a.m. to 9:30 a.m. The agenda for the preparatory encounter among company representatives is to elicit views regarding items on the agenda for the SEQ meeting. The SEQ's agenda is under the control of the SEQ. It is expected the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 91st Meeting
3. SEQ Work Program
 - The 1998 SEQ Work Program
 - The 1999 SEQ Work Program
 - Preparations for Emergency Response Exercise 1998
4. Policy and Legislative Developments in Member Countries
 - U.S. Energy Policy and Conservation Act (EPCA)
 - Report on U.S. Department of Energy's National Energy Strategy
 - Other Country Developments
5. Emergency Response Reviews of IEA Countries
 - Netherlands
 - Switzerland
 - Italy
 - Updated Schedule of Reviews
6. Transport Sector Oil Security Issues and Prospects
 - Road Vehicles for the Future
7. Emergency Reserve Situation of IEA Countries
 - Emergency Reserve and Net Import Situation of IEA Countries on October 1, 1997
 - Emergency Reserve and Net Import Situation of IEA Countries on January 1, 1998
 - Progress Report on Compliance with IEA Stockholding Commitments
8. Emergency Response Issues in IEA candidate countries
 - Emergency Reserve Situation of IEA Candidate Countries
 - Report on Data Reporting by Candidate Countries
9. Emergency Data System and Related Questions
 - Base Period Final Consumption Q197-Q497

- Monthly Oil Statistics (MOS) December 1997
 - MOS January 1998
 - MOS February 1998
 - Monthly Oil Data Diskette Service (MODS)
 - Quarterly Oil Forecast Q398
 - Emergency Management Manual (improved format)
 - Emergency Reference Guide
 - 10. IEA/ASCOPE Workshop on Asian Energy Security
 - 11. Implementation of IEA Security Rules
 - 12. Any Other Business
 - Oral Report on the May 14 Seminar on the Effects of the Oil Price Drop
 - Update on use of Internet for SEQ documents and communications
 - Workshop in Brazil on Enhancing Oil Sector Energy Security
- As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, D.C., May 1, 1998.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 98-12295 Filed 5-7-98; 8:45 am]

BILLING CODE 9430-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2927-004 and 2928-004]

Aquamac Corporation and Merrimac Paper Company Inc.; Notice of Intent To Conduct Public Scoping Meetings and Site Visit

May 4, 1998.

The Federal Energy Regulatory Commission (Commission or FERC), received an application from the Aquamac Corporation (Aquamac) to relicense the Aquamac Hydroelectric Project No. 2927-004. This 250 kilowatt project is located on the Merrimack River in the City of Lawrence in Essex County, Massachusetts. The Commission also received an application from the Merrimac Paper Company, Inc. (Merrimac), to relicense the Merrimac Hydroelectric Project No. 2928-004. This 1,250 kilowatt project is also located on the Merrimack River in the City of Lawrence in Essex County, Massachusetts. The Commission will hold public and agency scoping meetings on May 18 and 19, 1998, respectively, for preparation of a

Multiple Project Environmental Assessment (MPEA) under the National Environmental Policy Act (NEPA), for the issuance of minor licenses for the projects.

Scoping Meetings

FERC staff will conduct one evening scoping meeting and one day scoping meeting. The day scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that will be analyzed in the MPEA. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Monday, May 18, 1998.
Time: From 7:00 p.m. until 10:00 p.m.
Place: Merrimac Paper Company Conference Room.
Address: 9 South Canal Street, Lawrence, Massachusetts.

Day Scoping Meeting

Date: Tuesday, May 19, 1998.
Time: From 10:00 a.m. until 1:00 p.m.
Place: Merrimac Paper Company Conference Room.
Address: 9 South Canal Street, Lawrence, Massachusetts.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed at the meeting to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visits

The Applicant and FERC staff will conduct a project site visit beginning at 1:00 p.m. on May 18, 1998. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the Merrimac Paper Company office at 9 South Canal Street in Lawrence. All participants are responsible for their own transportation to the site. Anyone with questions about the site visit should contact Mr. Ed Roux of Merrimac Paper at (978) 683-2754.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the MPEA; (2) solicit from meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage

statements from experts and the public on issues that should be analyzed in the MPEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the relative depth of analysis for issues to be addressed in the MPEA; and (5) identify resource issues that are of lesser importance, and therefore, do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceedings on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record. Speaking time for attendees at the meetings may be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the MPEA.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, until June 22, 1998. All filings should contain an original and eight copies, and must clearly show at the top of the first page "Aquamac Hydroelectric Project FERC No. 2927-004"; "Merrimac Hydroelectric Project FERC No. 2928-004"; or both.

For further information, please contact Tim Berry at (202) 219-2790 or Timothy.Berry@FERC.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12257 Filed 5-7-98; 8:45 am]

BILLING CODE 9717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF94-160-004]

Cherokee County Cogeneration Partners, L.P.; Notice of Amendment To Filing

May 4, 1998.

Take notice that on April 17, 1998, Cherokee County Cogeneration Partners, L.P. (applicant), tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement pertains to the ownership structure of the facility.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All motion and protest should be filed by May 18, 1998, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12256 Filed 5-7-98; 8:45 am]

BILLING CODE 9717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-2623-000]

Cook Inlet Energy Supply Limited Partnership; Notice of Filing

May 4, 1998.

Take notice that on April 21, 1998, Cook Inlet Energy Supply Limited Partnership (Cook Inlet), in compliance with the Commission's July 10, 1996, Letter Order approving its market-based rate schedule, submitted for filing a Notification of Change in Status. The Cook Inlet filing describes the development of wind energy projects by affiliates of Cook Inlet and concludes that these transactions do not alter the characteristics that the Commission

relied upon in approving the market-based pricing for Cook Inlet.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 15, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12222 Filed 5-7-98; 8:45 am]

BILLING CODE 9717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98-70-000]

Duke Energy Morro Bay LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

May 4, 1998.

Take notice that on April 24, 1998, Duke Energy Morro Bay LLC (Morro Bay), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Morro Bay is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Duke Energy Corporation. Morro Bay's facility consists of four natural gas-fired generating units with a combined generating capacity of 1,002 MW. Morro Bay states that prior to its purchase of the facility from Pacific Gas & Electric (PG&E), the facility was part of PG&E's integrated system. Therefore, a rate or charge in connection with this facility was in effect under the laws of California on October 24, 1992. On December 16, 1997, the Public Utilities Commission of the State of California (CPUC), issued an interim opinion which concluded that allowing the facility to be an exempt wholesale generator within the meaning of PUHCA would be in the public interest.

would benefit consumers, and would not violate California law. Morro Bay attached a copy of the CPUC opinion to its application.

Morro Bay further states that copies of the application were served upon the California Power Exchange, the Securities and Exchange Commission, the South Carolina Public Service Commission, the North Carolina Utilities Commission, and the CPUC.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before May 15, 1998 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12220 Filed 5-7-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-2626-000]

Kansas City Power & Light Company; Notice of Filing

May 4, 1998.

Take notice that on April 20, 1998, Kansas City Power & Light Company (KCPL), tendered for filing its report of transactions under KCPL's GSS Tariff for the first quarter of 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 15, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12223 Filed 5-7-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-2665-000]

PJM Interconnection, L.L.C., Notice of Filing

May 4, 1998.

Take notice that on April 23, 1998, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of Cargill-Alliant LLC. PJM requests an effective date on the day after this Notice of Filing is received by FERC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 15, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12224 Filed 5-7-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-384-000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

May 4, 1998.

Take notice that on April 24, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket

No. CP98-384-000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point for service to Walthall Natural Gas Company, Inc. (Walthall), under Southern's blanket certificate issued in Docket No. CP82-406-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide firm transportation service to Walthall at a new delivery point for service at approximately Mile Post 22.5 on Southern's 24" Franklinton-Gwinville and 26" Franklinton-Gwinville Loop Line in Section 16, Township 2 North, Range 11 East, Walthall County, Mississippi. The estimated cost of the facilities proposed to be constructed by Southern is \$185,725.

Southern states that it will transport gas on behalf of Walthall under a new service agreement with Southern pursuant to Southern's Rate Schedule FT. Southern states that the installation of the proposed facilities will have no adverse effect on its ability to provide its existing firm requirements. Southern and Walthall have executed a firm transportation agreement and Southern has agreed to pay for the cost of the facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12225 Filed 5-7-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98-6-000]

Warren Transportation, Inc.; Notice of Filing

May 4, 1998.

Take notice that on April 23, 1988, Warren Transportation, Inc. (Warren), filed standards of conduct under Order Nos. 497 *et seq.*¹ and Order Nos. 566 *et seq.*²

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 19, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12226 Filed 5-7-98; 8:45 am]

BILLING CODE 6717-01-M

¹ Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986-1990 ¶ 30,820 (1988); Order No. 497-A, order on rehearing, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986-1990 ¶ 30,868 (1989); Order No. 497-B, order extending sunset date, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986-1990 ¶ 30,908 (1990); Order No. 497-C, order extending sunset date, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991-1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497-D, order on remand and extending sunset date, FERC Stats. & Regs. 1991-1996 ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497-E, order on rehearing and extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497-F, order denying rehearing and granting clarification, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497-G, order extending sunset date, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,996 (June 17, 1994).

² Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,997 (June 17, 1994); Order No. 566-A, order on rehearing, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,004 (October 14, 1994); Order No. 566-B, order on rehearing, 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-2609-000]

Wisconsin Public Service Corporation; Notice of Filing

May 4, 1998.

Take notice that on April 20, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing a quarterly report of short term transactions made during the first quarter of 1998 under WPSC's FERC Electric Tariff, Original Volume No. 10 (MR Tariff).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before May 15, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12221 Filed 5-7-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-1033-000, et al.]

Automated Power Exchange, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 30, 1998.

Take notice that the following filings have been made with the Commission:

1. Automated Power Exchange, Inc.

[Docket No. ER98-1033-000]

Take notice that on April 27, 1998, Automated Power Exchange, Inc., filed its compliance filing in the above-captioned proceeding.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. West Texas Utilities Company

[Docket No. ER98-1174-000]

Take notice that on April 27, 1998, West Texas Utilities Company (WTU), resubmitted for filing in this docket, without seeking confidential treatment, a "Control Area Services Agreement Among West Texas Utilities Company and Rayburn Country Electric Cooperative, Inc., and LG&E Power Marketing" (the Agreement) pursuant to which WTU will sell a package of control area services to Rayburn Country Electric Cooperative, Inc., (Rayburn) and LG&E Energy Marketing Inc., (formerly known as LG&E Power Marketing Inc.) (LPM).

WTU continues to seek an effective date of May 22, 1998. WTU has served copies of the resubmitted filing on Rayburn, LPM and the Public Utility Commission of Texas.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER98-1580-000]

Take notice that on April 27, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing its amended Service Agreement, dated January 1, 1998, in which Cinergy signed up as a customer under its own Open Access Transmission Tariff. As directed by the Commission's July 31, 1997, Order issued in Allegheny Power System, et al., 80 FERC ¶ 61,143 (1997), Cinergy also changed the rates in said Service Agreement back to its pre-Order No. 888 open access transmission tariff rates.

Copies of the filing have been served upon the Customer, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Rochester Gas and Electric Corporation

[Docket No. ER98-1605-001]

Take notice that on April 27, 1998, Rochester Gas and Electric Corporation made a filing in compliance with the Commission's March 26, 1998, Order in the above-referenced proceeding. Rochester Gas and Electric Corporation, 82 FERC ¶ 61,294.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER98-1874-000]

Take notice that on April 27, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing its amended Service Agreement, dated February 1, 1998, in which Cinergy signed up as a customer under its own Open Access Transmission Tariff. As directed by the Commission's July 31, 1997, Order issued in Allegheny Power System, et al., 80 FERC ¶61,143 (1997), Cinergy also changed the rates in said Service Agreement back to its pre-Order No. 888 open access transmission tariff rates.

Copies of the filing have been served upon the Customer, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. FirstEnergy System

[Docket No. ER98-2689-000]

Take notice that on April 27, 1998, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Aquila Power Corporation, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97-412-000. The proposed effective date under this Service Agreement is April 1, 1998, for the above mentioned Service Agreement in this filing.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Company

[Docket No. ER98-2690-000]

Take notice that on April 27, 1998, Tampa Electric Company (Tampa Electric), filed a notice of termination of the agreement for interchange service between Tampa Electric and the City of Vero Beach (Vero Beach). Tampa Electric requests that the termination be made effective on May 1, 1998.

Copies of the filing have been served on Vero Beach and the Florida Public Service Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. FirstEnergy System

[Docket No. ER98-2691-000]

Take notice that on April 27, 1998, FirstEnergy System filed Service Agreements to provide Non-Firm Point-

to-Point Transmission Service for DTE Energy Trading, Incorporated and SCANA Energy Marketing, Incorporated, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97-412-000. The proposed effective date under the Service Agreements is April 1, 1998.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. The Dayton Power and Light Co.

[Docket No. ER98-2692-000]

Take notice that on April 27, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing The Dayton Power and Light Energy Services Department as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served upon The Dayton Power and Light Company and the Public Utilities Commission of Ohio.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. The Dayton Power and Light Company

[Docket No. ER98-2693-000]

Take notice that on April 27, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing East Kentucky Power Cooperative, Inc., Merchant Energy Group of the Americas, Inc., VTEC Energy, Inc., Virginia Electric and Power Company as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served upon East Kentucky Power Cooperative, Inc., Merchant Energy Group of the Americas, Inc., VTEC Energy, Inc., Virginia Electric and Power Company and the Public Utilities Commission of Ohio.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER98-2694-000]

Take notice that on April 27, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with OGE Energy Resources, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon OGE Energy Resources, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric

[Docket No. ER98-2695-000]

Take notice that on April 27, 1998, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96-137-000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with Snohomish County PUD. PGE respectfully requests that the Commission allow the Service Agreement to become effective March 20, 1998. PGE will be required to refund the time value of any revenues collected from the effective date of the Service Agreement through June 26, 1998, to account for the prior-notice requirement under 18 CFR Section 35.3.

A copy of this filing was caused to be served upon Snohomish County PUD as noted in the filing letter.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER98-2696-000]

Take notice that on April 27, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with OGE Energy Resources, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement,

Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and

conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon OGE Energy Resources, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. ER98-2697-000]

Take notice that on April 27, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Otter Tail Power Company (Otter Tail) dated April 2, 1998, and a Non-Firm Transmission Service Agreement with Otter Tail dated April 2, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of April 2, 1998, for the Agreements with Otter Tail and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Otter Tail, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Gas and Electric

[Docket No. ER98-2699-000]

Take notice that on April 27, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing a true-up to rates pursuant to Contract No. 14-06-200-2948A, PG&E Rate Schedule FERC No. 79 (Contract 2948A), between PG&E and the Western Area Power Administration (Western).

Pursuant to Contract 2948A and the PG&E-Western Letter Agreement dated February 7, 1992, electric capacity and energy sales are made initially at rates based on estimated costs and are then true-up at rates based on recorded costs after the necessary data become available. The proposed rate change establishes recorded cost-based rates for true-up of capacity sales and energy sales from Energy Account No. 2, made during 1996, at rates based on estimated costs.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. MidAmerican Energy Company

[Docket No. ER98-2700-000]

Take notice that on April 27, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Network Integration Transmission Service Agreement and a Network Operating Agreement, both dated April 2, 1998, and entered into by MidAmerican and the City of Denver, Iowa (Denver) in accordance with MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of April 2, 1998, for the Agreements and, seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Denver, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER98-2701-000]

Take notice that on April 27, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and Tractebel Energy Marketing, Inc., in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served on Tractebel Energy Marketing, Inc.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER98-2702-000]

Take notice that on April 27, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and South Jersey Energy Company in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served on South Jersey Energy Company.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER98-2703-000]

Take notice that on April 27, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and Engage

Energy US, L.P., in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served on Engage Energy US, L.P.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc.

[Docket No. ER98-2704-000]

Take notice that on April 27, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and Amoco Trading Corporation in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served on Amoco Trading Corporation.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER98-2705-000]

Take notice that on April 27, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing an Interchange Agreement among the Cinergy Operating Companies and Tenaska Power Services Company in the above-referenced docket. The Interchange Agreement provides for voluntary sales transactions between the parties.

Copies of the filing have been served upon Tenaska Power Services Company.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER98-2706-000]

Take notice that on April 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and FirstEnergy Corp., as agent for and on behalf of The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company (FirstEnergy Corp.). This Transmission Service Agreement specifies that FirstEnergy Corp., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96-194-000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and FirstEnergy Corp., to enter into separately scheduled transactions

under which NMPC will provide transmission service for FirstEnergy Corp., as the parties may mutually agree.

NMPC requests an effective date of April 20, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and FirstEnergy Corp.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Niagara Mohawk Power Corporation

[Docket No. ER98-2707-000]

Take notice that on April 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and New York Power Authority. This Transmission Service Agreement specifies that New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96-194-000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of April 21, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and New York Power Authority.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corporation

[Docket No. ER98-2708-000]

Take notice that on April 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and FirstEnergy Corp. (FirstEnergy Corp.), as agent for and on behalf of The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company. This Transmission Service Agreement specifies that FirstEnergy Corp., has signed on to and has agreed to the terms and conditions of NMPC's

Open Access Transmission Tariff as filed in Docket No. OA96-194-000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and FirstEnergy Corp., to enter into separately scheduled transactions under which NMPC will provide transmission service for FirstEnergy Corp., as the parties may mutually agree.

NMPC requests an effective date of April 20, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and FirstEnergy Corp.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Louisville Gas And Electric Company

[Docket No. ER98-2709-000]

Take notice that on April 27, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and VTEC Energy, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12227 Filed 5-7-98; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-2712-000, et al.]

Kentucky Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

May 1, 1998.

Take notice that the following filings have been made with the Commission:

1. Kentucky Utilities Company

[Docket No. ER98-2712-000]

Take notice that on April 28, 1998, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during January 1, 1998 through March 31, 1998, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95-854-000.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Cinergy Services, Inc.

[Docket No. ER98-2713-000]

Take notice that on April 28, 1998, Cinergy Services, Inc., on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing a Power Supply Agreement between Cinergy Services, Inc. and the City of Salem, Virginia (Customer). Said filing also includes unbundled pricing information related to said Power Supply Agreement.

Copies of the filing were served upon the City of Salem, Virginia, the Virginia State Corporation Commission, the Blue Ridge Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER98-2714-000]

Take notice that on April 28, 1998, Cinergy Services, Inc., on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing a Power Supply Agreement between Cinergy Services, Inc. and the City of Martinsville, Virginia (Customer). Said filing also includes unbundled pricing information related to said Power Supply Agreement.

Copies of the filing were served upon the City of Martinsville, Virginia, the

Virginia State Corporation Commission, the Blue Ridge Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER98-2715-000]

Take notice that on April 28, 1998, Cinergy Services, Inc., on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing a Power Supply Agreement between Cinergy Services, Inc., and the City of Bedford, Virginia (Customer). Said filing also includes unbundled pricing information related to said Power Supply Agreement.

Copies of the filing were served upon the City of Bedford, Virginia, the Virginia State Corporation Commission, the Blue Ridge Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas And Electric Company

[Docket No. ER98-2716-000]

Take notice that on April 28, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing of its obligation to file the Transaction detail for wholesale transactions made pursuant to its market-based Generation Sales Service (GSS) Tariff.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Rayburn Country Electric Cooperative, Inc.

[Docket No. ER98-2717-000]

Take notice that Rayburn Country Electric Cooperative, Inc. (Rayburn Electric), on April 28, 1998, tendered a rate change filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the regulations of the Federal Energy Regulatory Commission (FERC, or Commission). Rayburn Electric proposes to implement changes to its tariff which are revenue-neutral to its system wide rates approved by the Commission in 1995, and by the Public Utility Commission of Texas (PUCT) in 1994. Rayburn Electric indicates that its FERC-jurisdictional rate resulting from the proposed rate change will not

increase. Rayburn states that all wholesale customers that belong to the affected rate class consent to the proposed rate change. Rayburn Electric requests an effective date of June 1, 1998, or such other date as may be approved by the PUCT regarding Rayburn Electric's companion rate filing submitted to the PUCT, and requests any waivers or other authority deemed necessary by the FERC to permit its rate change to become effective as proposed.

Rayburn Electric proposes changes to its rates currently charged to its member cooperatives, as presently reflected in Rayburn Electric's Rate Schedule WP-2 on file with the FERC. The changes are proposed primarily due to new power supply arrangements that Rayburn Electric has entered into on behalf of its member cooperatives, which will result in substantial savings in purchased power costs. Although Rayburn Electric indicates that the new power supply arrangements affect only the portion of Rayburn Electric's load in the Electric Reliability Council of Texas, the savings under the new arrangements, according to Rayburn Electric, will benefit all of Rayburn Electric's load through the blended, system wide rates.

Rayburn Electric has served copies of this filing on each of the parties to the Agreement, its member/customers and the PUCT.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Consumers Energy Company

[Docket No. ER98-2718-000]

Take notice that on April 28, 1998, Consumers Energy Company (Consumers), tendered for filing an executed Service Agreement for Network Integration Transmission Service pursuant to Consumers' Open Access Transmission Service Tariff and a Network Operating Agreement. Both were with the City of Wyoming and have effective dates of April 22, 1998.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the customer.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Great Bay Power Corporation

[Docket No. ER98-2719-000]

Take notice that on April 28, 1998, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Strategic Energy, Ltd., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in

Docket No. ER96-726-000. The service agreement is proposed to be effective April 21, 1998.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER98-2720-000]

Take notice that on April 28, 1998, Consolidated Edison Company of New York, Inc. (CECONY), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for Consolidated Edison Solutions, Inc., to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

CECONY states that a copy of this filing has been served by mail upon Consolidated Edison Solutions, Inc.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power

[Docket No. ER98-2721-000]

Take notice that on April 28, 1998, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, unexecuted Service Agreements under WWP's FERC Electric Tariff First Revised Volume No. 9, with California Independent Service Operator and The California Power Exchange. WWP requests waiver of the prior notice requirement and requests an effective date of April 1, 1998.

Also tendered for filing is a Certificate of Concurrence for The Montana Power Trading & Marketing Company, formerly Montana Power Company.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas And Electric Company

[Docket No. ER98-2722-000]

Take notice that on April 28, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Cargill-Alliant, LLC under LG&E's Open Access Transmission Tariff.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER98-2723-000]

Take notice that on April 28, 1998, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western

Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company) and Public Service Company of New Hampshire, tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, a rate schedule change for sales of electric energy to Sterling Municipal Light Department.

NUSCO states that a copy of this filing has been mailed to Sterling Municipal Light Department and the Massachusetts Department of Public Utilities.

NUSCO requests that the rate schedule change become effective on May 1, 1998.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER98-2724-000]

Take notice that on April 28, 1998, Cinergy Services, Inc., on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing a Power Supply Agreement between Cinergy Services, Inc., and the Town of Richlands, Virginia (Customer). Said filing also includes unbundled pricing information related to said Power Supply Agreement.

Copies of the filing were served upon the Town of Richlands, Virginia, the Virginia State Corporation Commission, the Blue Ridge Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER98-2725-000]

Take notice that on April 28, 1998, Cinergy Services, Inc., on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing a Power Supply Agreement between Cinergy Services, Inc., and the City of Danville, Virginia (Customer). Said filing also includes unbundled pricing information related to said Power Supply Agreement.

Copies of the filing were served upon the City of Danville, Virginia, the Virginia State Corporation Commission, the Blue Ridge Power Agency, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. The Energy Spring, Inc.

[Docket No. ER98-2772-000]

Take notice that on April 28, 1998, The Energy Spring, Inc., submitted for filing a notice of name change prepared in accordance with the provisions of 18 CFR 35.16 and 131.51 notifying the Commission that effective April 7, 1998, The Energy Spring, Inc., has legally changed its name to Atlanta Gas Light Services, Inc. (AGLS). AGLS adopts, ratifies and makes its own, in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the Federal Energy Regulatory Commission by The Energy Spring, Inc., effective April 28, 1998:

The Energy Spring, Inc.
Rate Schedule FERC No. 1

Atlanta Gas Light Services, Inc.'s filing is available for public inspection at its offices in Atlanta, Georgia.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12228 Filed 5-7-98; 8:45 am]

BILLING CODE 5717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6011-4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Verification of Test Parameters and Parts Lists for Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) for renewal to the Office of Management and Budget (OMB) for review and approval: Verification of test parameters and parts lists for light-duty vehicles and light-duty trucks, OMB Control Number 2060-0094, expiring 08/31/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 7, 1998.

ADDRESSES: Vehicle Programs & Compliance Division (6405J), 401 M Street, SW, Washington, D.C. 20460. Interested persons may request a copy of this ICR, without charge, by writing, faxing, or phoning the contact person below.

FOR FURTHER INFORMATION OR A COPY: Sonny Kakar, Office of Mobile Sources, Vehicle Programs & Compliance Division, (202) 564-9467, (202) 565-2057 (fax), E-mail address: kakar.sonny@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are manufacturers of light-duty vehicles and light-duty trucks.

Title: Verification of test parameters and parts lists for light-duty vehicles and light-duty trucks, OMB Control Number 2060-0094, expiration date 08/31/98. This is a request for an extension of currently approved collections.

Abstract: The EPA tests in-use vehicles in order to enforce compliance with light-duty vehicle and light-duty truck emission standards. The Federal Test Procedure (FTP), which is used for determining compliance, requires test parameters and procedures that are necessary to conduct a valid test. Therefore, after EPA has selected these parameters and procedures from previously submitted manufacturer

data, EPA gives the motor vehicle manufacturer the opportunity to review and verify that EPA has selected the correct parameters and procedures for vehicle emission testing. Providing part numbers gives the manufacturer the opportunity to help ensure that defective or incorrect parts will be replaced by those which the manufacturer feels are necessary to correctly evaluate the emissions performance of the vehicles tested. Though this information request is voluntary, EPA uses the manufacturers' input as part of the verification of our work. If this information is not reviewed and provided by the manufacturers, EPA and the manufacturers may waste resources on tests that were performed improperly and the manufacturers may not have as much opportunity to participate in a compliance program that has the potential to adversely affect them.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of the appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual burden for this collection of information is estimated to average 150 hours and \$4950 for the manufacturers and 150 hours and \$5400 for the government. Approximately 75 requests may be made annually with an average of 2 hours spent on each request by both entities. The total costs are attributed to labor hours and overhead since there is no capital investment required for this collection of information. Burden means

the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 30, 1998.

Richard Wilson,
Acting Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 98-12304 Filed 5-7-98; 8:45 am]

BILLING CODE 5500-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6011-7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Industry Screener Questionnaire: Phase I Cooling Water Intake Structures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Industry Screener Questionnaire: Phase I Cooling Water Intake Structures (EPA ICR number 1828.01). The ICR describes the nature of the information collection activities and its expected burden and cost. In particular, the ICR describes the collection methodology EPA will use to distribute the data collection instrument and includes a representative sample of the data collection instrument.

DATES: Comments must be submitted on or before June 8, 1998.

FOR FURTHER INFORMATION OR A COPY: Contact Sandy Farmer by phone at (202) 260-2740, e-mail at farmer.sandy@epamail.epa.gov or download off the Internet at <http://www.epa.gov/ICR>. In all requests, refer to EPA ICR No. 1828.01.

SUPPLEMENTARY INFORMATION:

Title: Industry Screener Questionnaire: Phase I Cooling Water Intake Structures (EPA ICR No. 1828.01). This is a new collection.

Abstract: The U.S. Environmental Protection Agency ("EPA") is currently developing regulations under section 316(b) of the Clean Water Act ("CWA"), 33 U.S.C. Section 1326(b). Section 316(b) provides that any standard established pursuant to sections 301 or 306 of the Clean Water Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. Section 316(b) is unique in that it applies to the intake of water and not the discharge.

The intent is to minimize the impingement and entrainment of fish and other aquatic organisms as they are drawn into an industrial facility's cooling water intake. As the result of a lawsuit by a coalition of environmental groups headed by the Hudson Riverkeeper (*Cronin, et al. v. Reilly*, 93 Civ. 0314 (AGS)), the United States District Court, Southern District of New York entered a Consent Decree on October 10, 1995. The Consent Decree established a seven year schedule for EPA to take final action with respect to regulations addressing impacts from cooling water intake structures.

The screener questionnaire contains three types of questions. These questions are either scoping, stratifying, or characterizing in nature. EPA intends to use data from the scoping questions to determine who is potentially in scope of Section 316(b). EPA intends to use data from stratifying questions to support the subsequent survey sample frame development for the detailed industry questionnaire. EPA intends to use data from the characterizing questions to assist EPA in structuring the subsequent detailed questionnaire and to support the Agency's development of Section 316(b) regulations. The screener questionnaire collects information on such topics as cooling water use within industry groups; cooling water intake structure location, design configurations, construction, and capacity; and types of intake water sources. In addition, EPA is requesting facility and firm level economic data. This economic data will enable EPA to consider cooling water use across a broad variety of facility and firm sizes. The subsequent detailed questionnaire is structured to seek more in-depth information on the unique features of cooling water use and other

important intake structure and environmental characteristics.

EPA has the authority to collect this information under Section 308 of the CWA (33 U.S.C. Section 1318). All recipients of the screener questionnaire are required to complete and return the questionnaire to EPA. The survey instrument will be mailed after OMB approves the ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 18, 1997. EPA received six sets of comments (75 comments in all). EPA's response to these comments are presented in Attachment 4 of the ICR.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 50 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Nonutility Power Producers (SIC 49 and all other Industrial Self-Generators), Paper and Allied Products (SIC 2611, 2621, and 2631), Chemical and Allied Products (SIC 28 except 2895, 2893, 2851, and 2879), Petroleum and Coal Products (SIC 2911), and Primary Metals (SIC 3312, 3315, 3316, 3317, 3353, 3363, 3365, and 3366).

Estimated number of respondents: 2,600.
Frequency of Response: This is a one time collection.

Estimated total Annual Hour Burden: 130,000 hours.

Estimated total annualized cost burden: \$7,125,300.

As a result of the insights gained from the public comment and pretest activities, EPA reduced the burden on respondents by simplifying and

shortening the screener questionnaire. In particular, EPA moved several financial questions back so that only those facilities that are within the scope of CWA Section 316(b) will have to answer those questions. In addition, EPA reduced the level of detail of the questions in the electricity generation section. EPA has also lengthened the response time from 30 to 60 days.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1828.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, PPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: May 4, 1998.

Joseph Retzer,
Director, Regulatory Information Division.
[FR Doc. 98-12308 Filed 5-7-98; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6011-5]

Contractor Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency has authorized the following subcontractor to access information that has been, or will be, submitted to the EPA under section 114 of the Clean Air Act (CAA) as amended: Caldwell Environmental, Inc., 6205 Winthrop Drive, Raleigh, NC 27612. Some of this information may be claimed to be confidential business information (CBI) by the submitter. This subcontractor will be providing support to the EPA under contracts 68-D6-0008 and 68-D6-0010. The prime contractor on this contract is EC/R, Incorporated, 2327 Englert Drive, Suite 100, Durham, North Carolina, 27713.

DATES: Access to confidential data submitted to EPA will occur no sooner than May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Melva Toomer, Document Control Officer, Office of Air Quality Planning and Standards (MD-11), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-0880.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under section 114 of the CAA that the EPA may provide the above mentioned subcontractor access to these materials on a need-to-know basis. Under the direction of the prime contractor, this subcontractor will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in developing Federal Air Pollution Control Regulations.

In accordance with 40 CFR 2.301(h), the EPA has determined that the above subcontractor requires access to CBI submitted to the EPA under sections 112 and 114 of the CAA in order to perform work satisfactorily under the above noted contract. The subcontractor's personnel will be given access to information submitted under section 114 of the CAA. The subcontractor's personnel will be required to sign nondisclosure agreements and will receive training on appropriate security procedures before they are permitted access to CBI.

Clearance for access to CAA CBI is scheduled to expire on September 30, 2001 under contract 68-D6-0008 and contract 68-D6-0010.

Dated: May 1, 1998.

Robert Brenner,
Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98-12305 Filed 5-7-98; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5491-5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or (202) 564-7153. Weekly receipt of Environmental Impact Statements Filed April 27, 1998 Through May 01, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980149, Draft Supplement, BLM, MT, Judith-Valley-Phillips Comprehensive Resource Management Plan, New Information Addressing Oil and Gas Leasing on Federal Minerals, Implementation, Lewistown District, Judith Basin,

Fergus, Petroleum, Phillips and Valley Counties, MT, Due: August 06, 1998, Contact: Jerry Majerus (406) 538-7461.

EIS No. 980150, Final EIS, COE, AZ, Rio Salado Environmental Restoration of two Sites along the Salt River; (1) Phoenix Reach and (2) Tempe Reach, Feasibility Report, in the Cities of Phoenix and Tempe, Maricopa County, AZ, Due: June 08, 1998, Contact: Alex Watt (213) 452-3860.

EIS No. 980151, Final EIS, AFS, KY, Daniel Boone National Forest Off-Highway Vehicle (OHV) Management Policy, Modification, Several Counties, KY, Due: June 08, 1998, Contact: Benjamin T. Worthington (606) 745-3100.

EIS No. 980152, Draft EIS, USA, Stratford Army Engine Plant (SAEP) Disposal and Reuse, Implementation, City of Stratford, Fairfield and New Haven Counties, CT, Due: June 22, 1998, Contact: Leslie Sullivan (703) 697-0153.

EIS No. 980153, Draft EIS, NPS, MS, Natchez Trace Parkway, Construction of Section 3X Southern Terminus, Adam Counties, MS, Due: July 07, 1998, Contact: Wendell Simpson (601) 680-4003.

EIS No. 980154, Final EIS, FHW, CA, CA-101/Cuesta Grade Highway Improvements, 1.1 Miles north of Reservoir Canyon Road to the Cuesta Grade Overhead, Funding and Permit Issuance, San Luis Obispo County, CA, Due: June 08, 1998, Contact: John R. Schultz (916) 498-5041.

EIS No. 980155, Draft EIS, DOE, SC, Tritium Extraction Facility (TEF), Construction and Operation near the Center of Savannah River Site at H Area, (DOE/EIS-0271D), Aiken and Barnwell Counties, SC, Due: June 22, 1998, Contact: Andrew R. Grainger (800) 881-7292.

EIS No. 980156, Draft EIS, COE, GA, SC, Savannah Harbor Section 203 Expansion Project, Channel Deepening and Harbor Improvements, Georgia Ports Authority, Federal Navigation Project, Chatham County, Ga and Jasper County, SC, Due: June 22, 1998, Contact: William Bailey (912) 652-5781.

EIS No. 980157, Draft EIS, AFS, OR, Moose Subwatershed Timber Harvest and Other Vegetation Management Actions, Central Cascade Adaptive Management (CCAMA), Willamette National Forest, Sweet Home Ranger District, Linn County, OR, Due: June 22, 1998, Contact: Donna Short (541) 367-5168.

EIS No. 980159, Final EIS, UAF, FL, CA, Evolved Expandable Launch Vehicle (EELV) Program, Development,

Operation and Deployment, Proposed Launch Locations are Cape Canaveral Air Station (AS), Florida and Vandenberg Air Force Base (AFB), California, Federal Permits and Licenses, FL and CA, Due: June 08, 1998, Contact: Patty Vaught (703) 604-0561.

EIS No. 980160, Final EIS, NSF, Amundsen-Scott South Pole Station, Proposal to Modernize through Reconstruction and Replacement of Key Facilities, Antarctica, Due: June 08, 1998, Contact: Joyce A. Jatko (703) 306-1032.

EIS No. 980161, Draft EIS, BLM, AZ, Hualapai Mountain Land Exchange/Plan Amendment, Implementation, Kingman and Dutch Flat, Mohave County, AZ, Due: July 27, 1998, Contact: Don McClure (520) 692-4400.

This EIS was inadvertently omitted from the 04-24-98 **Federal Register**. The official 45 days NEPA review period is calculated from 04-24-98.

Dated: May 5, 1998

William D. Dickerson,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98-12297 Filed 5-7-98; 8:45 am]
BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5491-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 20, 1998 Through April 24, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D-AFS-K65203-CA Rating EC2, Sirretta Peak Motorcycle Trail Construction, Approval and Implementation, Sirretta Peak/Machine Creek Area, Kern Plateau, Sequoia National Forest, Cannell Meadow Ranger District, Tulare County, CA.

Summary: EPA expressed environmental concerns about potential adverse impacts to the watershed and

wildlife habitat from the construction and use of a motorized trail in a roadless area.

ERP No. D-BLM-K67047-NV Rating EC2, Trenton Canyon Mining Project, Construction, Operation and Expansion, Plan of Operation, Valma and North Peak Deposits, Humboldt and Lander Counties, NV.

Summary: EPA expressed environmental concerns to the proposed project, based on a lack of analysis of a reasonable range to project alternatives, and potential environmental degradation to waters of the United States. EPA asked for additional information, including information on a sequential backfilling alternative, waste rock and pit wall rock characterization, cumulative impact, project description, comprehensive mitigation and monitoring plan.

ERP No. D-COE-E39042-GA Rating EC2, Latham River/Jekyll Creek Environmental Restoration Project (Section 1135), To Establish the Without Project Condition, Atlantic Intracoastal Waterway (AIWW), Glynn County, GA.

Summary: EPA expressed environmental concerns over the long-term impacts to wetlands resources in the project and the potential for increased development on Jekyll Island.

ERP No. D-COE-K32049-CA Rating EO2, San Francisco Bay to Stockton Phase III (John F. Baldwin) Navigation Channel Project, Construction and Operation, For Deliver of Petroleum to Refineries, Storage Terminals and Other Facilities, COE Section 10 and 404 Permits, US Coast Guard Permit, Contra Costa County, CA.

Summary: EPA expressed environmental objectives with two action alternatives because, according to the DEIS, deepening 16 miles of navigation channel would result in adverse water quality impacts, specifically intrusion of salt water into the Sacramento-San Joaquin Delta that would exceed salinity standards. This increased salinity intrusion would have adverse effects on municipal drinking water supplies, fish and wildlife resources. EPA also expressed concerns on Clean Water Act Section 404 issues associated with a pipeline system alternative and noted that all three action alternatives may require a conformity determination for oxides of nitrogen (an ozone precursor) due to the San Francisco Bay Area's ozone maintenance status.

ERP No. D-FRC-B03009-ME Rating EC2, Maritimes Phase II Project, Construct and Operate an Interstate Natural Gas Pipeline, COE Section 10 and 404 Permits, Endangered Species Act (ESA) and NPDES's permits, US

Canada border at Woodland (Burleyville) Maine and Westbrook Maine.

Summary: EPA requested additional information about the impacts of the proposed pipeline with regard to wetlands, eelgrass, drinking water, groundwater supply, and secondary impacts in order to fully evaluate the environmental acceptability of the proposed project.

ERP No. D-FRC-J02035-00 Rating EC2, Alliance Natural Gas Pipeline Project, Construction and Operation, Funding, NPDES Permit, COE Section 10 and 404 Permit, ND, MN, IA and IL.

Summary: EPA expressed environmental concerns and requested additional information on the following areas; Purpose and Need, Alternatives Evaluation, Resource Surveys (Threatened and Endangered Species, Cultural and Historical), Agricultural Land/Non-Agricultural Land, Waterbody/Wetland Crossing Procedures, Wetland/Woodland Loss Compensation and description of Extra Work Areas.

ERP No. DS-COE-L36011-00 Rating EC2, Columbia and Lower Willamette River Federal Navigation Channel, Integrated Dredge Material Management Study, OR and WA.

Summary: EPA's expressed environmental concerns that the Corps should take more effort at advanced identification and management of in-stream dredged material disposal sites. EPA also requested more information regarding the environmental impacts of upland disposal of dredged material.

Dated: May 5, 1998.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 98-12298 Filed 5-7-98; 8:45 am]

BILLING CODE 5560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5491]

Designation of an Ocean Dredged Material Disposal Site (ODMDS) Off Wilmington, NC, Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA) Region 4.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the final designation of an ODMDS off Wilmington, North Carolina.

PURPOSE: The U.S. EPA, Region 4, in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA) and in cooperation with the

U.S. Army Corps of Engineers, Wilmington District, will prepare a Draft EIS on the designation of an ODMDS off Wilmington, North Carolina. An EIS is needed to provide the information necessary to designate an ODMDS. This Notice of Intent is issued Pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Mr. Douglas K. Johnson, U.S. Environmental Protection Agency, Region 4, Coastal Programs Section, 61 Forsyth Street, Atlanta, Georgia 30303, phone 404-562-9386 or Mr. Philip M. Payonk, U.S. Army Corps of Engineers, Wilmington District, Environmental Resources Section, P.O. Box 1890, Wilmington, North Carolina 28402-1890, phone 910-251-4589.

SUMMARY: Ongoing needs for ocean disposal of dredged sediments and proposed improvements to the Wilmington Harbor navigation channel have resulted in the need for designation of a new ODMDS off Wilmington, North Carolina. Based on site surveys and anticipated levels of site use, the capacity of the existing Wilmington ODMDS will be reached in seven to 10 years. The annual volume of maintenance dredged material taken to the ocean for disposal from the Wilmington Harbor area is about two million cubic yards per year. The recently authorized Wilmington Harbor Federal navigation channel improvements (deepening and other channel modifications) will produce approximately 19 million cubic yards of dredged material for ocean disposal. The channel improvements will realign the ocean bar channel directly across the Wilmington ODMDS rendering the site obsolete. The channel would be realigned to avoid rock dredging and blasting and the environmental concerns associated with those activities.

The relocation of the ODMDS would provide an opportunity to add separation between the Wilmington ODMDS and nearby shrimp trawling bottoms. The shrimpers have complained that wood debris attributed to dredged materials placed within the ODMDS interfere with shrimping.

Need for Action: The Corps of Engineers, Wilmington District, has requested that EPA designate a new ODMDS off Wilmington, North Carolina for the disposal of dredged material from the Wilmington Harbor area, when ocean disposal is the preferred disposal

alternative. An EIS is required to provide the necessary information to evaluate alternatives and designate the preferred ODMDS.

Alternatives:

1. No action. The no action alternative is defined as not designating an ocean disposal site.

2. Alternative disposal sites in the nearshore, mid-shelf, and shelf break regions.

Scoping: Scoping will be accomplished by correspondence and meetings, in late Spring or early Summer, 1998, with affected Federal, State and local agencies, and interested parties.

Estimated Date of Release: The Draft EIS will be made available in October 1999.

Responsible Official: John H. Hankinson, Jr., Regional Administrator, Region 4.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 98-12299 Filed 5-7-98; 8:45 am]

BILLING CODE 5560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6010-9]

Salt River Pima-Maricopa Indian Community; Tentative Approval of an Alternative Liner System Design and Use of Alternative Daily Cover Material for the Salt River Municipal Solid Waste Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Tentative determination on application of the Salt River Pima-Maricopa Indian Community for approval of an alternative liner system design and use of alternative daily cover material for the Salt River Municipal Solid Waste Landfill, public hearing and public comment period.

SUMMARY: Subtitle D of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6941-6949a requires EPA to establish minimum federal criteria to ensure that municipal solid waste landfills are designed and operated in a manner that protects human health and the environment. These standards are codified at 40 CFR part 258. Generally, these criteria are technical standards and are self-implementing. For many of these criteria, part 258 also establishes a flexible performance-based standard as an alternative to the self-implementing regulations.

The Salt River Pima-Maricopa Indian Community submitted applications for approval to use two of the flexible

standards at the Salt River Municipal Solid Waste Landfill. One application requests use of a geosynthetic clay liner in place of a composite liner. The second application requests use of a tarp system as cover in place of earthen material. EPA reviewed the applications and all supplementary material and tentatively approves these requests. This tentative approval applies solely to the Salt River Municipal Solid Waste Landfill located on Salt River Pima-Maricopa Indian Reservation in Arizona.

Although RCRA does not require EPA to hold a public hearing on any site-specific flexibility request, Region 9 has scheduled a public hearing on these tentative approvals. Details appear below in the DATES section of this notice. The Salt River Pima-Maricopa Indian Community's applications and all supplementary material are available for public review and comment.

DATES: All comments on the Salt River Pima-Maricopa Indian Community's applications for approval of site-specific flexibility must be received by the close of business on June 10, 1998. A public hearing is scheduled for June 10, 1998 from 5-7 p.m. At the hearing, EPA may limit oral testimony to five minutes per speaker, depending on the number of commenters. Commenters presenting oral testimony must also submit their comments in writing at the hearing on June 10, 1998. The hearing may adjourn earlier than 7:00 pm if all of the speakers deliver their comments before that hour. Representatives of the Salt River Pima-Maricopa Indian Community and the Salt River Municipal Solid Waste Landfill will be present at the public hearing.

ADDRESSES: Written comments should be sent to Ms. Susanna Trujillo, Mail Code WST-7, US EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

The public hearing will be held at Salt River Pima-Maricopa Indian Reservation, Community Development Conference Room, 1005 E. Osborne Road, Scottsdale, Arizona 85256. For further information, contact Steve Parker at (602) 850-8024.

Copies of the Salt River Pima-Maricopa Indian Community's applications for site-specific flexibility are available for inspection and copying at: Salt River Pima-Maricopa Indian Reservation Administration Building, 1005 E. Osborne Road, Scottsdale, Arizona 85256. Contact: Lonita Jim, Tribal Secretary (602) 850-8000 and the US EPA Region 9 Library, 75 Hawthorne Street 13th Floor, San Francisco, California, 94105, telephone (415) 744-

1510, from 9 am to 5 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: US EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attn: Ms. Susanna Trujillo, Mail Code WST-7 telephone (415) 744-2099.

SUPPLEMENTARY INFORMATION:

A. Regulatory Background

Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6941-6949a, governs the disposal of nonhazardous solid waste and of small-quantity hazardous waste not regulated under Subtitle C of RCRA. Subtitle D prohibits "open dumping" and EPA established criteria for determining which solid waste facilities classified as "sanitary landfills" which is "open dumps." 40 CFR part 257, subpart A. Pursuant to HSWA, EPA added revised criteria to establish minimum federal standards to ensure that municipal solid waste landfills (MSWLF) are designed and operated in a manner that protects human health and the environment. The Federal revised criteria are codified at 40 CFR part 258. RCRA also requires states to implement permit programs to ensure that MSWLF facilities comply with the revised criteria (40 U.S.C. 6945(c)). EPA determines whether each state has developed an adequate solid waste permitting program and "approves" those states. In states that do not develop an adequate program, the regulations set forth in part 258 are self-implementing and apply to owners and operators of MSWLF units without additional EPA approval or review (40 CFR 258.1).

For many of the criteria, part 258 establishes a flexible performance standard as an alternative to the self-implementing regulation. The flexibility provided in the MSWLF criteria allows for the consideration of site-specific conditions in designing and operating an MSWLF at the lowest cost possible while ensuring protection of human health and the environment. The flexible standard is not self-implementing, and use of the alternative standard is generally approved by the Director of an approved state. Part 258 does not currently provide owners and operators of MSWLF units located in Indian Country with a mechanism for obtaining approval of the flexible performance standards.

Indian tribes are defined as "municipalities" under RCRA section 1004(13), 42 U.S.C. 6903. As a "municipality," the tribe would seek

approval of design flexibility from the appropriate approved state. However, states are generally precluded from enforcing their civil regulatory programs in Indian Country absent an explicit Congressional authorization. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Including tribes as part of section 1004(13) was a definitional expedient, to avoid adding the phrase "and Indian tribes or tribal organizations or Alaska Native villages or organizations" wherever the term "municipality" appeared. By this definition, Congress did not intend to change the sovereign status of tribes for purposes of RCRA. In *Bockcountry Against Dumps v. EPA*, 100 F.3d 147, 151 (D.C.Cir. 1996), the District of Columbia Circuit Court determined that the inclusion of Indian Tribes as "municipalities" "does not strip the tribe of its sovereign authority to govern its own affairs" * * * [the tribe has the authority] to create and enforce its own solid waste management plan." RCRA does not grant the regulatory authority to develop and implement solid waste management plans to municipalities.

Owners and operators of MSWLF units in Indian Country are not subject to state authority, they cannot obtain approval from the state for the performance standards included in part 258. Yet, the Federal revised criteria are silent as to the process by which MSWLF units in Indian Country can apply for the alternate standards.

EPA proposes this site-specific rule to allow the Salt River Pima-Maricopa Indian Community ("Community"), an owner/operator of an MSWLF in Indian Country, the same flexibility as owners and operators of MSWLF units in approved states. EPA derives its authority to promulgate this rule from sections 4004, 4005, and 4010 of RCRA, 42 U.S.C. 6944, 6945, and 6949a. These sections provide the basis on which EPA developed the criteria distinguishing open dumps from landfills and the revised criteria in part 258. Nothing in these provisions limits EPA's ability to issue site-specific criteria. In this instance, where the existing part 258 regulations do not contain a process for approval of the flexible performance standards for MSWLF units in Indian Country, it is appropriate to issue a site-specific rule to supplement part 258 and address this unique situation. The U.S. District Court in the District of South Dakota reviewed this issue directly and upheld EPA's authority to issue a site-specific rule to provide design flexibility under subtitle D of RCRA. (*Yankton Sioux Tribe v. US EPA*), 950 F.Supp. 1471 (D.S.D. 1996). The *Yankton* court determined that EPA

appropriately created an "alternative mechanism" to provide flexibility to the relevant MSWLF in Indian Country. The U.S. Court of Appeals for the D.C. Circuit also supports EPA's authority to issue such a site-specific rule under RCRA Subtitle D. (See *Backcountry Against Dumps v. EPA*, 100 F.3d at 152 (1996).) For a description of the suggested process used to apply for and approve flexibility requests in Indian Country, see EPA draft guidance entitled "Site-Specific Flexibility Requests for MSWLFs in Indian Country" (August 1997 Document Number: EPA530-R-97-016).

B. EPA's Tentative Determination

1. Alternative Liner System Design (40 CFR 258.40)

The Salt River Landfill (Landfill) is located on 200 acres of property east of Phoenix, Arizona. It is operated by the Salt River Pima-Maricopa Indian Community and serves as a sanitary landfill for the tri-city area of Mesa, Tempe, and Scottsdale, Arizona. Landfill operations began in October 1993 and are expected to continue until at least the year 2003. The landfill currently consists of three lined cells and three undeveloped cells. The three operational cells are lined with the composite liner prescribed by 40 CFR 258.40(b). On May 23, 1997, the Community submitted an application to the EPA requesting approval to use a geosynthetic clay liner in place of a composite liner for the undeveloped cells of the Landfill.

The federal revised criteria do not specifically include a procedure for EPA's tentative determination. However, EPA relied on the requirements set forth in 40 CFR 258.40 as a guideline for analyzing the Community's application.

Generally, 40 CFR 258.40 (a)(1), (c), and (d) require the following:

- The alternative liner design ensures that constituent concentrations of the chemicals listed in Table 1 of the criteria will not be exceeded in the uppermost aquifer at the relevant point of compliance; and
- The alternative liner design addresses the hydrogeologic characteristics of the landfill site, climate, volume, and physical and chemical characteristics of the leachate, and models potential contaminant migration.

EPA reviewed all information submitted by the Community and tentatively determined that the proposed alternative liner meets or exceeds the performance standards set forth in 40 CFR 258.40(a)(1), (c), and (d).

2. Alternative Daily Cover Materials (40 CFR 258.21)

The federal revised criteria requires that MSWLF units must use six inches of earthen material to cover disposed solid waste each day. 40 CFR 258.21(b) provides flexibility by allowing use of alternative materials and an alternative thickness if they control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

On June 2, 1997, the Community submitted an application to the EPA requesting approval to use any alternative daily cover material that Arizona has approved for that state. These materials consist of tarps, foams, chipped green waste, drinking water treatment residues, and chipped tires. The Community subsequently restricted their current application to the use of tarps as an alternative daily cover material.

The federal revised criteria does not specifically include a procedure for EPA's tentative determination. However, EPA relied on the requirements set forth in 40 CFR 258.21 as a guideline for analyzing the Community's application. The Community proposes to use the *Tarpomatic* tarping operation, consisting of a polypropylene tarp rolled over the landfill material at the end of each business day and retrieved at the beginning of the next business day.

EPA reviewed all information submitted by the Community and tentatively determined that the proposed alternative daily cover meets or exceeds the performance standards set forth in Section 258.21(b).

Public Comment

EPA Region 9 will hold a public hearing on this tentative determination from 5:00 to 7:00 pm on June 10, 1998, at Salt River Pima-Maricopa Indian Reservation, Community Development Conference Room, 1005 E. Osborne Road, Scottsdale, Arizona 85256. For further information, contact Stu Baker at (602) 941-3427.

The public may submit written comments on this tentative determination until June 10, 1998. Copies of the Community's applications and supplementary material are available for inspection at: Salt River Pima-Maricopa Indian Reservation Administration Building, 1005 E. Osborne Road, Scottsdale, Arizona 85256. Contact: Lonita Jim, Tribal Secretary (602) 850-8000 and the US EPA Region 9 Library, 75 Hawthorne Street 13th Floor, San Francisco,

California, 94105, telephone (415) 744-1510, from 9 am to 5 p.m. Monday through Friday.

EPA will consider all public comments on its tentative determination received at the hearing or during the public comment period. Issues raised by those comments may be the basis for a decision not to approve one or both of the Community's applications. EPA will make a final determination on whether or not to approve the Community's applications and will give notice of this decision in the *Federal Register*. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Executive Order 12866

Executive Order 12866 requires Office of Management and Budget review of "significant regulatory actions." Significant regulatory actions are defined as those that (1) have an annual effect on the economy \$100 Million or more or adversely affect a sector of the economy, including state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients; or (4) raise novel legal or policy issues. This tentative decision is a not a "significant regulatory action" and is not subject to the requirements of Executive Order 12866.

Executive Order 12875

EO 12875 applies to regulations that create an unfunded mandate upon state, local or tribal government. As this tentative determination is site-specific and applies only to the Community as owner and operator of the Landfill's MSWLF, this tentative determination does not create an unfunded mandate for state, local, or tribal government.

Executive Order 13045

Executive Order 13045 applies to rulemaking that (1) has an annual effect on the economy of \$100 Million or more or adversely affects any sector of the economy and (2) may disproportionately create an environmental health or safety risk for children. This tentative decision to approve alternate landfill requirements will not result in such impacts and is not subject to the requirements of EO 13045.

Executive Order 12898

Executive Order 12898 requires agencies to consider impacts on the health and environmental conditions in

minority and low-income communities with the goal of achieving environmental justice. This tentative determination to approve the Community's requests for use of an alternative landfill standard is consistent with EO 12898. By allowing the Community to use the site-specific flexibility provided by part 258, the Community is placed on a parity with those owners and operators of MSWLF units regulated by authorized state Subtitle D programs. This tentative determination fosters non-discrimination in implementing Subtitle D of RCRA.

The National Technology Transfer and Advancement Act (NTTAA)

The NTTAA requires agencies to consider using suitable voluntary consensus standards to carry out policy objectives or activities. As a rule of particular applicability, this tentative determination to approve the alternative landfill requirements is not subject to the NTTAA.

Paperwork Reduction Act

This tentative decision is not an information collection request subject to the Paperwork Reduction Act.

The Regulatory Flexibility Act

As a rule of particular applicability, this tentative determination to approve the alternative landfill requirements is not subject to the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act.

The Unfunded Mandates Reform Act

This tentative determination is a rule of particular applicability and does not include a federal mandate imposing enforceable duties upon state, local, or tribal governments. On this basis, this tentative determination is not subject to the requirements of the Unfunded Mandates Act.

Authority: This notice is issued under the authority of sections 2002, 4004, 4005, and 4010 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912, 6944, 6945, and 6949a. The Regional Administrator is making this decision in accordance with EPA Delegations Manual No. 8-47 (October 8, 1993).

Dated: April 27, 1998.

Felicia Marcus,
Regional Administrator.
[FR Doc. 98-12150 Filed 5-7-98; 8:45 am]
BILLING CODE 6560-50-P

COUNCIL ON ENVIRONMENTAL QUALITY

American Heritage Rivers Initiative

AGENCY: Council on Environmental Quality.

ACTION: Description of Administration policy regarding congressional opposition to designation of American Heritage Rivers.

Immediately following the 1997 State of the Union Address, President Clinton instructed the Cabinet to work with communities on the design of the American Heritage Rivers initiative to support community-led efforts that spur economic revitalization, protect natural resources and the environment, and preserve our historic and cultural heritage. In response to this initiative, communities across the country nominated 126 rivers (or stretches of rivers) for designation as an American Heritage River. An advisory committee of nonfederal experts will review all nominations and recommend rivers to the President for designation.

An interagency working group convened by the White House developed guidelines for the review of nominations. As stated in the *Federal Register* Notice of September 17, 1997 and President Clinton's Executive Order of April 7, 1998, the advisory committee will provide an assessment of the following for each nomination:

1. The scope of each nomination's application and the adequacy of its design to achieve the community's goals;
2. Whether the natural, economic (including agricultural), scenic, historic, cultural, and/or recreational resources featured in the application are distinctive or unique;
3. The extent to which the community's plan of action is clearly defined and the extent to which the plan addresses all three American Heritage Rivers objectives—natural resource and environmental protection, economic revitalization, and historic and cultural preservation—either through planned cooperative action or past accomplishments.

4. The strength and diversity of support for the nomination and plan of action as evidenced by letters from local and State governments, Indian tribes, elected officials, any and all parties who participate in the life and health of the area nominated, or who have an interest in the economic life and cultural and environmental vigor of the involved community.

The Administration believes that public input into the design of the

initiative and into individual river nominations is critically important. Representatives from Federal agencies traveled around the country to meet with community organizations, local governments and industry associations to learn their views on the initiative and incorporate them into its design.

On May 19, 1997, the Administration published a notice in the *Federal Register* requesting comment about the initiative's structure, the criteria used to determine eligible rivers, the needs of communities for technical assistance and funding, and other items. The Administration incorporated many of the more than 1,700 comments received during the more than 90 days of public input into the final design of the initiative that was published on September 17, 1997 in the *Federal Register*. This notice also included how communities apply for designation, specifically asking them to demonstrate strong and diverse public support for the nomination.

Nominations closed on December 10, 1997. Members of Congress were sent copies of nominations from their districts and asked to provide comments to the Administration by January 23, 1998.

The Administration received more than 200 responses from Members of Congress, both in support and opposition, to particular nominations. Overall, Members expressed support for rivers that were nominated in their districts or State by more than a 4:1 ratio.

The views of Members of Congress on specific nominations have particular importance in evaluating applications. Elected officials such as Members of Congress represent a diversity of concerns within a community that need to be taken into account. Furthermore, the views of Members of Congress are especially relevant in this case since American Heritage Rivers is a Federal initiative on behalf of those communities. The Administration concluded accordingly that, under the conditions described in this notice, if a Member of Congress opposes the nomination of a river in his or her district, it means that a sufficient strength and diversity of support were not demonstrated for such a designation, and that the nomination did not satisfy that particular criteria.

In order to respond to the views of Members of Congress who oppose specific nominations, the Administration has agreed that the nomination of certain rivers or stretches of river would be excluded from consideration for designation under this initiative, if the Member so requested.

The way in which this exclusion works is summarized in this notice as follows.

A Member of the U.S. House of Representatives may request that a nomination as an American Heritage River not be considered for selection. If the entire nominated portion of the river flows through the district of that Member, then the nomination will not be considered by the advisory committee. If only a portion of the river flows through the Member's district, then that portion of the river would not be included in any designation by the President. The advisory committee in its consideration of that nomination would need to weigh the extent to which that exclusion affects the merit of the balance of the nomination. A Member may only make such a request for rivers, or portions of rivers, that flow through his or her district and may not exclude from consideration the nomination of a river in the district of another Member.

Likewise, the Senators from a state may request that a nomination as an American Heritage River not be considered for selection. A request made by both Senators will be dispositive of the application. If the entire nominated portion of the river flows through the state of the Senators, then the nomination will not be considered by the advisory committee. If only a portion of the river flows through the Senator's state, then that portion of the river would not be included in any designation by the President. The advisory committee in its consideration of that nomination would need to weigh the extent to which that exclusion affects the merit of the balance of the nomination. A Senator may only make such a request for rivers or portions of rivers that flow through his or her state and may not exclude from consideration the nomination of a river in another state. Of course, if a single Senator opposes a nomination, and the other Senator and the relevant House Member express no view, the nomination will not be considered by the advisory committee.

Where the view of a single Senator who opposes a nomination conflicts with the position of the other Senator from that state or a Member of Congress (for that part of a river which he or she represents) because one or the other supports the nomination, then the views of all members of the Congressional delegation will be presented to the advisory committee. In such cases, the advisory committee will evaluate the merits of the nomination and the degree to which the criteria of strength and diversity of support have been satisfied by the application. However, if any House Member opposes a nomination,

then no designation of any stretch of the river will be considered in his district as previously outlined in this notice.

Nine rivers completely eliminated from consideration by Congressional opposition:

- Clearwater River, ID, MT—Representative Helen Chenoweth (ID-1), Senator Conrad Burns (MT), Senator Larry Craig (ID), Representative Rick Hill (MT-ALL), Senator Dirk Kempthorne (ID);
- Gunnison River, CO—Representative Scott McInnis (CO-3), Senator Ben Nighthorse Campbell (CO);
- Osage River, MO—Representative Ike Skelton (MO-4);
- St. Mary's River, MI—Representative Bart Stupak (MI-1);
- San Joaquin River, CA—Representative George Radanovich (CA-19);
- San Juan River, NM—Representative Bill Redmond (NM-3);
- San Luis Rey River, CA—Representative Randy Cunningham (CA-51), Representative Ron Packard (CA-48);
- Snohomish River, WA—Representative Jack Metcalf (WA-2);
- Upper Rio Grande, NM—Representative Bill Redmond (NM-3), Representative Steve Schiff (NM-1), Joe Skeen (NM-2).

Sixteen rivers affected in part by Congressional opposition:

- American River, CA—Representative John Doolittle (CA-4), Richard Pombo (CA-11);
- Arkansas River, AR, CO, OK, KS—Representative Marion Berry (AR-1), Senator Sam Brownback (KS), Representative Tom Coburn (OK-2), Representative Jay Dickey (AR-4), Representative Jerry Moran (KS-1), Representative Todd Tiahrt (KS-4), Asa Hutchinson (AR-3), Senator Tom Hutchinson (AR), Senator Ben Nighthorse Campbell (CO);
- Cold Water Creek, MO—Representative James Talent (MO-2);
- Columbia River, OR—Senator Gordon H. Smith (OR);
- French Broad River, NC—Representative Charles Taylor (NC-11);
- James River, VA—Representative Thomas Bliley, Jr. (VA-7);
- Jordan River, UT—Representative Christopher Cannon (UT-3);
- Mississippi River, MO—Representative Pat Danner (MO-6), Representative James Talent (MO-2);
- Missouri River, MT, MO, NE, SD—Representative Pat Danner (MO-6), Representative Rick Hill (MT-ALL), Representative Kenny Hulshof (MO-9), Representative James Talent (MO-2), Representative Ike Skelton (MO-4), Senator Sam Brownback (KS), Senator

Conrad Burns (MT), Senator Hagel (NE), Representative John Thune (SD-ALL), Representative Vincent Snowbarger (KS-3);

- Ohio River, IN—Representative John Hostettler (IN-8);
- Ouachita River, LA/AR—Representative Jay Dickey (AR-4), Representative Asa Hutchinson (AR-3), Senator Tim Hutchinson (AR);
- St. John's River, FL—Representative David Weldon (FL-15), Representative Cliff Stearns (FL-6);
- San Antonio River, TX—Representative Lamar Smith (TX-21);
- South Platte River, CO—Senator Ben Nighthorse Campbell (CO);
- Santa Cruz River, AZ—Senator Jon Kyl (AZ);
- Yellowstone River, WY, MT—Representative Barbara Cubin (WY-ALL), Representative Rick Hill (MT-ALL), Senator Conrad Burns (MT), Senator Michael Enzi (WY), Senator Craig Thomas (WY);
- Willamette River, OR—Senator Gordon H. Smith (OR).

FOR FURTHER INFORMATION CONTACT: Karen Hobbs, Agency Representative, Council on Environmental Quality, Old Executive Office Building, Room 360, Washington, D.C. 20501. Phone: 202-395-7417; Fax: 202-456-6546.

Dated: May 6, 1998.
Kathleen A. McGinty,
Chair, Council on Environmental Quality.
[FR Doc. 98-12432 Filed 5-7-98; 8:45 am]
BILLING CODE 3125-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA-1214-DR)

Alabama; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA-1214-DR), dated April 9, 1998, and related determinations.

EFFECTIVE DATE: April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama, is hereby amended to include the following area among those areas determined to have been adversely

affected by the catastrophe declared a major disaster by the President in his declaration of April 9, 1998:

Covington County for Public Assistance (already designated for Individual Assistance).

Walker County for Individual Assistance. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,
Executive Associate Director, Response and Recovery Directorate.
[FR Doc. 98-12286 Filed 5-7-98; 8:45 am]
BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

(FEMA-3125-EM)

Arkansas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Arkansas (FEMA-3125-EM), dated April 24, 1998, and related determinations.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 24, 1998, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms, tornadoes, and flooding on April 16, 1998, is of sufficient severity and magnitude to warrant an emergency declaration under subsection 501(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). I, therefore, declare that such an emergency exists in the State of Arkansas.

You are authorized to provide assistance for temporary housing (provision of mobile homes) pursuant to subsection 502(a)(6) of the Stafford Act. FEMA will transport and

donate the mobile homes to the State of Arkansas at time of delivery.

Pursuant to this emergency declaration, you are also authorized to provide emergency assistance, as you deem appropriate under Title V of the Stafford Act at 75 percent Federal funding.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham L. Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Arkansas to have been affected adversely by this declared emergency:

Mississippi County.
FEMA has been authorized to provide mobile homes pursuant to subsection 502 (a)(6) of the Stafford Act. FEMA will transport and donate the mobile homes to the State of Arkansas at the time of delivery. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,
Director.
[FR Doc. 98-12283 Filed 5-7-98; 8:45 am]
BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA-1209-DR)

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA-1209-DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas

determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Twiggs County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,
Executive Associate Director, Response and Recovery Directorate.
[FR Doc. 98-12289 Filed 5-7-98; 8:45 am]
BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

(FEMA-1210-DR)

Republic of the Marshall Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Republic of the Marshall Islands (FEMA-1210-DR), dated March 20, 1998, and related determinations.

EFFECTIVE DATE: April 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the cost-share arrangement under FEMA-1210-DR is adjusted at 90 percent Federal funding for eligible costs for the Public Assistance Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98-12288 Filed 5-7-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1213-DR]

Federated States of Micronesia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Federated States of Micronesia, (FEMA-1213-DR), dated April 3, 1998, and related determinations.

EFFECTIVE DATE: April 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Federated States of Micronesia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 3, 1998:

Emergency protective measures (Category B) for the following areas:

Sorol in Yap State.
Oroluk and Pakin in Pohnpei State.
Etten, Tetiw, Piis-Paneu, and Pollap in Chuuk State.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98-12287 Filed 5-6-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1215-DR]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA-1215-DR), dated April 20, 1998, and related determinations.

EFFECTIVE DATE: April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1998:

Carroll and Blount Counties for Individual Assistance.

Roane and Grainger Counties for Individual Assistance (already designated for Public Assistance).

Anderson and Dickson Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98-12285 Filed 5-7-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory

Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

NAME: Board of Visitors for the National Fire Academy.

DATES OF MEETING: June 25-27, 1998.

PLACE: Building J, Room 138, National Emergency Training Center, Emmitsburg, Maryland.

TIME: June 25, 1998, 8:30 a.m.-5:00 p.m.
June 26, 1998, 8:30 a.m.-9:00 p.m.
June 27, 1998, 8:30 a.m.-12 noon.

PROPOSED AGENDA: June 25, 26, and 27, 1998, Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447-1117, on or before June 12, 1998.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: April 24, 1998.

Carrye B. Brown

U.S. Fire Administrator.

[FR Doc. 98-12290 Filed 5-7-98; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL MARITIME COMMISSIONS

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 224-201049-001.

Title: Tampa-Tampa Bay International Wharfage Incentive Agreement.

Parties: Tampa Port Authority; Tampa Bay International Terminals, Inc.

Synopsis: The proposed amendment adds a commodity to the agreement. The

term of the agreement continues to run through March 31, 1999.

Agreement No.: 224-201050.

Title: NY-NJ/Ecuadorian Containerized Banana Volume Incentive Agreement.

Parties: Port Authority of New York and New Jersey; South Pacific Shipping Company Ltd. d/b/a; Ecuadorian Line.

Synopsis: The proposed agreement concerns the terms and conditions of a banana import incentive program. The term of the agreement runs through April 28, 1999.

Dated: May 4, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98-12193 Filed 5-7-98; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, May 13, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.bog.frb.fed.us> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-12385 Filed 5-6-98; 10:50 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 98039]

Programs To Prevent the Emergence and Spread of Antimicrobial Resistance; Notice of Availability of Fiscal Year 1998 Funds

Introduction

The Centers for Disease Control and Prevention (CDC) is implementing a multifaceted effort to address the problem of antimicrobial resistance. As part of this, CDC announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program to provide assistance for the development and evaluation of demonstration projects to prevent and control the emergence and spread of antimicrobial resistance.

The CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301(a), 317(k)(1), and 317(k)(2) of the Public Health Service Act, as amended (42 U.S.C. 241(a), 247b(k)(1), and 247b(k)(2)).

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103-227, the Pro-Children's Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and governments and their agencies in the United States (U.S.). Thus, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, including State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian

tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Note: An organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Also, only one application will be accepted from any single applicant.

Availability of Funds

Approximately \$1.2 million is available in FY 1998 to fund approximately 2 to 3 awards. It is expected that awards will begin on or about August 15, 1998, and will be made for a 12-month budget period within a project period of up to 5 years. It is expected that the average annual award for the first 3 years of the project period will be \$450,000 (direct costs and indirect costs), ranging from \$300,000 to \$600,000. The last 2 years will involve data collection and analysis only for purposes of evaluating the program; therefore, it is anticipated that lesser amounts of funding will be needed in these years.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Note: Approximately 50 percent of the available funds are allocated for projects focusing on community-based projects. Approximately 50 percent of the available funds are allocated for projects focusing on integrated health care delivery systems. Applicants should indicate clearly whether they consider their application to be primarily directed at community-based interventions or interventions in integrated health care delivery systems. (Applications addressing both are encouraged. However, for purposes of the evaluation process, the application must clearly state whether it is primarily addressing community-based interventions or interventions in integrated health care delivery systems.)

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. section 1352 (which has been in effect since December 23, 1989), recipients (and their sub-tier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part,

involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Pub. L. 105-78) states in section 503(a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relations, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

The introduction of antibacterial drug therapy in the 1940s led to a dramatic reduction in illness and death from infectious diseases over the past 50 years. Worldwide, antimicrobial drugs have spared the lives of millions of people for whom premature death or crippling complications would have been unavoidable. However, this situation is changing rapidly. Emergence of drug resistance in bacteria, fungi, parasites, and viruses is swiftly reversing the miracles of the past 50 years and threatens to create an era where antimicrobial agents are no longer useful for many common diseases. The identification this year of *Staphylococcus aureus* with reduced susceptibility to vancomycin in both Japan and the United States (U.S.) is particular cause for concern. At least 70 percent of the bacteria-causing, hospital-acquired infections are resistant to at least one antimicrobial agent commonly used for treatment. Among community-acquired pathogens, drug resistance among respiratory tract pathogens, particularly pneumococci, represents a growing problem. Pneumococcal strains have been identified that are not susceptible to any of the oral agents commonly used as therapy, and combination therapy with vancomycin now is recommended for life threatening pneumococcal infections due to increasing resistance among extended spectrum cephalosporins. The

spread of resistance means that more toxic, more difficult to administer, more costly, or experimental antimicrobial agents must be used for therapy.

Factors that promote the spread of resistance differ between pathogens. In the community, transmission within families and in other settings where close contact may occur (e.g., child care facilities); rates of antibiotic therapy, the agents used and their dose; and the impact of resistance on the fitness of a pathogen, all may affect the spread of resistance. For pathogens that cause nosocomial infections, health-care-associated transmission involving acute-care hospitals, long-term-care institutions, such as nursing homes, and non-institutionalized persons in the community receiving health care in their homes and/or ambulatory clinical settings also may be important. Few programs to reduce the development and spread of antimicrobial resistance have been implemented in whole communities. Strategies to prevent the spread of resistance among nosocomial pathogens which have proven successful within a single institution or a limited population of patients include the implementation of infection control guidelines and controls on antibiotics to limit inappropriate use. Antibiotic use has been controlled with formulary restrictions, intervention by infectious disease consultants and/or clinical pharmacologists, clinical practice guidelines for physicians, computer-assisted prescribing, and physician and patient educational programs.

Infection control guidelines include the use of barrier precautions, pre-admission and discharge screening, environmental controls, and cohorting. In the community, successful interventions have included education of physicians and patients, the development of clinical practice guidelines and their promotion by peer educators and opinion leaders, feedback to clinicians comparing their practices with those of their peers, decreasing availability of antibiotics, and changing the agents used, their dose, and the duration of therapy.

Purpose

This program is intended to evaluate the effectiveness and impact of strategies to control the spread of antimicrobial resistance within a larger population, such as a geographically defined community, the catchment area of large health-care delivery organization, or the population of one or more integrated health-care delivery systems.

Another purpose of this program is to conduct research which develop,

implement, and evaluate programs designed to reduce the emergence and spread of antimicrobial resistance. It is anticipated that these programs will be effective and that they could subsequently be replicated widely in order to reduce antimicrobial resistance throughout the U.S. Applicants may submit applications that focus primarily on either (1) communities or (2) integrated networks of health facilities. This program is not intended to support an infection control program at an individual health-care facility or evaluation of a single intervention in a community or health-care setting.

Programs will address the problem of antimicrobial resistance through interventions potentially including, but not limited to:

1. Promoting more judicious antimicrobial use (e.g., using antimicrobials only when needed, using appropriate doses of antimicrobial agents, etc.).
2. Reducing transmission of antimicrobial resistant microorganisms.
3. Preventing colonization and infection through the use of vaccines.
4. Improving the ability to provide effective narrow spectrum therapy by rapidly and accurately diagnosing resistant microorganisms through the use of improved laboratory testing procedures and improved quality and flow of laboratory data.
5. Using improved means of communication with health-care providers to improve their use of antimicrobials, such as through the use of information management systems and Internet-based technology.

It is envisioned that funded projects will use a combination of approaches to achieve judicious antimicrobial use and other changes that will result in decreased appearance and spread of resistance. Funded projects will also be expected to conduct a multifaceted evaluation of many aspects of the program. An essential part of such an evaluation will be assessing the costs and cost savings associated with any proposed intervention.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for conducting activities under B (CDC Activities).

A. Recipient Activities

1. Select Community or Health Facility Focus and Define Pathogens of Interest

Identify whether the primary focus of activities will be on decreasing spread

of resistance among community-or health-care-associated pathogens and define the pathogen/resistance patterns that will be evaluated in the project.

2. Select Study Population

Identify a population of adequate size for study purposes.

a. If the primary focus of the application is to address antimicrobial resistance in community settings, the population should be defined by a geographic area and should include a variety of health-care providers and health-care provider organizations. (One example of an appropriate approach would be to define the population to be addressed as metropolitan area or part of a State in which case the project might involve, at a minimum, public health entities and providers of outpatient health care in this area.)

b. If the primary focus of the application is on integrated health care delivery systems or networks, the population should be defined such that interventions could be conducted in multiple settings in which antimicrobial resistance among the target pathogens can develop or be spread (for example, inpatient hospital settings, emergency rooms, ambulatory care facilities, home health settings, long term care facilities, etc.). One example of an appropriate approach would be to define the population as those receiving hospital, long-term care services, and ambulatory care services through a network of related organizations, in which case the project might involve the targeted health facilities, as well as public health authorities in the area.

3. Define, Collect, and Analyze Baseline Data

Collect baseline data so that evaluation of the interventions can be done. This includes, at a minimum, collecting incidence and/or prevalence data on antimicrobial resistance among the target pathogens and measuring indicators of prescribing practices of providers serving the population under study.

4. Design and Implement an Intervention Promoting Judicious Antimicrobial Use and Other Approaches to Reducing Antimicrobial Resistance

It is anticipated that this will involve developing coalitions among public health agencies, health-care providers, professional societies, and others, as well as implementing specific strategies. These strategies may include peer education of physicians, public education campaigns, clinical practice guidelines, formulary guidelines,

prescribing restrictions, pre-admission and pre-discharge screening and the implementation of admission and discharge guidelines, cohorting, barrier precautions, isolation precautions, and other strategies which are likely to be efficacious. The choice of strategies should be justified based on the nature of the study population and the structure of the health care delivery system(s) within which the study population receives health care.

5. Measure Effect of the Intervention

a. Measure the change in rates of antimicrobial resistance of the organisms over time. Changes in rates of resistance among organisms that are carried (e.g., in the nasopharynx) may be evaluated in addition to changes in rates of resistant infections. Measurement of antimicrobial resistance should be by a laboratory with proven ability to do these measurements well.

b. As decreases in resistance as a result of the program may take several months to years to manifest themselves, measure outcomes related to how well the interventions have been implemented and whether they have resulted in behavior change.

c. Measure cost implications of the intervention. This should include impact of the intervention on direct costs (e.g., costs of antibiotics, medical care visits, duration of hospitalization, etc.) and indirect costs (e.g., time lost from work or child care). Costs should be differentiated from charges, and the perspective of the costs should be defined (e.g., societal, payer, patient, provider). Costs of the intervention program must be differentiated from those of the evaluation.

d. Other possible outcomes that could be measured include changes in parent or provider knowledge and attitudes regarding antimicrobial use.

6. Disseminate Research Findings

Disseminate research results by appropriate methods such as publication in journals, presentation at meetings, conferences, etc.

B. CDC Activities

CDC will provide technical assistance in the design and conduct of the research. This may include:

1. Provide technical assistance in the design and conduct of the project, including intervention methods and analytic approach.
2. Upon recipient's request, perform selected laboratory tests as appropriate.
3. Participate in data management, the analysis of research data, and the interpretation and dissemination of research findings as appropriate.

4. Assist in the design of the evaluation, in particular, in the identification of outcome measures that will allow for later analysis of economic benefits.

5. Provide educational materials, including working with grantees to develop new materials that might be needed at multiple sites.

6. Facilitate exchange of information between recipients.

Technical Reporting Requirements

Narrative progress reports are required semiannually. The first semiannual report is required with each year's noncompeting continuation application and should cover program activities from date of the previous report (or date of award for reporting in the first year of the project). The second semiannual report is due 90 days after the end of each budget period and should cover activities from the date of previous report. Progress reports should address the status of progress toward specific project objectives and should include copies of any publications resulting from the project.

An original and two copies of a Financial Status Report (FSR) are required no later than 90 days after the end of each budget period. A final performance report and FSR are due no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, CDC.

Application

1. Pre-application Letter of Intent

In order to assist CDC in planning and executing the evaluation of applications submitted under this program announcement, all parties intending to submit application(s) are requested to submit a non-binding letter of intent. Notification should be provided as soon as possible but not later than 30 business days prior to the application due date. Notification should include: (1) Name and address of institution, (2) name, address, and telephone number of contact person, and (3) whether the application will primarily address community-based interventions or interventions in integrated health care delivery systems. Notification can be provided by facsimile, postal mail, or electronic mail (E-mail) to Suzanne Binder, M.D., National Center for Infectious Diseases, Mailstop F-22, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Facsimile (770) 488-7794, Internet scb1@cdc.gov.

2. Application Content

Applicants are required to submit an original and two copies of the

application and must develop their application in accordance with the PHS Form 5161-1 (Revised 7/92, OMB Control number 0937-0189), information contained in this program announcement, and the instructions outlined below. In order to ensure an objective, impartial, and prompt review, applications which do not conform to these instructions may be disqualified.

All pages must be clearly numbered, and a complete index to the application and its appendices must be included. The application must be submitted unstapled and unbound. Bound materials (e.g., pamphlets, booklets, etc.) will not be accepted in the narrative or appendices. To submit such materials, copy them onto 8½" x 11" white paper, one-side only. All materials must be typewritten, single spaced, and in un-reduced type (no smaller than font size 12) with at least 1" margins, headers, and footers.

The application narrative must not exceed 20 pages (excluding budget and appendices). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below.

a. Abstract

Provide a brief (two pages maximum) abstract of the project. State the length of the project period for which assistance is being requested (see AVAILABILITY OF FUNDS Section for additional information regarding project period). Indicate clearly whether this project primarily addresses antimicrobial resistance in communities or in integrated health-care networks.

b. Background and Need

Discuss the background and need for the proposed project. Illustrate and justify the need for the proposed project that is consistent with the purpose and objectives of this cooperative agreement program.

c. Capacity and Personnel

Describe applicant's past experience in conducting projects/studies similar to that being proposed. Describe applicant's resources, laboratory and other facilities, and professional personnel that will be involved in conducting the project. Include in an appendix curriculum vitae for all professional personnel involved with the project. Describe plans for administration of the project and identify administrative resources that

will be assigned to the project. Provide in an appendix letters of support from all key participating non-applicant organizations, individuals, etc., which clearly indicate their commitment to participate as described in the operational plan. (Do not include letters of support from CDC personnel—they will not be accepted in the application.)

d. Objectives and Technical Approach

Describe specific objectives for the proposed project which are measurable and time-phased and are consistent with the purpose and goals of this cooperative agreement program. Include a detailed timeline for completion of key activities. Provide a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses all recipient activities. Include a clear description of applicant's technical approach/methods which are directly relevant to the study objectives. Clearly identify specific assigned responsibilities/tasks for all key professional personnel. Describe the nature and extent of collaboration with CDC and/or others during various phases of the project. If the applicant is not a health department, describe plans for involving local and State health departments. Clearly describe the population to be studied. Describe in detail a plan for evaluating study results (including how data on prescribing practices, costs, and charges will be obtained) and for evaluating progress toward achieving project objectives. Justify the choice of organisms and antimicrobial susceptibility that will be used for evaluation, and include a description about how quality of laboratory measurements will be assured. Clearly state the proposed length of the project period.

e. Budget

Provide in an appendix a budget and accompanying detailed justification for the first year of the project that is consistent with the purpose and objectives of this program. Provide estimated total budgets for subsequent years. If requesting funds for any contracts, provide the following information for each proposed contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, and (5) method of contractor selection (e.g., sole-source or competitive solicitation). (See sample budget included in application package.)

Note: If indirect costs are requested, a copy of the applicant organization's current

negotiated Federal indirect cost rate agreement or cost allocation plan must be provided.

f. Human Subjects

Whether or not exempt from DHHS regulations, if the proposed project involves human subjects, describe in an appendix adequate procedures for the protection of human subjects. Also, ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects (see OTHER REQUIREMENTS Section for additional information).

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (10 points):

Extent to which applicant's discussion of the background for the proposed project demonstrates a clear understanding of the purpose and objectives of this cooperative agreement program. Extent to which applicant illustrates and justifies the need for the proposed project that is consistent with the purpose and objectives of this program.

2. Capacity (30 points total):

a. Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. This includes the capacity to conduct quality laboratory measurements. (10 points)

b. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research and programs related to that proposed as evidenced by curriculum vitae, publications, etc. (15 points)

c. Extent to which applicant includes letters of support from non-applicant organizations, individuals, etc. Extent to which the letters clearly indicate the author's commitment to participate as described in the operational plan. (5 points)

3. Objectives and Technical Approach (60 points total):

a. Extent to which applicant describes specific objectives of the proposed project which are consistent with the purpose and goals of this program and which are measurable and time-phased. (10 points)

b. Extent to which the applicant identifies an appropriate population for study, including whether the results of a study in this population will be generalizable to other populations in the U.S. Extent to which adequate procedures are described for the protection of human subjects. Extent to

which the applicant identifies microbes/resistance patterns for study that are of public health importance. (10 points)

c. Extent to which applicant presents a detailed operational plan for initiating and conducting the project, which clearly and appropriately addresses all recipient activities. Extent to which applicant clearly identifies specific assigned responsibilities for all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for developing and conducting the proposed program and evaluation and extent to which the plan is adequate to accomplish the study objectives. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. The extent to which applicant describes the existence of or plans to establish partnerships. (20 points)

d. Extent to which applicant describes adequate and appropriate collaboration with CDC and/or others during various phases of the project. (10 points)

e. Extent to which applicant provides a detailed and adequate plan for evaluating study results (including laboratory data and data on prescribing practices), as well as plans for evaluating progress toward achieving project objectives. (10 points)

4. Budget (not scored): Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

This program is not subject to Executive Order 12372 Review, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the *Federal Register*, Vol. 60, No. 179, pages 47947-47951, and dated Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 (Revised 7/92, OMB Control number 0937-0189), must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, Mailstop E-18, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, on or before June 29, 1998.

1. **Deadline:** Applications shall be considered as meeting the deadline if they are either:

- Received on or before the deadline date; or
- Sent on or before the deadline date and received in time for submission to

the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. **Late Applications:** Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1-888-GRANTS (1-888-472-6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. (Please refer to Announcement Number 98039.) You will receive a complete program description, information on application procedures and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 314, Mailstop E-18, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, telephone (404) 842-6546, Facsimile (404) 842-6513, Internet oxb3@cdc.gov.

Programmatic technical assistance may be obtained from David Bell, telephone (404) 639-2603 or Suzanne Binder, M.D., National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop F-22, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (770) 488-7793, Facsimile (770) 488-7794, Internet scb1@cdc.gov.

Please refer to Announcement Number 98039 when requesting information regarding this program.

You may obtain this announcement from one of two Internet sites on the actual publication date: CDC's homepage at <http://www.cdc.gov> or at the Government Printing Office homepage (including free on-line access to the *Federal Register* at <http://www.access.gpo.gov>).

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office,

Washington, DC 20402-9325, telephone: (202) 512-1800.

Dated: May 4, 1998.

Joseph R. Carter,
Acting Associate Director for Management
and Operations, Centers for Disease Control
and Prevention (CDC).

[FR Doc. 98-12236 Filed 5-7-98; 8:45 am]
BILLING CODE 4160-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and
Prevention

National Institute for Occupational
Safety and Health

[Program Announcement 98056]

Mining Occupational Safety and Health
Research Grants; Availability of Funds
for FY 1998

A. Purpose

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of fiscal year (FY) 1998 funds for a research grant program for Mining Occupational Safety and Health Research Grants. This program addresses the "Healthy People 2000" priority area of Occupational Safety and Health. The purpose of the program is to develop knowledge that can be used to prevent occupational diseases and injuries to miners. NIOSH will support hypothesis-testing research projects to identify and quantify occupational health and safety hazards to miners, develop methods and technologies to measure and control these hazards, and translate research findings so that they can be applied to solve health and safety problems in mines.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Pub. L. 104-65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately \$700,000 is expected to be available in FY 1998 to fund 4-8 research project grants. This money is in addition to the funds available for the previous RFA 807 announced in August 1997. Organizations that submitted applications for RFA 807 may revise and resubmit under this announcement. The amount of funding available may vary and is subject to change. Awards will range from \$50,000 to \$200,000 in total costs (direct and indirect) per year. It is expected that the awards will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of up to 3 years.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Programmatic Interest

The Mine Safety and Health Research Program has been fully coordinated with the National Occupational Research Agenda (NORA) plans and recommendations. The NORA document is available through the NIOSH homepage at <http://www.cdc.gov/niosh/nora.html>. The focus of grants should emphasize research in the following topical areas which are in priority order:

(1) Hearing Loss Prevention

Conduct laboratory and field research on noise-induced hearing loss in miners; Conduct field dosimetric and audiometric surveys to assess the extent and severity of the problem and to identify those mining segments in greatest need of attention and to objectively track progress in meeting loss prevention goals; Conduct field and laboratory research to identify noise generation sources and to identify those areas most amenable to intervention activities; Develop, test, and demonstrate new control technologies for noise reduction; Develop strategies and methods to improve the effectiveness of hearing protectors for miners; Assess the effect of using hearing protectors on miner safety; Evaluate technical and economic feasibility of controls; Develop, evaluate, and recommend implementation strategies to promote the adoption and use of noise reduction technology.

(2) Mining Injury Prevention

Conduct laboratory, field, and computer modeling research to focus on human physiological capabilities and limitations and their interactions with

mining jobs, tasks, equipment and the mine work environment; Research on causes and prevention of low back disorders, slips and falls, and materials handling injuries in miners; Study effects of human behavior on mining injuries; Design and conduct epidemiological research studies to identify and classify risk factors that are causing or may be causing traumatic injuries to miners; Evaluate and recommend implementation strategies for injury prevention and control technologies; Research to improve response to mine emergencies, and to enhance the effectiveness of mine rescue teams; Identify and evaluate research opportunities using a systems approach for intervention and prevention; and Develop cost analysis methodologies to evaluate performance and engineering control strategies.

(3) Dust and Toxic Substance Control

Research to develop or improve personal and area direct reading instruments for measuring mining contaminants, including but not limited to respirable dust, silica, diesel engine emissions, and other toxic substances and mixtures; Conduct field tests, experiments, and demonstrations of new technology for monitoring and assessing mine air quality; Conduct laboratory and field research to develop airborne hazard reduction control technologies; Carry out field surveys in mines to identify work organization strategies that could result in reduced dust or toxic substance exposure; Evaluate the performance, economics, and technical feasibility of engineering control strategies, novel approaches, and the application of new or emerging technologies for underground and surface mine dust and toxic substance control systems; Develop and evaluate implementation strategies for using newly developed monitors and control technology for exposure reduction or prevention.

(4) Social and Economic Consequences of Mining Illness and Injury

Analyze all effects of mining illness and injury on miners, their families, communities and States; Assess the effectiveness of health services provided to miners for prevention and care of occupational illness and injury; Assess the economic burden of mining illnesses and injuries and potential economic benefits of their prevention.

(5) Surveillance

Develop and evaluate new surveillance methods for mining-related illnesses and fatal and nonfatal injuries to improve collection and analysis of

health and safety data; Collect demographic information on miners to analyze health and safety data; Develop improved methods to describe trends in incidence of mining-related fatalities, morbidity, and traumatic injury; Develop and evaluate methods to conduct surveillance on the use of new and emerging technologies, the use of engineering controls, and the use of protective equipment in the mining sector; Analyze the effectiveness of prevention and control interventions in mining; Conduct mining-relevant risk analyses.

E. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

The Letter of Intent must be submitted on or before June 1, 1998, to: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98056, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E-13, Atlanta, Georgia 30305-2209.

Application

Submit the original and five copies of PHS-398 (OMB Number 0925-0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before June 25, 1998, submit the application to: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98056, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E-13, Atlanta, Georgia 30305-2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

F. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC for completeness and

responsiveness. Applications determined to be incomplete or unresponsive to this announcement will be returned to the applicant without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

Applications that are complete and responsive to the announcement will be reviewed for scientific and technical merit by an initial review group and will be determined to be competitive or non-competitive, based on the review criteria relative to other applications received. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified.

Applications judged to be competitive will be discussed and assigned a priority score. Following initial review for technical merit, the applications will receive a secondary review for programmatic importance.

Review Criteria for Technical Merit Are as Follows

1. Significance—Does this study address an important problem related to the topical research issues outlined in this solicitation? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

2. Approach—Are the conceptual framework, design (including composition of study population), methods, and analyses adequately developed, well-integrated and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative approaches?

3. Innovation—Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

4. Principal Investigator—Is the investigator appropriately trained and well suited to carry out this work (particularly but not exclusively) in the area of the proposed project? Is the work proposed appropriate to the experience level of the principal investigator and other researchers, if any?

5. Environment—Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the

scientific environment or employ useful collaborative arrangements? Is there documentation of cooperation from industry, unions, or other participants in the project, where applicable? Is there evidence of institutional support and availability of resources necessary to perform the project?

6. Gender and minority issues—Are plans to include both sexes and minorities and their subgroups adequately developed (as appropriate for the scientific goals of the project)? Are strategies included for the recruitment and retention of human subjects?

7. Human Subjects—Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Are all procedures in compliance with applicable published regulations (see "Other Requirements").

8. Vertebrate animals—Are the procedures proposed adequate for the welfare of vertebrate animals and are they fully documented? Are all procedures in compliance with applicable published regulations?

9. Budget—Is the budget reasonable and appropriate for all direct costs and period/s of requested support and are all entries adequately justified?

Review Criteria for Programmatic Importance Are as Follows

1. Relevance to mine safety and health, by contributing to achievement of research objectives specified in Section 501 of the Federal Mine Safety and Health Act of 1977.

2. Magnitude of the problem in terms of numbers of miners affected.

3. Severity of the disease or injury in the mining population.

4. Usefulness to applied technical knowledge in the identification, evaluation, or control of occupational safety and health hazards in mines on a national or regional basis.

The Following Will Be Considered in Making Funding Decisions

1. Technical merit of the proposed project as determined by the initial peer review.

2. Programmatic importance of the project as determined by secondary review.

3. Availability of funds.

4. Program balance among priority areas of the announcement.

G. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of—

1. Progress reports (annual);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E-13, Atlanta, GA 30305-2209.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I (in the application kit).

AR98-1—Human Subjects Requirements

AR98-2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR98-3—Animal Subjects Requirements

AR98-10—Smoke-Free Workplace Requirements

AR98-11—Healthy People 2000

AR98-12—Lobbying Restrictions

H. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, section 301(a) (42 U.S.C. 241(a)), as amended and the Federal Mine Safety and Health Act of 1977, section 501 (30 U.S.C. 951) as amended. The Catalog of Federal Domestic Assistance number is 93.262.

I. Where To Obtain Additional Information

Please refer to Program Announcement 98056 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98056, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E-13, Atlanta, GA 30305-2209, telephone (404) 842-6535, Email address: jcw6@cdc.gov.

For program technical assistance, contact: Roy M. Fleming, Sc.D., Research Grants Program, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, M/S D-30, Atlanta, GA 30333, Telephone: (404) 639-3343, FAX: (404) 639-4616, Internet: rmf2@cdc.gov.

To receive additional written information and to request an application kit, call 1-888-GRANTS4 (1-888 472-6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. Also, this and other CDC Announcements can be found on the CDC homepage on the Internet (<http://www.cdc.gov>) under the "Funding" section, as well as on the NIOSH homepage (<http://www.cdc.gov/niosh>) under "Extramural Program." For your convenience, you may be able to retrieve a copy of the PHS Form 398 from (<http://www.nih.gov/grants/funding/phs398/phs398.html>).

Please Refer to Announcement Number 98056 when Requesting Information and Submitting an Application.

Dated: May 1, 1998.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-12212 Filed 5-7-98; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCSE 98SIP-1]

Child Support Enforcement Demonstration and Special Projects—Special Improvement Projects

AGENCY: Office of Child Support Enforcement, ACF, DHHS.

ACTION: Notice.

SUMMARY: The OCSE invites eligible applicants to submit competitive grant applications for special improvement projects which further the national child support mission, vision, and goals as outlined in the CSE Strategic Plan with Outcome Measures for Fiscal Years 1995-1999. A copy of the CSE Strategic Plan may be obtained upon request (See ADDRESSES of this announcement). Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: The closing date for submission of applications is July 7, 1998. See Part IV of this announcement for more information on submitting applications.

ADDRESSES: Application kits containing the necessary forms and instructions to

apply for a grant under this program announcement and the CSE Strategic Plan are available from: Administration for Children and Families, Office of Child Support Enforcement, Office of Automation and Special Projects, 370 L'Enfant Promenade, SW, 4th Floor, West Wing, Washington, DC 20447, Attention: Jay Adams, (202) 401-9240, ljadams@ACF.DHHS.GOV, or (202) 401-5539 (FAX).

FOR FURTHER INFORMATION CONTACT:

Administration for Children and Families (ACF), OCSE, Susan A. Greenblatt at (202) 401-4849, for specific program concerns regarding the announcement.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background—program purpose, program objectives, legislative authority, funding availability, and CFDA Number.

Part II: Project and Applicant Eligibility—project priorities, project considerations, eligible applicants, and project and budget periods.

Part III: The Review Process—intergovernmental review, initial ACF screening, evaluation criteria and competitive review, and funding reconsideration.

Part IV: The Application—application materials, application development, and application submission.

Paperwork Reduction Act of 1995 (Pub. L. 104-13)

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collections within this Program Announcement are approved under the following currently valid OMB control numbers: 424 (0348-0043); 424A (0348-0044); 424B (0348-0040); Disclosure of Lobbying Activities (0348-0046); Uniform Project Description (0970-0139 Expiration date 10/31/00).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I. Background

A. Program Purpose and Objectives

To fund a number of special improvement projects which further the national child support mission, vision and goals as outlined in the Office of Child Support Enforcement Plan (1995-1999). Thus, proposed projects should further the accomplishment of national

goals: i.e. all children to have parentage established; all children in IV-D cases to have financial and medical support orders; and all children to receive financial and medical support. Specifically, we are looking for grants which will further OCSE's FY 1998 priorities to increase collections, support orders and paternities.

The OCSE is committed to helping States make measurable program improvements that will enhance the lives of children.

Special improvement projects undertaken for this announcement should be in furtherance of efforts under the Government Performance and Results Act (i.e. designing a performance based program), the goals of the national child support strategic plan stated above and advancing the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

B. Legislative Authority

Section 452(j), 42 U.S.C. 652(j) of the Social Security Act provides Federal funds for technical assistance, information dissemination and training of Federal and State staff, research and demonstration programs and special projects of regional or national significance relating to the operation of State child support enforcement programs.

C. Availability of Funds

Approximately \$1.3 million is available for FY 1998. In order to fund a wide variety of projects, we plan to fund small to medium projects (e.g., \$30,000-\$150,000); however, we will consider higher amounts if the merit and benefits of the project are exceptional. All grant awards are subject to the availability of appropriated funds. A non-Federal match is not required.

D. CFDA Number:

93.601—Child Support Enforcement Demonstrations and Special Projects.

Part II. Applicant and Project Eligibility

A. Eligible Applicants

Eligible applicants for these special improvement project grants are State (including Guam, Puerto Rico, and the Virgin Islands) Human Services Umbrella agencies, other State agencies (including State IV-D agencies), Tribes and Tribal Organizations, local public agencies (including IV-D agencies), nonprofit organizations, and consortia of State and/or local public agencies. The Federal OCSE will provide the State CSE agency the opportunity to comment on the merit of local CSE agency applications before final award. Given

that the purpose of these projects is to improve child support enforcement programs, it is critical that applicants have the cooperation of IV-D agencies to operate these projects.

Preferences will be given to applicants representing CSE agencies and applicant organizations which have cooperative agreements with CSE agencies. All applications developed jointly by more than one agency organization must identify a single lead organization as the official applicant. The lead organization will be the recipient of the grant award. Participating agencies and organizations can be included as co-participants, subgrantees, or subcontractors with their written authorization.

B. Project Priorities

Eligible applicants should describe how the special improvement project will:

- Improve the effectiveness of Federal programs by promoting a new focus on results, service quality, management/organizational innovations, or public satisfaction;

- Significantly further national OCSE priorities as outlined in the OCSE Strategic Plan (1995-1999), i.e., all children to have parentage established; all children in IV-D cases to have financial and medical orders; and all children to receive financial and medical support;

- Improve effectiveness of the child support program by achieving project outcomes/results that further national goals and are transferable to other states/entities;

- Build on existing partnership agreements between State Child Support agencies and Federal Regional Offices or cooperative agreements between State Child Support agencies and Tribes.

C. Project Considerations

In order to successfully compete under this announcement, the applicants should:

- Provide a description of the project and how it will change/impact the current operations of the Child Support Enforcement Program in the area(s) affected by this grant project;

- Provide a detailed description of what program improvement/innovations will be addressed. This should include an assessment of the current situation and how this project will address a problem area(s) and improve program results. Within the context of program improvement, applicants shall provide information on the extent of the problem and the environment in which they operate, e.g., number of cases affected, specific locality affected; and

impact analysis, e.g., who/what is affected by the problem and impact on performance. Under this announcement, an applicant may undertake initiatives to improve performance in a wide variety of areas. We are looking for projects which will increase program effectiveness and achieve measurable results in child support enforcement collections, orders established and paternities acknowledged;

- Identify necessary qualifications for any consultants or contractors who would be used;

- Provide a detailed budget for the project. The staff required, equipment and facilities that would be leased or purchased, a detailed explanation of costs needed to accomplish all major project tasks. Grant funds cannot be used for capital improvements or the purchase of land or buildings;

- Explain why this project's resource requirements cannot be met by the state/local agency's regular program operating budget;

- Provide a management and staffing plan for the project undertaken under this announcement. The plan should outline the goals/objectives and tasks to be accomplished by the project. Project methodology should logically outline the goals and tasks to be accomplished;

- Provide for an assessment strategy for determining overall project effectiveness relating to proposed outcomes/results. We are asking for: (a) Criteria against which a project's success can be measured, (b) a mechanism to make that assessment, and (c) clearly documented results. See Part III, The Review Process, (C. Competitive Review and Evaluation Criteria (3) Criterion III: Project Effectiveness) of this announcement for more information on an assessment strategy for determining overall project effectiveness relating to proposed outcomes/results.

D. Project and Budget Periods

Generally, project and budget periods for these projects will be up to 17 months. However, OCSE will consider projects up to 36 months, if unique circumstances warrant.

If OCSE approves a project for a time period longer than 17 months, OCSE will provide funding in discrete 12-month increments, or "budget periods." Funding beyond the first 12-month budget period is not guaranteed. Rather, future funding will depend on the grantee's satisfactory performance and the availability of future appropriations.

Part III: The Review Process**A. Intergovernmental Review**

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/Territory Participation in the Intergovernmental Review Process does not Signify Applicant Eligibility for Financial Assistance Under a Program. A Potential Applicant Must Meet the Eligibility Requirements of the Program for Which it is Applying Prior to Submitting an Application to its Single Point of Contact (SPOC), if Applicable, or to ACF.

As of May 15, 1997, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility criteria of the program may still apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs.

Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to

clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, S.W., Mail Stop 6C-462, Washington, D.C. 20447. A list of the Single Points of Contact for each State and Territory is included with the application materials for this program announcement.

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

C. Competitive Review and Evaluation Criteria

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement. Proposed projects will be reviewed using the following evaluation criteria:

(1) Criterion I: Understanding and Analysis of the Problem (Maximum 25 points)

The application should demonstrate a thorough understanding and analysis of the problem(s) being addressed in the project and the importance of addressing these in improving the effectiveness of the child support program. Applicants should include a discussion of the child support program as it currently operates including its strengths and weaknesses regarding the area(s) addressed by the project. The applicant should describe how the project will address these problem(s) through implementation of changes, enhancements and innovative efforts.

(2) Criterion II: Project Plan and Project Staffing (Maximum: 30 points)

A well thought-out and practical management and staffing plan is mandatory. The application should include a detailed management plan that includes time-lines and detailed budgetary information. The main concern in this criterion is that the applicant should demonstrate a clear idea of the project's goals, objectives, and tasks to be accomplished. The plan to accomplish the goals and tasks should be set forth in a logical framework. The plan should identify what tasks are required of any contractors.

Staff to be committed to the project (including supervisory and management staff) at the state and/or local levels must be identified by their role in the project along with their qualifications and areas of particular expertise. In addition, for any technical expertise obtained through a contract or subgrant, the desired technical expertise and skills of proposed positions should be specified in detail. The applicant should demonstrate that the staff positions needed to operate the project are filled or will be filled in a reasonable time.

(3) Criterion III: Project Effectiveness (Maximum: 30 points)

The applicant should identify the specific goals and objectives of the project; describe the cost effective methods which will be used to achieve these goals; the specific results/products that will be achieved; and how the success of this project has broader application in furthering national child support initiatives and/or providing solutions that could be adapted by other states/jurisdictions. A discussion of data availability and outcome measures to be used should be included. Describe the collection and reporting system to be used.

(4) Criterion IV: Reasonable Costs (Maximum 10 points)

The project costs are reasonable in relation to the identified tasks. All agency and other resources (i.e., state, community, other programs—TANF/Head Start) that will be committed to the project should be given in detail.

(5) Criterion V: Preferences (Maximum 5 points)

Preference will be given to those grant applicants representing IV-D agencies and applicant organizations who have cooperative agreements with IV-D agencies.

D. Funding Reconsideration

After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration may occur at any time funds become available within twelve (12) months following ranking. ACF does not select from multiple ranking lists for a program. Therefore, should a new competition be scheduled and applications remain ranked without final disposition, applicants are informed of their opportunity to reapply for the new competition, to the extent practical.

Part IV. The Application**A. Application Development**

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the ADDRESSES section in the preamble of this announcement. The length of the application, including the application forms and all attachments, should not exceed 20 pages. A page is a single-side of an 8 1/2 x 11" sheet of plain white paper. The narrative should be typed double-spaced on a single-side of an 8 1/2 x 11" plain white paper, with 1" margins on all sides. Applicants are requested not to send pamphlets, maps, brochures or other printed material along with their application as these are difficult to photocopy. These materials, if submitted, will not be included in the review process. Each page of the application will be counted to determine the total length.

B. Application Submission

1. Mailed applications postmarked after the closing date will be classified as late and will not be considered in the competition.

2. Deadline. Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Attention: Lois Hodge, 370 L'Enfant Promenade, SW, Mail Stop 6C-462, Washington, DC 20447. Applicants must ensure that a legibly dated U.S. Postal Service

postmark or a legibly dated, machine-produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant will be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor (near loading dock), Aerospace Building, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Lois Hodge". ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late applications. Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. Extension of deadlines. ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Dated: May 4, 1998.

David Gray Ross,
Commissioner, Office of Child Support
Enforcement.

[FR Doc. 98-12215 Filed 5-7-98; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families****Notice of Availability of Funding for Alternative Projects for the Provision of Comprehensive Refugee Resettlement Services, Including Interim Financial Assistance, Social Services and Case Management for Newly Arriving Refugees**

AGENCY: Office of Refugee Resettlement, ACF, DHHS.

ACTION: Request for applications for alternative projects for the provision of comprehensive refugee resettlement services, including interim financial assistance, social services and case management for newly arriving refugees.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF) announces that competing applications will be accepted for new grants pursuant to the Director's discretionary authority under section 412(c)(1)(A) of the Immigration and Nationality Act (INA) and pursuant to the Secretary's authority under section 412(e)(7) of the INA for alternative projects, as amended by section 311 of the Refugee Act of 1980 (Pub. L. 96-212), 8 U.S.C. 1522(c); 8 U.S.C. 1522(e)(7); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c) of the INA, as cited above; and the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605).

This announcement offers applicants the opportunity to implement alternative projects to test the feasibility of providing comprehensive resettlement services to newly arriving refugees¹ under a public/private-sector

¹ In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status", eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100-202); and certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100-461), 1990 (Pub. L. 101-167), and 1991 (Pub. L. 101-513). For convenience, the term "refugee" is

Continued

partnership among States and national and local voluntary agencies responsible for reception and placement services to refugees. Funding is available to these projects under both the "Wilson/Fish" authority and ORR's discretionary social services program.

DATES: The closing date for submission of applications is August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Carmel Clay-Thompson, Director, Division of Community Resettlement, (202) 401-4557.

SUPPLEMENTARY INFORMATION: All newly arrived refugees, regardless of family size, are eligible for these programs. Projects should be designed to meet their needs in a manner that promotes complementary services, coordination between assistance and services, culturally and linguistically appropriate service delivery, and emphasizes employment and the needs of the refugee family as a unit. The services should be cost-effective by promoting welfare avoidance and by enhancing refugees' prospects for early economic and social self-sufficiency.

Effective projects will demonstrate (1) close linkage in the delivery of financial assistance and employment services; and (2) successful resettlement along the key indicators of labor force participation, per capita and household income, English language acquisition, car ownership, and reductions in refugee reliance on public assistance.

Alternative projects are to provide interim financial assistance as needed to newly arrived refugees who might otherwise be deemed eligible for either the Temporary Assistance for Needy Families (TANF) Program or the Refugee Cash Assistance (RCA) Program. Federal reimbursement of the costs of cash assistance are available through CMA appropriated funds for a period not to exceed the eighth month (although funds are not available for the first month of Reception and Placement) after a refugee's date of entry into the U.S.

Consistent with section 412 (e)(7)(B) of the INA, refugees in projects funded under this announcement will be precluded from receiving cash assistance under the TANF program or the RCA Program.

used in this notice to encompass all such eligible persons unless the specific context indicates otherwise. Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

Alternative options for medical care are not available under this announcement. Participating refugees will retain eligibility for medical coverage under the Refugee Medical Assistance (RMA) program or under Medicaid, Title XIX of the Social Security Act.

Applicants may apply for discretionary funds in proportion to the number of refugee participants in the project, for the purpose of establishing or enhancing existing refugee-specific employment services.

Funds will be awarded under a cooperative agreement.

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.576.

This Program Announcement consists of four parts:

Part I covers information on available funds, legislative authorities, eligible applicants, definition of terms used in the Program Announcement, the purpose and scope of the program and types of projects to be considered, details on project and budget periods, cost sharing, restrictions on funds, third-party evaluation, and application content.

Part II provides general instructions for preparing a full project description.

Part III describes the review criteria used in the assessment of applications.

Part IV describes the application procedures, the availability of forms, where and how to submit an application, instructions for completing the SF-424 and the intergovernmental review.

Part I—General Information

Availability of Funds

Approximately \$4,000,000 is available under this announcement in discretionary social service funds, to be used for refugee-specific employment and case management services, as well as the administrative costs of the projects. ORR anticipates making 4-6 individual grant awards in amounts up to \$1,000,000 each for these costs. Requests for discretionary funds should be justified in proportion to the size of the population enrolled in the project.

Successful applicants will also be eligible to receive reimbursement of costs for interim support and related administrative costs from ORR's CMA appropriations. The Director reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government.

In order to be considered for funding under this Announcement, applicants must submit a request which includes:

(a) Reimbursement of cash assistance and related administrative costs incurred by the applicant for refugees participating in the project. This request should be substantially equivalent to the level of funds the project's participating population would otherwise receive during the designated eight-month budget period under the publicly supported program of assistance (TANF or RCA) for which they would otherwise be eligible. Thus, the TANF payment rate should be the basis for computing payments for TANF-type participants. The RCA payment rate should be the basis for computing payments for RCA-type participants.

(b) A request for social services discretionary funding for enhanced, refugee-specific services for refugees who have been targeted for inclusion in this alternative project. Requests for services funding should be proportional to the size of the participating eligible population of new arrivals.

Legislative Authority

Section 412(c)(1)(A) of the INA authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services."

Projects are also authorized by section 412(e)(7) of the Immigration and Nationality Act, 8 U.S.C. 1522(e)(7) which states: "The Secretary shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers."

Eligible Applicants

Eligible applicants are those agencies of State government that are responsible for the refugee program under 45 CFR 400.5 as well as private, non-profit voluntary agencies under agreement

with the Department of State, Bureau of Population, Refugees, and Migration to conduct the reception and placement program for refugees.

Definition of Terms

Eligible refugee participants: All newly arrived refugees in the designated State or local jurisdiction, whether they are primary or secondary migrants to that area. Refugees who for reasons of age or disability may be eligible for SSI are ineligible for participation in these projects. Income and asset disregards may be used in determining continuing eligibility for these projects.

Interim Support: To provide financial assistance adequate to meet the subsistence needs of refugees otherwise eligible for RCA and/or TANF and to preclude the need to access public cash assistance during the first eight months following arrival in the U.S.

Interim support includes provision of financial assistance, as necessary, for up to eight months. This assistance may be in the form of cash, an income floor, a grant diversion, financial bonuses or incentives, payment for work-related expenses, income disregards, or other "Make Work Pay" incentives for early employment.

Financial assistance shall not begin under the grant before the 31st day after the refugee's arrival.

During the second through the eighth month, the alternative program must provide interim support in amounts substantially equivalent to the State's established payment under the RCA or TANF program, as appropriate, adjusted for the size of the family unit, for a period not to exceed the eighth month following U.S. arrival, or earlier, if the refugee case as a whole is receiving wages sufficient to render interim support unnecessary.

Refugee-Specific Services: Services which are designed specifically to meet refugee needs, such as employment, English language training, cultural orientation, and social adjustment, and are conducted in a linguistically and culturally appropriate manner, in keeping with the objectives of the refugee program.

Purpose and Scope

The purpose of this announcement is to enable applicants to implement alternative projects to provide interim financial assistance, support services and case management to refugees in a manner that encourages self-sufficiency, reduces the likelihood of welfare dependency, and fosters greater coordination among the resettlement agencies and service providers. ORR's intent is to encourage applicants to

serve all newly arriving refugees in their jurisdiction, regardless of family composition and regardless of the program of cash assistance (RCA or TANF) for which they would otherwise be eligible, in a refugee-specific program of interim cash assistance and services. Refugees who apply and are found eligible for SSI will not be eligible for these projects.

These awards are intended to help refugees attain self-sufficiency within eight months after arrival in the U.S., without access to public cash assistance.

Applicants may submit a single application which proposes funding on a State-wide basis or which proposes an alternative project for refugees arriving in one or more communities or localities.

Cash assistance funding may be requested for a period not to exceed seven months (excluding the first month of Reception and Placement) following the arrival of refugees otherwise eligible for the RCA or TANF program.

Applicant must ensure that the target population is afforded all safeguards specified in section 412 (e) of the INA and other applicable law including but not limited to: Application of eligibility criteria, administrative procedures, fair hearings, and appeals of adverse decisions. Applicants must also ensure that all relevant statutory conditions and prohibitions are applied to the target population.

Use of Funds

Applicants may request discretionary funds under this announcement to enhance their ability to provide refugee-specific employment services to this population. The discretionary funds may be used in the following ways: Job development, placement, and post-placement services, on-the-job training, legally established employer or employee incentives, post-placement services, competency-based English language training, case management and related administrative overhead. Short-term skills training may be provided with these funds only to the extent that such training is consistent with industry standards and leads directly to a specific job.

To be considered, applicants must apply on behalf of all newly arriving refugees in the designated jurisdiction or service area who are otherwise eligible for the specific assistance category(ies) for which this project is an alternative.

Types of Projects To Be Considered for Funding

Projects are encouraged where refugees are adversely affected by

changes brought about under welfare reform. Programs are also encouraged where there is an interest in restructuring the refugee program for new arrivals to produce comprehensive service delivery, coordinated among publicly and privately supported agencies, for assisting refugees in achieving economic and social self-sufficiency.

Circumstances where an alternative project may be appropriate include the following examples:

Where States are having difficulty maintaining RCA in new welfare systems and wish to find alternative resettlement methods.

Where TANF refugees may not have access to culturally and linguistically appropriate services.

Where refugees, particularly two-parent families, are in danger of dependency on public assistance.

Where a transition period of additional financial resources is needed for refugee-specific services which are not funded under ORR's formula allocations.

Where continuity of services from time of arrival through attainment of self-sufficiency needs to be strengthened.

Applicants may establish alternative programs in various ways: some options include:

The State government separates the refugee program from the public welfare system and transfers its implementation to one or more voluntary resettlement agencies, under the mechanism of a subgrant or subcontract.

The State government, in partnership with national and local networks of voluntary agencies, privatizes both the operations and service delivery of refugee interim support and services.

The State government transfers responsibility for the administration of the program to a national voluntary agency or consortium of several voluntary agencies.

National and local voluntary resettlement agencies form a consortium to operate a comprehensive resettlement program that is an alternative to public welfare.

Project and Budget Periods

Under this announcement the Director solicits applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period; applications for continuation grants funded under these awards beyond the one-year budget period may be entertained on a non-competitive basis, subject to the availability of funds, satisfactory progress of the project, and a

determination that continuation would be in the best interest of the government.

Cost Sharing

States are encouraged to share the costs of interim support in this program by contributing a share of funds—either Federal or State TANF assistance for TANF-eligible refugees in the project or State (non-TANF) funds which, subject to the necessary conditions, may be counted towards the State's maintenance of effort requirement—in proportion to the targeted TANF-type population in this demonstration, that would have been expended in their behalf in the absence of this alternative project.

Restrictions

Refugees covered under an alternative program are precluded from receiving cash assistance under TANF and/or RCA, for which this project is an alternative, during the first eight months following their arrival in the U.S.

Third-Party Evaluation

An independent evaluation of each project funded under this announcement will be conducted by ORR. For this purpose, successful grantees will be expected to maintain and provide access to appropriate client-specific data on date of arrival, family size, age, gender, employment, job retention, financial assistance provided, and other key indicators of successful resettlement, as well as on service delivery and program implementation. Grantees will be strongly encouraged to evaluate project effectiveness through feedback provided by participants after completing the program.

Part II—General Instructions for Preparing a Project Description

General Instructions

Cross-referencing should be used rather than repetition. ORR is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

Applicants shall prepare the project description statement in accordance with the following instructions.

A. Project Summary/Abstract

Provide a summary of the project description with reference to the funding request. ORR is also interested in the following:

- The total number of refugees to be served when the program is fully operational.
- The total ORR funds requested for a 12 month period when the project is fully operational.
- The amount and source of any additional funding that will help support the project.
- The community to be served (name of county(ies) or State).
- The type of program option(s) proposed (for TANF-type refugees if included with RCA-type refugees) and the proposed services.
- The target date for beginning full services to newly arrived refugees.

B. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

ORR is particularly interested in the following:

1. Describe the problem in the current resettlement situation to be addressed by the alternative project with respect to:
 - (a) Refugee welfare utilization data, by category of assistance, duration, and the reasons, if applicable, for high utilization in the refugee community; (b) barriers to, and the need for, coordination among public and private refugee agencies; (c) current employment and other program strategies and outcomes; (d) refugees' access to entry-level employment through culturally and linguistically appropriate services; (e) confusion among refugees regarding the purpose of public welfare and the employment

services available within the community.

2. State the rationale for this alternative project relative to welfare reform and justify the proposed strategy intended to reduce welfare dependency, promote employment, and foster coordination among resettlement agencies and service providers. Discuss the proposed project's anticipated cost effectiveness.

C. Results or Benefits Expected

Identify the results and benefits to be derived. Describe proposed program outcomes, in terms of appropriate indicators, including GPRA measures currently in use in the refugee resettlement program. Include the plan for measuring progress along these indicators: e.g., welfare avoidance and/or reduction, numbers of refugees who retain employment for a designated period of time, number of single refugees and refugee families who attain self-sufficiency.

Describe data collection and analyses anticipated to document project implementation and outcomes. Describe the plan and schedule for project monitoring. Successful applicants will also be required to report outcomes on ORR's standard Quarterly Performance Report.

D. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served.

ORR is particularly interested in the following:

1. Describe (a) The target population (numbers, ethnicity, and demographic characteristics) (b) anticipated refugee welfare utilization by the category of public assistance for which the targeted population may otherwise be eligible;
2. Financial assistance (e.g., eligibility criteria, payment standards, administrative procedures, etc.) Include a description of levels of support and all other incentives or cash mechanisms for providing interim support; measures to

ensure fair and equitable access to financial support, provisions for sanctions for non-cooperation and for fair hearings and appeals.

3. Discuss how refugees in this project will have eligibility for, and access to, other programs, specifically, Refugee Medical Assistance or Medicaid, the Children's Health Insurance Program (CHIP), Food Stamps, expanded medical coverage under OBRA, etc.

4. Describe how the alternative project will provide interim cash assistance and support services of case management and employment in a manner that is coordinated and that promotes self-sufficiency and reduces welfare dependency.

a. Demonstrate how the services of the project will be coordinated among resettlement agencies and service providers, including voluntary resettlement agencies, Mutual Assistance Associations, and other public and private, non-profit agencies that provide services to refugees. Provide letters of agreement, if available.

b. An integrated system of assistance and services is considered an essential characteristic of an alternative project. Describe how this integration will be effected in this project.

5. Provide a description with documentation of consultation with the State Refugee Coordinator, if applicant is a private, non-profit agency; and with appropriate national voluntary agencies, if applicant is a State government.

6. Where the application is for a State-wide project, describe how the proposed project will address any element of the current program which the new project would include, replace, interrelate with, or otherwise impact.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

E. Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

F. Additional Information

1. Staff and Position Data

Provide a biographical sketch for each key person appointed and a job

description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

ORR is also interested in the following:

Describe the organization's plan for administering and managing the project. Describe the location of the project in the structure of the agency and include position descriptions, qualifications, and names of key project staff. Describe plans and qualification for training and on-going technical assistance.

2. Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

G. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form, e.g., cash assistance, employment and other services, case management, and administrative costs by program activity. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF-424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

ORR is also interested in the following:

Provide a client-loading chart and related budget (samples are available from ORR.) Use the costs of the current program for the most recent 12 month period, including numbers of refugees served and unit costs of services, to project your budget. Include the anticipated arrival rates of refugees into the community by probable category of public assistance for which they would otherwise be eligible. Provide a narrative to support the costs included in each category. List and describe all anticipated funding sources with projected amounts, i.e., ORR, State government, other federal program, and any other resources.

Part III: Application Review Criteria

A. Objectives, Need for Assistance, and Rationale for Proposing the Alternative Project

1. Identification of the problem to be addressed by the project is based on a thorough examination and description of: Refugee welfare utilization, current coordination of services in the local resettlement community; opportunity for early employment for refugees; availability of concurrent, culturally and linguistically appropriate employment and language services; adequacy of the statistics used to describe the problem. Points: (10)

2. The degree to which the rationale for proposing the demonstration project is justifiable and appropriate; probability that the project will increase refugee self-sufficiency, reduce or avoid welfare dependency among arriving refugees, and increase coordination among service providers. Probability that the project will be cost-effective. Points: (10)

B. Approach/Program Strategy

The proposed project design is clear, logical and theory based, reflecting the state of knowledge and experience in this field. Clarity, completeness and reasonableness of the proposed strategy as it relates to the target population and the geographic area to be covered; anticipated need for interim cash assistance; adequacy of the cash assistance policies and administration; reasonableness of policies and procedures for appeals and fair hearings; coordination of services and assistance; availability of other Federal and State programs; consultation with the State Coordinator and voluntary agencies, as appropriate. Points: (35)

C. Results, Benefits Expected, and Proposed Outcomes

The proposed project, if successfully implemented, is capable of achieving the stated results. Reasonableness of the outcomes proposed; feasibility of the methodology for collecting outcome data and client feedback. Points: (15)

D. Organizational Capacity

Adequacy of the organizational capacity and resources for project administration and management; the qualification and expertise of the project staff; and the quality of the design and adequacy of the proposed program monitoring and reporting system. Points: (15)

E. Project Budget

Reasonableness and adequacy of the budget in relation to the expected

activities and outcomes. Completeness of the budget and line-item budget narrative. Reasonableness of procedures used to estimate the budget request. Points: (15)

Part IV: Application Submission

The Director reserves the right to award more or less than the funds described above depending upon the quality of the applications, or such other circumstances as may be deemed to be in the best interest of the Government. Applicants may be required to reduce the scope of selected projects to accommodate the amount of the approved grant award.

Standard Form 424 with instructions for submitting an application was published in the *Federal Register* on December 9, 1997 (62 FR 64856).

If an application represents a consortium (that is, the applicant includes other types of agencies among its membership), the single organization identified as applicant by the Authorized Representative's signature on the SF-424, Box 18.d, will be the grant recipient and will have primary administrative and fiscal responsibilities. An applicant entity must be a public or private nonprofit organization.

General Application Procedures

All applications which meet the stipulated deadline and other requirements will be reviewed competitively and scored by an independent review panel of experts in accordance with ACF grants policy and the criteria stated above. The results of the independent review panel scores and explanatory comments will assist the Director of ORR in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by the reviewers. Highly ranked applications are not guaranteed funding since other factors are taken into consideration, including: Comments of reviewers and of ACF/ORR officials; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; and investigative reports. Final funding decisions will be made by the Director of ORR.

A. Availability of Forms

Copies of the *Federal Register* are available on the Internet website address: www.access.gpo.gov/nara/index.html#cf and at most local libraries and Congressional District Offices for reproduction. If copies are

not available at these sources, they may be obtained by sending a written or faxed request to the following office: Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, D.C. 20447, Fax: (202) 401-5487.

B. Forms, Certifications, Assurances, and Disclosure

1. Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF-424A, Budget Information—Non-Construction Programs; SF-424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. An application with an original signature and two copies is required.

2. Budget and Budget Justification—Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF-424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. According to the instructions for completing the SF-424A and the preparation of the budget and budget justification, "Federal resources" refers only to the ACF/ORR grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel: Costs of employee salaries and wages. Identify the project director and for each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies.

Fringe Benefits: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF/ORR-sponsored meetings should be detailed in the budget.

Equipment: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project.

Supplies: Costs of all tangible personal property other than that included under the Equipment category.

Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, etc. Contracts with secondary recipient organizations, including delegate agencies (if applicable), should be included under this category.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if procurement without competition is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Justify any anticipated procurement action that is expected to be awarded without competition and to exceed the simplified acquisition threshold fixed at 41 USC 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as requests for proposal or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency,

the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development, and administrative costs.

Provide computations, a narrative description and a justification for each cost under this category.

Indirect Costs: This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

An applicant proposing to charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency.

Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the agreement, the authorized

representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income: The estimated amount of income, if any, expected to be generated from this project. Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information. Program income generated under a Federal grant resulting from this announcement may be added to funds committed to the project and used to further program objectives. There is no requirement to request prior approval to defer use of program income for a later period.

Non-Federal Resources: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF-424.

The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

3. Applicants must provide the following certifications. Copies of the forms and assurances are located at the end of this announcement.

a. Certification regarding lobbying if your anticipated award exceeds \$100,000.

b. Certification regarding environmental tobacco smoke. By signing and submitting the applications, applicant provides certification that they will comply with the requirements of the Pro-Children Act of 1994 (Pub. L. 103-227, Part C—Environmental Tobacco Smoke) and need not mail back the certification with the application.

c. Certification regarding debarment, suspension, and other ineligibility. By signing and submitting the applications, applicant provides certification that they are not presently debarred, suspended or otherwise ineligible for this award and therefore need not mail back the certification with the application.

d. Drug-Free Workplace Act of 1988.

C. Deadline

1. Mailed applications shall be considered as meeting this announced deadline if they are sent on or before the deadline date and received by ORR in time for the independent review. Applications should be mailed to: Office of Refugee Resettlement, Administration for Children and Families, Division of Community Resettlement, 370 L'Enfant Promenade, SW, Sixth Floor, Washington, DC 20447, Attention: *Alternative Projects*.

Applicants must ensure that a legibly dated U.S. Postal Service postmark, or a legibly dated, machine produced postmark of a commercial mail service appears on the envelope/package containing the application(s). An acceptable postmark from a commercial carrier is one which includes the carrier's logo/emblem and shows the date the package was received by the commercial mail service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand-carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the Administration for Children and Families, Office of Refugee Resettlement, Aerospace Center, 901 D

Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend the deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

4. Once an application has been submitted, it is considered as final and no additional materials will be accepted by ACF.

D. Nonprofit Status

Applicants other than public agencies must provide evidence of their nonprofit status with their applications. Either of the following is acceptable evidence: (1) A copy of the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code; or (2) a copy of the currently valid IRS tax exemption certificate.

E. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities."

As of June 15, 1997, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions need take no action in regard to E.O. 12372: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau. All remaining jurisdictions participate in the E.O. process and have established Single Points of Contact (SPOCs).

Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them to the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that ORR can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8 (a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Division of Community Resettlement, 6th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447.

F. The Paperwork Reduction Act of 1995 (Pub. L. 104-13)

All information collections within this Program Announcement are approved under the following currently valid OMB control numbers: 424, (0348-0043); 424A (0348-0044); 424B (0348-0040); Disclosure of Lobbying Activities (0348-0046); Uniform Project Description (0970-0139), Expiration date 10/31/2000.

Public reporting burden for this collection of information is estimated to average 150 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

G. Applicable Regulations

Applicable DHHS regulations can be found in 45 CFR Part 74 or 92.

H. Reporting Requirements

Grantees are required to file the Financial Status Report (SF-269) semi-annually and Program Performance Reports (OMB Approval No. 0970-0036)

on a quarterly basis. Funds issued under these awards must be accounted for and reported upon separately from all other grant activities.

Although ORR does not expect the proposed components/projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures by budget line item.

The official receipt point for all reports and correspondence is the ORR Division of Community Resettlement. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Project Officer named in the award letter. The mailing address is: 370 L'Enfant Promenade SW., Sixth Floor, Washington, DC 20447.

A final Financial and Program Report shall be due 90 days after the budget expiration date or termination of grant support.

Dated: April 30, 1998.

Lavinia Limon,

Director, Office of Refugee Resettlement.

(FR Doc. 98-12301 Filed 5-7-98; 8:45 am)

BILLING CODE 4184-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4341-N-09]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-1226; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist

the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1998 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B-41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: **Air Force:** Ms. Barbara Jenkins, Air Force Real Estate Agency, Area-MI, Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332-8020; (202) 767-4184; **Energy:** Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM-20, Room 6H-058, Washington, DC 20585; (202) 586-0426; **Interior:** Ms. Lola D. Knight, Department of the Interior, 1848 C Street, NW., Mail Stop 5512-MIB, Washington, DC 20240; (202) 208-4080; **GSA:** Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501-2059; **Navy:** Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332-2300; (703) 325-7342; (These are not toll-free numbers).

Dated: April 30, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 5/08/98

Suitable/Available Properties

Buildings (by State)

California

Broadcast Center
10888 La Tuna Canyon Road
Sun Valley Co: Los Angeles CA 91352-
Landholding Agency: Air Force
Property Number: 189810031
Status: Unutilized
Comment: 58,000 sq. ft. bldg. on 2 acres,
most recent use—office/communications

New Mexico

Gran Quivira Visitor Station
Gran Quivira Ruins, SR55
Mountainair Co: Torrance NM 87036-
Landholding Agency: Interior
Property Number: 619820003
Status: Unutilized
Comment: 1121 sq. ft., stone, presence of
asbestos, off-site use only

North Carolina

Tarheel Army Missile Plant
Burlington Co. Alamance NC 27215-
Landholding Agency: GSA
Property Number: 549820002
Status: Excess
Comment: 31 bldgs., presence of asbestos,
most recent use—admin., warehouse,
production space and 10.04 acres parking
area, contamination at site—environmental
clean up in process
GSA Number: 4-D-NC-593

Virginia

Bldg. LP-160
Naval Air Station
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820004
Status: Unutilized
Comment: 3013 sq. ft., needs rehab, most
recent use—maintenance shed, off-site use
only

Bldg. SP-277

Naval Air Station
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820005
Status: Unutilized
Comment: 84 sq. ft., most recent use—bus
stop shelter, off-site use only

Bldg. V-56

Naval Air Station
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820006
Status: Unutilized
Comment: 587 sq. ft., needs rehab, most
recent use—storage, off-site use only

Bldg. CD24

Naval Station Norfolk
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820007
Status: Excess
Comment: 4275 sq. ft., most recent use—
office, off-site use only

Bldg. CD25

Naval Station Norfolk
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820008
Status: Excess
Comment: 4350 sq. ft., most recent use—
vehicle maintenance shed, off-site use only

Bldg. V-49

Naval Air Station
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820009
Status: Excess
Comment: 32,290 sq. ft., presence of
asbestos/lead paint, most recent use—auto
vehicle shop, off-site use only

Bldg. V-136

Naval Air Station

Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820010
Status: Excess
Comment: 12,610 sq. ft., presence of
asbestos/lead paint, most recent use—auto
vehicle shed/storage, off-site use only

Bldg. A-80

Naval Station
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820011
Status: Excess
Comment: 36,960 sq. ft., presence of
asbestos/lead paint, most recent use—auto
vehicle shop, off-site use only

Bldg. A-120

Naval Station
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820012
Status: Excess
Comment: 3275 sq. ft., presence of asbestos/
lead paint, most recent use—vehicle shop,
off-site use only

Bldg. A-121

Naval Station
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820013
Status: Excess
Comment: 9382 sq. ft., presence of lead paint,
most recent use—auto vehicle shop, off-site
use only

Bldg. A-123

Naval Station
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820014
Status: Excess
Comment: 6559 sq. ft., presence of lead
paint/asbestos, most recent use—storage,
off-site use only

Bldg. A-126

Naval Station
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820015
Status: Excess
Comment: 1788 sq. ft., presence of lead paint,
most recent use—public works shop, off-
site use only

Bldg. A-127

Naval Station
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820016
Status: Excess
Comment: 4328 sq. ft., presence of lead paint,
most recent use—vehicle refuel shop, off-
site use only

Bldg. Z-93

Naval Station
Norfolk VA 23511-
Landholding Agency: Navy
Property Number: 779820017
Status: Excess
Comment: 38,930 sq. ft., presence of lead
paint, most recent use—public works shop,
off-site use only

Bldg. Z-194

Naval Station
Norfolk VA 23511-

Landholding Agency: Navy
Property Number: 779820018
Status: Excess
Comment: 4226 sq. ft., presence of lead paint, most recent use—maintenance shop, off-site use only

Bldg. Z-394
Naval Station
Norfolk VA 23511—
Landholding Agency: Navy
Property Number: 779820019
Status: Excess
Comment: 2400 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Bldg. Z-398
Naval Station
Norfolk VA 23511—
Landholding Agency: Navy
Property Number: 779820020
Status: Excess
Comment: 1680 sq. ft., most recent use—pwc shop, off-site use only

Unsuitable Properties

Buildings (by State)

California
02-120 Liz White Residence
Wilson Creek
Klamath Co: Del Norte CA 95531—
Landholding Agency: Interior
Property Number: 619820002
Status: Unutilized
Reason: Extensive deterioration

Hawaii
Bldg. 4
Beckoning Point Naval Station
Pearl Harbor Co: Honolulu HI 96860—
Landholding Agency: Navy
Property Number: 779820002
Status: Excess
Reason: Extensive deterioration

Bldg. 33
Naval Magazine Lualualei
West Loch Branch Co: Oahu HI
Landholding Agency: Navy
Property Number: 779820021
Status: Unutilized
Reason: Extensive deterioration

Maryland
Bldg. 947, Qtrs. D
Naval Air Station
Co: St. Mary's MD 20670-5304
Landholding Agency: Navy
Property Number: 779820003
Status: Unutilized
Reason: Extensive deterioration

New Mexico
11 Bldgs., Tech Area I
Kirtland AFB
#639-43, 828, 830, 863, 881-883
Albuquerque NM 87185—
Landholding Agency: Energy
Property Number: 419820001
Status: Excess
Reason: Extensive deterioration

Washington
Bldgs. 1158, 1159
Ross Lake Natl Recreation Area
Co: Whatcom WA
Landholding Agency: Interior
Property Number: 619820001
Status: Unutilized

Reason: Extensive deterioration
[FR Doc. 98-11938 Filed 5-7-98; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Final Listing Priority Guidance for Fiscal Years 1998 and 1999

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces final guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act (Act) during fiscal year (FY) 1998 and FY 1999. Although the Service is returning to a more balanced listing program, serious backlogs remain and a method of prioritizing among the various activities is necessary. Highest priority will be processing emergency listing rules for any species determined to face a significant and imminent risk to its well being. Second priority will be processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants; the processing of new proposals to add species to the lists; the processing of administrative petition findings to add species to the lists, delist species, or reclassify listed species (petitions filed under section 4 of the Act); and a limited number of delisting and reclassifying actions. Processing of proposed or final designations of critical habitat will be accorded the lowest priority.

DATES: This Listing Priority Guidance is effective May 8, 1998 and will remain in effect until modified or terminated.

ADDRESSES: Questions regarding this guidance should be addressed to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW, Mailstop ARLSQ-452, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703-358-2171 (see ADDRESSES section).

SUPPLEMENTARY INFORMATION:

Background

The Service adopted guidelines on September 21, 1983 (48 FR 43098-43105), that govern the assignment of priorities to species, both domestic and

foreign, under consideration for listing as endangered or threatened under section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The Service adopted those guidelines to establish a rational system for allocating available appropriations to the highest priority species when adding species to the lists of endangered or threatened wildlife and plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates). However, this system does not provide for prioritization among different types of listing actions such as preliminary determinations, proposed listings, and final listings.

Serious backlogs of listing actions resulted from major disruptions in the listing budget beginning in FY 1995 and a moratorium on certain listing actions during parts of FY 1995 and FY 1996. The enactment of Pub. L. 104-6 in April 1995 rescinded \$1.5 million from the Service's budget for carrying out listing activities through the remainder of FY 1995. Pub. L. 104-6 also prohibited the expenditure of the remaining appropriated funds for final determinations to list species, whether foreign or domestic, or designate critical habitat; in effect, this placed a moratorium on those activities. During the first half of FY 1996, the moratorium continued while a series of continuing resolutions provided little or no funding for listing activity. The net effect of the moratorium and reductions in funding was that the Service's listing program was essentially shut down. The moratorium on final listings and the immediate budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that the Act gave him to waive the moratorium. At that time, the Service had accrued a backlog of proposed listings for 243 domestic and foreign species. The extremely limited funding available to the Service for listing activities generally precluded petition processing and the development of proposed listings from October 1, 1995, through April 26, 1996.

When the moratorium was lifted and funds were appropriated for the administration of the listing program, the Service faced the considerable task of allocating the available resources to

the significant backlog of listing activities. The Final Listing Priority Guidance for FY 1996 was published on May 16, 1996 (61 FR 24722). The Service followed that three-tiered approach until the Final Listing Priority Guidance for FY 1997 was published on December 5, 1996 (61 FR 64475). The FY 1997 Listing Priority Guidance employed four tiers for assigning relative priorities to listing actions to be carried out under section 4 of the Act. Tier 1, the Service's highest priority, was the processing of emergency listings for species facing a significant risk to their well-being. Processing final decisions on pending proposed listings was assigned to Tier 2. Tier 3 was to resolve the conservation status of species identified as candidates (species eligible for proposed listing rules) and processing 90-day or 12-month administrative findings on petitions to list or reclassify species from threatened to endangered status. Preparation of proposed or final critical habitat designations, which provide little or no additional conservation benefit to listed species, and processing delistings and reclassifications from endangered to threatened status were assigned lowest priority (Tier 4).

While operating the listing program under the Final FY 1997 Listing Priority Guidance, the Service focused its resources on issuing final determinations (Tier 2 listing activities); no Tier 1 actions (emergency listings) were required during FY 1997. During FY 1997, the Service made final determinations for 156 species (145 final listings and 11 withdrawals). As a result of this expeditious progress, only 100 proposed species remained at the end of FY 1997 (including newly proposed species). After April 1, 1997, the Service began implementing a more balanced listing program and began processing more Tier 3 listing actions. Thus, the Service also made expeditious progress on determining the conservation status of species designated by the Service as candidates for listing. A candidate is a species for which the Service has found that there is sufficient information indicating that a listing proposal is appropriate. Such a finding may be made on the Service's own initiative, or as a result of the petition process. Once a species is placed on the Service's list of candidates, its conservation status must be resolved by either proposing the species for listing or by completing a candidate removal form. During FY 1997, the Service proposed 23 species from the candidate list. In addition, the Service published 11 petition findings

in FY 1997. The Service also updated the list of candidate species with the publication of the most recent Candidate Notice of Review published on September 19, 1997 (see 16 U.S.C. 1533(b)(3)(B)(iii)(II)); at that time, there were 207 candidate species. This total represents 52 additions to the list of candidates.

Although the Service returned to a more balanced listing program during FY 1997, serious backlogs of listing activity remain. Besides the 100 species awaiting final rules and the 207 candidates awaiting resolution of their conservation status, there were 30 species with due or overdue 12-month petition findings and 47 species with due or overdue 90-day petition findings, plus one petition to list 3700 foreign species due a 90-day finding.

It is important to recognize that the Service faces even greater backlogs in its responsibilities to implement other aspects of the Act. There is a large section 7 consultation and Habitat Conservation Planning (HCP) backlog. During FY 1998, the Service projects that it will conduct more than 40,000 consultations with other Federal agencies, including approximately 900 formal consultations. The Act mandates time frames for consultation completion. The consultation workload continues to increase as new species are listed. The Service also projects that there will be approximately 75 new HCPs requiring review in FY 1998, bringing the number of active HCPs to approximately 300. The recovery backlog includes over 300 species awaiting recovery plans and an extreme shortage of recovery implementation funding. Completing recovery plans within 2½ years after a species is listed and funding implementation of completed plans is integral to the Act's goal of removing the threats to listed species so that they can eventually be recovered. The Service bases its funding requests on the workloads faced by all activities of the endangered species program. Because the magnitude of the other endangered species backlogs exceeds that of the listing backlog, the President's FY 1998 request for increased funding for endangered species programs was focused on section 7 consultation, HCPs, and recovery rather than listing. However, the President's budget for FY 1999 includes a significant increase for the program overall and a portion of the increase is identified for listing.

In enacting the Department of the Interior's FY 1998 Appropriations Act (Pub. L. 105-83, 111 Stat. 1543 (Nov. 14, 1997)), Congress agreed with the President's priorities regarding

endangered species funding, providing significant increases to the section 7 consultation, HCP, and recovery programs. Moreover, Congress expressly limited the amount the Service can spend on listing actions (including delistings, reclassifications, and the designation of critical habitat) to \$5.19 million.

Federal agencies can act only to the extent funds are provided by the Congress. This is a fundamental check and balance of our Federal system of Government, and is indeed a constitutional requirement. The enactment of the Act does not carry with it the appropriation of funds necessary to implement that law. Absent appropriations by the Congress, the Service cannot take the actions required by the Act. Appropriations are provided to the Department of the Interior and the agencies therein, including the Service, pursuant to annual appropriation acts. The FY 1998 Appropriations Act, including the maximum of \$5.19 million for implementing listing activities (subsections (a), (b), (c), and (e) of section 4 of the Act), is binding upon the Department and must be strictly followed.

Given the backlogs of proposed species pending final action, candidate species awaiting proposal, and petitions awaiting administrative findings, and the limited funding available to address these backlogs, it is extremely important for the Service to focus its efforts on listing actions that will provide the greatest conservation benefits to imperiled species in the most expeditious and biologically sound manner. The purpose of this Listing Priority Guidance is to reconcile the requirements of the Act with the realities of the annual appropriation act. The Listing Priority Guidance is an exercise of the Service's discretion concerning how best to expend that amount of money for listing activities in a manner that provides the greatest conservation benefit to threatened and endangered species consistent with the purposes of the Act. In other words, the Listing Priority Guidance is the Service's blueprint for coming into compliance with the Act as quickly as the available appropriations allow.

It has been longstanding Service policy (1983 Listing and Recovery Priority Guidelines (48 FR 43098)) that the order in which species should be processed for listing is based primarily on the immediacy and magnitude of the threats they face. The Service will continue to base decisions regarding the order in which species will be proposed or listed on the 1983 listing priority guidelines. The Service also must

prioritize among types of listing actions and this level of prioritization is what necessitates the guidance provided below.

The Service has made this guidance applicable to FY 1999 as well as FY 1998 to avoid any confusion over whether this guidance will remain in effect if the budget process for FY 1999 is delayed. However, when the Service receives its FY 1999 budget, it will review this guidance, and, if appropriate, modify or terminate it. Funding for delistings and reclassifications from endangered to threatened status is moved entirely to the recovery funding subactivity in the Administration's FY 1999 budget proposal, so these activities would be removed from Tier 2.

Analysis of Public Comments

On March 5, 1998, the Service published a notice in the *Federal Register* (63 FR 10931) announcing proposed listing priority guidance for FY 1998 and FY 1999 and solicited public comment on that proposed guidance. The Service received 6 letters of comment on the proposed guidance. Two letters were generally in favor of the proposed guidance and four were generally opposed. A summary of the issues raised and the Service's response follows.

Issue 1: The notice is unclear as to the application of the Listing Priority Guidance to foreign species. The commenter said that the guidance should only apply to U.S. species because the listing and delisting of foreign species is handled in the Service's headquarters by a different office than domestic listing activities and with different budget dollars.

Response: The Listing Priority Guidance is indeed applicable to both foreign and domestic species, since the Congressional budget appropriations for all listing activities, foreign and domestic, is limited in FY 1998 to \$5.19 million. The final Listing Priority Guidance has been modified to clarify this point. However, exceptions in the operation of the Guidance may be made with respect to foreign species as explained in the discussions below.

Issue 2: Two commenters recommended that the Service recognize sustainable use as a reason for delisting species, especially when the listed status of the species conflicts with the recovery and/or management program of the nation where the species occurs. Both referred primarily to delisting of foreign species, such as the Namibian cheetah and Nile crocodile. One commenter considered inclusion of delisting in Tier 2, albeit at a low level

within Tier 2, an improvement over Listing Priority Guidance of FYs 1996 and 1997. The other suggested assigning delisting activities to Tier 1 or at least the highest priority of Tier 2.

Service response: The Service recognizes the conservation benefits of delisting activities for domestic and foreign species and recognizes that, with regard to foreign game species, fees from trophy hunters can, in some cases, provide economic incentives for landowners to maintain healthy populations of game species. It should be noted, however, that several foreign big game species are listed under the Act and import permits have not been issued for hunting trophies for species listed as endangered. A large percentage of international hunters are Americans who might invest in the hunting program if the species were not listed and import was permitted.

However, the Service disagrees that delisting should be the highest priority of Tier 2, although for some foreign species it will be a higher priority. Furthermore, placing delisting activities ahead of emergency listing actions (Tier 1), as suggested by the commenter, is contrary to the intent of section 4 of the Act. With limited resources, the Service must prioritize among the various listing activities. The Service has placed highest priority on emergency listing actions since those actions may mean the difference between extinction and existence. The Service will not place any listing actions over emergency listing actions.

The Service recognizes that listing, reclassifying from endangered to threatened, and delisting actions for foreign species are different, as the conservation benefits of those actions will be different than for domestic species (species with a range that includes the United States). The Service has placed delisting at the end of Tier 2 for domestic species, because the conservation benefits of delisting are indirect. For foreign species, particularly when trade is a factor affecting the status of a species, the Service will also take into consideration the international legal status of the species. Thus, for species listed in Appendix II of the Convention on International Trade in Endangered Species (CITES), an alignment of their listing status under the Act should be evaluated. There may be species listed in CITES Appendix II (which allows for regulated trade that is not detrimental to the survival of the species), for which there can be potential conservation benefits of such trade, such as when such trade is part of the management plan of the country of origin. In such

cases, listing under the Act as endangered, which prohibits such trade, may have potential conservation detriment for some species. Certainly, the United States should endeavor, when possible, to recognize the conservation programs of foreign countries, when based on sound science.

The Service placed delisting at the end of Tier 2 because the conservation benefits of delisting are indirect. The Service expends its limited resources to conserve imperiled species through final listing actions, resolving the conservation status of candidates, including new proposals for listing, and processing petition findings. These actions are vital to the continued existence of imperiled species and are important in the protection of the habitats upon which those species depend. The Service has determined that the above actions should receive higher priority than delisting activities. The Service acknowledges its responsibilities to delist and reclassify qualified species and plans on completing a small number of these activities in FY 1998. The President's FY 1999 budget request would fund delisting and reclassification from endangered to threatened status under the recovery subactivity for domestic species and under the Permits/CITES subactivity for foreign species; the President's budget would also remove delistings and reclassifications from endangered to threatened status from the listing cap. If these aspects of the President's budget are enacted, delisting and reclassification from endangered to threatened will no longer be in direct competition for funding with other listing activity and will be removed from this Listing Priority Guidance.

Issue 3: It is disingenuous for the Service to claim that the \$5.19 million appropriated by Congress for the listing program in FY 1998 falls far short of the resources needed to completely eliminate the listing backlogs when that was all that the Department of the Interior requested for the listing program, and further, the Department specifically requested a listing cap. Therefore, the Service has failed to justify the proposed guidance.

Response: The President's budget request for the entire endangered species program for FY 1998 was \$80 million. This budget request was significantly greater than the FY 1997 enacted budget of \$68 million due to considerable workload facing the Service throughout the entire endangered species program. As stated previously in this notice, listing is not the only responsibility the Service has

under the Act. For instance, over 300 species await recovery plans, while approximately 900 formal section 7 consultations, which are, by regulation, to be completed within 90 days, will be due in FY 1998, and 200 HCP applicants are awaiting technical assistance and permit review and issuance. Consequently, the President's FY 1998 request for increased funding for the endangered species programs was focused on section 7 consultation, HCPs, and recovery rather than listing. Moreover, given the recent history of the listing budget, the FY 1998 request for listing was based on a realistic assessment of the level of funding that might be obtained.

The listing budget has always been subject to a cap, in the sense that Congressional committee reports allocate a certain amount of funds, and no more, to the listing program. For FY 1998, the Department of the Interior requested that Congress include the amount of funding available to listing on the face of the appropriations law to further clarify Congress' intent that the Service not be able to divert funding to listings from other programs. Moreover, the Service's budget justification to Congress made clear that the requested funding would not be sufficient to eliminate the listing backlog in FY 1998, particularly with regard to the designation of critical habitat. Congress could have chosen to provide additional funding and/or earmark funding for critical habitat designation, but did not do so.

The President's budget for FY 1999 seeks a \$1.7 million increase for listing activity. The FY 1999 budget also moves delisting and reclassification to recovery since these activities are the end point of the recovery process.

Issue 4: The proposed listing priority guidance is not based on sound science. Critical habitat determinations should have a higher priority than withdrawals, delistings, and reclassifications, which offer no direct conservation benefits for listed species. Tier 2 should include listing decisions, critical habitat designations, and listing proposals for species with high, imminent threats; Tier 3 should prioritize other species based on the September 1983 listing priority guidance; and Tier 4 should include downlisting, delisting, withdrawals, and other non-protective actions.

Response: The Service disagrees with the assertion that the proposed listing priority guidance is not based on sound biological considerations, and remains firm in its belief that designation of critical habitat generally provides little or no additional conservation benefits

beyond those provided by the consultation provisions of section 7 and the prohibitions of section 9, while the cost of designation is generally high. The Service will continue to determine whether critical habitat is prudent or not prudent at the time a species is listed (Tier 2) by determining whether designation of critical habitat would provide marginal benefit and, if so, weighing that benefit against any risks caused or increased by designation. However, any rulemaking resulting from a "prudent" determination will remain the Service's lowest priority because, even where there is benefit to the species, it is generally very slight. The listing of a species, on the other hand, provides an array of generally applicable prohibitions and protections, including the prohibition of agency actions causing jeopardy.

The Service has determined that inclusion of a limited number of delisting and reclassification actions in Tier 2 is justified. Although indirect, conservation benefits to individual species and the endangered species program are significant. As long as a species remains on the endangered and threatened lists, Service funds are expended for ongoing conservation activities, including reviewing and permitting activities associated with habitat conservation plans and other regulated activities pursuant to section 10 of the Act. Similarly, the Service must expend funds engaging in consultations with other Federal agencies under section 7 of the Act. Resources currently devoted to these activities could be redirected to other listed species more deserving of conservation efforts. Further, the primary objective of the Act is recovering species and removing them from the lists. Once it is determined that the Act's protections are no longer appropriate, it is important that delisting or reclassification proceed, particularly where listing creates an unwarranted management burden.

In addition to allowing the Service to direct resources to activity with greater conservation benefit, delisting a species or reclassifying a species from endangered to threatened and issuing a special rule also can provide regulatory relief to, and thus reduce the expenses of, other Federal agencies as well as State and private entities. For instance, following delisting of a species, Federal agencies are no longer required to consult under section 7 on Federal activities. In addition, the prohibitions and permit requirements of sections 9 and 10, respectively, which apply to both public and private entities, are eliminated. Thus, delisting and

reclassification not only reduces Service expenditures, but it has the added benefit of relieving unnecessary restrictions and burdens on States and private citizens, and may increase public support for the endangered species program.

While the primary focus of the FY 1998 Listing Priority Guidance will remain adding species to the endangered and threatened lists, when appropriate, the Service believes that a small number of delisting and reclassification actions is critical to the integrity of the Act. The Service would process delisting or reclassification actions as appropriate and probably no more than 10-12 species during FY 1998, as compared to approximately 170 proposed and final listing actions, provided it is allowed to follow the Listing Priority Guidance.

Pub. L. 104-6 rescinded \$1.5 million from the Service's FY 1995 listing budget and expressly prohibited the expenditure of the remaining funds for final listing and critical habitat determinations but did not prohibit delisting and downlisting activities. At the time the Pub. L. was enacted, the Service was working on several delisting and reclassification actions. For instance, on June 30, 1995, shortly after the moratorium and rescission, the Service published in the *Federal Register* (60 FR 34406) a notice of intent to delist the American peregrine falcon. Considerable status information was received from the public as a result of the notice. However, development of a delisting proposal ceased when the listing program ran out of funds and the entire program was shut down. The Service expects to proceed with this delisting proposal in FY 1998.

Completing this delisting is a high priority for the Service. The Dismal Swamp shrew is another species that the Service anticipates delisting soon. Other delistings actions expected to proceed in FY 1998 include the Columbian white-tailed deer (Roseburg population), Hoover's woolly star (a plant), the Tinian monarch, and possibly one or two other domestic species. The Service estimates that approximately \$300,000 to \$400,000 of the \$5.19 million listing budget would be necessary in FY 1998 to proceed with delisting activities for these five species in addition to the delisting and reclassification activities for a small number of other species. It should be noted that recovery actions and the gathering of information for use in the evaluation of delisting actions is funded from the Service's Recovery budget allocation, and not from the Listing allocation. Therefore, the only funding

from the Listing allocation is for the preparation and processing of proposed and final delisting actions.

The costs associated with retaining these species on the endangered and threatened lists are significant. Section 18 of the Act requires that the Service annually report reasonably identifiable Federal and State expenditures for the conservation of listed species. Expenditures include, but are not limited to, activities such as research, recovery (including grants to the States under section 6 of the Act), land acquisition, consultation under section 7 of the Act, permitting under section 10, and law enforcement, to the extent such activities can be attributed to particular listed species. According to the most recent expenditures report, Federal and State Endangered Species Expenditures, Fiscal Year 1994 (U.S. Fish and Wildlife Service, October 1997), the Service spent a total of approximately \$1.2 million on conservation activities for the five species identified above (American peregrine falcon, Dismal Swamp shrew, Columbian white-tailed deer, Tinian monarch, and Hoover's woolly star). Non-Service Federal agencies expended \$1.7 million on these species, bringing the total identifiable Federal expenditures to nearly \$3 million. While it is likely that fewer resources were devoted to recovery of these species in more recent years, as recovery neared completion, expenditures associated with section 7 and section 9 typically increase as a species becomes more abundant. Consultations on Federal projects will continue to be necessary as long as these species are listed. The American peregrine falcon has made a dramatic recovery since its listing in 1970; with more than 1184 pairs currently in the wild, it has more than doubled the overall recovery goal of 456 pairs. The species occurs in nearly every State, and the eventual delisting will assist in reducing the section 7 consultation workload. At least 50 formal consultations were conducted for this species in 1996 and 1997. Even the Hoover's woolly-star, which has a much more limited range, required 7 formal consultations in 1996 and 1997. The sooner these species can be removed from the endangered and threatened lists, the sooner associated resources can be redirected to other listed species.

The Service expects to reclassify from endangered to threatened some foreign species or populations that are currently listed in CITES Appendix II, for which the United States listing under the Act prohibits commercial imports. The existing prohibition is seen by some

range countries as potentially undermining their conservation and management programs. After evaluating the conservation status of the species, and assessing the scientific basis of those management programs and the potential conservation benefits of continued trade pursuant to CITES Appendix II, the Service expects to: (1) reclassify from endangered to threatened the yacaré caiman, with a special rule to allow trade in parts and products that comply with CITES tagging and other requirements for the species (the species has never been included in CITES Appendix I); (2) reclassify from endangered to threatened those populations of the vicuña that are listed in CITES Appendix II, with a special rule to allow trade in parts and products only if they comply with all CITES requirements for the species; and (3) consider the reclassification from endangered to threatened of certain captive-bred populations of both Morelet's crocodile and the Asian bonytongue fish, that are treated as Appendix II species, as part of approved CITES captive breeding programs. Although not all species for which CITES allows commercial trade should be reclassified under the Act, the Service intends to take CITES status into consideration. The Service also plans to finalize its review, pursuant to a petition, of the biological status of the cheetah to determine if it qualifies for reclassification from endangered to threatened.

The inclusion of withdrawals of proposed listings in Tier 2 is reasonable. As stated in the FY 1997 Listing Priority Guidance, it is appropriate to process a withdrawal notice on a proposed listing if that course of action is found to be appropriate and is based on a review of the proposed listing conducted in accordance with the listing priority guidance. The resolution of regulatory uncertainty that comes with a withdrawal notice, the fact that publication of the notice is a relatively small component of the total cost invested in the decision, and the fact that a withdrawal under section 4(b)(6)(A)(i)(IV) eliminates the legal liability under the time frames of section 4(b)(6)(A), all justify the placement of this activity in Tier 2. Preparation of withdrawals require relatively limited resources beyond that required to complete the final listing status evaluation of the proposed action. Some proposed listings are withdrawn as a result of the implementation of Candidate Conservation Agreements developed to conserve the species prior to its listing. While processing of the

notice withdrawing the proposed rule is charged to the Listing budget, any funding associated with development or implementation of the Conservation Agreement is charged to a separate Candidate Conservation budget.

Issue 5: Several commenters contend that the Service lacks any authority to implement the proposed Listing Priority Guidance and that it may not be used by the Service to avoid its mandatory duty to designate critical habitat or take other actions on species. Further, it provides no deadlines by which the Service must take listing or critical habitat actions under any of the tiers, ignoring explicit deadlines set by Congress. One commenter cited several court rulings that found the Service's Listing Priority Guidance invalid because it attempted to turn the Service's mandatory duties under the Act into indefinite extensions of time.

Response: These commenters fundamentally misunderstand the purpose of the Listing Priority Guidance and the relationship between substantive law, such as the Act, and the annual appropriation of funds necessary to implement the law. The lack of deadlines in the Listing Priority Guidance is entirely appropriate, as the Listing Priority Guidance is not meant to replace the deadlines of the Act. Those deadlines are binding on the Service; the Service must comply with them to the extent that it can do so within the limits of its appropriated funds. See the discussion of Pub. L. 105-83 above.

Contrary to the assertions of these commenters, simply inserting deadlines into the Listing Priority Guidance would serve no purpose. If lack of funds render it impossible for the Service to meet all of the Act's deadlines, the Service must take the required actions as soon as appropriated funds make it possible to do so. Thus, if the Listing Priority Guidance included deadlines different than those of the Act, those deadlines would be no more enforceable than the Act's deadlines if the available funds prove insufficient. Conversely, the fact that deadlines arbitrarily set in the Listing Priority Guidance had not passed would not excuse the Service's failure to comply with the Act's deadlines if the Service had sufficient available funds to take the actions before the time specified in the Listing Priority Guidance.

As one commenter notes, while some courts have looked no further than the fact of the Service's violation of a particular deadline, other courts that have looked at the larger picture have held that the Listing Priority guidance is a reasonable method of prioritization,

and allowed the Service to follow the Guidance in coming into compliance with the Act. For example, in *Forest Guardians v. Bobbitt*, No. CIV 97-0453 JC/DJS (D.N.M. Oct. 23, 1997), the court deferred to the Listing Priority Guidance's treatment of critical habitat designation for the silvery minnow: "The court is persuaded by the recent cases that have deferred to the Secretary's listing priority system. . . . The Court is also moved by the prudential argument advanced by the Secretary. If the Service is forced to designate a critical habitat for the silvery minnow in the wake of the budgetary constraints, other species . . . may lose-out on the ESA's protections. . . . Deferring to the Secretary's listing priority is also consistent with the overarching purposes of the ESA—maximizing species protection and reversing the trends of extinction." Slip op. at 4-5. Such decisions recognize that the Service did not receive sufficient funding in FY's 1996, 1997, or 1998 to allow it to comply with all the mandated time frames under section 4 of the Act and that it was legally prohibited by the listing moratorium from expending funds to accomplish certain of those activities for over a year. Consequently, the Service developed a rational system for setting priorities that is most consistent with the purposes of the Act and makes most efficient use of limited funding as the Service manages it way out of the significant listing backlog that was created by the moratorium and funding rescission.

Issue 6: By placing candidate species conservation status determinations over processing of petitions, the proposed Guidance effectively eliminates the petition process. Unless a petitioned species faces an emergency, it will not be addressed. The Listing Priority Guidance directs the Service to complete listing determinations for candidates species, for which the Act mandates no deadlines, over making determinations for petitioned species, which have explicit mandatory 90-day and 12-month deadlines.

Response: The Service disagrees that the Listing Priority Guidance effectively eliminates the petition process. The development of proposals for candidate species and the processing of petitions are both included in Tier 2, reflecting the Service's expectation of making significant headway in eliminating the substantial petition backlog during FY 1998. Within Tier 2, the Service has given the highest priority to the finalization of proposals and new proposals for candidate species because the Service's most immediate concern is

to initiate and finalize protection for the most imperiled candidate species. The Service also is still subject to the Fund for Animals settlement agreement, which requires resolution of the status of 85 candidate species by December 31, 1998. Thirty-five were addressed in FY 1997, 39 have been addressed so far in FY 1998 and the remaining 11 must be completed by the end of the calendar year. As the remaining candidates are addressed, the Service Regions will accelerate the pace of making petition findings.

The Service recognizes the need to address its backlog of petitions in FY 1998. At the end of FY 1997, thirty 12-month petition findings were due or overdue and forty-seven 90-day findings were due or overdue, in addition to a finding due on a petition to add 3700 foreign species to the lists. The actions requested in the various petitions include listing, delisting, reclassification, and designation or revision of critical habitat. The Service has received eight petitions thus far in FY 1998. In FY 1998, each region will assess the overdue petitions for which it has the lead responsibility. Overdue 12-month findings generally will be processed before processing new, non-emergency 90-day findings because the Service already has made an initial determination that listing of those species may be warranted. Completing the status reviews for these species and resolving whether or not listing is warranted will be a high priority. For those actions deemed warranted, the Service will assign the species a listing priority number in accordance with the 1983 listing priority guidance and either develop a listing proposal or designate the species a candidate with a "warranted but precluded" finding, thus ensuring it receives the appropriate priority for listing relative to other species. Those species for which listing is not warranted will be removed from further consideration. Among the petitions awaiting 90-day findings, the Service will process listing petitions ahead of those requesting delisting and reclassification. Petitions relating to critical habitat will have the lowest priority.

Issue 7: The Service needs to clarify what a candidate species is, what activities related to candidate species are given priority over petition findings, and how petitions will be assessed. Candidate conservation agreements must take a lower priority than statutory listing actions.

Response: Species are added to the endangered and threatened species lists through one of two mechanisms. The primary mechanism is the Service's own

candidate assessment process, which accounts for the initiation of most listing proposals. The second mechanism is the petition process, which supplements the Service's own ongoing assessment process. In fact, it is not unusual for the Service to receive a petition to list a species that is already a candidate for listing or a petition requesting another action that the Service is already actively considering. Section 4(h) of the Act required the Service to establish and publish a ranking system to assist in the identification of species that should receive priority review for listing. Pursuant to this requirement, the September 1983 listing priority guidelines established a system for prioritizing species for listing based on magnitude and immediacy of threats. Once the Service determines that a species qualifies for listing and has sufficient information to support a proposal, the species is designated a candidate and is assigned a listing priority number in accordance with this ranking system.

The assessment of potential candidate species and monitoring of species formally designated candidate species do not receive priority over processing of petitions because the Service's candidate assessment program is funded through the Service's Candidate Conservation appropriation, not the Listing appropriation. Similarly, any early conservation activities, including candidate conservation agreements, conducted on behalf of candidate species are funded through the Candidate Conservation appropriation. In fact, in many cases, an agency other than the Service takes the lead in developing candidate conservation agreements. Because candidate assessment and conservation activities do not compete with listing funds they do not factor into the Listing Priority Guidance priority system.

Issue 8: The Service should clarify its decision criteria for emergency listings.

Response: The Service will consider the need for emergency listing any candidate or potential candidate and any species included in a petition. Consistent with the 1983 listing priority guidance, any petition or other documentation that demonstrates such a need will receive the highest priority (Tier 1). A petition must substantiate that the immediacy of the threats to the species is so great to a significant proportion of the total population that the normal rulemaking process (publishing a proposed rule, considering comments, then publishing a final rule) would be insufficient to prevent large losses that may result in extinction.

Assessment of an emergency situation may consider the number of individuals of the species that may be subject to the threats, the location of the area threatened in proximity to the remaining population, or other pertinent circumstances. While many petitions that the Service receives request emergency listing, as a rule they fail to meet the necessary criteria. Emergency situations are most likely to exist when a species has a very limited distribution and a major portion of its population or its habitat is under immediate threat of loss. Petitions that do not demonstrate that an emergency exists will be considered under Tier 2.

Issue 9: The proposed guidance does not use degree of threat as its main driver, nor as a basis for missing 90-day petition finding deadlines. Consequently, the guidance is likely to result in the Service focusing substantial resources on species that are facing lower degree of threat, as will occur when the Service elevates actions involving a less biologically imperiled candidate species over an action involving more biologically imperiled species that is the subject of a petition. How will the 1983 listing priority guidance be used in this priority system?

Response: The comment is primarily addressed at Tier 2, which includes finalizing determinations on pending proposals, preparing new proposals for candidate species (or removing species from candidacy), processing petitions for listing, delisting and reclassification, and processing a limited number of delisting and reclassification actions. Although the Listing Priority Guidance describes an approach to prioritizing types of listing actions, the underlying basis for the Listing Priority Guidance is the 1983 listing priority guidelines. Now that the Service has progressed to a more balanced listing program, it can justify assigning all of the aforementioned activities to the same tier. Inclusion within the same tier provides the Service greater ability to apply the 1983 listing priority guidelines. The majority of proposals awaiting final determinations include species with high level threats; therefore, finalization of these rules is a high priority. Preparing proposals for candidates with high level threats also is a high priority. Processing of petitions to list species that appear to face high level threats will have a lower but relatively comparable priority. Among the petitions, each Service Region will screen all overdue petitions for which it has the lead to identify any that may face relatively high, imminent threats. Unless certain petitions awaiting 90-day

findings appear to warrant immediate action, such as in the case of a species with limited distribution facing a high level of threats, those petitions awaiting 12-month findings generally will have priority over those awaiting 90-day findings, since the Service has already made an initial determination that the petition contained substantial information indicating listing may be warranted. If the 12-month analysis results in a finding that listing is warranted, the species will be assigned a listing priority number in accordance with the 1983 guidelines and, depending on the priority, will be proposed for listing or designated a "warranted but precluded" candidate. Monitoring of these candidates will be accomplished using the Candidate Conservation appropriation, not the Listing appropriation. Processing 90-day findings for species for which the initial review indicates a lower urgency will have a lower priority. However, the Service wishes to emphasize its intent to make significant progress in reducing the total number of overdue 90-day and 12-month findings, provided it is allowed to follow its Listing Priority Guidance. Delisting actions, including processing of petitions for delisting and reclassifications from endangered to threatened, have the lowest priority in Tier 2, as explained in other sections of this notice.

Issue 10: The Listing Priority Guidance should not be allowed to intrude on the listing process because Congress has provided the "warranted but precluded" designation to handle limited resources.

Response: The "warranted but precluded" designation in the Act applies specifically to species subject to petitions for which the Service has found that the requested action is warranted but an immediate proposal is precluded by other higher priority listing actions. However, the Service's listing process is not limited to consideration of species under petition. The Service also actively reviews other species, identified through its own initiative, that may warrant the Act's protection. Once the Service determines that listing a species is warranted, regardless of whether it is the subject of a petition, it determines the species' priority for listing in accordance with the 1983 listing priority guidance. Therefore, the Service effectively considers all candidate species as species for which listing is "warranted but precluded." This approach expressly ensures that the degree of threat the species faces drives the urgency of a proposed listing, regardless of whether the species is subject to a

petition or is a candidate identified by the Service. This avoids a situation where, simply by virtue of a species being the subject of a petition, it takes priority over non-petitioned species in greater need of timely protection.

Issue 11: The FY 1998-99 Listing Priority Guidance appears to propose the same priority system for petitions embodied in the FY 1997 Listing Priority Guidance. Clarify how they differ.

Response: The order of priorities in the FY 1998-1999 Listing Priority Guidance is very similar to that of the FY 1997 guidance in that finalizing outstanding proposals and preparing new proposals for candidate species will be considered ahead of processing petitions. However, the FY 1998-99 Guidance differs from the FY 1997 Guidance in that petition processing has been elevated to Tier 2 along with finalization of proposals, processing new listing proposals, and, as the lowest priority in Tier 2, a limited number of reclassification and delisting actions. Placing petition processing within the same tier as these other activities in effect elevates their consideration within the whole prioritization scheme and provides the Service Regions greater latitude to process petitions simultaneously with other actions in Tier 2. Under this Guidance, the Service will focus on screening petitions to identify those that appear most likely to include a potentially high priority candidate and process those along with proposing candidates. Therefore, the Listing Priority Guidance for FY 1998-99 differs from the FY 1997 Guidance in that the Service expects to place a much greater emphasis on addressing overdue petitions in FY 1998.

Final Listing Priority Guidance for Fiscal Years 1998 and 1999

To address the biological, budgetary, and administrative issues noted above, the Service issues the following listing priority guidance for FYs 1998 and 1999. As with the Final Listing Priority Guidance for FY 1997 issued December 5, 1996 (extended on October 23, 1997), this guidance supplements, but does not replace, the 1983 listing priority guidelines, which were silent on the matter of prioritizing among different types of listing activities.

As noted above, the Department of the Interior's FY 1998 appropriation provides no more than \$5.19 million for the Service's endangered species listing program. The \$5.19 million budget for all listing activities (both foreign and domestic) will fall far short of the resources needed to completely eliminate the listing backlogs in FY

1998. Therefore, some form of prioritization is still necessary, and the Service will implement the following listing priority guidance in FY 1998 and FY 1999.

The following sections describe a three-tiered approach that assigns relative priorities, on a descending basis, to listing actions to be carried out under section 4 of the Act. The 1983 listing priority guidelines will continue to be used to set priorities among species within types of listing activities. In order to continue to move toward a more balanced listing program, the Service will concurrently undertake listing actions in Tiers 1 and 2 during FY 1998 with its listing budget of \$5.19 million. As the Service informed Congress in its budget justification, critical habitat designations (Tier 3 actions) during FY 1998 should not be expected. The FY 1998 listing appropriation is only sufficient to support high-priority listing proposals and final determinations, petition processing activities, and a minimal number of high priority delisting/reclassification actions. A single critical habitat designation could consume up to twenty percent of the total listing appropriation, thereby disrupting the Service's biologically based priorities. Higher priority listing actions (Tiers 1 and 2) provide the greatest amount of protection for imperiled species while making the most efficient use of limited resources.

Completion of emergency listings for species facing a significant risk to their well-being remains the Service's highest priority (Tier 1). Processing final decisions on pending proposed listings, the resolution of the conservation status of species identified as candidates (resulting in a new proposed rule or a candidate removal), processing 90-day or 12-month administrative findings on petitions, and undertaking a limited number of delisting/reclassification activities are assigned to Tier 2. Third priority is the processing of petitions for critical habitat designations and the preparation of proposed and final critical habitat designations; these actions generally provide little or no added conservation benefit and are therefore assigned lowest priority (Tier 3).

Tier 1—Emergency Listing Actions

The Service will immediately process emergency listings for any species of fish, wildlife, or plant that faces a significant and imminent risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act. This would include preparing a proposed rule to list the species. The

Service will conduct a preliminary review of every petition that it receives to list a species or reclassify a threatened species to endangered in order to determine whether an emergency situation exists. If the initial review indicates an emergency situation, the action will be elevated to Tier 1 and an emergency rule to list the species will be prepared. Emergency listings are effective for 240 days. A proposed rule to list the species is usually published at the same time as an emergency rule. If the initial review does not indicate that emergency listing is necessary, processing of the petition will be assigned to Tier 2 as discussed below.

Tier 2—Processing Final Decisions on Proposed Listings; Resolving the Conservation Status of Candidate Species (Resulting in a new Proposed Rule or a Candidate Removal); Processing Administrative Findings on Petitions to Add Species to the Lists and Petitions To Delist or Reclassify Species; and Delisting or Reclassifying Actions

The majority of the unresolved proposed species face high-magnitude threats. Focusing efforts on completing final determinations provides maximum conservation benefits to those species that are in greatest need of the Act's protections. As proposed listings are reviewed and processed, they will be completed through publication of either a final listing or a withdrawal of a proposed listing. Completion of a withdrawal may not appear consistent with the conservation intent of this guidance. However, once a determination not to make a final listing has been made, publishing the withdrawal of the proposed listing takes minimal time and appropriations. Thus, it is more cost effective and efficient to bring closure to the proposed listing than it is to postpone the action and take it up at some later time. For the same reasons, the Service will consider critical habitat prudence and determinability findings to be Tier 2 activities, although actual designation of critical habitat is a Tier 3 activity. The publication of new proposals (candidate conservation resolution) and the processing of petition findings to add species to the lists of threatened and endangered species have significant conservation benefit and these actions are also now placed in Tier 2. Delisting activities also have been placed in Tier 2 because of the indirect conservation benefits of these actions, such as the reduction of section 7 consultation workload. Nationwide in FY 1998 and FY 1999, the Service will undertake the full array of listing actions in tiers 1 and

2 as appropriate. However, some Regions and some Field Offices still have significant backlogs of proposed species, candidates, petitions, and delistings. Therefore, additional guidance is needed to clarify the relative priorities within Tier 2.

Setting Priorities Within Tier 2

Pursuant to the 1983 listing priority guidelines, final determinations on proposed rules dealing with taxa believed to face imminent, high-magnitude threats have the highest priority within Tier 2. If an emergency situation exists, the species will be elevated to Tier 1. Proposed listings that cover multiple species facing high-magnitude threats have priority over single-species proposed rules unless the Service has reason to believe that the single-species proposal should be processed first to avoid possible extinction. Proposed species facing high-magnitude threats that can be quickly finalized have higher priority than proposed rules for species with equivalent listing priorities that still require extensive work to complete. Given species with equivalent listing priorities and the factors previously discussed being equal, proposed listings with the oldest dates of issue will be processed first.

Issuance of new proposed listings is the first formal step in the regulatory process for listing a species. It provides some protection in that all Federal agencies must "confer" with the Service on actions that are likely to jeopardize the continued existence of proposed species. Resolving the conservation status of candidates will be afforded the second highest priority within Tier 2. The resolution of a candidate species' conservation status will be accomplished through the publication of new proposed rules or the processing of candidate removal forms (which, when signed by the Director, remove species from the candidate list). The 1983 listing priority guidelines are the basis for assigning a candidate species a listing priority number. This system ensures that species in the greatest need of protection will be processed first. New proposed listings for species facing imminent, high-magnitude threats (candidates with the highest listing priority numbers) will be processed ahead of candidates with lower listing priority numbers. The Service includes new proposals for petitioned species that are currently on the candidate list in this priority level within Tier 2.

The processing of 90-day petition findings and 12-month petition findings to add species to the lists will be the next priority among Tier 2 listing

activities. The Service will also screen all petitions to identify species that may have an imminent, high magnitude threat and process those concurrently with proposing new species. The Service will give priority to completing 12-month findings for species for which it has made a positive 90-day finding over processing petitions for species awaiting 90-day findings. If a positive 90-day petition finding is issued, the Service will make every reasonable effort to complete the 12-month finding in the appropriate time frame. When it is practicable for the Service to complete a 90-day finding within 90 days, the Service is statutorily afforded a 12-month period from the receipt of a petition to completion of the 12-month finding. However, in those cases in which it is not practicable for the Service to complete a 90-day finding within 90 days of receipt of the petition, the Service will still require 9 months to complete a thorough biological status review and issue a 12-month finding after the 90-day finding is completed.

For foreign species only, within the limited allocation assigned to that function, those final determinations that have potential for conservation benefit, and assist developing countries with the conservation and management of their species, will be of the highest priority within Tier 2. Currently proposed listings and status determinations on petitioned foreign species have the next highest priority within Tier 2. Since the Service cannot develop recovery plans for foreign species, priorities for listing or delisting must by necessity take into account the conservation programs of other countries in determining which actions are of higher priority. In virtually all cases, the only nexus for the U.S. is whether or not to allow importation of species, either for commercial or non-commercial purposes.

Finally, the Service expects to complete a small number of delistings and reclassifications during FY 1998. The Service believes that significant, albeit indirect, conservation benefit will result from the processing of certain high-priority delisting or reclassification actions. As long as a species remains on the endangered and threatened lists, Service funds are expended for ongoing conservation activities, including reviewing and permitting activities associated with habitat conservation plans and other regulated activities pursuant to section 10 of the Act. Similarly, the Service must expend funds engaging in consultations with other Federal agencies under section 7 of the Act. Resources currently devoted to these activities could be redirected to

other listed species more deserving of conservation efforts. Further, the ultimate goal of the Act is recovering species and removing them from the lists. Once it is determined that the Act's protections are no longer appropriate, it is important that delisting or reclassification proceed, particularly where listing creates an unwarranted management burden. Moreover, the Service is obligated to maintain the lists of threatened and endangered species and it is of utmost importance to keep the lists accurate and up to date. In addition to allowing the Service to direct resources to activities with greater conservation benefit, delisting a species or reclassifying a species from endangered to threatened and issuing a special rule also can provide regulatory relief to other Federal agencies as well as State and private entities, which are subject to commerce and taking prohibitions under section 9 of the Act and permit requirements under section 10. Monitoring of species that are on the lists is accomplished through the recovery program, but the small expenditure of funds necessary to process the change in a species' status will continue to be undertaken by the listing program in FY 1998. However, the President's FY 1999 budget request proposes funding delistings and reclassifications from endangered to threatened status under the recovery subactivity rather than the listing subactivity. Therefore, if enacted, these activities will no longer complete for funding with other listing activities and will be removed from this Guidance. Until then, delisting and reclassification will be afforded the lowest priority in Tier 2.

The Service expects to make substantial progress in removing or reducing the backlogs of proposed species awaiting final determination, candidates awaiting resolution, and petitions awaiting findings during FY 1998 and FY 1999. During FY 1998 and FY 1999, the application of both the listing priority guidance described above and the 1983 guidelines are critical to maintaining nationwide and program-wide biologically sound priorities to guide the allocation of limited listing resources.

Tier 3—Processing Critical Habitat Determinations

It is essential during periods of limited listing funds to maximize the conservation benefit of listing appropriations. Designation of critical habitat is very costly. For instance, the cost of designating critical habitat is illustrated by two recent examples: The

Service spent over \$126,000 on designation of critical habitat for the marbled murrelet and approximately \$1 million for the northern spotted owl. While in some cases the cost may be much less than it was for these two birds, the Service has found that in those cases where designation of critical habitat may provide some marginal benefit, such as for some broad ranging, highly habitat-specific species, the Service expects that the cost of designation would fall in the high cost range. However, the Service has determined that in most cases little or no additional protection is gained by designating critical habitat for species already on the lists and the Service's limited resources are best utilized for adding to the lists species that presently have very limited or no protection under the Act, rather than designating critical habitat for species already receiving its full protection. Because the protection that flows from critical habitat designation applies only to Federal actions, the Service continues to believe that the designation of critical habitat provides little or no additional protection beyond the "jeopardy" prohibition of section 7, which also applies only to Federal actions. Critical habitat will remain in Tier 3 during FY 1998; this will be re-evaluated when FY 1999 appropriations are received.

A recent court ruling remanded to the Service "not prudent" critical habitat determinations for 245 Hawaiian plant species listed between 1991 and 1996. To comply with the Court's remand in this case, the Service is proposing to the Court to complete reconsideration of the 245 "not prudent" findings (Tier 2) during FY's 1998, 1999, and 2000. This option would completely suspend all other listing activities in the Hawaiian Field Office until November 2000. A second option proposed by the Service would require dedication of fewer staff to the remands and allow for other listing activities in the Field Office, but would extend reconsideration of the prudency findings to FY 2002. However, for those species for which the Service finds that designation is prudent, proposed designation would proceed only after prudency determinations for all 245 species have been completed, and would be subject to any listing priority guidance that might be in effect at that time. Regardless of the approach selected (option 1 or 2), reconsideration of the prudency findings will significantly delay the Service's Hawaii Field Office in preparing proposed or final rulemakings to add approximately 97 currently unprotected Hawaiian

species to the endangered and threatened lists.

Allocating Listing Resources Among Regions

The Service allocates its listing appropriation among its seven Regional Offices, and the Washington Office for foreign species, based strictly on the number of proposed and candidate species for which the Region has lead responsibility with the exception of providing minimum "capability funding" for one listing biologist for each Region. The objective is to ensure that those areas of the country with the largest percentage of known imperiled species will receive a correspondingly high level of listing resources. The Service's experience in administering the Act for the past two decades has shown, however, that it needs to maintain at least a minimal listing program in each Region in order to respond to emergencies and to retain a level of expertise that permits the overall program to function effectively over the longer term, thus the "capability funding" to each Region. In the past, when faced with seriously uneven workloads, the Service has experimented with reassigning workload from a heavily burdened Region to less burdened Regions. This approach has proven to be very inefficient because the expertise developed by a biologist who works on a listing package will be useful for recovery planning and other conservation activities, and that expertise should be concentrated in the ecosystem or geographic area inhabited by the species. In addition, biologists in a Region are familiar with other species in that Region that interact with the species proposed for listing, and that knowledge may be useful in processing a final decision. For these reasons, the Service has found it unwise to reassign one Region's workload to personnel in another Region. Because the Service must maintain a listing program in each Region, Regions with few outstanding proposed listings may be able to take more lower priority listing actions within Tier 2 (such as new proposed listings or petition findings), while Regions with many outstanding proposed listings will use most of their allocated funds on finalizing proposed listings.

Addressing Matters in Litigation

The Service understands the numerous statutory responsibilities it bears under the Act. These responsibilities, however, do not come with an unlimited budget. The Service is often required to make choices about

how to prioritize its responses to those statutory responsibilities in order to make the best use of its limited resources. Under these circumstances, technical compliance with the Act with respect to one species often means failure to comply with the technical requirements of the Act for another species. This guidance is part of a continuing effort to express to the public that the Service is striving towards compliance with the Act in the manner that best fulfills the spirit of the Act, using the Service's best scientific expertise.

The Service understands that some may believe they have reason to bring suit against the Service for failing to carry out specific actions with regard to specific species. These actions question the Service's judgment and priorities, placing the emphasis of Act compliance on technical fulfillment of the statute for specific species rather than on the best use of the Service's resources to provide the maximum conservation benefit to all species. There are many outstanding section 4 matters currently in litigation. In each case, the plaintiff seeks, in effect, to require the Service to sacrifice conservation actions which the Service believes would have major benefits for actions which the Service believes would have much lesser effects.

In no case will the Service adjust its priorities to reflect the threat or reality of litigation. The Service has argued and will continue to argue before the courts that it should be allowed to prioritize its activities so as to best fulfill the spirit of the Act. Should any court not accept this argument, the Service will, of course, carry out the instruction of the court or the terms of any settlement reached. The Service believes, however, that such obligations impede the overall conservation effort for a much lesser benefit for a single species.

For example, during FY 1997, a plaintiff succeeded in obtaining a court order that required the Service to designate critical habitat for the southwestern willow flycatcher. The Service acknowledges that it had a responsibility to carry out this action and intended to meet its statutory requirement, like all others, when its budget and backlog of higher priority listing actions allowed. However, the Service still contends that this particular action had relatively little conservation benefit, especially compared to the numerous listings of wildlife and plants that had to be delayed to allow it to proceed when it did. As a result, the Service's Region 2 is suffering from an inability to prioritize its responsibilities and

complete several high priority species listings last year.

Good Cause for Immediate Effectiveness

The Service finds that good cause exists to make this policy effective immediately. Immediate implementation of this policy serves to advance the public interest in maximizing the conservation benefits that can be achieved from funds appropriated for listing activities under the Act. As indicated herein, there are not sufficient funds to do all listing activities contemplated by section 4 of the ESA. The final Listing Priority Guidance for FY 1998-99 will allocate existing funds to most effectively achieve the purposes of the Act.

In addition, immediate implementation of this policy will not impose a burden on the public. This is internal Service guidance that does not in and of itself invoke or relieve restrictions on the private or public sector. Although this policy addresses the timing of particular regulatory actions (i.e., listing of species), those particular actions will be subject to public notice and comment and, in the absence of good cause, delayed effective date pursuant to the Administrative Procedures Act. Therefore, in accordance with 5 U.S.C. 533(d), the Service makes this policy effective upon publication in the *Federal Register*.

National Environmental Policy Act

The Service does not consider the implementation of this guidance to be a major Federal action significantly affecting the quality of the human environment for the purposes of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Further, the Department of the Interior's Departmental Manual (DM) categorically excludes from consideration under NEPA, "Policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case." This guidance clearly qualifies as an administrative matter under this exclusion. The Service also believes that the exceptions to categorical exclusions (DM 2 Appendix 2) would not be applicable to such a decision, especially in light of environmental effects for such action.

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: May 1, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98-12284 Filed 5-7-98; 8:45 am]

BILLING CODE 4310-65-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Proposed Policy on the Export of Live American Alligators and Announcement of Public Meeting**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed policy.

SUMMARY: After review and analysis of comments received and for the reasons detailed in this notice, the Service proposes to adopt a policy against the issuance of permits for the export of live American alligators for commercial breeding or resale purposes. The American alligator is protected under the Endangered Species Act of 1973 (ESA) as threatened due to similarity of appearance and under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as Appendix II. The Service may issue an export permit upon finding that all applicable permit issuance requirements have been met. Exports of animals listed on Appendix II of CITES may occur only if the Scientific Authority has advised the Management Authority that such exports will not be detrimental to the survival of the species and the Management Authority is satisfied the animals were not obtained in violation of laws for their protection. Based on documentation presented for consideration by the CITES Parties in 1983, the Service has determined that the American alligator is listed on Appendix II for reasons of similarity in appearance under Article II.2(b) of CITES as well as the potential threat to the species survival under CITES Article II.2(a).

This notice announces a proposed policy by the Service on the export of live American alligators. Based on the information received in response to the June 24, 1997, notice, the Service is unable to find that the export of live American alligators either for commercial breeding or resale purposes is not detrimental as required under CITES or that such exports comply with Executive Order 11987—*Exotic*

Organisms. Applications for permits to export live American alligators for purposes such as scientific research or zoological exhibition would be evaluated on a case-by-case basis.

DATES: The Service will consider all information and comments received by June 8, 1998 in making its final decision on this proposal. A public meeting will be held at the Delta Resort Orlando, 5715 Major Boulevard, Orlando, Florida 32819-7988, on May 5, 1998, from 1:30 pm to 3:30 pm.

ADDRESSES: Please send comments or other correspondence concerning this document to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 700, Arlington, VA 22203. Materials received will be available for public inspection by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Office of Management Authority.

FOR FURTHER INFORMATION CONTACT: Ms. Teiko Saito, Chief, Office of Management Authority, telephone 703-358-2095, fax 703-358-2298.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) published a notice on June 24, 1997 (62 FR 34074), requesting submission to the Service of any information available on the impacts of exports of live American alligators. Generally, in order to export species of wildlife protected under the ESA and/or CITES, an export permit must be issued. The Service is the agency responsible for reviewing applications for export of wildlife. Each permit application must be carefully evaluated to ensure compliance with all applicable regulations and executive orders. The American alligator is protected under the Endangered Species Act of 1973 (ESA) as threatened due to similarity of appearance and under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as Appendix II. A permit for export of American alligators can only be issued if the Service can determine:

1. That the export will not be detrimental to the survival of the species (50 CFR 23.15(d)(1));
2. That the animals to be exported were not obtained in violation of laws for their protection (50 CFR 23.15(d)(2));
3. That the authorization requested does not potentially threaten a wildlife population (50 CFR 13.21(b)(4)); and
4. That the requirements of Executive Order 11987, *Exotic Organisms*, are met. (This Executive Order, in part, requires "Executive agencies shall, to the extent permitted by law, restrict the use of Federal funds, programs, or authorities used to export native species for the

purpose of introducing such species into ecosystems outside the United States where they do not naturally occur." In this instance, introduction is defined to include "the release, escape, or establishment of an exotic species into a natural ecosystem.")

5. That live specimens are prepared for shipping and shipped in compliance with the International Air Transport Association (IATA) Live Animal Regulations (for air transport) or CITES guidelines for transport (for other transport).

The Service received requests from the Florida Game and Freshwater Fish Commission and the Louisiana Department of Wildlife and Fisheries that we review the criteria for issuance of permits for export of live American alligators for commercial breeding or resale purposes and to restrict issuance of such permits until a review could be completed. In response to these concerns, the Service published the June 24, 1997, *Federal Register* notice requesting submission of any information available to assist us in evaluating such impacts.

In addition, the problems associated with the introduction of exotic species have become increasingly apparent worldwide. The problems have been discussed in a number of international fora such as the meeting of the CITES Conference of the Parties in 1997 in Zimbabwe, the World Conservation Congress in 1996, and the Conference on Alien Species in Norway in 1996. In the United States, approximately 122 species of exotic (non-indigenous) species of fish and wildlife have already established free-living populations and are causing great harm. The import of potentially harmful exotic species is currently being reviewed by the Service in the context of the Lacey Act prohibitions on import of injurious species. In relation to export of native species, E.O. 11987 restricts the use of Federal funds, programs, or authorities (i.e., the issuance of CITES export permits) to export native species outside the United States. The American alligator is one of the few native species that requires a CITES export permit and for which we have received applications for export of large numbers of live specimens. Given the documented introduction of other crocodilians outside their range, in evaluating an application for export of live American alligators the Service must take into consideration the ecological damage that could result from introduction of alligators, either planned or unplanned, into ecosystems outside their natural range in the United States.

Commercial enterprises for the breeding or resale of American alligators outside their natural range provide the most serious conservation concerns regarding the threat of planned or accidental introductions of exotic species. The introduction of Morelet's crocodile (*Crocodylus moreletii*) into American crocodile (*C. acutus*) habitat in western Mexico is attributed to escapes from breeding facilities, and the introduction of caiman (*Caiman crocodylus*) into southern Florida is attributed to caimans imported for the pet trade that either were released or escaped. Properly designed scientific research projects and facilities designed to exhibit specimens to the public generally present a lower level of concern in relation to accidental introduction of species since there are limited numbers of specimens involved and plans for disposition of specimens are generally a part of the overall design of the project or facility.

Analysis of Comments

In response to the June 24, 1997, *Federal Register* notice, 11 comments were received. Comments were received from the States of Louisiana and Florida (the two States which contain the majority of the habitat for wild American alligators and which supply hatchlings and eggs to alligator farmers located throughout the Southeastern United States), the IUCN Crocodile Specialist Group, the Humane Society of the United States, three individual alligator farmers, and four associations dealing with alligator farming. Ten of the eleven commenters strongly opposed the export of live American alligators. One commenter supported such exports.

Comment: Nine commenters voiced strong concerns in the area of enforcement. Areas of concern included: Reduced regulatory control, past illegal trade in crocodilians outside the United States, the undermining of effective legal management programs, lack of assurances that other countries would provide comparable control mechanisms on farm inspections and enforcement to prevent illegal trade, inadequate re-export controls over alligators (either as products or live), the type of CITES tags that would be used for alligators originating in the United States yet harvested in another country, and confusion or compromise of current well regulated channels of international control and trade regulation. One commenter stated that there were a number of examples where demand for captive breeding stock has generated demand for illegally acquired specimens from the range countries. Four

commenters also pointed out that the limited range of the American alligator has been an important factor in the effectiveness of enforcement efforts to ensure that laws enacted to protect the alligator are complied with.

Response: The Service recognizes the concerns of the commenters in the area of enforcement. The States have put a great deal of time, effort, and planning into their conservation management programs to protect the American alligator. At one time there was extensive poaching and illegal trade in American alligators which has diminished drastically thanks to the work of the States and the cooperation of the industry. The States and the Service have worked together closely to develop guidelines for the export of alligator skins to ensure that the skins have been acquired legally. Each skin must be tagged with a CITES export tag in accordance with State regulations, and that tag must be on the skin at the time of export. The Service uses the data provided by the States from their conservation management programs to make the no detriment and legal acquisition findings required under CITES for the export of American alligator skins. Therefore, CITES export permits for export of tagged alligator skins continue to be issued. The CITES Parties have long recognized the importance of monitoring trade in crocodilian skins worldwide and first adopted a resolution concerning the universal tagging of crocodilians in 1992 (Res. Conf. 8.14). This resolution was revised in 1994 (Res. Conf. 9.22) and has been very effective in enabling Parties to closely monitor and control trade in crocodilian skins. The U.S. alligator tagging program complies with this resolution. However, the focus of the resolution is on trade in skins, which constitutes the majority of the international commercial trade in crocodilians. At the time the resolution was first adopted, there was very little international commercial trade in live crocodilians. The export of live animals is not covered by the resolution and raises different concerns and responsibilities than the export of parts and products.

Comment: Two commenters were concerned over the types of CITES tags that would be placed on American alligators harvested outside the United States. One commenter thought CITES tags should be denied for animals already out of the country. The other thought CITES tags should not be issued for species out of their natural ranges.

Response: The Service is also concerned with the question of CITES tags for American alligators that are not

harvested in the United States. Each American alligator harvested in the United States is tagged with a permanently locking CITES export tag bearing a legend showing the US-CITES logo, State of origin, species, year of take, and a unique serial number. Tags must be placed on each skin in accordance with State requirements. Any tags that break prior to export must be replaced prior to actual export. Under CITES Resolution Conf. 9.22, all crocodilian skins must be tagged, and the tags must remain on the skin until it has been processed and cut. CITES tags for crocodilians should indicate the country of origin of the specimen and are placed on the skin at or near the time of harvest. The country of origin is considered to be "the country where the animal was taken from the wild or the country of natal origin of the animal" (50 CFR 10.11). Therefore, specimens that originated in the United States, exported to another country, and harvested in that country would require tags to show the country of origin as the United States. The Service also has concerns about CITES tags for U.S.-origin alligators being issued by other countries who may or may not monitor the species as closely as the United States. Within their range, crocodilians that are harvested based on sustainable use ranching programs have a high conservation value. Crocodilians commercially bred in countries outside their range have, at best, a low conservation value since their production is not reliant on conservation of habitat needed to maintain wild populations. In the case where a captive breeding facility for American alligators is established outside the United States, the CITES tags for offspring of the founding stock would show the species as American alligator and the country of origin as the country where the facility is located. The one instance where we are aware of this already happening is in Israel. We have requested information from the CITES Management Authority of Israel regarding the CITES tags used for American alligators originating from the Hammat Gader facility which breeds American alligators, but have not yet received a reply.

Comment: One commenter pointed out that the American alligator export program is an example of successful management which has been based on a close working relationship between the States and the Federal Government. In addition, the effectiveness of monitoring and enforcing the management program is due to the limited natural range of the American

alligator. Exports of live specimens could jeopardize the current management programs which could, in turn, impact wild populations.

Response: The Service agrees that the American alligator represents a conservation management success story. The American alligator has gone from being listed as endangered under the ESA to being threatened due to its similarity in appearance to endangered crocodilians and a model for sustainable use management. The cooperation and coordination between the State and Federal Governments have been vital, particularly in the area of enforcement. Live American alligators exported to another country would no longer benefit from the protection provided by this close relationship. The advice issued by the Office of Scientific Authority on November 4, 1997, concerning the export of live alligators from the United States that "if alligator breeding facilities in other countries become competitively more successful (as might occur if production costs are lower) than alligator farms in the United States, prime alligator habitats will be vulnerable to other uses incompatible with the survival of the species. The fundamental premise of crocodilian ranching programs is the built-in incentive for habitat preservation by industries whose success is dependent upon perpetuation of natural habitats. It is this fact that has made crocodilian ranching around the world such a successful conservation approach within the CITES community of nations."

Comment: One commenter was concerned that "illegally-taken young domestic alligators could be smuggled and easily commingled with legally-obtained alligators or alligators produced on foreign farms." Regarding this possibility, another commenter stated that there are a number of examples where evidence indicated that "demand for captive breeding stock has generated demand for illegally acquired specimens from the range states." One such report concerned the attempted illegal import of New Guinea crocodiles (*Crocodylus novaeguineae*) into Thailand.

Response: This possibility is of concern to the Service.

Comment: Four commenters specifically raised concerns over the loss of control if live American alligators are exported. The concerns included that the United States would have no ability to monitor re-export of specimens after initial export and that re-export controls would be less stringent than those of range countries which would further reduce effective

international control over the management and trade in American alligators.

Response: The Service agrees. An export permit is issued based on the information provided by the applicant as to the purpose and destination of the shipment. Once the alligators are exported, the Service has no control over the re-export of the specimens to a different destination. The issuance of a re-export certificate is based only on whether the specimens were legally imported under CITES, not on whether the re-export would be detrimental to the survival of the species. Thus, even if the Service were able to make the determinations needed to issue an export permit to ship live American alligators to a country where introduction of exotic crocodilians is not considered a potential threat, it is impossible to know whether the animals will be subsequently shipped to a country or area within a country where introduction would be a real threat and where the Service might not have been able to find no detriment.

Comment: Eight of the commenters expressed concerns relative to accidental or deliberate introduction of alligators into areas outside their natural range. Even where there is no intention to release the animals and with the most secure facility, accidental release due to human error or natural disasters such as hurricanes remains a real possibility. The American alligator is the most temperate of the crocodilian species and is able to cope with frequent freezing temperatures. They are also generalists and opportunists in their feeding habits and able to adapt their diet to a wide variety of prey species. Given their reproductive potential, alligators are capable of rapidly expanding their populations. In areas already occupied by crocodilian species, the introduction of alligators could prove damaging, not only due to competition, but also by the introduction of exotic diseases. Such introductions would also impact prey species. Examples of documented introductions of crocodilians outside their natural range include: Spectacled caiman populations in southern Florida; Morelet's crocodile into the range of the American crocodile in western Mexico; and the common caiman on the Isle of Pines in Cuba which has had an impact on recovery of the endangered Cuban crocodile. One commenter stated that: "The few examples we do have indicate that when introduced into a suitable habitat crocodilians can rapidly achieve dense populations which are virtually impossible to eradicate."

Response: The Service agrees that this is a serious concern. Substantial

information was provided to document the effects of species, especially crocodilian species, introduced into areas outside their natural range. The impacts are not only on other crocodilian species and prey species, but also on the ecosystem as a whole.

Comment: Six commenters had concerns that allowing the export of live American alligators would have a detrimental impact on the success of alligator management programs in the United States. These programs serve as an economic incentive to preserve the wetland habitats required for alligator conservation and that lack of economic incentives would adversely impact alligators as well as their habitat. The conservation benefits of alligator management programs are inextricably tied to economics. The concern in regard to conservation is where economic impacts negatively affect conservation programs. In this regard, there is concern that the establishment of breeding groups of alligators outside their natural range will result in a substantial loss of incentives for the conservation of alligator habitat. One commenter felt that range states have the strongest incentives for managing their own resources and that such management had conservation benefits and that use of natural resources by non-range states has no conservation benefit.

Response: The Service agrees that the alligator management programs in the United States have been very effective and that economic incentives are a factor in that success.

Comment: One commenter felt that his applications for export of live American alligators should not be regulated as a commercial shipment since the alligators were to be transported to a foreign facility only for their further care and maintenance. The commenter noted that he would be maintaining his full ownership rights in the specimens. In addition he felt that as long as State laws were complied with and an FWS import/export license was purchased each year, there should be no further restrictions on exports.

Response: The Federal Government has the jurisdiction, authority, and responsibility to ensure that exports of wildlife comply with Federal statutes, regulations, and international agreements as well as appropriate State law, and may place conditions on the export of such wildlife consistent with Federal law. An import/export license is required of all businesses importing and/or exporting wildlife, regardless of whether the proposed export involves a commercial activity. In addition to the license requirement, exporters planning

to export wildlife protected under the ESA and/or CITES must obtain a Federal export permit prior to export. The issuance of such permits is a Federal authority and responsibility. Most trade in American alligators has been in the skins, not in live animals. Permits continue to be issued for exports of properly tagged American alligator skins, and live animals may be sold within the United States in accordance with State law. The State has primary jurisdiction over the management and use of wildlife as long as it is within that State.

Comment: One commenter stated that since export permits for live American alligators had been issued in the past, the Service should continue to issue them.

Response: The Service is required to use the best scientific information available in making the required determinations for issuing export permits. When new or additional information is brought to our attention, the Service has an obligation to review that information and use it, as appropriate, in making future decisions on permit issuance. Because several entities contacted the Service concerning the impacts of live American alligator exports, it became our responsibility to seek out and evaluate all information available that would assist us in making the determinations required prior to permit issuance. If the information indicates persuasively that there are concerns that previously had not been considered, those concerns must be addressed.

Comment: One commenter felt that export of live American alligators should be allowed if the destination was not within the habitat of other crocodilians.

Response: The Service does not agree. Although the initial destination may not be within crocodilian habitat, as outlined previously, there is no assurance that the initial destination is the final destination. Additionally, although information was provided to the Service stating that one facility planning to receive American alligators was not within the habitat of other crocodilians, subsequent information has indicated that the facility is within the range of two endangered crocodilians, one of which was introduced into the area after escaping from a crocodilian farm.

Comment: One commenter stated that since a June 24, 1996, Federal Register final rule allowed the import of live Nile crocodiles into the United States, there should be no restrictions on the export of live American alligators.

Response: The Service disagrees. Since publication of the final rule on Nile crocodile imports, the Service has received a great deal of information concerning problems associated with the introduction of exotic species into this country as well as other countries. Therefore, the question of allowing the import of live, non-native crocodilians into the United States is being reviewed separately in the context of the Lacey Act prohibitions on import of injurious species. This is a related, but separate, issue that is currently under review.

Comment: One commenter stated that Florida farmed or ranched alligators are no longer considered wildlife under Florida rules and are "considered as domestic livestock and personal property for use." As a result, there should be no additional requirements for commercial use of the alligators and that any additional requirements are a condemnation of a property right.

Response: Under Federal regulations, wildlife is defined as "any wild animal, whether alive or dead * * * whether or not bred, hatched, or born in captivity, and including any part, product, egg, or offspring thereof." (50 CFR 10.12) Farmed or ranched alligators are still considered wildlife and subject to all applicable Federal laws and requirements (including CITES export permits). A ranching program such as those developed by the States of Florida and Louisiana relies on the availability of natural habitat where wild alligators can reproduce naturally. A certain number of the eggs and/or hatchlings are taken from the wild based on a formula to ensure sustainability of the harvest. The hatchlings are raised on a "farm" until the alligators are of a suitable size to harvest for their skins. The fact that these animals were raised under controlled conditions does not alter the fact that they are wildlife both under Federal law and in accordance with CITES. Alligator farmers may trade their property (live alligators, skins, or products) freely within the United States in accordance with State laws. International trade in such property is subject to Federal requirements, however, and such export restrictions that are applied for the conservation of domestic alligators and foreign crocodilians do not in any way affect the possession or use of such property in the United States. The proposed policy, if adopted, would not effect a taking of property without due process of law. Furthermore, the Service continues to issue CITES permits for the export of American alligator skins and products based on our ability to make the determinations required by CITES.

Comment: One commenter stated that "It is a documented fact that alligators are notoriously poor breeders in captivity" and that previous live American alligator exports have not resulted in commercial farming operations in any other countries.

Response: The Service disagrees. A permit to export 120 live American alligators to Israel was issued in 1981. It was issued with assurances from the Israeli CITES Management Authority that the alligators would not be commercialized and would be for exhibition only. In 1986, due to successful breeding the Israeli facility became overcrowded and 200 alligators were shipped to Florida. In October 1987, the requirement that the alligators not be commercialized was rescinded by the U.S. Federal Wildlife Permit Office. The Israeli facility stated in a letter to the Service that they did not expect their exports of skins to be more than approximately 200 skins per year. However, according to statistics obtained from the World Conservation Monitoring Centre, from 1989 to 1995 a total of 4,963 American alligator skins were exported from Israel (an average of 709 skins per year).

Comment: One commenter requested a public meeting.

Response: A public meeting will be held at the Delta Resort in Orlando, Florida, on Tuesday, May 5, 1998, from 1:30 p.m. to 3:30 p.m.

Required Determinations

This notice contains no information collection requirements beyond those already approved by the Office of Management and Budget under 44 U.S.C. 3506 and assigned Clearance Number 1018-0093 with an expiration date of February 28, 2001. The Service has determined that an environmental assessment is not necessary for this policy as it is a permit function categorically excluded under Part 516 of the Departmental Manual, Chapter 2. The policy reflects the Service's permit decisions based on existing requirements for no detriment findings and introduction of exotic species.

Proposed Policy

Purpose: The Service has been entrusted with certain responsibilities under the ESA and CITES regarding export of protected species and under Executive Order 11987 in regard to export of exotic species. The American alligator (*Alligator mississippiensis*) is one of the few native species included in CITES Appendix II for which we have received applications for export of live specimens for commercial breeding or resale purposes. Prior to issuance of

any CITES export permit, the Service must be able to determine that the specimens to be exported were legally acquired, that the export would not be detrimental to the species, and that live specimens will be prepared and shipped in a humane manner. To ensure that the Service carries out these responsibilities in a consistent manner, the Service will consider the issuance of permits for the export of live American alligators (*Alligator mississippiensis*) in the following context:

1. Applications for export permits for scientific research should include:
 - a. Formal research protocol with timetable;
 - b. Qualifications of the scientific personnel conducting the proposed research;
 - c. Description of the facilities where the specimens will be housed and precautions that will be taken to prevent escape; and
 - d. Plans for disposition of the alligators and any progeny upon completion of the research project.
2. Applications for export permits for zoological display should include:
 - a. A description of the receiving facility including the housing planned or in existence for the requested alligators and measures to be taken to prevent escape; and
 - b. Plans for disposition of the alligators and any progeny should the facility close or become overcrowded.
3. Applications for export permits for captive breeding or resale will not be accepted.

If adopted, this proposed policy would remain in place until further notice. If substantial new biological information is received, the basis for these findings would be reviewed.

Dated: May 1, 1998.
 Jamie Rappaport Clark,
 Director.

[FR Doc. 98-12292 Filed 5-7-98; 8:45 am]
 BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Salt River Pima-Maricopa Indian Community Alcoholic Beverage Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the

Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161. I certify that amendment of the Salt River Pima-Maricopa Indian Community Alcoholic Beverage Control Ordinance, Resolution No. SR-1797-98, was duly adopted and certified by the Salt River Pima-Maricopa Indian Community Council on February 18, 1998. This Ordinance amends an earlier ordinance published in Volume 38 of the *Federal Register* at page 3416. This Ordinance provides for the regulation of the sale, possession and consumption of liquor within the Salt River Pima-Maricopa Indian Community, under the jurisdiction of the Salt River Pima-Maricopa Indian Community and is in conformity with the laws of the State of Arizona.

DATES: This Ordinance is effective May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street NW, MS 4603-MIB, Washington, D.C. 20240-4001; telephone (202) 208-3463.

SUPPLEMENTARY INFORMATION: The Tribal Liquor Ordinance for the Salt River Pima-Maricopa Indian Community is to read as follows:

Salt River Pima-Maricopa Indian Community Alcoholic Beverage Control Ordinance

1. Preamble

(a) **Title.** This Ordinance shall be known as the Salt River Pima-Maricopa Indian Community Alcoholic Beverage Control Ordinance.

(b) **Authority.** This Ordinance is enacted pursuant to the Act of August 15, 1953, (Pub. L. 83-277, 67 Stat. 586, 18 U.S.C. § 1161) and Article VII of the Salt River Pima-Maricopa Indian Community Constitution.

(c) **Purpose.** The purpose of this Ordinance is to regulate and control the possession, consumption, and sale of liquor on the Salt River Pima-Maricopa Indian Community. The enactment of an ordinance governing liquor possession and sale on the reservation will increase the ability of the Community government to control reservation liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the Community government and the delivery of Community government services.

(d) **Application of 18 U.S.C. § 1161.** All acts and transactions under this Ordinance shall be in conformity with this Ordinance and in conformity with the laws of the State of Arizona as that term is used in 18 U.S.C. § 1161.

(e) **Effective Date.** This Ordinance shall be effective upon the date of its publication in the *Federal Register*.

2. Definitions

In this ordinance unless the context otherwise requires:

(a) **Alcoholic Beverages** means beer, wine or other spirituous liquor.

(b) **Community** means the Salt River Pima-Maricopa Indian Community.

(c) **License** means a license issued pursuant to the provisions of this ordinance.

(d) **Licensed Premises or Premises** means a place from which a licensee is authorized to sell alcoholic beverages under the provisions of this ordinance.

(e) **Licensee** means a person who has been authorized to sell alcoholic beverages for consumption at a particular premise by the Salt River Pima-Maricopa Indian Community.

(f) **Person** means a natural person or a corporation duly chartered by a jurisdiction within the United States.

(g) **Private Residence** means a place where an individual or a family maintains a habitation.

(h) **Public Place** means any place not a private residence and not licensed for the possession of alcoholic beverages.

(i) **Sell, Sold, Buy** shall include furnish, dispose of, give, receive or acquire.

3. Unlawful Acts

(a) It shall be unlawful for any person to deal with alcoholic beverages in any manner not allowed by this Ordinance or the regulations adopted under this Ordinance.

(b) It shall be unlawful for a licensee or other person to give, sell or cause to be sold or otherwise distribute alcoholic beverages to a person under the age of 21 years.

(c) It shall be unlawful to employ a person under the age of 21 years in any capacity connected with the handling of alcoholic beverages.

(d) It shall be unlawful for a person under the age of 21 years to buy, possess, or consume alcoholic beverages.

(e) It shall be unlawful for a licensee or an employee of a licensee to consume alcoholic beverages on or about the licensed premises during such periods such person is working at the licensed premises.

(f) It shall be unlawful for a licensee or any other person to sell alcoholic beverages to an intoxicated or disorderly person, or for a licensee or employee of a licensee to allow or permit an intoxicated or disorderly person to remain on the premises.

(g) It shall be unlawful for a licensee to sell alcoholic beverages in any

manner not provided for by this ordinance or the licensee's license.

4. Lawful Commerce With Alcoholic Beverages

(a) Alcoholic beverages may be possessed and consumed only at private residences and licensed premises, and may be transported in unbroken containers to such places.

(b) Alcoholic beverages may be sold at licensed premises only under the conditions under which the license is issued.

(c) The Community may from time to time issue licenses for the sale of alcoholic beverages subject to the provisions of this ordinance and the regulations adopted pursuant to this Ordinance.

5. Issuance of License, Regulation, Revocation, Fees, Hearings

(a) The Office of Alcohol Beverage Control ("Office") is hereby established. The director of the Office will be the Alcohol Beverage Hearing Officer who will be responsible to the Community Manager and whose duties may be delegated from time to time to assistant hearing officers or other employees of the Office. All of the positions of the Office will be filled and will be conducted in accordance with the Community's established policies and procedures.

(b) **Regulations**—The Director of the Office shall propose for adoption by the Salt River Pima-Maricopa Indian Community Council regulations for the purpose of carrying out the provisions of this ordinance. Such regulations shall:

(1) Establish a procedure for application for license through the Office provision for public hearings before final decision by the Alcohol Beverage Hearing Officer;

(2) Provide uniform standards of qualification for licensees;

(3) Determine the information required to be supplied by applicants for license, and for the verification of such information. Applicants shall include in the case of a corporation, all shareholders of more than 5% of the corporate stock and all officers and directors of the corporation; and in the case of a partnership, all of the partners;

(4) Establish the fee for an application, renewal application and annual license provided that no such fee shall in the first year of this ordinance exceed \$1,500.00 or increase more than 5% per annum thereafter;

(5) Establish hours within which premises may be open;

(6) Establish standards for operation of licensed premises and for the audit of

records to be supplied to the Community;

(7) Establish classes of licenses for the sale of (i) all alcoholic beverages, (ii) only beer, (iii) only wine, or (iv) only beer and wine;

(8) Establish a procedure for revocation and suspension of licenses which will be administered by the Alcohol Beverage Hearing Officer.

(c) **Beverage restrictions**—Licenses may only be issued for premises operated under the following classifications as defined herein; and such licenses may be restricted to the sale of (i) all alcoholic beverages, (ii) only beer, (iii) only wine, or (iv) only beer and wine.

(d) **Designated area**—Licenses may be issued for premises located only on land described on the Designated Area Map attached to this ordinance and filed in the official records of the Community in the Office of the Secretary. Additional land may be described as within the "Designated Area" by the enactment by the Community Council of an ordinance amending the Designated Area Map.

(e) **Premises which may be licensed**—Licenses may only be issued for premises as defined in this subsection (e) or its subparagraphs.

(1) Hotel-Motel License

(i) The Alcohol Beverage Hearing Officer may issue a hotel-motel license to any hotel or motel that would qualify for a restaurant license under the terms of a restaurant license and/or for the operation of one or more bars in such hotel or motel provided that the applicant is otherwise qualified to hold a license.

(ii) The holder of a hotel-motel license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises. For the purpose of this section "Licensed Premises" shall include all public bar rooms, public restaurant rooms and, private banquet rooms supplied by the hotel-motel restaurant.

(iii) **Restaurant** means an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

(2) Casino License

(i) The Alcohol Beverage Hearing Officer may issue a casino license to any casino authorized to operate as a casino by the Community.

(ii) The holder of a casino license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises. For the purpose of this section "licensed premises" shall include all public bar rooms, gaming

areas, private banquet or meeting rooms and restaurants and other food service facilities.

(3) Golf Course Club House License

(i) The Alcohol Beverage Hearing Officer may issue a Golf Course Club House license to any Golf Course Club House.

(ii) The holder of a Golf Course Club House license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises and only to patrons of the Golf Course Facility. For the purpose of this section "licensed premises" shall include all restaurant, bar and lounge facilities within the Golf Course Club House. For purposes of this section, a "Golf Course Club House" means a Club House located on a golf course.

(f) Issuance of Licenses, Hearings

(1) Licenses will be issued by the Director of the Office of Alcohol Beverage Control after a hearing and upon a determination by the Alcohol Beverage Hearing Officer that there has been a satisfactory showing of the capability, qualifications and reliability of the Applicant, and in the case of a corporation, its principal stockholders, offices and directors, and of a partnership, its partners, and that the public convenience requires and the best interests of the Community will be substantially served by the issuance of the license. The Salt River Pima-Maricopa Indian Community Police Department shall, at the request of the President of the Community and for the purposes of this subparagraph, do a criminal history background check qualification on any applicant for a license under this ordinance.

(2) The Alcohol Beverage Hearing Officer shall determine after a hearing has been held whether and under what conditions a license shall be issued. The hearing shall be announced by notice in the Community newspaper. Notice shall be given no less than 10 days prior to such hearing. The hearing shall be conducted by the Alcohol Beverage Hearing Officer in an informal manner with rules adopted pursuant to this ordinance calculated to assure full disclosure of all relevant information. Professional attorneys shall not be permitted to represent parties at any such hearing or hearings on appeal. The Alcohol Beverage Hearing Officer shall hear all relevant issues and within 5 days after the hearing is concluded shall issue a written decision. The decision will contain the findings of fact relied on by the Alcohol Beverage Hearing Officer for the decision as well as the decision. The findings of fact and

decision shall be filed with the Clerk of the Salt River Pima-Maricopa Indian Community Court and distributed within two (2) days after such filing to the applicant, any other person who files a notice of appearance with the Alcohol Beverage Hearing Officer before the hearing is adjourned, and the Secretary of the Salt River Pima-Maricopa Indian Community.

(3) A decision of the Alcohol Beverage Hearing Officer under Section 5(f)(1) and (2) and 5(g) may be appealed to the Salt River Pima-Maricopa Indian Community Court by the applicant, the Community, or any Community member who has filed a notice of appearance.

(4) Appeals shall be taken from any decision of the Alcohol Beverage Hearing Officer in the following manner:

(i) *Notice of appeal.* Written notice of appeal shall be given within ten (10) days after the day the written and executed decision is filed with the Clerk of the Salt River Pima-Maricopa Indian Community Court. The notice of appeal shall state all the grounds for appeal relied on by the appellant. The notice of appeal shall not be amended once it is filed. The appellee may file a short written response to the grounds for appeal within ten (10) days after the notice of appeal is filed. The notice of appeal and response shall be mailed to the opposing party on the day it is filed. If the appellant is the applicant for the license, the appellee shall in all cases be the Alcohol Beverage Hearing Officer. If the appellant is a person who filed a notice of appearance or the Community, the appellee shall in all cases be the applicant. In the event there is more than one Notice of Appeal filed, the appeals shall be consolidated by the Clerk and only one response shall be filed to the consolidated appeals.

(ii) *Costs.* There shall be posted with the Clerk of the Salt River Pima-Maricopa Indian Community Court a cash fee of \$25.00 to cover court costs.

(iii) *Grounds for appeal.* The court shall determine the appeal upon the findings of fact and decision entered in the case by the Alcohol Beverage Hearing Officer.

(iv) *Findings of fact.* The findings of fact shall be presumed to be without reversible error. The presumption may be overcome by a sworn written statement presented to the court at the time of the filing of the notice of appeal which establishes on the basis of the statement, any one or more of the following grounds:

(A) That a witness ready and willing to testify at the time of the hearing on behalf of the appellant was not allowed by the Alcohol Beverage Hearing Officer

to take the witness stand and testify, and such testimony would have materially altered the decision of the Alcohol Beverage Hearing Officer.

(B) That the Alcohol Beverage Hearing Officer refused to admit documentary or other physical evidence, and such evidence would have materially altered the decision of the Alcohol Beverage Hearing Officer.

(C) That after the hearing the appellant discovered material evidence which, with reasonable diligence, could not have been discovered and produced at the hearing, and such evidence would have materially altered the decision of the Alcohol Beverage Hearing Officer. In the event the court finds the presumption is overcome pursuant to this subsection, the court shall remand the case back to the Alcohol Beverage Hearing Officer for the limited purpose of hearing only the excluded or new evidence and any evidence presented in rebuttal to such evidence. The hearing will be held within ten (10) days after the order of the court has been filed and served upon the appellants and appellee. At the conclusion of such remand hearing, the Alcohol Beverage Hearing Officer shall, within ten (10) days of the hearing, make and enter such amended findings of fact and decision as the Alcohol Beverage Hearing Officer determines that the evidence adduced at the remand hearing requires. If the Alcohol Beverage Hearing Officer determines that the prior findings of fact requires no amendment, the Alcohol Beverage Hearing Officer will issue a decision reaffirming its prior findings of fact and decision. The findings of fact and decision will be transmitted to the court and such findings of fact and decision will not be subject to a separate appeal.

(v) *Decision.* The court shall determine whether the decision is supported by the findings of fact and the law. Any party to the case may request an opportunity to appear before the court prior to its decision to give the court such party's view of the case. The other party or parties shall be given adequate notice of the hearing and an opportunity to present such party's or parties' view of the case. Such views shall be presented orally by the parties or their advocates and shall only deal with the grounds relied on by the appellant as set out in the notice of appeal. The hearing shall be limited to one hour and the time will be equally divided between the appellant and the appellee. If the court finds that the decision is incorrect, it shall issue a new decision correctly stating the decision. Such decision shall be final and not subject to rehearing, review or appeal.

(5) *Records of application, permit and proceedings.* A complete record of all applications, actions taken thereon, and any licenses issued shall be maintained by the Community and shall be open for public inspection at the Office of Alcohol Beverage Control.

(g) Licenses shall be issued for a period of one year and are renewable on application to the Office of Alcohol Beverage Control which will renew on payment of renewal application fee and annual license fee.

(h) Licenses issued under this ordinance are non-transferable without the prior approval of the Alcohol Beverage Hearing Officer after the application process has been completed.

(i) The Office of Alcohol Beverage Control, the Department of Public Safety or the Community Manager may cite a licensee to appear before the Alcohol Beverage Hearing Officer for a revocation hearing upon allegations of violations under Section 2 hereof.

(j) Any license issued pursuant to this ordinance may be revoked or suspended after a hearing before the Alcohol Beverage Hearing Officer upon a finding that the licensee is operating the premises in violation of this ordinance or the regulations adopted pursuant to it, or the laws of the Community or that the license would not have been originally issued had the facts in evidence at the time of any revocation hearing been known at the time of the application for a license.

6. Scope of Ordinance

Except for Article I and III of Chapter 14 of the Code of Ordinances of the Salt River Pima-Maricopa Indian Community, this Ordinance constitutes the entire law of the Community in regard to the sale and/or distribution of alcoholic beverages within the Community.

7. Repeal of Ordinance

Article II of Chapter 14 of the Code of Ordinances of the Community is repealed.

Dated: April 28, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98-12278 Filed 5-7-98; 8:45 am]

BILLING CODE 4310-02-1

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the *Federal Register*, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Fifth Renewal of Agreement between the Northern Cheyenne Tribe and the State of Montana regarding Class III gaming on the Northern Cheyenne Reservation which was executed on February 17, 1998.

DATES: This action is effective May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219-4068.

Dated: April 30, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98-12261 Filed 5-7-98; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the *Federal Register*, notice of approved Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment II to the Amended Gaming Compact Between the Sisseton-Wahpeton Sioux Tribe and the State of South Dakota, which was executed on January 13, 1998.

DATES: This action is effective May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219-4068.

Dated: April 30, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98-12260 Filed 5-7-98; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-062-1410-00-P; F-19155-4]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 120 acres. The lands involved are in the vicinity of Birch Creek, Alaska, within T. 19 N., R. 7 E. and T. 17 N., R. 11 E., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until June 8, 1998, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Elizabeth Sherwood,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98-12237 Filed 5-7-98; 8:45 am]

BILLING CODE 4310-JA-U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-050-1150-00-G8-0170]

Prineville District; Cave Closure; Oregon

May 1, 1998.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that Stout Cave, Deschutes County, Oregon, is closed yearlong to all visitor use for a three-year period ending on May 1, 2001.

Effective immediately, Stout Cave, in Deschutes County, Oregon, is closed to all visitor use (caving, sport climbing, etc.) for a three-year period ending on May 1, 2001. The term "cave" applies to any naturally occurring void, cavity, recess, or system of interconnected passages which occurs beneath the surface of the earth and to any natural pit, sinkhole, or other feature which is an extension of the entrance. The term "sinkhole" applies to the area below the rim and extending to the cave's entrance. The purpose of this closure is to protect roosting western big-eared bats from human disturbance. This Special Status species is extremely sensitive to human disturbance. Also, this closure is necessary in order to determine the specific type and location of bat use in the absence of human disturbance. Current levels of human disturbance prevent further evaluation of bat use. Without this information, impacts to biota from current and proposed human uses at the cave cannot be analyzed. BLM cave management policy directs that protective measures, including cave closures, be implemented where known or potential adverse impacts to sensitive animals is present. Closure needs will be re-evaluated at the end of the three-year closure period. Exemptions to this closure will apply to administrative personnel for monitoring purposes; other exemptions to this restriction may be made on a case-by-case basis by the authorized officer. Exemptions could include approved research, essential search and rescue, and other emergency actions or administrative operations for the protection of cave resources. The authority for this closure is 43 CFR 8364.1: Closure and restriction orders.

A more specific location of public lands under this closure order is not provided in order to protect sensitive cave resources. Cave locations are exempt from the Freedom of Information Act under the Federal Cave Resources Protection Act of 1988.

FOR FURTHER INFORMATION CONTACT: Sarah Nichols, Cave Protection Specialist, BLM Prineville District, P.O. Box 550, Prineville, Oregon 97754, telephone (541) 416-6725.

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0-7.

Dated: May 1, 1998.

James G. Kenna,
Deschutes Area Manager, Prineville District Office.

[FR Doc. 98-12194 Filed 5-7-98; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(MT-060-08-1610-00, 1616P)

Notice of Availability of the Draft Oil and Gas Supplemental Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the National Environmental Policy Act the Bureau of Land Management (BLM) has prepared a Draft Oil and Gas Supplemental Resource Management Plan and Environmental Impact Statement (RMP/EIS). This is a draft supplement to the 1992 Judith-Valley-Phillips RMP and is available to the public for a 90-day review period. The Draft Oil and Gas Supplemental RMP/EIS addresses two additional alternatives for oil and gas leasing on 3.4 million acres in northcentral Montana: Fergus, Petroleum, Judith Basin, Phillips, and Valley Counties and the southern portion of Chouteau County. One of the alternatives would avoid oil and gas leasing in areas with valuable wildlife habitat. The other alternative, the preferred alternative, would provide for oil and gas leasing while protecting other resource values through stipulations or closing areas where resource values are not compatible with exploration and development.

DATES: The agency must receive comments on or before August 6, 1998.

ADDRESSES: Address all comments to David L. Mari, District Manager, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457-1160.

Copies of the Draft Oil and Gas Supplemental RMP/EIS are available from the Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457-1160.

Public reading copies will be available for review at the following Bureau of Land Management locations: Montana State Office, 222 North 32nd Street, Billings, Montana; Lewistown District Office, Airport Road, Lewistown, Montana; Phillips Resource Area, 501 S 2nd Street East, Malta, Montana; and Valley Resource Area, Hwy 2 W, Glasgow, Montana.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, 406-538-7461.

SUPPLEMENTARY INFORMATION: In September 1988, the National Wildlife Federation protested the issuance of oil and gas leases by the BLM in the State of Montana. The reasons for the protest were an inadequate analysis under the National Environmental Policy Act and non-compliance with the Endangered Species Act. The BLM's November 1988 decision on this protest was that BLM would suspend lease issuance on tracts with special wildlife stipulations until a new RMP/EIS was completed meeting the Bureau's supplemental program guidance.

In September 1988, the BLM issued a notice of intent to prepare an RMP/EIS for public lands in northcentral Montana. One of the issues identified for the RMP was oil and gas leasing. The draft Judith-Valley-Phillips RMP/EIS was released for public comment in July 1991. The National Wildlife Federation comments on the draft raised the concern that the November 1988 decision was not mentioned, much less identified as a practical alternative. The BLM responded to this comment in the final Judith-Valley-Phillips RMP/EIS that areas nominated for lease which require special stipulations to protect wildlife would not be offered for lease but this was an interim policy until the RMP/EIS was completed and not an alternative.

In December 1992 the BLM released the final Judith-Valley-Phillips RMP/EIS for a 30 day protest period. In January 1993, the National Wildlife Federation protested the final RMP/EIS because the document neither mentioned the 1988 decision nor identified an alternative of carrying the temporary arrangement forward to avoid leasing valuable wildlife habitat. After careful review of this issue by the BLM's Director the protest warranted a supplement to the final RMP/EIS addressing an alternative for oil and gas leasing that would avoid leasing valuable wildlife habitat.

(Authority: Sec. 202, Pub. L. 94-579, 90 Stat. 2747 (43 U.S.C. 1712) and Sec. 102, Pub. L. 91-190, 83 Stat. 852 as amended (42 U.S.C. 4332))

Dated: April 27, 1998.

B. Gene Miller,

Associate District Manager.

[FR Doc. 98-12187 Filed 5-7-98; 8:45 am]

BILLING CODE 4310-0N-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU-60470, UTU-69463]

Utah; Proposed Reinstatement of Terminated Oil and Gas Leases

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas leases UTU-60470 and UTU-69463 for lands in Carbon County, Utah, was timely filed and required rentals accruing from April 1, 1998, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$5 per acre and 16-2/3 percent, respectively. The \$500 administrative fee for each lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate leases UTU-60470 and UTU-69463, effective April 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Group Leader, Minerals Adjudication Group.

[FR Doc. 98-12211 Filed 5-7-98; 8:45 am]

BILLING CODE 4310-00-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-370-1430-01, CA 15801, CAS 308, CAS 309, CA 6549, CAS 310]

Notice of Realty Action: Intent To Convey Lands for Landfill Purposes, Modoc County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Intent to convey lands for landfill purposes.

SUMMARY: The County of Modoc has requested that five landfills currently

leased from the Bureau of Land Management be patented to the County under the authority of the Recreation and Public Purposes Act of June 14, 1926, as amended. Pending the completion of the Environmental Assessment (EA) and the Landfill Transfer Audit (LTA), it is the intent of the Bureau of Land Management to convey the lands to the County of Modoc. The Intent to Convey involves the following lands located in the County of Modoc, California: Federal Lands to be conveyed to the County of Modoc:

Mount Diablo Meridian, California

1. Cedarville: T 43 N, R 17 E, Sec. 34, Lot 3, 6, E 1/2 NE 1/4 SW 1/4; CA 15801 containing 60.00 acres.
2. Eagleville: T 40 N, R 17 E, Sec. 21, NE 1/4 SE 1/4 (within); CAS 308
3. Lake City: T 43 N, R 16 E, Sec. 3, N 1/4 NW 1/4 (within); CAS 309
4. Likely: T 39 N, R 13 E, Sec. 11, NE 1/4 SW 1/4 (within); CAS 310
5. Davis Creek: T 45 N, R 14 E, Sec. 29, NE 1/4 NE 1/4 NE 1/4 (within); CA 6549

SUPPLEMENTARY INFORMATION:

Conveyance is consistent with current BLM land use planning and is in the public interest. The County of Modoc is a qualified applicant for conveyance. Final determination of the Intent to Convey will be made using public comments, an Environmental Assessment (EA) and a Landfill Transfer Audit (LTA). The conveyance document (patent) for the Federal public lands will include the following terms, conditions or reservations to the United States:

1. "A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945)."
2. Provisions of the Recreation and Public Purposes (R&PP) Act and applicable regulations of the Secretary of the Interior.
3. All valid and existing rights documented on the official public land records at the time of patent issuance.
4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Upon publication of this Notice in the **Federal Register**, the public lands described above are segregated from all forms of appropriation under the public land laws, including the mineral laws except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws for a period of five years from the date of publication. The segregative effect shall terminate as provided by 43 CFR 2741.5(h)(2).

Detailed information concerning the Intent to Convey is available at the

Alturas Resource Area Office, 708 West 12th Street, Alturas, CA, 96101 and Surprise Resource Area Office, 602 Cressler Street, CA 96104 or by contacting Jerry Wheeler at 530-233-4666 or Joe McFarlan at 530-279-6101. For a period of 45 days after the initial publication of this Notice in the **Federal Register**, interested parties may submit comments to the Alturas Field Manager, Alturas Field Office at the above address. Send comments to the Surprise Field Manager, Surprise Field Office at P.O. Box 460, Cedarville, CA 96104.

Any adverse comments will be reviewed by the California State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice in the **Federal Register**.

Susan T. Stokke,

Manager, BLM Surprise Field Office.

[FR Doc. 98-12282 Filed 5-7-98; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(MT-060-08-1610-00, 1617P)

Notice of Intent To Prepare a Land Disposal Plan Amendment for the Judith-Valley-Phillips and West HiLine Resource Management Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) will amend the Judith-Valley-Phillips and West HiLine Resource Management Plans (RMPs). The Bureau of Land Management is amending the RMPs to allow the disposal of small isolated tracts which were not specifically identified and listed in the RMPs. The public land being considered is located in Blaine, Chouteau, Fergus, Glacier, Hill, Judith Basin, Liberty, Petroleum, Phillips, Toole, and Valley Counties, Montana. An environmental assessment will be prepared by the Lewistown District Office to analyze the impacts of this proposal and any alternatives.

DATES: Comments and recommendations on this notice to amend the Judith-Valley-Phillips and West HiLine RMPs should be received on or before June 8, 1998.

ADDRESSES: Address all comments concerning this notice to David L. Mari, District Manager, Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457-1160.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, 406-538-7461.

SUPPLEMENTARY INFORMATION: The West HiLine (1988) and Judith-Valley-Phillips (1994) Resource Management Plans (RMP) identified specific parcels of public land for disposal. Under these RMPs, a plan amendment is required for any land exchange, or sale, that involves public land not specifically identified for disposal and listed in the RMPs no matter how small and insignificant the sale or exchange. Over the past seven years this has required six plan amendments to complete eight minor land sales exchanges which ranged in size from 20 to 382 acres. The purpose of each amendment was to dispose of small isolated tracts that were not identified in the RMPs, but upon closer examination did meet disposal criteria. Completing this plan amendment would allow the BLM the option, and flexibility, to identify additional disposal tracts in the future, provided they meet the disposal criteria and the management objectives in the RMPs. Under the plan amendment, additional disposal tracts would not be identified for major land exchanges that do not meet RMP objectives.

(Authority: Sec. 202, Pub. L. 94-579, 90 Stat. 2747 (43 U.S.C. 1712))

Dated: April 29, 1998.

M. James Feist,

Acting District Manager.

[FR Doc. 98-12272 Filed 5-7-98; 8:45 am]

BILLING CODE 4310-0N-P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan / Draft Environmental Impact Statement, Marsh-Billings National Historical Park, Vermont

AGENCY: National Park Service Interior.

ACTION: Notice of availability of Draft General Management Plan/Draft Environmental Impact Statement.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, this notice announces the availability for public review of a Draft General Management Plan/Draft Environmental Impact Statement for Marsh-Billings National Historical Park, Windsor County, Vermont. In accordance with the National Environmental Policy Act 102(2)(C) of 1969, the environmental impact statement was prepared to assess the impacts of implementing the general management plan.

The Draft General Management Plan/Draft Environmental Impact Statement presents a Proposal and a Management Alternative, then assesses the potential environmental and socioeconomic effects of the actions presented on site resources, visitor experience, and the surrounding area. The Proposal and the Alternative differ in their approaches to management. The Proposal calls for a strong partnership between the Woodstock Foundation, Inc. (which operates Billings Farm & Museum, located on private property within the park boundary), and the National Park Service to manage the park. The Alternative describes how the park could operate if these two organizations worked independently.

DATES: The formal public review period is to start on or about May 8, 1998, for 60 days (watch for Environmental Protection Agency Federal Register Notice on May 8). Two public forums will be held during the month of May. The dates, times, and location of the two public forums will be advertised in local media outlets.

SUPPLEMENTARY INFORMATION: Copies of the document will be available for review at the following locations:

Marsh-Billings National Historical Park,
54 Elm Street, Woodstock, VT 05091
Woodstock Town Hall, Woodstock,
Vermont
Norman Williams Public Library,
Woodstock, Vermont

To request copies of the document, please call (802) 457-3368 ext. 14, fax (802) 457-3405, or write to the Superintendent, Marsh-Billings National Historical Park, PO Box 178, Woodstock, VT 05091.

Comments on the Draft General Management Plan/Draft Environmental Impact Statement should be submitted to Rolf Diamant, Superintendent, Marsh-Billings National Historical Park, PO Box 178, Woodstock, VT 05091. You can also fax your comments to the Superintendent at (802) 457-3405.

Dated: April 23, 1998.

Rolf Diamant,
Superintendent, Marsh-Billings National
Historical Park.

[FR Doc. 98-12243 Filed 5-7-98; 8:45 am]
BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statements;
Availability, Etc: Natchez Trace
Parkway, MS Southern Terminus

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Draft Environmental Impact Statement for the Southern Terminus of the Natchez Trace Parkway, Mississippi.

SUMMARY: This notice announces the availability of a draft environmental impact statement (EIS) for the Southern Terminus (Section 3X) of the Natchez Trace Parkway. This notice also announces the intention to hold public meetings for the purpose of receiving comments about the draft EIS.

DATES: Comments on the draft EIS should be received no later than July 7, 1998. Public meetings will be held in Natchez, MS, and Jackson, MS. The dates and times of the public meetings will be announced in local media in those cities, but they will be held no sooner than 30 days following the publication of this announcement in the Federal Register.

ADDRESSES: Comments on the draft EIS shall be submitted to: Superintendent Wendell A. Simpson, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, MS 38801, (601) 680-4004.

The locations of the public meetings will be announced in the local media in the cities where they will be held.

Public reading copies of the EIS will be available for review at the following locations:

1. Natchez Trace Parkway Headquarters, 2680 Natchez Trace Parkway, Tupelo, Mississippi 38801, (601) 680-4005
2. Natchez National Historical Park, 504 S. Canal Street, Natchez, Mississippi 39120, (601) 442-7047
3. Judge George W. Armstrong Library, 220 South Commerce Street, Natchez, Mississippi 39120, (601) 445-8862
4. Jackson/Hinds Library System, Eudora Wetly Library, 300 North State Street, Jackson, Mississippi 39201, (601) 968-5809. (This is the Headquarters or main library in Jackson.)

A limited number of copies of the draft EIS are also available from the office of the Superintendent, Natchez Trace Parkway.

SUPPLEMENTARY INFORMATION: This Draft Environmental Impact Statement for the Southern Terminus (Section 3X) of the Natchez Trace Parkway presents a proposal and two alternative locations for the Southern Terminus of the Natchez Trace Parkway. The parkway in this region currently ends at U.S. Highway 61, about 7.5 miles east of the city of Natchez. An unopened section of the parkway has been partially constructed from U.S. Highway 61 to U.S. Highway 84/98, about 3.6 miles east of the Natchez city limits.

Alternative 1, the no action alternative, would construct an

interchange at U.S. 84/98 and make that point the southern terminus of the parkway. The proposal, alternative 2, would extend the parkway another 4.2 miles from U.S. 84/98 toward Natchez to terminate at Liberty Road, where an interchange would be constructed. Alternative 3 would expend the parkway about 4.3 miles from U.S. 84/98 to terminate with an interchange at Seargent Prentiss Drive. Alternative 3 is the only alternative which would not require the acquisition of some additional property. In every alternative, parkway users would exit the parkway and utilizing existing city streets to reach the city center or other locations in Natchez. The EIS evaluates the potential environmental impacts associated with the three terminus locations and their associated parkway routing alternatives.

Dated: April 29, 1998.

Daniel W. Brown,
Acting Regional Director, Southeast Region.
[FR Doc. 98-12241 Filed 5-7-98; 8:45 am]
BILLING CODE 3210-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

Joshua Tree National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Joshua Tree National Park Advisory Commission (Commission) will be held from 9:00 a.m. (PDT) until 3:00 p.m. on Saturday, June 13, 1998, at the Helen Gray Center, on Whitefeather Drive in the village of Joshua Tree, California. The Commission will hear presentations on issues related to the Backcountry and Wilderness Management Plan, which serves as an amendment to the General Management Plan for Joshua Tree National Park, and will develop Commission by-laws.

The Advisory Commission was established by Pub. L. 103-433, section 107 to advise the Secretary concerning the development and implementation of a new or revised comprehensive management plan for Joshua Tree National Park.

Members of the Commission include:

Mr. Chuck Bell—Planner
Ms. Diane Benson—Town of Yucca Valley
Ms. Cyndie Bransford—Recreational Climbing
Mr. Gary Daigneault—Property Owner
Hon. Kathy Davis—County of San Bernardino
Mr. Brian Huse—Conservation

Mr. Michael McCormack—Property Owner
Mr. Julian McIntyre—Conservation
Mr. Roger Melanson—Homeowner
Mr. Ramon Mendoza—Native American Interest
Ms. Leslie Mouriquand—Planner
Mr. Richard Russell—All Wheel Drive Vehicle Interest
Dr. Byron Walls—Mining Interest
Hon. Roy Wilson—County of Riverside
Mr. Gilbert Zimmerman—Tourism

Included on the agenda for this public meeting will be:

- Discussion of the Backcountry and Wilderness Management Plan
- designation of a trail system
- designation of unpaved roads
- climbing management
- roadside auto camping
- major artificial water sources for wildlife
- area closures
- establishment of group size limits
- implementation of the Department of the Interior's Desert Tortoise Recovery Plan

Development of Commission by-laws

The meeting is open to the public and will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. For copies, please contact Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, California 92272 at (760) 367-5502.

Dated: April 24, 1998.

Ernest Quintana,
Superintendent.
[FR Doc. 98-12242 Filed 5-7-98; 8:45 am]
BILLING CODE 4310-70-P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 10-98]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Friday, May 22, 1998, 9:30 a.m.

SUBJECT MATTER: Hearings on the Record on Objections to Proposed Decisions on claims against Albania, as follows:

1. Claim No. ALB-042 Xhani Femera, et al.
2. Claim No. ALB-072 Thomas M. Toma.
3. Claim No. ALB-092 Thanos A. Laske.
4. Claim Nos. ALB-137 Klementina Sevo, ALB-138 Maranthi Fili.
5. Claim No. ALB-153 Bibi Xhemal Bejleri.
6. Claim No. ALB-173 Marigo Vasiliades, et al.
7. Claim No. ALB-187 Helena Liolin.
8. Claim No. ALB-203 Stavri G. Buri.
9. Claim No. ALB-220 Gjergji Gjeli.
10. Claim No. ALB-293 Jorgo Stoli.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, N.W., Room 6002, Washington, DC 20579. Telephone: (202) 616-6988.

Dated at Washington, DC, May 6, 1998.

Judith H. Lock,
Administrative Officer.
[FR Doc. 98-12420 Filed 5-6-98; 12:25 pm]
BILLING CODE 4410-BA-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; application for suspension of deportation or special rule cancellation of removal (Pursuant to Section 203 of Public Law 105-100).

The Department of Justice, Immigration and Naturalization Service (INS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 7, 1998.

Section 203 of Public Law 105-100, the Nicaraguan Adjustment and Central American Relief Act (NACARA), allows certain individuals to apply for suspension of deportation or cancellation of removal under special rules. This information collection is contained in the NACARA legislation which is being implemented by

proposed rulemaking. The regulation allows many of these individuals to affirmatively apply for the benefit of suspension of deportation or special rule cancellation of removal with the INS.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection.

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100).

(3) *Agency from number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-881, Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by nonimmigrants to apply for suspension of deportation or special rule cancellation of removal. The information collected on this form is necessary in order for the INS to determine if it has jurisdiction over an individual applying for this benefit under section 203 of Public Law 105-100.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300,000 responses at 5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: 1,500,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 4, 1998.

Robert B. Briggs,
Department Clearance Officer, United States
Department of Justice.

[FR Doc. 98-12230 Filed 5-7-98; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be

enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on federal and Federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume cause procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and superseded decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None.

Volume II:

None.

Volume III:

None.

Volume IV:

None.

Volume V:

None.

Volume VI:

None.

Volume VII:

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487-4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 1st day of May 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98-11984 Filed 5-7-98; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Training Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the submission of training plans as addressed in 30 CFR 48.3 and 48.23. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before July 7, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203-1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235-1910 (voice) or (703) 235-5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203-1984. Mr. Fesak can be reached at gfsak@msha.gov

(Internet E-mail), (703) 235-8378 (voice), or (703) 235-1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, *et seq.* (Mine Act), recognizes that the role of education and training in the improvement of miner health and safety is an important element of federal efforts to make the nation's mines safer places in which to work. Section 115(a) of the Mine Act states that "each operator of a coal or other mine shall have a health and safety program which shall be approved by the Secretary." Title 30, C.F.R. §§ 48.3 and 48.23 specifically address the requirements for training plans. The standards are intended to ensure that miners will be effectively trained in matters affecting their health and safety, with the ultimate goal being the reduction of frequency and severity of the injuries in the nation's mines.

II. Current Actions

Approved training plans are used to implement training programs for training new miners, training newly employed experienced miners, training miners for new tasks, annual refresher training, and hazard training. The plans are also used by MSHA to ensure that all miners are receiving the training necessary to perform their jobs in the safest manner possible.

Type of Review: Extension

Agency: Mine Safety and Health Administration.

Title: Training Plans—30 C.F.R. §§ 48.3 and 48.23

OMB Number: 1219-0009.

Affected Public: Business or other for-profit institutions.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hrs)	Burden (hrs)
48.3 and 48.23	1,300	Annually	1,300	8	10,400
Totals	1,300	Annually	1,300	8	10,400

Total Burden Cost (capital/startup): \$0

Total Burden Cost (operating/maintaining): \$2,600.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 1, 1998.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 98-12274 Filed 5-7-98; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 98-5]

Increase of Statutory and Other Copyright Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public hearings.

SUMMARY: The Copyright Office of the Library of Congress will conduct a public hearing on increasing statutory and other copyright filing fees in accordance with technical amendments to the copyright law (Pub. L. 105-80, 111 Stat. 1529 (1997)). The Office will issue a more detailed Notice of Information proposing specific fees several months before the public hearing in order to give an interested party time to file a written comment and/or notify the Office that he or she wishes to participate in the public hearing.

DATES: The hearing will be held on Thursday, October 1, 1998, beginning at 10:00 a.m. Additional hearing dates will be announced if necessary.

ADDRESSES: The hearing will be held in the Library of Congress, James Madison Memorial Building, Dining Room A, First and Independence Avenue, S.E., Washington, D.C. 20559-6000.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel at (202) 707-8380.

Dated: May 4, 1998.

Marilyn J. Kretsinger,
Assistant General Counsel

[FR Doc. 98-12131 Filed 5-7-98; 8:45 am]

BILLING CODE 1410-30-P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: May 26-27, 1998; 8:00 a.m.-6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: H. Frederick Bowman, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306-1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including

technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b)(3), (4) and (6) of the Government in the Sunshine Act.

Dated: May 4, 1998.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 98-12198 Filed 5-7-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information Intelligent Systems(1200).

Date and Time: May 28-29, 1998 8:30 am-5:00 pm.

Place: The Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Gary Strong, Acting Deputy Division Director National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 306-1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Computation and Social Systems Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b)(3), (4) and (6) of the Government in the Sunshine Act.

Dated: May 5, 1998.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 98-12197 Filed 5-7-98; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-352]

Philadelphia Electric Company; Limerick Generating Station, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment

to Facility Operating License No. NPF-39, issued to Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station (LGS), Unit 1, located in Montgomery and Chester Counties, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would approve the implementation of a plant modification to support the installation of replacement suction strainers for the emergency core cooling systems (residual heat removal and core spray) pumps at LGS, Unit 1.

The proposed action is in accordance with the licensee's application for amendment dated October 6, 1997, as supplemented by letter dated February 2, 1998.

The Need for the Proposed Action

On May 6, 1996, the NRC issued NRC Bulletin 96-03, "Potential Plugging of Emergency Core Cooling Suction Strainers by Debris in Boiling Water Reactors", that requested addressees to implement appropriate procedural measures and plant modifications to minimize the potential for clogging of emergency core cooling system (ECCS) suppression pool suction strainers by debris generated during a loss-of-coolant accident (LOCA) and requested that addressees report to the NRC whether they intend to implement the requested actions.

In response to the above cited bulletin, the licensee proposed a plant modification to install replacement suction strainers in the emergency core cooling (ECCS) pumps. The replacement strainer surface areas, which are substantially larger than the currently installed strainers, are required to reduce potential strainer clogging due to debris in the suppression pool following a postulated loss-of-coolant accident.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the installation of the replacement strainers in the ECCS pumps reduces potential strainer clogging due to debris in the suppression pool following a loss-of-coolant accident and does not change the manner in which the plant is being operated or the environmental impacts of operation. The proposed action involves features entirely within the protected area as defined in 10 CFR Part 20.

The change will not increase the probability or consequences of

accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or collective occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Limerick Generating Station, Unit 1.

Agencies and Persons Consulted

In accordance with its stated policy, on April 10, 1998, the staff consulted with the Pennsylvania State official, Mr. David Ney of the Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 6, 1997, as supplemented by letter dated February 2, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street,

NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania.

Dated at Rockville, Maryland, this 4th day of May 1998.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate 1-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-12280 Filed 5-7-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NUREG-1625]

Permanently Defueled Westinghouse Plant; Proposed Standard Technical Specifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG-1625, "Proposed Standard Technical Specifications for Permanently Defueled Westinghouse Plants," a draft report for comment dated March 1998.

DATES: Submit comments by August 6, 1998.

ADDRESSES: Draft NUREG-1625 is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555-0001. A free single copy of draft NUREG-1625 may be requested by writing to U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555-0001.

FOR FURTHER INFORMATION CONTACT: Michael Webb, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: 301-415-1347.

SUPPLEMENTARY INFORMATION: Given the number of nuclear power plants that have permanently shutdown, the NRC has recognized the need for generic guidance on appropriate Technical Specifications for permanently shutdown power reactors.

This NUREG report describes the NRC staff's proposed Standard Technical Specifications for Permanently Defueled Westinghouse Plants (STS PDW). The report includes a detailed discussion of the strategy followed for determining the contents of the STS PDW. The proposed STS PDW is being published

to provide the general public and the nuclear community with an opportunity for comment.

The contents of the proposed STS PDW are based primarily on the Standard Technical Specifications, Westinghouse Plants (NUREG-1431, Revision 1, April 1995), which in turn were based on the criteria in the NRC Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors (SECY-93-067, 58 FR 39132; July 22, 1993). The proposed STS PDW reflect the experience gained in the development of the Permanently Defueled Technical Specifications (PDTs) for the Trojan Nuclear Plant, the first PDTs approved by the NRC that were based on the improved STS for Westinghouse Plants. As licensees begin to plan permanent shutdown of their nuclear power plants, they are encouraged to adopt the STS PDW to an extent that is practical and consistent with their licensing basis.

Dated at Rockville, Maryland, this 1st day of May 1998.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Director, Non-Power Reactors and Decommissioning Project Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98-12275 Filed 5-7-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-456, STN 50-457; STN 50-454, STN 50-455; 50-237, 50-249; 50-373, 50-374; 50-254, 50-265; And 50-295, 50-304 License Nos. NPF-72, NPF-77; NPF-37, NPF-66; DPR-19, DPR-25; NPF-11, NPF-18; DPR-29, DPR-30; And DPR-39, DPR-48]

Commonwealth Edison Company; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated March 25, 1998, the National Whistleblower Legal Defense and Education Fund and Mr. Randy Robarge (the Petitioners) have requested that the U.S. Nuclear Regulatory Commission (NRC) take immediate corrective action and imposition of civil penalties against Commonwealth Edison Company (ComEd).

As grounds for their request, the Petitioners assert that (1) ComEd's assertion in a pleading in a case before the U.S. Department of Labor, 98-ERA-2, that the filing of a "Problem Identification Form" (PIF) does not constitute protected activity fosters an atmosphere of intimidation and chills

the reporting of safety concerns in violation of 10 CFR 50.7, and (2) ComEd intentionally imposed "restrictive confidentiality" aimed at prohibiting employees from providing information to the NRC in violation of 10 CFR 50.7.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation. The Petitioners' request for immediate action was denied by letter dated April 29, 1998.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, DC 20003-1527.

Dated at Rockville, Maryland, this 29th day of April 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98-12276 Filed 5-7-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Notice of Publication of Draft Commission Paper "Combined License Review Process"

The U.S. Nuclear Regulatory Commission (NRC) has issued a draft version of a Commission paper entitled "Combined License Review Process" and is requesting public comments on this paper. Subpart C of 10 CFR part 52 presents a process for issuing combined licenses (COLs) for nuclear power facilities. A COL is a single license authorizing construction and conditional operation of a nuclear power facility. This draft paper informs the Commission about the NRC staff's positions on a number of issues relating to the COL review process, including: contents of a COL application; COL inspections, tests, analyses, and acceptance criteria (ITAAC); ITAAC for emergency plans; verification of ITAAC; role of the quality assurance program in ITAAC; and emergency plans for early site permits.

An earlier version of the draft paper was issued in April 1993. The NRC received comments from the nuclear industry (NUMARC) on this paper. As a result, several changes were made to the draft paper. The most significant of these changes include: removing a proposed license condition regarding detailed design drawings, removing any mention of hold points in the construction inspection process, revising the format of the sample

license, and shortening the duration of a combined license to conform with the Atomic Energy Act of 1954, as amended. An amendment to the Atomic Energy Act has been proposed to correct the COL duration issue.

A copy of the draft paper has been placed in NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037, for review by interested persons. Questions and comments should be directed to Jerry N. Wilson, Mail Stop O-10 D22, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Email:jnw@nrc.gov or telephone: 301-415-3145. Comments should be submitted within 120 days of the publication of this notice.

Dated at Rockville, MD, this 1st day of May 1998.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Standardization Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98-12279 Filed 5-7-98; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23168; 812-10598]

Dean Witter Select Equity Trust, et al.; Notice of Application

May 1, 1998.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").
ACTION: Notice of application under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(F)(ii) and 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit a trust of funds relying on section 12(d)(1)(F) to offer units with a sales load in excess of the 1.5% limit in section 12(d)(1)(F)(ii) of the Act. In addition, the requested order would permit a terminating series of the trust to sell certain fund shares and fixed income securities issued by the United States government ("Treasuries") to a new series of the trust.

APPLICANTS: Dean Witter Reynolds Inc. (the "Sponsor" or "Dean Witter"); Dean Witter Select Equity Trust and Dean Witter Select Investment Trust (collectively, the "Trusts"); and certain subsequent series of the Trusts sponsored by Dean Witter (each, a "Trust Series").

FILING DATES: The application was filed on March 27, 1997, and amended on

October 15, 1997. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 26, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Two World Trade Center, New York, New York 10048. Attention: Steven M. Massoni.

FOR FURTHER INFORMATION CONTACT:

Elaine M. Boggs, Senior Counsel, at (202) 942-0572, or Christine Y. Greenlees, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (telephone (202) 942-8090).

Applicants' Representations

1. Each Trust Series will be a series of one of the Trusts, each a unit investment trust ("UIT") registered under the Act. Dean Witter will be the sponsor of each Trust Series.

2. The Sponsor intends to offer certain Trust Series based on an asset allocation model. The portfolio of each Trust Series will contain a different asset allocation of shares of one or more open-end investment companies or series thereof, none of which will be an affiliated person of applicants (the "Funds"), and, in some cases, Treasuries. The shares of the Funds will be deposited in each Trust Series at the shares' net asset value and the Treasuries will be valued by an independent evaluator (the "Independent Evaluator"), who will be a "qualified evaluator" as defined in rule 22c-1(b)(2) under the Act, based on the Treasuries' offer-side valuation.

3. Simultaneously with the deposit of Fund shares and Treasuries and/or cash with instructions to the Trust's trustee (the "Trustee") to purchase the securities, the Trustee will deliver to the Sponsor a certificate or receipt for units ("Units") representing the entire ownership of the Trust Series. The Units will be offered at prices based upon the aggregate underlying value of the Fund shares and Treasuries, plus a sales charge. The sales charge imposed on the Units will not, when aggregated with any sales charge or service fees paid by the Trust Series with respect to shares of the underlying Funds, exceed the limits set forth in rule 2830(d) of the National Association of Securities Dealers' ("NASD") Conduct Rules. A Trust Series may invest in a Fund with an asset-based sales charge, provided that any asset-based sales charge received by the Sponsor or the Trustee from a Fund will be rebated to the Trust Series. Although a Trust Series may invest in a Fund with an asset-based sales charge greater than .25% of the Fund's average net assets, if any of the asset-based sales charge is received by the Sponsor or the Trustee as a Fund distribution expense, that amount will not be retained by the Sponsor or the Trustee but will be paid to the Trust Series for the benefit of the Trusts' unitholders.

4. Each Trust Series will terminate approximately one year after it is offered for sale ("Rollover Series"). At that time, the Sponsor intends to create and offer a new Trust Series ("New Trust Series"), the portfolio of which will reflect the then current asset allocation model for the corresponding Trust Series. Investors in the Rollover Series may elect to invest in the New Trust Series.

5. In order to minimize the potential for overreaching, Dean Witter will certify in writing to the Trustee, within five days of each sale of securities from a Rollover Series to a New Trust Series: (a) that the transaction is consistent with the policy of both the Rollover and New Trust Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of the transaction, and (c) the price determined by the Independent Evaluator for the sale date of the Treasuries. The Trustee will then countersign the certificate, unless, in the event that the Trustee disagrees with the price listed on the certificate, the Trustee immediately informs Dean Witter orally of any such disagreement and returns the certificate within five days to Dean Witter with corrections duly noted. Upon Dean Witter's receipt of a corrected certificate, Dean Witter

and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, published list of prices for the date of the transaction.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities issued by another investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the value of the total assets of the acquiring company, or if securities issued by the acquired company and all other investment companies have an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(F) provides that section 12(d)(1) does not apply to securities purchased or otherwise acquired by a registered investment company if, immediately after the purchase or acquisition, not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company, and the acquiring company does not impose a sales load on its shares of more than 1.5%. In addition, no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days.

3. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) to permit a Trust Series to offer Units with a sales load in excess of the 1.5% limitation. For the reasons below, applicants believe that the requested relief meets the standards of section 12(d)(1)(J).

4. Applicants argue that section 12(d)(1) is intended to mitigate or eliminate actual or potential abuses that might arise when one investment company acquires shares of another investment company, including the excessive layering of sales charges. For the reasons stated below, applicants do not believe that their proposal will result in excessive sales charges.

5. While each Trust Series will charge a sales load, the Sponsor will deposit the Fund shares at net asset value (i.e., without any sales charge). To further limit the extent to which unitholders may pay indirectly for distribution costs of the underlying Funds, any asset-

based sales charges received by the Sponsor of the Trustee from a Fund with regard to the Fund shares will be rebated to the Trust Series. In addition, applicants have agreed as a condition to the relief that any sales charge assessed with respect to the Units of a Trust Series, when aggregated with any sales charge or service fees paid by the Trust Series with respect to securities of the underlying Funds, will not exceed the limits set forth in rule 2830(d) of the Conduct Rules of the NASD. As a result, the aggregate sales charges will not exceed the limit that otherwise could be charged at any single level.

6. Applicants believe that it is appropriate to apply the NASD's rules to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii). Applicants further believe that the condition subjecting any sales charges or service fees to the limits established by the NASD will provide ongoing regulation with the flexibility to accommodate continuing developments in the industry.

7. Administrative fees may be charged at both the Trust Series and underlying Fund levels. Applicants believe, however, that certain expenses of the Trusts may be reduced under the proposed arrangement. For example, when a Trust Series invests in Fund shares (whose net asset value is readily available), applicants anticipate that the evaluator would charge a lower fee, if any at all.

8. Applicants assert that the proposal will benefit potential unitholders as well as shareholders of the Funds. Applicants believe that a Trust Series provides a simple means through which investors can obtain a professionally selected and maintained mix of investment company shares in one package and at one sales load for a relatively small initial investment. In addition, applicants believe that purchasing shares in large quantities will enable a Fund to obtain certain economies of scale, and will benefit certain Funds by permitting them to carry a Trust Series on their books as a single shareholder account, even though there are numerous unitholders, and by providing them with a stable net asset base.

B. Section 17

1. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to or purchase securities from the company. Investment companies under common control are considered affiliates of one another. The Trust Series may be deemed to be under common control

because they have Dean Witter as a sponsor and, therefore, unable to sell and buy securities to and from each other without an exemption from section 17(a). Accordingly, applicants request relief to permit a Rollover Series to sell Fund shares and Treasuries to a New Trust Series.

2. Section 17(b) permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. For the reasons stated below, applicants believe that the terms of the transactions meet the standards of sections 6(c) and 17(b).

3. Rule 17a-7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of having common investment advisers, directors, and/or officers, to purchase securities from or sell securities to one another at an independently determined price, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a-7, other than paragraphs (b) and (e).

4. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor procedures for these transactions to assure compliance with the rule. Since a UIT does not have a board of directors, there can be no board review of the transaction. Applicants state, however, that review in the context of a UIT would serve little useful purpose in connection with Fund shares and Treasuries because independently verifiable prices are readily available.

5. Paragraph (b) of rule 17a-7 requires that the transactions be effected at the independent current market price of the security. The Fund shares and Treasuries would fall within the paragraph (b)(4) category of "all other securities," for which the current market price under rule 17a-7(b) is the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry.

6. With respect to Fund shares, applicants state that Fund shares do not trade at a bid or offer price but at an independently determined net asset value. Applicants state that the Funds' shares will be issued by investment companies that will not be affiliated with the Sponsor and that each Fund will calculate the net asset value of its shares daily. The net asset value would be the price at which the Rollover Series would sell Fund shares to the New Trust Series.

7. With respect to Treasuries, applicants state that the Treasuries would be sold by a Rollover Series to a New Trust Series at the Treasuries' offer-side evaluation. Other Treasuries acquired by the New Trust Series will be acquired at the offer-side evaluation and the New Trust Series would be valued during the Trusts' initial offering period based on the Treasuries' offer-side evaluation. Applicants state that, therefore, there will be uniformity as to price for all of the Treasuries evaluated (both Treasuries bought in the market and Treasuries purchased from a Rollover Series). In addition, all unitholders of the New Trust Series, both unitholders from a Rollover Series and new unitholders, will acquire Units with a value based on the offer-side evaluation of the Treasuries, which applicants state is consistent with the Trusts' acquisition cost.

8. Applicants believe that engaging in transactions for securities for which market quotations are readily available at an independently determined price will not disadvantage either Trust Series. Applicants state that the sales between Trust Series will reduce transaction costs to unitholders of the Trust Series and will reduce costs to the Fund. In addition, applicants state that the purchases and sales between Trust Series will be consistent with the policy of each Trust Series, as only securities that would otherwise be bought and sold on the open market pursuant to the policy of each Trust Series will be involved in the proposed transactions.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each Trust Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges or service fees charged with respect to Units of a Trust Series, when aggregated with any sales charges or service fees paid by the Trust Series with respect to securities of the underlying Funds, will not exceed the

limits set forth in rule 2830(d) of the NASD's Conduct Rules.

3. Each sale of Fund shares between the Trust Series will be effected at the net asset value of the Fund shares as determined by the Fund on the sale date. Each sale of Treasuries between the Trust Series will be effected at the Treasuries' offer-side evaluation as determined by an Independent Evaluator as of the evaluation time on the sale date. Such sales will be effected without any brokerage charges or other remuneration except customary transfer fees, if any.

4. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Series and New Trust Series.

5. The Trustee of each Rollover Series and New Trust Series will (a) review the procedures relating to the sale of securities from a Rollover Series and the purchase of securities for deposit in a New Trust Series and (b) make changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a), (c), and (d) of rule 17a-7.

6. A written copy of these procedures and a written record of each transaction pursuant to the requested order will be maintained as provided in rule 17a-7(f).

7. No Trust Series will acquire securities of an underlying Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-12265 Filed 5-7-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Homestead Village Incorporated, Common Stock, \$.01 Par Value) File No. 1-12269

May 4, 1998.

Homestead Village Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and

registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security also is listed for trading on the New York Stock Exchange, Inc. ("NYSE") pursuant to a Registration Statement Form 8-A that became effective on March 26, 1998. Trading in the Security on the NYSE commenced on April 1, 1998, and concurrently therewith the Security was suspended from trading on the Amex.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing and registration on the Exchange and by setting forth in detail to the Exchange the facts and reasons supporting the proposed withdrawal. The Company decided to withdraw its Security from listing and registration on the Amex, because of the Security's listing and registration on the NYSE.

By letter dated March 27, 1998, the Exchange informed the Company that it would not object to the withdrawal of the Company's Security from listing and registration on the Amex.

By reason of Section 12(b) of the Act and the rules and regulations thereunder, the company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before May 26, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-12210 Filed 5-7-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Pope Resources, A Delaware Limited Partnership, Depositary Receipts (Units)) File No. 1-9035

May 4, 1998.

Pope Resources, A Delaware Limited Partnership ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Exchange since December 6, 1995, and has been approved for quotation on the NASDAQ National Market System ("NASDAQ") since July 16, 1991.

The Company has complied with Exchange Rule 3.4(b) by filing with the Exchange a certified copy of the resolution adopted by the Company's Board of Directors authorizing the delisting of the Security from the PCX and a letter setting forth in detail the reasons for the proposed delisting and facts in support thereof. In deciding to withdraw the Security from listing and registration on the PCX, the Company considered the costs and expenses of maintaining the dual listing of its Security on the PCX and the NASDAQ. The Company sees no advantage in the dual trading of its Security and believes that the dual listing has fragmented the market for its Security and has created arbitrage opportunities that have led to instability in the price of the Company's Security. There have often been significant differences in the price at which the Security trades in one market as opposed to the other, which has been exacerbated due to how thinly the Security is traded on the PCX.

By letter dated March 16, 1998, the Exchange informed the Company that it had approved the company's request to be removed from listing and registration on the PCX.

The Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before May 26, 1998, submit by letter to the Secretary of the Securities and

Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-12209 Filed 5-7-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39944; File Nos. SR-MSRB-98-06, SR-NASD-98-20, SR-NYSE-98-07]

Self-Regulatory Organizations; The Municipal Securities Rulemaking Board; The National Association of Securities Dealers, Inc.; and The New York Stock Exchange, Inc.; Order Extending Comment Period for Proposed Rule Changes Regarding Confirmation and Affirmation Services

May 1, 1998.

Recently, the Municipal Securities Rulemaking Board ("MSRB"), The National Association of Securities Dealers, Inc. ("NASD"), and the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ concerning amendments to their rules regarding confirmation and affirmation services.² Notices of the proposals were published in the *Federal Register* on April 13, 1998.³

The notices of the proposals state that comments on the proposals should be received by May 4, 1998. The Commission has received a request that the comment period for the proposals be

¹ 15 U.S.C. 78s(b)(1).

² On February 18, 1998, the NYSE filed its proposed rule change with the Commission (File No. SR-NYSE-98-07). On March 5, 1998, the NASD filed its proposed rule change with the Commission (File No. SR-NASD-98-20). On April 3, 1998, the MSRB filed its proposed rule change with the Commission (File No. SR-MSRB-98-06).

³ Securities Exchange Act Release Nos. 39830 (April 6, 1998), 63 FR 18060 (NYSE); 39831 (April 6, 1998), 63 FR 18057 (NASD); 39833 (April 6, 1998), 63 FR 18055 (MSRB).

extended for thirty days from May 4, 1998, to June 3, 1998.⁴ The Commission finds that extending the comment period is appropriate in order to give interested persons additional time to comment on the matters that the proposals address.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the comment period for the proposed rule changes of the NYSE (File No. SR-NYSE-98-07), the NASD (File No. SR-NASD-98-20), and the MSRB (File No. SR-MSRB-98-06) be and hereby is extended from May 4, 1998, to June 3, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,

Secretary.

(FR Doc. 98-12263 Filed 5-7-98; 8:45 am)
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39942; File No. SR-NASD-98-29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Standards for Individual Correspondence

May 1, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 6, 1998, the NASD Regulation, Inc. ("NASDR") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASDR. On April 30, 1998, the NASDR filed Amendment No. 1 to the proposed rule change.³ The

⁴ The requester stated, "The requested extension is necessary to allow for substantive review and comment on what are extremely important issues for the securities industry." Letter from Mari-Anne Pisarr, Pickard and Djinis, on behalf of Thomson Financial Services (April 30, 1998).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78a(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from John Ramsay, Vice President and Deputy General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 29, 1998 ("Amendment No. 1"). In Amendment No. 1, the NASDR proposes to amend its filing to clarify that in determining whether a given communication constitutes correspondence for purposes of the rule, NASD members, as well as NASDR staff, should

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR proposes to amend Rule 2210 of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to require that written or electronic communications prepared for a single customer be subject to the general standards and those specific standards of Rule 2210 that prohibit misleading statements.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications with the Public

(a) Definitions—*Communications with the public shall include:*

(1) Advertisement—For purposes of this Rule and any interpretation thereof, "advertisement" means material published, or designed for use in, a newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, telephone directories (other than routine listings), electronic of other public media.

(2) Sales Literature—For purposes of this Rule and any interpretation thereof, "sales literature" means any written or electronic communication distributed or made generally available to customers or the public, which communication does not meet the foregoing definition of "advertisement." Sales literature includes, but is not limited to, circulars, research reports, market letters, performance reports or summaries, form letters, telemarketing scripts, seminar texts, and reprints or excerpts of any other advertisement, sales literature or published article.

(3) Correspondence—For purposes of this Rule and any interpretation thereof, "correspondence" means any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public.

consider, among other things, the form and content of the communication.

Cross Reference—Rules Concerning Review and Endorsement of Correspondence are Found in paragraph (d) to Conduct Rule 3010.

(b) Approval and Recordkeeping

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member.

(2) A separate file of all advertisements and sales literature, including the name(s) of the person(s) who prepared them and/or approved their use, shall be maintained for a period of three years from the date of each use.

(c) Filing Requirements and Review Procedures

(1) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) not included within the requirements of paragraph (c)(2), and public direct participation programs (as defined in Rule 2810) shall be filed with the Association's Advertising/Investment Companies Regulation Department (Department) within 10 days of first use or publication by any member. The member must provide with each filing the actual or anticipated date of first use. Filing in advance of use is recommended. Members are not required to file advertising and sales literature which have previously been filed and which are used without change. Any member filing any investment company advertisement or sales literature pursuant to this paragraph (c) that includes or incorporates rankings or comparisons of the investment company with other investment companies shall include a copy of the ranking or comparison used in the advertisement or sales literature.

(2) Advertisements concerning collateralized mortgage obligations registered under the Securities Act of 1933, and advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts and unit investment trusts) that include or incorporate rankings or comparisons of the investment company with other investment companies where the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate, shall be filed with the Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular

circumstances) for approval and, if changed by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, if expressly disapproved, until the advertisement has been refiled for, and has received, Association approval. The member must provide with each filing the actual or anticipated date of first use. Any member filing any investment company advertisement or sales literature pursuant to this paragraph shall include a copy of the data, ranking or comparison on which the ranking or comparison is based.

(3)(A) Each member of the Association which has not previously filed advertisements with the Association (or with a registered securities exchange having standards comparable to those contained in this Rule) shall file its initial advertisement with the Department at least ten days prior to use and shall continue to file its advertisements at least ten days prior to use for a period of one year. The member must provide with each filing the actual or anticipated date of first use.

(B) Except for advertisements related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, members subject to the requirements of paragraph (c)(3)(A) [or (B)] of this Rule may, in lieu of filing with the Association, file advertisements on the same basis, and for the same time periods specified in [those] that subparagraph[s], with any registered securities exchange having standards comparable to those contained in this Rule.

(4)(A) Notwithstanding the foregoing provisions, any District Business Conduct Committee of the Association, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department and/or the District Committee, at least ten days prior to use. The member must provide with each filing the actual or anticipated date of first use.

(B) The Committee shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one

year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing before the District Business Conduct Committee, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Code of Procedure as contained in the Rule 9000 Series.

(5) In addition to the foregoing requirements, every member's [advertising] *advertisements* and sales literature shall be subject to a routine spot-check procedure. Upon written request from the Department, each member shall promptly submit the material requested. Members will not be required to submit material under this procedure which has been previously submitted pursuant to one of the foregoing requirements and, except for material related to exempted securities (as defined in Section 3(a)(12) of the Act), municipal securities, direct participation programs or investment company securities, the procedure will not be applied to members who have been, within the Association's current examination cycle subjected to a spot-check by a registered securities exchange or other self-regulatory organization using procedures comparable to those used by the Association.

(6) The following types of material are excluded from the foregoing filing requirements and spot-check procedures:

(A) Advertisements or sales literature solely related to changes in a member's name, personnel, location, ownership, offices, business structure, officers or partners, telephone or teletype members, or concerning a merger with, or acquisition by, another member;

(B) Advertisements or sales literature which do no more than identify the Nasdaq symbol of the member and/or of a security in which the member is a Nasdaq registered market maker;

(C) Advertisements or sales literature which do no more than identify the member and/or offer a specific security at a stated price;

(D) Material sent to branch offices or other internal material that is not distributed to the public;

(E) Prospectuses, preliminary prospectuses, offering circulars and similar documents used in connection with an offering of securities which has been registered or filed with the Commission or any state, or which is exempt from such registration, except that an investment company prospectus published pursuant to SEC Rule 482 under the Securities Act of 1933 shall

not be considered a prospectus for purposes of this exclusion;

(F) Advertisements prepared in accordance with Section 2(10)(b) of the Securities Act of 1933, as amended, or any rule thereunder, such as SEC Rule 134, unless such advertisements are related to direct participation programs or securities issued by registered investment companies.

(7) Material which refers to investment company securities or direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Act) solely as part of a listing of products and/or services offered by the member, is excluded from the requirements of subparagraphs (1) and (2).

(d) Standards Applicable to Communications With the Public

(1) General Standards

(A) All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered. No material fact or qualification may be omitted if the omission, in the light of the context of the material presented, would cause the [advertising or sales literature] communication to be misleading.

(B) Exaggerated, unwarranted or misleading statements or claims are prohibited in all public communications of members. In preparing such [literature] communications, members must bear in mind that inherent in investments are the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield, and no member shall, directly or indirectly, publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities which may not constitute advertisements, members and persons associated with members shall nevertheless follow the standards of paragraphs (d) and (f) of this Rule.

(D) In judging whether a communication of a particular element of a communication may be misleading, several factors should be considered, including but not limited to:

(i) the overall context in which the statement or statements are made. A statement made in one context may be

misleading even though such a statement could be [perfectly] appropriate in another context. An essential test in this regard is the balance of treatment of risks and potential benefits.

(ii) the audience to which the communication is directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed, and the ability of the member given the nature of the media used, to restrict the audience appropriately. If the statements made in a communication would be applicable only to a limited audience or a single customer, or if additional information might be necessary for other audiences, it should be kept in mind that it is not always possible to restrict the readership of a particular communication.

(iii) the overall clarity of the communication. A statement or disclosure made in an unclear manner [obviously] can result in a lack of understanding of the statement, or in a serious misunderstanding. A complex or overly technical explanation may be [worse] more confusing than too little information. Likewise, material disclosure relegated to legends or footnotes [realistically] may not enhance the reader's understanding of the communication.

(2) Specific Standards

In addition to the foregoing general standards, the following specific standards apply:

(A) Necessary Data. Advertisements and sales literature shall contain the name of the member, unless such advertisements and sales literature comply with paragraph (f). Sales literature shall contain the name of the person or firm preparing the material, if other than the member, and the date on which it is first published, circulated or distributed. If the information in the material is not current, this fact should be stated.

(B) Making [R] recommendations in advertisements and sales literature.

(i) In making a recommendation, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must disclose any of the following situations which are applicable:

a. that the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, [and/or] that the member or associated persons will sell to or buy from customers on a principal basis;

b. that the member and/or its officers or partners own options, rights or

warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;

c. that the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.

(ii) The member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.

(iii) A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.

(iv) Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in subparagraph (iii). Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

(C) Claims and Opinions.

Communications with the public must not contain promises of specific results, exaggerated or unwarranted claims or unwarranted superlatives, opinions for which there is no reasonable basis, or forecasts of future events which are unwarranted, or which are not clearly labeled as forecasts.

(D) Testimonials. In testimonials concerning the quality of a firm's investment advice, the following points must be clearly stated in [the] advertisement or sales literature [communication]:

(i) The testimonial may not be representative of the experience of other clients.

(ii) The testimonial is not indicative of future performance or success.

(iii) If more than a nominal sum is paid, the fact that it is a paid testimonial must be indicated.

(iv) If the testimonial concerns a technical aspect of investing, the person making the testimonial must have knowledge and experience to form a valid opinion.

(E) Offers of Free Service. Any statement in communications with the public to the effect that any report, analysis, or other service will be furnished free or without any charge must not be made unless such report, analysis or other service actually is or will be furnished entirely free and without condition or obligation.

(F) Claims for Research Facilities. No claim or implication in communications with the public may be made for research or other facilities beyond those which the member actually possesses or has reasonably capacity to provide.

(G) Hedge Clauses. No cautionary statements or caveats, often called hedge clauses, may be used in communications with the public if they are misleading or are inconsistent with the content of the material.

(H) Recruiting Advertising. Advertisements in connection with the recruitment of sales personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business and should not refer to specific earnings figures or ranges which are not reasonable under the circumstances.

(I) Periodic Investment Plans. Advertisements and sales literature [Communications with the public] should not discuss or portray any type of continuous or periodic investment plan without disclosing that such a plan does not assure a profit and does not protect against loss in declining markets. In addition, if the material deals specifically with the principles of dollar-cost averaging, it should point out that since such a plan involves continuous investment in securities regardless of fluctuating price levels of such securities, the investor should consider his financial ability to continue his purchases through periods of low price levels.

(J) References to Regulatory Organizations. Communications with the public shall not make any reference to membership in the Association or to registration or regulation of the securities being offered, or of the underwriter, sponsor, or any member or

associated person, which reference could imply endorsement or approval by the Association or any federal or state regulatory body. References to membership in the Association or Securities Investors Protection Corporation shall comply with all applicable By-Laws and Rules pertaining thereto.

(K) Identification of Sources. Statistical tables, charts, graphs or other illustrations used by members in advertising or sales literature should disclose the source of the information if not prepared by the member.

(L) Claims of Tax Free/Tax Exempt Returns. Income or investment returns may not be characterized in communications with the public as tax free or exempt from income tax where tax liability is merely postponed or deferred. If taxes are payable upon redemption, that fact must be disclosed. References to tax free/tax exempt current income must indicate which income taxes apply or which do not unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds may be subject to state or local income taxes, this should be stated, or the illustration should otherwise make it clear that income is free from federal income tax.

(M) Comparisons. In making a comparison in advertisements or sales literature, either directly or indirectly, the member must make certain that the purpose of the comparison is clear and must provide a fair and balanced presentation, including any material differences between the subjects of comparison. Such differences may include investment objectives, sales and management fees, liquidity, safety, guarantees or insurance, fluctuation of principal and/or return, tax features, and any other factors necessary to make such comparisons fair and not misleading.

(N) Predictions and projections. In communications with the public, if investment results cannot be predicted or projected. Investment performance illustrations may not imply that gain or income realized in the past will be repeated in the future. However, for purposes of this Rule, hypothetical illustrations of mathematical principles are not considered projections of performance; e.g., illustrations designed to show the effects of dollar cost averaging, tax-free compounding, or the mechanics of variable annuity contracts or variable life policies.

* * *

IM-2210-1. Communications with the Public About Collateralized Mortgage Obligations (CMOs)

(a) General Considerations

For purposes of the following guidelines, the term "collateralized mortgage obligation" (CMO) refers to a multiclass bond backed by a pool of mortgage pass-through securities or mortgage loans. CMOs are also known as "real estate mortgage investment conduits" (REMICs). As a result of the 1986 Tax Reform Act, most CMOs are issued in REMIC form to create certain tax advantages for the issuer. The term CMO and REMIC are now used interchangeably. In order to prevent [a communication about] advertisements and sales literature regarding CMOs from being false or misleading, there are certain factors to be considered, including, but not limited to, the following:

(1) Product Identification

In order to assure that investors understand exactly what security is being discussed, all communications concerning CMOs should clearly describe the product as a "collateralized mortgage obligation." Member firms should not use the proprietary names for CMOs as they do not adequately identify the product. To prevent confusion and the possibility of misleading the reader, communications should not contain comparisons between CMOs and any other investment vehicle, including Certificates of Deposit.

(2) Educational Material

In order to ensure that customers are adequately informed about CMOs members are required to offer to customers education material which covers the following matters:

(A) A discussion of CMO characteristics an investments and their attendant risks;

(B) An explanation of the structure of a CMO, including the various types of tranches;

(C) A discussion of mortgage loans and mortgage securities;

(D) Features of CMOs, including: credit quality, prepayment rates and average lives, interest rates (including effect on value and prepayment rates), tax considerations, minimum investments, transactions costs and liquidity;

(E) Questions an investor should ask before investing; and

(F) A glossary of terms that may be helpful to an investor considering an investment.

(3) Safety Claims

A communication should not overstate the relative safety offered by the CMO. Although CMOs generally offer low investment risk, they are subject to market risk like all investment securities and there should be no implication otherwise. Accordingly, references to liquidity should be balanced with disclosure that, upon resale, an investor may receive more or less than his original investment.

(4) Claims About Government Guarantees

(A) Communications should accurately depict the guarantees associated with CMO securities. For example, in most cases it would be misleading to state that CMOs are "government guaranteed" securities. A government agency issue could instead be characterized as government agency backed. Of course, private-issue CMO advertisements should not contain references to guarantees or backing, but may disclose the rating.

(B) If the CMO is offered at a premium, the communication should clearly indicate that the government agency backing applies only to the face value of the CMO, and not to any premium paid. Furthermore, communications should not imply that either the market value or the anticipated yield of the CMO is guaranteed.

(5) Simplicity Claims

CMOs are complex securities and require full, fair and clear disclosure in order to be understood by the investor. A communication should not imply that these are simple securities that may be suitable for any investor seeking high yields. All CMOs do not have the same characteristics and it is misleading to indicate otherwise. Even though two CMOs may have the same underlying collateral, they may differ greatly in their prepayment speed and volatility.

(6) Claims About Predictability

A communication would be misleading if it indicated that the anticipated yield and average life of a CMO were assured. It should disclose that the yield and average life will fluctuate depending on the actual prepayment experience and changes in current interest rates.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDR included statements concerning the purpose of and basis for the

proposed rule change as discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDR has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

NASD Conduct Rule 2210 imposes various requirements on member communications with the public, designed to ensure that those communications are fair, balanced and not misleading. Rule 2210 does not expressly apply to the content of correspondence (i.e., a communication to only one person). In addition, there is no definition of correspondence in the NASD rules, even though members are required to supervise the use of correspondence by their associated persons under Rule 3010.

Recently, several NASD disciplinary matters raised the issue of whether correspondence to a single customer constitutes "sales literature" subject to the requirements of Rule 2210.⁴ The National Business Conduct Committee ("NBCC")⁵ consistently took the position in these cases that a document prepared for use with a single customer, and not for dissemination to the general public, is not "sales literature" as that term is defined in subparagraph (a)(2) to NASD Rule 2210. However, the NBCC also agreed that the application to correspondence of particular standards in the rules for communications to the public would be appropriate and would enable NASD staff to bring enforcement actions on the basis of clear violations of certain proscribed behavior. The NBCC recommended that the NASD define "correspondence" in Rule 2210 and amend the rule to clarify which standards apply to correspondence. In June 1997, the NASDR requested comment on these proposed amendments in Notice to Members 97-37 (June 1997).

As first proposed, the amendments to Rule 2210 would have required that

communications prepared for a single customer be subject to the standards, but not the filing and review requirements, of Rule 2210. Some of these standards define or prohibit the dissemination of statements that could be considered misleading. Others require that certain additional disclosure, e.g., that the member makes a market in a particular security, be included in certain cases in the communication. Most commenters thought it was appropriate only to apply the general standards of Rule 2210, which, among other things, prohibit untrue statements of material facts, the omission of material facts, and statements that are exaggerated, misleading or unwarranted. These commenters stated that imposing all of the specific standards on each item of correspondence, particularly those that require additional disclosure, would unduly complicate communication with clients and unnecessarily burden supervisory programs without materially contributing to the protection of investors. A few commenters supported the proposed amendments, stating that the proposed exemption of correspondence from the NASD filing and review requirements strikes the proper balance. One commenter suggested applying the proposed amendment only to solicitations, recommendations, and sales letters directed at an individual customer.

Discussion

The NASDR believes that certain statements pose similar dangers regardless of whether they are communicated to one person or many persons. An amendment to Rule 2210 to clarify how the rule applies to correspondence would provide better guidance to the membership and would help to assure that investors are adequately protected with respect to the communications they receive individually. At the same time, the NASDR recognizes that correspondence is highly individualized in nature and that much correspondence (unlike advertising and sales literature) is directed by registered representatives ("RR") to customers with whom the RR already has an established relationship. Therefore, the NASDR has determined that the proposed rule change should subject correspondence to the general standards and those specific standards of Rule 2210 that prohibit misleading statements, but not to the specific standards of the rule that prescribe specific disclosure.

The proposed rule change creates a category defined as "communications with the public" to include the current

definitions of "advertisement" and "sales literature," and a new definition of "correspondence." "Correspondence" is defined as "any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public." In determining when a written or electronic communication is prepared for delivery to a single current or prospective customer, NASD members should consider and the staff of the NASDR should examine,⁶ among other things, the form and content of the communication. Thus, a written or electronic communication addressed to a single current or prospective customer, the content of which is substantially identical to that of written or electronic communications sent to one or more other current or prospective customers, is a form letter, not "correspondence." Because form letters are considered "sales literature" under Rule 2210, they would be subject to all of the general and specific standards of Rule 2210.

The proposed rule change amends Rule 2210 to subject individual correspondence to the general standards under subparagraph (d)(1) and the following specific standards under subparagraph (d)(2) of Rule 2210: (i) subparagraph (d)(2)(C), which prohibits exaggerated, unwarranted, or certain other specific claims or opinions, (ii) subparagraph (d)(2)(E), which prohibits certain offers of free services, (iii) subparagraph (d)(2)(F), which prohibits certain claims for research services, (iv) subparagraph (d)(2)(G), which prohibits certain hedge clauses, (v) subparagraph (d)(2)(J), which prohibits the implication of endorsement or approval by regulatory organizations, (vi) subparagraph (d)(2)(L), which prohibits certain statements regarding tax free or tax exempt returns, and (vii) subparagraph (d)(2)(N), which prohibits predictions and projections of investment results. Each of these specific provisions derive from members' general obligations not to make statements that are misleading or without a reasonable basis in fact.

Individual correspondence will not be subject to the following specific standards of Rule 2210: (i) subparagraph (d)(2)(A), which requires the inclusion of certain information regarding members' names, (ii) subparagraph (d)(2)(B), which requires that a member disclose specified information to the customer when making a recommendation, (iii) subparagraph

⁶ See Amendment No. 1, *supra* note 3.

(d)(2)(D), which requires the inclusion of certain statements regarding testimonials, (iv) subparagraph (d)(2)(H), which prohibits exaggerated or unwarranted claims in advertisements for the recruitment of sales personnel, (v) subparagraph (d)(2)(I), which requires certain disclosures regarding periodic investment plans; (vi) subparagraph (d)(2)(K), which requires the identification and disclosure of sources other than the member for certain statistical tables, charts, graphs, or other illustrations, and (vii) subparagraph (d)(2)(M), which requires the inclusion of certain information when making comparisons of investment alternatives.

The proposed rule change is not intended to change the current application of Interpretive Memoranda under Rule 2210. Therefore paragraph (a) to IM-2210-1 (interpretation regarding collateralized mortgage obligations) has been amended to clarify that only advertisements and sales literature are covered by the interpretation.

Finally, the proposed amendments also incorporate several minor technical changes that are non-substantive in nature.

2. Statutory Basis

The NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which require that the Association adopt and amend its rules to promote just and equitable principles of fair trade, and generally provide for the protection of investors and the public interest. By subjecting individual correspondence to the general standards and those individual standards in Rule 2210 that prohibit misleading statements, the NASDR believes that the proposed rule change strikes the appropriate balance between protecting investors from misleading or inappropriate communications in correspondence and imposing workable regulatory requirements that reasonably permit member firms to exercise effective compliance oversight with respect to correspondence.

The NASDR is requesting that the proposed rule change be effective within 45 days of SEC approval.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDR does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁷ 15 U.S.C. 78o-3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was published for comment in Notice to Members 97-37 (June 1997). Eighteen comments were received in response thereto. Of the 18 comment letters received, 4 were in favor of the proposed rule change and 14 were opposed. Most of the commenters either opposed the proposed rule change or thought only the general standards of Rule 2210 should apply.

American Express strongly supported the proposed rule change stating that the NASD's willingness to address the dangers of misleading or unwarranted statements in correspondence while exempting such correspondence from NASD filing and review requirements is the proper balance.

AmeriTrade Holding Corporation stated that the proposed rule change would be beneficial as long as it only applies to solicitations, recommendations, and sales letters directed at an individual customer.

The Equitable and Banc One were generally supportive of goals of the proposed rule change but thought it was appropriate to focus on applying only the general standards of the Rule, rather than the specific standards. The Equitable stated that imposing all of the specific standards of Rule 2210 on each item of correspondence would unduly complicate communication with clients and unnecessarily burden supervisory programs without materially contributing to the protection of investors.

PSA, The Bond Market Trade Association, The Securities Industry Association, The Investment Company Institute, New York Life Insurance Co., American Funds Distributors, Inc., Mutual Service Corporation, A. G. Edwards & Sons, Inc., T. Rowe Price Associates, Inc., Arlington Securities Inc., JP Morgan, and CUSO Financial Services, Inc. all opposed the proposed rule change stating that (i) existing NASD rules sufficiently govern the content and use of correspondence, (ii) the application of the Rule to a large amount of a firm's correspondence would be irrelevant, and (iii) review of all such correspondence would be burdensome.

Merrill Lynch stated that if the proposed rule change is adopted as proposed, a letter to a client disclosing his or her quarterly mutual fund distributions would presumably be subject to the requirements of Securities Act Rule 482, and would require

inclusion of the five-year, ten-year and since-inception performance of the fund, disclosures that past performance is no assurance of future results, and disclosures that the investment return and principal value will fluctuate so that the investor's shares, when redeemed, may be worth more or less than their original cost.

PSA stated that the proposed rule change would unnecessarily inhibit the use of electronic communications media, because electronic correspondence, unlike sales literature and advertisements, often takes the form of an ongoing dialogue between two parties, involving the exchange of multiple messages, and that the application of the specific content requirements of Rule 2210 to all such communications would require member firms to repeat large amounts of information in each message.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- by order approve such proposed rule change, or
- institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for

⁴ See, in the Matter of Peter Stuart Bevington, Complaint No. C8A940021 (March 5, 1997); in the Matter of William Stafford Thurmond, Complaint No. C06930051 (Feb. 1, 1996); in the Matter of Jeffery Steven Stone, Complaint No. C06940036 (Feb. 1, 1996); and in the Matter of Micah C. Douglas, Complaint Nos. C06920046 and C06930068 (Sept. 19, 1995).

⁵ The NBCC is now called the National Adjudicatory Council.

inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-29 and should be submitted by May 29, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz,

Secretary.

[FR Doc. 98-12264 Filed 5-7-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39948; File No. SR-SCCP-98-02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Reducing Certain Trade Recording Fees

May 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 23, 1998, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend on a pilot basis for two months through June 30, 1998, a reduction in SCCP's fee schedule for trade recording fees for certain specialists.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the propose of a statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the

most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP proposes to extend, for a two month period, its pilot program reducing SCCP's trade recording fees for certain specialists. On February 9, 1998, the Commission temporarily approved the trade recording fee reduction effective for trades settling January 2, 1998, through April 30, 1998.³

Prior to the approval and implementation of the pilot program, SCCP charged a trade recording fee of \$.47 per side for regular trades. The proposed pilot program bifurcates the category of trade recording fees for regular trades into trades not matching with PACE orders and trades matching with PACE orders.⁴ The trade recording fees for trades not matching with PACE orders remains \$.47 per side. The proposed pilot program reduces SCCP's trade recording fees for trades matching with PACE orders. For these trades, the trade recording fee is reduced to: (i) \$.27 per side for the first 2,500 trades per month (a reduction of \$.20 per trade) and (ii) \$.10 per side for trades in excess of 2,500 per month (a reduction of \$.37 per trade).

SCCP has been working closely with the Philadelphia Stock Exchange, Inc. ("PHLX") to reevaluate its fees. In connection with this effort, SCCP is proposing to extend the pilot program reducing these trade recording fees on a temporary basis through June 30, 1998.

SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act,⁵ which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impact or impose a burden on competition.

² The Commission has modified parts of these statements.

³ Securities Exchange Act Release No. 39630 (February 17, 1998), 63 FR 7848.

⁴ PACE, an acronym for the Philadelphia Stock Exchange Automated Communication and Execution System, is a real time order routing and execution system.

⁵ 15 U.S.C. 78q-1(b)(3)(D).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and Rule 19b-4(e)(2) thereunder.⁷ At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR-SCCP-98-02 and should be submitted by May 29, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,

Secretary.

[FR Doc. 98-12262 Filed 5-7-98; 8:45 am]

BILLING CODE 8010-01-M

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(e)(2).

⁸ 17 CFR 200.30-3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974 (Special 301)

AGENCY: Office of the United States Trade Representative.

ACTION: Identification of countries that deny adequate protection for intellectual property rights or market access for persons that rely on intellectual property protection.

SUMMARY: The United States Trade Representative (USTR) is required by the "Special 301" provisions in U.S. trade law to identify those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign countries. These identifications are presented below.

DATES: These identifications took place on April 30, 1998.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property, (202) 395-6864, Steve Fox, Deputy Director for Intellectual Property, (202) 395-6864, or Geraldyn S. Ritter, Associate General Counsel, (202) 395-6800.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242) (commonly referred to as Special 301) requires the USTR, within 30 days of the publication of the National Trade Estimates Report provided for in section 181(b) of the Trade Act, to identify all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as "priority foreign countries," unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this

manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officials of the Federal Government and take into account information from other sources such as information submitted by interested persons.

On April 30, 1998, the USTR identified 47 trading partners as failing to provide adequate and effective intellectual property protection and fair and equitable market access to persons that rely on such protection. In addition, China's implementation of the 1995 and 1996 Bilateral IPR Agreements will remain subject to monitoring under section 308 of the Trade Act (19 U.S.C. 2416). As a result of these agreements and extensive follow-up work with Chinese officials, China now has a functioning system to protect intellectual property rights (IPR). As an integral part of this national effort, numerous laws, regulations and circulars were issued during 1997. There has also been continued progress on enforcement in China. In 1997, U.S. industry losses from pirated optical media exports declined very significantly according to industry estimates. Nevertheless, we remain concerned with end-user piracy of business software, continuing retail piracy, growing trademark counterfeiting and problems in obtaining administrative protection for pharmaceuticals. U.S. officials will continue to work to ensure that China strengthens its enforcement against illegal importation, distribution, reproduction and sale of all illegitimate IPR products.

Fifteen other trading partners were placed on the administratively-created "priority watch list," including Argentina, Bulgaria, the Dominican Republic, Ecuador, Egypt, the European Union, Greece, India, Indonesia, Israel, Italy, Kuwait, Macao, Russia and Turkey. Bulgaria will be subject to review during the course of the year to maintain pressure for further progress. Thirty-one other countries were placed on the special 301 "watch list," including Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Guatemala, Honduras, Hong Kong, Ireland, Jamaica,

Japan, Jordan, Korea, Oman, Pakistan, Peru, The Philippines, Poland, Qatar, Saudi Arabia, Singapore, South Africa, Sweden, Thailand, Ukraine, U.A.E. (United Arab Emirates), Venezuela, and Vietnam. Of these, at least Colombia, Hong Kong, Jordan, and Vietnam will be subject to interim reviews during the coming year. The USTR highlighted concerns, developments and expectations for further progress in 17 other countries. Finally, the USTR announced the initiation of a WTO dispute settlement case against Greece and the European Communities for violations of the enforcement obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Claude Burcky,

Director of Intellectual Property.

[FR Doc. 98-12196 Filed 5-7-98; 8:45 am]

BILLING CODE 3190-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-108]

Determinations Under Section 304 of the Trade Act of 1974: Argentine Specific Duties and Non-Tariff Barriers Affecting Textiles, Apparel, Footwear and Other Items

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations, termination and monitoring.

SUMMARY: The United States Trade Representative (USTR) has determined that Argentina's specific duties on textiles and apparel and statistical tax on almost all imports violate the General Agreement on Tariffs and Trade (GATT) 1994. This determination is based on the report of a dispute settlement panel convened under the auspices of the World Trade Organization (WTO) at the request of the United States and the report of the WTO Appellate Body reviewing the panel report. The panel report and the Appellate Body report (the WTO reports) were adopted by the WTO Dispute Settlement Body (DSB) on April 22, 1998. The United States expects that Argentina will conform its specific duties and statistical tax to meet its obligations under the GATT 1994, consistent with the decisions of the panel and the Appellate Body. In light of the foregoing, the USTR will not take action under section 301 of the Trade Act of 1974 (the Trade Act) at this time and has terminated this investigation. The USTR will monitor Argentina's steps to implement the WTO reports

and will take action under section 301(a) of the Trade Act if Argentina fails to implement the rulings and recommendations of the WTO reports within a reasonable period of time to be determined in accordance with WTO rules.

EFFECTIVE DATE: April 3, 1998.

ADDRESSES: 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Kellie A. Meiman, Director for Mercosur and the Southern Cone, (202) 395-5190, or Hal S. Shapiro, Assistant General Counsel, (202) 395-3582.

SUPPLEMENTARY INFORMATION: Under the GATT 1994, Argentina agreed to a maximum tariff rate of 35 percent of the value of imported textile, apparel and footwear products. Argentina, through, has imposed minimum specific duties—i.e., a minimum flat rate—applicable to hundreds of categories of textiles, apparel and footwear that exceed 35 percent when assessed on a wide variety of imports. The imposition of duties greater than an agreed upon maximum rate is inconsistent with Article II of the GATT 1994, which provides that imports shall be exempt from all duties or charges of any kind imposed on or in connection with importation in excess of those set forth in a WTO Member's tariff binding.

Argentina also has imposed a statistical tax on almost all imports that is calculated based on the value of the merchandise subject to it. The tax formerly was 3 percent of the price of covered imports, but Argentina reduced it to 0.5 percent in January 1998. Article VIII of the GATT 1994 states that all fees and charges imposed by WTO members, other than ordinary import or export duties, shall be limited to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports for fiscal purposes. Because the statistical tax is levied as a percentage of the value of imported items, and has no maximum charge, it is not limited to the cost of any service rendered.

On January 22, 1997, the United States requested the establishment of a WTO dispute settlement panel to examine whether Argentina's measures are inconsistent with its obligations under the WTO agreements. On November 25, 1997, the panel determined that Argentina's specific duties on textiles and apparel violate GATT Article II and that the statistical tax violates GATT Article VIII. The panel's decision did not address Argentina's specific duties on footwear because, shortly after the United States

requested the establishment of a panel, Argentina revoked these duties and imposed a safeguard measure in their place. On March 27, 1998, the WTO Appellate Body affirmed the panel's decision, though it disagreed with the panel's reasoning in certain respects.

Pursuant to section 304(a)(1)(A) of the Trade Act (19 U.S.C. 2414(a)(1)(A)), the USTR is required to determine in this case whether Argentina's specific duties and statistical tax violate, or otherwise deny, benefits to which the United States is entitled under a trade agreement. Where that determination is affirmative, the USTR must take action under section 301 of the Trade Act (19 U.S.C. 2411), subject to the specific direction of the President, if any, unless the USTR finds that one of the circumstances set forth in section 301(a)(2)(B) (19 U.S.C. 2411(a)(2)(B)) exists.

Based on the results of the WTO dispute settlement proceedings, as well as public comments received and appropriate consultations, the USTR has determined that Argentina's specific duties on textile and apparel imports violate Argentina's obligations under GATT 1994 Article II and its statistical tax on almost all imports violates GATT Article VIII.

The decision of the panel, as modified by the decision of the Appellate Body, was adopted at the April 22, 1998 meeting of the DSB. The USTR expects that Argentina will conform its specific duties and statistical tax to meet its obligations under the GATT 1994, consistent with the decisions of the panel and the Appellate Body, and will do within a reasonable period of time to be determined in accordance with WTO rules. Therefore, pursuant to section 301(a)(2)(B)(i) of the Trade Act, the USTR is not taking action at this time under section 301(a) of the Trade Act and has terminated this investigation. Pursuant to section 306 of the Trade Act (19 U.S.C. 2416), the USTR will monitor Argentina's implementation of the WTO reports and will take action under section 301(a) if Argentina fails to implement the rulings and recommendations of the WTO reports within a reasonable period of time to be determined in accordance with WTO rules.

Irving A. Williamson,
Chairman, Section 301 Committee.

[FR Doc. 98-12195 Filed 5-7-98; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Change #3 to FAA-P-8110-2, Airship Design Criteria (ADC)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: Change 3 is based on a National Transportation Safety Board (NTSB) recommendation calling for envelope tear warning systems on new airship certification projects. The recommendation stems from an airship accident that resulted from an envelope failure. Change 3 requires that some means of indication or warning system will alert the pilot of envelope tears. This could be an elaborate warning system based on sensors or simple gauges located and marked such that an unusual indication would be obvious to the pilot.

DATES: Comments must be received on or before June 8, 1998.

ADDRESSES: Send all comments to: Federal Aviation Administration, Small Airplane Directorate, Standards Office, ACE-110, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Regulations and Policy Branch, ACE-111, at the address above, telephone number (816) 426-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this information by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**.

Comments Invited

We invite interested parties to submit comments on the proposed change to the ADC. Commenters must identify the report number (FAA-P-8110-2) and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final Change 3 to the ADC. The proposed changes to the ADC and comments received may be inspected at the Standards Office (ACE-110), 1201 Walnut, Suite 900, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

In 1993, an airship came to rest on top and draped over a seven-story building in New York, New York, after the airship deflated in flight and became uncontrollable. The airship suffered a large tear in the envelope, the material

that makes up the shape of the balloon portion of the airship. The NTSB subsequently investigated and recommended several changes to the FAA's airship design standards. One of the recommendations called for an envelope tear warning system.

The primary reason for the NTSB's recommendation for the envelope tear warning system came from the crew's report. The pilot and passenger both stated that they were not aware of the loss of envelope pressure until the airship began to collapse, even though there was a pressure gauge and a low pressure indicator light to alert them of envelope damage. Although crew procedures for both major and minor envelope tears had been established, those actions were not accomplished because the crew did not initially recognize that the envelope was damaged.

The emergency procedures for this airship, relating to a tear in the envelope, are to operate the airship with a very low pressure. Very low pressure causes the airship to lose rigidity, but minimizes the loss of helium while maintaining controllability. If the emergency procedure is not followed, ballonets will automatically attempt to keep the envelope pressure constant, forcing helium out through the tear. Ballonets are airbags contained within the envelope that are inflated with air to control the rigidity and sometimes the center of gravity (trim) of the airship. A warning light and alarm activate when the envelope pressure drops below a nominal level; however, if the ballonets continue to automatically inflate to maintain envelope pressure, the alarm system does not activate until substantial helium is lost.

The NTSB noted that the airship was not equipped nor required to be equipped with a ballonet inflation rate transducer or other device, which might have alerted the crew to the loss of significant quantities of helium. The NTSB believes that had the airship been equipped with a better warning system, the pilot would have been alerted to the loss of pressure earlier and could have taken prudent emergency actions to improve the possibility of a controlled emergency landing.

Issued in Kansas City, Missouri, on April 30, 1998.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

Proposed Change #3 To FAA-P-8110-2 Airship Design Criteria (ADC)

New Item: Add to 6.2 "(i)"

Change 3 is based on a National Transportation Safety Board (NTSB)

recommendation calling for envelope tear warning systems on new airship certification projects. The recommendation stems from an airship accident that resulted from an envelope failure. Change 3 requires that some means of indication or warning system will alert the pilot of envelope tears.

The new paragraph will be added to item 6.2 as follows:

(i) Means to warn the pilot of envelope tears.

Acceptable compliance means include systems as simple as locating and marking both envelope and ballonet pressure gauges so that unusual indications (rapid loss of helium) are immediately noticeable to the pilot. If an airship valving system is complex or automatic, a system such as a ballonet airflow rate change sensor connected to a warning system may be more appropriate.

[FR Doc. 98-12293 Filed 5-7-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-98-5]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 28, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800

Independence Avenue, SW., Washington, D.C. 20591. Comments may also be sent electronically to the following internet address: 9-NPRM-CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT:

Tawana Matthews (202) 267-9783 or Angela Anderson (202) 267-9681 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 4, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29161.

Petitioner: World Airways, Inc.

Sections of the FAR Affected: 14 CFR 121.434(e).

Description of Relief Sought: To permit World Airways to use flight attendants who previously served with, and were trained by Aer Lingus as required crew members without those flight attendants having received five hours of supervised operating experience under part 121.

Docket No.: 25080.

Petitioner: Aeroservice Aviation Center, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(3); 61.56(h)(1), (2), and (3); and 61.57(c)(3) and (d)(2); 61.58(e); 61.64(e)(3); 61.65(e)(2), and (g)(1) and (3); 61.67(c)(4) and (d)(2); 61.158(d)(1); 61.191(d); and 61.197(e).

Description of Relief Sought: To permit Aeroservice and persons who contract for services from Aeroservice to continue to use Federal Aviation Administration-approved flight simulators to meet certain flight experience requirements of part 61

without Aeroservice holding the certificate required by 14 CFR part 142.
Docket No.: 28853.

Petitioner: Sully Produits Spéciaux.
Sections of the FAR Affected: 14 CFR 145.75(d).

Description of Relief Sought: To permit Sully to authorize its inspectors who cannot read, write, and understand English to approve parts for return to service with Federal Aviation Administration Form 8130-3, "Airworthiness Approval Tag."

Docket No.: 28888.
Petitioner: Pemco Aeroplex, Inc.
Sections of the FAR Affected: CAR 4b.362(c)(1), 4b.362(e)(7), and 4b.382(d).

Description of Relief Sought: To permit the accommodations of two supernumeraries forward of a rigid cargo bulkhead and smoke-tight door, on 727-200 aircraft with Class E compartments.

Dispositions of Petitions

Docket No.: 27446.
Petitioner: State of New Jersey, Department of Transportation.
Sections of the FAR Affected: 14 CFR 156.5(b).

Description of Relief Sought/
Disposition: To permit the petitioner to use up to \$75,000 annually of State Block Grant Program funds for the period currently authorized for the Airport Improvement Program, which is fiscal years 1997 and 1998, for program administrative costs. GRANT, April 3, 1998, Exemption No. 5835A.

Docket No.: 28630.
Petitioner: Kevin Seddon.
Sections of the FAR Affected: 14 CFR 121.311(b).

Description of Relief Sought/
Disposition: To permit Ms. Seddon to travel on the lap(s) of one or both of her parents, without her occupying an approved seat or berth with a separate belt properly secured about her during movement on the surface, takeoff, and landing. GRANT, March 30, 1998, Exemption No. 6486A.

[FR Doc. 98-12294 Filed 5-7-98; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Indian Reservation Roads Program Transportation Planning Procedures and Guidelines; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of public meeting.

SUMMARY: The Federal Highway Administration in cooperation with the

Bureau of Indian Affairs (BIA) will jointly hold a meeting to present the final draft of the document, "Indian Reservation Roads (IRR) Program Transportation Planning Procedures and Guidelines" and to verify that all comments received were addressed.

DATES: The meeting will be held on June 8-11, 1998, beginning at 2:00 p.m. on June 8, running from 9:00 a.m. until 5:00 p.m. on June 9-10, and from 9:00 a.m. until 12:00 p.m. on June 11.

ADDRESSES: The meeting will be held at the Wool Warehouse, located at 516 First Street, NW, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Julianne Stevenson, HFL-11, Room 4206, (202) 366-9490, Federal Lands Highway Office; or Mr. Wilbert Baccus, HCC-10, Room 4230, (202) 366-0780, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For the BIA: Mr. LeRoy Gishi, Bureau of Indian Affairs, Division of Transportation, (202) 208-4359, U.S. Department of the Interior, 1849 C. Street, NW. (Code 260 MS 4058 MIB), Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this public meeting notice may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Federal Register's home page at: <http://www.nara.gov/nara/fedreg> and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs. The final draft IRR Program Transportation Planning Procedures and Guidelines will be available May 15, 1998, on the Federal Lands Highway Office home page at: <http://www.fhwa.dot.gov/lands.html>.

Public Meeting

The purpose of this public meeting is to present the final draft of the document, "Indian Reservation Roads Program Transportation Planning Procedures and Guidelines" and to verify that all comments received were addressed.

On March 24, 1997, the first draft of this document was mailed to all Indian Tribal Governments, the Bureau of Indian Affairs, and the Federal Highway Administration for review and comment. June 9-12, 1997, the

comments were reviewed and the second draft of the document was prepared. On September 4, 1997, the second draft of this document was mailed to all Indian Tribal Governments, the Bureau of Indian Affairs, the Federal Highway Administration and other interested parties for review and comment. The comment period closed on November 21, 1997. In addition, a national meeting was held on September 24-25, 1997, in Denver, Colorado to review and discuss the subject document in detail. Comments were solicited and received at this meeting. On December 8-12, 1997, February 3-6, 1998, March 10-13, 1998, and April 6-10, 1998, the comments received were addressed by the Transportation Planning Policy and Procedures Team (the Team). This team is comprised of the following individuals:

Francine Shaw-Whitson—Federal Highway Administration, Federal Lands Highway Office, Washington, DC
Julianne Stevenson—Federal Highway Administration, Federal Lands Highway Office, Washington, DC
Dee Spann—Federal Highway Administration, Office of Environment and Planning, Washington, DC
Joseph Martin—Bureau of Indian Affairs, Division of Transportation, Albuquerque, New Mexico
Galen Balster—Bureau of Indian Affairs, Aberdeen Area Office, Aberdeen, South Dakota
Robert D. Maxwell, Jr.—Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Arizona
Harold Riley—Bureau of Indian Affairs, Navajo Area Office, Gallup, New Mexico
R. Evan Fulton—Tribal Technical Assistance Program, Houghton, MI
Everett Waller—Intertribal Transportation Association (Osage Nation, of Oklahoma, Oklahoma)
Don Ellis—Oklahoma Department of Transportation (Comanche Indian Tribe, Oklahoma)
Robert Endicott—Cherokee Nation of Oklahoma, Oklahoma
Roy Begay—Navajo Nation of Arizona, New Mexico, and Utah; Arizona
James Mark Wright—Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
Becky Rey—Confederated Tribes of the Colville Reservation, Washington
Larry L. Keeler—Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Alvin Moyle—Paiute Shoshone Tribe of the Fallon Reservation and Colony, Nevada

Herbert Tate—White Mountain Apache Tribe of the Fort Apache Reservation, Arizona

Dennis Smith—Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada

Rebecca Torres—Alabama/Quassarte Tribal Town of the Creek Nation of Oklahoma, Oklahoma

James Garrigan—Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota

Kevin R. Alford—Eastern Band of Cherokee Indians of North Carolina, North Carolina

Tracy VanRite—Menominee Indian Tribe of Wisconsin, Wisconsin

Henry Hoggatt—Chickasaw Nation, Oklahoma

Sandra Shade—Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona, Arizona

Tim Longie, Sr.—Spirit Lake Tribe, North Dakota

Lewis B. George—Catawba Indian Nation, South Carolina

David McKinney—Muscogee (Creek) Nation, Oklahoma

Louis Hood—Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona

Emil Tojola—Pueblo of Isleta, New Mexico

Glenn Wasson—Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada

Frederick Murillo—Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California

Mark Tibbetts—Eight Northern Indian Pueblos Council, New Mexico

R.T. Eby—Cocopah Tribe of Arizona

Levi Valdez—Bureau of Indian Affairs, Albuquerque Area Office, Northern Pueblo Agency, New Mexico

Also, these meetings were attended by members of various other tribes who provided input into the revision of this document.

Copies of the document will be available May 15, 1998, and can be obtained from the Federal Highway Administration, Federal Lands Highway Office, HFL-11, 400 Seventh Street, SW., Washington, DC 20590.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Allen W. Burden,
Acting Federal Lands Highway Program Administrator.

[FR Doc. 98-12269 Filed 5-7-98; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-3774; Notice 1]

Program Plan for Evaluating the Effectiveness of Existing Regulations, 1998-2002

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of its Evaluation Program Plan for 1998-2002. The report describes the agency's ongoing and planned evaluations of its existing Federal Motor Vehicle Safety Standards (49 CFR Part 571) and its other safety and consumer programs. It also summarizes the results of completed evaluations. The agency's evaluation program responds to Executive Order 12866, which provides for Government-wide review of existing significant Federal regulations. This notice solicits public review and comment on the evaluation plan. Comments received will be used to improve the plan.

DATES: Comments must be received no later than September 8, 1998.

ADDRESSES: Report: Interested people may obtain copies of the reports free of charge by sending a self-addressed mailing label to Publications Ordering and Distribution Services (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

Comments: All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington DC 20590. [Docket hours, 9:30 a.m.-4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590 (202-366-2560).

SUPPLEMENTARY INFORMATION: NHTSA has rigorously evaluated its major programs as a matter of policy since 1970. The evaluation of the effectiveness of the Federal Motor Vehicle Safety Standards (FMVSS) began in 1975. The Government Performance and Results Act of 1993 and Executive Order 12866, "Regulatory Planning and Review," issued in October 1993 (58 FR 51735), now oblige all Federal agencies to evaluate their existing programs and regulations.

Previously, Executive Order 12291, issued in February 1981 (46 FR 13193), also required reviews of existing regulations. Even before 1981, however, NHTSA was a leader among Federal agencies in evaluating the effectiveness of existing regulations and technologies. There are large data bases of motor vehicle crashes which can be analyzed to find out what vehicle and traffic safety programs work best.

This five-year plan presents and discusses the programs, regulations, technologies and related areas NHTSA proposes to evaluate, and it summarizes the findings of past evaluations. Depending on scope, evaluations typically take a year or substantially more, counting initial planning, contracting for support, OMB clearance for surveys, internal reviews, approvals, publication, review of public comments, and the last phase of preparing recommendations for subsequent agency action.

Most of NHTSA's crashworthiness and several crash avoidance standards have been evaluated at least once since 1975. A number of consumer-oriented regulations, e.g., bumpers, theft protection, fuel economy and NCAP have also been evaluated. So have promising safety technologies, such as antilock brake systems, that were not mandatory under Federal regulations. The plan for the next five years includes evaluations of new and existing vehicle safety regulations, technologies and consumer protection programs, plus the completion of an assessment of the highway safety program.

NHTSA welcomes public review of the plan and invites the reviewers to comment about the selection, priority, and schedule of the regulations to be evaluated. The agency is interested in learning of any additional data that may be useful in the evaluations. The plan will be periodically updated in response to public and agency needs, with a complete revision scheduled every four years. The most recent plan before this one was published on June 10, 1994 (59 FR 30090).

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and 7 copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business

information regulation. (49 CFR Part 512).

All comments received before the close of business on the comment closing date will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested people continue to examine the docket for new material.

People desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

William H. Walsh,
Associate Administrator for Plans and Policy.
[FR Doc. 98-12232 Filed 5-7-98; 8:45 am]
BILLING CODE 4910-58-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Grant To Support the Demonstration and Evaluation of Programs To Reduce the Incidence of Illegal Passing of School Buses

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of discretionary grant agreement program to support the demonstration and evaluation of programs to reduce the incidence of illegal passing of school buses.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary grant agreement program to support the demonstration and evaluation of programs to reduce the incidence of illegal passing of school buses.

The goal of NHTSA's school bus safety program is to reduce school-bus-related fatalities and injuries. While the number of fatalities and injuries related to school bus crashes has been consistently low for over a decade, the number of motorists illegally passing school buses is increasing, jeopardizing the safety record of school transportation. This cooperative agreement program will support development and implementation of

community-based demonstration projects that have the potential to substantially reduce the incidence of illegal passing.

NHTSA anticipates funding up to four demonstration projects for a minimum demonstration period encompassing one complete school year and a total period of performance of no more than 15 months.

This notice solicits applications from public and private, non-profit and for-profit organizations, state and local governments and their agencies. Interested applicants must submit an application package as further described in the Application Procedures section of this notice. The applications will be evaluated to determine the proposals that will receive funding under this announcement.

DATES: Applications must be received at the office designated below on or before 3 pm June 10, 1998.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), ATTN: Rose Watson, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Grant Agreement Program No. NTS-01-8-05130.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Rose Watson, Office of Contracts and Procurement at (202) 366-9557. Programmatic questions relating to this grant agreement program should be directed to Diane Wigle, Safety Countermeasures Division, NHTSA, 400 7th Street, SW., (NTS-15), Washington, DC 20590, by e-mail at dwigle@nhtsa.dot.gov, or by phone at (202) 366-4301. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

An estimated 23 million students ride school buses twice daily every school day to go to and from school. Their safe travel is a top concern of Federal, State and local governments, school districts, school administrators, parents, and citizens. To ensure their safety, NHTSA established and currently enforces Federal Motor Vehicle Safety Standards governing the manufacture of buses to be used to transport school children. In addition, NHTSA's Guideline #17 establishes minimum recommendations for a pupil transportation safety program, including the identification, operation, and maintenance of buses

used for carrying students; training of passengers, pedestrians, and bicycle riders; and administration.

Even with school-bus-specific Federal Motor Vehicle Safety Standards and Guideline #17, some school bus safety problems persist. One such problem is the problem of motor vehicles illegally passing school buses stopped to load/unload students (also referred to as stop-arm violations). Though it is illegal in every state to pass a school bus stopped to load or unload students, every state faces the problem of citizens disobeying the law.

In October 1997 the National School Transportation Association conducted a survey of state school transportation directors. As part of that survey the directors were asked to identify the three biggest issues in their state for school transportation. The problem of illegal passing of school buses was reported as one of their top safety concerns.

The School Transportation Management Section (STMS) of the Florida Department of Education recently documented the size of that state's illegal passing problem. It was determined through a study conducted by the University of South Florida for STMS that on one day in May, 1995, 10,590 vehicles illegally passed stopped school buses in 58 of Florida's 67 school districts (approximately 11,150 school buses). During this same school year, two of Florida's public school children were killed by motorists illegally passing stopped school buses. However, the statewide citation totals for the illegal passing of stopped school buses accounted for only 13,178 of the over 17 million citations issued for all traffic violations in the state from 1988 to 1992.

A one-day study conducted September 24, 1996 revealed that 3,394 Virginia motorists illegally passed a stopped school bus on that day. Of that total, 187 involved passing the bus on the side that students enter and exit. A total of 119 out of 131 school divisions in the state participated in the study. Though Virginia and Florida transport a similar number of students on a comparable number of school buses, Virginia school buses only travel half the miles Florida school buses travel in a year.

The Evaluation Unit within the Division of Traffic Safety of the Illinois Department of Transportation conducted a probability-based sample survey of 250 school buses to arrive at an estimate of the total number of stop-arm violations of school buses in Illinois. Drivers of the 250 buses were asked to record stop-arm violations

during a 41 school day time period. A total of 135 of the drivers completed and returned the survey. A total of 3,450 violations were reported by the school buses involved in the study. Based on the findings, the estimated number of stop-arm violations each school year in Illinois is over 1,900,000, a major traffic safety problem in Illinois.

Due to the high number of incidents of illegal passing of school buses, the tremendous potential safety consequences of the violations and the results of the recent studies conducted on the subject, NHTSA proposes to support the development and implementation of four community-based programs to address the problem of illegal passing of stopped school buses. The results of these four community programs and those of a variety of other community programs aimed at reducing the number of incidents of illegal passing sites will be included in a manual NHTSA plans to produce in FY 2000.

Purpose

This grant will support the development and implementation of up to four community-based public information and law enforcement programs designed to decrease the incidents of vehicles illegally passing school buses stopped to load/unload passengers.

Project eligibility

Applications may be submitted by public and private, non-profit and for-profit organizations, and state and local governments and their agencies or a consortium of these groups. Thus, schools, research institutions, law enforcement agencies, community traffic safety and injury prevention programs, hospitals, other public and private (non-or not-for profit) organizations, and state and local governments are eligible to apply. Interested applicants are advised that no fee or profit will be allowed under this grant agreement program. Preference will be given to the proposals that contain pledges of financial commitments to the project from other sources.

Application Procedure

Each applicant must submit one original signature and two copies of the grant application package to: Office of Contracts and Procurement, NAD-30, DOT/National Highway Traffic Safety Administration, ATTN: Rose Watson, 400 7th Street, SW, Washington, DC 20590. One additional copy will facilitate the review process, but is not required. Applications must include a

completed Application for Federal Assistance (standard form 424—revised 4-88).

Only complete packages received at this address on or before 3 pm, June 10, 1998, will be considered. No facsimile transmissions will be accepted. Due to the large number of actions being processed, be certain that the project number is indicated on the envelope and the application. Please direct program related questions to Diane E. Wigle, (202) 366-4301 and those related to grant application and administration nature to Rose Watson, (202) 366-9557.

Application Contents

Applicants must prepare a proposal that details the demonstration project they propose to conduct and the specific activities and costs for which demonstration grant funds are being requested.

Applicants need to consult and gain commitment to the proposed project from the school system(s) and law enforcement agencies of the community in which the project is to be implemented. At a minimum, letters of commitment and support from the involved school system(s) and law enforcement agencies must be included in the proposal package. The minimum demonstration period should encompass one complete school year and the total period of performance no more than 15 months.

The application (one original) and two copies shall consist of the following: A signed copy of OMB standard Form 424 (revised 4/88, including 424A and 424B) "Application for Federal Assistance" with the required information provided and the Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions, Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Certification regarding Drug-Free Workplace Requirements; identification of any portions of the application for which the applicant seeks confidentiality (in accordance with 49 CFR part 512); the Program Narrative Statement; and address the following:

A. In accordance with SF 424A, Budget Information, Sections A, B and C, a detailed budget estimate of all activities to be conducted with grant funding must be provided. Funding sources, other than the funds being provided through this grant, are encouraged. Since activities may be performed with a variety of financial resources, applicants need to fully identify all project costs and their

funding sources in the proposed budget. The proposed budget must identify all funding sources in sufficient detail to demonstrate that the overall objectives of the demonstration will be met.

B. Program Narrative Statement: Proposal must fully describe the scope of the demonstration project, detailing the activities and costs for which funding is being requested.

1. Specific activities to implement a program to reduce the incidence of illegal passing of school buses for one complete school year and the total period of performance of no more than 15 months. This should include goals, objectives, and strategies. The proposed countermeasures must be devised from an analysis of the community problem of illegal passing of school buses, and the problem must be fully described in the proposal, including a demographic description of the community, e.g. size of school district, students transported by school buses, etc.

2. The application should also include plans for the following:

- Specific education programs for the target group;
- Broad-based mass media Public Information and Education program support;
- Enhanced enforcement program, including waves of enforcement throughout the school year;
- Time schedules and milestones for each activity;
- Interaction between the grantee, local school system(s), and law enforcement organizations;
- The responsible agency or organization to conduct each activity;
- Source, type, and level of support.

3. A description of what will be done specifically with the demonstration grant funds, along with the time schedules, milestones, and any product deliverables.

4. An identified reporting schedule for quarterly and final reports to be submitted as a performance requirement of the awarded cooperative agreement. (See TERMS AND CONDITIONS OF AWARD)

5. An evaluation plan which describes how the grantee will evaluate the demonstration project. As a minimum the Evaluation Plan must contain:

- A description of the evaluation to be employed to assess the program and project activities and their effectiveness. Specify variables necessary to assess performance and/or impact for each objective.

Evaluation Criteria and Review Process

Initially all application packages will be reviewed to ensure that they contain

all of the items specified in the Application Contents section of this announcement. Each complete application will then be evaluated by a Technical Evaluation Committee within NHTSA. The committee will evaluate the proposals based on the following criteria presented in order of importance:

1. Goals, Objectives, and Workplan (35 Percent)

The applicant's goals are clearly articulated and the objectives are time-phased, specific, measurable, and achievable. The proposal will achieve the desired outcome of reducing the incidence of motorists illegally passing school buses stopped to load/unload passengers. The proposal addresses what the applicant plans to develop and implement, how this will be accomplished, activities that are appropriate to reach the target audience, and includes the major tasks and milestones necessary to complete the project.

2. Analysis of Community Problem (25)

The proposed program countermeasures are devised from an analysis of the community problem of motorists illegally passing school buses stopped to load/unload students. This problem identification data must be presented in the submitted proposal. The applicant provides sufficient evidence of community cooperation and commitment to be able to successfully carry out the proposed project. Letters of commitment from the local school system(s) and law enforcement agencies are included in the application. Community demographics are detailed in the application.

3. Evaluation Plan (20 Percent)

The proposal clearly describes the proposed evaluation design and the methods for measuring the outcomes of the project. The applicant provides sufficient evidence of community cooperation and commitment to allow the plan to be implemented.

4. Staffing and Budget (20 Percent)

The proposed staff are clearly described, appropriately assigned, and have adequate skills and experience to conduct the project. The applicant has the capacity and facilities to design,

implement, and evaluate the proposed project. The proposal describes the project activities in sufficient detail to support the estimated budget; the budget is sufficient detailed to allow NHTSA to determine that the estimated costs are reasonable and necessary to perform the proposed efforts. Financial or in-kind commitment of resources by the applicant or other supporting organizations has been clearly identified.

Availability of Funds and Period of Support

Approximately \$170,000 has been allocated for this demonstration program. Subject to the availability of funds, award amounts may be approximately \$40,000, depending on the type of demonstration proposed and the estimated resources required to accomplish the demonstration objectives. At the discretion of the government, funds may be obligated fully at the time of award of this grant or incrementally over the period of the grant. Nothing in this solicitation should be construed as committing NHTSA to make any award.

Special Award Selection Factors

While not a requirement of this announcement, applicants are strongly urged to seek funds from other Federal, state, local, and private sources to augment those available under this announcement. For those applicants that are evaluated as meritorious for consideration for award, preference may be given to those that have proposed cost-sharing strategies and/or have other proposed funding sources in addition to those in this announcement.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting requirements and deliverables:

A. **Quarterly Performance Reports**—Three copies of a letter-type report shall

be submitted to the NHTSA office designated in the grant award document within 30 days or the end of the quarter being reported. This report shall briefly present information on the progress made in implementing, operating, and evaluating and demonstration, and shall contain information specified in 49 CFR 18.40, Monitoring and Reporting of Program Performance.

B. **Final Report**—Three copies of a final report shall be submitted to the NHTSA office designated in the grant award document within 60 days of project completion. The report must be submitted in a printed version and in a WorldPerfect 6.1 file on a standard 1.44 floppy diskette. The final report shall include the following information at a minimum:

(a) A two-to-three page executive summary of the activities undertaken and the results achieved;

(b) A detailed description of all activities conducted (during the period being reported) which impacted the demonstration;

(c) An analysis and interpretation of those activities and an assessment of the results achieved;

(d) A copy of all materials (print, audio, video, electronic, camera-ready material, etc.) created under the grant agreement. In addition all print materials must be provided in finished form and on computer diskette with complete printing instructions including all fonts used in the product; and

(e) Recommendations for follow-on efforts.

3. During the effective performance period of cooperative agreements awarded as a result of this announcement, the agreement as applicable to the grantee, shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Issued on: April 29, 1998.

James Nichols,
Acting Associate Administrator for Traffic Safety programs.

Appendix A—Application for Federal Assistance, Standard Form 424 (rev 4-88)

BILLING CODE 4910-59-M

**APPLICATION FOR
FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		2. DATE SUBMITTED		Applicant Identifier	
Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		3. DATE RECEIVED BY STATE		State Application Identifier	
		4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier	
5. APPLICANT INFORMATION					
Legal Name:			Organizational Unit:		
Address (give city, county, State, and zip code):			Name and telephone number of person to be contacted on matters involving this application (give area code):		
6. EMPLOYER IDENTIFICATION NUMBER (EIN): □□-□□□□□□			7. TYPE OF APPLICANT: (enter appropriate letter in box)		
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es) <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):			A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify)		
9. NAME OF FEDERAL AGENCY:					
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: □□-□□□□			11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:		
12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):					
13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:			
Start Date	Ending Date	a. Applicant		b. Project	
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?			
a. Federal	\$	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:			
b. Applicant	\$	DATE			
c. State	\$	b. No. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E. O. 12372			
d. Local	\$	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW			
e. Other	\$				
f. Program Income	\$	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?			
g. TOTAL	\$	<input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No			
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.					
a. Type Name of Authorized Representative		b. Title		c. Telephone Number	
d. Signature of Authorized Representative				e. Date Signed	

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INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | | | | |
|---|--------|--|--------|
| Item: | Entry: | Item: | Entry: |
| 1. Self-explanatory. | | 12. List only the largest political entities affected (e.g., State, counties, cities). | |
| 2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). | | 13. Self-explanatory. | |
| 3. State use only (if applicable). | | 14. List the applicant's Congressional District and any District(s) affected by the program or project. | |
| 4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | | 15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <i>only</i> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. | |
| 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | | 16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. | |
| 6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | | 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. | |
| 7. Enter the appropriate letter in the space provided. | | 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) | |
| 8. Check appropriate box and enter appropriate letter(s) in the space(s) provided: | | | |
| - "New" means a new assistance award. | | | |
| - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. | | | |
| - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | | |
| 9. Name of Federal agency from which assistance is being requested with this application. | | | |
| 10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | | |
| 11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | | |

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OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY		New or Revised Budget		Total (g)
Estimated Unobligated Funds		Federal (e)	Non-Federal (f)	
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Federal (c)	Non-Federal (d)	
1.		\$	\$	\$
2.				
3.				
4.				
5.	Totals	\$	\$	\$
SECTION B - BUDGET CATEGORIES				
GRANT PROGRAM, FUNCTION OR ACTIVITY				
		(1)	(2)	(3)
6. Object Class Categories				Total (5)
a. Personnel		\$	\$	\$
b. Fringe Benefits				
c. Travel				
d. Equipment				
e. Supplies				
f. Contractual				
g. Construction				
h. Other				
i. Total Direct Charges (sum of 6a-6h)				
j. Indirect Charges				
k. TOTALS (sum of 6i and 6j)		\$	\$	\$
7. Program Income		\$	\$	\$

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SECTION C - NON-FEDERAL RESOURCES					SECTION D - FORECASTED CASH NEEDS				SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				SECTION F - OTHER BUDGET INFORMATION			
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	(a) Grant Program	(b) First	(c) Second	(d) Third	(e) Fourth		
8.	\$	\$	\$	\$	\$	\$	\$	\$	\$	13. Federal						
9.										14. Non-Federal						
10.										15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$		
11.																
12. TOTAL (sum of lines 8-11)	\$	\$	\$	\$												
FUTURE FUNDING PERIODS (Years)																
20. TOTAL (sum of lines 16-19)																
21. Direct Charges:																
22. Indirect Charges:																
23. Remarks:																

Standard Form 424A (Rev. 7-87) Page

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not* requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For *new* applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing* grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental* grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation

Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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49 CFR Part 29 - Appendix A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed

49 CFR Part 29 - Appendix B

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND

VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature/Authorized Certifying Official_____
Typed Name and Title_____
Applicant/Organization_____
Date Signed

49 CFR Part 29 - Appendix C

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Alternate I. (Grantees Other Than Individuals)

- A. The grantee certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing an ongoing drug-free awareness program to inform employees about--
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - (e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
 - (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted--
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
 - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).
- B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

- (a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;
- (b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Signature/Authorized Certifying Official

Typed Name and Title

Applicant/Organization

Date Signed

[FR Doc. 98-11796 Filed 5-7-98; 8:45 am]

BILLING CODE 4910-56-C

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 575]

Review of Rail Access and Competition Issues

AGENCY: Surface Transportation Board, DOT.

ACTION: Convening of conference.

SUMMARY: A conference will be held on May 21, 1998, to address certain issues related to rail access and competition.

DATES: May 21, 1998.

ADDRESSES: Federal Regulatory Energy Commission, 888 First Street, N.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Administrative Law Judge Jacob Leventhal, (202) 219-2538 or Joseph H. Dettmar, (202) 565-1600 [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: On April 17, 1998, the Surface Transportation Board issued a decision addressing issues that had been raised concerning rail access and competition in today's railroad industry. Among other things, the decision directed railroads to meet with shippers, under the supervision of an Administrative Law Judge, to discuss issues relating to "revenue adequacy" and "competitive access." An initial conference was held on April 28, 1998. A further conference will be held on May 21, 1998, in a hearing room at the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C.

Decided: May 4, 1998.

By the Board, Jacob Leventhal,
Administrative Law Judge.

Vernon A. Williams,

Secretary.

[FR Doc. 98-12166 Filed 5-7-98; 8:45 am]

BILLING CODE 4915-06-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33583]

Wisconsin Central Ltd. and Fox Valley & Western Ltd.—Joint Relocation Project Exemption—In Fond Du Lac, WI

Wisconsin Central Ltd. (WCL) and Fox Valley & Western Ltd. (FVW) have jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to enter into a project to relocate lines of railroad in Fond Du Lac, WI. Both WCL and FVW are Class II railroads commonly controlled by Wisconsin Central Transportation Company. The

transaction was expected to be consummated on or shortly after April 16, 1998, the effective date of the exemption.

WCL and FVW own and operate parallel lines of railroad through Fond Du Lac, WI. The joint relocation will reroute operations from, and allow removal of, duplicative rail lines. Under the joint project, WCL and FVW agree to the following transactions: (1) WCL will abandon its line of railroad on FVW Line One between MP-175.85 near Dixie and Morris Street and MP-178.40 north of Scott Street, a distance of approximately 2.55 miles, and will also abandon its line of railroad on FVW Line Two between MP-145.58 near Guinette and Woodlawn Avenues and MP-146.24 north of Ninth Street where it connects with FVW Line One, a distance of approximately .66 miles, all in Fond Du Lac, WI; (2) FVW will construct a connecting track of approximately 2,430 feet in length between the WCL Line and FVW Line Two in the vicinity of Morris and Dixie Streets;¹ and (3) WCL will grant FVW trackage rights over the WCL Line between MP-154.87 at Dixie and Farwell Streets and MP-157.24 north of Scott Street, a distance of 2.37 miles.

The proposed joint relocation project will simplify rail operations. The notice states that no shippers will be adversely affected by these relocations or lose access to any rail service currently provided by WCL or FVW. It also states that Stock Lumber, Inc., located at MP-177.78 on FVW Line One, will continue to receive rail service via trackage that FVW is contractually bound to retain after the joint relocation project is completed.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. See *City of Detroit v. Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. See *D.T. & I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not

¹ This will connect FVW Line Two with the WCL line. FVW Line One is already connected to the WCL line.

disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33583, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: Michael J. Barron, Esq., Wisconsin Central Ltd. and Fox Valley & Western Ltd., 6250 North River Road, Suite 9000, Rosemont, IL 60018.

Decided: May 4, 1998.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98-12310 Filed 5-7-98; 8:45 am]

BILLING CODE 4915-06-P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 30, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 8, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0056.

Form Number: IRS Forms 1023 and 872-C.

Type of Review: Revision.

Title: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (1023); and Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code (872-C)

Description: Form 1023 is filed by applicants seeking Federal income tax exemption as organizations prescribed in section 501(c)(3). IRS uses the information to determine if the applicant is exempt and whether the applicant is a private foundation. Form

87-C extends the statute of limitations for assessing tax under 4940.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 29,409.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing, and sending the form to the IRS
1023 Parts I to IV	55 hr., 43 min	5 hr., 1 min	8 hr., 7 min
1023 Schedule A	7 hr., 10 min	0 min	7 min
1023 Schedule B	4 hr., 47 min	30 min	30 min
1023 Schedule C	5 hr., 1 min	35 min	43 min
1023 Schedule D	4 hr., 4 min	42 min	47 min
1023 Schedule E	9 hr., 20 min	1 hr., 5 min	1 hr., 17 min
1023 Schedule F	2 hr., 39 min	2 hr., 53 min	3 hr., 3 min
1023 Schedule G	2 hr., 38 min	0 min	2 min
1023 Schedule H	1 hr., 55 min	42 min	46 min
1023 Schedule I	3 hr., 35 min	0 min	4 min
872-C	1 hr., 26 min	24 min	26 min

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 2,069,527 hours.

OMB Number: 1545-0170.

Form Number: IRS Form 4466.

Type of Review: Extension.

Title: Corporation Application for Quick Refund of Overpayment of Estimated Tax.

Description: Form 4466 is used by a corporation to file for an adjustment (quick refund) of overpayment of estimated income tax for the tax year. This information is used to process the claim, so the refund can be issued.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 16,125.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 35 min.
Learning about the law or the form—18 min.

Preparing and sending the form to the IRS—22 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 68,693 hours.

OMB Number: 1545-0219.

Form Number: IRS Form 5884.

Type of Review: Revision.

Title: Work Opportunity Credit.

Description: Internal Revenue Code (IRC) section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to figure the credit. IRS uses the information on the form to verify that the correct amount of credit was claimed.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 85,000.

Estimated Burden Hours Per

Respondent/Recordkeeper:

Recordkeeping—6 hr., 28 min.
Learning about the law or the form—53 min.

Preparing and sending the form to the IRS—1 hr., 1 min.

Frequency of Response: Annually.
Estimated Total Reporting/

Recordkeeping Burden: 713,150 hours.

OMB Number: 1545-0231.

Form Number: IRS Form 6478.

Type of Review: Extension.

Title: Credit for Alcohol Used as Fuel.
Description: Internal Revenue Code

(IRC) section 38(b)(3) allows a nonrefundable income tax credit for businesses that sell or use alcohol. Small ethanol producers also receive a nonrefundable credit for production of qualified ethanol. Form 6478 is used to figure the credits.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 5,600.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—11 hr., 43 min.
Learning about the law or the form—34 min.

Preparing the form—1 hr., 43 min.
Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: Annually.
Estimated Total Reporting/

Recordkeeping Burden: 79,912 hours.

OMB Number: 1545-0687.

Form Number: IRS Form 990-T.

Type of Review: Revision.

Title: Exempt Organization Business

Income Tax Return.

Description: Form 990-T is needed to compute the section 511 tax on unrelated business income of a charitable organization. IRS uses the information to enforce the tax.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 37,103.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—65 hr., 3 min.
Learning about the law or the form—24 hr., 23 min.

Preparing the form—40 hr., 29 min.
Copying, assembling, and sending the form to the IRS—4 hr., 1 min.

Frequency of Response: Annually.
Estimated Total Reporting/

Recordkeeping Burden: 4,969,947 hours.

OMB Number: 1545-0984.

Form Number: IRS Form 8586.

Type of Review: Revision.

Title: Low-Income Housing Credit.

Description: The Tax Reform Act of 1986 (Code section 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 50,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 hr., 25 min.
Learning about the law or the form—1 hr., 32 min.

Preparing the form—3 hr., 35 min.
Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 653,000 hours.
OMB Number: 1545-1593.
Form Number: IRS Form 1041-QFT.
Type of Review: Extension.
Title: U.S. Income Tax Return for Qualified Funeral Trusts.

Description: Internal Revenue Code (IRC) section 685 allows the trustee of a qualified funeral trust to elect to report and pay the tax for the trust. Data is used to determine that the trustee filed the proper return and paid the correct tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 15,000.

Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—9 hr., 5 min.
Learning about the law or the form—1 hr., 26 min.

Preparing the form—3 hr., 31 min.
Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 218,550 hours.

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 98-12213 Filed 5-7-98; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 27, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington DC 20220.

DATES: Written comments should be received on or before June 8, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0115.
Form Number: IRS Form 1099-MISC.
Type of Review: Extension.
Title: Miscellaneous Income.

Description: Form 1099-MISC is used by payers to report payments of \$600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, \$10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments, and an indication of direct sales or \$5,000 or more.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 4,302,217.

Estimated Burden Hours Per

Respondent: 14 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 16,852,933 hours.

OMB Number: 1545-0129.

Form Number: IRS Form 1120-POL.
Type of Review: Extension.

Title: U.S. Income Tax Return for Certain Political Organizations.

Description: Certain political organizations file Form 1120-POL to report the tax imposed by section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under section 527(h). IRS uses Form 1120-POL to determine if the proper tax was paid.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 6,527.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—15 hr., 32 min.
Learning about the law or the form—6 hr., 12 min.

Preparing the form—15 hr., 6 min.
Copying, assembling, and sending the form to the IRS—2 hr., 25 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 256,185 hours.

OMB Number: 1545-0192.

Form Number: IRS Form 4970.

Type of Review: Extension.

Title: Tax on Accumulation

Distribution of Trusts.

Description: Form 4970 is used by a beneficiary of a domestic or foreign trust

to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 30,000.

Estimated Burden Hours Per

Respondent/Recordkeeper:

Recordkeeping—1 hr., 12 min.
Learning about the law or the form—16 min.

Preparing the form—1 hr., 27 min.
Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 97,800 hours.

OMB Number: 1545-0196.

Form Number: IRS Form 5227.

Type of Review: Extension.

Title: Split-Interest Trust Information Return.

Description: The data reported is used to verify that the beneficiaries of a charitable remainder trust include the correct amounts in their tax returns, and that the split-interest trust is not subject to private foundation taxes.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 53,303.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—46 hr., 52 min.
Learning about the law or the form—3 hr., 48 min.

Preparing the form—10 hr., 19 min.
Copying, assembling, and sending the form to the IRS—1 hr., 37 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 3,336,768 hours.

OMB Number: 1545-0582.

Form Number: IRS Form 1139.

Type of Review: Extension.

Title: Corporation Application for Tentative Refund.

Description: Form 1139 is filed by corporations that expect to have a net operating loss, net capital loss, or unused general business credits carried back to a prior tax year. IRS uses Form 1139 to determine if the amount of the loss or unused credits is reasonable.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 3,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—25 hr., 35 min.
Learning about the law or the form—3 hr., 50 min.

Preparing the form—9 hr., 4 min.
Copying, assembling, and sending the form to the IRS—1 hr., 20 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 119,490 hours.

OMB Number: 1545-0763.

Regulation Project Number: LR-200-76 Final.

Type of Review: Extension.

Title: Qualified Conservation

Contributions.
Description: The information is necessary to comply with various substantive requirements of section 170(h), which describes situations in which a taxpayer is entitled to an income tax deduction for a charitable contribution for conservation purposes of a partial interest in real property.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Recordkeepers: 1,000.

Estimated Burden Hours Per Recordkeeper: 1 hour, 15 minutes.

	Form 1066	Schedule Q (Form 1066)
Recordkeeping	28 hr., 13 min	6 hr., 13 min.
Learning about the law or the form	6 hr., 41 min	1 hr., 28 min.
Preparing the form	9 hr., 41 min	2 hr., 34 min.
Copying, assembling, and sending the form to the IRS	32 min	16 min.

Frequency of Response: Quarterly, Annually.

Estimated Total Reporting/Recordkeeping Burden: 736,862 hours.

OMB Number: 1545-1020.

Form Number: IRS Form 1041-T.

Type of Review: Extension.

Title: Allocation of Estimated Tax Payments to Beneficiaries.

Description: This form was developed to allow a trustee of a trust or an executor of an estate to make an election under Internal Revenue Code (IRC) section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). This form serves as a transmittal so that Service Center personnel can determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per

Respondent/Recordkeeper:

Recordkeeping—20 min.
Learning about the law or the form—4 min.

Estimated Total Recordkeeping Burden: 1,250 hours.

OMB Number: 1545-0927.

Form Number: IRS Form 8390.

Type of Review: Extension.

Title: Information Return for determination of Life Insurance Company Earnings Rate Under Section 809.

Description: Life insurance companies are required to provide data so the Secretary of the Treasury can compute the: (1) stock earnings rate of the 50 largest stock companies; and (2) average mutual earnings rate. These factors are used to compute the differential earnings rate which will determine the tax liability for mutual insurance companies.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 150.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—56 hr., 41 min.
Learning about the law or the form—3 hr., 35 min.

Preparing and sending the form to the IRS—4 hr., 40 min.

	Form 1066	Schedule Q (Form 1066)
Recordkeeping	28 hr., 13 min	6 hr., 13 min.
Learning about the law or the form	6 hr., 41 min	1 hr., 28 min.
Preparing the form	9 hr., 41 min	2 hr., 34 min.
Copying, assembling, and sending the form to the IRS	32 min	16 min.

Preparing the form—21 min.
Copying, assembling, and sending the form to the IRS—17 min.

Frequency of Response: Other (when such election is made).

Estimated Total Reporting/Recordkeeping Burden: 1,040 hours.

OMB Number: 1545-1250.

Form Number: IRS Form 9356.

Type of Review: Revision.

Title: Application for Software Developers to Participate in the 1040PC Format for Individual Income Tax Returns.

Description: Form 9356 will be filled in by software developers and submitted to the IRS as an application for producing software for the Form 1040PC.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 50 hours.

OMB Number: 1545-1308

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 9,738 hours.

OMB Number: 1545-1014.

Form Number: IRS Form 1066 and Schedule Q (Form 1066).

Type of Review: Extension.

Title: U.S. Real Estate Mortgage

Investment Conduit (REMIC) Income Tax Return (1066); and Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation (Schedule Q).

Description: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 4,917.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1066	Schedule Q (Form 1066)
Recordkeeping	28 hr., 13 min	6 hr., 13 min.
Learning about the law or the form	6 hr., 41 min	1 hr., 28 min.
Preparing the form	9 hr., 41 min	2 hr., 34 min.
Copying, assembling, and sending the form to the IRS	32 min	16 min.

Regulation Project Number: PS-260-82 Final.

Type of Review: Extension.

Title: Election, Revocation,

Termination, and Tax Effect of

Subchapter S Status.

Description: Sections 1.1362-1 through 1.1362-7 of the Income Tax Regulations provide the specific procedures and requirements necessary to implement section 1362, including the filing of various elections and statements with the Internal Revenue Service.

Respondents: Individuals or households, Business or other for-profit, Farms.

Estimated Number of Respondents: 133.

Estimated Burden Hours Per

Respondent: 3 hours, 18 minutes.

Estimated Total Reporting Burden: 322 hours.

OMB Number: 1545-1379.

Form Number: IRS Form 8831.

Type of Review: Extension.

Title: Excise Taxes on Excess

Inclusions of REMIC Residual Interests.

Description: Form 8831 is used by a real estate mortgage investment conduit

(REMIC) to figure its excise tax liability under Code sections 860E(e)(1), 860E(e)(6), and 860E(e)(7). IRS uses the information to determine the correct tax liability of the REMIC.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 31.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hr., 32 min.
Learning about the law or the form—1 hr., 29 min.

Preparing and sending the form to the IRS—1 hr., 38 min.

Frequency of Response: On occasion.

Estimated Total Reporting/

Recordkeeping Burden: 237 hours.

Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98-12214 Filed 5-7-98; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8264

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8264, Application for Registration of a Tax Shelter.

DATES: Written comments should be received on or before July 7, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Registration of a Tax Shelter.

OMB Number: 1545-0865

Form Number: 8264

Abstract: Under section 6111 of the Internal Revenue Code, organizers of certain tax shelters are required to register them with the IRS. Organizers filing a properly completed Form 8264 will receive a tax shelter registration number from the IRS. They must furnish the tax shelter registration number to investors in the tax shelter, who must provide the number to the IRS when they report any income or claim a deduction, loss, credit, or other tax benefit derived from the tax shelter on their tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,000

Estimated Time Per Respondent: 39 hr., 4 min.

Estimated Total Annual Burden Hours: 39,060

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to

minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98-12199 Filed 5-7-98; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8288 and 8288-A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests and Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.

DATES: Written comments should be received on or before July 7, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288) and Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288-A).

OMB Number: 1545-0902.

Form Number: 8288 and 8288-A.

Abstract: Internal Revenue Code section 1445 requires transferors to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Form 8288 is used to report and transmit the amount withheld to the IRS. Form 8288-A is used by the IRS to validate the withholding, and a copy is returned to the transferor for his or her use in filing a tax return.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 4,918.

Estimated Time Per Respondent: 21 hr., 43 min.

Estimated Total Annual Burden Hours: 106,784.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 29, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98-12201 Filed 5-7-98; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8271

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8271, Investor Reporting of Tax Shelter Registration Number.

DATES: Written comments should be received on or before July 7, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Investor Reporting of Tax Shelter Registration Number.

OMB Number: 1545-0881.

Form Number: 8271.

Abstract: All persons who are claiming a deduction, loss, credit, or other tax benefit, or reporting any income on their tax return from a tax shelter required to be registered under Internal Revenue Code section 6111 must report the tax shelter registration number to the IRS. Form 8271 is used for this purpose. The IRS uses the information provided on Form 8271 to identify the tax shelter from which the benefits are claimed and to determine if any compliance actions are needed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 297,500.

Estimated Time Per Respondent: 52 min.

Estimated Total Annual Burden Hours: 258,825.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98-12202 Filed 5-7-98; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 250]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: The specific authority to issue Taxpayer Advocate Directives and Proposed Taxpayer Advocate Directives. The text of the delegation order appears below.

EFFECTIVE DATE: March 17, 1998.
FOR FURTHER INFORMATION CONTACT: Doug Peterson, Program Analyst, C:TA, Room 1027, 1111 Constitution Ave, NW, Washington, D.C. 20224, (202) 622-4315 (not a toll-free call).

Issuance of Taxpayer Advocate Directives

Authority: To issue Taxpayer Advocate Directives and Proposed Taxpayer Advocate Directives.

(1) Taxpayer Advocate Directives provide authority to the Taxpayer Advocate to mandate that functional areas make certain administrative or procedural changes. These changes are limited to situations in which the Taxpayer Advocate has previously requested a change be made to either improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) much in the way that a Taxpayer Assistance Order (under Section 7811 of the Internal Revenue Code) is used to grant relief to individual taxpayers. Directives will only be used to order specific actions when the Taxpayer Advocate believes the action is necessary to implement a recommendation designed to protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide a essential service to taxpayers. The only avenue of appeal, should a functional area disagree with the directive, is to the Deputy Commissioner. A Taxpayer Advocate Directive will not be issued to interpret law.

(2) A Proposed Taxpayer Advocate Directive will be issued to the Chief(s)

of the responsible area. This will generally be the Headquarters functional area. However, if the policy or procedure is unique to a specific region, district, or service center, the Proposed Taxpayer Advocate Directive may be addressed to the director of that region, district, or center (with a copy of the Directive to the headquarters functional chief). A copy of the Proposed Taxpayer Advocate Directive will be sent the Deputy Commissioner. The proposed directive will specify a time period to respond (generally, 90 days). In certain instances, an extension to this time period may be granted. The response can take the form of an agreed action to resolve the problem, a counter-proposal of a different action to resolve the problem, or an explanation of why the proposed action or change cannot or should not take place. The Taxpayer Advocate, at his or her option, may accept an alternative suggestion or a proposal by the function to jointly work toward a solution to the problem. Generally, a Proposed Taxpayer Advocate Directive will not be issued until after the function has been given the opportunity to work with the Advocate to resolve the issue.

(3) If a response that is not deemed satisfactory (by the Advocate) is received within the time period allowed in the Proposed Taxpayer Advocate Directive, or if no response has been received, a formal Taxpayer Advocate Directive may be issued. The Directive will include an explanation of why the function's response is not satisfactory. A copy of the Directive will be provided to the function and the Deputy Commissioner.

(4) If the Chief of the area subject to the Taxpayer Advocate Directive disagrees with the action required by the directive, he/she may appeal the

proposed action to the Deputy Commissioner within 10 calendar days of the date on the Directive. An appeal must include an analysis of why the proposed action cannot or should not be implemented. The Taxpayer Advocate or the Deputy Commissioner may, at their discretion, extend the 10-day period if they determine that more time is needed to provide information or analysis that was not included in the response to the Proposed Taxpayer Advocate Directive.

(5) In instances where the Taxpayer Advocate determines that the problem is immediate in nature and will have a significant negative impact on taxpayers, the Advocate may issue a Taxpayer Advocate Directive immediately, without the intervening step of a Proposed Taxpayer Advocate Directive. This will be done only if, in the opinion of the Advocate and the Deputy Commissioner, allowing normal time frames would prevent the implementation of the action. Such "expedited" Taxpayer Advocate Directives will receive immediate review by the Deputy Commissioner. It is anticipated that all parties involved (the Advocate, the Deputy Commissioner, and the Chief of any impacted functions) would meet as soon as possible to resolve the issue.

Delegated to: The National Taxpayer Advocate.

Redelegation: This Authority may not be redelegated.

Source of Authority: Treasury Order 150-10.

Approved:
Dated: March 17, 1998.

Charles O. Rossotti,
Commissioner.
[FR Doc. 98-12200 Filed 5-7-98; 8:45 am]
BILLING CODE 4830-01-U

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584-AC38

National School Lunch Program and School Breakfast Program: Additional Menu Planning Alternatives

Correction

In proposed rule document 98-11654, beginning on page 24686, in the issue of

Monday, May 4, 1998, make the following corrections:

§ 210.10 [Corrected]

1. On page 24702, § 210.10(d) is corrected to read as follows:

(d) *Minimum nutrient levels for school lunches/food-based menu planning alternatives.*

(1) *Traditional food-based menu planning alternative.* For the purposes of the traditional food-based menu planning alternative, as provided for in paragraph (k)(1) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school lunches offered over a school week:

Nutrients and energy allowances	Minimum requirements				Optional
	Preschool	Grades K-3 Ages 5-8	Grades 4-12 Ages 9 and older	Grades 7-12 Ages 12 and older	
Energy allowances (calories)	517	663	785	825	
Total fat (as a percentage of actual total food energy)	(1)	(2)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1)	(2)	(2)	(2)	(2)
RDA for protein (g)	7	9	15	16	16
RDA for calcium (mg)	267	267	370	400	400
RDA for iron (mg)	3.3	3.3	4.2	4.5	4.5
RDA for Vitamin A (RE)	150	200	285	300	300
RDA for Vitamin C (mg)	14	15	17	18	18

¹ The dietary guidelines recommend that after 2 years of age *** children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.
² Not to exceed 30 percent over a school week.
³ Less than 10 percent over a school week.

(2) *Enhanced food-based menu planning alternative.* For the purposes of the enhanced food-based menu planning alternative, as provided for in paragraph (k)(2) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for lunches over a school week:

Nutrients and energy allowances	Minimum requirements				Optional
	Preschool	Grades K-6	Grades 7-12	Grades K-3	
Energy allowances (calories)	517	664	825	633	
Total fat (as a percentage of actual total food energy)	(1)	(2)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1)	(2)	(2)	(2)	(2)
RDA for protein (g)	7	10	16	9	9
RDA for calcium (mg)	267	286	400	267	267
RDA for iron (mg)	3.3	3.5	4.5	3.3	3.3
RDA for Vitamin A (RE)	150	224	300	200	200
RDA for Vitamin C (mg)	14	15	18	15	15

¹ The dietary guidelines recommend that after 2 years of age *** children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.
² Not to exceed 30 percent over a school week.
³ Less than 10 percent over a school week.

§ 220.8 [Corrected]

2. On page 24708, in § 220.8(g)(2)(ii), in the table, the heading, "Operation for" should read "Option for".

3. On page 24708, in § 220.8(g)(2)(ii), in the table, in the fourth column under "Grades K-12", in the fifth entry, "of" should read "or".

BILLING CODE 1505-01-0

Friday
May 8, 1998

Part II

Department of
Transportation

Federal Aviation Administration

14 CFR Parts 11 and 135
Commercial Passenger-Carrying
Operations in Single-Engine Aircraft
Under Instrument Flight Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 135

(Docket No. 28743; Amendment Nos. 43, 73)

RIN 2120-AG55

Commercial Passenger-Carrying Operations in Single-Engine Aircraft Under Instrument Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises and clarifies certain conditions and limitations in part 135 for instrument flight rule (IFR), passenger-carrying operations in single-engine aircraft. The clarification is necessary to resolve ambiguity in the current rule regarding the requirement for redundant power for gyroscopic instrumentation. The intended effect of the action is to remove any ambiguity concerning the required power sources for the gyroscopic instruments required for flight under IFR for single engine aircraft involved in commercial, passenger-carrying operations.

This action also advises the public of the information collection approval by the Office of Management and Budget (OMB), withdraws SFAR 81 because the SFAR could not be placed in effect with a readily apparent ambiguity, adds the OMB control number to part 11, and amends part 135.

DATES: These amendments are effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Meier, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone: (202) 267-8166.

SUPPLEMENTARY INFORMATION:

Availability of This Action

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service ((703) 321-3339), the Federal Register's electronic bulletin board service ((202) 512-1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service ((800) 322-2722 or (202) 267-5948). Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the Federal Register's web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Ave., SW, Washington, DC 20591, or by calling (202) 267-9677.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On August 6, 1997, the FAA amended the conditions and limitations in part 135 for instrument flight rule, passenger-carrying operations in single-engine aircraft (62 FR 42364). That rule has an effective date of May 4, 1998 (62 FR 45014). Included in the August 6, 1997 final rule was SFAR 81, with certain information collection requirements, which was written to allow operators, whose aircraft were properly equipped, authority to operate before the effective date of the final rule. The information collection requirements of SFAR 81 and the final rule were submitted to OMB and were approved under OMB control number 2120-0619.

Consideration of Comments

On February 4, 1998, the FAA proposed to revise and clarify part 135 for instrument flight rule (IFR), passenger-carrying operations in single-engine aircraft (62 FR 6826, February 10, 1998). Three substantive comments were received on that proposal: two from airplane manufacturers, and one from an air carrier that operates under part 135; one comment from a trade association offered general support for the proposal.

Comment: Cessna Aircraft Company and Atlantic Aero stated that they have the required redundancy in their Caravan model aircraft because of its unique split panel configuration which uses both electric and bleed air sources to power its gyroscopic instruments. However, this configuration does not provide redundant sources of power on each instrument. Although Cessna and Atlantic Aero recognize that a separate electrically driven air pump may have to be added behind the current bleed air driven gyro now installed on the aircraft to comply with this rule, they both suggest that the installation of an additional, electrically powered attitude instrument should be permitted to meet the redundancy requirements.

FAA Response: Cessna states that they can comply with the proposed rule by installing an "electrically driven back up vacuum pump behind the bleed air

driven attitude gyro now installed on the aircraft. This will provide two sources of energy for both the gyros on the Captain's Instrument Panel." The FAA agrees that this would meet the requirements for redundancy, as stated in the proposal.

Regarding the installation of an additional, unrequired gyroscopic instruments for IFR, the FAA agrees that such additional instruments do not need redundant sources. Therefore, the FAA is amending the regulatory language by adding the word "required" after "all" to clarify that only *required* gyroscopic instruments must have redundant sources of power.

However, as to Cessna's specific suggestion that the installation of an additional, electrically-powered attitude indicator should meet the redundancy requirements for the bleed air driven gyroscopic instruments, the FAA does not agree. The FAA recognizes that the Cessna Caravan will comprise a large portion of the fleet that will benefit from the SEIFR rule. However, the FAA is promulgating a rule of general applicability, and it believes that there will be other operators of various types and models of aircraft (other than the Caravan) who will seek to modify their aircraft to gain the benefits of operating under the SEIFR rule. To amend this proposal to meet only the desires of Cessna Caravan operators may establish an economic disadvantage for some other operators, and would, in fact, require another notice and comment period.

Further, the additional attitude indicator that both Cessna and Atlantic Aero suggest is outside the basic "T" configuration of the primary flight instruments. The FAA considers the basic "T" configuration very important when manually flying the aircraft under IMC conditions, and is concerned about human factor problems associated with the placement of this additional attitude indicator. The FAA has therefore determined that safety requires that the primary flight instruments, powered by redundant energy sources, be positioned in the basic "T" configuration directly in front of the pilot flying the aircraft.

Cessna agrees that it can comply with the proposal, although the installation of the additional electrically driven vacuum pump is not its first preference for compliance. Therefore, in regard to this issue, the FAA will adopt the rule as proposed.

Comment: The Societe de Construction d'Avions de Touris (SOCATA), a European airplane manufacturer, states that the FAA should not be specific in citing the types of redundant power sources for the

gyroscopic instruments. Instead, SOCATA suggests establishing the "safety objective" of redundant sources of power and leaving it to the applicant to justify their option and means.

FAA Response: In reviewing SOCATA's comment, the FAA agrees that establishing a "safety objective" is flexible and beneficial to the regulated community. The FAA attempts to promulgate "performance based" regulations whenever possible. The FAA notes that § 135.163 is, in part, a performance based requirement. Section 135.163 requires "two independent sources of energy," one source of which must be an engine-driven pump or generator. The other source, however, is not specified, so as to allow the aircraft operator to choose the appropriate equipment. Also, the FAA used the term "source of energy" to allow for future technological developments, which may provide energy from sources other than those currently used on aircraft.

Regulatory Analyses

The FAA is amending Part 135 because some commenters to the final rule on Commercial Passenger-Carrying Operations in Single-Engine Aircraft under Instrument Flight Rules had questions on the redundant sources of power to the gyroscopic flight instruments. This change will alleviate any ambiguity and clarify the regulatory requirements. Therefore, the FAA has determined that this regulation imposes no additional burden on any entity. Accordingly, it has been determined that the action (1) is not significant under Executive Order 12866 and (2) is not a significant rule under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, because this amendment is editorial in nature, no impact is expected to result, and a full regulatory evaluation is not required. In addition, the FAA certifies that this amendment will not have a significant economic impact, either positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Trade Impact

The amendment does not impose any costs on either U.S. or foreign operators. Therefore, a competitive trade disadvantage will not be incurred by either U.S. operators abroad or foreign operators in the United States.

Unfunded Mandates Act

This amendment does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded

Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act and Information Collection Requirements

This amendment contains no additional information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

This collection of information cited in 14 CFR 135.163, 135.411, and 135.421 is required to obtain the benefits of operating under these rules, and will be used by (1) the operator to ensure that all maintenance is performed and (2) the FAA principal maintenance inspector (PMI) to monitor the continued airworthiness of the aircraft used in passenger-carrying operations.

Public reporting burden is estimated to average 0.8 hours per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Recordkeepers and respondents have been given no assurance of confidentiality, nor is any needed. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 2120-0619.

List of Subjects

14 CFR Part 11

Administrative practices and procedure, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Safety, Single-engine aircraft.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 11 and 135 of Title 14 of the Code of Federal Regulations as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701-44702, 44711, 46102.

2. Section 11.101 is amended by adding new section numbers in numerical order and the OMB Control Number to the table in paragraph (b) as follows:

§ 11.101 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

(b) Display.

14 CFR part or section identified and described	Current OMB Control No.
§ 135.163	2120-0619
§ 135.411	2120-0619
§ 135.421	2120-0619

3. For the reasons set out in the preamble, 14 CFR part 135 is amended as set forth below:

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

4. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722.

SFAR 81—Passenger-Carrying Single-Engine IFR Operations

5. SFAR 81 is removed on May 4, 1998.

6. Section 135.163 is amended by revising paragraph (h) to read as follows:

§ 135.163 Equipment requirements: Aircraft carrying passengers under IFR.

(h) Two independent sources of energy (with means of selecting either) of which at least one is an engine-driven pump or generator, each of which is able to drive all required gyroscopic instruments powered by, or to be powered by, that particular source and installed so that failure of one instrument or source, does not interfere with the energy supply to the remaining instruments or the other energy source unless, for single-engine aircraft in all cargo operations only, the rate of turn indicator has a source of energy separate from the bank and pitch and direction indicators. For the purpose of this paragraph, for multi-engine aircraft, each engine-driven source of energy must be on a different engine.

Issued in Washington, DC on May 4, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98-12229 Filed 5-4-98; 5:13 pm]

BILLING CODE 4910-13-U

federal register

Friday
May 8, 1998

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 412, and 413
Medicare Program; Changes to the
Hospital Inpatient Prospective Payment
Systems and Fiscal Year 1999 Rates;
Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 412, and 413

(HCFA-1003-P)

RIN 0938-A122

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement applicable statutory requirements, including section 4407 of the Balanced Budget Act of 1997, as well as changes arising from our continuing experience with the systems. In addition, in the addendum to this proposed rule, we are describing proposed changes in the amounts and factors necessary to determine rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes would be applicable to discharges occurring on or after October 1, 1998. We are also setting forth proposed rate-of-increase limits as well as proposing changes for hospitals and hospital units excluded from the prospective payment systems.

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on July 7, 1998.

ADDRESSES: Mail written comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-1003-P, P.O. Box 7517, Baltimore, MD 21207-0517.

If you prefer, you may deliver your written comments (an original and three copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or Room C5-09-26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-1003-P. Comments received timely will be available for public inspection as they are received.

generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

For comments that relate to information collection requirements, mail a copy of comments to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eyd, HCFA Desk Officer; and Office of Financial and Human Resources, Management Planning and Analysis Staff, Room C2-26-17, 7500 Security Boulevard, Baltimore, MD 21244-1850.

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FOR FURTHER INFORMATION CONTACT:

Nancy Edwards, (410) 786-4531, Operating Prospective Payment, DRG, and Wage Index Issues.
Tzvi Hefter, (410) 786-4487, Capital Prospective Payment, Excluded

Hospitals, and Graduate Medical Education Issues.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Sections 1886(d) and (g) of the Social Security Act (the Act), set forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

Certain specialty hospitals are excluded from the prospective payment systems. Under section 1886(d)(1)(B) of the Act, the following hospitals and units are excluded from PPS: psychiatric hospitals or units, rehabilitation hospitals or units, children's hospitals, long term care hospitals, and cancer hospitals. For these hospitals and units, Medicare payment for operating costs is based on reasonable costs subject to a hospital-specific annual limit.

Under section 1886(a)(4) of the Act, costs incurred in connection with approved graduate medical education (GME) programs are excluded from the operating costs of inpatient hospital services. Hospitals with approved GME programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the number of the hospital's residents in that period and the hospital's costs per resident in a base year.

The regulations governing the hospital inpatient prospective payment system are located in 42 CFR Part 412. The regulations governing excluded hospitals are located in both Parts 412 and 413, and the graduate medical education regulations are found in Part 413.

On August 29, 1997, we published a final rule with comment period in the **Federal Register** (62 FR 45966) setting forth both statutorily required changes and other changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs, which were effective for discharges occurring on or after October 1, 1997. This rule also

implemented changes addressing payments for excluded hospitals and payments for graduate medical education costs. This final rule with comment period followed a proposed rule published in the **Federal Register** on June 2, 1997 (62 FR 29902) that set forth proposed updates and changes.

B. Major Contents of This Proposed Rule

In this proposed rule, we are setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs. This proposed rule would be effective for discharges occurring on or after October 1, 1998. Following is a summary of the major changes that we are proposing to make:

1. Changes to the DRG Classifications and Relative Weights

As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and relative weights at least annually. Our proposed changes for FY 1999 are set forth in section II. of this preamble.

2. Changes to the Hospital Wage Index

In section III. of this preamble, we discuss proposed revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section include the following:

- FY 1999 wage index update.
- Changes to the data categories included in the wage index.
- Revisions to the wage index based on hospital redesignations.

3. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating and Graduate Medical Education Costs

In section IV. of this preamble, we discuss several provisions of the regulations in 42 CFR parts 412 and 413 and set forth certain proposed changes concerning the following:

- Definition of transfer cases.
- Rural referral centers.
- Disproportionate share adjustment.
- Bad debts.
- Direct graduate medical education programs.

4. Changes to the Prospective Payment System for Capital-Related Costs

In section V. of this preamble, we discuss several provisions of the regulations in 42 CFR part 412 and set forth certain proposed changes and clarifications concerning the following:

- Capital indirect medical education payments.
- Payments to new hospitals.

5. Changes for Hospitals and Hospital Units Excluded from the Prospective Payment Systems

In section VI. of this preamble, we discuss the following criteria governing excluded hospital issues:

- Hospital-within-a-hospital.
- Adjustments to the target amounts for FY 1999.

6. Determining Prospective Payment Operating and Capital Rates and Rate-of-Increase Limits

In the addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 1999 prospective payment rates for operating costs and capital-related costs. We are also proposing update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 1999 for hospitals and hospital units excluded from the prospective payment system.

7. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this proposed rule would have on affected entities.

8. Capital Acquisition Model

Appendix B contains the technical appendix on the proposed FY 1999 capital cost model.

9. Report to Congress on the Update Factor for Prospective Payment Hospitals and Hospitals Excluded from the Prospective Payment System

Section 1886(e)(3)(B) of the Act requires that the Secretary report to Congress on our initial estimate of a recommended update factor for FY 1999 for both hospitals included in and hospitals excluded from the prospective payment systems. This report is included as Appendix C to this proposed rule.

10. Proposed Recommendation of Update Factor for Hospital Inpatient Operating Costs

As required by sections 1886(e)(4) and (e)(5) of the Act, Appendix D provides our recommendation of the appropriate percentage change for FY 1999 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals

and hospital units excluded from the prospective payment system.

11. Discussion of Medicare Payment Advisory Commission Recommendations

The Balanced Budget Act of 1997 abolished the Prospective Payment Assessment Commission (ProPAC) and created the Medicare Payment Advisory Commission (MedPAC). Under section 1805(b) of the Act, MedPAC is required to submit a report to Congress, not later than March 1 of each year, that reviews and makes recommendations on Medicare payment policies. The March 1, 1998 report made several recommendations concerning hospital inpatient payment policies. We reviewed those recommendations and this document sets forth our responses to those recommendations.

Although it has been our practice to include a reprint of ProPAC's March 1 report as an appendix to the proposed rule, we are not following that practice with MedPAC reports. For further information relating specifically to that report or to obtain a copy of the report, contact MedPAC at (202) 653-7220.

II. Proposed Changes to DRG Classifications and Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 1998 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM). The Medicare fiscal intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights.

Currently, cases are assigned to one of 496 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, cases are assigned to an MDC based on the principal diagnosis, before assignment to a DRG. However, there are five DRGs to which cases are directly assigned on the basis of procedure codes. These are the DRGs for liver, bone marrow, and lung transplant (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a

surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (hereafter CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

The changes we are proposing to make to the DRG classification system for FY 1999 and other decisions concerning DRGs are set forth below. Unless otherwise noted, our DRG analysis is based on the full (100 percent) FY 1997 MedPAR file based on bills received through September 1997.

2. MDC 5 (Diseases and Disorders of the Circulatory System)

In the August 29, 1997 hospital inpatient final rule with comment period (62 FR 45974), we noted that, because of the many recent changes in heart surgery, we were considering conducting a comprehensive review of the MDC 5 surgical DRGs. We have begun that review, and based upon our analysis thus far, we believe it is appropriate to propose some DRG changes immediately. These proposed changes are set forth below.

a. *Coronary Bypass*. There are two DRGs that capture coronary bypass procedures: DRG 106 (Coronary Bypass with Cardiac Catheterization) and DRG 107 (Coronary Bypass without Cardiac Catheterization). The procedures that allow a coronary bypass case to be assigned to DRG 106 include percutaneous valvuloplasty, percutaneous transluminal coronary angioplasty (PTCA), cardiac catheterization, coronary angiography, and arteriography.

In analyzing the FY 1997 MedPAR file, we noted that, of cases assigned to DRG 106, the average standardized charges for coronary bypass cases with PTCA were significantly higher than those cases without PTCA. There were approximately 4,400 cases in DRG 106 where PTCA is performed as a secondary procedure. These cases have an average standardized charge of

approximately \$69,000. The average charge of the approximately 95,000 cases in DRG 106 without PTCA is approximately \$52,000.

Based on this analysis, we are proposing to create a new DRG for coronary bypass cases with PTCA. The cases currently in DRG 106 without PTCA would be assigned to another DRG and the cases currently assigned to DRG 107 would be unmodified. Because we would replace two DRGs with three new DRGs, we would revise the DRG numbers and titles accordingly. The new DRGs and their titles are set forth below:

DRG 106 Coronary Bypass with PTCA
DRG 107 Coronary Bypass with Cardiac Catheterization
DRG 109 Coronary Bypass without Cardiac Catheterization

We note that DRG 109 has been an empty DRG for the last several years.

b. *Implantable Heart Assist System and Annuloplasty*. In the August 29, 1997 final rule with comment period, we moved implant of an implantable, pulsatile heart assist system (procedure code 37.66) from DRGs 110 and 111 (Major Cardiovascular Procedures)¹ to DRG 108 (Other Cardiothoracic Procedures). Although this move improved payment for these procedures, they were still much more expensive than the other cases in DRG 108 (\$96,000 for heart assist versus an average of \$54,000 for all other cases in the FY 1996 MedPAR file). We stated that we would continue to review the MDC 5 surgical DRGs in an attempt to find a DRG placement for these cases that would be more similar in terms of resource use.

In reviewing the FY 1997 MedPAR file, we note that heart assist system implant continues to be the most expensive procedure in DRG 108. In fact, other than heart transplant, heart assist system implant is the most expensive procedure in MDC 5. The average FY 1997 charge for these cases, when assigned to DRG 108, is over \$150,000 compared to about \$53,000 for all cases in DRG 108. Obviously, the charges for heart assist implant are increasing at a much greater rate than the average charges for DRG 108. In addition, the length of stay for cases coded with 37.66 is approximately 32 days compared to about 11 days for all other DRG 108 cases.

¹ A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second DRG is for cases without CC. If a third number is included, it represents cases with patients who are age 0-17. Occasionally, a pair of DRGs is split between age >17 and age 0-17.

One possibility for improving payment for these cases is to move them to DRGs 104 and 105 (Cardiac Valve Procedures). Those DRGs, which split on the basis of the performance of cardiac catheterization, have average charges of approximately \$66,000 and \$51,000, respectively. While heart assist implant cases are still more expensive than the average case in these DRGs, payment would be improved. Clinically, placement of heart assist implant in DRGs 104 and 105 is not without precedent. Effective with FY 1988, we placed implant of a total automatic implantable cardioverter defibrillator (AICD) in these DRGs. In addition, the vast majority of procedures assigned to DRG 108 involve surgically splitting open the sternum to perform the procedure. However, implant of the heart assist device does not require this approach.

While reviewing the DRG 108 cases, we also noted that procedure code 35.33 (annuloplasty) is assigned to this DRG. Annuloplasty is a valve procedure and is clinically more similar to the cases assigned to DRGs 104 and 105 than it is to the cases assigned to DRG 108. In addition, the average standardized charge for annuloplasty cases assigned to DRG 108 is about \$67,000, well above the overall average charge of approximately \$53,000 for cases in DRG 108. Therefore, we are proposing to move annuloplasty from DRG 108 to DRGs 104 and 105.

In order to more accurately reflect the cases assigned to DRGs 104 and 105, we would retitle them as follows:

DRG 104 Cardiac Valve and Other Major Cardiothoracic Procedures with Cardiac Catheterization
DRG 105 Cardiac Valve and Other Major Cardiothoracic Procedures without Cardiac Catheterization.

3. MDC 22 (Burns)

Under the current DRG system, burn cases are assigned to one of six DRGs in MDC 22 (Burns), which have not been revised since 1986. In our FY 1998 hospital inpatient proposed rule (June 2, 1997; 62 FR 29912), in response to inquiries we had received, we indicated that we would conduct a comprehensive review of MDC 22 to determine whether changes in these DRGs could more appropriately capture the variation in resource use associated with different classes of burn patients. We solicited public comments on this issue, particularly asking for recommendations on ways to categorize related diagnosis and procedure codes to produce DRG groupings that would be more homogeneous in terms of resource use.

Among the comments we received was a proposal (endorsed by the American Burn Association (ABA)) for restructuring the DRGs based on several statistical and clinical criteria, including age, severity of the burn, and the presence of complications or comorbidities. Although this proposal was structured for a patient population encompassing all ages of patients, we believed that it showed great promise for Medicare patients as well. During the last several months, we have worked closely with representatives of the ABA and with the clinicians who developed the proposal in order to refine it for Medicare purposes.

Based on this work, we are proposing a new set of DRGs for burn cases. Under this proposal, we would replace the six existing DRGs in MDC 22 with eight new DRGs. For ease of reference and classification, the current DRGs in MDC 22, DRGs 456 through 460 and 472, would no longer be valid, and we would establish new DRGs 504 through 511 to contain all cases that currently group to MDC 22. (The complete titles of the new DRGs are set forth below.)

In reviewing the Medicare burn cases, we found that the most important distinguishing characteristic in terms of resource use was the amount of body surface affected by the burn and how much of that burn was a 3rd degree burn. The second most important factor was whether or not the patient received a skin graft. Thus, a patient with burns covering at least 20 percent of body area, with at least 10 percent of that a 3rd degree burn, consumed the most resources. However, if a patient met these criteria and did not receive a skin graft, then the case was much less expensive and the average length of stay fell from over 30 days to 8 days. The first two proposed burn DRGs would reflect these distinctions (DRGs 504 and 505).

After classifying the most extensive burn cases, we found that the patients with 3rd degree burns that did not meet the criteria to be assigned to DRGs 504 and 505 were the most expensive of the remaining cases (that is, those patients whose burns that did not meet the at least 20 percent body area or at least 10 percent 3rd degree criteria). These burns are referred to clinically as "full-thickness burns." A subset of these full-thickness burn cases, those with skin graft or an inhalation injury, were much more expensive than the other cases. After dividing these patients into two groups, with or without skin graft or inhalation injury, we examined whether other factors had an influence on resource use. We found that patients who had a CC (complication or

comorbidity) or a concomitant significant trauma consumed more resources whether or not they had a skin graft or inhalation injury. Thus, the next four DRGs were defined as full-thickness burns with skin graft or inhalation injury with or without CC or significant trauma, or full-thickness burns without skin graft or inhalation injury with or without CC or significant trauma (DRGs 506 through 509).

Finally, the last two proposed DRGs (510 and 511) are for cases with nonextensive burns. These cases are also split on the basis of CCs or concomitant significant trauma.

Consistent with the recommendations of several commenters on last year's proposed rule, the new burn DRGs would no longer include a separate DRG for cases in which burn patients were transferred to another acute care facility. Overall, we estimate that these proposed changes would increase by more than 25 percent the amount of variation in resource use explained by the DRGs in MDC 22. They would also improve the clinical coherence of the cases within each DRG. Thus, we believe that the proposed DRGs would provide for improved payment for cases assigned to MDC 22.

The specific diagnosis and procedure codes that would be included in each of the eight DRGs and their titles are as follows:

DRGs 504 and 505—Extensive 3rd Degree Burns with and without Skin Graft

DRGs 504 and 505 would include all cases with burns involving at least 20 percent of body surface area combined with a 3rd degree burn covering at least 10 percent of body surface area. Thus, these cases would have diagnosis codes of 948.xx, with a fourth digit of 2 or higher (indicating that burn extends over 20 percent or more of body surface) and a fifth digit of 1 or higher (indicating a 3rd degree burn extending over 10 percent or more of body surface). Cases with the appropriate diagnosis codes would be classified into DRG 504 if one of the following skin graft procedure codes is present:

85.82 Split-thickness graft to breast
85.83 Full-thickness graft to breast
85.84 Pedicle graft to breast
86.60 Free skin graft, NOS
86.61 Full-thickness skin graft to hand
86.62 Other skin graft to hand
86.63 Full-thickness skin graft to other sites
86.65 Heterograft to skin
86.66 Homograft to skin
86.67 Dermal regenerative graft (new code in FY 1999—see Table 6A in section V. of the Addendum)
86.69 Other skin graft to other sites
86.70 Pedicle of flap graft, NOS

- 86.71 Cutting and preparation of pedicle grafts or flaps
 86.72 Advancement of pedicle graft
 86.73 Attachment of pedicle or flap graft to hand
 86.74 Attachment of pedicle or flap graft to other sites
 86.75 Revision of pedicle or flap graft
 86.93 Insertion of tissue expander

DRGs 506 and 507—Full Thickness Burn with Skin Graft or Inhalation Injury with or without CC or Significant Trauma

These DRGs would include all other cases of 3rd degree burns that also have either a skin graft or an inhalation injury. Thus, these cases would have diagnosis codes of 941.xx through 946.xx, and 949.xx, with a fourth digit of 3 or higher, as well as cases with codes of 948.xx that did not group into DRGs 504 or 505 (that is, 948.00, 948.01, and 948.1x through 948.9x with a fifth digit of 0). In addition, cases classified into DRGs 506 and 507 must have either one of the skin graft procedure codes listed above or one of the following diagnosis codes for inhalation injuries:

- 518.5 Pulmonary insufficiency following trauma and surgery
 518.81 Respiratory failure
 518.84 Acute and chronic respiratory failure (new code in FY 1999—see Table 6A in section V. of the Addendum)
 947.1 Burn of larynx, trachea, or lung
 987.9 Toxic effect of gas, fume, or vapor, NOS

Cases that meet both of these coding criteria would be assigned to DRG 506 if there is a diagnosis code indicating either a CC (based on the standard DRG CC list) or concomitant significant trauma (based on the significant trauma diagnosis codes, listed by body site, used for classification in MDC 24).

DRGs 508 and 509—Full Thickness Burn without Skin Graft or Inhalation Injury with or without CC or Significant Trauma

These DRGs would include all other cases of 3rd degree burns. Thus, these DRGs would include all cases without a skin graft or inhalation injury that have diagnosis codes of 941.xx through 946.xx, and 949.xx, with a fourth digit of 3 or higher, as well as cases with codes of 948.xx that did not group into DRGs 504 or 505. DRG 508 would also require a secondary diagnosis from the standard CC list or the trauma list based on the significant trauma diagnosis codes, listed by body site, used for classification in MDC 24.

DRGs 510 and 511—Nonextensive Burns with and without CC or Significant Trauma

The remaining burn cases would be classified into one of these two DRGs, depending on whether or not the claim included a diagnosis code reflecting the presence of a CC or a significant trauma, as explained above.

4. Legionnaires' Disease

Effective with discharges occurring on or after October 1, 1997, a new diagnosis code was created for pneumonia due to Legionnaires' disease (code 482.84). In the August 29, 1997 final rule with comment period, we assigned this code to DRGs 79, 80, and 81 (Respiratory Infections and Inflammations) (62 FR 46090). However, we did not include this code as a human immunodeficiency virus (HIV) major related condition in MDC 25 (HIV Infections). Because pneumonia due to Legionnaires' disease is a serious respiratory condition that has a deleterious effect on patients with HIV, we are proposing to assign diagnosis code 482.84 to DRG 489 (HIV with Major Related Condition) as a major related condition. In addition, we did not assign the code as a major problem in DRGs 387 (Prematurity with Major Problems) and 389 (Full Term Neonate with Major Problems). These DRGs are assigned to MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period). Again, as a part of this proposed rule, we would assign diagnosis code 482.84 as a major problem in DRGs 387 and 389 because of its effect on resource use in treating newborns.

5. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with

the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 5, the surgical class "heart transplant" consists of a single DRG (DRG 103) and the class "major cardiovascular procedures" consists of two DRGs (DRGs 110 and 111). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPE searches for the procedure in the most resource-intensive surgical class this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if

no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we are unable to test the effects of the proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of revised GROUPE software at the time this proposed rule is prepared. Rather, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then determine the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We test the proposed surgical hierarchy changes after the revised GROUPE is received and reflect the final changes in the DRG relative weights in the final rule. Further, as discussed below in section II.C of this preamble, we anticipate that the final recalibrated weights will be somewhat different from those proposed, since they will be based on more complete data. Consequently, further revision of the hierarchy, using the above principles, may be necessary in the final rule.

At this time, we would revise the surgical hierarchy for MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth and Throat) as follows:

- We would reorder Sinus and Mastoid Procedures (DRGs 53–54) above Myringotomy with Tube Insertion (DRGs 61–62).
- We would reorder Mouth Procedures (DRGs 168–169) above Tonsil and Adenoid Procedure Except Tonsillectomy and/or Adenoidectomy Only (DRGs 57–58).

6. Refinement of Complications and Comorbidities List

There is a standard list of diagnoses that are considered CCs. We developed this list using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial

complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. At this time, we do not propose to delete any of the diagnosis codes on the CC list.

In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPE logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes to preclude coding of CCs for closely related conditions, to preclude duplicative coding or inconsistent coding from being treated as CCs, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 18877), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or

comorbidities of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. (See the September 30, 1988 final rule for the revision made

for the discharges occurring in FY 1989 (53 FR 38485); the September 1, 1989 final rule for the FY 1990 revision (54 FR 36552); the September 4, 1990 final rule for the FY 1991 revision (55 FR 36126); the August 30, 1991 final rule for the FY 1992 revision (56 FR 43209); the September 1, 1992 final rule for the FY 1993 revision (57 FR 39753); the September 1, 1993 final rule for the FY 1994 revisions (58 FR 46278); the September 1, 1994 final rule for the FY 1995 revisions (59 FR 45334); the September 1, 1995 final rule for the FY 1996 revisions (60 FR 45782); the August 30, 1996 final rule for the FY 1997 revisions (61 FR 46171); and the August 29, 1997 final rule for the FY 1998 revisions (62 FR 45966)).

We are proposing a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD-9-CM diagnosis coding system effective October 1, 1998. (See section II.B.8, below, for a discussion of ICD-9-CM changes.) These proposed changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6F and 6G in section V. of the Addendum to this proposed rule contain the proposed revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 1998. Each table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6F—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 1998, the indented diagnoses will not be recognized by the GROUPE as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6G—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 1998 the indented diagnoses will be recognized by the GROUPE as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for \$92.00 plus \$6.00 shipping and handling and on microfiche for \$20.50, plus \$4.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which

should include the identification accession number (PB) 88-133970) should be made to the following address: National Technical Information Service; United States Department of Commerce; 5285 Port Royal Road; Springfield, Virginia 22161; or by calling (703) 487-4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998) and those in Tables 6F and 6G of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1998.

Alternatively, the complete documentation of the GROUPEL logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with HCFA, is responsible for updating and maintaining the GROUPEL program. The current DRG Definitions Manual, Version 15.0, is available for \$195.00, which includes \$15.00 for shipping and handling. Version 16.0 of this manual, which will include the final FY 1999 DRG changes, will be available in October 1998 for \$225.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road; Wallingford, Connecticut 06492; or by calling (203) 949-0303. Please specify the revision or revisions requested.

7. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

- 60.0 Incision of prostate
- 60.12 Open biopsy of prostate
- 60.15 Biopsy of periprostatic tissue
- 60.18 Other diagnostic procedures on prostate and periprostatic tissue

- 60.21 Transurethral prostatectomy
- 60.29 Other transurethral prostatectomy
- 60.61 Local excision of lesion of prostate
- 60.69 Prostatectomy NEC
- 60.81 Incision of periprostatic tissue
- 60.82 Excision of periprostatic tissue
- 60.93 Repair of prostate
- 60.94 Control of (postoperative) hemorrhage of prostate
- 60.95 Transurethral balloon dilation of the prostatic urethra
- 60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD-9-CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV. of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990, August 30, 1991, September 1, 1992, September 1, 1993, September 1, 1994, September 1, 1995, August 30, 1996, and August 29, 1997, we moved several other procedures from DRG 468 to 477, as well as moving some procedures from DRG 477 to 468. (See 55 FR 36135, 56 FR 43212, 57 FR 23625, 58 FR 46279, 59 FR 45336, 60 FR 45783, 61 FR 46173, and 62 FR 45981, respectively.)

a. Adding Procedure Codes to MDCs. We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. Based on this year's review, we did not identify any necessary changes; therefore, we are not proposing to move any procedures from DRGs 468 and 477 to one of the surgical DRGs.

b. Reassignment of Procedures Among DRGs 468, 476, and 477. We also reviewed the list of procedures that produce assignments to DRGs 468, 476, and 477 to ascertain if any of those procedures should be moved from one of these DRGs to another based on average charges and length of stay. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we are not proposing to move any procedures from DRG 468 to DRGs 476 or 477, from DRG 476 to DRGs 468

or 477, or from DRG 477 to DRGs 468 or 476.

8. Changes to the ICD-9-CM Coding System

As discussed above in section II.B.1 of this preamble, the ICD-9-CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD-9-CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD-9-CM. That mission includes approving coding changes, and developing errata, addenda, and other modifications to the ICD-9-CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD-9-CM diagnosis codes included in the *Tabular List* and *Alphabetic Index for Diseases* while HCFA has lead responsibility for the ICD-9-CM procedure codes included in the *Tabular List* and *Alphabetic Index for Procedures*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding fields, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes at public meetings held on June 5 and December 4 and 5, 1997, and finalized the coding changes after consideration of comments received at the meetings and in writing

within 30 days following the December 1997 meeting. The initial meeting for consideration of coding issues for implementation in FY 2000 will be held on June 4, 1998. Copies of the minutes of the 1997 meetings can be obtained from the HCFA Home Page @ <http://www.hcfa.gov/pubaffr.htm>, under the "What's New" listing. Paper copies of these minutes are no longer available and the mailing list has been discontinued. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD-9-CM Coordination and Maintenance Committee; NCHS; Room 1100; 6525 Belcrest Road; Hyattsville, Maryland 20782. Comments may be sent by E-mail to: dfp4@cdc.gov.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD-9-CM Coordination and Maintenance Committee; HCFA, Center for Health Plans and Providers, Plan and Provider Purchasing Policy Group, Division of Acute Care; C5-06-27; 7500 Security Boulevard; Baltimore, Maryland 21244-1850. Comments may be sent by E-mail to: pbrooks@hcfa.gov.

The ICD-9-CM code changes that have been approved will become effective October 1, 1998. The new ICD-9-CM codes are listed, along with their proposed DRG classifications, in Tables 6A and 6B (New Diagnosis Codes and New Procedure Codes, respectively) in

section V. of the Addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment in the ICD-9-CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, we are soliciting comments only on the proposed DRG classifications.

Further, the Committee has approved the expansion of certain ICD-9-CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes, other codes, or have been deleted are in Table 6C (Invalid Diagnosis Codes). These invalid diagnosis codes will not be recognized by the GROUPEL beginning with discharges occurring on or after October 1, 1998. The corresponding new or expanded diagnosis codes are included in Table 6A. Procedure codes that have been replaced by expanded codes, other codes, or have been deleted are in Table 6D (Invalid Procedure Codes). Revisions to diagnosis code titles are in Table 6E (Revised Diagnosis Code Titles), which also include the proposed DRG assignments for these revised codes. For FY 1999, there are no revisions to procedure code titles.

9. Other Issues—

a. Palliative Care. Effective October 1, 1996 (FY 1997), we introduced a diagnosis code to allow the

identification of those cases in which palliative care was delivered to a hospital inpatient. This code, V66.7 (Encounter for palliative care), was unusual in that there had been no previous code assignment that included the concept of palliative care. Since this was a new concept, instructional materials were developed and distributed by the AHA as well as specialty groups on the use of this new code. With new codes, it sometimes takes several years for physician documentation to improve and for coders to become accustomed to looking for this type of information in order to assign a code. There is an inclusion note listed under V66.7 which indicates that this code should be used as a secondary diagnosis only; the patient's medical problem would always be listed first. Currently, use of diagnosis code V66.7 does not have an impact on DRG assignment. Consistent with prior practice, we have waited until the FY 1997 data became available for analysis before considering any possible modifications to the DRGs.

In analyzing the FY 1997 bills received through September 1997, we found that 4,769 discharges included V66.7 as a secondary diagnosis. These cases were widely distributed throughout 199 DRGs. The vast majority of these DRGs included five or fewer discharges with use of palliative care. Only 12 DRGs included more than 100 cases. These were the following:

DRG	Title	Number of cases
10	Nervous System Neoplasms with CC	144
14	Specific Cerebrovascular Disorders Except TIA	272
79	Respiratory Infections and Inflammations Age >17 with CC	139
82	Respiratory Neoplasms	526
89	Simple Pneumonia and Pleurisy Age >17 with CC	200
127	Heart Failure and Shock	184
172	Digestive Malignancy with CC	226
203	Malignancy of Hepatobiliary System or Pancreas	285
239	Pathological Fractures and Musculoskeletal and Connective Tissue Malignancy	218
296	Nutritional and Miscellaneous Metabolic Disorders Age >17 with CC	173
403	Lymphoma and Non-Acute Leukemia with CC	178
416	Septicemia Age >17	147

Six of these DRGs are cancer-related; however, the other DRGs are quite diverse. Upon further analysis, we found that, for the most part, discharges with code V66.7 do not significantly differ in length of stay from the discharges in the same DRG without code V66.7. Discharges with code V66.7 are sometimes longer and sometimes shorter and the comparative length of stay for a given DRG tends to vary by only one day. In general, the average charges for a palliative care case

discharge with a secondary code of V66.7 were lower than the charges for other discharges within the DRG. However, these differences were relatively small and were well within the standard variation of charges for cases in the DRG.

One approach we could take to revise the DRGs would be to divide those DRGs with a large number of cases coded with V66.7 into two different DRGs, with and without palliative care. However, the relatively small

proportion of cases in each DRG argues against this approach; no DRG has more than 1 percent of its cases coded with palliative care and, in most cases, the percentage is well under 1 percent. An alternative approach would be to group all palliative care cases, regardless of the underlying disease or condition, into one new DRG. However, the charges of these cases are so varied that this is not a logical choice. In addition, there is a lack of clinical coherence in such an approach. The underlying diagnoses of

these cases range from respiratory conditions to heart failure to septicemia. Because there are so few cases in the FY 1997 data and they are so widely dispersed among different DRGs, we are not proposing a DRG modification at this time. We will make a more detailed analysis of these cases over the next year based on a more complete FY 1997 data file as well as review of the FY 1998 cases that will be available later this year. As time goes by, hospital coders and physicians should become more aware of this code and we hope that more complete data will assist our decision making process.

b. *PTCA*. Effective with discharges occurring on or after October 1, 1997, we reassigned cases of PTCA with coronary artery stent implant from DRG 112 to DRG 116. In the August 29, 1997 final rule with comment period, we responded to several commenters who contended that PTCA cases treated with platelet inhibitors were as resource intensive as the PTCA with stent implant cases and that these cases should also be moved to DRG 116. However, there is currently no code that describes the infusion of platelet inhibitors. Therefore, we were unable to make any changes in the DRGs for FY 1998.

As set forth in Table 6B, New Procedure Codes in section V. of the addendum to this proposed rule, a new procedure code for injection or infusion of platelet inhibitors (code 99.20) will be effective with discharges occurring on or after October 1, 1998. Our usual policy on new codes is to assign them to the same DRG or DRGs as their predecessor code. Because infusion of platelet inhibitors is currently assigned to a non-OR procedure code, we followed our usual practice and designated code 99.20 as a non-OR code that does not affect DRG assignment.

We will not have any data on this new code until we receive bills for FY 1999. Thus, we would be unable to make any changes in DRG assignment until FY 2001. We note, however, that the Conference Report that accompanied the Balanced Budget Act of 1997 contained language stating that "... in order to ensure that Medicare beneficiaries have access to innovative new drug therapies, the Conferees believe that HCFA should consider, to the extent feasible, reliable, validated data other than MedPAR data in annually recalibrating and reclassifying the DRGs." (H.R. Rep. No. 105-217.734). At this time, we have received no data that would allow us to make an appropriate modification of DRG 112 for PTCA cases with platelet infusion therapy. When we develop the final rule, we will review and analyze

any data we receive about the use of platelet inhibitors for Medicare beneficiaries. If we believe that the data are adequate to allow identification of the percentage of cases in DRG 112 that receive this therapy and the charge and length of stay data convince us that these cases should be moved, we will consider such a move effective for discharges occurring on or after October 1, 1998.

C. Recalibration of DRG Weights

We are proposing to use the same basic methodology for the FY 1999 recalibration as we did for FY 1998. (See the August 29, 1997 final rule with comment (62 FR 45982).) That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we would use the most current charge information available, the FY 1997 MedPAR file, rather than the FY 1996 MedPAR file. The MedPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights are constructed from FY 1997 MedPAR data, based on bills received by HCFA through December 1997, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1997 MedPAR file includes data for approximately 11.2 million Medicare discharges.

The methodology used to calculate the proposed DRG relative weights from the FY 1997 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the proposed DRG classification revisions discussed above in section II.B of this preamble. As noted in section II.B.5, due to the unavailability of revised GROUPE software, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification. However, there are some changes that cannot be modeled.

- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.

- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.

- We then eliminated statistical outliers, using the same criteria as was used in computing the current weights. That is, all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges

per case and the charges per day for each DRG.

- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. A transfer case is counted as a fraction of a case based on the ratio of its length of stay to the geometric mean length of stay of the cases assigned to the DRG. That is, a 5-day length of stay transfer case assigned to a DRG with a geometric mean length of stay of 10 days is counted as 0.5 of a total case.

- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1995 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from HCFA as transplant centers.)

- Acquisition costs for kidney, heart, heart-lung, liver, and lung transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant for heart and heart-lung transplants); DRG 480 (Liver Transplant); and DRG 495 (Lung Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We propose to use that same case threshold in recalibrating the DRG weights for FY 1999. Using the FY 1997 MedPAR data set, there are 38 DRGs that contain fewer than 10 cases. We computed the weights for the 38 low-volume DRGs by adjusting the FY 1998 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The weights developed according to the methodology described above, using the proposed DRG classification

changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.b of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to assure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprised of two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise

breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA.

We note that effective April 1, 1990, the term Metropolitan Area (MA) replaced the term Metropolitan Statistical Area (MSA) (which had been used since June 30, 1983) to describe the set of metropolitan areas comprised of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 *Federal Register* to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the prospective payment system, we will continue to refer to these areas as MSAs.

Section 1886(d)(3)(E) of the Act also requires that the wage index be updated annually beginning October 1, 1993. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. We also adjust the wage index, as discussed below in section III.F, to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act.

B. FY 1999 Wage Index Update

The proposed FY 1999 wage index in section V of the Addendum (effective for hospital discharges occurring on or after October 1, 1998 and before October 1, 1999) is based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1995 (the FY 1998 wage index was based on FY 1994 wage data). The proposed FY 1999 wage index includes the following categories of data, which were also included in the FY 1998 wage index:

- Total salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Direct patient care contract labor costs and hours.

The proposed wage index also continues to exclude the direct salaries and hours for nonhospital services such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system. Finally, as discussed in detail in the August 29, 1997 final rule with comment period, we would calculate a separate Puerto

Rico-specific wage index and apply it to the Puerto Rico standardized amount. (See 62 FR 45984 and 46041) This wage index is based solely on Puerto Rico's data.

For FY 1999 we are proposing to include two changes to the categories: we will add contract labor costs and hours for top management positions and replace the fringe benefit category with the wage-related costs associated with hospital and home office salaries category. These two changes reflect changes to the Medicare cost report that were implemented in the FY 1995 hospital prospective payment system September 1, 1994 final rule with comment period (59 FR 45355). The changes were made to the cost report for cost reporting periods beginning during FY 1995. Because we are using wage data from the FY 1995 cost report for the proposed FY 1999 wage index, these two changes will be reflected in the wage index for the first time in FY 1999.

As discussed in detail in the September 1, 1994 final rule with comment period (59 FR 45355), we expanded the definition of contract services reported on the Worksheet S-3 to include the labor-related costs associated with contract personnel in a hospital's top four management positions: Chief Executive Officer (CEO)/Hospital Administrator, Chief Operating Officer (COO), Chief Financial Officer (CFO), and Nursing Administrator. We also revised the cost report to reflect a change in terminology from "fringe benefits" to "wage-related costs," to promote the consistent reporting of these costs. (See September 1, 1994 final rule with comment period 59 FR 45356-45359.) We made this change in terminology because we believe that it will eliminate confusion regarding those wage-related costs that are incorporated in the wage index versus the broader definition of fringe benefits recognized under the Medicare cost reimbursement principles. Wage-related costs, which include core and other wage-related costs, are reported on the Form HCFA-339, the Provider Cost Report Reimbursement Questionnaire.

Finally, we have analyzed the wage data for the following costs, which were separately reported for the first time on the FY 1995 cost reports:

- Physician Part A costs.
- Resident and Certified Registered Nurse Anesthetist (CRNA) Part A costs.
- Overhead cost and hours by cost center.

Our analysis and proposals concerning these data are set forth below in section III.C.

C. Proposals Concerning the FY 1999 Wage Index

1. Physician Part A Costs.

Currently, if a hospital directly employs a physician, the Part A portion of the physician's salary and wage-related costs (that is, administrative and teaching service) is included in the calculation of the wage index. However, the costs for contract physician Part A services are not included. Our policy has been that, to be included in the wage index calculation, a contracted service must be related to direct patient care, or, beginning with the FY 1999 wage index, top level management (see discussion above). Because some States have laws that prohibit hospitals from directly hiring physicians, the hospitals in those States have claimed that they are disadvantaged by the wage index's exclusion of contract physician Part A costs. We began collecting separate wage data for both direct and contract physician Part A services on the FY 1995 cost report in order to analyze this issue. As we discussed in the September 1, 1994 final rule with comment period (59 FR 45354), our original purpose in collecting these data was to exclude all Part A physician costs from the wage index.

When we made the change to the cost report, there were five States in which hospitals were prohibited from directly employing physicians. We understand that only two States currently maintain this prohibition: Texas and California. Thus, the number of hospitals affected by our current policy has decreased. Nevertheless, the fact that hospitals in these two States are still prohibited from directly employing physicians for Part A services and, therefore, must enter into contractual agreements with physicians for these services, perpetuates the perceived inequity.

The main reasons we planned to exclude all Part A physician costs rather than include the contract costs was our concern that it would be difficult to accurately attribute the Part A costs and hours of these contract physicians and including these costs could inappropriately inflate the hospitals' average hourly wages. That is, we anticipated that average costs for contract physicians would be significantly higher than the costs for those physicians directly employed by the hospital. However, our analysis of the data shows that the average hourly wages for contract physician Part A costs are very similar to, and, in fact slightly lower than, the costs for salaried Part A physician services.

Based on this result, we believe that continuing to include the direct

physician Part A costs and adding the costs for contract physicians would be the better policy. Thus, we are proposing to calculate the FY 1999 wage index including both direct and contract physician Part A costs.

Of the 5,115 hospitals included in the FY 1995 wage data file, approximately 23 percent reported contract physician Part A costs. Including these costs would raise the wage index values for one MSA (2 hospitals) by more than 5 percent and 5 MSAs (60 hospitals) by between 2 and 5 percent. One Statewide rural area (68 hospitals) would experience a decrease between 2 and 5 percent. The wage index values for the remaining 365 areas (5,055 hospitals) would be relatively unaffected, experiencing changes of between -2 and 2 percent. We understand that an unusually large number of hospitals have requested changes to these wage data; therefore, there may be relatively significant differences between the wage data file used to calculate the proposed wage index and the final corrected wage data in the file used to calculate the final wage index. Because of this, we will reevaluate our decision based on that final wage data, which will be submitted by April 6, 1998. If we find significant differences in the contract labor costs, we may reconsider our proposal.

2. Resident and CRNA Part A Costs

The wage index presently includes salaries and wage-related costs for residents in approved medical education programs and for CRNAs employed by hospitals under the rural pass-through provision. However, Medicare pays for these costs outside the prospective payment system. Removing these costs from the wage index calculation would be consistent with our general policy to exclude costs that are not paid through the prospective payment system, but, because they were not separately identifiable, we could not remove them.

In the September 1, 1994 final rule with comment period (59 FR 45355), we stated that we would begin collecting the resident and CRNA wage data separately and would evaluate the data before proposing a change in computing the wage index. However, there were data reporting problems associated with these costs on the FY 1995 cost report. The original instructions for reporting resident costs on Line 6 of Worksheet S-3, Part III, erroneously included teaching physician salaries and other teaching program costs from Worksheet A of the cost report. Although we issued revised instructions to correct this error, we now understand these revisions may

not have been uniformly instituted. Another issue relating to residents' salaries stems from apparent underreporting of these costs by hospitals and inconsistent treatment of the associated wage-related costs.

In addition, the original Worksheet S-3 and reporting instructions did not provide for the separate reporting of CRNA wage-related costs. Another issue with the FY 1995 wage data is the inclusion of contract CRNA Part A costs in the contract labor costs reported on Worksheet S-3. We believe that much of the CRNA Part A costs are reported under contract labor, rather than under salaried employee costs, due to the heavy use of contract labor by rural hospitals. We do not believe that it would be feasible at this time to try to remove these CRNA Part A costs from the contract labor costs. We improved the reporting instructions for CRNA costs on the FY 1996 cost report.

Our analysis of the CRNA and resident wage data submitted on the FY 1995 cost report convinces us that these data are inaccurately and incompletely reported by hospitals. For example, although there are over 900 teaching hospitals receiving graduate medical education payments, only about 800 hospitals reported resident cost data. Because we do not want to make a relatively significant change in the wage index data calculation without complete and accurate data upon which to base our decision, we are proposing to delay any decision regarding excluding resident and CRNA costs from the wage index until at least next year. We will review the FY 1996 data when it becomes available later this year and present our analysis and any proposals in next year's proposed rule.

3. Overhead Allocation

Prior years' wage index calculations have excluded the direct wages and hours associated with certain subprovider components that are excluded from the prospective payment system; however, the overhead costs associated with excluded components have not been removed. We have previously attempted to remove the overhead costs associated with these excluded areas of the hospital on two separate occasions. Based on the quality of the data, as well as comments we received from the public, these proposals were never implemented.

In the September 1, 1995 final rule with comment period (60 FR 45797), we discussed the results of the second of these efforts. Our analysis was prompted by several suggestions from hospital representatives that the current methodology, which removes the higher

nursing costs in excluded areas from the hospital's direct salaries but leaves in the lower general services salaries, negatively distorts wages. However, the results of our analysis at that time dissuaded us from proposing to exclude these areas' overhead costs because the data were unreliable. We revised the FY 1995 cost report to allow for the reporting of the overhead salaries and hours. We stated that we would reexamine this issue when the FY 1995 cost report data became available.

To allocate overhead costs based on the data reported on Worksheet S-3, we first determined the ratio of the hours reported directly to excluded areas compared to the total hours. Total overhead hours and salaries were then multiplied by this ratio to allocate the proportion of overhead costs attributable to excluded areas. Next, the overhead hours and salaries attributable to excluded areas were subtracted from the hospital's total hours and salaries, and an average hourly wage reflecting this overhead allocation was computed.

Of the 5,115 hospitals in the FY 1995 wage data file, 3,661 reported overhead hours (hospitals were only required to separately report overhead hours if their number of directly assigned excluded hours exceeded 5 percent of their total hours). The overhead allocation would result in an increase in the wage index value of more than 5 percent for only one MSA (2 hospitals). A total of 12 labor areas (5 Statewide rural (206 hospitals) and 7 MSAs (25 hospitals)) would experience an increase of between 2 percent and 5 percent. Only one MSA (29 hospitals) would experience a decline of between 2 and 5 percent. The wage index value for the remaining 358 areas (4,921 hospitals) would be affected by less than 2 percent.

We are proposing to include this exclusion of overhead allocation in the calculation of the FY 1999 wage index. Although the overall impact on hospitals of this change is relatively small, we believe it is an appropriate step toward improving the overall consistency of the wage index. Additionally, we believe this change will significantly increase the accuracy of the wage data for individual hospitals, especially hospitals that have a relatively small portion of their facility devoted to acute inpatient care.

D. Verification of Wage Data From the Medicare Cost Report

The data for the proposed FY 1999 wage index were obtained from Worksheet S-3, Parts III and IV of the FY 1995 Medicare cost reports. The data file used to construct the proposed wage

index includes FY 1995 data submitted to the Health Care Provider Cost Report Information System (HCRIS) as of early January 1998. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

Of the 5,123 hospitals originally in the data file, 851 hospitals had data elements that failed an edit. From mid-January to mid-February 1998, intermediaries contacted hospitals to revise or verify data elements that resulted in the edit failures.

As of February 17, 1998, 31 hospitals still had unresolved data elements. These unresolved data elements are included in the calculation of the proposed FY 1999 wage index pending their resolution before calculation of the final FY 1999 wage index. We have instructed the intermediaries to complete their verification of questionable data elements and to transmit any changes to the wage data (through HCRIS) no later than April 6, 1998. We expect that all unresolved data elements will be resolved by that date. The revised data will be reflected in the final rule.

Also, as part of our editing process, we deleted data for eight hospitals that failed edits. For two of these hospitals, we were unable to obtain sufficient documentation to verify or revise the data because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. The data from the remaining six participating hospitals were removed because inclusion of their data would have significantly distorted the wage index values. The data for these six hospitals will be included in the final wage index if we receive corrected data that passes our edits. As a result, the proposed FY 1999 wage index is calculated based on FY 1995 wage data for 5,115 hospitals.

E. Computation of the Wage Index

The method used to compute the proposed wage index is as follows:

Step 1—As noted above, we are proposing to base the FY 1999 wage index on wage data reported on the FY 1995 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S-3, Parts III and IV of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1994 and before October 1, 1995. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1994 and reported a cost reporting period exceeding 52 weeks. These data were included because no

other data from these hospitals would be available for the cost reporting period described above, and particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1995 data.

Step 2—For each hospital, we subtracted the excluded salaries (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system) from gross hospital salaries to determine net hospital salaries. To determine total salaries plus wage-related costs, we added the costs of contract labor for direct patient care, certain top management, and physician Part A services; hospital wage-related costs, and any home office salaries and wage-related costs reported by the hospital, to the net hospital salaries. The actual calculation is the sum of lines 2, 4, 6, and 33 of Worksheet S-3, Part III. This calculation differs from the one computed on line 32 of Worksheet S-3, Part III. Therefore, a hospital's average hourly wage calculated under Step 2 will be different from the average hourly wage shown on line 32, column 5.

Step 3—For each hospital, we subtracted the reported excluded hours from the gross hospital hours to determine net hospital hours. To determine total hours, we increased the net hours by the addition of home office hours and hours for contract labor attributable to direct patient care, certain top management, and physician Part A salaries.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs. First, we determined the ratio of excluded area hours (Line 24 of Worksheet S-3, Part III) to revised total hours (Line 9 of Worksheet S-3, Part III, adding back CRNA Part A, physician Part A, and resident hours). Second, we computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 16 of Worksheet S-3, Part IV. Finally, we subtracted the computed overhead salaries and hours associated with excluded areas from the total salaries and hours derived in Steps 2 and 3.

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage inflation adjustment, we estimated the percentage change in the employment

cost index (ECI) for compensation for each 30-day increment from October 14, 1994 through April 15, 1996, for private industry hospital workers from the Bureau of Labor Statistics *Compensation and Working Conditions*. For previous wage indexes, we used the percentage change in average hourly earnings for hospital industry workers to make the wage inflation adjustment. For FY 1999 we are proposing to use the ECI for compensation for private industry hospital workers because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries, which is what the average hourly earnings category reflected. In addition, the ECI includes managers as well as other hospital workers. We are also proposing to change the methodology used to compute the monthly update factors. This new methodology uses actual quarterly ECI data to determine the monthly update factors. The methodology assures that the update factors match the actual quarterly and annual percent changes. The inflation factors used to inflate the hospital's data were based on the midpoint of the cost reporting period as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/94	11/15/94	1.032882
11/14/94	12/15/94	1.030771
12/14/94	01/15/95	1.028721
01/14/95	02/15/95	1.026731
02/14/95	03/15/95	1.024776
03/14/95	04/15/95	1.022827
04/14/95	05/15/95	1.020886
05/14/95	06/15/95	1.018901
06/14/95	07/15/95	1.016822
07/14/95	08/15/95	1.014649
08/14/95	09/15/95	1.012446
09/14/95	10/15/95	1.010279
10/14/95	11/15/95	1.008146
11/14/95	12/15/95	1.006047
12/14/95	01/15/96	1.003981
01/14/96	02/15/96	1.001950
02/14/96	03/15/96	1.000000
03/14/96	04/15/96	0.998181

For example, the midpoint of a cost reporting period beginning January 1, 1995 and ending December 31, 1995 is June 30, 1995. An inflation adjustment factor of 1.016822 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1995 and covers a period of less than 360 days or greater than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by

the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area prior to any reclassifications under sections 1886(d)(8)(B) or 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained in Step 6 by the sum of the total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the Nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is \$20.6036.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of \$9.3339 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the hospital wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of Public Law 105-33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to assure that aggregate prospective payment system payments are not greater or less than those which would have been made in the year if this section did not apply. For FY 1999, this change affects 229 hospitals in 34 MSAs. The MSAs affected by this provision are identified in Table 4A by a footnote.

F. Revisions to the Wage Index Based on Hospital Redesignation

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.

- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to that combined wage index value.

- If including the wage data for the redesignated hospitals increases the wage index value for the area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value.

- The wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.

- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred.

- Rural areas whose wage index values increase as a result of excluding

the wage data for the hospitals that have been redesignated to another area have their wage index values calculated exclusive of the wage data of the redesignated hospitals.

- The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index value for an urban area below the statewide rural wage index value.

We note that, except for those rural areas where redesignation would reduce the rural wage index value, the wage index value for each area is computed exclusive of the wage data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several urban areas listed in Table 4A have no hospitals remaining in the area. This is because all the hospitals originally in these urban areas have been reclassified to another area by the MGCRB. These areas with no remaining hospitals receive the prereclassified wage index value. The prereclassified wage index value will apply as long as the area remains empty.

The proposed revised wage index values for FY 1999 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located. When the wage index value of the area to which a hospital is redesignated is lower than the wage index value for the rural areas of the State in which the hospital is located, the redesignated hospital receives the higher wage index value, that is, the wage index value for the rural areas of the State in which it is located, rather than the wage index value otherwise applicable to the redesignated hospitals.

Tables 4D and 4E list the average hourly wage for each labor market area, prior to the redesignation of hospitals, based on the FY 1995 wage data. In addition, Table 3C in the Addendum to this proposed rule includes the adjusted average hourly wage for each hospital based on the FY 1995 data (as calculated from Steps 4 and 5, above). The MGCRB will use the average hourly wage published in the final rule to evaluate a hospital's application for reclassification, unless that average hourly wage is later revised in accordance with the wage data correction policy described in

§ 412.63(w)(2). In such cases, the MGCRB will use the most recent revised data used for purposes of the hospital wage index. Hospitals that choose to apply before publication of the final rule may use the proposed wage data in applying to the MGCRB for wage index reclassifications that would be effective for FY 2000. We note that in adjudicating these wage index reclassification requests during FY 1999, the MGCRB will use the average hourly wages for each hospital and labor market area that are reflected in the final FY 1999 wage index.

At the time this proposed wage index was constructed, the MGCRB had completed its review. The proposed FY 1999 wage index values incorporate all 435 hospitals redesignated for purposes of the wage index (hospitals redesignated under section 1886(d)(8)(B) or 1886(d)(10) of the Act) for FY 1999. The final number of reclassifications may be different because some MGCRB decisions are still under review by the Administrator and because some hospitals may withdraw their requests for reclassification.

Any changes to the wage index that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process will be incorporated into the wage index values published in the final rule. The changes may affect not only the wage index value for specific geographic areas, but also whether redesignated hospitals receive the wage index value for the area to which they are redesignated, or a wage index value that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

Under § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw their applications within 45 days of the publication of this *Federal Register* document. The request for withdrawal of an application for reclassification that would be effective in FY 1999 must be received by the MGCRB by June 22, 1998. A hospital that requests to withdraw its application may not later request that the MGCRB decision be reinstated.

G. Requests for Wage Data Corrections

As a part of the August 29, 1997 final rule with comment period, we implemented a new timetable for requesting wage data corrections (62 FR 45990). In February 1998, we notified hospitals again of these changes through a memorandum to the fiscal

intermediaries. To allow hospitals time to evaluate the wage data used to construct the proposed FY 1999 hospital wage index, we made available to the public a data file containing the FY 1995 hospital wage data. In a memorandum dated February 2, 1998, we instructed all Medicare intermediaries to inform the prospective payment hospitals that they serve of the availability of the wage data file and the process and timeframe for requesting revisions. The wage data file was made available February 6, 1998, through the Internet at HCFA's home page (<http://www.hcfa.gov>). The intermediaries were also instructed to advise hospitals of the alternative availability of these data through their representative hospital organizations or directly from HCFA. Additional details on ordering this data file are discussed in section IX.A of this preamble, "Requests for Data from the Public."

In addition, Table 3C in the Addendum to this proposed rule contains each hospital's adjusted average hourly wage used to construct the proposed wage index values. A hospital can verify its adjusted average hourly wage, as calculated from Steps 4 and 5 of the computation of the wage index (see section III.E of this preamble, above) based on the wage data on the hospital's cost report (after taking into account any adjustments made by the intermediary), by dividing the adjusted average hourly wage in Table 3C by the applicable wage adjustment factors as set forth above in Step 5 of the computation of the wage index. As noted above, however, a hospital's average hourly wages using this calculation will vary from the average hourly wages shown on Line 32 of Worksheet S-3, Part III. An updated Table 3C (along with applicable wage adjustment factors) will be included in the final rule.

We believe hospitals have had ample time to ensure the accuracy of their FY 1995 wage data. Moreover, the ultimate responsibility for accurately completing the cost report rests with the hospital, which must attest to the accuracy of the data at the time the cost report is filed. However, if after review of the wage data file released February 6, a hospital believed that its FY 1995 wage data were incorrectly reported, the hospital was to submit corrections along with complete, detailed supporting documentation to its intermediary by March 9, 1998. To be reflected in the final wage index, any wage data corrections must be reviewed and verified by the intermediary and transmitted to HCFA on or before April 6, 1998. These deadlines are necessary

to allow sufficient time to review and process the data so that the final wage index calculation can be completed for development of the final prospective payment rates to be published by August 1, 1998. We cannot guarantee that corrections transmitted to HCFA after April 6 will be reflected in the final wage index.

After reviewing requested changes submitted by hospitals, intermediaries transmitted any revised cost reports to HCRIS and forwarded a copy of the revised Worksheet S-3, Parts III and IV to the hospitals. If requested changes were not accepted, fiscal intermediaries notified hospitals of the reasons why the changes were not accepted. This procedure ensures that hospitals have every opportunity to verify the data that will be used to construct their wage index values. We believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. However, if a hospital disagrees with the intermediary's resolution of a requested change, the hospital may contact HCFA in an effort to resolve policy disputes. We note that the April 6 deadline also applies to these requested changes. We will not consider factual determinations at this time as these should have been resolved earlier in the process.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 1999 payment rates. Accordingly, hospitals that do not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage corrections or to dispute the intermediary's decision with respect to requested changes.

We note that, beginning this year with the FY 1999 wage index, the final wage index that is published August 1 will incorporate all corrections, including those to correct data entry or tabulation errors of the final wage data by the intermediary or HCFA. The final wage data public use file will be released by May 7, 1998. Hospitals will have until June 5, 1998, to submit requests to correct errors in the final wage data due to data entry or tabulation errors by the intermediary or HCFA. The correction requests that will be considered after the March 9 deadline will be limited to errors in the entry or tabulation of the final wage data which the hospital could not have known about prior to March 9, 1998.

The final wage data file released in early May will contain the wage data that will be used to construct the wage

index values in the final rule. As with the file made available in February, HCFA will make the final wage data file released in May available to hospital associations and the public (on the Internet). This file, however, is being made available only for the limited purpose of identifying any potential errors made by HCFA or the intermediary in the entry of the final wage data that result from the correction process described above (with the March 9 deadline), not for the initiation of new wage data correction requests. Hospitals are encouraged to review their hospital wage data promptly after the release of the final file.

If, after reviewing the final file, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and HCFA. The letters should outline why the hospital believes an error exists and provide all supporting information, including dates. These requests must be received by HCFA and the intermediaries no later than June 5, 1998. Requests mailed to HCFA should be sent to: Health Care Financing Administration; Center for Health Plans and Providers; Attention: Stephen Phillips, Technical Advisor; Division of Acute Care; C5-06-27; 7500 Security Boulevard; Baltimore, MD 21244-1850. Each request also must be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt and contact HCFA immediately to discuss its findings.

At this time, changes to the hospital wage data will be made only in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the final wage data file. Specifically, neither the intermediary nor HCFA will accept the following types of requests at this stage of the process:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to HCRIS on or before April 6, 1998.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the February 1998 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 5, 1998) will be incorporated into the final wage index to be published by August 1, 1998, and effective October 1, 1998.

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the intermediary's attention. Moreover, because hospitals will have access to the final wage data by early May, they will have the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the development and publication of the FY 1999 wage index by August 1, 1998, and the implementation of the FY 1999 wage index on October 1, 1998. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be free of such errors. Nevertheless, in the unlikely event that errors should occur after that date, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(w)(2), we may make midyear corrections to the wage index only in those limited circumstances where a hospital can show: (1) That the intermediary or HCFA made an error in tabulating its data; and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 1999 (that is, by the June 5, 1998 deadline). As indicated earlier, since a hospital will have the opportunity to verify its data, and the intermediary will notify the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be made. However, should a midyear correction be necessary, the wage index change for the affected area will be effective prospectively from the date the correction is made.

IV.-V. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating Costs

A. Definition of Transfers (§ 412.4)

Pursuant to section 1886(d)(5)(I) of the Act, the prospective payment system distinguishes between "discharges," situations in which a patient leaves an acute care (prospective payment) hospital after receiving complete acute care treatment, and "transfers," situations in which the patient is transferred to another acute care hospital for related care. If a full DRG payment were made to each hospital involved in a transfer situation, irrespective of the length of time the patient spent in the "sending" hospital prior to transfer, a strong incentive to increase transfers would be created, thereby unnecessarily endangering

patients' health. Therefore, our policy, which is set forth in the regulations at § 412.4, provides that, in a transfer situation, full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

Currently, the per diem rate paid to a transferring hospital is determined by dividing the full DRG payment that would have been paid in a nontransfer situation by the geometric mean length of stay for the DRG into which the case falls. Hospitals receive twice the per diem for the first day of the stay and the per diem for every following day up to the full DRG amount. Transferring hospitals are also eligible for outlier payments for cases that meet the cost outlier criteria established for all other cases (nontransfer and transfer cases alike) classified to the DRG. Two exceptions to the transfer payment policy are transfer cases classified into DRG 385 (Neonates, Died or Transferred to Another Acute Care Facility) and DRG 456 (Burns, Transferred to Another Acute Care Facility), which receive the full DRG payment instead of being paid on a per diem basis.

Under section 1886(d)(5)(J) of the Act, which was added by section 4407 of the Balanced Budget Act of 1997, a "qualified discharge" from one of 10 DRGs selected by the Secretary to a postacute care provider will be treated as a transfer case beginning with discharges on or after October 1, 1998. Section 1886(d)(5)(J)(iii) confers broad authority on the Secretary to select 10 DRGs "based upon a high volume of discharges classified within such group and a disproportionate use of" certain post discharge services. Section 1886(d)(5)(J)(ii) defines a "qualified discharge" as a discharge from a prospective payment hospital of an individual whose hospital stay is classified in one of the 10 selected DRGs if, upon such discharge, the individual—

- Is admitted to a hospital or hospital unit that is not a prospective payment system hospital;
- Is admitted to a skilled nursing facility; or
- Is provided home health services by a home health agency if the services relate to the condition or diagnosis for

which the individual received inpatient hospital services and if these services are provided within an appropriate period as determined by the Secretary.

The Conference Agreement that accompanied the law noted that "(t)he Conferees are concerned that Medicare may in some cases be overpaying hospitals for patients who are transferred to a post acute care setting after a very short acute care hospital stay. The Conferees believe that Medicare's payment system should continue to provide hospitals with strong incentives to treat patients in the most effective and efficient manner, while at the same time, adjust PPS [prospective payment system] payments in a manner that accounts for reduced hospital lengths of stay because of a discharge to another setting." (H.R. Rep. No. 105-217, 740.) In its March 1, 1997 report, ProPAC expressed similar concerns: "... * * * length of stay declines have been greater in DRGs associated with substantial postacute care use, suggesting a shift in care from hospital inpatient to postacute settings" (pp. 21-22).

In fact, based on the latest available data, overall Medicare hospital costs per case have decreased during FYs 1994 and 1995. This unprecedented real decline in costs per case has led to historically high Medicare operating margins (over 10 percent on average). Along with these declining lengths of stay and costs per case, there has been an increase in the utilization of postacute care. In 1990, the rate of skilled nursing facility services per 1,000 Medicare enrollees was 19. By 1995, it had grown to 33. Corresponding numbers for home health agency services are 58 per 1,000 Medicare enrollees during 1990 and 93 per 1,000 enrollees during 1995. Although home health services are not always directly related to a hospitalization episode, there does appear to be a trend toward increased use of home health for the provision of postacute care rehabilitation services. Previous analysis of the percentage of hospital discharges that receive postacute home health care showed a 10.3 percent increase in 1994 compared to 1992.

Our proposals to implement section 1886(d)(5)(J) of the Act are set forth below.

1. Selection of 10 DRGs

Section 1886(d)(5)(J)(iii)(I) of the Act provides that the Secretary select 10

DRGs based on a high volume of discharges to postacute care and a disproportionate use of postacute care services. Therefore, in order to select the DRGs to be paid as transfers, we first identified those DRGs with the highest percentage of postacute care.

We used the FY 1996 MedPAR file because the complete FY 1997 MedPAR file was not available at the time we conducted our analysis. To identify postacute care utilization, we merged hospital inpatient bill files with postacute care bill files matching beneficiary identification numbers and discharge and admission dates. We created this file rather than depend on information concerning discharge destination on the inpatient bill because we have found that the discharge destination codes included on the hospital bills are often inaccurate in identifying discharges to a facility other than another prospective payment hospital.

Section 1886(d)(5)(J)(iii)(III) of the Act requires the Secretary to choose an appropriate window of days in which the home health services start in order for the discharge to meet the definition of a transfer. In order to include postdischarge home health utilization in our analysis, we identified all hospital discharges for patients who received any home health care within 7 days after the date of discharge. (As described below in section IV.A.2., we ultimately decided to propose 3 days as the window for home health services.)

Starting with the DRG with the highest percentage of postacute care discharges and continuing in descending order, we selected the first 20 DRGs that had a relatively large number of discharges to postacute care (our lower limit was 14,000 cases). In order to select 10 DRGs from the 20 DRGs on our list, for each of the DRGs we considered the volume and percent age of discharges to postacute care that occurred before the mean length of stay and whether the discharges occurring early in the stay were more likely to receive postacute care. The following table lists the 10 DRGs we are proposing to include under our expanded transfer definition, their percentage of postacute utilization compared to total cases, and the total number of cases identified as going to postacute care.

DRG	Title and type of DRG (surgical or medical)	Percent of postacute utilization	Number of postacute cases
14	Specific Cerebrovascular Disorders Except Transient Ischemic Attack (Medical)	49.5	186,845
113	Amputation for Circulatory System Disorders Excluding Upper Limb and Toe (Surgical)	59.0	28,402
209	Major Joint Limb Reattachment Procedures of Lower Extremity (Surgical)	71.9	257,875
210	Hip and Femur Procedures Except Major Joint Age >17 With CC (Surgical)	77.8	111,799
211	Hip and Femur Procedures Except Major Joint Age >17 Without CC (Surgical)	74.2	19,548
236	Fractures of Hip and Pelvis (Medical)	61.2	24,498
263	Skin Graft and/or Debridement for Skin Ulcer or Cellulitis With CC (Surgical)	49.4	14,499
264	Skin Graft and/or Debridement for Skin Ulcer or Cellulitis W/O CC (Surgical)	39.3	1,328
429	Organic Disturbances and Mental Retardation (Medical)	45.4	19,314
483	Tracheostomy Except for Face, Mouth and Neck Diagnoses (Surgical)	45.3	18,254

We included DRG 263 on the list because of its ranking in the top 20 DRGs in terms of postacute utilization and volume of discharges to postacute care. DRGs 263 and 264 are paired DRGs; that is, the only difference in the cases assigned to DRG 263 as opposed to DRG 264 is that the patient has a complicating or comorbid condition. If we included only DRG 263 in the list, it would be possible for a transfer case with a relatively short length of stay that should be assigned to DRG 263 and receive a relatively small transfer payment to be assigned instead to DRG 264, and receive the full DRG payment, simply by failing to include the CC diagnosis code on the bill. Therefore, our choice was to either delete DRG 263 from the list or add DRG 264. We decided to include DRG 264 in the proposed list because DRG 263 fully meets all the conditions for inclusion on the list of 10 DRGs.

2. Postacute Care Settings

Section 1886(d)(5)(J)(ii) of the Act requires the Secretary to define and pay as transfers cases from one of 10 DRGs selected by the Secretary if the individual is discharged to one of the following settings:

- A hospital or hospital unit that is not a subsection 1886(d) hospital, that is a hospital or unit excluded from the inpatient prospective payment system.
- A skilled nursing facility that is, a facility that meets the definition of a skilled nursing facility set forth at section 1819 of the Act.
- Home health services provided by a home health agency, if the services are related to the condition or diagnosis for which the individual received inpatient hospital services, and if the home health services are provided within an appropriate period (as determined by the Secretary).

Section 1886(d)(1)(B) of the Act defines the hospitals and hospital units that are excluded from the prospective payment system as the following: psychiatric, rehabilitation, children's, long-term care, and cancer hospitals and

psychiatric and rehabilitation distinct part units of a hospital. Therefore, any discharge from a prospective payment hospital from one of the 10 proposed DRGs that is admitted to one of these types of facilities on the date of discharge from the acute hospital, on or after October 1, 1998, would be considered a transfer and paid accordingly under the prospective payment systems (operating and capital) for inpatient hospital services.

A discharge from a prospective payment hospital to a skilled nursing facility would include cases discharged from one of the 10 DRGs from an inpatient bed in the hospital to a bed in the same hospital that has been designated for the provision of skilled nursing care (a "swing" bed). The swing bed provision allows certain small rural hospitals to furnish services in inpatient beds which, if furnished by a skilled nursing facility, would constitute extended care services. In addition, any patient who receives swing-bed services is deemed to have received extended care services as if furnished by a skilled nursing facility. Thus, if swing beds are not included in the transfer policy, those hospitals with swing bed agreements could move patients assigned to one of the 10 selected DRGs as if it were a discharge from an inpatient bed to a swing bed and receive payment. We do not believe that this would be a fair policy in that it would create a payment advantage for swing bed hospitals. Therefore, we are providing in the regulations that a discharge to a swing bed will be paid as a transfer when the patient is classified to one of the 10 selected DRGs.

Section 1886(d)(5)(J)(ii)(III) of the Act states that the discharge of an individual who receives home health services upon discharge will be treated as a transfer if "such services are provided within an appropriate period (as determined by the Secretary)." As discussed above in section IV.A.1, we began our analysis using 7 days (one week) as the time period we would consider. We

now believe that 3 days after the date of discharge is a more appropriate timeframe. Based on our analysis of the FY 1996 bills, approximately 90 percent of patients began receiving home health care within 3 days. We are particularly interested in receiving comments on the appropriate period of time in which home health services should begin in the context of the transfer policy.

With regard to an appropriate definition of "home health services" * * * relate(d) to the condition or diagnosis for which the individual received inpatient hospital services * * *, we considered several possible approaches. Under one approach we could compare the principal diagnosis of the inpatient stay to the diagnosis code indicated on the home health bill, similar to our policy on the 3-day payment window for preadmission services. However, we believe that is far too restrictive in terms of qualifying discharges for transfer payment. In addition, a hospital will not know when it discharges a patient to home health what diagnosis code the home health agency will put on the bill. Therefore, the hospital would not be able to correctly code the inpatient bill as a transfer or discharge.

We also considered proposing that any home health care that begins within the designated timeframe be included "as related" in our definition. However, this definition might be too broad and the hospital would not be able to predict which cases should be coded as transfers because the hospital often may not know about home health services that are provided upon discharge but were not ordered or planned for as part of the hospital discharge plan.

We are proposing that home health services would be considered related to the hospital discharge if the patient is discharged from the hospital with a written plan of care for the provision of home health care services from a home health agency. In this way, the hospital would be fully aware of the status of the patient when discharged and could be held responsible for correctly coding the

discharge as a transfer on the inpatient bill. In general, this would mean that the home health service would qualify as a Part A home health benefit under section 1861(tt) of the Act as added by section 4611(b) of the BBA.

We note, however, that we plan to compare inpatient bills with home health service bills for care provided within 3 days after discharge, similar to our current claims edit for hospital to hospital transfers. If we find that home health services were provided within the postdischarge window, the hospital will be notified and the hospital payment adjusted unless the hospital can submit documentation verifying the discharge status of the patient. This will alert hospitals if there are problems with their discharge/transfer billing and allow them to adjust their discharge planning process and billing practices. If we find a continued pattern of a hospital billing for cases from the 10 DRGs as discharges and our records indicate that the patients are receiving postacute care services from an excluded hospital, a skilled nursing facility, or within the 3-day home health service window, the hospitals may be investigated for fraudulent or abusive billing practices.

3. Payment Methodology

The statute does not dictate the payment methodology we must use for these transfer cases. However, section 1886(d)(5)(J)(i) of the Act provides that the payment amount for a case may not exceed the sum of half the full DRG payment amount and half of the payment amount under the current per diem payment methodology.

Based on our analysis comparing the costs per case for the transfers in the 10 DRGs with payments under our current transfer payment methodology, we found that most of the 10 DRGs are appropriately paid using our current methodology (that is, twice the per diem for the first day and the per diem for each subsequent day). In fact, this payment would, on average, slightly exceed costs. However, this is not true of DRGs 209, 210, and 211. For those three DRGs, a disproportionate percentage (about 50 percent) of the costs of the case are incurred on the first day of the stay. Therefore, we are proposing to pay DRGs 209, 210, and 211 based on 50 percent of the DRG payment for the first day of the stay and 50 percent of the per diem for the remaining days of the stay. The other seven DRGs would be paid under the current transfer payment methodology.

In Appendix E to this proposed rule, we have included tables that illustrate, for 9 of the 10 DRGs, the number of total

and postacute discharges by length of stay, the geometric mean lengths of stay from FY 1983 through FY 1997, and the estimated average costs and transfer payments by length of stay. (The summary information for DRG 264 was not available at the time of publication because it was not included in the original data file of 20 DRGs used for our analysis.) For DRGs 209, 210, and 211, the payment line is determined on the basis of the alternative payment formula described above.

These tables demonstrate that a very large number of discharges from these 10 DRGs receive postacute care. In addition, the length of stay for these DRGs has decreased sharply over the last several years. We believe that this proposed policy will both decrease the hospitals' financial incentive to discharge patients very early in the stay, often before the full course of acute care treatment has ended, as well as pay the hospital at an appropriate level when it does move patients into postacute care.

We would revise § 412.4 to reflect these proposed policies. In addition, we would delete the reference in current § 412.4(d)(2) to DRG 456 (Burns, Transferred to Another Acute Care Facility) because we are proposing to replace that DRG, as discussed in section II.B.3 of this preamble. There would no longer be any burn DRG with a transfer designation.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban rather than the rural standardized amount. As of that date, the other urban and rural standardized amounts were the same. However, rural referral centers continue to receive special treatment under both the disproportionate share hospital payment adjustment and the criteria for geographic reclassification.

One of the criteria under which a rural hospital may qualify as a rural referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (specifying a minimum case-mix index and a minimum number of discharges) and at least one of the three optional criteria (relating to specialty composition of medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a

hospital may be classified as a rural referral center if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. The methodology we use to determine the proposed national and regional case-mix index values, is set forth in regulations at § 412.96(c)(1)(ii). The proposed national case-mix index value includes all urban hospitals nationwide, and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

These values are based on discharges occurring during FY 1997 (October 1, 1996 through September 30, 1997) and include bills posted to HCFA's records through December 1997. Therefore, in addition to meeting other criteria, for hospitals with fewer than 275 beds, we are proposing that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1998, a hospital's case-mix index value for FY 1997 would have to be at least—

- 1.3578; or
 - Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located.
- The median case-mix values by region are set forth in the table below:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2533
2. Middle Atlantic (PA, NJ, NY) ..	1.2499
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3468

Region	Case-mix index value	Region	Number of discharges
4. East North Central (IL, IN, MI, OH, WI)	1.2717	1. New England (CT, ME, MA, NH, RI, VT)	6658
5. East South Central (AL, KY, MS, TN)	1.2965	2. Middle Atlantic (PA, NJ, NY) ..	8477
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.2264	3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	7505
7. West South Central (AR, LA, OK, TX)	1.3351	4. East North Central (IL, IN, MI, OH, WI)	7273
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3752	5. East South Central (AL, KY, MS, TN)	6852
9. Pacific (AK, CA, HI, OR, WA) ..	1.3405	6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5346
		7. West South Central (AR, LA, OK, TX)	5179
		8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	7926
		9. Pacific (AK, CA, HI, OR, WA) ..	5945

The above numbers will be revised in the final rule to the extent required to reflect the updated MedPAR file, which will contain data from additional bills received for discharges through March 31, 1997.

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1997 case-mix index value in Table 3C in section IV. of the Addendum to this proposed rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. However, we are proposing to update the regional standards. The proposed regional standards are based on discharges for urban hospitals' cost reporting periods that began during FY 1996 (that is, October 1, 1995 through September 30, 1996). That is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we are proposing that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1998, the number of discharges a hospital must have for its cost reporting period that began during FY 1997 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the table below.

We note that the number of discharges for hospitals in each census region is greater than the national standard of 5,000 discharges. Therefore, 5,000 discharges is the minimum criteria for all hospitals. These numbers will be revised in the final rule based on the latest FY 1996 cost report data.

We reiterate that, to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1998, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1996 would have to be at least 3,000.

C. Payments to Disproportionate Share Hospitals: Conforming Change Regarding Interpretation of Medicaid Patient Days Included in Disproportionate Patient Percentage (§ 412.106)

Effective for discharges beginning on or after May 1, 1986, hospitals that treat a disproportionately large number of low-income patients receive additional payments through the disproportionate share (DSH) adjustment. One means of determining a hospital's DSH payment adjustment for a cost reporting period requires calculation of its disproportionate patient percentage for the period. The disproportionate patient percentage is the sum of a prescribed Medicare fraction and a Medicaid fraction for the hospital's fiscal period.

Under clause (I) of section 1886(d)(5)(F)(vi) of the Act and § 412.106(b)(2), the Medicare fraction is determined by dividing the number of the hospital's patient days for patients who were entitled (for such days) to benefits under both Medicare Part A and Supplemental Security Income (SSI) under Title XVI of the Act, by the total number of the hospital's patient days for the patients who were entitled to Medicare Part A. The Medicaid fraction is determined, in accordance with clause (II) of section 1886(d)(5)(F)(vi) of

the Act and § 412.106(b)(4), by dividing the number of the hospital's patient days for patients who (for such days) were eligible for medical assistance under a State Medicaid plan approved under Title XIX of the Act but who were not entitled to Medicare Part A, by the total number of the hospital's patient days for that period.

Initially, HCFA calculated the Medicaid fraction by interpreting section 1886(d)(5)(F)(vi)(II) of the Act to recognize as Medicaid patient days only those days for which the hospital received Medicaid payment for inpatient hospital services. See 51 FR 31454, 31460 (1986). The agency's interpretation was declared invalid by four Federal circuit courts of appeals.

See *Cabell Huntington Hosp., Inc. v. Shalala*, 101 F.3d 984, 990–91 (4th Cir. 1996) (following three other circuits). These courts held that the statute requires, for purposes of calculating the Medicaid fraction, inclusion of each patient day of service for which a patient was eligible on that day for medical assistance under an approved State Medicaid plan. Specifically, the statute requires inclusion of each hospital patient day for a patient eligible for Medicaid on such day, regardless of whether particular items or services were covered or paid under the State Medicaid plan.

On February 27, 1997, the HCFA Administrator issued HCFA Ruling 97–2, which acquiesced in the four adverse appellate court decisions. The Ruling changed the agency's statutory construction to comport with those decisions, in order to facilitate nationwide uniformity in the calculation of the Medicaid fraction. Like the court decisions, the Ruling provides that a hospital's Medicaid patient days include each patient day of service for which a patient was eligible on such day for medical assistance under an approved State Medicaid plan, regardless of whether particular items or services were covered or paid under the State plan. The Ruling also reflects the hospital's burden of furnishing data adequate to prove each claimed Medicaid patient day, and of verifying with the State that a patient was eligible for Medicaid during each day of the inpatient hospital stay.

The Ruling further provides that the agency's new interpretation is effective February 27, 1997 for each cost reporting period that: (1) Begins on or after that effective date; (2) was not settled, as of that date, on the Medicaid patient days issue, by means of an applicable notice of program reimbursement (NPR) (see § 405.1803); or (3) was settled through such an NPR

as of the Ruling's effective date and is the subject of a pending administrative appeal or civil action that satisfies all applicable jurisdictional requirements of the Medicare statute and regulations. The Ruling also provides, however, that the change in statutory interpretation effected by the Ruling is not a basis for reopening a hospital cost reporting period (see §§ 405.1885–405.1889) that was finalized previously on the same matter at issue.

We propose to revise § 412.106(b)(4) in order to conform the Medicare regulations to the new statutory construction issued in HCFA Ruling 97–2. The revisions are necessary to ensure that the regulations comport with the four appellate court decisions that declared invalid the agency's prior interpretation and led to the issuance of the HCFA Ruling. The proposed revisions will further facilitate nationwide uniformity in the calculation of the Medicaid fraction.

Since the proposed revisions are intended simply to conform the regulations to HCFA Ruling 97–2 (and hence to the four adverse court decisions), revised § 412.106(b)(4) would reiterate the Ruling's change of interpretation that the Medicaid fraction under section 1886(d)(5)(F)(vi)(II) of the Act includes each hospital patient day for a patient eligible for Medicaid on such day, regardless of whether particular items or services were covered or paid under the State Medicaid Plan. Our proposed revisions to § 412.106(b)(4), like the Ruling, would continue to place on the hospital the burdens of production, proof, and verification as to each claimed Medicaid patient day.

Under our proposal, revised § 412.106(b)(4) would apply to cost reporting periods beginning on or after October 1, 1998. HCFA Ruling 97–2, which includes the same provisions as proposed § 412.106(b)(4), would continue to apply to any cost reporting period beginning before October 1, 1998 provided that, as of February 27, 1997, there is for such period: no submitted cost report; no cost report settled on the Medicaid patient days issue through an applicable NPR; or a cost report settled on that issue, which is also the subject of a jurisdictionally proper administrative appeal or civil action on the issue.

D. Payment for Bad Debts (§ 413.80)

Section 4451 of the Balanced Budget Act of 1997 reduces the payment for enrollee bad debt for hospitals. Specifically, this provision reduces the amount of bad debts otherwise treated as allowable costs, attributable to the

deductibles and coinsurance amounts under this title, by 25 percent for cost reporting periods beginning during fiscal year 1998, by 40 percent for cost reporting periods beginning during fiscal year 1999, and by 45 percent for cost reporting periods beginning during a subsequent fiscal year. This proposed rule would conform the regulations to the statute.

Section 4451 of the Balanced Budget Act of 1997 also provides that in determining such reasonable costs for hospitals, any copayments reduced under the election available for hospital outpatient services under section 1833(t)(5)(B) of the Act will not be treated as a bad debt. This provision will be implemented in the outpatient prospective payment system regulation that implements section 4521, 4522, and 4523 of the Balanced Budget Act of 1997, to be published later this year.

E. Payment for Direct Costs of Graduate Medical Education to Hospitals and Nonhospital Providers (§§ 405.2468, 413.85, and 413.86)

1. Introduction

Currently, under section 1886(h) of the Act, Medicare pays only hospitals for the costs of graduate medical education (GME) training. We do not pay nonhospital sites for the costs they incur in training medical residents. There has been a general trend to shift patient care from the inpatient setting to the less expensive nonhospital setting where appropriate. Consistent with this trend in patient care, the BBA allows for direct GME payment to qualified nonhospital providers to encourage more training of future physicians in nonhospital settings.

Under section 1886(k) of the Act, as added by section 4625 of the BBA, the Secretary is now authorized, but not required, to pay qualified nonhospital providers for the direct costs of GME training. The Conference Report also notes that the Conferees believe paying nonhospital providers for GME costs may help alleviate physician shortages in underserved rural areas. We believe that providing Medicare payment directly to nonhospital providers may facilitate more training and better quality training in nonhospital sites.

2. Statutory Background

Section 1886(k) of the Act states: "For cost reporting periods beginning on or after October 1, 1997, the Secretary may establish rules for payment to qualified nonhospital providers for their direct costs of medical education, if those costs are incurred in the operation of an approved medical residency training

programs described in subsection (h)." The statute further provides that, to the extent the Secretary exercises this broad discretionary authority, the rules "shall specify the amounts, form, and manner in which such payments will be made and the portion of such payments that will be made from each of the trust funds under this title."

a. *Payments Only to "Qualified Nonhospital Providers"*. The statute confers broad discretion on the Secretary regarding whether and how to pay nonhospital providers for direct GME costs. However, the statute does specify the entities whom the Secretary can pay—"qualified nonhospital providers." Section 1886(k)(2) of the Act defines "qualified nonhospital providers" to include: Federally Qualified Health Centers (FQHCs), as defined in section 1861(aa)(4); Rural Health Centers (RHCs), as defined in section 1861(aa)(2); Medicare+Choice organizations; and such other providers (other than hospitals) as the Secretary determines to be appropriate.

b. *Payments Only for the "Direct Costs" of Training*. The statute also specifies the costs the Secretary can pay for under section 1886(k) of the Act. Medicare pays hospitals for both the direct and indirect costs of medical education under sections 1886(h) and 1886(d)(5)(B) of the Act respectively, but section 1886(k) of the Act provides for payment to nonhospital providers only for the direct costs of medical education.

In addition, section 1886(k) of the Act provides for payment for the direct costs of training medical residents only if those costs are incurred in the operation of an "approved medical residency training program." Section 1886(h)(5)(A) of the Act defines an "approved medical residency training program" as a "residency or other postgraduate medical training program participation in which may be counted toward certification in a specialty or subspecialty and includes formal postgraduate training programs in geriatric medicine approved by the Secretary." Implementing regulations at § 413.86(b) state that an approved medical residency training program includes allopathic and osteopathic training programs as well as training programs for dentistry and podiatry. Therefore, the statute authorizes Medicare payments to nonhospital providers only for the costs of training medical residents, not for the costs of training other health professionals.

In addition to adding section 1886(k) of the Act, section 4625 of the BBA amends section 1886(h)(3)(B) of the Act to prohibit double payments for direct

GME to a hospital and a qualified nonhospital provider. This prohibition on double payments requires that the Secretary reduce a hospital's GME payments (the "aggregate approved amount" as defined in section 1886(h)(3)(b) of the Act) to the extent we pay a nonhospital provider for GME under section 1886(k) of the Act.

3. Proposed Policies

Pursuant to section 4625 of the BBA, we are proposing policies to provide Medicare payment to nonhospital providers for the direct costs of GME training, effective for portions of cost reporting periods occurring on or after January 1, 1999. We believe that these payments will serve the Congressional intent to encourage and support training in nonhospital settings.

a. Definition of "Qualified Non-Hospital Providers". Under our proposed policy, Medicare would make GME payments to the following "qualified nonhospital providers"—FQHCs, RHCs, and Medicare+Choice organizations. Under the authority of section 1886(k)(2)(D) of the Act, the Secretary may expand the definition of a "qualified nonhospital provider" to include such other providers (other than hospitals) as the Secretary determines to be appropriate. Once we have gained experience providing direct GME payments to FQHCs, RHCs, and Medicare+Choice organizations, we may consider including other types of nonhospital providers in the definition of a "qualified nonhospital provider."

Additionally, we propose that, under certain circumstances, a hospital may continue to receive GME payments for residents who train in the nonhospital setting. In those instances where a hospital is eligible to continue receiving GME payments for residents who train in the nonhospital setting, the nonhospital provider could receive payment from the hospital for costs they incur in training medical residents. Thus, our policy promotes the intent of section 4625 of the BBA to provide financial support, either directly from Medicare or through the hospital, to nonhospital providers for the direct costs of training residents in the nonhospital site.

b. Definition of "Direct Costs" of Medical Education for Non-Hospital Providers. Section 4625 of the BBA provides for payment to nonhospital providers only for the direct costs of training residents. Our proposed definition of "direct costs" for nonhospital providers is comparable to the direct costs for hospitals under section 1886(h) of the Act. Under our proposed policy, direct GME costs are

those costs that are incurred by the nonhospital site for the education activities of the approved program and that are the proximate result of training medical residents in the nonhospital site. Direct costs for nonhospital providers would include:

- Residents' salaries and fringe benefits (including related travel and lodging expenses where applicable);
- That portion of costs of the teaching physicians' salaries and fringe benefits that are related to the time spent in teaching and supervision of residents; and
- Other related GME overhead costs.

Consistent with our policies on direct GME costs for hospitals, direct GME costs for nonhospital providers would not include normal operating costs or the marginal increase in costs that the nonhospital site experiences as a result of having an approved medical residency training program. For example, a decrease in productivity and increased intensity in treatment patterns as the result of a training program do not constitute "direct costs" of training residents in the nonhospital setting; rather, these are the "indirect costs" of such training.

Also consistent with our policies for direct GME payments to hospitals, we propose to pay qualified nonhospital providers only for training that is related to the delivery of patient care services. Sections 1886(h) ("Payments for Direct GME Costs") and 1886(h)(4)(E) of the Act ("Counting Time Spent in Outpatient Settings") provide support continuing our longstanding policy of paying only for training that is associated with patient care services. In particular, section 1886(h)(4)(E) of the Act states:

Such rules shall provide that *only time spent in activities relating to patient care* shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting.

In addition, section 1861(b) of the Act describes the types of patient care services that are reimbursable. Specifically, section 1861(b)(6) of the Act indicates that the training of interns or residents under an approved teaching program are included as reimbursable patient care costs.

Moreover, direct GME costs for nonhospital providers, like direct GME costs for hospitals, would include only that portion of costs of the teaching physicians' salaries and fringe benefits

associated with time spent in teaching and supervising residents. Specifically, a teaching physician's time spent on teaching of a general nature would constitute a direct GME cost, while teaching of a patient-specific nature would not constitute a direct cost. In addition, direct costs in the nonhospital setting would include that portion of teaching physicians' salaries and fringe benefits associated with time spent developing resident schedules and evaluating or rating the residents. Direct costs would also include a teaching physician's office costs allocated to GME.

By contrast, direct GME costs for nonhospital providers would not include the following: A teaching physician's time spent in the care of individual patients which results in billable services; teaching physicians' activities that are related to the education of other health professionals (i.e., classroom instruction in connection with approved activities other than GME such as provider-operated nursing programs); teaching physicians' time spent on administrative and supervisory services to the provider that are unrelated to approved educational activities (i.e., operating costs); and teaching physician activities that involve nonallowable costs such as research and medical school activities that are not related to patient care in the nonhospital setting.

GME overhead costs include only those costs that are allocable to direct GME and that are not used in patient care. For example, a portion of administrative and general costs could be appropriately allocated to an RHC or FQHC's GME cost center. Similarly, a conference room that is dedicated specifically for the training of residents could be appropriately allocated to an RHC or FQHC's GME cost center. By contrast, patient care rooms added to an RHC or an FQHC cannot be appropriately allocated to an RHC or FQHC's GME cost center.

One of the advantages of our proposed definition of "direct costs" is that it is administratively feasible. Our definition of "direct costs" for nonhospital providers is comparable to the direct costs that are included in the per resident amount paid to hospitals under section 1886(h) of the Act. At present, there is limited information regarding the actual costs of training residents in nonhospital sites. After we gain experience providing direct GME payments to qualified nonhospital providers and have reviewed the GME costs separately reported by these nonhospital providers, we may revise the definition of "direct costs." We are

soliciting comments on other elements that may constitute direct costs of GME in the nonhospital site that can be identified, reported, and verified as directly attributable to GME activities through the cost reporting process. We are interested in comments on whether we should include other costs in the definition of "direct costs" for nonhospital providers and on the administrative feasibility of identifying the GME portion of those costs.

c. Determining Direct Costs. One of our major concerns in developing policies for paying nonhospital providers for the direct costs of GME is the administrative feasibility of determining the amount of direct costs incurred by the nonhospital provider. It is our understanding that, currently, hospitals and nonhospital sites often share, to varying degrees, the costs of training residents in the nonhospital site. Because of the difficulty in apportioning costs between the hospital and the nonhospital for the training in the nonhospital site, we believe that it is not administratively feasible to pay both the hospital and the nonhospital site for the cost of training in the nonhospital site. We have been unable to devise a method for accurately apportioning costs between the two entities.

Furthermore, the potential for both the hospital and the nonhospital site to be paid for the same direct GME expenses poses a significant problem for complying with section 1886(h)(3)(B) of the Act, as amended by the BBA, which specifically prohibits double payments. Under this provision, the Secretary shall reduce the hospital's GME payment (the "aggregate approved amount") to the extent we pay nonhospital providers for GME costs under section 1886(k) of the Act. Consequently, our policy must ensure that Medicare does not pay two entities for the same training time in the nonhospital site.

Given that the hospital's per resident amount can include, but is not necessarily based on the costs of training in the nonhospital site, we were not able to devise an equitable way of reducing the hospital's per resident payment to reflect payments made under section 1886(k) of the Act. It would not be equitable to subtract the exact amount of payment made to the qualified nonhospital provider from the hospital's per resident payment because the payment made to the nonhospital site is unrelated to the hospital's per resident amount. The hospital per resident amount is based on specific GME costs incurred by the hospital in the 1984 base year. Those costs included in the per resident amount

have no relevance to the costs incurred in the nonhospital setting almost 15 years after the 1984 base year. We believe that the residents' salaries, teaching physicians' salaries, and overhead costs for the nonhospital setting will constitute a different proportion of the total GME costs in the nonhospital setting as compared with the hospital setting. Rather, it would be more equitable to determine the proportion of costs incurred by each entity and reduce the hospital's per resident payment by the proportion of GME costs incurred by the nonhospital site; however, since specific components of the per resident amount were not identified in the hospital's GME base year (1984), we cannot accurately determine the appropriate amount to reduce the current year hospital per resident payment amount. Moreover, to reduce the hospital's GME payments based solely on the amount paid to the nonhospital site could result in inequitable payments to the hospital, which has ongoing costs even when the resident is training in the nonhospital site. In fact, it could leave the hospital at risk of receiving no payment for the GME costs it has incurred.

In order to encourage training in nonhospital sites, it is important to develop a policy that, while providing payment to nonhospital providers, would also be equitable to hospitals. We believe that paying only the nonhospital site for the training costs could result in hospitals choosing not to rotate their residents to the nonhospital site. We have been unable to devise an equitable and accurate method for dividing up the GME payment for training in the nonhospital site if neither the hospital, nor the nonhospital site incurs "all or substantially all" of the costs. As such, we are soliciting comment on possible methods for allocating the GME payments for training in the nonhospital site where neither the hospital nor the nonhospital provider is incurring "all or substantially all" of the costs for the training program. We believe that the proposed policies discussed below are equitable to both hospital and nonhospital providers and will achieve Congress' objective of encouraging and supporting training in the nonhospital setting.

Given our concerns about administrative feasibility, the statutory prohibition on double payments, and developing policies that are equitable to hospitals as well as nonhospital providers, we believe the only feasible way to pay for training in nonhospital settings is to pay either the hospital or the nonhospital provider. Currently, hospitals may receive payment for the

time residents spend in the nonhospital setting if the hospital incurs "all or substantially all" of the training costs. We propose to adopt a similar policy for nonhospital providers; that is, a qualified nonhospital provider may receive payment for the direct costs of GME if the nonhospital provider incurs "all or substantially all" of the training costs.

d. Modifications of Policy To Pay Hospitals For GME. In the course of developing our policies for nonhospital providers, we have reviewed our method for paying hospitals for the costs of training residents in the nonhospital site. Accordingly, as part of our policy to pay nonhospital providers for the costs of training residents, we are proposing necessary and appropriate modifications to our current policy for paying hospitals for such nonhospital training. Specifically, as part of our proposal to implement section 1886(k) of the Act, we propose to modify the regulations at § 413.86(f).

Presently, under sections 1886(d)(5)(B)(iv) and 1886(h)(4)(E) of the Act, if a hospital incurs "all or substantially all" of the costs of training residents in the nonhospital site, then the hospital may include the resident in its indirect medical education (IME) and direct GME full-time equivalent count. Under § 413.86(f)(1)(iii), currently a hospital incurs "all or substantially all" of the costs of training the resident in the nonhospital site if the hospital pays the residents' salaries and fringe benefits. Based on our review of data in Medicare cost reports on the Hospital Cost Reporting Information System (HCRIS), we decided to reexamine the issue of what constitutes "all or substantially all" of the costs of training the resident. In our analysis, we determined that, on average, residents' salaries and fringe benefits are less than half of the total amount of the direct costs of a hospital's GME program. Therefore, we are proposing to revise the standard for incurring "all or substantially all" of the costs for the training program in the nonhospital setting.

We propose to redefine "all or substantially all" of the costs for the training program in the nonhospital setting to include at a minimum:

- the portion of costs of the teaching physicians' salaries and fringe benefits that are related to the time spent in teaching and supervision of residents; and
- residents' salaries and fringe benefits (including travel and lodging expenses where applicable).

e. Payment Proposal. In light of the numerous considerations discussed

above, we are proposing a system whereby we will pay either the hospital or the nonhospital site for the cost of training in the nonhospital site, depending on which entity incurs "all or substantially all" of the costs of training in the nonhospital site. An entity incurs "all or substantially all" of the costs for the training program in the nonhospital setting if it pays for, at a minimum: that portion of the costs of the teaching physicians' salaries and fringe benefits that are related to the time spent in teaching and supervision of residents; and residents' salaries and fringe benefits (including travel and lodging expenses where applicable). Our proposal accommodates three alternative payment scenarios that are discussed below.

i. **Payment to FQHCs and RHCs.** In the first payment scenario, if the FQHC or RHC incurs "all or substantially all" of the costs for the training program in the nonhospital setting, we are proposing to pay the nonhospital site cost-based reimbursement for the direct costs of training. By reporting these direct GME costs in a reimbursable cost center on the cost report, an FQHC or RHC would be attesting that it is incurring "all or substantially all" of the costs for the training program in the nonhospital site. Conversely, where an FQHC or RHC is not incurring "all or substantially all" of the costs of training residents in the nonhospital site, the FQHC or RHC would report these training costs in a nonreimbursable cost center on the cost report.

As previously stated, we propose to define the direct costs of training to include:

- Residents' salaries and fringe benefits (including related travel and lodging expenses where applicable);
- That portion of the costs of teaching physicians' salaries and fringe benefits that are related to the time spent in teaching and supervision of residents; and
- Other related overhead costs that are allocated to GME.

We are proposing that the FQHC's and RHC's allowable direct GME costs be subject to reasonable cost principles in 42 CFR part 413 and other relevant provisions referenced in part 413. As such we are proposing to add language to § 415.60 to make the reasonable cost principles applicable to FQHC's and RHC's. In addition, the FQHC's and RHC's direct GME costs would be subject to the Reasonable Compensation Equivalency limits under §§ 415.60 and 415.70. Accordingly, we are proposing to add language to § 415.70 to make the reasonable compensation equivalency limits applicable to FQHC's and RHC's.

Also, Medicare would pay only for Medicare's share of the direct costs of training in the nonhospital site. We are proposing that the FQHC's and RHC's Medicare share equal the nonhospital provider's ratio of Medicare visits to total visits. Thus, the amount of Medicare payment would equal the product of the clinic's Medicare allowed direct GME costs and the clinic's ratio of Medicare visits to total visits.

For FQHCs and RHCs that incur "all or substantially all" of the costs for the training program in the nonhospital setting, the direct GME costs are not subject to the existing per visit payment caps for reimbursement under sections 505.1 and 505.2 of the Medicare Rural Health Clinic and Federally Qualified Health Centers Manual. Moreover, we believe participation in GME training should not affect any FQHCs or RHCs ability to meet the productivity standards outlined in section 503 of the Medicare Rural Health Clinic and Federally Qualified Health Centers Manual. Therefore, we are proposing that, where payment is available under section 1886(k) of the Act for residents working in either an FQHC or an RHC, the FQHCs and RHCs do not need to include residents as health care staff in the calculation of productivity standards under section 503 of the Manual.

ii. **Payment to Medicare+Choice organizations.** In the second payment scenario, if a Medicare+Choice organization incurs "all or substantially all" of the costs for the training program in the nonhospital setting, we propose making the direct GME payment to the Medicare+Choice organization. The Medicare+Choice organization would be eligible to receive cost-based reimbursement for the residents' salaries and fringe benefits only for the time that the resident spends in the nonhospital setting. In addition, we are proposing that the Medicare+Choice organization's allowed costs include only that portion of the teaching physician salaries and fringe benefits that is related to training in the nonhospital setting.

Unlike our proposed policy in paying FQHCs and RHCs for GME, at this time we are not proposing to pay Medicare+Choice organizations for the costs of overhead that are directly associated with a GME program. We have no historical data on the GME costs of managed care organizations and the extent to which these costs are incurred directly or indirectly under contracts between the managed care organization and physician groups or other providers engaged in ambulatory care. Moreover, we have an established methodology for allocating and

reporting overhead costs for FQHCs and RHCs on Medicare cost reports that does not currently exist for Medicare+Choice organizations. Since Medicare+Choice organizations do not use the Medicare cost report, there is currently no mechanism to review and audit these costs in the managed care context. Because Medicare+Choice organizations are paid on a capitated basis, we have no method for paying Medicare+Choice organizations for variable costs such as GME overhead that require a sophisticated cost allocation methodology. By contrast, it is currently feasible to pay Medicare+Choice organizations for the costs of the residents' salaries and teaching physicians' salaries because those costs are more readily documented and auditable.

However, we are open to suggestions about how we can create a methodology for allocating and reporting overhead costs for Medicare+Choice organizations. Any comments should include not only a proposed methodology for paying Medicare+Choice organizations for GME overhead costs, but also proposed mechanisms for the audit and review of the costs of these organizations.

Similar to our proposed policy for paying FQHCs and RHCs for direct costs of GME, the Medicare+Choice organization's reimbursement for residents' salaries and fringe benefits (including related travel and lodging expenses where applicable) would be subject to the reasonable cost principles in 42 CFR part 413 and any other relevant provisions referenced in part 413. As such we are proposing to add language to § 415.60 to make the reasonable cost principles applicable to Medicare+Choice organizations. In addition, the Medicare+Choice organization's GME reimbursement would also be subject to the Reasonable Compensation Equivalency limits under §§ 415.60 and 415.70. Accordingly, we are proposing to add language to § 415.70 to make reasonable compensation equivalency limits applicable to Medicare+Choice organizations. While we would pay the Medicare+Choice organization for certain GME costs in nonhospital settings under this proposal, the cost of residents' and teaching physicians' salaries and fringe benefits in the hospital setting would be paid to the hospital, not the Medicare+Choice organization.

The Medicare+Choice organization would receive direct GME payment only for the direct costs of training in the nonhospital site that are associated with the delivery of patient care services. In

determining the amount of direct GME payments to Medicare+Choice organizations, we must adjust for Medicare's share of those education costs. Medicare's share would equal the ratio of the total number of Medicare enrollees in the Medicare+Choice organization to total enrollees in the Medicare+Choice organization.

We are proposing that, in order to receive the direct GME payment, the Medicare+Choice organization must produce a contractual agreement between itself and the nonhospital providers. Medicare+Choice organizations may contract with any nonhospital patient care site, including freestanding clinics, nursing homes, and physicians' offices in connection with approved programs. The contract between the Medicare+Choice organization and the nonhospital site must indicate that, for the time that residents spend in the nonhospital site, the Medicare+Choice organization agrees to pay for the cost of residents' salaries and fringe benefits. In addition, the contract must indicate that the Medicare+Choice organization agrees to pay the portion of the costs of teaching physicians' salaries and fringe benefits that is related to the time spent in teaching and supervision of residents and that is unrelated to the volume of services. The contract must stipulate the portion of each teaching physician's time that will be spent training residents in the nonhospital setting. Moreover, the contract must indicate that the Medicare+Choice organization agrees to identify an amount for the cost of the teaching physician's salary based on the time that the resident spends in the nonhospital setting, not based upon a capitated rate for the delivery of physician services.

Under our proposed rule, we could pay a Medicare+Choice organization for the direct costs of training medical residents in a physician's office if such office had a contractual agreement with the organization whereby the organization agrees to pay for "all or substantially all" of the costs for the training program in the nonhospital setting. However, an independent physician office would not be eligible to receive payment directly from Medicare for the cost of training residents because it would not be a "qualified nonhospital provider" under our proposed policy. Similarly, if a hospital rotates a resident through a physician's office, the hospital must pay for "all or substantially all" of the costs of training the resident in the physician's office in order to include that resident in its FTE count for IME and direct GME purposes. (In this instance, the hospital's

responsibility in assuming "all or substantially all" of the costs of training the resident in the nonhospital site would not be based on section 4625 of BBA which permits payment to nonhospital providers.) The hospital would have to assume "all or substantially all" of the training costs for that nonhospital training time in order to avail itself of the benefit of including the resident in the hospital's FTE count for IME and direct GME purposes based on the proposed modifications to § 413.86.

iii. **Payment to Hospitals.** In the third payment scenario, if the hospital itself incurs "all or substantially all" of the costs for the training program in the nonhospital setting, then the hospital may include the residents' training time in the nonhospital setting in the hospital's FTE counts for direct GME and for IME. In order to include the residents' training in the nonhospital site, the hospital must produce a contractual agreement between the hospital and the nonhospital provider. Under § 413.86(f)(1)(iii), hospitals may contract with any nonhospital patient care provider such as freestanding clinics, nursing homes, and physicians' offices in connection with approved programs.

Currently, a hospital must produce a written agreement between the hospital and the nonhospital provider that states that the resident's compensation for training time spent outside of the hospital setting is to be paid by the hospital. Since this proposal changes the definition of what constitutes "all or substantially all" of the costs of training in the nonhospital site, hospitals must produce a written agreement that demonstrates that they are assuming responsibility for more of the costs of training in the nonhospital site than had previously been required.

In accordance with our proposed definition of what constitutes "all or substantially all" of the costs of training while the resident is in the nonhospital site, we are proposing that the contract must indicate that the hospital is assuming financial responsibility for, at a minimum, the cost of residents' salaries and fringe benefits (including travel and lodging expenses where applicable) and the costs for that portion of teaching physicians' salaries and fringe benefits related to the time spent in teaching and supervision of residents.

The contract must indicate that the hospital is assuming financial responsibility for these costs directly or that the hospital agrees to reimburse the nonhospital provider for such costs. The contract must also contain an acknowledgment on the part of the

nonhospital provider that, since the residents' time is being counted by the hospital, the nonhospital site cannot claim GME costs on their Medicare cost report. The nonhospital provider must agree to report its direct GME costs as well as any money received from the hospital for GME purposes in a nonallowable cost center on its cost report. In addition, in order to determine teaching physician compensation that may be allocated to direct GME, the nonhospital provider must specify the portion of the teaching physicians' time that will be spent training residents in the nonhospital setting. Finally, any payment to the hospital for the direct costs of GME training in the nonhospital setting will continue to reflect Medicare's share, which equals the hospital's ratio of Medicare inpatient days to total inpatient days.

Hospitals that have residents who rotate to nonhospital sites are, like all teaching hospitals, subject to an institutional cap on the number of FTE residents that may be counted for both indirect and direct GME under sections 1886(d)(5)(B)(v) and 1886(h)(6)(F) of the Act. For hospitals that have residents who rotate to a nonhospital site, those residents will be subject to the hospital's FTE caps.

f. **Trust Funds.** Under section 1886(k)(1) of the Act, the rules established by the Secretary for paying nonhospital providers for GME must specify the portion of Medicare payments that will be made from each of the Medicare trust funds. We propose that GME payments made directly to an FQHC, RHC, or Medicare+Choice organization would be made from the Federal Supplementary Medical Insurance Trust Fund.

g. **Conclusion.** Under this proposed rule, clinics that are presently ineligible to receive payments for direct GME may now receive such payments. Moreover, this proposal provides Medicare+Choice organizations the opportunity to receive direct GME payments for training residents in the nonhospital setting. As Medicare+Choice organizations, managed care entities will, for the first time, be eligible to receive direct GME payments for training residents in various types of nonhospital sites. This proposed rule would help bridge the disparity between hospital and nonhospital providers in obtaining payment for direct GME costs.

We believe this proposed rule may encourage the development of new programs in nonhospital settings. Similarly, it may also encourage approved residency training programs to

rotate additional residents to nonhospital sites.

In developing this proposed rule, we considered establishing a fixed payment rate for the direct costs of training residents in the nonhospital setting. We are not proposing a policy of a fixed payment at this time because we presently have no reliable data on the direct costs of training residents in nonhospital settings. Moreover, we are concerned that a fixed payment for these costs may not be appropriate if there is significant variation in cost among participating nonhospital sites.

Given these considerations, our policy to pay FQHCs, RHCs, and Medicare+Choice organizations on a cost reimbursement basis may be revised in the future. Once we have acquired data such that we can estimate the direct costs of training residents in the nonhospital site, we will revisit our payment methodology for paying FQHCs, RHCs, and Medicare+Choice organizations for direct GME. We believe that ultimately it might be appropriate to pay FQHCs, RHCs, and Medicare+Choice organizations using a national average per resident amount. This national per resident amount would be based on the national average for the direct costs of training medical residents in the nonhospital site. As such, we are interested in receiving comments on a fixed payment methodology and on how to derive such a payment. These comments should include empirical data on training costs in nonhospital sites.

The effective date of these provisions for FQHCs, RHCs, Medicare+Choice organizations, and hospitals will be January 1, 1999. In particular, the effective date for IME payments to hospitals under this provision applies to discharges occurring on or after January 1, 1999. In addition, the effective date for direct medical education payments to FQHCs, RHCs, Medicare+Choice organizations, and hospitals applies to that portion of cost reporting periods occurring on or after January 1, 1999.

VI. Changes to the Prospective Payment System for Capital-Related Costs

A. Proposed Cap on the Capital Indirect Medical Education Adjustment Ratio (§ 417.322)

Under section 1886(g) of the Act, the Secretary has broad discretion in implementing the capital prospective payment system. Section 412.322 of the regulations specifies the formula for the capital indirect medical education (IME) adjustment factor. The capital IME adjustment is intended to pay the capital prospective payment system

share of the indirect costs of medical education to teaching hospitals. The formula was adopted in the August 30, 1991 final rule for the capital prospective payment system (56 FR 43380) and uses the ratio of interns and residents to average daily census (defined as total inpatient days divided by the number of days in the cost reporting period). Section 1886(d)(5)(B) of the Act requires the use of the ratio of residents-to-beds to calculate the IME adjustment for the operating Prospective payment system. However, pursuant to our authority under section 1886(g) of the Act, we adopted the resident to average daily census ratio for the capital prospective payment system because we believed it was a more appropriate method for measuring teaching intensity and because we believed it was less subject to manipulation.

The IME adjustment factor increases by approximately 2.8 percentage points for each .10 increase in the hospital's ratio of residents to average daily census. The IME adjustment for inpatient capital-related costs for hospitals paid under the prospective payment system takes the form of e raised to the power $(.2822 \times \text{ratio of interns and residents to average daily census} - 1)$ where e is the natural antilog of 1, based on the total cost regression results. In order to determine the Federal rate portion of the hospital's payment, the IME adjustment factor is multiplied by the standard Federal rate, the DRG weight, the geographic adjustment factor, and any other relevant payment adjustments such as the DSH adjustment or the large urban add-on. The formula is as follows: $(\text{Standard Federal Rate}) \times (\text{DRG weight}) \times (\text{GAF}) \times (\text{Large Urban Add-on, if applicable}) \times (\text{COLA adjustment for hospitals located in Alaska and Hawaii}) \times (1 + \text{Disproportionate Share Adjustment Factor} + \text{IME Adjustment Factor, if applicable})$.

It has come to our attention that because of the application of the capital IME adjustment, one hospital would receive a capital IME payment greater than its total hospital costs. We have also recently learned that of the approximately 1,200 teaching hospitals in the United States, based on December 1997 data, 8 hospitals have a resident to average daily census ratio of more than 1.5. A resident to average daily census ratio of 1.5 results in a capital IME adjustment factor of .53, which increases the Federal rate portion of the hospital's capital payment by 53 percent.

To address this unintended effect of the capital IME methodology, we are proposing to cap the capital IME ratio at

1.5. A ratio greater than 1.5 means a hospital has, on average, considerably more residents than inpatients. Capping the ratio at 1.5 would allow for one resident per patient on the inpatient side plus some outpatient training, and would keep capital IME payments more consistent with the costs incurred. Because of the large number of unoccupied beds in most hospitals, the operating IME ratio has only slightly exceeded 1.0 in two cases. This change would ensure that the capital IME adjustment is more in line with hospital costs.

B. Payment Methodology for Mergers Involving New Hospitals (§ 412.331)

The August 30, 1991 final rule (56 FR 43418), which implemented the capital prospective payment system, established special payment provisions for new hospitals. Under § 412.324(b), a new hospital is paid 85 percent of its allowable Medicare capital-related costs through its first cost reporting period ending at least 2 years after the hospital accepts its first patient. The first cost reporting period beginning at least 1 year after the hospital accepts its first patient is the hospital's base year for purposes of determining its hospital-specific rate. Section 412.302(b) defines a new hospital's old capital costs as allowable capital-related costs for land and depreciable assets that were put in use for patient care on or before the last day of the hospital's base year cost reporting period. Beginning with the third year, the hospital is paid under the fully prospective or hold-harmless payment methodology, as appropriate. If the hospital is paid under the hold-harmless payment methodology, the hospital's hold-harmless payments for its old capital costs can continue for up to 8 years.

In the August 30, 1991 final rule, we defined a new hospital as one that had operated (under previous or present ownership) for less than 2 years and did not have a 12-month cost reporting period that ended on or before December 31, 1990. In the September 1, 1992 final rule (57 FR 39789), as a result of situations brought to our attention after publication of the prospective payment system final rule, we clarified the new hospital exemption under the capital prospective payment system. We explained that the new hospital exemption would not apply to a facility that opened as an acute care hospital if that hospital had previously operated under current or prior ownership and had a historic asset base. We also clarified that a hospital that replaced its entire facility (with or without a change of ownership) would not qualify for a

new hospital exemption and that a previously existing excluded hospital (paid under section 1886(b) of the Act) that became an acute care hospital (paid under section 1886(d)) of the Act would not qualify.

We explained our belief that the reasonable cost payment protection under the new hospital exemption should only be available to those hospitals that had not received reasonable cost payments in the past and needed special protection during their initial period of operation. We also stated in the June 4, 1992 proposed rule (57 FR 23649) that we were clarifying the new hospital exemption to ensure that hospitals that had an existing asset base before December 31, 1990 were not provided with an extended transition period and inappropriately higher payments relative to other hospitals. We also explained our belief that it was essential to maintain the integrity of the capital prospective payment system by allowing only truly new providers of hospital care to qualify for the new hospital exemption.

Since publication of our last clarification of the payment rules for new hospitals, questions have arisen regarding application of our rules for payment of new hospitals in merger situations. Consistent with our previously stated policy that only truly new hospitals without an existing asset base should be eligible for the new hospital exemption, we are further clarifying the new hospital payment provisions.

If during the period it is eligible for payment as a new hospital (as defined at § 412.300(b) and § 412.328(b)), a new hospital merges with one or more existing hospitals and the merger meets the existing capital-related reasonable cost rules regarding the criteria for recognizing a merger at § 413.134 and the new hospital is the surviving corporation (as defined in § 413.134(l)(2)) we would treat as old capital only those assets of the existing hospital that met the definition of old capital (as defined in § 412.302(b)) prior to the merger, for purposes of determining payments after the merger.

Any assets of the existing hospital that were considered new capital prior to the merger will still be considered new capital after the merger. The merger cannot be used to convert the existing hospital's new capital into old capital. After the merger, the discharges of each campus of the merged entity would maintain their pre-merger payment methodology until the end of the 2 year period that the "new hospital" campus was eligible for reasonable cost reimbursement as defined at

§ 412.324(b). At the end of this period, the intermediary would devise a hospital specific rate for the "new" campus of the merged hospital. Finally, the calculation methodology for hospital mergers at new § 412.331(a)(1) and (2) would be performed and a combined hospital-specific rate would be determined and a payment methodology selected for the merged hospital as a whole.

The calculation at § 412.331(a)(1) and (2) uses each hospital's base year old capital costs. Any new capital of the previously existing hospital would not be used in the determination. If the new merged entity qualifies for the hold-harmless payment methodology, only the capital which meets the definition of old capital at § 412.302(b) would be eligible for hold-harmless payments.

We note that this proposed change is consistent with the principles underlying existing § 412.331(a)(3), which provides that in the case of a merger only the existing capital-related costs related to the assets of each merged or consolidated hospital as of December 31, 1990 are recognized as old capital costs during the transition period. If the hospital is paid under the hold-harmless methodology after merger or consolidation, only that original base year old capital is eligible for hold-harmless payments.

Example: Hospital A is a new hospital in its first 2 years of operation and is being paid 85 percent of its allowable Medicare inpatient hospital capital-related costs. Hospital A's base year for establishing its hospital-specific rate will end September 30, 1998. Hospital B is an existing hospital whose base year for capital prospective payment system purposes was June 30, 1990. Hospital B is a hold-harmless hospital paid 100 percent of the Federal rate. Hospital A merged with Hospital B (in accordance with § 413.134(l)) on March 1, 1998, and Hospital A is a new merged entity, with two campuses: one which used to be the original Hospital A—the "new" hospital, and one which used to be Hospital B—the "existing" hospital. The merged Hospital A retains the corporate structure, provider number, and cost reporting period of the original Hospital A, which is the surviving hospital. The merged Hospital A's discharges will be paid under two different payment methodologies until the "new" campus completes its base period under the payment rules for new hospitals and a hospital-specific rate and a payment methodology can be determined for the merged Hospital A. Until that time, the discharges of the "new" hospital campus (previously the original Hospital A) will be paid in accordance with § 412.324(b) as a new hospital. Any capital that meets the definition of old capital acquired by the "new" campus before the end of its base year will be accorded old capital status in accordance with § 412.302(b). The "existing" hospital campus (previously hospital B) will

continue to be paid on a hold-harmless basis. Any capital acquired by the "existing" campus will be accorded new capital status in accordance with section 2807.3A of the Provider Reimbursement Manual (PRM). At the end of the "new" campus' base year, a hospital-specific rate will be determined for that campus. After a hospital specific rate is determined, the calculation methodology for hospital mergers at § 412.331(a)(1) and (2) will be performed. As part of the calculation and before combining the data, the base years of the two hospitals used to establish the hospital-specific rate are brought to the same point by discharge-weighting and updating. The calculation uses only the old capital costs of each hospital in order to determine a combined hospital-specific rate and payment methodology. After a payment methodology determination is made, the two campuses will be paid using the same payment methodology for all of their discharges.

VII. Changes for Hospitals and Units Excluded From the Prospective Payment System

Limits on and Adjustments to the Target Amounts for Excluded Hospitals and Units (§ 413.40(g))

1. Updated Caps

Section 1886(b)(3) of the Act as amended by section 4414 of the BBA established caps on the target amounts for excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. The caps on the target amounts apply to the following three categories of excluded hospitals: psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

A discussion of how the caps on the target amounts were calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46018). For purposes of calculating the caps for cost reporting periods beginning during FY 1999 through FY 2002, the statute requires us to calculate the 75th percentile of the target amounts for each class of hospital (psychiatric, rehabilitation, or long-term care) for cost reporting periods ending during FY 1996. The resulting amounts are updated by the market basket percentage to the applicable fiscal year.

The projected market basket for excluded hospitals and units for FY 1999 is 2.5 percent. Accordingly, the caps on the target amount for FY 1999 are as follows:

- (1) Psychiatric hospitals and units: \$10,443
- (2) Rehabilitation hospitals and units: \$18,938
- (3) Long-term care hospitals: \$37,360

2. Classification of Hospitals and Units

Since publication of the August 29, 1997 final rule with comment period, some excluded facilities have suggested that if they are currently excluded as one class of hospital or unit but also qualify for exclusion as another class of hospital, they should be permitted to choose which classification applies for purposes of applying the cap on target amounts. For example, some hospitals that participate in Medicare as psychiatric hospitals (defined under section 1861(f) of the Act, and the special conditions of participation in 42 CFR part 482 subpart E) have noted that they have average lengths of stay greater than 25 days. Those hospitals have asked to be "reclassified" as long-term care hospitals and given the benefit of the higher cap on target amounts applicable to that hospital class.

We have considered these hospitals' suggestions, but we believe it would not be appropriate to adopt them. Section 1886(b)(3)(H)(iv) of Act makes it clear that each category of hospital and corresponding units—psychiatric (section 1886(d)(1)(B)(ii)), rehabilitation (section 1886(d)(1)(B)(iii)), and long-term care hospitals (section 1886(d)(1)(B)(iv)) is treated separately. We believe it is consistent with effective implementation of this provision to prevent hospitals or units that could potentially be assigned to more than one category of excluded facility from choosing the category to which they wish to be assigned. Even though some hospitals or units in one group might potentially have been assigned to a different group, each group has its own limit based on the target amounts for similarly classified facilities. It would not be appropriate to apply a limit to a hospital or unit based on the target amount derived from the cost experience of differently classified hospitals and units.

In addition, there are a number of hospitals that could potentially move from the psychiatric hospital cap to the long-term care hospital cap. This movement would have a significant impact on the appropriateness of both caps. In the case of the psychiatric hospitals, had those hospitals with the longest lengths of stay and therefore higher per discharge target amount been excluded in the original calculation of the caps, the cap for all remaining psychiatric hospitals would invariably have been lower. Furthermore, had those psychiatric hospitals been included in the calculation of the long-term care hospital cap, that cap could also have been lower. To allow such a significant change in the application of

the caps is to raise a serious question as to the appropriateness of the current caps for all psychiatric and long-term care hospitals.

Thus, to clarify the application of the caps, we propose to revise § 413.40(c)(4)(iii) to specify that, for purposes of that paragraph, the classification of a hospital that was excluded from the prospective payment system for its cost reporting period ending in FY 1996 will be determined by its classification (that is, the basis on which it was excluded) in FY 1996. If a hospital or unit was not excluded for a cost reporting period ending in FY 1996 but could be excluded on more than one basis (for example, as either a rehabilitation or long-term care hospital) it will be assigned to the classification group with the lowest limit.

3. Exceptions

The August 29, 1997 final rule with comment period (62 FR 46018) specified that a hospital that has a target amount that is capped at the 75th percentile would not be granted an adjustment payment to the target amount (also referred to as an exception payment) as governed by § 413.40(g) based solely on a comparison of its costs or patient mix in its base year to its costs or patient mix in the payment year. Since the hospital's target amount would not be determined based on its own experience in a base year, any comparison of costs or patient mix in its base year to costs or patient mix in the payment year would be irrelevant.

We propose to clarify that, to the extent we grant an exception to a hospital not affected by the cap, the amount of the exception would be limited to the cap on the hospital's target amount. This policy is consistent with the caps. By establishing caps on TEFRAs target amounts, Congress has limited payments to individual hospitals based on amounts that reflect the cost experience of other hospitals. Therefore, in determining the extent of any adjustment paid to a hospital as an exception under our regulations at § 413.40(g)(3), we believe it is consistent with Congressional intent to limit the extent of the adjustment to the hospital's cap on its target amount.

We propose to revise § 413.40(g)(1) to set forth the limitation on the adjustment payments.

VIII. MedPAC Recommendations

We have reviewed the March 1998 report submitted by MedPAC to Congress and have given its recommendations careful consideration in conjunction with the proposals set forth in this document.

Recommendations concerning the update factors for inpatient operating costs and for hospitals and hospital distinct-part units excluded from the prospective payment system are discussed in Appendix D, to this proposed rule. The remaining recommendations are discussed below.

A. Disproportionate Share Hospitals (DSH)

Recommendation: The Medicare Payment Advisory Commission (MedPAC) made several recommendations concerning the Medicare disproportionate share adjustment calculation. In general, the Commission's proposal would base the amount of DSH payment each hospital receives on its volume and mix of cases paid under the prospective payment system and its share of low-income patients. The low-income share measure would reflect the costs of care provided to low-income individuals (Medicare patients eligible for Supplemental Security Income (SSI), Medicaid patients, patients sponsored by local indigent care programs, and patients receiving uncompensated care) as a proportion of total patient care expenses. Both inpatient and outpatient costs were included in the data used to calculate the low-income shares, although payment would be made only on inpatient discharges.

The same formula would be applied to all prospective payment hospitals. Under the recommendation, there would be a threshold or minimum low-income share, that must be reached for a hospital to receive any Medicare disproportionate share adjustment. The payment the hospital would receive is proportionate to the segment of its low-income share that lies above the threshold. MedPAC simulated the potential effects of applying their approach on the distribution of Medicare disproportionate share payments made in 1995. For purposes of MedPAC's simulations, the threshold was set at a level that would limit payments to about 40 percent of prospective payment hospitals—roughly the same as under the current DSH adjustment. MedPAC stated that this proportion could be adjusted, or the threshold could be set using a different method, as deemed appropriate by policy makers. (For more information see Volume 1, chapter 6, page 63 of the March 1998 report.)

Response: Section 1886(d)(5)(F) of the Act, as amended by section 4403(b) of the BBA, requires us to prepare a report to Congress, due by August 5, 1998, which will include our recommendations for an appropriate

formula for determining DSH payments. We appreciate MedPAC's efforts to assist HCFA in restructuring the Medicare disproportionate share adjustment and we will further examine and consider their recommendations as we develop our report to Congress.

B. Potential Effects of Target Amount Caps

Recommendation: The wage-related portion of the excluded hospital target amount caps should be adjusted by the appropriate hospital wage index to account for geographic differences in wages. (For more information see Volume 1, chapter 7, page 71 of the March 1998 report.)

Response: As MedPAC indicated in its recommendation, legislation would be required to adjust the target amount caps in such a substantial manner as to adjust for differences in area labor costs.

IX. Other Required Information

A. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at WWW.HCFA.GOV/STATS/PUBFILES.HTML. Data files are listed below with the cost of each. Anyone wishing to purchase data tapes, cartridges, or diskettes should submit a written request along with a company check or money order (payable to HCFA-PUF) to cover the cost to the following address: Health Care Financing Administration, Public Use Files, Accounting Division, P.O. Box 7520, Baltimore, Maryland 21207-0520, (410) 786-3691. Files on the Internet may be downloaded without charge.

1. Expanded Modified MEDPAR-Hospital (National)

The Medicare Provider Analysis and Review (MedPAR) file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in the United States. (The file is a Federal fiscal year file, that is, discharges occurring October 1 through September 30 of the requested year.)

The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine

Uses for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), and amended by the July 2, 1985 notice (50 FR 27361). The national file consists of approximately 11 million records. Under the requirements of these notices, an agreement for use of HCFA Beneficiary Encrypted Files must be signed by the purchaser before release of these data. For all files requiring a signed agreement, please write or call to obtain a blank agreement form before placing an order. Two versions of this file are created each year. They support the following:

- Notice of Proposed Rulemaking (NPRM) published in the **Federal Register**, usually available by the end of May (April beginning in 1998). This file is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).

- Final Rule published in the **Federal Register**, usually available by the first week of September (August beginning with the FY 1999 final rule). For final rules published before 1998, this file is derived from the MedPAR file with a cutoff of 9 months after the end of the fiscal year (June file). The FY 1997 MedPAR file used for the FY 1999 final rule will have a cutoff of 6 months after the end of the fiscal year (March file).
Media: Tape/Cartridge
File Cost: \$3,415.00 per fiscal year
Periods Available: FY 1988 through FY 1997

2. Expanded Modified MedPAR-Hospital (State)

The State MedPAR file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in a particular State. The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the December 24, 1984 **Federal Register** notice, and amended by the July 2, 1985 notice. This file is a subset of the Expanded Modified MedPAR-Hospital (National) as described above. Under the requirements of these notices, an agreement for use of HCFA Beneficiary Encrypted Files must be signed by the purchaser before release of these data. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually available by the end of May (April beginning in 1998). This file is derived from the MedPAR file with a

cutoff of 3 months after the end of the fiscal year (December file).

- Final Rule published in the **Federal Register**, usually available by the first week of September (August beginning with the FY 1999 final rule). For final rules published before 1998, this file is derived from the MedPAR file with a cutoff of 9 months after the end of the fiscal year (June file). The FY 1997 MedPAR file used for the FY 1999 final rule will be cut off 6 months after the end of the fiscal year (March file).

Media: Tape/Cartridge
File Cost: \$1,050.00 per State per year
Periods Available: FY 1988 through FY 1997

3. HCFA Wage Data

This file contains the hospital hours and salaries for 1995 used to create the proposed FY 1999 prospective payment system wage index. The file will be available by the beginning of February for the NPRM and the beginning of May for the final rule.

Processing year	Wage data year	PPS fiscal year
1998	1995	1999
1997	1994	1998
1996	1993	1997
1995	1992	1996
1994	1991	1995
1993	1990	1994
1992	1989	1993
1991	1988	1992

These files support the following:

- NPRM published in the **Federal Register**, usually by the end of April.
- Final Rule published in the **Federal Register**, usually by the first week of August.

Media: Diskette/Internet
File Cost: \$145.00 per year
Periods Available: FY 1999 PPS Update

4. HCFA Hospital Wages Indices (Formerly: Urban and Rural Wage Index Values Only)

This file contains a history of all wage indices since October 1, 1983.

Media: Diskette/Internet
File Cost: \$145.00 per year
Periods Available: FY 1999 PPS Update

5. PPS SSA/FIPS MSA State and County Crosswalk

This file contains a crosswalk of State and county codes used by the Social Security Administration (SSA) and the Federal Information Processing Standards (FIPS), county name, and a historical list of Metropolitan Statistical Area (MSA).

Media: Diskette/Internet

File Cost: \$145.00 per year
Periods Available: FY 1999 PPS Update

6. Reclassified Hospitals by Provider Only

This file contains a list of hospitals that were reclassified for the purpose of the proposed FY 1999 wage index. Two versions of these files are created each year.

They support the following:

- NPRM published in the **Federal Register**, usually by the end of April.
- Final Rule published in the **Federal Register**, usually by the first week of August.

Media: Diskette/Internet
File Cost: \$145.00 per year
Periods Available: FY 1999 PPS Update

7. PPS-IV to PPS-XII Minimum Data Sets

The Minimum Data Set contains cost, statistical, financial, and other information from Medicare hospital cost reports. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare participating hospital by the Medicare Fiscal Intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

MEDIA: TAPE/CARTRIDGE

	Periods beginning on or after	and before
PPS IV	10/01/86	10/01/87
PPS V	10/01/87	10/01/88
PPS VI	10/01/88	10/01/89
PPS VII	10/01/89	10/01/90
PPS VIII	10/01/90	10/01/91
PPS IX	10/01/91	10/01/92
PPS X	10/01/92	10/01/93
PPS XI	10/01/93	10/01/94
PPS XII	10/01/94	10/01/95

(Note: The PPS XIII Minimum Data Set covering FY 1997 will not be available until July 31, 1998.)

File Cost: \$715.00 per year

8. PPS-IX to PPS-XII Capital Data Set

The Capital Data Set contains selected data for capital-related costs, interest expense and related information and complete balance sheet data from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare certified hospital by the Medicare fiscal intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

MEDIA: TAPE/CARTRIDGE

	Periods beginning on or after	and before
PPS IX	10/01/91	10/01/92
PPS X	10/01/92	10/01/93
PPS XI	10/01/93	10/01/94
PPS XII	10/01/94	10/01/95

(Note: The PPS XIII Capital Data Set covering FY 1997 will not be available until July 31, 1998.)

File Cost: \$715.00 per year

9. Provider-Specific File

This file is a component of the PRICER program used in the fiscal intermediary's system to compute DRG payments for individual bills. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration processes and related activities. Beginning with December 1988, the individual records were enlarged to include pass-through per diems and other elements.

Media: Diskette/Internet
File Cost: \$265.00
Periods Available: FY 1998 PPS Update

10. HCFA Medicare Case-Mix Index File

This file contains the Medicare case-mix index by provider number as published in each year's update of the Medicare hospital inpatient prospective payment system. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually by the end of May (April beginning in 1998).
- Final rule published in the **Federal Register**, usually by the first week of September (August beginning in 1998).

Media: Diskette/Internet
Price: \$145.00 per year
Periods Available: FY 1985 through FY 1997 (Internet—FY 1997)

11. DRG Relative Weights (Formerly Table 5 DRG)

This file contains a listing of DRGs, DRG narrative description, relative weights, and geometric and arithmetic mean lengths of stay as published in the **Federal Register**. The hardcopy image has been copied to diskette. There are two versions of this file as published in the **Federal Register**:

- NPRM, usually published by the end of May (April beginning in 1998).
- Final rule, usually published by the first week of September (August beginning in 1999).

Media: Diskette/Internet
File Cost: \$145.00
Periods Available: FY 1999 PPS Update

12. PPS Payment Impact File

This file contains data used to estimate payments under Medicare's hospital inpatient prospective payment systems for operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, Minimum Data Sets, and prior impact files. The data set is abstracted from an internal file used for the impact analysis of the changes to the prospective payment systems published in the **Federal Register**. This file is available for release 1 month after the proposed and final rules are published in the **Federal Register**.

Media: Diskette/Internet
File Cost: \$145.00
Periods Available: FY 1999 PPS Update

13. AOR/BOR Tables

This file contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation, and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are "Before Outliers Removed" and the AOR is "After Outliers Removed." (Outliers refers to statistical outliers, not payment outliers.) Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually by the end of April.
- Final rule published in the **Federal Register**, usually by the first week of August.

Media: Diskette/Internet
File Cost: \$145.00
Periods Available: FY 1999 PPS Update

For further information concerning these data tapes, contact Mary R. White at (410) 786-3691.

Commenters interested in obtaining or discussing any other data used in constructing this rule should contact Stephen Phillips at (410) 786-4548.

B. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the **DATES**

section of this preamble and respond to those comments in the preamble to that rule. We emphasize that, given the statutory requirement under section 1886(e)(5) of the Act that our final rule for FY 1999 be published by August 1, 1998, we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Chapter IV would be amended as set forth below:

A. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405 is revised to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a), unless otherwise noted.

Subpart X—Rural Health Clinic and Federally Qualified Health Center Services

§ 405.2468 [Amended]

2. In § 405.2468, a new paragraph (f) is added to read as follows:

(f) *Graduate medical education.* (1) Effective for that portion of cost reporting periods occurring on or after January 1, 1999, if an RHC or an FQHC incurs "all or substantially all" of the costs for the training program in the nonhospital setting as defined in § 413.86(b) of this chapter, the RHC or FQHC may receive direct graduate medical education payment for those residents.

(2) Direct graduate medical education costs are not included as allowable cost under § 405.2466(b)(1)(i); and therefore, are not subject to the limit on the all-inclusive rate for allowable costs.

(3) Allowable graduate medical education costs must be reported on the RHC's or the FQHC's cost report under a separate cost center.

(4) Allowable direct graduate medical education costs under paragraphs (f)(5) and (6)(i) of this section, are subject to reasonable cost principles under part 413 and the reasonable compensation equivalency limits in §§ 415.60 and 415.70 of this chapter.

(5) The allowable direct graduate medical education costs are those costs incurred by the nonhospital site for the educational activities associated with patient care services of an approved program, subject to the redistribution and community support principles in § 413.85(c).

(i) The following costs are included in allowable direct graduate medical education costs to the extent that they are reasonable—

(A) The costs of the residents' salaries and fringe benefits (including travel and lodging expenses where applicable).

(B) The portion of teaching physicians' salaries and fringe benefits that are related to the time spent teaching and supervising residents.

(C) Facility overhead costs that are allocated to direct graduate medical education.

(ii) The following costs are not included as allowable graduate medical education costs—

(A) Costs associated with training, but not related to patient care services.

(B) Normal operating and capital-related costs.

(C) The marginal increase in patient care costs that the RHC or FQHC experiences as a result of having an approved program.

(D) The costs associated with activities described in § 413.85(d) of this chapter.

(6) Payment is equal to the product of—

(i) The RHC's or the FQHC's allowable direct graduate medical education costs; and

(ii) Medicare's share of the direct graduate medical education payment which is equal to the ratio of Medicare visits to the total number of visits (as defined in § 405.2463).

(7) Direct graduate medical education payments to RHCs and FQHCs made under this section are made from the Federal Supplementary Medical Insurance Trust Fund.

B. Part 412 is amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh).

Subpart A—General Provisions

2. Section 412.4 is revised to read as follows:

§ 412.4 Discharges and transfers.

(a) *Discharges.* Subject to the provisions of paragraphs (b) and (c) of this section, a hospital inpatient is considered discharged from a hospital paid under the prospective payment system when—

(1) The patient is formally released from the hospital; or

(2) The patient dies in the hospital.

(b) *Transfer—Basic rule.* A discharge of a hospital inpatient is considered to be a transfer for purposes of payment under this part if the discharge is made under any of the following circumstances:

(1) From a hospital to the care of another hospital that is—

(i) Paid under the prospective payment system; or

(ii) Excluded from being paid under the prospective payment system because of participation in an approved Statewide cost control program as described in subpart C of part 403 of this chapter.

(2) From one inpatient area or unit of a hospital to another inpatient area or unit of the hospital that is paid under the prospective payment system.

(c) *Transfers—Special 10 DRG rule.* For discharges occurring on or after October 1, 1998, a discharge of a hospital inpatient is considered to be a transfer for purposes of this part when the patient's discharge is assigned, as described in § 412.60(c), to one of the qualifying diagnosis-related groups (DRGs) listed in paragraph (d) of this section and the discharge is made under any of the following circumstances—

(1) To a hospital or distinct part hospital unit excluded from the prospective payment system under subpart B of this part.

(2) To a skilled nursing facility or to a swing bed in the hospital that meets the provisions of § 482.66 of this chapter.

(3) To home under a written plan of care for the provision of home health services from a home health agency and those services begin within 3 days after the date of discharge.

(d) *Qualifying DRGs.* The qualifying DRGs for purposes of paragraph (c) of this section are DRGs 14, 113, 209, 210, 211, 236, 263, 264, 429, and 483.

(e) *Payment for discharges.* The hospital discharging an inpatient (under paragraph (a) of this section) is paid in full, in accordance with § 412.2(b).

(f) *Payment for transfers.* (1) *General rule.* Except as provided in paragraph (f)(2) or (f)(3) of this section, a hospital that transfers an inpatient under the circumstances described in paragraph (b) or (c) of this section, is paid a graduated per diem rate for each day of the patient's stay in that hospital, not to exceed the amount that would have been paid under subparts D and M of this part if the patient had been discharged to another setting. The per diem rate is determined by dividing the appropriate prospective payment rates (as determined under subparts D, and M of this part) by the geometric mean length of stay for the specific which the case is assigned. Payment is graduated by paying twice the per diem amount for the first day of the stay, and the per diem amount for each subsequent day, up to the full DRG payment.

(2) *Special rule for DRGs 209, 210, and 211.* A hospital that transfers an inpatient under the circumstances described in paragraph (c) of this section and the transfer is assigned to DRGs 209, 210 or 211 is paid as follows:

(i) 50 percent of the appropriate prospective payment rate (as determined under subparts D and M of this part) for the first day of the stay; and

(ii) 50 percent of the per diem amount as calculated under paragraph (f)(1) of this section for the remaining days of the stay, up to the full DRG payment.

(3) *Transfer assigned to DRG 385.* If a transfer is classified into DRG No. 385 (Neonates, died or transferred) the transferring hospital is paid in accordance with § 412.2(e).

(4) *Outliers.* Effective with discharges occurring on or after October 1, 1994, a transferring hospital may qualify for an additional payment for extraordinarily high-cost cases that meet the criteria for cost outliers as described in subpart F of this part.

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

3. In § 412.106, paragraph (b)(4) is revised to read as follows:

§ 412.106 *Special treatment: Hospitals that serve a disproportionate share of low-income patients.*

(b) * * *

(4) *Second computation.* The fiscal intermediary determines, for the same cost reporting period used for the first computation, the number of the hospital's patient days of service for which patients were eligible for Medicaid but not entitled to Medicare Part A, and divides that number by the total number of patient days in the same period.

(i) For purpose of paragraph (b)(4), a patient is deemed eligible for Medicaid on a given day if the patient is eligible for medical assistance under an approved State Medicaid plan on such day, regardless of whether particular items or services were covered or paid under the State plan.

(ii) The hospital has the burden of furnishing data adequate to prove eligibility for each Medicaid patient day claimed under this paragraph, and of verifying with the State that a patient was eligible for Medicaid during each claimed patient hospital day.

Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs

4. In § 412.322, a new sentence is added at the end of paragraph (a)(3) to read as follows:

§ 412.322 *Indirect medical education adjustment factor.*

(a) * * *

(3) * * * This ratio cannot exceed 1.5.

5. In § 412.331, paragraphs (a) and (b) are redesignated as paragraphs (b) and (c) respectively, a new paragraph (a) is added, and the first sentences of new paragraphs (b) introductory text and (b)(2) are revised to read as follows:

§ 412.331 *Determining hospital-specific rates in cases of hospital merger, consolidation, or dissolution.*

(a) *New hospital merger or consolidation.* If, after a new hospital accepts its first patient but before the end of its base year, it merges with one or more existing hospitals, and two or more separately located hospital campuses are maintained, hospital specific rate and payment determination for the merged entity are determined as follows—

(1) The "new" campus continues to be paid based on reasonable costs until the end of its base year. The existing campus remains on its previous payment methodology until the end of the new campus' base year. Effective with the first cost reporting period beginning after the "new" campus, the

intermediary determines a hospital-specific rate applicable to the new campus, and then determines a revised hospital-specific rate for the merged entity in accordance with paragraph (a) of this section.

(2) *Payment determination.* To determine the applicable payment methodology under § 412.336 and for payment purposes under § 412.340 or § 412.344, the discharge-weighted hospital-specific rate is compared to the Federal rate. The revised payment methodology is effective on the first day of the cost reporting period beginning after the end of the "new" campus' base year.

(b) *Hospital merger or consolidation.* If, after the base year, two or more hospitals merge or consolidate into one hospital as provided for under § 413.134(k) of this chapter and are not subject to the provisions of paragraph (a) of this section, the intermediary determines a revised hospital-specific rate applicable to the combined facility under § 412.328, which is effective beginning with the date of merger or consolidation. * * *

(2) *Payment determination.* To determine the applicable payment methodology under § 412.336 and for payment purposes under § 412.340 or § 412.344, the discharge-weighted hospital-specific rate is compared to the Federal rate. * * *

C. Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (l) and (n), 1861(v), 1871, 1881, 1883, and 1866 of the Social Security Act (42 U.S.C. 1302, 1395ff(b), 1395g, 1395l, 1395l(a), (l) and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart C—Limits on Cost Reimbursement

2. In § 413.40, paragraph (c)(4)(iv) is redesignated as paragraph (v), a new paragraph (iv) is added, and paragraph (g)(1) is revised to read as follows:

§ 413.40 *Ceiling on the rate of increase in hospital inpatient costs.*

(c) * * *

(4) * * *

(iv) For purposes of the limits on target amounts established under paragraph (c)(4)(iii) of this section, each hospital or unit that was excluded from the prospective payment system for its cost reporting period ending during FY 1996 will be classified in the same way (that is, as a psychiatric hospital or unit, or a long-term care hospital) as it was classified under subpart B of part 412 of this chapter for purposes of exclusion from prospective payment systems for its cost reporting period ending during FY 1996. If a hospital or unit was not excluded from the prospective payment system for a cost reporting period ending during FY 1996 but could qualify to be classified in more than one way under the exclusion criteria in subpart B of part 412 of this chapter, the hospital is assigned to the classification group that has the lowest limit on its target amounts.

(g) *Adjustments.* (1) *General rule.* HCFA may adjust the amount of the operating costs considered in establishing the rate-of-increase ceiling for one or more cost reporting periods, including both periods subject to the ceiling and the hospital's base period, under the circumstances specified below. When an adjustment is requested by the hospital, HCFA makes an adjustment only to the extent that the hospital's operating costs are reasonable, attributable to the circumstances specified separately identified by the hospital, and verified by the intermediary. HCFA may grant an adjustment requested by the hospital only if the hospital's operating costs exceed the rate-of-increase ceiling imposed under this section. In the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long term care hospital, the amount of payment made to a hospital after an adjustment under paragraph (g)(3) of this section may not exceed the 75th percentile of the target amounts for hospitals of the same class as described in § 413.40(c)(4)(iii).

Subpart F—Specific Categories of Costs

3. In § 413.80, paragraph (h) is redesignated as paragraph (i), and a new paragraph (h) is added to read as follows:

§ 413.80 *Bad debts, charity, and courtesy allowances.*

(h) *Limitations on bad debts.* In determining reasonable costs for hospitals, the amount of bad debts

otherwise treated as allowable costs (as defined in paragraph (e) of this section) is reduced—

(1) For cost reporting periods beginning during fiscal year 1998, by 25 percent;

(2) For cost reporting periods beginning during fiscal year 1999, by 40 percent; and

(3) For cost reporting periods beginning during a subsequent fiscal year, by 45 percent.

4. In § 413.85, a new paragraph (h) is added to read as follows:

§ 413.85 *Cost of educational activities.*

(h) *Medicare+Choice organizations.*

(1) Effective for that portion of cost reporting periods occurring on or after January 1, 1999, Medicare+Choice organizations may receive direct graduate medical education payments for the time that residents spend in nonhospital provider settings such as freestanding clinics, nursing homes, and physicians' offices in connection with approved programs.

(2) Medicare+Choice organizations may receive direct graduate medical education payments if all of the following conditions are met—

(i) The resident spends his or her time in patient care activities.

(ii) The Medicare+Choice organization incurs "all or substantially all" of the costs for the training program in the nonhospital setting as defined in § 413.86(b).

(iii) There is a written agreement between the Medicare+Choice organization and the nonhospital provider that contains—

(A) A statement by the nonhospital provider that, all or substantially all of the direct graduate medical education costs as defined in paragraph (f)(1)(iii) of this section are being assumed by the Medicare+Choice organization;

(B) A statement that the nonhospital site agrees to offset the revenue received from the Medicare+Choice organization.

(C) A statement that the nonhospital site agrees to report its direct graduate medical education costs in a nonreimbursable cost center on its cost report; and

(D) A statement indicating how much time the teaching physicians will spend training residents in the nonhospital setting, subject to the provisions of §§ 415.60 and 415.70 of this chapter.

(3) A Medicare+Choice organization's allowable direct graduate medical education costs, subject to the redistribution and community support principles in § 413.85(c), consist of—

(i) Residents' salaries and fringe benefits (including travel and lodging where applicable); and

(ii) The portion of teaching physicians' salaries and fringe benefits that are related to the time spent in teaching and supervising residents.

(4) Allowable direct graduate medical education costs under paragraph (h)(3) of this section are subject to the reasonable cost principles of part 413 and the reasonable compensation equivalency limits in §§ 415.60 and 415.70 of this chapter.

(5) The direct graduate medical education payment is equal to the product of—

(i) The Medicare+Choice organization's allowable direct graduate medical education costs as defined in paragraph (h)(3) of this section; and

(ii) Medicare's share of the Medicare+Choice organization's direct graduate medical education payment in the nonhospital site which is equal to the ratio of the number of Medicare beneficiaries enrolled to the total number of individuals enrolled in the Medicare+Choice organization.

(6) Direct graduate medical education payments made to Medicare+Choice organizations under this section are made from the Federal Supplementary Medical Insurance Trust Fund.

5. In § 413.86, the introductory text of paragraph (b) is republished, a new definition in alphabetical order is added to paragraph (b), paragraphs (i) and (j) are redesignated as paragraphs (j) and (k) respectively, paragraph (f)(2) is redesignated as new paragraph (i), paragraphs (f)(2)(i) through (vii) are redesignated as paragraphs (i)(1) through (7) respectively, the introductory text of paragraph (f)(1) is redesignated as the introductory text of paragraph (f), paragraphs (f)(1)(i) through (iii) are redesignated as paragraphs (f)(1) through (3) respectively, paragraphs (f)(1)(iii)(A) and (B) are redesignated as (f)(3)(i) and (ii) respectively, new paragraph (f)(2) and the introductory text of new paragraph (f)(3) are revised, and a new paragraph (f)(4) is added to read as follows:

§ 413.86 *Direct graduate medical education payments.*

(b) *Definitions.* For purposes of this section, the following definitions apply:

All or substantially all of the costs for the training program in the nonhospital setting means the residents' salaries and fringe benefits (including travel and lodging where applicable) and the

portion of the cost of teaching physicians' salaries and fringe benefits.

(f)
(2) No individual may be counted as more than one FTE. If a resident spends time in more than one hospital or, except as provided in paragraphs (f)(3) and (4) of this section, in a nonprovider setting, the resident counts as partial FTE based on the proportion of time worked at the hospital to the total time worked. A part-time resident counts as a partial FTE based on the proportion of allowable time worked compared to the total time necessary to fill a full-time internship or residency slot.

(3) On or after July 1, 1987 and for the portion of the cost reporting period occurring before January 1, 1999, the time residents spend in nonprovider settings such as freestanding clinics, nursing homes, and physicians' offices in connection with approved programs is not excluded in determining the number of FTE residents in the calculation of a hospital's resident count if the following conditions are met—

(4) On or after July 1, 1987 and for the portion cost reporting period occurring on or after January 1, 1999, the time residents spend in nonprovider settings such as freestanding clinics, nursing homes, and physicians' offices in connection with approved programs is not excluded in determining the number of FTE residents in the calculation of a hospital's resident count if the following conditions are met—

(i) The resident spends his or her time in patient care activities.

(ii) The written agreement between the hospital and the nonhospital provider must contain—

(A) A statement by the nonhospital provider that, all or substantially all of the direct graduate medical education costs as defined in paragraph (b) of this section are being assumed by the hospital;

(B) A statement that the nonhospital site agrees to offset the revenue received from the hospital;

(C) A statement that the nonhospital site agrees to report its direct graduate medical education costs on its cost report in a graduate medical education cost center; and

(D) A statement indicating how much time the teaching physicians will spend training residents in the nonhospital setting, subject to the provisions of §§ 415.60 and 415.70 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774,

Medicare—Supplementary Medical Insurance)

Dated: April 28, 1998.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing
Administration.

Dated: May 1, 1998.

Donna E. Shalala,
Secretary.

[Editorial Note: The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Proposed Schedule of Standardized Amounts Effective With Discharges Occurring On or After October 1, 1998 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1998

I. Summary and Background

In this addendum, we are setting forth the proposed amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth proposed rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1998, except for sole community hospitals, Medicare-dependent, small rural hospitals, and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

Sole community hospitals are paid based on whichever of the following rates yield the greatest aggregate payment: The Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. Medicare-dependent, small rural hospitals are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 cost per discharge, whichever is higher. For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate and 50 percent of a national rate.

As discussed below in section II, we are proposing to make changes in the determination of the prospective payment rates for Medicare inpatient operating costs. The changes, to be applied prospectively, would affect the calculation of the Federal rates. In section III of this addendum, we discuss

our proposed changes for determining the prospective payment rates for Medicare inpatient capital-related costs. Section IV of this addendum sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the proposed rule are presented at the end of this addendum in section V.

II. Proposed Changes to Prospective Payment Rates for Inpatient Operating Costs for FY 1999

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the proposed factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, would be effective with discharges occurring on or after October 1, 1998. As required by section 1886(d)(4)(C) of the Act, we must also adjust the DRG classifications and weighting factors for discharges in FY 1999.

In summary, the proposed standardized amounts set forth in Tables 1A and 1C of section V of this addendum reflect—

- Updates of 0.7 percent for all areas (that is, the market basket percentage increase of 2.6 percent minus 1.9 percentage points);
- An adjustment to ensure budget neutrality as provided for in sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1998 budget neutrality factor and applying a revised factor;
- An adjustment to apply the revised outlier offset by removing the FY 1998 outlier offsets and applying a new offset; and
- An adjustment in the Puerto Rico standardized amounts to reflect the application of a Puerto Rico-specific wage index.

The standardized amounts set forth in Tables 1E and 1F of section V of this addendum, which apply to "temporary relief" hospitals (see 62 FR 46001 for a discussion of these hospitals), reflect updates of 1.0 percent for all areas but otherwise reflect the same adjustments

as the national standardized amounts. As described in § 412.107, these hospitals receive an update that is 0.3 percentage points more than the update factor applicable to all other prospective payment hospitals for FY 1999.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(B) and (C) of the Act required that the base-year per discharge costs be updated for FY 1984 and then standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1997, when the market basket was last revised, we have considered 71.1 percent of costs to be labor-related for purposes of the prospective payment system. We are revising the Puerto Rico standardized amounts by the average labor share in Puerto Rico of 71.3 percent. We are revising the discharge-

weighted national standardized amount for Puerto Rico to reflect the proportion of discharges in large urban and other areas from the FY 1997 MedPAR file.

2. Computing Large Urban and Other Area Averages

Sections 1886(d)(2)(D) and (3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: One for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 50 percent of the applicable Puerto Rico standardized amount and 50 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban area" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100-203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on 1996 population estimates published by the Bureau of the Census, 60 areas meet the criteria to be defined as large urban areas for FY 1999. These areas are identified by a footnote in Table 4A.

3. Updating the Average Standardized Amounts

Under section 1886(d)(3)(A) of the Act, we update the area average standardized amounts each year. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban and the other areas average standardized amounts for FY 1999 using the

applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XIV) of the Act specifies that, for hospitals in all areas, the update factor for the standardized amounts for FY 1999 is equal to the market basket percentage increase minus 1.9 percentage points. The "temporary relief" provision under section 4401 of Public Law 105-33 provides for an update equal to the market basket percentage increase minus 1.6 percentage points for hospitals that are not Medicare-dependent, small rural hospitals, that receive no IME or DSH payments, that are located in a state in which aggregate Medicare operating payments for such hospitals were less than their aggregate allowable Medicare operating costs for their cost reporting periods beginning during FY 1995, and whose Medicare operating payments are less than their allowable Medicare operating costs for their cost reporting period beginning during FY 1999.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the proposed hospital market basket increase for FY 1999 is 2.6 percent. Thus, for FY 1999, the proposed update to the average standardized amounts equals 0.7 percent (1.0 percent for those hospitals qualifying under the "temporary relief" provision of Public Law 105-33).

As in the past, we are adjusting the FY 1998 standardized amounts to remove the effects of the FY 1998 geographic reclassifications and outlier payments before applying the FY 1999 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. We then apply the new offsets to the standardized amounts for outliers and geographic reclassifications for FY 1999.

Although the update factor for FY 1999 is set by law, we are required by section 1886(e)(3) of the Act to report to Congress on our initial recommendation of update factors for FY 1999 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included the report to Congress as Appendix C to this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act), as well as our responses to MedPAC's recommendation concerning the update factor, are set forth as Appendix D to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. *Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment.* Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act specifies that the hospital wage index must be updated on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we used historical discharge data to simulate payments and compared aggregate payments using the FY 1998 relative weights and wage index to aggregate payments using the proposed FY 1999 relative weights and wage index. The same methodology was used for the FY 1998 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 0.999227. We adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 0.998946. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 1998 budget neutrality adjustments. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we are proposing to continue to apply the same FY 1999

adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1998, in order to ensure that we meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the FY 1999 DRG weights and updated wage index. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. *Reclassified Hospitals—Budget Neutrality Adjustment.* Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used historical discharge data to simulate payments, and compared total prospective payments (including IME and DSH payments) prior to any reclassifications to total prospective payments after reclassifications. We are applying an adjustment factor of 0.994019 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 1998 budget neutrality adjustment factor. We note that the proposed FY 1999 adjustment reflects wage index and standardized amount reclassifications approved by the MGCRRB or the Administrator as of February 27, 1998. The effects of any additional reclassification changes resulting from appeals and reviews of the MGCRRB decisions for FY 1999 or from a hospital's request for the withdrawal of a reclassification request will be reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act and published in the final rule for FY 1999.

c. *Outliers.* Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective

payments for "outlier" cases, cases involving extraordinarily high costs (cost outliers). Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to adjust the large urban and other standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total payments based on DRG prospective payment rates.

For FY 1998, the fixed loss cost outlier threshold is equal to the prospective payment for the DRG plus \$11,050 (\$10,080 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) is 80 percent. We applied an outlier adjustment to the FY 1998 standardized amounts of 0.948840 for the large urban and other areas rates and 0.9382 for the capital Federal rate.

We are proposing a fixed loss cost outlier threshold in FY 1999 equal to the prospective payment rate for the DRG plus \$11,350 (\$10,355 for hospitals that have not yet entered the prospective payment system for capital-related costs). In addition, we are proposing to maintain the marginal cost factor for cost outliers at 80 percent.

In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated proposed outlier thresholds so that outlier payments are projected to equal 5.1 percent of total payments based on DRG prospective payment rates. In accordance with section 1886(d)(3)(E), we reduced the proposed FY 1999 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both inpatient operating costs and inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the proposed thresholds for FY 1999 will result in outlier payments equal to 5.1

percent of operating DRG payments and 6.2 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors applied to the standardized amounts for FY 1999 are as follows:

	Operating standardized amounts	Capital federal rate
National	0.948819	0.9378
Puerto Rico	0.972962	0.9626

We apply the proposed outlier adjustment factors after removing the effects of the FY 1998 outlier adjustment factors on the standardized amounts.

Table 8A in section V of this addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. These Statewide average ratios would replace the ratios published in the August 29, 1997 final rule with comment period (62 FR 46113), effective October 1, 1998. Table 8B contains comparable Statewide average capital cost-to-charge ratios. These average ratios would be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.217279 or greater than 1.28985 and capital cost-to-charge ratios lower than 0.01281 or greater than 0.18084. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. We note that the cost-to-charge ratios in Tables 8A and 8B would be used during FY 1999 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or outside the three standard deviations range.

In the August 29, 1997 final rule with comment period (62 FR 46041), we stated that, based on available data, we estimated that actual FY 1997 outlier payments would be approximately 4.8 percent of actual total DRG payments. This was computed by simulating payments using actual FY 1996 bill data available at the time. That is, the estimate of actual outlier payments did not reflect actual FY 1997 bills but instead reflected the application of FY 1997 rates and policies to available FY 1996 bills. Our current estimate, using available FY 1997 bills, is that actual outlier payments for FY 1997 were approximately 5.5 percent of actual total DRG payments. We note that the

MedPAR file for FY 1997 discharges continues to be updated.

We currently estimate that actual outlier payments for FY 1998 will be approximately 5.4 percent of actual total DRG payments, slightly higher than the 5.1 percent we projected in setting outlier policies for FY 1998. This estimate is based on simulations using the December 1997 update of the provider-specific file and the December 1997 update of the FY 1997 MedPAR file (discharge data for FY 1997 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 1998 by applying FY 1998 rates and policies to available FY 1997 bills.

In FY 1994, we began using a cost inflation factor rather than a charge inflation factor to update billed charges for purposes of estimating outlier payments. This refinement was made to improve our estimation methodology. For FY 1998, we used a cost inflation factor of minus 2.005 percent (a cost per case decrease of 2.005 percent). For FY 1999, based on more recent data, we are proposing a cost inflation factor of minus 1.831 percent to set outlier thresholds. We will reevaluate this factor when we develop the final rule for FY 1999. At that time, more recent data should be available for analysis, specifically, cost report data for cost reporting periods beginning in FY 1997.

5. FY 1999 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A (Table 1E for "temporary relief" hospitals) contains the two national standardized amounts that we are proposing to be applicable to all hospitals, except for hospitals in Puerto Rico. Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A and 1E). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C (Table 1F for "temporary relief" hospitals). These tables also include the Puerto Rico standardized amounts.

B. Adjustments for Area Wage Levels and Cost of Living

Tables 1A, 1C, 1E and 1F, as set forth in this addendum, contain the proposed labor-related and nonlabor-related shares that would be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico.

This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble, we discuss certain revisions we are making to the wage index. The wage index is set forth in Tables 4A through 4F of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 1999, we propose to adjust the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. If the Office of Personnel Management releases revised cost-of-living adjustment factors before July 1, 1998, we will publish them in the final rule and use them in determining FY 1999 payments.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.225
County of Hawaii	1.15
County of Kauai	1.225
County of Maui	1.225
County of Kalawao	1.225

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative

to Medicare cases in other DRGs. Table 5 of section V of this addendum contains the relative weights that we propose to use for discharges occurring in FY 1999. These factors have been recalibrated as explained in section II of the preamble.

D. Calculation of Prospective Payment Rates for FY 1999

General Formula for Calculation of Prospective Payment Rates for FY 1999

Prospective payment rate for all hospitals located outside of Puerto Rico except sole community hospitals and Medicare-dependent, small rural hospitals = Federal rate.

Prospective payment rate for sole community hospitals = Whichever of the following rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the updated FY 1982 hospital-specific rate, or 100 percent of the updated FY 1987 hospital-specific rate.

Prospective payment rate for Medicare-dependent, small rural hospitals = 100 percent of the Federal rate plus, if the greater of the updated FY 1982 hospital-specific rate or the updated FY 1987 hospital-specific rate is higher than the Federal rate, 50 percent of the difference between the applicable hospital-specific rate and the Federal rate.

Prospective payment rate for Puerto Rico = 50 percent of the Puerto Rico rate + 50 percent of a discharge-weighted average of the national large urban standardized amount and the national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 1998 and before October 1, 1999, except for sole community hospitals, Medicare-dependent, small rural hospitals, and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Tables 1A or 1E, in section V of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4A, 4B, and 4C of section V of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted if appropriate under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section V of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals and Medicare-Dependent, Small Rural Hospitals)

Sections 1886(d)(5)(D)(i) and (b)(3)(C) of the Act provide that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge.

Sections 1886(d)(5)(G) and (b)(3)(D) of the Act provide that Medicare-dependent, small rural hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rate based on FY 1982 and FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. *Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 1999.* We are proposing to increase the hospital-specific rates by 0.7 percent (the hospital market basket percentage increase of 2.6 percent minus 1.9 percentage points) for sole community hospitals and Medicare-dependent, small rural hospitals located in all areas for FY 1999. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 1999, is the market basket rate of increase minus 1.9 percentage points. Section 1886(b)(3)(D) of the Act provides that the update factor applicable to the hospital-specific rates for Medicare-dependent, small rural hospitals equals the update factor

provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 1999, is the market basket rate of increase minus 1.9 percentage points.

b. *Calculation of Hospital-Specific Rate.* For sole community hospitals and Medicare-dependent, small rural hospitals, the applicable FY 1999 hospital-specific rate would be calculated by increasing the hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (0.7 percent), which is the same as the update for all prospective payment hospitals except "temporary relief" hospitals. In addition, the hospital-specific rate would be adjusted by the budget neutrality adjustment factor (that is, 0.999227) as discussed in section II.A.4.a of this Addendum. This resulting rate would be used in determining under which rate a sole community hospital or Medicare-dependent, small rural hospital is paid for its discharges beginning on or after October 1, 1998, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1998 and Before October 1, 1999.

a. *Puerto Rico Rate.* The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C or 1F of section V of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section V of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section V of the addendum).

b. *National Rate.* The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C or 1F of section V of the addendum) by the appropriate national wage index (see Tables 4A and 4B of section V of the addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section V of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Changes to Payment Rates for Inpatient Capital-Related Costs for FY 1999

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the proposed Federal rate and the hospital-specific rates for FY 1999. The rates will be effective for discharges occurring on or after October 1, 1998.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992 we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. In addition, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for exceptions under § 412.348.

Furthermore, § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FYs 1992 through 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate

payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the rate which was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of the revised policy of paying for transfers. In the FY 1998 final rule with comment period (62 FR 45966) we implemented section 4402 of the BBA, which required that for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard Federal rate was reduced by 17.78 percent. A small part of that reduction will be restored effective October 1, 2002.

For each hospital, the hospital-specific rate was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. Since FY 1992, the hospital-specific rate has been updated annually for inflation and for changes in the exceptions payment adjustment factor. For FYs 1992 through 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor. In the FY 1998 final rule with comment period (62 FR 46012) we implemented section 4402 of the BBA, which required that for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted hospital-specific rate should be reduced by 17.78 percent. A small part of that reduction will also be restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the exceptions payment adjustment and other factors. The model and its application are described in greater detail in Appendix B of this proposed rule.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1998, as a result of section 4406 of the BBA, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

For FY 1998, the Federal rate is \$371.51. With the changes we are proposing to the factors used to establish the Federal rate, the proposed FY 1999 Federal rate is \$377.25.

In the discussion that follows, we explain the factors that were used to determine the proposed FY 1999 Federal rate. In particular, we explain why the proposed FY 1999 Federal rate has increased 1.55 percent compared to the FY 1998 Federal rate. Even though we estimate that Medicare hospital inpatient discharges will decline by approximately 2.25 between FY 1998 and FY 1999, we also estimate that aggregate capital payments will increase by 2.60 percent during this same period. This aggregate increase is primarily due to the change in the federal rate blend percentage from 70 percent to 80 percent, the 1.55 percent increase in the rate, and a projected increase in case mix.

The major factor contributing to the increase in the proposed capital Federal rate for FY 1999 relative to FY 1998 is

that the proposed FY 1999 exceptions reduction factor is 1.06 percent higher than the factor for FY 1998. The exceptions reduction factor equals 1 minus the projected percentage of exceptions payments. We estimate that the projected percentage of exceptions payments for FY 1999 will be lower than the projected percentage for FY 1998; accordingly, the proposed FY 1999 rate reflects less of a reduction to account for exceptions than the FY 1998 rate.

Total payments to hospitals under the prospective payment system are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment transition system are estimated to increase in FY 1999 compared to FY 1998.

1. Standard Federal Rate Update

a. Description of the Update Framework. Under section 412.308(c)(1), the standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index and other factors. The update framework consists of a capital input price index (CPI) and several policy adjustment factors. Specifically, we have adjusted the projected CPI rate of increase as appropriate each year for case-mix index related changes, for intensity, and for errors in previous CPI forecasts. The proposed update factor for FY 1999 under that framework is 0.2 percent. This proposal is based on a projected 0.8 percent increase in the CPI, policy adjustment factors of -0.2, and a forecast error correction of -0.4 percent. We explain the basis for the FY 1999 CPI projection in section II.D of this addendum. Here we describe the policy adjustments.

The case-mix index is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and

- The annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect").

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we adjusted for the effects of the FY 1992 DRG reclassification and recalibration as part of our FY 1994 update recommendation.) The operating adjustment consists of a reduction for total observed case-mix change, an increase for the portion of case-mix change that we determine is due to real case-mix change rather than coding modifications, and an adjustment for the effect of prior DRG reclassification and recalibration changes. We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 1999, we are projecting a 1.0 percent increase in the case-mix index. We estimate that real case-mix increase will equal 0.8 percent in FY 1999. Therefore, the proposed net adjustment for case-mix change in FY 1999 is -0.2 percentage points.

We estimate that DRG reclassification and recalibration result in a 0.0 percent change in the case mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs.

The capital update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year there may be unanticipated price fluctuations that may result in differences between the actual increase in prices faced by hospitals and the forecast used in calculating the update factors. In setting a prospective payment rate under the proposed framework, we make an adjustment for forecast error only if our estimate of the capital input price index rate of increase for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the

measurement of the forecast error. Thus, for example, we would adjust for a forecast error made in FY 1997 through an adjustment to the FY 1999 update. Because we only introduced this analytical framework in FY 1996, FY 1998 was the first year in which a forecast error adjustment could be required. We estimate that the FY 1997 CIPI was 0.4 percentage points higher than our current data show, which means that we estimate a forecast error of -0.4 percentage points for FY 1997. Therefore we are making an -0.4 percent adjustment for forecast error in FY 1999.

Under the capital prospective payment system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component), and changes in real case-mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. We have, therefore, incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 1999, we have developed a Medicare-specific intensity measure based on a 5-year average using FY 1993-1997 data. In determining case-mix constant intensity, we found that observed case-mix increase was 0.9 percent in FY 1993, 0.8 percent in FY

1994, 1.7 percent in FY 1995, 1.6 percent in FY 1996, and 0.3 percent in FY 1997. For FY 1995 and FY 1996, we estimate that real case-mix increase was 1.0 to 1.4 percent each year. The estimate for those years is supported by past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G. M. Carter, J. P. Newhouse, and D. A. Relles, R-4098-HCFA/ProPAC(1991). The study suggested that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1992 through FY 1997. Based on this analysis, we believe that all of the observed case-mix increase for FY 1993, FY 1994 and FY 1997 is real.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component), and changes in real case-mix. Given estimates of real case mix of 0.9 percent for FY 1993, 0.8 percent for FY 1994, 1.0 percent for FY 1995, and 1.0 percent for FY 1996, and 0.3 percent for FY 1997, we estimate that case-mix constant intensity declined by an average 1.5 percent during FYs 1993 through 1997, for a cumulative decrease of 7.3 percent. If we assume that real case-mix increase was 0.9 percent for FY 1993, 0.8 percent for FY 1994, 1.4 percent for FY 1995, 1.4 percent for FY 1996 and 0.3 percent for FY 1997, we estimate that case-mix constant intensity declined by an average 1.6 percent during FYs 1993

through 1997, for a cumulative decrease of 7.7 percent. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 1999.

b. Comparison of HCFA and MedPAC Update Recommendations. MedPAC recommends a 0.0 to 0.7 percent update to the standard Federal rate and we are recommending a 0.2 percent update. There are some significant differences between the HCFA and MedPAC update frameworks, which account for the difference in the respective update recommendations. A major difference is the input price index which each framework uses as a beginning point to estimate the change in input prices since the previous year. The HCFA capital input price index (the CIPI) includes price measures for interest expense, which are an indicator of the interest rates facing hospitals during their capital purchasing decisions. The MedPAC capital market basket does not include interest expense; instead the MedPAC update framework includes an adjustment when necessary to account for the prolonged changes in interest rates. HCFA's CIPI is vintage-weighted, meaning that it takes into account price changes from past purchases of capital when determining the current period update. MedPAC's capital market basket is not vintage-weighted, accounting only for the current year price changes. This year, due to the difference between HCFA's and MedPAC's input price index, the percentage change in HCFA's CIPI is 0.8 percent, and the percentage change in MedPAC's market basket is 2.4 percent.

MedPAC and HCFA also differ in the adjustments they make to their price indices. (See Table 1 for a comparison of HCFA and MedPAC's update recommendations.) MedPAC makes an adjustment for productivity, while HCFA has not adopted an adjustment

for capital productivity or efficiency. MedPAC employs the same productivity adjustment in its operating and capital framework. We have identified a total intensity factor but have not identified an adequate total productivity measure. The Commission also includes a product change adjustment to account for changes in the service content of hospital stays, which adjusts the base payment rates to eliminate overpayments in the future. MedPAC recommends a -3.0 to a -1.0 adjustment for product change for FY 1999. For FY 1999 MedPAC recommends a -0.7 to a -0.3 adjustment for productivity. We recommend a 0.0 intensity adjustment.

We recommend a -0.2 total case mix adjustment since we are projecting a 1.0 percent increase in the case mix index and we estimate that real case-mix increase will equal 0.8 percent in FY 1999. MedPAC makes a two part adjustment for case mix changes, which takes into account changes in case mix in the past year. They recommend a -0.2 to -0.0 adjustment for coding change and an 0.0 to 0.2 adjustment for within-DRG complexity change. We recommend a -0.4 adjustment for forecast error correction, and MedPAC recommends a -0.4 adjustment for forecast error correction.

The net result of these adjustments is that MedPAC's capital update framework suggests a -1.9 to 1.4 percent update. MedPAC has recommended a 0.0 to 0.7 percent update to the rate for FY 1999. This range is consistent with the PPS operating update recommended by the Commission. We describe the basis for our proposed 0.2 percent total update in the preceding section. HCFA and MedPAC's update recommendations are quite close, with HCFA's recommendation within the range recommended by MedPAC.

TABLE 1.—HCFA'S FY 1999 UPDATE FACTOR AND MEDPAC'S RECOMMENDATION

	HCFA's update factor	MedPAC's recommendation
Capital Input Price Index	0.8	2.4
Policy Adjustment Factors:		
Productivity		-0.7 to -0.3
Intensity	0.0	
Science and Technology		0.0 to 0.5
Intensity		(1)
Real within DRG Change		(2)
Product Change		-3.0 to -1.0
Subtotal	0.0	-3.7 to -0.8
Case-Mix Adjustment Factors:		
Projected Case-Mix Change	-1.0	
Real Across DRG Change	0.8	

TABLE 1.—HCFA's FY 1999 UPDATE FACTOR AND MEDPAC'S RECOMMENDATION—Continued

	HCFA's update factor	MedPAC's recommendation
Coding Change		-0.2 to -0.0
Real within DRG Change	(³)	0.0 to 0.2
Subtotal	-0.2	-0.2 to 0.2
Effect of FY 1996 Reclassification and Recalibration	0.0	
Forecast Error Correction	-0.4	-0.4
Total Update	0.2	-1.9 to 1.4

¹ Included in MedPAC's productivity measure.² Included in MedPAC's case-mix adjustment.³ Included in HCFA's intensity factor.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 80 percent for cost reporting periods beginning in FY 1999 for hospitals paid under the fully prospective methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of outlier payments under the Federal rate to total inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments. The inpatient capital-related outlier reduction factor reflects the inpatient capital-related outlier payments that would be made if all hospitals were paid 100 percent of the Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model payments as if all hospitals were paid 100 percent of the Federal rate because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

In the August 29, 1997 final rule with comment period, we estimated that outlier payments for capital in FY 1998 would equal 6.18 percent of inpatient capital-related payments based on the Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9382 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d of this Addendum, we estimate that

outlier payments for capital will equal 6.22 percent of inpatient capital-related payments based on the Federal rate in FY 1999. We are, therefore, proposing an outlier adjustment factor of 0.9378 to the Federal rate. Thus, estimated capital outlier payments for FY 1999 represent a higher percentage of total capital standard payments than in FY 1998.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the proposed net change in the outlier adjustment to the Federal rate for FY 1999 is 0.9996 (0.9378/0.9382). Thus, the outlier adjustment decreases the FY 1999 Federal rate by 0.04 percent (0.9996—1) compared with the FY 1998 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the GAF are projected to equal aggregate payments that would have been made on the basis of the Federal rate without such changes. We use the actuarial model, described in Appendix B of this proposed rule, to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the GAF. We also use the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF.

For FY 1998, we calculated a GAF/DRG budget neutrality factor of 0.9989. For FY 1999, we are proposing a GAF/DRG budget neutrality factor of 1.0032. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The proposed incremental change in the adjustment from FY 1998 to FY 1999 is 1.0032. The proposed cumulative change in the rate due to this adjustment is 1.0034 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, FY 1998, and the proposed incremental factor for FY 1999: $0.9980 \times 1.0053 \times 0.9998 \times 0.9994 \times 0.9987 \times 0.9989 \times 1.0032 = 1.0034$).

This proposed factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 1999 geographic reclassification decisions made by the MGCRB compared to FY 1998 decisions. However, it does not account for changes in payments due to changes in the disproportionate share and indirect medical education adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of additional payments for exceptions under § 412.348 relative to total payments under the hospital-specific rate and Federal rate. We use the model originally developed for determining the budget neutrality adjustment factor to determine the

exceptions payment adjustment factor. We describe that model in Appendix B to this proposed rule.

For FY 1998, we estimated that exceptions payments would equal 3.41 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9659 (1—0.0341) in determining the Federal rate. For this proposed rule, we estimate that exceptions payments for FY 1999 will equal 2.39 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we are proposing an exceptions payment reduction factor of 0.9761 to the Federal rate for FY 1999. The proposed exceptions reduction factor for FY 1999 is 1.06 percent higher than the factor for FY 1998.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the proposed net adjustment to the FY 1999 Federal rate is 0.9761/0.9659, or 1.0106.

5. Standard Capital Federal Rate for FY 1999

For FY 1998, the capital Federal rate was \$371.51. With the changes we are proposing to the factors used to establish the Federal rate, the FY 1999 Federal rate would be \$377.25. The proposed Federal rate for FY 1999 was calculated as follows:

- The proposed FY 1999 update factor is 1.0020, that is, the proposed update is 0.20 percent.
- The proposed FY 1999 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the GAF is 1.0032.
- The proposed FY 1999 outlier adjustment factor is 0.9378.
- The proposed FY 1999 exceptions payments adjustment factor is 0.9761.

Since the Federal rate has already been adjusted for differences in case mix, wages, cost of living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we propose to make no additional

adjustments in the standard Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the factors and adjustments for FY 1999 affected the computation of the proposed FY 1999 Federal rate in comparison to the FY 1998 Federal rate. The proposed FY 1999 update factor has the effect of increasing the Federal rate by 0.20 percent compared to the rate in FY 1998, while the proposed geographic and DRG budget neutrality factor has the effect of increasing the Federal rate by 0.32 percent. The proposed FY 1999 outlier adjustment factor has the effect of decreasing the Federal rate by 0.04 percent compared to FY 1998. The proposed FY 1999 exceptions reduction factor has the effect of increasing the Federal rate by 1.06 percent compared to the exceptions reduction for FY 1998. The combined effect of all the proposed changes is to increase the proposed Federal rate by 1.55 percent compared to the Federal rate for FY 1998.

Comparison of Factors and Adjustments—FY 1998 Federal Rate and Proposed FY 1999 Federal Rate

	FY 98	Proposed FY 99	Change	Percent change
Update factor ¹	1.0090	1.0020	1.0020	0.20
GAF/DRG Adjustment Factor ¹	0.9989	1.0032	1.0032	0.32
Outlier Adjustment Factor ²	0.9382	0.9378	0.9996	-0.04
Exceptions Adjustment Factor ²	0.9659	0.9761	1.0106	1.06
Federal Rate	\$371.51	\$377.25	1.0155	1.55

¹ The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 1998 to FY 1999 resulting from the application of the 1.0032 GAF/DRG budget neutrality factor for FY 1999 is 1.0032.

² The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 1999 outlier reduction factor is 0.9378/0.9382, or 0.9996.

6. Special Rate for Puerto Rico Hospitals

As explained at the beginning of this section, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the Federal rate is derived from the costs of all acute care hospitals participating in the prospective payment system (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a geographic adjustment factor (GAF) to both portions of the blended rate. The GAF is calculated using the operating PPS wage index and varies depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital blended rate and the national wage index to

determine the GAF for the national part of the blended rate.

Since we implemented a separate GAF for Puerto Rico, we also propose to apply separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. We propose to apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 since the Puerto Rico specific GAF was implemented that year. The Puerto Rico GAF budget neutrality factor is 0.9989, while the DRG adjustment¹ is 1.0033, for a combined cumulative adjustment of 1.0022. (For a more detailed explanation of this proposed change see Appendix B.)

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate (50%) is multiplied by the Puerto Rico-specific

GAF for the MSA in which the hospital is located, and the national portion of the rate (50%) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico rate as a result of the BBA.

For FY 1998, before application of the GAF, the special rate for Puerto Rico hospitals was \$177.57. With the changes we are proposing to the factors used to determine the rate, the proposed FY 1999 special rate for Puerto Rico is \$180.73.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 1999 be determined by adjusting

the FY 1998 hospital-specific rate by the following factors:

1. Hospital-Specific Rate Update Factor

The hospital-specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 1999, we are proposing that the hospital-specific rate be updated by a factor of 1.0020.

2. Exceptions Payment Adjustment Factor

For FYs 1992 through FY 2001, the updated hospital-specific rate is multiplied by an adjustment factor to account for estimated exceptions payments for capital-related costs under

§ 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 1999, we estimate that exceptions payments will be 2.39 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we propose that the updated hospital-specific rate be reduced by a factor of 0.9761. The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. The proposed net adjustment to the FY 1999 hospital-specific rate is 0.9761/0.9659, or 1.0106.

3. Net Change to Hospital-Specific Rate

We are providing a chart to show the net change to the hospital-specific rate. The chart shows the factors for FY 1998 and FY 1999 and the net adjustment for each factor. It also shows that the proposed cumulative net adjustment from FY 1998 to FY 1999 is 1.0126, which represents a proposed increase of 1.26 percent to the hospital-specific rate. For each hospital, the proposed FY 1999 hospital-specific rate is determined by multiplying the FY 1998 hospital-specific rate by the cumulative net adjustment of 1.0126.

PROPOSED FY 1999 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

	FY 98	Proposed FY 99	Net Adjustment	Percent Change
Update Factor	1.0090	1.0020	1.0020	0.20
Exceptions Payment Adjustment Factor	0.9659	0.9761	1.0106	1.06
Cumulative Adjustments	0.9746	0.9869	1.0026	1.26

Note: The update factor for the hospital-specific rate is applied cumulatively in determining the rates. Thus, the incremental increase in the update factor from FY 1998 to FY 1999 is 1.0020. In contrast, the exceptions payment adjustment factor is not applied cumulatively. Thus, for example, the incremental increase in the exceptions reduction factor from FY 1998 to FY 1999 is 0.9761/0.9659, or 1.0106.

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 1999

During the capital prospective payment system transition period, a hospital is paid for the inpatient capital-related costs under one of two payment methodologies—the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system.

The applicable Federal rate was determined by making adjustments as follows:

- For outliers by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and,
- For the payment adjustment factors applicable to the hospital (that is, the hospital's GAF, the disproportionate share adjustment factor, and the indirect medical education adjustment factor, when appropriate).

If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) x (DRG weight) x (GAF) x (Large Urban Add-on, if applicable) x (COLA adjustment for hospitals located in Alaska and Hawaii) x (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable).

The result is the adjusted Federal rate. Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of the following:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost reporting period beginning on or after October 1, 1994 (or

the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is the sum of the following:

- The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and
 - The adjusted Federal rate multiplied by the Federal transition blend percentage.
- The blend percentages for cost reporting periods beginning in FY 1999 are 80 percent of the adjusted Federal rate and 20 percent of the hospital-specific rate.

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that portion is 80 percent of the Federal rate for

discharges occurring in cost reporting periods beginning during FY 1999. Thus, a fully prospective hospital will receive 80 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 1999. For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The proposed outlier thresholds for FY 1999 are in section II.A.4.c of this Addendum. For FY 1999, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the prospective payment rate for the DRG plus \$11,350.

During the capital prospective payment system transition period, a hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The proposed minimum payment levels for portions of cost reporting periods occurring in FY 1999 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent; and
- Urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for

their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

D. Capital Input Price Index

1. Background

Like the prospective payment hospital operating input price index, the Capital Input Price Index (CIPI) is a fixed-weight price index that measures the price changes associated with costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

Using Medicare cost reports, AHA data, and Securities Data Corporation data, a vintage-weighted price index was developed to measure price increases associated with capital expenses. We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. Currently, the CIPI is based to FY 1992 and was last rebased in 1997. The most recent explanation of the CIPI was discussed in the final rule with comment period for FY 1998 published in the August 29, 1997 *Federal Register* (62 FR 46050). The following *Federal Register* documents also describe development and revisions of the methodology involved with the construction of the CIPI: September 1,

1992 (57 FR 40016), May 26, 1993 (58 FR 30448), September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876), September 1, 1994 (59 FR 45517), June 2, 1995 (60 FR 29229), and September 1, 1995 (60 FR 45815), May 31, 1996 (61 FR 27466), August 30, 1996 (61 FR 46196), and June 2, 1997 (62 FR 29953).

2. Forecast of the CIPI for Federal Fiscal Year 1999

DRI forecasts a 0.8 percent increase in the CIPI for FY 1999. This is the outcome of a projected 2.0 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 2.6 percent increase in other capital expense prices in FY 1999, partially offset by a 2.7 percent decline in vintage-weighted interest rates in FY 1999. The weighted average of these three factors produces the 0.8 percent increase for the CIPI as a whole.

IV. Proposed Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

A. Rate-of-Increase Percentages for Excluded Hospitals and Hospital Units

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). In the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the target amount may not exceed the 75th percentile of target amounts for hospitals and units in the same class (psychiatric, rehabilitation, and long-term care). The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Each hospital's target amount is adjusted annually, at the beginning of its cost reporting period, by an applicable update factor. Section 1886(b)(3)(B) of the Act provides that for cost reporting periods beginning on or after October 1, 1998 and before October 1, 1999, the update factor is the market basket less a percentage point between 0 and 2.5 depending on the hospital's or

unit's costs in relation to the ceiling. For hospitals with costs exceeding the ceiling by 10 percent or more, the update factor is the market basket increase. For hospitals with costs exceeding the ceiling by less than 10 percent, the update factor is the market basket minus .25 percent for each percentage point by which costs are less than 10 percent over the ceiling. For hospitals with costs equal to or less than the ceiling but greater than 66.7 percent of the ceiling, the update factor is the greater of 0 percent or the market basket minus 2.5 percent. For hospitals with costs that do not exceed 66.7 percent of the ceiling, the update factor is 0.

The most recent forecast of the market basket increase for FY 1999 for hospitals and hospital units excluded from the prospective payment system is 2.5 percent; therefore, the update to a hospital's target amount for its cost reporting period beginning in FY 1999 would be between 0 and 2.5 percent.

In addition, section 1886(b)(3)(H) of the Act provides that for cost reporting periods beginning on or after October 1, 1998 and before October 1, 1999, the target amount for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals will be the lower of the hospital's specific target amount or the 75th percentile target amount for hospitals in the same class. The FY 1998 75th percentile target amounts were \$10,534 for psychiatric hospitals and units, \$19,104 for rehabilitation hospital and units, and \$37,688 for long-term care hospitals. For 1999, these 75th percentile figures must be updated by the market basket increase. Section 1886(b) of the Act was revised to change the formulas for determining bonus and relief payments for excluded hospitals and also establishes an additional bonus

payment for continuous improvement, for cost reporting periods on or after October 1, 1997. Finally, a new statutory payment methodology for new hospitals and units (psychiatric, rehabilitation, and long-term care) was effective October 1, 1997 as governed by section 1886(b)(7) of the Act.

V. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this Addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 1E, 1F, 3C, 4A, 4B, 4C, 4D, 4E, 4F, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 7A, 7B, 8A, and 8B are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor

Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor

Table 1D—Capital Standard Federal Payment Rate

Table 1E—National Adjusted Operating Standardized Amounts for "Temporary Relief" Hospitals, Labor/Nonlabor

Table 1F—Adjusted Operating Standardized Amounts for "Temporary Relief" Hospitals in Puerto Rico, Labor/Nonlabor

Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1997 and Hospital Average Hourly Wage for Federal Fiscal Year 1999 Wage Index

Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas

Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas

Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified

Table 4D—Average Hourly Wage for Urban Areas

Table 4E—Average Hourly Wage for Rural Areas

Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)

Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Arithmetic Mean Length of Stay Points Used in the Prospective Payment System

Table 6A—New Diagnosis Codes

Table 6B—New Procedure Codes

Table 6C—Invalid Diagnosis Codes

Table 6D—Invalid Procedure Codes

Table 6E—Revised Diagnosis Code Titles

Table 6F—Additions to the CC Exclusions List

Table 6G—Deletions to the CC Exclusions List

Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 97 MEDPAR Update 12/97 GROUPE V15.0

Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 97 MEDPAR Update 12/97 GROUPE V16.0

Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) March 1998

Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) March 1998

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,776.21	1,128.44	2,732.26	1,110.58

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	2,752.36	1,118.74	2,752.36	1,118.74
Puerto Rico	1,323.01	532.55	1,302.07	524.11

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	371.51
Puerto Rico	177.57

TABLE 1E.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR "TEMPORARY RELIEF" HOSPITALS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,790.09	1,134.08	2,745.92	1,116.13

TABLE 1F.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR "TEMPORARY RELIEF" HOSPITALS IN PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	2,766.12	1,124.33	2,766.12	1,124.33
Puerto Rico	1,329.63	535.21	1,308.58	526.73

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1997; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1999 WAGE INDEX

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
010001	01.4834	15.97	010097	00.9183	14.87	030006	01.5689	18.22	040005	01.0400	13.38	040118	01.3520	15.27
010004	01.0055	13.79	010098	01.1894	13.02	030007	01.3034	17.95	040007	01.8696	18.99	040119	01.1640	15.33
010005	01.1699	15.89	010099	01.1010	09.13	030008	02.2412	14.19	040008	01.0301	13.20	040124	01.0549	16.23
010006	01.4636	16.19	010100	01.3314	15.67	030009	01.2640	17.83	040010	01.3262	16.83	040126	00.9551	13.26
010007	01.1300	14.09	010101	01.0382	14.69	030010	01.4386	20.05	040011	00.9590	11.65	040134	02.6975	.....
010008	01.0838	13.78	010102	00.9504	12.71	030011	01.4734	19.48	040014	01.2138	18.12	050002	01.5241	27.86
010009	01.1456	17.50	010103	01.8119	17.65	030012	01.2358	18.04	040015	01.1668	14.80	050006	01.5662	20.69
010010	01.0888	15.40	010104	01.6869	18.66	030013	01.2935	20.90	040016	01.6762	16.66	050007	01.5312	27.11
010011	01.6411	20.28	010105	01.2192	16.69	030014	01.5263	19.07	040017	01.2700	14.62	050008	01.4438	25.60
010012	01.2728	17.45	010106	01.1224	13.41	030015	01.1871	19.00	040018	01.2583	18.08	050009	01.6484	24.26
010013	01.1428	14.04	010107	01.0248	14.97	030016	01.4718	19.72	040019	01.1438	12.08	050010	01.8476	23.25
010014	01.2538	17.40	010108	01.1997	14.59	030017	01.8083	27.57	040020	01.5404	15.42	050011	01.1816	23.57
010015	00.9607	17.72	010109	01.6522	15.97	030018	01.2636	23.65	040021	01.2056	16.15	050012	01.3820	24.35
010016	01.2435	15.00	010110	01.3201	16.49	030019	01.2770	18.79	040022	01.5321	23.41	050013	01.1889	18.74
010017	01.2461	15.83	010111	00.8706	08.92	030020	01.4160	20.04	040023	01.0031	13.38	050014	02.0973	24.47
010018	01.0069	18.25	010112	00.8824	.....	030021	01.6963	20.87	040024	00.9000	12.48	050015	01.2579	17.02
010019	01.6877	16.06	010113	01.3033	28.88	030022	01.0483	14.97	040025	01.5700	17.88	050016	01.4154	24.41
010020	01.4236	15.82	010114	00.8398	18.57	030023	01.0392	17.17	040026	01.2930	13.77	050017	01.5819	23.22
010021	01.3834	14.53	010115	01.0107	18.62	030024	01.7154	18.21	040027	01.0462	14.24	050018	01.3639	20.68
010022	00.8180	36.37	010116	01.3471	13.03	030025	01.2640	15.67	040028	01.2975	17.64	050019	01.8279	21.99
010023	01.6109	17.24	010117	01.2883	16.28	030026	01.0795	17.44	040029	00.8325	12.20	050020	01.5433	28.62
010024	01.2801	17.36	010118	01.2886	16.44	030027	01.2315	17.93	040030	00.9669	11.81	050021	01.3707	15.51
010025	00.9803	13.81	010119	01.0743	15.15	030028	01.2603	20.35	040031	00.9837	10.12	050022	01.4900	21.71
010026	01.9671	18.82	010120	01.2171	18.91	030029	02.0594	20.18	040032	01.5104	17.85	050023	01.3267	20.82
010027	01.1086	14.54	010121	01.3575	18.07	030030	01.6264	20.57	040033	01.1061	12.40	050024	01.2557	19.03
010028	01.1827	17.08	010122	00.9738	.....	030031	01.1572	14.74	040034	01.2394	13.39	050025	01.4502	24.74
010029	01.1899	17.99	010123	01.0590	12.94	030032	00.9538	14.31	040035	00.9817	15.09	050026	01.6546	15.95
010030	01.3028	19.03	010124	00.9980	15.85	030033	01.2213	17.92	040036	01.2978	17.08	050027	01.4456	29.35
010031	01.7055	17.87	010125	01.3864	17.25	030034	00.9736	18.04	040037	01.2567	15.12	050028	01.6097	21.59
010032	01.6110	18.52	010126	00.8391	10.86	030035	00.9401	18.63	040038	01.0524	13.02	050029	01.2411	32.71
010033	01.0489	11.63	010127	01.2373	18.84	030036	00.9939	20.75	040039	01.0079	17.86	050030	01.2889	22.76
010034	01.1028	15.92	010128	00.9399	12.43	030037	00.8332	14.41	040040	01.1013	15.48	050031	01.5649	31.83
010035	01.2056	14.77	010129	01.6766	20.38	030038	01.2012	17.65	040041	01.1795	12.44	050032	01.2364	18.69
010036	01.5054	17.67	010130	01.2743	15.07	030039	01.3005	22.74	040042	01.1670	13.51	050033	01.1880	22.24
010037	00.9884	12.14	010131	01.3459	18.59	030040	01.1528	17.75	040043	01.1178	15.65	050034	01.5646	34.07
010038	01.1575	13.82	010132	01.3390	16.15	030041	01.6564	20.08	040044	01.0532	13.50	050035	01.1348	20.91
010039	01.1489	14.17	010133	01.2470	16.83	030042	01.2455	16.61	040045	01.4655	15.78	050036	01.1263	18.44
010040	00.9234	11.17	010134	00.9483	.....	030043	01.7664	18.45	040046	01.0463	15.12	050037	01.3276	22.45
010041	01.0479	13.68	010135	01.3349	17.75	030044	01.7843	19.91	040047	00.9290	11.03	050038	01.3074	24.36
010042	01.0750	08.17	010136	01.1552	15.82	030045	01.0939	16.99	040048	01.6786	15.55	050039	01.5828	20.60
010043	01.1995	17.28	010137	01.2892	16.12	030046	01.1092	15.82	040049	01.0657	13.92	050040	01.4871	25.22
010044	01.4737	16.47	010138	01.0788	10.90	030047	01.4037	21.66	040050	01.1801	16.36	050041	01.5008	18.49
010045	01.3306	19.46	010139	01.5208	27.19	030048	01.0057	.....	040051	01.2165	12.63	050042	01.3507	22.13
010046	00.9785	13.47	010140	01.0595	24.09	030049	00.8620	.....	040052	01.1095	15.47	050043	01.4701	23.89
010047	01.0774	15.44	010141	01.1712	25.49	030050	01.0041	.....	040053	00.9098	14.25	050044	01.7005	21.95
010048	01.1893	15.80	010142	00.9285	28.73	030051	00.9408	.....	040054	01.6234	16.49	050045	01.2265	19.77
010049	01.0206	13.27	010143	01.1834	25.07	030052	00.8242	.....	040055	01.0982	15.41	050046	01.3204	21.48
010050	01.7552	20.86	010144	00.9834	25.64	030053	00.9614	.....	040056	01.2503	16.30	050047	01.1315	19.98
010051	01.3692	15.35	010145	01.1238	30.06	030054	00.8060	.....	040057	01.0369	12.15	050048	01.6246	24.57
010052	00.9184	10.89	010146	00.8881	25.77	030055	01.0727	.....	040058	01.0407	16.99	050049	01.3716	31.44
010053	01.2837	17.18	010147	01.0169	25.93	030056	00.8528	.....	040059	01.0621	12.57	050050	01.3791	33.07
010054	01.1851	12.84	010148	00.9299	25.75	030057	01.5008	19.77	040060	01.5099	22.64	050051	01.4414	32.14
010055	01.1579	15.22	010149	01.2746	26.15	030058	01.3763	22.10	040061	01.0790	16.38	050052	01.3063	33.68
010056	01.0650	11.04	010150	01.0266	26.76	030059	01.1228	.....	040062	00.9679	10.85	050053	01.3412	32.86
010057	01.2573	17.97	010151	01.1152	22.90	030060	01.4617	18.59	040063	01.2191	14.71	050054	01.9181	32.26
010058	01.2411	14.42	010152	01.4752	25.14	030061	01.4318	20.19	040064	01.1006	16.62	050055	01.6304	24.52
010059	01.8296	17.69	010153	00.9680	.....	030062	01.6536	19.77	040065	01.1954	15.29	050056	01.3632	25.59
010060	01.0337	15.64	010154	00.9067	.....	030063	01.4231	19.42	040066	01.4395	13.39	050057	01.5434	31.90
010061	01.5048	18.27	010155	00.7369	.....	030064	01.6391	19.70	040067	00.9349	14.77	050058	01.4214	19.44
010062	01.2796	17.32	010156	00.8551	.....	030065	01.6833	21.25	040068	01.1266	18.55	050059	01.6661	21.99
010063	01.0395	15.44	010157	01.1349	22.66	030066	01.3770	18.77	040069	00.9413	13.01	050060	01.8759	22.53
010064	01.6587	16.36	010158	01.0164	26.32	030067	01.2784	19.19	040070	01.2392	12.91	050061	00.9877	19.55
010065	01.2392	18.50	010159	01.2873	.....	030068	01.0461	18.85	040071	01.0353	13.05	050062	01.3688	18.85
010066	01.6235	17.44	010160	01.0891	.....	030069	00.9439	.....	040072	01.0675	13.53	050063	01.2668	23.85
010067	01.0247	13.51	010161	01.3399	19.87	030070	01.1079	13.42	040073	01.1428	16.75	050064	01.1370	21.99
010068	01.4011	15.82	010162	01.7944	20.96	030071	01.1468	13.33	040074	01.1342	13.95	050065	00.9386	16.26
010069	01.2128	18.01	010163	02.0396	22.85	030072	01.0880	13.97	040075	01.8758	17.98	050066	01.5500	23.90
010070	00.9779	12.73	010164	01.1011	12.52	030073	01.6709	17.69	040076	01.2656	16.72	050067	01.2374	21.29

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
050097	01.3873	18.48	050204	01.5825	24.52	050313	01.2044	22.00	050443	00.9057	18.82	050571	01.5096	20.05
050099	01.4747	23.55	050205	01.2709	21.52	050315	01.3579	20.47	050444	01.2967	22.54	050573	01.6294	28.41
050100	01.8983	33.49	050207	01.2640	20.02	050317	01.2655	21.86	050446	00.9770	10.06	050575	01.1367	.....
050101	01.4168	31.68	050211	01.3186	30.87	050320	01.2324	27.70	050447	01.0672	18.58	050577	01.4644	20.19
050102	01.3532	17.01	050213	01.5794	22.96	050324	01.9664	26.19	050448	01.0974	20.95	050578	01.4689	30.62
050103	01.5661	23.46	050214	01.4659	21.31	050325	01.2308	21.08	050449	01.3366	21.14	050579	01.4970	26.52
050104	01.4815	23.84	050215	01.5572	29.63	050327	01.5599	18.67	050454	01.8425	25.82	050580	01.4380	27.74
050107	01.4511	23.02	050217	01.3457	19.08	050329	01.2928	19.88	050455	01.7746	16.56	050581	01.3930	24.39
050108	01.8295	23.87	050219	01.1139	18.83	050331	01.4843	24.20	050456	01.1694	16.92	050583	01.6266	21.88
050110	01.1656	20.59	050222	01.6256	31.91	050333	01.1427	24.96	050457	02.0310	31.03	050584	01.1966	20.18
050111	01.3578	20.16	050224	01.5705	23.23	050334	01.7269	34.59	050459	01.2985	29.51	050585	01.2772	27.19
050112	01.4824	19.36	050225	01.6075	22.02	050335	01.4534	21.39	050464	01.8738	22.01	050586	01.3490	20.52
050113	01.3756	31.25	050226	01.4119	24.79	050336	01.3695	20.14	050468	01.3879	19.71	050588	01.3220	24.70
050114	01.3693	23.13	050228	01.2880	30.89	050342	01.3706	17.71	050469	01.0972	16.83	050589	01.2474	24.07
050115	01.5640	20.46	050230	01.3342	25.40	050343	01.0225	14.95	050470	01.1474	18.51	050590	01.3578	24.92
050116	01.4487	23.36	050231	01.6681	25.54	050348	01.6579	25.44	050471	01.8883	23.41	050591	01.3784	22.87
050117	01.4515	20.79	050232	01.7123	21.50	050349	00.8825	14.57	050476	01.3512	21.10	050592	01.3661	18.46
050118	01.1901	23.81	050234	01.2536	30.23	050350	01.3957	24.28	050477	01.4936	26.90	050593	01.1846	.....
050121	01.3531	24.60	050235	01.6014	24.55	050351	01.4653	32.84	050478	00.9635	21.11	050594	01.6739	19.05
050122	01.5966	26.85	050236	01.4893	25.40	050352	01.3034	19.07	050481	01.4648	27.13	050597	01.2665	21.36
050124	01.3182	17.12	050238	01.5517	24.76	050353	01.6669	24.77	050482	01.0978	16.07	050598	01.3875	32.07
050125	01.3970	27.55	050239	01.5877	21.67	050355	00.9808	16.04	050483	01.1821	22.22	050599	01.6318	23.23
050126	01.5414	24.94	050240	01.4863	21.17	050357	01.4011	23.77	050485	01.6561	23.81	050601	01.6150	32.05
050127	01.3406	24.15	050241	01.2337	26.32	050359	01.2854	19.11	050486	01.3493	23.00	050603	01.4035	22.60
050128	01.6211	21.63	050242	01.4284	29.91	050360	01.4136	31.05	050488	01.3349	32.94	050604	01.5622	37.27
050129	01.6194	14.25	050243	01.5930	22.58	050366	01.3455	22.32	050491	01.1935	21.97	050607	01.1545	20.69
050131	01.3023	20.99	050245	01.4385	23.33	050367	01.2485	27.64	050492	01.4113	22.37	050608	01.3080	15.26
050132	01.4257	23.74	050248	01.2618	27.54	050369	01.2376	21.58	050494	01.2167	26.20	050609	01.4505	32.31
050133	01.2911	25.55	050251	01.0989	14.91	050373	01.4446	24.31	050496	01.7259	31.88	050613	01.0896	31.83
050135	01.3964	25.36	050253	01.2992	25.63	050376	01.3991	26.32	050497	00.8270	10.59	050615	01.6042	23.04
050136	01.4011	24.04	050254	01.2141	14.11	050377	00.9333	19.49	050498	01.2434	24.96	050616	01.3591	22.85
050137	01.4012	30.81	050256	01.7518	23.91	050378	01.1364	20.86	050502	01.7222	22.74	050618	01.1163	22.83
050138	01.9630	33.22	050257	01.1275	19.38	050379	00.9589	15.15	050503	01.3400	23.15	050623	02.0034	27.05
050139	01.2532	31.55	050260	01.0044	24.07	050380	01.6867	29.30	050506	01.4395	27.49	050624	01.3554	22.18
050140	01.2757	31.54	050261	01.2723	18.81	050382	01.3984	23.86	050510	01.3791	31.86	050625	01.6074	25.23
050144	01.6355	29.12	050262	01.8576	27.43	050385	01.4021	26.64	050512	01.5743	33.03	050630	01.3401	23.93
050145	01.3861	31.48	050264	01.3335	27.45	050388	00.9019	20.64	050515	01.3473	32.36	050633	01.3131	21.95
050148	01.4782	.....	050267	01.6544	27.78	050390	01.1857	16.75	050516	01.5400	26.16	050636	01.5051	26.10
050148	01.1151	21.00	050270	01.3573	24.13	050391	01.3292	21.68	050517	01.1822	19.69	050638	01.1025	24.90
050149	01.4748	22.78	050272	01.3703	21.55	050392	00.9917	18.42	050522	01.2252	30.95	050641	01.2588	14.88
050150	01.2678	23.95	050274	00.9903	21.63	050393	01.4860	17.95	050523	01.2384	26.96	050643	00.6426	.....
050152	01.3850	23.39	050276	01.2072	33.01	050394	01.5488	20.22	050526	01.3236	13.42	050644	01.0506	22.44
050153	01.6231	28.40	050277	01.4723	19.05	050396	01.6148	24.12	050528	01.2785	19.70	050660	01.4613	.....
050155	01.0917	22.33	050278	01.5669	22.63	050397	00.9690	20.00	050531	01.1762	20.18	050661	00.8186	20.05
050158	01.3649	27.94	050279	01.3441	19.04	050401	01.1257	19.64	050534	01.4679	23.66	050662	00.8651	33.41
050159	01.2998	19.09	050280	01.7639	25.90	050404	01.0765	15.96	050535	01.3453	23.23	050663	01.1547	24.12
050167	01.2885	21.83	050281	01.5490	33.56	050406	01.0708	19.56	050537	01.3680	18.57	050666	00.9460	34.46
050168	01.5278	22.07	050282	01.3068	23.58	050407	01.3597	29.45	050539	01.2567	19.52	050667	01.0189	28.01
050169	01.4399	24.49	050283	01.5231	27.35	050410	01.0632	13.08	050541	01.5665	33.44	050668	01.1332	39.35
050170	01.4906	21.04	050286	00.8525	18.46	050411	01.3589	33.17	050542	01.1186	14.45	050670	00.7487	20.84
050172	01.2523	19.87	050289	01.6964	30.78	050414	01.3074	23.74	050543	00.9409	23.72	050674	01.3219	32.55
050173	01.3729	21.72	050290	01.6895	33.81	050417	01.3155	20.45	050545	00.8583	27.87	050675	01.9709	14.65
050174	01.6799	29.40	050291	01.1544	30.54	050419	01.4360	16.25	050546	00.6946	31.14	050676	00.9474	16.75
050175	01.3660	23.84	050292	01.0469	22.19	050420	01.3375	23.41	050547	00.8417	36.25	050677	01.3998	32.89
050177	01.2731	16.89	050293	01.1254	20.70	050423	01.0173	19.31	050549	01.7120	26.33	050678	01.2229	.....
050179	01.3063	21.22	050295	01.4947	21.01	050424	01.8153	23.48	050550	01.4607	22.49	050680	01.1971	26.94
050180	01.6017	32.17	050296	01.1902	23.74	050425	01.3094	34.22	050551	01.3289	24.83	050682	00.8928	22.32
050183	01.1126	19.44	050298	01.3275	22.54	050426	01.3708	25.47	050552	01.2293	20.52	050684	01.2450	17.19
050186	01.2933	27.51	050299	01.3607	20.49	050427	00.9189	19.93	050557	01.5109	21.78	050685	01.2468	28.37
050188	01.4286	26.90	050300	01.4938	19.23	050430	01.0555	19.53	050559	01.3996	23.82	050686	01.3134	32.42
050189	01.0831	22.39	050301	01.2481	24.81	050432	01.6129	22.37	050561	01.1996	32.15	050688	01.2792	25.15
050191	01.4729	20.67	050302	01.3482	27.55	050433	01.1058	20.42	050564	01.3309	06.57	050689	01.4155	30.16
050192	01.1901	20.19	050305	01.5457	29.10	050434	01.1365	19.87	050565	01.3544	13.81	050690	01.5124	32.17
050193	01.3308	22.67	050307	01.3027	19.99	050435	01.2208	29.08	050566	00.9061	13.99	050693	01.3049	29.48
050194	01.2435	27.41	050308	01.4832	27.92	050436	00.9412	15.20	050567	01.6269	24.54	050694	01.3586	18.36
050195	01.5834	33.92	050309	01.3376	24.61	050438	01.8098	19.83	050568	01.3990	19.06	050695	01.0960	28.46
050196	01.3052	15.36	050310	01.0912	20.24	050440	01.3403	18.63	050569	01.3783	23.26	050696	02.3021	26.75
050197	01.8716	30.49	050312	01.9222	24.66	050441	02.0343	26.41	050570	01.7110	23.79	050697	01.4515	20.60

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
050698	00.9075	20.97	060073	01.0655	16.43	100009	01.4921	21.67	100102	01.0245	18.11	100210	01.6031	18.18
050699	00.6236	20.97	060075	01.3102	24.34	100010	01.5263	24.50	100103	00.9630	16.14	100211	01.3282	20.20
050700	01.5678	31.31	060076	01.3829	19.28	100012	01.6950	18.74	100105	01.4360	21.03	100212	01.6623	20.46
050701	01.3360	30.27	060085	00.9348	12.76	100014	01.4918	21.94	100106	01.0823	16.69	100213	01.5199	18.60
050704	01.1294	15.23	060087	01.8777	21.08	100015	01.4344	17.47	100107	01.3253	18.60	100217	01.3379	18.88
050707	01.0702	27.09	060088	00.9931	23.16	100017	01.4976	17.71	100108	01.0633	14.31	100220	01.7265	26.34
050708	01.2629	22.59	060090	00.9777	13.54	100018	01.5086	21.03	100109	01.3838	18.97	100221	01.7374	25.21
050709	01.3280	18.88	060096	01.0685	21.94	100019	01.5290	19.50	100110	01.4040	20.80	100222	01.4127	20.13
050710	01.3480	26.13	060100	01.5060	20.00	100020	01.3336	23.86	100112	00.9244	12.57	100223	01.4858	18.81
050713	00.8060	20.31	060103	01.2902	23.16	100022	01.9055	24.49	100113	02.1161	19.93	100224	01.4049	20.57
050714	01.3480	26.13	060104	01.2502	21.91	100023	01.4358	17.35	100114	01.4078	18.20	100225	01.4014	20.59
050715	01.7138	20.31	060107	01.1286	20.00	100024	01.3638	19.67	100117	01.3161	19.37	100226	01.4003	18.53
050716	03.8652	20.31	070001	01.7599	25.86	100025	01.8449	18.06	100118	01.2409	19.51	100228	01.3287	20.31
050717	00.8003	20.31	070002	01.8086	24.34	100026	01.5872	18.06	100121	01.2121	16.03	100229	01.3032	18.10
050718	00.9336	20.31	070003	01.1454	25.30	100027	00.9920	15.86	100122	01.3058	16.67	100230	01.3648	22.35
050899	00.5288	20.31	070004	01.2352	24.34	100028	01.2339	18.03	100124	01.3284	14.64	100231	01.7051	16.97
060001	01.6504	20.31	070005	01.4131	24.84	100029	01.4199	19.58	100125	01.3273	18.00	100232	01.3660	19.83
060003	01.3293	18.91	070006	01.4122	27.20	100030	01.3066	19.01	100126	01.4408	18.89	100234	01.5349	18.94
060004	01.2793	20.57	070007	01.3912	24.35	100032	01.8893	17.78	100127	01.6387	19.58	100235	01.5525	17.92
060006	01.1829	18.36	070008	01.2534	22.94	100034	01.7634	19.44	100128	02.1517	21.53	100236	01.4246	19.87
060007	01.1389	15.33	070009	01.2944	24.56	100035	01.6050	17.98	100129	01.2696	17.72	100237	02.2024	23.28
060008	01.1884	15.83	070010	01.8774	20.35	100038	01.5798	18.23	100130	01.2454	18.62	100238	01.5894	13.88
060009	01.4660	21.35	070011	01.4579	23.89	100039	01.5397	21.36	100131	01.3794	20.96	100239	01.4442	19.35
060010	01.5585	22.31	070012	01.2488	23.36	100040	01.7626	17.97	100132	01.3098	19.53	100240	00.7775	15.37
060011	01.3645	22.12	070015	01.4162	24.05	100043	01.3643	15.33	100134	00.9935	13.03	100241	00.9329	13.90
060012	01.4391	18.62	070016	01.3810	23.00	100044	01.4082	21.18	100135	01.6123	17.82	100242	01.4132	16.91
060013	01.3221	16.29	070017	01.3702	24.60	100045	01.4052	19.25	100137	01.3170	18.60	100243	01.4048	24.16
060014	01.7402	20.31	070018	01.4229	28.54	100046	01.4822	20.36	100138	01.0153	10.76	100244	01.4078	19.39
060015	01.5816	21.13	070019	01.2953	24.83	100047	01.7725	18.92	100139	01.1145	15.04	100246	01.4106	17.86
060016	01.2618	17.07	070020	01.3139	24.55	100048	00.9695	13.58	100140	01.2249	17.48	100248	01.6271	18.75
060018	01.2400	17.15	070021	01.2930	24.85	100049	01.3278	17.97	100142	01.2594	18.66	100249	01.3503	18.84
060020	01.8773	17.56	070022	01.8192	23.48	100050	01.1456	15.90	100144	01.2818	19.61	100252	01.2848	21.94
060022	01.8160	19.49	070024	01.3153	23.84	100051	01.2118	19.11	100146	01.0877	16.15	100253	01.5082	20.97
060023	01.8591	17.02	070025	01.8600	19.43	100052	01.4303	18.90	100147	01.0605	14.54	100254	01.5827	18.66
060024	01.7966	22.84	070026	01.1616	18.55	100053	01.2198	18.09	100150	01.3984	19.96	100255	01.2900	24.34
060027	01.6866	21.24	070027	01.2854	23.11	100054	01.3283	17.76	100151	01.7240	18.08	100256	02.0081	18.90
060028	01.4966	21.55	070028	01.5443	24.77	100055	01.3757	17.93	100154	01.5955	19.74	100258	01.6280	21.07
060029	00.9005	15.35	070029	01.3587	21.95	100056	01.4068	19.38	100156	01.2007	19.92	100259	01.4194	18.73
060030	01.3241	19.00	070030	01.2292	25.18	100057	01.4184	18.63	100157	01.5860	21.06	100260	01.4513	21.73
060031	01.6355	19.53	070031	01.2535	23.12	100060	01.7365	21.02	100159	00.9550	11.69	100262	01.3943	21.16
060032	01.4770	20.78	070033	01.4122	26.38	100061	01.4813	21.88	100160	01.2495	18.43	100263	01.2482	18.64
060033	01.0722	13.41	070034	01.3825	29.05	100062	01.7465	18.11	100161	01.7073	21.30	100264	01.4012	17.62
060034	01.5666	20.31	070035	01.4072	22.89	100063	01.2890	18.31	100162	01.4540	19.83	100265	01.3352	15.01
060036	01.1694	15.76	070036	01.5709	27.95	100067	01.4095	16.81	100165	01.1337	13.18	100266	01.3566	18.10
060037	01.0288	13.56	070038	01.0707	20.00	100068	01.3733	17.72	100166	01.4808	19.75	100267	01.3379	19.83
060038	01.0310	13.78	070039	00.9302	23.64	100069	01.3153	15.88	100167	01.4454	20.58	100268	01.2241	22.61
060041	00.9383	14.14	080001	01.7025	27.32	100070	01.4966	18.19	100168	01.3650	19.91	100269	01.4247	20.37
060042	01.0363	14.73	080002	01.2023	15.33	100071	01.2953	16.97	100169	01.8710	20.54	100270	00.8682	20.06
060043	00.9025	12.99	080003	01.3949	20.16	100072	01.2360	23.32	100170	01.4100	15.49	100271	01.7428	20.02
060044	01.1085	16.07	080004	01.3094	19.45	100073	01.7511	20.04	100172	01.3995	14.68	100275	01.4146	20.36
060046	01.0901	18.50	080006	01.4184	21.83	100075	01.6523	18.22	100173	01.6957	17.25	100276	01.2702	22.13
060047	00.9872	13.98	080007	01.4486	16.75	100076	01.3180	17.07	100174	01.3787	17.95	100277	01.0519	15.24
060049	01.3479	20.25	090001	01.5888	27.79	100077	01.3753	18.82	100175	01.2198	15.49	100279	01.3775	12.47
060050	01.2593	16.03	090002	01.3122	19.74	100078	01.1969	18.33	100176	02.0937	23.45	100280	01.3550	16.99
060052	01.0840	13.49	090003	01.3697	25.82	100079	01.6561	19.15	100177	01.3473	18.58	100281	01.3003	22.78
060053	01.1047	14.93	090004	01.7397	24.43	100080	01.6318	22.70	100179	01.7319	19.47	100282	01.1124	17.70
060054	01.3319	18.61	090005	01.3450	23.71	100081	01.0539	14.21	100180	01.4631	19.43	100001	01.3047	15.63
060056	00.9948	15.37	090006	01.3214	20.39	100082	01.4614	18.91	100181	01.2111	21.61	100002	01.3058	16.54
060057	01.0133	23.55	090007	01.3635	19.38	100084	01.4186	20.77	100183	01.2830	18.48	100003	01.3845	15.24
060058	00.9506	15.60	090008	01.4969	20.72	100085	01.3915	21.33	100187	01.4150	19.92	100004	01.3881	18.05
060060	00.9769	14.53	090010	01.0223	17.93	100086	01.2392	21.23	100189	01.3952	24.14	100005	01.1802	17.38
060062	00.9096	16.53	090011	02.0090	25.70	100087	01.8553	21.28	100191	01.2949	20.19	100006	01.4001	19.78
060064	01.4880	21.56	100001	01.4825	18.62	100088	01.6726	21.08	100199	01.3616	19.76	100007	01.6056	18.12
060065	01.3260	22.85	100002	01.4763	19.92	100090	01.3888	17.89	100200	01.3456	21.55	100008	01.2651	18.30
060068	01.0226	15.09	100004	01.0119	13.82	100092	01.5281	19.47	100204	01.6026	19.37	100009	01.1532	15.80
060068	01.0475	18.74	100006	01.6406	20.10	100093	01.5080	15.93	100206	01.3988	19.96	100010	02.1459	24.74
060070	01.1221	17.17	100007	01.8866	20.87	100098	01.1552	19.33	100208	01.5848	22.72	100011	01.2262	16.24
060071	01.2194	16.52	100008	01.7096	20.20	100099	01.2922	13.50	100209	01.5855	17.58	100013	01.1130	16.61

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
110014	01.0448	16.21	110101	01.1323	12.27	110198	01.3303	25.48	130048	01.0690	14.17	140081	01.0654	14.36
110015	01.1788	19.15	110103	00.9185	11.59	110200	01.8824	19.23	130049	01.2597	19.05	140082	01.4505	22.85
110016	01.2943	16.27	110104	01.0983	15.18	110201	01.5092	18.30	130054	00.8904	17.88	140083	01.3069	18.82
110017	00.8766	13.46	110105	01.2904	15.96	110203	00.9956	20.45	130056	00.8204	17.37	140084	01.2298	19.27
110018	01.1447	18.80	110107	01.8386	18.54	110204	00.8148	18.89	130060	01.3078	20.72	140086	01.1655	15.72
110020	01.3285	18.61	110108	00.9689	17.58	110205	01.0763	22.65	130061	00.9403	09.29	140087	01.3956	17.07
110023	01.2840	18.65	110109	01.0955	15.30	110207	01.1807	12.46	130063	01.1768		140088	01.7029	21.97
110024	01.4669	19.21	110111	01.1955	15.74	110208	00.9903	15.74	140001	01.3044	15.14	140089	01.2384	17.29
110025	01.4282	17.90	110112	01.1297	18.83	110209	00.7381	16.57	140002	01.3201	18.33	140090	01.4953	23.30
110026	01.2060	14.58	110113	01.1014	14.21	110211	00.9586		140003	01.0457	15.69	140091	01.8169	18.10
110027	01.1287	15.90	110114	01.0561	15.10	110212	01.1651		140004	01.0989	16.55	140093	01.1840	18.79
110028	01.6783	20.65	110115	01.6734	22.60	110213	00.7480		140005	00.9503	10.22	140094	01.3097	20.06
110029	01.3697	20.27	110118	01.0544	11.38	120001	01.8279	27.25	140007	01.4925	21.24	140095	01.3835	20.85
110030	01.2736	17.81	110120	01.0683	12.89	120002	01.2601	23.99	140008	01.5269	20.27	140097	00.9245	15.85
110031	01.2780	19.47	110121	01.2134	14.59	120003	01.1064	24.14	140010	01.3777	23.35	140100	01.3042	20.50
110032	01.3079	15.70	110122	01.3699	18.25	120004	01.2164	24.55	140011	01.1962	16.35	140101	01.2281	18.42
110033	01.4405	21.48	110124	01.3180	14.58	120005	01.2966	21.62	140012	01.2712	18.24	140102	01.1167	15.46
110034	01.6284	18.31	110125	01.2718	16.36	120006	01.3249	24.84	140013	01.5981	16.59	140103	01.4637	15.98
110035	01.4374	23.29	110127	00.9214	14.72	120007	01.6729	21.82	140014	01.2346	18.98	140105	01.3523	20.16
110036	01.7729		110128	01.1853	18.34	120009	00.9647	19.58	140015	01.2858	14.77	140107	01.0723	14.15
110038	01.4872	17.19	110129	01.6924	17.61	120010	01.8131	23.76	140016	00.9826	12.09	140108	01.3529	22.83
110039	01.3748	19.83	110130	01.0679	11.85	120011	01.3231	32.97	140018	01.3572	19.73	140109	01.2235	14.65
110040	01.1392	17.40	110132	01.1281	13.98	120012	00.8889	21.42	140019	01.0877	14.26	140110	01.2260	18.89
110041	01.1919	16.88	110134	00.9052	12.22	120014	01.3437	23.53	140024	00.9826	13.82	140112	01.1475	14.27
110042	01.2326	16.85	110135	01.3155	17.76	120015	00.8945	23.63	140025	01.0844	16.04	140113	01.5963	18.16
110043	01.8013	16.83	110136	01.1358	15.43	120016	01.0773	26.99	140026	01.2533	16.60	140114	01.3451	19.18
110044	01.1835	15.11	110140	01.0384	15.81	120018	01.0119	22.29	140027	01.3199	17.12	140115	01.3316	19.21
110045	01.2010	19.00	110141	01.0430	13.17	120019	01.2134	20.93	140029	01.4133	20.69	140116	01.2572	20.69
110046	01.2702	19.27	110142	00.9278	10.94	120021	00.8363	19.89	140030	01.7236	21.88	140117	01.5466	20.39
110048	01.2958	14.77	110143	01.4312	20.93	120022	01.6938	17.36	140031	01.1981	14.47	140118	01.6712	23.20
110049	01.0596	12.66	110144	01.1053	18.09	120026	01.2420	24.30	140032	01.3088	17.51	140119	01.7295	21.17
110050	01.2663	17.24	110146	01.1084	16.74	120027	01.4788	22.77	140033	01.2949	22.13	140120	01.4493	16.54
110051	01.0328	13.87	110149	01.1383	18.93	120028	01.2495		140034	01.1849	18.25	140121	01.4033	14.91
110052	01.1633	08.57	110150	01.3908	18.34	130001	00.9237	20.88	140035	01.0753	13.77	140122	01.5846	22.78
110054	01.3234	18.80	110152	01.0769	15.05	130002	01.3874	15.94	140036	01.2318	17.01	140124	01.2207	25.20
110056	01.1047	16.02	110153	01.0943	18.80	130003	01.3296	19.77	140037	01.0362	13.33	140125	01.3391	16.31
110059	01.3075	12.05	110154	01.0296	13.75	130005	01.4326	19.70	140038	01.2131	14.65	140127	01.4371	18.66
110061	01.0818	13.87	110155	01.1450	14.18	130006	01.8387	19.10	140040	01.3081	15.90	140128	01.0565	16.08
110062	00.8961	14.52	110156	01.0223	15.53	130007	01.6496	19.28	140041	01.1977	16.33	140129	01.1941	16.61
110063	01.1382	15.19	110181	01.3086	20.74	130008	00.9899	12.07	140042	01.0291	13.94	140130	01.2719	24.16
110064	01.3862	18.18	110182	00.8099		130009	00.9347	15.62	140043	01.1678	17.93	140132	01.5121	23.60
110065	01.0241	12.93	110183	01.5208	18.71	130010	00.9101	19.08	140045	01.0478	15.21	140133	01.3440	20.51
110066	01.4714	20.37	110184	01.4277	21.27	130011	01.3476	19.35	140046	01.3159	15.70	140135	01.2990	16.16
110069	01.2824	18.52	110185	01.4010	18.70	130012	01.0020	22.02	140047	01.1731	18.57	140137	01.0426	17.24
110070	01.1006	17.18	110186	01.5150	18.65	130013	01.3101	19.25	140048	01.3315	21.58	140138	01.0982	14.14
110071	01.1356	11.04	110188	01.7223	20.47	130014	01.3693	17.03	140049	01.5511	20.89	140139	01.1145	15.86
110072	01.0173	12.51	110189	01.1931	18.66	130015	00.9264	17.50	140051	01.5114	19.42	140140	01.1906	18.58
110073	01.2272	14.32	110171	01.4942	20.46	130016	00.9173	17.25	140052	01.3990	17.19	140141	01.3059	14.79
110074	01.4541	17.24	110172	01.4235	21.34	130017	01.1709	16.55	140053	02.0119	18.24	140143	01.1514	17.94
110075	01.3591	16.51	110174	00.9675	15.24	130018	01.7382	17.35	140054	01.3761	22.90	140144	01.0424	17.37
110076	01.5073	20.04	110176	02.5217	20.96	130019	01.1641	17.99	140055	00.9267	13.99	140145	01.1604	16.19
110078	01.7630	21.73	110177	01.5788	19.87	130021	00.9692	15.30	140058	01.2943	16.54	140146	01.0612	16.77
110079	01.3856	19.30	110178	02.9393	16.83	130022	01.2437	18.53	140059	01.2264	15.77	140147	01.3933	15.62
110080	01.2083	18.22	110179	01.1105	20.42	130024	01.0773	18.00	140061	01.1070	14.15	140148	01.8210	17.46
110082	02.1044	21.81	110181	00.9493	14.70	130025	01.1043	14.20	140062	01.2892	26.44	140150	01.5871	25.02
110083	01.7148	20.96	110183	01.3855	21.18	130026	01.0592	19.83	140063	01.4336	22.90	140151	01.0723	19.84
110086	01.2336	13.04	110184	01.2704	19.37	130027	00.8923	19.57	140064	01.3056	17.80	140152	01.1727	21.63
110067	01.3469	20.67	110185	01.1237	15.51	130028	01.2366	16.83	140065	01.5316	24.12	140155	01.3024	17.47
110089	01.2215	17.12	110186	01.3551	15.59	130029	01.1095	17.82	140066	01.2213	15.60	140158	01.3851	22.91
110091	01.3195	19.73	110187	01.3406	19.18	130030	00.8668	18.40	140067	01.7964	17.99	140160	01.2137	16.52
110092	01.1812	15.18	110188	01.3408	18.49	130031	00.9616	16.44	140068	01.2411	18.98	140161	01.2198	18.07
110093	00.9463	11.89	110189	01.1257	17.51	130034	01.0096	19.35	140069	01.0622	16.04	140162	01.7889	17.93
110094	01.0827	14.08	110190	01.0981	15.41	130035	01.0090	19.47	140070	01.2423	17.31	140164	01.4470	20.29
110095	01.3819	14.69	110191	01.3627	17.96	130036	01.3025	13.66	140074	01.0465	17.25	140165	01.1078	13.70
110096	01.1427	14.85	110192	01.4687	21.41	130037	01.2910	16.97	140075	01.4117	14.13	140166	01.3247	17.54
110097	01.0561	14.44	110193	01.2426	17.89	130043	00.9508	15.79	140077	01.2351	16.89	140167	01.1271	15.06
110098	00.9804	15.28	110194	00.9257	14.21	130044	01.1952	10.50	140079	01.2417	17.22	140168	01.1771	16.66
110100	01.0482	16.39	110195	01.1159	13.34	130045	00.9956	15.28	140080	01.6294	20.58	140170	01.0929	13.81

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
140171	00.9828	12.95	140300	01.5868	23.72	150074	01.6442	19.08	160030	01.3920	18.00	160109	01.0993	14.76
140172	01.6579	18.91	150001	01.1146	19.10	150075	01.1491	15.63	160031	01.1010	14.50	160110	01.5914	15.04
140173	00.9180	18.52	150002	01.5657	18.51	150076	01.1723	21.36	160032	01.1307	16.27	160111	01.0133	12.29
140174	01.5914	20.01	150003	01.6957	19.07	150077	01.1446	17.40	160033	01.8232	17.57	160112	01.4106	16.06
140178	01.2364	19.89	150004	01.5034	19.80	150078	01.0704	17.34	160034	01.1382	15.15	160113	01.0099	13.35
140177	01.3481	17.27	150005	01.1843	18.97	150079	01.2096	15.90	160035	01.0002	16.77	160114	01.0199	15.40
140179	01.3420	20.09	150006	01.2849	18.75	150082	01.5715	18.22	160036	00.9948	19.22	160115	01.0123	15.21
140180	01.4432	20.79	150007	01.2112	23.06	150084	01.9333	21.85	160037	01.0667	17.12	160116	01.1438	16.05
140181	01.4074	19.27	150008	01.4533	20.34	150086	01.3607	16.73	160039	01.0325	17.49	160117	01.4481	16.57
140182	01.4406	15.18	150009	01.3592	17.29	150088	01.3868	18.67	160040	01.3654	17.43	160118	01.0367	15.14
140184	01.2681	15.18	150010	01.3797	16.85	150089	01.4239	19.56	160041	01.1128	14.40	160120	01.0155	11.33
140185	01.5341	17.64	150011	01.2435	18.61	150090	01.2347	18.94	160043	01.0103	14.43	160122	01.0901	18.27
140186	01.3891	20.30	150012	01.6411	21.50	150091	01.0113	16.53	160044	01.2318	15.75	160124	01.2824	16.47
140187	01.4964	18.84	150013	01.1763	15.74	150092	01.0684	14.87	160045	01.7278	18.63	160126	01.0538	15.68
140188	00.9537	13.20	150014	01.5052	18.35	150094	00.9903	17.59	160046	00.9983	11.21	160129	01.0655	15.03
140189	01.1992	17.72	150015	01.2408	20.85	150095	01.0953	18.41	160047	01.3985	16.53	160130	01.2040	14.80
140190	01.1009	18.47	150017	01.8553	19.45	150096	01.0629	17.95	160048	01.0493	13.27	160131	01.0625	14.49
140191	01.4397	22.26	150018	01.3501	18.66	150097	01.1098	17.18	160049	00.9436	12.67	160134	00.9376	12.70
140193	01.1059	14.46	150019	01.1845	14.94	150098	01.1241	16.63	160050	01.0811	15.90	160135	01.0142	15.11
140197	01.2541	16.79	150020	01.1512	13.22	150099	01.0655	14.59	160051	00.9319	13.79	160138	01.0655	14.59
140199	01.1100	17.14	150021	01.6165	18.36	150100	01.6568	17.51	160052	01.0078	14.41	160140	01.1400	16.69
140200	01.4821	21.75	150022	01.1136	17.58	150101	01.1211	19.95	160054	01.0121	13.35	160142	01.1009	15.31
140202	01.3111	21.58	150023	01.6061	19.97	150102	01.1598	12.14	160055	00.9931	13.61	160143	00.9819	15.10
140203	01.1647	22.19	150024	01.3888	18.92	150103	00.9512	19.44	160056	01.1741	14.54	160145	01.1407	14.85
140205	00.9675	15.10	150025	01.4888	17.26	150104	01.0823	16.22	160057	01.3770	17.28	160146	01.4416	16.29
140206	01.2352	20.80	150026	01.2078	18.81	150105	01.3386	17.27	160058	01.7722	19.62	160147	01.3353	17.49
140207	01.3748	20.67	150027	01.0411	17.50	150106	01.0981	15.15	160060	01.1076	15.15	160151	01.1079	16.09
140208	01.6884	24.61	150029	01.3890	20.73	150109	01.4355	18.03	160061	01.1171	16.03	160152	01.0039	14.39
140209	01.6540	14.76	150030	01.2567	17.00	150110	01.0392	15.28	160062	00.9454	15.66	160153	01.8054	18.68
140210	01.0791	14.99	150031	01.0948	15.03	150111	01.1656	16.85	160063	01.1546	16.85	160155	01.1951	16.74
140211	01.2061	19.50	150032	01.8612	19.41	150112	01.3267	18.92	160064	01.6269	18.72	160156	01.0677	13.57
140213	01.3176	21.25	150033	01.5966	21.73	150113	01.2282	18.52	160065	01.0220	16.04	160157	01.1576	15.84
140215	01.0859	14.06	150034	01.4872	21.18	150114	01.0692	17.02	160066	01.1481	15.76	160158	00.9797	13.42
140217	01.3129	22.52	150035	01.5616	19.88	150115	01.3601	17.18	160067	01.4072	17.52	160159	01.2006	17.07
140218	01.0528	15.20	150036	01.0369	18.92	150116	01.1376	18.53	160068	01.0212	15.43	160160	01.3037	16.52
140220	01.1009	17.26	150037	01.2481	18.31	150117	01.0540	14.07	160069	01.4919	17.39	160161	01.4254	15.95
140222	01.6061	23.21	150038	01.4463	18.74	150118	01.1303	15.08	160070	00.9590	14.55	160162	01.3060	16.49
140224	01.3499	22.21	150039	00.9739	16.62	150119	01.4487	19.02	160072	01.0788	14.19	160164	01.0310	17.45
140228	01.6505	17.83	150042	01.2851	16.54	150126	01.4679	20.96	160073	00.9704	13.66	160165	00.9909	15.23
140230	00.9336	15.97	150043	01.0389	16.96	150127	01.0314	15.89	160074	01.0474	15.71	160166	01.6836	22.29
140231	01.5659	21.90	150044	01.2351	18.03	150128	01.2813	18.07	160075	01.1806	15.77	160167	01.2077	18.08
140233	01.8328	18.16	150045	01.1303	16.21	150129	01.1222	24.48	160076	01.0409	17.07	160168	01.1380	14.10
140234	01.2359	17.76	150046	01.4926	16.66	150130	01.3484	16.53	160077	01.0730	11.38	160169	01.2203	16.42
140236	01.0046	14.29	150047	01.6176	19.11	150132	01.4914	18.89	160079	01.4250	17.86	160170	01.2910	15.58
140239	01.7410	18.31	150048	01.2267	18.58	150133	01.1644	17.44	160080	01.2026	17.07	160172	01.1333	16.84
140240	01.4331	22.78	150049	01.1415	15.37	150134	01.1629	17.56	160081	01.0971	15.21	160173	01.3998	17.38
140242	01.6616	22.15	150050	01.2343	16.20	150136	00.9607	20.95	160082	01.9400	17.26	160174	01.1587	13.03
140245	01.2200	15.19	150051	01.4673	18.83	150145	03.7024		160083	01.6760	17.94	160175	01.1942	16.10
140246	01.1107	12.78	150052	01.1526	14.50	160001	01.2869	18.91	160085	00.9877	15.41	160176	01.1060	13.45
140250	01.3085	23.24	150053	01.0122	18.92	160002	01.1579	14.48	160086	00.9510	15.78	160177	01.3149	15.96
140251	01.3487	20.32	150054	01.0954	15.80	160003	01.0272	14.39	160088	01.1853	16.87	160178	01.0487	12.94
140252	01.4849	23.55	150056	01.8319	23.14	160005	01.0962	15.72	160089	01.2264	16.16	160179	00.8797	12.80
140253	01.3970	14.08	150057	02.3139	18.25	160007	01.0149	13.81	160090	01.0121	15.53	160180	01.0645	15.46
140258	01.5859	22.07	150058	01.7734	20.30	160008	01.1611	14.74	160091	01.0690	12.74	160183	01.3680	15.54
140271	01.0367	14.78	150059	01.3588	21.47	160009	01.2225	15.87	160092	01.0710	15.37	160184	01.0172	13.85
140275	01.2383	16.99	150060	01.1408	14.72	160012	01.0015	15.93	160093	01.0603	15.71	160185	00.8913	14.00
140276	02.0402	21.39	150061	01.2235	15.33	160013	01.2088	16.74	160094	01.1200	15.80	160186	00.9101	14.08
140280	01.3633	17.80	150062	01.1228	17.69	160014	00.9551	14.41	160095	01.0625	14.27	160187	01.0368	16.58
140281	01.6894	22.14	150063	01.0545	16.90	160016	01.2452	17.25	160097	01.0952	14.59	160188	00.9220	12.68
140285	01.2529	26.86	150064	01.2804	16.17	160018	00.9374	13.77	160098	01.0002	15.05	160189	01.0941	14.19
140286	01.1496	18.53	150065	01.2062	18.66	160020	01.0918	13.84	160099	00.9166	12.91	160190	01.6491	19.98
140288	01.7475	22.93	150066	01.0055	17.04	160021	01.0669	15.16	160101	01.0582	17.55	160191	01.0778	11.22
140289	01.3491	16.32	150067	01.1690	16.20	160023	01.0267	14.75	160102	01.4133	16.83	160192	00.9909	13.97
140290	01.3868	20.06	150069	01.2637	17.75	160024	01.5208	18.26	160103	01.0464	16.71	160193	01.0394	15.99
140291	01.3999	23.45	150070	01.0571	17.16	160026	01.0784	17.30	160104	01.2767	17.17	160194	01.2914	18.45
140292	01.1440	20.62	150071	01.1147	14.38	160027	01.1359	15.04	160106	01.0226	15.39	160195	00.9111	13.41
140294	01.1807	18.17	150072	01.2157	16.13	160028	01.2457	29.74	160107	01.1907	18.26	160196	01.1183	14.31
140297	03.6153	42.09	150073	01.0490	20.53	160029	01.5683	20.19	160108	01.1241	15.98	160197	00.9906	13.83

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
170054	01.0978	13.64	170150	01.1546	14.00	180067	01.9594	17.80	190034	01.1818	15.36	190155	00.7261	16.10
170055	01.0862	14.51	170151	00.9807	12.49	180069	01.1523	17.35	190035	01.4071		190156	01.0217	12.27
170056	00.8958	14.93	170152	01.0368	14.21	180070	01.1536	13.55	190036	01.6970	20.46	190158	01.1942	20.62
170057	00.9835	12.90	170160	01.0025	11.81	180072	01.1750	15.81	190037	00.9050	11.28	190160	01.2638	17.06
170058	01.1567	17.07	170164	01.0153	15.00	180075	01.6587	12.66	190039	01.4112	16.98	190161	01.0650	14.05
170060	01.1064	14.95	170166	01.1487	17.40	180078	01.0858	18.97	190040	01.3258	20.34	190162	01.0985	19.57
170061	01.1697	14.15	170171	01.0693	12.88	180079	01.2482	12.71	190041	01.5988	19.98	190164	01.2766	14.89
170063	00.8588	11.84	170175	01.3959	17.87	180080	01.0624	15.09	190043	01.0674	12.52	190167	01.1707	18.71
170066	01.0038	13.66	170178	01.6751	23.94	180087	01.3024	14.29	190044	01.1587	21.11	190170	00.9093	13.69
170067	01.0353	14.44	170182	01.4638	21.54	180088	01.5749	21.13	190045	01.4309	21.34	190173	01.4304	19.33
170068	01.2562	17.01	170183	02.0468	15.05	180092	01.2237	15.98	190046	01.4383	18.69	190175	01.6161	20.46
170070	01.0330	12.73	170184	01.7569		180093	01.3704	16.89	190048	01.2557	15.02	190176	01.6907	20.76
170073	01.1796	15.56	180001	01.3958	17.78	180094	01.0627	12.86	190049	00.9841	15.98	190177	01.7758	18.85
170074	01.1210	13.48	180002	01.1271	17.71	180095	01.1988	13.96	190050	01.0974	14.68	190178	00.9828	10.60
170075	00.9167	10.71	180004	01.1260	15.79	180099	01.2011	12.83	190053	01.1305	12.51	190182	01.2638	19.89
170076	01.0539	12.59	180005	01.2488	18.80	180101	01.2773	16.26	190054	01.3434	16.77	190183	01.1934	15.22
170077	00.9613	12.55	180006	00.9249	12.49	180102	01.4712	18.17	190059	00.8927	14.11	190184	01.0340	15.61
170079	00.9525	12.75	180007	01.4823	16.55	180103	02.2948	18.25	190060	01.4334	14.94	190185	01.3460	19.22
170080	00.9784	12.95	180009	01.4022	20.11	180104	01.5599	18.65	190064	01.5728	22.67	190186	00.9219	14.11
170081	00.9351	11.91	180010	01.9106	18.13	180105	00.9458	15.32	190065	01.4938	18.08	190190	00.8904	12.48
170082	00.9822	12.06	180011	01.3471	18.96	180106	00.8758	13.13	190071	00.9048	12.66	190191	01.2236	19.55
170084	00.9112	29.87	180012	01.4127	18.41	180108	00.8320	13.64	190077	00.9403	13.95	190196	00.9611	16.22
170085	00.9055	12.47	180013	01.4174	17.18	180115	01.0027	16.43	190078	01.1522	12.81	190197	01.1855	17.51
170086	01.7294	18.97	180014	01.7276	18.00	180116	01.3502	16.15	190079	01.3216	17.02	190199	01.2599	10.95
170088	00.9532	10.70	180016	01.3059	14.83	180117	01.1374	17.24	190081	00.9314	13.70	190200	01.5884	20.17
170089	00.9736	12.13	180017	01.3626	14.79	180118	01.0477	11.54	190083	01.1019	16.51	190201	01.0893	18.83
170090	00.9993	11.36	180018	01.3348	15.32	180120	01.0374	16.25	190086	01.3466	15.04	190202	01.2511	18.81
170092	00.8320	12.01	180019	01.2531	16.78	180121	01.3111	14.05	190088	01.3395	19.01	190203	01.5559	22.35
170093	00.9126	12.94	180020	01.1266	16.86	180122	01.1060	15.93	190089	01.0953	12.63	190204	01.4971	20.42
170094	00.9330	16.97	180021	01.0895	14.26	180123	01.4019	18.92	190090	01.1136	16.03	190205	01.9390	18.91
170095	01.1284	13.41	180023	00.9119	14.80	180124	01.4305	16.87	190092	01.4163	21.19	190206	01.6020	21.26
170097	00.9883	14.02	180024	01.4455	15.89	180125	01.1083	17.87	190095	01.0410	15.00	190207	01.2223	17.10
170098	01.1633	14.54	180025	01.1748	16.40	180126	01.2108	11.42	190098	01.4884	19.10	190208	00.8302	10.93
170099	01.2147	12.86	180026	01.2509	13.57	180127	01.3576	16.72	190099	01.2333	17.67	190218	01.1701	17.36
170100	01.0623	13.73	180027	01.3139	15.23	180128	01.1777	16.18	190102	01.5818	18.10	190227	00.8682	30.27
170101	00.9176	13.46	180028	01.0814	17.78	180129	01.0392	15.30	190103	00.8978	11.00	190231	01.4412	13.27
170102	01.0142	12.99	180029	01.3033	16.86	180130	01.4202	17.56	190106	01.1713	17.86	190235	01.6524	
170103	01.2839	15.92	180030	01.1614	16.38	180132	01.2846	16.14	190109	01.2506	14.31	190236	01.4037	
170104	01.4518	20.25	180031	01.1179	14.02	180133	01.3195	22.68	190110	00.9671	13.76	200001	01.4021	16.84
170105	01.0732	15.22	180032	01.0939	16.97	180134	01.0985	14.44	190111	01.5353	19.83	200002	01.1101	23.41
170106	00.9680	10.48	180033	01.1805	16.08	180136	01.6663	19.72	190112	01.6582	20.08	200003	01.1421	16.08
170109	00.9935	16.20	180034	01.1401	15.45	180138	01.2692	17.70	190113	01.3372	19.82	200006	01.0161	18.67
170110	01.0011	15.05	180035	01.6042	19.58	180139	01.1175	17.89	190114	01.0360	13.12	200007	01.0238	16.64
170112	01.0327	13.55	180036	01.2081	18.69	180140	01.0543	22.80	190115	01.2011	19.30	200008	01.2487	20.05
170113	01.0910	15.23	180037	01.3315	19.96	180141	01.7850		190116	01.1612	15.43	200009	01.8248	20.26
170114	01.0309	14.06	180038	01.4356	15.84	190001	00.9574	22.06	190118	01.0653	13.06	200012	01.1253	16.83
170115	00.9963	12.43	180040	01.9798	18.75	190002	01.7233	18.29	190120	01.0389	13.99	200013	01.1175	15.39
170116	01.0782	15.42	180041	01.1067	14.94	190003	01.4208	18.66	190122	01.3127	13.83	200015	01.2672	17.80
170117	00.9897	13.41	180042	01.1356	15.00	190004	01.4619	16.87	190124	01.6393	19.92	200016	01.0377	16.48
170119	00.9907	13.57	180043	01.1907	19.10	190005	01.5814	16.64	190125	01.5379	18.47	200018	01.2179	16.45
170120	01.3100	12.93	180044	01.2212	17.26	190006	01.3309	15.31	190128	01.1054	18.95	200019	01.2635	18.12
170122	01.7443	18.82	180045	01.3799	17.34	190007	01.0296	14.17	190130	00.9720	12.14	200020	01.1295	19.42
170123	01.7878	18.98	180046	01.1868	16.65	190008	01.2328	19.37	190131	01.2328	17.54	200021	01.1599	18.52
170124	00.9925	13.55	180047	01.0316	14.66	190009	01.3215	14.70	190133	00.9626	12.86	200023	00.9037	14.08
170126	00.9618	12.53	180048	01.2731	16.28	190010	01.1133	16.24	190134	01.0045	16.50	200024	01.4120	19.55
170128	00.9122	14.70	180049	01.3932	16.09	190011	01.1696	15.32	190135	01.4522	20.69	200025	01.1595	19.60
170131	01.1686	12.10	180050	01.2650	17.25	190013	01.3473	16.26	190136	01.2074	11.11	200026	01.0448	15.97
170133	01.1015	16.69	180051	01.3715	15.43	190014	01.1457	16.03	190138	00.8637	20.29	200027	01.2326	19.90
170134	00.9044	13.04	180053	01.1052	14.96	190015	01.2583	18.74	190140	00.9874	11.98	200028	00.9883	16.14
170137	01.1656	17.98	180054	01.1345	15.82	190017	01.3983	14.84	190142	00.9321	14.53	200031	01.2524	15.04
170139	01.0729	12.91	180055	01.2319	14.70	190018	01.1580	17.48	190144	01.2665	16.26	200032	01.2974	17.40
170142	01.2852	17.02	180056	01.1288	16.33	190019	01.7964	19.64	190145	01.0068	14.74	200033	01.7963	
170143	01.1875	15.24	180058	01.0463	13.04	190020	01.1693	17.77	190146	01.6123	21.10	200034	01.2207	18.06
170144	01.6583	13.79	180059	00.8671	15.28	190025	01.3335	13.33	190147	00.9695	14.36	200037	01.2183	16.94
170145	01.1081	14.18	180063	01.1789	11.94	190026	01.5020	18.00	190148	00.9710	13.91	200038	01.1302	19.07
170146	01.5294	18.68	180064	01.3252	14.68	190027	01.5422	17.46	190149	01.0118	14.40	200039	01.2896	19.74
170147	01.2024	18.98	180065	01.0035	12.89	190029	01.1748	17.67	190151	01.2151	12.80	200040	01.1290	19.05
170148	01.4951	17.89	180066	01.1563	18.08	190033	00.9756	10.02	190152	01.4896	20.71	200041	01.1543	18.64

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
200043	00.7365	18.37	220017	01.3977	14.12	220153	01.0232	22.56	230100	01.1670	15.57	230213	00.9993	15.25
200050	01.1575	17.35	220019	01.1845	19.12	220154	00.9445	22.42	230101	01.1095	18.36	230216	01.5651	17.80
200051	01.0114	19.57	220020	01.2268	19.47	220162	01.2697		230103	01.0400	20.72	230217	01.2521	22.94
200052	01.0406	15.56	220023	00.8107	19.30	220163	02.1199	24.87	230104	01.5911	22.43	230219	00.8768	19.28
200055	01.1814	17.37	220024	01.2158	21.22	220171	01.6207	22.92	230105	01.7568	20.27	230221	00.8720	24.54
200062	00.9472	15.91	220025	01.1292	18.70	230001	01.1902	18.07	230106	01.3003	20.51	230222	01.4495	19.43
200063	01.3059	18.34	220028	01.4722	21.01	230002	01.2759	20.89	230107	00.9076	14.72	230223	01.3326	21.85
200066	01.1622	18.74	220029	01.1851	24.16	230003	01.1581	18.62	230108	01.2121	18.37	230227	01.4724	21.58
210001	01.4925	21.16	220030	01.1533	15.00	230004	01.7096	22.86	230110	01.3576	17.83	230230	01.6794	22.01
210002	01.9930	18.07	220031	01.9215		230005	01.2844	18.86	230113	00.9199	20.15	230232	00.9510	17.15
210003	01.6014	21.93	220033	01.2840	20.97	230006	01.1008	18.53	230115	01.0388	17.19	230235	01.0957	16.27
210004	01.3657	23.18	220035	01.2837	24.51	230007	00.9571	18.95	230116	00.9248	16.31	230236	01.3249	21.58
210005	01.2762	19.38	220036	01.5965	21.66	230012	00.8563	12.18	230117	01.8993	26.06	230239	01.1389	13.72
210006	01.1400	17.18	220038	01.2959	26.32	230013	01.4022	21.06	230118	01.2189	17.43	230241	01.1643	17.52
210007	01.7371	25.17	220041	01.2273	23.41	230015	01.2010	20.91	230119	01.2966	21.44	230244	01.3959	21.17
210008	01.3938	19.26	220042	01.2464	24.13	230017	01.5028	28.89	230120	01.1514	18.40	230253	00.9911	18.85
210009	01.8131	21.72	220046	01.3702	23.14	230019	01.4696	22.20	230121	01.2299	20.81	230254	01.2624	21.20
210010	01.1495	15.64	220049	01.3541	18.47	230020	01.7404	21.30	230122	01.3428	19.37	230257	00.7824	18.51
210011	01.3419	19.67	220050	01.1242	19.98	230021	01.5653	18.27	230124	01.1625	18.52	230259	01.1882	21.59
210012	01.6374	22.07	220051	01.2183	21.10	230022	01.2543	18.76	230126	01.3957	22.70	230264	01.6939	14.86
210013	01.3219	19.82	220052	01.3247	24.59	230024	01.4480	22.98	230130	01.6687	22.34	230269	01.3782	22.69
210015	01.2992	19.60	220053	01.2325	20.02	230027	01.1127	17.48	230132	01.3690	24.82	230270	01.1731	20.20
210018	01.8243	22.33	220055	01.2994	13.89	230029	01.5582	19.51	230133	01.2687	17.99	230273	01.4465	22.29
210017	01.2218	15.90	220057	01.4056	22.87	230030	01.3296	16.78	230136	01.3180	23.03	230275	00.5262	19.58
210018	01.3056	21.29	220058	01.1529	18.51	230031	01.4311	19.42	230137	01.1580	18.31	230276	00.6644	21.40
210019	01.5806	18.39	220060	01.2952	25.42	230032	01.7502	19.80	230141	01.6323	22.96	230277	01.2430	23.05
210022	01.5039	21.14	220062	00.5762	19.65	230034	01.2739	18.80	230142	01.3057	19.01	230278	01.4214	17.82
210023	01.3373	21.51	220063	01.2663	19.84	230035	01.0906	20.47	230143	01.3112	18.35	230279	00.6584	15.95
210024	01.5453	20.11	220064	01.2830	21.51	230036	01.2229	20.75	230144	01.1482	20.81	230280	00.9997	12.33
210025	01.3740	18.95	220065	01.2958	19.95	230037	01.1368	17.86	230145	01.1934	18.05	230281	01.5448	22.78
210026	01.3830	17.97	220066	01.3789	21.73	230038	01.6671	21.58	230146	01.2748	19.36	230282	01.7516	20.94
210027	01.2945	17.86	220067	01.3230	22.81	230040	01.1819	20.58	230147	01.3954	17.47	230284	01.5826	21.10
210028	01.2229	18.31	220070	01.2219	19.89	230041	01.2518	19.27	230149	01.1505	16.14	230285	00.9321	17.38
210029	01.2710	14.51	220071	01.9036	24.06	230042	01.2328	20.06	230151	01.4024	21.20	230286	01.1358	20.97
210030	01.1576	19.24	220073	01.3068	25.94	230046	01.9346	23.28	230153	01.1458	16.86	230287	01.0866	15.50
210031	01.2844	16.78	220074	01.4397	28.44	230047	01.3796	19.17	230154	00.9500	14.32	230288	01.1157	19.71
210032	01.1792	18.71	220075	01.4818	20.18	230053	01.6002	24.58	230155	01.0478	17.35	230289	00.9226	14.31
210033	01.2737	18.96	220076	01.1822		230054	01.8075	19.80	230156	01.7144	23.80	230290	01.9680	24.41
210034	01.3510	20.17	220077	01.7973	24.84	230055	01.1704	19.01	230157	01.2003	22.20	230291	01.1532	17.81
210035	01.2976	19.08	220079	01.1889	21.36	230056	00.9664	15.57	230159	01.3458	17.84	230293	01.3350	18.17
210037	01.2736	18.27	220080	01.3078	19.50	230058	01.0994	18.45	230162	01.0605	19.93	230294	01.0774	20.29
210038	01.4108	21.78	220081	01.0949	26.78	230059	01.5035	19.08	230165	01.8769	22.77	230296	01.3927	18.22
210039	01.1817	19.69	220082	01.2893	19.76	230060	01.2247	18.53	230167	01.7979	19.39	230297	01.0659	17.25
210040	01.2977	23.06	220083	01.1675	21.78	230062	00.9643	15.71	230169	01.3453	23.25	230298	01.2864	17.23
210043	01.3140	21.29	220084	01.3389	26.31	230063	01.3202	19.89	230171	01.0181	14.41	230299	01.2645	21.39
210044	01.3429	21.63	220086	01.7743		230065	01.3020	20.37	230172	01.1855	19.10	230300	01.1651	20.04
210045	01.0234	11.01	220088	01.6385	23.68	230066	01.3702	21.26	230174	01.3641	20.84	230301	01.0408	16.96
210048	01.2486	22.46	220089	01.2541	21.52	230069	01.1366	22.24	230175	03.7082		230302	01.1137	19.13
210049	01.1655	17.20	220090	01.2774	21.06	230070	01.6318	20.99	230176	01.2172	22.12	230303	00.9935	19.88
210051	01.4205	22.78	220092	01.2563	29.72	230071	01.1883	22.62	230178	01.0025	17.48	230305	01.1418	16.29
210054	01.3626	21.94	220094	01.4476	18.10	230072	01.2717	19.89	230180	01.1699	14.55	230307	01.0297	16.33
210055	01.2721	22.10	220095	01.2243	18.87	230075	01.4810	20.07	230184	01.1598	18.23	230308	01.1529	18.52
210056	01.3993	17.87	220096	01.3462	17.39	230076	01.3291	22.97	230186	01.2450	15.20	230309	01.1803	18.10
210057	01.4721	24.67	220100	01.2697	25.09	230077	01.9370	19.36	230188	01.1176	15.81	230310	01.2634	17.99
210058	01.4828	18.67	220101	01.4781	24.24	230078	01.2553	16.56	230189	00.9585	15.39	230311	00.9756	16.71
210059	01.2611	21.98	220104	01.4373	23.69	230080	01.2411	19.94	230190	01.0724	24.98	230316	01.5650	20.26
210060	01.2540		220105	01.3499	20.60	230081	01.2578	16.86	230191	00.9623	17.58	230317	01.0233	18.19
210061	01.1774	18.56	220106	01.2300	23.09	230082	01.1162	17.08	230193	01.2584	17.77	230318	01.4973	24.56
220001	01.2775	27.10	220108	01.1989	22.28	230085	01.0922	18.91	230195	01.3347	21.46	230319	01.2454	20.15
220002	01.5400	18.62	220110	02.0189	29.18	230086	00.9486	17.36	230197	01.4218	21.17	230321	01.1644	17.48
220003	01.1363	17.49	220111	01.2643	21.79	230087	01.0889	16.19	230199	01.1115	19.29	230323	01.1966	17.00
220006	01.4328	20.39	220116	01.9394		230089	01.2754	23.86	230201	01.1456	15.09	230324	01.1842	18.04
220008	01.2873	21.58	220119	01.3311	23.69	230092	01.3562	19.28	230204	01.4307	21.66	230325	01.0477	21.34
220010	01.3417	21.70	220123	01.0577	23.94	230093	01.2768	19.05	230205	01.0377	16.37	230326	01.5436	21.26
220011	01.1581	28.81	220126	01.3572	19.87	230095	01.1791	17.06	230207	01.2683	19.90	230327	01.2443	22.64
220012	01.3404	35.18	220128	00.8929	21.18	230096	01.0974	24.02	230208	01.3205	17.76	230328	01.7730	22.43
220015	01.1918	22.77	220133	00.9081	27.36	230097	01.6121	19.12	230211	00.9047	21.59	230329	01.1639	24.71
220018	01.3686	21.58	220135	01.3076	26.10	230099	01.1463	19.68	230212	01.0827	23.46	230331	01.0123	18.49

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
240052	01.3097	18.64	240139	00.9667	16.59	250042	01.2795	15.45	260003	01.1304	13.48	260105	01.8950	20.26
240053	01.5210	20.25	240141	01.1702	21.09	250043	00.9854	12.25	260004	01.0516	13.31	260107	01.4575	19.81
240056	01.2479	21.74	240142	01.1458	19.27	250044	01.0267	15.41	260005	01.6188	20.26	260108	01.8607	21.29
240057	01.8120	22.68	240143	00.9530	13.94	250045	01.2004	18.75	260006	01.5009	20.55	260109	00.9884	12.92
240058	00.9732	14.79	240144	01.0302	16.74	250047	00.9728	15.45	260008	01.3629	16.53	260110	01.6868	15.15
240059	01.0983	21.81	240145	01.0332	15.57	250048	01.5487	15.26	260009	01.2581	16.29	260113	01.1477	14.76
240061	01.8085	24.36	240146	00.9306	19.10	250049	00.8905	11.34	260011	01.6980	18.75	260115	01.2593	17.02
240063	01.4355	22.81	240148	01.0485	14.55	250050	01.2741	13.43	260012	01.1050	12.84	260116	01.0817	15.06
240064	01.2914	21.93	240150	00.9199	12.84	250051	00.8862	10.57	260013	01.1935	15.32	260119	01.2307	15.30
240065	01.0337	12.44	240152	01.0164	19.91	250057	01.2316	15.59	260015	01.2710	16.27	260120	01.1985	16.64
240066	01.3815	21.19	240153	01.0056	15.23	250058	01.1873	14.40	260017	01.2333	15.54	260122	01.1738	12.73
240069	01.1890	19.07	240154	01.0449	17.00	250059	01.0410	14.21	260018	00.9010	10.09	260123	01.0789	14.05
240071	01.1104	19.55	240155	00.8945	19.40	250060	00.7799	08.90	260019	01.0877	14.52	260127	01.0109	15.92
240072	01.0197	18.80	240157	01.0929	14.13	250061	00.8857	17.69	260020	01.7249	20.07	260128	01.0125	10.96
240073	00.9372	16.40	240160	01.0026	16.30	250063	00.8515	12.44	260021	01.4657	17.59	260129	01.2317	15.69
240075	01.1813	19.91	240161	00.9970	14.99	250065	00.9231	12.61	260022	01.2879	19.05	260131	01.2494	18.04
240076	01.0703	21.04	240162	01.0628	16.59	250066	00.9111	13.53	260023	01.4980	34.66	260134	01.1693	15.67
240077	00.9446	14.31	240163	00.9935	17.79	250067	01.1344	14.67	260024	00.9639	12.96	260137	01.7177	15.26
240078	01.4829	23.66	240166	01.1120	15.60	250068	00.8476	11.38	260025	01.3101	14.68	260138	01.8700	21.26
240079	01.0280	15.37	240169	00.9128	15.98	250069	01.3525	17.35	260027	01.6202	21.58	260141	01.9087	19.54
240080	01.5649	22.34	240170	01.1056	17.38	250071	00.9308	11.63	260029	01.2388	19.02	260142	01.1144	15.65
240082	01.1936	17.03	240171	01.0726	15.79	250072	01.4199	18.43	260030	01.1850	10.36	260143	00.9985	12.75
240083	01.3140	17.90	240172	00.9529	15.82	250077	00.9293	11.97	260031	01.6090	18.38	260147	00.9753	13.55
240084	01.2434	20.04	240173	00.8928	16.66	250078	01.4771	14.93	260032	01.6629	18.43	260148	00.9263	10.32
240085	00.9719	17.41	240179	01.0132	16.66	250079	00.8824	17.44	260034	01.0573	15.99	260158	01.0224	12.65
240086	01.0849	17.64	240184	00.9886	13.04	250081	01.3211	16.03	260035	01.0046	11.74	260159	00.9863	19.26
240087	01.2026	14.87	240187	01.1930	18.48	250082	01.4033	13.51	260036	01.0154	15.34	260160	01.0544	15.82
240088	01.3869	19.81	240193	01.0223	17.61	250083	00.9515	12.27	260039	01.1258	13.86	260162	01.5557	20.64
240089	00.9840	17.72	240196	00.6319	22.78	250084	01.1844	17.73	260040	01.6625	15.28	260163	01.2241	14.59
240090	01.0465	14.69	240200	00.8680	14.48	250085	00.9749	12.58	260042	01.2599	17.82	260164	00.9519	13.24
240093	01.3293	17.64	240205	00.9138	.....	250088	01.0022	16.53	260044	01.0487	15.91	260166	01.2346	19.78
240094	00.9622	20.49	240206	00.8411	.....	250089	01.2121	13.89	260047	01.4767	17.20	260172	00.9986	12.55
240096	00.9800	17.63	240207	01.2109	21.80	250093	01.1337	14.36	260048	01.2963	20.70	260173	01.0314	12.21
240097	01.0196	21.79	240210	01.2788	22.90	250094	01.3184	15.45	260050	01.0431	16.40	260175	01.1175	16.34
240098	00.9533	20.33	240211	00.9038	14.75	250095	01.0053	15.92	260052	01.3352	19.75	260176	01.6500	17.62
240099	01.0631	13.30	250001	01.5514	17.39	250096	01.1988	17.01	260053	01.1737	11.73	260177	01.2846	20.19
240100	01.2892	18.97	250002	00.9820	17.13	250097	01.3216	15.83	260054	01.3147	16.07	260178	01.4976	20.94
240101	01.1825	20.41	250003	01.0084	18.40	250098	00.8380	16.66	260055	00.9906	10.97	260179	01.6431	20.52
240102	00.9603	12.87	250004	01.4873	17.91	250099	01.2609	14.01	260057	01.1503	16.96	260180	01.7064	18.96
240103	01.0505	16.28	250005	00.9412	09.95	250100	01.2905	15.26	260059	01.2891	14.66	260183	01.5177	16.58
240104	01.2301	21.81	250006	00.9862	14.60	250101	00.8850	16.65	260061	01.1020	14.06	260186	01.4347	17.27
240105	00.9597	13.46	250007	01.2808	19.42	250102	01.6048	17.06	260062	01.2033	18.91	260188	01.2198	18.37
240106	00.4052	26.55	250008	00.9814	13.33	250104	01.4486	17.62	260063	01.0897	15.44	260189	00.8526	10.87
240107	01.0916	17.31	250009	01.2300	17.50	250105	00.9434	13.40	260064	01.3240	16.92	260190	01.2045	18.00
240108	01.0081	17.24	250010	01.0398	12.77	250107	00.8815	14.53	260065	01.8217	18.25	260191	01.2516	18.58
240109	00.9484	12.99	250012	00.9311	19.88	250109	00.8949	15.37	260066	01.0266	15.01	260193	01.2915	26.66
240110	00.9668	16.33	250015	01.0847	10.44	250112	00.9717	13.07	260067	00.8671	13.74	260195	01.2198	16.53
240111	01.0666	19.00	250017	00.9989	16.64	250117	01.0769	14.70	260068	01.6718	20.21	260197	01.1405	25.99
240112	00.9994	14.73	250018	00.9513	13.02	250119	01.1164	12.45	260070	01.0429	14.48	260198	01.3077	16.46
240114	00.9257	14.74	250019	01.4335	17.00	250120	01.1106	13.09	260073	01.1387	12.89	260200	01.2666	19.43
240115	01.6191	21.63	250020	00.9455	13.52	250122	01.2481	16.91	260074	01.3021	13.93	260205	01.3757	.....
240116	00.9343	13.96	250021	00.8815	08.57	250123	01.2786	18.73	260077	01.7307	17.13	270002	01.3026	14.15
240117	01.1588	18.18	250023	00.9552	12.77	250124	00.9126	11.59	260078	01.1782	14.62	270003	01.2653	21.02
240119	00.8258	20.58	250024	00.9084	13.60	250125	01.3155	16.38	260079	01.0765	14.32	270004	01.6961	18.01
240121	00.9397	21.27	250025	01.2071	18.06	250126	00.9754	14.17	260080	01.0516	11.77	270006	00.9221	16.35
240122	01.0517	18.93	250027	00.9570	11.90	250127	00.8201	.....	260081	01.6079	18.83	270007	00.8770	12.23
240123	01.0109	15.03	250029	00.8773	12.96	250128	01.0941	12.06	260082	01.1768	13.93	270009	01.1201	19.32
240124	00.9676	18.39	250030	00.9739	14.45	250131	01.0232	11.03	260085	01.5720	19.71	270011	01.0312	18.28
240125	00.9278	11.73	250031	01.3079	18.54	250134	00.9919	16.70	260086	01.0978	15.09	270012	01.5921	18.33
240127	01.1171	14.25	250032	01.2608	16.21	250136	00.8821	17.66	260091	01.7219	19.76	270014	01.8294	17.81
240128	01.1121	15.77	250033	01.0514	15.66	250138	01.2904	17.90	260094	01.1985	16.48	270016	00.8992	15.97
240129	01.0143	17.56	250034	01.6577	14.46	250141	01.2616	15.71	260095	01.4477	16.89	270017	01.2378	19.09
240130	00.9625	15.66	250035	00.8681	13.84	250145	00.8232	10.04	260096	01.5927	22.03	270019	01.0001	15.86
240132	01.2209	22.40	250036	00.9700	14.48	250146	00.9630	13.97	260097	01.2007	14.79	270021	01.1771	16.67
240133	01.1986	17.72	250037	00.9132	10.05	250148	01.0955	19.08	260100	01.0435	15.72	270023	01.3055	21.22
240135	00.8725	14.11	250038	00.9700	14.37	250149	00.8930	12.04	260102	01.0442	18.57	270026	00.8850	14.97
240137	01.2258	18.97	250039	00.9941	13.36	260001	01.7040	18.05	260103	01.2885	17.51	270027	01.1158	12.40
240138	00.9522	12.97	250040	01.3026	16.20	260002	01.4644	21.10	260104	01.7564	18.42	270028	01.1217	15.50

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
270029	00.9579	18.18	280051	01.0812	15.15	290021	01.6244	21.94	310041	01.4067	23.71	320023	01.0840	16.73
270032	01.1262	16.20	280052	01.0846	13.32	290022	01.7010	17.94	310042	01.2416	23.53	320030	01.1495	16.84
270033	00.8614	15.58	280054	01.2607	17.98	290027	00.9528	17.23	310043	01.1431	20.86	320031	00.8258	17.05
270035	01.0099	18.28	280055	00.9182	14.40	290029	00.9833		310044	01.2847	20.70	320032	00.9003	17.10
270036	00.8802	12.78	280056	00.9752	14.45	290032	01.4115	22.30	310045	01.4639	27.19	320033	01.1552	22.76
270039	01.0024	15.36	280057	00.9835	15.40	290036	00.9391	51.78	310047	01.3682	24.34	320035	01.0299	22.89
270040	01.1080	18.24	280058	01.3029	18.34	290038	00.9923	19.95	310048	01.2820	22.81	320037	01.2216	23.31
270041	01.1062	15.74	280060	01.5871	18.65	290039	01.3219		310049	01.2927	25.66	320038	01.2326	16.83
270044	01.1453	13.98	280061	01.4293	17.06	300001	01.3935	21.15	310050	01.2323	23.05	320046	01.2948	20.88
270046	00.9619	14.85	280062	01.0987	13.35	300003	01.9474	23.98	310051	01.3560	24.27	320048	01.2823	14.43
270048	01.1003	18.41	280064	01.0290	15.52	300005	01.2963	20.28	310052	01.2951	22.60	320057	00.9566	
270049	01.7959	20.21	280065	01.2779	18.54	300006	01.1897	19.05	310054	01.3459	24.80	320058	00.7512	
270050	01.0985	17.98	280066	01.0654	12.50	300007	01.1006	18.33	310057	01.3357	21.17	320059	01.0062	
270051	01.3389	21.06	280068	00.9650	09.45	300008	01.2856	19.44	310058	01.1060	24.61	320060	00.8691	
270052	01.0417	17.86	280070	01.0106	11.19	300009	01.1291	19.41	310060	01.2001	18.83	320061	01.1829	
270057	01.2418	18.93	280073	01.0056	13.88	300010	01.1911	19.48	310061	01.2520	21.39	320062	00.8839	
270058	00.9052	13.38	280074	01.1152	14.02	300011	01.3744	22.78	310062	01.3076	20.98	320063	01.3049	16.68
270059	00.7748	15.90	280075	01.1776	13.70	300012	01.3351	21.77	310063	01.3896	21.02	320065	01.2881	16.05
270060	00.9593	15.08	280076	01.0520	13.95	300013	01.1894	17.57	310064	01.3195	24.32	320067	00.8533	15.74
270063	00.9957	14.82	280077	01.3183	17.95	300014	01.2855	19.49	310067	01.3185	22.76	320068	00.9287	16.40
270072	00.8066	13.85	280079	01.0646	10.61	300015	01.2367	18.54	310069	01.2924	22.42	320069	00.9720	10.83
270073	01.1784	11.83	280080	01.1041	13.61	300016	01.2347	18.83	310070	01.4173	23.33	320070	00.9663	
270074	00.8989		280081	01.7829	18.66	300017	01.3038	21.18	310072	01.3090	21.25	320074	01.0956	18.00
270075	00.9172		280082	01.0111	13.50	300018	01.3126	20.22	310073	01.6320	25.21	320079	01.1739	17.24
270076	00.7682		280083	01.0442	14.26	300019	01.2127	19.97	310074	01.4196	22.66	320081	01.1965	25.94
270079	00.8978	13.71	280084	01.0067	11.42	300020	01.3060	20.45	310075	01.4342	24.11	320082	01.4751	25.88
270080	01.1930	16.88	280088	01.7594		300021	01.0885	17.07	310076	01.4454	29.78	320083	01.3224	15.68
270081	01.0272	12.52	280089	01.0559	17.29	300022	01.0547	17.35	310077	01.6821	25.08	320084	01.2944	19.87
270082	01.0743	16.17	280090	00.9608	14.34	300023	01.3847	20.45	310078	01.3970	23.81	320085	01.8198	23.51
270083	01.0915	15.30	280091	01.1064	14.54	300024	01.2611	19.20	310081	01.3268	21.83	320086	01.2708	26.80
270084	00.8820	14.83	280092	00.9797	13.94	300028	01.2139	17.28	310083	01.3087	22.57	320087	01.3120	18.50
280001	01.1071	14.99	280094	01.1321	15.40	300029	01.3666	22.33	310084	01.3916	21.85	320088	01.1599	16.96
280003	02.1164	18.85	280097	00.9649	11.94	300033	01.1353	16.28	310086	01.2187	21.24	320089	01.2889	30.94
280005	01.4013	17.73	280098	00.9699	10.71	300034	02.0334	22.41	310087	01.3224	20.28	320090	01.3763	12.50
280009	01.7524	18.19	280101	01.1002	13.51	310001	01.8034	25.91	310088	01.2207	20.56	320091	01.3000	19.95
280011	00.8691	12.42	280102	00.9272	12.45	310002	01.8222	25.58	310090	01.3629	24.24	320092	01.6985	29.74
280013	01.9321	21.09	280104	00.9947	13.11	310003	01.2776	23.65	310091	01.2907	20.77	320093	02.0896	17.73
280014	00.9234	13.35	280105	01.2732	18.10	310005	01.2322	21.08	310092	01.3142	21.20	320094	01.3552	29.38
280015	01.0353	15.29	280106	00.9818	14.48	310006	01.2754	22.66	310093	01.1682	20.42	320096	01.0658	16.94
280017	01.1197	14.01	280107	01.0910	11.45	310008	01.3528	23.42	310096	01.8816	23.74	320099	01.3051	27.77
280018	01.0384	13.73	280108	01.1303	15.09	310009	01.3133	23.49	310105	01.3010	24.12	320100	01.0469	14.30
280020	01.6464	19.60	280109	00.9214	10.58	310010	01.2849	20.79	310108	01.4365	24.39	320103	01.2634	23.47
280021	01.2618	16.90	280110	01.0019	11.44	310011	01.2108	21.51	310110	01.2714	20.54	320104	01.8333	31.66
280022	01.0382	14.17	280111	01.2495	18.27	310012	01.6589	26.14	310111	01.3831	23.33	320105	01.1052	13.57
280023	01.3988	16.83	280114	00.9200	13.00	310013	01.4193	21.54	310112	01.3408	21.93	320107	01.3596	31.94
280024	00.9571	11.90	280115	00.9323	16.12	310014	01.6973	25.20	310113	01.2698	21.81	320108	01.4711	25.53
280025	00.9430	12.87	280117	01.0899	15.93	310015	01.9538	25.55	310115	01.3332	21.37	320109	01.0082	19.40
280026	01.2113	14.79	280118	00.9335	16.45	310016	01.2558	24.30	310116	01.2758	22.74	320130	01.2557	16.43
280028	01.1079	15.15	280119	00.8703		310017	01.3828	23.95	310118	01.2657	22.78	320133	01.2798	16.86
280029	01.1344	15.52	280123	00.8938		310018	01.1258	21.68	310119	01.7103	30.34	320134	00.6391	30.46
280030	01.7044	27.82	280125	01.2392		310019	01.6672	24.86	310120	01.0971	20.79	320136	01.3056	19.62
280031	01.0150	13.61	290001	01.6935	23.03	310020	01.3887	22.65	320001	01.3857	17.43	320148	01.1546	15.46
280032	01.3002	16.45	290002	00.9128	16.13	310021	01.3817	23.63	320002	01.3670	19.13	320151	01.2340	15.52
280033	01.0406	15.89	290003	01.6810	25.76	310022	01.3156	21.10	320003	01.1238	13.29	320152	01.3043	36.69
280035	01.0337	13.65	290006	01.4874	20.79	310024	01.3022	23.65	320004	01.2792	14.96	320153	01.3194	33.46
280037	01.0415	15.48	290006	01.2561	19.14	310025	01.2009	21.93	320005	01.3531	20.75	320154	01.3085	18.10
280038	01.0023	15.49	290007	01.8502	27.93	310026	01.2043	23.19	320006	01.4170	14.55	320155	01.4176	27.45
280039	01.0489	15.70	290008	01.2147	19.60	310027	01.3265	21.41	320009	01.6244	17.17	320157	01.4603	30.06
280040	01.6269	19.18	290009	01.6221	17.91	310028	01.2526	21.94	320011	01.0077	17.05	320158	01.1772	16.85
280041	00.9134	12.05	290010	01.2399	14.00	310029	01.9458	23.14	320012	00.9824	16.53	320159	01.2917	17.45
280042	01.0344	15.14	290011	00.9015	15.52	310031	02.0675	22.58	320013	01.1521	17.87	320160	01.2386	17.85
280043	01.0147	15.47	290012	01.3753	21.50	310032	01.3467	22.51	320014	01.1514	14.63	320163	01.1874	14.83
280045	01.0969	16.10	290013	01.0527	18.62	310034	01.2580	21.58	320016	01.1211	15.17	320166	01.6244	29.81
280046	01.1072	12.37	290014	00.9699	17.46	310036	01.1893	19.11	320017	01.2111	16.75	320167	01.4395	30.22
280047	01.0907	18.01	290015	00.9197	15.18	310037	01.3653	27.57	320018	01.5827	18.43	320169	01.8783	18.74
280048	01.2131	13.82	290016	01.1837	22.67	310038	01.9545	26.13	320019	01.4848	19.57	320171	01.3057	18.66
280049	01.0412	15.08	290019	01.3426	19.74	310039	01.2827	21.22	320021	01.7502	17.99	320175	01.5787	33.67
280050	00.9263	13.71	290020	01.0445	17.29	310040	01.2393	23.99	320022	01.2213	16.24	320177	01.3166	24.36

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
330062	01.0733	17.10	330179	00.9045	14.60	330275	01.2903	22.06	340031	01.0066	12.83	340129	01.2985	18.11
330064	01.4892	32.11	330180	01.1983	16.27	330276	01.1685	17.92	340032	01.3624	18.77	340130	01.3225	19.83
330065	01.2030	18.54	330181	01.3528	31.07	330277	01.1085	16.57	340035	01.1531	17.23	340131	01.5209	18.16
330066	01.2766	17.96	330182	02.5453	30.48	330279	01.3577	19.05	340036	01.2139	18.25	340132	01.3266	16.27
330067	01.3948	20.64	330183	01.4677	19.94	330285	01.8458	22.66	340037	01.0873	14.46	340133	01.1268	14.74
330072	01.4097	29.92	330184	01.3264	27.58	330286	01.3379	24.38	340038	01.1012	16.66	340137	01.1310	15.62
330073	01.2255	15.82	330185	01.2827	24.72	330290	01.6841	32.27	340039	01.2681	19.88	340138	01.0625	16.94
330074	01.3127	17.25	330186	00.5618	20.30	330293	01.1953	15.09	340040	01.8191	18.61	340141	01.7229	20.28
330075	01.0589	17.73	330188	01.1830	18.71	330304	01.2338	27.04	340041	01.2094	17.89	340142	01.2350	15.79
330078	01.4268	17.96	330189	01.3232	16.54	330306	01.4266	28.10	340042	01.2260	15.70	340143	01.4228	19.62
330079	01.2427	17.22	330191	01.3283	18.17	330307	01.2663	19.23	340044	01.1020	18.87	340144	01.3656	18.96
330080	01.3325	27.06	330193	01.3516	28.64	330314	01.3785	21.50	340045	00.9956	14.02	340145	01.4314	18.88
330084	01.0696	17.68	330194	01.7808	31.20	330315	16.0413	30.36	340047	01.8288	19.42	340146	01.1145	14.28
330085	01.2974	18.59	330195	01.6416	31.94	330316	01.3084	22.23	340048	01.0275	05.23	340147	01.2535	19.21
330086	01.2666	26.87	330196	01.2608	27.80	330327	00.9713	16.98	340049	01.0355	17.75	340148	01.4937	18.55
330088	01.0531	22.43	330197	01.1287	16.79	330331	01.3121	29.10	340050	01.2003	17.95	340151	01.2078	15.67
330090	01.5991	17.92	330198	01.3837	23.21	330332	01.2892	26.99	340051	01.3356	16.79	340153	01.8814	19.87
330091	01.3584	18.01	330199	01.3382	25.90	330333	01.2444	51.91	340052	01.0223	21.14	340155	01.3640	21.24
330092	01.0542	14.25	330201	01.6866	40.72	330336	01.3094	30.29	340053	01.6440	19.44	340156	00.7966	
330094	01.2399	17.06	330202	01.3886	27.41	330338	01.2333	20.97	340054	01.2239	14.35	340158	01.1278	16.49
330095	01.2452	18.40	330203	01.3959	19.61	330339	00.9320	18.87	340055	01.2769	17.40	340159	01.1375	16.21
330096	01.1887	15.81	330204	01.3552	28.88	330340	01.2344	22.43	340060	01.1293	17.75	340160	01.1672	14.11
330097	01.2171	15.32	330205	01.1763	19.85	330350	01.6747	28.46	340061	01.7280	20.31	340162	01.1787	16.56
330100	00.7936	28.03	330208	01.2263	26.41	330353	01.2772	31.43	340063	01.0171	22.75	340164	01.4579	20.69
330101	01.8106	30.39	330209	01.1811	24.53	330354	01.5676		340064	01.2364	17.05	340166	01.2776	19.58
330102	01.3312	17.00	330211	01.2029	18.46	330357	01.3809	34.81	340065	01.2854	15.89	340168	00.4875	15.15
330103	01.2449	16.63	330212	01.1468	24.26	330359	00.9373	29.31	340067	01.1587	18.20	340171	01.2031	
330104	01.4313	27.89	330213	01.1701	18.39	330372	01.1964	22.25	340068	01.2139	16.56	340173	01.2130	
330106	01.6949	34.04	330214	01.8173	31.94	330381	01.2852	29.21	340069	01.8495	20.34	350001	00.9857	14.51
330107	01.3314	26.04	330215	01.2026	17.11	330385	01.1940	29.15	340070	01.3026	18.49	350002	01.8548	16.86
330108	01.2467	16.97	330218	01.0527	20.44	330386	01.2158	23.26	340071	01.0889	15.86	350003	01.1701	16.63
330111	01.0751	15.08	330219	01.6629	29.87	330387	00.7923	30.68	340072	01.1279	15.86	350004	01.9174	18.34
330114	00.9490	15.82	330221	01.2904	29.07	330389	01.7245	31.92	340073	01.5386	19.84	350005	01.0598	14.07
330115	01.2405	16.12	330222	01.2606	18.36	330390	01.3751	31.67	340075	01.1939	16.88	350006	01.5142	16.25
330116	00.9611	15.34	330223	01.0770	16.39	330393	01.7444	25.45	340080	01.0339	15.49	350007	00.8879	13.24
330118	01.6591	20.00	330224	01.2569	21.50	330394	01.5407	18.21	340084	01.0889	16.12	350008	00.9420	16.74
330119	01.7636	32.85	330225	01.1739	24.76	330395	01.3488	33.16	340085	01.1663	16.33	350009	01.1468	17.04
330121	01.0383	15.12	330226	01.2590	17.82	330396	01.1754	31.55	340087	01.1169	16.53	350010	01.1050	13.74
330122	01.0650	22.97	330229	01.3257	16.25	330397	01.3150	30.46	340088	01.1258	18.13	350011	01.8836	20.64
330125	01.9179	20.66	330230	01.3791	29.27	330398	01.3550	29.49	340089	01.0120	13.83	350012	01.1086	13.55
330126	01.1519	22.70	330231	01.0674	19.53	330399	01.2625	29.60	340090	01.1444	17.83	350013	01.1051	16.53
330127	01.3403	29.65	330232	01.2445	17.76	340001	01.4796	17.91	340091	01.7002	19.89	350014	00.9841	13.14
330128	01.2625	29.68	330233	01.4948	30.49	340002	01.8416	18.45	340093	01.0697	13.96	350015	01.7381	16.56
330132	01.2001	13.55	330234	02.3119	31.88	340003	01.1252	17.14	340094	01.4789	18.27	350016	01.0963	11.47
330133	01.3701	34.67	330235	01.1204	19.21	340004	01.4483	18.79	340096	01.1483	17.40	350017	01.3990	16.68
330135	01.1994	19.14	330236	01.4074	28.47	340005	01.1650	14.89	340097	01.1445	17.69	350018	01.0846	17.83
330136	01.2894	19.26	330238	01.1749	15.02	340006	01.0428	14.76	340098	01.6889	19.32	350019	01.6863	18.72
330140	01.7769	18.58	330239	01.1666	16.21	340007	01.1704	16.96	340099	01.2134	13.03	350021	01.0260	12.00
330141	01.3850	24.49	330240	01.3279	27.67	340008	01.1373	17.84	340101	01.0627	11.87	350023	00.9286	15.16
330144	00.9394	15.19	330241	01.9705	21.51	340010	01.2998	17.56	340104	00.9970	11.37	350024	01.0368	16.47
330146	01.0767	15.47	330242	01.3423	25.14	340011	01.1622	15.71	340105	01.3725	18.85	350025	01.0095	14.00
330151	01.1172	14.66	330245	01.3076	17.00	340012	01.3162	17.04	340106	01.2505	20.04	350027	00.9540	14.46
330152	01.4137	30.10	330246	01.3839	25.91	340013	01.2800	17.33	340107	01.3591	17.08	350029	00.8728	12.98
330153	01.7338	16.97	330247	00.9015	27.38	340014	01.5587	22.23	340109	01.3186	17.38	350030	01.0496	16.65
330154	01.7268		330249	01.1933	16.18	340015	01.3007	20.37	340111	01.1989	14.63	350033	00.9198	14.40
330157	01.3501	19.72	330250	01.2870	17.98	340016	01.1912	16.24	340112	00.9917	15.24	350034	00.9924	17.45
330158	01.4999	20.48	330252	00.9461	16.84	340017	01.2474	14.31	340113	01.8577	20.59	350035	00.9005	10.21
330159	01.2907	17.88	330254	01.1696	17.12	340018	01.2456	16.25	340114	01.5500	20.34	350038	01.0922	15.28
330160	01.4736	29.42	330258	01.3355	30.01	340019	01.0224	20.26	340115	01.5723	19.35	350039	01.0288	14.75
330162	01.2185	27.06	330259	01.5025	23.47	340020	01.1977	19.04	340116	01.8178	19.81	350042	01.0442	17.60
330163	01.1905	19.14	330261	01.2944	26.17	340021	01.2336	17.51	340119	01.2970	16.41	350042	01.1142	15.19
330164	01.4954	19.87	330263	01.0305	17.91	340022	01.0586	16.91	340120	01.0817	13.56	350043	01.5670	14.65
330166	01.0125	13.56	330264	01.2135	21.71	340023	01.3771	17.77	340121	01.0648	15.43	350044	00.8768	11.49
330167	01.6539	29.65	330265	01.3931	16.33	340024	01.1393	16.33	340123	01.0905	15.57	350047	01.1941	16.54
330169	01.4639	32.41	330267	01.3643	23.95	340025	01.3324	15.47	340124	01.0127	13.96	350049	01.3354	13.86
330171	01.4007	23.94	330268	00.9663	15.02	340027	01.2058	16.89	340125	01.4796	16.50	350050	00.9591	11.89
330175	01.1894	15.10	330270	01.9872	31.03	340028	01.5976	16.85	340126	01.3940	16.50	350051	00.9832	15.74
330177	00.9633	14.78	330273	01.3059	25.72	340030	02.0173	21.06	340127	01.3339	17.51	350053	01.0116	11.88

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
350055	00.9999	13.78	360074	01.3337	18.00	360159	01.2116	19.84	370029	01.2602	13.51	370149	01.2900	15.69
350056	00.9564	13.88	360075	01.4441	21.40	360161	01.2549	13.89	370030	01.1832	16.49	370153	01.0658	14.06
350058	00.9230	12.18	360076	01.3645	18.64	360163	01.8032	20.26	370032	01.5887	16.17	370154	01.0434	14.12
350060	00.8587	08.80	360077	01.5831	19.38	360164	00.9634	15.60	370033	01.0599	12.34	370156	01.0577	17.29
350061	01.0645	15.31	360078	01.2491	19.90	360165	01.1732	17.81	370034	01.2337	14.36	370158	01.0253	12.09
350063	00.8843	15.31	360079	01.8666	21.04	360166	01.1873	18.01	370035	01.6429	16.77	370159	01.3951	15.05
350064	00.8364	15.31	360080	01.1462	15.68	360170	01.3808	16.53	370036	01.0721	10.54	370163	01.0022	14.57
360001	01.3790	17.65	360081	01.3761	19.70	360172	01.3455	17.89	370037	01.7160	18.63	370165	01.1291	11.97
360002	01.1925	17.82	360082	01.3254	23.27	360174	01.3284	18.44	370038	01.0062	11.68	370166	01.1323	15.55
360003	01.7561	22.14	360084	01.6045	20.53	360175	01.1937	20.19	370039	01.2618	13.93	370169	01.0593	11.91
360006	01.8372	20.93	360085	01.8333	21.47	360176	01.1290	15.34	370040	01.0977	15.04	370170	01.0046	11.91
360007	01.0627	15.95	360086	01.4331	17.81	360177	01.2931	18.27	370041	00.9733	16.47	370171	01.0182	11.91
360008	01.2396	17.78	360087	01.4291	18.51	360178	01.2433	17.16	370042	00.8835	13.98	370172	00.9229	11.91
360009	01.4867	17.38	360088	01.3676	19.09	360179	01.3391	19.50	370043	00.9443	15.18	370173	01.1000	11.91
360010	01.2461	17.09	360089	01.1769	17.84	360180	02.1577	23.00	370045	00.9900	09.83	370174	00.7547	11.91
360011	01.3403	18.91	360090	01.2425	19.75	360184	00.4293	18.78	370046	00.9817	10.89	370176	01.2219	16.29
360012	01.3150	19.72	360091	01.2836	20.40	360185	01.2259	18.13	370047	01.3904	15.04	370177	00.9737	10.48
360013	01.1386	18.36	360092	01.1263	19.47	360186	01.1539	10.45	370048	01.2228	15.40	370178	01.0021	11.20
360014	01.2083	18.87	360093	01.1654	17.64	360187	01.4085	17.87	370049	01.3327	15.44	370179	00.7441	15.19
360016	01.8147	18.36	360094	01.3940	18.15	360188	00.9725	17.11	370051	00.9867	11.30	370180	00.9135	15.19
360017	01.8633	21.51	360095	01.2581	19.83	360189	01.1592	16.98	370054	01.4896	16.32	370183	01.0309	10.35
360018	01.8285	19.87	360096	01.1266	17.46	360192	01.3663	21.31	370056	01.5245	18.44	370186	00.9921	13.32
360019	01.2657	21.76	360098	01.4265	18.26	360193	01.2971	16.98	370057	01.1165	15.27	370190	01.5486	26.42
360020	01.4424	20.72	360099	01.0479	19.53	360194	01.2855	17.89	370059	01.0974	17.49	370192	01.2229	16.30
360024	01.3762	17.75	360100	01.2888	18.00	360195	01.1587	19.33	370060	01.1260	13.90	370196	00.8240	16.30
360025	01.3562	19.40	360101	01.3901	21.04	360197	01.1688	19.16	370063	01.1782	16.95	370197	00.9846	16.30
360026	01.3485	16.21	360102	01.2969	19.19	360200	01.0276	15.62	370064	00.9593	10.71	370198	01.7997	16.30
360027	01.4597	20.14	360103	01.3578	19.87	360203	01.2094	14.41	370065	00.9924	15.36	370199	01.2902	18.13
360028	01.4846	17.21	360106	01.1021	16.08	360204	01.2422	19.09	370071	01.0530	10.05	380002	01.2715	18.07
360029	01.1846	17.74	360107	01.2417	17.37	360210	01.2012	20.81	370072	00.8635	14.04	380003	01.2260	28.86
360030	01.2891	16.67	360108	01.0913	16.45	360211	01.2671	19.64	370076	01.2612	12.45	380004	01.7003	23.04
360031	01.2807	19.33	360109	01.1094	18.64	360212	01.3941	20.16	370078	01.7411	18.08	380005	01.2187	22.81
360032	01.0729	17.87	360112	01.8012	23.33	360213	01.2686	18.05	370079	00.9634	15.91	380006	01.2870	19.61
360034	01.3225	14.77	360113	01.3630	15.36	360218	01.3047	18.29	370080	00.9738	14.18	380007	01.6852	24.92
360035	01.6186	20.73	360114	01.1017	17.48	360230	01.5624	21.16	370082	00.9220	13.86	380008	01.0543	19.56
360036	01.3579	19.04	360115	01.2554	17.92	360231	01.1494	12.39	370083	00.9508	12.81	380009	01.8821	22.90
360037	02.0580	21.38	360116	01.0983	17.49	360234	01.3469	18.44	370084	01.0827	13.65	380010	01.0520	22.58
360038	01.5828	20.60	360118	01.3521	18.34	360236	01.2883	25.36	370085	00.8717	13.21	380011	01.0490	19.05
360039	01.3135	17.40	360121	01.2409	19.22	360239	01.3034	19.85	370086	01.1713	11.51	380013	01.3177	20.62
360040	01.3495	17.81	360123	01.2744	19.33	360241	00.4699	21.14	370089	01.2580	15.23	380014	01.6295	22.02
360041	01.3392	18.83	360125	01.0992	17.41	360242	01.8068	18.00	370091	01.7259	19.18	380017	01.9390	25.87
360042	01.1862	18.02	360126	01.2179	20.75	360243	00.7287	14.26	370092	01.0247	14.09	380018	01.8034	20.94
360044	01.1205	15.83	360127	01.1844	17.85	360245	00.7295	15.21	370093	01.8539	17.71	380019	01.2880	21.45
360045	01.4762	20.73	360128	01.1314	15.05	360247	00.4184	15.00	370094	01.5130	19.25	380020	01.5022	21.41
360046	01.1449	17.71	360129	00.9665	15.12	360248	01.7504	17.00	370095	00.9994	11.75	380021	01.2890	21.57
360047	01.1368	14.51	360130	01.1237	15.93	370001	01.7845	20.06	370097	01.3708	17.38	380022	01.1715	22.57
360048	01.8279	21.60	360131	01.3442	18.99	370002	01.1524	13.71	370099	01.1771	14.07	380023	01.2243	18.43
360049	01.1856	19.60	360132	01.4255	18.28	370004	01.2310	16.67	370100	01.0076	14.49	380025	01.3449	25.35
360050	01.0987	12.40	360133	01.5948	18.70	370005	01.0032	14.07	370103	00.9320	16.27	380026	01.1604	19.09
360051	01.6396	23.55	360134	01.7247	20.07	370006	01.2654	15.48	370105	01.9777	18.43	380027	01.2943	22.82
360052	01.7665	18.65	360136	01.0811	16.90	370007	01.2216	14.36	370106	01.5469	18.37	380029	01.1592	18.33
360054	01.2934	16.53	360137	01.6532	19.95	370008	01.3784	17.77	370108	01.1298	11.81	380031	00.9808	22.48
360055	01.2577	19.64	360140	00.9788	16.21	370011	01.0524	12.91	370112	01.0696	14.65	380033	01.7744	24.22
360056	01.4280	20.89	360141	01.5661	23.32	370012	00.8733	09.87	370113	01.1887	15.11	380035	01.2910	21.53
360057	01.1603	15.46	360142	01.0197	16.62	370013	01.8435	19.24	370114	01.6464	15.79	380036	01.0585	20.79
360058	01.2702	17.56	360143	01.4294	19.90	370014	01.2842	19.35	370121	01.1723	16.84	380037	01.2761	20.52
360059	01.6935	21.65	360144	01.3319	19.89	370015	01.2181	17.16	370122	01.1283	12.45	380038	01.3383	25.28
360062	01.5157	20.52	360145	01.6848	18.18	370016	01.3747	16.52	370123	01.3288	17.25	380039	01.3184	21.50
360063	01.1355	18.29	360147	01.2300	16.40	370017	01.1872	11.23	370125	00.9809	12.01	380040	01.2643	21.08
360064	01.6110	21.73	360148	01.1746	17.80	370018	01.3459	18.25	370126	00.9821	12.07	380042	01.0847	17.33
360065	01.2978	18.23	360149	01.2144	18.68	370019	01.3577	14.79	370131	00.9588	15.71	380047	01.7005	21.15
360066	01.5064	18.92	360150	01.2785	20.02	370020	01.3041	11.86	370133	01.1458	11.04	380048	01.0727	15.35
360067	01.1473	13.48	360151	01.3441	17.15	370021	00.9234	10.38	370138	01.0828	15.12	380050	01.4632	18.30
360068	01.7403	21.49	360152	01.5138	19.73	370022	01.3220	17.34	370139	01.1101	11.70	380051	01.6000	20.79
360069	01.1413	17.25	360153	01.1322	13.86	370023	01.3350	16.03	370140	01.0074	11.92	380052	01.2194	17.97
360070	01.6991	16.22	360154	01.0127	13.29	370025	01.3416	16.09	370141	01.3413	15.22	380055	01.0479	25.16
360071	01.3655	14.35	360155	01.3655	20.38	370026	01.4980	16.66	370146	01.1663	11.23	380056	01.1095	16.82
360072	01.2294	17.52	360156	01.2889	18.45	370028	01.9096	20.31	370148	01.4901	27.04	380060	01.4546	22.68

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
380061	01.5010	21.24	390054	01.1925	16.20	390138	01.3274	17.99	390242	01.3211	18.77	400120	01.3210	09.45
380062	01.2271	18.32	390055	01.8803	26.53	390139	01.5292	23.00	390244	00.9008	12.10	400121	00.9061	06.57
380063	01.2396	18.55	390056	01.1583	16.53	390142	01.8012	28.56	390245	01.4283	21.37	400122	01.0071	07.20
380064	01.3645	18.24	390057	01.3181	19.58	390145	01.3627	20.30	390246	01.2381	17.91	400123	01.1923	08.39
380065	01.2612	22.48	390058	01.2736	18.64	390146	01.2696	16.85	390247	01.0888	20.42	400124	02.6899	11.00
380066	01.3314	20.01	390060	01.2044	16.88	390147	01.2520	20.55	390249	01.0817	12.79	410001	01.3885	21.15
380068	00.9929	21.71	390061	01.5126	20.08	390150	01.1850	20.98	390256	01.8065	24.05	410004	01.3542	21.95
380069	01.1237	19.35	390062	01.1873	16.43	390151	01.2236	19.88	390258	01.3894	20.71	410005	01.3893	22.97
380070	01.3656	25.32	390063	01.7711	20.19	390152	01.0833	17.35	390260	01.2324	23.05	410006	01.3047	21.58
380071	01.2885	20.13	390065	01.2445	19.95	390153	01.2347	22.04	390262	01.8663	18.17	410007	01.6896	21.22
380072	00.9525	16.03	390066	01.2979	19.58	390154	01.2149	17.37	390263	01.4746	19.75	410008	01.2641	20.03
380075	01.3760	19.99	390067	01.7841	19.97	390158	01.4353	20.56	390265	01.3029	19.06	410009	01.3206	23.53
380078	00.9440	18.28	390068	01.3034	19.04	390157	01.3790	18.98	390266	01.2200	16.95	410010	01.0628	26.80
380081	01.1300	18.28	390069	01.3366	20.08	390158	01.5582	19.47	390267	01.3089	19.01	410011	01.2360	23.92
380082	01.3109	21.55	390070	01.3343	19.37	390160	01.2930	19.68	390268	01.3484	21.17	410012	01.8346	21.15
380083	01.2950	21.90	390071	01.0930	15.04	390161	01.1318	13.75	390270	01.3596	17.08	410013	01.2926	24.44
380084	01.2579	21.98	390072	01.0866	15.49	380162	01.5617	21.02	390272	00.4562		420002	01.3852	21.83
380087	01.0848	12.91	390073	01.6243	19.82	390163	01.2249	16.11	390277	00.5292	23.14	420004	01.8530	18.30
380088	01.0227	18.65	390074	01.2608	16.82	390184	02.1585	22.59	390278	00.6728	16.94	420005	01.1718	15.14
380089	01.3275	23.82	390075	01.3632	17.48	390166	J1.1125	18.97	390279	01.0386	14.40	420006	01.1714	17.66
380090	01.2856	25.49	390076	01.4253	21.97	390167	01.3655	21.84	400001	01.2646	09.39	420007	01.5056	17.78
380091	01.3021	24.95	390078	01.0805	16.92	390168	01.2845	18.12	400002	01.6156	10.99	420009	01.2431	17.01
390001	01.4101	21.89	390079	01.7802	17.91	390169	01.2814	18.85	400003	01.3181	06.34	420010	01.2029	15.22
390002	01.2997	19.71	390080	01.3128	18.40	390170	01.8882	21.93	400004	01.1998	08.16	420011	01.1862	15.88
390003	01.2251	17.48	390081	01.3443	21.33	390173	01.2026	17.81	400005	01.0804	06.50	420014	01.0521	15.49
390004	01.3957	17.68	390083	01.2260	17.49	390174	01.6821	28.75	400006	01.2047	07.82	420015	01.3602	17.27
390005	01.0449	16.58	390084	01.1848	15.92	390176	01.1634	18.54	400007	01.1616	07.13	420016	00.9967	14.27
390006	01.7963	18.43	390086	01.1623	17.91	390178	01.3125	19.14	400009	01.0382	07.64	420018	01.8076	19.64
390007	01.2165	20.24	390088	01.3418	21.04	390179	01.3565	21.31	400010	00.9135	10.07	420019	01.1909	14.81
390008	01.1475	16.70	390090	01.7964	20.56	390180	01.4771	23.13	400011	01.0608	07.81	420020	01.2623	17.58
390009	01.6945	19.72	390091	01.1404	18.52	390181	01.0478	19.10	400012	01.1906	07.89	420023	01.4452	19.27
390010	01.2666	16.99	390093	01.1546	15.95	390183	01.1759	18.03	400013	01.2834	08.06	420026	01.8876	18.73
390011	01.2805	18.32	390095	01.2041	15.21	390184	01.1047	18.24	400014	01.3803	08.68	420027	01.3581	17.34
390012	01.2209	19.43	390096	01.5027	17.87	390185	01.2232	17.20	400015	01.3729		420030	01.2949	17.49
390013	01.2405	18.14	390097	01.2959	22.07	390189	01.1429	19.19	400016	01.3717	11.37	420031	00.9613	12.23
390015	01.1529	13.06	390100	01.6655	20.58	390191	01.2270	16.80	400017	01.2069	06.56	420033	01.2721	19.24
390016	01.2456	17.76	390101	01.2042	17.62	390192	01.1586	15.84	400018	01.2977	09.29	420036	01.4355	18.46
390017	01.2175	15.86	390102	01.3763	19.60	390193	01.2088	17.26	400019	01.7668	09.58	420037	01.1963	21.60
390018	01.3160	19.28	390103	01.1383	18.62	390194	01.1410	16.95	400021	01.4606	09.43	420038	01.3331	15.74
390019	01.1409	16.01	390104	01.0956	14.75	390195	01.8448	22.62	400022	01.3456	11.18	420039	01.1544	16.21
390022	01.3648	20.49	390106	01.0527	15.98	390196	01.3776		400024	01.0267	07.45	420042	01.1022	14.56
390023	01.2385	18.03	390107	01.3456	19.43	390197	01.3002	17.87	400026	00.9852	06.04	420043	01.2299	18.79
390024	01.0879	23.53	390108	01.3678	19.21	390198	01.2119	15.83	400027	01.1410	08.07	420046	01.2492	13.44
390025	00.6397	15.37	390109	01.2783	14.91	390199	01.3245	15.86	400028	01.0099	07.98	420049	01.1743	16.46
390026	01.3006	21.98	390110	01.6319	19.36	390200	01.0981	17.18	400029	01.0884	10.05	420051	01.6278	17.99
390027	01.8620	26.88	390111	01.8454	29.97	390201	01.2808	20.12	400031	01.2349	09.50	420053	01.1996	16.08
390028	01.8946	19.73	390112	01.2860	13.72	390203	01.3856	22.12	400032	01.2496	08.99	420054	01.2963	17.01
390029	01.9719	18.87	390113	01.2274	17.00	390204	01.3041	20.57	400044	01.1780	09.84	420055	01.0131	15.72
390030	01.2422	18.37	390114	01.2178	21.25	390206	01.3925	19.09	400048	01.1548	08.23	420056	01.0853	13.21
390031	01.1866	18.45	390115	01.3792	23.95	390209	01.0899	16.37	400061	01.6558	14.42	420057	01.1687	14.71
390032	01.2567	19.11	390116	01.2709	23.74	390211	01.2499	18.17	400079	01.2819	10.43	420059	00.9796	15.11
390035	01.2478	17.14	390117	01.1848	16.84	390213	01.1615	19.15	400087	01.4420	10.90	420061	01.1681	17.58
390036	01.4518	19.18	390118	01.1802	16.48	390215	01.2938	24.51	400094	01.0401	06.88	420062	01.4640	15.81
390037	01.3834	19.24	390119	01.3516	18.05	390217	01.2323	20.29	400098	01.3576	08.48	420064	01.1124	14.50
390039	01.1357	16.31	390121	01.3576	19.61	390219	01.3267	19.86	400102	01.1698	04.27	420065	01.3464	18.10
390040	00.9663	16.73	390122	01.1007	18.49	390220	01.2025	18.22	400103	01.4518	09.30	420066	00.9577	16.65
390041	01.2908	18.92	390123	01.3805	20.31	390222	01.2859	20.89	400104	01.3442	09.05	420067	01.2622	18.10
390042	01.5647	21.41	390125	01.2001	15.48	390223	01.5318	22.49	400105	01.2514	08.85	420068	01.4309	17.58
390043	01.1558	18.18	390126	01.2793	19.94	390224	00.9047	15.35	400106	01.2522	08.81	420069	01.0556	18.03
390044	01.8721	19.24	390127	01.2446	21.39	390225	01.1782	17.76	400109	01.4903	09.61	420070	01.2279	16.89
390045	01.8045	17.60	390128	01.2398	19.93	390226	01.7896	23.48	400110	01.0649	06.99	420071	01.3120	18.25
390046	01.5550	20.26	390130	01.1635	16.56	390228	01.1917	19.19	400111	01.1917	08.80	420072	00.9800	11.63
390047	01.9134	30.25	390131	01.3111	16.73	390231	01.4331	24.08	400112	01.1131	06.91	420073	01.3017	20.68
390048	01.1814	18.12	390132	01.2825	22.21	390233	01.3151	18.31	400113	01.2139	06.29	420074	01.0054	13.73
390049	01.6700	21.29	390133	01.8226	22.97	390235	01.5371	23.51	400114	01.0730	06.19	420075	00.9408	13.75
390050	02.1813	22.47	390135	01.2353	21.87	390236	01.1865	16.40	400115	01.0700	06.58	420078	01.8491	21.18
390051	02.1743	25.86	390136	01.1261	15.10	390237	01.6160	19.08	400117	01.1921	09.36	420079	01.5774	19.07
390052	01.1794	15.47	390137	01.5138	16.40	390238	01.4870	18.78	400118	01.2634	10.06	420080	01.3760	24.17

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
420082	01.5220	18.32	440011	01.3887	17.79	440135	01.2276	19.84	450039	01.4508	17.93	450150	00.9615	10.86
420083	01.2939	19.79	440012	01.6038	18.49	440137	01.0953	13.42	450040	01.5337	17.64	450151	01.1421	15.82
420085	01.4964	17.31	440014	00.9585	14.66	440141	01.0489	16.14	450042	01.7796	17.20	450152	01.2733	16.88
420086	01.4475	18.16	440015	01.7375	15.39	440142	01.0746	12.75	450044	01.5602	20.09	450153	01.5917	18.67
420087	01.6840	18.21	440016	01.0127	12.68	440143	01.0957	17.21	450046	01.4559	12.99	450154	01.1522	14.43
420088	01.1409	16.23	440017	01.7209	19.76	440144	01.2961	17.79	450047	01.1070	11.09	450155	01.0382	24.42
420089	01.2826	21.79	440018	01.3665	16.68	440145	00.9607	13.88	450050	00.9968	11.53	450157	01.1365	15.32
420091	01.2793	16.06	440019	01.6964	20.11	440147	01.5847	16.28	450051	01.6355	19.77	450160	00.9535	15.51
420093	01.0268	16.77	440020	01.2407	15.60	440148	01.1655	18.26	450052	01.0576	13.42	450162	01.2604	21.24
430004	01.1554	16.77	440023	01.1507	14.25	440149	01.1555	14.35	450053	01.0823	14.15	450163	01.0682	16.72
430005	01.3595	15.32	440024	01.3297	17.96	440150	01.3246	18.41	450054	01.6306	21.89	450164	01.2194	14.62
430007	01.0638	13.91	440025	01.2064	13.85	440151	01.3017	17.89	450055	01.0921	12.18	450165	01.0931	13.25
430008	01.1481	16.06	440029	01.3155	17.57	440152	01.8871	18.01	450056	01.8523	16.13	450166	00.9362	10.68
430010	01.1348	14.54	440030	01.2445	13.96	440153	01.2219	16.01	450058	01.6081	16.97	450169	00.7896	12.56
430011	01.2481	15.59	440031	01.0365	13.97	440156	01.5838	22.45	450059	01.3520	13.67	450170	00.9586	11.25
430012	01.3134	16.94	440032	01.0487	14.25	440157	01.0574	15.33	450063	00.9136	12.64	450176	01.3488	14.31
430013	01.2626	16.44	440033	01.1447	11.81	440159	01.3462	13.80	450064	01.4496	15.32	450177	01.2792	13.51
430014	01.3447	18.19	440034	01.5852	19.30	440161	01.9004	19.94	450065	01.1111	19.22	450178	00.9892	13.80
430015	01.1468	16.06	440035	01.2851	17.58	440166	01.6175	18.67	450068	01.8913	24.40	450181	01.0425	19.19
430016	01.8286	18.86	440039	01.7990	18.40	440168	01.0818	16.29	450072	01.2252	19.03	450184	01.5030	23.29
430018	00.9273	14.23	440040	01.0268	14.47	440173	01.6639	17.92	450073	01.2014	18.74	450185	01.0475	10.84
430022	00.9234	11.89	440041	01.0192	12.50	440174	01.0421	15.12	450076	01.6720	19.74	450187	01.2512	19.67
430023	00.9009	11.59	440046	01.2308	14.28	440175	01.1542	17.31	450078	00.9841	9.74	450188	01.0367	14.02
430024	01.0343	14.51	440047	00.9274	16.03	440176	01.4262	19.42	450079	01.4681	20.51	450191	01.0301	19.15
430027	01.7770	18.58	440048	01.8485	18.82	440178	01.2426	22.63	450080	01.2200	17.44	450192	01.2312	17.99
430028	01.0635	15.50	440049	01.6623	17.56	440190	01.2421	16.19	450081	01.0655	15.61	450193	02.0166	22.67
430029	01.0237	15.69	440050	01.3806	16.99	440181	01.0545	10.98	450082	01.0038	13.31	450194	01.2934	20.99
430031	00.9251	12.23	440051	00.9613	14.08	440182	00.9998	16.20	450083	01.7323	19.48	450196	01.4438	17.07
430033	00.9806	13.99	440052	01.1465	15.14	440183	01.5912	20.71	450085	01.0847	12.24	450200	01.4043	14.95
430034	01.0590	12.76	440053	01.3823	17.37	440184	01.3803	19.32	450087	01.4908	17.64	450201	01.0004	17.33
430036	01.0975	12.56	440054	01.1902	13.52	440185	01.2481	18.83	450090	01.2450	13.44	450203	01.2382	18.28
430037	00.8770	14.57	440056	01.1204	14.40	440186	01.0953	17.87	450092	01.2228	12.47	450209	01.5951	18.25
430038	00.9865	11.26	440057	01.0459	12.35	440187	01.2081	15.76	450094	01.3052	13.02	450210	01.1066	13.17
430040	01.0299	13.59	440058	01.2301	15.98	440189	01.5755	18.56	450096	01.4605	16.91	450211	01.3831	16.37
430041	00.9403	14.87	440059	01.3550	13.94	440192	01.2296	16.54	450097	01.4472	18.03	450213	01.6843	16.75
430043	01.1678	12.87	440060	01.2762	16.56	440193	01.2803	17.93	450098	01.1799	16.58	450214	01.3531	19.24
430044	00.8239	16.48	440061	01.2361	17.43	440194	01.2787	22.50	450099	01.2415	17.53	450217	01.0704	11.12
430047	01.0575	14.80	440063	01.6979	18.02	440197	01.3863	19.25	450101	01.4681	16.40	450219	01.1743	12.93
430048	01.2187	17.49	440064	01.1639	17.44	440200	01.1095	16.93	450102	01.7052	17.78	450221	01.2410	19.52
430049	00.8976	13.24	440065	01.2574	19.20	440203	00.9488	14.18	450104	01.1807	14.62	450222	01.5738	17.18
430051	00.9900	16.00	440067	01.2538	17.02	440205	01.1295	14.78	450107	01.6561	19.78	450224	01.3931	21.57
430054	01.0254	13.60	440068	01.2810	17.51	440206	01.0269	17.93	450108	00.9943	13.51	450229	01.6431	15.88
430056	00.8484	13.33	440070	01.0737	15.47	440210	00.8638	14.10	450109	00.9201	14.10	450231	01.6402	17.02
430057	00.8887	13.52	440071	01.3827	15.29	440211	00.8634	14.10	450110	01.3519	18.61	450234	01.0158	11.70
430060	00.9648	09.05	440072	01.4283	17.03	450002	01.5007	16.87	450111	01.2674	19.21	450235	01.0278	13.81
430064	01.1062	13.30	440073	01.3083	16.15	450004	01.1706	13.46	450112	01.3283	14.83	450236	01.1414	12.89
430066	00.9328	12.75	440078	01.0126	12.13	450005	01.2847	14.90	450113	01.2951	16.69	450237	01.5569	16.22
430073	01.0259	15.30	440081	01.1637	14.99	450007	01.2371	18.19	450118	01.5992	18.24	450239	01.0932	16.23
430076	00.9397	11.72	440082	02.0438	21.84	450008	01.3035	15.35	450119	01.4448	19.05	450241	00.9370	17.05
430077	01.6490	17.05	440083	01.1524	12.07	450010	01.3484	15.69	450121	01.5409	18.89	450243	00.9835	11.45
430079	00.9894	13.32	440084	01.1534	13.82	450011	01.5105	16.02	450123	01.1160	18.35	450249	00.9517	10.86
430081	00.8564	13.24	440091	01.6220	18.42	450014	01.0623	15.48	450124	01.7023	18.45	450250	00.9991	15.66
430082	00.9185	13.24	440100	01.0732	14.88	450015	01.6551	16.86	450126	01.4337	17.01	450253	01.1681	12.65
430083	00.7926	13.24	440102	01.1389	13.79	450016	01.5914	18.01	450128	01.2114	13.18	450258	01.0492	12.74
430084	00.8631	13.24	440103	01.2114	17.04	450018	01.4744	20.02	450130	01.4736	18.04	450264	00.8597	15.18
430085	00.8586	13.24	440104	01.6329	18.95	450020	00.9726	16.92	450131	01.2712	20.21	450269	01.0555	15.78
430087	00.7737	10.24	440105	01.5362	15.40	450021	01.8369	20.79	450132	01.6805	17.53	450270	01.2103	11.06
430089	00.8702	13.24	440109	01.1650	13.89	450023	01.4090	17.41	450133	01.6198	14.09	450271	01.2446	15.37
430090	01.6368	13.24	440110	01.0533	16.25	450024	01.3806	17.30	450135	01.6577	19.58	450272	01.3032	15.86
430091	01.2774	13.24	440111	01.3627	20.00	450025	01.4884	16.75	450137	01.5282	21.67	450276	01.0699	12.98
440001	01.1359	14.56	440114	01.0912	14.77	450028	01.5648	18.21	450140	00.9498	11.63	450278	00.9644	12.52
440002	01.6182	17.64	440115	01.0532	15.54	450029	01.5963	15.23	450143	00.9918	12.21	450280	01.5125	18.38
440003	01.2559	17.39	440120	01.5957	18.89	450031	01.4996	18.63	450144	01.0331	12.01	450283	01.0389	12.79
440006	01.4841	18.92	440125	01.5453	18.50	450032	01.3522	13.79	450145	00.8532	14.34	450288	01.1750	15.16
440007	01.0194	10.84	440130	01.1768	14.86	450033	01.6513	17.18	450146	01.0084	23.62	450289	01.4006	17.39
440008	00.9915	14.52	440131	01.1562	14.49	450034	01.6287	18.76	450147	01.3928	16.89	450292	01.1576	19.69
440009	01.2565	14.35	440132	01.1233	13.87	450035	01.4187	19.20	450148	01.2800	19.65	450293	00.9323	12.72
440010	00.9659	12.64	440133	01.5603	19.98	450037	01.6096	18.97	450149	01.5185	19.99	450296	01.4152	19.20

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
450299	01.4072	17.64	450508	01.3603	17.58	450666	01.3312	17.90	450795	01.1350	11.54	470023	01.2895	20.23
450303	01.0154	09.91	450514	01.1700	21.10	450668	01.5943	20.06	450796	01.1114	18.43	470024	01.1727	19.52
450306	01.3057	13.64	450517	00.9399	10.56	450669	01.4186	18.58	450797	00.6077	20.39	490001	01.1946	22.18
450307	00.8801	14.50	450518	01.5820	18.69	450670	01.3482	19.53	450798	00.8050	13.86	490002	01.1337	13.48
450309	01.0743	11.89	450523	01.5399	20.21	450672	01.6957	15.51	450801	01.4763	15.51	490003	00.8057	17.48
450315	01.5546	19.19	450530	01.2367	14.42	450673	01.0679	13.71	450802	01.3938	21.70	490004	01.2252	17.71
450320	01.2414	18.72	450534	00.9886	15.40	450674	01.2022	19.92	450803	00.9037	14.23	490005	01.5926	15.95
450321	00.9614	13.82	450535	01.2414	21.39	450675	01.4594	18.09	450804	00.7378	18.83	490006	01.1499	14.40
450322	00.6639	17.10	450537	01.3383	20.33	450677	01.3331	18.92	450807	00.8978	09.72	490007	02.0606	17.85
450324	01.6384	16.95	450539	01.4022	16.04	450678	01.4407	20.79	450808	01.2265	20.55	490009	01.9210	21.78
450327	01.0202	15.94	450544	01.2272	18.82	450683	01.3459	16.70	450809	01.6064	11.29	490010	01.1786	18.22
450330	01.1889	17.95	450545	01.2791	10.16	450684	01.2082	18.70	450810	00.9015		490011	01.4566	17.62
450334	01.0427	12.16	450547	01.1421	14.03	450686	01.5023	14.59	450811	02.1718		490012	01.2121	13.77
450337	01.1368	15.71	450551	01.0935	11.37	450688	01.3506	18.63	450812	01.4107		490013	01.2226	16.47
450340	01.4648	13.10	450558	01.8402	18.19	450690	01.4263	17.85	450813	00.9625		490014	01.5159	22.68
450341	01.0639	17.56	450561	01.6276	17.05	450694	01.1099	20.41	480001	01.7571	20.72	490015	01.4427	21.35
450346	01.5308	18.52	450563	01.2546	26.74	450696	01.8786	18.73	480003	01.6596	13.31	490017	01.3665	14.05
450347	01.1688	17.43	450565	01.2517	16.37	450697	01.5484	15.64	480004	01.7671	21.27	490018	01.3418	17.01
450348	01.0269	11.60	450570	01.0924	15.62	450698	00.9596	13.38	480005	01.6888	17.23	490019	01.2321	16.49
450351	01.2346	20.05	450571	01.4822	16.04	450700	01.0540	13.52	480006	01.3436	19.96	490020	01.2247	16.07
450352	01.2368	17.88	450573	01.0277	13.94	450702	01.5379	17.73	480007	01.4903	20.38	490021	01.3831	18.06
450353	01.2532	18.38	450574	00.9377	11.77	450703	01.5073	10.03	480008	01.4270	16.77	490022	01.4805	20.25
450355	01.1328	14.56	450575	01.0523	17.94	450704	01.3187	18.39	480009	01.8533	20.44	490023	01.2675	18.77
450358	02.0759	22.13	450578	00.9641	14.60	450705	00.8680	17.81	480010	02.0785	21.33	490024	01.8219	17.17
450362	01.0834	14.11	450580	01.1420	14.05	450706	01.3743	20.77	480011	01.4411	15.69	490027	01.1416	14.52
450369	01.0290	11.76	450583	01.0040	11.81	450709	01.2530	18.28	480013	01.4727	18.36	490030	01.1740	11.44
450370	01.1810	09.42	450584	01.1354	12.88	450711	01.6382	26.65	480014	01.3192	16.46	490031	01.1290	13.85
450371	01.3147	12.05	450586	01.0874	12.54	450712	00.7382	11.77	480015	01.2639	19.82	490032	01.7735	19.88
450372	01.2321	21.35	450587	01.2170	17.55	450713	01.5244	20.73	480016	00.9270	16.64	490033	01.1962	17.39
450373	01.1823	18.71	450591	01.2310	17.41	450715	01.4406	18.46	480017	01.4957	17.56	490035	01.0236	07.57
450374	00.9860	12.21	450596	01.3163	18.97	450716	01.3997	19.33	480018	00.9784	16.10	490037	01.1886	14.88
450378	01.0667	21.41	450597	01.0268	13.68	450717	01.3232	22.11	480019	01.1733	16.25	490038	01.2703	14.96
450379	01.5480	20.94	450603	00.7219	14.21	450718	01.2781	17.49	480020	00.9866	17.05	490040	01.4415	21.70
450381	01.0325	13.87	450604	01.3496	14.64	450723	01.4075	18.75	480021	01.3876	20.12	490041	01.2682	16.01
450386	01.8150	15.21	450605	01.2186	16.89	450724	01.3091	18.28	480022	00.9246	18.19	490042	01.3042	16.38
450389	01.2994	14.40	450609	00.8719	12.26	450725	01.0043	19.85	480023	01.2160	20.38	490043	01.3803	19.82
450393	01.3200	11.86	450610	01.4645	18.06	450727	01.0811	16.87	480025	00.8007	20.08	490044	01.3514	17.17
450395	01.0597	16.54	450614	01.0531	12.79	450728	00.8837	07.46	480026	01.0552	17.32	490045	01.2228	19.98
450399	00.9655	11.15	450615	01.1326	12.36	450730	01.2614	21.03	480027	00.8883	20.44	490046	01.5215	17.99
450400	01.1933	13.63	450617	01.3492	19.91	450733	01.6021	15.09	480029	01.0308	17.00	490047	01.1505	16.65
450403	01.3197	19.63	450620	01.1109	12.27	450735	00.9833	13.78	480030	01.1423	16.55	490048	01.5931	17.94
450411	00.9241	13.09	450623	01.2008	18.97	450742	01.2757	20.17	480032	01.0597	19.39	490050	01.4805	20.95
450417	01.2299	15.17	450626	01.0125	16.38	450743	01.4277	17.77	480033	00.9172	17.19	490052	01.6347	16.26
450418	01.4876	21.54	450628	00.9890	17.19	450746	01.0074	14.71	480035	00.9441	12.43	490053	01.3129	15.12
450419	01.2224	20.33	450630	01.6105	19.66	450747	01.3436	17.58	480036	01.0266	20.56	490054	01.0153	15.45
450422	00.8583	25.07	450631	01.8903	13.59	450749	00.9909	14.54	480037	00.9572	18.38	490057	01.5481	18.87
450423	01.4788	22.82	450632	01.0398	11.43	450750	01.0134	12.54	480039	01.0909	23.84	490059	01.6281	19.99
450424	01.2921	16.39	450633	01.5822	12.13	450751	01.3102	19.24	480041	01.3319	20.51	490060	01.1169	18.19
450429	01.0852	12.33	450634	01.7215	23.78	450754	00.9192	13.20	480042	01.4554	14.11	490063	01.7955	23.28
450431	01.8026	18.46	450638	01.5546	25.20	450755	01.1391	17.26	480043	00.9829	21.91	490066	01.2905	20.77
450438	01.2764	13.12	450639	01.4457	23.25	450757	00.9009	13.23	480044	01.1823	20.42	490067	01.2750	16.60
450446	00.7248	15.16	450641	01.0829	17.56	450758	01.9407	19.90	480046	01.9599	17.71	490069	01.4205	14.56
450447	01.3800	17.19	450643	01.2095	15.10	450760	01.2017	18.55	480047	01.7392	19.91	490071	01.4266	17.71
450451	01.1680	15.20	450644	01.5151	18.19	450761	01.0213	11.87	480049	02.0096	19.97	490073	01.4074	17.39
450457	01.7808	18.77	450646	01.5429	20.32	450763	00.9975	17.58	480050	01.3199	19.33	490074	01.4408	18.79
450460	01.0157	12.81	450647	01.9096	20.84	450766	02.0886	21.59	480051	01.2227	13.29	490075	01.2421	19.03
450462	01.7455	16.26	450648	00.9381	12.65	450769	00.8730	11.77	470001	01.2556	20.25	490077	01.3591	15.64
450464	01.0024	12.89	450649	00.9870	14.53	450770	01.0213	15.47	470003	01.8563	19.92	490079	01.2514	16.34
450465	01.3399	15.41	450651	01.7586	19.35	450771	01.7967	16.42	470004	01.1211	15.87	490084	01.2505	15.31
450467	00.9850	17.15	450652	00.8798	14.52	450774	01.6108	20.17	470005	01.2357	21.12	490085	01.1793	16.50
450469	01.4058	19.15	450653	01.1829	16.63	450775	01.3187	41.14	470006	01.2066	17.97	490088	01.1277	16.41
450473	01.0205	14.61	450654	00.9596	10.61	450776	00.9848	10.16	470008	01.2542	17.91	490089	01.1658	16.31
450475	01.1210	13.56	450656	01.4624	18.35	450777	00.9836	16.72	470010	01.1439	19.71	490090	01.2201	19.80
450484	01.4951	19.64	450658	00.9767	12.49	450779	01.2890	22.50	470011	01.1753	20.37	490091	01.2429	15.01
450488	01.3238	17.72	450659	01.5010	21.19	450780	01.6074	16.21	470012	01.2872	18.28	490092	01.3892	15.78
450489	01.0359	13.90	450661	01.1973	21.13	450785	00.9638	18.31	470015	01.1589	19.34	490093	01.1193	16.40
450497	01.1631	14.82	450662	01.6029	16.56	450788	01.5172	16.06	470018	01.2011	20.89	490094	01.4744	17.31
450498	00.9818	12.66	450665	00.9015	13.23	450794	01.4587	16.66	470020	00.9543	16.28	490095		

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
490097	01.2401	15.08	500055	01.1102	22.34	510030	01.0609	15.78	520045	01.6899	18.80	520144	01.0178	16.36
490098	01.2771	13.23	500057	01.2911	17.73	510031	01.4605	16.76	520047	00.9944	17.42	520145	00.9470	16.85
490099	00.9704	16.66	500058	01.5107	21.64	510033	01.3690	16.31	520048	01.4624	18.04	520146	01.0694	15.78
490100	01.5522	18.36	500059	01.0873	22.72	510035	01.3504	18.82	520049	01.8631	19.12	520148	01.1567	16.73
490101	01.2218	23.44	500060	01.4688	23.87	510036	01.0367	12.45	520051	01.8043	15.77	520149	00.9333	12.72
490104	00.8484	21.14	500061	01.0054	20.43	510038	01.1249	14.36	520053	01.1564	15.87	520151	01.0435	16.58
490105	00.5902	30.04	500062	01.1028	19.07	510039	01.3356	15.89	520054	01.0412	19.44	520152	01.1259	17.97
490106	00.8484	21.07	500064	01.6849	24.85	510043	00.9429	14.14	520057	01.1771	18.10	520153	00.9590	14.95
490107	01.3556	22.35	500065	01.2258	20.87	510046	01.3048	17.25	520058	01.1268	20.40	520154	01.1615	18.07
490108	00.9494	19.84	500068	01.0622	18.81	510047	01.2964	18.83	520059	01.3542	19.76	520156	01.1721	19.10
490109	00.9167	20.38	500069	01.1722	19.05	510048	01.1292	18.03	520060	01.4225	17.08	520157	01.0942	15.30
490110	01.3455	15.78	500071	01.3962	20.91	510050	01.8030	16.38	520062	01.3120	17.21	520159	00.9415	19.52
490111	01.2018	15.96	500072	01.2463	24.49	510053	01.0108	14.63	520063	01.2008	19.95	520160	01.7765	19.26
490112	01.6587	19.70	500073	01.0093	18.07	510055	01.2826	22.31	520064	01.5671	20.70	520161	01.0404	17.96
490113	01.2995	22.73	500074	01.0970	18.46	510058	01.2636	17.21	520066	01.5292	19.84	520170	01.2542	21.23
490114	01.1138	15.90	500077	01.3337	22.82	510059	02.4160	15.98	520068	00.9889	18.59	520171	00.9070	14.86
490115	01.1964	16.82	500079	01.3407	21.42	510060	01.0691	15.10	520069	01.1861	18.14	520173	01.1585	19.58
490116	01.1887	18.24	500080	00.8399	13.35	510061	01.0314	13.59	520070	01.5734	17.44	520177	01.8324	19.38
490117	01.1938	10.57	500084	01.2536	21.57	510062	01.2784	17.15	520071	01.2420	18.44	520178	01.1172	16.98
490118	01.7261	20.56	500085	01.0506	18.46	510066	01.1573	13.24	520074	01.0372	16.81	520187	00.2966	16.98
490119	01.4062	17.02	500086	01.3459	21.47	510067	01.1882	16.39	520075	01.4602	18.96	530002	01.2253	21.84
490120	01.3763	17.93	500088	01.3211	23.74	510068	01.1347	15.46	520076	01.1673	16.36	530003	00.8835	14.70
490122	01.4040	22.46	500089	01.0985	16.55	510070	01.3876	15.31	520077	00.9774	14.51	530004	00.9574	14.14
490123	01.1230	15.45	500090	00.9182	14.04	510071	01.3472	15.78	520078	01.6274	18.24	530005	01.0465	14.61
490124	01.1222	15.81	500092	00.9896	19.29	510072	01.0515	13.30	520082	01.2908	17.60	530006	01.1196	20.18
490126	01.4055	16.47	500094	00.9176	17.96	510077	01.1535	15.63	520083	01.7091	21.38	530007	01.1095	14.87
490127	01.0287	18.05	500096	01.0060	18.80	510080	01.2046	16.32	520084	01.0666	17.62	530008	01.2996	13.79
490129	01.0607	23.65	500097	01.1573	19.47	510081	01.1996	13.50	520087	01.7203	18.81	530009	00.9922	18.12
490130	01.2347	15.72	500098	01.0903	14.96	510082	01.2149	13.50	520088	01.2637	18.97	530010	01.2158	18.65
490132	01.0026	15.72	500101	00.9755	19.08	510084	00.9664	12.91	520089	01.4904	20.44	530011	01.1586	17.22
500001	01.4111	21.97	500102	00.9657	20.71	510085	01.3282	17.98	520090	01.2889	17.51	530012	01.5605	18.08
500002	01.4114	21.64	500104	01.1802	22.63	510086	01.1820	13.59	520091	01.3199	18.68	530014	01.4027	19.27
500003	01.4119	24.03	500106	00.9602	19.85	520002	01.2720	18.66	520092	01.1556	16.83	530015	01.2690	19.02
500005	01.8033	21.24	500107	01.2297	16.88	520003	01.0833	15.78	520094	00.7870	19.19	530016	01.2999	17.19
500007	01.3070	23.24	500108	01.7227	20.48	520004	01.1862	18.46	520095	01.3843	19.38	530017	00.8709	15.80
500008	01.9296	25.09	500110	01.1878	20.80	520006	01.0492	20.59	520096	01.3983	18.60	530018	01.0972	16.71
500011	01.3263	22.96	500118	01.1808	22.66	520007	01.0781	14.87	520097	01.2966	19.05	530019	01.0350	11.26
500012	01.5418	22.34	500119	01.3050	21.86	520008	01.6437	22.59	520098	01.8306	20.96	530022	01.1106	17.60
500014	01.5358	22.94	500122	01.2794	22.76	520009	01.6467	18.07	520100	01.2626	18.06	530023	00.8946	19.55
500015	01.4382	22.41	500123	00.8948	16.33	520010	01.2081	20.01	520101	01.0947	17.84	530025	01.2198	21.13
500018	01.5256	24.13	500124	01.3290	23.72	520011	01.2493	19.33	520102	01.1586	09.85	530026	01.1680	21.55
500019	01.3845	22.33	500125	01.1430	15.98	520013	01.3654	19.29	520103	01.3296	18.39	530027	00.9464	32.50
500021	01.4791	18.72	500129	01.7655	23.34	520014	01.1483	16.47	520107	01.3313	18.69	530029	01.0347	14.86
500023	01.2237	21.48	500132	00.9488	17.26	520015	01.1656	17.59	520109	00.9690	18.27	530031	00.8621	18.36
500024	01.8929	25.17	500134	00.5730	17.47	520016	01.1202	12.53	520110	01.2401	18.59	530032	01.0887	20.89
500025	01.8624	25.48	500138	06.3328	.....	520017	01.1603	18.49	520111	00.9933	17.44			
500026	01.4298	24.13	500139	01.4946	20.82	520018	01.1396	17.51	520112	01.1309	17.87			
500027	01.8083	26.89	500141	01.3409	22.31	520019	01.3102	19.27	520113	01.2560	19.14			
500028	01.1018	17.84	500143	00.5960	15.77	520021	01.3145	19.71	520114	01.1466	15.59			
500029	00.9778	17.28	500146	01.1943	17.52	520024	01.1085	13.94	520115	01.2493	17.57			
500030	01.4685	23.64	510001	01.8062	18.22	520025	01.1185	16.59	520116	01.2386	19.24			
500031	01.3076	22.42	510002	01.3476	17.07	520026	01.0738	18.95	520117	01.0212	17.30			
500033	01.3568	20.98	510005	00.9799	14.53	520027	01.2317	20.05	520118	00.8786	12.73			
500036	01.3789	20.93	510006	01.2876	17.40	520028	01.4023	20.17	520120	00.8917	16.22			
500037	01.1777	20.35	510007	01.5321	19.91	520029	00.9252	17.80	520121	00.9610	16.30			
500039	01.3856	22.97	510008	01.2363	16.30	520030	01.6637	20.22	520122	01.0140	16.52			
500041	01.2891	24.11	510012	01.0194	15.51	520031	01.1181	15.70	520123	01.0617	17.45			
500042	01.4113	21.93	510013	01.1629	16.85	520032	01.1645	18.87	520124	01.0920	18.50			
500043	01.0687	19.43	510015	01.0179	13.81	520033	01.2055	17.42	520130	01.0256	14.89			
500044	01.9209	23.59	510018	01.1368	14.07	520034	01.0827	17.18	520131	01.0431	17.56			
500045	01.0517	22.10	510020	01.0662	12.22	520035	01.3492	17.15	520132	01.1994	17.01			
500048	00.9665	19.03	510022	01.8733	19.32	520037	01.6601	19.33	520134	01.0791	18.37			
500049	01.5515	22.21	510023	01.2461	15.36	520038	01.3396	17.69	520135	00.9793	24.20			
500050	01.3757	20.94	510024	01.4907	18.04	520039	01.0178	18.09	520136	01.5411	19.31			
500051	01.8476	24.14	510026	01.0369	13.05	520040	01.4388	19.39	520138	01.8963	19.63			
500052	01.2052	.....	510027	00.9899	16.49	520041	01.1377	15.58	520139	01.2903	20.36			
500053	01.3356	21.20	510028	01.1102	14.91	520042	01.1067	17.13	520140	01.6170	19.69			
500054	01.8578	22.51	510029	01.2666	16.61	520044	01.4365	17.04	520142	00.8928	16.53			

Note: Case mix indexes do not include discharges from PPS-exempt units.
Case mix indexes include cases received in HCFA Central Office through December 1996.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (Constituent counties)	Wage index	GAF
0040 Abilene, TX	0.8081	0.8642
Taylor, TX		
0060 Aguadilla, PR	0.4772	0.6025
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	1.0011	1.0008
Portage, OH		
Summit, OH		
0120 Albany, GA	0.8098	0.8655
Dougherty, GA		
Lee, GA		
0160 ² Albany-Sche- nectady-Troy, NY	0.8640	0.9047
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.8813	0.9171
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA ...	0.8598	0.9017
Rapides, LA		
0240 Allentown-Beth- lehem-Easton, PA	1.0219	1.0149
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA	0.9398	0.9584
Blair, PA		
0320 Amarillo, TX	0.8483	0.8935
Potter, TX		
Randall, TX		
0380 Anchorage, AK ..	1.3088	1.2024
Anchorage, AK		
0440 Ann Arbor, MI	1.1127	1.0759
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.8731	0.9113
Calhoun, AL		
0460 Appleton-Osh- kosh-Neenah, WI	0.8899	0.9232
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 Arecibo, PR	0.4915	0.6148
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.9016	0.9315
Buncombe, NC		
Madison, NC		
0500 Athens, GA	0.8746	0.9123
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 ¹ Atlanta, GA	1.0024	1.0016
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
DeKalb, GA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Brazos, TX		
1280 1 Buffalo-Niagara Falls, NY	0.9592	0.9719
Erie, NY		
Niagara, NY		
1303 Burlington, VT	0.9612	0.9733
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4445	0.5739
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		
1320 Canton-Massillon, OH	0.8895	0.9229
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.9227	0.9464
Natrona, WY		
1360 Cedar Rapids, IA	0.8888	0.9224
Linn, IA		
1400 Champaign-Urbana, IL	0.8844	0.9193
Champaign, IL		
1440 Charleston-North Charleston, SC	0.8931	0.9255
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.9042	0.9334
Kanawha, WV		
Putnam, WV		
1520 1 Charlotte-Gastonia-Rock Hill, NC-SC	0.9568	0.9702
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Stanly, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	1.0359	1.0244
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN-GA	0.9123	0.9391
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 Cheyenne, WY	0.9354	0.9553
Laramie, WY		
1600 1 Chicago, IL	1.0507	1.0344
Cook, IL		
DeKalb, IL		
DuPage, IL		
Grundy, IL		
Kane, IL		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 Chico-Paradise, CA	1.0231	1.0158
Butte, CA		
1640 1 Cincinnati, OH-KY-IN	0.9465	0.9630
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN-KY	0.8204	0.8732
Christian, KY		
Montgomery, TN		
1680 1 Cleveland-Lorain-Elyria, OH	0.9970	0.9979
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9469	0.9633
El Paso, CO		
1740 Columbia, MO	0.9678	0.9778
Boone, MO		
1760 Columbia, SC	0.9368	0.9563
Lexington, SC		
Richland, SC		
1800 Columbus, GA-AL	0.8573	0.8999
Russell, AL		
Chattahoochee, GA		
Harris, GA		
Muscogee, GA		
1840 1 Columbus, OH	0.9929	0.9951
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8112	0.8665
Nueces, TX		
San Patricio, TX		
1900 2 Cumberland, MD-WV (Maryland Hospitals)	0.8627	0.9038
Alegany, MD		
Mineral, WV		
1900 Cumberland, MD-WV (West Virginia Hospital)	0.8407	0.8880
Alegany, MD		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Mineral, WV		
1920 1 Dallas, TX	0.9149	0.9409
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.9121	0.9389
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA-IL	0.8496	0.8944
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9670	0.9773
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.9211	0.9453
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8302	0.8804
Lawrence, AL		
Morgan, AL		
2040 Decatur, IL	0.8140	0.8686
Macon, IL		
2080 1 Denver, CO	1.0532	1.0361
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.8576	0.9001
Dallas, IA		
Polk, IA		
Warren, IA		
2160 1 Detroit, MI	1.0601	1.0408
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.7827	0.8455
Dale, AL		
Broward, FL		
Houston, AL		
2190 Dover, DE	0.9441	0.9614
Kent, DE		
2200 Dubuque, IA	0.8292	0.8796
Dubuque, IA		
2240 Duluth-Superior, MN-WI	1.0133	1.0091
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	0.9860	0.9904
Dutchess, NY		
2290 Eau Claire, WI	0.8755	0.9130
Chippewa, WI		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Eau Claire, WI		
2320 El Paso, TX	0.8978	0.9288
El Paso, TX		
2330 Elkhart-Goshen, IN	0.9168	0.9422
Elkhart, IN		
2335 2 Elmira, NY	0.8640	0.9047
Chemung, NY		
2340 Enid, OK	0.8050	0.8620
Garfield, OK		
2360 Erie, PA	0.9343	0.9545
Erie, PA		
2400 Eugene-Springfield, OR	1.1288	1.0865
Lane, OR		
2440 Evansville-Henderson, IN-KY	0.8505	0.8950
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND-MN (North Dakota Hospitals)	0.7905	0.8513
Clay, MN		
Cass, ND		
2520 2 Fargo-Moorhead, ND-MN (Minnesota Hospitals)	0.8665	0.9065
Clay, MN		
Cass, ND		
2560 Fayetteville, NC	0.8460	0.8918
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.8686	0.9080
Benton, AR		
Washington, AR		
2620 Flagstaff, AZ-UT	0.9602	0.9726
Coconino, AZ		
Kane, UT		
2640 Flint, MI	1.1106	1.0745
Genesee, MI		
2650 Florence, AL	0.7740	0.8391
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8368	0.8851
Florence, SC		
2670 Fort Collins-Loveland, CO	1.0383	1.0261
Larimer, CO		
2680 1 Ft. Lauderdale, FL	1.0534	1.0363
Broward, FL		
2700 Fort Myers-Cape Coral, FL	0.9017	0.9316
Lee, FL		
2710 1 Fort Pierce-Port St. Lucie, FL	0.9847	0.9895
Martin, FL		
St. Lucie, FL		
2720 Fort Smith, AR-OK	0.7687	0.8352
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 2 Fort Walton Beach, FL	0.8947	0.9266

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Okaloosa, FL		
2760 Fort Wayne, IN	0.8896	0.9230
Adams, IN		
Allen, IN		
De Kalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 1 Forth Worth-Arlington, TX	0.9192	0.9439
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.0491	1.0334
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8854	0.9200
Etowah, AL		
2900 Gainesville, FL	0.9542	0.9684
Alachua, FL		
2920 Galveston-Texas City, TX	0.9549	0.9689
Galveston, TX		
2960 Gary, IN	0.9542	0.9684
Lake, IN		
Porter, IN		
2975 2 Glens Falls, NY	0.8640	0.9047
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8523	0.8963
Wayne, NC		
2985 Grand Forks, ND-MN	0.8996	0.9301
Polk, MN		
Grand Forks, ND		
2995 Grand Junction, CO	0.9110	0.9382
Mesa, CO		
3000 1 Grand Rapids-Muskegon-Holland, MI	1.0018	1.0012
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
3040 Great Falls, MT	0.9362	0.9559
Cascade, MT		
3060 Greeley, CO	0.9856	0.9901
Weld, CO		
3080 Green Bay, WI	0.9323	0.9531
Brown, WI		
3120 1 Greensboro-Winston-Salem-High Point, NC	0.9418	0.9598
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9034	0.9328
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.9318	0.9528

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 Hagerstown, MD	1.0268	1.0183
Washington, MD		
3200 Hamilton-Middletown, OH	0.9292	0.9510
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA	0.9572	0.9705
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
3283 12 Hartford, CT	1.2175	1.1443
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 2 Hattiesburg, MS	0.7359	0.8106
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC	0.8687	0.9081
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1628	1.1088
Honolulu, HI		
3350 Houma, LA	0.8266	0.8777
Lafourche, LA		
Terrebonne, LA		
3360 1 Houston, TX	1.0017	1.0012
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV-KY-OH	0.9728	0.9813
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8428	0.8895
Limestone, AL		
Madison, AL		
3480 1 Indianapolis, IN	0.9901	0.9932
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9561	0.9697
Johnson, IA		
3520 Jackson, MI	0.9302	0.9517
Jackson, MI		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
3560 Jackson, MS	0.8279	0.8787
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.8632	0.9042
Madison, TN		
Chester, TN		
3600 ¹² Jacksonville, FL	0.8947	0.9266
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 ² Jacksonville, NC	0.8162	0.8702
Onslow, NC		
3610 ² Jamestown, NY	0.8640	0.9047
Chautauqua, NY		
3620 Janesville-Beloit, WI	0.9128	0.9394
Rock, WI		
3640 Jersey City, NJ ..	1.1372	1.0920
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8847	0.9195
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 Johnstown, PA ..	0.8671	0.9070
Cambria, PA		
Somerset, PA		
3700 Jonesboro, AR ...	0.7643	0.8319
Craighead, AR		
3710 Joplin, MO	0.7933	0.8534
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.2009	1.1336
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	0.9175	0.9427
Kankakee, IL		
3760 ¹ Kansas City, KS-MO	0.9672	0.9774
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.9206	0.9449
Kenosha, WI		
3810 Killeen-Temple, TX	1.0180	1.0123
Bell, TX		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Coryell, TX		
3840 Knoxville, TN	0.8569	0.8996
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.9350	0.9550
Howard, IN		
Tipton, IN		
3870 La Crosse, WI-MN	0.8989	0.9296
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8363	0.8848
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN	0.8984	0.9293
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.7738	0.8389
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.8947	0.9266
Polk, FL		
4000 Lancaster, PA	0.9646	0.9756
Lancaster, PA		
4040 Lansing-East Lansing, MI	1.0130	1.0089
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 ² Laredo, TX	0.7404	0.8140
Webb, TX		
4100 Las Cruces, NM	0.9045	0.9336
Dona Ana, NM		
4120 ¹ Las Vegas, NV-AZ	1.1349	1.0905
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.8728	0.9110
Douglas, KS		
4200 Lawton, OK	0.8770	0.9140
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9226	0.9463
Androscoggin, ME		
4280 Lexington, KY	0.8579	0.9004
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.8885	0.9222
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9082	0.9362
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.8598	0.9017
Faulkner, AR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8583	0.9007
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 ¹ Los Angeles-Long Beach, CA	1.2124	1.1410
Los Angeles, CA		
4520 Louisville, KY-IN	0.9212	0.9453
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.8460	0.8918
Lubbock, TX		
4640 Lynchburg, VA ...	0.8680	0.9076
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.9109	0.9381
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0103	1.0070
Dane, WI		
4800 Mansfield, OH	0.8606	0.9023
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR ...	0.4360	0.5664
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8541	0.8976
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0109	1.0075
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	0.9289	0.9507
Brevard, FL		
4920 ¹ Memphis, TN-AR-MS	0.8423	0.8891
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA	1.0304	1.0207
Merced, CA		
5000 ¹ Miami, FL	0.9427	0.9604
Dade, FL		
5015 ¹ Middlesex-Somerset-Hunterdon, NJ ..	1.0871	1.0589

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 ¹ Milwaukee-Waukesha, WI	0.9470	0.9634
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 ¹ Minneapolis-St. Paul, MN-WI	1.0956	1.0645
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5160 Mobile, AL	0.7942	0.8540
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0406	1.0276
Stanislaus, CA		
5190 ¹ Monmouth-Ocean, NJ	1.1285	1.0863
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.8288	0.8793
Ouachita, LA		
5240 Montgomery, AL	0.7919	0.8523
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	0.9493	0.9650
Delaware, IN		
5330 ² Myrtle Beach, SC	0.8110	0.8664
Horry, SC		
5345 Naples, FL	1.0205	1.0140
Collier, FL		
5360 ¹ Nashville, TN ...	0.9336	0.9540
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford, TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 ¹ Nassau-Suffolk, NY	1.3123	1.2046
Nassau, NY		
Suffolk, NY		
5483 ¹² New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2175	1.1443
Fairfield, CT		
New Haven, CT		
5523 ² New London-Norwich, CT	1.2175	1.1443

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
New London, CT		
5560 ¹ New Orleans, LA	0.9397	0.9583
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 ¹ New York, NY	1.4537	1.2920
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 ¹ Newark, NJ	1.0899	1.0607
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY-PA	1.1226	1.0824
Orange, NY		
Pike, PA		
5720 ¹ Norfolk-Virginia Beach-Newport News, VA-NC	0.8235	0.8755
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City, VA		
Williamsburg City, VA		
York, VA		
5775 ¹ Oakland, CA	1.5309	1.3386
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.9229	0.9465
Marion, FL		
5800 Odessa-Midland, TX	0.7773	0.8415
Ector, TX		
Midland, TX		
5880 ¹ Oklahoma City, OK	0.8764	0.9136
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Pottawatomie, OK		
5910 Olympia, WA	1.1605	1.1073
Thurston, WA		
5920 Omaha, NE-IA ..	0.9938	0.9958
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 ¹ Orange County, CA	1.1153	1.0776
Orange, CA		
5960 ¹ Orlando, FL	0.9933	0.9954
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 ² Owensboro, KY	0.7902	0.8511
Daviess, KY		
6015 ² Panama City, FL	0.8947	0.9266
Bay, FL		
6020 Parkersburg-Marietta, WV-OH (West Virginia Hospitals)	0.8118	0.8669
Washington, OH		
Wood, WV		
6020 ² Parkersburg-Marietta, WV-OH (Ohio Hospitals)	0.8576	0.9001
Washington, OH		
Wood, WV		
6080 ² Pensacola, FL	0.8947	0.9266
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8157	0.8698
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 ¹ Philadelphia, PA-NJ	1.1427	1.0957
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 ¹ Phoenix-Mesa, AZ	0.9759	0.9834
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.8003	0.8585
Jefferson, AR		
6280 ¹ Pittsburgh, PA	0.9896	0.9929
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 ² Pittsfield, MA ...	1.0917	1.0619
Berkshire, MA		
6340 Pocatello, ID	0.8760	0.9133

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Bannock, ID		
6360 Ponce, PR	0.4740	0.5998
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9537	0.9681
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 1 Portland-Vancouver, OR-WA	1.1274	1.0856
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 1 Providence-Warwick-Pawtucket, RI	1.0888	1.0600
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	0.9910	0.9938
Utah, UT		
6560 Pueblo, CO	0.8785	0.9151
Pueblo, CO		
6580 Punta Gorda, FL	0.8994	0.9300
Charlotte, FL		
6600 Racine, WI	0.9207	0.9450
Racine, WI		
6640 1 Raleigh-Durham-Chapel Hill, NC	0.9909	0.9938
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
6660 Rapid City, SD	0.8277	0.8785
Pennington, SD		
6680 Reading, PA	0.9282	0.9503
Berks, PA		
6690 Redding, CA	1.2017	1.1341
Shasta, CA		
6720 Reno, NV	1.0169	1.0115
Washoe, NV		
6740 2 Richland-Kennebec-Pasco, WA	1.0577	1.0392
Benton, WA		
Franklin, WA		
6760 Richmond-Petersburg, VA	0.9257	0.9485
Charles City County, VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
6780 1 Riverside-San Bernardino, CA	1.0151	1.0103
Riverside, CA		
San Bernardino, CA		
York, ME		
6800 Roanoke, VA	0.8581	0.9005
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.1797	1.1198
Olmsted, MN		
6840 1 Rochester, NY	0.9678	0.9778
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.8703	0.9093
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.8214	0.8740
Edgecombe, NC		
Nash, NC		
6920 1 Sacramento, CA	1.1952	1.1299
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9567	0.9701
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9667	0.9771
Benton, MN		
Stearns, MN		
7000 St. Joseph, MO	0.9972	0.9981
Andrew, MO		
Buchanan, MO		
7040 1 St. Louis, MO	0.9063	0.9348
IL		
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 Salem, OR	0.9987	0.9991
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.5270	1.3363

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Monterey, CA		
7160 1 Salt Lake City-Ogden, UT	0.9458	0.9626
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.7512	0.8221
Tom Green, TX		
7240 1 San Antonio, TX	0.7744	0.8394
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 1 San Diego, CA	1.2388	1.1579
San Diego, CA		
7360 1 San Francisco, CA	1.3621	1.2357
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 1 San Jose, CA	1.3783	1.2457
Santa Clara, CA		
7440 1 San Juan-Bayamon, PR	0.4521	0.5806
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Lugaillo, PR		
Manati, PR		
Morovis, PR		
Naguabo, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.0825	1.0558
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.1233	1.0829
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.4099	1.2652
Santa Cruz, CA		
7490 Santa Fe, NM	0.9525	0.9672

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.3167	1.2073
Sonoma, CA		
7510 2 Sarasota-Bradenton, FL	0.9567	0.9701
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.8776	0.9145
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 2 Scranton-Wilkes-Barre-Hazleton, PA	0.8615	0.9029
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 1 Seattle-Bellevue-Everett, WA	1.1634	1.1092
Island, WA		
King, WA		
Snohomish, WA		
7610 Sharon, PA	0.8948	0.9267
Mercer, PA		
7620 2 Sheboygan, WI	0.8557	0.8988
Sheboygan, WI		
7640 Sherman-Denison, TX	0.8229	0.8750
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.9436	0.9610
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA-NE	0.8530	0.8968
Woodbury, IA		
Dakota, NE		
7760 Sioux Falls, SD	0.8988	0.9295
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9939	0.9958
St. Joseph, IN		
7840 Spokane, WA	1.1020	1.0688
Spokane, WA		
7880 Springfield, IL	0.8793	0.9157
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.8151	0.8694
Christian, MO		
Greene, MO		
Webster, MO		
8003 Springfield, MA	1.0917	1.0619
Hampden, MA		
Hampshire, MA		
8050 State College, PA	0.9528	0.9674
Centre, PA		
8080 2 Steubenville-Weirton, OH-WV	0.8576	0.9001
(Ohio Hospitals)		
Jefferson, OH		
Brooke, WV		
Hancock, WV		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
8080 Steubenville-Weirton, OH-WV		
(West Virginia Hospitals)	0.8476	0.8929
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.1157	1.0779
San Joaquin, CA		
8140 Sumter, SC	0.8195	0.8726
Sumter, SC		
8160 Syracuse, NY	0.9410	0.9592
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 2 Tacoma, WA	1.0577	1.0392
Pierce, WA		
8240 2 Tallahassee, FL	0.8947	0.9266
Gadsden, FL		
Leon, FL		
8280 1 Tampa-St. Petersburg-Clearwater, FL	0.9179	0.9430
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 Terre Haute, IN	0.9063	0.9348
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana, AR-Texarkana, TX	0.7538	0.8240
Miller, AR		
Bowie, TX		
8400 Toledo, OH	1.0132	1.0090
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	0.9894	0.9927
Shawnee, KS		
8480 Trenton, NJ	1.0399	1.0272
Mercer, NJ		
8520 Tucson, AZ	0.9104	0.9377
Pima, AZ		
8560 Tulsa, OK	0.8520	0.8961
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.7706	0.8366
Tuscaloosa, AL		
8640 Tyler, TX	0.8792	0.9156
Smith, TX		
8680 2 Utica-Rome, NY	0.8640	0.9047
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.3458	1.2255
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.0764	1.0517
Ventura, CA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
8750 Victoria, TX	0.8451	0.8911
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	1.0460	1.0313
Cumberland, NJ		
8780 Visalia-Tulare-Porterville, CA	1.0168	1.0115
Tulare, CA		
8800 Waco, TX	0.8027	0.8603
McLennan, TX		
8840 1 Washington, DC-MD-VA-WV	1.0863	1.0583
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpeper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
Pinellas, FL		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.8402	0.8876
Black Hawk, IA		
8940 Wausau, WI	0.9814	0.9872
Marathon, WI		
8960 West Palm Beach-Boca Raton, FL	1.0288	1.0196
Palm Beach, FL		
9000 2 Wheeling, WV-OH (West Virginia Hospitals)	0.7938	0.8537
Belmont, OH		
Marshall, WV		
Ohio, WV		
9000 2 Wheeling, WV-OH (Ohio Hospitals)	0.8576	0.9001
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.8990	0.9297
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.7864	0.8483
Archer, TX		
Wichita, TX		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
9140 ² Williamsport, PA	0.8615	0.9029
Lycoming, PA		
9160 Wilmington-Newark, DE-MD	1.1968	1.1309
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9427	0.9604
New Hanover, NC		
Brunswick, NC		
9260 ² Yakima, WA	1.0577	1.0392
Yakima, WA		
9270 Yolo, CA	1.0702	1.0476
Yolo, CA		
9280 York, PA	0.9509	0.9661
York, PA		
9320 Youngstown-Warren, OH	0.9897	0.9929
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0957	1.0646
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	1.0143	1.0098
Yuma, AZ		

¹ Large Urban Area
² Hospitals geographically located in the area are assigned the statewide rural wage index for FY 1999.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7385	0.8125
Alaska	1.2534	1.1673
Arizona	0.8082	0.8643
Arkansas	0.7274	0.8042
California	0.9976	0.9984
Colorado	0.8454	0.8914
Connecticut	1.2175	1.1443
Delaware	0.8590	0.9012
Florida	0.8947	0.9266
Georgia	0.7933	0.8534
Hawaii	1.1011	1.0682
Idaho	0.8548	0.8981
Illinois	0.7985	0.8572
Indiana	0.8429	0.8896
Iowa	0.7846	0.8469
Kansas	0.7334	0.8087
Kentucky	0.7902	0.8511
Louisiana	0.7517	0.8225
Maine	0.8538	0.8974
Maryland	0.8627	0.9038
Massachusetts	1.0917	1.0619
Michigan	0.8988	0.9295
Minnesota	0.8665	0.9065
Mississippi	0.7359	0.8106
Missouri	0.7510	0.8219
Montana	0.8645	0.9051
Nebraska	0.7683	0.8349
Nevada	0.9267	0.9492

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
New Hampshire	1.0324	1.0221
New Jersey ¹	0.7927	0.8529
New Mexico	0.8640	0.9047
New York	0.8162	0.8702
North Carolina	0.7471	0.8190
North Dakota	0.8576	0.9001
Ohio	0.7207	0.7991
Oklahoma	0.9957	0.9971
Oregon	0.8615	0.9029
Pennsylvania	0.4083	0.5415
Puerto Rico		
Rhode Island ¹	0.8110	0.8664
South Carolina	0.7564	0.8260
South Dakota	0.7483	0.8199
Tennessee	0.7404	0.8140
Texas	0.8851	0.9198
Utah	0.9489	0.9647
Vermont	0.7890	0.8502
Virginia	1.0577	1.0392
Washington	0.7938	0.8537
West Virginia	0.8557	0.8988
Wisconsin	0.8763	0.9135
Wyoming		

All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index	GAF
Abilene, TX	0.8081	0.8642
Albany, GA	0.7933	0.8534
Albuquerque, NM	0.8813	0.9171
Alexandria, LA	0.8598	0.9017
Allentown-Bethlehem-Easton, PA	1.0219	1.0149
Amarillo, TX	0.8483	0.8935
Anchorage, AK	1.3088	1.2024
Asheville, NC	0.9016	0.9315
Atlanta, GA	1.0024	1.0016
Augusta-Aiken, GA-SC	0.9309	0.9521
Baltimore, MD	0.9760	0.9835
Barnstable-Yarmouth, MA	1.4646	1.2986
Baton Rouge, LA	0.8940	0.9261
Benton Harbor, MI	0.8988	0.9295
Bergen-Passaic, NJ	1.1845	1.1229
Billings, MT	0.9220	0.9459
Binghamton, NY	0.8989	0.9296
Birmingham, AL	0.9150	0.9410
Bismarck, ND	0.7838	0.8464
Boise City, ID	0.9267	0.9492
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.0885	1.0598
Brazoria, TX	0.8895	0.9229
Bryan-College Station, TX	0.7962	0.8555
Buffalo-Niagara Falls, NY	0.9592	0.9719
Burlington, VT	0.9612	0.9733
Caguas, PR	0.4445	0.5739

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Canton-Massillon, OH	0.8895	0.9229
Casper, WY	0.9227	0.9464
Champaign-Urbana, IL	0.8844	0.9193
Charleston-North Charleston, SC	0.8931	0.9255
Charleston, WV	0.8819	0.9175
Charlotte-Gastonia-Rock Hill, NC-SC	0.9568	0.9702
Charlottesville, VA	0.9803	0.9865
Chattanooga, TN-GA	0.8885	0.9222
Chicago, IL	1.0507	1.0344
Cincinnati, OH-KY-IN	0.9465	0.9630
Clarksville-Hopkinsville, TN-KY	0.8204	0.8732
Cleveland-Lorain-Elyria, OH	0.9970	0.9979
Columbia, MO	0.9331	0.9537
Columbus, GA-AL	0.8573	0.8999
Columbus, OH	0.9929	0.9951
Corpus Christi, TX	0.8112	0.8665
Dallas, TX	0.9149	0.9409
Danville, VA	0.8779	0.9147
Davenport-Moline-Rock Island, IA-IL	0.8496	0.8944
Dayton-Springfield, OH	0.9670	0.9773
Denver, CO	1.0532	1.0361
Des Moines, IA	0.8576	0.9001
Duluth-Superior, MN-WI	1.0133	1.0091
Dutchess County, NY	0.9860	0.9904
Elkhart-Goshen, IN	0.9168	0.9422
Eugene-Springfield, OR	1.1141	1.0768
Evansville-Henderson, IN-KY	0.8505	0.8950
Fargo-Moorhead, ND-MN (Minnesota Hospital)	0.8665	0.9065
Fayetteville, NC	0.7905	0.8513
Flagstaff, AZ-UT	0.8460	0.8918
Flint, MI	0.9602	0.9726
Fort Collins-Loveland, CO	1.1106	1.0745
Ft. Lauderdale, FL	1.0383	1.0261
Fort Pierce-Port St. Lucie, FL	1.0534	1.0363
Fort Smith, AR-OK	0.9847	0.9895
Fort Walton Beach, FL	0.7582	0.8273
Forth Worth-Arlington, TX	0.8694	0.9086
Gadsden, AL	0.9192	0.9439
Gainesville, FL	0.8854	0.9200
Goldsboro, NC	0.9542	0.9684
Grand Forks, ND-MN	0.8366	0.8850
Grand Junction, CO	0.8996	0.9301
Grand Rapids-Muskegon-Holland, MI	0.9110	0.9382
Great Falls, MT	0.9908	0.9937
Greeley, CO	0.9362	0.9559
Green Bay, WI	0.9663	0.9768
Greenville, NC	0.9323	0.9531
Greenville-Spartanburg-Anderson, SC	0.8844	0.9193
Harrisburg-Lebanon-Carlisle, PA	0.9318	0.9528
	0.9572	0.9705

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Hartford, CT	1.1152	1.0775
Hattiesburg, MS	0.7359	0.8106
Hickory-Morganton-Lenoir, NC	0.8687	0.9081
Honolulu, HI	1.1628	1.1088
Houston, TX	1.0017	1.0012
Huntington-Ashland, WV-KY-OH	0.9353	0.9552
Huntsville, AL	0.8269	0.8780
Indianapolis, IN	0.9901	0.9932
Iowa City, IA	0.9441	0.9614
Jackson, MS	0.8279	0.8787
Jackson, TN	0.8632	0.9042
Jacksonville, FL	0.8915	0.9244
Johnson City-Kingsport-Bristol, TN-VA	0.8847	0.9195
Jonesboro, AR	0.7643	0.8319
Joplin, MO	0.7710	0.8369
Kalamazoo-Battlecreek, MI	1.1713	1.1144
Kansas City, KS-MO	0.9672	0.9774
Knoxville, TN	0.8569	0.8996
Lafayette, LA	0.8363	0.8848
Lansing-East Lansing, MI	1.0025	1.0017
Las Cruces, NM	0.9045	0.9336
Las Vegas, NV-AZ	1.1349	1.0905
Lexington, KY	0.8579	0.9004
Lima, OH	0.8715	0.9101
Lincoln, NE	0.8900	0.9233
Little Rock-North Little Rock, AR	0.8598	0.9017
Los Angeles-Long Beach, CA	1.2124	1.1410
Louisville, KY-IN	0.9212	0.9453
Macon, GA	0.8886	0.9223
Madison, WI	1.0103	1.0070
Mansfield, OH	0.8606	0.9023
Memphis, TN-AR-MS	0.8423	0.8891
Merced, CA	1.0304	1.0207
Milwaukee-Waukesha, WI	0.9289	0.9507
Minneapolis-St. Paul, MN-WI	1.0956	1.0645
Modesto, CA	1.0406	1.0276
Monroe, LA	0.8148	0.8691
Montgomery, AL	0.7919	0.8523
Myrtle Beach, SC	0.8162	0.8702
Nashville, TN	0.9336	0.9540
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2175	1.1443
New London-Norwich, CT	1.1738	1.1160
New Orleans, LA	0.9397	0.9583
New York, NY	1.4537	1.2920
Newark, NJ	1.0899	1.0607
Newburgh, NY-PA	1.1356	1.0910
Oakland, CA	1.5309	1.3386
Odessa-Midland, TX	0.7773	0.8415
Oklahoma City, OK	0.8764	0.9136
Omaha, NE-IA	0.9938	0.9958
Orange County, CA	1.1153	1.0776
Orlando, FL	0.9933	0.9954
Peoria-Pekin, IL	0.8157	0.8698
Philadelphia, PA-NJ	1.1427	1.0957

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Pittsburgh, PA	0.9740	0.9821
Pocatello, ID (Idaho Hospital)	0.8760	0.9133
Pocatello, ID (Wyoming Hospitals)	0.8763	0.9135
Portland, ME	0.9537	0.9681
Portland-Vancouver, OR-WA	1.1274	1.0856
Provo-Orem, UT	0.9910	0.9938
Raleigh-Durham-Chapel Hill, NC	0.9909	0.9938
Rapid City, SD	0.8277	0.8785
Reno, NV	1.0169	1.0115
Rochester, MN	1.1797	1.1198
Rockford, IL	0.8703	0.9093
Sacramento, CA	1.1952	1.1299
Saginaw-Bay City-Midland, MI	0.9567	0.9701
St. Cloud, MN	0.9667	0.9771
St. Louis, MO-IL	0.9063	0.9348
Salt Lake City-Ogden, UT	0.9458	0.9626
San Diego, CA	1.2388	1.1579
Santa Fe, NM	0.9414	0.9595
Santa Rosa, CA	1.3003	1.1970
Seattle-Bellevue-Everett, WA	1.1634	1.1092
Sharon, PA	0.8835	0.9187
Sherman-Denison, TX	0.8061	0.8628
Sioux City, IA-NE	0.8530	0.8968
Sioux Falls, SD	0.8885	0.9222
South Bend, IN	0.9939	0.9958
Spokane, WA	1.0554	1.0819
Springfield, IL	0.8793	0.9157
Springfield, MO	0.8151	0.8694
State College, PA	0.8845	0.9194
Syracuse, NY	0.9410	0.9592
Tallahassee, FL	0.8566	0.8994
Tampa-St. Petersburg-Clearwater, FL	0.9179	0.9430
Texarkana, AR-Texas	0.7538	0.8240
Topeka, KS	0.9667	0.9771
Tucson, AZ	0.9104	0.9377
Tulsa, OK	0.8418	0.8888
Tuscaloosa, AL	0.7706	0.8366
Tyler, TX	0.8792	0.9156
Vallejo-Fairfield-Napa, CA	1.3458	1.2255
Victoria, TX	0.8451	0.8911
Washington, DC-MD-VA-WV	1.0863	1.0583
Waterloo-Cedar Falls, IA	0.8402	0.8876
Wausau, WI	0.9501	0.9656
Wichita, KS	0.8853	0.9200
Wichita Falls, TX	0.7695	0.8357
Rural Alabama	0.7385	0.8125
Rural Illinois	0.7985	0.8572
Rural Louisiana	0.7517	0.8225
Rural Massachusetts	1.0481	1.0327
Rural Michigan	0.8988	0.9295
Rural Minnesota	0.8665	0.9065
Rural Missouri	0.7510	0.8219
Rural Nevada	0.8855	0.9201
Rural New Mexico	0.7927	0.8529
Rural Oregon	0.9957	0.9971

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Rural Washington	1.0577	1.0392
Rural Wyoming	0.8763	0.9135

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	16.4503
Aguadilla, PR	9.8326
Akron, OH	20.5582
Albany, GA	16.6839
Albany-Schenectady-Troy, NY	17.3615
Albuquerque, NM	18.1579
Alexandria, LA	17.7146
Allentown-Bethlehem-Easton, PA	21.0540
Altoona, PA	19.3623
Amarillo, TX	17.4756
Anchorage, AK	26.6324
Ann Arbor, MI	22.9259
Annapolis, MD	17.9884
Appleton-Oshkosh-Neenah, WI	18.3354
Arecibo, PR	10.1277
Asheville, NC	18.5755
Athens, GA	18.0203
Atlanta, GA	20.6523
Atlantic-Cape May, NJ	23.3952
Augusta-Aiken, GA-SC	19.1799
Austin-San Marcos, TX	16.8088
Bakersfield, CA	18.4123
Baltimore, MD	20.1089
Bangor, ME	16.5207
Barnstable-Yarmouth, MA	32.2329
Baton Rouge, LA	18.4192
Beaumont-Port Arthur, TX	17.8430
Bellingham, WA	23.6418
Benton Harbor, MI	17.7241
Bergen-Passaic, NJ	25.1292
Billings, MT	18.9960
Biloxi-Gulfport-Pascagoula, MS	17.0828
Binghamton, NY	18.7554
Birmingham, AL	18.8514
Bismarck, ND	16.5132
Bloomington, IN	18.6271
Bloomington-Normal, IL	18.3900
Boise City, ID	19.0323
Boston-Worcester-Lawrence-Low- ell-Brockton, MA-NH	22.3344
Boulder-Longmont, CO	20.8550
Brazoria, TX	18.3273
Bremerton, WA	22.9686
Brownsville-Harlingen-San Benito, TX	17.0823
Bryan-College Station, TX	16.3918
Buffalo-Niagara Falls, NY	19.7621
Burlington, VT	19.7504
Caguas, PR	9.1371
Canton-Massillon, OH	18.3270
Casper, WY	18.0774
Cedar Rapids, IA	18.3134
Champaign-Urbana, IL	18.1242
Charleston-North Charleston, SC	18.4009
Charleston, WV	18.6306

TABLE 4D.—AVERAGE HOURLY WAGE
FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Charlotte-Gastonia-Rock Hill, NC—SC	19.7132
Charlottesville, VA	21.3425
Chattanooga, TN-GA	18.7967
Cheyenne, WY	19.2719
Chicago, IL	21.6476
Chico-Paradise, CA	21.0787
Cincinnati, OH-KY-IN	19.5020
Clarksville-Hopkinsville, TN-KY	16.6908
Cleveland-Lorain-Elyria, OH	20.5422
Colorado Springs, CO	19.5098
Columbia, MO	19.9392
Columbia, SC	19.3016
Columbus, GA-AL	17.6626
Columbus, OH	20.4569
Corpus Christi, TX	16.6221
Cumberland, MD-WV	17.3219
Dallas, TX	18.9048
Danville, VA	18.7936
Davenport-Moline-Rock Island, IA-IL	17.5045
Dayton-Springfield, OH	19.9239
Daytona Beach, FL	18.9775
Decatur, AL	17.1051
Decatur, IL	16.7703
Denver, CO	21.6957
Des Moines, IA	17.5941
Detroit, MI	21.8417
Dothan, AL	16.1254
Dover, DE	19.4527
Dubuque, IA	17.0843
Duluth-Superior, MN-WI	20.7877
Dutchess County, NY	21.5269
Eau Claire, WI	18.0385
El Paso, TX	18.4982
Elkhart-Goshen, IN	18.7060
Elmira, NY	17.5584
Enid, OK	16.5863
Erie, PA	19.2498
Eugene-Springfield, OR	23.2566
Evansville, Henderson, IN-KY	17.5235
Fargo-Moorhead, ND-MN	15.4103
Fayetteville, NC	17.4302
Fayetteville-Springdale-Rogers, AR	17.8965
Flagstaff, AZ-UT	19.7008
Flint, MI	22.8823
Florence, AL	15.9479
Florence, SC	17.2402
Fort Collins-Loveland, CO	21.3936
Fort Lauderdale, FL	20.3768
Fort Myers-Cape Coral, FL	18.5790
Fort Pierce-Port St. Lucie, FL	19.9753
Fort Smith, AR-OK	15.8375
Fort Walton Beach, FL	17.8995
Fort Wayne, IN	18.3283
Fort Worth-Arlington, TX	18.8266
Fresno, CA	21.6143
Gadsden, AL	18.2411
Gainesville, FL	19.6396
Galveston-Texas City, TX	19.6738
Gary, IN	19.5496
Glens Falls, NY	17.6404
Goldboro, NC	17.5612
Grand Forks, ND-MN	18.4172
Grand Junction, CO	17.0997
Grand Rapids-Muskegon-Holland, MI	20.6411
Great Falls, MT	18.4336

TABLE 4D.—AVERAGE HOURLY WAGE
FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Greeley, CO	20.3075
Green Bay, WI	19.0230
Greensboro-Winston-Salem-High Point, NC	19.4045
Greenville, NC	18.6140
Greenville-Spartanburg-Anderson, SC	19.1991
Hagerstown, MD	21.1564
Hamilton-Middletown, OH	19.1458
Harrisburg-Lebanon-Carlisle, PA	19.7220
Hartford, CT	22.8114
Hattiesburg, MS	15.0868
Hickory-Morganton-Lenoir, NC	18.4430
Honolulu, HI	23.9579
Houma, LA	17.0314
Houston, TX	20.6380
Huntington-Ashland, WV-KY-OH	20.0441
Huntsville, AL	17.3657
Indianapolis, IN	20.3998
Iowa City, IA	19.6992
Jackson, MI	19.1645
Jackson, MS	17.0541
Jackson, TN	17.7852
Jacksonville, FL	18.3674
Jacksonville, NC	15.6996
Jamestown, NY	15.9060
Janetville-Beloit, WI	18.8060
Jersey City, NJ	23.4307
Johnson City-Kingsport-Bristol, TN-VA	18.2276
Johnstown, PA	17.8659
Jonesboro, AR	15.3904
Joplin, MO	16.3448
Kalamazoo-Battlecreek, MI	24.7428
Kankakee, IL	18.9037
Kansas City, KS-MO	19.9286
Kenosha, WI	18.9676
Killeen-Temple, TX	20.9746
Knoxville, TN	17.6557
Kokomo, IN	19.2639
La Crosse, WI-MN	18.5196
Lafayette, LA	17.1506
Lafayette, IN	18.3693
Lake Charles, LA	15.9437
Lakeland-Winter Haven, FL	18.5691
Lancaster, PA	19.8739
Lansing-East Lansing, MI	20.8707
Laredo, TX	15.2064
Las Cruces, NM	18.4298
Las Vegas, NV-AZ	23.3827
Lawrence, KS	17.9827
Lawton, OK	18.0698
Lewiston-Auburn, ME	19.0090
Lexington, KY	17.6767
Lima, OH	18.3062
Lincoln, NE	18.7127
Little Rock-North Little Rock, AR	17.6667
Longview-Marshall, TX	17.6848
Los Angeles-Long Beach, CA	24.9118
Louisville, KY-IN	18.9791
Lubbock, TX	17.4301
Lynchburg, VA	17.8831
Macon, GA	18.7672
Madison, WI	20.8155
Mansfield, OH	17.7321
Mayaguez, PR	8.9825
McAllen-Edinburg-Mission, TX	17.5983
Medford-Ashland, OR	20.8288
Melbourne-Titusville-Palm Bay, FL	19.1394

TABLE 4D.—AVERAGE HOURLY WAGE
FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Memphis, TN-AR-MS	17.3550
Merced, CA	20.8449
Miami, FL	20.7248
Middlesex-Somerset-Hunterdon, NJ	23.1938
Milwaukee-Waukesha, WI	19.5106
Minneapolis-St. Paul, MN-WI	22.5733
Mobile, AL	16.3627
Modesto, CA	21.4409
Monmouth-Ocean, NJ	23.2510
Monroe, LA	17.0762
Montgomery, AL	16.2493
Muncie, IN	19.5589
Myrtle Beach, SC	16.4379
Naples, FL	21.0253
Nashville, TN	19.2358
Nassau-Suffolk, NY	28.5558
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	24.7905
New London-Norwich, CT	24.1351
New Orleans, LA	19.3612
New York, NY	29.9516
Newark, NJ	24.1961
Newburgh, NY-PA	23.1287
Norfolk-Virginia Beach-Newport News, VA-NC	16.9674
Oakland, CA	31.0918
Ocala, FL	19.0159
Odessa-Midland, TX	16.0153
Oklahoma City, OK	18.0573
Olympia, WA	23.9108
Omaha, NE-IA	20.4749
Orange County, CA	23.1127
Orlando, FL	20.4664
Owensboro, KY	16.1460
Panama City, FL	17.6753
Parkersburg-Marietta, WV-OH	16.7267
Pensacola, FL	16.9466
Peoria-Pekin, IL	16.7415
Philadelphia, PA-NJ	23.5434
Phoenix-Mesa, AZ	20.1062
Pine Bluff, AR	16.4882
Pittsburgh, PA	20.3893
Pittsfield, MA	22.4781
Pocatello, ID	18.0491
Ponce, PR	9.7656
Portland, ME	19.6358
Portland-Vancouver, OR-WA	23.2280
Providence-Warwick, RI	22.4328
Provo-Orem, UT	20.4158
Pueblo, CO	18.1010
Punta Gorda, FL	18.5303
Racine, WI	18.9689
Raleigh-Durham-Chapel Hill, NC	20.4162
Rapid City, SD	17.0546
Reading, PA	19.1241
Redding, CA	24.7586
Reno, NV	20.9521
Richland-Kennebec-Pasco, WA	21.3732
Richmond-Petersburg, VA	19.0728
Riverside-San Bernardino, CA	21.3055
Roanoke, VA	17.6802
Rochester, MN	24.3054
Rochester, NY	19.9396
Rockford, IL	17.9308
Rocky Mount, NC	18.5969
Sacramento, CA	24.6188
Saginaw-Bay City-Midland, MI	19.7109
St. Cloud, MN	19.9167

TABLE 4D.—AVERAGE HOURLY WAGE
FOR URBAN AREAS—Continued

Urban area	Average hourly wage
St. Joseph, MO	20.5465
St. Louis, MO-IL	18.6721
Salem, OR	20.5776
Salinas, CA	31.4614
Salt Lake City-Ogden, UT	19.4515
San Angelo, TX	15.4776
San Antonio, TX	15.9548
San Diego, CA	25.4297
San Francisco, CA	28.9991
San Jose, CA	28.6758
San Juan-Bayamon, PR	9.3148
San Luis Obispo-Atascadero-Paso Robles, CA	22.3026
Santa Barbara-Santa Maria-Lompoc, CA	23.1439
Santa Cruz-Watsonville, CA	29.0487
Santa Fe, NM	19.6247
Santa Rosa, CA	28.2324
Sarasota-Bradenton, FL	19.7119
Savannah, GA	18.0808
Scranton-Wilkes Barre-Hazleton, PA	17.5663
Seattle-Bellevue-Everett, WA	23.9527
Sharon, PA	18.4366
Sheboygan, WI	17.0899
Sherman-Denison, TX	16.9538
Shreveport-Bossier City, LA	19.4408
Sioux City, IA-NE	17.5754
Sioux Falls, SD	18.5187
South Bend, IN	20.4772
Spokane, WA	22.7055
Springfield, IL	18.1176
Springfield, MO	16.7941
Springfield, MA	22.7477
State College, PA	19.6319
Steubenville-Weirton, OH-WV	17.4636
Stockton-Lodi, CA	22.9869
Sumter, SC	16.8850
Syracuse, NY	19.3881
Tacoma, WA	21.5661
Tallahassee, FL	17.5545
Tampa-St. Petersburg-Clearwater, FL	18.7444
Terre Haute, IN	18.6722
Texarkana, AR-Texarkana, TX	14.8193
Toledo, OH	20.8755

TABLE 4D.—AVERAGE HOURLY WAGE
FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Topeka, KS	20.3862
Trenton, NJ	21.4255
Tucson, AZ	18.7576
Tulsa, OK	17.5538
Tuscaloosa, AL	15.8762
Tyler, TX	18.1141
Utica-Rome, NY	17.2785
Vallejo-Fairfield-Napa, CA	27.9551
Ventura, CA	22.7487
Victoria, TX	17.4131
Vineland-Millville-Bridgeton, NJ	21.5511
Visalia-Tulare-Porterville, CA	20.9493
Waco, TX	16.5375
Washington, DC-MD-VA-WV	22.3812
Waterloo-Cedar Falls, IA	16.5347
Wausau, WI	20.2214
West Palm Beach-Boca Raton, FL	21.2686
Wheeling, OH-WV	15.8460
Wichita, KS	18.5231
Wichita Falls, TX	16.2020
Williamsport, PA	17.5305
Wilmington-Newark, DE-MD	24.6591
Wilmington, NC	19.4232
Yakima, WA	21.4371
Yolo, CA	22.0507
York, PA	19.5923
Youngstown-Warren, OH	20.3921
Yuba City, CA	22.5751
Yuma, AZ	20.8977

TABLE 4E.—AVERAGE HOURLY WAGE
FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	15.1489
Alaska	25.8250
Arizona	16.6528
Arkansas	14.9880
California	20.5534
Colorado	17.4187
Connecticut	25.0854
Delaware	17.6976

TABLE 4E.—AVERAGE HOURLY WAGE
FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Florida	18.4340
Georgia	16.3451
Hawaii	22.6872
Idaho	17.6124
Illinois	16.4317
Indiana	17.3659
Iowa	16.1658
Kansas	15.1110
Kentucky	16.2801
Louisiana	15.4622
Maine	17.5914
Maryland	17.7750
Massachusetts	22.4920
Michigan	18.5026
Minnesota	17.8522
Mississippi	15.1615
Missouri	15.4743
Montana	17.8114
Nebraska	15.8291
Nevada	19.0933
New Hampshire	21.2716
New Jersey ¹	16.3322
New Mexico	17.8012
New York	16.8177
North Carolina	15.3932
North Dakota	17.6689
Ohio	14.8488
Oklahoma	20.5099
Oregon	17.7499
Pennsylvania	8.4134
Puerto Rico	16.7085
Rhode Island ¹	15.5851
South Carolina	15.4168
South Dakota	15.2542
Tennessee	18.2372
Texas	19.5500
Utah	16.2563
Vermont	21.7931
Virginia	16.3543
Washington	17.6308
West Virginia	18.0559
Wisconsin	
Wyoming	

¹ All counties within the State are classified as urban.

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index—Reclass. hospitals	GAF—Reclass. hospitals
Aguadilla, PR	1.0534	1.0363		
Arecibo, PR	1.0850	1.0575		
Caguas, PR	0.9812	0.9871	0.9812	0.9871
Mayaguez, PR	0.9624	0.9741		
Ponce, PR	1.0462	1.0314		
San Juan-Bayamon, PR	0.9980	0.9986		
Rural Puerto Rico	0.9014	0.9314		

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.0645	6.8	9.6
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.1009	7.5	10.1
3	01	SURG	*CRANIOTOMY AGE 0-17	1.9573	12.7	12.7
4	01	SURG	SPINAL PROCEDURES	2.3259	5.1	7.7
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.4845	2.7	3.6
6	01	SURG	CARPAL TUNNEL RELEASE	.7763	2.1	3.0
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.3911	6.8	10.1
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.2891	2.2	3.2
9	01	MED	SPINAL DISORDERS & INJURIES	1.2867	4.8	6.6
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2113	5.1	7.0
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8233	3.1	4.2
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9034	4.8	6.7
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7792	4.4	5.5
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.1973	4.9	6.4
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.7327	3.1	3.9
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0715	4.5	5.9
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6186	2.7	3.4
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9285	4.3	5.6
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6463	3.0	3.8
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.6134	7.9	10.5
21	01	MED	VIRAL MENINGITIS	1.4785	5.1	6.8
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.8984	3.6	4.7
23	01	MED	NONTRAUMATIC STUPOR & COMA	.7776	3.2	4.3
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9579	3.8	5.1
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5905	2.7	3.4
26	01	MED	SEIZURE & HEADACHE AGE 0-17	.6950	2.4	3.1
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3017	3.4	5.3
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.1699	4.3	6.0
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.6370	2.7	3.6
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3310	2.0	2.0
31	01	MED	CONCUSSION AGE >17 W CC	.8039	3.2	4.4
32	01	MED	CONCUSSION AGE >17 W/O CC	.5138	2.2	3.0
33	01	MED	*CONCUSSION AGE 0-17	.2080	1.6	1.6
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0067	4.1	5.5
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5915	2.7	3.6
36	02	SURG	RETINAL PROCEDURES	.6873	1.3	1.5
37	02	SURG	ORBITAL PROCEDURES	.9614	2.5	3.7
38	02	SURG	PRIMARY IRIS PROCEDURES	.4876	1.9	2.6
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5686	1.5	2.0
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.7937	2.1	3.2
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3369	1.6	1.6
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6034	1.6	2.1
43	02	MED	HYPHEMA	.4370	2.7	3.4
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6100	4.2	5.1
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6822	2.8	3.5
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7546	3.6	4.7
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4618	2.5	3.3
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0-17	.2969	2.9	2.9
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7597	3.7	5.0
50	03	SURG	SIALOADENECTOMY	.8288	1.6	2.0
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.8590	1.8	2.8
52	03	SURG	CLEFT LIP & PALATE REPAIR	.9567	2.0	2.8
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.1402	2.3	3.7
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0-17	.4812	3.2	3.2
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.8886	2.0	3.0
56	03	SURG	RHINOPLASTY	.9008	2.1	2.8
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.9381	2.6	3.7
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2732	1.5	1.5
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.6750	1.8	2.4
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2081	1.5	1.5
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.1456	2.6	4.5
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0-17	.2946	1.3	1.3
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.3248	3.0	4.4
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.2201	4.4	6.8
65	03	MED	DYSEQUILIBRIUM	.5173	2.4	3.0
66	03	MED	EPISTAXIS	.5418	2.6	3.3
67	03	MED	EPIGLOTTITIS	.8230	3.0	3.8
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.6733	3.4	4.2

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5076	2.7	3.3
70	03	MED	OTITIS MEDIA & URI AGE 0-17	.3860	2.1	2.5
71	03	MED	LARYNGOTRACHEITIS	.7663	3.2	4.0
72	03	MED	NASAL TRAUMA & DEFORMITY	.6534	2.8	3.8
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7507	3.3	4.4
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3347	2.1	2.1
75	04	SURG	MAJOR CHEST PROCEDURES	3.1785	8.1	10.2
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.6860	8.4	11.3
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.1569	3.4	4.9
78	04	MED	PULMONARY EMBOLISM	1.4068	6.3	7.4
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.6331	6.7	8.4
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	.9177	4.7	5.9
81	04	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.5160	6.1	6.1
82	04	MED	RESPIRATORY NEOPLASMS	1.3628	5.3	7.2
83	04	MED	MAJOR CHEST TRAUMA W CC	.9508	4.4	5.6
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5041	2.7	3.3
85	04	MED	PLEURAL EFFUSION W CC	1.2361	5.1	6.7
86	04	MED	PLEURAL EFFUSION W/O CC	.6843	3.0	3.9
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3672	4.8	6.4
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9558	4.4	5.4
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.0865	5.2	6.3
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6669	3.8	4.5
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.7210	3.3	4.0
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.2047	5.1	6.4
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7722	3.5	4.4
94	04	MED	PNEUMOTHORAX W CC	1.1904	4.9	6.5
95	04	MED	PNEUMOTHORAX W/O CC	.6060	3.1	3.9
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.7917	4.0	4.9
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.5942	3.2	3.8
98	04	MED	BRONCHITIS & ASTHMA AGE 0-17	.6921	3.6	4.9
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.6739	2.3	3.0
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5155	1.7	2.1
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8304	3.3	4.4
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5402	2.2	2.8
103	05	SURG	HEART TRANSPLANT	16.8723	30.4	48.1
104	05	SURG	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W CARD CATH	7.2756	9.9	12.5
105	05	SURG	CARDIAC VALVE & OTH MAJ CARDIOTHORACIC PROC W/O CARD CATH	5.7011	7.9	9.7
106	05	SURG	CORONARY BYPASS WITH PTCA	7.3400	9.2	10.9
107	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.4891	9.5	10.7
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.9512	8.6	11.3
109	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.0670	7.0	8.0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1419	7.4	9.7
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2188	5.1	5.9
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	1.9862	2.8	3.9
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.7407	9.8	13.0
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.5023	6.0	8.4
115	05	SURG	PERM PACE IMPLNT W AMI, HRT FAIL OR SHOCK OR AICD LEAD OR GEN PROC	3.5531	6.4	8.8
116	05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR PTCA W CORONARY ART STENT	2.4811	3.0	4.2
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.2368	2.7	4.0
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5711	2.0	2.9
119	05	SURG	VEIN LIGATION & STRIPPING	1.2960	3.2	5.4
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9568	4.9	8.2
121	05	MED	CIRCULATORY DISORDERS W AMI & MAJOR COMP DISCH ALIVE	1.6354	5.7	7.0
122	05	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP DISCH ALIVE	1.1299	3.6	4.4
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4874	2.7	4.4
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.3790	3.5	4.5
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	1.0130	2.2	2.9
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.5820	9.7	12.7
127	05	MED	HEART FAILURE & SHOCK	1.0143	4.3	5.5
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7671	5.3	6.0
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.0878	1.8	3.0
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9435	4.9	6.0
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.6077	3.9	4.7

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
132 ...	05	MED	ATHEROSCLEROSIS W CC .....	.6711	2.5	3.2
133 ...	05	MED	ATHEROSCLEROSIS W/O CC .....	.5562	2.0	2.5
134 ...	05	MED	HYPERTENSION .....	.5838	2.7	3.5
135 ...	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC ...	.8519	3.3	4.4
136 ...	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC ..	.5766	2.4	3.0
137 ...	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17 .....	.8168	3.3	3.3
138 ...	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC .....	.8012	3.1	4.1
139 ...	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC .....	.4981	2.1	2.6
140 ...	05	MED	ANGINA PECTORIS .....	.5973	2.4	3.0
141 ...	05	MED	SYNCOPE & COLLAPSE W CC .....	.7029	3.0	3.9
142 ...	05	MED	SYNCOPE & COLLAPSE W/O CC .....	.5316	2.2	2.8
143 ...	05	MED	CHEST PAIN .....	.5265	1.8	2.3
144 ...	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1123	3.8	5.3
145 ...	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC .....	.6305	2.2	2.9
146 ...	06	SURG	RECTAL RESECTION W CC	2.7210	9.0	10.3
147 ...	06	SURG	RECTAL RESECTION W/O CC	1.5887	6.1	6.7
148 ...	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.4239	10.3	12.3
149 ...	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5698	6.3	6.9
150 ...	06	SURG	PERITONEAL ADHESION W CC	2.7465	8.9	10.9
151 ...	06	SURG	PERITONEAL ADHESION W/O CC	1.2832	4.8	5.9
152 ...	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9427	7.0	8.3
153 ...	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1905	5.1	5.6
154 ...	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC ..	4.1849	10.3	13.4
155 ...	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC ..	1.3570	3.6	4.7
156 ...	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17 ..	.8412	6.0	6.0
157 ...	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.2071	3.9	5.4
158 ...	06	SURG	ANAL & STOMAL PROCEDURES W/O CC .....	.6434	2.1	2.6
159 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC ..	1.2873	3.7	5.0
160 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC ..	.7413	2.2	2.7
161 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.0742	2.9	4.1
162 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC .....	.6129	1.7	2.0
163 ...	06	SURG	*HERNIA PROCEDURES AGE 0-17 .....	.8700	2.1	2.1
164 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3206	7.3	8.5
165 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2301	4.3	5.0
166 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.4518	4.0	5.1
167 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC .....	.8548	2.4	2.8
168 ...	03	SURG	MOUTH PROCEDURES W CC	1.1593	3.1	4.6
169 ...	03	SURG	MOUTH PROCEDURES W/O CC .....	.7155	1.9	2.5
170 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8008	7.9	11.3
171 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1668	3.6	4.8
172 ...	06	MED	DIGESTIVE MALIGNANCY W CC	1.3152	5.2	7.1
173 ...	06	MED	DIGESTIVE MALIGNANCY W/O CC .....	.7316	2.8	4.0
174 ...	06	MED	G.I. HEMORRHAGE W CC .....	.9945	4.0	4.9
175 ...	06	MED	G.I. HEMORRHAGE W/O CC .....	.5305	2.5	3.0
176 ...	06	MED	COMPLICATED PEPTIC ULCER	1.1068	4.3	5.5
177 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W CC .....	.8646	3.7	4.6
178 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC .....	.6344	2.7	3.2
179 ...	06	MED	INFLAMMATORY BOWEL DISEASE	1.1084	5.0	6.4
180 ...	06	MED	G.I. OBSTRUCTION W CC .....	.9184	4.2	5.4
181 ...	06	MED	G.I. OBSTRUCTION W/O CC .....	.5254	2.9	3.5
182 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC ..	.7709	3.4	4.4
183 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC ..	.5594	2.4	3.0
184 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17 ..	.5224	2.5	3.2
185 ...	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17 ..	.8303	3.3	4.5
186 ...	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17 ..	.3207	2.9	2.9
187 ...	03	MED	DENTAL EXTRACTIONS & RESTORATIONS .....	.7415	3.0	4.0
188 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0758	4.1	5.6
189 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC .....	.5600	2.4	3.2
190 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17 .....	.7636	3.8	5.3
191 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.4088	10.8	14.6
192 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7111	5.4	6.7

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
193 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC ..	3.3324	10.4	12.5
194 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC ..	1.6689	5.8	6.9
195 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	2.7947	8.3	9.8
196 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6378	4.9	5.7
197 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC ..	2.3864	7.1	8.6
198 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC ..	1.2024	4.0	4.6
199 ...	07	SURG	HEPATOBIILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3873	7.7	10.2
200 ...	07	SURG	HEPATOBIILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY ..	3.2791	7.4	11.5
201 ...	07	SURG	OTHER HEPATOBIILIARY OR PANCREAS O.R. PROCEDURES	3.5903	10.4	14.4
202 ...	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3123	5.1	6.8
203 ...	07	MED	MALIGNANCY OF HEPATOBIILIARY SYSTEM OR PANCREAS	1.2979	5.1	6.9
204 ...	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2114	4.7	6.1
205 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRRH, ALC HEP W CC	1.2109	4.9	6.6
206 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRRH, ALC HEP W/O CC ....	.6932	3.1	4.1
207 ...	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.0711	4.0	5.2
208 ...	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC .....	.6178	2.3	2.9
209 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY ..	2.1818	4.9	5.5
210 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC ..	1.8153	6.1	7.1
211 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC ..	1.2530	4.7	5.2
212 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17 .....	.8679	3.2	3.8
213 ...	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS ..	1.6323	6.2	8.4
214 ...	08	SURG	NO LONGER VALID .....	.0000	.0	.0
215 ...	08	SURG	NO LONGER VALID .....	.0000	.0	.0
216 ...	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE ..	2.1241	7.0	9.8
217 ...	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCULOSKELET & CONN TISS DIS ..	2.7825	8.7	13.0
218 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC ..	1.4630	4.2	5.3
219 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC ..	.9926	2.8	3.3
220 ...	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0-17 ..	.5827	5.3	5.3
221 ...	08	SURG	NO LONGER VALID .....	.0000	.0	.0
222 ...	08	SURG	NO LONGER VALID .....	.0000	.0	.0
223 ...	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC ..	.9257	2.0	2.6
224 ...	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC ..	.7876	1.7	2.1
225 ...	08	SURG	FOOT PROCEDURES	1.0120	3.0	4.4
226 ...	08	SURG	SOFT TISSUE PROCEDURES W CC	1.4076	4.0	5.9
227 ...	08	SURG	SOFT TISSUE PROCEDURES W/O CC .....	.7916	2.1	2.7
228 ...	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC ..	1.0048	2.3	3.4
229 ...	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC .....	.7055	1.8	2.4
230 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR ..	1.1097	3.1	4.5
231 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR ..	1.2922	3.0	4.6
232 ...	08	SURG	ARTHROSCOPY	1.0895	2.3	3.8
233 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0699	5.4	7.7
234 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.1712	2.8	3.6
235 ...	08	MED	FRACTURES OF FEMUR .....	.7526	3.9	5.4
236 ...	08	MED	FRACTURES OF HIP & PELVIS .....	.7260	4.1	5.3
237 ...	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH .....	.5367	2.9	3.6
238 ...	08	MED	OSTEOMYELITIS	1.3382	6.7	8.9
239 ...	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY ..	.9661	5.0	6.4
240 ...	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.2253	5.0	6.7
241 ...	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC .....	.5875	3.1	4.0
242 ...	08	MED	SEPTIC ARTHRITIS	1.0391	5.2	6.8
243 ...	08	MED	MEDICAL BACK PROBLEMS .....	.7159	3.8	4.9
244 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC .....	.7056	3.9	5.0

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
245 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC .....	.4961	2.9	3.8
246 ...	08	MED	NON-SPECIFIC ARTHROPATHIES .....	.5662	3.1	3.9
247 ...	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE .....	.5542	2.6	3.5
248 ...	08	MED	TENDONITIS, MYOSITIS & BURITIS .....	.7487	3.6	4.7
249 ...	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE .....	.6514	2.6	3.6
250 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC .....	.6776	3.2	4.2
251 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC .....	.4622	2.3	3.0
252 ...	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17 .....	.2532	1.8	1.8
253 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC .....	.7188	3.7	4.9
254 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC .....	.4315	2.7	3.4
255 ...	08	MED	*FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0-17 .....	.2947	2.9	2.9
256 ...	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES .....	.7564	3.8	5.1
257 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC .....	.9219	2.4	3.0
258 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC .....	.7237	1.9	2.1
259 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC .....	.8840	2.0	3.1
260 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC .....	.6238	1.4	1.5
261 ...	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION .....	.9138	1.7	2.2
262 ...	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY .....	.8738	2.9	4.2
263 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.0055	8.8	11.9
264 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.1061	5.4	7.2
265 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.4806	4.2	6.5
266 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC .....	.8252	2.5	3.4
267 ...	09	SURG	PERIANAL & PILONIDAL PROCEDURES .....	.9378	3.0	4.6
268 ...	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.0673	2.3	3.6
269 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.5778	5.6	7.9
270 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC .....	.7218	2.2	3.2
271 ...	09	MED	SKIN ULCERS	1.0023	5.7	7.2
272 ...	09	MED	MAJOR SKIN DISORDERS W CC	1.0465	4.9	6.4
273 ...	09	MED	MAJOR SKIN DISORDERS W/O CC .....	.6251	3.6	4.8
274 ...	09	MED	MALIGNANT BREAST DISORDERS W CC	1.1170	4.8	6.8
275 ...	09	MED	MALIGNANT BREAST DISORDERS W/O CC .....	.5288	2.6	3.6
276 ...	09	MED	NON-MALIGANT BREAST DISORDERS .....	.6416	3.6	4.5
277 ...	09	MED	CELLULITIS AGE >17 W CC .....	.8345	4.8	5.9
278 ...	09	MED	CELLULITIS AGE >17 W/O CC .....	.5561	3.8	4.5
279 ...	09	MED	CELLULITIS AGE 0-17 .....	.6697	4.3	5.0
280 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC .....	.6624	3.3	4.3
281 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC .....	.4540	2.5	3.2
282 ...	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17 .....	.2563	2.2	2.2
283 ...	09	MED	MINOR SKIN DISORDERS W CC .....	.6961	3.6	4.8
284 ...	09	MED	MINOR SKIN DISORDERS W/O CC .....	.4419	2.6	3.3
285 ...	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS	2.0445	8.1	11.0
286 ...	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.2173	5.5	7.0
287 ...	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.8652	8.0	11.3
288 ...	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0156	4.7	5.9
289 ...	10	SURG	PARATHYROID PROCEDURES	1.0132	2.2	3.2
290 ...	10	SURG	THYROID PROCEDURES .....	.9181	1.9	2.5
291 ...	10	SURG	THYROIDGLAND PROCEDURES .....	.5752	1.5	1.8
292 ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.5779	7.5	10.7
293 ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2954	3.9	5.5
294 ...	10	MED	DIABETES AGE >35 .....	.7500	3.8	4.9
295 ...	10	MED	DIABETES AGE 0-35 .....	.7234	3.0	4.0
296 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC .....	.8511	4.1	5.4
297 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC .....	.5206	2.9	3.7
298 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17 .....	.5479	2.4	3.7
299 ...	10	MED	INBORN ERRORS OF METABOLISM .....	.8774	3.9	5.4
300 ...	10	MED	ENDOCRINE DISORDERS W CC	1.0807	4.8	6.3
301 ...	10	MED	ENDOCRINE DISORDERS W/O CC .....	.6023	2.9	3.8
302 ...	11	SURG	KIDNEY TRANSPLANT	3.6251	8.6	10.1

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
303 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEO-PLASM	2.6598	7.5	9.2
304 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.3331	6.5	9.0
305 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.1358	3.2	3.9
306 ...	11	SURG	PROSTATECTOMY W CC	1.2407	3.8	5.5
307 ...	11	SURG	PROSTATECTOMY W/O CC .....	.6423	2.0	2.4
308 ...	11	SURG	MINOR BLADDER PROCEDURES W CC	1.5218	4.1	6.0
309 ...	11	SURG	MINOR BLADDER PROCEDURES W/O CC .....	.9101	2.1	2.6
310 ...	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.0630	3.0	4.3
311 ...	11	SURG	TRANSURETHRAL PROCEDURES W/O CC .....	.6087	1.6	2.0
312 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC .....	.9880	2.9	4.3
313 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC .....	.6269	1.8	2.4
314 ...	11	SURG	*URETHRAL PROCEDURES, AGE 0-17 .....	.4939	2.3	2.3
315 ...	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0691	4.6	8.0
316 ...	11	MED	RENAL FAILURE	1.3318	5.0	6.9
317 ...	11	MED	ADMIT FOR RENAL DIALYSIS .....	.6194	2.0	2.9
318 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.0973	4.4	6.1
319 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC .....	.6170	2.2	3.0
320 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC .....	.8675	4.5	5.6
321 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC .....	.5826	3.4	4.0
322 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17 .....	.5394	3.3	4.1
323 ...	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY .....	.7679	2.4	3.2
324 ...	11	MED	URINARY STONES W/O CC .....	.4360	1.6	1.9
325 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC .....	.6246	3.0	4.0
326 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC .....	.4152	2.1	2.7
327 ...	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17 .....	.3532	3.1	3.1
328 ...	11	MED	URETHRAL STRICTURE AGE >17 W CC .....	.7189	2.8	3.7
329 ...	11	MED	URETHRAL STRICTURE AGE >17 W/O CC .....	.4911	1.7	2.3
330 ...	11	MED	*URETHRAL STRICTURE AGE 0-17 .....	.3182	1.6	1.6
331 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC .....	.9946	4.2	5.6
332 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC ..	.6236	2.7	3.6
333 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17 .....	.7891	3.5	5.0
334 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.5998	4.4	5.0
335 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.2055	3.4	3.7
336 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC .....	.8873	2.8	3.6
337 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC .....	.6186	2.0	2.3
338 ...	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.0888	3.2	4.8
339 ...	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17 .....	.9811	2.9	4.2
340 ...	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17 .....	.2828	2.4	2.4
341 ...	12	SURG	PENIS PROCEDURES	1.1213	2.1	3.0
342 ...	12	SURG	CIRCUMCISION AGE >17 .....	.8601	2.6	3.5
343 ...	12	SURG	*CIRCUMCISION AGE 0-17 .....	.1536	1.7	1.7
344 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0395	1.8	2.6
345 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY .....	.8659	2.5	3.6
346 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC .....	.9541	4.3	5.8
347 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC .....	.5764	2.3	3.1
348 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC .....	.6894	3.2	4.3
349 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC .....	.4142	2.1	2.8
350 ...	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM .....	.6931	3.6	4.4
351 ...	12	MED	*STERILIZATION, MALE .....	.2358	1.3	1.3
352 ...	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES .....	.6279	2.7	3.6
353 ...	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	1.9243	5.6	6.9
354 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.4969	4.8	5.8
355 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC .....	.9332	3.2	3.5
356 ...	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES .....	.7878	2.3	2.6
357 ...	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	2.4468	7.3	9.0
358 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2133	3.7	4.4
359 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC .....	.8676	2.8	3.0
360 ...	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES .....	.8910	2.6	3.2
361 ...	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.2140	2.3	3.3
362 ...	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION .....	.3014	1.4	1.4

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.7481	2.5	3.3
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.7290	2.6	3.6
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.7398	4.6	6.9
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.1946	4.8	6.9
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.5666	2.2	2.9
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.0553	5.0	6.4
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5264	2.3	3.1
370	14	SURG	CESAREAN SECTION W CC	1.0533	4.3	5.5
371	14	SURG	CESAREAN SECTION W/O CC	.7197	3.2	3.5
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5679	2.4	3.2
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3987	1.8	2.1
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.7188	2.1	3.0
375	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6840	4.4	4.4
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	.4925	2.4	2.9
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1.4598	3.4	4.5
378	14	MED	ECTOPIC PREGNANCY	.8441	2.2	2.6
379	14	MED	THREATENED ABORTION	.4401	2.2	3.6
380	14	MED	ABORTION W/O D&C	.4235	1.7	2.0
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.5583	1.6	2.1
382	14	MED	FALSE LABOR	.1917	1.1	1.3
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.4732	2.7	3.7
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.3576	1.9	2.7
385	15		*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.3728	1.8	1.8
386	15		*EXTREME IMMATUREITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	4.5269	17.9	17.9
387	15		*PREMATURITY W MAJOR PROBLEMS	3.0918	13.3	13.3
388	15		*PREMATURITY W/O MAJOR PROBLEMS	1.8655	8.6	8.6
389	15		*FULL TERM NEONATE W MAJOR PROBLEMS	1.4930	4.7	4.7
390	15		NEONATE W OTHER SIGNIFICANT PROBLEMS	1.6281	4.2	6.0
391	15		*NORMAL NEWBORN	.1522	3.1	3.1
392	16	SURG	SPLENECTOMY AGE >17	3.2630	7.8	10.4
393	16	SURG	*SPLENECTOMY AGE 0-17	1.3447	9.1	9.1
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.6349	4.1	7.1
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8209	3.4	4.7
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	2.2655	5.5	18.5
397	16	MED	COAGULATION DISORDERS	1.2544	4.0	5.5
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2457	4.7	6.0
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6933	3.0	3.7
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6552	6.1	9.4
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.5729	7.7	11.0
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	1.0126	2.7	3.9
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6817	5.8	8.2
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8288	3.2	4.5
405	17		*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.9065	4.9	4.9
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC	2.5701	6.9	9.5
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W/O CC	1.1786	3.4	4.3
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC	1.8039	4.6	7.5
409	17	MED	RADIOTHERAPY	1.0112	4.3	5.8
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	.8403	2.7	3.4
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.3229	2.0	2.9
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.5222	1.9	2.3
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.3511	5.4	7.5
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.7210	3.1	4.2
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5656	10.5	14.4
416	18	MED	SEPTICEMIA AGE >17	1.4885	5.7	7.4
417	18	MED	SEPTICEMIA AGE 0-17	1.3566	4.5	6.0
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9882	4.9	6.2
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.8779	4.0	5.0
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6351	3.2	4.0
421	18	MED	VIRAL ILLNESS AGE >17	.6757	3.1	4.0

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.5729	2.6	3.3
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.6011	5.8	7.8
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.3280	9.0	14.3
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6791	3.0	4.1
426	19	MED	DEPRESSIVE NEUROSES	.5537	3.5	4.9
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5609	3.4	4.8
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7031	4.5	7.2
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8721	5.2	7.4
430	19	MED	PSYCHOSES	.8073	6.2	8.8
431	19	MED	CHILDHOOD MENTAL DISORDERS	.7541	4.6	7.3
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7008	3.4	5.2
433	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3024	2.3	3.2
434	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	.6998	3.9	5.2
435	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC	.4143	3.5	4.4
436	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	.8189	11.4	14.1
437	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	.7027	7.7	9.2
438			NO LONGER VALID	.0000	.0	.0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.5601	5.0	7.7
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.7978	5.7	8.9
441	21	SURG	HAND PROCEDURES FOR INJURIES	1.0114	2.3	3.4
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.2637	5.2	8.1
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.9271	2.5	3.3
444	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7110	3.5	4.5
445	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4790	2.6	3.4
446	21	MED	*TRAUMATIC INJURY AGE 0-17	.2955	2.4	2.4
447	21	MED	ALLERGIC REACTIONS AGE >17	.4935	1.9	2.5
448	21	MED	*ALLERGIC REACTIONS AGE 0-17	.0972	2.9	2.9
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	.7848	2.7	3.8
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4333	1.6	2.1
451	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.2625	2.1	2.1
452	21	MED	COMPLICATIONS OF TREATMENT W CC	.9785	3.6	5.0
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4855	2.2	2.9
454	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	.8478	3.2	4.7
455	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	.4694	2.0	2.7
456			NO LONGER VALID	.0000	.0	.0
457			NO LONGER VALID	.0000	.0	.0
458			NO LONGER VALID	.0000	.0	.0
459			NO LONGER VALID	.0000	.0	.0
460			NO LONGER VALID	.0000	.0	.0
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.0644	2.4	4.4
462	23	MED	REHABILITATION	1.3849	10.1	12.6
463	23	MED	SIGNS & SYMPTOMS W CC	.6757	3.3	4.4
464	23	MED	SIGNS & SYMPTOMS W/O CC	.5006	2.6	3.4
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.5238	1.9	2.9
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.6193	2.3	4.1
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4944	2.3	4.4
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3.6566	9.5	13.5
469			**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	.0
470			**UNGROUPABLE	.0000	.0	.0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	3.3201	5.3	6.1
472			NO LONGER VALID	.0000	.0	.0
473	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.4688	7.6	13.0
474			NO LONGER VALID	.0000	.0	.0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.7373	8.1	11.3
476		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2226	8.9	11.9
477		SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.7581	5.3	8.2
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.3334	5.1	7.5
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4224	3.0	3.8
480		SURG	LIVER TRANSPLANT	10.6455	19.4	26.8
481		SURG	BONE MARROW TRANSPLANT	9.7725	24.5	27.2

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
482	...	SURG	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES	3.5950	10.0	12.8
483	...	SURG	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES	16.2677	33.9	42.1
484	...	24 SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.3170	9.5	14.8
485	...	24 SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR.	3.0440	7.7	9.6
486	...	24 SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.9559	8.4	12.4
487	...	24 MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9036	5.4	7.5
488	...	25 SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.5576	11.9	17.2
489	...	25 MED	HIV W MAJOR RELATED CONDITION	1.7700	6.2	8.9
490	...	25 MED	HIV W OR W/O OTHER RELATED CONDITION	.9720	3.9	5.4
491	...	08 SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	1.6670	3.1	3.7
492	...	17 MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	4.5197	11.4	17.2
493	...	07 SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.7952	4.2	5.6
494	...	07 SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	.9989	1.9	2.4
495	...	08 SURG	LUNG TRANSPLANT	9.0247	13.7	17.0
496	...	08 SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.4507	8.6	10.6
497	...	08 SURG	SPINAL FUSION W CC	2.7585	5.0	6.3
498	...	08 SURG	SPINAL FUSION W/O CC	1.6870	2.9	3.5
499	...	08 SURG	BACK & NECK PROCS EXCEPT SPINAL FUSION W CC	1.4669	3.8	5.0
500	...	08 SURG	BACK & NECK PROCS EXCEPT SPINAL FUSION W/O CC	.9709	2.4	2.9
501	...	08 SURG	KNEE PROC W PDX OF INFECTION W CC	2.5459	8.4	10.4
502	...	08 SURG	KNEE PROC W PDX OF INFECTION W/O CC	1.5548	5.5	6.6
503	...	08 SURG	KNEE PROCEDURES W/O PDX OF INFECTION	1.2316	3.2	4.2
504	...	22 SURG	EXTENSIVE 3RD DEGREE BURN W SKIN GRAFT	13.9440	23.1	31.6
505	...	22	EXTENSIVE 3RD DEGREE BURN W/O SKIN GRAFT	1.7871	2.3	5.9
506	...	22	FULL THICK BURN W SK GRAFT OR INHAL INJ W CC OR SIG TR	4.2300	12.2	16.8
507	...	22	FULL THICK BURN W SK GRAFT OR INHAL INJ W/O CC OR SIG TR	1.7017	6.5	9.0
508	...	22	FULL THICK BURN W/O SK GRAFT OR INHAL INJ W CC OR SIG TR	1.3792	5.2	7.8
509	...	22	FULL THICK BURN W/O SK GRAFT OR INHAL INJ W/O CC OR SIG TR	.7376	3.3	4.9
510	...	22	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.1408	4.8	6.9
511	...	22	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	.6001	3.5	4.8

* Medicare data have been supplemented by data from 19 states for low volume DRGs.

** DRGs 469 and 470 contain cases which could not be assigned to valid DRGs.

Note: Geometric mean is used only to determine payment for transfer cases.

Note: Arithmetic mean is used only to determine payment for outlier cases.

Note: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis codes	Description	CC	MDC	DRG
337.3	Autonomic dysreflexia	N	1	18,19
438.53	Other paralytic syndrome, bilateral	N	1	12
482.40	Pneumonia due to Staphylococcus, unspecified	Y	4	79, 80, 81 ¹
			5	121
			15	387, 389, ² 489 ³
			25	
482.41	Pneumonia due to Staphylococcus aureus	Y	4	79, 80, 81
			5	121 ¹
			15	387, 389 ²
			25	489 ³
482.49	Other Staphylococcus pneumonia	Y	4	79, 80, 81
			5	121 ¹
			15	387, 389 ²
			25	489 ³
518.83	Chronic respiratory failure	Y	4	87
518.84	Acute and chronic respiratory	Y	4	87
			22	506, 507
519.00	Unspecified tracheostomy complication	Y	Pre	482
			4	101, 102
519.01	Infection of tracheostomy	Y	Pre	482
			4	101, 102
519.02	Mechanical complication of tracheostomy	Y	Pre	482
			4	101, 102
519.09	Other tracheostomy complication	Y	Pre	482
			4	101, 102

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis codes	Description	CC	MDC	DRG
536.40	Unspecified gastrostomy complication	Y	6	188, 189, 190
536.41	Infection of gastrostomy	Y	6	188, 189, 190
536.42	Mechanical complication of gastrostomy	Y	6	188, 189, 190
536.49	Other gastrostomy complication	Y	6	188, 189, 190
564.81	Neurogenic bowel	N	6	182, 183, 184
564.89	Other functional disorders of intestine	N	6	182, 183, 184
569.62	Mechanical complication of colostomy and enterostomy	Y	6	188, 189, 190
659.70	Abnormality in fetal heart rate/rhythm, unspecified as to episode of care or not applicable.	N	14	370, 371, 372, 373, 374, 375
659.71	Abnormality in fetal heart rate/rhythm, delivered, with or without mention of antepartum condition.	N	14	370, 371, 372, 373, 374, 375
659.73	Abnormality in fetal heart rate/rhythm, antepartum condition or complication.	N	14	383, 384
763.81	Abnormality in fetal heart rate or rhythm before the onset of labor	N	15	390
763.82	Abnormality in fetal heart rate or rhythm during labor	N	15	390
763.83	Abnormality in fetal heart rate or rhythm, unspecified as to time of onset.	N	15	390
763.89	Other specified complications of labor and delivery affecting fetus and newborn.	N	15	390
780.71	Chronic fatigue syndrome	N	23	463, 464
			25	490
780.79	Other malaise and fatigue	N	23	463, 464
			25	490
786.03	Apnea	Y	4	99, 100
			25	490
786.04	Cheyne-Stokes respiration	Y	4	99, 100
			25	490
786.05	Shortness of breath	N	4	99, 100
			25	490
786.06	Tachypnea	N	4	99, 100
			25	490
786.07	Wheezing	N	4	99, 100
			25	490
965.61	Poisoning by propionic acid derivatives	N	21	449, 450, 451
965.69	Poisoning by other antirheumatics	N	21	449, 450, 451
995.86	Malignant hyperthermia	Y	21	454, 455
996.55	Mechanical complications due to artificial skin graft and decellularized allografts.	Y	21	452, 453
996.56	Mechanical complications due to peritoneal dialysis catheter	Y	21	452, 453
996.68	Infection and inflammatory reaction due to peritoneal dialysis catheter	Y	21	452, 453
V02.51	Carrier or suspected carrier of Group B streptococcus	N	23	467
V02.52	Carrier or suspected carrier of other streptococcus	N	23	467
V02.59	Carrier or suspected carrier of other specified bacterial diseases	N	23	467
V10.48	Personal history of malignant neoplasm of epididymis	N	17	411, 412
V13.61	Personal history of hypospadias	N	23	467
V13.69	Personal history other congenital malformation	N	23	467
V16.51	Family history of malignant neoplasm of kidney	N	23	467
V16.59	Family history of malignant neoplasm of other urinary organs	N	23	467
V18.61	Family history of polycystic kidney	N	23	467
V18.69	Family history of other kidney diseases	N	23	467
V23.81	Supervision of high-risk pregnancy of elderly primigravida	Y	14	469
V23.82	Supervision of high-risk pregnancy of elderly multigravida	Y	14	469
V23.83	Supervision of high-risk pregnancy of young primigravida	Y	14	469
V23.84	Supervision of high-risk pregnancy of young multigravida	Y	14	469
V23.89	Supervision of other high-risk pregnancy	Y	14	469
V26.51	Tubal ligation status	N	23	467
V26.52	Vasectomy status	N	23	467
V29.3	Observation for suspected genetic or metabolic condition	N	23	467
V43.83	Organ or tissue replaced by artificial skin	N	23	467
V44.50	Unspecified cystostomy status	N	23	467
V44.51	Cutaneous-vesicostomy status	N	23	467
V44.52	Appendicovesicostomy status	N	23	467
V44.59	Other cystostomy status	N	23	467
V56.2	Fitting and adjustment of peritoneal dialysis catheter	N	11	317
V58.62	Encounter for aftercare for long-term (current) use of antibiotics	N	23	465, 466
V76.44	Special screening for malignant neoplasm of prostate	N	23	467
V76.45	Special screening for malignant neoplasm of testis	N	23	467

¹ Classified as a "major complication" in this DRG.² Classified as a "major problem" in these DRGs.³ HIV major related condition in this DRG.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
36.31	Open chest transmyocardial revascularization	Y	5	108
36.32	Other transmyocardial revascularization	Y	5	108
36.39	Other heart revascularization	Y	5	108
37.67	Implantation of cardiomyostimulation system	Y	5	110, 111
			21	442, 443
			24	486
75.37	Amnioinfusion	N		
86.67	Dermal regenerative graft	Y	1	7, 8
			3	63
			5	120
			6	170, 171
			8	217
			9	263, 264, 265,
			10	266
			21	287
			22	439
			24	458, 472
				504, 506, 507
				486
92.30	Stereotactic radiosurgery, not otherwise specified	N ¹	1	7, 8
			10	292, 293
			17	401, 402, 408
92.31	Single source photon radiosurgery	N	1	7, 8
			10	292, 293
			17	401, 402, 408
92.32	Multi-source photon radiosurgery	N	1	7, 8
			10	292, 293
			17	401, 402, 408
92.33	Particulate radiosurgery	N	1	7, 8
			10	292, 293
			17	401, 402, 408
92.39	Stereotactic radiosurgery, not elsewhere classified	N	1	7, 8
			10	292, 293
			17	401, 402, 408
96.29	Reduction of intussusception of alimentary tract	N		
99.10	Injection or infusion of thrombolytic agent	N		
99.20	Injection or infusion of platelet inhibitor	N		

¹ Nonoperating room, but affecting DRG

TABLE 6C.—INVALID DIAGNOSIS CODE

Diagnosis codes	Description	CC	MDC	DRG
482.4	Pneumonia due to Staphylococcus	Y	4	79, 80, 81
			5	121 ¹
			15	387, 389 ²
			25	489 ³
519.0	Tracheostomy complication	Y	PRE	482
			4	101, 102
564.8	Other specified functional disorders of intestine	N	6	182, 183, 184
763.8	Other specified complications of labor and delivery affecting fetus and newborn	N	15	390
780.7	Malaise and fatigue	N	23	463, 464
			25	490
965.8	Poisoning by antirheumatics (antiphlogistics)	N	21	449, 450, 451
V02.5	Carrier or suspected carrier of other specified bacterial diseases	N	23	467
V13.6	Personal history of congenital malformations	N	23	467
V16.5	Family history of malignant neoplasm of urinary organs	N	23	467
V18.6	Family history of kidney diseases	N	23	467
V23.8	Supervision of other high-risk pregnancy	Y	14	469
V44.5	Cystostomy status	N	23	467

¹ Classified as a "major complication" in this DRG.² Classified as a "major problem" in these DRGs.³ HIV major related condition in this DRG.

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
36.3	Other heart revascularization	Y	5	108
92.3	Stereotactic radiosurgery	N ¹	1	7, 8
			10	292, 293
			17	401, 402, 408

¹ Nonoperation room but effecting DRG.

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
518.81	Acute respiratory failure	Y	4	87
			22	506, 507
659.60	Elderly multigravida unspecified as to episode of care or not applicable ..	N	14	370, 371, 372, 373, 374, 375
659.61	Elderly multigravida delivered, with mention of antepartum condition	N	14	370, 371, 372, 373, 374, 375
659.63	Elderly multigravida with antepartum condition or complication	N	14	383, 384
V56.1	Fitting and adjustment of extracorporeal dialysis catheter	N	11	317
V82.4	Maternal postnatal screening of chromosomal anomalies	N	23	467

TABLE 6F.—ADDITIONS TO THE CC EXCLUSIONS LIST

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CCs that are added to the list are in Table 6F—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*01100	*01123	*01146	*01172	*01195	*01281	*11515	48249
48240	48240	48240	48240	48240	48240	48240	*48230
48241	48241	48241	48241	48241	48241	48241	48240
48249	48249	48249	48249	48249	48249	48249	48241
*01101	*01124	*01150	*01173	*01196	*01282	*11595	48249
48240	48240	48240	48240	48240	48240	48240	*48231
48241	48241	48241	48241	48241	48241	48241	48240
48249	48249	48249	48249	48249	48249	48249	48241
*01102	*01125	*01151	*01174	*01200	*01283	*1221	48249
48240	48240	48240	48240	48240	48240	48240	*48232
48241	48241	48241	48241	48241	48241	48241	48240
48249	48249	48249	48249	48249	48249	48249	48241
*01103	*01126	*01152	*01175	*01201	*01284	*1304	48249
48240	48240	48240	48240	48240	48240	48240	*48239
48241	48241	48241	48241	48241	48241	48241	48240
48249	48249	48249	48249	48249	48249	48249	48241
*01104	*01130	*01153	*01176	*01202	*01285	*1363	48249
48240	48240	48240	48240	48240	48240	48240	*48240
48241	48241	48241	48241	48241	48241	48241	01100
48249	48249	48249	48249	48249	48249	48249	01101
*01105	*01131	*01154	*01180	*01203	*01286	*3373	01102
48240	48240	48240	48240	48240	48240	3350	01103
48241	48241	48241	48241	48241	48241	33510	01104
48249	48249	48249	48249	48249	48249	33511	01105
*01106	*01132	*01155	*01181	*01204	*01790	33519	01106
48240	48240	48240	48240	48240	48240	33520	01110
48241	48241	48241	48241	48241	48241	33521	01111
48249	48249	48249	48249	48249	48249	33522	01112
*01110	*01133	*01156	*01182	*01205	*01791	33523	01113
48240	48240	48240	48240	48240	48240	33524	01114
48241	48241	48241	48241	48241	48241	33529	01115
48249	48249	48249	48249	48249	48249	3358	01116
*01111	*01134	*01160	*01183	*01206	*01792	3359	01120
48240	48240	48240	48240	48240	48240	*4800	01121
48241	48241	48241	48241	48241	48241	48240	01122
48249	48249	48249	48249	48249	48249	48241	01123
*01112	*01135	*01161	*01184	*01210	*01793	48249	01124
48240	48240	48240	48240	48240	48240	*4801	01125
48241	48241	48241	48241	48241	48241	48240	01126
48249	48249	48249	48249	48249	48249	48241	01130
*01113	*01136	*01162	*01185	*01211	*01794	48249	01131
48240	48240	48240	48240	48240	48240	*4802	01132
48241	48241	48241	48241	48241	48241	48240	01133
48249	48249	48249	48249	48249	48249	48241	01134
*01114	*01140	*01163	*01186	*01212	*01795	48249	01135
48240	48240	48240	48240	48240	48240	*4808	01136
48241	48241	48241	48241	48241	48241	48240	01140
48249	48249	48249	48249	48249	48249	48241	01141
*01115	*01141	*01164	*01190	*01213	*01796	48249	01142
48240	48240	48240	48240	48240	48240	*4809	01143
48241	48241	48241	48241	48241	48241	48240	01144
48249	48249	48249	48249	48249	48249	48241	01145
*01116	*01142	*01165	*01191	*01214	*0212	48249	01146
48240	48240	48240	48240	48240	48240	*481	01150
48241	48241	48241	48241	48241	48241	48240	01151
48249	48249	48249	48249	48249	48249	48241	01152
*01120	*01143	*01166	*01192	*01215	*0310	48249	01153
48240	48240	48240	48240	48240	48240	*4820	01154
48241	48241	48241	48241	48241	48241	48240	01155
48249	48249	48249	48249	48249	48249	48241	01156
*01121	*01144	*01170	*01193	*01216	*0391	48249	01160
48240	48240	48240	48240	48240	48240	*4821	01161
48241	48241	48241	48241	48241	48241	48240	01162
48249	48249	48249	48249	48249	48249	48241	01163
*01122	*01145	*01171	*01194	*01280	*11505	48249	01164
48240	48240	48240	48240	48240	48240	*4822	01165
48241	48241	48241	48241	48241	48241	48240	01166
48249	48249	48249	48249	48249	48249	48241	01170

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01171	4955	01183	5078	01195	48240	48241	48249
01172	4956	01184	5080	01196	48241	48249	*5061
01173	4957	01185	5081	01200	48249	*4950	48240
01174	4958	01186	5171	01201	*48283	48240	48241
01175	4959	01190	*48249	01202	48240	48241	48249
01176	5060	01191	01100	01203	48241	48249	*5062
01180	5061	01192	01101	01204	48249	*4951	48240
01181	5070	01193	01102	01205	*48284	48240	48241
01182	5071	01194	01103	01206	48240	48241	48249
01183	5078	01195	01104	01210	48241	48249	*5063
01184	5080	01196	01105	01211	48249	*4952	48240
01185	5081	01200	01106	01212	*48289	48240	48241
01186	5171	01201	01110	01213	48240	48241	48249
01190	*48241	01202	01111	01214	48241	48249	*5064
01191	01100	01203	01112	01215	48249	*4953	48240
01192	01101	01204	01113	01216	*4829	48240	48241
01193	01102	01205	01114	0310	48240	48241	48249
01194	01103	01206	01115	11505	48241	48249	*5069
01195	01104	01210	01116	11515	48249	*4954	48240
01196	01105	01211	01120	1304	*4830	48240	48241
01200	01106	01212	01121	1363	48240	48241	48249
01201	01110	01213	01122	481	48241	48249	*5070
01202	01111	01214	01123	4820	48249	*4955	48240
01203	01112	01215	01124	4821	*4831	48240	48241
01204	01113	01216	01125	4822	48240	48241	48249
01205	01114	0310	01126	48230	48241	48249	*5071
01206	01115	11505	01130	48231	48249	*4956	48240
01210	01116	11515	01131	48232	*4838	48240	48241
01211	01120	1304	01132	48239	48240	48241	48249
01212	01121	1363	01133	48240	48241	48249	*5078
01213	01122	481	01134	48241	48249	*4957	48240
01214	01123	4820	01135	48249	*4841	48240	48241
01215	01124	4821	01136	48281	48240	48241	48249
01216	01125	4822	01140	48282	48241	48249	*5080
0310	01126	48230	01141	48283	48249	*4958	48240
11505	01130	48231	01142	48284	*4843	48240	48241
11515	01131	48232	01143	48289	48240	48241	48249
1304	01132	48239	01144	4829	48241	48249	*5081
1363	01133	48240	01145	4830	48249	*4959	48240
481	01134	48241	01146	4831	*4845	48240	48241
4820	01135	48249	01150	4838	48240	48241	48249
4821	01136	48281	01151	4841	48241	48249	*5088
4822	01140	48282	01152	4843	48249	*496	48240
48230	01141	48283	01153	4845	*4846	48240	48241
48231	01142	48284	01154	4846	48240	48241	48249
48232	01143	48289	01155	4847	48241	48249	*5089
48239	01144	4829	01156	4848	48249	*500	48240
48240	01145	4830	01160	485	*4847	48240	48241
48241	01146	4831	01161	486	48240	48241	48249
48249	01150	4838	01162	4870	48241	48249	*5171
48281	01151	4841	01163	4950	48249	*501	48240
48282	01152	4843	01164	4951	*4848	48240	48241
48283	01153	4845	01165	4952	48240	48241	48249
48284	01154	4846	01166	4953	48241	48249	*5178
48289	01155	4847	01170	4954	48249	*502	48240
4829	01156	4848	01171	4955	*485	48240	48241
4830	01160	485	01172	4956	48240	48241	48249
4831	01161	486	01173	4957	48241	48249	*51881
4838	01162	4870	01174	4958	48249	*503	51883
4841	01163	4950	01175	4959	*486	48240	51884
4843	01164	4951	01176	5060	48240	48241	78603
4845	01165	4952	01180	5061	48241	48249	78604
4846	01166	4953	01181	5070	48249	*504	*51882
4847	01170	4954	01182	5071	*4870	48240	51883
4848	01171	4955	01183	5078	48240	48241	51884
485	01172	4956	01184	5080	48241	48249	78603
486	01173	4957	01185	5081	48249	*505	78604
4870	01174	4958	01186	5171	*4871	48240	*51883
4950	01175	4959	01190	*48281	48240	48241	51881
4951	01176	5060	01191	48240	48241	48249	51882
4952	01180	5061	01192	48241	48249	*5060	51883
4953	01181	5070	01193	48249	*494	48240	51884
4954	01182	5071	01194	*48282	48240	48241	78603

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78604	53642	*99656	56962	V2384	V2384
7991	53649	99655	*99791	V2389	V2389
*51884	56962	99656	53640	*V230	V239
51881	9974	99659	53641	V2381	*V2389
51882	*53642	99660	53642	V2382	V237
51883	53640	99661	53649	V2383	V2381
51884	53641	99662	56962	V2384	V2382
78603	53642	99663	99586	V2389	V2383
78604	53649	99664	99655	*V231	V2384
7991	56962	99665	99656	V2381	V2389
*51889	9974	99666	99668	V2382	V239
48240	*53649	99667	*99799	V2383	*V239
48241	53640	99668	53640	V2384	V2381
48249	53641	99669	53641	V2389	V2382
*51900	53642	99670	53642	*V232	V2383
51900	53649	99671	53649	V2381	V2384
51901	56962	99672	56962	V2382	V2389
51902	9974	99673	99586	V2383	
51909	*56960	99674	99655	V2384	
*51901	56962	99675	99656	V2389	
51900	*56961	99676	99668	*V233	
51901	56962	99677	*9980	V2381	
51902	*56962	99678	99586	V2382	
51909	56960	99679	*99811	V2383	
*51902	56961	*99659	99586	V2384	
51900	56962	99655	*99812	V2389	
51901	56969	99656	99586	*V234	
51902	*56969	99668	*99813	V2381	
51909	56962	*99660	99586	V2382	
*51909	*74861	99655	*99881	V2383	
51900	48240	99656	53640	V2384	
51901	48241	99668	53641	V2389	
51902	48249	*99668	53642	*V235	
51909	*78603	99655	53649	V2381	
*5191	78603	99656	56962	V2382	
51900	78604	99659	99586	V2383	
51901	*78604	99660	*99883	V2384	
51902	78603	99661	53640	V2389	
51909	78604	99662	53641	*V237	
*5198	*7991	99663	53642	V2381	
48240	51883	99664	53649	V2382	
48241	51884	99665	56962	V2383	
48249	78603	99666	99586	V2384	
51883	78604	99667	*99889	V2389	
51884	*9584	99668	53640	*V2381	
51900	99586	99669	53641	V237	
51901	*9954	99670	53642	V2381	
51902	99586	99671	53649	V2382	
51909	*99586	99672	56962	V2383	
78603	99586	99673	99586	V2384	
78604	*99652	99674	*9989	V2389	
*5199	99655	99675	53640	V239	
48240	*99655	99676	53641	*V2382	
48241	99652	99677	53642	V237	
48249	99655	99678	53649	V2381	
51883	99660	99679	56962	V2382	
51884	99661	*99669	99586	V2383	
51900	99662	99655	*V220	V2384	
51901	99663	99656	V2381	V2389	
51902	99665	99668	V2382	V239	
51909	99666	*99670	V2383	*V2383	
78603	99667	99655	V2384	V237	
78604	99669	99656	V2389	V2381	
*53640	99670	99668	*V221	V2382	
53640	99671	*99679	V2381	V2383	
53641	99672	99655	V2382	V2384	
53642	99673	99656	V2383	V2389	
53649	99674	99668	V2384	V239	
56962	99675	*9974	V2389	*V2384	
9974	99676	53640	*V222	V237	
*53641	99677	53641	V2381	V2381	
53640	99678	53642	V2382	V2382	
53641	99679	53649	V2383	V2383	

TABLE 6G.—DELETIONS TO THE CC EXCLUSIONS LIST

[CCs that are deleted from the list are in Table 6G—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*01100	*01146	*01195	*11515	01143	48282	4824	4824
4824	4824	4824	4824	01144	48283	*4870	*5178
*01101	*01150	*01196	*11595	01145	48284	4824	4824
4824	4824	4824	4824	01146	48289	*4871	*51889
*01102	*01151	*01200	*1221	01150	4829	4824	4824
4824	4824	4824	4824	01151	4830	*494	*5190
*01103	*01152	*01201	*1304	01152	4831	4824	5190
4824	4824	4824	4824	01153	4838	*4950	*5191
*01104	*01153	*01202	*1363	01154	4841	4824	5190
4824	4824	4824	4824	01155	4843	*4951	*5198
*01105	*01154	*01203	*4800	01156	4845	4824	4824
4824	4824	4824	4824	01160	4846	*4952	5190
*01106	*01155	*01204	*4801	01161	4847	4824	*5199
4824	4824	4824	4824	01162	4848	*4953	4824
*01110	*01156	*01205	*4802	01163	485	4824	5190
4824	4824	4824	4824	01164	486	*4954	*74861
*01111	*01160	*01206	*4808	01165	4870	4824	4824
4824	4824	4824	4824	01166	4950	*4955	*V220
*01112	*01161	*01210	*4809	01170	4951	4824	V238
4824	4824	4824	4824	01171	4952	*4956	*V221
*01113	*01162	*01211	*481	01172	4953	4824	V238
4824	4824	4824	4824	01173	4954	*4957	*V222
*01114	*01163	*01212	*4820	01174	4955	4824	V238
4824	4824	4824	4824	01175	4956	*4958	*V230
*01115	*01164	*01213	*4821	01176	4957	4824	V238
4824	4824	4824	4824	01180	4958	*4959	*V231
*01116	*01165	*01214	*4822	01181	4959	4824	V238
4824	4824	4824	4824	01182	5060	*496	*V232
*01120	*01166	*01215	*48230	01183	5061	4824	V238
4824	4824	4824	4824	01184	5070	*500	V238
*01121	*01170	*01216	*48231	01185	5071	4824	V238
4824	4824	4824	4824	01186	5078	*501	*V234
*01122	*01171	*01280	*48232	01190	5080	4824	V238
4824	4824	4824	4824	01191	5081	*502	*V235
*01123	*01172	*01281	*48239	01192	5171	4824	V238
4824	4824	4824	4824	01193	*48281	*503	*V237
*01124	*01173	*01282	*4824	01194	4824	4824	V238
4824	4824	4824	01100	01195	*48282	*504	*V238
*01125	*01174	*01283	01101	01196	4824	4824	V237
4824	4824	4824	01102	01200	*48283	*505	V238
*01126	*01175	*01284	01103	01201	4824	4824	V239
4824	4824	4824	01104	01202	*48284	*5060	*V239
*01130	*01176	*01285	01105	01203	4824	4824	
4824	4824	4824	01106	01204	*48289	*5061	
*01131	*01180	*01286	01110	01205	4824	4824	
4824	4824	4824	01111	01206	*4829	*5062	
*01132	*01181	*01790	01112	01210	4824	4824	
4824	4824	4824	01113	01211	*4830	*5063	
*01133	*01182	*01791	01114	01212	4824	4824	
4824	4824	4824	01115	01213	*4831	*5064	
*01134	*01183	*01792	01116	01214	4824	4824	
4824	4824	4824	01120	01215	*4838	*5069	
*01135	*01184	*01793	01121	01216	4824	4824	
4824	4824	4824	01122	0310	*4841	*5070	
*01136	*01185	*01794	01123	11505	4824	4824	
4824	4824	4824	01124	11515	*4843	*5071	
*01140	*01186	*01795	01125	1304	4824	4824	
4824	4824	4824	01126	1363	*4845	*5078	
*01141	*01190	*01796	01130	481	4824	4824	
4824	4824	4824	01131	4820	*4846	*5080	
*01142	*01191	*0212	01132	4821	4824	4824	
4824	4824	4824	01133	4822	*4847	*5081	
*01143	*01192	*0310	01134	48230	4824	4824	
4824	4824	4824	01135	48231	*4848	*5088	
*01144	*01193	*0391	01136	48232	4824	4824	
4824	4824	4824	01140	48239	*485	*5089	
*01145	*01194	*11505	01141	4824	4824	4824	
4824	4824	4824	01142	48281	*486	*5171	

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY
[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	36587	9.6084	2	4	7	12	20
2	6967	10.0350	3	5	8	13	20
3	3	9.3333	7	7	9	12	12
4	6322	7.7259	1	3	5	9	17
5	101105	3.6387	1	2	2	4	8
6	355	3.0225	1	1	2	4	7
7	12601	10.0945	2	4	7	12	20
8	3030	3.1845	1	1	2	4	7
9	1692	6.4923	1	3	5	8	13
10	19727	6.8631	2	3	5	8	14
11	2960	4.1365	1	2	3	5	8
12	38339	6.6619	2	3	5	8	12
13	6315	5.4716	2	3	4	6	9
14	372136	6.2938	2	3	5	8	12
15	145631	3.8599	1	2	3	5	7
16	13905	5.9283	2	3	4	7	11
17	3212	3.4315	1	2	3	4	7
18	27489	5.5809	2	3	4	7	10
19	7294	3.8174	1	2	3	5	7
20	6590	10.1862	2	5	8	13	19
21	1369	6.8152	2	3	5	8	14
22	2789	4.6587	2	2	4	6	9
23	6884	4.2594	1	2	3	5	8
24	57890	5.0641	1	2	4	6	10
25	22696	3.4294	1	2	3	4	7
26	34	3.1176	1	1	2	4	6
27	4153	5.4211	1	1	3	7	12
28	13896	5.9431	1	2	4	7	12
29	4266	3.5375	1	1	3	4	7
31	3075	4.4062	1	2	3	5	8
32	1343	2.9717	1	1	2	3	6
34	20072	5.4331	1	3	4	7	11
35	4264	3.5561	1	2	3	4	7
36	5393	1.5366	1	1	1	1	2
37	1685	3.7187	1	1	2	4	8
38	116	2.5948	1	1	2	3	5
39	1898	2.0327	1	1	1	2	4
40	2281	3.1806	1	1	2	4	7
42	4026	2.0904	1	1	1	2	4
43	120	3.4250	1	2	3	5	7
44	1343	5.0551	2	3	4	6	9
45	2414	3.4731	1	2	3	4	6
46	3148	4.6436	1	2	4	6	9
47	1220	3.2975	1	1	3	4	7
48	2	4.5000	4	4	5	5	5
49	2277	5.0097	1	2	4	6	9
50	3004	1.9767	1	1	2	2	3
51	299	2.8194	1	1	1	3	6
52	89	2.7528	1	1	2	3	7
53	2989	3.6554	1	1	2	4	8
54	2	6.0000	5	5	7	7	7
55	1686	2.9543	1	1	2	3	6
56	684	2.8436	1	1	2	3	6
57	608	3.7237	1	1	2	4	7
59	120	2.4333	1	1	3	3	5
60	1	4.0000	4	4	4	4	4
61	278	4.5144	1	1	1	5	10
62	4	1.2500	1	1	1	1	2
63	3676	4.4502	1	2	3	5	9
64	3408	6.7183	1	2	5	8	14
65	29086	2.9715	1	2	2	4	5
66	6812	3.2606	1	2	3	4	6
67	489	3.7996	1	2	3	4	7
68	11522	4.1519	1	2	3	5	7
69	3450	3.3183	1	2	3	4	6
70	37	2.5405	1	1	2	3	4
71	99	3.9394	1	2	3	6	7
72	817	3.7931	1	2	3	5	7
73	6282	4.4062	1	2	3	6	8
74	2	2.5000	2	2	3	3	3

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
75	40757	10.2370	4	5	8	13	20
76	41668	11.3195	3	5	9	14	21
77	2040	4.8819	1	2	4	7	10
78	30845	7.3107	3	5	7	9	12
79	247000	8.4030	3	4	7	10	15
80	8299	5.8754	2	3	5	7	10
81	6	12.6667	2	3	6	8	8
82	71035	7.1298	2	3	6	9	14
83	7249	5.5655	2	3	4	7	10
84	1290	3.3256	1	2	3	4	6
85	22415	6.6640	2	3	5	8	13
86	1501	3.8741	1	2	3	5	7
87	73076	6.3172	1	3	5	7	12
88	388565	5.4142	2	3	4	7	10
89	469073	6.2791	2	4	5	8	11
90	38989	4.4632	2	3	4	6	8
91	48	3.9375	1	2	3	5	7
92	14464	6.3794	2	3	5	8	12
93	1314	4.3653	1	2	4	6	8
94	13391	6.4833	2	3	5	8	12
95	1388	3.8739	1	2	3	5	7
96	61778	4.8513	2	3	4	6	9
97	25587	3.8266	1	2	3	5	7
98	28	4.9286	1	2	3	5	13
99	26442	3.0393	1	1	2	4	6
100	10283	2.1219	1	1	2	3	4
101	20140	4.4383	1	2	3	5	9
102	4520	2.7914	1	1	2	3	5
103	490	48.0898	9	14	29	67	115
104	29151	12.4470	4	7	10	16	23
105	25542	9.6459	4	6	8	11	17
106	106585	10.6917	6	7	9	12	17
107	68972	7.9520	4	5	7	9	13
108	8075	11.7282	4	6	9	14	22
110	62245	9.6084	2	5	8	12	18
111	5581	5.8094	2	4	6	7	9
112	118470	3.9277	1	1	3	5	8
113	46689	12.2570	4	6	9	15	24
114	8489	8.3873	2	4	7	11	16
115	15007	8.7475	2	4	7	11	17
116	208927	4.1747	1	2	3	5	8
117	3726	3.9847	1	1	2	5	9
118	6481	2.9303	1	1	2	3	6
119	1629	5.3640	1	1	3	7	13
120	37814	8.1649	1	2	5	10	18
121	170012	6.6480	2	4	6	8	12
122	83182	4.2023	1	2	4	6	7
123	43363	4.4029	1	1	2	5	10
124	154194	4.4587	1	2	4	6	9
125	62627	2.8721	1	1	2	4	6
126	5399	12.4253	4	6	9	15	25
127	719871	5.5133	2	3	4	7	10
128	16049	6.0323	3	4	5	7	9
129	4455	2.9495	1	1	1	3	7
130	98047	5.9926	2	3	5	7	10
131	24574	4.6703	1	3	4	6	8
132	174092	3.1532	1	2	3	4	6
133	6631	2.4803	1	1	2	3	5
134	30358	3.4496	1	2	3	4	6
135	8217	4.3269	1	2	3	5	8
136	1113	2.9695	1	1	2	4	5
138	209079	4.0464	1	2	3	5	8
139	67303	2.5774	1	1	2	3	5
140	107658	2.9719	1	1	2	4	5
141	81733	3.8534	1	2	3	5	7
142	36613	2.7911	1	1	2	3	5
143	143826	2.2585	1	1	2	3	4
144	78710	5.2279	1	2	4	7	10
145	6350	2.8698	1	1	2	4	6
146	10372	10.2717	5	7	9	12	17

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
147	1779	6.7482	4	5	7	8	10
148	146892	12.2593	5	7	10	15	22
149	14387	6.8504	4	5	6	8	10
150	23756	10.8870	4	6	9	13	19
151	4149	5.8894	2	3	5	8	10
152	4713	8.3393	4	5	7	10	14
153	1604	5.6359	3	4	5	7	8
154	34348	13.3603	4	7	10	16	25
155	4743	4.6884	1	2	4	6	9
156	2	18.0000	6	6	30	30	30
157	9287	5.3854	1	2	4	7	11
158	4110	2.6190	1	1	2	3	5
159	18320	4.9678	1	2	4	6	9
160	9765	2.6768	1	1	2	3	5
161	14601	4.0877	1	2	3	5	9
162	7065	2.0350	1	1	1	2	4
163	5	11.8000	4	4	11	13	22
164	5272	8.5277	4	5	7	10	15
165	1639	4.9555	2	3	5	6	8
166	3542	5.1256	2	3	4	6	9
167	2325	2.8456	1	2	2	4	5
168	1700	4.5476	1	2	3	6	9
169	843	2.5326	1	1	2	3	5
170	12774	11.2370	2	5	8	14	23
171	1004	4.8337	1	2	4	6	9
172	32993	7.1114	2	3	5	9	14
173	2135	3.9611	1	1	3	5	8
174	248770	4.9263	2	3	4	6	9
175	21672	3.0085	1	2	3	4	5
176	18343	5.4925	2	3	4	7	10
177	11138	4.5572	2	2	4	6	8
178	3486	3.2114	1	2	3	4	6
179	12485	6.4200	2	3	5	8	12
180	93327	5.4284	2	3	4	7	10
181	21330	3.5057	1	2	3	4	6
182	234973	4.3571	1	2	3	5	8
183	69893	3.0179	1	1	2	4	6
184	91	3.1648	1	2	2	4	7
185	4046	4.4881	1	2	3	6	9
187	870	3.9908	1	2	3	5	8
188	75257	5.5524	1	2	4	7	11
189	8618	3.2060	1	1	2	4	6
190	59	5.2712	1	2	4	7	11
191	10625	14.5648	4	7	11	18	29
192	831	6.7088	2	4	6	8	12
193	7334	12.5020	5	7	10	15	22
194	773	6.9288	3	4	6	9	12
195	7094	9.8105	4	6	8	12	17
196	1260	5.7254	2	4	5	7	10
197	25012	8.6285	3	5	7	10	15
198	6357	4.5945	2	3	4	6	8
199	2037	10.1733	3	5	8	14	20
200	1339	11.4593	2	4	8	14	23
201	1651	14.2938	4	6	11	18	29
202	28649	6.7440	2	3	5	8	13
203	29508	6.8400	2	3	5	9	14
204	53140	6.0853	2	3	5	7	11
205	22927	6.5500	2	3	5	8	13
206	1614	4.0694	1	2	3	5	8
207	35502	5.1397	1	2	4	6	10
208	9472	2.8992	1	1	2	4	6
209	362634	5.4336	3	4	5	6	8
210	141586	7.0191	3	4	6	8	12
211	26005	5.1476	3	4	5	6	8
212	13	3.7692	1	2	4	5	6
213	7496	8.4066	2	4	6	11	16
216	6117	9.8190	2	4	7	12	19
217	20587	12.9505	3	5	9	16	27
218	23700	5.3217	2	3	4	6	10
219	18252	3.2882	1	2	3	4	5

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
220	5	3.2000	1	1	3	4	7
223	18540	2.6177	1	1	2	3	5
224	7682	2.0607	1	1	2	3	4
225	5644	4.3556	1	2	3	5	9
226	5540	5.9224	1	2	4	7	12
227	4597	2.7261	1	1	2	3	5
228	2757	3.4345	1	1	2	4	8
229	1100	2.3827	1	1	2	3	5
230	2386	4.5306	1	2	3	5	9
231	10685	4.5647	1	2	3	5	9
232	496	3.8327	1	1	2	4	9
233	4903	7.6490	2	3	5	9	16
234	2258	3.6151	1	2	3	5	7
235	5348	5.3113	1	2	4	6	10
236	39380	5.1518	1	3	4	6	9
237	1593	3.6353	1	2	3	5	7
238	7851	8.8615	3	4	7	11	17
239	59615	6.4289	2	3	5	8	12
240	13635	6.6882	2	3	5	8	13
241	2905	3.9983	1	2	3	5	7
242	2634	6.7358	2	3	5	8	13
243	81633	4.8627	2	3	4	6	9
244	12420	4.9928	2	3	4	6	9
245	4361	3.7420	1	2	3	5	7
246	1273	3.9309	1	2	3	5	7
247	12240	3.4938	1	2	3	4	7
248	8122	4.6959	1	2	4	6	9
249	10840	3.6358	1	1	3	4	7
250	3561	4.2263	1	2	3	5	8
251	2210	2.9570	1	1	2	4	5
252	1	1.0000	1	1	1	1	1
253	19384	4.8629	1	3	4	6	9
254	9275	3.3439	1	2	3	4	6
255	2	3.5000	1	1	6	6	6
256	5517	5.1064	1	2	4	6	10
257	21137	2.9877	1	2	2	3	5
258	16396	2.1344	1	1	2	3	3
259	3772	3.0803	1	1	2	3	7
260	4464	1.5383	1	1	1	2	2
261	1967	2.2466	1	1	2	3	4
262	659	4.2231	1	1	3	6	9
263	27474	11.3931	3	5	14	22	33
264	3318	7.0530	2	3	5	8	14
265	4309	6.5331	1	2	4	8	13
266	2464	3.4054	1	1	2	4	7
267	250	4.6400	1	2	3	5	9
268	875	3.5783	1	1	2	4	7
269	9415	7.8786	2	3	6	10	16
270	2662	3.1480	1	1	2	4	7
271	22961	7.1545	3	4	6	9	13
272	5940	6.4330	2	3	5	8	12
273	1307	4.7980	1	2	4	6	8
274	2409	6.7430	1	3	5	8	14
275	210	3.5143	1	1	2	4	7
276	932	4.4678	1	2	4	6	8
277	81663	5.9066	2	3	5	7	10
278	24598	4.4950	2	3	4	6	8
279	12	5.0000	2	2	4	7	9
280	14156	4.3177	1	2	3	5	8
281	5945	3.1527	1	1	3	4	6
282	2	2.0000	2	2	2	2	2
283	5201	4.8029	1	2	4	6	9
284	1656	3.3255	1	2	3	4	6
285	5534	11.0193	3	5	8	13	21
286	2141	6.9650	3	4	5	8	13
287	6161	11.2446	3	5	8	13	22
288	1478	5.9303	2	3	5	6	9
289	5457	3.2448	1	1	2	3	7
290	8922	2.5158	1	1	2	3	4
291	66	1.7576	1	1	1	2	3

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
292	5029	10.7174	2	4	8	14	21
293	347	5.5476	1	2	4	7	12
294	82039	4.9200	1	2	4	6	9
295	3593	3.9585	1	2	3	5	7
296	235524	5.3934	2	3	4	7	10
297	32715	3.6521	1	2	3	4	7
298	91	3.7253	1	1	2	4	8
299	968	5.3657	1	2	4	7	10
300	16820	6.2855	2	3	5	8	12
301	2395	3.8113	1	2	3	5	7
302	7784	10.1382	5	6	8	12	18
303	19638	9.2247	4	5	7	10	16
304	12813	8.9904	2	4	7	11	18
305	2552	3.8985	1	2	3	5	7
306	10658	5.5019	1	2	3	7	12
307	2355	2.3996	1	1	2	3	4
308	9167	6.0165	1	2	4	8	13
309	3541	2.5945	1	1	2	3	5
310	26694	4.2835	1	2	3	5	9
311	7805	1.9543	1	1	1	2	4
312	1731	4.3437	1	1	3	6	9
313	587	2.3799	1	1	2	3	5
314	1	10.0000	10	10	10	10	10
315	28283	8.0413	1	2	5	10	18
316	93071	6.8024	2	3	5	9	14
317	787	2.8666	1	1	2	3	6
318	6194	6.1022	1	3	5	8	12
319	407	2.9902	1	1	2	4	6
320	177474	5.5698	2	3	4	7	10
321	23679	4.0416	2	2	3	5	7
322	82	4.1098	2	2	3	4	7
323	16931	3.2166	1	1	2	4	6
324	7513	1.9385	1	1	1	2	4
325	7409	3.9591	1	2	3	5	8
326	2192	2.7199	1	1	2	3	5
327	9	2.8889	1	1	2	3	4
328	759	3.7167	1	2	3	5	7
329	87	2.2644	1	1	1	3	4
331	43598	5.5769	1	3	4	7	11
332	4517	3.5603	1	1	3	5	7
333	306	4.9477	1	2	4	6	11
334	18572	4.9690	3	3	4	6	8
335	10338	3.7163	2	3	3	4	5
336	54082	3.6046	1	2	3	4	7
337	31770	2.2858	1	1	2	3	4
338	2767	4.7879	1	2	3	6	10
339	1987	4.1726	1	1	3	5	9
340	2	1.0000	1	1	1	1	1
341	4909	2.9589	1	1	2	3	6
342	1007	3.4518	1	2	2	4	7
344	3882	2.6285	1	1	1	3	5
345	1343	3.6389	1	1	2	4	8
346	4844	5.8179	1	3	4	7	11
347	365	3.1370	1	1	2	4	6
348	3181	4.2521	1	2	3	5	8
349	632	2.7658	1	1	2	4	5
350	6114	4.3999	2	2	4	5	8
352	638	3.6160	1	2	3	4	7
353	2816	6.9457	3	4	5	8	12
354	9926	5.7743	3	3	4	6	10
355	5640	3.4624	2	3	3	4	5
356	28862	2.6478	1	2	2	3	4
357	6330	9.0289	3	5	7	11	17
358	27373	4.3708	2	3	3	5	7
359	27990	2.9775	2	2	3	3	4
360	17843	3.1581	1	2	3	4	5
361	540	3.3259	1	1	2	3	7
363	3943	3.3109	1	2	2	3	6
364	1828	3.5656	1	1	2	5	8
365	2298	6.8903	1	2	5	9	14

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
366	4368	6.8116	1	3	5	8	14
367	506	2.8893	1	1	2	3	6
368	2895	6.3530	2	3	5	8	12
369	2588	3.0622	1	1	2	4	6
370	1154	5.4610	2	3	4	5	9
371	1157	3.4754	2	3	3	4	5
372	975	3.1549	1	2	2	3	5
373	3868	2.1171	1	1	2	2	3
374	147	3.0340	1	2	2	3	3
375	9	5.1111	2	2	3	9	10
376	214	2.9252	1	2	2	3	6
377	52	4.4808	1	1	2	3	6
378	168	2.5952	1	1	2	3	4
379	334	3.5868	1	1	2	3	7
380	87	2.0345	1	1	2	2	3
381	187	2.1283	1	1	1	2	4
382	40	1.2750	1	1	1	1	2
383	1460	3.7301	1	2	3	4	8
384	123	2.6585	1	1	2	3	6
385	1	2.0000	2	2	2	2	2
389	9	8.6667	1	3	7	10	15
390	13	6.0000	2	2	4	5	17
392	2513	10.3828	4	5	7	12	21
394	1805	7.0853	1	2	4	8	16
395	70948	4.7241	1	2	3	6	9
396	15	18.4667	1	2	5	11	15
397	18814	5.5200	1	2	4	7	11
398	18127	6.0414	2	3	5	7	11
399	1322	3.7239	1	2	3	5	7
400	7225	9.3664	2	3	6	12	20
401	6653	11.0137	2	4	8	14	23
402	1464	3.8907	1	1	3	5	9
403	38919	8.1409	2	3	6	10	17
404	3797	4.4464	1	2	3	6	9
406	3308	9.5299	2	4	7	12	20
407	634	4.3202	1	2	4	5	8
408	2667	7.5047	1	2	5	9	16
409	4644	5.8404	2	3	4	6	11
410	59252	3.4182	1	2	3	4	6
411	18	2.8889	1	1	2	2	6
412	24	2.3333	1	1	2	3	4
413	7781	7.4429	2	3	6	9	15
414	676	4.2219	1	2	3	5	8
415	45158	14.3432	4	7	11	18	28
416	230365	7.3967	2	4	6	9	14
417	41	5.9024	2	2	5	7	11
418	21184	6.1906	2	3	5	8	11
419	15269	5.0200	2	3	4	6	9
420	2680	3.9474	1	2	3	5	7
421	12113	3.9569	1	2	3	5	7
422	86	3.3372	1	2	2	5	7
423	10723	7.7520	2	3	6	9	15
424	1621	14.2961	2	5	10	18	29
425	15405	4.1352	1	2	3	5	8
426	4449	4.9020	1	2	3	6	10
427	1633	4.8010	1	2	3	6	10
428	940	7.1755	1	2	4	8	14
429	32769	7.1661	2	3	5	8	14
430	56829	8.7198	2	4	7	11	17
431	217	7.3088	1	3	5	9	13
432	409	5.2152	1	2	3	6	12
433	6811	3.2053	1	1	2	4	7
434	21537	5.1804	2	3	4	6	9
435	14552	4.4078	1	2	4	5	8
436	3322	13.9618	4	7	13	21	28
437	12779	9.2061	3	5	8	12	16
439	1138	7.7065	1	3	5	9	16
440	5155	8.9081	2	3	6	10	19
441	570	3.4333	1	1	2	4	7
442	16247	8.1177	1	3	6	10	17

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V15.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
443	3153	3.3321	1	1	2	4	7
444	3425	4.5007	1	2	3	5	8
445	1243	3.3628	1	2	3	4	6
446	1	2.0000	2	2	2	2	2
447	4257	2.5130	1	1	2	3	5
449	27905	3.7822	1	1	3	5	8
450	6171	2.0826	1	1	1	2	4
451	9	2.7778	1	1	1	4	5
452	22863	5.0341	1	2	4	6	10
453	3796	2.9236	1	1	2	4	6
454	3855	4.6905	1	2	3	6	9
455	758	2.7401	1	1	2	3	5
456	194	8.5670	1	1	3	9	21
457	128	3.5859	1	1	1	3	9
458	1526	15.0308	3	7	12	19	31
459	480	8.9771	2	3	6	11	19
460	2327	6.0812	1	3	4	7	12
461	3047	4.4322	1	1	2	4	11
462	10348	12.4504	4	6	10	16	23
463	13983	4.4209	1	2	3	5	8
464	3556	3.3751	1	2	3	4	6
465	210	2.9095	1	1	1	3	5
466	1748	4.0955	1	1	2	4	9
467	1332	4.3949	1	1	2	4	7
468	61704	13.4718	3	6	10	17	27
471	12918	6.0694	3	4	5	7	12
472	179	27.2179	1	8	19	37	55
473	8429	12.7713	2	3	7	18	33
475	109339	11.1900	2	5	9	15	22
476	5924	11.9158	3	6	10	15	22
477	28747	8.1623	1	3	6	11	17
478	123286	7.4571	1	3	5	9	15
479	18337	3.8430	1	2	3	5	7
480	400	26.7550	8	11	20	32	53
481	256	27.1133	16	20	24	32	43
482	6596	12.7329	4	7	10	15	23
483	41763	40.0560	14	21	33	50	73
484	391	14.6931	2	6	11	18	27
485	3471	9.5906	4	5	7	11	18
486	2244	12.3382	1	5	10	16	25
487	4210	7.3983	2	3	6	9	14
488	865	17.0532	4	7	12	22	35
489	14894	8.9049	2	4	6	11	19
490	4863	5.4148	1	2	4	7	11
491	11011	3.6593	2	2	3	4	6
492	2334	17.1418	4	5	12	27	36
493	56210	5.6284	1	2	5	7	11
494	25155	2.4285	1	1	2	3	5
495	125	16.9920	7	10	13	19	31
496	895	10.5821	4	6	8	13	20
497	21969	6.2886	2	3	5	7	11
498	12500	3.5058	1	2	3	5	6
499	36205	4.9604	2	2	4	6	9
500	36448	2.8726	1	2	2	4	5
501	1895	10.4391	4	6	8	12	19
502	468	6.5876	3	4	6	8	10
503	6317	4.2169	1	2	3	5	8
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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY
[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	36587	9.6084	2	4	7	12	20
2	6967	10.0350	3	5	8	13	20
3	3	9.3333	7	7	9	12	12

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
4	6322	7.7259	1	3	5	9	17
5	101105	3.6387	1	2	2	4	8
6	355	3.0225	1	1	2	4	7
7	12601	10.0945	2	4	7	12	20
8	3030	3.1845	1	1	2	4	7
9	1692	6.4923	1	3	5	8	13
10	19727	6.8631	2	3	5	8	14
11	2960	4.1365	1	2	3	5	8
12	38339	6.6619	2	3	5	8	12
13	6315	5.4716	2	3	4	6	9
14	372136	6.2938	2	3	5	8	12
15	145631	3.8599	1	2	3	5	7
16	13905	5.9283	2	3	4	7	11
17	3212	3.4315	1	2	3	4	7
18	27489	5.5809	2	3	4	7	10
19	7294	3.8174	1	2	3	5	7
20	6590	10.1862	2	5	8	13	19
21	1369	6.8152	2	3	5	8	14
22	2789	4.6587	2	2	4	6	9
23	6884	4.2594	1	2	3	5	8
24	57890	5.0641	1	2	4	6	10
25	22696	3.4294	1	2	3	4	7
26	34	3.1176	1	1	2	4	6
27	4153	5.4211	1	1	3	7	12
28	13896	5.9431	1	2	4	7	12
29	4266	3.5375	1	1	3	4	7
31	3075	4.4062	1	2	3	5	8
32	1343	2.9717	1	1	2	3	6
34	20072	5.4331	1	3	4	7	11
35	4264	3.5561	1	2	3	4	7
36	5393	1.5366	1	1	1	1	2
37	1685	3.7187	1	1	2	4	8
38	116	2.5948	1	1	2	3	5
39	1898	2.0327	1	1	1	2	4
40	2281	3.1806	1	1	2	4	7
42	4026	2.0904	1	1	1	2	4
43	120	3.4250	1	2	3	5	7
44	1343	5.0551	2	3	4	6	9
45	2414	3.4731	1	2	3	4	6
46	3148	4.6436	1	2	4	6	9
47	1220	3.2975	1	1	3	4	7
48	2	4.5000	4	4	5	5	5
49	2277	5.0097	1	2	4	6	9
50	3004	1.9767	1	1	2	2	3
51	299	2.8194	1	1	1	3	6
52	89	2.7528	1	1	2	3	7
53	2989	3.6554	1	1	2	4	8
54	2	6.0000	5	5	7	7	7
55	1686	2.9543	1	1	2	3	6
56	684	2.8436	1	1	2	3	6
57	608	3.7237	1	1	3	4	7
59	120	2.4333	1	1	3	3	5
60	1	4.0000	4	4	4	4	4
61	278	4.5144	1	1	2	5	10
62	4	1.2500	1	1	1	1	2
63	3676	4.4502	1	2	3	5	9
64	3408	6.7183	1	2	5	8	14
65	29086	2.9715	1	2	2	4	5
66	6812	3.2606	1	2	3	4	6
67	489	3.7996	1	2	3	4	7
68	11522	4.1519	1	2	3	5	7
69	3450	3.3183	1	2	3	4	6
70	37	2.5405	1	1	2	3	4
71	99	3.9394	1	2	3	6	7
72	817	3.7931	1	2	3	5	7
73	6282	4.4062	1	2	3	6	8
74	2	2.5000	2	2	3	3	3
75	40757	10.2370	4	5	8	13	20
76	41668	11.3195	3	5	9	14	21
77	2040	4.8819	1	2	4	7	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
78	30845	7.3107	3	5	7	9	12
79	247000	8.4030	3	4	7	10	15
80	8299	5.8754	2	3	5	7	10
81	6	12.6667	2	3	6	8	8
82	71035	7.1298	2	3	6	9	14
83	7249	5.5655	2	3	4	7	10
84	1290	3.3256	1	2	3	4	6
85	22415	6.6640	2	3	5	8	13
86	1501	3.8741	1	2	3	5	7
87	73076	6.3172	1	3	5	8	12
88	388565	5.4142	2	3	4	7	10
89	469073	6.2791	2	4	5	8	11
90	38989	4.4632	2	3	4	6	8
91	48	3.9375	1	2	3	5	7
92	14464	6.3794	2	3	5	8	12
93	1314	4.3653	1	2	4	6	8
94	13391	6.4833	2	3	5	8	12
95	1388	3.8739	1	2	3	5	7
96	61778	4.8513	2	3	4	6	9
97	25587	3.8266	1	2	3	5	7
98	28	4.9286	1	2	3	5	13
99	26442	3.0393	1	1	2	4	6
100	10283	2.1219	1	1	2	3	4
101	20140	4.4383	1	2	3	5	9
102	4520	2.7914	1	1	2	3	5
103	490	48.0898	9	14	29	67	115
104	29920	12.5288	4	7	10	16	23
105	26799	9.7413	4	6	8	11	17
106	4737	10.9261	5	7	9	13	19
107	101848	10.6808	6	7	9	12	17
108	6049	11.2420	4	6	9	14	21
109	68972	7.9520	4	5	7	9	13
110	62245	9.6084	2	5	8	12	18
111	5581	5.8094	2	4	6	7	9
112	118470	3.9277	1	1	3	5	8
113	46689	12.2570	4	6	9	15	24
114	8489	8.3873	2	4	7	11	16
115	15007	8.7475	2	4	7	11	17
116	208927	4.1747	1	2	3	5	8
117	3726	3.9847	1	1	2	5	9
118	6481	2.9303	1	1	2	3	6
119	1629	5.3640	1	1	3	7	13
120	37814	8.1649	1	2	5	10	18
121	170012	6.6480	2	4	6	8	12
122	83182	4.2023	1	2	4	6	7
123	43363	4.4029	1	1	2	5	10
124	154194	4.4587	1	2	4	6	9
125	62627	2.8721	1	1	2	4	6
126	5399	12.4253	4	6	9	15	25
127	719871	5.5133	2	3	4	7	10
128	16049	6.0323	3	4	5	7	9
129	4455	2.9495	1	1	1	3	7
130	98047	5.9926	2	3	5	7	10
131	24574	4.6703	1	3	4	6	8
132	174092	3.1532	1	2	3	4	6
133	6631	2.4803	1	1	2	3	5
134	30358	3.4496	1	2	3	4	6
135	8217	4.3269	1	2	3	5	8
136	1113	2.9695	1	1	2	4	5
138	209079	4.0464	1	2	3	5	8
139	67303	2.5774	1	1	2	3	5
140	107658	2.9719	1	1	2	4	5
141	81733	3.8534	1	2	3	5	7
142	36613	2.7911	1	1	2	3	5
143	143826	2.2585	1	1	2	3	4
144	78710	5.2279	1	2	4	7	10
145	6350	2.8698	1	1	2	4	6
146	10372	10.2717	5	7	9	12	17
147	1779	6.7482	4	5	7	8	10
148	146892	12.2593	5	7	10	15	22

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
149	14387	6.8504	4	5	6	8	10
150	23756	10.8870	4	6	9	13	19
151	4149	5.8894	2	3	5	8	10
152	4713	8.3393	4	5	7	10	14
153	1604	5.6359	3	4	5	7	8
154	34348	13.3603	4	7	10	16	25
155	4743	4.6884	1	2	4	6	9
156	2	18.0000	6	6	30	30	30
157	9287	5.3854	1	2	4	7	11
158	4110	2.6190	1	1	2	3	5
159	18320	4.9678	1	2	4	6	9
160	9765	2.6768	1	1	2	3	5
161	14601	4.0877	1	2	3	5	9
162	7065	2.0350	1	1	1	2	4
163	5	11.8000	4	4	11	13	22
164	5272	8.5277	4	5	7	10	15
165	1639	4.9555	2	3	5	6	8
166	3542	5.1256	2	3	4	6	9
167	2325	2.8456	1	2	2	4	5
168	1700	4.5476	1	2	3	6	9
169	843	2.5326	1	1	2	3	5
170	12774	11.2370	2	5	8	14	23
171	1004	4.8337	1	2	4	6	9
172	32993	7.1114	2	3	5	9	14
173	2135	3.9611	1	1	3	5	8
174	248770	4.9263	2	3	4	6	9
175	21672	3.0085	1	2	3	4	5
176	18343	5.4925	2	3	4	7	10
177	11138	4.5572	2	2	4	6	8
178	3486	3.2114	1	2	3	4	6
179	12485	6.4200	2	3	5	8	12
180	93327	5.4284	2	3	4	7	10
181	21330	3.5057	1	2	3	4	6
182	234973	4.3571	1	2	3	5	8
183	69893	3.0179	1	1	2	4	6
184	91	3.1648	1	2	2	4	7
185	4046	4.4881	1	2	3	6	9
187	870	3.9908	1	2	3	5	8
188	75257	5.5524	1	2	4	7	11
189	8618	3.2060	1	1	2	4	6
190	59	5.2712	1	2	4	7	11
191	10625	14.5648	4	7	11	18	29
192	831	6.7088	2	4	6	8	12
193	7334	12.5020	5	7	10	15	22
194	773	6.9288	3	4	6	9	12
195	7094	9.8105	4	6	8	12	17
196	1260	5.7254	2	4	5	7	10
197	25012	8.6285	3	5	7	10	15
198	6357	4.5945	2	3	4	6	8
199	2037	10.1733	3	5	8	14	20
200	1339	11.4593	2	4	8	14	23
201	1651	14.2938	4	6	11	18	29
202	28649	6.7440	2	3	5	8	13
203	29508	6.8400	2	3	5	9	14
204	53140	6.0853	2	3	5	7	11
205	22927	6.5500	2	3	5	8	13
206	1614	4.0694	1	2	3	5	8
207	35502	5.1397	1	2	4	6	10
208	9472	2.8992	1	1	2	4	6
209	362634	5.4336	3	4	5	6	8
210	141586	7.0191	3	4	6	8	12
211	26005	5.1476	3	4	5	6	8
212	13	3.7692	1	2	4	5	6
213	7496	8.4066	2	4	6	11	16
216	6117	9.8190	2	4	7	12	19
217	20587	12.9505	3	5	9	16	27
218	23700	5.3217	2	3	4	6	10
219	18252	3.2882	1	2	3	4	5
220	5	3.2000	1	1	3	4	7
223	18540	2.6177	1	1	2	3	5

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
224	7682	2.0607	1	1	2	3	4
225	5644	4.3556	1	2	3	5	9
226	5540	5.9224	1	2	4	7	12
227	4597	2.7261	1	1	2	3	5
228	2757	3.4345	1	1	2	4	8
229	1100	2.3827	1	1	2	3	5
230	2386	4.5306	1	2	3	5	9
231	10685	4.5647	1	2	3	5	9
232	496	3.8327	1	1	2	4	9
233	4903	7.6490	2	3	5	9	16
234	2258	3.6151	1	2	3	5	7
235	5348	5.3113	1	2	4	6	10
236	39380	5.1518	1	3	4	6	9
237	1593	3.6353	1	2	3	5	7
238	7851	8.8615	3	4	7	11	17
239	59615	6.4289	2	3	5	8	12
240	13635	6.6882	2	3	5	8	13
241	2905	3.9983	1	2	3	5	7
242	2634	6.7358	2	3	5	8	13
243	81633	4.8627	2	3	4	6	9
244	12420	4.9928	2	3	4	6	9
245	4361	3.7420	1	2	3	5	7
246	1273	3.9309	1	2	3	5	7
247	12240	3.4938	1	2	3	4	7
248	8122	4.6959	1	2	4	6	9
249	10840	3.6358	1	1	3	4	7
250	3561	4.2263	1	2	3	5	8
251	2210	2.9570	1	1	2	4	5
252	1	1.0000	1	1	1	1	1
253	19384	4.8629	1	3	4	6	9
254	9275	3.3439	1	2	3	4	6
255	2	3.5000	1	1	6	6	6
256	5517	5.1064	1	2	4	6	10
257	21137	2.9877	1	2	2	3	5
258	16396	2.1344	1	1	2	3	3
259	3772	3.0803	1	1	2	3	7
260	4464	1.5383	1	1	1	2	2
261	1967	2.2466	1	1	2	3	4
262	659	4.2231	1	1	3	6	9
263	27474	11.3931	3	5	8	14	22
264	3318	7.0530	2	3	5	8	14
265	4309	6.5331	1	2	4	8	13
266	2464	3.4054	1	1	2	4	7
267	250	4.6400	1	2	3	5	9
268	875	3.5783	1	1	2	4	7
269	9415	7.8786	2	3	6	10	16
270	2662	3.1480	1	1	2	4	7
271	22961	7.1545	3	4	9	13	13
272	5940	6.4330	2	3	5	8	12
273	1307	4.7980	1	2	4	6	8
274	2409	6.7430	1	3	5	8	14
275	210	3.5143	1	1	2	4	7
276	932	4.4678	1	2	4	6	8
277	81663	5.9066	2	3	5	7	10
278	24598	4.4950	2	3	4	6	8
279	12	5.0000	2	2	4	7	9
280	14156	4.3177	1	2	3	5	8
281	5945	3.1527	1	1	3	4	6
282	2	2.0000	2	2	2	2	2
283	5201	4.8029	1	2	4	6	9
284	1656	3.3255	1	2	3	4	6
285	5534	11.0193	3	5	8	13	21
286	2141	6.9650	3	4	5	8	13
287	6161	11.2446	3	5	8	13	22
288	1478	5.9303	2	3	5	6	9
289	5457	3.2448	1	1	2	3	7
290	8922	2.5158	1	1	2	3	4
291	66	1.7576	1	1	1	2	3
292	5029	10.7174	2	4	8	14	21
293	347	5.5476	1	2	4	7	12

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
294	82039	4.9200	1	2	4	6	9
295	3593	3.9585	1	2	3	5	7
296	235524	5.3934	2	3	4	7	10
297	32715	3.6521	1	2	3	4	7
298	91	3.7253	1	1	2	4	8
299	968	5.3657	1	2	4	7	10
300	16820	6.2855	2	3	5	8	12
301	2395	3.8113	1	2	3	5	7
302	7784	10.1382	5	6	8	12	18
303	19638	9.2247	4	5	7	10	16
304	12813	8.9904	2	4	7	11	18
305	2552	3.8985	1	2	3	5	7
306	10658	5.5019	1	2	3	7	12
307	2355	2.3996	1	1	2	3	4
308	9167	6.0165	1	2	4	8	13
309	3541	2.5945	1	1	2	3	5
310	26694	4.2835	1	2	3	5	9
311	7805	1.9543	1	1	1	2	4
312	1731	4.3437	1	1	3	6	9
313	587	2.3799	1	1	2	3	5
314	1	10.0000	10	10	10	10	10
315	28283	8.0413	1	2	5	10	18
316	93071	6.8024	2	3	5	9	14
317	787	2.8666	1	1	2	3	6
318	6194	6.1022	1	3	5	8	12
319	407	2.9902	1	1	2	4	6
320	177474	5.5698	2	3	4	7	10
321	23679	4.0416	2	2	3	5	7
322	82	4.1098	2	2	3	4	7
323	16931	3.2166	1	1	2	4	6
324	7513	1.9385	1	1	1	2	4
325	7409	3.9591	1	2	3	5	8
326	2192	2.7199	1	1	2	3	5
327	9	2.8889	1	1	2	3	4
328	759	3.7167	1	2	3	5	7
329	87	2.2644	1	1	1	3	4
331	43598	5.5769	1	3	4	7	11
332	4517	3.5603	1	1	3	5	7
333	306	4.9477	1	2	4	6	11
334	18572	4.9690	3	3	4	6	8
335	10338	3.7163	2	3	3	4	5
336	54082	3.6046	1	2	3	4	7
337	31770	2.2858	1	1	2	3	4
338	2767	4.7879	1	2	3	6	10
339	1987	4.1726	1	1	3	5	9
340	2	1.0000	1	1	1	1	1
341	4909	2.9589	1	1	2	3	6
342	1007	3.4518	1	2	2	4	7
344	3882	2.6285	1	1	1	3	5
345	1343	3.6389	1	1	2	4	8
346	4844	5.8179	1	3	4	7	11
347	365	3.1370	1	1	2	4	6
348	3181	4.2521	1	2	3	5	8
349	632	2.7658	1	1	2	4	5
350	6114	4.3999	2	2	4	5	8
352	638	3.6160	1	2	3	4	7
353	2816	6.9457	3	4	5	8	12
354	9926	5.7743	3	3	4	6	10
355	5640	3.4624	2	3	3	4	5
356	28862	2.6478	1	2	2	3	4
357	6330	9.0289	3	5	7	11	17
358	27373	4.3708	2	3	3	5	7
359	27990	2.9775	2	2	3	3	4
360	17843	3.1581	1	2	3	4	5
361	540	3.3259	1	1	2	3	7
363	3943	3.3109	1	2	2	3	6
364	1828	3.5656	1	1	2	5	8
365	2298	6.8903	1	2	5	9	14
366	4368	6.8116	1	3	5	8	14
367	506	2.8893	1	1	2	3	6

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
368	2895	6.3530	2	3	5	8	12
369	2588	3.0622	1	1	2	4	6
370	1154	5.4610	2	3	4	5	9
371	1157	3.4754	2	3	3	4	5
372	975	3.1549	1	2	2	3	5
373	3868	2.1171	1	1	2	2	3
374	147	3.0340	1	2	2	3	3
375	9	5.1111	2	2	3	9	10
376	214	2.9252	1	2	2	3	6
377	52	4.4808	1	2	3	6	9
378	168	2.5952	1	1	2	3	4
379	334	3.5868	1	1	2	3	7
380	87	2.0345	1	1	2	2	3
381	187	2.1283	1	1	1	1	2
382	40	1.2750	1	1	1	1	2
383	1460	3.7301	1	2	3	4	8
384	123	2.6585	1	1	2	3	6
385	1	2.0000	2	2	2	2	2
389	9	8.6667	1	3	7	10	15
390	13	6.0000	2	2	4	5	17
392	2513	10.3828	4	5	7	12	21
394	1805	7.0853	1	2	4	8	16
395	70948	4.7241	1	2	3	6	9
396	15	18.4667	1	2	5	11	15
397	18814	5.5200	1	2	4	7	11
398	18127	6.0414	2	3	5	7	11
399	1322	3.7239	1	2	3	5	7
400	7225	9.3664	2	3	6	12	20
401	6653	11.0137	2	4	8	14	23
402	1464	3.8907	1	1	3	5	9
403	38919	8.1409	2	3	6	10	17
404	3797	4.4464	1	2	3	6	9
406	3308	9.5299	2	4	7	12	20
407	634	4.3202	1	2	4	5	8
408	2667	7.5047	1	2	5	9	16
409	4644	5.8404	2	3	4	6	11
410	59252	3.4182	1	2	3	4	6
411	18	2.8889	1	1	2	2	6
412	24	2.3333	1	1	2	3	4
413	7781	7.4429	2	3	6	9	15
414	676	4.2219	1	2	3	5	8
415	45158	14.3432	4	7	11	18	28
416	230365	7.3967	2	4	6	9	14
417	41	5.9024	2	2	5	7	11
418	21184	6.1906	2	3	5	8	11
419	15269	5.0200	2	3	4	6	9
420	2680	3.9474	1	2	3	5	7
421	12113	3.9569	1	2	3	5	7
422	86	3.3372	1	2	2	5	7
423	10723	7.7520	2	3	6	9	15
424	1621	14.2961	2	5	10	18	29
425	15405	4.1352	1	2	3	5	8
426	4449	4.9020	1	2	3	6	10
427	1633	4.8010	1	2	3	6	10
428	940	7.1755	1	2	4	8	14
429	32769	7.1661	2	3	5	8	14
430	56829	8.7198	2	4	7	11	17
431	217	7.3088	1	3	5	9	13
432	409	5.2152	1	2	3	6	12
433	6811	3.2053	1	1	2	4	7
434	21537	5.1804	2	3	4	6	9
435	14552	4.4078	1	2	4	5	8
436	3322	13.9618	4	7	13	21	28
437	12779	9.2061	3	5	8	12	16
439	1138	7.7065	1	3	5	9	16
440	5155	8.9081	2	3	6	10	19
441	570	3.4333	1	1	2	4	7
442	16247	8.1177	1	3	6	10	17
443	3153	3.3321	1	1	2	4	7
444	3425	4.5007	1	2	3	5	8

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM; SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY97 MEDPAR Update 12/97 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
445	1243	3.3628	1	2	3	4	6
446	1	2.0000	2	2	2	2	2
447	4257	2.5130	1	1	2	3	5
449	27905	3.7822	1	1	3	5	8
450	6171	2.0826	1	1	1	2	4
451	9	2.7778	1	1	1	4	5
452	22863	5.0341	1	2	4	6	10
453	3796	2.9236	1	1	2	4	6
454	3855	4.6905	1	2	3	6	9
455	758	2.7401	1	1	2	3	5
461	3047	4.4322	1	1	2	4	11
462	10348	12.4504	4	6	10	16	23
463	13983	4.4209	1	2	3	5	8
464	3556	3.3751	1	2	3	4	6
465	210	2.9095	1	1	1	3	5
466	1748	4.0955	1	1	2	4	9
467	1332	4.3949	1	1	2	4	7
468	61704	13.4718	3	6	10	17	27
471	12918	6.0694	3	4	5	7	10
473	8429	12.7713	2	3	7	18	33
475	109339	11.1900	2	5	9	15	22
476	5924	11.9158	3	6	10	15	22
477	28747	8.1623	1	3	6	11	17
478	123286	7.4571	1	3	5	9	15
479	18337	3.8430	1	2	3	5	7
480	400	26.7550	8	11	20	32	53
481	256	27.1133	16	20	24	32	43
482	6596	12.7329	4	7	10	15	23
483	41763	40.0560	14	21	33	50	73
484	391	14.6931	2	6	11	18	27
485	3471	9.5906	4	5	7	11	18
486	2244	12.3382	1	5	10	16	25
487	4210	7.3983	2	3	6	9	14
488	865	17.0532	4	7	12	22	35
489	14894	8.9049	2	4	6	11	19
490	4863	5.4148	1	2	4	7	11
491	11011	3.6593	2	2	3	4	6
492	2334	17.1418	4	5	12	27	36
493	56210	5.6284	1	2	5	7	11
494	25155	2.4285	1	1	2	3	5
495	125	16.9920	7	10	13	19	31
496	895	10.5821	4	6	8	13	20
497	21969	6.2886	2	3	5	7	11
498	12500	3.5058	1	2	3	5	6
499	36205	4.9604	2	2	4	6	9
500	36448	2.8726	1	2	2	4	5
501	1895	10.4391	4	6	8	12	19
502	468	6.5876	3	4	6	8	10
503	6317	4.2169	1	2	3	5	8
504	157	31.5669	8	14	25	39	57
505	171	5.8421	1	1	1	4	11
506	1130	16.7522	4	8	13	21	34
507	391	8.9668	2	4	7	12	17
508	1206	7.7355	2	3	5	9	16
509	462	4.8528	1	2	3	6	10
510	1006	6.8897	2	3	5	8	13
511	311	4.8135	1	2	3	6	9
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TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 1998

State	Urban	Rural
ALABAMA	0.373	0.446
ALASKA	0.503	0.731
ARIZONA	0.375	0.540
ARKANSAS	0.515	0.457
CALIFORNIA	0.363	0.481
COLORADO	0.467	0.565
CONNECTICUT	0.546	0.532
DELAWARE	0.506	0.488
DISTRICT OF COLUMBIA	0.521	
FLORIDA	0.384	0.389
GEORGIA	0.497	0.497
HAWAII	0.430	0.559
IDAHO	0.564	0.582
ILLINOIS	0.445	0.546
INDIANA	0.559	0.597
IOWA	0.513	0.640
KANSAS	0.429	0.644
KENTUCKY	0.496	0.519
LOUISIANA	0.442	0.496
MAINE	0.620	0.576
MARYLAND	0.765	0.818
MASSACHUSETTS	0.540	0.571
MICHIGAN	0.467	0.580
MINNESOTA	0.532	0.811
MISSISSIPPI	0.478	0.499
MISSOURI	0.441	0.516
MONTANA	0.524	0.569
NEBRASKA	0.482	0.639
NEVADA	0.320	0.584
NEW HAMPSHIRE	0.573	0.586
NEW JERSEY	0.436	
NEW MEXICO	0.466	0.510
NEW YORK	0.553	0.633
NORTH CAROLINA	0.523	0.461
NORTH DAKOTA	0.620	0.666
OHIO	0.533	0.576
OKLAHOMA	0.460	0.529
OREGON	0.546	0.624
PENNSYLVANIA	0.407	0.527
PUERTO RICO	0.481	0.569
RHODE ISLAND	0.571	
SOUTH CAROLINA	0.472	0.494
SOUTH DAKOTA	0.537	0.620
TENNESSEE	0.481	0.508
TEXAS	0.427	0.536
UTAH	0.538	0.635
VERMONT	0.615	0.577
VIRGINIA	0.476	0.499
WASHINGTON	0.599	0.662
WEST VIRGINIA	0.592	0.573
WISCONSIN	0.568	0.641
WYOMING	0.495	0.694

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 1998

State	Ratio
ALABAMA	0.047
ALASKA	0.066
ARIZONA	0.043
ARKANSAS	0.054
CALIFORNIA	0.038
COLORADO	0.052
CONNECTICUT	0.042
DELAWARE	0.058

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 1998—Continued

State	Ratio
DISTRICT OF COLUMBIA	0.040
FLORIDA	0.046
GEORGIA	0.049
HAWAII	0.045
IDAHO	0.054
ILLINOIS	0.042
INDIANA	0.059
IOWA	0.054
KANSAS	0.052
KENTUCKY	0.051
LOUISIANA	0.067
MAINE	0.040
MARYLAND	0.013
MASSACHUSETTS	0.056
MICHIGAN	0.046
MINNESOTA	0.056
MISSISSIPPI	0.054
MISSOURI	0.049
MONTANA	0.052
NEBRASKA	0.057
NEVADA	0.068
NEW HAMPSHIRE	0.066
NEW JERSEY	0.039
NEW MEXICO	0.047
NEW YORK	0.053
NORTH CAROLINA	0.047
NORTH DAKOTA	0.075
OHIO	0.053
OKLAHOMA	0.054
OREGON	0.055
PENNSYLVANIA	0.043
PUERTO RICO	0.054
RHODE ISLAND	0.033
SOUTH CAROLINA	0.053
SOUTH DAKOTA	0.061
TENNESSEE	0.056
TEXAS	0.052
UTAH	0.056
VERMONT	0.047
VIRGINIA	0.058
WASHINGTON	0.066
WEST VIRGINIA	0.056
WISCONSIN	0.052
WYOMING	0.056

Appendix A—Regulatory Impact Analysis

I. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located

outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classify these hospitals as urban hospitals.

It is clear that the changes being proposed in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

II. Objectives

The primary objective of the prospective payment system is to create incentives for hospitals to operate efficiently and minimize unnecessary costs while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of deficit reduction and restraints on government spending in general.

We believe the proposed changes would further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that these proposed changes would ensure that the outcomes of this payment system are reasonable and equitable while avoiding or minimizing unintended adverse consequences.

III. Limitations of Our Analysis

As has been the case in previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our proposed policy changes, as well as statutory changes effective for FY 1999, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case mix. As we have done in previous proposed rules, we are soliciting comments and information about the anticipated effects of these changes on hospitals and our methodology for estimating them.

IV. GME Payment to Nonhospital Providers

In the past, Medicare only paid hospitals for GME costs. Therefore, FQHCs, RHCs and Medicare+Choice organizations may have been reluctant to train many residents since they would incur costs in training the residents but would not be reimbursed for those costs by Medicare. Under this proposed regulation, where the non-hospital site incurs all or substantially all of the costs of the training at that site, Medicare will reimburse

the provider for Medicare's share of the reasonable costs of the training. The proposal to allow for payments directly to these non-hospital sites for the costs of training residents in approved programs will facilitate more training of residents in settings that will be similar to the settings that many of those residents will ultimately practice after their training is completed. Additionally, this could result in an increase in the number of physicians practicing in underserved areas.

In addition, hospitals are currently allowed to count residents, working in nonhospital sites in their count of residents and the hospital would be paid GME payments, if it paid for all or substantially all of the costs of the program at the non-hospital site. Previously the regulation defined the statutory requirement of "all or substantially all" to mean at least the residents' salaries and fringe benefits. Under the proposal we would redefine "all or substantially all" of the costs of the program at the nonhospital site to also include the GME portion of the teaching physicians' salaries and fringe benefits. This will require hospitals to incur more of the costs of the training at the nonhospital site in order to receive both direct and indirect GME payments for those residents.

Section 4625 of the Balanced Budget Act, which provides for direct graduate medical education payments to nonhospital providers, would have minimal impact in the context of total graduate medical education costs. We believe that the most significant impact resulting from section 4625 will be the movement of resident training from the inpatient setting to the nonhospital setting. We expect that such a shift in the site where resident training occurs will result in little if any additional cost to Medicare. In addition to the expected shift in training from the inpatient setting to the nonhospital setting, in relatively few cases, section 4625 could result in additional resident training being paid by Medicare. However, Medicare's share of costs incurred in those nonhospital sites based on Medicare utilization is often generally low, so we expect the impact of the cost of training of any additional residents to be negligible.

V. Hospitals Included In and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 45 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 50 such hospitals in Maryland remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. Thus, as of March 1998, we have included 4,956 hospitals in our analysis. This represents about 82 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 18 percent are specialty hospitals that are excluded from the

prospective payment system and continue to be paid on the basis of their reasonable costs (subject to a rate-of-increase ceiling on their inpatient operating costs per discharge). These hospitals include psychiatric, rehabilitation, long-term care, children's, and cancer hospitals. The impacts of our proposed policy changes on these hospitals are discussed below.

VI. Impact on Excluded Hospitals and Units

As of March 1998, there were 1,082 specialty hospitals excluded from the prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. In addition, there were 2,393 psychiatric and rehabilitation units in hospitals otherwise subject to the prospective payment system. These excluded units are also paid in accordance with § 413.40.

As required by section 1886(b)(3)(B) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 1999 would be between 0 and 2.5 percent, depending on the hospital's costs in relation to its limit.

The impact on excluded hospitals and units of the proposed update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limits, the major effect will be the amount of excess costs that would not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit plus 50 percent of the difference between its reasonable costs and 110 percent of the limit, not to exceed 110 percent of its limit. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VII. Quantitative Impact Analysis of the Proposed Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this proposed rule, we are announcing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We estimate the total payment impact of these changes on FY 1999 payments compared to FY 1998 payments to be approximately a \$400 million reduction. We have prepared separate impact analyses of the proposed

changes to each system. This section deals with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 1997 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these proposed policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 1997 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are not analyzed here. Estimated payment impacts of proposed FY 1999 changes to the capital prospective payment system are discussed below in section VII of this Appendix.

The proposed changes discussed separately below are the following:

- The effects of implementing the expanded transfer definition enacted by section 4407 of the BBA, which counts as a transfer any discharge from one of 10 DRGs if upon discharge the patient is admitted to an excluded hospital or distinct part unit or a skilled nursing facility, or is provided home health care that is related to the hospitalization within 3 days of the date of discharge.
- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the DRG relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of changes in hospitals' wage index values reflecting the wage index update (FY 1995 data).
- The effects of two proposed changes to the wage index: (1) including the costs associated with Part A physician costs under contract; and (2) removing the overhead costs related to departments excluded from the wage data used to calculate the wage index (for example, skilled nursing facilities and distinct part units).
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRRB) that will be effective in FY 1999.

• The total change in payments based on FY 1999 policies relative to payments based on FY 1998 policies.

To illustrate the impacts of the FY 1999 proposed changes, our analysis begins with a FY 1999 baseline simulation model using: The FY 1998 GROUPE (version 15.0); the FY 1998 wage index; the transfer definition prior to implementation of section 4407 of the BBA; and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total DRG payments.

Each proposed and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 1999 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 1998 to FY 1999. Four factors have significant impacts here. First is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban and the other areas average standardized amounts for FY 1999 using the most recently forecasted hospital market basket increase for FY 1999 of 2.6 percent minus 1.9 percentage points. Similarly, section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals (SCHs), essential access community hospitals (EACHs) (which are treated as SCHs for payment purposes), and Medicare-dependent, small rural hospitals (MDHs) is equal to the market basket increase of 2.6 percent minus 1.9 percentage points (for an update of 0.7 percent).

A second significant factor impacting changes in hospitals' payments per case from FY 1998 to FY 1999 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified in FY 1998 that are no longer reclassified in FY 1999 may have a negative payment impact going from FY 1998 to FY 1999; conversely, hospitals not reclassified in FY 1998 that are reclassified in FY 1999 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage increase in payments for the category may be below the national mean.

A third significant factor is that we currently estimate that actual outlier payments during FY 1998 will be 5.4 percent of actual total DRG payments. When the FY 1998 final rule was published, we projected FY 1998 outlier payments would be 5.1 percent of total DRG payments, and the standardized amounts were reduced correspondingly. The effects of the slightly higher than expected outlier payments during FY 1998 (as discussed in the Addendum to this proposed rule) are reflected in the analyses below comparing our current estimates of FY 1998 payments per case to estimated FY 1999 payments per case.

Fourth, payments per case in FY 1999 are reduced from FY 1998 for hospitals that receive the indirect medical education (IME) or the disproportionate share (DSH) adjustments. Section 1886(d)(5)(B)(ii) of the Act provides that the IME adjustment is reduced from approximately a 7.0 percent increase for every 10 percent increase in a hospital's resident-to-bed ratio in FY 1998, to a 6.5 percent increase in FY 1999. Similarly, in accordance with section 1886(d)(5)(F)(ix) of the Act, the DSH adjustment for FY 1999 is reduced by 2 percent from what would otherwise have been paid, compared to a 1 percent reduction for FY 1998.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,956 hospitals included in the analysis. This is 132 fewer hospitals than were included in the impact analysis in the FY 1998 final rule with comment period (62 FR 46119).

The next four rows of Table I contain hospitals categorized according to their geographic location (all urban, which is further divided into large urban and other urban, or rural). There are 2,792 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,588 hospitals located in large urban areas (populations over 1 million), and 1,204 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,164 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 1999 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show the numbers of hospitals paid based on these categorizations (after consideration of geographic reclassifications) are 2,877, 1,681, 1,196, and 2,079, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an IME adjustment, receive DSH payments, or some combination of these two adjustments). There are 3,875 nonteaching hospitals in our analysis, 841 teaching hospitals with fewer than 100 residents, and 240 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not

reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (They may, however, have been reclassified for purposes of the wage index.) The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next row separately examines hospitals that available data show may qualify under section 4401(b) of the BBA for the special temporary relief provision, which grants an additional 0.3 percent update to the standardized amounts (in addition to the 0.7 percent update other hospitals would receive during FY 1999), resulting in a 1.0 percent update for this category of hospitals. To be eligible, a hospital must not be an MDH, nor may it receive either IME or DSH payments. It must also experience a negative margin on its operating prospective payments during FY 1999. We estimated eligible hospitals based on whether they had a negative operating margin on their FY 1995 cost report (latest available data). Finally, to qualify, a hospital must be located in a State where the aggregate FY 1995 operating prospective payments were less than the aggregate associated costs for all of the non-IME, non-DSH, non-MDH hospitals in the State. There are 356 hospitals in this row.

The next four rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), MDHs, and EACHs), as well as rural hospitals not receiving a special payment designation. The RRCs (137), SCH/EACHs (633), MDHs (351), and SCH/EACH and RRCs (54) shown here were not reclassified for purposes of the standardized amount. There is one SCH that will be reclassified for the standardized amount in FY 1999 that, therefore, is not included in these rows. There are six EACHs included in our analysis and three EACH/RRCs.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1995 Medicare cost report files, if available (otherwise FY 1994 data are used). Data needed to determine ownership status or Medicare utilization percentages were unavailable for 95 hospitals. For the most part, these are new hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first three groupings display hospitals that were reclassified by the MGCRB for both FY 1998 and FY 1999, or for either of those 2 years, by urban/rural status. The next rows illustrate the overall number of FY 1999 reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM
(Percent changes in payments per case)

	Number of hosps. ¹	PAC tran. prov- ision ²	DRG re- calib. ³	New wage data ⁴	Contract phys. pt a costs ⁵	Allocated overhead costs ⁶	DRG & Wt changes ⁷	MGCRB recl- assifi- cation ⁸	All FY 99 changes ⁹
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
(BY GEOGRAPHIC LOCATION):									
ALL HOSPITALS ..	4,956	-0.6	0.1	0.1	0.0	-0.1	0.0	0.0	-0.7
URBAN HOS- PITALS	2,792	-0.7	0.1	0.0	0.0	-0.2	-0.2	-0.4	-1.1
LARGE URBAN	1,588	-0.7	0.1	-0.3	0.0	-0.2	-0.5	-0.4	-1.4
OTHER URBAN	1,204	-0.6	0.1	0.4	0.0	-0.2	0.2	-0.3	-0.5
RURAL HOS- PITALS	2,164	-0.4	0.1	0.9	-0.1	0.3	1.3	2.4	1.5
BED SIZE (URBAN):									
0-99 BEDS	690	-0.8	0.2	-0.3	0.0	-0.1	-0.3	-0.5	-0.7
100-199 BEDS	936	-0.8	0.2	-0.2	0.0	-0.1	-0.3	-0.4	-1.0
200-299 BEDS	566	-0.7	0.1	-0.1	0.0	-0.1	-0.3	-0.3	-0.9
300-499 BEDS	448	-0.6	0.1	0.0	0.0	-0.2	-0.3	-0.5	-1.2
500 OR MORE BEDS	152	-0.5	0.1	0.3	0.0	-0.3	0.1	-0.2	-1.2
BED SIZE (RURAL):									
0-49 BEDS	1,135	-0.3	0.1	0.9	-0.1	0.5	1.3	-0.1	1.3
50-99 BEDS ..	635	-0.4	0.1	0.8	-0.1	0.3	1.1	0.9	1.1
100-149 BEDS	229	-0.5	0.1	0.8	-0.1	0.4	1.3	3.3	1.3
150-199 BEDS	91	-0.5	0.1	1.0	-0.1	0.3	1.5	3.9	2.7
200 OR MORE BEDS	74	-0.4	0.1	1.0	0.0	0.2	1.4	4.6	1.6
URBAN BY CEN- SUS DIVISION:									
NEW ENG- LAND	152	-0.7	0.1	-2.4	-0.1	0.1	-2.7	0.1	-3.5
MIDDLE AT- LANTIC	425	-0.4	0.2	0.4	0.3	-0.2	0.6	-0.5	-0.5
SOUTH AT- LANTIC	413	-0.6	0.1	0.8	-0.1	-0.2	0.6	-0.6	-0.3
EAST NORTH CENTRAL ..	475	-0.8	0.1	0.0	-0.1	-0.4	-0.6	-0.3	-1.5
EAST SOUTH CENTRAL ..	159	-0.6	0.1	0.5	-0.1	-0.4	0.0	-0.5	-0.7
WEST NORTH CENTRAL ..	186	-0.7	0.0	0.9	0.0	0.1	1.0	-0.6	0.1
WEST SOUTH CENTRAL ..	350	-0.9	0.1	-1.1	0.1	-0.2	-1.4	-0.1	-2.0
MOUNTAIN ...	126	-0.8	0.1	0.4	0.2	-0.2	0.5	-0.6	-0.3
PACIFIC	458	-0.8	0.1	-0.5	-0.1	0.0	-0.7	-0.3	-1.4
PUERTO RICO	48	-0.2	0.3	0.8	-0.3	-0.3	0.3	-0.5	0.3
RURAL BY CEN- SUS DIVISION:									
NEW ENG- LAND	53	-0.4	0.0	1.3	0.1	0.0	1.4	0.6	-0.4
MIDDLE AT- LANTIC	80	-0.3	0.1	0.9	0.1	0.0	1.2	1.2	1.1
SOUTH AT- LANTIC	286	-0.4	0.2	0.8	-0.1	0.3	1.1	3.3	2.0
EAST NORTH CENTRAL ..	284	-0.5	0.1	1.0	-0.3	0.3	1.2	1.9	1.5
EAST SOUTH CENTRAL ..	269	-0.4	0.1	1.5	-0.1	0.3	1.9	2.5	2.0

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued
[Percent changes in payments per case]

	Number of hosps. ¹	PAC tran. prov- ision ²	DRG re- calib. ³	New wage data ⁴	Contract phys. pt a costs ⁵	Allocated overhead costs ⁶	DRG & WI changes ⁷	MGCRB rec- assifi- cation ⁸	All FY 99 changes ⁹
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
WEST NORTH CENTRAL ..	499	-0.4	0.0	1.1	0.0	0.7	1.9	2.1	1.8
WEST SOUTH CENTRAL ..	341	-0.5	0.1	0.3	-0.1	0.5	0.8	3.1	0.7
MOUNTAIN ..	206	-0.3	0.0	0.3	-0.1	0.5	0.8	1.6	1.2
PACIFIC	141	-0.6	0.1	0.4	-0.1	0.4	1.0	2.3	1.1
PUERTO RICO	5	-0.4	0.1	2.3	0.1	-0.3	2.2	1.9	0.8
(BY PAYMENT CAT- EGORIES):									
URBAN HOS- PITALS	2,877	-0.7	0.1	0.0	0.0	-0.2	-0.2	-0.3	-1.0
LARGE URBAN	1,681	-0.7	0.1	-0.3	0.0	-0.2	-0.4	-0.3	-1.3
OTHER URBAN	1,196	-0.6	0.1	0.4	0.0	-0.2	0.2	-0.4	-0.5
RURAL HOS- PITALS	2,079	-0.4	0.1	0.9	-0.1	0.4	1.3	2.0	1.4
TEACHING STA- TUS:									
NON-TEACH- ING	3,875	-0.7	0.1	0.2	-0.1	0.0	0.2	0.3	-0.1
LESS THAN 100 RES. ...	841	-0.7	0.1	0.0	0.0	-0.2	-0.2	-0.3	-0.9
100+ RESI- DENTS	240	-0.6	0.1	0.0	0.1	-0.2	-0.1	-0.3	-1.7
DISPROPORTIO- NATE SHARE HOSPITALS (DSH):									
NON-DSH	3,074	-0.6	0.1	0.1	0.0	-0.1	0.1	0.3	-0.4
URBAN DSH:									
100 BEDS OR MORE	1,402	-0.7	0.1	0.0	0.0	-0.2	-0.2	-0.3	-1.1
FEWER THAN 100 BEDS ..	93	-0.7	0.2	-0.2	-0.1	-0.1	-0.3	-0.5	-0.7
RURAL DSH:									
SOLE COM- MUNI- TY (SCH) ..	156	-0.2	0.1	0.8	-0.1	0.2	1.1	-0.1	1.3
REFER- RAL CEN- TERS (RRC) ..	47	-0.5	0.2	1.3	-0.1	0.3	1.9	4.8	2.9
OTHER RURAL DSH HOSP.:									
100 BEDS OR MORE	64	-0.6	0.2	1.2	-0.1	0.4	1.8	1.3	0.8
FEWER THAN 100 BEDS ..	120	-0.3	0.1	1.4	-0.1	0.4	1.8	0.0	1.7
URBAN TEACH- ING AND DSH:									

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued
[Percent changes in payments per case]

	Number of hosps. ¹	PAC tran. prov- ision ²	DRG re- calib. ³	New wage data ⁴	Contract phys. pt a costs ⁵	Allocated overhead costs ⁶	DRG & WI changes ⁷	MGCRB rec- assifi- cation ⁸	All FY 99 changes ⁹
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
BOTH TEACHING AND DSH ...	700	-0.7	0.1	0.0	0.0	-0.2	-0.2	-0.4	-1.4
TEACHING AND NO DSH	328	-0.6	0.0	0.0	0.0	-0.3	-0.2	-0.1	-1.0
NO TEACH- ING AND DSH	795	-0.8	0.2	0.0	-0.1	-0.1	-0.1	-0.2	-0.6
NO TEACH- ING AND NO DSH	1,054	-0.7	0.1	-0.2	0.0	-0.1	-0.3	-0.3	-0.6
SPECIAL UPDATE HOSPITALS (UNDER SEC. 4401(b) OF PUBLIC LAW 105-33)	356	-0.6	0.2	0.1	-0.1	-0.1	0.1	0.3	-0.3
RURAL HOSPITAL TYPES:									
NONSPECIAL STATUS HOSPITALS	904	-0.5	0.2	1.1	-0.1	0.5	1.6	1.1	1.0
RRC	137	-0.6	0.1	1.2	0.0	0.4	1.8	5.6	2.5
SCH/EACH	633	-0.2	0.0	0.4	0.0	0.2	0.6	0.1	0.8
MDH	351	-0.3	0.1	1.1	-0.1	0.5	1.5	0.4	1.3
SCH/EACH AND RRC ..	54	-0.2	0.0	0.3	0.0	0.1	0.4	1.5	1.3
TYPE OF OWN- ERSHIP:									
VOLUNTARY PROPRI- ETARY	2,859	-0.6	0.1	0.1	0.0	-0.1	-0.1	-0.1	-0.8
GOVERN- MENT	671	-0.9	0.2	0.1	-0.1	-0.1	-0.1	0.1	-0.9
UNKNOWN	1,331	-0.5	0.1	0.3	-0.1	0.0	0.3	0.3	-0.3
MEDICARE UTILI- ZATION AS A PERCENT OF INPATIENT DAYS:	95	-0.7	0.2	0.3	-0.1	-0.1	0.2	-0.2	-0.7
0-25	249	-0.7	0.2	-0.7	-0.1	-0.1	-1.0	0.1	-1.6
25-50	1,267	-0.7	0.1	0.0	0.0	-0.1	-0.2	-0.2	-1.2
50-65	1,975	-0.6	0.1	0.2	0.0	-0.1	0.1	0.1	-0.4
OVER 65	1,370	-0.6	0.1	0.3	0.0	0.0	0.4	0.0	0.0
UNKNOWN	95	-0.7	0.2	0.3	-0.1	-0.1	0.2	-0.2	-0.7
HOSPITALS RECLAS- SIFIED BY THE MEDICARE GEO- GRAPHIC REVIEW BOARD:									
RECLASSIFICATI- ON STATUS DURING FY 98 AND FY 99:									
RECLASSI- FIED DUR- ING BOTH FY98 AND FY99	311	-0.5	0.1	0.6	-0.1	0.1	0.8	6.6	-0.1
URBAN ...	70	-0.5	0.1	0.2	-0.1	-0.3	-0.1	5.4	-0.5
RURAL ...	241	-0.5	0.1	1.0	-0.1	0.4	1.5	7.5	0.2
RECLASSI- FIED DUR- ING FY99 ONLY	178	-0.5	0.1	0.8	-0.1	0.2	1.0	4.0	4.7

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued
(Percent changes in payments per case)

	Number of hosps. ¹	PAC tran. prov- ision ²	DRG re- calib. ³	New wage data ⁴	Contract phys. pt a costs ⁵	Allocated overhead costs ⁶	DRG & W changes ⁷	MGCRB rec- assifi- cation ⁸	All FY 99 changes ⁹
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
URBAN ...	25	-0.5	0.1	0.4	-0.1	0.0	0.4	3.1	1.9
RURAL ...	153	-0.5	0.1	1.0	-0.1	0.3	1.3	4.4	6.1
RECLASSI- FIED DUR- ING FY98									
ONLY ...	111	-0.7	0.1	0.6	0.0	-0.2	0.5	-0.5	-3.1
URBAN ...	38	-0.7	0.1	0.5	0.1	-0.3	0.2	-0.6	-2.2
RURAL ...	73	-0.4	0.1	0.9	-0.1	0.4	1.3	-0.5	-6.1
FY 99 RECLASSI- FICATIONS:									
ALL RECLAS- SIFIED									
HOSP.	489	-0.5	0.1	0.7	-0.1	0.1	0.9	5.7	1.6
STAND.									
AMOU- NT									
ONLY ..	94	-0.6	0.1	0.6	0.1	-0.3	0.5	1.0	-0.3
WAGE									
INDEX									
ONLY ..	281	-0.5	0.1	0.5	-0.1	0.3	0.8	6.6	-0.9
BOTH	47	-0.6	0.2	0.9	-0.1	-0.4	0.6	3.8	-1.6
NON- RE- CLAS- SIFIED	4,507	-0.7	0.1	0.1	0.0	-0.1	-0.1	-0.4	-0.7
ALL URBAN									
RECLASS.	95	-0.5	0.1	0.3	-0.1	-0.2	0.0	4.7	0.2
STAND.									
AMOU- NT									
ONLY ..	25	-0.4	0.2	0.9	0.1	-0.4	0.7	0.7	0.0
WAGE									
INDEX									
ONLY ..	45	-0.5	0.1	0.0	-0.1	0.1	-0.1	6.5	0.6
BOTH	25	-0.5	0.1	0.6	-0.2	-0.6	-0.1	2.9	-0.5
NON- RE- CLAS- SIFIED	2,670	-0.7	0.1	0.0	0.0	-0.2	-0.2	-0.6	-1.1
ALL RURAL									
RECLASS.	394	-0.5	0.1	1.0	-0.1	0.4	1.4	6.3	2.5
STAND.									
AMOU- NT									
ONLY ..	57	-0.5	0.1	1.1	-0.2	0.3	1.5	5.1	2.4
WAGE									
INDEX									
ONLY ..	309	-0.5	0.1	0.9	-0.1	0.4	1.4	6.1	2.3
BOTH	28	-0.6	0.1	1.1	-0.1	0.3	1.6	9.2	3.8
NON- RE- CLAS- SIFIED	1,770	-0.3	0.1	0.9	-0.1	0.3	1.2	-0.5	0.8
OTHER RECLAS- SIFIED HOS- PITALS (SEC- TION									
1886(d)(8)(B)) ...	27	-0.5	0.1	-0.9	0.2	-0.3	-0.9	0.7	-0.6

¹ Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1997, and hospital cost report data are from reporting periods beginning in FY 1994 and FY 1995.

² This column displays the impact of the change enacted by section 4407 of the BBA, which defines discharges from 1 of 10 DRGs to postacute care as transfers. Under our proposed policy, 3 of the 10 DRGs would be paid under an alternative methodology where they would receive 50 percent of the full DRG amount on the first day and 50 percent of the current per diem transfer payment amount for each remaining day of the stay. The remaining seven DRGs would be paid using our current transfer payment methodology.

³ This column displays the payment impact of the recalibration of the DRG weights based on FY 1997 MedPAR data and the DRG classification changes, in accordance with section 1886(d)(4)(C) of the Act.

⁴ This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1995 cost reports.

⁵ This column displays the impact of adding contract Part A physician costs to the wage data.

⁶ This column illustrates the payment impact of removing the overhead costs allocated to departments where the directly assigned costs are already excluded from the wage index calculation (for example, SNFs and distinct part units).

⁷ This column displays the combined impact of the reclassification and recalibration of the DRGs, the updated and revised wage data used to calculate the wage index, and the budget neutrality adjustment factor for these two changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 2, 3, 4, and 5, and the FY 1999 budget neutrality factor of 0.999227.

⁸ Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects shown here demonstrate the FY 1999 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 1999. Reclassification for prior years has no bearing on the payment impacts shown here.

⁹ This column shows changes in payments from FY 1998 to FY 1999. It incorporates all of the changes displayed in columns 1, 6, and 7 (the changes displayed in columns 2, 3, 4 and 5 are included in column 6). It also displays the impact of the FY 1999 update, changes in hospitals' reclassification status in FY 1999 compared to FY 1998, the difference in outlier payments from FY 1998 to FY 1999, and the reductions to payments through the IME and DSH adjustments taking effect during FY 1999. The sum of these columns may be different from the percentage changes shown here due to rounding and interactive effects.

B. Impact of the Proposed Implementation of the Expanded Transfer Definition (Column 1)

Section 1886(d)(5)(J) of the Act (added by section 4407 of the BBA) requires the Secretary to select 10 DRGs for which discharges (from any one of these DRGs) to a postacute care provider will be treated as a transfer beginning with discharges on or after October 1, 1998. Column 1 shows the impact of this provision.

Although the expanded definition encompasses only 10 DRGs, they were selected, in accordance with the statute, based upon their large and disproportionate volume of cases receiving postacute care. We estimate that approximately 25 percent of all cases receiving follow-up postacute care come from these 10 DRGs. Therefore, the overall payment impact of this change is significant (a 0.6 percent decrease in payments per case).

The 10 DRGs that we are proposing to include under this provision are identified in section V.A. of the preamble to this proposed rule. In addition to selecting 10 DRGs, the statute authorizes the Secretary to develop an alternative transfer payment methodology for DRGs where a substantial portion of the costs of the cases occur very early in the stay. This is particularly likely to happen in some surgical DRGs because of the high cost of the surgical procedure. Based on our analysis comparing the costs per case for these cases with payments under our current transfer payment methodology, we are proposing to pay the current transfer per diem for all DRGs except DRGs 209, 210, and 211. For those three DRGs, the alternative payment methodology we are proposing is 50 percent of the full DRG payment amount for the first day of the stay, plus 50 percent of the current per diem transfer payment for each remaining day, up to the full DRG payment.

To simulate the impact of these proposed policies, we adjusted hospitals' transfer-adjusted discharges and case-mix index values (using version 15 of the GROUPE) to reflect the impact of this expansion in the transfer definition. The transfer-adjusted discharge amount is calculated one of two ways, depending on the transfer payment methodology. Under our current transfer payment methodology, and for all but the three DRGs receiving special payment consideration, this adjustment is made simply by adding one to the length of stay and dividing that amount by the geometric mean length of stay for the DRG (not to exceed 1.0). For example, a transfer after 3 days from a DRG with a geometric mean

length of stay of 6 days would have a transfer-adjusted discharge weight of 0.667 ((3+1)/6).

For transfers from any one of the three DRGs receiving the alternative payment methodology, the transfer-adjusted discharge amount is 0.5 (to reflect that these cases receive half the full DRG amount the first day), plus one-half of the result of dividing one plus the length of stay prior to transfer by the geometric mean length of stay for the DRG. As with the above adjustment, the result is equal to the lesser of the transfer-adjusted DRG or 1.

The transfer-adjusted case-mix index values are calculated by summing the transfer-adjusted DRG weights and dividing by the transfer-adjusted discharges. The transfer-adjusted DRG weights are calculated by multiplying the DRG weight by the lesser of 1 or the transfer-adjusted discharge for the case, divided by the geometric mean length of stay for the DRG. In this way, simulated payments per case can be compared before and after the change to the transfer policy.

This change has the greatest impact among urban hospitals (0.7 percent decrease). Among urban hospitals, smaller hospitals (under 200 beds) are most affected, with a 0.8 percent reduction in payments. For urban hospitals grouped by census division, Puerto Rico and the Middle Atlantic division have the smallest negative impacts, 0.2 and 0.4 percent decreases, respectively. The Middle Atlantic division has traditionally had the longest average lengths of stay, therefore, it is not surprising that the impact is smallest here. Transfer cases with a length of stay more than the (geometric) mean length of stay minus one day do not experience any payment impact under this provision. (Full payment is reached one day prior to the mean length of stay due to the double per diem paid for the first day under our current transfer payment methodology.) The small impact in Puerto Rico would indicate that these hospitals also are not discharging patients to postacute care early in the stay.

Rural hospitals experience a smaller payment impact overall, especially the smallest rural hospitals: Those with fewer than 50 beds (a 0.3 percent decrease). The smallest impacts among rural census divisions are in the Middle Atlantic and the Mountain. The largest rural impact is in the Pacific division, with a 0.6 percent decrease. This change is consistent with the shorter lengths of stay in this geographic region.

The largest negative impact is a 0.9 percent decrease in payments, observed among urban

West South Central hospitals, and proprietary hospitals. The smallest negative impact besides urban Puerto Rico hospitals occurs in SCHs (0.2 percent decrease). Those SCHs paid based on their hospital-specific amount would see no impact related to this change, since there is no transfer adjustment made to the hospital-specific amount.

C. Impact of the Proposed Changes to the DRG Classifications and Relative Weights (Column 2)

In column 2 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II of the preamble to this proposed rule. Section 1886(d)(4)(C)(i) of the Act requires us to annually make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 1998 DRG relative weights (GROUPE version 15) to aggregate payments using the proposed FY 1999 DRG relative weights (GROUPE version 16). Overall, payments increase by 0.1 percent due to the DRG changes, although this is prior to applying the budget neutrality factor for DRG and wage index changes (see column 6). Consistent with the minor changes we are proposing for the FY 1999 GROUPE, the redistributive impacts of DRG reclassifications and recalibration across hospital groups are very small (a 0.1 percent increase for large and other urban hospitals, as well as for rural hospitals). Within hospital categories, the net effects for urban hospitals are small positive changes for all hospitals (a 0.2 percent increase for hospitals with fewer than 200 beds and a 0.1 percent increase for larger hospitals). Among rural hospitals, all hospital categories experience an increase of 0.1 percent.

The breakdowns by urban census division show that the increase among urban hospitals is spread across all census categories, with the largest increase (0.3 percent) for hospitals in Puerto Rico. For rural hospitals, there is no impact (that is, a 0.0 percent change) for hospitals in the New England, West North Central, and Mountain census divisions. All other divisions experience a 0.1 percent increase.

This pattern of small increases or no change applies to all other hospital categories. Overall, we attribute this change to the increasing severity of illness of

hospital inpatients. That is, as greater numbers of less acutely ill patients are treated outside the inpatient setting, the acuity of the remaining hospital inpatients increases. Although, in the past, this effect was seen more clearly in large urban and very large rural hospitals, which often had more outpatient settings available for patient treatment, hospitals in all areas now appear to be able to take advantage of this practice. Of course, in general, these positive impacts are very minor, with virtually no hospital group experiencing more than a 0.2 percent increase.

D. Impact of Updating the Wage Data (Column 3)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the proposed wage index for FY 1999 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1994 and before October 1, 1995. As with the previous column, the impact of the new data on hospital payments is isolated by holding the other payment parameters constant in the two simulations. That is, column 3 shows the percentage changes in payments when going from a model using the FY 1998 wage index based on FY 1994 wage data before geographic reclassifications to a model using the FY 1999 prereclassification wage index based on FY 1995 wage data.

The wage data collected on the FY 1995 cost reports includes, for the first time, contract labor costs and hours for top management positions as allowable in the wage index calculation. In addition, the changes to wage-related costs associated with hospital and home office salaries that were discussed in the September 1, 1994 final rule (59 FR 45355) are reflected in the FY 1995 data. These changes are reflected in column 3, as well as other year-to-year changes in hospitals' labor costs.

The results indicate that the new wage data have an overall impact of a 0.1 percent increase in hospital payments (prior to applying the budget neutrality factor, see column 6). Rural hospitals especially appear to benefit from the update. Their payments increase by 0.9 percent. These increases are attributable to relatively large increases in the wage index values for the rural areas of particular States; South Dakota, Hawaii, Mississippi, Wyoming, New Hampshire, and Iowa all had increases greater than 6 percent in their prereclassification wage index values.

Urban hospitals as a group are not significantly affected by the updated wage data. The gains of hospitals in other urban areas (0.4 percent increase) are offset by decreases among hospitals in large urban areas (0.3 percent decrease). The negative impact among large urban areas appears to be largely due to a 5.8 percent decrease in the wage index values for the Boston MSA. This impact is especially evident in the 2.4 percent decrease for urban New England hospitals. Urban West South Central hospitals experience a 1.1 percent decrease, largely due to 11 Texas MSAs with FY 1999 wage indexes that fall by more than 7 percent. These appear to be primarily related

to large changes in the average hourly wages of individual hospitals in MSAs with only a few hospitals. We would point out that the wage data used for the proposed wage index is not final, and we understand that many hospitals have submitted revision requests. To the extent these requests are granted by hospitals' fiscal intermediaries, these revisions are likely to affect the impacts shown in the final rule. In addition, we continue to verify the accuracy of the data for hospitals with extraordinary changes in their data from the prior year. We anticipate that all these verifications will be completed when we calculate the final FY 1999 wage index.

The largest increases are seen in the rural census divisions. Rural Puerto Rico experiences the greatest positive impact, 2.3 percent. Hospitals in three other census divisions receive positive impacts over 1.0 percent; East South Central at 1.5 percent, New England at 1.3 percent, and West North Central at 1.1 percent. We believe these positive impacts of the new wage data for rural hospitals stem from the expansion of the contract labor definition, specifically to include certain management categories. On average, the hourly cost of contract labor increased for rural hospitals by 5.9 percent. Among urban hospitals, the increase was 4.2 percent.

E. Impact of Including Contract Physician Part A Costs (Column 4)

As discussed in section III.C.1 of the preamble, we began collecting separate wage data for both direct and contract physician Part A services on the FY 1995 cost report. This change was made in order to address any potential inequity of including only salaried Part A physician costs in the wage index while some States had laws prohibiting their hospitals from employing physicians directly (forcing hospitals to contract with physicians for administrative services). Based on our analysis, we are proposing to include contract physician Part A costs in the wage index calculation.

Column 4 shows the payment impacts of including these data. Although only two States currently maintain the prohibition against hospitals directly employing physicians (Texas and California), many hospitals in other States reported these costs as well. Thus, the impacts of this proposed change extend well beyond Texas and California. In fact, the urban Middle Atlantic census division shows the largest positive impact from this change (0.3 percent).

In general, hospitals in other areas experience either no changes due to this proposed policy, or small (0.1 percent) increases or decreases. However, urban hospitals in Puerto Rico and rural hospitals in the East North Central census division experience 0.3 percent decreases. The negative rural East North Central impact is largely due to a negative impact of this change on the rural Wisconsin wage index.

As noted above, the data used to prepare the proposed FY 1999 wage index are subject to revision, and we understand that many hospitals requested changes to their contract physician Part A costs prior to the March 9 deadline for all requests for wage data changes to be submitted to the fiscal

intermediaries. The extent of these requests and the number which are approved by the fiscal intermediaries may change the impacts in the final rule.

F. Impact of Removing Overhead Costs of Excluded Areas (Column 5)

Prior years' wage index calculations have removed the direct wages and hours associated with certain subprovider components excluded from the prospective payment system; however, the overhead costs associated with these excluded components have not been removed. We revised the FY 1995 cost report to allow hospitals to report separately overhead salaries and hours, and we are proposing to remove the overhead costs and hours allocated to areas of the hospital excluded from the wage index calculation.

Column 5 displays the impacts on FY 1999 payments per case of implementing this change. The overall impact is a 0.1 percent decline in payments; however, once again (as with the impacts of the FY 1995 data), the impact diverges along urban and rural lines. Urban hospitals lose 0.2 percent as a result of removing these overhead costs, while rural hospitals gain 0.3 percent. Among rural hospitals by bed size, the smallest rural hospitals benefit the most, with a 0.5 percent increase for rural hospitals with fewer than 50 beds.

Hospitals in the rural West North Central census division experience the largest percentage increase (0.7 percent). The largest negative impacts are in Puerto Rico (urban and rural), and urban East North Central and urban East South Central.

The combined wage index changes in Table I are determined by summing the individual impacts in columns 3, 4, and 5. For example, the rural West North Central census division gains 1.1 percent from the new wage data, and 0.7 percent from removing the overhead costs allocated to excluded areas. Therefore, the combined impact of the FY 1999 wage index for these hospitals is a 1.8 percent increase.

The following chart compares the shifts in wage index values for labor market areas for FY 1999 relative to FY 1998. This chart demonstrates the impact of the proposed changes for the FY 1999 wage index relative to the FY 1998 wage index. The majority of labor market areas (282) experience less than a 5 percent change. A total of 54 labor market areas experience an increase of more than 5 percent with 13 having an increase greater than 10 percent. A total of 34 areas experience decreases of more than 5 percent (all urban). Of those, 6 decline by 10 percent or more.

Percentage change in area wage index values	Number of labor market areas	
	FY 1998	FY 1999
Increase more than 10 percent	2	13
Increase more than 5 percent and less than 10 percent	24	41
Increase or decrease less than 5 percent	334	282

Percentage change in area wage index values	Number of labor market areas	
	FY 1998	FY 1999
Decrease more than 5 percent and less than 10 percent	9	28
Decrease more than 10 percent	1	6

Among urban hospitals, 164 would experience an increase of more than 5 percent and 29 more than 10 percent. More rural hospitals have increases greater than 5 percent (360), but none greater than 10 percent. On the negative side, 268 urban hospitals but no rural hospitals have decreases in their wage index values of at least 5 percent (30 of the urban hospitals have decreases greater than 10 percent). The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Number of hospitals	
	Urban	Rural
Increase more than 10 percent	29	0
Increase more than 5 percent and less than 10 percent	164	360
Increase or decrease less than 5 percent	2440	1924
Decrease more than 5 percent and less than 10 percent	238	0
Decrease more than 10 percent	30	0

G. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 6)

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this proposed rule, we compared aggregate payments using the FY 1998 DRG relative weights and wage index to aggregate payments using the FY 1999 DRG relative weights and wage index. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 0.999227. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 6. The 0.0 percent impact for All Hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

For the most part, the changes in this column are the sum of the changes in columns 2, 3, 4, and 5, minus approximately 0.1 percent attributable to the budget neutrality factor. There may, of course, be some variation of plus or minus 0.1 percent due to rounding.

H. Impact of MGCRB Reclassifications (Column 7)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 7 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 1999. As noted below, these decisions affect hospitals' standardized amount and wage index area assignments. In addition, rural hospitals reclassified for purposes of the standardized amount qualify to be treated as urban for purposes of the DSH adjustment.

Beginning in 1998, by February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. (In previous years, these determinations were made by March 30.) The MGCRB may approve a hospital's reclassification request for the purpose of using the other area's standardized amount, wage index value, or both or for FYs 1999–2001 for purposes of qualifying for a DSH adjustment or to receive a higher DSH payment.

The proposed FY 1999 wage index values incorporate all of the MGCRB's reclassification decisions for FY 1999. The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process for MGCRB decisions as of February 27, 1998. Additional changes that result from the Administrator's review of MGCRB decisions or a request by a hospital to withdraw its application will be reflected in the final rule for FY 1999.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 0.994019 to ensure that the effects of reclassification are budget neutral. (See section II.A.4 of the Addendum to this proposed rule.) As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.4 percent, while payments to urban hospitals decline 0.4 percent. Hospitals in other urban areas see a decrease in payments of 0.3 percent, while large urban hospitals lose 0.4 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally decline.

A positive impact is evident among all rural hospital groups except the smallest hospitals (under 50 beds), which experience a slight decrease of 0.1 percent. The smallest increase among the rural census divisions is 0.6 percent for New England. The largest increase is in rural South Atlantic, with an increase of 3.3 percent.

Among rural hospitals designated as RRCs, 108 hospitals are reclassified for purposes of the wage index only, leading to the 5.6 percent increase in payments among RRCs overall. This positive impact on RRCs is also reflected in the category of rural hospitals

with 200 or more beds, which has a 4.6 percent increase in payments.

Rural hospitals reclassified for FY 1998 and FY 1999 experience a 6.6 percent increase in payments. This may be due to the fact that these hospitals have the most to gain from reclassification and have been reclassified for a period of years. Rural hospitals reclassified for FY 1999 only experience a 4.4 percent increase in payments, while rural hospitals reclassified for FY 1998 only experience a 0.5 percent decrease in payments. Urban hospitals reclassified for FY 1998 but not FY 1999 experience a 0.6 percent decline in payments overall. Urban hospitals reclassified for FY 1999 but not for FY 1998 experience a 3.1 percent increase in payments.

The FY 1999 Reclassification rows of Table I show the changes in payments per case for all FY 1999 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). The table illustrates that the largest impact for reclassified rural hospitals is for those hospitals reclassified for both the standardized amount and the wage index. These hospitals receive a 9.2 percent increase in payments. In addition, rural hospitals reclassified just for the wage index receive a 6.1 percent payment increase. The overall impact on reclassified hospitals is to increase their payments per case by an average of 5.7 percent for FY 1999.

Among the 27 rural hospitals deemed to be urban under section 1886(d)(8)(B) of the Act, payments increase 0.7 percent due to MGCRB reclassification. This is because, although these hospitals are treated as being attached to an urban area in our baseline (their redesignation is ongoing, rather than annual like the MGCRB reclassifications), they are eligible for MGCRB reclassification. For FY 1999, one hospital in this category reclassified to a large urban area.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that are not reclassified, the overall impact of hospital reclassifications is an average decrease in payments per case of about 0.4 percent. Rural nonreclassified hospitals decrease slightly more, experiencing a 0.5 percent decrease, and urban nonreclassified hospitals lose 0.6 percent (the amount of the budget neutrality offset).

The number of reclassifications for purposes of the standardized amount, or for both the standardized amount and the wage index, has increased from 149 in FY 1998 to 162 in FY 1999. The number of wage index only reclassifications increased from 284 in FY 1998 to 358 in FY 1999. These increases are mainly attributable to two changes made by the BBA. Section 4202 of the BBA amended section 1886(d)(10)(D) of the Act to allow RRCs to reclassify for wage index purposes based only on comparison of the RRC's average hourly wage to the average hourly wage of the area to which it applies to be reclassified. In addition, section 4203 provides that for FYs 1999–2001, a rural

hospital may be reclassified to an other urban area for the sole purpose of receiving a higher DSH payment.

The foregoing analysis was based on MGCRB and HCFA Administrator decisions made by February 27 of this year. As previously noted, there may be changes to some MGCRB decisions through the appeals, review, and applicant withdrawal process. The outcome of these cases will be reflected in the analysis presented in the final rule.

I. All Changes (Column 8)

Column 8 compares our estimate of payments per case, incorporating all changes reflected in this proposed rule for FY 1999 (including statutory changes), to our estimate of payments per case in FY 1998. It includes the effects of the 0.7 percent update to the standardized amounts and the hospital-specific rates for SCHs, ECHs, and MDHs. It also reflects the 0.3 percentage point difference between the projected outlier payments in FY 1999 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 1998 (5.4 percent), as described in the introduction to this Appendix and the Addendum to this proposed rule.

Additional changes affecting the difference between FY 1998 and FY 1999 payments are the reductions to the IME and DSH adjustments enacted by the BBA. These changes initially went into effect during FY 1998 and include additional decreases in payment for each of several succeeding years. As noted in the introduction to this impact analysis, for FY 1999, IME is reduced to approximately a 6.5 percent rate of increase, and DSH is reduced by 2 percent from what hospitals otherwise would receive. We estimate the overall effect of these statutory changes to be a 0.4 percent reduction in FY 1999 payments. For hospitals receiving both IME and DSH, the impact is estimated to be a 0.9 percent reduction in payments per case.

We also note that column 8 includes the impacts of FY 1999 MGCRB reclassifications compared to the payment impacts of FY 1998 reclassifications. Therefore, when comparing FY 1999 payments to FY 1998, the percent changes due to FY 1999 reclassifications shown in column 7 need to be offset by the effects of reclassification on hospitals' FY 1998 payments (column 7 of Table 1, August 29, 1997 final rule with comment period; 62 FR 46119). For example, the impact of MGCRB reclassifications on rural hospitals' FY 1998 payments was approximately a 2.2 percent increase, offsetting much of the 2.4 percent increase in column 7 for FY 1999.

Therefore, the net change in FY 1999 payments due to reclassification for rural hospitals is actually closer to an increase of 0.2 percent relative to FY 1998. However, last year's analysis contained a somewhat different set of hospitals, so this might affect the numbers slightly.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 8 may not equal the sum of the changes in columns 1, 6, and 7, plus the other impacts that we are able to identify.

The overall payment change from FY 1998 to FY 1999 for all hospitals is a 0.7 percent decrease. This reflects the 0.6 percent net change in total payments due to the postacute transfer change for FY 1999 shown in column 1; the 0.7 percent update for FY 1999, the 0.3 percent lower outlier payments in FY 1999 compared to FY 1998 (5.1 percent compared to 5.4 percent); and the 0.4 percent reduction due to lower IME and DSH payments.

Hospitals in urban areas experience a 1.1 percent drop in payments per case compared to FY 1998. Urban hospitals lose 0.9 percent due to the expanded transfer definition and the DRG and wage index changes combined. The 0.4 percent negative impact due to reclassification is offset by an identical negative impact for FY 1998. The impact of reducing IME and DSH is a 0.6 percent reduction in FY 1999 payments per case. Most of this negative impact is incurred by hospitals in large urban areas, where payments are expected to fall 1.4 percent per case compared to 0.5 percent per case for hospitals in other urban areas.

Hospitals in rural areas, meanwhile, experience a 1.5 percent payment increase. As discussed previously, this is primarily due to a smaller negative impact due to the expanded transfer definition (0.4 percent decrease compared to 0.6 percent nationally) and the positive effect due to the wage index and DRG changes (1.3 percent increase).

Among census divisions, urban New England displays the largest negative impact, 3.5 percent. This outcome is primarily related to the 2.4 percent decrease due to the new wage data. Similarly, urban West South Central experiences a 2.0 percent drop in payments per case, due to a 1.1 percent drop due to the new wage data. The urban East North Central and the urban Pacific also experience overall payment declines of more than 1.0 percent, with

1.5 and 1.4 percent decreases, respectively. The West North Central is the only urban census category to experience a rise in payments, stemming primarily from a 0.9 percent increase due to the new wage data. Hospitals in this census division also are less reliant on IME and DSH funding, and are therefore, impacted less by these reductions.

The only rural census division to experience a negative payment impact is New England (0.4 percent fall). This appears to result from a much smaller reclassification effect for rural New England hospitals in FY 1999. For FY 1998, the impact of MGCRB reclassification for these hospitals was a 2.1 percent increase (see 62 FR 46119). For FY 1999, the increase is only 0.6 percent. The largest increases by rural census division are in the South Atlantic and the East South Central, both with 2.0 percent increases in their FY 1999 payments per case. In the South Atlantic, this is primarily due to a larger FY 1999 benefit from MGCRB reclassifications. For the East South Central, it is largely due to a 1.5 percent increase from the FY 1995 wage data.

Among special categories of rural hospitals, RRCs have the largest increase, 2.5 percent. This carries over to other categories as well: rural hospitals with between 150 and 200 beds have a 2.7 percent rise in payments (there are 37 RRCs in this category); and RRCs receiving DSH see a 2.9 percent increase.

The largest negative payment impacts from FY 1998 to FY 1999 are among hospitals that were reclassified for FY 1998 and are not reclassified for FY 1999. Overall, these hospitals lose 3.1 percent. The urban hospitals in this category lose 2.2 percent, while the rural hospitals lose 6.1 percent. On the other hand, hospitals reclassified for FY 1999 that were not reclassified for FY 1998 would experience the greatest payment increases: 4.7 percent overall; 6.1 percent for 153 rural hospitals in this category and 1.9 percent for 25 urban hospitals.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued
[Payments per case]

	Number of hospitals	Average FY 1998 payment per case	Average FY 1999 payment per case	All changes
	(1)	(2) ¹	(3) ¹	(4)
OTHER URBAN AREAS	1,204	6,584	6,549	-0.5
RURAL AREAS	2,164	4,461	4,528	1.5
BED SIZE (URBAN):				
0-99 BEDS	690	4,922	4,890	-0.7
100-199 BEDS	936	6,127	6,069	-1.0
200-299 BEDS	566	6,921	6,860	-0.9
300-499 BEDS	448	7,839	7,744	-1.2
500 OR MORE BEDS	152	9,724	9,607	-1.2
BED SIZE (RURAL):				
0-49 BEDS	1,135	3,663	3,712	1.3
50-99 BEDS	635	4,173	4,218	1.1
100-149 BEDS	229	4,609	4,669	1.3
150-199 BEDS	91	4,799	4,927	2.7
200 OR MORE BEDS	74	5,603	5,692	1.6
URBAN BY CENSUS DIV.:				
NEW ENGLAND	152	7,873	7,597	-3.5
MIDDLE ATLANTIC	425	8,168	8,123	-0.5
SOUTH ATLANTIC	413	6,973	6,955	-0.3
EAST NORTH CENTRAL	475	7,016	6,909	-1.5
EAST SOUTH CENTRAL	159	6,558	6,511	-0.7
WEST NORTH CENTRAL	186	7,001	7,011	0.1
WEST SOUTH CENTRAL	350	6,807	6,672	-2.0
MOUNTAIN	126	7,065	7,045	-0.3
PACIFIC	458	8,403	8,289	-1.4
PUERTO RICO	48	3,049	3,057	0.3
RURAL BY CENSUS DIV.:				
NEW ENGLAND	53	5,308	5,285	-0.4
MIDDLE ATLANTIC	80	4,802	4,857	1.1
SOUTH ATLANTIC	286	4,606	4,697	2.0
EAST NORTH CENTRAL	284	4,492	4,559	1.5
EAST SOUTH CENTRAL	269	4,160	4,242	2.0
WEST NORTH CENTRAL	499	4,174	4,250	1.8
WEST SOUTH CENTRAL	341	3,989	4,019	0.7
MOUNTAIN	206	4,815	4,871	1.2
PACIFIC	141	5,603	5,664	1.1
PUERTO RICO	5	2,369	2,389	0.8
(BY PAYMENT CATEGORIES):				
URBAN HOSPITALS	2,877	7,289	7,215	-1.0
LARGE URBAN AREAS	1,681	7,795	7,691	-1.3
OTHER URBAN AREAS	1,196	6,564	6,533	-0.5
RURAL AREAS	2,079	4,440	4,501	1.4
TEACHING STATUS:				
NON-TEACHING	3,875	5,478	5,472	-0.1
FEWER THAN 100 RESIDENTS	841	7,219	7,155	-0.9
100 OR MORE RESIDENTS	240	10,987	10,796	-1.7
DISPROPORTIONATE SHARE HOSPITALS (DSH):				
NON-DSH	3,074	5,830	5,809	-0.4
URBAN DSH:				
100 BEDS OR MORE	1,402	7,941	7,850	-1.1
FEWER THAN 100 BEDS	93	5,024	4,990	-0.7
RURAL DSH:				
SOLE COMMUNITY (SCH)	156	4,255	4,310	1.3
REFERRAL CENTERS (RRC)	47	5,293	5,446	2.9
OTHER RURAL DSH HOSP.:				
100 BEDS OR MORE	64	4,196	4,229	0.8
FEWER THAN 100 BEDS	120	3,572	3,633	1.7
URBAN TEACHING AND DSH:				
BOTH TEACHING AND DSH	700	8,961	8,837	-1.4
TEACHING AND NO DSH	328	7,390	7,318	-1.0
NO TEACHING AND DSH	795	6,342	6,303	-0.6
NO TEACHING AND NO DSH	1,054	5,661	5,626	-0.6
SPECIAL UPDATE HOSPITALS (UNDER SEC. 4401(b) OF PUBLIC LAW 105-33)	356	5,322	5,305	-0.3
RURAL HOSPITAL TYPES:				
NONSPECIAL STATUS				
HOSPITALS	904	3,948	3,986	1.0

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

	Number of hospitals	Average FY 1998 payment per case	Average FY 1999 payment per case	All changes
	(1)	(2) ¹	(3) ¹	(4)
(BY GEOGRAPHIC LOCATION):				
ALL HOSPITALS	4,956	6,764	6,715	-0.7
URBAN HOSPITALS	2,792	7,332	7,255	-1.1
LARGE URBAN AREAS	1,588	7,891	7,782	-1.4

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1999 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued
(Payments per case)

	Number of hospitals	Average FY 1998 payment per case	Average FY 1999 payment per case	All changes
	(1)	(2) ¹	(3) ¹	(4)
RRC	137	5,182	5,309	2.5
SCH/EACH	633	4,490	4,525	0.8
MDH	351	3,701	3,747	1.3
SCH/EACH AND RRC	54	5,363	5,433	1.3
TYPE OF OWNERSHIP:				
VOLUNTARY	2,859	6,949	6,894	-0.8
PROPRIETARY	671	6,148	6,092	-0.9
GOVERNMENT	1,331	6,233	6,215	-0.3
UNKNOWN	95	7,984	7,928	-0.7
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:				
0-25	249	8,884	8,740	-1.6
25-50	1,267	8,243	8,142	-1.2
50-65	1,975	6,168	6,143	-0.4
OVER 65	1,370	5,250	5,247	0.0
UNKNOWN	95	7,984	7,928	-0.7
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD:				
RECLASSIFICATION STATUS DURING FY98 AND FY99:				
RECLASSIFIED DURING BOTH FY98 AND FY99	311	5,995	5,989	-0.1
URBAN	70	7,505	7,468	-0.5
RURAL	241	5,250	5,258	0.2
RECLASSIFIED DURING FY99 ONLY	178	5,512	5,773	4.7
URBAN	25	8,442	8,605	1.9
RURAL	153	4,705	4,993	6.1
RECLASSIFIED DURING FY98 ONLY	111	6,192	6,000	-3.1
URBAN	38	7,018	6,865	-2.2
RURAL	73	4,458	4,185	-6.1
FY 99 RECLASSIFICATIONS:				
ALL RECLASSIFIED HOSP.	489	5,815	5,908	1.6
STAND. AMT. ONLY	94	5,938	5,920	-0.3
WAGE INDEX ONLY	281	5,994	5,940	-0.9
BOTH	47	6,390	6,290	-1.6
NONRECLASS.	4,507	6,844	6,795	-0.7
ALL URBAN RECLASS.	95	7,767	7,786	0.2
STAND. AMT. ONLY	25	5,922	5,924	0.0
WAGE INDEX ONLY	45	9,138	9,194	0.6
BOTH	25	6,679	6,647	-0.5
NONRECLASS.	2,670	7,327	7,245	-1.1
ALL RURAL RECLASS.	394	5,026	5,149	2.5
STAND. AMT. ONLY	57	4,516	4,626	2.4
WAGE INDEX ONLY	309	5,086	5,204	2.3
BOTH	28	5,038	5,230	3.8
NONRECLASS.	1,770	4,106	4,137	0.8
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B))	27	4,725	4,695	-0.6

¹ These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the proposed changes for FY 1999 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the projected payments per case for FY 1999 with the average estimated per case payments for FY 1998, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 8 of Table I.

VIII. Impact of Proposed Changes in the Capital Prospective Payment System

A. General Considerations

We now have data that were unavailable in previous impact analyses for the capital prospective payment system. Specifically, we have cost report data available for the fourth year of the capital prospective payment system (cost reports beginning in FY 1995) available through the December 1997 update of the Health Care Provider Cost Report Information System (HCRIS). We also have updated information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data

on several items. These are the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year. The lack of this information affects our impact analysis in the following ways:

- Major investment in hospital capital assets (for example in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for individual hospitals.

Moreover, our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding intermediary determinations of projected aggregate obligated capital amounts. However, we still do not know when these projects will actually be put into use for patient care, the actual amount that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments for purposes of the FY 1999 capital cost projections. In Appendix B of this proposed rule, we discuss the assumptions and computations that we employ to generate the amount of obligated capital commitments for use in the FY 1999 capital cost projections.

In Table III of this section, we present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 1999. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the proposed FY 1999 capital payment policies by the standard prospective payment system hospital groupings. While we now have actual information on the effects of the transition payment methodology and interim

payments under the capital prospective payment system and cost report data for most hospitals, we still need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. We continue to be unable to predict accurately FY 1999 capital costs for individual hospitals, but with the most recent data hospitals' experience under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

B. Projected Impact Based on the Proposed FY 1999 Actuarial Model

1. *Assumptions.* In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1998 to FY 1999 using a capital cost model. The FY 1999 model, as described in Appendix B of this proposed rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1995 as reported on the December 1997 update of HCRIS, interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through January 1, 1998 in the provider-specific file. We used these data to determine the proposed FY 1999 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1995, and we age that capital by a formula described in Appendix B. Therefore, we need to randomly generate only new capital acquisitions for any year after FY 1995. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the FY 1999 actuarial model includes the following assumptions:

CAPITAL TRANSITION PAYMENT METHODOLOGY FOR FY 1999

Type of hospital	Percent of hospitals	Percent of discharges	Percent of capital costs	Percent of capital payments
Low Cost Hospital	67	62	53	58
High Cost Hospital	33	38	47	42

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(e) for putting obligated capital in to use for patient care). If the redetermined hospital-specific rate is

greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we continue to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays

• Medicare inpatient capital costs per discharge will change at the following rates during these periods:

AVERAGE PERCENTAGE CHANGE IN CAPITAL COSTS PER DISCHARGE

Fiscal Year	Percentage Change
1997	-2.20
1998	-0.44
1999	0.61

We have reduced our estimate of the growth in Medicare costs per discharge from the August 29, 1997 final rule with comment period to this proposed rule based on later cost data. We are now estimating a much smaller increase in costs per discharge.

• The Medicare case-mix index will increase by 1.0 percent in FY 1998 and FY 1999.

• The Federal capital rate and hospital-specific rate were updated in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs, and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The proposed FY 1999 update for inflation is 0.20 percent (see section III of the Addendum).

2. *Results.* We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1998 to FY 1999. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate and the applicable Federal rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

the percentage change in payments from FY 1998 to FY 1999 using the above described actuarial model. With the proposed Federal rate, we estimate aggregate Medicare capital payments will increase by 2.60 percent in FY 1999.

TABLE III.—IMPACT OF PROPOSED CHANGES FOR FY 1999 ON PAYMENTS PER DISCHARGE

	Number of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change over FY 1998
FY 1998 Payments per Discharge:									
Low Cost Hospitals	3,260	6,746,172	\$458.89	72.51	\$86.07	\$4.04	\$8.87	\$557.88	
Fully Prospective	3,021	6,102,199	440.78	70.00	95.16		8.21	544.15	
100% Federal Rate	208	567,402	661.26	100.00			11.10	672.36	
Hold Harmless	31	76,570	402.65	59.69		355.79	45.50	803.94	
High Cost Hospitals	1,637	4,163,057	636.32	95.82		36.64	16.72	689.68	
100% Federal Rate	1,398	3,701,256	667.50	100.00			11.65	679.14	
Hold Harmless	239	461,801	386.44	60.70		330.33	57.34	774.12	
Total Hospitals	4,897	10,909,229	526.60	81.67	53.23	16.48	11.87	608.18	
FY 1999 Payments per Discharge:									
Low Cost Hospitals	3,260	6,596,003	\$529.51	81.61	\$58.10	\$3.38	\$9.53	\$597.52	7.11
Fully Prospective	3,021	5,966,449	513.52	80.00	64.23		8.47	586.21	7.73
100% Federal Rate	211	561,909	674.19	100.00			10.98	685.17	1.91
Hold Harmless	28	67,646	445.71	64.76		329.56	91.77	867.04	7.85
High Cost Hospitals	1,637	4,068,306	655.17	97.22		25.50	23.85	704.52	2.15
100% Federal Rate	1,417	3,678,286	681.02	100.00			16.94	697.97	2.77
Hold Harmless	220	390,020	411.40	67.81		265.94	88.99	766.33	-1.01
Total Hospitals	4,897	10,664,309	575.59	87.73	35.93	11.82	15.00	638.34	4.96

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average increase in payments per case of 7.73 percent, and high capital cost hospitals will experience an average increase of 2.15 percent.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 70 percent to 80 percent and the hospital-specific rate payment percentage will decrease from 30 to 20 percent in FY 1999. The Federal rate payment percentage for hospitals paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for high cost hospitals receiving a hold-harmless payment for old capital will increase from 60.70 percent to 67.81 percent. We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will increase from 85.6 percent to 86.8 percent. We estimate that high cost hold-harmless hospitals will experience a decrease in payments of 1.01 percent from FY 1998 to FY 1999. The apparent decrease occurs because we estimate that there will be 19 fewer high-cost

hold-harmless hospitals in FY 1999. These 19 hospitals may have higher payments than the remaining hospitals, hence the apparent decrease when they are removed from the group. This decrease is partially offset by an increase in the Federal portion of the hospital's payments and a projected increase in exceptions payments.

We expect that the average hospital-specific rate payment per discharge will decrease from \$95.16 in FY 1998 to \$64.23 in FY 1999. This is partly due to the decrease in the hospital-specific rate payment percentage from 30 percent in FY 1998 to 20 percent in FY 1999.

We are proposing no changes in our exceptions policies for FY 1999. As a result, the minimum payment levels would be:

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or
- 70 percent for all other hospitals.

We estimate that exceptions payments will increase from 1.95 percent of total capital payments in FY 1998 to 2.35 percent of payments in FY 1999. Since the August 29, 1997 final rule with comment period, we have reduced our estimates of capital cost per case based on more recent data. Although we

still estimate that more hospitals will receive exceptions payment in FY 1999 than in FY 1998 fewer hospitals will have costs over the exceptions threshold then we previously estimated. The projected distribution of the exception payments is shown in the table below:

Estimated FY 1999 Exceptions Payments

Type of hospital	Number of hospitals	Percent of exceptions payments
Low Capital Cost	178	39
High Capital Cost	200	61
Total	378	100

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies

Table IV presents a cross-sectional summary of hospital groupings by capital prospective payment methodology. This distribution is generated by our actuarial model.

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total No. of Hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	4,897	5.1	33.2	61.7
Large urban areas (populations over 1 million)	1,558	5.7	40.7	53.6

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total No. of Hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
Other urban areas (populations of 1 million or fewer)	1,188	6.2	40.8	52.9
Rural areas	2,151	4.0	23.7	72.4
Urban hospitals	2,746	5.9	40.8	53.3
0-99 beds	653	5.8	33.8	60.3
100-199 beds	928	8.5	45.9	45.6
200-299 beds	565	5.8	40.9	53.3
300-499 beds	448	2.2	40.8	56.9
500 or more beds	152	2.0	38.2	59.9
Rural hospitals	2,151	4.0	23.7	72.4
0-49 beds	1,124	3.5	16.1	80.4
50-99 beds	633	4.3	28.8	67.0
100-149 beds	229	4.8	38.0	57.2
150-199 beds	91	7.7	25.3	67.0
200 or more beds	74	1.4	48.6	50.0
By Region				
Urban by Region	2,746	5.9	40.8	53.3
New England	151	0.0	27.8	72.2
Middle Atlantic	421	4.5	34.0	61.5
South Atlantic	409	5.4	53.5	41.1
East North Central	472	5.5	30.5	64.0
East South Central	157	10.8	48.4	40.8
West North Central	183	6.0	36.6	57.4
West South Central	332	13.3	55.7	31.0
Mountain	122	4.9	50.8	44.3
Pacific	451	3.3	37.7	59.0
Puerto Rico	48	6.3	22.9	70.8
Rural by Region	2,151	4.0	23.7	72.4
New England	53	0.0	22.6	77.4
Middle Atlantic	79	5.1	25.3	69.6
South Atlantic	282	2.5	33.0	64.5
East North Central	283	3.2	19.1	77.7
East South Central	267	1.9	34.1	64.0
West North Central	498	3.6	16.1	80.3
West South Central	339	3.8	27.4	68.7
Mountain	205	10.7	15.6	73.7
Pacific	140	5.0	23.6	71.4
Large urban areas (populations over 1 million)	1,651	5.9	40.5	53.7
Other urban areas (populations of 1 million or fewer)	1,180	5.8	41.1	53.1
Rural areas	2,066	4.0	23.0	73.0
Teaching Status:				
Non-teaching	3,818	5.1	32.8	62.0
Fewer than 100 Residents	840	5.7	35.1	59.2
100 or more Residents	239	1.7	33.5	64.9
Disproportionate share hospitals (DSH):				
Non-DSH	3,029	5.3	28.9	65.8
Urban DSH:				
100 or more beds	1,397	5.2	43.7	51.0
Less than 100 beds	87	1.1	29.9	69.0
Rural DSH:				
Sole Community (SCH/EACH)	156	5.1	22.4	72.4
Referral Center (RRC/EACH)	47	2.1	53.2	44.7
Other Rural:				
100 or more beds	64	4.7	37.5	57.8
Less than 100 beds	117	0.9	28.2	70.9
Urban teaching and DSH:				
Both teaching and DSH	699	4.0	36.6	59.4
Teaching and no DSH	327	6.7	31.5	61.8
No teaching and DSH	785	5.9	48.5	45.6
No teaching and no DSH	1,020	6.8	40.5	52.7
Rural Hospital Types:				
Non special status hospitals	894	2.0	24.0	73.9
RRC/EACH	137	2.2	40.1	57.7
SCH/EACH	632	8.2	19.9	71.8
Medicare-dependent hospitals (MDH)	349	1.1	17.5	81.4
SCH, RRC and EACH	54	11.1	33.3	55.6

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total No. of Hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold- harmless (A)	Percentage paid fully prospective (B)	
Type of Ownership:				
Voluntary	2,847	4.9	33.0	62.1
Proprietary	656	10.1	58.2	31.7
Government	1,329	3.2	21.1	75.7
Medicare Utilization as a Percent of Inpatient Days:				
0-25	238	4.2	30.7	65.1
25-50	1,260	5.9	41.0	53.2
50-65	1,970	5.6	33.0	61.4
Over 65	1,364	3.8	26.6	69.6

As we explain in Appendix B, we were not able to determine a hospital-specific rate for 59 of the 4,956 hospitals in our database. Consequently, the payment methodology distribution is based on 4,897 hospitals. These data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is presented by: (1) Geographic location, (2) region, and (3) payment classification. This provides an indication of the percentage of hospitals within a particular hospital grouping that will be paid under the fully prospective payment methodology and the hold-harmless payment methodology.

The percentage of hospitals paid fully Federal (100 percent of the Federal rate) as hold-harmless hospitals is expected to increase to 33.2 percent in FY 1999. We note that the number of hospitals paid fully Federal as hold-harmless hospitals has not increased as quickly as we predicted in the August 29, 1997 final rule with comment period because of revised estimates.

Table IV indicates that 61.7 percent of hospitals will be paid under the fully prospective payment methodology. (This figure, unlike the figure of 67 percent for low cost capital hospitals in the previous section, takes account of the effects of redeterminations. In other words, this figure does not include low cost hospitals that, following a hospital-specific rate redetermination, are now paid under the hold-harmless methodology.) As expected, a relatively higher percentage of rural and governmental hospitals (73.0 percent and 75.7 percent, respectively by payment classification) are being paid under the fully prospective methodology. This is a reflection of their lower than average capital costs per case. In contrast, only 31.7 percent of proprietary hospitals are being paid under the fully prospective methodology. This is a reflection of their higher than average capital costs per case. (We found at the time of the August 30, 1991 final rule (56 FR 43430) that 62.7 percent of proprietary hospitals had a capital cost per case above the national average cost per case.)

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 1999 actuarial model to estimate the potential impact of our proposed changes for FY 1999 on total capital payments per case, using a universe of 4,897 hospitals. The individual hospital payment parameters are taken from the best available data, including: The January 1, 1998 update to the provider-specific file, cost report data, and audit information supplied by intermediaries. In Table V we present the results of the cross-sectional analysis using the results of our actuarial model and the aggregate impact of the FY 1999 payment policies. Columns 3 and 4 show estimates of payments per case under our model for FY 1998 and FY 1999. Column 5 shows the total percentage change in payments from FY 1998 to FY 1999. Column 6 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 6 include the 1.5 percent increase in the Federal rate, a 1.0 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB. Column 5 includes the effects of the Federal rate changes represented in Column 6. Column 5 also reflects the effects of all other changes, including: the change from 70 percent to 80 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, and exceptions. The comparisons are provided by: (1) Geographic location, (2) region, and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to increase 5.0 percent in FY 1999. The results show that the effect of the Federal rate changes alone is to increase payments by 1.5 percent. In addition to the increase attributable to the Federal rate changes, a 3.5 percent increase is attributable to the effects of all other changes.

Our comparison by geographic location shows that urban and rural hospitals will experience slightly different rates of increase in capital payments per case (4.8 percent and 6.3 percent, respectively). This difference is due to the lower rate of increase for urban hospitals relative to rural hospitals (1.3 percent and 3.2 percent, respectively) from the Federal rate changes alone. Urban hospitals will gain approximately the same as rural hospitals (3.5 percent versus 3.1 percent) from the effects of all other changes.

All regions are estimated to receive increases in total capital payments per case, partly due to the increased share of payments that are based on the Federal rate (from 70 to 80 percent). Changes by region vary from a low of 3.6 percent increase (West South Central urban region) to a high of 7.8 percent increase (Pacific rural region).

By type of ownership, government hospitals are projected to have the largest rate of increase (6.2 percent, 1.9 percent due to Federal rate changes and 4.3 percent from the effects of all other changes). Payments to voluntary hospitals will increase 5.1 percent (a 1.5 percent increase due to Federal rate changes and a 3.6 percent increase from the effects of all other changes) and payments to proprietary hospitals will increase 2.8 percent (a 1.1 percent increase due to Federal rate changes and a 1.7 percent increase from the effects of all other changes).

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both and for purposes of DSH, for FY 1999-2001. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 1999 compared to the effects of reclassification for FY 1998, we show the average payment percentage increase for hospitals reclassified in each

fiscal year and in total. For FY 1999 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 1999 as a whole are projected to experience a 6.8 percent increase in payments (a 3.5 percent increase attributable to Federal rate changes and a 3.3 percent increase attributable to the effects of all other changes). Payments to nonreclassified hospitals will increase slightly less (5.1 percent) than reclassified hospitals (6.8 percent) overall. Payments to

nonreclassified hospitals will increase less than reclassified hospitals from the Federal rate changes (1.5 percent compared to 3.5 percent), but they will gain about the same from the effects of all other changes (3.6 percent compared to 3.3 percent).

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE (FY 1998 COMPARED TO FY 1999)

	Number of hospitals	Average FY 1998 pay- ments/case	Average FY 1999 pay- ments/case	All changes	Portion at- tributable to federal rate change
By Geographic Location:					
All hospitals	4,897	608	638	5.0	1.5
Large urban areas (populations over 1 million)	1,558	700	732	4.5	1.1
Other urban areas (populations of 1 million or fewer)	1,188	601	633	5.2	1.5
Rural areas	2,151	405	431	6.3	3.2
Urban hospitals	2,746	658	689	4.8	1.3
0-99 beds	653	482	502	4.1	1.2
100-199 beds	928	584	605	3.6	1.1
200-299 beds	565	628	661	5.4	1.3
300-499 beds	448	686	720	4.9	1.2
500 or more beds	152	824	866	5.1	1.4
Rural hospitals	2,151	405	431	6.3	3.2
0-49 beds	1,124	325	348	6.9	2.9
50-99 beds	633	382	407	6.6	2.8
100-149 beds	229	421	446	5.9	3.0
150-199 beds	91	442	469	6.0	3.8
200 or more beds	74	500	531	6.2	3.7
By Region:					
Urban by Region	2,746	658	689	4.8	1.3
New England	151	659	685	4.0	-0.4
Middle Atlantic	421	708	743	5.0	1.8
South Atlantic	409	649	678	4.4	1.8
East North Central	472	616	650	5.5	1.0
East South Central	157	611	633	3.6	0.8
West North Central	183	638	673	5.6	2.3
West South Central	332	664	688	3.6	0.5
Mountain	122	691	728	5.4	1.6
Pacific	451	719	755	5.1	1.0
Puerto Rico	48	277	288	4.1	1.9
Rural by Region	2,151	405	431	6.3	3.2
New England	53	475	497	4.5	1.9
Middle Atlantic	79	413	443	7.4	3.4
South Atlantic	282	430	455	5.9	3.6
East North Central	283	401	431	7.4	3.4
East South Central	267	376	400	6.6	3.4
West North Central	498	390	411	5.6	3.4
West South Central	339	370	390	5.5	2.5
Mountain	205	434	461	6.4	2.4
Pacific	140	478	515	7.8	2.8
By Payment Classification:					
All hospitals	4,897	608	638	5.0	1.5
Large urban areas (populations over 1 million)	1,651	692	724	4.5	1.1
Other urban areas (populations of 1 million or fewer)	1,180	599	631	5.2	1.5
Rural areas	2,066	402	427	6.2	3.0
Teaching Status:					
Non-teaching	3,818	517	540	4.5	1.7
Fewer than 100 Residents	840	647	682	5.4	1.3
100 or more Residents	239	889	936	5.3	1.3
Urban DSH:					
100 or more beds	1,397	693	727	4.9	1.3
Less than 100 beds	87	444	467	5.1	1.1
Rural DSH:					
Sole Community (SCH/EACH)	156	364	383	5.2	2.5
Referral Center (RRC/EACH)	47	462	494	7.0	4.5
Other Rural:					
100 or more beds	64	384	400	4.3	2.8
Less than 100 beds	117	320	340	6.3	3.3
Urban teaching and DSH:					
Both teaching and DSH	699	761	801	5.3	1.2
Teaching and no DSH	327	659	696	5.5	1.3

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE (FY 1998 COMPARED TO FY 1999)—Continued

	Number of hospitals	Average FY 1998 payments/case	Average FY 1999 payments/case	All changes	Portion attributable to federal rate change
No teaching and DSH	785	585	610	4.3	1.3
No teaching and no DSH	1,020	558	579	3.7	1.3
Rural Hospital Types:					
Non special status hospitals	894	367	389	6.0	2.6
RRC/EACH	137	475	506	6.5	3.9
SCH/EACH	632	391	416	6.2	2.4
Medicare-dependent hospitals (MDH)	349	324	355	9.5	3.6
SCH, RRC and EACH	54	483	500	3.5	3.1
Hospitals Reclassified by the Medicare Geographic Classification Review Board:					
Reclassification Status During FY98 and FY99:					
Reclassified During Both FY98 and FY99	311	540	566	4.8	1.7
Reclassified During FY99 Only	178	487	537	10.4	6.8
Reclassified During FY98 Only	110	580	587	1.2	-1.4
FY99 Reclassifications:					
All Reclassified Hospitals	489	520	555	6.8	3.5
All Nonreclassified Hospitals	4,449	614	646	5.1	1.5
All Urban Reclassified Hospitals	95	663	708	6.8	2.3
Urban Nonreclassified Hospitals	2,624	659	689	4.7	1.2
All Reclassified Rural Hospitals	394	462	494	6.8	4.2
Rural Nonreclassified Hospitals	1,757	369	391	6.0	2.4
Other Reclassified Hospitals (Section 1886 (D)(8)(B))	27	461	476	3.3	1.1
Type of Ownership:					
Voluntary	2,847	622	653	5.1	1.5
Proprietary	656	617	634	2.8	1.1
Government	1,329	530	563	6.2	1.9
Medicare Utilization as a Percent of Inpatient Days:					
0-25	238	685	725	5.8	1.1
25-50	1,260	724	759	4.7	1.3
50-65	1,970	565	594	5.2	1.6

Appendix B: Technical Appendix on the Capital Cost Model and Required Adjustments

Under section 1886(g)(1)(A) of the Act, we set capital prospective payment rates for FY 1992 through FY 1995 so that aggregate prospective payments for capital costs were projected to be 10 percent lower than the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expired effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor, and the reduction in the Federal and hospital-specific rates for exceptions payments. To determine these factors, we must continue to project capital costs and payments.

We have used the capital acquisition model since the start of prospective payments for capital costs. We now have 4 years of cost reports under the capital prospective payment system. For FY 1998, we developed a new capital cost model to replace the capital acquisition model. This revised model makes use of the data from these cost reports.

The following cost reports are used in the capital cost model for this proposed rule: The December 31, 1997 update of the cost reports for PPS-IX (cost reporting periods beginning in FY 1992), PPS-X (cost reporting periods

beginning in FY 1993), PPS-XI (cost reporting periods beginning in FY 1994), and PPS-XII (cost reporting periods beginning in FY 1995). In addition, to model payments, we use the January 1, 1998 update of the provider-specific file, and the March 1994 update of the intermediary audit file.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently excluded from the capital prospective payment system, we excluded these hospitals from our model.

We developed FY 1992 through FY 1998 hospital-specific rates using the provider-specific file and the intermediary audit file. (We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We ensured that increases in the hospital-specific rates were at least as large as the published updates (increases) for the hospital-specific rates each year. We were able to match hospitals to the files as shown in the following table:

Source	Number of hospitals
Provider-Specific File Only	99
Provider-Specific and Audit File	4857
Total	4956

Eighty-six of the 4,956 hospitals had unusable or missing data or had no cost reports available. We determined from the cost reports that 27 of the 86 hospitals were paid under the hold-harmless methodology. Since the hospital-specific amount is not used to determine payments for these hospitals, we were able to include these 27 hospitals in the analysis. We used the cost report data of 4,897 hospitals for the analysis. Fifty-nine hospitals could not be used in the analysis because of insufficient information. These hospitals account for approximately 0.3 percent of admissions, therefore, any effects from the elimination of their cost report data should be minimal.

We analyzed changes in capital-related costs (depreciation, interest, rent, leases, insurance, and taxes) reported in the cost reports. We found a wide variance among hospitals in the growth of these costs. For hospitals with more than 100 beds, the distribution and mean of these cost increases were different for large changes in bed-size (greater than ± 20 percent). We also analyzed changes in the growth in old capital and new capital for cost reports that provided this information. For old capital, we limited the analysis to decreases in old capital. We did this since the opportunity for most hospitals to treat "obligated" capital put into service as

old capital has expired. Old capital costs should, therefore, decrease as assets become fully depreciated, and as interest costs decrease as the loan is amortized.

The new capital cost model separates the hospitals into three mutually exclusive groups. Hold-harmless hospitals with data on old capital were placed in the first group. Of the remaining hospitals, those hospitals with fewer than 100 beds comprise the second group. The third group consists of all hospitals that did not fit into either of the groups. Each of these groups displayed unique patterns of growth in capital costs. We found that the gamma distribution is useful in explaining and describing the patterns of increase in capital costs. A gamma distribution is a statistical distribution that can be used to describe patterns of growth rates, with greatest proportion of rates being at the low end. We use the gamma distribution to estimate individual hospital rates of increase as follows:

(1) For hold-harmless hospitals, old capital cost changes were fitted to a truncated gamma distribution, that is, a gamma distribution covering only the distribution of cost decreases. New capital costs changes were fitted to the entire gamma distribution allowing for both decreases and increases.

(2) For hospitals with fewer than 100 beds (small), total capital cost changes were fitted to the gamma distribution allowing for both decreases and increases.

(3) Other (large) hospitals were further separated into three groups:

- Bed-size decreases over 20 percent (decrease).
- Bed-size increases over 20 percent (increase).
- Other (no-change).

Capital cost changes for large hospitals were fitted to gamma distributions for each bed-size change group, allowing for both decreases and increases in capital costs. We analyzed the probability distribution of increases and decreases in bed-size for large hospitals. We found the probability somewhat dependent on the prior year change in bed-size and factored this dependence into the analysis. Probabilities of bed-size change were determined. Separate sets of probability factors were calculated to reflect the dependence on prior year change in bed-size (increase, decrease, and no change).

The gamma distributions were fitted to changes in aggregate capital costs for the entire hospital. We checked the relationship between aggregate costs and Medicare per discharge costs. For large hospitals, there was a small variance, but the variance was larger for small hospitals. Since costs are used only for the hold-harmless methodology and to determine exceptions, we decided to use the gamma distributions fitted to aggregate cost increases for estimating distributions of cost per discharge increases.

Capital costs per discharge calculated from the cost reports were increased by random numbers drawn from the gamma distribution to project costs in future years. Old and new capital were projected separately for hold-harmless hospitals. Aggregate capital per discharge costs were projected for all other hospitals. Because the distribution of

increases in capital costs varies with changes in bed-size for large hospitals, we first projected changes in bed-size for large hospitals before drawing random numbers from the gamma distribution. Bed-size changes were drawn from the uniform distribution with the probabilities dependent on the previous year bed-size change. The gamma distribution has a shape parameter and a scaling parameter. (We used different parameters for each hospital group, and for old and new capital.)

We used discharge counts from the cost reports to calculate capital cost per discharge. To estimate total capital costs for FY 1997 (the MedPAR data year) and later, we use the number of discharges from the MEDPAR data. Some hospitals have considerably more discharges in FY 1997 than in the years for which we calculated cost per discharge from the cost report data. Consequently, a hospital with few cost report discharges would have a high capital cost per discharge since fixed costs would be allocated over only a few discharges. If discharges increase substantially, the cost per discharge would decrease because fixed costs would be allocated over more discharges. If the projection of capital cost per discharge is not adjusted for increases in discharges, the projection of exceptions would be overstated. We address this situation by recalculating the cost per discharge with the MedPAR discharges if the MedPAR discharges exceed the cost report discharges by more than 20 percent. We do not adjust for increases of less than 20 percent because we have not received all of the FY 1997 discharges, and we have removed some discharges from the analysis because they are statistical outliers. This adjustment reduces our estimate of exceptions payments, and consequently, the reduction to the Federal rate for exceptions is smaller. We will continue to monitor our modeling of exceptions payments and make adjustments as needed.

The average national capital cost per discharge generated by this model is the combined average of many randomly generated increases. This average must equal the projected average national capital cost per discharge, which we projected separately (outside this model). We adjusted the shape parameter of the gamma distributions so that the modeled average capital cost per discharge matches our projected capital cost per discharge. The shape parameter for old capital was not adjusted since we are modeling the aging of "existing" assets. This model provides a distribution of capital costs among hospitals that is consistent with our aggregate capital projections.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital as determined from the provider-specific file and the cost reports. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments.

The case-mix index for a hospital is derived from the FY 1997 MedPAR file using the FY 1998 DRG relative weights published in section V. of the Addendum to this proposed rule. The case-mix index is increased each year after FY 1997 based on analysis of past experiences in case-mix increases. Based on analysis of recent case-mix increases, we estimate that case-mix will increase 1.0 percent in FY 1998 and 1.0 percent in FY 1999. (Since we are using FY 1997 cases for our analysis, the FY 1997 increase in case mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 1998, the budget neutrality adjustment factor was 1.00015.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we propose to apply separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We propose to apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 since the geographic adjustment factor for Puerto Rico was implemented in 1998.

To determine the factors for FY 1999, we first determined the portions of the Federal national and Puerto Rico rates that would be paid for each hospital in FY 1999 based on its applicable payment methodology. Using our model, we then compared, separately for the national rate and the Puerto Rico rate, estimated aggregate Federal rate payments based on the FY 1998 DRG relative weights and the FY 1998 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 1998 relative weights and the FY 1999 geographic adjustment factor. In making the comparison, we held the FY 1999 Federal rate portion constant and set the other budget neutrality adjustment factor and the exceptions reduction factor to 1.00. We determined that, to achieve budget neutrality for the changes in the national geographic adjustment factor, an incremental budget neutrality adjustment of 0.99995 for FY 1999 should be applied to the previous cumulative FY 1998 adjustment of 1.00015, yielding a cumulative adjustment of 1.00010 through FY 1999. Since this is the first adjustment for Puerto Rico, the incremental and cumulative adjustment for Puerto Rico would be 0.99887 through 1999. We apply these new adjustments then compare estimated aggregate Federal rate payments based on the FY 1998 DRG relative weights and the FY 1999 geographic adjustment factors to estimated aggregate

Federal rate payments based on the FY 1999 DRG relative weights and the FY 1999 geographic adjustment factors. The incremental adjustment for DRG classifications and changes in relative

weights would be 1.00328 nationally and for Puerto Rico. The cumulative adjustments for DRG classifications and changes in relative weights and for changes in the geographic adjustment factors through 1999 would be

1.00338 nationally, and 1.00215 for Puerto Rico. The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RECALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTORS

Fiscal year	National				Puerto Rico			
	Incremental Adjustment			Cumulative	Incremental Adjustment			Cumulative
	Geographic Adjustment Factor	DRG Re-classifications and Recalibration	Combined		Geographic Adjustment Factor	DRG Re-classifications and Recalibration	Combined	
1992				1.000.00				
1993			0.998.00	0.998.00				
1994			1.00531	1.00330				
1995			0.99980	1.00310				
1996			0.99940	1.00250				
1997			0.99873	1.00123				
1998			0.99892	1.00015				1.00000
1999	0.99995	1.00328	1.00323	1.00338	0.99887	1.00328	1.00215	1.00215

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that, under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor (the national rate and the Puerto Rico rate are determined separately) for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving

low-income patients or the large urban add-on payments.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate the exceptions reduction factor. This exceptions reduction factor ensures that aggregate payments under the capital prospective payment system, including exceptions payments, are projected to equal the aggregate payments that would have been made under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. The table below provides the actual factors for fiscal years 1992 through 1998, the proposed factors for fiscal year 1999, and the estimated factors that would be applicable through FY 2003. We caution that these are estimates for fiscal years 2000 and later, and are subject to revisions resulting from continued methodological refinements, receipt of additional data, and changes in payment policy changes. We note that in making these projections, we have assumed that the cumulative national DRG/GAF budget neutrality adjustment factor will remain at 1.00338 (1.00215 for Puerto Rico) for FY 1999 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 1999.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	DRG/GAF adjustment factor ¹	Outlier adjustment factor	Federal rate adjustment	Federal rate (after outlier reduction)
1992	N/A	0.9813	0.9602		.9497		415.59
1993	6.07	.9756	.9162	.9980	.9496		417.29
1994	3.04	.9485	.8947	1.0053	.9454	2.9260	378.34
1995	3.44	.9734	.8432	.9998	.9414		376.83
1996	1.20	.9849	N/A	.9994	.9536	3.9972	461.96
1997	0.70	.9358	N/A	.9987	.9481		438.92
1998	0.90	.9659	N/A	.9989	.9382	4.8222	371.51
1999	0.20	.9761	N/A	1.0032	.9378		377.25
2000	0.80	.9749	N/A	⁵ 1.0000	⁵ .9378		379.80
2001	0.80	.9720	N/A	1.0000	.9378		381.70
2002	0.90	⁶ 1.0000	N/A	1.0000	.9378		396.23
2003	0.90	⁶ 1.0000	N/A	1.0000	.9378	⁴ 1.0255	410.01

¹ Note: The incremental change over the previous year.

² Note: OBRA 1993 adjustment.

³ Note: Adjustment for change in the transfer policy.

⁴ Note: Balanced Budget Act of 1997 adjustment.

⁵ Note: Future adjustments are, for purposes of this projection, assumed to remain at the same level.

⁶ Note: We are unable to estimate exceptions payments for the year under the special exceptions provision (§ 412.348(g) of the regulations) because the regular exceptions provision (§ 412.348(e)) expires.

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Appendix C: Report to Congress
THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAY 4 1998

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Section 1886(e)(3) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in hospital inpatient payment rates for fiscal year (FY) 1999 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

Current law mandates, and the President's FY 1999 budget includes, an update for PPS hospitals equal to the market basket rate of increase minus 1.9 percentage points, or, for certain hospitals under the temporary relief provision of section 4401(b) of the Balanced Budget Act of 1997, the market basket rate of increase minus 1.6 percentage points. The President's FY 1999 budget estimated the PPS market basket rate of increase for FY 1999 to be 2.7 percent. Based on this estimate, we recommend an update for hospitals in both large urban and other areas of 0.8 percent, and an update for temporary relief hospitals of 1.1 percent.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection to maintain access to services for Medicare beneficiaries. SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate. Medicare-dependent, small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their area and are afforded special payment protection to maintain access to services for beneficiaries. MDHs are paid the Federal PPS rate, or, if their hospital-specific rate exceeds the Federal PPS rate, the Federal rate plus 50 percent of the difference between the hospital-specific rate and the Federal rate. Current law mandates that the FY 1999 update to hospital-specific rates for SCHs and MDHs equal the market basket rate of increase minus 1.9 percentage points. Consistent with the President's FY 1999 budget, we recommend an update to hospital-specific rates equal to our recommended increase for PPS hospitals, that is, the market basket rate of increase of 2.7 percent minus 1.9 percentage points, or 0.8 percent.

Page 2 - The Honorable Albert Gore, Jr.

Hospitals and distinct part hospital units excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. Current law mandates that the update for all hospitals and distinct part units excluded from PPS equal the rate of increase in the excluded hospital market basket less a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit. The President's FY 1999 budget incorporates a rate of increase in the TEFRA limit equal to the rate of increase in the excluded hospital market basket (2.7 percent) minus a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit. Therefore, we recommend an increase in the TEFRA limit of between 0.2 and 2.7 percent.

My recommendation for the updates is based on cost projections used in the President's FY 1999 budget. A final recommendation on the appropriate percentage increases for FY 1999 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Medicare Payment Advisory Commission (MedPAC). We currently expect that the final estimate of the market basket rate of increase will be lower than the estimate used in the President's FY 1999 budget.

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 1999.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the Speaker of the House of Representatives.

Sincerely,

Donna E. Shalala



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAY 4 1998

The Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Section 1886(e)(3) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in hospital inpatient payment rates for fiscal year (FY) 1999 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

Current law mandates, and the President's FY 1999 budget includes, an update for PPS hospitals equal to the market basket minus 1.9 percentage points, or, for certain hospitals under the temporary relief provision of section 4401(b) of the Balanced Budget Act of 1997, the market basket rate of increase minus 1.6 percentage points. The President's FY 1999 budget estimated the PPS market basket rate of increase for FY 1999 to be 2.7 percent. Based on this estimate, we recommend an update for hospitals in both large urban and other areas of 0.8 percent, and an update for temporary relief hospitals of 1.1 percent.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection to maintain access to services for Medicare beneficiaries. SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate. Medicare-dependent, small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their area and are afforded special payment protection to maintain access to services for beneficiaries. MDHs are paid the Federal PPS rate, or, if their hospital-specific rate exceeds the Federal PPS rate, the Federal rate plus 50 percent of the difference between the hospital-specific rate and the Federal rate. Current law mandates that the FY 1999 update to hospital-specific rates for SCHs and MDHs equal the market basket rate of increase minus 1.9 percentage points. Consistent with the President's FY 1999 budget, we recommend an update to hospital-specific rates equal to our recommended increase for PPS hospitals, that is, the market basket rate of increase of 2.7 percent minus 1.9 percentage points, or 0.8 percent.

Page 2 - The Honorable Newt Gingrich

Hospitals and distinct part hospital units excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. Current law mandates that the update for all hospitals and distinct part units excluded from PPS equal the rate of increase in the excluded hospital market basket less a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit. The President's FY 1999 budget incorporates a rate of increase in the TEFRA limit equal to the rate of increase in the excluded hospital market basket (2.7 percent) minus a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit. Therefore, we recommend an increase in the TEFRA limit of between 0.2 and 2.7 percent.

My recommendation for the updates is based on cost projections used in the President's FY 1999 budget. A final recommendation on the appropriate percentage increases for FY 1999 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Medicare Payment Advisory Commission (MedPAC). We currently expect that the final estimate of the market basket rate of increase will be lower than the estimate used in the President's FY 1999 budget.

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 1999.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the Speaker of the House of Representatives.

Sincerely,

Donna E. Shalala

Appendix D: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Act address the setting of update factors for inpatient services furnished in FY 1999 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XIV) of the Act sets the FY 1999 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 1.9 percent for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 1999 percentage increase in the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 1.9 percentage points. (We note that, as provided in section 4401(b) of the Balanced Budget Act of 1997, certain hospitals that do not receive indirect medical education or disproportionate share payments and are not designated as Medicare-dependent, small rural hospitals will receive an update that is 0.3 percent higher than the update for other prospective payment hospitals. Section 1886(b)(3)(B)(ii) of the Act sets the FY 1999 percentage increase in the rate of increase limits for hospitals excluded from the prospective payment system equal to the rate of increase in the excluded hospital market basket minus a percentage between 0 and 2.5 percent percentage points, depending on the hospital's costs in relation to its limit.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals excluded from the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the fourth quarter 1997 forecast of the FY 1999 market basket increase of 2.6 percent for hospitals subject to the prospective payment system, the proposed updates to the standardized amounts are 0.7 percent (that is, the market basket rate of increase minus 1.9 percent) for hospitals in both large urban and other areas. The proposed update to the hospital-specific rate applicable to sole community and Medicare-dependent, small rural hospitals is also 0.7 percent. The proposed update for hospitals excluded from the prospective payment system is the percentage increase in the excluded hospital market basket (currently estimated at 2.5 percent) less a percentage between 0 and 2.5 percentage points, or an update equal to between 0 and 2.5 percent.

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section

1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act.

Accordingly, this appendix provides the recommendations of appropriate update factors, the analysis underlying our recommendations, and our responses to the MedPAC recommendations concerning the update factors.

In its March 1, 1998 report, MedPAC stated that the legislated update of market basket increase minus 1.9 percentage points will provide a reasonable level of payment to hospitals. Although MedPAC suggests that a somewhat lower update could be justified in light of changes in the utilization and provision of hospital inpatient care, the Commission does not believe it is necessary to recommend a lower update for FY 1999. MedPAC did not make a separate recommendation for the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals. We discuss MedPAC's recommendations concerning the update factors and our responses to these recommendations below.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that an appropriate update factor for the standardized amounts is 0.7 percent for hospitals located in large urban and other areas. We are also recommending an update of 0.7 percent to the hospital-specific rate for sole community hospitals and Medicare-dependent, small rural hospitals. These figures are consistent with the President's FY 1999 budget recommendations, which reflect the update provided by section 4401(a) of the Balanced Budget Act of 1997. We believe these recommended update factors would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund. When the President's budget was submitted, the market basket rate of increase was projected at 2.7 percent. As noted above, this proposed recommendation is based on the most recent forecast of the market basket, 2.6 percent.

We recommend that hospitals excluded from the prospective payment system receive an update of between 0 and 2.5 percent. The update for excluded hospitals and units is equal to the increase in the excluded hospital operating market basket, less a percentage between 0 and 2.5 percentage points depending on the hospital's or unit's costs in relation to its rate-of-increase limit. The market basket rate of increase is currently forecast at 2.5 percentage points. This recommendation is consistent with the President's FY 1999 budget, although we note that the market basket rate of increase was forecast at 2.7 percent when the budget was submitted.

As required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of MedPAC in setting these recommended update factors. Our responses to the MedPAC recommendations concerning the update factors are discussed below.

III. MedPAC Recommendation for Updating the Prospective Payment System Standardized Amounts

For FY 1999, MedPAC's update framework would support an update of the increase in the hospital market basket minus a figure between 4.4 percentage points and 1.1 percentage points. MedPAC notes that costs per case have grown more slowly than payments per case since 1992 and, as a result, overall Medicare operating margins for hospitals have been rising. MedPAC predicts that Medicare operating margins will continue to be quite favorable even with the payment reductions enacted by the Balanced Budget Act of 1997. MedPAC further notes that Medicare payments are just one of many factors that affect hospital margins. Thus, while MedPAC agrees with the proposed update of market basket increase minus 1.9 percentage points for 1999, that update is closer to the higher end than the lower end of MedPAC's update framework. The Commission emphasizes that, because of uncertainty about the future and the extent of changes in productivity and service delivery, its recommendation applies for only one year. MedPAC's estimate of the market basket increase is 2.5 percent, which is 0.1 percentage points below HCFA's current estimate. MedPAC's market basket estimate focuses on employee compensation changes in the hospital industry and the economy in general, while HCFA's market basket forecast gives less weight to the projected changes in the hospital industry's wages. Thus, MedPAC's update framework reflects a 0.1 percent adjustment for this difference.

Response: We agree with MedPAC's recommendation of an update for FY 1999 for prospective payment system hospitals of market basket minus 1.9 percentage points. Our recommendation is supported by the following analyses that measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix:

a. Productivity

Service level productivity is defined as the ratio of total service output to full-time equivalent employees (FTEs). While we recognize that productivity is a function of many variables (for example, labor, nonlabor material, and capital inputs), we use a labor productivity measure since this update framework applies to operating payment. To recognize that we are apportioning the short run output changes to the labor input and not considering the nonlabor inputs, we weight our productivity measure for operating costs by the share of direct labor services in the market basket rate of increase to determine the expected effect on cost per case.

Our recommendation for the service productivity component is based on historical trends in productivity and total output for both the hospital industry and the general economy, and projected levels of future hospital service output. MedPAC's predecessor, the Prospective Payment Assessment Commission (ProPAC), estimated cumulative service productivity growth to be 4.9 percent from 1985-1989, or 1.2 percent annually. At the same time, MedPAC estimated total output growth at 3.4 percent

annually, implying a ratio of service productivity growth to output growth of 0.35.

Since it is not possible at this time to develop a productivity measure specific to Medicare patients, we examined productivity (output per hour) and output (gross domestic product) for the economy. Depending on the exact time period, annual changes in productivity range from 0.3 to 0.35 percent of the change in output (that is, a 1.0 percent increase in output would be correlated with a 0.3 to 0.35 percent change in output per hour).

Under our framework, the recommended update is based in part on expected productivity—that is, projected service output during the year, multiplied by the historical ratio of service productivity to total service output, multiplied by the share of labor in total operating inputs, as calculated in the hospital market basket rate of increase. This method estimates an expected labor productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. Thus, the recommendation allows for unit productivity to be smaller than the historical averages in years that output growth is relatively low and larger in years that output growth is higher than the historical averages. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected real case-mix growth, and expected quality enhancing intensity growth, net of expected decline in intensity due to reduction of cost ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Thus, expected output growth is simply the sum of the expected change in intensity (0.0 percent), projected admissions change (–2.0 percent for FY 1999), and projected real case-mix growth (0.8 percent), or –1.2 percent. The share of direct labor services in the market basket rate of increase (consisting of wages, salaries, and employee benefits) is 61.4 percent.

Multiplying the expected change in total hospital service output (–1.2 percent) by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage 61.4, provides our productivity standard of –0.2 to –0.3 percent.

MedPAC believes that the update should also take into account the effects of product change. MedPAC analysis indicates that between 1992 and 1996, the decline in length of stay and corresponding increase in the intensity of services per day resulted in a net reduction of about 11 percent for services provided per hospital admission. In the past, ProPAC expected hospitals to achieve productivity gains ranging from 0.5 percent to 2.0 percent per year. This year, recognizing

changes in lengths of stay and sites of service, MedPAC believes a product adjustment in the range of –3.0 to –1.0 percentage points is appropriate. In addition, MedPAC's update framework contains a productivity adjustment of between –0.7 to –0.3 percent, which is slightly more optimistic than our estimate.

b. Intensity

We base our intensity standard on the combined effect of three separate factors: Changes in the use of quality enhancing services, changes in the use of services due to shifts in within-DRG severity, and changes in the use of services due to reductions of cost-ineffective practices. For FY 1999, we recommend an adjustment of 0.0 percent. The basis of this recommendation is discussed below.

We have no empirical evidence that accurately gauges the level of quality-enhancing technology changes. A study published in the Winter 1992 issue of the Health Care Financing Review, "Contributions of case mix and intensity change to hospital cost increases" (p. 151–163), suggests that one-third of the intensity change is attributable to high-cost technology. The balance was unexplained but the authors speculated that it is attributable to fixed costs in service delivery.

Typically, a specific new technology increases cost in some uses and decreases cost in other uses. Concurrently, health status is improved in some situations while in other situations it may be unaffected or even worsened using the same technology. It is difficult to separate out the relative significance of each of the cost increasing effects for individual technologies and new technologies.

All things being equal, per-discharge fixed costs tend to fluctuate in inverse proportion to changes in volume. Fixed costs exist whether patients are treated or not. If volume is declining, per-discharge fixed costs will rise, but the reverse is true if volume is increasing.

Following methods developed by HCFA's Office of the Actuary for deriving hospital output estimates from total hospital charges, we have developed Medicare-specific intensity measures based on a 5-year average using FY 1993–FY 1997 MedPAR billing data. Case-mix constant intensity is calculated as the change in total Medicare charges per discharge adjusted for changes in the average charge per unit of service as measured by the Medical CPI hospital component and changes in real case mix. Thus, in order to measure changes in intensity, one must measure changes in real case mix.

For FY 1993–FY 1997, observed case mix index change ranged from a low of 0.8 percent to a high of 1.7 percent, with a 5-year average change of 1.3 percent. Based on evidence from past studies of case-mix change, we estimate that real case mix change fluctuates between 1.0 and 1.4 percent and the observed values generally fall in this range. The average percentage change in charge per discharge was 3.4 percent and the average annual change in the medical CPI was 5.7 percent. Dividing the change in charge per discharge by the

quantity of the real case-mix index change and the medical CPI, yields an average annual change in intensity of –3.4 percent. Assuming the technology/fixed cost ratio still holds, technology would account for a –1.1 percent annual decline while fixed costs would account for a –2.3 percent annual decline. The decline in fixed costs per discharge makes intuitive sense as volume, measured by total discharges, as increased during the period. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 1999.

c. Quality Enhancing New Science and Technology

For FY 1999, MedPAC has computed the adjustment for scientific and technological advances to be a future-oriented policy target intended to provide additional funds for hospitals to adopt quality-enhancing, cost increasing health care innovations. As in past recommendations, MedPAC has included an adjustment ranging from 0.3 to 1.0 percentage points. MedPAC believes that the cost-competitive environment now faced by hospitals may dampen the adoption of new technologies as they closely evaluate their relative costs and benefits. Therefore, MedPAC recommends an adjustment of 0.5 percentage points for the increase in operating costs due to scientific and technological advances.

d. Change in Case Mix

Our analysis takes into account projected changes in case mix, adjusted for changes attributable to improved coding practices. For our FY 1999 update recommendation, we are projecting a 1.0 percent increase in the case-mix index. We define real case-mix increase as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs, but do not reflect greater resource requirements. For FY 1999, we believe that real case-mix increase is equal to our projected change in case mix less 0.2 percent. We estimate that changes in coding behavior account for an increase of 0.2 percentage points in our projected case-mix change. Thus, we are projecting an increase of 0.8 percentage points for the real case-mix index.

Unlike ProPAC's case-mix recommendation in previous years, MedPAC did not make a specific percentage change recommendation but rather estimated a range from –0.2 to 0.2 percentage point change based on changes in the 1998 case mix index.

e. Effect of FY 1997 DRG Reclassification and Recalibration

We estimate that DRG reclassification and recalibration for FY 1997 resulted in a 0.0 percent increase in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPE. MedPAC does not make an adjustment for DRG reclassification and recalibration in its update recommendation.

f. Correction for Market Basket Forecast Error

The estimated market basket percentage increase used to update the FY 1997 payment

rates was 2.5 percent. Our most recent data indicate the actual FY 1997 increase was 2.1 percent. The resulting forecast error in the FY 1997 market basket rate of increase is 0.4 percentage points. Under our update

framework, we make a forecast error correction if our estimate is off by 0.25 percentage points or more. Therefore, we are recommending an adjustment of -0.4 percentage points to reflect this

overestimation of the FY 1997 market basket rate of increase. The following is a summary of the update ranges supported by our analyses compared to MedPAC's framework.

TABLE 1.—COMPARISON OF FY 1999 UPDATE RECOMMENDATIONS

	HHS	MedPAC
Market Basket	MB	MB
Difference between HCFA & MedPAC Market Baskets		-0.1
Subtotal	MB	MB
Policy Adjustments Factors:		
Productivity	-0.3 to -0.2	-0.7 to -0.3
Product	(¹)	-3.0 to -1.0
Intensity	0.0	0.0 to 0.5
Science & Technology		(¹)
Practice Patterns		(²)
Real Within DRG Change		-3.7 to -0.8
Subtotal	-0.3 to -0.2	
Case-Mix Adjustment Factors:		
Projected Case-Mix Change	-1.0	-0.2 to 0.0
Real Across DRG Change	0.8	0.0 to 0.2
Real Within DRG Change	(³)	-0.2 to 0.2
Subtotal	-0.2	
Effect of 1996 Reclassification & Recalibration	0.0	-0.4
Forecast Error Correction	-0.4	MB -4.4 to MB -1.1
Total Recommended Update	MB -0.9 to MB -0.8	

¹ Included in MedPAC's Productivity Measure.

² Included in MedPAC's Case-Mix Adjustment.

³ Included in HHS' Intensity Factor.

Because we are not recommending a negative adjustment for intensity (as our methodology would suggest is appropriate), the update suggested by our framework appears to be more generous than the recommendation of MedPAC. While the above framework would support an update of the market basket increase minus 0.9 percentage points, we are recommending an update of the market basket increase minus 1.9 percentage points (0.7 percent). We believe that this update factor appropriately adjusts for changes occurring in health care delivery including the relative decrease in use of hospital inpatient services and the corresponding increase in use of hospital outpatient and postacute care services. We agree with MedPAC that a 0.7 percent update for FY 1999 would not disadvantage the hospital industry nor harm Medicare

beneficiaries. We also recommend that the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals be increased by the same update, 0.7 percentage points.

IV. MedPAC Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals

MedPAC recommends an update factor equal to a 2.1 percent average increase for TEFRA target amounts for excluded hospitals and units. The update formula enacted by section 4411(a) of the Balanced Budget Act is equal to the increase in the excluded hospital market basket less a percentage point between 0 and 2.5 percent, depending on the hospital's or unit's costs in relation to the target amount. MedPAC's recommendation reflects a reduction of 0.4

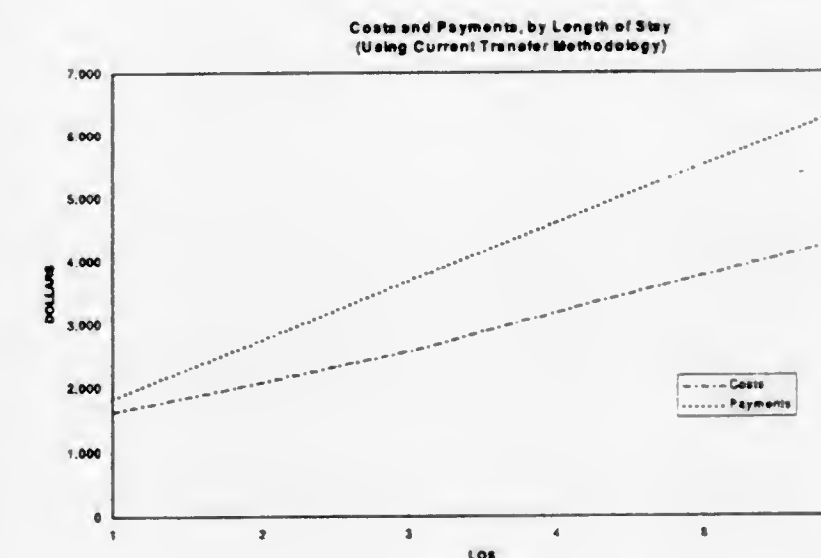
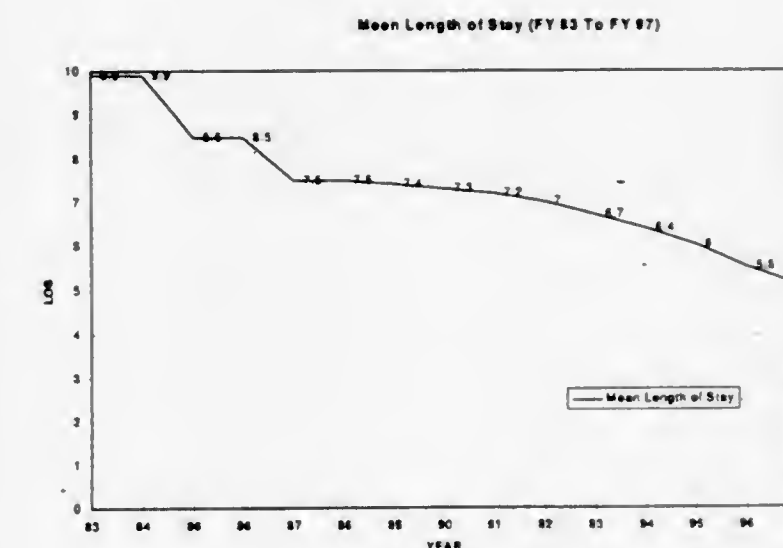
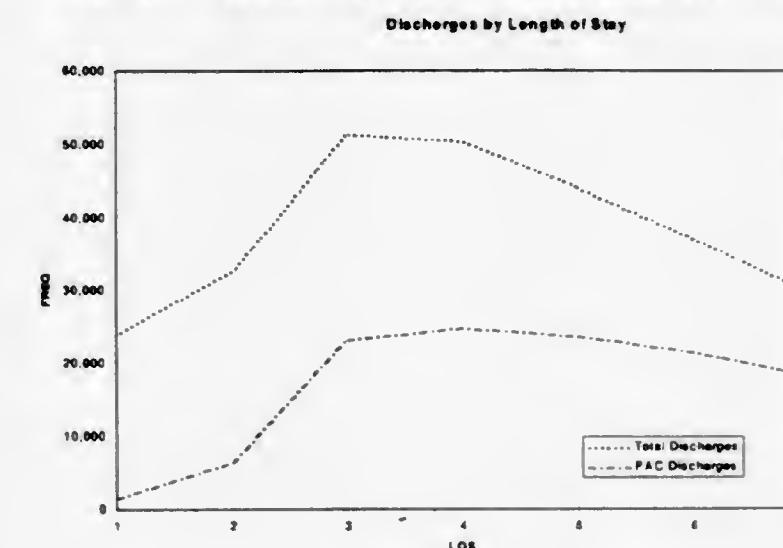
percentage points from HCFA's market basket increase forecast of 2.5 percent. The reduction consists of an adjustment of -0.4 percentage points to account for the forecast error in the FY 1997 market basket rate of increase, and no allowance for new technology.

Response: We recommend that hospitals excluded from the prospective payment system also receive a 2.5 percent increase in the market basket used in the update formula for TEFRA target amount updates provided to the prospective payment hospitals. We believe this update would ensure that Medicare acts as a prudent purchaser and would provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

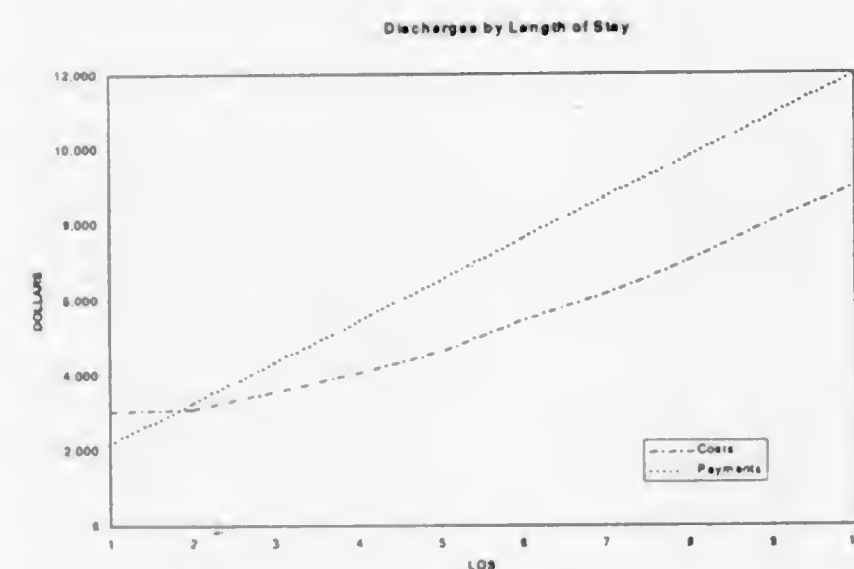
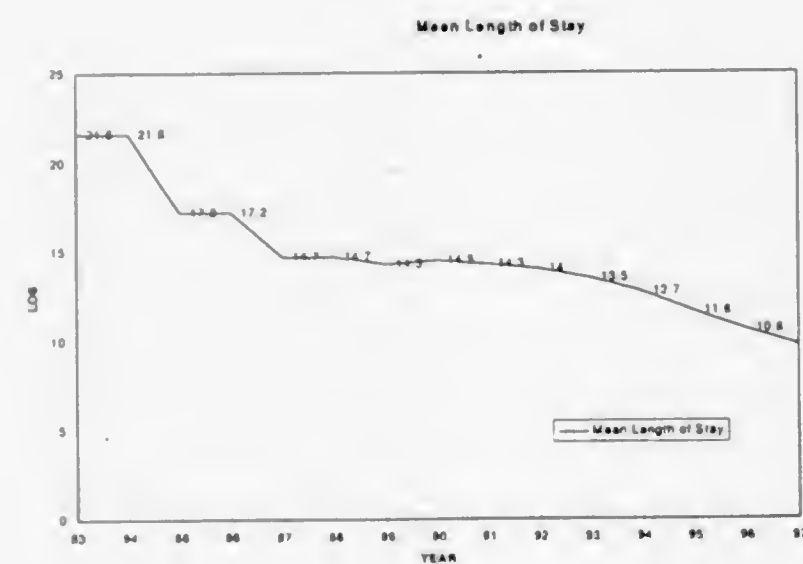
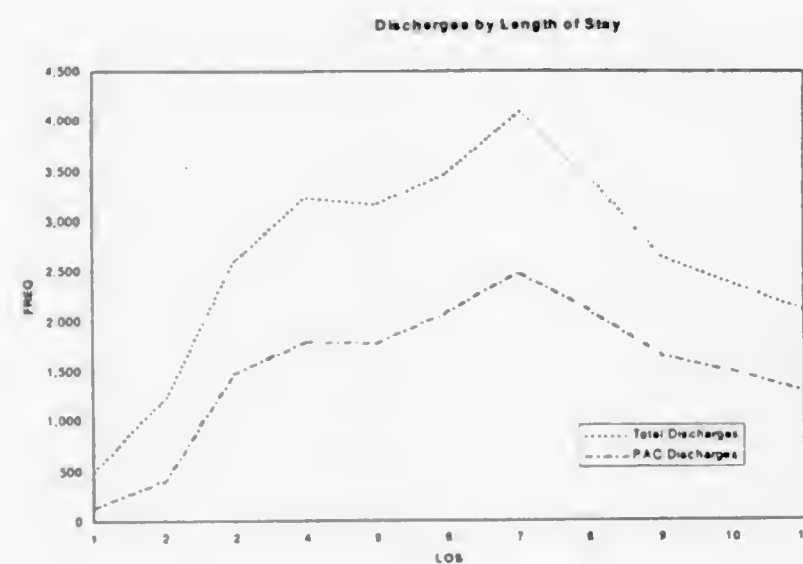
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APPENDIX E: DRG Charts

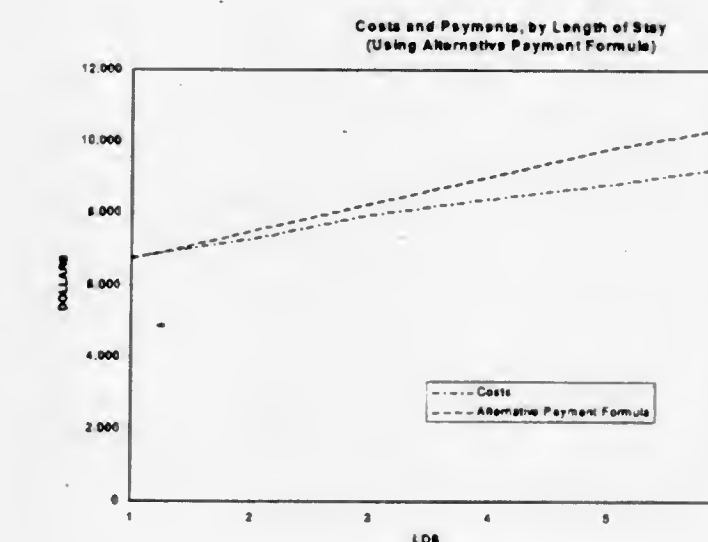
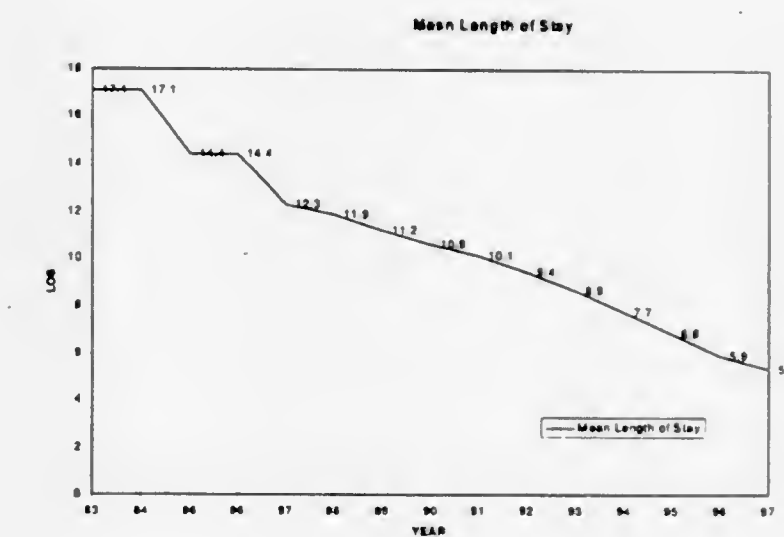
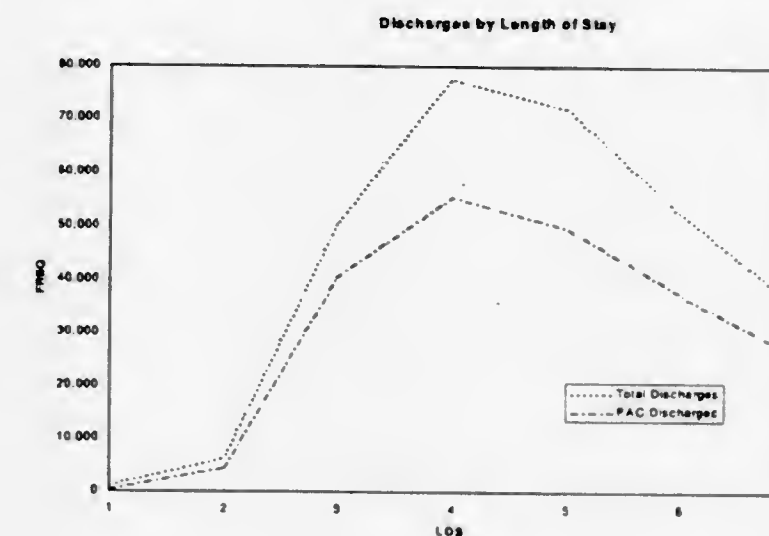
DRG 14 SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA (MEDICAL)



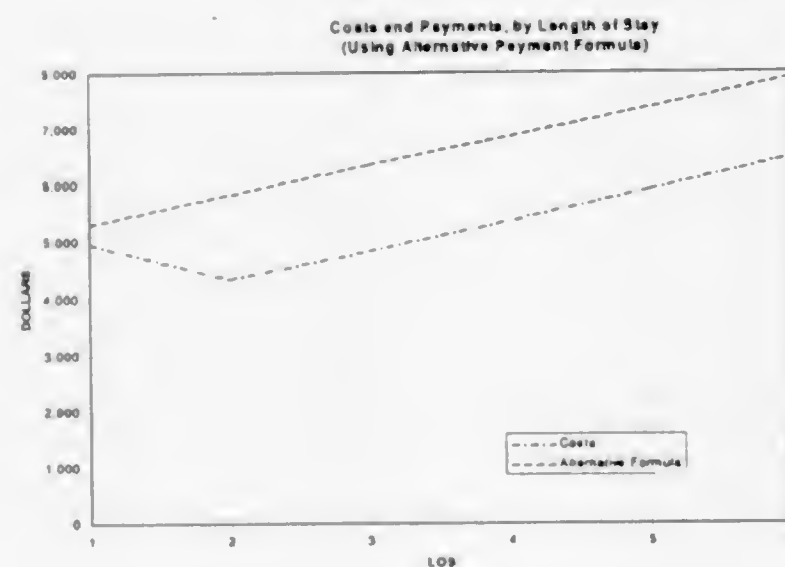
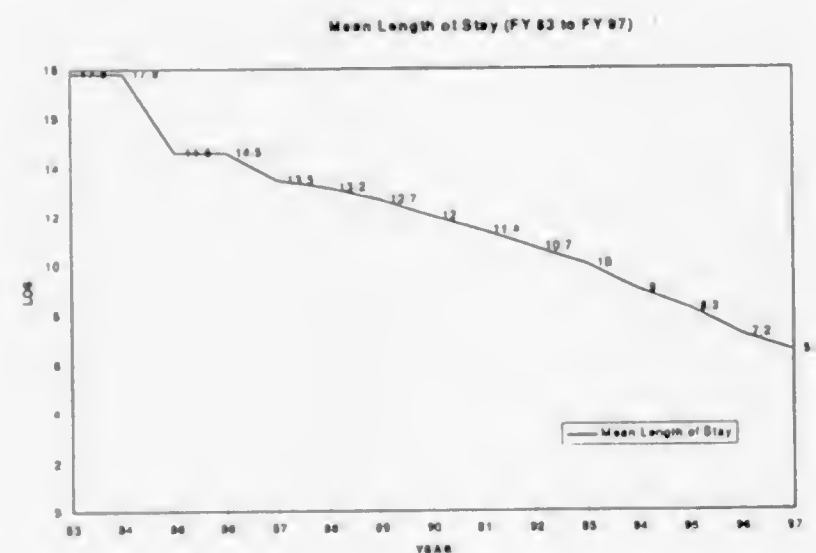
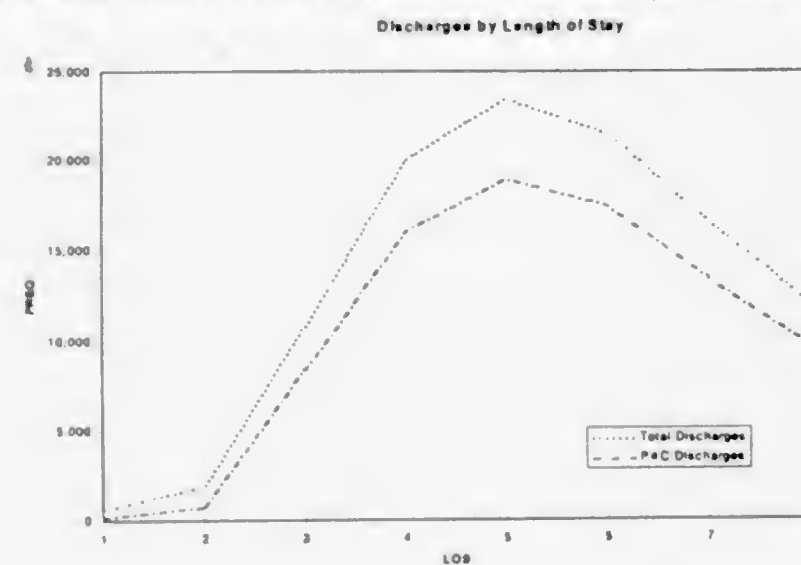
DRG 113
AMPUTATION FOR CIRCULATORY SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE
(SURGICAL)



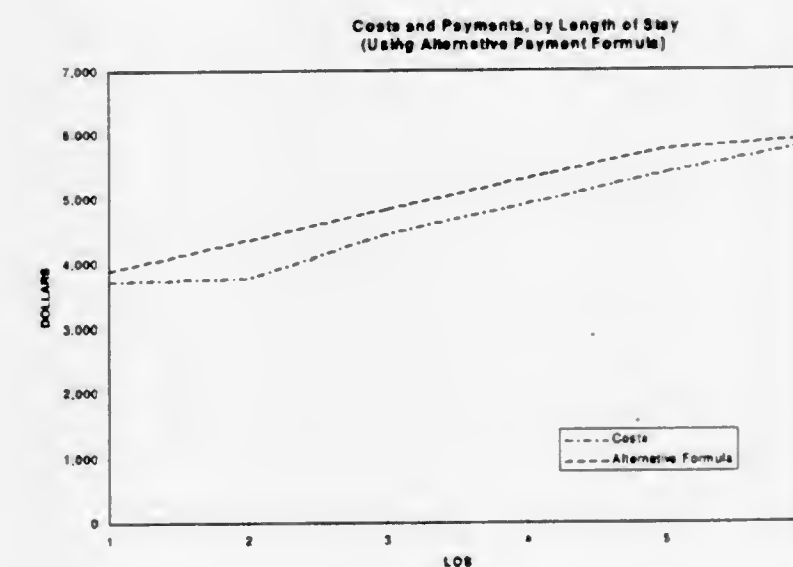
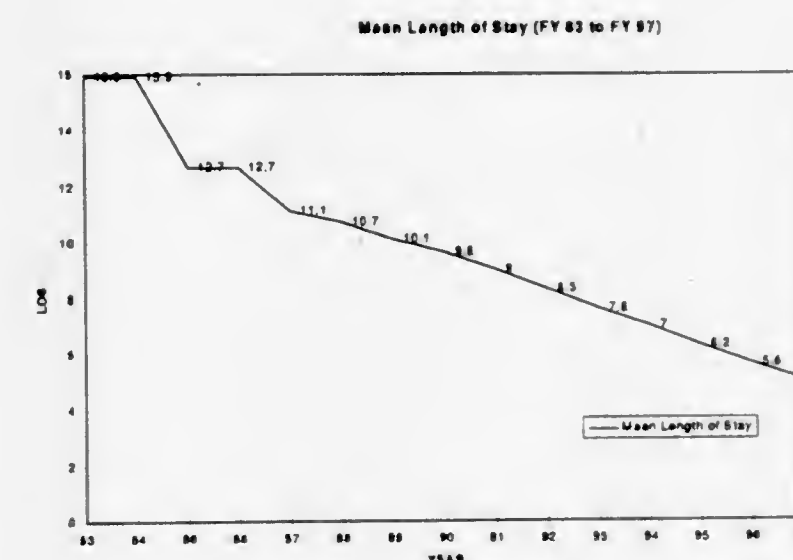
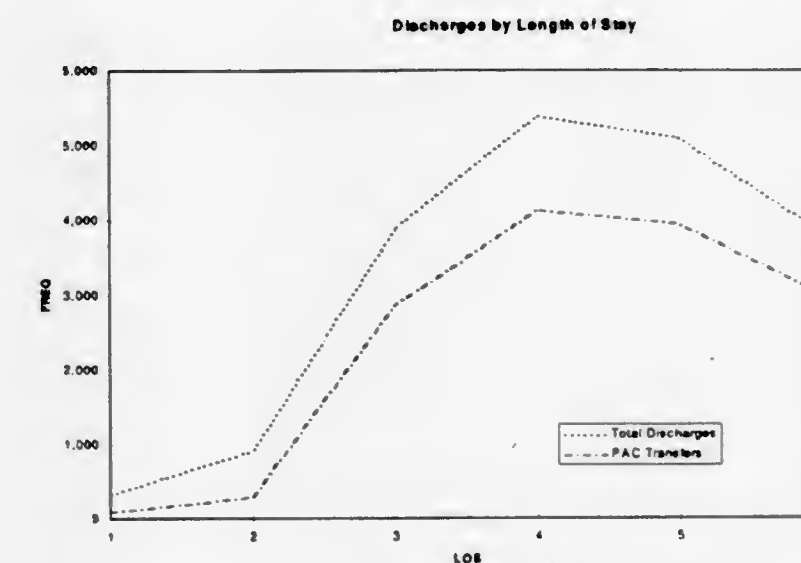
DRG 209
MAJOR JOINT LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY (SURGICAL)



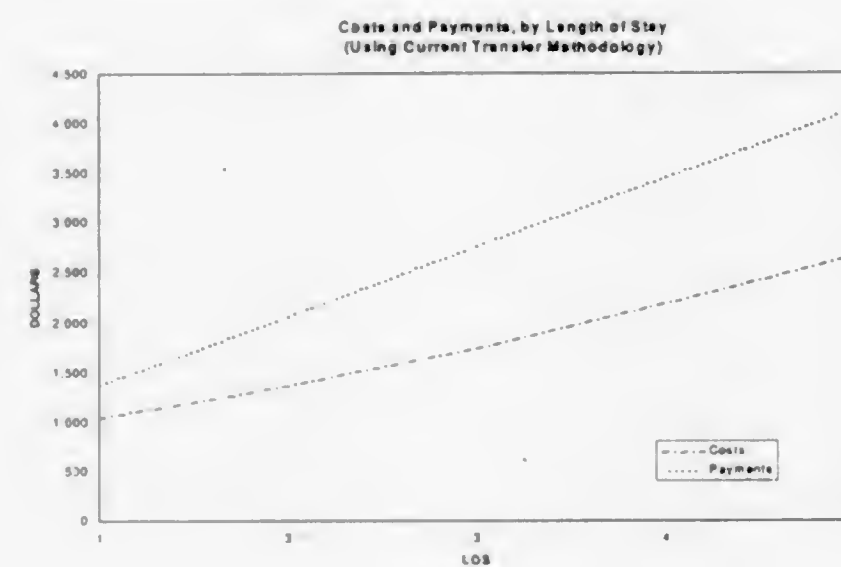
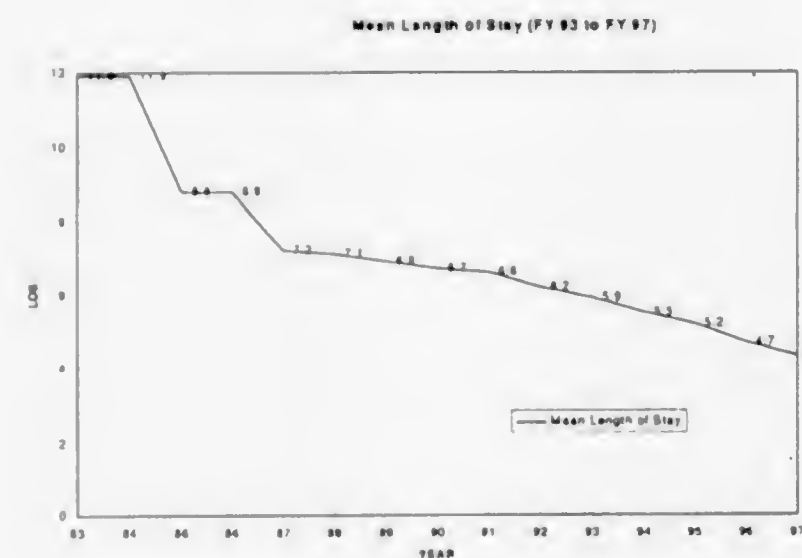
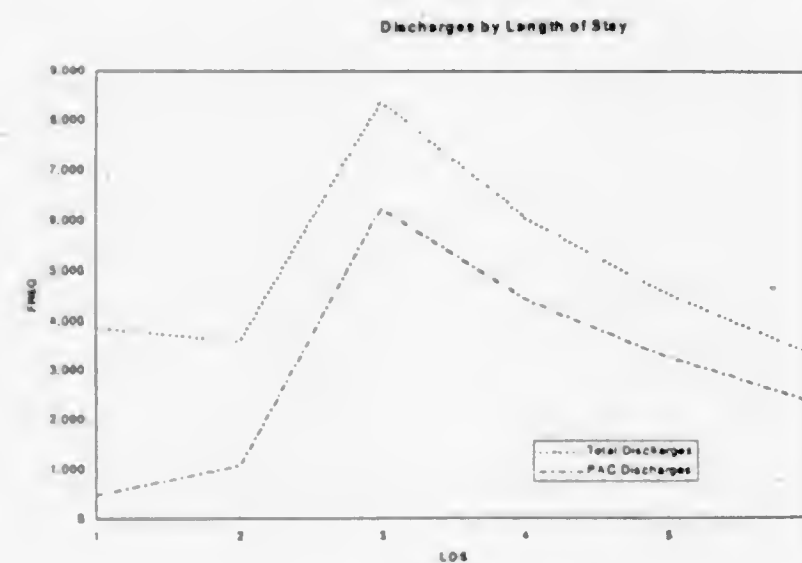
DRG 210
HIP FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 WITH CC (SURGICAL)



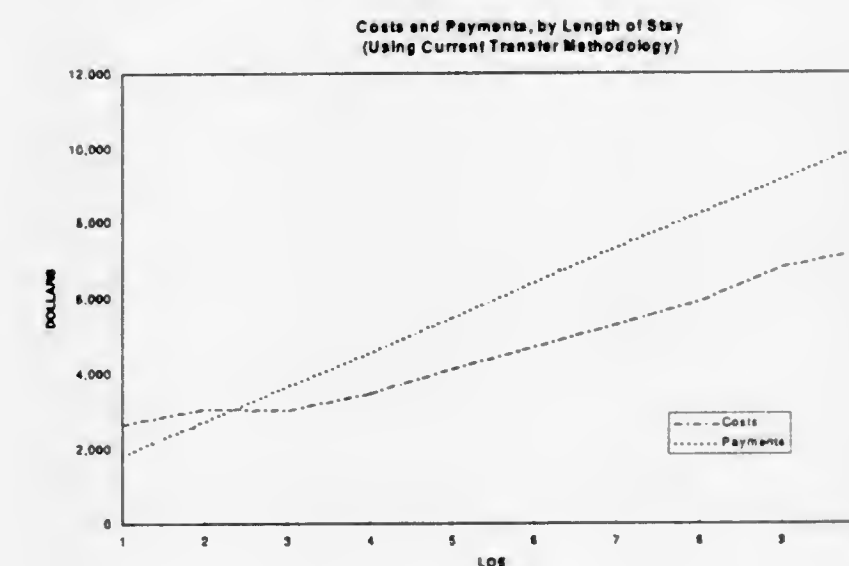
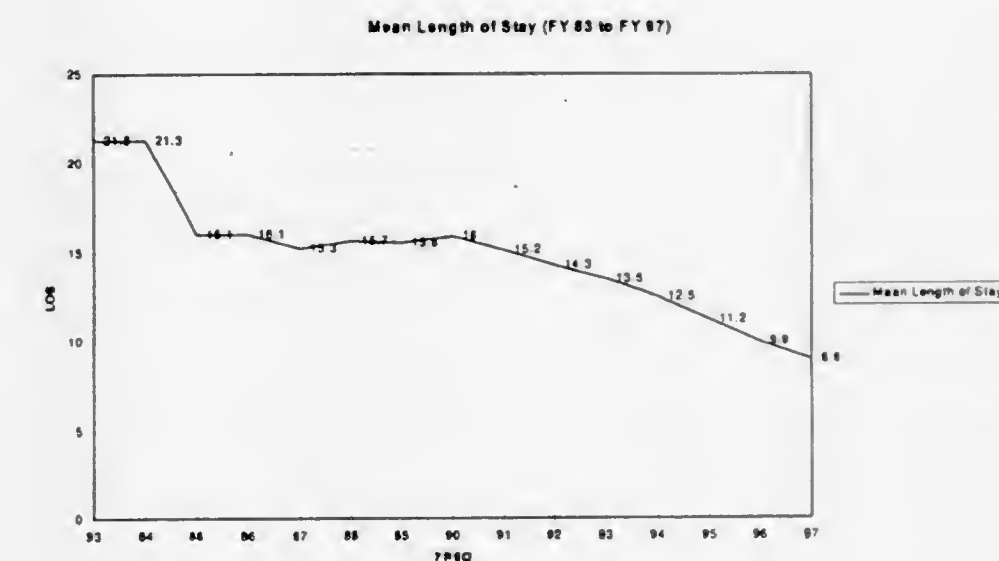
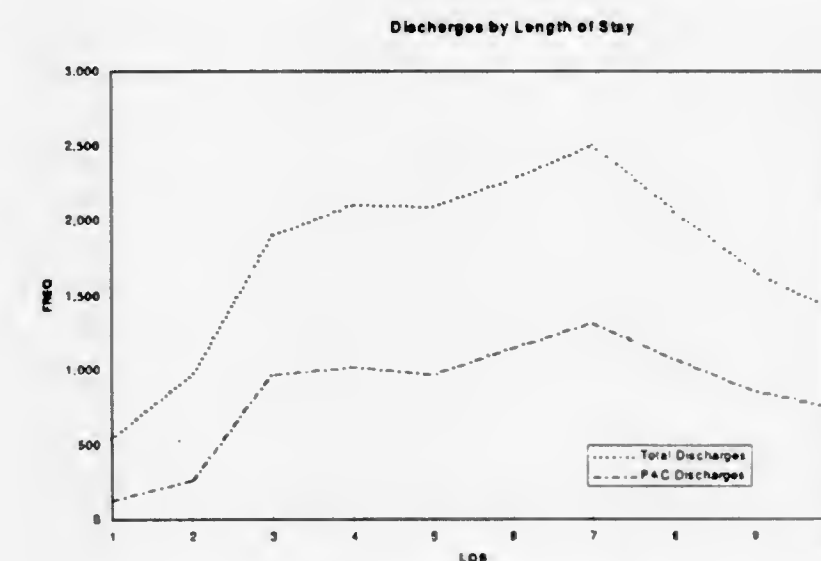
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HIP FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC (SURGICAL)



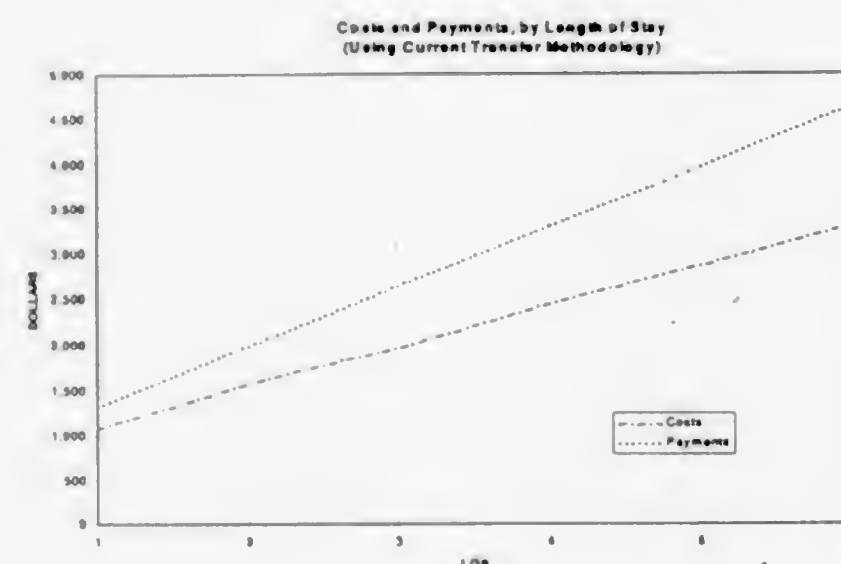
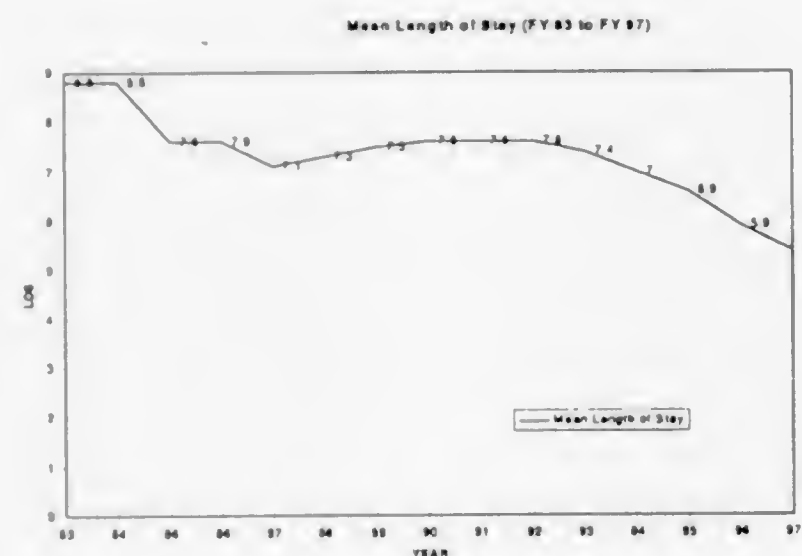
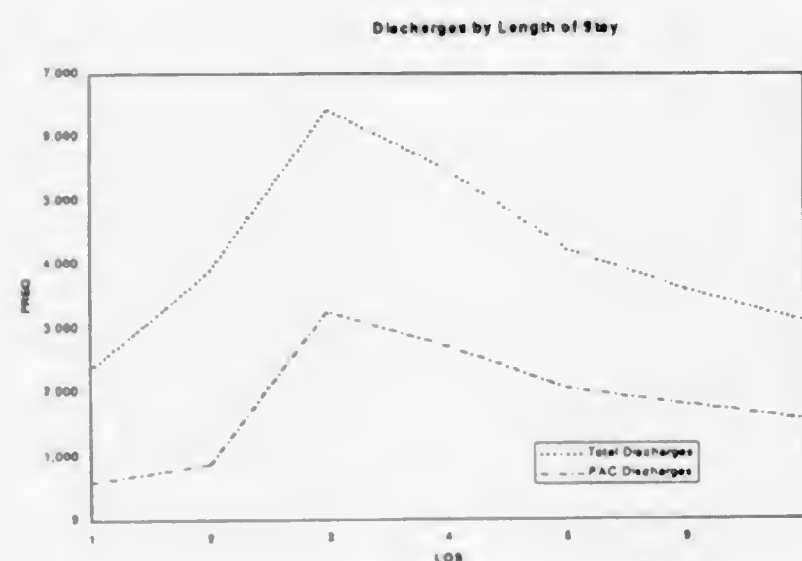
DRG 236
FRACTURE OF HIP PELVIS (MEDICAL)



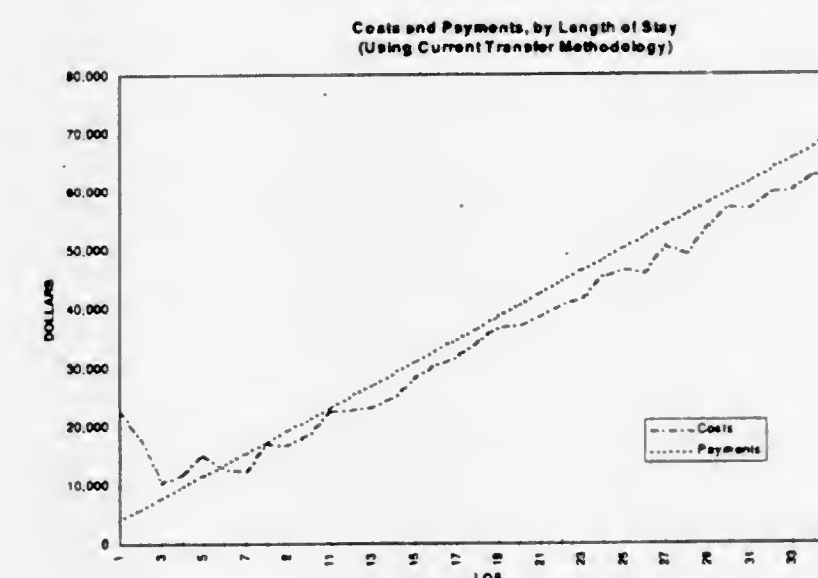
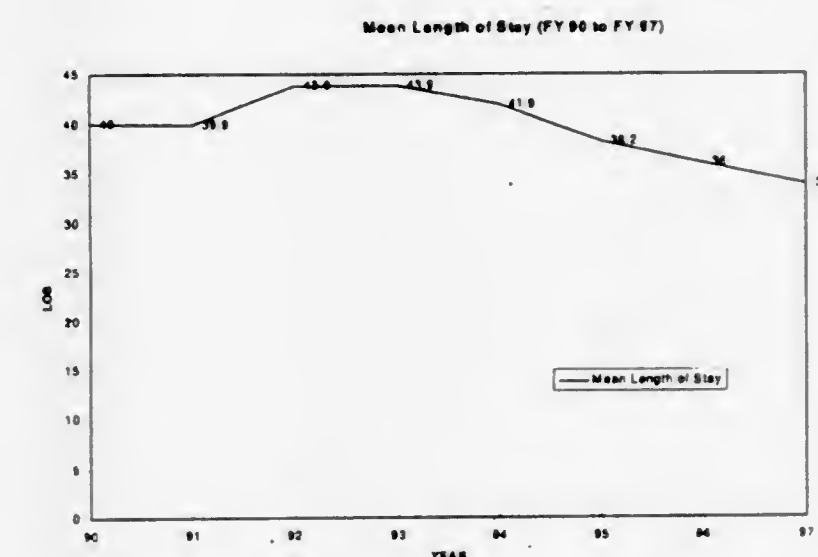
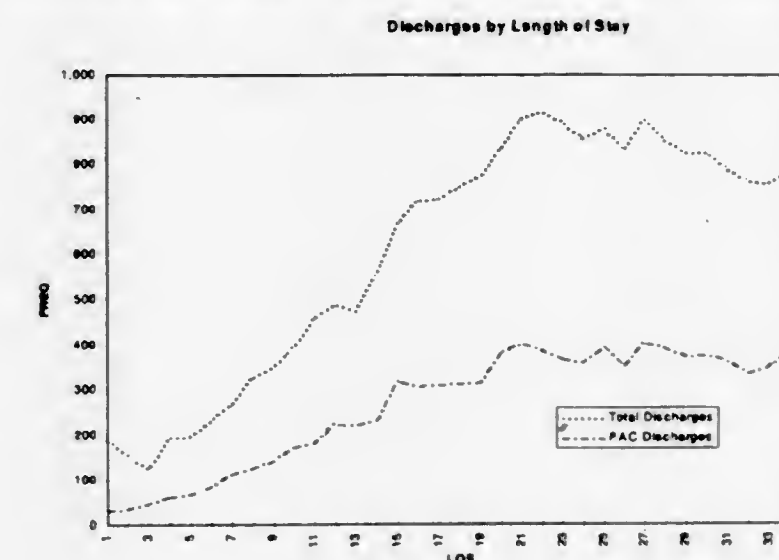
DRG 263
SKIN GRAFT AND/OR DEBRIDEMENT FOR SKIN ULCER OR CELLULITIS WITH CC
(SURGICAL)



DRG 429
ORGANIC DISTURBANCES MENTAL RETARDATION (MEDICAL)



DRG 483
TRACHEOSTOMY EXCEPT FOR FACE, MOUTH, NECK DIAGNOSES (SURGICAL)



federal register

Friday
May 8, 1998

Part IV

Federal Housing Finance Board

12 CFR Parts 935, and 970
Community Investment Cash Advance
Programs and Federal Home Loan Bank
Standby Letters of Credit; Proposed
Rules

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 935, and 970

[No. 98-16]

RIN 3069-AA75

Community Investment Cash Advance Programs

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing a rule establishing a general framework under which the Federal Home Loan Banks (Bank) may establish community investment cash advance (CICA) programs in addition to their Affordable Housing Programs (AHP) and Community Investment Programs (CIP). The proposed rule does not require a Bank to establish CICA programs. It is intended to provide the Banks with an outline of what the Finance Board has determined will meet the statutory requirement that CICA programs support community investment.

The proposed rule is intended to establish one set of general standards governing all CICA programs, including the Banks' CIPs. The proposed rule, however, does not apply to a Bank's AHP, which is governed specifically by part 960 of the Finance Board's regulations. In addition to establishing a general outline for CICA programs, the proposed rule establishes standards for two specific CICA programs a Bank may establish: the Rural Development Advances (RDA) and the Urban Development Advances (UDA) programs. The proposed standards for the RDA and the UDA programs are intended to create a safe harbor for programs that the Finance Board would consider to meet the statutory requirement that CICA programs support community investment. A Bank will not be required to obtain prior Finance Board approval of CICA programs the Bank may create. However, all such programs will be subject to review through the examination process to determine whether they support what the Finance Board considers to be community investment financing.

DATES: Comments on this proposed rule must be received in writing on or before August 6, 1998.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, Market Research, (202) 408-2537; Stanley Newman, Associate Director, Market Research, (202) 408-2812; or Diane E. Dorius, Associate Director, Program Development, (202) 408-2576; Office of Policy; or Brandon B. Straus, Senior Attorney-Advisor, (202) 408-2589; Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:**I. Statutory and Regulatory Background**

The Banks currently have broad authority under section 10(a) of the Federal Home Loan Bank Act (Bank Act) and part 935 of the Finance Board's regulations to make advances in support of housing finance, including housing for very low-, low- and moderate-income families. See 12 U.S.C. 1430(a); 12 CFR part 935. Furthermore, in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Congress required the Banks to create two specific programs, the AHP and the CIP, to provide advances in support of unmet housing finance and economic development credit needs. See Pub. L. 101-73, section 721, 103 Stat. 183 (Aug. 9, 1989).

The AHP is a subsidy program through which the Banks support the finance of affordable owner-occupied and rental housing. See 12 U.S.C. 1430(j). The Finance Board first issued implementing regulations for the AHP in 1990. See 12 CFR Part 960.

The CIP is a program through which the Banks provide advances to members at cost to support the financing of housing benefiting families with incomes at or below 115 percent of the area median income and economic development activities benefiting families with incomes at or below 80 percent of the area median income. See 12 U.S.C. 1430(i)(2). The Finance Board previously has not promulgated regulations implementing the CIP.

Section 10(j)(10) of the Bank Act authorizes the Banks to establish CICA programs in addition to the CIP and the AHP to support "community investment." See *id.* section 1430(j)(10). The Finance Board has not previously promulgated regulations or other specific guidance on what kinds of Bank lending are permitted under this authority.

Since the establishment of the Banks' statutory authority to make advances for community investment under FIRREA, the Banks have provided relatively less long-term credit for economic development projects than for housing, and all of the Banks' economic

development lending has been done under their CIP authority, as opposed to their authority to establish other CICA programs. In the past eight years, the Banks have provided \$18.1 billion in CIP advances to finance 368,359 housing units. Only 25 percent of those units have been multifamily or rental units that often provide housing for lower-income families and are usually more difficult to finance than single-family owner-occupied housing. In addition, only \$751 million or 4 percent of CIP advances have financed economic development projects. Furthermore, CIP advances are not available to the Banks' nonmember borrowers. See *id.* section 1430(i)(1).

The Finance Board believes there is a need for long-term financing for economic development in urban and rural areas that is not being met by members using the CIP. The Banks can help to meet this need through the establishment of other CICA programs to provide long-term financing for economic development through both members and nonmember borrowers. Therefore, the Finance Board now is proposing to establish standards defining the kinds of housing and economic development activities that constitute "community investment" eligible to be financed by advances under section 10(j)(10) of the Bank Act. This proposed rule does not require a Bank to establish a CICA program; it is intended to provide the Banks with an outline of what the Finance Board has determined will meet the statutory requirement for "community investment" under section 10(j)(10). See *id.* However, all such programs will be subject to review through the examination process to determine whether they support what the Finance Board considers to be community investment financing, in compliance with the statutory requirement.

The Finance Board specifically requests comment on whether it should establish CICA standards, in whole or in part, in a form other than a regulation. Would establishing such standards in the form of a policy statement or guidelines be a more effective means of achieving the goal of promoting the Banks' support for community investment financing, and if so, why? The Finance Board is interested particularly in the comments of the potential users of CICA program advances, i.e., members and nonmember borrowers, as well as the potential end users of CICA-financed credit products, such as developers of housing and commercial properties.

II. Analysis of Proposed Rule**A. Overview**

The proposed rule adds a new Part 970 to the Finance Board's regulations. Part 970 establishes a framework for the Banks to create CICA programs to provide advances to members, nonmember borrowers, or both, who in turn use the advances to provide long-term financing for housing and economic development projects that benefit families with incomes at or below a targeted income level, as established by a Bank to address unmet community investment credit needs. Projects with unmet credit needs are those for which financing is not generally available, or is available at lower levels or under less attractive terms.

B. Annual CICA Program Goals—Section 970.3

Each Bank should undertake a deliberate decision making process to determine how much community investment credit it intends to make available each year, through its CIP and other CICA programs, and the kinds of projects to which that credit should be directed. As discussed above, the current focus of the Banks' community investment lending efforts has been through volume lending under the CIP in support of home mortgage loans, to the relative exclusion of economic development financing. The Banks' concentration on funding large volumes of CIP-eligible home mortgage loans may have been encouraged by the CIP target system established in the past by the Finance Board, which was based on a Bank's average annual outstanding CIP advances. The Finance Board wishes to reverse this trend and to encourage the Banks to shift their focus from the overall volume of CIP advances to maximizing the impact of individual advances. Although the Bank Act does not expressly state that a Bank may establish limits on the amount of CIP advances it makes, the Finance Board believes that because the CIP is a no-profit program for the Banks, the supply of CIP advances is necessarily limited. Consequently, as discussed further below, the proposed rule makes clear each Bank's authority to determine the appropriate amount of CIP credit to make available on an annual basis. However, with the authority to limit the amount of available CIP credit comes the obligation to target how the opportunity cost associated with CIP advances is to be used most effectively in relation to the kinds of CIP projects the Bank funds.

As discussed above, the Banks provide CIP advances to members at

cost. See *id.* Therefore, where a Bank funds a member's mortgage lending with CIP advances, there is an opportunity cost to the Bank to the extent the Bank could have used regular advances to fund the transaction. CIP advances should be used to fund those loans and projects where the opportunity cost associated with the advance makes the most difference to the member or the project. The Banks have ample authority to make regular advances to support home mortgage lending currently being undertaken by members. To the extent that CIP capacity is made available by substituting regular advances funding, where appropriate, for home mortgage lending that is currently being funded under the CIP, a Bank can redirect the CIP to meeting unmet housing and economic development credit needs.

In order to implement these concepts, § 970.3 of the proposed rule provides that a Bank may establish an annual budget for the cumulative discount the Bank intends to make available under its CIP and other CICA programs (excluding AHP) the Bank may establish. The budget should be based upon the Bank's projected annual totals of CIP advances and other CICA programs that the Bank intends to make, and the extent to which the Bank intends to provide a pricing discount, if any, for such other CICA programs. A Bank also may include pricing discounts the Bank intends to offer for letters of credit in support of targeted economic development financing. In determining projected annual totals for CIP and other CICA program advances, a Bank should take into account its earnings. If a Bank establishes a budget for the cumulative discount available under its CICA programs, the Bank also should establish standards for allocating the discount among specific types of eligible housing finance and economic development activities. In the absence of such a budget, the Bank must fund requests from qualified members or nonmember borrowers for any advances that otherwise meet the requirements of the Bank's CIP or any other CICA Program the Bank may create.

A Bank's determination as to how much CIP credit to make available annually must be based upon the extent to which the Bank intends to make community investment credit available under other CICA programs. In the case of CIP advances, each Bank must establish a strategy for providing CIP advances to support financing for housing and economic development projects that is otherwise not generally available, or is available at lower levels or under less attractive terms. For

example, CIP advances could be directed to housing projects designed to improve the affordability of the housing through lower downpayments, longer term financing, and use of subsidies from other sources, or projects involving homebuyer counseling. A Bank's strategy may include the establishment of partnerships with government and private entities that provide funds to projects in conjunction with CIP advances and other CICA programs in order to further reduce the cost of such financing. In developing its strategy, a Bank must consult with urban and rural economic development organizations in the Bank's District and the Bank's Advisory Council. The Finance Board requests comments on how information about a Bank's CIP and other CICA programs, including any projected annual totals for advances under such programs, could best be disseminated to Bank members and nonmember borrowers, as well as to other interested members of the public.

C. Definitions—Section 970.4**1. Definition of Benefit**

Under each CICA program, a Bank may make advances to support housing and economic development projects that benefit families with incomes at or below a certain targeted income level. The proposed rule uses the same definition of the term "benefit" for all CICA programs. Section 970.4 of the proposed rule defines "benefit" based on whether the project is for economic development or for housing, and on the form of the housing, such as owner-occupied or rental. Specifically, an economic development project is deemed to benefit families with incomes at or below a targeted income level if: (1) The project is located in a neighborhood in which more than 50 percent of the families have incomes at or below the targeted income level; (2) the project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of Agriculture (in the case of projects located in rural areas); (3) the project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of HUD (in the case of projects located in urban areas); (4) the project is located in a federally declared disaster area; (5) the project involves property eligible for a federal Brownfield Tax Credit; (6) the project is located in an area affected by a federal military base closing or realignment; (7) the project is located in an area identified as a designated

community under the Community Adjustment and Investment Program, which is a joint program of the federal government and the North American Development Bank established in connection with the passage of the North American Free Trade Agreement (NAFTA) to promote economic opportunities in communities that have experienced job losses related to the implementation of the NAFTA; (8) the annual salaries for at least 75 percent of the permanent full-and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level; (9) the project qualifies as a small business concern, as defined under the Small Business Act; or (10) more than 50 percent of the families who otherwise benefit from (other than through employment) or are provided services by the project have incomes at or below the targeted income level. The Finance Board specifically requests comment on whether measuring the salaries of jobs created by a project is an effective way to determine whether the project benefits families with incomes at or below a targeted level.

A housing project is deemed to benefit families with incomes at or below a targeted income level if the project involves: (1) Owner-occupied units, each of which is purchased or owned by a family with an income at or below the targeted income level; (2) multi-unit, owner-occupied housing in which more than 50 percent of the units are owned or purchased by families with incomes at or below the targeted income level; (3) multifamily rental housing where more than 50 percent of the units in the project will be occupied by, or the rents will be affordable to, families with incomes at or below the targeted income level; or (4) manufactured housing parks where either substantially all of the resident families have incomes at or below the targeted income level, or the project is located in a neighborhood where more than 50 percent of the families have incomes at or below the targeted income level.

2. Forms of Financing

Section 10(i)(1) of the Bank Act requires the Banks to establish a CIP to provide funding for members, who in turn, provide loans to finance CIP-eligible activities. *See id.* section 1430(i)(1). Most of the Banks have implemented this statutory requirement by providing advances to members to fund the origination of loans financing CIP-eligible activities. The proposed rule adopts a more expansive reading of

the meaning of the statutory language authorizing CIP advances to be used by members to "provide loans." *See id.* Specifically, the proposed rule authorizes CIP advances and other CICA advances to be used not only to fund CICA-eligible loan originations but also to purchase mortgage revenue bonds (MRB) and mortgage-backed securities (MBS) where all of the loans financed by such bonds and all of the loans backing such securities are CICA-eligible loans. *See proposed § 970.3* (definition of "providing financing"). The proposed rule also authorizes CICA advances to be used by members to create or maintain a secondary market for loans, where all such loans are CICA-eligible loans. The Finance Board believes that these are additional means of providing loans for the financing of CICA-eligible activities, in accordance with the intent of the statute, because they create liquidity in the market for CICA-eligible loans.

3. Income Limits

The Bank Act does not specifically require the income limits for the CIP or other CICA programs to be based on median income data published by the Department of Housing and Urban Development (HUD). A "low-or moderate-income household" is defined in the Bank Act as a household with an income of 80 percent or less of the area median income. *See* 12 U.S.C. 1430(j)(13)(B). A "low-or moderate-income neighborhood" is defined as a neighborhood in which 51 percent or more of the households are low-or moderate-income households. *See id.* section 1430(j)(13)(C).

For purposes of the Banks' AHPs, the Finance Board permits each Bank to choose among several median income standards for owner-occupied and rental projects. *See* 12 CFR 960.1. In the case of owner-occupied projects, "area median income" may be defined as: (1) The median income for the area, as published annually by HUD; (2) the applicable median family income, as determined under the mortgage revenue bond program set forth in 26 U.S.C. 143(f) and published by a State agency or instrumentality; (3) the median income for the area, as published by the United States Department of Agriculture; or (4) the median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, that has been approved by the Board of Directors of the Finance Board for use under the AHP. *See id.* In the case of rental projects, "area median income" may be defined as: (1) the median income for

the area, as published annually by HUD; or (2) the median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, that has been approved by the Board of Directors of the Finance Board for use under the AHP. *See id.* In order to provide uniformity between the AHP and other CICA programs, the proposed rule permits a Bank, for purposes of its CICA programs, to choose among the median income standards identified in the AHP regulation. The Finance Board specifically requests comments on defining income limits for CICA programs based upon median income data other than that published annually by HUD.

D. Provisions Governing the CIP—Section 970.5

As discussed above, the Finance Board has not previously issued a regulation governing the CIP. The Banks currently operate their CIPs under the applicable statutory provisions in section 10(i) of the Bank Act. *See* 12 U.S.C. 1430(i). The Finance Board has provided some interpretations of section 10(i) in instances where there is ambiguity in the statutory provisions, and in the absence of Finance Board interpretations, the Banks have made their own interpretations for purposes of program implementation. This process of experimentation among the Banks in the context of the CIP, closely monitored by the Finance Board, was useful in the beginning of the program. It also has resulted in inconsistencies among the Banks in the implementation of the program, and left many questions unanswered. Consequently, the proposed rule is intended to establish one set of standards governing all CICA programs, taking into account the specific statutory requirements governing the CIP, previous interpretations, and other questions of which the staff is aware.

1. Housing Projects

Section 10(i)(2)(A) and (B) of the Bank Act authorize the Banks to finance: (1) Home purchases by families whose income does not exceed 115 percent of median income for the area, and (2) the purchase or rehabilitation of housing for occupancy by families whose income does not exceed 115 percent of median income for the area. *See id.* sections 1430(i)(2)(A), (B). Section 970.5(b) of the proposed rule implements this provision by defining the following housing activities that qualify for CIP financing: (1) the purchase or construction of owner-occupied housing

units; (2) the purchase or rehabilitation of rental housing; (3) the purchase or rehabilitation of manufactured housing parks; and (4) the purchase or rehabilitation of housing for the homeless.

While manufactured housing parks have aspects of both owner-occupied and rental housing projects, they do not fit clearly within the categories for single-family or rental housing projects described under the CIP provisions of the Bank Act. Furthermore, ensuring that the population of occupants in a manufactured housing park meets the relevant income eligibility requirements for the CIP is more difficult than in the context of financing other kinds of housing. For instance, most occupants of manufactured housing located in such parks own their homes but rent the space on which their homes are located. Verification of income is not a usual practice in the course of renting space to the owner of a manufactured home. Therefore, it is difficult to verify that the resident families in a manufactured housing park are income-eligible.

Nonetheless, the Finance Board believes that the financing of manufactured housing parks should be permitted under the CIP and other CICA programs. Consequently, under § 970.4 of the proposed rule, a manufactured housing park is deemed to benefit families with targeted incomes if either: (1) substantially all of the resident families have incomes at or below the targeted income level, or (2) the project is located in a neighborhood where more than 50 percent of the families have incomes at or below the targeted income level. The latter criterion is intended as a proxy for the requirement that each resident family is income-eligible.

2. Economic Development Projects

Section 10(i)(2)(C) of the Bank Act authorizes CIP funding to be used to finance commercial and economic development activities that benefit low- and moderate-income families or activities that are located in low- and moderate-income neighborhoods. *See id.* § 1430(i)(2)(C). The proposed rule implements this provision by defining the kinds of economic development activities that qualify for CIP financing.

Section 970.4 of the proposed rule defines "economic development projects" as: (1) commercial, manufacturing, social service, and public facility projects and activities; and (2) the construction or rehabilitation of public or private infrastructure, such as roads, utilities, and sewers. In order to be CIP-eligible, a loan must finance an economic development project that benefits

families with incomes at or below 80 percent of the area median income. As discussed above, an economic development project is deemed to benefit such families if it meets the definition of "benefit" under § 970.4 of the proposed rule.

3. Use of CIP Advances for Refinancing

Section 970.5(d) clarifies that a member may use CIP advances to provide refinancing for owner-occupied and rental housing projects provided that the proceeds of any equity taken out of such projects are used to rehabilitate the projects or to preserve affordability for current residents. Where refinancing is done to preserve affordability for current residents, there is no requirement that continued affordability be monitored subsequent to the refinancing. The proposed rule also provides that CIP advances may be used to refinance economic development projects. For economic development projects, there is no limitation on the use of the proceeds of any equity taken out of the project.

4. Pricing of CIP Advances

Section 10(i)(1) of the Bank Act provides that CIP advances shall be priced at the cost of Bank consolidated obligations of comparable maturities, taking into account reasonable administrative costs. *See id.* section 1430(i)(1). The statute does not define reasonable administrative costs. Section 935.7 of the Finance Board's regulation on Bank Advances codifies the statutory pricing requirement for CIP advances without material change. *See* 12 CFR 935.7.

A survey of the Banks' CIP policies in 1996 indicated that the Banks have adopted a variety of CIP pricing policies under § 935.7 of the Advances regulation. *See id.* Four Banks priced CIP advances at their cost of funds, and two Banks priced CIP advances at five basis points over their cost of funds. Two banks priced CIP advances 12 to 35 basis points below the price of regular Bank advances, depending upon the maturity of the advance. It is estimated that, on average, CIP advances are priced approximately 25 basis points below the price of regular Bank advances.

The proposed rule amends the language of existing § 935.7 of the Advances regulation by clarifying that in pricing CIP advances, a Bank may take into account only those administrative costs necessary for the operation of its CIP, not administrative costs attributable to other Bank operations. Furthermore, the price of CIP advances shall be lower than the price of advances of similar amounts,

maturities and terms made pursuant to section 10(a) of the Bank Act. *See* 12 U.S.C. 1430(a). The proposed rule moves the CIP pricing provision from existing § 935.7 of the Advances regulation to new § 970.5 of the CICA regulation.

According to the 1996 survey of the Banks' CIP policies, four Banks varied CIP pricing based on the kinds of projects being financed and the income levels of the households benefiting from the project, for instance, projects that benefit families with incomes at or below 80 percent of the area median income. One Bank provided lower pricing for members that have been assigned a rating of outstanding under the Community Reinvestment Act. *See id.* sections 2901 *et seq.* The Finance Board requests comment on whether the regulation should contain a list of factors such as these that could be the basis for deeper CIP discounts by the Banks.

5. Pricing Pass-through

The statutory provisions governing the CIP do not require members that obtain CIP advances to pass on the benefit of the pricing differential between CIP advances and regular Bank advances to the owners or occupants of CIP-financed housing or businesses. The 1996 survey of the Banks' CIP pricing policies indicated that two Banks specifically required such a pass-through and four Banks encouraged a pass-through. Section 970.5(g) of the proposed rule provides that a Bank may, in its discretion, require members receiving CIP advances to pass through the benefit of the pricing differential of the CIP advance to the member's borrower.

E. Provisions Governing Other CICA Programs Established By A Bank—Section 970.6 and Section 970.7

1. RDA and UDA Programs—Section 970.6

As discussed above, the RDA and UDA programs are CICA programs a Bank may establish to provide financing for economic development projects in rural or urban areas, respectively. Section 970.6(a) of the proposed rule authorizes each Bank to establish an RDA program to provide advances to its members, nonmember borrowers, or both to finance economic development projects in rural areas that benefit families with incomes at or below 115 percent of the area median income. Section 970.6(b) of the proposed rule authorizes a Bank to establish a UDA program to provide advances to its

members, nonmember borrowers, or both to finance economic development projects in urban areas that benefit families with incomes at or below 100 percent of the area median income. As discussed above, the proposed standards for the RDA and the UDA are intended to create safe harbor programs that the Finance Board considers to meet the statutory requirement that CICA programs support "community investment." See *id.*, section 1430(j)(10).

The RDA is intended to benefit a population that is not targeted under the CIP, which has an income eligibility standard of 80 percent of area median income for economic development projects. See *id.*, section 1430(i)(2)(C). The UDA program, which is intended to benefit families with incomes at or below 100 percent of the area median income, also is intended to reach a population not targeted by the CIP. Due to generally higher median incomes in urban areas, this standard, although numerically lower than the income eligibility standard for the RDA program, reaches families with higher incomes.

In cases where a UDA or an RDA project has a housing component, only the economic development portion of the project must be designed to benefit families with targeted income levels.

The proposed rule permits the Banks to price RDAs and UDAs either as regular advances or at rates below the price of regular advances of similar amounts, maturities and terms. Permitting the Banks to price UDAs and RDAs as regular advances may provide them with a financial incentive to make such advances. The Banks have the option to provide reduced pricing for RDAs and UDAs in order to provide members and nonmember borrowers with a financial incentive to undertake the kinds of financing described in the RDA and UDA programs.

2. Other CICA Programs—Section 970.7

Section 970.7 of the proposed rule establishes minimum requirements for CICA programs a Bank may wish to establish that do not conform to the requirements of the RDA and UDA programs. A Bank may establish such other CICA programs to provide advances to finance community investment for economic development and housing. Projects that involve a combination of economic development and housing must meet the appropriate targeting standards for the economic development and housing components of such projects, respectively.

a. Economic Development Projects. Under proposed § 970.7(b), a Bank may establish a CICA program to provide

financing for economic development projects benefiting families with incomes at or below a level established by the Bank to address unmet economic development credit needs.

b. Housing projects. Under proposed § 970.7(c), a Bank may establish a CICA program to provide financing for housing projects involving the acquisition, construction, rehabilitation, or refinancing of owner-occupied and rental housing, as well as manufactured housing parks and housing for the homeless. In the case of refinancing, the refinancing must be necessary to preserve affordability for the current residents of a rental housing project or the current owners of owner-occupied housing.

As in the case of economic development projects, the Bank must establish an income eligibility level at or below a level targeted to address unmet housing credit needs. Proposed § 970.7(c)(2) makes clear that the financing of predevelopment costs for eligible housing also is permitted.

c. Pricing of other CICA program advances. As under the provisions governing the RDA and UDA programs, § 970.7(f) of the proposed rule permits the Banks to price other CICA advances either as regular advances or below regular advances.

d. Prior Finance Board approval not required. As discussed above, a Bank is not required to obtain prior Finance Board approval of a CICA program it establishes under § 970.7. However, such programs will be subject to review through the examination process to determine whether they support what the Finance Board considers to be community investment financing, in compliance with the Bank Act.

F. Limits on Access to CICA Advances—Section 970.8

Section 7(j) of the Bank Act provides that the board of directors of each Bank shall administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member borrower. See 12 U.S.C. 1427(j). Section 970.8 of the proposed rule is intended to make clear that any limitations established by a Bank upon members' or nonmember borrowers' access to CIP or other CICA advances must comply with the statutory nondiscrimination requirement in section 7(j) of the Bank Act.

G. Conforming Amendments to the Finance Board's Advances Regulation

The proposed rule makes conforming amendments to the Advances regulation in order to make clear that a Bank may make long-term advances for the

purpose of financing lending and investment activities that meet the requirements of a CICA Program, including economic development activities. Specifically, the proposed rule amends the existing definition of "residential housing finance assets" in § 935.1 of the Advances regulation to include loans or investments financed by CICA Program advances. The proposed rule also revises several existing provisions of the Advances regulation on the use of long-term advances under the CIP in order to make clear that these provisions apply to all CICA Programs, not just the CIP. See *id.*, §§ 935.13, 935.14. In addition, the proposed rule replaces the existing definition of "Community Investment Program" with a new definition of "Community Investment Cash Advance Program," which, as discussed above, includes the CIP.

III. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, see *id.*, section 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 970

Credit, Federal home loan banks, Housing.

Accordingly, chapter IX, title 12, Code of Federal Regulations, is hereby proposed to be amended, as set forth below:

Subchapter B—Federal Home Loan Bank System

PART 935—ADVANCES

1. The authority citation for Part 935 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430; 1430b, and 1431.

2. Section 935.1 is amended by adding in alphabetical order the following definition of "Community Investment Cash Advance Program", by removing the definition of "Community Investment Program", and in the definition of "Residential housing

finance assets" by republishing the introductory text and in paragraph (4), to read as follows:

§ 935.1 Definitions.

Community Investment Cash Advance Program or CICA Program has the same meaning as in part 970 of this chapter.

Residential housing finance assets means any of the following:

(4) Loans or investments financed by advances made pursuant to a CICA program;

§ 935.7 [Removed and reserved]

3. Section 935.7 is removed and reserved.

4. Section 935.13 is amended by revising paragraph (a)(5) to read as follows:

§ 935.13 Restrictions on advances to members that are not qualified thrift lenders.

(a) * * *

(5) The requirements of paragraph (a)(2) of this section shall not apply to applications from non-savings association members for CICA Program advances.

5. Section 935.14 is amended by revising paragraph (b)(2) to read as follows:

§ 935.14 Limitations on long-term advances.

(b) * * *

(2) Applications for CICA Program advances are exempt from the requirements of paragraph (b)(1) of this section.

6. Subchapter F, consisting of part 970, is added to chapter IX to read as follows:

Subchapter F—Community Investment

PART 970—Community Investment Cash Advance Programs

Sec.

970.1 Scope.

970.2 Purpose.

970.3 Annual CICA Program goals.

970.4 Definitions.

960.5 Community Investment Program.

970.6 Rural and Urban Development Advances Programs.

970.7 Other Community Investment Cash Advance programs.

970.8 Limits on access to CICA Program advances.

970.9 Reporting.

Authority: 12 U.S.C. 1422b(a)(1) and 1430.

§ 970.1 Scope.

Sections 10(i) and (j) of the Act require the Banks to establish an Affordable Housing Program (AHP) and a Community Investment Program (CIP). (See 12 U.S.C. 1430(j), (i)). Section 10(j)(10) of the Act authorizes the Banks to establish community investment cash advance (CICA) programs in addition to the AHP and the CIP. (See 12 U.S.C. 1430(j)(10)). This part establishes requirements for a Bank's CIP and for other CICA programs established by a Bank. The requirements of this part do not apply to a Bank's AHP, which is governed specifically by part 960 of this chapter.

§ 970.2 Purpose.

The purpose of this part is to identify targeted community investment activities the Banks may support through the establishment of CICA programs under section 10(j)(10) of the Act. (12 U.S.C. 1430(j)(10)). Advances made under a CICA program are to be used in support of financing for housing and economic development activities that benefit income-targeted families. This part establishes the general framework under which a Bank may create CICA programs in support of community investment financing. This part establishes regulations for advances made under a Bank's statutorily mandated CIP. This part also sets forth standards governing other CICA programs a Bank may establish, including two specific CICA programs a Bank may establish: Rural Development Advances (RDA) and Urban Development Advances (UDA) programs.

§ 970.3 Annual CICA Program goals.

A Bank may establish an annual budget for the cumulative discount the Bank intends to make available under its CIP and other CICA programs (excluding AHP) the Bank may establish. The budget should be based upon the Bank's projected annual totals of CIP advances and other CICA advances that the Bank intends to make, and the extent to which the Bank intends to provide a pricing discount, if any, for such other CICA programs. A Bank also may include pricing discounts the Bank intends to offer for letters of credit in support of targeted economic development financing. In determining projected annual totals for CIP and other CICA program advances, a Bank should take into account its earnings. If a Bank establishes a budget for the cumulative discount available under its CICA programs, the Bank also should establish standards for allocating the discount among specific types of

eligible housing finance and economic development activities. In the absence of such a budget, the Bank must fund must fund requests from qualified members or nonmember borrowers for any advances that otherwise meet the requirements of the Bank's CIP or any other CICA Program the Bank may create. Each Bank shall establish a strategy for providing CIP advances to support financing for housing and economic development projects that is otherwise not generally available, or is available at lower levels or under less attractive terms. A Bank's strategy may include the establishment of partnerships with government and private entities that provide funds to projects in conjunction with CIP and other CICA advances in order to further reduce the cost of such financing. In developing its strategy, a Bank must consult with urban and rural economic development organizations in the Bank's District and with the Bank's Advisory Council.

§ 970.4 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Advance means a loan to a member from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 935 of this chapter.

AHP means the Affordable Housing Program, the CICA Program mandated by section 10(j) of the Act (12 U.S.C. 1430(j)) and part 960 of this chapter.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Benefit. (1) *Economic development projects.* An economic development project is deemed to *benefit* families with incomes at or below a targeted income level if:

(i) The project is located in a neighborhood in which more than 50 percent of the families have incomes at or below the targeted income level;

(ii) The project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of Agriculture (in the case of projects located in rural areas);

(iii) The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the

Secretary of HUD (in the case of projects located in urban areas);

(iv) The project is located in a federally declared disaster area;

(v) The project involves property eligible for a federal Brownfield Tax Credit;

(vi) The project is located in an area affected by a federal military base closing or realignment;

(vii) The project is located in an area identified as a designated community under the Community Adjustment and Investment Program;

(viii) The annual salaries for at least 75 percent of the permanent full-and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level;

(ix) The project qualifies as a small business; or

(x) More than 50 percent of the families who otherwise benefit from (other than through employment) or are provided services by the project have incomes at or below the targeted income level.

(2) *Housing projects.* A housing project is deemed to benefit families with incomes at or below a targeted income level if the project involves:

(i) Owner-occupied units, each of which is purchased or owned by a family with an income at or below the targeted income level;

(ii) Multi-unit, owner-occupied housing in which more than 50 percent of the units are owned or purchased by families with incomes at or below the targeted income level;

(iii) Rental housing where more than 50 percent of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(iv) Manufactured housing parks where:

(A) Substantially all of the resident families have incomes at or below the targeted income level; or

(B) The project is located in a neighborhood where more than 50 percent of the families have incomes at or below the targeted income level.

Board of Directors means the Board of Directors of the Finance Board.

Champion Community means a community which developed a strategic plan and applied for designation by either the Secretary of HUD or the Secretary of Agriculture as an Empowerment Zone or Enterprise Community, but was designated a Champion Community.

CICA or Community Investment Cash Advance means an advance made pursuant to a CICA program.

CICA Program or Community Investment Cash Advance program means:

(1) A Bank's AHP;

(2) A Bank's CIP;

(3) A Bank's RDA program;

(4) A Bank's UDA program; and

(5) Any other cash advance program established by a Bank that meets the requirements of § 970.6.

CIP means a Bank's Community Investment Program, the CICA Program mandated by section 10(i) of the Act (12 U.S.C. 1430(i)).

Community investment means housing finance and economic development projects that benefit families with incomes at or below a targeted income level.

Economic development projects means:

(1) Commercial, manufacturing, social service, and public facility projects and activities; and

(2) The construction or rehabilitation of public or private infrastructure, such as roads, utilities, and sewers.

Family means one or more persons living in the same dwelling unit.

Finance Board means the agency established as the Federal Housing Finance Board.

HUD means the Department of Housing and Urban Development.

Median income for the area. (1) *Owner-occupied housing projects and economic development projects.* For purposes of owner-occupied housing projects and economic development projects, *median income for the area* means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD;

(ii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(iii) The median income for the area, as published by the United States Department of Agriculture; or

(iv) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

(2) *Rental housing projects.* For purposes of rental projects, *median income for the area* means:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's

housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

(3) *Procedure for approval.* Requests for approval of median income standards shall receive prompt consideration by the Board of Directors.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 and 933.24 of this chapter.

Neighborhood means:

(1) A census tract or block numbering area;

(2) A unit of local government with a population of 25,000 or less;

(3) A rural county;

(4) A trust or restricted Indian land, Native Hawaiian Home Land, or Alaskan Native Village; or

(5) A geographic location designated in comprehensive plans, ordinance, or other local documents as a neighborhood, village, or similar geographic designation that is within the boundary of but does not encompass the entire area of a unit of general local government.

Nonmember borrower means an entity certified as a nonmember mortgagee pursuant to § 935.22(b) of this chapter.

Provide financing means:

(1) Originating loans;

(2) Purchasing mortgage revenue bonds or mortgage-backed securities, where all of the loans financed by such bonds and all of the loans backing such securities meet the eligibility requirements of the program under which the member or nonmember borrower receives an advance; and

(3) Creating or maintaining a secondary market for loans, where all such loans are mortgage loans meeting the eligibility requirements of the program under which the member or nonmember borrower receives an advance.

RDA or Rural Development Advance means an advance made pursuant to an RDA program.

RDA program or Rural Development Advance program means a program established by a Bank meeting the requirements of § 970.6(a).

Rural area means:

(1) A unit of general local government or an unincorporated place outside a Metropolitan Statistical Area (MSA), as defined by the U.S. Bureau of the Census, that has a population of less than 30,000; or

(2) A trust or restricted Indian land, Native Hawaiian Home Land, or Alaskan Native Village.

Small business means a "small business concern," as that term is

defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration under 13 CFR part 121, or any successor provisions.

UDA or Urban Development Advance means an advance made pursuant to a UDA program.

UDA program or Urban Development Advance program means a program established by a Bank meeting the requirements of § 970.6(b).

Urban area means a unit of general local government or an unincorporated place that is:

(1) Within an MSA; or

(2) Outside an MSA and has a population of more than 30,000.

§ 970.5 Community Investment Program.

(a) *In general.* Each Bank shall establish a CIP to make advances to its members to provide financing, as defined in § 970.4, for eligible community investment projects. (Nonmember borrowers are not eligible to receive CIP advances.)

(b) *Housing projects.* A Bank may provide CIP advances to finance the following kinds of housing projects, provided that such projects benefit families with incomes at or below 115 percent of the median income for the area of a family of four:

(1) The purchase or construction of owner-occupied housing units;

(2) The purchase or rehabilitation of rental housing;

(3) The purchase or rehabilitation of manufactured housing parks; and

(4) The purchase or rehabilitation of housing for the homeless.

(c) *Economic development projects.* A Bank may provide CIP advances to finance economic development projects that benefit families with incomes at or below 80 percent of the median income for the area of a family of four.

(d) *Refinancing.* A Bank may provide CIP advances to refinance:

(1) Economic development projects described in paragraph (c) of this section; and

(2) Owner-occupied and multifamily housing and manufactured housing parks described in paragraphs (b)(1) through (b)(4) of this section, provided that the equity proceeds of the refinancing are used to rehabilitate the projects or to preserve affordability for current residents.

(e) *Mixed-use projects.* If a project involves a combination of eligible housing finance and economic development activities, the economic development and housing components of the project must benefit families at the appropriate income levels.

(f) *Pricing of CIP advances—(1) In general.* Each Bank shall price its CIP

advances as provided in § 935.6 of this chapter, provided that the cost of such advances shall not exceed, and may be lower than, the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs. In pricing CIP advances, a Bank may take into account only those administrative costs necessary for the operation of its CIP.

(2) *Pricing differential.* The price of CIP advances shall be lower than the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Act.

(g) *Pricing pass-through.* A Bank may require members receiving CIP advances to pass through the benefit of the pricing differential of the CIP advance to the member's borrower.

§ 970.6 Rural and Urban Development Advances Programs.

(a) *RDA program.* Each Bank may establish an RDA program to provide advances to its members, nonmember borrowers, or both to provide financing, as defined in § 970.4, for economic development projects in rural areas that benefit families with incomes at or below 115 percent of the median income for the area of a family of four.

(b) *UDA program.* Each Bank may establish a UDA program to provide advances to its members, nonmember borrowers, or both to provide financing, as defined in § 970.4, for economic development projects in urban areas that benefit families with incomes at or below 100 percent of the median income for the area of a family of four.

(c) *Mixed-use projects.* If an economic development project financed by a UDA or an RDA involves the financing of housing, only the economic development portion of the project must be designed to benefit families with targeted income levels.

(d) *Pricing of UDAs and RDAs—(1) Advances to members.* A Bank shall price UDAs and RDAs to members as provided in § 935.6 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Act. (12 U.S.C. 1430(a)).

(2) *Advances to nonmember borrowers.* A Bank shall price UDAs and RDAs to nonmember borrowers as provided in § 935.24 of this chapter and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10b of the Act. (12 U.S.C. 1430b)).

§ 970.7 Other Community Investment Cash Advance programs.

(a) *In general.* Each Bank may establish CICA programs in addition to those described in §§ 970.5 and 970.6, to provide advances to its members, nonmember borrowers, or both to finance community investment.

(b) *Economic development projects.* A Bank may make a CICA to a member or nonmember borrower to provide financing, as defined in § 970.4, for economic development projects that benefit families with incomes at or below a targeted income level, as established by the Bank to address unmet economic development credit needs. Projects with unmet economic development credit needs are those economic development projects for which financing is not generally available, or is available at lower levels or under less attractive terms.

(c) *Housing projects.* A Bank may make a CICA to a member or nonmember borrower to provide financing, as defined in § 970.4, for the following kinds of housing projects, provided such projects benefit families with incomes at or below a targeted income level, as established by the Bank to address unmet housing credit needs. Projects with unmet housing credit needs are those housing projects for which financing is not generally available, or is available at lower levels or under less attractive terms:

(1) The acquisition, construction, rehabilitation, or refinancing of:

(i) Owner-occupied housing units;

(ii) Multi-unit, owner-occupied housing;

(iii) Rental housing;

(iv) Manufactured housing parks; and

(v) Housing for the homeless; or

(2) The financing of predevelopment costs for housing described in paragraph (c)(1) of this section.

(d) *Limit on refinancing.* Where a member or nonmember borrower uses a CICA for the purpose of refinancing housing, the refinancing must be necessary to preserve affordability for the current residents of a multifamily rental housing project or the current owners of owner-occupied housing.

(e) *Mixed-use projects.* If a project involves a combination of eligible housing finance and economic development activities, the economic development and housing components of the project must benefit families at the appropriate targeted income levels.

(f) *Pricing of other CICA program advances.—(1) Advances to members.* A Bank shall price advances to members made under a CICA program established pursuant to this section as provided in § 935.6 of this chapter, and may price

such advances at rates below the price of advances of similar amounts, maturities, and terms made pursuant to section 10(a) of the Act. (12 U.S.C. 1430(a)).

(2) *Advances to nonmember borrowers.* A Bank shall price advances to nonmember borrowers made under a CICA program established pursuant to this section as provided in § 935.24 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities, and terms made pursuant to section 10b of the Act. (12 U.S.C. 1430b).

§ 970.8 Limits on access to CICA program advances.

Any limit established by a Bank upon members' or nonmember borrowers' access to CICA advances shall not discriminate in favor of or against any member.

§ 970.9 Reporting.

(a) *CICA policies.* Each Bank shall submit to the Finance Board annually a copy of the policies governing the Bank's CICA programs.

(b) *Quarterly reports.* Each Bank shall report quarterly to the Finance Board on the Bank's use of CICA's.

Dated: April 22, 1998.

By the Board of Directors of the Federal Housing Finance Board.
Bruce A. Morrison,
Chairman.

[FR Doc. 98-11951 Filed 5-7-98; 8:45 am]
BILLING CODE 4725-01-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 938

[No. 98-17]

RIN 3069-AA61

Federal Home Loan Bank Standby Letters of Credit

AGENCY: Federal Housing Finance Board.

ACTION: Proposed Rule.

SUMMARY: The Federal Housing Finance Board is proposing to codify its existing policies on Federal Home Loan Bank (FHLBank) standby letters of credit into the form of a regulation and to amend these policies to allow for broader use of these products by FHLBank members and eligible nonmember mortgagees. The proposed rule also would eliminate some of the restrictions currently imposed on issuance of standby letters of credit by FHLBanks that limit the usefulness of these products to members and eligible nonmember mortgagees.

DATES: Comments are due on or before August 6, 1998.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington D.C. 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Diane E. Dorius, Associate Director, Program Development, Office of Policy, (202) 408-2576; or Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, (202) 408-2932, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The FHLBanks have been permitted to engage in standby letter of credit (LOC) transactions since 1983, when the predecessor agency to the Federal Housing Finance Board (Finance Board), the former Federal Home Loan Bank Board (FHLBB), first adopted its Policy Guidelines for Issuance of FHLBank Standby Letters of Credit (FHLBB Guidelines). Underlying this policy was a 1983 FHLBB legal opinion which concluded that FHLBank issuance of standby LOCs on behalf of members is permissible under the FHLBanks' authority to make secured advances, set forth in section 10 of the Bank Act, 12 U.S.C. 1430, because a FHLBank standby LOC is the functional equivalent of an advance in that it involves an extension of credit by the FHLBank to its member. Because the FHLBB considered the authority to issue standby LOCs to derive from the authority to make secured advances, the 1983 FHLBB Guidelines, and the 1985 and 1989 revisions thereto, applied the statutory and regulatory requirements pertaining to advances to standby LOC transactions. The substance of the FHLBB Guidelines was maintained when the Finance Board (created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 412 (1989), to succeed the FHLBB as regulator of the FHLBanks) adopted its first standby LOC policy in 1991.

FHLBank participation in standby LOC transactions currently is governed by the Finance Board's Interim Policy Guidelines for FHLBank Standby Letters of Credit (Interim Guidelines), which were adopted in 1993. The Interim Guidelines permit FHLBanks to issue or confirm standby LOCs on behalf of members to facilitate: the purchase of, or commitment to purchase mortgage loans; the collateralization of public unit deposits; the collateralization of

Internal Revenue Code (IRC) Section 936 deposits (deposits made in Puerto Rican financial institutions by corporations operating in Puerto Rico); interest rate swaps and other transactions that assist a member's asset/liability management; transactions that promote home financing, housing activity, or members' involvement in commercial and economic development activities that benefit low- and moderate-income families or activities that are located in low- and moderate-income neighborhoods (community development); and tax-exempt bonds or notes designed to promote housing or the financing of community development. In addition, the Interim Guidelines permit FHLBanks to issue LOCs on behalf of nonmember mortgagees eligible to obtain advances under section 10b of the Bank Act, 12 U.S.C. 1430b, for transactions that promote home financing, housing activity, and community development.

Because the Finance Board retained the substance of the FHLBB Guidelines and, by implication, the 1983 FHLBB legal analysis, the Interim Guidelines continued to impose upon LOCs all of the regulatory requirements and restrictions that apply to advances. For example, the Interim Guidelines require that LOCs be fully secured with collateral eligible to secure advances under § 935.9(a) of the Finance Board's regulations, 12 CFR 935.9(a); be counted in the calculation of a member's FHLBank stock-to-advances ratio; be issued only for housing finance purposes if they have a term to maturity in excess of five years, or are issued on behalf of non-qualified thrift lender (non-QTL) members; and be included in the calculation of the limitation on advances to non-QTL members set forth in § 935.13 of the regulations, *id.* § 935.13, if issued on behalf of non-QTL members. In addition, the Interim Guidelines limit LOCs and confirmations used for purposes other than interest rate swap transactions to terms of ten years or less and prohibit use of LOC confirmations solely to promote a member's LOC program or to increase a member's profitability from this fee-based service.

As part of an ongoing effort to determine both how FHLBank standby LOCs might be made more useful to member institutions and nonmember mortgagees and how to encourage greater use of LOCs in carrying out the housing and community investment mission of the FHLBank System, the Finance Board recently undertook a survey of the FHLBanks to determine the uses of standby LOCs and the needs of the FHLBanks in issuing standby

LOCs. The Finance Board also undertook a review of the legal bases on which the FHLBanks' LOC authority has been, and could be, grounded. As a result of these efforts, the Finance Board has concluded that FHLBank authority to engage in standby LOC transactions is not limited to the provisions addressed in the 1983 FHLBB legal opinion, but also may be considered to be part of, and incidental to, the FHLBanks' deposit-taking and payment processing powers set forth in section 11(e) of the Bank Act, 12 U.S.C. 1431(e). If a FHLBank's involvement in a standby LOC transaction is considered to be part of its payment processing activity, however, FHLBank fees for LOCs may be subject to a private sector adjustment factor under section 11(e)(2) of the Bank Act, 12 U.S.C. 1431(e)(2). The Finance Board specifically requests comment regarding the consequences of this possibility.

The Finance Board also has determined that the authority of a FHLBank to issue a standby LOC may be considered, in the alternative, to be part of the FHLBanks' incidental authority to enter into commitments to make advances. On the basis of this refined analysis, the Finance Board has concluded that, although there may be safety and soundness and other policy reasons for requiring certain restrictions, it is unnecessary as a matter of law to subject FHLBank LOCs to all of the statutory and regulatory restrictions and limitations that apply to advances.

This rulemaking proposes to amend the Interim Guidelines to provide the FHLBanks with greater flexibility to respond to member needs for standby LOCs in a manner that ensures that FHLBanks' use of standby LOCs is consistent with the FHLBank System's housing and community investment mission and to codify these policies as a regulation. Accordingly, these proposed standby LOC regulations permit FHLBank members to request standby LOCs for a broader range of purposes and remove many of the restrictions on FHLBank standby LOC issuance that have limited the usefulness of such LOCs in the past.

The Finance Board requests comments on all aspects of the proposed rule.

II. Analysis of the Proposed Rule

This rulemaking proposes to add to the Finance Board's regulations, 12 CFR chapter IX, a new part 938 to govern FHLBank Standby LOCs. Definitions relevant to the proposed FHLBank Standby LOC regulation are set forth in § 938.1 of the proposed regulation. Because these definitions have been

drafted in order to implement substantive provisions, they are discussed, as necessary, below in the context of their use in the body of the regulation.

Section 938.2 of the proposed regulation governs FHLBank standby LOCs issued or confirmed on behalf of member institutions. Paragraph (a) authorizes FHLBanks to issue standby LOCs on behalf of members, and to confirm standby LOCs issued by members, that conform to the requirements of proposed part 938 and that are issued for the purposes enumerated in paragraphs (a)(1) through (a)(4). The term "standby letter of credit," as defined in § 938.1, is intended to include those instruments that are commonly referred to as such; i.e., LOCs that effectively guarantee the applicant's payment or performance in an underlying transaction with the beneficiary. The term does not include LOCs that are intended to serve as a short-term payment mechanism to finance the movement of goods (commonly known as "commercial" LOCs). The Finance Board considers "direct pay" LOCs, which are designed to act as the primary mechanism for satisfying an applicant's payment obligations over a period of time (for example, to make payments of principal and interest on commercial paper and medium-term notes) to be a form of standby LOC which FHLBanks would be authorized to issue under the proposed regulation.

Under paragraph (a) of proposed § 938.2, FHLBanks would be authorized to issue or confirm standby LOCs for any of four broad purposes: (1) To facilitate residential housing finance or other housing activity; (2) to facilitate the financing of targeted economic development projects; (3) to assist members with asset/liability management; or (4) to provide members with liquidity or other funding. This list of approved purposes would replace the more specific and restrictive list set forth in the Interim Guidelines. By replacing the specific list with the broader purposes set forth in paragraph (a) of § 938.2, the Finance Board intends to ensure that FHLBanks' use of standby LOCs is consistent with the FHLBank System's housing and community development mission and, at the same time, provide the FHLBanks with greater flexibility to respond to member needs for such credit. Under the proposed regulation, FHLBanks would determine, subject to Finance Board review and oversight, whether particular transactions fall within any of the above-described categories.

The term "residential housing finance" refers to the purchase or funding of "residential housing finance assets," or other activities that support the development or construction of residential housing. As defined in § 935.1 of the Finance Board's regulations, the term "residential housing finance assets" includes: Loans secured by residential real property; mortgage-backed securities; participations in loans secured by residential real property; loans financed by CIP advances (under the proposed Community Investment Cash Advance (CICA) rule, discussed below, reference to CIP advances would be amended to refer to loans or investments financed by advances made pursuant to a CICA program); loans secured by manufactured housing; or any other assets that the Finance Board determines to be residential housing finance assets. The term "residential housing finance," as defined in § 938.1 of the proposed regulation, also is intended to encompass activities that are aimed toward providing residential housing for individuals and families, but that do not fall within the existing regulatory definition of "residential housing finance assets," which refers only to loans and securities backed by loans. For example, a FHLBank would be permitted to issue a standby LOC to serve as a performance bond to secure a builder's performance in a housing construction project. Paragraph (a)(1) of § 938.2 is intended to provide the FHLBanks with the same scope of authority to issue and confirm housing-related standby LOCs that currently exists under the Interim Policy.

Economic development projects that would be eligible for support through a FHLBank standby LOC would include commercial, manufacturing, social service, public or community facility, and public or private infrastructure projects or activities that benefit families with incomes of 100 percent or less of area median income in urban areas, 115 percent or less of area median income in rural areas, or with an income at or below a target level established by a FHLBank to address unmet housing or economic development credit needs. Projects would be deemed to benefit such families if: The project is located in a neighborhood in which more than 50 percent of the families have incomes at or below the targeted income level; the project is located in a rural or urban Champion Community, a rural or urban Empowerment Zone, or rural or urban Enterprise Community; the project is located in a federally declared disaster area; the project involves property

eligible for a federal Brownfield Tax Credit; the project is located in an area affected by a federal military base closing or realignment; the project is located in an area identified as a designated community under the Community Adjustment and Investment Program; the annual salaries for at least 75 percent of the permanent full- and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level; the project qualifies as a small business; or more than 50 percent of the families who otherwise benefit from (other than through employment) or are provided services by the project have incomes at or below the targeted income level.

These provisions and the concepts underlying them were developed as part of the Finance Board's proposed Community Investment Cash Advance (CICA) program regulation, which has been published elsewhere in this issue of the Federal Register. The proposed CICA Regulation would establish a general framework under which the FHLBanks may establish programs to provide advances to be used in support of financing for housing and economic development activities that benefit income-targeted families that may not benefit from advances made under the FHLBanks' existing Affordable Housing Programs (AHP) and Community Investment Programs (CIP).

Specifically, the proposed CICA Regulation would authorize each FHLBank to establish: A Rural Development Advance (RDA) program to provide advances to members and nonmember borrowers to finance economic development projects in rural areas that benefit families with incomes at or below 115 percent of the area median income; an Urban Development Advance (UDA) program to provide advances to members and nonmember borrowers to finance economic development projects in urban areas that benefit families with incomes at or below 100 percent of the area median income; and other CICA programs to provide financing for economic development projects benefiting families with incomes at or below a level established by the Bank to address unmet economic development credit needs (defined as those for which financing is not generally available, or is available at lower levels or under less attractive terms). Regulation of the existing CIP would also be subsumed within the CICA Regulation.

Under the Interim Guidelines, FHLBanks are permitted to issue standby LOCs to support only those

economic development activities that benefit families earning less than 80 percent of area median income, or that are located in a neighborhood in which 51 percent or more of the households earn less than 80 percent of area median income, for which a member could receive a CIP advance. Having determined that it may authorize FHLBanks to issue standby LOCs to support a wider array of activities than is currently permitted under the Interim Guidelines, the Finance Board sought ways to permit FHLBanks to respond better to member requests for LOC products while, at the same time, assuring that FHLBanks' use of standby LOCs is consistent with the public policy purposes of the FHLBank System. The inclusion of the CICA-related targeted economic development provisions, which already had been subject to much study and discussion in the process of developing the proposed CICA Regulation, as one parameter for FHLBank LOC use appears to meet both criteria by maximizing the ability of FHLBanks to benefit areas with unmet economic development credit needs, as well as furthering regulatory consistency.

A thorough discussion of the reasoning behind the Finance Board's inclusion of particular substantive criteria in its conception of targeted economic development may be found in the preamble to the proposed CICA Regulation, published elsewhere in this issue of the Federal Register. It is anticipated that, if and when the CICA and Standby LOC Regulations are promulgated as final rules, the Standby LOC Regulation will describe the economic activities that may be appropriately supported by FHLBank LOCs merely by cross-referencing the CICA Regulation, as opposed to including all of the CICA-related definitions therein. Because the CICA Regulation thus far has been published only as a proposed rule, the Finance Board found it appropriate to restate those definitions in their entirety within the proposed Standby LOC Regulation in order to make its scope more readily apparent to the reader.

Under paragraph (a) of proposed § 938.2, FHLBanks also would be permitted to issue standby LOCs to assist members with their asset/liability management and to provide members with liquidity or other funding. Although the Interim Guidelines permit FHLBanks to issue short-term LOCs to facilitate interest rate swaps and other transactions that assist in asset/liability management, such LOCs would no longer be limited to a term of five years or less, or limited only to QTL members,

under the proposed regulation. In addition, although liquidity and other funding purposes are not mentioned expressly in the Interim Guidelines, they have been included in the proposed regulation to make clear that the FHLBanks may use their LOC authority to further this central member-service function and to bring within the purview of the regulation permissible standby LOC activities that might not be easily traceable to a particular housing or economic development purpose, such as securing public unit deposits and IRC Section 936 deposits.

Paragraph (b) of proposed § 938.2 requires that FHLBank standby LOCs made to members be secured at the time of issuance for the full amount of the LOC by collateral described in paragraph (c) of that section. This would continue the requirement of the Interim Guidelines that LOCs be fully secured at the time of issuance, although, as discussed below, members would be able to use a wider range of collateral and would no longer need to pledge their FHLBank stock as additional collateral for LOCs. Although the Finance Board has concluded that, as a matter of law, the Bank Act does not necessarily require that LOCs be collateralized fully at the time of issuance, it has determined that such a requirement is advisable as a matter of safe and sound banking practice. The Finance Board requests comments on whether there are any circumstances under which the FHLBanks could safely and soundly issue LOCs that are not fully collateralized.

Paragraph (c) describes the types of collateral that are eligible to secure FHLBank standby LOCs issued on behalf of members. It provides that all LOCs may be secured with collateral that is eligible to secure FHLBank advances to members under § 935.9(a) of the Finance Board's regulations. 12 CFR 935.9(a). In addition, in order to facilitate the use of LOCs to support housing and targeted economic development activities and to permit greater access to LOCs by members that lack sufficient § 935.9(a)-eligible collateral, the proposed regulation also would permit members to secure LOCs that are issued for the purpose of facilitating residential housing finance or targeted economic development activities with: (1) secured or federally-guaranteed loans to small businesses (as defined by the Office of Thrift Supervision); (2) investment-grade obligations of state or local government agencies; and (3) "other real estate-related collateral" described in § 935.9(a)(4) of the regulations in excess

of the "30 percent of capital" limitation set forth in paragraph (a)(4)(iii) thereof.

Under the Interim Guidelines, LOCs may be secured only by collateral that is eligible to secure advances, regardless of the purpose for which the LOC is issued. Such collateral includes Small Business Administration—(SBA) guaranteed securities. However because most small business loans are not SBA-guaranteed, the proposed regulation, by permitting all secured or federally-guaranteed small business loans to be used as collateral for LOCs, could encourage members to provide financing for smaller or start-up businesses that often have a more difficult time accessing credit than well-established or larger enterprises. Expanded use of small business loans as collateral will support the FHLBanks' mission of providing support for targeted economic development lending—the targeted universe in this case being small commercial and business entities, including small farms. Commercial bank members and Community Development Financial Institution (CDFI) members, in particular, may have substantial amounts of such loans available to use as collateral.

Under the proposed regulation, an additional source of collateral for LOCs would be state and municipal bonds rated investment grade by a nationally-recognized rating agency (such as bonds rated BBB or better by Moody's or Bbb or better by Standard & Poor's). Under the Interim Guidelines, FHLBanks may accept real estate-related state and municipal housing bonds as collateral for LOCs only as part of the limited basket of other real estate-related collateral. See 12 CFR 935.9(a)(4)(iii). Expanding eligible collateral for LOCs to include investment grade state or municipal bonds could benefit members who hold such investments and who have insufficient advances-eligible collateral. Because there is an established secondary market for these bonds, they can be easily valued and, if necessary, liquidated by a FHLBank.

The proposed regulation also permits members to secure LOCs issued for housing finance or targeted economic development purposes with other real estate-related collateral in excess of the "30 percent of capital" limitation set forth in § 935.9(a)(4)(iii) of the Advances Regulation. 12 CFR 935.9(a)(4)(iii). If so permitted, members that have substantial amounts of such collateral, such as commercial banks, could expand their use of FHLBank LOCs. For example, members specializing in community development lending could pledge, without limit, loans secured by

community facilities, such as day care centers and health clinics and lenders in rural areas could pledge more of their farm loans.

The proposed regulation would permit each FHLBank to establish limits on the use of these additional types of collateral. FHLBanks accepting such collateral would be expected to include, as part of their standby LOC policies required under § 938.5(a)(1), policies and procedures for valuing and securing such collateral that are consistent with safe and sound banking practice. The Finance Board believes that any additional risks that might arise from the use of these additional types of collateral should be adequately managed in accordance with the collateral provisions of the Advances Regulation that are referenced in proposed § 938.5(d). Among other things, the Advances Regulation requires the FHLBanks to establish written procedures for determining the value of collateral, and to follow those procedures in ascertaining the value of a particular asset offered as collateral. See 12 CFR 935.12. The Advances Regulation also permits the FHLBanks to require a member to support the valuation of any collateral with an appraisal or other investigation of the collateral as the FHLBank deems necessary. *Id.*

The Finance Board expects that if proposed part 938 is adopted as a final rule, each FHLBank will review its collateral valuation procedures, and will amend them as necessary to reflect the availability of these additional types of collateral to secure standby LOCs, before accepting such collateral. The Finance Board also expects that the FHLBanks, as a matter of practice, will conduct careful review and, if necessary, require an appraisal of such collateral. Such appraisal should take into account the security of the loan itself, as well as any additional risks inherent in such collateral and each FHLBank's own ability to evaluate those risks. The Finance Board specifically requests comment on whether there are other assets that should be considered as eligible collateral for LOCs and whether the Finance Board should establish limits on these additional types of collateral based upon the assets that secure the loans themselves.

Section 938.3 of the proposed regulation governs FHLBank standby LOCs issued or confirmed on behalf of customers that have been certified as eligible nonmember mortgagees pursuant to § 935.22(b) of the Finance Board's regulations. 12 CFR 935.22(b). Paragraph (a) of proposed § 938.3 would authorize FHLBanks to issue or confirm

on behalf of nonmember mortgagees standby LOCs that are fully secured by Federal Housing Administration-(FHA) insured loans or Government National Mortgage Association (GNMA) securities backed by FHA-insured loans, for the same broad purposes for which FHLBanks may issue or confirm LOCs on behalf of member institutions. In addition, paragraph (b) of proposed § 938.3 would authorize FHLBanks to issue or confirm, on behalf of nonmember mortgagees that have qualified as state housing finance agencies (SHFAs) by meeting the requirements of § 935.22(d) of the regulations, 12 CFR 935.22(d), standby LOCs that are fully secured by collateral eligible under § 935.9(a) of the regulations, *id.* 935.9(a), to secure advances. Standby LOCs secured by such collateral would be required to facilitate residential or commercial lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the IRC.

Proposed § 938.3 would continue the general policy of the Interim Guidelines by requiring that FHLBank LOCs issued on behalf of nonmember mortgagees be subject to the same limitations and restrictions that apply to advances made to nonmembers under section 10b of the Bank Act, 12 U.S.C. 1430b, and § 935.24 of the regulations, 12 CFR 935.24. In its legal review of the sources of statutory authority for issuance of LOCs by FHLBanks, the Finance Board determined that, unlike LOCs issued on behalf of members, the issuance of LOCs on behalf of nonmembers could not be considered to fall within the FHLBanks' payment processing authority, which expressly applies only to FHLBank dealings with members and financial institutions eligible to apply for FHLBank membership. See 12 U.S.C. 1431(e)(2). Thus, the Finance Board believes that FHLBanks should issue LOCs to a nonmember mortgagee only under the same conditions that would apply if the FHLBank were to enter into an advance commitment with that nonmember. Because the type of collateral that a FHLBank may accept to secure advances to nonmembers is linked, by statute, to the purpose of the advance, the purpose for which a LOC is issued on behalf of a nonmember also must govern the type of collateral that the FHLBank may accept to secure the LOC.

Section 938.4 of the proposed regulation governs the obligation of both members and nonmember mortgagees on whose behalf an FHLBank issues a LOC to reimburse the FHLBank for any funds drawn by the beneficiary under

the LOC. Paragraph (a) of proposed § 938.4 requires that, as part of the agreement pursuant to which a LOC is to be issued, a member or nonmember assume an unconditional obligation to reimburse the FHLBank fully for any amounts drawn by the beneficiary under the LOC by having available in its FHLBank deposit or transaction account on the day of the FHLBank's payment to the beneficiary sufficient funds to cover such payment. The requirement that an applicant assume an unconditional obligation to reimburse the FHLBank continues the policy of the Interim Guidelines and is consistent with the provisions of Article 5 of the Uniform Commercial Code (UCC), as revised in 1995, which provide that an issuer that has honored a presentation made by a beneficiary under a LOC is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds. See UCC 5-108(i) (1995).

In order to facilitate reimbursement of a FHLBank, to emphasize the applicant's responsibility to cover the amount of any draw under a LOC, to tie the FHLBank's LOC activities more closely to their payment processing authority (in the case of LOCs issued on behalf of members) and for purposes of regulatory consistency, paragraph (a)(1) of § 938.4 requires that reimbursement by an applicant be accomplished through its FHLBank deposit account (if the applicant is a member) or transaction account (if the applicant is a nonmember, see 12 CFR 935.24).

Paragraph (b) of proposed § 938.4 requires FHLBanks to take prompt action to recover the funds due if an applicant fails to have available in its FHLBank deposit or transaction account on the day of a draw under a LOC sufficient funds to cover the draw. Despite this requirement, paragraph (b) of proposed § 938.4 authorizes an issuing FHLBank, at the request of a member or nonmember, but in its own discretion, to finance an applicant's repayment of a LOC draw by making an advance to the applicant. Of course, such an advance could be made only if the applicant is, at that time, willing and able to comply with the advances requirements of section 10 (if the applicant is a member) or section 10b (if the applicant is a nonmember) of the Bank Act, 12 U.S.C. 1430, 1430b, and part 935 of the Finance Board's regulations, 12 CFR part 935. For purposes of complying with the regulatory advance requirements, the "purpose" of an advance made to a member or nonmember under the conditions of proposed § 938.4(c) would be determined using the same standards

that apply to any other type of advance. See 12 CFR 935.13 & .14.

Section 938.5 of the proposed regulation sets forth certain miscellaneous provisions that would apply to all LOCs issued on behalf of members and nonmembers. Paragraph (a)(1) of proposed § 938.5 requires that all LOCs issued on behalf of members or nonmembers be issued only pursuant to a written LOC policy established by the FHLBank to govern its standby LOC programs. Such a policy would be required to: (1) implement all statutory and regulatory provisions that apply to standby FHLBank LOCs; (2) to set forth underlying criteria to apply to the issuance or renewal of standby LOCs that is consistent with the criteria that must be applied to the underwriting of advances; and (3) set forth criteria regarding the pricing of standby LOCs, including any special criteria that could apply to LOCs issued to facilitate the financing of targeted economic development projects.

It is intended that paragraph (a)(1)(ii) of proposed § 938.5, regarding the application of underwriting criteria under the FHLBank's LOC policy at the time of the issuance or renewal of a LOC, apply also in cases where a LOC contains a provision stating that the LOC will automatically renew unless the FHLBank notifies the beneficiary of its intent not to renew the LOC. Such provisions must be carefully monitored so that the FHLBank can control its risk exposure. The renewal of any LOC pursuant to such a provision should be approved in the same manner as a renewal of a LOC that does not contain this provision. However, because an issued LOC cannot be canceled without agreement from the beneficiary, FHLBanks are encouraged to issue LOCs only for a limited term, with the potential for renewal if the account party remains creditworthy. This would give the FHLBanks an opportunity to reassess periodically their exposure on long-term transactions.

As a matter of safety and soundness regulation, paragraph (a)(2) of proposed § 938.5 would continue the policy of the Interim Guidelines by requiring that all LOCs issued by a FHLBank either contain a specific expiration date, or be for a specified term. This is consistent with Comptroller of the Currency and the OTS regulations on LOCs, which specifically require that LOCs issued by national banks and savings associations, as a matter of sound banking practice, be limited in duration or terminable periodically or at will upon notice or payment to the beneficiary. See 12 CFR 7.1016(b)(1)(iii) and 560.120(b)(1)(iii).

Similarly, paragraph (a)(3) of proposed § 938.5 would continue the policy of the Interim Guidelines by requiring that the transfer of a FHLBank LOC be approved in advance by the issuing FHLBank. A transfer of a letter of credit occurs when the beneficiary transfers to a another party its right to draw under the LOC. Requiring approval by a FHLBank would ensure that a LOC could not be transferred without the FHLBank's knowledge.

Finally, paragraph (b) of proposed § 938.5 would apply to FHLBank LOCs issued on behalf of members and nonmembers certain provisions set forth in the Finance Board's Advances Regulation, 12 CFR part 935, including provisions regarding the FHLBank's right to require additional collateral or to limit the type of collateral that it will accept, and matters of collateral verification, safekeeping and valuation.

Proposed part 938 would not include many of the restrictions on FHLBank standby LOC transactions that currently are imposed by the Interim Guidelines. The Interim Guidelines require a member to purchase FHLBank stock when a FHLBank issues a LOC, which is an off-balance sheet item, on behalf of that member. This causes a decrease in the FHLBank's leverage because the FHLBank's outstanding stock is increased without a corresponding increase in on-balance sheet assets. Under proposed part 938, FHLBanks would no longer be required to include LOCs in the computation of a member's advances/FHLBank capital stock ratio, because the Finance Board no longer considers LOCs to be the legal equivalent of outstanding advances. Eliminating this requirement would remove the deleveraging effect of the current policy and would make FHLBank standby LOCs more attractive to members.

By applying uniform requirements to standby LOCs issued on behalf of any member, without regard to the QTL status of the member, proposed part 938 would not require that standby LOCs issued on behalf of non-QTL members be issued only for housing finance purposes, as is the case under the Interim Guidelines. In addition, proposed part 938 would not require that standby LOCs issued on behalf of non-QTL members be included with total FHLBank System advances and advances to non-QTL members for purposes of monitoring compliance with the FHLBank System's statutory 30 percent limit on advances to non-QTL members. See 12 U.S.C. 1430(e)(2). Again, the Finance Board has determined that these restrictions are not required by law because the Finance

Board no longer considers LOCs to be the legal equivalent of outstanding advances.

Removing these restrictions on standby LOCs issued on behalf of non-QTL members, many of which are actively involved in financing housing and economic development transactions, would expand the opportunities for FHLBanks to issue standby LOCs to support such housing and economic development activities. In addition, removal of these restrictions would enhance the ability of FHLBanks to assist non-QTL members with their liquidity needs.

The Interim Guidelines limit the use of standby LOCs with tax-exempt bonds to those issues designed to promote housing or commercial and economic development that benefits low- and moderate-income families or that is located in low- and moderate-income neighborhoods. Under IRC section 149, 26 U.S.C. 149, it is unclear whether tax-exempt bonds financing economic development would lose their tax-exempt status if supported by a FHLBank standby LOC. The Finance Board currently is working with Congress to resolve this issue legislatively. In the meantime, the Finance Board considers this issue to be a matter for the Internal Revenue Service to determine and, therefore, has not specified in the proposed regulation the types of tax-exempt bonds for which a FHLBank standby LOC may be issued.

The Interim Guidelines provide that FHLBank LOC confirmations may not be used solely to support a member's own LOC program or to increase a member's profitability. LOC confirmations serve essentially the same purpose, and incur for a FHLBank the same contingent liability, as the issuance of a LOC. A member's access to a FHLBank's LOC confirmation presumably would make a member's LOC more acceptable to a beneficiary and would help to increase a member's profitability. Because all of the products and services offered by a FHLBank to its members are designed to assist members improve their liquidity, to offer additional financing options to its customers, and consequently increase its income, the current restriction on confirmations appears to conflict with these goals. Therefore, this restriction has not been included in proposed part 938.

The Interim Guidelines limit the term of a FHLBank standby LOC issued on behalf of a QTL member to 5 years for non-housing finance purposes and 10 years for housing finance purposes, but impose no limit for issues that support a member's performance in interest rate swap transactions. The Interim

Guidelines limit the term of a FHLBank standby LOC issued on behalf of a non-QTL member to 10 years or less for housing finance. In contrast, FHLBanks may offer advances with maturities of any length consistent with the safe and sound operation of the FHLBank. See 12 CFR 935.6(a).

Expanding the terms for LOCs would benefit low-income housing tax credit transactions that often require a 15-year letter of credit. In addition, a longer term would permit LOCs to be used with industrial development and other bonds used to fund local economic development that typically have terms longer than 10 years. Because standby LOCs possess no more credit risk than an advance, there appears to be no reason to limit the maturity of a LOC as long as a FHLBank has established controls that ensure the safe and sound operation of the FHLBank. Therefore, the proposed regulation imposes no term limitations on FHLBank standby LOCs.

Proposed part 938 would not require that outstanding FHLBank LOCs be reflected on the books of the FHLBank as contingent liabilities, as is required under the Interim Guidelines, because this is already required under General Accepted Accounting Principles (GAAP), which the FHLBanks must follow. Finally, the requirement of the Interim Guidelines that FHLBanks must submit monthly LOC reports has not been included in the proposed regulation because this is already subsumed within the current general requirement that FHLBanks report monthly to the Finance Board on all FHLBank activities. See 12 CFR 934.7(e).

III. Regulatory Flexibility Act

The proposed rule applies only to the FHLBanks, which do not come within the meaning of "small business," as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 938

Community development, Credit, Federal home loan banks, Housing, Mortgages.

Accordingly, the Finance Board hereby proposes to amend chapter IX, title 12, Code of Federal Regulations, to add a new part 938 to read as follows:

PART 938—STANDBY LETTERS OF CREDIT

Sec.

938.1 Definitions.

938.2 Standby letters of credit on behalf of members.

938.3 Standby letters of credit on behalf of nonmember mortgagees.

938.4 Obligation to Bank under all standby letters of credit.

938.5 Additional provisions applying to all standby letters of credit.

Authority: 12 U.S.C. 1422b, 1429, 1430, 1430b, 1431.

§ 938.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421-49).

Applicant means a person or entity at whose request or for whose account a standby letter of credit is issued.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Beneficiary means a person or entity who, under the terms of a standby letter of credit, is entitled to have its complying presentation honored.

Benefit. An economic development project is deemed to *benefit* families with incomes at or below a targeted income level if:

(1) The project is located in a neighborhood in which more than 50 percent of the families have incomes at or below the targeted income level;

(2) The project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of Agriculture (in the case of projects located in rural areas);

(3) The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of HUD (in the case of projects located in urban areas);

(4) The project is located in a federally declared disaster area;

(5) The project involves property eligible for a federal Brownfield Tax Credit authorized by 26 U.S.C. 198;

(6) The project is located in an area impacted by a federal military base closing or realignment;

(7) The project is located in an area identified as a designated community under the Community Adjustment and Investment Program;

(8) The annual salaries for at least 75 percent of the permanent full- and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level;

(9) The project qualifies as a small business; or

(10) More than 50 percent of the families who otherwise benefit from (other than through employment) or are provided services by the project have incomes at or below the targeted income level.

Champion Community means a community which developed a strategic plan and applied for designation by either the Secretary of Housing and Urban Development or the Secretary of Agriculture as an Empowerment Zone or Enterprise Community, but was designated a Champion Community.

Confirm means to undertake, at the request or with the consent of the issuer, to honor a presentation under a standby letter of credit issued by a member or nonmember mortgagee.

Document means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion that is presented under the terms of a standby letter of credit.

Economic development projects means:

(1) Commercial, manufacturing, social service, and public facility projects and activities; and

(2) The construction or rehabilitation of public or private infrastructure, such as roads, utilities, and sewers.

Family means one or more persons living in the same dwelling unit.

Finance Board means the agency established by the Act as the Federal Housing Finance Board.

Issuer means a person or entity that issues a standby letter of credit.

Median income for the area means one or more of the following, as determined by the Bank:

(1) The median income for the area, as published annually by the Department of Housing and Urban Development;

(2) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(3) The median income for the area, as published by the United States Department of Agriculture; or

(4) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors of the Finance Board, at the request of a Bank, for use under the Bank's Community Investment Cash Advance (CICA) programs, as provided for in part 970 of this chapter.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in

the Bank in accordance with §§ 933.20 and 933.24 of this chapter.

Metropolitan statistical area means a "metropolitan statistical area," as that term is defined by the U.S. Bureau of the Census.

Neighborhood means:

(1) A census tract or block numbering area;

(2) A unit of general local government with a population of 25,000 or less;

(3) A rural county;

(4) A trust or restricted Indian land, Native Hawaiian Home Land, or Alaskan Native Village; or

(5) A geographic location designated in comprehensive plans, ordinance, or other local documents as a neighborhood, village, or similar geographic designation that is within the boundary of but does not encompass the entire area of a unit of general local government.

Nonmember mortgagee means an entity certified as a nonmember mortgagee pursuant to § 935.22(b) of this chapter.

Nonmember SHFA means a nonmember mortgagee that is a "state housing finance agency," as that term is defined in § 935.1 of this chapter, and that has met the requirements of § 935.22(d) of this chapter.

Presentation means delivery of a document to an issuer, or an entity that has undertaken a confirmation at the request or with the consent of the issuer, for the giving of value under a standby letter of credit.

Residential housing finance means:

(1) The purchase or funding of "residential housing finance assets," as that term is defined in § 935.1 of this chapter; or

(2) Other activities that support the development or construction of residential housing.

Rural area means:

(1) A unit of general local government or an unincorporated place outside a metropolitan statistical area that has a population of less than 30,000; or

(2) A trust or restricted Indian land, Native Hawaiian Home Land, or Alaskan Native Village.

Small business means a "small business concern," as that term is defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration at 13 CFR part 121, or any successor provisions.

Standby letter of credit means a definite undertaking by an issuer on behalf of an applicant that represents an obligation to the beneficiary, pursuant to a complying presentation, to repay money borrowed by, advanced to, or for the account of the applicant; to make

payment on account of any indebtedness undertaken by the applicant; or to make payment on account of any default by the applicant in the performance of an obligation. The term *standby letter of credit* does not include a commercial letter of credit, or any short-term self-liquidating instrument used to finance the movement of goods.

Targeted income level means:

(1) For projects or activities that benefit primarily individuals or families residing in an urban area, 100 percent of the median income for the area;

(2) For projects or activities that benefit primarily individuals or families residing in a rural area, 115 percent of the median income for the area; or

(3) An income level that is based on a percentage of median income established by the Bank to address unmet community investment credit needs.

Urban area means a unit of general local government or an unincorporated place that is:

(1) Within a metropolitan statistical area; or

(2) Outside a metropolitan statistical area and has a population of more than 30,000.

§ 938.2 Standby letters of credit on behalf of members.

(a) **Authority and purposes.** Each Bank is authorized to issue or confirm on behalf of members standby letters of credit that comply with the requirements of this part, for any of the following purposes:

(1) To assist members in facilitating residential housing finance;

(2) To assist members in facilitating the financing of economic development projects that benefit families with incomes at or below a targeted income level;

(3) To assist members with asset/liability management; or

(4) To provide members with liquidity or other funding.

(b) **Fully secured.** A Bank, at the time it issues or confirms a standby letter of credit on behalf of a member, shall obtain and maintain a security interest in collateral that is sufficient to secure fully the member's unconditional obligation described in § 938.4(a)(2), and that complies with the requirements set forth in paragraph (c) of this section.

(c) **Eligible collateral.** (1) Any standby letter of credit issued on behalf of a member may be secured by collateral that is eligible to secure advances under § 935.9(a) of this chapter. In making the calculation required under § 935.9(a)(4)(iii) of this chapter, only standby letters of credit issued for the

purposes described in paragraphs (a)(3) or (a)(4) of this section shall be counted as "outstanding advances."

(2) A standby letter of credit issued on behalf of a member for a purpose described in paragraphs (a)(1) or (a)(2) of this section may, in addition to the collateral described in paragraph (c)(1) of this section, be secured by:

(i) Secured or federally-guaranteed loans to small businesses or securities representing interests in such loans; or

(ii) Obligations of state or local government units or agencies, rated as investment grade by a nationally-recognized rating agency.

§ 938.3 Standby letters of credit on behalf of nonmember mortgagees.

(a) **Nonmember mortgagees.** Each Bank is authorized to issue or confirm on behalf of nonmember mortgagees standby letters of credit that are fully secured by collateral described in §§ 935.24(b)(1)(i) or (ii) of this chapter, and that otherwise comply with the requirements of this part, for any of the following purposes:

(1) To assist nonmember mortgagees in facilitating residential housing finance;

(2) To assist nonmember mortgagees in facilitating the financing of economic development projects that benefit families with incomes at or below a targeted income level;

(3) To assist nonmember mortgagees with asset/liability management; or

(4) To provide nonmember mortgagees with liquidity or other funding.

(b) **Nonmember SHFAs.** Each Bank is authorized to issue or confirm on behalf of nonmember SHFAs standby letters of credit that are fully secured by collateral described in §§ 935.24(b)(2)(i)(A), (B) or (C) of this chapter, and that otherwise comply with the requirements of this part, for the purpose of facilitating residential or commercial mortgage lending that benefits individuals or

families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code (26 U.S.C. 142(d) or 143(f)).

§ 938.4 Obligation to Bank under all standby letters of credit.

(a) **Obligation to reimburse.** A Bank may issue or confirm a standby letter of credit only on behalf of a member or nonmember mortgagee that has:

(1) Established with the Bank a cash account pursuant to §§ 934.5, 935.24(b)(2)(i)(B) or 935.24(d) of this chapter; and

(2) Assumed an unconditional obligation to reimburse the Bank for value given by the Bank to the beneficiary under the terms of the standby letter of credit by depositing immediately available funds into the account described in paragraph (a)(1) of this section not later than the date of the Bank's payment of funds to the beneficiary.

(b) **Prompt action to recover funds.** If a member or nonmember mortgagee fails to fulfill the obligation described in paragraph (a)(2) of this section, the Bank shall take action promptly to recover the funds that such member or nonmember mortgagee is obligated to repay.

(c) **Obligation financed by advance.** Notwithstanding the obligations and duties of the Bank and its member or nonmember mortgagee under paragraphs (a) and (b) of this section, the Bank may, at its discretion, permit such member or nonmember mortgagee to finance repayment of the obligation described in paragraph (a)(2) of this section by receiving an advance that complies with sections 10 or 10b of the Act and part 935 of this chapter.

§ 938.5 Additional provisions applying to all standby letters of credit.

(a) **Written policy; other requirements.** Each standby letter of credit issued or confirmed by a Bank shall:

(1) Be issued or confirmed only in compliance with a written policy, developed and implemented by the Bank to govern its standby letter of credit programs, that:

(i) Is consistent with the provisions of the Act and this part;

(ii) Sets forth credit underwriting criteria, consistent with the provisions of § 935.5 of this chapter, to be applied in evaluating applications for standby letters of credit and renewals thereof; and

(iii) Sets forth criteria regarding the pricing of standby letters of credit, including any special pricing provisions for letters of credit that facilitate the financing of economic development projects that benefit families with incomes at or below a targeted income level;

(2) Contain a specific expiration date, or be for a specific term; and

(3) Require approval in advance by the Bank of any transfer of the standby letter of credit from the original beneficiary to another person or entity.

(b) **Additional collateral provisions.**

(1) A Bank may take such steps as it deems necessary to protect its secured position on standby letters of credit, including requiring additional collateral, whether or not such additional collateral conforms to the requirements of §§ 938.2 or 938.3.

(2) Collateral pledged by a member or nonmember mortgagee to secure a letter of credit issued or confirmed on its behalf by a Bank shall be subject to the provisions of §§ 935.9(b), 935.9(e), 935.11 and 935.12 of this chapter.

Dated: April 22, 1998.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,
Chairman.

[FR Doc. 98-11948 Filed 5-7-98; 8:45 am]

BILLING CODE 6725-01-P

federal register

Friday
May 8, 1998

Part V

National Security Council

32 CFR Part 2101

Freedom of Information Act Requests for
Classified Documents—Processing, Fees,
Reports, Applicable Material,
Declassification Criteria, Partial Release;
Final Rule

Procedures for Obtaining Access to
National Security Council (NSC) Records;
Notice

NATIONAL SECURITY COUNCIL

32 CFR Part 2101

Freedom of Information Act Requests for Classified Documents—Processing, Fees, Reports, Applicable Material, Declassification Criteria, Partial Release

AGENCY: National Security Council.

ACTION: Removal of final rule.

SUMMARY: This action removes the National Security Council regulations for processing FOIA requests for classified documents. The National Security Council is an entity within the Executive Office of the President that

exists solely to advise and assist the President in the discharge of his constitutionally based responsibilities over the national security affairs of the United States, and thus NSC records are not subject to disclosure under the Freedom of Information Act. This action is consistent with the holding of the U.S. Court of Appeals for the District of Columbia in *Armstrong, et al. v. Executive Office of the President, et al.*, 90 F.3d 553 (1996), *cert. denied*, 117 S. Ct. 1842 (1997). Requesters may continue to seek access to NSC documents by writing to the National Security Council, Access Management Staff, Washington, DC 20504.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Rod Soubers, 202-456-9201.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 2101

Freedom of information.

PART 2101—[REMOVED]

Accordingly, by the authority of 44 U.S.C. 2201 and 50 U.S.C. 402, 32 CFR part 2101 is removed.

Glyn T. Davies,
Executive Secretary.

[FR Doc. 98-12344 Filed 5-7-98; 8:45 am]

BILLING CODE 3150-01-P

NATIONAL SECURITY COUNCIL

Procedures for Obtaining Access to National Security Council (NSC) Records

AGENCY: National Security Council.

ACTION: Notice of NSC Issuance of Access Procedures.

SUMMARY: The NSC is today publishing a Removal of Final Rule in the *Federal Register* that removes the NSC regulations for processing Freedom of Information Act (FOIA) requests for NSC records. Although NSC records are no longer subject to disclosure under the FOIA, a Presidential Memorandum of March 24, 1994, directed the NSC to establish procedures for continued public access to appropriate NSC records.

DATES: These procedures take effect on May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Rod Soubers, 202-456-9201.

Public Access to National Security Council Records

Introduction

Sec. 1.1 Background

As an organization in the Executive Office of the President that advises and assists the President, the National Security Council (NSC) is not subject to the Freedom of Information Act (FOIA). However, the NSC accepts and processes requests from the public and releases information as appropriate on a discretionary basis.

Sec. 1.2 Purpose

These procedures set forth an orderly process for public access to important national security information, consistent with protecting national security, ensuring the rights of individuals, and promoting open and effective government.

Requests From the Public for Records

Sec. 2.1 Access Policy

a. The NSC will review for release: (1) certain records of the current administration: namely, those internal records created by and transmitted exclusively among NSC staff members as well as all communications sent or received from outside the Executive Office of the President; and (2) records remaining in NSC custody from past Presidential administrations.

b. Because of the NSC's statutory role in advising and assisting the President with respect to national security issues, many of the records maintained by the NSC are extremely sensitive; most are classified under Executive Order 12958

or predecessor orders. Consequently, a main emphasis of the NSC staff in reviewing records for release to the public is assuring that sensitive national security information remains protected as records are released. In releasing documents, the NSC will follow generally accepted access principles, such as those articulated in FOIA case law.

c. Records of the current administration are not subject to the mandatory review provisions of Executive Order 12958. However, all requests for classified records not otherwise restricted will be processed in a manner consistent with the mandatory review provisions of Executive Order 12958, or its successor.

d. A record, or portion thereof, may be exempted from release only if it contains information within one or more of the following categories:

1. Information that is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive Order.

2. Information relating to appointments to Federal office or entirely to the internal practices of the NSC, including formats maintained in confidence to authenticate internal issuances.

3. Information that is specifically exempted from disclosure by statute.

4. Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

5. Communications requesting or submitting advice, or any other privileged communications, between presidential advisers, including NSC staff, or between NSC staff and other government officials.

6. Personnel files and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

7. Information compiled for law enforcement purposes.

Sec. 2.2 Submitting Requests for Records

All requests from the public for records should be addressed to: Director, Access Management, National Security Council, Washington, D.C. 20504. Requests for records must be sufficiently specific to enable the NSC staff to locate the record with a reasonable amount of effort. When a request does not reasonably and specifically describe the record sought, the NSC staff will notify the requester that no further action will be taken until

additional information is provided, or the scope of the request is narrowed.

Sec. 2.3 Processing Requests for Records

a. The NSC staff will process and answer all requests, including conducting searches for responsive records, providing copies of all releasable records, providing a negative reply if no responsive records are located, and providing a reason for withholding of any record or portion thereof.

b. Public requests to the NSC are generally handled on a "first-in/first-out" basis. The Access Management Staff will maintain a queue of requests and will service each request in turn. In the interest of economy and efficiency the staff may establish separate queues for requests of different degrees of difficulty.

c. There are three routine procedural exceptions to this "first-in/first-out" policy: (1) when it is readily apparent that requested documents have been previously declassified and released, the request is answered without regard to its position in the queue; (2) when a new document request is identical to or involves part of a previous but still pending document request (i.e., no additional research is required), the new request is processed along with the pending request; and (3) when the processing of a particular request requires coordination with agencies of subject matter interest, a response cannot be provided to a requester until the coordination is complete.

d. Exceptions to the "first-in/first-out" policy may also be made in order to hasten response to (1) requests that may affect the personal safety of an individual or (2) requests that are of broad and pressing public interest.

e. In order to assure equitable access to records by all members of the requesting public, initial production of documents in response to any single request, at the discretion of the Access Management staff, may be limited to what can reasonably be retrieved without burdensome effort. After the initial production of documents the request will be placed at the end of the queue to await further action in turn after other waiting requesters have been served.

f. After any materials responsive to a particular public request are collected, they are reviewed for declassification and release. In reviewing documents for declassification, the Access Management staff often seeks the subject matter expertise of interested Federal agencies. This expertise is obtained through the referral of copies of

responsive documents to appropriate agencies for review and recommendation or through consultation.

g. Copies of responsive documents that were originated by a Federal agency but located among NSC files may be referred to the originating agency for a release determination and direct response by the agency to the requester.

h. In light of the NSC's official recordkeeping practices, records normally will be made available in paper form. Exceptions to this policy will be made where electronic versions of records exist in an accessible form, and it is feasible for the NSC to provide public access to records in that form.

Sec. 2.4 Requests for Reconsideration

a. Requests for reconsideration of decisions not to release requested documents, or portions thereof, should be addressed to the Executive Secretary, National Security Council, Washington, D.C. 20504, within sixty (60) days from the date the requester receives written notification of the denial. This appeal process does not include reconsideration of notifications that no responsive documents were located in a search of NSC files.

b. Requests for reconsideration will be placed in a separate queue to be acted on in turn. The Access Management staff will process such requests as expeditiously as possible.

Sec. 2.5 Availability of Released Records

Upon release to an individual requester, NSC numbered policy documents are also deposited with the National Archives and Records Administration for general public reference.

Sec. 2.6 Fee Schedule

The NSC reserves the right to establish a fee schedule for the search and reproduction of information available under this public access policy.

Glyn Davies,

Executive Secretary.

[FR Doc. 98-12343 Filed 5-7-98; 8:45 am]

BILLING CODE 3150-01-P

Friday
May 8, 1998

Part VI

Environmental Protection Agency

Definition of a Public Water System in
SDWA Section 1401(4) as Amended by
the 1996 SDWA Amendment; Notice

federal register

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6011-8]

Definition of a Public Water System in SDWA Section 1401(4) as Amended by the 1996 SDWA Amendments

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is seeking comments on the draft guidance "Definition of a Public Water System in SDWA Section 1401(4) as Amended by the 1996 SDWA Amendments." The draft guidance is published as an Appendix to this notice.

DATES: Comments must be submitted on or before June 22, 1998.

ADDRESSES: Comments should be addressed to Jon Merkle, Drinking Water Office—(WTR-6), EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Comments may also be submitted by E-mail to merkle.jon@epamail.epa.gov. Commenters who want EPA to acknowledge receipt of their comments must enclose a self-addressed, stamped envelope.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426-4791, or Jon Merkle, telephone (415) 744-1844.

SUPPLEMENTARY INFORMATION:

Purpose of this Notice

This notice publishes draft guidance which is intended to interpret the broadened definition of what type of water suppliers will be defined as a "public water system" in light of revisions to this term by the 1996 amendments to the SDWA. Before the 1996 amendments, the SDWA defined a "public water system" as a system that provided piped water for human consumption to the public and had at least fifteen service connections or regularly served at least twenty-five individuals. The 1996 amendments expanded the definition of "public water system" to include systems providing water for human consumption that deliver this water by "constructed conveyances," such as irrigation canals.

The definition of a "public water system" is central to delineating the scope of many SDWA requirements and this notice is designed to solicit public comment on the specific provisions in the new definition and its suggested implementation.

Specific Issue for Commenters to Consider

The Agency is particularly interested in comments on the implementation of the provision regarding certain piped irrigation districts (Section III of this document) in new section 1401(4)(B)(ii) of the SDWA. The statute provides that a piped irrigation district in existence prior to May 18, 1994, which provides primarily agricultural service with only incidental residential or similar use shall not be considered a public water system (PWS) if it or its users comply with the alternative water or treatment exclusions for constructed conveyance suppliers in section 1401(4)(B)(i)(II) or (III).

The statutory language is ambiguous as to whether all connections to the system used for human consumption must comply with this provision, or whether only as many connections for human consumption must comply so as to reduce the remaining number of connections to fewer than fifteen.

The draft guidance would require all connections to the irrigation district that use the district's water for human consumption to comply with the alternative water or treatment exclusions. More of the States on the workgroup that commented on this question preferred the approach taken in this draft guidance over the approach discussed below as an alternative.

EPA's interpretation of this provision is based on the realities that these piped districts were already considered PWSs under the pre-1996 definition, that the only change in the status of these piped irrigation districts in the 1996 SDWA Amendments was to provide them an opportunity to use these exclusions to remove themselves from PWS status, that this opportunity is not available to any other types of piped water systems, and that compliance with these exclusions is much simpler and less costly than the compliance required of PWSs with the entire SDWA (which can be avoided by appropriate use of the exclusions). Under these circumstances, EPA believes that the approach taken in the draft guidance is equitable and appropriate and protective of public health.

The approach taken in the draft guidance is supported by Report 104-169 of the Senate Environment and Public Works Committee on S. 1316, which states that "[t]hese piped (irrigation) systems are not to be considered public water systems if all of the connections to the system comply with the requirements applicable under one or the other of the exclusions for alternative water or point-of-entry

treatment." (p. 89, emphasis added). The irrigation district provision enacted in the SDWA Amendments is identical to the one first adopted in S. 1316 by the Senate Committee.

Finally, this approach provides an incentive to piped irrigation districts to give equal protection to all their connections for human consumption. This would prevent situations from arising where some users could receive untreated water while users at the excluded connections receive water that meets the requirements of the exclusion, i.e. it meets the equivalent level of protection provided by the applicable national primary drinking water regulations (NPDWRs). EPA believes that the support of the majority of the workgroup States that expressed an opinion on this point indicates that they intend to apply it in a way that would avoid unfairness to irrigation districts which seek in good faith to comply with the exclusions, but are prevented from applying them to all connections because a few users refuse to allow the use of the exclusions for their water supply.

EPA and the workgroup considered an alternative approach, which would allow qualifying irrigation districts to use the same method of counting or excluding connections as suppliers of water through constructed conveyances. Specifically, they could remove themselves from PWS status by reducing the number of counted connections to fewer than 15. This alternative approach would prevent any possibility of unfairness to irrigation districts that seek in good faith to comply with the exclusions but find that a few users refuse to allow the system to take the actions necessary to qualify for the exclusions for their water supply.

If after receiving comments on these two approaches, EPA decides to revise the guidance to take the alternative approach, then questions and answers 8 and 9 in the *Questions and Answers* section of the guidance would be modified or deleted to reflect this decision.

Dated: May 5, 1998.

Robert Perciasepe,
Assistant Administrator for Water.

Appendix—Draft Guidance on Implementation of Amended Public Water System Definition

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Disclaimer

Introduction

This document provides guidance to the primacy agencies¹ and the U.S. Environmental Protection Agency's (EPA's) regional offices in their implementation of the Safe Drinking Water Act's (SDWA) 1996 amendments to the definition of a public water system (section 1401(4)).

This document incorporates and replaces the preliminary guidance on this topic issued December 6, 1996, by Assistant Administrator for Water Robert Perciasepe entitled "Safe Drinking Water Act Amendment to Public Water System Definition." It is a collaborative effort between the Office of Water and the Office of Enforcement and Compliance Assurance (OECA). OECA has concurred with the contents of this document and will incorporate and implement it through their enforcement and compliance assurance directives and operating protocols.

Background

The term *public water system* (PWS) is central to delineating the scope of many SDWA requirements. Prior to the 1996 SDWA amendments, Section 1401 of the SDWA defined a *public water system* as "a system for the provision to the public of piped water for human consumption if such system has at least fifteen service connections or regularly serves at least twenty-five individuals." In *Imperial Irrigation District v. United States Environmental Protection Agency*, 4 F.3d 774 (9th Cir. 1993), the court ruled that the SDWA provisions governing PWSs did not apply to an irrigation district supplying residences, schools and businesses with untreated water through open canals. In response, Congress changed the definition of public water system to regulate under SDWA "water (provided) for human consumption through pipes or other

¹ Primacy agency refers to either the EPA or the State or the Tribe in cases where the State or Tribe exercises primary enforcement responsibility for the public water systems.

constructed conveyances." This change reflected Congress' understanding that the human consumption of such untreated canal water could constitute a significant risk to public health, and that appropriate measures were warranted to provide consumers of this water with a level of health protection equivalent to that from drinking water standards. At the same time, Congress provided several means by which certain water suppliers could be excluded from this definition, and provided that systems newly subject to SDWA regulation under this amended definition would not be regulated until August 6, 1998.

The amended section 1401(4) does several things. First, effective August 6, 1998, section 1401(4)(A) expands the definition of a PWS to include suppliers of water for human consumption that deliver their water through canals and other constructed conveyances. Second, section 1401(4)(B)(i) supplies methods by which connections to these newly defined PWSs will not be considered "connections" if the systems or users at these connections have taken specific actions to ensure protection of public health. If, after the systems or users have taken these specific actions to ensure protection of public health and the systems no longer serve at least 15 service connections or 25 individuals, the systems will not be considered to be PWSs. Third, section 1401(4)(B)(ii) also allows certain piped irrigation districts to no longer be considered public water systems if the districts or their users take specific actions to ensure public health.

As promised in the December 6, 1996 guidance, EPA convened an EPA-State work group to develop more detail on the interpretation and application of this new definition. State members of this work group included drinking water program representatives for Arizona, California, Georgia, Idaho, Texas and Washington. The work group consulted with thirteen individual irrigation water suppliers and irrigation trade associations within these States. The workgroup also consulted with six organizations involved with community-based minority health and welfare issues and interviewed three persons who use canal water for human consumption.

Application of Section 1401(4)

I. Systems Newly Defined as Public Water Systems

A. Statutory Language

As described above, effective August 6, 1998, Section 1401(4)(A) of the

SDWA² expands the definition of a PWS to read as follows:

The term *public water system* means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (i) any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

This revised definition broadens the means for delivering water that will qualify a water supplier³ as being a public water system from pipes to "pipes or other constructed conveyances." Thus, as of August 6, 1998, in accordance with this provision and EPA's regulations, water systems providing water for human consumption through constructed conveyances to at least fifteen service connections or an average of twenty-five individuals daily at least 60 days per year will be defined as public water systems subject to SDWA regulation. See 40 CFR 141.2. EPA has interpreted the term *human consumption* to include drinking, bathing, showering, cooking, dishwashing, and maintaining oral hygiene, and this interpretation has been upheld by the courts. See *United States v. Midway Heights County Water District*, 695 F. Supp. 1072, 1074 (E.D. Cal. 1988) ("*Midway Heights*").

In order to obtain or maintain primacy, States must adopt this new definition of public water system or a more stringent definition and submit this portion of their State primacy programs for approval to EPA in accordance with Section 1413 of the SDWA and 40 CFR Part 142.

B. Interpretation of "Constructed Conveyance"

As of August 6, 1998, systems that deliver water for human consumption through constructed conveyances other than pipes to the requisite number of connections and/or individuals will be defined as PWSs subject to SDWA regulation. The term *constructed conveyance* is not limited by the SDWA as to the size of the conveyance or the

² All references in this Guidance to section 1401 refer to section 1401 of the SDWA.

³ As used in this Guidance, and as indicated in section 1401(4)(C), the term *water supplier* broadly refers to any water provider that may be subject to regulation as a public water system under the SDWA. This term should not be confused with *supplier of water*, which is defined in the SDWA as "any person who owns or operates a public water system". See SDWA Section 1401(7).

character of the delivery system. The term refers broadly to any manmade conduit such as ditches, culverts, waterways, flumes, mine drains or canals. The term constructed conveyance does not include water that is delivered by bottle, other package unit, vending machine or cooler, nor does it include water that is trucked or delivered by a similar vehicle.⁴

Water bodies or waterways that occur naturally but which are altered by humans may, in some cases, be constructed conveyances. Whether a particular water body or waterway is a constructed conveyance for purposes of section 1401(4) depends on the totality of facts that characterize whether the water body or waterway is essentially a natural water body or waterway, or whether it is essentially a manmade conduit. Specifically, the primacy agency should first decide whether a water body is manmade, or "constructed," by determining whether or not it exists in its current configuration substantially from human modifications such as mining, dredging, channelization, bed or bank modification, maintenance, etc. Second, the primacy agency should determine whether the water body is a conduit, or "conveyance," by examining who owns or controls the water and the reason why water is present: Whether it is present perennially through natural precipitation and runoff or discharge of natural springs, or whether its flow is present primarily by human means and in order to convey the water to users as part of a network under the management of the water supplier. If both of the above-described factors are present, at least as to particular users whose status as "connections" is in question, the water body is a constructed conveyance. Primacy agencies should also use the totality of circumstances to determine whether natural waterway portions of a water delivery system composed in part of constructed conveyances are part of a public water system.

While irrigation-related entities and their canals are likely to be the most common systems newly defined as PWSs under the expanded definition in section 1401(4), mining and other industrial entities that convey water may also fit within the definition if their water is used for human consumption.

⁴One or more of these water delivery methods may under certain circumstances be considered public water systems under existing interpretations of other parts of the definition of a public water system.

C. Identification of Public Water Systems Under the Revised Definition

Primacy agencies should examine their areas of jurisdiction to determine if there are any water suppliers that meet the new public water system definition. Whether a water system is providing water through constructed conveyances to at least fifteen service connections or an average of twenty-five individuals daily at least 60 days per year should be determined by whether the water supplier knows or should know that the connections exist or that the individuals are using water from the water system for human consumption. In *Midway Heights*, the court held that the county water district either knew or should have known to a substantial certainty that individuals were using the district's water for human consumption based on the locations and arrangements of the pipes and plumbing, the fact that a pipe ran from the system into a number of homes, and a specific provision in an agreement between the water district and the users instructing the users to make the water potable before using it for human consumption. The court further found that a "waiver" agreement between the water district and the users that purported to limit the use of the district's water to irrigation was ineffective to remove the water system's liability under the SDWA. Likewise, EPA does not consider a waiver signed by water users stating that they must not use or are not using water for human consumption to preclude the water supplier from being considered a PWS when the system knows or should know that it is supplying water for human consumption to at least fifteen connections or an average of twenty-five regularly served individuals.

In order for water suppliers that may be newly defined as public water systems under the revised definition to determine whether they will, in fact, be defined as PWSs as of August 6, 1998, the suppliers should undertake before this date any necessary actions (e.g., a survey of any water users that might be using the water for human consumption) to ascertain their users' water use patterns. While water suppliers should take the initiative to assess and characterize their water use situations to the primacy agency as a core element of such surveys, such suppliers can also offer their users the opportunity to describe their water use situations to the supplier. Suppliers should determine from users that might be using their water for human consumption whether the water they supply is currently used for any of the human consumptive uses outlined

above, i.e., drinking, bathing, showering, cooking, dishwashing, or maintaining oral hygiene, and, if so, which such uses. Suppliers should also document whether additional or alternative sources of water are used for human consumption, e.g., whether a private well, bottled water, or hauled water is used, and for what purposes these additional sources of water are used. Suppliers should determine and document whether the users are connected to a central treatment plant or use a point-of-entry device. Some suppliers have already performed surveys to gather information regarding their users' water use patterns.

In addition to undertaking a survey or other action to document water use patterns, water suppliers will need to consider any other available information that indicates that their users are in fact using the water for human consumption. As stated above, where a water supplier knows or should know that the requisite number of connections and/or individuals are using its water for human consumption, the primacy State or EPA will consider the system to be a PWS. The results of any survey and other available information should provide a basis for ascertaining whether a water supplier has at least fifteen service connections or regularly serves at least twenty-five individuals and would therefore be considered a PWS. EPA or the primacy State will expect documented evidence of the suppliers' best efforts to ascertain these water uses. A supplier's failure to make such an effort to gather any necessary information and provide sufficient documentation will not excuse the supplier from liability under the SDWA.

Primacy agencies should determine what form of records they will need from water suppliers to implement this provision. In addition to surveys, primacy agencies may want to consider requiring suppliers to submit annual affidavits documenting such information as the number of connections and users to whom they serve water, the uses of that water, and whether alternative water is supplied. Primacy agencies should also determine how often they will need updated records and how suppliers should maintain these records (e.g., schedule, location, availability).

Pursuant to its regular oversight responsibilities, EPA can review State determinations of whether a system is a PWS. If EPA has serious concerns with the result of a State's determination, it will discuss these matters with the State regarding a potential reconsideration of the determination. In the event EPA cannot resolve the matter with the State,

SDWA Section 1414 continues to authorize EPA to bring an enforcement action against a system to support the position that the system is a PWS.

If a water supplier provides water for human consumption through constructed conveyances other than pipes to at least twenty-five individuals or fifteen connections at any time on or after August 6, 1998, the supplier will be considered a PWS. Such a supplier may avoid regulation as a PWS only if it qualifies for the exclusions provided in section 1401(4)(B)(i) and thereby reduces its "connections" to fewer than fifteen connections regularly serving fewer than twenty-five individuals. Information gathered in suppliers' surveys will aid the suppliers in deciding whether they may qualify for or should apply to the primacy agency for these exclusions, and in documenting their case for any such exclusions. The exclusions are described in detail in Section II below.

II. The Exclusions in Section 1401(4)(B)(i)

A. Statutory Language

Section 1401(4)(B)(i) provides limited exclusions to the "connection" component of the PWS definition to systems that deliver water through constructed conveyances other than pipes. These exclusions are not available to piped water systems, with the exception of certain piped irrigation districts described in section 1401(4)(B)(ii) and discussed in section III, below.

Specifically, Section 1401(4)(B)(i) provides that a connection to a system that delivers water through constructed conveyances other than pipes is excluded from consideration as a "connection" for purposes of section 1401(4)(A) under three circumstances:

- (1) Where the water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);
- (2) Where EPA or the State (where the State has primary enforcement responsibility for PWSs) determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulations is provided for drinking and cooking;
- (3) Where EPA or the State (where the State has primary enforcement responsibility for PWSs) determines that the water provided for drinking, cooking, and bathing is treated (centrally or by point of entry) by the provider, a pass-through entity, or the

user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

If the application of one or more of these exclusions reduces the "connections" of a system providing water for human consumption (through constructed conveyances other than pipes) to fewer than fifteen service connections that serve fewer than twenty-five individuals, the supplier's water system is not a PWS regulated under the SDWA.⁵

However, if the supplier's remaining connections number fifteen or more, or if its remaining connections (even if they number fewer than fifteen) regularly serve at least twenty-five individuals, then the system is a PWS, although the excluded connections are not considered part of the PWS for as long as the exclusions apply and the system complies with any conditions governing their applicability.

B. Application of Section 1401(4)(B)(i)

1. The "Other Than Residential Uses" Exclusion

Whether the first of the three exclusions in section 1401(4)(B)(i) applies depends on the facts surrounding a user's use of the water. If water provided by a water supplier to a particular connection is used exclusively for purposes other than residential uses, consisting of drinking, bathing, and cooking, or similar uses, the exclusion in section 1401(4)(B)(i)(I) applies automatically to that connection without a formal determination by the primacy agency as to its applicability. However, the primacy agency may still request that the supplier verify the nonresidential use of the water through a survey or other mechanism that evidences whether the supplier may be subject to regulation as a PWS. An example of where this exclusion would apply is when a user obtains all water for drinking, bathing, cooking, and similar uses from a private well, while the supplier provides the user with water for toilet flushing and/or outside irrigation.

2. The Alternative Water and Treatment Exclusions

The next two exclusions are not "automatic;" they apply only after the primacy agency has made the factual determination that the supplier complies with the exclusion criteria. If the primacy agency provides the supplier with a written determination

⁵The three exclusions above do not otherwise affect the manner in which primacy agencies have defined a connection for the purposes of the SDWA.

that the exclusions in sections 1401(4)(B)(i)(II) and (III) apply, then an eligible water supplier can reasonably rely on those exclusions, as long as they continue to be maintained in practice, to avoid classification as a PWS subject to the SDWA or to continue to provide users of "excluded connections" with water for human consumption that does not comply with the SDWA requirements applicable to PWSs. Suppliers seeking to exclude connections under section 1401(4)(B)(i)(II) and/or (III) are responsible for ensuring that the primacy agency has sufficient information and documentation to demonstrate compliance with the exclusion criteria prior to the primacy agency's making a determination.

The Alternative Water Exclusion. A water supplier seeking to exclude a particular connection pursuant to section 1401(4)(B)(i)(II) must demonstrate to the primacy agency that it is providing users at that connection with water for drinking and cooking from another source such as bottled water or hauled water. To qualify for this exclusion the supplier must provide the water to the users, at a reasonable location, not merely make it available. Whether the alternative water provided by the supplier is being provided at a reasonable location, such as on the user's doorstep or at the property line, will be determined by the primacy agency on a case-by-case basis. The supplier must demonstrate that it is actually providing to the users a minimum amount of water adequate to meet the users' drinking and cooking needs. The supplier need not provide alternative water to meet the users' bathing needs. The exclusion does not apply to a connection where the users, not the supplier, provide alternative water for drinking and cooking. In such cases, the supplier cannot ensure that the alternative water is reliably providing a level of public health protection equivalent to that provided by the applicable national primary drinking water regulations (NPDWRs).⁶

The primacy agency must also make the factual determination that the alternative water provided for drinking and cooking actually achieves the equivalent level of public health protection provided by applicable NPDWRs. The primacy agency will make this determination based on its own criteria regarding which alternative water sources, and which associated

⁶Applicable national primary drinking water regulations means the NPDWRs that would apply to the water supplier if all its connections excluded pursuant to the alternative water and treatment exclusions were counted as connections.

documentation, operational, monitoring, reporting or other requirements, achieve the equivalent level of public health protection provided by applicable NPDWRs. The primacy agency should not necessarily assume that all varieties of bottled or hauled water will achieve the requisite level of public health protection absent information about the source and quality of the water. Where existing State regulations governing bottled and/or hauled water provide the equivalent level of public health protection provided by applicable NPDWRs, an alternative water purveyor's compliance with such regulations would provide adequate assurance that the alternative water actually achieves the requisite level of public health protection.

The water supplier may charge the users for the reasonable cost of the water supplied. The water supplier may also contract with a third party to deliver the water at a reasonable cost to the user, but in such case the supplier remains responsible for ensuring that the alternative water is provided to the users.

The Treatment Exclusion. A water supplier seeking to exclude a particular connection pursuant to section 1401(4)(B)(i)(III) must demonstrate to the primacy agency that the water that it supplies for drinking, cooking and bathing at that connection is centrally treated⁷ or treated at the point of entry by the provider, a pass-through entity, or the user. A pass-through entity is an entity other than a water supplier referred to in section 1401(4)(B) or its users that has been contractually engaged by the water supplier or the user to provide the treatment described in section 1401(4)(B)(i)(III). The supplier must submit information and documentation to the primacy agency demonstrating that central treatment or a point-of-entry treatment device is actually in use and treating all water used for drinking, cooking and bathing at that connection.

The primacy agency must also make the factual determination that the treated water actually achieves the equivalent level of public health protection provided by the applicable NPDWRs.⁸ The primacy agency will make this determination based on its own criteria, which can include appropriate, independent third party (such as the National Sanitation Foundation) certification or

performance verification, regarding which types of treatment devices may be used, and which associated operational, monitoring, reporting or other requirements are necessary, to ensure that the provided water actually achieves the equivalent level of public health protection provided by applicable NPDWRs. This third party verification generally describes a range of contamination levels in the raw (untreated) water that the treatment device can effectively address. Where local variability of source water conditions indicates a need—as where the raw water is highly contaminated—primacy agencies could choose to require more site-specific pilot testing. National third party performance verification will still be helpful in such cases as a guide to the water quality parameters (levels of contamination) that will (or will not) present problems for technology performance with the type of contaminant and treatment process involved. EPA's listing of point-of-entry compliance technologies may also be helpful, as the listings may include a statement of certain limitations on the use of a specific technology for compliance that can focus primacy agencies' attention on key performance parameters.

The words "equivalent level of public health protection" are meant to distinguish the situation of providers covered by this section from the situation of public water systems which must comply with all relevant aspects of the applicable regulations, including sampling and testing requirements and sometimes details of treatment. For example, a point-of-entry treatment device for filtration and disinfection might not comply with all requirements of relevant drinking water rules for monitoring, extent of surveillance of the disinfection process, and so forth. But, it would meet the "equivalent level of public health protection" requirement of this section if the quality of the water it produces is similar to that from central filtration and disinfection. Thus, this requirement is a performance standard providing that the quality of the water that affected residential users get should be similar to that from central treatment.

As stated in section 1401(4)(B)(i)(III), treatment may be provided by the water supplier seeking to qualify for the exclusion, by a pass-through entity, or by the user. However, because the exclusion cannot be granted unless the treatment actually provides an equivalent level of public health protection, as a practical matter the supplier will need to be responsible for ensuring that this is the case to enable

the primacy agency to make the necessary determination.

III. The Exclusion in Section 1401(4)(B)(ii) for Certain Piped Irrigation Districts

All piped water systems providing water for human consumption to at least fifteen service connections or twenty-five regularly served individuals were defined as PWSs subject to SDWA regulation prior to the 1996 amendments. The amendments, however, provide a new exclusion for a specified group of these PWSs. Section 1401(4)(B)(ii) provides:

An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subclause (II) or (III) of clause (i).

The exclusion provisions for qualifying piped irrigation districts were effective immediately upon passage of the 1996 amendments, in contrast with the expanded definition of public water system in section 1401(4) as applied to constructed conveyance systems, which becomes effective on August 6, 1998.

An irrigation district referred to in section 1401(4)(B)(ii) that would otherwise be defined as a PWS may avoid regulation as a PWS only if the primacy agency determines that all connections to the district that use the district's water for human consumption comply with subclause (II) or (III) of section 1401(4)(B)(i). In contrast to systems providing water through constructed conveyances, these districts cannot avoid regulation as a PWS by simply "reducing connections" to fewer than fifteen connections serving fewer than twenty-five individuals by application of the exclusions in subclauses (II) and (III).

Only those irrigation districts that existed prior to May 18, 1994, and which provide primarily agricultural service through piped water systems with only incidental residential or similar use, are eligible to apply for these exclusions. The agricultural exclusion is available for commercial agriculture only. *Incidental residential or similar use* refers to human consumptive uses that are closely and functionally related to the primary agricultural service provided by the irrigation district. For example, the use of water for human consumption by the residents of a farmhouse working on agricultural property, from a connection used primarily for irrigation of that property, is incidental to the primarily

agricultural use of the water. Similarly, human consumptive use by farmworkers residing on agricultural property is incidental to the primary agricultural service provided to that property by the district. In contrast, the use of water for human consumption from a connection to an irrigation district's pipe by a cluster of homes in a subdivision is not "incidental" to the district's primary agricultural service. If the character of the irrigation district's service changes so that the district no longer provides primarily commercial agricultural service with only incidental residential or similar use, the district would no longer qualify for this exclusion.

Questions and Answers

Q1: How can primacy agencies identify water suppliers that may be newly defined as public water systems under the revised definition of public water system in section 1401(4)?

A1: Primacy agencies will likely benefit by tapping into the knowledge base of their inspectors, following up on citizen water quality complaints in irrigation and mining areas and developing inventories of irrigation and other constructed conveyance water suppliers. State agriculture departments, mining regulatory agencies and water resource departments can help develop these inventories. EPA recommends that the primacy agency send a letter to possible new PWSs informing them of the requirements of the 1996 amendments, the systems' potential SDWA responsibilities, and the systems' responsibility to determine whether and how many of their users are using their water for human consumption. EPA further recommends that primacy agencies suggest that the suppliers undertake any necessary actions (e.g., a survey of any water users that might be using the water for human consumption) to ascertain their users' water use patterns. Primacy agencies may wish to request that water suppliers providing water through constructed conveyances other than pipes provide them with annual, affirmative documentation such as affidavits or other certifications identifying the connections and users to whom they serve water, and identifying the connections and users using their water for human consumption and residential uses. This would be a means for primacy agencies to verify suppliers' documentation of the number of connections using their water for human consumption.

Q2: Because most water suppliers cannot inspect the interiors of their users' premises, on what evidence

should the suppliers base their conclusions about their users' water use?

A2: A survey of users by the supplier that includes affirmative documentation as to the types of uses made of the water would be sufficient in most cases. The supplier should look to evidence that may be available such as the likely availability of potable ground water in the area, empty water bottles awaiting pick-up, observations by company personnel and patterns of water use at that connection that indicate whether human consumption of the water provided by the supplier is probable.

Q3: Some water suppliers have warned their users that their water is nonpotable or is not for human consumption without treatment. Some have offered the water for sale only on the condition that it will not be used for human consumption. Other suppliers have required their users to sign statements that the water will not be used for human consumption or that the supplier is not liable (and the user assumes the risks) if the water is used domestically. If, nevertheless, a user uses water for human consumption in the face of these or similar conditions, must the water supplier count the user as a connection for the purposes of section 1401(4)?

A3: Yes. The controlling element here is whether the water supplier is delivering water that the supplier knows or should know is being used for human consumption.

Q4: There are several kinds of nonpaying water users. Some water suppliers are plagued by "midnight" or transient water thieves who take water for a very short period of time. Their identities are usually unknown. Other nonpaying users are found to have taken water surreptitiously for a longer period but still without the permission of the supplier. A third group consists of nonpaying users who have taken water openly for a considerable length of time with the knowledge but without the consent of the supplier. Some users have continued taking water directly from canals or ditches with buckets and other containers after their pump/siphon intakes were eliminated by the supplier. Which of these users are counted as "connections" within the meaning of section 1401(4)?

A4: The primacy agency should look at the totality of the relationship between the water supplier and the nonpaying user to determine if the relationship is of sufficient strength to constitute a "connection" or "individual served" by the system. The supplier's knowledge of water withdrawals and the permanency of the

withdrawals is more important in this relationship than the payment of fees. The supplier is expected to monitor its operation as a regular part of its business and to be aware of water withdrawals. If the water supplier knows or reasonably should know of the taking of the water, there is probably a connection within the meaning of section 1401(4).

Q5: Where a water supplier provides water for human consumption through pipes or other constructed conveyances, does the geographic isolation of that water supplier's users affect whether such users are counted as connections or individuals served by the supplier?

A5: No. All water users to whom the water supplier provides water for human consumption are counted as connections or individuals served by the supplier regardless of their geographic isolation from other users, unless such connections are otherwise excluded pursuant to section 1401(4)(B).

Q6: Are the exclusions in section 1401(4)(B)(i) available to a water supplier that operates a system that consists primarily of non-piped constructed conveyances, but which includes some limited "piping" such as siphons to pass under roads or washes, short tunnels through hills, etc.?

A6: Yes, assuming the exclusion criteria apply. Only those suppliers that convey water by means other than pipes, and which are newly defined as public water systems under the expanded definition in section 1401(4)(A), may use the exclusions available under section 1401(4)(B)(i) to avoid regulation as a public water system. Suppliers whose piping consists only of the limited piping described above are not considered to convey water by pipes. A primacy agency should not make a determination that a supplier is a piped water system, either as to specific connections or entirely, if it would not have been able to do so under SDWA prior to the changes enacted to section 1401(4). It should be noted that section 1401(4)(B)(ii) provides a separate exclusion to a specified group of piped irrigation districts, as discussed in Section III above.

Q7: If a water supplier delivers water for human consumption through a constructed conveyance other than a pipe and reduces its number of countable connections through the operation of 1401(4)(B)(i) to 15 connections using water for human consumption does it have to supply SDWA-complying water only to these 15 connections or to all of its connections?

⁷ However, a system that centrally treats water for 15 or more connections or 25 or more individuals is itself a public water system and subject to the NPDWRs.

⁸ See footnote 5.

A7: The water supplier is under an obligation to supply SDWA-complying water only to the 15 connections.

Q8: Is an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use considered to be a public water system if just one connection fails to comply with subclause (II) or (III) of clause (i)?

A8: Yes. All connections to this kind of public water system must comply with subclause (II) or (III) of clause (i) before the supplier will not be considered a public water system.

Q9: In the example immediately above, is the irrigation district under an obligation to comply fully with SDWA with regard to just the one connection described or to all of its connections?

A9: The water supplier must comply fully with SDWA with regard to all of the connections to the public water system using water for human consumption.

Q10: What financial options are available to water suppliers that will be newly defined as PWSs as of August 6, 1998 under the expanded definition of PWS in section 1401(4) and to suppliers

that wish to make use of the exclusions in section 1401(4)(B)?

A10: There are various financial options available to those water suppliers. First, public water systems are eligible for Drinking Water State Revolving Fund loans—with subsidies available to disadvantaged communities. Even those water suppliers that wish to exclude connections through use of point-of-entry treatment or central treatment pursuant to section 1401(4)(B)(i)(III) are eligible for these loans to provide such treatment. In addition, some communities known as "colonias" may be eligible for assistance through federal grants to border States intended to provide assistance to such communities to facilitate compliance with SDWA requirements, although such grant funding has not previously been appropriated for this purpose. Finally, water suppliers providing alternative treatment have all the financial options regarding amortization and charging costs to users they would have for any other capital investment.

Disclaimer

This document provides guidance to EPA Regions and States exercising primary enforcement responsibility under the SDWA concerning how EPA interprets the amended definition of *public water system* under the SDWA. It also provides guidance to the public and the regulated community on how EPA intends to exercise its discretion in implementing the statute and regulations defining *public water system*. The guidance is designed to implement national policy on these issues. The document does not, however, substitute for the SDWA or EPA's regulations, nor is it a regulation itself. Thus, it cannot impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and State decisionmakers retain the discretion to adopt approaches that differ from this guidance on a case-by-case basis where appropriate. EPA may change this guidance in the future.

(Authority: 42 U.S.C. 300f(4))

[FR Doc. 98-12307 Filed 5-7-98; 8:45 am]

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H.R. 3579/P.L. 105-174

1998 Supplemental Appropriations and Rescissions Act (May 1, 1998; 112 Stat. 58)

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98-025-1]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth quarantine and regulations by adding areas in Ohio and Wisconsin. These changes affect 3 areas in Ohio and 14 areas in Wisconsin. This action is necessary to prevent the artificial spread of gypsy moth to noninfested States.

DATES: Interim rule effective May 11, 1998. Consideration will be given only to comments received on or before July 10, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-025-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-025-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Coanne E. O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247; or e-mail: cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45-12 and referred to below as the regulations) quarantine certain States because of the gypsy moth and restrict the interstate movement of certain articles from generally infested areas in the quarantined States to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45-2 of the regulations, generally infested areas are, with certain exceptions, those areas in which a gypsy moth general infestation has been found by an inspector, or each portion of a State which the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

Designation of Areas as Generally Infested Areas

We are amending § 301.45-3(a) of the regulations, which lists generally infested areas, by adding Lorain, Medina, and Wayne Counties in Ohio; and Calumet, Kenosha, Marinette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Washington, Waukesha, and Winnebago Counties in Wisconsin.

We are taking this action because, in cooperation with the States, the United States Department of Agriculture conducted surveys that detected all life stages of the gypsy moth in these areas. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized to be generally

infested and therefore subject to continued reinfestation.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary because of the possibility that the gypsy moth could be spread artificially to noninfested areas of the United States, where it could cause economic loss due to defoliation of susceptible forest and shade trees.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the list of generally infested areas under the gypsy moth quarantine and regulations by adding areas in Ohio and Wisconsin. Immediate action is necessary in order to prevent the artificial spread of gypsy moth to noninfested areas of the United States.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.45–3, paragraph (a) is amended by adding entries for Ohio and Wisconsin, in alphabetical order, to read as follows:

§ 301.45–3 Generally infested areas.

(a)

Ohio

.
Lorain County. The entire county.

Medina County. The entire county.

Wayne County. The entire county.

Wisconsin

.
Columbia County. The entire county.

Kenosha County. The entire county.

Marquette County. The entire county.
Menominee County. The entire county.
Milwaukee County. The entire county.
Oconto County. The entire county.
Outagamie County. The entire county.

Ozaukee County. The entire county.
Racine County. The entire county.
Showano County. The entire county.
Sheboygan County. The entire county.
Washington County. The entire county.
Waukesha County. The entire county.
Winnebago County. The entire county.
 Done in Washington, DC, this 5th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–12396 Filed 5–8–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–11]

Mediterranean Fruit Fly; Addition to the Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by expanding the current quarantined area in Dade County, FL. The regulations restrict the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the continental United States.

DATES: Interim rule effective May 5, 1998. Consideration will be given only to comments received on or before July 10, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–11, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–11. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–

8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

In an interim rule effective on June 16, 1997, and published in the *Federal Register* on June 20, 1997 (62 FR 33537–33539, Docket No. 97–056–2), we added a portion of Hillsborough County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from that quarantined area. In a second interim rule effective on July 3, 1997, and published in the *Federal Register* on July 10, 1997 (62 FR 36976–36978, Docket No. 97–056–3), we expanded the quarantined area in Hillsborough County, FL, and added areas in Manatee and Polk Counties, FL, to the list of quarantined areas. In a third interim rule effective on August 7, 1997, and published in the *Federal Register* on August 13, 1997 (62 FR 43269–43272, Docket No. 97–056–4), we further expanded the quarantined area by adding new areas in Hillsborough County, FL, and an area in Orange County, FL, to the list of quarantined areas. In that third interim rule, we also revised the entry for Manatee County, FL, to make the boundary lines of the quarantined area more accurate. In a fourth interim rule effective on September 4, 1997, and published in the *Federal Register* on September 10, 1997 (62 FR 47553–47558, Docket No. 97–056–5), we quarantined a new area in Polk County, FL, and an area in Sarasota County, FL. In a fifth interim rule effective on October 15, 1997, and published in the *Federal Register* on October 21, 1997 (62 FR 54571–54572, Docket No. 97–056–7), we removed all or portions of the quarantined areas in Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL, from the list of quarantined areas. In a sixth interim rule effective on November 14, 1997, and published in the *Federal Register*

on November 20, 1997 (62 FR 61897–61898, Docket No. 97–056–8), we removed all of the quarantined areas in Polk County, FL, from the list of quarantined areas. In a seventh interim rule effective April 17, 1998, and published in the *Federal Register* on April 22, 1998 (63 FR 19797–19798, Docket No. 97–056–9), we removed the quarantined area in Hillsborough County, FL, from the list of quarantined areas. In an eighth interim rule also effective on April 17, 1998, and published in the *Federal Register* on April 23, 1998 (63 FR 20053–20054, Docket No. 98–046–1), we added a portion of Dade County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from the quarantined area.

Recent surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have detected Medfly larvae in fruit in the currently quarantined area in Dade County, FL. This indicates a reproducing Medfly population in the area. For this reason, we are expanding the quarantined area in Dade County, FL, to prevent the spread of Medfly to noninfested areas.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half-miles from the detection sites. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly finding described above, we are amending 301.78–3 by expanding the current quarantined area in Dade County, FL. The resulting quarantined area is described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the *Federal Register*. After the comment period closes, we will publish another document in the *Federal Register*. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by expanding the current quarantined area in Dade County, FL. This action is necessary on an emergency basis to prevent the spread of the Medfly into noninfested areas of the United States.

This interim rule affects the interstate movement of regulated articles from the newly quarantined area of Dade County, FL. We estimate that there are 63 entities in this area of Dade County, FL, that sell, process, handle, or move regulated articles; this estimate includes 14 mobile vendors, 34 stores/markets, and 15 nurseries. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 63 entities are small in size, since the overwhelming majority of businesses in Florida, as well as the rest of the United

States, are small entities by SBA standards.

We believe that few, if any, of the 63 entities will be significantly affected by the quarantine action taken in this interim rule because few of these types of entities move regulated articles outside the State of Florida during the normal course of their business. Nor do consumers of products purchased from these types of entities generally move those products interstate. The effect on the small entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow those small entities to move regulated articles interstate with very little additional costs. Also, many of these types of small entities sell other items in addition to regulated articles, so the effect, if any, of the interim rule should be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were

prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subject in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78-3, paragraph (c), the entry for Florida is revised to read as follows:

§ 301.78-3 Quarantined areas.

(c) . . .

FLORIDA

Dade County. That portion of Dade County beginning at the intersection of Northwest 87th Avenue and Northwest 103rd Street (State Highway 932); then east along Northwest 103rd Street (State Highway 932) (also known as 49th Street) to the section line dividing sections 4 and 5, T. 53 S., R. 41 E.; then south along the section line dividing sections 4 and 5, T. 53 S., R. 41 E., to Northwest 36th Street (State Highway 948); then west along Northwest 36th Street to Northwest 87th Avenue; then north along

Northwest 87th Avenue to the point of beginning.

Done in Washington, DC, this 5th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-12395 Filed 5-8-98; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064-AB73

Simplification of Deposit Insurance Rules

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is revising its deposit insurance regulations by adopting three substantive amendments and numerous technical amendments. The purpose of these amendments is to increase the public's understanding of the regulations through simplification. The substantive amendments in the final rule will: Relax the FDIC's recordkeeping requirements for certain agency or fiduciary accounts; create a six-month "grace period" following the death of a depositor for the restructuring of accounts; and clarify the insurance coverage of revocable trust accounts when an account is held by the depositor pursuant to a formal "living trust" agreement.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, (202) 898-8839, or Joseph A. DiNuzzo, Senior Counsel, (202) 898-7349, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Simplifying the deposit insurance regulations is one of the FDIC's corporate operating projects under its Strategic Plan. The purpose is to promote public understanding of deposit insurance and, particularly, to clarify and illustrate rules that have been misunderstood. The public's misunderstanding of certain of the rules has been reflected in the large volume of letters and phone calls received by the FDIC concerning deposit insurance. Also, this simplification effort is in furtherance of section 303(a) of the Riegle Community Development and

Regulatory Improvement Act of 1994, 12 U.S.C. 4803(a), requiring the federal banking agencies to reduce regulatory burden and improve efficiency.

The FDIC's insurance regulations are codified at 12 CFR part 330. In recent years, the FDIC has revised these regulations twice (not including a third revision that dealt only with certain disclosure requirements). In 1980, following the termination of the Federal Savings and Loan Insurance Corporation (FSLIC), the FDIC issued uniform regulations applicable to deposits in all insured depository institutions including those previously insured by the FSLIC. The issuance of uniform regulations was mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101-73 (1989)). In 1993, the FDIC revised the rules applicable to the deposits of employee benefit plans and retirement plans. This revision was mandated by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102-242 (1991)). Notwithstanding these relatively recent revisions, the Board of Directors (Board) believes that the final rule is necessary for the purpose of simplification.

All revisions to the insurance regulations must be consistent with section 11(a) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821(a). Section 11(a) provides that deposits maintained by a depositor in the same capacity and the same right at the same insured depository institution must be aggregated and insured up to \$100,000. The FDI Act does not define "depositor", "capacity" or "right". Through the insurance regulations, the FDIC has implemented these terms by recognizing different categories of accounts based on ownership. Each type of account is entitled to separate insurance up to the \$100,000 limit if it satisfies certain requirements. For example, single ownership accounts owned by a particular depositor are not added to qualifying joint accounts partly owned by the same depositor.

The final rule is the product of a process that began in May of 1996. At that time, the FDIC published an Advance Notice of Proposed Rulemaking (ANPR). See 61 FR 25596 (May 22, 1996). The ANPR was followed, in May of 1997, by the publication of a proposed rule. See 62 FR 26435 (May 14, 1997). The evolution of the final rule is discussed in greater detail below.

The final rule does not complete the FDIC's simplification efforts. As discussed below, the FDIC is still studying other possible revisions to its

insurance regulations pertaining to joint accounts and "payable-on-death" accounts.

II. The Proposed Rule

Through the ANPR (61 FR 25596), the FDIC broadly solicited comments on how the insurance regulations could be simplified. Also, the FDIC sought comments on a number of specific revisions. The comment period ended on August 20, 1996. Almost all of the comments (sixty-eight in number) supported the FDIC's simplification efforts.

The FDIC did not include some of the revisions mentioned in the ANPR in the proposed rule (62 FR 26435). In particular, the proposed rule did not include revisions that would: (1) Eliminate the first step in the two-step process for determining the insurance coverage of joint accounts under current § 330.7 (new § 330.9); and (2) expand the list of qualifying beneficiaries for revocable trust accounts under current § 330.8 (new § 330.10). In publishing the proposed rule, the FDIC explained that these revisions required additional study. Before deciding on these revisions, the Board wished to learn more about the extent to which the revisions would affect the scope of deposit insurance coverage.

The proposed rule suggested three substantive revisions to the insurance regulations: (1) Relaxing the recordkeeping rules for fiduciary accounts; (2) providing a "grace period" following the death of a depositor; and (3) clarifying the operation of the revocable trust account rules in cases in which an account is held by a depositor in connection with a "living trust." Each of these revisions is discussed in detail below.

A. Recordkeeping Rules for Fiduciary Accounts

The FDIC's recordkeeping rules are largely premised on the concept of "pass-through" insurance. If an agent on behalf of a principal deposits funds at an insured depository institution, the FDIC does not treat the agent as the owner of the deposit for purposes of the \$100,000 insurance limit. Rather, the FDIC insures the funds to the principal or actual owner. In other words, the insurance coverage "passes through" the agent to the owner. See 12 CFR 330.6 (new 330.7).

The fact that agency accounts are insured on a "pass-through" basis does not mean that agency accounts represent a separate category of ownership or that agency accounts are entitled to insurance up to \$100,000 separate from all other accounts. On the contrary,

agency accounts are subject to aggregation with any other accounts maintained by or for the principal in the same right and capacity at the same insured depository institution. For example, funds in an account held by an agent for a principal, in the principal's single ownership capacity, will be aggregated with any single ownership accounts held directly by the principal.

"Pass-through" insurance as described above is subject to an important qualification. Under section 12(c) of the FDI Act (12 U.S.C. 1822(c)), the FDIC is not required to recognize as the owner of a deposit any person whose interest is not disclosed on the records of the failed depository institution. In other words, in the absence of adequate disclosure, an account held by an agent is not entitled to "pass-through" insurance coverage. The FDIC has implemented section 12(c) by establishing certain recordkeeping rules for accounts held by agents or fiduciaries.

Under the FDIC's recordkeeping rules, the deposit account records of the failed depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based. See 12 CFR 330.4(b)(1) (new 330.5(b)(1)). Assuming such disclosure, the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor. See 12 CFR 330.4(b)(2) (new 330.5(b)(2)).

The rules quoted above are based upon a basic principle: In paying insurance, the FDIC is entitled to rely on the account records of the failed depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records are considered binding on the depositor, and no other records shall be considered, as to the manner in which the funds are owned. See 12 CFR 330.4(a)(1). In other words, under the current regulations, the account records must be unclear or ambiguous before the FDIC will consider evidence outside of the account records in determining the ownership of an account.

The FDIC's strict reliance on the account records serves multiple purposes. First, it enables the FDIC to estimate the amount of insured deposits when considering resolution options for a failing insured depository institution. Speed and accuracy in accounting for the assets and liabilities of the failing institution are critical when the institution is resolved through a purchase and assumption agreement (i.e., a transfer of some assets and liabilities, including the deposit liabilities, to a healthy depository institution). Second, strict reliance on the account records enables the FDIC to pay insurance very quickly following the failure of an institution. If the FDIC could not rely on the records, depositors would not receive their insurance until the FDIC had completed a lengthy investigation as to the actual legal ownership of the accounts. Third, strict reliance on the records discourages the making of fraudulent claims for insurance. If depositors were not bound by the account records, some depositors over the \$100,000 limit might be tempted to fabricate outside evidence (such as agency or trust agreements) as to the actual ownership of their accounts.

For the reasons stated above, the insurance regulations purposefully restrict the FDIC's ability to consider outside evidence (i.e., evidence outside of the deposit account records) in determining the ownership of an account for insurance purposes. Again, under the current or unrevised regulations, outside evidence will not be considered unless the FDIC determines—in its own discretion—that the account records are unclear or ambiguous.

At times, the restrictions on the FDIC's ability to consider outside evidence has produced results that could be viewed as severe. At one failed bank, for example, a deposit account was held by a title company as agent for customers who were buying or selling houses. Because the bank's deposit account records did not indicate the agency nature of the account, the funds were deemed to be owned by the title company and insured to a limit of \$100,000. The funds were not insured up to \$100,000 on a "pass-through" basis for the interest of each customer (in aggregation with any other account(s) that each customer might have held at the same bank). This result was severe because the name of the agent by itself was suggestive of a possible agency or fiduciary relationship.

The proposed rule addressed the problem by adding a provision to the

regulations that would relax the FDIC's recordkeeping requirements in certain situations. Specifically, the proposed rule provided that the FDIC would be free to consider outside evidence of ownership if the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. Examples of accounts covered by the proposed rule would be accounts in the name of escrow agents or title companies.

In requesting comments on this part of the proposed rule, the FDIC also requested comments on the recordkeeping requirements applicable to accounts held by multiple levels of fiduciaries. See 12 CFR 330.4(b)(3) (new 330.5(b)(3)). These requirements specify two methods for disclosing such multi-tiered relationships. Under the second method, according to the current regulations, the deposit account records must state that the depositor is acting in a fiduciary capacity on behalf of certain persons or entities who may, in turn, be acting in a fiduciary capacity for others. See 12 CFR 330.4(b)(3)(ii)(A). In complying with this requirement, fiduciaries have opened accounts with awkward and unwieldy account titles. To alleviate this problem, the FDIC proposed to require—under the second method—that the account records merely indicate that there are multiple levels of fiduciary relationships.

B. "Grace Period" Following the Death of a Depositor

The second substantive revision included in the proposed rule was the creation of a "grace period" following the death of a depositor. Under the deposit contract or applicable state law, the death of a depositor may result in an immediate and automatic change in ownership of the deposit account. This is significant for insurance purposes because deposit insurance is based primarily on legal ownership. Though ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage, the regulations provide that ownership under state law of deposited funds is a necessary condition for deposit insurance. See 12 CFR 330.3(h) (new 330.3(h)).

Under the current regulations, the FDIC presumes—for certain types of accounts—that the ownership of the account changes immediately upon the death of a depositor. This presumption is applied to accounts characterized by survivorship rights, i.e., joint accounts and revocable trust or "payable-on-death" (POD) accounts. For the sake of uniformity, the FDIC applies this presumption irrespective of the laws of

the state in which the depository institution is located. In some cases, following the death of a depositor, the presumption will cause a dramatic decrease in deposit insurance coverage.

For example, a husband and wife could hold a joint account, a joint revocable trust (or POD) account for the benefit of their child, and two individual accounts in their respective names. Assuming the satisfaction of all applicable requirements, these four accounts could be insured up to a total of \$500,000. Upon the death of either the husband or wife, however, the surviving spouse would become the sole owner of the joint account and the joint revocable trust account. Under the FDIC's established interpretation of the current regulations, the joint account would be transformed into a single ownership account subject to aggregation with the surviving spouse's individual account. (The single ownership account in the name of the deceased spouse would continue to be insured separately from the other accounts.) Moreover, the maximum coverage of the joint revocable trust account would be reduced from \$200,000 to \$100,000 (i.e., \$100,000 for each combination of settlors and qualifying beneficiaries). In total, the maximum coverage of the four accounts would be reduced—immediately upon the death of the husband or wife—from \$500,000 to \$300,000.

If the depository institution failed before the surviving spouse restructured the accounts or transferred funds to another institution, in the example above, the loss to the surviving spouse could be very substantial. (For the single ownership account in the name of the deceased spouse, the insurance money would be paid to the trustee of the decedent's estate.)

The interpretation described above has been criticized as "penalizing" the survivors of deceased depositors. Some people have complained that the immediate restructuring of an account upon the death of a depositor may not be practicable. For example, in order to restructure an account, the survivor of an account holder may be required to present proof of the account holder's death to the depository institution. Also, during a time of grief, the survivors may not view the restructuring of bank accounts as a matter of high priority.

Another criticism of the FDIC's interpretation of the current regulations is that some state laws might not provide for the immediate change in ownership presumed by the FDIC.

In response to the criticisms and concerns described above, the proposed rule created a "grace period" of six months following the death of a

depositor. During this "grace period," the insurance coverage of the decedent's accounts would not change unless the accounts were restructured by those authorized to take such action. Because the six-month "grace period" was not intended to reduce coverage, the proposed rule also provided that the "grace period" would not be applied if its application would result in a decrease in deposit insurance coverage.

The six-month "grace period" prescribed by the proposed rule was consistent with a policy applied by the former FSLIC. The rationale of that policy was to "lessen hardship."

In publishing the proposed rule, the FDIC specifically requested comments as to whether six months was the appropriate length of time for the "grace period."

C. The Insurance Coverage of "Living Trust" Accounts

The third substantive revision included in the proposed rule was the insertion into the regulations of language clarifying the insurance coverage of accounts held pursuant to "living trust" agreements. A "living trust" is a formal revocable trust in which the owner retains control of the trust assets during his or her lifetime. Upon the owner's death, the trust generally becomes irrevocable.

As a type of revocable trust account, a "living trust" account is subject to the rules prescribed by § 330.8 (new § 330.10). Subject to the requirements discussed below, that section of the regulations provides that funds deposited in a revocable trust account (also referred to as a "payable-on-death" or "POD" account or "Totten trust" account) shall be insured up to \$100,000 for the prospective interest of each of the owner's designated beneficiaries. Such insurance is separate from the insurance coverage afforded to any single ownership accounts held by the owner or beneficiary at the same insured depository institution. The revocable trust account will not be entitled to such separate insurance, however, unless the account satisfies certain requirements. First, each of the designated beneficiaries must be the owner's spouse, child or grandchild. Second, the beneficiaries must be specifically named (i.e., named by name) in the account records of the depository institution. Third, the title of the account must include a term such as "in trust for" or "payable-on-death to" (or any acronym therefor). Fourth, the revocable trust agreement must provide unequivocally that the funds shall belong to the designated beneficiaries

upon the death of the owner. See 12 CFR 330.8(a) (new 330.10(a)).

In many cases, the trust agreement is simply the signature card for the account. Generally, in these cases, the fourth requirement above does not present a problem because the signature card will not include any conditions upon the interests of the designated beneficiaries. In other words, the signature card—in simple language—will provide that the funds shall belong to the beneficiaries upon the death of the owner. In contrast, most formal "living trust" agreements provide that the funds might belong to the beneficiaries depending upon various conditions. The FDIC refers to such conditions as "defeating contingencies" if they create the possibility that the beneficiaries or the estate or heirs of the beneficiaries will never receive the funds following the death of the owner. In the presence of a "defeating contingency," the revocable trust account will not be entitled to separate insurance coverage under § 330.8 (new § 330.10). Rather, the account will be aggregated with any single ownership accounts held by the owner at the same insured depository institution.

The subject of "defeating contingencies" is explained at length in FDIC Advisory Opinion 94-32 (May 18, 1994). That advisory opinion is entitled "Guidelines for Insurance Coverage of Revocable Trust Accounts (Including 'Living Trust' Accounts)." Though this advisory opinion is available upon request, the FDIC continues to receive numerous inquiries regarding the insurance coverage of "living trust" accounts. Moreover, even people who have read the Guidelines often remain confused about the coverage of such accounts.

In response to the public's confusion, the proposed rule inserted clarifying language into the regulations. Specifically, the proposed rule stated that the presence of a "defeating contingency" in a "living trust" agreement would prevent the account from receiving separate insurance coverage (i.e., separate from any single ownership accounts held by the owner at the same insured depository institution).

III. The Final Rule

The FDIC received twenty-six written comments on the proposed rule. Most of the comments were submitted by depository institutions or their holding companies. Several comments were submitted by bankers' associations; several others were submitted by financial services companies. The FDIC also received a small number of

comments from individuals and one comment from a building company. The comments are discussed below as they relate to the various components of the final rule.

A. Recordkeeping Rules for Fiduciary Accounts

Sixteen commenters addressed the proposed relaxation of the FDIC's recordkeeping requirements for agency or fiduciary accounts. All of the commenters expressed support for the proposed rule but some also expressed reservations. The concern expressed by some commenters was that the proposed rule might impose additional recordkeeping obligations or other regulatory burdens on insured depository institutions. The FDIC does not intend to create any such additional burdens. The proposed rule was directed at the FDIC itself and not at depository institutions. As previously explained, the proposed rule granted greater flexibility to the FDIC in considering outside evidence (i.e., evidence other than the deposit account records) in determining the ownership of an account. Specifically, the proposed rule provided that the FDIC would be free to consider outside evidence if the FDIC determined, in its sole discretion, that the titling of the account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. Examples are accounts in the names of escrow agents, title companies or entities (or nominees of such entities) whose primary business is to hold—for safekeeping reasons—deposits of others.

The Board has decided to adopt, in the final rule, the proposed revision to its recordkeeping requirements. As revised, these requirements will be codified at § 330.5. The revised requirements will increase the FDIC's ability to pay insurance to the real owners of some deposits without undercutting the general rule that unambiguous deposit account records of a failed depository institution are binding on depositors.

Also, the final rule includes two revisions to the recordkeeping requirements applicable to accounts held by multiple levels of fiduciaries. As revised, these requirements will be codified at paragraph (b)(3) of § 330.5. First, the FDIC has changed the regulation to clarify that there are two and not three methods of satisfying these recordkeeping requirements. Second, in connection with the second method of satisfying the requirements, the FDIC has removed the necessity of stating in the account records that the depositor is acting in a fiduciary

capacity on behalf of certain persons or entities who may, in turn, be acting in a fiduciary capacity for others. Instead, the deposit account records must expressly indicate that there are multiple levels of fiduciary relationships. The FDIC has made this change in recognition of the fact that fiduciaries have been placing the required information in the titles of deposit accounts. As a result of this revision, the titles of multi-tiered fiduciary accounts should be less unwieldy. Several commenters expressed support for this provision.

B. "Grace Period" Following the Death of a Depositor

Nineteen commenters addressed the proposed creation of a six-month "grace period" following the death of a depositor. As previously explained, this "grace period" primarily would affect the insurance coverage of deposit accounts with survivorship rights (i.e., joint accounts and revocable trust or "payable-on-death" accounts). During this "grace period," the insurance coverage of such accounts would not change unless the accounts are restructured by those authorized to take such action. The FDIC would apply the "grace period" only if its application would increase rather than decrease deposit insurance coverage.

Only one commenter opposed the creation of a "grace period." That commenter stated that deposit insurance should be based on the ownership of accounts. If ownership changes upon the death of a depositor, in the opinion of this commenter, the insurance coverage also should change. Another commenter did not oppose a "grace period" but expressed concern that it would create additional recordkeeping obligations on the depository institution. A third commenter supported a "grace period" but favored a ninety-day period as opposed to a six-month period. With the exceptions noted above, the commenters supported the proposed rule.

The Board has decided to adopt the proposed creation of a six-month "grace period." The rule will be codified at paragraph (j) of § 330.3. The FDIC believes that the "grace period" is consistent with the general principle that insurance coverage is based on ownership but also based on the satisfaction of recordkeeping requirements. Following the death of a depositor, the actual ownership of an account will not be reflected by the account records unless the account is restructured. For example, a joint account immediately following the death of one of two co-owners will

appear to remain a joint account. By themselves, the account records will not indicate that the account is a single ownership account until the account has been restructured by the survivor. The FDIC's strict reliance on ownership, under these circumstances, contrasts with the FDIC's general reliance on the account records.

The FDIC believes that a six-month "grace period" will create an equitable balance between ownership and recordkeeping in cases involving deceased depositors. Also, the FDIC does not believe that the "grace period" will create any recordkeeping burdens on the depository institution because the "grace period" is directed solely at the FDIC itself and the survivors of deceased depositors. The FDIC would apply the "grace period" only after the depository institution had failed.

In the case of a revocable trust account, the "grace period" will be triggered by the death of the owner but not by the death of a beneficiary. Similarly, in the case of an irrevocable trust account, the "grace period" will be triggered by the death of the legal owner or settlor but not by the death of a beneficiary. The death of the settlor may or may not be significant under the terms of the irrevocable trust agreement.

Under many "living trust" agreements (discussed in greater detail below), a revocable trust becomes irrevocable upon the death of the owner. Through the operation of the "grace period," such "living trust" accounts that qualify as revocable trust accounts for insurance purposes could be insured up to six months as revocable trust accounts—rather than irrevocable trust accounts—withstanding the death of the owner.

As mentioned above, only one commenter thought that six months was not the appropriate length of time for the "grace period." That commenter favored a period of ninety days. As noted by other commenters, however, a six-month period is consistent with the six-month period of "separate insurance" following the assumption of the deposits of one insured depository institution by another insured depository institution (e.g., a merger). See 12 U.S.C. 1818(q). The FDIC agrees with the majority of the commenters that a period of six months is reasonable.

C. The Insurance Coverage of "Living Trust" Accounts

Twelve commenters addressed the proposed insertion into the regulations of language clarifying the insurance coverage of revocable trust accounts held pursuant to "living trust" agreements. As previously explained,

this language would state expressly that the presence of a "defeating contingency" in the "living trust" agreement would prevent the account from receiving separate insurance coverage (i.e., separate from any single ownership accounts held by the owner at the same insured depository institution).

Ten commenters supported the proposed revision as a means of reducing depositors' confusion regarding the coverage of such accounts. The other two commenters did not oppose the insertion of clarifying language into the regulations but urged the FDIC to take stronger measures. Specifically, they urged the FDIC to abolish the concept of "defeating contingencies" altogether so that a "living trust" account would be entitled to separate insurance coverage

irrespective of any such contingencies. The approach recommended by these commenters would represent an abrupt departure from the FDIC's established interpretation of the regulations. See FDIC Advisory Opinion 94-32 (May 18, 1994), entitled "Guidelines for Insurance Coverage of Revocable Trust Accounts (Including 'Living Trust' Accounts)." Though this approach would remove one source of confusion regarding the operation of the insurance regulations, the recommended approach could create other problems. For example, an owner's "living trust" agreement with various contingencies could specify that one qualifying beneficiary could assume ownership of the trust funds under one set of circumstances but that two qualifying beneficiaries (or no qualifying beneficiaries) could assume ownership of the funds under another set of circumstances. Following the failure of the depository institution, the FDIC would be faced with the problem of deciding whether the maximum separate insurance coverage of the account is \$100,000 (one qualifying beneficiary) or \$200,000 (two qualifying beneficiaries).

At this time, the FDIC is not prepared to abandon its long-standing interpretation of its regulations regarding the insurance coverage of "living trust" accounts. As a means of reducing some of the confusion surrounding these accounts, however, the Board has adopted—in the final rule—the proposed clarifying language. This language will be codified at paragraph (f) of § 330.10.

IV. Comments on Other Aspects of the Proposed Rule

In addition to addressing the three substantive revisions discussed above,

some commenters addressed other aspects of the proposed rule. For example, several commenters applauded the insertion into the regulations of examples. Another commenter criticized the renumbering of the sections. Specifically, this commenter stated that the renumbering of the sections will affect the accuracy of training materials. Though this concern is understandable, the FDIC believes that renumbering is necessary as a means of increasing depositors' understanding of certain rules. For example, the placement of current paragraph (g) of § 330.3 in new § 330.4 will highlight this rule governing the continuation of separate deposit insurance after merger of insured depository institutions.

A number of commenters addressed the revisions in the ANPR that were not included in the proposed rule. Notably, several voiced disappointment that the FDIC had not included in the proposed rule revisions to the joint account and POD account rules. They emphasized that the current joint account rules, in particular, are very confusing to both the industry and the public. The Board is mindful of these comments and has instructed the staff to continue studying the policy, economic and other implications of amending the joint account and POD account rules. If the Board determines that such amendments are warranted, it will authorize the issuance of a proposed rule to obtain public comment on specific changes to those rules.

A comment regarding the insurance coverage of annuity contract accounts is addressed below in connection with new § 330.8.

V. Section-by-Section Discussion of the Final Rule

Section 330.1—Definitions

This section has been expanded to include some definitions currently placed in other sections of part 330. Also, "Corporation" has been defined as the FDIC.

Section 330.2—Purpose

This section has been reduced by eliminating a narrative description of the FDIC's authority to issue deposit insurance regulations. This information is unnecessary.

Section 330.3—General principles

This section has been amended in several ways. First, examples have been added to illustrate some of the general principles. Second, in recognition of its importance, current paragraph (g) of § 330.3 has been moved from this

section to new § 330.4 dealing with the continuation of separate deposit insurance after merger of insured depository institutions. Third, current § 330.13 has been added to this section as new paragraph (g) dealing with bank investment contracts. Fourth, a new provision has been added to provide the survivors of deceased depositors with a six-month "grace period" for the restructuring of accounts. The provision is new paragraph (j). It is discussed in detail above.

Section 330.4—Continuation of separate deposit insurance after merger of insured depository institutions

This is a new section composed of the provisions in current paragraph (g) of § 330.3. It addresses the deposit insurance implications of bank mergers and acquisitions. The placement of the rule in a separate section of the regulations should make the rule more accessible.

Section 330.5—Recognition of deposit ownership and recordkeeping requirements

This section is current § 330.4 with two substantive amendments. First, the FDIC's recordkeeping requirements have been amended by adding an exception to the general rule that the deposit account records of a depository institution must expressly disclose the existence of a fiduciary relationship in order for the FDIC to recognize the fiduciary nature of the account. The exception provides that the general requirement would not apply if the FDIC determines, in its sole discretion, that the titling of the account and the underlying deposit account records of the depository institution indicate the existence of a fiduciary relationship. The section specifies that the exception might apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company, or an entity (or its agent or nominee) whose business is to hold, for safekeeping reasons, deposits for others. Second, the recordkeeping requirements for accounts held pursuant to multi-tiered fiduciary relationships (current paragraph (b)(3) of § 330.3 and new paragraph (b)(3) of § 330.5) have been modified so that the titles of such accounts can be less unwieldy. These revisions are discussed above.

Section 330.6—Single ownership accounts

This section is current § 330.5. The definition of a "sole proprietorship" has been moved from this section to new § 330.1. Also, in the section dealing with a decedent's account, a cross-

reference has been added to new paragraph (j) of § 330.3. The latter provides a six-month "grace period" for the restructuring of accounts following the death of a depositor.

Section 330.7—Accounts held by an agent, nominee, guardian, custodian or conservator

This section is current § 330.6. The provision on mortgage servicing accounts has been clarified to indicate that such accounts are not entitled to separate insurance. Rather, they are insured as custodial or agency accounts subject to aggregation with other accounts held by the owner at the same insured depository institution. Also, the provisions on annuity contract accounts have been moved from this section to new § 330.8.

Section 330.8—Annuity contract accounts

This is a new section composed of the provisions in current paragraph (f) of § 330.6. Under this section, funds held by an insurance company for the sole purpose of funding life insurance or annuity contracts are insured up to \$100,000 per annuitant if certain requirements are satisfied. The FDIC is placing this rule in a separate section of the regulations—rather than keeping the rule in the section dealing with the "pass-through" coverage of agency accounts—because annuity contract accounts represent a separate category of insurance. Also, in stating that such accounts shall be insured separately in the amount of up to \$100,000 per annuitant, the FDIC is adding the word "separately."

One commenter objected to the addition of the word "separately." In the opinion of this commenter, the addition of this word would result in a windfall for insurance companies by creating a new category of insured deposits.

Subject to the requirements in the regulation, the FDIC's long-standing staff position is that annuity contract accounts represent a separate category of insured deposits. In other words, the revision does not create a new category of insured deposits but simply clarifies the existing coverage of such accounts. The need for such clarification is emphasized by the comment.

While adding the word "separately," the FDIC has removed the phrase "different right and capacity." The phrase is unnecessary and confusing.

Section 330.9—Joint ownership accounts

This section is current § 330.7. Though it has not been changed

substantively, the section has been clarified through the addition of several examples.

Section 330.10—Revocable trust accounts

This section is current § 330.8. For the purpose of clarification, the section has been rephrased and examples have been added. Also, a paragraph has been added to clarify the insurance coverage of revocable trust accounts held pursuant to formal "living trust" agreements. The paragraph states specifically that the presence of a "defeating contingency" in the trust agreement would prevent a beneficiary's interest from receiving separate insurance under this section. The addition of this new paragraph is explained in detail above.

Section 330.11—Accounts of a corporation, partnership or unincorporated association

This section is current § 330.9. The definition of "independent activity" has been moved from this section to § 330.1.

Section 330.12—Accounts held by a depository institution as the trustee of an irrevocable trust

This section is current § 330.10. The modifications are slight and not substantive.

Section 330.13—Irrevocable trust accounts

This section is current § 330.11. The definitions of "trust interest" and "non-contingent trust interest" have been moved from this section to § 330.1.

Section 330.14—Retirement and other employee benefit plan accounts

This section is current § 330.12. It is unchanged except for the deletion of current paragraph (b)(2)(ii) of § 330.12, which required a notice to certain depositors within ten business days after July 1, 1995. That provision is obsolete.

Section 330.15—Public unit accounts

This section is current § 330.14. It is essentially unchanged.

Section 330.16—Effective dates

Changes have been made to this section to indicate that the designated effective dates apply to former changes to part 330. The FDIC has retained this information in part 330 because the effective dates might be relevant in connection with time deposits issued prior to December 19, 1991, until the maturity date of such deposits.

In addition to the changes explained above, two sections have been

eliminated by the final rule. First, current § 330.13 ("Bank investment contracts") has been reduced and moved to new paragraph (g) of § 330.3. Second, current § 330.15 ("Notice to depositors") has been removed altogether as unnecessary.

VI. Paperwork Reduction Act

No collection of information pursuant to the Paperwork Reduction Act is contained in the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The Board of Directors certifies that the final rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The revisions to the deposit insurance rules will impose no new reporting, recordkeeping or other compliance requirements upon those entities. Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

VIII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed. The effective date is July 1, 1998.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

The Board of Directors of the Federal Deposit Insurance Corporation hereby revises part 330 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

Sec.

- 330.1 Definitions.
- 330.2 Purpose.
- 330.3 General principles.
- 330.4 Continuation of separate deposit insurance after merger of insured depository institutions
- 330.5 Recognition of deposit ownership and recordkeeping requirements.
- 330.6 Single ownership accounts.

- 330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.
 - 330.8 Annuity contract accounts.
 - 330.9 Joint ownership accounts.
 - 330.10 Revocable trust accounts.
 - 330.11 Accounts of a corporation, partnership or unincorporated association.
 - 330.12 Accounts held by a depository institution as the trustee of an irrevocable trust.
 - 330.13 Irrevocable trust accounts.
 - 330.14 Retirement and other employee benefit plan accounts.
 - 330.15 Public unit accounts.
 - 330.16 Effective dates.
- Authority:** 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

§ 330.1 Definitions.

For the purposes of this part:

- (a) *Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).
- (b) *Corporation* means the Federal Deposit Insurance Corporation.
- (c) *Default* has the same meaning as provided under section 3(x) of the Act (12 U.S.C. 1813(x)).
- (d) *Deposit* has the same meaning as provided under section 3(l) of the Act (12 U.S.C. 1813(l)).

(e) *Deposit account records* means account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.

(f) *FDIC* means the Federal Deposit Insurance Corporation.

(g) *Independent activity*. A corporation, partnership or unincorporated association shall be deemed to be engaged in an "independent activity" if the entity is operated primarily for some purpose other than to increase deposit insurance.

(h) *Insured branch* means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of the Act.

(i) *Insured deposit* has the same meaning as that provided under section 3(m)(1) of the Act (12 U.S.C. 1813(m)(1)).

(j) *Insured depository institution* is any depository institution whose deposits are insured pursuant to the Act, including a foreign bank having an insured branch.

(k) *Natural person* means a human being.

(l) *Non-contingent trust interest* means a trust interest capable of

determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service.

(m) *Sole proprietorship* means a form of business in which one person owns all the assets of the business, in contrast to a partnership or corporation.

(n) *Trust estate* means the determinable and beneficial interest of a beneficiary or principal in trust funds but does not include the beneficial interest of an heir or devisee in a decedent's estate.

(o) *Trust funds* means funds held by an insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement.

(p) *Trust interest* means the interest of a beneficiary in an irrevocable express trust (other than an employee benefit plan) created either by written trust instrument or by statute, but does not include any interest retained by the settlor.

§ 330.2 Purpose.

The purpose of this part is to clarify the rules and define the terms necessary to afford deposit insurance coverage under the Act and provide rules for the recognition of deposit ownership in various circumstances.

§ 330.3 General principles.

(a) *Ownership rights and capacities*. The insurance coverage provided by the Act and this part is based upon the ownership rights and capacities in which deposit accounts are maintained at insured depository institutions. All deposits in an insured depository institution which are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) shall be added together and insured in accordance with this part. Deposits maintained in different rights and capacities, as recognized under this part, shall be insured separately from each other.

(Example: Single ownership accounts and joint ownership accounts are insured separately from each other.)

(b) *Deposits maintained in separate insured depository institutions or in separate branches of the same insured depository institution*. Any deposit accounts maintained by a depositor at one insured depository institution are insured separately from, and without regard to, any deposit accounts that the same depositor maintains at any other

separately chartered and insured depository institution, even if two or more separately chartered and insured depository institutions are affiliated through common ownership.

(Example: Deposits held by the same individual at two different banks owned by the same bank holding company would be insured separately, per bank.)

The deposit accounts of a depositor maintained in the same right and capacity at different branches or offices of the same insured depository institution are not separately insured; rather they shall be added together and insured in accordance with this part.

(c) *Deposits maintained by foreigners and deposits denominated in foreign currency*. The availability of deposit insurance is not limited to citizens and residents of the United States. Any person or entity that maintains deposits in an insured depository institution is entitled to the deposit insurance provided by the Act and this part. In addition, deposits denominated in a foreign currency shall be insured in accordance with this part. Deposit insurance for such deposits shall be determined and paid in the amount of United States dollars that is equivalent in value to the amount of the deposit denominated in the foreign currency as of close of business on the date of default of the insured depository institution. The exchange rates to be used for such conversions are the 12 PM rates (the "noon buying rates for cable transfers") quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution, unless the deposit agreement specifies that some other widely recognized exchange rates are to be used for all purposes under that agreement, in which case, the rates so specified shall be used for such conversions.

(d) *Deposits in insured branches of foreign banks*. Deposits in an insured branch of a foreign bank which are payable by contract in the United States shall be insured in accordance with this part, except that any deposits to the credit of the foreign bank, or any office, branch, agency or any wholly owned subsidiary of the foreign bank, shall not be insured. All deposits held by a depositor in the same right and capacity in more than one insured branch of the same foreign bank shall be added together for the purpose of determining the amount of deposit insurance.

(e) *Deposits payable solely outside of the United States and certain other locations*. Any obligation of an insured depository institution which is payable solely at an office of such institution

located outside the States of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, is not a deposit for the purposes of this part.

(f) *International banking facility deposits*. An "international banking facility time deposit," as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), or in any successor regulation, is not a deposit for the purposes of this part.

(g) *Bank investment contracts*. As required by section 11(a)(8) of the Act (12 U.S.C. 1821(a)(8)), any liability arising under any investment contract between any insured depository institution and any employee benefit plan which expressly permits "benefit responsive withdrawals or transfers" (as defined in section 11(a)(8) of the Act) are not insured deposits for purposes of this part. The term "substantial penalty or adjustment" used in section 11(a)(8) of the Act means, in the case of a deposit having an original term which exceeds one year, all interest earned on the amount withdrawn from the date of deposit or for six months, whichever is less; or, in the case of a deposit having an original term of one year or less, all interest earned on the amount withdrawn from the date of deposit or three months, whichever is less.

(h) *Application of state or local law to deposit insurance determinations*. In general, deposit insurance is for the benefit of the owner or owners of funds on deposit. However, while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage. Deposit insurance coverage is also a function of the deposit account records of the insured depository institution, of recordkeeping requirements, and of other provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage.

(i) *Determination of the amount of a deposit*—(1) *General rule*. The amount of a deposit is the balance of principal and interest unconditionally credited to the deposit account as of the date of default of the insured depository institution, plus the ascertainable amount of interest to that date, accrued at the contract rate (or the anticipated or announced interest or dividend rate), which the insured depository institution in default would have paid if the deposit had matured on that date and

the insured depository institution had not failed. In the absence of any such announced or anticipated interest or dividend rate, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period.

(2) *Discounted certificates of deposit*. The amount of a certificate of deposit sold by an insured depository institution at a discount from its face value is its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(3) *Waiver of minimum requirements*. In the case of a deposit with a fixed payment date, fixed or minimum term, or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if interest had been credited and as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

(j) *Continuation of insurance coverage following the death of a deposit owner*. The death of a deposit owner shall not affect the insurance coverage of the deposit for a period of six months following the owner's death unless the deposit account is restructured. The operation of this grace period, however, shall not result in a reduction of coverage. If an account is not restructured within six months after the owner's death, the insurance shall be provided on the basis of actual ownership in accordance with the provisions of § 330.5(a)(1).

§ 330.4 Continuation of separate deposit insurance after merger of insured depository institutions.

Whenever the liabilities of one or more insured depository institutions for deposits are assumed by another insured depository institution, whether by merger, consolidation, other statutory assumption or contract:

(a) The insured status of the institutions whose liabilities have been assumed terminates on the date of receipt by the FDIC of satisfactory evidence of the assumption; and

(b) The separate insurance of deposits assumed continues for six months from the date the assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period. In the case of time deposits which mature within six months of the date the deposits are assumed and which are renewed at the same dollar amount (either with or without accrued

interest having been added to the principal amount) and for the same term as the original deposit, the separate insurance applies to the renewed deposits until the first maturity date after the six-month period. Time deposits that mature within six months of the deposit assumption and that are renewed on any other basis, or that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

§ 330.5 Recognition of deposit ownership and recordkeeping requirements.

(a) *Recognition of deposit ownership*—(1) *Evidence of deposit ownership*. Except as indicated in this paragraph (a)(1) or as provided in § 330.3(j), in determining the amount of insurance available to each depositor, the FDIC shall presume that deposited funds are actually owned in the manner indicated on the deposit account records of the insured depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records shall be considered binding on the depositor, and the FDIC shall consider no other records on the manner in which the funds are owned. If the deposit account records are ambiguous or unclear on the manner in which the funds are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. Despite the general requirements of this paragraph (a)(1), if the FDIC has reason to believe that the insured depository institution's deposit account records misrepresent the actual ownership of deposited funds and such misrepresentation would increase deposit insurance coverage, the FDIC may consider all available evidence and pay claims for insured deposits on the basis of the actual rather than the misrepresented ownership.

(2) *Recognition of deposit ownership in custodial accounts*. In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in a custodial capacity and a portion thereof is placed on deposit in one or more insured depository institutions without allocation, the owner's insured interest in the deposit in any one insured depository institution would represent, at any

given time, the same fractional share as his or her share of the total commingled funds.

(b) *Recordkeeping requirements*—(1) *Disclosure of fiduciary relationships*. The "deposit account records" (as defined in § 330.1(e)) of an insured depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based. No claim for insurance coverage based on a fiduciary relationship will be recognized if no fiduciary relationship is evident from the deposit account records of the insured depository institution. The general requirement for the express indication that the account is held in a fiduciary capacity will not apply, however, in instances where the FDIC determines, in its sole discretion, that the titling of the deposit account and the underlying deposit account records sufficiently indicate the existence of a fiduciary relationship. This exception may apply, for example, where the deposit account title or records indicate that the account is held by an escrow agent, title company or a company whose business is to hold deposits and securities for others.

(2) *Details of fiduciary relationships*. If the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance (including the exception provided for in paragraph (b)(1) of this section), the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.

(3) *Multi-tiered fiduciary relationships*. In deposit accounts where there are multiple levels of fiduciary relationships, there are two methods of satisfying paragraphs (b)(1) and (b)(2) of this section to obtain insurance coverage for the interests of the true beneficial owners of a deposit account.

(i) One method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, the existence of each and every level of fiduciary relationships; and

(B) Disclose, at each level, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

(ii) An alternative method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, that there are multiple levels of fiduciary relationships;

(B) Disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of business, by parties at subsequent levels; and

(C) Disclose, at each of the levels, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting. No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain.

(4) *Exceptions to recordkeeping requirements*—(i) *Deposits evidenced by negotiable instruments*. If any deposit obligation of an insured depository institution is evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, negotiable traveler's check, letter of credit or other negotiable instrument, the FDIC will recognize the owner of such deposit obligation for all purposes of claim for insured deposits to the same extent as if his or her name and interest were disclosed on the records of the insured depository institution; provided, that the instrument was in fact negotiated to such owner prior to the date of default of the insured depository institution. The owner must provide affirmative proof of such negotiation, in a form satisfactory to the FDIC, to substantiate his or her claim. Receipt of a negotiable instrument directly from the insured depository institution in default shall, in no event, be considered a negotiation of said instrument for purposes of this provision.

(ii) *Deposit obligations for payment of items forwarded for collection by depository institution acting as agent*. Where an insured depository institution in default has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the FDIC will recognize the holders of such items for all purposes of claim for insured deposits to the same extent as if their name(s) and interest(s) were disclosed as depositors on the deposit account records of the insured depository institution, when such claim for insured deposits, if otherwise payable, has been

established by the execution and delivery of prescribed forms. The FDIC will recognize such depository institution forwarding such items for the holders thereof as agent for such holders for the purpose of making an assignment to the FDIC of their rights against the insured depository institution in default and for the purpose of receiving payment on their behalf.

§ 330.6 Single ownership accounts.

(a) *Individual accounts*. Funds owned by a natural person and deposited in one or more deposit accounts in his or her own name shall be added together and insured up to \$100,000 in the aggregate. Exception: Despite the general requirement in this paragraph (a), if more than one natural person has the right to withdraw funds from an individual account (excluding persons who have the right to withdraw by virtue of a Power of Attorney), the account shall be treated as a joint ownership account (although not necessarily a qualifying joint account) and shall be insured in accordance with the provisions of § 330.9, unless the deposit account records clearly indicate, to the satisfaction of the FDIC, that the funds are owned by one individual and that other signatories on the account are merely authorized to withdraw funds on behalf of the owner.

(b) *Sole proprietorship accounts*. Funds owned by a business which is a "sole proprietorship" (as defined in § 330.1(m)) and deposited in one or more deposit accounts in the name of the business shall be treated as the individual account(s) of the person who is the sole proprietor, added to any other individual accounts of that person, and insured up to \$100,000 in the aggregate.

(c) *Single-name accounts containing community property funds*. Community property funds deposited into one or more deposit accounts in the name of one member of a husband-wife community shall be treated as the individual account(s) of the named member, added to any other individual accounts of that person, and insured up to \$100,000 in the aggregate.

(d) *Accounts of a decedent and accounts held by executors or administrators of a decedent's estate*. Funds held in the name of a decedent or in the name of the executor, administrator, or other personal representative of his or her estate and deposited into one or more deposit accounts shall be added together and insured up to \$100,000 in the aggregate; provided, however, that nothing in this paragraph (d) shall affect the operation of § 330.3(j). The deposit insurance

provided by this paragraph (d) shall be separate from any insurance coverage provided for the individual deposit accounts of the executor, administrator, other personal representative or the beneficiaries of the estate.

§ 330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.

(a) *Agency or nominee accounts*. Funds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, shall be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage shall be governed by the provisions of § 330.13.

(b) *Guardian, custodian or conservator accounts*. Funds held by a guardian, custodian, or conservator for the benefit of his or her ward, or for the benefit of a minor under the Uniform Gifts to Minors Act, and deposited into one or more accounts in the name of the guardian, custodian or conservator shall, for purposes of this part, be deemed to be agency or nominee accounts and shall be insured in accordance with paragraph (a) of this section.

(c) *Accounts held by fiduciaries on behalf of two or more persons*. Funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons jointly, shall be treated as a joint ownership account and shall be insured in accordance with the provisions of § 330.9.

(d) *Mortgage servicing accounts*. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured in accordance with paragraph (a) of this section for the interest of each owner (mortgagee, investor or security holder) in such accounts. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts.

(e) *Custodian accounts for American Indians*. Paragraph (a) of this section shall not apply to any interest an individual American Indian may have in funds deposited by the Bureau of Indian Affairs of the United States

Department of the Interior (the "BIA") on behalf of that person pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of that person pursuant to similar authority, in an insured depository institution. The interest of each American Indian in all such accounts maintained at the same insured depository institution shall be added together and insured, up to \$100,000, separately from any other accounts maintained by that person in the same insured depository institution.

§ 330.8 Annuity contract accounts.

(a) Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts, shall be insured separately in the amount of up to \$100,000 per annuitant, provided that, pursuant to a state statute:

(1) The corporation establishes a separate account for such funds;

(2) The account cannot be charged with the liabilities arising out of any other business of the corporation; and

(3) The account cannot be invaded by other creditors of the corporation in the event that the corporation becomes insolvent and its assets are liquidated.

(b) Such insurance coverage shall be separate from the insurance provided for any other accounts maintained by the corporation or the annuitants at the same insured depository institution.

§ 330.9 Joint ownership accounts.

(a) *Separate insurance coverage*. Qualifying joint accounts, whether owned as joint tenants with right of survivorship, as tenants in common or as tenants by the entirety, shall be insured separately from any individually owned (single ownership) deposit accounts maintained by the co-owners.

(Example: If A has a single ownership account and also is a joint owner of a qualifying joint account, A's interest in the joint account would be insured separately from his or her interest in the individual account.) Qualifying joint accounts in the names of both husband and wife which are comprised of community property funds shall be added together and insured up to \$100,000, separately from any funds deposited into accounts bearing their individual names.

(b) *Determination of insurance coverage*. Step one: all qualifying joint accounts owned by the same combination of individuals shall be added together; the aggregate amount is insurable up to a limit of \$100,000.

(Example: A qualifying joint account owned by "A & B" would be added to a

qualifying joint account owned by "B&A" and the insurable limit on the combined balances in those accounts would be \$100,000. Moreover, the insurable limit on a single qualifying joint account owned by "A&B" would be \$100,000. Thus, any qualifying joint account (or group of qualifying joint accounts owned by the same combination of persons) with a balance over \$100,000 will be over the insurance limit.)

Step two: the interests of each co-owner in all qualifying joint accounts, whether owned by the same or different combinations of persons, shall then be added together and the total shall be insured up to \$100,000.

(Example: "A&B" have a qualifying joint account with a balance of \$100,000; "A&C" have a qualifying joint account with a balance of \$150,000; and "A&D" have a qualifying joint account with a balance of \$100,000. The balance in the account owned by "A&C" exceeds \$100,000, so under step one the excess amount, \$50,000, would be uninsured. A's combined ownership interests in the insurable amounts in the accounts would be \$150,000, of which under step two \$100,000 would be insured and \$50,000 would be uninsured; B's ownership interest would be \$50,000, all of which would be insured; C's insurable ownership interest would be \$50,000, all of which would be insured; and D's ownership interest would be \$50,000, all of which would be insured.)

(c) *Qualifying joint accounts.* (1) A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are "natural persons" (as defined in § 330.1(k)); and

(ii) Each co-owner has personally signed a deposit account signature card; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

(2) The signature-card requirement of paragraph (c)(1)(ii) of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

(3) All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section, and those accounts that come within the exception provided for in paragraph (c)(2) of this section, shall be deemed to be jointly owned provided that, in accordance with the provisions of § 330.5(a), the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts are owned, then the FDIC may, in its sole discretion, consider evidence

other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account (although not necessarily a qualifying joint account) unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

(d) *Nonqualifying joint accounts.* A deposit account held in two or more names which is not a qualifying joint account, for purposes of this section, shall be treated as being owned by each named owner, as an individual, corporation, partnership, or unincorporated association, as the case may be, and the actual ownership interest of each individual or entity in such account shall be added to any other single ownership accounts of such individual or other accounts of such entity, and shall be insured in accordance with the provisions of this part governing the insurance of such accounts.

(e) *Determination of interests.* The interests of the co-owners of qualifying joint accounts, held as tenants in common, shall be deemed equal, unless otherwise stated in the depository institution's deposit account records. This section applies regardless of whether the conjunction "and" or "or" is used in the title of a joint deposit account, even when both terms are used, such as in the case of a joint deposit account with three or more co-owners.

§ 330.10 Revocable trust accounts.

(a) *General rule.* Funds owned by an individual and deposited into an account evidencing an intention that upon the death of the owner the funds shall belong to one or more qualifying beneficiaries shall be insured in the amount of up to \$100,000 in the aggregate as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. For purposes of this provision, the term "qualifying beneficiaries" means the owner's spouse, child/children or grandchild/grandchildren.

(Example: If A establishes a qualifying account payable upon death to his spouse, two children and one grandchild, assuming compliance with the requirements of this provision, the account would be insured up to \$400,000 separately from any other

different types of accounts either A or the beneficiaries may have with the same depository institution.)

Accounts covered by this provision are commonly referred to as tentative or "Totten trust" accounts, "payable-on-death" accounts, or revocable trust accounts.

(b) *Required intention.* The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more qualifying beneficiaries must be manifested in the title of the account using commonly accepted terms such as, but not limited to, "in trust for," "as trustee for," "payable-on-death to," or any acronym therefor. In addition, the beneficiaries must be specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust account shall be presumed to own the funds deposited into the account.

(c) *Interests of nonqualifying beneficiaries.* If a named beneficiary of an account covered by this section is not a qualifying beneficiary, the funds corresponding to that beneficiary shall be treated as individually owned (single ownership) accounts of such owner(s), aggregated with any other single ownership accounts of such owner(s), and insured up to \$100,000 per owner.

(Examples: If A establishes an account payable upon death to his or her nephew, the account would be insured as a single ownership account owned by A. Similarly, if B establishes an account payable upon death to her husband, son and nephew, two-thirds of the account balance would be eligible for POD coverage up to \$200,000 corresponding to the two qualifying beneficiaries (i.e., the spouse and child). The amount corresponding to the non-qualifying beneficiary (i.e., the nephew) would be deemed to be owned by B in her single ownership capacity and insured accordingly.)

(d) *Joint revocable trust accounts.* Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner (which shall be deemed equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each qualifying beneficiary shall be separately insured up to \$100,000. However, where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, such account shall not be insured according to the provisions of this section but shall instead be insured

in accordance with the joint account provisions of § 330.9.

(e) *Definition of "children" and "grandchildren."* For the purpose of establishing the qualifying degree of kinship set forth in paragraph (a) of this section, the term "children" includes any biological, adopted and step-children of the owner and "grandchildren" includes biological, adopted, or step-children of any of the owner's children.

(f) *Living trusts.* This section also applies to revocable trust accounts held in connection with a so-called "living trust," a formal trust which an owner creates and retains control over during his or her lifetime. If a named beneficiary in a living trust is a qualifying beneficiary under this section, then the deposit account held in connection with the living trust may be eligible for deposit insurance under this section, assuming compliance with all the provisions of this part. If, however, for example, the living trust includes a "defeating contingency" relative to that beneficiary's interest in the trust assets, then insurance coverage under this section would not be provided. For purposes of this section, a "defeating contingency" is defined as a condition which would prevent the beneficiary from acquiring a vested and non-contingent interest in the funds in the deposit account upon the owner's death.

§ 330.11 Accounts of a corporation, partnership or unincorporated association.

(a) *Corporate accounts.* (1) The deposit accounts of a corporation engaged in any "independent activity" (as defined in § 330.1(g)) shall be added together and insured up to \$100,000 in the aggregate. If a corporation has divisions or units which are not separately incorporated, the deposit accounts of those divisions or units shall be added to any other deposit accounts of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts shall not be treated as the deposit accounts of the corporation but shall be treated as fiduciary accounts and insured in accordance with the provisions of § 330.7.

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b),

3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage.

(b) *Partnership accounts.* The deposit accounts of a partnership engaged in any "independent activity" (as defined in § 330.1(g)) shall be added together and insured up to \$100,000 in the aggregate. Such insurance coverage shall be separate from any insurance provided for individually owned (single ownership) accounts maintained by the individual partners. A partnership shall be deemed to exist, for purposes of this paragraph, any time there is an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business for profit.

(c) *Unincorporated association accounts.* The deposit accounts of an unincorporated association engaged in any independent activity shall be added together and insured up to \$100,000 in the aggregate, separately from the accounts of the person(s) or entity(ies) comprising the unincorporated association. An unincorporated association shall be deemed to exist, for purposes of this paragraph, whenever there is an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.

(d) *Non-qualifying entities.* The deposit accounts of an entity which is not engaged in an "independent activity" (as defined in § 330.1(g)) shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership or unincorporated association, and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by that person and insured up to \$100,000 in the aggregate.

§ 330.12 Accounts held by a depository institution as the trustee of an irrevocable trust.

(a) *Separate insurance coverage.* "Trust funds" (as defined in § 330.1(o)) held by an insured depository institution in its capacity as trustee of an irrevocable trust, whether held in its trust department, held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, shall be insured up to \$100,000 for each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any other deposits of the owners or the beneficiaries.

(b) *Determination of interests.* The insurance for funds held by an insured depository institution in its capacity as trustee of an irrevocable trust shall be determined in accordance with the following provisions:

(1) *Allocated funds of a trust estate.* If trust funds of a particular "trust estate" (as defined in § 330.1(n)) are allocated by the fiduciary and deposited, the insurance with respect to such trust estate shall be determined by ascertaining the amount of its funds allocated, deposited and remaining to the credit of the claimant as fiduciary at the insured depository institution in default.

(2) *Interest of a trust estate in unallocated trust funds.* If funds of a particular trust estate are commingled with funds of other trust estates and deposited by the fiduciary institution in one or more insured depository institutions to the credit of the depository institution as fiduciary, without allocation of specific amounts from a particular trust estate to an account in such institution(s), the percentage interest of that trust estate in the unallocated deposits in any institution in default is the same as that trust estate's percentage interest in the entire commingled investment pool.

(c) *Limitation on applicability.* This section shall not apply to deposits of trust funds belonging to a trust which is classified as a corporation under § 330.11(a)(2).

§ 330.13 Irrevocable trust accounts.

(a) *General rule.* Funds representing the "non-contingent trust interest(s)" (as defined in § 330.1(l)) of a beneficiary deposited into one or more deposit accounts established pursuant to one or more irrevocable trust agreements created by the same settlor(s) (grantor(s)) shall be added together and insured up to \$100,000 in the aggregate. Such insurance coverage shall be separate from the coverage provided for other accounts maintained by the settlor(s), trustee(s) or beneficiary(ies) of the irrevocable trust(s) at the same insured depository institution. Each "trust interest" (as defined in § 330.1(p)) in any irrevocable trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his or her contribution to the trust.

(b) *Treatment of contingent trust interests.* In the case of any trust in which certain trust interests do not qualify as non-contingent trust interests, the funds representing those interests shall be added together and insured up to \$100,000 in the aggregate. Such insurance coverage shall be in addition to the coverage provided for the funds

representing non-contingent trust interests which are insured pursuant to paragraph (a) of this section.

(c) *Commingle accounts of bankruptcy trustees.* Whenever a bankruptcy trustee appointed under Title 11 of the United States Code commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each Title 11 bankruptcy estate will be added together and insured up to \$100,000, separately from the funds of any other such estate.

§ 330.14 Retirement and other employee benefit plan accounts.

(a) *"Pass-through" insurance.* Except as provided in paragraph (b) of this section, any deposits of an employee benefit plan or of any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a "pass-through" basis, in the amount of up to \$100,000 for the non-contingent interest of each plan participant, provided that the FDIC's recordkeeping requirements, as prescribed in § 330.5, are satisfied.

(b) *Exception.* "Pass-through" insurance shall not be provided pursuant to paragraph (a) of this section with respect to any deposit accepted by an insured depository institution which, at the time the deposit is accepted, may not accept brokered deposits pursuant to section 29 of the Act (12 U.S.C. 1831f) unless, at the time the deposit is accepted:

(1) The institution meets each applicable capital standard; and

(2) The depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a "pass-through" basis.

(c) *Aggregation.*—(1) *Multiple plans.* Funds representing the non-contingent interests of a beneficiary in an employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457), which are deposited in one or more deposit accounts shall be aggregated with any other deposited funds representing such interests of the same beneficiary in other employee benefit plans, or eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986, established by the same employer or employee organization.

(2) *Certain retirement accounts.* (i) Deposits in an insured depository institution made in connection with the following types of retirement plans shall

be aggregated and insured in the amount of up to \$100,000 per participant:

(A) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. 408(a));

(B) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457); and

(C) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002) and any plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)), to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

(ii) The provisions of this paragraph (c) shall not apply with respect to the deposits of any employee benefit plan, or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986, which is not entitled to "pass-through" insurance pursuant to paragraph (b) of this section. Such deposits shall be aggregated and insured in the amount of \$100,000 per plan.

(d) *Determination of interests.*—(1) *Defined contribution plans.* The value of an employee's non-contingent interest in a defined contribution plan shall be deemed to be the employee's account balance as of the date of default of the insured depository institution, regardless of whether said amount was derived, in whole or in part, from contributions of the employee and/or the employer to the account.

(2) *Defined benefit plans.* The value of an employee's non-contingent interest in a defined benefit plan shall be deemed to be the present value of the employee's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the insured depository institution.

(3) *Amounts taken into account.* For the purposes of applying the rule under paragraph (c)(2) of this section, only the present vested and ascertainable interests of each participant in an employee benefit plan or "457 Plan," excluding any remainder interest created by, or as a result of, the plan, shall be taken into account in determining the amount of deposit insurance accorded to the deposits of the plan.

(e) *Treatment of contingent interests.* In the event that employees' interests in an employee benefit plan are not capable of evaluation in accordance

with the provisions of this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the FDIC with respect to all such interests shall not exceed \$100,000 in the aggregate.

(f) *Overfunded pension plan deposits.* Any portion of an employee benefit plan's deposits which is not attributable to the interests of the beneficiaries under the plan shall be deemed attributable to the overfunded portion of the plan's assets and shall be aggregated and insured up to \$100,000, separately from any other deposits.

(g) *Definitions of "depositor", "employee benefit plan", "employee organization" and "non-contingent interest".* Except as otherwise indicated in this section, for purposes of this section:

(1) The term *depositor* means the person(s) administering or managing an employee benefit plan.

(2) The term *employee benefit plan* has the same meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1002) and includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(3) The term *employee organization* means any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(4) The term *non-contingent interest* means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7) or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service.

(h) *Disclosure of capital status.*—(1)

Disclosure upon request. An insured depository institution shall, upon request, provide a clear and conspicuous written notice to any depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risk-based capital ratio, total risk-based capital ratio and prompt corrective action (PCA) capital category, as defined in the regulations of the institution's primary federal regulator, and whether, in the depository institution's judgment, employee benefit

plan deposits made with the institution, at the time the information is requested, would be eligible for "pass-through" insurance coverage under paragraphs (a) and (b) of this section. Such notice shall be provided within five business days after receipt of the request for disclosure.

(2) *Disclosure upon opening of an account.* An insured depository institution shall, upon the opening of any account comprised of employee benefit plan funds, provide a clear and conspicuous written notice to the depositor consisting of an accurate explanation of the requirements for "pass-through" deposit insurance coverage provided in paragraphs (a) and (b) of this section; the institution's PCA capital category; and a determination of whether or not, in the depository institution's judgment, the funds being deposited are eligible for "pass-through" insurance coverage.

(3) *Disclosure when "pass-through" coverage is no longer available.* Whenever new, rolled-over or renewed employee benefit plan deposits placed with an insured depository institution would no longer be eligible for "pass-through" insurance coverage, the institution shall provide a clear and conspicuous written notice to all existing depositors of employee benefit plan funds of its new PCA capital category, if applicable, and that new, rolled-over or renewed deposits of employee benefit plan funds made after the applicable date shall not be eligible for "pass-through" insurance coverage under paragraphs (a) and (b) of this section. Such written notice shall be provided within ten business days after the institution receives notice or is deemed to have notice that it is no longer permitted to accept brokered deposits under section 29 of the Act and the institution no longer meets the requirements in paragraph (b) of this section.

(4) *Definition of "employee benefit plan".* For purposes of this paragraph (h), the term "employee benefit plan" has the same meaning as provided under paragraph (g)(2) of this section but also includes any eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457).

§ 330.15 Public unit accounts.

(a) *Extent of insurance coverage.*—(1) *Accounts of the United States.* Each official custodian of funds of the United States lawfully depositing such funds in an insured depository institution shall be separately insured in the amount of:

(i) Up to \$100,000 in the aggregate for all time and savings deposits; and

(ii) Up to \$100,000 in the aggregate for all demand deposits.

(2) *Accounts of a state, county, municipality or political subdivision.* (i) Each official custodian of funds of any state of the United States, or any county, municipality, or political subdivision thereof, lawfully depositing such funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state) shall be separately insured in the amount of:

(A) Up to \$100,000 in the aggregate for all time and savings deposits; and
(B) Up to \$100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to \$100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(3) *Accounts of the District of Columbia.* (i) Each official custodian of funds of the District of Columbia lawfully depositing such funds in an insured depository institution in the District of Columbia (including an insured depository institution having a branch in the District of Columbia) shall be separately insured in the amount of:

(A) Up to \$100,000 in the aggregate for all time and savings deposits; and
(B) Up to \$100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the District of Columbia shall be insured in the amount of up to \$100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(4) *Accounts of the Commonwealth of Puerto Rico and other government possessions and territories.* (i) Each official custodian of funds of the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, or of any county, municipality, or political subdivision thereof lawfully depositing such funds in an insured depository institution in Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, respectively, shall be separately insured in the amount of:

(A) Up to \$100,000 in the aggregate for all time and savings deposits; and

(B) Up to \$100,000 in the aggregate for all demand deposits.

(ii) In addition, each such official custodian depositing such funds in an insured depository institution outside of the commonwealth, possession or territory comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to \$100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(5) *Accounts of an Indian tribe.* Each official custodian of funds of an Indian tribe (as defined in 25 U.S.C. 1452(c)), including an agency thereof having official custody of tribal funds, lawfully depositing the same in an insured depository institution shall be separately insured in the amount of:

(i) Up to \$100,000 in the aggregate for all time and savings deposits; and
(ii) Up to \$100,000 in the aggregate for all demand deposits.

(b) *Rules relating to the "official custodian".*—(1) *Qualifications for an "official custodian".* In order to qualify as an "official custodian" for the purposes of paragraph (a) of this section, such custodian must have plenary authority, including control, over funds owned by the public unit which the custodian is appointed or elected to serve. Control of public funds includes possession, as well as the authority to establish accounts for such funds in insured depository institutions and to make deposits, withdrawals, and disbursements of such funds.

(2) *Official custodian of the funds of more than one public unit.* For the purposes of paragraph (a) of this section, if the same person is an official custodian of the funds of more than one public unit, he or she shall be separately insured with respect to the funds held by him or her for each such public unit, but shall not be separately insured by virtue of holding different offices in such public unit or, except as provided in paragraph (c) of this section, holding such funds for different purposes.

(3) *Split of authority or control over public unit funds.* If the exercise of authority or control over the funds of a public unit requires action by, or the consent of, two or more officers, employees, or agents of such public unit, then they will be treated as one "official custodian" for the purposes of this section.

(c) *Public bond issues.* Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge a debt owed to the holders of notes or bonds issued by the public unit, any deposit of such funds in an insured

depository institution shall be deemed to be a deposit by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the deposit shall be separately insured up to \$100,000.

(d) *Definition of "political subdivision"*. The term "political subdivision" includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between the states. It also includes any subdivision of a public unit mentioned in paragraphs (a)(2), (a)(3) and (a)(4) of this section or any principal department of such public unit:

(1) The creation of which subdivision or department has been expressly authorized by the law of such public unit;

(2) To which some functions of government have been delegated by such law; and

(3) Which is empowered to exercise exclusive control over funds for its exclusive use.

§ 330.16 Effective dates.

(a) *Prior effective dates*. Former §§ 330.1(j), 330.10(a), 330.12(c), 330.12(d)(3) and 330.13 (see 12 CFR part 330, as revised January 1, 1998) became effective on December 19, 1993.

(b) *Time deposits*. Except with respect to the provisions in former § 330.12 (a) and (b) (see 12 CFR part 330, as revised January 1, 1998) and current § 330.14(a) and (b), any time deposits made before December 19, 1991 that do not mature until after December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any time deposits made after December 19, 1991 but before December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any rollover or renewal of such time deposits prior to December 19, 1993 shall subject those deposits to the rules in effect on the date of such rollover or renewal. With respect to time deposits which mature only after a prescribed notice period, the provisions of this part shall be effective on the earliest possible maturity date after June 24, 1993 assuming (solely for purposes of this section) that notice had been given on that date.

By order of the Board of Directors.
Dated at Washington, D.C., this 28th day of April, 1998.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 98-11987 Filed 5-8-98; 8:45 am]
BILLING CODE 6714-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 98N-0294]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to lift the stay of the effective date for the allowable levels in the bottled water quality standard for nine chemical contaminants, i.e., antimony, beryllium, cyanide, nickel, thallium, diquat, endoathall, glyphosate, and 2,3,7,8-TCDD (dioxin), that was imposed in a final rule published on March 26, 1996. By lifting the stay of the effective date, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for these nine chemical contaminants under the current good manufacturing practice (CGMP) regulations for bottled water. FDA is required to issue monitoring requirements for the nine chemical contaminants under the Safe Drinking Water Act Amendments of 1996 (SDWA Amendments). FDA is using direct final rulemaking for this action because the agency expects that there will be no significant adverse comment on the rule. Elsewhere in this issue of the *Federal Register*, FDA is publishing a companion proposed rule under FDA's usual procedure for notice-and-comment rulemaking to provide a procedural framework to finalize the rule in the event the agency receives significant adverse comments and withdraws this direct final rule. The companion proposed rule and direct final rule are substantively identical.

DATES: The regulation is effective November 9, 1998. Submit written comments by July 27, 1998. If no timely significant adverse comments are received, the agency will publish a notice in the *Federal Register* no later than August 6, 1998, confirming the effective date of the direct final rule. If timely significant adverse comments are

received, the agency will publish a notice of significant adverse comment in the *Federal Register* withdrawing this direct final rule no later than August 6, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry Kim, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-260-0631.

SUPPLEMENTARY INFORMATION:

I. Background

Before the enactment of the SDWA Amendments on August 6, 1996, section 410 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349) required that, whenever the Environmental Protection Agency (EPA) prescribed interim or revised National Primary Drinking Water Regulations (NPDWR's) under section 1412 of the Public Health Service Act (SDWA) (42 U.S.C. 300f through 300j-9), FDA consult with EPA and either amend its regulations for bottled drinking water in § 165.110 (21 CFR 165.110) or publish in the *Federal Register* its reasons for not making such amendments.

In accordance with section 410 of the act, FDA published in the *Federal Register* of March 26, 1996 (61 FR 13258), a final rule (hereinafter "the March 1996 final rule") that amended the quality standard for bottled water by establishing or revising the allowable levels for 5 inorganic chemicals (IOC's) and 17 synthetic organic chemicals (SOC's), including 3 synthetic volatile organic chemicals (VOC's), 9 pesticide chemicals, and 5 nonpesticide chemicals. This action was in response to EPA's issuance of NPDWR's consisting of maximum contaminant levels (MCL's) for the same 5 IOC's and 17 SOC's in public drinking water (see 57 FR 31776, July 17, 1992).

However, in the March 1996 final rule, FDA stayed the effective date for the allowable levels for the five IOC's (antimony, beryllium, cyanide, nickel, and thallium) and four of the SOC's (diquat, endoathall, glyphosate, and dioxin). This action was in response to bottled water industry comments (responding to the August 4, 1993, proposal (58 FR 41612)) which asserted that additional monitoring for these nine chemicals required under the bottled water CGMP regulations would pose an undue economic burden on bottlers. If the agency had not stayed the effective date for the allowable levels,

the bottled water CGMP regulations under part 129 (21 CFR part 129) would have been in effect for these nine chemical contaminants. The bottled water CGMP regulations require a minimum yearly monitoring of source water and finished bottled water products for chemical contaminants for which allowable levels have been established in the bottled water quality standard. The comments requested that FDA adopt reduced frequency monitoring requirements for chemical contaminants that are not likely to be present in the source water for bottling or in the finished bottled water products. The comments submitted data that supported the request that FDA reconsider the current monitoring frequency requirements for chemical contaminants in the bottled water CGMP regulations.

Based on the information submitted by the comments, FDA stated in the March 1996 final rule (61 FR 13258 at 13261) that the matter of reduced frequency of monitoring (less frequently than once per year) requirements for chemical contaminants that are not likely to be found in bottled water merited consideration by the agency. FDA also stated, however, that any revision of the monitoring requirements for chemical contaminants in bottled water would require an amendment of the bottled water CGMP regulations (part 129). FDA stated that it intended to initiate, considering its resources and competing priorities, a separate rulemaking to address the issue of circumstances in which reduced frequency of monitoring requirements for chemical contaminants in bottled water products may be appropriate.

Therefore, FDA stayed the effective date for the nine chemical contaminants pending completion of a rulemaking to address the issue of reduced frequency monitoring for chemical contaminants in bottled water. Although the effect of the stay does not require bottled water manufacturers to monitor source waters and finished bottled water products annually for the nine chemical contaminants, FDA advised water bottlers to ensure, through appropriate manufacturing techniques and sufficient quality control procedures, that their bottled water products are safe with respect to levels of these nine chemical contaminants.

II. Direct Final Rulemaking

FDA has determined that the subjects of this rulemaking are suitable for a direct final rule. The actions taken should be noncontroversial and the agency does not anticipate receiving any significant adverse comments.

FDA is lifting the stay for the nine chemical contaminants for which the agency stayed the effective date in the March 1996 final rule. By lifting the stay, the bottled water CGMP requirements for annual testing for the nine chemical contaminants will become effective. This action will meet the statutory mandate provided in the SDWA Amendments that requires the agency to issue monitoring requirements for the nine chemical contaminants by August 6, 1998.

If FDA does not receive significant adverse comment on or before July 27, 1998, the agency will publish a notice in the *Federal Register* no later than August 6, 1998, confirming the effective date of the direct final rule. The agency intends to make the direct final rule effective 180 days after publication of the confirmation notice in the *Federal Register*.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment. If timely significant adverse comments are received, the agency will publish a notice of significant adverse comment in the *Federal Register* withdrawing this direct final rule no later than August 6, 1998.

The companion proposed rule, which is substantively identical to the direct final rule, provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments regarding the

direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule and the agency will consider such comments in developing a final rule. FDA will not provide additional opportunity for comment on the companion proposed rule. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the *Federal Register* of November 21, 1997 (62 FR 62466).

III. Action to Lift the Stay

Subsequent to the March 1996 final rule, on August 6, 1996, the SDWA Amendments were enacted. Section 305 of the SDWA Amendments requires that, for contaminants covered by a standard of quality regulation issued by FDA before the enactment of the SDWA Amendments for which an effective date had not been established, FDA issue monitoring requirements for such contaminants (e.g., the nine chemical contaminants: Antimony, beryllium, cyanide, nickel, thallium, diquat, endoathall, glyphosate, and dioxin) not later than 2 years after the date of enactment of the SDWA Amendments. Under this mandate, FDA is required to issue monitoring requirements for the nine chemical contaminants for which it stayed the effective date in the March 1996 final rule by August 6, 1998, with an effective date of February 6, 1999. If FDA does not meet this statutory time period, the NPDWR's for the nine chemical contaminants become applicable to bottled water.

For the reasons set forth in this document, FDA is lifting the stay of the effective date for the allowable levels for the nine chemical contaminants (antimony, beryllium, cyanide, nickel, thallium, diquat, endoathall, glyphosate, and dioxin). First, the agency's CGMP regulations for bottled water, which require that source waters and finished bottled water products be tested for these nine contaminants at least once a year, are protective of the public health. The agency considers at least annual testing, as set forth in its CGMP regulations in part 129 to be of sufficient frequency, absent circumstances that may warrant more frequent testing, to ensure that bottled water has been prepared, packed or held under sanitary conditions. Second, Congress mandated, under the SDWA Amendments, that the agency issue monitoring requirements for the nine chemical contaminants by August 6, 1998. The agency's action to lift the stay is consistent with this mandate. By lifting the stay of the effective date for the allowable levels for

the nine chemical contaminants in the bottled water quality standard, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for these nine chemical contaminants under the CGMP provisions in part 129. Third, in the March 1996 final rule, FDA stated that it intended to initiate rulemaking to address the issue of whether there are circumstances in which reduced frequency of monitoring for contaminants is appropriate. However, such rulemaking would require consideration of all chemical contaminants, not just the nine chemical contaminants that are the subject of the stay. FDA is only addressing, in this rulemaking, the frequency of monitoring for the nine chemical contaminants that are the subject of the stay. FDA may consider, in a future rulemaking, the issue of reduced frequency of monitoring in the context of all chemical contaminants in bottled water subject to the bottled water CGMP regulations (part 129). Therefore, the agency is, at this time, electing to lift the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants, i.e., antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin, and thereby require annual testing for these nine contaminants, consistent with the CGMP requirements for bottled water.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this direct final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health

and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of \$100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this direct final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this direct final rule is not a major rule for the purpose of Congressional review. For the purpose of Congressional review, a major rule is one which is likely to cause an annual effect on the economy of \$100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Final Regulatory Flexibility Analysis

FDA has examined the impact of the rule as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612). If a rule has a significant economic impact on a substantial number of small entities, the RFA requires agencies to analyze options that would minimize the economic impact of that rule on small entities. The agency acknowledges that the direct final rule may have a significant economic impact on a substantial number of small entities. The agency is not, in this analysis, addressing comments received in response to an initial regulatory flexibility analysis. The nature of the direct final rule provides for a companion proposed rule published at the same time as the direct final rule. An initial regulatory flexibility analysis is contained in the companion proposed rule. The agency is publishing the direct final rule because the agency does not anticipate any significant adverse comment. Should the agency receive any significant adverse comment in response to the direct final rule, the agency will withdraw the direct final rule and use the companion proposed rule in developing a final rule.

1. Objectives

The RFA requires a succinct statement of the purpose and objectives of any rule that may have a significant economic impact on a substantial number of small entities. The agency is taking this action to lift the stay for nine chemical contaminants under a Congressional mandate, under the SDWA Amendments, that FDA issue monitoring requirements for these nine chemical contaminants in bottled water. Lifting the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants (antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin) protects the public health. By lifting the stay, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for the nine chemical contaminants under the bottled water CGMP regulations in part 129. The agency considers at least annual testing, as set forth in its CGMP regulations, to be of sufficient frequency, absent circumstances that may warrant more frequent testing, to ensure that bottled water has been prepared, packed, or held under sanitary conditions.

2. Description of Small Business and the Number of Small Businesses Affected

The RFA requires a description of small businesses used in the analysis and an estimate of the number of small businesses affected, if such estimate is available. Table 1 of this document describes small businesses affected and estimates the number of small businesses affected by the rule. The agency combined the Small Business Administration (SBA) definition of a small business as an upper bound of the total number in the analysis with data from Duns Market Identifiers (DMI) on the number of plants using SIC 2086. FDA has used the International Bottled Water Association (IBWA) estimate as a lower bound of the number of small entities in the industry. According to DMI, there are a total of 1,567 establishments in the industry group of which 66 percent of the entities (1,028 firms) have fewer than 500 employees. According to IBWA, there are approximately 560 member firms, of which 50 percent or 280 firms have annual sales below \$1 million.

TABLE 1.—APPROXIMATE NUMBER OF SMALL ENTITIES COVERED BY THIS RULE

Type of Establishment	Standard Industry Classification Codes	Classification of Small Entities	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by the Rule
IBWA	NA	Annual Sales below \$1million	50%	280

TABLE 1.—APPROXIMATE NUMBER OF SMALL ENTITIES COVERED BY THIS RULE—Continued

Type of Establishment	Standard Industry Classification Codes	Classification of Small Entities	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by the Rule
DMI	2,086	Less than 500 employees	66%	1,028

3. Description of the Economic Impact on Small Entities

a. Estimated costs for testing source waters. The estimated costs for testing source waters are the estimated total

additional costs the small entity would incur to monitor source waters for the nine chemical contaminants annually. Table 2 of this document summarizes the expected additional costs. As discussed in the March 1996 final rule

(61 FR 13258 at 13263), additional cost per sample is estimated to be \$1,290, and an estimated 50 percent of source waters are from municipal sources that do not require testing.

TABLE 2.—ESTIMATED SUBTOTAL COSTS FOR TESTING SOURCE WATERS

No. of Small Establishments Covered by the Rule	Cost per Sample	Percent Water from Nonmunicipal Sources	Subtotal Annual Cost
Lower Bound—280	\$1,290	50%	\$180,600
Upper Bound—1028	\$1,290	50%	\$663,060

b. Estimated costs for testing finished bottled water products. The estimated costs for testing are the estimated total additional costs the small entity would

incur to monitor finished bottled water products for the nine chemical contaminants annually. Table 3 of this document summarizes the expected

costs. As discussed in the March 1996 final rule (61 FR 13258 at 13263), additional cost per sample is estimated to be \$1,290.

TABLE 3.—ESTIMATED SUBTOTAL COSTS FOR TESTING FINISHED BOTTLED WATER PRODUCTS

No. of Small Establishments Covered by the Rule	Cost per Sample	Average Number of Products	Subtotal Annual Cost
Lower Bound—280	\$1,290	2	\$722,400
Upper Bound—1028	\$1,290	2	\$2,652,240

c. Estimated total costs for testing source waters and finished bottled water products. The estimated total testing costs are the sum of estimated costs to

monitor source waters and finished bottled water products. The agency estimates that the lower bound cost is \$900,000 and the upper bound cost is \$3

million. Table 4 of this document summarizes the expected additional costs.

TABLE 4.—ESTIMATED TOTAL COSTS

No. of Small Establishments Covered by the Rule	Subtotal Costs for Testing Source Waters	Subtotal Costs for Testing Finished Bottled Water Products	Total Testing Costs ¹
Lower Bound—280	\$180,600	\$722,400	\$900,000
Upper Bound—1028	\$663,060	\$2,652,240	\$3,000,000

¹Total Testing Costs are rounded to the nearest significant digit.

d. Professional skills required for compliance. The RFA requires a description of the professional skills necessary for the preparation of a report or record. This rule does not require professional skills for the preparation of a report or record. Any sampling of source water or finished bottled water product for analysis of chemical

contaminants can be carried out by trained plant personnel who can ship such samples to a testing laboratory for analysis. Other trained skills would also include recording and maintaining the test result records at the plant for a minimum of 2 years.

e. Recordkeeping requirements. The RFA requires a description of the recordkeeping requirements of the rule.

Table 5 of this document shows the provisions for making and maintaining records by small businesses, the number of small businesses affected, the annual frequency of making each record, the amount of time needed for making each record, and the total number of hours for each provision in the first year and then in subsequent years.

TABLE 5.—SMALL BUSINESS RECORDKEEPING REQUIREMENTS

Provision	No. of Small Entities Keeping Records	Annual Frequency	Hours per Record per Small Entity	Total Hours, First Year	Total Hours, Subsequent Years
Monitoring SOP	280	1	10	2,800	2,800
Monitoring SOP	1,028	1	10	10,280	10,280
Validation	280	1	5	1,400	1,400
Validation	1,028	1	5	5,140	5,140
Record Maintenance	280	1	5	1,400	1,400
Record Maintenance	1,028	1	5	5,140	5,140
Totals-Lower Bound	280	1	20	5,600	5,600
Totals-Upper Bound	1,028	1	20	20,560	20,560

4. Minimizing the Burden to Small Entities

The RFA requires an evaluation of any regulatory alternatives that would minimize the costs to small entities. There are four alternatives that the agency has considered to provide regulatory relief for small entities. First, FDA considered the option of not lifting the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants. Second, FDA considered the option of exempting small entities from the requirements of this rule. Third, FDA considered lengthening the compliance period for small entities. Fourth, FDA considered reducing the testing frequency.

a. *Not lifting the stay.* By convention, the option of taking no action is the baseline in comparison with the evaluation of the other options. Taking no action in this case means not lifting the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants. By not lifting the stay, FDA would not meet the statutory mandate provided in the SDWA Amendments that requires the agency to issue monitoring requirements for the nine chemical contaminants by August 6, 1998. If FDA does not issue monitoring requirements by August 6, 1998, the NPDWR's for public drinking water for these nine contaminants would be considered to be the standard of quality regulations for bottled water under § 165.110. Under the NPDWR's, EPA's base monitoring requirements for ground water testing are once every 3 years for testing inorganic chemicals (e.g., antimony, beryllium, cyanide, nickel, and thallium), and four successive quarters every 3 years for ground water testing for synthetic organic chemicals (e.g., diquat, endothall, glyphosate, and dioxin). Under part 129, FDA requires at least annual testing for both the inorganic and synthetic organic chemicals. Therefore, the frequency of testing requirements under EPA's NPDWR's for

public drinking water and FDA's frequency of testing requirements for bottled water differ.

Moreover, the regulatory scheme under EPA regulations for public drinking water contemplates State coordination, including the use of State-issued waivers in certain situations. EPA regulations address treated ground and surface water testing, whereas FDA regulations address source water (which in most cases involves testing of untreated ground water) and finished bottled water product testing. Source water testing provides a preliminary review of the safety and quality of the water source that a water bottler intends to manufacture into a bottled water product. FDA considers source water testing to be as important as finished bottled water product testing because the safety and quality of the source water, determined by source water testing, will affect the treatment necessary to produce a finished bottled water product that complies with the bottled water quality standard. However, if EPA's regulatory scheme for public drinking water would need to be considered for the nine chemical contaminants that are the subject of this rule for bottled water, it is unclear whether only finished bottled water product testing for these nine chemical contaminants, without source water testing, would be applicable.

Furthermore, EPA's monitoring requirements are designed to address water that is provided to customers through municipal water distribution systems while FDA's requirements address water that is produced to be sold to consumers in discrete units. Some differences between these two sets of monitoring requirements exist (e.g., criteria for determining when a system (or bottler) is not in compliance), because they address two fundamentally different production circumstances. FDA believes that its regulations for bottled water, which are designed to ensure that bottled water is prepared, packed, or held under sanitary conditions, should apply to the testing

for these nine chemical contaminants in bottled water rather than having such contaminants subject to a regulatory scheme established for public drinking water.

Furthermore, the extent to which FDA would consider certain aspects of EPA's regulatory scheme for public drinking water as "monitoring requirements" is not clear. FDA has not had to apply EPA's regulations for public drinking water to bottled water under the bottled water quality standard regulations. Therefore, if FDA did not lift the stay and issue monitoring requirements under the agency's CGMP requirements in part 129 for these nine chemical contaminants, the application of section 410(b)(4)(A) of the act would create uncertainty for industry and regulators. The practical effect of the application of section 410(b)(4)(A) of the act may be additional burdens on small businesses if such businesses must adhere to two regulatory schemes for testing of their bottled water products rather than one comprehensive scheme for all bottled water testing. As stated earlier, FDA's CGMP requirements are protective of the public health and the application of these CGMP requirements to all bottled water would not result in uncertainty to industry and regulators. As discussed below in section V.B.3.d of this document, FDA believes that retaining the applicability of its CGMP requirements to all bottled water, with further evaluation of reduced frequency of testing in the context of all chemical contaminants in a future rulemaking, would be less confusing to small entities. Therefore, FDA believes that lifting the stay would be beneficial to the public.

b. *Exempt small entities.* One alternative for alleviating the burden for small entities would be to exempt them from the testing requirements of this rule. Although, this option would eliminate the cost of testing on small firms, it may also result in a decrease in the potential public health benefits of the rule. Small entities comprise a large part of the affected industry and

exempting them would affect the testing requirements for a large segment of the bottled water products on the market. Such products would not be subject to a certain frequency of testing that provides adequate assurance that such products manufactured by small businesses are as protective of the public health as those that have undergone the testing requirements for these nine contaminants under part 129. Therefore, exempting small businesses would reduce the potential public health benefits of lifting the stay.

c. *Extend compliance period.* FDA considered an extended compliance period. Lengthening the compliance period would provide regulatory relief to small entities because it would reduce the present value of the costs of testing. However, as stated in section V.B.4.b of this document, because small entities comprise a large part of the affected industry, longer compliance periods would delay any potential public health benefits of the rule. For example, if a small business had an excess level of one of the nine chemical contaminants in its bottled water product, it would not be aware of the potential public health problem as a result of the specific contaminant because the small business would not be testing during the longer compliance period. Therefore, the agency has concluded that lifting the stay is more protective of the public health.

d. *Reduced testing frequency.* Another alternative for alleviating the burden for small entities would be to reduce the testing frequency for certain chemical contaminants, including the nine chemical contaminants that are the subject of this rule. The agency believes that, in considering the issue of reduced frequency of testing, it needs to do so in the context of all chemical contaminants, not just the nine that are the subject of this rule. Reduced frequency of testing may include an entirely different scheme that may include waivers for certain chemical contaminants. The contemplation of such a scheme is better addressed in a context that includes consideration of all chemical contaminants, rather than considering and implementing a different regulatory scheme for only the nine chemical contaminants. Moreover, Congress mandated that the agency issue monitoring requirements for these nine chemical contaminants by August 6, 1998. Because the scope of this rule is limited to these nine chemical contaminants, and the agency does not have sufficient time to enlarge the scope of this rulemaking to the issue of reduced frequency of testing for all chemical contaminants, the agency is

not pursuing this alternative in this rulemaking. However, the agency plans to consider the issue of reduced frequency of monitoring for all chemical contaminants in bottled water in a future rule.

5. Summary

FDA has examined the impact of the direct final rule on small businesses in accordance with RFA. This analysis, together with the preamble, constitutes RFA.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this direct final rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). This rule does not require a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of \$100 million (adjusted annually for inflation) or more by State, local, and tribal governments in the aggregate, or by the private sector, in any one year.

VI. Paperwork Reduction Act of 1995

FDA concludes that this direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Comments

Interested persons may, on or before July 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this direct final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Effective Date

The agency intends to make the direct final rule effective 180 days after the publication of the confirmation notice in the *Federal Register*. The agency is providing a 180 day effective date to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs, 21 CFR part 165 is amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343-1, 348, 349, 371, 379e.

§ 165.110 [Amended]

2. Section 165.110 *Bottled water* is amended in the table in paragraph (b)(4)(iii)(A) by removing the superscript "1" after the entries for "Antimony," "Beryllium," "Cyanide," "Nickel," and "Thallium," and by removing the footnote to the table; in the table in paragraph (b)(4)(iii)(C) by removing the superscript "1" after the entries for "Diquat," "Endothall," "Glyphosate," and "2,3,7,8-TCDD (Dioxin)," and by removing the footnote to the table; and by removing the note that follows paragraph (b)(4)(iii)(G)(3)(iv).

Dated: May 5, 1998.

William K. Hubbard,
Associate Commissioner for Policy
Coordination.

[FR Doc. 98-12381 Filed 5-6-98; 3:57 pm]
BILLING CODE 4140-01-F

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Expedited Revocation Procedure for Parole Violators

AGENCY: Parole Commission, Justice.
ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is adding to its regulations a provision whereby certain parolees who have been arrested and charged with violations of parole (or who are serving new sentences for crimes committed while on parole) may consent to revocation of parole upon the acceptance of a sanction within the applicable guideline range. The purpose of this procedure is to avoid the need for holding parole violators in local jails for revocation hearings, and to save the Parole Commission the time and expense of conducting hearings when an appropriate sanction can be imposed with the consent of the offender.

DATES: Effective June 10, 1998.
FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General

Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: In certain categories of cases, the U.S. Parole Commission has found that an appropriate sanction for parole failure can be determined through a review of the parolee's record and by reference to the applicable reparole guidelines. The majority of these cases involve administrative violations, drug use, and drug treatment program failure, as well as petty crimes. The sanction is revocation and a presumptive reparole date. In other cases, the violation of parole may be serious enough that the only appropriate sanction is revocation and denial of reparole. The Commission has found that many arrested parole violators in these categories are willing to waive their right to a hearing under 18 U.S.C. 4214 in order to be removed from a local jail and complete the prescribed period of imprisonment in an institution where programming and other amenities are available.

Accordingly, in 1996, the Commission approved a pilot project for an "expedited revocation procedure." After the preliminary interview has been conducted following the arrest of the accused parole violator, the Commission offers the parolee the opportunity to consent to revocation and a sanction of a definite number of months in prison. The procedure was initially limited to Category One violations on the guidelines at 28 CFR 2.20. Category Two violations and cases where the Commission proposed to deny reparole altogether ("continue to expiration") were eventually added. The procedure is also used in the case of parolees who will complete an adequate sanction by serving a new state or federal sentence, but for whom revocation of parole is necessary in order to guarantee an adequate period of parole supervision following release from imprisonment. This is accomplished by an order forfeiting the time spent on parole, which accompanies an order of revocation.

Over the course of the pilot project, 1223 cases were considered for the expedited revocation procedure, with an acceptance rate of 76.2%. The project has saved agency resources as well as critical jail space without diminishing in any respect the sanctions normally imposed by the Commission on these types of parole violators. It is to be emphasized that the "expedited revocation procedure" is in no sense a form of plea-bargaining; the Parole Commission offers the accused violator

the sanction that is considered appropriate by the Commission. If the parolee does not accept the proposed sanction, a revocation hearing is conducted. Following the hearing, any appropriate sanction may be imposed. Moreover, the parolee's acceptance of the Commission's offer does not create a "plea agreement" that can be subsequently enforced to avoid consequences required by regulation or law (e.g., a consecutive sentence that is not referenced in the Commission's offer).

It is also to be emphasized that the Parole Commission may, in its discretion, decide not to offer an expedited revocation if there is any aspect of the case that appears to warrant an in-person revocation hearing, and may rescind an offer at any time in order to schedule an in-person hearing.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant rule within the meaning of Executive Order 12866, and the proposed rule has, accordingly, not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U.S. Parole Commission makes the following changes to 28 CFR Part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR Part 2 is amended by adding § 2.67 to read as follows:

§ 2.67 Expedited Revocation Procedure.

(a) In addition to the actions available to the Commission under § 2.47(a) and (b), and under § 2.48, the Commission may offer an alleged parole violator an opportunity to accept responsibility for his violation behavior, to waive a revocation hearing, and to accept the sanction proposed by the Commission in the Notice of Eligibility for Expedited

Revocation Procedure that is sent to the alleged parole violator.

(b) The following cases may be considered under the expedited revocation procedure:

(1) Cases in which the alleged parole violator has been given a preliminary interview under § 2.48, and the alleged violation behavior would be graded Category One or Category Two;

(2) Cases in which the alleged violator has been given a preliminary interview under § 2.48 and the proposed decision is continue to expiration of sentence, regardless of offense category; and

(3) Cases in which an alleged violator has received a dispositional review under § 2.47, and the Commission determines that conditional withdrawal of the warrant would be appropriate, but forfeiture of street time is deemed necessary to provide an adequate period of supervision.

(c) The alleged violator's consent shall not be deemed to create an enforceable agreement with respect to any action the Commission is authorized to take by law or regulation, or to limit in any respect the normal statutory consequences of a revocation of parole or mandatory release.

Dated: May 5, 1998.

Michael J. Gaines,
Chairman, U.S. Parole Commission.
[FR Doc. 98-12388 Filed 5-8-98; 8:45 am]
BILLING CODE 4410-01-P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Electronic Issuance of Paroling Violation Warrants

AGENCY: Parole Commission, Justice.
ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending a regulation that requires parole violation warrants to be issued by U.S. Mail. In order to expedite the receipt of warrants by the U.S. Marshals Service, the regulation is being amended to permit warrants to be sent by electronic transmission. Although an alleged parole violator may be arrested by authorized officials who have been alerted to the issuance of a warrant but have not actually received the warrant, a procedure that will ensure the immediate receipt of warrants by arresting authorities will avoid confusion as to the Commission's instructions and the parolee's status.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, MD 20815. Telephone: (301) 492-5959.

SUPPLEMENTARY INFORMATION: The Commission has determined that cases of confusion over whether a warrant should be executed or placed as a detainer (if the alleged parole violator is already in custody on another charge) can be readily avoided if the Commission adopts a procedure designed to expedite the receipt of warrants by the U.S. Marshals Service. Other possibilities for delay and confusion prior to the receipt of a signed warrant can also be avoided. The only legal obligation under which the Commission operates with respect to the issuance of valid warrants is that a warrant must be issued prior to the expiration of the parolee's sentence. Issuance and delivery of a warrant are separate events. 18 U.S.C. 4213(d) (1976).

The term "issue" means to send out officially. *Hervey v. Secretary of Health and Human Services*, 88 F.3d 1001, 1002 (Fed. Cir. 1996). The long-accepted definition of the term "issue" has never been specific as to means of issuance. Accordingly, the Parole Commission may, by regulation, define the issuance of a warrant as being the electronic transmission of the signed warrant to the arresting authorities. The date and time of "issuance" of a warrant will be the date and time it is transmitted electronically. The signed original, having been thus issued, will remain in the Commission's file.

Executive Order 12868 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U.S. Parole Commission makes the following changes to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR Part 2, § 2.44 (c) is revised to read as follows:

§ 2.44 Summons to appear or warrant for retaking of parolee.

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms except that in the case of a prisoner released as if on parole pursuant to 18 U.S.C. 4164, such summons or warrant may be issued only within the maximum term or terms, less one hundred eighty days. A summons or warrant shall be considered issued when signed and either—
(1) Placed in the mail or
(2) Sent by electronic transmission to the intended authorities.

Dated: May 5, 1998.

Michael J. Gaines,
Chairman, U.S. Parole Commission.
[FR Doc. 98-12387 Filed 5-8-98; 8:45 am]
BILLING CODE 4410-01-P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Release of Information to the Public

AGENCY: Parole Commission, Justice.
ACTION: Final rule.

SUMMARY: The Commission's regulation concerning the disclosure of information about offenders under its jurisdiction currently addresses only those situations where disclosure is necessary to give notice to potential victims of individuals on parole, or to assist law enforcement authorities. No provision is made for the general disclosure of information about prisoners and parolees when such information is considered to be "public sector" information that may be disclosed without the consent of the subject. At 28 CFR 540.65(b), the Bureau of Prisons defines the information that is considered "a matter of public record" for disclosure to representatives of the media. The Parole Commission is now amending its regulation to define the information that it gives to the media and to the public generally.
EFFECTIVE DATE: Effective June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone: (301) 492-5959.

SUPPLEMENTARY INFORMATION: The information defined as "public sector" information is consistent with the information defined in § 540.65(b), and with the current practice of the U.S. Parole Commission. The same policy will be followed for both U.S. and D.C. Code offenders.

It should be noted that, although Commission decisions may be disclosed, this does not necessarily include the statement of reasons provided by the Commission in support of each decision. Pursuant to its routine use exemptions from the Privacy Act of 1974 (published at 53 FR 7813, March 10, 1988), public disclosure of the full Notice of Action issued by the Parole Commission is only available if the Commission has determined that disclosure is appropriate "to further understanding of the criminal justice system by the public" and has transmitted the Notice of Action to the Office of Public Affairs of the Department of Justice.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U.S. Parole Commission makes the following changes to 28 CFR Part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR Part 2, § 2.37 is amended by adding the following new paragraph (c):

§ 2.37 Disclosure of information concerning parolees; Statement of policy.

(c) Information deemed to be "public sector" information may be disclosed to third parties without the consent of the file subject. Public sector information encompasses the following:

- (1) Name;
- (2) Register number;
- (3) Offense of conviction;
- (4) Past and current places of incarceration;
- (5) Age;
- (6) Sentence data on the Bureau of Prisons sentence computation record (BP-5);
- (7) Date(s) of parole and parole revocation hearings; and
- (8) The decision(s) rendered by the Commission following a parole or parole revocation proceeding, including the dates of continuances and parole dates. An inmate's designated future place of incarceration is not public information.

Dated: May 5, 1998.
Michael J. Gaines,
Chairman, U.S. Parole Commission.
[FR Doc. 98-12386 Filed 5-8-98; 8:45 am]
BILLING CODE 4410-01-P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Reg. 5400.21]

Privacy Act; Implementation

AGENCY: Defense Logistics Agency, DoD.
ACTION: Final rule.

SUMMARY: The Defense Logistics Agency is exempting a system of records identified as S500.60 CA, entitled 'DLA Complaint Program Records' from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.
EFFECTIVE DATE: May 5, 1998.

ADDRESSES: Send comments to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767-6183.
SUPPLEMENTARY INFORMATION: Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does

not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act, and 44 U.S.C. Chapter 35.

This rule adds an exempt Privacy Act system of records to the DLA inventory of systems of records. DLA operates a complaint system whereby individuals may report instances of suspected fraud, waste, or abuse; mismanagement; contract deviations, noncompliance, or improprieties; administrative misconduct; or adverse treatment under the complaint program. Allegations are investigated and appropriate corrections are instituted. The exempt system reflects recognition that certain records in the system may be deemed to require protection from disclosure in order to protect confidential sources mentioned in the files and avoid compromising, impeding, or interfering with investigative and enforcement proceedings. The proposed rule was previously published on March 6, 1998, at 63 FR 11198. No comments were received, therefore, the Director is adopting the exemptions for the reasons provided.

List of subjects in 32 CFR part 323

Privacy.
Accordingly, 32 CFR part 323 is amended as follows:

Part 323—Defense Logistics Agency Privacy Program.

1. The authority citation for 32 CFR Part 323 continues to read as follows:
Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).
2. Appendix H to Part 323 is to be amended by adding paragraph e. as follows:

Appendix H to Part 323—DLA Exemption Rules.

e. ID: S500.60 CA (Specific exemption).

1. System name: DLA Complaint Program Records.

2. **Exemption:** (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

3. **Authority:** 5 U.S.C. 552a(k)(2) and (k)(5), subsections (c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

4. **Reasons:** (i) From subsection (c)(3) because to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence;

enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Dated: May 5, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense
[FR Doc. 98-12321 Filed 5-8-98; 8:45 am]
BILLING CODE 5000-04-F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its Privacy Act regulation on exemptions for specific record systems. The administrative amendment consists of changing the system name of N05520-4, NIS Investigative Files System' to 'NCIS Investigative Files System'.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

SUPPLEMENTARY INFORMATION: Executive Order 12866. It has been determined that this Privacy Act rule for

the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Department of the Navy is amending the system name of an exempt system of records published in 32 CFR part 701, subpart G. The administrative amendment consists of changing the system name of N05520-4, NIS Investigative Files System' to 'NCIS Investigative Files System'.

List of Subjects in 32 CFR Part 701

Privacy.

1. The authority citation for 32 CFR part 701, Subpart G continues to read as follows:

AUTHORITY: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, is amended by revising the heading of paragraph (m) as follows:

§ 701.118 Exemptions for specific Navy record systems.

(m) **System identifier and name:** N05520-4, NCIS Investigative Files System. * * *

Dated: May 5, 1998.

L. M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 98-12322 Filed 5-8-98; 8:45 am]
BILLING CODE 5000-04-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA-46-1-7384a; FRL-6009-1]

Approval and Promulgation of State Implementation Plans; Louisiana: Site-Specific Revision for the Exxon Company Baton Rouge Refinery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the EPA is approving a site-specific revision to the Louisiana 15% Rate-of-Progress State Implementation Plan (SIP). The revision extends the date of compliance for the installation of particular Volatile Organic Liquid (VOL) storage tank controls for storage tanks located at the Baton Rouge Refinery of Exxon Company, U.S.A. Specifically, the revision extends the compliance date of the requirement for the installation of guide pole sliding cover gaskets on 33 storage tanks until the earlier of the next scheduled downtime of the subject tanks or December 2005.

In the proposed rules section of today's Federal Register (FR), the EPA is proposing and seeking public comment on the same conditional and final approvals of the Louisiana SIP that are discussed in this document. If relevant adverse comments are received on these approvals, the EPA will publish a timely withdrawal in the Federal Register informing the public that the direct final rule did not take effect, and addressing the relevant comments received in a subsequent final rule, based on the related proposed rule. No additional opportunity for public comment will be provided.

DATES: This action is effective on July 10, 1998 unless adverse or critical comments are received by June 10, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule did not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, Region 6, Dallas, 1445 Ross Avenue, Texas 75202-2733, telephone: (214) 665-7214

Air Quality Division, Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810, telephone: (504) 765-7247.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Eaton R. Weiler, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone: (214) 665-2174.

SUPPLEMENTARY INFORMATION:

I. Background

A. VOL Storage Rule

In 61 FR 54737 (October 22, 1996) the EPA approved the Louisiana 15% Rate-of-Progress plan which describes how ozone nonattainment areas classified as moderate and above will achieve an actual reduction in emissions of volatile organic compounds during the first six years after the enactment of the 1990 Clean Air Act amendments. See section 182(b). Included in this plan is the State rule for controlling Volatile Organic Compound (VOC) emissions from VOL storage, Louisiana Administrative Code (LAC) 33:III.2103. The calculated emissions reductions from the implementation of this rule were credited towards the Louisiana 15% Rate-of-Progress plan.

The compliance date for rule LAC 33:III.2103 was November 15, 1996. The control requirements for external floating roof storage tanks of this rule include the installation of guide pole sliding cover gaskets. Relating to compliance date extensions, the rule states, "Requests for extension of the November 15, 1996, compliance date will be considered on a case-by-case basis for situations which require the tank to be removed from service to install the controls and must be approved by the administrative authority." In this instance, the term "administrative authority" refers to both the Secretary or designee of the LDEQ, and the Administrator or authorized representative of the EPA.

B. Site Specific Request

In letters to the LDEQ dated November 13, 1996; May 14, 1997; and July 3, 1997; the Baton Rouge Refinery of Exxon Company, U.S.A. requested an extension of the compliance schedule of the requirement for the installation of guide pole sliding cover gaskets on 33 external floating roof tanks. These letters include a list of the tanks, the date of the next maintenance downtime, and emissions estimates for the tanks.

To accomplish the installation of the sliding cover gaskets, the guide pole roller brackets must be temporarily removed to allow the sliding cover to be elevated to insert the gasket. The roller brackets on these 33 tanks are welded in place (versus bolted in place) and require the use of cutting torches or other "hotwork" (spark generating cutting or welding) for removal.

Prematurely shutting down and cleaning the subject tanks to install the required sliding cover gaskets would result in considerable additional VOC emissions from each tank beyond that expected for normal maintenance and inspection. Where possible, the Refinery has complied with all other floating roof storage tank rules to limit emissions of VOC's.

Calculations provided by Exxon and reviewed and accepted by the LDEQ and the EPA show installation of the sliding gaskets would result in a reduction of VOC emissions by 12 tons per year. Premature shut down and degassing needed to install the sliding gaskets would result in additional VOC emissions of over 100 tons. Furthermore, the installation of the sliding gaskets represents a minuscule portion of the 2,500 tons per year of emission reductions from Exxon's tank controls as approved in the 15% Rate-of-Progress plan.

Therefore, the delayed reductions will not significantly impact the 15% Rate-of-Progress plan for the Baton Rouge ozone nonattainment area. The VOC emission impact of this extension is approximately 0.03 tons per day and will diminish as tanks come out of service and are retrofitted while reductions demonstrated in the 15% Rate-of-Progress plan exceed the required reductions by 1.4 tons per day; therefore, the plan will still demonstrate the required reductions.

In letters dated July 17, and September 12, 1997, the LDEQ notified Exxon of LDEQ's approval of the compliance date extensions for installation of the sliding cover gaskets. In a letter dated December 20, 1997, the Governor of Louisiana submitted the LDEQ-approved site-specific revision to

the 15% Rate-of-Progress plan to the EPA for approval.

II. Final Action

By this action, the EPA is approving a revision to the Louisiana 15% Rate-of-Progress SIP to allow for a site-specific extension of the compliance date to LAC 33:III.2103.D.4 for the installation of sliding pole gasket covers for 33 tanks located at the Exxon Company U.S.A., Baton Rouge Refinery until the earlier of the next scheduled downtime or December 2005.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective July 10, 1998 without further notice unless, by June 10, 1998, relevant adverse comments are received.

If EPA receives such comments, then the EPA will publish a timely withdrawal of the final rule in the **Federal Register** informing the public that the rule did not take effect. All relevant public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective July 10, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may

certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 23, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation of part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraphs (c)(79) to read as follows:

§ 52.970 Identification of plan.

(c) * * *

(79) Site-specific revision to the 15% Rate-of-Progress plan submitted by the Governor in a letter dated December 20, 1997. The revision provides for a schedule extension for installation of guide pole sliding cover gaskets on 33 external floating roof tanks located at the Baton Rouge refinery of Exxon Company U.S.A.

(i) Incorporation by reference.

Letters dated July 17, 1997, and September 12, 1997, from the LDEQ to Exxon Company U.S.A. approving the compliance date extension; which are included in the State Implementation Plan submittal entitled, "Summary of 15% Rate-of-Progress State Implementation Plan Revision," dated December 20, 1997.

(ii) Additional material.

(A) Letter from the Governor of Louisiana dated December 20, 1997, transmitting a copy of the State Implementation Plan revision.

(B) Letters dated November 13, 1996; May 14, 1997; and July 3, 1997; from Exxon Company U.S.A. to the LDEQ requesting the compliance date extension and including a list of the subject tanks, the date of the next maintenance downtime, and emissions estimates for the tanks; which are included in the State Implementation Plan submittal entitled, "Summary of 15% Rate-of-Progress State Implementation Plan Revision," dated December 20, 1997.

[FR Doc. 98-12433 Filed 5-8-98; 8:45 am]
BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300646; FRL-5787-4]

RIN 2070-AB78

Bentazon; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide bentazon and its metabolites in or on succulent peas at 3 part per million (ppm) for an additional 1-year period, to June 30, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on succulent peas. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to

establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective May 11, 1998. Objections and requests for hearings must be received by EPA, on or before July 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300646], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300646], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Virginia Dietrich, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-9359; e-mail: dietrich.virginia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the Federal Register of June 20, 1997 (62 FR 33563-33569) (FRL-5720-4), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of bentazon and its metabolites in or on succulent peas at 3 ppm, with an expiration date of June 30, 1998. EPA established the tolerance

because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of bentazon on succulent peas for this year's growing season due to infestation with the weed Canada thistle. After having reviewed the submission, EPA concurs that emergency conditions exist for Minnesota. EPA has authorized under FIFRA section 18 the use of bentazon on succulent peas for control of Canada thistle in succulent peas.

EPA assessed the potential risks presented by residues of bentazon in or on succulent peas. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of June 20, 1997 (62 FR 33563-33569). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on June 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on succulent peas after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing

requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 10, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which

will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 51/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300646]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels

or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 27, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:
Authority: 21 U.S.C. 346a and 371.

§ 180.355 [Amended]

2. In § 180.355, the table to paragraph (b) is amended by changing the date "6/30/98" to read "6/30/99".

[FR Doc. 98-12425 Filed 5-8-98; 8:45 am]

BILLING CODE 6560-60-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 60

RIN 0908-AA49

National Vaccine Injury Compensation Program (VICP): Effective Date Provisions of Coverage of Certain Vaccines to the Vaccine Injury Table

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: Section 904(b) of the Taxpayer Relief Act of 1997 provides for an excise tax for three new vaccines, effective August 6, 1997. Petitions for compensation for injuries or deaths related to hepatitis B, Hib, and varicella vaccines may now be filed under the Vaccine Injury Compensation Program (VICP). This technical amendment amends the Code of Federal Regulations (CFR) to include a date certain (August 6, 1997) in § 100.3(c) of the Vaccine Injury Compensation regulations, so that there will be no uncertainty as to the coverage of these three vaccines.

EFFECTIVE DATE: This final rule is effective May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Medical Director, Division of Vaccine Injury Compensation, Bureau of Health Professions, (301) 443-4198, or David Benor, Senior Attorney, Office of the General Counsel (301) 443-2006.

SUPPLEMENTARY INFORMATION: The National Vaccine Injury Compensation Program (VICP), established by Subtitle 2 of Title XXI of the Public Health Service Act (the Act), provides a system of no-fault compensation for certain individuals who have been injured by specific childhood vaccines. The Vaccine Injury Table (the Table) establishes presumptions about causation of certain illnesses and conditions which are used by the U.S. Court of Federal Claims to adjudicate petitions. The Act provides that a revision to the Table, based on addition of new vaccines under section 2114(e) of the Act, shall take effect upon the effective date of a tax enacted to provide funds for compensation for injuries from vaccines that are added to the Table. (See section 13632(a)(3) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, enacted August 10, 1993.)

On August 5, 1997, the President signed Public Law 105-34, the

"Taxpayer Relief Act of 1997." Section 904(a) of this Act provides that the excise tax on all covered vaccines under the VICP is 75 cents per dose and that combinations of vaccines are subject to an excise tax which is the sum of the amounts for each vaccine included in the combination. The amendments of the Taxpayer Relief Act also make effective the coverage of three new vaccines under the VICP—hepatitis B, Hib, and varicella vaccines.

On October 9, 1997, a Notice was published in the *Federal Register* (62 FR 52724) announcing the excise tax for these vaccines and that petitions for compensation for injuries or deaths related to hepatitis B, Hib, and varicella vaccines (items VIII, IX, X, and XI of the Table) may now be filed under the VICP. In accordance with section 2116(b) of the PHS Act, for injuries or deaths that occurred before August 6, 1997, for these three vaccines, petitions may be filed no later than August 6, 1999, provided that the injury or death occurred no earlier than August 6, 1989.

In accordance with section 904(b) of the Taxpayer Relief Act of 1997 which provides for an excise tax for these three new vaccines, this final rule (technical amendment) amends the CFR to include a date certain (August 6, 1997) in § 100.3(c) of the regulations for the coverage of these three new vaccines. Paragraph (c)(3) provides for inclusion of other new vaccines, as they may be added in the future under item XII of the Table.

Justification for Omitting Notice of Proposed Rulemaking

Since these amendments are of a technical nature, the Secretary has determined, pursuant to 5 U.S.C. 533 and departmental policy, that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective date of this final rule.

Economic Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of

alternatives, costs, benefits, incentives, equity, and available information. Regulations that are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department has determined that no resources are required to implement the requirements in this regulation. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. The Secretary has also determined that this final rule does not meet the criteria for a major rule as defined by Executive Order 12866. This technical amendment sets forth the effective date provision of coverage of certain vaccines to the Vaccine Injury Table. As such, this rule would have no major effect on the economy or on Federal or State expenditures.

Paperwork Reduction Act of 1995

This Final rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, Immunization.

Approved: April 28, 1998.

Claude Earl Fox,

Acting Administrator, Health Resources and Services Administration.

Accordingly, 42 CFR part 100 is amended as set forth below:

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for 42 CFR part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act, 100 Stat. 3767, as revised (42 U.S.C. 300aa-15); § 100.3, Vaccine Injury Table, issued under secs. 312 and 313 of Pub. L. 99-660, 100 Stat. 3779-3782 (42 U.S.C. 300aa-1 note) and sec. 2114(c) and (e) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645 (42 U.S.C. 300aa-14(c) and (e); and sec. 904(b) of Pub. L. 105-34, 111 Stat. 873).

2. Section 100.3(c) is amended by revising its title, by adding "or (3)" in the first sentence of paragraph (c)(1) after the words "paragraph (c)(2)", by revising paragraph (c)(2), and by adding a new paragraph (c)(3) to read as follows:

§ 100.3 Vaccine injury table.

• • • • •

(c) Coverage provisions. • • •

• (c)(2) Hepatitis B, Hib, and varicella vaccines (Items VIII, IX, X, and XI of the Table) are included in the Table as of August 6, 1997.

(c)(3) Other new vaccines (Item XII of the Table) will be included in the Table as of the effective date of a tax enacted to provide funds for compensation paid with respect to such vaccines. An amendment to this section will be published in the *Federal Register* to announce the effective date of such a tax.

[FR Doc. 98-12389 Filed 5-8-98; 8:45 am]

BILLING CODE 4180-15-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part O

[GC Docket No. 97-143; FCC 97-332]

Implementation of the Electronic Freedom of Information Act Amendments of 1996; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (FCC) published in the *Federal Register* of October 3, 1997, a document amending its Freedom of Information Act (FOIA) regulations to implement the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). Inadvertently, in § 0.461 paragraphs (i)(2) through (i)(5) were deleted from the rules. This document restores those rules.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Laurence H. Schecker, Office of General Counsel, (202) 418-1720.

SUPPLEMENTARY INFORMATION: The FCC published a document in the *Federal Register* of October 3, 1997 (62 FR 51795), amending its FOIA regulations to conform to the EFOIA. In FR Doc. 97-26205, published in the *Federal Register* of October 3, 1997, in § 0.461 paragraphs (i)(2) through (i)(5) were inadvertently deleted from the regulations. This correction restores those rules.

In rule FR Doc. 97-26205 published on October 3, 1997, (62 FR 51795) make the following corrections.

1. On page 51797, in the second column, revise amendatory instruction 7, to read as follows: "Section 0.461 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2), revising paragraphs

(d)(1) and (d)(3), paragraph (g) introductory text, paragraph (g)(3) and the concluding text of paragraph (g), redesignating paragraphs (h)(1) through (h)(5) and (i) as paragraphs (i)(1) through (i)(5) and (j), revising newly designated paragraphs (i)(1) and (j), adding new paragraph (h), and revising paragraph (k) introductory text and paragraph (k)(3) to read as follows:"

2. On page 51798, in the first column, second line from the bottom, insert the designation "(1)" after the designation "(i)" and before the word "If".

3. On page 51798, in the second column, insert 5 asterisks in a line following paragraph (i)(1) and proceeding paragraph (j).

Magalie Roman Salas,

Secretary.

[FR Doc. 98-12411 Filed 5-8-98; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991-AB43

Acquisition Regulation: Limitation on Allowability of Compensation for Certain Contractor Personnel

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its Acquisition Regulation to incorporate the statutory provisions contained in Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 808 establishes a cap on allowable compensation costs for certain officers of Department of Defense and civilian agency contractors which applies to costs of compensation incurred after January 1, 1998 for executive compensation.

DATES: This rule is effective on May 11, 1998.

ADDRESSES: Terrence D. Sheppard, Office of Policy (HR-51), Office of Procurement and Assistance Policy, Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Terrence D. Sheppard (202) 586-8193; e-mail terry.sheppard@hq.doe.gov; fax (202) 586-0545.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Section by Section Analysis
 - A. Review Under Executive Order 12866
 - B. Review Under Executive Order 12988
- III. Procedural Requirements

- C. Review Under the Paperwork Reduction Act
- D. Review Under the National Environmental Policy Act
- E. Review Under Executive Order 12612
- F. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
- G. Review Under the Unfunded Mandates Reform Act of 1995

I. Background

This notice amends the Department of Energy Acquisition Regulation (DEAR) based on provisions contained in Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 808 establishes a cap on allowable compensation costs for certain officers of Department of Defense and civilian agency contractors which applies to costs of compensation incurred after January 1, 1998, under covered contracts entered into before, on, or after the date of enactment of the Act. Section 808 states that costs of compensation of senior executives of contractors for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds the benchmark compensation amount determined applicable for the fiscal year by the Administrator for Federal Procurement Policy, are unallowable.

Further, for purposes of section 2324(e)(1)(P) of title 10, United States Code, and section 306(e)(1)(P) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256(e)(1)(P)), the Administrator shall review commercially available surveys of executive compensation and, on the basis of the results of the review, determine a benchmark compensation amount to apply for each fiscal year. In making determinations under this subsection the Administrator shall consult with the Director of the Defense Contract Audit Agency and such other officials of executive agencies as the Administrator considers appropriate. The benchmark compensation amount applicable for a fiscal year is the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available at the time the determination under subsection (a) is made.

The term "compensation", for a fiscal year, means the total amount of wages, salary, bonuses and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the fiscal year.

The term "senior executive", with respect to a corporation, means the chief

executive officer of the corporation or any individual acting in a similar capacity for the corporation; the four most highly compensated employees in management positions of the corporation other than the chief executive officer; and in the case of a corporation that has components which report directly to the corporate headquarters, the five most highly compensated individuals in management positions at each such component.

The term "benchmark corporation", with respect to a fiscal year, means a publicly-owned United States corporation that has annual sales in excess of \$50,000,000 for the fiscal year.

The term "publicly-owned United States corporation" means a corporation organized under the laws of a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States and the voting stock of which is publicly traded.

The term "fiscal year" means a fiscal year established by a contractor for accounting purposes.

II. Section by Section Analysis

1. The authority for Part 970 is restated.
2. Section 970.3102-2, Compensation for personnel services, is revised by adding a new paragraph (q) which addresses the statutory compensation limits.
3. Section 970.5204-13(d)(8) is revised by adding a new paragraph (viii) which addresses the statutory compensation limits.
4. Section 970.5204-14(d)(8) is revised by adding a new paragraph (viii) which addresses the statutory compensation limits.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following

requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of Energy has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule revises certain policy and procedural requirements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

F. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more. This rulemaking only affects private sector entities, and the impact is less than \$100 million.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC on April 22, 1998.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec 644 of the Department of Energy Organization Act, Public Law 95-91 (42 U.S.C. 7254).

2. Section 970.3102-2 is amended by adding a new paragraph (q) to read as follows:

970.3102-2 Compensation for personal services.

(q) Limitation on allowability of compensation for certain contractor personnel. Costs incurred for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy, are unallowable. Allowable costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205-6(p).

3. Section 970.5204-13 is amended by adding a new paragraph (d)(8)(viii) immediately after paragraph (d)(8)(vii) and before the Note to read as follows:

970.5204-13 Allowable costs and fixed-fee (management and operating contracts).

(d)(8)
(viii) Compensation of a senior executive, provided that such compensation does not exceed the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy. Costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205-6(p).

4. Section 970.5204-14 is amended by adding a new paragraph (d)(8)(viii) immediately after paragraph (d)(8)(vii) and before the Note to read as follows:

970.5204-14 Allowable costs and fixed-fee (support contracts).

(d)(8)
(viii) Compensation of a senior executive, provided that such compensation does not exceed the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy. Costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205-6(p).

[FR Doc. 98-12413 Filed 5-8-98; 8:45 am]

BILLING CODE 6450-01-P

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-27-AD]

RIN 2120-AA64

Airworthiness Directives; Textron Lycoming and Teledyne Continental Motors Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Textron Lycoming and Teledyne Continental Motors reciprocating engines that had crankshafts repaired by Nelson Balancing Service, Repair Station Certificate No. NB7R820J, Bedford, Massachusetts. This proposal would require removal from service of affected crankshafts, or a visual inspection, magnetic particle inspection, and dimensional check of the crankshaft journals, and, if necessary, rework or removal from service of affected crankshafts and replacement with serviceable parts. This proposal is prompted by reports of crankshafts exhibiting heat check cracking of the nitrided bearing surfaces which led to crankshaft cracking and subsequent failure. The actions specified by the proposed AD are intended to prevent crankshaft failure due to cracking, which could result in an inflight engine failure and possible forced landing.

DATES: Comments must be received by June 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-27-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using

the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Rocco Viselli, Aerospace Engineer (assigned to Textron Lycoming), New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., 3rd Floor, Valley Stream, NY 11581-1200; telephone (516) 256-7531, fax (516) 568-2716; or Jerry Robinette, Aerospace Engineer (assigned to Teledyne Continental Motors), Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1895 Phoenix Boulevard, One Crown Center, Suite 450, Atlanta, GA 30349; telephone (770) 703-6096, fax (770) 703-6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-ANE-27-AD." The postcard will be date stamped and returned to the commenter.

Federal Register

Vol. 63, No. 90

Monday, May 11, 1998

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-27-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of crankshafts installed in certain Textron Lycoming and Teledyne Continental Motors (TCM) reciprocating engines cracking after repair by Nelson Balancing Service, Repair Stations Certificate No. NB7R820J, Bedford, Massachusetts. The investigation revealed that the crankshafts exhibit heat check cracking of the nitrided bearing surfaces. The cracking of the nitride surface is believed to be due to improper grinding procedures. Grinding occurred as part of the engine overhaul process. Improper grinding can result in overheating the crankshaft, which, in turn, results in cracking of the nitride surface. If the crankshaft is returned to service with the nitride surface cracked, the crankshaft will fail. The cracks occur in the forward and/or aft fillet of the main bearing journals and/or crankpin journals. The time to failure depends on the severity of the cracking but the crankshaft will not complete the overhaul cycle. There have been 28 cases of crankshafts installed on certain Textron Lycoming reciprocating engines that have been classified as cracked, 3 broken, and 2 later rejected by Nelson Balancing Service; and 3 reports of crankshaft failure and 7 cases of crankshafts being rejected when reinspected, due to heat check cracking, on certain TCM engines. This condition, if not corrected, could result in crankshaft failure due to cracking, which could result in an inflight engine failure and possible forced landing.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal from service of affected crankshafts, or a visual inspection, magnetic particle inspection, and dimensional check of the crankshaft journals, and, if necessary, rework or removal from service of affected crankshafts and replacement with serviceable parts.

There are approximately 250,000 engines of the designs listed in the applicability section of this AD in the worldwide fleet. The FAA estimates that 200,000 of those engines are installed on aircraft of U. S. registry. Of these it is estimated that 30% or 60,000 engines will have had an overhaul in the time frame of interest; however, only 291 would be required to take compliance action. Of this 60,000 it is estimated that 10,000 will require removal of the propeller spinner to determine applicability of the AD. The cost associated with the spinner removal/replacement is estimated to be \$60 per work hour average labor rate times one hour. It will take approximately 90 work hours per engine to accomplish the proposed action and the average labor rate is \$60 per work hour. Required parts would cost \$115 per engine for gaskets, seals, etc. In addition, it is estimated that half of the 291 affected engines can be reworked at a cost of \$1,800 per engine and that the other half of the 291 affected engines will be rejected, plus purchasing another crankshaft which will cost \$4,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$3,048,765.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Textron Lycoming and Teledyne Continental Motors: Docket No. 98-ANE-27-AD.

Applicability: Textron Lycoming (LYC) O-235, O-235-C1, -235-C2C, O-235-L2C, O-235-N2C, O-290, O-290-D2, O-320, O-320-A, O-320-A1A, O-320-A2B, O-320-B2B, O-320-B2C, O-320-D2J, O-320-D3G, O-320-E2A, O-320-E2D, O-320-E2G, O-320-E3D, -320-H2AD, O-360, O-360-A1A, O-360-A1D, O-360-A3A, O-360-A4A, O-360-A4K, O-360-B1B, IO-360-F1A6, AEIO-320-E1B, HIO-360-C1A, IO-320, IO-320-B1A, IO-360, IO-360-A1A, IO-360-A1B6, IO-360-B1E, IO-360-C, IO-360-C1C, IO-360-C1C6, IO-360-C1D6, IO-360-D, O-540-A1B5, O-540-A1D5, O-540-R2AD, IO-540, IO-540-C4B5, IO-540-S1A5, TIO-540-A2, LIO-320-C1A, LIO-360-C1E6, and O-720 reciprocating engines; and Teledyne Continental Motors (TCM) A-65, A65-3, A65-8, A75, A75-8, C75-12, C85, C85-8, C85-12, C90-8FJ, C90-12, O-200, O-200-A, O-300, O-300-D, IO-360-C, E-185-4, E-225-8, O-470, O-470-K, O-470-L, O-470-R, O-470-11, IO-470, IO-470-N, IO-470-S, IO-520, IO-520-D, GTSIO-520, and TSIO-520-VB reciprocating engines, with installed crankshafts repaired by Nelson Balancing Service, Bedford, Massachusetts, Repair Station Certificate No. NB7R820J, between February 1, 1995, and December 31, 1997, inclusive, as listed (by work order (W/O)) in Table 1 of this AD.

TABLE 1

Engine	Model	W/O	Date	Engine SER#
LYC	AEIO-320-E1B	1134	2/17/96	L-5653-55A
LYC	HIO-360-C1A	1155	2/7/96	L-12126-51A
LYC	IO-320	1141	1/17/96	
LYC	IO-320-B1A	1525	11/14/97	
LYC	IO-360	1314	12/17/96	
LYC	IO-360	IN6137	8/7/97	
LYC	IO-360-A1A	1230	6/10/96	L-474-51
LYC	IO-360-A1A	1289	10/23/96	L-4085-5174
LYC	IO-360-A1A	1415b	5/23/97	RL-3920-51A
LYC	IO-360-A1B6	1463	7/31/97	
LYC	IO-360-B1E	1312	12/12/96	L-4453-51A
LYC	IO-360-C	1146	1/23/96	R-51448-9-C
LYC	IO-360-C1C	1336	2/10/97	
LYC	IO-360-C1C	1518	12/9/97	
LYC	IO-360-C1C6	1530	11/25/97	
LYC	IO-360-C1C6	1537	12/9/97	L-19294-51A
LYC	IO-360-C1D6	1286	4/28/97	
LYC	IO-360-D	1540	12/2/97	
LYC	IO-360-F1A6	1176	3/7/96	L-27423-36A
LYC	IO-540	1014	2/8/96	
LYC	IO-540	1056	6/13/96	
LYC	IO-540	1302	12/5/96	
LYC	IO-540-C4B5	1313	12/17/96	L-19547-48
LYC	IO-540-S1A5	1513	10/27/97	L-19597-48A
LYC	IVO-435-G1A	1271		
LYC	LIO-320-C1A	1158	2/8/96	
LYC	LIO-360-C1E6	1280	10/7/96	

TABLE 1—Continued

Engine	Model	W/O	Date	Engine SER#
LYC	LIO-360-C1E6	1281	10/9/96	
LYC	O-235	1013	2/21/95	
LYC	O-235	1051	6/2/95	
LYC	O-235	1054	6/9/95	
LYC	O-235	1057	6/14/95	L-9041-15
LYC	O-235	1058	6/29/95	
LYC	O-235	1060	6/30/95	
LYC	O-235	1069	8/10/95	
LYC	O-235	1110	2/20/96	
LYC	O-235	1145	1/23/96	
LYC	O-235	1151	1/25/96	
LYC	O-235	1160	2/9/96	RL-24636-15
LYC	O-235	1305	12/5/96	L-22542-15
LYC	O-235	1329	2/11/97	
LYC	O-235	1332	2/11/97	
LYC	O-235	1481	9/2/97	
LYC	O-235-C1	1089	10/8/95	L-6475-15
LYC	O-235-C1	1188	4/2/96	L-7143-15
LYC	O-235-C1	1335	3/12/97	L-5569-15
LYC	O-235-C1	1367	3/24/97	
LYC	O-235-C2C	1019	2/24/95	L-12284-15
LYC	O-235-C2C	1040	5/8/95	
LYC	O-235-C2C	1105	12/1/95	L-12273-15
LYC	O-235-L2C	1030	4/6/95	L-14545-15
LYC	O-235-L2C	1036	4/24/95	
LYC	O-235-L2C	1037	4/24/95	L-23012-15
LYC	O-235-L2C	1050	6/2/95	L-15542-15
LYC	O-235-L2C	1062	7/5/95	L-18306-15
LYC	O-235-L2C	1067	8/8/95	
LYC	O-235-L2C	1070	8/10/95	L-16005-15
LYC	O-235-L2C	1095	11/14/95	RL-023227-15
LYC	O-235-L2C	1101	11/4/95	L-15300-15
LYC	O-235-L2C	1102	11/15/95	L-20183-15
LYC	O-235-L2C	1162	2/14/96	L-16114-15
LYC	O-235-L2C	1179	3/11/96	L-21215-15
LYC	O-235-L2C	1219	5/16/96	L-21215-15
LYC	O-235-L2C	1251	8/22/96	
LYC	O-235-L2C	1285	10/19/96	
LYC	O-235-L2C	1365	3/24/97	
LYC	O-235-L2C	1400	4/28/97	
LYC	O-235-L2C	1414	8/5/97	
LYC	O-235-L2C	1417	12/5/97	
LYC	O-235-L2C	1433	6/26/97	L-17074-15
LYC	O-235-L2C	1435	6/9/97	
LYC	O-235-L2C	1504	10/31/97	
LYC	O-235-L2C	1508	11/18/97	
LYC	O-235-L2C	1524	11/12/97	
LYC	O-235-L2C	1536	11/24/97	
LYC	O-235-L2C	2010	11/19/97	
LYC	O-235-N2C	1511	10/29/97	L-23857-15
LYC	O-290	1257	9/4/96	
LYC	O-290	1326	3/26/97	
LYC	O-290-D2	1082	9/26/95	L-6019-21
LYC	O-320	1018	2/22/95	
LYC	O-320	1024	3/17/95	
LYC	O-320	1038	5/3/95	L-39272-27A
LYC	O-320	1045	5/24/95	
LYC	O-320	1084	9/28/95	
LYC	O-320	1116	1/8/96	
LYC	O-320	1125	1/8/96	
LYC	O-320	1169	2/28/96	
LYC	O-320	1175	3/7/96	
LYC	O-320	1184	3/28/96	
LYC	O-320	1189	8/27/96	
LYC	O-320	1202	4/30/96	
LYC	O-320	1212	5/10/96	
LYC	O-320	1283	10/17/96	
LYC	O-320	1316	12/21/96	
LYC	O-320	1340	2/25/97	L-24367
LYC	O-320	1347	2/18/97	
LYC	O-320	1360	3/10/97	
LYC	O-320	1361	3/10/97	

TABLE 1—Continued

Engine	Model	W/O	Date	Engine SER#
LYC	O-320	1436	5/29/97	
LYC	O-320	1468	8/14/97	
LYC	O-320	1474	8/22/97	L-13130-39A
LYC	O-320	1477	9/13/97	
LYC	O-320	1477	9/13/97	
LYC	O-320	1507		
LYC	O-320	1519	11/21/97	
LYC	O-320	1546	12/7/97	
LYC	O-320	1171	3/1/96	
LYC	O-320-A	1192	4/13/96	
LYC	O-320-A	1194	4/13/96	
LYC	O-320-A	1196	4/13/96	
LYC	O-320-A1A	1244	8/13/96	L-5270-27
LYC	O-320-A2B	1081	9/22/95	
LYC	O-320-A2B	1461	9/9/97	L-12626-27
LYC	O-320-B2B	1452	7/10/97	L-2977-39
LYC	O-320-B2C	1315	12/17/96	
LYC	O-320-D2J	1172	3/4/96	L-13039-39A
LYC	O-320-D2J	1173	3/7/96	L-123412-39A
LYC	O-320-D2J	1253	9/4/96	
LYC	O-320-D2J	1534	11/25/97	
LYC	O-320-D2J	1539	12/3/97	
LYC	O-320-D3G	1077	9/17/95	
LYC	O-320-D3G	1114	1/8/96	L-10983-39A
LYC	O-320-D3G	1354	2/25/97	
LYC	O-320-D3G	1370	3/26/97	H45247
LYC	O-320-D3G	1544	12/3/97	
LYC	O-320-E2A	1103	11/10/95	L-26363-27A
LYC	O-320-E2A	1191	4/13/96	L-19377-27A
LYC	O-320-E2A	1317	12/21/96	L-15219-27A
LYC	O-320-E2A	1439	6/9/97	L-38003-55A
LYC	O-320-E2D	1068	8/10/95	L-35528-27A
LYC	O-320-E2D	1078	9/17/95	
LYC	O-320-E2D	1177	3/9/96	L-44732-27A
LYC	O-320-E2D	1181	3/14/96	
LYC	O-320-E2D	1241	8/9/96	L-42691-27A
LYC	O-320-E2D	1245	8/13/96	L-40483-27A
LYC	O-320-E2D	1260	9/9/96	L-15300-15
LYC	O-320-E2D	1343	2/17/97	
LYC	O-320-E2D	1346	3/2/97	L-44320-27A
LYC	O-320-E2D	1385	4/16/97	
LYC	O-320-E2D	1458	7/18/97	
LYC	O-320-E2D	1533	11/25/97	
LYC	O-320-E2D	1549	12/12/97	
LYC	O-320-E2G	1338	3/10/97	L-38264-27A
LYC	O-320-E3D	1034	4/18/95	L-29668-27A
LYC	O-320-E3D	1074	8/24/95	L-29495-27A
LYC	O-320-E3D	1431	6/9/97	L-33770-27A
LYC	O-320-E3D	1444	6/13/97	
LYC	O-320-E3D	1500	10/7/97	L-33841-27A
LYC	O-320-H2AD	1322	1/22/97	L-1530-78T
LYC	O-360	1025	3/17/95	
LYC	O-360	1157	2/7/96	
LYC	O-360	1199	4/18/96	
LYC	O-360	1362	3/10/97	
LYC	O-360	1386	4/17/97	
LYC	O-360	1394	5/6/97	
LYC	O-360	1528	11/19/97	
LYC	O-360-A1A	1170	2/28/96	L-20677-36A
LYC	O-360-A1A	1214	5/14/96	L-20190-36A
LYC	O-360-A1A	1239	8/5/96	
LYC	O-360-A1D	1411	5/5/97	
LYC	O-360-A3A	1531	11/25/97	
LYC	O-360-A4A	1270	9/27/96	L-14008-36A
LYC	O-360-A4A	1464	7/30/97	L-24796-36A
LYC	O-360-A4A	1486	9/6/97	
LYC	O-360-A4A	1529	11/25/97	
LYC	O-360-A4K	1166	2/22/96	L-26455-36A
LYC	O-360-B1B	1262	9/9/96	L-5261-51A
LYC	O-540-A1B5	1129	12/29/95	
LYC	O-540-A1B5	1132	1/9/96	L-1165-40
LYC	O-540-A1D5	1462	7/28/97	L-5661-40

TABLE 1—Continued

Engine	Model	W/O	Date	Engine SER#
LYC	O-720	1510	10/26/97	
LYC	TIO-540-A2	1064	7/13/95	
LYC	TIO-540-A2	1111	1/10/96	
LYC	TIO-540-R2AD	1106	11/27/95	L-5949-61A
TCM	A-65	1152	1/25/96	
TCM	A-65	1154	2/7/96	7187
TCM	A-65	1183	2/22/96	
TCM	A-65	1185	3/28/96	
TCM	A-65	1233	6/23/96	
TCM	A-65	1290	10/29/96	
TCM	A-65	1296	11/14/96	4933868
TCM	A-65	1299	11/19/96	
TCM	A-65	1325	3/26/97	
TCM	A-65	1326	3/26/97	
TCM	A-65	1376	4/29/97	
TCM	A-65	1438	6/17/97	5890178
TCM	A-65-3	1243	8/13/96	324993
TCM	A-65-8	1541	12/2/97	
TCM	A65-8	1276	10/5/96	5762568
TCM	A75	1156	2/7/96	5321868
TCM	A75	1255	9/3/96	
TCM	A75	1256	9/4/96	
TCM	A75-8	1275	10/5/96	5162868
TCM	C75-12F	1293	11/4/96	3316-6-12
TCM	C85	1088	10/4/95	
TCM	C85	1092	10/18/95	
TCM	C-85	1198	4/17/96	29652-7-8
TCM	C-85	1297	11/14/96	
TCM	C-85	1352	3/10/97	
TCM	C-85	1381	4/28/97	
TCM	C-85	1391	4/19/97	
TCM	C-85	1392	4/19/97	
TCM	C-85	1484	9/4/97	28487-6-12
TCM	C-85-8FJ	1139	1/17/96	29845-7-8
TCM	C-85-8FJ	1420	5/12/97	29465-7-8
TCM	C-85-12	1031	4/6/95	
TCM	C-85-12	1182	3/18/96	21596-6-12
TCM	C-85-12	1217	5/15/96	
TCM	C-85-12	1265	9/12/96	14657
TCM	C-85-12	1298	11/14/96	23610-6-12
TCM	C-90-8F	1471	9/6/97	42838-1-8
TCM	C-90-12	1279	10/7/96	44747-6-12
TCM	E-185-4	1124	1/16/96	25700D-1-9
TCM	E-225-8	1505	10/28/97	35477-D-9-8-P
TCM	GTSIO-520	1208	5/7/96	210114-70H
TCM	IO-360-C	1126	12/28/95	F-51439-9-C
TCM	IO-470	1028	3/23/95	87329-R
TCM	IO-470-N	1421	5/13/97	95271-1-N
TCM	IO-470-S	1331	3/11/97	102412-2-S-I
TCM	IO-520	1174	3/4/96	
TCM	IO-520-D	1167	2/22/96	
TCM	O-200	1033	4/18/95	
TCM	O-200	1043	5/12/95	
TCM	O-200	1049	6/2/95	
TCM	O-200	1076	9/11/95	214668-27A
TCM	O-200	1104	11/21/95	213830-71A
TCM	O-200	1131	1/5/96	
TCM	O-200	1142	1/18/96	265349-R
TCM	O-200	1147	1/23/96	
TCM	O-200	1190	4/13/96	
TCM	O-200	1193	4/13/96	
TCM	O-200	1195	4/13/96	
TCM	O-200	1197	4/17/96	
TCM	O-200	1213	5/13/96	
TCM	O-200	1261	9/9/96	
TCM	O-200	1303	12/5/96	
TCM	O-200	1321	2/7/97	28115
TCM	O-200	1324	2/6/97	
TCM	O-200	1344	3/2/97	
TCM	O-200	1393	5/5/97	
TCM	O-200	1413	5/7/97	61001-5-4
TCM	O-200	1430	5/23/97	

TABLE 1—Continued

Engine	Model	W/O	Date	Engine SER#
TCM	O-200	1437	6/17/97	255759A-48
TCM	O-200	1488	9/7/97	
TCM	O-200	1506	11/18/97	
TCM	O-200	1522	11/11/97	
TCM	O-200-A	1052	6/21/95	254150-A-48
TCM	O-200-A	1085	9/29/95	
TCM	O-200-A	1120	12/29/95	253971
TCM	O-200-A	1161	2/9/96	24R-469
TCM	O-200-A	1215	5/15/96	
TCM	O-200-A	1240	8/5/96	69589-8-A
TCM	O-200-A	1254	9/3/96	6105-71-A-R
TCM	O-200-A	1264	9/12/96	
TCM	O-200-A	1356	3/10/97	
TCM	O-300	1027	3/20/95	
TCM	O-300	1042	5/12/95	34012-D-6-D
TCM	O-300	1083	9/26/95	
TCM	O-300	1096	10/23/95	464481
TCM	O-300	1137	1/17/96	
TCM	O-300	1259	9/4/96	
TCM	O-300	1387	4/22/97	
TCM	O-300	1397	4/26/97	5928-9A
TCM	O-300	1403	4/28/97	
TCM	O-300	1423	6/9/97	3834D8Z
TCM	O-300	1555	1/13/98	
TCM	O-300-A	1446	6/27/97	
TCM	O-300-D	1022	3/17/95	35110-D-6-D
TCM	O-300-D	1079	9/17/95	24276-D-0-D
TCM	O-300-D	1487	9/6/97	
TCM	O-300-D	1543	12/3/97	
TCM	O-470	1046	6/1/95	
TCM	O-470	1383	4/4/97	
TCM	O-470-11	1017	2/22/95	
TCM	O-470-11	1491	10/19/97	
TCM	O-470-11	1492	10/19/97	
TCM	O-470-11	1493	10/19/97	
TCM	O-470-11	1494	10/19/97	
TCM	O-470-F	1236	7/25/96	76956-4-F
TCM	O-470-K	1087	10/3/95	47172-6-K
TCM	O-470-L	1128	1/10/96	68681-8-L
TCM	O-470-L	1359	5/19/97	68245-8-L
TCM	O-470-L	1399	4/28/97	
TCM	O-470-R	1016	2/10/95	133087-6-R
TCM	O-470-R	1086	10/3/95	
TCM	O-470-R	1165	2/22/96	
TCM	O-470-R	1178	3/10/96	
TCM	O-470-R	1201	6/2/96	83164-1-R
TCM	O-470-R	1319	1/6/97	459408
TCM	TSIO-520-VB	1055	6/9/95	

Note 1: Blank spaces indicate unknown data. Where the engine serial no. is blank in this table, it is either unknown or the crankshaft may not be installed in an engine.

Note 2: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the

request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent crankshaft failure due to cracking, which could result in an inflight engine failure and possible forced landing, accomplish the following:

(a) Within 10 hours time in service after the effective date of this AD, determine if this AD applies, as follows:

(1) Determine if any repair was conducted on the engine that required crankshaft removal during the February 1, 1995, to December 31, 1997, time frame; if the engine was not disassembled for crankshaft removal and repair in this time frame, no further action is required.

(2) If the engine and crankshaft was repaired during this time frame, determine from the maintenance records (engine log

book), and Table 1 of this AD if the crankshaft was repaired by Nelson Balancing Service, Repair Station Certificate No. NB7R820J, Bedford, Massachusetts. The maintenance records should contain the Return to Service (Yellow) tag for the crankshaft that will identify the company performing the repair. Also the work order number contained in Table 1 of this AD was etched on the crankshaft propeller flange, adjacent to the closest connecting rod journal. Because some etched numbers will be difficult to see, if necessary, use a 10X magnifying glass with an appropriate light source to view the work order number. In addition, the propeller spinner, if installed, will have to be removed in order to see this.

(3) A person with a private pilot or higher rated certificate may make the determination of applicability of this AD provided the

propeller spinner does not have to be removed.

(4) If it cannot be determined who repaired the crankshaft, compliance with this AD is required.

(b) Within 10 hours time in service after the effective date of this AD, accomplish the following:

(1) Perform a visual inspection as defined in paragraph (b)(2) of this AD, magnetic particle inspection, and a dimensional check of the crankshaft journals, or remove from service affected crankshafts and replace with serviceable parts.

(2) For the purpose of this AD, a visual inspection of the crankshaft is defined as the inspection of all surfaces of the crankshaft for cracks which include heat check cracking of the nitrided bearing surfaces, cracking in the main or aft fillet of the main bearing journal and crankpin journal, including checking the bearing surfaces for scoring, galling, corrosion, or pitting.

Note 3: Further guidance on all inspection and acceptance criteria is contained in applicable TCM or LYC Overhaul or Maintenance Manuals, or other FAA-approved data.

(3) Replace any crankshaft that fails the visual inspection, magnetic particle inspection, or the dimensional check with a serviceable crankshaft, unless the crankshaft can be reworked to bring it in compliance with:

(i) All the overhaul requirements of the appropriate TCM or LYC Overhaul/Maintenance Manuals; or

(ii) All of the FAA-approved requirements for any repair station which currently has approval for limits other than those in the appropriate TCM or LYC Overhaul/Maintenance Manuals.

(4) For the purpose of this AD, a serviceable crankshaft is one which meets the requirements of paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

Note 4: Crankshafts removed from TCM engine models IO-360, IO-520, and TSIO-520 series engines are also subject to compliance with AD 97-26-17.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York (LYC) or Atlanta (TCM) Aircraft Certification Offices. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York or Atlanta Aircraft Certification Offices.

Note 5: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification or New York Aircraft Certification Office, as applicable.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on May 1, 1998.

Thomas A. Boudreau,
Acting Manager, Engine and Propeller
Directorate, Aircraft Certification Service.
[FR Doc. 98-12353 Filed 5-8-98; 8:45 am]
BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-128-AD]

RIN 2120-AA64

Airworthiness Directives; Stemme GmbH & Co. KG Model S10-V Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Stemme GmbH & Co. KG (Stemme) Model S10-V sailplanes. The proposed action would require replacing the propeller blade suspension forks with parts of improved design. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent propeller suspension fork failure caused by design deficiency, which, if not corrected, could result in loss of a propeller blade and loss of sailplane controllability.

DATES: Comments must be received on or before June 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-128-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D-13355 Berlin, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri

64106; telephone: (816) 426-6934; facsimile: (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-128-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-128-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Stemme S10-V sailplanes. The LBA reports one incident of a failure of the propeller blade suspension fork during flight, which caused loss of sailplane controllability. Investigation of this incident revealed that the thread end groove area of the propeller blade suspension fork does not have an adequate design. This inadequate design causes fatigue of the propeller blade suspension fork to the point of failure.

This condition, if not corrected, could result in loss of the propeller blade

during flight and possible loss of sailplane controllability.

Relevant Service Information

Stemme has issued Service Bulletin No. A31-10-020, Am-index: 02.a, dated October 7, 1996, which specifies procedures for replacing the propeller blade suspension fork, part number (P/N) 10AP-V08, distance ring, P/N 10AP-V05, and nut, P/N 10AP-V06, with a new propeller blade suspension fork of improved design, P/N A09-10AP-V08, a new distance ring of improved design, P/N A09-10AP-05, and a new nut of improved design, P/N A09-10AP-V06.

The LBA classified this service bulletin as mandatory and issued German AD 95-177/2, dated January 30, 1997, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA, reviewed all available information, including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Stemme Model S10-V sailplanes of the same type design registered in the United States, the proposed AD would require replacing the propeller blade suspension fork, distance ring, and nut with parts of improved design. Accomplishment of the proposed installation would be in accordance with Stemme GmbH & Co. KG Service Bulletin No. A31-10-020, Am-index: 02.a, dated October 7, 1996.

Cost Impact

The FAA estimates that 7 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take 6 hours per sailplane to accomplish the proposed action, and that the average labor rate is approximately \$60 an hour. Parts cost approximately \$930 per sailplane. Based on these figures, the

total cost impact of the proposed AD on U.S. operators is estimated to be \$9,030.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Stemme GmbH & Co. KG: Docket No. 97-CE-128-AD.

Applicability: Model S10-V sailplanes (serial numbers (S/N) 14-002 through 14-026, and converted sailplanes S/N 4-003M through 14-036M), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required upon the accumulation of 100 hours total time-in-service (TIS) on the sailplane propeller or within the next 10 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent propeller suspension fork failure caused by design deficiency, which, if not corrected, could result in loss of a propeller blade and loss of sailplane controllability, accomplish the following:

(a) Replace the propeller blade suspension fork, part number (P/N) 10AP-V08 (or an FAA-approved equivalent P/N), with new P/N A09-10AP-V08 (or an FAA-approved equivalent P/N), distance ring, P/N 10AP-V05 (or an FAA-approved equivalent P/N), with new P/N A09-10AP-V05 (or an FAA-approved equivalent P/N), and nut, P/N 10AP-V06 (or an FAA-approved equivalent P/N), with new P/N A09-10AP-V06 (or an FAA-approved equivalent part number) in accordance with Stemme GmbH & Co. KG Service Bulletin No. A31-10-020, Am-index: 02.a, dated October 7, 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to pages 3 and 4 of Stemme GmbH & Co. KG Service Bulletin, Modification v.p. propeller/failure blade suspension, No. A31-10-020, Am-index: 02.a, dated October 7, 1996, should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D-13355 Berlin, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 95-177/2, dated January 30, 1997.

Issued in Kansas City, Missouri, on May 4, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12383 Filed 5-8-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 98N-0294]

Beverages: Bottled Water; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to lift the stay of the effective date for the allowable levels in the bottled water quality standard for nine chemical contaminants, i.e., antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and 2,3,7,8-TCDD (dioxin), that was imposed in a final rule published on March 26, 1996. By lifting the stay of the effective date, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for these nine chemical contaminants under the current good manufacturing practice (CGMP) regulations for bottled water. FDA is required to issue monitoring requirements for the nine chemical contaminants under the Safe Drinking Water Act Amendments of 1996 (SDWA Amendments). This proposed rule is a companion to the direct final rule published elsewhere in this issue of the *Federal Register*.

DATES: Submit written comments by July 27, 1998. See section VIII. of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments on the companion proposed rule to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry Kim, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-260-0631.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the *Federal Register*. The companion proposed rule and the direct final rule are substantively identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comment and is withdrawn. The comment period for the companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. FDA is publishing the direct final rule because the agency anticipates that it will receive no significant adverse comment. A detailed discussion of this rule is set forth in section II of the direct final rule. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation notice no later than August 6, 1998. FDA intends the direct final rule to become effective 180 days after publication of the confirmation notice. If FDA receives significant adverse comment, the agency will withdraw the direct final rule. FDA will proceed to respond to all of the comments received regarding the rule, and, if appropriate, the rule will be finalized under this companion proposed rule using notice-and-comment procedure. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule.

Before the enactment of the SDWA Amendments on August 6, 1996, section 410 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349) required that, whenever the Environmental Protection Agency (EPA) prescribed interim or revised National Primary Drinking Water Regulations (NPDWR's) under section 1412 of the Public Health Service Act SDWA (42 U.S.C. 300f through 300j-9), FDA consult with EPA and either amend its regulations for bottled drinking water in § 165.110 (21 CFR 165.110) or publish in the *Federal Register* its reasons for not making such amendments.

In accordance with section 410 of the act, FDA published in the *Federal Register* of March 26, 1996 (61 FR 13258), a final rule (hereinafter "the March 1996 final rule") that amended

the quality standard for bottled water by establishing or revising the allowable levels for 5 inorganic chemicals (IOC's) and 17 synthetic organic chemicals (SOC's), including 3 synthetic volatile organic chemicals (VOC's), 9 pesticide chemicals, and 5 nonpesticide chemicals. This action was in response to EPA's issuance of NPDWR's consisting of maximum contaminant levels (MCL's) for the same 5 IOC's and 17 SOC's in public drinking water (57 FR 31776; July 17, 1992).

However, in the March 1996 final rule, FDA stayed the effective date for the allowable levels for the five IOC's (antimony, beryllium, cyanide, nickel, and thallium) and four of the SOC's (diquat, endothall, glyphosate, and dioxin). This action was in response to bottled water industry comments (responding to the August 4, 1993 proposal (58 FR 41612)) which asserted that additional monitoring for these nine chemicals required under the bottled water CGMP regulations would pose an undue economic burden on bottlers. If the agency had not stayed the effective date for the allowable levels, the bottled water CGMP regulations under 21 CFR part 129 (part 129) would have been in effect for these nine chemical contaminants. The bottle water CGMP regulations require a minimum yearly monitoring of source water and finished bottled water products for chemical contaminants for which allowable levels have been established in the bottled water quality standard. The comments requested that FDA adopt reduced frequency monitoring requirements for chemical contaminants that are not likely to be present in the source water for bottling or in the finished bottled water products. The comments submitted data that supported the request that FDA reconsider the current monitoring frequency requirements for chemical contaminants in the bottled water CGMP regulations.

Based on the information submitted by the comments, FDA stated in the March 1996 final rule (61 FR 13258 at 13261) that the matter of reduced frequency of monitoring (less frequently than once per year) requirements for chemical contaminants that are not likely to be found in bottled water merited consideration by the agency. FDA also stated, however, that any revision of the monitoring requirements for chemical contaminants in bottled water would require an amendment of the bottled water CGMP regulations in part 129. FDA stated that it intended to initiate, considering its resources and competing priorities, a separate rulemaking to address the issue of

circumstances in which reduced frequency of monitoring requirements for chemical contaminants in bottled water products may be appropriate.

Therefore, FDA stayed the effective date for the nine chemical contaminants pending completion of a rulemaking to address the issue of reduced frequency monitoring for chemical contaminants in bottled water. Although the effect of the stay does not require bottled water manufacturers to monitor source waters and finished bottled water products annually for the nine chemical contaminants, FDA advised water bottlers to ensure through appropriate manufacturing techniques and sufficient quality control procedures that their bottled water products are safe with respect to levels of these nine chemical contaminants.

II. Additional Information

For additional information see the corresponding direct final rule published elsewhere in this issue of the *Federal Register*. All persons who wish to submit comments should review the detailed rationale for these amendments set out in the preamble discussion of the direct final rule.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

III. Proposal to Lift the Stay

Subsequent to the March 1996 final rule, on August 6, 1996, the SDWA Amendments was enacted. Section 305 of the SDWA Amendments requires that, for contaminants covered by a standard of quality regulation issued by FDA before the enactment of the SDWA Amendments for which an effective date had not been established, FDA issue monitoring requirements for such contaminants (e.g., the nine chemical contaminants: Antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin) not later than 2 years after the date of enactment of the SDWA Amendments. Under this mandate, FDA is required to

issue monitoring requirements for the nine chemical contaminants for which it stayed the effective date in the March 1996 final rule by August 6, 1998, with an effective date of February 6, 1999. If FDA does not meet this statutory time period, the NPDWR's for the nine chemical contaminants become applicable to bottled water.

FDA is proposing to lift the stay of the effective date for the allowable levels for the nine chemical contaminants (antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin) for the following reasons: First, the agency's CGMP regulations for bottled water, which require that source waters and finished bottled water products be tested for these nine contaminants at least once a year, are protective of the public health. The agency considers at least annual testing, as set forth in its CGMP regulations in part 129, to be of sufficient frequency, absent circumstances that may warrant more frequent testing, to ensure that bottled water has been prepared, packed, or held under sanitary conditions. Second, Congress mandated, under the SDWA Amendments, that the agency issue monitoring requirements for the nine chemical contaminants by August 6, 1998. The agency's action to lift the stay is consistent with this mandate. By lifting the stay of the effective date for the allowable levels for the nine chemical contaminants in the bottled water quality standard, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for these nine chemical contaminants under the CGMP provisions in part 129. Third, FDA, in the March 1996 final rule, stated that it intended to initiate rulemaking to address the issue of whether there are circumstances in which reduced frequency of monitoring for contaminants is appropriate. However, such rulemaking would require consideration of all chemical contaminants, not just the nine chemical contaminants that are the subject of the stay. FDA is only addressing, in this rulemaking, the frequency of monitoring for the nine chemical contaminants that are the subject of the stay. FDA may consider, in a future rulemaking, the issue of reduced frequency of monitoring in the context of all chemical contaminants in bottled water subject to the bottled water CGMP regulations in part 129. Therefore, the agency is, at this time, electing to lift the stay of the effective date for the allowable levels in the bottled water quality standard for the

nine chemical contaminants, i.e., antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin, and thereby require annual testing for these nine contaminants, consistent with the CGMP requirements for bottled water.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of this proposed rule under Executive Order 12866. Executive Order 12866 directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of \$100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this proposed rule is not a major rule for the purpose of congressional review. For the purpose of Congressional review, a major rule is one which is likely to cause an annual effect on the economy of \$100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Initial Regulatory Flexibility Analysis

FDA has examined the impact of the rule as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612). If a rule has a significant economic impact on a substantial number of small entities, the RFA requires agencies to analyze options that would minimize the economic impact of that rule on small entities. The agency acknowledges that the proposed rule may have a significant economic impact on a

substantial number of small entities. If the agency receives any significant adverse comments to the direct final rule, the agency will withdraw the direct final rule and proceed with the rulemaking based on this proposed rule. In the context of the rulemaking based on this proposed rule, the agency will consider comments to the initial regulatory flexibility analysis.

1. Objectives

The RFA requires a succinct statement of the purpose and objectives of any rule that may have a significant economic impact on a substantial number of small entities. The agency is taking this action to lift the stay for nine chemical contaminants under a congressional mandate, under the SDWA Amendments, that FDA issue monitoring requirements for these nine chemical contaminants in bottled water. Lifting the stay of the effective date for

the allowable levels in the bottled water quality standard for the nine chemical contaminants (antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin) protects the public health. By lifting the stay, bottled water manufacturers will be required to monitor source waters and finished bottled water products at least once a year for the nine chemical contaminants under the bottled water CGMP regulations in part 129. The agency considers at least annual testing, as set forth in its CGMP regulations, to be of sufficient frequency, absent circumstances that may warrant more frequent testing, to ensure that bottled water has been prepared, packed, or held under sanitary conditions.

2. Description of Small Business and the Number of Small Businesses Affected

The RFA requires a description of small businesses used in the analysis

and an estimate of the number of small businesses affected, if such estimate is available. Table 1 describes small businesses affected and estimates the number of small businesses affected by the rule. The agency combined the Small Business Administration (SBA) definition of a small business as an upper bound of the total number in the analysis with data from Duns Market Identifiers (DMI) on the number of plants using SIC 2086. FDA has used the International Bottled Water Association (IBWA) estimate as a lower bound of the number of small entities in the industry. According to DMI, there are a total of 1,567 establishments in the industry group of which 66 percent of the entities (1,028 firms) have fewer than 500 employees. According to IBWA, there are approximately 560 member firms, of which 50 percent or 280 firms have annual sales below \$1 million.

TABLE 1.—APPROXIMATE NUMBER OF SMALL ENTITIES COVERED BY THIS RULE

Type of establishment	Standard Industry Classification Codes	Classification of Small Entities	Percentage of Category Defined as Small by SBA	No. of Small Establishments Covered by the Rule
IBWA	NA	Annual sales below \$1 million	50%	280
DMI	2,086	Less than 500 employees	66%	1,028

3. Description of the Economic Impact on Small Entities.

a. *Estimated costs for testing source waters.* The estimated costs for testing source waters are the estimated total additional costs the small entity would

incur to monitor source waters for the nine chemical contaminants annually. Table 2 summarizes the expected additional costs. As discussed in the March 1996 final rule (61 FR 13258 at

13263), additional cost per sample is estimated to be \$1,290, and an estimated 50 percent of source waters are from municipal sources that do not require testing.

TABLE 2.—ESTIMATED SUBTOTAL COSTS FOR TESTING SOURCE WATERS

No. of Small Establishments Covered by the Rule	Cost per Sample	Percent Water From Nonmunicipal Sources	Subtotal Annual Cost
Lower bound-280	\$1,290	50%	\$180,600
Upper bound-1,028	\$1,290	50%	\$663,060

b. *Estimated costs for testing finished bottle water products.* The estimated costs for testing are the estimated total additional costs the small entity would

incur to monitor finished bottled water products for the nine chemical contaminants annually. Table 3 summarizes the expected costs. As

discussed in the March 1996 final rule (61 FR 13258 at 13263), additional cost per sample is estimated to be \$1,290.

TABLE 3.—ESTIMATED SUBTOTAL COSTS FOR TESTING FINISHED BOTTLE WATER PRODUCTS

No. of Small Establishments Covered by the Rule	Cost per Sample	Average Number of Products	Subtotal Annual Cost
Lower bound-280	\$1,290	2	\$722,400
Upper bound-1,028	\$1,290	2	\$2,652,240

c. *Estimated total costs for testing source waters and finished bottled water products.* The estimated total testing costs are the sum of estimated costs to

monitor source waters and finished bottled water products. The agency estimates that the lower bound cost is \$900,000 and the upper bound cost is \$3

million. Table 4 summarizes the expected additional costs.

TABLE 4.—ESTIMATED TOTAL COSTS

No. of Small Establishments Covered by the Rule	Subtotal Costs for Testing Source Waters	Subtotal Costs for Testing Finished Bottled Water Products	Total Testing Costs ¹
Lower bound-280	\$180,600	\$722,400	\$900,000
Upper bound-1,028	\$660,060	\$2,652,240	\$3,000,000

¹ Total Testing Costs are rounded to the nearest significant digit.

d. *Professional skills required for compliance.* The RFA requires a description of the professional skills necessary for the preparation of a report or record. This rule does not require professional skills for the preparation of a report or record. Any sampling of source water or finished bottled water product for analysis of chemical

contaminants can be carried out by trained plant personnel who can ship such samples to a testing laboratory for analysis. Other trained skills would also include recording and maintaining the test result records at the plant for a minimum of 2 years.

e. *Recordkeeping requirements.* The RFA requires a description of the recordkeeping requirements of the rule.

Table 5 shows the provisions for making and maintaining records by small businesses, the number of small businesses affected, the annual frequency of making each record, the amount of time needed for making each record, and the total number of hours for each provision in the first year and then in subsequent years.

TABLE 5.—SMALL BUSINESS RECORDKEEPING REQUIREMENTS

Provision	No. of Small Entities Keeping Records	Annual Frequency	Hours per Record per Small Entity	Total Hours, First Year	Total Hours, Subsequent Years
Monitoring SOP	280	1	10	2,800	2,800
Monitoring SOP	1,028	1	10	10,280	10,280
Validation	280	1	5	1,400	1,400
Validation	1,028	1	5	5,140	5,140
Record maintenance	280	1	5	1,400	1,400
Record maintenance	1,028	1	5	5,140	5,140
Totals-lower bound	280	1	20	5,600	5,600
Totals-upper bound	1,028	1	20	20,560	20,560

4. Minimizing the Burden to Small Entities

The RFA requires an evaluation of any regulatory alternatives that would minimize the costs to small entities. There are four alternatives that the agency has considered to provide regulatory relief for small entities. First, FDA considered the option of not lifting the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants. Second, FDA considered the option of exempting small entities from the requirements of this rule. Third, FDA considered lengthening the compliance period for small entities. Fourth, FDA considered reducing the testing frequency.

a. *Not lifting the stay.* By convention, the option of taking no action is the baseline in comparison with the evaluation of the other options. Taking no action in this case means not lifting the stay of the effective date for the allowable levels in the bottled water quality standard for the nine chemical contaminants. By not lifting the stay, FDA would not meet the statutory mandate provided in the SDWA Amendments that requires the agency to issue monitoring requirements for the nine chemical contaminants by August

6, 1998. If FDA does not issue monitoring requirements by August 6, 1998, the NPDR's for public drinking water for these nine contaminants would be considered to be the standard of quality regulations for bottled water under § 165.110. Under the NPDR's, EPA's base monitoring requirements for ground water testing are once every 3 years for testing inorganic chemicals (e.g., antimony, beryllium, cyanide, nickel, and thallium), and four successive quarters every 3 years for ground water testing for synthetic organic chemicals (e.g., diquat, endothall, glyphosate, and dioxin). Under part 129, FDA requires at least annual testing for both the inorganic and synthetic organic chemicals. Therefore, the frequency of testing requirements under EPA's NPDR's for public drinking water and FDA's frequency of testing requirements for bottled water differ.

Moreover, the regulatory scheme under EPA's regulations for public drinking water contemplates State coordination, including the use of state-issued waivers in certain situations. EPA regulations address treated ground and surface water testing, whereas FDA's regulations address source water (which in most cases involves testing of

untreated ground water) and finished bottled water product testing. Source water testing provides a preliminary review of the safety and quality of the water source that a water bottler intends to manufacture into a bottled water product. FDA considers source water testing to be as important as finished bottled water product testing because the safety and quality of the source water, determined by source water testing, will affect the treatment necessary to produce a finished bottled water product that complies with the bottled water quality standard. However, if EPA's regulatory scheme for public drinking water would need to be considered for the nine chemical contaminants that are the subject of this rule for bottled water, it is unclear whether only finished bottled water product testing for these nine chemical contaminants, in lieu of source water testing, would be applicable. Furthermore, EPA's monitoring requirements are designed to address water that is provided to customers through municipal water distribution systems while FDA's requirements address water that is produced to be sold to consumers in discrete units. Some differences between these two sets of monitoring requirements exist (e.g.,

criteria for determining when a system (or bottler) is not in compliance), because they address two fundamentally different production circumstances. FDA believes that its regulations for bottled water, which are designed to ensure that bottled water is prepared, packed, and held under sanitary conditions, should apply to the testing for these nine chemical contaminants in bottled water rather than having such contaminants subject to a regulatory scheme established for public drinking water.

Furthermore, the extent to which FDA would consider certain aspects of EPA's regulatory scheme for public drinking water as "monitoring requirements" is not clear. FDA has not had to apply EPA's regulations for public drinking water to bottled water under the bottled water quality standard regulations. Therefore, if FDA did not lift the stay and issue monitoring requirements under the agency's CGMP requirements in part 129 for these nine chemical contaminants, the application of section 410(b)(4)(A) of the act would create uncertainty for industry and regulators. The practical effect of the application of section 410(b)(4)(A) of the act may be additional burdens on small businesses if such businesses must adhere to two regulatory schemes for testing of their bottled water products rather than one comprehensive scheme for all bottled water testing. As stated earlier, FDA's CGMP requirements are protective of the public health and the application of these CGMP requirements to all bottled water would not result in uncertainty to industry and regulators. As discussed in option d of this section of this document, FDA believes that retaining the applicability of its CGMP requirements to all bottled water, with further evaluation of reduced frequency of testing in the context of all chemical contaminants in a future rulemaking, would be less confusing to small entities. Therefore, FDA believes that lifting the stay would be beneficial to the public.

b. *Exempt small entities.* One alternative for alleviating the burden for small entities would be to exempt them from the testing requirements of this rule. Although, this option would eliminate the cost of testing on small firms, it may also result in a decrease in the potential public health benefits of the rule. Small entities comprise a large part of the affected industry and exempting them would affect the testing requirements for a large segment of the bottled water products on the market. Such products would not be subject to a certain frequency of testing that provides adequate assurance that such

products manufactured by small businesses are as protective of the public health as those that have undergone the testing requirements for these nine contaminants under part 129. Therefore, exempting small businesses would reduce the potential public health benefits of lifting the stay.

c. *Extend compliance period.* FDA considered an extended compliance period. Lengthening the compliance period would provide regulatory relief to small entities because it would reduce the present value of the costs of testing. However, as stated in option b of section V.B.4.c of this document, because small entities comprise a large part of the affected industry, longer compliance periods would delay any potential public health benefits of the rule. For example, if a small business had an excess level of one of the nine chemical contaminants in its bottled water product, it would not be aware of the potential public health problem as a result of the specific contaminant because the small business would not be testing during the longer compliance period. Therefore, the agency has concluded that the lifting the stay is more protective of the public health.

d. *Reduced testing frequency.* Another alternative for alleviating the burden for small entities would be to reduce the testing frequency for certain chemical contaminants, including the nine chemical contaminants that are the subject of this rule. The agency believes that, in considering the issue of reduced frequency of testing, it needs to do so in the context of all chemical contaminants, not just the nine that are the subject of this rule. Reduced frequency of testing may include an entirely different scheme that may include waivers for certain chemical contaminants. The contemplation of such a scheme is better addressed in a context that includes consideration of all chemical contaminants, rather than considering and implementing a different regulatory scheme for only the nine chemical contaminants. Moreover, Congress mandated that the agency issue monitoring requirements for these nine chemical contaminants by August 6, 1998. Because the scope of this rule is limited to these nine chemical contaminants, and the agency does not have sufficient time to enlarge the scope of this rulemaking to the issue of reduced frequency of testing for all chemical contaminants, the agency is not pursuing this alternative in this rulemaking. However, the agency plans to consider the issue of reduced frequency of monitoring for all chemical contaminants in bottled water in a future rule.

5. Summary

FDA has examined the impact of the proposed rule on small businesses in accordance with the RFA. This analysis, together with the preamble, constitutes the RFA.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this proposed rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). This rule does not require a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of \$100 million (adjusted annually for inflation) or more by State, local, and tribal governments in the aggregate, or by the private sector, in any 1 year.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this companion proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Comments

Interested persons may, on or before July 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Effective Date

The agency intends to make any final rule based on this proposal effective 180 days following the date of publication of the final rule in the *Federal Register*. The agency is providing this time period to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 165 be amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343-1, 348, 349, 371, 379e.

§ 165.110 [Amended]

2. Section 165.110 *Bottled water* is amended in the table in paragraph (b)(4)(iii)(A) by removing the superscript "1" after the entries for "Antimony," "Beryllium," "Cyanide," "Nickel," and "Thallium," and by removing the footnote to the table; in the table in paragraph (b)(4)(iii)(C) by removing the superscript "1" after the entries for "Diquat," "Endothall," "Glyphosate," and "2,3,7,8-TCDD (Dioxin)," and by removing the footnote to the table; and by removing the note that follows paragraph (b)(4)(iii)(G)(3)(iv).

Dated: May 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98-12382 Filed 5-6-98; 3:57 pm]

BILLING CODE 4190-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 874

[Docket No. 98N-0249]

Ear, Nose, and Throat Devices; Classification of the Nasal Dilator, the Intranasal Splint, and the Bone Particle Collector

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify the nasal dilator, intranasal splint, and the bone particle collector into class I and exempt these devices from premarket notification procedures. FDA is also publishing the recommendations of the Ear, Nose, and Throat Devices Panel (the panel) regarding the classification of the devices. After considering public comments on the proposed classifications, FDA will publish a final regulation classifying the devices. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Written comments by August 10, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Harry R. Sauberman, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 9200 Corporate Blvd, Rockville, MD 20850, 301-594-2080.

SUPPLEMENTARY INFORMATION:

I. Background

The act, as amended by the 1976 amendments (Pub. L. 94-295), the SMDA (Pub. L. 101-629), and FDAMA (Pub. L. 105-115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval). Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments) are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee), (2) published the panel's recommendations for comment, along with a proposed regulation classifying the device, and (3) published a final regulation classifying the device. A device that is first offered in commercial distribution after May 28, 1976, and which FDA determines to be substantially equivalent to a device classified under this scheme, is classified into the same class as the device to which it is substantially equivalent. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A device that was not in commercial distribution prior to May 28, 1976, and that has not been found by FDA to be substantially equivalent to a legally marketed predicate device, is classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process.

In the Federal Register of November 6, 1986 (51 FR 40378), FDA published a final rule classifying ear, nose and throat devices. At that time, FDA was not aware that the nasal dilator, the intranasal splint, and the bone particle

collector were preamendments devices and inadvertently omitted classifying them.

II. Device Descriptions

FDA is proposing the following device descriptions based on the panel's recommendations (Ref. 1) and the agency's review:

(1) The nasal dilator is a device intended to provide temporary relief from breathing difficulties resulting from structural abnormalities in the nose. The external nasal dilator is described as a device constructed from layers of fabric material with a flat plastic spring inserted between the layers, with a skin adhesive applied to adhere to the skin of the nose. The device is placed externally on the lower third of the nose. The external nasal dilator acts with a pulling force to open the nares and the nasal valves thereby decreasing nasal airway resistance and increasing nasal air flow. The internal nasal dilator is constructed from metal or plastic and is placed inside the nostrils. It acts by pushing the nostrils open or by gently pressing on the columella, thereby decreasing nasal airway resistance and increasing nasal airflow;

(2) The intranasal splint is a device intended to minimize bleeding and edema and to prevent adhesions between the septum and the nasal cavity. The intranasal splint is constructed from plastic, silicone, or absorbent material and is placed in the nasal cavity after surgery or trauma; and

(3) The bone particle collector is a filtering device intended to be inserted into the suction tube line during the early stages of otologic surgery to collect bone particles for future use.

III. Recommendations of the Panel

In a public meeting held on October 25, 1990, the panel made classification recommendations for the nasal dilator, the intranasal splint, and the bone particle collector. The panel recommended that the devices be classified in class I (general controls). No recommendation was made to exempt these devices.

IV. Summary of the Reasons for the Recommendations

The panel concluded that the safety and effectiveness of the nasal dilator, intranasal splint, and bone particle collector can be reasonably assured by general controls. Specifically, the panel believed that the safety and effectiveness of the nasal dilator,

intranasal splint, and the bone particle collector can be reasonably assured by: (1) Registration and listing (section 510 of the act), and (2) the general requirements concerning reports (21 CFR 820.180), complaint files (21 CFR 820.198), and good manufacturing practices requirements (section 520(f) of the act (21 U.S.C. 360j(f)).

V. Risks to Health

The panel identified no specific risks associated with the use of the intranasal splint or the bone particle collector. The panel identified two potential risks to health associated with use of the nasal dilator: (1) The device could be lost inside a wide nose (internal dilator), and (2) the device can cause ulceration of skin or mucous membrane which could lead to infection. The panel further concluded that the risk of injury resulting from a dislodged dilator or from skin ulceration is low.

VI. Summary of the Data Upon Which the Proposed Recommendation Is Based

The panel based its recommendations on expert testimony presented to the panel and on the panel members' personal knowledge of and clinical experience with the nasal dilator, the intranasal splint, and the bone particle collector.

VII. FDA's Tentative Finding

FDA tentatively concurs with the recommendations of the panel that the nasal dilator, the intranasal splint, and the bone particle collector should be classified into class I (general controls) because the agency believes that sufficient information exists to determine that general controls will provide reasonable assurance of the safety and effectiveness of the devices. Consistent with the purpose of the act, class I (general controls) as defined by section 513(a)(1)(A) of the act would provide the least amount of regulation necessary to reasonably assure that current and future nasal dilators, intranasal splints, and bone particle collectors are safe and effective.

On November 21, 1997, the President signed FDAMA into law. Section 206 of FDAMA, in part, added a new section 510(l) to the act (21 U.S.C. 360(l)). Under section 501 of FDAMA, new section 510(l) became effective on February 19, 1998. New section 510(l) provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury

(hereafter "reserved criteria"). FDA has determined that these devices do not meet the reserved criteria and, therefore, they are exempt from the premarket notification requirements.

The agency, therefore, proposes to classify the nasal dilator, the intranasal splint, and the bone particle collector into class I, and to exempt them from the premarket notification requirements.

VIII. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Ear, Nose, and Throat Devices Panel, 35th meeting, transcript and meeting minutes, October 25-26, 1990.

IX. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed classification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by Subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104-121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. As noted previously, FDA may classify devices into one of three regulatory classes according to the degree of control needed to provide reasonable assurance of safety and

effectiveness. For these three devices, FDA is proposing that they be classified into class I, the lowest level of control allowed. In addition, FDA is proposing to exempt them from premarket notification requirements. These devices would be subject to a minimal level of control. The agency, therefore, certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of \$100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

XI. Paperwork Reductions Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XII. Comments

Interested persons may, on or before August 10, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 874

Medical devices.
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 874 be amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 874.3900 is added to subpart D to read as follows:

§ 874.3900 Nasal dilator.

(a) *Identification.* A nasal dilator is a device intended to provide temporary relief from breathing difficulties resulting from structural abnormalities in the nose. These devices decrease airway resistance and increase nasal airflow. The external nasal dilator is

constructed from layers of fabric material with a flat plastic string inserted between the layers, with a skin adhesive applied to adhere to the skin of the nose. The external dilator acts with a pulling action to open the nares. The internal nasal dilator is constructed from metal or plastic and is placed inside the nostrils. It acts by pushing the nostrils open or by gently pressing on the columella.

(b) *Classification*. Class I (general controls). This device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

3. Section 874.4780 is added to subpart E to read as follows:

§ 874.4780 Intranasal splint.

(a) *Identification*. An intranasal splint is a device intended to minimize bleeding and edema to prevent adhesions between the septum and the nasal cavity. The intranasal splint is constructed between the septum and the nasal cavity. The intranasal splint is constructed from plastic, silicone, or absorbent material and is placed in the nasal cavity after surgery or trauma.

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

4. Section 874.4800 is added to subpart E to read as follows:

§ 874.4800 Bone particle collector.

(a) *Identification*. A bone particle collector is a filtering device intended to be inserted into the suction tube during the early stages of otologic surgery to collect bone particles for future use.

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: May 1, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98-12312 Filed 5-8-98; 8:45 am]

BILLING CODE 4190-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-209682-94]

RIN 1545-AS39

Adjustments Following Sales of Partnership Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Postponement of hearing and requests to videoconference hearing.

SUMMARY: This document postpones the public hearing on proposed regulations relating to the optional adjustments to the basis of partnership property following certain transfers of partnership interests under section 743, the calculation of gain or loss under section 751(a) following the sale or exchange of a partnership interest, the allocation of basis adjustments among partnership assets under section 755, the allocation of a partner's basis in its partnership interest to properties distributed to the partner by the partnership under section 732(c), and the computation of a partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) under section 1017. In addition, this document announces that persons outside the Washington, DC area who wish to testify at the public hearing on the proposed regulations may request that the Service videoconference the public hearing to their sites.

DATES: Requests to videoconference the hearing to other sites must be received by Friday, May 29, 1998.

ADDRESSES: Requests must be sent to: CC:DOM:CORP:R (REG-209682-94), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Requests may also be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-209682-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit requests electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting requests directly to the IRS internet site at <http://www.irs.ustreas.gov/prod/taxregs/comments.html>.

FOR FURTHER INFORMATION CONTACT: LaNita VanDyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7180 (not a toll-free number). **SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing appearing in the *Federal Register* on Thursday, January 29, 1998 (63 FR 4408), announced that a public hearing with respect to proposed regulations relating to adjustments to a partner's basis in its partnership interest and a partnership's basis in its assets would be held on Wednesday, July 8, 1998, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC, and that requests to

speak and outlines of oral comments should be received by Wednesday, June 24, 1998.

Subsequent to this announcement, the Service received a request that the hearing be videoconferenced. The Service recognizes that other persons outside the Washington, DC area may also wish to testify through videoconferencing. Those persons should now request to do so.

Requests to include other videoconferencing sites must be received by Friday, May 29, 1998. If the Service receives sufficient indications of interest to warrant videoconferencing to a particular city and if the Service has videoconferencing facilities in that city, the Service will accommodate the requests.

Accordingly, the public hearing originally scheduled for July 8, 1998, is postponed. The Service will issue a document in the *Federal Register* announcing the new date, time, and any videoconference sites of the public hearing.

Cynthia Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98-12340 Filed 5-8-98; 8:45 am]

BILLING CODE 4830-01-J

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA-46-1-7384b; FRL-6008-9]

Approval and Promulgation of State Implementation Plans; Louisiana: Site-Specific Revision for the Exxon Company Baton Rouge Refinery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the EPA proposes to approve a site-specific revision to the Louisiana 15% Rate-of-Progress State Implementation plan. The revision extends the date of compliance for the installation of particular Volatile Organic Liquid storage tank controls for storage tanks located at the Baton Rouge Refinery of Exxon Company, U.S.A. Specifically, the revision extends the compliance date of the requirement for the installation of guide pole sliding cover gaskets on 33 storage tanks until the earlier of the next scheduled downtime of the subject tanks or December 2005.

In the Rules and Regulations Section of this *Federal Register*, the EPA is approving the State's SIP revision as a direct final rule without prior proposal

because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives relevant adverse comments, the EPA will publish a timely withdrawal in the *Federal Register*. All relevant public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 10, 1998.

ADDRESSES: Written comments on this action should be addressed to Thomas H. Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Air Quality Division, Louisiana Department of Environmental Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Eaton R. Weiler, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665-2174.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is published in the Rules and Regulations section of this *Federal Register*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: April 23, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 98-12431 Filed 5-8-98; 8:45 am]

BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-6012-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Occidental Chemical Corporation (Occidental Chemical), to exclude (or delist) certain solid wastes generated at its Ingleside, Texas, facility from the lists of hazardous wastes contained in 40 CFR 261.24, 261.31, and 261.32, (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This petition was submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273, and under § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). The EPA is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed. The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition.

DATES: Comments will be accepted until June 25, 1998. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision by filing a request with Acting Director, Robert E. Hanneschlager, Multimedia Planning and Permitting Division, whose address appears below, by May 26, 1998. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments. Two copies should be sent to the William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency EPA, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: "F-97-TXDEL-OC-CIDENTAL."

Requests for a hearing should be addressed to the Acting Director, Robert E. Hanneschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. The RCRA regulatory docket for this proposed rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing in the EPA Library on the 12th Floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact Jon Rinehart, Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202, (214) 665-6789.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description

may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the EPA to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains nonhazardous based on the hazardous waste characteristics.

In addition, mixtures containing listed hazardous wastes are also considered hazardous wastes as are wastes derived from the treatment, storage, or disposal of listed hazardous waste. See § 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the EPA on procedural grounds. *Shell Oil Co. v. EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278). These references should be consulted for more information regarding mixtures and residues.

B. Approach Used to Evaluate This Petition

Occidental Chemical's petition requests a delisting for listed hazardous wastes. In making the initial delisting determination, the EPA evaluated the petitioned wastes against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agreed with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have proposed to deny the petition.) The EPA then evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. The EPA considered whether the wastes are acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned wastes, the quantities of wastes generated, and waste variability.

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned wastes. The EPA determined that disposal in a Subtitle D landfill/surface impoundment is the most reasonable, worst-case disposal scenario for Occidental Chemical's petitioned wastes, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the EPA is proposing to use a particular fate and transport model, the EPA Composite Model for Landfills (EPACML), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the disposal of Occidental Chemical's petitioned wastes on human health and the environment. Specifically, the EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-

based levels at an assumed risk of 10^{-6} used in delisting decision-making for the hazardous constituents of concern.

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned wastes in a landfill/surface impoundment, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, may not pose a threat to human health or the environment. In most cases, because a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict, and does not presently control, how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the EPA determined that it would be unnecessary to request ground water monitoring data. Specifically, Occidental Chemical currently disposes of a part of the petitioned wastes (Rockbox Residue and Limestone Sludge) generated at its facility in an off-site, RCRA hazardous waste landfill (which is not owned/operated by Occidental Chemical).¹ This landfill did not begin accepting this petitioned waste generated by the Occidental Chemical facility until 1991. This petitioned waste comprises a small fraction of the total waste managed in the unit. Therefore, the EPA believes that any ground water monitoring data from the landfill would not be meaningful for an evaluation of the specific effect of this petitioned waste on ground water. Finally, there are presently no data from groundwater monitoring wells available, therefore there is no data to evaluate.

From the evaluation of Occidental Chemical's delisting petition, a list of constituents was developed for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from

¹ The other portion of waste proposed to be excluded is not disposed but is instead treated onsite prior to discharge. Discharge of the waste is regulated under Section 402 of the Clean Water Act.

the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (i.e., "delisting levels") are part of the proposed verification testing conditions of the exclusion.

Similar to other facilities seeking exclusions, Occidental Chemical's exclusion (if granted) would be contingent upon the facility conducting analytical testing of representative samples of the petitioned wastes at Ingleside. This testing would be necessary to verify that the treatment system is operating as demonstrated in the petition submitted on January 3, 1997. Specifically, the verification testing requirements, would be implemented to demonstrate that the processing facility will generate

nonhazardous wastes (i.e., wastes that meet the EPA's verification testing conditions). The EPA's proposed decision to delist wastes from Occidental Chemical's facility is based on the information submitted in support of today's rule, i.e., description of the wastewater treatment system and analytical data from the Ingleside facility.

Finally, the HSWA specifically require the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Occidental Chemical Corporation, Ingleside, Texas 78362.

A. Petition for Exclusion

Occidental Chemical Corporation, located in Ingleside, Texas, petitioned the EPA for an exclusion for 128 cubic yards of Rockbox Residue, 148,284 cubic yards of Caustic Neutralized Wastewater, and 1,114 cubic yards Limestone Sludge per calendar year resulting from its hazardous waste treatment process. The resulting wastes are presently listed, in accordance with § 261.3(c)(2)(i) (i.e., the "derived from" rule), as EPA Hazardous Waste No. K019, K020, F001, F003, F005, and F025. The listed constituents of concern for these waste codes are listed in Table 1.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS

Waste code	Basis for characteristics/listing
K019/K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
F001	Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F003	N.A Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, 2-nitropropane.
F025	Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, 3-chloropropene, dichloropropene, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, benzene, chlorobenzene, dichlorobenzene, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.

Occidental Chemical petitioned to exclude the Rockbox Residue, Caustic Neutralized Wastewater, and Limestone Sludge treatment residues because it does not believe that the petitioned wastes meet the criteria for which they were listed. Occidental Chemical further believes that the wastes are not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the wastes to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the HSWA. See section 222 of HSWA, 42 U.S.C. § 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Occidental Chemical's petition.

B. Background

On January 3, 1997, Occidental Chemical petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, an annual volume of Rockbox Residue, Caustic Neutralized Wastewater, and

Limestone Sludge which are generated as a result of the treatment of offgases from onsite incinerators. Specifically, in its petition, Occidental Chemical requested that the EPA grant an exclusion for 128 cubic yards of Rockbox Residue, 148,284 cubic yards of Caustic Neutralized Wastewater, and 1,114 cubic yards of Limestone Sludge generated per calendar year.

In support of its petition, Occidental Chemical submitted: (1) Descriptions of its wastewater treatment processes and the incineration activities associated with petitioned wastes; (2) results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, and metals except for pesticides, herbicides and PCBs; (3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals; (4) results for reactive sulfide; (5) results for reactive cyanide; (6) results for pH; (7) results of the total basis for dioxin and furan; and (8) results of dioxin and furan TCLP extract.

Occidental Chemical is an active plant that produces ethylene dichloride (EDC), vinyl chloride monomer (VCM), chlorine, and caustic soda. The plant utilizes chlorine, ethylene, and oxygen as feedstock and utilizes two permitted, onsite RCRA incinerators to burn process vent gases, intermediate wastes generated during the production of EDC and VCM (K019, K020, and F025), waste paint thinner (F001, F003, F005), and occasionally waste oil. These two incinerators have been in continuous operation since 1991. Occidental Chemical has previously classified three waste streams (Rockbox Residue, Caustic Neutralized Wastewater and Limestone Sludge) generated from the treatment of the offgases from the incinerators as hazardous based on the "derived from" rule in § 261.3(c)(2)(i).

The combustion products from the incinerators contain hydrochloric acid (HCl). Incinerator offgases are treated in the Incinerator Offgas Treatment System. In this system, the emissions are passed through absorption columns, dehumidifier columns, and caustic scrubbers to remove the HCl. Blowdown

water from the dehumidifier columns and caustic scrubber columns are routed to the Rockbox Tank (the Rockbox) as the first step in neutralizing the HCl. Excess HCl from the aqueous HCl storage tanks is commingled with the blowdown water and routed to the Rockbox. The influent to Rockbox normally contains 3 to 7 percent HCl. At times when excess HCl is not produced, the influent to the Rockbox is predominantly blowdown from the dehumidifier and caustic scrubber columns.

The Rockbox contains crushed limestone with small amounts of inert materials (silica oxide). These inert materials accumulate in the bottom of the Rockbox as the crushed limestone is utilized in the neutralization process. The accumulation of inert materials is the Rockbox Residue. The Rockbox Residue is a "third generation" waste since it is the residue of treating wastewater used to quench gaseous emissions from the incineration of listed wastes.

The pH of the effluent leaving the Rockbox is between 1 and 5. The effluent is passed through a primary pH adjustment tank where air is released into the water to remove carbon dioxide. Additionally, sodium hydroxide may be added to this tank. Mixing with air minimizes the formation of calcium carbonate precipitate upon introduction of caustic soda. The effluent is then passed through the secondary pH adjustment tank where caustic soda (sodium hydroxide) is added to raise the pH of the water to a pH between 7 and 9. The stream, consisting of water and calcium carbonate precipitant in suspension, flows through a clarifier where the sludge is settled out. The aqueous effluent from the clarifier tank is the Caustic Neutralized Wastewater which Occidental Chemical seeks to delist. This waste stream consists of an aqueous phase that no longer exhibits

the hazardous waste characteristic of corrosivity.

The settled solids (calcium carbonate) from the clarifier are dewatered on a belt filter press and are dropped directly into rolloff bins for disposal. Water removed during the operation of the filter press is returned to the clarifier. The remaining filter cake is the Limestone Sludge, which Occidental Chemical also seeks to delist.

Rockbox Residue is generated on a batch basis every one to two years. For the past two years (1995 and 1996), the Rockbox Residue was generated annually. This is probable due to a higher than average concentration of inerts in the limestone purchased for the Rockbox. The Rockbox Residue is disposed of in an offsite permitted hazardous waste landfill.

Caustic Neutralized Wastewater and Limestone Sludge are generated on a continuous basis. The Caustic Neutralized Wastewater is treated in an onsite unit which has in an National Pollution Discharge Elimination System (NPDES) permitted outfall. The Limestone Sludge is transported to an offsite hazardous waste landfill for disposal.

Occidental Chemical developed a list of constituents of concern from comparing a list of all raw materials used in the plant that could potentially appear in the petitioned waste with those found in 40 CFR part 264, as well as dioxins and furans. Based on the knowledge of process they determined that herbicides, pesticides and PCBs would be excluded from the Appendix IX analyte list. The EPA has included the dioxins and furans on the list, due to the incineration of chlorinated compounds. Using the list of constituents of concern, Occidental analyzed the four composite samples for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the volatiles and semivolatiles, and metals from Appendix IX. These four

samples were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR 261.21, 261.22, and 261.23, including analysis for total constituent concentrations of cyanide, sulfide, reactive cyanide, and reactive sulfide. These four samples were also analyzed for Toxicity Characteristic Leaching Procedure (TCLP) concentrations (i.e., mass of a particular constituent per unit volume of extract) of all the volatiles, semivolatiles, and metals on the Appendix IX list. This list was developed based on the availability of test methods and process knowledge. Two sampling events were conducted, one in 1995 and one in 1996.

C. EPA Analysis

Occidental Chemical used SW-846 Methods 8260A, 8270B, 6010, 8290 to quantify the total constituent concentrations of 40 CFR part 264, Appendix IX Volatiles (including 2-ethoxyethanol, chloroethylene, vinylidene chloride and trichloromethane), Appendix IX Semivolatiles (excluding PCBs, Pesticides, Herbicides) Appendix IX Metals, and Appendix IX Dioxins/Furans. Occidental Chemical used SW-846 Methods 9045, 9030, 9010, 1311 to quantify pH, Reactive Sulfide, and Reactive Cyanide. Occidental Chemical used SW-846 Methods 8260A, 8270B, 6010, 8290 to quantify the constituents from the TCLP extract. These analyses were performed on all three of the petitioned wastes: the Rockbox Residue, Limestone Sludge, and the Caustic Neutralized Wastewater. The Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater do not meet the definitions for reactivity and corrosivity as defined by §§ 261.22 and 261.23. Table 2 presents the maximum total constituent and leachate concentrations for the Rockbox Residue.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS ROCKBOX RESIDUE²

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Acetone	<0.02	<0.1
Bromodichloromethane	0.007	<0.02
Bromoform	0.022	0.02
Bromomethane	<0.01	<0.05
Chlorodibromomethane	0.027	<0.02
Chloroform	0.008	<0.02
Dichloromethane	<0.005	0.11
Ethylbenzene	<0.005	0.04
2,3,7,8-TCDD Equivalent	0.000321	0.0000000531
Barium	1.5	0.666
Chromium	<1.0	0.13
Copper	1.1	<0.25
Lead	<1.0	<0.07

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS ROCKBOX RESIDUE²—Continued

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Selenium	<1.0	0.11
Tin	2	<0.10
Vanadium	1.3	<0.50
Zinc	23	<0.4
Reactive Sulfide	<50	
Reactive Cyanide	<10	
pH	3.19	

< Denotes that the constituent was not detected at the detection limit specified in the table.

² These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

Tables 3 and 4 present the maximum total constituent and leachate concentrations for the Limestone Sludge. Table 5 presents the maximum total constituent and leachate concentrations for the Caustic Neutralized Wastewater.

TABLE 3.—MAXIMUM TOTAL ORGANIC CONSTITUENT AND LEACHATE CONCENTRATIONS LIMESTONE SLUDGE³

Constituent	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Acetone	0.034	0.27
Bromoform	0.031	<0.02
Chlorodibromomethane	0.012	<0.02
Dichloromethane	<0.005	0.54
Ethylbenzene	<0.005	0.03
1,1,1-Trichloroethane	0.011	<0.1
Toluene	<0.005	1.8
Trichlorofluoromethane	0.011	<0.02
Xylene	<0.020	0.11
Diethylphthalate	<0.00001	<0.04
2,3,7,8-TCDD Equivalent	0.00135	0.0000000018
Reactive Sulfide	<50	
Reactive Cyanide	<10	
pH	9.55	

< Denotes that the constituent was not detected at the detection limit specified in the table.

³ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE 4.—MAXIMUM TOTAL INORGANIC CONSTITUENT AND LEACHATE CONCENTRATIONS LIMESTONE SLUDGE⁴

Constituent	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Antimony	2.6	<0.6
Arsenic	18.4	<0.1
Barium	15.2	0.14
Beryllium	0.5	<0.1
Chromium	25.2	<0.1
Cobalt	2.4	<0.1
Copper	41.2	<0.1
Lead	13	<0.1
Nickel	64.4	0.47
Selenium	<0.001	0.1
Silver	1.1	<0.1
Vanadium	138	<0.1
Zinc	58	0.11

< Denotes that the constituent was not detected at the detection limit specified in the table.

⁴ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE 5.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER⁵

Constituent	Total constituent analyses
Acetone	0.01
Bromoform	0.054
Chlorodibromomethane	0.015

TABLE 5.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER⁵—Continued

Constituent	Total constituent analyses
2,3,7,8-TCDD Equivalent	0.0000000006
Arsenic	0.01
Barium	0.18
Lead	0.1
Silver	0.08
Vanadium	0.007
Zinc	0.49
Reactive Sulfide	<50
Reactive Cyanide	<10
pH	11.8

⁵ Denotes that the constituent was not detected at the detection limit specified in the table.

⁶ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

Occidental Chemical used SW-846 Methods 8260A and 8270B to quantify the total constituent concentrations of 54 volatile and 117 semivolatile organic compounds, respectively in the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater. This suite of constituents included all of the nonpesticide organic constituents listed in § 261.24. Also, Occidental Chemical used SW-846 Methods 8260A and 8270B to quantify the leachable concentrations of 54 volatile and 117 semivolatile organic compounds, respectively, in the Rockbox Residue, Limestone Sludge, and the Caustic Neutralized Wastewater, following extraction by SW-846 Method 1311 (TCLP). This suite of constituents included all of the organic constituents listed in § 261.24 (except the pesticides). In addition, the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater were analyzed for TCLP metals.

Occidental Chemical submitted a signed certification stating that, based on projected annual waste generation, the maximum annual generation rate will be 128 cubic yards of Rockbox Residue, 148,284 cubic yards of Caustic Neutralized Wastewater, and 1,114 cubic yards of Limestone Sludge. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to reevaluate the estimated waste volume. The EPA accepted Occidental Chemical's certified estimates. The EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before

finalizing a delisting petition or after granting an exclusion.

D. EPA Evaluation

The EPA considered the appropriateness of alternative waste management scenarios for Occidental Chemical's Rockbox Residue, Caustic Neutralized Wastewater, and Limestone Sludge. The EPA decided, based on the information provided in the petition, that disposal of the Rockbox Residue and Limestone Sludge in a municipal solid waste landfill is the most reasonable, worst-case scenario for the Rockbox Residue and the Limestone Sludge. The disposal of the Caustic Neutralized Wastewater in a surface impoundment would be the most reasonable worst case scenario. Under a landfill/surface impoundment disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Occidental Chemical's petitioned wastes using the modified EPA Composite Model for Landfills/Surface Impoundments (EPACML) which predicts the potential for ground water contamination from wastes that are landfilled/placed in a surface impoundment. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991) and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground water

recharge for a specific volume of waste. The EPA requests comments on the use of the EPACML as applied to the evaluation of Occidental Chemical's petitioned wastes (Rockbox Residue, Caustic Neutralized Wastewater, and Limestone Sludge).

For the evaluation of Occidental Chemical's petitioned wastes, the EPA used the EPACML to evaluate the mobility of the hazardous constituents detected in the extract of samples of Occidental Chemical's Rockbox Residue and the Limestone Sludge. The total analysis was utilized for the Caustic Neutralized Wastewater. Typically, the EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming an ongoing process generates wastes for 20 years.

The DAF for the waste volume of Rockbox Residue is 128 cubic yards/year assuming 20 years of generation is 100. The DAF for the waste volume of Caustic Neutralized Wastewater is 148,284 cubic yards/year assuming 20 years of generation is 7. The DAF for the waste volume of Limestone Sludge is 1,114 cubic yards/year assuming 20 years of generation is 100.

The EPA's evaluation of the Rockbox Residue using a DAF of 100, a maximum waste volume estimate of 128 cubic yards, and the maximum reported TCLP concentrations (see Table 2), yielded compliance point concentrations (see Table 5) that are below the current health based levels.

The EPA's evaluation of the Limestone Sludge using a DAF of 100, for the Limestone Sludge a maximum waste volume estimate of 1,114 cubic yards, and the maximum reported TCLP concentrations (see Tables 3 and 4), yielded compliance point concentrations (See Table 7) that are below the current health based levels.

The EPA's evaluation of the Caustic Neutralized Wastewater using a DAF of

7, a maximum waste volume estimate of 148,284, cubic yards, and the maximum reported TCLP concentrations (see Table 5), yielded compliance point concentrations (See Table 8) that are below the current health based levels.

TABLE 6.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS ROCKBOX RESIDUE

Constituents	Compliance point concentrations (mg/l) ⁶	Levels of concern (mg/l) ⁷
Acetone	0.00106	4.0
Bromodichloromethane	0.0002	0.0014
Bromoform	0.0002	0.01
Bromomethane	0.0005	0.05
Chlorodibromomethane	0.0002	0.001
Chloroform	0.0002	0.01
Dichloromethane	0.0011	0.01
Ethylbenzene	0.0004	0.7
2,3,7,8-TCDD Equivalent	0.000000000531	0.0000000006
Barium	0.0066	2.0
Chromium	0.0013	0.1
Copper	0.0025	1.3
Lead	0.0005	0.015
Selenium	0.0011	0.05
Tin	0.0010	2.1
Vanadium	0.005	0.3
Zinc	0.004	10.0

⁶ Using the maximum TCLP leachate concentration, based on a DAF of 100 for a maximum annual volume of 128 cubic yards.

⁷ See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," May 1996 located in the RCRA Public Docket for today's notice.

TABLE 7.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATION LIMESTONE SLUDGE

Constituents	Compliance point concentrations (mg/l) ⁶	Levels of concern (mg/l) ⁹
Acetone	0.0027	4.0
Bromoform	0.0002	0.01
Chlorodibromomethane	0.0002	0.001
Dichloromethane	0.0054	0.01
Ethylbenzene	0.0003	0.7
1,1,1-Trichloroethane	0.0002	0.2
Toluene	0.02	7.0
Trichlorofluoromethane	0.0002	10.0
Xylene	0.0011	20.0
Diethyl phthalate	0.0001	30.0
2,3,7,8-TCDD Equivalent	0.0000000000183	0.0000000006
Antimony	0.06	0.006
Arsenic	0.0005	0.05
Barium	0.0014	2.0
Beryllium	0.0005	0.004
Chromium	0.0005	0.1
Cobalt	0.005	2.1
Copper	0.0025	1.3
Lead	0.0005	0.015
Nickel	0.0047	0.7
Selenium	0.001	0.05
Silver	0.00025	0.02
Vanadium	0.005	0.3
Zinc	0.0011	10.0

⁶ Using the maximum TCLP leachate concentration, based on a DAF of 100 for a maximum annual of 1,114 cubic yards.

⁹ See Table 6.

TABLE 8.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER

Constituents	Compliance point concentrations (mg/l) ¹⁰	Levels of concern (mg/l) ¹¹
Acetone	0.00143	4.0
Bromolorm	0.01	0.01
Chlorodibromomethane	0.001	0.001
2,3,7,8-TCDD Equivalent	0.000000000012	0.0000000006
Arsenic	0.00143	0.05
Barium	0.03	2.0

TABLE 8.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS CAUSTIC NEUTRALIZED WASTEWATER—Continued

Constituents	Compliance point concentrations (mg/l) ¹⁰	Levels of concern (mg/l) ¹¹
Lead	0.01	0.015
Silver	0.01	0.02
Vanadium	0.001	0.3
Zinc	0.07	10.0

¹⁰ Using the maximum total concentration, based on a DAF of 7 for a maximum annual volume of 148,248 cubic yards.

¹¹ See Table 6.

The maximum reported or calculated leachate concentrations of bromoform, chlorodibromomethane, dichloromethane, ethylbenzene, 2,3,7,8-TCDD Equivalent, barium, chromium, and selenium in the Rockbox Residue yielded compliance point concentrations well below the health based levels used in the delisting decision-making. The EPA did not evaluate the mobility of the remaining constituents (e.g., acetone, bromodichloromethane, copper, lead) from Occidental Chemical's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 2). The EPA does not evaluate nondetectable concentrations of a constituent of concern in its modeling efforts if the nondetectable value was obtained using the appropriate analytical method; the EPA then assumes that the constituent is not present and therefore does not present a threat to human health or the environment.

The maximum reported or calculated leachate concentrations of acetone, bromoform, chlorodibromomethane, 2,3,7,8-TCDD Equivalent, arsenic, barium, lead, silver, vanadium, and zinc in the Caustic Neutralized Wastewater yielded compliance point concentrations well below the health based levels used in the delisting decision-making.

The maximum reported or calculated leachate concentrations of acetone, dichloromethane, ethylbenzene, toluene, xylene, 2,3,7,8-TCDD Equivalent, barium, nickel, selenium, and zinc in the Limestone Sludge yielded compliance point concentrations well below the health based levels used in the delisting decision-making. The EPA did not evaluate the mobility of the remaining constituents (e.g., bromoform, beryllium, chromium, cobalt, copper, lead) from Occidental Chemical's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 3). As explained above, the EPA does not evaluate

nondetectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method.

The EPA concluded, after reviewing Occidental Chemical's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Occidental Chemical's wastes. In addition, on the basis of explanations and analytical data provided by Occidental Chemical, pursuant to § 260.22, the EPA concludes that the petitioned wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

During the evaluation of Occidental Chemical's petition, the EPA also considered the potential impact of the petitioned wastes via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from Occidental Chemical's petitioned wastes is unlikely. Therefore, no appreciable air releases are likely from Occidental's wastes under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Occidental Chemical's wastes in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Occidental Chemical's Rockbox Residue, Caustic Neutralized Wastewater, or the Limestone Sludge. A description of the EPA's assessment of the potential impact of Occidental Chemical's wastes, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

The EPA also considered the potential impact of the petitioned wastes via a

surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the run-off will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the wastes is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if Occidental Chemical's waste were released from a municipal solid waste landfill through runoff and erosion. See, the RCRA public docket for today's proposed rule. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Occidental Chemical's Rockbox Residue, the Caustic Neutralized Wastewater, and the Limestone Sludge wastes are not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

E. Conclusion

The EPA believes that the descriptions of the Occidental Chemical hazardous waste process and analytical characterization, in conjunction with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis to grant Occidental Chemical's petition for an exclusion of the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater. The EPA believes the data submitted in support of the petition show Occidental Chemical's process can render the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater non-hazardous. The EPA has reviewed the sampling procedures used by Occidental Chemical and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater. The data submitted in support of the petition show that constituents in Occidental Chemical's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Occidental Chemical has successfully demonstrated that the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater is non-hazardous.

The EPA's decision to exclude this waste is based on descriptions of the incineration and the wastewater treatment activities associated with the petitioned waste and characterization of the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater. If the proposed rule is finalized, the petitioned wastes will no longer be subject to regulation under parts 262 through 268 and the permitting standards of part 270. The EPA therefore, proposes to grant an exclusion to the Occidental Chemical Corporation, located in Ingleside, Texas, for the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater described in its petition.

F. Verification Testing Conditions

(1) *Delisting Levels:* All concentrations for the following constituents must not exceed the following levels (ppm). For the Rockbox Residue and the Limestone Sludge, constituents must be measured in the waste leachate by the method specified in 40 CFR § 261.24. The constituents for the Caustic Neutralized Wastewater must be measured in total constituents.

- (A) Caustic Neutralized Wastewater
(i) Inorganic Constituents
Arsenic—0.35; Barium—14; Lead—0.11;
Silver—0.14; Vanadium—2.1; Zinc—70
(ii) Organic Constituents

Acetone—28; Bromoform—0.07;
Chlorodibromomethane—0.01; 2,3,7,8-TCDD Equivalent—0.00000004
(B) Rockbox Residue
(i) Inorganic Constituents
Barium—100; Chromium—5; Copper—130;
Lead—1.5; Selenium—1; Tin—210;
Vanadium—30; Zinc—1000
(ii) Organic Constituents
Acetone—400; Bromodichloromethane—0.14; Bromoform—1.0;
Chlorodibromomethane—0.1; Chloroform—1.0; Dichloromethane—1.0;
Ethylbenzene—70; 2,3,7,8-TCDD Equivalent—0.000000531
(C) Limestone Sludge
(i) Inorganic Constituents
Antimony—0.6; Arsenic—5; Barium—100;
Beryllium—0.4; Chromium—10;
Cobalt—210; Copper—130; Lead—1.5;
Nickel—70; Selenium—1; Silver—2.0;
Vanadium—30; Zinc—1000
(ii) Organic Constituents
Acetone—400; Bromoform—1.0;
Chlorodibromomethane—0.10;
Dichloromethane—1.0; Ethylbenzene—70; 1,1,1-Trichloroethane—20;
Toluene—700;
Trichlorofluoromethane—1000;
Xylene—2000; Diethyl phthalate—3000;
2,3,7,8-TCDD Equivalent—0.0000006

This paragraph provides the levels of constituents for which Occidental Chemical must test the leachate from the Rockbox Residue, and the Limestone Sludge, and the water in the Caustic Neutralized Wastewater, below which these wastes would be considered non-hazardous. The exclusion is effective when it is signed, but the disposal can not be implemented until the verification sampling is completed. If these constituent levels are exceeded then that waste is considered to be hazardous and must be managed as hazardous waste. If the annual testing of the waste does not meet the delisting requirements described in Paragraph 1, the facility must notify the Agency according to the Paragraph 6. The exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. The EPA selected the set of inorganic and organic constituents specified after reviewing information about the composition of the waste, descriptions of Occidental Chemical's treatment process, previous test data provided for the three waste and the respective health-based levels used in delisting decision-making. The EPA established the proposed delisting levels for this paragraph by back-calculating the Maximum Allowable Leachate (MALs) concentrations from the health-based levels for the constituents of concern using the EPACML chemical-specific DAFs of 100, 100, and 7 (See, previous discussions in Section D—

Agency Evaluation) i.e., MAL = HBL × DAF). These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) *Waste Holding and Handling:* Occidental Chemical must store in accordance with its RCRA permit, or continue to dispose of as hazardous all Rockbox Residue and the Limestone Sludge generated, and continue to discharge the Caustic Neutralized Wastewater generated in compliance with Occidental Chemical's NPDES permit until the verification testing described in Condition (3)(A) and (B), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. Occidental Chemical must continue to treat and discharge the Caustic Neutralized Wastewater as provided by the terms of its NPDES permit. If constituent levels in a sample exceed any of the delisting levels set in Condition (1), the waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA and Occidental Chemical's NPDES permit.

The purpose of this paragraph is to ensure that any Rockbox Residue and Limestone Sludge which might contain hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the Rockbox Residue and Limestone Sludge until characterization is complete will protect against improper handling of hazardous material. Further, inasmuch as Occidental Chemical has a permit to discharge under the NPDES program, it must continue to fully meet those permit requirements and may, according to this exception, only dispose of the Caustic Neutralized Wastewater as provided by that permit. If the EPA determines that the data collected under this condition do not support the data provided for the petition or Occidental Chemical is no longer meeting the terms of its NPDES permit, the exclusion will not cover the three wastes.

(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing

in Condition (3)(A) may be replaced by Condition (3)(B).

(A) *Initial Verification Testing:* (i) During the first 40 operating days of the Incinerator Offgas Treatment System after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Limestone Sludge, and the Caustic Neutralized Wastewater. Daily composites must be composed of representative grab samples collected every 6 hours during each unit operating cycle. The two wastes must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. Occidental Chemical must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the generation of the two wastes.

(ii) When the Rockbox unit is decommissioned for cleanout after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Rockbox Residue. The waste must be sampled after each decommissioning. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. No later than 90 days after the Rockbox is decommissioned for cleanout the first two times after this exclusion becomes final, Occidental Chemical must report the operational and analytical test data, including quality control information.

If the EPA determines that the data from the initial verification period demonstrates the treatment process is effective, Occidental Chemical may request that EPA allow it to perform verification testing on a quarterly basis for the Limestone Sludge and the Caustic Neutralized Wastewater. The Rockbox Residue will be sampled during periodic maintenance. If approved in writing by EPA, then Occidental Chemical may begin verification testing quarterly of the Limestone Sludge and the Caustic Neutralized Wastewater.

The EPA believes that an initial period of 40 days is sufficient for a facility to collect sufficient data to verify the data provided for the Limestone Sludge and the Caustic Neutralized Wastewater in the 1997 petition is representative of the waste to be delisted. If the EPA determines that the data collected under this condition do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the EPA determines that the data from the initial verification period reflected in (3)(A)(i) demonstrates that the treatment process is effective, EPA will notify Occidental Chemical in writing that the testing conditions in (3)(A)(i) may be replaced with the testing conditions in (3)(B). EPA also believes it is sufficient for Occidental Chemical to collect

verification data for the Rockbox Residue when the Rockbox unit is decommissioned for cleanout.

(B) *Subsequent Verification Testing:* Following written notification by EPA, Occidental Chemical may substitute the testing conditions in (3)(B) for (3)(A)(i). Occidental Chemical must continue to monitor operating conditions, and analyze samples representative of each quarter of operation during the first year of waste generation. The samples must represent the waste generated over one quarter. (This provision does not apply to the Rockbox Residue.)

The EPA believes that the concentrations of the constituents of concern in the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater may vary somewhat over time. As a result, in order to ensure that Occidental Chemical's treatment process can effectively handle any variation in constituent concentrations in the three wastes, the EPA is proposing a subsequent verification testing condition. The proposed subsequent testing would verify that the incinerator offgas system is operated in a manner similar to its operation during the initial verification testing and that the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater, do not exhibit unacceptable levels of toxic constituents. Therefore, the EPA is proposing to require Occidental Chemical to analyze representative samples of the Limestone Sludge, and the Caustic Neutralized Wastewater on a quarterly basis during the first year of waste generation (commencing on the anniversary date of the final exclusion) as described in Condition (3)(B). The Rockbox Residue will be sampled when the unit is out of commission for routine maintenance.

(C) *Termination of Organic Testing for Limestone Sludge and Caustic Neutralized Wastewater:* Occidental Chemical must continue testing as required under Condition (3)(B) for organic constituents specified in Condition (1)(A)(ii) and (1)(C)(ii) until the analyses submitted under Condition (3)(B) show a minimum of two consecutive quarterly samples below the delisting levels in Conditions (1)(A)(ii) and (1)(C)(ii). Occidental Chemical may then request that quarterly organic testing be terminated. After EPA notifies Occidental Chemical in writing it may terminate quarterly organic testing. Following termination of the quarterly testing, Occidental Chemical must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after final exclusion). If the waste exceeds the delisting levels then the waste will not be delisted.

The EPA is proposing to terminate the subsequent testing conditions for

organics as allowed in Condition (1)(A)(ii) and (1)(C)(ii) after Occidental Chemical has demonstrated the delisting levels for the waste are consistently met. If the annual testing of the wastes does not meet the delisting requirements described in Paragraph 1, the facility must notify the Agency according to the requirements in Paragraph 6. The exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. In order to confirm that the characteristics of the wastes do not change significantly over time, Occidental Chemical must continue to analyze a representative sample of the wastes for organic constituents on an annual basis (no later than twelve months after the final exclusion). If Occidental Chemical changes operating conditions as described in Condition (4), then Occidental Chemical must reinstate all testing in Condition (3)(A), pending a new demonstration under this condition for termination. Occidental Chemical must continue Organic Testing of the Rockbox Residue for that waste to be excluded.

(4) *Changes in Operating Conditions:* If Occidental Chemical significantly changes the process described in its petition or implements any processes which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), or its NPDES permit is changed, revoked or not reissued, or if it intends to manage the Caustic Neutralized Wastewater other than by discharge under its NPDES permit, Occidental Chemical must notify the EPA in writing and may no longer handle the wastes generated from the new process, or no longer discharge as nonhazardous until the wastes meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA.

Condition (4) would allow Occidental Chemical the flexibility of modifying its processes (e.g., changes in equipment or change in operating conditions) to improve its treatment process. However, Occidental Chemical must demonstrate that the change would not affect the composition or type of waste and request approval from the EPA. Wastes generated during the new process demonstration must be managed as a hazardous waste until written approval has been obtained and Condition (1) is satisfied. If Occidental Chemical changes operating conditions as described in Condition (5), then Occidental Chemical must reinstate all testing in Condition (3) pending a new

demonstration under this condition for termination.

(5) *Data Submittals:* The data obtained through Condition 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

To provide appropriate documentation that Occidental Chemical's facility is properly treating the waste, all analytical data obtained through Condition (3), including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Condition (5) requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Texas.

If made final, the proposed exclusion will apply only to 128 cubic yards of Rockbox Residue, 1,114 cubic yards of Limestone Sludge, and 148,284 cubic yards of Caustic Neutralized Wastewater generated annually at the wastewater system at the Occidental Chemical facility after successful verification

testing. Except as described in Condition (4), the facility would be required to submit a new petition if the treatment process specified for the Incinerator Offgas Treatment System is significantly altered. Occidental Chemical would be required to file a new delisting petition for any new manufacturing or production process(es), or significant changes from the current process(es) described in its petition which generates the three wastes or which may or could affect the composition or type of waste generated. Additionally if there is any change to Occidental Chemical's NPDES permit or if it wishes to manage the Caustic Neutralized Wastewater other than by discharge under its NPDES permit, except as provided in Condition (4), Occidental would also be required to file a new delisting petition. The facility must manage any of the waste in excess of 128 cubic yards of Rockbox Residue, 1,114 cubic yards of Limestone Sludge, and 148,284 cubic yards of Caustic Neutralized Wastewater generated from a changed process as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would not be subject to Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) *Reopener.*

(a) If Occidental Chemical discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then Occidental Chemical must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition.

(b) Upon receiving information described in paragraph (a) regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

The purpose of paragraph 6 is to require Occidental Chemical to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This will allow EPA to reevaluate the exclusion if new or additional information is provided to the Agency by Occidental Chemical

which indicates that information on which EPA's decision was based was incorrect or circumstances have changed such that information is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires Occidental Chemical to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing non-migration petitions located at § 268.6.

EPA has recognized that current delisting regulations contain no express procedure for reopening a decision if additional information is received and although it believes that it has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978), *et seq.* (APA), to take this action, EPA believes that a clear statement of its authority in the context of delistings is merited in light of Agency experience. (See, e.g., Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste did not leach in the actual disposal site as it had been modeled thus leading the Agency to repeal the delisting.) Until such time as EPA codifies an express reopener provision in the exclusion regulations, EPA will include language similar to that expressed above in delistings. EPA is considering the inclusion of a more specific regulatory process both defining when a delisting should be reopened and the result of reopening a granted exclusion and is soliciting comments on this process. Since each delisting is waste-specific and facility-specific or process-specific, EPA is currently reluctant to adopt a rule which might inadvertently, for example, cause an immediate repeal where specific circumstances would not merit so precipitous a result. In the meantime, in the event that an immediate threat to human health or the environment presents itself, EPA will continue to rely on its authority under the APA to make a good cause finding to justify an emergency rulemaking suspending notice and comment. APA section 553(b).

(7) *Notification Requirements:* Occidental Chemical must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

IV. Effective Date

EPA intends that this rule, should become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 USC 553(d).

V. Regulatory Impact

Under Executive Order (EO) 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact therefore, due to today's proposed rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Children's Health Protection

Under EO 13045, for all significant regulatory actions as defined by EO 12866, EPA must provide an evaluation of the environmental health or safety effect of a proposed rule on children and an explanation of why the proposed rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposal is not a significant regulatory action and is exempt from EO 13045.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required however if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, which was signed into law on March 22, 1995, EPA must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small

government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local, or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Intergovernmental Partnership

Under EO 12875, EPA may not promulgate any regulation which creates an unfunded mandate upon state, local or tribal government. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments (See Section IX (UMRA) above) and accordingly, this action is exempt from the requirements of EO 12875.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: April 17, 1998.

Robert Hanneschlagger,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Tables 1 and 2 of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Occidental Chemical,	Ingleside, Texas	<p>Limestone sludge, (at a maximum generation of 1,114 cubic yards per calendar year)</p> <p>Rockbox Residue, (at a maximum generation of 128 cubic yards per calendar year) and Caustic Neutralized Wastewater, (at a maximum generation of 148,282 cubic yards per calendar year) generated by Occidental Chemical using the wastewater treatment process to treat the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater (EPA Hazardous Waste No. F025, F001, F003, and F005) generated at Occidental Chemical.</p> <p>Occidental Chemical must implement a testing program that meets the following conditions for the exclusion to be valid:</p> <p>(1) <i>Delisting Levels:</i> All concentrations for the following constituents must not exceed the levels (ppm). For the Rockbox Residue and the Limestone Sludge, constituents must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. The constituents for the Caustic Neutralized Wastewater must be measured in total constituents.</p> <p>(A) Caustic Neutralized Wastewater.</p> <p>(i) Inorganic Constituents Arsenic-0.35; Barium-14; Lead-0.11; Silver-0.14; Vanadium-2.1; Zinc-70.</p> <p>(ii) Organic Constituents Acetone-28; Bromoform-0.07; Chlorodibromomethane-0.01; 2,3,7,8-TCDD Equivalent-0.00000004.</p> <p>(B) Rockbox Residue.</p> <p>(i) Inorganic Constituents Barium-200; Chromium-10; Copper-130; Lead-1.5; Selenium-1; Tin-210; Vanadium-30; Zinc-1000.</p> <p>(ii) Organic Constituents Acetone-400; Bromodichloromethane-0.14; Bromoform-1.0; Chlorodibromomethane-0.1; Chloroform-1.0; Dichloromethane-1.0; Ethylbenzene-70; 2,3,7,8-TCDD Equivalent-0.000000531.</p> <p>(C) Limestone Sludge.</p> <p>(i) Inorganic Constituents Antimony-0.6; Arsenic-5; Barium-200; Beryllium-0.4; Chromium-10; Cobalt-210; Copper-130; Lead-1.5; Nickel-70; Selenium-1; Silver-2.0; Vanadium-30; Zinc-1000.</p> <p>(ii) Organic Constituents Acetone-400; Bromoform-1; Chlorodibromomethane-0.1; Dichloromethane-1.0; Ethylbenzene-70; 1,1,1-Trichloroethane-20; Toluene-700; Trichlorofluoromethane-1000; Xylene-2000; Diethyl phthalate-3000; 2,3,7,8-TCDD Equivalent-0.0000006.</p> <p>(2) <i>Waste Holding and Handling:</i> Occidental Chemical must store in accordance with its RCRA permit, or continue to dispose of as hazardous waste all Rockbox Residue, and the Limestone Sludge generated, and continue to discharge the Caustic Neutralized Wastewater generated in compliance with Occidental Chemical's NPDES permit until the verification testing described in Condition (3)(A) and (3)(B), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. Occidental Chemical must continue to treat and discharge the Caustic Neutralized Wastewater as provided by the terms of its NPDES permit. If constituent levels in a sample exceed any of the delisting levels waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA and Occidental Chemical's NPDES permit.</p> <p>(3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).</p> <p>(A) <i>Initial Verification Testing:</i> (i) During the first 40 operating days of the Incinerator Offgas Treatment System after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Limestone Sludge, and the Caustic Neutralized Wastewater. Daily composites must be composed of representative grab samples collected every 6 hours during each unit operating cycle. The two wastes must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. Occidental Chemical must report the operational and analytical test data, including quality control information, obtained during this initial period no later 90 days after the generation of the two wastes.</p>

TABLE 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(ii) When the Rockbox unit is decommissioned for cleanout, after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Rockbox Residue. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. No later than 90 days after the Rockbox is decommissioned for cleanout the first two times after this exclusion becomes final, Occidental Chemical must report the operational and analytical test data, including quality control information.
		(B) <i>Subsequent Verification Testing:</i> Following written notification by EPA, Occidental Chemical may substitute the testing conditions in (3)(B) for (3)(A)(i). Occidental Chemical must continue to monitor operating conditions, analyze samples representative of each quarter of operation during the first year of waste generation. The samples must represent the waste generated over one quarter. (This provision does not apply to the Rockbox Residue.)
		(C) <i>Termination of Organic Testing for the Limestone Sludge and the Caustic Neutralized Wastewater:</i> Occidental Chemical must continue testing as required under Condition (3)(B) for organic constituents specified in Condition (1)(A)(ii) and (1)(C)(ii) until the analyses submitted under Condition (3)(B) show a minimum of two consecutive quarterly samples below the delisting levels in Condition (1)(A)(ii) and (1)(C)(ii). Occidental Chemical may then request that quarterly organic testing be terminated. After EPA notifies Occidental Chemical in writing it may terminate quarterly organic testing. Following termination of the quarterly testing, Occidental Chemical must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after the final exclusion).
		(4) <i>Changes in Operating Conditions:</i> If Occidental Chemical significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), or its NPDES permit is changed, revoked or not reissued, or if it intends to manage the Caustic Neutralized Wastewater other than by discharge under its NPDES permit, Occidental Chemical must notify the EPA in writing and may no longer handle the wastes generated from the new process or no longer discharges as nonhazardous until the wastes meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA.
		(5) <i>Data Submittals:</i> The data obtained through Condition 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC § 1001 and 42 USC § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.
		(6) <i>Reopener.</i> (a) If Occidental Chemical discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then Occidental Chemical must report any information relevant to that condition, in writing, to the Director of the Multimedia Planning and Permitting Division or his delegate within 10 days of discovering that condition. (b) Upon receiving information described in paragraph (a) from any source, the Director or his delegate will determine whether the reported condition requires further action. Further action may include revoking the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(7) <i>Notification Requirements:</i> Occidental Chemical must provide a one-time written notification to any State Regulatory Agency to which or through which the debited waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

TABLE 2. WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Occidental Chemical	Ingleside, Texas	Limestone sludge, (at a maximum generation of 1,114 cubic yards per calendar year) Rockbox Residue, (at a maximum generation of 128 cubic yards per calendar year) and Caustic Neutralized Wastewater, (at a maximum generation of 148,282 cubic yards per calendar year) generated by Occidental Chemical using the wastewater treatment process to treat the Rockbox Residue, the Limestone Sludge, and the Caustic Neutralized Wastewater (EPA Hazardous Waste No. K019, K020. Occidental Chemical must implement a testing program that meets conditions found in Table 1. Wastes Excluded From Non-Specific Sources for the petition to be valid.

[FR Doc. 98-12427 Filed 5-8-98; 8:45 am]
BILLING CODE 6560-60-P

FEDERAL COMMUNICATIONS COMMISSION
47 CFR 61
[IB Docket No. 98-60; FCC 98-78]

Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation

AGENCY: Federal Communications Commission.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has issued a notice of proposed rulemaking to consider replacing traditional rate of return regulation with an alternative incentive based regulation plan for Comsat Corporation ("Comsat") with respect to Comsat's provision of INTELSAT switched voice, private line and occasional-use video services to those markets where the Commission finds it dominant. The Commission believes that its current rate of return regulation that would be applicable to Comsat's dominant markets may no longer be an efficient or effective means of regulating Comsat's rates and may not create adequate efficiency incentives for Comsat. Therefore, the Commission invites interested parties to file comments in response to the Commission's tentative conclusions set forth in the notice of proposed

rulemaking regarding alternative incentive based regulation for Comsat's dominant markets.

DATES: Interested parties may file comments by May 26, 1998 and reply comments by June 5, 1998.
ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Daniel Connors, International Bureau, Satellite Policy Branch, (202) 418-0755; or Kathleen Campbell, International Bureau, Satellite Policy Branch (202) 418-0753.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 98-60 that is contained in the Commission's Order and Notice of Proposed Rulemaking; FCC 98-78, adopted April 24, 1998, and released April 28, 1998. The complete text of the Order and Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D.C., and from the Commission's world-wide-web page on the Internet (<http://www.fcc.gov>), and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037. Because this Notice of Proposed Rulemaking contains information

collections that affect less than 10 persons and, therefore, is not subject to the Paperwork Reduction Act of 1995, Public Law 104-13. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Certification certifying that the proposed rule will not impact small entities.

1. The Initial Regulatory Flexibility Certification necessary to comply with the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, is set forth below.

2. The Paperwork Reduction Act does not apply to the rules adopted herein because such rules apply to less than 10 persons.

Initial Regulatory Flexibility Certification

3. The Regulatory Flexibility Act ("RFA") requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." U.S.C. § 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." *Id.* § 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. *Id.* § 601(3). A small business concern is one which: (a) is

independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration ("SBA"). See 15 U.S.C. § 632.

4. The Order and Notice of Proposed Rulemaking is an order reclassifying Comsat as a non-dominant common carrier in certain INTELSAT markets. The Order and Notice of Proposed Rulemaking contains a notice of proposed rulemaking ("Notice") proposing rules that will apply to Comsat. The Notice indicates that the Commission will consider replacing the current rate of return regulations applicable to Comsat's INTELSAT switched voice, private line and occasional-use video services in the markets, where Comsat continues to be subject to dominant common carrier regulation, with an alternative form of incentive based regulation similar to a price cap. The Notice tentatively concludes: (a) that any alternative incentive based regulation plan that the Commission adopts for Comsat with

respect to its services in dominant markets remain in effect for an indefinite period of time, rather than expiring after three years; and (b) that any alternative incentive based regulation plan that the Commission adopts for Comsat with respect to its services in dominant markets allow all users of Comsat's service in dominant markets to benefit from a competitive or "transaction" rate rather than the non-discounted tariffed rate that would result from Comsat's uniform pricing commitment. The Notice invites Comsat and other interested parties to comment on these tentative conclusions. If commenters believe that the proposed rules discussed in the Notice require additional RFA analysis, they should include a discussion of this in their comments.

5. The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services "Not Elsewhere Classified." This

definition provides that a small entity is one with \$11 million or less in annual receipts. 13 CFR § 121.201. The proposed rules will apply only to Comsat's INTELSAT services in markets where the Commission finds Comsat dominant. Comsat's 1996 INTELSAT revenues were in excess of \$11 million. Thus, Comsat does not qualify as a small entity under the SBA's definition. We therefore certify that the proposed rules in this Notice will not apply to any small entities.

6. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Notice, including this certification, to the Chief Counsel for Advocacy of the SBA.

List of Subjects in 47 CFR 61

Satellites.
Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 98-12406 Filed 5-8-98; 8:45 am]
BILLING CODE 6712-01-F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98-031-1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations to protect endangered species of terrestrial plants.

DATES: Comments on this notice must be received by July 10, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 98-031-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please send an original and three copies, and state that your comments refer to Docket No. 98-031-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding the importation or exportation of endangered species of

terrestrial plants, contact Mr. Michael Lidsky, CITES Program Coordinator, Operational Support, PPQ, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737-1236, (301) 734-5762. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734-5086.

SUPPLEMENTARY INFORMATION:

Title: Endangered Species Regulation and Forfeiture Procedures.

OMB Number: 0579-0076.

Expiration Date of Approval: August 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the United States Department of Agriculture (USDA) is responsible for protecting endangered species of terrestrial plants by regulating the individuals or entities who are engaged in the business of importing, exporting, or reexporting these plants.

To carry out this mission, the Animal and Plant Health Inspection Service (APHIS), USDA, administers regulations at 7 CFR part 355. In accordance with these regulations, any individual, nursery, or other entity wishing to engage in the business of importing, exporting, or reexporting terrestrial plants listed in the Convention on International Trade in Endangered Species of wild fauna and flora (CITES) regulations at 50 CFR 17.12 or 23.23 must obtain a general permit (PPQ Form 622). This includes importers, exporters, or reexporters who sell, barter, collect, or otherwise exchange or acquire terrestrial plants as a livelihood or enterprise engaged in for gain or profit. This does not include persons engaged in business merely as carriers or customhouse brokers.

To obtain a general permit, these individuals or entities must complete an application (PPQ 621) and submit it to APHIS for approval. When a permit has been issued, the plants covered by the permit may be imported into the United States provided they are accompanied by documentation required by the regulations and provided all other conditions of the regulations are met.

Effectively regulating entities who are engaged in the business of importing, exporting, or reexporting endangered species requires the use of this

application process, as well as the use of other information collection activities, such as notifying APHIS of the arrival or impending exportation of endangered species, marking containers used for the importation and exportation of plants, and creating and maintaining records of importation, exportation, and reexportation.

The information provided by these information gathering activities is critical to our ability to carry out the responsibilities assigned to us by The Endangered Species Act. These responsibilities include the careful monitoring of importation, exportation, and reexportation activities involving endangered species of plants, as well as investigating possible violations of the Endangered Species Act.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .1977 hours per response.

Respondents: U.S. importers and exporters of endangered species.

Estimated annual number of responses: 1,400.

Estimated annual number of responses per respondent: 11.51.

Estimated annual number of responses: 16,115.

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Vol. 63, No. 90

Monday, May 11, 1998

Estimated total annual burden on respondents: 3,186 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 5th day of May 1998.

Charles P. Schwalbe,
Acting Administrator, Animal and Plant
Health Inspection Service.

[FR Doc. 98-12397 Filed 5-8-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to a currently approved information collection in support of the CCC Supplier Credit Guarantee Program (SCGP), a variant of the Export Credit Guarantee Program (GSM-102), based on reestimates.

DATES: Comments on this notice must be received by July 10, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact L. T. McElvain, Director, Commodity Credit Corporation Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1035, Washington, DC 20250-1035, telephone (202) 720-6211.

SUPPLEMENTARY INFORMATION: Title: CCC/Supplier Credit Guarantee Program (SCGP).

OMB Number: 0551-0037.

Expiration Date of Approval: September 30, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The primary objective of the SCGP is to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural

commodities on credit terms. Furthermore, the SCGP is designed to assist exporters of U.S. agricultural commodities who wish to provide relatively short term (up to 180 days) credits to their importers evidenced by promissory notes executed by such importers. The CCC currently offers the SCGP for exports to at least 8 countries and 6 country regions, with more than 1,000 exporters currently eligible to participate. Under 7 CFR Part 1493, exporters are required to submit the following: (1) Information about the exporter for program participation, (2) export sales information in connection with applying for a payment guarantee, (3) information regarding the actual export of the commodity, (evidence of export report), (4) notice of default and claims for loss, and (5) other documents, if applicable, including notice assignment of the right to receive proceeds under the export credit guarantee. In addition, each exporter and exporter's assignee (U.S. financial institution) must maintain records on all information submitted to CCC and in connection with sales made under the SCGP. The information collected is used by CCC to manage, plan, evaluate and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 3.37 hours per response.

Respondents: U.S. Exporters of U.S. agricultural commodities, U.S. banks or other financial institutions, producer associations, U.S. export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 50 annum.

Estimated Number of Responses per Respondent: 25 per annum.

Estimated Total Annual Burden of Respondents: 674 hours.

Copies of this information collection can be obtained from Valeria Countiss, the Agency Information Collection Coordinator, at (202) 720-6713.

Requests for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to L.T. McElvain, Director, Commodity Credit Corporation Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1035, Washington, DC 20250-1035.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, April 30, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service
and Vice President, Commodity Credit Corporation.

[FR Doc. 98-12414 Filed 5-8-98; 8:45 am]

BILLING CODE 3410-05-M

COMMODITY CREDIT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2:00p.m., May 11, 1998.

PLACE: Room 104-A, Jamie Whitten Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the Special Open Meeting of November 3, 1997.

2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.

3. Memorandum re: Commodity Credit Corporation's (CCC's) Financial Condition Report.

4. Resolution re: Termination of Obsolete CCC Board Dockets.

5. Docket CZ-157, Revision 6, re: Policy and Procedure Governing the Submission of Dockets to the Board of Directors, CCC, and the Handling of Dockets Considered by the Board.

6. Docket A-POL-98-007, re: Commodity Credit Corporation Claims Policy.

7. Settlement Actions Report.

8. Docket P-COM-98-004, re:

Delegation of Responsibility for Commodity Credit Corporation's Domestic Commodity Programs.

9. Docket P-COM-98-005, re: Delegation of Responsibility for the Commodity Credit Corporation's Export Credit Guarantee Programs, Export Credit Sales Programs, Export Bonus Programs and Other Similar Programs Commodity Credit Corporation.

10. Docket P-COM-006, re: Policies Regarding the Management of

Commodity Credit Corporation
Commodities, Materials and Delegation
of Responsibility.

11. Docket ECZ-244, Revision 2, re: Commodity Credit Corporation Policies With Respect to Debarment and Suspension of Individuals and Firms

CONTACT PERSON FOR MORE INFORMATION:
Juanita B. Daniels, Acting Secretary,
Commodity Credit Corporation, Stop
0571, U.S. Department of Agriculture,
1400 Independence Avenue SW,
Washington, D.C. 20250-0571.

Dated: May 4, 1998.

Juanita B. Daniels,
Acting Secretary, Commodity Credit
Corporation.

[FR Doc. 98-12462 Filed 5-6-98; 4:36 pm]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service in Florida

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Florida

AGENCY: Natural Resources Conservation Service (NRCS) in Florida, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Florida for review and comment.

SUMMARY: It is the intention of NRCS in Florida to issue the following revised conservation practice standards for Florida: Agrochemical Mixing Station, Portable, (Code 703); Bedding (Code 310), Cross Wind Stripcropping, (Code 589B), Row Arrangement, (Code 648) in Section IV of the FOTG.

DATES: Comments will be received until June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to T. Niles Glasgow, State Conservationist, Natural Resources Conservation Service (NRCS), P.O. Box 141510, Gainesville, Florida 32614-1510. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Florida will receive comments

relative to the proposed changes. Following that period a determination will be made by the NRCS in Florida regarding disposition of those comments and a final determination of change will be made.

Dated: April 23, 1998.

T. Niles Glasgow,
State Conservationist, Natural Resources
Conservation Service, Gainesville, Florida.
[FR Doc. 98-12093 Filed 5-8-98; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Collection; Comment Request

TITLE: Survey of International Air Travelers (In-Flight Survey).

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 10, 1998.

ADDRESSES: Direct all written comment to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Ron Erdmann, ITA's Tourism Industries, Room 1860, 1401 Constitution Ave, NW, Washington, DC 20230; phone: (202) 482-4554, and fax: (202) 482-2887.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration, Tourism Industries' "Survey of International Air Travelers" is the only source for estimating international travel and passenger fare exports and imports for this country. This program also supports the U.S. Department of Commerce, Bureau of Economic Analysis mandate to collect and report this type of information which is used to calculate Gross Domestic Products for the United States. In addition, this project serves as the core data source for Tourism Industries. Numerous reports and analyses are

developed to assist businesses in increasing U.S. exports in international travel. An economic impact of international travel on state economies, visitation estimates, traveler profiles, presentations and reports are generated by Tourism Industries to help the federal government agencies and the travel industry better understand the international market. It is also a service that the U.S. Department of Commerce provides to travel industry businesses seeking to increase international travel and passenger fare exports for the country. It provides the only comparable estimates of nonresident visitation to the states and cities within the U.S., as well as U.S. resident travel abroad. Traveler characteristics data are also collected to help travel related businesses better understand the international travelers to and from the U.S. so they can develop targeted marketing and other planning related materials.

II. Method of Data Collection

The collection is on U.S. and foreign flag airlines who voluntarily agree to allow us to survey their departing flights from the U.S. Additional survey are also collected at U.S. departure airports and selected U.S. sites as cooperation is obtained from the travel industry.

III. Data

OMB Number: 0625-0227.

Form Number: Not applicable.

Type of Review: Extension-regular submission.

Affected Public: International travelers departing the United States 18 years or older which includes U.S. and non-U.S. residents.

Estimated Number of Respondents: 165,600.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 24,840 hours.

Estimated Total Annual Cost: This is a \$2.2 million research program. The government only funds \$800,000 of this program. The remaining funds are obtained from in-kind contributions of the airlines, airports and other travel industry partners as well as the sale of this data to the public. Respondents will not need to purchase equipment or materials to respond to this collection.

IV. Requested for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden

(including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 1998.

Linda Englemeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12417 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Collection; Comment Request

TITLE: Export Trading Companies Contact Facilitation Service.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before July 10, 1998.

ADDRESSES: Direct all written comments to Linda Englemeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482-3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Mary Michael, Office of Export Trading Company Affairs, Service Industries and Finance, Room 1800, 14th and Constitution Avenue, NW, Washington, DC 20230; phone: (202) 482-5131, and fax: (202) 482-1790.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Contact Facilitation Service (CFS) is designed to put producers together

with exporters. Many U.S. firms have never exported because of a fear of the risks involved in exporting and a lack of knowledge of the international marketplace. New-to-export firms need the assistance of firms offering export trade services. One of the purposes of the Export Trading Company (ETC) Act of 1982 is to increase United States exports of goods and services by encouraging more efficient provision of export trade services to U.S. producers and suppliers. Section 104 of the Act directs Commerce to provide a service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

The International Trade Administration (ITA) maintains a database for U.S. manufacturers, export trading and management companies, wholesalers/distributors, and international service firms. The CFS is designed to help promote exports and enable U.S. producers to locate ETCs and export services providers. Companies registered in the database are also listed in annual editions of The Export Yellow Pages which are distributed throughout the United States and worldwide. Without the information collected by the form, the CFS and The Export Yellow Pages would be unreliable and ineffective, because users of this kind of information need the current information about the listed companies.

II. Method of Collection

Form ITA-4094P is sent by request to U.S. firms.

III. Data

OMB Number: 0625-0120.

Form Number: ITA-4094P.

Type of Review: Revision-Regular Submission.

Affected Public: Business or other for-profit; not-for-profit institutions and State, local or Tribal Government.

Estimated Number of Respondents: 9,500.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden

Hours: 4,750.

Estimated Total Annual Costs:

\$198,184 (\$112,684 government and \$85,500 respondents).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 1998.

Linda Englemeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12418 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Collection; Comment Request

TITLE: Application for an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before July 10, 1998.

ADDRESSES: Direct all written comments to Linda Englemeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482-3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Mary Michael, Office of Export Trading Company Affairs, Service Industries and Finance, Room 1800, 14th and Constitution Ave, NW, Washington, DC 20230; phone: (202) 482-5131, and fax: (202) 482-1790.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290, 96 Stat. 1233-1247), requires the Department of Commerce to establish a program to evaluate applications for

Export Trade Certificates of Review, and with the concurrence of the Department of Justice, issue such certificates where the requirements of the Act are satisfied. The Act requires that Commerce, with Justice concurrence, issue regulations governing the evaluation and issuance of certificates before Commerce can accept applications for certification. The collection of information is necessary for the antitrust analysis which is a prerequisite to issuance of a certificate. Without the information there would be no basis upon which a certificate could be issued.

In the Department of Commerce, this economic and legal analysis will be performed by the Office of Export Trading Company Affairs and the Office of the General Counsel. The Department of Justice analysis will be conducted by the Antitrust Division. The purpose of such analysis is to make a determination as to whether or not to approve an application and issue an Export Trade Certificate of Review. If this information is not collected, the antitrust analysis cannot be performed and without that analysis no certificate can be issued. A certificate provides its holder and members named in the certificate (a) immunity from government actions under state and Federal antitrust laws for the export conduct specified in the certificate; (b) some protection from frivolous private suits by limiting their liability in private actions to actual damages when the challenged activities are covered by an Export Certificate of Review. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities—especially those involving actions by domestic competitors.

II. Method of Collection

Form ITA-4093P is sent by request to U.S. firms.

III. Data

OMB Number: 0625-0125.

Form Number: ITA-4093P.

Type of Review: Revision-Regular Submission.

Affected Public: Business or other for-profit; not-for-profit institutions and State, local or Tribal Government.

Estimated Number of Respondents: 30.

Estimated Time Per Response: 32 hours.

Estimated Total Annual Burden Hours: 960.

Estimated Total Annual Costs: The estimated annual cost for this collection is \$344,400 (\$260,000 government and \$134,400 respondents).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 1998.

Linda Englemeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12419 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Thane-Coat, Inc, Jerry Vernon Ford and Preston John Engebretson

In the Matters of: Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477; Jerry Vernon Ford, President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and with an address at, 7707 Augustine Drive, Houston, Texas 77036, and Preston John Engebretson, Vice-President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and with an address at 8903 Bonhomme Road, Houston, Texas 77074, Respondents.

Decision and Order on Renewal of Temporary Denial Order

On October 31, 1997, Acting Assistant Secretary for Export Enforcement Frank W. Deliberti issued a Decision and Order on Renewal of Temporary Denial Order (hereinafter "Order" or "TDO"), renewing for 180 days a May 5, 1997 Order naming Thane-Coat, Inc.; Jerry Vernon Ford, president Thane-Coat, Inc.; Preston John Engebretson, vice-president, Thane-Coat, Inc.; Export Materials, Inc.; and Thane-Coat, International, Ltd. (Thane-Coat, Inc., Ford, and Engebretson hereinafter referred to collectively as the "Respondents" and Export Materials, Inc. and Thane-Coat, International, Ltd., the "affiliated companies"), as persons

temporarily denied all U.S. export privileges 62 FR 60063-60065 (November 6, 1997). The Order will expire on April 29, 1998.

On April 17, 1998, pursuant to Section 766.24 of the Export Administration Regulations (15 C.F.R. Parts 730-774 (1997)) (hereinafter the "Regulations"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (hereinafter the "Act"), the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), requested that the Assistant Secretary for Export Enforcement renew the Order against Thane-Coat, Inc., Jerry Vernon Ford, and Preston John Engebretson for 180 days, pursuant to terms agreed to by and between the parties.

In its request, BXA stated that, as a result of an ongoing investigation, it had reason to believe that, during the period from approximately June 1994 through approximately July 1996, Thane-Coat, Inc., through Ford and Engebretson, and using its affiliated companies, Thane-Coat, International, Ltd. and Export Materials, Inc., made approximately 100 shipments of U.S.-origin pipe coating materials, machines, and parts to the Dong Ah Consortium in Benghazi, Libya. These items were for use in coating the internal surface of prestressed concrete cylinder pipe for the Government of Libya's Great Man-Made River Project.² Moreover, BXA's investigation gave it reason to believe that the Respondents and the affiliated companies employed a scheme to export U.S.-origin products from the United States, through the United Kingdom, to Libya, a country subject to a comprehensive economic sanctions program, without the authorizations required under U.S. law, including the Regulations. The approximate value of the 100 shipments at issue was \$35 million. In addition, the Respondents and the affiliated companies undertook several significant and affirmative

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R. 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R. 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R. 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

² BXA understands that the ultimate goal of this project is to bring fresh water from wells drilled in southeast and southwest Libya through prestressed concrete cylinder pipe to the coastal cities of Libya. This multibillion dollar, multiphase engineering endeavor is being performed by the Dong Ah Construction Company of Seoul, South Korea.

actions in connection with the solicitation of business on another phase of the Great Man-Made River Project.

BXA has stated that it believes that the matters under investigation and the information obtained to date in that investigation support renewal of the TDO issued against the Respondents.³ In that regard, BXA and the Respondents reached an agreement, whereby BXA has sought a renewal of the TDO in a "non-standard" format, denying all of the Respondents' U.S. export privileges to the United Kingdom, The Bahamas, Libya, Cuba, Iraq, North Korea, Iran, and any other country or countries that may be made subject in the future to a general trade embargo by proper legal authority. In return, the Respondents agreed that, among other conditions, at least 14 days in advance of any export that any of the Respondents intends to make of any item from the United States to any destination world-wide, the Respondents will provide to BXA's Dallas Field Office (i) notice of the intended export, (ii) copies of all documents reasonably related to the subject transaction, including, but not limited to, the commercial invoice and bill of lading, and (iii) the opportunity, during the 14-day notice period, to inspect physically the item at issue to ensure that the intended shipment is in compliance with the Export Administration Act, the Export Administration Regulations, or any order issued thereunder.

Based on BXA's showing, I find that it is appropriate to renew the order temporarily denying the export privileges of Thane-Coat, Inc., Jerry Vernon Ford, and Preston John Engebretson in a "non-standard" format, incorporating the terms agreed to by and between the parties. I find that such renewal is necessary in the public interest to prevent an imminent violation of the Regulations and to give notice to companies in the United States and abroad to cease dealing with these persons in any commodity, software, or technology subject to the Regulations and exported or to be exported to the United Kingdom, the Bahamas, Libya, Cuba, Iraq, North Korea, Iran, and any other country or countries that may be made subject in the future to a general trade embargo by proper legal authority, or in any other activity subject to the Regulations with respect to these specific countries. Moreover, I find such

³ On April 9, 1998, BXA requested that the Assistant Secretary for Export Enforcement renew the October 31, 1997 TDO against Thane-Coat, International, Ltd. and Export Materials, Inc.

renewal is in the public interest in order to reduce the substantial likelihood that Thane-Coat, Inc., Ford, and Engebretson will engage in activities which are in violation of the Regulations.

Accordingly, *It is therefore ordered:* First, that Thane-Coat, Inc., and all of its successors or assigns, officers, representatives, agents, and employees when acting on its behalf, Jerry Vernon Ford, and all of his successors, or assigns, representatives, agents and employees when acting on his behalf; and Preston John Engebretson, and all of his successors, or assigns, representatives, agents, and employees when acting on his behalf (all of the foregoing parties hereinafter collectively referred to as the "denied persons"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") subject to the Export Administration Regulations (hereinafter the "Regulations") and exported or to be exported from the United States to the United Kingdom, the Bahamas, Libya, Cuba, Iraq, North Korea, or Iran, or to any other country or countries that may be made subject in the future to a general trade embargo pursuant to proper legal authority (hereinafter the "Covered Countries"), or in any other activity subject to the Regulations with respect to the Covered Countries, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to any of the Covered Countries, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States to any of the Covered Countries that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any of the denied persons any item subject to the Regulations to any of the Covered Countries;

B. Take any action that facilitates the acquisition, or attempted acquisition by any of the denied persons of the ownership, possession, or control of any

item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries, including financing or other support activities related to a transaction whereby any of the denied persons acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from any of the denied persons of any item subject to the Regulations that has been exported from the United States to any of the Covered Countries;

D. Obtain from any of the denied persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to any of the Covered Countries; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries, and which is owned, possessed or controlled by any of the denied persons, or service any item, of whatever origin, that is owned, possessed or controlled by any of the denied persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, at least 14 days in advance of any export that any of the denied persons intends to make of any item from the United States to any destination world-wide, the denied person will provide to BXA's Dallas Field Office (i) notice of the intended export, (ii) copies of all documents reasonably related to the subject transaction, including, but not limited to, the commercial invoice and bill of lading, and (iii) the opportunity, during the 14-day notice period, to inspect physically the item at issue to ensure that the intended shipment is in compliance with the Export Administration Act, the Export Administration Regulations, or any order issued thereunder.

Fourth, that, after notice and opportunity for comment, as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to any of the denied persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, may also be made subject to the provisions of this Order.

Fifth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

This Order is effective immediately and shall remain in effect for 180 days.

A copy of this Order shall be served on each Respondent and shall be published in the **Federal Register**.

Entered this 29th day of April, 1998.

F. Amanda DeBusk,
Assistant Secretary for Export Enforcement.

Certificate of Service

I hereby certify that, on April 30, 1998, I caused the foregoing Decision and Order on Renewal of Temporary Denial Order to be mailed first-class, postage prepaid to:

Thane-Coat, Inc. 12725 Royal Drive
Stafford, Texas 77477.
Jerry Vernon Ford President Thane-Coat, Inc. 12725 Royal Drive Stafford, Texas 77477, and
Preston John Engebretson Vice-President Thane-Coat, Inc. 12725 Royal Drive Stafford, Texas 77477.

Lucinda G. Maruca,
Secretary, Office of the Assistant Secretary for Export Enforcement.
(FR Doc. 98-12421 Filed 5-8-98; 8:45 am)
BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Order No. 976)

Expansion of Foreign-Trade Zone 98, Birmingham, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the City of Birmingham, Alabama, grantee of Foreign-Trade Zone 98, for authority to expand FTZ 98 to include five additional sites in Birmingham, Alabama, within the Birmingham Customs port of entry area, was filed by the Board on April 29, 1997 (FTZ Docket 39-97, 62 FR 26772, 5/15/97; amended, 2/16/98, withdrawing a sixth proposed site for the Pizitz/McRae Warehouse);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 98, as amended, is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of April 1998.

Robert S. LaRussa,
Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.
Dennis Puccinelli,
Acting Executive Secretary.
(FR Doc. 98-12332 Filed 5-8-98; 8:45 am)
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

FOREIGN-TRADE ZONES BOARD

(Order No. 978)

Expansion of Foreign-Trade Zone 205, Ventura County, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Board of Harbor Commissioners, Oxnard Harbor District, grantee of Foreign-Trade Zone 205, for authority to expand FTZ 205-Site 1 and Site 2, located in Port Hueneme and Oxnard, California, within the Port Hueneme Customs port of entry area, was filed by the Board on June 4, 1997 (FTZ Docket 47-97, 62 FR 33829, 6/23/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 205 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of April 1998.

Robert S. LaRussa,
Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.
Dennis Puccinelli,
Acting Executive Secretary.
(FR Doc. 98-12329 Filed 5-8-98; 8:45 am)
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Order No. 974)

Grant of Authority for Subzone Status; Chevron Products Company (Oil Refinery), Richmond, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the San Francisco Port Commission, grantee of Foreign-Trade Zone 3, for authority to establish special-purpose subzone status at the oil refinery complex of Chevron Products Company, located in Richmond, California, was filed by the Board on June 12, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 49-97, 62 FR 33828, 6/23/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below:

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 3B) at the oil refinery complex of Chevron Products Company, located in Richmond, California, at the

location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.
2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000—# 2710.00.1050, # 2710.00.2500, and # 2710.00.45 which are used in the production of:

- petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
- products for export; and,
- products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 28th day of April 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98-12330 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 977]

Grant of Authority for Subzone Status Massachusetts Heavy Industries, Inc., (Shipbuilding), Quincy, MA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Massachusetts Port Authority, grantee of FTZ 27, for authority to establish special-purpose subzone status for the Massachusetts Heavy Industries, Inc., shipyard in Quincy, Massachusetts, was filed by the Board on September 4, 1997, and notice inviting public comment was given in the *Federal Register* (FTZ Docket 70-97, 62 FR 47625, 9-10-97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were given subject to the standard shipyard restriction on foreign steel mill products;

Now, therefore, the Board hereby grants authority for subzone status at the Massachusetts Heavy Industries, Inc., shipyard in Quincy, Massachusetts (Subzone 27B), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following special conditions:

1. Any foreign steel mill products admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and,

2. In addition to the annual report, Massachusetts Heavy Industries, Inc., shall advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

Signed at Washington, DC, this 28th day of April 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98-12333 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[DOCKETS 11-98 and 12-98]

Foreign-Trade Zone 147—Reading, PA and Foreign-Trade Zone 125—South Bend, IN; Applications for Subzone Status Bayer Corporation Plants (Aspirin Products); Extension of Public Comment Period

The comment periods for the above cases, requesting special-purpose subzone status for the aspirin products manufacturing facilities of Bayer Corporation, in Myerstown, Pennsylvania (63 FR 12440, 3/13/98), and Elkhart, Indiana (63 FR 12439, 3/13/98), are extended to June 12, 1998, to allow interested parties additional time in which to comment on the proposals.

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: May 4, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98-12328 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 975]

Grant of Authority for Subzone Status; Equistar Chemicals LP (Petrochemical Complex), Harris County, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of

the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Houston Authority, grantee of Foreign-Trade Zone 84, for authority to establish special-purpose subzone status at the petrochemical complex of Equistar Chemicals LP, located in Harris County, Texas, was filed by the Board on June 16, 1997, and notice inviting public comment was given in the *Federal Register* (FTZ Docket 50-97, 62 FR 355152, 6/30/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 84Q) at the petrochemical complex of Equistar Chemicals LP, located in Harris County, Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2710.00.0505-#2710.00.2500, and #2710.00.45 which are used in the production of:

- petrochemical feedstocks (examiners report, Appendix C);
- products for export; and,
- products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 28th day of April 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98-12331 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-846]

Brake Rotors From the People's Republic of China: Postponement of Preliminary Results of Antidumping Duty New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results in antidumping duty new shipper administrative review of brake rotors from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty new shipper administrative reviews of brake rotors from the People's Republic of China (PRC). This review covers the period April 1, 1997, through September 30, 1997.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Sunkyu Kim, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-1766 or (202) 482-2613, respectively.

Postponement of Preliminary Results of Review

On November 28, 1997, the Department initiated this new shipper review of the antidumping duty order on brake rotors from the PRC (62 FR 64206, December 4, 1997). The current deadline for the preliminary results is May 27, 1998. We determine that it is not practicable to complete this review within the original time frame because of the large number of respondents.¹ In accordance with Section 751(a)(2)(B)(iv)

¹ The six new shippers are China National Industrial Machinery Import & Export Company, Lai Zhou Auto Brake Equipments Factory, Longkou Haimeng Machinery Co., Ltd., Qingdao Gren Co., Yantai Winhere Auto-Part Manufacturing Co., Ltd., and Zibo Luzhou Automobile Parts Co., Ltd.

of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994 (19 U.S.C. 1675(a)(3)(A)), the Department finds this new shipper review extraordinarily complicated and is extending the time limit for completion of the preliminary results until September 24, 1998, which is 300 days after the date on which the new shipper review was initiated.

Dated: April 30, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98-12334 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-421-701]

Brass Sheet and Strip From the Netherlands: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by respondent Outokumpu Copper Strip B.V. (OBV) and its United States affiliate Outokumpu Copper (USA), Inc. (OCUSA), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip (BSS) from the Netherlands (A-421-701). This review covers one producer/manufacturer/exporter of the subject merchandise to the United States during the period August 1, 1996 through July 31, 1997.

We preliminarily determine that sales of BSS from the Netherlands have not been made below Normal Value (NV). If the preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service not to assess antidumping duties on entries of the subject merchandise made during period of review.

Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with the argument: (1) A statement of the issues; and (2) a brief summary of the argument.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Karla Whalen at 202/482-1386 or

Lisette Lach at 202/482-0190, AD/CVD Enforcement Group III, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations last codified at 19 FR Part 351 (May 19, 1997).

Background

On August 12, 1988, the Department published in the *Federal Register* the antidumping duty order on BSS from the Netherlands (53 FR 30455). On August 4, 1997, the Department published in the *Federal Register* a notice announcing the opportunity to request an administrative review of the antidumping duty order on BSS from the Netherlands for the period August 1, 1996, through July 31, 1997 (62 FR 41925). On August 29, 1997, in accordance with 19 CFR 353.213 (b), OBV filed a letter requesting an administrative review of its sales in this period of review. On September 25, 1997, we published in the *Federal Register* a notice of initiation of this administrative review (62 FR 50292). On October 23, 1997, petitioners in this proceeding¹ entered a notice of appearance in this administrative review.

Scope of the Review

Imports covered by this review are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under review is currently defined in the Copper Development Association (CDA) 200 Series or the Unified Numbering System (UNS) C20000 series. This review does not cover products the chemical compositions of which are defined by other CDA or UNS series. The physical dimensions of the products covered by

¹ Hussey Copper, Ltd.; The Miller Company; Olin Corporation; Revere Copper Products, Inc.; International Association of Machinists and Aerospace Workers; International Union; Allied Industrial Workers of America (AFL-CIO); Mechanics Educational Society of America (Local 56) and United Steelworkers of America (AFL-CIO/CLC).

this review are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise under investigation is currently classifiable under item 7409.21.00 and 7409.29.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all BSS, covered by the descriptions in the "Scope of the Review" section of this notice, *supra*, and sold in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of BSS. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's October 24, 1997 antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the following hierarchy of physical characteristics: (1) Type (alloy); (2) gauge (thickness); (3) width; (4) temper; (5) coating; and (6) packed form.

For purposes of the preliminary results, we have used differences in merchandise adjustments based on the difference in the variable cost of manufacturing between each U.S. model and its most similar home market model.

Date of Sale

On December 11, 1997, petitioners submitted a letter, objecting to OBV's use of the invoice date as the date of sale for the period of review. Citing a questionnaire response dated November 8, 1991, wherein OBV stated that sales in the United States were based primarily on long-term contracts generally negotiated on an annual basis and that all material terms of sale were established in these long-term contracts, petitioners urged the Department to use the frame agreement date, rather than the invoice date, as the date of sale.

On December 22, 1997, OBV responded to petitioners' date of sale comment. Citing 19 CFR 351.401(i), respondent asserted that petitioners' objection to the use of the invoice date as the date of sale ignores recent

Department practice. OBV further argued that using the frame agreement date as the date of sale would be incorrect because frame agreements do not firmly establish the material terms of sale. Rather, they contain an estimate by the customer of the type and approximate quantity of the merchandise the customer expects to order over the period of time covered by the frame agreements. OBV asserted that although frame agreements do contain a fabrication price, they do not contain a metal price;² therefore, OBV contended that such agreements do not establish the total price to be paid by the customer. Furthermore, respondent stated that frame agreements are non-binding since the quantity will vary from the quantity stated in the frame agreement. Finally, OBV stated that since the Department determined the use of the invoice date as the date of sale in the immediately preceding review, it should continue to find that the invoice date constitutes the date of sale.

In the immediately preceding review, the Department used the invoice date as the date of sale because we found that it was the first date on which all terms of sale (*i.e.*, quantity, metal price and fabrication price) were established. The record in this review supports the same conclusion. Therefore, in accordance with 19 CFR 351.401(i) and Department practice, we have preliminarily determined that the invoice date is the appropriate date of sale for OBV.

Differences in Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or constructed export price (CEP) transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative expenses (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

² A "fabrication price" is the price charged by companies such as OBV to transform raw materials into finished BSS. A "metal price" is the price OBV charges for the necessary raw materials.

If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

OBV did not request an adjustment for LOT for this POR. To ensure that no such adjustment was necessary, we examined OBV's questionnaire responses with regard to its distribution system, including selling functions, class of customer and selling expenses. We noted that OBV had the same type of channel of distribution and class of customer for all sales in both markets. We also noted that its selling expenses for the POR were the same for all customers. In addition, we examined information concerning OBV's different payment terms (including discounts) and any possible selling agents with which OBV works. Based on the available information on the record, it appears OBV did not have a formal or official policy for providing payment terms, including discounts, to different customers, nor did OBV have selling agents. Finally, employees of OBV or a sister company, OAB (Outokumpu Copper Radiator Strip A.B.), appear to have handled all sales of the foreign like product. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) of the Act is unwarranted.

Fair Value Comparisons

To determine whether OBV's sales of BSS to the United States were made at less than fair value, we compared EP to NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 771A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

We calculated the price of U.S. sales based on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold to an unaffiliated U.S. purchaser prior to the date of importation.

We calculated EP based on the packed, delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2) of the Tariff Act, where appropriate, we deducted from the starting price post-sale warehousing expense, international freight expense, inland and marine insurance, U.S. brokerage and handling expenses and U.S. Customs duties.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Tariff Act, we based NV on the price at which the foreign like products were first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade.

Where appropriate, we deducted discounts, post-sale warehousing expense, inland freight expense, marine and inland insurance and packing expense. We made adjustments, where appropriate, for differences in credit expenses.

We increased NV by U.S. packing expenses in accordance with section 773(a)(6)(A) of the Act. To the extent there were comparisons of U.S. merchandise to home market merchandise which were not identical but similar, we made adjustments to NV for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

Cost-of-Production Analysis

Because we disregarded sales below the cost of production in the most recently completed review, we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Tariff Act. See Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Reviews, 62 FR 51449 (October 1, 1997). Therefore, pursuant to section 773(b)(1)

of the Tariff Act, we initiated a COP investigation of sales by OBV.

A. Calculation of COP

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of the respondent's cost of materials and fabrication employed in producing the foreign like product, plus the costs for selling, general, and administrative expenses (SG&A), interest expense and packing costs. We relied on the home market sales and COP information OBV provided in its questionnaire responses.

B. Test of Home Market Prices

After calculating COP, we tested whether home market sales of subject BSS were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges and discounts, where appropriate.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of OBV's home market sales for a model were at prices less than the COP, we did not disregard any below-cost sales of that model because we determined that the below cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of OBV's home market sales of a given product were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2)(C) of the Tariff Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act, we compared home market prices to the weighted-average COP for the POR. When we found that below-cost sales had been made in "substantial quantities" and were not at prices which would permit recovery of all costs within a reasonable period of time, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

On January 8, 1998, the U.S. Court of Appeals for the Federal Circuit issued a decision in *Cemex v. United States*, WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds

foreign market sales to be outside "the ordinary course of trade." This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. See section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the "ordinary course of trade." Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Review" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the information provided by OBV in response to our antidumping questionnaire. We have implemented the Court's decision in this case to the extent that the data on the record permitted. Since there were sufficient sales above cost, it was unnecessary to calculate CV in this case.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." There were no significant fluctuations during the POR.

Preliminary Results of Review

As a result of our comparison of EP to NV, we preliminarily determine that the weighted-average dumping margin for OBV for this administrative review period is as follows:

BRASS SHEET AND STRIP FROM THE NETHERLANDS	
Producer/manufacturer/exporter	Weighted-average margin (percent)
Outokumpu Copper Strip B.V. (OBV)	0.00

Parties to this proceeding may request disclosure within five days of the date of publication of this notice and any interested party may request a hearing within ten days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first business day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be submitted no later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of the administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Cash Deposit

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of BSS from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for OBV will be the rate established in the final results of this administrative review (no deposit will be required for a zero or *de minimis* margin, i.e., margin lower than 0.5 percent); (2) For merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of the proceeding, the cash deposit rate will be the company-specific rate published for the most recent segment; (3) If the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate of 16.99 percent established in the less-than-fair-value investigation. See

Antidumping Duty Order of Sales at Less-Than-Fair Value; Brass Sheet and Strip From the Netherlands, 53 FR 30455 (August 12, 1988). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

All U.S. sales by the respondent OBV will be subject to one deposit rate according to the proceeding. The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisal purposes, where information is available, we will use the entered value of the subject merchandise to determine the appraisal rate.

This notice serves as preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties. This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)).

Dated: May 4, 1988.

Robert S. LaRossa,
Assistant Secretary for Import Administration.
[FR Doc. 98-12316 Filed 5-8-98; 8:45 am]
BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE

International Trade Administration (A-533-809)

Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On February 3, 1998, the Department of Commerce (the Department) published the preliminary results of its new shipper review of the antidumping duty order on certain stainless steel flanges (SSF) from India (63 FR 5501). This review covers exports of this merchandise to the United States by one manufacturer/exporter, Panchmahal Steel Ltd.

(Panchmahal), during the period February 1, 1996 through January 31, 1997.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. There was no dumping margin for Panchmahal for this review period.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-2704 or 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the

interim regulations published in the *Federal Register* on May 11, 1995 (60 FR 25130).

Background

The antidumping duty order on SSF from India was published February 9, 1994 (59 FR 5994). On February 3, 1998, the Department published in the *Federal Register* the preliminary results of this new shipper review of the antidumping duty order on SSF from India (63 FR 5501). The Department has now completed this new shipper review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A-182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches;

however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A-351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

The review covers one Indian manufacturer/exporter, Panchmahal, and the period February 1, 1996 through January 31, 1997.

Comments From Interested Parties

We gave interested parties an opportunity to comment on our preliminary results. We received no comments.

Final Results of Review

As a result of our analysis, which is unchanged from the preliminary results of review, we have determined that the following weighted-average dumping margin exists for Panchmahal:

Manufacturer/Exporter	Period	Margin (percent)
Panchmahal	2/1/96-1/31/97	0.00

The Department shall instruct the Customs Service to liquidate all appropriate entries, and to assess no antidumping duties on Panchmahal's entries.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act:

(1) The rate for the reviewed firm will be as listed above;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be that rate established for the manufacturer of the merchandise in the earlier review or the original

investigation, whichever is the most recent; or

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 162.14 percent, the "all others" rate established in the LTFV investigation.

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APOs) of their

responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and this notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(h).

Dated: May 1, 1998.

Robert S. LaRossa,
Assistant Secretary for Import Administration.
[FR Doc. 98-12335 Filed 5-8-98; 8:45 am]
BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-703]

Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administration Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce is conducting an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy. This review covers Ausimont SpA. The period of review is August 1, 1996, through July 31, 1997.

We have preliminary determined that sales of polytetrafluoroethylene resin from Italy have been at less than normal value. We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument: (1) A statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATES: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-4162 or (202) 482-3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations provided in 19 CFR Part 351, as published in the *Federal Register* on May 19, 1997 (62 FR 27296).

Background

On August 30, 1988, the Department published in the *Federal Register* the antidumping duty order on granular polytetrafluoroethylene resin (PTFE) from Italy (53 FR 33163). On August 4, 1997, the Department published a notice of "Opportunity to Request

Administrative Review" of this antidumping duty order for the period of August 1, 1996, through July 31, 1997 (62 FR 41925). On August 28, 1997, we received a timely request for review from E.I. DuPont de Nemours & Company (the petitioner). The review request named one respondent, Ausimont SpA and Ausimont USA Inc. (collectively, Ausimont). On September 25, 1997, we published the notice of initiation of this review (62 FR 50292).

We issued a questionnaire to Ausimont on September 24, 1997, followed by a supplemental questionnaire on February 23, 1998. On December 19, 1997, the petitioner submitted a timely request for verification of Ausimont's response.

Verification

In accordance with section 782(i)(3) of the Act, we conducted a verification of Ausimont's response from April 6 through April 14, 1998, in Bollate, Italy, and in Thorofare, New Jersey (see Verification of the Responses of Ausimont SpA and Ausimont U.S.A. in the 1996/97 Administrative Review of Polytetrafluoroethylene (PTFE) Resin from Italy, May 4, 1998).

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. See Granular Polytetrafluoroethylene Resin from Italy; Final Determination of Circumvention of Antidumping Duty Order, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTS). We are providing this HTS number for convenience and Customs purposes only. The written description of the scope remains dispositive.

Fair Value Comparisons

We compared the constructed export price (CEP) to the normal value (NV), as described in the *Constructed Export Price* and *Normal Value* sections of this notice. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual transactions to contemporaneous monthly weighted-average prices of sales of the foreign like product.

We first attempted to compare contemporaneous sales of products sold in the U.S. and the comparison market that were identical with respect to the following characteristics: type, filler,

percentage of filler, and grade. Where we were unable to compare sales of identical merchandise, we compared U.S. sales with comparison market sales of the most similar merchandise based on the characteristics listed above, in that order of priority. With respect to U.S. sales of imported wet raw polymer that further manufactured into finished PTFE resin (see *Constructed Export Price*, below), we limited our price-based comparisons to comparison market sales of wet raw polymer.

Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act.

Constructed Export Price

For all sales to the United States, we calculated constructed export price (CEP) as defined in section 772(b) of the Act because all sales to unaffiliated parties were made after importation of the subject merchandise into the United States through Ausimont U.S.A., respondent's affiliate. We based CEP on the packed, delivered prices to unaffiliated purchasers in the United States (the starting price). We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, including international freight marine insurance, brokerage and handling, U.S. inland freight, other transportation expenses, and U.S. customs duties.

In accordance with section 772(d)(1) of the Act, we deducted selling expenses incurred by the affiliated seller in connection with economic activity in the United States. These expenses include credit, warranty, technical service, inventory carrying costs, and indirect expenses incurred by Ausimont USA.

With respect to sales involving imported wet raw polymer that was further manufactured into finished PTFE resin in the United States, we deducted the cost of such further manufacturing in accordance with section 772(d)(2) of the Act. We determined that the special rule for merchandise with value added after importation under section 772(e) of the Act did not apply to such sales because the value added in the United States by the affiliated person did not exceed substantially the value of the subject merchandise.

Finally, we made an adjustment for the profit allocated to the above-referenced selling and further manufacturing expenses, in accordance with section 772(d)(3) of the Act.

No other adjustments were claimed or allowed.

Normal Value

In order to determine whether there was a sufficient volume of sales of granular PTFE resin in the home market to serve as a viable basis for calculating normal value (NV), we compared Ausimont's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than five percent of the respective aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like product was first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

We determined home prices net of price adjustments (early payment discounts and rebates). Where applicable, we made adjustments for packing and movement expenses, in accordance with sections 773(a)(6) (A) and (B) of the Act. In order to adjust for differences in packing between the two markets, we deducted home market packing costs from NV and added U.S. packing costs. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act, and for other differences in the circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act. We made a COS adjustment for home market credit expense.

As noted above, we determined normal value based on CV where there were no appropriate home market sales for comparison with the U.S. sale. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative (SG&A) expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Ausimont in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Italy. For selling expenses, we used the weighted-average home market selling expenses. We included U.S. packing pursuant to section 773(e)(3) of the Act. Where appropriate, we made

adjustments to CV, in accordance with section 773(a)(8) of the Act, for differences in the COS. Specifically, we made a COS adjustment by deducting home market credit. We also made a CEP-offset adjustment to NV for indirect selling expenses pursuant to section 773(a)(7)(B) of the Act as discussed below.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales at the same level of trade in the comparison market as the level of trade of the U.S. sales. The NV level of trade is that of the starting-price sales in the comparison market. For CEP sales, such as those made by Ausimont in this review, the U.S. level of trade is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than that of the U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 (November 19, 1997).

In implementing these principles in this review, we obtained information from Ausimont about the marketing stage involved in the reported U.S. sales and the home market sales, including a description of the selling activities performed by Ausimont for each channel of distribution. In identifying levels of trade for CEP and for home market sales, we considered the selling functions reflected in the CEP, after the deduction of expenses and profit under section 772(d) of the Act, and those reflected in the home market starting price before making any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar.

Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

The record evidence before us in this review indicates that the home market and the CEP levels of trade have not changed from the 1995-96 review.¹ As in prior segments of the proceeding, we determined that for Ausimont there was one home market level of trade and one U.S. level of trade (i.e., the CEP level of trade). In the home market, Ausimont sold directly to fabricators. These sales primarily entailed selling activities such as inventory maintenance, technical services, strategic and economic planning, market research, computer assistance and business system development assistance, personnel training, engineering services, and delivery services.

In determining the level of trade for the U.S. sales, we only considered the selling activities reflected in the price after making the appropriate adjustments under section 772(d) of the Act. (See, e.g., *Certain Stainless Wire Rods From France: Final Results of Antidumping Administrative Review*, 61 FR 47874, 47879-80 (Sept. 11, 1996). The CEP level of trade involves minimal selling functions (e.g., invoicing). Based on a comparison of the home market level of trade and this CEP level of trade, we find the home market sales to be at a different level of trade from, and more remote from the factory than, the CEP sales.

As noted above, all of the Ausimont's home market sales were at a single level of trade which is different from the CEP level of trade. Section 773(a)(7)(A) of the Act directs us to make an adjustment for difference in levels of trade where such differences affect price comparability. However, we were unable to quantify such price differences from information on the record. Because we have determined that the home-market level of trade is more remote from the factory than the CEP level of trade but the data necessary to calculate a level-of-trade adjustment are unavailable, we made a CEP-offset adjustment to NV pursuant to section 773(a)(7)(B) of the Act.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign

¹ See 62 FR 48592, September 16, 1997 (final results) and 62 FR 26283, May 13, 1997 (preliminary results).

currencies into U.S. dollars, unless the daily rate involves a fluctuation. In accordance with our practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is

defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate. See Policy Bulletin 96-1 Currency Conversions, 61 FR 9434 (March 8, 1996).

Manufacturer/exporter	Period	Margin (percent)
Ausimont S.p.A.	08/01/96-07/31/97	40.90

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days of issuance of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated an importer-specific ad valorem duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate these duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between NV and CEP, by the total CEP value of the sales compared, and adjusting the result by the average difference between CEP and customs value for all merchandise examined during the POR.) Individual differences between CEP and NV may vary from the percentage stated above. Upon completion of this review, the

Department will issue appraisal instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PTFE resin from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ausimont will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (LTFV) investigations or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 46.46 percent, the "all others" rate established in the LTFV investigation (50 FR 26019, June 24, 1985).

This notice also serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with the requirement could result in the Secretary's presumption that reimbursement of antidumping duties

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22(1996)).

Dated: May 4, 1998.
Robert S. LaRossa,
Assistant Secretary for Import
Administration.
[FR Doc. 98-12318 Filed 5-8-98; 8:45 am]
BILLING CODE 3510-05-M

DEPARTMENT OF COMMERCE

International Trade Administration [A-427-009]

Industrial Nitrocellulose from France: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, Hercules Incorporated, the Department of Commerce is conducting an administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers Bergerac, N.C. (formerly identified by the name of its parent company, Societe Nationale des Poudres et Explosifs), and its affiliates for the period August 1, 1996, through July 31, 1997.

We have preliminarily determined that sales for Bergerac, N.C., have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the

issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Zapf, Lyn Johnson, or David Dirstine, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (62 FR 27295).

Background

On August 10, 1983, the Department of Commerce (the Department) published in the *Federal Register* (48 FR 36303) the antidumping duty order on industrial nitrocellulose (INC) from France. On September 25, 1997, in accordance with 19 CFR 353.22(c), we published a notice of initiation of administrative review of this order for the period August 1, 1996, through July 31, 1997 (the POR) (62 FR 50292). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is INC containing between 10.8 and 12.2 percent nitrogen. INC is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. Imports of this product are classified under the HTS subheadings 3912.20.00 and 3912.90.00. The HTS item numbers are provided for convenience and customs purposes. The written descriptions of the scope of this proceeding remain dispositive.

Export Price and Constructed Export Price

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and (b) of the Act, as appropriate. We calculated EP and CEP based on the packed f.o.b., c.i.f., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for

rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Statement of Administrative Action (SAA) (at 823-824) to the URAA, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses, and indirect selling expenses in the United States. For sales without payment dates, we calculated credit expenses using the date of the supplemental response. Finally, we made an adjustment to CEP for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by a person affiliated with the producer or exporter and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we determined that the estimated value added in the United States accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. Also, we determined that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of such

sales is appropriate. Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons. No other adjustments to EP or CEP were claimed or allowed.

Normal Value

In calculating normal value (NV), we determined that the quantity of foreign like product sold by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1) of the Act because the quantity of sales in the home market was greater than five percent of the sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, i.e., at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

We calculated monthly, weighted-average NVs. Where possible, we compared U.S. sales to sales of identical merchandise in France. When identical merchandise was not sold during the relevant contemporaneous period, we compared U.S. sales to sales of the most similar foreign like product in accordance with sections 771(16)(B) and (C) of the Act.

(See the Matching Methodology section of our analysis memorandum to the file, dated April 17, 1998.)

Home-market prices were based on the packed, ex-factory or delivered prices to the affiliated and unaffiliated purchasers in the home market. We made deductions, where appropriate, for discounts, rebates, price adjustments and home market movement charges. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56. For comparison to EP, we made COS adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to NV. For comparisons to CEP, we made COS adjustments by deducting home-

market direct selling expenses from NV. We also made adjustments, where applicable, for home-market indirect selling expenses to offset U.S. commissions in CEP calculations.

Level of Trade

To the extent practicable, we determine NV for sales at the same level of trade as the U.S. sales (either EP or CEP). When there are no sales at the same level of trade, we compare U.S. sales to home-market sales at a different level of trade. The NV level of trade is that of the starting-price sales in the home market.

To determine whether home-market sales were at a different level of trade than U.S. sales for this review, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Based on the record evidence, we found that there were significant differences between the selling activities associated with the home-market level of trade and those associated with both EP and CEP. Therefore, we determined that EP and CEP sales are at a different level of trade than the home-market sales.

Consequently, we could not match U.S. sales to sales at the same level of trade in the home market. Moreover, data necessary to determine a level-of-trade adjustment was not available. Therefore, when we matched EP sales to sales in the home market, we made no level-of-trade adjustment. However, because home-market sales were made at a more advanced stage of distribution than that of the CEP level, we made a CEP-offset adjustment when comparing CEP and home-market sales, in accordance with section 773(a)(7)(B) of the Act. For a more detailed description of our analysis, see the Level-of-Trade section of our analysis memorandum dated April 17, 1998.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period August 1, 1996, through July 31, 1997 to be as follows:

Company	Margin (percent)
Bergerac, N.C.	9.24

Any interested party may request a hearing within 30 days of the date of publication of this notice. A hearing, if requested, will be held 2 days after submission of rebuttal briefs at the main Commerce Department building.

Issues raised in the hearing will be limited to those raised in briefs and

rebuttal briefs. Briefs from interested parties may be filed no later than 30 days after the date of publication. Rebuttal briefs, limited to the issues raised in case briefs, may be filed no later than five days after the deadline for filing case briefs.

Parties who submit briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue, and (2) a brief summary of the argument.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated importer-specific *ad valorem* duty-assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP or CEP, by the total statutory EP or CEP value of the sales compared and adjusting the result by the average difference between EP or CEP and customs value for all merchandise examined during the POR.) Bergerac, N.C., could not identify the importer of record for certain sales to unaffiliated customers. Therefore, we have calculated a single, per-unit duty assessment rate by dividing the total dumping margins by the total quantity sold for these importers.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rates for Bergerac, N.C., will be the rate established in the final results of this review (except that no deposit will be required if the firm has a zero or *de minimis* margin, i.e., a margin less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash-

deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation (LTFV), but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will be 1.38. This is the "all others" rate from the LTFV investigation which we are reinstating in accordance with the decisions by the Court of International Trade in *Floral Trade Council v. United States*, Slip Op. 93-79 (May 25, 1993), and *Federal-Mogul Corporation and The Torrington Company v. United States*, Slip Op. 93-83 (May 25, 1993). These cash-deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: May 4, 1998.

Robert S. LaRussa,
Assistant Secretary for Import
Administration.
[FR Doc. 98-12315 Filed 5-8-98; 8:45 am]
BILLING CODE 3510-05-P

DEPARTMENT OF COMMERCE

International Trade Administration [A-423-602]

Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of industrial phosphoric acid from Belgium.

SUMMARY: In response to requests from one respondent, petitioner and one

domestic producer, the Department of Commerce is conducting an administrative review of the antidumping duty order on industrial phosphoric acid from Belgium. The period of review is August 1, 1996 through July 31, 1997. This review covers imports of industrial phosphoric acid from one producer, Societe Chimique Prayon-Rupel S.A. ("Prayon").

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Blankenbaker or Thomas Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0989, and 482-3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Background

On August 20, 1987, the Department published in the *Federal Register* (52 FR 31439) the antidumping duty order on industrial phosphoric acid ("IPA") from Belgium. On August 4, 1997, the Department published in the *Federal Register* (62 FR 41925) a notice of opportunity to request an administrative review of this antidumping duty order. On August 29, 1997, in accordance with 19 CFR 351.213(b), Prayon, the petitioner FMC Corporation ("FMC"), and Albright & Wilson Americas Inc.

("Wilson"), a domestic producer of the subject merchandise, requested that the Department conduct an administrative review of Prayon's exports of subject merchandise to the United States. We published the notice of initiation of this review on September 25, 1997 (62 FR 50292).

Scope of the Review

The products covered by this review include shipments of IPA from Belgium. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 2809.2000 and 4163.0000. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Product Comparisons

We calculated monthly, weighted-average, normal values (NVs). The industrial phosphoric acid exported by Prayon to the United States is PRAYPHOS P5, a refined industrial phosphoric acid, and is the identical merchandise sold by Prayon in its home market in Belgium. Therefore, we have compared U.S. sales to contemporaneous sales of identical merchandise in Belgium.

Export Price

Prayon sells to end-users in the United States through its affiliated sales agent. For these sales, we used export price (EP). In accordance with sections 772 (a) and (c) of the Act, we calculated and EP because Prayon sold the merchandise directly to the first unaffiliated purchaser in the United States prior to importation. Additional factors used to determine EP include: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. affiliate was limited to that of a processor of sales-related documentation and a communications link with the unrelated buyer. Where the facts indicate that the activities of the U.S. affiliate were ancillary to the sale (e.g., arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. See e.g., *Certain Corrosion Resistant Steel Flat Products From Canada: Final Results of Antidumping Duty Administrative Review*, 63 FR 12725, 12738 (March 16, 1998). The record in this case indicates that Prayon has correctly classified its U.S. sales as EP sales. Prayon's affiliated sales agent in the United States, Quadra Corporation (USA) ("Quadra"), served

as a processor of sales-related documentation.

EP sales were based on the delivered price to unaffiliated purchasers in, or for exportation to, the United States. As appropriate, we made deductions for discounts and rebates, including early payment discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs brokerage fees, merchandise processing fees, and U.S. inland freight expenses.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, in accordance with section 773(a)(1)(B) of the Act, we based NV on home market sales.

We also excluded from our NV analysis sales to affiliated home market customers where the weighted-average sales prices to the affiliated parties were less than 99.5 percent of the weighted-average sales prices to unaffiliated parties. See *Usinor Sacilor v. United States*, 872 F. Supp. 1000, 1004 (CIT 1994).

We also made adjustments, consistent with section 773(a)(6)(B) of the Act, for inland freight. In addition, we made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

In calculating credit expense, Prayon reported the discount on accounts receivable sold to its affiliated coordination center. Since the reported credit expense is greater than the credit expense calculated using the standard credit calculation (i.e., (date of payment less date of shipment / 365) * monthly home market short-term interest rates* gross price), we have determined that the discount transaction between Prayon and its affiliated coordination center is not conducted at arm's-length. Accordingly, we have used the standard credit calculation when calculating the amount of credit to deduct from normal value. We used the monthly home market short-term borrowing rates provided by Prayon in calculating inventory carrying costs as the basis for the monthly home market short-term interest rates used in the credit calculation.

No other adjustments were claimed or allowed.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or the (constructed export price (CEP) transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sale are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 (November 19, 1997).

Prayon did not claim a LOT adjustment; however, we requested information concerning Prayon's distribution system, including selling functions, to determine whether such an adjustment was necessary. Prayon reported that all sales during the period of review (POR), in both the comparison market (the home market in this case) and the United States, were to end-users and distributors. In the U.S. market, Prayon sells to end-users through its affiliated sales agent. The subject merchandise is shipped from tankage in a storage facility in Canada directly to the customer. In the home market, Prayon sells through several channels of distribution. The first channel includes direct sales made to end-users. For the other channels, Prayon sells to either end-users or distributors through its affiliated sales agent. For all home

market customers, Prayon ships the subject merchandise via independent carriers directly to the customer from its storage facilities at the plant. We have examined information provided by Prayon concerning these sales and determined that the selling functions are the same in the home market and U.S. market. Prayon negotiates all final prices and quantities, and bears the cost of storage and handling, surveys and delivery to customer. Prayon does not maintain inventories for its customers, provide after-sales service, or offer advertising or other sales support activities to its customers in either market. Therefore, we preliminarily determine that sales in the home market and sales in the United States are at the same LOT and that no adjustment is warranted.

Commissions

The Department operates under the assumption that commission payments to affiliated parties (in either the United States or home market) are not at arm's length. The Court of International Trade has held that this is a reasonable assumption. See *Outokumpu Copper Rolled Products AB v. United States*, 850 F. Supp. 16,22 (1994).

Accordingly, the Department has established guidelines to determine whether affiliated party commissions are paid on an arm's-length basis such that an adjustment for such commissions can be made. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 61 FR 57,629 (November 7, 1996). First, we compare the commissions paid to affiliated and unaffiliated sales agents in the same market. If there are no commissions paid to unaffiliated parties, we then compare the commissions earned by the affiliated selling agent on sales of merchandise produced by the respondent to commissions earned on sales of merchandise produced by unaffiliated sellers or manufacturers. If there is no benchmark which can be used to determine whether the affiliated party commission is an arm's-length value (i.e., the producer does not use an unaffiliated selling agent and the affiliated selling agent does not sell subject merchandise for an unaffiliated producer), the Department assumes that the affiliated party commissions are not paid on an arm's-length basis.

In this case, Prayon used an affiliated sales agent in the home market and a different affiliated sales agent in the United States. Prayon did not use

unaffiliated agents during the POR and did not place on the record information that its affiliated home market and U.S. selling agents acted as agents for unaffiliated producers of the subject merchandise. As a result, we were unable to establish a benchmark for use in determining whether commission payments Prayon made to affiliated selling agents were at arm's length. Accordingly, we preliminarily determine not to make a circumstance of sale adjustment for commissions in either market.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on rates certified by the Federal Reserve Bank in effect on the dates of U.S. sales. See *Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996).

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period August 1, 1996 through July 31, 1997:

Manufacturer/exporter	Margin (percent)
Prayon	3.96

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may also request a hearing within ten days of publication. If requested, a hearing will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with the methodology in Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea (62 FR 55574, October 27, 1997), we calculated exporter/importer-specific assessment

values by dividing the total dumping duties due for each importer by the number of tons used to determine the duties due. We will direct Customs to assess the resulting per-ton dollar amount against each ton of the merchandise entered by these importers during the review period.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of industrial phosphoric acid from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required where the weighted-average margin is *de minimis*, i.e., less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original investigation, the cash deposit rate will be 14.67 percent, the "all others" rate established in the LTFV investigation.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 4, 1998.

Robert S. LaRussa,
Assistant Secretary, Import Administration.
[FR Doc. 98-12317 Filed 5-8-98; 8:45 am]
BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 94-2A007.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Florida Citrus Exports, L.C. ("FCE") on February 23, 1995. Notice of issuance of the original Certificate was published in the *Federal Register* on March 8, 1995 (60 FR 12735).

DATE: Effective February 4, 1998.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the *Federal Register*. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 94-2A007, was originally issued to Florida Citrus Exports, L.C. on February 23, 1995 (60 FR 12735, March 8, 1995) and previously amended on January 16, 1996 (61 FR 4255, February 5, 1996).

FCE's Export Trade Certificate of Review has been amended to:

1. Add the following entities as new "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): Dole Citrus, Vero Beach, FL (controlling entity: Dole Food Company, Inc., Westlake Village, CA); Hogan & Sons, Inc., Vero Beach, FL; and The Packers of Indian River, Ltd., Ft. Pierce, FL.
2. Delete Ocean Spray Cranberries Inc., Vero Beach, FL as a "Member" of the Certificate.

A copy of the amended certificate will be kept in the International Trade

Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: May 5, 1998.

Morton Schnabel,
Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98-12377 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-OR-P

DEPARTMENT OF COMMERCE

Evaluation of Coastal Zone Management Program and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Pennsylvania, Delaware and Alaska Coastal Zone Management Programs.

These evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs requires findings concerning the extent to which a state has met the national objectives enumerated in the CZMA, adhered to its coastal program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Delaware Coastal Management Program site visit will be from June 1-5, 1998. One public meeting will be held during the week. This meeting is scheduled for Tuesday, June 2, 1998, at 7:00 P.M., at the Department of Natural Resources and Environmental Control Auditorium, Richardson and Robins Building, 89 Kings Highway, Dover, Delaware.

The Pennsylvania Coastal Management Program site visit will be

from June 8–12, 1998. One public meeting will be held during the week. This public meeting will be on Tuesday, June 9 at 7:00 P.M. in the Admiral Room, Raymond M. Blasco M.D. Memorial Library, 160 East Front Street, Erie, Pennsylvania 16507.

The Alaska Coastal Management Program site visit will be from June 9–18, 1998. One public meeting will be held during the week. The public meeting will be on Thursday, June 11, 1998, at 7:00 P.M. at the Anchorage Legislative Information Office, 716 W. 4th Avenue, Suite 200. Teleconference connections will be provided between Anchorage and the coastal communities of Ketchikan, Sitka, Juneau, Cordova, Valdez, Kenai, Kodiak, Dillingham, Bethel, Nome, Kotzebue, and Barrow.

Each State will issue notice of the public meeting in a local newspaper at least 45 days prior to the public meeting, and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the *Federal Register* announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division (PCD), Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713-3090, ext. 126.

Federal Domestic Assistance Catalog 11.419 Coastal Zone, Management Program Administration.

Dated: May 1, 1998.

Nancy Foster,
Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98-12424 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050598B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Mr. Fred Sharpe, Behavioral Ecology Research Group, Simon Fraser University, Burnaby, British Columbia, V5A 1S6, Canada, has applied in due form for a permit to take North Pacific humpback whales (*Megaptera novaeangliae*) and killer whales (*Orcinus orca*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 10, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99801 (907/586-7221).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ms. Jeannie Drevenak, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the

regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The purpose of the proposed research is to: examine the behavior, social structure and foraging ecology of North Pacific humpback whales through passive observation (photo-identification, hydrophone recordings, video recording), side-scan sonar, playbacks of humpback whale sounds, and suction cup tagging with "critter cam" dive tags; and obtain opportunistic photo-identification images and recordings of killer whales. Up to 390 humpback whales may be harassed annually during these activities (only 18 of this number may be suction cup tagged annually). Up to 300 killer whales may be harassed annually during photo-identification studies. Research activities will be conducted over a five-year period in southeast Alaska waters.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the *Federal Register*, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 6, 1998.

Ann D. Terbush,
Chief, Permits and Documentation Division,
Office of Protected Resources, National
Marine Fisheries Service.

[FR Doc. 98-12416 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Registration for Scientific and Technical Information Services; DD Form 1540; OMB Number 0704-0264.

Type of Request: Extension.

Number of Respondents: 500.

Responses Per Respondent: 1.

Annual Responses: 500.

Average Burden Per Response: 25 minutes.

Annual Burden Hours: 208.

Needs and Uses: The Department of Defense Scientific and Technical Information Program (STIP) requires the exchange of scientific and technical information within and among Federal Government agencies and their contractors. The data that the Defense Technical Information Center (DTIC) handles is controlled, either because of distribution limitations or security classification. For this reason, all potential users are required to register for service. The registration procedure is mandated by DoD Directive 5200.21, Dissemination of DoD Technical Information. Federal Government agencies and their contractors are required to complete the DoD Form 1540, Registration for Scientific and Technical Information Services. The contractor community completes a separate DD Form 1540 for each contract or grant and registration is valid until the contract expires. All collected information is verified by DTIC's Registration Branch.

Affected Public: Business or other for-profit; not-for-profit institutions; State, Local, or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: May 5, 1998.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 98-12319 Filed 5-8-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Request for Approval of Foreign Government Employment of Air Force Members; OMB Number 0701-0134.

Type of Request: Reinstatement.

Number of Respondents: 148.

Responses Per Respondent: 1.

Annual Responses: 148.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 148.

Needs and Uses: The information collection requirement is to obtain the information needed by the Secretary of the Air Force and the Secretary of State on which to base a decision to approve or disapprove a request to work for a foreign government. This approval is specified by Title 37, United States Code Section 908. This statute delegates such approval authority of Congress to the respective service secretaries and to the Secretary of State. Respondents are Air Force retired members who have gained jobs with a foreign government and who must obtain approval of the Secretary of the Air Force and the Secretary of State to do so. Information, in the form of a letter, includes a detailed description of duty, name of employer, Social Security Number, and statements specifying whether or not the employee will be compensated; declaring if employee will be required or plans to obtain foreign citizenship; declaring that the member will not be required to execute an oath of allegiance of the foreign government; verifying that the member understands that retired pay equivalent to the amount received from the foreign government may be withheld if he or she accepts employment with a foreign government before receiving approval. Reserve members only must include a request to be reassigned to Inactive Status List Reserve Section (Reserve Section Code RB). After verifying the status of the individual, the letter is forwarded to the Air Force Review Board for processing. If the signed letter is not included in the file, individuals reviewing the file cannot furnish the necessary information to the Secretary of the Air Force and the Secretary of State on which a decision can be made. Requested information is necessary to maintain the integrity of the Request for Approval of Foreign Government Employment Program.

Affected Public: Individuals or households; business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: May 5, 1998.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 98-12320 Filed 5-8-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (1995 ed.) [MCM]. The proposed changes are the 1998 draft annual review required by the MCM and DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. The proposed changes concern the preamble, the rules of procedure and evidence applicable in trials by courts-martial and the punitive articles describing offenses. The proposed changes to one offense are contingent upon the passage of legislation amending that offense. More specifically, the proposed changes would: (1) Clarify the method of identifying amendments to and editions of the MCM should more than one executive order be signed in a given year; (2) set forth the rules for issuing protective orders preventing the parties and witnesses from making out of court statements when there is a substantial likelihood of material prejudice to a fair trial; (3) clarify which "convictions" are admissible on sentencing; (4) incorporate numerous references into the existing rules, discussion, and punitive articles to confinement with or

without eligibility for parole (authorized punishments, other penalties for capital cases, voting procedures, number of votes required for reconsideration of sentence, maximum punishments, mandatory minimums, proposals of sentences, and action on the sentence); (5) update all of the sample specifications by removing the reference to the 20th century from the date of the offense; (6) reject the automatic change to M.R.E. 407 based on the December 1, 1997 change to F.R.E. 407; (7) delete M.R.E. 415 (Evidence of Similar Acts in Civil Cases concerning Sexual Assault or Child Molestation); and (8) implement changes to paragraph 35 of the punitive articles (Article 111 Drunken or reckless operation of a vehicle, aircraft, or vessel) contingent upon the passage of legislation amending Article 111 of the UCMJ to provide a blood/alcohol blood/breath concentration of 0.08 or more as a per se standard of illegal intoxication.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

ADDRESSES: Comments on the proposed changes should be sent to LtCol Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332-8000.

DATES: Comments on the proposed changes must be received no later than July 27, 1998, for consideration by the JSC.

FOR FURTHER INFORMATION CONTACT: LtCol Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332-8000, (202) 767-1539; FAX (202) 404-8755.

The full text of the affected sections follows:

The last subparagraph of paragraph 4 of the Preamble is amended to read as follows:

"The Manual shall be identified as 'Manual for Courts-Martial, United States (XXXX edition).' Any amendments to the Manual made by Executive Order shall be identified as 'XXXX Amendments to the Manual for Courts-Martial, United States'; 'XXXX' being the year the Executive order was signed. If two or more Executive Orders amending the Manual are signed during the same year, then the second and any subsequent Executive Orders will be identified by placing a small case letter of the alphabet after the last digit of the year beginning with 'a' for the second Executive Order and continuing in alphabetic order for subsequent Executive Orders."

The Discussion following the Preamble is amended by adding the following at the end of the Discussion: "The 1999 amendment to paragraph 4 of the Preamble is intended to address the possibility of more frequent amendments to the Manual and the arrival of the 21st century. In the event that multiple editions of the Manual are published in the same year, the numbering and lettering of the edition should match that of the most recent Executive Order included in the publication."

R.C.M. 806 is amended by adding the following new subparagraph (d) as follows:

"(d) Protective orders. The military judge may, upon request of any party or *sua sponte*, issue an appropriate protective order, in writing, to prevent parties and witnesses from making extrajudicial statements that present a substantial likelihood of material prejudice to a fair trial by impartial members. For purposes of this subsection, "military judge" does not include the president of a special court-martial without a military judge."

The following Discussion is added after R.C.M. 806(d):

"A protective order may proscribe extrajudicial statements by counsel, parties, and witnesses that might divulge prejudicial matter not of public record in the case. Other appropriate matters may also be addressed by such a protective order. Before issuing a protective order, the military judge must consider whether other available remedies would effectively mitigate the adverse effects that any publicity might create, and consider such an order's likely effectiveness in ensuring an impartial court-martial panel. A military judge should not issue a protective order without first providing notice to the parties and an opportunity to be

heard. The military judge must state on the record the reasons for issuing the protective order. If the reasons for issuing the order change, the military judge may reconsider the continued necessity for a protective order."

The Analysis accompanying R.C.M. 806(d) is created as follows:

"1999 Amendment: Section (d) was added to codify the military judge's power to issue orders limiting trial participants' extrajudicial statements in appropriate cases. See *United States v. Garwood*, 16 M.J. 863, 868 (N.M.C.M.R. 1983) (finding military judge was justified in issuing restrictive order prohibiting extrajudicial statements by trial participants), *aff'd* on other grounds, 20 M.J. 148 (C.M.A. 1985); *United States v. Clark*, 31 M.J. 721, 724 (A.F.C.M.R. 1990) (suggesting, but not deciding, that the military judge properly limited trial participants' extrajudicial statements).

The public has a legitimate interest in the conduct of military justice proceedings. Informing the public about the operations of the criminal justice system is one of the "core purposes" of the First Amendment. In the appropriate case where the military judge is considering issuing a protective order, absent exigent circumstances, the military judge must conduct a hearing prior to issuing such an order. Prior to such a hearing the parties will have been provided notice. At the hearing, all parties will be provided an opportunity to be heard. The opportunity to be heard may be extended to representatives of the media in the appropriate case.

Section (d) is based on the first Recommendation Relating to the Conduct of Judicial Proceedings in Criminal Cases, included in the Revised Report of the Judicial Conference Committee on the Operation of the Jury System on the "Free Press-Fair Trial" Issue, 87 F.R.D. 519, 529 (1980), which was approved by the Judicial Conference of the United States on September 25, 1980. The requirement that the protective order be issued in writing is based on Rule for Courts-Martial 405(g)(6). Section (d) adopts a "substantial likelihood of material prejudice" standard in place of the Judicial Conference recommendation's "likely to interfere" standard. The Judicial Conference's recommendation was issued before the Supreme Court's decision in *Gentile v. State Bar of Nev.*, 501 U.S. 1030 (1991). *Gentile*, which dealt with a Rule of Professional Conduct governing extrajudicial statements, indicates that a lawyer may be disciplined for making statements that present a substantial likelihood of material prejudice to an accused's right

to a fair trial. While the use of protective orders is distinguishable from limitations imposed by a bar's ethics rule, the *Gentile* decision expressly recognized that the "speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press in *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976), and the cases which preceded it." 501 U.S. at 1074. The Court concluded that "the 'substantial likelihood of material prejudice' standard constitutes a constitutionally permissible balance between the First Amendment rights of attorneys in pending cases and the State's interest in fair trials." *Id.* at 1075. *Gentile* also supports the constitutionality of restricting communications of non-lawyer participants in a court case. *Id.* at 1072-73 (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984)). Accordingly, a protective order issued under the "substantial likelihood of material prejudice" standard is constitutionally permissible.

The first sentence of the discussion is based on the committee comment to the Recommendations Relating to the Conduct of Judicial Proceedings in Criminal Cases. 87 F.R.D. at 530. For a definition of "party," see R.C.M. 103(16). The second sentence of the discussion is based on the first of the Judicial Conference's recommendations concerning special orders. *Id.* at 529. The third sentence of the discussion is based on the second of the Judicial Conference's recommendations, *id.* at 532, and on *United States v. Salameh*, 992 F.2d 445, 447 (2d Cir. 1993) (per curiam), and *In re Application of Dow Jones & Co.*, 842 F.2d 603, 611, 612 n.1 (2d Cir.), *cert. denied*, 488 U.S. 946 (1988). The fourth sentence is based on *Salameh*, 992 F.2d at 447. The fifth sentence is based on *In re Halkin*, 598 F.2d 176, 196-97 (D.C. Cir. 1979), and Rule for Courts-Martial 905(d)."

R.C.M. 1001(b)(3)(A) is amended to read as follows:

"(A) In general. The trial counsel may introduce evidence of military or civilian convictions of the accused. For purposes of this rule, there is a "conviction" in a court-martial case when a sentence has been adjudged. In a civilian case, a "conviction" includes any disposition following an initial judicial determination or assumption of guilt, such as when guilt has been established by guilty plea, trial, or plea of *nolo contendere*, regardless of the subsequent disposition, sentencing procedure, or final judgment. However, a "civilian conviction" does not include a diversion from the judicial process

without a finding or admission of guilt; expunged convictions; juvenile adjudications; minor traffic violations; foreign convictions; tribal court convictions; or convictions reversed, vacated, invalidated or pardoned because of errors of law or because of subsequently discovered evidence exonerating the accused."

The Discussion following R.C.M. 1001(b)(3)(A) is amended by adding the following at the end of the Discussion:

"Whether a civilian conviction is admissible is left to the discretion of the military judge. As stated in the rule, a civilian "conviction" includes any disposition following an initial judicial determination or assumption of guilt regardless of the sentencing procedure and the final judgment following probation or other sentence. Therefore, convictions may be admissible regardless of whether a court ultimately suspended judgment upon discharge of the accused following probation, permitted withdrawal of the guilty plea, or applied some other form of alternative sentencing. Additionally the term "conviction" need not be taken to mean a final judgment of conviction and sentence."

The Analysis accompanying R.C.M. 1001(b)(3)(A) is amended by inserting the following at the end thereof: "1999 Amendment: As previously written, R.C.M. 1001(b)(3)(A) offered little guidance about what it meant by "civilian convictions." See, e.g., *United States v. White*, 47 M.J. 139 (CAAF 1997); *United States v. Barnes*, 33 M.J. 468 (CMA 1992); *United States v. Slovacek*, 24 M.J. 140 (CMA), *cert. denied*, 484 U.S. 855, 108 S.Ct. 161, 98 L.Ed.2d 115 (1987). The present rule addresses this void and intends to give the sentencing authority as much information as the military judge determines is relevant in order to craft an appropriate sentence for the accused.

Unlike most civilian courts, this rule does not allow admission of more extensive criminal history information, such as arrests. Use of such additional information is not appropriate in the military setting where court-martial members, not a military judge, often decide the sentence. Such information risks unnecessarily confusing the members.

The present rule clarifies the term "conviction" in light of the complex and varying ways civilian jurisdictions treat the subject. The military judge may admit relevant evidence of civilian convictions without necessarily being bound by the action, procedure, or nomenclature of civilian jurisdictions. Examples of judicial determinations admissible as convictions under this

rule include accepted pleas of *nolo contendere*, pleas accepted under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), or deferred sentences. If relevant, evidence of forfeiture of bail that results in a judicial determination of guilt is also admissible, as recognized in *United States v. Eady*, 35 M.J. 15 (CMA 1992). While no time limit is placed upon the admissibility of prior convictions, the military judge should conduct a balancing test to determine whether convictions older than ten years should be admitted or excluded on the basis of relevance and fundamental fairness.

The two central factors in this rule are (1) judicial determination of guilt and (2) assumption of guilt. So long as either factor is present, the "conviction" is admissible, if relevant. Consequently, this rule departs from the holding in *United States v. Hughes*, 25 M.J. 119 (CMA 1988), where the accused pleaded guilty in a Texas court, but the judge did not enter a finding of guilty under state law allowing "deferred adjudications." Under the present rule, the "conviction" would be admissible because the accused pleaded guilty in a judicial proceeding, notwithstanding the fact that the state judge did not enter a finding of guilty.

In contrast, "deferred prosecutions," where there is neither an admission of guilt in a judicial proceeding nor a finding of guilty, would be excluded. The rule also excludes expunged convictions, juvenile adjudications, minor traffic violations, foreign convictions, and tribal court convictions as matters inappropriate for or unnecessarily confusing to courts-martial members. What constitutes a "minor traffic violation" within the meaning of this rule is to be decided with reference only to principles of federal law, and not to the laws of individual states.

Additionally, because of the lack of clarity in the previous rule, courts sometimes turned to M.R.E. 609 for guidance. See, e.g., *United States v. Slovacek*, 24 M.J. 140 (CMA), *cert. denied*, 484 U.S. 855, 108 S.Ct. 161, 98 L.Ed.2d 115 (1987). We note that because the policies behind M.R.E. 609 and the present rule differ greatly, a conviction that may not be appropriate for impeachment purposes under M.R.E. 609, may nevertheless be admissible under the present rule.

The Federal Sentencing Guidelines were consulted when drafting the present rule. Although informed by those guidelines, the present rule departs from them in many respects because of the wide differences between

the courts-martial process and practice in federal district court."

R.C.M. 1003(b)(8) is amended to read as follows:

"(8) Confinement. The place of confinement shall not be designated by the court-martial. When confinement for life is authorized, it may be with or without eligibility for parole. A court-martial shall not adjudge a sentence to solitary confinement or to confinement without hard labor."

The Discussion following R.C.M. 1003(b)(8) is amended by adding the following at the end of the Discussion: "See Article 56a."

The Analysis accompanying R.C.M. 1003(b)(8) is amended by inserting the following at the end thereof:

"1999 Amendment: This change resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1629, 1759 (1997)."

R.C.M. 1004(e) is amended to read as follows:

"(e) Other penalties. Except for a violation of Article 106, when death is an authorized punishment for an offense, all other punishments authorized under R.C.M. 1003 are also authorized for that offense, including confinement for life with or without eligibility for parole, and may be adjudged in lieu of the death penalty, subject to limitations specifically prescribed in the Manual. A sentence of death includes a dishonorable discharge or dismissal as appropriate. Confinement is a necessary incident of a sentence of death, but not part of it."

The Analysis accompanying R.C.M. 1004(e) is amended by inserting the following at the end thereof:

"1999 Amendment: This change resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1629, 1759 (1997)."

The Discussion following R.C.M. 1006(c) is amended to read as follows:

"A proposal should state completely each kind and, when appropriate, amount of authorized punishment proposed by that member. For example, a proposal of confinement for life would state whether it is with or without eligibility for parole. See R.C.M. 1003(b)."

The Analysis accompanying R.C.M. 1006(c) is amended by inserting the following at the end thereof:

"1999 Amendment: This change to the discussion resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998,

Public Law 105-85, 111 Stat. 1629, 1759 (1997)."

R.C.M. 1006(d)(4)(B) is amended to read as follows:

"(B) Confinement for life with or without eligibility for parole or more than 10 years. A sentence which includes confinement for life with or without eligibility for parole or more than 10 years may be adjudged only if at least three-fourths of the members present vote for that sentence."

The Analysis accompanying R.C.M. 1006(d)(4)(B) is amended by inserting the following at the end thereof:

"1999 Amendment: This change resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1629, 1759 (1997)."

R.C.M. 1009(e)(3)(B)(ii) is amended to read as follows:

"(ii) In the case of a sentence which includes confinement for life, with or without eligibility for parole, or more than 10 years, more than one-fourth of the members vote to reconsider; or"

The Analysis accompanying R.C.M. 1009(e)(3)(B)(ii) is amended by inserting the following at the end thereof:

"1999 Amendment: This change resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1629, 1759 (1997)."

The second paragraph of the Discussion following R.C.M. 1107(d) is amended to read as follows:

"When mitigating forfeitures, the duration and amounts of forfeiture may be changed as long as the total amount forfeited is not increased and neither the amount nor duration of the forfeitures exceeds the jurisdiction of the court-martial. When mitigating confinement or hard labor without confinement, the convening authority should use the equivalencies at R.C.M. 1003(b)(6) and (7), as appropriate. One form of punishment may be changed to a less severe punishment of a different nature, as long as the changed punishment is one that the court-martial could have adjudged. For example, a sentence of death may be changed to confinement for life with or without eligibility for parole and a sentence of confinement for life without eligibility for parole may be changed to confinement for life with eligibility for parole or to confinement for a term of years. Also a bad-conduct discharge adjudged by a special court-martial may be changed to confinement for 6 months (but not vice versa). A pretrial agreement may also affect what punishments may be changed by the convening authority."

The Analysis accompanying R.C.M. 1107(d) is amended by inserting the following at the end thereof:

"1999 Amendment: This change to the discussion resulted from the enactment of Article 56a, UCMJ, in section 581 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, 111 Stat. 1629, 1759 (1997)."

M.R.E. 407 retains its wording as it existed on December 1, 1997.

The Analysis accompanying M.R.E. 407 is amended as follows:

"1999 Amendment: The amendment to Federal Rule of Evidence 407, effective December 1, 1997 does not apply. The Committee agrees with the Federal Advisory Committee that the rule applies only to changes made after the event that gave rise to the specification and that measures taken prior to the event do not fall within the exclusionary scope of Rule 407.

However, the Committee believes the rule's current language is more appropriate for a criminal rule of evidence."

M.R.E. 415 is deleted by amending the Rule to read as follows:

"Rule 415. Evidence of similar acts in civil cases concerning sexual assault or child molestation (Does not apply)."

The Analysis accompanying M.R.E. 415 is created as follows:

"1999 Amendment: The Rule was deleted because of its inapplicability to courts-martial."

All "Sample specification(s)" subparagraphs in the Punitive Articles (Part IV, MCM) are amended as follows:

"19 _____" is deleted and replaced by "19 _____"

Paragraph 43a(4) is amended to read as follows:

"(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson; is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life with or without eligibility for parole as a court-martial may direct."

Paragraph 43e(1), is amended to read as follows:

"(1) Article 118(1) or (4)—death. Mandatory minimum—imprisonment for life with eligibility for parole."

Paragraph 45e(3) is amended to read as follows:

"(3) Carnal knowledge with a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole."

Paragraph 51e(1) is amended to read as follows:

"(1) By force and without consent. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole."

Paragraph 51e(3) is amended to read as follows:

"(3) With a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole."

Paragraph 92e is amended to read as follows:

"e. Maximum punishment. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole."

Paragraph 35a(2) is amended (contingent on the prior passage of implementing legislation) to read as follows:

"(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis, shall be punished as a court-martial may direct."

Paragraph 35b(2)(c) is amended (contingent on the prior passage of implementing legislation) to read as follows:

"(c) the alcohol concentration in the accused's blood or breath was 0.08 grams of alcohol per 100 milliliters of blood or 0.08 grams of alcohol per 210 liters of breath, or greater, as shown by chemical analysis."

[Note: If injury resulted add the following element:]

Paragraph 35f is amended (contingent on the prior passage of implementing legislation) to read as follows:

"f. Sample specification.

In that XXXX (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____, (in the motor pool area) (near the Officer's Club) (at the intersection of _____ and _____) (while in the Gulf of Mexico) (while in flight over North America) physically control [a vehicle, to wit: (a truck) (a passenger car) _____] [an aircraft, to wit: (an AH-64 helicopter) (an F-18 fighter) (a KC-135 tanker) _____] [a vessel, to wit: (the aircraft carrier USS _____) (the Coast Guard Cutter _____) _____], [while drunk] [while impaired by _____] [while the alcohol concentration in his/her blood was 0.08 grams of alcohol per 100 milliliters of blood or greater] (breath was 0.08 grams of alcohol per

210 liters of breath or greater) as shown by chemical analysis] [in a (reckless) (wanton) manner by (attempting to pass another vehicle on a sharp curve) (by ordering that the aircraft be flown below the authorized altitude)] and did thereby cause said (vehicle) (aircraft) (vessel) to (strike and) (injure _____)].

The following paragraph is added (contingent on the prior passage of implementing legislation) at the end of the existing Analysis to Article 111, Appendix 23, MCM:

"1999a Amendment: Subparagraphs a, b, and f were amended to implement the amendment to 10 U.S.C. 911 (Article 111, UCMJ) contained in section XXX of the National Defense Authorization Act of Fiscal Year 199X, Public Law XXX, XXX Stat. XXX, XXX (199X). The amendment provides a blood/alcohol blood/breath concentration of 0.08 or more as a per se standard of illegal intoxication. The change will not, however, preclude prosecution where no chemical test is taken or even where the results of the chemical tests are below the statutory limits, where other evidence of intoxication is available."

Dated: May 5, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 98-12337 Filed 5-8-98; 8:45 am]
BILLING CODE 5000-04-U

DEPARTMENT OF DEFENSE

Office of Secretary

Meeting of the Defense Environment Response Task Force (DERTF)

AGENCY: Office of the Deputy Under Secretary of Defense (Environmental Security).

ACTION: Notice of business meeting and hearing.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a business meeting and hearing of the Defense Environment Response Task Force (DERTF). The DERTF is charged with studying and providing findings and recommendations on environmental response actions at military installations being closed or realigned. This meeting is a follow-up to the January 27-29, 1998, meeting. The DERTF will discuss issues related to BRAC funding and the progress of BRAC cleanup, environmental actions at BRAC installations beyond remedy in place, institutional controls, information management, other matters related to cleanup at closing military installations,

and the Task Force's FY98 Report to Congress. The DERTF will also be briefed on the cleanup program at Glenview Naval Air Station, Illinois. The business meeting and hearing will be open to the public. Public witnesses desiring to speak before the DERTF should contact Shah Choudhury, Executive Secretary, and prepare a written statement that can be summarized orally before the DERTF at the time to be fixed for public witnesses. Written statements must be received by the close of business June 22, 1998, at the Office of the Under Secretary of Defense (Environmental Security).

DATES: July 21, 1998, 9:30 a.m. to 8:30 p.m.; July 22, 1998, 8:00 a.m. to 8:00 p.m.; July 23, 1998, 9:00 a.m. to 5:00 p.m.

PUBLIC COMMENT PERIOD: July 22, 1998, 7:00 p.m. to 8:00 p.m.

ADDRESSES: Northshore Doubletree Hotel, 9599 Skokie Blvd., Skokie, Illinois 60077.

FOR FURTHER INFORMATION CONTACT: Mr. Shah Choudhury, Executive Secretary, Office of the Deputy Under Secretary of Defense (Environmental Security), 3400 Defense Pentagon, Washington, DC 20301-3400; telephone (703) 697-7475; e-mail choudhsa@acq.osd.mil.

Dated: May 5, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 98-12324 Filed 5-8-98; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act, (Pub. L. 92-463).

DATES: May 19, 1998.

ADDRESSES: NSF Board Room (Room 1235), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

PROPOSED SCHEDULE AND AGENDA: The Presidential Advisory Committee will meet in open session from approximately 8:30 a.m. to 11:30 a.m. and 1:00 p.m. to 4:00 p.m. on May 19, 1998. This meeting will include discussions on High Performance Computing in Asia and the status of the Presidential Advisory Committee draft interim report to the President on information technology. Time will also be allocated during the meeting for public comments by individuals and organizations.

FOR FURTHER INFORMATION: The National Coordination Office for Computing, Information, and Communications provides information about this Committee on its web site at: <http://www.ccic.gov>; it can also be reached at (703) 306-4722. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: May 5, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 98-12339 Filed 5-8-98; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

OASD(HA) TRICARE Management Activity (TMA), Information Management, Technology and Reengineering (IMT&R); Meeting of the Military Health System Health Data Administration Program

AGENCY: Department of Defense, OASD(HA), TRICARE Management Activity.

ACTION: Notice.

SUMMARY: Notice is hereby given of the Military Health System Data Administration Conference. The purpose of the conference is to bring Military Health System representatives together with Federal health agencies and industry leaders to discuss data standardization and data and information sharing. Specific objectives include sharing of the DoD/MHS data administration goals, products and status with industry and providing opportunity to partner with industry to improve the sharing of health data and information. In addition, this conference will provide the opportunity to exchange current data sharing initiatives and identify opportunities to use and influence industry standards. This conference will be open to the public and advance registration is required.

DATES: May 20-21, 1998.

ADDRESSES: Uniformed Services University of the Health Sciences, Bethesda, MD unless otherwise published.

FOR FURTHER INFORMATION CONTACT: Mr. Marco Johnson, Chief Data Administration, TRICARE Management Activity, Information Management Technology & Reengineering, Six Skyline Place, Suite 817, 5109 Leesburg Pike, Falls Church, VA 22041-3206; telephone (703) 681-5611.

SUPPLEMENTARY INFORMATION: Business sessions are scheduled between 8:00 am and 4:30 pm. on Wednesday, May 20, 1998 and 8:00 am and 4:30 pm on Thursday, May 21, 1998. All Conference and registration information can be found on the World Wide Web at <http://www.ha.osd.mil> under "Conferences" and then, "MHS Data Administration Conference." If you have additional questions concerning registration, the agenda, or directions and maps, please contact Elaine L. Powell, CMP, in the MHS Data Administration Conference Support Office at (703) 575-5024.

Dated: May 1, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 98-12336 Filed 5-8-98; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board Action: Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

Date of Meeting: June 17, 1998 from 0830 to 1730 and June 18, 1998 from 0800 to 1530.

Place: Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of \$1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Amy Levine, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696-2124.

Dated: May 5, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 98-12338 Filed 5-8-98; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.
ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Army is amending three systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective without further notice on June 19, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060-5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806-4390 or DSN 656-4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 5, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

AMENDMENTS
A0210-7a CFSC

SYSTEM NAME:

Vendor Misconduct/Fraud/
Mismanagement Information Exchange
Program (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0210-7a TAPC'.

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474. Segments exist at Army activities and nonappropriated fund instrumentalities. Addresses of which may be obtained from the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474.'

RECORD SOURCE CATEGORIES:

Delete from entry '(e.g. Army Regulation 15-6)' and 'issued pursuant to Defense Acquisition Regulation 1-608'.

A0210-7a TAPC

SYSTEM NAME:

Vendor Misconduct/Fraud/
Mismanagement Information Exchange
Program.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474. Segments exist at Army activities and nonappropriated fund instrumentalities. Addresses of which may be obtained from the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are identified in reports of vendor misconduct, fraud, or mismanagement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals; companies represented; reports of misconduct, fraud or mismanagement in procurement efforts concerning military installations/activities; similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To provide management officials of nonappropriated fund activities and commissaries with timely and useful information regarding incidents of vendor misconduct, fraud, and/or mismanagement and of individuals

involved in such incidents through the collection, exchange and dissemination of relevant information to DoD components so as to permit informed responsible procurement decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name of individual, vendor, or company.

SAFEGUARDS:

Records are maintained in combination lock file safes when not under personal supervision of responsible officials.

RETENTION AND DISPOSAL:

Destroyed two years after final determination is rendered on case.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474.

Individual should provide full name, name of company, current address and telephone number, sufficient detail concerning incident or event to facilitate locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474.

Individual should provide full name, name of company, current address and telephone number, sufficient detail

concerning incident or event to facilitate locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Copies of reports of audits, inspections, administrative investigations; summaries of criminal reports received from Army Staff agencies, major Army commands, or the Army and Air Force Exchange Service, and/or Department of Defense agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0210-7b CFSC

SYSTEM NAME:

Commercial Solicitation Ban Lists
(February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0210-7b TAPC'.

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474.

A0210-7b TAPC

SYSTEM NAME:

Commercial Solicitation Ban Lists.

SYSTEM LOCATION:

Centralized list of commercial solicitors banned from Army installations is maintained at the U.S. Total Army Personnel Command. Segments exist at Army installations where commanders have banned agents. Listing of those so banned is furnished to Major Army Commands; addresses may be obtained from the U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual whose on-base commercial solicitation privileges have been withdrawn.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, name of company represented, approval/disapproval of business solicitation action on Army posts, camps, and stations; requests for

and authorization of accreditation and removal of accreditation of companies, agents, vendors, salesmen, and solicitors; related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To maintain listing of agents/companies whose business solicitation privileges have been banned or suspended from military bases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By agent's/company's name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to designated officials who have a need in the performance of their official duties.

RETENTION AND DISPOSAL:

Records supporting the denial or suspension of solicitation privileges are retained for 10 years and then destroyed by shredding. Auxiliary and/or non-adverse action records are retained until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474 or to the installation commander who banned their solicitation privileges.

Individual should provide full name, name of company represented, current

address and telephone number, sufficient details to permit locating the records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474.

Individual should provide full name, name of company represented, current address and telephone number, sufficient details to permit locating the records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agent's/company's name, circumstances leading to banning action, investigatory reports, other Army records and reports, similar relevant documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0680-31a TAPC

SYSTEM NAME:

Officer Personnel Management Information System (OPMIS) (February 22, 1993, 58 FR 10172).

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals projected for entrance into the Active officer corps, active duty commissioned and warrant officers, officers in a separated or retired status, activated/mobilized U.S. Army Reserve and National Guard officers, and DoD civilians and military officers who serve as rating officials on the Officer Evaluation Reports (OERs) of Army officers.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The Total Army Personnel Data Base - Active Officer (TAPDB-AO) is the active officer component data base of Total Army Personnel Data Base. It is comprised of approximately 100 data tables containing the official automated personnel records for active component Army officers. Data maintained in the Total Army Personnel Data Base - Active Officer includes Social Security

Number, name, grade, personal and family information, service, security clearance, assignment history, strength management data, civilian and military education, awards, training, branch and occupational specialties/areas of concentration, mailing addresses, physical location, languages, career pattern, performance, command and promotion history, retirement/separation information and service agreement information. TAPDB-AO is updated in both on-line and batch mode from various source data bases and applications including the Standard Installation Division Personnel System (SIDPERS), the Total Officer Personnel Management Information System (TOPMIS), the Officer Evaluation Reporting System (OERS) and Accessions Management Information Systems (AMIS).

Accessions Management Information Systems (AMIS) contains selected officer personnel data from the Total Army Personnel Data Base - Active Officer, the date of entry on active duty, selected information regarding current location/school for pre-accessed officers, demographic data and assignment information on new officer accessions. It includes individual and mass record processing, erroneous record processing, report generation, Regular Army integration processing, Accessions Management Information Systems (AMIS) active record data, Officer Record Brief (ORB) information and strength data. Accessions Management Information Systems (AMIS) is used to manage Reserve Officer Training Corps (ROTC), U.S. Military Academy (USMA), Officer Candidate School (OCS), Judge Advocate General Corps (JAG) Recalls, Chaplains Corps, Warrant Officer and Surgeon General Reserve officers accessions. Accessions Management Information Systems (AMIS) data is stored on the Total Army Personnel Data Base - Active Officer. Some users enter new accession data directly to the Total Army Personnel Data Base - Active Officer via Accessions Management Information Systems (AMIS). For Reserve Officer Training Corps (ROTC), and U.S. Military Academy (USMA) new accessions, data extracts are batch loaded to the Total Army Personnel Data Base - Active Officer annually.

Assignments and Training Selection for Reserve Officer Training Corps (ROTC) graduates contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO), the cadet's preference statement for specialty (branch), duty and initial training; Reserve Forces duty

or delay selection, Regular Army selection and branch selection.

The Officer Evaluation Reporting System (OERS) contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO); selection board status; OER suspense indicator for action being taken to obtain missing or erroneous OERs; selected information for each OER; and the name, Social Security Number, and rating history of each individual, military and civilian, who has served as the senior rating official for an active duty Army officer.

Total Officer Personnel Management Information System (TOPMIS) provides the display and update of selected data on Total Army Personnel Data Base - Active Officer (TAPDB-AO) and comprises an extensive variety of automated officer personnel management functions. These functions include, officer personnel record display and update, requisition validation and processing, active officer strength management, Officer Distribution Plan (ODP) goaling management, officer asset reports, centralized command slate development, assignment stabilization break processing, electronic mail, Officer Record Brief (ORB) display and interactive telephonic/voice response retrieval of selected information from Total Army Personnel Data Base - Active Officer (TAPDB-AO).

Reserve Officer Training Corps (ROTC) Instructor File contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO) and the following information pertaining to ROTC instructors: ROTC detachment, duty station, date assigned to ROTC detachment, date projected to be reassigned. This information is maintained in a local data base by the Cadet Command Distribution Account Manager in Officer Distribution Division, OPMD, TAPC-OPD-O.

Advanced Civil Schools Management Information System (ACSMIS) contains selected information from the Total Army Personnel Data Base - Active Officer and the following information concerning commissioned and warrant officer personnel currently participating, or who have previously participated, in one of the following: Army sponsored college degree completion program, Training With Industry (TWI) program, special fellowship/scholarship programs, or the fully funded degree program. Data maintained also includes schooling start/stop dates, degree level, educational discipline and Army duty positions.

Army Education Requirements System (AERS) contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO) for officer and warrant officer personnel who are serving or are projected to serve in an AERS approved position requiring graduate level education.

U.S. Army Military Academy (USMA) Potential Instructor File contains selected information from the OMF and the following information pertaining to previous, current, and potential instructors for the USMA teaching staff; academic department and projected availability for USMA instructor duty. This information is maintained in a local data base by the USMA Distribution Account Manager in Officer Distribution Division, OPMD, TAPC-OPD-O.

A0680-31a TAPC

SYSTEM NAME:

Officer Personnel Management Information System (OPMIS).

SYSTEM LOCATION:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals projected for entrance into the Active officer corps, active duty commissioned and warrant officers, officers in a separated or retired status, activated/mobilized U.S. Army Reserve and National Guard officers, and DoD civilians and military officers who serve as rating officials on the Officer Evaluation Reports (OERs) of Army officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Total Army Personnel Data Base - Active Officer (TAPDB-AO) is the active officer component data base of Total Army Personnel Data Base. It is comprised of approximately 100 data tables containing the official automated personnel records for active component Army officers. Data maintained in the Total Army Personnel Data Base - Active Officer includes Social Security Number, name, grade, personal and family information, service, security clearance, assignment history, strength management data, civilian and military education, awards, training, branch and occupational specialties/areas of concentration, mailing addresses, physical location, languages, career pattern, performance, command and promotion history, retirement/separation information and service

agreement information. TAPDB-AO is updated in both on-line and batch mode from various source data bases and applications including the Standard Installation Division Personnel System (SIDPERS), the Total Officer Personnel Management Information System (TOPMIS), the Officer Evaluation Reporting System (OERS) and Accessions Management Information Systems (AMIS).

Accessions Management Information Systems (AMIS) contains selected officer personnel data from the Total Army Personnel Data Base - Active Officer, the date of entry on active duty, selected information regarding current location/school for pre-accessed officers, demographic data and assignment information on new officer accessions. It includes individual and mass record processing, erroneous record processing, report generation, Regular Army integration processing, Accessions Management Information Systems (AMIS) active record data, Officer Record Brief (ORB) information and strength data. Accessions Management Information Systems (AMIS) is used to manage Reserve Officer Training Corps (ROTC), U.S. Military Academy (USMA), Officer Candidate School (OCS), Judge Advocate General Corps (JAG) Recalls, Chaplains Corps, Warrant Officer and Surgeon General Reserve officers accessions. Accessions Management Information Systems (AMIS) data is stored on the Total Army Personnel Data Base - Active Officer. Some users enter new accession data directly to the Total Army Personnel Data Base - Active Officer via Accessions Management Information Systems (AMIS). For Reserve Officer Training Corps (ROTC), and U.S. Military Academy (USMA) new accessions, data extracts are batch loaded to the Total Army Personnel Data Base - Active Officer annually.

Assignments and Training Selection for Reserve Officer Training Corps (ROTC) graduates contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO), the cadet's preference statement for specialty (branch), duty and initial training; Reserve Forces duty or delay selection, Regular Army selection and branch selection.

The Officer Evaluation Reporting System (OERS) contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO); selection board status; OER suspense indicator for action being taken to obtain missing or erroneous OERs; selected information for each OER; and the name, Social Security

Number, and rating history of each individual, military and civilian, who has served as the senior rating official for an active duty Army officer.

Total Officer Personnel Management Information System (TOPMIS) provides the display and update of selected data on Total Army Personnel Data Base - Active Officer (TAPDB-AO) and comprises an extensive variety of automated officer personnel management functions. These functions include, officer personnel record display and update, requisition validation and processing, active officer strength management, Officer Distribution Plan (ODP) goaling management, officer asset reports, centralized command slate development, assignment stabilization break processing, electronic mail, Officer Record Brief (ORB) display and interactive telephonic/voice response retrieval of selected information from Total Army Personnel Data Base - Active Officer (TAPDB-AO).

Reserve Officer Training Corps (ROTC) Instructor File contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO) and the following information pertaining to ROTC instructors; ROTC detachment, duty station, date assigned to ROTC detachment, date projected to be reassigned. This information is maintained in a local data base by the Cadet Command Distribution Account Manager in Officer Distribution Division, OPMD, TAPC-OPD-O.

Advanced Civil Schools Management Information System (ACSMIS) contains selected information from the Total Army Personnel Data Base - Active Officer and the following information concerning commissioned and warrant officer personnel currently participating, or who have previously participated, in one of the following: Army sponsored college degree completion program, Training With Industry (TWI) program, special fellowship/scholarship programs, or the fully funded degree program. Data maintained also includes schooling start/stop dates, degree level, educational discipline and Army duty positions.

Army Education Requirements System (AERS) contains selected information from the Total Army Personnel Data Base - Active Officer (TAPDB-AO) for officer and warrant officer personnel who are serving or are projected to serve in an AERS approved position requiring graduate level education.

U.S. Army Military Academy (USMA) Potential Instructor File contains

selected information from the OMF and the following information pertaining to previous, current, and potential instructors for the USMA teaching staff; academic department and projected availability for USMA instructor duty. This information is maintained in a local data base by the USMA Distribution Account Manager in Officer Distribution Division, OPMD, TAPC-OPD-O.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used for personnel management strength accounting, manpower management, accessioning and determining basic entry specialty (branch) and initial duty assignments; tracking Officer Evaluation Reports, the rating history of senior rating official's rating history on individual OERs producing reports on active duty officers who have served as senior rating officials; managing instructor population at ROTC detachments and USMA; tracking information relating to the Army Degree Completion Civil School Program; transmitting necessary assignment instructions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Social Security Administration to verify Social Security Numbers.

To the Smithsonian Institution (The National Museum of American History): Copy of the U.S. Army Active Duty Register, for historical research purposes (not authorized for public display).

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronically on computer magnetic tapes and disc.

RETRIEVABILITY:

By Social Security Number, name, or other individual identifying characteristics.

SAFEGUARDS:

Physical security devices, guards, computer hardware and software features, and personnel clearances. Automated media and information are protected by authorized user ids, passwords for the system, a tiered system of security for access to officer data provided via Interactive Voice Response Systems based on the sensitivity of the data items provided, encryption of data transmitted via networks, controlled access to operator rooms and controlled output distribution.

RETENTION AND DISPOSAL:

Records are retained on the active TAPDB-AO files for 4 months after separation. Historical TAPDB-AO records are retained dating back to FY 1970. Accessions in AMIS are retained on active file until effective date of accession and are then placed on a history file for a period of 6 months. Records in the ROTC Graduate Assignment and Training Selection File are retained for approximately 400 days after the file is created (approximately December each year). Historic files for the OER system are kept for the life of the system. All other records are retained for active duty only until the individual is released from active duty and then destroyed. There are still hard copies in their Official Military Personnel Files (OMPFs).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

Selected data from the Total Army Personnel Data Base - Active Officer is also accessible to records subjects through an Interactive Voice Response Systems (IVRS). Access to the data made available through the IVRS is controlled by a tiered security system which is based on the sensitivity of the data being accessed.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, other Federal agencies and departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98-12323 Filed 5-8-98; 8:45 am]

BILLING CODE 5000-04-F

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Laboratory Operations Board
Date and Time: Wednesday, May 20, 1998, 8:30 A.M.—4:30 P.M.

Place: Brookhaven National Laboratory, Medical Building 490, Large Conference Room, Upton, Long Island, New York.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB-1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-1709.

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide advice to the Secretary of Energy Advisory Board

regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Wednesday, May 20, 1998

8:30-8:45 A.M.—Opening Remarks—Co-Chairs: Dr. John McTague and Under Secretary Dr. Ernest Moniz
8:45-9:15 A.M.—Status Report on Secretarial Commitments—Dr. Martha Krebs, Director of the Office of Energy Research and Vice Chair of the DOE R&D Council
9:15-10:00 A.M.—Presentation of the Small Laboratory Study—Dr. John McTague, Co-Chair
10:00-10:30 A.M.—Laboratory Director's Presentation & Discussion—Dr. John Marburger, Director, Brookhaven National Laboratory
10:30-12:30 P.M.—Site Tour (LOB Members only)
12:30-1:30 P.M.—Lunch
1:30-2:15 P.M.—Presentation of the Peer Review Study—Dr. Paul Gilman
2:15-3:30 P.M.—Discussion of Laboratory Operations Board Tasks
3:30-4:00 P.M.—DOE's Science & Technology Direction—Dr. Ernest Moniz, Co-Chair
4:00-4:30 P.M.—Public Comment Period
4:30 P.M.—Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation: The Chairman of the Laboratory Operations Board is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Upton, Long Island, New York, the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Laboratory Operations Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB-1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E-190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Laboratory Operations Board may also be found at the Secretary of Energy Advisory Board's web site, located at <http://www.hr.doe.gov/seab>.

Issued at Washington, D.C., on May 6, 1998.

Rachel M. Samuel,
Deputy Advisory Committee Management Officer.

[FR Doc. 98-12412 Filed 5-8-98; 8:45 am]

BILLING CODE 6450-01-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-199-000]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

May 5, 1998.

Take notice that on April 30, 1998, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective June 1, 1998:

First Revised Sheet No. 41
First Revised Sheet No. 42
First Revised Sheet No. 43

Discovery states that the revised tariff sheets eliminate the current requirement that a producer must have committed production to Discovery prior to January 1, 1997, in order to qualify for service under Discovery's FT-2 Rate Schedule. Discovery proposes to make FT-2 service available to any potential shipper that commits production to Discovery, to the extent that firm capacity is available in the pipeline system. Shippers that enter into FT-2 Service Agreements with Discovery must provide a good faith estimate of their production and provide documentation to support the production within eighteen (18) months after committing the production. Discovery's proposal is in response to requests from potential shippers that wish to receive FT-2 service.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12365 Filed 5-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-204-000]

Eastern Shore Natural Gas Company; Notice of Filing

May 5, 1998.

Take notice that on May 1, 1998 Eastern Shore Natural Gas Company (Eastern Shore) tendered a filing to terminate its Account No. 191—Unrecovered Purchased Gas Costs as of October 31, 1997, and to refund the balance in such account to its customers. Eastern Shore states that such termination is the result of Eastern Shore's conversion to a Part 284 open access transportation pipeline and the implementation of its new open access FERC Gas Tariff on November 1, 1997, (see 81 FERC ¶ 61,013).

Eastern Shore states that Section 38—Transition Cost Recovery Mechanism, of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, Second Revised Volume No. 1, effective November 1, 1997, provides for the recovery of costs incurred as a result of implementing, in connection with implementing, or attributable to the requirements of the Commission's Order No. 636, such costs being referred to as "transition costs". The Commission identified four specific types of transition costs: (1) Account No. 191 costs; (2) Gas Supply Realignment Costs; (3) Stranded Costs; and (4) certain new facilities. This filing, however, pertains only to the first category described above, Account No. 191 costs.

Eastern Shore further states that Section 38(A) of the GT&C permits Eastern Shore to direct bill a customer,

in the case of a positive (debit) Account No. 191 balance, or refund a customer, in the case of a negative (credit) Account No. 191 balance, that customer's share of the total unrecovered costs contained in Eastern Shore's Account No. 191. The portion of unrecovered costs that relate to demand shall be allocated on the basis of each particular customer's contract demand quantity under Eastern Shore's former CD-1 or CD-E rate schedule in effect on October 31, 1997, the day prior to the implementation of open access on Eastern Shore's system. The portion of unrecovered costs that relate to commodity shall be allocated on the basis of each particular customer's commodity purchases under Eastern Shore's former CD-1 or CD-E rate schedules for the period November 1, 1996 through October 31, 1997, the twelve months immediately preceding the implementation of open access on Eastern Shore's system.

Finally, Eastern Shore states that it is its intention to distribute refunds on July 1, 1998, and in anticipation of this date, has calculated the appropriate carrying charges through such date. Such refund date is intended to provide the Commission staff with sufficient time to review the information submitted in its filing.

Eastern Shore states that copies of the filing have been served upon its affected customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as on or before May 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12358 Filed 5-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11181-002 Oregon]

Energy Storage Partners; Errata Notice; Notice of Intent To Conduct Public Scoping Meetings and Site Visit

May 5, 1998.

The Notice of Intent to Conduct Public Scoping Meetings and Site Visit issued on April 27, 1998 (63 FR 24166, May 2, 1998), states that the times and locations of the scoping meetings are as follows:

"Agency Scoping Meeting

When: Thursday, May 28, 1998, From 9:00 a.m. until 12:00 p.m.

Where: Klamath County Museum, 1451 Main Street, Klamath Falls, OR 97601.

Public Scoping Meeting

When: Thursday, May 28, 1998, From 7:00 p.m. until 10:00 p.m.

Where: Klamath County Museum, 1451 Main Street, Klamath Falls, OR 97601"

The location for the 7:00 p.m. meeting has been changed to the Klamath County Library, 126 S. 3rd, Klamath Falls, Oregon.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12364 Filed 5-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-205-000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 5, 1998.

Take notice that on May 1, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the original and revised tariff sheets listed below proposing changes in rates for effectiveness on June 1, 1998:

Thirteenth Revised Sheet No. 21
Fourteenth Revised Sheet No. 22
Eleventh Revised Sheet No. 23
Original Sheet Nos. 336, 337 and 338

According to Granite State, the foregoing tariff sheets established a special surcharge on its existing Base tariff rates for firm and interruptible transportation services to recover the costs that Granite State will incur during the third extension its lease of

the pipeline owned by Portland Pipe Line Corporation (PPLC).

Granite State further states that it has leased a former oil pipeline from PPLC since 1986, converted it to natural gas transportation and has operated it pursuant to limited-term certificates issued by the Commission. It is said that the leased pipeline provides a link between Granite State's system at Portland, Maine, and the U.S.-Canadian border and provides transportation capacity used by Granite State's firm customers, Bay State Gas Company and Northern Utilities, Inc. to purchase and receive deliveries of Canadian gas.

According to Granite State, both Bay State Gas Company and Northern Utilities have subscribed for capacity on the Portland Natural Gas Transmission System (PNGTS) for transportation capacity that will replace their entitlements to capacity on the leased pipeline. It is further said that PNGTS has proposed an in-service date of November 1, 1998 but that there have been delays in the construction schedule, raising concerns that the project will not be available for service at the beginning of the heating season. Granite State further states that its transportation customers, particularly Northern Utilities, must have access to the transportation capacity on the leased pipeline or on PNGTS at the beginning of the 1998-99 heating season.

According to Granite State, it has negotiated an arrangement with PPLC pursuant to which the leased line can be activated again for natural gas transportation service on November 1, 1998, and continuing thereafter until April 30, 1999.

Granite State further states that, under the extended lease, it will incur costs for rental payments, costs for purging gas from the leased line and for Letters of Credit in favor of PPLC. Granite State states that it is obligated to make a rental payment of \$1.5 million to PPLC in one installment on October 25, 1998 and a payment of \$5.5 million in reconversion costs. If the line is activated for gas transportation service on November 1, 1998, Granite State will be charged \$301,000 in fixed monthly rent for the use of the leased pipeline, plus \$0.078 per MMBtu of gas throughput. Granite State's total cost exposure, if it uses the leased line for the full period of the lease extension until April 30, 1999, is approximately \$10.1 million.

Granite State proposes to recover the lease related costs over a 12-month

period through the special surcharge on its Base Tariff rates which will be derived pursuant to the methodology described in a new provision, Section 34, added to the General Terms and Conditions of its FERC Gas Tariff.

According to Granite State, copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12374 Filed 5-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-201-000]

Gulf States Transmission Corporation; Notice of Compliance Filing

May 5, 1998.

Take notice that on May 1, 1998, Gulf States Transmission Corporation (Gulf States), tendered for filing the original and revised tariff sheets listed in Appendix A to the filing. Gulf States proposes that the foregoing tariff sheets be made effective on June 1, 1998.

Gulf States states that this filing is in compliance with the Federal Energy Regulatory Commission's Order on Requests for Waiver, issued in Docket No. RP97-174-001, on April 30, 1997. Gulf States Transmission Corporation, et al., 79 FERC ¶ 61,102 (1997). Gulf States further states that the tariff sheets implement the standards for Electronic Data Interchange/Electronic Data Mechanism and capacity release promulgated by the Gas Industry Standards Board and adopted by the

Federal Energy Regulatory Commission in Order Nos. 587, et al.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 384.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12367 Filed 5-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-200-000]

KO Transmission Company; Notice of Petition for Waiver

May 5, 1998.

Take notice that on April 30, 1998, KO Transmission Company (KO Transmission) tendered for filing a petition for waiver of the electronic communications and Internet transaction requirements of the Commission's Order Nos. 587-B, 587-C and 587-G.

KO Transmission states that copies of this petition has been served on each of KO Transmission's customers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.
David P. Boergers,
Acting Secretary.
[FR Doc. 98-12366 Filed 5-8-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-9-16-000]

National Fuel Gas Supply Corporation;
Notice of Tariff Filing

May 5, 1998.

Take notice that on April 30, 1998, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Tenth Revised Sheet No. 9, with a proposed effective date of May 1, 1998.

National states that under Article II, Section 2, of the approved settlement at Docket Nos. RP94-367-000, et al., National is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG Rate of 10 cents per dth.

National further states that, as required by Article II, Section 4, National is filing a revised tariff sheet within 30 days of the effective date for the revised IG rate.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.
[FR Doc. 98-12376 Filed 5-8-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-202-000]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

May 5, 1998.

Take notice that on May 1, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Tenth Revised Sheet No. 22, to be effective June 1, 1998.

Natural states that the filing if submitted pursuant to Section 21 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1 (Section 21), as the tenth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in this filing.

Natural requested specific waivers of Section 21 and the Commission's Regulations, including the requirements of Section 154.63, to the extent necessary to permit the tendered tariff sheet to become effective June 1, 1998.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.
[FR Doc. 98-12371 Filed 5-8-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-203-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 1998.

Take notice that on May 1, 1998, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets set forth in Appendix A to the filing to effectuate changes in the rates and terms applicable to Northern's jurisdictional service. The effect of the rate case is an overall increase in revenues of approximately \$35 million above the Base Period revenues. Northern also is submitting several proposals to enhance service flexibility and operational and economic efficiency on the Northern system.

Northern states that the changes reflected in the Revised Tariff Sheets to be effective June 1, 1998, are required to effectuate the rate increase and to make certain changes to Northern's tariff based on Northern's operating experience. Northern also proposes an effective date of November 1, 1998, for certain of the Revised Tariff Sheets which require additional business process and system changes for all parties prior to implementation. Finally, Northern proposes Pro Forma Tariff Sheets which reflect further changes to become effective on a prospective basis following a omission order on the merits or a settlement of this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.
[FR Doc. 98-12373 Filed 5-8-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-2-59-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 1998.

Take notice that on May 1, 1998, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff the following tariff sheets proposed to become effective on June 1, 1998:

Fifth Revised Volume No. 1

Eighth Revised Sheet No. 54
Seventh Revised Sheet No. 61
Seventh Revised Sheet No. 62
Seventh Revised Sheet No. 63
Seventh Revised Sheet No. 64

Northern states that the revised tariff sheets are being filed in accordance with the methodology set forth in Section 53 of Northern's General Terms and Conditions, Tariff Sheet Nos. 300-301 (as filed on April 29, 1997), which requires Northern to adjust its fuel percentages each June 1. Northern has also filed to adjust its Unaccounted for (UAF) gas in accordance with the PRA mechanism. Therefore, Northern has filed Eighth Revised Sheet No. 54 and Seventh Revised Sheet Nos. 61, 62, 63 and 64 to be effective June 1, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.
[FR Doc. 98-12375 Filed 5-8-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-396-000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

May 5, 1998.

Take notice that on April 28, 1998, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah, 84108, filed in Docket No. CP98-396-000 a request pursuant to §§ 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (187 CFR 157.205, 157.211, and 157.216) for approval to abandon an obsolete meter which has failed at the Georgetown Meter Station in Bear Lake County, Idaho, and to construct and operate a smaller replacement meter at this station to maintain the ability to accommodate existing firm deliveries for Intermountain Gas Company's affiliate, IGI Resources, under Applicant's blanket certificate issued in Docket No. CP82-433-000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to modify the Georgetown Meter Station by removing the three-inch positive displacement meter and appurtenances and installing a new two-inch rotary meter and appurtenances. Applicant asserts that as a result of this modification, the maximum design capacity of the meter station will decrease from 3,033 Dth per day to approximately 2,000 Dth per day at 150 psig. It is further asserted that the modified station will be adequate to accommodate historically experienced flow rates as well as the existing maximum daily delivery obligations at this delivery point. Applicant states that the total cost of the proposed facility replacement at the Georgetown meter Station is estimated to be \$15,750. Applicant indicates that because this expenditure is necessary to replace a failed and obsolete meter, Applicant

will not require reimbursement by Intermountain.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,
Acting Secretary.
[FR Doc. 98-12360 Filed 5-8-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98-10-000]

Venice Gathering System, L.L.C.; Notice of Filing

May 5, 1998.

Take notice that on April 29, 1998, Venice Gathering System, L.L.C. (Venice) filed standards of conduct under Order Nos. 497 *et seq.*¹ and Order Nos. 556 *et seq.*²

¹ Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986-1990 ¶ 30,820 (1988); Order No. 497-A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986-1990 ¶ 30,868 (1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986-1990 ¶ 30,908 (1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991-1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas v. FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497-D, *order on remand and extending sunset date*, FERC Stats. & Regs. 1991-1996 ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497-E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497-F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497-G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,996 (June 17, 1994).

² Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,997 (June 17, 1994).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 20, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12361 Filed 5-8-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6375-006]

H.E.E.D. Co., Inc.; Notice of Availability of Environmental Assessment

May 5, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed the revocation of the exemption for the Slaughterhouse Gulch Project, No. 6375-006. The Slaughterhouse Gulch Project is located on Slaughterhouse Gulch Creek in Twin Falls County, Idaho. The exemption is being revoked for failure to operate the project or to respond to requests to surrender the exemption. A Draft Environmental Assessment (DEA) was prepared, and the DEA finds that revoking the exemption would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426.

Please submit any comments within 30 days from the date of this notice. Any

(June 17, 1994); Order No. 566-A, order on rehearing, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566-B, order on rehearing, 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 6375-006 to all comments. For further information, please contact Ms. Hillary Berlin, at (202) 219-0038.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12363 Filed 5-8-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-315-000]

Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed 1998 Line KA Replacement Project and Request for Comments on Environmental Issues

May 5, 1998

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the 1998 Line KA Replacement Project.¹ This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including

the use of eminent domain, is attached to this notice as appendix 1.²

Summary of the Proposed Project

Columbia Gas Transmission Corporation (Columbia) proposes to abandon and replace about 5.5 miles of 20-inch-diameter pipeline in Pike County, Kentucky. About 4.9 miles of the existing pipeline would be abandoned by removal and replaced within Columbia's existing right-of-way. The remaining 0.6 mile of pipeline would be abandoned in place and replaced on newly acquired right-of-way to avoid steep slopes.

The project location is shown in appendix 2.

Land Requirements for Construction

Columbia would use a 75-foot-wide construction right-of-way for the entire project. Where the pipeline would be replaced on existing right-of-way, 50 feet of Columbia's existing right-of-way would be used for construction. Where the pipeline would be replaced on newly acquired right-of-way, Columbia would obtain a permanent 50-foot-wide easement and a 25-foot-wide temporary right-of-way. The new permanent right-of-way would be about 3.6 acres. Additional work areas would be required for road and stream crossings, access roads, staging areas, and pipeyards. The area of disturbance for the entire project would total about 77.4 acres.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage

² The appendices referenced in this notice are not being printed in the *Federal Register*. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

¹ Columbia Gas Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

them to comment on their areas of concern.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on pages 3 and 4 of this Notice.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Endangered and threatened species.
- Water resources and wetlands.
- Vegetation and wildlife.
- Land use.
- Cultural resources.
- Geology and soils.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. These issues may be changed based on your comments and our analysis.

- Eight residences are located within 50 feet of the construction right-of-way.
- One prehistoric site that is potentially eligible for the National Register of Historic Places lies within the project's area of potential effect.
- Most of the project area is underlain by deep coal mines.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow

these instructions to ensure that your comments are received in time and properly recorded;

- Send two copies of your letter to: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR-11.1;

- Reference Docket No. CP98-315-000; and

- Mail your comments so that they will be received in Washington, DC on or before June 5, 1998.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenor play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filing by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed having ended on April 29, 1998. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee in the Commission's Office of External Affairs at (202) 208-1088.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12359 Filed 5-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77-110]

Pacific Gas and Electric Company; Notice of Site Visit and Scoping Meetings Pursuant to the National Environmental Policy Act of 1969

May 5, 1998.

On April 17, 1998, the Federal Energy Regulatory Commission (Commission) issued notice of an application for amendment of the license for the Potter Valley Project (FERC No. 77-110) and of our intent to prepare an Environmental Impact Statement (EIS) in support of the Commission's decision in this matter. The proposed amendment involves changes in the minimum flow requirements at the project, located on the Eel and East Fork Russian River, in Lake and Mendocino Counties, California.

The purpose of this notice is to: (1) Advise all parties of upcoming site visits to the project area; (2) announce the dates, times, and locations of public and agency meetings to be held to assist staff in determining the appropriate scope of staff's environmental analysis; (3) seek additional information pertinent to this analysis; and (4) advise all parties of their opportunity for comment.

Project Site Visits

The licensee and the Commission staff will conduct site visits of the Potter Valley Project and other relevant areas on June 1-2, 1998. On June 1, downstream areas of the East Fork Russian River will be visited. On June 2, the Potter Valley Project and downstream areas of the Eel River will be visited. Times and meeting places are as follows.

Date: June 1, 1998.

Time: 1:00 p.m.-5:00 p.m.

Place: Sonoma County Water Agency, 2150 West College Avenue, Santa Rosa, CA 95401.

Date: June 2, 1998.

Time: 9:00 a.m.-5:00 p.m.

Place: Hoppers Corner, Main Street and Eel River Road, Potter Valley, CA 95469.

All interested individuals, nongovernmental organizations (NGO's), and agencies are invited to attend. All participants are responsible for their own transportation. For more details, interested parties should contact the Project Manager identified at the end of this notice prior to May 28, 1998.

Scoping Process

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be addressed in the environmental document to be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). A document entitled "Scoping Document" (SD) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, NGO's and other interested parties to effectively participate in and contribute to the scoping process. The SD provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of the analysis, and a list of preliminary issues identified by staff.

Scoping Meetings

The Commission staff will hold scoping meetings on June 3 and June 4, 1998, to facilitate its preparation of an EIS for the proposed amendment. The scoping meetings will be held in two locations in the general vicinity of the Potter Valley Project. On each date there will be two scoping meetings: One afternoon meeting and one evening meeting. The afternoon meetings will focus on resource agency concerns, whereas the evening meeting will focus on receiving input from the public. However, we invite all interested agencies, NGOs, and individuals to attend one or both of the meetings, and to assist staff in identifying the scope of environmental issues that should be analyzed in the EIS. The times and locations of these meetings are shown below.

Ukiah Scoping Meetings:

Date: June 3, 1998.
Time: 1:00-3:00 p.m.; 7:00-9:00 p.m.
Place: Ukiah Valley Conference Center, 200 S. School Street, Ukiah, CA 95482, (707) 686-4571.

Eureka Scoping Meetings:

Date: June 4, 1998.
Time: 1:00-3:00 p.m.; 7:00-9:00 p.m.
Place: Doubletree Inn Eureka, 1929 Fourth Street, Eureka, CA 95501, (707) 445-0844.

As mentioned previously a scoping document will be distributed to the parties on the Commission's mailing list. The SD should help focus discussions, by outlining the issues to be addressed at the meetings. Copies of the SD can also be obtained by contacting the Project Manager identified at the end of this notice.

Meeting Objectives

At the scoping meetings, the staff will:

- (1) Summarize the environmental issues

- (2) tentatively identified for analysis in the EIS;
- (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue;
- (3) encourage statements on environmental issues that should be analyzed in the EIS, including opinions in favor of, or in opposition to, the staff's preliminary list of issues;
- (4) determine the depth of analysis for issues addressed in the EIS; and
- (5) identify resource issues that will not require detailed analysis in the EIS.

The scoping meetings will be recorded by a court reporter, and all statements (oral and written) will become part of the Commission's public record for this proceeding. Before each meeting starts, all individuals who attend, especially those individuals that intend to make statements during the meeting, will be asked to sign in and clearly identify themselves for the record prior to speaking. Time allotted for presentations will be determined by staff based on the length of the meetings and the number of people wanting to speak. All individuals wishing to speak will be provided at least five minutes to present their views.

Interested parties who choose not to speak, or are unable to attend the scoping meetings, may provide written comments and information to the Commission until June 15, 1998. Written comments and information should be submitted to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The first page of all filings should indicate "Potter Valley Project, FERC No. 77-110" at the top of the page. All filings sent to the Secretary of the Commission should contain an original and eight copies. Failure to file an original and eight copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. Furthermore, participants in this proceeding are reminded that if they file comments with the Commission, they must serve a copy of their filing to the parties on the Commission's service list.

For further information, please contact the Project Manager, Dr. John M. Mudre at (202) 219-1208.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12362 Filed 5-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Public Outreach Meeting; Portland, OR**

May 5, 1998

The Office of Hydropower Licensing will hold a public Outreach Meeting in Portland, OR, on Tuesday, May 19, 1998. The Outreach Meeting is scheduled to start at 9:00 am and finish at 5:00 p.m.

The purpose of the Outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties with the Commission's hydropower licensing program. The topics for the Outreach Meeting are pre-licensing, licensing, and post-licensing procedures for hydroelectric projects in Oregon whose licenses expire between calendar years 2000 and 2010.

Staff from the Commission's Office of Hydropower Licensing will preside over the meetings.

The location of the Outreach Meeting is: Doubletree Hotel, 909 North Hayden Island Drive, Portland, OR 97217, (503) 283-4466.

Directions to Hotel: Take I-5 North to Exit #308/Jantzen Beach Center. You will drive by a large Safeway store to a stop light. Right on Hayden Island Dr., Hotel will be directly in front.

If you plan to attend, notify John Blair, Western Outreach Coordinator, fax: 202-219-2152; telephone: 202-219-2845 or Theresa Gibson (202) 219-2793.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12356 Filed 5-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Public Outreach Meeting; Tacoma, Washington**

May 5, 1998

The Office of Hydropower Licensing will hold a public Outreach Meeting in Tacoma, Washington, on Thursday, May 21, 1998. The Outreach Meeting is scheduled to start at 9:00 am and finish at 5:00 pm.

The purpose of the Outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties

with the Commission's hydropower licensing program. The topics for the Outreach Meeting are pre-licensing, licensing, and post-licensing procedures for hydroelectric projects in Washington whose licenses expire between calendar years 2000 and 2010.

Staff from the Commission's Office of Hydropower Licensing will preside over the meetings.

The location of the Outreach Meeting is: Sheraton Hotel, 1320 Broadway Plaza, Tacoma, WA 98402, (253) 591-4137.

Directions to Hotel: Take Interstate 5 to exit #133 City Center, Take Highway 705, following "City Center" signs toward the downtown area, Take the "A" street exit, Follow "A" street to 11th street, Turn left on 11th street, Go uphill to the second stoplight, Broadway, Turn left on Broadway, Go two blocks to 1320 Broadway and you will be in front of the hotel.

If you plan to attend, notify John Blair, Western Outreach Coordinator, fax: 202-219-2152; telephone: 202-219-2845 or Theresa Gibson (202) 219-2793.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12357 Filed 5-8-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Sunshine Act Meeting**

May 6, 1998.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 13, 1998, 10:00 a.m.

PLACE: Room 2C 888 First Street, N.E., Washington, D.C. 20426

STATUS: Open

MATTERS TO BE CONSIDERED: Agenda

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Acting Secretary, telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be

examined in the reference and information center.

Consent Agenda—Hydro 698th Meeting—May 13, 1998 Regular Meeting (10:00 A.M.)

- CAH-1. DOCKET# P-7481, 094, NYSD LIMITED PARTNERSHIP
- CAH-2. DOCKET# P-233, 023, PACIFIC GAS AND ELECTRIC COMPANY
- CAH-3. DOCKET# P-1862, 017, CITY OF TACOMA, WASHINGTON
- CAH-4. DOCKET# P-2584, 004, ROCHESTER GAS AND ELECTRIC CORPORATION
- CAH-5. OMITTED
- CAH-6. DOCKET# P-2496, 024, EUGENE WATER AND ELECTRIC BOARD
OTHER#S P-2496, 028, EUGENE WATER AND ELECTRIC BOARD
P-2496, 029, EUGENE WATER AND ELECTRIC BOARD

Consent Agenda—Electric

- CAE-1. DOCKET# ER98-2279, 000, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA, INC.
- CAE-2. DOCKET# ER98-2267, 000, DELMARVA POWER & LIGHT COMPANY
- CAE-3. DOCKET# ER98-2329, 000, CENTRAL VERMONT PUBLIC SERVICE CORPORATION
- CAE-4. DOCKET# ER98-2322, 000, SOUTHERN CALIFORNIA EDISON COMPANY
OTHER#S ER97-2355, 002, SOUTHERN CALIFORNIA EDISON COMPANY
ER97-2364, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER97-2364, 002, SAN DIEGO GAS & ELECTRIC COMPANY
ER98-2371, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER98-2375, 000, SAN DIEGO GAS & ELECTRIC COMPANY
- CAE-5. DOCKET# ER98-2259, 000, LSP ENERGY LIMITED PARTNERSHIP
- CAE-6. DOCKET# ER98-2305, 000, EDGAR ELECTRIC COOPERATIVE ASSOCIATION D/B/A ENERSTAR POWER CORP.
- CAE-7. DOCKET# ER98-2297, 000, PG&E ENERGY SERVICES
- CAE-8. DOCKET# ER90-390, 000, NORTHEAST UTILITIES SERVICE COMPANY
OTHER#S EL90-39, 000, CONNECTICUT LIGHT & POWER COMPANY AND WESTERN MASSACHUSETTS ELECTRIC COMPANY
ER90-373, 000, NORTHEAST UTILITIES SERVICE COMPANY
- CAE-9. DOCKET# OA96-75, 000, BLACK HILLS POWER AND LIGHT COMPANY
- CAE-10. DOCKET# EC98-17, 000, J. MAKOWSKI COMPANY, INC. AND TRANSCANADA OSP HOLDINGS LTD.
OTHER#S EC98-18, 000, USGEN NEW ENGLAND, INC., TRANSCANADA OSP HOLDINGS LTD. AND TRANSCANADA POWER MARKETING LTD.
- CAE-11. DOCKET# ER97-3189, 001, ATLANTIC CITY ELECTRIC COMPANY
OTHER#S ER97-3189, 002, BALTIMORE GAS AND ELECTRIC COMPANY
ER97-3189, 003, DELMARVA POWER & LIGHT COMPANY
ER97-3189, 004, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
ER97-3189, 005, PECO ENERGY COMPANY
ER97-3189, 006, POTOMAC ELECTRIC POWER COMPANY
ER97-3189, 007, PP&L, INC.
ER97-3189, 008, PUBLIC SERVICE ELECTRIC AND GAS COMPANY
- CAE-12. DOCKET# ER98-1232, 000, NEW ENGLAND POWER COMPANY
- CAE-13. DOCKET# ER98-1568, 000, POTOMAC ELECTRIC POWER COMPANY
OTHER#S ER97-3189, 013 JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
ER98-1569, 000, PP&L, INC.
ER98-1570, 000, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
ER98-1608, 000, DELMARVA POWER & LIGHT COMPANY
ER98-1609, 000, ATLANTIC CITY ELECTRIC COMPANY
ER98-1621, 000, PUBLIC SERVICE ELECTRIC AND GAS COMPANY
ER98-2011, 000, PECO ENERGY COMPANY
- CAE-14. DOCKET# ER98-2095, 000, CALIFORNIA POWER EXCHANGE CORPORATION
- CAE-15. DOCKET# ER97-2524, 001, HOUSTON LIGHTING & POWER COMPANY
OTHER#S ER97-3113, 001, TEXAS UTILITIES ELECTRIC COMPANY
- CAE-16. DOCKET# EL94-45, 002, LG&E-WESTMORELAND SOUTHAMPTON
OTHER#S ER97-656, 000, LG&E-WESTMORELAND SOUTHAMPTON
QF88-84, 007, LG&E-WESTMORELAND SOUTHAMPTON
- CAE-17. DOCKET# ER93-465, 019 FLORIDA POWER & LIGHT COMPANY
OTHER#S ER93-922, 011 FLORIDA POWER & LIGHT COMPANY
- CAE-18. DOCKET# EL96-65, 000, PENNSYLVANIA POWER & LIGHT COMPANY V. SCHUYLKILL ENERGY RESOURCES, INC.

OTHER#S QF85-720, 004, SCHUYLKILL ENERGY RESOURCES, INC.
 CAE-19.
 DOCKET# EL97-56, 000, BRAZOS ELECTRIC POWER COOPERATIVE V. TENASKA IV TEXAS PARTNERS, LTD.
 OTHER#S QF94-84, 003, TENASKA IV TEXAS PARTNERS, LTD.
 CAE-20.
 OMITTED
 CAE-21.
 DOCKET# NJ98-2, 000, UNITED STATES DEPARTMENT OF ENERGY, SOUTHWESTERN POWER ADMINISTRATION
 CAE-22.
 OMITTED
 CAE-23.
 DOCKET# RM95-9, 003, OPEN ACCESS SAME-TIME INFORMATION SYSTEM AND STANDARDS OF CONDUCT
 CAE-24.
 DOCKET# RM98-3, 000, OPEN ACCESS SAME-TIME INFORMATION SYSTEM
 Consent Agenda—Gas and Oil
 CAG-1.
 DOCKET# PR98-6, 000, ARKANSAS OKLAHOMA GAS CORPORATION
 CAG-2.
 DOCKET# RP98-187, 000, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
 CAG-3.
 DOCKET# GT98-35, 000, EL PASO NATURAL GAS COMPANY
 CAG-4.
 DOCKET# RP92-132, 056 TENNESSEE GAS PIPELINE COMPANY
 OTHER#S RP92-132, 057 TENNESSEE GAS PIPELINE COMPANY
 CAG-5.
 DOCKET# RP97-248, 004, NORTHERN NATURAL GAS COMPANY
 CAG-6.
 DOCKET# RP97-469, 002, NATURAL GAS PIPELINE COMPANY OF AMERICA
 CAG-7.
 DOCKET# SA98-9, 000, MERLEYN A. CALVIN
 CAG-8.
 DOCKET# RP97-406, 014 CNG TRANSMISSION CORPORATION
 CAG-9.
 DOCKET# RP97-367, 001, ANR PIPELINE COMPANY
 OTHER#S RP97-307, 003, ANR PIPELINE COMPANY
 RP97-367, 000, ANR PIPELINE COMPANY
 CAG-10.
 OMITTED
 CAG-11.
 DOCKET# IS98-2, 000, AMOCO PIPELINE COMPANY
 CAG-12.
 DOCKET# OR96-1, 000, EXXON PIPELINE COMPANY, MOBIL ALASKA PIPELINE COMPANY, PHILLIPS ALASKA PIPELINE CORPORATION AND UNOCAL PIPELINE COMPANY
 OTHER#S IS96-1, 000, AMERADA HESS PIPELINE CORPORATION
 IS96-2, 000, ARCO TRANSPORTATION ALASKA, INC.
 IS96-3, 000, BP PIPELINES (ALASKA) INC.
 IS96-4, 000, EXXON PIPELINE COMPANY

IS96-5, 000, MOBIL ALASKA PIPELINE COMPANY
 IS96-6, 000, PHILLIPS ALASKA PIPELINE CORPORATION
 IS98-3, 000, AMERADA HESS PIPELINE CORPORATION
 IS98-4, 000, ARCO TRANSPORTATION ALASKA, INC.
 IS98-5, 000, BP PIPELINES (ALASKA) INC.
 IS98-6, 000, EXXON PIPELINE COMPANY
 IS98-7, 000, MOBIL ALASKA PIPELINE COMPANY
 IS98-8, 000, PHILLIPS ALASKA PIPELINE CORPORATION
 IS98-9, 000, UNOCAL PIPELINE COMPANY
 OR96-3, 000, STATE OF ALASKA V. AMERADA HESS PIPELINE CORPORATION
 OR96-4, 000, STATE OF ALASKA V. ARCO TRANSPORTATION ALASKA, INC.
 OR96-5, 000, STATE OF ALASKA V. BP PIPELINES (ALASKA) INC.
 OR96-6, 000, STATE OF ALASKA V. EXXON PIPELINE COMPANY
 OR96-7, 000, STATE OF ALASKA V. MOBIL ALASKA PIPELINE COMPANY
 OR96-8, 000, STATE OF ALASKA V. PHILLIPS ALASKA PIPELINE CORPORATION
 OR96-9, 000, STATE OF ALASKA V. UNOCAL PIPELINE COMPANY
 OR97-11, 000, PHILLIPS ALASKA PIPELINE CORPORATION
 OR98-4, 000, STATE OF ALASKA V. AMERADA HESS PIPELINE CORPORATION
 OR98-5, 000, STATE OF ALASKA V. ARCO TRANSPORTATION ALASKA, INC.
 OR98-6, 000, STATE OF ALASKA V. BP PIPELINES (ALASKA) INC.
 OR98-7, 000, STATE OF ALASKA V. EXXON PIPELINE COMPANY
 OR98-8, 000, STATE OF ALASKA V. MOBIL ALASKA PIPELINE COMPANY
 OR98-9, 000, STATE OF ALASKA V. PHILLIPS ALASKA PIPELINE CORPORATION
 OR98-10, 000, STATE OF ALASKA V. UNOCAL PIPELINE COMPANY
 CAG-13.
 DOCKET# OR97-13, 000, KANEB PIPE LINE OPERATING PARTNERSHIP, L.P.
 CAG-14.
 DOCKET# RM98-7, 000, REPORTING INTERSTATE NATURAL GAS PIPELINE MARKETING AFFILIATES ON THE INTERNET
 CAG-15.
 DOCKET# CP97-341, 000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
 CAG-16.
 DOCKET# CP97-765, 000, ANR PIPELINE COMPANY
 CAG-17.
 DOCKET# CP98-196, 000, NORTH SHORE GAS COMPANY
 CAG-18.
 DOCKET# CP98-189, 000, NORTHERN BORDER PIPELINE COMPANY
 CAG-19.

DOCKET# CP98-143, 000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
 CAG-20.
 DOCKET# CP98-215, 000, QUESTAR PIPELINE COMPANY
 CAG-21.
 DOCKET# CP98-254, 000, RICHFIELD GAS STORAGE SYSTEM
 OTHER#S CP98-252, 000, DUKE ENERGY FIELD SERVICES, INC.
 CAG-22.
 DOCKET# CP94-196, 007, WILLIAMS NATURAL GAS COMPANY
 OTHER#S CP94-197, 007, WILLIAMS GAS PROCESSING—MID-CONTINENT REGION COMPANY
 RP96-236, 002, WILLIAMS NATURAL GAS COMPANY
 CAG-23.
 OMITTED
 CAG-24.
 DOCKET# RP98-81, 000, ANR PIPELINE COMPANY
 CAG-25.
 DOCKET# CP96-249, 008, PORTLAND NATURAL GAS TRANSMISSION SYSTEM
 CAG-26.
 DOCKET# RP97-275, 014, NORTHERN NATURAL GAS COMPANY
 OTHER#S TM97-2-59, 010, NORTHERN NATURAL GAS COMPANY

Hydro Agenda

H-1.
 OMITTED

Electric Agenda

E-1.
 RESERVED

Regular Agenda—Miscellaneous

M-1.
 DOCKET# PL98-1,000, Public access to information and electronic filing; Notice soliciting comments on how the commission should implement electronic filing of documents.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
 RESERVED

II. Pipeline Certificate Matters

PC-1.
 OMITTED

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12544 Filed 5-7-98; 10:55 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6012-4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Audit Policy Customer Satisfaction Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Agency Information Collection Activities: Proposed Collection; Comment Request; Audit Policy Customer Satisfaction Survey, EPA ICR Number 1859.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 10, 1998.

ADDRESSES: U.S. E.P.A., Office of Enforcement and Compliance Assurance, 401 M Street, SW. (2201A), Audit Policy Survey, Washington, DC 20460. Interested parties may obtain a copy of the ICR by contacting the Audit Policy Docket, 202-564-2614.

FOR FURTHER INFORMATION CONTACT: Brian Riedel, 202-564-4187 phone, 202-501-0701 fax.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which submitted disclosures under EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" Policy (60 FR 66806, December 22, 1995 (Audit Policy)).

Title: Agency Information Collection Activities: Proposed Collection; Comment Request; Audit Policy Customer Satisfaction Survey, EPA ICR No. 1859.01.

Abstract: This information collection is proposed to implement the public commitment in EPA's Audit Policy to conduct a "study of the effectiveness of the policy * * *" by January 1999. (60 FR 66706, 60 FR 66712, part H(1) on Public Accountability). The proposed information collection is the Customer Satisfaction Survey set forth below.

EPA's Audit Policy, effective in January of 1996, encourages self-policing by eliminating gravity-based penalties for federal environmental violations that are voluntarily

discovered, disclosed, corrected and prevented under the terms of the Policy. Nor will EPA recommend criminal prosecution of regulated entities in these circumstances, although individuals remain liable for their own criminal conduct. The Policy includes safeguards to protect the public and the environment, such as excluding violations that may result in serious harm or risk, reflect repeated noncompliance or allow a company to realize an economic gain from its noncompliance. The Audit Policy is on the High Priority List of the President's Reinventing Environmental Regulations program. At the time of this document, approximately 273 regulated entities have disclosed violations at over 922 facilities, and EPA has settled cases/matters with 102 of these entities at 449 facilities. This ICR proposes to survey the entities that have disclosed violations under the Audit Policy.

The survey, set forth below, generally consists of the "customer satisfaction" questions relating to the "effectiveness" of the Audit Policy in encouraging voluntary discovery, disclosure, correction and prevention of violations, and questions on how the Audit Policy and its application can be improved. OECA will use this information to evaluate and, where appropriate, revise the Audit Policy to better serve its goals in protecting health and the environment. Participation by the regulated entities in the brief survey is voluntary and anonymous. EPA will not possess the name of the respondent in connection with any answers provided. Any information claimed to be Confidential Business Information will be treated in accordance with EPA regulations at 40 CFR part 2.

Generally, the Customer Satisfaction Survey will assist EPA in addressing the following issue areas cited in the Audit Policy (60 FR 66712):

"H. Public Accountability

(1) Within 3 years of the effective date of this policy, EPA will complete a study of the effectiveness of the policy in encouraging:

(a) Changes in compliance behavior within the regulated community, including improved compliance rates;

(b) Prompt disclosure and correction of violations, including timely and accurate compliance with reporting requirements;

(c) Corporate compliance programs that are successful in preventing violations, improving environmental performance and promoting public disclosure;

(d) Consistency among state programs that provide incentives for voluntary compliance.

EPA will make the study available to the public."

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The total estimated average burden is estimated to be twenty to thirty minutes at a cost of \$29 to \$43. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. It is estimated that approximately 60% to 70% or 164 to 191 of the 273 entities will respond to the survey request.

Dated: May 5, 1998.

Nancy K. Stoner,

Director, Office of Planning and Policy
Analysis, Office of Enforcement
and Compliance Assurance.

Audit Policy Customer Satisfaction Survey

EPA invites you to participate in this anonymous survey of companies that have disclosed environmental violations under the EPA Audit Policy. The Audit Policy, entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," appeared in the *Federal Register* on December 22, 1995 at 60 FR 66705. The intent of the Audit Policy is to encourage regulated entities to voluntarily discover, disclose, correct and prevent violations of federal environmental law. This survey will help EPA serve you better and will help EPA improve the Audit Policy. Average time to fill out the survey is estimated to be 20 to 30 minutes. Please return the completed survey in the enclosed envelope addressed to [a third party contractor] by _____. EPA will not possess the name of the respondent in connection with any answers provided. Please do not submit your name in the survey responses. Your participation is very much appreciated. Your response matters!

If you have not yet received final determination under the Audit Policy, i.e. signed order or EPA letter indicating closure of case/matter, please answer Questions 1-5 only. If you disclosed more than one type of violation, please generalize for all of your experiences.

1. How did you learn of EPA's Audit Policy?

- ☐ Trade association
☐ Seminar or conference
☐ Federal Register
☐ In-house or outside counsel
☐ Other (please indicate)

2. Would you have disclosed the violation to EPA in the absence of an Audit Policy?

- ☐ Yes
☐ No
☐ Don't know
Please explain why or why not.

3. Did you have an environmental compliance auditing program before you heard of the Audit Policy?

- ☐ Yes
☐ No
☐ Don't know
Please very briefly describe the scope and frequency of your auditing activities before you heard of the Audit Policy:

4. In what ways, if any, did the Audit Policy encourage improvements in the extent of your auditing or due diligence activities?

- ☐ Number of audits per facility
☐ Number of facilities audited
☐ Scope of environmental statutes or media covered

- ☐ Scope of processes covered
☐ Number of people involved
☐ Other

☐ Did not encourage

5. In what ways, if any, did the Audit Policy encourage improvements in the quality of your auditing or due diligence activities?

- ☐ Qualifications of people involved
☐ "Thoroughness" of audit
☐ Other

☐ Did not encourage

6. How did you systematically discover the violation(s) disclosed?

- ☐ Environmental audit
☐ Not applicable
☐ Due diligence efforts
☐ Both

If you checked "Both," and characterized the discovery as through environmental auditing in your disclosure letter, please explain why:

7. Why did you decide to disclose the violation(s) under the Audit Policy?

- Please check reason(s) and circle most important reason
☐ To take proactive measures to find and address compliance problems
☐ To limit liability
☐ To avail yourself of the incentives under the Policy—penalty mitigation and/or non-recommendation of matter for criminal prosecution
☐ To obtain certainty by relying on predictable enforcement response under Audit Policy
☐ To obtain assurance from EPA that violation is being properly corrected / damage is properly remediated
☐ To conduct and publicize disclosures as evidence of good corporate citizenry and awareness of need to protect public health and the environment
☐ Other

☐ Don't know

8. Hypothetically, if you had violations that you did not disclose under Audit Policy, why would you refrain from doing so?

- Please check reason(s) and circle most important reason
☐ Unable to meet 10-day written disclosure condition
☐ Uncertainty of enforcement response under Audit Policy
☐ Definition of "imminent and substantial endangerment" is too vague
☐ Belief that penalty representing the economic benefit gained from non-compliance will be too high
☐ Belief that agency is not likely to discover the violation if it is corrected but not disclosed
☐ Transactional costs of disclosing are too high

- ☐ Desire to avoid disclosure to public of violations
☐ Other reason

☐ Don't know

9. If you circled the "Uncertainty of enforcement response" reason in the previous question, please check the sub-reason(s) and circle the most important sub-reason:

- ☐ Process for calculating economic benefit component of penalty is not precise enough
☐ Definition of "repeat violations" is unclear
☐ Unclear whether entity would meet 10-day disclosure condition
☐ Uncertain whether the audit would meet the standard for environmental audits
☐ Uncertain whether compliance management system would meet due diligence standard
☐ Other reason

10. What relief did you receive under the Audit Policy?

- ☐ All penalties eliminated
☐ All gravity-based penalties eliminated with economic benefit penalty assessment
☐ 75% of gravity-based penalties eliminated with no economic benefit penalty assessment
☐ 75% of gravity-based penalties eliminated with economic benefit penalty assessment
☐ Penalties reduced under another authority because the disclosure did not meet the Audit Policy criteria
☐ Penalties not reduced because the disclosure did not meet the criteria of any authority

11. How do you view EPA's response to your company's correction of the disclosed violation?

- ☐ It was reasonable
☐ It was too stringent
Other _____
Please explain _____

☐ Don't know

12. How do you view EPA's response to your company's efforts to prevent recurrence of the disclosed violation?

- ☐ It was reasonable
☐ It was too stringent
Other _____
Please explain _____

☐ Don't know

13. Were you satisfied with the outcome of your company's self-disclosure?

- ☐ Yes
☐ No
☐ Somewhat
☐ Don't know
Please explain _____

14. What compliance or environmental improvements, if any, were made possible by the incentives offered under the Audit Policy?

15. What should EPA do to increase the regulated community's awareness of the Audit Policy?

16. How can EPA promote the regulated community's use of the Audit Policy?

17. Would you use the Audit Policy again?

- ☐ Yes, if applicable
☐ No
☐ Don't know

18. Would you recommend the Policy to clients/counterparts?

- ☐ Yes
☐ No
☐ Don't know

19. Would you like to see any changes made to the terms of the Audit Policy?

- ☐ Yes
☐ No
☐ Don't know
Please provide any suggested changes here.

20. What is your opinion about the amount of time it took EPA to respond to your self-disclosure?

21. What is your opinion about the amount of time it took EPA to resolve your case?

22. Do you have any other comments or suggestions about your experience with the Audit Policy?

23. Are you aware of EPA's "Final Policy on Compliance Incentives for Small Businesses," 61 FR 27984, June 3, 1996?

- ☐ Yes
☐ No

The Small Business Policy is intended to promote environmental compliance among businesses with 100 or fewer employees through incentives to participate in compliance assistance programs or conduct environmental audits and to subsequently correct any violations discovered.

24. Would you consider using the Small Business Policy?

- ☐ Yes
☐ No
☐ Not applicable because have >100 employees
☐ Don't know

Please explain why or why not.

Thank you for your participation.

Customer Satisfaction Survey on EPA's Audit Policy

EPA invites you to participate in this anonymous survey of companies that have disclosed environmental violations under the EPA Audit Policy. The Audit Policy, entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," appeared in the *Federal Register* on December 22, 1995 at 60 FR 66705. The intent of the Audit Policy is to encourage regulated entities to voluntarily discover, disclose, correct and prevent violations of federal environmental law. This survey will help EPA serve you better and will help EPA improve the Audit Policy. Average time to fill out the survey is estimated to be 20 to 30 minutes. Please return the completed survey in the enclosed envelope addressed to [a third party contractor] by _____. Please do not submit your name in the survey responses. Your participation is very much appreciated. Your response matters!

If you have not yet received final determination under the Audit Policy, i.e. signed order or EPA letter indicating closure of case/matter, please answer Questions 1-5 only. If you disclosed more than one type of violation, please generalize for all of your experiences.

1. How did you learn of EPA's Audit Policy?

- ☐ Trade association
☐ Federal Register
☐ Seminar or conference
☐ In-house or outside counsel
☐ Other (please indicate)

2. Would you have disclosed the violation to EPA in the absence of an Audit Policy?

- ☐ Yes
☐ No
☐ Don't know
Please explain why or why not.

3. Did you have an environmental compliance auditing program before you heard of the Audit Policy?

- ☐ Yes
☐ No
☐ Don't know
Please very briefly describe the scope and frequency of your auditing activities before you heard of the Audit Policy:

4. In what ways, if any, did the Audit Policy encourage improvements in the extent of your auditing or due diligence activities?

- ☐ Number of audits per facility
☐ Number of facilities audited
☐ Scope of environmental statutes or media covered
☐ Scope of processes covered
☐ Number of people involved
☐ Other

☐ Did not encourage

5. In what ways, if any, did the Audit Policy encourage improvements in the quality of your auditing or due diligence activities?

- ☐ Qualifications of people involved
☐ "Thoroughness" of audit
☐ Other

☐ Did not encourage

(If you have not yet received final determination under the Audit Policy, please stop here.)

6. How did you systematically discover the violation(s) disclosed?

- ☐ Environmental audit
☐ Due diligence efforts
☐ Both
☐ Not applicable

If you checked "Both," and characterized the discovery as through environmental auditing in your disclosure letter, please explain why:

7. Why did you decide to disclose the violation(s) under the Audit Policy?

- Please check reason(s) and circle the most important reason
☐ To take proactive measures to find and address compliance problems
☐ To limit liability
☐ To avail yourself of the incentives under the Policy—penalty mitigation and/or non-recommendation of matter for criminal prosecution
☐ To obtain certainty by relying on predictable enforcement response under Audit Policy
☐ To obtain assurance from EPA that violation is being properly corrected / damage is properly remediated
☐ To conduct and publicize disclosures as evidence of good corporate citizenry and awareness of need to protect public health and the environment
☐ Other

☐ Don't know

8. Hypothetically, if you had violations that you did not disclose under Audit Policy, why would you refrain from doing so?

- Please check reason(s) and circle the most important reason
☐ Unable to meet 10-day written disclosure condition
☐ Uncertainty of enforcement response under Audit Policy
☐ Definition of "imminent and substantial endangerment" is too vague
☐ Belief that penalty representing the economic benefit gained from non-compliance will be too high
☐ Belief that agency is not likely to discover the violation if it is corrected but not disclosed
☐ Transactional costs of disclosing are too high

_____ Desire to avoid disclosure to public of violations
 _____ Other reason

Please explain:

Please explain why or why not.

_____ Don't know

9. If you circled the "Uncertainty of enforcement response" reason in the previous question, please check the sub-reason(s) and circle the most important sub-reason:

_____ Process for calculating economic benefit component of penalty is not precise enough
 _____ Definition of "repeat violations" is unclear
 _____ Unclear whether entity would meet 10-day disclosure condition
 _____ Uncertain whether the audit would meet the standard for environmental audits
 _____ Uncertain whether compliance management system would meet due diligence standard
 _____ Other reason

14. What compliance or environmental improvements, if any, were made possible by the incentives offered under the Audit Policy?

15. What, if anything, should EPA do to increase the regulated community's awareness of the Audit Policy?

16. How can EPA promote the regulated community's use of the Audit Policy?

17. Would you use the Audit Policy again?

_____ Yes, if applicable
 _____ No
 _____ Don't know

18. Would you recommend the Policy to clients/counterparts?

_____ Yes
 _____ No
 _____ Don't know

19. Would you like to see any changes made to the terms of the Audit Policy?

_____ Yes
 _____ No
 _____ Don't know

Please provide any suggested changes here.

20. Do you have any other comments or suggestions about your experience with the Audit Policy?

21. Are you aware of EPA's "Final Policy on Compliance Incentives for Small Businesses," 61 FR 27984, June 3, 1996?

_____ Yes
 _____ No

The Small Business Policy is intended to promote environmental compliance among businesses with 100 or fewer employees through incentives to participate in compliance assistance programs or conduct environmental audits and to subsequently correct any violations discovered.

22. Would you consider using the Small Business Policy?

_____ Yes
 _____ No
 _____ Not applicable because have >100 employees
 _____ Don't know

10. What relief did you receive under the Audit Policy?

_____ All penalties eliminated
 _____ All gravity-based penalties eliminated with economic benefit penalty assessment
 _____ 75% of gravity-based penalties eliminated with no economic benefit penalty assessment
 _____ 75% of gravity-based penalties eliminated with economic benefit penalty assessment
 _____ Penalties reduced under another authority because the disclosure did not meet the Audit Policy criteria
 _____ Penalties not reduced because the disclosure did not meet the criteria of any authority

11. How do you view EPA's response to your company's correction of the disclosed violation?

_____ It was reasonable
 _____ It was too stringent

Please explain above or other response:

_____ Don't know

12. How do you view EPA's response to your company's efforts to prevent recurrence of the disclosed violation?

_____ It was reasonable
 _____ It was too stringent

Please explain above or other response:

_____ Don't know

13. Were you satisfied with the outcome of your company's self-disclosure?

_____ Yes
 _____ No
 _____ Somewhat
 _____ Don't know

Thank you for your participation.

[FR Doc. 98-12428 Filed 5-8-98; 8:45 am]

BILLING CODE 6540-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, May 19, 1998 at 2:00 p.m. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Mid-year Operational Reports by the Office of General Counsel and Office of Field Programs.

Closed Session

Litigation Authorization: General Counsel Recommendations

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the *Federal Register*, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663-7100 (voice) and (202) 663-4074 (TTD) at any time for information on these meetings. Contact Person for More Information: Frances M. Hart, Executive Officer on (202) 663-4070.

Dated: May 6, 1998.

This Notice Issued May 6, 1998.

Frances M. Hart,
 Executive Officer, Executive Secretariat.
 [FR Doc. 98-12548 Filed 5-7-98; 11:19 am]

BILLING CODE 6750-06-M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 1, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing

effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 10, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St.,

N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202-418-0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-0600.

Title: Application to Participate in an FCC Auction, Supplemental Continuation Form.

Form Number: FCC 175, FCC 175-S.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions; state, local or tribal government.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden:

	Number of respondents	Estimated average hours per response	Estimated annual burden hours
FCC 175	10,000	.75	7,500
FCC 175-S	2,400	.25	600

Estimated Cost Per Respondent:

FCC 175—27,000 hours×\$200/
 hour=\$5,400,000

FCC 175-S 600 hours×\$200/
 hour=\$120,000

Needs and Uses: The FCC Form 175 is used by entities wishing to participate in Commission spectrum auctions. It contains information that will be used by the Commission to determine whether the applicant is legally, technically and financially qualified to participate in the auction as required by Section 309(j) of the Communications Act, 47 U.S.C. 309(j). FCC Form 175-S is a continuation form used to identify additional licenses or markets for which the FCC Form 175 applicant wishes to bid.

Without such information the Commission could not determine whether to issue the licenses to the applicants that provide telecommunications services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. The rules and requirements are also designed to ensure that the competitive bidding process is limited to serious, qualified applicants and to deter possible abuses of the bidding and licensing processes.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-12407 Filed 5-8-98; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

May 4, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 10, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202-418-0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0804.

Title: Universal Service - Health Care Providers Universal Service Program.

Form No.: FCC Forms 465, 466, 467, and 468.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 18,400 respondents; 52,000 responses.

Estimated Time Per Response: 2.5 hours (avg.).

Frequency of Response: On occasion and annual reporting requirement.

Cost to Respondents: N/A.

Total Annual Burden: 121,500 hours.

Needs and Uses: On May 8, 1997, the Commission adopted rules providing support for all telecommunications services, limited distance charges, and Internet access for all eligible health care providers. The Commission made minor changes/corrections to several forms. Specifically, the list provided in item 13a of FCC Form 465 has been updated. All forms have been revised to include a telephone number to call for assistance and the appropriate address to send completed forms.

Federal Communications Commission,
Magalie Roman Salas,
Secretary.
[FR Doc. 98-12404 Filed 5-8-98; 8:45 am]
BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

April 29, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 10, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202-418-0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: OMB Control No.: 3060-0595.

Title: N/A.

Form No.: FCC Form 1210 Updating Maximum Permitted Rates for Regulated Services and Equipment.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; State, local and tribal governments.

Number of Respondents: 6,000 (4,000 filings and 2,000 LFA reviews).

Estimated Time Per Response: 2-15 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 54,000 hours, calculated as follows: We estimate that approximately 4,000 FCC Form 1210s will be filed in the next year, approximately 50% with the Commission and 50% with LFAs. The average burden for cable operators to complete FCC Form 1210 is estimated to be 15 hours. The average burden for local franchise authorities to review Form 1210 filings is estimated to be 10 hours per filing. Cable operators are estimated to use in-house staff to complete approximately 50% of the filings. When using outside assistance to complete the other 50%, we estimate operators undergo a burden of 2 hours per filing to coordinate information with the outside assistance.

2,000 (50% of 4,000) filings completed with in-house staff x 15 hours per filing = 30,000 hours. 2,000 (50% of 4,000) filings coordinated with outside assistance x 2 hours per filing = 4,000 hours. 2,000 filings reviewed by LFAs at an average burden of 10 hours per filing = 2,000 x 10 hours per filing = 20,000 hours.

Total Annual Cost to all Respondents: \$3,008,000 calculated as follows: Printing, photocopying and postage costs incurred by respondents are estimated to be \$2 per filing. 4,000 annual filings x \$2 per filing = \$8,000. We estimate that cable operators that use outside legal and accounting contractors will pay for these services at an average rate of \$100/hour. 2,000 filings x 15 hours per filing x \$100/hour = \$3,000,000.

Needs and Uses: FCC Form 1210 is used by cable operators to file for

adjustments in maximum permitted rates for regulated services to reflect external costs. Regulated cable operators submit this form to local franchising authorities or the Commission (in situations where the FCC has assumed jurisdiction). It is also filed with the Commission when responding to a complaint filed with the Commission concerning cable programming service rates and associated equipment. The filings are used by the Commission and local franchising authorities ("LFAs") to adjudicate permitted rates for regulated cable services and equipment, for the addition of new programming tiers and to account for the addition and deletion of channels, and for the allowance for pass throughs of external costs and costs due to inflation.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-12408 Filed 5-8-98; 8:45 am]

BILLING CODE 3510-22-F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

April 29, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 10, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202-418-0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0501.

Title: Section 76.206, Candidate Rates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10,750.

Estimated Time Per Response: 2-10 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 139,750 hours, calculated as follows:

There are approximately 10,750 cable systems in the nation. We estimate that in any given year, candidates for public office will be interested in seeking origination cablecast time from approximately half of these systems (5,375). We estimate that these cable systems will be required to make the various advertising rate disclosures set forth in Section 76.206 to an average of 4 candidates. The average burden on systems to disclose this information is estimated to be .5 hours per candidate, meaning 2 hours per cable system. 5,375 systems x 2 hours = 10,750 hours. We estimate that each cable system will calculate its lowest unit charge semi-annually with an average burden of 10 hours per system. 5,375 systems x 2 calculations x 10 hours = 107,500 hours. Systems are also required to periodically review their advertising records throughout the election period to determine whether compliance with Section 76.206 requires that candidates receive rebates or credits. We estimate that cable systems will review their records an average of 2 times throughout the election period, undergoing a burden of 2 hours per review. 5,375 systems x 2 reviews x 2 hours = 21,500 hours.

Total Annual Cost to Respondents: Postage and stationery costs associated with the various requirements contained

in Section 76.206 are estimated to be \$5 per system. 5,375 systems x \$5 = \$26,875.

Needs and Uses: On December 12, 1991, the Commission adopted Report and Order, FCC 91-403, MM Docket No. 91-168, in the matter of codification of the Commission's political programming policies. The Report and Order adopted affirmative disclosure requirements obliging cable television systems to disclose and make available to candidates all discount privileges available to commercial advertisers, including the lowest unit charge for the different classes of time sold. The Report and Order added Section 76.206 to the Commission's rules. Section 76.206 requires cable television systems to disclose any system practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time (immediately preemptible, preemptible with notice, fixed, fire sale, and make good). It also requires cable systems to calculate the lowest unit charge. The disclosure requirements contained in Section 76.206 serve to ensure that cable system licensees provide timely, accurate and complete information on rates and sales practices to legally qualified candidates for public office who are interested in origination cablecasting.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 98-12409 Filed 5-8-98; 8:45 am]
BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 98-852]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 5, 1998, the Commission released a public notice announcing the May 27, 1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes, Paralegal Specialist assisting the NANC, at (202) 418-2313 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235,

Washington, DC 20554. The fax number is: (202) 418-7314. The TTY number is: (202) 418-0484.

SUPPLEMENTARY INFORMATION: Released: May 5, 1998.

The next meeting of the North American Numbering Council (NANC) will be held on Wednesday, May 27, 1998, from 8:30 a.m., until 5:00 p.m., at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, D.C.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before each meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda

The planned agenda for the May 27, 1998, meeting is as follows:

1. Approval of meeting minutes.
2. Steering Group Report.
3. N11 Ad Hoc Working Group Report and Recommendation. Responsibilities under *First Report and Order* and *Further Notice of Proposed Rulemaking*. In the Matter of Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket 92-105, FCC 97-51.
4. Numbering Resource Optimization Working Group Report.
5. Industry Numbering Committee Report.
6. Cost Recovery Working Group Report. Update on first NECA NBANC board meeting.
7. Local Number Portability Administration (LNPA) Working Group Report. LNP Implementation Phase II and III update. Wireline Wireless Integration Task Force Report.
8. North American Numbering Plan Administration (NANPA) Report. CO Code Transition Task Force Update. Report of the NANPA.
9. Other Business.

Federal Communications Commission.
Geraldine A. Matise,
Chief, Network Services Division, Common
Carrier Bureau.
[FR Doc. 98-12405 Filed 5-8-98; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2273]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

May 4, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800. Oppositions to these petitions must be filed May 26, 1998. See § 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service (MM Docket No. 87-268, FCC 98-24).
Number of Petitions Filed: 32.

Federal Communications Commission.
Magalie Roman Sales,
Secretary.

[FR Doc. 98-12410 Filed 4-8-98; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the FDIC hereby give notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.
Title: Extension of Credit to Executive Officers—Unsafe and Unsound Practices.

OMB Number: 3064-0108.
Annual burden:
Estimated annual number of respondents: 8,000.
Estimated time per response: 1 hour.
Average annual burden hours 8,000 hours.

Expiration Date of OMB Clearance: May 31, 1998.

OMB Reviewer: Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898-7453, Office of the Executive Secretary, Room F-4022, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before June 10, 1998 in the **Federal Register** to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Executive officers of insured nonmember banks must file a report with their bank's Board of Directors within 10 days of incurring any indebtedness to any other bank in an amount in excess of the amount the insured nonmember bank could lend to the officer.

Dated: May 6, 1998.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.

[FR Doc. 98-12437 Filed 5-8-98; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: 98-12244.

PREVIOUSLY ANNOUNCED DATE & TIME: Tuesday, May 12, 1998, 10:00 A.M., Meeting Closed to the Public.

This meeting has been cancelled.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, May 14, 1998, 10:00 A.M., Meeting Open to the Public.

This meeting has been cancelled.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,
Telephone: (202) 694-1220.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 98-12464 Filed 5-6-98; 4:37 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 26, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Manuel V. Fernandez*, Arlington, Virginia; to acquire additional voting shares of United Financial Banking Companies, Inc., Vienna, Virginia, and thereby indirectly acquire additional voting shares of The Business Bank, Vienna, Virginia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *William and Marla Lastovica*, Yutan, Nebraska; to acquire voting shares of Yutan Bancorp., Inc., Yutan, Nebraska, and thereby indirectly acquire voting shares of Bank of Yutan, Yutan, Nebraska.

Board of Governors of the Federal Reserve System, May 5, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-12325 Filed 5-8-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *Ploetz Investments Limited Partnership*, Prairie du Sac, Wisconsin; to become a bank holding company by acquiring 48.16 percent of the voting shares of Bank of Prairie du Sac, Prairie du Sac, Wisconsin.

Board of Governors of the Federal Reserve System, May 5, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-12326 Filed 5-8-98; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIA): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meetings.

Name: Workgroup on Genetic Testing, Clinical Laboratory Improvement Advisory Committee.

Times and Dates: 8:30 a.m.-5 p.m., May 27, 1998; 8 a.m.-10 a.m., May 28, 1998.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The room will accommodate approximately 150 people.

Purpose: This Workgroup advises CLIA on issues related to Genetic Testing.

Matters To Be Discussed: The Workgroup will review and discuss the Clinical Laboratory Improvement Amendments (CLIA) regulations and general or specific CLIA requirements that apply to pre-analytic, analytic, and post-analytic components of genetic testing.

Agenda items are subject to change as priorities dictate.

Name: Clinical Laboratory Improvement Advisory Committee.

Times and Dates: 10:30 a.m.-5 p.m., May 28, 1998; 8:30 a.m.-5 p.m., May 29, 1998.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 150 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards Page 3 under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include an update on CLIA implementation; general or specific CLIA requirements that apply to pre-analytic, analytic, and post-analytic components of genetic testing; and the applicability of CLIA to laboratory testing performed for assisted reproductive technology (ART).

The Committee solicits oral and written testimony on the application of CLIA regulations and ART. Requests to make an oral presentation should be submitted in writing to the contact person listed below by close of business, May 22, 1998. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced, typed pages in length and should be received by the contact person listed below by close of business, May 22, 1998.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: John C. Ridderhof, Dr.P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, Mailstop G-25, Atlanta, Georgia 30341-3724, telephone 770/488-8076, FAX 770/488-1129.

Dated: April 30, 1998.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 98-12235 Filed 5-8-98; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory (INEEL) Health Effects Subcommittee.

Times and Dates: 8:30 a.m.-5:15 p.m., June 2, 1998; 7:30 a.m.-5 p.m., June 3, 1998.

Place: Best Western Templin's Hotel, 414 East First Avenue, Post Falls, Idaho 83854, telephone 208/773-1611, FAX 208/773-4192.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992

between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site.

Matters To Be Discussed: Agenda items include updates from the National Institute for Occupational Safety and Health on the progress of current studies; an update on the status of chemical screening and radionuclide screening and a presentation on document search from the Radiological Assessments Corporation; and subcommittee deliberations.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Arthur J. Robinson, Jr., or Sharona Woodley, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F-35), Atlanta, Georgia 30341-3724, telephone 770/488-7040, FAX 770/488-7044.

Dated: May 4, 1998.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 98-12354 Filed 5-8-98; 8:45 am]

BILLING CODE 4160-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 98F-0292]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp., has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of 2-methyl-4,6-bis-[(octylthio)methyl]phenol as a stabilizer

for rubber-modified polystyrene intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4594) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591-9005. The petition proposes to amend the food additive regulations to provide for the expanded safe use of 2-methyl-4,6-bis-[(octylthio)methyl]phenol as a stabilizer for rubber-modified polystyrene complying with § 177.1640 Polystyrene and rubber-modified polystyrene (21 CFR 177.1640) intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: April 24, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98-12314 Filed 5-8-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F-0289]

UBE Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that UBE Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of Nylon 6/12 copolymer resins manufactured using at least 80 weight percent epsilon-caprolactam and no more than 20 weight percent omega-aminododecanoic acid as a component of articles intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by June 10, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3084.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4569) has been filed by UBE Industries, Ltd., c/o Center for Regulatory Services, 2347 Paddock Lane, Reston, VA 20191. The petition proposes to amend the food additive regulations in § 177.1500 Nylon resins (21 CFR 177.1500) to provide for the safe use of Nylon 6/12 copolymer resins manufactured using at least 80 weight percent epsilon-caprolactam and no more than 20 weight percent omega-aminododecanoic acid as a component of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before June 10, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the

Federal Register in accordance with 21 CFR 25.40(c).

Dated: April 24, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98-12313 Filed 5-8-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N-0362]

The New 510(k) Paradigm; Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "The New 510(k) Paradigm-Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications." The New 510(k) Paradigm presents two alternative methods, in addition to the traditional method, of demonstrating substantial equivalence in premarket notifications and is intended to conserve FDA's review resources while facilitating the introduction of safe and effective devices into interstate commerce. The New 510(k) Paradigm addresses the type of information needed in premarket notification submissions, by the Center for Devices and Radiological Health (CDRH), to render substantial equivalence determinations.

DATES: May 11, 1998.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of "The New 510(k) Paradigm-Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications," to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818.

Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ-400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2022.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)), a person who intends to introduce a device into commercial distribution is required to submit a premarket notification, or 510(k), to FDA at least 90 days before commercial distribution is to begin. Section 513(i) of the act (21 U.S.C. 360c(i)) states that FDA may issue an order of substantial equivalence, only upon making a determination that the device to be introduced into commercial distribution is as safe and effective as a legally marketed device. Under 21 CFR 807.87, FDA has codified the content requirements for premarket notifications to be submitted by device manufacturers in support of a substantial equivalence decision. FDA has, however, discretion in the type of information it deems necessary to meet those content requirements.

While the Paradigm maintains the traditional method of demonstrating substantial equivalence under section 510(k) of the act, it also presents two alternatives. The first alternative, the "Special 510(k): Device Modification," utilizes certain aspects of the Quality System regulation, while the second alternative, the "Abbreviated 510(k)," relies on the use of FDA guidance documents, special controls and FDA recognized consensus standards to facilitate 510(k) review.

In the **Federal Register** of September 19, 1997 (62 FR 49247), FDA published a notice of availability of a draft of this guidance document on the Paradigm. FDA received 13 comments on the draft. FDA reviewed these comments and has made revisions to the guidance as appropriate.

This guidance document represents the agency's current thinking on the 510(k) Paradigm. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

II. Electronic Access

In order to receive "A New 510(k) Paradigm-Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications," via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800-899-0381

or 301-827-0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 905 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes: Device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at <http://www.fda.gov/cdrh>.

A text-only version of the CDRH Web site is also available from a computer or VT-100 compatible terminal by dialing 800-222-0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS Topics Page, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Comments

Interested persons may, at any time, submit to the contact person named above written comments regarding this guidance document. Comments will be considered in determining whether to revise or revoke the guidance.

Dated: May 1, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98-12311 Filed 5-8-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).

PRT-842309

Applicant: Mark F. O'Brien, University of Michigan, Museum of Zoology, Ann Arbor, Michigan.

The applicant requests a permit to take (capture and release, collect voucher specimens, collect larval exuviae, and salvage dead specimens) Hine's (=Ohio) emerald dragonfly (*Somatochlora hineana*) in the state of Michigan. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

PRT-842310

Applicant: QST Environmental, St. Louis, Missouri.

The applicant requests a permit to take (capture, handle, and release) Curtis' pearlymussel (*Epioblasma (=Dysnomia) florentina curtisi*), fat pocketbook (*Potamilus (=Proptera) capax*), Higgins' eye pearlymussel (*Lampsilis higginsii*), and pink muskelt pearlymussel (*Lampsilis abrupta (=orbiculata)*) in the states of Illinois and Missouri. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

PRT-842312

Applicant: Mark D. McGimsey, Columbia, Missouri.

The applicant requests a permit to take (capture and release) gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*) throughout the ranges of the species. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

PRT-842313

Applicant: Illinois Department of Natural Resources, Illinois State Museum Research and Collections Center, Springfield, Illinois.

The applicant requests a permit to take (capture and release, collect) Hine's (=Ohio) emerald dragonfly

(*Somatochlora hineana*) in the states of Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Activities are proposed to document presence or absence of the species and for the purpose of scientific research aimed at enhancement and survival of the species in the wild.

PRT-842314

Applicant: Mark A. Sellers, Kentwood, Michigan.

The applicant requests a permit to take (harass through survey; capture, and release) copperbelly water snake (*Nerodia erythrogaster neglecta*) in the state of Michigan. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

PRT-842392

Applicant: Richard French-Constant, University of Wisconsin-Madison, Department of Entomology, Madison, Wisconsin.

The applicant requests a permit to take (collect) Karner blue butterfly (*Lycaeides melissa samuelis*) in the states of Indiana and New York. Activities are proposed for the purpose of scientific research aimed at enhancement and survival of the species in the wild.

PRT-842503

Applicant: Robert Mies and Kimberly Williams, Organization for Bat Conservation, Williamston, Michigan.

The applicants request a permit to take (capture and release) Indiana bats (*Myotis sodalis*) in the state of Michigan. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations,

1 Federal Drive, Fort Snelling, Minnesota 55111-4056. Telephone: (612/713-5332); FAX: (612/713-5292).

Dated: May 4, 1998.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 98-12352 Filed 5-8-98; 8:45 am]

BILLING CODE 4310-65-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Permit No. 835549

Applicant: Charles Black, San Diego, California.

The applicant requests a permit to take (harass by survey, capture and release) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*), and remove and reduce to possession the San Diego mesa mint (*Pogogyne abramsii*) and the San Diego button celery (*Eryngium aristulatum* ssp. *pavishii*) for the purpose of enhancing their survival, in conjunction with research in vernal pools throughout the state of California.

Permit No. 830995

Applicant: Lisa B. Chaddock, San Diego, California.

The applicant requests a permit amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and ecological research throughout the species' range, for the purpose of enhancing its survival.

Permit No. 838741

Applicant: Larry Munsey, Tustin, California.

The applicant requests a permit amendment to take (harass by survey) the Delhi sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys in San Bernardino and

Riverside counties, for the purpose of enhancing its survival.

Permit No. 842199

Applicant: Kieth Greer, San Diego, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and ecological research throughout the species' range, for the purpose of enhancing its survival.

Permit No. 800291

Applicant: Ibis Environmental Services, Tiburon, California.

The applicant requests an amendment to her permit to take (harass by survey; locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii eximius*) in San Diego, San Bernardino, Riverside, Kern, and Orange Counties, California and to take (capture and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties, California, in conjunction with surveys and population monitoring, for the purpose of enhancing their survival.

Permit No. 829250

Applicant: Hawaii Wildlife Fund, Laie, Hawaii.

The applicant requests an amendment to his permit to take (relocate eggs) of the hawksbill sea turtle (*Eretmochelys imbricata*) in conjunction with scientific research on the island of Maui, for the purpose of enhancing their survival.

Permit No. 839483

Applicant: University of Nevada, Reno, Nevada

The applicant requests a permit to take (capture, release, collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*) and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with the collection of water and soil samples in Yolo, Solano, Sacramento, Yuba, and Merced Counties, California, for the purpose of enhancing their survival.

Permit No. 842267

Applicant: Steve Foreman, Fairfield, California

The applicant requests a permit to take (capture, mark, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) throughout its range in California; take (capture and release) the California freshwater shrimp (*Syncares pacifica*) in Marin, Napa, and Sonoma Counties, California; and take (harass by

survey, capture and release, collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardii*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) throughout the species range, in conjunction with surveys and population studies, for the purpose of enhancing their survival. Please note: the applicant is currently authorized to conduct these activities under Permit No. 677215.

DATES: Written comments on these permit applications must be received by June 10, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; Fax: (503) 231-6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231-2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: May 4, 1998.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98-12384 Filed 5-8-98; 8:45 am]

BILLING CODE 4310-65-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-395]

Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Products Containing Same; Notice of Commission Decision to Review Portions of an Initial Determination and Schedule for the Filing of Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of the initial determination (ID) issued by the presiding administrative law judge (ALJ) on March 19, 1998, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: John A. Wasleff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3094.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 18, 1997, based on a complaint filed by Atmel Corporation, 62 FR 13706. The complaint named five respondents: Sanyo Electric Co., Ltd., Winbond Electronics Corporation and Winbond Electronics North America Corporation (collectively "Winbond"), Macronix International Co., Ltd. and Macronix America, Inc. (collectively "Macronix"). Silicon Storage Technology, Inc. ("SST") was permitted to intervene.

In its complaint, Atmel alleged that respondents violated section 337 by importing into the United States, selling for importation, and/or selling in the United States after importation electronic products and/or components that infringe one or more of claim 1 of U.S. Letters Patent 4,511,811, claim 1 of U.S. Letters Patent 4,673,829, claim 1 of U.S. Letters Patent 4,974,565 ("the '565 patent") and claims 1-9 of U.S. Letters Patent 4,451,903. The '565 patent was subsequently removed from the case. The presiding ALJ held an evidentiary hearing from December 8 to December 19, 1997.

On March 19, 1998, the ALJ issued his final ID finding that there was no violation of section 337. He found that neither claim 1 of U.S. Letters Patent 4,511,811 ("the '811 patent"), nor claim 1 of U.S. Letters Patent 4,673,829 ("the '829 patent"), nor claim 1 or claim 9 of

U.S. Letters Patent 4,451,903 ("the '903 patent") was infringed by any product of the respondents or intervenor. He further found that the '903 patent was unenforceable because of waiver and implied license by legal estoppel, and that claims 2 through 8 of this patent are invalid for indefiniteness. He found that respondents and the intervenor had not demonstrated that any other claim at issue was invalid in view of any prior art before him, or that the '903 patent is void for failure to name a co-inventor. He found that complainant had not demonstrated that the '811 patent was entitled to an earlier date of invention than that appearing on the face of the patent. Finally, the ALJ found that there was a domestic industry with respect to all patents at issue.

On March 31, 1998, complainant Atmel filed a petition for review of the ALJ's final ID. On April 1, 1998, respondent Winbond filed a petition for review of the ALJ's ID. The other respondents and intervenor SST filed contingent petitions for review, raising issues to be considered in the event that the Commission determined to review certain of the ALJ's findings.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined not to review the issue of the validity of claims 2-8 of the '903 patent. The Commission has determined to review the remainder of the ID.

On review, the Commission is particularly interested in receiving answers to the following questions:

(1) What effect, if any, does the decision in *Atmel Corp. v. Information Storage Devices, Inc.*, No. C 95-1987 FMS, slip op. (N.D. Cal. April 14, 1998), have on the Commission's consideration of the '811 and '829 patents? In view of *Lancom Mfg. Co., Inc. v. USITC*, 799 F.2d 1572 (Fed. Cir. 1986), can the Commission consider the theory of invalidity relied upon by the court in *Information Storage Devices* with respect to the '811 and/or '829 patents?

(2) Under the ALJ's construction of claim 1 of the '811 and '829 patents:

(a) What evidence of record bears on the issue of whether the insertion of a source follower between the conductive line that receives increments of charge in the accused cpl2 circuit and the relevant long conductive line (word line or source line) is a substantial change?

(b) What evidence of record bears on the issue of whether the substitution of a two stage charge pump for a single stage charge pump is a substantial change?

(3) Discuss whether the following is an appropriate construction of the

disputed terms of claim 1 of the '811 and '829 patents:

(a) *Conductive lines having inherent distributed capacitance* means every conductive line on a semiconductor chip positioned over the insulating layer. In discussing this term, please comment on the significance of the following testimony: Hearing Tr. at 1593 (12/13/98)

(b) *Means . . . for selecting one or more of said conductive lines* means that some circuitry must select one or more conductive lines (as defined in part (a)), one of which receives the increments of charge from the charge pump.

(c) *Transfer means responsive to said selection means and connected to said voltage node for transferring increments of charge* means any circuitry connected at some point to the voltage node receiving the capacitively coupled voltage pulses, and delivering increments of charge to the conductive line to be charged. Further assume that the transfer means must respond to the selection means at some point in the charging operation, and increments of charge refers simply to a periodic increase in the charge, without necessarily returning to zero.

(d) *Said transfer means including switching means . . . for blocking substantially all of the flow of current* means any circuit device that prevents current from flowing from the high voltage supply to unselected lines.

(4) Assuming that the disputed claim terms are interpreted as set forth in question 3, would the accused devices of respondents and intervenor contain circuit means that perform the identical specified functions? Each respondent and intervenor is requested to answer this part of the question with regard to its own accused devices.

(5) If the disputed claim terms are interpreted as set forth in question 3, what evidence of record bears on the question of whether the circuit means for each element of the '811 and '829 patents is the equivalent for purposes of 35 U.S.C. 112(b) of the putative circuit means employed in the accused devices? If you conclude that the circuit means are not 112(b) equivalents, what evidence of record bears on the question of whether the distinguishing differences are substantial changes?

(6) What evidence of record bears on the question of whether the Amrany patent is prior art to the '811 and '829 patents? More specifically:

(a) What evidence of record corroborates the inventor's testimony that conception of the invention disclosed in the '811 and '829 patents occurred in May or June 1981?

(b) What evidence of record bears on the issue of when the invention disclosed in the '811 and '829 patents was reduced to practice?

(c) What evidence of record bears on the issue of due diligence from June 1981 until January 15, 1982?

(7) If the disputed claim terms are interpreted as set forth in question 3, are claim 1 of the '811 patent and claim 1 of the '829 patent valid in view of the prior art of record, including the Amrany reference?

(8) If the disputed claim terms are interpreted as set forth in question 3, do the Atmel AT45 and AT49 parts and the SEEQ parts practice the '811 and '829 patents?

(9) In what way would any agreement between SEEQ and JEDEC redound to the benefit of intervenor and respondents? Is there any evidence of record that intervenor or any of the respondents are third party beneficiaries?

(10) Assuming that the interaction of SEEQ with JEDEC resulted in a standing offer to every company in the industry to negotiate a royalty free license to the technology embodied in the '903 patent, is there any evidence of record that intervenor or any of the respondents accepted this offer before the filing of the complaint in this investigation?

(11) What evidence of record might establish an implied license by equitable estoppel with respect to the intervenor or any of the respondents?

(12) Given the facts of this case, can Mr. Jordan be the sole inventor of a patent with claim elements drafted in means plus function form?

(13) Discuss whether the following is an appropriate construction of the disputed terms of claim 1 of the '903 patent:

(a) *Primary circuit* means all circuitry that would be present on a semiconductor chip before the addition of circuitry needed to implement the invention disclosed in the '903 patent.

(b) *Product information array disposed on the semiconductor chip adjacent said primary circuit* means that the memory devices necessary to contain the claimed product information are fabricated on the same integrated circuit chip as the primary circuit, as defined in part (a) above, but not interspersed with the primary circuit.

(c) *Access means for receiving first and second signals and for selecting said primary circuit . . . [and] selecting said product information array* means the circuitry needed to make the logic decision whether the normal output of the primary circuit or the information in the product information array is being

requested by the user. Further assume that zero volts or the absence of any input are included in the universe of inputs that may be first and second signals.

(d) *Output means for providing output signals representative of the information stored* means the circuitry needed to translate internal logic signal(s) representative of the stored information into a signal suitable to drive devices external to the chip, according to the output drive specifications of the chip in question.

(14) If the disputed claim terms are interpreted as assumed in question 13, do the accused devices of respondents and intervenor infringe this claim? Each respondent and intervenor is requested to answer this part of the question with regard to its own accused devices.

(15) If the disputed claim terms are interpreted as set forth in question 13, is claim 1 of the '903 patent valid in view of the prior art of record?

(16) If the disputed claim terms are interpreted as set forth in question 13, do the Atmel AT27, AT29, and AT49 parts practice the '903 patent?

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is

therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the March 19, 1998 recommended determination of the ALJ. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on May 20, 1998. Reply submissions must be filed no later than May 28, 1998. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.42-

.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-.45).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

Issued: May 6, 1998.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-12587 Filed 5-8-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-408]

In the Matter of Certain Recombinantly Produced Hepatitis B Vaccines and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 3, 1998, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Chiron Corporation, 4560 Horton Street Emeryville, California 94608. A supplementary letter and an amended complaint were filed on April 20, 1998. A second supplement was filed on April 27, 1998. The complaint, as amended and supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain recombinantly produced Hepatitis B vaccines, and products containing same, made by processes that infringe claims 4, 5, 7, and 8 of U.S. Letters Patent Re. 35,749. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained herein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1997).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on May 5, 1998, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain recombinantly produced Hepatitis B vaccines, or products containing same, made by a process that infringes claims 4, 5, 7, or 8 of U.S. Letters Patent Re. 35,749, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Chiron Corporation, 4560 Horton Street, Emeryville, CA 94608-2917.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon

which the complaint is to be served: SmithKline Beecham Biologicals, S.A., Rue de l'Institut, 69, 1330 Rixensart, R.C. Nivelles 65945, Belgium, SmithKline Beecham Corporation, One Franklin Plaza, Philadelphia, PA 19102.

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401-L, Washington, DC 20436, who shall be the Commission Investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

(4) Pursuant to section 210.50(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.50(b)(1), the Commission delegates to the presiding administrative law judge the authority to compel discovery, take evidence, and hear argument with respect to the public interest, as appropriate, and directs the administrative law judge to include findings of fact and conclusions of law on public interest issues in any recommended determination filed with the Commission under section 210.42(a)(1)(ii), 19 CFR 210.42(j)(1)(ii).

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 5, 1998.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-12423 Filed 5-8-98; 8:45 am]
BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS 1926-98]

Fiscal Year 1998 Numerical Limitation Reached for H-1B Nonimmigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration Act of 1990 (IMMACT), provided that beginning with fiscal year 1992, the total number of aliens who may be issued visas under the H-1B category during any fiscal year could not exceed 65,000. Based on all available data, the 65,000 limit has been reached for fiscal year 1998. This notice describes the procedures the Service will use for processing H-1B petitions for new or initial employment in the remainder of fiscal year 1998.

DATES: This notice is effective May 11, 1998.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514-3240.

SUPPLEMENTARY INFORMATION:

Background

Section 205 of the Immigration Act of 1990 (IMMACT), Public Law 101-649, dated November 29, 1990, imposed a 65,000 numerical limitation beginning in fiscal year 1992 on the number of aliens who could be accorded H-1B nonimmigrant status in a fiscal year.

The regulation at 8 CFR 214.2(h)(8)(ii)(E) provides that "If the total numbers available in a fiscal year are used, new petitions and the accompanying fee shall be rejected and returned with a notice that numbers are unavailable for the particular nonimmigrant classification until the beginning of the next fiscal year."

Which H-1B Petitions Will Be Affected by This Notice?

H-1B petitions filed for new or initial employment for the remainder of fiscal year 1998 will be affected by this notice as well as petitions pending with the Service on the date of this notice.

Which H-1B Petitions Will Not Be Affected by This Notice?

Petitions filed for sequential H-1B employment, concurrent H-1B employment, extension of H-1B stay, and amended H-1B petitions are not affected by this notice.

Sequential employment is where an alien assumes one H-1B position after another. For example, an H-1B chemist completes his or her assignment with "Company A" and then assumes a new position the very next day as an H-1B chemist with "Company B".

Concurrent employment is where an alien holds two H-1B positions at the same time. For example, an H-1B computer system analyst works for "Company A" full-time during the week and works for "Company B" part-time on the weekends.

An *extension of stay* is where the alien's current employer submits a petition to extend the alien's temporary stay.

An *amended petition* is where there has been a change in the conditions of the alien's employment, but the alien remains employed by the same petitioner.

How Will H-1B Petitions Submitted For New or Initial Employment for Fiscal Year 1998 be Processed?

Based on 8 CFR 214.2(h)(8)(ii)(E), the Service will return, with fee, any H-1B petition filed with the Service on or after the date of this notice for new or initial employment in fiscal year 1998. The petitioner will be advised in a notice to either resubmit the petition when numbers are available on October 1, 1998, or to resubmit the petition and request employment commencing on or after October 1, 1998.

In the case of those petitions pending with the Service on the date of this notice, the Service will contact the petitioner or the attorney of record and advise him or her that the 65,000 limit has been reached. The petitioner will then be given the option of either withdrawing the petition or requesting that the Service change the date of the beneficiary's intended employment to on or after October 1, 1998, the beginning of fiscal year 1999, when H-1B numbers will again become available.

How Will H-1B Petitions Submitted For New or Initial Employment Beginning in Fiscal Year 1999 be Processed?

H-1B petitions filed for employment commencing on or after October 1, 1998, which is the beginning of fiscal year 1999, are not affected by the procedures described in this notice and those

petitions will be adjudicated when received by the Service.

What Will Happen if the Numerical Limitation is Raised by Congress?

The Congress is currently considering whether to raise the numerical limit for fiscal year 1998. The procedures described in this notice will be modified if the limit is raised through legislation enacted by the Congress and signed by the President.

Dated: May 6, 1998.

Doris Meissner,
Commissioner, Immigration and Naturalization Service.

[FR Doc. 98-12448 Filed 5-8-98; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and request for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to conduct safety and health training and education in the workplace. This notice announces grant availability for training in safety and health programs for construction, silica in general industry, food processing, shipyards, logging, and outreach to workers. The notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining the detailed grant application instructions mentioned later in the notice.

Authority for this program may be found in section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670).

DATES: Applications must be received by June 26, 1998.

ADDRESSES: Grant applications are to be submitted to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Helen Beall, Training Specialist, OSHA Office of Training and Education, 1555

Times Drive, Des Plaines, Illinois 60018, telephone (847) 297-4810, e-mail helen.beall@otl.osha.gov.

SUPPLEMENTARY INFORMATION:

What is the Purpose of the Program?

Susan Harwood Training Grants provide funds to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes three areas.

- Educating workers and employers in small businesses. A small business has 250 or fewer workers.
- Training workers and employers about new OSHA standards.
- Training workers and employers about high risk activities or hazards identified by OSHA through the priority planning process or otherwise, or as part of an OSHA special emphasis program.

Grantees are expected to develop training and/or educational programs that address one of the topics named by OSHA (see below), recruit workers and employers for the training, and conduct the training. Grantees will also be expected to follow-up with people who have been trained to find out what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

What Are the Training Topics This Year?

The purpose of this notice is to announce that funds are available for grants. Each grant application must address one of the following topic areas.

1. Construction. Applicants may address one of the following topics.
 - Recognition and avoidance of lead and silica hazards in bridge repair and renovation.
 - Safety and health hazards in highway construction with emphasis on preventing fatalities, particularly those caused by being struck by vehicles and equipment.
 - Recognition and avoidance of electrical hazards in construction, particularly contact with overhead power lines. Projects will emphasize developing systems and procedures that will provide ongoing training programs for new employees after the grant has ended.
2. Silica in general industry. Recognition and avoidance of silica hazards in industries where sandblasting is a process, such as metal finishing, or where silica is part of the manufacturing process, such as cement.
3. Food processing. Safety and health hazards in red meat and/or poultry processing.

4. Shipyards. Safety and health hazards in shipbuilding, shipbreaking, or ship repair.
5. Logging. Logging safety focusing on the OSHA standard and safe work practices. Projects must include a statewide group involved in the logging industry, such as a state forestry association.
6. Outreach to workers. Training workers about their rights under the OSH Act, how these rights can be exercised and what protections workers have. Training is to include sections 8(f) and 11(c) of the OSH Act, employee discrimination complaints under 29 CFR Part 24 (environmental laws), and complaints under the Surface Transportation Assistance Act of 1982 (29 CFR 1978). Projects will reach out to workers to inform them of their rights. Preference will be given to those that develop programs which will continue disseminating information after the grant ends.

Who is Eligible To Apply for a Grant?

Any nonprofit organization that is not an agency of a State or local government is eligible to apply. However, State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR 97.4(a)(1). Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the IRS.

What Can Grant Funds Be Spent On?

Grant funds can be spent on the following:

- Conducting training
- Conducting other activities that reach and inform workers and employers about occupational safety and health hazards and hazard abatement
- Developing educational materials for use in the training

Are There Restrictions on How Grant Funds Can Be Spent?

OSHA will not provide funding for the following activities:

1. Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.
2. Training involving workplaces that are not covered by the Occupational Safety and Health Act. Examples include state and local government workers in non-State Plan States and workers covered by section 4(b)(1) of the Act.
3. Production, publication, reproduction or use of training and educational materials, including

newsletters and instructional programs, that have not been reviewed by OSHA for technical accuracy.

4. Activities that address issues other than recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples include workers' compensation, first aid, and publication of materials prejudicial to labor or management.

5. Activities that provide assistance to workers in arbitration cases or other actions against employers, or that provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.

6. Activities that directly duplicate services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 7(c)(1) of the Occupational Safety and Health Act.

7. Activities intended to generate membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

What Other Grant Requirements Are There?

1. OSHA review of educational materials. Educational materials produced by the grantee will be reviewed by OSHA for technical accuracy during development and before final publication. OSHA will also review curriculums and purchased training materials for accuracy before they are used.

When grant recipients produce training materials, they will provide copies of completed materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Grant recipients' audiovisual materials will be included in this lending program. In addition, all materials produced by grantees may be placed on the Internet by OSHA.

2. OMB and regulatory requirements. Grantees will be required to comply with the following documents:

- 29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing OMB Circular A-110.
- OMB Circular A-21, which describes allowable and unallowable costs for educational institutions.

- OMB Circular A-122, which describes allowable and unallowable costs for other nonprofit organizations.

- OMB Circular A-133, which provides information about audit requirements.

3. Certifications. All applicants will be required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

4. Matching share. The program requires the grantee to provide a matching share. Grant recipients are to provide a minimum of 20% of the total grant budget. This match may be in-kind, rather than a cash contribution. For example, if the Federal share of the grant is \$80,000 (80% of the grant), then the matching share will be \$20,000 (20% of the grant), for a total grant of \$100,000. The matching share may exceed 20%.

How Are Applications Reviewed and Rated?

Grant applications will be reviewed by OSHA staff and the review results presented to the Assistant Secretary who will make the selection of organizations to be awarded grants. Preference will be given to applications that plan to conduct train-the-trainer programs. Applicants are encouraged to include managers and/or supervisors in their training. In general, applications that propose to serve a single employer will not be selected, since OSHA is interested in reaching multiple employers with each grant awarded.

The following factors will be considered in evaluating grant applications.

1. Program Design

- a. The proposed training and education program addresses one of the following topics:
 - i. Construction.
 - ii. Silica in general industry.
 - iii. Food processing.
 - iv. Shipyards.
 - v. Logging.
 - vi. Outreach to workers.
- b. The proposal plans to train workers and/or employers and clearly estimates the numbers to be trained.
- c. The proposal contains a train-the-trainer program, and the numbers to be trained by these trainers are clearly estimated.
- d. The planned activities are appropriate for the workers and/or employers to be trained.

- e. There is a plan to recruit trainees for the program.

- f. If the proposal includes developing educational materials, there is a plan for OSHA to review the materials during development.

- g. There is a plan to evaluate the program's effectiveness and this includes plans to follow-up with trainees to see if the training resulted in workplace change.

- h. The planned work can be accomplished in one year.

2. Program Experience

- a. The organization applying for the grant demonstrates experience with occupational safety and health.

- b. The organization applying for the grant demonstrates experience training adults in work-related subjects.

- c. The staff to be assigned to the project have experience in (1) occupational safety and health, (2) the specific topic chosen, and (3) training adults.

- d. The organization applying for the grant demonstrates experience in recruiting and training the population it proposes to serve under the grant.

3. Administrative Capability

- a. The applicant organization demonstrates experience managing a variety of programs.

- b. The applicant organization has administered, or will work with an organization that has administered, a number of different Federal and/or State grants over the past five years.

- c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

- a. The budgeted costs are reasonable.
- b. The proposed non-Federal share is at least 20% of the total budget.

- c. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

- d. The cost per trainee is less than \$500 and the cost per training hour is reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How Much Money Is Available for Grants?

There is approximately \$2,000,000 available for this program. The average Federal award will be \$100,000.

How Long Are Grants Awarded For?

Grants are awarded for twelve-month periods. Grants may be renewed for additional twelve-month periods depending on whether there are funds available, there is still a need for the training, and the grantee has performed satisfactorily.

How Do I Get a Grant Application Package?

Grant application instructions may be obtained from the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018. The application instructions are also available at <http://www.osha-slc.gov/Training/sharwood/sharwood.html>.

When and Where are Applications To Be Sent?

The application deadline is 4:30 p.m. Central Time, June 26, 1998.

Applications are to be mailed to the Division of Training and Educational Programs, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, IL 60018. Applications will not be accepted by fax.

How Will I be Told if My Application Was Selected?

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional Office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 5th day of May 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98-12372 Filed 5-8-98; 8:45 am]

BILLING CODE 4510-26-U

NATIONAL INSTITUTE FOR LITERACY (CFDA No. 84.257F)

NIFL Regional Technology HUB Project; Notice Inviting Applications for New Awards for Fiscal Year 1998

AGENCY: The National Institute for Literacy (NIFL).

ACTION: Notice.

PURPOSE: The purpose of these grants is to establish a second generation of regional hubs to extend the Literacy Information and Communication System (LINC) infrastructure throughout the literacy community in each region. Each hub will form a consortium with all states in the region—"member states"—and, in cooperation with member states, a network of targeted local literacy programs. Each regional hub will be expected to build on the achievements of the region's previous hub and to build strong partnerships with other technology efforts in the region. In the process of enhancing the technological capacity of states and local programs, regional hubs will—

- Increase the literacy field's electronic knowledge base by collecting and exchanging new literacy information resources, especially locally developed materials, and creating in-depth collections on important literacy topics.
- Encourage the widespread use of the NIFL's systematic procedures and uniform standards for information collection and exchange.
- Provide innovative delivery of high quality, easy-to-access information resources to the adult education and literacy community through the use of variety of tools, including multi-media.
- Enable member states and local programs to be self-sufficient in their efforts to enhance the LINC database and communication tools.
- Enhance communication and community-building by connecting increasingly larger numbers of literacy stakeholders of all kinds—researchers, practitioners, administrators, students, and policymakers—and closing the gap between information "haves" and "have nots."
- Integrate the use of technology into every aspect of learning and teaching in the adult education and literacy field.

Deadline for Transmittal of Applications: June 26, 1998.

Eligible Applicants: State, regional, and national organizations, or consortia of such organizations, in OVAE Region I.

Available Funds: This announcement envisions a two-year cooperative

agreement. In the first year a total of \$150,000 is available for the grant. Year 2 funding is subject to program authorization and availability of appropriations, and contingent upon satisfactory completion of the first year play of action.

Estimated Number of Awards: One award in the OVAE Region I.

Estimated Award Amount: \$150,000.
Project Period: Two years.

Applicable Regulations: The National Institute for Literacy has adopted the following regulations included in the Education Department Grants Administrative Regulations (EDGAR): 34 CFR Part 74; 34 CFR Part 75, §§ 75.50, 75.51, 75.102, 75.117, 75.109-75.192, 75.200, 75.201, 75.215; 34 CFR Parts 77, 80, 82, 85.

Note: The selection criteria used for this competition are set out in this Notice. While the criteria are patterned on those used generally by the U.S. Department of Education, they have been adapted by the NIFL to meet the needs of this program. While the NIFL is associated with the Departments of Education, Labor, and Health and Human Services, the policies and procedures regarding rulemaking and administration of grants are not adopted by the NIFL except as expressly stated in this Notice.

FOR FURTHER INFORMATION CONTACT:
Jaleh Behrooz Soroufi, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006. Telephone: 202-632-1506. FAX: 202-632-1512. E-mail: jaleh@literacy.nifl.gov

Information about NIFL's funding opportunities, including the Application Notices, Newsletters, Policy Updates, etc., can be viewed on the LINCSS WWW server (under Current Events, under grants). LINCSS URL: <http://novel.nifl.gov>

SUPPLEMENTARY INFORMATION:

Definitions: For purposes of this announcement the following definitions apply:

Literacy: An individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential (as stated in the National Literacy Act of 1991).

Adult Education and Literacy Community: The aggregate of individuals and groups at all levels nationwide that are actively involved with adult education and literacy instruction, including individuals such as researchers, practitioners, policymakers, adult learners, and administrators, and groups such as state and local departments of education,

human services, and labor; libraries; community-based organizations; businesses and labor unions; and volunteer and civic groups.

State Literacy Resource Centers (SLRCs): State or regional organizations supported through federal, state, or private funds for the purpose of coordinating the delivery and improvement of literacy services across agencies and organizations in the state or region, enhancing the capability of state and local organizations to provide literacy services, building a database of literacy-related information, and working closely with the NIFL and other national literacy organizations to enhance the national literacy infrastructure.

NIFL Standards: NIFL's guidelines and standards for organizing materials in a uniform format for posting on the Internet. These standards are found in NIFL's "Starting Point" manual and Adult Literacy Thesaurus (ALT).

OVAE Regions: The four regions of the United States designated by the U.S. Department of Education's Office of Vocational and Adult Education (OVAE):

Region I: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands.

Region II: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia.

Region III: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin.

Region IV: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Federal States of Micronesia, Guam, Marshall Islands, No. Mariana Islands.

Regional Hub or Regional Technology Hub: An Internet-based electronic information retrieval and communication site that serves states in a particular OVAE region by acting as the focal point for LINCSS activity, including training and technical assistance.

Background

The National Institute For Literacy (NIFL), as authorized by the National Literacy Act of 1991, has the legislative mandate to develop a national literacy database. The intent of this mandate is to assure the consolidation and accessability of scattered and hard-to-

access information resources for literacy.

As a first step in carrying out this charge, the NIFL conducted a study in 1992 of the literacy community's information needs by type of users and quality and format of existing literacy databases. In 1993, following up on the results of this survey, the NIFL formed eight work groups of representatives from the literacy community to develop a vision and work plan for establishing an information and communication system, which is called LINCSS. The work groups used a consensus-building process to produce a framework, standards, and guidelines for LINCSS, which are presented in the NIFL's "Starting Point" manual.

In order to implement the work groups' vision and plans, NIFL developed a LINCSS on-line prototype to examine and demonstrate the potential and capabilities of an Internet-based national literacy information and communication network. The LINCSS prototype was developed as a World Wide Web system on the Internet, accessible by multi-media tools (such as Mosaic or Netscape) and text-based tools (such as Lynx). LINCSS was designed to access literacy data available in multiple locations and to feature searchable literacy holdings and other literacy resources.

In 1995, the NIFL initiated the funding of regional hubs in all OVAE regions in order to build a nationwide infrastructure for extending LINCSS services throughout the adult education and literacy community. Grants were made to state agencies in all four regions, and grantees—called lead states—had the task of creating regional networks for LINCSS by helping all states and territories in their regions acquire the technological capability and expertise to establish their own LINCSS home pages, populate their site with locally produced materials, and extend LINCSS services to local programs and users. To date, 38 states have established LINCSS home pages on the Internet, and 130 local programs have received training and technical assistance in accessing LINCSS.

LINCSS currently permits simultaneous search across the home pages of all existing regional hubs and member states, as well as many major national and international organizations and databases. In addition, LINCSS provides the literacy community with important up-to-the-minute information on adult education and literacy policies, an event calendar, funding announcements, and information on other literacy initiatives. LINCSS also provides members of the literacy

community with opportunities for sharing expertise and resources on major literacy-related issues through several moderated forums/listservs.

Plans for the Future

Over the past five years, the NIFL has provided the leadership and tools to prepare the adult literacy community for the 21st century through major system-building initiatives, including the creation of LINCSS and its regional hubs. The NIFL intends to sustain the momentum of building systems that help professionalize the adult literacy community by continuing its initiatives in technology. During the next three years, the NIFL plans to expand LINCSS use as widely as possible throughout the literacy community, to enhance LINCSS resources and features, and to offer a range of services through LINCSS that will increase the qualitative and quantitative technological capabilities of the field. The success of these plans will depend on—

- Increased collaboration among the NIFL, regional hubs, member states, and all other major technology initiatives nationwide.

- Maintaining compatibility and consistency of LINCSS efforts among the NIFL and regional hubs.

- Continuous enhancement of LINCSS based on the state-of-the-art technology.

Overview of Regional Technology Hubs

The NIFL will award one grant to public and private organizations, or consortia of organizations, for the support of a regional technology hub in OVAE Region I. No more than one grant will be made in Region I.

Selection Criteria: (a)(1) In evaluating applications for a grant under this competition, the Director uses the following selection criteria.

(2) The maximum score for all the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) The Criteria—(1) Mission and Strategy (5 points). The Director reviews each application to determine the appropriateness of the applicant's stated mission and strategy for the proposed regional hub, including consideration of:

- (i) The degree to which the stated mission and strategy for operating a regional hub reflect an understanding of the NIFL's goals and purposes for LINCSS;

- (ii) The degree to which the application demonstrates an understanding of the previous regional hub's strengths and weaknesses; and

- (iii) The quality and coherence of proposed strategies for providing leadership to member states and targeted local programs.

(2) Institutional Capability (20 points). The Director reviews each application to determine the capabilities of the organization to sustain a long-term, high quality, and coherent program, including consideration of:

- (i) The applicant's experience in establishing and carrying out collaborative working relationships with other states, other state agencies, local programs, and other public and private groups;

- (ii) The applicant's experience in the use of technology to enhance accessibility of information and ease of communication;

- (iii) The capabilities of staff who will oversee project implementation;

- (iv) The applicant's capacity to provide resources—including hardware, software, and training—to member states and local programs; and

- (v) The applicant's willingness and ability to continue the project at the end of the two-year grant period.

(3) Plan of Operation (30 points). The Director reviews each application to determine the quality of the plan of operation, including consideration of:

- (i) The quality of the design of the project;

- (ii) How well the objectives of the project relate to the intended purposes of the regional technology hubs, as outlined in this request for applications;

- (iii) The quality of the applicant's plan to use its resources and personnel to achieve each project objective;

- (iv) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

- (v) The quality of the plan to establish effective working relationships with other organizations in the region as required for effective development of the project;

- (vi) The quality of the plan for leveraging additional resources for the project at the regional level and in each member state; and

- (vii) The extent to which the applicant's plan includes sound methods for achieving measurable goals.

(4) Technical Soundness (15 points). The Director reviews each application to determine the technical soundness of the proposed project, including consideration of:

- (i) The extent to which the applicant demonstrates knowledge of current Internet technologies, databases, telecommunications practices, equipment configurations, and maintenance;

- (ii) The extent to which the applicant demonstrates a thorough knowledge of literacy data collections, dissemination, and NIFL standards;

- (iii) The extent to which the applicant demonstrates a commitment to provide technical support, training, and equipment to member states;

- (iv) The extent to which the applicant will consider the perspectives of a variety of service providers in carrying out the work of the regional hub;

- (v) The extent to which the proposed training content is comprehensive and at appropriate levels; and

- (vi) The extent to which training methods, mechanisms, and structure are likely to be effective.

(5) Budget and Cost Effectiveness (10 points). The Director reviews each application to determine the extent to which:

- (i) The budget is adequate to support project activities;

- (ii) Costs are reasonable in relation to the objectives of the project;

- (iii) The budgets for any subcontracts are detailed and appropriate; and

- (iv) The budget details resources, cash and in-kind, that the applicant and others, especially member states, will provide to the project in addition to grant funds.

(6) Evaluation Plan (10 points). The Director reviews each application to determine the quality of the evaluation plan for the project, including consideration of:

- (i) The quality of methods and mechanisms to be used to document and evaluate progress in relation to the project's mission and goals;

- (ii) The strength of the applicant's statement of measurable outcomes for all project goals; and

- (iii) The quality of methods that will be used to document and evaluate the impact of the project's program on target audiences.

(7) Quality of Key Personnel (10 points). The Director reviews each application to determine the quality of key personnel for all project activities, including consideration of:

- (i) The qualifications of the project director;

- (ii) The qualifications of other key personnel;

- (iii) The experience and training of key personnel in leading a consortium of states and working in fields related to project objectives; and

- (iv) The applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected for employment without regard to race, color, national origin, religion, gender, age, or disability.

Application Requirements**Project Narrative**

The project narrative is critical and must thoroughly reflect the capacity of the applicant to lead the regional technology effort and build on the achievements of the previous regional hub. The narrative must clearly describe the applicant's plan for attaining measurable goals as identified in each of the sections listed below.

The narrative should not exceed twenty (20) single-spaced pages, or forty (40) double-spaced pages. The narrative may be amplified by material in attachments and appendices, (not exceeding 20 pages), but the body should stand alone to give a complete picture of the project. Proposals that exceed 20 single-spaced pages or 40 double-spaced pages will not be reviewed.

The narrative must encompass the full two years of project activities, with detailed plans for Year 1 and milestones for Year 2. The applicant must address the following areas, which correspond to the funding criteria:

1. Mission and Strategy

The applicant must state goals, objectives, and overall expected project achievements for the two-year grant period, including:

a. How the applicant's goals and objectives relate to NIFL's purposes for LINCNS and the regional hubs, as outlined under Plans for the Future and Overview of the Regional Technology Hubs in this notice.

b. How the project will build on the work of the previous regional hub in enhancing the technological capacity of the region's adult education and literacy community.

c. What services will be provided to all member states and targeted local programs in the region.

d. How the project will serve the entire adult education and literacy community, including the full range of public and private program (including libraries, local education agencies, community colleges, volunteer and community-based organizations, etc.).

2. Institutional Capabilities

The applicant must describe its qualifications to act as the lead site of a regional consortium of all member states in carrying out the proposed project, including evidence of the following:

a. The organizational capacity to lead member states in achieving project goals and objectives.

b. A successful leadership track record for working closely with other

agencies in the region in implementing a coordinated regional plan.

c. The ability to secure the support and involvement of member states, including their involvement in the development of the application.

d. The capacity to maintain and continuously enhance a sizable literacy collection on the Internet.

e. The availability of sufficient hardware, software, and technical expertise to maintain a home page and provide the necessary support to member states.

f. A secure funding basis for the duration of the project.

g. The ability to leverage other funding and resources to sustain the project beyond the grant.

3. Plan of Operation

The applicant must develop a two-year plan of operation that is both ambitious and realistic. While aiming high, the applicant must demonstrate an awareness of the constraints inherent in each particular situation. In addition to being reasonable and achievable, the plan must address both the immediate needs and the future vision and direction of the project. The plan must clearly identify the measurable outcomes that will result from project implementation. The description of the plan must address the following:

a. *Creating the regional hub:* How the applicant will establish and maintain a regional hub on the Internet that—

(1) Reflects knowledge of the previous hub's strengths and weaknesses, and builds on its achievements.

(2) Provides a seamless and uninterrupted transition of services and resources from the previous hub.

(3) Mirrors the LINCNS information structure and the system architecture, and is consistent with the NIFL vision for building a technology infrastructure, including hardware, software, and networking system compatibilities.

b. *Supporting member states:* How the applicant will help member states become technologically self-sufficient and develop the management capabilities to use and contribute to LINCNS, including states' ability to:

(1) Maintain a strong home page with a seamless interface with the applicant's and LINCNS home pages.

(2) Provide technical assistance, training, and high quality, updated resources to local adult education and literacy programs.

c. *Enhancing the knowledge base:* How the applicant will work with member states to gather information that broadens and deepens the literacy field's knowledge base and enhances LINCNS content, including—

(1) A measurable plan for the region and all member states that describes how the applicant will:

(a) Assess the information available in each member state and how it can be collected for use on LINCNS.

(b) Provide for the collection of information that responds to end users' educational and training needs.

(c) Focus on the collection of high quality resources, instructional materials, and tools, including information on exemplary projects.

(d) Make provisions for including print and non-print materials, such as audio and video materials, in their entirety.

(e) Be organized according to the NIFL standards.

(2) A plan for developing a special in-depth collection of information that represents the region's particular strengths in terms of resources and expertise.

(3) The resources to be made available to help member states achieve their measurable goals for information collection.

(4) How the applicant and member states will collect and update local program data according to NIFL standards.

(5) How the applicant will exercise quality control of the hub's home page.

d. *Extending LINCNS use to local programs:* How the applicant will work with member states to extend LINCNS use to target local programs, including:

(1) Determining how to enhance the technical capacity of local programs and end users.

(2) Selecting a specified number of local programs to target.

(3) The support to be provided to each member state for serving local programs, including—

(a) The kind of resources to be provided.

(b) The kind of hardware and software to be used.

(c) The training and technical assistance to be provided.

(4) Leveraging other resources for working with local programs.

(5) Evaluating the success of the project at the local level.

(6) The specific outcomes expected in year 1.

e. *Delivering resources:* How innovative technologies will be used to provide easy and efficient methods of delivering resources to the adult education and literacy community, including—

(1) What tools will be used.

(2) What hardware, software, and technical assistance will be provided for using these tools.

(3) How multi-media resources will be incorporated into project activities.

(4) How these tools will enable literacy practitioners to access LINCNS' variety of resources in all available formats.

(5) How these tools will help learners with low skill levels and learners with special needs use LINCNS resources.

f. *Enhancing communication and community-building:* How the applicant will enhance communication throughout the adult education and literacy community across and within member states through the use of telecommunication tools (such as listservs, forums, audio/video conferencing and networking, and virtual workspace programs), including—

(1) The kind of tools to be used.

(2) The specific content to be offered.

(3) How these tools will be used to link up literacy researchers, practitioners, administrators, students, and policymakers.

(4) How these tools will provide a medium for professional development within and among the member states and targeted local programs.

g. *Integrating technology into teaching learning:* How the applicant, in partnership with member states and local programs, will develop a two-year implementation plan for integrating technology into the daily teaching and learning routine of the adult education and literacy system, including—

(1) How the applicant will assess the existing level of integration in every member state.

(2) How the applicant will identify and use information about other national, state, and local efforts to integrate technology into teaching and learning.

(3) What resources will be recruited for the development of the two-year plan.

(4) How the applicant will support member states in developing and implementing plans for technology integration, including the selection of local programs as pilot sites.

(5) What kind of partnership will be developed with other regional and state agencies involved in similar efforts.

(6) How the applicant will evaluate progress in integrating technology.

(7) The minimum outcomes expected in Year 1.

h. *Organization and management:* How the applicant will ensure appropriate project organization and management that will—

1. Empower member states to become technologically independent in implementing project's activities.

2. Use and build on the strength and expertise of member states.

3. Ensure close collaboration and coordination of technology efforts among member states.

4. Ensure close collaboration with NIFL and other regional hubs, including cooperation in implementing new requirements or standards developed by NIFL in concert with regional hubs to assure uniformity across the LINCNS network.

The description of plans for organization and management should include—

(1) How the applicant involved member states in developing the application.

(2) How the applicant will involve member states and local programs in overseeing project implementation and evaluating progress.

(3) How the applicant will provide for expanding the roles of member states in carrying out project activities (i.e., by providing states with resources and funds appropriate to their level of need and expertise).

(4) How the applicant will provide for developing a formal agreement with all member states that clearly identifies the rights, roles, and responsibilities of each state with regard to all project activities.

(5) What tools will be used to maintain communication among the applicant and member states.

(6) How the applicant will provide for the management of any other partnership, consultant, or subcontract arrangement.

(7) How the applicant will help member states to—

(a) explore and leverage other sources of financial support and market their achievements.

(b) develop active state-level partnerships, especially with state education agencies.

(8) How the applicant will identify agencies within each state (including at a minimum the state literacy resource center and state office of adult education) to be involved in regional hub activities.

1. *Broad-based collaboration:* How the applicant will work with member states to develop collaborative relationships with other agencies, organizations, and projects that will—

1. Widen LINCNS usage in the field.

2. Provide global access to all literacy-related resources.

3. Further project objectives.

4. Be a potential source for future project support.

The description should include—

(1) How the applicant will work with member states to secure the active cooperation and partnership of appropriate state agencies, especially those dealing with education, labor, and human services.

(2) How the applicant will identify and develop partnerships with technology-based educational projects, especially those in the areas of telecommunications, on-line services, networking, and multi-media.

(3) How the applicant will pursue partnerships with private entities, including telecommunication and high tech business and industry.

4. Technical Soundness

Describe how the applicant will provide for the provision of hardware, software, and networking system that will—

(1) Address issues of interpretability and scalability,

(2) Support using audit-video, multi-media, and interactive Internet tools, and

(3) Keep pace with high-end technology.

The description should include assurances that the following will be in place—

(1) An electronic system for the regional HUB that mirrors the LINCNS structure, which consist of a UNIX-based server capable of providing the following services for the regional HUB and its member states:

(a) World Wide Web (WWW) HTTP services;

(b) Wide Area Information Server (WAIS) database services;

(c) Character-based web browser (LYNX) services;

(d) Internet Electronic Mail (SMTP) services;

(e) File Transfer Protocol (FTP) services;

(f) List (listproc, majordomo) services;

(g) Connectivity to the Internet via a dedicated Internet connection of sufficient capacity that will allow a sustained usage that must not exceed 30% of the total circuit capacity, and the combined circuit and web server must be able to transfer an average web page at a rate of 20 kilobytes in three seconds to a client web browser at NIFL, during peak usage times, and must also be able to deliver quality audio and video products at usable rates to multiple concurrent users;

(h) Maintain information in both HTML documents and WAIS databases;

(i) Serve as the HUB's WWW, WAIS, Audio and Video server; and

(j) Provide dial-in and Internet access to users via a command line Web browser (e.g., Lynx), for those that do not have the ability to run graphical browsers such as Netscape, Internet Explorer, Mosaic, etc. Provide user accounts on the local server for these users, dial-in model access, etc. (Note that all the software developed for the

NIFL homepage by the Logistics Management Institute and UUCOM is freely available for re-use).

(2) Provide assurances that the applicant will create a home page design that is similar to the LINC's home page, so that the same "look and feel" can be achieved throughout the network.

(3) Provide assurances that the applicant will, at a minimum, have (a) appropriately scaled Internet connectivity described above (connectivity may vary); (b) a WAIS database server(s) on the Internet [configuration is based on the LINCSearch multiple database search program]; (c) LINC's Locally produced Materials and Organization forms and guidelines on the HUB's server; and (d) the WAIS database(s) with literacy collections and program data, using "Starting Point" record structures, standards and Adult Literacy Thesaurus.

(4) Describe how the applicant will provide technical assistance, funding, and other resources to assure that all member states have their own directory of resources on the hub server or their own WAIS server, as well as the technical capacity to update their databases according to NIFL standards.

(5) Provide assurances that the applicant will for each member state, at a minimum, have—

(a) Assessment of the equipment needs.

(b) Inventory of equipment provided to implement project activities.

(c) Plans for purchasing or upgrading equipment, as well as software and networking systems.

(6) Describe how the applicant's measurable training and technical assistance activities will—

(a) Focus on raising awareness and educating practitioners on resources available through LINC's (broad-based training).

(b) Build greater knowledge, and skills in using the LINC's technology for teaching and learning (targeted training).

(c) Result in establishing a team of trainers at the regional level and for every member state.

(d) Assist member states to become independent in implementing state training plans and maintaining their web site.

(e) Adopt or develop training models (i.e., training trainers, workshops supplemented by peer coaching or modeling, etc.) that can be used to meet the needs of geographically dispersed staff at various levels of knowledge and skills.

(f) Provide methods, mechanisms, structures, and materials for training—both on-line and off-line—that can be replicated, maintained, easily accessible, and updated beyond the life of this project.

(g) Provide technical assistance for member states and local programs that help staff and end users at varying levels of technical sophistication, with special attention to non-technical staff.

(h) Assist member states in selection and installation of hardware and software within the proposed timeline.

5. Budget and Cost-Effectiveness

The applicant must describe plans for managing the project budget and ensuring cost-effectiveness, including—

a. Provisions for ensuring the most efficient and cost-effective use of project funds.

b. Provisions for identifying and securing additional funds to continue and expand the project beyond the end of the grant.

c. A time line for the project, consisting of a table or diagram listing major tasks or milestones and including estimates of funds, time, training schedules, personnel, facilities, and equipment allocated to each program area, as well as the timing of progress and other reports, meetings, and other similar events.

6. Monitoring and Evaluation

The applicant must describe a plan for monitoring and evaluation that is based on the measurable goals of the project. The description of the plan must include how the applicant will—

a. Demonstrate the project's effectiveness in achieving its objectives.

b. Assess the project's impact on member states and the broader literacy community.

c. Evaluate the effectiveness of the lead site's role in working with member states.

d. Use on-line methods (such as web tools) to collect and analyze data on the effectiveness of the resources presented.

e. Evaluate the project's impact on targeted local programs.

f. Confirm and report evaluation results

7. Key Personnel

The applicant must describe how it will ensure the capacity of key personnel to carry out the work of the project, including—

a. A description of the main qualifications of key personnel to carry out project tasks.

b. Identification of key staff members at the regional and member state level, their specific roles, and the number of hours required to carry out their tasks.

Other Application Requirements

The application shall include the following:

Project Summary: The proposal must contain a 200-word summary of the proposed project suitable for publication. It should not be an abstract of the proposal, but rather a self-contained description of the activities that would explain the proposal. The summary should be free of jargon and technical terminology, and should be understandable by a non-specialist reader.

Budget Proposal: ED Form 424A must be completed and submitted with each application. The form consists of Sections A, B, and C. On the back of the form are general instructions for completion of the budget. All applicants must complete Sections A and C. If Section B is completed, include the nature and source of non-federal funds. Attach to Section C a detailed explanation and amplification of each budget category. Included in the explanation should be a complete justification of costs in each category. Additional instructions include:

- Prepare a separate itemization and brief narrative for each of the member states in the region in addition to submitting an itemized budget narrative for the project as a whole.

- Personnel items should include names (titles or position) of key staff, number of hours proposed and applicable hourly rates.

- Include the cost, purpose, and justification for travel, equipment, supplies, contractual and other. Training stipends are not authorized under this program.

- Clearly identify in all instances contributed costs and support from other sources, if any.

- Show budget detail for financial aspects of any cost-sharing, joint or cooperative funding.

Disclosure of Prior NIFL Support: If any consortium member state has received NIFL funding in the past two years, the following information on the prior awards is required:

- NIFL award number, amount and period of support;

- A summary of the results of the completed work; and

- A brief description of available materials and other related research products not described elsewhere.

If the applicant has received a prior award, the reviewers will be asked to comment on the quality of the prior work described in this section of the proposal.

Current and Pending Support: All current project support from whatever

source (such as Federal, State, or local government agencies, private foundations, commercial organizations) must be listed. The list must include the proposed project and all other projects requiring a portion of time of the Project Director and other project personnel, even if they receive no salary support from the project(s). The number of person-months or percentage of effort to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals that are being considered by or will be submitted soon to other sponsors.

If the project now being submitted has been funded previously by another source, the information requested in the paragraph above should be furnished for the immediately preceding funding period. If the proposal is being submitted to other possible sponsors, all of them must be listed. Concurrent submission of a proposal to other organizations will not prejudice its review by the NIFL.

Any fee proposed to be paid to a collaborating or "partner" for-profit entity should be indicated. (Fees will be negotiated by the Grants Officer.) Any copyright, patent or royalty agreements (proposed or in effect) must be described in detail, so that the rights and responsibilities of each part are made clear.

If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall proposal and addressed in the narrative.

Reporting: In addition to working closely with the Institute, the applicant will be required to submit a final annual report of activities. This report will be presented to the Institute staff, the National Institute Advisory Board and the Interagency Group. Detailed specifications for the report will be provided to the consortium within three months after the award.

For planning purposes, the applicant may assume that the following information will be provided:

- Project(s) Title
- Project Abstract

A concise narrative describing in layman's language the subject purposes, methods, expected outcomes (including products), and significance of the project.

- Significant Products: A list of significant holdings available for access associated with the consortium.

- Significant Accomplishments. A past-tense abstract that describes the consortium's accomplishments,

known uses of the holdings and evidence of positive impact.

The grantee must also submit the following reports:

- Quarterly Performance: A brief 4–5 page report of progress—Due: Within 30 days at the end of each quarter.

Acknowledgment of Support and Disclaimer: An acknowledgment of NIFL support and a disclaimer must appear in publications of any material, whether copyrighted or not, based on or developed under NIFL supported projects:

This material is based upon work supported by NIFL under Grant No. (grantee should enter NIFL grant number).

Except for articles or papers published in professional journals, the following disclaimer should be included:

Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the NIFL.

Instructions for Transmittal of Applications

(a) To apply for a cooperative agreement grant—

(1) Mail the original and seven (7) copies of the application on or before the deadline date of June 26, 1998 to: National Institute for Literacy, 800 Connecticut Avenue, NW., Suite 200, Washington, DC 20006, Attention: Jaleh Behrooz Soroufi, (CFDA #84.257F).

(2) Hand deliver the application by 4:30 p.m. (Washington, DC time) on the deadline date to the address above.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(c) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

(2) The NIFL will mail a Grant Applicant Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing, the applicant should call the NIFL at (202) 632–1525 or (202) 632–1500.

(3) The applicant must indicate on the envelope and in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88) and instructions.

Part II: Budget Information-Non-Construction Programs (ED Form 424A) and instructions.

Part III: Application Narrative. Additional Materials: Estimated Public Reporting Burden.

Assurances-Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debarment, Suspension, and other responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of recipients and should not be transmitted to the NIFL.

Disclosure of Lobbying Activities (Standard form LLL) (if applicable) and instructions. An applicant may submit information on a Photostat copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and certifications must each have an original signature. No award can be made unless a complete application has been received.

Information about NIFL's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the NIFL homepage—LINC's—on the World Wide Web at: (<http://novel.nifl.gov/Grants.html>). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Instructions for Estimated Public Reporting Burden: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

The valid OMB control number for this information is under OMB control number 3430-0004, Expiration date: May, 2000. The time required to complete this information collection is 55 hours per response, including that time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, D.C. 20006-2712.

Program Authority: 20 U.S.C. 1213C.

Dated: May 6, 1998.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 98-12422 Filed 5-8-98; 8:45 am]

BILLING CODE 5055-01-M

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences Fiscal Year 1997 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93-438) identifies an abnormal occurrence (AO) as an unscheduled incident or event that the Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104-66) requires that AOs be reported to Congress on an annual basis. During fiscal-year 1997, six events that occurred at facilities licensed or otherwise regulated by the NRC and the Agreement States were determined to be AOs. These events are discussed below. As required by Section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG-0090, Vol. 20, "Report to Congress on Abnormal Occurrences, Fiscal Year 1997." This report will be available at NRC's Public Document Room, 2120 L Street N.W. (Lower Level), Washington, D.C., about three weeks after the publication date of this Federal Register Notice.

97-1 Loss of Two of Three High Pressure Injection Pumps at Oconee Nuclear Station Unit 3

One of the AO reporting criteria notes that a major deficiency in design, construction, control, or operation having significant safety implications requiring immediate remedial action can be considered an AO.

Date and Place—May 3, 1997; Oconee Unit 3, a pressurized water nuclear reactor plant designed by Babcock and Wilcox Company, operated by the Duke Energy Corporation (formerly known as Duke Power Company), and located about 8 miles north of Clemson, South Carolina.

Nature and Probable Consequences—On May 3, 1997, the Oconee Unit 3 reactor was shut down and the reactor coolant system (RCS) was being cooled down for inspection of the high pressure injection (HPI) discharge piping. The need for the inspection resulted from RCS leakage from a weld crack in the HPI makeup piping on Unit 2. Reactor pressure was approximately 270 psig, RCS temperature was approximately 205° F, one reactor coolant pump (RCP) was running, and the Low Pressure Injection System was being used to cool down the RCS. Makeup water to the RCS to compensate for the temperature decrease was being supplied from the letdown storage tank (LDST) by one of the three HPI pumps. Makeup to the LDST consisted of periodic batch additions as needed. These plant conditions were below the point where the technical specifications required that the HPI system must be operable; that is, required to mitigate a small-break loss-of-coolant accident.

Plant cool-down evolutions appeared to be normal until the "B" HPI pump started to cavitate and makeup flow to the reactor coolant system was lost. A RCP seal water (which is also supplied by the HPI pump) low-flow signal automatically started the "A" HPI pump. However, it also began to cavitate. (The third HPI pump is not designed to automatically start on this signal and remained in the standby condition.) The operators stopped both pumps and began troubleshooting the problem. A Notification of Unusual Event was declared when it was recognized that the pumps would be inoperable past the shift that was on duty. Unit 3 pressure and temperature were stabilized and there was no immediate concern that conditions would worsen.

Later investigations revealed that the potential for a more serious situation existed if there had been a small break loss-of-coolant accident, which is the

design basis for the HPI system, prior to this event. If such an accident had occurred, all three of the HPI pumps would have automatically started and become inoperable very quickly. In addition, the pumps may have become air bound and unavailable when the pump suction was transferred to the Borated Water Storage Tank to inject into the RCS. This would have significantly complicated recovery from the accident, but would have been within the Emergency Operating Procedure guidance and training provided to the operators. It would, however, increase the probability of core damage. The length of time that Unit 3 was in this degraded status could not be accurately determined, but the condition may have existed since start-up in March 1997, when plant conditions required that the HPI system be operable.

Cause or Causes—Loss of the HPI pumps occurred when all of the water was inadvertently pumped from the LDST because of faulty level indication. The erroneous level indication was caused by the loss of approximately one-half of the water in the level detector reference leg because of a slight leak in the instrument fitting. This loss of the reference leg water caused the tank level instrument to indicate a water level higher than the actual level, a condition that may have existed since February 1997, the last time the reference leg was verified to be full. It also caused the loss of the low-level alarm. As a result of these conditions, the operators did not provide makeup water to the tank when it was needed, resulting in the HPI pump continuing to run until the tank was empty. The LDST level detection system consists of two level instruments connected to a common reference leg. Thus, the condition affected both level detectors equally.

In addition, the control room operators did not properly monitor and detect the inaccurate LDST level indications. They did not notice that for a short period of time the indicated level stopped decreasing and continuously showed the tank to be approximately half-full at the same time water was being pumped from the tank.

Actions Taken to Prevent Recurrence

Licensee—Corrective actions included (1) the addition of a second reference leg to the LDST to provide separate level indications, (2) enhanced operator training and procedures, and (3) the performance of an HPI System Reliability Study that is to be completed by December 31, 1997.

NRC—Escalated enforcement, which incorporated this issue, resulted in the determination that a Severity Level II violation existed, and the licensee was assessed a \$330,000 civil penalty. Information Notice 97-38, "Level-Sensing System Initiates Common-Mode Failure of High-Pressure-Injection Pumps," was issued on June 24, 1997, to alert other licensees to this event. This event is closed for the purpose of this report.

Other NRC Licensees—(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

97-2 Overexposure of a Worker at Mallinckrodt, Inc., in Maryland Heights, Missouri

One of the AO criteria notes that any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in an annual shallow-dose equivalent to the skin or extremities of 2500 mSv (250 rem) or more will be considered for reporting as an AO.

Date and Place—May 14-15, 1997; Mallinckrodt, Inc.; Maryland Heights, Missouri.

Nature and Probable Consequences—On May 14, 1997, an employee was removing radioactive waste from the hot cell where rhenium-186 (Re-186) was used. The employee was performing this task manually, using gloves, instead of remotely. When he left the area, he attempted to perform a personal contamination survey but the survey meter immediately went off the scale. He assumed that the high count rate was due to background radiation from an adjacent radioactive material transport cart and, subsequently, forgot to resurvey himself in a low background area before he left the facility that evening. Upon arrival at work the next day, he was told that his urine sample, which he had submitted before going home the previous night, indicated iodine-131 (I-131) radiation contamination and that he was restricted from working with radioactive material. At that time, he performed a personal contamination survey and detected significant levels of contamination on his left thumb which subsequently was identified as Re-186. The I-131 contamination level did not exceed the AO criteria for exposure to radiation from licensed material.

The licensee estimates that the individual received a shallow-dose equivalent of 6090 millisievert (609 rem) to an area of about 0.75 square centimeters (0.12 square inches) on the palm side of the thumb of his left hand.

Lower levels of contamination were found on the back of his right hand and fingers. On May 15, 1997, the employee had undergone decontamination to the extent that only approximately 4 percent of the activity remained.

The licensee surveyed the offsite locations where the employee had been after leaving work on May 14, 1997. Low levels of Re-186 contamination were found on three locations inside the employee's vehicle and on various items in the bathroom and kitchen of his home. The employee's vehicle and home were decontaminated. The employee was examined by a physician who identified no immediate health effects. However, according to a report from an NRC consultant, a small possibility exists for skin cancer to develop in the exposed area of the thumb.

Cause or Causes—The cause of the event was a procedural deficiency in handling waste from the Re-186 hot cell. Normally, radioactive waste in other hot cells at the facility was handled with remote tools. However, in this case, procedural controls did not require remote handling of the waste. Once the employee completed the work, poor radiation work practices were exhibited as he cross-contaminated his hands when he removed his gloves. In addition, the worker did not investigate the detection of high count rates during his first attempt to perform a contamination survey.

Actions Taken to Prevent Recurrence

Licensee—The staff was instructed on the importance of conducting proper personal contamination surveys and the proper use of protective clothing. The use of Re-186 was suspended until improvements to existing waste disposal procedures could be evaluated and implemented. Plans were made (1) to compile all existing contamination protection procedures into one contamination protection procedure, (2) to evaluate the use of a portal type monitoring system, and (3) to post personal-monitoring reminder signs at all laboratory exits.

NRC—NRC conducted a special safety inspection, proposed a \$55,000 civil penalty on December 17, 1997, and the licensee paid the civil penalty on January 20, 1998.

This event is closed for the purpose of this report.

Agreement State Licensees

AS 97-1 Multiple Transuranic Overexposures to a Worker at Isotope Products Laboratories in Burbank, California

One of the AO criteria notes that any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in an annual total effective dose equivalent (TEDE) of 250 millisievert (mSv) (25 rem) or more; or an annual sum of the deep dose equivalent (DDE) (external dose) and committed dose equivalent (CDE) (intake of radioactive material) to any individual organ or tissue other than the lens of the eye, bone marrow, and the gonads of 2500 mSv (250 rem) or more will be considered for reporting as an AO. In addition, another AO criterion states that a serious deficiency in management or procedural controls in major areas will be considered for reporting as an AO.

Date and Place—Between January 1 and December 31, 1995; Isotope Products Laboratories; Burbank, California.

Nature and Probable Consequences—A radiochemist was assigned to make transuranic and other types of sources. The transuranics utilized included the isotopes of plutonium-238 (Pu-238), Pu-239, Pu-240, americium-241 (Am-241), and curium-244 (Cm-244). During January 1995, while making a Cm-244 source, it was discovered that the exhaust fan of the fume hood where the source was being fabricated was not working. An analysis of room air samples confirmed the loss of Cm-244 into the working area.

Bioassay results disclosed that the fecal and urine samples provided by the radiochemist contained Cm-244 and Am-241. The licensee hired dosimetry and radiation protection consultants as directed by the State Agency. Careful analysis of the bioassay data by these consultants, which included dose summation and retrospective time correction for various intakes, suggested that during 1995 the radiochemist received a TEDE of 383.20 mSv (38.32 rem) and a CDE of 6900 mSv (690 rem) to the bone surfaces. The specific exposures were as follows: (1) committed effective dose equivalent (CEDE) of 271.8 mSv (27.18 rem) from Cm-244, (2) CEDE of 80 mSv (8 rem) from Am-241, (3) CEDE of 4.4 mSv (0.44 rem) from Pu-238, Pu-239, and Pu-240, and (4) DDE of 27.0 mSv (2.70 rem) from external radiation.

The State Agency discovered this incident during a routine inspection on December 5, 1995, and was initially reported to NRC in January 1996. During

a follow-up inspection, the State Agency learned that another Cm-244 incident took place and was significant. The State Agency also learned of other exposure incidents that indicated the licensee had a deficient contamination control program, an inability to conduct internal dose assessments, and inadequate management oversight. The State provided additional information on these events to NRC in 1997.

Cause or Causes—The licensee's radiation protection program was inadequate and lacked important elements needed to ensure the radiation safety of its workers. Some of these inadequacies were the lack of (1) work permits, (2) glove boxes for certain types of work, and (3) radiation procedural controls.

Actions Taken To Prevent Recurrence

Licensee—After the licensee's consultants conducted their review and comprehensive audit of the existing radiation protection program, they made recommendations to ensure future compliance with the license and regulations. The licensee hired a competent radiation safety officer, and the radiochemist was assigned duties that did not involve the handling or processing of radioactive materials.

State Agency—The State Agency completed its investigation and is committed to closely tracking the licensee's radiation protection program to ensure continued compliance.

This event is closed for the purpose of this report.

AS 97-2 Overexposure of a Radiographer and an Untrained Technician at Wolf Creek Mine in Walker County, Alabama

One of the AO criteria notes that any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in an annual total effective dose equivalent (TEDE) of 250 millisievert (mSv) (25 rem) or more; or an annual sum of the deep dose equivalent (DDE) (external dose) and committed dose equivalent (CDE) (intake of radioactive material) to any individual organ or tissue other than the lens of the eye, bone marrow, and the gonads of 2500 mSv (250 rem) or more will be considered for reporting as an AO. In addition, another AO criterion states that a serious deficiency in management or procedural controls in major areas will be considered for reporting as an AO.

Date and Place—July 1, 1996; Wolf Creek Mine, Walker County, Alabama.

Nature and Probable Consequences—A radiographer, employed by Certified

Testing and Inspection of Cottondale, Alabama, and a technician, employed by Ultron, Inc., of Mt. Vernon, Illinois, were performing industrial radiography at the Wolf Creek Mine in Walker County, Alabama, when they became so distracted by problems with excessively exposed film that they forgot they had an exposure in progress and entered the high radiation area without making a survey and changed the film with the source in the unshielded exposed position. The radiographer had received prior radiation safety training, however, the technician, an employee of Ultron, Inc., had not received prior radiation safety training. The radiography film and the device used to support the source and the film during exposures were being supplied to the radiographer by Ultron, Inc.

Consequently, both individuals received unintended radiation exposure. The State Agency estimated that the radiographer received a dose of 530 millisievert (mSv) (53 rem) to his head and 48 mSv (4.8 rem) to the center of his body and the Ultron, Inc., technician received a dose of 110 mSv (11 rem) to his head and 28 mSv (2.8 rem) to the center of his body. Neither individual reported any acute radiation symptoms.

The radiography film supplied by Ultron, Inc., had faster and different exposure characteristics than the film usually used by Certified Testing and thus was being overexposed during processing in the darkroom. The darkroom, which was supplied by Certified Testing, utilized a homemade "safe light," which had been made a safe light by the application of red spray paint. The radiographer did not realize beforehand that the light would not be "safe" for the film supplied by Ultron, Inc.

Cause or Causes—The radiographer entered a designated high radiation area with his alarm ratemeter turned off and without following his normal practice of cranking in the source and surveying the guide tube and camera. The radiographer interpreted the silence from the alarm ratemeter as an indication of safe conditions. Unfortunately, when turned off, the alarm ratemeter gives the same indication as it does when indicating safe conditions. In addition, the radiographer did not utilize a collimator to reduce the exposure to himself and the Ultron, Inc., technician.

Actions Taken To Prevent Recurrence

Licensee—The licensee stated that the radiographer did not develop any symptom of acute radiation exposure and that its personnel were reinstructed in the importance of performing surveys

and using a collimator. The licensee committed to the State Agency to verify the training of all technicians, including those of the company that hires the licensee to perform radiography.

State Agency—The State Agency cited the Licensee for the following four violations: (1) excessive exposure to a radiation worker, (2) excessive exposure to a member of the public (the Ultron, Inc., technician representative), (3) failure to prevent unauthorized entry into the High Radiation Area, and (4) failure to exercise ALARA by using a collimator. A civil penalty was considered but not imposed. The State Agency recommended that both individuals contact the State and seek medical attention if any symptoms of acute exposure should appear.

This event is closed for the purpose of this report.

AS 97-3 Radiopharmaceutical Misadministration at Mad River Community Hospital in Arcata, California

One of the AO criteria states that a medical misadministration that results in a dose that is equal to or greater than 10 gray (Gy) (1000 rad) to any organ (other than a major portion of the bone marrow, to the lens of the eye, or to the gonads) and represents a dose or dosage that is at least 50 percent greater than that prescribed in a written directive will be considered for reporting as an AO.

Date and Place—February 28, 1996; Mad River Community Hospital; Arcata, California. The State initially reported this event to NRC in December 1996.

Nature and Probable Consequences—A patient was prescribed a dosage of 3.7 megabecquerel (MBq) (0.1 millicurie [mCi]) of iodine-131 (I-131) for a thyroid scan and uptake procedure. However, the patient was administered a dosage of 262.7 MBq (7.1 mCi) of I-131. As a result, the patient's thyroid received a dose of about 9100 centigray (cGy) (9100 rad), instead of the prescribed dose of 130 cGy (130 rad). The licensee stated that such a dose may induce a hypothyroid state requiring the patient to take thyroid hormone.

Cause or Causes—The wrong dosage was administered on the assumption that the patient was prescribed a whole body thyroid scan for a cancer metastatic disease evaluation.

Actions Taken To Prevent Recurrence

Licensee—Procedures for scheduling a whole body scan for thyroid cancer metastases were revised to include a detailed patient preparation and history.

The revised procedures required that the approving radiologist sign the I-131 administration policy before ordering a radiopharmaceutical. In addition, the nuclear medicine technologist attended a continuing education program at San Francisco General Hospital, which included a segment on the effects of studies involving therapy dosages.

State Agency—The State Agency conducted numerous follow-up inspections to ensure that the licensee's actions taken to prevent recurrence had been implemented.

This event is closed for the purpose of this report.

AS 97-4 Radiopharmaceutical Misadministration at Tuomey Regional Medical Center in Sumter, South Carolina

One of the AO criteria notes that a medical misadministration that results in a dose that is equal to or greater than 10 gray (Gy) (1000 rad) to any organ (other than a major portion of the bone marrow, to the lens of the eye, or to the gonads) and represents a dose or dosage that is at least 50 percent greater than that prescribed in a written directive will be considered for reporting as an AO.

Date and Place—December 11, 1996; Tuomey Regional Medical Center; Sumter, South Carolina.

Nature and Probable Consequences—A patient was prescribed a dosage of 74 megabecquerel (MBq) (2.0 millicurie [mCi]) of iodine-131 (I-131) for a treatment of Graves disease. However, the patient was administered a 388.5 MBq (10.5 mCi) dosage of I-131. As a result, the patient's thyroid received a dose of 40,400 centigray (cGy) (40,400 rad) instead of the prescribed dose of 7700 cGy (7700 rad).

The licensee stated that the administered dose of I-131 to the patient's thyroid is not expected to have major health effects.

Cause or Causes—The wrong dosage was administered to the patient because the written order for the I-131 procedure was misread by the administering technologist.

Actions Taken To Prevent Recurrence

Licensee—The licensee will have the written order on hand before ordering radiopharmaceuticals from the pharmacy and will have a second person verify the dosage before administration to the patient.

State Agency—The State Agency accepted the licensee's report and corrective action as appropriate. No further action was requested.

This event is closed for the purpose of this report.

Dated at Rockville, Maryland this 5th day of May, 1998.

For the Nuclear Regulatory Commission,

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98-12390 Filed 5-8-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power and Light Company; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 176 to Facility Operating License No. NPF-14 and Amendment No. 149 to Facility Operating License No. NPF-22 issued to Pennsylvania Power and Light Company (PP&L, the licensee), which revised the Technical Specifications (TSs) for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment modified the TSs by changing the Rod Block Monitor (RBM) flow biased trip setpoints and also the RBM channel calibration frequency and allowed outage times.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the *Federal Register* on April 11, 1997 (62 FR 17885). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality

of the human environment (63 FR 24197).

For further details with respect to the action see (1) the application for amendment dated November 27, 1996, and supplemented by letter dated February 12, 1997, (2) Amendment No. 176 to License No. NPF-14, (3) Amendment No. 149 to License No. NPF-22, (4) the Commission's related Safety Evaluation, and (5) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes Barre, PA 18701.

Dated at Rockville, Maryland, this 4th day of May 1998.

For the Nuclear Regulatory Commission
Victor Nerses,

Senior Project Manager, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-12391 Filed 5-8-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Southern Nuclear Operating Company, Inc., et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket Nos. 50-424 and 50-425]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-68 and NPF-81, issued to Southern Nuclear Operating Company, Inc., et al. (the licensee), for operation of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, located in Burke County, Georgia.

The proposed amendments would revise the VEGP Technical Specifications to authorize the licensee to increase the storage capacity of the VEGP Unit 1 spent fuel pool from the present capacity of 288 fuel assemblies to 1476 fuel assemblies. The change would be accomplished by the installation of high density fuel rack modules. The racks would utilize a neutron absorbing material between cells to assure a subcritical configuration.

The Commission had previously issued a Notice of Consideration of

Issuance of Amendments published in the *Federal Register* on December 31, 1997 (62 FR 68317). That notice contained the Commission's proposed determination that the requested amendments involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination, and offered an opportunity for the applicant to request a hearing on the amendment and for persons whose interest may be affected to petition for leave to intervene.

Due to oversight, the December 31, 1997, Notice of Consideration of Amendments did not provide notice that this application involves a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982. Such notice is required by Commission regulations, 10 CFR 2.1107.

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWP), 42 U.S.C. 10154. Under section 134 of the NWP, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWP are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G continue to govern the filing of requests for a

hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

By June 10, 1998, the licensee, if it wishes to invoke the hybrid hearing procedures, may file a request for such hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to invoke the hybrid hearing procedures and to participate as a party in such proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia. If a request for a hearing or petition for leave to intervene seeking to invoke the hybrid hearing procedures in accordance with this notice is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. Requests for hearing or petitions for leave to intervene that do not seek to invoke the hybrid procedures are not authorized by this notice and would be considered untimely.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the *Federal Register* a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene that seeks to invoke the hybrid hearing procedures in accordance with this notice must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia, attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 4, 1997, as supplemented by letter dated November 20, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 5th day of May 1998.

For The Nuclear Regulatory Commission,
David H. Jaffe,

Senior Project Manager, Project Directorate II-2 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 98-12392 Filed 5-8-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-280 AND 50-281]

Virginia Electric and Power Company; Surry Power Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. DPR-32 and Facility Operating License No. DPR-37, issued to Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt Virginia Electric and Power Company from the requirements of 10 CFR 70.24(a), which requires, in each area in which special nuclear material is handled, used, or stored, a monitoring system that will energize clear audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or

stored to ensure that withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated January 14, 1998.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 4.3 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and features designed to prevent inadvertent criticality, the staff has determined that inadvertent criticality is not likely to occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24(a), therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Surry Power Station Technical Specifications (TS), the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. TS requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, "General Design Criteria for Nuclear Power Plants," Criterion 62, requires that criticality in the fuel storage and handling system shall be prevented by

physical systems or processes, preferably by use of geometrically safe configurations. This is met at Surry Units 1 and 2, as identified in the TS.

Surry TS Section 5.4, Fuel Storage, states that the new fuel assemblies are stored vertically in an array with a distance of 21 inches between assemblies to assure that the effective neutron multiplication factor, K_{eff} , will remain ≤ 0.95 if fully flooded with unborated water, and to assure $K_{eff} \leq 0.98$ under conditions of low-density optimum moderation. The spent fuel assemblies are stored vertically in an array with a distance of 14 inches between assemblies to assure $K_{eff} \leq 0.95$ if fully flooded with unborated water.

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluents nor cause any significant occupational exposures since the TS, design controls, including geometric spacing of fuel assembly storage spaces, and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the Surry Power Station."

Agencies and Persons Consulted

In accordance with its stated policy the NRC staff consulted with Mr. Foldes of the Virginia Department of

Health on April 22, 1998, regarding the environmental impact of the proposed action.

The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 14, 1998, which is available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia.

Dated at Rockville, Maryland, this 5th day of May 1998.

For The Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Acting Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-12393 Filed 5-8-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Wednesday, May 13, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Wednesday, May 13

10:30 a.m. Affirmation Session (Public Meeting)

- Final Rule: Amendments to 10 CFR Parts 30, 40, 50, 70, and 72-Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensee.
- Final Rule: Revision of 10 CFR 32.14 (D) to Place Timepieces Containing Gaseous Tritium Light Sources on the Same Regulatory Basis as Timepieces Containing Tritium Paint (Contact: Ken Hart, 301-415-1659).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings

call (recording)—(301) 415-1292. Contact person for more information: Bill Hill (301) 415-1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: May 6, 1998.

William M. Hill, Jr.,

Secretary, Tracking Officer, Office of the Secretary.

[FR Doc. 98-12528 Filed 5-7-98; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-335, 50-389, 50-250, 50-251 License Nos. DPR-67, NPF-16, DPR-31, DPR-41]

Florida Power and Light; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petitions dated February 26 and 27, March 6, 15, 17, 29, and 30, and April 4, 1998, Thomas J. Saporito, Jr. and National Litigation Consultants (Petitioners) have requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Florida Power and Light's (FPL's) St. Lucie Plant, Units 1 and 2, and Turkey Point Plant, Units 3 and 4.

Petitioners request that the NRC take numerous actions, including certain immediate actions, with regard to the FPL St. Lucie and Turkey Point facilities. These actions include that the NRC: (1) Take escalated enforcement action, including modifying, suspending, or revoking FPL's operating licenses until it demonstrates that there is a work environment which encourages employees to raise safety concerns directly to the NRC, and the issuance of civil penalties for violations of the NRC's requirements; (2) permit Petitioners to intervene in a public hearing regarding whether FPL has violated the NRC's employee protection regulations and require FPL to allow the National Litigation Consultants to assist its employees in understanding and exercising their rights under these regulations; (3) conduct investigations

and require FPL to obtain appraisals and third-party oversight in order to determine whether its work environment encourages employees to freely raise nuclear safety concerns; (4) inform all employees of their rights under the Energy Reorganization Act and NRC's regulations to raise such concerns; and (5) establish a website on the Internet to allow employees to raise concerns to the NRC. As grounds for these requests, Petitioners assert that there is a widespread hostile work environment at FPL's facilities and that certain employees have been subjected to discrimination for raising nuclear safety concerns, and that the NRC's process for handling allegations and responding to concerns of discrimination has been ineffective. In addition, the Petition requests that the NRC immediately investigate concerns that contamination occurred and remains uncorrected because of the flow of water from a radioactive contaminated area at St. Lucie into an unlined pond, that FPL is improperly grouping work orders, thereby reducing the number of work open orders, that an excessive amount of contract labor remains onsite, and that, because NRC inspectors are only assigned to the day shift, many employees do not have access to the NRC onsite and inspectors cannot monitor safety-related work functions outside the day shift. As grounds for these requests, Petitioners assert that the storm drains from FPL's radioactive contaminated area flow into the pond and that FPL is aware of the problem but has failed to identify or correct this and directs its Health Physics personnel to survey the pond by sampling only surface water.

The requests are being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The requests have been referred to the Director of the Office of Nuclear Reactor Regulation. The Petitioners' requests for immediate action were denied by letter dated May 4, 1998. Copies of the Petitions are available for inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 4th day of May 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission.

[FR Doc. 98-12394 Filed 5-8-98; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549. Extension: Rule 15a-6 SEC File No. 270-329 OMB Control No. 3235-0371

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 15a-6 [17 C.F.R. 240.15a-6] under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) ("Exchange Act"), which provides, among other things, an exemption from broker-dealer registration for foreign broker-dealers that effect trades with or for U.S. institutional investors through a U.S. registered broker-dealer, provided that the U.S. broker-dealer obtains certain information about, and consents to service of process from, the personnel of the foreign broker-dealer involved in such transactions, and maintains certain records in connection therewith.

These requirements are intended to ensure (a) that the U.S. broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. institutional investors, (b) that the foreign broker-dealer and its personnel effectively may be served with process in the event enforcement action is necessary, and (c) that the Securities and Exchange Commission has ready access to information concerning these persons and their U.S. securities activities.

In general, the records to be maintained under Rule 15a-6 must be kept for the applicable time periods as set forth in Rule 17a-4 [17 C.F.R. 240.17a-4] under the Exchange Act or, with respect to the consents to service of process, for a period of not less than six years after the applicable person ceases engaging in U.S. securities activities. Reliance on the exemption set forth in Rule 15a-6 is voluntary, but if a foreign broker-dealer elects to rely such exemption, the collection of information described therein is mandatory. The collection does not involve confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid control number.

It is estimated that approximately 2,000 respondents will incur an average burden of three hours per year to comply with this rule, for a total burden of 6,000 hours. The average cost per hour is approximately \$100. Therefore, the total cost of compliance for the respondents is \$600,000.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to: (i) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549; and (ii) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503. Comments must be submitted within 30 days of this notice.

Dated: April 30, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-12348 Filed 5-8-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23169; 812-10746]

CypressTree Asset Management Corporation, Inc. and North American Funds; Notice of Application

May 4, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act and rule 18f-2 under the Act as well as certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants, CypressTree Asset Management Corporation, Inc. ("CAM") and North American Funds (the "Fund"), request an order that would (a) permit applicants to hire subadvisers ("Managers") and materially amend sub-advisory agreements ("Portfolio Management Agreements") without shareholder approval and (b) grant relief from certain disclosure requirements.

FILING DATES: The application was filed on August 1, 1997 and amended on April 7, 1998. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 29, 1998 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, 450 Fifth Street NE., Washington, DC 20549. Applicants, 116 Huntingdon Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942-0574, or Edward P. Macdonald, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549 (tel. 202-942-8090).

Applicants' Representations

1. The Fund is an open-end management investment company organized as a Massachusetts business trust and registered under the Act. The Fund is currently comprised of fifteen separate series ("Portfolios"), each of which has its own investment objectives and policies. CAM, registered under the Investment Advisers Act of 1940 (the "Advisers Act"), serves as investment adviser to the Fund. Each Portfolio currently has one Manager, each of which is registered under the Advisers Act.

2. The Fund and its former investment adviser, NASL Financial Services ("NASL"), are parties to an existing order that granted similar relief to that requested in the application (the "Existing Order").¹ On October 1, 1997,

CAM acquired a portion of the assets of NASL and of its parent, North American Security Life Insurance Company (the "Transaction"). Upon completion of the Transaction, CAM began serving as investment adviser to the Fund and its Portfolios pursuant to an investment advisory agreement (the "Investment Advisory Agreement"). Since CAM was not a party to the Existing Order, CAM and the Fund request an order substantially similar to the Existing Order so that the Fund may continue to operate in the manner in which it currently operates.² The requested order would supersede the Existing Order as it applies to the Fund.

3. CAM oversees the administration of all aspects of the business and affairs of the Fund, including providing administrative, financial, accounting, bookkeeping, and recordkeeping services. CAM selects, contracts with and compensates Managers that manage the assets of the Portfolios. CAM selects Managers based on a quantitative and qualitative evaluation of their skills and their proven ability to manage assets. Each Manager recommended by CAM is ultimately selected and approved by the Fund's board of trustees ("Board"), including a majority of the Fund's trustees who are not "interested persons" of the Fund as defined in section 2(a)(19) of the Act ("Independent Trustees"). CAM monitors each Manager's compliance with each Portfolio's investment objectives and policies, reviews the performance of each Manager, and periodically reports each Manager's performance to the Board.

4. Pursuant to the Portfolio Management Agreements, the specific investment decisions for each Portfolio are, and will continue to be, made by one or Managers, each of whom has discretionary authority to invest all or a portion of the assets of a particular Portfolio subject to general supervision by CAM and the Board. None of the Managers, except Standish, Ayer & Wood, manager of the Tax-sensitive Equity Portfolio, is an affiliate of CAM.

5. As compensated for its services, CAM receives a fee from the Fund

1996) (notice) and 22429 (December 31, 1996) (order).

² In addition, applicants request that the relief apply to any registered open-end investment companies that in the future are advised by CAM or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with CAM. Applicants also request that the relief apply to any series of the Fund that may be created in the future. All existing investment companies that currently intend to rely on the order have been named as applicants, and any other existing or future investment companies that subsequently rely on the order will comply with the terms and conditions in the application.

computed as an annual percentage of the current value of the net assets of each Portfolio. Managers' fees are paid by CAM out of its fee from the Portfolios at negotiated rates. Fees paid to a Manager of a Portfolio with multiple Managers would depend both on the fee rate negotiated with CAM and on the percentage of the Portfolio's assets allocated to that Manager by CAM.

6. Applicants request an exemption from section 15(a) of the Act and rule 18f-2 under the Act to permit Managers approved by the Board to serve as portfolio managers for the Portfolios without shareholder approval. Shareholder approval will continue to be required for any Manager that is an "affiliated person" (as defined in section 2(a)(3) of the Act), other than by reason of serving as a Manager of the Portfolio (an "Affiliated Manager").

7. Applicants also request an exemption from the various disclosure provisions described below that may require the Fund to disclose the fees paid by CAM to the Managers. The Fund will disclose for each Portfolio (both as a dollar amount and as a percentage of a Portfolio's net assets): (i) Aggregate fees paid to CAM and Affiliated Managers; and (ii) aggregate fees paid to Managers other than Affiliated Managers ("Limited Fee Disclosure"). For any Portfolio that employs an Affiliated Manager, the Portfolio will provide separate disclosure of any fees paid to the Affiliated Manager.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Rule 18f-2 under the Act provides that any investment advisory contract that is submitted to the shareholders of a series investment company under section 15(a) shall be deemed to be effectively acted upon with respect to any class or series of such company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter.

2. Form N-1A is the registration statement used by open-end investment companies. Items 2, 5(b)(iii), and 16(a)(iii) of Form N-1A (and after the effective date of the amendments to Form N-1A, items 3, 6(a)(1)(ii), and 15(a)(3), respectively) require disclosure of the method and amount of the investment adviser's compensation.

3. Form N-14 is the registration form for business combinations involving open-end investment companies. Item 3 of Form N-14 requires the inclusion of a "table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction."

4. Rule 20a-1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"). Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of "the terms of the contract to be acted upon" and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

5. Form N-SAR is the semi-annual report filed with the SEC by registered investment companies. Item 48 of Form N-SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Managers.

6. Regulation S-X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the SEC. Sections 6-07(2)(a), (b), and (c) of Regulation S-X require that investment companies include in their financial statements information about investment advisory fees.

7. Section 6(c) authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that an exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

8. Applicants assert that the Fund's investors rely on CAM to select one or more Managers best suited to achieve a Portfolio's investment objectives. Therefore, applicants assert that, from the perspective of the investor, the role of the Managers is comparable to that of individual portfolio managers employed

by other investment company advisory firms. Applicants note that the Investment Advisory Agreement will remain subject to shareholder approval.

9. Applicants further assert some Managers use a "posted" rate schedule to set their fees, particularly at lower asset levels. Based upon CAM's discussions with prospective Managers and NASL, applicants believe that some organizations may be unwilling to serve as Managers at any fee rate other than their "posted" fee rates, unless the rates negotiated for the Portfolios are not publicly disclosed. Applicants believe that requiring disclosure of Managers' fees may deprive CAM of its bargaining power while producing no benefit to shareholders, since the total advisory fee they pay would not be affected.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. The Fund will disclose in its registration statement the Limited Fee Disclosure.

2. CAM will not enter into a Portfolio Management Agreement with any Affiliated Manager without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees of the Fund. The selection of such counsel will remain within the discretion of the Independent Trustees.

5. CAM will provide the Board, no less frequently than quarterly, with information about CAM's profitability for each Portfolio relying on the requested relief. The information will reflect the impact on profitability of the hiring or termination of any Manager during the applicable quarter.

6. Whenever a Manager is hired or terminated, CAM will provide the Board information showing the expected impact on CAM's profitability.

7. When a Manager change is proposed for a Portfolio with an Affiliated Manager, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Portfolio and its shareholders and does not involve a

conflict of interest from which CAM or the Affiliated Manager derives an inappropriate advantage.

8. Before a Portfolio may rely on the order requested in the application, the operation of the Portfolio in the manner described in the application will be approved by a majority of its outstanding voting securities, as defined in the Act, or, in the case of a new Portfolio whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 11 below, by the sole initial shareholder(s) before offering shares of that Portfolio to the public.

9. CAM will provide general management services to the Fund and its Portfolios, including overall supervisory responsibility for the general management and investment of the Portfolios' securities portfolio, and, subject to review and approval by the Board, will (i) set the Portfolio's overall investment strategies; (ii) select Managers; (iii) when appropriate, allocate and reallocate the Fund's assets among multiple Managers; (iv) monitor and evaluate the performance of Managers; and (v) ensure that the Managers comply with the Portfolio's investment objectives, policies and restrictions.

10. Within 60 days of the hiring of any new Manager, shareholders will be furnished all information about the new Manager or Portfolio Management Agreement that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Manager. CAM will meet this condition by providing shareholders, within 60 days of the hiring of a Manager, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement also will meet the requirements of Schedule 14A under the Exchange Act, except as modified by the order to permit Limited Fee Disclosure.

11. The Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Portfolio will hold itself out to the public as employing the "Manager of Managers" structure described in the application. The prospectus will prominently disclose that CAM has ultimate responsibility (subject to oversight by the Board) to oversee the Managers and recommend their hiring, termination, and replacement.

¹ NASL Financial Services, Inc., Investment Company Act Release Nos. 22382 (December 9,

12. No trustee or officer of the Fund or director or officer of CAM will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Manager except for (i) ownership of interests in CAM or any entity that controls, is controlled by, or is under common control with CAM; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Manager or an entity that controls, is controlled by, or is under common control with a Manager.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12403 Filed 5-8-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39953; File No. SR-DTC-98-06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Charges

May 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 16, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes fees for the matching feature of DTC's Institutional Delivery (ID) system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

¹ 15 U.S.C. 78s(b)(1).

rule change. The text of these statements may be examined at the places specified in Items IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The matching feature is an enhancement to the current confirmation and affirmation processing in the ID system.³ The proposed fees are designed to recover DTC's estimated service costs and will be effective for services provided after April 30, 1998. Under the proposed rule change, DTC will charge \$0.08 for each matched or unmatched confirmation in addition to the regular confirmation fees. DTC will charge this fee to the following parties: (1) To a clearing broker for each matched or unmatched confirmation to a broker, clearing broker, or interested party; (2) to the clearing agent for each matched or unmatched confirmation to the ID agent or clearing agent; and (3) to the clearing agent or clearing broker for each matched or unmatched confirmation to an institution that either agrees to pay for it or \$0.04 when the parties agree to split the fee.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁴ and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among DTC's participants and other parties that use DTC's ID service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received.

² The Commission has modified the text of the summaries prepared by DTC.

³ For a description of the matching feature of the ID System, refer to Securities Exchange Act Release No. 39832 (April 6, 1998), 63 FR 18062 [File No. SR-DTC-95-23] (order approving proposed rule change).

⁴ 15 U.S.C. 78q-1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)⁵ of the Act and Rule 19b-4(e)(2)⁶ promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-98-06 and should be submitted by June 1, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12350 Filed 5-8-98; 8:45 am]
BILLING CODE 8010-01-M

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(e)(2).

⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39954; File No. SR-MBSCC-98-2]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying MBS Clearing Corporation's Schedule of Charges for the Dealer Account Group

May 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 10, 1998, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies MBSCC's schedule of charges for the dealer account group.²

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change modifies MBSCC's schedule of charges for the dealer account group. Specifically, the proposed rule change reduces account maintenance fees, currently at \$350 per month for each account, for participants that use a common investment manager to process trades with MBSCC.

¹ 15 U.S.C. 78s(b)(1).

² MBSCC has separate fee schedules for brokers and dealers. The dealer account group is the fee schedule for dealers' accounts.

³ The Commission has modified the text of the summaries prepared by MBSCC.

The new account maintenance fee for a participant that uses a common investment manager to process trades with MBSCC is based on the total number of accounts a participant maintains with an investment manager. The new monthly account maintenance fees are \$350 for one account, \$185 per account for two or three accounts, \$150 per account for four to seven accounts, \$130 per account for eight to ten accounts, and \$120 per month for more than ten accounts.

The reduced account maintenance fees reflect efficiencies obtained by using a common investment manager to process trades with MBSCC such as reduced communications costs, systems overhead, and support services that result in savings to MBSCC. MBSCC will implement these changes commencing with its May 1998 billing cycle.

MBSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act⁴ and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among MBSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)⁵ of the Act and pursuant to Rule 19b-4(e)(2)⁶ promulgated thereunder in that the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(e)(2).

in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR-MBSCC-98-02 and should be submitted by June 1, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12349 Filed 5-8-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39945; File No. SR-PCX-98-08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Assessment for New Facilities

May 1, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² on February 9, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change SR-PCX-98-08. The proposed rule change is described

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The proposed rule change was originally submitted by the Exchange with a request for Commission action pursuant to Section 19(b)(2) of the Act.³ The proposed rule change was published for comment in the *Federal Register* on March 11, 1998.⁴ No comments were received on the proposal.

During the initial comment period for the proposal, on March 19, 1998, the Exchange filed a letter amendment, Amendment No. 1 to the filing,⁵ which requested that the Commission act upon the filing pursuant to its authority under Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder.⁶ Because the filing establishes a due, fee, or other charge of the Exchange, in accordance with Section 19(b)(3)(A) of the Act and subparagraph (3) of Rule 19b-4 thereunder, the proposed rule change became immediately effective upon the Exchange's filing of Amendment No. 1. The Commission is therefore publishing this release to provide public notice of Amendment No. 1 to File No. SR-PCX-98-08 and the immediate effectiveness of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to assess the owners of each of the 552 Exchange memberships in order to provide an equity base for financing land and new facilities for the Exchange. These facilities will include new trading floors, technology facilities, office space and equipment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to assess the owners of each of its 552 memberships \$36,000, to be paid by each membership owner in monthly installments of \$1,000. The installments are payable on a monthly basis and may not be paid in advance. The purpose of the assessment is to provide an equity base to finance land and facilities to house the Exchange's new trading floors, technology facilities, associated office space and equipment. The Exchange intends to treat funds from the assessment as a contribution to capital that will be segregated from PCX operating funds.

The Exchange expects that the cost of the facilities will greatly exceed the amount to be raised by this assessment. In that regard, the Exchange intends to arrange additional financing for its new facilities. The amount raised by the assessment will serve as an equity base that will aid in the process of obtaining additional financing.

The Exchange's new facilities will consolidate the Exchange's San Francisco administrative and operational facilities into a single location, will include a larger options trading floor and an appropriately designed equities trading facility that will better serve the trading of equity securities and option contracts, and will provide office space for members and member organizations, including clearing firms. The need for new facilities is based upon the Exchange's current growth rate and its need to provide effective services to its membership. The move will also allow the Exchange to increase the operational efficiency and improve the services it provides to the investing public.

The Exchange recognizes that the current industry trend towards electronic trading will affect the Exchange's future needs for trading floor space, particularly in the trading of equity securities. But with regard to the trading of options contracts, the Exchange believes that it will still need a significantly larger trading floor because the Exchange anticipates that electronic options trading will operate in tandem with the current open outcry floor market. The Exchange also notes that its need to move to new facilities is due in part to the continuing growth of its options business in recent years. The move will also fulfill the Exchange's need to operate in facilities with enhanced emergency power and

business recovery systems. The Exchange notes that it previously imposed an assessment on its membership in 1988 and 1984.⁷

The Exchange is currently studying ways in which it might provide future benefits (such as a rebate of the proposed assessment, if permitted in the future by financial circumstances) to the seat holders who pay some or all of the assessment. The Exchange will also require PCX seat owners and their lessees, if any, to specify in an addendum to their leases whether rent under those leases will be increased to reflect the assessment and whether any potential benefits ultimately returned to seat owners with respect to the assessment will, in turn, be paid of transferred by the seat owner to the lessee.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4),⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees or other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.¹⁰

⁷ In 1988, the Exchange imposed an interim monthly assessment on each of its 551 regular memberships, consisting of two parts: a flat fee of \$600 per month and supplemental activity charge, applied differently for Equities and Options Members, averaging \$600 per month per Member. The assessment was imposed in order for the Exchange to meet its operational, technology, and facilities needs. See Securities Exchange Act Release No. 25617 (April 26, 1988), 53 FR 15761 (May 3, 1988). In 1984, the Exchange imposed a special fee of \$6,000 on the 503 memberships outstanding as of December 15, 1983, for an aggregate assessment of approximately \$3 million. The purpose of the assessment was to raise financing for contemplated facilities improvements to the Los Angeles and San Francisco Equity Floors and the San Francisco Options Floor. See Securities Exchange Act Release No. 20550 (January 11, 1984), 49 FR 2178 (January 18, 1984) [order approving File No. SR-PSE-83-24, which was submitted pursuant to Section 19(b)(3)(A) of the Exchange Act].

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ The Commission notes that, although the Exchange did not formally request comments on the rule filing from members, it did hold a series of meetings to apprise members of the proposed

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraphs (e) of Rule 19b-4 thereunder.¹¹ At any time within 60 days of the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20540. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-98-08 and should be submitted by June 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12351 Filed 5-8-98; 8:45 am]

BILLING CODE 8010-01-M

project to finance land and facilities to house the Exchange. Subsequent to those meetings, the Exchange received a petition signed by approximately 165 Options Floor Members opposing the proposed new Exchange facilities and assessment plan. A copy of the petition has been filed with the Commission as Exhibit A to the Rule 19b-4 filing for the proposed rule change.

¹¹ 15 U.S.C. 78f(b)(3)(A) and 17 CFR 19b-4(e).

¹² 17 CFR 200.30-3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The *Federal Register* Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 20, 1997 [62 FR 224].

DATES: Comments must be submitted on or before June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC-100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267-9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilot Medical Certification Customer Service Survey.

OMB Control Number: 2120-0624.

Type of Request: Extension of a currently approved collection.

Affected Public: 48,000 Pilots.

Abstract: This information is being conducted to comply with the Executive Order 12862, Setting Customer Service Standards. The information will be used to evaluate agency performance in the area of pilot medical certification. The completion of this form is voluntary and the information collection will be conducted anonymously.

Estimated Annual Burden Hours: 2,400 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection;

ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 5, 1998.
Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98-12440 Filed 5-8-98; 8:45 am]

BILLING CODE 4910-02-P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending of May 1, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-98-3793.

Date Filed: April 28, 1998.

Parties: Members of the International Air Transport Association.

Subject:

COMP Telex Mail Vote 937.

(Euro) Conversion Resolution 010h.

Intended effective date: June 1, 1998.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98-12369 Filed 5-8-98; 8:45 am]

BILLING CODE 4910-02-P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending May 1, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-98-3801.

Date Filed: April 30, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 28, 1998.

Description: Application of Chileinter Airlines S.A. for a foreign air carrier permit, pursuant to 49 U.S.C. 41302 to allow it to engage in charter foreign air transportation of persons, property, and mail between a point or points in Chile and a point or points in the United States, via intermediate points, as provided by the U.S.-Chile Air Transport Agreement of 1989, as amended, and to operate additional ad hoc charters pursuant to 14 C.F.R. Part 212.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98-12370 Filed 5-8-98; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent to Prepare an Environmental Impact Statement and to Hold an Environmental Scoping Meeting for Cleveland Hopkins International Airport, Cleveland, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to hold a public scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that environmental documentation, including an Environmental Impact Statement (EIS), will be developed to address environmental and related impacts expected with the proposed expansion of Cleveland Hopkins International Airport, Cleveland, Ohio.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 734-487-7280.

SUPPLEMENTARY INFORMATION: The FAA will prepare an EIS concurrently with the finalization of a Master Plan for Cleveland Hopkins International Airport. Currently, the City of Cleveland has a proposal for the relocation and extension of Runway 5L/23R and the extension of Runway 5R. Associated with this development would be the relocation of Brook Park Road, development of new air traffic control procedures, and development of methods for providing noise compatibility with the surrounding communities. The EIS will also evaluate the cumulative impacts anticipated to

occur as a result of the implementation of foreseeable future improvements at Cleveland Hopkins International Airport.

Comments and suggestions are invited from federal, state, and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues are identified. Copies of materials to be evaluated can be obtained by contacting the FAA information contact listed above. Comments and suggestions may be mailed to the same address.

Public Scoping Meeting

To facilitate receipt of comments, two scoping meetings will be held on Wednesday, June 17, 1998. A resource agency meeting will be held from 1:00 p.m. to 3:00 p.m. at the Cleveland Convention Center, 500 Lakeside (Room 212A), Cleveland, Ohio 44114. A public workshop and scoping meeting will be held from 5:00 p.m. to 8:00 p.m. at the Cleveland Convention Center, 500 Lakeside (Room 212B), Cleveland, Ohio 44114, to solicit comments and input from the general public on the environmental analysis process. If you plan on attending the resource agency meeting, please contact Mr. Ernest Gubry. Written comments and recommendations may be sent to Mr. Gubry's office at the above noted address prior to June 30, 1998.

Issued in Des Plaines, Illinois, on May 4, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, FAA, Great Lakes Region.

[FR Doc. 98-12441 Filed 5-8-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-3803]

Decision That Nonconforming 1993 Audi 100 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1993 Audi 100 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1993 Audi 100 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation

into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1993 Audi 100), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective May 11, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the *Federal Register* of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the *Federal Register*.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90-006) petitioned NHTSA to decide whether 1993 Audi 100 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition under Docket No. NHTSA 98-3453 on February 18, 1998 (63 FR 8252) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of Audi AG, the vehicle's

manufacturer. In this comment, Volkswagen disputed J.K.'s claim that the non-U.S. certified 1993 Audi 100 complies with the Bumper Standard found in 49 CFR Part 581. Volkswagen also contended that the vehicle is only equipped with a driver's side air bag, and lacks a knee bolster on the driver's side that is necessary to meet the unbelted test requirements of Standard No. 208, *Occupant Crash Protection*. Volkswagen additionally observed that the vehicle is not equipped with a passenger side air bag or knee bolster, which it asserts are necessary for compliance with Standard No. 208.

Volkswagen also stated that the U.S. certified version of the 1993 Audi 100 has been designated a high theft line vehicle under the Theft Prevention Standard at 49 CFR Part 541. Volkswagen contended that the U.S. certified 1993 Audi 100 received an exemption from the parts marking requirements of the standard on the basis that it is equipped with an anti-theft system which differs from the system found on the non-U.S. certified version of the vehicle. As a consequence, Volkswagen asserted that the non-U.S. certified 1993 Audi 100 would have to be modified prior to importation so that it is equipped with the same anti-theft system as that found on its U.S. certified counterpart.

NHTSA accorded J.K. an opportunity to respond to Volkswagen's comment. In its response, J.K. stated that all vehicles imported under the petition will be inspected to ensure that those manufactured on or after September 1, 1993 are equipped with dual air bags. Additionally, J.K. stated that knee bolsters will be installed on vehicles that lack these components to achieve compliance with Standard No. 208.

With respect to the Theft Prevention Standard compliance issue raised by Volkswagen, J.K. asserted that all cars produced after 1987 that it has imported for use in the United States are marked in the required locations regardless of whether they have been designated as a high theft line or are equipped with an alarm system. J.K. also stated that a U.S. model anti-theft alarm system will be installed, where necessary, prior to the importation of any vehicles to be imported under the petition.

NHTSA believes that J.K.'s response adequately addresses the comments that Volkswagen has made regarding the petition. NHTSA further notes that the modifications described by J.K., which have been performed with relative ease on thousands of motor vehicles imported over the years, would not preclude non-U.S. certified 1993 Audi 100 passenger cars from being found

"capable of being readily altered to comply with applicable motor vehicle safety standards." Accordingly, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP-244 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1993 Audi 100 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1993 Audi 100 Quattro passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 6, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98-12438 Filed 5-8-98; 8:45 am]

BILLING CODE 4910-68-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-3806]

Notice of Receipt of Petition for Decision That Nonconforming 1995 Ferrari 456 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Ferrari 456 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1995 Ferrari 456 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially

similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is June 10, 1998.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the *Federal Register* of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the *Federal Register*.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90-006) has petitioned NHTSA to decide whether 1995 Ferrari 456 passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1995 Ferrari 456 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1995 Ferrari 456 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1995 Ferrari 456, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1995 Ferrari 456 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) inscription of the word "Brake" on the dash, in place of the international ECE warning symbol; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies and rear sidemarker lights; (c) installation of a U.S.-model high-mounted stop light assembly.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a key microswitch and a warning buzzer.

Standard No. 118 *Power Window Systems*: installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a seat belt warning buzzer wired to the seat belt latch; (b) replacement of the seat belts and the driver's and passenger's side air bags, knee bolsters, control unit and sensors with U.S.-model components on vehicles that are not so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints are automatic, self-tensioning, and that release by means of a single red push button at both front and rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection*: installation of door bars on vehicles that are not so equipped.

With regard to compliance with the Bumper Standard found in 49 CFR Part 581, the petitioner states that the bumpers and the support structure for the bumpers on the non-U.S. certified 1995 Ferrari 456 are identical to those found on the vehicle's U.S. certified counterpart. The petitioner notes, however, that some of these bumpers may have to be replaced if they do not have holes cut into the side to accommodate side marker lights.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the *Federal Register* pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 6, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98-12439 Filed 5-8-98; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the fifteenth session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held June 29 through July 10, 1998 in Geneva, Switzerland.

DATES: June 18, 1998, 9:30 AM-1:00 PM; July 16, 1998, 9:30 AM-1:00 PM.

ADDRESSES: Both meetings will be held in room 6244, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frist Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the fifteenth session of the UNSCOE and to discuss U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the session and to prepare for the Twentieth Session of the Committee of Experts on the Transport of Dangerous Goods which is scheduled for December 7-18, 1998 in Geneva, Switzerland. Topics to be covered during the public meeting include matters related to restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule including development of packing instructions prescribed the types of packagings for specific materials, international harmonization of classification criteria and labeling, review of intermodal portable tank requirements including requirements for multi-element gas containers, review of the requirements applicable to small quantities of hazardous materials in

transport (limited quantities), classification of individual substances, requirements for toxic-by-inhalation substances and requirements applicable to the classification and transportation of explosives.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the fifteenth session of the UNSCOE meeting may be obtained from the RSPA Dockets Division (202-366-5046) or by downloading them from the United Nations Transport Division's web site at <http://www.itu.int/itudoc/un/editrans/dgdb/dgscmm.html>. This site may also be accessed through RSPA's Hazardous Materials Safety Homepage at <http://hazmat.dot.gov/intstandards.htm>.

Issued in Washington, DC, on May 5, 1998.

Robert A. McGuire,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98-12345 Filed 5-8-98; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Subscription for purchase of Treasury Securities-State and Local Government Series One-Day Certificates of Indebtedness.

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third

Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION:

Title: Subscription for Redemption of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness.

OMB Number: 1535-0082.

Form Number: PD F 5237.

Abstract: The information is requested to establish an account for State and Local Government entities wishing to purchase Treasury Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or Local Government.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 39.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98-12398 Filed 5-8-98; 8:45 am]

BILLING CODE 4810-30-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request for Redemption of U.S. Treasury Securities-State and Local Government Series One-Day Certificates of Indebtedness.

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION:

Title: Request for Redemption of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness.

OMB Number: 1535-0083.

Form Number: PD F 5238.

Abstract: The information is requested to process redemption for State and Local Government entities.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or Local Government.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 15.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98-12399 Filed 5-8-98; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the resolution by governing body of an organization authorizing assignment and disposition of securities.

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION:

Title: Resolution by Governing Body of an Organization Authorizing Assignment and Disposition of Specified Securities Owned in Its Own Right or in a Fiduciary Capacity.

OMB Number: 1535-0117.

Form Number: PD F 1010.

Abstract: The information is requested to establish the official's authority to act on behalf of the organization.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 25.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 4.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98-12400 Filed 5-8-98; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the bond of indemnity and waiver request.

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S.

Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION:

Title: Bond of Indemnity and Detached Coupon Statement.

OMB Number: 1535-0097.

Form Numbers: PD F 4087, 4087-1, 4087-3, and 5380.

Abstract: The information is requested to support claims for relief on account of lost, stolen, or destroyed securities or coupons.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals, business or other for-profit, or not-for-profit institutions.

Estimated Number of Respondents: 5,500.

Estimated Time Per Respondent: PD F 4087, 4087-1, and 4087-3, 60 minutes; PD F 5380, 10 minutes.

Estimated Total Annual Burden Hours: 1,333.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98-12401 Filed 5-8-98; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Treasury Security Commercial Tender form.

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S.

Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION:

Title: Treasury Security Commercial Tender Form

OMB Number: 1535-0112.

Form Number: PD F 5395

Abstract: The information is requested to process the tenders and to ensure compliance with regulations.

Current Actions: None

Type of Review: Extension

Affected Public: Individuals, business or other for profit, or not-for-profit institutions.

Estimated Number of Respondents: 1,500

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 375

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98-12402 Filed 5-8-98; 8:45 am]

BILLING CODE 4810-39-P

federal register

Monday
May 11, 1998

Part II

Environmental Protection Agency

40 CFR Parts 51, 76, and 96
Supplemental Notice for the Finding of
Significant Contribution and Rulemaking
for Certain States in the Ozone Transport
Assessment Group Region for Purposes
of Reducing Regional Transport of
Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 76, and 96

[FRL-6008-6]

RIN 2060-AH10

Supplemental Notice for the Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Notice of Proposed Rulemaking (SNPR).

SUMMARY: In accordance with the Clean Air Act (CAA), today's action is a SNPR to EPA's November 7, 1997 notice of proposed rulemaking (NPR). This action augments EPA's proposal to require certain States to submit State implementation plan (SIP) measures to ensure that emissions reductions are achieved as needed to mitigate transport of ozone (smog) pollution and one of its main precursors—emissions of oxides of nitrogen (NO_x)—across State boundaries in the eastern half of the United States.

Ozone has long been recognized, in both clinical and epidemiological research, to affect public health. There is a wide range of ozone-induced health effects, including decreased lung function (primarily in children active outdoors), increased respiratory symptoms (particularly in highly sensitive individuals), increased hospital admissions and emergency room visits for respiratory causes (among children and adults with pre-existing respiratory disease such as asthma), increased inflammation of the lung, and possible long-term damage to the lungs.

Today's action includes proposed rule language for the November 7, 1997 NPR for the 23 jurisdictions, revised statewide emissions budgets and cost analysis, proposed State reporting requirements and SIP approvability criteria, a proposed model cap-and-trade rule, a discussion of the interaction between this proposal and the title IV NO_x rule, and air quality analyses of the proposed statewide emissions budgets.

The EPA intends to finalize today's action and the November 7, 1997 NPR simultaneously in the September 1998 timeframe.

DATES: The EPA is establishing a 45-day comment period, ending on June 25, 1998. Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed

in ADDRESSES (in duplicate form if possible). A public hearing will be held on May 29, 1998, beginning at 9:00 a.m. Please refer to SUPPLEMENTARY INFORMATION for details.

ADDRESSES: Comments may be submitted to the Air and Radiation Docket and Information Center (6101), Attention: Docket No. A-96-56, US Environmental Protection Agency, 401 M Street SW, room M-1500, Washington, DC 20460, telephone (202) 260-7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Comments and data may also be submitted electronically by following the instructions under SUPPLEMENTARY INFORMATION of this document. No Confidential Business Information (CBI) should be submitted through e-mail. A courtesy copy of comments to David Cole would be appreciated at Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-5565, Fax (919) 541-0824. An electronic copy would also be helpful to cole.david@epa.gov. The address for sending overnight packages is US EPA, Air Quality Strategies and Standards Division, 411 W. Chapel Hill St., Durham, NC 27701. The public hearing will be held at the EPA Auditorium at 401 M Street SW, Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's action should be addressed to Kimber Smith Scavo, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-3354. Please refer to SUPPLEMENTARY INFORMATION below for a list of contacts for specific subjects described in today's action.

SUPPLEMENTARY INFORMATION:

Reopening of November 7, 1997 NPR Comment Period and Technical Analyses

The Agency will ensure that all comments and technical analyses received on the November 7, 1997 NPR (62 FR 60318) and this SNPR are made publicly available in the docket to this rulemaking. The EPA will accept comments on all issues raised in today's SNPR, as well as comments concerning the implications that any such issues may have for issues raised in the November 7, 1997 NPR. In addition, on April 9, 1998 (63 FR 17349), EPA published a notice in the *Federal Register* that discussed additional items

related to the November 7, 1998 NPR for which the Agency is reopening the comment period. Therefore, the comment period for the November 7, 1997 NPR is reopened until June 25, 1998 for the items specified in the April 9, 1998 notice.

Public Hearing

The EPA will conduct a public hearing on today's proposal on May 29, 1998 beginning at 9:00 a.m. The public hearing will be held at the EPA Auditorium at 401 M Street SW., Washington, DC 20460. The metro stop is Waterfront which is on the green line. Persons planning to present oral testimony at the hearing should notify JoAnn Allman, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-1815 no later than May 22, 1998. Oral testimony will be limited to 5 minutes each. Any member of the public may file a written statement before, during, or by the close of the comment period after the hearing. For written statements concerning the proposed amended 40 CFR Part 76, the hearing record will be kept open for 30 days after the hearing date, under section 307(d)(5)(iv) of the CAA to provide an opportunity for submission of rebuttal and supplementary information. Written statements (duplicate copies preferred) should be submitted to the docket at the above address. A hearing schedule including a list of speakers will be posted on EPA's SIP call webpage at <http://www.epa.gov/ttn/oarpg/otagsip.html> prior to the hearing.

Following the hearing, a verbatim transcript of the hearing and written statements will be made available for copying during normal working hours at the Air and Radiation Docket Information Center at the above address. The Agency does not plan to schedule any additional hearings on the proposed rule.

Electronic Availability

The official record for this rulemaking, as well as the public version, has been established under docket number A-96-56 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in ADDRESSES at the beginning of this document.

Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 (or 5.1) file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A-96-56. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Availability of Related Information

Documents related to the Ozone Transport Assessment Group (OTAG) are available on the Agency's Office of Air Quality Planning and Standards' (OAQPS) Technology Transfer Network (TTN) via the web at <http://www.epa.gov/ttn/>. If assistance is needed in accessing the system, call the help desk at (919) 541-5384 in Research Triangle Park, NC. Documents related to OTAG can be downloaded directly from OTAG's webpage at <http://www.epa.gov/ttn/otag>. The OTAG's technical data are located at <http://www.iceis.mcnc.org/OTAGDC>. The October 10, 1997 signature version of the proposed SIP call, the November 7, 1997 *Federal Register* version, and associated documents are located at <http://epa.gov/ttn/oarpg/otagsip.html>. Information related to Section VII, Air Quality Assessment of the Statewide Emissions Budgets can be obtained in electronic form from the following EPA website: <http://www.epa.gov/scram001/regmodcenter/t28.htm>.

For Additional Information

For technical questions related to the air quality analyses, please contact Norm Possiel, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division; MD-14, Research Triangle Park, NC 27711, telephone (919) 541-5692. For legal questions, please contact Howard Hoffman, Office of General Counsel, 401 M Street SW, MC-2344, Washington, DC, 20460, telephone (202) 260-5892. For questions concerning the statewide emissions budget revisions, please contact Laurel Schultz, Office of Air Quality Planning and Standards; Emissions, Monitoring, and Analysis Division; MD-14, Research Triangle Park, NC 27711, telephone (919) 541-5511. For questions concerning SIP reporting requirements, please contact Bill Johnson, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD-15, Research Triangle Park, NC 27711,

telephone (919) 541-5245. For questions concerning the model cap-and-trade rule, please contact Rob Lacount, Office of Atmospheric Programs, Acid Rain Division, MC-6204J, 401 M Street SW, Washington, DC 20460, telephone (202) 564-9122. For questions concerning the regulatory cost analysis of electricity generating sources, please contact Ravi Srivastava, Office of Atmospheric Programs, Acid Rain Division, MC-6204J, 401 M Street SW, Washington DC 20460, telephone (202) 564-9093. For questions concerning the regulatory cost analysis of other stationary sources, please contact Scott Mathias, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-5310.

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I. Background

A. Summary of November 7, 1997 NPR

The EPA's November 7, 1997 proposal¹ (hereafter referred to as the

¹ The EPA signed the November 7, 1997 NPR on October 10, 1997 and made it immediately available

"proposed SIP call" or "SIP call") proposed to find that the transport of ozone and ozone precursors from 22 States and the District of Columbia (23 jurisdictions) significantly contributes to nonattainment of the ozone national ambient air quality standards (NAAQS), or interferes with maintenance of the NAAQS, in downwind States. The proposed SIP call explained the basis for determining significant contribution or interference with maintenance for the 23 jurisdictions. Further, the SIP call proposed the appropriate levels of NO_x emissions that each of the 23 jurisdictions would be required to achieve. The EPA also conducted a regulatory cost analysis which is available in the docket to this rulemaking (docket number II-B-01) as a technical support document (TSD) to the proposed SIP call. A detailed explanation of how EPA established the budgets is also available as a TSD to the proposal (docket number III-B-02). These TSDs have been revised as explained in Section III, Emissions Budgets Analyses.

The SIP call proposed SIP requirements under CAA section 110(a)(1) and section 110(k)(5) in order to meet the requirements of section 110(a)(2)(D), as it pertains to the ozone NAAQS, to prohibit ozone precursor emissions from sources or activities in those States from "contribut[ing] significantly to nonattainment in, or interfer[ing] with maintenance by," a downwind State.

Based on this determination, the EPA proposed to require SIP revisions in order to take steps toward ensuring that the necessary regional reductions are achieved that will enable current ozone nonattainment areas in the eastern half of the United States to prepare attainment demonstrations and that will enable all areas to demonstrate noninterference with maintenance of the ozone standard. This requirement permits each State to choose for itself what measures to adopt to meet the necessary emissions budget. Consistent with OTAG's recommendations to achieve NO_x emissions decreases primarily from large stationary sources in a trading program, EPA encourages States to consider electric utility and large boiler controls under a cap-and-trade program as a cost-effective strategy. The cap-and-trade program is described in more detail in Section V, NO_x Budget Trading Program.

to the public on EPA's homepage at <http://www.epa.gov/ttn/carp/rules.html>.

B. Updates With 1994-96 Air Quality Data for the Findings of Significant Contribution

In the proposed SIP call, EPA followed a weight of evidence approach to determine which States cause a significant contribution to nonattainment in downwind States. Part of the information EPA considered in this determination included air quality modeling based on the OTAG 2007 Base Case and OTAG "zero-out" subregional UAM-V simulations. The results of the 2007 Base Case modeling were analyzed with 1993-1995 ambient air quality measurements to identify areas which (a) currently violate the NAAQS (based on monitoring) and (b) are expected to continue to violate the NAAQS in the future (based on modeling). The "zero-out" subregional modeling data were then used to quantify the "ppb" contributions to ozone in these "nonattainment" areas. The resulting "ppb" contributions were provided in the SIP call Tables II-10 and II-12 for the 1-hour and 8-hour NAAQS, respectively.

The EPA stated in the SIP call that it would review more recent air quality data and, in the event that these data alter the results of the significant contribution assessment in any meaningful way, EPA would make the appropriate adjustments to the findings. Since the SIP call was published, EPA has reviewed 1996 air quality data to determine which counties violate the 1-hour and 8-hour NAAQS based on 1994-1996 measurements. A list of the 1-hour and 8-hour violating counties based on these data is provided in the docket. The EPA recalculated the "ppb" contributions to downwind nonattainment using the 1994-1996 1-hour and 8-hour violating counties and the OTAG 2007 Base Case and "zero-out" subregional modeling. The resulting updated 1-hour and 8-hour contribution tables are provided in the docket. Based upon a review of the information in these tables, EPA finds no basis for altering its conclusions on significant contribution.

II. Proposed Action for the 23 Jurisdictions

This SNPR includes the proposed rule language for the CFR for the basic elements of the proposed SIP call, including the requirements imposed on the 23 jurisdictions to submit SIP revisions, under both the 1-hour and 8-hour standard, providing for implementation of the applicable statewide NO_x emissions budget, as well as the definition of the NO_x

budget. The rule language is located at the end of the preamble.

III. Emissions Budgets Analyses

A. Explanation of Revised Budgets

A number of changes were made to the emissions inventory used to calculate the budget. These changes apply to the electricity generating and non-electricity generating point source sectors only and were made to correct errors found subsequent to publication of the proposed SIP call (NPR). These source sectors are discussed separately below. Detailed information concerning the changes can be found in the revised Budget TSD titled "Development of Modeling Inventory and Budgets for the Ozone Transport SIP Call" (revised Budget TSD).

1. Electricity Generating Units

The changes that were made to the electricity generating component of the budgets fall into two general categories: addition of sources and changes in growth factors. Both of these changes increase the budgets.

a. *Addition of Sources.* The changes that were made in the population of the utility and non-utility owned electricity generating units since the November 7, 1997 notice are summarized in Table III-1. This SNPR includes 1,757 units compared to 1,180 units in the NPR. This reflects an addition of 577 units to the State budget inventories. These units include electricity generating sources 25 megawatts of electrical output (MWe) or smaller and additional units not affected under the Acid Rain

Program (40 CFR part 76). Detailed information on the sources of data for these additional units is contained in the revised Budget TSD.

TABLE III-1.—INVENTORY CHANGE FROM NPR

Source	NPR population	SNPR population
Utility	1062	1510
Non-Utility	118	247
Total	1180	1757

b. *Growth Factors.* The EPA's "Proposed Ozone Transport Rulemaking Regulatory Analysis" (September 1997, docket number III-B-01) used a 1995 forecast of future electricity demand prepared by the North American Electric Reliability Council (NERC), with adjustments for EPA's 1996 estimates of the electricity demand reductions that the Climate Change Action Plan (CCAP) was projected to produce from the year 2000 and on. Details on how EPA prepared this electricity demand forecast can be found in EPA's "Analyzing Electric Power Generation under the Clean Air Act," (July 1996, docket number II-A-07). The EPA used this electricity demand forecast in analyses conducted for OTAG and the Clean Air Power Initiative (CAPI). Further, EPA also used this forecast when establishing the State-specific growth factors used in the NPR (referred to as the "original" projections).

TABLE III-2.—CORRECTED ELECTRICITY GENERATION GROWTH FACTORS

State	Original 96-07 factor	Corrected 96-07 factor	Percent increase
Alabama	1.03	1.16	12.92
Connecticut	0.92	1.22	32.99
District of Columbia	1.00	1.00	0.00
Delaware	1.68	1.80	6.77
Georgia	1.14	1.21	6.32
Illinois	1.23	1.34	8.63
Indiana	1.27	1.30	2.64
Iowa	1.20	1.28	6.41
Kentucky	1.62	1.71	5.62
Massachusetts	1.14	1.23	7.37
Maryland	1.13	1.18	4.60
Michigan	1.13	1.24	9.28
Missouri	1.10	1.26	15.04
North Carolina	0.99	1.26	27.37
New Jersey	1.11	1.22	10.16
New York	1.10	1.14	3.19
Ohio	1.07	1.15	7.07
Pennsylvania	0.43	0.48	11.83
Rhode Island	1.32	1.63	23.22
South Carolina	0.92	1.25	35.78
Tennessee	1.18	1.43	20.50
Virginia	1.07	1.13	6.30
Wisconsin	1.02	1.05	3.26
West Virginia			

While EPA is continuing to use the electricity generating industry growth projections described in the NPR when establishing the budget component for that sector, this SNPR is correcting one error in the growth factor calculation of the NPR. The EPA corrected its estimates of State-specific growth rates from 1996 to 2007. The estimates were interpolated from the average annual growth of each State as forecasted by EPA using the Integrated Planning Model (IPM) and EPA's baseline electricity generation forecast. In developing the average annual growth, EPA relied on unit-specific summer energy use from 2000 to 2010 as forecasted by the IPM. The average annual growth was determined using the State-specific growth from 2000 to 2010. However, when calculating the growth for the year 2010, EPA inadvertently omitted information on many of the new combustion turbine and combined-cycle units that IPM forecasts to be built by 2010. Thus new electricity-generating capacity, expected to be built between 2000 and 2010 was not included when estimating the industry growth between 2000 and 2010. This error resulted in an underestimation of the expected average annual growth for each affected State. In the revision of the budget for the electric power industry, this error has been corrected. The change leads to a higher electricity generating component of the NO_x budget for all affected States. The corrected growth factors are shown in Table III-2 (referred to as the "corrected" projections).

Since the NPR, EPA has also updated its electricity demand forecast to include more up-to-date information. The information was obtained from the same sources used in developing the forecast used in the NPR. The EPA's more recent forecast uses the 1997 forecast of future electricity demand prepared by NERC with adjustments for the Administration's 1997 estimates of electricity demand reductions that the CCAP is projected to produce from 2000 on (referred to as the "revised" projections). The EPA found that this revised estimate leads to lower growth rates for the electricity generating

industry than the estimate used in the NPR analyses. However, in this SNPR, EPA uses the corrected forecast when calculating State-specific budgets because of the inherent uncertainty in any projection, and EPA's willingness to provide States flexibility in achieving their budgets. Further, when evaluating the cost effectiveness of NO_x controls, EPA considered both the corrected and revised future electricity demand forecasts. However, for all other analyses under this SNPR, EPA is using the corrected future electricity demand forecast. Further, EPA solicits comment on whether to use only the revised

future electricity demand forecast for the budget and cost effectiveness calculations.

c. *Revised Budget Component.* Both the 2007 electricity generating Base Case and the electricity generating Budget component were revised based on the changes described above. These revisions are shown in Tables III-3 and III-4. The difference between the 2007 Base Case and Budget emissions that were proposed and the revised Base Case and Budget emissions is shown in Table III-3. The revised percent reduction from the 2007 Base Case to the Budget is shown in Table III-4.

TABLE III-3.—CHANGES TO PROPOSED BASE CASE AND BUDGET COMPONENTS FOR ELECTRICITY GENERATING UNITS (tons NO_x/season)

State	Proposed base	Revised base	Percent increase	Proposed budget	Revised budget	Percent increase
Alabama	81,704	85,201	4	26,946	30,644	14
Connecticut	5,715	7,048	23	3,409	5,245	54
Delaware	10,901	10,727	-2	4,390	4,994	14
District of Columbia	385	236	-39	152	152	0
Georgia	92,946	84,890	-9	30,158	32,433	8
Illinois	115,053	119,756	4	31,833	36,570	15
Indiana	177,888	159,917	-10	48,791	51,818	6
Kentucky	128,688	130,919	2	35,820	38,775	8
Maryland	35,332	37,575	6	11,364	12,971	14
Massachusetts	28,284	24,998	-12	12,956	14,651	13
Michigan	82,057	73,585	-10	25,402	29,458	16
Missouri	92,313	81,799	-11	22,932	26,450	15
New Jersey	14,553	17,484	20	5,041	8,191	62
New York	39,639	43,705	10	24,653	31,222	27
North Carolina	83,273	86,872	4	27,543	32,691	19
Ohio	185,757	167,601	-10	46,758	51,493	10
Pennsylvania	125,195	120,979	-3	39,594	45,971	16
Rhode Island	773	1,351	75	905	1,609	78
South Carolina	43,363	57,146	32	15,090	19,842	31
Tennessee	71,994	83,844	16	19,318	26,225	36
Virginia	45,719	51,113	12	16,884	20,990	24
West Virginia	83,719	76,374	-9	23,306	24,045	3
Wisconsin	51,004	45,538	-11	15,755	17,345	10
Total	1,596,255	1,568,655	-2	489,000	563,784	15

TABLE III-4.—REVISED NO_x BUDGET COMPONENTS AND PERCENT REDUCTION FOR ELECTRICITY GENERATING UNITS (tons/season)

State	Revised base	Revised budget	Percent reduction
Alabama	85,201	30,644	64
Connecticut	7,048	5,245	26
Delaware	10,727	4,994	53
District of Columbia	236	152	36
Georgia	84,890	32,433	62
Illinois	119,756	36,570	69
Indiana	159,917	51,818	68
Kentucky	130,919	38,775	70
Maryland	37,575	12,971	65
Massachusetts	24,998	14,651	41
Michigan	73,585	29,458	60
Missouri	81,799	26,450	68
New Jersey	17,484	8,191	53
New York	43,705	31,222	29
North Carolina	86,872	32,691	62
Ohio	167,601	51,493	69
Pennsylvania	120,979	45,971	62
Rhode Island	1,351	1,609	-19

TABLE III-4.—REVISED NO_x Budget Components and Percent Reduction for Electricity Generating Units—Continued (tons/season)

State	Revised base	Revised budget	Percent reduction
South Carolina	57,146	19,842	65
Tennessee	83,844	26,225	69
Virginia	51,113	20,990	59
West Virginia	76,374	24,045	69
Wisconsin	45,538	17,345	62
Total	1,568,655	563,784	64

d. *Alternative Approach to Calculating the Component of the Budget for Electricity Generation.* In this regulatory action, the component of each State's budget assigned to electricity generation is determined using the State's total heat input, applicable emission rate (0.15 lb/million British thermal units per hour (mmBtu)), and projected growth to 2007. Consequently, for each State this budget component is based on the amount of fossil fuel each State uses to produce electricity.

However, States use other fuel sources to generate electricity, notably nuclear and hydro energy, as well as solar and wind energy. Furthermore, some facilities that rely on fossil fuel sources are more efficient, in terms of lower NO_x emissions, than other facilities. In addition, each State's use of sources to generate electricity may change over time. For example, electricity now produced by the combustion of fossil fuels may, in the future, be produced using alternative sources and vice versa.

Because of the shifts in generation from one fuel source to another, an alternative approach to determining each State's share of the total nationwide budget component based on total heat input may be a consideration of total electricity generation within the State. Under this approach (referred to as "output-based"), the electricity generation component (i.e., 563,784 tons of NO_x) of the nationwide budget would be apportioned among the States based on total electricity generation, not only fossil-fuel generation. Since the total nationwide budget component would be the same as that proposed in this notice, and assuming a multistate trading program, the environmental effects and cost effectiveness of such an allocation should be similar to the proposed approach.

The data used to apportion the nationwide budget component to each State under the output-based approach would be State-specific generation (in MWh) for the time period May 1 to September 30. One source of such

information is the Energy Information Administration's (EIA) Form 759, where electricity generating sources report their monthly generation. To more equitably account for shifts from State-to-State, it may be appropriate to use the higher of summer 1995 or 1996 generation for each State in determining the output-based State budget components, or perhaps the average of the highest two out of three summer periods. The first approach is similar to that used in generating the proposed budget for this sector.

This alternative approach has the effect of rewarding States that have invested in methods of electricity generation that result in no, or fewer, NO_x emissions. At the same time, because most electricity generation relies on fossil-fuel inputs that, in turn, result in NO_x emissions, even under this output-based approach, the State budgets would bear a strong relationship to amount of actual NO_x emissions on a State-by-State basis.

Even so, the resulting budgets for each State would be different, to some degree, from the budgets currently proposed. If a nationwide trading program is ultimately used, it may be assumed that emissions would be reallocated so that each State's budget under the alternative approach would be the same as under the currently proposed approach. Of course, in this case, the cost effectiveness and environmental benefit associated with this alternative approach would be the same as that of the currently proposed approach. It seems plausible to assume that States subject to the NO_x SIP call would opt for nationwide trading due to the cost effectiveness of this approach.

However, in this rulemaking, EPA is not attempting to require nationwide trading, and if the States opt not to employ such a system, the air quality impacts of an output-based approach and its cost effectiveness may be different from the air quality impacts under the proposed budget. If for some States, the budget under the output-based approach is significantly lower

than that under the proposed approach, the absence of a nationwide trading system may result in required control levels that are not technically achievable.

Other issues that arise under the output-based approach concern the representativeness and quality of the required data. Specifically, the EIA data used in the output-based approach may not include all electricity generating sources, such as Independent Power Producers (IPPs) and Non-Utility Generators (NUGs). Additionally, some may argue that it is inappropriate to incorporate the non-NO_x-emitting sources in the calculation of each State's electricity generation component of the budget. In addition, the alternative budget fails to consider the fact that nuclear-, hydro-, solar-, or wind-powered facilities generate steam output, as well as electricity.

Accordingly, it may be logical to adjust the alternative budgets further to take account of steam output. Further, as discussed in Section V.C.9.b, Output Information, of this preamble, there are a number of issues associated with measuring and using electricity- or steam-related output data. The EPA solicits comments on all issues concerning this alternative approach, including the appropriateness, legality, rationale, and methodology for incorporating the output-based approach when calculating the electricity generation component of each State's budget.

2. Non-Electricity Generating Point Sources

Changes that were made to the non-electricity generating point source component of the budgets fall into two categories: addition of sources and application of controls. Addition of sources increases the budgets, while correction in the application of controls tends to decrease the budgets.

a. *Addition of Sources.* Based on the matching that was done to identify electricity generating sources, it was determined that a number of sources

that were identified in the OTAG inventory as utilities were, in fact, not utility sources. In the budgets that were proposed on November 7, 1997, these sources were left out of the inventory when the OTAG utility data were replaced by the acid rain data. These sources have since been identified and added back into the budgets. A list of the sources that were moved from the electricity generating to non-electricity generating sector is contained in the revised Budget TSD.

b. Application of Controls. The non-electricity generating point source budget components were calculated based on the OTAG recommendations as follows:

- 70 percent control for large (> 250 mmBtu/hr) sources (measured from uncontrolled 2007 emissions);
- Reasonably Available Control Technology (RACT)-level controls for all other NO_x sources with more than 1.0 tons per day (tpd) of NO_x emissions (medium-sized sources);
- Small source NO_x emissions were estimated using OTAG Base 1c scenario emission values.

For the budgets that were proposed, RACT was erroneously applied only to those sources that were in areas required to adopt RACT. The intent of the proposed approach was to apply RACT to all medium-sized sources, regardless of whether they are located in an area that would otherwise be required to apply RACT. The revised

budgets reflect the application of RACT to all medium-sized sources in the affected States. A list of the sources that were treated as large and medium sources is contained in the appendices to the revised Budget TSD.

c. Revised Budget Component. Both the 2007 Base Case and Budget component for non-electricity generating point sources were revised based on the changes described above. These revisions are shown in Tables III-5 and III-6. The difference between the 2007 Base Case and Budget emissions that were proposed and the revised Base Case and Budget emissions for non-electricity generating units is shown in Table III-5. The revised percent reduction from the 2007 Base Case to the Budget is shown in Table III-6.

TABLE III-5.—CHANGES TO PROPOSED BASE CASE AND BUDGET COMPONENTS FOR NON-ELECTRICITY GENERATING UNITS
(tons NO_x/season)

	Proposed base	Revised base	Percent increase	Proposed budget	Revised budget	Percent decrease
Alabama	47,182	48,187	2	25,131	24,416	3
Connecticut	4,732	5,254	11	4,475	3,103	31
Delaware	5,205	5,276	1	3,206	2,271	29
District of Columbia	312	311	0	312	259	17
Georgia	34,012	33,939	0	20,472	14,305	30
Illinois	63,642	65,351	3	39,855	40,719	-2
Indiana	51,432	51,839	1	35,603	29,187	18
Kentucky	18,817	19,019	1	12,258	11,996	2
Maryland	6,729	10,710	59	4,825	5,852	-21
Massachusetts	10,683	9,978	-7	7,590	6,207	18
Michigan	57,190	61,656	8	35,317	35,957	-2
Missouri	12,248	12,320	1	8,174	9,012	-10
New Jersey	32,663	22,228	-32	26,741	12,786	52
New York	19,889	20,853	5	16,930	14,644	14
North Carolina	32,107	34,412	7	21,113	19,267	9
Ohio	50,946	53,329	5	32,799	30,923	6
Pennsylvania	64,224	74,839	17	59,622	41,824	30
Rhode Island	328	327	0	328	327	0
South Carolina	34,791	34,994	1	20,097	18,671	7
Tennessee	65,051	67,774	4	32,138	34,308	-7
Virginia	23,333	25,509	9	15,529	10,919	30
West Virginia	41,510	42,733	3	31,377	21,066	33
Wisconsin	21,209	21,263	0	12,269	11,401	7
Total	698,233	722,101	3	466,158	399,416	14

TABLE III-6.—REVISED NO_x BUDGET COMPONENTS AND PERCENT REDUCTION FOR NON-ELECTRICITY GENERATING UNITS
(tons/season)

	Revised base	Revised budget	Percent reduction
Alabama	48,187	24,416	49
Connecticut	5,254	3,103	41
Delaware	5,276	2,271	57
District of Columbia	311	259	17
Georgia	33,939	14,305	58
Illinois	65,351	40,719	38
Indiana	51,839	29,187	44
Kentucky	19,019	11,996	37
Maryland	10,710	5,852	45
Massachusetts	9,978	6,207	38
Michigan	61,656	35,957	42

TABLE III-6.—REVISED NO_x BUDGET COMPONENTS AND PERCENT REDUCTION FOR NON-ELECTRICITY GENERATING UNITS—Continued
(tons/season)

	Revised base	Revised budget	Percent reduction
Missouri	12,320	9,012	27
New Jersey	22,228	12,786	42
New York	20,853	14,644	30
North Carolina	34,412	19,267	44
Ohio	53,329	30,923	42
Pennsylvania	74,839	41,824	44
Rhode Island	327	327	0
South Carolina	34,994	18,671	47
Tennessee	67,774	34,308	49
Virginia	25,509	10,919	57
West Virginia	42,733	21,066	51
Wisconsin	21,263	11,401	46
Total	722,101	399,416	45

d. Options for Calculating the Budgets. In the November 7, 1997 NPR, EPA proposed budgets and developed cost effectiveness data for non-utility boilers and gas turbines together with other non-utility point sources. The budgets for these sources were based on the applicable OTAG recommendation of 70 percent reduction from uncontrolled levels at large units (greater than 250 mmBtu/hr), RACT at medium units (other sources greater than 1 ton per day) and no controls beyond the baseline for small sources. The revised budgets described in Section III.A.2, Non-Electricity Generating Point Sources, of today's action are based on the same approach. Costs were estimated for these sources using a least cost approach for each State budget which assumed incremental emissions reductions at the most cost-effective sources in each State, including small, medium, and large units. In contrast, electric generation sources were analyzed separately using an emissions rate approach to develop the budgets and the Integrated Planning Model (IPM) was run to estimate costs under an interstate trading program. The November 7, 1997 NPR invited comment on the size cutoffs used in the above analyses and also specifically invited comment on treating large combustion sources, such as industrial boilers greater than 250 mmBtu (this level approximately corresponds to greater than 1 ton per day), at control levels equal to that for large electric generation sources.

In today's action, EPA is proposing to include the non-utility boilers and gas

turbines greater than 250 mmBtu/hr together with electric generation sources as the core group of sources in the NO_x Budget Trading Program and analyze both using IPM. As a result, EPA intends to conduct additional analyses as described below.

For the non-utility boilers and gas turbines greater than 250 mmBtu/hr, EPA intends to estimate costs using IPM and assuming a trading program involving these sources and the electric generation sources. The emissions budget would be calculated for these sources the same as it was in the November 7, 1997 NPR. The EPA also solicits comments on whether to calculate budgets for the non-utility boilers and gas turbines through the alternative means of an emission rate basis (e.g., 0.20 lbs/mmBtu), similar to the approach used by EPA for electric generation sources in the November 7, 1997 NPR. The EPA invites comment on these and other approaches for calculating the budget component and costs for the non-utility boilers and gas turbines greater than 250 mmBtu/hr.

Additionally, EPA intends to further analyze the point source categories that are not part of the proposed core group of sources in the NO_x Budget Trading Program (e.g., process heaters, stationary internal combustion engines, and cement manufacturing). These analyses will look at applying (1) various cost-effectiveness ceilings (e.g., maximum of \$2000 per ton); (2) percentage reduction floors (e.g., minimum of 50 percent reduction); and (3) combinations (e.g., \$2000 per ton maximum and 50 percent reduction minimum). These analyses

will cover individual source categories not in the proposed core group of sources of the NO_x Budget Trading Program as well as all such sources in the aggregate. The EPA invites comment on these and other approaches for calculating the budget component and costs for this group of sources.

In the November 7, 1997 NPR, EPA noted that information on emissions and potential control measures was generally lacking for small sources. The EPA believes that there are several medium and large units for which such information is also lacking. In the November 7, 1997 NPR (and in the revised budgets described in Section III.A.2, Non-Electricity Generating Point Sources), these units were assigned a 70 percent reduction target for large and RACT for medium sized units, consistent with the OTAG recommendation. However, since EPA cannot identify specific control measures for these sources due to the lack of available technical information, EPA now proposes to keep them in the statewide budgets at baseline levels, without additional emission reductions.

As the above analyses are completed, EPA intends to place them in the docket.

3. Revised Statewide Budgets

The revised statewide budgets that reflect the changes to the electricity generating and non-electricity generating point source sectors described above are shown in Table III-7.

TABLE III-7.—REVISED STATEWIDE NO_x BUDGETS
(tons/season)

State	Base	Budget	Percent red.
Alabama	241,564	155,617	36
Connecticut	52,014	39,909	23
Delaware	30,568	21,010	31
District of Columbia	7,978	7,000	12
Georgia	246,243	159,013	35
Illinois	350,154	218,679	38
Indiana	340,084	200,345	41
Kentucky	263,855	158,360	40
Maryland	118,065	73,628	38
Massachusetts	103,445	73,575	29
Michigan	283,821	199,238	30
Missouri	185,104	116,246	37
New Jersey	132,032	93,464	29
New York	230,310	185,537	19
North Carolina	234,300	153,106	35
Ohio	391,012	236,443	40
Pennsylvania	328,433	207,250	37
Rhode Island	12,175	10,132	17
South Carolina	169,572	109,267	36
Tennessee	291,225	187,250	36
Virginia	219,835	162,375	26
West Virginia	158,240	81,701	48
Wisconsin	142,759	95,902	33
Total	4,532,790	2,945,046	35

B. Revised Cost Analyses

The EPA has revised the cost estimates presented in the November 7, 1997 notice. As discussed in Section III.A. Explanation of Revised Budgets, additional emissions sources were included in the emissions budgets and several changes to the emissions inventory were made. Also, revised unit control cost estimates for Selective Catalytic Reduction (SCR) and Selective Non Catalytic Reduction (SNCR) were prepared for non-electricity generating point sources. The revised costs are now more consistent with the way estimates were developed for electricity generating sources. Details on the revised cost analysis are presented in "Supplemental Ozone Transport Rulemaking Regulatory Analysis" (Supplemental Regulatory Analysis TSD).

1. Electricity Generating Sources

The OTAG recognized the value of market-based approaches to lowering emissions from power plants and large industrial sources. The Agency agrees that a market-based approach with trading is preferable as more cost effective and encourages all States covered by this rulemaking to establish such a program. The Agency's regulatory analysis is based on this view. As in the original proposal analysis, analytical limitations kept EPA from estimating the costs of a single cap-and-trade program for the electric power

industry and other large stationary sources. In this SNPR, the analysis of a cap-and-trade program, across all States covered in the rulemaking, is limited to sources in the electric power industry.

The analysis of the electric power industry has been expanded to include additional electricity-generating sources (see Section III.A. Explanation of Revised Budgets). Additionally, EPA also updated many of the assumptions included in the Integrated Planning Model (IPM), including more recent energy demand forecasts and more recent information on future planned new units. These changes are discussed in the Supplemental Regulatory Analysis TSD.

The EPA analyzed the cost of a NO_x cap-and-trade program with a summer NO_x emissions cap of 563,784 tons, assuming reductions are effective by the 2003 ozone season. Annual cost estimates are provided for 2003 and 2007.

2. Non-Electricity Generating Point Sources

The costs for non-electricity generating point sources are estimated using two alternative approaches. The first approach, called the Least Cost Scenario, attempts to identify the mix of sources and control technologies that achieve each State's non-electricity generating budget level for point sources at the lowest possible control cost. The sources controlled under the Least Cost Scenario may not be the same sources

that are controlled for the purpose of establishing each State's emissions budget. The results of the Least Cost Scenario are a proxy for State-level emissions trading programs free of transactions costs. If it were possible to consider transactions costs, the Least Cost Scenario would result in higher cost estimates than are presented here. On the other hand, if the Least Cost Scenario had been modeled assuming the States participate collectively in a trading program for non-electricity generating sources (i.e., domain-wide trading as modeled in the electricity generating sector), the resulting cost estimates would likely be lower than presented here.

The second approach, termed the Command-and-Control Scenario, attempts to estimate the cost of controlling just those sources that were used to establish each State's emissions budget. This method does not take into account possible cost savings that can be realized by more efficient regulatory schemes, such as emissions trading, and therefore tends to overstate the cost of meeting the non-electricity generating point source emissions budget.

The EPA has revised the cost of controls associated with non-electricity generating sources based on information previously developed for the revised IPM for electricity generating sources. The new method for estimating SCR and SNCR costs for non-electricity generating sources is now more

consistent with the estimates for electricity generating sources. The annual costs for non-electricity generating sources are estimated based on the 2007 non-electricity generating source emissions projections. Unlike the IPM analysis for electricity generating sources, the cost analysis framework for non-electricity generating sources did not allow distinctions to be made between the estimated annual cost of compliance in 2003 relative to the year 2007. As shown in Section III.B.3, Cost Analysis Results, the electricity generating sector annual cost estimates vary only 5 percent between 2003 and

2007. It is reasonable to believe that non-electricity generating sector annual cost would also not vary significantly between 2003 and 2007.

For NO_x point sources, EPA estimated annual compliance costs for achieving a total summer NO_x emissions budget of 416,619 tons. This budget is slightly higher (4 percent) than the 399,416 ton budget presented in Section III.A.2, Non-Electric Generation Point Sources, because the cost analysis for non-electricity generating point sources was completed before all adjustments to the proposed budgets had been finalized. If the final 399,416 ton budget had been

analyzed the cost estimates for non-electricity generating point sources would have been only slightly higher.

3. Cost Analysis Results

Tables III-8 and III-9 show the analysis results based on the changes to the proposed emissions budgets and cost methodology improvements. Table III-8 shows the population of sources covered by each element of the cost analysis and the resulting NO_x emissions levels. Table III-9 shows the estimated annual compliance costs and average cost effectiveness.

TABLE III-8.—POPULATION OF EMISSIONS SOURCES AND NO_x EMISSIONS AFTER COMPLIANCE WITH THE OZONE TRANSPORT RULEMAKING

Budget component	Number of sources*	Ozone season emissions (1,000 NO _x tons)
Electricity generating sources	1,757	564
Non-Electricity generating sources: Least Cost—2007	13,373	409
Non-Electricity generating sources: Command-and-Control—2007	1,774	394

* The number of electricity generating sources reflects the number of sources in 1996 that were used to establish the summer season NO_x budget. The number of non-electricity generating sources reflects sources controlled for the purpose of estimating costs.

TABLE III-9.—INCREMENTAL ANNUAL CONTROL COSTS AND AVERAGE COST EFFECTIVENESS FOR COMPLIANCE WITH THE OZONE TRANSPORT RULEMAKING

Budget component	Annual control cost (million 1990 dollars)	Average ozone season cost effectiveness (\$/ton)	Average annual cost effectiveness (\$/ton)
Electricity generating sources—2003	1,308	1,455	1,161
Electricity generating sources—2007	1,378	1,469	1,165
Non-Electricity generating sources: Least Cost—2007	456	1,500	640
Non-Electricity generating Sources: Command-and-Control—2007	1,170	3,700	2,600

Based on the Least Cost Scenario for non-electricity generating sources, the incremental annual cost of the proposed SIP call in 2007 for both electricity and non-electricity generating sources is \$1.8 billion (1990 dollars).

IV. SIP Criteria and Emissions Inventory Reporting Requirements

A. SIP Criteria

1. Introduction

The November 7, 1997 NPR explained that each State would be required to submit a SIP demonstrating "that each State will meet the assigned statewide emission budget" (62 FR 60365). It further explained that each "SIP revision should include the following general elements related to the regional strategy: (1) Baseline 2007 statewide NO_x emissions inventory (which includes growth and existing control requirements)—this would generally be the emissions inventory that was used to calculate the required statewide

budget; (2) a list and description of control measures to meet [the] statewide budget; (3) fully-adopted State rules for the regional transport strategy with compliance dates providing for control between September 2002 and September 2004, depending on the date EPA adopts in its final rulemaking; (4) clearly documented growth factors and control assumptions; and (5) a 2007 projected inventory that demonstrates that the State measures along with national measures will achieve the State budget in 2007." Id.

The purpose of this Section is to identify criteria for determining completeness and approvability of a State submittal in response to the final SIP call. The criteria are set forth in proposed regulatory language (40 CFR 51.121). In addition, this section describes the actions the Agency intends to take if a State fails to make a submittal, or the Agency makes a finding of incompleteness or disapproves the SIP.

2. Completeness Determination

Any submittal that is made with respect to the final SIP call first will be determined to be either incomplete or complete. A finding of completeness means that EPA will review the submittal to determine whether it is approvable. It is not a determination that the submittal is approvable; rather, it means the submittal is administratively and technically sufficient for EPA to determine whether it meets the statutory and regulatory requirements for approval. In order for any submittal to be complete, 40 CFR 51.121 provides that the submittal must meet the criteria described in 40 CFR, part 51, Appendix V, "Criteria for Determining the Completeness of Plan Submissions." These criteria apply generally to SIP submissions and so should be familiar to States submitting transport SIPs.

Section 1.2 of Appendix V, in accordance with section 110(k)(1) of the

CAA, requires EPA to notify States within 60 days of EPA's receipt of a submittal, but no later than 6 months after the submittal is due. If a completeness determination is not made within 6 months after submission, the submittal is deemed complete by operation of law. For purposes of rules submitted in response to the SIP call, EPA intends to make completeness determinations expeditiously. In addition, EPA expects to make findings of failure to submit no later than the Agency makes completeness determinations.

A finding of failure to submit or incompleteness triggers an 18-month sanctions clock that can only be stopped by an affirmative EPA finding that the State has made a complete submittal. The findings also trigger the requirement that EPA promulgate a Federal implementation plan (FIP) within 2 years of the date of the finding, if the deficiency has not yet been corrected. The EPA intends to propose FIPs in the fall of 1998 and move quickly to promulgate a FIP where necessary. In addition, sanctions and FIP clocks are triggered if a State submits a complete SIP, but EPA subsequently disapproves it, in whole or in part.²

3. Approvability Criteria

In the November 7, 1997 NPR, EPA highlighted several general elements that must be included in ozone transport SIP revisions. Without these general elements, a SIP submission will not be approved. This Section (1) identifies EPA's proposed additional approvability criteria for control strategies that will help States meet their NO_x budgets; and (2) provides guidance to assist States in preparing emissions inventories for purposes of identifying emissions benefits of possible control strategies. The existing guidance documents listed below will help States incorporate existing EPA guidance into their SIPs. Much of the pertinent guidance is available electronically.

Each State must start with a baseline 2007 statewide NO_x emissions inventory, including growth and existing control requirements. The 2007 projected control inventory must demonstrate that the State measures, along with national measures, will achieve the State budget in 2007. The EPA has issued documents to assist States in developing emissions inventories. Specifically, these

² A more detailed discussion of sanctions and FIPs appeared in the November 7, 1997 NPR at page 60366-69.

documents describe how to clearly define the particular control measures and document the methods used to estimate emissions reductions from implementation measures. A State need not define these measures in its SIP to the extent it chooses to achieve the required reductions through the model rule for the NO_x Budget Trading Program, which is being proposed in this notice.

a. Additional Control Strategy Approvability Criteria.

i. Introduction. The approvability criteria for transport SIP submissions appear in proposed 40 CFR 51.121. Most of the criteria are substantially identical to those that already apply to attainment SIPs. For example, each submission must describe the control measures that the State intends to employ, identify the enforcement methods for monitoring compliance and handling violations, and demonstrate that the State has legal authority to carry out its plan. This part of the preamble focuses on approvability criteria that are being proposed for the first time to ensure States meet their NO_x budgets.

ii. General Recommendations. As discussed in the NPR (62 FR 60365-66), regulatory requirements that employ a maximum mass emissions limitation for a source or group of sources provide the greatest certainty that a specific level of emissions will be attained and maintained. With respect to transport of pollution, a mass emissions limitation also provides the greatest assurance to downwind States that air emissions from upwind States will be effectively managed over time. Regulatory requirements designed and enforced as an emissions rate limitation can achieve a measurable emissions reduction, but the targeted level of emissions may or may not be reached depending on the actual activity level of the affected source(s). Finally, regulatory requirements designed as a specific technology or measure have the greatest uncertainty for achieving a targeted emissions level due to uncertainty in both the activity level of the affected source(s) and uncertainty in the effectiveness of the technology or measure.

Based on the desire to establish regulatory requirements with the greatest likelihood of achieving and maintaining the statewide NO_x emissions budget, EPA recommends that, to the maximum extent practicable, all regulatory requirements be in the form of a maximum level of emissions for a source or group of sources. The EPA recognizes that this option may be difficult for some sources because the available emissions control options may

be limited, and the techniques for quantifying mass emissions to ensure compliance with a tonnage budget may not be adequate.

iii. New Proposed Approval Criteria. While mass emissions limitations may be difficult for some sources, EPA believes that, if the State chooses to meet the budget through control requirements for electric generators and large industrial boilers, the State can feasibly require these sources to quantify mass emissions through reasonably available measurement technology. For this reason, as well as others discussed below, EPA proposes the following additional SIP approvability criteria which would apply if the State selected regulatory requirements covering NO_x sources serving electric generators with a nameplate capacity greater than 25 MWe and boilers with a maximum design heat input greater than 250 mmBtu/hr:

- Regulatory requirements to meet the 2007 budget for these sources would need to be expressed in one of three ways: (1) In terms of mass emissions, which would limit total emissions from a source or group of sources; (2) in terms of emissions rates that when multiplied by the affected sources' maximum operating capacity would meet the tonnage component of the emissions budget for this source or for these sources; or (3) an alternative approach for expressing regulatory requirements, provided the State demonstrates to EPA that its alternative provides equivalent or greater assurance than options (1) or (2) that seasonal emissions budgets will be attained and maintained.

- Sources would be required to demonstrate that they have met these applicable emissions control provisions using continuous emissions monitors. Further, EPA is taking comment on whether sources should be required to demonstrate that they met these requirements using the monitoring provisions of the Acid Rain Program for monitoring NO_x mass emissions in 40 CFR part 75.

The EPA believes control approaches and monitoring for this group³ of sources have advanced to the point that complying with, tracking, and enforcing a maximum mass emissions limitation or tonnage budget is reasonable. A variety of regulatory programs are currently in use or under development that utilize a mass emissions limitation for large combustion devices. These

³ NO_x sources serving electric generators with a nameplate capacity greater than 25 MWe and boilers with a maximum design heat input greater than 250 mmBtu/hr.

regulatory systems include the EPA's Acid Rain Program for sulfur dioxide (SO₂) emissions, the South Coast Air Quality Management District's Regional Clean Air Incentives Market for SO₂ and NO_x, and the Ozone Transport Commission's NO_x Budget Program. Experience with these regulatory programs indicates that establishing a tonnage budget for large combustion sources is currently feasible and cost effective. These approaches exist because there is a range of reasonable options available for controlling emissions from these sources. In general, large combustion sources have several effective control options for reducing NO_x emissions, including combustion modifications, post-combustion technologies, and fuel switching. This range of options provides flexibility for these sources or groups of sources to maintain a tonnage budget for emissions.

For measuring emissions, continuous emissions monitors, currently installed at most sources participating in these programs, provide accurate, complete and timely accounting of emissions which enable the administrators of these programs to easily track and enforce emissions on a mass emissions basis. Therefore, EPA proposes that all of the sources in this group must employ continuous emissions monitoring. Further, EPA seeks comment on what specifications, if any, to require for such continuous emissions monitoring systems (CEMS). More specifically, EPA is taking comment on requiring these sources to meet the NO_x mass emissions monitoring and reporting provisions that are contained in a proposed new subpart to the monitoring and reporting provisions of the acid rain regulations in 40 CFR part 75. These revisions are being proposed in a separate notice entitled "Acid Rain Program; Continuous Emission Monitoring Revisions" that will be published in the *Federal Register* in the near future.

Electric utility units have been meeting the current 40 CFR part 75 requirements since at least 1995. The EPA believes that the proposed 40 CFR part 75 provisions will provide accurate monitoring of NO_x mass emissions and also provide flexibility, particularly for smaller and infrequently operated sources. Additional information on the proposed 40 CFR part 75 requirements can be found in Section V.C.9.a, Requirements for Point Sources. Also, EPA has prepared a memorandum for the docket that compares the proposed

provisions of 40 CFR part 75 to other available CEMS requirements.⁴

Another reason that States choosing to control electricity generating sources should use available means to assure that the source's mass emissions stay within the State's projected levels is that recent changes in the utility industry may foster substantial shifts in electricity production from State to State for market reasons. Given the changing market forces in the electricity generating industry today, State measures to limit electricity generating unit emission rates without accounting for potential utilization increases would provide little assurance that mass emissions from these sources would be reduced to the levels necessary to meet the proposed budgets. For this reason, too, EPA believes that regulatory requirements for large combustion sources to meet a State's NO_x budget can and should be expressed and enforced as mass emissions limitations or an alternative providing equivalent assurance that the mass reductions will occur.

Finally, while EPA has not heretofore imposed the proposed approvability criteria on State ozone control measures, EPA believes they are reasonable (as described above) and appropriate in the context of this transport rulemaking. This SIP call addresses the regional problem of emissions transport—i.e., the problem of one State's effect on one or more other States. The EPA believes it is appropriate to take reasonable and feasible steps to minimize the potential "commons" phenomenon inherent in this problem. Under the theory of the commons, a State has less interest in controlling pollution that is produced within its borders but primarily affects the health of non-residents, compared to its interest in controlling pollution that has intrastate effects. The additional approvability criteria proposed today offer downwind States the assurance that upwind States, to the extent they elect to control the applicable group of sources, will implement measures that offer transparent certainty of success. Given the availability of reasonable measures to control the applicable group of sources in this way, and the potential for substantial shifts in utilization in the utility sector in coming years, EPA believes it is appropriate for this transport SIP call to propose additional SIP approvability

⁴ See Memorandum from Kevin Culligan, EPA, Acid Rain Division, to Docket regarding "Transport SIP Call: Potential Continuous Emissions Monitoring Systems Requirements" April 8, 1998, Docket Number A-96-56, IV-B-01.

criteria to address the potential commons phenomenon.⁵

To assist States with the development and implementation of an emissions budget for large combustion sources, EPA is proposing the NO_x Budget Trading Program in section V of today's notice. States may voluntarily choose to participate in the NO_x Budget Trading Program by adopting the model rule. This multistate trading program would provide sources the flexibility and cost effectiveness of a market based system, while meeting the additional SIP approvability criteria for States that are proposed in this section.

The EPA intends to approve the portion of any State's SIP submission that adopts the model rule, provided: (1) The State has the legal authority to adopt the model rule and implement its responsibilities under the model rule, and (2) the SIP submission accurately reflects the NO_x reductions to be expected from the State's adoption of the model rule. As noted above, today's action proposes that transport SIP submissions comply with various approval criteria that are substantially identical to existing approval criteria for attainment SIPs. Those criteria include: (1) A demonstration by the State that it has the legal authority to adopt and implement each of the control measures contained in the SIP submission, and (2) a demonstration of the expected emissions reductions to be achieved from each new control measure. Provided a State meets these two criteria with respect to its adoption of the model rule, then EPA intends to approve the model rule portion of the State's SIP submission.

A State or group of States may also choose to develop, adopt, and implement their own cap-and-trade program separate from today's proposed NO_x Budget Trading Program. In developing these alternative programs,

⁵ Authority for the proposed additional SIP approval criteria described above resides in sections 110(a) and 301(a) of the Clean Air Act. Specifically, the requirement in section 110(a)(2)(A) that SIPs include enforceable emissions limitations and other control measures "as may be necessary or appropriate" to meet the Clean Air Act, together with the requirement in section 110(a)(2)(D) that SIPs include "adequate provisions" to mitigate certain transport effects on other States, implicitly authorize EPA to impose the additional SIP approval criteria described above to ensure that affected States adequately mitigate their contribution to ozone transport, given the reasons and circumstances described above. Additionally, section 301(a) grants EPA broad authority to prescribe such regulations as are necessary to carry out its functions under the Clean Air Act. The proposed additional SIP approval criteria are necessary for EPA to meet its obligation to approve only SIPs that contain "necessary or appropriate" and "adequate" provisions for the applicable State to mitigate its contribution to ozone transport.

States should follow the available guidance in the Economic Incentive Program requirements (see 40 CFR part 51, subpart U) and EPA's Emissions Trading Policy Statement (see 51 FR 43814, December 4, 1986) in addition to the transport SIP approval criteria in proposed 40 CFR 51.121.

Regulatory requirements used to meet the 2007 budget for other sources not identified in the above description may be expressed as (1) a mass emissions limit, (2) an emissions rate, or (3) specific technology or measure. As discussed above, EPA recognizes that it may not be reasonable to require regulatory requirements to be expressed as mass emissions limitations for all of these sources because of limitations with control options and the ability to measure mass emissions. Moreover, EPA believes that the likelihood of substantial shifts in demand (and corresponding changes in emissions compared to historical actuals) is lower for these other sources. Therefore, EPA believes there is substantially less risk with respect to these sources that past representative production rates will prove unreliable predictors of future activity. However, EPA recommends that mass emissions budgets also be used for these sources to the maximum extent practicable.

The EPA solicits comments on the proposed SIP approvability criteria for regulatory requirements that govern emissions from large combustion sources. In addition, EPA solicits comments as to the reasonableness of expressing regulatory requirements as mass emissions limitations for other sources.

b. Emissions Inventory Preparation Guidance and Control Strategies Guidance. This Section presents guidance that States should follow when initiating the planning and development of an emissions inventory. The documents referenced below describe control measures a State may wish to consider for purposes of meeting a statewide NO_x budget. Most of these documents can be obtained directly by computer download from the EPA's Clearinghouse for Inventories and Emission Factors (CHIEF) Web Site (<http://www.epa.gov/ttn/chief>) or by contacting the InfoCHIEF helpline at (919) 541-5285.

Descriptions of a number of potential data sources that can be consulted for emission estimation methods are provided below. Site-specific source tests are generally expected to provide a better estimate for the tested site than average emission factors (including factors cited in "Compilation of Air Pollutant Emission Factors (AP-42)"

derived from testing at similar sources. Site-specific tests should be based on a reliable test procedure and should represent typical operating conditions at the site before being assumed to be superior to an average emission factor. The CEMS data for a given site can be considered a superior form of site-specific source test data. Material balances for NO_x sources, and particularly combustion NO_x sources, are not appropriate and should not be used.

If reliable site-specific tests or calculation methods are not available or are not feasible to use for all sources, an emission factor or emission model approach can be used. The EPA's Factor Information Retrieval (FIRE) Data System provides a searchable electronic listing of all criteria, toxic, and greenhouse gas emission factors appearing through the latest printed AP-42 supplement for stationary sources. The FIRE database also contains a number of non-AP-42 factors, but only for sources where no AP-42 factor exists. In addition, FIRE contains a reference indicating if the factor is from AP-42 or another source, and it contains the factor quality rating if one exists. Note that mobile source emission factors do not appear in FIRE. The most recently finished AP-42 stationary source revisions can only be found on the CHIEF web site (<http://www.epa.gov/ttn/chief/ap42etc.html>).

If an emission factor is not available from one of the above sources, or if the inventory preparer wants to improve the emissions estimates for sources deemed significant, the following data sources may be of use.

- "Volume I, Introduction to the Emission Inventory Improvement Program (EIIP)" (EPA-454/R-97-004a)—

<http://www.epa.gov/ttn/chief/eiip/techrep.htm#intro>

- "Volume II, Preferred and Alternative Methods for Estimating Air Emissions from Point Sources" (EPA-454/R-97-004b)—

<http://www.epa.gov/ttn/chief/eiip/techrep.htm#pointsrc>

- "Volume III, Preferred and Alternative Methods for Estimating Air Emissions from Area Sources" (EPA-454/R-97-004c)—

<http://www.epa.gov/ttn/chief/eiip/techrep.htm#areasrc>

- "Volume IV, Preferred and Alternative Methods for Estimating Air Emissions from Mobile Sources" (EPA-454/R-97-004d)—

<http://www.epa.gov/ttn/chief/eiip/techrep.htm#mobsrc>

- "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources" (EPA-450/4-91-016)—

This document provides general procedures for estimating emissions from point and area stationary sources; it may still be useful for estimating emissions from area sources that are not yet covered in the EIIP area source guidance document (e.g., small publicly owned treatment works, aircraft refueling, on-site incineration, residential heating (excluding wood fuel), barge and tank drum cleaning). It is not available in electronic form. Paper copies are available from the InfoCHIEF help desk (919) 541-5285.

- "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume II: Emission Inventory Requirements for Photochemical Air Quality Simulation Models" (Revised) (EPA-450/R-92-026)—

This document offers technical assistance to those engaged in the planning and development of detailed emissions inventories for use in photochemical air quality simulation models. It includes guidance for identifying and incorporating the additional detail required by photochemical air quality simulation models into an existing base year inventory. It is not available in electronic form. Paper copies are available from the InfoCHIEF help desk (919) 541-5285.

- "Procedures for Emission Inventory Preparation, Vol. IV: Mobile Sources" (EPA-450/4-81-026d [Revised]) (You can download a zipped WordPerfect file of this document from the "Emission Inventory Guidance" Section of the CHIEF Web Site.)

http://www.epa.gov/ttn/chief/ei_guide.html

c. Growth estimates. In order for EPA to approve a SIP for the proposed Ozone Transport Rule, the State must clearly document growth factors and control assumptions used in the budget calculations. To the extent the State uses EPA growth factors and control assumptions, the SIP need only include a statement attesting to this. If a State wants to substitute its own growth factors or control assumptions in the budget analysis, it must provide adequate justification for using the alternative numbers. As stated in the November 7, 1997 NPR (62 FR 60367), EPA believes it is important that consistent emissions growth estimates be used for the State's budget

demonstration and for EPA's calculation of the required statewide emissions budget. The EPA will evaluate any revision to these growth factors or control assumptions that is suggested during the comment period on this rule and may recalculate the required statewide budget to reflect the State's change. Because the revised growth estimates will be included in EPA's budget calculation, lower growth rates could not be considered part of a State's NO_x control strategy to attain that budget unless the change in growth is the result of clearly identified control strategies that can be shown to provide real, permanent, and quantifiable changes in growth. In the November 7, 1997 NPR, EPA encouraged States to request any changes to growth estimates or control assumptions during the comment period for the proposal so that budgets given in the final rulemaking would reflect these changes. Guidance on how to prepare emission growth and projections is listed below.

The EPA is currently considering an optional alternative approach for States to use to meet the major source offset requirements under section 173 of the Act (new source review (NSR) for nonattainment areas).⁶ This approach would allow States to create an offset "pool" composed of actual emissions reductions that generally will be achieved as a result of NO_x control strategies adopted in response to the SIP call. To create an offset pool, at the time States revise their SIPs to include statewide NO_x control measures, under certain conditions states could set aside a subset of their emissions reductions generated from those measures for the purpose of offsetting anticipated emissions increases of ozone precursors from new and modified major sources that would be subject to nonattainment NSR preconstruction permitting. (The EPA is considering modifying the NSR regulations to consider both NO_x and VOC ozone precursors in all areas. Under such an approach, for offset purposes, VOC emissions increases from new and modified major sources could be offset with NO_x emissions decreases where appropriate.)

⁶ The EPA is not now seeking comment on the optional alternative approach of an offset pool. The approach is described here solely for the purpose of informing States of the potential for such an approach and its potential relationship to the growth estimates in the SIP call rulemaking. If EPA pursues this approach, the agency will propose it for comment in a separate *Federal Register* notice and intends to take final action by the end of this year. In particular, to the extent that the offset pool option might elaborate upon or vary from existing Agency policy or guidance, such differences will be addressed in the later notice.

The EPA currently anticipates that those States subject to the NO_x SIP call will be able to take advantage of the offset pool idea, as compliance with the SIP call will necessitate emissions reductions that are likely to be creditable as offsets. Specifically, because States' budgets under the SIP call account for a certain increment of new major source growth, states may set aside that increment in an offset pool and still comply with the budgets mandated by the SIP call. Thus, to take full advantage of the offset pool approach, States would need to ensure that they have projected sufficient growth considering major new sources and major modifications to existing major sources that will be locating in existing and new nonattainment areas. In general, EPA believes that sufficient growth assumptions have been built into the budget calculations to allow an adequate margin for new source offsets. Nevertheless, before EPA finalizes the NO_x budgets, States have an opportunity to reevaluate and adjust growth factors and control assumptions to ensure that the final budgets accurately reflect State-specific forecasts of major new source growth. Consequently, EPA recommends that States covered by this rulemaking and interested in using offset pools review their emissions growth assumptions and projections for anticipated new and modified major sources that will become part of their 2007 baseline emissions inventories under this rulemaking to ensure that growth projections accurately reflect the expected new emissions that will be required to be offset under major NSR.

d. Emissions Growth Projection Guidance.

- "Procedures for Preparing Emissions Projections" EPA-450/4-91-019, July 1991 (Hard copy only available).

- "Guidance for Growth factors, Projections, and Control Strategies for the 15 Percent Rate-Of-Progress Plans" EPA 452/R-93-002, March 1993 (Hard copy only available).

B. Emissions Reporting Requirements for States

As stated in the November 7, 1997 NPR, the EPA believes it is essential that compliance with the regional control strategy be verified. Tracking emissions is the principal mechanism to ensure compliance with the budget and to assure the downwind affected States and EPA that the ozone transport problem is being mitigated. Emissions reporting requirements for States subject to this SIP call are discussed in this Section.

1. Use of Inventory Data

If tracking and periodic reports indicate that a State is not implementing all of its NO_x control measures beginning in September 2002⁷ or is off track to meet its statewide budget by 2007, EPA will work with the State to determine the reasons for noncompliance and what course of remedial action is needed. The EPA will expect the State to submit a plan showing what steps it will take to correct the problems. As described more fully in the NPR (62 FR 60364-60369), noncompliance with the NO_x transport SIP may lead EPA to make a finding of failure to implement the SIP and potentially to implement sanctions, if the State does not take corrective action within a specified time period.

The EPA will use 2007 data to assess how each State's SIP actually performed in meeting the statewide NO_x emissions budget. If emissions exceed the required budget in any year after 2006, the control strategies in the SIP will need to be strengthened. The EPA will evaluate the circumstances for the budget failure and may issue a call for States to revise their SIPs, as appropriate.

2. Legal Authority

The legal authority for the proposed State reporting requirements described in this Section resides in sections 110(a) and 301(a) of the Clean Air Act. Specifically, the requirement in section 110(a)(2)(D) that SIPs include "adequate provisions" to mitigate certain transport effects on other States implicitly authorizes emissions inventory reporting to EPA, as reporting will be needed and appropriate to verify that a State is in fact meeting its NO_x budget. Section 110(a)(2)(F) provides additional authority for requiring that SIP call submissions include provisions for emissions reporting by sources to a State, correlation of source information by the State, and steps by the State to make the correlated information available to the public. Section 110(a)(2)(K), in turn, requires a State to submit to EPA as requested, data related to modeling the effect of NO_x and other emissions on ambient air quality. The reported emissions inventory data described in this Section will be used by EPA in air quality modeling to assess the effectiveness of the transport rulemaking's regional strategy. Finally, section 301(a) grants EPA broad

⁷ In this discussion of reporting requirements, September 2002 is presumed to be the compliance date for NO_x transport call controls. As discussed earlier, the final rule may adopt a different date for compliance which may, in turn, affect the dates in the final requirements for State reporting.

authority to prescribe such regulations as are necessary to carry out its functions under the CAA. These proposed regulations are necessary for EPA to properly carry out its evaluation of compliance with the SIP call

3. Background for Reporting Requirements

In the November 7, 1997 NPR, EPA indicated that it intended to work with affected States to determine what reporting procedures are needed to provide adequate assurance that the emissions budgets are being achieved. On January 13, 1998, EPA held a 1-day workshop with the States to discuss tracking issues. The objectives of the workshop were to determine what type and frequency of inventory reporting are feasible for the different source sectors (power generating sources, other point sources, area sources, and mobile sources) to identify key reporting issues related to each sector, and to develop recommendations on reporting requirements to ensure compliance with the SIP call. The goal was to share information and ideas rather than to reach consensus. A summary of the meeting is contained in the docket (docket number V-B-18) for this rulemaking.

The workshop participants generally thought that existing reporting requirements for attainment SIPs should be used whenever possible to minimize any new reporting burden. The States further recommended that the degree of reporting rigor should be directly related to the sectors that the State chooses to control in its NO_x transport strategy. Reporting every 3 years was considered feasible for all source sectors. Reporting on an annual basis was considered both achievable and necessary for all source sectors that a State chooses to regulate specifically for the purpose of meeting the NO_x budgets proposed in the SIP call. This would include all NO_x sources within the State which are subject to measures included by the State in its transport SIP revision in response to this SIP call. In addition, it was noted that sources or source categories that would be participating in a trading program would need to meet the reporting protocols specific to that program. Consideration was also given to establishing uniform monitoring and reporting requirements and a centralized data base for reporting for other sources. Several States indicated support for this concept if there were easy access to the data by all parties. For all source sectors, the States suggested that emissions rather than indicators should be reported.

4. Proposal

After taking into account the suggestions on tracking of the participants in the workshop, EPA today is proposing inventory reporting requirements for States subject to the NO_x SIP call. The regulatory text appears in proposed § 51.122 and is described below.

The EPA is proposing that States report emissions annually starting with data for the year 2003* for any emissions source (point, area, or mobile) to which additional controls are being applied for the purpose of meeting the NO_x budget, with certain exceptions as discussed below, and from any emissions source that will either sell or buy NO_x emission allowances. The EPA is also proposing that States develop and submit comprehensive statewide NO_x inventories, including all NO_x sources, controlled and uncontrolled, every 3 years, starting with data for the year 2002.

The tracking requirements for meeting the NO_x SIP call budget attempt to make use of existing inventory reporting mechanisms as much as possible so that existing requirements are not duplicated. However, the reporting requirements outlined below are more comprehensive than current reporting requirements for attainment SIPs in two respects. This is because EPA proposes that States report emissions from area sources and mobile sources annually if the State adopts new measures to reduce emissions from these sources for purposes of meeting the NO_x budget. Currently, there is no annual reporting requirement for area or mobile sources. In addition, States are not currently required to report on a 3 year cycle emissions from area and mobile sources in attainment areas. States would be required to report Statewide area and mobile source ozone season emissions every third year under the proposed requirements.

Details of reporting for specific source types are set forth below.

5. Annual Reporting

Annual NO_x emissions reporting requirements for point, area and mobile source emissions are to start for the year 2003. The State must submit annual reports for all sources the State chooses to regulate specifically for the purpose of meeting the NO_x budgets proposed in the SIP call. This would include all NO_x sources within the State which are subject to measures included by the State in its transport SIP revision in

* 2003 would be the year for which the data would be reported. The actual reporting schedule is given in the Reporting Schedule Section.

response to this SIP call. For example, a State would not have to submit an annual report for NO_x emissions for a cement kiln which was controlled prior to 1998 for RACT purposes. However, if the State chose to go beyond RACT requirements for the cement kiln in order to meet its budget, the State would have to report annually the emissions for the source. Emissions inventory reports are to be submitted according to the Reporting Schedule Section below.

a. Point Sources. The EPA proposes that States be required to report NO_x emissions annually for all point sources that are subject to regulations specifically for the purpose of meeting the NO_x budgets proposed in this SIP call. The State must report emissions from such point sources both for the whole year and for the ozone season (May 1 to September 30). The direct reporting from sources to EPA of data used for compliance with the requirements of a trading program meeting the requirements of 40 CFR Part 96 can be used to satisfy this requirement. The EPA is also taking comment on requiring electrical generating units and large industrial boilers to use the monitoring provisions in 40 CFR Part 75 to account for their emissions. This topic is more thoroughly discussed in Section IV.A.3, Approvability Criteria.

b. Area Sources. The EPA proposes that the State determine area source NO_x ozone season emissions for source categories that are controlled beyond otherwise applicable Federal, State or local measures to meet the NO_x budget and report these annually to EPA. A State need not report annually the emissions from an area source sector if the State does not require additional NO_x reductions from that sector in order to meet the transport rule's NO_x budget.

c. Mobile Sources. The EPA proposes that a State determine statewide mobile source NO_x ozone season emissions and report these to EPA annually if the State is requiring additional controls for purposes of meeting the NO_x budget. Reductions from Federal measures are already assumed in the budget. A State need not report annually the emissions from mobile sources if the State does not require additional NO_x reductions from that sector in order to meet the transport rule's NO_x budget.

* The EPA is proposing to define point source for this rule as a non-mobile source which emits 100 tons or more per year of NO_x emissions. Non-mobile sources which emit less than 100 tons per year of NO_x would be considered area sources. This definition of point source is consistent with current reporting requirements for NO_x emissions.

6. Reporting Every Third Year (3-Year Cycle or Triennial Reporting)

Consistent with current 3-year reporting requirements, EPA proposes that for every third year, starting in 2002, States would be required to submit to EPA statewide NO_x emissions data from all NO_x sources (point, area, and mobile) within the State.¹⁰ These data would include data from all source categories in the State regardless of whether those sources are being controlled to meet the requirements of the transport rulemaking. For triennial reporting for area and mobile sources, only ozone season emissions must be reported. For triennial reporting for point sources, both ozone season and annual emissions must be reported.

7. 2007 Report

The EPA proposes that in 2007, States submit to EPA statewide NO_x emissions data from all NO_x sources (point, area, and mobile) within the State. This would include data from all source categories in the State regardless of whether those sources are being controlled to meet the requirements of the transport rulemaking. For the 2007 report, only ozone season emissions must be reported for area and mobile sources, while both ozone season and annual emissions must be reported for point sources. The data reporting requirements are identical to the reporting requirements for the 3-year cycle inventories, and this reporting requirement is being proposed to allow evaluation of whether budget requirements are met for 2007. This one-time special inventory is necessary because the ordinary 3-year reporting cycle does not fall in the year 2007. States which must submit the 2007 inventory may project incremental changes in emissions from 2007 to 2008 to allow the 2008 inventory requirement to be more easily met and to reduce the burden on States which must submit full NO_x inventories in consecutive years, i.e., 2007 and 2008.

8. Ozone Season Reporting

The EPA is proposing that the States provide ozone-season inventories for the sources for which the State reports annual, triennial and 2007 emissions. The ozone season emissions may be calculated from annual data by prorating emissions from the ozone season by utilization factors that must be reported and that are further defined in 40 CFR 51.122. For area and mobile

¹⁰ The actual submittal of data by the State would only be required 12 months after the end of 2002. The data should be submitted according to the schedule in the Reporting Schedule Section.

sources, only ozone season data must be reported for the annual, triennial, and 2007 inventories. For point sources, the State must report emissions for the whole year, as well as for the ozone season, since States are already required under other existing inventory provisions to submit the data for the whole year. For the annual report, emissions need only be reported for source categories that a State chooses to regulate specifically for the purpose of meeting the NO_x budgets proposed in the SIP call. This would include all NO_x sources within the State which are subject to measures included by the State in its transport SIP revision in response to this SIP call. For the triennial and 2007 reports, ozone season emissions from all NO_x source categories within the State, controlled or uncontrolled, must be reported. The EPA is proposing that each State provide its ozone season calculation method to EPA for approval.

9. Data Reporting Procedures

When submitting a formal NO_x budget emissions report and associated data, the State should formally notify the appropriate EPA Regional Office of its activities. The EPA proposes that States would be required to report emissions data in an electronic format to the location given below. Several options are available for data reporting. The State may choose to continue reporting to the EPA Aerometric Information Retrieval System (AIRS) using the AIRS facility subsystem (AFS) format for point sources. (This option will continue for point sources for some period of time after AIRS is reengineered (before 2002), at which time this choice may be discontinued or modified.) A second option is for the State to convert its emissions data into the Emission Inventory Improvement Program/Electronic Data Interchange (EIIP/EDI) format. This file can then be made available to any requestor, either using E-mail, floppy disk, or value added network, or can be placed on a file transfer protocol (FTP) site. As a third option, the State may submit its emissions data in a proprietary format based on the EIIP data model. For the last two options, the terms "submitting" and "reporting" data are defined as either providing the data in the EIIP/EDI format or the EIIP based data model proprietary format to EPA, Office of Air Quality Planning and Standards, Emission Factors and Inventory Group, directly or notifying that group that the data are available in the specified format and at a specific electronic location (e.g., FTP site). A fourth option for annual reporting (not for third year

reports) is to have sources submit the data directly to EPA. This option will be available to any source in a State that is both participating in a trading program meeting the requirements of 40 CFR part 96 and that has agreed to submit data in this format. The EPA will make both the raw data submitted in this format and summary data available to any State that chooses this option. The EPA also solicits comment on whether this option should be expanded to additional stationary sources.

For the latest information on data reporting procedures, call the EPA Info Chief help desk at (919) 541-5285 or email to info.chief@epamail.epa.gov.

10. Reporting Schedule

The EPA is proposing that States submit the required annual and triennial emissions inventory reports no later than 12 months after the end of the calendar year for which the data are collected. Because downwind nonattainment areas will be relying on the upwind NO_x reductions to assist them in reaching attainment by the required dates, EPA believes it is important that data be submitted as soon as practicable to verify that the necessary emissions reductions are being achieved. Early reports will allow States to more quickly respond to implementation problems detected by the reports. States should formally notify the appropriate EPA Regional Office when making the submittals.

In a related rulemaking effort, EPA is currently developing the consolidated emissions inventory reporting rule. Among other things, the rule will be proposing that all States in the Nation submit statewide inventories of ozone precursors (NO_x, VOC, CO) every 3 years beginning with 1999 data. The third year reporting requirement for the transport rule has been developed to be consistent with that reporting cycle. However, the proposed 2002 start date for the transport rule emissions reports is 3 years later than the start date for the consolidated rule reports. The EPA is considering an 18-month reporting schedule for the later rule. The EPA expects that, as States gain experience in developing statewide emissions inventories, less time will be needed to gather and quality assure the data. Once States have completed the first cycle of reporting for 1999 under the consolidated rule, they may have sufficient procedures in place to allow for an accelerated reporting schedule. Therefore, because of the importance of the NO_x inventory reports for determining compliance with the NO_x budgets, EPA believes it is appropriate

to require a 12-month reporting schedule for the transport rulemaking.

The EPA recognizes that there are different constraints on data collection for the point, mobile, and area source categories. Therefore, EPA is also soliciting comment on whether different reporting schedules should be established for the different source categories, such that data that can be obtained more readily should be submitted sooner. For example, because point sources are already known to State agencies, and their operating parameters will not change significantly from year to year, the time needed to collect and quality assure data may be shorter than for the other categories. The new data submission procedures discussed above may allow further reductions in the reporting time. The EPA is soliciting comment on whether the State reporting time for point source emissions should be shortened to no later than 6 or 9 months after the end of the calendar year for which the data are collected.

For mobile and area sources, the necessary reporting time frames may be longer than for point sources due to the delay in obtaining activity data from information sources outside the inventory preparing agency. In many cases, surveys to collect new activity data are required by the inventory preparing agency to be able to calculate emissions estimates. As with point sources, the new data submission procedures may allow reductions in the reporting time. The EPA is soliciting comment on whether no later than 6 or 9 months after the end of the applicable calendar year would be a feasible time frame for submitting mobile and area source emissions inventory reports.

If different reporting schedules are established for the different source categories in the final rule, the EPA is proposing that, for the third year complete statewide inventory, States submit a summary report identifying the separate submittals and totaling the statewide NO_x ozone season emissions to demonstrate progress toward, and ultimately compliance with, their NO_x budget.

11. Confidential Data

Emissions data being requested in today's proposal would not be considered confidential by the EPA (See 42 U.S.C. 7414). However, some States may restrict the release of certain types of data, such as process throughput data. Where Federal and State requirements are inconsistent, the EPA Regional Office should be consulted for final reconciliation.

12. Data Elements To Be Reported

In addition to reporting ozone season NO_x emissions, the State should report other critical data necessary to generate and validate these values. This includes data used to identify source categories such as site name, location and (source classification code) SCC codes. It also includes data used to generate the NO_x emissions values such as fuel heat content and activity level. The specific data elements required for each source category are further defined in 40 CFR 51.122.

V. NO_x Budget Trading Program

In the November 7, 1997 proposed rulemaking to reduce the transport of ozone and facilitate attainment of the NAAQS for ozone, EPA offered to develop and administer a multistate NO_x trading program to assist States in the achievement of these goals; today's notice proposes such a program. The trading program being proposed employs a cap on total emissions in order to ensure that emissions reductions under the proposed transport rulemaking are achieved, while providing the flexibility and cost effectiveness of a market-based system. This Section provides background information and a description of the NO_x Budget Trading Program, as well as an explanation of how the trading program would interface with other State and Federal programs. In addition, a model rule for the trading program is proposed. States can voluntarily choose to participate in the NO_x Budget Trading Program by adopting the model rule, which is a fully approvable control strategy for achieving emissions reductions required under the proposed transport rulemaking.

Should the States voluntarily choose to participate in the NO_x Budget Trading Program by adopting the model rule, EPA's authority to cooperate with and assist the States in the implementation of the trading program resides in both State law and the CAA. With respect to State law, any State which elects to adopt the model rule as part of its transport SIP will be authorizing EPA to assist the State in implementing the trading program with respect to the sources in that State. With respect to the CAA, EPA believes that the Agency's assistance to those States that choose to participate in the trading program will facilitate the implementation of the program and minimize any administrative burden on the States. One purpose of title I of the CAA is to offer assistance to States in implementing title I air pollution prevention and control programs (42

U.S.C. 101(b)(3)). In keeping with that purpose, section 103(a) and (b) generally authorize EPA to cooperate with and assist State authorities in developing and implementing pollution control strategies, making specific note of interstate problems and ozone transport. Finally, section 301(a) grants EPA broad authority to prescribe such regulations as are necessary to carry out its functions under the CAA. Taken together, EPA believes that these provisions of the Act authorize EPA to cooperate with and assist the States in implementing the NO_x Budget Trading Program in the ways set forth in the model rule.

A. Program Summary

1. Purpose of the NO_x Budget Trading Program

The OTAG concluded that an emissions trading program could facilitate cost effective emissions reductions from large combustion sources (for more information on OTAG, see Section V.B.1.). When designed and implemented properly, a market-based program offers many advantages over its traditional command-and-control counterpart. The OTAG articulated five principal advantages of market-based systems: (1) Reduced cost of compliance; (2) creation of incentives for early reductions; (3) creation of incentives for emissions reductions beyond those required by regulations; (4) promotion of innovation; and (5) increased flexibility without resorting to waivers, exemptions and other forms of administrative relief (OTAG 1997 Executive Report, pg. 57). These benefits result primarily from the flexibility in compliance options available to sources and the monetary reward associated with avoided emissions in a market-based system. The cost of compliance in a market-based program is reduced because sources have the freedom to pursue various compliance strategies, such as switching fuels, installing pollution control technologies, or buying authorizations to emit from a source that has over-complied. Since an emission rate or emissions level below the level mandated allows the generation of credits or allowances that may be sold on the market, pollution prevention becomes more cost effective, and innovations in less-polluting alternatives and control equipment are encouraged.

A market system that employs a fixed tonnage limitation (or cap) for a source or group of sources provides the greatest certainty that a specific level of emissions will be attained and maintained since a predetermined level

of reductions is ensured. With respect to transport of pollution, an emissions cap also provides the greatest assurance to downwind States that emissions from upwind States will be effectively managed over time. The capping of total emissions of pollutants over a region and through time ensures achievement of the environmental goal while allowing economic growth through the development of new sources or increased use of existing sources. In an uncapped system, (where, for example, sources are required only to demonstrate that they meet a given emission rate), the addition of new sources to the regulated sector or an increase in activity at existing sources can increase total emissions even though the desired emission rate control is in effect.

In the NO_x Budget Trading Program, EPA proposes to implement jointly with participating States, a capped market-based program for certain combustion sources to achieve and maintain an emissions budget consistent with the proposed transport rulemaking. An emissions cap or budget trading program for large combustion sources is a proven and cost-effective method for achieving emissions reductions while allowing regulated sources compliance flexibility.

Although participation in the NO_x Budget Trading Program is discretionary, EPA encourages States to participate in the trading program as a cost-effective way of meeting their emissions reductions obligations under the proposed transport rulemaking. Specifically, today's proposal is designed to assist States in: (1) Achieving, through a program covering certain large stationary combustion sources, emissions reductions required under the proposed transport rulemaking; (2) ensuring flexibility for regulated sources; (3) reducing compliance costs for sources; and (4) reducing administrative costs to States.

Adoption of the NO_x Budget Trading Rule would ensure consistency in certain key operational elements of the program among participating States, while allowing each State flexibility in other important program elements. Uniformity of the key operational elements across the NO_x Budget Trading Program region is necessary to ensure a viable and efficient trading program with low transaction costs and minimum administrative costs for sources, States, and EPA.

The effect of NO_x emissions on air quality in down wind nonattainment areas depends, in part on the distance between sources and receptor areas. Sources that are closer to the

nonattainment area tend to have much larger effects on air quality than sources that are far away. In light of this, and as discussed in Section VII, the Agency plans to evaluate alternative approaches in developing the final rule.

The Agency solicits comments on whether a trading program should factor in differential effects of NO_x emissions in an attempt to strike a balance between achieving the cost savings from a broader geographic scope of trading and avoiding the adverse effects on air quality that could result if the geographic domain for trading is inappropriately large or trades across areas are not appropriately adjusted to reflect differential environmental effects. The Agency could consider establishing "exchange ratios" for tons traded between areas. The large number of areas in the region violating the standards and the several different weather patterns associated with summertime ozone pollution episodes complicate the development of a stable set of trading ratios. Alternatively, the Agency could consider establishing subregions for trading within the 23-jurisdiction area and apply a discount to or prohibit trades between regions.

The Agency solicits comments on this issue. If after review of alternative approaches (including sub-regional modeling analysis submitted by the States and other commenters), EPA concludes that an alternative approach is appropriate, EPA will issue a SNPR.

2. Emissions Reductions Required by the Proposed Transport Rulemaking

Each of the 22 States and the District of Columbia, determined by EPA in the proposed transport rule to make a significant contribution to nonattainment or interfere with maintenance in another jurisdiction, has been assigned a statewide NO_x emissions budget. Each of these States must submit a SIP revision delineating the controls that will be implemented to meet its specified budget. Each State has complete discretion to develop and adopt a mix of control measures appropriate for meeting its assigned emissions budget. Today's proposal assumes that compliance with the emissions reductions requirements for the transport rulemaking will begin on May 1, 2003, as proposed in the transport rulemaking. If a different compliance deadline is required in the final transport rulemaking, the deadlines in the proposed trading rule will be adjusted accordingly.

In the proposed transport rulemaking, EPA calculated seasonal NO_x emissions budgets for States, assuming activity growth levels through 2007 and the

application of reasonable, cost-effective controls that are currently available to achieve NO_x reductions. The statewide budgets were developed by applying appropriate controls to each sector of the total State emissions inventory: large electricity generating devices, point sources other than large electricity generators, nonroad engines, highway vehicles, and area sources. The statewide NO_x budget development process is fully described in Section III.B. of the November 7, 1997 proposal (62 FR 60346).

As outlined in the proposed transport rulemaking, budget levels calculated for nonroad engine, highway vehicle, and area source inventory sectors assume continued application of controls already required for those source sectors in addition to implementation of Federal measures, such as the National Low Emissions Vehicle Program. The statewide seasonal NO_x budgets proposed for the large electricity generating source sector (fossil-fuel burning electricity utility units and nonutility units serving electricity generators greater than 25 MWe) were based on applying a uniform NO_x emission rate of 0.15 lb/mmBtu to projected generating activity levels. Budget estimates for States' nonutility point source sector were developed assuming a 70 percent reduction from future emissions levels of large sources (greater than 250 mmBtu/hour), and application of RACT to medium sized sources (100–250 mmBtu/hour) in this category.

Though States are free to independently determine their control strategies to achieve their statewide budgets, several Federal and/or State programs are already under way or planned for most of the inventory source sectors to assist States in meeting their budgets. For example, meeting individual budget components for highway vehicles and nonroad engines can be achieved through Federal programs without adopting additional new control strategies. In addition, EPA is offering to administer certain aspects of today's proposed regional NO_x Budget Trading Program in order to assist States in developing a regulatory strategy for large stationary combustion sources.

3. Benefits of Participating in the NO_x Budget Trading Program

Participation in the NO_x Budget Trading Program would enable States that have been identified in the proposed transport rulemaking to achieve the required emissions reductions from stationary combustion sources while minimizing the

administrative burden faced by both States and sources. The SIP revision process required by the proposed transport rulemaking would be significantly streamlined for States choosing to include the NO_x Budget Trading Program as a part of the SIP. The EPA proposes that adoption of the model rule will be considered a SIP-approvable control strategy for the proposed transport rulemaking. States electing to participate in the trading program may either adopt the model rule by reference or develop State regulations that are in accordance with the model rule.

The permitting process under the trading program would be significantly streamlined since there will be no need for enforceable compliance plans and few circumstances necessitating permit revisions. Emissions monitoring, a central requirement of the trading program, as well as the availability to the public of emissions data, allowance data, and annual reconciliation information, would ensure that participating States and the public have confidence that the required emissions reductions are being achieved.

Cost savings for sources in States included in the trading program are projected to be substantial. As estimated in the "Proposed Ozone Transport Rulemaking Regulatory Analysis" (September 1997 docket # III-B-01), annual incremental costs for a rate-based control approach (at 0.15 lbs/mmBtu) are estimated to be \$501 million higher in 2005 than the costs of participating in the NO_x Budget Trading Program (assuming the same emission rate) for the 23 jurisdictions in the proposed transport rulemaking. Moreover, the annual average cost effectiveness of emissions reductions achieved through a regional trading program for the electric power industry is projected to be approximately \$1,250 per ton by 2010, while the cost effectiveness of the rate-based approach is projected to be \$2,050 per ton by 2010 (pages 2-24 through 2-27).

Sources included in the trading program can also expect increased compliance flexibility, as compared to a rate-based approach that requires each affected source to comply with the 0.15 lbs/mmBtu emission rate and necessitates installation of control equipment for any affected source that cannot meet the limit. Participation in the trading program provides sources the choice of numerous compliance strategies. Moreover, sources can choose to over-comply and generate excess allowances that can be sold on the market or, as discussed below, possibly banked for future use. In addition,

sources may change their control approach at any time without regulatory agency approval.

4. EPA's Proposal

Initially, the following sources would be included in the NO_x Budget Trading Program: fossil fuel-fired units (i.e., stationary boilers, combustion turbines, and combined cycle systems) that serve an electrical generator of capacity greater than 25 MWe; and fossil fuel-fired units that do not serve a generator and that have a heat input capacity greater than 250 mmBtu/hr. All such sources located within a State that chooses to join the trading program would be required to participate in the program. Conversely, sources located in States that do not join the trading program would not be eligible to participate. The NO_x budget sources initially included in the trading program represent about 80 percent of the point source portion of the 2007 NO_x baseline emissions inventory and about 65 percent of the point source portion of the 2007 NO_x budget as proposed in the ozone transport rulemaking. Additionally, these sources represent about 90 percent of the emissions reductions required in the proposed ozone transport rulemaking. This core group of sources, therefore, captures the majority of NO_x emissions from the point source sector. States, however, have the option of extending the program to include additional point sources at their discretion, provided these additional point sources can fulfill the requirements set forth for the trading program in this proposal. The EPA is also taking comment on allowing certain new and modified major sources to participate in the trading program at their discretion as a way of potentially meeting the new source offset provisions under section 173 of the CAA, provided the source meets the permitting, monitoring, and accountability requirements of the trading program.¹¹ The EPA requests comments on broadening the applicability of this trading program to include more types of sources such as process sources, mobile sources, or area sources. Commenters should address each type of source that they recommend be included in the applicability of this program. For each source type, commenters should describe procedures for monitoring emissions and identify responsible parties for the source type. Criteria for monitoring and for responsible parties are outlined below. Additionally,

¹¹ For discussion on this subject, see Section F. below, that addresses New Source Review.

comment is requested on any other types of concerns or issues associated with inclusion of these other source types (e.g., environmental justice; net cost savings likely to accrue from trading; administrative costs for sources, States, and EPA).

Sources in the trading program would be required to monitor and report their emissions in accordance with relevant portions of 40 CFR part 75, which is currently under revision to provide greater flexibility to regulated sources. (40 CFR part 75 revisions will be proposed in a notice entitled "Acid Rain Program; Continuous Emission Monitoring Revisions" that will be published in the *Federal Register* in the near future.) The monitoring of emissions is necessary for accountability and to ensure that a ton from one source in one State is equivalent to a ton from another source in the same or another State.

The NO_x allowances—each allowance representing a limited authorization to emit one ton of NO_x—would be the currency used in the trading program. An emissions budget and an allowance-based system ensure achievement of environmental goals within a cost-effective, market-based program and can be implemented through existing infrastructure. A fixed number of NO_x allowances would be allocated to regulated sources in each State for each ozone season in the amount of the NO_x budget set for the trading program in the State. States would have the responsibility for allocating allowances among regulated sources. The proposed NO_x Budget Trading Rule establishes timing requirements for the submission of NO_x allowance allocations to EPA by participating States for inclusion into the NO_x Allowance Tracking System (NATS), which would be operated by EPA.

In addition to timing requirements, today's proposal provides options for a recommended methodology for States to allocate NO_x allowances to their sources covered by the NO_x Budget Trading Program. A specific recommendation would be included in the final trading rule. States would have the flexibility to deviate from EPA's recommendation as long as the timing requirements (40 CFR 96.41) are met and total NO_x allowances allocated to regulated sources do not exceed the number of tons that the State apportions to these sources in the SIP. This would help ensure that the trading program can operate efficiently and effectively across multiple States.

In addition to EPA's traditional role in the approval and oversight of the SIP, EPA would be responsible for managing the emissions data and market functions

of the program, as well as performing annual reconciliation of monitored emissions and allowances. States choosing to join the trading program would be responsible for promulgating the supporting State regulations; submitting NO_x allowance allocations to EPA for inclusion in NATS; and enforcing the permitting, monitoring and excess emissions requirements. As established in the proposed transport rulemaking, the control period would extend from May through September. Based on results presented in the regulatory analysis for the proposed transport rule that suggest no significant changes in the location of emissions reductions resulting from an unrestricted trading program with a consistent control level ("Proposed Ozone Transport Rulemaking Regulatory Analysis," September 1997, pages 2-20 and 2-23, docket # III-B-01), trading could occur across participating States free from restrictions (other than the requirement to comply with existing emissions limits under title I and title IV of the Act). These and other program parameters, however, are predicated on the proposed transport rule and may be modified if the final transport rule differs from the proposal.

B. Evolution of the NO_x Budget Trading Program

Market-based systems to control NO_x emissions have been developed within the United States, including: The South Coast Air Quality Management District's Regional Clean Air Incentives Market (RECLAIM) and the Ozone Transport Commission's (OTC) NO_x Budget Program. Today's proposed NO_x Budget Trading Program builds directly upon the OTC program and recommendations from OTAG. In addition, EPA held two public workshops in November and December of 1997 specifically to solicit input on the development of the trading program. The proceedings of these workshops are also summarized in this Section.

1. OTC's NO_x Budget Program

The goals and implementation strategy of the OTC's NO_x Budget Program are similar to those of the proposed transport rule and today's proposed NO_x Budget Trading Program. Taking into account the work that has been done by the OTC, EPA has tried to develop a proposal that will minimize conflicts between the two programs by building upon the terms and provisions in the OTC program. Section V.E of this preamble further discusses the integration issues for the two programs.

On September 27, 1994, the OTC adopted a Memorandum of Understanding (MOU) committing the signatory States to the development and proposal of regionwide NO_x emissions reductions in two phases beginning in 1999 and 2003. The signatory States were Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, and the District of Columbia.

The OTC MOU requires reductions in ozone season NO_x emissions from utility and large industrial combustion facilities in order to further the effort to achieve the health-based NAAQS for ozone. These emissions reduction requirements will be implemented through a regionwide cap-and-trade program. The OTC States, in collaboration with EPA, industry, and environmental groups, drafted and approved a model rule in May 1996. This model rule serves as a template for States to adopt their own rules to implement the budget program defined by the OTC MOU. In addition to adopting rules, States in the OTC program are responsible for allocating NO_x allowances among regulated sources, certifying monitors and monitoring plans, auditing and recertifying sources, and enforcing the provisions of their State rules. In addition to EPA's traditional role in the approval and oversight of the SIP, EPA serves as the administrator for the NATS and the Emissions Tracking System (ETS), the data systems used to implement the OTC program. This entails issuing NO_x allowances and opening accounts, processing transfers and quarterly emissions reports, conducting annual reconciliation of emissions and allowances, and providing technical assistance to States and sources as needed.

To implement the program, the OTC MOU emissions reduction requirements were applied to a 1990 baseline for NO_x emissions in the Ozone Transport Region (OTR) to create an emissions budget for each of the 2 target years: 1999 (Phase II) and 2003 (Phase III). (Phase I required the installation of RACT by May 1995.) This budget was apportioned among all the States; each State is responsible for allocating its budget to regulated sources in its State. Sources are allowed to buy, sell, or trade NO_x allowances, and ultimately must hold allowances sufficient to cover all NO_x emitted during the ozone season. Beginning in 1999, the total NO_x emissions from regulated sources cannot exceed the number of allowances allocated in the OTR.

In order to ensure that NO_x emissions reductions are achieved and allowances are fungible, budget sources are required to monitor and report their NO_x emissions. Most sources use CEMS, as approved by EPA under 40 CFR Part 75. For smaller oil-and-gas-burning units, alternative monitoring methods are available.

At the conclusion of each ozone season, sources have an opportunity to evaluate their reported emissions and obtain any additional NO_x allowances they may need to offset their emissions during the ozone season. By December 31 of each year, a regulated source submits a compliance certification report. Should a source lack sufficient allowances to offset emissions for the season, the OTC model rule requires subtraction of allowances from that source's allocation for the following year. If enough NO_x allowances are not held, an automatic offset will be imposed during the following year's ozone season where an amount of NO_x allowances will be deducted from the source in an amount equaling three NO_x allowances for each ton of excess emissions. The source is also subject to the application of existing State and Federal enforcement protocols and penalties.

The NO_x allowances that are not used are automatically carried over into the following year as banked allowances. The banking provisions of the OTC model rule provide for unlimited banking of allowances with a "progressive flow control" management scheme to control the withdrawal and use of banked allowances. (For a more detailed discussion of banking, see Section V.E.) Explicit program audit provisions are established in the OTC model rule to ensure that the use of banked NO_x allowances does not threaten the integrity of the system.

Finally, the OTC model rule makes provisions for possible rule modifications in the future. This "mid-course correction" provides an opportunity to revise the 2003 emissions reduction target and budget and to modify the OTC model rule in response to refined air quality modeling or other altered circumstances.

2. OTAG Process

The OTAG, a partnership among the 37 easternmost States and the District of Columbia, EPA, industry representatives and environmental groups, was charged with assessing the significance of ozone transport and with recommending to EPA control strategies for reducing this transport. The OTAG's initial meetings were in May and June of 1995, and its final recommendations were issued to

EPA on July 8, 1997 (see 62 FR 60376, Appendix B). The OTAG completed an extensive and comprehensive analysis of ozone transport and control, and EPA has taken OTAG's work and conclusions into account in developing this rulemaking.

The analysis and conclusions of the Trading and Incentives Workgroup of OTAG are particularly relevant to EPA's creation of the NO_x Budget Trading Program. The Trading and Incentives Workgroup was charged with designing market-based approaches to reduce NO_x emissions. This group identified two basic paths to market system implementation—identified as "Track One" and "Track Two"—which could be used to facilitate achievement of the statewide budgets delineated in the proposed transport rulemaking. "Track One" was defined as an interstate cap-and-trade program for stationary sources, administered by a central regulatory authority, such as EPA. "Track Two" was defined as a market-based system without an emissions cap. As discussed above, trading with a cap better ensures that environmental goals will be met than trading without a cap. Therefore, for the purposes of assisting State achievement of the statewide budgets set forth in the proposed transport rulemaking, EPA is focusing on implementing a "Track One" type of program with today's proposed rule and is building upon OTAG's analysis and recommendations regarding the development of Track One programs.

3. EPA Model Trading Program Workshops

The EPA held two public workshops to solicit comments and suggestions from States and other stakeholders on a NO_x cap-and-trade program prior to developing today's proposed NO_x Budget Trading Rule. This Section describes the workshop process. Greater detail regarding program development and feedback received through the workshop process is provided within relevant Sections of this preamble.

The trading rule workshops were held on November 4 and 5, 1997 in Washington DC, and December 10 and 11, 1997 in Arlington, Virginia. Written comments during this pre-proposal phase were welcomed through December 31, 1997. Each workshop consisted of a 2-day forum: the first day was devoted to EPA/State discussions, and the second day was open to all interested parties. Over 150 people participated in each of the workshops. To facilitate meaningful comments from these participants, EPA developed working papers on critical issues that were made available for review prior to

each workshop. These papers discussed major issues relevant to developing a NO_x Budget Trading Rule, delineated options and, in some cases, offered recommendations. The issues associated with each working paper were presented at the workshops, followed by open discussion periods allowing workshop participants to comment and discuss each issue.

The first workshop, addressed the foundations of the NO_x Budget Trading Program development. To achieve the required NO_x emissions reductions in the most cost-effective manner, the goals of the trading program were defined as meeting the budget, facilitating trading, and creating a workable program. The necessity of operating the NO_x Budget Trading Program within the framework of the proposed transport rulemaking dictated further requirements, such as a seasonal control period. Four fundamental trading rule components (applicability, monitoring, emissions limitations, and banking) were discussed at length.

After broad concepts for the NO_x Budget Trading Program framework were introduced and discussed at the first workshop, EPA revised and augmented the working papers in accordance with comments and discussion. At the second workshop, EPA presented recommendations and considerations of additional issues, seeking further input from participants. The original working papers on applicability, monitoring, emissions limitations, and banking were expanded, and new papers on the use of output in allocations and the creation of an energy efficiency set-aside were introduced in response to interest expressed at the first workshop. In addition, a paper presenting a skeleton of all the components of a model rule was presented to provide context for input and an indication of how the NO_x Budget Trading Rule as a whole was evolving.

The EPA found the workshop process to be very helpful in generating useful recommendations for developing the framework for the model rule. Today's NO_x Budget Trading Rule proposal incorporates comments and suggestions raised at both workshops, along with nearly fifty written comments received following the workshops. Listening to issues important to States through the workshop process was essential for EPA to develop a program that would meet States' needs. Since the ultimate cost savings of the regional trading program will increase with the number of participating States, it is advantageous to design a regional trading program that will likely be adopted by the greatest

number of States. The workshops also served as a forum to discuss which program elements should be consistent among participating States, since consistency in State-adopted rules is essential for a viable regional cap-and-trade program. Also of importance in the workshop process was working with stakeholders, such as affected sources, in order to ensure that the trading program offers the necessary flexibility, as well as compatibility with other programs.

The working papers, a detailed summary of the input received during both workshops, and written comments are included in the proposed transport rulemaking docket (A-96-56, Section 2a).

4. RECLAIM Program

The RECLAIM program, which was adopted by the South Coast Air Quality Management District in October, 1993, and began January 1, 1994, provides another example of a cap-and-trade market system. This program regulates NO_x and sulfur oxides (SO_x) emissions from facilities that generally emit four or more tons per year of either pollutant from permitted equipment in the South Coast Air Basin, centered in Los Angeles.¹² The RECLAIM program currently includes approximately 330 facilities.

The RECLAIM program replaced command-and-control regulations with a market program to provide facilities with added flexibility and lowered compliance costs in achieving reductions required to meet State and Federal requirements for clean air programs. Facilities in the program are collectively required to cut their emissions by a specific amount each year under the program, resulting in an almost 80 percent reduction by 2003 for both SO_x and NO_x. Each facility participating in RECLAIM is allocated RECLAIM trading credits (RTCs) equal to its annual emissions limit. Initially, allocations are based on past peak production and the requirements of existing rules and control measures for each facility. Allocations decline annually through the 2003 compliance year, then remain constant during subsequent years. The RTCs, each representing the limited authorization to emit one pound of pollutant, expire annually. Facilities may trade these RTCs among themselves, providing that every quarter, each facility holds credits

¹² Some sources with annual emissions less than four tons are included in the program by virtue of their inclusion in a SIC category in which the majority of sources emit greater than four tons per year.

equal to or greater than their actual emissions for that quarter.

In terms of NO_x emitters, the RECLAIM program generally requires stationary sources that emit ten or more tons of NO_x annually or which burn any solid fuels to use CEMS to quantify their emissions. Smaller sources have additional monitoring options. Sources that emit four or more tons of NO_x and less than ten tons may use default emission rates. They must demonstrate that these rates are appropriate by monitoring process variables, performing periodic emissions testing, and conducting periodic tune-ups of equipment. The smallest sources in the RECLAIM program (those with annual emissions of less than four tons) may choose to use default emission rates that require less extensive testing and demonstration than those available to the larger sources.

The program's annual report for 1996 concluded that RECLAIM was continuing to meet its emissions reduction goals; an active trading market had developed; and the compliance rate, once it is finalized for the 1996 compliance year, will be in the 85 to 90 percent range.

C. NO_x Budget Trading Program

1. General Provisions

Today's proposed NO_x Budget Trading Rule will be incorporated into the 40 CFR as a new part 96. The subparts of 40 CFR part 96 are described below. The provisions of 40 CFR part 96 will become effective and apply to sources only if a State incorporates 40 CFR part 96 by reference into the State's regulation or adopts regulations that are in accordance with 40 CFR part 96.

a. Purpose. Subpart A of today's proposed NO_x Budget Trading Rule includes Sections describing: To whom the NO_x trading program would apply; the standard requirements for participants in the program (permitting, NO_x allowances, monitoring, excess emissions, and liability provisions); exemptions for retired units from the program requirements; definitions, measurements, and abbreviations; and computation of deadlines stated within the proposal.

b. Definitions, Measurements, Abbreviations, and Acronyms.

Many of the definitions, measurements, abbreviations, and acronyms are the same as those used in 40 CFR part 72 of the Acid Rain Program regulations, in order to maintain consistency among programs. However, additional terms specific to the NO_x Budget Trading Program, such as control period (the period beginning

May 1 of each year and ending on September 30 of the same year), NO_x Budget unit (a unit subject to the emissions limitation under the NO_x Budget Trading Program), and several others are added. Key definitions are discussed in relevant Sections below describing the rule.

c. Applicability. The EPA proposes that the NO_x Budget Trading Rule be applicable to a core group of sources that includes all fossil fuel-fired, stationary boilers, combustion turbines, and combined cycle systems (i.e., "units") that serve an electrical generator of capacity greater than 25 MWe and to any fossil fuel-fired, stationary boilers, combustion turbines, and combined cycle systems not serving a generator that have a heat input capacity greater than 250 mmBtu/hr. A unit is considered fossil fuel-fired if fossil fuels account for more than 50 percent of the unit's heat input on an annual basis. These sources represent about 80 percent of the point source portion of the 2007 NO_x baseline emissions inventory and about 65 percent of the point source portion of the 2007 NO_x budget in the proposed ozone transport rulemaking. Additionally, these sources represent about 90 percent of the emissions reductions required in the proposed ozone transport rulemaking.

The EPA proposes the above core group of sources based on their significant contribution of NO_x emissions, range of cost-effective emissions reduction options, ability to monitor emissions, and ability to identify responsible parties. The following discussion examines the monitoring and responsible party criteria for the NO_x Budget Trading Program's applicability. Additional options for the trading program's applicability are also presented for consideration. The EPA solicits comment on the appropriateness of including all categories described above in the core group of sources, whether the size cut-offs should be higher or lower for these source categories, and the appropriateness of including other source categories in the core group.

i. Monitoring. In general, sources that participate in a cap-and-trade program must have the ability to accurately and consistently account for their emissions. Accuracy is an important design parameter because it ensures that emissions for all sources covered by the trading program are within the cap. In addition, because each NO_x allowance will have economic value, it is important to ensure that emissions (and thus allowances used) are accurately quantified. Consistency is an important

feature because it ensures that accuracy is maintained from source to source and year to year. It also ensures that the sources in the trading program are treated equitably. Finally, consistency facilitates administration of the program for both the regulated community and State and Federal agencies.

When considering what source types to include in the proposed trading program (e.g., large boilers, process sources, mobile sources, area sources), EPA determined that the core sources were capable of accurate and consistent monitoring as outlined below.

- **Large Electric Utility Units:** For several years, units serving electricity generators greater than 25 MWe (with some exemptions for cogeneration and nonutility electricity generating units) have been complying with the title IV monitoring provisions. The EPA proposes to include these sources in the NO_x Budget Trading Program.

- **Other Large Electricity Generating Units:** Additionally, with deregulation of electric utilities, it is not clear how ownership of the electricity generating facilities will evolve. Therefore, EPA proposes to include all large electricity generating sources, regardless of ownership, in the trading program. As there is no relevant physical or technological difference between utilities and other power generators, the same monitoring provisions and the size cut-off of greater than 25 MWe are applicable to all units which serve generators.

- **Other Large Steam Producing Units:** There is also no fundamental physical or technological difference between a boiler, combustion turbine, or combined cycle system that produces steam for eventual production of electricity or for other industrial applications. Thus, EPA believes that the same monitoring provisions can be applied to a boiler, combustion turbine, or combined cycle system used for industrial steam.¹³

- ii. **Responsible Party.** Another critical element of a trading program is to be able to identify a responsible party for each regulated source. The responsible party for a source covered by the trading program would be required to demonstrate compliance with the provisions of the NO_x Budget Trading Program. In general, the large sources included in the proposed trading program have readily identifiable owners and operators that would serve as the responsible party.

¹³ Further, assuming a generator efficiency of approximately 1/3, the 25 MWe cutoff being used for electrical power producers is roughly equal to a 250 mmBtu/hr cutoff for steam producing boilers, combustion turbines, and combined cycle systems.

iii. Inclusion of Additional Source Categories. During the public workshops, several commenters recommended allowing a State to include additional sources beyond the core group into the trading program. As the applicability criteria proposed today are intended to define the minimum set of units required to participate in a trading program, inclusion of additional sources is allowed. Some States have existing or planned programs very similar to the one proposed today, but with different applicability criteria (e.g., the OTC NO_x Budget Program). States may choose to modify the applicability language to bring in smaller sources of the same type as those included in the core group or additional source categories. All additional sources (e.g., a certain industrial process) must meet all trading program requirements (including monitoring requirements of 40 CFR part 75 subpart H) and be able to identify a responsible party. The EPA believes that smaller sources of the same type as those included in the core group should be able to meet the trading program requirements and, thus, could be included in a State's trading rule without affecting EPA's streamlined approval of the SIP as described in Section V.D of this preamble.

The EPA is also taking comment on allowing or requiring additional stationary source categories beyond the proposed core group to be part of the trading program. There are three ways that some or all of the sources included in these additional categories could be included. The sources could be included as part of the core program applicability, as an additional list of source categories that a State could choose to include¹⁴, or they could be individually opted-in according to the provisions under 40 CFR part 96 subpart I of the trading rule.

The EPA believes that there are a number of additional source categories that could account for their emissions using the monitoring protocols in 40 CFR part 75. Bringing a source or source category that meets these protocols into the trading program would also not affect EPA's streamlined approval of the SIP. The EPA proposes to develop a list of additional source categories beyond the core group that a State may bring into the trading program without affecting EPA's streamlined approval of the SIP.

¹⁴ 40 CFR part 96 subpart E of the proposed trading rule addresses the allocation of NO_x allowances to NO_x Budget units which includes the core group of sources as well as any additional sources the State may choose to include in the trading program.

If a State chose to bring other source categories beyond those included in this proposed list into the trading program, a more thorough EPA review may be needed. There are two main reasons for this review. The first is to ensure that the monitoring protocols that the State intended to use for the source or source category would provide accurate information and be consistent with the monitoring protocols being used for the core sources in the program. The second is to ensure that EPA could successfully administer the regional NO_x trading program with the addition of these sources. For example, EPA would have to determine that the reporting requirements for these source categories could be supported with the information systems that EPA develops and the resources that EPA employs to administer the program.

The EPA believes that the source categories that are simplest to consider adding are sources that vent all of their emissions to a stack, because existing monitoring protocols (e.g., 40 CFR part 75) can be used to accurately and consistently quantify mass emissions for these categories of sources. The two existing capped NO_x trading programs (the OTC program and the RECLAIM program) have also focused on these types of sources.

The OTC program has generally focused on the same types of sources that are in the proposed core group, electrical generating units and large industrial boilers that burn primarily fossil fuels. One notable exception to this is that Connecticut intends to cover municipal waste incinerators in Phase III of their program, which starts in 2003. The RECLAIM program has focused on a larger breadth of sources. These include industrial boilers and electrical generating units, but they also include: internal combustion engines, heaters, furnaces, kilns and calciners, ovens, fluid catalytic cracking units, dryers, fume incinerators/afterburners, test cells, tail gas units, sulfur acid production units and waste incinerators. In both programs, the monitoring requirements have been based on a tiered system that requires more stringent monitoring for units with higher emissions. Both programs require CEMS for larger units. In general, this would include units larger than 250 mmBtu with capacity factors of greater than 10 percent for the OTC program and units with emissions of ten or more tons of NO_x per year for the RECLAIM program. Both programs also offer less stringent, non-CEMS alternatives for smaller sources.

While RECLAIM has been able to account for emissions from a larger

group of source categories than EPA is proposing to include in the core group, RECLAIM has had difficulty with some of these additional source categories. For instance, RECLAIM's 1996 audit explained that the standing working group on RECLAIM CEMS Technical issues (a group formed to address issues relating to RECLAIM monitoring) has focused on issues "associated mainly with the difficult situations faced by refineries in implementing CEMS requirements." The audit goes on to explain that "this is attributed to the variability of the fuel used in refinery equipment [e.g., catalytic cracking units] as compared to natural gas, the operational variability of much of the affected equipment, and the fact that many of the sources in an older refinery were never constructed with CEMS monitoring in mind". Additionally, discussions with RECLAIM staff have indicated that units that have high concentrations of particulate emissions and emit to open baghouses, such as asphalt heaters and metal melting furnaces, have been difficult to monitor because of the high concentration of particulates. In short, RECLAIM's experience has indicated that the problems faced by these source categories require more resources for both the regulated community and the regulatory agency. Therefore, while EPA is taking comment on including all types of stationary sources that emit to stacks in the program, EPA believes that some sources are better suited for participating in a trading program because their emissions can more easily be accurately and consistently quantified.

Based on information available to EPA at this time, the specific additional source categories for which EPA is particularly interested in taking comment are: Process heaters, internal combustion engines, kilns and calciners, and municipal waste incinerators. If any of these source categories are included in the final rule as a part of the core group, EPA is proposing that they be included with applicability cut-offs roughly equivalent to the 25 megawatt cut-off used for electrical generating facilities and the 250 mmBtu cutoff used for industrial boilers. The EPA requests comment on the appropriateness of these cut-offs.

The EPA is taking comment on these particular additional categories because EPA believes these sources have the capacity to generate significant amounts of NO_x and are capable of monitoring using the protocols set forth in 40 CFR part 75. These are also source categories that are currently participating in the RECLAIM trading program or those that

at least one of the States in the northeast region has considered including in the OTC NO_x Budget Trading Program.

The EPA believes that these source categories are capable of using 40 CFR part 75 monitoring because they vent all of their emissions to a stack or stacks, which could be monitored using CEMS. The EPA believes that the particular monitoring protocols in 40 CFR part 75 that would be applicable for these sources would be dependent on the fuel burned, the size of the source, and the magnitude of the emissions of the particular unit that was being included in the program. This is consistent with the way that the monitoring protocols are set forth for core sources. For example, all units that burned solid fuel (including all municipal waste combustors and cement kilns and process heaters that burned coal) would use a NO_x emission rate CEM and a flow CEM to determine NO_x mass.

Units that burn oil or gas (internal combustion engines and some process heaters and kilns) would have several other options depending upon their size. Large oil or gas units could use a NO_x emission rate CEM and a fuel flow meter to determine NO_x mass. Infrequently operated units could qualify to use the emission rate curve methodology set forth in Appendix E of 40 CFR part 75, and units with potential emissions¹⁵ of under 25 tons per year could use the default emission factor protocols for low mass emitters set forth in 40 CFR 75.19.

The EPA notes that the currently proposed provisions in 40 CFR 75.19 do not contain default emission factors applicable for these types of units and requests comments on what factors would be appropriate. While smaller and less frequently operated units could use these simplified monitoring methodologies, they would also be allowed to use any of the monitoring methodologies available to other units in the program. The low mass emitter methodology as it is currently proposed was designed to provide very low emitting units a very cost effective way to account for their emissions using conservative uncontrolled default emission factors. Because it is based on conservative uncontrolled default emission factors, it does not allow units that use it to quantify emissions reductions. The owner or operator of a unit that qualified to use this methodology might choose to use another methodology such as the Appendix E methodology or CEMS

¹⁵ The phrase "potential emissions" has a different meaning than the phrase "potential to emit" used elsewhere by the Agency.

because this would be more representative of the unit's actual emission rate. Another option that is not in the proposed 40 CFR part 75 rulemaking would be to change the low mass emitter methodology to allow units to use unit specific emission rates and actual unit heat inputs to get more accurate emissions estimates. Since the emission rates that were being used would not be as conservative, units would have to do more quality assurance to demonstrate that their reported emissions were more representative of their actual emissions. This might include periodic testing of emission rates and/or periodic tuning requirements for the equipment. These concepts could also be used in conjunction with controlled default emission rates to verify that the controls are operating properly and that the lower default rates are appropriate. All of these concepts are similar to the monitoring methodologies allowed for the smallest size units in the RECLAIM program.

The EPA is seeking comment on the following issues related to monitoring for both the specific additional source categories that EPA believes are most able to account for their emissions consistently and accurately and any additional stationary source categories that emit to a stack. (All comments related to the use of 40 CFR part 75 for monitoring for these sources should be submitted in the separate rulemaking on 40 CFR part 75 revisions—40 CFR part 75 revisions will be proposed in a notice entitled "Acid Rain Program; Continuous Emission Monitoring Revisions" that will be published in the *Federal Register* in the near future—rather than in the instant proceeding.)

1. Can these source categories monitor and report NO_x mass emissions using the protocols set forth in the proposed revisions to 40 CFR part 75? If not, why not?

2. Are there other protocols that should be included which would provide emissions measurement and reporting for these additional sources with accuracy and consistency comparable to that provided under 40 CFR part 75?

3. Are the thresholds set forth in 40 CFR part 75 for different monitoring methodologies appropriate for these types of sources? For example, in order to qualify to use the load vs. emission rate curve methodology set forth in Appendix E of 40 CFR part 75, a unit must have an average capacity factor of less than 10 percent for 3 years and have a maximum capacity factor of no more than 20 percent in any one of those years.

The EPA is also seeking comment on the following issues related to these source categories:

1. Should any of these source categories be included in the core program applicability, i.e., should their inclusion be mandatory for a State to participate in the NO_x Budget Trading Program?

2. Should States, at their option, be allowed to include any of these source categories and still receive streamlined approval of their SIPs?

In addition, EPA is taking comment on whether any other additional stationary source categories should be included. Finally, EPA is taking comment on whether individual States including these source categories would raise concerns about shifting of production activity (and thus emissions) to other States that do not choose to include these categories.

There is more uncertainty for the ability of source categories not identified in the core group or in the list of additional source categories to meet the trading program requirements. Adding other source categories not identified in the final NO_x Budget Trading Program would entail additional obligations for the State (e.g., allocating allowances, certifying monitors, and enforcing trading program requirements), would mean that EPA's approval of the SIP would not be as streamlined, and could affect EPA's ability to administer the region-wide program. Therefore, EPA would strongly encourage any State wishing to participate in the trading program to work with EPA before proposing a rule with expanded applicability criteria beyond that identified in the final NO_x Budget Trading Rule.

iv. Individual Opt-Ins. The EPA is proposing that individual point sources, not otherwise subject to the trading program and located in a State that is participating in the NO_x Budget Trading Program, be allowed to opt-in to the program. For a source to opt-in, it must meet the same monitoring and accountability requirements as other NO_x Budget sources. Thus, under the proposed rule, initial opt-ins would be boilers, combustion turbines, and combined cycle systems below the proposed (or State defined) applicability threshold. The EPA requests comment on whether individual opt-ins should also include any additional sources that may be included as part of the core group of sources as a result of the above discussion under Section iii, Inclusion of Additional Source Categories. The proposed opt-in provisions are further discussed in the opt-in Section of this preamble.

v. Additional Options for Applicability. The EPA solicits comments on three different options that may be incorporated into the core applicability provision of the proposed trading rule. One option is to expand the trading program's core applicability to include smaller, new sources of the same type as are now proposed for the core applicability that commence operation on or after May 1, 2003, the start of the first ozone season (the first compliance period, after September, 2002). For example, the trading program could apply to all new units serving electricity generators 10 MWe or greater and new units not serving electricity generators and having a heat input capacity equal to or greater than 100 mmBtu/hr. The possibility exists that a significant number of smaller new units would be constructed and that activity from existing NO_x Budget units could be shifted to these new units. Over time, the increased number of smaller, new units not included in the trading program could make up a significant portion of the overall NO_x emissions in comparison to the NO_x emissions from the source categories purportedly included in the NO_x Budget Trading Program. To reduce this potential, it may be desirable to adjust the applicability criteria for new units to ensure that the trading program continues to cover a significant portion of the NO_x emissions for the source categories covered by the program.

A second option would be to expand the core applicability to include all new and modified sources that meet the definition of major new or modified source under the part D nonattainment NSR program and that are of the same type of source included in the proposed core applicability, even if these sources are smaller than the source size under option one, above. This would enable the trading program to integrate more fully with the NSR program. Under this option, the trading program applicability would include all new and modified units (whether or not they serve electricity generators) that commence operation on or after May 1, 2003. If smaller new sources were included in the trading program, these sources would have to meet the monitoring requirements of subpart H of 40 CFR part 75; the proposed revisions to 40 CFR part 75 contain new protocols for units with low NO_x mass emissions. Sources' compliance requirements could be streamlined significantly if they could meet their NSR offset obligations by participating in the NO_x Budget Trading Program (see Section F, below).

A third option would be to provide an exemption from the trading program for existing units that have a very low federally enforceable NO_x emissions limit (e.g., 25 tons per year), regardless of the nameplate capacity or the maximum potential hourly heat input of the unit. Commenters at the public workshops raised this option noting that a trading program generally reduces the cost of compliance. However, for some very infrequently used or very low emitting units, there may be more cost-effective ways to ensure any necessary reductions.

vi. Area and Mobile Sources. Comments were received at the public workshops about the opportunity to include additional sources beyond large stationary sources in the trading program. There was not consensus among workshop participants on this issue. However, most States in attendance were opposed to including area and mobile sources in the trading program at this time.

As noted above, EPA has identified key criteria that are important to the success of the trading program. First, it is essential that these sources are able to monitor at a level of accuracy consistent with the basic objectives of the program. In addition, the proposed trading program requires that all sources covered under the program be held accountable through a responsible party for their total emissions that occur from May through September of each year.

The EPA may consider inclusion of portions of mobile source or area source categories which best meet the key concerns mentioned above (e.g., measurement and accounting of all emissions and identification of responsible parties). Over the past decade, EPA and the States have developed procedures and protocols for Mobile Source Emissions Reduction Credit programs. This effort has focused on the generation of credits for specific categories of programs, including scrappage and clean-fueled fleet programs.

Key issues for the development of these mobile source programs include ensuring that the credits generated reflect real emissions reductions, development and implementation of an effective monitoring program, and identification of a responsible party for the implementation of the program and the ensuing emissions reductions. The EPA requests comment on the adequacy of the existing programs in addressing key issues for mobile source credit programs. Comment is also requested on whether these types of programs, as existing or with modification, should be

considered for inclusion in the NO_x Budget Trading Program.

The EPA is interested in innovative ideas for including area and mobile sources in cap-and-trade type trading programs. Comments should address the categories of each source type that could most successfully be incorporated into a cap-and-trade program and that best address the key issues. Commenters should address how inclusion of the specific category recommended may be implemented and the expected effects of including these source types in the program (e.g., integrity of the program, public support, flexibility, cost savings, administrative feasibility). Additionally, comment is requested on any other types of concerns or issues associated with inclusion of these source types (e.g., environmental justice¹⁶).

d. Retired Unit Exemption. 40 CFR part 96 subpart A of today's proposal provides an exemption from NO_x Budget Trading Program requirements for retired units. The purpose of this provision is to free retired NO_x Budget units from unnecessary requirements (e.g., emissions monitoring and reporting). The EPA proposes an exemption beginning on the day the unit permanently retires, requiring no notice and comment period regarding the retirement. This provision proposes that the NO_x AAR (i.e., the person authorized by the owners and operators to make submissions and handle other matters) submit notification to the permitting authority of the NO_x Budget unit's retirement within 30 days of the cessation of activity. In response, the permitting authority would amend the operating permit in accordance with the exemption and notify EPA of the unit's status as exempt. Criteria within this provision ensure that all program requirements prior to the exemption are fulfilled and records are kept on site to verify the non-emitting status of the retired unit. A retired unit could continue to hold NO_x allowances previously allocated or be allocated NO_x allowances in the future depending on the allocation provisions adopted by the State where the retired unit is located. The number of future year NO_x allowances that a retired unit would be allocated would be dependent on the

¹⁶ The EPA is aware of concerns relating to environmental justice issues. These concerns focus on the possibility that car scrappage programs might allow significant toxic VOC emissions increases in specific areas by concentrating region wide emissions in a local area. The National Environmental Justice Advisory Council (NEJAC) has recommended that the Agency involve stakeholders, analyze local environmental impacts of existing and proposed trading programs, and report back to NEJAC. Refer to Document IV-H-10 in EPA Air Docket A-96-56.

given State's allocation system. The NO_x allowance allocations are discussed below in Section V.C.5 of this preamble.

In order to resume operation without violating program requirements, the NO_x AAR of the NO_x Budget unit must submit a permit application to the permitting authority no less than 18 months (or less, if so specified by the applicable State permitting regulations) prior to the date on which the unit is first to resume operation, to allow the permitting authority time to review and approve the application for the unit's re-entry into the program. If a retired unit resumes operation, EPA proposes to automatically terminate the exemption under this part.

e. Standard Requirements. Today's proposal delineates, in proposed 40 CFR part 96 subpart A the standard requirements, that NO_x budget units and their owners, operators, and NO_x AARs must meet under the NO_x Budget Trading Program. This provision sets forth and provides references to other portions of the trading rule for the full range of program requirements: permits, monitoring, NO_x emissions limitations, excess emissions, recordkeeping and reporting, liability, and effect on other authorities. For example, the permitting, monitoring, and emissions limit requirements are discussed in general and the relevant Sections of the trading rule are cited. The liability provisions state that the requirements of the trading program must be met, and any knowing violations or false statements are subject to enforcement under the applicable State or Federal law. Violations and the associated liability are established to be unit-specific, except in the case of common stacks. The provision addressing the effect on other authorities establishes that no provision of the trading program can be construed to exempt the owners or operators of a NO_x Budget unit from compliance with any other provision of the applicable, approved SIP, any federally enforceable permit, or the CAA. This provision ensures, for example, that a State may set a binding source-specific NO_x limitation and, regardless of how many allowances a NO_x Budget unit holds under the trading program, the emissions limit established in the SIP cannot be violated.

f. Computation of Time. Proposed 40 CFR 96.7 clarifies how to determine the deadlines referenced in the proposal. For example, deadlines falling on a weekend or holiday are extended to the next business day. These are the same computation-of-time provisions as are in the regulation for the Acid Rain Program.

2. NO_x Authorized Account Representative

40 CFR part 96 subpart B of today's proposed NO_x Budget Trading Rule establishes the process for certifying the NO_x AAR and describes his or her duties. A NO_x AAR is the individual who is authorized to represent the owners and operators of each NO_x budget unit at a NO_x budget source in matters pertaining to the NO_x Budget Trading Program. Because the NO_x AAR is representing the owners and operators of all the NO_x Budget units at a NO_x Budget source, the NO_x AAR must certify that he or she was selected by an agreement binding on all such owners and operators and is authorized to act on their behalf. The NO_x AAR's responsibilities include: the submission of permit applications to the permitting authority, submission of monitoring plans and certification applications, holding and transferring NO_x allowances, and submission of emissions data and compliance reports. While the Acid Rain Program refers to the "designated representative" as the representative of owners and operators for non-allowance matters and the "authorized account representative" as the person for allowance matters, today's proposal uses only one term for all matters and somewhat streamlines the procedures for selection.

The Agency recognizes that the NO_x AAR cannot always be available to perform his or her duties. Therefore, the rule proposes to allow for the appointment of one alternate NO_x AAR (alternate NO_x AAR) for a NO_x budget source. The alternate NO_x AAR would have the same authority and responsibilities as the NO_x AAR. Therefore, unless expressly provided to the contrary, whenever the term "NO_x authorized account representative" is used in the rule, it should be read to apply to the alternate NO_x AAR as well. While the alternate NO_x AAR would have full authority to act on behalf of the NO_x AAR, all correspondence from EPA, including reports, would be sent only to the NO_x AAR.

Today's proposal requires the completion and submission of the account certificate of representation form in order to certify a NO_x AAR for a NO_x budget source and all NO_x budget units at the source. There would be one standard form which would be submitted by sources to EPA. The EPA would establish a compliance account for each unit in the NATS. The form would include: The plant name, State, and identifying number (ORIS or facility code); the NO_x AAR name, the NO_x AAR identification number (if already

assigned), address, phone, fax, and e-mail (as well as similar information for the alternate NO_x AAR, if applicable); the name of every owner and operator of the source and each NO_x budget unit at the source; and certification language and signature of the NO_x AAR and alternate, if applicable.

In order to change the NO_x AAR, alternate NO_x AAR, or list of owners and operators, EPA is proposing that a new complete account certificate of representation be submitted. The EPA believes the NO_x AAR requirements afford the regulated community with flexibility, while ensuring source accountability and simplifying the administration of the trading program.

3. Permits

a. General Requirements. The EPA has attempted to minimize the number of new procedural requirements for NO_x Budget permitting and to defer, whenever possible, to the permitting programs already established by the permitting authority. The proposed NO_x Budget Trading Program regulations assume that the NO_x budget permit would be a portion of a federally enforceable permit issued to the NO_x Budget source and administered through permitting vehicles such as operating permits programs established under title V of the CAA and 40 CFR part 70. The term "NO_x budget permit" throughout this preamble and the NO_x Budget Trading Program regulations therefore refers to the NO_x Budget Trading Program portion of the permit issued by the permitting authority to a NO_x budget source.

b. Title V/Non-Title V Permits. Although many of the NO_x Budget sources that would participate in the NO_x Budget Trading Program must apply for and receive a title V permit, this would not be the case for every NO_x budget source. Sources presently required to have a title V permit are those that are "major" sources, as defined in title V and 40 CFR parts 70 and 71. Since there would be some NO_x budget sources that are not major sources, the NO_x Budget Trading Program would require only that a NO_x budget source have a federally enforceable permit, rather than require that each NO_x Budget source have a title V permit. The EPA believes that requiring all NO_x budget sources to have a title V permit would be unduly burdensome and that proper implementation of a NO_x Budget Trading Program can be achieved through federally enforceable permitting vehicles in addition to those established under title V and 40 CFR part 70 or 71.

For sources required to have a title V permit, the NO_x Budget Trading Program attempts, wherever possible, to allow the regulations promulgated by the permitting authority under title V and 40 CFR part 70 or 71 to determine how the NO_x budget permit would be administered. For those sources not required to have a title V permit, the NO_x Budget Trading Program attempts, wherever possible, to allow the permitting authority's non-title V permit regulations to govern how the NO_x budget permit would be administered. Essentially, this would enable the NO_x Budget Trading Program to operate within the regulatory framework already established by permitting authorities for both title V and non-title V permits.

The proposed rule requires that every NO_x budget unit have a federally enforceable permit. The EPA is concerned, however, that some States may not currently have permitting vehicles for the issuance of federally enforceable permits to smaller units that would be subject to the proposed trading rule. For such States, adoption of the NO_x budget rule would also require the State either to issue permits under its title V program to sources that would not otherwise require title V permits or to develop other permitting programs through which federally enforceable permits could be issued to such units.

Therefore, EPA requests comment on the option, for States without programs for issuing federally enforceable permits for smaller NO_x budget units, of not requiring such units to obtain federally enforceable permits. Under this option, the State's NO_x Budget Trading Rule would state that NO_x budget units that are not covered by a federally enforceable permit would still be subject to the emissions, monitoring, and other non-permit requirements of the trading rule, would have their emissions reported to and recorded on the EPA-administered Emissions Tracking System, and would have their NO_x allowance allocations, deductions, and transfers recorded on the EPA-administered NATS. The EPA requests comment on whether, under these circumstances, the units' obligations (e.g., to hold sufficient NO_x allowances each control period to cover NO_x emissions and to monitor emissions in accordance with 40 CFR part 75 subpart H) would be federally enforceable, with or without a federally enforceable permit reiterating the unit's requirements under the NO_x Budget Trading Program.

The EPA is soliciting comment on several other aspects of this issue. First, EPA is interested in State assessments of

the extent of the problem in issuing federally enforceable permits to all sources included in the trading program. In particular, EPA seeks information on how many NO_x budget units (or what percent of States' NO_x budget units) would not be issued federally enforceable permits, but for the permit requirements of the proposed trading rule, and on the extent to which non-title V permitting programs are currently established and available for permitting NO_x budget units. Second, EPA seeks comments regarding the feasibility of the approach described above, under which federally enforceable permits would not be required for smaller NO_x budget units if the State lacked an existing program for issuing federally enforceable permits to such units. Lastly, EPA is interested in receiving suggestions regarding other possible approaches to address this matter.

c. NO_x Budget Permit Application Deadlines. The proposed rule sets the initial NO_x budget permit application deadlines for units in operation before January 1, 2000 with either title V or non-title V permits so that the permits will be issued by May 1, 2003. May 1, 2003 is the beginning of the first control period for the NO_x Budget Trading Program, and therefore also the date by which initial NO_x budget permits for existing units must be effective. Application submission deadlines are based on the permitting authority's title V and non-title V requirements for final action on a permit application. For instance, if a permitting authority's permitting regulations allowed 12 months for final action by the permitting authority on a permit application, the application deadline for units in operation before 2000 governed by the permitting rule would be May 1, 2002 (12 months prior to May 1, 2003). The same principle applies to NO_x budget units commencing operation on or after January 1, 2000, except that the application submission deadline is calculated from the later of the date the NO_x budget unit commences operation or from May 1, 2003. The NO_x budget permit renewal application deadlines are the same as those that apply to permit renewal applications in general for sources with title V or non-title V permits. For instance, if a permitting authority requires submission of a title V permit renewal application by a date which is 12 months in advance of a title V permit's expiration, the same date would also apply to the NO_x budget permit application.

d. NO_x Budget Trading Program Permit Application. The NO_x Budget Trading Program requires that a NO_x

budget permit application properly identify the source and include the standard requirements under proposed 40 CFR 96.6. The NO_x Budget Trading Program permit application should include all elements of the program (including the standard requirements). Such an approach allows the permitting authority to incorporate virtually all of the applicable NO_x Budget Trading Program requirements into a NO_x budget permit by including as part of such permit the NO_x budget permit application submitted by the source. Directly incorporating the NO_x budget permit application into the NO_x budget permit and, thus, into the source's operating permit or the overarching permit minimizes the administrative burden on the permitting authority of including the NO_x Budget Trading Program applicable requirements, and mirrors the approach successfully implemented by many permitting authorities in issuing Phase II Acid Rain permits under titles IV and V.

e. NO_x Budget Permit Issuance. As stated earlier, most of the procedures needed by a permitting authority to issue NO_x budget permits have already been established by the permitting authority through permitting vehicles such as operating permits programs under title V and 40 CFR part 70 or 71. Generally, the permits regulations promulgated by the permitting authority cover: Permit application, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, and State and EPA review. The proposed NO_x Budget Trading Program permit regulations generally require use of the procedures under these other regulations and add some requirements such as NO_x budget permit application submission and renewal deadlines, NO_x budget permit application information requirements and permit content, and initial NO_x budget permit effective dates.

f. NO_x Budget Permit Revisions. For revisions to the NO_x budget permit, the NO_x Budget Trading Program again defers to the regulations addressing permit revisions promulgated by the permitting authority under title V and 40 CFR part 70 or 71 (for sources requiring a title V permit) or to non-title V permitting regulations (for sources not requiring a title V permit). The proposal also provides that the allocation, transfer, or deduction of NO_x allowances is automatically incorporated in the NO_x budget permit, and does not require a permit revision or reopening by the permitting authority. The NO_x budget permit must, however, expressly state that each unit

must hold enough NO_x allowances to account for NO_x emissions by the allowance transfer deadline for each control period and that there are offsets if the unit does not. The EPA believes that requiring the permitting authority to revise or reopen a NO_x budget permit each time a NO_x allowance allocation, transfer, or deduction is made would be burdensome and unnecessary. This is similar to the approach taken in the Acid Rain Program, where the transfer of SO₂ allowances are treated as "automatic permit amendments" that do not require any action by the permitting authority.

4. Compliance Certification

40 CFR part 96 subpart D of today's proposed NO_x Budget Trading Rule sets forth the requirements concerning certification by the NO_x AAR at the end of each control period that the unit was in compliance with the emissions limitation and other requirements of the NO_x Budget Trading Program. The NO_x AAR must submit a compliance certification report for each NO_x budget unit, by November 30 following the control period, to both the permitting authority and the Administrator. This report must identify the NO_x budget unit and include a compliance certification statement. The compliance certification statement must indicate whether all of the applicable requirements of the NO_x Budget Trading Program, including the requirement to hold allowances greater than or equal to emissions and the requirement to monitor and report according to the provisions in 40 CFR part 96 subpart H of today's proposal, were met by the unit for the most recent control period. The report also allows the NO_x AAR to specify which allowances (by serial number) should be deducted from the NO_x budget unit's compliance account and to specify the proportion of NO_x allowances to deduct for each unit if a group of units share a common stack.

The EPA is proposing that annual compliance certification reports must be submitted for several reasons. First, the report provides important information, such as whether there were any changes to the unit's monitoring plan used by EPA to evaluate the unit's monitoring and to determine compliance. Second, the report provides an opportunity for the owner or operator to use the flexibilities allowed in today's proposal to choose which NO_x allowances would be deducted to meet emissions reduction requirements rather than using the default methodologies for deducting allowances that are also set forth in today's proposal. The EPA is

proposing that a copy of the compliance certification report be sent to both EPA and to the permitting authority because EPA needs the information in order to administer the compliance period reconciliation process and the permitting authority needs the information in order to ensure compliance with the SIP. The EPA is proposing a deadline of November 30 following the control period for submission because EPA believes this is sufficient time to compile the information required in the report, while still allowing EPA to perform reconciliation before the next control period begins.

5. NO_x Allowance Allocations

40 CFR part 96 subpart E of today's proposed model rule addresses the allocation of NO_x allowances to NO_x budget units. Within each participating State, the NO_x Budget Trading Program would establish a State trading program budget (i.e., a cap of seasonal NO_x emissions for all units included in the program) equal to a fixed total number of NO_x allowances that each State allocates to its NO_x budget units for each control period. States would have the ultimate responsibility for determining the size of their respective trading program budgets. 40 CFR part 96 subpart E of today's proposed rule sets timing requirements for when the allocations should be completed by each State and submitted to EPA for inclusion into the NATS and provides an option for how States may allocate NO_x allowances to the NO_x budget units.

a. Development of State Trading Program Budget. Today's proposal establishes in 40 CFR part 96 subpart E the total number of NO_x tons for the NO_x Budget Trading Program within a specific State. The proposed rule sets the State trading program budget at the level of NO_x emissions apportioned by an approved SIP for the ozone transport rulemaking to the State's sources meeting the definition of "NO_x budget unit" in the 2007 statewide emissions budget. Sources meeting the definition of "NO_x budget unit" would include the sources in the trading program's core group of sources as well as additional sources that a State may choose to include in the program as discussed above in Section V.C.1.c. The proposed transport rulemaking provides States the flexibility to meet the statewide emissions budgets with a different mix of control measures than were calculated in the transport rulemaking, thus potentially changing the total amount of NO_x tons apportioned to the NO_x budget units. Therefore, a State

may determine the number of NO_x tons allotted for the State trading program budget provided the State complies with the overall requirements of the proposed transport rulemaking. Once a State sets the trading program budget, the limit is set for the total number of NO_x allowances that the State may allocate to the State's NO_x budget units for any one control period.

b. Timing Requirements. Today's proposed rule sets requirements for when a State would finalize NO_x allowance allocations for each control period in the NO_x Budget Trading Program and submit them to EPA for inclusion into the NATS. This topic was discussed at both of the public workshops as explained later in this Section. The timing requirements ensure that all NO_x budget units would have sufficient time and the same amount of time to plan for compliance for each control period, and sufficient time and the same amount of time to trade NO_x allowances. The timing requirements would also contribute to the efficient administration of the NO_x Budget Trading Program. By establishing this schedule at the outset of the trading program, both the States and EPA would be able to develop internal procedures for effectively implementing the NO_x allowance provisions of the trading program. This is particularly important for EPA with its role as administrator of the NATS for all participating States. The timing requirements would ensure that EPA would be able to record in the NATS the time sensitive NO_x allowance allocations for the NO_x budget units in all participating States at the same time for each control period.

At the public workshops, a range of options were discussed and commented on for the timing requirements. The timing options generally range from year-by-year allocations, in which the NO_x allowance allocations would be placed into the NATS on an annual basis for the upcoming control period; to a 5 to 10 year allocation where NO_x allowance allocations would be periodically placed into the NATS for 5 to 10 control periods; to a single, permanent allocation where the NO_x allowance allocations would be set only once at the beginning of the trading program and recorded in the NATS for an extended, rolling block of time (e.g., a rolling 30 year period).

Some commenters stated that timing options which provide an opportunity to periodically update the allocation of NO_x allowances to NO_x budget units have certain advantages. First, the current restructuring of the electricity industry may significantly affect the mix

of electricity generators that produce electricity in the future. As the utilization of existing electricity generators changes and new electricity generators begin operations, an allocation regime which is periodically updated would provide an opportunity to reallocate NO_x allowances based on this changing environment. Second, depending on the formula that is used to allocate the NO_x allowances, trading programs that periodically update the allocations may provide an opportunity to reward energy efficiency improvements at specific NO_x budget units. Incentives may be provided for energy efficiency improvements by rewarding NO_x budget units that increase their production efficiency over time with a larger number of NO_x allowances during the next allocation period. However, commenters also noted that allocation systems that are adjusted annually may restrict a NO_x budget unit's ability to plan for compliance by creating uncertainty year to year about the amount of future allocations that the NO_x budget unit would receive. In addition, annual allocations prevent a NO_x budget unit from officially transferring future year NO_x allowances because the NATS only contains the current year's NO_x allowances under this type of system. These commenters generally favored an allocation system that periodically allocates NO_x allowances for 5 to 10 control periods at a time.

Other commenters noted the advantages of a single, permanent allocation where the NO_x allowance allocations would be set only once at the beginning of the trading program. Permanent allocations provide a long planning horizon for the NO_x budget units that receive an allocation. Some commenters noted that permanent allocations provide a strong incentive for the owners or operators of high emitting units to retire or replace the units. Additionally, permanent allocations provide an incentive to improve a NO_x budget unit's energy efficiency and require less resources to administer as compared to updating allocation systems. In a permanent allocation system, all NO_x allowances are allocated to NO_x budget units at the beginning of the trading program. New NO_x budget units that begin operations after the allocation of NO_x allowances would be required to obtain NO_x allowances from the market in order to comply with the trading program requirements, or there would need to be a new source set-aside that increased from year to year, coupled with a declining allocation to existing sources.

Therefore, commenters that support an allocation mechanism that provides NO_x allowances to new NO_x budget units were generally opposed to the permanent allocation approach.

In light of the comments from the public workshops, today's proposed rule attempts to strike a balance between systems that change the allocations on an annual basis and systems that establish a single, permanent allocation by proposing a system that allocates NO_x allowances for 5 to 10 years at a time. The proposed rule includes the following timing requirements for the allocation of NO_x allowances: by September 30, 1999, the State would submit to EPA NO_x allowance allocations for the control periods in the years 2003, 2004, 2005, 2006, and 2007. This initial submission date would provide the initial allocation information to NO_x budget units more than 3 years before the start of the trading program and would enable a State to include the first five years of NO_x allowance allocations as a part of its overall SIP submission to meet the requirements of the proposed transport rulemaking. After this initial allocation, two timing options are proposed for the allocations following the year 2007. One option, which is set forth in the proposed rule, is: by January 1, 2003 and January 1 of each year thereafter, the State would submit to EPA allocations for the control period in the year that is 5 years after the applicable submission deadline. Under this option, a State would ensure that its NO_x budget units are always allocated 5 years worth of NO_x allowances in the NATS. A second option, on which comment is also requested, is: By January 1, 2003, a State would submit to EPA NO_x allowance allocations for the control periods in 2008, 2009, 2010, 2011, and 2012. The State would maintain this schedule of submitting NO_x allowance allocations for 5 control periods by January 1 every five years after January 1, 2003. This option would ensure that the State's NO_x budget units are allocated no less than 5 years, and as much as 10 years, worth of NO_x allowances in the NATS at any one time. Under the second option, future allocations are made less frequently and, for some years, based on older data on unit utilization. The second option would also require a larger new source set-aside (as discussed below) to span the longer time frame before new sources would be incorporated in the updated allocation. In addition to the specific options described above, EPA also solicits comments on the full range of possible timing requirements

including a single, permanent allocation system and an annually changing allocation system.

Today's proposed trading rule includes a provision that if a State were to fail to meet the timing requirements for submitting NO_x allowance allocations to EPA, EPA would allocate NO_x allowances to NO_x budget units in that State in accordance with 40 CFR 96.42 within 60 days of the applicable deadline. Section 96.42 is the Section of the model rule that will contain EPA's recommended approach for allocating NO_x allowances to NO_x budget units, which is discussed below. This provision is designed to ensure that all NO_x budget units included in the NO_x Budget Trading Program would receive NO_x allowance allocations at the same time for each control period. The EPA solicits comment on this provision.

c. Options for NO_x Allowance Allocation Recommendation

i. Basis for Developing an Allocation Recommendation. The EPA proposes that the final NO_x Budget Trading Rule include a recommended NO_x allowance allocation. This was discussed at length at the public workshops. Three approaches to addressing NO_x allowance allocations in the trading program were presented at the workshops. First, the rule could prescribe one method for allocating NO_x allowances. States that choose to participate in the NO_x Budget Trading Program would need to allocate NO_x allowances as prescribed by the rule. This option would have the benefit of going through public comment as a part of the rule development process. The second approach was for the rule to recommend one method for allocating NO_x allowances. States may choose to use the recommendation, to adjust the recommendation, or to develop an allocation method that is completely different from the recommendation. The third approach was for the rule to be silent on the method for allocating NO_x allowances and require the participating States to independently develop State specific allocation methods.

Workshop participants covered the entire range of approaches in their comments. Commenters in favor of a prescriptive allocation method argued that a standard system ensures that there is equity between NO_x budget units in different States, that the same environmental goals are pursued within all participating States (e.g., promotion of energy efficient units through output based emission limitations), that all State programs have the necessary consistency to promote interstate trading, and that a standard system

reduces industry and government resources necessary to develop and implement NO_x allowance allocations in each State. On the other end of the spectrum, commenters in favor of States having complete flexibility in the allocation method asserted that it is important for States to have the freedom to develop systems that address their specific needs. Furthermore, as long as all States follow the timing requirements for allocations in the proposed rule, the different State methods should be sufficiently compatible to realize the benefits of trading.

The EPA is sensitive to the argument that a more prescriptive proposed rule would ensure a consistent and administratively efficient multi-state program that is equitable for similar NO_x budget units. However, EPA also recognizes that the States which have commented on this subject have unanimously supported some degree of flexibility for developing allocation methods. Because EPA believes it is important for as many States as possible to participate in the NO_x Budget Trading Program, EPA is proposing that the final rule contain a recommendation for how States may allocate NO_x allowances but allow States the flexibility to differ from the recommendation. By including the recommended allocation method, the final rule would provide a complete model for the NO_x Budget Trading Program. This has the potential to ease the regulatory process for States that prefer the recommendation by providing a rule that can be quickly adapted for promulgation as a State rule and, as discussed below, more quickly considered by EPA as part of SIP review. In addition, in order to help facilitate administration of the program, EPA plans on ensuring that the necessary data collection protocols exist to support the option recommended in the final rule. This would include both standard data collection requirements and standard data reporting requirements.

ii. Options for an Allocation Recommendation. NO_x allowances could be distributed to NO_x budget units and other private parties by allocations based on actual operating data, via auctions, or by a variety of other mechanisms. Most of the workshop discussions and comments focused on how to allocate NO_x allowances based on actual operating data. In general terms, three different processes at a unit may be measured and used as a metric for allocating NO_x allowances: (1) The actual emissions (in tons of NO_x) from the unit, (2) the

actual heat input (in mmBtu) of the unit, and (3) the actual production output (in terms of electricity generation and/or steam energy) of the unit. The option of allocating NO_x allowances based on a unit's actual NO_x emissions was not generally recommended because it is regarded as providing a perverse incentive by rewarding more NO_x allowances to units that have the greatest NO_x emissions. Heat input and output are regarded as more neutral measures of a unit's utilization, and therefore, more equitable options for basing allocations.

The EPA solicits comments on three options using input or output data for the allocation recommendation that would be included in the final trading rule.¹⁷ The first option is to base the allocation recommendation on heat input data. This option may be desirable because accurate protocols exist for monitoring this data and reporting it to EPA, and several years of certified data are available for most of the affected sources. Additionally, methods currently exist for calculating allocations based on heat input data. It should be noted that in some specific instances, these protocols are designed to conservatively estimate heat input. For instance, new units that do not certify their monitors by the compliance deadline, may report heat input using the unit's maximum potential heat input. In another instance, low mass emitting units that use a simplified emissions estimation methodology would also report using the unit's maximum potential heat input. In both of these cases, the potential over-reporting of heat input, could lead to a larger percentage of allowances being allocated to these units. One potential option for these instances would be to require units in these types of situations to report one heat input value to be used for emissions estimation purposes and another less conservative value to be used for purposes of allowance allocations. Another option would be to apply a discount to reported heat input values in certain circumstances (e.g., during periods when monitors are not certified) for purposes of allocating allowances. The EPA seeks comment on whether this issue needs to be addressed to ensure equitable allocation of allowances. The other two options incorporate the use of output data for the allocation recommendation. The EPA believes that basing allocations on

¹⁷ It is important to note that in today's trading program proposal, a State would have the flexibility of determining allocations to its NO_x budget units by whatever system it desires regardless of EPA's allocation recommendation.

output has the potential benefit of promoting energy efficiency in an allocation system that periodically reallocates the NO_x allowances (see Section V.C.9.b of this preamble).

The second option for which EPA solicits comments would base the allocation recommendation on heat input data for the first five control periods of the trading program (control periods in the years 2003–2007). The allocation recommendation would then be converted to use output data for the control periods after the year 2007. Under this option, heat input data would be used for the first five years because a number of issues for the measurement, collection, and use of output data may not be fully resolved for all of the NO_x budget units that would be included in the trading program prior to the time that the allocation recommendation would need to be finalized for the initial allocation period. Section V.C.9.b of this preamble discusses a number of the issues associated with measuring and using output data. To facilitate the use of output data under this option, EPA proposes to work with stakeholders to design the output based system that would be used after the initial allocation period. As a part of this output based system, EPA would amend its Electronic Data Reporting format so that output data would be available for States through EPA's Emissions Tracking System.

In order to implement this option, EPA suggests the following schedule for developing the output based system that would be used in the allocation recommendation for the control periods after the year 2007: (1) EPA would issue a proposed system for output based allocations by the spring of 1999; (2) EPA would finalize an output based system by fall of 1999; (3) States wishing to use an output based system would adopt the necessary rules by fall of 2000; (4) output data could be measured and collected at NO_x budget units during the control periods in the years 2001 and 2002; (5) output data would be available for States to calculate allocations for the control periods after the year 2007, in time to meet the allocation timing requirements established in today's proposed rule. As discussed under Section V.C.5.b, allocations for the control period in the year 2008 would be submitted to EPA by January 1, 2003 for inclusion into the NATS. The EPA solicits comments on this suggested schedule for establishing a method for output based allocations and comments on the issues raised under Section V.C.9.b of this preamble.

The third option for which EPA solicits comments would base the allocation recommendation on output data, to the extent practicable, for all NO_x budget units from the start of the trading program. The allocations for the first five control periods of the trading program would be based on output data currently reported to government agencies other than EPA (such as the Department of Energy's Energy Information Agency, the Federal Energy Regulatory Commission, or State Public Utility Commissions). Depending upon the availability of information, it may be necessary in this option to use output for electricity generating facilities and input data for non-electricity generating facilities for the initial allocation period. The allocation recommendation would then be converted to use output data for all NO_x budget units for the control periods after the year 2007. As in the second option described above, EPA proposes to work with stakeholders to design a complete output based system that would be used after the initial allocation period. Unlike the output data used in the initial allocation period, the allocations for control periods after the year 2007 would be based on output data that would be reported in EPA's Electronic Data Reporting format and designed specifically to support a NO_x allowance allocation system. The EPA suggests the same schedule as outlined above in the second option for developing the complete output based system for allocating NO_x allowances.

iii. Framework for an Allocation Recommendation. As discussed above under Section V.C.5.c.i, EPA proposes to include a specific recommendation in the final trading rule for allocating NO_x allowances to NO_x budget units. This allocation recommendation may be based on either input or output data as outlined in one of the three options presented above under Section V.C.5.c.ii. In addition to the data used to support the allocations, EPA also solicits comments on two other key elements for an allocation recommendation: (1) Using a portion of the State's NO_x allowances as a set-aside for new NO_x budget units for control periods for which the unit was not allocated NO_x allowances, and (2) using either a fuel neutral or output neutral calculation to determine allocations for NO_x budget units.

Today's proposed rule includes an example of a specific allocation methodology that uses heat input data and addresses the above key elements. This allocation methodology would be appropriate for implementing an allocation system entirely based on heat

input data or for implementing the initial allocation period of an allocation system that starts out using input data and later is converted to the use of output data. The allocation methodology would need to be modified for the use of output data to implement an allocation system that eventually converts to output data or for an allocation system that begins with using output data. The EPA solicits comment on the following allocation methodology for using input data and on the appropriateness of using the basic framework of this methodology for an output based allocation system. Furthermore, the allocation methodology establishes an allocation set-aside account equaling 2 percent of the State trading program budget for each control period for new NO_x budget units (i.e., units that commence operation during or after the period on which general NO_x allowance allocations are based). Based on analyses conducted using the Integrated Planning Model (IPM) and on the proposal to reallocate allowances every five years, 2 percent appears to be a reasonable portion of NO_x allowances to set aside for new units. The remaining 98 percent of the NO_x allowances are to be allocated to existing NO_x budget units. The EPA requests public comment on the use of a set-aside and on the proposed size of the set-aside, which EPA believes should be large enough to accommodate all new units entering the trading program.

Initial, unadjusted allocations to existing NO_x budget units, which equal 98 percent of the State trading program budget, would be based on actual heat input data (in mmBtu) for the units multiplied by an emission rate of 0.15 lb/mmBtu. For the control periods in the years 2003 through 2007, the heat input used in the allocation calculation equals the average of the heat input for the two highest control periods for the years 1995, 1996, and 1997. For the control periods after 2007, the heat input equals the heat input measured during the control period of the year that is six years before the year in which the allocations are being calculated. Therefore, the allocation calculation combined with the timing requirements discussed under Section V.C.5.b of this preamble results in the following schedule: The allocation for the control period in 2008 should be submitted to EPA by January 1, 2003 and based on heat input data for the control period in the year 2002; the allocation for the 2009 control period should be submitted to EPA by January 1, 2004 and based on 2003 control period heat

input data. This schedule would continue indefinitely or until revised (e.g., to base allocations on output) through rulemaking. The heat input data used for calculating the allocations is to be data collected in accordance with the requirements of 40 CFR part 75 for units that were subject to these requirements for the year or years specified by the allocation calculation. For units not subject to 40 CFR part 75 requirements for the year or years specified by the allocation calculation, the heat input data used in the calculation should be the best available heat input data reported by the unit to the State. Once the initial allocation calculation is completed for all the existing NO_x budget units, the allocation for each unit would be adjusted proportionately so that the total allocation equals 98 percent of the State trading program budget.

A separate, allocation set-aside for new units would be established for each control period. Each set-aside would initially hold NO_x allowances equal to 2 percent of the NO_x allowances in the State trading program budget¹⁸. NO_x allowances in the allocation set-aside would be available to NO_x budget units for control periods that the unit was not allocated allowances because the unit commenced operation during or after the period on which general NO_x allowance allocations are based. To receive NO_x allowances from the allocation set-aside, the NO_x AAR for a unit would submit to the State a NO_x allowance request, in writing or in a format specified by the State. The request would be for no more than 5 consecutive control periods, starting with the control period during which the unit is projected to commence operation. For the 6th year and later, there would be sufficient operating data for the unit to be incorporated into the NO_x allowance allocations with existing NO_x budget units. The NO_x allowance request would be submitted prior to May 1 of the first control period for which NO_x allowances are requested and after the date on which the State issues a permit to construct the NO_x budget unit. The NO_x AAR may not request an amount of NO_x allowances for each control period that exceeds 0.15 lb/mmBtu multiplied by the NO_x

¹⁸ The EPA is soliciting comment in Section F, below, on allowing certain sources, to which the trading program would not be generally applicable, to opt into the NO_x Budget Trading Program in order to fulfill the new source offset provisions under section 173 of the CAA. If this alternative is incorporated into the final trading rule, then the size of the allocation set-aside should be based on the expected new sources that are covered by the general applicability criteria and the additional sources that may opt in.

budget unit's maximum design heat input (in mmBtu) for the hours in the control period starting with the first day in which the unit is projected to operate. Maximum design heat input is used because actual heat input information for the baseyear period used for existing units would not be available since the new unit would have commenced operation during or after the baseline period.

Under this proposal, the State would review and allocate NO_x allowances to new units requesting NO_x allowances according to the order that the requests were received. Upon review, the State would make any necessary adjustments to the requests according to the requirements governing NO_x allowance requests. If the allocation set-aside for the control period for which NO_x allowances are requested has an amount of NO_x allowances not less than the number requested and verified by the State, the State would allocate the full (or adjusted) amount of NO_x allowances requested to the NO_x budget unit. If the set-aside for the control period for which NO_x allowances are requested has a smaller amount of NO_x allowances than the number requested and verified, the State would deny in part the request and only allocate the remaining number of NO_x allowances in the set-aside to the NO_x budget unit. Once the set-aside for a control period has been depleted of all NO_x allowances, the State would not allocate any NO_x allowances to additional units requesting NO_x allowances for the control period. NO_x budget units with NO_x allowance requests that were denied in whole or part would be responsible for obtaining the necessary amount of NO_x allowances from the NO_x allowance market in order to demonstrate compliance with the provisions of the proposed rule. The State would act on all NO_x allowance requests within 60 days upon receipt of the request and notify the NO_x AAR that submitted the request and the EPA of the number of NO_x allowances (if any) allocated for the control period. After September 30 of each year, the EPA would transfer NO_x allowances remaining in the set-aside for the control period to the set-aside for the following control period.

For new NO_x budget units that have been allocated NO_x allowances from the allocation set-aside, the EPA would deduct NO_x allowances following each control period based on the unit's actual utilization for the control period, determined in accordance to the requirements under 40 CFR part 96 subpart H of the proposed rule. Because, as discussed above, the allocation for a

new unit from the set-aside is based on maximum design heat input, this procedure adjusts the allocation by actual heat input for the control period of the allocation. This adjustment is a surrogate for the use of actual utilization in a prior baseline period which is the approach used on allocating NO_x allowances to existing units. Without the adjustment procedures, a new unit (e.g., a peaking unit) could be allocated NO_x allowances assuming utilization far out of proportion to actual utilization and the set-aside could be insufficient to provide NO_x allowances for all new units at such an allocation level.

Under the actual utilization adjustment procedure, EPA would deduct a number of NO_x allowances according to the following equation: NO_x allowances deducted for actual utilization adjustment = (Number of NO_x allowances allocated for control period) - ((actual control period utilization (in mmBtu) × 0.15 lb/mmBtu)). The NO_x allowances deducted must have the same or an earlier compliance use date as the year of the control period for which NO_x allowances were allocated from the set-aside. (As discussed below in Section V.C.7.b of this preamble, the proposed rule reflects unlimited banking of NO_x allowances once the trading program begins in 2003. However, EPA is proposing several options concerning banking (including no banking) and requesting comment on them.) The NO_x AAR may identify the serial numbers of the NO_x allowances to be deducted. In the absence of such identification, the EPA would deduct NO_x allowances on a first-in, first-out basis. The EPA would transfer the NO_x allowances deducted into the State's set-aside for the following control period.

If additional NO_x allowances are moved into a set-aside resulting from the transfer of NO_x allowances from a previous year's set-aside or from the actual utilization adjustment, the State would allocate NO_x allowances to those NO_x allowance requests that were denied in whole or in part pursuant to the NO_x allowance request provisions under this Section of the proposed rule. However, requests for NO_x allowances by new units would not be granted retrospectively for control periods that have ended.

An additional option that was considered for inclusion in an EPA recommended allocation methodology was the use of a price signal auction for a portion of NO_x allowances. The transparency of the first SO₂ allowance auctions under Title IV accelerated price discovery and provided useful information to industry for making

compliance decisions in the early years of the program. The value for this type of auction for NO_x allowances was discussed at the December public workshop. Commenters generally questioned the need for a price signal auction for NO_x allowances because of the market instruments currently available from the private sector, including several allowance price indexes. Based on these comments, EPA did not include a price signal auction in the proposed options for the allocation recommendation. The EPA solicits comment on this option.

The EPA solicits comments on any other allocation recommendation that may be made in the final rule. Comments should be of comparable detail to the example outlined in this Section.

6. NO_x Allowance Tracking System

40 CFR part 96 subpart F of today's proposed trading rule covers the NATS. The proposed rule is intended to be reasonably consistent with the NATS that was developed for implementation of the OTC's NO_x Budget Program. Such consistency would help to allow the integration of the two programs in the future. It would also save industry and government the time and resources necessary to develop new tracking systems.

The NATS would be an automated system used to track NO_x allowances held by NO_x budget units under the NO_x Budget Trading Program, as well as those allowances held by other organizations or individuals. Specifically, the NATS would track the allocation of all NO_x allowances, holdings of NO_x allowances in accounts, deduction of NO_x allowances for compliance purposes, and transfers between accounts. The primary role of NATS is to provide an efficient, automated means of monitoring compliance with the NO_x Budget Trading Program. The NATS would also provide the allowance market with a record of ownership of allowances, dates of allowance transfers, buyer and seller information, and the serial numbers of allowances transferred. Although today's proposal assigns each allowance a unique serial number, EPA requests comments on the necessity of serial numbers and on whether the administrative burden to allowance holders and EPA of tracking and reporting serial numbers outweighs the benefits of serial numbers for tax and accounting purposes.

The EPA is proposing that NATS contain three primary types of accounts: compliance accounts, overdraft accounts, and general accounts.

Compliance accounts are created for each NO_x budget unit, and overdraft accounts are created for each source with two or more NO_x budget units, upon receipt of the account certificate of representation form. General accounts are created for any organization or individual upon receipt of a general account information form.

a. Compliance Accounts. As part of the implementation of the NO_x Budget Trading Program, EPA is proposing to establish compliance accounts for each NO_x budget unit upon receipt of the account certificate of representation form. These accounts would be identified by a 12-digit account number incorporating the plant's Office of Regulatory Information System's (ORIS) code or facility identification number as well as the number of the unit for which the compliance account is established. Allocations for the first six years (2003–2008), as prescribed by each State, would be transferred into these compliance accounts prior to the first control period in 2003. Prior to the second control period, in 2004, and each year thereafter, allocations for the new sixth year, as prescribed by each State, would be transferred into each compliance account (e.g., in 2004, year 2009 NO_x allowances would be allocated). As for the deadline for transferring NO_x allowances to cover emissions in the control period (i.e., the NO_x allowance transfer deadline of midnight on November 30), each compliance account (supplemented as discussed below by an overdraft account) must hold sufficient NO_x allowances to cover the NO_x budget unit's NO_x emissions for that year's control period.

b. Overdraft Accounts. Today's proposed trading rule provides for an overdraft account that would be automatically created for each source with two or more NO_x budget units, and represented by the source's NO_x AAR. The NO_x AAR may choose whether he or she wishes to utilize the account by transferring allowances into the account before the annual reconciliation process. NO_x allowances transferred into the overdraft account for a NO_x budget source by the NO_x allowance transfer deadline would be available for deduction during annual reconciliation if a NO_x budget unit at that source fails to hold sufficient NO_x allowances to cover emissions in its compliance account. This is similar to the approach used in the OTC NO_x Budget Program and provides additional flexibility for owners and operators in complying with the requirement to hold NO_x allowances covering emissions. If the compliance account and the overdraft account

together do not contain enough NO_x allowances, then the unit would be out of compliance. The compliance account must be depleted of all NO_x allowances before the overdraft account is utilized.

The proposed rule would deduct NO_x allowances from the overdraft account beginning with the unit having the lowest NATS account number. The unit that fails to hold sufficient NO_x allowances between the compliance account and the overdraft account would be subject to the same consequences that would apply were only its compliance account being tapped for compliance, including the automatic excess emissions offset deduction and the applicable penalties under State law and the CAA. If the final trading rule includes provisions for the banking of NO_x allowances, such provisions would apply to the NO_x allowances held in the overdraft accounts as well as those held in compliance accounts.

Today's proposal allows the NO_x AAR to identify specific serial numbers for deduction from a compliance account. In the absence of a specific identification of NO_x allowances to be deducted, a FIFO (first-in, first-out) method would determine the order in which NO_x allowances would be deducted. The proposal does not, however, allow for the identification of specific NO_x allowances to be deducted from an overdraft account because NO_x allowance deductions from the overdraft account would take place automatically, in a set order, after the NO_x allowance transfer deadline has passed.

c. Compliance. Once a control period has ended, NO_x budget units would have a window of opportunity (i.e., until the NO_x allowance transfer deadline of midnight on November 30) to evaluate their reported emissions and obtain any additional NO_x allowances they may need to cover the emissions during the ozone season. On November 30 of each year, the NO_x AAR must also submit a compliance certification report for each NO_x budget unit. Should the NO_x budget unit not obtain sufficient NO_x allowances to offset emissions for the season, three NO_x allowances for each ton of excess emissions would be deducted from the unit's compliance account for the following control period. EPA believes that it is important to set up this automatic offset deduction because it ensures that non-compliance with the NO_x emission limitations of this part is a more expensive option than controlling emissions. The automatic offset provisions do not limit the ability of the permitting authority or EPA to take enforcement action under State law or the CAA.

d. General Accounts. Today's proposal allows any person or group to open a general account in NATS. These accounts would be identified by the "9999" that would compose the first four digits of the NATS account number. Unlike compliance accounts and overdraft accounts, general accounts cannot be used for compliance but can be used for holding or trading NO_x allowances (e.g., by NO_x allowance brokers or owners of multiple NO_x budget units). General accounts are currently used for SO₂ allowances in the Acid Rain Program.

To open a general account, a person or group must complete the standard general account information form, which is similar to the account certificate of representation that precedes the opening of a compliance account and any overdraft account. The form would include: the NO_x AAR name, phone, fax, and e-mail (as well as similar information for the Alternate NO_x AAR, if applicable); NO_x AAR mailing address; the names of all parties with an ownership interest with the respect to the NO_x allowances in the account; and certification language and signatures of the NO_x AAR and alternate, if applicable.

Revisions to information regarding an existing general account are made by submitting a new general account information form which would be sent to EPA in all cases, whether the form is used to open a new account, or revise information on an existing one. The EPA would notify the NO_x AAR cited on the application of the establishment of his or her account in the NATS or of the registration of requested changes.

7. Banking

a. General Discussion. Banking is the retention of unused allowances from one control period for use in a later control period. Banking allows sources to create reductions beyond required levels and "bank" the unused allowances for use later. Generally speaking, banking has several advantages: it can encourage earlier or greater reductions than are required from sources, stimulate the market and encourage efficiency, and provide flexibility in achieving emissions reduction goals (e.g., by allowing for periodic increased generation activity that may occur in response to interruptions of power supply from non-NO_x emitting sources). In addition, a banked allowance is one less ton of pollutant emitted in a given year. On the other hand, banking may result in banked allowances being used to allow emissions in a given year to exceed a State's trading program budget. The

following discussion summarizes the general issues associated with banking and then presents four specific banking options for consideration.

i. Banking After the Start of the Program. Banking after a program starts and the budget is imposed allows sources to retain any allowances not surrendered for compliance at the end of each control period. Once the trading program budget is in place, sources may over-control for one or more seasons and withdraw from the bank in a later season. This type of banking provides the general advantages as described above (encourages early reductions, stimulates the market, and provides flexibility to sources), while also potentially causing NO_x emissions in some control periods to be greater than the allowances allocated for those seasons.

ii. Banking Prior to the Start of the Program. Banking of credits or allowances for reductions prior to the start of the program allows sources to accumulate NO_x allowances for compliance use once the program begins. In addition to the general advantages of banking, this option allows sources to possibly delay required emissions reductions for some sources once the program begins by using banked allowances for compliance. As OTAG analyses concluded, the accumulation of significant amounts of allowances prior to the start of the program could defer the date at which the trading program budget is actually achieved, even though the early reductions may enable some air quality benefits to be realized sooner than anticipated. Early reductions can be realized either through the award of early reduction credits or the creation of a phased-in program.

iii. Management of Banking. Banking clearly introduces another variable into a cap-and-trade program; it may, in fact, inhibit or prohibit achievement of the desired emissions budget in a given season. To limit this variability and promote achievement of a budget, OTAG suggested several different management options: Adjusting the trading program budget downward by decreasing allocations so that expected variations would stay below the desired emissions level; imposing an accelerated rate of retirement on allowances used for emissions during ozone episodes; establishing an absolute limit on the amount of banked allowances that could be used each season or a discount rate on the use of banked allowances over a given level (flow control); and applying a transaction-specific discount rate to all

banked allowances used in the future. In considering these options identified by OTAG for managing the use of banked allowances, it is important to remember that the model trading rule is being developed to attain the seasonal budget set forth in the proposed transport rulemaking.

The "flow control" option would allow banking, but would discourage the "excessive use" of banked allowances by establishing either an absolute limit on the number of banked allowances that could be used each season or a rate discounting the use of allowances over a given level. In the latter case, the number of banked allowances in the system would be tabulated each year to determine what percentage of the overall budget was banked, and therefore whether flow control could affect the use of banked allowances for compliance in the upcoming control period. If this percentage were below a predetermined amount (e.g., 10 percent as is the case with the OTC, since this level roughly equated emissions variations in years of low nuclear power availability), all banked allowances could be used without discounts in the upcoming control period. If this percentage were above the predetermined amount, a withdrawal ratio would be applied to each account holding banked NO_x allowances that could be used for compliance to determine the number that could be used to cover emissions at a 1-to-1 rate, and the number which, if used, would have to be used at a 2-to-1 rate. It is important to note that the withdrawal ratio would be applied only to banked NO_x allowances that could be used for compliance purposes, and therefore only to NO_x allowances banked in compliance and overdraft accounts. The withdrawal ratio would be determined each year prior to the control period to which it would pertain, but it would not be applied until the time of compliance certification at the end of that control period. This schedule provides the sources one full control period to plan for the application of flow control on their compliance and overdraft accounts.

To illustrate flow control, assume the total trading program budget across all participating States was 300,000 allowances, and 35,000 allowances were banked following a control period. Since more than 10 percent of the total trading program budget is banked, a withdrawal ratio would be applied to all accounts holding banked allowances that can be used for compliance in the upcoming control period. In this case, the ratio applied to accounts with

banked allowances would be 0.86 (determined by dividing 10 percent of the total trading program budget by the total number of banked allowances, or 30,000/35,000). Thus, if a source holds 1,000 banked allowances at the end of this upcoming control period, it will be able to use 860 on a 1-for-1 basis, but will have to use the remaining 140, if necessary, on a 2-for-1 basis. As a result, if the source used all its banked NO_x allowances to cover emissions in the upcoming control period, the 1,000 allowances would equate to 930 tons of NO_x emissions (860 + 140/2).

In this manner, flow control manages the use of banked allowances beyond a predetermined level, here 10 percent of the region wide trading program budget. This discourages but does not prohibit the use of banked allowances and, thus, mitigates the effects of "excessive use" of banked allowances in a given control period. While limiting the annual flow of emissions on the one hand, flow control also preserves the benefits of banking, granting flexibility to sources, stimulating the market and maintaining some incentive to over-comply. Since the withdrawal ratio is known to sources prior to the control period, sources have certainty about how excessive use of banked allowances will be treated, and both States and EPA can minimize their involvement and let the market function relatively unfettered.

b. Options. The EPA is proposing, and requests comment on, four options for whether and how banking may be incorporated into the NO_x Budget Trading Program: (1) Banking is not a feature; (2) banking begins when the trading program begins; (3) units may generate early reduction credits for use after the start of the program and banking continues after the program begins; and (4) banking begins with the first-phase of a two-phase trading program and continues thereafter. The EPA is not adopting or recommending an option in this proposal. In the final rule, EPA intends to adopt a specific approach to banking based on the comments received on the four options and any other approaches suggested by commenters. Although EPA has not focused on any one approach at this time, the proposed rule reflects, for the purpose of illustration, option 2 (i.e., banking when the trading program begins and without any management of banked NO_x allowances).

Each of the four options is discussed below. If banking is allowed, development of a banking provision involves trade offs on the following design features: the length of time (if any) permitted for reductions yielding NO_x allowances prior to the start of the

trading program as determined in the proposed transport rulemaking; the level at which these reductions can be generated; and the type of management imposed on the use of banked NO_x allowances. The longer the period of time allowed for early reductions and the less stringent the level at which NO_x allowances can be generated, the more concern there will be about exceeding the program budget once the program begins. Because of this concern, arising from the potentially numerous banked NO_x allowances available at the start of the program, there may be a need for management of the use of banked NO_x allowances.

The EPA used the IPM model to help investigate the ramifications of different options. The results of this analysis were presented in the working paper on emissions banking presented at EPA's December 1997 model rule workshop, entitled "Second Draft Working Paper: Emissions Banking, December 1997 Analysis of Banking in a NO_x Trading Program". This paper is available as item number V-A-28 in Docket No. A-96-56 of the Air and Radiation Docket (see the ADDRESSES Section at the beginning of today's notice for further guidance on obtaining information from the docket). The EPA hopes that these analyses will help stakeholders consider the trade-offs in designing programs with banking and provide EPA comments on the best way to structure a trading program. Commenters should consider how best to strike a balance between the advantages of flexibility, encouraged early reductions, and potential lower compliance costs versus the potential exceedance of prescribed budgets due to excessive use of banked allowances in a given control period.

i. Option 1: No Banking. Not allowing banking in the NO_x Budget Trading Program would result in the automatic retirement of any NO_x allowances not surrendered for compliance following each control period. Under this option, the only NO_x allowances available for compliance in each control period would be those allocated within the budget for that control period. As a result, States would be assured of achieving their budgets established under the NO_x Budget Trading Program each control period. However, the "no banking" option does eliminate incentives for early reductions, reduces the program's flexibility, and may contribute to a "use or lose" mentality for the use of allowances by sources at the end of each control period.

ii. Option 2: Banking After Program Start Only. This option, which does not provide for early reductions, but allows banking of NO_x allowances after the

start of the program, was the approach used in the supporting analysis for the proposed transport rulemaking. This option is presented without the imposition of a management system on the use of banked NO_x allowances because the volume of banked NO_x allowances is not expected to be excessive absent the opportunity for early reductions.

iii. Option 3: Early Reduction Credits. This option allows for the generation of early reduction credits for some time period prior to the start of the trading program; the NO_x allowances resulting from early reductions are banked for use once the program starts, and banking is an option throughout the life of the program.

Sources demonstrating tonnage emissions reductions in excess of a predetermined level in the year or years prior to the start date for the program earn early reduction credits; each credit is redeemed for a one-time award of one NO_x allowance. The NO_x allowances awarded for the generation of early reduction credits may be created as additional to the trading program budget, or may be drawn from the budget. If the NO_x allowances awarded for early reductions come from the trading program budget, each State participating in the NO_x Budget Trading Program would establish a set-aside of a small percentage of its seasonal trading program budget for purposes of awarding the generation of early reduction credits. For example, this set-aside could be 2-3 percent of the State trading program budget, pulled from each of the first five years of allocated NO_x allowances. The resulting set-aside could be distributed at the conclusion of the period in which early reduction credits can be generated, on a pro rata basis. Any NO_x allowances not awarded from this reserve would be returned to the State trading program budget for distribution as allocations. The EPA requests comment on this option of taking early reduction credits from the State trading program budgets and details regarding how this could be accomplished, if in a different manner than that suggested here.

If the NO_x allowances awarded for early reductions originate from within the trading program budget, their award could pose a threat to achievement of the budget once the program begins, even though future allocations will necessarily be decreased by an amount equivalent to the NO_x allowances awarded for early reductions. The shift of available NO_x allowances to the beginning of the program could potentially result in more emissions than budgeted levels in the early years

of the program. If the NO_x allowances awarded for early reductions are created outside of the trading program budget, there should be even more concern regarding potential exceedance of the trading program budget since all awarded NO_x allowances are in excess of budgeted levels of emissions and thus, potentially have a more pronounced and extended impact on the achievement of the trading program budget. This concern is addressed later in this Section.

The award of NO_x allowances for early reductions under the NO_x Budget Trading Program, whether from within or outside of the budget, would require a case-by-case determination by participating States that the reductions claimed were real, surplus, and quantifiable. Part of this determination would be made based on monitored data. This monitored data should be based on the same standards that are being used to support the ongoing trading program. Therefore, any source wishing to receive early reduction credits would be required to have monitors in place and certified for the entire period that the awards are being made. Early reduction credits could be determined and awarded on either a unit-, source-, company-, or State-level basis. A unit- or source-level determination would necessitate a more substantial proof of legitimacy due to concerns of load-shifting to other units or sources. Load shifting is a particular concern in this instance because relatively few units would be pursuing the early reduction credits, leaving the majority of similar sources at a less stringent control level or no required level. Generally speaking, the opportunity for load shifting from sources subject to some emission control (e.g., units seeking early reduction credits) increases with the number of similar units or sources that are not subject to an equivalent emission control. Whether the load shifting is to units or sources with the same owner or with a different owner as compared to the original unit or source, such load shifting could eliminate the environmental benefit of reduced emissions at the original unit or source. The applicant would have to demonstrate that the requested credits were real and surplus, and not the result of load or production shifting. A company or State-level determination, on the other hand, would reduce, but may not eliminate, load-shifting concerns. The activity of all units owned by the company in the State (but not any other units) would be accounted for in the consideration of eligibility for

early reduction credits. The EPA solicits comment on using a company-level determination in order to reduce concern over utilization shifting.

Incorporating early reduction credits into the NO_x Budget Trading Program would also require determinations of the control level beyond which to award early reduction credits and the time period during which the credits can be earned. The control level should be set within the range of the already established title IV and title I levels and the level in the proposed transport rulemaking; EPA solicits comment on the level of 0.15 lb/mmBtu as proposed in the transport rulemaking. The time in which the credits could be earned could be either one, two, or three years prior to the start of the program; EPA solicits comment on a time period of two years. If the NO_x allowances awarded for early reductions come from outside of the trading program budget, a control level above 0.15 lb/mmBtu or a time period longer than two years may threaten program integrity by allowing the possibility of a large bank being established prior to the start of the program that could significantly delay achievement of the budget. If the NO_x allowances are awarded from within the budget, this control level and time period are still appropriate to protect program integrity, and also ensure that the NO_x allowance set-aside to reward early reductions does not withdraw too many NO_x allowances from the future trading program budget, and pose undue burden on sources in the program. Placing a limit on the number of NO_x allowances which may be awarded for early reductions, such as two percent of the first budget period, and reducing the first period budget by a like amount, could help to protect program integrity and ensure that too many allowances are not withdrawn from the first budget period.

The existence of early reduction credits in the NO_x Budget Trading Program could necessitate the consideration of a management scheme to control the use of banked allowances. A management scheme could be required even if the NO_x allowances are withdrawn from the budget, since exceedance of the budget would still be quite possible due to the shift of available NO_x allowances to the beginning of the program. As discussed above, a flow control management scenario, whereby the use of banked NO_x allowances over a predetermined percentage of the trading program budget would be constricted by a weighted withdrawal ratio, would be one way of discouraging the "excessive use" of banked allowances throughout a

control period. Under this approach, a withdrawal ratio of two banked NO_x allowances to one for the current control period would be imposed on the use of some banked NO_x allowances whenever the percentage of banked NO_x allowances in the NO_x Budget Trading Program region exceeds 10 percent of the trading program budget for that control period. EPA acknowledges other percentages and withdrawal ratios are also feasible, but solicits comment on 10 percent and 2-for-1 as reasonable levels to ensure program integrity while providing the opportunity to bank NO_x allowances. The proposed flow control management scenario is the same system used in the OTC's model rule to manage the use of banked NO_x allowances. This system simply acts as a safeguard against excessive withdrawals of banked allowances in a given control period; if large amounts of banked NO_x allowances are not used, it will not be invoked.

These four factors together—the origin of the NO_x allowances awarded for early reductions, the time period for reductions, the level beyond which credits can be earned, and the subsequent management scheme for banked NO_x allowances—together determine the impact of the award of early reduction credits on achievement and maintenance of the NO_x Budget Trading Program budget.

iv. Option 4: Phased-In Program. For this option of a program utilizing phased-in emissions reductions, an initial limit or cap would be set at a level representing an emissions reduction less stringent than the desired budget that is the ultimate goal of the trading program. A NO_x budget source could over-control with respect to this preliminary level at one or more units and accrue NO_x allowances, building up a bank to be used to defer emissions reduction requirements when the first phase level is ratcheted downward to achieve the final budget under the trading program. Banking would begin with the first phase of the program and be allowed throughout the life of the program.

Implementing the NO_x Budget Trading Program as a phased-in program requires similar trade-offs to those required to implement early reduction credits, including consideration of the time period of the first phase during which banked allowances can be accumulated, the stringency of the control level and resulting budget mandated in the first phase, and the management scheme imposed. The implementation of a phased-in program, however, unlike the award of early reduction credits, requires all sources to

participate in the first phase. In effect, a phased-in program creates an earlier compliance deadline for sources in all States participating in the NO_x Budget Trading Program. Unlike an early reduction credit approach, a phased-in approach would not require applicants to demonstrate that NO_x allowances were surplus of load shifting or States to conduct case-by-case reviews of applications because load shifting would be much less of a concern. This lowered environmental risk should allow a less stringent performance level to be used in the early phase, which would increase the opportunity to bank NO_x allowances. Monitoring and reporting in accordance with prescribed methodologies would be required by the new, earlier compliance deadline in order to track compliance and ensure the integrity of reductions and resulting generation of excess allowances.

To provide time for such monitoring and reporting to be put in place for all NO_x budget units, the first phase could be no sooner than two years prior to the start of the trading program at the level of control and timing mandated in the proposed transport rulemaking. The EPA solicits comment on a time period of two years. As would be the case with early reduction credits, the level of control for the first phase would be set at a level within the range of the title IV level and the level established in the proposed transport rulemaking. The EPA solicits comment on a level of 0.25 lb/mmBtu, a somewhat less stringent level than that considered without a phased-in program. However, even this level of control would enhance the ability of units to bank NO_x allowances and so would increase the need for a management scheme to ensure program integrity. The EPA also solicits comment on a flow control approach incorporating a withdrawal ratio of two to one for some banked NO_x allowances used for compliance in the current control period whenever the percentage of banked allowances in the NO_x Budget Trading Program region exceeds 10 percent of the trading program budget for that control period. Once again, it is important to note the interdependence of the time period for reductions prior to the program start, the level beyond which allowances can be earned, and subsequent management scheme for banked NO_x allowances.

8. Allowance Transfers

The EPA is proposing that once a NO_x AAR is appointed and an account is established in the NATS, NO_x allowances can be transferred to or from the accounts with the submission of an allowance transfer form to EPA.

Transfers can occur between any accounts at any time of year with one exception: transfers of current and past year allowances into and out of compliance accounts and overdraft accounts are prohibited after the NO_x allowance transfer deadline (November 30) of each year until EPA completes the annual reconciliation process by deducting the necessary allowances.

There would be one standard NO_x allowance transfer form. This form would be submitted to the EPA in all cases. The form would include: The transferor and transferee NATS account numbers; the transferor's printed name, phone number, signature, and date of signature; and a list of allowances to be transferred, by serial number.

The EPA is moving towards electronic submission of allowance transfers. Full capability is expected by 2000. AARs would be informed of developments and/or requirements for electronic submissions as they arise.

9. Emissions Monitoring and Reporting

a. Requirements for Point Sources. 40 CFR part 96 subpart H of today's proposed model rule sets forth the emissions monitoring and reporting requirements for the NO_x Budget Trading Program. The EPA is proposing that units subject to the NO_x Budget Trading Program be required to meet the monitoring and reporting provisions that are contained in a proposed new 40 CFR part 75 subpart H to the monitoring and reporting provisions of the Acid Rain regulations. These revisions are being proposed in a separate rulemaking that contains a new subpart H of 40 CFR part 75, which addresses how NO_x mass emissions (i.e., tons of NO_x emitted) should be monitored and reported and which references relevant provisions in the other subparts of 40 CFR part 75 (revisions to be published in the *Federal Register* in the near future). All comments on the new subpart H of 40 CFR part 75 should be submitted in the separate rulemaking on 40 CFR part 75 revisions rather than in the instant proceeding.

The EPA is proposing that States use the proposed 40 CFR part 75 subpart H to support the monitoring and reporting for this program to ensure that emissions are consistently and accurately monitored and reported from unit to unit and from State to State. This consistency and accuracy in monitoring is necessary to ensure that a NO_x allowance actually represents one ton of emissions and that one ton of reported emissions from one source is equivalent to a ton of reported emissions from another source. This establishes the integrity of the NO_x allowance (i.e., the

authority to emit one ton of NO_x) and instills confidence in the market mechanisms that are designed to provide sources with flexibility in achieving compliance. The consistency and accuracy in reporting is necessary to ensure that compliance can be determined quickly and consistently and that buyers and sellers of NO_x allowances can determine the value of what they are trading.

The EPA believes that the NO_x mass emissions monitoring provisions in 40 CFR part 75, as it is proposed to be revised, provide a reasonable and cost effective way to consistently and accurately monitor NO_x mass. One of the main advantages of using these provisions to support this program is that many of the NO_x budget units, i.e., existing utility units subject to the Acid Rain program, are already required to meet the monitoring and reporting requirements in the existing 40 CFR part 75. Under the proposed revisions to 40 CFR part 75, the main new requirement for these units would be to calculate and report hourly, quarterly, seasonal and annual NO_x mass emissions. In almost all cases, these values could be determined using existing 40 CFR part 75 monitoring systems.

In addition to sources currently subject to the Acid Rain Program, many additional sources in the OTC that are not subject to the Acid Rain Program, but that are covered by both the OTC's NO_x Budget Program and this proposal, will be meeting many of the monitoring and reporting requirements in existing 40 CFR part 75 by April 1, 1998 in order to comply with the OTC's NO_x Budget Program. Units covered by the proposed trading rule but not required to use the provisions of 40 CFR part 75 to comply with either the Acid Rain Program or the OTC's NO_x Budget Program will also benefit from using monitoring and reporting requirements that are based in large part on existing 40 CFR part 75 requirements that are already being used by a large number of units. Since existing State monitoring regulations vary greatly, and since many States do not currently require the monitoring and reporting of NO_x mass, it is necessary, for purposes of supporting the proposed trading program, to create consistent monitoring and reporting requirements. If 40 CFR part 75 monitoring and reporting are used in the trading program, units not currently using 40 CFR part 75 will have the benefit of much of the expertise and software that has already been developed to support the Acid Rain Program and the OTC NO_x Budget Program.

The notice of the proposed rulemaking concerning revisions to 40

CFR part 75 sets forth in detail the proposed revisions related to monitoring NO_x mass emissions. While comments on the proposed revisions to 40 CFR part 75 (including proposed 40 CFR part 75 subpart H) should be submitted in the separate 40 CFR part 75 rulemaking, an overview of the 40 CFR part 75 revisions is provided here to assist commenters in the instant rulemaking. The proposed 40 CFR part 75 revisions require units to determine NO_x mass emissions by monitoring NO_x emission rate (in lbs/mmBtu) and heat input (in mmBtu) on an hourly basis and by multiplying those two values together. Coal units and other units that burn solid fuel that are covered by the NO_x Budget Trading Program would be required to measure NO_x emission rate using a NO_x concentration CEM consisting of a NO_x concentration CEM and a diluent CEM (CO₂ or O₂ CEM) and measure heat input using a diluent CEM and a flow CEM. All gas and oil units covered by the NO_x Budget Trading Program would be allowed to use this option or alternatively could measure heat input by using a fuel flowmeter and performing fuel sampling and analysis. This option for determining heat input is set forth in Appendix D of 40 CFR part 75 and referenced in the new subpart H of 40 CFR part 96. Gas and oil units that qualified as either peaking units or low mass emitting units under 40 CFR part 75 would also have additional lower cost monitoring methodologies available to them. Peaking units, for example, could do source testing to create heat input versus NO_x emission rate curves. Then based on hourly measurement of heat input from a fuel flowmeter and fuel sampling and analysis, the heat input versus NO_x emission rate curves would be used to estimate the hourly NO_x emission rate. This option for determining NO_x emission rate is set forth in Appendix E of 40 CFR part 75 and referenced in 40 CFR part 96 subpart H. This rate would be used in conjunction with heat input determined using the provisions in Appendix D of 40 CFR part 75 to determine NO_x mass. A unit that qualifies as a low mass emitting unit could use a default NO_x emission rate and the unit's maximum rated hourly heat input to determine NO_x mass emissions. The low mass emissions unit provisions are in proposed 40 CFR 75.19 and referenced in 40 CFR part 96 subpart H.

The proposed 40 CFR part 75 subpart H requires units to report hourly NO_x mass emissions throughout the year, rather than just in the seasonal control period. The EPA is proposing to make

the monitoring and reporting requirements year round, as under the Acid Rain Program, because EPA believes that this will facilitate integration with other monitoring and reporting requirements, such as New Source Performance Standards (NSPS) requirements, Compliance Assurance Monitoring (CAM) requirements and other State requirements. In the long run, EPA believes that this consolidation can help to ease the overall monitoring and reporting burden on sources.

The proposed changes to 40 CFR part 75 also highlight several additional issues that are particularly pertinent to monitoring NO_x mass emissions. These include: an alternative way to measure NO_x mass emissions using a NO_x concentration CEM and a flow CEM, specific requirements for monitoring NO_x emission rate at common stacks and heat input at common stacks and common fuel pipes, and the reporting of NO_x mass emissions on a total hourly basis rather than on an hourly mass emissions rate basis. More information on these issues can be found in the notice of proposed rulemaking for 40 CFR part 75 which will be published in the *Federal Register* in the near future. All comments on the proposed revisions to 40 CFR part 75, including any related to NO_x mass emissions, should be submitted in the 40 CFR part 75 rulemaking proceeding, rather than in the instant proceeding.

While units would be required to meet the technical monitoring requirements set forth in 40 CFR part 75, the general and administrative requirements related to monitoring are set forth in the proposed trading rule. These include: compliance dates, prohibitions, requirements for certification and recertification of monitors, recordkeeping and reporting requirements and procedures for requests for alternatives to the monitoring requirements.

The EPA is proposing that units that commence operation before January 1, 2000 have certified monitors installed and operating for this program by May 1, 2001, which is earlier than the compliance date (May 1, 2003) for emissions reductions in the proposed transport rulemaking and this trading program. Since no precertification of emissions reductions is needed for sources to make trades, it is important to make sure that the monitoring that is used to certify the emissions is verified before the start of the trading program. While up-front certification of monitors provides a great deal of assurance that sources would be able to account for their emissions, up-front reporting

verifies that they can report their emissions. In addition, other aspects of the trading program that are discussed in other parts of this proposal, including a rolling allocation scheme based on updated monitored data and the banking of allowances before the beginning of the program, would require monitoring earlier than May 1, 2003. If a unit commences operation on or after January 1, 2000, it would be required to have certified monitors installed and operating by the later of: May 1, 2001; or 180 days after the unit commences operations or, if the unit is subject to any Acid Rain emission limitation, 90 days after the unit commences commercial operation. Deadlines for installation and certification of monitors are also established with regard to new stacks or flues constructed after the general installation and certification deadlines. Regardless of the deadline for installation and certification of monitors, if any unit is operating on or before May 1, 2001, but the monitors for that unit are not certified by May 1, 2001, the owner or operator must still account for emissions beginning on May 1, 2001 so that this data will be available to support the allocation provisions and possible provisions providing the opportunity to bank allowances before the beginning of the program. Similarly, if any unit is not operating on or before May 1, 2001 the owner or operator must account for emissions from the date and hour the unit commences operation. The owner or operator has three options for accounting for emissions until all of the required monitors are certified: Reference method monitoring; maximum potential values; or data from the monitors before certification is completed if certain quality assurance and data validation procedures are followed. This would be consistent with the requirement to hold NO_x allowances for all emissions in the ozone season and would assist with NSR integration, which requires accounting of all emissions.

The prohibitions Section of the trading rule sets forth several general prohibitions that would apply to all units included in the program. Units would not be able to use alternatives to the requirements in proposed subpart H of 40 CFR part 96 (and proposed revised 40 CFR part 75) unless that alternative was approved according to the procedures set forth for approval of alternatives to the monitoring requirements. The procedures for requests for alternatives to the monitoring requirements vary depending upon whether or not the unit

involved is also subject to 40 CFR part 75 for purposes of compliance with title IV of the Act.

Units subject to 40 CFR part 75 for purposes of compliance with an Acid Rain emission limitation would already meet most of the requirements for the NO_x Budget Trading Program, by meeting the requirements for title IV. Before an owner or operator could deviate from the monitoring requirements for 40 CFR part 75 for this trading program or both this program and title IV, approval would have to be obtained from EPA. The EPA would take action on the petition for alternative monitoring in consultation with the appropriate State agency. This differs from the requirements for sources not subject to title IV who would need approval from both the State and EPA. The EPA believes that this is appropriate because EPA currently has authority to approve petitions for these sources. The additional requirements would involve reporting new data and, in a few cases, use of monitors not being used for purposes of title IV. The NO_x budget units subject to title IV would continue to meet the same requirements as other units subject to title IV, but would be required to include some additional data in the quarterly reports that they are already submitting for title IV purposes. This data would include hourly, quarterly, annual and ozone season NO_x mass emissions data. In addition, if a unit subject to title IV had to install additional monitors to comply with this program, those monitors would have to meet the certification and recertification requirements of the NO_x Budget Trading Program. The only reason that a unit would have to install additional monitors for this program would be if its currently installed monitors did not allow it to calculate NO_x mass. This would only be an issue if a unit shared a common stack with other units and chose to measure NO_x emission rate at the unit level, but measured heat input at the common stack level. For purposes of the Acid Rain Program, this unit would be allowed to apportion heat input to the unit level. While EPA believes this methodology is accurate enough for purposes of using heat input to determine reduced utilization, EPA does not believe that it is accurate enough for purposes of determining NO_x mass; EPA's rationale is discussed in the preamble to the 40 CFR part 75 rulemaking which will be published in the *Federal Register* in the near future. The NO_x budget units not subject to title IV would be subject to essentially the same requirements for certification

and recertification and monitoring and reporting. The owner or operator of a unit would be responsible for initially certifying monitors. The owner or operator would be responsible for providing the permitting authority both a monitoring plan and notification of the time and date of the original certification tests in advance of those tests. The owner or operator would also be responsible for recertifying monitors if any major changes were made to the monitors and would be required to report emissions and other supporting data on a quarterly basis.

An owner or operator wishing to deviate from the monitoring requirements set forth in 40 CFR part 75 would have to petition for approval to do so. Unlike certifications and recertifications which would only have to be approved by the permitting authority, these petitions would have to be approved by both EPA and the permitting authority. There are three main reasons that petitions would have to be approved jointly. The first is that in order to ensure that emissions are accounted for equivalently from source to source and State to State, it is important that there be consistency in approving any alternatives to the allowed monitoring methodologies. By working with the permitting authority in all of the approvals for alternatives, EPA can help ensure this consistency. The second is that in order for EPA to fulfill its role as the repository for emissions data, it is important that all of the data be reported in a consistent format and that EPA be aware of any deviations from that consistent format. The final reason is that EPA cannot approve a SIP that allows a State the unlimited ability to approve alternatives not specifically spelled out in the SIP. If a State wants to approve a methodology that is not specifically part of the SIP, EPA would have to be involved in this approval.

b. Output Information. In general, the information available concerning the operation of a unit can be placed into one of three categories: Input, process, and output. Heat input is a measure of input; specifically, it is the chemical energy of the fuel burned. Variables related to combustion, such as temperature, are process variables. Measures of output from a unit include emissions; steam energy, and, for a unit serving an electricity generator, electrical power produced. Today's proposal presents options for allocating NO_x allowances based on actual information on unit operation. The EPA has received comments that allocations of NO_x allowances under the trading program should be made on the basis of

electrical and/or steam output, rather than heat input, measurement.

A system where NO_x allowances are reallocated on an ongoing basis (as is being proposed today) may decrease the incentives for reducing NO_x emissions through the use of more efficient fuels or more efficient equipment. For example, assume a certain unit currently uses 500 mmBtu/hr to generate 50 MWe. Under a simple heat input based allocation scenario, if that unit increased its efficiency by 20 percent, so that it could produce 50 MWe while using only 420 mmBtu/hr, it would lose 20 percent of its NO_x allowances in the next NO_x allowance reallocation, even though it is producing the same electricity. However, under an allocation scheme based on output, if this unit's electricity production did not change, it would receive the same number of NO_x allowances. Since a decrease in the amount of fuel needed is generally accompanied by a decrease in NO_x emissions, a unit increasing its efficiency would either have more NO_x allowances to sell on the market or would need to purchase less NO_x allowances to be in compliance. Thus, basing allocations on output gives units additional efficiency options for compliance, which should reduce the overall cost of the program. As an additional benefit, decreases in fuel usage would reduce emissions of other pollutants such as SO₂, mercury, and carbon dioxide (CO₂).

However, EPA is concerned that there may be some issues not yet fully addressed concerning allocation of NO_x allowances based on output. First are issues concerning the development of measurement protocols for output. Measurement protocols are critical for making a fair and expeditious allocation of NO_x allowances. There are two general locations at which power output of an electricity generating facility could be measured: gross generation at the generator, or net generation after plant power requirements have been consumed. Gross generation seems less appropriate, since an allocation based on output would primarily be intended to address efficiency improvements and allocation by gross generation fails to account for a plant's power requirements whose efficiency could be improved. To the extent the power is sold, net generation could be measured at the point of sale. Measurement at the point of sale has an advantage in that it is tracked by the source and the dispatch authority for crediting sales. A workable program requires only that all participants measure generation at the same general location and with the same method.

A second set of issues in allocating using output concerns how to relate product output to emissions output. Electrical generation and distribution systems at plants can be complex, with multiple units emitting through one or more stacks and serving multiple generators. If output is to be measured at the plant level, then it would be appropriate to measure total emissions from the plant, even if that meant measuring emissions from small units. Alternatively, the electrical output from small units could be measured and subtracted from plant-level electrical output to avoid the need to monitor emissions from small or infrequently used units.

For units producing steam that does not feed into a generator, different issues arise. These sources have steam production in addition to (or instead of) power generation as their final output. Allocating emissions to both types (steam producing and power generating) of sources would require the development of a method for converting the steam energy to an electrical power equivalent. The method would likely require assumptions about the efficiency of the conversion. The use of any general efficiency assumption, without considering the configuration and operation of each individual plant, could lead to penalizing plants that operate more efficiently than the general case (by not allocating enough allowances) and giving windfalls to plants that operate less efficiently than the general case (by allocating more allowances than warranted).

The EPA solicits comments on how the issues discussed above could be addressed in order to allow States to base the initial NO_x allowance allocations for this trading program on an output measure or convert an allocation system initially based on input to one based on output. As further explained in the allocation Section of the preamble, EPA may use this information in the development of a final rule that would provide States the opportunity of using output based allocations.

10. Opt-Ins

The NO_x Budget Trading Program includes provisions allowing for units that otherwise would not be subject to the trading program and that are located in a State that is participating in the trading program to voluntarily elect to participate (i.e., opt in). The opt-in provisions can further reduce the cost of complying with the NO_x budget by allowing those units, which may not otherwise be required to reduce NO_x emissions for a State to meet its budget,

to opt in to the trading program and make incremental, lower-cost reductions. The NO_x allowances freed up by the opt-in source's control action can be sold to other NO_x budget units for their compliance with the NO_x emission limitation. In general, units that opt in are treated like other NO_x budget units and are subject to the same requirements to monitor, to hold allowances to account for emissions, and to have a NO_x budget permit. Units that have opted in may also elect to withdraw from the program if certain requirements are met.

a. Applicability for Opt-In Units. Today's proposal allows sources (i.e., units) to opt-in that are similar to, but smaller in capacity than, the sources covered under the proposed applicability provisions of the NO_x Budget Trading Program. A State would account for the opt-in unit in the State's SIP by adding the opt-in unit's NO_x emissions to the trading program budget in the SIP and subtracting the opt-in unit's NO_x emissions from the part of the SIP not covered under the NO_x Budget Trading Program.¹⁹ The applicability Section of this preamble discusses and requests comment on the participation of other source types and sizes under the trading program. It also discusses whether other additional source categories should be included in the trading program. The sources in these categories could be included as part of the core program applicability, they could be included as an additional list of source categories that a State could choose to include as core sources, or they could be listed as sources that could choose to individually opt in.

b. Allowance Allocations for Opt-In Units. Today's proposal allocates NO_x allowances to an opt-in unit on a year-by-year basis. An opt-in unit is required to monitor and report the NO_x emission rate and the heat input according to the provisions under 40 CFR part 96 subpart H of the proposed rule for one control period prior to the unit entering the trading program. The NO_x emission rate and heat input measured at the unit during this initial period of time would become the unit's baseline emission rate and baseline heat input, respectively. The EPA requests comment on whether

¹⁹ Today's proposal also solicits comment on allowing sources not meeting the above description to opt in, at their discretion, if they are subject to part D nonattainment NSR preconstruction permitting requirements as major new sources or major modifications to existing sources and they can meet the other eligibility criteria of this trading program. The trading program budget in the SIP would not be increased for the new emissions at these opt-in sources because they would be entering the trading program in order to offset their new emissions (see Section F, below).

emissions rate or heat input data from periods prior to this initial period should also be used to set these baselines. The allocation for an opt-in unit is calculated by multiplying the lesser of the unit's baseline emission rate (in lb/mmBtu) or the most stringent State or Federal emissions limitation applicable to the NO_x budget opt-in source during the control period by the lesser of the unit's baseline heat input or the unit's actual heat input (in mmBtu) measured during the control period prior to the allocation calculation. The State would notify EPA by December 1 to allocate NO_x allowances to an opt-in unit for the next year's control period. While the proposal recommends opt-in allowance allocations based on heat input, EPA solicits comment on whether the allocations should be based on output. The options for using output and the factors considered are analogous to those discussed above concerning general allocations to NO_x budget units.

The EPA proposes to allocate NO_x allowances to opt-in units on a year-by-year basis to ensure that shifts in utilization from these units to other units not covered under the cap do not result in any significant increases in overall NO_x emissions. Such increases in emissions may occur if units outside the cap increase their utilization (and emissions) while NO_x allowances remain under the cap from an opt-in unit that reduces its utilization. The year-by-year allocation regime limits this potential problem while still maintaining continuing economic benefits for a unit to opt in because each of the future year allocations are calculated based on the unit's baseline emissions rate multiplied by the lesser of the baseline heat input or the previous year's utilization. By reducing a unit's actual emission rate below the baseline emission rate, an opt-in unit would continue to earn NO_x allowances to sell in the market in future years as long as they continued to operate at the same level. The EPA solicits comment on the appropriateness of the year-by-year allocations to account for the potential shifts in utilization for the different types of possible opt-in units including units that serve electricity generators as well as other types of industrial units.

c. Units Sharing Stacks or Fuel Pipe Headers With NO_x Budget Units. Today's proposal does not include special or simplified opt-in provisions for non-NO_x budget units that share a common stack or common fuel pipe header with a NO_x budget unit. Allowing these units to participate in the trading program may streamline the

monitoring and reporting requirements for the NO_x budget units. For example, if a non-NO_x budget unit sharing a common stack with a NO_x budget unit is opted in to the trading program, it may no longer be necessary to apportion common stack emissions between two units. The NO_x AAR may simply elect the percentage of NO_x allowances to be deducted for each unit, provided that the total number deducted covers the common stack emissions. The EPA solicits comment on the desirability and method of opting in such units.

d. Withdrawal and Termination of Opt-In Units. The proposed trading rule addresses how an opt-in unit may withdraw from the trading program. An opt-in unit may withdraw from the NO_x Budget Program at any time, but a request to withdraw may be effective only on a date specified by the NO_x AAR that is before or after a control period. The EPA believes that the administrative burden for a permitting authority in processing a withdrawal effective during a control period, particularly in ascertaining the disposition of NO_x allowances and in determining compliance for a partial control period, is sufficient to warrant the prohibition of an effective date of withdrawal during a control period. Further, an opt-in source could seek to withdraw during a control period because the opt-in source projects that it will not hold enough NO_x allowances to account for its NO_x emissions for that control period. Under such a scenario, allowing the unit to "opt out" of the program during a control period could easily result in higher NO_x emissions, since an opt-in unit could emit enough NO_x to use up its NO_x allowance allocation for the control period prior to the end of that control period, withdraw from the program, and continue to emit NO_x after withdrawal during the control period. Such emissions would not be accounted for with the requisite surrender of NO_x allowances required under the NO_x Budget Program and could occur outside of a State's overall budget for NO_x.

If a NO_x budget opt-in unit becomes a NO_x budget unit under 40 CFR 96.4, the opt-in permit is terminated. This change in status for an opt-in unit could occur as a result of a modification, reconstruction, or repowering that may take place at the unit. An opt-in unit that becomes a NO_x budget unit under 40 CFR 96.4 is required to notify the permitting authority within 30 days of the change in status of the opt-in unit. The permitting authority revises the opt-in permit to reflect the NO_x budget permit content requirements of 40 CFR 96.23 effective as of the date of the

change in status. The NO_x allowances are deducted or allocated as necessary to ensure that the appropriate number of allowances are allocated to the unit consistent with 40 CFR part 96 subpart E of the proposed trading rule for each partial or full control period after the effective date of the change in status. In addition to the potential of an opt-in unit changing its status and becoming a NO_x budget unit under 40 CFR 96.4, it is also possible that an opt-in unit may become subject to the major new source review (NSR) requirements under section 173 of the Act by making a physical change or a change in the method of operation. In this case, triggering nonattainment NSR may also terminate an opt-in permit as discussed above. In Section C.1.c.v above, EPA seeks comment on treating all sources that are subject to major nonattainment NSR and that are of the same type of source included in the proposed core applicability as NO_x budget units.

11. Program Audits

The EPA would publish a report annually, commencing after the first year of compliance, that would contain, for each NO_x budget unit, the control period NO_x emissions and the number of NO_x allowances deducted for all reasons. This would be done in order for States to track emissions and NO_x allowance transaction activity in neighboring and upwind States. The proposed transport rulemaking has requirements for reporting of additional data to determine compliance for affected States. The EPA would also publish a report beginning in 2007 and every five years thereafter to assess the level of activity and/or emissions shifting from sources included in the NO_x Budget Program to sources not included. An assessment of opt-in sources (e.g., how many, from what sector, source size, duration of participation in program) would also be included in this periodic report.

12. Administration of Program

The administration of this program would be somewhat different from the administration of a typical State program. This is both because of the trading aspects of the program and because of the regional nature of the trading program. In order for the market forces underlying the trading program to work, the sources that participate in the trading program must have confidence in the market. This confidence stems from a number of factors including: a belief that all of the sources included in the program are following the same set of rules, and a belief that trades can be made easily, quickly and with a great

deal of confidence that they will not be altered or denied. Several things can help to foster these beliefs and thus a confidence in the market. The first is to start with a consistent set of rules. This can be done by developing a model rule and having all States and sources that participate in the trading program abide by the ground rules set forth in the model rule. The second is to implement those rules in a consistent and efficient manner. Because of the multi-state nature of the program, it would be difficult for any individual State to do that by itself. Therefore, EPA is proposing that this program be implemented jointly by EPA and the States that choose to participate in the program. As part of this joint implementation, States would have specific roles. EPA would have specific roles, and there would be roles that States and EPA would perform jointly.

States would be responsible for developing and promulgating rules consistent with the model rule and for submitting those rules as part of the SIP. States would also be responsible for identifying sources subject to the rule, issuing new or revised permits as appropriate, and determining NO_x allowance allocations. In addition, they would be responsible for receiving, reviewing and approving most monitoring plans and monitoring certification applications, observing quality assurance testing and performing audits. The final primary area of State responsibility would be enforcement of the trading program. If violations occur, the State would take the lead in pursuing enforcement action. However, once the rules are approved as part of the SIP, they would become federally enforceable, and EPA could also take enforcement action.

The EPA would have two primary roles in administration of the program. The first role would be EPA's traditional role in the approval and oversight of the SIP. The second would be a more unique role for EPA, in which EPA would administer significant portions of the program.

In EPA's traditional role in the SIP process, EPA would be responsible for taking action to approve or disapprove the SIP revision once it was submitted to EPA. Once the SIP revision was approved, EPA would play an oversight role in ensuring that the SIP was completely implemented. This oversight role might include audits of the State program, or taking enforcement action, if EPA believed that sources were violating the SIP.

In EPA's more unique role as administrator of portions of the

program, EPA would run both the emissions tracking system (ETS) and the NATS. ETS is the system that units would use to report their emissions data and that EPA would then use to verify total emissions for the control season. The EPA would use the same system that it is currently using to track emissions data from the Acid Rain Program and that it will soon be using to track emissions data from the OTC NO_x Budget Program. There are a number of advantages to the sources, States, and EPA to using this existing system. Since many units are already reporting to the system for purposes of the Acid Rain Program and more units will soon be reporting to the system for purposes of the OTC NO_x Budget Program, using this existing system will represent little change for many units and EPA. This will help to reduce administrative costs for both units and EPA and will help to minimize startup problems associated with a new program. It also means that each State will not need to develop, maintain and operate such a system.

In addition to receiving the emissions data, quality assuring it, and providing reports to both States and units about the emissions data, EPA would have several other responsibilities as the administrator of ETS. The EPA would be involved in approval of any petitions for alternatives to the allowable monitoring methods. The EPA would also be involved in providing units and States assistance in using ETS. This assistance may include: Answering individual questions from units and States, providing guidance documents and training for units and States, and providing software to assist in the submittal of emissions data.

As the administrator of NATS, EPA would be responsible for receiving applications for NO_x AARs, tracking all official transfers of NO_x allowances, and using the end of control season emissions data and NO_x allowance data to determine compliance for the control season. In order for EPA to play this role, each State would have to provide EPA with its NO_x allowance allocations consistent with a prescribed schedule and format. The NO_x AARs for individual sources would have to provide EPA with information about all official NO_x allowance transfers in a prescribed format. The NO_x AAR's would also have to provide EPA with an end of control season compliance certification. At the end of the control season, EPA would use all of this data to determine how many NO_x allowances should be deducted from each unit's compliance account or each source's overdraft account. In the event

that there were not enough NO_x allowances to cover a unit's emissions for a control period, EPA would notify the State and would automatically deduct NO_x allowances for the next year's control period according to the emissions offset provisions set forth in the proposed trading rule.

The main joint role that EPA and States would have is for the approval of alternatives to the allowable monitoring methods. This role is more fully discussed in Section V.C.9 of the preamble on monitoring.

D. SIP Approvability

The EPA's proposed ozone transport rulemaking set forth the general elements that a SIP needed to include (see 62 FR 60364-71). These criteria are more fully explained in Section IV.A of this supplemental proposal. One of the components of an approvable SIP is that it include fully adopted State rules for the regional transport strategy with compliance dates. One possible control strategy that a State might choose would be to implement this NO_x Budget Trading Rule (40 CFR part 96). If a State chooses to implement the NO_x Budget Trading Rule, the proposed ozone transport rulemaking explains that the trading rule will incorporate all necessary SIP criteria into the program design. In general, today's proposed trading rule meets the necessary SIP criteria. However, Section IV.A describes two criteria that a SIP must meet for EPA to approve the NO_x Budget Trading Rule portion of the SIP (see Section IV.A.3 for further discussion).

E. OTC Integration

Twelve of the thirteen OTC jurisdictions have committed to the implementation of a cap-and-trade program in order to achieve region-wide NO_x emissions reductions starting in 1999 to help reduce ozone transport and make progress toward attainment. Nine of those twelve jurisdictions are also included in the proposed ozone transport rulemaking. The goals and implementation strategy of the OTC program are similar to those of the proposed transport rule and today's proposed NO_x Budget Trading Program. However, there is a potential for conflict between the OTC Program and today's proposal. The EPA was involved in the development of the OTC Program and is aware of the issues that the OTC States faced in developing that program. Taking into account the work that has been done, EPA has tried to develop a proposal that will minimize conflicts between the two programs. Some differences still exist concerning

applicability, allocations, banking and the use of banked allowances, emissions monitoring, and permitting. The purpose of this Section is to identify how EPA believes that these specific issues can be resolved, so that the goals of the OTC program can be achieved in concert with today's proposal. The EPA believes that these differences can be resolved as the OTC States undertake rulemakings to implement Phase III (beginning in 2003) of the OTC program.

1. Applicability

a. *State Applicability.* On a regional level, the NO_x Budget Trading Program is applicable to any of the 23 jurisdictions identified in the proposed transport rulemaking electing to participate. Three of the OTC States (Maine, New Hampshire, and Vermont), however, are not among the 23 jurisdictions cited in the proposed transport rulemaking. The OTC States have requested EPA to consider how these States may participate in the trading program. The EPA sees, and requests comment on, two options for addressing these States. One option is to exclude Maine, New Hampshire, and Vermont from participation in the NO_x Budget Trading Program; the other is to offer the States the opportunity to join the trading program by complying with the overall requirements of the proposed transport rulemaking. The EPA proposes the two alternative options and requests comment on them.

Denying Maine, New Hampshire, and Vermont the opportunity to participate in the NO_x Budget Trading Program can be justified by their exclusion from the proposed transport rulemaking. Based on analysis of the entire 37 State OTAG region, EPA proposed to determine that only 23 jurisdictions are significant contributors to a nonattainment or maintenance problem in another State. Since these three States were not among the 23 jurisdictions covered by the proposed transport rulemaking, arguably they should not be permitted to participate in the trading program designed to help achieve mandated reductions in the targeted States. Excluding Maine, New Hampshire, and Vermont from the trading program would restrict the ability for sources in these States to trade NO_x allowances with sources in other OTC States that are included in the proposed transport rulemaking and participating in today's proposed trading program. A second option would be to allow Maine, New Hampshire, and Vermont to participate in the NO_x Budget Trading Program by voluntarily enrolling in the proposed ozone transport rulemaking and implementing the requirements therein.

This second option would assist with the integration of the OTC program with the NO_x Budget Trading Program by maintaining the ability for sources located in Maine, New Hampshire, and Vermont to trade NO_x allowances with sources located in the other participating OTC States.

b. *Source Applicability.* The source applicability criteria for today's proposed NO_x Budget Trading Program identifies a minimum, core group of sources. These core sources are fossil fuel-fired units (i.e., stationary boilers, combustion turbines, and combined cycle systems) serving electrical generators greater than 25 megawatts and other units not serving generators and having a heat input greater than 250 mmBtu per hour. Beyond the core sources, this proposal contains criteria for States to include additional sources in the trading program, as well as the process for allowing individual units to opt in.

The OTC program applies to a similar universe: fossil fuel-fired boilers and indirect heat exchangers of 250 mmBtu or greater, electricity generating units of 15 megawatts or greater, and "opt-in" sources. The main difference in applicability criteria between the OTC program and today's proposed NO_x Budget trading program is that the OTC includes units between 15 and 25 megawatts. However, today's proposal allows States to include smaller sources of the same type as those included in the core group such as electrical generating units between 15 and 25 megawatts, without affecting EPA's streamlined approval of the SIP as described in Section V.D of this preamble. This allows the OTC program applicability provisions to be reasonably compatible with those in the NO_x Budget Trading Program.

2. Allocations

Today's proposal establishes NO_x allowances as the currency for the NO_x Budget Program, and recommends a methodology for participating States to allocate NO_x allowances among NO_x budget sources. States are provided the flexibility to deviate from the recommendation, as long as the timing requirements for completion of allocations and submission of the information to EPA for inclusion into the NATS are met, the control periods for which allowances are allocated are the same, and total NO_x allowances allocated do not exceed the number of tons that the State apportions to NO_x budget sources in the SIP.

The OTC provides States full discretion to develop and adopt their own allocation methodologies. The

resulting allocation processes are in some cases incompatible with EPA's software capabilities, beyond the scope of EPA's resources to administer, and inconsistent with the efficient and orderly functioning of a NO_x allowance market. This experience showed the need for greater consistency among States for the allocation process. As a result, the OTC States would need to revise their allocation methodologies for Phase III of the OTC to be consistent with the timing requirements of the NO_x Budget Trading Program. Since the OTC is still discussing the implementation of Phase III, EPA believes that the schedule for this proposal provides an opportunity to develop allocation plans that meet the timing requirements in today's proposed trading program. Each OTC State would still be able to determine the specific allocation to each source provided the total number of allowances allocated did not exceed the trading program budget.

3. Emissions Banking

The OTC program provides for the banking of early reductions in 1997 and 1998 and of excess Phase II NO_x allowances in 1999 through 2002. Furthermore, the OTC program includes the use of a flow control mechanism to manage the use of banked allowances as described under Section V.C.7 of this preamble and an audit to assess the program's performance. Today's proposal solicits comments on four banking options that are discussed under the banking Section of this preamble. The EPA requests comments on how the OTC banking provisions may be integrated with the banking options under the proposed NO_x Budget Trading Program.

4. Emissions Monitoring and Reporting

The monitoring and reporting requirements in the proposed NO_x Budget Trading Program are based on the requirements in proposed revisions to 40 CFR part 75, the monitoring and reporting regulations under the Acid Rain Program. The monitoring and reporting requirements in the OTC's NO_x Budget Program are based on the current version of 40 CFR part 75 and on additional guidance that was developed in a collaborative process among States, sources, and EPA. This additional guidance sets forth requirements for reporting NO_x mass emissions which are not currently set forth in 40 CFR part 75 and provides some additional flexibilities for sources not subject to the Acid Rain Program. For sources that are subject to both the Acid Rain Program and the OTC NO_x

Budget Program, use of the revised 40 CFR part 75 would require few changes to address the NO_x mass monitoring and reporting requirements in this proposal. However, for some sources that are only subject to the OTC NO_x Budget Program, the use of the revised 40 CFR part 75 in the proposal may require some changes.

The most significant change under the proposed NO_x Budget Trading Program would be that all units that burn coal or other solid fuels would be required to use a flow monitor and a diluent monitor to measure heat input. Under the OTC NO_x Budget Program, these units currently have two options for monitoring heat input: the first option is to use a flow monitor and a diluent monitor, and the second is to petition the State to use an alternative heat input methodology. There are two main reasons that EPA is proposing to limit the options for monitoring heat input for these types of units. First, EPA believes that in order to ensure fairness and to ensure that the emissions reductions required by this program are realized, it is important to have accurate and consistent monitoring across all of the sources. To date, no source under the OTC NO_x Budget Program has completed any testing to demonstrate that the alternatives are as consistent and accurate as the flow monitoring methodology. Second, EPA does not believe that there are significant cost savings associated with allowing the alternatives. In order to demonstrate that the alternative is as consistent and accurate as the flow monitoring methodology, the source is required to do initial certification testing and ongoing quality assurance testing very similar to the testing required for the use of flow monitoring methodology. The capital costs associated with setting up platforms and ladders so that this testing can be performed is one of the most significant capital costs associated with the flow monitor methodology, but this cost would also have to be incurred in order to perform testing on the alternative methodology. Similarly, some of the most significant costs associated with the ongoing use of the flow monitor methodology are ongoing quality assurance and data reporting. Performing similar quality assurance and data reporting is also a requirement for any alternative methodology. For these reasons, EPA believes the costs would be similar. In addition, if the alternatives are allowed, there would be an additional administrative burden placed on both States and sources in preparing and reviewing applications for alternative methodologies.

In addition to the specific requirement to use flow monitors for coal-fired facilities, the proposed revisions to 40 CFR part 75 change some of the ongoing quality assurance tests for flow monitors. The number of levels at which flow relative accuracy test audits (RATAs) have to be performed is reduced, but an additional quarterly quality assurance of the flow monitors has been added. The EPA believes that the combined effect of these changes reduces the overall cost of flow monitoring, while at the same time improving the quality of the data.

Another significant change between the OTC NO_x Budget Program and the proposed NO_x Budget Trading Program would be in the options allowed for low mass emitting units, or peaking units, that burn oil and/or gas. The OTC NO_x Budget Program offers a number of different options for these units, in addition to the CEM options that are allowed for all sources in the program. While these different options provide more flexibility, they also create more confusion and complexity for smaller sources. The EPA believes that by proposing fewer options, and simplifying these allowable options as much as possible, both cost and confusion for smaller sources can be minimized. The two non-CEM options that the proposed revisions to 40 CFR part 75 will allow for smaller sources are the use of a default emission rate based on unit type and fuel burned, and the use of source testing to determine unit specific NO_x emission rate versus load curves. The use of default emission rates is proposed to be limited to units that have actual emissions and projected emissions using such default emission rates of less than 25 tons per year. The use of the unit specific NO_x emission rate versus load curves is proposed to be limited to units that qualify as peaking units (a unit that has an average capacity of no more than 10.0 percent for three years, with a maximum capacity of no more than 20.0 percent in any one of those years.)

Most of the other changes in the proposed revisions to 40 CFR part 75 that would affect OTC NO_x Budget Trading Program sources are designed to reduce monitoring costs and provide additional flexibilities. These include: a reduction in fuel sampling for units that use fuel sampling and analysis to determine heat input; more flexibility for the scheduling of quality assurance testing to accommodate unexpected unit outages; and an option to reduce the amount of missing data that must be reported during periods of monitor recertification. More information on all of the proposed revisions to 40 CFR part

75 can be found in the proposal for that rule (notice entitled "Acid Rain Program; Continuous Emission Monitoring Revisions" that will be published in the *Federal Register* in the near future); comments on them should be submitted in that separate rulemaking.

5. Permitting

The OTC program does not explicitly require permits that are issued or modified for use under the OTC program to be federally enforceable. The proposed NO_x Budget Trading Rule requires federally enforceable permits. The EPA's rationale for requiring federally enforceable permits is further explained in Section V.C.3 of this preamble. This would potentially require the OTC States to amend the permitting provisions in the OTC program.

F. New Source Review

Under section 173 of the CAA, new and modified major sources located in nonattainment areas must offset their new emissions. The EPA believes that this requirement can be met through a source's participation in the NO_x Budget Trading Program defined in today's proposed rule. Simply put, in a system where the level of emissions cannot exceed an absolute mass emissions cap, new sources of emissions subject to the system must acquire sufficient NO_x allowances elsewhere in the system to offset any new emissions. Those sources from whom NO_x allowances are acquired must also hold sufficient NO_x allowances to cover their emissions. Therefore, since the trading program budget would not be increased for sources seeking offsets, NO_x allowances which are acquired necessarily come from actual emissions decreases that take place from other sources that are covered by the cap.

A key issue is how sources whose emissions increase are subject to the major NSR offset requirements may become participants in the trading program. All new units meeting the proposed applicability criteria, and all emissions increases at existing units meeting these criteria, would be subject to the NO_x Budget Trading Rule and, therefore, would be participants in the trading program. However, sources in need of NSR offsets but which do not meet the proposed applicability criteria may wish to participate in the trading program so as to satisfy their NSR offset requirement. The EPA notes that today's proposed rule makes no specific provision for the inclusion of these types of sources. Since EPA believes there may be significant benefits to

integrating any new source review requirements with the NO_x Budget Trading Program, inclusion in the trading program of new sources that do not meet the proposed applicability criteria may well be helpful to both those sources and States that are concerned about finding offsets for new sources. The EPA solicits comments on allowing the opt in of new and modified sources, not otherwise subject to the program, in order to satisfy the section 173 offset provisions through participation in the trading program. Commenters should consider how these sources would be integrated into the trading program in a simple and straightforward manner which would not compromise any of the program's goals or requirements. For example, EPA expects that any source opting into the trading program would have to meet the permitting, monitoring, and accountability requirements applicable to core sources. At this time, EPA also solicits recommendations on: (1) How the section 173(c)(1) requirements pertaining to the geographic location of offsets can be met under the NO_x Budget Trading Program and (2) how to reconcile the seasonal nature of the proposed rule with the NSR requirements that the total annual tonnage of new emissions increases must be offset.

G. End Use Energy Efficiency and Renewable Energy

1. Background

This Section discusses the potential for a provision within a State's NO_x Budget Trading Rule to recognize and encourage the contribution that energy efficiency and renewables can make in meeting the NO_x budget. The December workshop with State, industry and non-governmental organization representatives included a discussion of a possible role for energy efficiency and renewables. As stated in the December workshop, energy efficiency and renewables can be important components of an effective NO_x reduction strategy. Greater deployment of energy efficiency and renewables technologies cannot only be a cost-effective means of preventing emissions of NO_x. It can also be a cost-effective way of preventing emissions of greenhouse gases, such as carbon dioxide (CO₂), and toxic substances, such as mercury.

There is a large potential for greater energy efficiency improvements that reduce energy demand. In addition, renewable resources that reduce demand at the consumer level are available, including technologies that

generate electricity, such as rooftop photovoltaics, and technologies that reduce electricity demand such as solar hot water heaters. Greater penetration of energy efficiency and distributed renewable resources in the marketplace can save companies and individuals money and promote economic growth, thus reducing the economic cost of compliance with environmental requirements. These savings can be passed on to consumers through lower electricity rates.

The EPA has examined the potential for energy efficiency and renewables in the SIP call region. The most recent information on this potential comes from the Department of Energy's (DOE's) "5-lab study," which quantifies the potential for energy efficiency and renewables to reduce carbon emissions in the U.S. via two scenarios. The first is the study's "Efficiency" case which consists of the potential for cost-effective energy efficiency and renewables technologies to penetrate the market given an invigorated promotion effort for greater market transformation. The second scenario is the "High Efficiency" case, which demonstrates the potential for emissions reductions from energy efficiency and renewables measures that are optimistic, but feasible to undertake. Both the DOE study and the findings and results from similar analyses that have been conducted in the last several years in different States or groups of States within the proposed ozone transport rulemaking region show substantial potential for NO_x reductions and ancillary benefits from greater adoption of energy efficiency and renewable technologies. According to an analysis based on the DOE 5-lab study, approximately 1,700 Tbtu of energy can be saved by 2007, resulting in over 100,000 tons of avoided seasonal NO_x emissions in the SIP call region if the area achieves the increased rate of energy efficiency improvement outlined in the "Efficiency" case. These potentials increase to over 3,000 Tbtu of energy saved and over 200,000 tons of avoided seasonal NO_x emissions (or 13 percent of the total tons of reductions needed) under the 5-lab "High Efficiency" case. The associated carbon emissions reductions are nearly 30 million metric tons of carbon equivalent (MMTCE) by 2007 for the "Efficiency" case, and over 50 MMTCE for the "High Efficiency" case.

In a recent study of energy efficiency opportunities in the mid-Atlantic States region (including New York, New Jersey and Pennsylvania), the American Council for an Energy-Efficient Economy (ACEEE) concluded that over

2,800 TBtu of energy could be saved in this area by 2010 under their aggressive efficiency scenario. This translates into over 200,000 tons of seasonal NO_x reduced by 2007, and nearly 160 million metric tons (MMT) of carbon emissions avoided. Enhanced deployment of energy efficiency technologies and distributed renewable resources, therefore, may be an important policy tool for States to consider in achieving multiple environmental objectives.

There are substantial economic benefits and compliance cost implications for using energy efficiency as a NO_x reduction strategy in the proposed ozone transport rulemaking region. The economic benefits of achieving the 5-lab study's "Efficiency" case level of improvement include the potential for creating a net increase of over 80,000 jobs. For the "High Efficiency" case, over 160,000 new jobs would be created. The mid-Atlantic study shows a net increase of approximately 16,000 new jobs created in the region, with a corresponding increase in gross State product (GSP) of over \$60 billion by achieving the efficiency potential outlined in the study. Taking advantage of all of the energy efficiency and renewables potential in the SIP call region prior to applying other NO_x control methods, such as selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR), can lower the overall compliance costs of meeting the NO_x budget as well as reduce overall societal costs. The EPA's initial analyses show that compliance costs can be reduced in 2005 by nearly \$150 million through accelerated adoption of energy efficiency and renewables consistent with the 5-lab study in the proposed ozone transport rulemaking region.

2. Energy Efficiency and Renewables Set-Aside Options

The EPA recognizes and has performed analyses that demonstrate the benefits of aggressive adoption of energy efficiency and renewables technologies as a NO_x reduction strategy in the proposed NO_x Budget Trading Program for the proposed ozone transport rulemaking region. However, EPA is not proposing a specific approach for an energy efficiency and renewables set-aside for NO_x Budget Trading Program in this action.

During the December workshop and in the discussion paper that was distributed afterward, EPA stated that an energy efficiency and renewables set-aside approach put forward by the Agency should meet three important goals: (1) reduce the total economic cost of meeting the proposed NO_x budget, (2)

promote energy efficiency and renewables as effective NO_x and pollutant-reducing strategies through the accelerated adoption of such practices and technologies, and (3) reduce future CO₂-related liabilities by recognizing the positive impacts of energy efficiency and renewables on carbon emissions. In addition, EPA stressed that two key principles should guide the design of its approach for a set-aside program: (1) A set-aside program should encourage actions that increase efficiency that would not otherwise occur without the program, and (2) the set-aside program should maintain the integrity of the NO_x cap. The EPA noted in its December workshop discussion paper that the difficulties in designing an approach consistent with our objectives of reducing cost and meeting the goals and principles above are not trivial. At this time, EPA does not have adequate information to propose an approach that will accomplish the goals and meet the Agency's purposes, while adhering to the principles and addressing the design issues outlined at the December workshop.

The EPA is not including a proposal in this notice to include an energy efficiency and renewables set-aside in the NO_x Budget Trading Program. The EPA continues to consider whether and how to develop an approach to include energy efficiency and renewables in the NO_x Budget Trading Program. As part of this action, EPA today requests that interested parties submit information addressing the design issues and questions that require further investigation which are outlined below. Should EPA conclude in the future that there is adequate information to design an approach for including an energy efficiency and renewables set-aside to meet its purposes, EPA will either issue a proposal or guidance as appropriate.

While EPA continues to examine the possibility of designing an approach for a set-aside, EPA encourages States to consider including energy efficiency and renewables in their State NO_x Budget Trading programs.

• Issue (1) Rewarding Efficiency Improvements Above "Business as Usual"

In developing an approach for energy efficiency and renewables in the NO_x Budget Trading Program, EPA believes it is important that the system encourage actions that increase the penetration of energy efficiency and renewables improvements beyond the normal rate at which they are currently and continuously incorporated into all sectors of the U.S. economy. Some

remarks received in response to the discussion paper were of the opinion that it is unnecessary to be concerned with business-as-usual projects (or "anyway" tons or "anyway" projects), specifically because the respondents believe that the restructuring of the electric utility industry will result in the decline of demand side management (DSM) programs and reduce the rate of business-as-usual energy efficiency and renewables adoption to below a meaningful level. However, because energy efficiency projects often yield very attractive internal rates of return, many above 35 percent, and because there are many public information programs and private businesses aiming at getting more energy efficient and renewables products and choices into the market, there is likely to be a continuing level of energy efficiency improvement in the U.S. economy. Allocating NO_x allowances to existing, mandated and expected energy efficiency and renewables measures means that fewer allowances will be available to encourage incremental projects. The issue is in determining how to differentiate between the various types of measures and, particularly in future years, determining what types of measures were likely to have happened without the set-aside program. In regard to the amount of "business-as-usual" energy improvement due to energy efficiency and renewables, EPA requests the following information:

Question 1. How do States determine the amount of "business-as-usual" energy efficiency and renewables occurring across all sectors of the economy?

Question 2. What information do States and other entities have about the amounts and types of energy efficiency and renewables that have been occurring over the last 3-5 years?

The EPA suggested three options for determining projects eligible for set-aside NO_x allowances in its December workshop discussion paper. One option is to limit the reward of "business-as-usual" projects may be to require that projects attain a sizable efficiency improvement, over and above a set minimum. This will require the development of a set of average energy improvement metrics for the residential, commercial and industrial sectors. As an example, projects for efficiency in the commercial building sector would be compared to a target set below the average energy use per square foot that achieves a particular and higher level of efficiency than that of "business as usual" in that sector. Only projects that meet or exceed the target would be eligible to be awarded allowances, and

the size of the award would be based on the increment of improvement between the "business as usual" average and the achievement or exceedance of the target.

Two other options involve varying the length of the efficiency reward for different types of energy efficiency improvement measures, or restricting the number of NO_x allowances available to certain types of improvements. Under the second approach, certain types of energy efficiency improvements that have already been implemented or are likely to be implemented without an additional incentive (e.g., regulatorily mandated improvements unless implemented early, or energy efficiency improvements of products that bring them up to the industry average) would be allocated a shorter stream of allowances, while new and innovative energy efficiency improvements (incremental projects above "business-as-usual") would be allocated a longer stream of NO_x allowances. Under the third approach, the number of NO_x allowances allocated to energy efficiency improvements likely to occur anyway is restricted to some portion (e.g., 50 percent) of the full number of NO_x allowances they qualify for given the actual or expected load reduction.

Of the three options, the first seems to offer the best possibility for limiting rewards for energy efficiency improvements that would have occurred anyway. Options two and three would allocate a potentially smaller portion of NO_x allowances to projects that have already been implemented, are mandated, or are deemed to belong to a classification of improvements judged to be those likely to occur anyway. Either of these latter two approaches is difficult because it requires that a State be able to differentiate between those measures that would have been implemented anyway versus other types of energy efficiency improvements. Option one would require that projects attain a sizable efficiency improvement, over and above a set minimum. This would require the development of a set of energy improvement metrics for the residential, commercial and industrial sectors to use to distinguish baseline from accelerated or enlarged adoption of energy efficiency and renewables. One possibility for energy efficiency projects under this option would be to develop a set of energy use or intensity benchmarks that these projects would be required to meet or exceed in order to be eligible.

The EPA could use information from its own energy efficiency programs, such as Energy Star Buildings and Energy Star Homes, as a starting point for developing benchmarks in the

residential and commercial buildings sectors. For example, in its Energy Star Homes program, home builders agree to construct new homes that will be 30 percent more energy efficient than the Model Energy Code (MEC). The EPA could establish the "30 percent better than MEC" as the benchmark that must be attained for applicants wishing to receive set-aside NO_x allowances based on new home developments that are more energy efficient. The applicant would have to first demonstrate that the homes built meet this benchmark, and then could be awarded NO_x allowances based on the improvement that reaching the benchmark represents in that sector. In considering the development of benchmarks to limit the rewarding of "business-as-usual" projects, EPA requests the following information:

Question 3. Do States and potential applicants for energy efficiency and renewables NO_x allowances have sufficient information about energy improvement metrics (e.g., energy use per square foot, MEC) or can they gather sufficient information about upgrade projects in order to be able to compare the results of these projects with a benchmark developed for that category (residential, commercial or industrial) of upgrade?

Question 4. If so, specifically what types of energy improvement measurements and information about upgrade projects are recorded or gathered by States and/or potential applicants for energy efficiency and renewables upgrades or projects?

Question 5. In addition to Energy Star Buildings and Energy Star Homes what other options are there for developing benchmarks in the residential and commercial buildings sectors?

Question 6. What kinds of benchmarks could be developed for industrial sector energy efficiency and renewables improvements, and how could they be developed? Since industries have both process and non-process energy use, how could benchmarks be developed for process (e.g., motors, compressed air, fans) and non-process (facility lighting and HVAC) efficiency measures in the industrial sector?

Question 7. In order to be able to use benchmarks for industrial sector energy efficiency it is necessary to separate the facility's non-process energy use from its process-related energy use. What methods might be used for distinguishing between an industrial facility's non-process energy use from its process energy use?

• Issue (2) Appropriate Size of the Set-Aside Allowance Pool

The EPA indicated in the December workshop discussion paper that the energy efficiency and renewables allowance pool within the budget for the NO_x Budget Trading Program should be set at an amount large enough to maximize the opportunities to promote energy efficiency and renewables projects, but not so large as to overstate the efficiency potential so that there are excess NO_x allowances that go unallocated. As pool size is related to the rewarding "business-as-usual" issue, EPA listed two alternatives in the December workshop discussion paper: (1) Limit the size of the pool and allocate NO_x allowances based on criteria that would minimize their allocation to "business-as-usual" projects, or (2) establish a larger pool so that there is room for both "business-as-usual" projects as well as incremental energy efficiency projects being undertaken. Using three different methods and the projections for energy efficiency potential from the 5-lab study, EPA showed that a set-aside pool in the range of 5-20 percent of the total electricity NO_x budget for a State or across the region could be considered

Note: these figures do not include a portion of the nonutility boiler NO_x budget.

The EPA received remarks indicating that a set-aside pool should be not less than 20 percent to allow for the full potential of both energy efficiency and renewables projects. Another recommendation made to EPA is that no specific pool size should be set within the budget for the NO_x Budget Trading Program. Rather, a State could opt to take all proposals for efficiency and renewables "off-the-top" of the allocation pool, and allocate the remainder to NO_x Budget units. Other respondents to the December discussion paper remarked that an "off-the-top" scheme would allow too little certainty for NO_x Budget units in planning for how to meet the NO_x cap. With regard to pool size, EPA requests the following information:

Question 8. What is a reasonable estimate for a pool size within the budget for the NO_x Budget Trading Program to award incremental energy efficiency projects that would not be undertaken without the availability of set-aside NO_x allowances?

Question 9. For States that may be interested in an "off-the-top" allocation method as opposed to a fixed percentage set-aside for energy efficiency and renewables projects, what allocation mechanisms could be designed to provide greater certainty to NO_x budget

units about the number of non-set-aside NO_x allowances for planning purposes for the upcoming ozone season?

Once a pool size is determined, the main issue of concern is how to translate load reductions into allowances. The December workshop discussion paper outlines three basic methods under consideration by EPA. The first method would be to develop a flat, region-wide, average NO_x rate that represents the average NO_x emissions reductions expected for a kWh reduced. For this method, the rate could be based on one of three NO_x rates: (1) The average NO_x rate calculated by dividing the total NO_x emissions in an area on an annual or seasonal basis by the total fossil fuel generation in that area for the same time period, expressed in lbs per kWh State or region specific data; (2) an average NO_x rate calculated by multiplying the proposed ozone transport rulemaking NO_x rate of 0.15 lbs per mmBtu by a system wide average heat rate in Btu per kWh; or (3) an average "marginal" NO_x rate in lbs per kWh representing the generation mix most likely to be backed out on the "margin." This marginal NO_x rate is calculated by dividing the difference in NO_x emissions in an uncapped scenario between a reference or baseline amount of electricity demand and a reduced amount of demand (e.g., from energy efficiency) by the amount of generation (kWh) avoided due to the reduction in energy demand.

The second method would be to develop a regional or a State specific NO_x rate (average or marginal) in lbs/kWh utilizing the IPM model which would more accurately take into account the generation mix in each State and the power pools in which they participate. Developing a regional or a State specific rate would therefore take into account the amount of NO_x reduction actually attributed to energy efficiency in an uncapped NO_x environment. This method would likely result in different NO_x factors for each State. The third method would be to develop measure-specific marginal NO_x rates which would more accurately represent the load shape associated with particular energy efficiency measures (i.e., commercial lighting or industrial motors), or alternatively, NO_x factors for "typical" residential, commercial and industrial loads. This method would therefore more accurately represent the marginal generation units that would likely be dispatched less.

The third method, if used to develop measure-specific factors, could potentially result in dozens of different NO_x rates and would likely be too administratively burdensome. The first

and second methods may result in either overstating or understating emissions reductions for a particular State. One respondent expressed a preference for State-specific NO_x factors to be used in translating energy savings into NO_x reductions and the corresponding NO_x allowances. Although State-by-State factors may more accurately reflect the fuel mix of a particular State, the use of different rates and whether States consistently use either an average or a marginal NO_x rate may impact the value of allowances. If inconsistent methods are used from one State to the next, then one State's efficiency allowances may be construed to be of greater value than another State's. In order to evaluate the three methods or an alternative to these methods, EPA requests the following information:

Question 10. What access do States or end users have to information necessary to obtain or calculate the average NO_x rate or the marginal NO_x rate for their State or power pool that may be used for translating energy efficiency savings into tons of NO_x reductions?

Question 11. If a marginal NO_x rate is not available or calculable and an average NO_x rate is used, how would a State or end user take into account the type of different fossil fuel mix that the efficiency savings is coming from? Is this necessary to do?

• Issue (3) Eligibility of and Allocation to Applicants and Projects

Although the scope of the set-aside comprises appropriate end use energy efficiency and distributed renewables improvements, it is not intended to limit the types of entities that may apply for allowances based on completed end use efficiency and renewables upgrades. But keeping in mind EPA's overall objective of rewarding real reductions, States may want to consider what types of end users could implement efficiency and renewables actions that best fit the criteria of providing real reductions, and focus their efforts on providing incentive for those types of entities. The EPA generally believes that entities that would be provided this incentive should be entities that would not otherwise be holding allowances for the purposes of being able to emit NO_x. Entities holding such NO_x allowances for these purposes have a direct incentive to take actions that will lower their need for NO_x allowances or free up NO_x allowances for trading, and so do not need an additional incentive. With regard to the industrial sector, the previous discussion and questions about whether benchmarks can be determined for improvements in the industrial

sector, and whether or not industrial building energy use can be separated from industrial process use may be relevant to this discussion. Concerning which end users it may be more or less appropriate to award with NO_x allowances for reductions achieved through greater energy efficiency and use of renewable resources, EPA requests the following information:

Question 12. In determining which entities should be eligible to apply for set-aside NO_x allowances, is it appropriate to limit eligibility to those entities that would not otherwise be holding NO_x allowances for the purposes of being able to emit NO_x? If not, why not?

In addition, for reasons of administrative ease, it may be best for entities to be required to meet a minimum level of efficiency improvement or NO_x reduction. The purpose of this requirement would be to prevent the submission of large numbers of applications for small amounts of reductions, which may cause an excessive administrative burden, particularly in terms of time required for processing and verification. For example, applications for NO_x allowances of less than one ton of NO_x may be impractical because an allowance is defined as one ton of NO_x emissions. It may be advisable to set a higher threshold of NO_x reductions, such as five or ten tons or more, as a minimum for application. This would mean that an applicant for set-aside NO_x allowances would have to bring in energy efficiency and renewables projects that total no less than five or ten tons of NO_x reductions in order to be considered for an award. Concerning minimum thresholds for an award, EPA requests the following information:

Question 13. How many applications could a State reasonably review on an annual basis for the set-aside without causing an inordinate administrative burden? What would be the incremental administrative cost associated with the application process for the set-aside?

There is also a concern about whether or not the location of the applying entity or where the energy efficiency or renewables improvement is implemented matters. The location of the applying entity theoretically should not matter, as long as the energy efficiency and renewables improvements result in NO_x reductions in the proposed ozone transport rulemaking region.

However, there may be concern about awarding allowances for end use efficiency for projects in a State within the ozone transport rulemaking region where the load reduction or the majority

of the load reduction is realized at an electricity generating unit that is located outside the NO_x Budget Trading Program region. If it is likely that the end use efficiency will result in load reductions occurring outside of the proposed ozone transport rulemaking region, then the amount of NO_x allowances to be awarded should perhaps be adjusted to exclude the reductions occurring outside the region. This is in keeping with the principle of maintaining the integrity of the NO_x budget. However, in order to do this, States must be able to reasonably estimate what amount of generation is produced within the region versus that which is being imported from outside the area. In this regard, EPA requests the following information:

Question 14. Will States be able to reasonably estimate the amount of generation produced within their States and being imported from within the proposed ozone transport rulemaking region versus that which is being imported from outside the region? How?

Question 15. Is it necessary to make adjustments that would be to account for reductions from energy efficiency or renewables occurring outside the proposed ozone transport rulemaking region, and if so, what mechanisms are there for doing so?

There is also the matter of whether allowances for energy efficiency improvements should be awarded for actions that occur during the years prior to the start date for the NO_x Budget Trading Program. Since the first year for the trading program is 2003, it may be possible to award NO_x allowances for energy efficiency and renewables measures that are initiated and come on line between the finalization of the proposed NO_x Budget Trading Rule and the 2003 control period. This would effectively give end users credit for early actions taken to become more energy efficient or to bring on new renewable resources prior to the need for additional/other controls to meet the NO_x budget. In considering giving credit for early actions in the form of NO_x allowances from the set-aside pool, EPA requests the following information:

Question 16. What amount or level of incremental energy efficiency improvements or renewable resources, greater than "business-as-usual," could/ may come on line if credit for early action is given in the form of NO_x allowances from a set-aside that would be available for trading once the trading program begins?

Question 17. If no incremental projects could come on line under an early credit scheme, what are the barriers preventing them?

Another topic of importance in this area is the timing of applications for projects to be considered for NO_x allowances and how entities should apply. This concerns whether or not an end user may be awarded energy efficiency or renewables NO_x allowances prior to the implementation of the improvement, or if an award can only be made after the improvement is in place and has demonstrated results. While it would be unwise to award allocations based on estimated savings alone, greater incentive is provided to potential projects if the applicant has some degree of reasonable certainty of receiving allowances for a project that is being considered, provided that the expected energy savings and NO_x reductions are achieved. One option is to design a two-step application process, where an applicant makes a submission sufficiently prior to the first ozone season for which that efficiency/renewable project will be operational. The State would review the project proposal and pre-qualify that the project is eligible for allowances. Then prior to an ozone season, the applicant must make a demonstration (e.g., of six months or more) and verify whether the appropriate efficiency standard(s) or benchmark(s) has been met. If the demonstration and verification requirements are met, the State would then issue the appropriate amount of an allowance award. This option may provide more certainty to the project sponsor or applicant prior to undertaking the project and may give the State a better estimate of what level of activity will occur for efficiency set-aside allowances prior to the ozone season. However, this option will require two rounds of review for each project or application and so may be more administratively burdensome.

Another option would be to use a single-step application process, where applications would be made several months ahead of an ozone season for projects that are in place and can demonstrate and verify reductions at time of application. If the project meets eligibility criteria and expected reductions have occurred in line with efficiency standard or benchmark, the State would certify that applicant be awarded allowances for the appropriate ozone season(s). This second option may be less burdensome, but it may be more difficult to determine under this method which projects could be interpreted as "business-as-usual" types of projects, since they will already have been put in place without any guarantee of receiving NO_x allowances. In regard to determining the process for a project

to apply for allowances, EPA requests the following information:

Question 18. Which option for reviewing and processing of applications for energy efficiency and renewables NO_x allowances is preferable and why? What is the estimated administrative burden associated with each option?

Question 19. Are there other options for reviewing and processing applications that offer a reasonable degree of incentive and certainty to applicants while minimizing the administrative burden to States? What is the estimated administrative burden?

The final matter in this issue area is how to handle over or under subscription of an energy efficiency and renewables set-aside pool. Two options outlined in EPA's December workshop discussion paper for dealing with leftover NO_x allowances in a given year or period include: (1) Banking the allowances to be used for potential shortfalls in future years, or (2) retiring them. The two options outlined in the December workshop discussion paper for dealing with shortfalls in NO_x allowances in a given year or period include: (1) Deferring allocation of allowances for later applicants in the cycle until the following year, or (2) setting aside a larger portion of allowances from the NO_x budget to award end use energy efficiency and renewables if shortfalls become a chronic problem. One response to this issue in the December workshop discussion paper recommends not setting a specific level of allowances in the set-aside, but rather allocating all NO_x allowances necessary to cover the eligible applications for efficiency and renewables measures in a given period first, then allocating the balance of allowances to NO_x budget units. However, the EPA is concerned that this method provides too little certainty to NO_x budget units in terms of being able to plan for the number of allowances they will need for a given ozone season and to consider allowance trading. Another suggestion received recommends discounting the allowances in the pool sufficiently to be able to cover any over subscription in a given period. This method would likely result in differences in the amount of allowances allocated to equivalent projects that are submitted for consideration in different periods. With respect to under or over subscription of the allowance pool, EPA requests the following information:

Question 20. Which of the options listed above for over subscription and for under subscription of the set-aside

pool is more administratively feasible for a State, and why?

Question 21. What other options or suggestions could be considered for handling the over subscription or under subscription of the set-aside pool?

• Issue (4) Persistence of Efficiency Award

Because energy efficiency and renewables measures result in permanent improvements in energy use and NO_x reductions, it may be appropriate to award energy efficiency and renewables NO_x allowances to these projects for more than one year. This provides a stream of allowances and provides greater incentive for incremental projects to be undertaken. There are tradeoffs, however, between the length of the stream of allowances awarded to a project and the ability to maintain sufficient availability of allowances over time to provide incentive for new projects that might not otherwise be financially viable. A shorter stream of energy efficiency NO_x allowances provides greater availability of such NO_x allowances over time to reward new projects, but provides less of an incentive (due to lower value) to undertake such projects. A longer stream provides more financial incentive, but limits the availability of allowances for future projects.

One respondent to the EPA December workshop discussion paper suggested that a five-year stream of allowances should be sufficient to provide incentive for new projects that might not otherwise be financially viable. And since the proposed NO_x Budget Trading Rule sets a five-year period as the duration of the initial allowance allocation to NO_x budget units, EPA believes that it is appropriate to set the duration of energy efficiency awards to five years. With regard to an appropriate duration of award for energy efficiency and renewables projects, EPA requests the following information:

Question 22. How large an incentive would a multi-year or a five-year stream of allowances provide for new energy efficiency or renewables projects that might not occur otherwise?

Question 23. What kinds of incremental projects might be implemented as the result of a multi-year or five-year stream of NO_x allowances?

• Issue (5) Verification Requirements and Procedures

In order to ensure that energy savings are measured in a reliable and consistent manner that provides valid information about the NO_x reductions achieved, and that can be used in

translating these savings into their associated NO_x reductions for purposes of awarding NO_x allowances, a set-aside program should have effective verification requirements and procedures.

Some respondents to the December workshop discussion paper affirmed the need for strong measurement and verification protocols, but also stressed that it is important that the methods chosen should not be too complex. In addition, it was suggested that the methods and the degree of verification fit the type of measure and the entity. However, it is important that the methods used for measurements are reasonably consistent among all entities participating in any set-aside programs in the proposed ozone transport rulemaking region. Further, some respondents stated that the methods used for awarding set-aside allowances should be as accurate as the methods used for monitoring NO_x budget units for their use of allowances.

There are three major existing energy efficiency measurement protocols that may be used to verify reductions for purposes of a set-aside program: (1) The Conservation Verification Protocol (CVP) of the Acid Rain Program, (2) the International Performance Measurement and Verification Protocol (IPMVP) developed by DOE with energy service company (ESCO) input, and (3) New Jersey's Measurement Protocol for Commercial, Industrial and Residential Facilities (MPCIRF).

The CVP prescribes measurement methods and confidence levels for utilities to use in claiming sulfur dioxide (SO₂) allowances for savings produced by DSM measures. Although the CVP is comprehensive, this protocol may not be appropriate to EPA's purposes in a NO_x set-aside program because the CVP was developed for utilities, and the set-aside focuses on demand side improvements. DOE developed the IPMVP with ESCOs so they could use them with their customers to develop performance contracts for efficiency measures. The IPMVP however, has no regulatory component, and some of the verification methods it prescribes do not require the actual measurement of energy savings. The MPCIRF prescribes precise monitoring and verification methodologies by project type and also provides procedures for developing new monitoring and verification methods. In order to determine what kinds of reliable protocols exist or may need to be developed, EPA requests the following information:

Question 24. What is the degree of reliability and validity of the

verification methods used in these protocols? What is the administrative burden associated with the use of one or more of these protocols?

Question 25. Are there particular parts or sections of one or more of these protocols that work particularly well and should be included in or used as a model in developing a new measurement and verification protocol? Why?

Question 26. What other protocols besides the CVP, the IPMVP and the MPCIRF exist that States or other entities have used to monitor and verify energy efficiency projects?

Question 27. What is the degree of reliability and validity of the verification methods used in these alternative protocols, and what is the associated administrative burden?

Where the degree of reliability and validity in the measurement of energy efficiency and renewables improvements is low, it is possible for a tradeoff to be made between the level of verification required (i.e., the certainty of load reduction) and the possibility that a given measure will not result in the expected load reduction. A discount factor or rate that is commensurate with the level of uncertainty of the reductions can be applied to lower the total amount of load reduction that would be awarded allowances. The less stringent the verification requirements, the higher the discount rates should be set.

One option in developing alternative verification/NO_x allowance discounting strategies is to determine the uncertainty bounds associated with a specific verification approach, and then set the discount rate such that there is, for example, a 90 or 95 percent probability that all of the allowances that would be awarded represent true load reductions. For a more conservative approach, the rate could be set at a 99 percent probability level. One variation on this option is to establish several verification/discount strategies rather than just one. These strategies could range from a low verification/high discount rate to a high verification/low or no discount rate. With regard to verification/allowance discounting strategies, EPA requests the following information:

Question 28. What are other options to the verification/allowance discounting strategies outlined above?

Question 29. What kinds of record keeping are currently done by States or others to monitor the progress and track the results of energy efficiency and renewables projects being done?

Question 30. Which option seems most manageable for States? Why?

VI. Interaction with Title IV NO_x Rule

On April 13, 1995, EPA promulgated NO_x emission rate limitations (in lb/mmBtu) for certain types of coal-fired utility boilers for the Acid Rain Program under title IV of the Act (60 FR 18751, April 13, 1995). The EPA set limits of 0.45 and 0.50 lb/mmBtu, respectively, for tangentially fired boilers and dry bottom, wall fired boilers ("Group 1 boilers"). On December 19, 1996, EPA promulgated additional NO_x emission rate limitations for Phase II of the program, i.e., revised limits for Group 1 boilers and new limits for cell burner, cyclone, wet bottom, and vertically fired boilers ("Group 2 boilers") (61 FR 67112, December 19, 1996). In setting the December 19, 1996 NO_x limits, EPA also promulgated a final rule provision (which was to be included in 40 CFR part 76 of the acid rain regulations) that addressed the relationship between NO_x requirements under titles I and IV of the CAA. As part of recent litigation in which the December 19, 1996 regulations were upheld by the Court (*Appalachian Power v. U.S. EPA*, No. 96-1497, slip op. (D.C. Cir., February 13, 1998)), EPA requested a remand, which was granted by the Court, of 40 CFR 76.16 in order to provide additional opportunity for public comment on the provision. The EPA is therefore including in today's action a proposed 40 CFR 76.16 that is largely the same as the remanded rule provision. Obviously, in proposing a new 40 CFR 76.16, EPA is not requesting comment on any aspect of the December 19, 1996 final rule, including any issues addressed by the Court in *Appalachian Power*.

The EPA believes that NO_x reduction initiatives under title I and title IV should be coordinated, consistent with statutory requirements, in a way that promotes the goal of achieving necessary NO_x reductions in a cost-effective manner. In particular, today's proposed 40 CFR 76.16, which is proposed to be added to 40 CFR part 76 of the Acid Rain regulations under title IV, promotes this goal through provisions that address the interaction of: (i) efforts under title I, e.g., the proposed transport rulemaking, to reduce NO_x emissions through cap-and-trade programs; and (ii) the establishment of the title IV Phase II NO_x limits, i.e., the revised limits of 0.40 and 0.46 lb/mmBtu respectively for tangentially fired and dry bottom, wall-fired utility boilers and the new limits of 0.68, 0.86, 0.84, and 0.80 lb/mmBtu respectively for cell burner, cyclone, wet bottom, and vertically fired utility boilers.

Many utility boilers subject to the title IV Phase II NO_x limits are likely to face significant, additional NO_x reduction requirements as a result of the proposed SIP call. If, as EPA recommends, the proposed SIP call requirements are implemented in the form of a cap-and-trade program and the program results in utility NO_x emission reductions exceeding those that would be required by utility boilers complying with title IV Phase II NO_x limits, EPA believes that the cap-and-trade system should be relied on, in lieu of the title IV Phase II NO_x limits, to the fullest extent permissible under the CAA. Under such an approach, the reductions achievable under title IV will still be realized but in a manner that allows utilities to take advantage of the cost savings that result from flexibility, within a cap, to trade allowances among utilities, as well as among boilers owned by a single utility. Under the Acid Rain Program in title IV (as under other emission limit programs), each individual utility boiler must generally meet the applicable NO_x limit; only boilers with the same owner or operator may average their emissions and comply with a weighted average NO_x limit under a NO_x averaging plan.²⁰ Relief from the title IV Phase II NO_x limits is appropriately limited to utility boilers in the State or States covered by the cap-and-trade regime.

Under today's proposed § 76.16, the Administrator retains the authority to relieve boilers subject to a cap-and-trade program under title I from the Phase II NO_x limits under section 407(b)(2) if the Administrator finds that alternative compliance through the cap-and-trade program will achieve the same or more overall NO_x reductions from those boilers than will the section 407(b)(2) emission limitations. Section 76.16 sets forth the criteria that the cap-and-trade program must meet in order to ensure that the program will yield the necessary NO_x reductions. Since alternative compliance will be allowed only if the necessary NO_x reductions will still be made, this approach is consistent with the purposes of title IV and the Act in general.

The EPA believes that it has the authority under section 407(b)(2) to provide relief from the revised Group 1 limits and the Group 2 limits where the cap-and-trade program, replacing those limits, provides for the same or greater NO_x emissions reductions and thus the same or greater environmental

²⁰ In addition, if it is demonstrated that a boiler with installed NO_x control technology designed to meet the applicable standard NO_x limit cannot meet that limit, the boiler may be assigned a less stringent, alternative emission limitation under title IV.

protection. With regard to Group 1 boilers not subject to the existing Group 1 limits until 2000 (i.e., Group 1 Phase II boilers), section 407(b)(2) provides that the Administrator "may" establish more stringent emission limitations if more effective low NO_x burner technology is available (42 U.S.C. 7651f(b)(2)). The Administrator exercised her discretion to revise generally the Group 1 limits because more effective low NO_x burner technology is available, and the resulting additional reductions are cost effective, represent a reasonable step toward achieving regional NO_x reductions that are likely to be needed, and are consistent with section 401(b) (61 FR 671137). If it is determined that, for boilers in certain States, NO_x emissions will be the same or lower under a cap-and-trade program than under the revised Group 1 limits (and the Group 2 limits), it is reasonable to conclude that it is not necessary to revise the Group 1 limits for those boilers. Imposing the revised Group 1 limits on boilers subject to such a cap-and-trade program could limit the flexibility of utilities under the cap-and-trade program and thereby limit the potential cost savings from trading. While emissions averaging under section 407(e) provides some flexibility for a utility to overcontrol at its cheaper-to-control boilers and undercontrol at its more-expensive-to-control boilers, averaging is limited by statute to boilers with the same owner or operator. In contrast, under a cap-and-trade program, utilities may overcontrol at some of their units and sell NO_x allowances to other utilities that may undercontrol at some of their units. It is this greater flexibility, within a total annual emissions cap, that provides the opportunity to reduce compliance costs. If boilers subject to a cap-and-trade program are relieved of compliance with the revised Group 1 limits, this will likely result in achievement of reductions in a more cost-effective manner than if the revised Group 1 limits continued to be imposed on these boilers.

Section 407(b)(2) gives the Administrator discretion to make more stringent the initial Group 1 limits established in 1995, i.e., 0.45 and 0.50 lb/mmBtu respectively for tangentially fired and dry bottom wall-fired utility boilers (60 FR 18751), but not to relax these initial limits. Thus, the initial Group 1 limits will apply to Group 1 boilers covered by a cap-and-trade program. While retaining the initial Group 1 limits means that there may be less flexibility than if there were no

section 407 limits on these boilers, relieving the boilers of the revised Group 1 limits still results in some increased flexibility and therefore is likely to yield cost savings.

Similarly, with regard to Group 2 boilers, section 407(b)(2) requires that the Administrator, taking account of environmental and energy impacts, set emission limits that are based on the reductions achievable using available control technologies with cost effectiveness comparable to low NO_x burners on Group 1 boilers. In setting the Group 2 limits, the Administrator relied in part on the additional NO_x reductions that will result and determined that these reductions are cost effective, represent a reasonable step toward achieving necessary regional NO_x reductions, and are consistent with section 401(b) (61 FR 67114). Again, if greater reductions from boilers in a State or group of States can be achieved through a cap-and-trade program in a more cost-effective manner than through imposition of Group 2 limits (and revised Group 1 limits) on the boilers, it is reasonable to relieve those units of the Group 2 limits. Taking account of these environmental and cost impacts, the Administrator can, in such circumstances, allow the cap-and-trade program to apply in lieu of the Group 2 limits.

Proposed 40 CFR 76.16 establishes the procedural and substantive requirements for relieving boilers of the revised Group 1 limits and the Group 2 limits. The proposed rule itself does not grant or require such relief. Instead, under the proposed rule, the Administrator has the discretion to act, on a case-by-case basis consistent with the established procedures, to provide such relief if he or she determines that the substantive requirements are met.

Consideration of whether to relieve boilers under a cap-and-trade program of the section 407(b)(2) limits may be initiated either by a petition by a State or group of States or on the Administrator's own motion. Because of the large number of utility companies and coal-fired boilers and the complexities that would result if relief from the section 407(b)(2) limits were considered on a boiler-by-boiler or utility-by-utility basis, the rule requires that any request for, and any determination whether to grant, such relief be made for an entire State or entire group of States. The cap-and-trade program involved must cover, for an entire State or group of States, all the units for which relief is sought or considered. This approach has the added benefit of making it more likely that the cap-and-trade program involved

will be broad enough to provide a robust NO_x allowance market.

Further, the cap-and-trade program may be established through SIPs or FIPs covering the States involved. The relief from section 407(b)(2) limits is potentially available whether the cap-and-trade program is adopted voluntarily by States or imposed by EPA under title I. State petitions for such relief may be submitted, and the Administrator's consideration of whether to grant relief may begin, before the SIPs or FIPs (including revised SIPs or FIPs) establishing the cap-and-trade program are final and federally enforceable. This allows the process of deciding whether to grant relief from the section 407(b)(2) limits to be coordinated with the processing of these SIPs or FIPs. However, relief may not be granted until the SIPs or FIPs establishing the cap-and-trade program are actually in place, i.e., are final and federally enforceable.

The substantive requirements that must be met by the cap-and-trade program are essentially the same whether the program is implemented through a SIP or FIP and whether the consideration of relief from section 407(b)(2) limits is initiated by petition or on the Administrator's own motion. The Administrator has discretion to grant relief only if the cap-and-trade program meets certain requirements aimed at ensuring that the necessary NO_x reductions will still be achieved and that the program creates an opportunity for cost savings. First, each unit that is in the State or group of States and that would otherwise be subject to title IV NO_x emission limits must be subject to either (i) a cap on total annual NO_x emissions or (ii) two or more seasonal caps that together limit total annual NO_x emissions. This allows for a cap-and-trade program with different caps during different seasons, e.g., a summer cap consistent with the proposed trading rule and a cap for the rest of the year.

Second, the units must be allowed to trade authorizations to emit NO_x within the applicable cap. This element is what provides utilities the flexibility to reduce the costs of making the reductions necessary for achievement of the cap. If a utility demonstrates that relief from the title IV Phase II NO_x limits for units in a given State will make compliance less cost effective by limiting the utility's ability to use NO_x averaging plans to comply with the title IV NO_x limits that will still be applicable to the utility's units, the Administrator is required to take this into consideration in determining

whether to approve such relief for units in that State.

Third, the units must surrender authorizations to emit NO_x (i.e., NO_x allowances) to account for their NO_x emissions during the period covered by the cap. It should be noted that this provision—and indeed the proposed 40 CFR 76.16 in general—do not address, and do not either require or bar, banking of NO_x allowances.

In addition, the units must be required to surrender allowances to account for any NO_x emissions consequences of reducing utilization at the generation facilities covered by the cap and shifting utilization to generation facilities not covered by the cap. This addresses a problem that potentially arises if a cap-and-trade program covers some but not all generation facilities. If, for example, a utility can reduce the use of a unit covered by the cap and offset the resulting reduced generation with increased generation at a unit not covered by the cap, circumvention of the cap may result. Shifting of utilization may be accomplished because of the nature of the electricity industry, which in general operates through an interstate transmission grid to which the generation facilities are connected. Because of the offsetting utilization changes at the two units, the atmosphere may receive the same total amount of NO_x emissions from the units. In addition, since only the reduced-utilization unit is subject to the cap and so allowances are used only to account for that unit's emissions, the unused allowances are available for use by other units subject to the cap. The net result is that the total emissions in the atmosphere (including emissions by the reduced-utilization unit, the increased-utilization unit, and the units acquiring and using the unused allowances) may exceed the cap. This is analogous to the reduced utilization problem in the SO₂ cap-and-trade program in Phase I, during which most units in the U.S. are not covered by the requirement to hold allowances for their SO₂ emissions (58 FR 60950, 60951, January 11, 1993). Section 408(c)(1)(B) of the CAA and 40 CFR 72.91 and 72.92 of the acid rain regulations require SO₂ allowance surrender to account for the emissions consequences of reduced utilization (60 FR 18462–63, 1995).

The NO_x cap-and-trade program must include appropriate allowance surrender provisions to address this problem by requiring NO_x allowance surrender to the extent necessary to account for the increased NO_x emissions, if any, at generation facilities (i.e., combustion devices serving

generators) not covered by the cap. The EPA recognizes that any allowance surrender provisions can only approximate the emissions consequences of shifting utilization from within-the-cap facilities to outside-the-cap facilities, (60 FR 18466). The EPA will evaluate NO_x allowance surrender provisions in light of this limitation and of the importance of adopting provisions that are workable and not overly complicated. The EPA believes that effective NO_x allowance surrender provisions can be developed that are less complex than those in place for reduced utilization in the SO₂ allowance trading program. The EPA also notes that the larger the group of States covered by the cap, and the more comprehensive the coverage by the cap of generation facilities in such States, the smaller the potential for shifting utilization from units under the cap to units outside the cap. The proposed rule, therefore, provides that the Administrator will consider showings that accounting for shifting utilization is not necessary because such shifting will not likely result in higher total NO_x emissions from sources in the State or the group of States involved or other States.

Fourth, the total annual emissions by all units that are subject to the cap and that would otherwise be subject to the section 407(b) limits must be equal to or less than the total annual emissions of such units if they were subject to the section 407(b) limits (without adjusting for alternative emission limitations and NO_x averaging plans). In determining the units' total annual emissions under the section 407(b) limits, the effect of alternative emission limitations—which reduce the amount of NO_x reductions achieved and whose precise levels for individual units would be difficult if not impossible to project—will not be considered. Requiring the cap-and-trade program to yield the same or fewer total annual emissions than the section 407(b) limits without considering alternative emission limitations will help ensure that the environmental benefits of the section 407(b)(2) are preserved under the cap-and-trade program (Economic Incentive Program Rules, 59 FR 16690, 16694, April 7, 1994).

In addition, the effect of averaging will not be considered in determining the units' total annual NO_x emissions because of the following reasons. If averaging is limited to units that are also subject to the cap-and-trade program, averaging is unnecessary to consider separately because it would not affect the total emissions of the averaging units under the section 407(b) limits (60

FR 18756 which explains that, considering actual annual utilization, actual weighted average emission rate of units in averaging plan cannot exceed weighted average emission rate if each unit had emitted at its 40 CFR 76.5, 76.6, or 76.7 limit and 60 FR 18769). If averaging includes units not subject to the cap-and-trade program and those units select emission rates under the plan that exceed the standard limits, this could have the effect of understating the reductions achieved under the title IV limits.

In order to avoid disputes over what period to use in comparing total annual emissions under the cap-and-trade program and the section 407(b) limits, the rule specifies how to select the period. The approach in the rule ensures that actual data is available for such period.

In addition to the substantive requirements for relieving units of the section 407(b)(2) limits, the rule addresses the procedures that the Administrator must follow in determining whether to exercise his or her discretion to grant relief. The Administrator must make this determination in a draft decision, subject to notice and comment, and then in a final decision. The draft decision must set forth not only the determination and its basis but also the specific procedures that will govern the issuance and any appeal of the final decision.

The proposed 40 CFR 76.16 imposes certain minimum procedural provisions that must be set forth in the draft decision. These procedural requirements are closely modeled after the procedures in 40 CFR part 72 of the Acid Rain regulations for the issuance of Acid Rain permits. Notice of the draft decision must be provided by service on interested persons, designated representatives of any sources with units otherwise subject to the title IV Phase II NO_x limits, and the air pollution control agencies in States that may be affected by the draft decision. The State agencies that must be provided notice include not only the States in which the units involved are located, but also neighboring States. The description in the proposed rule of the neighboring States (and areas in which there are federally recognized Indian Tribes) on which notice must be served is based on the provisions of the definition of "affected States" and the affected State review provisions in the 40 CFR part 71 regulations, which govern federal issuance of title V operating permits (61 FR 34202, 34229, and 34242–43, July 1, 1996). Notice must also be provided in the Federal

Register and equivalent State publications. Notice in newspapers in general circulation in the areas in which the units involved are located is not required. The EPA maintains that newspaper notice in these circumstances is unnecessary, particularly since any NO_x cap-and-trade program being evaluated will have to go through notice and comment in order to be included in a SIP or FIP. Newspaper notice could also be unworkable in light of the number of units and States that could be involved.

The provisions for public comment period and public hearing are essentially the same as those in 40 CFR part 72. Notice must be given of the final decision in the same manner as notice of the draft decision. Any appeals of the final decision are governed by 40 CFR part 78, which governs other acid-rain-related decisions of the Administrator.

Finally, after the Administrator decides to relieve units of the section 407(b)(2) limits in light of a given cap-and-trade program, the SIP or FIP could potentially be revised in a way that may affect the cap-and-trade program and the basis for the Administrator's decision. In such circumstances, the Administrator may reconsider the decision to grant relief from the section 407(b)(2) limits. The ability to reconsider is explicitly preserved in the rule in order to ensure that the environmental benefit of the section 407(b)(2) limits that would otherwise apply to the units involved continues to be realized.

VII. Air Quality Assessment of the Statewide Emissions Budgets

A. Background Information

This Section contains an assessment of the impacts of the proposed budgets on ozone concentrations within the OTAG region. The assessment is based on photochemical modeling of the entire OTAG region for three emissions scenarios, a Base Year, a 2007 Base Case and the proposed statewide budgets. Modeling was performed for the four OTAG episodes using the OTAG version of UAM-V. The emissions associated with each State's budget were modeled collectively to examine the net benefits of the budgets applied across the 23 jurisdictions. The procedures for developing the emissions inputs for the Base Case and the Budget scenario are described in Section VII.B, Emissions Scenarios. A number of metrics were used to evaluate the impacts of the budgets on ozone concentrations, as described in Section VII, C, Analysis of Modeling Results. Finally, the results of

this assessment are provided in Section VII.D, Analysis Results and Findings. All of the model-ready emissions inputs and model predictions can be obtained in electronic form from the following EPA website: <http://www.epa.gov/scram001/regmodcenter/t28.htm>

B. Emissions Scenarios

The EPA modeled three emissions scenarios for each of the four OTAG episodes: Base Year, 2007 CAA Base Case, and 2007 Budget (command and control). Collectively, these scenarios are designed to provide a means to examine the expected impacts of the proposed budgets on ozone within the OTAG modeling domain. The Base Year scenario is intended to generally reflect emissions during the 1994–1996 time period. The CAA Base Case reflects growth to 2007 and controls mandated by the 1990 Clean Air Act Amendments, similar to the OTAG “2007 Base1c” scenario. The 2007 Budget scenario caps NO_x emissions, by State, at the level in the SIP call, as modified to correct minor errors and omissions identified by EPA subsequent to the November 7, 1997 SIP call.

1. Development of Emissions Inputs

a. *Electric Generation Sources.* For electric generation units (EGU), the Base Year is a composite of 1995 and 1996. The 1996 emissions were used unless heat input at a State level was higher in 1995. For those States, 1995 emissions were used. This is consistent with the budget development approach. For the 2007 Base Case, growth was applied to existing sources and CAA mandated controls, including title IV and RACT, were applied to all sources in the modeling domain. No additional controls beyond those mandated by the CAA were applied. For the 2007 Budget scenario, growth was applied to existing sources and the emission rate for each source >25 MWe in the 23 jurisdictions covered by the SIP call was set at .15 lb/mmBtu. Note that this application of the .15 lb/mmBtu limit does not reflect an emissions trading program. For sources outside the 23 jurisdictions but inside the modeling domain, the 2007 CAA Base Case emission rates were retained. Details on the development of these emissions scenarios are described in the revised Budget TSD.

b. *Non-Electric Generation Point Sources.* For the non-EGU point sources, the Base Year is 1995. The emissions are essentially the OTAG 1990 emissions projected to 1995 with a few minor changes. The 2007 emissions are the OTAG Base1c emissions with changes. The main change that was made was to reclassify certain sources as non-utility

where they were incorrectly classified as utilities in the OTAG inventory. For the Budget scenario, a 70 percent reduction was applied to uncontrolled 2007 projected emissions for large sources (i.e. >250 MMBtu/hr). For medium sources (i.e. <=250 MMBtu/hr and emitting more than 1 ton/day) RACT was applied. For all small sources in the 23 jurisdictions and all sources outside these areas but inside the modeling domain, the 2007 CAA Base Case emissions were used.

c. *Mobile and Area Sources.* For the highway, nonroad and stationary area source sectors, EPA used the OTAG 1995 emissions for the Base Year and the OTAG 2007 Basic emissions for the 2007 CAA Base Case. For the Budget scenario, emissions for these sectors were modeled using OTAG “level 0” for highway mobile and OTAG “level 1” for stationary and nonroad area sources within the 23 jurisdictions covered by the SIP call. For areas outside these areas but inside the modeling domain, the 2007 CAA Base Case emissions were used.

2. Emission Summaries

State-level summaries of the weekday NO_x emissions used for modeling the Base Year, 2007 CAA Base Case, and Budget scenario are shown in Tables VII-1 through VII-3, respectively. For the purpose of these summaries, area sources include both stationary and nonroad area sources. The mobile emissions are day-specific and are presented for July 7, 1988. Where partial States are included in the modeling domain, only the emissions from the part of the State in the domain are presented. Table VII-4 shows the percent reduction between the 2007 CAA Base Case and the Budget NO_x emissions used as input for modeling.

C. Analysis of Modeling Results

1. Technical Procedures

The impacts of the proposed budgets on 1-hour and 8-hour ozone concentrations in each State are evaluated using various ozone “metrics”²¹. The focus of the analysis is on ozone predictions above the 1-hour and 8-hour NAAQS in areas which currently measure violations of these standards. This State-level assessment is supplemented with the OTAG Standard Table of Metrics to quantify the impacts in several ozone “problem areas” identified by OTAG. The remainder of

²¹ Metrics are an aggregate of ozone concentrations or the difference in ozone concentrations between two or more scenarios. Metrics are used to provide a means of quantitatively evaluating multiple strategies.

this Section describes the procedures for calculating the metrics used in this assessment.

a. *State-Level Analysis.* Nine metrics were used to quantify the impacts of the budgets on ozone concentrations in each State. The metrics are listed below and defined in Section C.1.a.ii, Procedures for Calculating State-Level Metrics.

1-Hour Metrics

Metric 1—the number of grid cells with 1-hour daily maximum ozone concentrations >=125 ppb.

Metric 2—the magnitude and frequency of the “ppb” reductions in 1-hour daily maximum ozone concentrations >=125 ppb.

Metric 3—the number of days with 1-hour daily maximum ozone concentrations >=125 ppb, and

Metric 4—the “areal exposure” to hourly ozone concentrations >=125 ppb²² (see definition in Section C.1.a.ii, Procedures for Calculating State-Level Metrics).

8-Hour Metrics

Metric 5—the number of grid cells with average second high 8-hour ozone concentrations >=85 ppb.

Metric 6—the magnitude and frequency of the “ppb” reductions in average second high 8-hour ozone concentration >=85 ppb.

Metric 7—the number of grid cells with 8-hour daily maximum ozone concentrations >=85 ppb.

Metric 8—the magnitude and frequency of the “ppb” reductions in 8-hour daily maximum 8-hour ozone concentrations >=85 ppb, and

Metric 9—the number of days with 8-hour daily maximum ozone concentrations >=85 ppb.

i. *Selection of Grid Cells for Analysis.* As noted above, the focus of this analysis is to evaluate the impacts of the budgets on concentrations in areas which violate the NAAQS. In this regard, the first step in calculating the metrics was to select appropriate sets of grid cells for analysis. The approach to grid cell selection is similar to that used in the proposed SIP call, Section II, “Weight of Evidence Determination of Significant Contribution” to quantify the contributions from upwind subregions on downwind nonattainment. Different sets of grid cells were selected for analyzing the results relative the 1-hour NAAQS and the 8-hour NAAQS. For both standards, there are two generic types of grid cells. The first type must meet the following

²² In brief, this metric represents the sum of the concentrations for all hourly ozone values >=125 ppb, divided by the area (km²) covered by predictions >=125 ppb.

two-part test: (a) The grid cell must correspond geographically to (i.e. overlay) a county which currently violates the NAAQS and (b) the grid cell must have predicted ozone concentrations above the concentration level of the NAAQS (e.g. >=125 ppb for the 1-hour NAAQS and >=85 ppb for the 8-hour NAAQS). The second generic type of grid cell must meet only the second part of this two part test. That is, the grid cell must have predicted ozone above the NAAQS but may or may not be associated with a county violating the NAAQS. The 1-hour and 8-hour State-level metrics identified above were calculated for both types of grid cells. The rationale and procedures followed in the grid cell selection process are described below.

First, 1994–1996 ambient monitoring data were used to identify counties which currently violate the 1-hour and 8-hour NAAQS. A list of these counties is contained in the docket for this notice. The grid cells in the OTAG region were then screened to identify those grids which at least partially overlay one of the 1-hour violating counties. The same procedure was followed using the 8-hour violating counties. This process resulted in one set of grid cells associated with areas violating the 1-hour NAAQS and a separate set associated with areas violating the 8-hour NAAQS. The next step was to select the subset of 1-hour “violating grid cells” which also have predicted ozone concentrations above the NAAQS. For this, the 1-hour daily maximum concentrations for the 2007 Base Case model runs were examined to identify which grid cells had predicted values >=125 ppb during any one of the 4 episodes. The grid cells that met this test were then selected for analysis using the 1-hour metrics.

For the 8-hour analysis, the procedures for selecting the subset of grid cells was more complicated due to the distinction between the form of the 8-hour NAAQS and the episodic nature of the model predictions. In this regard, two sets of 8-hour predictions were included for analysis. One set considers those grid cells with 8-hour daily maximum concentrations >=85 ppb in the 2007 Base Case model runs (this set is analogous to the set of 1-hour data described above). Thus, a set of grid cells which (a) corresponds to counties violating the 8-hour NAAQS and (b) has 8-hour predictions >=85 ppb was selected for calculating the 8-hour metrics. However, although the analysis of 8-hour daily maximum values may provide useful information on the impacts of the budgets relative to high 8-hour concentrations, these data do not

necessarily correspond to the form of the 8-hour NAAQS. In this regard, we also considered the approach followed in the proposed SIP call for dealing with this issue. That approach involved using ozone measurements to “link” the fourth highest 8-hour form of the NAAQS, based on three years of data, to the episodes modeled by OTAG (Staff Report-Procedures for Linking the OTAG Episodes to the 8-Hour Ozone NAAQS, October 1997, docket number, II-A-25). The results of that analysis indicate that the episodic average of the second highest 8-hour observed concentrations during the 1991, 1993, and 1995 episodes correspond best “overall” to the fourth highest 8-hour values calculated using 3 years of measured data. For the assessment of the budgets, the second highest 8-hour values averaged across the 1991, 1993, and 1995 episodes were calculated for each grid cell. Those grid cells which (a) correspond to counties violating the 8-hour NAAQS and (b) have an average second high 8-hour prediction >=85 ppb were selected for calculating the 8-hour metrics. Thus, for the 8-hour analysis, separate metrics were calculated for the daily maximum 8-hour values and for the average second high 8-hour values.

The previous discussion dealt with selecting grid cells which meet the two-part “monitoring plus modeling” test for both the 1-hour and 8-hour NAAQS. The other type of grid cell selected for analysis must only meet the model prediction part of the tests described above. The rationale for using this second type of grid cell is discussed next. Although the “violating county” grid cells may be most appropriate for this assessment because they are associated with areas violating the NAAQS, there are a number of limitations with this approach which warrant further consideration. First, in terms of the modeling data, the requirement that high ozone predictions spatially coincide with violating counties may be overly limiting given the uncertainties in the modeled wind regimes associated with the regional nature of the meteorological inputs. Also, the set of “violating county” grid cells excludes all grid cells that are over water and not touching any State land areas. In the real atmosphere, sea breeze and lake breeze wind flows can transport high ozone levels over water back on-shore to affect coastal land areas. This meteorological process is not fully treated in the model because of the coarse horizontal resolution of the grid cells (i.e. 12 km). Thus, high concentrations predicted just offshore may be inappropriately excluded from

an analysis that is limited to the set of “violating county” grid cells. In terms of limitations to the monitoring data, there are relatively large areas in some portions of the domain without any monitors. Since the model predicts concentrations in grid cells which cover the entire domain, the model predictions may indicate an ozone problem in areas without monitors. In an attempt to address these concerns, grid cells were selected for analysis based on model predictions only. The criteria for selecting these grid cells involved the modeling part of the two part test described above. That is, for the 1-hour NAAQS a set of grid cells was selected if they have daily maximum 1-hour predictions >=125 ppb. Similarly, there are two sets of 8-hour grid cells. One set contains those grid cells with daily maximum 8-hour predictions >=85 ppb and the other set contains grid cells with an average second high 8-hour value >=85 ppb. Also, note that in this approach, all grid cells over land as well as over each of the Great Lakes and in a band 60 km (5 grid cells) wide along the East Coast are considered depending on whether or not they passed these 1-hour and 8-hour concentration tests.

ii. *Procedures for Calculating State-Level Metrics.* Each of the 1-hour and 8-hour metrics identified in Section C.1.a, State-Level Analysis, was calculated for the two types of grid cells described above. The procedures for calculating these metrics are described next. The results are discussed in Section D, Analysis Results and Findings. Metric 1 was calculated by first screening the 2007 Base Case 1-hour daily maximum predictions for each grid cell to select only those days with concentrations >=125 ppb. The daily maximum predictions from the Budget scenario for these same days and grids were also selected for analysis. The values from the Budget scenario were then subtracted from the corresponding 2007 Base Case values to derive a set of “ppb” differences for each day²³ and grid cell with ozone >=125 ppb in the Base Case. These “ppb” reductions were then grouped into seven concentration ranges (i.e. 2–5 ppb, 5–10 ppb, 10–15 ppb, 15–20 ppb, 20–25 ppb, and >25 ppb) and tallied by State. Metric 2 is simply a tabulation of the number of grid cells with at least one daily maximum ozone 1-hour concentration >=125 ppb. This metric was calculated

²³ Note that EPA followed the procedures established by OTAG by excluding predictions from the first three days of each episode from the calculation of metrics. These days are considered “ramp-up” days when “initial” conditions to the model might effect predictions.

for both the 2007 Base Case and the Budget scenario. For Metric 3, the number of days with a daily maximum ozone prediction ≥ 125 ppb was tallied for each grid cell for both the 2007 Base Case and for the Budget scenario. These data were aggregated to show the number of grid cells that had 1 day, 2-4 days, 5-9 days, 10-14 days, or ≥ 15 days with predicted 1-hour daily maximum ozone concentrations ≥ 125 ppb. Metric 4 (areal exposure) was calculated by first summing all hourly concentrations that are ≥ 125 ppb (i.e. add together the predicted hourly "ppb" values that are ≥ 125 ppb) for each grid cell individually, for each day. These "daily exposure" values in each grid were then summed by grid cell over all days in all 4 episodes to produce the total exposure for each grid cell. The resulting grid cell exposure values were summed by State for all grid cells (with predictions ≥ 125 ppb) in the State. The State total exposure values were then divided by the total area covered by the grid cells used in the calculations to produce the "areal exposure" values in units of ppb-hrs per km².

Procedures for calculating the five 8-hour metrics are similar to those followed for calculating the corresponding 1-hour metrics except that the 8-hour values (i.e. the 8-hour daily maxima and the average second high 8-hour values) were used in the calculations.

b. OTAG Standard Table of Metrics. As part of OTAG, a Standard Table of Metrics was developed to evaluate the relative effectiveness of OTAG's strategies. This table contains a set of 22 metrics which are calculated for each of 22 geographic areas. The OTAG Standard Table of Metrics for the Budget scenario compared to the 2007 Base Case is provided in the docket. From this full set of data, five of the metrics calculated for the 12 OTAG ozone "problem areas" were selected for analysis because of their relevance to this assessment. These metrics are listed below. The remaining OTAG metrics were not considered as applicable primarily because they do not focus on concentrations above the NAAQS. The 12 OTAG "ozone problem areas" are shown in Figure 1. The other 10 areas for which the OTAG metrics were calculated overlap these 12 areas. Note that the OTAG metrics are calculated using all grid cells that meet the criteria of the individual metrics. No attempt was made by OTAG to relate the grid cells used in these calculations to counties violating the NAAQS.

1-hr Metrics

- Number of grid cells with a 1-hour daily maximum ozone concentrations >124 and >140 ppb,
- "Weighted sum of differences" when the 2007 Base Case prediction is >124 ppb,
- Number of grid cells with a decrease of more than 4 ppb (2007 Base vs Budget) in daily maximum ozone when the 2007 Base Case ozone is >124 ppb, and
- Number of grid cells with an increase of more than 4 ppb (2007 Base vs Budget) in daily maximum ozone when the 2007 Base Case ozone is >124 ppb.

8-hr Metrics

- Number of grid cells with 8-hour daily maximum ozone concentrations >84 and >100 ppb.

The preceding 1-hour and 8-hour OTAG metrics are self-explanatory, except for the "weighted sum of differences." In calculating this metric the change in daily maximum 1-hour ozone in a grid cell is multiplied by the corresponding 2007 Base Case ozone prediction in that grid cell. These concentration-"weighted" differences are calculated for each day and then summed for the episode. Finally, the sum of "weighted" differences is divided by the sum of the 2007 Base Case daily maximum concentrations to produce the values for this metric. This metric provides a means for examining the "average" ozone reduction in a way that gives more importance or "weight" to reductions that occur at high concentrations.

D. Analysis Results and Findings

1. Introduction

The results and conclusions found in this Section are based on the suite of metrics outlined above in Section C, Analysis of Modeling Results. The discussion is organized such that the impacts on 1-hour concentrations and the impacts on 8-hour concentrations are presented separately. For each NAAQS the results for the State-level metrics are followed by the results for the OTAG "problem areas."

As indicated in Section C.1, Technical Procedures, the focus of this assessment is on the impacts of the budgets on 1-hour and 8-hour ozone above the NAAQS in areas which currently measure violations of these standards. In this regard, the discussion of the State-level impacts addresses only those metrics calculated using the "violating county" grid cells. The data for all metrics calculated using the set of grid cells selected based on model

predictions only are included in the docket. Also, the discussion for the 8-hour NAAQS is based on the metrics calculated for the average second high 8-hour concentrations since this was found to best represent the form of the 8-hour NAAQS. The data for metrics calculated using the 8-hour daily maximum predictions are included in the docket.

For the State-level analyses, the modeling domain was divided into several regions. The impacts across the 23 jurisdictions subject to the SIP call are addressed separately for States in the Midwest, Southeast, and Northeast. The States included in each of these regions are listed in Table VII-5. For completeness, all of the metrics were also calculated for those States within the domain that are not subject to the SIP call. These data are included in the docket.

a. Impacts on 1-Hour Ozone Concentrations. The State-level analyses of 1-hour concentrations included Metrics 1-4: (1) The number of grid cells with 1-hour daily maximum concentrations ≥ 125 ppb; (2) the magnitude and frequency of the "ppb" reductions in 1-hour daily maximum ozone concentrations ≥ 125 ppb; (3) the number of days with 1-hour daily maximum ozone concentrations ≥ 125 ppb; and, (4) the "areal exposure" to hourly ozone concentrations ≥ 125 ppb. For ease of communication in the discussion of results, the following terminology is used in referring to these metrics:

- Metric 1: the extent of "nonattainment,"
- Metric 2: the magnitude and frequency of "nonattainment,"
- Metric 3: the number of "nonattainment" days in each grid cell, and
- Metric 4: exposure to "nonattainment."

In addition to the State-level analysis, the impacts on 1-hour ozone in the OTAG "problem areas" were investigated using several of the standard OTAG metrics, including: (1) The number of grid cells with daily maximum 1-hour ozone >124 ppb; and the number of grid cells with daily maximum 1-hour ozone >140 ppb; (2) the weighted sum of differences when the 2007 Base Case prediction is >124 ppb; and, (3) the number of grid cells with an increase of more than 4 ppb when the 2007 Base Case ozone is >124 ppb versus the number of grid cells with a decrease of more than 4 ppb when the 2007 Base Case ozone is >124 ppb. This last metric is designed to compare the regional benefits of NO_x emissions reductions to possible local disbenefits.

The results for these OTAG metrics follow the discussion of the State-level results.

i. State-Level Analyses—1-Hour Concentrations. The 1-hour metrics for States in the Midwest, Southeast, and Northeast are provided in Tables VII-6, VII-7, and VII-8, respectively. For the Midwest, the results indicate that the overall extent of 1-hour nonattainment (Metric 1) is reduced by 74 percent in this region as a result of the emissions reductions provided by the Budget scenario. The results for Metric 2 indicate that over 50 percent of the "ppb" reductions in ozone are in the 10-15 ppb range or greater, with reductions in the magnitude of nonattainment at more than 25 ppb in Illinois and Indiana. In Michigan, nearly all of the reductions were in the range of 10-15 ppb or more. The results for Metric 3 show a large reduction in the number of 1-hour nonattainment days in four out of the five States having nonattainment in the 2007 Base Case. Note that although the number of nonattainment days in Ohio did not decline, the concentrations on these days were reduced, but not to below 125 ppb. In terms of exposure to nonattainment (Metric 4), there were large reductions in exposure for each of the 3 episodes that produced high concentrations in this region (i.e. 1988, 1991, and 1995). Overall, exposure to nonattainment was reduced by 77 percent in the Midwest as a result of the emissions reductions associated with the budget.

States in the Southeast are also predicted to have large benefits in mitigating the 1-hour nonattainment problem as a result of the budgets. The overall extent of nonattainment (Metric 1) is predicted to decline by 44 percent in this region with reductions of approximately 50 percent in Tennessee and Alabama. Large "ppb" reductions are also predicted using Metric 2. The four States with 1-hour nonattainment problems in the region (Alabama, Georgia, Tennessee, and Virginia) have reductions of 15 ppb or more. In Alabama, 34 percent of the reductions exceed 20 ppb and in Georgia, 48 percent of the reductions exceed 20 ppb. The number of nonattainment days is also reduced in the Southeast (Metric 3), but not to the same degree as in the Midwest. Still, the number of grid cells with one or more nonattainment days is reduced by 25 percent in Georgia and by 38 percent and 43 percent in Alabama and Tennessee, respectively. Looking at Metric 4 indicates that the total exposure to nonattainment across the Southeast was cut in half. For individual States and specific episodes,

the reduction in exposure in this region ranged from 30 percent to 100 percent.

The emissions reductions in the budget are predicted to produce an overall 48 percent decline in the extent of nonattainment in the Northeast (Metric 1). The extent of nonattainment in Maryland and Pennsylvania was reduced by approximately 50 percent and by more than 70 percent in Delaware, Massachusetts, New Jersey, and Rhode Island. The "ppb" reductions (Metric 2) were greater than 25 ppb in Delaware, Maryland, Massachusetts, New Jersey, and Pennsylvania. The results for Metric 2 also indicate that the magnitude of nonattainment is reduced by 15 ppb or more in seven of the Northeast States (Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, and Pennsylvania). The total number of grid cells across the region with more than two nonattainment days declined by 46 percent (Metric 3), while the number of grid cells with more than five nonattainment days declined by 75 percent. Also, the exposure to nonattainment (Metric 4) in the Northeast was reduced in half as a result of the budgets. Except for Washington, DC, which had relatively low exposure because it covers a much smaller area than the Northeast States, the total exposure to nonattainment was reduced in the range from 44 percent in Connecticut to 89 percent in Maine.

ii. Ozone Problem Area Analyses—1-Hour Concentrations. In reviewing the metrics for the ozone "problem areas," the analyses are restricted to the 3 sections of the Northeast Corridor and selected ozone problem areas: Richmond, Atlanta, Nashville, St. Louis, Louisville-Cincinnati, Lake Michigan Area, Detroit, Pittsburgh and Charlotte. The metrics are presented in Table VII-9 for each episode considered along with a composite for all four episodes.

The results for the three portions of the Northeast Corridor indicate that there is an overall decline of 40 percent to 67 percent in the number of grid cells with concentrations exceeding 124 and a somewhat comparable decrease of 51 percent to 65 percent in exceedences of 140 ppb. Reductions in these two metrics occur across all four episodes. The "weighted sum of differences" metric provides a way to quantify the "ppb" reductions in ozone with greater "weight" given to the reductions when concentrations are high. The results for this metric indicate that most of the "ppb" reductions in the three Northeast Corridor areas range from approximately 12 ppb to 18 ppb.

Examining the 1-hour metrics for the other problem areas indicates that all of

the areas were predicted to have large decreases in the number of grid cells exceeding 124 ppb and 140 ppb. In general, the reductions in this metric are comparable to what was predicted for the Northeast Corridor. Specifically, in six areas (Nashville, Louisville-Cincinnati, Richmond, St. Louis, Pittsburgh, and Charlotte), the number of grid cells >124 ppb decreases by 70 percent or more. Considering the "weighted sum of differences" metric, the "ppb" reduction in six of the areas outside the Northeast Corridor (Atlanta, Richmond, Nashville, Louisville-Cincinnati, Pittsburgh, and Charlotte) were generally close to, or greater than, 20 ppb.

In addition to evaluating the impact of the budgets in terms of ozone reductions, the model predictions were also examined to determine the extent of any increase or "disbenefit" in ozone concentrations. In this regard, EPA compared the number of grid cells exceeding 124 ppb that had more than a 4 ppb increase versus the number of such grid cells with more than a 4 ppb decrease. The results indicate that the extent of reductions in ozone far exceeds any increases. In two of the three Northeast Corridor areas, as well as in all of the other problem areas, more than 90 percent of the daily maximum values exceeding 124 ppb were reduced by 4 ppb or more. In terms of ozone "disbenefits," five areas had no increases greater than 4 ppb. In those areas with a predicted increase, these increases represent a very small fraction of the total number of exceedences of 124 ppb.

b. Impacts on 8-Hour Ozone Concentrations.

The analyses presented in this Section for the 8-hour ozone concentrations follow the same format as the previous discussion on 1-hour ozone concentration metrics. The State-level analysis is presented first followed by the analysis of the OTAG Metrics. The State-level metrics include Metric 5: the number of grid cells with average second high 8-hour ozone concentrations ≥ 85 ppb and Metric 6: the magnitude and frequency of the "ppb" reductions in average second high 8-hour ozone concentrations ≥ 85 ppb. Note that fewer 8-hour metrics are considered in this analysis because the link to the form of the 8-hour NAAQS results in a single average second high value in each grid cell. Thus, metrics involving "multiple days" or "multiple hours" are not directly applicable to the 8-hour NAAQS. Like the 1-hour discussion, for ease of communication of results, the following terminology is used in referring to these metrics:

Metric 5: the extent of "nonattainment" and

Metric 6: the magnitude and frequency of reductions in "nonattainment."

The 8-hour analysis includes the same geographic regions as the 1-hour analysis.

i. State-Level Analyses—8-Hour Concentrations. The results for the 8-hour metrics are presented for the Midwest, Southeast and Northeast in Tables VII-10, VII-11, and VII-12, respectively. In the Midwest, the proposed budgets reduced the overall extent of 8-hour nonattainment (Metric 5) by 89 percent. Six States (Kentucky, Indiana, Illinois, Michigan, Ohio, and West Virginia) have reductions of more than 80 percent. The magnitude and frequency of reductions is also large (Metric 6). Specifically, 97 percent of all of the "ppb" reductions are 5 ppb or greater and 21 percent of the reductions are 15 ppb or greater. In the Southeast, the overall extent of nonattainment (Metric 5) declines by 78 percent. All of the States in this region (Alabama, Georgia, North Carolina, South Carolina, Tennessee, and Virginia) show a decline in this metric of 60 percent or more. In addition, 80 percent of the "ppb" reductions are 10 ppb or greater with reductions of over 20 ppb in North Carolina. The Northeast region has a somewhat lesser reduction in the extent of 8-hour nonattainment (Metric 5) compared to the other two regions, with an overall reduction in this metric of 65 percent. Two States (New Jersey and Connecticut) have reductions in the extent of 8-hour nonattainment of approximately 60 percent while two other States (Delaware and Pennsylvania), along with Washington, DC have reductions in this metric of over 90 percent. In terms of the magnitude of the "ppb" reductions in nonattainment (Metric 6), approximately 97 percent of the reductions are greater than 5 ppb, 62 percent are greater than 10 ppb, and 9 percent are greater than 15 ppb. Looking at the individual States indicates that four States (Delaware, Maryland, New Jersey, and Pennsylvania) all have "ppb" reductions in the 15-20 ppb range.

ii. Ozone Problem Area Analyses—8-Hour Concentrations.

To investigate impacts on 8-hour ozone in the OTAG "problem areas," two of the standard OTAG metrics were analyzed:

- the number of grid cells with 8-hour daily maximum ozone > 84 ppb; and
- the number of cells with 8-hour daily maximum ozone > 100 ppb.

The results, as provided in Table VII-13, indicate that the extent of high 8-hour concentrations in the northern and central portions of Northeast Corridor is generally reduced by 30 percent to 40 percent, considering all 4 episodes combined. The reductions are somewhat greater in the southern Corridor at 46 percent to 67 percent. For the problem areas outside the Corridor, seven of the areas (Atlanta, Charlotte, Louisville-Cincinnati, Nashville, Pittsburgh, and Richmond) had reductions of approximately 60 percent or more in the extent of 8-hour concentrations exceeding 84 ppb and 100 ppb.

2. Summary and Conclusions

In summary, the air quality impacts of the proposed budgets were modeled for the four OTAG episodes. The result were evaluated by comparing ozone predictions from the Budget scenario to a 2007 Base Case reflecting emissions reductions associated with CAA control programs. A number of 1-hour and 8-hour metrics were used to quantify the impacts at the State-level. In addition, several of the relevant metrics from the OTAG Standard Table of Metrics were examined to evaluate the impacts in ozone "problem areas" within the region.

The results of this analysis lead to the following major conclusions:

- (1) The emissions reductions associated with the proposed statewide budgets are predicted to produce large reductions in both 1-hour and 8-hour concentrations in areas which currently violate the NAAQS and which would likely continue to have violations in the future without the SIP call budget reductions.
- (2) Looking at individual ozone "problem areas" considered by OTAG shows similar results, based on the available metrics.
- (3) Any "disbenefits" due to the NO_x reductions associated with the budgets are expected to be very limited compared to the extent of the "benefits" expected from these budgets.
- (4) Even though the budgets are expected to reduce 1-hour and 8-hour ozone concentrations across all 23 jurisdictions, the analysis indicates that nonattainment problems requiring additional local control measures will likely continue in some areas currently

violating the NAAQS (see also Section I.B. Updates with 1994-96 Air Quality Data).

E. Alternative Approaches

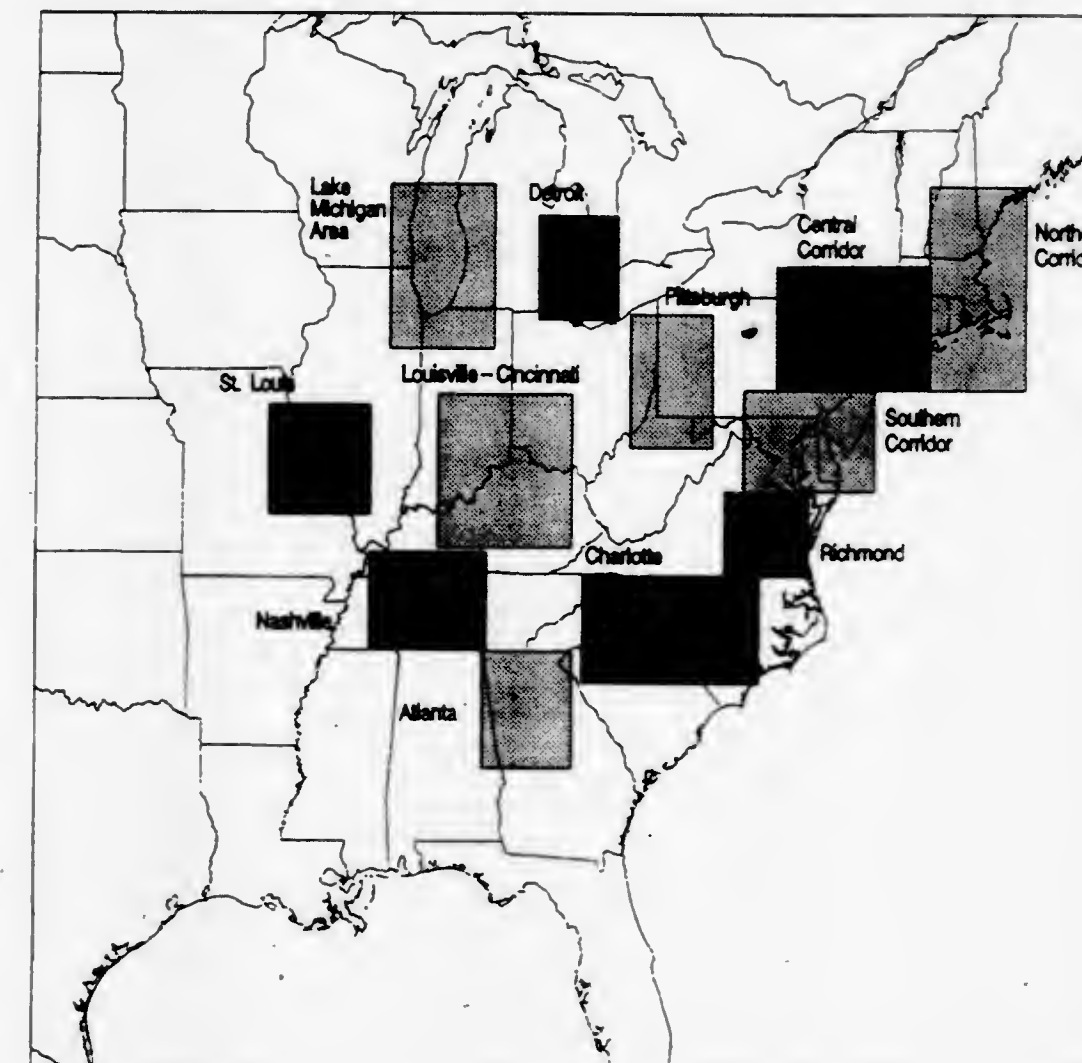
The effect of NO_x emissions on air quality in areas violating air quality standards depends, in part, on the distance between sources and receptor areas. Sources that are closer to areas violating air quality standards tend to have larger effects on air quality than sources that are far away. If there is significant variation in the contribution of emissions in different subregions within the 23-jurisdiction area, alternative approaches to calculating States' budgets other than those based on the application of uniform control measures will be evaluated. On the other hand, the large number of nonattainment areas spread out over the region and the several different weather patterns associated with summertime ozone pollution episodes should also be considered when evaluating a subregional approach. The EPA plans to evaluate alternative approaches in developing the final rule. These will consider alternative uniform approaches at levels below and above the proposal level as well as regional approaches that apply different control levels to different geographic regions.

The EPA solicited comment in the November 7, 1997 NPR on approaches for establishing State emissions budgets that factor in the differential effects on air quality in areas violating a standard. Comments advocating alternative approaches would be most helpful if they set forth concrete proposals on what analysis should form the basis of budget calculations. For example, some have suggested an approach that would attempt to quantify more explicitly the cost effectiveness of emissions reductions in terms of improvements in ambient ozone concentrations in areas violating a standard (measured, for example, as cost per population-weighted changes in parts per billion peak ozone concentration) taking into account the location of control measures through subregional modeling. If after review of alternative approaches (including sub-regional modeling analyses submitted by the States and other commenters), EPA concludes that a new approach is appropriate, EPA will issue a SNPR.

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Figure VII-1. Twelve of the Ozone "Problem Areas" Selected by OTAG

Figure VII-1. Twelve of the Ozone "Problem Areas" Selected by OTAG.



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TABLE VII-1.—BASE YEAR (1995/96) MODELING EMISSIONS OF NO_x
[Tons/day]

State	EGU	Non-EGU	Area	Highway	Total
Alabama	720.16	246.58	351.01	431.09	1748.84
Arkansas	188.47	58.55	212.98	232.64	692.64
Connecticut	54.10	36.10	128.47	211.86	430.53
Delaware	58.64	28.26	45.35	63.44	195.69
District of Columbia	3.97	2.58	18.52	19.96	45.03
Florida	1004.44	121.73	375.44	793.65	2295.26
Georgia	634.73	185.30	290.50	655.60	1766.13
Illinois	862.93	519.40	552.99	724.46	2659.78
Indiana	1138.63	280.04	380.34	495.91	2294.92
Iowa	252.19	69.31	179.77	239.78	741.05
Kansas	277.06	159.31	430.15	193.23	1059.75
Kentucky	1107.62	103.18	457.30	358.09	2026.19
Louisiana	346.66	870.30	720.25	300.05	2237.26
Maine	9.43	52.03	32.32	118.05	211.83
Maryland	336.13	90.36	186.20	307.20	919.89
Massachusetts	111.40	73.86	235.31	290.73	711.30
Michigan	555.44	353.14	383.65	633.21	1925.44
Minnesota	215.18	61.45	182.61	360.58	819.82
Mississippi	194.65	173.26	278.40	270.34	916.65
Missouri	588.13	74.08	237.45	417.50	1317.16
Nebraska	96.15	36.86	142.89	116.47	392.37
New Hampshire	65.36	6.97	43.95	96.20	212.48
New Jersey	143.02	143.33	265.11	404.10	955.56
New York	375.07	126.63	494.87	823.37	1819.94
North Carolina	969.62	186.09	238.08	608.02	2001.81
North Dakota	0.00	0.46	26.11	16.53	43.10
Ohio	1701.82	307.42	478.37	757.73	3245.34
Oklahoma	337.30	100.69	400.76	316.23	1154.98
Pennsylvania	878.45	531.22	402.97	630.38	2443.02
Rhode Island	21.82	2.21	28.05	53.40	105.48
South Carolina	429.77	169.16	164.21	352.85	1115.99
South Dakota	44.54	0.37	23.65	51.03	119.59
Tennessee	957.50	371.13	452.50	474.18	2255.31
Texas	1172.84	1290.89	760.77	1200.77	4425.27
Vermont	0.20	1.04	13.32	60.65	75.21
Virginia	432.34	146.16	357.88	578.05	1514.43
West Virginia	873.65	282.88	137.26	168.66	1462.45
Wisconsin	311.71	110.90	224.92	360.40	1007.93
Total	17471.12	7373.23	10334.68	14186.39	49365.42

TABLE VII-2.—2007 CAA BASE CASE MODELING EMISSIONS OF NO_x
[Tons/day]

State	EGU	Non-EGU	Area	Highway	Total
Alabama	619.16	314.95	361.70	416.80	1712.61
Arkansas	241.34	67.74	278.52	218.21	805.81
Connecticut	62.85	37.62	120.02	159.47	379.96
Delaware	85.86	34.82	40.33	60.30	221.31
District of Columbia	3.81	2.03	26.99	20.96	53.79
Florida	1193.66	143.06	396.06	935.38	2668.16
Georgia	635.45	224.98	306.47	599.03	1765.93
Illinois	908.72	442.08	558.24	622.86	2531.9
Indiana	1164.89	344.53	426.76	491.79	2427.97
Iowa	318.51	79.17	193.78	242.36	833.82
Kansas	278.16	200.10	387.65	206.14	1072.05
Kentucky	958.00	125.90	486.02	338.91	1908.83
Louisiana	370.72	797.24	764.56	288.99	2221.51
Maine	7.31	62.32	39.78	116.31	225.72
Maryland	289.05	94.67	227.65	271.66	883.03
Massachusetts	188.69	72.86	239.72	240.22	741.49
Michigan	511.62	402.98	428.71	622.31	1965.62
Minnesota	269.07	74.35	188.95	375.95	908.32
Mississippi	239.02	180.66	406.62	246.82	1073.12
Missouri	604.78	81.31	224.18	420.19	1330.46
Nebraska	93.92	41.46	136.45	119.41	391.24
New Hampshire	118.61	8.03	36.31	86.94	249.89
New Jersey	154.00	145.28	271.11	381.86	952.25

TABLE VII-2.—2007 CAA BASE CASE MODELING EMISSIONS OF NO_x—Continued
[Tons/day]

State	EGU	Non-EGU	Area	Highway	Total
New York	356.59	138.02	391.91	777.35	1663.87
North Carolina	672.59	227.44	250.26	551.56	1701.85
North Dakota	0.00	0.40	37.24	17.47	55.11
Ohio	1237.97	361.08	494.11	710.83	2803.99
Oklahoma	365.45	124.90	521.39	316.14	1327.88
Pennsylvania	906.73	558.46	382.86	556.86	2404.91
Rhode Island	10.47	2.34	22.85	51.46	87.12
South Carolina	437.29	235.36	186.94	365.30	1224.89
South Dakota	49.91	0.64	34.31	51.89	136.75
Tennessee	610.64	461.38	517.64	496.75	2086.41
Texas	1271.05	1114.13	825.12	1073.35	4283.65
Vermont	0.20	1.04	13.76	63.05	78.05
Virginia	415.27	168.41	411.85	603.89	1599.42
West Virginia	571.47	283.37	115.44	158.49	1128.77
Wisconsin	325.87	141.67	225.54	315.35	1008.43
Total	16548.70	7796.78	10977.80	13592.61	48915.89

TABLE VII-3.—2007 BUDGET MODELING EMISSIONS OF NO_x
[Tons/day]

State	EGU	Non-EGU	Area	Highway	Total
Alabama	224.26	159.58	335.69	386.24	1105.77
Arkansas	241.34	67.74	262.83	202.88	774.79
Connecticut	47.31	22.25	101.66	118.71	289.93
Delaware	40.59	15.18	36.83	57.67	150.27
District of Columbia	2.45	1.69	26.75	15.46	46.35
Florida	1193.66	143.06	351.44	875.17	2563.33
Georgia	246.29	96.16	267.79	529.59	1139.83
Illinois	278.01	278.58	477.65	529.99	1564.23
Indiana	377.70	195.89	398.19	454.61	1426.39
Iowa	318.51	79.17	176.64	227.15	801.47
Kansas	278.16	200.10	373.76	194.01	1046.03
Kentucky	283.92	79.77	462.46	315.42	1141.57
Louisiana	370.72	797.24	717.26	274.46	2159.68
Maine	7.31	62.32	37.87	109.26	216.76
Maryland	103.61	51.86	196.22	195.28	546.97
Massachusetts	112.86	43.88	208.53	157.66	522.93
Michigan	203.44	235.01	388.17	555.53	1382.15
Minnesota	269.07	74.35	166.35	353.51	863.28
Mississippi	239.02	180.66	370.67	229.32	1019.67
Missouri	196.28	60.26	194.63	375.51	826.68
Nebraska	93.92	41.46	127.59	112.49	375.46
New Hampshire	118.61	8.03	34.64	86.94	248.22
New Jersey	83.04	83.57	241.65	268.82	677.08
New York	266.18	96.55	340.98	642.00	1345.71
North Carolina	252.33	127.56	214.94	498.25	1093.08
North Dakota	0.00	0.40	36.37	16.33	53.1
Ohio	381.07	207.70	458.48	631.24	1678.49
Oklahoma	365.45	124.90	503.59	294.70	1288.64
Pennsylvania	357.05	314.54	343.61	499.34	1514.54
Rhode Island	10.81	2.34	18.98	38.89	71.02
South Carolina	151.97	127.09	164.62	337.58	781.26
South Dakota	49.91	0.64	31.29	48.65	130.49
Tennessee	191.00	240.31	451.78	461.03	1344.12
Texas	1271.05	1114.13	712.99	974.78	4072.95
Vermont	0.20	1.04	12.50	59.13	72.87
Virginia	176.69	73.05	379.47	544.69	1173.9
West Virginia	179.92	141.03	107.50	147.62	576.07
Wisconsin	124.49	77.21	192.28	284.20	678.18
Total	9108.20	5626.30	9924.65	12104.11	36763.26

TABLE VII-4.—PERCENT REDUCTION BETWEEN 2007 CAA BASE CASE AND BUDGET NO_x EMISSIONS FOR MODELING
(Tons/day)

State	2007 Base case	Budget	Percent reduction
Alabama	1712.61	1105.77	35.4
Arkansas	805.81	774.79	3.9
Connecticut	379.96	289.93	23.7
Delaware	221.31	150.27	32.1
District of Columbia	53.79	46.35	13.8
Florida	2668.16	2563.33	3.9
Georgia	1765.93	1139.83	35.5
Illinois	2531.9	1564.23	38.2
Indiana	2427.97	1426.39	41.3
Iowa	833.82	801.47	3.9
Kansas	1072.05	1046.03	2.4
Kentucky	1908.83	1141.57	40.2
Louisiana	2221.51	2159.68	2.8
Maine	225.72	216.76	4.0
Maryland	883.03	546.97	38.1
Massachusetts	741.49	522.93	29.5
Michigan	1965.62	1382.15	29.7
Minnesota	908.32	863.28	5.0
Mississippi	1073.12	1019.67	5.0
Missouri	1330.46	826.68	37.9
Nebraska	391.24	375.46	4.0
New Hampshire	249.89	248.22	0.7
New Jersey	952.25	677.08	28.9
New York	1663.87	1345.71	19.1
North Carolina	1701.85	1093.08	35.8
North Dakota	55.11	53.1	3.6
Ohio	2803.99	1678.49	40.1
Oklahoma	1327.88	1288.64	3.0
Pennsylvania	2404.91	1514.54	37.0
Rhode Island	87.12	71.02	18.5
South Carolina	1224.89	781.26	36.2
South Dakota	136.75	130.49	4.6
Tennessee	2086.41	1344.12	35.6
Texas	4283.65	4072.95	4.9
Vermont	78.05	72.87	6.6
Virginia	1599.42	1173.9	26.6
West Virginia	1128.77	576.07	49.0
Wisconsin	1008.43	678.18	32.7
Total	48915.89	36763.26	24.8

TABLE VII-5.—LIST OF STATES IN EACH ANALYSIS REGION

Midwest	Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, West Virginia, Wisconsin.
Southeast	Alabama, Georgia, North Carolina, South Carolina, Tennessee, Virginia.
Northeast	Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island.
Non-SIP Call States	Arkansas, Florida, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, Texas, Vermont.

TABLE VII-6.—1-HR AIR QUALITY METRICS FOR MIDWEST REGION (GRID CELLS SELECTED BASED ON "MONITORED" AND "MODELED" NONATTAINMENT)
[Modeled values include Daily Max 1-hr for all 4 Episodes]

	MO	WI	IL	IN	MI	OH	KY	WV	Total
Metric 1: Number of Grid Cell-Days with a Daily Max Ozone Value ≥ 125 ppb									
2007 Base	4	0	10	3	23	3	0	0	43
2007 Budget	2	0	2	0	4	3	0	0	11
Difference	-2	0	-8	-3	-19	0	0	0	-32
Percent	-50.00	0.00	-80.00	-100.00	-82.61	0.00	0.00	0.00	-74.42
Metric 2: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction									
Magnitude of ozone reduction									
2-5 ppb	0	0	0	0	0	0	0	0	0
5-10 ppb	1	0	1	1	1	1	0	0	5
10-15 ppb	2	0	3	0	15	1	0	0	21
15-20 ppb	0	0	3	0	7	1	0	0	11
20-25 ppb	0	0	0	0	0	0	0	0	0
>25 ppb	0	0	2	2	0	0	0	0	4

TABLE VII-6.—1-HR AIR QUALITY METRICS FOR MIDWEST REGION (GRID CELLS SELECTED BASED ON "MONITORED" AND "MODELED" NONATTAINMENT)—Continued
[Modeled values include Daily Max 1-hr for all 4 Episodes]

	MO	WI	IL	IN	MI	OH	KY	WV	Total
Metric 3: Number of Grid Cells ≥ 125 ppb, by Number of Days									
Baseline 2007									
Number of Days ≥ 125 ppb:									
-1 day	2	0	6	5	0	3	3	0	19
2-4 days	1	0	2	9	0	0	0	0	12
5-9 days	0	0	0	0	0	0	0	0	0
10-14 days	0	0	0	0	0	0	0	0	0
≥ 15 days	0	0	0	0	0	0	0	0	0
Total	3	0	8	14	0	3	3	0	31
NO _x SIP Call:									
-1 day	0	0	2	4	0	0	3	0	9
2-4 days	1	0	0	0	0	0	0	0	1
5-9 days	0	0	0	0	0	0	0	0	0
10-14 days	0	0	0	0	0	0	0	0	0
≥ 15 days	0	0	0	0	0	0	0	0	0
Total	1	0	2	4	0	0	3	0	10
Difference (days)	-2	0	-6	-10	0	-3	0	0	-21
Percent	-66.7	0.0	-75.0	-71.4	0.0	-100.0	0.0	0.0	-67.7
Metric 4: Percent Reduction in Areal Exposures to ozone ≥ 125 ppb									
	July '88	July '91	July '93	July '95	All episodes				
MO	58.3	49.5	-	-	40.4				
WI	-	-	-	-	-				
IL	84.8	49.9	-	100.0	75.0				
MI	-	-	-	88.6	88.6				
KY	-	-	-	-	-				
IN	-	-	-	100.0	100.0				
OH	-	-	-	-	-				
WV	-	-	-	-	-				
Total	73.7	51.3	-	90.2	76.6				
No areas ≥ 125 ppb									

TABLE VII-7.—1-HR AIR QUALITY METRICS FOR SOUTHEAST REGION (GRID CELLS SELECTED BASED ON "MONITORED" AND "MODELED" NONATTAINMENT)
[Modeled values include Daily Max 1-hr for all 4 Episodes]

	TN	AL	GA	SC	NC	VA	Total
Metric 1: Number of Grid Cell-Days with a Daily Max Ozone Value ≥ 125 ppb							
2007 Base	27	108	203	0	0	14	352
2007 Budget	13	53	117	0	0	13	196
Difference	-14	-55	-86	0	0	-1	-156
Percent	-51.85	-50.93	-42.36	0.00	0.00	-7.14	-44.32
Metric 2: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction							
Magnitude of ozone reduction							
2-5 ppb	4	1	2	0	0	1	8
5-10 ppb	11	20	9	0	0	6	46
10-15 ppb	7	27	31	0	0	4	69
15-20 ppb	3	23	64	0	0	1	91
20-25 ppb	0	16	53	0	0	0	69
>25 ppb	0	21	44	0	0	0	65
Metric 3: Number of Grid Cells ≥ 125 ppb, by Number of Days							
Baseline 2007							
Number of Days ≥ 125 ppb:							
-1 day	7	9	5	0	0	0	21
2-4 days	6	14	15	0	1	0	36
5-9 days	1	8	17	0	2	0	28
10-14 days	0	1	3	0	0	0	4
≥ 15 days	0	0	0	0	0	0	0
Total	14	32	40	0	3	0	89
NO _x SIP Call:							
-1 day	6	6	8	0	0	0	20
2-4 days	2	11	10	0	1	0	24
5-9 days	0	3	11	0	2	0	16
10-14 days	0	0	1	0	0	0	1
≥ 15 days	0	0	0	0	0	0	0
Total	8	20	30	0	3	0	61
Difference (days)	-6	-12	-10	0	0	0	-28
Percent	-42.9%	-37.5%	-25.0%	0.0%	0.0%	0.0%	-31.5%
Metric 4: Percent Reduction in Areal Exposures to Ozone ≥ 125 ppb							
	July '88	July '91	July '93	July '95	All Episodes		
TN	100.0	29.5	72.0	52.4	60.2		
AL	71.7	100.0	57.7	63.0	60.0		

TABLE VII-7.—1-HR AIR QUALITY METRICS FOR SOUTHEAST REGION (GRID CELLS SELECTED BASED ON "MONITORED" AND "MODELED" NONATTAINMENT)—Continued
[Modeled values include Daily Max 1-hr for all 4 Episodes]

	TN	AL	GA	SC	NC	VA	Total
GA	59.4	100.0	46.9	55.6	51.0		
NC	18.7%			58.2%	24.1%		
VA							
SC							
Total	50.1	89.7	51.0	57.5	53.0		

*No areas >= 125 ppb.

TABLE VII-8.—1-HR AIR QUALITY METRICS FOR NORTHEAST REGION (GRID CELLS SELECTED BASED ON "MONITORED" AND "MODELED" NONATTAINMENT)

[Modeled values include Daily Max 1-hr for all 4 Episodes]

	MD	DC	DE	PA	NJ	NY	CT	RI	MA	Total
Metric 1: Number of Grid Cell-Days with a Daily Max Ozone Value >= 125 ppb										
2007 Base Case	251	3	12	34	183	221	231	8	61	738
2007 Budget	111	3	3	17	54	154	141	2	13	381
Difference	-140	0	-9	-17	-129	-67	-90	-6	-48	-357
Percent	-55.78	0.00	-75.00	-50.00	-70.49	-30.32	-38.96	-75	-78.69	-48.37

Metric 2: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction

Magnitude of ozone reduction	7	0	0	3	5	26	16	0	3	60
2-5 ppb	27	1	0	7	12	63	58	2	7	177
5-10 ppb	43	0	0	14	41	89	115	6	27	335
10-15 ppb	91	0	1	6	90	24	25	0	15	252
15-20 ppb	40	0	6	2	19	1	0	0	2	70
20-25 ppb	32	0	5	1	12	0	0	0	7	57

Metric 3: Number of grid Cells >= 125 ppb, by Number of Days

Baseline 2007	PA	NY	MD	DC	DE	NJ	CT	MA	RI	Total
Number of Days >= 125 ppb:										
>= 1 days	16	0	5	0	6	22	2	17	4	72
>= 2-4 days	7	15	26	1	3	35	41	13	2	143
>= 5-9 days	0	28	25	0	0	9	17	3	0	82
>= 10-14 days	0	0	1	0	0	0	0	0	0	1
>= 15 days	0	0	0	0	0	0	0	0	0	0
Total	23	43	57	1	9	66	60	33	6	298
NO _x SIP Call:										
>= 1 days	15	6	12	0	3	24	18	13	2	93
>= 2-4 days	1	27	23	1	0	12	37	0	0	101
>= 5-9 days	0	11	7	0	0	0	3	0	0	21
>= 10-14 days	0	0	0	0	0	0	0	0	0	0
>= 15 days	0	0	0	0	0	0	0	0	0	0
Total	16	44	42	1	3	36	58	13	2	215
Difference (days)	-7	1	-15	0	-6	-30	-2	-20	-4	-83
Percent	-30.4	2.3	-26.3	0.0	-66.7	-45.5	-3.3	-60.6	-66.7	-27.9

Metric 4: Percent Reduction in Areal Exposures to Ozone >= 125 ppb

	July '88	July '91	July '93	July '95	All episodes
PA	63.7	100.00		100.0	67.3
NY	40.2	55.33		43.5	47.2
MD	51.8	86.79	49.0	76.6	59.8
DC	8.9				8.9
DE	82.0			100.0	84.5
NJ	74.5	95.81	100.0	100.0	81.2
CT	31.6	68.51	100.0	61.1	43.9
MA	82.2	95.78		85.2	86.7
ME	92.3	82.80			89.3
Total	52.4	71.08	51.0	67.9	59.1

*No areas >= 125 ppb.

TABLE VII-9.—SELECTED OTAG METRICS FOR 1-HR STANDARD

	No. corridor	Cn corridor	So. corridor	Richmond	Atlanta	Nashville	Louis-Cinci	St. Louis	Lk. MI area	Detroit	Pitts-burgh	Charlotte
Peak 1-Hr Total—# of Grid Cells > 124 ppb												
July 4-11, 1988	337	484	522	148	38	56	71	10	46	54	27	157
2007 Base Case	147	314	214	27	19	14	22	4	0	34	1	19
Difference	-190	-170	-308	-121	-19	-42	-49	-6	-46	-20	-26	-138
Percent	-56.4%	-35.1%	-59.0%	-81.8%	-50.0%	-75.0%	-69.0%	-60.0%	-100.0%	-37.0%	-96.3%	-87.9%
July 16-21, 1991	497	282	111	1	10	0	19	5	113	0	0	0
2007 Base Case	160	141	19	0	0	0	10	2	58	0	0	0
Difference	-337	-141	-92	-1	-10	0	-9	-3	-55	0	0	0
Percent	-67.8%	-50.0%	-82.9%	-100.0%	-100.0%	0.0%	-47.4%	-60.0%	-48.7%	0.0%	0.0%	0.0%

TABLE VII-9.—SELECTED OTAG METRICS FOR 1-HR STANDARD—Continued

	No. corridor	Cn corridor	So. corridor	Richmond	Atlanta	Nashville	Louis-Cinci	St. Louis	Lk. MI area	Detroit	Pitts-burgh	Charlotte
July 22-29, 1993:												
2007 Base Case	1	5	105	38	178	39	4	1	0	0	0	123
2007 Budget	0	3	28	11	84	7	0	0	0	0	0	23
Difference	-1	-2	-77	-27	-94	-32	-4	-1	0	0	0	-100
Percent	-100.0%	-40.0%	-73.3%	-71.1%	-52.8%	-82.1%	-100.0%	-100.0%	0.0%	0.0%	0.0%	-81.3%
July 10-18, 1995:												
2007 Base Case	217	127	165	49	149	35	43	6	343	4	1	20
2007 Budget	137	74	37	19	47	6	9	0	233	1	0	3
Difference	-80	-53	-128	-30	-102	-29	-34	-6	-110	-3	-1	-17
Percent	-36.9%	-41.7%	-77.6%	-61.2%	-68.5%	-82.9%	-79.1%	-100.0%	-32.1%	-75.0%	-100.0%	-85.0%
2007 Base Case	217	127	165	49	149	35	43	6	343	4	1	20
2007 Budget	137	74	37	19	47	6	9	0	233	1	0	3
Difference	-80	-53	-128	-30	-102	-29	-34	-6	-110	-3	-1	-17
Percent	-36.9%	-41.7%	-77.6%	-61.2%	-68.5%	-82.9%	-79.1%	-100.0%	-32.1%	-75.0%	-100.0%	-85.0%
All Episodes:												
2007 Base Case	1052	898	903	236	375	130	137	22	502	58	28	300
2007 Budget	444	532	298	57	150	27	41	6	291	35	1	45
Difference	-608	-366	-605	-179	-225	-103	-96	-16	-211	-23	-27	-255
Percent	-57.8%	-40.8%	-67.0%	-75.8%	-60.0%	-79.2%	-70.1%	-72.7%	-42.0%	-39.7%	-96.4%	-85.0%

Peak 1-Hr Total—# of Grid Cells > 140 ppb

July 4-11, 1988:												
2007 Base Case	122	219	229	35	20	21	5	2	0	16	1	34
2007 Budget	52	139	95	4	6	9	0	0	0	2	0	4
Difference	-70	-80	-134	-31	-14	-12	-5	-2	0	-14	-1	-30
Percent	-57.4%	-36.5%	-58.5%	-88.6%	-70.0%	-57.1%	-100.0%	-100.0%	0.0%	-87.5%	-100.0%	-88.2%
July 16-21, 1991:												
2007 Base Case	149	114	11	0	4	0	5	0	28	0	0	0
2007 Budget	29	20	4	0	0	0	4	0	0	0	0	0
Difference	-120	-94	-7	0	-4	0	-1	0	-28	0	0	0
Percent	-80.5%	-82.5%	-63.6%	0.0%	-100.0%	0.0%	-20.0%	0.0%	-100.0%	0.0%	0.0%	0.0%
July 22-29, 1993:												
2007 Base Case	0	0	21	14	99	8	0	0	0	0	0	38
2007 Budget	0	0	4	0	38	1	0	0	0	0	0	5
Difference	0	0	-17	-14	-61	-7	0	0	0	0	0	-33
Percent	0.0%	0.0%	-81.0%	-100.0%	-61.6%	-87.5%	0.0%	0.0%	0.0%	0.0%	0.0%	-86.8%
July 10-18, 1995:												
2007 Base Case	142	59	35	22	49	3	14	0	191	0	0	4
2007 Budget	63	32	3	4	20	0	1	0	96	0	0	0
Difference	-79	-27	-32	-18	-29	-3	-13	0	-95	0	0	-4
Percent	-55.6%	-45.8%	-91.4%	-81.8%	-59.2%	-100.0%	-92.9%	0.0%	-49.7%	0.0%	0.0%	-100.0%
All Episodes:												
2007 Base Case	413	392	296	71	172	32	24	2	219	16	1	76
2007 Budget	144	191	105	8	64	10	5	0	96	2	0	9
Difference	-269	-201	-190	-63	-108	-22	-19	-2	-123	-14	-1	-67
Percent	-65.1%	-51.3%	-64.2%	-88.7%	-62.8%	-68.8%	-79.2%	-100.0%	-56.2%	-87.5%	-100.0%	-88.2%

Weighted Sum of Differences When the Base is > 124 ppb

July 4-11, 1988	-13.8	-9.6	-18.5	-22.3	-18.3	-23.9	-17.4	-18.5	-13.8	-10	-24.5	-25.1
July 16-21, 1991	-15.1	-13.7	-16.9	-10.4	-29	0	-13.3	-6.1	-10.9	0	0	0
July 22-29, 1993	-5.7	-4.6	-15.8	-20	-21.3	-21.7	-26.2	-10.9	0	0	0	-22.6
July 10-18, 1995	-15.8	-11.5	-16.8	-19	-21.5	-22.1	-27.4	-16	-12.6	-8.5	-40.8	-23.7

Grid Cells with more than a 4 ppb Decrease when Base is > 124 ppb

July 4-11, 1988	330	386	496	144	38	55	67	10	46	51	27	156
Percent of Total	97.9%	79.8%	95.0%	97.3%	100.0%	98.2%	94.4%	100.0%	100.0%	94.4%	100.0%	99.4%
July 16-21, 1991	496	276	104	1	10	0	16	3	104	0	0	0
Percent of Total	99.8%	97.9%	93.7%	100.0%	100.0%	0.0%	84.2%	60.0%	92.0%	0.0%	0.0%	0.0%
July 22-29, 1993	1	3	102	38	178	37	4	1	0	0	0	123
Percent of Total	100.0%	60.0%	97.1%	100.0%	100.0%	94.9%	100.0%	100.0%	0.0%	0.0%	0.0%	100.0%
July 10-18, 1995	217	111	161	48	149	35	43	6	326	4	1	20
Percent of Total	100.0%	87.4%	97.6%	98.0%	100.0%	100.0%	100.0%	100.0%	95.0%	100.0%	100.0%	100.0%
All Episodes	1044	776	863	231	375	127	130	20	476	55	28	299
Percent of Total	99.2%	86.4%	95.6%	97.9%	100.0%	97.7%	94.9%	90.9%	94.8%	94.8%	100.0%	99.7%

Grid Cells with more than a 4 ppb Increase when Base is > 124 ppb

July 4-11, 1988	2	32	7	2	0	0	1	0	0	1	0	0
Percent of Total	0.6%	6.6%	1.3%	1.4%	0.0%	0.0%	1.4%	0.0%	0.0%	1.9%	0.0%	0.0%
July 16-21, 1991	0	0	2	0	0	0	2	0	2	0	0	0
Percent of Total	0.0%	0.0%	1.8%	0.0%	0.0%	0.0%	10.5%	0.0%	1.8%	0.0%	0.0%	0.0%
July 22-29, 1993	0	1	3	0	0	0	0	0	0	0	0	0
Percent of Total	0.0%	20.0%	2.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
July 10-18, 1995	0	0	1	0	0	0	0	0	0	0	0	0
Percent of Total	0.0%	0.0%	0.8%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

TABLE VII-9.—SELECTED OTAG METRICS FOR 1-HR STANDARD—Continued

	No. corridor	Cn. corridor	So. corridor	Richmond	Atlanta	Nashville	Louis-Cinci	St. Louis	Lk. MI area	Detroit	Pitts-burgh	Charlotte
All Episodes	2%	33%	13%	2%	0%	0%	3%	0%	2%	1%	0%	0%
Percent of Total	0.2%	3.7%	1.4%	0.8%	0.0%	0.0%	2.2%	0.0%	0.4%	1.7%	0.0%	0.0%

TABLE VII-10.—8-HR AIR QUALITY METRICS FOR MIDWEST REGION (GRID CELLS SELECTED BASED ON "MONITORED" AND "MODELED" NONATTAINMENT)

	MO	WI	IL	IN	MI	OH	KY	WV	Total
Metric 5: Number of Grid Cell-Days with an Average 2nd High Ozone Value ≥ 85 ppb									
Scenario									
2007 Base	2	0	7	31	21	39	43	7	150
2007 Budget	2	0	1	3	1	2	7	0	16
Difference	0	0	-6	-28	-20	-37	-38	-7	-134
Percent	0.00	0.00	-85.71	-90.32	-95.24	-94.87	-83.72	-100.00	-89.33
Metric 6: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction									
Magnitude of Ozone Reduction									
2-5 ppb	1	0	0	1	1	0	2	0	5
5-10 ppb	1	0	5	2	12	16	6	0	42
10-15 ppb	0	0	2	16	8	21	19	8	72
15-20 ppb	0	0	0	9	0	2	12	1	24
20-25 ppb	0	0	0	3	0	0	4	0	7
>25 ppb	0	0	0	0	0	0	0	0	0

TABLE VII-11.—8-HR AIR QUALITY METRICS FOR SOUTHEAST REGION (GRID CELLS SELECTED BASED ON "MONITORED" AND "MODELED" NONATTAINMENT)

	TN	AL	GA	SC	NC	VA	Total
Metric 5: Number of Grid Cell-Days with an Average 2nd High Ozone Value ≥ 85 ppb							
Scenario							
2007 Base	48	39	44	13	52	16	212
2007 Budget	10	12	17	1	4	3	47
Difference	-38	-27	-27	-12	-48	-13	-165
Percent	-79.17	-69.23	-61.36	-92.31	-92.31	-81.25	-77.83
Metric 6: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction							
Magnitude of Ozone Reduction							
2-5 ppb	5	0	0	0	0	0	5
5-10 ppb	23	3	4	5	2	1	38
10-15 ppb	17	28	32	6	42	13	138
15-20 ppb	2	8	8	2	5	2	27
20-25 ppb	0	0	0	0	3	0	3
>25 ppb	0	0	0	0	0	0	0

TABLE VII-12.—8-HR AIR QUALITY METRICS FOR NORTHEAST REGION (GRID CELLS SELECTED BASED ON "MONITORED" AND "MODELED" NONATTAINMENT)

	MD	DC	DE	PA	NJ	NY	CT	RI	MA	Total
Metric 5: Number of Grid Cell-Days with an Average 2nd High Ozone Value ≥ 85 ppb										
Scenario										
2007 Base	84	1	30	73	99	45	29	0	11	257
2007 Budget	40	0	1	4	37	33	11	0	8	91
Difference	-44	-1	-29	-69	-62	-12	-18	0	-5	-166
Percent	-52.38	-100.00	-96.67	-94.52	-62.63	-26.67	-62.07	0.00	-45.45	-65
Metric 6: Number of Grid Cell-Days with Ozone Reductions, by Magnitude of the Reduction										
Magnitude of Ozone Reduction										
2-5 ppb	1	0	0	1	1	6	1	0	1	11
5-10 ppb	18	1	3	19	17	34	28	0	9	129
10-15 ppb	57	0	13	46	75	0	0	0	1	192
15-20 ppb	7	0	14	7	6	0	0	0	0	34
20-25 ppb	0	0	0	0	0	0	0	0	0	0
>25 ppb	0	0	0	0	0	0	0	0	0	0

TABLE VII-13.—SELECTED OTAG METRICS FOR 8-HR STANDARD

	No. corridor	Cn. corridor	So. corridor	Richmond	Atlanta	Nashville	Louis-Cinci	St. Louis	Lk. MI area	Detroit	Pitts-burgh	Charlotte
Peak 8-Hr Total—# of Grids ≥ 84 ppb												
July 4-11, 1988												
2007 Base Case	1624	1959	1696	580	154	485	1653	196	853	478	850	1195
2007 Budget	1132	1256	1115	313	58	139	447	32	435	253	197	450
Difference	-492	-703	-581	-267	-96	-346	-1206	-164	-418	-225	-653	-745
Percent	-30.3%	-35.9%	-34.3%	-46.0%	-55.8%	-71.3%	-73.0%	-83.7%	-49.0%	-47.1%	-76.8%	-62.3%

TABLE VII-13.—SELECTED OTAG METRICS FOR 8-HR STANDARD—Continued

	No. corridor	Cn. corridor	So. corridor	Richmond	Atlanta	Nashville	Louis-Cinci	St. Louis	Lk. MI area	Detroit	Pitts-burgh	Charlotte
July 16-21, 1991:												
2007 Base Case	1333	1034	1058	112	56	93	875	129	615	172	605	71
2007 Budget	1019	573	552	12	21	10	198	37	512	51	81	0
Difference	-314	-461	-506	-100	-35	-83	-677	-92	-103	-121	-524	-71
Percent	-23.6%	-44.6%	-47.8%	-89.3%	-62.5%	-89.2%	-77.4%	-71.3%	-16.7%	-70.3%	-86.6%	-100.0%
July 22-29, 1993:												
2007 Base Case	161	204	610	206	855	395	545	56	79	23	59	1562
2007 Budget	88	134	315	92	374	125	78	17	24	2	0	387
Difference	-73	-70	-295	-114	-481	-270	-467	-39	-55	-21	-59	-1175
Percent	-45.3%	-34.3%	-48.4%	-55.3%	-56.3%	-68.4%	-85.7%	-69.6%	-69.6%	-91.3%	-100.0%	-75.2%
July 10-18, 1995:												
2007 Base Case	653	714	1489	527	693	708	1072	124	994	311	468	754
2007 Budget	437	321	642	142	260	160	215	52	712	150	20	96
Difference	-216	-393	-847	-385	-433	-548	-857	-72	-282	-161	-448	-658
Percent	-33.1%	-55.0%	-56.9%	-73.1%	-62.5%	-77.4%	-79.9%	-58.1%	-28.4%	-51.8%	-95.7%	-87.3%
All Episodes:												
2007 Base Case	3771	3911	4853	1425	1758	1681	4145	505	2541	984	1982	3582
2007 Budget	2676	2284	2624	559	723	434	138	1683	1683	456	298	933
Difference	-1095	-1627	-2229	-866	-1035	-1247	-3207	-367	-858	-528	-1684	-2649
Percent	-29.0%	-41.6%	-45.9%	-60.8%	-58.9%	-74.2%	-77.4%	-72.7%	-33.8%	-53.7%	-85.0%	-74.0%
Peak 8-Hr Total—Grid Cells ≥ 100 ppb												
July 4-11, 1988:												
2007 Base Case	817	862	975	302	64	149	383	25	320	139	215	458
2007 Budget	418	555	413	96	26	32	50	6	92	74	13	75
Difference	-399	-307	-562	-206	-38	-117	-333	-19	-228	-65	-202	-383
Percent	-48.8%	-35.6%	-57.6%	-68.2%	-59.4%	-78.5%	-86.9%	-76.0%	-71.3%	-46.8%	-94.0%	-83.6%
July 16-21, 1991:												
2007 Base Case	868	501	448	13	21	1	190	22	302	18	62	0
2007 Budget	511	305	109	0	4	0	22	7	204	1	0	0
Difference	-357	-196	-339	-13	-17	-1	-168	-15	-98	-17	-62	0
Percent	-41.1%	-39.1%	-75.7%	-100.0%	-81.0%	-100.0%	-88.4%	-68.2%	-32.5%	-94.4%	-100.0%	0.0%
July 22-29, 1993:												
2007 Base Case	34	59	212	85	322	97	71	4	0	0	0	399
2007 Budget	11	30	63	25	151	23	1	0	0	0	0	81
Difference	-23	-29	-149	-60	-171	-74	-70	-4	0	0	0	-318
Percent	-67.6%	-49.2%	-70.3%	-70.6%	-53.1%	-76.3%	-96.6%	-100.0%	0.0%	0.0%	0.0%	-79.7%
July 10-18, 1995:												
2007 Base Case	328	255	544	105	259	159	225	27	553	60	15	98
2007 Budget	230	139	139	34	112	28	27	1	423	17	1	6
Difference	-98	-116	-405	-71	-147	-131	-198	-26	-130	-43	-14	-92
Percent	-29.9%	-45.5%	-74.4%	-67.6%	-56.8%	-82.4%	-88.0%	-96.3%	-23.5%	-71.7%	-93.3%	-93.9%
All Episodes:												
2007 Base Case	2047	1677	2179	505	666	406	869	78	1175	217	292	955
2007 Budget	1170	1029	724	155	293	83	100	14	719	92	14	162
Difference	-877	-648	-1455	-350	-373	-323	-769	-64	-456	-125	-278	-793
Percent	-42.8%	-38.6%	-66.8%	-69.3%	-56.0%	-79.6%	-88.5%	-82.1%	-38.8%	-57.6%	-95.2%	-83.0%

VIII. Impact on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available a regulatory flexibility analysis, unless it certifies that the proposed rule, if promulgated, will not have "a significant economic impact on a substantial number of small entities." *Id.*, section 605(b). Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See, e.g., *Mid-Tex Electric Cooperative, Inc. v. FERC*,

773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on regulated entities and not indirect impact on small entities not regulated). In the proposed rulemaking, which EPA published by notice dated November 7, 1997, 62 FR 60318, EPA noted that the proposed rule would not directly regulate small entities. Instead, the proposed rule would require States to develop, adopt, and submit SIP revisions that would achieve the necessary NO_x emission reductions, and would leave to the States the task of determining how to obtain those reductions, including which entities to regulate. The EPA also noted, in the

proposed rule, that because affected States would have discretion to choose which sources to regulate and how much emissions reductions each selected source would have to achieve, EPA could not, at the time of the proposal, predict the effect of the rule on small entities.

The purposes of the RFA, the RFA's statutory requirements for regulatory flexibility analyses, and the caselaw all shed light on the meaning of the term "impact" as used in the RFA. These sources indicate that a rule can have an "impact" of concern under the RFA only with respect to sources subject to the requirements of the rule.

The RFA's "Findings and Purposes" section states,

It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and information requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.

Pub. L. 96-354, section 2(b). This statement of purpose indicates that Congress intended the RFA to ensure that agencies tailored the requirements of their regulations to the resources and capabilities of entities "subject to [such] regulation." Other provisions of the RFA reflect this statement of purpose. For example, RFA sections 603 and 604 require that the initial and final regulatory flexibility analyses identify the types and estimate the numbers of small entities "to which the proposed rule will apply" (sections 603(b)(3) and 604(a)(3)); and other RFA provisions make clear that the regulatory flexibility analyses are to focus on how to minimize rule requirements for small entities (sections 603(c)(1) and (4), 605(a)(5)). Taken as a whole, these provisions suggest that agencies should undertake the RFA analyses only with respect to rules to which small entities are subject.

Two Federal court cases support this interpretation of "impact": *Mid-Tex Elec. Co-op v. FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985), summarized above, and *United Distribution Companies v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996). In *United Distribution Companies*, the court stated that the *Mid-Tex* court—

... conducted an extensive analysis of the RFA provisions governing when a regulatory flexibility analysis is required and concluded that no analysis is necessary when an agency determines "that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule."

Id. at 1170 (quoting *Mid-Tex* court, emphasis added by *United Distribution* court). For a more detailed analysis by EPA of the RFA, see "Final Rule: National Ambient Air Quality Standards for Ozone," 62 FR 38856, 38888 (July 18, 1997).

For the reasons indicated above, EPA certified that the proposed rule would "not have, if promulgated, a significant economic impact on a substantial number of small entities." The Agency received a number of comments on this certification, including several challenging the certification as improper under the RFA. The EPA is currently considering these comments and will respond to them in light of the

rulemaking record after comments are received on this supplemental proposal.

Today's supplemental proposal does not contain anything that would adversely affect small entities. The SIP criteria and emissions reporting requirements proposed in today's action would apply only to States, and would not, by themselves, subject any other entities to any regulation. The NO_x budget trading program is a recommendation to States, but not a requirement, and thus does not subject any entities to any requirements. In addition, the trading program, if adopted by a State, would provide sources subject to the State NO_x controls additional flexibility in meeting SIP requirements. Thus, the trading program would have a beneficial effect on State-regulated sources, including small entities subject to those State requirements. Accordingly, EPA certifies that this supplemental proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities.

As noted in Section VI, Interaction with Title IV NO_x Rule, today's supplemental proposal includes, in addition to provisions directly related to the NO_x SIP call, a revision to the 40 CFR Part 76, which implements the NO_x requirements of the acid rain provisions in Title IV of the CAA Amendments and which applies directly to sources. The revision is designed to lessen the administrative requirements imposed on sources affected by the acid rain program that are in States that adopt a NO_x cap-and-trade program. Because the only impact of this revision will be to ease administrative requirements, it will not have any adverse effect on any small entity that may be subject to the rule's requirements. Accordingly, I certify that this part of today's proposed rule will not have a significant economic effect on a substantial number of small entities.

IX. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more * * * in any one year." A "Federal

mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

Under section 203 of UMRA, 2 U.S.C. 1533, before EPA establishes any regulatory requirements "that might significantly or uniquely affect small governments" EPA must have developed a small government agency plan. The plan must provide for notifying potentially affected small governments; enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates; and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under section 204 of UMRA, 2 U.S.C. 1534, if an agency proposes a rule that contains a "significant Federal intergovernmental mandate[]," the agency must develop a process to permit elected officials of State, local, and tribal governments to provide input into the development of the proposal.

The EPA addressed these issues, in the proposed rulemaking as to the proposed NO_x SIP call. However, as noted in Section VI, Interaction with Title IV NO_x Rule, today's supplemental proposal includes, in addition to provisions directly related to the proposed NO_x SIP call, a revision to the 40 CFR Part 76, which implements the NO_x requirements of the acid rain provisions in Title IV of the CAA Amendments and which applies directly to sources. The revision is designed to lessen the administrative requirements imposed on sources affected by the acid rain program that

are in States that adopt a NO_x cap-and-trade program. Because the only impact of this part of the rule will be to ease administrative requirements, it will not impose costs that would trigger the requirements of UMRA sections 202, 204, or 205. For the same reason, this part of the rule would not result in regulatory requirements that might significantly affect small governments; moreover, this part of the proposed rule would not impose requirements unique to small governments. Thus, the requirements of section 203 (2 U.S.C. 1533) do not apply to the revisions to 40 CFR Part 76.

X. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1857.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St. SW, Washington, DC 20460 or by calling (202) 260-2740.

The EPA believes that it is essential that compliance with the regional control strategy be verified. Tracking emissions is the principal mechanism to ensure compliance with the budget and to assure the downwind affected States and EPA that the ozone transport problem is being mitigated. If tracking and periodic reports indicate that a State is not implementing all of its NO_x control measures beginning with the compliance date for NO_x controls or is off track to meet its statewide budget by 2007, EPA will work with the State to determine the reasons for noncompliance and what course of remedial action is needed. The reporting requirements are mandatory and the legal authority for the proposed reporting requirements resides in section 110(a) and 301(a) of the CAA. Emissions data being requested in today's proposal would not be considered confidential by EPA. Certain process data may be identified as sensitive by a State and are then treated as "State-sensitive" by EPA.

The reporting and record keeping burden for this collection of information is described below:

Respondents/Affected Entities: States, along with the District of Columbia, which are included in the NO_x SIP call.

Number of Respondents: 23.

Frequency of Response: Annually, triennially.

Estimated Annual Hour Burden per Respondent: 282.

Estimated Annual Cost per Respondent: \$7,942.68.

Estimated Total Annual Hour Burden: 6,486.

Estimated Total Annualized Cost: \$182,682.00.

There are no additional capital or operating and maintenance costs associated with the reporting requirements of the proposed rule. During the 1980s, an EPA initiative established electronic communication with each State environmental agency. This included a computer terminal for any States needing one in order to communicate with the EPA's national data base systems. Costs associated with replacing and maintaining these terminals, as well as storage of data files, have been accounted for in the ICR for the existing annual inventory reporting requirements (OMB # 2060-0088).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested by June 22,

1998. Include the ICR number in any correspondence.

XI. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

Any final action related to the NO_x SIP Call is "nationally applicable" within the meaning of section 307(b)(1). As an initial matter, through this rule, EPA interprets section 110 of the Act in a way that could affect future actions regulating the transport of pollutants. In addition, the SIP Call, as proposed, would require 22 States and the District of Columbia to establish emissions budgets for NO_x. The SIP Call also is based on a common core of factual findings and analyses concerning the transport of ozone and its precursors between the different States subject to the SIP Call. Finally, EPA plans to establish in the final rule uniform approvability criteria that would be applied to all States subject to the SIP call. For these reasons, the Administrator also is determining that any final action regarding the NO_x SIP Call is of nationwide scope and effect for purposes of section 307(b)(1). Thus any petitions for review of final actions regarding the SIP Call must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is promulgated in the *Federal Register*.

XII. Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

As EPA indicated in the proposed rulemaking, this action is a "significant regulatory action" because it would have an annual effect on the economy of approximately \$2 billion. 62 FR 60318, 60373. Accordingly, the notice of proposed rulemaking was submitted to OMB for review. For the same reason, today's supplemental notice of proposed rulemaking was submitted to OMB for review. Any written comments from OMB to EPA and any written EPA response to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the ADDRESSES section of this preamble.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 76

Environmental protection, Acid rain program, Air pollution control, Nitrogen dioxide, Reporting and recordkeeping requirements.

40 CFR Part 96

Environmental protection, Administrative practice and procedure, Air pollution control, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: April 28, 1998.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, parts 51, 76, and 96 of chapter I of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401, 7410, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

Subpart G—Control Strategy

2. Subpart G is amended to add §§ 51.121 and 51.122 to read as follows:

§ 51.121 Requirements for state implementation plan revisions relating to budgets for emissions of oxides of nitrogen.

(a) The EPA Administrator finds that the State implementation plans (SIPs) for the States listed in paragraph (c) of this section are substantially inadequate to comply with the requirements of section 110(a)(2)(D) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(D), and to mitigate adequately the interstate pollutant transport described in section 184 of the Clean Air Act, 42 U.S.C. 7511c, with respect to nonattainment areas under the 1-hour ozone national ambient air quality standards (NAAQS), to the extent that those SIPs do not provide for compliance with a budget of emissions of nitrogen oxides ("NO_x budget") as described in paragraph (e) of this section. To cure such inadequacy, each of the States listed in paragraph (c) of this section must submit to EPA a SIP revision that provides for compliance with such NO_x budget and associated SIP provisions described in this section.

(b) The EPA Administrator determines that the States listed in paragraph (c) of this section must submit SIP revisions under section 110(a)(1) of the Clean Air Act, 42 U.S.C. 7410(a)(1), that provide for compliance with a NO_x budget, as described in paragraph (e) of this section and associated SIP provisions described in this section, to comply with the requirements of section 110(a)(2)(D) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(D), with respect to nonattainment areas under the 8-hour ozone NAAQS.

(c) The States subject to paragraphs (a) and (b) of this section are: Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia.

(d)(1) The SIP submissions required under paragraphs (a) and (b) of this

section must be submitted by no later than September 30, 1999.

(2) The State makes an official submission of its SIP revision to EPA only when:

(i) The submission conforms to the requirements of appendix V to this part; and

(ii) The State delivers five copies of the plan to the appropriate Regional Office, with a letter giving notice of such action.

(e)(1) The NO_x budget for a State listed in paragraph (c) of this section is defined as the total amount of NO_x emissions allowed from all sources in that State, as indicated in paragraph (e)(4) of this section with respect to that State.

(2) The SIP must provide for compliance with the NO_x budget during each ozone season, which includes May 1 through September 30 of the year 2007 and each subsequent year.

(3) The SIP must require implementation of its control measures by no later than September 30, 2002.

(4) The State-by-State amounts of the NO_x budget are as follows:

State	Budget
Alabama	155,617
Connecticut	39,909
Delaware	21,010
District of Columbia	7,000
Georgia	159,013
Illinois	218,679
Indiana	200,345
Kentucky	158,360
Maryland	73,628
Massachusetts	73,575
Michigan	199,238
Missouri	116,246
New Jersey	93,464
New York	185,537
North Carolina	153,106
Ohio	236,443
Pennsylvania	207,250
Rhode Island	10,132
South Carolina	109,267
Tennessee	187,250
Virginia	162,375
West Virginia	81,701
Wisconsin	95,902
Total	2,945,046

(f) Each SIP revision must set forth control measures to meet the NO_x budget which include the following:

(1) A description of enforcement methods including, but not limited to:

(i) Procedures for monitoring compliance with each of the selected control measures;

(ii) Procedures for handling violations; and

(iii) A designation of agency responsibility for enforcement of implementation.

(2) Should a State elect to impose control measures on NO_x sources serving electric generators with a nameplate capacity greater than 25 MWe or boilers with a maximum design heat input greater than 250 mmBtu/hr as a means of meeting its NO_x budget, then those measures must either:

(i) Impose a NO_x mass emissions cap on each source;

(ii) Impose a NO_x emission rate limit on each source and assume maximum operating capacity for every such source for purposes of estimating mass NO_x emissions; or

(iii) Impose any other regulatory requirement which the State has demonstrated to EPA provides equivalent or greater assurance than options in paragraphs (e)(2)(i) or (ii) of this section that the State will meet its NO_x budget.

(g)(1) Each SIP revision must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely compliance with the NO_x budget during the 2007 ozone season.

(2) The demonstration must include the following:

(i) Each revision must contain a detailed baseline inventory of NO_x mass emissions from point, area, and mobile sources in the year 2007 absent the control measures specified in the SIP submission. The State must use the same baseline inventory that EPA used in calculating the State's NO_x budget.

(ii) Each revision must contain a summary of NO_x mass emissions in 2007 projected to result from implementation of each of the new control measures and from all NO_x sources together following implementation of such control measures. The summary must assume the same NO_x mass emissions for mobile sources assumed by EPA in calculating the State's budget, unless the State has adopted measures more stringent than the Federal measures incorporated into the budget calculation. The State must provide EPA with a summary of the computations, assumptions, and judgments used to determine the degree of reduction of projected emissions that will result from the implementation of the control measures.

(iii) Each revision must identify the sources of the data used in the projection of emissions.

(h) Each revision must comply with § 51.116 (regarding data availability).

(1) Each revision must provide for monitoring the status of compliance with any rules and regulations adopted to meet the NO_x budget. Specifically,

the revision must meet the following requirements:

(i) The revision must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of and periodically report to the State—

(A) Information on the amount of NO_x emissions from the stationary sources; and

(B) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control measures;

(ii) The revision must comply with § 51.212 of this part (regarding testing, inspection, enforcement, and complaints);

(iii) If the revision contains any transportation control measures, then the revision must comply with § 51.213 (regarding transportation control measures);

(iv) If the revision contains measures to control NO_x sources serving electric generators with a nameplate capacity greater than 25 MWe or greater or boilers with a maximum design heat input greater than 250 mmBtu/hr, then the revision must require such sources to use a continuous emissions monitoring system.

(2) [Reserved]

(i) [Reserved]

(j) Each revision must show that the State has legal authority to carry out the revision, including authority to:

(1) Adopt emissions standards and limitations and any other measures necessary for attainment and maintenance of the State's NO_x budget specified in paragraph (e) of this section;

(2) Enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources.

(4) Require owners or operators of stationary sources to install, maintain, and use emissions monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; also authority for the State to make such data available to the public as reported and as correlated with any applicable emissions standards or limitations.

(k)(1) The provisions of law or regulation which the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or

regulations be submitted with the SIP revision.

(2) Legal authority adequate to fulfill the requirements of paragraphs (j)(3) and (4) of this section may be delegated to the State under section 114 of the Act.

(l)(1) A revision may assign legal authority to local agencies in accordance with section 51.232.

(2) Each revision must comply with section 51.240 (regarding general plan requirements).

(m) Each revision shall contain legally enforceable compliance schedules setting forth September 30, 2002 as the date by which all sources or categories of such sources must be in compliance with any applicable requirement of the SIP revision.

(n) Each revision must comply with section 51.280 (regarding resources).

(o) For purposes of the SIP revisions required by this section, EPA may make a finding under section 179(a)(1) through (4) of the Act, 42 U.S.C. 7509(a)(1)-(4), starting the sanctions process set forth in section 179(a) of the Act. Any such finding will be deemed a finding under section 52.31(c) and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in section 52.31.

(p) Each revision must provide for State compliance with the reporting requirements set forth in section 51.122 of this part.

§ 51.122 Emissions reporting requirements for SIP revisions relating to budgets for NO_x emissions.

(a) For its transport SIP revision under section 51.121 of this part, each State must submit to EPA NO_x emissions data as described in this section.

(b) Each revision must provide for periodic reporting by the State of NO_x emissions data to demonstrate that the emissions budget set forth in section 51.121(e)(4) is being met.

(1) *Annual reporting.* Each revision must provide for annual reporting of NO_x emissions data from all of the following sources and source categories:

(i) All NO_x sources within the State which the State chooses to regulate specifically for the purpose of meeting the NO_x budgets submitted under section 51.121(e)(4). This would include all NO_x sources within the State which are subject to measures included by the State in its transport SIP revision submitted under section 51.121. On road and nonroad mobile sources are not included unless controls greater than those Federally mandated are required for these sources.

(ii) The direct reporting of data from sources to EPA used for compliance

with the requirements of a trading program meeting the requirements of 40 CFR part 96 and/or direct reporting of data from sources to EPA used for meeting the monitoring and reporting requirements of subpart H of 40 CFR part 75 can be used to satisfy this requirement.

(2) *Triennial reporting.* Each plan must provide for triennial (i.e., every third year) reporting of NO_x emissions data from all sources within the State.

(3) *Year 2007 reporting.* Each plan must provide for reporting of year 2007 NO_x emissions data from all sources within the State.

(4) The data availability requirements in section 51.116 must be followed for all data submitted to meet the requirements of paragraphs (b)(1), (2) and (3) of this section.

(c) The data reported in paragraph (b) of this section for stationary point sources must meet the following minimum criteria:

(1) For annual data reporting purposes the data must include the following minimum elements:

- (i) Inventory year.
- (ii) State FIPS code.
- (iii) County FIPS code.
- (iv) Federal ID code (plant).
- (v) Federal ID code (point).
- (vi) Federal ID code (process).
- (vii) Federal ID code (stack).
- (viii) Site Name.
- (ix) Physical Address.
- (x) SCC.
- (xi) Pollutant code.
- (xii) Annual emissions.
- (xiii) Ozone Season emissions.
- (xiv) Area designation.

(2) In addition, the annual data must include the following minimum elements as applicable to the emissions estimation methodology.

- (i) Fuel heat content (annual).
- (ii) Fuel heat content (seasonal).
- (iii) Source of fuel heat content data.
- (iv) Activity throughput (annual).
- (v) Activity throughput (seasonal).
- (vi) Source of activity/throughput data.

- (vii) Winter throughput (%).
- (viii) Spring throughput (%).
- (ix) Summer throughput (%).
- (x) Fall throughput (%).
- (xi) Work weekday emissions.
- (xii) Emission factor.
- (xiii) Source of emission factor.
- (xiv) Hr/day in operation.
- (xv) Operations Start time (hour).
- (xvi) Day/wk in operation.
- (xvii) Wk/yr in operation.

(3) The triennial and 2007 inventories must include the following data elements:

(i) The data required in paragraphs (c)(1) and (c)(2) of this section.

- (ii) X coordinate (latitude).
- (iii) Y coordinate (longitude).
- (iv) Stack height.
- (v) Stack diameter.
- (vi) Exit gas temperature.
- (vii) Exit gas velocity.
- (viii) Exit gas flow rate.
- (ix) SIC.
- (x) Boiler/process throughput design capacity.

- (xi) Maximum design rate.
- (xii) Maximum capacity.
- (xiii) Primary control efficiency.
- (xiv) Secondary control efficiency.
- (xv) Control device type.

(d) The data reported in paragraph (b) of this section for area sources must include the following minimum elements:

(1) For annual inventories it must include:

- (i) Inventory year.
- (ii) State FIPS code.
- (iii) County FIPS code.
- (iv) SCC.
- (v) Emission factor.
- (vi) Source of emission factor.
- (vii) Activity/throughput level (annual).

(viii) Activity throughput level (seasonal).

(ix) Source of activity/throughput data.

- (x) Spring throughput (%).
- (xi) Summer throughput (%).
- (xii) Fall throughput (%).
- (xiii) Control efficiency (%).
- (xiv) Pollutant code.
- (xv) Ozone Season emissions.
- (xvi) Source of emissions data.
- (xvii) Hr/day in operation.
- (xviii) Day/wk in operation.
- (xix) Wk/yr in operations.

(2) The triennial and 2007 inventories must contain at a minimum all the data required in paragraph (d)(1) of this section.

(e) The data reported in paragraph (b) of this section for mobile sources must meet the following minimum criteria:

(1) For the annual, triennial, and 2007 inventory purposes the following data must be reported:

- (i) Inventory year.
- (ii) State FIPS code.
- (iii) County FIPS code.
- (iv) Emission factor.
- (v) Source of emission factor.
- (vi) Activity (VMT by Roadway Class).
- (vii) Source of activity data.
- (viii) Pollutant code.

(ix) Summer work weekday emissions.

(x) Ozone season emissions.

(xi) Source of emissions data.

(2) [Reserved.]

(f) Approval of ozone season calculation by EPA. Each State must submit for EPA approval an example of

the calculation procedure used to calculate ozone season emissions along with sufficient information for EPA to verify the calculated value of ozone season emissions.

(g) *Reporting schedules.* (1) Annual reports are to begin with data for the year 2003.

(2) Triennial reports are to begin with data for the year 2002.

(3) Year 2007 data are to be submitted for the year 2007.

(4) States must submit data for a required year by 12 months after the end of the calendar year for which the data are collected.

(h) *Data Reporting Procedures.* When submitting a formal NO_x budget emissions report and associated data, States shall notify the appropriate EPA regional office.

(1) States are required to report emissions data in an electronic format to the location given in paragraph (h)(5) of this section. Several options are available for data reporting.

(2) An agency may choose to continue reporting to the EPA Aerometric Information Retrieval System (AIRS) system using the AIRS facility subsystem (AFS) format for point sources. (This option will continue for point sources for some period of time after AIRS is reengineered (before 2002), at which time this choice may be discontinued or modified.)

(3) An agency may convert its emissions data into the Emission Inventory Improvement Program/Electronic Data Interchange (EIIP/EDI) format. This file can then be made available to any requestor, either using E-mail, floppy disk, or value added network (VAN), or can be placed on a file transfer protocol (FTP) site.

(4) An agency may submit its emissions data in a proprietary format based on the EIIP data model.

(5) For options in paragraphs (h)(3) and (4) of this section, the terms *submitting* and *reporting* data are defined as either providing the data in the EIIP/EDI format or the EIIP based data model proprietary format to EPA, Office of Air Quality Planning and Standards, Emission Factors and Inventory Group directly or notifying this group that the data are available in the specified format and at a specific electronic location (e.g., FTP site).

(6) For annual reporting (not for triennial reports) a State may have sources submit the data directly to EPA. This option will be available to any source in a State that is both participating in a trading program meeting the requirements of part 96 of this chapter and that has agreed to accept data in this format. The EPA will

make both the raw data submitted in this format and summary data available to any State that chooses this option.

(i) *Definitions.* As used in this section, the following words and terms shall have the meanings set forth below:

(1) *Annual emissions.* Actual emissions for a plant, point, or process, either measured or calculated.

(2) *Ash content.* Inert residual portion of a fuel.

(3) *Area designation.* The designation of the area in which the reporting source is located with regard to the ozone national ambient air quality standard. This would include attainment or nonattainment designations. For nonattainment designations, the classification of the nonattainment area must be specified, i.e., transitional, marginal, moderate, serious, severe, or extreme.

(4) *Boiler design capacity.* A measure of the size of a boiler, based on the reported maximum continuous steam flow. Capacity is calculated in units of MMBtu/hr.

(5) *Control device type.* The name of the type of control device (e.g., wet scrubber, flaring, or process change).

(6) *Control efficiency.* The emissions reduction efficiency of a primary control device, which shows the amount of reduction of a particular pollutant from a process' emissions due to controls or material change. Control efficiency is usually expressed as a percentage or in tenths.

(7) *County/parish/reservation (FIPS).* Federal Information Placement System (FIPS). FIPS is the system of unique numeric codes developed by the government to identify States, counties, towns, and townships for the entire United States, Puerto Rico, and Guam.

(8) *Day/wk in operations.* Days per week that the emitting process operates.

(9) *Emission factor.* Ratio relating emissions of a specific pollutant to an activity or material throughput level.

(10) *Exit gas flow rate.* Numeric value of stack gas flow rate.

(11) *Exit gas temperature.* Numeric value of an exit gas stream temperature.

(12) *Exit gas velocity.* Numeric value of an exit gas stream velocity.

(13) *Fall throughput (%).* Portion of throughput for the three Fall months (September, October, November). This represents the expression of annual activity information on the basis of four seasons, typically spring, summer, fall, and winter. It can be represented either as a percentage of the annual activity (e.g., production in summer is 40 percent of the year's production), or in terms of the units of the activity (e.g., out of 600 units produced, spring = 150

units, summer = 250 units, fall = 150 units, and winter = 50 units).

(14) *Federal ID code (plant).* Unique codes for a plant or facility, containing one or more pollutant-emitting sources.

(15) *Federal ID code (point).* Unique codes for the point of generation of emissions, typically a physical piece of equipment.

(16) *Federal ID code (stack number).* Unique codes for the point where emissions from one or more processes are released into the atmosphere.

(17) *Federal Information Placement System (FIPS).* The system of unique numeric codes developed by the government to identify States, counties, towns, and townships for the entire United States, Puerto Rico, and Guam.

(18) *Heat content.* The thermal heat energy content of a solid, liquid, or gaseous fuel. Fuel heat content is typically expressed in units of Btu/lb of fuel, Btu/gal of fuel, joules/kg of fuel, etc.

(19) *Hr/day in operations.* Hours per day that the emitting process operates.

(20) *Maximum design rate.* Maximum fuel use rate based on the equipment's or process' physical size or operational capabilities.

(21) *Maximum nameplate capacity.* A measure of the size of a generator, and is put on the unit's nameplate by the manufacturer. The data element is reported in MW or KW.

(22) *Ozone season.* The period May 1 through September 30 of a year.

(23) *Physical address.* Street address of facility.

(24) *Point source.* A non-mobile source which emits 100 tons of NO_x or more per year. A non-mobile source which emits less NO_x per year than this amount is an area source.

(25) *Pollutant code.* A unique code for each reported pollutant that has been assigned in the EIIP Data Model.

Character names are used for criteria pollutants, while Chemical Abstracts Service (CAS) numbers are used for all other pollutants. Some States may be using SAROAD codes for pollutants, but these should be able to be mapped to the EIIP Data Model pollutant codes.

(26) *Process rate/throughput.* A measurable factor or parameter that is directly or indirectly related to the emissions of an air pollution source.

Depending on the type of source category, activity information may refer to the amount of fuel combusted, the amount of a raw material processed, the amount of a product that is manufactured, the amount of a material that is handled or processed, population, employment, number of units, or miles traveled. Activity information is typically the value that is

multiplied against an emission factor to generate an emissions estimate.

(27) *SCC. Source category code.* A process-level code that describes the equipment or operation emitting pollutants.

(28) *Secondary control efficiency (%).* The emission reduction efficiency of a secondary control device, which shows the amount of reduction of a particular pollutant from a process' emissions due to controls or material change. Control efficiency is usually expressed as a percentage or in tenths.

(29) *SIC. Standard Industrial Classification code.* U.S. Department of Commerce's categorization of businesses by their products or services.

(30) *Site name.* The name of the facility.

(31) *Spring throughput (%).* Portion of throughput or activity for the three spring months (March, April, May). See the definition of Fall Throughput.

(32) *Stack diameter.* Stack physical diameter.

(33) *Stack height.* Stack physical height above the surrounding terrain.

(34) *Start date (inventory year).* The calendar year that the emissions estimates were calculated for and are applicable to.

(35) *Start time (hour).* Start time (if available) that was applicable and used for calculations of emissions estimates.

(36) *State/providence/territory (FIPS).* Federal Information Placement System (FIPS). FIPS is the system of unique numeric codes developed by the government to identify States, counties, towns, and townships for the entire United States, Puerto Rico, and Guam.

(37) *Summer throughput (%).* Portion of throughput or activity for the three summer months (June, July, August). See the definition of Fall Throughput.

(38) *Summer work weekday emissions.* Average day's emissions for a typical day.

(39) *VMT by Roadway Class.* VMT stands for vehicle miles traveled and is an expression of vehicle activity that is used with emission factors. The emission factors are usually expressed in terms of grams per mile of travel. Since VMT does not directly correlate to emissions that occur while the vehicle is not moving, these non-moving emissions are incorporated into EPA's MOBILE model emission factors.

(40) *Winter throughput (%).* Portion of throughput or activity for the three winter months (December, January, February). See the definition of Fall Throughput.

(41) *Week/year in operation.* Weeks per year that the emitting process operates.

(42) *Work Weekday.* Any day of the week except Saturday or Sunday.

(43) *X coordinate (latitude)*. East-west geographic coordinate of an object.
 (44) *Y coordinate (longitude)*. North-south geographic coordinate of an object.

PART 76—ACID RAIN NITROGEN OXIDES EMISSION REDUCTION PROGRAM

3. The authority citation for part 76 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

4. Section 76.16 is added to read as follows:

§ 76.16 Alternative compliance.

(a)(1) A State or group of States may submit a petition requesting that the Administrator, on his or her own motion, may:

(i) Require the owners or operators of the Group 1, Phase II coal-fired utility units with a tangentially fired boiler or a dry bottom wall fired boiler in the State or the group of States to be subject to the applicable emission limitations for NO_x in § 76.5, in lieu of the applicable emission limitations for NO_x in § 76.7; and

(ii) Provide that the owners or operators of the Group 2 coal-fired utility units with a cell burner boiler, cyclone boiler, wet bottom boiler, or vertically fired boiler in the State or the group of States are not subject to the applicable emission limitations for NO_x in § 76.6.

(2) A petition under paragraph (a)(1) of this section must demonstrate that the requirements in paragraphs (b)(1) and (2) of this section are met.

(3) A petition under paragraph (a)(1) of this section may be submitted, but may not be approved by the Administrator, before the State implementation plan or Federal implementation plan covering the entire State, or the State implementation plans or Federal implementation plans covering the entire group of States, under paragraph (b) of this section become final and federally enforceable.

(b) The Administrator may take the actions in paragraphs (a)(1)(i) and (ii) of this section if he or she finds that, under the State implementation plan or Federal implementation plan covering the entire State or the State implementation plans or Federal implementation plans covering the entire group of States:

(1) Each unit that is in the State or the group of States and that, but for the provisions of this section, would be subject to emission limitations under this part

(i) Is subject to:

(A) A cap on total annual NO_x emissions; or

(B) Two or more seasonal caps that together limit total annual NO_x emissions;

(ii) May trade authorizations to emit NO_x within each such cap, provided that the Administrator will consider (to the extent demonstrated to his or her satisfaction) whether the cost savings from trading will be offset by elimination of the ability of an owner or operator of a unit in the State or the group of States to use a NO_x averaging plan under § 76.11 in lieu of emission limitations under § 76.5, § 76.6, or § 76.7 that remain applicable under the provisions of this section; and

(iii) Must use authorizations to emit NO_x to account for:

(A) Any NO_x emissions by such unit; and

(B) Any NO_x emissions resulting from reducing utilization of such unit below its baseline utilization (adjusted for changes in demand for electricity) and shifting utilization to any other unit, or combustion device serving a generator, that is not subject to each such cap, unless it is demonstrated to the satisfaction of the Administrator that any NO_x emissions under this paragraph (b)(1)(iii)(B) will not result in higher total NO_x emissions from sources in the State or group of States or in other States; and

(2)(i) Total annual NO_x emissions by all units that are in the State or the group of States and that, but for the provisions of this section, would be subject to emission limitations under this part will be equal to or lower than total annual NO_x emissions by such units if each such unit is treated as subject to the applicable emission limitation in § 76.5, § 76.6, or § 76.7 that would apply but for the provisions of this section.

(ii) In the case of a petition under paragraph (a) of this section, total annual NO_x emissions by the units will be determined using the actual utilizations of the units for the last 4 calendar quarters prior to submission of the petition. In the case of action by the Administrator on his or her own motion under paragraph (a) of this section, total annual NO_x emissions by the units will be determined using the actual utilizations of the units for the last 4 calendar quarters prior to issuance of the draft decision under paragraph (c) of this section.

(c) In acting on a petition or on his or her own motion under paragraph (a) of this section, the Administrator will issue, for public comment, a draft decision on the petition or a draft decision to act on his or her own motion

and then a final decision. The Administrator may issue a draft decision, but not final decision, on a petition or on his or her own motion before the State implementation plan or Federal implementation plan covering the entire State, or the State implementation plans covering the entire group of States, under paragraph (b) of this section become final and federally enforceable. The draft decision will set forth procedures that will govern issuance of the final decision and will provide for:

(1) Service of notice of issuance of the draft decision on:

(i) Any interested person;

(ii) The designated representative of each source with one or more units that, but for the provisions of this section, would be subject to the applicable emission limitation in § 76.6 or § 76.7; and

(iii) The air pollution control agencies that:

(A) Have jurisdiction over a unit covered by the draft decision;

(B) Are in a State, or area in which there is a federally recognized Indian tribe, whose air quality may be affected by the draft decision and that is contiguous to the State, or the area in which there is a federally recognized Indian tribe, where a unit covered by the draft decision is located; or

(C) Are in a State, or area in which there is a federally recognized Indian tribe, within 50 miles of a unit covered by the draft decision.

(2) Publication of notice of issuance of the draft decision in the **Federal Register** and in any State publication designed to give general public notice in the States in which the units covered by the draft decision are located;

(3) A public comment period of at least 30 days and extension or reopening of the comment period by the Administrator for good cause;

(4) A public hearing, upon request or on the Administrator's own motion, to the extent the Administrator determines that a public hearing will contribute to the decision-making process by clarifying one or more significant issues affecting the draft decision;

(5) Consideration by the Administrator of the comments on the draft decision received during the public comment period or any public hearing and written response by the Administrator to any such relevant comments;

(6) Notice of issuance of a final decision using the methods set forth in paragraphs (c)(1) and (2) of this section for providing notice of the draft decision; and

(7) Appeals, governed by part 78 of this chapter, of the final decision.

(d) If, after the Administrator issues a final decision under paragraph (c) of this section and takes the actions set forth in paragraphs (a)(1)(i) and (ii) of this section with regard to a State or group of States, a State implementation plan or Federal implementation plan covering the entire State or entire group of States is revised in a way that may affect the basis for the findings on which such decision is based, the Administrator may, upon petition or on his or her own motion, reconsider such decision.

(e) For purposes of this section, the term "State" shall mean one of the 48 contiguous States or the District of Columbia.

Authority: 42 U.S.C. 7401, 7403, 7410, and 7601.

5. Part 96 is added consisting of §§ 96.1 through 96.88 to read as follows:

PART 96—NO_x BUDGET TRADING PROGRAM

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Authority: 42 U.S.C. 7401, 7403, 7410, and 7601.

Subpart A—NO_x Budget Trading Program General Provisions

§ 96.1 Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO_x Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The owner or operator of a unit, or any other person, shall comply with the requirements of this part only if such compliance is required by a State that has jurisdiction over the unit and that incorporates by reference or otherwise adopts the requirements of this part. A State that adopts the requirements of this part authorizes the Administrator to assist

the State in implementing the NO_x Budget Trading Program by carrying out the functions set forth for the Administrator in this part.

§ 96.2 Definitions.

The terms used in this part shall have the meanings set forth in this section as follows:

Account certificate of representation means the completed and signed submission required by subpart B of this part for certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO_x Budget units at such source or sources with regard to matters under the NO_x Budget Trading Program.

Account number means the identification number given by the Administrator to each NO_x Allowance Tracking System account.

Acid Rain emissions limitation means, as defined in § 72.2 of this chapter, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the Clean Air Act.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means the determination by the permitting authority or the Administrator of the number of NO_x allowances to be initially credited to a NO_x Budget unit or an allocation set-aside.

Automated data acquisition and handling system or DAHS means that component of the CEMS, or other emissions monitoring system approved for use under subpart H of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart H of this part.

Boiler means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Clean Air Act means the Clean Air Act, 42 U.S.C. 7401, *et seq.*, as amended by Pub. L. No. 101-549 (November 15, 1990).

Combined cycle system means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines

configured to improve overall efficiency of electricity generation or steam production.

Combustion turbine means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For purposes of § 96.70 and except as provided in § 96.5, for a unit that is a NO_x Budget unit under § 96.4 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. For purposes of § 96.70 and except as provided in § 96.5 or subpart I of this part, for a unit that is not a NO_x Budget unit under § 96.4 on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit under § 96.4 shall be the unit's date of commencement of commercial operation.

Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For purposes of § 96.21, § 96.42, or § 96.70 and except as provided in § 96.5, for a unit that is a NO_x Budget unit under § 96.4 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. For purposes of § 96.21, § 96.42, or § 96.70 and except as provided in § 96.5 or subpart I of this part, for a unit that is not a NO_x Budget unit under § 96.4 on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under § 96.4 shall be the unit's date of commencement of operation.

Common stack means a single flue through which emissions from two or more units are exhausted.

Compliance account means a NO_x Allowance Tracking System account, established by the Administrator for the NO_x Budget unit under subpart F of this part, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for a control period for the purpose of

meeting the unit's NO_x Budget emissions limitation.

Compliance certification means a submission to the permitting authority or the Administrator, as appropriate, that is required under subpart D of this part to report a NO_x Budget source's or a NO_x Budget unit's compliance or noncompliance with this part and that is signed by the NO_x authorized account representative in accordance with subpart B of this part.

Compliance use date means the first control period for which a NO_x allowance can be used for the purpose of meeting a unit's NO_x Budget emissions limitation.

Continuous emission monitoring system or CEMS means the equipment required under subpart H of this part to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes, a permanent record of emissions, expressed in pounds per million British thermal units (lb/mmBtu) for nitrogen oxides. The equipment also provides, for each hour, a permanent record of emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included in a continuous emission monitoring system:

- (1) Flow monitor;
- (2) Nitrogen oxides pollutant concentration monitors;
- (3) Diluent gas monitor (oxygen or carbon dioxide);
- (4) A continuous moisture monitor when such monitoring is required by subpart H of this part; and
- (5) An automated data acquisition and handling system.

Control period means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with subpart H of this part.

Energy Information Administration means the Energy Information Administration of the United States Department of Energy.

EPA means the United States Environmental Protection Agency. **Excess emissions** means any tonnage of nitrogen oxides emitted by a NO_x Budget unit during a control period that exceeds the NO_x Budget emissions limitation for the unit.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil fuel-fired means the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel comprises more than 50 percent of the annual heat input on a Btu basis.

General account means a NO_x Allowance Tracking System account, established under subpart F of this part, that is not a compliance account or an overdraft account.

Generator means a device that produces electricity.

Heat input means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with subpart H of this part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

Maximum potential hourly heat input means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of part 75 of this chapter to report heat input, this value should be calculated, in accordance with part 75 of this chapter, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this

value should be reported, in accordance with part 75 of this chapter, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

Maximum potential NO_x emission rate means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

Monitoring system means any monitoring system that meets the requirements of subpart H of this part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

Most stringent State or Federal NO_x emissions limitation means, with regard to a NO_x Budget opt-in source, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

Non-title V permit means a federally enforceable permit administered by the permitting authority pursuant to the Clean Air Act and regulatory authority under the Clean Air Act, other than title V of the Clean Air Act and part 70 or 71 of this chapter.

NO_x allowance means an authorization by the permitting authority or the Administrator under the NO_x Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

NO_x allowance deduction or deduct NO_x allowances means the permanent withdrawal of NO_x allowances by the Administrator from a NO_x Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x Budget unit for a control period, determined in accordance with subpart H of this part, or for any other allowance surrender obligation under this part.

NO_x allowances held or hold NO_x allowances means the NO_x allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subpart G of this part, in a NO_x Allowance Tracking System account.

NO_x Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of NO_x allowances under the NO_x Budget Trading Program.

NO_x Allowance Tracking System account means an account in the NO_x Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

NO_x allowance transfer deadline means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x Budget emissions limitation for the control period immediately preceding such deadline.

NO_x authorized account representative means, for a NO_x Budget source or NO_x Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x Budget units at the source, in accordance with subpart B of this part, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subpart F of this part, to transfer or otherwise dispose of NO_x allowances held in the general account.

NO_x Budget emissions limitation means the tonnage equivalent of the NO_x allowances allocated to a NO_x Budget unit for use in a control period adjusted, as of the NO_x allowance transfer deadline, by transfers to or from the unit's compliance account, or the overdraft account of the source where the unit is located, of NO_x allowances available for compliance deductions for the unit for the control period in accordance with § 96.54.

NO_x Budget opt-in permit means a NO_x Budget permit covering a NO_x Budget opt-in source.

NO_x Budget opt-in source means a unit that has been elected to become a NO_x Budget unit under the NO_x Budget Trading Program and whose opt-in permit has been issued and is in effect under subpart I of this part.

NO_x Budget permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the NO_x Budget Trading Program requirements applicable to a NO_x Budget source, to each NO_x Budget unit at the NO_x Budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x Budget source and each NO_x Budget unit.

NO_x Budget source means a source that includes one or more NO_x Budget units.

NO_x Budget Trading Program means a regional nitrogen oxides air pollution control and emission reduction program established in accordance with this part and pursuant to § 51.121 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

NO_x Budget unit means a unit that is subject to the NO_x Budget Trading Program emissions limitation under § 96.4 or § 96.80.

Operating means, with regard to a unit under §§ 96.22(d)(2) and 96.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_x Budget permit under § 96.83(a).

Operator means any person who operates, controls, or supervises a NO_x Budget unit, a NO_x Budget source, or unit for which an application for a NO_x Budget opt-in permit under § 96.83 is being or has been submitted and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Opt-in means to be elected to become a NO_x Budget unit under the NO_x Budget Trading Program through a final, effective NO_x Budget opt-in permit under subpart I of this part.

Overdraft account means the NO_x Allowance Tracking System account, established by the Administrator under subpart F of this part, for each NO_x Budget source where there are two or more NO_x Budget units.

Owner means any of the following persons:

- (1) Any holder of any portion of the legal or equitable title in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under § 96.83 is being or has been submitted; or
- (2) Any holder of a leasehold interest in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under § 96.83 is being or has been submitted; or

(3) Any purchaser of power from a NO_x Budget unit or from a unit for which an application for a NO_x Budget opt-in permit under § 96.83 is being or has been submitted under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x Budget unit or the unit for which an application for a NO_x Budget opt-in permit under § 96.83 is being or has been submitted; or

(4) With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the NO_x Budget Trading Program in accordance with subpart C of this part.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to NO_x allowances, the movement of NO_x allowances by the Administrator from one NO_x Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of part 60 of this chapter.

Serial number means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the Administrator, under § 96.53(c).

Source means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the Clean Air Act. For purposes of section 502(c) of the Clean Air Act,

a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the 48 contiguous States and the District of Columbia specified in § 51.121(c) of this chapter, or any non-federal authority in or including such States or the District of Columbia (including local agencies, and Statewide agencies) or any eligible Indian tribe in an area of such State or the District of Columbia, that adopts a NO_x Budget Trading Program pursuant to § 51.121 of this chapter. To the extent a State incorporates by reference this part, the term "State" shall mean the incorporating State. The term "State" shall have its conventional meaning where such meaning is clear from the context.

State trading program budget means the total number of NO_x tons apportioned to all NO_x Budget units in a given State, in accordance with the NO_x Budget Trading Program, for use in a given control period.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton or tonnage means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_x Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with subpart H of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

Unit means a stationary boiler, combustion turbine, or combined cycle system.

Unit load means the total (i.e., gross) output of a unit in any control period (or other specified time period)

produced by combusting a given heat input of fuel, expressed in terms of:

(1) The total electrical generation (MWe) for use within the plant and for sale; or

(2) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means any hour (or fraction of an hour) during which a unit combusts any fuel.

Utilization means the heat input (expressed in mmBtu/time) for a unit.

§ 96.3 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu—British thermal unit.
hr—hour.
Kwh—kilowatt hour.
lb—pounds.
mmBtu—million Btu.
MWe—megawatt electrical.
ton—2000 pounds.
CO₂—carbon dioxide.
NO_x—nitrogen oxides.
O₂—oxygen.

§ 96.4 Applicability.

The following units in a State shall be NO_x Budget units, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this part:

- (a) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe; or
- (b) Any unit that is not a unit under paragraph (a) of this section and that, any time on or after January 1, 1995, does not serve a generator and has a maximum design heat input greater than 250 mmBtu/hr.

§ 96.5 Retired unit exemption.

(a) This section applies to any NO_x Budget unit, other than a NO_x Budget opt-in source, that is permanently retired.

(b)(1) Any NO_x Budget unit, other than a NO_x Budget opt-in source, that is permanently retired shall be exempt from the NO_x Budget Trading Program, except for the provisions of this section, §§ 96.2, 96.3, 96.4, 96.7 and subparts E, F, and G of this part.

(2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_x authorized account representative (authorized in accordance with subpart

B of this part) shall submit a statement to the permitting authority otherwise responsible for administering a NO_x Budget permit for the unit. A copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the permitting authority) that the unit is permanently retired and will comply with the requirements of paragraph (c) of this section.

(3) After receipt of the notice under paragraph (b)(2) of this section, the permitting authority will amend the permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.

(c) **Special provisions.** (1) A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart E of this part.

(2)(i) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under § 96.22 for the unit not less than 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

(ii) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a non-title V permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under § 96.22 for the unit not less than 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

(3) The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_x Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit that is exempt under this section is not eligible to be a NO_x Budget opt-in source under subpart I of this part.

(5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(6) **Loss of exemption.** (i) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:

(A) The date on which the NO_x authorized account representative submits a NO_x Budget permit application under paragraph (c)(2) of this section; or

(B) The date on which the NO_x authorized account representative is required under paragraph (c)(2) of this section to submit a NO_x Budget permit application.

(ii) For the purpose of applying monitoring requirements under subpart H of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

§ 96.6 Standard requirements.

(a) **Permit Requirements.** (1) The NO_x authorized account representative of each NO_x Budget source and each NO_x Budget unit at the source shall:

(i) Submit to the permitting authority a complete NO_x Budget permit application under § 96.22 in accordance with the deadlines specified in § 96.21(b) and (c);

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a NO_x Budget permit application and issue or deny a NO_x Budget permit.

(2) The owners and operators of each NO_x Budget source and each NO_x Budget unit at the source shall have a NO_x Budget permit issued by the permitting authority and operate the unit in compliance with such NO_x Budget permit.

(b) **Monitoring requirements.** (1) The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x Budget source and each NO_x Budget unit at the source shall comply with the monitoring requirements of subpart H of this part.

(2) The emissions measurements recorded and reported in accordance with subpart H of this part shall be used to determine compliance by the unit with the NO_x Budget emissions limitation under paragraph (c) of this section.

(c) **Nitrogen oxides requirements.** (1) The owners and operators of each NO_x Budget source and each NO_x Budget unit at the source shall hold NO_x allowances available for compliance deductions under § 96.54, as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the control period from the unit, as determined in accordance with subpart H of this part, plus any amount necessary to account for actual utilization under § 96.42(d) for the control period.

(2) Each ton of nitrogen oxides emitted in excess of the NO_x Budget emissions limitation shall constitute a separate violation of this part, the Clean Air Act, and applicable State law.

(3) A NO_x Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of May 1, 2003 or the date on which the unit commences operation.

(4) NO_x allowances shall be held in, deducted from, or transferred among NO_x Allowance Tracking System accounts in accordance with subparts E, F, G, and I of this part.

(5) A NO_x allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period in a year prior to the year for which the NO_x allowance was allocated.

(6) A NO_x allowance allocated by the permitting authority under the NO_x Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_x Budget Trading Program. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under § 96.5 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.

(7) A NO_x allowance allocated by the permitting authority or the Administrator under the NO_x Budget Trading Program does not constitute a property right.

(8) Upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x Budget unit's compliance account or the overdraft account of the source where the unit is located is

deemed to amend automatically, and become a part of, the NO_x Budget unit's NO_x Budget permit by operation of law without any further review.

(d) *Excess emissions requirements.* (1) The owners and operators of a NO_x Budget unit that has excess emissions in any control period shall:

(i) Surrender the NO_x allowances required for deduction under § 96.54(d)(1); and

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under § 96.54(d)(3).

(2) [Reserved]

(e) *Recordkeeping and Reporting Requirements.* (1) Unless otherwise provided, the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The account certificate of representation for the NO_x authorized account representative for the source and each NO_x Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with § 96.13; "provided" that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

(ii) All emissions monitoring information, in accordance with subpart H of this part; "provided" that to the extent that subpart H of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x Budget Trading Program.

(iv) Copies of all documents used to complete a NO_x Budget permit application and any other submission under the NO_x Budget Trading Program or to demonstrate compliance with the requirements of the NO_x Budget Trading Program.

(2) The NO_x authorized account representative of a NO_x Budget source and each NO_x Budget unit at the source shall submit the reports and compliance certifications required under the NO_x Budget Trading Program, including those under subparts D, H, or I of this part.

(f) *Liability.* (1) Any person who knowingly violates any requirement or prohibition of the NO_x Budget Trading Program, a NO_x Budget permit, or an exemption under § 96.5 shall be subject to enforcement pursuant to applicable State or Federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

(3) No permit revision shall excuse any violation of the requirements of the NO_x Budget Trading Program that occurs prior to the date that the revision takes effect.

(4) Each NO_x Budget source and each NO_x Budget unit shall meet the requirements of the NO_x Budget Trading Program.

(5) Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget source (including a provision applicable to the NO_x authorized account representative of a NO_x Budget source) shall also apply to the owners and operators of such source and of the NO_x Budget units at the source.

(6) Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x Budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under subpart H of this part, the owners and operators and the NO_x authorized account representative of one NO_x Budget unit shall not be liable for any violation by any other NO_x Budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

(g) *Effect on Other Authorities.* No provision of the NO_x Budget Trading Program, a NO_x Budget permit application, a NO_x Budget permit, or an exemption under § 96.5 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x Budget source or NO_x Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.7 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin on the

occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NO_x Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Subpart B—NO_x Authorized Account Representative for NO_x Budget Sources

§ 96.10 Authorization and responsibilities of the NO_x authorized account representative.

(a) Except as provided under § 96.11, each NO_x Budget source, including all NO_x Budget units at the source, shall have one and only one NO_x authorized account representative, with regard to all matters under the NO_x Budget Trading Program concerning the source or any NO_x Budget unit at the source.

(b) The NO_x authorized account representative of the NO_x Budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x Budget units at the source.

(c) Upon receipt by the Administrator of a complete account certificate of representation under § 96.13, the NO_x authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x Budget source represented and each NO_x Budget unit at the source in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No NO_x Budget permit shall be issued, and no NO_x Allowance Tracking System account shall be established for a NO_x Budget unit at a source, until the Administrator has received a complete account certificate of representation under § 96.13 for a NO_x authorized account representative of the source and the NO_x Budget units at the source.

(e) (1) Each submission under the NO_x Budget Trading Program shall be submitted, signed, and certified by the NO_x authorized account representative

for each NO_x Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x Budget sources or NO_x Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a NO_x Budget source or a NO_x Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.11 Alternate NO_x authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(b) Upon receipt by the Administrator of a complete account certificate of representation under § 96.13, any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(c) Except in this section and §§ 96.10(a), 96.12, 96.13, and 96.51, whenever the term "NO_x authorized account representative" is used in this part, the term shall be construed to include the alternate NO_x authorized account representative.

§ 96.12 Changing the NO_x authorized account representative alternate NO_x authorized account representative; changes in the owners and operators.

(a) Changing the NO_x authorized account representative. The NO_x authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under § 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.

(b) Changing the alternate NO_x authorized account representative. The alternate NO_x authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under § 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.

(c) *Changes in the owners and operators.* (1) In the event a new owner or operator of a NO_x Budget source or a NO_x Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the permitting authority or the Administrator, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a NO_x Budget source or a NO_x Budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall

submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

§ 96.13 Account certificate of representation.

(a) A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the NO_x Budget source and each NO_x Budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative.

(3) A list of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source.

(4) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit."

(5) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement or notice referred to in the account certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 96.14 Objections concerning the NO_x authorized account representative.

(a) Once a complete account certificate of representation under § 96.13 has been submitted and received, the permitting authority and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under § 96.13 is received by the Administrator.

(b) Except as provided in § 96.12(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the permitting authority or the Administrator under the NO_x Budget Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

Subpart C—Permits

§ 96.20 General NO_x budget trading program permit requirements.

(a) Each NO_x Budget source shall have a federally enforceable permit, which shall include a NO_x Budget permit, administered by the permitting authority.

(1) For NO_x Budget sources required to have a title V operating permit, the NO_x Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart or subpart I of this part. The applicable provisions of such title V operating permits regulations shall include, but are not limited to, those provisions addressing operating permit applications, operating permit application shield, operating permit duration, operating permit shield, operating permit issuance, operating permit revision and reopening, public participation, and State and EPA review.

(2) For NO_x Budget sources required to have a non-title V permit, the NO_x Budget portion of the non-title V permit

shall be administered in accordance with the permitting authority's regulations promulgated to administer non-title V permits, except as provided otherwise by this subpart or subpart I of this part. The applicable provisions of such non-title V permits regulations may include, but are not limited to, provisions addressing permit applications, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, and State and EPA review.

(b) Each NO_x Budget permit (including a draft or proposed NO_x Budget permit, if applicable) shall contain all applicable NO_x Budget Trading Program requirements and shall be a complete and segregable portion of the permit under paragraph (a) of this section.

§ 96.21 Submission of NO_x Budget permit applications.

(a) *Duty to apply.* The NO_x authorized account representative of any NO_x Budget source with one or more NO_x Budget units shall submit to the permitting authority a complete NO_x Budget permit application under § 96.22 by the applicable deadline in paragraph (b) of this section.

(b)(1) For NO_x Budget sources required to have a title V operating permit:

(i) For any source, with one or more NO_x Budget units under § 96.4 that commence operation before January 1, 2000, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 96.22 covering such NO_x Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before May 1, 2003.

(ii) For any source, with any NO_x Budget unit under § 96.4 that commences operation on or after January 1, 2000, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 96.22 covering such NO_x Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NO_x Budget unit commences operation.

(2) For NO_x Budget sources required to have a non-title V permit:

(i) For any source, with one or more NO_x Budget units under § 96.4 that commence operation before January 1,

2000, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 96.22 covering such NO_x Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before May 1, 2003.

(ii) For any source, with any NO_x Budget unit under § 96.4 that commences operation on or after January 1, 2000, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 96.22 covering such NO_x Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NO_x Budget unit commences operation.

(c) *Duty to Reapply.* (1) For a NO_x Budget source required to have a title V operating permit, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 96.22 for the NO_x Budget source covering the NO_x Budget units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.

(2) For a NO_x Budget source required to have a non-title V permit, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 96.22 for the NO_x Budget source covering the NO_x Budget units at the source in accordance with the permitting authority's non-title V permits regulations addressing permit renewal.

§ 96.22 Information requirements for NO_x Budget permit applications.

A complete NO_x Budget permit application shall include the following elements concerning the NO_x Budget source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the NO_x Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

(b) Identification of each NO_x Budget unit at the NO_x Budget source and whether it is a NO_x Budget unit under § 96.4 or under subpart I of this part;

(c) The standard requirements under § 96.6; and

(d) For each NO_x Budget opt-in unit at the NO_x Budget source, the following

certification statements by the NO_x authorized account representative:

(1) "I certify that each unit for which this permit application is submitted under subpart I of this part is not a NO_x Budget unit under 40 CFR 96.4 and is not covered by a retired unit exemption under 40 CFR 96.5 that is in effect."

(2) If the application is for an initial NO_x Budget opt-in permit, "I certify that each unit for which this permit application is submitted under subpart I is currently operating, as that term is defined under 40 CFR 96.2."

§ 96.23 NO_x Budget permit contents.

(a) Each NO_x Budget permit (including any draft or proposed NO_x Budget permit, if applicable) will contain, in a format prescribed by the permitting authority, all elements required for a complete NO_x Budget permit application under § 96.22 as approved or adjusted by the permitting authority.

(b) Each NO_x Budget permit is deemed to incorporate automatically the definitions of terms under § 96.2 and, upon recordation by the Administrator under subparts F, G, or I of this part, every allocation, transfer, or deduction of a NO_x allowance to or from the compliance accounts of the NO_x Budget units covered by the permit or the overdraft account of the NO_x Budget source covered by the permit.

§ 96.24 Effective date of initial NO_x budget permit.

The initial NO_x Budget permit covering a NO_x Budget unit for which a complete NO_x Budget permit application is timely submitted under § 96.21(b) shall become effective by the later of:

(a) May 1, 2003;

(b) May 1 of the year in which the NO_x Budget unit commences operation, if the unit commences operation on or before May 1 of that year;

(c) The date on which the NO_x Budget unit commences operation, if the unit commences operation during a control period; or

(d) May 1 of the year following the year in which the NO_x Budget unit commences operation, if the unit commences operation on or after October 1 of the year.

§ 96.25 NO_x Budget permit revisions.

(a) For a NO_x Budget source with a title V operating permit, except as provided in § 96.23(b), the permitting authority will revise the NO_x Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

(b) For a NO_x Budget source with a non-title V permit, except as provided in § 96.23(b), the permitting authority will revise the NO_x Budget permit, as necessary, in accordance with the permitting authority's non-title V permits regulations addressing permit revisions.

Subpart D—Compliance Certification

§ 96.30 Compliance certification report.

(a) *Applicability and deadline.* For each control period in which one or more NO_x Budget units at a source are subject to the NO_x Budget emissions limitation, the NO_x authorized account representative of the source shall submit to the permitting authority and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.

(b) *Contents of report.* The NO_x authorized account representative shall include in the compliance certification report under paragraph (a) of this section the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NO_x Budget emissions limitation for the control period covered by the report:

(1) Identification of each NO_x Budget unit;

(2) At the NO_x authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under § 96.54 for the control period;

(3) At the NO_x authorized account representative's option, for units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with subpart H of this part, the percentage of allowances that is to be deducted from each unit's compliance account under § 96.54(e); and

(4) The compliance certification under paragraph (c) of this section.

(c) *Compliance certification.* In the compliance certification report under paragraph (a) of this section, the NO_x authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x Budget units at the source in compliance with the NO_x Budget Trading Program, whether each NO_x Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x Budget Trading Program applicable to the unit, including:

(1) Whether the unit was operated in compliance with the NO_x Budget emissions limitation;

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO_x emissions to the unit, in accordance with subpart H of this part;

(3) Whether all the NO_x emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with subpart H of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made;

(4) Whether the facts that form the basis for certification under subpart H of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under subpart H of this part, if any, has changed; and

(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

§ 96.31 Permitting authority's and Administrator's action on compliance certifications.

(a) The permitting authority or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct allowances from or return allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this section.

Subpart E—NO_x Allowance Allocations**§ 96.40 State trading program budget.**

The State trading program budget allocated by the permitting authority under § 96.42 will equal the total number of tons of NO_x emissions apportioned to the NO_x Budget units under § 96.4 in the State, as determined by the applicable, approved State implementation plan.

§ 96.41 Timing requirements for NO_x allowance allocations.

(a) By September 30, 1999, the permitting authority will submit to the Administrator the NO_x allowance allocations, in accordance with § 96.42, for the control periods in 2003, 2004, 2005, 2006, and 2007. If the permitting authority fails to submit to the Administrator the NO_x allowance allocations in accordance with this paragraph (a), the Administrator will allocate NO_x allowances for the applicable control periods, in accordance with § 96.42, within 60 days of the deadline for submission by the permitting authority.

(b) By December 31, 2002 and December 31 of each year thereafter, the permitting authority will submit to the Administrator the NO_x allowance allocations, in accordance with § 96.42, for the control period in the year that is 6 years after the year of the applicable deadline for submission under this paragraph (b). If the permitting authority fails to submit to the Administrator the NO_x allowance allocations in accordance with this paragraph (b), the Administrator will allocate NO_x allowances for the applicable control period, in accordance with § 96.42, within 60 days of the applicable deadline for submission by the permitting authority.

§ 96.42 NO_x allowance allocations.

(a)(1) The heat input (in mmBtu) used for calculating NO_x allowance allocations for each NO_x Budget unit under § 96.4 will be:

(i) For a NO_x allowance allocation under § 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997; and

(ii) For a NO_x allowance allocation under § 96.41(b), the unit's heat input for the control period in the year that is 6 years before the year for which the NO_x allocation is being calculated.

(2) The unit's total heat input for the control periods in each year specified under paragraph (a)(1) of this section will be determined in accordance with part 75 of this chapter if the NO_x Budget unit was otherwise subject to the

requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(b) For each control period under § 96.41, the permitting authority will allocate to all NO_x Budget units under § 96.4 in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NO_x allowances equal to 98 percent of the tons of NO_x emissions in the State trading program budget under § 96.40 in accordance with the following procedures:

(1) The permitting authority will allocate NO_x allowances to each NO_x Budget unit in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section.

(2) If the initial total number of NO_x allowances allocated to all NO_x Budget units in the State for a control period under paragraph (a)(1) of this section does not equal 98 percent of the number of tons of NO_x emissions in the State trading program budget, the permitting authority will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the control period under paragraph (a)(1) of this section so that the total number of NO_x allowances allocated equals 98 percent of the number of tons of NO_x emissions in the State trading program budget. This adjustment will be made by: multiplying each unit's allocation by the total number of NO_x allowances allocated under paragraph (a)(1) of this section divided by 98 percent of the number of tons of NO_x emissions in the State trading program budget, and rounding to the nearest whole allowance as appropriate.

(c) For each control period under § 96.41, the permitting authority will allocate NO_x allowances to NO_x Budget units under § 96.4 in the State that commenced operation on or after May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, in accordance with the following procedures:

(1) The permitting authority will establish a separate allocation set-aside for each control period. Each allocation set-aside will be allocated NO_x allowances equal to 2 percent of the tons of NO_x emissions in the State trading program budget under § 96.40.

(2) The NO_x authorized account representative of a NO_x Budget unit under paragraph (c) of this section may submit to the permitting authority a request, in writing or in a format

specified by the permitting authority, to be allocated NO_x allowances for no more than five consecutive control periods under § 96.41, starting with the control period during which the NO_x Budget unit is projected to commence operation. The NO_x allowance allocation request must be submitted prior to May 1 of the first control period for which the NO_x allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NO_x Budget unit.

(3) In a NO_x allowance allocation request under paragraph (c)(2) of this section, the NO_x authorized account representative may request for a control period NO_x allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NO_x Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit is projected to operate.

(4) The permitting authority will review, and allocate NO_x allowances pursuant to, NO_x allowance allocation requests under paragraph (c)(2) of this section in the order that the requests are received by the permitting authority.

(i) Upon receipt of a NO_x allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, the control period and the number of allowances specified are consistent with the requirements of paragraphs (c)(2) and (3) of this section.

(ii) If the allocation set-aside for the control period for which NO_x allowances are requested has an amount of NO_x allowances not less than the number requested (as adjusted under paragraph (c)(4)(i) of this section), the permitting authority will allocate the full, adjusted amount of the NO_x allowances requested to the NO_x Budget unit.

(iii) If the allocation set-aside for the control period for which NO_x allowances are requested has a smaller amount of NO_x allowances than the number requested (as adjusted under paragraph (b)(4)(i) of this section), the permitting authority will deny in part the request and allocate only the remaining number of NO_x allowances in the allocation set-aside to the NO_x Budget unit.

(iv) Once an allocation set-aside for a control period has been depleted of all NO_x allowances, the permitting authority will deny, and will not allocate any NO_x allowances pursuant to, any NO_x allowance allocation requests under which NO_x allowances

have not already been allocated for the control period.

(5) Within 60 days of receipt of a NO_x allowance allocation request, the permitting authority will take appropriate action under paragraph (c)(4) of this section and notify the NO_x authorized account representative that submitted the request and the Administrator of the number of NO_x allowances (if any) allocated for the control period to the NO_x Budget unit.

(6) After September 30 of each year, the Administrator will transfer any NO_x allowances remaining in the allocation set-aside for the control period for the year to the allocation set-aside for the following control period.

(7) If additional NO_x allowances are placed in the allocation set-aside for the control period pursuant to paragraphs (c)(6) or (d)(2) of this section, the permitting authority will allocate NO_x allowances, in accordance with paragraph (c)(4) of this section, to any NO_x allowance allocation requests that were originally denied in whole or in part. The permitting authority will notify the NO_x authorized account representative that submitted the request and the Administrator of the number of NO_x allowances (if any) allocated under this paragraph (c)(7).

(d) For a NO_x Budget unit that is allocated NO_x allowances under paragraph (c) of this section for a control period, the Administrator will deduct NO_x allowances under § 96.54(b) or (e) to account for the actual utilization of the unit during the control period.

(1) The Administrator will calculate the number of NO_x allowances to be deducted to account for the unit's actual utilization using the following formula, provided that the number of NO_x allowances to be deducted shall be zero if the number calculated is less than zero:

Unit's NO_x allowances deducted for actual utilization = (Unit's NO_x allowances allocated for control period) — (Unit's actual control period utilization × 0.15 lb/mmBtu) where:

"Unit's NO_x allowances allocated for control period" is the number of NO_x allowances allocated to the unit for the control period under paragraph (c) of this section.

"Unit's actual control period utilization" is the utilization (in mmBtu), as defined in § 96.2, of the unit during the control period.

(2) Any NO_x allowances deducted by the Administrator in accordance with paragraph (d) of this section will be transferred by the Administrator to the permitting authority's allocation set-aside for the following control period.

Subpart F—NO_x Allowance Tracking System**§ 96.50 NO_x Allowance Tracking System accounts.**

(a) Nature and function of compliance accounts and overdraft accounts. Consistent with § 96.51(a), the Administrator will establish one compliance account for each NO_x Budget unit and one overdraft account for each source with one or more NO_x Budget units. Allocations of allowances pursuant to subpart E of this part, transfers of allowances pursuant to subpart G of this part, and deductions of allowances to cover NO_x emissions, account for actual utilization, or offset excess emissions of NO_x pursuant to § 96.54 will be recorded in the compliance accounts or overdraft accounts in accordance with this subpart.

(b) Nature and function of general accounts. Consistent with § 96.51(b), the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to subpart G of this part will be recorded in the general account in accordance with this subpart.

§ 96.51 Establishment of accounts.

(a) *Compliance accounts and overdraft accounts.* Upon receipt of a complete account certificate of representation under § 96.13, the Administrator will establish:

(1) A compliance account for each NO_x Budget unit for which the account certificate of representation was submitted; and

(2) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_x Budget units.

(b) *General accounts.* (1) Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(i) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;

(ii) At the option of the NO_x authorized account representative, organization name and type of organization;

(iii) A list of all persons subject to a binding agreement for the NO_x authorized account representative to represent their ownership interest with

respect to the allowances held in the general account;

(iv) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(v) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

(2) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(i) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(ii) The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the Administrator or a court regarding the general account.

(iii) Each submission concerning the general account shall be submitted, signed, and certified by the NO_x authorized account representative or the alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this

submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iv) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(iii) of this section.

(3)(i) An application for a general account may designate one and only one NO_x authorized account representative and one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(ii) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section, any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(4)(i) The NO_x authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(ii) The alternate NO_x authorized account representative for a general account may be changed at any time

upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Administrator, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

(5)(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(4) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the Administrator under the NO_x Budget Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

(c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.52 NO_x Allowance Tracking System responsibilities of NO_x authorized account representative.

(a) Following the establishment of a NO_x Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account.

(b) Authorized account representative identification. The Administrator will assign a unique identifying number to each NO_x authorized account representative.

§ 96.53 Recordation of NO_x allowance allocations.

(a) The Administrator will record the NO_x allowances for 2003, 2004, 2005, 2006, and 2007 in the NO_x Budget units' compliance accounts and the allocation set-asides, as allocated under subpart E of this part. The Administrator will also record the NO_x allowances allocated under § 96.88(a)(1) and (b) for each NO_x Budget opt-in source in its compliance account.

(b) Each year, after the Administrator has made all deductions from a NO_x Budget unit's compliance account and the overdraft account pursuant to § 96.54, the Administrator will record NO_x allowances, as allocated to the unit under subpart E of this part or under § 96.88(a)(2) and (b), in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the Administrator will also record NO_x allowances, as allocated under subpart E of this part, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(c) Serial numbers for allocated NO_x allowances. When allocating NO_x allowances to and recording them in an account, the Administrator will assign each NO_x allowance a unique

identification number that will include digits identifying the year for which the NO_x allowance is allocated.

§ 96.54 Compliance.

(a) *NO_x allowance transfer deadline.* The NO_x allowances are available to be deducted for compliance with a unit's NO_x Budget emissions limitation for a control period in a given year only if the NO_x allowances:

(1) Have compliance use dates prior to or the same as that year; and

(2) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under § 96.60 by the NO_x allowance transfer deadline for that control period.

(b) *Deductions for compliance.* (1) Following the recordation, in accordance with § 96.61, of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for a control period, the Administrator will deduct NO_x allowances available under paragraph (a) of this section to cover the unit's NO_x emissions (as determined in accordance with subpart H of this part), or to account for actual utilization under § 96.42(d), for the control period:

(i) From the compliance account; and

(ii) Only if no more NO_x allowances available under paragraph (a) of this section remain in the compliance account from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NO_x Allowance Tracking System account number and end with the unit having the compliance account with the highest NO_x Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(2) The Administrator will deduct NO_x allowances first under paragraph (b)(1)(i) of this section and then under paragraph (b)(1)(ii) of this section:

(i) Until the number of NO_x allowances deducted for the control period equals the number of tons of NO_x emissions, determined in accordance with subpart H of this part, from the unit for the control period for

which compliance is being determined, plus the number of NO_x allowances required for deduction to account for actual utilization under § 96.42(d) for the control period; or

(ii) Until no more NO_x allowances available under paragraph (a) of this section remain in the respective account.

(c)(1) *Identification of NO_x allowances by serial number.* The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under paragraph (b), (d), or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with § 96.30.

(2) *First-in, first-out.* The Administrator will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under paragraph (c)(1) of this section, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those NO_x allowances with a compliance use date the same as the year of the control period and that were allocated to the unit under subpart E or I of this part;

(ii) Those NO_x allowances with a compliance use date the same as the year of the control period and that were transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation;

(iii) Those NO_x allowances with an earlier compliance use date than the year of the control period and that were allocated to the unit under subpart E or I of this part; and

(iv) Those NO_x allowances with an earlier compliance use date than the year of the control period and that were transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, with a compliance use date the same as the year after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

(2) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator will deduct the required

number of NO_x allowances, regardless of their compliance use date, whenever NO_x allowances are recorded in either account.

(3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the NO_x Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a NO_x Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

(ii) Each ton of excess emissions is a separate violation.

(e) *Deductions for units sharing a common stack.* In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this part, the NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with § 96.30.

Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct NO_x allowances until the number of NO_x allowances equals the identified percentage of the number of tons of NO_x emissions, as determined in accordance with subpart H of this part, from the common stack for the control period in the year for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.

(f) The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to paragraphs (b), (d), or (e) of this section.

§ 96.55 Banking [Reserved].

§ 96.56 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO_x Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify

the NO_x authorized account representative for the account.

§ 96.57 Closing of general accounts.

(a) The NO_x authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement, in writing or in a format specified by the Administrator, requesting deletion of the account from the NO_x Allowance Tracking System and by correctly submitting for recordation under § 96.60 an allowance transfer of all NO_x allowances in the account to one or more other NO_x Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the Administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the Administrator receives a correctly submitted transfer of NO_x allowances into the account under § 96.60 or a statement, in writing or in a format specified by the Administrator, submitted by the NO_x authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart G—NO_x Allowance Transfers

§ 96.60 Scope and submission of NO_x allowance transfers.

The NO_x authorized account representatives seeking recordation of a NO_x allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the Administrator:

- The numbers identifying both the transferrer and transferee accounts;
- A specification by serial number of each NO_x allowance to be transferred; and
- The printed name and signature of the NO_x authorized account representative of the transferrer account and the date signed.

§ 96.61 EPA recordation.

(a) Within 5 business days of receiving a NO_x allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a NO_x allowance transfer by moving each NO_x allowance from the transferrer account to the transferee

account as specified by the request, provided that:

- The transfer is correctly submitted under § 96.60;
 - The transferrer account includes each NO_x allowance identified by serial number in the transfer; and
 - The transfer meets all other requirements of this part.
- (b) A NO_x allowance transfer that is submitted for recordation following the NO_x allowance transfer deadline and that includes any NO_x allowances with a compliance use date that is prior to or the same as the year of the control period to which the NO_x allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NO_x allowance allocations in § 96.53(b).
- (c) Where a NO_x allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.62 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a NO_x allowance transfer under § 96.61, the Administrator will notify each party to the transfer. Notice will be given, in writing or in a format to be specified by the Administrator, to the NO_x authorized account representatives of both the transferrer and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a NO_x allowance transfer that fails to meet the requirements of § 96.61(a), the Administrator will notify, in writing or in a format to be specified by the Administrator, the NO_x authorized account representatives of both accounts subject to the transfer of:

- A decision not to record the transfer; and
- The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a NO_x allowance transfer for recordation following notification of non-recordation.

Subpart H—Monitoring and Reporting

§ 96.70 General requirements.

The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x Budget unit, shall comply with the monitoring and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.2 and in § 72.2 of this chapter shall apply, and the terms

"affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be replaced by the terms "NO_x Budget unit," "NO_x authorized account representative," and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in § 96.2.

(a) *Compliance dates.* (1)(i) The owner or operator of each NO_x Budget unit under § 96.4 that commences operation before January 1, 2000 shall ensure that all monitoring systems required under this subpart for monitoring NO_x emission rate and heat input are installed, all certification tests required under § 96.71 are successfully completed, and all other provisions of this subpart and part 75 of this chapter applicable to such systems are met on or before May 1, 2000.

(ii) The owner or operator of each NO_x Budget unit under paragraph (a)(1) of this section that has not successfully completed all certification tests required under § 96.71 by May 1, 2001 shall determine and report hourly NO_x emission rate and heat input, starting on such date until all such certification tests are successfully completed, using either:

- The maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit;
- Reference methods under § 75.22 of this chapter; or

(C) Monitored data validated using the procedures in § 75.20(b)(3) of this chapter where the term "recertification" is replaced by the term "initial certification."

(2)(i) The owner or operator of each NO_x Budget unit under § 96.4 that commences operation on or after January 1, 2000 shall ensure that all monitoring systems required under this subpart for monitoring NO_x emission rate and heat input are installed, all certification tests required under § 96.71 are successfully completed, and all other provisions of this subpart and part 75 applicable to such systems are met on or before the later of the following dates:

- May 1, 2001; or
- Not later than the earlier of 180 days after the date on which the unit commences operation or, for units under § 96.4(a), 90 days after the date on which the unit commences commercial operation.

(ii) The owner or operator of each NO_x Budget unit under paragraph (a)(2) of this section that has not successfully completed all certification tests required under § 96.71 by the later of May 1, 2001 or the date on which the unit

commences operation shall determine and report hourly NO_x emission rate and heat input, starting on such date until all such certification tests are successfully completed, using either:

- The maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit;
- Reference methods under § 75.22 of this chapter; or

(C) Monitored data validated using the procedures in § 75.20(b)(3) of this chapter where the term "recertification" is replaced by the term "initial certification."

(3)(i) The owner-operator of a NO_x Budget unit that completes construction of a new stack or flue after the applicable deadline in paragraph (a)(1)(i) or (2)(i) of this section or under subpart I of this part, shall ensure, with regard to such new stack or flue, that all monitoring systems required under this subpart for monitoring NO_x emission rate and heat input are installed, all certification tests required under § 96.71 are successfully completed, and all other provisions of this subpart and part 75 are met not later than 90 days after the date on which emissions first exit to the atmosphere through such new stack or flue.

(ii) The owner or operator of each NO_x Budget unit under paragraph (a)(3)(i) of this section that has not successfully completed all certification tests required under § 96.71 by not later than 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue under paragraph (a)(3)(i) of this section shall determine and report hourly NO_x emission rate and heat input, starting on such date until all such certification tests are successfully completed, using either:

- The maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit;
- Reference methods under § 75.22 of this chapter; or

(C) Monitored data validated using the procedures in § 75.20(b)(3) of this chapter where the term "recertification" is replaced by the term "initial certification."

(4) The provisions of this subpart are applicable to a unit for which an application for a NO_x Budget opt-in permit is being or has been submitted, as provided in subpart I of this part.

(b) *Prohibitions.* (1) No owner or operator of a NO_x Budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 96.75.

(2) No owner or operator of a NO_x Budget unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a NO_x Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a NO_x Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this subpart, except under any one of the following circumstances:

- During the period that the unit is covered by a retired unit exemption under § 96.5 that is in effect;
- The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or
- The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with § 96.71(b)(2)(i).

§ 96.71 Initial certification and recertification procedures.

(a) The owner or operator of a NO_x Budget unit that is subject to an acid rain emissions limitation shall comply with the initial certification and recertification procedures of part 75 of this chapter, except that:

- If, prior to January 1, 1998, the Administrator approved a petition under § 75.17(a) or (b) of this chapter for apportioning the combined NO_x emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.17 of this chapter, the petition shall be resubmitted to the Administrator under § 96.75(a) to determine if the approval should apply under the NO_x Budget Trading Program.

(2) For any additional NO_x emission rate CEMS required under the common stack provisions in § 75.72 of this chapter, the owner or operator shall meet the requirements of paragraph (b) of this section.

(b) The owner or operator of a NO_x Budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, and the owner or operator of a NO_x Budget unit that is subject to an acid rain emissions limitation shall meet the following initial certification and recertification procedures for any additional NO_x emission rate CEMS required under the common stack provisions in § 75.72 of this chapter.

(1) *Requirements for initial certification or recertification.* (i) The owner or operator shall ensure that each monitoring system required by subpart H of part 75 of this chapter (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter and shall ensure that all applicable certification tests are successfully completed by the deadlines specified in § 96.70(a). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this part, in a location where no such monitoring system was previously installed, initial certification is required.

(ii) Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that is determined by the permitting authority or the Administrator to significantly affect the ability of the system to accurately measure or record NO_x emission rate or heat input or to meet the requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system by performing all of the recertification testing required under § 75.20 of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that is determined by the permitting authority or the Administrator to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system. Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients. Any change to a continuous emissions monitoring system for which

the permitting authority or the Administrator determines that a relative accuracy test audit (RATA) is not necessary, shall not require recertification, and any other tests that the permitting authority or the Administrator determines to be necessary (e.g., linearity checks, calibration error tests, automated data acquisition and handling system (DAHS) verifications) shall be performed. These other tests shall be considered diagnostic tests rather than recertification tests. The data validation procedures in § 75.20(b)(3) of this chapter shall be applied (replacing the term "recertification" with the term "diagnostic") to linearity checks, 7-day calibration error tests, and cycle time tests when these are required as diagnostic tests.

(2) *Certification approval process for initial certifications and recertification.*

(i) *Notification of certification.* The NO_x authorized account representative shall submit to the permitting authority a written notice of the dates of certification in accordance with § 96.73.

(ii) *Certification application.* The NO_x authorized account representative shall submit to the permitting authority a certification application for each monitoring system required under subpart H of part 75 of this chapter. A complete certification application shall include the information specified in § 75.73 of this chapter.

(iii) Upon the earlier of the successful completion of the required certification procedures of paragraph (b)(1) of this section or the hour in which data that were considered conditionally valid according to the procedures in § 75.20(b)(3) of this chapter for the monitoring system or component thereof, the monitoring system or component thereof shall be deemed provisionally certified for use under the NO_x Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system or component thereof under paragraph (b)(2)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the permitting authority.

(iv) *Certification application formal approval process.* The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (b)(2)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system which meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the NO_x Budget Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each continuous emission monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (b)(2)(ii) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the NO_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (b)(2)(iv)(C) of this section.

(c) *Disapproval notice.* If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under paragraph (b)(2)(iv)(B) of this section has been met, the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for

loss of certification in paragraph (b)(2)(v) of this section for each monitoring system or component thereof which is disapproved for initial certification.

(D) *Audit decertification.* The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.72(b).

(v) *Procedures for loss of certification.* If the permitting authority issues a notice of disapproval of a certification application under paragraph (b)(2)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (b)(2)(iv)(D) of this section, then:

(A) The owner or operator shall substitute, for each hour of unit operation during the period of invalid data, the maximum potential NO_x emission rate or the maximum potential hourly heat input of the unit as applicable, until the earlier of the time, date, and hour (after the monitoring system or component thereof is adjusted, repaired, or replaced) when certification tests are successfully completed or the time, date, and hour specified under the data validation procedures under § 75.20(b)(3) of this chapter;

(B) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with the procedures in paragraphs (b)(2)(i) and (ii) of this section; and

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

§ 96.72 *Out of control periods.*

(a) Whenever any monitoring system fails to meet the quality assurance requirements of Appendix B of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D of part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.71 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time

of the audit, the permitting authority will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in § 96.71 for each disapproved system.

§ 96.73 *Notifications.*

The NO_x authorized account representative for a NO_x Budget unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an acid rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 96.74 *Recordkeeping and reporting.*

(a) The owner or operator of a NO_x Budget unit that is subject to an acid rain emissions limitation shall meet recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter and paragraph (b) of this section, except that:

(1) For any additional NO_x emission rate CEMS required under the common stack provisions of § 75.72 of this chapter, the owner or operator shall meet the requirements of paragraph (b)(2) of this section;

(2) If the NO_x authorized account representative for the unit is not the same person as the designated representative for the unit under subpart B of part 72 of this chapter, all submissions under subpart F or G of part 75 of this chapter must be signed by both the NO_x authorized account representative and the designated representative; and

(3) Each quarterly report submitted to meet the requirements of § 75.64 of this chapter shall also include the data and information required in § 75.73 of this chapter.

(b) For NO_x Budget units that are not subject to an acid rain emissions limitation:

(1) *Monitoring Plans.* The owner or operator shall comply with requirements of § 75.62 of this chapter, except that the monitoring plan shall include all of the information required by § 75.73 of this chapter.

(2) *Certification Applications.* The NO_x authorized account representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests including the information required under § 75.73 of this chapter.

(3) *Quarterly reports.* (i) (A) Except as provided in paragraph (b)(3)(i)(B) of this section, the NO_x authorized account representative shall submit electronically a quarterly report for each calendar quarter beginning with the earlier of the calendar quarter that includes the date of initial provisional certification under § 96.71(b)(2)(iii) or May 1, 2001. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or May 1, 2001.

(B) If the unit commences operation after May 1, 2001, the NO_x authorized account representative shall submit electronically a quarterly report for each calendar quarter beginning with the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to the date that the unit commenced operation.

(ii) Each quarterly report shall be submitted to the Administrator within 30 days following the end of each calendar quarter and shall include, for each NO_x Budget unit (or group of units using a common stack), all of the data and information required in § 75.73 of this chapter.

(iii) *Compliance certification.* The NO_x authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(A) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(B) With regard to a unit with add-on emission controls and for all hours where data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not

systematically underestimate NO_x emissions.

(iv) The NO_x authorized account representative shall comply with all of the quarterly reporting requirements in § 75.64(d), (f), and (g) of this chapter.

§ 96.75 *Petitions.*

(a)(1) The NO_x authorized account representative of a NO_x Budget unit that is subject to an acid rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.

(2) Notwithstanding paragraph (a)(1) of this section, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of § 75.70 of this chapter, the petition is governed by paragraph (b) of this section.

(b)(1) The NO_x authorized account representative of a NO_x Budget unit that is not subject to an acid rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. The NO_x authorized account representative of a NO_x Budget unit that is subject to an acid rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of § 75.50 of this chapter. (2) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent the petition under paragraph (b)(1) of this section is approved by both the permitting authority and the Administrator.

Subpart I—Individual Unit Opt-Ins

§ 96.80 *Applicability.*

A unit that is in the State, is not a NO_x Budget unit under § 96.4, and is operating, may qualify, under this subpart, to become a NO_x Budget opt-in source. A unit that is a NO_x Budget unit, is covered by a retired unit exemption under § 96.5 that is in effect, or that is not operating, is not eligible to become a NO_x Budget opt-in source.

§ 96.81 General.

Except otherwise as provided in this part, a NO_x Budget opt-in source shall be treated as a NO_x Budget unit for purposes of applying subparts A through H of this part.

§ 96.82 NO_x authorized account representative.

A unit for which an application for a NO_x Budget opt-in permit is being or has been submitted, or a NO_x Budget opt-in source, located at the same source as one or more NO_x Budget units, shall have the same NO_x authorized account representative as such NO_x Budget units.

§ 96.83 Applying for NO_x Budget opt-in permit.

(a) *Applying for initial NO_x Budget opt-in permit.* In order to apply for an initial NO_x Budget opt-in permit, the NO_x authorized account representative of a unit qualified under § 96.80 may submit to the permitting authority at any time, except as provided under § 96.86(g):

(1) A complete NO_x Budget permit application under § 96.22;

(2) A monitoring plan submitted in accordance with subpart H of this part; and

(3) A complete account certificate of representation under § 96.13, if no NO_x authorized account representative has been previously designated for the unit.

(b) *Duty to reapply.* The NO_x authorized account representative of a NO_x Budget opt-in source shall submit a complete NO_x Budget permit application under § 96.22 to renew the NO_x Budget opt-in permit in accordance with § 96.21(c) and, if applicable, an updated monitoring plan in accordance with subpart H of this part.

§ 96.84 Opt-in process.

The permitting authority will issue or deny a NO_x Budget opt-in permit for a unit for which an initial application for a NO_x Budget opt-in permit under § 96.83 is submitted, in accordance with § 96.20 and the following:

(a) *Interim review of monitoring plan.* The permitting authority will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x Budget opt-in permit under § 96.83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit are monitored and reported in accordance with subpart H of this part. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(b) If the permitting authority determines that the unit's monitoring plan is sufficient under paragraph (a) of this section and after completion of monitoring system certification under subpart H of this part, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with subpart H of this part for one full control period during which monitoring system availability is not less than 80 percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NO_x Budget unit" prior to issuance of a NO_x Budget opt-in permit covering the unit.

(c) Based on the information monitored and reported under paragraph (b) of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mMBtu) for the control period and the unit's baseline NO_x emissions rate shall be calculated as the unit's total NO_x mass emissions (in lb) for the control period divided by the unit's baseline heat rate.

(d) After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraph (c) of this section, the permitting authority will serve a draft NO_x Budget opt-in permit on the NO_x authorized account representative of the unit.

(e) *Confirmation of intention to opt-in.* Within 20 days after the issuance of the draft NO_x Budget opt-in permit, the NO_x authorized account representative of the unit must submit to the permitting authority, in writing, a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO_x Budget opt-in permit under § 96.83. The permitting authority will treat the failure to make a timely submission as a withdrawal of the NO_x Budget opt-in permit application.

(f) *Issuance of draft NO_x Budget opt-in permit.* If the NO_x authorized account representative confirms the intention to opt in the unit under paragraph (e) of this section, the permitting authority will issue the draft NO_x Budget opt-in permit in accordance with § 96.20.

(g) Notwithstanding paragraphs (a) through (f) of this section, if at any time before issuance of a draft NO_x Budget opt-in permit for the unit, the permitting authority determines that the unit does not qualify as a NO_x Budget opt-in source under § 96.80, the permitting authority will issue a draft denial of a NO_x Budget opt-in permit for the unit in accordance with § 96.20.

(h) *Withdrawal of application for NO_x Budget opt-in permit.* A NO_x authorized account representative of a unit may withdraw its application for a NO_x Budget opt-in permit under § 96.83 at any time prior to the issuance of the final NO_x Budget opt-in permit. Once the application for a NO_x Budget opt-in permit is withdrawn, a NO_x authorized account representative wanting to reapply must submit a new application for a NO_x Budget permit under § 96.83.

(i) *Effective date.* The effective date of the initial NO_x Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NO_x Budget opt-in permit by the permitting authority. The unit shall be a NO_x Budget opt-in source and a NO_x Budget unit as of the effective date of the initial NO_x Budget opt-in permit.

§ 96.85 NO_x Budget opt-in permit contents.

(a) Each NO_x Budget opt-in permit (including any draft or proposed NO_x Budget opt-in permit, if applicable) will contain all elements required for a complete NO_x Budget opt-in permit application under § 96.22 as approved or adjusted by the permitting authority.

(b) Each NO_x Budget opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.2 and, upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of NO_x allowances to or from the compliance accounts of each NO_x Budget opt-in source covered by the NO_x Budget opt-in permit or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located.

§ 96.86 Withdrawal from NO_x Budget Trading Program.

(a) *Requesting withdrawal.* To withdraw from the NO_x Budget Trading Program, the NO_x authorized account representative of a NO_x Budget opt-in source shall submit to the permitting authority a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a NO_x Budget opt-in source covered by a request under paragraph (a) of this section may withdraw from the NO_x Budget Trading Program and the NO_x Budget opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period immediately before the withdrawal to be effective, the NO_x authorized account

representative must submit or must have submitted to the permitting authority an annual compliance certification report in accordance with § 96.30.

(2) If the NO_x Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator will deduct or have deducted from the NO_x Budget opt-in source's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located, the full amount required under § 96.54(d) for the control period.

(3) After the requirements for withdrawal under paragraphs (b)(1) and (2) of this section are met, the Administrator will deduct from the NO_x Budget opt-in source's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located, NO_x allowances equal in number to and with the same or earlier compliance use date as any NO_x allowances allocated to that source under § 96.88 for any control period for which the withdrawal is to be effective. The Administrator will close the NO_x Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x Budget opt-in source. The NO_x authorized account representative for the NO_x Budget opt-in source shall become the NO_x authorized account representative for the general account.

(c) A NO_x Budget opt-in source that withdraws from the NO_x Budget Trading Program shall comply with all requirements under the NO_x Budget Trading Program concerning all years for which such NO_x Budget opt-in source was a NO_x Budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.

(d) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of NO_x allowances required), the permitting authority will issue a notification to the NO_x authorized account representative of the NO_x Budget opt-in source of the acceptance of the withdrawal of the NO_x Budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the

NO_x authorized account representative of the NO_x Budget opt-in source that the NO_x Budget opt-in source's request to withdraw is denied. If the NO_x Budget opt-in source's request to withdraw is denied, the NO_x Budget opt-in source shall remain subject to the requirements for a NO_x Budget opt-in source.

(e) *Permit amendment.* After the permitting authority issues a notification under paragraph (d)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the NO_x Budget permit covering the NO_x Budget opt-in source to terminate the NO_x Budget opt-in permit as of the effective date specified under paragraph (d)(1) of this section. A NO_x Budget opt-in source shall continue to be a NO_x Budget opt-in source until the effective date of the termination.

(f) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the NO_x Budget opt-in source's request to withdraw, the NO_x authorized account representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(g) *Ability to return to the NO_x Budget Trading Program.* Once a NO_x Budget opt-in source withdraws from the NO_x Budget Trading Program and its NO_x Budget opt-in permit is terminated under this section, the NO_x authority account representative may not submit another application for a NO_x Budget opt-in permit under § 96.83 for the unit prior to the date that is 4 years after the date on which the terminated NO_x Budget opt-in permit became effective.

§ 96.87 Change in regulatory status.

(a) *Notification.* When a NO_x Budget opt-in source becomes a NO_x Budget unit under § 96.4, the NO_x authorized account representative shall notify in writing the permitting authority and the Administrator of such change in the NO_x Budget opt-in source's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's action.* (1)(i) When the NO_x Budget opt-in source becomes a NO_x Budget unit under § 96.4, the permitting authority will revise the NO_x Budget opt-in source's NO_x Budget opt-in permit to meet the requirements of a NO_x Budget permit under § 96.23 as of an effective date that is the date on which such NO_x Budget opt-in source becomes a NO_x Budget unit under § 96.4.

(ii)(A) The Administrator will deduct from the compliance account for the NO_x Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NO_x Budget source

where the unit is located, NO_x allowances equal in number to and with the same or earlier compliance use date as:

(1) Any NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt-in source) under § 96.88 for any control period after the last control period during which the unit's NO_x Budget opt-in permit was effective; and

(2) If the effective date of the NO_x Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt-in source) under § 96.88 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.

(B) The NO_x authorized account representative shall ensure that the compliance account of the NO_x Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NO_x Budget source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under paragraph (b)(1)(ii)(A) of this section. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of their compliance use date, whenever NO_x allowances are recorded in either account.

(iii)(A) For every control period during which the NO_x Budget permit revised under paragraph (b)(1)(i) of this section is effective, the NO_x Budget unit under paragraph (b)(1)(i) of this section will be treated, solely for purposes of NO_x allowance allocations under § 96.42, as a unit that commenced operation on the effective date of the NO_x Budget permit revision under paragraph (b)(1)(i) of this section and will be allocated NO_x allowances under § 96.42.

(B) Notwithstanding paragraph (b)(1)(iii)(A) of this section, if the effective date of the NO_x Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the following number of NO_x allowances will be allocated to the NO_x Budget unit under paragraph (b)(1)(i) of this section under § 96.42 for the control period: the number of NO_x allowances otherwise allocated to the NO_x Budget unit under § 96.42(c) for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section,

divided by the total number of days in the control period.

(2)(i) When the NO_x authorized account representative of a NO_x Budget opt-in source does not renew its NO_x Budget opt-in permit under § 96.83(b), the Administrator will deduct from the NO_x Budget opt-in unit's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located, NO_x allowances equal in number to and with the same or earlier compliance use date as any NO_x allowances allocated to the NO_x Budget opt-in source under § 96.88 for any control period after the last control period for which the NO_x Budget opt-in permit is effective. The NO_x authorized account representative shall ensure that the NO_x Budget opt-in source's compliance account or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located includes the NO_x allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of their compliance use date, whenever NO_x allowances are recorded in either account.

(ii) After the deduction under paragraph (b)(2)(i) of this section is completed, the Administrator will close the NO_x Budget opt-in source's

compliance account. If any NO_x allowances remain in the compliance account after completion of such deduction and any deduction under § 96.84, the Administrator will close the NO_x Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x Budget opt-in source. The NO_x authorized account representative for the NO_x Budget opt-in source shall become the NO_x authorized account representative for the general account.

§ 96.88 NO_x allowance allocations to opt-in units.

(a) *NO_x allowance allocation.* (1) By December 31 immediately before the first control period for which the NO_x Budget opt-in permit is effective, the permitting authority will allocate NO_x allowances to the NO_x Budget opt-in source and submit to the Administrator the allocation for the control period in accordance with paragraph (b) of this section.

(2) By no later than December 31, after the first control period for which the NO_x Budget opt-in permit is in effect, and December 31 of each year thereafter, the permitting authority will allocate NO_x allowances to the NO_x Budget opt-in source, and submit to the Administrator allocations for the next

control period, in accordance with paragraph (b) of this section.

(b) For each control period for which the NO_x Budget opt-in source has an approved NO_x Budget opt-in permit, the NO_x Budget opt-in source will be allocated NO_x allowances in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating NO_x allowance allocations will be the lesser of:

(i) The NO_x Budget opt-in source's baseline heat input determined pursuant to § 96.84(c); or

(ii) The NO_x Budget opt-in source's heat input, as determined in accordance with subpart H of this part, for the control period in the year prior to the year of the control period for which the NO_x allocations are being calculated.

(2) The permitting authority will allocate NO_x allowances to the NO_x Budget opt-in source in an amount equaling the heat input (in mmBtu) determined under paragraph (b)(1) of this section multiplied by the lesser of:

(i) The NO_x Budget opt-in source's baseline NO_x emissions rate (in lb/mmBtu) determined pursuant to § 96.84(c); or

(ii) The most stringent State or Federal NO_x emissions limitation applicable to the NO_x Budget opt-in source during the control period.

[FR Doc. 98-11873 Filed 5-8-98; 8:45 am]

BILLING CODE 6560-60-P

federal register

Monday
May 11, 1998

Part III

Department of Energy

Office of Energy Efficiency and
Renewable Energy

10 CFR Part 430

Energy Conservation Program for
Consumer Products: Test Procedure for
Water Heaters; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE-RM-94-230]

RIN 1904-AA52

Energy Conservation Program for Consumer Products: Test Procedure for Water Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or the Department) is amending its test procedure for water heaters. The first-hour rating for storage-type water heaters is revised to more accurately measure large storage-type water heaters. Also, electric and gas-fired instantaneous water heaters are rated at the maximum flow rate to distinguish them from storage-type water heaters.

EFFECTIVE DATE: This rule is effective June 10, 1998.

FOR FURTHER INFORMATION CONTACT:

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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act, as amended (EPCA or the Act), establishes the Energy Conservation Program for Consumer Products other than Automobiles (Program).¹ The products currently subject to this Program include water heaters, which are the subject of today's Final Rule.

Under the Act, the Program consists essentially of three parts: testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (formerly the National Bureau of Standards), is required to amend or establish test procedures as appropriate for each of the covered products. Section 323 of EPCA, 42 U.S.C. 6293. The purpose of the test procedures is to produce test results that measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. The test procedure must not be unduly burdensome to conduct. Section 323(b)(3) of EPCA, 42 U.S.C. 6293(b)(3).

Beginning 180 days after a test procedure for a product is prescribed, no manufacturer, distributor, retailer, or private labeler may make representations with respect to the energy use, efficiency, or cost of energy consumed by such products, except as reflected in tests conducted according to the DOE procedure. Section 323(c)(2) of EPCA, 42 U.S.C. 6293(c)(2).

Furthermore, DOE is required to determine to what extent, if any, an amended test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. Section 323(e)(1) of EPCA, 42 U.S.C. 6293(e)(1).

B. Background

Today's Final Rule amends DOE's test procedure for water heaters by revising the method used to determine the first-hour rating of storage-type water

heaters, adding a new rating for electric and gas-fired instantaneous water heaters, and amending the definition of a heat pump water heater.

On March 23, 1995, DOE published in the *Federal Register* (60 FR 15330) a Notice of Proposed Rule and Public Hearing on proposed amendments to clarify the water heater test procedure and requested data, comments, and information regarding its applicability and workability. The Department conducted a public hearing on July 12, 1995, and a public workshop on February 12, 1997, and requested written comments.

The proposed amendments to the water heater test procedure included revisions to make the water heater test procedure applicable to electric and oil-fired instantaneous water heaters; coverage for testing storage-type water heaters with rated storage capacities less than 20 gallons (76 liters); revision of the first-hour rating for storage-type water heaters; amendment to the current definition for heat pump water heater; and the addition of new definitions for heat pump water heater storage tank, add-on heat pump water heater, integral heat pump water heater, and solar water heater. In addition, DOE requested comments on the adequacy of the test procedure for heat pump water heaters regarding the use of a backup electric resistance element(s).

II. Discussion of Comments

A. General Comments

Forty commenters submitted written comments in response to the proposed rulemaking on water heaters. After reviewing these comments and the comments presented during the public hearing, the Department held a public workshop on February 12, 1997, to solicit additional comments on the issues in the Proposed Rule. Workshop topics included the daily hot water consumption of 64.3 gallons (243.4 liters) and the thermostat setting of 135°F (57.2°C) in the existing test procedure. The notice for the public workshop was published in the *Federal Register* (62 FR 4202, January 29, 1997). Nine commenters submitted written comments prior to and after the workshop. Those written comments received prior to the workshop (from the Gas Appliance Manufacturers Association [GAMA], February 12, 1997, Water Heater Test Procedure Workshop Transcript [hereafter referred to as "February 1997 Transcript"] at Appendix I; Electric Power Research Institute [EPRI], February 1997 Transcript at Appendices E and J; and Controlled Energy Corp. [CEC], February

1997 Transcript at Appendix H) were distributed to all participants at the beginning of the workshop for inclusion in the workshop session. During the rulemaking process, a number of commenters stated their support of the EPRI recommendations on all issues. These commenters included: Northeast Utilities Service Co., No. 11; The Dayton Power & Light Co., No. 15; Utilities District of Western Indiana, No. 16; National Rural Electric Coop. Assoc., No. 18; Decatur County REMC, No. 19; Pennsylvania Power & Light Co., No. 20; Central and South West Services, Inc., No. 21; Centrior Energy, No. 22; Hawaiian Electric Co., No. 23; Southern Company Services, Inc., No. 24; Potomac Electric Power Co., No. 26; East Kentucky Power Cooperative, Inc., No. 34; Ohio Edison Co., No. 39; Southern California Edison Co., No. 43; Duke Power Co., No. 44; and Nevada Power Co., No. 45.

The following is a summary of the public comments, presented during and after both the public hearing and the workshop, on each of the DOE proposed amendments/revisions, and on other issues concerning the existing test procedure.

On October 31, 1997, the comment period was reopened on the issues of the maximum gallons (liters) per minute rating for electric and gas-fired instantaneous water heaters and the energy factor of the heat pump water heater storage tank. (62 FR 58923, October 31, 1997.)

B. Product Specific Comments

1. Instantaneous Water Heaters

a. *Coverage of Electric and Oil-Fired Instantaneous Water Heaters.* The current test procedure does not address the testing of electric and oil-fired instantaneous water heaters, because they are not defined in the test procedure. In the 1995 proposed rulemaking for water heaters, DOE proposed definitions for these two types of instantaneous water heaters so they would be subject to the same test procedures as gas-fired instantaneous water heaters (i.e., the first-hour rating test and the 24-hour simulated use test).

GAMA agreed that electric and oil-fired instantaneous water heaters should be covered in the test procedures. However, GAMA said it is unaware of any residential oil-fired instantaneous models on the market. (GAMA, No. 1 at 2 and February 1997 Transcript at 119.) Edison Electric Institute (EEL), Bock Water Heaters (Bock), the Federal Trade Commission (FTC), and the Oregon Energy Office (Oregon) also stated that they know of no residential oil-fired

instantaneous water heaters on the market. (EEL, February 1997 Transcript at 119; Bock, February 1997 Transcript at 120; FTC, February 1997 Transcript at 120; and Oregon, No. 51 at 3.) In response to the reopening notice of October 1997, Controlled Energy Corporation provided information on a kerosene-fired instantaneous water heater sold by Monitor Products, Inc. (CEC, No. 64 at 1.) The California Energy Commission (CAEC) also provided information on one oil-fired instantaneous water heater manufactured by Monitor Products of Princeton, NJ, which meets the definition in the test procedure for the input BTU rating. The CAEC also informed DOE that Monitor intends to introduce another smaller instantaneous water heater soon, and the CAEC opposed the DOE withdrawing coverage for oil-fired instantaneous water heaters. (CAEC, No. 68 at 1-2.)

Virginia Power stated that it does not support the testing and rating of electric units because of the small variance in efficiency among them. Virginia Power stated that electric units are not typically compared to oil or gas-fired instantaneous water heaters. Virginia Power claimed the incomparability is due to the difference in utilization between gas-fired and electric instantaneous water heaters. (Virginia Power, No. 50 at 2 and No. 66 at 3.) The Department interprets this statement to mean that gas-fired models are for whole-house applications, whereas electric models are for point-of-use applications such as kitchen or lavatory sinks.

EPRI stated that neither the existing nor the proposed test should be applied to instantaneous water heaters because a heating rating of more than 150,000 Btu per hour is needed to satisfy whole-house applications and all instantaneous water heaters for residential use are below that heating capacity. EPRI claimed that an instantaneous water heater should not have an efficiency rating because the efficiency rating would falsely imply an equivalency with tank-type water heaters. (EPRI, No. 56 at 11.)

The Oregon Energy Office suggested that an energy efficiency rating for instantaneous water heaters is needed, and suggested that a test procedure should be developed that would take into account the warm-up and cool-down losses during a draw for all units (as well as the flue and pilot light losses for gas-fired units). Oregon stated that the procedure for instantaneous water heaters should not be the same as for storage-type water heaters. (Oregon, No. 51 at 3.)

GAMA claimed for electric models that there are distinctions between larger models intended for multiple points of use and smaller models intended for a single point of use. GAMA suggested that DOE may need to make distinctions between such units by creating separate classes of instantaneous water heaters. (GAMA, No. 1 at 2.)

DOE believes that separate classes of electric instantaneous water heaters would require technical data on these models, such as: (1) The intended purpose of use; (2) the frequency of daily draws at the point of use; (3) the average volume of each draw; and (4) the average amount of the total daily draw. However, DOE believes that at the present time, the development of separate classes of electric instantaneous water heaters for residential application is not needed because, even at the proposed maximum input power rating of 12 kW (40,944 Btu/h), an electric instantaneous water heater can only supply a maximum of 1.06 gallons per minute (gpm) (4.01 liters per minute [L/min]) of water at a 77°F (42.8°C) temperature rise (from 58°F to 135°F [14.4°C to 57.2°C]) on a continuous draw basis. DOE believes this is far below the requirements of a whole-house application which could range from 3-5 gallons per minute. Furthermore, the limit on the input heating rate of electric instantaneous water heaters is not likely to change because it is limited by the current carrying capacity of wiring in most residential housing.

Additionally, DOE believes that the variation of the energy efficiency of electric instantaneous water heaters would be small for similar sized models, provided they are tested under similar conditions because energy losses only occur during the warm-up and cool-down of the heaters between water draws. However, test data are needed to determine the magnitude of these losses, which are functions of the water used during each draw and the frequency of draws. No field data is available on the average draw rate, amount per draw, and the average daily draw volumes for these small electric, point-of-use type instantaneous water heaters. The daily hot water usage of 64.3 gal (243.4 L) specified for whole-house application does not apply to these small heating capacity electric units. Consequently, the energy efficiency, and energy consumption cannot be determined for these units without additional data. Therefore, DOE will not test electric instantaneous water heaters for energy efficiency or energy consumption until a future rulemaking when the daily hot

¹ Part B of Title III of Energy Policy and Conservation Act, as amended, is referred to in this Final Rule as "EPCA" or the "Act." Part B of Title III is codified at 42 U.S.C. 6291-6309.

water usage data for point-of-use instantaneous water heaters are available.

DOE did not receive any indication until after the October 1997 notice of reopening that residential oil-fired instantaneous water heaters are on the market. DOE's belief that these water heaters were not being sold in the United States was supported by GAMA, Bock, EEI, the FTC, and the Oregon Energy Office. DOE believes that there is not time for adequate public review and comment to include oil-fired instantaneous water heaters in this rulemaking. Accordingly, DOE withdraws its proposal to test oil-fired instantaneous water heaters in today's Final Rule.

The Department will continue to require the testing of gas-fired instantaneous water heaters for energy efficiency and energy consumption because data is needed for the FTC labeling program.

b. GPM v. First-Hour Rating. In the 1995 proposed rulemaking, DOE proposed testing for electric and oil-fired instantaneous water heaters based on the first-hour rating currently used for gas-fired instantaneous water heaters. This proposal would test instantaneous water heaters in a manner equal to gas-fired storage-type water heaters. On October 31, 1997, DOE reopened the comment period on first-hour rating for instantaneous water heaters. In its reopening notice, DOE proposed to revise the first-hour rating for instantaneous water heaters from gallons per hour to a test that measures the maximum flow rate in gallons per minute (gpm) (liters per minute [L/min]) at a 77°F (42.8°C) temperature rise. DOE proposed to call this rating the maximum gpm rating.

DOE's proposed revision was in response to concerns raised by several commenters regarding the March 1995 proposed rule. EEI, EPRI and the Tennessee Valley Authority (TVA) considered the proposed first-hour rating procedure for instantaneous water heaters to be inappropriate because it would lead consumers to "mistakenly compare instantaneous and storage-type water heaters as being equivalent." They argued that a storage-type water heater can supply a large amount of hot water during a short draw period, whereas an instantaneous water heater may not be able to supply a similar amount of hot water because it is limited by its heating rate. (EEI, No. 2 at 5, No. 27 at 5, and July 12-13, 1995, Public Hearing Transcript [hereafter referred to as July 1995 Transcript] at 22 and 27; EPRI, No. 17 at 4; and TVA, No. 14 at 2.)

During the 1997 workshop and in its written comments, EPRI recommended a rating based on the maximum gpm flow rate at a 50°F (27.8°C) temperature rise if a single rating value is used, and at both a 50°F and 77°F temperature rise if two rating values are used. EPRI stated that it prefers a rating at both a 50°F and 77°F temperature rise. (EPRI, No. 56 at 11.)

GAMA supported EPRI's alternative of a maximum flow rate. However, GAMA's alternative test procedure involves adjusting the flow rate to obtain a temperature rise of 77°F in the instantaneous water heater, and using this maximum gpm flow rate as the rating characteristic, rather than the current first-hour rating value. GAMA recommended that the temperature rise be the same as specified for storage-type water heaters—that is, 77°F, not 50°F as suggested by other commenters. (GAMA, No. 35 at 2.) GAMA stated it selected a temperature rise of 77°F because hot water also will be used for machine-related applications (dishwashers and clothes washers) that require a 135°F (57.2°C) temperature. (GAMA, February 1997 Transcript at 127 and 138.)

Virginia Power supports the proposal to rate instantaneous water heaters with a maximum gpm rating. (Virginia Power, No. 42 at 2 and No. 66 at 2-3.) However, Virginia Power supports dual maximum gpm ratings, at both 50-52°F and 77°F rise. Virginia Power stated that both temperature rises are used in applications (human-contact at 110°F [43.3°C] and machine use at 135°F [57.2°C]). Virginia further stated that DOE's statement in the October 1997 reopening notice that a 77°F temperature rise will ensure that consumers in cold regions of the country will have an acceptable water temperature is inconsistent with the rationale used to establish other parameters of the test procedure (i.e., establishing on the basis of national average values). (Virginia Power, No. 50 at 2 and No. 66 at 3.) EEI supported Virginia's position on this issue. (EEI, No. 65 at 1.) Oregon stated that both a 50°F and 77°F would be useful in sizing a unit properly. (Oregon, No. 51 at 3.) State Industry claimed that a rating value based on a nominal temperature rise of 50°F would not provide consumers with information on whether the heater is capable of delivering hot water at a 77°F temperature rise. (State Industry, February 1997 Transcript at 134.)

Based on the comments, DOE believes there is a consensus that the current first-hour rating for instantaneous water heaters may mislead consumers because

it may overstate the capability of the instantaneous water heater to provide a given quantity of hot water at a given instant of time. The suggestion from GAMA, EEI, EPRI, and other commenters to replace the first-hour rating parameter with a maximum flow rate (gpm) over a specific temperature rise (77°F [42.8°C] or 50°F [27.8°C]) instead of a total volume flow over one hour is reasonable. This comparison measures the ability of instantaneous water heaters to deliver the maximum possible amount of hot water to the user at a specific temperature rise occurring any single moment. Because some consumer appliances require a hot water temperature in the 135-140°F (57.2-60°C) range, information on the amount of flow at a 77°F rise is needed. Also, a rating value based on a nominal temperature rise of 50°F would not provide consumers with information on whether the heater is capable of delivering hot water at 135°F. Therefore, DOE believes that the maximum flow rate at the rated energy input rate and at a temperature rise of 77°F across the water heater should be specified for rating the capability of instantaneous water heaters to deliver hot water. Furthermore, this maximum flow rate should be specified in place of the first-hour rating. The Department is therefore creating a new rating for instantaneous gas and electric water heaters using a "maximum gpm draw rate at 77°F rise" criterion, and renaming the criterion from "First-Hour Rating" to "Maximum GPM Draw Rating" in Sections 5.2 and 6.2 of today's Final Rule.

c. Water Temperature Rise. Regarding the outlet water temperature for gas-fired instantaneous water heaters, the Controlled Energy Corporation (CEC) submitted a written statement to DOE and distributed the statement at the February 1997 workshop. CEC stated that the outlet water temperature for an instantaneous water heater should be at 110-115°F because there is no practical domestic use for water at 135°F. (CEC, February 1997 Transcript at Appendix H at 4 and No. 63 at 3.) Additionally, CEC claimed the 135°F temperature specified for storage-type water heaters is simply to increase the heat content of the stored water and therefore is not relevant for instantaneous water heaters. (CEC, February 1997 Transcript at Appendix H at 4.)

Group Thermo suggested that a 50°F temperature rise is too low for some cold regions of the country, and Bock suggested it is too low for certain well water sources. EEI supported a temperature rise of 50°F because there are many places like Miami and Texas with high ground water temperatures for

most, if not all, of the year. EPRI supported a 50°F temperature rise because that is representative of typical human usage and a rise of 77°F because that is typical of machine usage. A.O. Smith favored a single rating at a 77°F temperature rise because it is simpler and allows comparisons with storage-type water heaters. (Group Thermo, February 1997 Transcript at 133 and 138; Bock, February 1997 Transcript at 132; EEI, February 1997 Transcript at 136; A.O. Smith, February 1997 Transcript at 141; and EPRI, No. 56 at 11.)

The Department will continue to specify the test conditions for water heater temperatures at 58°F inlet (Title 10 CFR, Part 430, Subpart B, Appendix E, Section 2.3) with a 77°F rise to address (1) machine-use applications that require a 135°F water temperature for efficient operation, and (2) the performance of a water heater in regions of the country that may have a significantly lower supply (inlet) temperature. Additionally, a single value of 77°F rise will reduce the test burden on manufacturers.

d. Draw Schedule. DOE did not propose any changes in the draw schedule for instantaneous water heaters. There were several comments addressing this issue. During the 1997 workshop, EPRI commented that for large, whole-house, fossil-fueled instantaneous water heaters, the losses due to warm-up and cool-down after each water draw become significant because of the thermal mass of the water and the heat exchanger. Also, EPRI stated the number of draws (six) in the existing test procedure for energy factor (EF) tests is not high enough to account for the daily total cyclical loss that occurs in practice. EPRI claimed that in the field there are 20-50 draws per day. EPRI suggested that tests be conducted on smaller tank types and whole-house instantaneous water heaters to compare the difference in losses caused by a larger number of draws throughout the day. (EPRI, February 1997 Transcript at 166, 173, and 178.)

In its written statement, CEC also requested that the draw schedule in the 24-hour simulated use test for modulating gas-fired instantaneous water heaters be changed from an equal number of draws at the maximum and minimum firing rates (three at each) to 75% of the draws at the maximum firing rate and 25% at the minimum firing rate. CEC stated that this would reflect the fact that most of the daily hot water consumption is at the maximum firing rate, which, CEC stated, is when the efficiency of its heater is highest. CEC stated that the minimum firing rate is

provided for the convenience of consumers for hand washing, etc. (CEC, February 1997 Transcript at Appendix H at 3 and No. 63 at 2.)

DOE recognizes that the number of draws will affect the energy factor and the annual energy consumption of instantaneous water heaters. The reason is that the warm-up and cool-down of the heat exchanger between hot water draws will reduce the measured average outlet temperature from the specified nominal 135°F resulting in a lower energy factor and a higher energy consumption when the outlet temperature is adjusted back to the nominal temperature in the calculation procedure. The decrease in outlet temperature is proportional to the number of draws under a constant total daily draw volume. However, DOE has no data on the amount of daily hot water usage at the minimum or maximum firing rate for modulating gas-fired instantaneous water heaters. Hence, there is no basis for DOE to change the number of draws for instantaneous water heaters at either a fixed firing rate or for modulating instantaneous water heaters at the minimum or maximum firing rate in the 24-hour simulated use test.

Additionally, DOE needs data to substantiate any change to the number of draws during the 24-hour simulated use test for instantaneous water heaters because changing the number of draws is likely to reduce the energy factor for existing units thereby requiring a modification to the energy conservation standard for those products.

e. Energy Factor Measurement. DOE proposed a 24-hour simulated use test for instantaneous water heaters that is exactly the same as the 24-hour simulated use test for storage-type water heaters. The 24-hour simulated use test would determine the amount of fuel or electricity used during a 24-hour period to heat 64.3 gallons of water to 135°F with the water being drawn in six equal draws at one-hour intervals. Also, if the instantaneous water heater allows variable input rates, the fuel or electricity consumed to heat 64.3 gallons of water to 135°F during a 24-hour period would be determined with three draws at the maximum flow rate and three draws at the minimum flow rate. In the current test procedure, the recovery efficiency is calculated from the output energy of the first draw (determined from water mass, temperature, and specific heat) divided by the measured input energy used during the first draw of the 24-hour simulated use test for units with a single firing rate. For modulated units, the recovery efficiency is the average of the

two recovery efficiencies calculated on the basis of data from the first draw (at the maximum input rate) and the fourth draw (at the minimum input rate) of the 24-hour simulated use test.

In its comments to the 1995 proposed rulemaking, Paloma Industries, Inc., suggested that for gas-fired instantaneous water heaters, two EF values should be determined in the test procedure. These values would reflect test conditions with (1) the pilot light being continuously on, and (2) the pilot light being off except when hot water is needed. The pilot-light-on condition is the case in which the pilot light is always on regardless of whether there is a demand for hot water. The second test condition is for the case in which a consumer turns the pilot light off when hot water is not needed. Paloma claims that with its Piezo-Electric Ignition and Subsidiary Pilot Burner Assembly, the consumer can manually light the pilot easily (in about 10 seconds time) when hot water is needed. CEC concurred with Paloma. (Paloma Industries, No. 7 at 3; CEC, February 1997 Transcript at Appendix H at 4 and No. 63 at 2.) Furthermore, CEC stated that differentiating water heaters with pilot lights from those without is even more important because CEC will introduce a unit in 1998 with electronic ignition. (CEC, No. 63 at 2.)

With respect to the issue of the pilot light status between hot water draws, GAMA recognized that turning off the pilot will reduce energy consumption and increase the energy factor. GAMA also stated that turning off the pilot light may not be practical for a whole-house application. Bock expressed the same opinion. Oregon suggested that it is possible to have two energy factors, one based on the pilot light on between draws and one based on it being off. Oregon also recommended that a test procedure for instantaneous water heaters should account for warm-up, cool-down and pilot light losses. (GAMA, February 1997 Transcript at 170 and 176; Bock, February 1997 Transcript at 171; Oregon, No. 51 at 3.)

DOE believes the suggestion to compute two energy factors is valid only if the consumer can conveniently turn the pilot light off and on automatically at the point of use (e.g., at the faucet or showerhead) and if no other faucet or appliance requiring hot water is connected to the same water heater. Neither Paloma nor CEC indicated that such an approach was possible with their equipment although CEC has stated that it will introduce a model with electronic ignition in 1998. DOE believes that manual shut-off for pilot lights on instantaneous water heaters

would not be practical for widespread use and energy savings. Therefore, DOE will continue to calculate one energy factor.

2. Storage-type Water Heaters With Rated Storage Capacities Less Than 20 Gallons

In the 1995 proposed rulemaking, DOE proposed to cover storage-type water heaters with rated storage capacities less than 20 gallons (76 liters). This proposal was in response to a July 17, 1991, letter from GAMA that stated that storage-type water heaters less than 20 gallons (76 liters) are not covered by the existing test procedure.

To cover these water heaters, DOE proposed to adopt the draw rate and the schedules in ANSI/ASHRAE Standard 118.2-1993, "Method of Testing for Rating Residential Water Heaters," to be used in the first-hour rating test and the 24-hour simulated use test. The draw schedules are as follows: (1) For units with rated storage less than 10 gallons (38 liters), a total volume of 9 gallons (34 liters) shall be withdrawn, and (2) for units with rated storage greater than or equal to 10 gallons (38 liters) but less than 20 gallons (76 liters), a total volume of 24 gallons (91 liters) shall be withdrawn. The draw rate for both draw schedules shall be 1.0 gallon \pm 0.25 gallons per minute (3.8 liters \pm 0.95 liters per minute). DOE also requested comments and data on its proposal to extend test procedure coverage to storage-type water heaters of less than 20 gallons (76 liters).

Several commenters objected to one or more of these proposals. These commenters variously cited the following reasons: (1) The existing minimum efficiency standards are based on field applications and usage requirements for larger volume water heaters and are inappropriate for smaller-volume water heaters, for example, fitting and connection losses would be unfairly treated for smaller-volume water heaters because those losses would represent a larger percentage of total losses; (2) it is difficult to install thermocouples and to control flow rates in smaller-volume water heaters; (3) smaller-volume water heaters cannot meet the efficiency requirement because they typically are installed in confined areas, which limits the amount of insulation used to reduce surface losses; and (4) a flow rate of 1 gpm during water draws is too large for smaller water heaters' it would quickly deplete the quantity of hot water in tanks of 2.5 gallons or less. (GAMA, No. 1 at 3, No. 35 at 3, and July 1995 Transcript at 12; EPRI, No. 17 at 2; EEI, No. 2 at 6, No. 27 at 5, and July 1995

Transcript at 28; Oregon, No. 51 at 3 and February 1997 Transcript at 164 and 195; TVA, No. 14 at 1; The Southern Company Services, Inc., No. 24 at 2; American Electric Power, No. 38 at 1; Potomac Electric Power, No. 26 at 3; CSW, No. 4 at 2; Centerion Energy, No. 22 at 1; Nevada Electric Power, No. 45 at 2; National Rural Electric Cooperative Association, No. 18 at 2; Decatur County REMC, No. 19 at 1; and Dayton Power and Light, No. 20 at 1.)

GAMA suggested that separate piping arrangement figures be used for floor-mounted models of less than 20 gallons storage capacity. GAMA provided the schematic drawings for its suggested changes. (GAMA, No. 1 at 6 and July 1995 Transcript 17.)

Vaughn Manufacturing Corporation claimed: (1) The number of units is a small percentage of the total; (2) this is a utilitarian product which is used to fit special circumstances when other alternatives are not available; and (3) the publication of energy factors will not cause the purchaser to choose a more efficient model to an extent that will make a significant difference in national energy conservation. (Vaughn, No. 31 at 2.)

However, AGA believed that the large number of such heaters sold justifies some measurement that could be used for a minimum standard. (AGA, February 1997 Transcript at 184-185.) GAMA proposed running only a stand-by loss test for the measurement, and EPRI proposed to base this measurement on the maximum stand-by loss without considering daily water consumption. GAMA argued that any standard would have to be connected to some level of daily consumption. The FTC pointed out that if the test procedure covers these products, they would have to be labeled, and the label has to contain a value for energy consumption. In its written comments, GAMA stated that the applicable maximum hourly stand-by loss requirement in ASHRAE 90A-1980 was 43W. GAMA asserted that because the ASHRAE loss was based on an 80°F temperature difference, the DOE maximum loss rate should be 36.3W, based on the 67.5°F temperature difference for the DOE test. GAMA concluded that the DOE proposal for the 24-hour simulated use test should be scrapped and that only an hourly stand-by loss should be measured by the test procedure. (GAMA, No. 35 at 4 and February 1997 Transcript at 165 and 185-186; EPRI, February 1997 Transcript at 183-184; and FTC, February 1997 Transcript at 186.) This proposal was not supported by Virginia Power, who claimed that losses for fittings were greater for small tanks and

that specialized uses for these tanks may limit the kinds of modifications leading to improved efficiency. Oregon supported the stand-by loss proposal and added that heaters with capacity equal to or less than 2 gallons (7.6 liters) be exempt from coverage and that all water heaters less than 20 gallons (76 liters) be exempt from the Energy Guide labeling requirement. EPRI expressed general support for GAMA's proposal, but suggested that a combination of stand-by loss and recovery efficiency rather than a single energy efficiency term be used to determine the energy standard for small water heaters. (Virginia Power, No. 42 at 3; Oregon, No. 51 at 3 and February 1997 Transcript at 164 and 195; EPRI, No. 56 at 5 and February 1997 Transcript at 164, 183, and 188 and at Appendix J at 2.)

Although the Department believes the stand-by loss measurement for water heaters less than 20 gallons (76 liters) proposed by GAMA and EPRI may be feasible, DOE will reserve consideration of this proposal for a future revision of the test procedure. The reasons for this decision are: (1) Absence of data to determine the appropriate daily hot water consumption, and (2) DOE's need to develop and evaluate the stand-by loss procedure. Therefore, DOE is withdrawing its proposal in today's Final Rule.

3. Definitions

In the 1995 proposed rule making, DOE solicited comments on the addition to the test procedure of definitions of a heat pump water heater storage tank and a solar water heater. DOE also proposed to revise the definition of a heat pump water heater to specify two types, an integral heat pump water heater and an add-on heat pump water heater.

The following discussion ensued: (i) *Solar Water Heater*. GAMA stated that it did not understand the purpose or intent of the expanded definitions or the need to define "solar water heaters" for the test procedure. GAMA suggested that the requirement that a solar water heater obtain 50% of its annual heating energy from the sun is not a definitive criterion because a solar water heater with less than 50% of its input energy from the sun is still a solar water heater. (GAMA, July 1995 Transcript at 15 and No. 1 at 5.)

(ii) *Heat Pump Water Heater Storage Tank*. During the February 1997 workshop, GAMA proposed that a 50-gallon tank standardized with respect to the energy factor is adequate and should be used to test any add-on heat pump water heater sold without a tank by its manufacturer. (The existing DOE test

procedure specifies a 47-gallon tank meeting the minimum standard energy factor or not greater than .02 EF above the minimum.) GAMA objected to the Department's proposal for a special heat pump water heater storage tank.

EPRI objected to the inclusion of a special heat pump water heater storage tank, and proposed that an add-on heat pump water heater be tested with a standard 50-gallon tank as required under the existing DOE test procedure. EPRI further stated that there are no storage tanks labeled and designed for use exclusively with heat pump water heaters. All other commenters, such as the Oregon Energy Office and Virginia Power, agreed with GAMA's and EPRI's proposals for a standard 50-gallon tank. The Oregon Energy Office called for a revision of the original definition. (GAMA, February 1997 Transcript at 229; EPRI, No. 17 at 5 and February 1997 Transcript at 227; Oregon, No. 51 at 6; Virginia Power, No. 50 at 4.)

(iii) *Add-on Heat Pump Water Heaters*. EEI expressed concerns about the definition of add-on heat pump water heaters. EEI and EPRI claimed the definition is inappropriate and should not be adopted. They stated that add-on heat pump water heaters are designed to work with any electric water heater tank and that some are designed to work with any tank. EPRI claimed the new definition limits the availability of tanks for use with add-on heat pump water heaters. EPRI believes that this new definition would increase the cost. Further, EEI found that this definition is ill-advised, because new tanks of essentially identical construction must meet two definitions, thus creating confusion and potentially increasing the cost of heat pump water heaters. (EEI, No. 2 at 7, and No. 27 at 7; EPRI, No. 17 at 5.)

Virginia Power proposed deleting "heat pump" from the last line of the definition. (Virginia Power, No. 50 at 4.)

Vaughn Manufacturing Corp. commented that the addition of more than one category of heat pump water heaters, or even solar water heaters, will add to the confusion because it may lead consumers to compare test results of dissimilar types of water heaters. (Vaughn, No. 31 at 4.)

(iv) *Integral Heat Pump Water Heaters*. GAMA suggested that, instead of the 1995 DOE proposed definitions of "integral heat pump water heaters" and "add-on heat pump water heaters," the respective definitions should be "heat pump water heaters with tanks" and "heat pump water heaters without tanks".

Also, GAMA objected to the term "integral heat pump water heaters"

because it implies that the heat pump is structurally integrated with a tank, whereas in reality, the heat pump and the tank can be physically separated, but are usually sold by the manufacturer as a packaged unit. (GAMA, February 1997 Transcript at 230.)

Virginia Power proposed deleting the definition of "integral heat pump water heater." (Virginia Power, No. 50 at 4.)

(v) *Proposed Revisions*. DOE responded to these comments in the October 1997 reopening notice. In this notice, DOE proposed the following revisions:

- Withdraw the definition of solar water heaters.
- Withdraw the proposal for heat pump water heater storage tanks for testing with an add-on heat pump water heater.
- Delete the definition of integral heat pump water heaters.
- Replace the definition of "integral heat pump water heaters" with the definition, "Heat pump water heater with storage tank means an air-to-water heat pump sold by the manufacturer with an insulated storage tank as a packaged unit. The tank may be integral with or separated from the heat pump."
- Replace the definition of "add-on heat pump water heater" with the definition, "Heat pump water heater without storage tank (also called add-on heat pump water heater) means an air-to-water heat pump designed for use with a storage-type water heater or with a storage tank that is not specified or supplied by the manufacturer."

EEI, Virginia Power, and GAMA supported DOE's proposed definitional changes in the October 1997 notice of reopening. (EEI, No. 65 at 1; Virginia Power, No. 66 at 4; and GAMA, No. 67 at 1.) No commenter took issue with the proposed definitional changes.

Therefore, DOE is adopting in this Final Rule the proposed revision as stated above.

4. Heat Pump Water Heaters

a. *Back-up Electric Resistance Heating*. In the Proposed Rule, the Department requested comments on the adequacy of the existing test procedure regarding back-up electric heating elements for heat pump water heaters because the current test setup and parameters may not represent operating conditions requiring the resistance element(s) to be activated. The existing procedure does not account for energy used by these elements because most heat pump water heaters are capable of meeting the test draw requirements of the 24-hour simulated use test for the energy factor and, therefore, the back-up

electric resistance heating element(s) is not activated.

GAMA stated that the current draw schedule is such that the back-up electric resistance element(s) does not turn on during testing. Although GAMA concluded from tests conducted at Intertek Testing Service (ITS) that changing the current draw schedule by increasing the volume of water withdrawn will not activate the elements, it still argued that in residential applications, a significant percentage of the energy for water heating (15-20%) comes from the back-up resistance element(s). GAMA asserted that this energy should be included in determining the annual energy consumption of the heat pump water heater. This view is shared by the Southern Company Services (SCS). (GAMA, No. 1 at 5, No. 35 at 5, July 1995 Transcript at 16, and February 1997 Transcript at 241; and SCS, No. 24 at 2.) Vaughn Manufacturing Corporation claimed that the one-hour recovery between the six small draws prejudices the test procedure in favor of heat pump water heaters. Furthermore, Vaughn claimed, this test profile is not based on a representative average use cycle. (Vaughn, No. 31 at 3.) Georgia Power recommended that the draw schedule continue to stipulate 10.7 gallons per draw for each hour. (Georgia Power, No. 54 at 2.)

GAMA recommended adding some electrical energy to the annual energy consumption calculation but GAMA did not recommend a specific amount of energy. GAMA claimed that this electrical energy was necessary because no resistance heating was measured during tests of heat pump water heaters using the DOE test procedure and GAMA claims that it is well accepted that heat pump water heaters use backup resistance heating during periods of heavy draws. (GAMA, No. 57 at 2 and February 1997 Transcript at 240-260.) The recommendation was supported by AGA and the Oregon Energy Office. (AGA, February 1997 Transcript at 254 and 263; Oregon, February 1997 Transcript at 248, 250, and 255; and Oregon, No. 51 at 5.)

However, EPRI claimed that its data shows that less than 10 percent of the energy consumption for water heating with heat pumps actually comes from the back-up resistance elements for customers who use about 64 gallons of hot water per day. EPRI argued that it would be improper to apply a correction factor to compensate for resistance elements that do not activate during average test conditions. Moreover, EPRI added that if a correction factor is applied to heat pump water heaters,

then correction factors due to regional conditions would need to be applied to all types of water heaters. Based on these reasons, EPRI is opposed to the recommendation by GAMA. (EPRI, No. 56 at 2, February Transcript at 239, 248, 257 and 264 and at Appendix J at 2.) Virginia Power agreed with EPRI's comments. (Virginia Power, No. 50 at 4, and February 1997 Transcript at 249 and 258.)

Other opponents to GAMA's recommendation included Abrams and Associates, who commented that the purpose of the test procedures is to rate water heaters for comparison purposes rather than to reflect actual household applications. Lawrence Berkeley National Laboratory (LBNL) stated that heat pump water heaters do not need a separate test procedure to account for backup resistance heating because of their insignificant market share and greater efficiency. EEI commented that to activate the heating elements would require a draw in excess of 50 gallons, which is not realistic. AIL Research stated that no correction factor should be used until data becomes available. (Abrams, February 1997 Transcript at 260; LBNL, February 1997 Transcript at 252; EEI, February 1997 Transcript at 255; and AIL, February 1997 Transcript at 261-284.)

The Department believes that the 24-hour simulated use test for the energy factor must be based on average test conditions that also apply to other water heaters of comparable size and use so that all storage-type water heaters are tested and rated on a consistent and uniform basis. Furthermore, DOE notes that based on test data submitted by GAMA, the back-up heating elements for heat pump water heaters will not activate when the volume of hot water drawn is changed from 10.7 gallons to a more severe 21.4 gallons per draw during two of the six draws of the 24-hour simulated use test. The Department believes that any single draw in the draw schedule greater than the 21.4 gallons per draw (as tested) would not be considered as an average use pattern. Because the test procedure is for comparison purposes and is not intended to take into account all potential field use patterns (such as the draw-down of the storage tank), DOE considers that a revision to the current draw schedule of 10.7 gallons per draw for the six draws in the 24-hour simulated use test (for example, stipulating 21.4 gallons per draw for two of the six draws) is not necessary because it will not change the result. Furthermore, there is no agreement on an average percent of the annual energy consumption that comes from the

resistance heating elements. Therefore, the Department concludes that applying a correction to the energy factor and/or annual energy consumption of the heat pump water heater to account for the energy used by the resistance elements that do not activate during testing is unwarranted and will not be included in today's Final Rule.

b. Installation Requirements. The installation requirements in Section 4.1 of Appendix E of the current test procedure state that a heat pump water heater without a manufacturer-supplied storage tank shall be connected to the storage tank in accordance with the manufacturer's instructions. The requirements further state, "If installation materials are not provided by the heat pump manufacturer, use uninsulated 8 foot (2.44 m) long connecting hoses, having an inside diameter of 5/8 inch (1.6 cm)." The intent of this requirement is to specify a uniform test setup for those units that do not include manufacturer's instructions. DOE asked for comments on this issue.

EPRI commented that the term "installation materials" in this context is unclear. EPRI suggested changing "installation materials" to a more descriptive term because most manufacturers of add-on heat pump water heaters, or any other type of water heater, do not provide the plumbing hardware and should not be penalized for not doing so. (EPRI, No. 17 attached report at 6.) American Electric Power claimed that the installation requirements were vague. (American Electric, No. 38 at 1.) Oregon suggested that in cases in which manufacturers do not include instructions, the test procedure should be performed using insulated hoses of sufficient length and size to properly mount the heat pump unit relative to the storage tank. (Oregon, No. 51 at 6.)

To make the wording clear, DOE is revising the text in section 4.1 of Appendix E from "installation materials" to "installation instructions" as suggested by EPRI. DOE disagrees with Oregon's comment because in most residences, the hot water pipes usually are not insulated. DOE believes that the 8-foot hose is adequate to make the heat-pump-to-water-heater connection and ensure that the heat loss from the uninsulated hose is equal for all add-on heat pump water heaters that do not have manufacturers' installation instructions.

c. Heat from the Ambient Air. The current and proposed test procedures use the same test conditions and test procedures for oil-fired, electric and heat pump water heaters. Vaughn

claimed that because the DOE test procedure does not account for heat removed from the ambient air, the procedure favors heat pump water heaters. (Vaughn, No. 31 at 3.)

The Department has considered this topic and has concluded that the interactions between heat pump water heaters and the building environment are extremely complex and difficult to measure. Furthermore, in some cases, heat pump water heaters may be installed outside the building, in which case the heat removed from the ambient air is free and does not need to be counted. For these reasons, DOE will address building and heat pump interactions in a future rulemaking.

5. First-Hour Rating for Storage-type Water Heaters

In the 1995 proposed rulemaking, DOE proposed a revised test procedure for the first-hour rating for storage-type water heaters. The proposed revision specifies the start of a first draw at the beginning of the one-hour period, when the average tank temperature is at the specified limit of $135^{\circ}\text{F} \pm 5^{\circ}\text{F}$ ($57.2^{\circ}\text{C} \pm 2.8^{\circ}\text{C}$) and all the thermostats are satisfied. The first draw is terminated when the outlet water temperature decreases by 25°F (13.9°C) below the maximum outlet temperature recorded during the draw. Successive draws are initiated when the uppermost thermostat is satisfied following a tank recovery, and ended when the outlet water temperature decreases by 25°F (13.9°C) below the maximum outlet temperature recorded during each particular draw.

At the end of the one-hour period, a final draw is initiated if no draw is in progress. This draw is terminated when the outlet water temperature decreases to the value used to terminate the draw that was completed before this final draw. If a draw is in progress at the end of the one-hour period, this draw is continued until the outlet water temperature decreases by 25°F (13.9°C) below the maximum outlet temperature recorded during this draw. A temperature correction factor is applied to the last draw. The correction factor is a quotient in which the numerator is the average delivered water temperature of the last draw minus the minimum water temperature of the next-to-last draw and the denominator is the average delivered water temperature of the next-to-last draw minus the minimum water temperature of the next-to-last draw. The correction factor corrects for any significant reduction in energy content of the draw due to a lower average outlet water temperature over the draw

than those obtained during the earlier draws.

Thermally compensating dip tubes and integral mixing valves result in higher first-hour ratings. DOE did not propose to apply a correction factor to water heaters employing these features because the Department was unaware of the existence of these features on currently manufactured water heaters. However, EPRI, EEI, and Nevada Power Company stated that because at least one U.S. manufacturer has purchased the right to manufacture and sell the equivalent of an "internal mixing" product, DOE should develop a procedure that accounts for differences in hot water delivery temperatures. (EEI, No. 27 at 5; EPRI, No. 17 at 12; and Nevada Power Company, No. 45 at 3.) Southern Company Services (SCS) argued that specifications for mixing valves (similar to internal mixing) are not relevant to efficiency and the use of mixing valves should not be restricted. Furthermore, SCS supported the test procedure proposed by Dr. Carl Hiller of EPRI, which it claimed would not be affected by mixing valves. (SCS, No. 24 at 2.)

EEI and EPRI commented that DOE's proposed first-hour rating procedure, while an improvement over the current (1991 Final Rule) and previous (1978) DOE procedures, is still flawed and should not be implemented. Both EEI and EPRI based their comments on the analysis of the DOE proposed procedure by Dr. Carl Hiller of EPRI. (EEI, No. 2 at 2, No. 27 at 2, and July 1995 Transcript at 22; and EPRI, No. 17 attached report at 2.)

Dr. Hiller commented that the DOE proposed procedure is based on unrealistic water consumption behavioral patterns, and bears little relevance to the sizing of hot water systems. Dr. Hiller stated that the procedure gives misleadingly high ratings to units having a high heat input rate, thus penalizing electric systems and systems with larger tanks. Dr. Hiller suggested that the entire proposed procedure should be abandoned and replaced with an alternative developed by EPRI. (EPRI, No. 17 at 9 and 13.)

Specifically, Dr. Hiller claimed that the DOE proposed first-hour rating procedure for storage-type water heaters is characterized by the following: (1) It penalizes large tanks because the draw rate of 3 gpm causes the draws to take longer for larger tanks, thus limiting useful reheat time; (2) the temperature correction factor applied to the last draw is cumbersome; (3) the draw at the end of the one-hour test results in a variable test time; (4) depending on the thermostat setting and behavior, two

similar tanks may show dramatic differences in their first-hour ratings; (5) the one-hour time period in the procedure is arbitrary and relatively irrelevant to water heating system sizing; and (6) the procedure fails to account for the energy content of water delivered at different temperatures during the draws. (EPRI, No. 17 at 9-13.)

Dr. Hiller proposed three EPRI alternatives to DOE's first-hour rating procedure. The first alternative calculates first-hour rating as the sum of (1) the volume of water from an initial draw (multiplied by a factor to correct to a uniform delivery temperature of 110°F (43.3°C)) and (2) the maximum useful reheat volume (water is heated to 110°F (43.3°C)) at the rated energy input between the end of the first recovery (after the first draw) and the end of a specified reheat time period. This EPRI proposal uses a calculation to determine the maximum useful reheat volume during the specific reheat period; EPRI notes that the maximum useful reheat volume could also be determined with actual draws. In this proposal, EPRI advocates a reheat period of 35-45 minutes instead of one hour. (EPRI, No. 17 at 13.)

The second EPRI alternative, proposed by Dr. Hiller at the February 1997 workshop, bases tank sizing on a graph of the way hot water is actually used over a specific time period together with graphical representations of hot water delivery capability (a stepwise function versus time due to reheat delay) for various water heaters. The water heater size is found by overlaying the two graphs of hot water delivery capability and hot water consumption requirement. EPRI provided examples of data for several tank sizes for hot water delivered not exceeding once per day, once per week and once per month derived from a 2½ year EPRI field study at 14 metered sites with electric storage-type water heaters. (EPRI, No. 56 at 6, and February 1997 Transcript at Appendix J at 4-10.)

In its comments after the February 1997 workshop, EPRI proposed a third alternative first-hour rating procedure, which modified its first proposal. In this procedure, hot water is drawn initially and during four reheat cycles. Data from the five corresponding draws (stepwise in form as in the second alternative) are used to establish a graphical representation of hot water availability versus time, including the reheat time delay between the first draw after recovery (on the basis of the cut-out of the uppermost thermostat) and the subsequent draw. From these measurements, the actual first draw

volume available and the actual average reheat rate of the system are determined. After the first reheat is completed, a linear calculation is performed to estimate the number of additional gallons that can be produced based on the average reheat rate. Then the "minimum" maximum water availability curve is calculated. The hot water delivery rating from the graph is determined based on the minimum hot water availability curve together with a "critical design time interval" of 35 minutes. EPRI claimed that this procedure accounts for the first draw volume and the reheat rate, as well as the reheat time delay between the hot water run-out after the first draw and the completion of the recovery (on the basis of the cut-out of the uppermost thermostat). EPRI claimed that this procedure is better than the DOE proposed procedure because the reheat delay time is accounted for. The third alternative differs from the first alternative primarily because the third alternative involves four cycles of reheating, and the water temperature at the top of the tank after recovery is at 135°F (57.2°C) instead of 110°F (43.3°C). (EPRI, No. 56 attached report at 11-12.)

This proposal includes an optional method that permits manufacturers to list the first draw as the first draw rating because the 35-minute hot water delivery rating is typically at or near the first draw capability of the tank. This avoids the need to perform the four reheats and five draws. (EPRI, No. 56 attached report at 13.)

Virginia Power and American Electric Power (AEP) also stated their opposition to the DOE first-hour rating and their support of a maximum first draw rating. Virginia Power claimed that the maximum first draw rating more accurately represents typical consumer action. (Virginia Power, No. 50 at 2; AEP, No. 53 at 1.)

Rheem Manufacturing claimed the first-hour rating is seldom used by consumers in purchasing water heaters. (Rheem, February 1997 Transcript at 154-155.)

Georgia Power claimed that the first-hour rating is biased toward gas-fired water heaters. Georgia Power proposed an alternative method which involves checking the temperature in the top of the tank periodically after the first draw is complete. When the temperature is above the minimum setpoint temperature, a second draw should begin. It claimed that this procedure reflects the way a consumer would use hot water after a run-out. (Georgia Power, No. 54 at 1.)

GAMA stated that it does not support EPRI's alternative first-hour rating

procedures. GAMA claimed that the current and proposed DOE test procedure, in which water is drawn from a tank full of heated water and then subsequent draws are made each time the tank returns to the setpoint temperature within an hour, is an appropriate way to evaluate a water heater's capability to provide heated water. GAMA stated that the DOE procedure may require some modifications and corrections in the calculations, but GAMA did not believe it is necessary to rewrite the entire first-hour rating procedure (as suggested by EPRI). (GAMA, No. 1 at 2, and No. 35 at 2, and July 1995 Transcript at 10.)

GAMA claimed the 1990 procedure gives a first-hour rating volume that may be smaller than the first draw volume for larger tanks. GAMA presented the results of tests conducted by its water heater manufacturer members that compared representative models of gas-fired and electric water heaters. The test results were compiled from both the current test procedure and the 1995 DOE proposed first-hour rating test procedure. The data show that the proposed procedure does provide a first-hour rating that reflects a combination of the water heater's storage capacity and recovery rate. In a written submittal at the February 1997 workshop, GAMA presented additional test results conducted by Intertek Testing Service on water heaters tested in the GAMA efficiency certification program. The data showed that 53 gas-fired water heaters (with storage capacities of 30–50 gallons) were tested, and the difference between the first-hour rating using the proposed procedure and the first-hour rating based on the current procedure varied from –0.2 gallons to 8.0 gallons with a standard deviation for each tank volume class tested of 3.7–6.0 gallons. The data also showed that 51 electric water heaters (with storage capacities of 30–82 gallons) were tested, and the differences in rating value were from 3.7 gallons to 5.5 gallons with a standard deviation for each tank volume class tested of 2.0–5.8 gallons. GAMA believed that the data is indicative of a general trend and that it does support the use of the proposed first-hour rating test procedure. (GAMA, No. 1 at 2, No. 35 at 2, and February 1997 Transcript at 91–92 and at Appendix I at 1–2.)

GAMA, in the same written submittal at the February 1997 workshop, claimed DOE should provide an alternative conservative calculation for the first-hour rating. GAMA's suggested calculations are based on 1995 and 1996 data from GAMA's efficiency certification program. The 1996 data show that the volume of the first draw

compared to the rated volume is about 0.85 for gas-fired water heaters and 0.78–0.85 for electric water heaters. GAMA proposed three calculations for first-hour rating: (1) For gas-fired water heaters, the first-hour rating equals 0.8 of the tank volume plus an energy-based correction factor; (2) for dual-element electric water heaters, the first-hour rating equals 0.75 of the tank volume plus an energy-based correction factor; and (3) for a single element electric water heater, the first-hour rating equals 0.75 of the volume. GAMA claimed these calculations give conservative results. (GAMA, February 1997 Transcript at Appendix I at 1–2.)

GAMA, in a later submittal following the February 1997 workshop, stated that its proposed optional first-hour calculation for electric water heaters should be modified to provide a more accurate first-hour value for larger volume models. It stated that the original calculation leads to an assumption that no recovery will occur for 24 minutes with an 80-gallon tank. GAMA stated that because the lower heating element turns on in 2–5 minutes into the first-hour rating test in all electric water heaters, GAMA decided to modify the volume-related correction factor for dual-element electric water heaters to reflect this. (GAMA, No. 57 at 1.)

Supporters of the DOE proposal for determining the first-hour rating include the AGA, which finds it useful in determining the proper size of a water heater, stating that proper sizing is important for energy conservation, customer satisfaction and safety. (AGA, No. 55 at 1.) The Oregon Energy Office recommended DOE adopt its 1995 proposal and not adopt any part of the EPRI proposals because Oregon claimed EPRI put too much weight on the first draw volume, thus promoting larger tanks. (Oregon Energy Office, No. 51 at 2 and February 1997 Transcript at 110–112.) In a statement submitted after the February 1997 workshop, Battelle Columbus presented some experimental data and analysis of a 35,500 Btu/h, 50-gallon gas-fired water heater. Battelle presented data to show that the test water heater was able to satisfy the "once a month" draw schedules based on the EPRI field tests of 15 actual households. Battelle claimed that the test water heater could meet 12 of the 15 household hot water loads with a delivery temperature above 110°F. Battelle claimed the data showed that the DOE first-hour rating procedure is a good predictor of water heater performance. (Battelle, No. 58 at 1.)

George Kusterer of Bock Water Heaters stated that the information

relating to EPRI's alternate first-hour rating method is inconclusive and recommended it not be accepted by DOE. Bock also claimed that a first-hour rating based only on the first draw will not work. (Bock, February 1997 Transcript at 146, 151 and 153.)

In response to EPRI's comments on the effect of the draw rate, DOE does not agree that a 3 gpm draw rate will result in a shorter reheat time for larger tanks. This is due to the fact that, for most electric water heaters, the bottom element will turn on within 5 minutes into the first draw. Also, a larger draw rate and a longer reheat time may not increase the total amount of hot water drawn because the heat input rate and not the draw rate will determine whether a tank can recover to a minimum temperature of 110°F. This recovery capability is the reason that the size of the storage tank is not the only criterion for first-hour rating.

Tank size is critical for simultaneous water usage, but tank recovery rate, either by a greater input rate or by dual—heating element design, could prove critical during times of consecutive hot water usages. While it is true that a consumer will not wait for the tank water temperature to reach 135°F or the thermostat to cut out before turning on the hot water faucet, the one-hour rating does provide a simple and easy to understand indication of the combined effects of tank size and recovery rate within a reasonable time frame where heavy use of hot water may occur (for example, during the morning hours). It is also a definitive procedure for manufacturers to use for labeling but it is not necessarily an appropriate criterion for tank sizing since that depends on consumer behavior and uses of hot water.

The temperature correction factor is used to adjust the volume of the last draw to account for the possible lower heat content of the last draw than those earlier draws with fully heated water. DOE has created the temperature correction factor as a simple arithmetic temperature ratio using temperature data that has already been measured during the test. DOE realizes that the temperature of the last draw may be at a lower temperature than those of earlier draws.

DOE does not believe that due to the imposition of the last draw at the one-hour mark, two similar tanks, one at 111°F and the other at 109°F, will result in a large difference in the amount of total volume drawn. The temperature correction factor is specifically applied to prevent that from happening. For example, assuming that the whole tank of water at 111°F is drawn, the

temperature ratio, $(111-110)/(130-110) = 0.05$, will add only 5% of the last draw volume to the total volume drawn at the one-hour mark. (For illustration purposes, the maximum outlet temperature is assumed to be 135°F and the average outlet water temperature during a regular—not the imposed—draw is assumed to be 130°F.) DOE believes this difference of 5% of the volume of the tank is acceptable for grouping models of storage-type water heaters.

There were claims that the DOE test period of one hour is too long. The one-hour time period is related to a similar period of high water consumption in most residences. Although the EPRI data indicates a shorter time, DOE believes that more data is necessary to establish a national average pattern of use, and DOE does not believe that a reduction of 25 minutes in test time, as suggested by EPRI, is merited. There were no comments from manufacturers or GAMA that the shorter test time was desirable. Rather, Darrell Paul, EEI, Bock, and Group Thermo stated that people tend to adjust their hot water use pattern during high consumption periods to account for short periods without hot water. (Battelle Columbus, February 1997 Transcript at 47; EEI, February 1997 Transcript at 49; Bock, February 1997 Transcript at 52; Group Thermo, February 1997 Transcript at 53.)

Regarding the comment that a final draw results in a variable testing time, certainly the imposition of a final draw extends the test period beyond one hour. However, the procedure requires the cessation of input energy at the one-hour mark. Therefore, DOE believes this is an equitable way to account for all the usable heat energy input to the water heater within the one-hour time frame.

DOE does not believe that a correction factor for hot water tanks with induced interim mixing will improve the accuracy of the test procedure enough to warrant its inclusion. DOE does agree that a temperature correction factor should be applied to the water drawn during each of the draws if a thermally compensating dip tube or an internal mixing device is used. However, at the present time there is no water heater that employs a mixing valve or thermally compensating dip tube during its normal operation. One design that does employ a mixing device is a special application for utility demand-side management in which higher temperature hot water is heated and stored during periods of low electricity demand. However, such a tank can be tested under the proposed DOE test. Therefore, a correction factor for

induced internal mixing is not needed at this time.

The Department reviewed and evaluated two of the proposals presented by EPRI (the second and the third, the latter of which is EPRI's modification of its first alternative). DOE considers that the second proposal, as stated by EPRI, is still in the development stage. DOE believes that when completely developed, the method may be included and used, in graphical or tabulated forms, in a design manual for use by designers to size the hot water tank for the needs of a particular customer. However, to adopt the procedure for a single number rating purpose would require the development of, and agreement by all concerned parties to, an average national utilization curve to be used in conjunction with EPRI's hot water delivery capability graphs for various models of water heaters. The Department believes that prospect will not be feasible in the near future. Furthermore, the Department believes that EPRI's third proposal should not be adopted. The reasons are (1) the procedure puts more weight on the first draw, which would tend to encourage the use of larger tanks; (2) the hot water produced during the recovery period is not included, even though it is available at the end of recovery; (3) the proposed four reheat cycles may require a very long test time, especially for larger electric tanks; (4) for water heaters with a lower heat input rate, the subsequent draw rate, which provides continuous 135°F (heated up from the 58°F inlet condition) water and is calculated on the basis of the reheat rate, will be much lower; and (5) the procedure, and any modification to it, has not been tested.

The Department has decided not to adopt the optional calculation procedure proposed by GAMA. The Department checked the optional calculation procedure against data published in the GAMA directory and found that the results for first hour rating varied among electric, gas-and oil-fired water heaters. Furthermore, the coefficients proposed by GAMA were based on the current test procedure for first hour rating. The Department believes that the optional calculation may have merit, but the coefficients need to be based on the first hour rating in this Final Rule. For these reasons, the Department has decided to adopt the 1995 proposed procedure for first-hour rating in today's Final Rule.

6. Installation of Under-the-Counter and Counter-Top Water Heaters

The installation requirements in section 4 of Appendix E of the proposed

test procedure do not distinguish under-the-counter water heaters from counter-top water heaters. GAMA recommended these be addressed separately because they are intended for different installations. GAMA indicated that because the water connections for counter-top models are within the water heater jacket, they can be installed flush to the back wall, and that this is not true for under-the-counter models. GAMA also recommended that separate piping arrangements be provided for floor-mounted water heaters with storage capacities less than 20 gallons. GAMA submitted four figures illustrating these configurations. (GAMA, July 1995 Transcript at 17 and No. 1 at 6.) Intertek Testing Services confirmed that GAMA's suggested changes are consistent with the normal practice in testing these types of models. Intertek further furnished piping schematics for those under-the-counter models that have a side inlet port and a top center outlet port. (Intertek, No. 62 at 1.)

The Department supports these proposals. The Department understands that if a counter-top model is installed with the back surface of the water heater jacket flush against the wall, the heat loss through the back surface will be different from an installation in which the back surface is exposed directly to the ambient air. DOE also understands that for under-the-counter models, the limitation of space under the counter necessitates a short piping connection, which should be reflected in the installation requirement. Therefore, the installation figures for piping connections for under-the-counter and counter-top water heaters as provided by GAMA and Intertek are included in today's Final Rule (as Figures 3, 4, 5, 6, 7A, and 7B in Appendix E). Sections 4.1 and 4.3 of Appendix E are revised to indicate these new figures and the requirement for a simulated wall against the back side of a counter-top model.

7. Test Conditions

a. Daily Hot Water Usage. The current test procedure prescribes water heater testing to determine the energy factor must be based on a daily hot water usage of 64.3 gallons per day (gpd). DOE did not propose to change the daily hot water usage in the 1995 proposed rulemaking.

The American Gas Association (AGA) and Battelle Columbus argued that the current daily hot water usage is outdated and proposed it be lowered to 54 gpd to reflect a recent study. (AGA, No. 25 at 2; and Battelle, No. 46 at 1.) Virginia Power suggested lowering the daily hot water usage to 50 gpd or less. Virginia Power also stated that because

the daily usage value is used in energy estimation and design calculations, changing it to a current value will maximize the usefulness and applicability of the test results. EEI suggested lowering the daily hot water usage to 50–57 gpd. Georgia Power argued for a value close to 50 gpd. (Virginia Power, No. 50 at 3 and February 1997 Transcript at 212 and 223; EEI, February 1997 Transcript at 201; and Georgia Power, No. 54 at 2.) EPRI stated that there is substantial evidence, based on its recent study of submetered electric utility load data from 28 different sources, that the daily hot water consumption should be less than 50 gallons. However, EPRI, as well as GAMA, the Oregon State Energy Office, A.O. Smith, and Effikal International (Effikal), indicated that lowering the gpd value would not alter the relative efficiency ranking (based on energy factor) of the water heaters, but would impose an additional cost burden on industry for retesting and relabeling. The five commenters, therefore, suggested that DOE maintain the current daily hot water usage of 64.3 gpd in the test procedure. GAMA also suggested that, if necessary, it is possible to use linear estimation of energy consumption based on a different daily usage. The Oregon Energy Office suggested that the variation of the daily usage value with individual consumers is quite large, and the current 64.3 gpd may not be too far from the average. (EPRI, No. 56 at 13 and February 1997 Transcript at 221 and at Appendix J at 2; GAMA, February 1997 Transcript at 215; Oregon State Energy Office, February 1997 Transcript at 219; A.O. Smith, February 1997 Transcript at 220; Effikal, February 1997 Transcript at 224; and Oregon, No. 51 at 4.)

The Department believes that the current value of 64.3 gpd is useful in determining an energy factor for consumers to use to compare water heaters. The Department believes that revising the value so it can be used to estimate or predict energy consumption will require a more detailed evaluation of individual installation locations, thermostat settings, and use patterns. Based on the fact that a revised daily hot water usage has not been agreed upon, and that the industry would be financially burdened, the Department concludes that revising the daily hot water usage is unwarranted in today's Final Rule.

b. Storage Tank Temperature. The existing test procedure uses a thermostat setting of $135^{\circ}\text{F} \pm 5^{\circ}\text{F}$ ($57.2^{\circ}\text{C} \pm 2.8^{\circ}\text{C}$). DOE did not propose to revise this setting in the 1995 proposed rulemaking. AGA suggested that the

thermostat setting be lowered to $120^{\circ}\text{F} \pm 5^{\circ}\text{F}$ ($48.9^{\circ}\text{C} \pm 2.8^{\circ}\text{C}$) to reflect the manufacturers' recommendation to consumers to lower the temperature settings on water heaters thus preventing potential scalding. (AGA, No. 25 at 4.)

Both Virginia Power and Bock Water Heaters also supported lowering the current thermostat setting to 120°F (48.9°C). The reasons cited included: (1) The current setting of 135°F (57.2°C) does not reflect how consumers actually operate their water heaters; (2) most energy-related organizations advocate a setting of 120°F (48.9°C) when promoting energy efficiency and safety; (3) scalding by hot water at 135°F (57.2°C) is a major concern in some areas; and (4) certain local codes restrict the thermostat setting to be no higher than 120°F (48.9°C). EEI stated that for several years many customers have been told to set their thermostats at 120°F (48.9°C). (Virginia Power, No. 50 at 3 and February 1997 Transcript at 212 and 223; Bock Water Heaters, February 1997 Transcript at 207 and 211; and EEI, February 1997 Transcript at 201.)

In contrast, six commenters, individually or in support of another commenter's position, opposed lowering the thermostat setting from $135^{\circ}\text{F} \pm 5^{\circ}\text{F}$ ($57.2^{\circ}\text{C} \pm 2.8^{\circ}\text{C}$). (EPRI, No. 56 at 2 and February 1997 Transcript at 199, 208, and 218 and at Appendix J at 1; GAMA, February 1997 Transcript at 215 and at Appendix I at 3; Oregon State Energy Office, No. 51 at 4 and February 1997 Transcript at 201, 204, and 219; Group Thermo, February 1997 Transcript at 206; A.O. Smith, February 1997 Transcript at 220; and Effikal International, February 1997 Transcript at 224.) Their various comments are: (1) A setting at 120°F (48.9°C) could pose a potential health risk (e.g., legionella) to consumers; (2) a setting at 135°F (57.2°C) is necessary to meet consumers' expected hot water needs (as with machine-use for washing clothes); (3) a setting at 135°F (57.2°C) reflects realistic household settings; and (4) changing the thermostat setting from 135°F (57.2°C) will not alter the comparative ranking of water heaters but would result in a substantial cost to industry in retesting and relabeling. EEI stated that it would not object if the current requirement in the test procedure is not revised. (EEI, February 1997 Transcript at 220.)

Based on the comments in the record regarding actual field thermostat setting by consumers, potential health concerns and the potential burden on industry, the Department concludes that revision of the thermostat setting from $135^{\circ}\text{F} \pm 5^{\circ}\text{F}$ ($57.2^{\circ}\text{C} \pm 2.8^{\circ}\text{C}$) to $120^{\circ}\text{F} \pm 5^{\circ}\text{F}$

($48.9^{\circ}\text{C} \pm 2.8^{\circ}\text{C}$) is unwarranted in today's Final Rule.

c. Ambient Air Temperature. The current DOE test procedure specifies ambient air temperature for heat pump water heaters to be $67\frac{1}{2}^{\circ}\text{F} \pm 1^{\circ}\text{F}$ ($19.7^{\circ}\text{C} \pm 0.6^{\circ}\text{C}$) and for all other water heater types to be between 65°F (18.3°C) and 70°F (21.1°C). DOE did not propose a change to these values. EPRI stated that the existing ambient air temperature values are satisfactory, but suggested using a nationwide survey to determine more representative ambient air temperature values. (EPRI, No. 56 at 5.) DOE believes a survey is unnecessary and will continue to use the current values.

d. Supply Water Temperature. The current DOE test procedure specifies supply water temperature to be $58^{\circ}\text{F} \pm 2^{\circ}\text{F}$ ($14.4^{\circ}\text{C} \pm 1.1^{\circ}\text{C}$). DOE did not propose a change to this value. EPRI stated that the existing supply water temperature value is satisfactory, but suggested revisiting the value periodically because of the possible change of the average source temperature caused by regional shifts in the population. (EPRI, No. 56 at 5 and 6.) DOE believes the current value for supply water temperature is appropriate and that changing it would place an unreasonable burden on manufacturers.

e. Relative Humidity. The current DOE test procedure specifies relative humidity for heat pump water heaters to be between 49% and 51%. DOE did not propose a change to this value. EPRI stated that the existing humidity value is satisfactory, but suggested using weighted regional averages in the future to account for humidity extremes. (EPRI, No. 56 at 5 and 6.) DOE believes the current value for humidity is appropriate and that changing it would place an unreasonable burden on manufacturers.

8. Cost-Based Correction Factor for Fossil-Fueled Residential Appliances

The current procedure provides a test method to measure the energy efficiency of water heaters that is used to rate units of similar volumes for comparison purposes. This measure of energy efficiency is known as the energy factor (EF). DOE did not propose any amendment to the existing test method in the Proposed Rule.

AGA commented that because the energy factor is calculated from measurements of the consumption of energy at the site, the EF for fossil-fueled water heaters is substantially lower than the EF for electric water heaters. AGA also stated that gas-fired water heaters typically cost consumers considerably less to operate. AGA stated

that there is no correlation between the current energy descriptor and the cost of operation. AGA believes this inconsistency between the energy descriptor and cost of operation can be extremely misleading to the consumer if a purchase decision is based primarily on the energy factor or annual energy consumption. Therefore, AGA suggested that the energy usage of the water heater be adjusted by a multiplication factor of 0.298 which represents the ratio of the average cost of fossil fuel to electricity. (AGA, No. 25 at 5.)

The 0.298 factor is the inverse of DOE's F-factor of 3.36 which was proposed in the furnaces/boilers, vented home heating equipment and pool heaters test procedures. The F-factor would have allowed the consumption of fossil fuel and electricity to be combined into a single value by placing the two energy types on a common basis. (60 FR 4348, January 20, 1995.)

In response to disagreement from an overwhelming majority of commenters regarding the proposed F-factor, the Department stated that the Energy Policy and Conservation Act, as amended, requires the energy efficiency of a furnace to be based on consumption of energy at the site per the definition of "energy use," 42 U.S.C. 6291(4). The Department also concluded that the statute does not permit the promulgation of an energy efficiency standard that is expressed in terms of annual operating costs of the furnace. Based on this analysis, the Department withdrew the proposed F-Factor in its Final Rule Regarding Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment and Pool Heaters. (62 FR 26140, May 12, 1997.) Likewise, DOE will not adjust the energy factor for electric water heaters to a source basis as proposed by AGA.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department will finalize amendments to test procedures that may be used to implement future energy conservation standards for water heaters. The Department has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* The rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in the Department's NEPA regulations at Appendix A to Subpart D, 10 CFR part 1021. This Final Rule will not affect the

quality or distribution of energy usage and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's Final Rule is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, today's action is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule, for which a general notice of proposed rulemaking is required, that would have a significant economic effect on small entities unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. DOE certified in the notice of proposed rulemaking that the rule would not have a significant economic impact on a substantial number of small entities. DOE estimates there are approximately 7 manufacturers of water heaters for specialty markets that may be small entities as defined in the Regulatory Flexibility Act. The manufacturers of heat pump water heaters and storage-type water heaters already make the types of measurements required by this rule, and the cost of compliance will be negligible. Today's revised test procedures will have no immediate impact on manufacturers of instantaneous water heaters because there currently are no energy efficiency standards for instantaneous water heaters; in any event, the cost of compliance would not be significant. DOE received no comments on its certification in the proposed rule.

D. "Takings" Assessment Review

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation, if adopted, would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

E. Federalism Review

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are substantial direct effects, then this Executive Order requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The Final Rule published today would not regulate the States. Accordingly, DOE has determined that preparation of a Federalism assessment is unnecessary.

F. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

G. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by sections 3(a) and 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and reducing burdens; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of

them. DOE reviewed today's rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in one year.

The Department has determined that this Final Rule does not include any requirements that would result in the expenditure of money by State, local, and tribal governments. It also would not result in costs to the private sector of \$100 million or more in any one year. Therefore, the requirements of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

I. Congressional Notification

Consistent with Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801-808, DOE will submit to Congress a report regarding the issuance of today's Final Rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a "major rule" under that Act, 5 U.S.C. 801, 804.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., on April 6, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Part B, Title III, Energy Policy and Conservation Act, (42 U.S.C. 6291-6309), as amended.

2. Appendix E to Subpart B of Part 430 is revised to read as follows:

Appendix E to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Water Heaters

1. Definitions

1.1 *Cut-in* means the time when or water temperature at which a water heater control or thermostat acts to increase the energy or fuel input to the heating elements, compressor, or burner.

1.2 *Cut-out* means the time when or water temperature at which a water heater control or thermostat acts to reduce to a minimum the energy or fuel input to the heating elements, compressor, or burner.

1.3 *Design Power Rating* means the nominal power rating that a water heater manufacturer assigns to a particular design of water heater, expressed in kilowatts or Btu (kJ) per hour as appropriate.

1.4 *Energy Factor* means a measure of water heater overall efficiency.

1.5 *First-Hour Rating* means an estimate of the maximum volume of "hot" water that a storage-type water heater can supply within an hour that begins with the water heater fully heated (i.e., with all thermostats satisfied). It is a function of both the storage volume and the recovery rate.

1.6 *Heat Trap* means a device which can be integrally connected or independently attached to the hot and/or cold water pipe connections of a water heater such that the device will develop a thermal or mechanical seal to minimize the recirculation of water due to thermal convection between the water heater tank and its connecting pipes.

1.7 Instantaneous Water Heaters

1.7.1 *Electric Instantaneous Water Heater* Reserved.

1.7.2 *Gas Instantaneous Water Heater* means a water heater that uses gas as the energy source, initiates heating based on sensing water flow, is designed to deliver water at a controlled temperature of less than 180°F (82°C), has an input greater than 50,000 Btu/h (53 MJ/h) but less than 200,000 Btu/h (210 MJ/h), and has a manufacturer's specified storage capacity of less than 2 gallons (7.6 liters). The unit may use a fixed or variable burner input.

1.8 *Maximum gpm (L/min) Rating* means the maximum gallons per minute (liters per minute) of hot water that can be supplied by an instantaneous water heater while maintaining a nominal temperature rise of 77°F (42.8°C) during steady state operation.

1.9 *Rated Storage Volume* means the water storage capacity of a water heater, in gallons (liters), as specified by the manufacturer.

1.10 *Recovery Efficiency* means the ratio of energy delivered to the water to the energy content of the fuel consumed by the water heater.

1.11 *Standby* means the time during which water is not being withdrawn from the water heater. There are two standby time intervals used within this test procedure:

$\tau_{\text{stdby},1}$ represents the elapsed time between the time at which the maximum mean tank temperature is observed after the sixth draw and subsequent recovery and the end of the 24-hour test; $\tau_{\text{stdby},2}$ represents the total time during the 24-hour simulated use test when water is not being withdrawn from the water heater.

1.12 Storage-type Water Heaters

1.12.1 *Electric Storage-type Water Heater* means a water heater that uses electricity as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a nominal input of 12 kilowatts (40,956 Btu/h) or less, and has a rated storage capacity of not less than 20 gallons (76 liters) nor more than 120 gallons (450 liters).

1.12.2 *Gas Storage-type Water Heater* means a water heater that uses gas as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a nominal input of 75,000 Btu (79 MJ) per hour or less, and has a rated storage capacity of not less than 20 gallons (76 liters) nor more than 100 gallons (380 liters).

1.12.3 *Heat Pump Water Heater* means a water heater that uses electricity as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a maximum current rating of 24 amperes (including the compressor and all auxiliary equipment such as fans, pumps, controls, and, if on the same circuit, any resistive elements) for an input voltage of 250 volts or less, and, if the tank is supplied, has a manufacturer's rated storage capacity of 120 gallons (450 liters) or less. Resistive elements used to provide supplemental heating may use the same circuit as the compressor if (1) an interlocking mechanism prevents concurrent compressor operation and resistive heating or (2) concurrent operation does not result in the maximum current rating of 24 amperes being exceeded. Otherwise, the resistive elements and the heat pump components must use separate circuits. A heat pump water heater may be sold by the manufacturer with or without a storage tank.

a. *Heat Pump Water Heater with Storage Tank* means an air-to-water heat pump sold by the manufacturer with an insulated storage tank as a packaged unit. The tank and heat pump can be an integral unit or they can be separated.

b. *Heat Pump Water Heater without Storage Tank* (also called Add-on Heat Pump Water Heater) means an air-to-water heat pump designed for use with a storage-type water heater or a storage tank that is not specified or supplied by the manufacturer.

1.12.4 *Oil Storage-type Water Heater* means a water heater that uses oil as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180°F (82°C), has a nominal energy input of 105,000 Btu/h (110 MJ/h) or less, and has a manufacturer's rated storage capacity of 50 gallons (190 liters) or less.

1.12.5 *Storage-type Water Heater of More than 2 Gallons (7.6 Liters) and Less than 20 Gallons (76 Liters)* Reserved.

1.13 *ASHRAE Standard 41.1-86* means the standard published in 1986 by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., and titled Standard Measurement Guide: Section on Temperature Measurements.

1.14 *ASTM-D-2156-80* means the test standard published in 1980 by the American

Society for Testing and Measurements and titled "Smoke Density in Flue Gases from Burning Distillate Fuels, Test Method for".

1.15 *Symbol Usage* The following identity relationships are provided to help clarify the symbology used throughout this procedure:

C_p specific heat capacity of water

E_{annual} annual energy consumption of a water heater

E_f energy factor of a water heater

F_{hr} first-hour rating of a storage-type water heater

F_{max} maximum gpm (L/min) rating of an instantaneous water heater rated at a temperature rise of 77°F (42.8°C) across the heater

i a subscript to indicate an i th draw during a test

M_i mass of water removed during the i th draw ($i=1$ to 6) of the 24-hr simulated use test

M_i^* for storage-type water heaters, mass of water removed during the i th draw ($i=1$ to n) during the first-hour rating test

$M_{10\text{m}}$ for instantaneous water heaters, mass of water removed continuously during a 10-minute interval in the maximum gpm (L/min) rating test

n for storage-type water heaters, total number of draws during the first-hour rating test

Q total fossil fuel and/or electric energy consumed during the entire 24-hr simulated use test

Q_d daily water heating energy consumption adjusted for net change in internal energy

Q_{da} adjusted daily water heating energy consumption with adjustment for variation of tank to ambient air temperature difference from nominal value

Q_{dm} overall adjusted daily water heating energy consumption including Q_{da} and Q_{HWD}

Q_{hr} hourly standby losses

Q_{HW} daily energy consumption to heat water over the measured average temperature rise across the water heater

Q_{HWD} adjustment to daily energy consumption, Q_{HW} , due to variation of the temperature rise across the water heater not equal to the nominal value of 77°F (42.8°C)

Q_t energy consumption of fossil fuel or heat pump water heaters between thermostat (or burner) cut-out prior to the first draw and cut-out following the first draw of the 24-hr simulated use test

$Q_{t,\text{max}}$ energy consumption of a modulating instantaneous water heater between cut-out (burner) prior to the first draw and cut-out following the first draw of the 24-hr simulated use test

$Q_{t,\text{min}}$ energy consumption of a modulating instantaneous water heater from immediately prior to the fourth draw to burner cut-out following the fourth draw of the 24-hr simulated use test

Q_{stdby} total energy consumed by the water heater during the standby time interval $\tau_{\text{stdby},1}$

Q_{tot} total fossil fueled and/or electric energy consumed from the beginning of the first draw to the thermostat (or burner) cut-out following the completion of the sixth draw during the 24-hr simulated use test

T_{min} for modulating instantaneous water heaters, steady state outlet water temperature at the minimum fuel input rate

T_0 mean tank temperature at the beginning of the 24-hr simulated use test

T_{24} mean tank temperature at the end of the 24-hr simulated use test

$T_{a,\text{stdby}}$ average ambient air temperature during standby periods of the 24-hr use test

T_{del} for instantaneous water heaters, average outlet water temperature during a 10-minute continuous draw interval in the maximum gpm (L/min) rating test

$T_{\text{del},i}$ average outlet water temperature during the i th draw of the 24-hr simulated use test

T_{in} for instantaneous water heaters, average inlet water temperature during a 10-minute continuous draw interval in the maximum gpm (L/min) rating test

$T_{\text{in},i}$ average inlet water temperature during the i th draw of the 24-hr simulated use test

$T_{\text{max},1}$ maximum measured mean tank temperature after cut-out following the first draw of the 24-hr simulated use test

T_{stdby} average storage tank temperature during the standby period $\tau_{\text{stdby},2}$ of the 24-hr use test

T_{su} maximum measured mean tank temperature after cut-out following the sixth draw of the 24-hr simulated use test

$T_{\text{L},\text{stdby}}$ average storage tank temperature during the standby period $\tau_{\text{stdby},1}$ of the 24-hr use test

$T_{\text{del},i}^*$ for storage-type water heaters, average outlet water temperature during the i th draw ($i=1$ to n) of the first-hour rating test

$T_{\text{max},1}^*$ for storage-type water heaters, maximum outlet water temperature observed during the i th draw ($i=1$ to n) of the first-hour rating test

$T_{\text{min},1}^*$ for storage-type water heaters, minimum outlet water temperature to terminate the i th draw during the first-hour rating test

U_A standby loss coefficient of a storage-type water heater

V_i volume of water removed during the i th draw ($i=1$ to 6) of the 24-hr simulated use test

V_i^* volume of water removed during the i th draw ($i=1$ to n) during the first-hour rating test

$V_{10\text{m}}$ for instantaneous water heaters, volume of water removed continuously during a 10-minute interval in the maximum gpm (L/min) rating test

V_{max} steady state water flow rate of an instantaneous water heater at the rated input to give a discharge temperature of 135°F \pm 5°F (57.2°C \pm 2.8°C)

V_{min} steady state water flow rate of a modulating instantaneous water heater at the minimum input to give a discharge temperature of T_{min} up to 135°F \pm 5°F (57.2°C \pm 2.8°C)

V_{st} measured storage volume of the storage tank

W_f weight of storage tank when completely filled with water

W_t tare weight of storage tank when completely empty of water

η_r recovery efficiency

ρ density of water

$\tau_{\text{stdby},1}$ elapsed time between the time the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hr simulated use test

$\tau_{\text{stdby},2}$ overall standby periods when no water is withdrawn during the 24-hr simulated use test

2. *Test Conditions*

2.1 *Installation Requirements.* Tests shall be performed with the water heater and instrumentation installed in accordance with Section 4 of this appendix.

2.2 *Ambient Air Temperature.* The ambient air temperature shall be maintained between 65.0°F and 70.0°F (18.3°C and 21.1°C) on a continuous basis. For heat pump water heaters, the dry bulb temperature shall be maintained at 67.5°F \pm 1°F (19.7°C \pm 0.6°C) and, in addition, the relative humidity shall be maintained between 49% and 51%.

2.3 *Supply Water Temperature.* The temperature of the water being supplied to the water heater shall be maintained at 58°F \pm 2°F (14.4°C \pm 1.1°C) throughout the test.

2.4 *Storage Tank Temperature.* The average temperature of the water within the storage tank shall be set to 135°F \pm 5°F (57.2°C \pm 2.8°C).

2.5 *Supply Water Pressure.* During the test when water is not being withdrawn, the supply pressure shall be maintained between 40 psig (275 kPa) and the maximum allowable pressure specified by the water heater manufacturer.

2.6 *Electrical and/or Fossil Fuel Supply.*

2.6.1 *Electrical.* Maintain the electrical supply voltage to within \pm 1% of the center of the voltage range specified by the water heater and/or heat pump manufacturer.

2.6.2 *Natural Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 7-10 inches of water column (1.7-2.5 kPa). If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within \pm 10% of the manufacturer's specified manifold pressure. For all tests, use natural gas having a heating value of approximately 1,025 Btu per standard cubic foot (38,190 kJ per standard cubic meter).

2.6.3 *Propane Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 11-13 inches of water column (2.7-3.2 kPa). If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within \pm 10% of the manufacturer's specified manifold pressure. For all tests, use propane gas with a heating value of approximately 2,500 Btu per standard cubic foot (93,147 kJ per standard cubic meter).

2.6.4 *Fuel Oil Supply.* Maintain an uninterrupted supply of fuel oil. Use fuel oil

having a heating value of approximately 138,700 Btu per gallon (38,660 kJ per liter).

3. Instrumentation

3.1 *Pressure Measurements.* Pressure-measuring instruments shall have an error no greater than the following values:

Item measured	Instrument accuracy	Instrument precision
Gas pressure	± 0.1 inch of water column (± 0.025 kPa)	± 0.05 inch of water column (± 0.012 kPa).
Atmospheric pressure	± 0.1 inch of mercury column (± 0.34 kPa)	± 0.05 inch of mercury column (± 0.17 kPa).
Water pressure	± 1.0 pounds per square inch (± 6.9 kPa)	± 0.50 pounds per square inch (± 3.45 kPa).

3.2 Temperature Measurement

3.2.1 *Measurement.* Temperature measurements shall be made in accordance with the Standard Measurement Guide: Section on Temperature Measurements, ASHRAE Standard 41.1-86.

3.2.2 *Accuracy and Precision.* The accuracy and precision of the instruments, including their associated readout devices, shall be within the following limits:

Item measured	Instrument accuracy	Instrument precision
Air dry bulb temperature	$\pm 0.2^\circ\text{F}$ ($\pm 0.1^\circ\text{C}$)	$\pm 0.1^\circ\text{F}$ ($\pm 0.06^\circ\text{C}$)
Air wet bulb temperature	$\pm 0.2^\circ\text{F}$ ($\pm 0.1^\circ\text{C}$)	$\pm 0.1^\circ\text{F}$ ($\pm 0.06^\circ\text{C}$)
Inlet and outlet water temperatures	$\pm 0.2^\circ\text{F}$ ($\pm 0.1^\circ\text{C}$)	$\pm 0.1^\circ\text{F}$ ($\pm 0.06^\circ\text{C}$)
Storage tank temperatures	$\pm 0.5^\circ\text{F}$ ($\pm 0.3^\circ\text{C}$)	$\pm 0.25^\circ\text{F}$ ($\pm 0.14^\circ\text{C}$)

3.2.3 *Scale Division.* In no case shall the smallest scale division of the instrument or instrument system exceed 2 times the specified precision.

3.2.4 Temperature Difference.

Temperature difference between the entering and leaving water may be measured with any of the following:

- A thermopile
- Calibrated resistance thermometers
- Precision thermometers
- Calibrated thermistors
- Calibrated thermocouples
- Quartz thermometers

3.2.5 *Thermopile Construction.* If a thermopile is used, it shall be made from calibrated thermocouple wire taken from a single spool. Extension wires to the recording device shall also be made from that same spool.

3.2.6 *Time Constant.* The time constant of the instruments used to measure the inlet and outlet water temperatures shall be no greater than 5 seconds.

3.3 *Liquid Flow Rate Measurement.* The accuracy of the liquid flow rate measurement, using the calibration if furnished, shall be equal to or less than $\pm 1\%$ of the measured value in mass units per unit time.

3.4 *Electric Energy.* The electrical energy used shall be measured with an instrument and associated readout device that is accurate within $\pm 1\%$ of the reading.

3.5 *Fossil Fuels.* The quantity of fuel used by the water heater shall be measured with an instrument and associated readout device that is accurate within $\pm 1\%$ of the reading.

3.6 *Mass Measurements.* For mass measurements greater than or equal to 10 pounds (4.5 kg), a scale that is accurate within $\pm 1\%$ of the reading shall be used to make the measurement. For mass measurements less than 10 pounds (4.5 kg), the scale shall provide a measurement that is accurate within ± 0.1 pound (0.045 kg).

3.7 *Heating Value.* The higher heating value of the natural gas, propane, or fuel oil shall be measured with an instrument and associated readout device that is accurate

within $\pm 1\%$ of the reading. The heating value of natural gas and propane must be corrected for local temperature and pressure conditions.

3.8 *Time.* The elapsed time measurements shall be measured with an instrument that is accurate within ± 0.5 seconds per hour.

3.9 *Volume.* Volume measurements shall be measured with an accuracy of $\pm 2\%$ of the total volume.

4. Installation

4.1 *Water Heater Mounting.* A water heater designed to be freestanding shall be placed on a $\frac{3}{4}$ inch (2 cm) thick plywood platform supported by three 2×4 inch (5 cm \times 10 cm) runners. If the water heater is not approved for installation on combustible flooring, suitable non-combustible material shall be placed between the water heater and the platform. Counter-top water heaters shall be placed against a simulated wall section. Wall-mounted water heaters shall be supported on a simulated wall in accordance with the manufacturer-published installation instructions. When a simulated wall is used, the recommended construction is 2×4 inch (5 cm \times 10 cm) studs, faced with $\frac{3}{4}$ inch (2 cm) plywood. For heat pump water heaters that are supplied with a storage tank, the two components, if not delivered as a single package, shall be connected in accordance with the manufacturer-published installation instructions and the overall system shall be placed on the above-described plywood platform. If installation instructions are not provided by the heat pump manufacturer, uninsulated 8 foot (2.4 m) long connecting hoses having an inside diameter of $\frac{3}{4}$ inch (1.6 cm) shall be used to connect the storage tank and the heat pump water heater. With the exception of using the storage tank described in 4.10, the same requirements shall apply for heat pump water heaters that are supplied without a storage tank from the manufacturer. The testing of the water heater shall occur in an area that is protected from drafts.

4.2 *Water Supply.* Connect the water heater to a water supply capable of delivering

water at conditions as specified in Sections 2.3 and 2.5 of this appendix.

4.3 Water Inlet and Outlet Configuration.

For freestanding water heaters that are taller than 36 inches (91.4 cm), inlet and outlet piping connections shall be configured in a manner consistent with Figures 1 and 2. Inlet and outlet piping connections for wall-mounted water heaters shall be consistent with Figure 3. For freestanding water heaters that are 36 inches or less in height and not supplied as part of a counter-top enclosure (commonly referred to as an under-the-counter model), inlet and outlet piping shall be installed in a manner consistent with Figures 4, 5, and 6. For water heaters that are supplied with a counter-top enclosure, inlet and outlet piping shall be made in a manner consistent with Figures 7A and 7B, respectively. The vertical piping noted in Figures 7A and 7B shall be located (whether inside the enclosure or along the outside in a recessed channel) in accordance with the manufacturer-published installation instructions.

All dimensions noted in Figures 1 through 7 shall be achieved. All piping between the water heater and the inlet and outlet temperature sensors, noted as T_{IN} and T_{OUT} in the figures, shall be Type "L" hard copper having the same diameter as the connections on the water heater. Unions may be used to facilitate installation and removal of the piping arrangements. A pressure gauge and diaphragm expansion tank shall be installed in the supply water piping at a location upstream of the inlet temperature sensor. An appropriately rated pressure and temperature relief valve shall be installed on all water heaters at the port specified by the manufacturer. Discharge piping for the relief valve shall be non-metallic. If heat traps, piping insulation, or pressure relief valve insulation are supplied with the water heater, they shall be installed for testing. Except when using a simulated wall, clearance shall be provided such that none of the piping contacts other surfaces in the test room.

4.4 *Fuel and/or Electrical Power and Energy Consumption.* Install one or more

instruments which measure, as appropriate, the quantity and rate of electrical energy and/or fossil fuel consumption in accordance with Section 3. For heat pump water heaters that use supplemental resistive heating, the electrical energy supplied to the resistive element(s) shall be metered separately from the electrical energy supplied to the entire appliance or to the remaining components (e.g., compressor, fans, pumps, controls).

4.5 *Internal Storage Tank Temperature Measurements.* Install six temperature measurement sensors inside the water heater tank with a vertical distance of at least 4 inches (100 mm) between successive sensors. A temperature sensor shall be positioned at the vertical midpoint of each of the six equal volume nodes within the tank. Nodes designate the equal volumes used to evenly partition the total volume of the tank. As much as is possible, the temperature sensor should be positioned away from any heating elements, anodic protective devices, tank walls, and flue pipe walls. If the tank cannot accommodate six temperature sensors and meet the installation requirements specified above, install the maximum number of sensors which comply with the installation requirements. The temperature sensors shall be installed either through (1) the anodic device opening; (2) the relief valve opening; or (3) the hot water outlet. If installed through the relief valve opening or the hot water outlet, a tee fitting or outlet piping, as applicable, shall be installed as close as possible to its original location. If the relief valve temperature sensor is relocated, and it no longer extends into the top of the tank, a substitute relief valve that has a sensing element that can reach into the tank shall be installed. If the hot water outlet includes a heat trap, the heat trap shall be installed on top of the tee fitting. Added fittings shall be covered with thermal insulation having an R value between 4 and 8 h-ft²-°F/Btu (0.7 and 1.4 m²-°C/W).

4.6 *Ambient Air Temperature Measurement.* Install an ambient air temperature sensor at the vertical mid-point of the water heater and approximately 2 feet (610 mm) from the surface of the water heater. The sensor shall be shielded against radiation.

4.7 *Inlet and Outlet Water Temperature Measurements.* Install temperature sensors in the cold-water inlet pipe and hot-water outlet pipe as shown in Figures 1, 2, 3, 4, 5, 6, 7a and 7b, as applicable.

4.8 *Flow Control.* A valve shall be installed to provide flow as specified in sections 5.1.4.1 for storage tank water heaters and 5.2.1 for instantaneous water heaters.

4.9 Flue Requirements.

4.9.1 *Gas-Fired Water Heaters.* Establish a natural draft in the following manner. For gas-fired water heaters with a vertically discharging draft hood outlet, a 5-foot (1.5-meter) vertical vent pipe extension with a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. For gas-fired water heaters with a horizontally discharging draft hood outlet, a 90-degree elbow with a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A 5-foot (1.5-meter) length of vent

pipe shall be connected to the elbow and oriented to discharge vertically upward. Direct vent gas-fired water heaters shall be installed with venting equipment specified in the manufacturer's instructions using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

4.9.2 *Oil-Fired Water Heaters.* Establish a draft at the flue collar at the value specified in the manufacturer's instructions. Establish the draft by using a sufficient length of vent pipe connected to the water heater flue outlet, and directed vertically upward. For an oil-fired water heater with a horizontally discharging draft hood outlet, a 90-degree elbow with a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A length of vent pipe sufficient to establish the draft shall be connected to the elbow fitting and oriented to discharge vertically upward. Direct-vent oil-fired water heaters should be installed with venting equipment as specified in the manufacturer's instructions, using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

4.10 *Heat Pump Water Heater Storage Tank.* The tank to be used for testing a heat pump water heater without a tank supplied by the manufacturer (see Section 1.12.3b) shall be an electric storage-type water heater having a measured volume of 47.0 gallons ± 1.0 gallon (178 liters ± 3.8 liters); two 4.5 kW heating elements controlled in such a manner as to prevent both elements from operating simultaneously; and an energy factor greater than or equal to the minimum energy conservation standard (as determined in accordance with Section 6.1.7) and less than or equal to the sum of the minimum energy conservation standard and 0.02.

5. Test Procedures

5.1 *Storage-type Water Heaters, Including Heat Pump Water Heaters.*

5.1.1 *Determination of Storage Tank Volume.* Determine the storage capacity, V_{st} , of the water heater under test, in gallons (liters), by subtracting the tare weight—measured while the tank is empty—from the gross weight of the storage tank when completely filled with water (with all air eliminated and line pressure applied as described in section 2.5) and dividing the resulting net weight by the density of water at the measured temperature.

5.1.2 Setting the Thermostat.

5.1.2.1 *Single Thermostat Tanks.* Starting with a tank at the supply water temperature, initiate normal operation of the water heater. After cut-out, determine the mean tank temperature every minute until the maximum value is observed. Determine whether this maximum value for the mean tank temperature is within the range of $135^\circ\text{F} \pm 5^\circ\text{F}$ ($57.2^\circ\text{C} \pm 2.8^\circ\text{C}$). If not, turn off the water heater, adjust the thermostat, drain and refill the tank with supply water. Then, once again, initiate normal operation of the water heater, and determine the maximum mean tank temperature after cut-out. Repeat this sequence until the maximum mean tank temperature after cut-out is $135^\circ\text{F} \pm 5^\circ\text{F}$ ($57.2^\circ\text{C} \pm 2.8^\circ\text{C}$).

5.1.2.2 *Tanks with Two or More Thermostats.* Follow the same sequence as

for a single thermostat tank, i.e. start at the supply water temperature, operate normally until cutout. Determine if the thermostat that controls the uppermost heating element yields a maximum water temperature of $135^\circ\text{F} \pm 5^\circ\text{F}$ ($57.2^\circ\text{C} \pm 2.8^\circ\text{C}$), as measured by the in-tank sensors that are positioned above the uppermost heating element. If the tank temperature at the thermostat is not within $135^\circ\text{F} \pm 5^\circ\text{F}$ ($57.2^\circ\text{C} \pm 2.8^\circ\text{C}$), turn off the water heater, adjust the thermostat, drain and refill the tank with supply water. The thermostat that controls the heating element positioned next highest in the tank shall then be set to yield a maximum water temperature of $135^\circ\text{F} \pm 5^\circ\text{F}$ ($57.2^\circ\text{C} \pm 2.8^\circ\text{C}$). This process shall be repeated until the thermostat controlling the lowest element is correctly adjusted. When adjusting the thermostat that controls the lowest element, the maximum mean tank temperature after cut-out, as determined using all the in-tank sensors, shall be $135^\circ\text{F} \pm 5^\circ\text{F}$ ($57.2^\circ\text{C} \pm 2.8^\circ\text{C}$). When adjusting all other thermostats, use only the in-tank temperature sensors positioned above the heating element in question to evaluate the maximum water temperature after cut-out.

For heat pump water heaters that control an auxiliary resistive element, the thermostat shall be set in accordance with the manufacturer's installation instructions.

5.1.3 *Power Input Determination.* For all water heaters except electric types having immersed heating elements, initiate normal operation and determine the power input, P , to the main burners (including pilot light power, if any) after 15 minutes of operation. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be set within $\pm 10\%$ of that recommended by the manufacturer. For oil-fired water heaters the fuel pump pressure shall be within $\pm 10\%$ of the manufacturer's specified pump pressure. All burners shall be adjusted to achieve an hourly Btu (kJ) rating that is within $\pm 2\%$ of the value specified by the manufacturer. For an oil-fired water heater, adjust the burner to give a CO_2 reading recommended by the manufacturer and an hourly Btu (kJ) rating that is within $\pm 2\%$ of that specified by the manufacturer. Smoke in the flue may not exceed No. 1 smoke as measured by the procedure in ASTM-D-2156-80.

5.1.4 First-Hour Rating Test.

5.1.4.1 *General.* During hot water draws, remove water at a rate of 3.0 ± 0.25 gallons per minute (11.4 ± 0.95 liters per minute). Collect the water in a container that is large enough to hold the volume removed during an individual draw and suitable for weighing at the termination of each draw. Alternatively, a water meter may be used to directly measure the water volume(s) withdrawn.

5.1.4.2 *Draw Initiation Criteria.* Begin the first-hour rating test by imposing a draw on the storage-type water heater. After completion of this first draw, initiate successive draws based on the following criteria. For gas- and oil-fired water heaters, initiate successive draws when the thermostat acts to reduce the supply of fuel to the main burner. For electric water heaters having a single element or multiple elements that all operate simultaneously, initiate

successive draws when the thermostat acts to reduce the electrical input supplied to the element(s). For electric water heaters having two or more elements that do not operate simultaneously, initiate successive draws when the applicable thermostat acts to reduce the electrical input to the element located vertically highest in the storage tank. For heat pump water heaters that do not use supplemental resistive heating, initiate successive draws immediately after the electrical input to the compressor is reduced by the action of the water heater's thermostat. For heat pump water heaters that use supplemental resistive heating, initiate successive draws immediately after the electrical input to the compressor or the uppermost resistive element is reduced by the action of the applicable water heater thermostat. This draw initiation criterion for heat pump water heaters that use supplemental resistive heating, however, shall only apply when the water located above the thermostat at cut-out is heated to 135°F±5°F (57.2°C±2.8°C).

5.1.4.3 Test Sequence. Establish normal water heater operation. If the water heater is not presently operating, initiate a draw. The draw may be terminated anytime after cut-in occurs. After cut-out occurs (i.e., all thermostats are satisfied), monitor the internal storage tank temperature sensors described in section 4.5 every minute.

Initiate a draw after a maximum mean tank temperature has been observed following cut-out. Record the time when the draw is initiated and designate it as an elapsed time of zero ($\tau = 0$). (The superscript * is used to denote variables pertaining to the first-hour rating test.) Record the outlet water temperature beginning 15 seconds after the draw is initiated and at 5-second intervals thereafter until the draw is terminated. Determine the maximum outlet temperature that occurs during this first draw and record it as $T_{\max,1}^*$. For the duration of this first draw and all successive draws, in addition, monitor the inlet temperature to the water heater to ensure that the required 58°F±2°F (14.4°C±1.1°C) test condition is met. Terminate the hot water draw when the outlet temperature decreases to $T_{\max,1}^* - 25^\circ\text{F}$ ($T_{\max,1}^* - 13.9^\circ\text{C}$). Record this temperature as $T_{\min,1}^*$. Following draw termination, determine the average outlet water temperature and the mass or volume removed during this first draw and record them as $T_{\text{del},1}^*$ and M_1^* or V_1^* , respectively.

Initiate a second and, if applicable, successive draw each time the applicable draw initiation criteria described in section 5.1.4.2 are satisfied. As required for the first draw, record the outlet water temperature 15 seconds after initiating each draw and at 5-second intervals thereafter until the draw is terminated. Determine the maximum outlet temperature that occurs during each draw and record it

as $T_{\max,i}^*$, where the subscript i refers to the draw number. Terminate each hot water draw when the outlet temperature decreases to $T_{\max,i}^* - 25^\circ\text{F}$ ($T_{\max,i}^* - 13.9^\circ\text{C}$). Record this temperature as $T_{\min,i}^*$. Calculate and record the average outlet temperature and the mass or volume removed during each draw ($T_{\text{del},i}^*$ and M_i^* or V_i^* , respectively). Continue this sequence of draw and recovery until one hour has elapsed, then shut off the electrical power and/or fuel supplied to the water heater.

If a draw is occurring at an elapsed time of one hour, continue this draw until the outlet temperature decreases to $T_{\max,n}^* - 25^\circ\text{F}$ ($T_{\max,n}^* - 13.9^\circ\text{C}$), at which time the draw shall be immediately terminated. (The subscript n shall be used to denote quantities associated with the final draw.) If a draw is not occurring at an elapsed time of one hour, a final draw shall be imposed at one hour. This draw shall be immediately terminated when the outlet temperature first indicates a value less than or equal to the cut-off temperature used for the previous draw ($T_{\min,n-1}^*$). For cases where the outlet temperature is close to $T_{\min,n-1}^*$, the final draw shall proceed for a minimum of 30 seconds. If an outlet temperature greater than $T_{\min,n-1}^*$ is not measured within 30 seconds, the draw shall be immediately terminated and zero additional credit shall be given towards first-hour rating (i.e., $M_n^* = 0$ or $V_n^* = 0$). After the final draw is terminated, calculate and record the average outlet temperature and the mass or volume removed during the draw ($T_{\text{del},n}^*$ and M_n^* or V_n^* , respectively).

5.1.5 24-Hour Simulated Use Test. During the simulated use test, a total of 64±3 1.0 gallons (243±3.8 liters) shall be removed. This value is referred to as the daily hot water usage in the following text.

With the water heater turned off, fill the water heater with supply water and apply pressure as described in section 2.5. Turn on the water heater and associated heat pump unit, if present. After the cut-out occurs, the water heater may be operated for up to three cycles of drawing until cut-in, and then operating until cut-out, prior to the start of the test.

At this time, record the mean tank temperature (T_p), and the electrical and/or fuel measurement readings, as appropriate. Begin the 24-hour simulated use test by withdrawing a volume from the water heater that equals one-sixth of the daily hot water usage. Record the time when this first draw is initiated and assign it as the test elapsed time (τ) of zero (0). Record the average storage tank and ambient temperature every 15 minutes throughout the 24-hour simulated use test unless a recovery or a draw is occurring. At elapsed time intervals of one, two, three, four, and five hours from $\tau = 0$, initiate additional draws, removing an amount of water equivalent to one-sixth of

the daily hot water usage with the maximum allowable deviation for any single draw being ±0.5 gallons (1.9 liters). The quantity of water withdrawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn equals 64.3 gallons ± 1.0 gallon (243.4 liters ± 3.8 liters).

All draws during the simulated use test shall be made at flow rates of 3.0 gallons ± 0.25 gallons per minute (11.4 liters ± 0.95 liters per minute). Measurements of the inlet and outlet temperatures shall be made 15 seconds after the draw is initiated and at every subsequent 5-second interval throughout the duration of each draw. The arithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw ($T_{\text{del},i}$ and $T_{\text{in},i}$). Determine and record the net mass or volume removed (M_i or V_i), as appropriate, after each draw.

At the end of the recovery period following the first draw, record the maximum mean tank temperature observed after cut-out, $T_{\max,1}$, and the energy consumed by an electric resistance, gas or oil-fired water heater, Q_1 . For heat pump water heaters, the total electrical energy consumed during the first recovery by the heat pump (including compressor, fan, controls, pump, etc.) and, if applicable, by the resistive element(s) shall be recorded as Q_1 .

At the end of the recovery period that follows the sixth draw, determine and record the total electrical energy and/or fossil fuel consumed since the beginning of the test, Q_{tot} . In preparation for determining the energy consumed during standby, record the reading given on the electrical energy (watt-hour) meter, the gas meter, and/or the scale used to determine oil consumption, as appropriate. Record the maximum value of the mean tank temperature after cut-out as T_{up} . Except as noted below, allow the water heater to remain in the standby mode until 24 hours have elapsed from the start of the test (i.e., since $\tau = 0$). Prevent the water heater from beginning a recovery cycle during the last hour of the test by turning off the electric power to the electrical heating elements and heat pump, if present, or by turning down the fuel supply to the main burner at an elapsed time of 23 hours. If a recovery is taking place at an elapsed time of 23 hours, wait until the recovery is complete before reducing the electrical and/or fuel supply to the water heater. At 24 hours, record the mean tank temperature, T_{24} , and the electric and/or fuel instrument readings. Determine the total fossil fuel or electrical energy consumption, as appropriate, for the entire 24-hour simulated use test, Q . Record the time interval between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour test as $t_{\text{rec},1}$. Record the time during which water is not being withdrawn from the water heater during the entire 24-hour period as $t_{\text{stdy},2}$.

5.2 Instantaneous Gas and Electric Water Heaters

5.2.1 Setting the Outlet Discharge Temperature. Initiate normal operation of the water heater at the full input rating for electric instantaneous water heaters and at

the maximum firing rate specified by the manufacturer for gas instantaneous water heaters. Monitor the discharge water temperature and set to a value of 135°F ± 5°F (57.2°C ± 2.8°C) in accordance with the manufacturer's instructions. If the water heater is not capable of providing this discharge temperature when the flow rate is 3.0 gallons ± 0.25 gallons per minute (11.4 liters ± 0.95 liters per minute), then adjust the flow rate as necessary to achieve the specified discharge water temperature. Record the corresponding flow rate as V_{\max} .

5.2.2 Additional Requirements for Variable Input Instantaneous Gas Water Heaters. If the instantaneous water heater incorporates a controller that permits operation at a reduced input rate, adjust the flow rate as necessary to achieve a discharge water temperature of 135°F ± 5°F (57.2°C ± 2.8°C) while maintaining the minimum input rate. Record the corresponding flow rate as V_{\min} . If an outlet temperature of 135°F ± 5°F (57.2°C ± 2.8°C) cannot be achieved at the minimum flow rate permitted by the instantaneous water heater, record the flow rate as V_{\min} and the corresponding outlet temperature as T_{\min} .

5.2.3 Maximum GPM Rating Test for Instantaneous Water Heaters. Establish normal water heater operation at the full input rate for electric instantaneous water heaters and at the maximum firing rate for gas instantaneous water heaters with the discharge water temperature set in accordance with Section 5.2.1. During the 10-minute test, either collect the withdrawn water for later measurement of the total mass removed, or alternatively, use a water meter to directly measure the water volume removed.

After recording the scale or water meter reading, initiate water flow throughout the water heater, record the inlet and outlet water temperatures beginning 15 seconds after the start of the test and at subsequent 5-second intervals throughout the duration of the test. At the end of 10 minutes, turn off the water. Determine the mass of water collected, $M_{10\text{m}}$, in pounds (kilograms), or the volume of water, $V_{10\text{m}}$, in gallons (liters).

5.2.4 24-hour Simulated Use Test for Gas Instantaneous Water Heaters.

5.2.4.1 Fixed Input Instantaneous Water Heaters. Establish normal operation with the discharge water temperature and flow rate set to values of 135°F ± 5°F (57.2°C ± 2.8°C) and V_{\max} per Section 5.2.1, respectively. With no draw occurring, record the reading given by the gas meter and/or the electrical energy meter as appropriate. Begin the 24-hour simulated use test by drawing an amount of water out of the water heater equivalent to one-sixth of the daily hot water usage. Record the time when this first draw is initiated and designate it as an elapsed time, τ , of 0. At elapsed time intervals of one, two, three, four, and five hours from $\tau = 0$, initiate additional draws, removing an amount of water equivalent to one-sixth of the daily hot water usage, with the maximum allowable deviation for any single draw being ±0.5 gallons (1.9 liters). The quantity of water drawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn equals

64.3 gallons ± 1.0 gallons (243.4 liters ± 3.8 liters).

Measurements of the inlet and outlet water temperatures shall be made 15 seconds after the draw is initiated and at every 5-second interval thereafter throughout the duration of the draw. The arithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw. Record the scale used to measure the mass of the withdrawn water or the water meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, determine and record the fossil fuel or electrical energy consumed, Q_1 . Following the sixth draw and subsequent recovery, allow the water heater to remain in the standby mode until exactly 24 hours have elapsed since the start of the test (i.e., since $\tau = 0$). At 24 hours, record the reading given by the gas meter and/or the electrical energy meter as appropriate. Determine the fossil fuel or electrical energy consumed during the entire 24-hour simulated use test and designate the quantity as Q .

5.2.4.2 Variable Input Instantaneous Water Heaters. If the instantaneous water heater incorporates a controller that permits continuous operation at a reduced input rate, the first three draws shall be conducted using the maximum flow rate, V_{\max} , while removing an amount of water equivalent to one-sixth of the daily hot water usage, with the maximum allowable deviation for any one of the three draws being ±0.5 gallons (1.9 liters). The second three draws shall be conducted at V_{\min} . If an outlet temperature of 135°F ± 5°F (57.2°C ± 2.8°C) could not be achieved at the minimum flow rate permitted by the instantaneous water heater, the last three draws should be lengthened such that the volume removed is:

$$V_{4,5,6} = \frac{64.3 \text{ gal}}{6} \times \left[\frac{77^\circ\text{F}}{(T_{\min} - 58^\circ\text{F})} \right]$$

or

$$V_{4,5,6} = \frac{243 \text{ L}}{6} \times \left[\frac{42.8^\circ\text{C}}{(T_{\min} - 14.4^\circ\text{C})} \right]$$

where T_{\min} is the outlet water temperature at the flow rate V_{\min} as determined in Section 5.2.1, and where the maximum allowable variation for any one of the three draws is ±0.5 gallons (1.9 liters). The quantity of water withdrawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn equals (32.15 + 3 $T_{10\text{m}}V_{4,5,6}$) ± 1.0 gallons ((121.7 + 3 $V_{4,5,6}$) ± 3.8 liters).

Measurements of the inlet and outlet water temperatures shall be made 5 seconds after a draw is initiated and at every 5-second interval thereafter throughout the duration of the draw. Determine the arithmetic mean of the hot water discharge temperature and the cold water inlet temperature for each draw. Record the scale used to measure the mass of the withdrawn water or the water meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, determine and record the fossil

fuel or electrical energy consumed, Q_1 . Likewise, record the reading of the meter used to measure fossil fuel or electrical energy consumption prior to the fourth draw and at the end of the recovery period following the fourth draw, and designate the difference as $Q_{\text{rec},4}$. Following the sixth draw and subsequent recovery, allow the water heater to remain in the standby mode until exactly 24 hours have elapsed since the start of the test (i.e., since $\tau = 0$). At 24 hours, record the reading given by the gas meter and/or the electrical energy meter, as appropriate. Determine the fossil fuel or electrical energy consumed during the entire 24-hour simulated use test and designate the quantity as Q .

6. Computations

6.1 Storage Tank and Heat Pump Water Heaters.

6.1.1 Storage Tank Capacity. The storage tank capacity is computed using the following:

$$V_{\text{st}} = \frac{(W_f - W_i)}{\rho}$$

Where:

V_{st} = the storage capacity of the water heater, gal (L).

W_f = the weight of the storage tank when completely filled with water, lb (kg).

W_i = the (tare) weight of the storage tank when completely empty, lb (kg).

ρ = the density of water used to fill the tank measured at the temperature of the water, lb/gal (kg/L).

6.1.2. First-Hour Rating Computation. For the case in which the final draw is initiated at or prior to an elapsed time of one hour, the first-hour rating shall be computed using:

$$F_{\text{hr}} = \sum_{i=1}^n V_i^*$$

Where:

n = the number of draws that are completed during the first-hour rating test.

V_i^* = the volume of water removed during the i th draw of the first-hour rating test, gal (L)

or, if the mass of water is being measured,

$$V_i^* = \frac{M_i^*}{\rho}$$

Where:

M_i^* = the mass of water removed during the i th draw of the first-hour rating test, lb (kg).

ρ = the water density corresponding to the average outlet temperature measured during the i th draw, ($T_{\text{del},i}$), lb/gal (kg/L).

For the case in which a draw is not in progress at the elapsed time of one hour and a final draw is imposed at the elapsed time of one hour, the first-hour rating shall be calculated using

$$F_{hr} = \sum_{i=1}^{n-1} V_i^* + V_n^* \left(\frac{\bar{T}_{del,n}^* - \bar{T}_{min,n-1}^*}{\bar{T}_{del,n-1}^* - \bar{T}_{min,n-1}^*} \right)$$

where n and V^* are the same quantities as defined above, and
 V_n^* = the volume of water drawn during the n th (final) draw of the first-hour rating test, gal (L)
 $\bar{T}_{del,n-1}^*$ = the average water outlet temperature measured during the $(n-1)$ th draw of the first-hour rating test, °F (°C).

$$\eta_r = \frac{M_1 C_{pl} (\bar{T}_{del,1} - \bar{T}_{in,1})}{Q_r} + \frac{V_{st} \rho_2 C_{p2} (\bar{T}_{max,1} - \bar{T}_o)}{Q_r}$$

Where:

M_1 = total mass removed during the first draw of the 24-hour simulated use test, lb (kg), or, if the volume of water is being measured,

$M_1 = V_1 \rho_1$

Where:

V_1 = total volume removed during the first draw of the 24-hour simulated use test, gal (L).

ρ_1 = density of the water at the water temperature measured at the point where the flow volume is measured, lb/gal (kg/L).

C_{p1} = specific heat of the withdrawn water, ($\bar{T}_{del,1} + \bar{T}_{in,1}$) / 2, Btu/lb·°F (kJ/kg·°C).

$\bar{T}_{del,1}$ = average water outlet temperature measured during the first draw of the 24-hour simulated use test, °F (°C).

$\bar{T}_{in,1}$ = average water inlet temperature measured during the first draw of the 24-hour simulated use test, °F (°C).

V_{st} = as defined in section 6.1.1.

ρ_2 = density of stored hot water, ($\bar{T}_{max,1} + \bar{T}_o$) / 2, lb/gal (kg/L).

C_{p2} = specific heat of stored hot water evaluated at ($\bar{T}_{max,1} + \bar{T}_o$) / 2, Btu/lb·°F (kJ/kg·°C).

$\bar{T}_{max,1}$ = maximum mean tank temperature recorded after cut-out following the first draw of the 24-hour simulated use test, °F (°C).

\bar{T}_o = maximum mean tank temperature recorded prior to the first draw of the 24-hour simulated use test, °F (°C).

Q_r = the total energy used by the water heater between cut-out prior to the first draw and cut-out following the first draw, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ). (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 kWh = 3,412 Btu.)

The recovery efficiency for electric water heaters with immersed heating elements is assumed to be 98%.

6.1.4 *Hourly Standby Losses.* The hourly standby energy losses are computed as:

$$Q_{stby} = \frac{V_{st} \rho C_p (\bar{T}_{24} - \bar{T}_{st})}{\tau_{stby,1}}$$

Where:

Q_{stby} = the hourly standby energy losses of the water heater, Btu/h (kJ/h).

Q_{stby} = the total energy consumed by the water heater between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour test period, Btu (kJ).

V_{st} = as defined in section 6.1.1.

ρ = density of stored hot water, ($\bar{T}_{24} + \bar{T}_{st}$) / 2, lb/gal (kg/L).

C_p = specific heat of the stored water, ($\bar{T}_{24} + \bar{T}_{st}$) / 2, Btu/lb·°F (kJ/kg·°C).

\bar{T}_{24} = the mean tank temperature at the end of the 24-hour simulated use test, °F (°C).

\bar{T}_{st} = the maximum mean tank temperature observed after the sixth draw, °F (°C).

$\tau_{stby,1}$ = as defined in section 6.1.3.

$\tau_{stby,1}$ = elapsed time between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour simulated use test, h.

The standby heat loss coefficient for the tank is computed as:

$$UA = \frac{Q_{stby}}{\bar{T}_{stby,1} - \bar{T}_{astby,1}}$$

Where:

UA = standby heat loss coefficient of the storage tank, Btu/h·°F (kJ/h·°C).

Q_{stby} = as defined in this section.

$\bar{T}_{stby,1}$ = overall average storage tank temperature between the time when the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour simulated use test, °F (°C).

$\bar{T}_{astby,1}$ = overall average ambient temperature between the time when the maximum mean tank temperature is observed after the sixth draw and the end of the 24-hour simulated use test, °F (°C).

6.1.5 *Daily Water Heating Energy Consumption.* The daily water heating energy consumption, Q_d , is computed as:

$$Q_d = Q - \frac{V_{st} \rho C_p (\bar{T}_{24} - \bar{T}_o)}{\eta_r}$$

Where:

$\bar{T}_{del,n}$ = the average water outlet temperature measured during the n th (final) draw of the first-hour rating test, °F (°C).

$\bar{T}_{min,n-1}$ = the minimum water outlet temperature measured during the $(n-1)$ th draw of the first-hour rating test, °F (°C).

6.1.3 *Recovery Efficiency.* The recovery efficiency for gas, oil, and heat pump storage-type water heaters is computed as:

Q = total energy used by the water heater during the 24-hour simulated use test including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ). (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 kWh = 3,412 Btu.)

V_{st} = as defined in section 6.1.1.

ρ = density of the stored hot water, ($\bar{T}_{24} + \bar{T}_{st}$) / 2, lb/gal (kg/L).

C_p = specific heat of the stored water, ($\bar{T}_{24} + \bar{T}_{st}$) / 2, Btu/lb·°F (kJ/kg·°C).

\bar{T}_{24} = mean tank temperature at the end of the 24-hour simulated use test, °F (°C).

\bar{T}_o = mean tank temperature at the beginning of the 24-hour simulated use test, recorded one minute before the first draw is initiated, °F (°C).

η_r = as defined in section 6.1.3.

6.1.6 *Adjusted Daily Water Heating Energy Consumption.* The adjusted daily water heating energy consumption, Q_{adj} , takes into account that the temperature difference between the storage tank and surrounding ambient air may not be the nominal value of 67.5°F (135°F–67.5°F) or 37.5°C (57.2°C–19.7°C) due to the 10°F (5.6°C) allowable variation in storage tank temperature, 135°F ± 5°F (57.2°C ± 2.8°C), and the 5°F (2.8°C) allowable variation in surrounding ambient temperature 65°F (18.3°C) to 70°F (21.1°C). The adjusted daily water heating energy consumption is computed as:

$$Q_{adj} = Q_D - [(T_{stby,2} - T_{astby,2}) - (135^\circ\text{F} - 67.5^\circ\text{F})] UA \tau_{stby,2}$$

$$\text{or } Q_{adj} = Q_D - [(T_{stby,2} - T_{astby,2}) - (57.2^\circ\text{C} - 19.7^\circ\text{C})] UA \tau_{stby,2}$$

Where:

Q_{adj} = the adjusted daily water heating energy consumption, Btu (kJ).

Q_d = as defined in section 6.1.5.

$\tau_{stby,2}$ = the mean tank temperature during the total standby portion, $\tau_{stby,2}$, of the 24-hour test, °F (°C).

$\bar{T}_{astby,2}$ = the average ambient temperature during the total standby portion, $\tau_{stby,2}$, of the 24-hour test, °F (°C).

UA = as defined in section 6.1.4.

$\tau_{stby,2}$ = the number of hours during the 24-hour simulated test when water is not being withdrawn from the water heater.

A modification is also needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 77°F

(135°F–58°F) or 42.8°C (57.2°C–14.4°C). The following equations adjust the experimental data to a nominal 77°F (42.8°C) temperature rise.

The energy used to heat water, Btu/day (kJ/day), may be computed as:

$$Q_{HW} = \sum_{i=1}^6 \frac{M_i C_{pi} (\bar{T}_{del,i} - \bar{T}_{in,i})}{\eta_r}$$

Where:

M_i = the mass withdrawn for the i th draw ($i = 1$ to 6), lb (kg).

C_{pi} = the specific heat of the water of the i th draw, Btu/lb·°F (kJ/kg·°C).

$\bar{T}_{del,i}$ = the average water outlet temperature measured during the i th draw ($i = 1$ to 6), °F (°C).

$\bar{T}_{in,i}$ = the average water inlet temperature measured during the i th draw ($i = 1$ to 6), °F (°C).

η_r = as defined in section 6.1.3.

The energy required to heat the same quantity of water over a 77°F (42.8°C) temperature rise, Btu/day (kJ/day), is:

$$Q_{HW,77^\circ\text{F}} = \sum_{i=1}^6 \frac{M_i C_{pi} (135^\circ\text{F} - 58^\circ\text{F})}{\eta_r}$$

$$\text{or } Q_{HW,42.8^\circ\text{C}} = \sum_{i=1}^6 \frac{M_i C_{pi} (57.2^\circ\text{C} - 14.4^\circ\text{C})}{\eta_r}$$

The difference between these two values is:

$Q_{HWD} = Q_{HW,77^\circ\text{F}} - Q_{HW}$
 or $Q_{HWD} = Q_{HW,42.8^\circ\text{C}} - Q_{HW}$
 which must be added to the adjusted daily water heating energy consumption value. Thus, the daily energy consumption value which takes into account that the temperature difference between the storage tank and ambient temperature may not be 67.5°F (37.5°C) and that the temperature rise across the storage tank may not be 77°F (42.8°C) is:

$Q_{dm} = Q_{adj} + Q_{HWD}$

6.1.7 *Energy Factor.* The energy factor, E_f , is computed as:

$$E_f = \sum_{i=1}^6 \frac{M_i C_{pi} (135^\circ\text{F} - 58^\circ\text{F})}{Q_{dm}}$$

or

$$E_f = \sum_{i=1}^6 \frac{M_i C_{pi} (57.2^\circ\text{C} - 14.4^\circ\text{C})}{Q_{dm}}$$

Where:

Q_{dm} = the modified daily water heating energy consumption as computed in accordance with section 6.1.6, Btu (kJ).

M_i = the mass withdrawn for the i th draw ($i = 1$ to 6), lb (kg).

C_{pi} = the specific heat of the water of the i th draw, Btu/lb·°F (kJ/kg·°C).

6.1.8 *Annual Energy Consumption.* The annual energy consumption for storage-type and heat pump water heaters is computed as:

$$E_{annual} = 365 \times Q_{dm}$$

Where:

Q_{dm} = the modified daily water heating energy consumption as computed in accordance with section 6.1.6, Btu (kJ). 365 = the number of days in a year.

6.2 *Instantaneous Water Heaters.*

6.2.1 *Maximum GPM (L/min) Rating Computation.* Compute the maximum gpm (L/min) rating as:

$$F_{max} = \frac{M_{10m} (\bar{T}_{del} - \bar{T}_{in})}{10(\rho)(135^\circ\text{F} - 58^\circ\text{F})}$$

$$\text{or } F_{max} = \frac{M_{10m} (\bar{T}_{del} - \bar{T}_{in})}{10(\rho)(57.2^\circ\text{C} - 14.4^\circ\text{C})}$$

which may be expressed as:

$$F_{max} = \frac{M_{10m} (\bar{T}_{del} - \bar{T}_{in})}{10(\rho)(77^\circ\text{F})}$$

$$\text{or } F_{max} = \frac{M_{10m} (\bar{T}_{del} - \bar{T}_{in})}{10(\rho)(42.8^\circ\text{C})}$$

Where:

M_{10m} = the mass of water collected during the 10-minute test, lb (kg).

\bar{T}_{del} = the average delivery temperature, °F (°C).

\bar{T}_{in} = the average inlet temperature, °F (°C).

ρ = the density of water at the average delivery temperature, lb/gal (kg/L).

If a water meter is used the maximum gpm (L/min) rating is computed as:

$$F_{max} = \frac{V_{10m} (\bar{T}_{del} - \bar{T}_{in})}{10(77^\circ\text{F})}$$

$$\text{or } F_{max} = \frac{V_{10m} (\bar{T}_{del} - \bar{T}_{in})}{10(42.8^\circ\text{C})}$$

Where:

V_{10m} = the volume of water measured during the 10-minute test, gal (L).

\bar{T}_{del} = as defined in this section.

\bar{T}_{in} = as defined in this section.

6.2.2 *Recovery Efficiency*

6.2.2.1 *Fixed Input Instantaneous Water Heaters.* The recovery efficiency is computed as:

$$\eta_r = \frac{M_1 C_{p1} (\bar{T}_{del,1} - \bar{T}_{in,1})}{Q_r}$$

Where:

M_1 = total mass removed during the first draw of the 24-hour simulated use test, lb (kg), or, if the volume of water is being measured,

$M_1 = V_1 \cdot \rho$

Where:

V_1 = total volume removed during the first draw of the 24-hour simulated use test, gal (L).

ρ = density of the water at the water temperature measured at the point where the flow volume is measured, lb/gal (kg/L).

C_{p1} = specific heat of the withdrawn water, ($\bar{T}_{del,1} + \bar{T}_{in,1}$) / 2, Btu/lb·°F (kJ/kg·°C).

$\bar{T}_{del,1}$ = average water outlet temperature measured during the first draw of the 24-hour simulated use test, °F (°C).

$\bar{T}_{in,1}$ = average water inlet temperature measured during the first draw of the 24-hour simulated use test, °F (°C).

Q_r = the total energy used by the water heater between cut-out prior to the first draw and cut-out following the first draw, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu (kJ). (Electrical auxiliary energy shall be converted to thermal energy using the following conversion: 1 kWh = 3,412 Btu.)

6.2.2.2 *Variable Input Instantaneous Water Heaters.* For instantaneous water heaters that have a variable firing rate, two recovery efficiency values are computed, one at the maximum input rate and one at the minimum input rate. The recovery efficiency used in subsequent computations is taken as the average of these two values. The maximum recovery efficiency is computed as:

$$\eta_{r,max} = \frac{M_1 C_{p1} (\bar{T}_{del,1} - \bar{T}_{in,1})}{Q_{r,max}}$$

Where:

M_1 = as defined in section 6.2.2.1.

C_{p1} = as defined in section 6.2.2.1.

$\bar{T}_{del,1}$ = as defined in section 6.2.2.1.

$\bar{T}_{in,1}$ = as defined in section 6.2.2.1.

$Q_{r,max}$ = the total energy used by the water heater between burner cut-out prior to the first draw and burner cut-out following the first draw, including auxiliary energy such as pilot lights, Btu (kJ).

The minimum recovery efficiency is computed as:

$$\eta_{r,min} = \frac{M_4 C_{p4} (\bar{T}_{del,4} - \bar{T}_{in,4})}{Q_{r,min}}$$

Where:

M_4 = the mass withdrawn during the fourth draw, lb (kg), or, if the volume of water is being measured,

$M_4 = V_4 \cdot \rho$

Where:

V_4 = total volume removed during the first draw of the 24-hour simulated use test, gal (L).

ρ = as defined in 6.2.2.1.

C_{p4} = the specific heat of water, Btu/lb·°F (kJ/kg·°C).

$\bar{T}_{del,4}$ = the average delivery temperature for the fourth draw, °F (°C).

$\bar{T}_{in,4}$ = the average inlet temperature for the fourth draw, °F (°C).

$Q_{r,min}$ = the total energy consumed between the beginning of the fourth draw and burner cut-out following the fourth draw, including auxiliary energy such as pilot lights, Btu (kJ).

The recovery efficiency is computed as:

$$\eta_r = \frac{\eta_{r, \max} + \eta_{r, \min}}{2}$$

Where:

$\eta_{r, \max}$ = as calculated above.

$\eta_{r, \min}$ = as calculated above.

6.2.3 *Daily Water Heating Energy Consumption.* The daily water heating energy consumption, Q_d , is computed as:

$Q_d = Q$

Where:

Q = the energy used by the instantaneous water heater during the 24-hr simulated use test.

A modification is needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 77°F (135°F - 58°F) or 42.8°C (57.2°C - 14.4°C). The following equations adjust the experimental data to a nominal 77°F (42.8°C) temperature rise.

The energy used to heat water may be computed as:

$$Q_{HW} = \sum_{i=1}^6 \frac{M_i C_{pi} (\bar{T}_{del, i} - \bar{T}_{in, i})}{\eta_r}$$

Where:

M_i = the mass withdrawn during the i th draw, lb (kg).

C_{pi} = the specific heat of water of the i th draw, Btu/lb°F (kJ/kg °C).

$\bar{T}_{del, i}$ = the average delivery temperature of the i th draw, °F (°C).

$\bar{T}_{in, i}$ = the average inlet temperature of the i th draw, °F (°C).

η_r = as calculated in section 6.2.2.2.

The energy required to heat the same quantity of water over a 77°F (42.8°C) temperature rise is:

$$Q_{HW, 77^\circ F} = \sum_{i=1}^6 \frac{M_i C_{pi} (135^\circ F - 58^\circ F)}{\eta_r}$$

$$\text{or } Q_{HW, 42.8^\circ C} = \sum_{i=1}^6 \frac{M_i C_{pi} (57.2^\circ C - 14.4^\circ C)}{\eta_r}$$

Where:

M_i = the mass withdrawn during the i th draw, lb (kg).

C_{pi} = the specific heat of water of the i th draw, Btu/lb°F (kJ/kg °C).

η_r = as calculated above.

The difference between these two values is:

$$Q_{rwd} = Q_{HW, 77^\circ F} - Q_{HW}$$

$$\text{or } Q_{rwd} = Q_{HW, 42.8^\circ C} - Q_{HW}$$

which must be added to the daily water heating energy consumption value. Thus, the daily energy consumption value which takes into account that the temperature rise across the storage tank may not be 77°F (42.8°C) is:

$$Q_{dm} = Q_d + Q_{rwd}$$

6.2.4 *Energy Factor.* The energy factor, E_f , is computed as:

$$E_f = \sum_{i=1}^6 \frac{M_i C_{pi} (135^\circ F - 58^\circ F)}{Q_{dm}}$$

$$\text{or } E_f = \sum_{i=1}^6 \frac{M_i C_{pi} (57.2^\circ C - 14.4^\circ C)}{Q_{dm}}$$

Where:

Q_{dm} = the daily water heating energy consumption as computed in accordance with section 6.2.3, Btu (kJ).

M_i = the mass associated with the i th draw, lb (kg).

C_{pi} = the specific heat of water computed at a temperature of (58°F + 135°F) / 2, Btu/lb °F [(14.4°C + 57.2°C) / 2, kJ/kg °C].

6.2.5 *Annual Energy Consumption.* The annual energy consumption for instantaneous type water heaters is computed as:

$$E_{annual} = 365 \times Q_{dm}$$

Where:

Q_{dm} = the modified daily energy consumption, Btu/day (kJ/day).
365 = the number of days in a year.

7. Ratings for Untested Models

In order to relieve the test burden on manufacturers who offer water heaters which differ only in fuel type or power input, ratings for untested models may be established in accordance with the following procedures. In lieu of the following procedures a manufacturer may elect to test the unit for which a rating is sought.

7.1 *Gas Water Heaters.* Ratings obtained for gas water heaters using natural gas can be used for an identical water heater which utilizes propane gas if the input ratings are within $\pm 10\%$.

7.2 Electric Water Heaters

7.2.1 *First-Hour Rating.* If an electric storage-type water heater is available with more than one input rating, the manufacturer shall designate the standard input rating, and the water heater need only be tested with heating elements at the designated standard input ratings. The first-hour ratings for units having power input rating less than the designated standard input rating shall be assigned a first-hour rating equivalent to the first draw of the first-hour rating for the electric water heater with the standard input rating. For units having power inputs greater than the designated standard input rating, the first-hour rating shall be equivalent to that measured for the water heater with the standard input rating.

7.2.2 *Energy Factor.* The energy factor for identical electric storage-type water heaters, with the exception of heating element wattage, may use the energy factor obtained during testing of the water heater with the designated standard input rating.

[FR Doc. 98-12296 Filed 5-8-98; 8:45 am]

BILLING CODE 6450-01-P

Monday
May 11, 1998

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Actions
Under the Guidelines; Notice

federal register

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth actions to be taken by the Director, National Institutes of Health, under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782, 62 FR 53335, 62 FR 56196, 62 FR 59032, and 63 FR 8052).

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010. Phone 301-496-9838, FAX 301-496-9839. The ORDA web site is located at <http://www.nih.gov/od/orda/> for further information about the office.

SUPPLEMENTARY INFORMATION: Today's actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines). The proposed actions were published for comment in the *Federal Register* on February 11, 1998 (63 FR 7054), and reviewed by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on March 10, 1998.

I. Amendment to Appendix M-I, Submission Requirements—Human Gene Transfer Experiments, Under the NIH Guidelines Regarding Electronic Submission of Protocols

I-A. Background Information and Decisions on Actions Under the NIH Guidelines

Appendix M-I, Submission Requirements—Human Gene Transfer Experiments, of the NIH Guidelines, stipulates requirements for submission of documents to ORDA. In January 1998, Dr. C. Estuardo Aguilar-Cordova, a member of the RAC, participated in a pilot test with ORDA staff regarding electronic submission of documents to ORDA. In this test, the documents submitted electronically included a human gene transfer protocol; responses to Appendices M-II through M-V, Points to Consider in the Design and

Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider); and the ORDA registration document. The 82-page electronic submission, including tables, satisfactorily proved the efficiency and effectiveness of using this method for submission of protocols.

ORDA recognizes that electronic submission of documents is an accepted standard of practice within the scientific community; therefore, this practice is not novel. The practice of using this medium to submit formal protocols to ORDA, however, is novel and requires amendments to the NIH Guidelines. As a result, ORDA proposed to amend Appendix M-I of the NIH Guidelines to provide guidance to investigators regarding optional electronic submission procedures.

Electronic submission of human gene transfer protocols to ORDA offers several distinct advantages over the current practice of submitting protocols by printed matter, including: (1) ORDA can review protocols more expeditiously because they are received immediately; (2) electronic submission allows ORDA to search protocols electronically for keywords or phrases; (3) registration tasks performed at ORDA will be reduced substantially because the investigator has already completed most of the registration document as part of the electronic submission; and (4) ORDA can facilitate RAC review of the protocol by forwarding the complete protocol to RAC members electronically.

Appendix M-I is proposed to read:

"Appendix M-I. Submission Requirements—Human Gene Transfer Experiments

"Investigators must submit the following material (see exemption in Appendix M-VIII-A, Footnotes of Appendix M) to the Office of Recombinant DNA Activities, National Institutes of Health/MSK 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, Phone 301-496-9838, FAX 301-496-9839. Investigators may submit this material electronically and can obtain specific instructions from the ORDA home page (<http://www.nih.gov/od/orda/>) regarding electronic submission requirements. For all submissions, whether printed or electronic, ORDA will confirm receipt within three working days after receiving the submission. Investigators should contact ORDA if they do not receive this confirmation.

"Proposals in printed form and/or in an electronic version shall be submitted to NIH/ORDA in the following order: (1) Scientific abstract; (2) non-technical abstract; (3) Responses to Appendix M-II through M-V, Description of the Proposed, Informed Consent, Privacy and Confidentiality, and Special Issues (the pertinent responses can be

provided in the protocol or as an appendix to the protocol); (4) clinical protocol as approved by the local Institutional Biosafety Committee and Institutional Review Board; (5) Informed Consent document as approved by the Institutional Review Board (see Appendix M-III, Informed Consent); (6) appendices (including tables, figures, and manuscripts); and (7) curricula vitae—no more than two pages for each key professional person in biographical sketch format.

"All submissions must include Institutional Biosafety Committee (IBC) and Institutional Review Board (IRB) approvals and their deliberations pertaining to your protocol. IBC approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is *ex vivo* transduction of recombinant DNA material into target cells for human application). Because these written IBC and IRB approvals require appropriate signatures, investigators cannot submit them electronically. Investigators should submit these signed approvals either by mail or by facsimile transmission.

"Investigational New Drug (IND) applications shall be submitted to the FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format. Submissions to the FDA should be sent to the Division of Congressional and Public Affairs, Document Control Center, HFM-99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852-1448.

"Note: NIH/ORDA will accept submission material at any time. However, if a protocol is submitted less than eight weeks before a scheduled RAC meeting and subsequently is recommended for public discussion by the full RAC, the public discussion of that protocol will be deferred until the next scheduled RAC meeting. This eight-week period is needed to ensure adequate time for review by the committee members."

During the March 10, 1998, RAC meeting, a motion was made that the RAC accept the proposed action published in the *Federal Register* of February 11, 1998 (63 FR 7054) to permit submission of human gene transfer protocols to ORDA for registration in an optional electronic format, as opposed to the printed materials. The motion passed by a vote of 9 in favor, 0 opposed, and 1 abstention.

The actions are detailed in Section I-B—Summary of Actions. I accept the RAC recommendations, and the NIH Guidelines will be amended accordingly.

I-B. Summary of Actions

I-B-1. Amendments to Appendix M-I, Submission Requirements—Human Gene Transfer Experiments

Appendix M-I is to be amended to read:

"Section M-I. Submission Requirements—Human Gene Transfer Experiments

"Investigators must submit the following material (see exemption in Appendix M-VIII-A, Footnotes of Appendix M) to the Office of Recombinant DNA Activities, National Institutes of Health/MSK 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, Phone 301-496-9838, FAX 301-496-9839. Investigators may submit this material electronically and can obtain specific instructions from the ORDA home page (<http://www.nih.gov/od/orda/>) regarding electronic submission requirements. For all submissions, whether printed or electronic, ORDA will confirm receipt within three working days after receiving the submission. Investigators should contact ORDA if they do not receive this confirmation.

"Proposals in printed form and/or in an electronic version shall be submitted to NIH/ORDA in the following order: (1) Scientific abstract; (2) non-technical abstract; (3) Responses to Appendix M-II through M-V, Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues (the pertinent responses can be provided in the protocol or as an appendix to the protocol); (4) clinical protocol as approved by the local Institutional Biosafety

Committee and Institutional Review Board; (5) Informed Consent document as approved by the Institutional Review Board (see Appendix M-III, Informed Consent); (6) appendices (including tables, figures, and manuscripts); and (7) curricula vitae—no more than two pages for each key professional person in biographical sketch format.

"All submissions must include Institutional Biosafety Committee (IBC) and Institutional Review Board (IRB) approvals and their deliberations pertaining to your protocol. IBC approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is *ex vivo* transduction of recombinant DNA material into target cells for human application). Because these written IBC and IRB approvals require appropriate signatures, investigators cannot submit them electronically. Investigators should submit these signed approvals either by mail or by facsimile transmission.

"Investigational New Drug (IND) applications shall be submitted to the FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format. Submissions to the FDA should be sent to the Division of Congressional and Public Affairs, Document Control Center, HFM-99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852-1448.

"Note: NIH/ORDA will accept submission material at any time. However, if a protocol is submitted less than eight weeks before a

scheduled RAC meeting and subsequently is recommended for public discussion by the full RAC, the public discussion of that protocol will be deferred until the next scheduled RAC meeting. This eight-week period is needed to ensure adequate time for review by the committee members."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guideline. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: April 30, 1998.

Harold Varmus,
Director, National Institutes of Health.
[FR Doc. 98-12327 Filed 5-8-98; 8:45 am]

BILLING CODE 4140-01-M

federal register

Monday
May 11, 1998

Part V

Department of Housing and Urban Development

24 CFR Parts 6, 180, 570
Nondiscrimination in Programs and
Activities Receiving Assistance Under
Title I of the Housing and Community
Development Act of 1974; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 6, 180, 570

[Docket No. FR 4092-P-01]

RIN 2501-AC28

Nondiscrimination in Programs and Activities Receiving Assistance Under Title I of the Housing and Community Development Act of 1974

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish procedures to file a complaint for a claim of discrimination under HUD's community planning and development programs modeled on the Department's regulations implementing the prohibition against discrimination on the basis of disability and the regulations implementing the prohibition against discrimination on the basis of race, color, or national origin in Federal programs. The rule also would provide that hearings on complaints be conducted in accordance with HUD's consolidated hearing procedures for civil rights claims. This rule is needed to inform members of the public how to file complaints and how HUD will act on their complaints.

DATES: Comments due date: July 10, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Betsy Ryan, Director, Program Compliance Division, Office of Program Compliance and Disability Rights, Office of Fair Housing and Equal Opportunity, Room 5240, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410-5000, telephone (202) 708-0404. Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 109 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5321) (Title I) provides as follows:

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

The original language in section 109 of Title I (hereafter "Section 109") was modeled on the language in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1) (Title VI). Title VI prohibits discrimination on the basis of race, color, and national origin in any program or activity for which federal financial assistance is authorized under a law administered by the Department. However, Section 109 also includes protection against discrimination on the basis of sex. Additionally, unlike Title VI, which excludes employment practices except where employment is a primary purpose of the program, Section 109 includes employment discrimination within its coverage.

The Housing and Community Development Act of 1981 (Pub. L. 97-335, approved August 13, 1981; 95 Stat. 392) amended Section 109 to reference the prohibitions against age and disability discrimination in Title I programs under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). The purpose of this amendment was to clarify that although Section 109 does not directly prohibit discrimination on the basis of age and disability, it directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 apply to Title I programs.

Section 912 of the National Affordable Housing Act of 1990 (Pub. L. 101-625, approved November 28, 1991; 104 Stat. 4079) also amended Section 109 to add protection against discrimination on the basis of religion. Age or disability discrimination actions in Title I programs may be brought under either the Age Discrimination Act or Section 504, as appropriate. Causes of action for race, color, and national origin

discrimination may be brought under Title VI and/or Section 109. Causes of action for discrimination based on sex and religion may be brought under Section 109.

The Department's regulations governing the Community Development Block Grant Programs are set forth in 24 CFR part 570. Section 570.602 of these regulations incorporates the nondiscrimination provisions of Section 109, defining specific types of discrimination, and setting forth performance standards by which the Department judges whether a Recipient is complying with Section 109.

To date, Section 109 has been enforced by utilizing the provisions of § 570.602 and the procedures set forth in the Department's regulations at 24 CFR part 8, which implement Section 504 for HUD-assisted programs and activities. The purpose of this rule is to set forth, in a new 24 CFR part 6, the policies and procedures necessary to enforce Section 109.

In addition to proposing a new part 6, the Department also proposes to conform 24 CFR 570.602 to reflect the addition of the new part 6 to the Department's regulations. Specifically, the Department proposes to amend 24 CFR 570.602 to state the applicability of Section 109 to the Title I programs and to refer the reader to the new part 6 for the regulations governing Section 109. Additionally, the Department proposes to amend 24 CFR part 180 (Consolidated HUD Hearing Procedures for Civil Rights Matters) to include Section 109. The Department promulgated part 180 in an effort to promote uniformity and reduce confusion for HUD program participants who in the past were faced with separate hearing procedures for each civil rights statutory authority enforced by the Department. Part 180 consolidates HUD's hearing procedures for nondiscrimination and equal opportunity matters under the Fair Housing Act (42 U.S.C. 3601-3619), Title VI, the Age Discrimination Act, and Section 504. Amending part 180 to include Section 109 will further the Department's goals of promoting uniformity, avoiding redundancy, and reducing confusion for HUD program participants. The use of part 180 hearing procedures for Section 109 hearings in no way affects the applicability of the hearing procedures provided for at 24 CFR 570.496 and 570.913, which govern non-civil rights matters under Title I. Section 570.913 is proposed to be amended in this rule to cross reference the procedures in parts 6 and 180 with respect to discrimination prohibited under Section 109, as described in § 570.602.

The proposed new part 6 provides specific time frames and procedures for the acceptance and investigation of complaints, improving response time and benefit to both complainants and Recipients. The proposed new part 6 is divided into two subparts. Subpart A (General Provisions) outlines the purpose and applicability of part 6, defines the important terms that are used in the regulation, and states in general terms the discriminatory acts that are prohibited by Section 109. Subpart B (Enforcement) sets forth the administrative enforcement provisions and refers the reader to 24 CFR part 180 for the administrative hearing procedures.

II. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in § 6.6 of this proposed rule are already imposed on Recipients of Title I assistance under existing regulations at 24 CFR 91.105, 91.115, 570.491, and 570.506. These information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Numbers 2506-0117 and 2506-0077. This rule incorporates these recordkeeping requirements, but does not require duplication of this information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Coordination

The Department of Justice has reviewed and approved this proposed rule under Executive Order 12250. The Equal Employment Opportunity Commission has reviewed and approved this proposed rule under Executive Order 12067.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this rule set out nondiscrimination standards and, therefore, are categorically excluded

from the requirements of the National Environmental Policy Act under 24 CFR 50.19(c)(3).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication, and by approving it certifies that this proposed rule would not have a significant economic impact on small entities. The purpose of this rule is to provide for the enforcement of Section 109 of the Housing and Community Development Act of 1974, as amended, as it applies to recipients of Federal financial assistance from the Department of Housing and Urban Development. The rule is needed to inform members of the public on how to file complaints on the basis of discrimination under Section 109 and how HUD will act on their complaints. The rule sets out the process so that all parties involved in complaints will have certainty as to what procedures will govern. The proposed rule would not have a significant economic impact on a substantial number of small entities. The Department is sensitive, however, to the fact that uniform application of requirements on entities of differing sizes often places a disproportionate burden on small business. Therefore, the Department is soliciting alternatives for compliance from small entities that might be less burdensome to them.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this proposed rule are directed to Title I programs and activities, and do not impinge upon the relationship between the Federal government and State and local governments. Accordingly, the proposed rule is not subject to review under the Order.

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.406.

List of Subjects

24 CFR Part 6

Administrative practice and procedure, Civil rights, Community

development block grants, Equal employment opportunity, Grant programs—housing and community development, Investigations, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, subtitle A and chapters I and V of title 24 of the Code of Federal Regulations are proposed to be amended as follows:

1. A new part 6 is added, to read as follows:

PART 6—NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES RECEIVING ASSISTANCE UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Subpart A—General Provisions

Sec.

- 6.1 Purpose.
- 6.2 Applicability.
- 6.3 Definitions.
- 6.4 Discrimination prohibited.
- 6.5 Discrimination prohibited—employment.
- 6.6 Records to be maintained.

Subpart B—Enforcement

- 6.10 Compliance information.
- 6.11 Conduct of investigations.
- 6.12 Procedure for effecting compliance.
- 6.13 Hearings and appeals.

Authority: 42 U.S.C. 3535(d), 5309.

Subpart A—General Provisions

§ 6.1 Purpose.

The purpose of this part is to implement the provisions of Section 109 of Title I of the Housing and Community Development Act of 1974 (Title I) (42

U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. Section 109 does not directly prohibit discrimination on the bases of age or disability, and the regulations set forth in this part 6 do not apply to age or disability discrimination in Title I programs. Instead, Section 109 directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) apply to programs or activities funded in whole or in part with Federal financial assistance. Thus, the regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs, apply to disability and age discrimination in Title I programs.

§ 6.2 Applicability.

(a) This part applies to any program or activity funded in whole or in part with funds under Title I of the Housing and Community Development Act of 1974, including Community Development Block Grants—Entitlement, State and HUD-Administered Small Cities, and Section 108 Loan Guarantees; Urban Development Action Grants; Economic Development Initiative Grants; and Special Purpose Grants.

(b) The provisions of this part and sections 104(b)(2) and 109 of Title I which relate to discrimination on the basis of race shall not apply to the provision of Federal financial assistance by grantees under this title to the Hawaiian Homelands (42 U.S.C. 5309).

§ 6.3 Definitions.

The terms *Department*, *HUD*, and *Secretary* are defined in 24 CFR part 5. Other terms used in this part 6 are defined as follows:

Act means the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301-5320).

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Award Official means the HUD official who has been delegated the Secretary's authority to implement a

Title I funded program and to make grants thereunder.

Complete complaint means a written statement that contains the complainant's name and address, identifies the Recipient against which the complaint is made, and describes the Recipient's alleged discriminatory action in sufficient detail to inform HUD of the nature and date of the alleged violation of section 109. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Federal financial assistance means: (1) Any assistance made available under Title I of the Housing and Community Development Act of 1974, as amended, and includes income generated from such assistance, and any grant, loan, contract, or any other arrangement, in the form of:

- (i) Funds;
- (ii) Services of Federal personnel; or
- (iii) Real or personal property or any interest in or use of such property, including:

(A) Transfers or leases of the property for less than fair market value or for reduced consideration; and

(B) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

(2) Federal financial assistance includes assistance in the form of proceeds from loans guaranteed under section 108 of the Act, but does not include assistance made available through direct Federal procurement contracts or any other contract of insurance or guaranty.

Program or activity (funded in whole or in part) means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of such State or local government that distributes such assistance, and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other post-secondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraphs (1), (2), or (3) of this definition, any part of which is extended Federal financial assistance.

Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another Recipient, for any program or activity, or who otherwise participates in carrying out such program or activity, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity.

Responsible Official means the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

Section 109 means Section 109 of the Housing and Community Development Act of 1974, as amended.

Title I means Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5321).

§ 6.4 Discrimination prohibited.

(a) Section 109 requires that no person in the United States shall, on the grounds of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.

(1) A Recipient under any program or activity to which this part applies may not, directly or through contractual, licensing, or other arrangements, on the grounds of race, color, national origin, religion, or sex:

(i) Deny any individual any facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any facilities, services, financial aid, or other benefits which are different, or are provided in a different form, from that provided to others under the program or activity;

(iii) Subject an individual to segregated or separate treatment in any facility, or in any matter of process related to the receipt of any service or benefit under the program or activity;

(iv) Restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirements or conditions which the individual must meet in order to be provided any facilities, services, or other benefit provided under the program or activity;

(vi) Deny an individual an opportunity to participate in a program or activity as an employee;

(vii) Aid or otherwise perpetuate discrimination against an individual by providing Federal financial assistance to an agency, organization, or person that discriminates in providing any housing, aid, benefit, or service;

(viii) Otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other individuals receiving the housing, aid, benefit, or service;

(ix) Use criteria or methods of administration which have the effect of subjecting persons to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, religion, or sex; or

(x) Deny a person the opportunity to participate as a member of planning or advisory boards.

(2) In determining the site or location of housing, accommodations, or facilities, a Recipient may not make selections of such site or location which have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, religion, or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Section 109 and of this part 6.

(3)(i) In administering a program or activity in which the Recipient has

discriminated on the grounds of race, color, national origin, religion or sex, the Recipient must take any necessary steps to overcome the effects of prior discrimination.

(ii) In the absence of discrimination, a Recipient, in administering a program or activity, may take any steps necessary to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, national origin, religion, or sex.

(iii) After a finding of noncompliance, or after a Recipient has reasonable cause to believe that discrimination has occurred, a Recipient shall not be prohibited by this section from taking any action eligible under 24 CFR part 570, subpart C, to ameliorate an imbalance in benefits, services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy discriminatory practices or usage.

(iv)(A) Notwithstanding anything to the contrary in this part, nothing contained in this section shall be construed to prohibit any Recipient from maintaining or constructing separate living facilities or restroom facilities for the different sexes in order to protect personal privacy or modesty concerns. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can, in the interest of personal privacy or modesty, only be performed by a member of the same sex as those receiving the services.

(B) Section 109 of the Act does not directly prohibit discrimination on the basis of age or disability, but directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 apply to Title I programs and activities.

Accordingly, for programs or activities receiving Federal financial assistance, the regulations set forth in this part 6 apply to discrimination on the bases of race, color, national origin, religion, or sex; the regulations at 24 CFR part 8 apply to discrimination on the basis of disability; and the regulations at 24 CFR part 146 apply to discrimination on the basis of age.

§ 6.5 Discrimination prohibited—employment.

(a) *General.* A Recipient may not, under any program or activity funded in whole or in part with Federal financial assistance, directly or through contractual agents or other arrangements including contracts and consultants, subject a person to discrimination in the

terms and conditions of employment, including advertising, interviewing, selection, promotion, demotion, transfer, recruitment and advertising, layoff or termination, pay or other compensation, including benefits, and selection for training.

(b) *Determination of compliance status.* The Assistant Secretary will follow the procedures set forth in this part and 29 CFR part 1691 and look to the substantive guidelines and policy of the Equal Employment Opportunity Commission when reviewing employment practices under Section 109.

§ 6.6 Records to be maintained.

(a) *General.* Recipients shall maintain records and data as required by 24 CFR 91.105, 91.115, 570.490, and 570.506.

(b) *Employment.* Recipients shall maintain records and data as required by the Equal Employment Opportunity Commission at 29 CFR part 1600.

(c) Recipients shall make available such records and any supporting documentation upon request of the Responsible Official. (Approved by the Office of Management and Budget under control numbers 2506-0117 and 2506-0077.)

Subpart B—Enforcement

§ 6.10 Compliance information.

(a) *Cooperation and assistance.* The Responsible Official and the Award Official, in obtaining compliance with this part, will provide assistance and guidance to Recipients to help them comply voluntarily with this part.

(b) *Access to data and other sources of information.* Each Recipient shall permit access by authorized representatives of HUD to its facilities, books, records, accounts, minutes and audio tapes of meetings, personnel, computer disks and tapes, and other sources of information as may be pertinent to a determination of whether the Recipient is complying with this part. Where information required of a Recipient is in the exclusive possession of any other agency, institution, or person, and this agency, institution, or person fails or refuses to furnish this information, the Recipient shall so certify in any requested report and shall set forth what efforts it has made to obtain the information. Failure or refusal to furnish pertinent information (whether maintained by the Recipient or some other agency, institution, or person) without a credible reason for the failure or refusal will be considered to be noncompliance under this part.

(c) *Compliance data.* Each Recipient shall keep records and submit to the

Responsible Official, timely, complete, and accurate data at such times and in such form as the Responsible Official may determine to be necessary to ascertain whether the Recipient has complied or is complying with this part.

(d) *Notification to employees, beneficiaries, and participants.* Each Recipient shall make available to employees, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the program or activity under which the Recipient receives Federal financial assistance and make such information available to them in such manner as the Responsible Official finds necessary to apprise such persons of the protections against discrimination assured them by Section 109 and this part.

§ 6.11 Conduct of investigations.

(a) *Filing a complaint.*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may file, or may have an authorized representative file on his or her behalf, a complaint with the Responsible Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint with the Responsible Official.

(2) *Confidentiality.* The Responsible Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, unless the Responsible Official waives this time limit for good cause. For purposes of determining when a complaint is filed under this part, a complaint mailed to the Responsible Official via the U. S. Postal Service will be deemed filed on the date it is postmarked. A complaint delivered to the Responsible Official in any other manner will be deemed filed on the date it is received by the Responsible Official.

(4) *Where to file complaints.* Complaints must be in writing, signed, addressed to the Responsible Official and filed with (mailed to or otherwise delivered to) the Office of Fair Housing and Equal Opportunity at any HUD Office.

(5) *Content of complaints.* Each complaint should contain the

complainant's name, address, and phone number; a description or name, if available, of the Recipient alleged to have violated this part; an address where the violation occurred; and a description of the Recipient's alleged discriminatory action in sufficient detail to inform the Responsible Official of the nature and date of the alleged violation of this part.

(6) *Amendments to complaints.* Amendments to complaints, such as clarification and amplification of allegations in a complaint or the addition of other Recipients, may be made by the complainant or the complainant's authorized representative at any time during the pendency of the complaint and any amendment shall be deemed to be made as of the original filing date.

(7) *Notification.* To the extent practicable, the Responsible Official will notify the complainant and the Recipient of the Responsible Official's receipt of a complaint within 10 calendar days of receipt of a complete complaint. If the Responsible Official receives a complaint that is not complete, the Responsible Official will notify the complainant and specify the additional information that is needed to make the complaint complete. If the complainant fails to complete the complaint, the Responsible Official will close the complaint without prejudice and notify the complainant. When a complete complaint has been received, the Responsible Official, or his or her designee, will review the complaint for acceptance, rejection, or referral to an appropriate Federal agency within 20 calendar days.

(8) *Resolution of complaints.* After the acceptance of a complete complaint, the Responsible Official will investigate the complaint, attempt informal resolution, and, if resolution is not achieved, the Responsible Official will notify the Recipient and complainant, to the extent practicable within 180 days of the receipt of the complete complaint, of the results of the investigation in a letter of findings sent by certified mail, return receipt requested, containing the following:

(i) Findings of fact and a finding of compliance or noncompliance;

(ii) A description of an appropriate remedy for each violation believed to exist; and

(iii) A notice of the right of the Recipient and the complainant to request a review of the letter of findings by the Responsible Official. A copy of the final investigative report will be made available upon request.

(9) *Right to a review of the letter of findings.* (i) Within 30 days of receipt of

the letter of findings, a complainant or Recipient may request that a review be made of the letter of findings, by mailing or delivering to the Responsible Official, Room 5100, Office of Fair Housing and Equal Opportunity, HUD, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified.

(ii) The Responsible Official will send by certified mail, return receipt requested, a copy of the request for review to the other party. Such other party shall have 20 days from receipt to respond to the request for review.

(iii) The Responsible Official will either sustain or modify the letter of findings or require that further investigation be conducted, within 60 days of the request for review. The Responsible Official's decision shall constitute the formal determination of compliance or noncompliance.

(iv) If neither party requests that the letter of findings be reviewed, the Responsible Official, within 14 calendar days of the expiration of the time period in paragraph (a)(9)(i) of this section, will send a formal written determination of compliance or noncompliance to the complainant, the Recipient, and the Award Official.

(10) *Voluntary compliance time limits.* The Recipient will have 10 calendar days, or such other reasonable amount of time specified in the letter transmitting the findings of noncompliance, from receipt of a formal determination of noncompliance within which to agree, in writing, to come into voluntary compliance or to contact the Responsible Official for settlement discussions. If the Recipient fails to meet this deadline, HUD will proceed in accordance with §§ 6.12 and 6.13.

(11) *Informal resolution/voluntary compliance.* (i) *General.* It is the policy of HUD to encourage the informal resolution of matters. A complaint or a compliance review may be resolved by informal means at any time. If a letter of findings is issued, and the letter makes a finding of noncompliance, the Responsible Official will attempt to resolve the matter through a voluntary compliance agreement.

(ii) *Objectives of informal resolution/voluntary compliance.* In attempting informal resolution, the Responsible Official will attempt to achieve a just resolution of the matter and to obtain assurances, where appropriate, that the Recipient will satisfactorily remedy any violations of the rights of any complainant, and will take such action as will assure the elimination of any violation of this part or the prevention of the occurrence of such violation in the future. If a finding of noncompliance

has been made, the terms of such an informal resolution shall be reduced to a written voluntary compliance agreement, signed by the Recipient and the Responsible Official, and be made part of the file. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similarly situated, and the public interest.

(iii) *Right to file a private civil action.* At any time in the process, the complainant has the right to file a private civil action. If the complainant does so, the Responsible Official has the discretion to administratively close the investigation or continue the investigation, if he or she decides that it is in the best interests of the Department to do so. If the Responsible Official makes a finding of noncompliance and an agreement to voluntarily comply is not obtained from the Recipient, the procedures at §§ 6.12 and 6.13 for effecting compliance shall be followed.

(12) *Intimidatory or retaliatory acts prohibited.* No Recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, compliance review, proceeding, or hearing under this part.

(b) *Compliance reviews.*—(1) *Periodic compliance reviews.* The Responsible Official may periodically review the practices of Recipients to determine whether they are complying with this part and may conduct on-site reviews. The Responsible Official will initiate an on-site review by sending to the Recipient a letter advising the Recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time prior to receipt of a final determination, to submit information that explains, validates, or otherwise addresses the practices under review. In addition, the Award Official will include, in normal program compliance reviews and monitoring procedures, appropriate actions to review and monitor compliance with general or specific program requirements designed to effectuate the requirements of this part.

(2) *Time period of the review.* (i) For the Entitlement program, compliance reviews will cover the three years prior to the date of the review.

(ii) For the Urban Development Action Grant (UDAG) program, the compliance review is applicable only to UDAG loan repayments or other payments or revenues classified as

program income. UDAG repayments or other payments or revenues classified as miscellaneous revenue are not subject to compliance review under this part. (See 24 CFR 570.500(a).) The compliance review will cover the time period that program income is being repaid.

(iii) For the State and HUD-Administered Small Cities programs, the compliance review will cover the four years prior to the date of the review.

(iv) For all other programs, the time period covered by the review will be four years prior to the date of the review.

(v) On a case-by-case basis, at the discretion of the Responsible Official, the above time frames for review can be expanded where facts or allegations warrant further investigation.

(3) *Early compliance resolution.* On the last day of the on-site visit, after the compliance review, the Recipient will be given an opportunity to supplement the record. Additionally, a prefinding conference may be held and a summary of the proposed findings may be presented to the Recipient. In those instances where the issue(s) cannot be resolved at a prefinding conference or with the supplemental information, a meeting will be scheduled to attempt a voluntary settlement.

(4) *Notification of findings.* (i) The Assistant Secretary will notify the Recipient of Federal financial assistance of the results of the compliance review in a letter of findings sent by certified mail, return receipt requested.

(ii) *Letter of findings.* The letter of findings will include the findings of fact and the conclusions of law; a description of a remedy for each violation found; and a notice that a copy of HUD's final report concerning its investigation of the complaint allegations will be made available, upon request, to the Recipient.

(iii) *Response to the letter of findings of noncompliance.* Within a reasonable period of time not to exceed 30 days after receipt of the letter of findings, the Recipient may request the commencement of discussions to resolve the findings of noncompliance voluntarily.

§ 6.12 Procedure for effecting compliance.

(a) Whenever the Assistant Secretary determines that a Recipient of Federal financial assistance has failed to comply with Section 109(a) or this part and voluntary compliance efforts have failed, the Secretary shall notify the Governor of the State or the Chief Executive Officer of the unit of general local government of the findings of noncompliance and shall request that

the Governor or the Chief Executive Officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or the Chief Executive Officer fails or refuses to secure compliance, the Secretary shall:

(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) Exercise the powers and functions provided by Title VI;

(3) Terminate or reduce payments under Title I, or limit the availability of payments under Title I to programs or activities not affected by the failure to comply; or

(4) Take such other actions as may be provided by law, including but not limited to, the initiation of proceedings under 24 CFR part 24 or any applicable proceeding under State or local law.

(b) *Termination, reduction, or limitation of the availability of Title I payments.* No order terminating, reducing, or limiting the availability of Title I payments under this part shall become effective until:

(1) The Secretary has notified the Governor of the State or the Chief Executive Officer of the unit of general local government of the Recipient's failure to comply in accordance with paragraph (a) of this section and of the termination, reduction or limitation of the availability of Title I payments to be taken;

(2) The Secretary has determined that compliance cannot be secured by voluntary means; and

(3) The Recipient has been extended an opportunity for a hearing in accordance with § 6.13(a); and

(4) A final agency notice or decision has been rendered in accordance with paragraph (c) of this section or 24 CFR part 180.

(c) If a Recipient does not respond to the notice of opportunity for a hearing or does not elect to proceed with a hearing within 20 days of the issuance of the Secretary's actions listed in paragraphs (b)(1), (2) and (3) of this section, then the Secretary's approval of the termination, reduction or limitation of the availability of Title I payments is considered a final agency notice and the Recipient may seek judicial review in accordance with section 111(c) of the Act.

§ 6.13 Hearings and appeals.

(a) When a Recipient requests an opportunity for a hearing, in accordance with § 6.12(b)(3), the General Counsel shall follow the notification procedures set forth in 24 CFR 180.415. The hearing, and any petition for review, will be conducted in accordance with

the procedures set forth in 24 CFR part 180.

(b) After a hearing is held and a final agency decision is rendered under 24 CFR part 180, the Recipient may seek judicial review in accordance with section 111(c) of the Act.

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

2. The heading of part 180 is revised to read as set forth above.

2a. The authority citation for 24 CFR part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d-1, 3535(d), 3601-3619, 5301-5320, and 6103.

3. In § 180.100, the paragraph (c) designation is removed and a new paragraph (c) is added immediately above the definition for Agency; and the definitions of "Federal financial assistance," "Non-Fair Housing Act Matters," and "Recipient" are revised to read as follows:

§ 180.100 Definitions.

(c) Other terms used in this part are defined as follows:

Federal financial assistance has the meaning provided in 24 CFR 1.2, 6.3, 8.3, or 146.7, as applicable.

Non-Fair Housing Act Matters refers to proceedings under this part pursuant to:

(1) Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000d-1) and the implementing regulations at 24 CFR part 1;

(2) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(3) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6103), and the implementing regulations at 24 CFR part 146; or

(4) Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301-5321), and the implementing regulations at 24 CFR part 6.

Recipient has the meaning provided in 24 CFR 1.2, 6.3, 8.3, or 146.7, as applicable.

4. Section 180.105 is amended by removing "and" at the end of paragraph (a)(3), by removing the period at the end of paragraph (a)(4) and adding "; and" in its place, and by adding a new paragraph (a)(5), to read as follows:

§ 180.105 Scope of rules.

(a) * * *

(5) Section 109 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5321) and implementing regulations at 24 CFR part 6.

* * *

5. In § 180.310, paragraph (a) is revised to read as follows:

§ 180.310 Parties.

(a) Parties to proceedings under this part are HUD, the respondent(s), and any intervenors. Respondents include persons named as such in a charge issued under 24 CFR part 103 and Recipients/applicants named as respondents in hearing notices issued under 24 CFR parts 1, 6, 8 or 146 and notices of proposed adverse action under this part.

6. In § 180.415, the section heading and paragraph (a) are revised to read as follows:

§ 180.415 Notice of proposed adverse action regarding Federal financial assistance in non-Fair Housing Act matters.

(a) *Filing and service.* Within 10 days after a Recipient/applicant has requested a hearing, as provided for in 24 CFR parts 1, 6, 8, or 146, the General Counsel shall file a notice of proposed adverse action with the Chief Docket Clerk and serve copies (with the additional information required under paragraph (b) of this section) on all respondents and complainants.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

7. The authority for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301-5320.

8. Section 570.602 is revised to read as follows:

§ 570.602 Section 109 of the Act.

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of Section 109 are codified in 24 CFR part 6.

9. In § 570.913, a heading is added to paragraph (a) and the introductory text of paragraph (a) is revised to read as follows:

§ 570.913 Other remedies for noncompliance.

(a) *Action to enforce compliance.* When the Secretary acts to enforce the civil rights provisions of Section 109, as described in § 570.602 and 24 CFR part 6, the procedures described in 24 CFR parts 6 and 180 apply. If the Secretary finds, after reasonable notice and opportunity for hearing, that a recipient has failed to comply substantially with any other provisions of this part, the provisions of this section apply. The Secretary, until he/she is satisfied that there is no longer any such failure to comply, shall:

Dated: March 27, 1998.

Andrew Cuomo,

Secretary.

[FR Doc. 98-11849 Filed 5-8-98; 8:45 am]

BILLING CODE 4210-32-P

Monday
May 11, 1998

Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priorities and Notice Inviting Applications for New Awards for Fiscal Years 1998-1999 for Certain Centers and Projects; Notices

federal register

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priorities for Fiscal Years 1998-1999 for Certain Centers and Projects

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1998-1999 for certain centers and projects.

SUMMARY: The Secretary announces final funding priorities for four Rehabilitation Research and Training Centers (RRTCs) and two Disability and Rehabilitation Research Projects (DRRPs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998-1999. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect on June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205-5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-2742. Internet: Donna_Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Disability and Rehabilitation Research Projects and Centers Program for four RRTCs related to secondary conditions of spinal cord injuries (SCI), neuromuscular diseases (NMD); multiple sclerosis (MS), and community integration for persons with traumatic brain injury (TBI). This notice also contains final priorities for two Disability and Rehabilitation Research Projects related to dissemination and utilization of research information to promote independent living, and supported living and choice for persons with mental retardation.

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of

1973, as amended (29 U.S.C. 761a(g) and 762).

Note: This notice of final priorities does not solicit applications. A notice inviting applications is published in this issue of the Federal Register.

Analysis of Comments and Changes

On December 22, 1997, the Secretary published a notice of proposed priorities in the *Federal Register* (62 FR 66922-66929). The Department of Education received seventeen letters commenting on the notice of proposed priority by the deadline date. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

General

Comment: The "Description of RRTCs" indicates that "RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services." RRTCs should be operated in collaboration with institutions of higher education and (emphasis added) providers of rehabilitation service providers.

Discussion: The collaboration requirement included in the "Description of RRTCs" is statutory. No further restrictions are permissible by law.

Changes: None.

Comment: An RRTC should be located in a region of high occurrence of the disorder being studied. In addition, in order to be more representative of other locations where services might be provided, an RRTC should be located in small or medium-sized community, and not in a densely populated urban area.

Discussion: The commenter's suggestion would have the effect of restricting eligibility in violation of the statute. In addition, an RRTC's access to the target population or the replicability of its findings are not necessarily limited by the physical location of the grantee.

Changes: None.

Comment: Applicants' previous dissemination efforts, including their publication record, should be used as an indicator of their future performance.

Discussion: The quality of an applicant's past performance in carrying out a grant is one of the factors used in the selection criteria for these RRTCs. An applicant's previous publication record on a grant would be considered in this evaluation. Placing too much emphasis on an applicant's previous publication record in evaluating an application may unfairly disadvantage excellent new researchers or prove an

unreliable indicator of future dissemination efforts related specifically to an RRTC.

Changes: None.

Comment: Two commenters suggested that the requirements for conducting a state-of-the-science conference and publishing a final report should be more flexible. A second commenter suggested that the state-of-the-science conference should be held in the fourth year when more data will be available to present and discuss.

Discussion: The information from the state-of-the-science conference will be used, in conjunction with NIDRR's program reviews and other inputs in the determination of future research issues and as part of NIDRR's Government Performance and Results Act database. The budget planning process requires this information to be available during the fourth year of a five year grant. As long as the report is available in the fourth year of the grant, NIDRR agrees that grantees should have as much flexibility as possible in regard to the scheduling of the state-of-the-science conference.

Changes: The state-of-the-science conference requirement has been revised to allow grantees total discretion in scheduling the conference.

Comment: The training requirements of the RRTC should include "non-traditional" methods such as using the Internet and satellite video conferencing.

Discussion: Applicants have the discretion to propose the training methods that a project will use, and the peer review process will evaluate the merits of the methods. An applicant could propose to include training methods using the Internet and satellite video conferencing. However, requiring all projects to include training methods using the Internet and satellite video conferencing could exclude equally effective training methods.

Changes: None.

Comment: NIDRR received a comment in response to the proposed priority on Multiple Sclerosis that suggested that NIDRR require the RRTC to collaborate with a number of different entities.

Discussion: This comment prompted a general review of all of the collaboration and coordination requirements contained in the proposed RRTC priorities to determine their appropriateness and consistency. That review revealed some inconsistency in language requiring clarification.

Changes: The RRTC priorities have been revised to clarify that having met the stated collaboration or coordination requirements, each RRTC has the authority to collaborate or coordinate

with other entities carrying out related activities.

Priority 1: Secondary Conditions of Spinal Cord Injury

Comment: The wording in the first and second activities should be changed from "prevent and treat" to "prevent or treat." Prevention and treatment protocols are very different, and requiring investigators to develop prevention as well as treatment protocols would require too many projects. In addition, rather than being required to address all five of the conditions, the RRTC should have the discretion to address four out of the five secondary conditions listed in the first activity.

Discussion: While NIDRR agrees that prevention and treatment protocols are very different, such protocols are needed. Similarly, the five secondary conditions listed are widespread and problematic. The funding provided to this project should enable a grantee to pursue both types of protocols as well as all of the five conditions included in the priority.

Changes: None.

Comment: The RRTC should be required to conduct training workshops to educate patients, families, service providers, and health care providers.

Discussion: In part, the RRTC must meet the general training requirement to provide " * * * training on knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other appropriate parties." Applicants have the discretion to approach this and other training requirements broadly, and can propose to "educate" target audiences on other information as long as it is in addition to the knowledge gained from the Center's research activities. The peer review process will evaluate the merits of each applicant's proposed training activities.

Changes: None.

Comment: One commenter indicated that a significant and growing number of persons who experience spinal cord injuries are from minority backgrounds and live in urban areas, and that many of those injuries are a result of violence, including gunshot wounds which present unique secondary complications. The same commenter indicated that women with spinal cord injuries experience different complications from those faced by men with spinal cord injuries, including problems related to sexuality, reproduction, and other genito-urinary problems. The commenter suggested that the RRTC should place a special

emphasis on the unique needs of persons from minority backgrounds who live in urban areas, as well as on women, because of the unique rehabilitation management and community re-entry issues facing both groups.

Discussion: NIDRR agrees that both of these groups of persons with SCI face unique rehabilitation challenges that merit special emphasis.

Changes: The priority has been revised to place a special emphasis on the unique needs of persons with SCI from minority backgrounds who live in urban areas as well as women with SCI.

Priority 2: Neuromuscular Diseases

Comment: Is the RRTC expected to research the genetic discrimination that could become a problem, or to determine the ethical and psychosocial implications of this research? Is the RRTC intended to address how knowing the information made available through genetic testing may affect potential physical and psychosocial outcomes?

Discussion: NIDRR prefers to provide applicants with the discretion to propose a line, or lines, of investigation on the issue of examining the risks and benefits related to the use of genetic testing. An applicant could propose to answer the questions that the commenter poses, and the peer review process will evaluate the merits of the approach.

Changes: None.

Priority 3: Multiple Sclerosis

Comment: The proposed priority solicited comments on whether the RRTC should investigate: (1) The unique needs of women with MS, and (2) alternative models of care for persons of different cultural, economic, minority, ethnic, or geographic backgrounds. For the most part, the commenters indicated that these were potentially important topics worthy of exploratory research activities. The commenters indicated that not enough is known about the differences between the needs of men and women with MS, or between the needs of persons from different cultural, economic, minority, ethnic, or geographic backgrounds. The commenters suggested that the first step in this research should be to determine if those differences exist. The one commenter who expressed support for an investigation of the unique needs of women, suggested that the RRTC investigate the extent to which MS affects women in relation to hormonally mediated events (e.g., pregnancy, menstruation, and menopause), and the programs and services that may be needed to promote effective functioning.

In light of these comments, NIDRR believes that the first line of inquiry on these issues should be to determine if there are differences between the needs of men and women with MS, as well as between diverse groups of populations.

Changes: The priority has been revised to require the RRTC to investigate if differences exist between the needs of: (1) Men and women with MS; and (2) persons with MS from different cultural, economic, minority, ethnic, or geographic backgrounds.

Comment: Two commenters suggested that health promotion and wellness be addressed separately from substance abuse in the priority's first required activity.

Discussion: There are advantages to investigating substance abuse within the context of health promotion and wellness. However, an applicant could propose to investigate substance abuse in a separate project, and the peer review process will evaluate the merits of this proposal.

Changes: None.

Comment: Two commenters suggested that the RRTC address the educational needs of employers regarding reasonable accommodations.

Discussion: The fourth activity of the RRTC involves research on workplace accommodations. The RRTC is required to develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties (emphasis added). NIDRR expects employers to be included as "other interested parties" in regard to the fourth activity.

Changes: None.

Comment: The RRTC should address the impact of the Americans with Disabilities Act (ADA).

Discussion: The third activity of the RRTC requires the RRTC to investigate the employment status of the persons with MS. An applicant could propose to address the impact of the ADA as part of this investigation, and the peer review process will evaluate the merits of this research. However, requiring all applicants to carry out this line of investigation could exclude other equally meritorious lines of investigation on the employment status of person with MS.

Changes: None.

Comment: NIDRR should establish three RRTCs related to MS and: (1) Medical rehabilitation, (2) psychosocial and vocational rehabilitation; (3) health care delivery and policy.

Discussion: At this time, and in light of other priorities, devoting the

additional resources that would be necessary to support three RRTCs on these topics for persons with MS is not feasible.

Changes: None.

Comment: The RRTC should collaborate with the National Multiple Sclerosis Society, the American Academy of Neurology, the American Society of Neurorehabilitation, the Paralyzed Veterans of America, and the RRTC on Managed Care.

Discussion: When a priority requires collaboration or coordination with one or more entities, the rationale is that the RRTC could not carry out the purposes of the priority without the required collaboration or coordination. All of the entities listed in the comment are good candidates for collaboration, and an applicant could propose to collaborate with any or all of them. However, the RRTC could carry out its purposes without collaborating with these entities. Therefore, the priority has not been revised to require collaboration with the agencies listed in the comment.

Changes: None.

Comment: The state-of-the-science conference should be held in conjunction with the annual meeting of the Consortium of Multiple Sclerosis Centers.

Discussion: An applicant could propose to carry out the state-of-the-science conference in conjunction with the annual meeting of the Consortium of Multiple Sclerosis Centers (CMSCs). However, the conference could be successful even if it were not held in conjunction with the annual meeting of the CMSCs. Therefore, it is not necessary to require it.

Changes: None.

Priority 4: Community Integration for Persons With Traumatic Brain Injury

Comment: In addition to identifying and evaluating programs for successful community integration of persons with TBI, the RRTC should develop such programs. The RRTC should also investigate the factors that support or serve as barriers to community integration.

Discussion: It is feasible and necessary for the RRTC to not only identify and evaluate programs that support community integration, but also develop these programs. In the process of carrying out these development and evaluation activities, the RRTC will need to investigate the factors that support or serve as barriers to community integration. Therefore, it is unnecessary to specifically state it as a requirement.

Changes: The priority has been revised to require the RRTC to not only

identify and evaluate, but also develop model programs and services that support community integration.

Comment: While there are a few assessment tools that are used to measure community integration and the quality of life of persons with TBI, better assessment tools are needed. The RRTC should develop outcome measures to delineate the full breadth of the community integration challenges faced by individuals with TBI.

Discussion: Development of improved assessment tools will make a significant contribution to other activities of the RRTC as well as to the field. NIDRR expects that the RRTC will fully consider the possibility of improving existing assessments before undertaking to develop a new assessment.

Changes: The priority has been revised to require the RRTC to either identify, improve, and evaluate, or develop and evaluate an assessment that measures the community integration of persons with TBI.

Comment: The requirement to investigate the impact of aging on community integration should be expanded to include persons who incur TBI at an advanced age.

Discussion: The requirement to investigate the impact of aging on community integration does not have to be revised in order for an applicant to include persons who incur TBI at an advanced age. NIDRR expects a wide range of ages of onset to be included among the sample population in order for the sample to be representative of the target population of persons with TBI. Therefore, it is unnecessary to require it.

Changes: None.

Comment: The RRTC should address the community integration of persons with TBI from minority backgrounds.

Discussion: NIDRR agrees that persons with TBI from minority backgrounds, particularly those from urban areas who are victims of violence, have unique community integration needs.

Changes: The priority has been revised to require the RRTC to address the unique community integration needs of persons from minority backgrounds.

Comment: NIDRR should be more specific in describing the nature and scope of the research that it expects the RRTC to carry out.

Discussion: NIDRR makes every effort to be as least prescriptive as possible when it establishes an RRTC's requirements in order to encourage innovation and in recognition of the expertise of potential applicants. NIDRR depends on its peer review process to ensure the appropriateness and quality

of the nature and scope of the research that an RRTC carries out.

Changes: None.

Comment: NIDRR should clarify whether the research into the impact on aging on community integration should address aging support systems as well as aging of the human organism. These are two very different issues.

Discussion: NIDRR prefers to provide applicants with the discretion to propose a line, or lines, of investigation on the issue of the impact of aging on community integration. An applicant could propose either, or both, approaches that the commenter describes, and the peer review process will evaluate the merits of the approach.

Changes: None.

Priority 6: Supported Living and Choice for Persons With Mental Retardation

Comment: In addition to identifying and synthesizing research findings on state-of-the-art models of supported living, the project should develop descriptions of the nature of the organizations that approximate the ideals of supported living and the transformations that traditional community organizations are going through to adopt supported living approaches and ideals.

Discussion: An applicant could propose to develop descriptions of the nature of the organizations that approximate the ideals of supported living and the transformations that traditional community organizations are going through to adopt supported living approaches and ideals. The peer review process will evaluate the merits of these descriptions. NIDRR declines to require all applicants to develop these descriptions because it is not necessary in order to identify and synthesize research findings on state-of-the-art models of supported living.

Changes: None.

Comment: The project should be expanded to include all persons with developmental disabilities in addition to those with mental retardation.

Discussion: If persons with developmental disabilities who are not mentally retarded could benefit from the RRTC's materials and information, an applicant could propose to include them in the target population as long as it is in addition to persons with mental retardation. The peer review process will evaluate the merits of this proposal. NIDRR declines to require all applicants to include persons with developmental disabilities who are not mentally retarded out of concern that applicants will underserve persons with mental retardation.

Changes: None.

Comment: The third activity of the project should be revised to require the project to: (1) Undertake public awareness activities to educate the public and policymakers on the importance of direct support workers; and (2) become familiar with existing training materials prior to development of new training materials in order to avoid duplication.

Discussion: An applicant could propose to undertake public awareness activities to educate the public and policymakers on the importance of direct support workers as part of the second activity required by the priority. The peer review process will evaluate the merits of these public awareness activities.

In regard to becoming familiar with existing training materials prior to development of new training materials in order to avoid duplication, NIDRR expects that all applicants would carry out such a review as a matter of routine. Therefore, it is unnecessary to require it.

Changes: None.

Comment: If agencies cannot find or keep qualified workers, the viability of supported living is at risk. The project should carry out research, training, and demonstration activities on strategies to address direct support worker recruitment, retention, and training.

Discussion: Research, training, and demonstration activities on strategies to address direct support worker recruitment, retention, and training is critically important to the success of supported living. These suggested activities are outside the scope of this project, however, NIDRR plans to establish an RRTC on Community Integration for Persons with Mental Retardation in FY 98 that will carry out these activities.

Changes: None.

Rehabilitation Research and Training Centers

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760-762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the

training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified

by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General Requirements

The following requirements apply to these RRTCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these proposed requirements will be assessed using applicable selection criteria in the peer review process.

The RRTC must provide: (1) Training on research methodology and applied research experience; and (2) training on knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other appropriate parties.

The RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

The RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities.

Priority 1: Secondary Conditions of Spinal Cord Injuries

Background

There are approximately 10,000 new cases of SCI each year and the prevalence of SCI is estimated between 183,000 and 230,000 persons (University of Alabama-Birmingham, "Facts and Figures at a Glance," *Spinal Cord Injury Factsheet*, August, 1997). The etiology of SCI has been very well

documented and the medical characterization of this condition is well established (Maynard, F. M., et al., "International Standards for Neurological and Functional Classification of Spinal Cord Injury—American Spinal Cord Injury Association," *Spinal Cord*, 35(5), pgs. 266–274, May, 1997). Past medical advances have improved the probability of surviving SCI, and ongoing developments and improvements in clinical care have increased the life expectancy and quality of life of persons with SCI (Ditunno, J. F. and Formal, C. S., "Chronic Spinal Cord Injury," *New England Journal of Medicine*, 330(8), pgs. 550–556, February, 1994). However, the life expectancy of individuals with SCI is still lower than the general population, and people who are living with SCI continue to be at higher risk than the general population for a number of secondary conditions. For the purposes of this priority, a secondary condition is a condition that is causally related to a disabling condition (i.e., occurs as a result of the primary disabling condition) and that can be pathological, an impairment, a functional limitation, or an additional disability (Pope, A. M. and Tarlov, A. R., "Prevention of Secondary Conditions," *Disability in America*, pgs. 214–241, 1991).

Pressure ulcers, respiratory complications, urinary tract infections (UTIs), pain, and obesity are commonly reported secondary conditions of SCI (Lemons, V. R. and Wagner, F. C., Jr., "Respiratory Complications After Cervical Spinal Cord Injury," *Spine*, 9(20), pgs. 2315–2320, 1994; Anson, C. A. and Shepherd, C., "Incidence of Secondary Complication in Spinal Cord Injury," *International Journal of Rehabilitation Research*, 19(1), pgs. 55–66, March, 1996). Depression in SCI is also often identified as a secondary condition (Elliott, T. R. and Frank, R. G., "Depression Following Spinal Cord Injury," *Archives of Physical Medicine and Rehabilitation*, Volume 77, pgs. 816–823, 1996). Continued research efforts directed toward the prevention and treatment of secondary conditions of persons with SCI will improve their health and well-being.

Despite past efforts, pressure ulcers remain a daunting problem with respect to both prevention and treatment. Most approaches to pressure ulcer management emphasize prevention (Ditunno, J. F. and Formal, C. S., op. cit.). There is little systematic evidence on how individuals with SCI manage a pressure ulcer once one develops (Fuhrer, M. J., et al., "Pressure Ulcers in Community-Resident Persons with

Spinal Cord Injury: Prevalence and Risk Factors," *Archives of Physical Medicine and Rehabilitation*, 74, pgs. 1172–1177, 1993).

Respiratory-related conditions have now replaced UTIs as the major cause of death in the SCI population, particularly among individuals with cervical level injuries (University of Alabama-Birmingham, op. cit.). Pneumonia continues to be one of the most common secondary conditions. Secretion management is often problematic due to impaired cough (Ditunno, J. F. and Formal, C. S., op. cit.). The effectiveness of current therapeutic interventions to reduce the incidence of respiratory conditions appears to be marginal (Lemons, V. R. and Wagner, F. C., Jr., op. cit.).

Urinary tract infections are a common secondary condition in SCI. Antibiotic prophylaxis is not generally recommended. Other possible strategies, such as vaccination, immunotherapy, and the use of receptor analogs have been suggested, but there is not yet sufficient data on the effectiveness (Galloway, A., "Prevention of Urinary Tract Infection in Patients with Spinal Cord Injury—A Microbiological Review," *Spinal Cord*, 35(4), pgs. 198–204, April, 1997). There are possible psycho-social-vocational factors that impact bladder management programs (NIDRR 1992 Consensus Statement, "The Prevention and Management of Urinary Tract Infections Among People with Spinal Cord Injuries," *Journal of American Paraplegia Society*, 15(3), pgs. 194–204, July, 1992).

Pain is a secondary condition that affects a significant number of persons with SCI (Yezielski, R. P., "Pain Following Spinal Cord Injury: the Clinical Problem and Experimental Studies," *Pain*, 68(2–3), pgs. 185–194, 1996). Previous research has resulted in a number of classification schemes for SCI pain; however, there is no standardized classification system, limiting comparability of findings from the literature. The numerous individual variations in pain as a secondary condition accompanying SCI impede research progress in the alleviation of pain (Stover, S. L., et al., "Management of Neuromusculoskeletal System," *Spinal Cord Injury: Clinical Outcomes from Model Systems*, Chapter 8, pgs. 154–155, 1995).

Obesity can contribute to health-related problems in the general population. Obesity in SCI, particularly morbid obesity, is more likely to contribute to health-related problems. This condition is closely tied to nutritional status and the ability to engage in physical activity or exercise.

Limitations on the latter are likely to contribute significantly to the problems stemming from this secondary condition (Blackmer, J. and Marshall, S., "Obesity and Spinal Cord Injury: An Observational Study," *Spinal Cord*, 35(4), pgs. 245–247, April, 1997).

Depression is more common among persons with SCI than among the general population. There is some evidence that depression is higher among persons whose SCI is of relatively short duration compared to others who have had a longer time to adjust (Steins, S. A., et al., "Spinal Cord Injury Rehabilitation: Individual Experience, Personal Adaptation, and Social Perspectives," *Archives of Physical Medicine and Rehabilitation*, Volume 78, March, 1997). Proper diagnosis and treatment of depression in persons with SCI has not yet been well established (Elliott, T. R. and Frank, R. G., op. cit.). Prevention and treatment for depression and other psychosocial adjustment problems may include increasing opportunities for social interactions through community participation (Rintala, D. H., et al., "The Relationship Between the Extent of Reciprocity with Social Supporters and Measures of Depressive Symptomatology, Impairment, Disability, and Handicap in Persons with Spinal Cord Injury," *Rehabilitation Psychology*, 39(1), pgs. 15–27, 1994).

There is a linkage between maintaining the health of persons with SCI and the prevention of secondary conditions. Health maintenance activities may include, but are not limited to, following accepted medical protocols, proper diet, weight control, and exercise. Persons with SCI are increasingly realizing the importance of and seeking access to health maintenance activities (Edwards, P., "Health Promotion Through Fitness for Adolescents and Young Adults Following Spinal Cord Injury," *SCI Nursing*, 13(3), pgs. 69–73, September, 1996).

Because of the differences in exercise tolerance among different levels of SCI, one uniform exercise protocol can not be applied to all individuals. Exercise options for persons with SCI will be expanded when appropriate exercise protocols are developed for the different levels of injury (Rimmer, J. H., "Fitness and Rehabilitation Programs for Special Populations," Brown and Benchmark, Madison, WI, Chapter 7, 1994). Little is known about the synergistic effects of exercise, diet, and nutrition. Questions remain as to whether and how these lifestyle factors work together to promote health and prevent secondary conditions.

The availability and dissemination of information about this injury tends to be concentrated in specialty areas. This problem can be frustrating to newly-injured individuals and their family members. Rapidly accessing the most up-to-date clinical information can also be problematic for non-specialty health professionals.

Priority 1

The Secretary will establish an RRTC on Secondary Conditions of Spinal Cord Injuries to improve general health, well-being, and community integration of persons with spinal cord injury. The RRTC shall:

- (1) Investigate and evaluate interventions to prevent and treat secondary medical conditions, including but not necessarily limited to pressure ulcers, respiratory complications, UTIs, pain, and obesity;
- (2) Investigate and evaluate interventions to prevent and treat depression; and
- (3) Develop and evaluate exercise protocols, stress management techniques and diet and nutrition regimens.

In carrying out the purposes of the priority, the RRTC must:

- Address the unique needs of persons with SCI from minority backgrounds who live in urban areas as well as women with SCI; and
- Coordinate with the NIDRR-sponsored Model SCI Systems, the RRTCs on Aging with a Disability, Personal Assistance Services, and Managed Care, and related research or training activities sponsored by the National Center for Medical Rehabilitation Research, the Centers for Disease Control, and other entities.

Priority 2: Neuromuscular Diseases

Background

Neuromuscular disease is a taxonomic category that describes diseases of the peripheral neuromuscular system, both acquired and hereditary. This category encompasses diseases such as amyotrophic lateral sclerosis, post-polio, Guillain-Barre, muscular dystrophy, myasthenia gravis, and other muscular atrophies and myopathies. NMDs affect approximately 400,000 children and adults in the United States (LaPlante, M., et al., *Disability in the United States: Prevalence and Causes*, 1992). Conditions associated with these disorders include progressive weakness, limb contractures, spine deformity, and impaired pulmonary function. Cardiac involvement and intellectual impairment occur with some NMDs. The progression of these degenerative

diseases takes three stages: ambulatory, wheelchair, and prolonged survival (Bach, J. R. and Lieberman, J.S., "Rehabilitation of the Patient with Disease Affecting the Motor Unit," *Rehabilitation Medicine: Principles and Practice*, pg. 1099, 1993). Past research efforts have focused on documenting the impairment and disability profiles of neuromuscular disease as well as on mitigating the functional consequences of NMD. Functional independence and community integration continue to challenge persons with NMDs.

Among the functional independence issues that affect persons with NMD are preserving respiratory function, maintaining muscle strength, assuring good nutrition, and combating muscle fatigue. Respiratory insufficiency due to progressive muscle wasting is a one of the leading causes of illness and death among persons with NMDs (Bates, D., *Respiratory Function in Disease*, pgs. 371–379, 1989). For persons with NMDs, maintaining or improving muscle strength is a major functional concern. The relationships among conditioning exercise, functional strength, and fatigue is not well understood in this population. For example, exercise has been shown to be effective in improving strength and endurance at particular points in the disease progress, but many questions remain and the optimal use of exercise across different NMD categories is not known (Brinkmann, J. R., and Ringel, S. P., "Effectiveness of Exercise in Progressive Neuromuscular Disease," *Journal of Neurological Rehabilitation*, Volume 5, pgs. 195–199, 1991). Finally, feeding problems in patients with NMDs are frequently underestimated and poorly analyzed (Willig, T. N., et al., "Swallowing Problems in Neuromuscular Disorders," *Archives of Physical Medicine and Rehabilitation*, Volume 75, No. 11, pgs. 1175–1181, 1994).

Persons with NMDs must maintain functional independence to maximize their ability to participate in home, work, educational, recreational, and other community activities. For instance, respiratory problems often require mechanical ventilation. Home ventilation has been shown to be useful for a growing number of patients with NMDs (Winterholler, M., et al., "Recommendation of Bavarian Muscle Centers of the German Neuromuscular Disease Society for Home Ventilation of Neuromuscular Diseases of Adult Patients," *Nervenarzt*, Volume 68, No. 4, pgs. 351–357, 1997). Despite its technical simplicity, home ventilation leads to a number of social, medical and

infrastructural problems (*Paraplegia*, Volume 31, pgs. 93–101, 1993).

Many persons with NMDs have had limited opportunity for educational and work experiences. Research has demonstrated the "alteration of cognitive functions" in some NMD diagnoses, creating special challenges to pursuing education (Fardeau-Gautier, M. and Fardeau, M., "Socioeconomic Aspects of Neuromuscular Diseases," *Myology: Basic and Clinical*, 1994). Previous research found a significant relationship between psychosocial adjustment and unemployment for some persons with NMD (Fowler, W. M., Jr., "Employment Profiles in Neuromuscular Diseases," *American Journal of Physical Medicine and Rehabilitation*, Volume 76, No. 1, pgs. 26–37, 1997).

In addition to issues of functional capacity and community integration, there is an emerging policy issue related to diagnosis of NMDs. Rapid development in genetic knowledge and technologies has increased the ability to test asymptomatic NMD individuals for late-onset diseases, disease susceptibilities, and carrier status. Genetic criteria may be replacing diagnostic and clinical classification systems as a method of identifying NMDs (Fowler, W. M., Jr., "Impairment and Disability Profiles of Neuromuscular Diseases," *American Journal of Physical Medicine and Rehabilitation*, Volume 74, No. 5, pg. S61, 1995). These developments raise ethical, legal and financial issues related to appropriate timing for tests and communication of results ("American Society of Human Genetics and American College of Medical Genetics Report—Points to Consider: Ethical, Legal, and Psychosocial Implications of Genetic Testing in Children and Adolescents," *American Journal of Human Genetics*, Volume 57, pgs. 1233–1241, 1995).

Because of the number of very rare diseases that are included in the proposed World Federation of Neurology Classifications of NMD and the low incidence and prevalence of the more well-known NMDs, the availability and dissemination of information about these diseases is problematic. This difficulty is characteristic of cases where there is both a limited amount of information and a very small audience. This problem can be frustrating to newly-diagnosed individuals and their family members. Rapidly accessing the most up-to-date clinical information can also be problematic for the non-specialist physicians, as evidenced by the well-known difficulty in diagnosing these

diseases (Swash, M. and Schwartz, M. S., *Neuromuscular Diseases: A Practical Approach to Diagnosis and Management*, pg. 3, 1988).

Priority 2

The Secretary will establish an RRTC on NMDs to promote the functional independence and community integration of persons with NMDs. The RRTC shall:

- (1) Investigate and evaluate interventions to preserve functional capacity;
- (2) Investigate and evaluate techniques for enhancing community integration;
- (3) Examine the risks and benefits related to the use of genetic testing; and
- (4) Establish and maintain a clearinghouse on NMDs.

In carrying out the purposes of the priority, the RRTC must coordinate with related research or training activities sponsored by the National Institute on Neurological Disorders and Stroke, and other entities.

Priority 3: Multiple Sclerosis

Background

Multiple sclerosis is a disease capable of producing significant disability, particularly in the young adult population. The most frequent age of onset is between 20 and 45 years, with a mean onset age of 33. The female to male ratio is nearly 2:1 and the white to non-white ratio is also nearly 2:1. The total population of individuals with MS in the United States is estimated at 250,000—350,000. The causes of MS are unknown, although autoimmune, viral, genetic, and environmental factors are considered to have potential causal significance (Smith, C. and Schapiro, R., "Neurology," *Multiple Sclerosis*, pg. 7, 1996).

Multiple Sclerosis randomly attacks the central nervous system and may manifest itself over several decades in a wide range of disabilities including, but not limited to, inability to walk, loss of bowel and bladder control, blindness, mild alteration of sensation, paralysis of limbs, impaired speech, sexual dysfunction, extreme fatigue, poor coordination, spasticity, and cognitive dysfunction. The course of MS is unpredictable. The disease may wax and wane. Significant manifestation can be brought on by heat, overwork, or a common cold and followed by return to a state with little evidence of active disease. Sometimes there are manifestations with no apparent trigger. A small group of those with the disease experience continued evolving neurological deficits. Generally,

progression, severity and specific symptoms cannot be foreseen.

Various interventions may alleviate some of the manifestations. While medications may slow the disease course, there is no cure for MS. Coping and planning can be difficult and exhausting for those who make continual adjustments in daily activity. Work schedules or family plans may be disrupted by the sudden onset of fatigue. Driving and independent activity may be difficult due to MS-related impairments. Bladder difficulties may cause a person to avoid activities.

Maintaining healthy lifestyle habits can assist persons with MS to maintain maximum function despite the disease. Exercise can strengthen muscles when possible or can help maintain muscle tone for those that are affected, although the potential for overexercise must be understood. Adequate rest is critical for persons with MS and relaxation techniques can be aids as well (Chan, A., "Physical Therapy," *Multiple Sclerosis*, pg. 87, 1996). Various diets have been suggested, as have vitamin and nutritional supplements. However, the evidence supporting the value of those measures is inconclusive. Alcohol or substance abuse can be problems for persons with the disease whose neurological deficits have caused decreased tolerance. Any substance that places extra strain on the already-impaired nervous system must be used with extreme caution. Drug interactions can be a danger if the person is on prescribed medication (Lechtenberg, R., *Multiple Sclerosis Fact Book*, pg. 171, 1989).

It is difficult to assess the employment status of persons with MS. This is due in part to the nature of the disease and its variable impact on individuals' ability to work. Information on the employment status of persons with MS may be available through a secondary analysis of databases such as the 1994–95 National Health Interview Survey Disability Supplement. Persons with MS may require unique work accommodations such as sustained cooler environments, rest breaks, and flexible work schedules.

Rehabilitation techniques are available to assist the person with MS in daily life, including at the workplace. Medications can be effective for treating fatigue, bladder, bowel, or sexual difficulties. Physical therapists commonly recommend mobility aids and devices to help with visual impairments or difficulties using the hands. At times, as when mobility impairments occur, there may be hesitation or unwillingness on the part

of the person with MS, physicians, or health care coverage providers, to use assistive technologies, believing that the problem will go away (Iezzoni, L., "When Walking Fails," *The Journal of the American Medical Association*, Volume 276, No. 19, pg. 1609, 1996).

While the life expectancy for persons with MS is nearly identical to that of healthy individuals, various manifestations of MS can be expected over the course of decades. As a person with MS ages, depression, cognitive dysfunction, and other emotional or physical health problems may play increasingly larger roles. Treatment and rehabilitation modalities may be different if a manifestation is caused by aging, as opposed to MS.

Priority 3

The Secretary will establish an RRTC on MS to promote the health and wellness, and improve the functioning and employment status of persons with MS. The RRTC shall:

- (1) Identify, develop, and evaluate health promotion and wellness activities, including those that address substance abuse.
- (2) Identify, develop, and evaluate rehabilitation techniques to manage and improve functioning, including those that address coping with the uncertain course of MS and depression, stress, and cognitive dysfunction;
- (3) Investigate the employment status of persons with MS;
- (4) Identify, develop, and evaluate workplace accommodations;
- (5) Investigate the interaction between aging and MS;
- (6) Investigate if differences exist between the needs of: (a) Men and women with MS; and (b) persons with MS from different cultural, economic, minority, ethnic, or geographic backgrounds.

In carrying out the purposes of the priority, the RRTC must collaborate with the Consortium of MS Centers, the RRTC on Substance Abuse, and other entities carrying out related research or training activities.

Priority 4: Community Integration for Persons With Traumatic Brain Injury

Background

Each year approximately 1.9 million Americans experience traumatic brain injuries (Collins, J. F., "Types of Injuries by Selected Characteristics: US 1985–1987," National Center for Health Statistics, *Vital Health Stat*, 10 (175), 1990). Brain injury is frequently a childhood injury, and incidence is highest among youth and young adults, particularly males (NIDRR

Rehabilitation Research and Training Center, University of California, San Francisco, *Disability Statistics Abstract*, No. 14, November, 1995). The number of people surviving brain injuries has increased significantly over the last 25 years due to improved emergency medical services and advances in acute care.

Community integration is the primary aim of rehabilitation after serious trauma. For the purposes of this priority, community integration is defined as integration into home-like settings, social networks, and productive activities such as employment, school, or volunteer work (Willer, B., et al., "Assessment of Community Integration for Traumatic Brain Injury," *Journal of Head Trauma Rehabilitation*, Volume 8, No. 2, pgs. 75–87, June, 1993). Living independently, pursuing avocational activities, volunteering, educational endeavors, employment, and participation in social activities outside the home are important community integration outcomes.

Sequelae to TBI include problems of cognition resulting in memory and learning difficulties and personality and behavior problems, including irritability and impulsivity, that impact on community integration outcomes. In addition, individuals with severe TBI often experience fatigue, limited attention span, information processing problems, visual perception difficulties, and depression. Furthermore, alcohol use at the time of injury, as well as pre- or post-injury heavy drinking, has been related to worse post-injury outcomes (Kreutzer, J. S., "A Prospective Longitudinal Multi-center Analysis of Alcohol Use Patterns Among Persons with TBI," *The Journal of Head Trauma Rehabilitation*, Volume 11, No. 5, pg. 58, October, 1996).

Persons who experience the physical and mental consequences of TBI require a variety of programs and services to be successfully reintegrated in the community. These resources may include schools, libraries, recreation centers, health facilities, drug treatment programs, housing, transportation, and police and law enforcement services. Often these programs and services are not fully accessible to this population because their needs are not known or recognized.

The sequelae of TBI contribute to significant difficulties obtaining and retaining employment post-injury. Because of the demographics of head injury, some of the survivors may not have worked prior to the injury. Those who were employed face challenges in seeking to return to work. Despite

increasing emphasis on vocational rehabilitation, investigation of long-term outcomes has indicated unemployment rates ranging from 34 percent to 75 percent at two to 15 years after injury. A recent longitudinal investigation revealed unemployment rates for rehabilitation patients as high as 76 percent during the first four years after injury (Sander, A. M., "Neurobehavioral Functioning, Substance Abuse, and Employment after Brain Injury: Implications for Vocational Rehabilitation," *Journal of Head Trauma Rehabilitation*, 12 (5), pgs. 28–41, 1997). Past research has examined the efficacy of supported employment and other strategies for improving employment outcomes for individuals with TBI. Successful strategies consider the structure and culture of the workplace in linking these to the needs of individuals with TBI to succeed in employment settings (Wehman, P. H., et al., "Return to Work for Persons with Severe Traumatic Brain Injury: A Data-based Approach to Program Development," *Journal of Head Trauma Rehabilitation*, 10 (1), pgs. 27–39, 1995).

The prevalence of TBI in children is documented by the National Pediatric Trauma Registry located at the RRTC on Rehabilitation and Childhood Trauma. Most injured children are one to 14 years of age. Children with disabilities face numerous problems transitioning from rehabilitation to educational settings. Educators may be unaware of the impact of TBIs on school performance and uncertain of effective educational programming. Establishing a stronger link between hospitals and school professionals is an essential step toward improving educational and functional outcomes (Farmer, J. E., et al., "Educational Outcomes in Children with Disabilities: Linking Hospitals and Schools," *NeuroRehabilitation*, Volume 5, No. 1, pgs. 49–56, 1995).

Families of people with TBI exhibit high levels of distress, depression and anxiety. As a result, they may experience isolation and diminished social interaction and diminished ability to make decisions regarding medical, ethical, and financial issues. Even 15 years post-injury, family members of persons with TBI report tension, friction, and distress (Gervasio, A. H., "Kinship and Family Members' Psychological Distress after TBI: A Large Sample Study," *The Journal of Head Trauma Rehabilitation*, 12(3), pgs. 14–16, 1997).

Because of improved treatment and increased survival rates, many more people with TBI are living to middle age and beyond. For people with TBI who live with their families, both their aging

and that of the caregivers may create problems. This is especially true for those people who live with their parents following head injury. Shortages of affordable and accessible housing, personal assistance services, and respite care may pose threats to community integration and require additional community resources.

Priority 4

The Secretary will establish an RRTC on Community Integration of Persons with TBI to assist families to cope, and to improve community resources, employment outcomes, and educational programming. The RRTC shall:

- (1) Either identify, improve, and evaluate, or develop and evaluate an assessment that measures community integration.

(2) Identify, develop, and evaluate model programs and services that support community integration;

(3) Identify, develop, and evaluate strategies to improve employment outcomes, including obtaining initial employment and successful return-to-work;

(4) Identify and evaluate effective practices that link rehabilitation and education professionals to facilitate identification and appropriate educational programming for children;

(5) Identify and evaluate techniques to assist families to cope; and

(6) Investigate the impact of aging on community integration;

In carrying out the purposes of the priority, the RRTC must:

- Coordinate with the TBI Model Systems projects, the RRTC on Substance Abuse, other entities carrying out related research and training activities;

- Address the needs of persons with TBI who are substance abusers; and

- Address the unique community integration needs of persons from minority backgrounds.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 202 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and

economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Priority 5: Improving Research Information Dissemination and Utilization to Promote Independent Living

Background

One of the persistent concerns in the area of knowledge dissemination and utilization is the gap between information generated from disability and rehabilitation research and its utilization by persons with disabilities in their efforts to live independently in the community. Persons with disabilities can draw from a wealth of information derived from research, such as universal design concepts, consumer-directed personal assistance strategies, the availability of assistive technology, peer counseling techniques, housing options, and self-care techniques. This information can help provide persons with disabilities with the knowledge to exercise control over their lives, reduce their reliance on others in making decisions, perform everyday activities, and participate more fully in community life.

To generate baseline data on information dissemination related to independent living, the National Center for the Dissemination of Disability Research (NCDDR) conducted a nationwide survey asking persons with disabilities about their perceptions of the usefulness of research-based disability information, their knowledge of where to obtain that information, and their current modes of receiving information. Seventy-two percent of survey respondents affirmed that disability research information is useful to them. Twenty percent reported that they do not know if it is useful to them, and eight percent responded that the information is not useful. The survey also asked the respondents if they knew how to find information from disability research. Forty-eight percent responded they did, and 32 percent responded that they did not know how to find the information (NCDDR, "Research Exchange," Volume 2, No. 4, 1997).

Even if research information is in the public domain, it may not be accessible to persons with disabilities. Highly technical language, obscure journal articles, and under-publicized or prohibitively expensive conference presentations exemplify some of the barriers that persons with disabilities

face in their efforts to access research information. There may also be physical barriers when research information is not available in alternate formats (e.g., braille, large print, tape recording) for persons with sensory disabilities.

NIDRR has funded information dissemination and utilization efforts related to living independently in the community, using a variety of techniques, media, and dissemination strategies. NIDRR also disseminates information through national information databases and dissemination programs, such as the National Rehabilitation Information Center (NARIC) and ABLEDATA, a database that contains information on more than 22,000 assistive devices. Many Centers for Independent Living (CILs) provide information and referral activities both in person, in print, and electronically. In addition, there are fully established consumer-run publications, television networks, electronic bulletin boards, and world wide web pages that provide independent living information.

The Internet is a primary medium for the dissemination of disability information. The Internet allows this information to be available to persons with disabilities in daily life settings, rather than requiring travel to workshops and conferences. The NCDDR survey showed that over 50 percent of the persons with disabilities living independently indicated that they have never used the Internet to obtain information, 25 percent reported using it often or very often.

Although many persons with disabilities do not currently own computers or contract with Internet provider services themselves, many institutions, such as public libraries, churches, or places other than employment or educational sites are increasingly providing alternate points of free access. Also, the decreasing costs of web TV and other accessing equipment are expected to make this resource more universally available in the future.

Priority 5

The Secretary will establish a DRRP on Improving Research Information Dissemination and Utilization to Promote Independent Living. The DRRP shall:

(1) Using the NCDDR survey results as baseline information, further assess the use of research information to promote independent living;

(2) Identify the barriers to increased use of research information by persons with disabilities;

(3) Based on the input of persons with disabilities, identify research that promotes independent living;

(4) Develop and implement strategies to disseminate research information to promote independent living, using a variety of innovative methods and media;

(5) Develop and disseminate strategies that other information providers, such as CILs, NIDRR-funded grantees, and consumer publications, can use to increase the utilization of research to promote independent living, and provide technical assistance to those entities to increase the dissemination and utilization of this information; and

(6) Develop and implement strategies to assist persons with disabilities to increase their use of existing and future information technologies such as the Internet.

In carrying out the purposes of the priority, the DRRP must:

- Include information and activities that feature concepts of consumer choice, independence, personal autonomy and self-direction; and
- Coordinate activities with the NCDDR.

Priority 6: Supported Living and Choice for Persons With Mental Retardation

Background

Personal autonomy and choice are primary rehabilitation goals for persons with mental retardation. Supported living has emerged as a viable approach toward achieving these goals. In order for the potential impact of supported living to be realized, information on supported living must be provided to a wide array of parties involved with promoting choice and community living for persons with mental retardation.

Based on the National Health Interview Survey on adults living in the general household population and surveys of people in formal residential support programs, about .78 percent or 1,250,000 of the adult population of the U.S. can be identified as being limited in a major life activity and having a primary or secondary condition of mental retardation.

NIDRR has supported research and demonstrations in the area of mental retardation and developmental disabilities since 1965. Throughout this time, researchers have addressed issues involving deinstitutionalization, mainstreaming, transition from school to work, supported employment and the overall supports persons with mental retardation and developmental disabilities need to live as independently as possible in the community.

Supported living refers to the development and provision of assistance, including natural supports, to enable persons with mental retardation to live in settings and participate in activities that contribute to their personal goals and quality of life (Abery, B. H., et al., "Research on Community Integration of Persons with Mental Retardation and Related Conditions: Current Knowledge, Emerging Challenges and Recommended Future Directions," Prepared for the NIDRR Long Range Planning Process, pg. 4, May, 1996). Supported living intends to increase control and choice of services and supports that persons with mental retardation receive.

Access to community services and community supports varies greatly by State. Information on trends in supported community living and innovative models of successful community living can assist States to initiate and improve effective services. In addition to parents and family members, direct service personnel such as group home staff, foster family members and job coaches, are primary sources of support and services for persons with mental retardation living in the community.

In the past decade, there has been growing concern about recruitment and retention of direct service personnel. Research has shown high turnover rates of between 55 percent and 73 percent annually (Braddock, D., and Mitchell, D., "Residential Services and Developmental Disabilities in the United States: A National Survey of Staff Compensation, Turnover, and Related Issues," American Association on Mental Retardation, Washington, DC, 1992). In order to attract and retain competent direct service personnel, service providers must provide staff with information and training on effective and innovative approaches to promote independence. Agency trainers and managers require information about effective training techniques that teach support providers how to encourage self advocacy and choice making to persons with mental retardation. In addition, public awareness activities that educate both the public and policymakers on the importance of direct service workers can enhance the image of community workers and the individuals with developmental disabilities they assist (Larson, S. A., et al., "Residential Services Personnel: Recruitment, Training and Retention," *Challenges for a Service System in Transition*, pg. 321; 1994).

Recent developments in two major Federal programs significantly affect the

nature and extent of community-based services for persons with mental retardation: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (welfare reform) and Medicaid. Recent welfare reforms provide States with increased flexibility in the delivery of community-based public services. The Medicaid program is the primary source of payment for both health care and community-based long term care services for persons with mental retardation and their families. Providing training and technical assistance on supported living to policymakers and services providers involved in the administration of welfare and Medicaid programs will enable them to take advantage of new opportunities to shape integrated and flexible programs for persons with mental retardation.

Priority 6

The Secretary will establish a Dissemination, Training, and Technical Assistance Project to promote supported living and choice for persons with mental retardation. The Project shall:

(1) Identify and synthesize research findings on state-of-the-art models of supported living;

(2) Develop and disseminate materials based on the synthesis and provide training and technical assistance to consumers, families, service providers, State policy makers and State agencies; and

(3) Develop and disseminate training materials for direct service staff with input from consumers and family members.

In carrying out the purposes of the priority, the Project must disseminate materials and coordinate training activities with relevant units of the Department of Health and Human Services, State public and private managed care representatives, individuals with disabilities and other NIDRR Centers addressing related issues.

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APPLICABLE PROGRAM REGULATIONS: 34 CFR Parts 350 and 353.

Program Authority: 29 U.S.C. 760-762. Dated: May 5, 1998.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects, and 84.133B, Rehabilitation Research and Training Centers)

Judith E. Heumann,
Assistant Secretary for
Special Education and
Rehabilitative Services.

[FR Doc. 98-12378 Filed 5-8-98; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133A and 84.133B]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Disability and Rehabilitation Research Project and Centers Program for Fiscal Year (FY) 1998

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86, and 350.

Program Title: Disability and Rehabilitation Research Project and Centers Program

CFDA Numbers: 84.133A and 84.133B

Purpose of Program: The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, develop

methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, the purpose of the Disability and Rehabilitation Research Project and Centers Program is to improve the

effectiveness of services authorized under the Act.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1998—DISABILITY AND REHABILITATION RESEARCH PROJECTS, CFDA NO. 84-133A

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)	Project period (months)
Improving Research Information Dissemination and Utilization to Promote Independent Living.	July 10, 1998	1	\$400,000	60
Supported Living and Choice for Persons with Mental Retardation	July 10, 1998	1	400,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Improving Research Information Dissemination and Utilization to Promote Independent Living Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for a project on improving research information dissemination and utilization to promote independent living under the Disability and Rehabilitation Research Project and Centers Program.

(a) Importance of the problem (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of one or more disabled populations (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) Responsiveness to an absolute or competitive priority (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the Federal Register.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the

absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) Design of research activities (8 points).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (4 points).

(ii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (4 points).

(d) Design of demonstration activities (13 points total).

(1) The Secretary considers the extent to which the design of demonstration activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed demonstration activities build on

previous research, testing, or practices (3 points).

(ii) The extent to which the proposed demonstration activities include the use of proper methodological tools and theoretically sound procedures to determine the effectiveness of the strategy or approach (2 points).

(iii) The extent to which the proposed demonstration activities include innovative and effective strategies or approaches (4 points).

(iv) The extent to which the proposed demonstration activities are likely to contribute to current knowledge and practice and be a substantial addition to the state-of-the-art (2 points).

(v) The extent to which the proposed demonstration activities can be applied and replicated in other settings (2 points).

(e) Design of dissemination activities (13 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (2 points); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (2 points).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including

consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (3 points).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (2 points).

(f) Design of utilization activities (12 points total).

(1) The Secretary considers the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the potential new users of the information or technology have a practical use for the information and are likely to adopt the practices or use the information or technology, including new devices (4 points).

(ii) The extent to which the utilization strategies are likely to be effective (4 points).

(iii) The extent to which the information or technology is likely to be of use in other settings (4 points).

(g) Design of technical assistance activities (8 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (2 points).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (2 points).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target

population, needs of the target population, and format for providing information (2 points).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (2 points).

(h) Plan of operation (6 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (3 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (3 points).

(i) Collaboration (3 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(iii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities (1 point).

(j) Adequacy and reasonableness of the budget (4 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(k) Plan of evaluation (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(l) Project staff (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority (1 point).

(m) Adequacy and accessibility of resources (4 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the

facilities, equipment, and other resources of the project (2 points total).

Supported Living and Choice for Persons With Mental Retardation Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for a project on supported living and choice for persons with mental retardation under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the *Federal Register*.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of training activities* (13 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (4 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (3 points).

(iii) The extent to which the proposed training materials, methods, and content

are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (4 points).

(iv) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (2 points).

(d) *Design of dissemination activities* (24 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (7 points).

(ii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (7 points).

(iii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (7 points).

(iv) The extent to which the information to be disseminated will be accessible to individuals with disabilities (3 points).

(e) *Design of utilization activities* (8 points total).

(1) The Secretary considers the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the utilization strategies are likely to be effective (8 points).

(f) *Design of technical assistance activities* (10 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (3 points).

(ii) The extent to which the plan of operation, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (3 points).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (2 points).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (3 points).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (2 points).

(g) *Plan of operation* (6 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (3 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (3 points).

(h) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) *Adequacy and reasonableness of the budget* (4 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority (1 point).

(l) *Adequacy and accessibility of resources* (4 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

APPLICATION NOTICE FOR FISCAL YEAR 1998—REHABILITATION RESEARCH AND TRAINING CENTERS, CFDA NO. 84-133B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Secondary Conditions of Spinal Cord Injuries	July 10, 1998	1	\$800,000	60
Neuromuscular Diseases	July 10, 1998	1	650,000	60
Multiple Sclerosis	July 10, 1998	1	700,000	60
Community Integration for Persons with Traumatic Brain Injury	July 10, 1998	1	800,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

RRTC Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for RRTCs on secondary conditions of spinal cord injuries, neuromuscular diseases, multiple sclerosis, and community integration for persons with traumatic brain injury under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the *Federal Register*.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (35 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in

accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within

budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(g) *Adequacy and reasonableness of the budget* (3 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(h) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(i) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(j) *Adequacy and accessibility of resources* (4 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (1 point).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (2 points).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Instructions for Application Narrative
The Secretary strongly recommends the following:

(1) A one-page abstract;

(2) An Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 125 pages for RRTC applications and 75 pages for Project applications, double-spaced (no more than 3 lines per vertical inch) 8½ x 11"

pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Additional Materials. Estimated Public Reporting Burden. Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80-0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80-0014) and instructions. (NOTE: ED Form 80-0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205-8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-9860. The preferred method for requesting information is to FAX your request to (202) 205-8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202-2645. Telephone: (202) 205-5880. Individuals who use a telecommunications device

for the deaf (TDD) may call the TDD number at (202) 205-2742. Internet: Donna_Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1-888-293-6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219-1511 or, toll free, 1-800-222-4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760-762.
Dated: May 4, 1998.

Judith E. Heumann,
Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Applications Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15%.

An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether my Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure that my Application Will be referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting my Application Can I find Out if it Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		2. DATE SUBMITTED		Applicant Identifier	
3. DATE RECEIVED BY STATE		State Application Identifier			
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier			
5. APPLICANT INFORMATION					
Legal Name:			Organizational Unit:		
Address (give city, county, state, and zip code):			Name and telephone number of the person to be contacted on matters involving this application (give area code):		
6. EMPLOYER IDENTIFICATION NUMBER (EIN): [] [] - [] [] [] [] [] []			7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/>		
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):			A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify):		
9. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: [] [] [] [] [] []			10. NAME OF FEDERAL AGENCY:		
11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:					
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):					
13. PROPOSED PROJECT:			14. CONGRESSIONAL DISTRICTS OF:		
Start Date		Ending Date		a. Applicant	
				b. Project	
15. ESTIMATED FUNDING:			16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?		
a. Federal \$.00			a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:		
b. Applicant \$.00			DATE		
c. State \$.00			b. NO <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372		
d. Local \$.00			<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		
e. Other \$.00					
f. Program Income \$.00			17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?		
g. TOTAL \$.00			<input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No		
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED					
a. Typed Name of Authorized Representative			b. Title		c. Telephone number
d. Signature of Authorized Representative			e. Date Signed		

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|---|--------|--|--------|
| 1. Self-explanatory. | | 12. List only the largest political entities affected (e.g., State, counties, cities). | |
| 2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | | 13. Self-explanatory. | |
| 3. State use only (if applicable). | | 14. List the applicant's Congressional District and any District(s) affected by the program or project. | |
| 4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | | 15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. | |
| 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | | 16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. | |
| 6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | | 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. | |
| 7. Enter the appropriate letter in the space provided. | | 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) | |
| 8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | | |
| 9. Name of Federal agency from which assistance is being requested with this application. | | | |
| 10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | | |
| 11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | | |

OMB Control No. 1875-0102		Expiration Date: 9/30/98		Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.		
U.S. DEPARTMENT OF EDUCATION		BUDGET INFORMATION		NON-CONSTRUCTION PROGRAMS		
Name of Institution/Organization		SECTION A - BUDGET SUMMARY U.S. DEPARTMENT OF EDUCATION FUNDS				
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

Name of Institution/Organization		SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS						SECTION C - OTHER BUDGET INFORMATION (see instructions)	
Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.		Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)		
Budget Categories									
1. Personnel									
2. Fringe Benefits									
3. Travel									
4. Equipment									
5. Supplies									
6. Contractual									
7. Construction									
8. Other									
9. Total Direct Costs (lines 1-8)									
10. Indirect Costs									
11. Training Stipends									
12. Total Costs (lines 9-11)									

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget,

Paperwork Reduction Project 1820-0027, Washington, D.C. 20503. *Disability and Rehabilitation Research Projects* (CFDA No. 84.133A) 34 CFR Part 350 Subpart B. *Rehabilitation Research and Training Center* (CFDA No. 84.133B) 34 CFR Part 350 Subpart C.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Disability and Rehabilitation Research Projects (CFDA No.

84.133A) 34 CFR Part 350 Subpart B.

Rehabilitation Research and Training Center (CFDA No. 84.133B) 34 CFR Part 350 Subpart C.

NOTICE TO ALL APPLICANTS

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382). **To Whom Does This Provision Apply?**

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.** **What Does This Provision Require?**

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and

succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.805 and 85.810—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 800 Independence Avenue, S.W. (Room 3800, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.805 and 85.810—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 800 Independence Avenue, S.W. (Room 3800, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-008 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352 (See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Entity Registrant (if individual, last name, first name, MI):		b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):
11. Amount of Payment (check all that apply): <input type="checkbox"/> actual <input type="checkbox"/> planned		12. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify: _____
13. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind, specify: _____ nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: _____		
15. Continuation Sheet(s) of LLL attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by the 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the law above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
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TRANSPORTATION DEPARTMENT National Highway Traffic Safety Administration

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H.R. 3579/P.L. 105-174

1998 Supplemental Appropriations and Rescissions Act (May 1, 1998; 112 Stat. 58)

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² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

⁵ No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

⁶ No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

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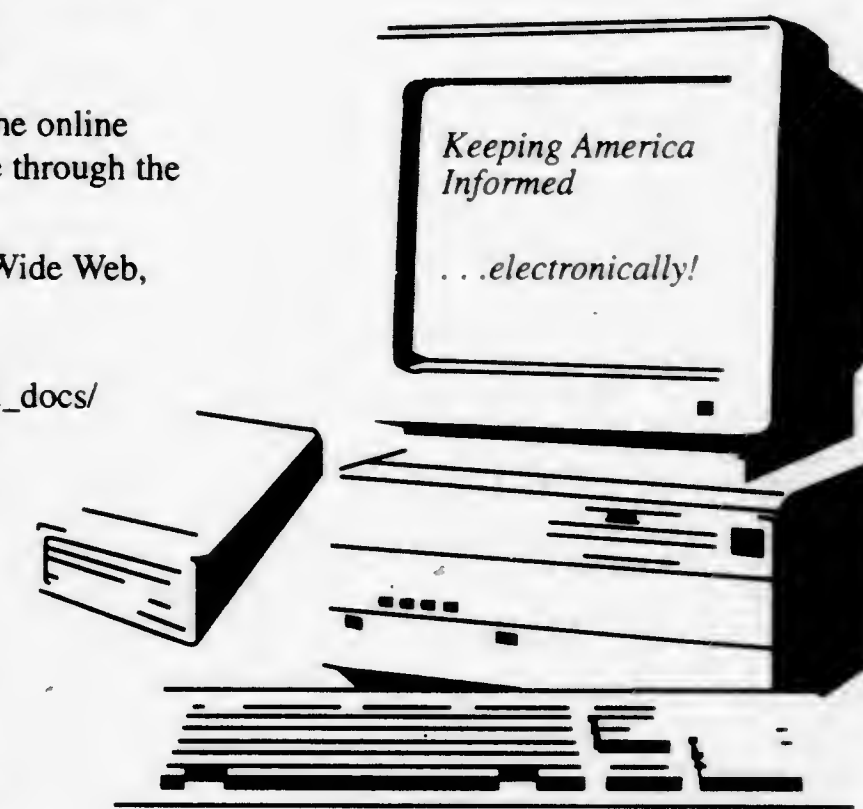
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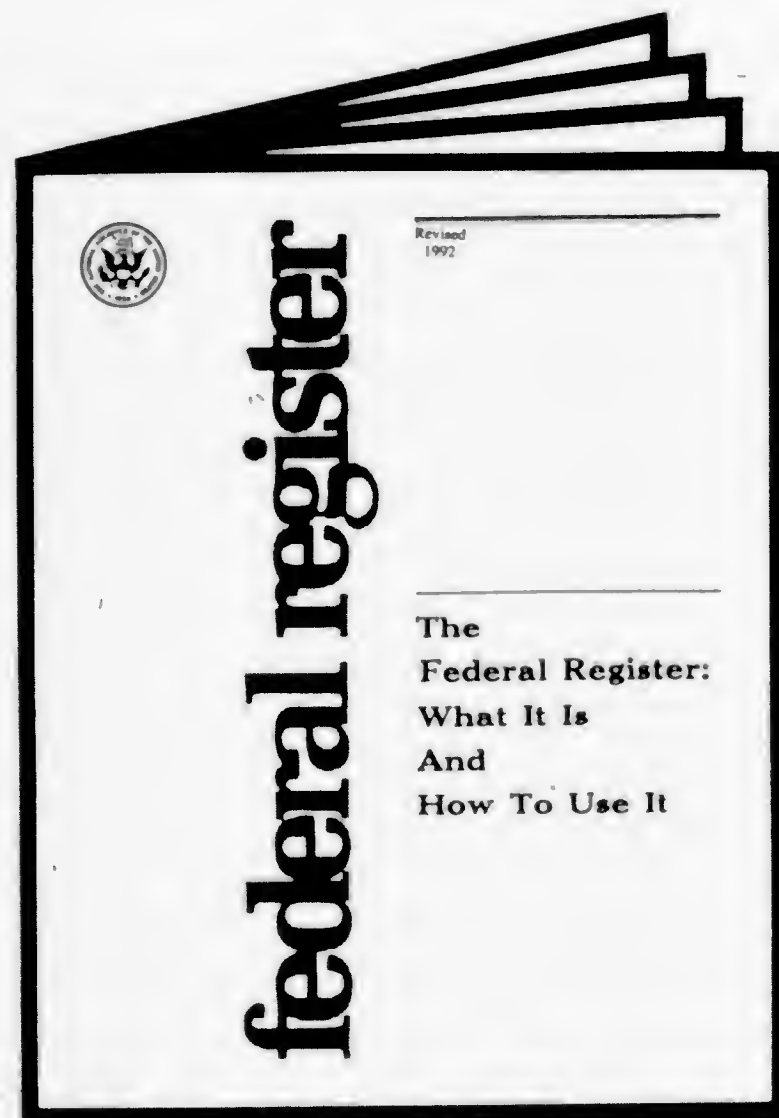
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1720

RIN 2550-AA05

Implementation of the Privacy Act of 1974

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight is adopting as final without change the interim regulation that was published at 63 FR 8840 on February 23, 1998. This final regulation implements the Privacy Act of 1974 by setting forth the procedures by which an individual may request access to records about him/her that are maintained by OFHEO, amendment of such records, or an accounting of disclosures of such records.

DATES: This final regulation is effective June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Deputy General Counsel, or Isabella W. Sammons, Associate General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414-3800 (not a toll-free number). The toll-free telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

The Office of Federal Housing Enterprise Oversight (OFHEO) published an interim regulation at 63 FR 8840 on February 23, 1998, that implemented the Privacy Act of 1974. OFHEO requested comments on the interim regulation, but did not receive any. Accordingly, the interim regulation, which amended Chapter

XVII of title 12 of the Code of Federal Regulations by adding part 1720, is adopted as a final regulation without change.

Dated: May 5, 1998.

Mark A. Kinsey,

Acting Director.

[FR Doc. 98-12588 Filed 5-11-98; 8:45 am]

BILLING CODE 4220-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

Noise Standards: Aircraft Type and Airworthiness Certification

CFR Correction

In Title 14 of the Code of Federal Regulations, parts 1 to 59, revised as of January 1, 1998, on page 779, in appendix A to part 36, the following text was removed and should be reinstated below each equation.

Appendix A to Part 36 [Corrected]

1. In the first column, in paragraph (d)(1)(i), the omitted text should read as follows:

* * * * *
where SPL_i and SPL_{ic} are the measured and corrected sound pressure levels, respectively, in the i-th one-third octave band. The first correction term accounts for the effects of change in atmospheric sound absorption where α_i and α_{ic} are the sound absorption coefficients for the test (determined under section A36.9(d)) and reference atmospheric conditions, respectively, for the i-th one-third octave band and KQ is the measured takeoff sound propagation path. The second correction term accounts for the effects of atmospheric sound absorption on the change in the sound propagation path length where KQ_c is the corrected takeoff sound propagation path. The third correction term accounts for the effects of the inverse square law on the change in the sound propagation path length.

* * * * *

2. Also, in the first column, in paragraph (d)(2)(i), the omitted text should read as follows:

* * * * *

where NS and NS_r are the measured and reference approach sound propagation paths, respectively.

* * * * *

3. In the second column, in paragraph (d)(3), the omitted text should read as follows:

* * * * *

where LX is the measured sideline sound propagation path from station L (Figure A1) to position X of the aircraft for which PNLTM is observed at station L and LX_c is the corrected sideline sound propagation path.

* * * * *

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-111-AD; Amendment 39-10522; AD 98-10-10]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 and 767 series airplanes. This action requires a one-time inspection to confirm the installation of Teflon sleeves over certain electrical wires inside conduits installed in the fuel tanks; and corrective actions, if necessary. This amendment is prompted by a report of missing Teflon sleeves, which protect the wiring insulation from chafing. The actions specified in this AD are intended to prevent such chafing, which could eventually expose the electrical conductor creating the potential for arcing from the wire to the conduit, and consequent fuel tank fire/explosion.

DATES: Effective May 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114,

Attention: Rules Docket No. 98-NM-111-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2681; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: On July 17, 1996, shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York, a Boeing Model 747 series airplane was involved in an accident during which the center fuel tank exploded. Ensuing investigations of the cause of the accident have focused on the fuel tank explosion.

A recent inspection of the main fuel tanks on a Model 747 series airplane indicated that the inner and outer Teflon sleeves were missing from wiring within the conduit of the aft boost pump to the number 4 main fuel tank. The reason for the missing sleeves has not been determined. Missing Teflon sleeves could result in chafing of the wire insulation encasing the fuel pump wiring. These conditions, if not corrected, could eventually expose the electrical conductor creating the potential for arcing from the wire to the conduit, and consequent fuel tank fire/explosion.

Similar Airplanes

The vibration environment and the conduit and wiring installations associated with fuel pumps in the wing fuel tanks of Model 747 and 767 series airplanes are similar. Therefore, the FAA has determined that both models may be subject to the unsafe condition identified in this AD.

Related AD's

The FAA has issued a number of AD's to address various fuel-tank related unsafe conditions on Boeing Model 747 series airplanes, including the following:

- AD 79-05-04, amendment 39-3431 (44 FR 12636, March 8, 1979). This AD was prompted by a report indicating that fuel pump wires had chafed through the insulation in an aluminum

conduit inside an auxiliary fuel tank on a Model 747 series airplane. Electrical arcing from the chafed wire to the aluminum conduit had burned a hole in the conduit permitting fuel leakage; however, the arcing did not result in a fire or explosion. That AD requires discontinued use of the auxiliary fuel tanks unless Teflon sleeving is installed over the wire bundles in accordance with Boeing Alert Service Bulletin 747-28A2091, Revision 1, dated February 5, 1979.

- AD 79-06-02, amendment 39-3439 (44 FR 16362, March 19, 1979). Because the conduit and wiring installations for the auxiliary fuel tanks are similar to those of the number 1 and number 4 main fuel tanks on Model 747 series airplanes, an inspection of the boost pump wiring of the main fuel tank was conducted on other airplanes of this model. Although none of the wires inspected had worn completely through the insulation, chafing through 80 percent of the total insulation thickness was found on numerous wires. The reported chafing was attributed to vibration of the wires against the conduit wall. Based on these results, AD 79-26-02 was issued to require inspection, repair, and modification of the boost pump wires of the outboard main (number 1 and number 4) fuel tanks on Model 747 series airplanes. Corrective actions involve replacing chafed wires, installing wire ties at equal intervals, and installing double-layer Teflon sleeves over the wires, in accordance with Boeing Alert Service Bulletin 747-28A2092, dated February 12, 1979.

- AD 96-26-06, amendment 39-9870 (62 FR 304, January 1, 1997). Following the 1996 accident, AD 96-26-06 was issued to require a one-time inspection in accordance with Boeing Alert Service Bulletin 747-28A2201, dated December 19, 1996. The purpose of this inspection was to detect damage to the Teflon sleeving and wire bundles to the forward and aft boost pumps for the number 1 and number 4 main fuel tanks and to the auxiliary tank jettison pumps (if installed) on Model 747 series airplanes equipped with aluminum conduits. At the time AD 96-26-06 was issued, the FAA had determined that sleeving inside aluminum conduits was more susceptible to chafing and burn-through in the event of arcing than sleeving inside stainless steel conduits.

- AD 97-26-07, amendment 39-10250 (62 FR 65352, December 12, 1997). Based on damage reports from two operators that had replaced the aluminum conduits with stainless steel conduits and had found significant chafing on 48 percent of the airplanes

checked, the FAA concluded that stainless steel conduit installations also should be inspected. Therefore, the FAA issued AD 97-26-07, which supersedes AD 96-26-06 to expand the inspection requirements to include Model 747 series airplanes having stainless steel conduits, and to add repetitive inspections of the Teflon sleeving on all Model 747 series airplanes to determine whether the sleeving would continue to provide a protective barrier after extended time in service.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Message M-7200-98-01080, dated March 18, 1998 (hereinafter referred to as the "message"). The message describes procedures for a one-time inspection to confirm installation of Teflon sleeving over wiring in conduits in the boost pumps of the numbers 1 and 4 main fuel tanks on Boeing Model 747 series airplanes, and in the main and center wing tanks on Model 767 series airplanes; and corrective actions, if necessary. The corrective actions involve follow-on inspections, installation of Teflon sleeves, and replacement of damaged wiring and conduits. Accomplishment of the actions specified in the message is intended to adequately address the identified unsafe condition.

The message refers to Boeing Alert Service Bulletin 747-28A2204 as an additional source of service information for accomplishment of the requirements of this AD.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent chafing of electrical wiring inside the conduits, which could eventually expose the electrical conductor creating the potential for arcing from the wire to the conduit, and consequent fuel tank fire/explosion. This AD requires accomplishment of the actions specified in the message described previously, except as described below. This AD also requires operators to send any damaged wires and conduits, and to submit a report to the FAA.

Differences Between the Rule and the Message

Operators should note that, whereas the message provides a compliance time of 30 days, the rule requires compliance within 60 days. Although the message recommends a 30-day compliance time,

the manufacturer, through a subsequent review of the number of affected airplanes, has advised the FAA that 30 days will be insufficient to accomplish the actions required by this AD on such a large fleet. The FAA has determined that a 60-day compliance time is appropriate in consideration of the safety implications of this AD, the size of the affected fleet, and the practical aspects of an orderly inspection within the allotted time.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-111-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-10-10 Boeing: Amendment 39-10522. Docket 98-NM-111-AD.

Applicability: Model 747 series airplanes, line positions 0001 through 1145 inclusive, that have not been inspected in accordance with AD 96-26-06, amendment 39-9870 (reference Boeing Alert Service Bulletin 747-28A2204, dated December 19, 1996), or AD 97-26-07, amendment 39-10250 (reference Boeing Alert Service Bulletin 747-28A2204, Revision 1, dated October 30, 1997); and

Model 767 series airplanes, line positions 001 through 689 inclusive, and 691; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wire insulation inside conduits installed in the fuel tanks, which could eventually expose the electrical conductor creating the potential for arcing from the wire to the conduit, and consequent fuel tank fire/explosion, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time visual inspection to confirm installation of Teflon sleeves over the electrical wires to the boost pumps installed inside conduits in the numbers 1 and 4 main fuel tanks (for Model 747 series airplanes), or in the main and center wing tanks (for Model 767 series airplanes), as applicable, in accordance with Boeing Message M-7200-98-01080, dated March 18, 1998.

(b) If any Teflon sleeve is found to be missing during the inspection required by paragraph (a) of this AD, prior to further flight, inspect to detect damage to the wires, in accordance with Boeing Message M-7200-98-01080, dated March 18, 1998.

(1) If no damage is found, prior to further flight, install a Teflon sleeve in accordance with the message.

(2) If any damage is found, prior to further flight, inspect to detect damage to the conduits in accordance with the message.

(i) If no damage is found, prior to further flight, replace any damaged wire and install a Teflon sleeve in accordance with the message.

(ii) If any damage is found, prior to further flight, replace any damaged wire and conduit and install a Teflon sleeve, in accordance with the message.

Note 2: Boeing Message M-7200-98-01080, dated March 18, 1998, refers to Boeing Alert Service Bulletin 747-28A2204 as an additional source of service information.

(c) Within 10 days after finding any damage during any inspection required by paragraph (b) of this AD, send damaged wiring and conduits and submit a report to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; fax (425) 227-1181. The report must include the following:

- The airplane model number;
- The airplane line position;
- The total number of hours time-in-service accumulated on the airplane;

- The total number of flight cycles accumulated on the airplane;
- A description of the area of the wiring where the sleeving was missing; and
- A description of the damage found.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Boeing Message M-7200-98-01080, dated March 18, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 27, 1998.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12512 Filed 5-11-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 431, 432, 433, 436, 440, 441, 442, 443, 444, 446, 448, 449, 450, 452, 453, 455, and 460

[Docket No. 98N-0211]

Removal of Regulations Regarding Certification of Antibiotic Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is repealing its regulations governing certification of antibiotic drugs. The agency is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA repealed the statutory provision in the Federal Food, Drug, and Cosmetic Act (the act) under which the agency certified antibiotic drugs. FDAMA also made conforming amendments to the act.

DATES: The direct final rule is effective September 24, 1998. Submit written comments on or before July 27, 1998. If no timely significant adverse comments are received, the agency will publish a document in the *Federal Register* before August 25, 1998, confirming the effective date of the direct final rule. If timely significant adverse comments are received, the agency will publish a document of significant adverse comment in the *Federal Register* withdrawing this direct final rule before August 25, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell or Christine F. Rogers, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

SUPPLEMENTARY INFORMATION:

I. FDAMA

On November 21, 1997, the President signed FDAMA (Pub. L. 105-115). Section 125(b) of FDAMA repealed section 507 of the act (21 U.S.C. 357). Section 507 of the act was the section under which the agency certified antibiotic drugs. Section 125(b) of FDAMA also made conforming amendments to the act.

FDA has determined that it will be most efficient to make changes in its regulations to reflect the repeal of section 507 of the act in phases. In this first phase, this direct final rule removes parts 430 through 460 (21 CFR parts 430 through 460). These regulations provide the procedures and standards used to certify antibiotic drugs, including FDA's antibiotic drug monographs. FDA plans to initiate a second phase direct final rulemaking procedure to make various, noncontroversial conforming amendments to the balance of Title 21 of the Code of Federal Regulations (CFR), such as removing citations to section 507 of the act and references to the certification of antibiotics. The

agency recognizes that as it implements the transition from regulating the premarket review and approval of antibiotic drugs under section 507 of the act to section 505 of the act (21 U.S.C. 355), other issues may arise that could require additional rulemaking. These issues will be addressed in the third phase of implementation.

II. Direct Final Rulemaking

FDA has determined that the subject of this rulemaking is suitable for a direct final rule. The repeal of section 507 of the act eliminates the statutory provision on which the agency relied to certify antibiotic drugs. FDA will, therefore, remove all provisions of Title 21 of the CFR that were issued primarily to carry out the agency's program for the certification of antibiotic drugs under former section 507 of the act. The actions taken should be noncontroversial and the agency does not anticipate receiving any significant adverse comments on this rule.

If FDA does not receive significant adverse comment on or before July 27, 1998, the agency will publish a document in the *Federal Register* before August 25, 1998, confirming the effective date of the direct final rule. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. If timely significant adverse comments are received, the agency will publish a notice of significant adverse comment in the *Federal Register* withdrawing this direct final rule before August 25, 1998.

Elsewhere in this issue of the *Federal Register*, FDA is publishing a companion proposed rule, which is identical to the direct final rule, that provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule and the agency will consider such comments in developing a final rule. FDA will not

provide additional opportunity for comment on the companion proposed rule.

If a significant adverse comment applies to part of this rule and that part may be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the *Federal Register* of November 21, 1997 (62 FR 62466).

III. Description of the Rule

This rule eliminates Part 430—Antibiotic Drugs; General, in its entirety. Part 430 provided definitions used in the certification of antibiotic drugs and contains § 430.10, which carried out former section 507(h) of the act and was intended to address the certification or release of antibiotic drugs affected by the Drug Amendments of 1962 (Pub. L. 87-781).

This rule also eliminates Part 431—Certification of Antibiotic Drugs, which provided various administrative and procedural requirements for the antibiotic certification program, established conditions on the effectiveness of a certification issued by the agency, and set the fees needed to maintain the agency's antibiotic certification program (see former section 507(b) of the act). Subpart D of Part 431—Confidentiality of Information, is also being eliminated because it is duplicative of the provisions in 21 CFR 312.130 governing the disclosure of information in or about an investigational new drug application.

Part 433—Exemptions from Antibiotic Certification and Labeling Requirements is removed by this rule. Part 433 set the conditions for exempting antibiotic drugs from the general requirement of certification as well as from other, more specific, regulatory requirements (see former section 507(c) and (d) of the act).

This rule eliminates Part 436—Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs. Part 436 contained sterility test methods, biological test methods, microbiological assay methods, and chemical tests for antibiotic drugs generally and for specific antibiotic drugs and antibiotic drug dosage forms. These tests and methods of assay established the means by which the agency would certify that a given batch of antibiotic drug was in compliance with applicable standards of identity, strength, quality, and purity (see former section 507(a) and (b) of the act).

This rule also repeals the following parts: Part 440—Penicillin Antibiotic

Drugs; Part 441—Penem Antibiotic Drugs; Part 442—Cepha Antibiotic Drugs; Part 443—Carbacephem Antibiotic Drugs; Part 444—Oligosaccharide Antibiotic Drugs; Part 446—Tetracycline Antibiotic Drugs; Part 448—Peptide Antibiotic Drugs; Part 449—Antifungal Antibiotic Drugs; Part 450—Antitumor Antibiotic Drugs; Part 452—Macrolide Antibiotic Drugs; Part 453—Lincomycin Antibiotic Drugs; Part 455—Certain Other Antibiotic Drugs; and Part 460—Antibiotic Drugs Intended for Use in Laboratory Diagnosis of Disease. These parts contain the standards of identity, strength, quality, and purity that served as the agency's basis for batch certifying or otherwise authorizing the marketing of drugs that were subject to former section 507 of the act, including the classes of penicillin; penem; cepha; carbacephem; oligosaccharide; tetracycline; peptide; antifungal; antitumor; macrolide; and lincomycin antibiotic drugs; several antibiotic drugs not included in the parts listed above; and antibiotic susceptibility discs, powders, and test panels, respectively (see former section 507(a) and (b) of the act).

With the repeal of part 436 and parts 440 *et seq.*, the test methods and assays contained in the approved marketing application and, when applicable, the United States Pharmacopeia (USP) will be used to determine if antibiotic drugs meet the standards of identity, strength, quality, and purity found in the approved marketing application for the drug and, when applicable, the USP.

Finally, the agency is eliminating Part 432—Packaging and Labeling of Antibiotic Drugs, which sets forth special packaging requirements and additional labeling requirements (in addition to the requirements prescribed by 21 CFR 201.100) for drugs that were subject to batch certification or release under former section 507 of the act. With the repeal of section 507 of the act, there is no need to maintain separate or additional labeling and packaging requirements for antibiotic drug products. As with other drug products, labeling of antibiotic drugs will be governed by the agency's general labeling provisions found in 21 CFR part 201 and by applicable over-the-counter drug monographs and approved marketing applications.

Part 432 also included § 432.9, which conditionally authorized the batch certification of antibiotic drugs intended for export, even if the drug failed to meet certain labeling requirements, and provided additional guidance on the labeling of antibiotic drugs for export. In light of the repeal of the batch

certification requirement, § 432.9 may also be eliminated without affecting the export of antibiotic drug products.

It should be noted, however, that differences remain between the application of the export provisions in sections 801 and 802 of the act (21 U.S.C. 381 and 382) to antibiotic drugs and the application of those provisions to other new drugs. Prior to the repeal of section 507 of the act, these differences were based on the fact that antibiotic drugs were not subject to premarket approval under section 505 and, therefore, could be exported under section 801(e)(1) of the act. Antibiotic drugs did not have to meet the export requirements in section 802 that apply to unapproved new drugs. Thus, manufacturers could export antibiotic drugs that had not been certified, released, or exempted from certification, subject only to the provisions of section 801(e)(1) of the act. Section 125(c) of FDAMA preserved the export status of antibiotic drugs (which are now subject to approval under section 505 of the act) by expressly exempting them from section 802. (Section 125(c) of FDAMA included the same exemption for insulin products.) In the second phase of the implementation of section 125 of FDAMA, the agency will consider making appropriate amendments to its regulations to reflect this difference between the application of the export provisions of the act to antibiotic drugs (and insulin products) as opposed to all other new drugs.

The removal of parts 430 *et seq.* is not expected to result in any immediate, significant changes in the manufacturing, packaging, labeling, or marketing of antibiotic drug products. Since 1982, the agency has conditionally exempted all antibiotic drugs from batch certification (47 FR 39155, September 7, 1982). With limited exceptions, such as in the areas of export and generic drug approvals, the agency has imposed much the same regulatory requirements on exempted antibiotic drug products as it has on all other drug products.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5

U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of \$100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. As discussed below, the agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the direct final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires that if a rule has a significant impact on a substantial number of small entities, the agency must analyze regulatory options to minimize the economic impact on small entities. The agency certifies, for the reasons discussed below, that the direct final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires an agency to prepare a budgetary impact statement before issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of \$100 million (adjusted annually for inflation) in any 1 year. The elimination of the regulations governing the certification of antibiotic drugs will not result in any increased expenditures by State, local, and tribal governments or the private sector. Because this rule will not result in an expenditure of \$100 million or more on any governmental entity or the private sector, no budgetary impact statement is required.

This rule is intended to eliminate regulatory procedures and standards that the agency, as a result of the repeal of section 507 of the act, is no longer required to maintain. The elimination of the above listed parts is expected to streamline the regulation of antibiotic drugs by making these products subject to the same regulatory standards as all other drugs for human use. Many of the

provisions that are being eliminated by this rulemaking have not had a material impact on the marketing of antibiotic drugs since 1982, when all antibiotic drugs were conditionally exempted from the batch certification requirement. Other provisions, such as the standards of identity, strength, quality, and purity, have in some instances not been kept up-to-date, are duplicative of USP standards, or have been incorporated into approved marketing applications for specific antibiotic drug products. For these reasons, the agency believes that this rule is necessary and that it is consistent with the principles of Executive Order 12866; that it is not a significant regulatory action under that Order; that it will not have a significant impact on a substantial number of small entities; and that it is not likely to result in an annual expenditure in excess of \$100 million.

VI. Paperwork Reduction Act of 1995

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104-13) is not required.

VII. Request for Comments

Interested persons may, on or before July 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 431

Administrative practice and procedure, Antibiotics, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 432

Antibiotics, Labeling, Packaging and containers.

21 CFR Part 433

Antibiotics, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 436, 440, 441, 442, 443, 444, 446, 448, 449, 450, 452, 453, 455, and 460

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Food and Drug Administration Modernization Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is removed.

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

2. Part 431 is removed.

PART 432—PACKAGING AND LABELING OF ANTIBIOTIC DRUGS

3. Part 432 is removed.

PART 433—EXEMPTIONS FROM ANTIBIOTIC CERTIFICATION AND LABELING REQUIREMENTS

4. Part 433 is removed.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

5. Part 436 is removed.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

6. Part 440 is removed.

PART 441—PENEM ANTIBIOTIC DRUGS

7. Part 441 is removed.

PART 442—CEPHA ANTIBIOTIC DRUGS

8. Part 442 is removed.

PART 443—CARBACEPHEM ANTIBIOTIC DRUGS

9. Part 443 is removed.

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

10. Part 444 is removed.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

11. Part 446 is removed.

PART 448—PEPTIDE ANTIBIOTIC DRUGS

12. Part 448 is removed.

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

13. Part 449 is removed.

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

14. Part 450 is removed.

PART 452—MACROLIDE ANTIBIOTIC DRUGS

15. Part 452 is removed.

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

16. Part 453 is removed.

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

17. Part 455 is removed.

PART 460—ANTIBIOTIC DRUGS INTENDED FOR USE IN LABORATORY DIAGNOSIS OF DISEASE

18. Part 460 is removed.

Dated: May 1, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98-12543 Filed 5-11-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 804

[Docket No. 98N-0170]

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing reporting by manufacturers, importers, distributors, and health care (user) facilities of adverse events related to medical devices. Amendments are being made to implement revisions to the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDA is publishing these amendments in accordance with its direct final rule procedures. Elsewhere in this issue of the *Federal Register*, FDA is publishing a companion proposed rule under FDA's usual procedures for notice and comment to finalize the rule in the event the agency receives a significant adverse comment and withdraws this direct final rule.

DATES: This rule is effective September 24, 1998. Submit written comments on or before July 27, 1998. Submit written comments on the information collection requirements on or before July 13, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Spitzig, Center for Devices and Radiological Health (HFZ-500), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301-594-2812.

SUPPLEMENTARY INFORMATION:

I. Background

Under the act and the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94-295), FDA issued medical device reporting regulations for manufacturers on September 14, 1984 (49 FR 36326). To correct weaknesses noted in the 1976 amendments, and to better protect the public health by increasing reports of device-related adverse events, Congress enacted the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101-629) that required medical device user facilities and distributors to report certain device-related adverse events.

Distributor reporting requirements became effective on May 28, 1992, following the November 26, 1991 (56 FR 60024), publication of those provisions in a tentative final rule. In the *Federal Register* of September 1, 1993 (58 FR 46514), FDA published a notice announcing that the proposed distributor reporting regulations had become final by operation of law and were now codified in part 804 (21 CFR part 804).

On June 16, 1992, the President signed into law the Medical Device Amendments of 1992 (the 1992 amendments) (Pub. L. 102-112) amending certain provisions of section 519 of the act (21 U.S.C. 360i) relating to reporting of adverse device events. Prior to the 1992 amendments, distributors and manufacturers reported adverse events by using a "reasonable probability" standard. Importers may be manufacturers or distributors, depending on their activities. Among other things, the 1992 amendments amended section 519 of the act to change the reporting standard for manufacturers and importers; however, the reporting standard for distributors who are not importers remained the same.

On November 21, 1997, the President signed FDAMA into law. FDAMA made several changes regarding the reporting of adverse events related to devices, including the elimination of reporting requirements for certain distributors, which became effective on February 19,

1998, that are reflected in this direct final rule. However, section 422 of FDAMA states that FDA's regulatory authority under the act, relating to tobacco products, tobacco ingredients, and tobacco additives shall be exercised under the act as in effect on the day before the date of enactment of FDAMA. Because the authority relating to tobacco products remains the same, the reporting requirements for manufacturers and distributors (including distributors who are importers) of cigarettes or smokeless tobacco remain unchanged.

Under part 897, the regulations pertaining to tobacco products, and parts 803 (21 CFR part 803) and 804, the regulations pertaining to device adverse event reporting, importers may be either manufacturers or distributors, depending on their activities. Under parts 897, 803, and 804, importers who repackage or relabel are manufacturers. Similarly, under those sections, importers whose sole activity is distribution of devices are defined as distributors.

As previously stated, the 1992 amendments created a bifurcated reporting standard for distributors, depending on whether they are domestic distributors or importers. When the agency asserted jurisdiction over tobacco products and issued regulations under part 897, tobacco distributors also became subject to this bifurcated reporting standard. Accordingly, the reporting standard applicable to tobacco products distributors has depended on whether the distributor is domestic or an importer. Consistent with section 422 of FDAMA, the direct final rule states that tobacco distributors will continue to use the appropriate reporting standard as described in § 804.25.

Changes made by FDAMA relating to reporting requirements for all medical devices other than tobacco products are as follows:

1. Section 213(a) of FDAMA revised section 519(a) of the act to eliminate distributors as an entity required to report adverse device events. Importers are still required to report under section 519(a) of the act.

2. Section 213(a) also amended section 519(a) of the act to clarify that existing requirements continue to apply for distributors to keep records concerning adverse device events and make them available to FDA upon request.

3. Section 213(a)(2) revoked section 519(d) of the act, which required manufacturers, importers, and distributors to submit to FDA an annual certification concerning the number of

reports filed under section 519(a) in the preceding year. As a result, certification requirements are eliminated.

4. Section 213(c)(1)(A) of FDAMA revised section 519(b)(1)(C) of the act to require that device user facilities submit an annual rather than a semiannual summary of their reports to FDA.

5. Section 213(c)(1)(B) of FDAMA eliminated section 519(b)(2)(C) of the act. This section had required FDA to disclose, upon request, the identity of a device user facility making a report under section 519(b) of the act if the identity of the device user facility was included in a report required to be submitted by a manufacturer, distributor, or importer. As a result of this change by FDAMA, FDA may now disclose the identity of a device user facility only in connection with an action concerning a failure to report or false or fraudulent reporting, a communication to the manufacturer of the device, or to the employees of the Department of Health and Human Services, the Department of Justice, and duly authorized committees and subcommittees of Congress.

II. Final Rule

A. General Approach

1. To implement these provisions, FDA is amending part 804, Distributor Reporting, to reflect that the distributor reporting requirements under that part remain in effect only for distributors (including distributors who are importers) of cigarettes or smokeless tobacco, as defined in part 897. FDA is revoking the reporting requirements under parts 803 and 804 as they apply to distributors who are not importers of all medical devices other than cigarettes or smokeless tobacco. FDA is transferring the reporting requirements for importers of all devices other than cigarettes or smokeless tobacco from part 804 to part 803, Medical Device Reporting. Importers of medical devices will continue to be subject to the same reporting and recordkeeping requirements as they have been under parts 803 and 804, with the exception that, in accordance with FDAMA, importers of devices other than cigarettes or smokeless tobacco products are no longer required to submit annual certifications. They will continue to submit reports on Form 3500A. FDA will review and revise this form as necessary in the near future.

2. Distributor recordkeeping requirements, which also remain in effect, are being transferred from part 804 to part 803, except for those requirements that apply to distributors of cigarettes or smokeless tobacco. The

recordkeeping requirements for distributors of cigarettes or smokeless tobacco remain in part 804. No additional requirements for distributor recordkeeping are being added by these changes.

3. In accordance with FDAMA, FDA is also amending part 803 to reflect the change from semiannual to annual reporting for device user facilities, to eliminate certification requirements for manufacturers of medical devices other than cigarettes or smokeless tobacco, and to limit the disclosability of device user facility identities.

4. FDA is not changing or adding any requirements with respect to manufacturers or distributors of cigarettes or smokeless tobacco, as defined in part 897.

B. Specific Changes to Parts 803 and 804

Reporting and recordkeeping requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco, as defined in part 897, remain in part 804. Reporting and recordkeeping requirements for manufacturers of all medical devices, including manufacturers of cigarettes or smokeless tobacco, and importers of devices other than cigarettes or smokeless tobacco are contained in part 803. Recordkeeping requirements for distributors of products other than cigarettes or smokeless tobacco are also contained in part 803. These parts are amended as follows:

Changes to Part 803

1. Section 803.1 is amended to reflect that the scope of the regulation now includes reporting requirements for importers, as well as manufacturers and device user facilities, and to clarify that distributors continue to be responsible for maintaining incident files.

2. Section 803.3 is amended to reflect that importers continue to be responsible for reporting, by modifying definitions related to reporting so that importers are included.

3. Section 803.9 is amended by removing paragraph (c)(3), which had required FDA to disclose the name of a device user facility making a report if the adverse event was required to be reported by a manufacturer or distributor. The removal of this paragraph corresponds to the elimination by FDAMA of section 519(b)(2)(C) of the act.

4. Section 803.10 is amended to reflect that importers of medical devices remain responsible for reporting adverse device events, by transferring to this section the requirements that were

previously codified under part 804. Furthermore, § 803.10(a)(2) is amended to reflect that device user facilities are now responsible for submitting annual, not semiannual reports. Section 803.10(c)(5) is amended to correspond with the revocation of section 519(d) of the act, which had required annual certification of the number of medical devices report (MDR) reports filed during the preceding year. Revised § 803.10(c)(5) reflects that manufacturers of cigarettes or smokeless tobacco continue to be responsible for complying with the annual certification requirements described in § 803.57.

5. Sections 803.11, 803.17, 803.19, 803.20, 803.22, and 803.56 are amended to reflect that importers continue to be subject to the MDR reporting requirements. Section 803.18 is amended to add "importers" to reflect that importers continue to be responsible for maintaining MDR event files, and to clarify that distributors of medical devices also continue to be responsible for establishing device complaint files and maintaining device incident records.

6. Section 803.12 is amended to reflect the change from "semiannual" to "annual" reports, and the continued inclusion of importers as reporting entities. Section 803.33 is amended to reflect that device user facilities are required to submit annual, not semiannual reports.

7. A new subpart D, consisting of §§ 803.40 and 803.43, has been added to reflect that importers of medical devices continue to be subject to the MDR reporting requirements. These sections represent the transfer of relevant provisions of part 804 (which now applies only to distributors, including those who are importers, of cigarettes or smokeless tobacco) into part 803. Importer reporting and recordkeeping requirements are not being changed by this transfer.

8. Section 803.57 is amended to clarify that the section applies only to manufacturers of cigarettes or smokeless tobacco. This amendment reflects the revocation of section 519(d) of the act, which had required annual certification of the number of MDR reports filed during the preceding year, as it applied to manufacturers of all devices other than cigarettes or smokeless tobacco. This change also reflects the rule of construction in section 422 of FDAMA under which FDA's regulatory authority under the act relating to tobacco products shall be exercised under the act as in effect on the day before the date of enactment of FDAMA.

Changes to Part 804

1. Section 804.1, the scope of part 804, Medical Device Distributor Reporting, is amended to reflect that this part now applies only to distributor reports of adverse events relating to contamination of cigarettes or smokeless tobacco products.

2. Section 804.3 is amended to limit the definition of distributors, for the purposes of part 804, to distributors (including distributors who are importers) of cigarettes or smokeless tobacco products, and to clarify that adverse events that are reportable by distributors are only those related to contamination of cigarettes or smokeless tobacco.

3. Section 804.25 is amended to clarify that adverse events that are reportable under this part are only those related to contamination of cigarettes or smokeless tobacco.

III. Rulemaking Action

In the *Federal Register* of November 21, 1997, FDA described its procedures on when and how FDA will employ direct final rulemaking. FDA believes that this rule is appropriate for direct final rulemaking because FDA views this rule as a noncontroversial amendment and anticipates no significant adverse comments. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing elsewhere in this issue of the *Federal Register* a companion proposed rule to amend existing parts 803 and 804. The companion proposed rule and the direct final rule are substantively identical. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of a significant adverse comment. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comments to the companion proposed rule will be considered as comments regarding the direct final rule.

FDA has provided a comment period on the direct final rule of July 27, 1998. If the agency receives a significant adverse comment, FDA intends to withdraw this final rule by publication in the *Federal Register* within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether a significant adverse comment is sufficient to terminate a direct final

rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment recommending an additional change to the rule may be considered a significant adverse comment if the comment demonstrates why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

If FDA withdraws the direct final rule, all comments received will be considered under the proposed rule in developing a final rule in accordance with usual Administrative Procedure Act notice-and-comment procedures.

If FDA receives no significant adverse comment during the specified comment period, FDA intends to publish a confirmation notice within 30 days after the comment period ends confirming that the direct final rule will go into effect on September 24, 1998.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impact of this direct final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104-121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this direct final rule is not a significant regulatory action as defined by the

Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The rule codifies the elimination of reporting by distributors, other than distributors (including distributors who are importers) of cigarettes or smokeless tobacco, continues reporting by importers (including distributors who are importers), increases protection from disclosure of the identity of device user facilities that have submitted reports, reduces summary reporting by device user facilities from semiannual to annual, eliminates annual certification for manufacturers and distributors (including importers) of medical devices other than cigarettes or smokeless tobacco, and makes other nonsubstantive changes. The agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This direct final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of \$100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

VI. Paperwork Reduction Act of 1995

This direct final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The title, description, and respondent description of the information collection provisions are shown as follows with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Reporting and recordkeeping requirements for manufacturers, importers, user facilities, and distributors of medical devices under FDAMA.

Description: FDAMA contained provisions that affect medical device reporting in a variety of ways. Section 213 of FDAMA eliminated the reporting requirements for medical device distributors (but not for importers), as well as the certification requirements for medical device manufacturers and distributors. This section of FDAMA also modified the summary reporting requirements for user facilities to

require annual, rather than semiannual, reporting, and increased confidentiality of user facility identities. However, section 422 of FDAMA states that FDA's regulatory authority under the act relating to tobacco products, tobacco ingredients, and tobacco additives shall be exercised under the act as in effect on the day before the date of enactment of FDAMA. Under this rule of construction, the reporting and certification requirements for manufacturers and distributors (including distributors who are importers) of cigarettes or smokeless tobacco remain unchanged.

This rule amends FDA's regulations in parts 803 and 804 to reflect the changes to medical device reporting made by FDAMA.

This direct final rule eliminates reporting by distributors other than distributors of cigarettes or smokeless tobacco, continues reporting by importers, increases the protection from disclosure of the identity of device user facilities that have submitted reports, reduces summary reporting by device user facilities from semiannual to annual, eliminates annual certification for manufacturers and distributors (including importers) of medical devices other than cigarettes or smokeless tobacco, and makes other nonsubstantive changes.

Description of Respondents: Businesses or other for profit organizations.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
803.19	150	1	150	3	450
803.33	1,800	1	1,800	1	1,800
803.40	195	1	195	3	585
803.56	750	20	15,000	1	15,000
803.57	31	1	31	1	31
804.25	10	1	10	1.5	15
804.30	1,365	1	1,365	1	1,365
804.32	5	1	5	1	5
804.33	0	0	0	1	0
TOTAL					19,251

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
803.17	2,000	1	2,000	2	4,000
803.18	39,764	1	39,764	1.5	59,646
804.34	1,365	1	1,365	2	2,730
804.35	1,365	1	1,365	1.5	2,047
TOTAL					67,058

There are no capital costs or operating and maintenance costs associated with this collection of information.

The burdens under this direct final rule are explained as follows:
Reporting Requirements

Prior to the program change reflected in this rule, § 803.19 allowed manufacturers or user facilities to request an exemption or variance from the reporting requirements. The agency had estimated that it would receive approximately 100 such requests annually. Distributors (including importers) were able to request an exemption or variance from the reporting requirements under § 804.33. Under this rule, § 803.19 is modified to transfer the exemption provisions for importers of medical devices other than

cigarettes or smokeless tobacco from § 804.33 to § 803.19. Furthermore, distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco are no longer required to submit MDR reports under this rule. The estimated burden for § 803.19 is further adjusted to reflect the agency's actual experience with this type of submission.

Prior to the program change reflected in this rule, § 803.33 required medical device user facilities to submit summary reports semiannually. Under this rule, user facilities are required to submit summary reports annually, thereby significantly decreasing the reporting burden on user facilities. The estimated

burden for this section is also adjusted to reflect the agency's actual experience with this type of submission.

Under this rule the reporting requirement for importers of medical devices other than cigarettes or smokeless tobacco previously codified under § 804.25 is being transferred to § 803.40. The estimated burden for importer reporting is based upon the agency's actual experience with this type of submission. The reporting requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco have been retained in part 804.

Prior to the program change reflected in this rule, § 803.56 required

manufacturers to submit supplemental reports containing information not known or not available at the time the initial report was submitted. The agency had estimated that it would receive approximately 500 such requests annually. Distributors (including importers) were required to submit supplemental information under § 804.32. Under this rule, § 803.56 is modified to transfer the supplemental reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco from § 804.32. Furthermore, distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco are no longer required to submit MDR reports (and thus supplemental reports as well) under this rule. The estimated burden for § 803.56 is further adjusted to reflect the agency's actual experience with this type of submission. The agency also notes that any additional information requested by the agency in accordance with § 803.15 is considered to be supplemental information for the purpose of this information collection and is included in the burden estimate for § 803.56.

Prior to the program change reflected in this rule, § 803.57 required medical device manufacturers to annually certify as to the number of reports submitted during the previous year, or that no such reports had been submitted. Distributors (including importers) were required to certify under § 804.30. Under this rule, § 803.57 is modified to require annual certification only for manufacturers of cigarettes or smokeless tobacco. The certification requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco have been retained in § 804.30.

Prior to the program change reflected in this rule, § 804.25 required medical device distributors (including importers) to report adverse device events. Under this rule, distributors of medical devices other than cigarettes or smokeless tobacco are no longer required to submit MDR reports, and the reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco have been transferred to part 803. Section 804.25 now requires distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit MDR reports for adverse events related to contamination of their products. The agency believes that there will be a very small number of MDR reports related to contamination of cigarettes or smokeless tobacco submitted in any given year.

Prior to the program change reflected in this rule, § 804.30 required medical

device distributors (including importers) to certify as to the number of MDR reports submitted during the previous year, or that no such reports were submitted. Under this rule, the certification requirement has been removed for distributors (including importers) of medical devices other than cigarettes or smokeless tobacco. Section 804.30 now requires distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit certifications of the number of MDR reports submitted for adverse events related to contamination of their products. The agency has identified 1,365 distributors of cigarettes or smokeless tobacco, each of which shall submit one certification annually.

Prior to the program change reflected in this rule, § 804.32 required medical device distributors (including importers) to submit supplemental information related to a previously submitted MDR report. Under this rule, distributors of medical devices other than cigarettes or smokeless tobacco are no longer required to submit any MDR reports, and the reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco have been transferred to part 803. Section 804.32 now requires distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit supplemental information related to a previously submitted MDR report. Because the agency believes that there will be a very small number of MDR reports submitted in any given year, even fewer supplemental submissions are anticipated. The agency also notes that any additional information requested by the agency in accordance with § 804.31 is considered to be supplemental information for the purpose of this information collection and is included in the burden estimate for § 804.32.

Prior to the program change reflected in this rule, § 804.33 allowed medical device distributors (including importers) to request an exemption or variance from the reporting requirements. Under this rule, the exemption provisions for importers of medical devices other than cigarettes or smokeless tobacco are transferred to § 803.19, and distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco are no longer required to submit any MDR reports under this rule. Section 804.33 now allows distributors (including distributors who are importers) of cigarettes or smokeless tobacco to request an exemption or variance from the reporting requirements. However, because distributors (including

distributors who are importers) of cigarettes or smokeless tobacco are required only to submit reports of adverse events related to contamination of their products, the agency does not anticipate any requests for exemptions or variances from the reporting requirements.

Recordkeeping Requirements

Prior to the program change reflected in this rule, § 803.17 required manufacturers and user facilities to establish written procedures for employee education, complaint processing, and documentation of information related to MDR's. Under this rule, the requirements for establishing written MDR procedures for importers of medical devices other than cigarettes or smokeless tobacco have been transferred to § 803.17, and the requirements for distributors (including importers) of cigarettes or smokeless tobacco are retained in § 804.34. The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information related to MDR reporting as part of their internal quality control system. The agency has estimated that no more than 2,000 such entities would be required to establish new procedures, or revise existing procedures, in order to comply with this provision. For those entities, a one-time burden of 10 hours, annualized over a period of 5 years, is estimated for establishing written MDR procedures. The remainder of manufacturers, user facilities, and importers not required to revise their written procedures to comply with this provision are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered "usual and customary" under 5 CFR 1320.3(b)(2).

Prior to the program change reflected in this rule, § 803.18 required manufacturers and user facilities to establish and maintain MDR event files. Distributors (including importers) were required to establish and maintain MDR event files under § 804.35. Under this rule, § 803.18 is modified to transfer the recordkeeping requirements for importers and other distributors of medical devices other than cigarettes or smokeless tobacco from § 804.35. Recordkeeping requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco have been retained in § 804.35. Prior to the program change reflected in this rule, § 804.34 required distributors (including importers) of all medical devices to establish written

procedures for employee education, complaint processing, and documentation of information related to MDR reports. Under this rule, distributors of medical devices other than cigarettes or smokeless tobacco are no longer required to submit MDR reports. Accordingly, they are no longer subject to the requirement to establish and maintain written MDR procedures although distributors are required to establish device complaint files in accordance with 21 CFR 820.198. Under this rule, the requirement for establishing written MDR procedures for importers of medical devices other than cigarettes or smokeless tobacco is transferred to § 803.17, and the requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco are retained in § 804.34. The agency has estimated a one-time burden of 10 hours, annualized over a period of 5 years, for distributors (including distributors who are importers) of cigarettes or smokeless tobacco to establish written MDR procedures under § 804.34.

Prior to the program change reflected in this rule, § 804.35 required distributors (including importers) to establish and maintain MDR event files. Under this rule, the recordkeeping burdens for distributors (including importers) of medical devices other than cigarettes or smokeless tobacco have been transferred to § 803.18. Recordkeeping requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco are retained in § 804.35.

As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection provisions of this direct final rule by July 13, 1998, to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the *Federal Register* when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct final rule, FDA will publish a notice in the *Federal Register* of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless it displays a current valid OMB control number.

VII. Request for Comments

Interested persons may, on or before July 27, 1998, submit to the Docket Management Branch (address above) written comments regarding this rule. The comment period runs concurrently with the comment period for the companion proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered as comments regarding the companion proposed rule and this direct final rule. In the event the direct final rule is withdrawn, all comments received regarding the companion proposed rule and this direct final rule will be considered comments on the proposed rule.

List of Subjects in 21 CFR Parts 803 and 804

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 803 and 804 are amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

2. Section 803.1 is amended by revising paragraph (a) to read as follows:

§ 803.1 Scope.

(a) This part establishes requirements for medical device reporting. Under this part, device user facilities, importers, and manufacturers, as defined in § 803.3, must report deaths and serious injuries to which a device has or may have caused or contributed, must establish and maintain adverse event files, and must submit to FDA specified followup and summary reports. Medical device distributors, as defined in § 803.3, are also required to maintain incident files. Furthermore, manufacturers and importers are also required to report certain device malfunctions. These reports will assist FDA in protecting the public health by helping to ensure that devices are not

adulterated or misbranded and are safe and effective for their intended use.

3. Section 803.3 is amended by redesignating paragraphs (m) through (ee) as paragraphs (n) through (ff), respectively; by revising the last sentence of the introductory text of paragraph (c), paragraph (c)(1), and redesignated paragraphs (p), (p)(1), and (r)(2); and by adding paragraphs (g) and (m) to read as follows:

§ 803.3 Definitions.

(c) * * * Manufacturers and importers are considered to have become aware of an event when:

(1) Any employee becomes aware of a reportable event that is required to be reported by an importer within 10 days, or by a manufacturer within 30 days or within 5 days under a written request from FDA under § 803.53(b); and

(g) *Distributor* means, for the purposes of this part, any person (other than the manufacturer or importer) who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under § 803.3(o). For the purposes of this part, distributors do not include distributors of cigarettes or smokeless tobacco.

(m) *Importer* means, for the purposes of this part, any person who imports a device into the United States and who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under § 803.3(o). For the purposes of this part, importers do not include importers of cigarettes or smokeless tobacco.

(p) *Manufacturer or importer report number* means the number that uniquely identifies each individual adverse event report submitted by a manufacturer or importer. This number consists of three parts as follows:

(1) The FDA registration number for the manufacturing site of the reported device, or for the importer. (If the

manufacturing site or the importer does not have a registration number, FDA will assign a temporary number until the site is officially registered. The manufacturer or importer will be informed of the temporary number.);

(r) * * *

(2) An event about which manufacturers or importers have received or become aware of information that reasonably suggests that one of their marketed devices:

(i) May have caused or contributed to a death or serious injury; or
(ii) Has malfunctioned and that the device or a similar device marketed by the manufacturer or importer would be likely to cause a death or serious injury if the malfunction were to recur.

§ 803.9 [Amended]

4. Section 803.9 *Public availability of reports* is amended by adding "or" after the semicolon at the end of paragraph (c)(2), by removing paragraph (c)(3), and by redesignating paragraph (c)(4) as paragraph (c)(3).

5. Section 803.10 is amended by revising the heading and paragraphs (a)(2) and (c)(5), and by adding paragraph (b) to read as follows:

§ 803.10 General description of reports required from user facilities, importers, and manufacturers.

(a) * * *

(2) User facilities must submit annual reports as described in § 803.33.

(b) Importers must submit MDR reports of individual adverse events within 10 working days after the importer becomes aware of an MDR reportable event as described in § 803.3. Importers must submit reports of device-related deaths or serious injuries to FDA and the manufacturer and reports of malfunctions to the manufacturer.

(c) * * *

(5) For manufacturers of cigarettes or smokeless tobacco, annual certification to FDA of the number of MDR reports filed during the preceding year as described in § 803.57.

§ 803.11 [Amended]

6. Section 803.11 *Obtaining the forms* is amended in the first sentence by adding the word

"", importers," after the phrase "User facilities".

7. Section 803.12 is amended by revising paragraph (b) to read as follows:

§ 803.12 Where to submit reports.

(b) Each report and its envelope shall be specifically identified, e.g., "User

Facility Report," "Annual Report," "Importer Report," "Manufacturer Report," "5-Day Report," "Baseline Report," etc.

§ 803.17 [Amended]

8. Section 803.17 *Written MDR procedures* is amended in the introductory paragraph by adding the word "", importers," after the phrase "User facilities".

9. Section 803.18 is amended by revising the heading, the first sentence of paragraphs (a) and (b)(1) introductory text, paragraphs (b)(1)(ii) and (b)(2), and the second sentence of paragraph (c), and by adding paragraph (d) to read as follows:

§ 803.18 Files and distributor records.

(a) User facilities, importers, and manufacturers shall establish and maintain MDR event files. * * *

(b)(1) For purposes of this part, "MDR event files" are written or electronic files maintained by user facilities, importers, and manufacturers. * * *

(ii) Copies of all MDR forms, as required by this part, and other information related to the event that was submitted to FDA and other entities (e.g., an importer, distributor, or manufacturer).

(2) User facilities, importers, and manufacturers shall permit any authorized FDA employee during all reasonable times to access, to copy, and to verify the records required by this part.

(c) * * * Manufacturers and importers shall retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event or a period of time equivalent to the expected life of the device, whichever is greater. * * *

(d)(1) A device distributor shall establish device complaint files in accordance with § 820.198 of this chapter and maintain an incident record containing any information, including any written or oral communication, that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness, or performance of a device. Device incident records shall be prominently identified as such and shall be filed by device.

(2) A device distributor shall retain copies of the records required to be maintained under this section for a period of 2 years from the date of inclusion of the record in the file or for a period of time equivalent to the design and expected life of the device, whichever is greater, even if the distributor has ceased to distribute the device that is the subject of the record.

(3) A device distributor shall maintain the device complaint files established under this section at the distributor's principal business establishment. A distributor that is also a manufacturer may maintain the file at the same location as the manufacturer maintains its complaint file under §§ 820.180 and 820.198 of this chapter. A device distributor shall permit any authorized FDA employee, during all reasonable times, to have access to, and to copy and verify, the records required by this part.

§ 803.19 [Amended]

10. Section 803.19 *Exemptions, variances, and alternative reporting requirements* is amended by adding in paragraphs (b) and (c) the word "", importers," before the phrase "or user facility," and by adding in paragraph (c) a comma after the word "variance".

11. Section 803.20 is amended by revising the last sentence of introductory text of paragraph (a), paragraph (a)(1), and the first sentence of paragraph (a)(2), and by adding paragraph (b)(2) to read as follows:

§ 803.20 How to report.

(a) * * * The form has sections that must be completed by all reporters and other sections that must be completed only by the user facility, importer, or manufacturer.

(1) The front of FDA Form 3500A is to be filled out by all reporters. The front of the form requests information regarding the patient, the event, the device, and the "initial reporter" (i.e., the first person or entity that submitted the information to the user facility, manufacturer, or importer).

(2) The back part of the form contains sections to be completed by user facilities, importers, and manufacturers. * * *

(b) * * *

(2) Importers are required to submit MDR reports to FDA and the device manufacturer, except for malfunctions which are reported to the manufacturer only:

(i) Within 10 working days of becoming aware of information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury.

(ii) Within 10 working days of receiving information that a device marketed by the importer has malfunctioned and that such a device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

* * *

§ 803.22 [Amended]

12. Section 803.22 *When not to file* is amended by adding in paragraphs (a) and (b)(1) the word "importer," after the word "facility".

§ 803.33 [Amended]

13. Section 803.33 *Semiannual reports* is amended by revising the heading to read "Annual reports"; in introductory text of paragraph (a) by removing the phrase "(for reports made July through December) and by July 1 (for reports made January through June)"; in introductory text of paragraph (a) and paragraphs (a)(5), (a)(7) introductory text, and (c) by removing the word "semiannual" wherever it appears and adding in its place the word "annual"; in paragraph (a)(2) by removing the phrase "and period, e.g., January through June or July through December"; and by adding in paragraph (a)(7)(vi) the word "importer," after the word "distributor".

14. Subpart D, consisting of §§ 803.40 and 803.43, is added to read as follows:

Subpart D—Importer Reporting Requirements

Sec.

803.40 Individual adverse event reporting requirements; importers.

803.43 Individual adverse event report data elements.

Subpart D—Importer Reporting Requirements

§ 803.40 Individual adverse event reporting requirements; importers.

(a) An importer shall submit to FDA a report, and a copy of such report to the manufacturer, containing the information required by § 803.43 on FDA form 3500A as soon as practicable, but not later than 10 working days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or medical or scientific literature, whether published or unpublished, that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury.

(b) An importer shall submit to the manufacturer a report containing information required by § 803.43 on FDA form 3500A, as soon as practicable, but not later than 10 working days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or through the importer's own research, testing, evaluation, servicing, or maintenance of one of its devices, that one of the devices marketed by the importer has

malfunctioned and that such device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

§ 803.43 Individual adverse event report data elements.

(a) Each importer that submits a report on an MDR reportable event shall complete and submit the applicable portions of FDA form 3500A in so far as the information is known or should be known to the importer, and submit it to FDA, and to the manufacturer as required by § 803.40.

(b) Each importer shall submit the information requested on FDA form 3500A, including:

(1) Identification of the source of the report.

(i) Type of source that reported the event to the importer (e.g., lay user owner, lay user lessee, hospital, nursing home, outpatient diagnostic facility, outpatient treatment facility, ambulatory surgical facility);

(ii) Importer report number;

(iii) Name, address, and telephone number of the source that reported the event to the importer (e.g., distributor, user facility, practitioner, etc.); and

(iv) Name of the manufacturer of the device.

(2) Date information.

(i) The date of the occurrence of the event;

(ii) The date the source that reported the event to the importer became aware of the event;

(iii) The date the event was reported to the manufacturer and/or FDA; and

(iv) The date of this report.

(3) The type of MDR reportable event (e.g., death, serious illness, serious injury, or malfunction), and whether an imminent hazard was involved;

(4) Patient information including age, sex, diagnosis, and medical status immediately prior to the event and after the event;

(5) Device information including brand and labeled name, generic name, model number or catalog number or other identifying numbers, serial number or lot number, purchase date, expected shelf life/expiration date (if applicable), whether the device was labeled for single use, and date of implant (if applicable);

(6) Maintenance/service information data including the last date of service performed on the device, where service was performed, whether service documentation is available, and whether service was in accordance with the service schedule;

(7) Whether the device is available for evaluation and, if not, the disposition of the device;

(8) Description of the event, including:

(i) Who was operating or using the device when the event occurred;

(ii) Whether the device was being used as labeled or as otherwise intended;

(iii) The location of the event;

(iv) Whether there was multi-patient involvement, and if so, how many patients were involved;

(v) A list of any other devices whose performance may have contributed to the event and their manufacturers, and the results of any analysis or evaluation with respect to such device (or a statement of why no analysis or evaluation was performed); and

(vi) A complete description of the event including, but not limited to, what happened, how the device was involved, the nature of the problem, patient followup/treatment required, and any environmental conditions that may have influenced the event.

(9) The results of any analysis of the device and the event, including:

(i) The method of the evaluation or an explanation of why no evaluation was necessary or possible;

(ii) The results and conclusions of the evaluation;

(iii) The corrective actions taken; and

(iv) The degree of certainty concerning whether the device caused or contributed to the reported event;

(10) The name, title, address, telephone number, and signature of the person who prepared the report.

§ 803.56 [Amended]

15. Section 803.56 *Supplemental reports* is amended in the introductory paragraph and in paragraphs (a) and (b) by adding the words "or importer" after the word "manufacturer".

§ 803.57 [Amended]

16 Section 803.57 *Annual certification* is amended in paragraphs (a) and (d) by removing the word "manufacturers" wherever it appears and by adding in its place the phrase "manufacturers of cigarettes or smokeless tobacco", and in paragraphs (b), (c)(1), and (d) by removing the word "manufacturer" wherever it appears and adding in its place the phrase "manufacturer of cigarettes or smokeless tobacco".

PART 804—MEDICAL DEVICE REPORTING FOR DISTRIBUTORS OF CIGARETTES OR SMOKELESS TOBACCO

17. The authority citation for 21 CFR part 804 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

18. Part 804 is amended by revising the heading to read as set forth above.

19. Section 804.1 is amended by revising paragraph (a) to read as follows:

§ 804.1 Scope.

(a) FDA is requiring distributors of cigarettes or smokeless tobacco to report deaths, serious illnesses, and serious injuries that are attributed to contamination of a cigarette or smokeless tobacco product. Distributors of cigarettes or smokeless tobacco are also required to submit a report to FDA annually certifying the number of medical device reports filed during the preceding year, or that no reports were filed. These reports enable FDA to protect the public health by helping to ensure that these products are not adulterated or misbranded and are otherwise safe and effective for their intended use. In addition, distributors of cigarettes or smokeless tobacco are required to establish and maintain complaint files or incident files as described in § 804.35, and to permit any authorized FDA employee at all reasonable times to have access to, and to copy and verify, the records contained in this file. This part supplements, and does not supersede, other provisions of this subchapter, including the provisions of part 820 of this chapter.

20. Section 804.3 is amended by revising paragraph (d), and in paragraphs (m)(1) and (m)(2) by adding the phrase "related to the contamination of cigarettes or smokeless tobacco" after the word "event" to read as follows:

§ 804.3 Definitions.

(d) *Distributor* means, for the purpose of this part, any person who furthers the distribution of cigarettes or smokeless tobacco, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption, but who does not repackage or otherwise change the container, wrapper, or labeling of the product package. Common carriers are not considered distributors for the purposes of this part.

§ 804.25 [Amended]

21. Section 804.25 *Reports by distributors* is amended in paragraph (a)(1) by removing the words "a device" and adding in their place the phrase "contamination of a cigarette or smokeless tobacco product"; in paragraph (a)(2) by removing the phrase "one of its marketed devices" and

adding in its place the phrase "contamination of one of its cigarette or smokeless tobacco products"; and by removing paragraph (c).

Dated: May 1, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98-12614 Filed 5-11-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1240

[Docket No. 97P-0418]

Revocation of Lather Brushes Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking its regulation pertaining to the treatment, sterilization, handling, storage, marking, and inspection of lather brushes. FDA is revoking this regulation because the regulation is no longer necessary to protect the public health.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Policy Development and Coordination Staff (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3380.

DATES: This final rule is effective June 11, 1998.

SUPPLEMENTARY INFORMATION:

I. Background

In the *Federal Register* of October 20, 1997 (62 FR 54398), FDA proposed to revoke a regulation pertaining to the treatment, sterilization, handling, storage, marking, and inspection of lather brushes. The preamble to the proposal explained that the lather brush regulation was originally published in 1949 by the Federal Security Agency and was intended to prevent cases of cutaneous anthrax through lather brushes made from animal hair or bristles. A Government reorganization transferred the Federal Security Agency's functions to the then-Department of Health, Education, and Welfare (now known as the Department of Health and Human Services), and responsibility for the rule was later assigned, in 1975, to FDA. The rule was codified at § 1240.70 (21 CFR 1240.70).

FDA proposed to revoke the regulation because it was unaware of

any reliance on the lather brush requirements or of any current concerns associated with lather brushes and because the regulation was no longer necessary to protect the public health. The proposal also noted that the then-Center for Disease Control (now the Centers for Disease Control and Prevention) revoked a similar lather brush regulation in 1985 on the grounds that no case of cutaneous anthrax in the United States had been associated with lather brushes since 1930.

FDA received no comments on the proposal. Consequently, this final rule revokes § 1240.70.

II. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule eliminates certain manufacturing requirements for lather brushes, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 1240

Communicable diseases, Public health, Travel restrictions, Water supply.

Therefore, under the Public Health Service Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1240 is amended as follows:

PART 1240—CONTROL OF COMMUNICABLE DISEASES

1. The authority citation for part 1240 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

§ 1240.70 [Removed]

2. Section 1240.70 *Lather brushes* is removed.

Dated: May 4, 1998.

William K. Hubbard,
Associate Commissioner for Policy
Coordination.

[FR Doc. 98-12450 Filed 5-11-98; 8:45 am]
BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-6011-6]

RIN 2060-AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Amendments.

SUMMARY: This action promulgates final amendments to the National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) by adding tetrahydrobenzaldehyde (THBA) and crotonaldehyde to, and removing acetaldehyde from, the list of chemical production processes. The amendment also establishes a separate compliance date of 3 years from final action for subparts F and G of part 63 and 1 year from final action for subpart H of part 63 for the THBA and crotonaldehyde production processes. The EPA is also making a change to clarify compliance demonstration requirements for flexible operation units.

This action implements section 112(d) of the Clean Air Act as amended in 1990

(the Act), which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b) of the Act. The intended effect of this rule is to protect the public by requiring new and existing major sources to control emissions of HAP to the level reflecting application of the maximum achievable control technology. This action also amends the initial list of source categories of HAP required by section 112(c) of the Act by removing THBA production from the list of categories of major sources.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: For information concerning this action contact Mr. John Schaefer at (919) 541-0296, Organic Chemicals Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities and Background Information

A. Regulated Entities

The regulated category and entities affected by this action include:

Category	Regulated entities
Industry ..	Facilities that produce tetrahydrobenzaldehyde; facilities that produce crotonaldehyde. Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR part 63, subpart F.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F or facilities producing THBA or crotonaldehyde and that are located at facilities that are major sources as defined in section 112 of the Clean Air Act (CAA). To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

With today's action, EPA is making production of THBA and crotonaldehyde subject to subparts F, G,

and H of 40 CFR Part 63. Subparts F, G, and H of 40 CFR Part 63 establish National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) (57 FR 62607). This rule is commonly referred to as the hazardous organic NESHAP or the HON. The HON rule applies to SOCMI facilities located at major sources and affects approximately 310 facilities nationwide. These SOCMI facilities include those that produce one or more of the synthetic organic chemicals listed in Table 1 of Subpart F and that either (1) use an organic HAP as a reactant or (2) produce an organic HAP in the process. Emission points within these facilities affected by the rule are process vents, storage vessels, transfer operations, equipment leaks, and wastewater collection systems. Processes producing THBA were not included on the list of SOCMI processes to be regulated under the HON. Crotonaldehyde production was removed from the list of SOCMI processes to be regulated by the HON when the rule was issued in April 1994. Crotonaldehyde production was deleted because available information indicated that this chemical was no longer produced in the United States. Because EPA has since learned that crotonaldehyde is still produced in the United States, in today's action EPA is adding crotonaldehyde production to the HON.

II. Summary of Changes to Rule

A. Addition of THBA Production

Tetrahydrobenzaldehyde production was included as a source of HAP emissions under the source category of butadiene dimers production on the initial list of source categories selected for regulation under Section 112(c) of the Act published on July 16, 1992 (57 FR 31576) and was scheduled for control by November 1997 on the section 112(e) source category schedule (58 FR 63941). Although the initial source category list clearly identified THBA production as being included in the butadiene dimers production source category, the butadiene dimers name was a misnomer. Consequently, the butadiene dimers production source category was changed to tetrahydrobenzaldehyde production by a source category list maintenance action finalized on June 4, 1996 (61 FR 28197). Today's action will add THBA production to the list of HON-affected chemicals.

THBA is produced by reacting 1,3-butadiene and acrolein together. Both 1,3-butadiene and acrolein are HAPs

and are emitted during the production process. At this time, only one facility in the nation manufactures THBA, and it is not expected that additional facilities will begin producing THBA. The THBA production unit is co-located with other SOCMI production units to which the HON is applicable. In addition, the emissions points and air pollution control measures applied are identical to those encountered in these co-located SOCMI units.

THBA is used in the manufacture of paint additives. The product is similar to other SOCMI products on the list of HON-affected chemicals in that it is an intermediate organic chemical used in the manufacture of other organic chemicals. The production of THBA was not included in the HON initially, because EPA was unaware of THBA's similarities to other SOCMI chemicals. Had EPA been aware of these similarities THBA would have been included in the list of affected HON chemicals in the initial HON rulemaking and subject to the requirements in the HON.

The EPA considers THBA production to be a batch process for purposes of equipment leaks since, the process operates over only a short operating cycle before experiencing significant fouling (plugging) in the reaction system, requiring the system to be shutdown and the equipment cleaned. Due to the frequent shutdown and equipment cleaning cycle, the process is classified as a batch process for purposes of subpart H.

The effect of today's action is twofold. First, it subjects facilities manufacturing THBA to the provisions of 40 CFR part 63, subparts F, G, and H. Although an assessment of the impacts (environmental, cost, economic, or other) associated with this action has not been conducted, the EPA believes that the impact on the THBA production unit will be no more or less severe than those imposed on the other SOCMI production processes already affected. Second, it overrides the need to write a separate regulation for the THBA production source category. Consequently, the THBA production source category is being removed from the list of HAP-emitting source categories published pursuant to Section 112(c) of the Act because it is being subsumed under the HON rule. The EPA does not believe that the development of a separate rule for this source category is justified or would result in a different control level than that required under the HON. Today's action is consistent with the source category schedule, which requires regulation of THBA production

(originally listed as butadiene dimers production) by November 1997.

With respect to the issue of whether the addition of the THBA production source category to the population of SOCMI sources regulated by the HON would alter the maximum achievable control technology (MACT) determinations made for the HON rule, it has been concluded that since the emission points and air pollution control measures at the only facility known to manufacture THBA are similar to those at other SOCMI sources, the HON MACT floor determination would be unaffected.

This action establishes compliance dates for THBA production units of 1 year from the date this action is published for subpart H of this part and 3 years from the date this action is published for subparts F and G of this part. The compliance date of three years from the date of this action for compliance with subparts F and G of this part is to allow time for retrofitting of controls and evaluation of control requirements in the one known facility. A facility has one year from today for compliance with subpart H of this part. One year is believed to provide sufficient time to establish the equipment leak monitoring program and recordkeeping system. These time periods are consistent with the compliance times provided for sources originally subject to the HON rule.

B. Addition of Crotonaldehyde Production and Removal of Acetaldehyde Production

Today's action adds crotonaldehyde production to the chemical production processes subject to the HON and establishes a new compliance date for crotonaldehyde chemical manufacturing process units. In addition, today's action removes acetaldehyde production processes from the applicability of the HON by removing this chemical from table 1 of subpart F.

In the April 22, 1994 rule, EPA made several changes to the proposed lists of chemical products to correct errors and to remove chemicals no longer commercially produced in the United States. One of the chemical products removed from the list of SOCMI chemicals in the April 1994 notice, based upon the belief that it was no longer commercially produced in the United States, was crotonaldehyde. Since April 1994, EPA has learned that this removal was an error because crotonaldehyde is produced by at least one facility in the United States. The EPA has also learned that acetaldehyde, which was retained on table 1 of subpart F in the April 1994 rule, is an unstable

intermediate which is used to produce either crotonaldehyde or 1,3-butylene glycol, and is therefore not itself a product appropriate for inclusion on table 1 of subpart F. Based on the January 17, 1997 amendments to the HON (62 FR 2721), EPA believes that acetaldehyde production operations are more appropriately considered unit operations part of crotonaldehyde or 1,3-butylene glycol chemical manufacturing process units. Therefore, the EPA is revising table 1 of subpart F by removing acetaldehyde. Crotonaldehyde production is being added to subpart F as a regulated process. No action is needed for 1,3-butylene glycol because that chemical is already listed in table 1 of subpart F.

This action creates a new compliance date for crotonaldehyde chemical production process units because of the confusion caused by listing a nonisolated intermediate chemical product instead of the correct final product. The new compliance date is 3 years from today for compliance with subparts F and G of this part to allow time for retrofitting of controls and evaluation of control requirements in the one known facility. A compliance date of 1 year from today is being used for compliance with subpart H of this part. One year is believed to provide sufficient time to establish the equipment leak monitoring program and recordkeeping system. These time periods are consistent with the compliance times provided for sources originally subject to the HON rule.

C. Clarification of Compliance Demonstration Requirements for Flexible Operation Units

In today's action, EPA is adding a new paragraph (b)(6) to § 63.103 of subpart F to clarify the compliance demonstration requirements for flexible operation units. This amendment revises the rule to clarify that performance tests and monitoring parameter ranges are to be based on operating conditions present during production of the primary product. The April 1994 rule was not clear on this point due to a drafting oversight. This change is being added because some owners and operators have expressed concerns that the rule could be interpreted as requiring installation of additional controls for periods when the flexible operation unit is producing a product other than the primary product. It is not the EPA's intent that the rule be interpreted in this manner. Therefore, for the purposes of compliance with this rule, additional controls are not required when producing products other than the primary product. The EPA has also

recently learned that there are questions whether the rule requires owners or operators to develop parameter monitoring ranges appropriate for each product produced by a flexible operation unit or to develop parameter monitoring ranges for operating conditions during production of the primary product of the flexible operation unit. The need for clarification of these aspects of compliance demonstration became apparent as facilities were completing compliance planning and demonstration activities for the April 1997 compliance deadline. This revision will make the rule consistent with the assumptions that EPA used in deriving the cost (including the recordkeeping and reporting burden) estimates used in support of the April 1994 rule. Based on conversations with several industry representatives, EPA believes that today's action is generally consistent with industry's understanding of the rule. Today's clarification is not expected to increase the cost or burden of demonstrating compliance with the HON.

D. Public Comment on the August 22, 1997 Proposal

Three comment letters were received on the August 22, 1997 *Federal Register* document that proposed changes to this rule. All comments received were from industry representatives. While the comments received were supportive of the proposed amendments they expressed concern with the applicability of the rule and clarity of the proposed changes. The EPA has considered these comments and has made one minor change to the final rule, and added additional language to the preamble to clarify the compliance demonstration procedures for flexible operation units. The response to these comments may be obtained over the Internet at <http://www.epa.gov/ttn> or from the EPA's Technology Transfer Network (TTN). The TTN is a network of electronic bulletin boards operated by the Office of Air Quality Planning and Standards. The service is free, except for the cost of a phone call. Dial (919) 541-5742 for up to a 14,400 bits per second modem. Select TTN Bulletin Board: Clean Air Act Amendments and select menu item Recently Signed Rules. If more information on TTN is needed, contact the systems operator at (919) 541-5384.

III. Administrative

A. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information

collection requirements contained in the rule under the Provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0282. An Information Collection Request (ICR) document was prepared by the EPA (ICR No. 1414.03) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington DC 20460 or by calling (202) 260-2740.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Today's action neither adds new respondents nor is it anticipated to increase the number of responses. The increase in the number of effected processing units is less than 1/2 percent. Since this action does not substantially change the information collection, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The HON rule promulgated on April 22, 1994 was considered "significant" under Executive Order 12866, and a regulatory impact analysis was prepared. The amendments issued today apply to one additional process unit at two facilities. These facilities are already well controlled. It is not certain what additional control will be required as a result of this action. Regardless of the final assessment of additional

controls at these two facilities, the EPA believes that application of the HON to these facilities will have a negligible impact. The clarification of the compliance demonstration requirements for flexible operation units is believed to be consistent with industry understanding of the rule, and is not believed to create additional impacts. For these reasons, the regulatory action is considered "not significant."

C. Regulatory Flexibility

The EPA has determined it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. See the April 22, 1994 *Federal Register* (59 FR 19449) for the basis for this determination. This amendment to the rule will not have a significant impact on a substantial number of small entities. This rule will apply the requirements of the HON rule to an additional process unit at two facilities and only imposes negligible recordkeeping costs on those facilities. The additional recordkeeping costs are not expected to create a burden for either of the regulated entities. Furthermore, neither of these regulated entities is a small business. The amendment to § 63.103(b)(6) is a clarification of an existing requirement, and this clarification is not expected to increase control requirements or burden of the rule.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), the EPA must prepare a budgetary impact

statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate or to the private sector, of \$100 million or more. Under Section 205, the EPA must select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 1, 1998.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is amended as follows:

a. By revising paragraphs (b)(1), (d) introductory text, (d)(3) introductory text, the first sentence of paragraph (g)(2)(iii), the first sentence of paragraph (h)(2)(iv), the first sentence of paragraph (i)(2)(iv), (k) introductory text, (l)(1)(ii), (l)(2)(ii);

b. By adding paragraphs (b)(1)(i), (b)(1)(ii), (d)(4), (g)(2)(iii)(A), (g)(2)(iii)(B), (h)(2)(iv)(A), (h)(2)(iv)(B), (i)(2)(iv)(A), (i)(2)(iv)(B), and (p).

The revisions and additions read as follows:

§ 63.100 Applicability and designation of source.

(b) * * *

(1) Manufacture as a primary product one or more of the chemicals listed in paragraphs (b)(1)(i) or (b)(1)(ii) of this section.

(i) One or more of the chemicals listed in table 1 of this subpart; or

(ii) One or more of the chemicals listed in paragraphs (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section:

(A) Tetrahydrobenzaldehyde (CAS Number 100-50-5); or

(B) Crotonaldehyde (CAS Number 123-73-9).

(d) The primary product of a chemical manufacturing process unit shall be determined according to the procedures specified in paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this section.

(3) For chemical manufacturing process units that are designed and operated as flexible operation units producing one or more chemicals listed in table 1 of this subpart, the primary product shall be determined for existing sources based on the expected utilization for the five years following April 22, 1994 and for new sources based on the expected utilization for the first five years after initial start-up.

(4) Notwithstanding the provisions of paragraph (d)(3) of this section, for chemical manufacturing process units that are designed and operated as flexible operation units producing a chemical listed in paragraph (b)(1)(ii) of this section, the primary product shall be determined for existing sources based on the expected utilization for the five years following May 12, 1998 and for new sources based on the expected utilization for the first five years after initial start-up.

(i) The predominant use of the flexible operation unit shall be determined according to paragraphs (d)(3)(i)(A) and (d)(3)(i)(B) of this section. If the predominant use is to produce one of the chemicals listed in paragraph (b)(1)(ii) of this section, then the flexible operation unit shall be subject to the provisions of this subpart and subparts G and H of this part.

(ii) The determination of applicability of this subpart to chemical manufacturing process units that are designed and operated as flexible operation units shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

(g) * * *

(2) * * *

(iii) If the predominant use of a storage vessel varies from year to year, then the applicability of this subpart shall be determined according to the criteria in paragraphs (g)(2)(iii)(A) and (g)(2)(iii)(B) of this section, as applicable. * * *

(A) For chemical manufacturing process units that produce one or more of the chemicals listed in table 1 of this subpart and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the 12-month period preceding April 22, 1994.

(B) For chemical manufacturing process units that produce one or more of the chemicals listed in paragraph (b)(1)(ii) of this section and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the 12-month period preceding May 12, 1998.

(h) * * *

(2) * * *

(iv) If the predominant use of a loading arm or loading hose varies from year to year, then the applicability of this subpart shall be determined according to the criteria in paragraphs (h)(2)(iv)(A) and (h)(2)(iv)(B) of this section, as applicable. * * *

(A) For chemical manufacturing process units that produce one or more of the chemicals listed in table 1 of this subpart and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the 12-month period preceding April 22, 1994.

(B) For chemical manufacturing process units that produce one or more of the chemicals listed in paragraph (b)(1)(ii) of this section and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the year preceding May 12, 1998.

(i) * * *

(2) * * *

(iv) If the predominant use of a distillation unit varies from year to year, then the applicability of this subpart shall be determined according to the criteria in paragraphs (i)(2)(iv)(A) and (i)(2)(iv)(B), as applicable. * * *

(A) For chemical manufacturing process units that produce one or more of the chemicals listed in table 1 of this subpart and meet the criteria in paragraphs (b)(2) and (b)(3) of this

section, the applicability shall be based on the utilization that occurred during the year preceding April 22, 1994.

(B) For chemical manufacturing process units that produce one or more of the chemicals listed in paragraph (b)(1)(ii) of this section and meet the criteria in paragraphs (b)(2) and (b)(3) of this section, the applicability shall be based on the utilization that occurred during the year preceding May 12, 1998.

(k) Except as provided in paragraphs (l), (m), and (p) of this section, sources subject to subparts F, G, or H of this part are required to achieve compliance on or before the dates specified in paragraphs (k)(1) through (k)(8) of this section.

(l)(1)
(ii)(A) Such construction commenced after December 31, 1992 for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in table 1 of this subpart;

(B) Such construction commenced after August 22, 1997 for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraph (b)(1)(ii) of this section; and

(2) * * *
(ii)(A) Such reconstruction commenced after December 31, 1992 for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in table 1 of this subpart; and

(B) Such construction commenced after August 22, 1997 for chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraph (b)(1)(ii) of this section.

(p) *Compliance dates for chemical manufacturing process units that produce crotonaldehyde or tetrahydrobenzaldehyde.* Notwithstanding the provisions of paragraph (k) of this section, chemical manufacturing process units that meet the criteria in paragraphs (b)(1)(ii), (b)(2), and (b)(3) of this section shall be in compliance with this subpart and subparts G and H of this part by the dates specified in paragraphs (p)(1) and (p)(2) of this section, as applicable.

(1) If the source consists only of chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraph (b)(1)(ii) of this section, new sources shall comply by the date specified in paragraph (p)(1)(i) of this

section and existing sources shall comply by the dates specified in paragraphs (p)(1)(ii) and (p)(1)(iii) of this section.

(i) Upon initial start-up or May 12, 1998, whichever is later.

(ii) This subpart and subpart G of this part by May 14, 2001, unless an extension has been granted by the Administrator as provided in § 63.151(a)(6) or granted by the permitting authority as provided in § 63.6(i) of subpart A of this part. When April 22, 1994 is referred to in this subpart and subpart G of this part, May 12, 1998 shall be used as the applicable date for that provision. When December 31, 1992 is referred to in this subpart and subpart G of this part, August 22, 1997 shall be used as the applicable date for that provision.

(iii) Subpart H of this part by May 12, 1999, unless an extension has been granted by the Administrator as provided in § 63.151(a)(6) or granted by the permitting authority as provided in § 63.6(i) of subpart A of this part. When April 22, 1994 is referred to in subpart H of this part, May 12, 1998 shall be used as the applicable date for that provision. When December 31, 1992 is referred to in subpart H of this part, August 22, 1997 shall be used as the applicable date for that provision.

(2) If the source consists of a combination of chemical manufacturing process units that produce as a primary product one or more of the chemicals listed in paragraphs (b)(1)(i) and (b)(1)(ii) of this section, new chemical manufacturing process units that meet the criteria in paragraph (b)(1)(ii) of this section shall comply by the date specified in paragraph (p)(1)(i) of this section and existing chemical manufacturing process units producing crotonaldehyde and/or tetrahydrobenzaldehyde shall comply by the dates specified in paragraphs (p)(1)(ii) and (p)(1)(iii) of this section.

3. Section 63.103 is amended by adding paragraph (b)(6) to read as follows:

§ 63.103 General compliance, reporting, and recordkeeping provisions.

(b) * * *

(6) The owner or operator of a flexible operation unit shall conduct all required compliance demonstrations during production of the primary product. The owner or operator is not required to conduct compliance demonstrations for operating conditions during production of a product other than the primary product. Except as otherwise provided in this subpart or in subpart G or subpart H of this part, as applicable, the

owner or operator shall operate each control device, recovery device, and/or recapture device that is required or used for compliance, and associated monitoring systems, without regard for whether the product that is being produced is the primary product or a different product. Except as otherwise provided in this subpart, subpart G and/or subpart H of this part, as applicable, operation of a control device, recapture device and/or recovery device required or used for compliance such that the daily average of monitored parameter values is outside the parameter range established pursuant to § 63.152(b)(2), or such that the monitoring data show operation inconsistent with the monitoring plan established pursuant to § 63.120(d)(2) or § 63.181(g)(1)(iv), shall constitute a violation of the required operating conditions.

Table 1 of Subpart F [Amended]

4. Table 1 of subpart F is amended by removing the entry for acetaldol and its associated CAS number and group number.

[FR Doc. 98-12579 Filed 5-11-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300648; FRL-5787-8]

RIN 2070-AB78

Azoxystrobin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of azoxystrobin or methyl (E)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yl]oxy]phenyl-3-methoxyacrylate and its Z isomer in or on cucurbits and watercress. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cucurbits and watercress in several states. This regulation establishes a maximum permissible level for residues of azoxystrobin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

The tolerance will expire and is revoked on June 30, 1999.

DATES: This regulation is effective May 12, 1998. Objections and requests for hearings must be received by EPA on or before July 13, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300648], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300648], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300648]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Virginia Dietrich, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9359, e-mail: dietrich.virginia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of the

fungicide azoxystrobin and its Z isomer, in or on cucurbits and watercress at 1.0 and 1.0 part per million (ppm). This tolerance will expire and is revoked on June 30, 1999. EPA will publish a document in the *Federal Register* to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The FQPA (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and FIFRA, 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum [61 FR 58135, November 13, 1996](FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such

tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Azoxystrobin on Cucurbits and Watercress and FFDCA Tolerances

For watercress, copper hydroxide is the only material registered for control of *Cercospora* leaf spot disease. Several applications of copper hydroxide are required per season for adequate control. Although copper hydroxide is still effective at controlling *Cercospora* leaf spot disease, due to the many required applications, levels of copper in soil and watercress plants have reached phytotoxic levels. As a consequence, in areas where watercress has been grown for several years, yield has been significantly reduced.

For cucurbits, azoxystrobin has been requested for the control of gummy stem blight and powdery mildew because unusually wet and cloudy weather conditions favor disease development. Similar weather conditions in 1997 resulted in estimated production losses of 68.4 and 36.2% in cantaloupe and honeydews. Registered alternatives are ineffective due to a combination of weather and resistance factors.

EPA has authorized under FIFRA section 18 the use of azoxystrobin on cucurbits and watercress for control of gummy stem blight on cucurbits and *Cercospora* leaf spot disease in watercress in several States. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of azoxystrobin in or on cucurbits and watercress. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as

provided in section 408(l)(6). Although this tolerance will expire and is revoked on June 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cucurbits and watercress after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether azoxystrobin meets EPA's registration requirements for use on cucurbits and watercress or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of azoxystrobin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than the approved States to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for azoxystrobin, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects

(the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure

that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated

considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model

for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (nonnursing infants (<1 year old)) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of azoxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of azoxystrobin and its Z isomer) on cucurbits and watercress at 1.0 and 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects and The Agency's selection of toxicological endpoints upon which to assess risk caused by azoxystrobin are discussed below.

1. *Acute toxicity.* The Agency evaluated the existing toxicology database for azoxystrobin and did not identify an acute dietary endpoint. Therefore, a risk assessment is not required.

2. *Short- and intermediate-term toxicity.* The Agency evaluated the existing toxicology database for short- and intermediate-term dermal and inhalation exposure and determined that this risk assessment is not required. [Note: From a 21-day dermal toxicity study the NOEL was 1,000 mg/kg/day at the highest dose tested (Acute inhalation toxicity category III).]

3. *Chronic toxicity.* EPA has established the RfD for azoxystrobin at 0.18 milligrams/kilogram/day (mg/kg/day). This RfD is based on a chronic toxicity study in rats with a NOEL of 18.2 mg/kg/day. Reduced body weights and bile duct lesions were observed at

the lowest-effect-level (LEL) of 34 mg/kg/day. An Uncertainty Factor (UF) of 100 was used to account for both the interspecies extrapolation and the intraspecies variability.

4. *Carcinogenicity.* The HED RfD/Peer Review Committee (November 7, 1996) determined that azoxystrobin should be classified as "Not Likely" to be a human carcinogen according to the proposed revised Cancer Guidelines. This classification is based on the lack of evidence of carcinogenicity in long-term rat and mouse feeding studies.

B. Exposures and Risks

1. From food and feed uses.

Permanent tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and its Z isomer, in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm in pecans to 1.0 ppm in grapes. In addition, time-limited tolerances have been established (40 CFR 180.507(b)) at levels ranging from 0.006 ppm in milk to 20 ppm in rice hulls) in conjunction with previous Section 18 requests. Risk assessments were conducted by EPA to assess dietary exposures and risks from azoxystrobin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Agency did not conduct an acute risk assessment because no toxicological endpoint of concern was identified during review of available data.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, HED has made very conservative assumptions -- 100% of cucurbits, watercress and all other commodities having azoxystrobin tolerances will contain azoxystrobin residues and those residues would be at the level of the tolerance -- which result in an overestimation of human dietary exposure. Thus, in making a safety determination for this tolerance, HED is taking into account this conservative exposure assessment.

The existing azoxystrobin tolerances (published, pending, and including the necessary Section 18 tolerance(s)) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

Population Sub-Group	TMRC (mg/kg/day)	% RfD
U.S. Population (48 States)	0.002	1%

Population Sub-Group	TMRC (mg/kg/day)	% RfD
Nursing Infants (<1 year old)	0.004	2%
Non-Nursing Infants (<1 year old)	0.009	5%
Children (1-6 years old)	0.005	3%
Children (7-12 years old)	0.003	2%
Hispanics	0.003	2%
Non-Hispanics Others	0.005	3%
U.S. Population (summer season)	0.003	2%
Females (13-19, not preg or nursing)	0.002	1%

The subgroups listed above are: (a) the U.S. population (48 states); (b) those for infants and children; (c) females (13-19 years old, not pregnant or nursing); and, (d) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. From drinking water. There is no established Maximum Contaminant Level for residues of azoxystrobin in drinking water. No health advisory

levels for azoxystrobin in drinking water have been established.

i. Acute exposure and risk. An assessment was not appropriate since no toxicological endpoint of concern was identified during review of the available data.

ii. Chronic exposure and risk. Based on the chronic dietary (food) exposure estimates, chronic drinking water levels of concern (DWLOC) for azoxystrobin were calculated and are summarized in Table 1. Estimated environmental

concentrations (EECs) using GENECC for azoxystrobin on bananas, grapes, peaches, peanuts, pecans, tomatoes, and wheat are listed in SWAT Team Second Interim Report (6/20/97). The highest EEC for azoxystrobin in surface water is from the application of azoxystrobin on grapes (39 µg/L) and is substantially lower than the DWLOCs calculated. Therefore, chronic exposure to azoxystrobin residues in drinking water do not exceed the Agency's level of concern.

Table 1. Drinking Water Levels of Concern

	RfD (mg/kg/day)	TMRC (Food Exposure) (mg/kg/day)	Max Water Exposure ¹ (mg/kg/day)	DWLOC ^{2,3,4} (µg/L)
U.S. Population (48 States)	0.18	0.00231	0.178	6200
Females (13+ years old, not pregnant or nursing)	0.18	0.00176	0.178	5300
Non-nursing Infants (< 1 year old) ...	0.18	0.00879	0.171	1700

¹ Maximum Water Exposure (mg/kg/day) = RfD (mg/kg/day) - TMRC from DRES (mg/kg/day)

² DWLOC(µg/L) = Max water exposure (mg/kg/day) * body wt (kg) / (10⁻³ mg/µg) * water consumed daily (L/day)

³ HED Default body wts for males, females, and children are 70 kg, 60 kg, and 10 kg respectively.

⁴ HED Default Daily Drinking Rates are 2 L/Day for Adults and 1 L/Day for children

3. From non-dietary exposure. Azoxystrobin is not currently registered for use on residential non-food sites.

4. Cumulative exposure to substances with common mechanism of toxicity. Azoxystrobin is related to the naturally occurring strobilurins. There are no other members of this class of fungicides registered with the Agency. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining

whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common

mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether azoxystrobin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, azoxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that azoxystrobin has a

common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. Chronic risk. Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, HED has estimated the exposure to azoxystrobin from food will utilize 1% of the RfD for the U.S. population. HED generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to azoxystrobin in drinking water, HED does not expect the aggregate exposure to exceed 100% of the RfD. Under current HED guidelines, the registered non-dietary uses of azoxystrobin do not constitute a chronic exposure scenario. HED concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to azoxystrobin residues. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to azoxystrobin residues.

2. Short- and intermediate-term risk. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. This risk assessment is not applicable since no indoor and outdoor residential exposure uses are currently registered for azoxystrobin.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. Safety factor for infants and children—In general. In assessing the potential for additional sensitivity of infants and children to residues of azoxystrobin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless

EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

2. Developmental toxicity studies—i. Rabbit. In the developmental toxicity study in rabbits, developmental NOEL was 500 mg/kg/day, at the highest dose tested (HDT). Because there were no treatment-related effects, the developmental LEL was >500 mg/kg/day. The maternal NOEL was 150 mg/kg/day. The maternal LEL of 500 mg/kg/day was based on decreased body weight gain during dosing.

ii. Rat. In the developmental toxicity study in rats, the maternal (systemic) NOEL was not established. The maternal LEL of 25 mg/kg/day at the lowest dose tested (LDT) was based on increased salivation. The developmental (fetal) NOEL was 100 mg/kg/day (HDT).

3. Reproductive toxicity study—i. Rat. In the reproductive toxicity study (MRID #43678144) in rats, the parental (systemic) NOEL was 32.3 mg/kg/day. The parental LEL of 165.4 mg/kg/day was based on decreased body weights in males and females, decreased food consumption and increased adjusted liver weights in females, and cholangitis. The reproductive NOEL was 32.3 mg/kg/day. The reproductive LEL of 165.4 mg/kg/day was based on increased weanling liver weights and decreased body weights for pups of both generations.

ii. Pre- and post-natal sensitivity. The pre- and post-natal toxicology data base for azoxystrobin is complete with respect to current toxicological data requirements. The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats. The additional 10X safety factor to account for sensitivity of infants and children was removed by an ad hoc FQPA Safety Factor Committee.

iii. Conclusion. The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats. The additional 10X safety factor to account for sensitivity of infants and children was removed by an ad hoc FQPA Safety Factor Committee.

4. Chronic risk. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to azoxystrobin from food will utilize 2 to 5% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to azoxystrobin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to azoxystrobin residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in grapes is adequately understood. The residue of concern in grapes is parent azoxystrobin and its Z isomer. The qualitative nature of the residue in wheat is adequately understood. Again, the major residues are azoxystrobin and the Z isomer in wheat metabolism studies. These data are being translated for watercress for this emergency exemption.

The qualitative nature of the residue in animals is adequately understood for the purposes of this Section 18 request. A ruminant metabolism study has been submitted, however the animal metabolism data have not been reviewed by the Office of Pesticide Program's Metabolism Assessment Review Committee. The residues of concern in ruminants appears to be different from that of plants. Unidentified metabolite compounds, designated metabolites 2, 20, and 28, appear to be the major components of the residue in ruminant tissues. For the purposes of these time-limited tolerances for emergency exemptions only, the residues of concern in animal tissues are azoxystrobin and its Z-isomer.

B. Analytical Enforcement Methodology

A method (SOP RAM 243/03, GLC/NPD) to determine residues of azoxystrobin and its Z isomer in banana, peach, peanut, tomato, and wheat commodities has been submitted. This method has been independently validated as per PR Notice 88-5. An Agency validation of this method is pending. The Agency concludes this method is adequate for enforcement of the requested Section 18 tolerances on plant commodities.

GLC/NPD method RAM 255/01 is adequate for collection of residue data for azoxystrobin in animal commodities. Adequate independent method validation and concurrent method recovery data have been submitted. Method SOP RAM 255/01 has been submitted for Agency method validation. The Agency concludes this method is adequate for enforcement of the necessary Section 18 tolerances on livestock commodities.

C. Magnitude of Residues

Residues of azoxystrobin and its Z isomer are not expected to exceed 1.0 ppm in/on cucurbits or watercress as a result of this Section 18 use. Time-limited tolerances should be established at this level.

D. Rotational Crop Restrictions

Rotational crop data were previously submitted. Based on this information, a 45 day plantback interval is appropriate for all crops.

E. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits (MRL) for azoxystrobin on cucurbits or watercress. Thus, harmonization is not an issue for these section 18 requests.

VI. Conclusion

Therefore, the tolerance is established for combined residues of azoxystrobin and its Z isomer in cucurbits and watercress at 1.0 and 1.0 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use

those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 13, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300648] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information

Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory

Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 27, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.507 is amended in paragraph (b) by alphabetically adding the following commodities to the table to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
Cucurbits	1.0	6/30/99
Watercress	1.0	6/30/99

* * *

[FR Doc. 98-12578 Filed 5-11-98; 8:45 am]

BILLING CODE 6550-50-F

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[OPP-300647; FRL-5787-7]

RIN 2070-AB78

Myclobutanil; Pesticide Tolerance.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on bananas (post-harvest). Rohm and Haas Company requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170).

DATES: This regulation is effective May 12, 1998. Objections and requests for

hearings must be received by EPA on or before July 13, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300647], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300647], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be

submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300647]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, Rm 247, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9354, e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 1, 1997 (62 FR 41379) (FRL-5732-4), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petition (PP) 2E4141 for a tolerance by Rohm and Haas Company, 100 Independence Mall

West, Philadelphia, PA 19106-2399. This notice included a summary of the petition prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.443 be amended by establishing a tolerance for combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on bananas (post-harvest) at 4.0 parts per million (ppm).

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects

(the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure

that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated

considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most

highly exposed population subgroup was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of myclobutanil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) on bananas (post-harvest) at 4.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Data Base

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by myclobutanil are discussed below.

1. *Acute studies.* The primary eye irritation for the technical is classified as toxicity category I. All other acute studies on the technical were classified as either toxicity category III or IV. There was a positive sensitizing reaction.

2. *Subchronic toxicity testing—i. Rats.* A subchronic feeding study in rats was conducted for 13 weeks. The NOEL was determined to be 1,000 ppm and the lowest observed effect level (LOEL) was 3,000 ppm based on increased liver and kidney weights, hypertrophy and necrosis in the liver, pigmentation in convoluted kidney tubules and vacuolated adrenal cortex.

ii. *Dogs.* A subchronic feeding study in dogs conducted for 13 weeks resulted in a NOEL of 10 ppm and a LOEL of 200 ppm. Technical myclobutanil was tested at 0, 10, 200, 800, and 1,600 ppm (0, 0.34, 7.26, 29.13, and 56.80 milligrams/kilogram (mg/kg)/day for males and 0, 0.42, 7.88, 32.43 and 57.97 mg/kg/day for females). At 200 ppm, and above, hepatocellular centrilobular or midzonal hypertrophy was observed in males. At 800 ppm and above, the same effect was observed in females. In addition, increases in alkaline phosphatase, in absolute liver weights

in both sexes and in relative liver weights in males were observed. At 1,600 ppm, all the previous effects plus increases in relative liver weights in females, a suggestion of mild red cell destruction or mild anemia, and decreases in body weight and food consumption (possibly related to palatability) were observed.

Subchronic dermal studies using a 40% active ingredient (ai) formulation (40WP) and a 24.99% emulsifiable concentrate formulation (2EC) of myclobutanil conducted in rats resulted in a NOEL for systemic effects of ≤ 100 mg ai/kg/day, a NOEL for skin irritation of 10 mg ai/kg/day and an LEL of 100 mg ai/kg/day. The 2EC was applied at either 1, 10 or 100 mg ai/kg and the 40WP applied at 100 mg ai/kg once per day for a total of 19-20 treatments over a 4 week period. No systemic effects were observed at any dose level for either formulation. Microscopic changes, indicating irritation, were observed in the skin.

3. *Chronic toxicity studies.* A 1-year dog feeding study was conducted using doses of 0, 10, 100, 400 and 1,600 ppm (equivalent to doses of 0, 0.34, 3.09, 14.28 and 54.22 mg/kg body weight (bw)/day in males and 0, 0.40, 3.83, 15.68 and 58.20 mg/kg bw/day in females). The NOEL is 100 ppm (3.09 mg/kg/day for males and 3.83 mg/kg/day for females) based upon hepatocellular hypertrophy, increases in liver weights, "ballooned" hepatocytes and increases in alkaline phosphatase, SGPT and GGT, and possible slight hematological effects. The LOEL is 400 ppm (14.28 mg/kg/day for males and 15.68 mg/kg/day for females).

4. *Carcinogenicity—i. Mice.* A carcinogenicity study in mice was conducted by administering 90.4% ai test material in the diet at 0, 20, 100, or 500 ppm (0, 2.7, 13.7 or 70.2 mg/kg/day for males and 0, 3.2, 16.5, or 85.2 mg/kg/day for females) for 24 months. The NOEL was determined to be 100 ppm (systemic) and the LOEL was 500 ppm (systemic) based on increased MFO (male and female), increased SGPT (male) and increased absolute and relative liver weights (male and female), increased incidences and severity of centrilobular hepatocytic hypertrophy, Kupffer cell pigmentation, periportal punctate vacuolation and individual hepatocellular necrosis (male), and increased incidences of focal hepatocellular alterations and multifocal hepatocellular vacuolation (male and female). In this test, dose levels in females was not high enough. In the following test, higher doses were tested (2,000 ppm; 393.5 mg/kg/day). No carcinogenic effects were observed.

A carcinogenicity study in mice was conducted for 18 months in which myclobutanil technical (92.9% ai) was administered in the diet at 0 and 2,000 ppm (393.5 mg/kg/day). No NOEL was established. The LOEL was 2,000 ppm (393.5 mg/kg/day) based on decreases in body weight and body weight gain, increases in liver weights, hepatocellular vacuolation, necrosis of single hypertrophied hepatocytes, yellow-brown pigment in the Kupffer cells and cytoplasmic eosinophilia and hypertrophy of the cells of the zona fasciculata area of the adrenal cortex. Myclobutanil was not carcinogenic under the conditions of the study.

ii. *Rats.* A carcinogenicity study in rats was conducted by administering technical myclobutanil (92.9% ai) in the diet at doses of 0 and 2,500 ppm (125 mg/kg/day). No NOEL was established (refer to next study). The LOEL was 2,500 ppm based on testicular atrophy and decreases in testes weights, increases in the incidences of centrilobular to midzonal hepatocellular enlargement and vacuolization in the liver of both sexes, increases in bilateral aspermatogenesis in the testes, increases in the incidence of hypospermia and cellular debris in the epididymides, and increased incidence of arteritis/periarthritis in the testes. No carcinogenic effects were observed.

A chronic feeding/carcinogenicity study was conducted in rats. Technical (90.4% and 91.4% pure) myclobutanil was administered in the diet for 24 months at 25/35/50, 100/140/200 and 400/560/800 ppm (2 weeks/2 weeks/2 weeks termination; 0, 2.49, 9.84 or 39.21 mg/kg/day for males; 0, 3.23, 12.86, or 52.34 mg/kg/day for females). The NOEL was 2.49 mg/kg/day and the LOEL was 9.84 mg/kg/day based on a decrease in testes weights and increase in testicular atrophy. Dosage rates were not high enough (refer to previous study). No carcinogenic effects were observed.

5. *Developmental toxicity*—i. *Rabbits.* A teratology study was conducted in rabbits at doses of 0, 20, 60 or 200 mg ai/kg/day (technical myclobutanil: 90.4% ai) administered by oral gavage on days 7-19 of gestation which resulted in a maternal NOEL of 60 mg/kg/day and a maternal LOEL of 200 mg/kg/day based on reduced body weight and body weight gain during the dosing period and clinical signs of toxicity and possibly abortions. The developmental NOEL was 60 mg/kg/day and the developmental LOEL was 200 mg/kg/day based on increases in number of resorptions, decreases in litter size and decrease in the viability index.

ii. *Rats.* In a teratology study, rats were treated with dosages of 0, 31.26,

93.77, 312.58 and 468.87 mg/kg/day by oral gavage from gestation days 6-15. The maternal NOEL was 93.8 mg/kg/day and the maternal LOEL was 312.6 mg/kg/day based on observation of rough hair coat and salivation at 312.6 mg/kg/day and salivation, alopecia, desquamation and red exudate around mouth at 468.87 mg/kg/day. The developmental NOEL was 93.8 mg/kg/day. The developmental LOEL was 312.6 mg/kg/day based on increased incidences of 14th rudimentary and 7th cervical ribs.

6. *Reproductive toxicity.* A 2-generation rat reproduction study was conducted with dosage rates of 0, 50, 200 and 1,000 ppm (equivalent to 0, 2.5, 10 and 50 mg/kg/day). The parental (systemic) NOEL was 50 ppm (2.5 mg/kg/day) and the parental (systemic) LOEL was 200 ppm (10 mg/kg/day) based on hepatocellular hypertrophy and increases in liver weights. The reproductive toxicity NOEL was 200 ppm (10 mg/kg/day) and reproductive toxicity LOEL was 1,000 ppm (50 mg/kg/day) based on an increased incidence in the number of stillborns and atrophy of the testes, epididymides and prostate. The developmental NOEL was 200 ppm (10 mg/kg/day) and the developmental LOEL was 1,000 ppm (50 mg/kg/day) based on a decrease in pup body weight gain during lactation.

7. *Mutagenicity.* A reverse mutation assay (Ames), point mutation in CHO/HGPRT cells, in vitro and in vivo (mouse) cytogenetic assays, unscheduled DNA synthesis and a dominant lethal mutation study in rats, were conducted, all of which were negative for mutagenic effects.

8. *Metabolism*—i. *Mice.* A metabolism study in mice demonstrated that myclobutanil was rapidly absorbed and excreted. It was completely eliminated by 96 hours. The chemical was extensively metabolized prior to excretion with metabolic patterns similar for both sexes. Disposition and metabolism after pulse administration is linear over the dose range.

ii. *Rats.* In a metabolism study in rats, myclobutanil was completely and rapidly absorbed. It was extensively metabolized and rapidly and essentially completely excreted. Elimination of label from plasma was biphasic and evenly distributed between urine and feces. There was no tissue accumulation after 96 hours.

In another metabolism study in rats, at least 7 major metabolites of myclobutanil were recovered and identified. The highest amounts of radioactivity were found in the liver, kidneys, and large and small intestines. There was no tissue accumulation.

9. *Neurotoxicity.* There have been no clinical neurotoxic signs or other types of neurotoxicity observed in any of the evaluated toxicology studies. The Hazard ID Assessment Review Committee did not recommend that a developmental neurotoxicity study be required for myclobutanil. The following information was considered in the weight-of-evidence evaluation:

i. Myclobutanil does not appear to be a neurotoxic chemical.

ii. The toxicology profile for this chemical did not indicate that there were any treatment-related effects on the central or peripheral nervous system. No acute or subchronic neurotoxicity studies in rats or delayed neuropathy studies in chickens were available for review so there was no evaluation of the nervous system following perfusion.

iii. No evidence of developmental anomalies of the fetal nervous system were observed in the prenatal developmental toxicity studies in either rats or rabbits at maternally toxic oral doses up to 468.9 and 200 mg/kg/day, respectively.

10. *Other toxicological considerations.* Myclobutanil has a complete data base and no other toxicological concerns have been identified in the evaluated studies.

B. Toxicological Endpoints

1. *Acute toxicity.* EPA has determined that data do not indicate the potential for adverse effects after a single dietary exposure.

2. *Short- and intermediate-term toxicity.* EPA has determined that when short- and intermediate-term risk assessments are appropriate for occupational and residential routes of exposure, the following should be used. OPP recommended that the NOEL of 100 mg/kg/day, taken from the 28-day dermal toxicity study in rats, be used for the short-term dermal MOE calculations. This dose level was the highest tested in the study. For intermediate-term MOE calculations, OPP recommended using the NOEL of 10 mg/kg/day from the 2-generation rat study. Effects seen at the LOEL in this study (50 mg/kg/day) were decreases in pup body weight, an increased incidence in number of stillborns, and atrophy of the prostate and testes.

3. *Chronic toxicity.* EPA has established the RfD for myclobutanil at 0.025 mg/kg/day. This RfD is based on [the chronic feeding study in rats with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 100. There was testicular atrophy at the lowest observed effect level (LOEL) of 9.9 mg/kg/day.

4. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified myclobutanil as a Group E chemical—"no evidence of carcinogenicity for humans"—based on the results of carcinogenicity studies in two species. The doses tested are adequate for identifying a cancer risk.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.443) for myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on a variety of raw agricultural commodities. Commodities include: almonds, apples, cherries, cotton seed, grapes, stone fruits (except cherries) and tolerances for meat, milk, poultry and eggs. In today's action, a tolerance will be established for combined residues of myclobutanil and its metabolite in or on bananas (post-harvest) at 4.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from myclobutanil as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Toxicology Endpoint Selection Committee did not identify an acute dietary toxicological endpoint and stated that an acute dietary risk assessment is not required.

ii. *Chronic exposure and risk.* In conducting the chronic dietary (food only) risk assessment, EPA has made several very conservative assumptions. With the exceptions of bananas for which a level representing residues in pulp rather than the whole banana was used and selected commodities which were corrected for percent crop treated, all commodities having myclobutanil tolerances will contain myclobutanil and metabolite residues and those residues will be at the levels of the established tolerances. For bananas, the level of 0.8 ppm was used in the dietary risk assessment rather than the proposed tolerance of 4.0 ppm since residues in the pulp will not exceed 0.8 ppm. Percent crop-treated estimates were utilized for selected commodities included in the assessment. Thus, in making a safety determination for this tolerance, EPA is taking into account this partially refined exposure assessment.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (a) that the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (b) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (c) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of these estimates of percent food treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on percent crop treated.

As indicated above, the Agency is required to determine the reliability of the percent crop-treated data. Percent crop-treated estimates are derived from federal and private market survey data. Typically, a range is assumed for the exposure assessment. By using this upper end estimate, the Agency is reasonably certain that the exposure is not understated for any significant population sub-group. Additionally, the DRES (Dietary Risk Evaluation System) modeling used in estimating chronic dietary risk uses regional consumption groups that are geographically based regions of the United States. None of these subgroups exceeded the Agency's level of concern.

The existing myclobutanil tolerances (published, pending, and including the necessary Section 18 tolerances) for crops other than bananas and the anticipated residues on bananas result in an Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD.

Population Subgroup	%RfD
U.S. Population (48 states)	17
Nursing Infants (<1 year old)	25
Non-nursing Infants (<1 year old)	75
Children (1-6 years old)	46
Children (7-12 years old)	28
Northeast Region	18
Western Region	19
Hispanics	20
Non-Hispanic Others	18

The subgroups listed above are: (a) the U.S. population (48 states), (b) those for infants and children, and (c) the other subgroups for which the percentage of

the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water.* Based on information in the EFED (Environmental Fate and Effects Division) One-Liner Database, myclobutanil is persistent and not considered mobile in soils with the exception of sandy soils. Data are not available for its metabolite. There is no established Maximum Contaminant Level for residues of myclobutanil in drinking water. No Health Advisory Levels for myclobutanil in drinking water have been established. The "Pesticides in Groundwater Database" has no information concerning myclobutanil. Estimates of ground and surface water concentrations for myclobutanil were determined based on the label rate of 0.65 lbs. a.i./acre and assuming 15 applications per season. Although the requested tolerance is for bananas, these estimates were based on turf since it would more realistically estimate the concentrations in water. The surface water numbers are based on the results of a Generic Environmental Concentration (GENEEC) model. The ground water numbers are based on a screening tool, SCI-GROW, which tends to overestimate the true concentration in the environment. For acute effects, the surface water EEC was determined to be 0.14596 ppm or mg/L (maximum initial concentration). For chronic effects the surface water EEC was 0.1186 ppm or mg/L (average 56-day concentration). Current policy allows the 90/56-day GENEEC value to be divided by 3 to obtain a value for chronic risk assessment calculations. Therefore, the surface water value for use in the chronic risk assessment would be 0.04 ppm or mg/L.

i. *Acute exposure and risk.* The Toxicology Endpoint Selection Committee did not identify an acute dietary toxicological endpoint and stated that an acute dietary risk assessment is not required.

ii. *Chronic exposure and risk.* Chronic exposure is calculated based on surface water. Chronic exposure from ground water is lower. Chronic exposure (mg/kg/day) is calculated by multiplying the concentration in water in mg/L by the daily consumption (2L/day for male and female adults and 1L/day for children) and dividing this figure by average weight (70 kg for males, 60 kg for females and 10 kg for children). For adult males, exposure is 1.1×10^{-3} mg/kg/day; for adult females, 1.3×10^{-3} mg/kg/day; and for children, 4.0×10^{-3} mg/kg/day. Chronic risk (non-cancer) from surface water was calculated to be 4.4% of the RfD for males, 5.2% for females and 16% for children.

3. *From non-dietary exposure.* Myclobutanil is currently registered for use on the following non-food sites: outdoor residential and greenhouse use on annuals and perennials, turf, shrubs, trees and flowers.

i. *Acute exposure and risk.* An acute toxicological endpoint was not identified for myclobutanil.

ii. *Chronic exposure and risk.* HED has determined that these uses do not constitute a chronic exposure scenario, but may constitute a short- to intermediate-term exposure scenario.

iii. *Short- and intermediate-term exposure and risk.* The home use of myclobutanil on turf has the greatest potential for exposure and was used in estimating short-term risk. HED concluded that residential intermediate-term exposure is not expected for handlers or persons re-entering treated areas. Fungicide use on home lawns is limited, restricted to certain parts of the country, and considered to be a "rare, extra treatment" in homeowner Do-It-Yourself programs. The end-point selected for short-term risk assessment is from a 28-day dermal study in rats; this dosing duration is expected to adequately reflect the typical human exposures for this use. Maximum application rates are calculated from the use directions on the label. Typical lawn size of 13,000 ft² is used in place of the high-end lawn default value of 20,000 ft². Post-application exposure estimates assume that 10% of the application rate is available as dislodgeable residue since the label states that the product is not washed away by rain or sprinklers.

Currently there is no use/usage information source available to HED for residential end-use products. Therefore, pertinent information is unknown and assumptions are made for parameters such as: amount of product applied, how often treatment is actually required; the number of applications that are typically made; whether applications are generally spot or full lawn treatments, etc. Similarly, a number of assumptions and best estimates are made in assessing post-application exposure, including: the duration and degree of activity in the treated area by children and adults; the amount of product available to dislodge and transfer to the skin during activity; and the amount of product dissipation over time.

HED determined that there is potential for intermittent short-term exposures to homeowners associated with typical end-product use of myclobutanil. Three exposure scenarios with the greatest potential for exposure are considered for application to home

lawns: (a) loading and application of granular product by hand held rotary granular spreader; (b) mixing, loading and application of a soluble concentrate product by low pressure handwand sprayer; and (c) mixing, loading, and application of a soluble concentrate product by garden hose-end sprayer. Short-term dermal exposure assessments using the "Pesticide Handlers Exposure Database" surrogate data and risk calculations for homeowners resulted in a short-term MOE of 460 for scenario 1, 260 for scenario 2 and 890 for scenario 3.

There is also the potential for post-application homeowner exposure following applications to lawn and garden sites. There are no chemical-specific data to use in assessing these potential exposures. Post-application exposure is estimated and risk assessments performed using typical transfer coefficients (Tc) and surrogate dislodgeable foliar residues (DFR) derived from the application rate. Short-term post-application exposure assessments and risk calculations for adults and toddlers re-entering treated areas on the day of application resulted in a short-term MOE of 350 for adult dermal exposure, 100 for toddler dermal exposure, 1,600 for toddlers for non-dietary ingestion and 100 for combined dermal and non-dietary ingestion for toddlers. Dietary ingestion is addressed in the discussion of aggregate risk.

Using these exposure assumptions for short-term risk assessments, it is concluded that the MOEs that will result from the residential use of myclobutanil do not exceed the level of concern.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning

common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether myclobutanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, myclobutanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that myclobutanil has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* No acute dietary risks were identified.

2. *Chronic risk.* Using the partially refined exposure assumptions described above, EPA has concluded that aggregate exposure to myclobutanil from food will utilize 17% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (<1 year old) which is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD

represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to myclobutanil in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to myclobutanil residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since short-term residential exposure scenarios are present, short-term aggregate MOEs for adults and children from the turf use were determined. The short-term aggregate MOE for adults was 150 and for children it was 94. Although an MOE of 94 was calculated, this MOE is acceptable based on conservative estimates of exposure. Since worst case estimates were used in the calculations, the MOE would be above 100 under usual conditions of use. It was concluded that short-term aggregate MOEs for both adults and children are acceptable. This is based on the consideration of the conservative nature of the default assumptions for duration and degree of activity in treated areas by children and adults, amount of product available to dislodge and transfer to skin during activity, and amount of product dissipation over time which were used in the derivation of exposure estimates. The estimates were calculated using the maximum application rate and the assumption that 10% of the application rate is available as dislodgeable residue. Both of these factors are likely overestimated. The fact that a LOEL was not identified in the 28-day rat dermal toxicity study used to determine the MOE indicates an overestimate since the level used was the highest dose tested. Additionally there are no indoor residential uses of myclobutanil; thus, indoor residential exposure is not a concern.

2. *Developmental toxicity studies—i. Rats.* In the developmental study in rats, the maternal (systemic) NOEL was 93.8 mg/kg/day, based on rough hair coat and salivation at the LOEL of 312.6 mg/kg/day. The developmental (fetal) NOEL was 93.8 mg/kg/day based on incidences of 14th rudimentary and 7th cervical ribs at the LOEL of 312.6 mg/kg/day.

ii. *Rabbits.* In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 60 mg/kg/day, based on reduced weight gain, clinical signs of toxicity and abortions at the LOEL of 200 mg/kg/day. The developmental (fetal) NOEL was 60 mg/kg/day, based on increases in number of resorptions, decreases in litter size, and a decrease in the viability index at the LOEL of 200 mg/kg/day.

3. *Reproductive toxicity study—Rats.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOEL was 2.5 mg/kg/day, based on increased liver weights and liver cell hypertrophy at the LOEL of 10 mg/kg/day. The developmental (pup) NOEL was 10 mg/kg/day, based on decreased pup body weight during lactation at the

LOEL of 50 mg/kg/day. The reproductive NOEL was 10 mg/kg/day, based on the increased incidences of stillborns, and atrophy of the testes, epididymides, and prostate at the LOEL of 50 mg/kg/day.

4. *Pre- and post-natal sensitivity.* The pre- and post-natal toxicology data base for myclobutanil is complete with respect to current toxicological data requirements. Based on the developmental and reproductive toxicity studies discussed above, there does not appear to be an extra sensitivity for pre- or post-natal effects.

5. *Acute risk.* No acute dietary risk has been identified.

6. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that exposure to myclobutanil from food will utilize 25% (nursing infants < 1 year old) and 75% (non-nursing infants < 1 year old) of the RfD. The percent of the RfD that will be used by the food and water exposure for children 1-6 years old is 62% and 21% for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to myclobutanil in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to myclobutanil residues.

7. *Short- or intermediate-term risk.* Intermediate-term risk is not expected since there is no expectation of intermediate-term exposure. Short-term exposure scenarios are expected and the MOEs which were determined for aggregate short-term risk does not exceed HED's level of concern. It was concluded that there is a reasonable certainty that no harm will result from aggregate exposure to myclobutanil residues.

8. *Conclusion.* EPA concludes that reliable data support use of the 100-fold uncertainty factor and that an additional 10-fold factor is not needed to ensure the safety of infants and children from dietary exposure.

III. Other Considerations

A. *Endocrine Disrupter Effects*

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inert) "may have an

effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect" The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of the FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. Based on the adverse testicular findings in the chronic toxicity and reproduction studies in rats, myclobutanil should be considered as a candidate for evaluation as an endocrine disrupter.

B. Metabolism In Plants and Animals

1. *Plants.* Based on the three metabolism studies on wheat, apples and grapes (which indicate a similar metabolic route for crops in three different crop groups), the nature of the residue in bananas is adequately understood. The residues of concern in bananas are myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound).

2. *Animals.* The nature of the residue in animals is adequately understood. The residues of concern in animal commodities except milk are myclobutanil and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free). The residues of concern in milk are myclobutanil and its metabolites alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) and alpha-(4-chlorophenyl)-alpha-(3,4-dihydroxybutyl)-1H-1,2,4-triazole-1-propanenitrile.

C. Analytical Enforcement Methodology

An adequate enforcement method, 34S-88-10, is available to enforce the tolerance on bananas. Quantitation is by GLC using a nitrogen/phosphorus detector for parent myclobutanil and an electron capture detector (Ni⁶³) for residues measured as the alcohol metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile. Enforcement methods for the established tolerances on animal commodities are Methods 34S-88-22, 34S-88-15, 31S-87-02, and 34S-88-21. These methods have been submitted for publication in PAM II.

The methods are available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 119FF, 1921 Jefferson Davis Hwy., (703) 305-5229.

D. Magnitude of Residues

The combined residues of myclobutanil and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) resulting from the proposed use will not exceed 4.0 ppm in bananas (post-harvest). The tolerance on bananas is for the raw agricultural commodity as defined in 40 CFR 180.1(j)(1). Both peel and pulp are included. Crown tissue or stalk are excluded. For risk assessment purposes, it was concluded that residues resulting from the proposed use will not exceed 0.8 ppm in banana pulp.

E. Rotational Crop Restrictions.

Rotational crop studies are not required for uses of pesticides on bananas.

F. International Residue Limits

There are no Codex, Canadian or Mexican residue limits established for myclobutanil and its metabolites on bananas. Therefore, no compatibility problems exist for the proposed tolerance on bananas.

IV. Conclusion

Therefore, the tolerance is established for the combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on the raw agricultural commodity bananas (post-harvest) at 4.0 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing

requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 13, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300647] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the

basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions was published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 23, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.443, is amended by adding and alphabetically inserting into the table of paragraph (a) the commodity bananas (Post-H) at 4.0 ppm to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

(a) General. * * *

Commodity	Parts per million
Bananas (Post-H)	4.0

[FR Doc. 98-12577 Filed 5-11-98; 8:45 am]

BILLING CODE 6560-60-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300628A; FRL-5785-4]

RIN 2070-AB78

Imidacloprid; Pesticide Tolerance Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting the final rule issued in the *Federal Register* of March 25, 1998 (63 FR 14371)(FRL-5778-3), establishing permanent tolerances for residues of the insecticide 1-((6-chloro-3-pyridinyl)methyl)-N-nitro-2-imidazolidinimine and its metabolites in or on sorghum grain at 0.05 parts per million (ppm), sorghum forage at 0.10 ppm, and sorghum stover at 0.10 ppm. Gustafson, Inc. submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170) requesting these tolerances.

DATES: This correction is effective May 12, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Elizabeth T. Haeberer, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-2891, e-mail: haeberer.elizabeth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and

Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2)."

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 28, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

In FR Doc. 98-7646, in the issue of Wednesday, March 25, 1998 at page 14378 in the third column, amendatory language item 2 and the amendment to § 180.472 are corrected to read as follows.

2. In § 180.472, the table in paragraph (a) is amended by revising the entries for "sorghum, forage," and "sorghum, grain," and adding alphabetically an entry for "sorghum, stover," to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.
(a) *

Commodity	Parts per million	Expiration/Revocation Date
Sorghum, forage	0.10	None
Sorghum, grain	0.05	None
Sorghum, stover	0.10	None
.....

[FR Doc. 98-12576 Filed 5-11-98; 8:45 am]

BILLING CODE 6560-50-F

Proposed Rules

Federal Register

Vol. 63, No. 91

Tuesday, May 12, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 97-131-1]

Horses From Qatar; Change in Disease Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of horses to remove Qatar from the list of regions the Animal and Plant Health Inspection Service considers affected with African horse sickness. This proposed action is based on information received from Qatar and is in accordance with standards set by the Office International des Epizooties for recognizing a country as free of African horse sickness. This proposed action would relieve restrictions on the importation of horses into the United States from Qatar.

DATES: Consideration will be given only to comments received on or before July 13, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97-131-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-131-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Coughill, Senior Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700

River Road, Unit 40, Riverdale, MD 20737-1231, (301) 734-3399; or e-mail: jcoughill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prescribe the conditions for the importation into the United States of specified animals to prevent the introduction of various animal diseases, including African horse sickness (AHS). AHS is a fatal equine viral disease that is not known to exist in the United States.

Section 93.308(a)(2) of the regulations lists regions that the Animal and Plant Health Inspection Service (APHIS) considers affected with AHS and sets forth specific quarantine requirements for horses that are imported from those regions. APHIS requires horses intended for importation from any of the regions listed, including horses that have stopped in or transited those regions, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This precaution is necessary to help ensure that the horses are not affected with AHS.

We are proposing to recognize Qatar as free of AHS. We are proposing this action based on information given to APHIS by Qatar and standards set by the Office International des Epizooties (OIE).

In order for a country to be recognized as free of AHS, the OIE requires the disease to be mandatorily reportable. In addition, the country must not have vaccinated domestic horses or other equines against the disease during the past 12 months. The OIE also requires that the country have no clinical, serological (in non-vaccinated animals), or epidemiological evidence of AHS for the past 2 years. Qatar has not had a recorded case of AHS in over 30 years, and vaccination against AHS has not been permitted during this period.

With its request to be considered free of AHS, Qatar provided APHIS with information about its veterinary infrastructure, animal health monitoring system, trading practices with other regions, and other pertinent information that we require in order to determine whether Qatar should be recognized as free of AHS.

APHIS has reviewed the information provided by Qatar in support of declaring it free of AHS. Based on that information, and in accordance with OIE standards for recognizing a country to be free of AHS, we are proposing to consider Qatar as free of AHS.

Therefore, we are proposing to amend § 93.308(a)(2) by removing Qatar from the list of regions declared affected with AHS. This proposed action would allow horses from Qatar to be shipped to and quarantined at ports designated in § 93.303, and would reduce the quarantine period to an average of 3 days to meet the quarantine and testing requirements specified in § 93.308.

On October 28, 1997, we published a final rule and policy statement in the **Federal Register** that established procedures for recognizing regions, rather than only countries, for the purpose of importing animals and animal products into the United States, and that established procedures by which regions may request permission to export animals and animal products to the United States under specified conditions, based on the regions' disease status (see 62 FR 56000-56033, Dockets 94-106-8 and 94-106-9). The final rule was effective on November 28, 1997. The request from Qatar addressed by this proposed rule is not a request to be recognized as a region, rather than a country, nor a request to establish new import conditions based on the disease status of regions. Therefore, we have handled and evaluated this request in the traditional framework of recognizing a country as affected or not affected with a specified disease. If this proposed rule is adopted, the current regulations regarding importation of horses from regions free of AHS will apply.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would recognize Qatar as free of AHS. This action would allow horses from Qatar to be shipped to and quarantined at ports designated in § 93.303 and would reduce the quarantine and testing period to an

average of 3 days to meet quarantine requirements specified in § 93.308.

U.S. importers of competition and breeding horses from Qatar would be affected by this rule if it is adopted. These importers would no longer be required to quarantine horses from Qatar for 60 days at the New York Animal Import Center in Newburgh, NY, at a cost of approximately \$5,296 per horse.

In 1996, the U.S. imported 31,633 horses. However, there have been no horses imported into the United States from Qatar since 1992. Removing the requirement for a 60-day quarantine for horses from Qatar would make the importation of these horses less expensive and logistically easier. As a result, we anticipate that U.S. importers might begin importing horses from Qatar. However, since the current horse population in Qatar is approximately 1500 head, we do not expect that the number of horses exported to the United States would be significant. In fact, in 1995, Qatar only exported 10 horses. Furthermore, most horses imported from Qatar would probably be in the United States on a temporary basis for particular events, such as for races or breeding, and then transported back to Qatar. For these reasons, we anticipate the overall economic impact on U.S. entities would be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 93 would be amended as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.308 [Amended]

2. In § 93.308, paragraph (a)(2) would be amended by removing "Qatar,".

Done in Washington, DC, this 6th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-12571 Filed 5-11-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-171-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-400, -400D, and -400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747-400, -400D, and -400F series airplanes, that would have required modification of the P212 and P213 panels of the cabin pressure control system. That proposal was prompted by a report of in-flight loss of cabin pressurization control due to a single failure of the auxiliary power unit (APU) battery. This action revises the proposed rule by adding new requirements, for certain airplanes, to modify the P5, P6, and P7 panels, and the W4701, W4703, and W4908 wire bundles, as applicable. The actions specified by this proposed AD are intended to prevent loss of control of the cabin pressurization system, which could result in rapid depressurization of the airplane. Such rapid depressurization could result in

deleterious physiological effects on the passengers and crew; and airplane diversions, which represent an increased risk to the airplane, passengers, and crew.

DATES: Comments must be received by June 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 96-NM-171-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. **FOR FURTHER INFORMATION CONTACT:** Clayton R. Morris, Jr., Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227-2794; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket Number 96-NM-171-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 96-NM-171-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747-400, -400D, and -400F series airplanes, was published as a notice of proposed rulemaking (NPRM) in the *Federal Register* on April 1, 1997 (62 FR 15433). That NPRM would have required modification of the P212 and P213 panels of the cabin pressure control system. That NPRM was prompted by a report of in-flight loss of cabin pressurization control due to a single failure of the auxiliary power unit (APU) battery. That condition, if not corrected, could result in rapid depressurization of the airplane. Such rapid depressurization could result in deleterious physiological effects on the passengers and crew; and airplane diversions, which represent an increased risk to the airplane, passengers, and crew.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has given due consideration to the comments received in response to the NPRM. One comment and the information it provides has led the FAA to consider making a significant change to the proposal. The comment and the changes prompted by it are explained below.

Request to Include Actions Specified in Additional Service Bulletin

One commenter (the manufacturer) requests that the FAA revise the proposed AD to additionally require accomplishment of the actions specified in Boeing Service Bulletin 747-24-2193, dated January 25, 1995; as revised by Notices of Status Change (NSC) 747-24-2193 NSC 1, dated April 13, 1995, 747-24-2193 NSC 2, dated October 5, 1995, 747-24-2193 NSC 3, dated November 22, 1995, 747-24-2193 NSC 4, dated December 21, 1995, 747-24-2193 NSC 5, dated May 2, 1996, and 747-24-2193 NSC 6, dated March 13, 1997; or Alert Service Bulletin 747-

24A2193, Revision 1, dated June 19, 1997.

The FAA concurs with the commenter's request to add the actions described in the service bulletins to the requirements of the originally proposed AD. Since issuance of the NPRM, the FAA has reviewed and approved these service bulletins, which describe procedures for modification of the wiring of the P5, P6, and P7 panels, and modification of the wiring in the W4701 and W4908 wire bundles; installation of diodes in the P6 panel; and, for certain airplanes, modification of the wiring in the W4703 wire bundles. Accomplishment of the actions described in the service bulletins would provide backup power for the control and indication of the cabin pressurization system in the event of a single-source failure of the main battery bus.

The FAA finds that accomplishment of the actions specified in Service Bulletin 747-24-2193 (including notices of status change), Alert Service Bulletin 747-24A2193, and Alert Service Bulletin 747-21A2381 (the appropriate source of service information for accomplishment of the actions specified in the originally proposed AD) would adequately address the identified unsafe condition by providing an additional power source in the event of loss of the primary power source. Therefore, the FAA has revised the proposed AD to add the actions specified in Boeing Service Bulletin 747-24-2193 or Alert Service Bulletin 747-24A2193.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 351 airplanes of the affected design in the worldwide fleet.

The FAA estimates that 43 airplanes of U.S. registry would be affected by this proposed AD. For all airplanes, it would take approximately 8 work hours per airplane to accomplish the proposed modification of the P212 and P213 panels, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$389 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be \$37,367, or \$869 per airplane.

For certain airplanes, it would take approximately 47 work hours per

airplane to accomplish the proposed modification of the P5, P6, and P7 panels, and the W4701, W4703, and W4908 wire bundles, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$1,529 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be \$4,349 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 96-NM-171-AD.

Applicability: Model 747-400, -400D, and -400F series airplanes; as identified in Boeing Alert Service Bulletin 747-21A2381, dated June 27, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of control of the cabin pressurization system, which could result in rapid depressurization of the airplane and consequent deleterious physiological effects on the passengers and crew; and airplane diversions, which represent an increased risk to the airplane, passengers, and crew; accomplish the following:

(a) Within 180 days after the effective date of this AD: Modify the P212 and P213 panels of the cabin pressure control system as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747-21A2381, dated June 27, 1996.

(1) For Groups 1 through 7 airplanes, as identified in the alert service bulletin: Change the wiring in the P212 and P213 panels; replace the existing two-pole relays with new four-pole relays; and perform a test of both panels.

(2) For Group 8 airplanes, as identified in the alert service bulletin: Change the wiring in the P212 panel; replace the existing two-pole relays with new four-pole relays; replace the existing P213 panel with a new P213 panel; and perform a test of both panels.

(b) For airplanes having line positions 696 through 1021 inclusive: Within 180 days after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2), as applicable, of this AD; in accordance with Boeing Service Bulletin 747-24-2193, dated January 25, 1995; as revised by Notices of Status Change (NSC) 747-24-2193 NSC 1, dated April 13, 1995, 747-24-2193 NSC 2, dated October 5, 1995, 747-24-2193 NSC 3, dated November 22, 1995, 747-24-2193 NSC 4, dated December 21, 1995, 747-24-2193 NSC 5, dated May 2, 1996, and 747-24-2193 NSC 6, dated March 13, 1997; or Alert Service Bulletin 747-24A2193, Revision 1, dated June 19, 1997.

(1) For all airplanes: Modify the wiring of the P5, P6, and P7 panels; modify the wiring in the W4701 and W4908 wire bundles; and install diodes in the P6 panel.

(2) For Groups 1 and 2 airplanes identified in paragraph i. of the Accomplishment Instructions of the service bulletin or alert service bulletin: Modify the wiring in the W4703 wire bundle.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 5, 1998.

D. L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12520 Filed 5-11-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 97-NM-156-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require repetitive inspections to detect cracking in the inner flange of door frame 66, and corrective actions, if necessary. This proposal also would provide for an optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to correct such fatigue cracking, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 97-NM-156-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM-156-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 97-NM-156-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that, during fatigue testing on a Model A320 test article, between 60,500 and 85,700 flight cycles, three cracks developed on the inner flange of door frame 66 at stringer 18 and stringer 20. The cracks were located around the edges of the gusset plate attachment holes of the inner flange of door frame 66, which, during routine visual inspection, would be hidden by the gusset plates. Such fatigue cracking, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320-53-1071, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996. This service bulletin describes procedures for repetitive rotating probe eddy current inspections to detect cracking around the edges of the gusset plate attachment holes of the inner flange of door frame 66, left and right, at stringer positions P18, P20, P22, P18', P20', and P22'. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96-234-087(B), dated October 23, 1996, in order to assure the continued airworthiness of these airplanes in France. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Airbus also has issued Service Bulletin A320-53-1072, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996. This service bulletin describes procedures for modification of the gusset plate attachment holes. The modification involves cold working the attachment holes of the inner flange of door frame 66, left and right, at stringer positions P18, P20, P22, P18', P20', and P22.. Accomplishment of the modification would eliminate the need for the repetitive inspections. The DGAC has approved this service bulletin.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the

provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Service Bulletin A320-53-1071 described previously, except as described in the following section. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Differences Between the Proposed AD and the Foreign Service Information

The proposed AD would differ from the previously described Airbus service bulletins and French airworthiness directive, which specify that Airbus be contacted for a repair solution for cracking detected during an inspection. In the proposed AD, however, repair of any crack would be required to be accomplished in accordance with a method approved by the FAA.

Also, operators should note that, unlike the procedures described in Airbus Service Bulletin A320-53-1071, this proposed AD would not permit further flight if cracks are detected around the edges of the gusset plate attachment holes of the inner flange of door frame 66. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject attachment hole that is found to have cracking must be repaired or modified prior to further flight.

Cost Impact

The FAA estimates that 132 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 8 work hours per airplane to accomplish the proposed inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be \$63,360, or \$480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the proposed modification, it would take approximately 5 work hours per airplane to accomplish the actions, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be \$300 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 97-NM-156-AD.

Applicability: Model A320 series airplanes on which Airbus Modification 21778 (reference Airbus Service Bulletin A320-53-1072, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996) has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To correct fatigue cracking in the inner flange of door frame 66, left and right, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 1 year after the effective date of this AD, whichever occurs later: Perform a rotating probe eddy current inspection to detect cracking around the edges of the gusset plate attachment holes of the inner flange of door frame 66, left and right, at stringer positions P18, P20, P22, P18', P20', and P22', in accordance with Airbus Service Bulletin A320-53-1071, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996. If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Repeat the inspection thereafter at intervals not to exceed 20,000 flight cycles.

(b) Modification of the gusset plate attachment holes of the inner flange of door frame 66, left and right (Airbus Modification 21778), in accordance with Airbus Service Bulletin A320-53-1072, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996, constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 96-234-087(B), dated October 23, 1996.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12518 Filed 5-11-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-37-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 757-200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757-200 series airplanes. This proposal would require modifications to the attachment installation of the forward lavatory. This proposal is prompted by a stress analysis report indicating that the forward lavatory could break free from the upper and/or lower attachments during an emergency landing. The actions specified by the proposed AD are intended to prevent failure of the attachment installation of the forward lavatory during an emergency landing, which could result in injury to the crew and passengers.

DATES: Comments must be received by June 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-37-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2780; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-37-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate,

ANM-114, Attention: Rules Docket No. 98-NM-37-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

While reviewing a stress analysis for the attachment installation of the forward lavatory on the Boeing Model 757-200 series airplane to add airline-requested variations, Boeing discovered a discrepancy with the analysis. The stress analysis, when corrected, indicated that the current design was not strong enough to withstand a 9g forward emergency landing. As a result, the upper attachment installation of the forward lavatory of passenger airplanes and the lower attachment installation of the forward lavatory of freighter airplanes do not meet the certification requirements for the ultimate load specifications of the forward lavatory. Furthermore, the stress analysis report indicated that the forward lavatory could break free at the upper and/or lower attachments during an emergency landing. Failure of the attachment installation of the forward lavatory during an emergency landing could result in injury to the crew and passengers.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 757-25-0181, dated June 26, 1997, which describes procedures for installation of a doubler to the upper attachment installation of the forward lavatory on passenger airplanes. The FAA also has reviewed and approved Boeing Alert Service Bulletin 757-25A0187, dated September 18, 1997, which describes procedures for installation of floor panel inserts, a retention fitting assembly, and a doubler assembly to the lower attachment installation of the forward lavatory on freighter airplanes. Accomplishment of the modifications specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the modifications specified in the service bulletins described previously.

Cost Impact

There are approximately 333 airplanes of the affected design in the worldwide fleet. The FAA estimates that 225 airplanes of U.S. registry would be

affected by this proposed AD: 164 passenger airplanes and 61 freighter airplanes.

It would take approximately 10 work hours per passenger airplane to accomplish the proposed modification, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$100 per airplane. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be \$114,800, or \$700 per passenger airplane.

It would take approximately 42 work hours per freighter airplane to accomplish the proposed modification, at an average labor rate of \$60 per work hour. Required parts would be provided by the airplane manufacturer at no cost to the operators. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be \$153,720, or \$2,520 per freighter airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption, ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98-NM-37-AD.

Applicability: Model 757-200 series airplanes; as listed in Boeing Service Bulletin 757-25-0181, dated June 26, 1997, and Boeing Alert Service Bulletin 757-25A0187, dated September 18, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the attachment installation of the forward lavatory during an emergency landing, which could result in injury to the crew and passengers, accomplish the following:

(a) For passenger airplanes identified in Boeing Service Bulletin 757-25-0181, dated June 26, 1997: Within 18 months after the effective date of this AD, install a doubler to the upper attachment installation of the forward lavatory in accordance with Boeing Service Bulletin 757-25-0181, dated June 26, 1997.

(b) For freighter airplanes identified in Boeing Alert Service Bulletin 757-25A0187, dated September 18, 1997: Within 18 months after the effective date of this AD, install floor panel inserts, a retention fitting assembly, and a doubler assembly to the lower attachment installation of the forward lavatory, in accordance with Boeing Alert Service Bulletin 757-25A0187, dated September 18, 1997.

(c) As of the effective date of this AD, no person shall install a floor panel, part number 141N5410-12 or 141N5410-28, on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12517 Filed 5-11-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-44-AD]

RIN 2120-AA64

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42 series airplanes. This proposal would require modification of the electrical power supply for the standby horizon indicator. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent loss of the standby horizon indicator in the event of failure of emergency direct current (DC) power, which could result in reduced controllability of the airplane during instrument flight rules conditions.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-

44-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-44-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-44-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42 series airplanes. The DGAC advises that an operator experienced an aborted takeoff that was attributed to loss of power at the direct current (DC) emergency (EMER) bus, which disabled the standby horizon indicator. The present configuration does not supply electrical power for the standby horizon indicator from two independent sources, which could result in the loss of the standby horizon indicator in the event of failure of emergency DC power. This condition, if not corrected, could result in reduced controllability of the airplane during instrument flight rules conditions.

Explanation of Relevant Service Information

The manufacturer has issued Avions de Transport Regional Service Bulletin ATR42-34-0090, Revision 1, dated April 22, 1997, which describes procedures for modifying the electrical power supply for the standby horizon indicator. This modification would involve installation of relays in certain electrical panels and modification of wiring, so that power to the standby horizon indicator can be supplied from two independent sources. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96-230-066(B), dated October 23, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 88 airplanes of U.S. registry would be affected by this proposed AD, that it would take between approximately 10 to 55 work hours per airplane to accomplish the proposed modification (depending on how many kits are needed for each airplane), and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators ranges from \$52,800 to \$290,400, or \$600 to 3,300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 98-NM-44-AD.

Applicability: Model ATR42-200, -300, and -320 series airplanes on which Aerospatiale Modification 4647 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the standby horizon indicator in the event of failure of emergency direct current (DC) power, which could result in reduced controllability of the airplane during instrument flight rules conditions, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the electrical power supply for the standby horizon indicator in accordance with Avions de Transport Regional Service Bulletin ATR42-34-0090, Revision 1, dated April 22, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 96-230-066(B), dated October 23, 1996.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12516 Filed 5-11-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-61-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-61-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-61-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-61-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that, during investigation into a bowl overflow problem, maintenance personnel determined that water contamination in the avionics bay could cause the left- and right-side engine relays to simultaneously fail. Further investigation has revealed that the engine/master 1 relay (11QG) should be

relocated from relay box 103VU to shelf 95VU in the avionics bay to improve system separation between the left- and right-side engine/master relays by increasing the distance between them. The relays control the low-pressure shutoff valves that supply fuel to the engines. Thus, simultaneous failure of the relays could result in a cutoff of the fuel supply to both engines. This condition, if not corrected, could lead to a loss of engine power and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320-24-1092, dated March 26, 1997, and Revision 01, dated December 24, 1997, which describe procedures for relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay. Relocation of the engine/master 1 relay involves modification of the equipment and wiring in the affected areas. Accomplishment of the action specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 97-360-111(B), dated November 19, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 120 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 16 work hours per airplane to accomplish the proposed action, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$209 or \$961 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be as low as \$1,169 per airplane, or as high as \$1,921 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98-NM-61-AD.

Applicability: Model A319, A320, and A321 series airplanes; on which Airbus Modification 26065 (reference Airbus Service Bulletin A320-24-1092, Revision 01, dated December 24, 1997) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, relocate the engine/master 1 relay (11QG) from relay box 103VU to shelf 95VU in the avionics bay, in accordance with Airbus Service Bulletin A320-24-1092, dated March 26, 1997, or Revision 01, dated December 24, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97-360-111(B), dated November 19, 1997.

Issued in Renton, Washington, on May 5, 1998.

D. L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 98-12515 Filed 5-11-98; 8:45 am]
BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-82-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300-600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300-600 series airplanes. This proposal would require repetitive inspections to detect fatigue cracking of the wing top skin at the front spar joint; and a follow-on eddy current inspection and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the wing top skin at the front spar joint, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-82-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-82-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-82-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300-600 series airplanes. The DGAC advises that, during full-scale testing on a Model A300-600 test article, fatigue cracks were found between 38,000 and 49,000 simulated flights on the wing top skin at the front spar joint between ribs 1 and 7. Further investigation has revealed that the fatigue cracks originated in the holes of the clearance fit fasteners on the wing top skin. Such fatigue cracking, if not detected and corrected in a timely manner, could

result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300-57-6045, Revision 1, dated August 3, 1994 (including Appendix 1, Revision 1, dated August 3, 1994), which describes procedures for repetitive detailed visual inspections to detect fatigue cracking of the wing top skin at the front spar joint; a follow-on eddy current inspection to confirm the findings of the visual inspection if cracking is suspected or detected; and repair of certain cracking. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 97-374-238(B), dated December 3, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in the service bulletin, this proposed AD would not permit further flight if cracks are detected in the wing top skin. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject wing top skin that is found to be

cracked must be repaired or modified prior to further flight.

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 54 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 2 work hours per airplane to accomplish the proposed inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be \$6,480, or \$120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by

contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98-NM-82-AD.

Applicability: All Model A300-600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the wing top skin at the front spar joint, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 22,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect fatigue cracking of the wing top skin at the front spar joint, in accordance with Airbus Service Bulletin A300-57-6045, Revision 1, dated August 3, 1994 (including Appendix 1, Revision 1, dated August 3, 1994). Repeat the detailed visual inspection thereafter at intervals not to exceed 8,000 flight cycles.

(b) If any cracking is suspected or detected during any inspection required by paragraph (a) of this AD, prior to further flight, perform an eddy current inspection to confirm the findings of the visual inspection, in accordance with Airbus Service Bulletin A300-57-6045, Revision 1, dated August 3,

1994 (including Appendix 1, Revision 1, dated August 3, 1994). If any cracking is detected during any eddy current inspection, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile or (its delegated agent).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97-374-238(B), dated December 3, 1997.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
(FR Doc. 98-12514 Filed 5-11-98; 8:45 am)

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-93-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A319, A320, and A321 series airplanes. This proposal would require repetitive inspections for discrepancies of the lock bolt for the pintle pin on the main landing gear (MLG), and follow-on corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The

actions specified by the proposed AD are intended to detect and correct a rotated, damaged, or missing lock bolt, which could result in disengagement of the pintle pin from the bearing, and consequent collapse of the MLG during landing.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-93-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: "Comments to Docket Number 98-NM-93-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-93-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that it has received two reports indicating that the forward pintle pin of the main landing gear (MLG) had migrated forward toward the wing rear spar. In both instances, the lock bolt and associated MLG barrel bushings securing the pintle pin were missing, which allowed the pintle pin to migrate forward, although further movement was prevented by the incrementally tapered diameter of the pintle pin. Initial investigations have indicated that the probable cause of migration of the pintle pin was due to ineffective lubrication of the bearing of the forward pintle pin, which caused excess load on the lock bolt. The DGAC further advises that backward migration of the pintle pin also could occur, which would allow the pintle pin to become disengaged and separate from the pintle pin bearing. Such discrepancies of the pintle pin, if not corrected, could result in collapse of the MLG during landing.

Explanation of Relevant Service Information

The manufacturer has issued Airbus All Operator Telex (AOT) 32-17, Revision 01, dated November 6, 1997, which describes procedures for repetitive detailed visual inspections for discrepancies (rotation, wear, missing or broken parts) of the lock bolt for the pintle pin of the MLG, and follow-on corrective actions, if necessary. The corrective actions include replacement of a discrepant lock bolt with a new or serviceable part, followed by relubrication of the pintle spherical bearing. The DGAC classified this AOT as mandatory and issued French airworthiness directive 97-385-112(B), dated December 17, 1997, in order to assure the airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOT described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 120 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be \$7,200, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1)

is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98-NM-93-AD.

Applicability: All Model A319, A320, and A321 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct a rotated, damaged, or missing lock bolt, which could result in disengagement of the pin from the bearing, and consequent collapse of the main landing gear (MLG) during landing, accomplish the following:

(a) Perform a detailed visual inspection to detect discrepancies (rotation, damage, and absence) of the lock bolt for the pin on

the MLG, in accordance with Airbus All Operator Telex (AOT) 32-17, Revision 01, dated November 6, 1997, at the latest of the times specified in paragraphs (a)(1), (a)(2), and (a)(3), of this AD. If any discrepancy is detected, prior to further flight, perform corrective actions, as applicable, in accordance with the AOT. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles or 15 months, whichever occurs first.

(1) Within 30 months since the airplane's date of manufacture or prior to the accumulation of 2,000 total flight cycles, whichever occurs first.

(2) Within 15 months or 1,000 flight cycles after the last gear replacement or accomplishment of Airbus Industrie Service Bulletin A320-32-1119, dated June 13, 1994, whichever occurs first.

(3) Within 500 flight cycles after the effective date of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97-385-112(B), dated December 17, 1997.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12511 Filed 5-11-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-123-AD]

RIN 2120-AA64

Airworthiness Directives; Dornier Model 328-100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328-100 series airplanes. This proposal would require a one-time visual inspection to detect cracking in the axle adapter of the shock absorber of the nose landing gear (NLG), and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to correct cracking in the axle adapter of the shock absorber of the NLG, which could result in failure of the NLG and consequent damage to the airplane structure.

DATES: Comments must be received by June 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-123-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D-82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-123-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-123-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328-100 series airplanes. The LBA advises that an operator reported finding a crack in the axle adapter of the shock absorber in the nose landing gear (NLG) during a maintenance check. Investigation revealed that, in certain areas of the crack, there was a presence of dichromate, an orange-red chemical used in material processing for the purposes of resisting corrosion. This presence of dichromate indicates that at least part of the crack was present during the manufacturing cycle of the component. This condition, if not corrected, could result in cracks in the axle adapter of the shock absorber of the NLG, which could cause failure of the NLG and consequent damage to the airplane structure.

Explanation of Relevant Service Information

The manufacturer has issued Dornier Service Bulletin SB-328-32-213, dated April 16, 1997, which describes procedures for a one-time visual inspection to detect cracking in the axle adapter of the shock absorber of the NLG, and corrective actions, if necessary. The corrective actions involve removal and replacement of the NLG shock absorber with a new or serviceable shock absorber if any cracking is detected in the axle adapter. The LBA classified this service bulletin as mandatory and issued German

airworthiness directive 97-142, dated May 22, 1997, in order to assure the continued airworthiness of these airplanes in Germany.

The Dornier service bulletin references Messier-Dowty Service Bulletin 800-32-027, dated May 7, 1997, as an additional source of service information to accomplish the inspection.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of actions specified in the Dornier service bulletin described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be \$3,000, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined

that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GmbH: Docket 98-NM-123-AD.

Applicability: Model 328-100 series airplanes, equipped with nose landing gear (NLG) having serial below IL113; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To correct cracking in the axle adapter of the shock absorber of the NLG, which could cause failure of the NLG and consequent damage to the airplane structure, accomplish the following:

(a) Within 300 flight hours after the effective date of this AD, perform a one-time visual inspection to detect cracking in the axle adapter of the NLG shock absorber, in accordance with Dornier Service Bulletin SB-328-32-213, dated April 16, 1997.

(1) If no cracking is detected, no further action is required by this AD.

(2) If any cracking is detected, prior to further flight, remove the NLG shock absorber and replace with a new or serviceable part, in accordance with the service bulletin.

Note 2: Dornier Service Bulletin SB-328-32-213, dated April 16, 1997, references Messier-Dowty Service Bulletin 800-32-027, dated May 7, 1997, as an additional source of service information to accomplish the inspection, removal, and repair.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in German airworthiness directive 97-142, dated May 22, 1997.

Issued in Renton, Washington, on May 5, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. 98-12510 Filed 5-11-98; 8:45 am]

BILLING CODE 4910-13-U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 34 and 35

Over-the-Counter Derivatives

AGENCY: Commodity Futures Trading Commission.

ACTION: Concept Release.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") has been engaged in a comprehensive regulatory reform effort

designed to update the agency's oversight of both exchange and off-exchange markets. As part of this reform effort, the Commission is reexamining its approach to the over-the-counter ("OTC") derivatives market.

OTC derivatives are contracts executed outside of the regulated exchange environment whose value depends on (or derives from) the value of an underlying asset, reference rate, or index. They are used by market participants to perform a wide variety of important risk management functions. The CFTC's last major regulatory actions involving OTC derivatives were regulatory exemptions for certain swaps and hybrid instruments adopted in January 1993. Since that time, the OTC derivatives market has grown dramatically in both volume and variety of products offered and has attracted many new end-users of varying degrees of sophistication. The market has also changed, with new products being developed, with some products becoming more standardized, and with systems for central execution or clearing being studied or proposed.

The Commission hopes that the public comments filed in response to this release will constitute an important source of relevant data and analysis that will assist it in determining whether its current regulatory approach continues to be appropriate or requires modification. The Commission wishes to maintain adequate safeguards without impairing the ability of the OTC derivatives market to continue to grow and the ability of U.S. entities to remain competitive in the global financial marketplace. The Commission has identified a broad range of issues and potential approaches in order to generate detailed analysis from commenters. The Commission urges commenters to analyze the benefits and burdens of any potential regulatory modifications in light of current market realities. The Commission has no preconceived result in mind. The Commission is open both to evidence in support of easing current restrictions and evidence indicating a need for additional safeguards. The Commission also welcomes comment on the extent to which certain matters are being or can be adequately addressed through self-regulation, either alone or in conjunction with some level of government oversight, or through the regulatory efforts of other government agencies.

New regulatory restrictions ultimately adopted, if any, will be adopted only after publication for additional public comment and will be applied prospectively only. This release in no

way alters the current status of any instrument or transaction under the Commodity Exchange Act. All currently applicable exemptions, interpretations, and policy statements issued by the Commission regarding OTC derivatives products remain in effect, and market participants may continue to rely upon them.

DATES: Comments must be received on or before July 13, 1998.

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; transmitted by facsimile to (202) 418-5521; or transmitted electronically to {secretary@cftc.gov}. Reference should be made to "Over-the-Counter Derivatives Concept Release."

FOR FURTHER INFORMATION CONTACT: Michael Greenberger, Director, David M. Battan, Special Counsel, or John C. Lawton, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, D.C. 20581 (202) 418-5430.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Description of Over-the-Counter Products and Markets

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I. Introduction

A. Description of Over-the-Counter Products and Markets

Over-the-counter (OTC) derivatives are contracts executed outside of the regulated exchange environment whose value depends on (or derives from) the value of an underlying asset, reference rate or index.¹ The classes of underlying assets from which a derivative

instrument may derive its value include physical commodities (e.g., agricultural products, metals, or petroleum), financial instruments (e.g., debt and interest rate instruments or equity securities), indexes (e.g., based on interest rates or securities prices), foreign currencies, or spreads between the value of such assets.

Like exchange-traded futures and option contracts, OTC derivatives are used to perform a wide variety of important risk management functions. End-users employ OTC derivatives to address risks from volatility in interest rates, foreign exchange rates, commodity prices, and equity prices, among other things. OTC derivative instruments also can be used to assume price risk in order to increase investment yields or to speculate on price changes. Participants in the OTC derivatives market include banks, other financial service providers, commercial corporations, insurance companies, pension funds, colleges and universities, and governmental entities.

Use of OTC derivatives has grown at very substantial rates over the past few years. According to the most recent market survey by the International Swaps and Derivatives Association ("ISDA"), the notional value of new transactions reported by ISDA members in interest rate swaps, currency swaps, and interest rate options during the first half of 1997 increased 46% over the previous six-month period.² The notional value of outstanding contracts in these instruments was \$28.733 trillion, up 12.9% from year-end 1996, 62.2% from year-end 1995, and 154.2% from year-end 1994.³ ISDA's 1996 market survey noted that there were 633,316 outstanding contracts in these instruments as of year-end 1996, up 47% from year-end 1995, which in turn represented a 40.7% increase over year-end 1994.⁴ An October 1997 report by the General Accounting Office ("GAO") suggests that the market value of those OTC derivatives represents "about 3 percent" of the notional amount.⁵ Applying the 3% figure to the most

recent ISDA number for contracts outstanding for the first half of 1997 indicates that the world-end market value of these OTC derivatives transactions is over \$860 billion.

While OTC derivatives serve important economic functions, these products, like any complex financial instrument, can present significant risks if misused or misunderstood by market participants. A number of large, well publicized, financial losses over the last few years have focused the attention of the financial services industry, its regulators, derivatives end-users, and the general public on potential problems and abuses in the OTC derivatives market.⁶ Many of these losses have come to light since the last major regulatory actions by the CFTC involving OTC derivatives, the swaps and hybrid instruments exemptions issued in January 1993.⁷

B. Purpose of This Release

The Commission has been engaged in a comprehensive regulatory reform effort designed to update the agency's oversight of both exchange and off-exchange markets.⁸ As part of this process, the Commission believes that it is appropriate to reexamine its regulatory approach to the OTC derivatives market taking into account developments since 1993. The purpose

¹ See, e.g., Jerry A. Markham, *Commodities Regulation: Fraud, Manipulation & Other Claims*, Section 27.05 nn. 2-22.1 (1997) (listing 22 examples of significant losses in financial derivatives transactions); 1997 GAO Report at 4 (stating that the GAO identified 360 substantial end-user losses). Some of these transactions involved instruments that are not subject to the CEA.

² Each of these exemptions is discussed in Part II, below.

³ See, e.g., Proposed Rulemaking Permitting Future-Style Margining of Commodity Options, 62 FR 66569 (Dec. 19, 1997); Concept Release on the Denomination of Customer Funds and the Location of Depositories, 62 FR 67841 (Dec. 30, 1997); Account Identification for Eligible Bunched Orders, 63 FR 695 (Jan. 7, 1998); Maintenance of Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers, 63 FR 2188 (Jan. 14, 1998); Requests for Exemptive, No-Action and Interpretative Letters, 63 FR 3285 (Jan. 22, 1998); Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market, 63 FR 3708 (Jan. 26, 1998); Distribution of Risk Disclosure Statements by Futures Commission Merchants and Introducing Brokers, 63 FR 8566 (Feb. 20, 1998); Amendments to Minimum Financial Requirements for Futures Commission Merchants, 63 FR 12713 (March 16, 1998); Two-Part Documents for Commodity Pools, 63 FR 15112 (March 30, 1998); and Trade Options on the Enumerated Agricultural Commodities, 63 FR 18621 (April 16, 1998). See also Application of FutureCom, Ltd. as a Contract Market in Live Cattle Futures and Options, 62 FR 62566 (Nov. 24, 1997) (Internet-based trading system); Application of Cantor Financial Futures Exchange as a Contract Market in US Treasury Bond, Ten-Year Note, Five-Year Note and Two-Year Note Futures Contracts, 63 FR 5505 (Feb. 3, 1998) (electronic trading system).

⁴ See Group of Thirty, *Derivatives: Practices and Principles 2* (1993).

² International Swaps and Derivatives Association, Summary of Recent Market Survey Results, ISDA Market Survey, available at (<http://www.isda.org>).

³ Id.

⁴ Id.

⁵ General Accounting Office, GAO/GGD-98-5, *OTC Derivatives: Additional Oversight Could Reduce Costly Sales Practice Disputes* 3 n.6 (1997) (hereinafter "1997 GAO Report"). The notional amount represents the amount upon which payments to the parties to a derivatives transaction are based and is the most commonly used measure of outstanding derivatives transactions. Notional amounts generally overstate the amount at risk and the market value of such transactions.

of this release is to solicit comments on whether the regulatory structure applicable to OTC derivatives under the Commission's regulations should be modified in any way in light of recent developments in the marketplace and to generate information and data to assist the Commission in assessing this issue.

The market has continued to grow and to evolve in the past five years. As indicated above, volume has increased dramatically. New end-users of varying levels of sophistication have begun to participate in this market. Products have proliferated, with some products becoming increasingly standardized. Systems for centralized execution and clearing are being proposed.

The Commission hopes that the public comments filed in response to this release will constitute an important source of relevant data and analysis that will assist it in determining how best to maintain adequate regulatory safeguards without impairing the ability of the OTC derivatives market to continue to grow and the ability of U.S. entities to remain competitive in the global financial marketplace. The Commission has no preconceived result in mind. The Commission wishes to draw on the knowledge and expertise of a broad spectrum of interested parties including OTC derivatives dealers, end-users of derivatives, other regulatory authorities, and academicians. The Commission urges commenters to provide detail on current custom and practice in the OTC derivatives marketplace in order to assist the Commission in gauging the practical effect of current exemptions and potential modifications.

The Commission is open both to evidence in support or broadening its exemptions and to evidence indicating a need for additional safeguards. Serious consideration will be given to the views of all interested parties before regulatory changes, if any, are proposed. In evaluating the comments and ultimately deciding on its course of action, the Commission will, of course, also engage in its own research and analysis. Any proposed changes will be carefully designed to avoid unduly burdensome or duplicative regulation that might adversely affect the continued vitality of the market and will be published for public comment. Moreover, any changes which impose new regulatory obligations or restrictions will be applied prospectively only.

As this process goes forward, the Commission is mindful of the industry's need to retain flexibility in designing new products as well as the need for legal certainty concerning the enforceability of agreements. Therefore, the Commission wishes to emphasize

that, as was the case with other recent concept releases, this release identifies a broad range of issues in order to stimulate public discussion and to elicit informed analysis. This release does not in any way alter the current status of any instrument or transaction under the CEA. All currently applicable exemptions, interpretations, and policy statements issued by the Commission regarding OTC derivatives products remain in effect, and market participants may continue to rely upon them.

II. Current Exemptions*

A. Swaps

1. Policy Statement

The Policy Statement was adopted by the Commission on July 21, 1989.¹⁰ It provides a safe harbor from regulation by the Commission under the CEA for qualifying agreements. It addresses only swaps settled in cash, with foreign currencies considered to be cash.¹¹

To qualify for a safe harbor from regulation under the Policy Statement, a swap agreement must have all of the following characteristics: (1) individually tailored terms; (2) an absence of exchange-style offset; (3) an absence of a clearing organization or margin system; (4) undertaken in conjunction with a line of business; and (5) not marketed to the general public.

These conditions limit the applicability of the Policy Statement primarily to agreements entered into by institutional and commercial entities such as corporations, commercial and

*In addition to the exemptions discussed in the text, the CEA excludes certain transactions. Forward contracts are excluded in section 1a(11) of the CEA, 7 U.S.C. 1a(11). The Treasury Amendment of the CEA excludes "transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgage and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board or trade." Section 2(a)(1)(A)(ii), 7 U.S.C. 2(ii). Furthermore, options on securities or securities indexes are excluded from the Act. Section 2(a)(1)(B)(i), 7 U.S.C. 2a(i). The Commission by order has also exempted certain transactions in energy products from the provisions of the CEA. Exemption for Certain Contracts Involving Energy Products, 58 FR 21286 (April 20, 1993). In addition, the Commission has exempted certain trade options. 17 C.F.R. 32.4; Trade Options on Enumerated Agricultural Commodities, 63 FR 18821 (April 16, 1998). The Commission has also exempted certain transactions in which U.S. customers establish or offset foreign currency options on the Hong Kong Futures Exchange. Petition of the Philadelphia Stock Exchange, Inc. for Exemptive Relief To Permit United States Customers To Establish or Offset Positions in Certain Foreign Currency Options on the Hong Kong Futures Exchange, Ltd. Through Registered Broker-Dealers, 62 FR 15659 (April 2, 1997).

¹⁰ 54 FR 30694 (July 21, 1989).

¹¹ Id. at 30696.

investment banks, thrift institutions, insurance companies, governments and government-sponsored or -chartered entities. The Commission indicated however, that the restrictions did not "preclude dealer transactions in swaps undertaken in conjunction with a line of business, including financial intermediation services."¹² Moreover, the restrictions reflect the Commission's understanding that qualifying transactions will be entered into with the expectation of performance by the counterparties, will be bilaterally negotiated as to material economic terms based upon individualized credit determinations, and will be documented by the parties in an agreement (or series of agreements) that is not standardized.¹³ The restrictions are not intended to prevent the use of master agreements between two counterparties, provided that the material terms of the master agreement and the transaction specifications are individually tailored by the parties.¹⁴

2. Part 35

The Futures Trading Practices Act of 1992 ("1992 Act")¹⁵ added subsections (c) and (d) to section 4 of the Act. Section 4(c)(1)¹⁶ authorizes the Commission, by rule, regulation or order, to exempt any agreement, contract or transaction, or class thereof from the exchange-trading requirements of Section 4(a) or any other requirement of the Act other than Section 2(a)(1)(B). Section 4(c)(2)¹⁷ provides that the Commission may not grant any exemption unless the Commission determines that the transaction will be entered into solely between "appropriate persons."¹⁸ That the exchange trading requirements of Section 4(a) should not be applied, that the agreement, contract or transaction in question will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act, and that the exemption would be consistent with the public interest and the purposes of the Act.

The Commission may grant exemptions "either unconditionally or on stated terms or conditions."¹⁹ Thus,

¹² Id. at 30697.

¹³ Id. at 30696-97.

¹⁴ See id. at 30696 n. 17.

¹⁵ Pub. L. No. 102-546 (1992), 106 Stat. 3590, 3629.

¹⁶ 7 U.S.C. 6(c)(1).

¹⁷ 7 U.S.C. 6(c)(2).

¹⁸ 7 U.S.C. 6(c)(3).

¹⁹ 7 U.S.C. 6(c)(1). Section 4(d), 7 U.S.C. 6(d), provides that

Section 4(c) gives the Commission the authority to tailor its regulatory program to fit the realities of the marketplace and the needs of market participants.

Part 35 of the Commission's regulations exempts swap agreements meeting specified criteria from the provisions of the CEA and the Commission's regulations promulgated thereunder except for the following: Section 2(a)(1)(B) of the CEA;²⁰ the antifraud provisions set forth in Sections 4b and 4c of the CEA²¹ and Commission Rule 32.9;²² and the antimanipulation provisions set forth in Sections 6(c) and 9(a)(2) of the CEA.²³ The Part 35 swap exemption is retroactive and effective as of October 23, 1974, the date of enactment of the Commodity Futures Trading Commission Act of 1974.²⁴ Part 35 was promulgated under authority granted to the Commission by Section 4(c) of the Act.²⁵

To be eligible for exemptive treatment under Part 35, an agreement: (1) must be a swap agreement as defined in Regulation 35.1(b)(1); (2) must be entered into solely between eligible swap participants; (3) must not be a part of a fungible class of agreements that are standardized as to their material economic terms; (4) must include as a material consideration the creditworthiness of a party with an obligation under the agreement; and (5) must not be entered into and traded on or through a multilateral transaction execution facility. These criteria were designed to assure that the exempted swaps agreements met the requirements set forth by Congress in Section 4(c) of the CEA and "to promote domestic and international market stability, reduce

[t]he granting of an exemption under this section shall not affect the authority of the Commission under any other provision of the Act to conduct investigations in order to determine compliance with the requirements or conditions of such exemption or to take enforcement action for any violation of any provision of this Act or any rule, regulation or order thereunder caused by failure to comply with or satisfy such conditions or requirements.

²⁰ 7 U.S.C. 2a. Section 2(a)(1)(B) of the Act establishes the respective jurisdiction of the CFTC and of the SEC over different instruments and restricts or prohibits certain types of securities futures.

²¹ 7 U.S.C. 6b and 6c.

²² Regulation 32.9, 17 CFR 32.9, prohibits fraud in connection with commodity options transactions.

²³ 7 U.S.C. 9 and 13(a)(2).

²⁴ Pub. L. No. 93-463 (1974), 86 Stat. 1389. See Commission Regulation 35.1(a) and Exemption for Certain Swap Agreements, 58 FR 5587 at 5588 (January 22, 1993) (adopting Part 35 Rules).

²⁵ In issuing the swap exemption, the Commission also acted pursuant to its authority to regulate options under Section 4(c) of the CEA, 7 U.S.C. 6(c)(b). See Exemption for Certain Swap Agreements, 58 FR 5587 at 5589 (Jan. 22, 1993).

market and liquidity risks in financial markets, including those markets (such as futures exchanges) linked to swap markets and eliminate a potential source of systemic risk."²⁶

The definition of "swap agreement" provided in Regulation 35.1(b)(1) is as follows:

Swap agreement means: (i) An agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing); (ii) Any combination of the foregoing; or (iii) A master agreement for any of the foregoing together with all supplements thereto.

This definition is the same as the definition of swap agreement set forth in Section 4(c)(5)(B) of the CEA.²⁷

Regulation 35.1(b)(2) defines "eligible swap participant" as follows:

(i) A bank or trust company (acting on its own behalf or on behalf of another eligible swap participant);

(ii) A savings association or credit union;

(iii) An insurance company;

(iv) An investment company subject to regulation under the Investment Company Act of 1940 . . . or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such investment company or foreign person is not formed solely for the specific purpose of constituting an eligible swap participant;

(v) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an eligible swap participant and has total assets exceeding \$5,000,000;

(vi) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an eligible swap participant (A) which has total assets exceeding \$10,000,000; or (B) the obligations of which under the swap agreement are guaranteed or otherwise supported by a letter of credit . . . or other agreement by any such entity referenced in this subsection (vi)(A) . . . or . . . in paragraph (i), (ii), (iii), (iv), (v), (vi) or (viii) of this section; or (C) which has a net worth of \$1,000,000 and enters into the swap agreement in connection with . . . its business; or which has a net worth of \$1,000,000 and enters into the swap agreement to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in . . . its business;

²⁶ Id. at 5588.

²⁷ See id. at 5589.

(vii) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding \$5,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 . . . or a commodity trading advisor subject to regulation under the Act;

(viii) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(ix) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 . . . or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on the behalf of another eligible swap participant: Provided, however, that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of either subsection (vi) or (xi) of this section;

(x) A futures commission merchant, floor broker, or floor trader subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible swap participant: Provided, however, that if such futures commission merchant, floor broker or floor trader is a natural person or proprietorship, the futures commission merchant, floor broker or floor trader must also meet the requirements of subsection (vi) or (xi) of this section; or

(xi) Any natural person with total assets exceeding at least \$10,000,000.

The definition of "eligible swap participant" in Regulation 35.1(b)(2) is based on the list of appropriate persons set forth in Section 4(c)(3)(A)-(J) of the CEA. However, the Commission, relying on authority provided in Section 4(c)(3)(K) of the CEA, adjusted those definitions when it adopted Part 35. These adjustments reflected the international character of the swaps market by assuring that both foreign and United States entities could qualify for treatment as eligible swap participants. In addition, the Commission raised the threshold for the net worth or total asset test that must be met by certain eligible swap participants. It applied this test as an indication of a swap participant's financial sophistication and background.²⁸ The Commission indicated its belief that the definition of "eligible swap participant," as adopted, would not adversely affect the swap market as it then existed.²⁹

The remaining conditions that must be satisfied by swap agreements in order

²⁸ See id. at 5589-90.

²⁹ See id. at 5590.

to qualify for the Part 35 exemption are meant, among other goals, to assure that the exemption does not permit the establishment of an unregulated exchange-like market in swaps.³⁰ These conditions require that the creditworthiness of any party having an obligation under the swap agreement must be a material consideration in entering into the agreement and prohibit a swap that is part of a fungible class of agreements, standardized as to their material economic terms, or that is entered into and traded on or through a multilateral transaction execution facility from qualifying for the Part 35 exemption. The Commission has made clear that the Part 35 exemption does not extend to transactions that are subject to a clearing system where the credit risk of individual counterparties to each other is effectively eliminated.³¹

These conditions do not prevent parties who wish to rely on the Part 35 exemption from undertaking bilateral collateral or margining arrangements nor from applying bilateral or multiparty netting arrangements to their transactions, provided however that, in the case of multilateral netting arrangements, the underlying gross obligations among the parties are not extinguished until all netted obligations are fully performed.³² Nor is the Part 35 restriction on multilateral transaction execution facilities meant to preclude parties who engage in negotiated, bilateral transactions from using computer or other electronic facilities to communicate simultaneously with other participants, so long as they do not use such facilities to enter orders or execute transactions.³³

Similarly, standardization of terms that are not material economic terms does not necessarily prevent an agreement from qualifying for an exemption under Part 35, provided that the material economic terms of the swap agreement remain subject to individual negotiation by the parties.³⁴ In this respect, the Commission has explained that:

[T]he phrase "material economic terms" is intended to encompass terms that define the rights and obligations of the parties under the swap agreement, and that as a result, may affect the value of the swap at origination or thereafter. Examples of such terms may include notional amount, amortization, maturity, payment dates, fixed and floating rates or prices (including method by which such rates or prices may be determined),

payment computation methodologies, and any rights to adjust any of the foregoing.³⁵

B. Hybrid Instruments

1. Background

In 1989, the Commission recognized that certain instruments combined characteristics of securities or bank deposits with characteristics of futures or options and wished to exclude from CEA regulation those hybrid instruments whose commodity-dependent value was less than their commodity-independent value. The Commission issued a Statutory Interpretation Concerning Certain Hybrid Instruments ("Interpretation")³⁶ which excluded from regulation under the CEA and CFTC regulations debt securities within the meaning of Section 2(1) of the Securities Act of 1933 and time deposits within the meaning of 12 CFR Section 204.2(c)(1) that had the following characteristics: (1) indexation to a commodity on no more than a one-to-one basis; (2) a limited maximum loss; (3) inclusion of a significant commodity component; (4) lack of a severable commodity component; (5) no required delivery of a commodity by means of an instrument specified in the rules of a designated contract market; and (6) no marketing of the instruments as futures contracts or commodity options.³⁷

Later in 1989, the Commission adopted Part 34, which exempted certain hybrid instruments with commodity option components from the CEA and from the Commission's regulations.³⁸ While Part 34 expanded the category of hybrid instruments that were considered to be outside of the CEA and the Commission's regulations, the Commission explicitly stated that it intended not "to address the entire universe of hybrid instruments in the proposed rules, but rather to establish an exemptive framework" that would apply to certain instruments in which issuers had expressed an interest to that point.³⁹ In 1990, the Commission issued a revised Interpretation designed to conform the Interpretation's treatment of hybrids with the treatment of hybrids in Part 34.⁴⁰ The revised Interpretation expanded the class of securities and depository accounts eligible as hybrid instruments and expanded the class of institutions eligible to transact in hybrids.

Congress included a provision in the 1992 Act permitting the Commission to exempt any transaction from all provisions of the CEA except Section 2(a)(1)(B). Using this new authority contained in Section 4(c) of the CEA, the CFTC substantially modified the Part 34 regulations to exempt certain hybrids (including, for the first time, hybrid instruments with futures-like components) from most provisions of the CEA and from the Commission's regulations.

2. Part 34

A hybrid instrument is defined in Part 34 of the Commission's regulations as an equity security, a debt security, or a depository instrument with at least one commodity-dependent component that has a payment feature similar to that of a commodity futures contract, a commodity option contract or a combination thereof.⁴¹ Part 34 exempts such hybrids, and those transacting in and/or providing advice or other services with respect to such hybrids, from all provisions of the CEA except Section 2(a)(1)(B) of the CEA; provided that a number of conditions are met.⁴² The conditions include: (1) a requirement that the issuer must receive full payment of the hybrid's purchase price;⁴³ (2) a prohibition on requiring additional out-of-pocket payments to the issuer during the hybrid's life or at its maturity;⁴⁴ (3) a prohibition on marketing the instrument as a futures contract or commodity option;⁴⁵ (4) a prohibition on settlement by delivery of an instrument specified as a delivery instrument in the rules of a designated contract market;⁴⁶ (5) a requirement that the hybrid be initially sold or issued subject to federal or state securities or banking laws to persons permitted thereunder to purchase the instrument;⁴⁷ and (6) a requirement that the sum of the values of the commodity-dependent components of a hybrid instrument be less than the value of the commodity-independent components.⁴⁸

In imposing the first two conditions of Part 34's exemptions—the requirement that the issuer of a hybrid instrument receive full payment of the hybrid's purchase price and the ban on out-of-pocket payments from a hybrid purchaser or holder to the instrument's issuer—the Commission sought to limit the possible losses due to the

commodity-dependent components of a hybrid instrument, reasoning that an instrument permitting the accrual of losses in excess of the face value of such instrument is more akin to a position in a commodity derivative than to a debt, equity, or depository instrument.⁴⁹ The third condition outlined above, a limitation on marketing the instrument as a futures contract or a commodity option, was intended to prevent purveyors of hybrid instruments from misleading investors as to the nature, legal status and form of regulatory supervision to which such instruments are subject.⁵⁰ The Commission did not want potential buyers to believe that hybrids were subject to the full protections of the CEA.

The fourth condition noted above, a prohibition on settlement by a contract market delivery instrument, was designed to guard against interference with deliverable supplies for settlement of exchange-traded futures or options contracts.⁵¹ In adopting the fifth condition, a limitation on persons permitted to purchase an instrument, the Commission was seeking both to address customer protection concerns and Congress's concern, as embodied in Section 4(c)(2)(B)(i) of the CEA,⁵² that only transactions entered into between appropriate persons may be exempted from the CEA.⁵³

This sixth requirement is referred to as the "predominance test."⁵⁴ It was designed in response to authorization granted by Congress in Section 4(c)(5)(A) of the CEA for the Commission to exempt hybrids, which were predominantly securities or depository instruments. The predominance test starts from the premise that hybrid instruments can be viewed as a combination of simpler instruments, the payments on which can be viewed as either commodity-independent or commodity-dependent. The payments on a hybrid's commodity-independent component are not indexed or calculated by reference to the price of an underlying commodity, including any index, spread or basket of commodities; the payments on a hybrid's commodity-dependent component are so indexed or referenced.

For a hybrid instrument to be exempted by Part 34, the present value of the returns associated with the commodity-independent component of an instrument (including any return of principal) must be greater than the "commodity-dependent value" of the instrument. In order to calculate the commodity-dependent value of a hybrid, Part 34 conceptually decomposes a hybrid's commodity-dependent portion into options. The absolute values of the premiums of all implicit options that are at- or out-of-the-money are summed to arrive at the commodity-dependent value of the hybrid instrument.⁵⁵ These values are calculated as of the time of issuance of the hybrid instrument.⁵⁶

III. Issues for Comment

A. Background

As the foregoing discussion indicates, the Commission has recognized that differences between exchange-traded markets and the OTC derivatives market warrant differences in regulatory treatment. Pursuant to the exemptions, activity in the OTC derivatives market has generally been limited to decentralized, principal-to-principal transactions between large traders. This has significant regulatory implications.

The OTC derivatives market does not appear to perform the same price discovery function as centralized exchange markets. Accordingly, certain regulatory requirements related to price discovery have not been applied to the OTC derivatives market. Thus, for example, the Commission has not suggested that it should preapprove contract design in the OTC derivatives market as it does for exchanges.

Similarly, the decentralization of trading in the OTC market and the relative sophistication of the participants have meant that issues of financial integrity and customer protection differ from exchange markets. Thus for example, while the Commission has retained its fraud authority for the swap market, it has not required segregation of customer funds.

Developments in the market in the last five years, however, indicate the need to review the current exemptions.

⁵⁰ More specifically, the absolute net value of all put option premiums with strike prices less than or equal to the reference price would be added to the absolute net value of all call option premiums with strike prices greater than or equal to the reference price. 58 FR 5580 at 5584. "Reference price" is defined in Regulation 34.2(g), 17 CFR 34.2(g), "as the nearest current spot or forward price at which a commodity-dependent payment becomes non-zero, or in the case where two potential reference prices exist, the price that results in the greatest commodity-dependent value."

⁵⁶ 58 FR 5580 at 5584-85.

As mentioned above, new end-users have entered the market, new products have been developed, some products have become more standardized, and systems for centralized execution and clearing have been proposed. The terms and conditions of the exemptions may need adjustment to reflect changes in the marketplace and to facilitate continued growth and innovation.

In addition, the explosive growth in the OTC market in recent years has been accompanied by an increase in the number and size of losses even among large and sophisticated users which purport to be trying to hedge price risk in the underlying cash markets. Market losses by end-users may lead to allegations of fraud or misrepresentation after they enter transactions they do not fully understand. Moreover, as the use of the market has increased, entities such as pension funds and school districts have been affected by derivatives losses in addition to corporate shareholders.⁵⁷

Accordingly, the Commission believes it is appropriate at this time to consider whether any modifications to the scope or the terms and conditions of the swap and hybrid instrument exemptions are needed to enhance the fairness, financial integrity, and efficiency of this market. The Commission reiterates that the items listed below are intended solely to encourage useful public comment.

The Commission urges commenters to analyze the benefits and burdens of any potential modifications in light of current market realities. In some areas, regulatory relief or expanded access to the market may be warranted while in others additional safeguards may be appropriate. The Commission is especially interested in whether modifications can be designed to stimulate growth. This might be accomplished, for example, by increasing legal certainty and investor confidence, thereby attracting new market participants, or by facilitating netting and other transactional efficiencies, thereby reducing costs. As discussed below, the Commission also welcomes comment on the extent to which certain matters can be adequately addressed through self-regulation. Finally, the Commission invites other regulators to express their views on the issues raised in this release and, in particular, how best to achieve effective coordination among regulators. The Commission anticipates that, where other regulators have adequate programs or standards in place to address

⁵⁷ See 1997 GAO Report at 71.

³⁰ See *id.* at 5590-91.

³¹ See *id.* at 5591.

³² See *id.*

³³ See *id.*

³⁴ See *id.* at 5590.

³⁵ *Id.* at 5590 n. 24.

³⁶ 54 FR 1139 (January 11, 1989).

³⁷ *Id.*

³⁸ 54 FR 30684 (July 21, 1989).

³⁹ *Id.*

⁴⁰ 55 FR 13582 (April 11, 1990).

⁴¹ 17 CFR 34.2(a) (1997).

⁴² 17 CFR 34.3(a) (1997).

⁴³ 17 CFR 34.3(a)(3)(i) (1997).

⁴⁴ *Id.*

⁴⁵ 17 CFR 34.3(a)(3)(ii) (1997).

⁴⁶ 17 CFR 34.3(a)(3)(iii) (1997).

⁴⁷ 17 CFR 34.3(a)(4) (1997).

⁴⁸ 17 CFR 34.3(a)(2) (1997).

particular areas, the Commission would defer to those regulators in those areas.

B. Potential Changes to Current Exemptions

The exemptions provided by Part 34 and Part 35 reflect circumstances in the relevant market at the time of their adoption. As noted, the Commission believes that it should review these exemptions in light of current market conditions. At the most general level, three issues are presented with respect to these exemptions: first, what criteria should be applied in determining whether a transaction or instrument is eligible for exemption from the CEA; second, what should be the scope of that exemption; and third, what conditions should be imposed, if any, to ensure that the public interest and the policies of the CEA are served.

1. Eligible Transactions

(a) *Swaps.* Part 35 sets forth certain criteria that an instrument must meet in order to qualify for the swap exemption. These criteria impose restrictions upon the design and execution of transactions that distinguish the exempted swap transactions from exchange-traded products.³⁸ Given the changes in the swap market since Part 35 was adopted, the Commission seeks comments as to whether the criteria set forth in Part 35 continue to provide a meaningful, objective basis for exempting transactions from provisions of the CEA and CFTC regulations.

In particular, some swap agreements have become highly standardized. The Part 35 exemption does not extend to "fungible agreements, standardized as to their material economic terms." The Commission seeks comment on whether this part of the Part 35 criteria provides sufficient guidance for parties involved in swaps. Parties may have difficulty in readily assessing whether a particular transaction qualifies for treatment under the Part 35 exemption.

In order to provide greater clarity, the Commission could adopt additional or alternative requirements governing exempted swap agreements. For example, the Commission could provide additional detail concerning the concept of fungibility in this context. The Commission could also clearly specify which terms of an agreement would be considered to be material economic terms under Part 35.

Moreover, subject to consideration of the requirements set forth in Sections 4(c)(1) and (c)(2) of the CEA, the

³⁸ CFTC, OTC Derivatives Markets and Their Regulation 78-79 (1993) ("CFTC OTC Derivatives Report") (discussing swaps exemption).

Commission could consider expanding the scope of the swap exemption so that it more clearly applies to certain classes of transactions that exhibit some degree of standardization. In this regard, while Section 4(c)(5)(B) authorizes the Commission to exempt non-fungible swaps, the lack of fungibility is not a necessary criterion under Sections 4(c)(1) or (c)(2) for exercising exemptive authority.

Request for comment. The Commission requests comment on whether the swaps exemption should be extended to fungible instruments and, if so, under what circumstances. The Commission is also seeking more general comment as to whether the swaps exemption continues to fulfill its stated goals. In this regard, the Commission is interested in commenters' views on what changes in the current rules may be needed to assure that Part 35 provides legal certainty to the current market and fulfills the statutory goals set forth in Section 4(c) of the CEA.

In particular, the Commission requests comment on the following questions:

1. In what ways has the swap market changed since the Commission adopted Part 35. Please address:

- (a) the nature of the products;
- (b) the nature of the participants, both dealers and end-users;
- (c) the location of transactions;
- (d) the business structure of participants (e.g., the use of affiliates for transacting OTC derivatives);
- (e) the nature of counterparty relationships;
- (f) the mechanics of execution;
- (g) the methods for securing obligations; and
- (h) the impact of the current regulatory structure on any of the foregoing.

2. What are the mechanisms for disseminating the prices for swap transactions?

3. Does the swap market serve as a vehicle for price discovery in underlying cash markets? If so, how? Please describe.

4. To what extent is the swap market used for hedging? To what extent is it used for speculation? Please provide details.

5. Is there a potential for transactions in the swap market to be used to manipulate commodity prices? Please explain.

6. To what degree is the swap market intermediated, i.e., to what extent do entities

- (a) act as brokers bringing end-users together?
- (b) act as dealers making markets in products?

Please describe the intermediaries in the market and the extent and nature of their activities.

7. To what extent do swap market participants act in more than one capacity (e.g., as principal in some transactions and broker in others)?

8. In light of current market conditions, do the existing Part 35 requirements provide reasonable, objective criteria for determining whether particular swaps transactions are exempted under the CEA? Should the meaning of terms such as "fungible," "material economic terms," or "material consideration" be clarified or modified in any way? If so, how?

9. What steps can the Commission take to promote greater legal certainty in the swap market?

10. What types of documentation are relevant in determining whether a particular transactions falls within the swaps exemption and/or the Policy Statement? Should the Commission set standards in this regard?

11. If the current restrictions set forth in the Part 35 requirements negatively affect or potentially limit the OTC market or its development in the United States, what changes would alleviate the negative effects? Should the exemption in Part 35 be broadened in any manner?

12. What steps, if any, can the Commission take to promote greater efficiency in the swap market, such as for example, by facilitating netting?

13. Are any changes in regulation relating to the design or execution of exempted swap transactions needed to protect the interests of end-users in the swap market? Are there changes in regulation that would attract new end-users to the market or lead existing end-users to increase their participation?

14. Should distinctions be made between swaps that are cash-settled and swaps that provide for physical delivery? Please explain.

15. Should transactions in fungible instruments be permitted under the swaps exemption?

16. To what extent should the creditworthiness of a counterparty continue to be required to be a material consideration under the swaps exemption? Please explain.

(b) *Hybrid instruments.* Part 34 was designed to exempt from Commission regulation instruments in which the commodity futures or option characteristics were subordinate to their characteristics as securities and deposits. Some experienced practitioners have stated that the definition of a hybrid instrument under Part 34 is extremely complex and difficult to understand and to apply. Moreover, the Commission staff has

recently reviewed several hybrid instruments that had very significant commodity components yet were apparently eligible for exemption under Part 34's technical definition.

For example, the Commission staff recently reviewed an instrument structured as a medium-term debt instrument paying a small quarterly coupon rate. At maturity, after subtracting out a "factor" reflecting certain costs borne by the issuer, the purchaser would receive a payment that was based on the performance of an index of futures contract prices with no upward limit on the commodity-based return. Moreover, the holder could lose its entire investment based on a downward movement in the commodity index. Commission staff believed that, under Part 34 as currently written, the instrument apparently would be exempt from regulation under the CEA. A regulatory definition that treats the entire principal as "commodity independent" despite the fact that all of the principal on this instrument could be lost as a direct result of movement in the commodity index warrants additional analysis.

Another conceptual concern with the current definition is the manner in which it assigns value to the "commodity dependent" component. Futures-like elements are analyzed as a combination of offsetting at-the-money puts and calls. The sum of the absolute values of these option premiums is the assigned value of the futures-like component. Some observers have suggested that this test is not an appropriate measure of the commodity dependent value. As Part 34 is currently structured, whether or not an instrument qualifies for an exemption depends critically on the total volatility of the commodity-dependent portion. This creates three potential problems. First, the technical knowledge needed to identify the commodity-dependent volatility may be a challenge for some market participants. Second, for two instruments that are identical except for their commodity-dependent volatility, one might be classified as exempt while the other might not. Indeed, if the volatility of the underlying commodity changes through time, the classification of identical hybrid instruments issued on different dates might be different. Thus, Part 34 may create some undesirable ambiguity regarding which instruments qualify for an exemption. Third, it appears to be paradoxical that short-term instruments are more likely to be classified as exempt than long-term instruments even though short-term instruments generally are more

akin to exchange-traded futures in many respects.

If the Commission were to modify or to clarify the predominance test in a way that resulted in more instruments being found to have a predominant commodity-dependent component, the Commission could exercise its authority under Section 4(c) to exempt some or all of such instruments subject to specified terms and conditions. As is the case today, instruments in which the commodity-independent component was predominant would not be subject to any such terms and conditions.

Request for comment. The Commission requests comment on the foregoing analysis. It welcomes alternative suggestions for analyzing hybrid instruments and for simplifying the definition of exempt hybrid instruments.

17. In what ways has the hybrid instrument market changed since the Commission adopted Part 34? Please address:

- (a) the nature of the products;
- (b) the nature of the participants, both dealers and end-users;
- (c) the location of transactions;
- (d) the nature of the counterparty relationships;
- (e) the mechanics of execution;
- (f) the methods for securing obligations; and
- (g) the impact of the current regulatory structure on any of the foregoing.

18. What are the mechanisms for disseminating prices for hybrid instrument transactions?

19. Does the hybrid instrument market serve as a vehicle for price discovery in underlying commodities? If so, how? Please describe.

20. To what extent is the hybrid instrument market used for hedging? To what extent is it used for speculation? Please provide details.

21. Is there a potential for transactions in the hybrid instrument market to be used to manipulate commodity prices? Please explain.

22. To what degree is the hybrid instrument market intermediated, i.e., to what extent do entities

- (a) act as brokers bringing end-users together?
- (b) act as dealers making markets in products?

Please describe the intermediaries in the market and the extent and nature of their activities and the extent to which transactions in these instruments are subject to other regulatory regimes.

23. To what extent do hybrid instrument market participants act in more than one capacity (e.g., as a principal in some transactions and broker in others)?

24. In light of current market conditions, do the existing Part 34 requirements provide reasonable, objective criteria for determining whether a particular hybrid instrument performs the functions of a futures or option or those of a security or depository instrument? Are the criteria easily understood and applied by participants in the market? Do they properly distinguish types of instruments? If not, should they be changed? How?

25. What steps, if any, can the Commission take to promote greater legal certainty in the hybrid instrument market? Please explain.

26. Should Part 34 be amended to reflect more accurately or more simply whether commodity-dependent components predominate over commodity-independent components?

27. Are changes in regulation relating to the design or execution of transactions in exempted hybrid instruments needed to protect the interests of end-users in the hybrid instrument market? Are there changes in regulation that would attract new end-users to the market or lead existing end-users to increase their participation?

28. Should the Commission exercise its authority to exempt any hybrid instruments with a predominant commodity component subject to specified terms and conditions? Please explain.

2. Eligible Participants

Section 4(c)(2) states that "the Commission shall not grant any exemption under" authority granted therein "unless the Commission determines that . . . the agreement, contract or transaction will be entered into solely between appropriate persons." Section 4(c)(3) further states that "the term 'appropriate person' shall be limited" to the classes of persons specifically listed therein including "[s]uch other persons that the Commission determines to be appropriate in light of their financial or other qualifications or the applicability of appropriate regulatory protections."

(a) *Swaps.* Part 35 currently contains a requirement that an exempt swap agreement be between eligible swap participants, as defined in Regulation 35.1(b)(2). The list of eligible swap participants in Part 35 is based substantially on the list of "appropriate person" defined in the CEA. The Commission seeks comments as to whether the current list of eligible swap participants should be modified in any way. The Commission requests comment regarding whether the definition is adversely affecting the

swaps market by excluding persons who should be included or, alternatively, by including persons who are not, or should not be, active in the current market. The Commission also seeks comment on whether additional persons should be added and, if so, whether additional protections would be appropriate. In either case, commenters are asked to describe such persons and the protections they need, if any.

Any potential change must be analyzed in light of the stated Congressional intent that any exempted transaction must be entered into solely by appropriate persons as defined in Section 4(c)(3)(A)-(K) of the Act. In addition, any changes to the definition of eligible swap participant would be considered in light of any other relevant changes that may result from Commission follow-up to this concept release.

(b) *Hybrid instruments.* As discussed above, if the Commission were to modify the predominance test under Part 34, it might also decide to exempt certain commodity-like hybrid instruments subject to specified terms and conditions. The Commission invites analysis on the potential applicability of an appropriate person standard in that context.

Request for comment. 29. Should the current list of eligible swap participants be expanded in any way? Should it be contracted in any way? If so, how and why?

30. Are there currently eligible swap participants who would benefit from additional protections? Are there potential swap participants who are not currently eligible but would be appropriate subject to additional protections? In either case, please describe the types of persons and the types of protections.

31. Should the Commission establish a class of eligible participants for the trading of hybrid instruments with a predominant commodity-dependent component? If so, please describe.

32. Is it advisable to use a single definition of sophisticated investor whenever that concept arises under the Commission's regulations? If so, what definition should apply?

3. Clearing

Clearing of swaps is not permitted under Part 35. The Commission expressly stated that:

The exemption does not extend to transactions that are subject to a clearing system where the credit risk of individual members of the system to each other in a transaction to which each is a counterparty is effectively eliminated and replaced by a system of mutualized risk of loss that binds

members generally whether or not they are counterparties to the original transaction.⁵⁹

Regulation 35.2 provides, however, that "any person may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate. . . ." The Commission included this proviso in order to hold open the possibility that swap agreements cleared through an organized clearing facility could be exempted from requirements of the Act under appropriate terms and conditions. The Commission affirmatively stated that the proviso "reflects the Commission's determination to encourage innovation in developing the most efficient and effective types of systemic risk reduction" and that "a clearing house system for swap agreements could be beneficial to participants and the public generally."⁶⁰

In the years since Part 35 was issued, interest in developing clearing mechanisms for swaps and other OTC derivatives has increased. The Commission has had extensive discussions with several organizations engaged in designing clearing facilities.⁶¹ The Commission believes that these efforts have reached a stage where it is necessary to consider and to formulate a program for appropriate oversight and exemption of swaps clearing.

Clearing organizations can provide many benefits to participants, such as the reduction of counterparty credit risk, the reduction of transaction and administrative costs, and an increase in liquidity. They also can provide benefits to the public at large by increasing transparency. These benefits are obtained at the cost of concentrating risk in the clearing organization.

Accordingly, a greater need may exist for oversight of the operations of a clearing organization than for any single participant in an uncleared market.

In the 1993 CFTC OTC Derivatives Report, the Commission stated that the regulatory issues presented by a facility for clearing swaps "would depend materially upon the facility's design, such as, for example, the extent to which the construction of such a facility is consistent with the minimum standards for netting systems recommended by the Report of the

Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries (Lamfalussy Report)."⁶² Comment is requested concerning the usefulness of the Lamfalussy standards in this context.

The Commission has identified the following core elements that should be addressed: the functions that an OTC derivatives clearing facility would perform; the products it would clear; the standards it would impose on participants; and the risk management tools it would employ. As discussed below, the Commission invites comments on each of these topics.

(a) *Functions.* An OTC derivatives clearing facility could perform a variety of functions ranging from simple trade comparison and recordation to netting of obligations to the guarantee of performance. For example, the Commission notes that, in jurisdictions other than the U.S., there may not be a clearing guarantee, or the guarantee may attach at a time other than the initiation of the trade. The Commission requests comment on which of these functions, if any, should be permitted and under what circumstances.

(b) *Products cleared.* The definition of the term "swap agreement" in Regulation 35.1(b)(1) is very broad. Financial engineers are continually designing new products that fall within that definition but have novel characteristics. As a practical matter, the Commission believes that any OTC derivatives clearing facility would be most likely in the context of "plain vanilla" products for which prices can be readily established and for which there is some standardization as to

⁵⁹ CFTC OTC Derivatives Report at 136-37. The Lamfalussy standards are the following:

1. Netting schemes should have a well-founded legal basis under all relevant jurisdictions;
2. Netting scheme participants should have a clear understanding of the impact of the particular scheme on each of the financial risks affected by the netting process;
3. Multilateral netting systems should have clearly-defined procedures for the management of credit risks and liquidity risks which specify the respective responsibilities of the netting provider and the participants. These procedures should also ensure that all parties have both the incentives and the capabilities to manage and contain each of the risks they bear and that limits are placed on the maximum level of credit exposure that can be produced by each participant.
4. Multilateral netting systems should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single net-debit position;
5. Multilateral netting systems should have objective and publicly-disclosed criteria for admission which permit fair and open access; and
6. All netting schemes should ensure the operational reliability of technical systems and the availability of back-up facilities capable of completing daily processing requirements.

⁵⁹ 54 FR 5587 at 5591.

⁶⁰ Id. at 5591 n.30.

⁶¹ Not all the proposed arrangements have included the mutualization of risks among members of a clearing organization. In some cases, a single entity proposed to support the clearing arrangements using its own assets.

terms. The Commission requests comment on whether the range of products that may be cleared through an OTC derivative clearing facility, or their terms of settlement, should be limited in any way.

(c) *Admission standards.* The class of eligible swap participants is defined in Regulation 35.1(b)(2). There is an inherent tension between the desire to promote open and competitive markets by allowing access,⁶³ and the desire to maintain financial integrity by imposing admission standards. The Commission requests comment on what standards, if any, it should establish, or permit an OTC derivatives clearing facility to establish, for admission as a clearing participant. Comment is also requested on whether clearing should be limited to transactions undertaken on a principal-to-principal basis or whether agency transactions should be included.⁶⁴

(d) *Risk management tools.* An OTC derivatives clearing facility could choose from among many potential risk management tools. These include capital requirements for participants, reporting requirements, position or exposure limits, collateral requirements, segregation requirements, mark-to-market or other valuation procedures, risk modeling programs, auditing procedures, and information-sharing arrangements. The clearing facility could also draw upon its own capital, its lines of credit, any guarantee funds financed by clearing members, or other arrangements for sharing losses among participants. The relevance of these various items would depend, of course, on the functions the clearing facility performed and the products its cleared. The Commission requests comment on how best to assure that a clearing facility uses appropriate risk management tools without preventing flexibility in the design of such tools or inhibiting the evolution of new risk management technology.

(e) *Other considerations.* Permitting OTC products to be cleared may make them more like exchange-traded products. The Commission welcomes comment on how best to promote fair competition and even-handed regulation in the context of the clearance of OTC derivative products.

In approving Part 35, the Commission noted that it was "mindful of the costs of duplicative regulation⁶⁵ and added the proviso to Regulation 35.2 that the

Commission would consider "the applicability of other regulatory regimes" in addressing petitions for further exemptive relief relating to swaps facilities. The Commission recognizes that existing clearing facilities that are regulated by another federal regulatory authority because the clear products subject to that regulator's jurisdiction may wish to develop swap clearing facilities. The Commission requests comment on how to address this situation.

Request for comment. 33. Are any swaps currently subject to any type of clearing function, either in the U.S. or abroad? If so, please provide details.

34. Would permitting swap clearing facilities promote market growth and assist U.S. participants in remaining competitive? If so, please describe the appropriate elements of a program for the oversight of swap clearing organizations.

35. Should there be a limit on the clearing functions permitted for swaps?

36. Should there be a limit on the range of products that may be cleared through a swap clearing facility?

37. Should there be standards for admission as a clearing participant?

38. What types of risk management tools should a clearing facility employ?

39. To what degree would cleared swaps be similar to exchange traded products? How best can the Commission promote fair competition and even-handed regulation in this context?

40. How should the Commission address OTC derivative clearing facilities that are subject to another regulatory authority by virtue of conducting activities subject to that regulator's jurisdiction?

4. Transaction Execution Facilities

Regulation 35.2(d) provides that a swap agreement may not be entered into or traded on or through a multilateral transaction execution facility ("MTEF").⁶⁶ In the release issuing Part 35, the Commission described an MTEF as:

[A] physical or electronic facility in which all market makers and other participants that are members simultaneously have the ability to execute transactions and bind both parties by accepting offers which are made by one member and open to all members of the facility.⁶⁷

The Commission specified that the MTEF limitation did not:

[P]reclude participants from engaging in privately negotiated bilateral transactions, even where these participants use computer or other electronic facilities, such as "broker

screens," to communicate simultaneously with other participants so long as they do not use such systems to enter orders to execute transactions.⁶⁸

The Commission noted that there were no swap MTEFs in existence at that time.⁶⁹ Consistent with the proviso in Regulation 35.2, the Commission invited application for appropriate exemptive relief for such facilities as they were developed.⁷⁰

The Commission is requesting comment on whether the regulatory approach to execution facilities should be modified in any way. Specifically, the Commission invites comment on whether the description of MTEFs set forth above is sufficiently clear, whether it accurately delineates the relevant features, and how the Commission should address other types of entities that facilitate execution, such as market makers or bulletin board services. The Commission recognized when it promulgated Part 35 that MTEFs "could provide important benefits in terms of increased liquidity and price transparency."⁷¹ The Commission seeks comment on whether it should permit swaps to be traded through an MTEF or other similar facilities and, if so, what terms and conditions should be applied. It also seeks comment on the degree to which such trading would be similar to exchange trading and the degree to which similar safeguards are needed. As in the case of clearing facilities, the Commission is mindful of the need to promote fair competition between and even-handed regulation of exchanges and the swap market.

Part 36 of the Commission's regulations⁷² was designed to allow reduced regulation for exchange trading limited to sophisticated traders. It was intended to "permit . . . exchange-traded products greater flexibility in competing with foreign exchange-traded products and with both foreign and domestic over-the-counter transactions while maintaining basic customer protection, financial integrity and other protections associated with trading in an exchange environment."⁷³ No contract market has applied for exemption under Part 36. An analysis of the perceived strengths and weaknesses of Part 36 may be a useful starting point in determining an appropriate regulatory regime for execution facilities. Accordingly, the Commission requests comment on whether elements

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ 17 CFR 36.1-36.9 (1997).

⁷² Section 4(c) Contract Market Transactions, 60 FR 51323 (Oct. 2, 1995).

⁶⁶ 17 CFR 35.2(d) (1997).

⁶⁷ 58 FR 5587 at 5591.

⁶³ See Section 15 of the Act, 7 U.S.C. 19.

⁶⁴ Current Part 35 allows only certain eligible swap participants to act on the behalf of another eligible swap participant. See 17 CFR 35.1(b)(2) (1997).

⁶⁵ 58 FR 5587 at 5591 n.30.

of Part 36 should be applicable to execution facilities. Proposals for modification of Part 36 are welcome.

Request for comment. 41. Should the definition of MTEF be changed in any way to provide more clarity?

42. Are MTEFs or other types of execution facilities currently being used for swap trading, either in the U.S. or abroad? If so, please provide details.

43. What terms and conditions, if any, should be applied to execution facilities? Please address potential competitive effects on current exchange trading and the degree to which similar requirements should be made applicable. Please also address the strengths and weaknesses of current Part 36 for this purpose.

5. Registration

Registration has been called "the kingpin in [the CEA's] statutory machinery, giving the Commission the information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act."⁷⁴ Registration identifies participants in the markets and allows for a "screening" process by requiring applicants to meet fitness standards. Registration may also facilitate enforcement of fraud prohibitions. In addition, the requirement to register may trigger other standards and obligations for registrants under the CEA and Commission rules.⁷⁵ Part 34 and Part 35 of the Commission's regulations currently exempt parties from the registration requirements of the Act with respect to qualifying transactions.

The Commission seeks comment on whether registration requirements for dealers or intermediaries would be useful or necessary for the Commission in its oversight of the OTC derivatives market. Registration would identify key players in the OTC derivatives markets

⁷⁴ *Commodity Futures Trading Commission v. British American Commodity Options Corp.*, 560 F.2d 135 at 139-40 (2d Cir. 1977) cert. denied, 438 U.S. 905 (1978).

⁷⁵ See, e.g., Sections 8a(2) and 8a(3) of the Act (statutory disqualification) and Regulation 1.12 (requirement that registered futures commission merchants ("FCMs") and registered introducing brokers ("IBs"), or any person who files an application to be so registered, notify the Commission if its capital falls below minimum capital requirements); Regulation 1.15 (risk assessment reporting for registered FCMs); Regulation 1.17 (minimum capital requirements for registered FCMs and registered IBs); Regulation 4.21 (requirement that commodity pool operators ("CPOs") who are registered or required to be registered deliver a disclosure document to clients or potential clients). Other regulations, however, may be applicable to parties whether or not they are registered or required to be registered. See, e.g., Part 189 (large trader reporting requirements).

but would not necessarily trigger the full range of regulations applicable to registered persons involved in exchange-traded futures and options. Instead it could be related to separate and limited OTC derivatives market regulations. Alternatively, the Commission seeks comment on whether it would be appropriate to adopt a notice filing, requiring parties involved in certain activities within the OTC derivatives markets to identify themselves to the Commission.

In addressing this issue, commenters should consider, among other things, whether a distinction should be made between swaps and hybrid instruments. Comment also would be useful on whether it would be sufficient that a person is registered or regulated by another federal agency so that the Commission should waive any registration requirements for such persons with respect to OTC derivatives transactions.

Differences between the OTC derivative market and exchange-traded futures and option markets may affect the need for registration in the context of OTC derivatives trading. For example, since swap transactions occur among institutional participants who bilaterally negotiate an agreement, there may be reduced value added in requiring dealers or advisors to undergo fitness checks. Such institutional participants would likely have the resources to investigate the fitness of potential counterparties and advisors.

Request for comment. 44. What benefits might arise from requiring registration of dealers, intermediaries, advisors, or others involved in OTC derivative transactions? Should any requirement be in the form of a notice filing or full registration?

45. What criteria should be used in determining the types of transactions and the types of market participants subject to registration requirements?

46. Should regulation by other federal agencies be a factor in permitting an exemption from registration or notice filing?

47. What role should membership in a designated self-regulatory organization play?

6. Capital

Capital requirements have long been considered important for assuring a firm's ability to perform its obligations to its customers and to its counterparties and for controlling systemic risk. The Commission currently imposes no capital requirements on participants in the OTC derivatives markets. Given the sophistication of the participants, the generally principal-to-principal nature

of their relationships with one another, the fact that OTC derivatives dealers typically do not hold customer's funds in an agency relationship (in contrast to futures commission merchants or broker-dealers), and the applicability of other regulatory capital standards to many market participants, capital requirements may be unnecessary.

The Commission seeks to explore whether regulatory capital might serve a useful function in the context of the OTC derivatives markets. For example, regulatory capital might provide an OTC derivatives dealer's counterparties with independent assurance of the creditworthiness of the dealer or might prevent the dealer from assuming excessive leverage. Capital requirements might also serve the function of providing early warning of financial difficulties.

Request for comment. 48. Are any capital requirements for OTC derivatives dealers needed? Why? What benefits would they provide to the market? What burdens would they impose?

49. Should any reporting or disclosure requirements be established for dealers as an alternative to capital requirements in order to permit counterparties to evaluate their creditworthiness adequately? Please explain.

50. Do ratings by nationally recognized statistical rating organizations fulfill the function of assuring end-user counterparties of the creditworthiness of OTC derivatives dealers?

7. Internal Controls

The importance of internal controls for financial services firms generally and for derivatives dealers in particular is widely recognized.⁷⁶ The Commission has long required information concerning risk management and internal control systems from FCMs, as well as prompt reporting of any material inadequacies in such systems.⁷⁷ Close attention to risk management and internal control systems may be especially important in an environment where capital standards (whether imposed by regulators or internally) are reduced and are based on the results of internal value-at-risk models and calculations rather than on more standardized "haircuts." While a

⁷⁶ See, e.g., DPG Framework at 13-22; IOSCO, *The Implications for Securities Regulators of the Increased use of Value at Risk Models by Securities Firms*, Section 2 (Jul. 1995); Basle Committee on Banking Supervision, *Framework for the Evaluation of Internal Control Systems* at 1 (Jan. 1998); Group of Thirty, *Derivatives: Practices and Principles* at 2 (1993).

⁷⁷ See, e.g., Regulations 1.14(a)(1)(ii); 1.15(a)(1)(ii); 1.16(e)(2).

complete discussion of internal control programs is beyond the scope of this release, the following elements of such a program are generally considered particularly important: effective models for measuring market and credit risk exposure; careful procedures for continuously validating those models, including rigorous backtesting and stress testing; netting arrangements that are enforceable in the relevant jurisdictions (and programs to review their enforceability on a regular basis); and a risk monitoring unit which reports directly to senior management, is independent of the business units being monitored, and has the necessary training and resources to accomplish its control objectives.

Request for comment. 51. Would OTC derivatives market participants benefit from internal control guidelines? If so, what market participants should be covered?

52. What provisions should be included in internal control requirements, if any?

53. How should compliance with any internal control requirements be monitored (e.g., regular audits, periodic spot checks, required reports)?

54. Who should be responsible for monitoring compliance with any internal control requirements (e.g., regulatory agencies, SROs, independent auditors)?

55. Could and should internal control standards serve as a substitute for regulatory capital requirements?

8. Sales Practices

As noted in the Introduction, a significant number of participants in the OTC derivatives markets have experienced large financial losses since the Commission's last regulatory initiatives involving OTC derivatives. The 1997 GAO Report notes that "[s]ales practice concerns were raised in 209, or 58 percent, of [the] losses [reviewed in the Report] and were associated with an estimated \$3.2 billion in losses."⁷⁸ Size and sophistication of a market participant may not provide meaningful protection against sales practice concerns, such as fraud.

The parties to OTC derivatives transactions are commonly referred to as end-users and dealers.⁷⁹ End-users and

⁷⁸ 1997 GAO Report at 71.

⁷⁹ By "end-users" the Commission is referring generally to participants who use derivatives to manage financial risks and opportunities that arise in the course of their businesses. Dealers are distinguished from end-users by their willingness to make two-way markets in OTC derivatives, either for end-users or for other dealers. See however, Derivatives Policy Group, *Framework for Voluntary Oversight* (Mar. 1995) ("DPG Framework") (the Framework was developed by a group of six major

OTC derivatives dealers may have differing views concerning the respective responsibilities of the parties to an OTC derivatives transaction. According to a survey undertaken in conjunction with the GAO Report, "about one-half of all end-users of plain vanilla or more complex OTC derivatives believed that a fiduciary relationship of some sort existed in some or all transactions between them and their dealer."⁸⁰ By contrast, "two dealer groups issued guidance asserting that such transactions are conducted on a principal-to-principal, or an 'arm's-length,' basis unless more specific responsibilities are agreed to in writing or otherwise provided by law."⁸¹ These differences in view can create problems, especially because of the extraordinary complexity of some OTC derivatives instruments and the information disparity between a derivatives dealer and many end-users. Therefore, comments concerning whether there is a need for sales practice rules applicable to OTC derivatives dealers would be useful.

In granting the Part 35 swaps exemption, the Commission retained the applicability of its basic antifraud and antimanipulation authority.⁸² In addition, some OTC derivatives transactions are subject to sales practice standards administered by other financial regulatory agencies. For example, both the Office of the Comptroller of the Currency and the Federal Reserve Board have issued guidance addressing sales practice issues in the context of a bank's overall responsibilities for managing the risks of its financial activities, including OTC derivatives.⁸³

investment firms). The DPG Framework refers to dealers as "professional intermediaries" and to end-users as "nonprofessional counterparties." This difference in articulation is symptomatic of the differing views that sometimes exist among the participants in these markets concerning their respective roles.

⁸⁰ 1997 GAO Report at 5.

⁸¹ *Id.* See DPG Framework at 9; and Federal Reserve Bank of New York, *Principles and Practices for Wholesale Financial Market Transactions* 1 (Aug. 17, 1995) (the Principles and Practices were developed by a group of six financial industry trade associations in coordination with the Federal Reserve Bank of New York).

⁸² See 17 CFR 35.2 (1997).

⁸³ See, e.g., OCC, *Banking Circular 277: Risk Management of Financial Derivatives*, BC-277, 1993 WL 640326 (OCC) (Oct. 23, 1993); OCC Bulletin, *Questions and Answers Re: BCC 277*, OCC 94-31, 1994 WL 194290 (OCC) (May 10, 1994); and Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, *Examining Risk Management and Internal Controls for Trading Activities of Banking Organizations*, [SR 93-69 (FIS)], (Dec. 20, 1993). These are not sales practice standards in the usual sense but bank risk management standards.

The Commission seeks comments concerning potential sales practice standards for principal-to-principal transactions between dealers and end-users. The Commission would also welcome information from commenters concerning the volume of transactions, if any, in which dealers act strictly as agents, rather than principals, in facilitating transactions between two end-users and whether any specific sales practice rules should apply to such agency transactions. Likewise, the Commission would welcome comments on the volume of transactions in which dealers trade directly with other dealers for their own proprietary accounts and whether any specific sales practice rules should apply to those dealer-to-dealer transactions.

(a) *Disclosure.* Traditionally, the most fundamental regulatory protection in the area of sales practices has been the duty to disclose risks and other material information concerning transactions to potential customers. Disclosure concerns have often been raised with respect to OTC derivatives transactions. For example, the DPG Framework, in its section on counterparty relationships, states that dealers should consider providing new end-users with "[g]eneric [r]isk [d]isclosure," which it characterizes as "disclosure statements generally identifying the principal risks associated with OTC derivatives transactions and clarifying the nature of the relationship between the [dealer] and its counterparties."⁸⁴ This section of the DPG Framework goes on to provide additional details on the nature of the relationship to be clarified, stating the DPG's view that "OTC derivatives transactions are predominantly arm's-length transactions in which each counterparty has a responsibility to review and evaluate the terms and conditions, and the potential risks and benefits, of prospective transactions * * *."⁸⁵ However, the DPG

Framework provides no further guidance as the nature or content of the generic risk disclosure.⁸⁶ Comment is

⁸⁴ DPG Framework at 37. The 1997 GAO Report recommends that the CFTC and SEC establish a mechanism for determining that the DPG firms are, in fact, following this and other sales practice standards in the DPG Framework.

⁸⁵ *Id.*

⁸⁶ The section of the DPG Framework on risk management controls lists five basic risks of OTC derivative transactions: market risk, credit risk, liquidity risk, legal risk, and operational risk. *Id.* at 14-15. In addition to these firm-specific risks, the CFTC OTC Derivatives Report lists a number of potential risks arising from OTC derivatives activities generally, including the complexity of the derivatives marketplace, the fact that dealer activity tends to be concentrated in a relatively small number of large entities, the lack of transparency,

Continued

solicited on whether risk disclosure should be required and, if so, the nature and content of such disclosure.

(b) *Customer information.* Comment is also solicited on whether it would be appropriate to require the dealer to obtain certain information from the end-user. Such information might include, for example:

- net worth information;
- information confirming that the end-user is within the class of eligible participants set out in Section 35.1 of the Commission's regulations;⁸⁷ or
- information demonstrating that the end-user is authorized to enter into the transaction.

(c) *Other possible sales practice rules.* Potential sales practice rules might also include provisions requiring dealers to supervise sales personnel and other employees responsible for handling the accounts of end-user customers. One element of such supervision might be to ensure that sales personnel are properly trained.

The Commission also wishes to consider what regime, if any, would be appropriate for overseeing the implementation and enforcement of any sales practice rules for OTC derivatives, including the costs and benefits of alternative oversight mechanisms. In that context, the Commission is seeking comments on: (1) the appropriate direct regulatory role of the CFTC with respect to potential sales practice rules; (2) the appropriate regulatory role of other financial regulatory agencies, including the applicability of any sales practice rules administered by other agencies and the degree of deference that should be accorded to such rules; and (3) the appropriate sales practice role of industry self-regulatory bodies, including the degree of CFTC oversight necessary to assure that any industry self-regulatory standards are properly implemented and enforced.

Request for comment. 56. Since Part 35 was adopted, has the swap market experienced significant problems concerning fraud or sales practice abuses? Since Part 34 was adopted, has the hybrid instrument market experienced significant problems

and systemic risk. See CFTC OTC Derivatives Report at 112-122. It may also be appropriate to consider whether to require dealers to disclose to prospective end-users other material information concerning OTC derivatives transactions, such as the relationship of the parties, the material terms of the contract, periodic reports of the status of the end-user's account, information on how the value of the OTC derivatives instrument would be affected by changes in the markets for the underlying components, and other similar information.

⁸⁷ 17 CFR 35.1(b)(2) (1997).

concerning fraud or sales practice abuses? If so, please describe.

57. Is there a need for any sales practice rules in the OTC derivatives market? If so, what should the rules provide, and to whom and under what circumstances should they be applicable?

58. Is there a need for risk disclosures by OTC derivatives dealers to end-users? If so, what risks should be disclosed?

59. Should OTC derivatives dealers be required to supplement any required generic risk disclosure statement with additional firm- or transaction-specific disclosures? If so, what should such disclosures cover?

60. What kind of disclosures, if any, should dealers make to end-users clarifying the nature of the relationship between the parties? Should there be rules establishing duties of the OTC derivatives dealer to its customers, and if so, what should they require?

61. What kind of disclosures, if any, should dealers make concerning the material terms of OTC derivatives contracts, including methods for calculating price, value, profit and loss, as well as the amount of commissions, fees and other costs involved?

62. What other kinds of disclosures, if any, might be appropriate concerning, for example, potential conflicts of interest, the dealer's policies on helping end-users to unwind transactions and matters such as the dealer's financial soundness, experience, or track record?

63. Should dealers be required to make periodic status reports to end-users concerning the status of their OTC derivatives positions (e.g., value, profits and losses)? If so, what kind of reports should be required, and how often should such reports be made?

64. Should dealers be required to collect information concerning their end-user customers? If so, what kind of information? Should dealers be required to retain documentation in their files concerning such information, and if so, what kind of documentation (e.g., confirming that particular information has been collected and reviewed by management to assure transactions are in conformity with the end-user's investment goals and policies)?

65. What sales practice rules, if any, should apply to transactions where a dealer is acting as an agent or broker to facilitate a principal-to-principal transaction between two end-users? Similarly, what sales practice rules, if any, should apply to dealer-to-dealer transactions where both dealers are trading for their own proprietary accounts?

66. Should dealers have to comply with different sales practice standards in dealing with end-users having different levels of sophistication, based, for example, on portfolio size, investment experience, or some other measure? If so, please elaborate.

67. Should dealers be required to follow any supervision requirements in connection with the activities of sales personnel and other employees responsible for handling the accounts of end-user customers? Should complex or highly leveraged transactions require prior approval by senior management of the dealer?

68. What is the appropriate regime for formulating and overseeing the implementation and enforcement of possible sales practice rules, including the appropriate roles of the Commission, other financial regulators and industry self-regulatory bodies?

9. Recordkeeping

The Commission has not required any recordkeeping requirements for OTC derivatives dealers or other OTC market participants. Having retained authority over fraudulent and manipulative behavior in the OTC derivative market, the Commission wishes comment on whether some recordkeeping requirements would facilitate its exercise of that authority. Provisions requiring the retention of written records of transactions with counterparties, for example, might be considered. The Commission requests comment on whether there should be specific recordkeeping requirements for transactions in the OTC derivatives markets and, if so, what types of records should be kept and by whom.

Request for comment. 69. Are recordkeeping requirements for participants in the OTC derivatives markets needed? If so, what records should be required? Who should be required to keep them?

10. Reporting

The Commission currently does not impose reporting requirements on OTC derivatives market participants.⁸⁸ The

⁸⁸ The DPG has established voluntary reporting requirements. See DPG Framework at 23-25. The DPG has committed to regular periodic reporting and to respond in good faith to ad hoc requests for additional information by the CFTC. Id. at 1. The DPG member firms currently provide to the Commission on a quarterly basis a report detailing for each member except Credit Suisse First Boston: (1) a Credit-Concentration Report listing (on a "no-names" basis) the top 20 OTC derivatives exposures and, for each exposure, the internal credit rating, the industry segment, the current net exposure, the next replacement value, the gross replacement values (receivable and payable) and the potential additional credit exposure (at a ten-day, 99-percent confidence interval); (2) a Portfolio Summary

Commission requests comment on whether specific reporting requirements for participants in the OTC derivatives markets are needed and, if so, what reports should be made and by whom. If the Commission were to establish reporting requirements, it would coordinate with other regulatory agencies and, to the extent possible, accept reports provided to other regulatory agencies in satisfaction of the Commission's requirements. The Commission solicits comment concerning how these goals might best be accomplished.

Request for comment. 70. Should the Commission establish reporting requirements for participants in the OTC derivatives markets? If so, what information should be reported? By whom?

C. Self-Regulation

Having identified areas in which current exemptions might be modified, the Commission is also interested in the views of commenters concerning whether, and to what extent, any needed changes concerning the oversight of the OTC derivatives market could be accomplished through initiatives of industry bodies either voluntarily or through a self-regulatory organization empowered to establish rules and subject to Commission oversight. The Commission notes that several industry organizations already exist with an interest in maintaining and improving the integrity of the OTC derivatives marketplace. These organizations include, among others, the Derivatives Policy Group, the International Swaps and Derivatives Association, the Group of Thirty, and the End-Users of Derivatives Association. Industry groups have already issued a number of voluntary initiatives aimed at reducing risks and promoting stability and integrity in the OTC derivatives marketplace.⁸⁹ The Commission is interested in exploring the extent to which concerns described in this release might be addressed, and adequate oversight of the OTC derivatives marketplace might be

listing, by credit rating category and industry segment, the current net exposure, net replacement value, and gross replacement values; (3) a Geographic Distribution listing, by country, the current net exposure, the net replacement value, and the gross replacement values; (4) a Net Revenues Report listing, by product category and month, the net revenue; and (5) a Consolidated Activity Report listing, by product category, the aggregate notional amount.

⁸⁹ See, e.g., Framework for Voluntary Oversight, supra; Principles and Practices for Wholesale Financial Market Transactions, supra; and Global Derivatives Study Group, Group of Thirty, Derivatives: Practices and Principles, supra.

attained, through industry bodies or through self-regulatory organizations.

Request for comment. 71. How effective are current self-regulatory efforts? What are their strengths and weaknesses?

72. Are there particular areas among those discussed above where self-regulation could obviate the need for government regulation?

73. Please discuss the costs and benefits of existing voluntary versus potential mandatory self-regulatory regimes.

74. If a self-regulatory regime were adopted, what mechanism would best assure effective oversight by the Commission?

75. How best can the Commission achieve effective coordination with other regulators in connection with the oversight of the OTC derivatives market?

IV. Summary of Request for Comment

Commenters are invited to discuss the broad range of concepts and approaches described in this release. The Commission specifically requests commenters to compare the advantages and disadvantages of the possible changes discussed above with those of the existing regulatory framework. In addition to responding to the specific questions presented, the Commission encourages commenters to submit any other relevant information or views.

Issued in Washington, D.C. this 6th day of May, 1998, by the Commodity Futures Trading Commission.

By the Commission (Chairperson BORN, Commissioners TULL and SPEARS; Commissioner HOLUM dissenting).

Jean A. Webb,
Secretary of the Commission.

Dissenting Remarks of Commissioner Barbara Pedersen Holum, Concept Release, Over-the-Counter Derivatives

In Section 4(c)(1) of the Commodity Exchange Act, Congress authorized the Commission to exempt certain transactions "[i]n order to promote responsible economic or financial innovation and fair competition." Indeed, it appears that the dramatic growth in volume and the products offered in the OTC derivatives market may be attributed in part to the Commission's past exemptive action. In the spirit of the Commission's ongoing regulatory review program, it is appropriate to examine the continuing applicability of the existing exemptions, focusing on the expanding economic significance of the OTC market. However, in my judgement, the release goes beyond the scope of regulatory review by exploring regulatory areas

that may be inapplicable to an OTC market. Accordingly, I am dissenting from the majority's decision to issue the Concept Release on OTC Derivatives in its current form.

Dated: May 6, 1998.

Barbara Pedersen Holum,
Commissioner.

[FR Doc. 98-12539 Filed 5-11-98; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 431, 432, 433, 436, 440, 441, 442, 443, 444, 446, 448, 449, 450, 452, 453, 455, and 460

[Docket No. 98N-0211]

Removal of Regulations Regarding Certification of Antibiotic Drugs; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing this companion proposed rule to the direct final rule, published elsewhere in this issue of the *Federal Register*, which is intended to repeal FDA's regulations governing certification of antibiotic drugs. The agency is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA repealed the statutory provision in the Federal Food, Drug, and Cosmetic Act (the act) under which the agency certified antibiotic drugs. FDAMA also made conforming amendments to the act.

DATES: Comments must be received on or before July 27, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell or Christine F. Rogers, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

SUPPLEMENTARY INFORMATION:

I. Background

As described more fully in the related direct final rule, section 125(b) of FDAMA (Pub. L. 105-115) repealed section 507 of the act (21 U.S.C. 357)

and made conforming amendments to the act and other provisions of Federal law. Section 507 of the act was the section under which the agency certified antibiotic drugs. FDA is proposing to remove all provisions of Title 21 of the Code of Federal Regulations that were issued primarily to carry out the agency's program for the certification of antibiotic drugs under former section 507 of the act.

II. Additional Information

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the *Federal Register*. The companion proposed rule and the direct final rule are identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comment and is withdrawn. The comment period for the companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule.

The amendments contained in this rule are a direct result of the repeal of the statutory certification provision. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to the companion proposed rule. Instead, FDA will publish a confirmation notice within 30 days after the comment period ends, and FDA intends the direct final rule to become effective 30 days after publication of the confirmation notice. If FDA receives significant adverse comments, the agency will withdraw the direct final rule. FDA will proceed to respond to all of the comments received regarding the rule and, if appropriate, the rule will be finalized under this companion proposed rule using usual notice-and-comment procedures.

For additional information, see the corresponding direct final rule published in the final rules section of this issue of the *Federal Register*. All persons who may wish to comment should review the rationale for these amendments set out in the preamble discussion of the direct final rule. If FDA receives significant adverse comments, the agency will withdraw the companion final rule and will treat those comments as comments to this proposed rule. The agency will address the comments in a subsequent final rule. FDA will not provide additional opportunity for comment. A significant adverse comment is one that explains why the rule would be inappropriate,

including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of \$100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. As discussed below, the agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires that if a rule has a significant impact on a substantial number of small entities, the agency must analyze regulatory options to minimize the economic impact on small entities. The agency certifies, for the reasons discussed below, that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires an agency to prepare a budgetary impact statement before

issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of \$100 million (adjusted annually for inflation) in any 1 year. The elimination of the regulations governing the certification of antibiotic drugs will not result in any increased expenditures by State, local, and tribal governments or the private sector. Because this rule will not result in an expenditure of \$100 million or more on any governmental entity or the private sector, no budgetary impact statement is required.

This rule is intended to eliminate regulatory procedures and standards that the agency, as a result of the repeal of section 507 of the act, is no longer required to maintain. The elimination of parts 430 *et seq.* is expected to streamline the regulation of antibiotic drugs by making these products subject to the same regulatory standards as all other drugs for human use. Many of the provisions that are being eliminated by this rulemaking have not had a material impact on the marketing of antibiotic drugs since 1982, when all antibiotic drugs were conditionally exempted from the batch certification requirement (47 FR 39155, September 7, 1982). Other provisions, such as the standards of identity, strength, quality, and purity, have in some instances not been kept up-to-date, are duplicative of U.S.P. standards, or have been incorporated into approved marketing applications for specific antibiotic drug products. For these reasons, the agency believes that this rule is necessary and that it is consistent with the principles of Executive Order 12866; that it is not a significant regulatory action under that Order; that it will not have a significant impact on a substantial number of small entities; and that it is not likely to result in an annual expenditure in excess of \$100 million.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104-13) is not required.

VI. Request for Comments

Interested persons may, on or before July 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. This comment period runs concurrently with the comment period for the direct final rule; any comments received will be considered as comments regarding the direct final rule. Two copies of any comments are

to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 431

Administrative practice and procedure, Antibiotics, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 432

Antibiotics, Labeling, Packaging and containers.

21 CFR Part 433

Antibiotics, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 436, 440, 441, 442, 443, 444, 446, 448, 449, 450, 452, 453, 455, and 460

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Food and Drug Administration Modernization Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR chapter I be amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is removed.

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

2. Part 431 is removed.

PART 432—PACKAGING AND LABELING OF ANTIBIOTIC DRUGS

3. Part 432 is removed.

PART 433—EXEMPTIONS FROM ANTIBIOTIC CERTIFICATION AND LABELING REQUIREMENTS

4. Part 433 is removed.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC-AND ANTIBIOTIC-CONTAINING DRUGS

5. Part 436 is removed.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

6. Part 440 is removed.

PART 441—PENEM ANTIBIOTIC DRUGS

7. Part 441 is removed.

PART 442—CEPHA ANTIBIOTIC DRUGS

8. Part 442 is removed.

PART 443—CARBACEPHEM ANTIBIOTIC DRUGS

9. Part 443 is removed.

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

10. Part 444 is removed.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

11. Part 446 is removed.

PART 448—PEPTIDE ANTIBIOTIC DRUGS

12. Part 448 is removed.

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

13. Part 449 is removed.

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

14. Part 450 is removed.

PART 452—MACROLIDE ANTIBIOTIC DRUGS

15. Part 452 is removed.

PART 453—LINCOMYCIN-ANTIBIOTIC DRUGS

16. Part 453 is removed.

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

17. Part 455 is removed.

PART 460—ANTIBIOTIC DRUGS INTENDED FOR USE IN LABORATORY DIAGNOSIS OF DISEASE

18. Part 460 is removed.

Dated: May 1, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98-12542 Filed 5-11-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 804

[Docket No. 98N-0170]

Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend certain regulations governing reporting by manufacturers, importers, distributors, and health care (user) facilities of adverse events related to medical devices. This proposed rule is a companion document to the direct final rule, published elsewhere in this issue of the *Federal Register*. The amendments are intended to implement provisions of the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDA is publishing this companion proposed rule under FDA's usual procedures for notice and comment to provide a procedural framework to finalize the rule in the event the agency receives a significant adverse comment and withdraws the direct final rule. **DATES:** Submit written comments on or before July 27, 1998. Submit written comments on the information collection requirements on or before July 13, 1998. **ADDRESSES:** Submit written comments on the proposed rule to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Spitzig, Center for Devices and Radiological Health (HFZ-500), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301-594-2812.

SUPPLEMENTARY INFORMATION: This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the *Federal Register*. This companion proposed rule is substantively identical to the direct final rule. This proposed rule will provide a procedural framework to finalize the rule in the event the agency receives a significant adverse comment and the direct final rule is withdrawn. FDA is publishing the direct final rule

because the rule contains noncontroversial changes, and FDA anticipates that it will receive no significant adverse comments. A detailed discussion of this rule is set forth in the preamble of the direct final rule. If no significant comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation notice within 30 days after the comment period ends confirming that the direct final rule will go into effect on September 24, 1998. Additional information about FDA's direct final rulemaking procedures is set forth in a guidance published in the *Federal Register* of November 21, 1997 (62 FR 62466).

If FDA receives a significant adverse comment regarding this rule, the agency will publish a document withdrawing the direct final rule within 30 days after the comment period ends and will proceed to respond to the comments under this rule using usual notice-and-comment procedures. The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

This action is part of FDA's continuing effort to achieve the objectives of the President's "Reinventing Government" initiative, and is intended to reduce the burden of

unnecessary regulations on medical devices without diminishing the protection of public health.

I. Background

Under the act and the Medical Device Amendments of 1976 (Pub. L. 94-295) (the 1976 amendments), FDA issued medical device reporting regulations for manufacturers on September 14, 1984 (49 FR 36326). To correct weaknesses noted in the 1976 amendments, and to better protect the public health by increasing reports of device-related adverse events, Congress enacted the Safe Medical Devices Act of 1990 (Pub. L. 101-629) that required medical device user facilities and distributors to report certain device-related adverse events.

Distributor reporting requirements became effective on May 28, 1992, following the November 26, 1991, publication of those provisions in a tentative final rule (56 FR 60024). In the *Federal Register* of September 1, 1993 (58 FR 46514), FDA published a notice announcing that the proposed distributor reporting regulations had become final by operation of law and were now codified in part 804 (21 CFR part 804).

On June 16, 1992, the President signed into law the Medical Device Amendments of 1992 (the 1992 amendments) (Pub. L. 102-112) amending certain provisions of section 519 of the act (21 U.S.C. 360i) relating to reporting of adverse device events. Prior to the 1992 amendments, distributors and manufacturers reported adverse events by using a "reasonable probability" standard. Importers may be manufacturers or distributors, depending on their activities. Among other things, the 1992 amendments amended section 519 to change the reporting standard for manufacturers and importers, however, the reporting standard for distributors who are not importers remained the same.

On November 21, 1997, the President signed FDAMA into law. FDAMA made several changes regarding the reporting of adverse events related to devices, including the elimination of reporting requirements for certain distributors, which became effective on February 19, 1998, that are reflected in this proposed rule. However, section 422 of FDAMA states that FDA's regulatory authority under the act, relating to tobacco products, tobacco ingredients, and tobacco additives shall be exercised under the act as in effect on the day before the date of enactment of FDAMA. Because the authority relating to tobacco products remains the same, the reporting requirements for

manufacturers and distributors (including distributors who are importers) of cigarettes or smokeless tobacco remain unchanged.

Under part 897, the regulations pertaining to tobacco products, and parts 803 and 804, the regulations pertaining to device adverse event reporting, importers may be either manufacturers or distributors, depending on their activities. Under parts 897, 803, and 804, importers who repackage or relabel are manufacturers. Similarly, under those sections, importers whose sole activity is distribution of devices are defined as distributors.

As previously stated, the 1992 amendments created a bifurcated reporting standard for distributors, depending on whether they are domestic distributors or importers. When the agency asserted jurisdiction over tobacco products and issued regulations under part 897, tobacco distributors also became subject to this bifurcated reporting standard. Accordingly, the reporting standard applicable to tobacco products distributors has depended on whether the distributor is domestic or an importer. Consistent with section 422 of FDAMA, the proposed rule states that tobacco distributors will continue to use the appropriate reporting standard as described in § 804.25.

Changes made by FDAMA relating to reporting requirements for all medical devices other than tobacco products are as follows:

1. Section 213(a) of FDAMA revised section 519(a) of the act to eliminate distributors as an entity required to report adverse device events. Importers are still required to report under section 519(a) of the act.
2. Section 213(a) also amended section 519(a) of the act to clarify that existing requirements continue to apply for distributors to keep records concerning adverse device events and to make them available to FDA upon request.
3. Section 213(a)(2) revoked section 519(d) of the act, which required manufacturers, importers, and distributors to submit to FDA an annual certification concerning the number of reports filed under section 519(a) in the preceding year. As a result, certification requirements are eliminated.
4. Section 213(c)(1)(A) of FDAMA revised section 519(b)(1)(C) of the act to require that device user facilities submit an annual rather than a semiannual summary of their reports to FDA.
5. Section 213(c)(1)(B) of FDAMA eliminated section 519(b)(2)(C) of the act. This section had required FDA to

disclose, upon request, the identity of a user facility making a report under section 519(b), if the identity of the user facility was included in a report submitted by a manufacturer, distributor, or importer. As a result of this change by FDAMA, FDA may now disclose the identity of a user facility only in connection with an action concerning a failure to report or false or fraudulent reporting, in a communication to the manufacturer of the device, or to the employees of the Department of Health and Human Services, the Department of Justice, and duly authorized committees and subcommittees of Congress.

To implement these provisions, FDA is issuing this proposed rule. A summary of the rule is contained in the preamble to the direct final rule published elsewhere in this issue of the *Federal Register*.

II. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impact of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104-121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any

significant impact of a rule on small entities. The proposed rule would eliminate reporting by distributors, other than distributors (including distributors who are importers) of cigarettes or smokeless tobacco, continue reporting by importers (including distributors who are importers), increase protections from disclosure of the identity of device user facilities that have submitted reports, reduce summary reporting by device user facilities from semiannual to annual, eliminate annual certification for manufacturers and distributors (including importers) of medical devices other than cigarettes or smokeless tobacco, and make other nonsubstantive changes. The agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of \$100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

IV. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The title, description, and respondent description of the information collection provisions are shown as follows with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Reporting and recordkeeping requirements for manufacturers, importers, user facilities, and distributors of medical devices under FDAMA.

Description: FDAMA contained provisions that affect medical device reporting in a variety of ways. Section 213 of FDAMA modified the summary reporting requirements for user facilities to require annual, rather than semiannual, reporting, and increased confidentiality of user facility identities. This section of FDAMA also eliminated the reporting requirements for medical device distributors (but not for importers), as well as the certification requirements for medical device manufacturers and distributors. However, section 422 of FDAMA states that FDA's regulatory authority under the act relating to tobacco products, tobacco ingredients, and tobacco additives shall be exercised under the act as in effect on the day before the date of enactment of FDAMA. Under this rule of construction, the reporting and certification requirements for manufacturers and distributors (including distributors who are importers) of cigarettes or smokeless tobacco remain unchanged.

This proposed rule would amend FDA's regulations in 21 CFR Parts 803 and 804 to reflect the changes to medical device reporting made by FDAMA.

This proposed rule would eliminate reporting by distributors other than distributors of cigarettes or smokeless tobacco, continue reporting by importers, increase the protection from disclosure of the identity of device user facilities that have submitted reports, reduce summary reporting by device user facilities from semiannual to annual, eliminate annual certification for manufacturers and distributors (including importers) of medical devices other than cigarettes or smokeless tobacco, and make other nonsubstantive changes.

Description of Respondents: Businesses or other for profit organizations.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
803.19	150	1	150	3	450
803.33	1,800	1	1,800	1	1,800
803.40	195	1	195	3	585
803.56	750	20	15,000	1	15,000
803.57	31	1	31	1	31
804.25	10	1	10	1.5	15
804.30	1,365	1	1,365	1	1,365
804.32	5	1	5	1	5
804.33	0	0	0	1	0
Total					19,251

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
803.17	2,000	1	2,000	2	4,000
803.18	39,764	1	39,764	1.5	59,646
804.34	1,365	1	1,365	1	1,365
804.35	1,365	1	1,365	1.5	2,047
Total					67,058

Note: There are no operating and maintenance cost or capital costs associated with this collection of information.

The burdens under this proposed rule are explained as follows:

A. Reporting Requirements

Prior to the program change proposed in this rule, § 803.19 allowed manufacturers or user facilities to request an exemption or variance from the reporting requirements. The agency had estimated that it would receive approximately 100 such requests annually. Distributors (including importers) were able to request an exemption or variance from the reporting requirements under § 804.33. Under this proposed rule, § 803.19 would be modified to transfer the exemption provisions for importers of medical devices other than cigarettes or smokeless tobacco from § 804.33 to § 803.19. Furthermore, distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco would no longer be required to submit MDR reports under this proposed rule. The estimated burden for § 803.19 is further adjusted to reflect the agency's actual experience with this type of submission.

Prior to the program change proposed in this rule, § 803.33 required medical device user facilities to submit summary reports semiannually. Under this proposed rule, user facilities would be required to submit summary reports annually, thereby significantly decreasing the reporting burden on user facilities. The estimated burden for this section is also adjusted to reflect the agency's actual experience with this type of submission.

Under this proposed rule the reporting requirement for importers of medical devices other than cigarettes or smokeless tobacco previously codified under § 804.25 would be transferred to new proposed § 803.40. The estimated burden for importer reporting is based upon the agency's actual experience with this type of submission. The reporting requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco would be retained in part 804.

Prior to the program change proposed in this rule, § 803.56 required manufacturers to submit supplemental reports containing information not known or not available at the time the initial report was submitted. The agency had estimated that it would receive approximately 500 such requests annually. Distributors (including distributors who are importers) were required to submit supplemental information under § 804.32. Under this proposed rule, § 803.56 would be modified to transfer the supplemental reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco from § 804.32. Furthermore, distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco would no longer be required to submit MDR reports (and thus supplemental reports as well) under this proposed rule. The estimated burden for § 803.56 is further adjusted to reflect the agency's actual experience with this type of submission. The agency also notes that any additional information requested by the

agency in accordance with § 803.15 is considered to be supplemental information for the purpose of this information collection and is included in the burden estimate for § 803.56.

Prior to the program change proposed in this rule, § 803.57 required medical device manufacturers to annually certify as to the number of reports submitted during the previous year, or that no such reports had been submitted. Distributors (including importers) were required to certify under § 804.30. Under this proposed rule, § 803.57 would be modified to require annual certification only for manufacturers of cigarettes or smokeless tobacco. The certification requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco would be retained in § 804.30.

Prior to the program change proposed in this rule, § 804.25 required medical device distributors (including importers) to report adverse device events. Under this proposed rule, distributors of medical devices other than cigarettes or smokeless tobacco are no longer required to submit MDR reports, and the reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco would be transferred to part 803. Section 804.25 would require distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit MDR reports for adverse events related to contamination of their products. The agency believes that there will be a very small number of MDR reports related to contamination

of cigarettes or smokeless tobacco submitted in any given year.

Prior to the program change proposed in this rule, § 804.30 required medical device distributors (including importers) to certify as to the number of MDR reports submitted during the previous year, or that no such reports were submitted. Under this rule, the certification requirement has been removed for distributors (including distributors who are importers) of medical devices other than cigarettes or smokeless tobacco. Section 804.30 now would require distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit certifications of the number of MDR reports submitted for adverse events related to contamination of their products. The agency has identified 1,365 distributors of cigarettes or smokeless tobacco, each of which would submit one certification annually.

Prior to the program change proposed in this rule, § 804.32 required medical device distributors (including importers) to submit supplemental information related to a previously submitted MDR report. Under this proposed rule, distributors of medical devices other than cigarettes or smokeless tobacco are no longer required to submit any MDR reports, and the reporting requirements for importers of medical devices other than cigarettes or smokeless tobacco would be transferred to part 803. Section 804.32 would require distributors (including distributors who are importers) of cigarettes or smokeless tobacco to submit supplemental information related to a previously submitted MDR report. Because the agency believes that there will be a very small number of MDR reports related to contamination of cigarettes or smokeless tobacco submitted in any given year, even fewer supplemental submissions are anticipated. The agency also notes that any additional information requested by the agency in accordance with section 804.31 is considered to be supplemental information for the purpose of this information collection and is included in the burden estimate for § 804.32.

Prior to the program change proposed in this rule, § 804.33 allowed medical device distributors (including importers) to request an exemption or variance from the reporting requirements. Under this rule, the exemption provisions for importers of medical devices other than cigarettes or smokeless tobacco would be transferred to § 803.19, and distributors (who are not importers) of medical devices other than cigarettes or smokeless tobacco are

no longer required to submit any MDR reports under this rule. Section 804.33 would allow distributors (including distributors who are importers) of cigarettes or smokeless tobacco to request an exemption or variance from the reporting requirements. However, because distributors (including distributors who are importers) of cigarettes or smokeless tobacco are required only to submit reports of adverse events related to contamination of their products, the agency does not anticipate any requests for exemptions or variances from the reporting requirements.

B. Recordkeeping Requirements

Prior to the program change proposed in this rule, § 803.17 required manufacturers and user facilities to establish written procedures for employee education, complaint processing, and documentation of information related to MDR's. Under this proposed rule, the requirement for establishing written MDR procedures for importers of medical devices other than cigarettes or smokeless tobacco would be transferred to § 803.17, and the requirements for distributors (including distributors who are importers) of medical devices other than cigarettes or smokeless tobacco would be retained in § 804.34. The agency has estimated a one-time burden of 10 hours, annualized over a period of 5 years, for distributors (including distributors who are importers) of cigarettes or smokeless tobacco to establish written MDR procedures under § 804.34.

Prior to the program change proposed in this rule, § 804.35 required distributors (including importers) to establish and maintain MDR event files. Under this proposed rule, the recordkeeping burdens for distributors (including importers) of medical devices other than cigarettes or smokeless tobacco would be transferred to § 803.18. Recordkeeping requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco would be retained in § 804.35.

For consistency with the direct final rule to which this proposed rule is a companion, FDA is following the Paperwork Reduction Act comment procedures for direct final rules in this proposed rule. As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection provisions of this proposed rule July 13, 1998 to the Dockets Management Branch (address above).

Prior to the program change proposed in this rule, § 804.34 required distributors (including importers) of all medical devices to establish written procedures for employee education, complaint processing and documentation of information related to MDR reports. Under this proposed rule, distributors of medical devices other than cigarettes or smokeless tobacco would no longer be required to submit MDR reports although distributors are required to establish device complaint files in accordance with 21 CFR 820.198. Accordingly, they would no longer be subject to the requirement to establish and maintain written MDR procedures. Under the proposed rule, the requirement for establishing written MDR procedures for importers of medical devices other than cigarettes or smokeless tobacco would be transferred to § 803.17, and the requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco would be retained in § 804.34. The agency has estimated a one-time burden of 10 hours, annualized over a period of 5 years, for distributors (including distributors who are importers) of cigarettes or smokeless tobacco to establish written MDR procedures under § 804.34.

Prior to the program change proposed in this rule, § 804.35 required distributors (including importers) to establish and maintain MDR event files. Under this proposed rule, the recordkeeping burdens for distributors (including importers) of medical devices other than cigarettes or smokeless tobacco would be transferred to § 803.18. Recordkeeping requirements for distributors (including distributors who are importers) of cigarettes or smokeless tobacco would be retained in § 804.35.

For consistency with the direct final rule to which this proposed rule is a companion, FDA is following the Paperwork Reduction Act comment procedures for direct final rules in this proposed rule. As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection provisions of this proposed rule July 13, 1998 to the Dockets Management Branch (address above).

At the close of the 60 day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the Federal Register when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct final rule, FDA will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

V. Request for Comments

Interested persons may, on or before July 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this companion proposed rule. The comment period runs concurrently with the comment period for the direct final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Comments will be considered to determine whether to amend or revoke this proposed rule. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered as comments regarding the direct final rule and this proposed rule. In the event the direct final rule is withdrawn, all comments received regarding the direct final rule and this companion proposed rule will be considered comments on this proposed rule.

List of Subjects in 21 CFR Parts 803 and 804

Imports, Medical devices, Reporting and recordkeeping requirements. Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 803 and 804 be amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

2. Section 803.1 is amended by revising paragraph (a) to read as follows:

§ 803.1 Scope.

(a) This part establishes requirements for medical device reporting. Under this part, device user facilities, importers, and manufacturers, as defined in § 803.3, must report deaths and serious injuries to which a device has or may have caused or contributed, must establish and maintain adverse event files, and must submit to FDA specified followup and summary reports. Medical device distributors, as defined in § 803.3, are also required to maintain incident files. Furthermore, manufacturers and importers are also required to report certain device malfunctions. These reports will assist FDA in protecting the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended use.

3. Section 803.3 is amended by redesignating paragraphs (m) through (ee) as paragraphs (n) through (ff), respectively; by revising the last sentence of the introductory text of paragraph (c), paragraph (c)(1), and redesignated paragraphs (p), (p)(1), and (r)(2); and by adding paragraphs (g) and (m) to read as follows:

§ 803.3 Definitions.

(c) * * * Manufacturers and importers are considered to have become aware of an event when:

(1) Any employee becomes aware of a reportable event that is required to be reported by an importer within 10 days, or by a manufacturer within 30 days or within 5 days under a written request from FDA under § 803.53(b); and

(g) *Distributor* means, for the purposes of this part, any person (other than the manufacturer or importer) who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under § 803.3(o). For the purposes of this part, distributors do not include distributors of cigarettes or smokeless tobacco.

(m) *Importer* means, for the purposes of this part, any person who imports a device into the United States and who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not

repackage or otherwise change the container, wrapper, or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under § 803.3(o). For the purposes of this part, importers do not include importers of cigarettes or smokeless tobacco.

(p) *Manufacturer or importer report number* means the number that uniquely identifies each individual adverse event report submitted by a manufacturer or importer. This number consists of three parts as follows:

(1) The FDA registration number for the manufacturing site of the reported device, or for the importer. (If the manufacturing site or the importer does not have a registration number, FDA will assign a temporary number until the site is officially registered. The manufacturer or importer will be informed of the temporary number.);

(r) * * *

(2) An event about which manufacturers or importers have received or become aware of information that reasonably suggests that one of their marketed devices:

(i) May have caused or contributed to a death or serious injury; or
(ii) Has malfunctioned and that the device or a similar device marketed by the manufacturer or importer would be likely to cause a death or serious injury if the malfunction were to recur.

§ 803.9 [Amended]

4. Section 803.9 *Public availability of reports* is amended by adding "or" after the semicolon at the end of paragraph (c)(2), by removing paragraph (c)(3), and by redesignating paragraph (c)(4) as paragraph (c)(3).

5. Section 803.10 is amended by revising the heading and paragraphs (a)(2) and (c)(5), and by adding paragraph (b) to read as follows:

§ 803.10 General description of reports required from user facilities, importers, and manufacturers.

(a) * * *

(2) User facilities must submit annual reports as described in § 803.33.
(b) Importers must submit MDR reports of individual adverse events within 10 working days after the importer becomes aware of an MDR reportable event as described in § 803.3. Importers must submit reports of device-related deaths or serious injuries to FDA and the manufacturer and reports of malfunctions to the manufacturer.

(c) * * *

(5) For manufacturers of cigarettes or smokeless tobacco, annual certification to FDA of the number of MDR reports filed during the preceding year as described in § 803.57.

§ 803.11 [Amended]

6. Section 803.11 *Obtaining the forms* is amended in the first sentence by adding the word "importers," after the phrase "User facilities".

7. Section 803.12 is amended by revising paragraph (b) to read as follows:

§ 803.12 Where to submit reports.

(b) Each report and its envelope shall be specifically identified, e.g., "User Facility Report," "Annual Report," "Importer Report," "Manufacturer Report," "5-Day Report," "Baseline Report," etc.

§ 803.17 [Amended]

8. Section 803.17 *Written MDR procedures* is amended in the introductory paragraph by adding the word "importers," after the phrase "User facilities".

9. Section 803.18 is amended by revising the heading, the first sentence of paragraphs (a) and (b)(1) introductory text, paragraphs (b)(1)(ii) and (b)(2), and the second sentence of paragraph (c), and by adding paragraph (d) to read as follows:

§ 803.18 Files and distributor records.

(a) User facilities, importers, and manufacturers shall establish and maintain MDR event files. * * *

(b)(1) For purposes of this part, "MDR event files" are written or electronic files maintained by user facilities, importers, and manufacturers. * * *

(ii) Copies of all MDR forms, as required by this part, and other information related to the event that was submitted to FDA and other entities (e.g., an importer, distributor, or manufacturer).

(2) User facilities, importers, and manufacturers shall permit any authorized FDA employee during all reasonable times to access, to copy, and to verify the records required by this part.

(c) * * * Manufacturers and importers shall retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event or a period of time equivalent to the expected life of the device, whichever is greater. * * *

(d)(1) A device distributor shall establish device complaint files in accordance with § 820.198 of this

chapter and maintain an incident record containing any information, including any written or oral communication, that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness, or performance of a device. Device incident records shall be prominently identified as such and shall be filed by device.

(2) A device distributor shall retain copies of the records required to be maintained under this section for a period of 2 years from the date of inclusion of the record in the file or for a period of time equivalent to the design and expected life of the device, whichever is greater, even if the distributor has ceased to distribute the device that is the subject of the record.

(3) A device distributor shall maintain the device complaint files established under this section at the distributor's principal business establishment. A distributor that is also a manufacturer may maintain the file at the same location as the manufacturer maintains its complaint file under §§ 820.180 and 820.198 of this chapter. A device distributor shall permit any authorized FDA employee, during all reasonable times, to have access to, and to copy and verify, the records required by this part.

§ 803.19 [Amended]

10. Section 803.19 *Exemptions, variances, and alternative reporting requirements* is amended by adding in paragraphs (b) and (c) the word "importers," before the phrase "or user facility," and by adding in paragraph (c) a comma after the word "variance".

11. Section 803.20 is amended by revising the last sentence of introductory text of paragraph (a), paragraph (a)(1), and the first sentence of paragraph (a)(2), and by adding paragraph (b)(2) to read as follows:

§ 803.20 How to report.

(a) * * * The form has sections that must be completed by all reporters and other sections that must be completed only by the user facility, importer, or manufacturer.

(1) The front of FDA Form 3500A is to be filled out by all reporters. The front of the form requests information regarding the patient, the event, the device, and the "initial reporter" (i.e., the first person or entity that submitted the information to the user facility, manufacturer, or importer).

(2) The back part of the form contains sections to be completed by user facilities, importers, and manufacturers. * * *

(b) * * *

(2) Importers are required to submit MDR reports to FDA and the device

manufacturer, except for malfunctions which are reported to the manufacturer only:

(i) Within 10 working days of becoming aware of information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury.

(ii) Within 10 working days of receiving information that a device marketed by the importer has malfunctioned and that such a device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

§ 803.22 [Amended]

12. Section 803.22 *When not to file* is amended by adding in paragraphs (a) and (b)(1) the word "importer," after the word "facility".

§ 803.33 [Amended]

13. Section 803.33 *Semiannual reports* is amended by revising the heading to read "Annual reports"; in introductory text of paragraph (a) by removing the phrase "(for reports made July through December) and by July 1 (for reports made January through June)"; in introductory text of paragraph (a) and paragraphs (a)(5), (a)(7) introductory text, and (c) by removing the word "semiannual" wherever it appears and adding in its place the word "annual"; in paragraph (a)(2) by removing the phrase "and period, e.g., January through June or July through December"; and by adding in paragraph (a)(7)(vi) the word "importer," after the word "distributor".

14. Subpart D, consisting of §§ 803.40 and 803.43, is added to read as follows:

Subpart D—Importer Reporting Requirements

Sec.
803.40 Individual adverse event reporting requirements; importers.
803.43 Individual adverse event report data elements.

Subpart D—Importer Reporting Requirements

§ 803.40 Individual adverse event reporting requirements; importers.

(a) An importer shall submit to FDA a report, and a copy of such report to the manufacturer, containing the information required by § 803.43 on FDA form 3500A as soon as practicable, but not later than 10 working days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or medical or scientific

literature, whether published or unpublished, that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury.

(b) An importer shall submit to the manufacturer a report containing information required by § 803.43 on FDA form 3500A, as soon as practicable, but not later than 10 working days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or through the importer's own research, testing, evaluation, servicing, or maintenance of one of its devices, that one of the devices marketed by the importer has malfunctioned and that such device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

§ 803.43 Individual adverse event report data elements.

(a) Each importer that submits a report on an MDR reportable event shall complete and submit the applicable portions of FDA form 3500A in so far as the information is known or should be known to the importer, and submit it to FDA, and to the manufacturer as required by § 803.40.

(b) Each importer shall submit the information requested on FDA form 3500A, including:

(1) Identification of the source of the report.

(i) Type of source that reported the event to the importer (e.g., lay user owner, lay user lessee, hospital, nursing home, outpatient diagnostic facility, outpatient treatment facility, ambulatory surgical facility);

(ii) Importer report number;

(iii) Name, address, and telephone number of the source that reported the event to the importer (e.g., distributor, user facility, practitioner, etc.); and

(iv) Name of the manufacturer of the device.

(2) Date information.

(i) The date of the occurrence of the event;

(ii) The date the source that reported the event to the importer became aware of the event;

(iii) The date the event was reported to the manufacturer and/or FDA; and

(iv) The date of this report.

(3) The type of MDR reportable event (e.g., death, serious illness, serious injury, or malfunction), and whether an imminent hazard was involved;

(4) Patient information including age, sex, diagnosis, and medical status immediately prior to the event and after the event;

(5) Device information including brand and labeled name, generic name, model number or catalog number or other identifying numbers, serial number or lot number, purchase date, expected shelf life/expiration date (if applicable), whether the device was labeled for single use, and date of implant (if applicable);

(6) Maintenance/service information data including the last date of service performed on the device, where service was performed, whether service documentation is available, and whether service was in accordance with the service schedule;

(7) Whether the device is available for evaluation and, if not, the disposition of the device;

(8) Description of the event, including:

(i) Who was operating or using the device when the event occurred;

(ii) Whether the device was being used as labeled or as otherwise intended;

(iii) The location of the event;

(iv) Whether there was multi-patient involvement, and if so, how many patients were involved;

(v) A list of any other devices whose performance may have contributed to the event and their manufacturers, and the results of any analysis or evaluation with respect to such device (or a statement of why no analysis or evaluation was performed); and

(vi) A complete description of the event including, but not limited to, what happened, how the device was involved, the nature of the problem, patient followup/treatment required, and any environmental conditions that may have influenced the event.

(9) The results of any analysis of the device and the event, including:

(i) The method of the evaluation or an explanation of why no evaluation was necessary or possible;

(ii) The results and conclusions of the evaluation;

(iii) The corrective actions taken; and

(iv) The degree of certainty concerning whether the device caused or contributed to the reported event;

(10) The name, title, address, telephone number, and signature of the person who prepared the report.

§ 803.56 [Amended]

15. Section 803.56 *Supplemental reports* is amended in the introductory paragraph and in paragraphs (a) and (b) by adding the words "or importer" after the word "manufacturer".

§ 803.57 [Amended]

16. Section 803.57 *Annual certification* is amended in paragraphs

(a) and (d) by removing the word "manufacturers" wherever it appears and by adding in its place the phrase "manufacturers of cigarettes or smokeless tobacco", and in paragraphs (b), (c)(1), and (d) by removing the word "manufacturer" wherever it appears and adding in its place the phrase "manufacturer of cigarettes or smokeless tobacco".

PART 804—MEDICAL DEVICE REPORTING FOR DISTRIBUTORS OF CIGARETTES OR SMOKELESS TOBACCO

17. The authority citation for 21 CFR part 804 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

18. Part 804 is amended by revising the heading to read as set forth above.

19. Section 804.1 is amended by revising paragraph (a) to read as follows:

§ 804.1 Scope.

(a) FDA is requiring distributors of cigarettes or smokeless tobacco to report deaths, serious illnesses, and serious injuries that are attributed to contamination of a cigarette or smokeless tobacco product. Distributors of cigarettes or smokeless tobacco are also required to submit a report to FDA annually certifying the number of medical device reports filed during the preceding year, or that no reports were filed. These reports enable FDA to protect the public health by helping to ensure that these products are not adulterated or misbranded and are otherwise safe and effective for their intended use. In addition, distributors of cigarettes or smokeless tobacco are required to establish and maintain complaint files or incident files as described in § 804.35, and to permit any authorized FDA employee at all reasonable times to have access to, and to copy and verify, the records contained in this file. This part supplements, and does not supersede, other provisions of this subchapter, including the provisions of part 820 of this chapter.

20. Section 804.3 is amended by revising paragraph (d), and in paragraphs (m)(1) and (m)(2) by adding the phrase "related to the contamination of cigarettes or smokeless tobacco" after the word "event" to read as follows:

§ 804.3 Definitions.

(d) *Distributor* means, for the purpose of this part, any person who furthers the distribution of cigarettes or smokeless tobacco, whether domestic or imported,

at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption, but who does not repackage or otherwise change the container, wrapper, or labeling of the product package. Common carriers are not considered distributors for the purposes of this part.

§ 804.25 [Amended]

21. Section 804.25 *Reports by distributors* is amended in paragraph (a)(1) by removing the words "a device" and adding in their place the phrase "contamination of a cigarette or smokeless tobacco product"; in paragraph (a)(2) by removing the phrase "one of its marketed devices" and adding in its place the phrase "contamination of one of its cigarette or smokeless tobacco products"; and by removing paragraph (c).

Dated: May 1, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98-12610 Filed 5-11-98; 8:45 am]

BILLING CODE 4180-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

(FRL-6012-1)

Announcement of a Stakeholder Meeting on the Draft Unregulated Contaminant Monitoring Regulation and List

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of a stakeholder meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a two-day public meeting on EPA's draft of the Unregulated Contaminant Monitoring Regulation (UCMR) and List. The focus of this meeting will be to identify and discuss issues raised by the draft Unregulated Contaminant Monitoring Regulation and List of unregulated contaminants to be monitored by public water systems as required by the Safe Drinking Water Act (SDWA) as amended in 1996. The UCMR is expected to be published as a proposed rule in the Fall of 1998. EPA has developed the draft regulation and list based on the input of the stakeholders meeting on the options for the Unregulated Contaminant Monitoring Regulation and List held by EPA in Washington, DC on December 2-3, 1997. The meeting will be open to

any interested parties. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholder meeting on the Unregulated Contaminant Monitoring Program will be held on June 3-4, 1998, from 9 a.m. to 5 p.m. EST.

ADDRESSES: Resolve, Inc. (an EPA contractor) will provide logistical support for the stakeholders meeting. The meeting will be held at Resolve, Inc., 1255 23rd Street, NW., Suite 275, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: For general information about the meeting, please contact Mr. Jeff Citrin at Resolve, Inc., 1255 23rd Street, NW., Suite 275, Washington, DC 20037; phone: (202) 965-6388; fax: (202) 338-1264, or e-mail at jcitrin@resolv.org. For other information on the Unregulated Contaminant Monitoring Regulation and List, please contact Charles Job, at the U.S. Environmental Protection Agency, Phone: 202-260-7084, Fax: 202-260-3762. Members of the public wishing to attend the meeting may register by phone by contacting Mr. Jeff Citrin by May 20, 1998. Those registered by May 20, 1998 will receive background materials prior to the meeting.

SUPPLEMENTARY INFORMATION:

A. Background on the Unregulated Contaminant Monitoring Regulation

The EPA must issue regulations establishing the monitoring program of unregulated contaminants under the SDWA. Within 3 years after enactment, and every 5 years thereafter, EPA shall issue a list of not more than 30 unregulated contaminants to be monitored by public water systems. The results of this monitoring will be included in the National Contaminant Occurrence Database.

Monitoring of unregulated contaminants shall vary based on system size, source water, and contaminants likely to be found. For those systems serving 10,000 persons or fewer, only a representative sample must be monitored. Each state may develop an unregulated contaminant monitoring plan for small and medium systems (serving fewer than 10,000 persons). If a state plan is implemented, the EPA is required to cover the reasonable costs of testing and laboratory analysis using funds authorized by Congress for unregulated contaminant monitoring. EPA shall waive the requirement for monitoring of specific unregulated contaminants in a state if the state demonstrates that the criteria for listing are not applicable in the state. Water systems must provide the results of unregulated contaminant

monitoring to the primacy agency (state/EPA) and must notify persons served by the system of the availability of results (§ 1445(a)(2)).

B. Request for Stakeholder Involvement

The upcoming meeting deals specifically with EPA's efforts to develop a proposed Unregulated Contaminant Monitoring Regulation and List based, in part, on information obtained from Stakeholders' discussion of a draft regulation and list to be presented at the meeting and in the background materials. These items are available prior to the stakeholder meeting from Jeff Citrin, Resolve, Inc., 1255 23rd St. NW., Suite 275, Washington, DC 20037; phone: (202) 965-6388; fax: (202) 338-1264, or after the meeting from the EPA by contacting Chuck Job, at the U.S. EPA, 401 M Street, SW (4607), Washington, DC 20460 or job.chuck@epa.gov. EPA believes that the initial list of unregulated contaminants for which monitoring will be required will largely come from the Contaminant Candidate List (CCL) published in February 1998. EPA will use the CCL to establish priorities for additional occurrence data gathering, health effects research, and regulation development. One of EPA's goals is to obtain monitoring data on certain unregulated contaminants to determine whether any of the contaminants should be regulated in the future, thus protecting drinking water used by consumers from public water systems. The unregulated contaminant data will also be used to support the development of a future CCL and to guide research. These data will be reported to the National Contaminant Occurrence Data Base and to the users of the selected water systems, as required by law.

The EPA Office of Ground Water and Drinking Water (OGWDW) sees the involvement of interested parties, representing a variety of perspectives and expertise, as critical to the development of a credible, effective and implementable regulation and list. This stakeholder meeting will provide an important opportunity for such involvement. Some anticipated issues for discussion include the following questions:

1. What should be the criteria for determining which of the unregulated contaminants on the CCL should be a candidate for required monitoring?

2. What should be the monitoring frequency, location and timing for unregulated contaminants?

3. How will the Governors' petition process place contaminants on the monitoring list?

4. How should the selection of a "representative sample" of small and medium systems be implemented?

5. What is the relationship of state plans for representative samples to the national representative sample?

6. Should waivers for monitoring be considered for large systems only?

7. What monitoring data should be reported and how?

8. Is the use of the Consumer Confidence Reporting and the National Contaminant Occurrence Database adequate for public notification?

9. What will this program cost and what are its benefits?

EPA has convened this public meeting to hear the views of stakeholders on the draft Unregulated Contaminant Monitoring Regulation and List. The public is invited to provide comments on the issues listed above or other issues related to the draft Unregulated Contaminant Monitoring Regulation and List during the June 3-4, 1998 meeting.

Dated: April 27, 1998.

William R. Diamond,
Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98-12306 Filed 5-11-98; 8:45 am]

BILLING CODE 6560-60-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 64

[CC Docket No. 96-115; DA 98-864]

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission has released a Public Notice which extends the pleading cycle for comments on the Further Notice of Proposed Rulemaking (FNPRM) released February 26, 1998, which addressed telecommunications carriers' use of customer proprietary information and other customer information. Since the date of publication in the *Federal Register* occurred after the original comment cycle was over, some parties may not have had notice of the deadlines for the original comment cycle. The Commission wishes to give those parties an opportunity to comment.

DATES: Comments are due on or before June 8, 1998, and reply comments are due on or before June 23, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor,

International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Brent Olson, Common Carrier Bureau, Policy and Program Planning Division, (202) 418-1580.

SUPPLEMENTARY INFORMATION:

Synopsis of Public Notice

On February 26, 1998, the Commission released the Second Report and Order and Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 96-115, 63 FR 20364, April 24, 1998, addressing telecommunications carriers' use of customer proprietary information and other customer information. The Commission established March 30, 1998 and April 14, 1998 as the deadlines for parties to submit comments and reply comments, respectively. Since, however, the FNPRM was not published in the *Federal Register* until April 24, 1998, after both dates had passed, we are extending the comment cycle in order to give those parties who did not receive notice an opportunity to comment.

Parties who did not have notice of the date to file original comments may file comments on or before June 8, 1998. We will not accept new comments from parties who have already filed comments in this proceeding. Reply comments should be filed on or before June 23, 1998.

Federal Communications Commission.
Ann Stevens,

Associate Chief, Policy and Programming Division, Common Carrier Bureau.

[FR Doc. 98-12608 Filed 5-11-98; 8:45 am]

BILLING CODE 6712-01-P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98-053-1]

National Wildlife Services (Formerly Known as Animal Damage Control) Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Wildlife Services Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held at the USDA Center at Riverside in the Conference Center, 4700 River Road, Riverdale, MD 20737. The Committee will meet on May 27-28, 1998, from 8 a.m. to 5 p.m. **FOR FURTHER INFORMATION CONTACT:** Mr. Martin Mendoza, Director, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737-1234, (301) 734-7921.

SUPPLEMENTARY INFORMATION: The National Wildlife Services Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Wildlife Services (WS) program. The Committee also serves as a public forum enabling those affected by the WS program to have a voice in the program's policies.

The meeting will focus on operational and research activities, and will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mr. Martin Mendoza at the address listed under **FOR FURTHER INFORMATION CONTACT**, or may be filed at the meeting.

Please refer to Docket No. 98-053-1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92-463).

Done in Washington, DC, this 8th day of May 1998.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-12660 Filed 5-11-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Request For Proposals: Fiscal Year 1998 Funding Opportunity for Research on Rural Cooperative Opportunities and Problems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately \$1.9 million in competitive cooperative agreement funds allocated from FY 1998 appropriations. RBS hereby requests proposals from institutions of higher education or nonprofit organizations interested in applying for competitively awarded cooperative agreements for research related to agricultural and nonagricultural cooperatives serving rural communities. The intent of the funding is to encourage research on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities.

DATES: Cooperative agreement applications must be received on or before June 30, 1998. Proposals received after June 30, 1998, will not be considered for funding. Comments regarding the information collection requirements under the Paperwork Reduction Act of 1995 must be received on or before July 13, 1998, to be assured of consideration.

ADDRESSES: Send Proposals and other required materials to Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue

Federal Register

Vol. 63, No. 91

Tuesday, May 12, 1998

SW, Washington, D.C. 20250-3252. Telephone: (202) 690-0368.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, D.C. 20250-3252. Telephone: (202) 690-0368.

SUPPLEMENTARY INFORMATION:

General Information

This solicitation is issued pursuant to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998 making appropriations for programs administered by USDA's Rural Business-Cooperative Service (RBS) for the fiscal year ending September 30, 1998. The Rural Business-Cooperative Service (RBS) was established by the Department of Agriculture Reorganization Act of 1994. The mission of RBS is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance, and creating effective strategies for rural development. RBS has authority to enter into cooperative agreements pursuant to section 607(b)(4) of the Rural Development Act of 1972, as amended by section 759A of the Federal Agriculture Improvement and Reform Act of 1996.

The primary objective of this funding is to encourage research through cooperative agreements on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities. Among others, these issues include:

- (1) The appropriate role of cooperatives in fostering rural development;
- (2) The role of cooperatives in filling the farm income safety net "void" created by the reduction or elimination of price support programs;
- (3) The role of cooperatives in an increasingly global environment;
- (4) The role of cooperatives in highly integrated agricultural industries;
- (5) Effective structures and operations for agricultural bargaining associations;
- (6) The role of cooperatives in low-resource areas.
- (7) Barriers to small and new farmer membership in agricultural marketing cooperatives.

(8) Cooperation as a tool for small-farmer use of farmers markets.

(9) Models for shared or cooperatively-owned agricultural production inputs.

A Cooperative Agreement reflects a relationship between the United States Government and an eligible recipient where (1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the eligible recipient to carry out research related to rural cooperatives; and (2) substantial involvement is anticipated between RBS acting for the United States Government, and the eligible recipient during the performance of the research in the agreement. Cooperative agreements are to be awarded on the basis of merit, quality, and relevance to advancing the purpose of federally supported rural development programs which increase economic opportunities in farming and rural communities.

To obtain an application kit containing instructions and all required forms, please contact Cooperative Services Program; USDA/RBS, at (202)690-0368 or FAX (202)690-2723. When calling Cooperative Services, please indicate that you are requesting an application kit for Fiscal Year 1998 (FY 1998) Research on Rural Cooperative Opportunities and Problems (RRCOP). The application kit may also be requested via Internet by sending a message with your name, mailing address (not E-mail) and phone number to "thomas.stafford@usda.gov" which requests an application kit for FY 1998 funding for research on rural cooperatives. The application kit will be mailed to you (not e-mailed or faxed) as quickly as possible.

Use of Funds

Funds may be used to pay up to 75 percent of the costs for carrying out relevant projects. Applicants' contribution may be in cash or in-kind contribution and must be from nonfederal funds. Funds may not be used to: (1) Pay more than 75 percent of relevant project or administrative costs; (2) pay costs of preparing the application package; (3) fund political activities; or (4) pay costs incurred prior to the effective date of the cooperative agreement. Indirect costs may not exceed current negotiated rates. If no rate has been negotiated, an indirect cost rate proposal must be submitted for approval.

Available Funds and Award Limitations

The amount of funds available for cooperative agreements in FY 1998 is

approximately \$1.9 million. Up to one-quarter of the total funds awarded will be allocated to research on nonagricultural cooperatives serving rural areas. Nonagricultural cooperatives include, but are not limited to housing, child care, health care, shared services, wholesale or retail consumer cooperatives, and credit unions. Agricultural cooperatives are grower-owned and controlled businesses which purchase farm inputs, market farm products, or provide other services to their members. The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. Maximum amount of Federal funds awarded for any one proposal will be \$100,000. It is anticipated that a typical award would range from \$25,000 to \$50,000.

Eligible Applicants

Proposals may be submitted by public or private colleges or universities, research foundations maintained by a college or university, or private nonprofit organizations. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(4)) which engages in lobbying activities, is not eligible to apply.

Methods for Evaluating and Ranking Applications

Applications will be evaluated by a panel of RBS technical experts. Applications will be evaluated competitively and points awarded as specified in the Evaluation Criteria and Weights section of this notice. After assigning points upon those criteria, applications will be listed in rank order and presented, along with funding level recommendations, to the Administrator of RBS, who will make the final decision on awarding of agreements. Applications will then be funded in rank order until all available funds have been expended.

RBS reserves the right to make selections out of rank order to provide for a geographic distribution of funded projects. With respect to any approved proposal, the amount of funding and the project period during which the project may be funded and will be completed, are subject to negotiation prior to finalization of the cooperative agreement.

Evaluation Criteria and Weights

RBS will initially determine whether the submitting organization is eligible and whether the application contains the information required by this notice.

Prior to technical examination, each proposal will be reviewed for responsiveness to the funding solicitation. Submissions which do not fall within the guidelines as stated in the solicitation will be eliminated from the competition and will be returned to the applicant.

After this initial screening, RBS will use the following criteria to rate and rank proposals received in response to this notice of funding availability. The maximum number of points is 100. Zero points on any criteria will disqualify the proposal.

(1) **Relevance:** Focuses on an agricultural or nonagricultural cooperatives serving rural areas and demonstrates a clear relationship with the research topics contained in this notice (maximum 20 points);

(2) **Demonstrates potential to contribute innovative ideas or solutions to identified problems or issues** (maximum 20 points);

(3) **Shows capacity for broad applicability in facilitating new or improved cooperative development or new or improved cooperative approaches** (maximum 15 points);

(4) **Outlines a sound plan of work and appropriate methodology to accomplish the stated objective of the research** (maximum 15 points);

(5) **Adequately documents the need for and clearly defines the objectives of the research** (maximum 10 points);

(6) **Demonstrates cost effectiveness** (maximum 10 points);

(7) **Identifies qualified resources and personnel, including a demonstrated track-record of similar research** (maximum 10 points).

Deliverables

Upon completion of the project, recipients will deliver the results of the research to RBS, in the form of a document of publishable quality, accompanied by an applicable supporting data. Publishable documents include, but are not limited to, manuscripts, videotapes, or software, or other media, as may be identified in approved proposals. RBS retains publishing rights to such documents, as well as rights to any raw or preliminary data collected as part of the project.

Content of a Proposal

A proposal should contain the following:

(1) *Form SF-424*, "Application for Federal Assistance."

(2) *Form SF-424A*, "Budget Information—Non-Construction Programs."

(3) *Form SF-424B*, "Assurances—Non-Construction Programs."

(4) *Form AD-1047*, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

(5) *Form AD-1049*, "Certification Regarding Drug-Free Workplace Requirements."

(6) **Table of Contents:** For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(7) **Project Summary:** A summary of the Project Proposal, not to exceed one-page should include the following: title of the project; names of principal investigators and applicant organization; and a description of the overall goals and relevance of the project.

(8) **Project Proposal:** The application must contain a narrative statement describing the nature of the proposed research. The Proposal must include at least the following:

(i) **Project Title:** The title of the proposed project must be brief, yet represent the major thrust of the project.

(ii) **Project Leaders:** List the names and contact information for the principal investigators. Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) **Need for the Project:** A concisely worded rationale for the research must be presented. Included should be a summarization of the body of knowledge (literature review) which substantiates the need for the research. The need for the proposed research must be clearly and directly related to the facilitation of new or improved cooperative development or new or improved cooperative approaches.

(iv) **Objectives of the Project:** Discuss the specific objectives of the project and the impact of the research on end-users.

(v) **Procedures:** Discuss the hypotheses or questions being asked and the methodology or approach to be used in carrying out the proposed research and accomplishing the objectives. A description of any subcontracting arrangements to be used in carrying out the project must be included.

(vi) **Time Table:** A tentative schedule for conducting the major steps of the research must be included.

(vii) **Expected Output:** Describe how the results will be presented and disseminated.

(viii) **Coordination and Management Plan:** Describe how the project will be coordinated among various participants

and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration. Describe scope of RBS involvement in the project.

(9) **Personnel Support:** To assist reviewers in assessing the competence and experience of proposed principal investigators, the following must be included for each:

(i) estimated time commitment to the project;

(ii) a one-page curriculum-vitae;

(iii) a chronological list of all publications during the past five years.

What To Submit

An original and two copies must be submitted in one package.

When and Where To Submit

Proposals must be received by close of business on June 30, 1998. Proposals must be sent to Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, D.C. 20250-3252.

Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to proposals considered for review and to cooperative agreements awarded. These include but are not limited to:

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations.

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying.

7 CFR part 3019—Uniform Administrative Requirements for Grant Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency announces its intention to seek Office of Management and Budget (OMB) approval of new reporting and recordkeeping requirements. These requirements have been approved by emergency clearance by OMB under OMB Control Number 0570-0028.

Approximately \$1.9 million in cooperative agreement funds has been allocated from FY 1998 appropriations for programs administered by USDA's Rural Business-Cooperative Service

(RBS) to encourage research related to rural cooperatives. The funds will be available to institutions of higher education or nonprofit organizations for research on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities. Among others, these issues include:

(1) The appropriate role of cooperatives in fostering rural development;

(2) The role of cooperatives in filling the farm income safety net "void" created by the reduction or elimination of price support programs;

(3) The role of cooperatives in an increasingly global environment;

(4) The role of cooperatives in highly integrated agricultural industries;

(5) Effective structures and operations for agricultural bargaining associations;

(6) The role of cooperatives in low-resource areas.

(7) Barriers to small and new farmer membership in agricultural marketing cooperatives.

(8) Cooperation as a tool for small-farmer use of farmers markets.

(9) Models for shared or cooperatively-owned agricultural production inputs.

The funds will be awarded on a competitive basis using specific selection criteria.

Public Burden in this Notice

At this time, the Agency is requesting OMB clearance of the following burden:

Form SF-424, "Application for Federal Assistance."

This application is used by applicants as a required face sheet for applications for federal funding.

Form SF-424A, "Budget Information—Non Construction Programs"

This form must be completed by applicants to show the project's anticipated budget breakdown in terms of expense categories and division of Federal and non-Federal sources of funds.

Form SF-424B, "Assurances Non-Construction Programs"

This form must be completed by the applicant to provide the Federal government certain assurances of the applicant's legal authority to apply for Federal assistance and financial capability to pay the non-Federal share of project costs. The applicant also assures compliance with various legal and regulatory requirements as described in the form.

Project Proposal

The applicant must submit a project proposal containing the elements described in the notice and in the format prescribed. The elements of the proposal are:

(1) **Table of Contents:** For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(2) **Project Summary.** A summary of the Project Proposal, not to exceed one-page should include the following: title of the project; names of principal investigators and applicant organization; and a description of the overall goals and relevance of the project.

(3) **Project Proposal:** The application must contain a narrative statement describing the nature of the proposed research. The Proposal must include at least the following:

(i) **Project Title.** The title of the proposed project must be brief, yet represent the major thrust of the project.

(ii) **Project Leaders.** List the names and contact information for the principal investigators. Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) **Need for the Project.** A concisely worded rationale for the research must be presented. Included should be a summarization of the body of knowledge (literature review) which substantiates the need for the research. The need for the proposed research must be clearly and directly related to the facilitation of new or improved cooperative development or new or improved cooperative approaches.

(iv) **Objectives of the Project.** Discuss the specific objectives of the project and the impact of the research on end-users.

(v) **Procedures.** Discuss the hypotheses or questions being asked and the methodology or approach to be used in carrying out the proposed research and accomplishing the objectives. A description of any subcontracting arrangements to be used in carrying out the project must be included.

(vi) **Time Table.** A tentative schedule for conducting the major steps of the research must be included.

(vii) **Expected Output.** Describe how the results will be presented and disseminated.

(viii) **Coordination and Management Plan.** Describe how the project will be

coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration. Describe scope of RBS involvement in the project.

(4) **Personnel Support.** To assist reviewers in assessing the competence and experience of proposed principal investigators, the following must be included for each:

(i) estimated time commitment to the project;

(ii) a one-page curriculum-vitae;

(iii) a chronological list of all publications during the past five years.

Use of Funds

Changes in approved goals and objectives, project leadership, or project time line must be submitted to the Deputy Administrator of Cooperative Services and approved in writing.

Reporting Requirements

Funding recipients will be required to submit written project performance reports on a quarterly basis. The project performance reports will include, but are not limited to: (1) A comparison of actual accomplishments to established objectives; (2) reasons established objectives were not met; (3) problems, delays, or adverse conditions which will materially affect attainment of planned project objectives; (4) objectives for the next reporting period; and (5) status of compliance with an special conditions on the use of awarded funds.

Estimate of Burden: Public reporting burden for this collection is estimated to range from 15 minutes to 15 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 2,280 hours.

Copies of this information collection can be obtained from Michele Brooks, Regulations and Paperwork Management Branch, Support Services Division, at (202) 720-3158.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden to collect the required information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments may be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Michele Brooks, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Housing Service, Stop 0743, Room 6345-S, 1400 Independence Avenue S.W., Washington, D.C. 20250-0743.

Dated: April 28, 1998.

Dayton J. Watkins,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 98-12463 Filed 5-11-98; 8:45 am]

BILLING CODE 3410-XV-U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) invites comments on these information collections for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 13, 1998.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250-1522. Telephone: (202) 720-9550. FAX: (202) 720-4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and

recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522. FAX: (202) 720-4120.

Title: Technical Assistance and Training Grants.

OMB Control Number: 0572-0112.

Type of Request: Reinstatement of a previously approved information collection, with change to combine 0572-0112 (Technical Assistance and Training Grants) and 0572-0113 (Technical Assistance and Training Grants, Addendum 1.)

Abstract: The Rural Utilities Service (RUS) manages programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by OMB

Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivables.

The combination of this regulation and addendum promulgates the policies and procedures to provide grants to private nonprofit organizations for technical assistance and/or training.

Respondents: Non-profit institutions.

Estimated Number of Respondents: 115.

Estimated Number of Responses per Respondent: 20.5.

Estimated Total Response Hours: 6,175 hours.

Requests for copies of an information collection can be obtained from Gail Salgado-Duff, Program Development and Regulatory Analysis, at (202) 205-3660. FAX: (202) 720-4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 30, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 98-12572 Filed 5-11-98; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213) (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of May 1998, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

Antidumping Duty Proceedings:

	Period
Argentina: Rectangular Carbon Steel Tubing, A-357-802	5/1/97-4/30/98
Brazil: Certain Malleable Cast Iron Pipe Fittings, A-351-505	5/1/97-4/30/98
Brazil: Iron Construction Castings, A-351-503	5/1/97-4/30/98
Brazil: Orange Juice, A-351-605	5/1/97-4/30/98
France: Ball Bearings, A-427-801	5/1/97-4/30/98
France: Cylindrical Roller Bearings, A-427-801	5/1/97-4/30/98
France: Spherical Plain Bearings, A-427-801	5/1/97-4/30/98
Germany: Ball Bearings, A-428-801	5/1/97-4/30/98
Germany: Cylindrical Roller Bearings, A-428-801	5/1/97-4/30/98
Germany: Spherical Plain Bearings, A-428-801	5/1/97-4/30/98
India: Pipes and Tubes, A-533-502	5/1/97-4/30/98
Italy: Ball Bearings, A-475-801	5/1/97-4/30/98
Italy: Cylindrical Roller Bearings, A-475-801	5/1/97-4/30/98
Japan: Ball Bearings, A-588-804	5/1/97-4/30/98
Japan: Cement, A-588-815	5/1/97-4/30/98
Japan: Cylindrical Roller Bearings, A-588-804	5/1/97-4/30/98
Japan: Impression Fabric, A-588-066	5/1/97-4/30/98
Japan: Polyvinyl Alcohol, A-588-836	5/1/97-4/30/98
Japan: Spherical Plain Bearings, A-588-804	5/1/97-4/30/98
Republic of Korea: Malleable Cast Iron Pipe Fittings, Other than Grooved, A-580-507	5/1/97-4/30/98
Republic of Korea: DRAMS, A-580-812	5/1/97-4/30/98
Romania: Ball Bearings, A-485-801	5/1/97-4/30/98
Russia: Pure Magnesium, A-821-805	5/1/97-4/30/98
Singapore: Ball Bearings, A-559-801	5/1/97-4/30/98
Sweden: Ball Bearings, A-401-801	5/1/97-4/30/98
Sweden: Cylindrical Roller Bearings, A-401-801	5/1/97-4/30/98

	Period
Taiwan: Certain Welded Carbon Steel Pipe & Tubes, A-583-008	5/1/97-4/30/98
Taiwan: Malleable Cast Iron Pipe Fittings, Other Than Grooved, A-583-507	5/1/97-4/30/98
Taiwan: Polyvinyl Alcohol, A-583-824	5/1/97-4/30/98
The People's Republic of China: Construction Castings, A-570-502	5/1/97-4/30/98
The People's Republic of China: Polyvinyl Alcohol, A-570-842	5/1/97-4/30/98
The People's Republic of China: Pure Magnesium, A-570-832	5/1/97-4/30/98
The Ukraine: Pure Magnesium, A-823-806	5/1/97-4/30/98
The United Kingdom: Ball Bearings, A-412-801	5/1/97-4/30/98
The United Kingdom: Cylindrical Roller Bearings, A-412-801	5/1/97-4/30/98
Turkey: Pipes and Tubes, A-489-501	5/1/97-4/30/98
Countervailing Duty Proceedings:	
Brazil: Certain Iron Construction Castings, C-351-504	1/1/97-12/31/97
Sweden: Viscose Rayon Staple Fiber, C-401-056	1/1/97-12/31/97
Venezuela: Ferrosilicon, C-307-808	1/1/97-12/31/97
Suspension Agreements: None.	

In accordance with 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. In recent revisions to its regulations, the Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with

§ 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the *Federal Register* a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of May 1998. If the Department does not receive, by the last day of May 1998, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 5, 1998.
Maria Harris Tildon,
Acting Deputy Assistant Secretary for Import Administration.
 [FR Doc. 98-12442 Filed 5-11-98; 8:45 am]
 BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration [A-688-824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the review of certain corrosion-resistant carbon steel flat products from Japan. This review covers the period August 1, 1996 through July 31, 1997.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Robert Bolling or Stephen Jacques at 202 482-0413, 482-3434 or 482-1391, respectively; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Extension of Preliminary Results

The Department has determined that it is not practicable to issue its preliminary results within the original time limit. (See Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRossa, Assistant Secretary for Import Administration, May 5, 1998.) The Department is extending the time limit for completion of the preliminary results until August 31, 1998 in accordance with Section 751(a)(3)(A) of the Act.

The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: May 6, 1998.

Joseph A. Spetrini,
Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 98-12594 Filed 5-11-98; 8:45 am]
 BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration [A-351-605]

Frozen Concentrated Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 14, 1998, the Department of Commerce published in the *Federal Register* the preliminary results of the administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. This review covers two producers/exporters, Branco Peres Citrus, S.A. and CTM Citrus, S.A. (formerly Citropectina). The Department terminated the review with respect to another firm, Citrovita S.A. See Frozen Concentrated Orange Juice from Brazil: Preliminary Results of Administrative Review; Termination in Part; and Intent Not to Revoke in Part, 63 FR 2202 (January 14, 1998). This review covers the period May 1, 1993, through April 30, 1994.

We gave interested parties an opportunity to comment on our preliminary results. We have based our analysis on the comments received and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Fabian Rivelis or Irina Itkin, Office 5, AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3853 or (202) 482-0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1998, the Department of Commerce (the Department) published in the *Federal Register* its preliminary results of the 1993-1994 administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil (62 FR 2202). The Department has now completed this administrative

review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751 of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The merchandise covered by this review is frozen concentrated orange juice from Brazil. The merchandise is currently classifiable under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and for customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments only from Branco Peres Citrus S.A. (Branco Peres).

Comment 1: Calculation of Comparison Market Commissions.

For the preliminary results, the Department based foreign market value (FMV) on the applicable minimum export price¹ (MEP) as a third-country offer for sale where no contemporaneous third-country sale existed. In cases where FMV was based on the MEP, we used the weighted average of the charges and adjustments reported for actual third-country sales.

According to Branco Peres, the Department erred in calculating a single average commission amount and applying it to four separate MEPs when calculating FMV. Branco Peres asserts that this methodology understated the amount of the commission that it would have paid if the merchandise had actually been sold at the MEP. Specifically, Branco Peres maintains that the commission amount would have been based on a fixed commission percentage and would have been higher than the average commission used by the Department.

¹ During the period of review, the minimum export price was a floor price set by the Carteira do Comercio Exterior de Banco do Brasil (CACEX), the export department of the Bank of Brazil. Minimum export prices were based on the price of FCOJ on the New York Cotton Exchange. Because the price movements of FCOJ on the futures market are irregular, the minimum export price may have remained the same or may have changed several times within a month.

Branco Peres asserts that the calculation of the single average commission amount is inconsistent with the calculation of U.S. commissions, which was based on the fixed commission percentage for each U.S. sale. Branco Peres maintains that the amount of both the third country and U.S. commissions should be exactly the same because, in every comparison, the U.S. price was exactly the same as the MEP. According to Branco Peres, the Department's use of inconsistent methodologies not only results in an unfair comparison, but also generates a dumping margin greater than *de minimis*. Branco Peres asserts that the Department should correct this error by deducting from FMV a commission amount based on the fixed commission percentage.

Branco Peres also argues that the Department's use of a single average commission amount for the period of review (POR) violated long-standing Department policy. Branco Peres states that the Department's practice in the 1993-1994 period for cases from Brazil, as illustrated in Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Brazil, 58 FR 37091, 37093 (July 9, 1993), was to determine expenses on a monthly basis because Brazil's economy experienced hyperinflation during that period. Therefore, Branco Peres asserts that the Department must calculate expenses based on the actual monthly expenses in effect for each MEP period.

Nonetheless, Branco Peres argues that if the Department continues to use a single average commission, it should revise its calculation to include only those commissions related to sales which were contemporaneous with its U.S. sales, under the Department's usual price-to-price methodology for administrative reviews. Branco Peres notes that the Department calculated a single average commission based on the average commission expenses related to all third-country sales to the Netherlands, even though only four of those sales were contemporaneous with the U.S. sales in question.

DOC Position: We agree. Our review of the record of this case shows that a fixed commission rate was in effect for all of Branco Peres' export sales during the POR and that the payment of a commission based on this rate is Branco Peres' normal business practice. Our calculation of the average POR commissions understated the commissions Branco Peres would have paid if it had made the sale at the MEP. Accordingly, we have calculated commissions by applying the

commission rate to the MEP. This calculation is consistent with our calculations for Branco Peres in the 1992-1993 review, where the MEP was also used as an offer for sale to calculate FMV. See Notice of Final Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice from Brazil, 62 FR 5798 (February 7, 1997).

Comment 2: Revocation of the Antidumping Duty Order With Respect to Branco Peres.

Branco Peres argues that, if the Department recalculates its comparison market commissions, the Department should revoke the antidumping duty order against it because its margin in this review (1993-1994) is *de minimis*. Branco Peres notes that its margin in the 1995-1996 review was zero, and no review was conducted in the intervening year. That review was terminated because both Branco Peres and CTM withdrew their requests for review and there were no other requests for review (see Frozen Concentrated Orange Juice from Brazil: Termination of Antidumping Duty Administrative Review, 60 FR 53163 (October 12, 1995)). Branco Peres cites section 351.222(d) of the Department's new regulations, published on May 19, 1997, which permits revocation after the Department has conducted reviews in the first and third years of a three-year period and has found zero or *de minimis* dumping

margins. Branco Peres states that the Department's rationale not to revoke it from the order after the 1995-1996 review period no longer applies because the new regulations are now in effect.

Branco Peres asserts that it is similarly entitled to revocation under section 353.25(a) of the Department's old regulations, because that regulation required only that the company under review has "sold the merchandise at not less than foreign market value for a period of at least three consecutive years." Branco Peres claims that it meets this requirement because in the intervening year its entries were liquidated at a zero duty deposit rate. Branco Peres asserts that revocation now does not contradict the Department's final results in the 1995-1996 review, where the Department stated that it had denied revocation for a respondent which had withdrawn from the second period of review. Branco Peres notes that in that case the Department could not conclude that the respondent in question had exported the merchandise at not less than fair value during the entire three year period because, in the intervening year, it had entered merchandise at deposit rates that were greater than *de minimis*. See Frozen Concentrated Orange Juice from Brazil: Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in

Part of the Antidumping Duty Order, 56 FR 52510, 52512 (October 21, 1991).

DOC Position: We disagree. The new regulations cited by Branco Peres did not take effect until June 19, 1997, well after the initiation of the 1995-1996 review. In addition, although it does not affect the result here, we note that the instant review was initiated prior to the effective date of the new regulations. As stated in the final results of the 1995-1996 review, the Department can conclude that a producer has sold merchandise at not less than fair value for three consecutive years, within the meaning of 19 CFR 353.25(a), only pursuant to administrative reviews actually conducted for each of the three years. See Frozen Concentrated Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 62 FR 29328 (May 30, 1997) (1995-1996 FCOJ Review). Because no administrative review was conducted for the intervening 1994-1995 period, we cannot make this conclusion. Accordingly, we have determined not to revoke the antidumping duty order with respect to Branco Peres.

Final Results of Review

As a result of the comments received we have revised our preliminary results and determine that the following margins exist for the period May 1, 1993, through April 30, 1994:

Manufacturer/exporter	Review period	Percent margin
Branco Peres	5/1/93-4/30/94	0.18
CTM Citrus S.A.	5/1/93-4/30/94	0.00

The Department has not revoked the antidumping duty order with respect to either Branco Peres or CTM Citrus S.A. (CTM) because neither Branco Peres nor CTM has demonstrated three consecutive years of sales at not less than FMV.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States Price and FMV may vary from the percentages stated above. We have calculated a company-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. The rate will be assessed uniformly on all entries of that particular company made during the POR. The Department will issue

appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of FCOJ from Brazil, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) Because a subsequent administrative review of Branco Peres has been completed, the cash deposit rate for this company will continue to be the rate calculated in that administrative review (see 1995-1996 FCOJ Review); (2) the cash deposit rate for CTM will be the calculated margin in the final results of this administrative review, as stated above; (3) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) if the exporter is

not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (5) for all other producers and/or exporters of this merchandise, the cash deposit rate will be 1.96 percent, the "all others" rate from the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1)(B) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 5, 1998.

Robert S. LaRussa,
Assistant Secretary for Import
Administration.

[FR Doc. 98-12446 Filed 5-11-98; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-814]

Pure Magnesium From Canada; Preliminary Results of Antidumping Administrative Review and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

ACTION: Notice of preliminary results of
antidumping duty administrative review
and notice of intent not to revoke order
in part of pure magnesium from Canada.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 1996 through July 31, 1997. This review covers imports of pure magnesium from one producer/exporter.

We have preliminarily found that sales of subject merchandise have not been made below normal value. Further, we intend not to revoke the order with respect to pure magnesium from Canada produced by Norsk Hydro Canada Inc. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later

than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Import Administration,
International Trade Administration,
U.S. Department of Commerce, 14th
Street and Constitution Avenue, N.W.,
Washington D.C. 20230; telephone (202)
482-1279.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to the regulations, codified at 19 CFR part 351 (62 FR 27399, May 19, 1997).

Background

The Department published an antidumping duty order on pure magnesium from Canada on August 31, 1992 (57 FR 39390). On August 4, 1997, the Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on pure magnesium from Canada (62 FR 41925). On August 29, 1997, a producer/exporter, Norsk Hydro Canada Inc. ("NHCI") requested an administrative review of its exports of the subject merchandise to the United States for the period of review August 1, 1996, through July 31, 1997. In accordance with 19 CFR 351.221, we initiated the review on September 25, 1997. The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule ("HTS"). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

Verification

As provided in section 751(d) of the Act, we verified information provided by the respondent, NHCI, by using our standard verification procedures,

including on-site examination of relevant sales and financial records.

Export Price

For sales to the United States, we used export price ("EP") as defined in section 772(a) of the Act because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. The use of constructed export prices was not warranted based on the facts of the record. EP was based on the packed delivered, duties unpaid price to unaffiliated purchasers in the United States. We made a deduction for movement expenses in accordance with section 772(c)(2)(A) of the Act; this included the foreign and U.S. inland freight expense.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, pursuant to section 773(a)(1)(B) of the Act, we based normal value ("NV") on home market sales.

We made adjustments for differences in packing in accordance with sections 773(a)(6)(A), B(i) of the Act. We also made adjustments for movement expenses, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight. In addition, we made adjustments for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses).

Revocation

Pursuant to 19 CFR 351.222(b)(2), NHCI requested revocation of the antidumping duty order in part. In accordance with 19 CFR 351.222(e), the request was accompanied by certifications that NHCI had not sold the subject merchandise at less than normal value during the current period of review and would not do so in the future. NHCI further certified that it sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. NHCI also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that NHCI, subsequent to the revocation, sold the

subject merchandise at less than normal value.

On October 22 and November 6, 1997, the petitioner submitted argumentation opposing NHCI's revocation request. On February 12, 1998, the Department established a process for the submission of factual information and argument pertaining to the issue of likelihood of future dumping.

Interested Party Comments on Whether Future Dumping Is Likely

On April 2 and April 9, 1998, NHCI and the petitioner submitted comments and rebuttals, respectively, on the issue of whether it is likely that NHCI would resume dumping if the Department granted NHCI's revocation request.

Petitioner's Arguments: The petitioner contends that NHCI did not make sales in commercial quantities during the last three consecutive review periods, and thus has not fulfilled one of the revocation requirements under the new regulations. In this case, the petitioner states that although one sale during a one-year period may be sufficient for the calculation of an antidumping margin, it does not constitute commercial quantities for the relevant product and industry. The petitioner also argues that the dramatic decline in NHCI's sales after the imposition of the order is indicative of NHCI's inability to make sales in the United States without dumping.

The petitioner made comments as to the condition of the pure magnesium market as well. The petitioner argues that the likelihood that NHCI will resume dumping is all the greater because of the substantial fall and continuing decline in magnesium prices that has occurred over the past two years, which is due to a fundamental oversupply in the global market. According to the petitioner, this oversupply will be exacerbated in coming years as new production facilities come on line in Canada (unrelated to NHCI) and in third countries. Furthermore, NHCI has plans to increase its own production capacity, which, according to the petitioner, will contribute to the oversupply in the global market and thus, likely lead to a resumption of dumping. In response to NHCI's argument that it is focusing on the alloy market, the petitioner states that greater competition in magnesium products along with supply exceeding demand will pressure NHCI to engage the U.S. pure magnesium market. Furthermore, according to the petitioner, if NHCI vigorously enters the U.S. pure magnesium market it will be facing a situation where pure

magnesium prices are actually on the decline, making dumping more likely.

Respondent's Arguments: NHCI argues that it has met all the procedural requirements for revocation. It has made the proper submissions and certifications, has a record of three years of U.S. sales at not less than normal value, and will continue to trade fairly and abide by trade laws in all markets. In response to the petitioner's allegations with respect to commercial quantities, NHCI argues that the Department has stated in past cases that there has been no substantive change of the revocation policy pursuant to the new regulations, and thus no additional revocation threshold in the form of the certification of sales in commercial quantities has been created. Rather, NHCI states that the Department should give great weight to the fact that it has met the Department's requirement of three consecutive years without dumping, all based on bona fide sales.

With respect to the likelihood of future dumping, NHCI argues that it has no incentive to engage in dumping in the U.S. pure magnesium market because it has a stable customer base in Canada and third countries. Additionally, it has no incentive to shift production from alloy magnesium to pure magnesium, given the growth in the alloy magnesium market. While NHCI's planned plant expansion may give it the ability to produce more pure magnesium for sale in the U.S. market, the company contends that the planned expansion is for the alloy magnesium market, and that any increases in production are not necessarily targeted for the United States. Even if some of the new production capacity were for pure magnesium, NHCI states that there has been growth in all magnesium markets, not just alloy. NHCI notes that such market conditions do not lend themselves to dumping.

NHCI maintains that the growth in the alloy magnesium market accounts for the drop off in NHCI's U.S. sales of pure magnesium. In support of its position, NHCI argues that the Norsk Hydro group produces the subject merchandise in both Canada and Norway, yet sales from Norway also declined during the same period, despite the absence of antidumping duties applicable to Norwegian imports. NHCI explains that the controlling factor for these marketing decisions has been the growth of the alloy magnesium market.

Department Analysis

Section 351.222(b)(2) of the Department's regulations states that the Secretary may revoke an order in part if the Secretary concludes that: (i) the

exporter or producer has sold the merchandise at not less than normal value for a period of three consecutive years; (ii) it is not likely that the person will in the future sell the merchandise at less than normal value; and (iii) the person agrees in writing to its immediate reinstatement in the order if the Secretary concludes that dumping has resumed (see, 19 CFR 351.222(b) (1998)). If these preliminary results are adopted as final results, NHCI will have met the first criterion. NHCI's agreement to its immediate reinstatement in the order if the Secretary concludes that dumping has resumed meets the third criterion. Thus, the issue is whether the evidence supports a finding that it is not likely that NHCI will in the future sell the merchandise at less than normal value.

When making this determination, the Department looks at all relevant information on the record (see, Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Revoke Order in Part (63 FR 6519, 6523, February 9, 1998) ("Canadian Brass Sheet")). When assessing whether a company is not likely to sell at less than normal value in the future, the lack of dumping over the course of three years can be predictive of future behavior in the absence of contrary evidence. Where, as was done here, the petitioner makes a compelling argument that dumping may occur in the future if the order is revoked, the Department may request and consider additional relevant evidence in making its revocation decision. As we stated in Canadian Brass Sheet, "the Department has considered, in addition to the respondent's prices and margins in the preceding periods, such other factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without sales at less than normal value." *Id.* See also, Brass Sheet and Strip from Germany: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part (61 FR 49727, 49730, September 23, 1996) ("German Brass Sheet").

Following the general practice discussed above, we closely examined NHCI's ability to compete in the U.S. market without sales at less than normal value. We based this particular analysis on NHCI's historical sales behavior, examining in particular its behavior prior to and after the issuance of the antidumping duty order. We also analyzed trends and conditions in the

U.S. and Canadian magnesium markets. (For a further discussion of the factual background to our decision, see, Memorandum to Gary Taverman dated May 4, 1998.) As discussed below, we preliminarily find that the evidence on the record does not support a conclusion that the standard for revocation has been met in this case.

An examination of the history of NHCI's U.S. pure magnesium sales behavior reveals that prior to the antidumping order NHCI had numerous U.S. pure magnesium customers and sold very large quantities of pure magnesium. Yet, after the investigation, in which the Department found that NHCI was making sales at less than normal value, imports of pure magnesium into the United States essentially stopped. In the two years after the imposition of the antidumping order, NHCI made no sales of pure magnesium into the United States. Furthermore, in the succeeding three years sales were negligible (*i.e.*, for each year, sales were less than one-half of one percent of the sales volume made in the last completed fiscal year prior to the order). The severe and abrupt drop-off in sales by NHCI after the order is a strong indicator that the company is unable to sell in the United States without engaging in dumping. As noted in German Brass Sheet, "the sharp decrease in volume after imposition of the order . . . suggest[s] that [the respondent] has difficulty selling [the subject merchandise] above fair value" (at 61 FR 49731). Thus, based on the virtual abandonment of the U.S. pure magnesium market by NHCI, it is reasonable to assume that the company has difficulty selling pure magnesium in the United States at or above normal value.

In order for the Department to revoke the antidumping duty order with respect to NHCI, the record evidence must support a finding that it is not likely that the company will sell at less than normal value in the future. As noted above, three years of no dumping is normally probative as to a company's future pricing practices. However, this approach assumes the company continues to participate meaningfully in the U.S. market. In this case, the three years in question are characterized by a negligible number and volume of sales by NHCI to the U.S. market and therefore does not have the same probative value.

NHCI states that the decline in its U.S. sales is not due to its inability to make sales above normal value, but rather due to its focus on the alloy magnesium market. We do not accept this explanation for two reasons. First, while

we recognize the recent and projected rapid growth rates for alloy magnesium, we find it extremely difficult to conclude that NHCI's abrupt abandonment of the U.S. market for pure magnesium was unrelated to the dumping proceedings.

Second, given the size and importance of the U.S. pure magnesium market and NHCI's continued sales of pure magnesium in other markets, we are not convinced that NHCI has permanently changed its marketing and sales strategy to focus solely on alloy magnesium. Although the company implies that it has little interest in the U.S. market for pure magnesium, we note that NHCI maintains significant sales of pure magnesium in Canada and third countries. The magnitude of NHCI's pure magnesium sales in Canada reflects the current global reality of a higher demand for pure than alloy magnesium. The higher demand for pure magnesium also exists in the United States. U.S. consumption of pure magnesium in 1996, for instance, was nearly triple that of alloy magnesium consumption. Given the mix of magnesium products (alloy versus pure) in the United States and the fact that the United States is the largest market in the world for pure magnesium, it appears likely that NHCI, in the absence of the antidumping duty order, would seek to reestablish itself in the U.S. pure magnesium market.

Thus, based on the above, we preliminarily conclude that the revocation standard has not been met in this case. Therefore, we have preliminarily determined not to revoke the antidumping duty order with respect to pure magnesium from Canada produced by NHCI.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that NHCI's margin for the period August 1, 1996, through July 31, 1997, is zero.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may also request a hearing within thirty days of publication. If requested, a hearing will be held 37 days after publication. Interested parties may submit case briefs within thirty days of publication. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the case briefs. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required for the company if its weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21 percent, the "all others" rate established in Pure Magnesium from Canada; Amendment of Final Determination of Sales At Less Than Fair Value and Order in Accordance With Decision on Remand (58 FR 62643, November 29, 1993).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR section 351.213.

Dated May 4, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-12595 Filed 5-11-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-829, A-533-814, A-588-844, A-580-830, A-469-808, A-583-829]

Initiation of Antidumping Duty Investigations: Stainless Steel Round Wire from Canada, India, Japan, the Republic of Korea, Spain, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT:

Thomas Schauer (Canada) at (202) 482-4852; Diane Krawczun (India) at (202) 482-0198; Edward Easton (Japan) at (202) 482-1777; Gabriel Adler (the Republic of Korea) at (202) 482-1442; Michael Panfeld (Spain) at (202) 482-0168; or Michelle Frederick (Taiwan) at (202) 482-0186, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations published in the *Federal Register* on May 19, 1997 (62 FR 27296).

The Petition

On March 27, 1998, the Department of Commerce ("the Department") received a petition filed in proper form by the following companies: ACS Industries, Inc., Al Tech Specialty Steel Corp., Branford Wire & Manufacturing Company, Carpenter Technology Corp., Handy & Harman Specialty Wire Group, Industrial Alloys, Inc., Loos & Company, Inc., Sandvik Steel Company, Sumiden Wire Products Corporation, and Techalloy Company, Inc. ("the petitioners"). Sumiden Wire Products Corporation is not a petitioner in the Japanese case, and Carpenter Technology Corp. and Techalloy Company, Inc., are not petitioners in the Canadian case. The Department received numerous supplemental submissions throughout the month of April, 1998.

In accordance with section 732(b) of the Act, the petitioners allege that imports of stainless steel round wire

("SSRW") from Canada, India, Japan, the Republic of Korea (Korea), Spain, and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support (see discussion below).

Scope of Investigations

For purposes of these investigations, the product covered is stainless steel round wire. Stainless steel round wire is any cold-formed (i.e., cold-drawn, cold-rolled) stainless steel product, of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to these investigations is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed with the petitioners whether the proposed scope was an accurate reflection of the product for which the domestic industry is seeking relief. The petitioners indicated that the scope in the petition accurately reflected the product for which they are seeking relief. Consistent with the preamble to the new regulations (62 FR at 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by 20 days after the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230. This period of scope consultation is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the

issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC are required to apply the same statutory provision regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.¹ Section 771(10) of the Act defines domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. We

¹ See *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 18, 1991).

consulted with the ITC, the U.S. Customs Service, and petitioners and have, as a result of these discussions, adopted the domestic like product definition set forth in the petition.

On April 8, 1998, the ITC presented us with information indicating that there may be as many as 25 additional producers of the domestic like product that were not included in the petition. On April 9, 1998, Central Wire Industries Ltd. and Greening Donald Co., Ltd., two Canadian producers of subject merchandise, submitted a list of 47 non-petitioning companies that they claimed represented U.S. producers of the domestic like product. See Letter from Central Wire Industries Ltd. and Greening Donald Co., Ltd. to the Secretary of Commerce dated April 9, 1998 (the Central Wire submission). Certain of these companies were included in the list of non-petitioning producers in the petition, but a majority were not. Because there was a question as to whether petitioners met the statutory requirements cited above, we exercised our statutory discretion under section 732(c)(1)(B) to extend the deadline for determining whether to initiate an investigation to a maximum of 40 days from the date of filing in order to resolve this issue. See Memorandum to Joseph A. Spetrini from Laurie Parkhill dated April 16, 1998. We also invited parties to identify any other potential producers of the domestic like product.

On April 21, 1998, the petitioners provided production information concerning 42 of the then 64 nonpetitioning companies that had been identified as potential producers by the ITC, the Central Wire submission, or by the petitioners themselves at that time. See Letter from the petitioners to the Secretary of Commerce, April 21, 1998. The sources of this production information are affidavits from co-counsel for the petitioners, stating that they have contacted each of the 42 producers and have received the production information directly from the companies. The petitioners also included affidavits from co-counsel for the petitioners, as well as one of the petitioning company officials, indicating that certain nonpetitioning companies support the petition.

On April 21, 1998, Central Wire submitted a list of all U.S. producers (including the petitioners) that it believed produced the domestic like product. See Letter from Central Wire Industries Ltd. and Greening Donald Co., Ltd. to the Secretary of Commerce, April 21, 1998. While most of these potential producers had already been identified, there were several potential

producers who had not been previously identified, and thus were not included in the list of 64 companies provided in the petitioners' April 21, 1998 letter.

We were able to contact all but one of the companies identified, and based on the data now on the record, we determine that the petitioners have established industry support in accordance with the statutory requirements cited above. See Memorandum from Laurie Parkhill and Gary Teverman to Richard W. Moreland dated May 6, 1998. Accordingly, we determine that the petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decisions to initiate these investigations are based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

With respect to sales to the U.S. market, the petitioners used an export price (EP) analysis because the producers in each country make their first sale of exports to unaffiliated importers. The petitioners based export prices on affidavits based on call reports and price quotes, as appropriate. The petitioners calculated EP by subtracting domestic inland freight (except in the India and Taiwan cases), ocean freight and marine insurance (except in the Canada case), import duties (except in the India case), harbor maintenance fees, U.S. merchandise processing fees, and U.S. inland freight (except in the Canada and India cases). The data for these adjustments was based on market research, U.S. Customs statistics, affidavits, and the 1997 import duty rates. The petitioners did not deduct domestic inland freight in the Indian case because they were not able to obtain such data. Although the petitioners did not explain why they did not deduct domestic inland freight in the Taiwan case, we note that this will not cause the dumping margins to be overstated. All adjustments not mentioned above that were not made by the petitioners in specific cases were due to the terms of the sales. We restated some of the export prices in the India case to conform with the affidavits the petitioners submitted. See Memorandum to File dated April 16, 1998.

The petitioners based normal value (NV) on home market prices, as obtained by market research. They adjusted the home market prices by deducting foreign inland freight (except in the India case due to the terms of sale) and imputed credit, and by adding the imputed credit calculated on the U.S. sale (except in the India case). Though the petitioners did not adjust for imputed credit in the India case, we were able to calculate an imputed credit expense for that case and did deduct it from NV. See Memorandum to File dated April 16, 1998. The data for the adjustments the petitioners made to NV were based on market research and International Financial Statistics (published by the International Monetary Fund). The petitioners submitted affidavits to support their claims regarding packing costs in the U.S. and Japanese markets. However, there was no adjustment for packing in other cases, either because information was not available for a country or because the petitioners assumed that packing costs were the same for sales to the home market and the U.S. market. There is no public evidence available to adjust NV for the differences in packing costs between the U.S. and home markets. Furthermore, our experience in steel cases generally suggests that the packing costs of export sales are nearly always greater than or equal to the packing costs of domestic sales, because additional precautions are usually necessary to protect exported merchandise (for example, from rust) during its longer time in transit. Therefore, we conclude that not adjusting for differences in packing costs is conservative.

Pursuant to sections 773(a)(4) and 773(e) of the Act, the petitioners also based NV for sales in all countries, except Japan, on constructed value (CV). CV consists of COM, selling, general and administrative expenses (SG&A), packing and profit. The petitioners based their calculations for COM, SG&A and packing on costs obtained by market research, affidavits from the petitioning companies' officials, and U.S. industry data compiled by the petitioners. We recalculated the CVs used in the Canada, India, and Taiwan cases. The nature of the recalculations and the reasons for the recalculations are explained in Memoranda to File dated April 16, 1998.

Based on comparisons of EP to NV, the petitioners estimate margins of 2.18 to 64.24 percent in the Taiwan case. We recalculated the estimated margins to be 2.38 to 40.48 percent in the Canada case, 3.47 to 36.52 percent in the India case, 2.02 to 29.58 percent in the Japan

case, 3.46 to 66.44 percent in the Korea case, and 12.99 to 35.80 percent in the Spain case.

Initiation of Cost Investigations

Pursuant to section 773(b) of the Act, the petitioners alleged that sales in the home market of Canada, India, Korea, and Taiwan were made at prices below the cost of production (COP) and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in Canada, India, Korea, and Taiwan. The Statement of Administrative Action ("SAA"), submitted to Congress in connection with the interpretation and application of the Uruguay Round Agreements, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess., at 833 (1994). The SAA states at 833 that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

The statute at section 773(b) states that the Department must have "reasonable grounds to believe or suspect" that below-cost sales have occurred before initiating such an investigation. "Reasonable grounds" exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. Based upon the comparison of the adjusted prices from the petition of the foreign like product in Canada, India, Korea, and Taiwan to the COP calculated in the petition (and adjusted in the Canada, India, and Taiwan cases as described in Memoranda to File dated April 16, 1998), we find "reasonable grounds to believe or suspect" that sales of these foreign like products were made below their respective COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation for Canada, India, Korea, and Taiwan.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of SSRW from Canada, India, Japan, Korea, Spain, and Taiwan are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including business proprietary data from the petitioning firms and U.S. Customs import data. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation.

Initiation of Antidumping Investigations

We have examined the petition on SSRW and have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of SSRW from Canada, India, Japan, Korea, Spain, and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations for the antidumping duty investigations by September 23, 1998.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Canada, India, Japan, Korea, Spain, and Taiwan. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by June 1, 1998, whether there is a reasonable indication that imports of SSRW from Canada, India, Japan, Korea, Spain, and Taiwan are causing material injury, or threatening to cause material injury, to a U.S. industry. Negative ITC determinations will result in the particular investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: May 6, 1998.

Richard W. Moreland,

Acting Assistant Secretary, Import Administration.

[FR Doc. 98-12593 Filed 5-11-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin-Madison; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97-106. **Applicant:** University of Wisconsin-Madison, Madison, WI 53706-1490. **Instrument:** Length Controller and Force Transducer System, Models 308B and 403A. **Manufacturer:** Aurora Scientific, Canada. **Intended Use:** See notice at 63 FR 5504, February 3, 1998.

Comments: None received. **Decision:** Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. **Reasons:** The foreign instrument provides measurement of the contractile force of muscle cells by mechanically deforming the length of the muscle fiber. The National Institutes of Health advised April 27, 1998 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98-12445 Filed 5-11-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of

Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Channel Islands National Marine Sanctuary Boater/Diver Survey.

Agency Number: N/A.

OMB Number: N/A.

Type of Request: New Collection.

Burden: 650 hours.

Number of Respondents: 3,400.

Avg. Hours Per Response: Ranges between 10 and 15 minutes depending on the survey.

Needs and Uses: This will be survey of boating and diving user groups at marinas from Santa Barbara through Los Angeles, California. The survey of users will collect demographic information on Sanctuary users, determine their knowledge about and attitudes toward the Sanctuary, how they receive information, and their level of interest in current or future educational programs offered by the Sanctuary. The information will be used to help develop education programs and to provide baseline data on users and uses of Sanctuary resources to help in the review and re-write of the Sanctuary management plan. Business owners will also have an opportunity to provide information that will be incorporated into a directory of available services.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker (202) 395-3897.

Copies of the above collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of the publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: May 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12599 Filed 5-11-98; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Western Alaska Community Development Quota Program.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sally Bibb, Sustainable Fisheries Division, NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, telephone (907) 586-7389.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) is requesting renewal of OMB approval of the information collection requirements supporting the Western Alaska Community Development Quota (CDQ) Program. These requirements are found in 50 CFR 679. The purpose of the CDQ program is to allocate a portion of the Bering Sea and Aleutian Islands fishing quotas for groundfish, halibut, crab, and prohibited species to Western Alaska communities to assist those communities in starting and supporting regionally-based commercial seafood or other fishery-related businesses.

Communities wishing to obtain a CDQ allocation must prepare Community Development Plans. Upon receiving an allocation, CDQ participants must submit reports and file any necessary amendments to their plan. Specific requirements are shown in the estimates of response times below.

In addition to existing requirements being renewed, the clearance request will contain four proposed additions or revisions to the requirements. These are a new CDQ Delivery Report, the

collection of additional information in the CDQ Catch Report, a requirement for prior notice to observers, and the collection of additional information in the Community Development Plans (CDPs).

Three approved requirements are proposed for removal—the CDQ Check-In/Check-Out Report, the CDQ Permit, and submission of Alaska Department of Fish and Game (ADF&G) fish tickets. The CDQ permit will be replaced by a request for an inspection of the observer sampling station (a subset of the original permit information requirement). These three elements are in the current information collection clearance because they were contained in a proposed rule published in the *Federal Register* on August 15, 1997 (62 FR 43865). However, NMFS has either removed these elements or revised them under a different element in the final rule.

II. Method of Collection

Respondents would comply with requirements set forth in 50 CFR 679. Forms are used for some reports.

III. Data

OMB Number: 0648-0269.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 333.

Estimated Time Per Response: 520 hours per response for preparation of the Community Development Plans, 40 hours per response for the annual report, 20 hours per response for the annual budget report, 8 hours per response for the annual budget reconciliation reports, 8 hours per response for substantial amendments, 4 hours per response for technical amendments, 2 hours per response for preparation of the request for an inspection of the observer sampling station, 1 hour per response for the CDQ delivery report, 30 minutes per response for a CDQ catch report, 15 minutes per response for printing and retaining scale printouts by shoreside processors, 2 minutes per response for prior notices to the observer of offloading of CDQ catch at the shoreside plant, 2 minutes per response for prior notices to the observer of CDQ hauls or sets on observed vessels, 8 hours per response for bin certification documents, 30 minutes per response for changes to the list of CDQ halibut and sablefish cardholders, and 1 hour per response for changes to the CDP's list of vessels for halibut and sablefish CDQ.

Estimated Total Annual Burden Hours: 4,950.

Estimated Total Annual Cost to Public: \$0 (no capital costs).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 1998.

Linda Engelmeier,
Departmental Forms Clearance Officer, Office
of Management and Organization.
[FR Doc. 98-12600 Filed 5-11-98; 8:45 am]
BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Involuntary Child and Spousal Support Allotments of NOAA Corps Officers

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Steve Eisenberg, NOAA Commissioned Personnel Center, 1315 East-West Highway, Silver Spring, MD 20910-3282 (301-713-3453, ext. 102).

SUPPLEMENTARY INFORMATION:

I. Abstract

Spouses, ex-spouses, or children of active NOAA Corps officers may seek to obtain involuntary deductions or allotments from an officer's pay if the officer has failed to make periodic payments under a support order. To obtain such an allotment the person, or that person's attorney or agent must, provide a certified copy of the support order, information identifying the officer, and related information.

II. Method of Collection

No form is used. Respondents follow the procedures detailed in 15 CFR 15.25.

III. Data

OMB Number: 0648-0242.

Form Number: N/A.

Type of Review: Regular submission.

Affected Public: Individuals.

Estimated Number of Respondents: 5.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 5.

Estimated Total Annual Cost to Public: \$0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 1998.

Linda Engelmeier,
Departmental Forms Clearance Officer, Office
of Management and Organization.
[FR Doc. 98-12601 Filed 5-11-98; 8:45 am]
BILLING CODE 3510-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Marine Fisheries Initiative (MARFIN).

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ellie Francisco Roche, State/Federal Liaison Office (F/SERx2), National Marine Fisheries Service, 9721 Executive Center Drive, N., St. Petersburg, FL 33702 (813) 570-5324.

SUPPLEMENTARY INFORMATION:

I. Abstract

MARFIN is a competitive Federal assistance program that promotes and endorses programs that seek to optimize research and development benefits from U.S. marine fishery resources through cooperative efforts that involve the best research and management talents to accomplish priority activities. This grant program is described in the "Catalog of Federal Domestic Assistance" (CFDA) under program 11.433, Marine Fisheries Initiative. Persons seeking grants must submit applications, and those obtaining grants must submit semi-annual and annual reports.

II. Method of Collection

Standard and program forms are used, supported by narrative documentation

whose requirements are outlined in annual Federal Register notices.

III. Data

OMB Number: 0648-0175.

Form Number: SF-424.

Type of Review: Regular submission.

Affected Public: Individuals; state or local governments; businesses or other for-profit; non-profit institutions; and small businesses or organizations.

Estimated Number of Respondents: 60 per year.

Estimated Time Per Response: 4 hours for applications, 1 hour for semi-annual reports, and 1 hour for annual reports.

Estimated Total Annual Burden Hours: 285 hours.

Estimated Total Annual Cost to Public: No cost to the public other than the time required to fill out the forms.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 1998.

Linda Engelmeier,
Departmental Forms Clearance Officer, Office
of Management and Organization.
[FR Doc. 98-12602 Filed 5-11-98; 8:45 am]
BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Monthly Cold Storage Fish Report.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to

take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Barbara K. O'Bannon, Fisheries Statistics and Economics Division (F/ST1), National Marine Fisheries Service, 1315 East-West Hwy., Silver Spring, MD 20910. (301) 713-2328.

SUPPLEMENTARY INFORMATION:

I. Abstract

These data are collected under authority of Section 742(d) of the Fish and Wildlife Act of 1956 as amended (16 U.S.C. 742(A)-754) and under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) as amended. Cold storage warehouses are asked to report on the quantity of fishery products by species held in cold storage on the last day of each month. Data are needed by industry for orderly purchases, sales, distribution and price planning for fishery products, and by NMFS and Fishery Council economics for fishery management and development purposes.

II. Method of Collection

Form 88-16 is conducted monthly via a survey form mailed to cold storage warehouses.

III. Data

OMB Number: 0648-0015.

Form Number: 88-16 Monthly Cold Storage Fish Report.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 110.

Estimated Time Per Response: 8 minutes.

Estimated Total Annual Burden Hours: 176.

Estimated Total Annual Cost to Public: No cost to the public other than the time required to fill out the form.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 1998.

Linda Engelmeier,
Departmental Forms Clearance Officer, Office
of Management and Organization.
[FR Doc. 98-12603 Filed 5-11-98; 8:45 am]
BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Applications and Reports for Registration as a Tanner or Agent. MMPA Exemption for Alaska Natives Subsistence.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Steven Springer, National

Marine Fisheries Service, Office of Enforcement, 8484 Georgia Ave., Suite 415, Silver Spring, Maryland, 20910. Telephone (301) 427-2300.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Marine Mammal Protection Act (Act) Alaskan natives may take marine mammals only for subsistence purposes or for creating and selling native handicrafts. The possession of marine mammals so taken are limited to natives or to registered agents or tanners. Agents or tanners must apply for registration, and after registration must annually submit copies of transaction records. The information is collected to (1) grant certain members of the public an exemption under the Act to which they would not otherwise be entitled, and (2) to manage the program and provide for effective law enforcement.

II. Method of Collection

Respondents will meet the requirements set forth in the regulation. No forms will be used.

III. Data

OMB Number: 0648-0179.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Business or other for profit organizations.

Estimated Number of Respondents: 75.

Estimated Time Per Response: 2.0 hrs.

Estimated Total Annual Burden Hours: 150.

Estimated Total Annual Cost to Public: \$0 (no capital expenditures).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12604 Filed 5-11-98; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Final Certification for the Combined Consolidation and/or Automation and Closure of 80 Weather Service Offices (WSOs) and Consolidation of Two WSOs

ACTION: Notice.

SUMMARY: On May 6, 1998 the Under Secretary for Oceans and Atmosphere approved and transmitted 14 office consolidation, 46 office automation, and 80 office closure certifications to Congress. Pub. L. 102-567 requires that the final certifications be published in the Federal Register.

EFFECTIVE DATE: May 12, 1998.

ADDRESSES: Requests for copies of the final certification packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301-713-0300 ext. 144.

SUPPLEMENTARY INFORMATION: The two consolidation certifications for Astoria and Wichita Falls were proposed in the December 27, 1996 Federal Register and the 60-day public comment period closed on February 25, 1997. The remaining 80 certification packages were proposed in the January 7, 1997 Federal Register and the 60-day public comment period closed on March 10, 1997. Thirteen timely and three late public comments were received pertaining to WSO Astoria. Individual public comments were received pertaining to each of the following WSOs: Muskegon, Michigan; Rapid City, South Dakota; Harrisburg, Pennsylvania; Apalachicola, Florida; and Port Arthur, Texas. Two public comments were received pertaining to Athens, Georgia and one comment was received that pertained to Pennsylvania sites in general. These comments and responses are set forth here for reference.

Comment: Thirteen timely and three late comments were received from individuals in the Astoria, Oregon area. Individuals providing comments included Congresswoman Elizabeth Furse, State Representative Jackie

Taylor, Senator George H. Smith, Congressman Earl Blumenauer, State Representative Tim Josi, Sheriff and Director of Emergency Services John P. Raichl, Airport Manager and Director of Operations Port of Astoria Ron Larsen, and Captain and President Columbia River Bar Pilots George A. Waer. The main concern presented by all individuals was the loss of face to face interaction with National Weather Service (NWS) personnel and the perceived inability to forecast for the "unique" weather conditions at Astoria from Portland.

Response: To ensure all concerns were addressed and understood, the March 1997 Modernization Transition Committee (MTC) meeting was held in Astoria. The community leaders and anyone else concerned with NWS Modernization actions had the opportunity to express their concerns to the Committee. The MTC and the public in attendance listened to both the NWS management from Portland and the public. The major topics discussed during the six-hour public comment period on the Astoria Consolidation Certification during the March 18, 1997 meeting are summarized below. A major concern surrounding the Astoria Consolidation was the ability of the Portland NEXRAD Weather Service Forecast Office (NWSFO) to provide information on the Columbia River Bar and offshore marine environment. To address these concerns the NWS presented the following: (1) the Portland office has access to all data that the Astoria office did and access to data that the Astoria office never had; (2) the Astoria WSO never produced the marine forecasts, these products have always been issued from Seattle or Portland; (3) mariners can contact the forecasters in Portland directly by phone; and (4) an Internet home page maintained in Portland allows ready access to current weather forecasts and products for Oregon and the coastal waters.

The ability of the Portland office to recognize rapid changes in the Astoria weather was questioned. However, the infrastructure affecting this ability has only improved since services were transferred to Portland. The more timely and robust data sets of the Modernization (i.e., Doppler radar, high resolution satellite imagery and continuous surface observations) provide a superior platform for Portland to monitor rapid weather changes than was previously present in the Astoria office. The severe weather spotter volunteers previously used by Astoria are still in place, except they now call Portland when severe weather threatens.

The Portland office also employs two staff from the Astoria WSO, so "local" expertise is available.

Since Portland is serving a larger metropolitan area, the ability of the office to give the Astoria community attention was challenged. However, most of the forecast services for Astoria have always come from Portland. A result of the Modernization in Oregon is that the Portland area of responsibility is decreasing substantially; thus more time is being spent on Astoria than before. A Warning Coordination Meteorologist and Weather Coordination Officer are assigned to the Portland office and coordinate with the Astoria office to ensure everyone receives adequate attention. Portland has made significant service adjustments in the NOAA Weather Radio (NWR) and marine reports program to meet the Astoria community needs, and will continue to take this approach in the future. After hearing both sides, the MTC members determined that there would not be a degradation of services associated with this proposed Consolidation certification. However, the MTC recognized potential future degradation of services associated with Automation and Closure certification and made the following recommendation:

The Portland WFO will work with the Astoria WCO and the community to define the remaining concerns and develop and implement procedures to ensure degradation of service does not occur. The issues identified by the committee include, but are not limited to, the need to ensure the adequacy of ASOS augmentation, the availability of consultation concerning river bar forecasts, and the implementation of special procedures during extreme conditions. In addition, the Committee has determined that a data buoy in proximity to the bar is essential. However, the characteristics of Data Buoy 46029 are not adequate to provide needed services.

The Committee agreed to pay careful attention to future actions concerning the Astoria office and requested follow-up briefings from the NWS at future meetings. The MTC also encouraged the public to keep them advised through public comments. Both the public and the NWS management seemed satisfied with the MTC conclusion, and everyone gained a better understanding of the problems and required solutions. **Comment:** Mr. Roy Wheeler, Assistant Director of the Muskegon County Emergency Services, responded to the Federal Register Announcement concerning the Consolidation, Automation, and Closure Certifications for Muskegon, MI. He expressed concern that: (1) he is not being served

as well with the Modernized technology and organizational structure as he was with the "old system"; (2) during severe weather he does not receive "adequate weather reports" and he does not receive accurate information in support of major fires and chemical spills; (3) the Amateur Radio Community is installing automated weather observing equipment; (4) while the staff at NEXRAD Weather Service Office (NWSO) Grand Rapids has been cooperative, he has lost the personal contact that he received from the "old system"; and (5) "on more than one occasion this past season, we were not notified when severe weather was present".

Response: The staff at NWSO Grand Rapids have had numerous contacts with the Emergency Management Services of Muskegon County since becoming operational in August of 1995 (open houses, seminars, spotter training sessions for Muskegon County, etc.). Some of the contacts were for normal operational issues, while others were to explain modernized technology and the new organizational structure. Every Emergency Management organization in the NWSO Grand Rapids County Warning Area has access to the severe weather forecaster via toll-free 800 service. Severe weather watches and warnings are provided via NOAA Weather Wire Service (NWWS), NWR, Internet Web Page, Emergency Manager Weather Information Network (EMWIN), as well as the Law Enforcement Information Network (LEIN). During HAZMAT situations on October 16, 1996 and December 13, 1996, surface observation data (i.e. wind speed and direction, temperature/dewpoint, pressure, etc.) from the Automated Surface Observing System (ASOS) at the Muskegon Airport as well as forecasts for the local area were provided to Muskegon County Emergency Dispatch and 911 upon request. NWSO Grand Rapids and the Amateur Radio Community have entered into a cooperative arrangement to expand the use of automated surface observation equipment. In fact, the NWS has provided some funding in support of the demonstration project. The automated equipment has been purchased commercially and is similar to the automated observation equipment used by television stations, utility companies, road departments, etc. NWSO Grand Rapids has been responsible for issuing severe weather warnings for Muskegon County for only the 1996 severe weather season. During that season, 3 warnings were issued. Two of them verified with reports of large hail. The other warning

had no severe weather reported. Lead times were 7 and 13 minutes. When contacted in the Fall of 1996, in association with the Confirmation of Services for the NEXRAD Doppler radar at NWSO Grand Rapids, Mr. Wheeler responded "Warnings are as good as before, but I still wish the radar had been located at Muskegon". Mr. Wheeler has stated on previous occasions that his primary concerns are: (1) The lack of telephone contact initiated by the staff at NWSO Grand Rapids during times of severe weather; and (2) that he would have preferred the WSR-88D be located in Muskegon instead of Grand Rapids. Technology (NWR, EMWIN, Internet, NWWS, EAS, LEIN, etc.) allows severe weather warnings and statements to be transmitted quickly to all the Emergency Managers in the County Warning Area (CWA). The Muskegon County Emergency Management Services (EMS) has access to NWWS and to NWR as well as to the LEIN. Mr. Wheeler can contact the Grand Rapids staff via the 800 service anytime, but it is not possible for the staff at NWSO Grand Rapids to make calls to each of the Emergency Management Organizations in their 28 county warning area during severe weather events. The WSR-88D at Grand Rapids is of optimum range (20-50 miles) from Muskegon County for severe weather detection. Leo Grenier, the Warning Coordination Officer (WCO) at Muskegon, has made several contacts with the Muskegon County EMS and the 911 Service, discussed their concerns, and explained the most efficient means for them to receive severe weather watches, warnings, and statements. Dan Houser, Meteorologist in Charge, and Mike Heathfield, Warning Coordination Meteorologist from Grand Rapids have also had similar conversations. Mr. Houser is organizing a follow-up meeting with the Muskegon County EMS, Muskegon County 911, and the Director of the local amateur radio club. Mr. Houser will make every attempt to satisfy the concerns of the participants. [On April 30, 1998 in a conversation between Mr. Wheeler and NWSO Grand Rapids staff, Mr. Wheeler said he was satisfied with the current services provided by NWSO Grand Rapids.]

Comment: Mr. Norman Pudwill, Director of the Fall River County Emergency Management Organization, responded to the Federal Register Announcement concerning the Consolidation, Automation, and Closure Certification for Rapid City. While he is "very happy" with the products and services provided by the new NWS

office in Rapid City, he is concerned by the lack of high quality NWR coverage in Fall River County.

Response: In a reply letter from the Central Regional Director, two alternatives requiring private/public partnerships were described for Mr. Pudwill. The NWS is not funded for NWR expansion, so it is incumbent on Mr. Pudwill to work with private groups or local government entities to acquire a transmitter/antenna system that is compatible with NWS programming consoles. Central Region Headquarters will continue to work with Mr. Pudwill in his effort to improve NWS coverage in southwest South Dakota. [Central Region Headquarters has advised Mr. Pudwill of the requirements for an additional transmitter. As of April 30, 1998, Mr. Pudwill has been unable to obtain a local funding source for the additional equipment.]

Comment: A public comment from Representative George W. Gekas raised an issue regarding deficiencies in NEXRAD coverage for the Harrisburg metropolitan region. The comment cited several documented cases of severe weather conditions which went undetected by the NEXRAD system, the most recent being in May 1996.

Response: Both the June 1995 National Research Council study, "Toward a New National Weather Service—Assessment of NEXRAD Coverage and Associated Weather Services" and the follow-on October 1995 "Secretary's Report to Congress on Adequacy of NEXRAD Coverage and Degradation of Weather Services under National Weather Service Modernization for 32 Areas of Concern" concluded that NEXRAD coverage for the Harrisburg area and associated weather services would not be degraded. Harrisburg, PA was one of 32 areas of concern established by public comments solicited by the Secretary of Commerce between November 1994 and January 1995. This information as well as the detailed findings in the Secretary's Report was conveyed to Representative Gekas in an August 26, 1996 letter from Mr. Louis J. Boezi, Deputy Assistant Administrator for Modernization of the NWS. The August 26 letter also responded with the particulars on the May 1996 severe weather event and referenced previous replies from the NWS on the earlier weather events cited by Representative Gekas.

Comment: A public comment from Larry Wells, Gulf County Emergency Management, raised the issues that the WSR-88D covering Gulf County is 80 miles away from Apalachicola and that NWSO Tallahassee (the office which is

responsible for Gulf County) has almost 50 counties under its responsibility versus the two counties for which WSO Apalachicola was responsible. The comment also mentioned a severe thunderstorm warning for Gulf County on February 14, 1997 which Mr. Wells thought was issued after a storm had already passed through Gulf County.

Response: Gulf County is within overlapping coverage of both the Tallahassee and Eglin Air Force Base WSR-88Ds. Almost all of Gulf County is within 60 nm of both WSR-88Ds. Even though NWSO Tallahassee is responsible for more counties than was WSO Apalachicola, NWSO Tallahassee had a much larger staff than did WSO Apalachicola. Archived data from the Tallahassee WSR-88D indicated that the February 14, 1997 severe thunderstorm warning for Gulf County was timely.

Comment: A public comment from W.M. Timmerman, Jr. mentioned inaccurate weather information broadcast by The Weather Channel and a local TV weather reporter. Mr. Timmerman also mentioned two other instances of inaccurate weather information.

Response: The NWS is not responsible for weather information presented by The Weather Channel or local TV weather reporters. Not enough information was presented about the latter two instances in the letter to determine if the weather information was from the NWS or from local TV stations. Mr. Timmerman was contacted by NWSO Lake Charles with an invitation to visit the NWSO and become a local storm spotter/rainfall observer for the Port Arthur area.

Comment: A public comment from Barry Church, Habersham County Emergency Management, (Athens, Georgia) stated his concern over the lack of attention given by NWSO Greenville/Spartanburg to spotter reports during a February 21, 1997 tornado event in Habersham County. Mr. Church also mentioned poor NWR reception in Habersham County and his perceived lack of attention given to the six northeast Georgia counties during a statewide tornado drill on February 26, 1997.

Response: NWSO Greenville/Spartanburg's log for February 21, 1997 indicated that a tornado watch which included Habersham County was issued at 2:28 PM EST. NWSO Greenville/Spartanburg issued a Severe Thunderstorm Warning for Habersham County at 2:51 PM EST which was valid until 3:30 PM EST. Habersham County was advised by telephone of the warning at 2:53 PM. Habersham County called NWSO Greenville/Spartanburg at

3:09 PM EST with a report of damaging winds county-wide with the first damage having occurred at about 3:00 PM (some of the damage was later identified as F-1 tornado damage). At 3:28 PM EST NWSO Greenville/Spartanburg received a call from Habersham County with three reports of funnel clouds just north of Cornelia. However, by this time the line of storms had already passed through Habersham County. Poor NWR reception in Habersham County has been an ongoing problem. NWSO Greenville/Spartanburg has had recent discussions with officials in Graham County, North Carolina concerning a possible new NWR transmitter in that county financed by Natchala Power Company. The NWR signal from such a transmitter should reach into Habersham County. If a repeater is necessary for reception in Habersham County, Mr. Church has offered to donate a tower site. Habersham County was included in the Georgia statewide tornado drill held on February 26, 1997. NWSO Greenville/Spartanburg issued a practice warning during the drill which included Habersham County. NWSO Greenville/Spartanburg verified through a telephone call that Habersham County received the practice warning.

Comment: A public comment from Peggy Hewatt, Barrow County Emergency Management, questioned whether NWSFO Atlanta could communicate with her office as well as WSO Athens had in the past.

Response: Ms. Hewatt gave no specific instance where NWSFO Atlanta had failed to communicate weather information to Barrow County and even stated that her comment "does not mean that Peachtree City is not doing a fine job . . ." NWSFO Atlanta's area of responsibility is larger than that which WSO Athens had and it may be that NWSFO Atlanta may not be able to use the telephone to communicate with each individual county as often as WSO Athens did in the past. However, communication methods such as NWR, NWS, and EMWIN are available for the receipt of weather information.

Comment: A public comment from Senator Arlen Specter raised an issue regarding the reliance on stand-alone ASOSs at Lehigh Valley Airport (Allentown, PA) specifically and throughout Pennsylvania generally. The comment stated "since the start of ASOS operations on November 12, 1996, Lehigh Valley International Airport has been forced to deal with numerous discrepancies in determining visibility and types of precipitation at the airport." The comment also stated

that Bradford Regional Airport had experienced several ASOS power losses.

Response: None of the NWS-sponsored ASOSs located at WSOs in Pennsylvania are stand-alone systems. All of these are classified as Federal Aviation Administration (FAA) service level C or higher which means that humans will be present to provide augmentation and back-up for the ASOSs. Augmentation means adding parameters that ASOS does not measure. Back-up means measuring parameters in the event of an ASOS failure or if the ASOS measurement is not representative of the meteorological conditions. Augmentation and back-up is done either by FAA controllers or a contractor. ASOS operations at Lehigh Valley International Airport did not start on November 12, 1996. This ASOS was commissioned on November 1, 1995 after a pre-commissioning checkout period to determine that the system was performing reliably and correctly. Upon commissioning, NWS employees at WSO Allentown performed required augmentation and back-up of the ASOS until November 12, 1996 when responsibility for this was transferred to the FAA. FAA was planning to provide the augmentation and backup at service level C by air traffic controllers at the airport, however, the Lehigh Valley International Airport Authority sponsored a contract to provide level B service. The Bradford Regional Airport is an FAA-sponsored expansion site. This means that prior to the ASOS being commissioned there on December 2, 1996, this airport had no round-the-clock surface observation.

The MTC considered and endorsed these certifications at its March 18, 1997 meeting, concluding that these certifications would not result in any degradation of service.

- (1) Astoria, OR—Consolidation
- (2) Wichita Falls, TX—Consolidation
- (3) Omaha, NE—Consolidation/Closure
- (4) Sacramento, CA—Consolidation/Closure
- (5) Akron, OH—Automation/Closure
- (6) Allentown, PA—Automation/Closure
- (7) Atlanta, GA—Automation/Closure
- (8) Atlantic City, NJ—Automation/Closure
- (9) Baltimore, MD—Automation/Closure
- (10) Baton Rouge, LA—Automation/Closure
- (11) Chicago, IL—Automation/Closure
- (12) Columbia, MO—Automation/Closure
- (13) Columbus, OH—Automation/Closure
- (14) Dayton, OH—Automation/Closure

- (15) Daytona Beach, FL—Automation/Closure
- (16) Detroit, MI—Automation/Closure
- (17) El Paso, TX—Automation/Closure
- (18) Flint, MI—Automation/Closure
- (19) Knoxville, TN—Automation/Closure
- (20) Lubbock, TX—Automation/Closure
- (21) Lynchburg, VA—Automation/Closure
- (22) Mansfield, OH—Automation/Closure
- (23) Moline, IL—Automation/Closure
- (24) Montgomery, AL—Automation/Closure
- (25) Norfolk, VA—Automation/Closure
- (26) Oklahoma City, OK—Automation/Closure
- (27) Raleigh, NC—Automation/Closure
- (28) Richmond, VA—Automation/Closure
- (29) Roanoke, VA—Automation/Closure
- (30) San Antonio, TX—Automation/Closure
- (31) San Diego, CA—Automation/Closure
- (32) Sioux City, IA—Automation/Closure
- (33) Stockton, CA—Automation/Closure
- (34) Toledo, OH—Automation/Closure
- (35) Tulsa, OK—Automation/Closure
- (36) West Palm Beach, FL—Automation/Closure
- (37) Wilke-Barre, PA—Automation/Closure
- (38) Williamsport, PA—Automation/Closure
- (39) Wilmington, DE—Automation/Closure
- (40) Youngstown, OH—Automation/Closure
- (41) Asheville, NC—Consolidation/Automation/Closure
- (42) Augusta, GA—Consolidation/Automation/Closure
- (43) Cincinnati, OH—Consolidation/Automation/Closure
- (44) Fargo, ND—Consolidation/Automation/Closure
- (45) Greensboro, NC—Consolidation/Automation/Closure
- (46) Lewiston, ID—Consolidation/Automation/Closure
- (47) Muskegon, MI—Consolidation/Automation/Closure
- (48) Rapid City, SD—Consolidation/Automation/Closure
- (49) Savannah, GA—Consolidation/Automation/Closure
- (50) Springfield, IL—Consolidation/Automation/Closure
- (51) Apalachicola, FL—Closure
- (52) Athens, GA—Closure
- (53) Austin, TX—Closure
- (54) Bakersfield, CA—Closure
- (55) Billings, MT—Closure
- (56) Bristol, TN—Closure
- (57) Cape Hatteras, NC—Closure
- (58) Columbus, GA—Closure

- (59) Del Rio, TX—Closure
- (60) Eugene, OR—Closure
- (61) Fort Myers, FL—Closure
- (62) Galveston, TX—Closure
- (63) Grand Island, NE—Closure
- (64) Harrisburg, PA—Closure
- (65) Helena, MT—Closure
- (66) Klamath Falls, OR—Closure
- (67) Los Angeles, CA—Closure
- (68) Macon, GA—Closure
- (69) New Orleans, LA—Closure
- (70) New York City, NY—Closure
- (71) Olympia, WA—Closure
- (72) Orlando, FL—Closure
- (73) Pensacola, FL—Closure
- (74) Phoenix, AZ—Closure
- (75) Port Arthur, TX—Closure
- (76) Reading, PA—Closure
- (77) Reno, NV—Closure
- (78) Rosewell, NM—Closure
- (79) Salem, OR—Closure
- (80) St. Louis, MO—Closure
- (81) Waco, TX—Closure
- (82) Winslow, AZ—Closure

After consideration of the public comments received and the MTC endorsements, the Under Secretary for Oceans and Atmosphere approved these 82 combined consolidation and/or automation and closure certifications and transmitted them to Congress on May 6, 1998. Certification approval authority was delegated from the Secretary to the Under Secretary in June 1996. The NWS is now completing the certification requirements of Pub. L. 102-567 by publishing the final consolidation and/or automation and closure certifications in the **Federal Register**.

Dated: May 7, 1998.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 98-12605 Filed 5-11-98; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE-ZXI-RM), Department of the Army, DOD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 13, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, (MTOP-Q), 6511 Columbia Pike, Falls Church, Virginia 22041-5050, ATTN: (Frederick Wirtz). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614-0454.

Title: Freight Carrier Qualification Statement/Required Documents, OMB Number 0702-0088, MT Form 377-R, MT Form 380-R, MT Form 381-R

Needs and Uses: Information is vital in determining capability to perform quality service transporting DoD freight. Carriers will furnish MTMC information to determine if individuals or associated companies are affiliated with government-debarred carriers and will also reflect carrier's financial stability.

Affected Public: Business or other for profit.

Annual Burden Hours: 8,500.

Number of Respondents: 1,000.

Responses Per Respondent: 1,000.

Average Burden Per Response: 8.5 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Carrier Qualification Program (CQP) is designed to protect the interest of the Government and to ensure that the Department of Defense (DOD) deals with responsible carriers having the capability to provide quality and dependable service. This program became necessary because deregulation of the motor carrier industry brought an influx of new carriers into DOD's transportation market, many of which are unreliable or do not have capability

to provide consistent dependable transportation services.

Gregory D. Showalter

Army Federal Register Liaison Officer

[FR Doc. 98-12569 Filed 5-11-98; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for the BRAC 95 Final Environmental Assessment (EA) and Finding of No Significant Impact for the Disposal and Reuse of the Ground-to-Air Transmission and Receiving/Surface-to-Air Guidance and Equipment (GATR/SAGE) Control Site of the Charles E. Kelly Support Facility, Oakdale, PA

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and the President's Council on Environmental Quality (CEQ), the Army has prepared an environmental assessment for the disposal and reuse of the GATR/SAGE control site of the Charles E. Kelly Support Facility, Oakdale, Pennsylvania. In accordance with Public Law 101-510 (as amended), the Defense Base Closure and Realignment Act of 1990 (BRAC), the Defense Base Closure and Realignment Commission recommended the disposal of two of the five parcels which make up the Charles E. Kelly Support Facility, Oakdale, Pennsylvania. As a result of this BRAC-mandated closure, the two parcels selected by the Army for closure are the GATR/SAGE parcel (covered by this EA) and the Irwin Annex parcel in Irwin, Pennsylvania. Due to the distance between these parcels, it was determined that the Irwin Annex parcel should be addressed by a separate EA now under preparation.

The Final EA for the GATR/SAGE parcel evaluates the environmental impacts of the disposal and subsequent reuse of the 6 acres. Alternatives examined in the EA include encumbered disposal of the property, unencumbered disposal of the property, and no action. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of property but would maintain it in caretaker status for an indefinite period.

While disposal of the GATR/SAGE parcel is the Army's primary action, the EA also analyzes the potential environmental effects of reuse as a secondary action by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of the GATR/SAGE parcel is encumbered disposal, with encumbrances pertaining to the possible presence of lead-based paint and asbestos-containing material, and the requirement for a right of reentry for environmental clean-up.

DATES: Written public comments must be submitted on or before June 11, 1998. The Army will not initiate the proposed action for 30 days following completion of the EA and publication of this Notice of Availability.

ADDRESSES: The Final EA is available for review at the Charles E. Kelly Support Facility Oakdale, PA, and the Collier Township Local Reuse Authority, Collier Township Municipal Building, 2418 Hilltop Road, Presto, PA. A copy of the final EA may be obtained by writing to Dr. Neil Robison, U.S. Army Corps of Engineers, Mobile District (ATTN: CESAM-PD-EI), 109 St. Joseph Street, Mobile, Alabama 36602, or by facsimile at (334) 690-2605. Written comments may be submitted to Dr. Robison at the same address.

SUPPLEMENTARY INFORMATION: A Notice of Intent (NOI) declaring the Army's intent to prepare an EA for the disposal and reuse of the GATR/SAGE parcel was published in the *Federal Register* on September 22, 1995 (60 FR 49264).

Dated: May 6, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 98-12560 Filed 5-11-98; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: U.S. Army Chemical and Biological Defense Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1), announcement is made of the availability for licensing of the following U.S. Patents for nonexclusive, exclusive or partially exclusive licensing. All of the patents listed below have been assigned to the United States

of America as represented by the Secretary of the Army, Washington, DC.

"Controlled Multi-Purpose Chemical Agent Vapor Generator System", U.S. Patent 5,728,927, Issued 17 Mar 98

A system for generating a chemical agent airstream for testing chemical agent detection devices. The system includes subsystems for generating the chemical agent airstream, a parallel subsystem for generating an airstream for preconditioning the detection device and a subsystem for generating an interferant airstream for further determining the reliability of the detection device.

"Super Toxic Analytical Glove Box System", U.S. Patent 5,730,765, Issued 24 Mar 98

The field of the invention is the detection and analysis of toxic matter. More particularly, the invention relates to a portable analytical glove box system used to analyze highly toxic chemical samples.

"Method of Measuring the Decomposition of a Gaseous Material Under Controlled Temperature and Time Conditions", U.S. Patent 5,719,323 issued 17 Feb 98

A method and apparatus for measuring the decomposition of a gaseous material under controlled temperature and time conditions. The method is particularly useful for testing the decomposition of pyrotechnic compositions useful in grenades.

"Oxidative Detoxification of Phosphonothiolates and Phosphonothioic Acids", U.S. Patent 5,710,358 Issued 20 Jan 98

A method for detoxifying substituted and unsubstituted phosphonothiolates and phosphonothioic acids.

"Panoramic Infrared-Imaging Spectroradiometer with Reverse Phase Modulation Beam Broadcasting", U.S. Patent 5,708,503, Issued 13 Jan 98

A spectroradiometer for analyzing chemicals located within a panorama comprised of hyperboloid mirrors for directing light received from the panorama through a collimator and via an interferometer to an array of detectors, the signals from which are subjected to parallel discrete Fourier transform and parallel spectra pattern recognition systems. Transmissions of data is achieved by using an interferometer having modulated photoelastic modulators positioned between linear polarizers, directing laser light through the interferometer to the hyperboloid mirrors and providing a

receiver comprised of a linear polarizer, a detector, a plurality of band pass amplifiers, and a processor for recognizing the different patterns in the output of the amplifier that result from rotating at least one of the photoelastic modulators and polarizers to a different position.

"Thermite Destructive Device", U.S. Patent 5,698,812, Issued 16 Dec 97

This invention relates to destructive devices using thermite reactions and in particular concerns improved means of utilizing such reactions in the destruction of metallic targets.

"Multifuel Combustion Engine and Use in Generating Obscurant Smoke", U.S. Patent 5,665,272, Issued 9 Sep 97

This invention pertains generally to the field of combustion engines and more particularly to combustion engines capable of operating on diverse fuels. In general, modifications are made to a combustion engine so that it is capable of operating on diverse fuels such as gasoline, diesel and kerosene.

"Frustum Layered Canister", U.S. Patent 5,660,173, Issued 26 Aug 97

This invention is a design improvement of the cylindrical canister or respirator filter that is used in conjunction with a gas mask for individual protection against respiratory hazards. This invention improved the problem of sacrificing protection time, against chemical and biological warfare agents, for pressure drop, in canister design.

"Earth Monitoring Satellite System with Combined Infrared Interferometry and Photopolarimetry for Chemical and Biological Sensing", U.S. Patent 5,659,391, Issued 19 Aug 97

Apparatus for remotely sensing chemical and biological material which produces interferograms and scattergrams on an array of light detectors, and provides a means for determining the distance between the apparatus and an area under examination.

"Neural Network Computing System for Pattern Recognition of Thermoluminescence Signature Spectra and Chemical Defense", U.S. Patent 5,631,469, Issued 20 May 97.

The present invention is related to the use of a neural network computing system recognizing the thermoluminescence signature spectra of chemical compounds and finds particular utility in the recognition of nerve and blister agent compounds.

"Competitor Primer Asymmetric Polymerase Chain Reaction", U.S. Patent 5,627,054, Issued 6 May 97

This invention relates generally to the detection of nucleic acid sequences by polymerase chain reaction (PCR). More particularly, this invention relates to a process for efficiently producing single-stranded PCR products in an amount proportional to the amount of a target nucleic acid sequence present in a sample being analyzed.

"Apparatus and Method for Measurement of Offgassing Rate", U.S. Patent 5,606,111, Issued 25 Feb 97

This invention relates generally to testing apparatus and more particularly to test cells for measuring the offgasses emitted from a test sample.

FOR FURTHER INFORMATION CONTACT: Mr. John Biffoni, Patent Attorney, U.S. Army CBDCOM, AMSCB-GC, APG, MD 21010-5423, Phone: (410) 671-1158.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 98-12506 Filed 5-11-98; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Training and Doctrine Command (TRADOC).

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following meeting:

Name of Committee: Distance

Learning/Training Technology Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: 27-29 May 1998.

Place: Fort Eustis, Virginia and The Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia 23185-3536.

Time: 1300-1630 on 27 May 1998; 0830-1630 on 28 May 1998; and 0830-1130 on 29 May 1998.

Proposed Agenda: Review and discussion of the status of Army Distance Learning and Classroom XXI.

Purpose of the Meeting: The members will advise the Assistant Deputy Chief of Staff (ADCST), HQ Training and Doctrine Command (TRADOC), on matters pertaining to education and training technologies to be used for

Army Distance Learning and resident instruction.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to Dr. Millie Abell, at Commander, Headquarters TRADOC, ATTN: ATTC-CF (Dr. Millie Abell), Fort Monroe, VA 23651-5000; telephone number (757) 728-5530.

SUPPLEMENTARY INFORMATION: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend any of the 27-29 May 1998 sessions. Contact Dr. Abell (757-728-5530) for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentation or oral statements at the meeting.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 98-12570 Filed 5-11-98; 8:45 am]
BILLING CODE 3710-06-M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Non-Exclusive, Partially Exclusive or Exclusive Licensing

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The Patent Application entitled "Fluidtight Door Gasket", Patent Number 5,553,871, is assigned to the United States Government and is available for licensing from the Department of the Navy.

DATES: A briefing by the inventors describing the capabilities created by this technology will be given at Carderock on July 15, 1998 at 10:00 am. The briefing will also cover the technology transfer and licensing process. Any organization interested in attending this briefing should provide notice of intent to attend by July 1, 1998.

ADDRESSES: The briefing will be held at the Naval Surface Warfare Center, Carderock Division, 9500 MacArthur Blvd., Bethesda, MD 20817-5700.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bloomquist, Technology

Transfer Manager, Naval Surface Warfare Center, Carderock Division, Code 0117, 9500 MacArthur Blvd., Bethesda, MD 20817-5700, telephone (301) 227-4299, fax (301) 227-2138 or email bloomquist@oasys.dtnavy.mil.

SUPPLEMENTARY INFORMATION: This gasket invention is uniquely proportioned to improve its sealing properties for use with fluidtight doors and hatches. The gasket is particularly long lived and resists high temperature damage, a significant safety feature. Because the gasket resists hardening and cracking, it requires far less replacement maintenance. The gasket, made of silicone rubber, is softer and therefore easier to install, providing a substantial cost saving over traditional neoprene gaskets. The invention covers a variety of fluidtight door gasket technologies and technical arts as well as other applications, including watertight electrical enclosures.

Authority: 35 U.S.C. 209, 37 CFR Part 404.
Dated: May 1, 1998.

Michael I. Quinn,
Commander, Judge Advocate General's Corps,
U.S. Navy, Federal Register Liaison Officer.
[FR Doc. 98-12501 Filed 5-11-98; 8:45 am]
BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patent applications cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, and must include the Patent Application Serial Number.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, telephone (703) 696-4001.

SUPPLEMENTARY INFORMATION: The list of available Patent Applications is as follows:

Patent Application Serial No. 08/941,933 entitled "Platform Independent

Computer Interface Software Responsive to Scripted Commands".

Patent Application Serial No. 08/941,257 entitled "Computer System Providing Platform Independent Universal Client Device".

Patent Application Serial No. 08/941,256 entitled "Operating Methods for Computer System Providing Platform Independent Universal Client Device".

Patent Application Serial No. 08/941,255 entitled "Universal Client Device for Interconnecting and Operating any Two Computers".

Patent Application Serial No. 08/941,258 entitled "Method for Operating a Universal Client Device Permitting Interoperation Between any Two Computers".

Patent Application Serial No. 08/941,667 entitled "A Universal Client Device Permitting a Computer To Receive and Display Information from Several Special Applications Simultaneously".

Patent Application Serial No. 08/941,544 entitled "Operating Methods for a Universal Client Device Permitting a Computer to Receive and Display Information from Several Special Applications Simultaneously".

Patent Application Serial No. 08/941,543 entitled "Robust Computer Systems Permitting Autonomously Switching Between Alternative Redundant Components".

Patent Application Serial No. 08/941,545 entitled "Operating Methods for Robust Computer Systems Permitting Autonomously Switching Between Alternative Redundant Components".

Patent Application Serial No. 08/941,931 entitled "Methods Permitting Rapid Generation of Platform Independent Software Applications Executed on a Universal Client Device".

Authority: 35 U.S.C. 207, 37 CFR Part 404.
Dated: April 30, 1998.

Michael I. Quinn,
Commander, Judge Advocate General's Corps,
U.S. Navy, Federal Register Liaison Officer.
[FR Doc. 98-12504 Filed 5-11-98; 8:45 am]
BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; MedAcoustics, Inc.

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to MedAcoustics, Inc., a revocable, nonassignable, exclusive license in the

United States, to practice the Government-owned inventions described in U.S. Patent No. 5,617,869 entitled "A Device and Method for Locating Flow Blockage in a Three-Dimensional Object," and U.S. Patent No. 5,727,561 entitled "Method and Apparatus for Non-Invasive Detection and Analysis of Turbulent Flow in a Patient's Blood Vessels" in the field of medical devices.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 13, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, telephone (703) 696-4001.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: April 30, 1998.

Michael I. Quinn,
Commander, Judge Advocate General's Corps,
U.S. Navy, Federal Register Liaison Officer.
[FR Doc. 98-12503 Filed 5-11-98; 8:45 am]
BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Prime Capital Group, Inc.

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Prime Capital Group, Inc., a revocable, nonassignable, exclusive license to practice, in certain foreign countries, the Government-owned invention described in U.S. Patent Application Serial No. 08/670,909 entitled "Non-Thermal Process for Annealing Crystalline Materials," filed June 26, 1996, in the fields of all steps related to manufacture of semiconductors and related devices. An exclusive license to practice this invention in the United States in the same fields of use has already been granted to Prime Capital Group, Inc.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting

evidence, if any, not later than July 13, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, telephone (703) 696-4001.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: April 30, 1998.

Michael I. Quinn,
Commander, Judge Advocate General's Corps,
U.S. Navy, Federal Register Liaison Officer.
[FR Doc. 98-12502 Filed 5-11-98; 8:45 am]
BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 13, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process

would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 6, 1998.

Hazel Fiers,
Acting Deputy Chief Information Officer,
Office of the Chief Information Officer.

Office of the General Counsel

Type of Review: Revision.
Title: General Education Provisions Act (GEPA) Section 427 Guidance for All Grant Applications
Frequency: Once only per application for new awards
Affected Public: Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs

Reporting Burden and Recordkeeping: Responses: 5,125
Burden Hours: 7,688

Abstract: In compliance with Section 427 of the General Education Provisions Act, as amended by Public Law No. 103-382, all applicants for grant awards made by the Department of Education are required to describe in their applications the steps they propose to take to ensure equitable access to, and equitable participation in, the proposed grant activities conducted with federal

funds. The Department has developed a single document that provides common guidance for all competitive and formula grant applicants on how they can meet this requirement. The language in this common guidance document is nearly identical to language that the Department has previously used in separate guidance documents applicable to discretionary grant applicants and to States that have previously applied for formula grants on the basis of consolidated plans available under Title XIV of the Elementary and Secondary Education Act.

[FR Doc. 98-12461 Filed 5-11-98; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 12, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 5, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer,
Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Extension.

Title: Integrated Postsecondary Education Data System (IPEDS).

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Reporting Burden and Recordkeeping:

Responses: 10,036.

Burden Hours: 277,809.

Abstract: IPEDS constitutes the core of NCES postsecondary education data collection program and helps NCES meet its mandate to report full and complete statistics on the condition of postsecondary education in the U.S. IPEDS provides data on a broad range of topics including postsecondary enrollments, faculty and staff, programs, degrees awarded, numbers and types of institutions, finances and information on time to degree/graduation rates. Because IPEDS is a system of surveys, it makes it possible to develop a more comprehensive perspective of postsecondary education than any single component could provide.

[FR Doc. 98-12368 Filed 5-11-98; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A-4]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998.

Purpose of Program: This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants: To be eligible to apply, an applicant must be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4(b); have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); be able to plan, conduct, administer, and evaluate a center consistent with the requirements of section 725(b) and (c) of the Act and Subparts F and G of 34 CFR Part 366; and either—(1) not currently be receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to entities that meet the requirements of 34 CFR 366.24 and propose to serve areas that are unserved or underserved in the States and territories listed under "Available Funds."

SUPPLEMENTARY INFORMATION: The current grantee under this program that is eligible for a grant under the statute has withdrawn its application. Therefore, the funds are available to other applicants.

Deadline For Transmittal of Applications: June 30, 1998.

Deadline for Intergovernmental Review: August 29, 1998.

Applications Available: May 14, 1998. Available Funds: \$93,421 as distributed in the following manner: Maryland—\$93,421.

Estimated Number of Awards: 1 per eligible State.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 364 and 366.

For Applications Contact: The Grants and Contracts Services Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202-2550. Telephone: (202) 205-8351. The preferred method for requesting applications is to FAX your request to (202) 205-8717. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Merri Pearson, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3326 Switzer Building, Washington, D.C. 20202-2741. Telephone: (202) 205-8484. Individuals who use a TDD may call the TDD number at (202) 205-8243.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

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<http://ocfo.ed.gov/fedreg.htm>
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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at any of the previous sites. If you have questions about using the pdf, please call the U.S. Government Printing Office toll free at 1-888-293-6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219-1511

or, toll free, 1-800-222-4922. These documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the Federal Register.

Program Authority: 29 U.S.C. 721(c) and (e) and 796(f).

Dated: May 7, 1998.

Judith E. Heumann,
Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98-12573 Filed 5-11-98; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES: June 18 and 19, 1998.

TIME: June 18, 2:30 p.m. to 5 p.m.; June 19, 9 a.m. to 4 p.m.

LOCATION: Room 100, 80 F St., NW., Washington, DC 20208-7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208-7564. Tel.: (202) 219-2065; fax: (202) 219-1528; e-mail: Thelma.Leenhouts@ed.gov, or nerppb@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The meeting is open to the public. On June 18, the Board will hear reports from its Committee on Research, Development, and Dissemination, and

receive a briefing about the ERIC Clearinghouse competition. On June 19, the Board will hear reports from the National Research Institutes of the Office of Educational Research and Improvement, and from its Program and Standards Committees. A final agenda will be available from the Board office on June 10, 1998.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW., Washington, DC 20208-7564.

Dated: May 8, 1998.

Eve M. Bither,

Executive Director.

[FR Doc. 98-12521 Filed 5-11-98; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FCR 555-001-FERC-555]

Information Collection Submitted for Review and Request for Comments

May 6, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received public comments from two entities in response to an earlier Federal Register notice of December 10, 1997 (62 FR 65071) and has replied to these comments in its submission to OMB. DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson

Place, N.W. Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208-1415, by fax at (202) 273-0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC-555 "Preservation of Records of Public Utilities and Licensees, Natural Gas and Oil Pipeline Companies."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902-0098. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no substantive changes to the existing collection. There is an increase in the reporting burden due to an increase in the number of respondents participating in industry and consequently subject to the Commission's jurisdiction. This increase reflects an adjustment to the Commission's regulatory burden for this information collection requirement. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA); the Natural Gas Act (NGA); and the Interstate Commerce Act (ICA). These statutes provide the Commission with the authority and responsibility for policing jurisdictional companies' to ensure compliance with the Acts' requirements. The information retained under Commission identifier FERC-555 are records maintained by the regulated companies in accordance with Schedules provided in the Commission's regulations in 18 CFR Parts 125, 225 and 356. The companies will use the regulatory requirements to determine the minimum length of time to maintain their records. These records are retained to be used during financial/compliance audits of jurisdictional companies forming the basis of the audit staff's opinion regarding (1) the reliability of the financial data filed with Commission by companies, (2) the extent of conformance by the companies to the Uniform System of Accounts (3)

compliance with the Commission's regulations for rate filings and reports.

Respondent Description: The respondent universe currently comprises on average, 515 recordkeepers subject to the Commission's regulations.

6. *Estimated Burden:* 1,236,000 total burden hours, 515 respondents, 1 response annually, 2,400 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 1,236,000 hours + 2,088 hours per year × \$110,000 per year = \$65,049,236, average cost per respondent = \$126,309.

Statutory Authority: Sections 301(a), 304(a), 309, of the Federal Power Act (FPA) 16 U.S.C. 792-828o; Sections 8(a), 10(a), 16 of the Natural Gas Act (NGA), 15 U.S.C. 717-717w; and Sections 19 and 20 of the Interstate Commerce Act (ICA), 49 U.S.C. 20.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12545 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98-42-000]

Algonquin LNG, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 200. The proposed effective date of this tariff sheet is June 1, 1998.

ALNG states that the purpose of this filing is to update its Index of Customers as of June 1, 1998.

ALNG states that copies of its filing have been served on all affected customers of ALNG and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12473 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-99-006]

Algonquin LNG, Inc.; Notice of Compliance Filing

May 6, 1998.

Take notice that on May 1, 1998, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective June 1, 1998:

Second Revised Sheet No. 31
Third Revised Sheet No. 51
Second Revised Sheet No. 83

ALNG asserts that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Letter Order issued on July 3, 1997, in Docket Nos. RP97-90-001 and RP97-99-002. ALNG states that the above listed tariff sheets are being filed to bring ALNG's FERC Gas Tariff into compliance with Gas Industry Standards Board (GISB) Standards 4.3.6, 4.3.7, and 5.4.13 through 5.4.16.

ALNG states that copies of this filing were served on firm customers of ALNG and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12474 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-212-000]

ANR Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective June 1, 1998:

Twenty-second Revised Sheet No. 17
Third Revised Sheet No. 140

ANR states that this filing represents ANR's annual report of the net revenues attributable to the operation of its cashout program. This filing covers the period January 1, 1997 to December 31, 1997. The Net Cashout Activity for the 12-month period ending December 31, 1997 resulted in a net balance of (\$1,461,898). This amount is added to the balance of (\$3,162,904) from ANR's previous cashout report plus carrying charges of (\$542,459), for a cumulative net cashout balance of (\$5,167,261). ANR has computed the cashout price surcharge pursuant to Section 15.5(b) of the General Terms & Conditions of its tariff. The cashout price surcharge of \$0.1211 will be subtracted from the cashout price where excess quantities are being cashed out (purchased), and will be added to the cashout price where deficient quantities are being cashed out (sold), consistent with ANR's approved tariff mechanism.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12488 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-206-000]

Atlanta Gas Light Company; Notice of Filing

May 6, 1998.

Take notice that on May 1, 1998, Atlanta Gas Light Company (Atlanta) tendered for filing a request for limited waivers and clarification of certain Commission regulations and policies and pipeline tariff provisions related to transportation services provided to Atlanta by interstate pipelines.

Atlanta states that on November 26, 1997, it gave notice of its election to become an electing distribution company pursuant to the Georgia Natural Gas Competition and Deregulation Act (S.B. 215), and that proceedings on Atlanta's application to unbundle its distribution services are underway at the Georgia Public Service Commission (GPSC) in GPSC Docket No. 8390-U. Atlanta states that the request for limited waivers and clarification is necessary to enable Atlanta to unbundle its system in the manner contemplated by S.B. 215.

Atlanta further states that copies of the filing have been mailed to all parties in GPSC Docket No. 8390-U, and GPSC, and each of Atlanta's interstate pipeline suppliers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12481 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417-001 and Project No. 1835-013]

Central Nebraska Public Power and Irrigation District and Nebraska Public Power District; Notice of Public Briefing

May 6, 1998.

Parties to this relicensing proceeding recently advised the Commission that they anticipate filing a comprehensive settlement agreement on May 15, 1998. In response to a request by the U.S. Department of the Interior (Interior), the Commission will host a public briefing on the settlement agreement. The briefing will be held on Tuesday, May 19, 1998, at 1:00 p.m., in the Commission Meeting Room, located on the second floor of 888 First Street, N.E., Washington, D.C. Interior and other key parties to the settlement agreement will brief the Commissioners on the major provisions of the settlement agreement and its relationship to the Platte River Cooperative Agreement, and will answer any questions. This portion of the briefing will take approximately one hour. After a short recess, the briefing will continue with more detailed presentations and discussions with Commission staff.

The briefing will be recorded by a stenographer, and the transcript will become part of the Commission's public record of this proceeding. Anyone wishing to receive a copy of the transcript of the briefing may contact Ace Federal Reporting Company by calling (202) 347-3700 or by writing to 1120 G Street, N.W., Washington, D.C. 20005.

For further information, please contact Frankie Green at (202) 501-7704.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12546 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-209-000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, Columbia Gas Transmission Corporation

(Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of June 1, 1998:

Twenty-seventh Revised Sheet No. 25
Twenty-seventh Revised Sheet No. 26
Twenty-seventh Revised Sheet No. 27
Twenty-seventh Revised Sheet No. 28
Eleventh Revised Sheet No. 30A
Eleventh Revised Sheet No. 31

Columbia states that the purpose of this filing is to make a downward adjustment to its Rate Schedule FTS base rate demand determinants as provided for in Stipulation II, Article III, Section H(2) of the Docket No. RP95-408 et al. rate case settlement. The settlement provision authorizes such adjustments associated with contract demand reductions recognizing the loss of direct firm transportation deliveries to customers from gathering facilities sold since the settlement up to 15,000 Dth/day. This filing reflects the loss in firm transportation demand determinants (and associated commodity determinants) for two Rate Schedule FTS customers.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.
[FR Doc. 98-12484 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-2075-000]

CSW Energy Services, Inc.; Notice of Issuance of Order

May 6, 1998.

CSW Energy Services, Inc. (ESI), a power marketer, is wholly-owned by Central & Southwest Corporation, which owns public utilities engaged in the generation, transmission, distribution and sale of electric power at wholesale and retail. ESI filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, ESI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ESI. On May 1, 1998, the Commission issued an Order Conditionally Accepting For Filing Proposed Tariff For Market Based Power Sales And Reassignment of Transmission Capacity And Directing Filing Of Revised Codes Of Conduct (Order), in the above-docketed proceeding.

The Commission's May 1, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (J):

(G) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ESI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, ESI is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ESI, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of

ESI's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is June 1, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,
Acting Secretary.
[FR Doc. 98-12487 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-287-017]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the following tariff sheet to become effective May 1, 1998:

Fifteenth Revised Sheet No. 30
Eighth Revised Sheet No. 31

El Paso states that the above tariff sheets are being filed to implement six negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95-6-000 and RM96-7-000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.
[FR Doc. 98-12476 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97-346-000, TM97-3-24-000, and RP98-123-000]

Equitrans, L.P.; Notice of Informal Settlement Conference

May 6, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, May 14, 1998, at 10:00 a.m., and will continue on Friday, May 15, 1998, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208-1602 or Robert A. Young at (202) 208-5705.

David P. Boergers,
Acting Secretary.
[FR Doc. 98-12477 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-156-001]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Original Sheet Nos. 63B, 63C, and 63D proposed to be effective May 1, 1998.

Great Lakes states that the tariff sheets are being filed to comply with the Commission's Order of April 22, 1998, in the above-named proceeding, 83 FERC ¶ 61,064 (1998). The order required Great Lakes to submit tariff sheets reflecting the necessary modifications to sheets filed by Great Lakes on March 3, 1998, to implement a new Market Center Services Rate Schedule (Rate Schedule MC).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.
[FR Doc. 98-12479 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-2076-000]

Hawkeye Power Partners, L.L.C.; Notice of Issuance of Order

May 6, 1998.

Hawkeye Power Partners, L.L.C. (Hawkeye Power), an affiliate of Florida Power & Light Company, filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Hawkeye Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Hawkeye Power. On April 30, 1998, the Commission issued an Order Conditionally Accepting For Filing Market-Based Rates (Order), in the above docketed proceeding.

The Commission's April 30, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Hawkeye Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering

Paragraph (D) above, Hawkeye Power is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Hawkeye Power, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Hawkeye Power's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 1, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, D.C. 20426.

David P. Boergers,
Acting Secretary.
[FR Doc. 98-12489 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98-41-000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective June 1, 1998:

Second Revised Sheet No. 3
First Revised Sheet No. 3A
First Revised Sheet No. 3B

Panhandle states that the purpose of this filing, made in accordance with Section 154.106 of the Commission's Regulations is to revise the system map to reflect changes in the pipeline facilities and the points at which service is provided. Specifically, the maps reflect the abandonment of the N.E. Oklahoma facilities as authorized in Docket Nos. CP96-567-000 (77 FERC ¶ 61,149) and CP93-505-000 (70 FERC ¶ 61,297), the abandonment of the North Line lateral in Michigan as authorized in Docket No. CP96-709-000 (80 FERC ¶ 61,193) and new delivery points in Kanasa (CP96-279-000, 77 FERC

§ 61.120 and CP97-767-000), Illinois (CP96-793-000), Ohio (CP97-155-000) and Michigan (CP96-709-000, 80 FERC ¶ 61,193).

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12472 Filed 5-11-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-211-000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective June 1, 1998.

Panhandle states that it is proposing to suspend the \$0.01 per Dt. Miscellaneous Stranded Transportation Cost Reservation Surcharge applicable to Rate Schedules FT, EFT and LFT and the 0.06¢ per Dt. Miscellaneous Stranded Transportation Cost Volumetric Surcharge applicable to Rate Schedule SCT in Docket No. RP98-75-000. Panhandle will file a reconciliation report as soon as practicable and provide invoice credits, with carrying charges, to applicable shippers for any excess collections through May 31, 1998.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12485 Filed 5-11-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-210-000]

Questar Pipeline Company; Notice of Tariff Filing

May 6, 1998.

Take notice that on May 1, 1998, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised sheet No. 71 and First Revised Sheet No. 71A, to be effective June 1, 1998.

Questar states that the technical implementation and programming of the business processes applicable to nominations tendered via Electronic Data Interchange (EDI) required Questar to choose one of three GISB model types for nominations—pathed, non-pathed, or pathed non-threaded. Questar states further that although none of the three model types matched perfectly the manner in which Questar's nomination process is administered, the pathed non-threaded model appeared to be the most closely related. Questar explains that implementation of the pathed non-threaded model nomination procedure and development of the associated priority-of-service algorithms requires priority-of-service tariff provisions to identify more discrete levels of service than the current tariff defines.

Accordingly, Questar is seeking Commission approval to modify Section 9.1, Priority of Service, to more discretely define and clarify priority-of-service levels that are consistent with the pathed non-threaded model nomination process.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12486 Filed 5-11-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-399-000]

Texas Eastern Transmission Corporation; Notice of Application

May 6, 1998.

Take notice that on April 29, 1998 Texas Eastern Transmission Corporation ("Texas Eastern"), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in the above docket, an abbreviated application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Texas Eastern to construct, own, operate, and maintain certain replacement facilities, abandon the existing pipeline being replaced, and utilize temporary work space and right-of-way during the construction of such facilities.

Specifically, Texas Eastern proposes to construct, own, operate, and maintain approximately 4,490 feet of 30-inch pipe between Mile Post ("M.P.") 177.84 and M.P. 178.69 beneath the Mississippi

River in West Feliciana and Pointe Coupee, Parishes, Louisiana. This new pipe will replace an existing river crossing of the same size on its Line 18, currently located 75 feet north of the proposed location for the replacement crossing. Monitoring of the Mississippi River bottom at this location indicates significant scouring is occurring at the existing crossing. The new facilities will not increase the capacity of Texas Eastern's system. Texas Eastern states that the new replacement facilities will enable Texas Eastern to ensure the safe and reliable operation of its system in order to meet its contractual requirements. The estimated total capital cost of the proposed facilities is approximately \$8,415,000.

Texas Eastern requests approval of this Application by December 1, 1998, in order to construct the proposed facilities during the 1999 summer construction season.

Any person desiring to participate in the hearing process to make any protest with reference to said application should on or before May 27, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of

environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12468 Filed 5-11-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98-40-000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to become effective May 31, 1998:

Second Revised Sheet No. 13
Second Revised Sheet No. 14
Second Revised Sheet No. 15

Second Revised Sheet No. 16
Second Revised Sheet No. 17
Second Revised Sheet No. 18
Second Revised Sheet No. 19
Second Revised Sheet No. 20

Texas Eastern states that the purpose of the filing is to update the system maps to reflect its current principal pipeline facilities and the points at which service is rendered, as required by Section 154.106 of the Commission's Regulations.

Texas Eastern states that copies of the filing were mailed to firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12471 Filed 5-11-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-255-002]

TransColorado Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective May 1, 1998:

Second Revised Sheet No. 21
First Revised Sheet No. 22

TransColorado states that the above tariff sheets are being filed to implement one negotiated rate contract pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-

Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95-6-000 and RM96-7-000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12475 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-331-001]

Transcontinental Gas Pipe Line Corporation; Notice of Amendment

May 6, 1998.

Take notice that on April 27, 1998, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP97-331-001, an application as supplemented on May 4, 1998, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, to amend the certificate of public convenience and necessity issued in Docket No. CP97-331-000 on January 15, 1998, to authorize Transco to uprate two compressor units, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Transco seeks to uprate compressor units 3 and 4 at its Station 100 in Chilton County, Alabama, from 5,000 horsepower to 6,000 horsepower each. Transco states that the certificate authorized Transco, among other things, to re-wheel compressor units 3 and 4 at Station 100.

Any person desiring to be heard or making any protest with reference to said application should on or before May 18, 1998, file with the Federal

Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held

without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12467 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98-39-000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective June 1, 1998:

Third Revised Sheet No. 5
First Revised Sheet No. 5A
First Revised Sheet No. 5B
First Revised Sheet No. 5C

Trunkline states that the purpose of this filing made in accordance with Section 154.106 of the Commission's Regulations, is to revise the system map to reflect changes in the facilities and the points at which service is provided. Specifically, the maps reflect the abandonment of facilities in south Texas as authorized in Docket No. CP97-173-000 (81 FERC ¶ 61,351) and new delivery points in Kentucky and Louisiana as authorized in Docket Nos. CP97-273-000 and CP96-546-000, respectively.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12470 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-197-001]

Viking Gas Transmission Company; Notice of Compliance Filing

May 6, 1998.

Take notice that on May 1, 1998 Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheets to become effective June 1, 1998:

Substitute Eleventh Revised Sheet No. 6
Substitute Fourth Revised Sheet No. 6A
Substitute Fourth Revised Sheet No. 14
Substitute Second Revised Sheet No. 15D
Substitute Fifth Revised Sheet No. 19
Substitute Fourth Revised Sheet No. 24
Substitute Fourth Revised Sheet No. 29

Viking states that this filing is being made pursuant to the Office of Pipeline Regulation's (OPR) May 1, 1998 Letter Order in the above-referenced proceeding in which OPR requested that Viking correct the listed tariff sheets to reflect the Commission's Pagination Guidelines. Consistent with the May 1, 1998 Letter Order, the only change that has been made to these sheets is the corrected pagination.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12480 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98-105-007 and RP98-165-002]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of May 1, 1998:

First Revised Sheet No. 6
Substitute First Revised Sheet No. 6A
First Revised Sheet Nos. 268, 269, and 270

Williams states that the filing is being made in compliance with Ordering Paragraph (B) of the Order on Rehearing and Compliance Filing, issued March 31, 1998, in Docket No. RP98-105-001, et al. The Commission directed Williams to submit surcharge to recover its GSR Costs.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12478 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-207-000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of June 1, 1998:

Second Revised Sheet No. 6A

Williams states that this filing is being made to adjust the maximum rates under Rate Schedules ITS-M and ITS-P by discontinuing the surcharge established in Docket No. RP96-173. This surcharge, which became effective June 1, 1996, has been in effect for its 24-month recovery period.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protests with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12482 Filed 5-11-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-208-000]

Williams Gas Pipelines Central, Inc.;
Notice of Proposed Changes in FERC
Gas Tariff

May 6, 1998.

Take notice that on May 1, 1998, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective June 1, 1998:

First Revised Sheet No. 267
Second Revised Sheet No. 268
Original Sheet Nos. 271A, 271B, 271C, and 271D
First Revised Sheet No. 272

Williams states that the purpose of this filing is to modify Article 14 of its FERC Gas Tariff to include costs incurred in the assignment of any remaining gas purchase contracts through a reverse auction process as a cost eligible for recovery as GSR costs and to establish procedures to be used in conducting such reverse action.

Williams states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12483 Filed 5-11-98; 8:45 am]
BILLING CODE 5717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98-38-000]

Williston Basin Interstate Pipeline
Company; Notice of Proposed
Changes in FERC Gas Tariff

May 6, 1998.

Take notice that on April 30, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 30, 1998:

Third Revised Sheet No. 5
Third Revised Sheet No. 6
First Revised Sheet No. 6A
First Revised Sheet No. 7
Second Revised Sheet No. 8
Third Revised Sheet No. 9

Williston Basin states that the revised tariff sheets are being filed simply to update its System Maps with the most recent information available.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12469 Filed 5-11-98; 8:45 am]
BILLING CODE 5717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98-67-000, et al.]

Onondaga Cogeneration Limited
Partnership et al.; Electric Rate and
Corporate Regulation Filings

May 4, 1998.

Take notice that the following filings have been made with the Commission:

1. Onondaga Cogeneration Limited
Partnership

[Docket No. EG98-67-000]

Take notice that on April 23, 1998, Onondaga Cogeneration Limited Partnership (Onondaga) of One Upper Pond Road, Parsippany, New Jersey, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a New York limited partnership which owns a topping-cycle cogeneration facility (the Facility). All electricity produced by the Facility is sold at wholesale to Niagara Mohawk Power Corporation.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Duke Energy Oakland LLC

[Docket No. EG98-68-000]

Take notice that on April 24, 1998, Duke Energy Oakland LLC (Oakland) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Oakland is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Duke Energy Corporation. Oakland's facility consists of three diesel-fired generating units with a combined generating capacity of 137 MW. Oakland states that prior to its purchase of the facility from Pacific Gas & Electric (PG&E), the facility was part of PG&E's integrated system. Therefore a rate or charge in connection with this facility was in effect under the laws of California on October 24, 1992. On December 16, 1997, the Public Utilities Commission of the State of California (CPUC), issued an interim opinion which concluded that allowing the facility to be an exempt wholesale generator within the meaning of PUHCA would benefit consumers, would be in the public interest, and would not violate California law. Oakland attached a copy of the CPUC opinion to its application.

Oakland further states that copies of the application were served upon the California Independent System Operator Corporation, the California Power Exchange Corporation, the Securities and Exchange Commission, the North Carolina Utilities Commission, the South Carolina Public Service Commission, and the CPUC.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Duke Energy Moss Landing LLC

[Docket No. EG98-69-000]

Take notice that on April 24, 1998, Duke Energy Moss Landing LLC (Moss Landing), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Moss Landing is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Duke Energy Corporation. Moss Landing's facility consists of two natural gas-fired generating units with a combined generating capacity of 1,478 MW. Moss Landing states that prior to its purchase of the facility from Pacific Gas & Electric (PG&E), the facility was part of PG&E's integrated system. Therefore, a rate or charge in connection with this facility was in effect under the laws of California on October 24, 1992. On December 16, 1997, the Public Utilities Commission of the State of California (CPUC), issued an interim opinion which concluded that allowing the facility to be an exempt wholesale generator within the meaning of PUHCA would benefit consumers, would be in the public interest, and would not violate California law. Moss Landing attached a copy of the CPUC opinion to its application.

Moss Landing further states that copies of the application were served upon the California Independent System Operator Corporation, the California Power Exchange Corporation, the Securities and Exchange Commission, the South Carolina Public Service Commission, the North Carolina Utilities Commission, and the CPUC.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to that concern the adequacy or accuracy of the application.

4. Atlantic City Electric Company

[Docket No. ER98-1721-001]

Take notice that on April 28, 1998, Atlantic City Electric Company (ACE), tendered for filing a refund report in compliance with Commission Order issued on March 30, 1998, in Docket No. ER98-1721-000.

Comment date: May 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas And Electric Company

[Docket No. ER98-2716-000]

Take notice that on April 29, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing of its obligation to file the Transaction detail for wholesale transactions made pursuant to its market-based Generation Sales Service (GSS) Tariff. This filing revises the filing dated April 27, 1998.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER98-2728-000]

Take notice that on April 29, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system west of NMPC's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96-194-000.

NMPC requests an effective date of April 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. ER98-2729-000]

Take notice that on April 29, 1998, Carolina Power & Light Company (CP&L), tendered for filing proposed changes to its FERC Tariff No. 1 for Sales of Capacity and Energy, FERC Original Volume No. 2 to permit market-based sales under that Tariff.

Copies of this filing were served on CP&L's customers currently eligible to take service under Tariff No. 1, the North Carolina Utilities Commission and The Public Service Commission of South Carolina.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER98-2730-000]

Take notice that on April 29, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service billed on and after April 15, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Co.

[Docket No. ER98-2731-000]

Take notice that on April 29, 1998, Portland General Electric Company (PGE), tendered for filing under PGE's Market-Based Rate Tariff, (Docket No. ER98-1643-000) an un-executed Service Agreement for Service at Market-Based Rates with California Power Exchange. Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93-2-002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the un-executed Service Agreements to become effective March 31, 1998.

Copies of this filing were caused to be served upon California Power Exchange.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER98-2734-000]

Take notice that on April 29, 1998, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with OGE Energy Resources, Inc., for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on June 1, 1998.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Company

[Docket No. ER98-2735-000]

Take notice that on April 29, 1998, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated April 1, 1998 with Conectiv Energy under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Conectiv Energy as a customer under the Tariff. DLC requests an effective date of April 1, 1998, for the Service Agreement.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER98-2736-000]

Take notice that on April 29, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an unexecuted electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) and an unexecuted electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) with Amoco Energy Trading Corporation (Amoco). Wisconsin Electric respectfully requests an effective date of April 3, 1998, to allow for economic transactions.

Copies of the filing have been served on Amoco, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Texas-New Mexico Power Company

[Docket No. ER98-2737-000]

Take notice that on April 29, 1998, Texas-New Mexico Power Company (TNMP), tendered for filing an umbrella service agreement for short-term nonfirm energy transactions of one year or less between TNMP, as seller, and Cinergy Capital and Trading, Inc., as purchaser, in accordance with TNMP's rate schedule for sales of electricity at market-based rates.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER98-2738-000]

Take notice that on April 29, 1998, New England Power Company filed a Service Agreement and Certificates of Concurrence with City of Holyoke Gas & Electric Department, under NEP's

FERC Electric Tariff, Original Volume No. 5.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power Corporation

[Docket No. ER98-2739-000]

Take notice that on April 29, 1998, Florida Power Corporation (FPC), tendered for filing a service agreement between Tampa Electric Company and FPC for service under FPC's Cost-Based Wholesale Power Sales Tariff (CR-1), FERC Electric Tariff, Original Volume No. 9. This Tariff was accepted for filing by the Commission on April 20, 1998, effective as of October 29, 1997, in Docket No. ER98-374-000. The service agreement is proposed to be effective March 31, 1998.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corp.

[Docket No. ER98-2740-000]

Take notice that on April 29, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system East of NMPC's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96-194-000.

NMPC requests an effective date of April 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas And Electric Company

[Docket No. ER98-2741-000]

Take notice that on April 28, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Cargill-Alliant, LLC under LG&E's Open Access Transmission Tariff.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company

[Docket No. ER98-2742-000]

Take notice that on April 29, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing a Consent of Assignment form assigning all of the rights associated with the Non-Firm Transmission Service Agreement between LG&E and Ohio Edison Company to FirstEnergy Corporation.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Southern California Edison Company

[Docket No. ER98-2743-000]

Take notice that on April 29, 1998, Southern California Edison Company (Edison), tendered for filing Amendment No. 2 to the Edison-Riverside 1996 BPA Firm Transmission Service Agreement between Edison and the City of Riverside, California.

Edison is requesting an effective date of May 1, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Peco Energy Company

[Docket No. ER98-2744-000]

Take notice that on April 29, 1998, PECO Energy Company (PECO), filed a Service Agreement dated October 21, 1997 with Market Responsive Energy, Inc., (MREI) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MREI as a customer under the Tariff.

PECO requests an effective date of April 1, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to MREI and to the Pennsylvania Public Utility Commission.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Entergy Services, Inc.

[Docket No. ER98-2745-000]

Take notice that on April 29, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New

Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and The Dayton Power and Light Company.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power & Light Company

[Docket No. ER98-2746-000]

Take notice that on April 30, 1998, Florida Power & Light Company (FPL), tendered for filing: (a) an Amendment Number Five to the Network Service Agreement between FPL and the Florida Municipal Power Agency, and (b) the Revised Interconnection Agreement among Florida Power & Light Company and Florida Keys Electric Cooperative Association, Inc. and the Utility Board of the City of Key West. Amendment Number Five adds the City of Key West, Florida as a Network Member. The Revised Interconnection Agreement accommodates, among other things, the upgrading of transmission facilities and Key West becoming a Network Member. FPL proposes to make the Amendment Number Five and the Revised Interconnection Agreement effective April 1, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER98-2748-000]

Take notice that on April 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Network Operating Agreement and a Network Integration Transmission Service Agreement between NSP and Gen-Sys Energy.

NSP requests that the Commission accept both the agreements effective April 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Northern States Power Company (Minnesota)

[Docket No. ER98-2749-000]

Take notice that on April 30, 1998, Northern States Power Company (NSP-M), tendered for filing an amendment to the Municipal Transmission Service Agreement between NSP-M and the City of Blue Earth, MN.

NSP requests that the Commission accept the agreement effective April 20, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Orange and Rockland Utilities, Inc.

[Docket No. ER98-2750-000]

Take notice that on April 30, 1998, Orange and Rockland Utilities, Inc. (O&R) tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement under which O&R will provide capacity and/or energy to Cinergy Capital & Trading, Inc., (CCT).

O&R requests waiver of the notice requirement so that the service agreement with CCT becomes effective as of April 30, 1998.

O&R has served copies of the filing on The New York State Public Service Commission and CCT.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service

[Docket No. ER98-2751-000]

Take notice that on April 28, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the South Jersey Energy Company under the NU System Companies' Sale for Resale, Tariff No. 7. NUSCO states that a copy of this filing has been mailed to the South Jersey Energy Company.

NUSCO requests that the Service Agreement become effective April 28, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Wisconsin Power & Light Company

[Docket No. ER98-2752-000]

Take notice that on April 30, 1998, Wisconsin Power and Light Company (WPL), tendered for filing a Power Supply Agreement dated April 29, 1998, between the Wisconsin Public Power Inc., and WPL. WPL states that this Agreement replaces the Power Supply Agreement dated June 5, 1989 and Power Supply Agreement No. 2 dated October 1, 1992. WPL is also requesting cancellation of the existing Agreements which are designated Rate Schedule FERC Nos. 152 and 173, respectively.

The parties have entered into the new Power Supply Agreement to implement combined load service terms. Service

under this Power Supply Agreement will be in accordance with standard WPL Rate Schedule PR-1.

WPL requests a waiver of Commission notice requirements and that an effective date of May 1, 1998 be assigned. WPL indicates that copies of the filing have been provided to Wisconsin Public Power Inc., and to the Public Service Commission of Wisconsin.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Power & Light Company

[Docket No. ER98-2754-000]

Take notice that on April 30, 1998, Wisconsin Power and Light Company (WPL), tendered for filing changes to its Partial Requirements Service tariff (PR-1). WPL indicates that the changes are being made to unbundle the transmission components of the rate. WPL has one customer taking service under the tariff and the customer is in agreement with the changes.

WPL requests a waiver of Commission notice requirements and that an effective date of May 1, 1998 be assigned. WPL indicates that copies of the filing have been provided to Wisconsin Public Power Inc. and to the Public Service Commission of Wisconsin.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Central Illinois Light Company

[Docket No. ER98-2756-000]

Take notice that April 30, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, on April 30, 1998, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement for one new customer, Merchant Energy Group of the Americas, Inc.

CILCO requested an effective date of April 6, 1998.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Florida Power Corporation

[Docket No. ER98-2758-000]

Take notice that on April 30, 1998, Florida Power Corporation (Florida Power), tendered for filing revisions to the capacity charges, reservation fees and energy adders for various interchange services provided by

Florida Power pursuant to interchange contracts.

The interchange services which are affected by these revisions are (1) Service Schedule A—Emergency Service; (2) Service Schedule B—Short Term Firm Service; (3) Service Schedule D—Firm Service; (4) Service Schedule F—Assured Capacity and Energy Service; (5) Service Schedule G—Backup Service; (6) Service Schedule H—Reserve Service; (7) Service Schedule I—Regulation Service; (8) Service Schedule OS—Opportunity Sales; (9) Service Schedule RE—Replacement Energy Service; (10) Contract for Assured Capacity And Energy With Florida Power & Light Company; (11) Contract for Scheduled Power and Energy with Florida Power & Light Company.

Florida Power requests that the amended revised capacity charges, reservation fees and energy adder be made effective on May 1, 1998. Florida Power requests waiver of the Commission's sixty-day notice requirement. If waiver is denied, Florida Power requests that the filing be made effective 60 days after the filing date.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Virginia Electric and Power Company

[Docket No. ER98-2759-000]

Take notice that on April 30, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Virginia Electric and Power Company and East Kentucky Power Cooperative under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97-3561-001. Under the tendered Service Agreement Virginia Power will provide services to East Kentucky Power Cooperative under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of April 30, 1998, for the Service Agreement.

Copies of the filing were served upon East Kentucky Power Cooperative, the Kentucky Public Service Commission, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. PacifiCorp

[Docket No. ER98-2761-000]

Take notice that PacifiCorp on April 30, 1998, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Non-Firm and Short-Term Firm Point-To-Point Transmission Service Agreements with City of Idaho Falls (Idaho Falls) under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to Idaho Falls, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Transmission Function's Bulletin Board System through a personal computer by calling (503) 813-5758 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. American Electric Power Service Corporation, Inc. and Central and South West Services, Inc.

[Docket No. ER98-2770-000]

Take notice that on April 30, 1998, American Electric Power Service Corporation, Inc. and Central and South West Services, Inc., tendered for filing (1) a System Integration Agreement which provides for the integration and coordination of their respective systems following their planned merger; (2) a System Transmission Integration Agreement; and (3) a Transmission Reassignment Tariff. The filing accompanies two related filings consisting of (1) a merger application under Section 203 of the Federal Power Act, and (2) a filing under Section 205 of the Federal Power Act of a joint transmission tariff.

The Applicants propose to make the System Integration Agreement, the System Transmission Integration Agreement and the Transmission Reassignment Tariff effective upon consummation of the merger. Copies of the filing have been served on the affected state regulatory commissions and upon all of the Applicants' wholesale customers.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. The California Power Exchange Corporation

[Docket No. ER98-2774-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX

Participants executed by the PX and Engage Energy US, L.P., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1) (2) and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Engage Energy US, L.P.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. American Electric Power Service Corporation and Central and South West Services, Inc.

[Docket No. ER98-2786-000]

Take notice that on April 30, 1998, American Electric Power Service Corporation and Central and South West Services, Inc., tendered for filing on behalf of the operating company subsidiaries of American Electric Power Company, Inc., and Central and South West Corporation, a proposed Open Access Transmission Tariff and procedures for compliance with the Commission's Standard of Conduct under 18 CFR 37.4, together with supporting testimony. The documents have been filed in conjunction with an application for authority to merge pursuant to Section 203 of the Federal Power Act, which is being filed contemporaneously. AEPSC requests that the documents be placed in effect as of the date the merger is consummated.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. The California Power Exchange Corporation

[Docket No. ER98-2798-000]

Take notice on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Arizona Public Service Co., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2, and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Arizona Public Service Co.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. The California Power Exchange Corporation

[Docket No. ER98-2799-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Enron Power Marketing, Inc., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Enron Power Marketing, Inc.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. The California Power Exchange Corporation

[Docket No. ER98-2800-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Pacific Gas & Electric Company for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Pacific Gas & Electric Company.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. The California Power Exchange Corporation

[Docket No. ER98-2801-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a

Meter Service Agreement for PX Participants executed by the PX and Southern California Edison Company for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Southern California Edison Company.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. The California Power Exchange Corporation

[Docket No. ER98-2802-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Midwest Sunset Cogeneration Company for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Midwest Sunset Cogeneration Company.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. The California Power Exchange Corporation

[Docket No. ER98-2803-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Duke Energy Trading & Marketing, L.L.C., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the

grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Duke Energy Trading & Marketing, L.L.C.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. The California Power Exchange Corporation

[Docket No. ER98-2804-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Electric Clearinghouse, Inc., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2), and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Electric Clearinghouse, Inc.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12466 Filed 5-11-98; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98-71-000, et al.]

Origen Power Corp., et al.; Electric Rate and Corporate Regulation Filings

May 5, 1998.

Take notice that the following filings have been made with the Commission:

1. Origen Power Corp.

[Docket No. EG98-71-000].

Take notice that on April 28, 1998, Origen Power Corp. (Applicant), with its principal office at P.O. Box 321, Oklahoma City, Oklahoma 73101, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that upon consummation of the purchase by OGE Energy Corp., of the outstanding stock of Oklahoma Loan Acquisition Corp. (OLAC), and the subsequent name change of OLAC to Origen Power Corp., Applicant will be engaged in owning and operating a cogeneration facility located near Pryor, Oklahoma (the Eligible Facility), with maximum net capacity of 128 megawatts, and selling electric energy exclusively at wholesale. A portion of that energy will be sold to Energy Corp.'s electric utility subsidiary, Oklahoma Gas and Electric Company (OG&E). All electric energy produced by the Eligible Facility will be sold exclusively at wholesale.

In connection with the purchase of OLAC by Energy Corp., and the sale of power to OG&E by Applicant, OG&E has obtained orders from the Oklahoma Corporation Commission and the Arkansas Public Service Commission with the findings required by Section 32(k) of the Public Utility Holding Company Act of 1935, as amended and Part 365 of the Commission's Regulations. See Application of Oklahoma Gas and Electric Company, Cause No. PUD 980000036, Order No. 421477 (O.C.C. Mar. 13, 1998) and Application of Oklahoma Gas and Electric Company, Docket No. 98-044-U, Order No. 1 (A.P.S.C. April 9, 1998).

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. American Electric Power Company, Inc.; Central and Southwest Corporation

[Docket No. EC98-40-000]

Take notice that on April 30, 1998, American Electric Power Company, Inc. (AEP), and Central and South West Corporation (CSW) (collectively, Applicants), tendered for filing an application to merge (Application).

The merger involves three corporations: the two Applicants, and Augusta Acquisition Corporation, a wholly owned subsidiary of AEP, which will serve the sole purpose of achieving the merger and will not survive the merger. Augusta will merge with and into CSW, which will survive and continue in existence for a period following the merger. At the closing, each share of CSW common stock will be converted into 0.6 of a share of AEP common stock with the former shareholders of CSW becoming shareholders of AEP. The merger will not affect any long-term or short-term debt securities of AEP, CSW, or any of their affiliates.

Following the merger, AEP will continue as a registered holding company under the Public Utility Holding Company Act. AEP will be the parent of the current seven AEP utility operating subsidiaries and the four CSW utility operating subsidiaries. None of these subsidiaries will lose its individual corporate existence as a consequence of the merger. AEP will also remain the parent of its existing non-utility subsidiaries and become the parent of CSW's non-utility subsidiaries.

Applicants state that the consideration for the merger was negotiated at arms-length. Applicants state that their merger will not have adverse effects on competition, on rates or on regulation.

Applicants state that they have, by overnight mail, served a copy of the Application, including all attached materials, on the eleven state regulatory agencies with jurisdiction over their electric utility operating subsidiaries, on all transmission dependent utilities located within the transmission service areas of those subsidiaries, on the subsidiaries' requirements customers located outside of those service areas, on all other utilities with which those subsidiaries are directly interconnected, and on representatives of the Securities and Exchange Commission, the Federal Trade Commission and the Department of Justice.

Applicants have also filed in a separate docket a joint Order No. 888 open access transmission tariff, which Applicants state would go into effect at

the time the merger closes and an Order No. 889 standards of conduct. In a further docket, the Applicants have also filed a System Integration Agreement, a Transmission Integration Agreement, and a Transmission Reassignment Tariff.

Applicants assert that the proposed merger is consistent with the public interest as required by Section 203 of the FPA. Applicants have requested that the Commission approve the merger without a hearing.

Comment date: June 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Western Kentucky Energy Corp.

[Docket No. EG98-72-000]

Take notice that on April 30, 1998, Western Kentucky Energy Corp. (WKEC), a Kentucky Corporation, with its principal place of business at P.O. Box 32010, 220 West Main Street, Louisville, Kentucky 40202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

WKEC will be engaged directly and exclusively in the business of owning (in its capacity as lessee) or operating, the following eligible facilities (Facilities) owned by Big Rivers Electric Corporation (Big Rivers) and selling electric energy exclusively at wholesale: Kenneth C. Coleman Plant, 455 MW (net); Robert D. Green Plant, 454 MW (net); D.B. Wilson Plant, 420 MW (net); and the Robert D. Reid facility (65 MW (net) combustion turbine, and a 65 MW (net) steam turbine). All of the Facilities' net electric power will be sold exclusively at wholesale in interstate commerce by Big Rivers or WKEC. The Kentucky Public Service Commission has determined that the status of each of the Facilities as an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Southern Indiana Gas and Electric Company

[Docket No. ER96-705-001]

Take notice that on April 30, 1998, Southern Indiana Gas and Electric Company tendered for filing with the Federal Energy Regulatory Commission notification that it has not collected amounts in excess of the settlement

rates approved in the letter order issued on March 25, 1998 in the above-referenced docket.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. The Detroit Edison Company

[Docket No. ER97-4215-001]

Take notice that on April 30, 1998, The Detroit Edison Company filed a refund report in the above-referenced docket.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Company

[Docket Nos. ER98-201-001 and ER98-202-001]

Take notice that on April 30, 1998, The Detroit Edison Company filed refund reports in the above-referenced dockets.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. The Detroit Edison Company

[Docket Nos. ER97-4410-001 and ER97-4411-001]

Take notice that on April 30, 1998, The Detroit Edison Company filed a refund report in the above-referenced dockets.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER98-956-000]

Take notice that on April 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing an amendment to its filing of a Firm Point-to-Point Transmission Service Agreement between NSP and the City of Medford, Wisconsin—Medford Electric Utility.

NSP is responding to the Commission's deficiency letter dated March 31, 1998. NSP is requesting that the filed Firm Point-to-Point Transmission Service Agreement, as revised by this filing, be accepted for filing effective January 1, 1998. NSP requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER98-2498-000]

Take notice that on April 22, 1998, the Public Service Company of New Mexico tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Southern New Hampshire Hydroelectric

[Docket No. ER98-2615-000]

Take notice that on April 20, 1998, Southern New Hampshire Hydroelectric tendered for filing an Interconnection Agreement with the Public Service Company of New Hampshire.

Comment date: May 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER98-2747-000]

Take notice that on April 30, 1998, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations Restated Power Sales Agreements with Arizona Electric Power Cooperative, Inc., City of Mesa, Arizona, and Electrical District No. 2 of Pinal County, Arizona.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER98-2760-000]

Take notice that on April 30, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Long Island Lighting Company under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97-3561-001. Under the tendered Service Agreement, Virginia Power will provide services to Long Island Lighting Company under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of April 30, 1998, for the Service Agreement.

Copies of the filing were served upon Long Island Lighting Company, the New York State Public Service Commission,

the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER98-2763-000]

Take notice that on April 30, 1998, Tampa Electric Company (Tampa Electric), tendered for filing updated transmission service rates under its agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the updated transmission service rates be made effective as of May 1, 1998, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Tampa Electric Company

[Docket No. ER98-2764-000]

Take notice that on April 30, 1998, Tampa Electric Company (Tampa Electric), tendered for filing cost support schedules showing an updated daily capacity charge for its scheduled/short-term firm interchange service provided under interchange contracts with each of 19 other utilities. Tampa Electric also tendered for filing updated caps on the charges for emergency and scheduled/short-term firm interchange transactions under the same contracts.

In addition, Tampa Electric tendered for filing a revised transmission loss factor, and revised open access transmission service tariff sheets on which the transmission loss factor is stated.

Tampa Electric requests that the updated daily capacity charge and caps on charges, and the revised transmission loss factor and tariff sheets, be made effective as of May 1, 1998, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the parties to the affected interchange contracts with Tampa Electric and each party to a service agreement under Tampa Electric's open access tariff, as well as the Florida and Georgia Public Service Commissions.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER98-2765-000]

Take notice that on April 30, 1998, Commonwealth Edison Company (ComEd), tendered for filing 53 service agreements establishing various entities as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of April 1, 1998, for the service agreements and, accordingly, seek waiver of the Commission's notice requirements.

ComEd states that a copy of the filing was served on the Illinois Commerce Commission and an abbreviated copy of the filing was served on each affected customer.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. American Electric Power Service Corporation

[Docket No. ER98-2766-000]

Take notice that on April 30, 1998, American Electric Power Service Corporation, as agent for the AEP Operating Companies (AEP), tendered for filing with the Commission an executed Service Agreement with the City of Radford, Virginia (Radford), under the Wholesale Market Tariff of the AEP Companies. AEP requests that the Agreement be made effective as of July 1, 1998.

AEP states that a copy of its filing was served upon Radford, the Indiana Utility Regulatory Commission, the Public Service Commission of Kentucky, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, the Tennessee Regulatory Authority, the Virginia State Corporation Commission, and the Public Service Commission of West Virginia.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. American Electric Power Service Corporation

[Docket No. ER98-2767-000]

Take notice that on April 30, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after April 1, 1998.

AEPSC also requests termination of two agreements filed under a prior open access tariff, AEP Companies' FERC

Electric Tariff Original Volume No. 1. The customers holding those agreements, Engage Energy US, L.P. and Cargill-Alliant, L.L.C., have executed agreements filed in this Docket under the OATT.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Mid-Continent Area Power Pool

[Docket No. ER98-2768-000]

Take notice that on April 30, 1998, the Mid-Continent Area Power Pool (MAPP), by counsel on behalf of its members who are subject to the jurisdiction of the Federal Energy Regulatory Commission as public utilities as defined in Section 201(e) of the Federal Power Act, submitted for filing, pursuant to Section 205 of the Federal Power Act, additional transmission service charges, with supporting workpapers, applicable to service under Service Schedule F of the Restated MAPP Agreement.

A copy of the filing was sent to the Illinois Commerce Commission, the Iowa Utilities Board, the Kansas Corporation Commission, the Michigan Public Service Commission, the Minnesota Department of Public Service, the Minnesota Public Utilities Commission, the Missouri Public Service Commission, the Montana Public Service Commission, the Nebraska Power Review Board, the North Dakota Public Service Commission, the Public Service Commission of Wisconsin, and the South Dakota Public Utilities Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. The California Power Exchange Corporation

[Docket No. ER98-2773-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Noram Energy Services for acceptance by the Commission in compliance with the Commission's order issued March 20, 1998, in Docket Nos. ER98-1955-000 and ER98-1663-007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1),

(2) and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Noram Energy Services.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. The California Power Exchange Corporation

[Docket No. ER98-2775-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and California Polar Power Brokers for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2) and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon California Polar Power Brokers.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. The Detroit Edison Company

[Docket No. ER98-2776-000]

Take notice that on April 30, 1998, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (the Service Agreement), for Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and DTE Energy Trading, Inc., dated as of March 4, 1998. The parties have not engaged in any transactions under the Service Agreements prior to thirty days prior to this filing. Detroit Edison requests that the Service Agreements be made effective as rate schedules as of April 1, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Duke Energy Corporation

[Docket No. ER98-2777-000]

Take notice that on April 30, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and

acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and OGE Energy Resources, Inc. The parties have not engaged in any transactions under the TSA prior to thirty (30) days prior to the filing date. Duke requests that the TSA be made effective as a rate schedule as of April 2, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. The California Power Exchange Corporation

[Docket No. ER98-2778-000]

Take that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Texaco Energy Services for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2) and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Texaco Energy Services.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. The California Power Exchange Corporation

[Docket No. ER98-2779-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for PG&E Energy Services Corp., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon PG&E Energy Services Corp.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. AG-Energy, L.P.; Seneca Power Partners, L.P.; Sterling Power Partners, L.P.; Power City Partners, L.P.

[Docket Nos. ER98-2782-000]

Take notice that on April 30, 1998, AG-Energy, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P. and Power City Partners, L.P. (Applicants), tendered for filing with the Federal Energy Regulatory Commission FERC Electric Rate Schedules No. 1. The Applicants request authority to make wholesale power sales, including energy and capacity, at market-based rates, request certain blanket authorizations, and waiver of certain of the Commission's Regulations. The Applicants request that the tendered rate schedules become effective June 30, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Bridgeport Energy LLC

[Docket No. ER98-2783-000]

Take notice that on April 30, 1998, Bridgeport Energy LLC tendered for filing an Application for Order Accepting Initial Rate Schedule, Granting Limited Authorizations and Blanket Authority, and Waiving Certain Requirements. Such Application seeks waivers and blanket approvals under various regulations of the Commission and for an Order accepting its FERC Electric Rate Schedule No. 1. Bridgeport Energy proposes that its Rate Schedule No. 1, become effective the earlier of (1) 60 days after the date of this filing or (2) the date Commission issues an Order accepting Rate Schedule No. 1 for filing. Bridgeport Energy is a limited liability company organized and existing under the laws of the State of Delaware. Bridgeport Energy is developing and will own and operate a 520 MW combined cycle gas turbine generating plant in Bridgeport, Connecticut and the other facilities necessary to interconnect the generating plant to the UI transmission grid (the Facility). The Facility will use natural gas as its fuel. Bridgeport Energy intends to sell energy and capacity from the Facility at market-based rates.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Pacific Gas and Electric Company

[Docket No. ER98-2785-000]

Take notice that on April 30, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing a Notice of Termination of two Reliability Must-Run rate schedules for service to the California Independent System Operator

Corporation (ISO), from its Moss Landing and Oakland power plants. These facilities have been sold to Duke Energy Moss Landing LLC and Duke Energy Oakland LLC, respectively (Duke), and Duke has filed with the Commission its own rate schedules for must-run service to the ISO from these power plants. PG&E has requested that this Notice of Termination be effective on the later of June 23, 1998 or the date on which the Commission makes Duke's rate schedules effective.

Copies of this filing have been served upon the ISO and the California Public Utilities Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Central Power and Light Company

[Docket No. ER98-2787-000]

Take notice that on April 30, 1998, Central Power and Light Company (CPL), submitted for filing an executed Delivery Point and Service Specifications sheet providing for a minor change to the Service Agreement between CPL and one of its full requirements wholesale customers, Magic Valley Electric Cooperative, Inc., executed under CPL's FERC Electric Tariff, 6th Revised Volume No. 1.

CPL states that a copy of the filing has been sent to the Public Utility Commission of Texas and to Magic Valley Electric Cooperative, Inc.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Tampa Electric Company

[Docket No. ER98-2790-000]

Take notice that on April 30, 1998, Tampa Electric Company (Tampa Electric), tendered for filing an updated weekly capacity charge for short term power service provided under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies). Tampa Electric also tendered for filing updated caps on energy charges for emergency assistance and short term power service under the contract.

Tampa Electric requests that the updated capacity charge and caps on charges be made effective as of May 1, 1998, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon Southern Companies and the Florida Public Service Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Arizona Public Service Company
[Docket No. ER98-2791-000]

Take notice that on April 30, 1998, Arizona Public Service Company (APS), tendered for filing an unexecuted Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3, for service to the California Power Exchange.

A copy of this filing has been served on the Arizona Corporation Commission and California Power Exchange.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. The California Power Exchange Corporation
[Docket No. ER98-2792-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Scana Energy Marketing, Inc., for acceptance by the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Scana Energy Marketing, Inc.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. The California Power Exchange Corporation
[Docket No. ER98-2793-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for BBOSS, LLC for acceptance by the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon BBOSS, LLC.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. The California Power Exchange Corporation
[Docket No. ER98-2794-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Department of Water & Power, City of Los Angeles for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Department of Water & Power, City of Los Angeles.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. The California Power Exchange Corporation
[Docket No. ER98-2795-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for PG&E Power Trading for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon PG&E Power Trading.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. The California Power Exchange Corporation
[Docket No. ER98-2796-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for

California Department of Water Resources for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon California Department of Water Resources.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. The California Power Exchange Corporation
[Docket No. ER98-2797-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for New Energy Ventures for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon New Energy Ventures.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. The California Power Exchange Corporation
[Docket No. ER98-2805-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a Meter Service Agreement for PX Participants executed by the PX and Williams Energy Services Company for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the date that the PX began operations. The PX has requested confidential treatment of Schedules (1), (2) and (4) attached to the Agreement on the grounds that such Schedules contain commercially sensitive information.

The PX states that this filing has been served upon Williams Energy Services Company.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. The California Power Exchange Corporation
[Docket No. ER98-2806-000]

Take notice that on April 30, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for American Electric Power for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon American Electric Power.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Wisconsin Public Service Corporation
[Docket No. ER98-2808-000]

Take notice that on April 30, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 10 to Service Agreement No. 5, for service to Manitowoc Public Utilities (MPU), pursuant to WPSC's FERC Electric Tariff, 2nd Revised Volume No. 1. Supplement No. 10, provides for additional delivery points for service to MPU. WPSC states that the filing proposes no other changes to the terms and conditions under which WPSC provides service to MPU.

WPSC asks that Supplement No. 10 be allowed to become effective sixty days after filing. WPSC states that MPU consents to and supports this requested effective date. WPSC further states that copies of the filing have been served upon MPU and the Wisconsin Public Service Commission.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. The California Power Exchange Corporation
[Docket No. ER98-2827-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed

unexecuted Meter Service Agreement for PX Participants for Enron Energy Systems for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Enron Energy Systems.

Copies of this filing are on file with the Commission and are available for public inspection.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. The California Power Exchange Corporation
[Docket No. ER98-2828-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed unexecuted Meter Service Agreement for PX Participants for Sacramento Municipal Utility District for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Sacramento Municipal Utility District.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. The California Power Exchange Corporation
[Docket No. ER98-2829-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed unexecuted Meter Service Agreement for PX Participants for City of Riverside for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds

that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon City of Riverside.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. The California Power Exchange Corporation
[Docket No. ER98-2830-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Salt River Project A.I. & P.D., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Salt River Project A.I. & P.D.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. The California Power Exchange Corporation
[Docket No. ER98-2831-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed unexecuted Meter Service Agreement for PX Participants for PacificCorp for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon PacificCorp.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. Logan Generating Company, L.P.
[Docket No. QF87-617-005]

Take notice that on April 28, 1998, Logan Generating Company, L.P. (Logan), 7500 Old Georgetown Road, Bethesda, Maryland 20814-6161,

submitted for filing an application for Commission recertification as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 218 MW, coal-fired topping-cycle cogeneration facility is located in Logan Township, Gloucester County, New Jersey. Steam recovered from the facility is used in the production of various chemical products by Solutia. Power from the facility is sold to Atlantic City Electric Company and PG&E Energy Trading-Power, L.P. The facility was certified as a QF in Docket No. QF87-617-000 [41 FERC ¶ 62,222 (1987)], and recertified in Docket No. QF87-617-001 [58 FERC ¶ 62,235 (1992)]. Logan filed a notice of self-recertification in Docket Nos. QF87-617-002, QF87-617-003, and QF87-617-004. According to the applicant, the instant recertification is requested in contemplation of changes in the ownership of the facility. It also involves changes in the operating and efficiency standard calculations, based on actual operating experience.

Comment date: June 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. Cambridge Electric Light Company, Commonwealth Electric Company, Florida Power & Light Company, Florida Power Corporation, GPU Energy, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, IES Utilities, Inc., Idaho Power Company, Minnesota Power & Light Company, Montana Power Company, Montaup Electric Company, Oklahoma Gas & Electric Company, Pacific Gas & Electric Company, Pennsylvania Power & Light Co., Potomac Electric Power Company, Public Service Electric & Gas Company, Southwestern Public Service Company, and Wisconsin Public Service Company.

[Docket Nos. OA97-173-000, OA97-443-000, OA97-447-000, OA97-457-000, OA97-415-000, OA97-455-000, OA97-590-000, OA97-130-000, OA97-441-000, OA97-453-000, OA97-185-000, OA97-515-000, OA97-423-000, OA97-594-000, OA97-294-000, OA97-429-000, OA97-400-000, and OA97-234-000]

Take notice that the companies listed in the above-captioned dockets submitted revised standards of conduct under Order Nos. 889 *et seq.*² The

¹ The revised standards of conduct were submitted between April 9 and April 13, 1998.

² Open Access Same-Time Information System (Formerly Real-Time Information Network) and

revised standards were submitted in response to the Commission's March 12, 1998, order on standards of conduct.³

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12465 Filed 5-11-98; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

(FR-6012-9)

Notice of Peer Consultation Workshop on Selenium Aquatic Toxicity and Bioaccumulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: This document announces a Peer Consultation Workshop on Selenium Aquatic Toxicity and Bioaccumulation which is being sponsored by the U.S. EPA, Office of Water, Office of Science and Technology. This peer consultation workshop is being conducted to assess the state of the science underlying various technical issues related to EPA's review and revision of its freshwater, chronic aquatic life criterion for selenium. During the workshop, a panel

Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,035 (April 24, 1996); Order No. 889-A, order on rehearing, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889-B, rehearing denied, 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

³ Cambridge Electric Light Company, *et al.*, 82 FERC ¶ 61,246 (1998).

of independent scientific experts external to the Agency will be responding to a technical charge developed by the Agency for addressing the various technical issues. The product of this workshop will be a report that will contain a summary of workshop discussions, the responses of the experts to the technical charge, and their supporting justification. EPA intends to consider the experts' responses to the technical charge during its forthcoming review and revision of the freshwater chronic aquatic life criterion for selenium.

DATES: This workshop will be held on Wednesday, May 27, 1998 through Thursday, May 28, 1998. It will begin at 9:00 a.m. on Wednesday and will conclude on Thursday at 3:30 p.m. (approximate time).

ADDRESSES: The Peer Consultation Workshop on Selenium Aquatic Toxicity and Bioaccumulation will be held at the Radisson Barcelo Hotel, Washington, DC, at 2121 P Street, NW, Washington, DC, Telephone: 202-293-3100.

FOR FURTHER INFORMATION CONTACT: Keith Sappington, Health and Ecological Criteria Division (4304), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460. Telephone: 202-260-9898, Fax 202-260-1036, or by E-mail at sappington.keith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Peer Consultation Workshop on Selenium Aquatic Toxicity and Bioaccumulation is to review and discuss the scientific database regarding several technical issues confronting EPA's review of its freshwater chronic aquatic life criterion for selenium. Some of these technical issues include whether or not reliable residue-based toxicological effect levels can be established in aquatic organisms, identifying which forms of selenium are most toxicologically-relevant in tissues and other media, and quantifying the effect that various environmental factors might have on the extent and rates of selenium bioaccumulation in aquatic life. The invited experts will have expertise in areas including selenium biogeochemistry, aquatic toxicology, pharmacology, bioaccumulation, environmental and analytical chemistry, modeling, and ecotoxicology in aquatic ecosystems. In responding to the technical charge, these experts will consider the available scientific literature on selenium effects and bioaccumulation in aquatic organisms in the context of setting toxicological effect levels of selenium on aquatic life in freshwater ecosystems. The product of this workshop will be a technical

report that contains the experts' responses to the technical charge, clear statements of the supporting rationale for conclusions made, and an assessment of the level of confidence (or conversely, the degree of uncertainty) associated with each response. EPA intends to consider the experts' responses to the technical charge in its subsequent review and revision of the freshwater, chronic aquatic life criterion for selenium.

To attend the Peer Consultation Workshop on Selenium Aquatic Toxicity and Bioaccumulation as an observer, call the ERG Conference Registration Line at telephone number, 781-674-7374. You may also register online at www.erg.com. There is no charge for attending this workshop as an observer, but seats are limited, so register as soon as possible. Each registrant will receive a confirmation letter, a preliminary agenda, and a logistical fact sheet. Any observer wishing to make comments or address issues must sign up with ERG prior to the workshop. Each will be assigned a time slot on a first-come, first-served basis. Individual comments should be limited to two to three minutes.

Dated: May 1, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98-12581 Filed 5-11-98; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK OF THE UNITED STATES

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Withdrawal

AGENCY: Export-Import Bank of the United States.

ACTION: Notice; withdrawal.

SUMMARY: The notice of submission for OMB review of a revision of a currently approved information collection (63 FR 24179) published on May 1, 1998 is withdrawn because the period for public comment is still open until May 26, 1998. This period for public comment was originally published on March 27, 1998, in 63 FR, No. 59, 14938.

FOR FURTHER INFORMATION CONTACT: Any additional information may be obtained from Daniel Garcia, Export-Import Bank of the United States, 811 Vermont Ave., N.W., Washington, D.C. 20571, (202) 565-3335.

Dated: May 7, 1998.

Daniel Garcia,

Agency Clearance Officer.

[FR Doc. 98-12550 Filed 5-11-98; 8:45 am]

BILLING CODE 6990-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 14, 1998, from 1:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883-4025, TDD (703) 883-4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Policy Statement on Interest Rate Risk
2. Investment Regulation [12 CFR Part 615, Subpart E] (Proposed)

C. Reports

1. Conditions in the System
2. Examiner Commissions with Specialist Certifications

* Closed Session

D. Reports

1. OSMO Report
2. OGC Litigation Report

Dated: May 7, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98-12658 Filed 5-8-98; 12:29 pm]

BILLING CODE 6750-01-P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10).

FEDERAL COMMUNICATIONS COMMISSION

Third Meeting of the Advisory Committee for the 1999/2000 World Radiocommunication Conference (WRC-99 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC-99 Advisory Committee will be held on Friday, May 22, 1998, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 1999 World Radiocommunication Conference. The Advisory Committee will consider any consensus views or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: May 22, 1998; 9:00 am—11:00 am.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, FCC International Bureau, Planning and Negotiations Division, at (202) 418-0420.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC-99 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 1999 World Radiocommunication Conference (WRC-99). In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the second meeting of the WRC-99 Advisory Committee.

The WRC-99 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the third meeting is as follows:

Agenda

Third Meeting of the WRC-99 Advisory Committee, Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554.

May 22, 1998; 9:00 am—11:00 am

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Second Meeting
3. IWG Reports

4. Consideration of Consensus Views, Proposals, or Option Papers
5. Future Meetings
6. Other Business.

Federal Communications Commission,
Magalie Roman Salas,
Secretary
[FR Doc. 98-12607 Filed 5-11-98; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

May 7, 1998.
OPEN COMMISSION MEETING: Thursday, May 14, 1998.
The Federal Communications Commission will hold an Open Meeting

on the subjects listed below on Thursday, May 14, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Common Carrier	Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities. Summary: The Commission will consider action to amend its rules governing Telecommunications Relay Services (TRS).
2	Wireless Telecommunications	Title: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report of Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services. Summary: The Commission will consider a Report fulfilling the requirement of 47 U.S.C. Section 332(c)(1)(c) (the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Section 6002(b)), which directs the Commission to annually report on the state of competition with respect to commercial mobile radio services.
3	Office of Engineering and Technology; Common Carrier and International.	Title: 1998 Biennial Regulatory Review—Amendment of Part 2 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment and to Implement Mutual Recognition Agreements; Amendment of part 68 of the Commission's Rules to Modify the Equipment Authorization Process for Telephone Terminal Equipment and to Implement Mutual Recognition Agreements; and Amendment of Part 25 of the Commission's Rules to Begin Implementation of the Global Mobile Personal Communications for Satellite (GMPCS) Arrangements. Summary: The Commission will consider proposed rules to 1) further streamline the equipment authorization process for radio frequency and telephone terminal equipment; 2) implement a Mutual Recognition agreement with the European Community and allow for similar agreements with other foreign governmental parties; and 3) set standards for the approval of equipment used in the Global Mobile Personal Communications by Satellite (GMPCS) service.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418-0500; TTY (202) 418-2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857-3800; fax (202) 857-3805 and 857-3184; or TTY (202) 293-8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is <http://www.itsi.com>.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993-3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966-2211 or fax (202) 966-1770; and from Conference Call USA (available only outside the Washington, D.C.

metropolitan area), telephone 1-800-962-0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834-0100; fax number (703) 834-0111.

Federal Communications Commission,
Magalie Roman Salas,
Secretary.
[FR Doc. 98-12758 Filed 5-8-98; 3:13 pm]
BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 98-808]

Waiver of Business and Industrial/Land Transportation Channel Construction Requirements

1. On February 20, 1998, Southern Company (Southern) filed a Request for Waiver of Section 90.629 of the Commission's Rules to further extend the extended implementation period for its Business and Industrial Land Transportation (I/LT) Category channels that Southern has converted to commercial use. Southern, an electric utility holding company, operates an 800 MHz Specialized Mobile Radio

(SMR) system on Business and I/LT channels, and on a small number of SMR and General Category channels.¹ The channels were licensed between 1992 and 1994, and Southern received a five-year extended implementation period. In 1995, Southern, apparently by means of intercategory sharing, converted the Business and I/LT channels to commercial use. It has constructed and placed in operation all of the base stations, and sixty-five percent of the channels, for which it is licensed. Southern seeks to extend the implementation period for its Business and I/LT channels, which expires on May 20, 1999, for an additional five years or until the Commission auctions those channels, whichever is sooner.

2. In its Request for Waiver, Southern asserts that a further extension of the implementation period is necessary because the current implementation period is unduly burdensome, frustrates the purpose of our rules, and is contrary

¹ Pursuant to the recently completed auction of licenses for the upper 200 channels of the SMR Service in the 800 MHz band, on March 9, 1998, Southern was conditionally granted licenses for frequency block A in BEAs 74, 75, and 78-82. See FCC Announces the Corrected Conditional Grant of 800 MHz SMR Licenses, Public Notice No. DA 98-482 (released March 10, 1998).

to the public interest. Southern's system, which has a service area of over 120,000 square miles in the southeastern United States, provides internal communications for Southern's operating companies and provides service to a large external customer base, including public utilities, federal, state, and local governments, and emergency management agencies, such as sheriffs' departments and ambulance services. The system provides voice dispatch service, full-duplex telephone interconnection, short message service (similar to alphanumeric paging), and data transmission capabilities. Southern states that the continued operation of its system is necessary to maintain competition in the urban dispatch service market, and to maintain dispatch and telephone interconnection service in rural areas. It also states that it is at a severe disadvantage with respect to other Commercial Mobile Radio Service (CMRS) providers because the subsequently-adopted CMRS construction requirement based on channel usage and population coverage is more flexible than the requirement for Business and I/LT channels.

3. We also note that on April 22, 1998, the Land Mobile Communications Council filed a Petition for Rule Making regarding the allocation of spectrum for the Private Mobile Radio Services. We anticipate that the Commission will resolve the matters raised therein in another proceeding, but we invite comments on how the LMCC Petition and the Southern waiver request relate to issues the Commission is likely to consider with regard to implementation of the Balanced Budget Act of 1997 (the Act). The Act, which mandates that most mutually exclusive license applications be resolved by competitive bidding, gives rise to such issues as whether geographic area licensing for Business and I/LT channels serves the public interest, how to define bidder eligibility for auctions held to award mutually exclusive licenses for these channels, how to define the class of land mobile licensee that is exempt from licensing by auction, and whether the existence of the Southern Request for Waiver and a number of other applications requesting large numbers of channels in the I/LT and Business Categories should be considered when developing rules for future licensing of these channels.²

² The Wireless Telecommunications Bureau has pending before it a number of applications filed by single users for large numbers of 800 MHz I/LT and Business channels. The applicants' individual communications requirements do not appear sufficient to require such large numbers of

4. Interested parties may file comments on Southern's Request for Waiver on or before May 28, 1998. Parties interested in submitting reply comments must do so on or before June 12, 1998. All comments should reference Southern's Request for Waiver with the designated DA number, and should be filed with the Office of the Secretary, Federal Communications Commission, 1919 M St., N.W., Room 222, Washington, D.C. 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th St., N.W., Washington, D.C. 20036, (202) 857-3800, and to Scot Stone, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, 2025 M St., N.W., Room 8010G, (202) 418-0680 or via e-mail to ssstone@fcc.gov.

5. The full text of the Request for Waiver, comments, and reply comments are available for public inspection and duplication during regular business hours in the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M St., N.W., Room 8010, Washington, D.C. 20554. Copies also may be obtained from ITS, 1231 20th St., N.W., Washington, D.C. 20036, (202) 857-3800.

6. For further information, contact Scot Stone of the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau at (202) 418-0680 or via e-mail to ssstone@fcc.gov.

Federal Communications Commission,
Rosalind Allen,
Deputy Chief, Wireless Telecommunications Bureau.
[FR Doc. 98-12606 Filed 5-11-98; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission,

channels. The Bureau continues to maintain these applications in pending status until the Act is fully implemented.

Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 217-011620.
Title: Hapag-Lloyd/P&O Nedlloyd Slot Exchange Agreement.

Parties:

Hapag-Lloyd Container Linie GmbH ("Hapag")

Treated as a single party, referred to as ("PONL") P&O Nedlloyd Limited, P&O Nedlloyd B.V.

Synopsis: The proposed Agreement authorizes PONL and Hapag to exchange slots on vessels owned, operated or utilized by them in the trade between North Europe and the U.S. Atlantic and Gulf Coasts, and to engage in a limited range of related cooperative arrangements in the trade. The parties have requested a shortened review period.

Agreement No.: 217-011621.

Title: Hapag-Lloyd/P&O Nedlloyd/Sea-Land Space Charter Agreement.

Parties:

Hapag-Lloyd Container Linie GmbH ("Hapag")

Treated as a single party, referred to as ("PONL") P&O Nedlloyd Limited, P&O Nedlloyd B.V.
Sea-Land Service, Inc. ("Sea-Land")

Synopsis: The proposed Agreement authorizes PONL and Sea-Land to charter space to Hapag and authorizes the parties to enter into a limited range of related cooperative arrangements in the trade between North Europe and the U.S. Atlantic and Gulf Coasts. The parties have requested a shortened review period.

Agreement No.: 224-200870-001.

Title: Port of Oakland/Marine Terminals Corporation Management Agreement.

Parties:

Port of Oakland
Marine Terminals Corporation ("MTC")

Synopsis: The proposed Agreement reduces the annual crane guarantee by 750 hours in MTC's Management Agreement with the Port for the Port's Seventh Street Marine Container Terminal. It also provides that the use of Crane No. X-423 by MTC shall not count towards MTC's annual crane guarantee, and that MTC may use Crane No. X-423 until such time as the Port elects to remove it from the facilities.

Agreement No.: 224-201051.
Title: Atlantic Coast Public Marine Terminal Discussion Agreement.

Parties:

Georgia Ports Authority
Maryland Port Administration
North Carolina State Ports Authority

South Carolina State Ports Authority
The Port Authority of New York &
New Jersey
Virginia Port Authority.

Synopsis: The proposed Agreement would permit the parties to meet, discuss, and exchange information regarding a broad range of port activities and issues of concern to the marine terminal industry. The Agreement does not authorize its members to take any collective action. Any agreement the parties might desire to implement would be filed with the Commission in accordance with the provisions of the Shipping Act of 1984, if required. The Agreement will be effective for an initial term of five years.

Agreement No.: 224-201052.

Title: Port of Oakland and Marine Terminals Corporation License and Concession Agreement.

Parties:

Port of Oakland
Marine Terminals Corporation.

Synopsis: Under the proposed agreement, the port grants Marine Terminals Corporation a license, concession and privilege, subject to the terms and conditions set forth in the agreement, to use about 25 acres, plus adjacent vessel berthing area in the Oakland Outer Harbor Area, currently leased by the port from the United States Army for an initial period expiring July 31, 1998, with options for subsequent one-year extensions.

By Order of the Federal Maritime Commission.

Dated: May 7, 1998.

Joseph C. Polking,
Secretary.

[FR Doc. 98-12584 Filed 5-11-98; 8:45 am]

BILLING CODE 8730-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

FirstAir, Inc. d/b/a SeaMasters, 980 Lone Oak Road, Suite 160, Eagan, MN 55121.
Officers: Richard D. McCrady, Jr., President, Kim L. McCrady, Vice President

Logical Logistics International Ltd., 5188 Roswell Road, Atlanta, GA 30342. Officer: Alan M. Sheps, President
Provex, Inc., 6581 N.W. 82nd Avenue, Miami, FL 33166. Officer: Jose Arteaga, President

Paramount Transportation System, Inc., 100 N. Rancho Santa Fe Road, Suite #125, San Marcos, CA 92069. Officers: Mike Keller, President, Grace Bishar, Secretary/Treasurer

Ocean Transportation Services, LLC, Two Union Square, 601 Union Street, Suite 5568, Seattle, WA 98101-2327. Officers: Neal E. Gordon, President, Ernest Sarkissian, Vice President

A.C.T.S. American Christian Transportation Service, 136 Church Street, Rockaway, NJ 07866. Donald G. Andersen, Sole Proprietor

Dated: May 7, 1998.

Joseph C. Polking,
Secretary.

[FR Doc. 98-12583 Filed 5-11-98; 8:45 am]

BILLING CODE 8730-01-M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411

Locust Street, St. Louis, Missouri 63102-2034:

1. *Union Planters Corporation*, and its second tier subsidiary, Union Planters Holding Corporation, both of Memphis, Tennessee; to acquire 100 percent of the voting shares and to merge with its wholly owned bank holding company subsidiary, Alvin Bancshares, Inc., and its wholly owned subsidiary, Alvin Bancshares, Delaware, Inc., and thereby indirectly acquire Alvin State Bank, all of Alvin, Texas.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. *Merchants Holding Company*, Winona, Minnesota; to acquire 32.1 percent of the voting shares of BRAD, Inc., Black River Falls, Wisconsin, and thereby indirectly acquire Black River Country Bank, Black River Falls, Wisconsin.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *WTSB Bancorp, Inc.*, Snyder, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of WTSB Delaware Bancorp, Inc., Dover, Delaware, and thereby indirectly acquire West Texas State Bank, Snyder, Texas.

2. *WTSB Delaware Bancorp, Inc.*, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of West Texas State Bank, Snyder, Texas.

Board of Governors of the Federal Reserve System, May 6, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98-12454 Filed 5-11-98; 8:45 am]
BILLING CODE 8210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 12:00 noon, Monday, May 18, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.bog.frb.fed.us> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 8, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-12656 Filed 5-8-98; 12:29 pm]

BILLING CODE 8210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pfizer, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of four new animal drug applications (NADA's) held by Pfizer, Inc. The NADA's provide for use of oxytetracycline hydrochloride. The sponsor requested the withdrawal of approval of the NADA's because the animal drug products are no longer manufactured or marketed.

EFFECTIVE DATE: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary

Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0212.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017 is the sponsor of NADA 8-696 TM-5 Antibiotic Feed Supplement (oxytetracycline), NADA 10-661 Terramycin Egg Formula (oxytetracycline hydrochloride), NADA 11-034 Liquimast Solution for Mastitis (oxytetracycline hydrochloride), and NADA 13-470 TM-10 Premix (oxytetracycline). The animal drug products were subject to review under the National Academy of Sciences/ National Research Council, Drug Efficacy Study Implementation Program, and are currently subject to requirements for finalization under that program. Pfizer, Inc., the current sponsor, requested withdrawal of approval of the NADA's because the animal drug products are no longer manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.48), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approvals of NADA's 8-696, 10-661, 11-034, 13-470, and all supplements and amendments thereto are hereby withdrawn, effective May 22, 1998.

These products had not been the subject of a regulation published under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b). Therefore, an amendment to the animal drug regulations to reflect the withdrawal of approvals is not required.

Dated: April 24, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98-12612 Filed 5-11-98; 8:45 am]

BILLING CODE 4180-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N-0285]

Sanofi Pharmaceuticals, Inc., et al.; Withdrawal of Approval of 21 New Drug Applications and 62 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 21 new drug applications (NDA's) and 62 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 4-496	Pipanol Powder and Tablets (trihyphenidyl)	Sanofi Pharmaceuticals, Inc., 90 Park Ave., New York, NY 10016.
NDA 6-328	Isuprel (isoproterenol hydrochloride) Sublingual Tablets, 10 milligrams (mg) and 15 mg	Do.
NDA 7-514	Insulin, NPH Iletin	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.
NDA 8-256	Insulin	Do.
NDA 8-717	Acetaminophen Tablets USP (acetaminophen tablets)	Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216-6532.
NDA 8-847	Sucostrin (succinylcholine chloride injection)	Apothecon, Inc., P.O. Box 4500, Princeton, NJ 08543-4500.
NDA 8-983	Arfonad (trimethaphan camsylate) Ampules	Hoffmann-La Roche, Inc., 40 Kingsland St., Nutley, NJ 07110-1199.
NDA 9-088	Neothylline (dyphylline) injection	TEVA Pharmaceuticals USA (formerly Lemmon Co.), 650 Cathill Rd., Sellersville, PA 18960.
NDA 9-300	Insulin, Lente Iletin I	Eli Lilly and Co.
NDA 9-410	Lotusate Tablets and Capsules (talbutal)	Sanofi Pharmaceuticals, Inc.
NDA 9-479	Jayne's Liquid Vermituge (piperazine hexahydrate)	Do.

Application No.	Drug	Applicant
NDA 10-966 NDA 10-967 NDA 11-446	Insulin, Ultralente Insulin, Semilente Sterane (prednisolone acetate injection) Intramuscular and Intra-Articular	Eli Lilly and Co. Do. Pfizer, Inc., 235 East 42d St., New York, NY 10017-5755.
NDA 11-724 NDA 17-108	Fenarol Tablets (chlormezanone) Methadone Hydrochloride Tablets, 2.5 mg, 5 mg, 10 mg, and 40 mg	Sanofi Pharmaceuticals, Inc. Eon Labs Manufacturing, Inc., 227-15 North Conduit Ave., Laurelton, NY 11413.
NDA 17-446 NDA 18-217	pHisoScrub (hexachlorophene) Suprol (suproten) Capsules, 200 mg	Sanofi Pharmaceuticals, Inc. R. W. Johnson Pharmaceutical Research Institute, 920 Rt. 202 South, P.O. Box 300, Raritan, NJ 08869-0602.
NDA 18-660	10% Travamulsion (Intravenous Fat Emulsion)	Baxter Healthcare Corp., Rt. 120 and Wilson Rd., Round Lake, IL 60073.
NDA 18-719 NDA 19-358	Modrastane (trilostane) Capsules Azo Gantrisin (sulfisoxazole and phenazopyridine hydrochloride) Tablets	Sanofi Pharmaceuticals, Inc. Hoffman-La Roche, Inc.
ANDA 60-734	BACIGUENT Ophthalmic Ointment (Bacitracin Ophthalmic Ointment, USP)	Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001-0199.
ANDA 62-036	Aerosporin (Polymyxin B Sulfate Sterile Powder)	Glaxo Wellcome, Inc., Five Moore Dr., P.O. Box 13398, Research Triangle Park, NC 27709.
ANDA 62-363	Cleocin T Topical Solution (Clindamycin Phosphate Topical Solution, USP)	Pharmacia & Upjohn Co.
ANDA 62-479	Doxycycline Hyclate Capsules USP, 50 mg and 100 mg (Base)	Purepac Pharmaceutical Co. 200 Elmora Ave., Elizabeth, NJ 07207.
ANDA 62-913	Clindamycin Phosphate Injection USP, 150 mg/milliliter (mL)	Marsam Pharmaceuticals, Inc., Bldg. 31, Olney Ave., P.O. Box 1022, Cherry Hill, NJ 08034.
ANDA 70-053	Betamethasone Valerate Cream USP, 0.1%	Clay-Park Labs, Inc., 1700 Bathgate Ave., Bronx, NY 10457.
ANDA 70-829	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/15 mg	Invamed, Inc., 2400 Rt. 130 North, Dayton, NJ 08810.
ANDA 70-830	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/25 mg	Do.
ANDA 70-850 ANDA 70-949	Metoclopramide Tablets USP, 10 mg Metoclopramide Oral Solution USP, Eq. 5 mg Base/5 mL	Do. Morton Grove Pharmaceuticals, Inc., 6451 West Main St., Morton Grove, IL 60053.
ANDA 71-071 ANDA 71-072 ANDA 71-073 ANDA 71-074 ANDA 71-075 ANDA 71-076 ANDA 71-658 ANDA 71-687 ANDA 71-688 ANDA 71-689 ANDA 71-811 ANDA 71-812 ANDA 71-938 ANDA 72-064 ANDA 72-065 ANDA 72-109 ANDA 72-197 ANDA 72-198 ANDA 72-233	Halopendol Tablets USP, 0.5 mg Halopendol Tablets USP, 1 mg Halopendol Tablets USP, 2 mg Halopendol Tablets USP, 5 mg Halopendol Tablets USP, 10 mg Halopendol Tablets USP, 20 mg Propranolol Hydrochloride Tablets USP, 10 mg Propranolol Hydrochloride Tablets USP, 20 mg Propranolol Hydrochloride Tablets USP, 40 mg Propranolol Hydrochloride Tablets USP, 80 mg Naloxone Hydrochloride Injection USP, 0.4 mg/mL Methyldopate Hydrochloride Injection USP, 50 mg/mL Ibuprofen Tablets USP, 800 mg Ibuprofen Tablets USP, 400 mg Ibuprofen Tablets USP, 600 mg Doxepin Hydrochloride Capsules, 25 mg Propranolol Hydrochloride Tablets USP, 60 mg Propranolol Hydrochloride Tablets USP, 90 mg Verapamil Hydrochloride Injection USP, 2.5 mg/mL (ampuls)	Purepac Pharmaceutical Co. Do. Do. Do. Do. Do. Invamed, Inc. Do. Do. Do. Do. Marsam Pharmaceuticals, Inc. Do. Invamed, Inc. Do. Do. Purepac Pharmaceutical Co. Invamed, Inc. Do. Marsam Pharmaceuticals, Inc.
ANDA 72-371 ANDA 72-436 ANDA 72-516 ANDA 72-517 ANDA 73-054 ANDA 73-055 ANDA 73-098	Diazepam Injection USP, 5 mg/mL, 2 mL (ampul) Metoclopramide Tablets USP, 5 mg Halopendol Injection USP, 5 mg/mL, 1 mL (ampul) Halopendol Injection USP, 5 mg/mL, 10 mL (vial) Doxepin Hydrochloride Capsules, 10 mg Doxepin Hydrochloride Capsules, 50 mg PEG-Lyte (PEG 3350 and Electrolytes for Oral Solution USP)	Do. Invamed, Inc. Marsam Pharmaceuticals, Inc. Do. Purepac Pharmaceutical Co. Do. Invamed, Inc.
ANDA 73-485	Verapamil Hydrochloride Injection USP, 2.5 mg/mL (vials)	Marsam Pharmaceuticals, Inc.
ANDA 74-125 ANDA 74-302	Pindolol Tablets USP, 5 mg and 10 mg Albuterol Sulfate Syrup, 2 mg (base)/5 mL	Purepac Pharmaceutical Co. Mova Pharmaceutical Corp., P.O. Box 8639, Caguas, PR 00726.
ANDA 74-510	Etoposide Injection 20 mg/mL, 50 mL Pharmacy Bulk Package	Gensia Laboratories, 19 Hughes, Irvine, CA 92718-1902.
ANDA 81-222	ADRUCIL (Flourouracil Injection, USP) 500 mg/10 mL Ampuls	Pharmacia & Upjohn Co.

Application No.	Drug	Applicant
ANDA 81-242	FOLEX PFS (Methotrexate Sodium Injection, USP) 25 mg/mL	Do.
ANDA 83-187 ANDA 83-237 ANDA 83-278 ANDA 83-856	Ataxin (brand of vitamin A Palmitate) Diphenhydramine Hydrochloride Elixir USP Propoxyphene Hydrochloride Capsules USP, 65 mg ESTRATAB (Esterified Estrogens Tablets, USP) 1.25 mg	Sanofi Pharmaceuticals, Inc. Purepac Pharmaceutical Co. Do. Solvay Pharmaceuticals, Inc., 901 Sawyer Rd., Marietta, GA 30062.
ANDA 83-921	Elixophyllin (Theophylline Soft Gelatin Capsules, 200 mg)	Forest Laboratories, Inc., 909 Third Ave., New York, NY 10022-4731.
ANDA 84-003 ANDA 85-545	Quinidine Sulfate Tablets USP, 200 mg Elixophyllin (Theophylline Soft Gelatin Capsules, 100 mg)	Purepac Pharmaceutical Co. Forest Laboratories, Inc.
ANDA 86-826	Elixophyllin SR (Theophylline Extended-Release Capsules, USP) 125 mg and 250 mg	Do.
ANDA 87-999	Spirolactone and Hydrochlorothiazide Tablets USP, 25 mg/25 mg	Purepac Pharmaceutical Co.
ANDA 89-284	Procainamide Hydrochloride Extended-Release Tablets USP, 500 mg	Invamed, Inc.
ANDA 89-463 ANDA 89-477 ANDA 89-501	Promethazine Hydrochloride Injection USP, 25 mg/mL Promethazine Hydrochloride Injection USP, 50 mg/mL Phenytoin Sodium Injection USP, 50 mg/mL, 2 mL (ampul)	Marsam Pharmaceuticals, Inc. Do. Do.
ANDA 89-511	Codaphen (Acetaminophen and Codeine Phosphate Tablets USP) 500 mg/15 mg	Roxane Laboratories, Inc.
ANDA 89-512	Codaphen (Acetaminophen and Codeine Phosphate Tablets USP) 500 mg/30 mg	Do.
ANDA 89-513	Codaphen (Acetaminophen and Codeine Phosphate Tablets USP) 500 mg/60 mg	Do.
ANDA 89-563	Chlorpromazine Hydrochloride Injection USP, 25 mg/mL	Marsam Pharmaceuticals, Inc.
ANDA 89-675 ANDA 89-779	Prochlorperazine Edisylate Injection USP, 5 mg/mL Phenytoin Sodium Injection USP, 50 mg/mL, 2 mL and 5 mL (vials)	Do. Do.
ANDA 89-849	Methocarbamol Injection USP, 100 mg/mL	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective June 11, 1998.

Dated: April 28, 1998.
Janet Woodcock,
Director, Center for Drug Evaluation and Research.
[FR Doc. 98-12613 Filed 5-11-98; 8:45 am]
BILLING CODE 4180-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration
[Docket No. 98F-0196]
Alltech Biotechnology Center; Filing of Food Additive Petition (Animal Use)-Selenium Yeast
AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alltech Biotechnology Center has filed a petition proposing that the food additive regulations be amended to provide for the safe use of selenium yeast as a source of selenium in animal feeds.
ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.
FOR FURTHER INFORMATION CONTACT: Nelson S. Chou, Center for Veterinary Medicine (HFV-228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0161.
SUPPLEMENTARY INFORMATION: Under section 409 (b)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2238) has been filed by Alltech Biotechnology Center, 3031 Catnip Hill Pike, Nicholasville, KY 40356. The petition proposes to amend the food additive regulations in part 573 *Food Additives Permitted in the Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of

selenium yeast as a source of selenium in animal feeds.
The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.
Dated: April 24, 1998.
Stephen F. Sundlof,
Director, Center for Veterinary Medicine.
[FR Doc. 98-12611 Filed 5-11-98; 8:45 am]
BILLING CODE 4180-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration
[Docket No. 96F-0341]
MacMillan Bloedel, Ltd.; Withdrawal of Food Additive Petition
AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 6B4517) proposing that the food additive regulations be amended to provide for the safe use of diethylene glycol as a component of a pulp bleaching medium used in the manufacture of paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 Ct. SW., Washington, DC 20204, 202-418-3095.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 30, 1996 (61 FR 51118), FDA announced that a food additive petition (FAP 6B4517) had been filed by MacMillan Bloedel, Ltd., c/o Camplong & Associates, Inc., P.O. Box 238, Schomberg, Ontario L0G 1T0, Canada. The filing notice stated that the petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of diethylene glycol as a pulp bleaching agent for paper and paperboard intended for use in contact with food. Upon further review, FDA has determined that the petition proposed the use of diethylene glycol as a component of a pulp bleaching medium used in the manufacture of food-contact paper and paperboard. MacMillan Bloedel, Ltd. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: April 10, 1998.
Laura M. Tarantino,
Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.
 [FR Doc. 98-12541 Filed 5-11-98; 8:45 am]
 BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
 [Docket No. 98F-0195]

Vanetta S.p.A.; Filing of Food Additive Petition (Animal Use) Menadione Nicotinamide Bisulfite

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Vanetta S.p.A. has filed a petition to allow the use of menadione

nicotinamide bisulfite in swine diets as a source of vitamin K activity and niacin.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michaela G. Alewynse, Center for Veterinary Medicine (HFV-228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-6657.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) 21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2239) has been filed by Vanetta S.p.A., Via Alzia Trento 10, Milano, Corsico, Italy. The petition proposes to amend the food additive regulations in part 573 *Food Additives Permitted in the Feed and Drinking Water of Animals* (21 CFR part 573) to provide for use of menadione nicotinamide bisulfite in swine diets as a source of vitamin K activity and niacin.

The agency has determined under 21 CFR 25.32 that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: April 24, 1998.
Stephen F. Sundlof,
Director, Center for Veterinary Medicine.
 [FR Doc. 98-12540 Filed 5-11-98; 8:45 am]
 BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 15 and 16, 1998, 8 a.m. to

6 p.m.; and June 17, 1998, 8 a.m. to 1 p.m..

Location: Sheraton Reston Hotel, Grand Ballroom, 11810 Sunrise Valley Dr., Reston, VA.

Contact: Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS-5), 202-205-4727, or Catherine M. DeRoever (HFS-22), 202-205-4251, FAX 202-205-4970, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will receive and undertake a scientific discussion about new data that have become available regarding the food additive olestra.

In the Federal Register of January 30, 1996 (61 FR 3118), FDA approved olestra for use as a food additive to replace conventional fats in prepackaged savory snacks. Olestra is a sucrose polyester formed with long chain fatty acids. The agency determined, based on its evaluation of the evidence in the record at that time, that there is a reasonable certainty that no harm will result from the use of olestra in savory snacks. At the time of approval, the petitioner, Procter and Gamble Co. (P&G), agreed to perform additional studies of olestra exposure (both amounts consumed and patterns of consumption) and the effects of olestra consumption. P&G also agreed to provide FDA with access to all data and reports of those studies as such information became available. At the time of olestra's approval, FDA committed to review all data received from P&G's studies, as well as any other new data that bear on the safe use of this additive, and present such information to the committee within 30 months of the approval.

Committee discussion will focus on data gathered from passive surveillance of complaints attributed to olestra consumption; the active surveillance of populations consuming savory snacks, including olestra snacks; any additional new data that have become available that bear on the safety of olestra (such as data and information on the health significance of carotenoids); and various other studies submitted by P&G (e.g., rechallenge, home consumption, and acute consumption test). The committee will consider whether these newly developed data are consistent with the original safety decision or whether the new data contradict FDA's original determination that there is a reasonable certainty of no harm from the use of

olestra in savory snacks. The committee will also discuss the bearing, if any, of these new data on the required label statement for olestra containing snacks.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 5, 1998. Oral presentations from the public will be scheduled in three sessions. The approximate session schedules and the topics upon which presentations at each should be focussed are: (1) Passive surveillance and special gastrointestinal studies on June 16, 1998, 8 a.m. to 9 a.m.; (2) active surveillance and new information on carotenoids on June 16, 1998, 4 p.m. to 4:30 p.m.; and (3) labeling on June 17, 1998, 10:30 a.m. to 11 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 5, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 4, 1998.
Michael A. Friedman,
Deputy Commissioner for Operations.
 [FR Doc. 98-12449 Filed 5-11-98; 8:45 am]
 BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1998.

Name: Advisory Commission on Childhood Vaccines (ACCV).
Date and Time: June 10, 1998; 9:00 a.m.—5:00 p.m.; June 11, 1998; 9:00 a.m.—12:00 Noon.
Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public. **Agenda:** Items will include, but not be limited to: an update on legislative proposals, an update on Vaccine Information Statements, an update on vaccines in clinical trials, an update on the Vaccine Adverse

Events Reporting System, an update on the Vaccine Safety Action Plan, and reports from the Department of Justice, the National Vaccine Program Office, and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on June 10, 1998, and before adjournment on June 11, 1998. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Melissa Palmer, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A-35, 5600 Fishers Lane, Rockville, MD 20857. Telephone (301) 443-6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on June 10-11, 1998. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Palmer, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A-35, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6593. Agenda items are subject to change as priorities dictate.

Dated: May 6, 1998.
Jane M. Harrison,
Acting Director, Division of Policy Review and Coordination.
 [FR Doc. 98-12609 Filed 5-11-98; 8:45 am]
 BILLING CODE 4160-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in May 1998.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17-89, Rockville, Maryland 20857. Telephone: 301-443-7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: May 26-29, 1998.

Place: Residence Inn, Calvert Room, 7335 Wisconsin Avenue, Bethesda, MD 20815.

Closed: May 26-28, 1998 9:00 a.m.—5:00 p.m.; May 29, 1998 9:00 a.m.—adjournment.

Panel: Center for Mental Health Services Circles of Care.

Contact: Richard A. Peabody, Room 17-89, Parklawn Building, Telephone: 301-443-9919 and FAX: 301-443-3437.

Dated: May 6, 1998.

Jeri Lipov,
Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98-12447 Filed 5-11-98; 8:45 am]
 BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4369-N-01]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 13, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Ms. Shelia Jones, Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, 451-7th

Street, SW, Room 7230, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Department of Housing and Urban Development (HUD) will submit to OMB the information collection requirements for the HOME Program, previously approved under OMB Control Numbers 2506-0162 and 2501-0013.

The HOME Investment Partnerships Act (Title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101-625) and created the HOME Program to expand the supply of affordable housing. Interim regulations were first published for the program on December 16, 1991 and this and subsequent interim rules were codified at 24 CFR Part 92. Paperwork

requirements for these rules were approved under OMB Control Number 2501-0013. On September 16, 1996, HUD published a final rule for the HOME Program. Additional paperwork requirements for certain optional reporting requirements were approved under OMB Control Number 2506-0162.

Title of proposal: HOME Investment Partnerships Program.
OMB Control Number, if applicable: 2501-0013; 2506-0162.

Description of the need for the information and proposed use: The HOME statute and related authorities impose a significant number of data collection and reporting requirements on the Department and on HOME participating jurisdictions. This information is collected: (1) to assist HOME participating jurisdictions in managing their programs; (2) to track performance of participating jurisdictions in meeting fund commitment and expenditure deadlines; (3) to permit HUD to determine whether each PJ meets the HOME statutory targeting and affordability requirements; and (4) to permit HUD to determine compliance with other statutory and regulatory program requirements e.g., requirements relating to match, affirmative marketing, lead-based paint, and displacement and relocation.

The recordkeeping and reporting burden hours for each individual respondent contained herein are largely unchanged from the previous approvals. The most significant change is in the total number of burden hours for both recordkeeping and reporting, brought about by the substantial increase in the number of program participants since the last major HOME paperwork submission in 1994. The number of participating jurisdictions has increased from 531 in 1994 to 576 in 1997. During this period, the number of Community

Housing Department Organizations increased from 1,075 to 2,732 and the number of State recipients increased from 675 to 1,555. Because so many more organizations are currently participating in the HOME Program than were participating in the first years of the program, the total number of burden hours has increased substantially despite the fact that the burden per respondent has dropped slightly.

Other changes from the earlier paperwork approval include: (1) a slight reduction in the number of reporting burden hours as a result of eliminating the HOME Program Description and Annual Performance Report requirements from 24 CFR Part 92 and adding those requirements to the Consolidated Plan rule (24 CFR Part 91); (2) a slight reduction in both record-keeping and reporting hours due to the conversion of HOME participating jurisdiction from the HOME Cash and Management Information System to the paperless Integrated Disbursement and Information (C/MI) System. (Although this conversion is substantially complete, the notice assumes that the 49 participating jurisdictions currently in the C/MI will remain so); and (3) a slight increase due to the fact that three optional reporting requirements approved under OMB Control Number 2506-0162 are being added to this submission.

Agency form numbers: HUD-40094; 40095; 40096; 40096-M; 40097; 40098; 40100; 40100-B; 40100-B; 40107; 40107-A.

Members of affected public: States, units of general local government, nonprofit organizations.

Estimation of the total annual number of hours to prepare the information collection including number of respondents, frequency of response, and hours of response:

Section affected	Paperwork requirement	Number of respondents	Frequency of response	Hours of response	Annual total
92.61	Insular Areas Program Description	4	1	10	40
92.66	Insular Areas reallocation	4	1	3	12
92.101	Consortia Designation	95	1	5	475
92.200	Public-Private Partnership	580	1	2	1,160
92.201	State Designation of Local Recipients	580	1	2	1,160
92.201	Distribution of Assistance	50	1	1.5	75
92.202	Site and Neighborhood Standards	580	1	2	1,160
92.203	Income Determination	4,867	1	2	9,734
92.206, 92.216, 92.217, 92.218, 92.250, 92.252, 92.254.	Documentation required by HUD to be included in project file to determine project eligibility.	4,867	1	5	24,335
92.206	Refinancing	200	1	4	800
92.251	Written Property Standards	4,867	1	1	4,867
92.253	Tenant Protections	4,867	1	5	24,335
92.254	Median Purchase price	20	1	5	100
92.254	Alternative to Resale/Recapture Provisions.	275	1	5	1,375
92.300	CHDO Identification	576	1	2	1,152

Section affected	Paperwork requirement	Number of respondents	Frequency of response	Hours of response	Annual total
92.300	Designation of CHDOs	300	1	1.5	450
92.300	CHDO Project Assistance	576	1	2	1,152
92.303	Tenant Participation Plan	2,732	1	10	27,320
92.350	Equal Opportunity	4,867	1	5	25,335
92.351	Affirmative marketing	4,867	1	10	48,670
92.353	Displacement, relocation and acquisition	4,867	1	5	24,335
92.354	Labor	4,867	1	2.5	12,167.5
92.355	Lead-Based Paint	4,867	1	0.5	2,433.5
92.357	Debarment and suspension	4,867	1	1	4,867
92.501	Investment Partnership Agreement	580	1	1	580
92.502	Cash and Management Information system.	49	1	10	490
92.502	Homeownership/Rental Project Set-Up (C/MI).	1,604	1	12.5	20,050
92.502	Tenant-based rental assistance Set-Up	30	1	6.25	187.5
92.502	Rental Housing Project Completion (C/MI).	1,604	1	7.5	12,030
92.502	Homeownership Project Completion (C/MI).	1,604	1	3.75	6,015
92.502	Homeownership/Rental Set-Up and Completion (IDIS).	527	1	16	8,432
92.502	Tenant-Based Rental Assistance Set-Up (IDIS).	89	1	5.5	489.5
92.504	Written Agreement	4,863	1	10	48,630
92.509	Management Reports—Annual Performance Report.	580	1	2.5	1,450
92.509	Management Reports—FY Match Report.	576	1	0.76	432

The total annual estimate of burden hours is 315,296.

Status of the proposed information collection: Public comment requested by HUD.

Contact person and telephone numbers (this is not a toll-free number) for copies of the proposed forms and other available documents: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. (This is not a toll-free number). A telecommunications device for hearing- and speech-impaired person (TTY) is available at 1-800-877-8229 (Federal Information Relay Service).

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 6, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98-12618 Filed 5-11-98; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4367-N-01]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: D. Jackson Kinkaid, Secretary to the Mortgagee Review Board, 451 7th Street, SW, Washington, DC 20410, telephone: (202)755-0278. (This is not a toll-free number.) A Telecommunications Device for Hearing and Speech-Impaired Individuals (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989), requires that HUD "publish a

description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from July 18, 1997 through December 31, 1997.

1. Advantage Mortgage Company, Inc., Knoxville, TN

Action: Proposed civil money penalty in the amount of \$60,000.

Cause: A review by the Department's Quality Assurance Division that disclosed violations of HUD/FHA requirements that included: failure to remit Up Front Mortgage Insurance Premiums (UFMIPs) to HUD/FHA within 15 days of loan closing and to remit late charges and interest penalties; failure to submit loans for endorsement in a timely manner; failure to pay an appraiser for services performed; and failure to implement and maintain an adequate Quality Control Plan for the origination of HUD/FHA insured mortgages.

2. Mortgage America Nationwide, Grand Terrace, CA

Action: Proposed civil money penalty of \$75,000.

Cause: Mortgage America Nationwide failed to comply with the provisions of

a settlement agreement dated April 2, 1996. The settlement agreement was put into place in order to resolve violations discovered during a review of the lender by the Department's Quality Assurance Division.

3. FT Mortgage, Inc. dba Carl I. Brown, Inc. Kansas City, MO

Action: Proposed settlement agreement that would include indemnification to the Department for 16 mortgages insured under the Title II program.

Cause: An investigation conducted by the Department's Office of Inspector General and the Federal Bureau of Investigation revealed that FT Mortgage approved these loans for an investor who committed fraud when he applied for the loans.

4. Ryland Mortgage Company, Columbia, MD

Action: Proposed settlement agreement that would protect the Department during the period the indictment remained in place pending the results of a trial.

Cause: The company and various of its officers were indicted by the United States District Court, Middle District of Florida, Jacksonville District. The indictment alleged Ryland engaged in a conspiracy to defraud the United States Government in violation of Title 18 U.S.C. Sections 371, 1001, 1343, 1032. Such an indictment is grounds for an administrative Action by the Board pursuant to 24 CFR Section 25.9(m).

5. Title I Lenders and Title II Mortgagees That Failed To Comply With HUD/FHA Requirements for the Submission of an Audited Annual Financial Statement and/or Payment of the Annual Recertification Fee

Action: Withdrawal of HUD/FHA Title I lender approval and Title II mortgagee approval.

Cause: Failure to submit to the Department the required annual audited financial statement and/or remit the required annual recertification fee.

Title I Lenders Withdrawn

BOATMEN'S NATIONAL BANK, BATESVILLE, BATESVILLE, AR
BOATMEN'S NATIONAL BANK, PINE BLUFF, PINE BLUFF, AR
BOATMEN'S NATIONAL BANK, RUSSELLVILLE, RUSSELLVILLE, AR
COLE TAYLOR BANK, BURBANK, IL
SOUTH CHICAGO BANK, CHICAGO, IL
INDIANA STATE BANK, TERRE HAUTE, IN
THE NATIONAL BANK, WATERLOO, IA
FARMERS BANK TRUST COMPANY, BARDSTOWN, KY

CALCASIEU MARINE NATIONAL BANK, LAKE CHARLES, LA
FAMILY MUTUAL SAVINGS BANK, HAVERHILL, MA
STATE BANK OF EWEN, EWEN, MI
THE STATE BANK, FENTON, MI
SAULT BANK, SAULT SAINTE MARIE, MI
GRAYLING STATE BANK, GRAYLING, MI
PELICAN VALLEY STATE BANK, PELICAN RAPIDS, MN
SECURITY STATE BANK, WYKOFF, MN
PEOPLES BANK OF COMMERCE, CAMBRIDGE, MN
BOATMEN'S NATIONAL BANK ST LOUIS, SAINT LOUIS, MO
HAVELOCK BANK, LINCOLN, NE
YOUNG MEN'S SVGS AND LOAN ASSN., BRIDGETON, NJ
HUDSON CITY SAVINGS INST, HUDSON, NY
DIME SAVINGS BANK NY FSB, UNIONDALE, NY
MECHANICS AND FARMERS BANK, DURHAM, NC
FARMERS STATE BANK, WINNER, SD
FIRST NATIONAL BANK, MARSHALL, TX
FIRST SECURITY BANK, SALT LAKE CITY, UT
CONSOLIDATED BANK AND TRUST CO, RICHMOND, VA
BANK OF BURLINGTON, BURLINGTON, WI
FIRSTSTAR BANK EAU CLAIRE NA, EAU CLAIRE, WI
FIRSTSTAR BANK, FOND DU LAC NA, FOND DU LAC, WI
LINCOLN STATE BANK, MILWAUKEE, WI
FIRSTSTAR BANK, SHEBOYGAN NA, SHEBOYGAN, WI
CENTRAL BANK AND TRUST, OWENSBORO, KY
STATE BANK STANDISH, STANDISH, MI
BANCO POPULAR DE P R, SAN JUAN, PR
BOATMEN'S BANK FRANKLIN COUNTY, BENTON, IL
FIRST BANK MAINLAND, LAMARQUE, TX
TERRELL STATE BANK, TERRELL, TX
FIRST NATIONAL BANK, WEST MEMPHIS, AR
TRI-COUNTIES BANK, CHICO, CA
ASHLAND STATE BANK, CHICAGO, IL
MARGUETTE BANK NA, GOLDEN VALLEY, MN
BOATMEN'S NATIONAL BANK N CEN ARKANSAS, HARRISON, AR
GRAHAM SAVINGS BANK, GRAHAM, NC
STERLING STATE BANK, AUSTIN, MN
MATEWAN NATIONAL BANK, WILLIAMSON, WV
LYTLE STATE BANK, LYTLE, TX

SOUTHBRIDGE CREDIT UNION, SOUTHBRIDGE, MA
FIRST FEDERAL SAVINGS AND LOAN, ALPENA, MI
COMMERCIAL SAVINGS BANK, ST. CLAIR, MI
BANK OF HOUSTON, HOUSTON, TX
DEL RIO BANK AND TRUST CO, DEL RIO, TX
CITIZENS STATE BANK, HAYFIELD, MN
GREENEVILLE FEDERAL BANK, FSB, GREENEVILLE, TN
BOATMEN'S NATIONAL BANK CONWAY, CONWAY, AR
FIRST NATIONAL BANK, NAVARRE, MN
WEST SIDE AUTO W F C U, FLINT, MI
MIFARMERS SAVINGS BANK, PIERSON, IA
MOUNTAINEER FEDERAL C U, SOUTH CHARLESTON, WV
CORNELL FEDERAL CREDIT UNION, ITHACA, NY
AMERICAN BANK AND TRUST CO, HOUMA, LA
R A C CREDIT UNION, ST LOUIS, MO
NEBRASKA STATE BANK, OSHKOSH, NE
SACRAMENTO DIST. POSTAL E.C.U., SACRAMENTO, CA
SPRINGFIELD MUNICIPAL EMP CU, SPRINGFIELD, OH
STAR MARKETS FEDERAL CREDIT UN, HONOLULU, HI
CORPUS CHRISTI AREA TEACH C U, CORPUS CHRISTI, TX
WEPCO FEDERAL CREDIT UNION, BLOOMINGTON, MD
HERMANTOWN FEDERAL CREDIT UN, HERMANTOWN, MN
CLEARWATER CREDIT UNION, LEWISTON, ID
LOS ANGELES WATER-POWER FCU, LOS ANGELES, CA
SECOND NATIONAL BANK BAY CITY, BAY CITY, MI
HARRISON DEPOSIT BANK AND TRUST CO, CYNTHIANA, KY
PADUCAH FEDERAL CR UN INC, PADUCAH, KY
SPACE AGE FEDERAL CREDIT UN, AURORA, CO
CORPUS CHRISTI CITY EMP C U, CORPUS CHRISTI, TX
BANCO CENTRAL HISPANO, HATO REY, PR
REPUBLIC BANK, DULUTH, MN
EL CAP CREDIT UNION, HUTCHINSON, KS
GREEN MOUNTAIN BANK, RUTLAND, VT
KINGS PARK EMPLOYEES FED C U, KINGS PARK, NY
STATE BANK, EDEN VALLEY, MN
NORTHERN TIER FEDERAL C U, MINOT, ND
STANDARD BANK PASB, MONROEVILLE, PA

FIRST CHEYENNE FEDERAL CREDIT UNION, CHEYENNE, WY
BANK OF NORTH ARKANSAS, MELBOURNE, AR
RENO CITY EMPLOYEES FED CR UN, RENO, NV
PAUL REVERE LIFE INSURANCE CO, WORCESTER, MA
BANK OF AMERICA FSB, SAN DIEGO, CA
DAMLA CORPORATION, ATLANTA, GA
KELLY FIELD NATIONAL BANK, SAN ANTONIO, TX
FIRST INTERSTATE BANK DENVER, TEMPE, AZ
JEFFERSON COUNTY BANK, JEFFERSON, WI
QUAIL CREEK BANK NA, OKLAHOMA CITY, OK
BANK OF AMERICA ALASKA NA, ANCHORAGE, AK
NORTHWOOD TRANSPORTATION CR, ROYAL OAK, MI
PACIFIC SHORE FUNDING, LAKE FOREST, CA
SEVENTEEN FOURTEEN FEDERAL CREDIT UNION, WARREN, OH
FB MORTGAGE CORPORATION, FORT WORTH, TX
BENCHMARK MORTGAGE FIN SERVICES INC, LUTZ, FL
STATE BANK OF KEWAUNEE, KEWAUNEE, WI
FIRSTAR BANK GREEN BAY, GREEN BAY, WI
BANK ONE OSHKOSH NA, OSHKOSH, WI
BANK OF OKLAHOMA NA, TULSA, OK
FIRSTAR BANK GRANTSBURG NA, GRANTSBURG, WI
BANK ONE GREEN BAY, GREEN BAY, WI
ROBBINS FINANCIAL INC, GLENDALE, CA
IMPERIAL M C INC, SAN DIEGO, CA
LASALLE BANK FSB, CHICAGO, IL
KILBOURN STATE BANK, MILWAUKEE, WI
FIRST TEXAS BANK, ROUND ROCK, TX
FIRST BANK AND TRUST OF MEMPHIS, MEMPHIS, TX
BANKTEXAS NA, HOUSTON, TX
THE FIRST NATIONAL BANK-BAIRD, BAIRD, TX
COMMONWEALTH THRIFT-FDIC, TORRANCE, CA
ABBEEY MORTGAGE CORPORATION II, LA MESA, CA
WESTCO REAL ESTATE FINANCE CORP, COSTA MESA, CA
COAST CAPITAL, TORRANCE, CA
BANK ONE—MADISON, MADISON, WI
RCFC INC, VICTORVILLE, CA
FIRST STATE BANK—THOMPSON FALLS, THOMPSON FALLS, MT

AMERICAN SOUTHWEST FUNDING, SAN DIEGO, CA
VALLEY INDEPENDENT BANK, EL CENTRO, CA
FIRST NATIONAL BANK—BOSTON, BOSTON, MA
MIDLANTIC BANK NA, EDISON, NJ
MONOGRAM HOME EQUITY COR, SALT LAKE CITY, UT
TRIANGLE EAST BANK, RALEIGH, NC
RAMSAY MORTGAGE CO OF—NC INC, CHAPEL HILL, NC
WEST JERSEY COMMUNITY BANK, FAIRFIELD, NJ
ANNAPOLIS MORTGAGE CORPORATION, PHOENIX, AZ
FIRST JEFFERSON MORTGAGE CORP, NORFOLK, VA
KNAPPER FINANCIAL SERVICES, HUNTINGTON BEACH, CA
RL SCHMIDT MORTGAGE CORP INC, HOLLYWOOD, FL
AMERICAN WEST BANK, ENCINO, CA
FIRST FRANKLIN FINANCIAL CORP, SAN JOSE, CA
CENTURY MORTGAGE CORP, LANGHORNE, PA
CITILITES REALTY INC, RANCHO CUCAMONGA, CA
STEVENS FINANCIAL CORPORATION, BREA, CA
BETHANY INC DBA NEW ENGLAND FUNDING, NO PROVIDENCE, RI
SOMERSET TRUST COMPAY, SOMERSET, PA
FIRST BANK AND TRUST, MOUNT JULIET, TN
SECURITY NATIONAL BK AND TR CO, NEWARK, NJ
REDLANDS CENTENNIAL BANK, REDLANDS, CA
COAST PARTNERS ACCEPTANCE CORP, SAN FRANCISCO, CA
QUESTAR FINANCIAL, DANVILLE, CA
CITY NATIONAL BANK COLORADO CITY, COLORADO CITY, TX
AMERICAN FEDERAL LENDING INC, DENVER, CO
BANK OF CHERRY CREEK NA, DENVER, CO
TRI STAR MORTGAGE INC, SAN DIEGO, CA
MORTECH FINANCIAL CORPORATION, VENTURA, CA
KANSAS CITY MORTGAGE INC, KANSAS CITY, MO
REI INC, ORANGE, CA
UNION AMERICA MORTGAGE CORP, TARPON SPRINGS, FL
BANK OF RANCHO BERNARDO, SAN DIEGO, CA
GOLD KEY MORTGAGE INC, SPRINGFIELD, MO
ALTA MORTGAGE CORPORATION, CHICAGO, IL
ATLANTIC INTERNATIONAL COMPANY, TAMPA, FL
CHICAGO COMMUNITY BANK, CHICAGO, IL

AMERICAN CAPITAL HOME LN INC, RANCHO CORDOVA, CA
FAST FLOW FINANCING, HOLLYWOOD, CA
WE FINANCIAL CORPORATION, SAN BERNARDINO, CA
CORPORATE CAPITAL FINANCIAL INC, IRVINE, CA
BARCLAYS MORTGAGE CO, STREAMWOOD, IL
BANK OF HOLLYWOOD, HOLLYWOOD, CA
LE COCON DOR INC, THOUSAND OAKS, CA
M AND I MARSHALL AND ILSLEY BANK, MILWAUKEE, WI
LENDERS ASSOCIATES CORP, MARIETTA, GA
SMITH MORTGAGE SERVICING CORP, LUBBOCK, TX
OLD REPUBLIC INS FIN ACCEPT CORPORATION, BLOOMFIELD, NJ
AAA MORTGAGE AND INVESTMENTS INC, CLEARWATER, FL
SUNRISE MORTGAGE COMPANY INC, HUNTINGDON VALLEY, PA
UNITED CAPITAL CORPORATION, WESTCHESTER, IL
INDEPENDENT NATIONAL BANK, GRAND PRAIRIE, TX
AMH MORTGAGE COMPANY LP, NEWPORT BEACH, CA
ALPINE MORTGAGE SERVICES INC, SEATTLE, WA
ISLAND COMMUNITY LENDING CORPORATION, HONOLULU, HI
PREMIER LENDING CORPORATION, MARIETTA, GA
HEARTLAND ENTERPRISES INC, CANOGA PARK, CA
LONDON ACCEPTANCE CORPORATION, MARIETTA, GA
FIRST UTAH MORTGAGE CORPORATION, LOGAN, UT
SMITH SOLOMON, TEMPLE CITY, CA
VISION MORTGAGE CORPORATION, HIALEAH, FL
LOAN STORE INC, ST LOUIS, MO
BECKHAM MORTGAGE CORPORATION, BIRMINGHAM, AL
BANKATLANTIC, FT. LAUDERDALE, FL
TWENTY FIRST CENTURY REAL ESTATE SER, ROCKWALL, TX
AMERON MORTGAGE CORPORATION, MARIETTA, GA
MORTGAGE STORE, WILLOWBROOK, IL
WEST COAST CAPITAL GROUP INC, LYNNWOOD, WA
UNITED CALIFORNIA LENDERS CORPORATION, TUSTIN, CA
THE FINANCIAL COMPANY, HUNTINGTON BEACH, CA
MORTGAGE BANC, KANSAS CITY, MO
STANDARD AMERICAN FINANCIAL CORP, BATON ROUGE, LA
AMERICAN TRADITIONAL MORTGAGE, NORTHRIDGE, CA

AMERICAN MUTUAL LIFE INSURANCE CO, DES MOINES, IA
 HEIGL MORTGAGE AND FINL CORP, BLOOMINGTON, MN
 CROSS COUNTRY LENDING INC, GOLETA, CA
 RED HILL FINANCIAL, ORANGE, CA
 FIRST INTERFINANCIAL MORTGAGE COMPANY, ST PETERSBURG, FL
 CASA MORTGAGE INC, ENCINO, CA
 CAPITAL CITY MORTGAGE CO INC, COLUMBIA, SC
 BAY MORTGAGE SERVICES, PLYMOUTH, MA
 CREST FINANCIAL I INC, MIDLAND, TX
 ONE SOURCE FUNDING INC, LAGUNA NIGUEL, CA
 NORTHERN PACIFIC MORTGAGE, RANCHO CUCAMONGA, CA
 ALLWEST LAND AND TITLE, SALT LAKE CITY, UT
 CONTINENTAL FUNDING CORP, STOUGHTON, MA
 LOAN WAREHOUSE LLC, COLORADO SPRINGS, CO
 PALMA MORTGAGE CORP, LAKE SUCCESS, NY
 TARA MORTGAGE CORPORATION, PENSACOLA, FL
 BARRONS FINANCIAL INC, DALLAS, TX
 AMERICAN RESIDENTIAL FUNDING, PLAINVIEW, NY
 NATIONALWIDE FINANCIAL CORP, ATLANTA, GA
 FOA FINANCIAL, ARCADIA, CA
 REMMINGTON ACCEPTANCE CORP, AUGUSTA, GA
 AMERI-FUND PROFESSIONAL LENDING SERV, TACOMA, WA

Title II Mortgagees Withdrawn

FIRST INTERSTATE BANK ARIZONA NA, PHOENIX, AZ
 BOATMEN'S NATIONAL BANK AR, LITTLE ROCK, AR
 BANK OF WALDRON, WALDRON, AR
 BOATMEN'S NATIONAL BANK HOT SPRINGS, HOT SPRINGS, AR
 BOATMEN'S NATIONAL BANK RUSSELLVILLE, RUSSELLVILLE, AR
 BOATMEN'S NATIONAL BANK NW ARKANSAS, FAYETTEVILLE, AR
 BOATMEN'S NATIONAL BANK CONWAY, CONWAY, AR
 MEMBERS MORTGAGE CORPORATION, ARVADA, CO
 LAFAYETTE AMERICAN BANK AND TRUST CO, BRIDGEPORT, CT
 ARTISANS SAVINGS BANK, WILMINGTON, DE
 SOCIETY FIRST FEDERAL SAVINGS BANK, FORT MYERS, FL
 JEFFERSON BANK—FLORIDA, MIAMI BEACH, FL
 CONSOLIDATED BANK NA, HIALEAH, FL
 COMMUNITY FIRST BANK, JACKSONVILLE, FL

HOMEBA NC MORTGAGE CORP, ATLANTA, GA
 FIRST NATIONAL BANK GAINSVILLE, GAINESVILLE, GA
 BANKERS FIRST FEDERAL SAVINGS AND LOAN, AUGUSTA, GA
 KNOX MORTGAGE COMPANY, THOMSON, GA
 BANKERS FIRST MORTGAGE CORP, MARTINEZ, GA
 FIDELITY FEDERAL SAVINGS BANK, DALTON, GA
 AMERICAN CAPITAL RESOURCE INC, ATLANTA, GA
 FIRST INTERSTATE BANK IDAHO NA, BOISE, ID
 ONEIDA SAVINGS BANK, ONEIDA, NY
 PAN AM MORTGAGE BANKERS INC, TAMPA, FL
 ST PAUL FEDERAL BANK FOR SAVINGS, CHICAGO, IL
 FARMERS NATL BANK GENESEO, GENESEO, IL
 SOUTH SHORE BANK CHICAGO, CHICAGO, IL
 FIRST NATIONAL BANK AND TRUST, GIBSON CITY, IL
 FIRST SUBURBAN NATIONAL BANK, MAYWOOD, IL
 ALLSTATE INSURANCE COMPANY, NORTHBROOK, IL
 ALLSTATE LIFE INS CO, NORTHBROOK, IL
 DEVELOPERS MORTGAGE CORP, CHICAGO, IL
 ROCKFORD MORTGAGE CO INC, ROCKFORD, IL
 LA PORTE BANK AND TRUST CO, LA PORTE, IN
 MERCHANTS MORTGAGE CORPORATION, INDIANAPOLIS, IN
 COLUMBUS BANK AND TRUST CO, COLUMBUS, IN
 STRATEGIC FINANCIAL CORP, ST JOHN, IN
 FIRSTAR BANK CEDAR RAPIDS NA, CEDAR RAPIDS, IA
 HARVEST SAVINGS BANK F S B, DUBUQUE, IA
 FIRSTAR BANK RED OAK NA, RED OAK, IA
 LIBERTY BANK AND TRUST, MASON CITY, IA
 FIRSTAR BANK AMES, AMES, IA
 BANK IV KANSAS NA, WICHITA, KS
 SUNFLOWER BANK NA, SALINA, KS
 COMMERCIAL NATIONAL BANK, SHREVEPORT, LA
 CALCASIEU MARINE NATIONAL BANK, LAKE CHARLES, LA
 PREMIER BANK NA, BATON ROUGE, LA
 HARRIS MORTGAGE CORPORATION, METAIRIE, LA
 AMERICAN BANK AND TRUST CO, HOUMA, LA
 ATLANTIC FEDERAL SAVINGS BANK, BALTIMORE, MD
 ODENTON FEDERAL SAVINGS AND LOAN ASSN, ODENTON, MD

CO-OPERATIVE BANK CONCORD, ACTON, MA
 NEW ENGLAND MUTUAL LIFE INS CO, BOSTON, MA
 CITY BANK AND TRUST COMPANY, JACKSON, MI
 STATE BANK STANDISH, STANDISH, MI
 SECOND NATIONAL BANK SAGINAW, SAGINAW, MI
 D AND N MORTGAGE CORPORATION, HANCOCK, MI
 PELICAN VALLEY STATE BANK, PELICAN RAPIDS, MN
 AMERICAN EXPRESS FINANCIAL SRVCS, MINNEAPOLIS, MN
 TOWLE FINANCIAL SERVICES, MINNEAPOLIS, MN
 COMMUNITY FIRST NATIONAL BANK, LITTLE FALLS, MN
 FIRST NATIONAL BANK, CROSBY, MN
 WORTHINGTON FEDERAL SAVINGS AND LN ASSN, WORTHINGTON, MN
 INTER SAVINGS BANK FSB, EDINA, MN
 FBS MORTGAGE CORPORATION, MINNEAPOLIS, MN
 HEIGL MORTGAGE AND FIN CORP, BLOOMINGTON, MN
 SECURITY BANK WACONIA, WACONIA, MN
 DELTA BANK AND TRUST, DREW, MS
 BOATMEN'S NATIONAL BANK-ST LOUIS, SAINT LOUIS, MO
 UNITED MISSOURI BANK NA, KANSAS CITY, MO
 UNITED MISSOURI MORTGAGE CO, KANSAS CITY, MO
 BOATMEN'S FIRST NATIONAL BANK KC, KANSAS CITY, MO
 FIRST MIDWEST BANK OF DEXTER, DEXTER, MO
 SECURITY FINANCIAL AND MTGE CORP, ST LOUIS, MO
 PRIMERIT BANK FSB, LAS VEGAS, NV
 MILFORD COOPERATIVE BANK, MILFORD, NH
 FIRST NH MORTGAGE CORP, HOOKSETT, NH
 HUDSON UNITED BANK, MAHWAH, NJ
 MUTUAL BENEFIT LIFE INS CO, NEWARK, NJ
 FIRST INTERSTATE BANK, SANTA FE, NM
 PLAZA HOME MORTGAGE SERVICING CORP, SANTA ANA, CA
 EVERGREEN BANK NA, GLENS FALLS, NY
 NATIONS TITLE INSURANCE NY INC, WESTBURY, NY
 EAST NEW YORK SAVINGS BANK, NEW YORK, NY
 REPUBLIC NATIONAL BANK OF NY, BROOKLYN, NY
 RHINEBECK SAVINGS BANK, RHINEBECK, NY

NORTH SIDE SAVINGS BANK, FLORAL PARK, NY
 PROGRESSIVE EQUITY FUNDING, ITHACA, NY
 BANKAMERICA NATIONAL TRUST COMPANY, NEW YORK, NY
 MECHANICS AND FARMERS BANK DURHAM, DURHAM, NC
 NORWEST-BARCLAYS MORTGAGE, CHARLOTTE, NC
 FIRST COMMERCIAL BANK, ASHEVILLE, NC
 GOOSE RIVER BANK, MAYVILLE, ND
 COMMUNITY FIRST NATIONAL BANK-TR CO, DICKINSON, ND
 NORTHWESTERN SAVINGS BANK FSB, FARGO, ND
 FIRST NATIONAL BANK, DEVILS LAKE, ND
 FIRST NATIONAL BANK AND TRUST, OKMULGEE, OK
 BANCOKLAHOMA MORTGAGE CORP, TULSA, OK
 FIRST INTERSTATE BANK OREGON NA, PORTLAND, OR
 F V PRIME MORTGAGE COMPANY, CORVALLIS, OR
 FRANKFORD TRUST COMPANY, LANCASTER, PA
 FIRST FEDERAL SAVINGS ALA, HAZLETON, PA
 PITTSBURGH HOME SAVINGS, PITTSBURGH, PA
 PROTECTED HOME MUTUAL LIFE INS, SHARON, PA
 BOULEVARD MORTGAGE COMPANY, PHILADELPHIA, PA
 MERIDIAN MORTGAGE CORP, WAYNE, PA
 AMERICAN FEDERAL BANK FSB, MADISON, SD
 WESTERN BANK, SIOUX FALLS, SD
 REGIONS BANK—TENNESSEE, NASHVILLE, TN
 TRANS FINANCIAL BANK FSB, TULLAHO MA, TN
 FIRST CITIZENS BANK, HOHENWALD, TN
 BOMAC CAPITAL CORP, DALLAS, TX
 FIRST NATIONAL BANK, MARSHALL, TX
 FRANKLIN FEDERAL BANCORP, AUSTIN, TX
 FIRST INTERSTATE BANK UTAH, MURRAY, UT
 RICHARDS WOODBURY MTG CORP, SALT LAKE CITY, UT
 UTAH INDEPENDENT BANK, SALINA, UT
 MERCHANTS BANK BURLINGTON, BURLINGTON, VT
 FIRST COMMONWEALTH SAVINGS BANK, ALEXANDRIA, VA
 METROPOLITAN FEDERAL SAVINGS, SEATTLE, WA
 CENTRAL WASHINGTON BANK, WENATCHEE, WA
 FIRSTAR BANK SHEBOYGAN NA, SHEBOYGAN, WI

M-I BANK BELOIT, BELOIT, WI
 FIRSTAR BANK MANITOWOC, MANITOWOC, WI
 BANK OF AMERICA ALASKA NA, ANCHORAGE, AK
 UPJOHN MANUFACTURING CO, ARECIBO, PR
 SAVINGS ASSOCIATIONS MTG CO INC, SAN JOSE, CA
 STANLEY M DAVIS MORTGAGE INC, DAVIS, CA
 HOME FEDERAL SAVINGS ALA, SAN FRANCISCO, CA
 HAMMOND COMPANY MTG BANKERS, NEWPORT BEACH, CA
 WESTSIDE BANK, TRACY, CA
 SUNRISE BANK OF CALIFORNIA, ROSEVILLE, CA
 AMERICAN FIDELITY MORTGAGE, ALTAMONTE SPRINGS, FL
 BANKERS BANK, ATLANTA, GA
 L J WRIGHT FINANCIAL RESOURCES, PHOENIX, AZ
 EQUICREDIT CORPORATION AMERICA, JACKSONVILLE, FL
 SUTTER BUTTES SAVINGS BANK, YUBA CITY, CA
 STERLING MORTGAGE CORP, TUKWILLA, WA
 UNIVERSAL MTG CORP, INDIANAPOLIS, IN
 HODGE BANK AND TRUST CO, HODGE, LA
 IMPERIAL CREDIT INDUSTRIES INC, SANTA ANA HEIGHTS, CA
 INDEPENDENT MORTGAGE CORP, ROCK HILL, SC
 MIDWESTERN MORTGAGE, ST LOUIS, MO
 COLORADO SPRINGS SAVINGS ALA, COLORADO SPRINGS, CO
 METROPOLITAN BANK FOR SAVINGS FSB, ARLINGTON, VA
 CONTINENTAL MORTGAGE CORP, PITTSBURGH, PA
 IBERVILLE TRUST AND SAVINGS BANK, PLAQUEMINE, LA
 HANCOCK SAVINGS BANK, LOS ANGELES, CA
 HARVARD FINANCIAL INC, LONG BEACH, CA
 FIRST CITIZENS BANK, BOZEMAN, MT
 PINE TREE FINANCIAL CORP, CHERRY HILL, NJ
 FARMERS BANK AND TRUST COMPANY, BLYTHEVILLE, AR
 SECURE MORTGAGE INC, HOLLYWOOD, FL
 SUNRISE MORTGAGE CO INC, HUNTINGDON VALLEY, PA
 VISION MORTGAGE CORPORATION, HIALEAH, FL
 FAMILY MORTGAGE BANKING CO INC, TROY, NY
 LITENDA MORTGAGE CORPORATION, MONTCLAIR, NJ
 INTEGRA MORTGAGE COMPANY, PITTSBURGH, PA

EFM MORTGAGE BANKERS INC, BURBANK, CA
 FIRST MORTGAGE GROUP INC, FAIRFAX, VA
 ALEXIS GROUP LTD, ARLINGTON HEIGHTS, IL
 ANNAPOLIS MORTGAGE CORPORATION, PHOENIX, AZ
 CORPUS CHRISTI TEACHERS FED CU, CORPUS CHRISTI, TX
 FIRST NATIONAL BANK AND TRUST, BARABOO, WI
 PRAGUE NATIONAL BANK, PRAGUE, OK
 STEPHENS RESOURCE MANAGEMENT, LITTLE ROCK, AR
 PEOPLES STATE BANK, MANY, LA
 FIRST FEDERAL FUNDING CORP, ROSELLE, IL
 ASSOCIATED BANK MADISON, MADISON, WI
 HEARTLAND MORTGAGE CO INC, JUNCTION CITY, KS
 REINLEIN-LIESER-MCGEE, SAINT LOUIS, MO
 SOUTHTRUST BANK OF VOLUSIA CTY, DELAND, FL
 WEATHERFORD NATIONAL BANK, WEATHERFORD, TX
 KNAPPER FINANCIAL SERVICES INC, HUNTINGTON BEACH, CA
 FIDELITY BANK, FORT WORTH, TX
 SOUTHTRUST BANK CENTRAL FL, OCALA, FL
 PROGRESSIVE NATIONAL BANK OF DE SOTO, MANSFIELD, LA
 MORTGAGE FUNDING, SANTA BARBARA, CA
 BILTMORE MORTGAGE CORPORATION, NASHVILLE, TN
 PACIFIC SOUTHWEST BANK FSB, DALLAS, TX
 CONSUMER FIRST MORTGAGE INC, COLUMBIA, MD
 MIZNER MORTGAGE CORPORATION, STUART, FL
 CHARTER MORTGAGE CORPORATION, OVERLAND PARK, KS
 FAMILY HOME MORTGAGE NETWORK, CHARLOTTE, NC
 RESOURCE MORTGAGE CORPORATION, PUYALLUP, WA
 RIVER VALLEY BANK FSB, WESLACO, TX
 RIVER VALLEY SAVINGS BANK FSB, PEORIA, IL
 US BANK OF IDAHO, BOISE, ID
 BOATMEN'S NATIONAL BANK OK, TULSA, OK
 FIRST COMMUNITY BANK, GASTONIA, NC
 NCB MORTGAGE CORPORATION, WINONA, MS
 FIRST OMNI MORTGAGE CO, FAYETTEVILLE, NC
 FMB—NORTHWESTERN BANK, BOYNE CITY, MI
 LIBERTY BANK, N RICHLAND HILLS, TX

MORTGAGE RESOURCES INC,
HONOLULU, HI
FIDELITY UNION MTG CORP VI,
CHRISTIANSTED, VI
MINNSTAR BANK NATIONAL ASSN,
LAKE CRYSTAL, MN
CONSTITUTION MTG BANKERS INC,
MERIDEN, CT
BANK OF NEWNAN, NEWNAN, GA
LAUREL FEDERAL CREDIT UNION,
LAUREL, MT
NATIONAL BANK COMMERCE
CORINTH, CORINTH, MS
CREDIT UNION RESIDENTIAL
MORTG, DES MOINES, IA
ERIN MORTGAGE CO, EASTPOINTE,
MI
PIGGOTT STATE BANK, PIGGOTT, AR
JEFFERSON COUNTY BANK,
JEFFERSON, WI
MORTGAGE LENDERS INC, EAST
LANSING, MI
TLC MORTGAGE SPECIALISTS INC,
RICHMOND HEIGHTS, OH
FARMERS STATE BANK AND TR,
AURORA, NE
HONDA FEDERAL CREDIT UNION,
TORRANCE, CA
COASTAL FEDERAL MTG CORP INC,
MIAMI, FL
YADKIN VALLEY BANK TRUST CO,
ELKIN, NC
FIRST CONNECTICUT HOUSING INC,
NEW LONDON, CT
BANKERS FINANCIAL FUNDING SVC,
CLEARWATER, FL
HIGHLAND BANK, SAINT PAUL, MN
FIRST MIDWEST BANK POPLAR
BLUFF, POPLAR BLUFF, MO
BELVIDERE NATIONAL BANK AND
TR, BELVIDERE, IL
EAGLE NATIONAL BANK, UPPER
DARBY, PA
GTE FEDERAL CREDIT UNION,
TAMPA, FL
BANK OF LENOX, LENOX, GA
SPRINGDALE BANK AND TRUST,
SPRINGDALE, AR
MERIDIAN NATIONAL BANK, ST
PAUL, MN
BENCHMARK MORTGAGE FIN
SERVICES, LUTZ, FL
MARION TRUST AND BANKING CO,
JASPER, TN
NORWEST BANK TEXAS S CENTRAL,
VICTORIA, TX
VALLEY BANK SHAWANO NA,
SHAWANO, WI
BANKFIRST, EUSTIS, FL
BLUE STAR MORTGAGE INC,
RIVERSIDE, CA
HUNTERS MORTGAGE CORP,
ARLINGTON, IL
FIRST BANK AND TRUST, SPIRIT
LAKE, IA
MATRIX LOAN SERVICES INC,
RANCHO SANTA MARGAR, CA
FIRST UTAH MORTGAGE CORP,
LOGAN, UT

ALPHA MORTGAGE INC, SAN
ANTONIO, TX
FB MORTGAGE CORPORATION, FORT
WORTH, TX
VICTORIA MORTGAGE CORP, IRVINE,
CA
SOUTHTRUST BANK JACKSONVILLE,
JACKSONVILLE, FL
INTERNATIONAL BANKERS FIN GR,
MIAMI, FL
OKLAHOMA BANK, OKLAHOMA
CITY, OK
OLD—FIRST NATIONAL BANK IN
BLUFFTON, BLUFFTON, IN
AMERICAN MORTGAGE BANKERS
INC, BETHESDA, MD
BEAVER TRUST COMPANY, BEAVER,
PA
BANK OF NORTH AMERICA, FORT
LAUDERDALE, FL
PROVIDENTIAL HOME INCOME PLAN
INC, SAN FRANCISCO, CA
BANKFIRST NA, BROOKINGS, SD
CHEMICAL BANK NA, JERICHO, NY
SOUTHLAND MORTGAGE LENDING
COR, TAMPA, FL
UNIVERSAL CAPITAL CORP,
TOTOWA, NJ
CITIZENS STATE BANK, CORPUS
CHRISTI, TX
PATRIOT MORTGAGE COMPANY LP,
ST LOUIS, MO
CITIZENS BANK NORTHWEST AR,
FAYETTEVILLE, AR
BANK OF AMERICA TEXAS NA,
TEMPE, AZ
BROKERS MORTGAGE
CORPORATION, LONG BEACH, CA
TRANSCAPITAL FINANCIAL INC,
HOUSTON, TX
FUNDING PLUS INC, SAN DIMAS, CA
SMYRNA BANK AND TRUST CO,
SMYRNA, GA
CLOS INC, PALM DESERT, CA
STATESTREET MORTGAGE CORP,
RICHMOND, VA
PAWTUCKET CREDIT UNION,
PAWTUCKET, RI
NORTH BANK, SAGINAW, MI
CORPORATE MORTGAGE SERVICES
INC, ST LOUIS, MO
CREATIVE MORTGAGE LOANS INC,
OKLAHOMA CITY, OK
CITIZENS BANK AND TRUST
FAYETTE, FAYETTEVILLE, GA
COLONIAL MORTGAGE CORP,
FAIRFAX, VA
PREFERRED CREDIT CORPORATION,
IRVINE, CA
SECURITY STATE BANK ND,
CARRINGTON, ND
USA MORTGAGE GROUP INC,
WOOSTER, OH
FIRST CITY MORTGAGE CORP,
DALLAS, TX
IMPERIAL MC INC, SAN DIEGO, CA
MORTGAGE CORPORATION OF MISS,
RIDGELAND, MS
AMERICAN LIFE AND CAUSUALTY
INSURANCE CO, DES MOINES, IA

AMERICAN INDUSTRIES LIFE INS CO,
HOUSTON, TX
LOS ANGELES TEACHERS CREDIT
UNION, LOS ANGELES, CA
FIRST NATIONAL BANK SOUTHWEST
FL, CAPE CORAL, FL
SEKON ENTERPRISES INC,
SARASOTA, FL
MAXIMUM MORTGAGE CORP,
MAPLE GROVE, MN
CHEMICAL BANK NY, JERICHO, NY
HAMMOND PROPERTIES INC,
CUMMING, GA
ABBAY MORTGAGE CORPORATION,
LA MESA, CA
GREAT SOUTH MORTGAGE CO INC,
LONGWOOD, FL
A AND I MORTGAGE CORPORATION,
SAN DIEGO, CA
TRINITY LENDING CORP, FORT
WORTH, TX
DES CHAMPS AND GREGORY MTG
CO, BRADENTON, FL
SHELTERNET INC, SAN MATEO, CA
A B MORTGAGE CORPORATION,
STUART, FL
LIBERTY NATIONAL MORTGAGE INC,
DENVER, CO
TEAM MORTGAGE CORP, EDEN
PRAIRIE, MN
FCB REALTY ADVISORS INC, TULSA,
OK
UNION AMERICA MORTGAGE CORP,
TARPON SPRINGS, FL
ENTREGA MORTGAGE LENDERS INC,
TAMPA, FL
BLAKE MORRIS MORTGAGE CORP,
NEWPORT BEACH, CA
NORTH COAST MORTGAGE INC, ST
LOUIS PARK, MN
PERPETUAL STATE BANK,
LEXINGTON, NC
MORTECH INC, LINCOLN, NE
RFI MORTGAGE CORP, RIVERSIDE, CA
CITIZENS BANK MORTGAGE CO,
SILVER SPRING, MD
BANK—DARIEN, DARIEN, CT
FIRST STATE BANK—THOMPSON
FALLS, THOMPSON FALLS, MT
SYNERGY MORTGAGE INC, DENVER,
CO
LAKE COMMUNITY BANK,
LAKEPORT, CA
COAST CAPITAL, TORRANCE, CA
ALPHA MORTGAGE INC, LOUISVILLE,
KY
SOUTHERN CAPITAL MORTGAGE
CORP, ATLANTA, GA
BANK OF ALTON, ALTON, IL
MILLENNIUM FIRST FUNDING,
IRVINE, CA
FINAMARK INC, KENSINGTON, MD
UNITED VALLEY BANK,
FARMERSVILLE, CA
PEOPLES NATIONAL MORTGAGE
CORP, DALLAS, TX
ADMIRAL MORTGAGE CO,
PASADENA, CA
CROSSLAND FEDERAL SAVINGS
BANK, NEW YORK, NY

FAMILY MORTGAGE INC, SAINT
CLAIRSVILLE, OH
O SULLIVAN DIVERSIFIED
COMPANIES INC, OCEANSIDE, CA
JPJ CAPITAL GROUP INC, TEMPE, AZ
SOUTHERN CRESCENT BANK,
MORROW, GA
ENTERPRISE BANK, BELLEVUE, WA
MOHAVE STATE BANK, LAKE
HAVASU CITY, AZ
BANK OF—BOONE COUNTY INC,
FLORENCE, KY
ECON MORTGAGE SERVICES,
HINSDALE, IL
A—PLUS MORTGAGE CORPORATION,
FORT WORTH, TX
PANAMERICAN BANK, MIAMI, FL
TELEPHONE EMPLOYEES CR UN,
PASADENA, CA
BANCNET INC, SCHAUMBURG, IL
PROGRESS FEDERAL SAVINGS BK,
BLUE BELL, PA
PREFERRED BANK, LOS ANGELES, CA
FIRST HOME SAVINGS BANK FSB,
PITTSBURGH, PA
ARC FINANCIAL GROUP INC,
MARLTON, NJ
SERVICE EMPLOYEES LANE COUNTY
CU, EUGENE, OR
BANK OF—ZUMBROTA, ZUMBROTA,
MN
BARA FINANCIAL INC, MONROVIA,
CA
COWGER AND MILLER MORTGAGE
INC, LOUISVILLE, KY
BANK OF WINTER PARK MORTGAGE
CO, MAITLAND, FL
LINCOLN MORTGAGE
CORPORATION, ELGIN, IL
STANDARD AMERICAN FINANCIAL
CORP, LAKE CHARLES, LA
CRESTAR MORTGAGE CAPITAL
CORP, SCHAUMBURG, IL
EPIC MORTGAGE CORPORATION,
MISSION HILLS, CA
WESTPORT BANK AND TRUST,
WESTPORT, CT
BANK OF—RANTOUL, RANTOUL, IL
FIRST BANK OF—WEST HARTFORD,
WEST HARTFORD, CT
BATES FINANCIAL CORP, NEW
HAVEN, CT
HOMES MORTGAGE CONSULTANTS,
ELMHURST, IL
HARVEST MORTGAGE, ORANGE, CA
SECOND NATIONAL BANK BAY CITY,
BAY CITY, MI
GRAYLING STATE BANK, GRAYLING,
MI
THE BANK OF QUITMAN, QUITMAN,
GA
TODAY'S BANK—EAST, FREEPORT,
IL
REI INC, ORANGE, CA
AMERICAN WEST FINANCIAL,
ONTARIO, CA
HARBOR MORTGAGE LTD, GIG
HARBOR, WA
FIRST HOME MORTGAGE OF
VIRGINIA INC, VIRGINIA BEACH,
VA

FIRSTAR BANK EAU CLAIRE NA, EAU
CLAIRE, WI
MORTGAGE ASSOCIATES INC,
MURRAY, UT
SUNBELT MTG AND FINANCIAL
SERVICES INC, FITZGERALD, GA
ALOHA MORTGAGE AND FINANCE,
HONOLULU, HI
WEST VENTURE HOME SALE INC,
STEVENSON RANCH, CA
EXCHANGE BANK AND TRUST
COMPANY, NATCHITOCHES, LA
MORTGAGE MART, NENDERSON, NV
FIRST CAPITAL MORTGAGE
COMPANY, YORK, PA
PINNACLE BANCORP INC,
SCHAUMBURG, IL
FAST FLOW FINANCING,
HOLLYWOOD, CA
SEVEN HILLS SAVINGS
ASSOCIATION, CINCINNATI, OH
FIRSTAR BANK CEDAR FALLS,
CEDAR FALLS, IA
FIRSTAR BANK MINNESOTA NA,
ROSEVILLE, MN
WESTCO REAL ESTATE FINANCE,
COSTA MESA, CA
NORTHERN BANK AND TRUST CO,
WOBBURN, MA
COMMUNITYFIRST BANK,
HARTSVILLE, TN
FIRST BANK AND TRUST,
MENOMONIE, WI
TWIN CITY FEDERAL SAVINGS BANK,
BRISTOL, TN
UNITED CAPITAL CORPORATION,
WESTCHESTER, IL
AMERICAN LOAN AND MORTGAGE
COR, PENSACOLA, FL
FIRST STATE BANK BIBB COUNTY,
WEST BLOCTON, AL
FIRST NATIONAL TRUST BANK,
SUNBURY, PA
MIDLANTIC BANK NA, WEST
PATERSON, NJ
DANIELS CAPITAL CORPORATION,
LAGUNA NIGUEL, CA
MADISON COMMERCE INC, PLANO,
TX
ATLANTIC INTERNATIONAL
COMPANY, CLEARWATER, FL
COMPULAN FINANCIAL SVCS LLC,
SALT LAKE CITY, UT
COMMONWEALTH THRIFT—FDIC,
TORRANCE, CA
SAFETY FUND NATIONAL BANK,
FITCHBURG, MA
SLAVIE FEDERAL SAV AND LN ASSN,
BALTIMORE, MD
AEGIS FUNDING, SOUTHAVEN, MS
WE FINANCIAL CORPORATION, SAN
BERNARDINO, CA
MORTGAGE PROFESSIONALS AMER
INC, CHICAGO, IL
LAKE CITY MORTGAGE INC,
ACWORTH, GA
CAPSOURCE MORTGAGE
CORPORATION, DALLAS, TX
CONTINENTAL FINANCING
COMPANY, SCHAUMBURG, IL

ELM MORTGAGE CORPORATION,
ELMHURST, IL
COLUMBIA NATIONAL BANK,
CHICAGO, IL
MORCAP INC, ATLANTA, GA
UNITY NATIONAL BANK, HOUSTON,
TX
AMERICAN ELECTRONICS ASSOC CU,
SUNNYVALE, CA
AMERICAN MORTGAGE INDUSTRIES
INC, LAS VEGAS, NV
FIRST COAST MTG CONSULTANTS
INC, ORANGE PARK, FL
FLEET REAL ESTATE CAPITAL INC,
BOSTON, MA
BRADFIELD PROPERTIES INC, SAN
ANTONIO, TX
OLD FAMILY MTG INC,
INDIANAPOLIS, IN
ALTERNATIVE MORTGAGE
CONCEPTS INC, AURORA, CO
FIRST BANK MORTGAGE CORP,
SAINT SIMONS ISLAND, GA
BANKERS FINANCIAL OF
CALIFORNIA INC, BAKERSFIELD,
CA
PROFEX MORTGAGE LENDERS INC,
MIAMI, FL
FIRST UNITED MORTGAGE
COMPANY, SANDY, UT
CHEMICAL COMMERCIAL MTG BK
COR, NEW YORK, NY
ROBBINS FINANCIAL INC,
GLENDALE, CA
ENCHANTMENT MORTGAGE INC,
SANTA FE, NM
AMH MORTGAGE COMPANY L P DBA
AMH FUNDING, NEWPORT, CA
WORKERS CREDIT UNION,
FITCHBURG, MA
MORTGAGE ADVANTAGE INC,
ABERDEEN, SD
A AND C MORTGAGE CORPORATION,
NORTH CHARLESTON, SC
APEX MORTGAGE CORPORATION,
DEARBORN HEIGHTS, MI
AMERICAN NORTHWEST MORTGAGE
DBA, SILVERDALE, WA
PAM CORPORATION, HONOLULU, HI
AMERICAN FINANCE AND INV INC,
FAIRFAX, VA
PEOPLES BANK OF KANKAKEE
COUNTY, BOURBONNAIS, IL
COLONIAL MORTGAGE SERVICE CO,
HORSHAM, PA
KEYSTONE VENTURES INC, AUSTIN,
TX
HEARTLAND ENTERPRISES INC,
CANOGA PARK, CA
MORTGAGE MAKERS, WARWICK, RI
DISCOVER FINANCIAL SERVICES,
FRANKLIN, IN
LEADER MORTGAGE INC, BOCA
RATON, FL
AMERICAN HOME MORTGAGE POLK
COUNTY INC, LAKELAND, FL
ROBERTS FINANCIAL INC, POMPTON
PLAINS, NJ
PACIFIC EMPIRE FUNDING, LAKE
FOREST, CA

STERNBERG FINANCIAL INC, ST CHARLES, MO
PROFESSIONAL REALTY SERVICES, LANHAM, MD
FARMERS BANK, NICHOLASVILLE, KY
COMMUNITY STATE BANK OF ROCK FALLS, ROCK FALLS, IL
FIRST NATIONAL BANK IN AMBOY, AMBOY, IL
PALO ALTO FUNDING GROUP INC, PALO ALTO, CA
FIRST INTERFINANCIAL MORTGAGE CORP, PINELLAS PARK, FL
MORTGAGE STORE, WILLOWBROOK, IL
SUMMIT MORTGAGE BANKERS INC, NEWNAN, GA
RDMG INC, BELLEVUE, WA
APPLE MORTGAGE CORPORATION, PEMBROKE PINES, FL
UNITED CALIFORNIA LENDERS CORP, TUSTIN, CA
UNIVERSAL BANCORP, LAGUNA HILLS, CA
THE FINANCIAL COMPANY, HUNTINGTON BEACH, CA
FIRST NATIONAL BANK OF TUTTLE, TUTTLE, OK
HUTCHINSON CREDIT UNION, HUTCHINSON, KS
HOMEOWNERS FINANCIAL SERVICES INC, COLUMBUS, OH
TEXAS UNITED MORTGAGE LTD, AUSTIN, TX
BANKALABAMA HUNTSVILLE, HUNTSVILLE, AL
CREST FINANCIAL INC, MIDLAND, TX
CASA MORTGAGE INC, ENCINO, CA
SANDHURST NATIONAL MORTGAGE CORPORATION, SAN DIEGO, CA
UPM MORTGAGE INC, AURORA, CO
FIRST MARINER MORTGAGE CORPORATION, BALTIMORE, MD
LENDING SOURCE INC, PORTLAND, OR
LIBERTY RESIDENTIAL MORTGAGE COMPANY, ARLINGTON, TX
NORTHERN PACIFIC MORTGAGE, RANCHO CUCAMONGA, CA
VOMACK CORPORATION, AUSTIN, TX
EMERALD MORTGAGE CORP, BEAVERTON, OR
WFS MORTGAGE SERVICES INC, WARREN, NJ
C AND P INNOVATIVE MARKETING SERV INC, SAN DIEGO, CA
AMERICAS MORTGAGE SOURCE LLC, MARLTON, NJ
HOMETOWN MORTGAGE INC, OWINGS MILLS, MD
NEW ENGLAND MORTGAGE LENDERS INC, STOUTTOWN, MA
PEERLESS FUNDING CORPORATION, LAS VEGAS, NV
EMERALD COAST MORT CO, EMERALD ISLE, NC
BANKERS MORTGAGE CORP, EVANSTON, IL

FOA FINANCIAL, ARCADIA, CA
ADVANTAGE MORTGAGE SRVS INC, CAMP SPRINGS, MD
FIRST CHOICE MORTGAGE LLC, BURR RIDGE, IL
INTEGRA PACIFIC MORTGAGE INC, LYNNWOOD, WA
VISTA PACIFIC DEVELOPMENT CORP, LOS ANGELES, CA
CHURCHILL MORTGAGE INVESTMENT, SUFFERN, NY
AUTOMATED MORTGAGE SERVICES, JONESBORO, GA

Dated: April 22, 1998.

Art Agnos,

Acting General Deputy Assistant Secretary-
Federal Housing Commissioner.

[FR Doc. 98-12616 Filed 5-11-98; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4369-N-02]

Announcement of OMB Approval Number

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Announcement of OMB
approval number.

SUMMARY: The purpose of this notice is
to announce the OMB approval number
for the collection of information
pertaining to 24 CFR part 55, Floodplain
Management.

FOR FURTHER INFORMATION CONTACT:
Richard H. Broun, Director, Office of
Community Viability, Office of
Community Planning and Development,
Department of Housing and Urban
Development, 451 7th Street, SW,
Washington, DC 20410-7000. For
inquiry by phone or e-mail: contact
Walter Prybyla, Deputy Director for
Policy, Environmental Review division
at (202) 708-1201, Ext. 4466 or e-mail:
Walter_Prybyla@hud.gov. This is not a
toll-free number. Hearing or speech-
impaired individuals may access this
number via TTY by calling the toll-free
Federal Information Relay Service at 1-
800-877-8339.

SUPPLEMENTARY INFORMATION: In
accordance with the Paperwork
Reduction Act of 1995 (44 U.S.C.
Chapter 35, as amended), this notice
advises that OMB has responded to the
Department's request for approval of the
information collection pertaining to 24
CFR part 55, Floodplain Management.
The OMB approval number for this
information collection is 2506-0151,
which expires on January 31, 2001.

An agency may not conduct or
sponsor, and a person is not required to

respond to, a collection of information,
unless it displays a currently valid OMB
control number.

Dated: May 7, 1998.

Fred Karnas,

Deputy Assistant Secretary for Economic
Development.

[FR Doc. 98-12617 Filed 5-11-98; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Environmental Assessment, Receipt of Application for, and Intent To Issue, Incidental Take Permit for Private Land in Iron County, UT

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability, receipt of
application for, and intent to issue
permit.

SUMMARY: Iron County and the Utah
Division of Wildlife Resources
(Applicants) have applied to the U.S.
Fish and Wildlife Service (Service) for
an incidental take permit pursuant to
section 10(a)(1)(B) of the Endangered
Species Act of 1973, as amended (Act).
The Applicant has been assigned permit
number PRT-MB000142-0. The
requested permit, which is for a period
of 20 years, would authorize incidental
take of the Utah Prairie Dog (*Cynomys
parvidens*), a species federally listed as
threatened. The proposed take would
occur as a result of development of
private land within Iron County, Utah.

The Service has prepared the
Environmental Assessment for issuance
of the incidental take permit. The
Applicant has prepared a habitat
conservation plan as part of the
incidental take permit application. A
determination of whether jeopardy to
the species will occur, or a finding of No
Significant Impact (FONSI), and/or
issuance of the incidental take permit,
will not be made before 30 days from
the date of publication of this notice.
This notice is provided pursuant to
section 10(c) of the Act and National
Environmental Policy Act regulations
(40 CFR 1506.6).

DATES: Written comments on the permit
application must be received on or
before June 11, 1998.

ADDRESSES: Persons wishing to review
the permit application may obtain a
copy by writing to the Field Supervisor,
Utah Ecological Services Field Office,
Fish and Wildlife Service, 145 East 1300
South Street, Suite 404, Salt Lake City,

Utah 84115. Documents will be
available for public inspection by
written request, or by appointment only,
during business hours (8 a.m. to 4:30
p.m.) at the above address.

Written data or comments concerning
the permit application should be
submitted to the Field Supervisor, Utah
Ecological Services Field Office, Fish
and Wildlife Service Salt Lake City,
Utah (see ADDRESSES above). Please refer
to permit number PRT-MB000142-0 in
all correspondence regarding these
documents.

FOR FURTHER INFORMATION CONTACT:

Marilet A. Zablan, Wildlife Biologist or
Ted W. Owens, Wildlife Biologist, at the
above U.S. Fish and Wildlife Service
office in Salt Lake City, Utah (See
ADDRESSES above) (telephone: (801)
524-5001, facsimile: (801) 524-5021).

SUPPLEMENTARY INFORMATION: Section 9
of the Act prohibits the "taking" of any
threatened or endangered species, such
as the threatened Utah Prairie Dog.
However, the Service, under limited
circumstances, may issue permits to
take threatened or endangered wildlife
species when such taking is incidental
to, and not the purpose of, otherwise
lawful activities. Regulations governing
permits for threatened and endangered
species are at 50 CFR 17.22.

The Applicants have submitted an
application to the Service for a permit
to incidentally take Utah Prairie Dogs,
pursuant to section 10(a)(1)(B) of the
Act, in association with various private
projects in Iron County. This permit
would allow specified take levels for
Utah Prairie Dogs by non-Federal
entities on non-Federal property within
the county when presence of Utah
Prairie Dogs hinders legal uses of the
property on which they reside. Details
of this alternative are found in the Iron
County/Utah Division of Wildlife
Resources (Division) Habitat
Conservation Plan (HCP), dated March
9, 1998. Proposed management actions
including minimizing and mitigating
take are described in detail on pages 30-
65 of the HCP. The proposed permit
would be in effect for 20 years.

Authorized take would include harm,
harassment, and direct mortality of Utah
Prairie Dogs. However, if the Service
determines that the obligations of the
Act Section 10(a)(1)(B) permit are not
being met (e.g., unauthorized taking or
permit violations by the cooperators is
occurring), the permit may be revoked if
remedial actions are not immediately
implemented to alleviate such
violations.

Two types of take would occur under
this incidental take permit: (1)
"Permanent" take where habitat is

permanently destroyed, and (2) "non-
permanent" take, in which the number
of Utah Prairie Dogs in a colony is
reduced, but no lasting habitat
destruction occurs. Permanent take from
development activities such as
residential or commercial construction,
road construction, parking lot
development, excavation, etc.,
contributes to a net loss of habitat and
adversely affects resident Utah Prairie
Dogs and future occupation of the site
by Utah Prairie Dogs. However, it may
not necessarily result directly in death
unless Utah Prairie Dogs are hibernating
and unable to escape construction
activities. Non-permanent take results in
a reduction of animal numbers, but no
net loss of habitat. Non-permanent take
may occur in areas where Utah Prairie
Dogs are inhabiting agricultural lands or
pastures, crops, private rangelands,
recreation areas, or where presence of
Utah Prairie Dogs interferes with
facilities maintenance. It would also
occur where the presence of Utah
Prairie Dogs causes safety concern, as
determined by the Implementation
Committee, and areas that were
previously cleared through legal means.

Recovery success depends upon
continued survival of existing public
land colonies and establishment of new
Utah Prairie Dog colonies on public
lands. Therefore, allowable levels of
permanent take of habitat and/or
animals on non-Federal property will
depend upon successful creation of new
habitat and establishment of Utah
Prairie Dogs on public lands, such that
there is at the very least, no loss of
habitat potential. Maximum annual
amounts of allowed permanent take
would depend upon:

1. Parameters determined from
population modeling to ascertain levels
of take that will not jeopardize the
species,
2. Successful establishment of Utah
Prairie dogs on public lands, or long-
term conservation of Utah Prairie Dogs
on non-Federal lands (e.g., conservation
easements), and
3. Implementation of measures to
minimize and mitigate take.

Annual permanent take would be
quantified in terms of habitat acres and
number of animals taken. Because Utah
Prairie Dogs may no longer exist at
many of the locations on non-Federal
lands where they have been mapped,
but habitat remains intact, permanent
take would be limited by either the
number of Utah Prairie Dogs or acreage
of habitat permanently taken. When the
allowed limit of either acreage of Utah
Prairie Dog number is reached, no
further permanent take would be
allowed during that calendar year. The

maximum allowed permanent take of
animals would not be more than 10
percent of the average spring count of
adult Utah Prairie Dogs on public lands
during the preceding 5 years. The
percentage of allowed take would
increase to 15 percent once counts on
public lands reach 1,500 adult Utah
Prairie Dogs as long as the other two
conditions (number of public land
complexes and quantity of public
acreage providing Utah Prairie Dog
habitat) are met. The maximum allowed
take of habitat initially would not
exceed 1 percent of the total non-
Federal land habitat, and would
increase as additional public land sites
become established.

As more acceptable habitat is created/
enhanced, and additional Utah Prairie
Dog colonies are established, further
permanent take on non-federally owned
habitat would be allowed. Acreage
protected through the establishment of
long-term conservation easements on
non-Federal property would count
toward the protected land total as well.
The remainder of Utah Prairie Dogs
needed for translocation to public lands
would come from non-permanent
sources. Utah Prairie Dogs translocated
to recovery sites, although considered
taken for purposes of development,
would still be protected under State law
and the Act, and would be afforded full
protection of a listed species under the
Act.

Maximum allowed permanent take
would depend upon implementation of
mitigation efforts and establishment of
Utah Prairie Dogs on public lands and
shall not exceed that listed in the Iron
County/Division HCP. Allowable
permanent take is expected to always be
at least 40 individuals or 400 acres
based on current distribution and
numbers. Permanent take that remains
unused during 1 year will be credited
for the following year only. Failure to
implement mitigation measures will
result in no allowable take.

Non-permanent take would be
restricted to Utah Prairie Dogs which are
(1) damaging croplands, pastures, and
private rangelands, (2) re-inhabiting
previously cleared areas after
construction is complete, (3) damaging
recreational areas that remain suitable
as habitat (e.g., golf course, softball
fields), (4) inhibiting effective work in
areas requiring maintenance (e.g.,
roads), (5) inhabiting sensitive areas
(e.g., cemeteries, archaeological sites),
and (6) compromising safety concern
areas (e.g., airport runway) as identified
by the Implementation Committee. In
non-permanent take situations, as many
Utah Prairie Dogs as can be
accommodated at translocation sites

will be live-trapped and translocated. In situations where translocation sites cannot accommodate demand, landowners may be issued limited permits under the Act Section 4(d) rule, to remove the remaining allowed animals by shooting or trapping.

In the case of areas previously developed which have not undergone an Act Section 10 clearance, but which have become occupied by Utah Prairie Dogs, the area would be treated similarly to undeveloped sites. If a landowner wanted Utah Prairie Dogs removed in order to conduct otherwise lawful activities he/she would be required to conduct a clearance survey, complete an assessment of take, and schedule to have Utah Prairie Dogs trapped and translocated. Annual reports summarizing the impacts of the Proposed Action would be submitted to the Service by the Iron County Commission and the Division.

Because of the patchy distribution of Utah Prairie Dogs in Iron County, as well as the large percentage of occupied habitat and numbers of Utah Prairie Dogs on non-Federal lands, development of a county-wide HCP was analyzed. A county-wide HCP (1) allows for establishment of long-term levels of take and cumulative effects monitoring, (2) reduces costs of individuals land owners, (3) allows for planning and reduces time delays for builders, (4) facilitates cooperation between local, State, and Federal agencies and individuals, and (5) does not preclude, and may be designed to promote, Utah Prairie Dog recovery.

A no-action alternative to the proposed action was considered. This would result in no lawful development in Utah Prairie Dog habitat unless each individual landowner who wanted to develop his/her property submitted an application for, and was subsequently issued, an Act section 10 incidental take permit. In order to lawfully develop within Utah Prairie Dog Habitat, each individual landowner would also be required to develop and implement a habitat conservation plan. The non-action alternative was rejected for reasons including loss of use of the private property resulting in significant economic loss to County residents and excessive expense, in both time and money, for County residents and Service employees who must process each individual permit and ensure its suitability. The Applicants also considered an alternative which would require the purchase (in fee title or of conservation easements), preservation, and long-term management of existing Utah Prairie Dog habitat on land currently owned by private entities.

However, this alternative was rejected for a number of reasons. First, such a configuration of Utah Prairie Dog habitat would have poor potential for genetic exchange among isolated Utah Prairie Dog colonies and would therefore probably not be conducive to long-term maintenance and recovery of the species. It would also disturb local and land-use patterns to an unacceptable degree. Finally, costs associated with land acquisition may be prohibitive.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: May 6, 1998.

Terry Terrell,

Regional Director, Region 6.

[FR Doc. 98-12522 Filed 5-11-98; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-350-4210-01]

Reinstatement of Information Collection on Indian Allotments; OMB Approval No. 1004-0023

AGENCY: Bureau of Land Management.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request reinstatement of approval for the collection of information from those persons who are applying for conveyance of public land under the General Allotment Act of 1887. Section 4 of that Act provides for issuing a deed to eligible Indians who are entitled to an allotment of public lands. The BLM uses the information collected on the Indian Allotment Application Form (Form 2530-1) to determine eligibility and identify legal information to assist in conveying title to the applied-for lands.

DATES: Comments on the proposed information collection must be received by July 13, 1998.

ADDRESSES: Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW, Washington, D.C., or mail comments to: Bureau of Land Management, Administrative Record, 1849 C St., NW, Mail Stop 401LS, Washington, D.C. 20240. Commenters may transmit comments electronically by way of the Internet to WOCComment@wo.blm.gov. Please

include "Attn.: 1004-0023" in your message. Comments will be available for public inspection at the L Street address during regular business hours (7:45 am. to 4:15 pm), Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Carl Gammon, (202) 452-7777.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), BLM is required to provide a 60-day notice in the *Federal Register* concerning a proposed collection of information to solicit comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Any individual seeking to acquire an allotment must make an application and provide information essential to complying with law, regulations, and procedures. Information is collected on Form 2530-1. Specific items on the form are as follows: Items 1-5 identify the applicant, mailing address, and, if appropriate, the minor child for whom the application is filed. Item 6 describes the land for which the application is filed. Item 7 requires the listing of prior allotments. Item 8 indicates whether the applicant or the minor child placed any improvements on the described land. Item 10 tells whether the applicant or minor child claims a bona fide settlement. Item 11 describes the manner in which settlement was made on the described land. Item 12 asks if the required petition for classification has been attached to the application. Specifically, completing Items 6 through 12 is necessary to determine the eligibility of the applicant/minor and the validity of the claim. Any eligible individual desiring an allotment of public lands must file a fully completed application. Items 6 through 12 are justified pursuant to the requirements of the regulations at 43 CFR Subparts 2530 and 2531. Section 4 of the Act provides that a patent cannot be issued unless a completed application form has been received by BLM. If the information required by 43 CFR Subpart 2531 were

not collected, BLM would not be able to carry out the mandate of section 4 of the Act.

Based on its experience in administering the regulations at 43 CFR Part 2530, BLM estimates that the public reporting burden for the information collection is 30 minutes per application. The respondents are individuals who seek to acquire public lands for Indian allotment purposes per the Act. The frequency of response is once per application. The BLM estimates that approximately 10 Indian allotment applications will be filed annually, for a total of 5 burden hours. Copies of Form 2530-1 may be obtained by contacting the individual under "For Further Information Contact."

All responses to the notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: May 4, 1998.

Carole J. Smith,

Bureau of Land Management, Information Collection Officer.

[FR Doc. 98-12562 Filed 5-11-98; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-98-1330-00]

Notice of Closure of Public Lands to Off-Road Vehicle Use and Discharge of Firearms, Carson City, NV

AGENCY: Bureau of Land Management, Department of the Interior.

SUMMARY: Notice is hereby given that certain public lands in the vicinity of Highland Ranch Parkway, Sun Valley, Nevada are closed to off-road motorized vehicle use and the discharge of firearms. This closure is necessary to prevent impacts to soil and vegetative resources at a recently reclaimed BLM community pit.

EFFECTIVE DATES: This closure will take effect June 11, 1998, and will remain in effect until the BLM Authorized Officer determines the reclamation at the pit is successful and the closure is no longer needed. Interested parties may submit comments to the Carson City District Manager, John O. Singlaub.

SUPPLEMENTARY INFORMATION: This closure applies to all motorized vehicle traffic and discharge of firearms except for emergency and law enforcement personnel during the conduct of their official duties. The public lands affected by this closure are described as follows.

Mt. Diablo Meridian.

T. 20 N., R. 20 E., Sec. 9, S½SE¼SW¼
Authority: 43 CFR 8364-Closure and Restriction Orders; 8365.1-6-Supplementary Rules of Conduct; 8341.2-Off-road Vehicles Conditions of Use, Special Rules.

Penalty: Any person who fails to comply with this closure may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 USC 3571, or both.

FOR FURTHER INFORMATION CONTACT: Ronald J. Tauchen, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701 Telephone: (702) 885-6000

A map of the closed area is available at the Carson City Field Office.

Dated: May 5, 1998.

John O. Singlaub,

District Manager, Carson City District.

[FR Doc. 98-12590 Filed 5-11-98; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-033-98-1230-00-MTNMAN]

Temporary Closure of Public Lands: Nevada, Carson City District

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of approximately 600 acres of public lands in Douglas County during the conduct of a mountain man rendezvous encampment authorized under Special Recreation Use Permit Number NV-030-97-047. The lands are located within T13N R23E Sections 5 and 8, M.D.M.

SUMMARY: The Assistant District Manager, Non-Renewable Resources announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during shooting events and to provide an uninterrupted atmosphere during the conduct of rendezvous activities. The permittee is required to clearly mark and monitor the area during the closure period. Only registered event participants and authorized officials may occupy the event area. A map of the closure area may be obtained at the contact address.

EFFECTIVE DATES: June 19 through 29, 1998.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road,

Carson City, Nevada 89701, Telephone: (702) 885-6161.

Exemptions: Closure restrictions do not apply to fire suppression, medical/rescue, law enforcement and agency personnel monitoring the event.

Authority: 43 CFR 8364 and 43 CFR 8372.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Event Specific Information: Pacific Rendezvous Corporation is sponsoring their regional, annual gathering, mountain man encampment. The encampment promotes the study and reenactment of North American fur trader history during the 1670-1840 time period. Event activities include: primitive camping, black powder target shooting, tomahawk, archery and knife skills, flintknapping and tool making, educational seminars, and trading of period goods. Motor vehicles are not used during the 10 day encampment. 300 to 700 participants are expected. The event area will be returned to a natural condition after the event.

Dated: May 5, 1998.

Clifford D. Lignons,

Assistant District Manager, Non Renewable Resources.

[FR Doc. 98-12591 Filed 5-11-98; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-1430-00; WYW-45359]

Recreation and Public Purposes Classification and Application to Amend Lease in Lincoln County; Wyoming

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a Notice of Realty Action in the *Federal Register* of April 15, 1998, notifying the public of decisions made concerning a Recreation and Public Purpose lease for a ski area in Lincoln County, Wyoming. The notice contained an incorrect legal description.

FOR FURTHER INFORMATION CONTACT: Mark Hatchel, Realty Specialist, Kemmerer Resource Area, Bureau of Land Management, 312 Highway 189 North, Kemmerer, Wyoming 83101, (307) 877-3933 extension 107.

SUPPLEMENTARY INFORMATION: In the Federal Register issue of April 15, 1998, on page 18439, an incorrect legal description was given. The corrected legal description follows:

T. 24 N., R. 118 W.,

Sec. 4, W $\frac{1}{2}$ of lot 6, lots 7, 8, 9, 10, W $\frac{1}{2}$ of lot 11, SE $\frac{1}{4}$ of lot 11, lots 14, 15, 16, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 5, E $\frac{1}{2}$ E $\frac{1}{2}$ of lot 5, E $\frac{1}{2}$ of lot 12, SW $\frac{1}{4}$ of lot 12, lot 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 25 N., R. 118 W.,

Sec. 35, E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$.

Dated: April 30, 1998.

Jeff Rawson,

Area Manager.

[FR Doc. 98-12505 Filed 5-11-98; 8:45 am]

BILLING CODE 4310-22-P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the Federal Register notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before July 13, 1998.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336-8563.

Summary of Form Under Review

Type of Request: Revised form.

Title: Project Information Report. *Form Number:* OPIC-71.

Frequency of Use: On occasion; a function of the sampling criteria. Maximum use is once per investor per contract.

Type of Respondents: Business or other institutions (except farms).

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies investing overseas.

Reporting Hours: 7 hours per project.

Number of Responses: 25 per year.

Federal Cost: \$1,600 per year.

Authority for Information Collection:

Title 22 USC 2191(k)(2) and 2199(h), Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Project Information Report is necessary to elicit and record the information on the developmental, environmental and U.S. economic effects of OPIC-assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects, and reporting the results in aggregate form, as required by Congress.

Dated: May 7, 1998.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 98-12592 Filed 5-11-98; 8:45 am]

BILLING CODE 3210-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-403]

Certain Acesulfame Potassium and Blends and Products Containing Same; Notice of Commission Determination not to Review Initial Determination Granting Motion to Amend the Complaint and Notice of Investigation to Add an Additional Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting complainant's motion for leave to amend the complaint and to amend the notice of investigation to add an additional respondent.

FOR FURTHER INFORMATION: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3098.

SUPPLEMENTARY INFORMATION: The Commission instituted this patent-based

section 337 investigation on November 20, 1997, based on a complaint filed by Nutrinova Nutrition Specialties and Food Ingredients GmbH and Nutrinova, Inc. ("Nutrinova"). Four respondents were originally named in the investigation—Hangzhou Sanhe Food Company, Ltd.; JRS International, Inc.; Dingsheng, Inc.; and WYZ Tech, Inc.

On February 10, 1998, Nutrinova filed, pursuant to Commission rule 210.14(b), 19 CFR 210.14(b), a motion for leave to amend the complaint and for issuance by the ALJ of an ID amending the notice of investigation to add Hangzhou Sanhe Food Additives Factory as a respondent. No oppositions to the motion were filed.

The ALJ granted Nutrinova's motion in an ID (Order No. 7) issued on April 1, 1998. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

Issued: May 4, 1998.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-12453 Filed 5-11-98; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Office Of Justice Programs

Bureau of Justice Assistance; Public Safety Officers Benefits Program; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; (reinstatement, with change of a previously approved collection for which approval has expired) report of Public Safety Officers' Permanent and Total Disability Program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty 60 days" until July 13, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Cynthia Y. Simons. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Cynthia Y. Simons, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW, Washington, DC 20531.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement of collection for which OMB Clearance has expired.

(2) *The Title of the form/collection:* Report of Public Safety Officers' Permanent and Total Disability Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form 3650/7, Public Safety Officers'

Benefits Program, Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, State, and Local public safety agencies. Other: National public safety membership organizations. The Public Safety Officers' Disability Program provides a benefit to Public Safety Officers who have become permanently and totally disabled by a catastrophic injury sustained in the line of duty.

(5) *An estimate of the total of number of respondents and the amount of time estimated for an average respondent to respond/reply:* 30 respondents at 10 hours to respond (one hour for application form, and nine hours for compilation of required supporting documents).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours. The total number of annual burden hours to complete the application form and compile supporting documentation is 300 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 5, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98-12547 Filed 5-11-98; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,339 and 339A]

AR Accessories; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 31, 1998, applicable to workers of AR Accessories located in West Bend, Wisconsin. The notice will soon be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification

for workers of the subject firm. The workers produce leather goods (wallets and purses). New findings on review show that workers providing administrative support services to the West Bend production facility have been separated from employment at the AR Accessories headquarters in Milwaukee, Wisconsin.

The intent of the Department's certification is to include all workers of AR Accessories who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of AR Accessories, Milwaukee, Wisconsin.

The amended notice applicable to TA-W-34,339 is hereby issued as follows:

"All workers of AR Accessories, West Bend, Wisconsin (TA-W-34,339) and Milwaukee, Wisconsin (TA-W-34,339A), who became totally or partially separated from employment on or after March 3, 1997 through March 31, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 28th day of April 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-12567 Filed 5-11-98; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such

request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 22, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 22, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment

and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of April, 1998.

Grant D. Beale,
Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

(Petitions Instituted on 4/20/98)

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,463	Northrop Grumman (Wrks)	Fleetville, PA	04/06/98	Relay Panels, Junction Boxes.
34,464	Walls Industries, Inc (Comp)	Hamilton, TX	03/23/98	Insulated Coveralls, Work Clothing.
34,465	United Industries (IAM)	Beloit, WI	04/01/98	Stainless Steel Tubing.
34,466	Beloit Corp (IAM)	Beloit, WI	04/01/98	Paper Machines.
34,467	Lone Star Cutting (Comp)	El Paso, TX	03/19/98	Garment Cuttings.
34,468	T.L. Edwards, Inc (Comp)	Statesville, NC	04/06/98	Knit Tee Shirts, Tank Tops.
34,469	Grossman and Sons, Inc (UNITE)	Passaic, NJ	04/02/98	Headwear.
34,470	SCI Systems, Inc (Wrks)	Augusta, ME	04/03/98	Computer Boards.
34,471	Louisville Manufacturing (UNITE)	Louisville, KY	04/07/98	Baseball Caps.
34,472	MagneTek (Comp)	Prairie Grove, AR	03/25/98	Fractional Horsepower Motors.
34,473	Bugatti New England (Wrks)	Gonic, NH	03/31/98	Leather Accessories.
34,474	Marshall Electric Corp (Comp)	Rochester, IN	03/31/98	Automotive Ignition Coils.
34,475	Ocean Beauty Seafood (UFCW)	Astoria, OR	04/08/98	Snapper, Salmon and Shrimp.
34,476	Nuclear Components, Inc (Wrks)	Greensburg, PA	03/27/98	Refueling Tools.
34,477	Eastman Kodak Co (Wrks)	Rochester, NY	04/08/98	Recordable CD-Rom Discs.

[FR Doc. 98-12563 Filed 5-11-98; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,219]

Powers Holdings, Incorporated, Curtis Industries Division, Milwaukee, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 8, 1998, applicable to workers of Powers Holdings, Incorporated located in Milwaukee, Wisconsin. The notice will soon be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings on review show that there are two divisions of Powers Holdings operating at the Milwaukee plant. Workers, subject of the petition investigation, producing terminal blocks, along with some production of controls, RFI filters, and sockets are affiliated with the Curtis Industries Division of the subject firm.

Accordingly, the Department is amending the worker certification to reflect this matter.

The amended notice applicable to TA-W-34,219 is hereby issued as follows:

"All workers of Powers Holdings, Incorporated, Curtis Industries Division, Milwaukee, Wisconsin, who became totally or partially separated from employment on or after January 15, 1997 through April 8, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 28th day of April 1998.

Grant D. Beale,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-12566 Filed 5-11-98; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,174]

United Technologies Automotive Columbus, Mississippi; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked April 20, 1998, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (IUE), Local 794, requested administrative

reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 5, 1998, and published in the **Federal Register** on March 23, 1998 (63 FR 13878).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The IUE Local 794 asserts that in December 1996, the production of starter motors and commercial starter motors was shifted from the Columbus, Mississippi plant to Mexico. The IUE Local 794 states that as a result of that shift in production, 225 workers were separated from employment in December 1996, and add that the TAA petition investigation did not include the workers producing these articles.

The January 8, 1998, petition for TAA filed with Department on behalf of workers at United Technologies

Automotive located in Columbus, Mississippi, identified fractional H.P. electric motors as the articles produced. Information obtained during the investigation showed that electric motors for windowlift, ABS, and windshield wiper applications was the primary output at the subject plant during the time period covered by the petition.

Section 223(b)(1) of the Trade Act of 1974 provides that a trade adjustment assistance certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed. The Trade Act does not give the Secretary authority to waive this statutory limitation. Since the December 1996 layoffs were more than one year prior to the January 8, 1998 petition date, the workers producing starter motors and commercial starter motors at Columbus cannot be considered in the TAA petition determination.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 29th day of April 1998.

Grant D. Beale,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-12564 Filed 5-11-98; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,637, TA -W-33,637A, and TA-W-33,637B]

Universal-Rundle Corporation; Amendment Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 31, 1997, applicable to workers of Universal-Rundle Corporation located in Hondo, Texas. The notice was published in the **Federal Register** on November 7, 1997 (62 FR 60279).

At the request of a company official, the Department reviewed the

certification for workers of the subject firm. The company reports that worker separations have occurred at Universal-Rundle Corporation's production facility in Monroe, Georgia and at the corporate headquarters in New Castle, Pennsylvania. The workers are engaged in employment related to china sanitary fixtures (sinks and toilets).

The intent of the Department's certification is to include all workers of Universal-Rundle Corporation who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of Universal-Rundle Corporation, Monroe, Georgia and New Castle, Pennsylvania.

The amended notice applicable to TA-W-33,637 is hereby issued as follows:

"All workers of Universal-Rundle Corporation, Hondo, Texas (TA-W-33,637), Monroe, Georgia (TA-W-33,637A), and New Castle, Pennsylvania (TA-W-33,637B) who became totally or partially separated from employment on or after June 20, 1996 through October 31, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 28th day of April 1998.

Grant D. Beale,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98-12565 Filed 5-11-98; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 98-6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Cadmium in General Industry, Maritime, and Agriculture

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly

understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the standards for Cadmium in General Industry 29 CFR 1910.1027, Cadmium in the Maritime Industry 1915.1027, and Cadmium in the Agriculture Industry 1928.1027. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addresses section of this notice. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted by July 13, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 98-6, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW, Washington, DC 20210, telephone number (202) 219-7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219-5046.

FOR FURTHER INFORMATION CONTACT: Adrian Corsey, Directorate of Health Standards Programs, Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, Room N3718, telephone (202) 219-7075. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Adrian Corsey at (202) 219-7075 extension 105 or Barbara Bielaski at (202) 219-8076 extension 142. For electronic copies of the Information Collection Request on Cadmium, contact OSHA's WebPage on

the Internet at <http://www.osha-slc.gov/> and click on "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Cadmium standard and its information collection requirements provide protection for employees from the adverse health effects associated with occupational exposure to cadmium. The standard requires that employers establish a compliance program, including exposure monitoring and medical records. These records are used by employees, physicians, employers and OSHA to determine the effectiveness of the employers' compliance efforts. Also the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Cadmium in General Industry (29 CFR 1910.1027), Cadmium in the Maritime Industry (1915.1027), and Cadmium in the Agriculture Industry (1928.1027).

OMB Control Number: 1218-0185.

Affected Public: Business or other for-profit, Federal government, State and Local governments.

Total Respondents: 54,544.

Frequency: On occasion.

Total Responses: 359,968.

Average Time per Response: Ranges from 5 minutes to maintain records to 1.5 hours for an employee to have a medical exam.

Estimated Total Burden Hours: 129,894.

Total Annualized capital/startup costs: —0—.

Total initial annual costs (operating/maintaining systems or purchasing services): \$19,068,500.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection. The comments will become a matter of public record.

Signed at Washington, DC, this 30th day of April, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor

[FR Doc. 98-12568 Filed 5-11-98; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, May 19, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

7002—Safety Study: Personal Watercraft Safety.

6889A—Railroad Accident Report—Collision and Derailment of Union Pacific Railroad Freight Trains in Devine, Texas on June 22, 1997.

6283A—Safety Recommendation Letter regarding AlliedSignal TPE-331 engine flameouts in icing conditions.

NEWS MEDIA CONTACT: Telephone: (202) 314-6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314-6065.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98-12754 Filed 5-8-98; 3:11 pm]

BILLING CODE 7533-01-P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC)

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 19, "Notices, Instructions, and Reports to Workers: Inspection and Investigations".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* As necessary in order that adequate and timely reports of radiation exposure be made to individuals involved in NRC-licensed activities.

5. *Who will be required or asked to report:* Licensees authorized to receive, possess, use, or transfer material licensed by the NRC.

6. *An estimate of the number of responses:* 414,800.

7. *The estimated number of annual respondents:* 280.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 46,018 (approximately 34,566 reporting hours—an average of 5 minutes per response, and 11,452 recordkeeping hours—an average of 1.78 hours per recordkeeper).

9. *An indication of whether Section 3507(d), Pub. L. 104-13 applies:* Not applicable.

10. *Abstract:* Title 10 of the Code of Federal Regulations, Part 19, requires licensees to advise workers on an annual basis of any radiation exposure they may have received as a result of NRC-licensed activities or when certain conditions are met. These conditions apply during termination of the worker's employment, at the request of a worker, former worker, or when the worker's employer (the NRC licensee) must report radiation exposure information on the worker to the NRC. Part 19 also establishes requirements for instructions by licensees to individuals participating in licensed activities and options available to these individuals in connection with Commission inspections of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974, and regulations, orders and licenses thereunder regarding radiological working conditions.

The worker should be informed of the radiation dose he or she receives because: (a) that information is needed by both a new employer and the individual when the employee changes jobs in the nuclear industry; (b) the individual needs to know the radiation dose received as a result of an accident or incident (if this dose is in excess of the 10 CFR Part 20 limits) so that he or she can seek counseling about future work involving radiation, medical attention, or both, as desired; and (c) since long-term exposure to radiation may be an adverse health factor, the individual needs to know whether the accumulated dose is being controlled within NRC limits. The worker also needs to know about health risks from occupational exposure to radioactive materials or radiation, precautions or procedures to minimize exposure, worker responsibilities and options to report any licensee conditions which may lead to or cause a violation of

Commission regulations, and individual radiation exposure reports which are available to him.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (<http://www.nrc.gov>) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by June 11, 1998: Erik Godwin, Office of Information and Regulatory Affairs (3150-0044), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 6th day of May 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98-12527 Filed 5-11-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-317, 50-318, and 72-8]

In the Matter of Baltimore Gas Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2, and the Independent Spent Fuel Storage Installation; Order Terminating the Effectiveness of the Approval of the Transfer of Licenses for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 and the Independent Spent Fuel Storage Installation

I

Baltimore Gas and Electric Company (BGE) is the licensee for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the associated Independent Spent Fuel Storage Installation. BGE has the exclusive responsibility for the construction, operation, and maintenance of Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 and the Independent Spent Fuel Storage Installation (ISFSI), as reflected in Operating License Nos. DPR-53, DPR-69 and Material License No. SNM-2505, issued on July 31, 1974, and November 30, 1976, and November 25, 1992, respectively, by the U.S. Nuclear

Regulatory Commission (NRC). The facilities are located on the western shore of the Chesapeake Bay, in Calvert County, Maryland.

II

By Order dated October 18, 1996, the Nuclear Regulatory Commission (the Commission or NRC) approved the proposed transfer of Operating Licenses Nos. DPR-53 and DPR-69 for the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, and Material License No. SNM-2505 for the Calvert Cliffs ISFSI from BGE to Constellation Energy Corporation. The approval was given in response to an application filed by BGE dated April 5, 1996, for consent under Section 50.80 and 72.50 of Title 10 of the Code of Federal Regulations (10 CFR 50.80 and 10 CFR 72.50). By its terms, the Order of October 18, 1996, would become null and void if the transfer of the licenses was not consummated by December 31, 1997, unless on application and for good cause shown, such date was extended by the Commission.

By letter dated November 21, 1997, BGE submitted a request for an extension of the effectiveness of the Order of October 18, 1996, such that approval of the transfer would remain effective until December 31, 1998. According to this submittal, all of the necessary regulatory approvals had been obtained to permit the consummation of the merger between BGE and Potomac Electric Power Company, resulting in Constellation Energy Corporation. BGE asserted, however, that the Maryland and District of Columbia Public Service Commissions attached conditions to their approvals that were inconsistent with the respective merger approval applications. The companies proposing to merge filed joint requests with the Maryland and District of Columbia Commissions for rehearing of their original orders approving the merger. According to BGE, an intervenor in the Maryland case appealed the Maryland Commission's Order approving the merger to the Circuit Court in Baltimore County, and this appeal delayed the expected merger process. On December 17, 1997, the Commission issued an Order providing that the effectiveness of the Order of October 18, 1996, approving the transfer of the licenses described herein was extended such that if the subject transfer of licenses was not consummated by December 31, 1998, the Order of October 18, 1996, would become null and void.

By letter dated January 30, 1998, however, BGE informed the NRC that on December 18, 1997, BGE and the Potomac Electric Power Company

(PEPCO) mutually agreed to terminate the proposed merger. In addition, BGE and PEPCO requested, in light of the termination of the merger, that approval of the transfer of licenses be canceled.

III

Upon consideration of BGE's letter dated January 30, 1998, and the termination of the proposed merger, the Commission has determined that the approval of the transfer of the licenses for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the ISFSI, should be withdrawn. Accordingly, pursuant to Sections 161b and 161i of the Atomic Energy Act, as amended, 42 U.S.C. §§ 2201(b) and 2201(i), it is hereby ordered that the approval of the transfer of the licenses described herein is immediately withdrawn, and the Orders dated October 18, 1996, and December 19, 1997 are null and void.

This Order is effective upon issuance.

For further details, with respect to this action, see the letter dated January 30, 1998, from BGE which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 30th day of April 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98-12524 Filed 5-11-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-244]

Rochester Gas and Electric Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP-18 issued to Rochester Gas and Electric Corporation (the licensee) for operation of the R.E. Ginna Nuclear Power Plant located in Wayne County, New York.

The proposed amendment would revise the Ginna Station Improved Technical Specifications (ITS) to reflect a planned modification to the spent fuel pool (SFP) storage racks. Specifications associated with SFP boron concentration, fuel assembly storage, and maximum limit on the number of fuel assemblies which can be stored in the SFP would be revised.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design basis events considered for the spent fuel pool include both external events and postulated accidents in the pool. The external events considered are tornado missiles and seismic events. The evaluation of the postulated impact of a tornado missile is detailed in Sections 3, 4, and 6 of Reference 1 [see application dated March 31, 1997]. The structural evaluation indicates that there are no gross distortions of the racks or any adverse effects upon plant structures or equipment. The radiological consequences of this event indicate that offsite doses are "well within" the 10 CFR 100 limits.

The structural evaluation is detailed in Section 3 of Reference 1 [see application dated March 31, 1997]. Current state of the art methods are used in the structural analysis. The evaluation of the storage racks is based on a conservative interpretation of requirements set forth in the American Concrete Institute, Code Requirements for Nuclear Safety Related Concrete Structures, and American Institute of Steel Construction, Specification for Structural Steel Buildings. The spent fuel storage system was designed to meet all applicable structural criteria for normal (Level A), upset (Level B), and faulted

(Level D) conditions as defined in NUREG-0900, SRP [Standard Review Plan] 3.8.4, Appendix D. The following loadings were considered: dead weight, seismic, thermal, stuck fuel assembly, drop of a fuel assembly, and tornado missile impact. Load combinations were performed in accordance with SRP 3.8.4, Appendix D. Given the evaluated seismic events, the changes in the final position of the racks are small as compared to the initial position prior to the seismic event. The maximum closure of gaps is such that no significant changes in gaps results during any single seismic event. Furthermore, the combined gap closures resulting from a combination of 5 OBEs [Operating Basis Earthquakes] and 1 SSE [Safe Shutdown Earthquake] show that there are no rack-to-rack or rack-to-wall impacts. These evaluations conclude that under these postulated events, the stored fuel assemblies are maintained in a stable, coolable geometry, and a subcritical configuration.

As described in the bases for LCO [Limiting Condition for Operation] 3.7.12 and 3.7.13, the postulated accidents in the spent fuel pool are divided into two categories. The first are those involving a loss of cooling in the spent fuel pool. The thermal-hydraulic analysis for the maximum expected decay heat loads is described in Section 5 of Reference 1 [see application dated March 31, 1997]. The proposed modification does not change the configuration of the available spent fuel cooling systems, the limiting design conditions for maximum decay heat load which occurs during a full core offload, or the existing requirement to maintain pool temperature below 150 °F. Utilizing the three available spent fuel cooling systems, Ginna Station maintains full redundancy during high heat load conditions. The decay heat load to the spent fuel pool is maintained within the capacity of the operating cooling system by appropriately delaying fuel offload from the reactor. Should a failure occur on the operating cooling system, the resulting heat rates allow sufficient time to place a standby cooling system in service before the pool design limit temperature is exceeded. Increases in spent fuel pool temperature, with the corresponding decrease in water density and void formation from boiling, will result in a decrease in reactivity due to the decrease in moderation effects. In addition, the analysis demonstrates that the storage rack geometry and required fuel storage configurations result in a k_{eff} [less than or equal to] .95 assuming no soluble boron allowing for the potential of makeup to the pool with unborated water if credit is taken in Region 2 for minimal availability of boraflex panels installed on the storage rack. (Note that concerns with boraflex degradation are discussed later in this evaluation).

The second category is related to the movement of fuel assemblies and other loads above the spent fuel pool. The limiting accident with respect to reactivity is the fuel handling accident which is analyzed in Section 4 of Reference 1 [see application dated March 31, 1997]. For both the incorrectly transferred fuel assembly (placed in an unauthorized location) or a dropped fuel assembly, the positive reactivity effects

resulting are offset by the negative reactivity from the required minimum soluble boron concentration. The resulting k_{eff} is shown to be less than 0.95 if credit is taken in Region 2 for minimal availability of boraflex panels installed on the storage racks. The radiological consequences of a fuel assembly drop remain as described in Section 15.7.3 of the UFSAR [updated final safety analysis report] and as discussed in Section 6 of Reference 1 [see application dated March 31, 1997]. Loads in excess of a fuel assembly and its handling tool are administratively prohibited from being carried over spent fuel. There are no changes anticipated for either the fuel handling equipment of the auxiliary building overhead crane due to the proposed modification to the fuel storage racks. The modification is scheduled for the Year 1998 to be performed while Ginna Station is operating. Movement of heavy loads around the spent fuel pool are controlled by the requirements of NUREG-0612 and the regulatory guidelines set forth in NRC Bulletin 96-02 (see Section 3 of Reference 1 [see application dated March 31, 1997]). Spent fuel casks and storage racks (during removal and installation) will be moved using the auxiliary building crane and lifting attachments satisfying the single failure proof criteria of NUREG-0554, obviating the need to determine the consequences for this accident.

Due to boraflex degradation within the spent fuel pool, credit must be temporarily taken for soluble boron to maintain k_{eff} [less than or equal to] 0.95. There is no increase in the probability of a loss of spent fuel pool cooling or fuel handling accident as a result of crediting soluble boron. The spent fuel pool is normally maintained at a boron concentration level greater than that proposed, including during fuel movement. Therefore, there is no effect on plant systems or spent fuel pool activities than which are currently in effect. The proposed boron concentration level is also equivalent to that required by LCO 3.9.1 during MODE 6 such that no boron dilution event is expected to occur within the pool during refueling operations when the reactor coolant system and spent fuel pool are hydraulically coupled.

Crediting soluble boron does not increase the consequences of an accident. As described in the bases for LCO 3.7.12, increases in spent fuel pool temperature, with the corresponding decrease in water density and void formation from boiling, will generally result in a decrease in reactivity due to the decrease in moderation effects. The only exception are temperature bands where positive reactivity is added as a result of the high boron concentration. This effect is bounded by the reactivity added as a result of a misloaded fuel assembly. With respect to the more limiting dropped fuel assembly accidents, boraflex neutron absorber panels were originally assumed in the criticality analysis. Requiring a high concentration of soluble boron in place of boraflex panels ensures that the spent fuel pool remains subcritical with k_{eff} [less than or equal to] 0.95 for these accidents. Fuel assembly movement will continue to be controlled in accordance with plant procedures and LCO

3.7.13 which specifies limits on fuel assembly storage locations. Periodic surveillances of boron concentration will be required every 7 days with level verified every 7 days during fuel movement per LCO 3.7.11. Due to the large inventory within the spent fuel pool, dilution of the soluble boron within the pool is very unlikely without being detected by operations personnel during auxiliary operator rounds or available level detection systems. There is also a large margin between the required boron concentration to maintain the pool subcritical k_{eff} [less than or equal to] 0.95 and the proposed value (approximately 900 ppm).

Based on the above, it is concluded that the proposed changes do not significantly increase the probability or consequences of any accident previously analyzed.

2. Operation in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed modification does not alter the function of any system associated with spent fuel handling, cooling or storage. The proposed changes do not involve a different type of equipment or changes in methods governing normal plant operation. The additional restrictions placed on the acceptable storage locations for spent fuel are consistent with the type of restriction that previously existed. The potential violation of these restrictions (incorrectly transferred fuel assembly) are analyzed as discussed above. The rerack design, analysis, fabrication, and installation meet all the appropriate NRC regulatory requirements, and appropriate industry codes and standards.

Crediting soluble boron within the spent fuel pool in place of boraflex neutron absorber panels does not create the possibility of a new or different kind of accident since the spent fuel pool is normally maintained with high boron concentrations. Assuming a boron dilution event to the level required to reach k_{eff} [less than or equal to] 0.95 conditions within the spent fuel pool would require either overflow of the pool or a controlled feed and bleed process with unborated water. In both cases, greater than 105,000 gallons of unborated water would be required to reach $k_{eff} > 0.95$. There is no source of unborated water of this size available to reach the spent fuel pool under procedural control or via a pipe break other than a fire water system pipe break or SW leak through the spent fuel pool heat exchangers. However, there are numerous alarms available within the control room to indicate this condition including high spent fuel pool water level and sump pump actuations within the residual heat removal pump pit (lowest location in the Auxiliary Building). Auxiliary operators also perform regularly scheduled tours within the Auxiliary Building. This provides sufficient time to terminate the event such that there is no credible spent fuel pool dilution accident.

Based on the above, the change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Operation of Ginna Station in accordance with the proposed changes does

not involve a significant reduction in the margin of safety.

The Licensing Report enclosed as Reference 1 [see application dated March 31, 1997] addresses the following considerations: nuclear criticality, thermal-hydraulic, and mechanical, material, and structural. Results of these evaluations demonstrate that the changes associated with the spent fuel reracking does not involve a significant reduction in the margin of safety as summarized below:

Nuclear Criticality

The established regulatory acceptance criterion is that k_{eff} be less than or equal to 0.95, including all uncertainties at the 95/95 probability/confidence level, under normal and abnormal conditions. The methodology used in the evaluation meets NRC requirements, and applicable industry codes, standards, and specifications with credit taken in Region 2 for the previously installed boraflex panels. In addition, the methodology has been reviewed and approved by the NRC in recent nuclear criticality evaluations. Specific conditions which were evaluated include misloading of a fuel assembly, drop of a fuel assembly (shallow, deep drops, and side drops), pool water temperature effects, and movement of racks due to seismic events. Results described in Section 4 of Reference 1 [see application dated March 31, 1997] document that the criticality acceptance criterion is met for all normal and abnormal conditions.

Thermal-Hydraulic

Conservative methods and assumptions have been used to calculate the maximum temperature of the fuel and the increase of the bulk pool water temperature in the spent fuel pool under normal and abnormal conditions. The methodology for performing the thermal-hydraulic evaluation meets NRC regulatory requirements. Results from the thermal-hydraulic evaluation show that the maximum temperature at the hottest fuel assembly, intact or consolidated canister, is less than the temperature for nucleate boiling condition. The effects of cell blockage on the maximum temperature of intact fuel and consolidated canisters were evaluated. Results described in Section 5 of Reference 1 [see application dated March 31, 1997] show that adequate cooling of the intact or consolidated fuel is assured. In all cases, the existing spent fuel pool cooling system will maintain the bulk pool temperature at or below 150 °F by delaying core offload from the reactor.

Mechanical, Material, and Structural

The primary safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal and abnormal loads. Abnormal loadings which have been considered in the evaluation are: seismic events, the drop of a fuel assembly, the impact of a tornado missile, a stuck assembly, and the drop of a heavy load. The mechanical, material, and structural design of the new spent fuel racks is in accordance with NRC regulatory requirements (including the NRC OT Position dated April 14, 1978, [NRC letter to all power reactor licensees

dated April 14, 1978] and addendum dated January 18, 1979), and applicable industry standards. The rack materials are compatible with the spent fuel pool environment and fuel assemblies. The material used as a neutron absorber (borated stainless steel) has been approved by the American Society for Testing and Materials (ASTM), and licensed previously by the NRC for use as a neutron absorber at Indian Point 3, Indian Point 2, and Millstone 2. The structural evaluation presented in Section 3 of Reference 1 [see application dated March 31, 1997] documents that the tipping or sliding of the free-standing racks will not result in rack-to-rack or rack-to-wall impacts during seismic events. The spent fuel assemblies will remain intact and the criticality criterion of k_{eff} [less than or equal to] 0.95 is met if credit is taken in Region 2 for previously installed boraflex panels.

Soluble boron within the spent fuel pool provides a significant negative reactivity such that k_{eff} is maintained [less than or equal to] 0.95. The proposed surveillance frequency will ensure that the necessary boron concentration is maintained. A boron dilution event which would remove the soluble boron from the pool has been shown to not be credible.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the *Federal Register* a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of

Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 11, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should

also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 31, 1997, supplemented June 18, 1997, October 10, 1997, October 20, 1997, November 11, 1997, December 22, 1997, January 15, 1998, January 27, 1998, March 30, 1998, April 23, 1998, and April 27, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. This notice supersedes the March 31, 1997, application published on April 30, 1997 (62 FR 23502) in its entirety.

Dated at Rockville, Maryland, this day of May 1998.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-12526 Filed 5-11-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 101st meeting on June 10-12, 1998, in Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

On June 10 and 11, 1998, 8:30 A.M. until 6:00 P.M., the Committee will discuss the following:

A. *Near-Field Environment and Performance of Engineered Barriers.*—The Committee will conduct a two-day working group session entitled, "Near-Field Environment and the Performance of Engineered Barriers in the Yucca Mountain Repository." The participants will be scientists and engineers from a variety of governmental, academic, private, and other organizations who will focus on conditions and processes that may occur inside the disposal drifts of the proposed mined geological repository.

On June 12, 1998, 8:30 A.M. until 4:00 P.M., the Committee will discuss the following topics:

B. *Meeting with Industry Representative.*—The Committee will discuss with Mr. Ralph Beedle, Senior Vice President, Nuclear Energy Institute, the ACNW's December 23, 1997, letter to the NRC Chairman titled, "1998 Strategic Plan and Priority Issues for the Advisory Committee on Nuclear Waste."

C. *Meeting with NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*—The Committee will meet with the Director to discuss recent developments within the division such as developments at the Yucca Mountain project, rules and guidance under development, available resources, and other items of mutual interest.

D. *Election of ACNW Officers.*—The Committee will elect the Chairman and Vice Chairman for the ACNW for a 1-year term beginning July 1, 1998 through June 30, 1999.

E. *Prepare for Next Meeting with the Commission.*—The Committee will prepare for its next briefing with the Commission. The Committee is scheduled to discuss items of mutual interest with the Commission on July 21, 1998. (tentative)

F. *Preparation of ACNW Reports.*—The Committee will discuss planned reports, including: the staff's plans to

review DOE's Viability Assessment, the total systems sensitivity analysis and other topics discussed during this and previous meetings as the need arises.

G. *Committee Activities/Future Agenda.*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

H. *Miscellaneous.*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on September 2, 1997 (62 FR 46382). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Acting Chief, Nuclear Waste Branch, Mr. Howard J. Larson, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Acting Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Howard J. Larson, Acting Chief, Nuclear Waste Branch (telephone 301/415-6805), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at <http://www.nrc.gov/ACRSACNW>.

Dated: May 6, 1998.

Andrew L. Bates,
Advisory Committee Management Officer.
[FR Doc. 98-12529 Filed 5-11-98; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Meeting

AGENCIES: Nuclear Regulatory Commission and Environmental Protection Agency.

ACTION: Notice of public meeting of the Interagency Steering Committee on Radiation Standards

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will host a meeting of the Interagency Steering Committee on Radiation Standards (ISCORS) in Rockville, Maryland. The purpose of ISCORS is to foster early resolution and coordination of regulatory issues associated with radiation standards.

Agencies represented on ISCORS include the U.S. Nuclear Regulatory Commission, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Defense, U.S. Department of Transportation, the Occupational Safety and Health Administration of the U.S. Department of Labor, the U.S. Department of Health and Human Services, and any successor agencies. The Office of Science and Technology Policy, the Office of Management and Budget, and a State representative are observers at meetings.

The objectives of ISCORS are to: (1) facilitate a consensus on allowable levels of radiation risk to the public and workers; (2) promote consistent and scientifically sound risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation; (3) promote completeness and coherence of Federal standards for radiation protection; and (4) identify interagency radiation protection issues and coordinate their resolution.

ISCORS meetings include presentations by the chairpersons of the subcommittees and discussion of current radiation protection issues. Committee meetings normally involve pre-decisional intra-governmental discussions and, as such, are normally not open for observation by members of the public or media. However, for the June 11 meeting, all interested members of the public are invited to attend the meeting.

DATE: The meeting will be held from 9:30 a.m. to noon on Thursday, June 11, 1998.

ADDRESS: The meeting will be held in the NRC auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Summaries of previous ISCORS meetings are available at the NRC's Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555; telephone 202-634-3273; fax 202-634-3343.

FOR FURTHER INFORMATION, CONTACT: Dominick Orlando, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-415-6749, fax 301-415-5398, E-mail: DAO@NRC.GOV.

SUPPLEMENTARY INFORMATION: Visitor parking around the NRC building is limited; however, the workshop site is located adjacent to the White Flint Metro Station on the Red Line. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, Maryland, this 5th day of May 1998.

For the Nuclear Regulatory Commission.

John W.N. Hickey,
Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98-12525 Filed 5-11-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on June 1, 1998, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, June 1, 1998—1:30 p.m. until the conclusion of business

The Subcommittee will discuss the NRC staff's concerns regarding the changes to Class 1, 2, and 3 piping system design requirements contained in the 1994 Addenda of Section III of the ASME Boiler and Pressure Vessel Code, and the status of resolution of these concerns by the ASME Special Working Group on Seismic Rules. The purpose of this meeting is to gather information, analyze relevant issues and

facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and the ASME Special Working Group on Seismic Rules, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415-6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 6, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98-12530 Filed 5-11-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 2, 1998, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of

a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 2, 1998—12:00 Noon—1:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415-7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 5, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98-12531 Filed 5-11-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on June 2, 1998, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting will be closed to public attendance to discuss General Electric Company proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:
Tuesday, June 2, 1998—8:30 a.m. until the conclusion of business

The Subcommittee will review the General Electric Company extended power uprate plan for operating BWRs, and the lead-plant (Monticello Nuclear Generating Plant) power uprate application. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the General Electric Company, the Northern States Power Company, the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present

oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415-8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 6, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98-12532 Filed 5-11-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Safety Research Program; Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on June 1, 1998, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, June 1, 1998—8:30 a.m. until 12:30 p.m.

The Subcommittee will discuss SECY-98-076, "Core Research Capabilities," and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions

with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415-6889) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: May 6, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98-12533 Filed 5-11-98; 8:45 am]

BILLING CODE 7590-01-U

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request: Investigations Forms 41-44

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), this notice announces that OPM intends to submit to the Office of Management and Budget (OMB) a request for reclearance of four information collections and solicit comments on them. OPM uses these forms to request information by mail for use in OPM investigations. These investigations are conducted to determine suitability for Federal employment and/or the ability to hold a security clearance as prescribed in Executive Orders 10450, 12968 and 10577 (5 CFR Part V) and 5 U.S.C. 3301. INV Form 41, Investigative Request for Employment Data and Supervisor Information, is sent to former employers and/or supervisors.

INV Form 42, Investigative Request for Personal Information, is sent to references.

INV Form 43, Investigative Request for Educational Registrar and Dean of Students Record Data, is sent to educational institutions.

INV Form 44, Investigative Request for Law Enforcement Data, is sent to local law enforcement agencies.

Based upon current usage it is estimated that 1,609,000 individuals

will respond annually (770,000 to INV Form 41; 412,000 to INV Form 42; 98,000 to INV Form 43; and 329,000 to INV Form 44) with each response requiring approximately 5 minutes. The total burden requested is 134,083 hours.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of collection of information on those who respond, through the use of appropriate technological collection techniques or other forms of information technology.

To obtain copies of this proposal please contact James M. Farron at (202) 418-3208 or by E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication. Submit comments on this proposal to Richard A. Ferris, Associate Director, U.S. Office of Personnel Management, Room 5416, 1900 E Street, NW., Washington, DC 20415.

U.S. Office of Personnel Management
Janice R. Lachance,
Director
[FR Doc. 98-12443 Filed 5-11-98; 8:45 am]
BILLING CODE 6325-01-P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606-0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on April 10, 1998 (63 FR 17904). Individual authorities

established or revoked under Schedules A and B and established under Schedule C between March 1, 1998, and March 31, 1998, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during March 1998.

Schedule B

No Schedule B authorities were established or revoked during March 1998.

Schedule C

The following Schedule C authorities were established during March 1998:

Department of Agriculture

Chief of Staff to the Administrator, Risk Management Agency. Effective March 4, 1998.

Confidential Assistant to the Administrator, Farm Service Agency. Effective March 4, 1998.

Special Assistant to the Chief, Natural Resources Conservation Service. Effective March 12, 1998.

Confidential Assistant to the Deputy Secretary. Effective March 17, 1998.

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective March 26, 1998.

Department of Defense (DOD)

Speechwriter to the Assistant Secretary for Public Affairs. Effective March 6, 1998.

Speechwriter to the Assistant Secretary of Defense for Public Affairs. Effective March 10, 1998.

Staff Assistant to the Special Assistant for White House Liaison. Effective March 10, 1998.

Confidential Assistant to the Assistant Secretary for Public Affairs. Effective March 19, 1998.

Staff Specialist to the Deputy Assistant Secretary (Asian and Pacific Affairs). Effective March 23, 1998.

Department of the Air Force (DOD)

Secretary Assistant to the Under Secretary of the Air Force. Effective March 10, 1998.

Department of the Army (DOD)

Personal and Confidential Assistant to the Under Secretary of the Army. Effective March 11, 1998.

Department of the Navy (DOD)

Staff Assistant to the Under Secretary of the Navy. Effective March 10, 1998.

Department of Commerce

Speechwriter to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective March 2, 1998.

Confidential Assistant to the Director, Secretariat Staff. Effective March 2, 1998.

Deputy Director, Office of Public Affairs to the Director, Office of Public Affairs. Effective March 6, 1998.

Director, Office of Business Liaison to the Secretary of Commerce. Effective March 9, 1998.

Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective March 13, 1998.

Department of Education

Special Assistant to the Special Advisor to the Secretary. Effective March 10, 1998.

Special Assistant to the Senior Advisor to the Secretary (Director, America Reads Challenge). Effective March 11, 1998.

Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective March 17, 1998.

Department of Energy

Briefing Book Coordinator to the Director, Scheduling and Logistics. Effective March 4, 1998.

Special Assistant to the Secretary of Energy. Effective March 4, 1998.

Special Assistant to the Director, Office of Energy Research. Effective March 6, 1998.

Special Assistant to the Associate Deputy Secretary for Field Management. Effective March 10, 1998.

Special Assistant to the Director, Office of Civilian Radioactive Management. Effective March 26, 1998.

Special Assistant to the Assistant Secretary for Human Resources and Administration. Effective March 30, 1998.

Department of Health and Human Services

Confidential Assistant to the Deputy Chief of Staff. Effective March 11, 1998.

Special Assistant to the Deputy Assistant Secretary for Legislation. Effective March 26, 1998.

Special Assistant to the Assistant Secretary for Aging. Effective March 27, 1998.

Department of Housing and Urban Development

Staff Assistant to the Director, Office of Special Programs. Effective March 2, 1998.

Special Assistant to the Assistant Deputy Secretary for Field Policy and Management. Effective March 6, 1998.

Department of the Interior

Special Assistant to the Director, Congressional and Legislative Affairs. Effective March 30, 1998.

Department of Justice

Confidential Assistant to the Assistant Attorney General for Civil Rights Division. Effective March 6, 1998.

Special Assistant to the Assistant Attorney General, Environment and Natural Resources Division. Effective March 13, 1998.

Department of Labor

Special Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective March 10, 1998.

Director of Intergovernmental Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 10, 1998.

Executive Assistant to the Assistant Secretary for Occupational Safety and Health Standards. Effective March 10, 1998.

Special Assistant to the Director, Director, Women's Bureau. Effective March 18, 1998.

Special Assistant for Public Affairs to the Assistant Secretary, Employment Standards Administration. Effective March 26, 1998.

Department of State

Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective March 5, 1998.

Staff Assistant to the Deputy Assistant Secretary, Bureau of Administration. Effective March 5, 1998.

Foreign Affairs Officer to the Deputy Chief of Protocol. Effective March 18, 1998.

Senior Advisor to the Under Secretary for Economic, Business and Agricultural Affairs. Effective March 25, 1998.

Department of Transportation

Director of Intergovernmental and Congressional Affairs to the Administrator, National Highway Traffic Safety Administration. Effective March 23, 1998.

White House Liaison to the Chief of Staff. Effective March 24, 1998.

Special Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective March 25, 1998.

Scheduling/Advance Assistant to the Director of Scheduling and Advance. Effective March 27, 1998.

Department of the Treasury

Assistant to the Commissioner, Internal Revenue Service. Effective March 6, 1998.

Equal Employment Opportunity Commission

Attorney Advisor to the General Counsel. Effective March 30, 1998.

Federal Communications Commission

Associate Chief, Office of Public Affairs to the Chief, Office of Public Affairs. Effective March 4, 1998.

National Transportation Safety Board

Special Assistant to the Director, Office of Government, Public, and Family Matters. Effective March 26, 1998.

Office of Personnel Management

Special Assistant to the Director, Office of Personnel Management. Effective March 17, 1998.

Securities and Exchange Commission

Confidential Assistant to a Commissioner. Effective March 18, 1998.

Small Business Administration

Special Assistant to the Senior Advisor to the Associate Deputy Administrator of Entrepreneurial Development. Effective March 25, 1998.

Social Security Administration

Press Officer to the Deputy Commissioner for Communications. Effective March 4, 1998.

Deputy Press Officer to the Deputy Community Commissioner for Communications. Effective March 4, 1998.

United States Information Agency

Special Assistant to the Director, United States Information Agency. Effective March 25, 1998.

Senior Advisor to the Director, Citizen Exchanges. Effective March 25, 1998.

United States Tax Court

Secretary (Confidential Assistant) to a Judge. Effective March 11, 1998.

Secretary (Confidential Assistant) to a Judge. Effective March 17, 1998.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., P.218. Office of Personnel Management.

Janice R. Lachance,
Director.

[FR Doc. 98-12444 Filed 5-11-98; 8:45 am]

BILLING CODE 6325-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange

Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15Bc3-1; Form MSDW, SEC File No. 270-93, OMB Control No. 3235-0087

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 et seq.), the Securities and Exchange Commission ("Commission") is publishing the following summary of collection for public comment. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15Bc3-1 under the Securities Exchange Act of 1934 provides that a notice of withdrawal from registration with the Commission as a bank municipal securities dealer must be filed on Form MSDW.

It is estimated that approximately 20 respondents will utilize this notice procedure annually, with a total of 10 burden hours. The number of hours necessary to comply with the requirements of Rule 15Bc3-1 is estimated to be .5 hours. The average cost per hour is approximately \$40. Therefore, the total cost of compliance for the respondents is \$400.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing on or before July 13, 1998.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: May 4, 1998.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12551 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15a-4, SEC File No. 270-7, OMB Control No. 3235-0010.
Rule 17a-1, SEC File No. 270-244, OMB Control No. 3235-0208.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is publishing the following summary of collections for public comment.

Rule 15a-4 (17 C.F.R. § 240.15a-4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) permits a natural person who is a member of a securities exchange and who terminates its association with a registered broker-dealer to continue to do business on the exchange while the Commission reviews his application for registration as a broker-dealer, if the exchange files a statement indicating that there does not appear to be any ground for disapproving the application. The total annual burden is 240 hours, based on approximately 30 submissions, each requiring 8 hours to complete.

Rule 17a-1 (17 C.F.R. § 240.17a-1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) requires that all national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board keep on file for a period of five years, two years in an accessible place, all documents which it makes or receives respecting its self-regulatory activities, and that such documents be available for examination by the Commission. The average number of hours necessary for compliance with the requirements of Rule 17a-1 is 50 hours per year. There are 26 entities required to comply with the rule: 8 national securities exchanges, 1 national securities association, 16 registered clearing agencies, and the Municipal Securities Rulemaking Board. The total number of hours required for all respondents to comply with the rule is thus 1,300 hours annually.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing on or before July 13, 1998.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

Dated: May 5, 1998.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12553 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, N.W., Washington, D.C. 20549.

Extension:

Rule 23c-3 and Form N-23c-3, SEC File No. 270-373, OMB Control No. 3235-0422

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension and approval of the collections of information discussed below.

Rule 23c-3 under the Investment Company Act of 1940 (17 CFR 270.23c-3) permits certain closed-end investment companies ("Closed-end funds" or "funds") periodically to offer to repurchase from shareholders a limited number of shares at net asset value. The rule includes several reporting and recordkeeping requirements. The fund must send shareholders a notification that contains specified information each time the fund makes a repurchase offer (on a quarterly, semi-annual, or annual basis, or for certain funds, on a discretionary basis not more often than every two years). The fund also must file copies of the shareholder notification with the

Commission (electronically through the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") or by sending three paper copies) attached to Form N-23c-3 [17 CFR 274.221], a cover sheet that provides limited information about the fund and the type of offer the fund is making.¹ The fund must describe in its annual report to shareholders the fund's policy concerning repurchase offers and the results of any repurchase offers made during the reporting period. The fund's board of directors must adopt written procedures designed to ensure that the fund's investment portfolio is sufficiently liquid to meet its repurchase obligations and other obligations under the rule. The board periodically must review the composition of the fund's portfolio and change the liquidity procedures as necessary. The fund also must file copies of advertisements and other sales literature with the Commission as if it were an open-end investment company subject to section 24 of the Investment Company Act [15 U.S.C. 80a-24] and the rules that implement section 24.²

The requirement that the fund send a notification to shareholders of each offer is intended to ensure that a fund provides material information to shareholders about the terms of each offer, which may differ from previous offers on such matters as the maximum amount of shares to be repurchased (the maximum repurchase amount may range from 5% to 25% of outstanding shares). The requirement that copies be sent to the Commission is intended to enable the Commission to monitor the fund's compliance with the notification requirement. The requirement that the shareholder notification be attached to Form N-23c-3 is intended to ensure that the fund provides basic information necessary for the Commission to process the notification and to monitor the fund's use of repurchase offers. The requirement that the fund describe its current policy on repurchase offers and the results of recent offers in the annual shareholder report is intended to provide shareholders current information about the fund's repurchase policies and its recent experience. The requirement that the board approve and

¹ Form N-23c-3 requires the fund to state its registration number, its full name and address, the date of the accompanying shareholder notification, and the type of offer being made (periodic, discretionary, or both).

² Rule 24b-3 under the Investment Company Act [17 CFR 270.24b-3], however, would generally exempt the fund from that requirement when the materials are filed instead with the National Association of Securities Dealers ("NASD"), as nearly always occurs under NASD procedures, which apply to the underwriter of every fund.

review written procedures designed to maintain portfolio liquidity is intended to ensure that the fund has enough cash or liquid securities to meet its repurchase obligations, and that written procedures are available for review by shareholders and examination by the Commission. The requirement that the fund file advertisements and sales literature as if it were an open-end investment company is intended to facilitate the review of these materials by the Commission or the NASD to prevent incomplete, inaccurate, or misleading disclosure about the special characteristics of a closed-end fund that makes periodic repurchase offers.

The Commission estimates that 10 funds currently rely upon the rule. The Commission estimates that each fund spends approximately 80 hours annually in preparing, mailing, and filing shareholder notifications for each repurchase offer, 4 hours annually in preparing and filing Form N-23c-3, 6 hours annually in preparing disclosures in the annual shareholder report concerning the fund's repurchase policy and recent offers, 28 hours annually in preparing procedures to protect portfolio liquidity, and 8 hours annually in performing subsequent reviews of these procedures. The total annual burden of the rule's paperwork requirements for all funds thus is estimated to be 1,260 hours. This represents an increase of 940 hours from the prior estimate of 320 hours. The increase results primarily from the recognition that sending notifications to shareholders and completing Form N-23c-3 imposes burdens in addition to the burden of preparing and filing the shareholder notifications with the Commission.³ The remaining increase results from a more accurate calculation of the component parts of other previously combined information burdens.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule and form is necessary to obtain the benefit of relying on the rule and form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

³ The Commission has not previously submitted to OMB a request for approval under the Paperwork Reduction Act for the collection of information in Form N-23c-3.

displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0-4, 450 5th Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB on or before June 11, 1998.

Dated: May 4, 1998.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12552 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Intercorp Excelle Inc., Common Stock, No Par Value; Redeemable Common Stock Purchase Warrants), File No. 1-13365

May 6, 1998.

Intercorp Excelle Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Company's Securities are currently registered under Section 12(b) of the Act and are listed for trading on the BSE and for quotation on the Nasdaq SmallCap Market ("Nasdaq").

The Company recently learned that it may not qualify for continued listing on the BSE in that it may not have more than 600 shareholders. Furthermore, the Company believes that the time and expense incurred in continued listing of the Securities on the BSE does not justify the benefits from such continued listing. The Company believes that it is in the best interests of the Company's shareholders to withdraw the Securities from listing on the BSE.

The Company will continue to maintain its listing of the Securities on the Nasdaq.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing and registration on the BSE.

Any interested person may, on or before May 28, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-12556 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23172; 812-11074]

Oppenheimer Series Fund, Inc., et al.; Notice of Application

May 5, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION:

Applicants seek an order to allow certain series of Oppenheimer Series Fund, Inc. and Oppenheimer Integrity Funds, both registered open-end management investment companies, to acquire the assets and liabilities of certain series of Oppenheimer Series Fund, Inc. Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

APPLICANTS: Oppenheimer Series Fund, Inc. (the "Company"), Oppenheimer Integrity Funds (the "Trust"), and Oppenheimer Funds, Inc. ("OFI").

FILING DATES: The application was filed on March 18, 1998. Applicants have agreed to file an amendment to the application, the substance of which is

included in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 1, 1998, and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Oppenheimer Series Fund, Inc., Oppenheimer Integrity Funds, and Oppenheimer Funds, Inc., c/o Denis R. Molleur, Esq., Two World Trade Center, 34th Floor, New York, New York 10048-0203.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 942-0714, or George J. Zornada, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (telephone (202) 942-8090).

Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company and is organized as a series company. The Company offers five portfolios, Oppenheimer Disciplined Value Fund and Oppenheimer Disciplined Allocation Fund (each an "Acquiring fund"), and Oppenheimer LifeSpan Growth Fund, Oppenheimer LifeSpan Balanced Fund and Oppenheimer LifeSpan Income Fund (collectively, the "Acquired Funds").

2. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is organized as a series company. Oppenheimer Bond Fund is the only portfolio of the Trust (together with Oppenheimer Disciplined Value Fund and Oppenheimer

Disciplined Allocation Fund, the "Acquiring Funds").

3. OFI is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"), and is the adviser to the Acquired Funds and the Acquiring Funds. It is a subsidiary of Oppenheimer Acquisition Corp., a holding company controlled by Massachusetts Mutual Life Insurance Company ("MassMutual"). As of March 2, 1998, MassMutual held of record of 21% of the outstanding shares of the Disciplined Value Fund; 63% of the LifeSpan Growth Fund; 70% of the LifeSpan Balanced Fund; and 86% of the LifeSpan Income Fund. MassMutual also is an investment adviser registered under the Advisers Act.

4. Each Acquired Fund currently has Class A, B, and C shares. Class A shares are subject to a front-end sales charge, except for certain large purchases that are subject to a 1% contingent deferred sales charge ("CDSC") if redeemed within one year. Class B and C shares may be subject to a CDSC depending on the length of time held, and are subject to a .75% asset-based sales charge. Each Acquiring Fund has identical Class A, B, and C shares.

5. On December 11, 1997, the board of directors of the Company (the "Board"), including a majority of the disinterested directors, approved proposed plans of reorganization (each a "Plan" and collectively, the "Plans"). Under the Plans, each Acquiring Fund will acquire all of the assets, less cash reserves,¹ and liabilities, as set out in the Plans, of the corresponding Acquired Fund in exchange for Class A, B, and C shares of the Acquiring Fund equal in value as computed at 4:00 p.m. New York, NY time ("Valuation Time") on the date of the transaction (the "Exchange Date") to the net value of the assets of the corresponding Acquired Fund at the Valuation Time on the Exchange Date.² Each Acquired Fund will distribute pro rata to its shareholders as of the close of business on the Exchange Date the Acquiring Fund Class A, B, and C shares that were issued in exchange for the Acquired Fund's assets. All issued and outstanding corresponding Class A, B, and C shares of the Acquired Fund will

¹ Assets will be retained by the Acquired Funds deemed sufficient in the discretion of the Board for the payment of the expenses of liquidation and liabilities not assumed by the Acquiring Fund.

² The Acquiring Funds and the corresponding Acquired Funds are:

- (i) Disciplined Value Fund and LifeSpan Growth Fund
- (ii) Disciplined Allocation Fund and LifeSpan Balanced Fund
- (iii) Oppenheimer Bond Fund and LifeSpan Income Fund.

simultaneously be canceled and the Acquired Fund subsequently will liquidate.

6. Shareholders of the Acquired Funds will not incur any sales charges in connection with the reorganization. Any CDSC, however, that currently applies to Acquired Fund shares will continue to apply to Acquiring Fund shares received in the transaction. Each Acquiring Fund and Acquired Fund will bear its own expenses incurred in connection with the reorganization. The investment objectives of each Acquired Fund and its corresponding Acquiring Fund are similar.

7. In approving the reorganization, the Board considered the terms and conditions of the Plans, including (a) that the exchange of Acquired Fund assets for Acquiring Fund shares will take place on a net asset value basis; (b) that no sales charge will be incurred by Acquired Fund shareholders in connection with their acquisition of Acquiring Fund shares; (c) the allocation of the expenses to each Fund; (d) the tax-free status of the reorganization; (e) the advantages that may be realized by the Acquired funds and the Acquiring Funds, including economies of scale which will result in reduced expense ratios; and (f) the comparability of the investment objectives, policies and restrictions of each Acquiring Fund with those of the corresponding Acquired fund. The Board and the Trustees of the Trust, including the disinterested members of each, also found that the Plans were fair and in the best interests of the shareholders of the Acquired Funds and the Acquiring Funds, and that the interests of existing shareholders will not be diluted as a result of the reorganization.

8. Amendments on Form N-14 to the Company's and Trust's registration statements under the Securities Act of 1933 were filed with the Commission on February 27, 1998 to register shares to be issued in the proposed reorganization. A special meeting for shareholder consideration of the Plans is scheduled for June 9, 1998.

9. Each Acquiring or Acquired Fund may abandon and terminate the Plan at any time prior to the Exchange Date without liability if a material breach of the terms of the Plan occurs or if a material legal, administrative, or other proceeding is instituted. In addition, each Acquiring or Acquired fund may, at its election, terminate the Plan in the event that any condition for the Plan to close has not been met or waived and if the transactions have not become effective on or before July 30, 1998.

10. The consummation of the reorganization will be subject to the following conditions: (a) the shareholders of each Acquired Fund will have approved the Plan; (b) applicants will have received the exemptive relief which is the subject of the application; and (c) applicants will have received an opinion of counsel or independent auditors with respect to the federal income tax aspects of the reorganization. Applicants agree not to make any material changes to the proposed Plans that affect the application without prior Commission approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from selling any security to, or purchasing any security from, such registered company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that owns 5% or more of the outstanding voting securities of such other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person, (c) any person directly or indirectly controlling, controlled by, or under common control with such other person, and (d) if such other person is an investment company, any investment adviser of that investment company.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reasons of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely upon rule 17a-8 because they may be affiliated for reasons other than those set forth in the rule. The Acquiring and Acquired Funds have a common investment adviser, OFI. Mass Mutual indirectly owns more than 5% of OFI. Mass Mutual also holds of record 5% or more of the outstanding voting securities of one Acquiring Fund, the Oppenheimer Disciplined Value Fund, and controls each of the Acquired Funds. Because of this ownership, each Acquiring Fund and OFI may be deemed affiliated persons of an affiliated person of the Acquired Funds. Therefore, the proposed reorganization may not meet the "solely by reason of"

requirement of rule 17a-8. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the proposed reorganization.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned; and the proposed transaction is consistent with the general purposes of the Act.

5. Applicants submit that the terms of the Plans satisfy the standards set forth in section 17(b) in that the terms are fair and reasonable and do not involve overreaching on the part of any person. Applicants note that the Board and the Trustees of the Trust, including the disinterested directors and trustees, have reviewed the terms of the Plans, including the consideration paid or received, and have found that the participation in the reorganization is in the best interests of each Acquiring and Acquired fund and that the interests of the existing shareholders will not be diluted as a result of the reorganization. Applicants also note that the exchange of the Acquired Funds' assets and liabilities for the shares of the Acquiring Funds will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12455 Filed 5-11-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23174; File No. 812-11062]

Sage Life Investment Trust, et al.

May 6, 1998.

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptive relief from Sections 9(a), 13(a), 15(a), 15(b) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of Sage

Life Investment Trust (the "Trust") and any other investment company that is designed to fund insurance products and for which Sage Advisors, Inc. may serve as investment manager, investment adviser, administrator, manager, principal underwriter or sponsor ("Future Trusts," together with the Trust, "Trusts") to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies and by qualified pension and retirement plans ("Qualified Plans" or "Plans") outside of the separate account context.

APPLICANTS: Sage Life Investment Trust and Sage Advisor, Inc. ("Sage").

FILING DATE: The application was filed on March 12, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 1, 1998, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the data of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o James F. Bronsdon, Esq., Safe Life Assurance of America, Inc., 300 Atlantic Street, Suite 302, Stamford Connecticut 06901.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W., Washington, D.C. (tel. (202) 942-8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the 1940 Act as an open-end, management investment company. The Trust currently consists of four separate portfolios (each, a "Fund"), each of which has its own

investment objective or objectives, and policies.

2. Sage will serve as the investment manager to the Trust. Sage is a wholly-owned subsidiary of Sage Insurance Group, Inc. Sage will be registered with the Commission as an investment adviser pursuant to the Investment Advisers Act of 1940.

3. Upon effectiveness of the Trust's registration statement, shares of each Fund will be offered to Safe Life Assurance of America, Inc. ("Current Participating Insurance Company"), as investment options for its separate accounts supporting variable annuity and variable life contracts.

4. Applicants state that, upon the granting of the exemptive relief requested by the Application, the Trust intends to offer shares representing interests in each Fund, and any future portfolios (each, a "Future Portfolio," together with the Fund, "Portfolios"), to separate accounts of insurance companies, including both the Current Participating Insurance Company and other insurance companies ("Other Insurance Companies") to serve as the investment vehicle for variable annuity contracts and variable life insurance contracts (collectively, "Variable Contracts"). The Current Participating Insurance Company and Other Insurance Companies which elect to purchase shares of one or more Portfolios are collectively referred to herein as "Participating Insurance Companies." The Participating Insurance Companies will establish their own separate accounts ("Separate Accounts") and design their own Variable Contracts. Applicants also propose that the Portfolios offer and sell their shares directly to Qualified Plans outside of the separate account context.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit shares of the trusts to be offered and sold to, and held by: (a) both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company ("mixed funding"); (b) separate accounts of unaffiliated life insurance companies (including both variable annuity separate accounts and variable life insurance separate accounts) ("shared funding"); and (c) trustees of Qualified Plans.

2. In connection with the funding of scheduled premium variable life

insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e-2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. These exemptions are available only if the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurer. Thus, the exemptions provided by Rule 6e-2 are not available if a scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to a variable annuity separate account or a flexible premium variable life insurance separate account of the same insurance company, or to an unaffiliated life insurance company. In addition, the relief granted by Rule 6e-2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying fund that also offers its shares to Qualified Plans.

3. Rule 6e-3(T)(b)(15) provides similar partial exemptions in connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust. These exemptions, however, are available only if all the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Thus, the exemptions provided by Rule 6e-3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the fund is engaged in shared funding or if the fund sells its shares to Qualified Plans.

4. Applicants state that current tax law permits the Trust to increase its asset base through the sale of its shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the assets underlying Variable Contracts, such as those in each Portfolio. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be,

for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the "Regulations"), adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817-5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817-5(f)(3)(iii)).

5. The promulgation of rules 6e-2 and 6e-3(T) preceded the issuance of the Regulations. Applicants state that, given the then-current tax law, the sale of shares of the same investment company to both the separate accounts of insurers and to Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e-2(b)(15) and Rule 6e-3(T)(b)(15).

6. Section 9(a)(3) of the 1940 Act provides, among other things, that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a) (1) or (2) of the 1940 Act. Rules 6e-2(b)(15) (i) and (ii) and Rules 6e-3(T)(b)(15) (i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

7. Applicants state that the partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of Section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of

Section 9. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants state that it is unnecessary to apply Section 9(a) to individuals in various unaffiliated Participating Insurance Companies (or affiliated companies of Participating Insurance Companies) that may utilize the Trusts as the funding medium for Variable Contracts. According to Applicants, there is no regulatory purpose in extending the Section 9(a) monitoring requirements because of mixed or shared funding. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management or administration of the Trusts. Moreover, those individuals who participate in the management or administration of the Trusts will remain the same regardless of which Separate Accounts, or Qualified Plans use the Trusts. Applicants argue that applying the monitoring requirements of Section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose.

8. Applicants also state that in the case of Qualified Plans, the Plans, unlike the Separate Accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of any of the Trusts by virtue of its shareholders.

9. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming that the limitations on mixed and shared funding imposed by the 1940 Act and the rules promulgated thereunder are observed.

10. Rules 6e-2(b)(15) and 6e-3(T)(b)(15) under the 1940 Act give the Participating Insurance Companies the right to disregard voting instructions of contract owners. Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A) each provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject

to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e-2 and 6e-3(T) under the 1940 Act). Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(A)(2) each provide that the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in the underlying investment company's investment policies, principal underwriter, or any investment adviser (subject to the provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of Rules 6e-2 and 6e-3(T) under the 1940 Act). Applicants represent that these rights do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e-2(b)(15) and 6e-3(T)(b)(15), an insurer can disregard voting instructions of contract owners only with respect to certain specified items. Applicants also note that the potential for disagreement among Separate Accounts is limited by the requirements in Rules 6e-2 and 6e-3(T) that a Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good faith determinations.

11. Applicants further represent that the offer and sale of Portfolio shares to Qualified Plans will not have any impact on the relief requested in this regard. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act ("ERISA"), shares of a fund sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

12. If a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the

responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

13. If a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and Plan investors with respect to voting of the respective Portfolio's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

14. Applicants further note that there is no reason to believe that participants in Qualified Plans which provide participants with the right to give voting instructions generally, or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage variable contract owners. Applicants, therefore, submit that the purchase of shares of the Portfolios by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that no increased conflicts of interest would be presented by granting the requested relief. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants submit that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e-2(b)(15) and 6e-3(T)(b)(15) under the 1940 Act permit.

Affiliated insurers may be domiciled in different states and be subject to differing state law requirements.

Affiliation does not reduce the potential for differences in state regulatory requirements. Applicants state that the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the Portfolios. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

17. Rules 6e-2(b)(15) and 6e-3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. Applicants assert that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e-2(b)(15) and 6e-3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e-2 and 6e-3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

18. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represent a minority position or would preclude a majority vote, then the insurer may be required, at the relevant Portfolio's election, to withdraw its Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to

participation by the Participating Insurance Companies in the Portfolios.

19. Applicants submit that there is no reason why the investment policies of the Portfolios would or should be materially different from what these policies would or should be if the Portfolios funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

20. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A Portfolio supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the relevant Portfolio. Mixed and shared funding will broaden the base of contract owners which will facilitate the establishment of additional portfolios serving diverse goals.

21. Applicants do not believe that the sale of the shares of the Portfolios to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

22. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with Regulations, adequately diversified.

23. Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The

Regulations, however, contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a Qualified Plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817-5(f)(3)(iii)). Thus, the Regulations specifically permit Qualified Plans and separate accounts to invest in the same portfolio of an underlying fund. For this reason, Applicants assert that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interest.

24. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or a Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value in conformity with Rule 22c-1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Plan.

25. Applicants state that it is possible to provide an equitable means of giving voting rights to contract owners in the Separate Accounts and to Qualified Plans. In connection with any meeting of shareholders, the Trusts will inform each shareholder, including each Separate Account and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e-2 and 6e-3(T), as applicable, and its participation agreement with the relevant Trust. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Trusts would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

26. Applicants submit that the ability of the Portfolios to sell their shares directly to Qualified Plans does not create a "senior security" as such term is defined under Section 18(g) of the

1940 Act. "Senior security" is defined under Section 18(g) of the 1940 Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts only have rights with respect to their respective shares of the Portfolio and any Future Portfolio. They only can redeem such shares at net asset value. No shareholder of the Portfolios has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants assert that there are no conflicts between the contract owners of the Separate Accounts and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

28. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Portfolios and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

29. Applicants also assert that there is no greater potential for material irreconcilable conflicts arising between the interest of participants in the Qualified Plans and contract owners of the Separate Accounts from future changes in the federal tax laws than that which already exist between variable annuity contract owners and variable life insurance contract owners.

30. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the

costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Use of a Portfolio as a common investment media for variable contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of Sage, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Portfolio, thereby promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new Portfolios more feasible. Applicants assert that making the Portfolios available for mixed and shared funding will, therefore, encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants also assert that the sale of shares of the portfolios to Qualified Plans in addition to the Separate accounts will result in an increased amount of assets available for investment by such Portfolios. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Portfolios more feasible.

31. Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. As noted above, Applicants assert that mixed and shared funding will not have any adverse Federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of each Trust will consist of persons who are

not "interested persons" of such Trust, as defined by section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board, (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, Sage, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (collectively, the "Participants") will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an

obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trusts, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment medium, including another Portfolio, or in the case of insurance company participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners end, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners or life insurance contract owners of one or more Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Trust, to withdraw such insurer's Separate Account's investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan

participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Trust, to withdraw its investment in such Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trusts, and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Trust or Sage be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any variable contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if: (a) a majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer; or (b) pursuant to documents governing the Qualified Plan, the Plan makes such decision without a Plan participant vote.

5. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all contract owners as required by the 1940 Act. Accordingly, each such Participant, where applicable, will vote shares of the applicable Portfolio held in its Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in the application will be a contractual obligation of all Participating Insurance Companies under their agreement with

Trust governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. Each Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, each Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

8. The Trusts will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that: (a) shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust may conflict; and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

9. If and to the extent that Rule 6e-2 and Rule 6e-3(T) under the 1940 Act are amended, or proposed Rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from those terms and conditions associated with the exemptive relief requested in the application, then the Trusts and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), or Rule 6e-3, as such rules are applicable.

10. The Participants, at least annually, will submit to the Board of each Trust such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in the application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

11. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

12. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Plan executes an agreement with the relevant Trust governing participation in such Portfolio. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shared of any Portfolio.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12555 Filed 5-11-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 81-926]

Application and Opportunity for Hearing: Summit Properties Inc.

May 6, 1998.

Notice is hereby given that Summit Properties Inc. ("Applicant") has filed

an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") for an order exempting applicant from the provisions of Section 16 of the Exchange Act with respect to its ownership of and transactions in units of limited partnership interest of Summit Properties Partnership, L.P.

For a detailed statement of the information presented, all persons are referred to this application, which is on file at the office of the Commission in the Public Reference Room 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is also given that any interested person not later than June 1, 1998 may submit to the Commission in writing its views or any substantial facts bearing on the application, or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such a request, and the issues of fact and law raised by the application which it wishes to contest.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after the date, an order granting application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12559 Filed 5-11-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of May 11, 1998.

A closed meeting will be held on Thursday, May 14, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, May 14, 1998, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: May 7, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-12703 Filed 5-8-98; 2:37 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39959; File No. SR-AMEX-98-16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Announcement of Closing Rotations in Equity Options After 4:02 p.m.

May 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 8, 1998, the American Stock Exchange, Inc. ("Amex" or "the Exchange"), filed with the Securities and Exchange Commission ("SEC" or "the Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 1 to permit closing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

rotations in equity options to be announced after 4:02 p.m. Language proposed to be deleted is in brackets.

Hours of Business

Rule 1 No change.

* * * Commentary

.01 No change.

.02 Options Trading after 4:02 p.m.—The Board has determined that no option series shall freely trade after 4:02 p.m. except that broad stock index group options shall freely trade until 4:15 p.m. each business day. However, one trading rotation in any class of options contracts may be effected even though employment of the rotations will result in the effecting of transactions on the Exchange after 4:02 p.m., provided:

(1) No change.

(2) Such rotation was initiated due to unusual market conditions pursuant to Rule 918, and: (i) Notice of such rotation is publicly disseminated no later than the commencement of the rotation or 4:00 p.m. (N.Y. time), whichever is earlier; or (ii) notice of such rotation is publicly disseminated after 4:00 p.m. [but before 4:02 p.m.], and the rotation does not commence until five minutes after news of such rotation is publicly disseminated.

(3) No change.

If prior to 4:02 p.m., a trading rotation is in progress and a Senior Floor Official and a Floor Official determine that a final trading rotation is needed to assure a fair and orderly market, the rotation in progress shall be halted and such final rotation begun as promptly as possible after 4:02 p.m. Any trading rotation commenced after 4:02 p.m. must be approved by a Senior Floor Official.

.03 through .04 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 14, 1997, the Exchange received approval to move the close of

equity options trading from 4:10 p.m. to 4:02 p.m.³ This change was prompted by improvements in dissemination of closing prices in the underlying securities, the limited ability of public customers to reach as quickly as professional traders to news announcements in the last ten minutes of trading, and the difficulties experienced by options specialists and registered traders trying to make orderly options markets without the ability to hedge or otherwise offset market risk with transactions in the underlying stock. Following receipt of approval, Rule 1 was amended to reflect this change to 4:02 p.m. Inadvertently, however, the provision that permits a closing rotation⁴ to be initiated due to unusual market conditions, was severely limited when the rule was changed to require that notice of the closing rotation had to be publicly disseminated before 4:02 p.m. As currently written, the rule gives Floor Officials only two minutes to assess an unusual market condition, determine whether it is appropriate to have a closing rotation and disseminate the news of the rotation to the public.

The Exchange now proposes that Rule 1 be amended to permit the announcement of closing rotations in equity options after 4:02 p.m. provided such a rotation does not begin sooner than five minutes after the announcement of the closing rotation is disseminated. Permitting the announcement of closing rotations after 4:02 p.m. will allow the Exchange to more effectively address unusual market conditions by increasing its flexibility in the timing of announcing and commencing closing rotations. Further, such an amendment would conform Rule 1 to other exchanges' rules concerning the announcement of closing rotations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁵ in general and furthers the objectives of Section 6(b)(5),⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and

perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by June 2, 1998.

³ Securities Exchange Act Release No. 38640, (May 14, 1997), 62 FR 28081 (May 22, 1997).

⁴ A closing rotation is a trading procedure to determine appropriate closing prices or quotes for each series of options on an underlying stock.

⁵ 15 U.S.C. 78f(b).

⁶ U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-12557 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-39956; File No. SR-CHX-98-01)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated Relating to the Stopping of Market and Marketable Limit Orders

May 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 16, 1998, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the stopping of market and marketable limit orders. On February 12, 1998, the Exchange filed amendment No. 1 with the Commission.² The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 37(b) relating to the stopping of market orders and marketable limit orders in the Midwest Automated Execution System ("MAX System"). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Article XX, Rule 37. Guaranteed Execution System and Midwest Automated Execution System (b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's Article XX, Rule 37(a)

("BEST Rule") and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

(1)-(9) No change in text.

(10) All market orders received through the MAX System that would result in an out of range execution shall be deemed to be received with a request to STOP. Additionally, specialists may stop limit orders that are marketable when entered into the MAX System. Subject to Interpretations and Policies .03 under [paragraph (a) under] this Rule 37, a specialist may execute a stopped order out of the primary market range, at no worse than the stopped price, provided the specialist receives approval to do so from two floor officials. All agency and professional market orders received through the MAX System that are from 100 shares up to and including 599 shares (or such greater amount designated by a specialist on a stock-by-stock basis) (the stop volume threshold), that are not automatically executed pursuant to subsections (6) and (7) hereof shall be designated as "pending auto-stop" orders. A pending auto-stop order shall be automatically stopped thirty seconds after entry into the MAX System unless the order has been canceled, executed, manually stopped, or put on hold during such thirty second period. The pending auto-stop feature shall operate from 8:45 a.m. until 2:57 p.m. Notwithstanding the foregoing all or none orders, fill or kill orders, immediate or cancel orders and orders that have been stopped under the Enhanced SuperMAX program are not eligible to be "pending auto-stop" orders.

(11)-(12) No change in text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose.

As described more fully below, the purpose of the proposed rule change is to amend CHX rules relating to "stopped" orders³ in the MAX System⁴ (i) to permit specialists to stop a marketable limit order⁵ if the order is not immediately executed, and (ii) to automate the stopping of certain market orders that are not automatically executed.

Under the Exchange's BEST Rule, Exchange specialists are required to guarantee executions of all agency⁶ market and limit orders for Dual Trading System issues⁷ from 100 shares up to and including 2099 shares. Subject to the requirements of the short sale rule, market orders must be executed at a price equal to or better than the Intermarket Trading System ("ITS") best bid or offer ("BBO"), up to the size associated with the ITS BBO. Limit orders must be executed at their limit price or better when: (1) the ITS BBO at the limit price has been exhausted in the primary market; (2) there has been a price penetration of the limit in the primary market (generally known as a trade-through of a CHX limit order); or (3) the issue is trading at the limit price on the primary market unless

³ See CHX Manual, Art. XX, Rule 28 regarding member liability for stopped orders.

⁴ The MAX System provides an automated delivery and, in certain cases, execution facility for orders that are eligible for execution under Article XX, Rule 37(a), and in certain other orders. See CHX Manual, Art. XX, Rule 37(b).

⁵ For purposes of this filing, a marketable limit order is a limit order that is marketable when entered into the MAX System, i.e., the limit price of the order is at or past (higher for a buy order or lower for a sell order) the relevant side of the ITS BBO at the time the order is received in the MAX System. If the ITS BBO subsequently moves away from the limit price (i.e., if the limit price is lower than the ITS best offer for a buy order or higher than the ITS best bid for a sell order) after receipt of the order but before execution of the order, the order will still be considered a marketable limit order for purposes of pending auto-stop. Conversely, if a limit order is not marketable when received by the MAX System, the order will not be considered a marketable limit order for purposes of pending auto-stop, even if the ITS BBO subsequently becomes equal to or past the limit price of the order.

⁶ The term "agency order" means an order for the account of a customer, but does not include professional orders as defined in CHX, Art. XXX, Rule 2, Interpretation and Policy.04. That Rule defines a "professional order" as any order for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

⁷ Dual Trading System issues are issues that are traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or American Stock Exchange.

⁷ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² See letter from David T. Rusoff, Foley & Lardner, to Gail A. Marshall, Division of Market Regulation, Commission, dated February 12, 1998.

it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related to, or other criteria for, requiring an execution.⁸

As stated above, the Exchange's MAX System provides for the automatic execution of orders that are eligible for execution under the Exchange's BEST Rule and certain other orders.⁹

The MAX System has two size parameters which must be designated by the specialist on a stock-by-stock basis. For Dual Trading System issues, the specialist must set the auto-execution threshold at 1099 shares or greater and the auto-acceptance threshold at 2099 shares or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order-entry firm sends an order through the MAX System that is greater than the specialist's auto-acceptance threshold, a specialist may cancel the order within one minute of it being entered into the MAX System.¹⁰ If the order is not canceled by the specialist, the order is designated as an open order.¹¹ If the order-entry firm sends an order through the MAX System that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order is not available for automatic execution but is designated in the open order book. A specialist may manually execute any portion of the order; the difference must remain as an open order. If the order-entry firm sends an order through the MAX System that is less than or equal to the auto-execution

threshold, the order is executed automatically, unless an exception applies. The MAX Rules currently provide several exceptions to automatic execution, even for orders that are less than or equal to the auto-execution threshold. First, unless a professional order is received with a "Z" designator, it is not automatically executed, regardless of size. Second, all market orders for Dual Trading System issues received through the MAX System that would result in an out of range¹² execution are deemed to be received with a request to "stop."¹³ Stopped orders are not automatically executed in the usual course (i.e., pursuant to Rule 37(b)(6)). Instead, they are placed in the open order file.¹⁴ The order sending firm then receives a "UR Stopped" message. The specialist is then required to include the order in its quote by bidding (if it is an order to buy) or offering (if it is an order to sell) the shares at one minimum variation better than the current market, in an effort to obtain price improvement for the order.

Third, the MAX System will not automatically execute a market order or marketable limit order if the size associated with the ITS BBO is less than the size of the market or marketable limit order.¹⁵

Currently, the MAX System has no functionality to automatically "stop" marketable limit orders; only market orders are stopped, and even then, only if they would result in out of range executions or the size of the order is greater than the size associated with ITS BBO.¹⁶ Consequently, if a marketable limit order is not immediately executed (e.g., it is out of range, the order is greater than the size associated with the ITS BBO, etc.), it is merely added to the open order book. No message is sent to the order sending firm until the order is executed. The same is true for market orders that are not automatically stopped and are not automatically executed.

Because no message is sent to the order sending firm, the firm is uncertain as to the current status of its order. As a result, as stated above, the purpose of the proposed rule change is (i) to permit specialists to stop a marketable limit order, and (ii) to automate the stopping of certain market orders. Once stopped,

the order sending firm will then receive a stopped message, rather than being unsure as to the current status of the order, as is currently the case.

Specifically, the CHX is proposing to amend Article XX, Rule 37(b)(10) to provide that all MAX market orders that are from 100 up to and including 599 shares (or such higher amount determined by a specialist on a stock by stock basis) that are not automatically executed in the normal course pursuant to Rule 37(b)(6) (i.e., because there is insufficient size associated with the ITS BBO, because the order would result in an out of range execution, because the order is a professional order and the specialist has not yet decided whether to accept the order, or because of any other reason permitted under CHX rules) will be identified as a "pending auto stop" order.¹⁷

These orders will retain their "pending auto-stop" status for 30 seconds. At the end of this 30 second period, the MAX System will automatically stop the order and send a "UR Stopped" message to the order sending firm, unless, before the end of the 30 second period, the order is executed, canceled, manually stopped by the specialist or "put on hold." If any of these events occur, the "pending auto-stop" status will be removed from the order and the order will not automatically be stopped.¹⁸ If an order is "put on hold," the CHX's existing rules for the order will apply. If the order is stopped, the stop price will be the ITS BBO at the time the order is received in the MAX System. Furthermore, if the order is stopped after the "pending auto-stop" period, the entire order will be stopped.

The change to Rule 37(b)(10) to stop the entire order will result in better guarantees for the order than are required by existing CHX Rules. For example, professional orders are currently not guaranteed an execution under the BEST Rule. Under this change, eligible professional market orders will now be guaranteed an

¹⁷ While both agency and professional orders will be eligible to be "pending auto-stop" orders, all or none orders, odd-lot orders, fill or kill orders, immediate or cancel orders, orders that re or will be stopped under the Enhanced SuperMAX program, and other orders that cannot be entered into the MAX System (i.e., not held orders, sell short exempt orders and special settlement orders) will not be eligible to be "pending auto stop" orders.

¹⁸ As is the case for all features of the MAX System, in unusual trading conditions, this feature of MAX can be de-activated (in its entirety or on an issue by issue basis) with the approval of two members of the Exchange's Committee on Floor Procedure or a designated member of the Exchange staff who would have authority to set execution prices. See CHX Article XX, Rule 37(b)(8).

execution at the stopped price. Additionally, pursuant to Article XX, Rule 28, a stopped order constitutes a guarantee that the order will be executed at the stopped price or better. However, under existing rules, if the size of the order is greater than the size of the ITS BBO in existence when the order is received, there is merely no automatic execution of the order, the order does not have to be "stopped." Moreover, even if the order is "stopped" under Rule 28 only that portion of the order that is less than or equal to the size of the ITS BBO is stopped. The portion of the order that exceeds the ITS BBO is not stopped. As proposed, the entire size of the order (up to 599 shares) would be automatically stopped after the 30 second delay unless an exception applies.

This better guarantee can be illustrated by an example. Suppose the ITS BBO is \$20 bid, \$20¼ offered, 400 shares x 10,000 shares. Suppose further that a 500 share agency market order to sell is entered into the MAX System. Under current CHX rules, the order would not be automatically executed. The specialist would be required to manually execute 400 shares at \$20. The remaining 100 shares would have to be executed at the next best prevailing price. If \$20 were out of range, there would also be no automatic execution. If the customer requested a stop, then a specialist would stop 400 shares of the order at \$20, i.e., offer 400 shares at \$20¼ and guarantee an execution at no worse than \$20. The remaining 100 shares would be guaranteed an execution (pursuant to the BEST Rule), but not necessarily an execution at \$20. Under Rule 37(b)(10), as proposed to be amended, if the specialist did nothing, after 30 seconds, all 500 shares of the order would be stopped. Thus, the customer would be guaranteed an execution of no worse than \$20 for all 500 shares.

The Exchange believes that the 30 second delay between the time the order is entered and the time that the order is stopped is appropriate. The 30 seconds will give the specialist an opportunity to review the order to determine whether a stop is appropriate under the circumstances.

The "pending auto-stop" feature of the MAX System will operate from 8:45 a.m. until 2:57 p.m. Thus, only orders entered into the MAX System after 8:45 a.m. but before 2:57 p.m. will be eligible to be "pending auto-stop" orders.

In addition to adding the new "pending auto stop" order to the MAX System the CHX is proposing changes to the MAX System that would permit a specialist to manually "stop" a

marketable limit order, regardless of size.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-98-01 and should be submitted by June 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12558 Filed 5-11-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39946; File No. SR-DTC-98-03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

May 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 20, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission"), as amended on March 6, 1998, the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will adjust the fees charged by DTC for various services provided.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B),

¹⁹ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adjust the fees charged for various services in order to align them with DTC's projected service costs for 1998.³ The adjusted fees are based upon a review of service costs conducted by DTC's Board of Directors. This fee change will be effective for services provided on and after April 1, 1998.⁴

DTC believes the 1998 fee schedule will yield \$5.0 million more in operating revenue annually than the present fee schedule would have yielded. DTC believes that the new fees will result in an average fee increase of 1.0% for participants based on their monthly bills from DTC for October, November, and December of 1997.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among DTC's participants and other parties that use DTC's services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants or others have not been received on the proposed rule change. Participants and other users of DTC's services were informed that DTC's annual fees would likely increase by \$5.0 million or approximately 1.5% in a July 2, 1997, memorandum entitled "Preliminary Projections for 1997 Year-end General Refund and Anticipated 1998 Service Fees." DTC informed participants and other users of its services of the proposed fee revisions by

² The Commission has modified the text of the summaries prepared by DTC.

³ The revised fee schedule is attached to DTC's rule filing and is available for copying at the Commission's public reference room.

⁴ The last full scale revision of DTC's fees occurred in 1995 although several revenue adjustments were made by DTC in early 1998.

⁵ 15 U.S.C. 78q-1.

a memorandum dated February 5, 1998, entitled "1998 Revisions of DTC Service Fees." Because participants have supported cost based fees in the past and because the subject fee changes overall are modest, DTC did not consider necessary a formal period for participant comment this year.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)⁶ of the Act and pursuant to Rule 19b-4(e)(2)⁷ promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-98-03 and should be submitted by June 2, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(e)(2).

⁸ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-12457 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39960; File No. SR-DTC-97-17]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to a Modification of the Coupon Collection Service

May 5, 1998.

On August 7, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on December 22, 1997, amended a proposed rule change (File No. SR-DTC-97-17) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the *Federal Register* on January 27, 1998.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC currently operates a coupon collection service ("CCS"), which provides DTC participants with a method for collecting interest payable on coupons from municipal bearer bonds. The rule change modifies CCS to include the collection of interest payable on coupons from corporate bearer bonds.³

Currently, participants using CCS are required to deposit coupons in a standard sealed envelope or "shell," each of which may contain no more than 200 coupons for the same CUSIP number, series, and payable date. DTC submits the contents of the shells to the appropriate issuer or paying agent and credits the interest to the participant's account.⁴ With certain exceptions, DTC will process corporate bearer bond coupons through CCS the same way that it currently processes municipal bearer bond coupons.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 39561 (January 20, 1998), 63 FR 3941.

³ Due to the additional processing and tracking of corporate bearer coupon deposits, DTC intends to file a proposed rule change with the Commission in the future to institute a surcharge for the handling of these deposits.

⁴ For a complete description of CCS, refer to Securities Exchange Act Release No. 35750 (January 22, 1996), 61 FR 2852 (File No. SR-DTC-95-18) (order approving proposed rule change).

First, DTC will contact the corporate paying agent before submitting the coupons for payment to determine whether the coupon proceeds are payable in U.S. dollars. Only corporate bearer bonds payable in either U.S. dollars or Canadian funds are eligible for CCS. Where the corporate bearer bonds are payable in Canadian funds, DTC will request the paying agent to convert the funds to U.S. dollars in accordance with the prevailing exchange rate. DTC will not process corporate bearer bonds through CCS unless the paying agent is able to and will convert Canadian funds to U.S. dollars.

Second, DTC will suppress for corporate bearer coupons the automatic payment function that it applies to municipal bearer coupons.⁵ By delaying crediting participants' accounts until it has received the interest payments from paying agents, DTC will avoid having to adjust such accounts due to fluctuations in exchange rates.

DTC requires that each shell containing corporate bearer bond coupons state the following information on its face: the CUSIP number; a description of issue including purpose, series, date of issue, and maturity date; the payable date; the quantity of coupons enclosed; the dollar value of individual coupons; the total shell value unless payable in Canadian dollars; the participant number; and the contact number and telephone number of the depositing participant. In addition, each shell must be accompanied by a completed deposit ticket, each of which can cover up to twenty-five shells, which provides the participant number, the shell quantity, the total dollar value, the CUSIP number per shell, the coupon quantity per shell, the dollar value per shell unless payable in Canadian dollars, and whether the coupons are future-due or past-due.

DTC will verify the number of shells listed on the deposit ticket and give the participant a time-stamped copy of the ticket. If the number of shells listed on the deposit ticket does not agree with the physical number of shells, the entire deposit will be rejected and sent back to the participant.

II. Discussion

Section 17A(b)(3)(F) of the Act⁶ requires that the rules of a clearing agency be designed to remove impediments to and to perfect the

⁵ When processing municipal bearer coupons through CCS, DTC credits participants' accounts on the payable date of the coupons regardless of whether it actually has received the interest payment.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because it should provide a more efficient method of settling the payment of corporate bearer bond coupons and should allow DTC participants to centralize the processing of the collection of coupons and the receipt of interest payments.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-97-17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-12459 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39955; File No. SR-DTC-98-2]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Adding the HUB Mailbox Service to the Institution Delivery System

May 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 10, 1998, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-98-2) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will add the HUB Mailbox Service ("HUB Mailbox") to DTC's Institutional Delivery ("ID") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add the HUB Mailbox to the services provided by the ID system.³ The HUB Mailbox will allow investment managers and custodian banks⁴ to exchange messages regarding: (1) securities purchases; (2) securities sales; (3) reconciliation data relating to securities positions and cash movements; and (4) other security-related transactions as agreed to by two or more HUB users.⁵ Occasionally, HUB

² The Commission has modified the text of the summaries prepared by DTC.

³ Currently, the ID system enables broker-dealers to exchange confirmation and affirmation messages with investment managers and custodian banks. For a complete description of the services provided by the ID system refer to Securities Exchange Act Release Nos. 33466 (January 12, 1994), 59 FR 3139 (File No. SR-DTC-93-07) (order approving proposed rule change relating to the enhanced ID system); 34166 (June 6, 1994), 59 FR 31660 (File No. SR-DTC-94-01) (order approving proposed rule change to add a standing instruction database to the ID system); 34199 (June 10, 1994), 59 FR 31660 (File No. SR-DTC-94-04) (order granting accelerated approval of a proposed rule change to implement the interactive capabilities and the electric mail features of the enhanced institutional delivery system); 36050 (August 2, 1995), 60 FR 41139 (File No. SR-DTC-95-10) (order approving proposed rule change to implementing advice of confirm correction/cancellation feature and modifying the authorization/exception processing feature of the institutional delivery system); and 39832 (April 6, 1998), 63 FR 18062 (File No. SR-DTC-95-23) (order approving proposed rule change implementing the ID system).

⁴ Initially, broker-dealers will not have access to the HUB Mailbox.

⁵ DTC anticipates that the HUB Mailbox will be used primarily for exchanging messages regarding securities that are not eligible for settlement at DTC. Telephone conversation among Jack Wiener, Vice

Continued

users may also transmit trade data to recordkeeping vendors where the custody and accounting functions are performed by two different parties.

According to DTC, the HUB Mailbox was developed in cooperation with the Industry Standardization for Institutional Trade Communication ("ISITC")⁶ to improve the delivery of ISITC messages. Therefore, all information will be entered in an ISITC approved format initially, but other formats may be used later if agreed upon by two or more HUB users.

To use the HUB Mailbox, investment managers and custodian banks will place formatted records into bundles for each addressee with appropriately coded headers and trailers and DTC will route the bundles to addressees' mailboxes for retrieval. Addressees will acknowledge receipt of bundles through their mailboxes. All mail messages, both delivered and undelivered, will be transferred at the end of each business day between 2 a.m. and 3 a.m. (ET) to a separate file which can be accessed directly on the next day. DTC will store mail messages for up to five days. According to DTC, it will not do any processing other than to direct mail to appropriate mailboxes.

Excerpts from the separate forms of agreement to be executed by HUB Mailbox users are attached as Exhibits C, D, and E to the filing. Exhibit C lists the fees to be charged for the service to investment manager users, and Exhibit D lists the fees to be charged for the service to custodians. Liability provisions, identical in both forms of agreement, are found in Exhibit E.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder because it will increase the speed of data transmissions between investment managers and custodians, thereby promoting efficiencies in the clearance and settlement of securities transactions.

President and Senior Counsel, DTC, and Jeffrey Mooney, Special Counsel, Division of Market Regulation ("Division"), Commission, and Greg Dumark, Attorney, Division, Commission (March 2, 1998).

⁶ ISITC is a committee of investment managers, custodians, and vendors which was established in 1991, has developed standard message formats and operating protocols for transmitting information concerning security-related transactions between and among investment managers and custodians. ISITC's goals are to overcome difficulties encountered by investment managers in communicating with multiple custodians and to attain straight-through-processing. Many ISITC members are DTC participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change have not been solicited from DTC participants. Nevertheless, DTC has tested the HUB Mailbox in a pilot program with a few investment managers and custodian banks. One of the participants in the pilot program characterized the HUB Mailbox as "the most efficient, secure and cost effective manner to obtain reconciliation data daily."

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

- (A) By order approve such proposed rule change or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should

refer to File No. SR-TDC-98-2 and should be submitted by June 2, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12554 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39957; File No. SR-NASD-98-34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to Cancellations and Suspensions for Failure To Comply with Arbitration Award

May 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 1, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. ("NASD Regulation"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association proposes to amend that portion of Rule 9514 of the Rules of the Association relating to review of non-compliance with arbitration awards and settlements. The Association proposes to change the composition of the hearing panels used in such proceedings. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

9514. Hearing and Decision.

• • • • •

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, association person, or other person subject to a notice under Rule 9512 or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 9512(a) or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party, and the NASD Regulation Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 9512(a) or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members: [One] one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on [the] a Hearing Panel.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to change the composition of the Hearing Panel used for proceedings under the Rule 9510 Series in which NASD Regulation seeks to suspend or cancel the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. Currently, Rule 9514(b) requires that the

Hearing Panel for such proceedings be composed of two or more members, one of whom must be a Director of NASD Regulation, and the remaining member or members must be a current or former Director of NASD Regulation or Governor of the NASD. NASD Regulation has determined that board-level panelists are not necessary for such hearings because the issues to be resolved are narrow and largely administrative. Generally, the only issues to be addressed are whether: (1) the member or person paid the award in full or fully complied with the settlement agreement; (2) the claimant agreed to installment payments or has otherwise settled the matter; (3) the member or person has filed a timely motion to vacate or modify the arbitration award and such motion has not been denied; (4) the member or person has filed a petition in bankruptcy and the bankruptcy proceeding is pending, or the award or payment owed under the settlement agreement has been discharged by the bankruptcy court; and (5) the member or person is unable to pay the award. The Commission has stated that a bona fide inability to pay an arbitration award is an important consideration determining whether any sanction for failure to pay an arbitration award is excessive or oppressive.² NASD Regulation has determined that it would be more efficient to have one Hearing Officer conduct the hearing on these issues and render a decision. Hearing Officers are well-suited to resolve the issues presented in these types of hearings due to their training and experience in the NASD's disciplinary proceedings under the Rule 9200 Series.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change will result in a fair and efficient procedure for suspending or canceling the membership of a member or the registration of a person for failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation so that where appropriate, such members or

² See *In the Matter of the Application of Bruce M. Zipper*, Securities Exchange Act Release 33376, Admin. Proc. File No. 3-7908, (Dec. 23, 1993).

persons are not permitted to continue to do business with investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD Regulation. All submissions should refer to the file number in the caption above and should be submitted by May 27, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12456 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39958; File No. SR-NASD-97-92]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed By-Law Amendment Requiring Members to Update Firm Contact Information Electronically, to Maintain Electronic Mail Account and for Other Purposes

May 5, 1998.

On December 19, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² The filing was thereafter amended on April 22, 1998.³ In this filing, as amended, the Association proposed amendments to the NASD By-laws, to require members to communicate with the Association electronically. Under this proposal, members will be required to set up and maintain an electronic mail account and must update their firm contact information through the Internet. In addition, the Association has included a technical amendment to the composition of the NASD National Nominating Committees, correcting a misprint from an earlier filing.⁴ Notice of the proposal was published in the Federal Register on January 16, 1998

("Notice").⁵ The Commission received three comment letters on the filing.⁶

I. Introduction and Background

On August 5, 1997, the Membership Committee of the NASD Regulation, Inc. ("NASD Regulation") Board of Directors recommended requiring each member's executive representative to maintain an Internet electronic mail account for communication with the NASD and to update firm contact information via NASD Regulation's Internet web site. Following approval by the NASD Regulation Board of Directors and the NASD Board of Governors, the Notice was filed with the Commission and published in the Federal Register.⁷ When polled on this proposal, as required by the NASD By-laws, the NASD membership voted more than two to one in favor of requiring maintenance of electronic mail accounts.⁸

II. Description of the Proposal

A. Electronic Mail Accounts and Updating of Member Information

The Proposal promotes Internet use by the Association and its members as a communication tool. As revised, the NASD By-laws will require each member to acquire and maintain an Internet electronic mail address on behalf of its executive representative before January 1, 1999.

In addition to maintaining electronic mail accounts, members will also be required to update firm contact information electronically. In its filing, the NASD maintained that the present method of collecting firm contact information (which is used for member balloting, compliance purposes and targeting key individuals for informational mailings, etc.) through physical filing of an *NASD Member Firm Questionnaire* ("Member Questionnaire") needs improvement. There are significant problems with current procedures. First, information is often stale, because members rarely update the filings. Second, the Member Questionnaire information, which is

currently stored and made available through the Central Registration Depository or "CRD," is not readily available for use in other computer programs and systems. Finally, the planned system enhancements to the CRD do not contemplate inclusion of Member Questionnaire data. Using the new electronic mailboxes, the NASD intends to transmit e-mail reminders to members to update their Membership Questionnaires on a periodic basis. Member firms can then easily access their respective Member Questionnaire via the NASD Regulation Web Site for updating.⁹ The Association has indicated that information provided in this manner is more readily interfaced to the internal NASD Regulation systems requiring the data.

The three comment letters received by the Commission on this rule filing all react negatively to required use of the Internet and electronic mail accounts. The main objections relate to the costs involved in setting up and maintaining such services. One commentator suggested that the decision to maintain an electronic mail account should be discretionary, rather than mandatory.¹⁰ Concerns about lack of member of NASD control over the Internet and internet functionality, reliability, access, integrity and security were also noted.¹¹ The Association's response argues that the minimal costs involved in connecting to the Internet (as little as ten dollars a month for an account and less than one thousand dollars for a computer and modem) are "reasonable in light of the tremendous benefits that electronic mail and Internet communication will bring to the membership."¹² The NASD also stressed its belief that all, rather than some, members should have an electronic mail account, to "strive for uniformity of notice and enable speedy and relatively inexpensive communication with all members."¹³

B. Technical Amendment to Nominating Committee Composition

The NASD also proposes a technical amendment to Article VII, Section 9(b) of the NASD By-Laws. In November, 1997, the Commission approved a comprehensive revision to the Association By-Laws, implementing a

more streamlined corporate structure.¹⁴ When voted on by the NASD members prior to Commission approval, however, Article VII, Section 9(b) incorrectly stated that the number of Industry committee members on the National Nominating Committee should equal or exceed the number of Non-Industry committee members. The terms "Industry" and "Non-Industry" had been transposed. By Commission order, the National Nominating Committee must have an equal or greater number of Non-Industry participants.¹⁵

Only one commentator addressed this portion of the proposal. This writer questioned numerical inconsistencies within the amendment.¹⁶ In its response, the NASD pointed out that the commentator incorrectly assumed that the terms "Non-Industry member" and "Public Member" were synonymous. Since they are not (because Public members are a subset of Non-Industry members) there is no inconsistency.¹⁷

III. Discussion

As discussed below, the Commission has determined at this time to approve the Association's proposal. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.¹⁸ In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.¹⁹

A. Electronic Mail Accounts and Updating of Member Information

The Commission has determined to approve the Association's proposal requiring members to acquire and maintain the ability to communicate

electronically. Use of the Internet as a business tool is expanding rapidly. As a general matter, it is becoming widely recognized as an efficient and cost-effective means of communication in the business world. Specifically, use of electronic mailboxes is expected to facilitate timely communications between the Association and its members, the more rapid distribution of NASD information, notices, and publications, and reduction or elimination of printed publications. Overall, the enhanced use of electronic communications should result in significant cost savings to the Association without significant disadvantage to the member. Moreover, as noted above, the costs involved in obtaining and maintaining Internet service are minimal.²⁰ According to research conducted by the Association, any phone line in the United States can support Internet service.²¹ Finally, the Commission agrees with the Association that "concerns over the lack of NASD control over the Internet as well as its integrity, security, and functionality also exist for other modes of communication, such as the United States mail. In many cases, Internet communication is more desirable given its speed, timely notice of undeliverable mail, and accessibility 24 hours a day."²² Since the proposal complies with the requirements of Sections 15A and 19(b)(2) of the Act, and the advantages clearly outweigh any disadvantages, the Commission is approving the filing.

b. Composition of National Nominating Committee

The Commission will also approve the adjustments to the composition of the National Nominating Committee at this time. This is necessary to ensure that membership in the National Nominating Committee conforms to the requirements of the SEC Order and related Undertakings issued in August 1996.²³ Based on the Commission's specific findings in the SEC Order, the Association agreed to "implement and maintain at least fifty percent independent public and non-industry membership in its Board of Governors, the Board(s) of Governors or Directors of all of its subsidiaries and affiliates that

exercise or have delegated self-regulatory functions, and . . . the National Nominating Committee."²⁴ For the past several months, the Association has maintained compliance with both the SEC Order and the misprinted effective language by maintaining an equally balanced committee.²⁵ Revising the language to correct the misprint will allow the Association to introduce additional Non-Industry members, which furthers the intent of the SEC Order and other related Commission proceedings.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.²⁶ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.²⁷ In particular, the electronic mail accounts and updating proposal promotes procedures that are cost-efficient and will promote the fair and efficient operation of the Association and conduct of its self-regulatory responsibilities. In addition, adjustment of the National Nominating Committee composition is important, to conform the language to the intent of the Association and the Commission when originally approved. This change will help to ensure a fair representation of NASD members in the selection of Association Directors and Governors and administration of its affairs and provide an appropriate number of Governors or Directors that are representative of issuers and investors and not associated with a member of the Association, a broker, or a dealer.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NASD-97-92), including Amendment No. 1 thereto, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12458 Filed 5-11-98; 8:45 am]

BILLING CODE 8010-01-M

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4

⁴ Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated April 22, 1998. The amendment provides the members' vote and responses to the comment letters. It is technical in nature and therefore not subject to a notice and comment requirement.

⁵ See Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997); see also *infra* text surrounding note 7.

⁶ See Securities Exchange Act Release No. 39539 (January 12, 1998), 63 FR 2709 (January 16, 1998) (File No. SR-NASD-97-92). Amendment No. 1 to the proposed rule filing was filed on April 22, 1998. See *supra* note 3.

⁷ See Letter from Marc B. Horin, National Compliance Consultants to Secretary, Commission, dated January 23, 1998; Letter from John B. Simmon, Morris Group Inc. to Secretary, Commission, dated January 22, 1998; and Letter from Marc B. Horin, National Compliance Consultants to Secretary, Commission, dated January 30, 1998.

⁸ Release No. 34-39539, *supra* note 5.

⁹ See Amendment No. 1, *supra* note 3. The membership vote was 1,884 in favor, 876 against. *Id.*

¹⁰ A firm would be able to access only its own Member Questionnaire; the information would be password-protected to prevent any public access.

¹¹ See Letter from Marc B. Horin, National Compliance Consultants to Secretary, Commission, dated January 30, 1998.

¹² *Id.*

¹³ Amendment No. 1, *supra* note 3 at 2.

¹⁴ *Id.*

¹⁴ See Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997).

¹⁵ See Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3-9056) ("SEC Order"). The SEC Order includes fourteen Undertakings adopted by the Association to remediate the problems identified in the order.

¹⁶ Letter from Marc B. Horin, National Compliance Consultants to Secretary, Commission, dated January 30, 1998.

¹⁷ See Amendment No. 1, *supra* note 3 at 2.

¹⁸ 15 U.S.C. 78s(b).

¹⁹ 15 U.S.C. 78o-3.

²⁰ See *supra* text accompanying note 12.

²¹ See E-Mail from Mary Dunbar, Office of General Counsel, NASD to Mandy Cohen, Office of Market Supervision, Commission dated April 30, 1998 (indicating that "NASD Regulation staff conferred with MCI, which informed NASD Regulation that modems were widely available that are capable of providing Internet access via any telephone line used in the United States").

²² See Amendment No. 1, *supra* note 3 at 2.

²³ See SEC Order, *supra* note 15.

²⁴ *Id.*

²⁵ Telephone call from Mary Dunbar, Office of General Counsel, NASD Regulation to Mandy Cohen, Office of Market Supervision, Commission dated May 5, 1998.

²⁶ 15 U.S.C. § 78o-3.

²⁷ 15 U.S.C. § 78c(f).

²⁸ 15 U.S.C. § 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION**Region I—New England States
Regional Fairness Board; Public
Hearing**

The New England States Regional Fairness Board Hearing to be held on June 22, 1998, starting at 9:30 a.m., at the University of Maine at Augusta, 46 University Drive, Jewett Hall Auditorium, Augusta, Maine 04330, in space is being donated by the University of Maine, to discuss such matters as may be presented by members, staff of the U. S. Small Business, and others present.

For further information contact Gary P. Peele, telephone (312) 353-0880.
Shirl Thomas,
Director, Office of External Affairs.
[FR Doc. 98-12538 Filed 5-11-98; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**Region V District Advisory Council
Public Meeting**

The U.S. Small Business Administration Region V District Advisory Council located in the geographical area of Minneapolis/St. Paul, Minnesota, will hold a public meeting on June 12, 1998, at 11:30 a.m., at the Decathlon Club, 1700 East 79th Street, Bloomington, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business, or other present.

For further information, write or call Edward A. Daum, District Director, U.S. Small Business Administration, 610-C Butler Square, 100 North 6th Street, Minneapolis, Minnesota 55403, telephone (612) 370-2306.
Shirl Thomas,
Director, Office of External Affairs.
[FR Doc. 98-12537 Filed 5-11-98; 8:45 am]
BILLING CODE 8025-01-M

SMALL BUSINESS ADMINISTRATION**Region III District Advisory Council
Public Meeting**

The U.S. Small Business Administration Region III District Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting at 10:30 a.m. on Monday, June 8, 1998, at Ponderosa Steak House, Bridgeport, West Virginia, to discuss such matters as may be presented by members, staff of the U. S. Small Business Administration, or others present.

For further information, write or call Ms. Jayne Armstrong, State Director, U. S. Small Business Administration, 168 West Main Street, Clarksburg, West Virginia 26301, telephone (304) 62305631 Ext. 223.

Shirl Thomas,
Director, Office of External Affairs.
[FR Doc. 98-12536 Filed 5-11-98; 8:45 am]
BILLING CODE 8025-01-P

DEPARTMENT OF STATE**[Public Notice 2802]****Bureau of Political-Military Affairs,
Office of Defense Trade Controls****AGENCY:** Department of State.**ACTION:** 60-day notice of proposed information collection; DSP-9, Statement of Registration.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the *Federal Register* preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:
Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Statement of Registration.

Frequency: One, two, or five years.

Form Number: DSP-9.

Respondents: Exporters of U.S. Munitions List items covered under the Foreign Military Sales Program.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including

through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: April 30, 1998.
Andrew J. Winter,
Deputy Chief Information Officer.
[FR Doc. 98-12491 Filed 5-11-98; 8:45 am]
BILLING CODE 4710-25-M

DEPARTMENT OF STATE**[Public Notice 2803]****Bureau of Political-Military Affairs,
Office of Defense Trade Controls****AGENCY:** Department of State.**ACTION:** 60-day notice of proposed information collection; DSP-83, non-transfer and use certificate.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the *Federal Register* preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Non-Transfer and Use Certificate.

Frequency: Annually.

Form Number: DSP-83.

Respondents: Exporters of significant military equipment and foreign end-users.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: April 30, 1998.
Andrew J. Winter,
Deputy Chief Information Officer.
[FR Doc. 98-12492 Filed 5-11-98; 8:45 am]
BILLING CODE 4710-15-M

DEPARTMENT OF STATE**[Public Notice 2804]****Bureau of Political-Military Affairs,
Office of Defense Trade Controls****AGENCY:** Department of State.**ACTION:** 60-Day Notice of Proposed Information Collection; DSP-61, Application/License for Temporary Import of Unclassified Defense Articles.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the *Federal Register* preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/License for Temporary Import of Unclassified Defense Articles.

Frequency: Triennially.

Form Number: DSP-61.

Respondents: Applicants for Import Licenses of Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 9,000.
Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: April 30, 1998.
Andrew J. Winter,
Deputy Chief Information Officer.
[FR Doc. 98-12493 Filed 5-11-98; 8:45 am]
BILLING CODE 4710-35-M

DEPARTMENT OF STATE**[Public Notice 2805]****Bureau of Political-Military Affairs,
Office of Defense Trade Controls****AGENCY:** Department of State.**ACTION:** 60-day notice of proposed information collection; OMB #1405-0093, request for approval of manufacturing license agreements, technical assistance agreements, and other agreements.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the *Federal Register* preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Request for Approval of Manufacturing

License Agreements, Technical Assistance Agreements, and other Agreements.

Frequency: Annually.
Form Number: OMB #1405-0093.

Respondents: Exporters of U.S. Technology.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 6 hours.

Total Estimated Burden: 6,000 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: April 30, 1998.
Andrew S. Winter, Jr.,
Deputy Chief Information Officer.
[FR Doc. 98-12494 Filed 5-11-98; 8:45 am]
BILLING CODE 4710-25-M

DEPARTMENT OF STATE**[Public Notice 2806]****Bureau of Political-Military Affairs,
Office of Defense Trade Controls****AGENCY:** Department of State.**ACTION:** 60-Day Notice of Proposed Information Collection; DSP-5, Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the *Federal Register* preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.

Frequency: Annually.
Form Number: DSP-5.

Respondents: Applicants for Export Licenses of Defense Articles and Related Technical Data.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 10,000.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: April 30, 1998.

Andrew J. Winter,
Deputy Chief Information Officer.

[FR Doc. 98-12495 Filed 5-11-98; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF STATE

[Public Notice 2807]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-Day notice of proposed information collection; DSP-73, application/license for temporary export of unclassified defense articles.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the *Federal Register* preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/License for Temporary Export of Unclassified Defense Articles.

Frequency: Annually.

Form Number: DSP-73.

Respondents: Applicants for Export Licenses of Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: April 30, 1998.

Andrew J. Winter,
Deputy Chief Information Officer.

[FR Doc. 98-12496 Filed 5-11-98; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF STATE

[Public Notice 2808]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-day notice of proposed information collection; DSP-85, application/license for permanent/temporary export or temporary import of classified defense articles and classified technical data.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the *Federal Register* preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data.

Frequency: Annually.

Form Number: DSP-85.

Respondents: Applicants for Export/Import Licenses of Classified Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
 - Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
 - Enhance the quality, utility, and clarity of the information to be collected.
 - Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.
- FOR ADDITIONAL INFORMATION:** Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting

documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: April 30, 1998.

Andrew J. Winter,
Deputy Chief Information Officer.

[FR Doc. 98-12497 Filed 5-11-98; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF STATE

[Public Notice 2809]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-day notice of proposed information collection; DSP-119, application for amendment to license for export or import of classified or unclassified defense articles and related technical data.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the *Federal Register* preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data.

Frequency: Annually.

Form Number: DSP-119.

Respondents: Applicants for Export/Import Licenses of Classified and Unclassified Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 1,125 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: April 30, 1998.

Andrew J. Winter,
Deputy Chief Information Officer.

[FR Doc. 98-12498 Filed 5-11-98; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF STATE

[Public Notice 2810]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-Day notice of proposed information collection; DSP-94, authority to export defense articles and defense services sold under the Foreign Military Sales Program.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the *Federal Register* preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Authority to Export Defense Articles and Defense Services sold under the Foreign Military Sales Program.

Frequency: Annually.

Form Number: DSP-94.

Respondents: Exporters of U.S. Munitions List items covered under the foreign Military Sales Program.

Estimated Number of Respondents: 250.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,500.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: April 30, 1998.

Andrew J. Winter,
Deputy Chief Information Officer.

[FR Doc. 98-12499 Filed 5-11-98; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF STATE

[Public Notice 2811]

Bureau of Political-Military Affairs, Office of Defense Trade Controls

AGENCY: Department of State.

ACTION: 60-Day Notice of Proposed Information Collection; OMB #1405-0025, Statement of Political Contributions, Fees, or Commissions in Connection with the sale of Defense Articles or Services.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the *Federal Register* preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Statement of Political Contributions,

Fees, or Commissions in Connection with the sale of Defense Articles or Services.

Frequency: Annually.

Form Number: OMB #1405-0025.

Respondents: Exporters of Defense Articles or Services.

Estimated Number of Respondents: 4,500.

Average House Per Response: 8 hours.

Total Estimated Burden: 96,000 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647-0596.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98-12500 Filed 5-11-98; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Monterey Peninsula Airport, Monterey, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part

158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 11, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261 or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010-1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Susan Kovalenko, Manager, Support Services, Monterey Peninsula Airport District, at the following address: 200 Fred Kane Drive, Suite 200, Monterey, CA 93940.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monterey Peninsula Airport District under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Specialist, Airports District Office, 831 Mitten Road, Room 210, Burlingame CA 94010-1303, Telephone: (650) 876-2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On April 9, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Monterey Peninsula Airport District was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 14, 1998.

The following is a brief overview of application number 98-04-C-00-MRY. Level of proposed PFC: 3.00 Proposed charge effective date: June 1, 2000.

Proposed charge expiration date: February 1, 2001.

Total estimated PFC revenue: \$510,159.

Brief description of proposed projects: Slurry Seal Aircraft Pavement at Monterey Peninsula Airport Southeast T-Hangars and Slurry Seal Fred Kane Drive; Extend Fire Protection Water Main on Northside of Airport; Airfield Lighting Improvements; Extend Old Northside Storm Drain to Detention

Pond; Airfield Generator Fuel System; Install Halotron in Aircraft Rescue Firefighting Vehicle; Concrete Repair/Sealant at South Side Ramp; Holding Apron for Taxiway "A" at West End; Realign Portion of Sky Park Drive; Reconstruct/Realign Southeast Entrance; Slurry Seal Taxiway "B," Slurry Seal General Utility Runway 10L/28R and Taxiways; Extend 12" Water Main to Old North Side; Paving of Blast Pad at Holding Area 10R; Terminal Automatic Door Replacement; Terminal Roof Replacement Phase 1; Noise Exposure Map Update; and Relocation of Power Pole Line at Sky Park Drive.

Glass or classes of air carriers which the public agency has requested not be required to collect PFCs: unscheduled/intermittent Part 135 air taxis.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, 15000 Aviation Blvd. Lawndale, CA 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monterey Peninsula Airport District.

Issued in Hawthorne, California, on April 22, 1998.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 98-12585 Filed 5-11-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Orange County, FL, Notice of Intent

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Orange County, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Bartlett, Programs Operation Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone (904) 942-9598.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a proposal to improve and extend SR 438 (John Young Parkway) from SR 50 (W. Colonial Drive) to SR 424 (Edgewater Drive) at SR 434 (Forest City Road), a distance of approximately 4.2 miles (6.7 km). The proposed improvement will complete

the link between Kissimmee and Maitland. This arterial will provide an alternative to I-4 traffic through Orlando, and will also alleviate traffic congestion on the existing local connecting streets of Lee Road, Carder Road, US 441, All American Boulevard, and Edgewater Drive that now must carry continuing northbound traffic to Forest City Road.

Alternatives under consideration are: (1) "No Build", or no improvements within the corridor beyond what is now committed; (2) Improvement of existing roadway facilities including transportation management system (TSM) within the corridor and; (3) New alignment: six-laning and extension of John Young Parkway from SR 50 to Forest City Road.

In the EIS, the FHWA and local agencies will evaluate all environmental impacts of the project, including socio-economic impact, cultural impact, and public recreational facility impact to the roadway corridor and surrounding communities, natural impacts to the wildlife and vegetation, and physical impacts to land use aesthetics, noise levels, and air and water quality of the area. Impacts to floodplain and Outstanding Florida Waters, wetlands and endangered or threatened species, wildlife corridors and critical habitat will be evaluated. The presence of contaminated properties or potential contamination will be evaluated. Impacts will be evaluated for both short term and long term duration and mitigation of any impacts will be studied. Storm water volume and quality management will be a major design consideration. Meeting the local transportation needs, both personal and mass transit, and public service needs of the area communities are goals of the study.

Letters with description of the proposed project soliciting comments will be sent to appropriate Federal, State, and local agencies, as well as private groups and citizens that have expressed interest in this proposal. Public notice will be issued for a series of public meetings and hearings to be held in Orange County and the City of Orlando between April, 1998 and March, 1999, where the Draft EIS will be available to the agencies and public for review and discussion. A formal scoping meeting is planned at the project site during 1998. Comments on the proposal from all interested parties are solicited and should be directed to the FHWA contact person listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.)

J.R. Skinner,

Division Administrator, Tallahassee.

[FR Doc. 98-12561 Filed 5-11-98; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-3812; Notice 1]

Bug Motors, Inc.; Receipt of Application for Temporary Exemption From Two Federal Motor Vehicle Safety Standards

Bug Motors, Inc., which has its principal place of operations in Long Beach, California, ("Bug") has applied for a temporary exemption of three years from two Federal motor vehicle safety standards as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with each of the standards.

This notice of receipt of an application is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

In June 1997, California granted a year's license as a "Vehicle Remanufacturer" to Looking Glass Replicas of Long Beach, of which Kenneth Scheiler was the sole proprietor. Mr. Scheiler changed this business entity into "Bug Motors, Inc." in December 1997, a corporation of which he is the sole shareholder and president. Therefore, Bug has not manufactured any vehicles in the 12-month period preceding the filing of its Application, nor can it file financial information for the three fiscal years called for by the regulation. Upon incorporation, its assets were stated as \$224,600. Mr. Scheiler has been engaged in refurbishing used Volkswagen Beetles, and would now like to produce "new and improved replicas" of the car. Bug intends to buy certain vehicle components from Volkswagen-Mexico, import them into the United States, and assemble Volkswagen "Beetles" to be sold under the name "the Bug." Specifically, Bug will buy and import new chasses, axles, and bodies including interior components. The Bug will be equipped with a refurbished 1973 engine and "a rebuilt speedometer (converted from Kilometers to Miles). Under California law, the Bug will be

titled as a "1998 Remanufactured Vehicle," but is considered "used" rather than "new." NHTSA reviewed the intended modus operandi with the applicant's attorney and concurred with Bug's decision that, under these facts, the Bug should be treated under Federal law as a newly manufactured passenger car which is required to comply with all applicable Federal motor vehicle safety standards.

In addition to the conventional Beetle two-door sedan, Bug will offer two convertible models. One is a sedan modified to have an electric-powered fabric roof that opens along the roof rails. The other is a fully convertible car with a manually-operated top, the familiar Beetle convertible. Bug's Application includes a list of the applicable Federal motor vehicle safety standards, indicating the compliance status of the Bug with respect to each. Representation is made that the Bug complies (e.g., Standard No. 104) or complies with a minor exception which will be modified in production (e.g., addition of a brake warning light, Standard No. 105). However, the Bug will not comply with Standard No. 208 and Standard No. 214.

Specifically, under Standard No. 208, the Bug will be equipped with a three-point restraint system, but "the warning system, including audio and visual aids" will only "be available within one year after production commences, and most likely within 6 months." Bug says that it "has been working with vendors to adapt a Dual Inflatable Restraint System to the Bug," but it anticipates that an entire three-year period will be required for the system to be developed and implemented.

With respect to Standard No. 214, Bug states that it "has been attempting to identify vendors and parts for the installation of door beams for the Bug" and that it "is uncertain as to what, if any, engineering will have to be performed to document compliance." It hopes to achieve compliance within a three-year period.

In support of its hardship argument, Bug informs NHTSA that it would be put out of business if the Application is not granted, as its subsidiary business of refurbishing Beetles is not sufficient to carry it alone. In addition, its national distributor would lose its entire investment in start-up costs, estimated to exceed \$100,000.

An exemption would be in the public interest as it will allow Bug to increase its workforce from seven to 35 people within a year, drawn from "a significant number of minorities, including Hispanics, Asians, and African-Americans." The availability of the Bug

also ought to create jobs and sales for "suppliers and sales people at auto dealerships. In addition, "sale of these vehicles [ought to] generate retail sales taxes of approximately \$1,162.50 per unit," and these revenues would be lost with the denial of the Application. An exemption would be consistent with the objectives of 49 U.S.C. Chapter 301 as it would make available to the public a nostalgic vehicle that complies with all but two Federal motor vehicle safety standards.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Central Docket Management Facility, room PL-401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket (from 10 a.m. to 5 p.m.) at the above address both before and after that date. Comments may also be viewed on the internet at web site dms.dot.gov. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the application will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: June 11, 1998. (49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on May 6, 1998.
L. Robert Shelton,
Associate Administrator for Safety
Performance Standards.
[FR Doc. 98-12597 Filed 5-11-98; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98-3396; Notice 2]

Orion Bus Industries Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

This notice grants the application by Orion Bus Industries Inc. of Oriskany, New York, for a five-month exemption from Motor Vehicle Safety Standard No. 121 *Air Brake Systems*. The basis of the application was that compliance would cause substantial economic hardship to

a manufacturer that has tried in good faith to comply with the standard.

Notice of receipt of the application was published on February 3, 1998, and an opportunity afforded for comment (62 FR 5604).

On June 7, 1995, Western Star Truck Holdings Ltd., Canada, purchased some of the assets of Bus Industries of America. Through its wholly-owned subsidiary, Orion Bus Industries Ltd. of Ontario, a manufacturer of city transit buses, Western Star established Orion Bus Industries Inc. ("Orion Bus") as a wholly-owned subsidiary of Orion Bus Industries Ltd. Since 1995, "Orion Bus has been striving to re-organize the operation, update and replace obsolete facilities and turn an insolvent organization into a first class bus manufacturing facility employing over 1,000 employees." Orion Bus manufactured 699 buses in the 12-month period preceding the filing of its application.

Paragraph S5.1.6.1(a) of Standard No. 121 requires each "single unit vehicle," including transit buses, manufactured on and after March 1, 1998, to be equipped with an antilock brake system. The company will be able to comply as of that date with buses entering production. However, it sought relief from compliance for certain Transit VI buses whose assembly will not be completed until after March 1, 1998. As it explained, these buses "are part of bus contracts which have been delayed due to the insolvency of a major part supplier." This has disrupted Orion Bus's schedule for over 27 weeks "where a new vendor could be found, new tooling produced and the new supply of parts tested and certified to meet current in-use Safety Standards." As the buses were not designed to be equipped with antilock braking systems, their fixed-cost contracts have no provisions for the purchaser bearing the cost of modifications, and Orion Bus would have to absorb the costs. Orion Bus increased its production schedule to minimize the number of buses needing an exemption. As of December 1, 1997, however, it appeared to Orion Bus that 148 Transit VI buses would be produced on or after March 1, 1998, and not later than August 1, 1998.

Orion Bus had a net loss of \$650,000 during its limited operations in 1995, a net income of \$1,223,000 in 1996, and a net income of \$4,696,000 in 1997. Further costs would be incurred were Orion Bus required to conform. At a minimum, the cost to convert stock axles sets and brake assemblies to become anti-lock compliant is estimated to be \$636,740. Were Orion Bus to complete its orders with conforming

buses, the purchasers might demand that the buses for which they had already taken delivery be retrofitted to conform. This contingent liability is estimated to be \$7,000,000. Orion Bus believes that a mixed fleet would have a detrimental effect upon its purchasers "by forcing them to carry different replacement parts, implementing different maintenance procedures and having to train maintenance personnel and drivers on how to handle the different vehicles." Because drivers sometimes change buses during their shifts, in an emergency a driver may not react appropriately as the situation demands. Thus, it is in the public interest to grant the application.

Orion Bus submitted data indicating that a temporary exemption "will have little impact on the ability of a bus to come safely to a stop within the stopping distances specified in Table II of FMVSS 121." These data "indicate that the test vehicle [Orion VI Transit bus] met all stopping distance guidelines and stayed within a 12-foot lane width (without wheel lock)."

One comment was received in response to the notice. Gillig Corporation, a manufacturer of "heavy duty buses, primarily for transit operation," opposed the application. It believes that "more than enough notice [was provided] to plan for a business like change over of an important safety standard improvement," commenting that the rest of the industry also had "schedule changes and increased vehicle costs [which] we had to incorporate into our business plans." Gillig further commented that "rationalizing the impact by citing best effort, dry road stopping is not the intent of anti-lock systems. Anti-lock is designed to perform in adverse conditions and panic stops. Fleet mixing is destined to occur." Finally, Gillig said that it was "unaware of precedent that Federal Motor Vehicle Safety Standards can be postponed due to a manufacturer's economic difficulties."

In fact, there is a factual precedent for the application by Orion Bus, and it also involved compliance with Standard No. 121. Last year, the agency exempted one truck tractor model manufactured by Capacity of Texas, Inc., from compliance with the antilock brake requirements of Standard No. 121 for a period of three months (62 FR 10110). Capacity's contract with the U.S. Postal Service called for it to deliver 210 vehicles between September 1996 and June 1997. In applying for relief, it estimated that it could not complete the final 60 truck tractors by March 1, 1997 without an uneconomic increase in

production rates which would entail the hiring and training of new personnel, and without diverting attention from other orders in process. In support of its application, it cited its customer's desire to have 210 identical vehicles so that all drivers in the fleet could be trained in the same operating procedure and maintenance employees in the same maintenance procedures. The Postal Service also did not wish to have a fleet of dissimilar vehicles requiring different spare parts. It had not proven feasible to complete the order before the antilock effective date.

Orion Bus's inability to complete its contract on schedule was due to "bus contracts which have been delayed due to the insolvency of a major part supplier." This disrupted its schedule for over 27 weeks while a new vendor could be found. As Orion Bus has asked for a 20-week exemption, it appears that the applicant would otherwise have completed the order for 210 buses almost two months before the effective date of the antilock provisions of Standard No. 121. NHTSA deems the "insolvency of a major part supplier" as something more than a "schedule change," with which other bus manufacturers had to contend, as submitted by Gillig. Orion Bus's other buses will be manufactured to conform to the new requirements of the standard effective March 1, 1998. In NHTSA's view, Orion Bus has demonstrated sufficiently that it has tried in good faith to comply with the antilock requirements of the standard.

Orion Bus has also made a sustainable hardship argument. Although its cumulative net income for the three fiscal years of its existence is somewhat more than \$5,000,000, a denial would force it to suspend production of the buses until it could bring them into conformity, and would present the possibility that its customers might demand that the buses already delivered to them be retrofitted to conform, a contingent liability estimated to be \$7,000,000. Orion Bus advances the same arguments relating to the inadvisability of mixed fleets as were presented by Capacity and which NHTSA found compelling in granting Capacity's application.

With respect to the necessary finding that an exemption is consistent with considerations of motor vehicle safety, Orion Bus has stated that its Transit VI buses will comply with the stopping distances required by S5.3.1 for buses equipped with antilock. Gillig emphasizes that this argument neglects

the purpose of antilock, "to perform in adverse conditions and panic stops." The safety of buses is of great concern to NHTSA because these vehicles are operated on a daily basis, carrying hundreds of passengers. But transit buses, unlike intercity buses, are operated on city streets where speed is limited and where they may not even reach these limits in the start-and-halt driving between stops. The likelihood of the need for antilock is less likely to arise in urban environments under these operating conditions. The continued availability of mass transit is in the public interest as is the preservation of the orderly flow of commerce.

In consideration of the foregoing, it is hereby found that to require Orion Bus to comply immediately with Federal Motor Vehicle Safety Standard No. 121 would cause substantial economic hardship to a manufacturer that has attempted in good faith to comply with the standard, and that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Orion Bus Industries, Inc., is hereby granted NHTSA Temporary Exemption No. 98-4, expiring September 1, 1998, for the production of not more than 150 Orion VI Transit buses to be exempt from S5.1.6 of 49 CFR 571.121 Standard No. 121 *Air Brake Systems*.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued: May 6, 1998.

Ricardo Martinez,
Administrator.

[FR Doc. 98-12596 Filed 5-11-98; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury

is soliciting comments concerning the Direct Deposit Sign Up Form.

DATES: Written comments should be received on or before July 14, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106-1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328, (304) 480-6553.

SUPPLEMENTARY INFORMATION:

Title: Direct Deposit Sign Up Form.

OMB Number: 1535-0128.

Form Number: PD F 5396.

Abstract: The information is requested to process payment data to a financial institution.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 3,400.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98-12523 Filed 5-11-98; 8:45 am]
BILLING CODE 4810-39-P

Corrections

Federal Register

Vol. 63, No. 91

Tuesday, May 12, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 278 and 279

RIN 0584-AC46

Food Stamp Program: Retailer Integrity, Fraud Reduction and Penalties

Correction

In proposed rule document 98-12038, beginning on page 24985, in the issue of Wednesday, May 6, 1998, make the following correction:

On page 24995, in the second column, in the signature date line, "1990" should read "1998".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980429110-8110-01; I.D. 042398B]

RIN 0648-AK25

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 1998 Management Measures

Correction

In rule document 98-11957 beginning on page 24973, in the issue of Wednesday, May 6, 1998, make the following correction:

On page 24981, in table 2., the heading "D. QUOTAS" should be moved and centered above the 10th line from the bottom.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 120996A]

Magnuson Act Provisions; Essential Fish Habitat; Extension of Comment Period

Correction

Rule document 98-4363 was inadvertently published in the Proposed Rules section of the issue of Friday, February 20, 1998, beginning on page 8607. It should have appeared in the Rules and Regulations section.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-942-5700-00]

Filing of Plats of Survey; California

Correction

In notice document 98-7127 appearing on page 13426 in the issue of Thursday, March 19, 1998, make the following corrections:

On page 13426, in the third column, under **San Bernardino Meridian, California**, in the fifth line, the plat of survey beginning Tps. 1 N and 1 S. should begin a new line. And in the 17th line "Meets" should read "Metes".

BILLING CODE 1505-01-D

Tuesday
May 12, 1998

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 409, et al.

Medicare Program: Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Final Rule

federal register

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424, 483, and 489

[HCFA-1913-IFC]

RIN 0938-A147

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule implements provisions in section 4432 of the Balanced Budget Act of 1997 related to Medicare payment for skilled nursing facility services. These include the implementation of a Medicare prospective payment system for skilled nursing facilities, consolidated billing, and a number of related changes. The prospective payment system described in this rule replaces the retrospective reasonable cost-based system currently utilized by Medicare for payment of skilled nursing facility services under Part A of the program.

DATES: These regulations are effective July 1, 1998.

Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 13, 1998.

ADDRESSES: Mail an original and 3 copies of written comments to the following address:

Health Care Financing Administration,
Department of Health and Human
Services, Attention: HCFA-1913-IFC,
P.O. Box 26688, Baltimore, MD
21207-0488

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey
Building, 200 Independence Avenue,
SW., Washington, D.C. 20201,

or
Room C5-09-26, 7500 Security
Boulevard, Baltimore, Maryland
21244-1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-1913-IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3

weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

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FOR FURTHER INFORMATION CONTACT:

Laurence Wilson, (410) 786-4603 (for general information). John Davis, (410) 786-0008 (for information related to the Federal rates).

Dana Burley, (410) 786-4547 (for information related to the case-mix classification methodology).

Steve Raitzyk, (410) 786-4599 (for information related to the facility-specific transition payment rates).

Bill Ullman, (410) 786-5667 (for information related to consolidated billing and related provisions).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this document, we are providing the following table of contents.

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III. Price Proxies Used To Measure Cost Category Growth

In addition, because of the many terms to which we refer by acronym in this rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

- | | |
|----------|--|
| ADLs | Activities of daily living |
| AHEs | Average Hourly Earnings |
| BBA | 1997 Balanced Budget Act of 1997 |
| BEA | [U.S.] Bureau of Economic Analysis |
| BLS | [U.S.] Bureau of Labor Statistics |
| CAH | Critical access hospital |
| CFR | Code of Federal Regulations |
| CPI | Consumer Price Index |
| CPI-U | Consumer Price Index for All Urban Consumers |
| CPT | (Physicians') Current Procedural Terminology |
| ECI | Employment Cost Index |
| FI | Fiscal intermediary |
| HCFA | Health Care Financing Administration |
| HCPCS | HCFA Common Procedure Coding System |
| ICD-9-CM | International Classification of Diseases, Ninth Edition, Clinical Modification |
| MDS | Minimum Data Set |
| MEDPAR | Medicare provider analysis and review file |
| MSA | Metropolitan Statistical Area |
| NECMA | New England County Metropolitan Area |
| PCE | Personal Care Expenditures |
| PPI | Producer Price Index |
| PPS | Prospective payment system |
| RAI | Resident Assessment Instrument |
| RAPs | Resident Assessment Protocol Guidelines |
| RUG | Resource Utilization Group |
| SNF | Skilled nursing facility |
| STM | Staff time measure |

I. Background

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Under the present payment system, Medicare skilled nursing facility (SNF) services are paid according to a retrospective, reasonable cost-based system. Under Medicare payment principles set forth in section 1861 of the Social Security Act (the Act) and part 413 of the Code of Federal Regulations (CFR), SNFs receive payment for three major categories of costs: routine costs, ancillary costs, and capital-related costs.

In general, routine costs are the costs of those services included by the provider in a daily service charge. Routine service costs include regular room, dietary, nursing services, minor medical supplies, medical social services, psychiatric social services, and the use of certain facilities and equipment for which a separate charge is not made. Ancillary costs are costs for specialized services, such as therapy, drugs, and laboratory services, that are directly identifiable to individual patients. Capital-related costs include the costs of land, building, equipment, and the interest incurred in financing the acquisition of such items.

Under Medicare rules, the reasonable costs of ancillary services and capital-related expenses are paid in full. Routine operating costs are also paid on a reasonable cost basis, subject to per diem limits. Sections 1861(v)(1) and 1888 of the Act authorize the Secretary to set limits on the allowable routine costs incurred by an SNF.

In addition, section 1888(d) of the Act gives low Medicare volume SNFs the option of receiving a single prospectively determined payment rate for routine operating and capital-related costs in lieu of the normal reasonable cost reimbursement method. A SNF may elect this payment method only if it had fewer than 1,500 Medicare covered inpatient days in its immediately preceding cost reporting period. An SNF's prospective payment rate under section 1888(d) of the Act, excluding capital-related costs, cannot exceed its routine service cost limits. Under this payment method, ancillary costs are still a pass-through cost.

B. Requirement of the Balanced Budget Act of 1997 for a Prospective Payment System for Skilled Nursing Facilities

Section 4432(a) of the Balanced Budget Act of 1997 (BBA 1997) (Public Law 105-33), enacted on August 5, 1997, amended section 1888 of the Act by adding subsection (e). This

subsection requires implementation of a Medicare SNF prospective payment system (PPS) for all SNFs for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs will be paid under a PPS applicable to all covered SNF services. These payment rates will encompass all costs of furnishing covered skilled nursing services (that is, routine, ancillary, and capital-related costs) other than costs associated with operating approved educational activities. Covered SNF services include posthospital SNF services for which benefits are provided under Part A (the hospital insurance program) and all items and services (other than services excluded by statute) for which, prior to July 1, 1998, payment may be made under Part B (the supplementary medical insurance program) and which are furnished to SNF residents during a Part A covered stay.

Section 1888(e)(4) of the Act provides the basis for the establishment of the per diem Federal payment rates applied under the PPS. It sets forth the formula for establishing the rates as well as the data on which they are based. In addition, this section requires adjustments to such rates based on geographic variation and case-mix and prescribes the methodology for updating the rates in future years.

Section 1888(e)(2) sets forth a requirement applicable to most providers for a transition phase covering the first three cost reporting periods under the PPS. During this transition phase, SNFs will receive a payment rate comprised of a blend between the Federal rate and a facility-specific rate based on historical costs. Section 1888(e)(3) prescribes the methodology for computing the facility-specific rates.

In addition to the payment methodology, section 4432(a) of the BBA 1997 added several other provisions to the Act related to the implementation and administration of the PPS.

Section 1888(e)(8) prohibits judicial or administrative review on matters relating to the establishment of the Federal rates. This includes the methodology used in the computation of the Federal rates, the case-mix methodology, and the development and application of the wage index. This limitation on judicial and administrative review also extends to the establishment of the facility-specific rates, except the determinations of reasonable cost in the fiscal year 1995 cost reporting period used as the basis for these rates.

In addition, section 1888(e)(7) requires the application of the PPS to

extended care services furnished in hospital swing bed units. However, this requirement is to be implemented no earlier than cost reporting periods beginning on July 1, 1999 and no later than for cost reporting periods beginning in the 12-month period starting on July 1, 2001. Accordingly, we are not revising the payment regulations for swing-bed hospitals (42 CFR 413.114) at this time, but will do so at a later date.

Finally, section 4432(c) of the BBA 1997 requires the Secretary to establish a medical review process to examine the impact of the PPS, consolidated billing, and other related changes set forth in this rule on the quality of SNF services provided to Medicare beneficiaries. This medical review process will place a particular emphasis on the quality of non-routine covered ancillary and physician services.

C. Summary of the Development of the Medicare Prospective Payment System for Skilled Nursing Facilities

The prospective payment system described in the following sections is the culmination of substantial research efforts beginning as early as the 1970s, focusing on the areas of nursing home payment and quality. In addition, it is based on a foundation of knowledge and work by a number of States that have developed and implemented similar payment methodologies for their Medicaid nursing home payment systems. Over the last 20 years, approximately 25 nursing home case-mix payment systems have been implemented by such States as New York, Ohio, West Virginia, and Texas.

Building on earlier research, the Health Care Financing Administration (HCFA) funded the development of the Multistate Nursing Home Case-Mix and Quality Demonstration in 1989. The purpose of this project was to design, implement, and evaluate a Medicare nursing home prospective payment and quality monitoring system across several States. These States were Kansas, Maine, Mississippi, New York, South Dakota, and Texas. The 3-year demonstration was implemented in 1995.

The current focus in the development of State and Federal payment systems for nursing home care rests on explicit recognition of the differences among residents, particularly in the utilization of resources. Recognition of these differences ensures that payment levels are adequate to support quality and access to care, especially for more costly resource intensive patients. In a case-mix adjusted payment system, the amount of payment given to the nursing

home for care of a resident is tied to the intensity of resource use (for example, hours of nursing or therapy time needed per day) and/or other relevant factors (for example, requirement for a ventilator). The focus of the demonstration was on the development and testing of such a case-mix PPS.

A case-mix system measures the intensity of care and services required for each resident and then translates it into a payment level. As discussed above, a number of States do have case-mix prospective payment systems for their Medicaid nursing home benefits. However, most of these payment systems were not readily transferrable to Medicare due to the relative differences in the resident populations served by each program. While naturally there is overlap, Medicare generally serves a more postacute resident population while Medicaid generally serves a longer-term custodial care population.

As a result of these differences, the development phase of the Multistate demonstration was devoted to developing a case-mix classification system appropriate for the Medicare population. The demonstration, like the national PPS set forth in this rule, utilized information from the Minimum Data Set (MDS) resident assessment instrument to classify residents into resource utilization groups (RUGs), which account for the relative resource use of different patient types. This classification system and its relationship to the MDS and the PPS are described in detail elsewhere in this rule.

D. Skilled Nursing Facility Prospective Payment—General Overview

As described above, the BBA 1997 requires implementation of a Medicare SNF PPS for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are no longer paid in accordance with the present reasonable cost-based system but rather through per diem prospective case-mix adjusted payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (that is, routine, ancillary, and capital-related costs) other than costs associated with operating approved educational activities. Covered SNF services include posthospital SNF services for which benefits are provided under Part A and all items and services for which, prior to July 1, 1998, payment had been made under Part B (other than physician and certain other services specifically excluded under the BBA 1997) but furnished to SNF residents during a Part A covered stay.

1. Payment Provisions—Federal Rate

The PPS utilizes per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the system. We develop the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in fiscal year 1995. The data used in developing the Federal rates also incorporate an estimate of the amounts payable under Part B for covered SNF services furnished during fiscal year 1995 to individuals who were residents of a facility and receiving Part A covered services. In developing the rates, we update costs to the first effective year of the PPS (15-month period beginning July 1, 1998) using a SNF market basket index, and standardize for facility differences in case-mix and for geographic variations in wages. Providers that received "new provider" exemptions from the routine cost limits are excluded from the data base used to compute the Federal payment rates. In addition, costs related to payments for exceptions to the routine cost limits are excluded from the data base used to compute the Federal payment rates. In accordance with the formula prescribed in the BBA 1997, we set the Federal rates at a level equal to a weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and a weighted mean of all SNF costs (hospital-based and freestanding) combined. We compute and apply separately payment rates for facilities located in urban and rural areas.

The Federal rate also incorporates adjustments to account for facility case-mix using a resident classification system that accounts for the relative resource utilization of different patient types. This classification system, Version III of the Resource Utilization Groups (RUGs-III), utilizes resident assessment data (from the Minimum Data Set or MDS) completed by SNFs to assign residents into one of 44 groups. SNFs complete these assessments according to an assessment schedule specifically designed for Medicare payment (that is, on the 5th, 14th, 30th, 60th, and 90th days after admission to the SNF). For Medicare billing purposes, there are revenue codes associated with each of the 44 RUG-III groups, and each assessment applies to specific days within a resident's SNF stay. SNFs that fail to perform assessments timely are paid a default payment for the days of a patient's care for which they are not in compliance with this schedule. In addition, we adjust the portion of the Federal rate

attributable to wage-related costs by a wage index.

For the initial period of the PPS, beginning on July 1, 1998 and ending on September 30, 1999, the payment rates are contained in this interim final rule. For each succeeding fiscal year, we will publish the rates in the *Federal Register* before August 1 of the year preceding the affected Federal fiscal year. For fiscal years 2000 through 2002, we will increase the rates by a factor equal to the SNF market basket index amount minus 1 percentage point. For subsequent fiscal years, we will increase the rates by the applicable SNF market basket index amount.

2. Payment Provisions—Transition Period

Beginning with a provider's first cost reporting period beginning on or after July 1, 1998, there is a transition period covering three cost reporting periods. During this transition phase, SNFs receive a payment rate comprised of a blend between the Federal rate and a facility-specific rate based on each facility's fiscal year 1995 cost report. We exclude SNFs that received their first payment from Medicare on or after October 1, 1995, from the transition period, and we make payment according to the Federal rates only.

For SNFs that qualify for the transition, the composition of the blended rate varies depending on the year of the transition. For the first cost reporting period beginning on or after July 1, 1998, we make payment based on 75 percent of the facility-specific rate and 25 percent of the Federal rate. In the next cost reporting period, the rate consists of 50 percent of the facility-specific rate and 50 percent of the Federal rate. In the following cost reporting period, the rate consists of 25 percent of the facility-specific rate and 75 percent of the Federal rate. For all subsequent cost reporting periods, we base payment entirely on the Federal rate.

3. Payment Provisions—Facility-Specific Rate

We compute the facility-specific payment rate utilized for the transition using the allowable costs of SNF services for cost reporting periods beginning in fiscal year 1995 (cost reporting periods beginning on or after October 1, 1994 and before October 1, 1995). Included in the facility-specific per diem rate is an estimate of the amount payable under Part B for covered SNF services furnished during fiscal year 1995 to individuals who were residents of the facility and receiving Part A covered services. In contrast to

the Federal rates, the facility-specific rate includes amounts paid to SNFs for exceptions to the routine cost limits. In addition, we also take into account "new provider" exemptions from the routine cost limits but only to the extent that routine costs do not exceed 150 percent of the routine cost limit.

We update the facility-specific rate for each cost reporting period after fiscal year 1995 to the first cost reporting period beginning on or after July 1, 1998 (the initial period of the PPS) by a factor equal to the SNF market basket percentage increase minus 1 percentage point. For the fiscal years 1998 and 1999, we update this rate by a factor equal to the SNF market basket index amount minus 1 percentage point, and, for each subsequent year, we update it by the applicable SNF market basket index amount.

4. Implementation of the Prospective Payment System (PPS)

As discussed above, the PPS is effective for cost reporting periods beginning on or after July 1, 1998. This is in contrast to the consolidated billing provision, which is effective for items and services furnished on or after July 1, 1998. Accordingly, we will require a number of SNFs to implement consolidated billing prior to migrating to the PPS.

E. Consolidated Billing for Skilled Nursing Facilities

Section 4432(b) of the BBA 1997 sets forth a consolidated billing requirement applicable to all SNFs providing Medicare services. SNF Consolidated Billing is a comprehensive billing requirement (similar to the one that has been in effect for inpatient hospital services for well over a decade), under which the SNF itself is responsible for billing Medicare for virtually all of the services that its residents receive. As with hospital bundling, the SNF consolidated billing requirement does not apply to the services of physicians and certain other types of medical practitioners. In a related provision, section 4432(b)(3) of the BBA 1997 requires the use of fee schedules and uniform coding specified by the Secretary for SNF Part B bills. These provisions are effective for services furnished on or after July 1, 1998.

II. Prospective Payment System for Skilled Nursing Facilities

A. Federal Payment Rates

This interim final rule with comment period sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services for cost

reporting periods beginning on or after July 1, 1998. This schedule incorporates per diem Federal rates designed to provide payment for all the costs of services furnished to a Medicare resident of an SNF. This section describes the components of the Federal rates and the methodology and data used to compute them.

1. Cost and Services Covered by the Federal Rates

The Federal rates apply to all costs (that is, routine, ancillary, and capital-related costs) of covered skilled nursing services other than costs associated with operating approved educational activities as defined in 42 CFR 413.85. Under section 1888(e)(2) of the Act, covered SNF services include posthospital SNF services for which benefits are provided under Part A (the hospital insurance program) and all items and services (other than services excluded by statute) for which, prior to July 1, 1998, payment may be made under Part B (the supplementary medical insurance program) and which are furnished to SNF residents during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2., in the context of the SNF Consolidated Billing provision.)

2. Data Sources Utilized for the Development of the Federal Rates

The methodology utilized by HCFA in developing the Federal rates combines a number of data sources. These sources include cost report data, claims data, case-mix indices, a wage index, and a market basket inflation index. This section describes each of these data sources while the following section describes the methodology that combines them to produce the Federal rates.

a. Cost report data. In accordance with sections 1888(e)(3)(A)(i) and (e)(4) of the Act, the primary data source for developing the cost basis of the Federal rates was the cost reports for hospital-based and freestanding SNFs for reporting periods beginning in fiscal year 1995 (that is, beginning on or after October 1, 1994 through September 30, 1995). Only those cost reports for periods of at least 10 months but not more than 13 months were included in the data base. We excluded shorter and longer periods on the basis that such data may not be reflective of a normal cost reporting period and, therefore, may distort the rate computation.

In accordance with section 1888(e)(4)(A) of the Act, providers that were exempted from the limits in the base year under § 413.30(e)(2) were

excluded from the data base to compute the Federal rates; in addition, allowable costs related to exceptions payments were excluded. Finally, costs related to approved educational activities were excluded from the data base.

In calculating the Federal rates, we utilized fiscal year 1995 cost report data, including both settled and as-submitted cost reports. In accordance with section 1888(e)(4)(A) of the Act, adjustment factors were applied separately to routine and ancillary costs from as-submitted cost reports to make the data reflect the average adjustments that would result from the cost report settlement process. Routine costs were adjusted downward by 1.31 percent, and ancillary costs were adjusted downward by 3.26 percent.

These adjustment factors were developed through comparisons of cost data from as-submitted and settled cost reports for providers contained in the data base from 1995. The factors represent the percent change of cost elements used in the PPS rate setting methodology between submission and settlement of the cost reports. These factors were validated by examining the relationship between as-submitted and settled cost reports for SNF cost reports beginning in the three preceding Federal fiscal years (that is, 1992, 1993, and 1994) as well. This comparison showed an overall consistency in the relationship between as-submitted and settled cost reports for the SNF cost elements utilized in the PPS rate development methodology.

b. Estimate of Part B payments. Section 1888(e)(4)(A)(ii) of the Act, as added by the BBA 1997, requires that in developing the Federal rates, the Secretary estimate the amounts that would be payable under Part B for covered SNF services furnished to SNF residents. Accordingly, it was necessary to examine the Part B allowable charges (including coinsurance) associated with the SNFs contained in the cost report data base. To estimate the Part B allowable charges, we matched 100 percent of the Medicare Part B SNF claims associated with Part A covered SNF stays to the SNF cost reports described above. The matched Part B allowable charges were incorporated at a facility level by the appropriate cost report cost center (for example, laboratory services, medical supplies) with the cost report data.

c. Hospital wage index. Section 1888(e)(4) requires that we both standardize the Federal rates and provide for appropriate adjustments to account for area wage differences "using an appropriate wage index as determined by the Secretary." We

cannot use a wage index based on SNF wage data because the industry-specific data necessary to compute a wage index for SNFs are not yet available. However, under section 106 of the Social Security Act Amendments of 1994 (Public Law 103-432), HCFA was required to begin collecting data no later than October 31, 1995, on employee compensation and paid hours of employment in SNFs for the purpose of constructing an SNF wage index adjustment. Until this data collection effort is completed and the data are analyzed, we believe that the hospital wage data provide the best available measure of comparable wages that would also be paid by SNFs. We believe that the use of the hospital wage data results in an appropriate adjustment to the labor portion of the costs based on an appropriate wage index as required under section 1888(e) of the Act.

For the rates effective with this rule, we are using wage index values that are based on hospital wage data from cost reporting periods beginning in fiscal year 1994—the most recent hospital wage data in effect before the effective date of this rule (see Table 2.I). Accordingly, the wage index values used in this rule are based on the same wage data as used to compute the FY 1998 wage index values for the hospital PPS.

d. Case-mix indices. As discussed in section I, section 1888(e)(4) of the Act requires us to make adjustments to the Federal rates to account for the relative resource use of different patient types (that is, case-mix). In addition, the law requires us to standardize the cost data used in developing the Federal rates for case-mix.

The goal of a case-mix payment system is to measure the intensity of care and services required for each patient and translate it into an appropriate payment level. Accordingly, in making this adjustment, the Federal rates will incorporate a patient classification system based on intensity of resource use with corresponding payment weights.

As discussed previously, the patient classification system utilized under this PPS is RUG-III. RUG-III, a 44-group patient classification system, provides the basis for the case-mix payment indices used both for standardization of the Federal rates and subsequently to establish the case-mix adjustments to the rates for patients with different service use. These indices reflect the weight or value of each of the 44 RUG-III groups relative to all the groups. A full discussion of the design and structure of RUG-III is presented later in this section. These payment indices are

based on staff time measure (STM) studies conducted in 1995 and 1997 that measured the nursing and therapy staff time required to care for groups of residents. The STM is based on a 24-hour period for nursing and therapy services. Accordingly, there are separate case-mix payment indices for nursing and related services and for therapy services.

The STM studies were conducted in 12 States across 154 SNFs and 2,900 residents. These States were Kansas, Maine, Mississippi, South Dakota, Texas, California, Colorado, Maryland, Florida, Ohio, Washington, and New York. The study utilized a stratified sample of SNFs, including both freestanding and hospital-based SNFs and those with different care delivery models. The resulting indices were adjusted to account for the relative salary differences between different types of nursing staff (registered nurses, licensed practical nurses, and aides) and the different therapy disciplines (occupational therapy, physical therapy, and speech pathology). The adjustment to the nursing index for relative salary differences in nursing staff was based on data from the American Health Care Association's 1995 study of national nursing home salaries. The adjustment to the therapy index for relative salary differences among disciplines was based on data from several different sources. These sources were surveys from the American Health Care Association, the National Association for the Support of Long-Term Care, the Bureau of Labor Statistics, the American Rehabilitation Association, the University of Texas, Mutual of Omaha, and the Maryland Health Cost Review Commission. They were used in HCFA's "best estimate" approach in the development of rehabilitation therapy salary equivalency guidelines. The schedule detailing the national case-mix payment indices is presented later in this section (see Tables 2.E and 2.F).

e. MEDPAR case-mix analog. Section 1888(e)(4)(C) requires that the data used in developing the Federal payment rates be standardized to remove the effects of geographic variation in case-mix. Standardization ensures that the aggregate impact of the case-mix adjustments on the Federal rates does not alter the aggregate payments that would occur in the absence of such an adjustment. In order to fulfill this requirement, it is necessary to have data on the average case-mix of each SNF in our data base for its cost reporting period beginning in fiscal year 1995. Because a national source of MDS derived case-mix data does not exist for this period, it was necessary to utilize

existing data sources. Accordingly, to provide national case-mix data on SNFs in our data base, we constructed a crosswalk between the RUG-III categories and the data from all Medicare claims in our Medicare Provider Analysis and Review file (MEDPAR).

The MEDPAR file is an analytical file created from Part A Medicare hospital and SNF claims and maintained by HCFA. These claims are the basis of the interim payments made by fiscal intermediaries and contain information on SNF stays paid for by Medicare Part A nationwide. Although Medicare claims information does not include all the data elements necessary to classify SNF patients exactly as they are in RUG-III, it does contain sufficient information to assign Medicare SNF patients to RUG-III categories at a general level. Classification into a RUG-III category is based on detailed clinical information from the patient assessment performed in the SNF. The claims in the MEDPAR file do not have the level of clinical detail required for classification into the RUG-III categories but do have basic clinical information that has been required on the claim for payment in the cost-based Medicare payment system. By using the clinical information in the MEDPAR file to crosswalk to the RUG-III grouping specifications, we were able to model how the national Medicare SNF population will classify into RUG-III categories. The model is referred to as the "MEDPAR analog." The value of the MEDPAR analog is that it provides a means to use available data to examine the case-mix of Medicare SNF patients nationally.

In order to examine case-mix based on the MEDPAR file data, it was necessary to recognize certain limitations of this file, identify where crosswalks could be made between the data contained in the MEDPAR file and that needed to assign an SNF patient to a RUG-III group, and establish proxy criteria where feasible to make more case classifications possible.

One limitation of the analog results from the Medicare coverage rules for physical, occupational, and speech rehabilitation therapy services. Rehabilitation therapy provided in the SNF is covered under Part A (and thereby will have claims data in MEDPAR), unless the services are provided by an independent agency, in which case they may be billed under Part B (although our analysis of Part B supplier bills indicated relatively few rehabilitation therapy services being billed in this way). In addition, a small number of facilities do not detail rehabilitation therapy charges in their claims. For these reasons, the MEDPAR

proxy may not be a complete record of all the services a patient in the SNF may receive during the course of a beneficiary's stay.

In spite of these limitations, MEDPAR is a reasonable tool to use in approximating the RUG-III categories related to Medicare SNF claims and appropriate for use in rate standardization. The file contains ICD-9-CM (International Classification of Diseases, Ninth Edition, Clinical Modification) diagnosis and procedure codes that provide a partial clinical profile of the patient supplemented by lengths of stay, revenue codes that represent types of services provided during each nursing home stay, and limited admission and discharge information. In addition, some of the facilities report rehabilitation charge information, making it possible for us to approximate frequency and duration of rehabilitation therapies, as well as to directly reproduce which discipline provided services.

The analog was first created in 1993, using the 1990 MEDPAR SNF file and an earlier version of the Minimum Data Set (MDS), the MDS+. We updated that work for the national implementation analyses, using instead the 1997 MEDPAR SNF file and the MDS 2.0. As stated above, the MDS 2.0 collects extensive patient information that includes demographic information, diagnoses, medication use, nursing rehabilitation services, activities of daily living (ADL) capabilities, and minutes per day of rehabilitative services provided. This information is the basis for assignment to a particular RUG-III group. Thus, in the creation of the MEDPAR analog, MDS+ (and now, MDS 2.0) definitions formed the key against which MEDPAR diagnosis and revenue service codes were matched.

The RUG-III classification system is a hierarchy of major patient types, organized into seven major categories. The categories are Rehabilitation, Extensive Services, Special Care, Clinically Complex, Impaired Cognition, Behavior Problems, and Reduced Physical Function. Each of these categories is further differentiated to yield the 44 specific patient groups used for payment.

The categories and groups within them are based on the research findings of staff time measurement studies performed in 1990, 1995, and 1997, described in detail below. Through analyses of the patient characteristics recorded on the MDS and the staff time associated with caring for patients in nursing homes, clinical criteria were identified that were predictive of resource use, and categories were

formed that would group patients according to resource use. The criteria for each category were derived from the actual staff time measurement study data.

The information contained in the MEDPAR file is not adequate to enable differentiation to the 44 groups, however. Therefore, the analog classifies patients only to the category level.

There are seven RUG-III categories: Rehabilitation, Extensive Services, Special Services, Clinically Complex, Impaired Cognition, Behavior, and Physical. The Rehabilitation category has five sub-categories, based on the number of minutes therapy is provided and the number of disciplines providing service. The sub-categories are: Ultra High, Very High, High, Medium, and Low. Using the crosswalk model, we were able to classify the claims in the MEDPAR file into the five rehabilitation therapy sub-categories and four of the remaining six categories: Extensive Services, Special Services, Clinically Complex, and Impaired Cognition. There were no available data elements in the MEDPAR to crosswalk for classification into the Behavior or Physical categories.

(1) Rehabilitation category. This is the most complex RUG-III category to crosswalk using the MEDPAR data base. A patient classifies into the Rehabilitation category based on the minutes per week of rehabilitation therapy services received. We also considered whether more than one of the rehabilitation disciplines provided services. MEDPAR data do not include minutes of service, but do reflect types of service provided. We, therefore, used charges as a proxy for minutes in approximating the amounts of service each beneficiary received. Since service patterns had to be approximated using ranges of rehabilitation therapy charges, great attention was paid to developing decision rules that would yield the most accurate description possible using Medicare claims. In addition, there are five levels of intensity within the Rehabilitation category. Using research study findings (Marsteller, Jill A. and Korbin Liu, "High End Therapy Patients: How Many and How Much?" Washington, DC, The Urban Institute, May 1994) and consultation with rehabilitation professionals, upper and lower charge limits were set to create groupings like each of the five RUG-III Rehabilitation categories.

As previously mentioned, nursing home case-mix is not a direct function of diagnosis. Diagnosis obviously has a role in determining what services a patient receives, but it is the services themselves, with the staff time required

to provide them, that determine case-mix in nursing homes. Thus, for the Rehabilitation categories, the RUG-III system uses measures of staff time and service frequency, variety, and duration to classify patients. The criteria are in the form of minimum numbers of minutes of therapy per day or per week, minimum frequencies of therapy sessions over a week, and minimum numbers of therapy disciplines used per patient. While the MEDPAR analog can directly reproduce the variety of therapy given, frequency and duration can only be approximated using Part A covered charges for skilled therapy thought to be commensurate with certain patterns of service.

The five Rehabilitation sub-categories for the MEDPAR analog were determined using ranges of covered charges per day to approximate the RUG-III criteria. The ranges of covered charges used to classify the MEDPAR cases were based on an average charge of \$300 per day for rehabilitation services. This amount is based on the covered charges for rehabilitation therapy in the MEDPAR file. To group cases using the MEDPAR file, the following ranges of covered charges were used: the Low Rehabilitation sub-category ranges from \$150 per day and below in any combination of types of skilled therapy; the Medium Rehabilitation sub-category ranges from \$150 to \$199 per day in any combination of therapies; the High Rehabilitation sub-category ranges from \$200 to \$299 per day in any combination of therapies; the Very High Rehabilitation sub-category ranges from \$300 to \$399 per day in any combination of therapies (or \$400 per day and above if only one therapy); and the Ultra High Rehabilitation sub-category range encompasses any case with covered charges higher than \$400 per day in at least two of the three therapies. Refer to Table 2.C for comparison of these charge ranges to the number of minutes per day and per week required by the RUG-III system.

We set a threshold at \$1,000 of covered charges for rehabilitation therapy services as a minimum for classification into any of the rehabilitation sub-categories. We based this on our finding, based on claims in the National Claims History file, that \$400 is a common charge for an initial evaluation and \$250 is a common charge for treatment by licensed therapists. Thus, we determined this threshold amount as representative of patients who received an evaluation by a professional rehabilitative therapist but no substantial course of rehabilitative therapy. That is, claims

for patients with total therapy charges less than \$1,000 were identified as having received an initial evaluation to determine the need for therapy but generally received no more than 1 week of rehabilitative therapy services.

Using the MEDPAR file, there was no way to approximate the nursing rehabilitation component of the RUG-III Low Rehabilitation sub-category. It was possible, however, to model rehabilitative therapy (of less than 5 days per week) using therapy charges that parallel such a pattern of treatment.

The Ultra High Rehabilitation sub-category is intended to apply only to the most complex cases requiring rehabilitative therapy well above the average amount of service time. This translates into higher charges for therapy services, both because treatment is more frequent and complex, and because length of stay is longer than for other skilled rehabilitation groups. In line with the intended complexity of this classification group, the lowest charge that the Ultra High sub-category includes is \$400 per day in at least two of the three therapies.

The RUG-III criteria for Ultra High Rehabilitation are:

- Two of the three rehabilitation therapy disciplines are represented.
- At least 720 minutes of treatment per week across the three disciplines.
- One discipline providing services at least 5 days per week.

The remaining three sub-categories, Very High, High, and Medium Rehabilitation are not driven by a specific number of disciplines represented. All three require at least 5 days per week of skilled rehabilitative therapy, but they are split according to weekly treatment time. The Very High cases must be receiving 500 minutes per week and must be receiving at least one of the disciplines all 5 days; any additional disciplines will count toward the total time, but no other disciplines are required for assignment to this sub-category. Similarly, those in the High sub-category must be receiving a minimum of 325 minutes per week and this time must include one of the rehabilitation disciplines being provided daily (at least 5 days per week). Cases in the Medium sub-category must be receiving at least 150 minutes of skilled rehabilitation in any combination of disciplines over the minimum 5 days (or five 30-minute sessions).

(2) Non-rehabilitation categories. As stated above, MEDPAR contains ICD-9-CM codes as the variables describing patient diagnoses and procedures. This numerical coding system is used by hospitals to report patient information,

and nursing homes use these codes on a more limited basis for reporting. The MDS 2.0 has many of the most prevalent diagnoses found in this patient population listed for check-off by the nurse performing the assessment, with a section elsewhere on the form available to write in any relevant additional ICD-9-CM codes. The analog for the non-rehabilitation categories was created by matching the ICD-9-CM codes in the MEDPAR file to as much of the specific clinical criteria on the MDS 2.0 used to classify residents into the Extensive Services, Special Care, Clinically Complex, and Impaired Cognition categories.

Certain RUG-III criteria could not be satisfactorily coded by an ICD-9-CM code. Although we could capture the clinical characteristics of the patients, many of the items used to assign patients to specific RUG-III groups are not included in the ICD-9-CM coding scheme. In the Clinically Complex category, for example, the number of physician visits or order changes is a qualifying factor that cannot be captured by an ICD-9-CM code, and will not be reported in the MEDPAR file. Similarly, we could not capture the patient's ADL capabilities.

For the lower categories, Impaired Cognition, Behavior Only, and Physical Function Reduced, our ability to match the MDS 2.0 items to those likely to be reported on the MEDPAR was greatly diminished. We were able to identify a few codes with which to group some of the cases that would fall into the Cognitively Impaired category, but there were no ICD-9-CM codes that describe the patients who meet the criteria for the remaining two categories. Therefore, the analog only groups patients into the top five categories, leaving all other cases as unclassified.

(3) Case-mix using the analog. As explained above, in the RUG-III system, the case-mix index is a function of the distribution of residents in each of the categories, further detailed across the ADL index, and then by service counts, depression, or nursing rehabilitation services. ADLs, nursing rehabilitation, depression, and service counts could not be modeled using MEDPAR. For the analog, the nursing and nursing/therapy weights could not be applied to the second and third levels of the RUG-III system. In the Rehabilitation category, weights for the five sub-categories were combined.

f. Skilled Nursing Facility market basket index. Section 1888(e)(4) of the Act requires the Secretary to establish an SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services

included in covered SNF services. The SNF market basket index is used to develop the Federal rates and also to update the Federal rates on an annual basis beginning in fiscal year 2000. We have developed an SNF market basket index that consists of the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. A complete discussion concerning the design and application of the SNF market basket index and the factors used in developing the payment rates is presented in section IV of this rule.

3. Methodology Used for the Calculation of the Federal Rates

The methodology used to compute the per diem standardized Federal rates was a multi-step process combining each of the data sources described above. This section details each of these steps. The schedule of Federal rates (Tables 2.G and 2.H) that results from this methodology is presented later in this section.

a. *Per diem costs.* In developing the per diem costs of SNFs, the cost data (including the estimate of Part B costs) for each facility are separated in components based on their relationship to the case-mix indices described above. This facilitates both the standardization of costs for case-mix and, similarly, the application of appropriate case-mix adjustment to the Federal rates. Costs related to nursing (excluding nurse management) and social services salaries (including benefits) and total costs (after allocation) of non-therapy ancillary services are grouped in the component related to the nursing index. Our analysis of patient level charges for these non-therapy ancillary services indicates a correlation between the RUG-III classification system and these services.

Occupational, physical, and speech therapy costs (after allocation) are grouped in the component related to the therapy index. The majority of SNF therapy costs are included in this therapy component of the per diem rate. As can be seen in the schedule of rates presented in Tables 2.E and 2.F, the therapy component of the per diem rates is only applicable to the 14 RUG-III therapy groups. However, through our analysis of Medicare claims and other data, we observed a low level of therapy services being utilized by patients that would not be classified into a RUG-III therapy group. These therapy services would include evaluations for rehabilitation in one or more of the therapy disciplines. Therefore, in order to provide more appropriate payment levels in the non-therapy RUG-III

groups, we estimated therapy costs in our data base associated with non-therapy RUG-III groups. These costs were grouped into the non-case-mix component of costs but, as can be seen in the rate schedule, are only applicable to the non-therapy RUG III groups.

This estimate was determined using the percentage of therapy charges by discipline for each facility in our data base associated with the non-therapy RUG-III RUG categories as determined by the MEDPAR Analog. This percentage was applied by discipline to the therapy costs in each facility's cost report data. The results of this calculation are presented in Tables 2.A and 2.B. All other costs are grouped in the non-case-mix related component.

For each facility in the data base, components are converted to a per diem by dividing the costs by Medicare days. For the therapy component, costs are divided by the number of Medicare days related to patients receiving therapy. For the remaining components, costs are divided by total Medicare days. For each component of cost, an outlier elimination process is performed to eliminate aberrant values. Facilities with per diem amounts greater than three standard deviations from the geometric mean are determined to be outliers and are eliminated from the calculation of the per diem cost for that component.

As required by section 1888(e)(4)(E)(i) of the Act, all costs are updated from the base year to the initial period of the PPS (that is, the 15-month period beginning July 1, 1998 and ending September 30, 1999) using the SNF market basket index described in section IV of this rule (see Tables 4.D. and 4.E). As required by the statute, this update is determined using the annual SNF market basket percentage minus 1 percentage point.

b. *Updating the data.* The SNF market basket index is used to adjust each per diem amount forward to reflect cost increases occurring between the midpoint of the cost reporting period represented in the data and the midpoint of the initial period (beginning July 1, 1998 and ending September 30, 1999) to which the payment rates apply. In accordance with section 1888(e)(4)(B) of the Act, the cost data are updated for each year between the cost reporting period and the initial period by a factor equivalent to the annual market basket index percentage minus 1 percentage point.

c. *Standardization of cost data.* Section 1888(e)(4)(C) of the Act requires that the Secretary standardize the updated cost data for each facility for the effects of case-mix and geographic

differences in wage levels. In order to standardize for wage differences, the proportion of labor related and non-labor related components of SNF costs must be identified. These proportions are based on the relative importance of the different components of the SNF market basket index (see Table 4.C). Accordingly, the labor-related portion of costs is 75.888 percent of costs while the non-labor portion is 24.112 percent. Costs are standardized for geographic differences in wage levels using the hospital wage index (described earlier in this section).

To standardize the cost data for the effects of case-mix, we used the MEDPAR Analog on claims data applicable to the fiscal year 1995 cost reporting periods in the data base. This allowed us to classify each SNF's residents into one of 10 RUG-III categories produced by the analog. By applying the case mix indices applicable to the RUG-III categories assigned by the analog, we were able to develop average case-mix index values (nursing and therapy) for each facility. As described below, these index values were used in standardizing SNF costs for case-mix.

As discussed earlier in this rule, a MEDPAR Analog is used to standardize for case-mix because actual MDS data are not available on a national level. However, in order to correct for systematic differences between the case-mix estimates produced by the analog method and the method that will be used under this PPS (that is, based on MDS data), a sensitivity analysis of the analog was performed. This analysis involved a comparison of case-mix values (based on the application of the case-mix indices) generated by the analog and corresponding values generated from actual MDS resident assessments for a sample of SNFs and patients. While the availability of such comparative data is limited, we were

able to draw a sample from the States participating in the Multistate Nursing Home Demonstration that included patients from approximately 100 SNFs in five States. The sample contained 13,354 Medicare claims covering 139,766 days of care. On average, case-mix values based on MDS data are 3 percent higher than analog-based values for the nursing index and 28 percent higher for the therapy index. This variance produced by the analog in the assignment of case-mix values is factored into the standardization methodology to ensure the rates are set at the appropriate level.

Each urban and rural component of per diem cost is standardized for differences in wage levels and case-mix by dividing total unstandardized cost by a standardization factor that reflects each facility's wage level and case-mix. This factor is based in part on each facility's wage adjustment (.7588 times its wage index plus .2412) multiplied by the appropriate case-mix value and number of days of care. These facility values are summed to obtain the standardization factor. The standardized cost is divided by the appropriate total days to obtain the standardized per diem cost.

This process equates per diem standardized cost (per diem cost adjusted for individual facility wage and case-mix differences) to per diem unstandardized cost. In this manner, standardization accounts for the application of individual facility wage index and case-mix adjustments to the per diem payment rates without altering the aggregates of the per diem cost data used to construct the per diem payment rates.

d. Computation of national standardized payment rates. Section 1888(e)(4)(D)(iii) of the Act authorizes the Secretary to compute separate payment rates for SNFs in urban and rural areas as defined in section 1886(d)(2)(D). Under the statute, urban

areas are those defined by the Office of Management and Budget as metropolitan statistical areas (MSAs) or New England County Metropolitan Areas (NECMAs). All other areas are considered rural areas. Table 2.I showing the wage index indicates all areas considered urban for purposes of establishing these rates.

Using the data described above and the formula prescribed in section 1888(e)(4)(E) of the Act, we calculated the national average per diem standardized payment rates separately for urban and rural SNFs using the following steps. The unadjusted Federal rates resulting from this calculation are presented in Tables 2.A and 2.B below.

(1) As required by section 1888(e)(4)(D)(ii) of the Act, for each of the four components of cost, we computed the mean based on data from freestanding SNFs only. This mean was weighted by the total number of Medicare days of the facility.

(2) As required by section 1888(e)(4)(D)(i) of the Act, for each of the four components of cost, we computed the mean based on data from both hospital-based and freestanding SNFs. Again, this mean was weighted by the total number of Medicare days of the facility.

(3) As required by section 1888(e)(4)(E)(i) of the Act, for each of the four components of cost, we calculated arithmetic mean of the amounts determined under steps (1) and (2) above.

(4) The unadjusted Federal rate for the initial period is calculated differently depending on the RUG-III case-mix grouping. For the 14 RUG-III therapy groups, the unadjusted Federal rate is the sum of the nursing case-mix, non-case-mix and therapy case-mix components. For other RUG-III groups, the unadjusted Federal rate is the sum of the nursing case-mix, non-case-mix and therapy non-case-mix components.

TABLE 2.A.—UNADJUSTED FEDERAL RATE PER DIEM
(Urban)

Rate component	Nursing— case mix	Therapy— case mix	Therapy— non-case mix	Non-case mix
Per Diem Amount	\$109.48	\$82.67	\$10.91	\$55.88

TABLE 2.B.—UNADJUSTED FEDERAL RATE PER DIEM
(Rural)

Rate Component	Nursing— case mix	Therapy— case mix	Therapy— non-case mix	Non-case mix
Per Diem Amount	\$104.88	\$95.51	\$11.66	\$56.95

B. Design and Methodology for Case-Mix Adjustment of Federal Rates

As indicated earlier, section 1888(e)(4)(G) of the Act requires that the Federal rates be adjusted for case-mix (the relative resource utilization of patients). The RUG-III classification is a patient classification system that accounts for the relative resource utilization of different patient types. To adjust for case-mix, care provided directly to, or for, a patient is represented by an index score (case-mix index) that is based on the amount of staff time, weighted by salary levels, associated with each group. That is, each RUG-III group is assigned an index score that represents the amount of nursing time and rehabilitation treatment time associated with caring for the patients who qualify for the group. The nursing weight includes both patient-specific time spent daily on behalf of each patient type by registered nurses, licensed practical nurses, and aides, as well as patient non-specific time spent by these staff members on other necessary functions such as staff education, administrative duties, and other tasks associated with maintenance of the care giving environment.

The case-mix indices are applied to the unadjusted rates presented above resulting in 44 separate rates, each corresponding with one of the 44 RUG-III classification groups. To determine the appropriate payment rate, SNFs are required to classify patients into a RUG-III group based on assessment data from the MDS 2.0. The design and structure of RUG-III and the methodology and Federal policy associated with the classification of patients into RUG-III groups, including the completion of assessments (MDS 2.0) for Medicare patients, under this PPS, are described in the following pages.

1. Background on the Resource Utilization Groups (RUGs) Patient Classification System

As part of the Nursing Home Case-Mix and Quality demonstration project, Version III of the Resource Utilization Groups (RUG-III) case-mix classification system was developed to capture resource use of nursing home patients and to provide an improved method of tracking the quality of their care.

RUG-III is a 44-group model for classifying nursing home patients into homogeneous groups according to the amount and type of resources they use. The RUG-III groups are the basis for the payment indices used to establish equitable prospective payment levels for patients with different service use. Care provided directly to, or for, a patient is

represented by an index score that is based on the amount of staff time, weighted by salary levels, associated with each group. That is, each RUG-III group is assigned an index score that represents the amount of nursing time and rehabilitation treatment time associated with caring for the patients who qualify for the group. The nursing weight includes both patient-specific time spent daily on behalf of each patient type by registered nurses, licensed practical nurses, and aides, as well as patient non-specific time spent by these staff members on other necessary functions such as staff education, administrative duties, and other tasks associated with maintenance of the care giving environment.

The principal goal of case-mix measurement is to identify patient characteristics associated with measured resource use. In nursing homes, no adequate models have been found for using length of stay or episode cost to explain resource use. Thus, the RUG-III nursing home case-mix system explains patient resource use on a daily basis.

The classification system was designed using resident characteristic information and measures of wage-weighted staff time. Information regarding a patient's characteristics and care needs is derived from the MDS, a set of core screening and assessment items and item definitions. The MDS is part of a standardized, comprehensive patient assessment instrument (the Resident Assessment Instrument or RAI) that all long term care facilities that are certified to participate in Medicare or Medicaid are required to use to develop individualized plans of care for each individual in the facility. The staff time measure (STM) study captured the amount of nursing staff time required to care for groups of residents over a 24-hour period and over the span of a week for therapy services.

Patient assessment and staff time data used to develop the initial version of the RUG-III classification system were collected from March to December 1990 for 7,648 patients in 202 nursing facilities in Kansas, Maine, Mississippi, South Dakota, Nebraska, Texas, and New York. Since then, two more staff time data collections have been performed on 154 Medicare certified units of hospital and freestanding facilities in 12 States (California, Colorado, Florida, Kansas, Maine, Maryland, Mississippi, New York, Ohio, South Dakota, Texas, and Washington). Only units that were judged to be providing adequate care were considered for participation in the study. Of these, States were asked to

select facilities that included 35 percent Medicare certified units, 25 percent hospital units, and two Alzheimer's units. "Unit" was defined as a nursing center such as a corridor or a floor, controlled from one nursing station. The remainder of the sample was selected by the State's demonstration project staff to represent the characteristics of the State's nursing homes.

The sample was purposefully targeted toward residents needing complex care and/or with cognitive impairments. This assured that sufficient numbers of patients with rare types of complex care needs were included in the sample. Facilities with special care units (for example, Alzheimer's or Rehabilitation units) that participated in the study were also asked to provide data from a non-specialized unit.

During the data collection, personnel on the study units electronically recorded all of the time in their work days: time providing services directly to patients; in activities related to specific patients, such as charting or consultation with family members or other members of the patient care team; as well as time that is not attributable to any particular patient, like that spent in meetings, in training, on breaks, etc. The time was allocated according to whether or not it was directly related to a particular patient, and was categorized as either patient specific time or non-patient specific time.

Those data have been used to modify the classification system to create the current RUG-III and establish updated average staff times to be salary-weighted. Analyses of the staff time data in conjunction with the patient MDS information identified three main predictors of a patient's resource utilization: (1) clinical characteristics; (2) limitations in the activities of daily living (ADLs); and (3) skilled services received. The RUG-III classification system uses these three types of variables to describe SNF patients for the purposes of determining the relative cost of caring for different types of patients (case-mix).

Analysis of the data indicated that patients with serious clinical conditions such as dehydration and respiratory infections, as well as patients who were very dependent in ADLs, require more nursing time than patients without complicating conditions. The RUG-III classification system resulting from the analyses is hierarchical. The clinical characteristics of patients, as identified by the MDS, that were associated with the greatest utilization of nursing time and rehabilitative therapy time, were used to categorize patients into the highest case-mix classification groups.

Similarly, the clinical characteristics associated with the lowest utilization of nursing time were used to categorize patients into the lowest case-mix classification group. Not all clinical characteristics are recognized separately by the classification system. Only those characteristics that were predictive of resource use and that would not introduce incentives that are considered to be negative, or not compatible with

high quality patient care, are used to classify patients into RUG-III groups. Table 2.C shows the mutually exclusive, layered categories of the RUG-III classification system. The table describes which patient clinical characteristics, levels of assistance used in performing ADLs, and services are used to assign the patient to a RUGs group. Clinical characteristics include the patient diagnoses, conditions, and comorbidities. ADLs include bed mobility, toilet use, transfer from bed to

chair, and eating. Patients receive a single RUG-III ADL score that measures the patient's ability to perform these activities (scores range from 4-18; higher scores represent greater functional dependence and a need for more assistance). Finally, treatments and services include respiratory therapy, amount of rehabilitation received, and treatments such as suctioning and intravenous medication administration.

TABLE 2.C.—CROSSWALK OF MDS 2.0 ITEMS AND RUG III GROUPS

Category	ADL index	End splits	MDS RUG III codes
REHABILITATION			
ULTRA HIGH	16-18	Not Used	RUC
Rx 720 minutes/week minimum	9-15	Not Used	RUB
At least 2 disciplines, one at least 5 days/week	4-8	Not Used	RUA
VERY HIGH	16-18	Not Used	RVC
Rx 500 mins. a wk. minimum	9-15	Not Used	RVB
At least 1 discipline—5 days	4-8	Not Used	RVA
HIGH	13-18	Not Used	RHC
Rx 325 mins. a wk. minimum	8-12	Not Used	RHB
1 discipline 5 days a week	4-7	Not Used	RHA
MEDIUM	15-18	Not Used	RMC
Rx 150 mins. a wk. minimum	8-14	Not Used	RMB
5 days across 3 disciplines	4-7	Not Used	RMA
LOW—Rx 45 minutes/week over at least 3 days	14-18	Not Used	RLB
Nursing rehabilitation 6 days/week, 2 activities	4-13	Not Used	RLA
EXTENSIVE SERVICES—(Adlsum <7 Special)			
IV Feeding in last 7 days	7-18	count of other categories code	SE3
In last 14 days, IV medications, suctioning	7-18	into plus IV	SE2
Tracheostomy care, ventilator/respirator	7-18	Meds +Feed	SE1
SPECIAL CARE—(ADLSUM <7 Clin. Complex)			
MS, Quad, or CP with ADLsum >=10, Resp. Ther.=7 days	17-18	Not Used	SSC
Tube fed and aphasic; Radiation tx; Rec'g tx for surgical wnds/lesions or ulcers (2=sites, any stg; 1 site stg 3 or 4).	15-16	Not Used	SSB
Fever with Dehyd., Pneu., Vomit., Weight Loss, or Tube Fed	7-14	Not Used	SSA
CLINICALLY COMPLEX—Burns, Coma, Septicemia, Pneumonia, Footwnds, Internal Bld, Dehyd, Tube fed (minimum 501 ml. fl, 26% cal), Oxygen, Transfusions	17-18D	Signs of depression	CC2
Hemiplegia with ADL sum >=10, Chemotherapy, Dialysis	17-18	Signs of depression	CC1
No. of Days in last 14—Phys. Visits/makes order changes:	12-16D	Signs of depression	CB2
visits>=1 and chng.>=4; or visits>=2 and chng.>=2	12-16	Signs of depression	CB1
Diabetes with injection 7 days/wk and order chng.>=2 days	4-11D	Signs of depression	CA2
IMPAIRED COGNITION:	4-11	(Special <7 ADL)	CA1
Score on MDS2.0 Cognitive	6-10	Nursing rehabilitation not receiving	IB2
Performance Scale >=3	6-10	Nursing rehabilitation not receiving	IB1
(Score of "6" will be Clin. Comp. or PE2-PD1)	4-5	Nursing rehabilitation not receiving	IA2
BEHAVIOR ONLY:			IA1
Code on MDS 2.0 items	6-10	Nursing rehabilitation not receiving	BB2
4+ days a week	6-10	Nursing rehabilitation not receiving	BB1
wandering, physical or verbal abuse	4-5	Nursing rehabilitation not receiving	BB2
inappropriate behavior or resists care	4-5	Nursing rehabilitation not receiving	BA1
or hallucinations, or delusions	4-5	Nursing rehabilitation not receiving	BA1
PHYSICAL FUNCTION REDUCED:			
No clinical variables used	16-18	Nursing rehabilitation not receiving	PE2
	16-18	Nursing rehabilitation not receiving	PE1
	11-15	Nursing rehabilitation not receiving	PD2
Nursing Rehab. Activities >=2, at least 6 days a wk	11-15	Nursing rehabilitation not receiving	PD1
		Nursing rehabilitation not receiving	PC2
Passive or Active ROM, amputation care, splint care	9-10	Nursing rehabilitation not receiving	PC1
Training in dressing or grooming, eating or swallowing	9-10	Nursing rehabilitation not receiving	PB2
transfer, bed mobility or walking, communication, scheduled toileting program or bladder retraining.	6-8	Nursing rehabilitation not receiving	PB1
	6-8	Nursing rehabilitation not receiving	PA2
	4-5	Nursing rehabilitation not receiving	PA1
	4-5	Nursing rehabilitation not receiving	PA1

TABLE 2.C.—CROSSWALK OF MDS 2.0 ITEMS AND RUG III GROUPS—Continued

Category	ADL index	End splits	MDS RUG III codes
			Default

Source: Analysis of the 1995 Medicare-Units Staff Time.
Study: Update of RUG III Classification MDS.

2. The RUG-III Classification System

In the RUG-III classification system, patient characteristic and health status information from the MDS, such as "diagnoses," "ability to perform ADLs," and "treatments received," will be used to assign the patient to a resource group for payment. The RUG-III system is a hierarchy of major patient types. RUG-III consists of seven major categories that are the first level of patient classification. The major categories, in hierarchical order, are Rehabilitation, Extensive Services, Special Care, Clinically Complex, Impaired Cognition, Behavior Problems, and Reduced Physical Function. These major categories are further differentiated into 44 more specific patient groupings. Except for Rehabilitation and Extensive Services, these categories are first subdivided into groups based on the patient's ADL score. The next level of subdivision is based on nursing rehabilitation services and signs of depression.

The initial subdivision of the Rehabilitation category is based on minutes per week of rehabilitative therapy services. The second level of subdivision uses ADL score. The Extensive Services category does not use ADL limitations except as a threshold for assignment into the category. Rather, services that require more technical clinical knowledge and skill are the variables used for assignment of patients into this category. Examples of these services are intravenous feeding or medications and tracheostomy care.

For example, the Special Care category includes patients with quadriplegia, multiple sclerosis, surgical wound(s), open lesions, fever with vomiting, dehydration, pneumonia, tube feedings, or weight loss, those who are aphasic and need to be tube fed, those receiving treatment for 2 or more skin ulcers, and patients who are receiving radiation therapy. Any patient with one or more of these conditions, who is not receiving rehabilitation services, will be assigned to this category. The patient's assignment to one of the three groups within this category is dependent on the patient's ADL score.

The Rehabilitation category is organized differently than the clinical categories that follow in the hierarchy.

Within this category, there are five sub-categories (Ultra High, Very High, High, Medium, and Low) that are then further split into the individual groups for payment. The sub-categories are defined by minutes per week of rehabilitation received by the patient, number of rehabilitation disciplines providing service, and the number of days per week on which rehabilitation services were provided. Assignment into a specific payment group is based on the patient's ability to perform certain of the activities of daily living as represented by his ADL score. As stated elsewhere, the patient is assessed on his ability to perform independently all of the activities of daily living and is assigned an ADL sum score that represents performance of the four "late loss" ADLs. The "late loss" ADLs used in the MDS ADL sum score are: eating; toileting; bed mobility; and transferring. A brief description of the respective RUG-III categories follows.

Rehabilitation: This category includes patients who, if they were not receiving rehabilitation therapy, would qualify for one of the other RUG-III skilled care categories. This category is divided into subcategories based on the number of minutes of rehabilitative services received in a week, combinations of rehabilitation disciplines providing services, receipt of nursing rehabilitative services, and the patient ADL scores. The range of rehabilitation therapy minutes per day represented in the Rehabilitation category varies from a low of 45 minutes per week to a high of more than 720 minutes per week. Patients who qualify for assignment to the Ultra High Rehabilitation sub-category receive at least 720 minutes per week of rehabilitation therapies. At least two disciplines must be providing services: one of the disciplines must provide services 5 days each week, and the other must provide services at least 3 days each week. In contrast, patients assigned to the lowest rehabilitation sub-category, Low Rehabilitation, must receive at least 45 minutes of rehabilitative therapy services across at least 3 days each week, in addition to 6 days per week of nursing rehabilitation in two activities.

Extensive Services: To qualify for this category, patients must have, in the past

14 days, received intravenous medications, tracheostomy care, required a ventilator/respirator, required suctioning, or must have, in the past 7 days, received intravenous feeding. In addition, the patients assigned to this category will have an ADL score that is at least 7.

Each patient in the extensive services category is assigned a score of 0-5 based on five criteria. The score is used to classify the patient to one of the three RUG-III groups in this category—0 or 1 will classify into the SE1 group, those with scores of 2 or 3 will go to SE2, and those with 4 or 5 will group to SE3.

For the following five criteria, the patient receives one point for each criterion that applies to him or her. The first three criteria are presence of a clinical condition that qualifies the patient for classification to the Special Care category, Clinically Complex category, or the Cognitively Impaired category. The fourth and fifth criteria are whether the patient is receiving intravenous feeding or whether the patient is receiving intravenous medication.

For example, a person who qualifies for both the Cognitively Impaired and Special Care categories will be assigned a score of 2 and will be classified into the SE2 group. Similarly, a patient who is ventilator dependent and requires suctioning will be assigned a score of 0 and will be classified into SE1.

Special Care: Patients who are assigned to this category have at least one of the following: multiple sclerosis, cerebral palsy, quadriplegia with an ADL score of 10 or more, or receive respiratory therapy 7 days per week; have, and receive treatment for, pressure or stasis ulcers on 2 or more body sites; have a surgical wound(s) or open lesions; be tube fed with at least 26 percent of daily calorie requirements and at least 501 ml of fluid through the tube per day, and aphasic; receive radiation therapy; or have a fever in combination with dehydration, pneumonia, vomiting, weight loss, or tube feedings.

Clinically Complex: Patients qualify for this category if they are comatose, have burns, septicemia, pneumonia, internal bleeding, dehydration, dialysis, hemiplegia in combination with an ADL

score of 10 or more, receive chemotherapy, tube feedings that comprise at least 26 percent of daily calorie requirements and at least 501 ml of fluid through the tube per day, treatments for foot wounds, or transfusions. Also included in this category are diabetics who receive injections 7 days per week and who have two or more physician order changes in the past 14 days as well as patients who have received oxygen therapy in the past 14 days. In order to assure inclusion of patients with unstable conditions, we also use a combination of physician visits and order changes as qualifying criteria for this category. This is a proxy measure for the amounts of skilled nursing observation, care planning, and monitoring usually required by this type of patient. The qualifying combinations of physician visit/order changes that must occur within the 14-day observation period to qualify for this category are: one or more visits with at least four order changes, or two or more visits with two or more order changes.

Impaired Cognition: Patients in this category and the following two categories frequently will not qualify for Medicare coverage although some may, due to specific circumstances. The patients in this category will have scores on the MDS 2.0 Cognition Performance Scale of 3, 4, or 5, and for two of the groups in this category will be receiving nursing rehabilitation services 6 days per week. Some patients with Alzheimer's disease or other types of dementia who have been acutely ill will classify to this category for Medicare. Under the SNF coverage guidelines, these patients could qualify based on the need for skilled nursing rehabilitation.

Behavior Only: These are patients who, in 4 of the last 7 days, exhibited behaviors that include resisting care, being combative, being physically and/or verbally abusive, wandering, and who have hallucinations or delusions.

Physical Function Reduced: The patients in this category are those who do not have any of the conditions or characteristics identified above. However, some have been documented as receiving "skilled nursing" and have been covered by Medicare in the past. With proper documentation and justification regarding the need for skilled care, Medicare may continue to cover SNF services.

3. Use of RUG-III "Grouper" Software

As discussed at the beginning of this section, all data necessary to classify a patient to one of the RUG-III categories is contained on the MDS 2.0. Under this

PPS, SNFs are required to use the MDS 2.0 as the data source for classification of patients for case-mix. The software programs that use the MDS 2.0 to assign patients to the appropriate groups, called groupers, are available from many software vendors. The version we use is available at no cost from our web site at: <http://www.hcfa.gov/medicare/hsqb/mds20>.

The logic used in the groupers is based on the hierarchical nature of the RUG-III system. This means that the patient is first assigned to the highest category for which the patient qualifies, and then, using relevant additional criteria, as explained above (ADL score, nursing rehabilitation, etc.), the patient is assigned to one of the groups within that category.

The grouper assigns patients to the highest-weighted group rather than to the highest group in the hierarchy. This is important because there may be rare instances in which a case would qualify for a group that, although higher in the hierarchy, has a lower payment index than a group that is lower in the hierarchy.

4. Determining the Case-Mix Indices

Care provided directly to, or for, a patient is represented by an index score that is based on the amount of staff time, weighted by salary levels, associated with each group. That is, each RUG-III group is assigned an index score that represents the amount of nursing time and rehabilitation treatment time associated with caring for the patients who qualify for the group. The nursing weight includes both patient-specific time spent daily on behalf of each patient type by registered nurses, licensed practical nurses, and aides, as well as patient non-specific time spent by these staff members on other necessary functions such as staff education, administrative duties, and other tasks associated with maintenance of the care giving environment.

As explained above (in section II.B.1), measures of the staff time required to care for nursing home patients were collected and used to identify specific clinical characteristics that are predictive of patient resource use. In order to do this, characteristics of the patients in the STM study and the time it took to care for them were combined and analyzed. In addition, the ratio of salaries for nursing staff and rehabilitative therapy staff were computed in order to calculate nursing and therapy weights for each RUG-III category. These analyses were then used to identify the patient characteristics that best explain weighted patient specific time. From this, the 44 groups

and an index for each was calculated. The basic calculation performed for each group was to take the minutes spent providing patient care and multiply them by the weight that represents the staff person's salary. Thus, the registered nurse's minutes were multiplied by 1.41, whereas those of the aide were multiplied by 0.59. The therapy weights include physical therapist (1.32), occupational therapist (1.23), and speech pathologist (1.16) time plus licensed physical therapy assistant (0.87), licensed occupational therapy assistant (0.81), and therapy aide (0.61) time, on a weekly basis. The nursing and therapy weights are multiplied by the number of patients in each group to yield an array of 44 nursing case-mix index scores and 5 therapy case-mix index scores. These indices are shown later in this section (see Tables 2.E and 2.F).

5. Application of the RUG-III System

Following are some illustrative case studies to illustrate how the RUG-III classification system would compare patients with similar descriptions but disparate classifications.

Example 1. Ms. A was recently hospitalized with a stroke. She has several comorbidities that include cardiac dysrhythmia, hypertension, and diabetes mellitus, and experienced a urinary tract infection within the last 30 days. In addition, she has lost voluntary movement in her left arm and leg, and has an unsteady gait, pain almost daily, and some localized edema, but is continent when toileted at regular intervals. She can see, hear, understand, and make herself understood. She tires easily and carries out ADLs slowly. Her mood is frequently tearful, and she expresses sadness about the loss of past life roles. She is concerned about her health and views herself, and is viewed by staff, as having potential for rehabilitation.

Her memory is good, although she does have some difficulty making decisions in new situations. She is involved in the daily life of the nursing home, interacts well with others, and is able to set her own goals. She spends some time in her own room in self-initiated activities.

Ms. A requires the assistance of one person to accomplish her personal hygiene, dressing, toileting (RUG-III ADL index score=4), bed mobility and transferring (ADL scores=4 each), and locomotion and eating (ADL score=2). She uses pressure-relieving chair and bed pads and receives special attention for her skin. She undergoes physical therapy and occupational therapy for 1 hour each, 5 days per week. Ms. A

receives daily restorative/rehabilitative follow-up nursing care and skill training for eating, active and passive range of motion, transferring, dressing, grooming, and locomotion, and participates in a bowel and bladder retraining program. Discharge from the facility is planned within the next 3 months.

As a stroke patient receiving two therapies five times a week, Ms. A is classified in the Very High Rehabilitation category. She has an ADL index score of 14 (4+4+4+2) and will therefore be classified into the RVB group. In case-mix calculations, her case receives a nursing weight of 1.04 and a therapy weight of 1.41.

Example 2, a non-rehabilitation patient. Ms. B has multiple sclerosis. At the present time she is recovering from a bout of pneumonia. She also had a urinary tract infection within the last 30 days. She has lost some voluntary movement in her extremities and cannot balance herself well in a standing position. She is not bedfast, however, and is in a wheelchair during the day. She has a history of pressure sores, but none are present at this time. There is stiffness in her hips, hands, feet, and shoulders. She complains of constipation and is sometimes incontinent of the bladder. She is able to see, hear, fully understand what is said, and is understood.

Her memory is good, and she is independent in her decision making. Her mood, however, is tearful, and she expresses distress. She grieves for her past life as a professional musician, and she is often withdrawn and has been verbally abusive to her roommate during the past week.

Ms. B uses extensive assistance with transferring (RUG-III ADL index score=4), locomotion, and toileting (ADL score=4), and limited assistance with bed mobility (ADL score=3), personal hygiene, and dressing. As she has had a history of pressure sores, she uses bed and chair pressure prevention pads and receives special skin care, positioning, and turning regularly over the day. Her intake and output are monitored, and the nursing staff provides passive and active range of motion and skill training for transferring with a trapeze while encouraging active range of motion where possible. She also began a bowel and bladder retraining program last week. Any discharge plan for Ms. B is uncertain at this time.

With multiple sclerosis and a high level of ADL dependency, Ms. B is classified into the Special Care category. Her ADL score is at least 12 (4+3+4+1). Service counts and mental state are not

used in the Special Care category, so her depressed mood does not factor into her assignment into a RUG group, although it influences her plan of care. She will be classified to the SSA group in the Special Care category. In RUG-III case-mix calculations, Ms. B is assigned a nursing weight of 1.01 and a therapy weight of 0 since she did not receive occupational, physical, or speech therapy in the last 7 days. Note that these weights are lower than those assigned to Ms. A in example 1, despite the similarities in their clinical descriptions.

6. Use of the Resident Assessment Instrument—Minimum Data Set (MDS 2.0)

The requirements for patient assessment found at § 483.20 apply to all patients in a Medicare or Medicaid certified long term care facility, regardless of the patient's age, diagnoses, length of stay, or payer source. Certified facilities are required to use the RAI specified by the State to assess patients. Each State's RAI consists of HCFA's MDS at a minimum. The RUG-III classification system and, subsequently, the Medicare SNF prospective payment, are based on the Minimum Data Set (MDS). The MDS contains a core set of screening, clinical, and functional status elements, including common definitions and coding categories, that form the basis of a comprehensive assessment.

In order to receive Medicare payment under PPS, in addition to completion of the uniform MDS as set forth at § 483.20, the facility will be required to complete two additional sections of the MDS: Sections T and U. Section U is currently an optional section of the MDS used to collect information on medication. However, completion of this section is required for States participating in HCFA's Nursing Home Case-Mix and Quality (NHCMQ) demonstration and several other States as well. Although collection of medication information on Section U will be required for Medicare patients under this PPS, we will not require completion and transmission of this information until October 1, 1999. In the interim, we will examine the potential for refining Section U in a way that would streamline data collection, reduce opportunities for error, and thereby maximize the accuracy and usefulness of the data.

Section T provides information on special treatments and therapies not reported elsewhere in the patient assessment. In section T, the facility must record the rehabilitative therapy services (physical therapy, occupational

therapy, and speech therapy) that have been ordered and are scheduled to occur during the early days of the patient's SNF stay. As rehabilitation services often are not initiated until after the first MDS assessment's observation period ends, we believe that allowing the patient time for transition is appropriate. Section T provides an overall picture of the amount of rehabilitation that a patient will likely receive through the 15th day from admission. This information on the MDS will make possible an accurate classification of the patient for whom rehabilitation is planned into the appropriate RUG-III group. SNFs must complete this section for services furnished on or after July 1, 1998.

Section T also provides information needed to evaluate a patient's response to therapy. For example, by assessing a patient's ability to walk at his most self-sufficient level, small increments of improvement can be measured. This level of detail is not contained in other areas of the MDS in contrast with the information recorded elsewhere in the MDS, regarding the patient's walking ability most of the time. Assessment of the patient's "most self sufficient" can be used to evaluate the effectiveness of physical therapy and nursing rehabilitation, the continued need for therapy and nursing rehabilitation, and maintenance of walking ability immediately after therapy is discontinued.

7. Required Schedule for Completing the MDS

Under section 1888(e)(6) of the Act, SNFs must "provide the Secretary, in a manner and within the timeframes prescribed by the Secretary, the resident assessment data necessary to develop and implement the rates under this subsection." We are requiring that SNFs perform patient assessments by the 5th day (although there is a grace period that allows performance by the 8th day) of the SNF stay, again by the 14th day, by the 30th day, and every 30 days thereafter as long as the patient is in a Medicare Part A stay. A full MDS must be submitted by facilities at each of these timeframes during a patient's Medicare Part A stay. Each Medicare patient is classified in a RUG-III group for each assessment period for which he is in a Part A SNF stay. The group to which the patient classifies is based on the information about his clinical resource needs as recorded on the MDS assessment.

Facilities will send each patient's MDS assessments to the State and claims for Medicare payment to the fiscal intermediary on a 30-day cycle.

Payment will be made according to the RUG-III group(s) recorded on the claim sent to the fiscal intermediary. For the first 30 days in an SNF, a Medicare patient will be assessed three times (at 5 days, 14 days, and 30 days) and perhaps more often, if the patient's needs change requiring additional MDS assessments and care plan modifications. Any of the assessments performed may result in a RUG-III classification change.

Each patient is to be assessed using full or comprehensive assessments according to the stated schedule. The State's RAI constitutes a "comprehensive" assessment, which is required at various timeframes according to Federal regulations found at § 483.20. In the following schedule, "full" assessment refers to completion of the entire MDS, and "comprehensive" refers to completion of the Resident Assessment Protocols (RAPs) in addition to the entire MDS. The SNF provider should adhere to the following assessment schedule for newly admitted and readmitted beneficiaries whose stays are expected to be covered by Medicare during the first 30 days of admission/readmission to the SNF.

- Day 0 Represents the period prior to admission
- Day 1 Patient admission day and notification of "Non-coverage"
- Day 5 Last day for Assessment Reference Date for the Medicare 5 Day Assessment
- Day 14 Last day for Assessment Reference Date for the Medicare 14 day Assessment (In accordance with Federal requirements at § 483.20, RAPS must be completed with the 5 day or the 14 day assessment)
- Day 29 Last day for Assessment Reference Date for the Medicare 30 day assessment (RAPs not required for Medicare unless a Significant Change in Status has occurred)
- Day 59 Last day for Assessment Reference Date for the Medicare 60 day assessment (RAPs not required for Medicare unless a Significant Change in Status has occurred)
- Day 89 Last day for Assessment Reference Date for Medicare 90 day assessment (RAPs not required for Medicare unless a Significant Change in Status has occurred)
- Day 100 Last possible day of Medicare coverage. Staff should return to the State-required MDS assessment schedule.

This schedule applies to Medicare beneficiaries during Part A Medicare nursing home stays.

Note that historically, instructions for completing the RAI, as in the *Long Term Care Resident Assessment Instrument User's Manual*, state that "when calculating when the Resident Assessment Instrument (RAI) is due, the

day of admission is counted as day zero." Counting the day of admission as day zero has allowed the maximum flexibility in terms of time to complete the RAI. For case-mix reimbursement purposes, however, States that participated in HCFA's Nursing Home Case-Mix and Quality Demonstration (NHCMQ) project have required that the day of admission be counted as day one. The use of the day of admission as day one is continued under the PPS rules for reimbursement scheduling. In support of this scheduling, in the future, HCFA will provide instructions for RAI completion counting the day of admission as day one.

In order to be in compliance with the requirements of Medicare and Medicaid certification, facilities must complete an Initial Admission assessment, including RAPs, within 14 days of a patient's admission to the facility. Within approximately the same time, the requirements for PPS specify that facilities must complete two assessments for each patient in a Medicare-covered Part A stay. These include a Medicare 5-day and a Medicare 14-day assessment. According to the rules for PPS, the RAPs must be completed with either the 5-day or the 14-day assessment, and the facility may choose with which of these assessments to complete the RAPs.

In order to minimize burden on facility staff, in some instances, the same assessment that is completed and electronically submitted to the State to meet the clinical requirements at § 483.20 may also be used to meet the PPS requirements. For example, the facility may use either the Medicare 5-day or the Medicare 14-day assessment (whichever one included the RAPs) to meet both the requirements for PPS, as well as the clinical requirements for completing and transmitting an Initial Admission assessment. In this case, the "Reason for Assessment" item on the MDS would be coded both as an Initial Admission assessment and as a Medicare 5-day or 14-day assessment. There is no grace period for the Initial Admission assessment to correspond with the grace period that the PPS rules allow for the Medicare 14-day assessment. Therefore, if a facility is using the Medicare 14-day assessment to also meet the requirement for the Initial Admission assessment, the assessment must be completed by day 14, and the grace period does not apply.

In order to be in compliance with the requirements for Medicare and Medicaid certification, facilities must perform the HCFA Standard Quarterly Review assessment for each resident in the facility at least every 92 days. The

requirements for PPS specify that a Medicare 90-day assessment be completed for each patient whose stay is still covered under Medicare. To minimize burden on facility staff, the Medicare 90-day assessment that is completed to meet PPS requirements may also be used to meet the clinical requirements at § 483.20 for completion of a Quarterly Review assessment. In this case, the "Reason for Assessment" item on the assessment would be coded both as a "Quarterly Review" assessment, and as a Medicare 90-day assessment. Although the PPS rules allow a 5-day grace period in completing the Medicare 90-day assessment, the Quarterly Review assessment must be completed within 92 days of completion of the last assessment. Therefore, if a facility is using the Medicare 90-day assessment to also meet the requirement for the Quarterly Review assessment, the assessment must be completed within 92 days of completion of the prior assessment, and only 2 days of the 5-day grace period could apply.

Facilities must also adhere to Federal regulations that require a comprehensive reassessment if the patient experiences a significant change in status. A significant change is a major change in a patient's status that is not self-limiting, affects more than one area of his health status, and requires interdisciplinary review. Accordingly, a patient must be reassessed whenever significant improvement or decline is consistently noted by facility staff. The current guidelines for determining a significant change in the patient's status are listed in the *Long Term Care Resident Assessment Instrument User's Manual*. These include, for example, a change in the patient's decision-making abilities from 0 or 1 to 2 or 3 on item B4 of the MDS 2.0. As a complement to these standard guidelines, we are requiring under PPS, that a comprehensive assessment be performed when a patient's rehabilitation service is discontinued unless the patient is physically discharged from the facility. For those rare instances in which a Significant Change in Status assessment is not clinically warranted, but rehabilitative services are discontinued, we are requiring a comprehensive assessment to be coded as "Other Medicare Required Assessment."

The assessment reference date for this assessment may be no earlier than 8 days after the conclusion of all rehabilitative therapies and no later than 10 days after the conclusion of such services. If the patient expires or is discharged from the facility, no

assessment is required. This assessment will result in a new case-mix classification for the patient and a new rate of payment. The new classification and payment rate will be effective as of the assessment reference date of this comprehensive assessment. If the resulting new classification is below those groups deemed covered by Medicare in the RUG-III hierarchy and the patient would not be covered by the existing administrative criteria for making SNF level of care determinations, a "continued stay" denial notice should be issued.

A Significant Change in Status assessment or Other Medicare Required Assessment that falls during the assessment window of a Medicare mandated assessment may take the place of one of the regularly scheduled assessments. If the assessment reference date of an Other Medicare Required Assessment or a Significant Change in Status assessment coincides with the range of days allowable for use as the assessment reference date for a regularly scheduled Medicare assessment, a single assessment may be coded as both a Significant Change in Status or Other

Medicare Required Assessment and as a regularly scheduled Medicare assessment. For example, a Significant Change in Status assessment completed on day 28 of the patient's nursing home stay would replace the 30-day scheduled assessment. However, a significant change that occurs on day 40 would not replace any scheduled assessment. Table 2.D below presents the schedule for MDS completion related to days covered and payment.

TABLE 2.D.—MEDICARE ASSESSMENT SCHEDULE

Medicare MDS assessment type	Reason for assessment (AA8b code)	Assessment reference date	Number of days authorized for coverage and payment	Applicable Medicare payment days
5 day	1	Days 1-8*	14	1 through 14.
14 day	7	Days 11-14**	16	15 through 30.
30 day	2	Days 21-29	30	31 through 60.
60 day	3	Days 50-59	30	61 through 90.
90 day	4	Days 80-89	10	91 through 100.

* If a patient expires or transfers to another facility before day 8, the facility will still need to prepare an MDS as completely as possible for the RUG-III classification and Medicare payment purposes. Otherwise the days will be paid at the default rate.

**RAPs follow Federal rules; RAPs must be performed with either the 5-day or 14-day assessment.

SNFs must submit the RAPs with either the 5-day or 14-day assessment. As noted above, RAPs must be completed as part of any Significant Change in Status assessments and Other Medicare Required Assessments that are appropriate. SNFs should consult the current version of the *Long Term Care Resident Assessment Instrument User's Manual* for more specific information regarding the RAPs.

The first MDS assessment for Medicare eligible beneficiaries should be completed by day 5 of the patient's SNF stay. The admission day counts as day 1. The Assessment Reference Date for the 5-day assessment may be any day between days 1 and 5 (although there is a 3-day grace period to day 8).

As stated in the note following Table 2.D, if a patient expires or transfers to another facility before day 8, the facility will still need to prepare an MDS as completely as possible for RUG-III classification and Medicare payment purposes. Otherwise, the days will be paid at the default group rate.

Subsequent to the 5-day assessment, the SNF must complete assessments for each coverage period in accordance with the Medicare assessment schedule. The staff must use the time periods as specified in the current *Long Term Care Resident Assessment Instrument User's Manual* and must include the assessment reference date/last day of the

observation period to judge the patient's condition except for the change items found at the end of particular MDS sections. The change items in Sections B, C, E, G, and H are assessed by referring back to the reference day of the last MDS completed.

The nurse coordinating the care of a Medicare Part A covered patient has considerable leeway in determining the reference date for all assessments after the initial MDS. This should be helpful in making the assessment schedule required for Medicare coincide with Significant Change in Status, and Other Medicare Required Assessments that may be necessary, or in avoiding scheduling or service delivery problems during holiday periods. The following is an example: Ms. Smith was admitted on March 21, 1997. The assessment reference date for Ms. Smith's 14-day assessment was April 2, 1997. The nurse coordinator has selected April 16, 1997 as the assessment reference date for her 30-day assessment. In this case, the instructions for the change items should be interpreted as the period between the assessment reference date of April 2, 1997 (the 14-day assessment) and the assessment reference date of April 16, 1997 (the 30-day assessment).

8. The Relationship Between Payment and the MDS

As explained above, each Medicare patient is classified in a RUG-III group for each assessment period for which he is in a Part A SNF stay. The group to which the patient classifies is based on the information about his clinical resource needs as recorded on the MDS assessment.

Facilities will send each patient's MDS assessments to the State and claims for Medicare payment to the fiscal intermediary on a 30-day cycle. Payment will be made according to the RUG-III group(s) recorded on the claim sent to the fiscal intermediary. For the first 30 days in an SNF, a Medicare patient will be assessed three times (at 5 days, 14 days, and 30 days) and perhaps more often, if the patient's needs change requiring additional MDS assessments and care plan modifications. Any of the assessments performed may result in a RUG-III classification change.

For example, a facility may have a patient whose first (5-day) MDS results in assignment to a Special Care group, but whose second assessment (14-day) indicates an assignment to a High Rehabilitation group. The facility must record these groups on its claim and will receive payment at the Special Care group rate for 14 days and then at the High Rehabilitation group rate for the

15th through 30th days. If a third MDS is performed during that 30 days indicating a change in the patient's condition that results in assignment to yet a third RUG-III group, the facility must record three groups on its claim to the fiscal intermediary and will receive payment accordingly for the days in the third RUG-III group. Table 2.D shows the relationship of the billing cycle to the MDS submissions.

9. Assessments and the Transition to the Prospective Payment System

For Medicare patients already in the nursing home during the facility's transition into the PPS, we are providing several alternative assessment schedule options from which to choose.

a. Medicare beneficiaries receiving Part A benefits admitted within the past 30 days. For a Medicare patient in a Part A covered stay, admitted in the 30 days before the SNF became subject to PPS, who has had an MDS completed during those 30 days, facility staff may choose to use the most recent full MDS assessment completed (within the past 30 days) for RUG-III classification. This classification would be effective on the first day the SNF joins PPS and determines the payment the SNF receives for the patient for the first 14 days the facility is in the new system. The next assessment must be completed by the 14th calendar day of the month the facility entered the PPS.

Another option is for the facility staff to choose to treat the beneficiary as a "new" admission on the first day of the facility's billing period. In this instance, a Medicare 5-day assessment must be performed as if the day the facility enters the PPS is day 1 of the patient's Part A nursing home stay, and then the assessment schedule followed as it would be for a new admission, as detailed above. There is no change in the patient's Medicare eligibility or coverage. Further, no additional days are added to Medicare's 100-day limit.

b. Medicare beneficiaries receiving Part A benefits admitted over 30 days prior. If a Medicare beneficiary was receiving Medicare Part A benefits for the past 30 days and has not had a full MDS assessment completed within the past 30 days, the beneficiary is considered a new admission to the PPS and follows the assessment schedule presented above (paragraph (a)). The new admission status is only for Medicare MDS assessment scheduling. There is no change in the patient's Medicare eligibility or coverage. Further, no additional days are added to Medicare's 100-day limit.

c. Medicare Part A beneficiaries with less than 14 days of Medicare eligibility

remaining. If the patient has less than 14 days of Medicare eligibility remaining when the SNF becomes subject to PPS, the facility has the option of completing an Other Medicare Required assessment or using the most recent assessment to classify the resident.

These guidelines are intended to maximize the beneficiary's opportunity to receive Medicare Part A benefits during the facility's transition from one payment system to another, provided that the Medicare Part A eligibility rules and coverage guidelines are met. Facility staff are able to utilize the RUG-III clinical categories to determine coverage for this group of beneficiaries.

10. Late Assessments

We recognize that the effect on revenue for missing an assessment can be great. To allow facilities flexibility and to minimize their revenue loss, we will permit an assessment to be completed as quickly as possible. Once a late assessment is conducted, the facility should return to the regular Medicare assessment schedule.

Frequent late assessments may result in an on-site review of assessment scheduling practices for the facility. Also, facilities need to be aware that assessments not completed within Federal timeframes established at § 483.20 may be cited as evidence of regulatory noncompliance.

Late 5-day assessments. As discussed above, the assessment reference date for a 5-day assessment may be set as early as day 1 or as late as day 5 of the patient's stay. However, in the event of a late 5-day assessment, a facility will be allowed to use up to and including day 8 as the assessment reference date with no financial penalty. This means that the facility may set an assessment reference date that is up to 3 days beyond the regular schedule and still receive the RUG-III rate calculated from the late assessment for the entire 14-day period of service covered by the 5-day assessment.

A 5-day assessment with an assessment reference date of day 9 or later will be paid at the RUG-III default rate for all 8 or more days of service provided before the assessment reference date of the late or missed assessment. The RUG-III rate calculated from the late assessment will be paid starting on the assessment reference date entered on the late assessment through day 14.

Late 14-day assessments. In order for an SNF to be in compliance with the requirements for Medicare or Medicaid certification, a comprehensive assessment must be performed for each patient in the facility by day 14.

Therefore, unless the 5-day assessment included the RAPs, the 14-day assessment must include RAPs and must be completed by day 14. If the RAPs were completed with the 5-day assessment, then this assessment counts as the admission assessment and should be coded as both a Medicare 5-day assessment and as the admission assessment. When the 5-day assessment is the admission assessment (that is, it includes the RAPs), then no RAPs are required with the 14-day assessment, and the 14-day assessment may have an assessment reference date through day 19, and a 5-day grace period like that allowed for the 30- and 60-day assessments.

Late 30-day, 60-day, or 90-day assessments. A 5-day grace period is permitted for late 30- or 60-day assessments with no financial penalty. This means that the facility may set an assessment reference date that is up to 5 days beyond the regular schedule and still receive the RUG-III rate calculated from the late assessment for the entire period of service covered by the assessment.

To be in compliance with the requirements for Medicare and Medicaid certification, facilities must perform assessments quarterly. For this reason, the 90-day assessment grace period is only 2 days, in agreement with that allowed by the certification requirement. The latest that the first quarterly assessment may be completed is on day 92. The 90-day assessment should be coded both as a Medicare 90-day assessment and a quarterly review assessment.

Assessments that have an assessment reference date that is 6 or more days beyond the regular schedule will result in a payment at the RUG-III default rate for those 5 or more days of service without a current assessment. The RUG-III rate calculated from the late assessment will be paid starting on the day of the assessment reference date entered on the late assessment.

In the case of an error on an MDS that has been locked (in accordance with the requirements set forth at § 483.20(f)), the facility must follow the normal MDS correction procedures. These procedures may require that the facility perform a Significant Change in Status assessment or a "significant correction" assessment. If appropriate, the facility must perform a new assessment with a new assessment reference period and then submit this new assessment. Payment will be based on the new assessment reference date if appropriate.

11. The Default Rate

As described above, assessments are completed by SNFs according to an assessment schedule specifically designed for Medicare payment, and each assessment applies to specific days within a resident's SNF stay for purposes of making that payment. Compliance with this assessment schedule is critical to ensure that the appropriate level of payment is made by Medicare and the quality of Medicare SNF services is maintained under the PPS. Accordingly, SNFs that fail to perform assessments timely are to be paid a RUG-III default rate for the days of a patient's care for which they are not in compliance with this schedule (assuming that they submit sufficient documentation in lieu of a completed assessment to enable the fiscal

intermediary to establish coverage under the existing administrative criteria used for this purpose, as discussed in section II.D of this rule). The RUG-III default rate takes the place of the otherwise applicable Federal rate (it does not supersede the facility-specific portion of the blended rate used for the transition period—see section III of this rule).

The RUG-III default rate may be lower than the Federal rate that would have been paid for a patient had an SNF submitted an assessment in accordance with the prescribed assessment schedule. For the initial period of the PPS, the RUG-III default rate is \$117.15 per day for urban SNFs and \$116.85 per day for rural SNFs. This rate equals the lowest Federal rate category (PA1) listed in Tables 2.G and 2.H. and is subject to the wage index adjustment.

12. Case-Mix Adjusted Federal Payment Rates

Application of the case-mix indices to the per diem Federal rates presented in Tables 2.A and 2.B result in 44 separate case-mix adjusted payment rates corresponding to the 44 separate RUG-III classification groups described above (see Tables 2.E and 2.F). The case-mix adjusted payment rates are listed separately for urban and rural SNFs (44 each) in Tables 2.E and 2.F below along with the corresponding case-mix index values. The rates are listed in total and by component. The application of the wage index, described later in this section, is the final adjustment applied to the Federal rates.

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Table 2.E
CASE MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES
URBAN

RUG III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Therapy Non-Case Mix Component	Non-Case Mix Component	Total Rate
RUC	1.30	2.25	\$142.32	\$186.01		\$55.88	\$384.21
RUB	0.95	2.25	\$104.01	\$186.01		\$55.88	\$345.90
RUA	0.78	2.25	\$ 85.39	\$186.01		\$55.88	\$327.28
RVC	1.13	1.41	\$123.71	\$116.56		\$55.88	\$296.15
RVB	1.04	1.41	\$113.86	\$116.56		\$55.88	\$286.30
RVA	0.81	1.41	\$ 88.68	\$116.56		\$55.88	\$261.12
RHC	1.26	0.94	\$137.94	\$ 77.71		\$55.88	\$271.53
RHB	1.06	0.94	\$116.05	\$ 77.71		\$55.88	\$249.64
RHA	0.87	0.94	\$ 95.25	\$ 77.71		\$55.88	\$228.84
RMC	1.35	0.77	\$147.80	\$ 63.66		\$55.88	\$267.34
RMB	1.09	0.77	\$119.33	\$ 63.66		\$55.88	\$238.87
RMA	0.96	0.77	\$105.10	\$ 63.66		\$55.88	\$224.64
RLB	1.11	0.43	\$121.52	\$ 35.55		\$55.88	\$212.95
RLA	0.80	0.43	\$ 87.58	\$ 35.55		\$55.88	\$179.01
SE3	1.70		\$186.12		\$10.91	\$55.88	\$252.91
SE2	1.39		\$152.18		\$10.91	\$55.88	\$218.97
SE1	1.17		\$128.09		\$10.91	\$55.88	\$194.88
SSC	1.13		\$123.71		\$10.91	\$55.88	\$190.50
SSB	1.05		\$114.95		\$10.91	\$55.88	\$181.74
SSA	1.01		\$110.57		\$10.91	\$55.88	\$177.36
CC2	1.12		\$122.62		\$10.91	\$55.88	\$189.41
CC1	0.99		\$108.39		\$10.91	\$55.88	\$175.18
CB2	0.91		\$ 99.63		\$10.91	\$55.88	\$166.42
CB1	0.84		\$ 91.96		\$10.91	\$55.88	\$158.75

RUG III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Therapy Non-Case Mix Component	Non-Case Mix Component	Total Rate
CA2	0.83		\$ 90.87		\$10.91	\$55.88	\$157.66
CA1	0.75		\$ 82.11		\$10.91	\$55.88	\$148.90
IB2	0.69		\$ 75.54		\$10.91	\$55.88	\$142.33
IB1	0.67		\$ 73.35		\$10.91	\$55.88	\$140.14
IA2	0.57		\$ 62.40		\$10.91	\$55.88	\$129.19
IA1	0.53		\$ 58.02		\$10.91	\$55.88	\$124.81
BB2	0.68		\$ 74.45		\$10.91	\$55.88	\$141.24
BB1	0.65		\$ 71.16		\$10.91	\$55.88	\$137.95
BA2	0.56		\$ 61.31		\$10.91	\$55.88	\$128.10
BA1	0.48		\$ 52.55		\$10.91	\$55.88	\$119.34
PE2	0.79		\$ 86.49		\$10.91	\$55.88	\$153.28
PE1	0.77		\$ 84.30		\$10.91	\$55.88	\$151.09
PD2	0.72		\$ 78.83		\$10.91	\$55.88	\$145.62
PD1	0.70		\$ 76.64		\$10.91	\$55.88	\$143.43
PC2	0.65		\$ 71.16		\$10.91	\$55.88	\$137.95
PC1	0.64		\$ 70.07		\$10.91	\$55.88	\$136.86
PB2	0.51		\$ 55.83		\$10.91	\$55.88	\$122.62
PB1	0.50		\$ 54.74		\$10.91	\$55.88	\$121.53
PA2	0.49		\$ 53.65		\$10.91	\$55.88	\$120.44
PA1	0.46		\$ 50.36		\$10.91	\$55.88	\$117.15

Table 2.F
CASE MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES
RURAL

RUG III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Therapy Non-Case Mix Component	Non-Case Mix Component	Total Rate
RUC	1.30	2.25	\$136.34	\$214.90		\$56.95	\$408.19
RUB	0.95	2.25	\$ 99.64	\$214.90		\$56.95	\$371.49
RUA	0.78	2.25	\$ 81.81	\$214.90		\$56.95	\$353.66
RVC	1.13	1.41	\$118.51	\$134.67		\$56.95	\$310.13
RVB	1.04	1.41	\$109.08	\$134.67		\$56.95	\$300.70
RVA	0.81	1.41	\$ 84.95	\$134.67		\$56.95	\$276.57
RHC	1.26	0.94	\$132.15	\$ 89.78		\$56.95	\$278.88
RHB	1.06	0.94	\$111.17	\$ 89.78		\$56.95	\$257.90
RHA	0.87	0.94	\$ 91.25	\$ 89.78		\$56.95	\$237.98
RMC	1.35	0.77	\$141.59	\$ 73.54		\$56.95	\$272.08
RMB	1.09	0.77	\$114.32	\$ 73.54		\$56.95	\$244.81
RMA	0.96	0.77	\$100.68	\$ 73.54		\$56.95	\$231.17
RLB	1.11	0.43	\$116.42	\$ 41.07		\$56.95	\$214.44
RLA	0.80	0.43	\$ 83.90	\$ 41.07		\$56.95	\$181.92
SE3	1.70		\$178.30		\$11.66	\$56.95	\$246.91
SE2	1.39		\$145.78		\$11.66	\$56.95	\$214.39
SE1	1.17		\$122.71		\$11.66	\$56.95	\$191.32
SSC	1.13		\$118.51		\$11.66	\$56.95	\$187.12
SSB	1.05		\$110.12		\$11.66	\$56.95	\$178.73
SSA	1.01		\$105.93		\$11.66	\$56.95	\$174.54
CC2	1.12		\$117.47		\$11.66	\$56.95	\$186.08
CC1	0.99		\$103.83		\$11.66	\$56.95	\$172.44
CB2	0.91		\$ 95.44		\$11.66	\$56.95	\$164.05
CB1	0.84		\$ 88.10		\$11.66	\$56.95	\$156.71

RUG III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Therapy Non-Case Mix Component	Non-Case Mix Component	Total Rate
CA2	0.83		\$ 87.05		\$11.66	\$56.95	\$155.66
CA1	0.75		\$ 78.66		\$11.66	\$56.95	\$147.27
IB2	0.69		\$ 72.37		\$11.66	\$56.95	\$140.98
IB1	0.67		\$ 70.27		\$11.66	\$56.95	\$138.88
IA2	0.57		\$ 59.78		\$11.66	\$56.95	\$128.39
IA1	0.53		\$ 55.59		\$11.66	\$56.95	\$124.20
BB2	0.68		\$ 71.32		\$11.66	\$56.95	\$139.93
BB1	0.65		\$ 68.17		\$11.66	\$56.95	\$136.78
BA2	0.56		\$ 58.73		\$11.66	\$56.95	\$127.34
BA1	0.48		\$ 50.34		\$11.66	\$56.95	\$118.95
PE2	0.79		\$ 82.86		\$11.66	\$56.95	\$151.47
PE1	0.77		\$ 80.76		\$11.66	\$56.95	\$149.37
PD2	0.72		\$ 75.51		\$11.66	\$56.95	\$144.12
PD1	0.70		\$ 73.42		\$11.66	\$56.95	\$143.03
PC2	0.65		\$ 68.17		\$11.66	\$56.95	\$136.78
PC1	0.64		\$ 67.12		\$11.66	\$56.95	\$135.73
PB2	0.51		\$ 53.49		\$11.66	\$56.95	\$122.10
PB1	0.50		\$ 52.44		\$11.66	\$56.95	\$121.05
PA2	0.49		\$ 51.39		\$11.66	\$56.95	\$120.00
PA1	0.46		\$ 48.24		\$11.66	\$56.95	\$116.85

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C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we provide for adjustments to the Federal rates to account for differences in area wage levels using "an appropriate wage index as determined by the Secretary." As discussed elsewhere in this rule, for the rates effective with this rule, we are using wage index values that are based on hospital wage data from cost reporting periods beginning in fiscal year 1994—the most recent hospital wage data in effect before the effective date of this rule. Accordingly, the wage values used in this rule are based on the same wage data as used to compute the wage index values for the hospital prospective payment system for discharges occurring in fiscal year 1998. To compute the SNF wage index values, HCFA groups wage data from all hospitals by urban (MSA) and rural area. Total wages and hours are summed for all hospitals in each area. An average hourly wage is computed for each area by dividing the total wages by the total hours. Wage index values are computed for each area by comparing the area specific average hourly wage to the national average hourly wage (computed in a similar manner). (A detailed description of the methodology used to compute the hospital prospective payment wage index is set forth in the final rule published in the Federal

Register on August 29, 1997 (62 FR 45966.)

The SNF wage index values are based on the Metropolitan Statistical Area (MSA) designations in effect prior to publication of this rule. For purposes of computing SNF wage index values, we are not taking into account changes in geographic classification for certain rural hospitals required under section 1886(d)(8)(B) of the Act or geographic reclassifications based on decisions of the Medicare Geographic Classification Review Board or the Secretary under section 1886(d)(10) of the Act. For SNF routine cost limits established under section 1888(a) of the Act and in effect for cost reporting periods beginning prior to July 1, 1998, HCFA has always applied a hospital wage index that does not reflect geographic reclassifications. Changing the basis of the wage index now would likely have a distributional impact on payments. In consideration of this and the fact that HCFA may be changing to a SNF wage index in the near future (which could also have distributional effects), we find it appropriate to employ a hospital wage index that does not reflect these reclassifications. Accordingly, we continue to believe that the MSA (or non-MSA) designation provides the best method for determining the wage index values used for SNF payments and the physical location of hospitals is the appropriate basis upon which to construct the wage index.

Table 2.I at the end of this section presents the wage indices applicable to urban and rural areas for use in making geographic adjustments to the Federal rates. Similar to the methodology described earlier relating to the standardization of the cost data for geographic differences in wage levels, the wage index adjustment is applied to the labor-related portion of the Federal rate, which is 75.888 percent of the total rate. The schedule of Federal rates below shows the Federal rates by labor-related and non-labor related components. Instructions and an example related to the application of the wage index to the case-mix adjusted rates are provided following the table.

In addition, section 1888(e)(4)(G) of the Act requires that the wage index adjustment to the Federal rates be made in a manner that does not result in aggregate payments that are greater or less than those that would otherwise be made if the rates were not adjusted by the wage index. In the initial year of the PPS, this requirement is addressed through the standardization methodology, described earlier, which ensures that the application of the wage index has no effect on the level of aggregate payments (that is, any effects are purely distributional). In future years, HCFA must make wage index budget neutrality adjustment in updating the payment rates.

TABLE 2.G.—CASE MIX ADJUSTED FEDERAL RATES FOR URBAN SNFs BY LABOR AND NON-LABOR COMPONENT

RUGs III category	Labor-related	Non-labor related	Total Federal rate
RUC	\$291.57	\$92.64	\$384.21
RUB	262.50	83.40	345.90
RUA	248.37	78.91	327.28
RVC	224.74	71.41	296.15
RVB	217.27	69.03	286.30
RVA	198.16	62.96	261.12
RHC	206.06	65.47	271.53
RHB	189.45	60.19	249.64
RHA	173.66	55.18	228.84
RMC	202.88	64.46	267.34
RMB	181.27	57.60	238.87
RMA	170.47	54.17	224.64
RLB	161.60	51.35	212.95
RLA	135.85	43.16	179.01
SE3	191.93	60.98	252.91
SE2	166.17	52.80	218.97
SE1	147.89	46.99	194.88
SSC	144.57	45.93	190.50
SSB	137.92	43.82	181.74
SSA	134.59	42.77	177.36
CC2	143.74	45.67	189.41
CC1	132.94	42.24	175.18
CB2	126.29	40.13	166.42
CB1	120.47	38.28	158.75
CA2	119.65	38.01	157.66
CA1	113.00	35.90	148.90
IB2	108.01	34.32	142.33

TABLE 2.G.—CASE MIX ADJUSTED FEDERAL RATES FOR URBAN SNFs BY LABOR AND NON-LABOR COMPONENT—Continued

RUGs III category	Labor-related	Non-labor related	Total Federal rate
IB1	106.35	33.79	140.14
IA2	98.04	31.15	129.19
IA1	94.72	30.09	124.81
BB2	107.18	34.06	141.24
BB1	104.69	33.26	137.95
BA2	97.21	30.89	128.10
BA1	90.56	28.78	119.34
PE2	116.32	36.96	153.28
PE1	114.66	36.43	151.09
PD2	110.51	35.11	145.62
PD1	108.85	34.58	143.43
PC2	104.69	33.26	137.95
PC1	103.86	33.00	136.86
PB2	93.05	29.57	122.62
PB1	92.23	29.30	121.53
PA2	91.40	29.04	120.44
PA1	88.90	28.25	117.15

TABLE 2.H.—CASE MIX ADJUSTED FEDERAL RATES FOR RURAL SNFs BY LABOR AND NON-LABOR COMPONENT

RUGs III category	Labor-related	Non-labor related	Total Federal rate
RUC	\$309.77	\$98.42	\$408.19
RUB	281.92	89.57	371.49
RUA	268.39	85.27	353.66
RVC	235.35	74.78	310.13
RVB	228.20	72.50	300.70
RVA	209.88	66.69	276.57
RHC	211.64	67.24	278.88
RHB	195.72	62.18	257.90
RHA	180.60	57.38	237.98
RMC	206.48	65.60	272.08
RMB	186.78	59.03	244.81
RMA	175.43	55.74	231.17
RLB	162.73	51.71	214.44
RLA	138.06	43.86	181.92
SE3	187.38	59.53	246.91
SE2	162.70	51.69	214.39
SE1	145.19	46.13	191.32
SSC	142.00	45.12	187.12
SSB	135.63	43.10	178.73
SSA	132.45	42.09	174.54
CC2	141.21	44.87	186.08
CC1	130.86	41.58	172.44
CB2	124.49	39.56	164.05
CB1	118.92	37.79	156.71
CA2	118.13	37.53	155.66
CA1	111.76	35.51	147.27
IB2	106.99	33.99	140.98
IB1	105.39	33.49	138.88
IA2	97.43	30.96	128.39
IA1	94.25	29.95	124.20
BB2	106.19	33.74	139.93
BB1	103.80	32.98	136.78
BA2	96.64	30.70	127.34
BA1	90.27	28.68	118.95
PE2	114.95	36.52	151.47
PE1	113.35	36.02	149.37
PD2	109.37	34.75	144.12
PD1	107.78	34.25	142.03
PC2	103.80	32.98	136.78
PC1	103.00	32.73	135.73
PB2	92.66	29.44	122.10
PB1	91.86	29.19	121.05
PA2	91.07	28.93	120.00
PA1	88.68	28.17	116.85

For any RUG-III group, to compute a wage adjusted Federal payment rate applicable to the initial period of the PPS, the labor related portion of the payment rate is multiplied by the SNF's appropriate wage index factor listed in Table 2.1. The product of that calculation is added to the corresponding non-labor related component. The resulting amount is the Federal rate applicable to a patient in that RUG-III group for that SNF. See the example below.

ABC SNF is located in State College, Pennsylvania. The per diem Federal rate applicable to an Ultra High Rehabilitation 'A' patient (RUA) is calculated using the rates listed in Table 2.1. Accordingly, the computation of the adjusted per diem rate is made as follows: $(248.37 \times .9635) + 78.91 = \318.21 per diem.

This Federal rate will be applicable to all patients in the RUA category for Happy Valley SNF for the initial period of the PPS (July 1, 1998 through September 30, 1999).

D. Updates to the Federal Rates

For the initial period of the PPS beginning on July 1, 1998 and ending on September 30, 1999, the payment rates are those contained in this interim final rule. In accordance with section 1888(e)(4)(H) of the Act, for each succeeding fiscal year, we will publish the rates in the Federal Register before August 1 of the year preceding the affected Federal fiscal year.

For fiscal years 2000 through 2002, section 1888(e)(4)(E)(ii) of the Act requires that the rates be increased by a factor equal to the SNF market basket index change minus 1 percentage point. In addition, for subsequent fiscal years, this section requires the rates to be increased by the applicable SNF market basket index change.

Section 1888(e)(4)(F) of the Act provides that the Secretary "may" adjust the unadjusted Federal per diem rates if the Secretary "determines that the adjustments under subparagraph (C)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments" during the fiscal year because of changes in the aggregate case-mix of the Medicare patient population that are not related to actual patient condition (that is, "case-mix creep"). HCFA is currently developing a methodology to implement this adjustment.

In addition, since enactment of the BBA 1997, various suggestions have been made relating to adjustments to the

rates promulgated in this interim final regulation. Some have suggested that the rates should be increased to reflect such factors as additional nursing care, the future growth of subacute care practices, specific services, and other items that may not be accurately reflected in the rates, etc. Other suggestions have related to downward adjustments to the rates to reflect the presence of inappropriate care or payments in the 1995 cost data used to establish the rates promulgated in this rule. For example, concerns have been raised regarding whether these data are inflated, reflecting medically unnecessary care and/or improper payments related to therapies and other ancillary services and that the inclusion of such costs results in inappropriately high payments to SNFs under the PPS. Studies by the Office of the Inspector General (OIG) and HCFA program integrity activities have found that incorrect payments have been made to SNFs in the past. One way to remove such costs from the data is the application of adjustments to the 1995 data base and recomputing the payment rates. However, the magnitude of these incorrect payments is not definitively known at this time. Therefore, the OIG, in conjunction with HCFA, is proposing to examine the extent to which the base period costs reflect costs that were inappropriately allowed. If this examination reveals excessive inappropriate costs, we would address this issue in a future proposed rule, or perhaps seek legislation to adjust future payment rates downward.

TABLE 2.1.—WAGE INDEX FOR URBAN AREAS

Urban Area (Constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.8287
Taylor, TX	
0060 Aguadilla, PR	0.4188
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9772
Portage, OH	
Summit, OH	
0120 Albany, GA	0.7914
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8480
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9309
Bernalillo, NM	

TABLE 2.1.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8162
Rapides, LA	
0240 Allentown-Bethlehem-Eas- ton, PA	1.0086
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9137
Blair, PA	
0320 Amarillo, TX	0.9425
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2842
Anchorage, AK	
0440 Ann Arbor, MI	1.1785
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8266
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8996
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4218
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9072
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9087
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	0.9823
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1155
Atlantic City, NJ	
Cape May, NJ	
0600 Augusta-Aiken, GA-SC	0.9333
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9133

TABLE 2.1.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	1.0014
Kern, CA	
0720 Baltimore, MD	0.9689
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9478
Penobscot, ME	
0743 Barnstable-Yarmouth, MA ...	1.4291
Barnstable, MA	
0760 Baton Rouge, LA	0.8382
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX ...	0.8593
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1221
Whatcom, WA	
0870 Benton Harbor, MI	0.8634
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2156
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9783
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8415
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8914
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9005
Blount, AL	
Jefferson, AL	
St Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7695
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.9128
Monroe, IN	
1040 Bloomington-Normal, IL	0.8733
McLean, IL	
1080 Boise City, ID	0.8856
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Law- rence-Lowell-Brockton, MA-NH ..	1.1506
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	

TABLE 2.1.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Stratford, NH	
1125 Boulder-Longmont, CO	1.0015
Boulder, CO	
1145 Brazoria, TX	0.9341
Brazoria, TX	
1150 Bremerton, WA	1.0999
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8740
Cameron, TX	
1260 Bryan-College Station, TX ...	0.8571
Brazos, TX	
1280 Buffalo-Niagara Falls, NY ...	0.9272
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0142
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4459
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8961
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9013
Natrona, WY	
1360 Cedar Rapids, IA	0.8529
Linn, IA	
1400 Champaign-Urbana, IL	0.8824
Champaign, IL	
1440 Charleston-North Charles- ton, SC	0.8807
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9142
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC	0.9710
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	0.9051
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.8658
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.7555
Laramie, WY	
1600 Chicago, IL	1.0860

TABLE 2.1.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0429
Butte, CA	
1640 Cincinnati, OH-KY-IN	0.9474
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN- KY	0.7852
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9804
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9316
El Paso, CO	
1740 Columbia, MO	0.9001
Boone, MO	
1760 Columbia, SC	0.9192
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.8288
Russell, AL	
Chattanooga, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9793
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8945
Nueces, TX	
San Patricio, TX	
1900 Cumberland, MD-WV	0.8822
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9703
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index	Urban Area (Constituent counties or county equivalents)	Wage index
1950 Danville, VA	0.8146	Warrick, IN	
Danville City, VA		Henderson, KY	
Pittsylvania, VA		2520 Fargo-Moorhead, ND-MN ...	0.8837
1960 Davenport-Moline-Rock Is- land, IA-IL	0.8405	Clay, MN	
Scott, IA		Cass, ND	
Henry, IL		2560 Fayetteville, NC	0.8734
Rock Island, IL		Cumberland, NC	
2000 Dayton-Springfield, OH	0.9584	2580 Fayetteville-Springdale-Rog- ers, AR	0.7461
Clark, OH		Benton, AR	
Greene, OH		Washington, AR	
Miami, OH		2620 Flagstaff, AZ-UT	0.9115
Montgomery, OH		Coconino, AZ	
2020 Daytona Beach, FL	0.8375	Kane, UT	
Flagler, FL		2640 Flint, MI	1.1171
Volusia, FL		Genesee, MI	
2030 Decatur, AL	0.8286	2650 Florence, AL	0.7551
Lawrence, AL		Colbert, AL	
Morgan, AL		Lauderdale, AL	
2040 Decatur, IL	0.7915	2655 Florence, SC	0.8711
Macon, IL		Florence, SC	
2080 Denver, CO	1.0386	2670 Fort Collins-Loveland, CO ...	1.0248
Adams, CO		Larimer, CO	
Arapahoe, CO		2680 Ft Lauderdale, FL	1.0448
Denver, CO		Broward, FL	
Douglas, CO		2700 Fort Myers-Cape Coral, FL	0.8788
Jefferson, CO		Lee, FL	
2120 Des Moines, IA	0.8837	2710 Fort Pierce-Port St. Lucie, FL	1.0257
Dallas, IA		Martin, FL	
Polk, IA		St. Lucie, FL	
Warren, IA		2720 Fort Smith, AR-OK	0.7769
2160 Detroit, MI	1.0825	Crawford, AR	
Lapeer, MI		Sebastian, AR	
Macomb, MI		Sequoyah, OK	
Monroe, MI		2750 Fort Walton Beach, FL	0.8765
Oakland, MI		Okaloosa, FL	
St Clair, MI		2760 Fort Wayne, IN	0.8901
Wayne, MI		Adams, IN	
2180 Dothan, AL	0.8070	Allen, IN	
Dale, AL		De Kalb, IN	
Houston, AL		Huntington, IN	
2190 Dover, DE	0.9303	Wells, IN	
Kent, DE		Whitley, IN	
2200 Dubuque, IA	0.8088	2800 Forth Worth-Arlington, TX ...	0.9979
Dubuque, IA		Hood, TX	
2240 Duluth-Superior, MN-WI	0.9779	Johnson, TX	
St Louis, MN		Parker, TX	
Douglas, WI		Tarrant, TX	
2281 Dutchess County, NY	1.0632	2840 Fresno, CA	1.0607
Dutchess, NY		Fresno, CA	
2290 Eau Claire, WI	0.8764	Madera, CA	
Chippewa, WI		2880 Gadsden, AL	0.8815
Eau Claire, WI		Etowah, AL	
2320 El Paso, TX	1.0123	2900 Gainesville, FL	0.9616
El Paso, TX		Alachua, FL	
2330 Elkhart-Goshen, IN	0.9081	2920 Galveston-Texas City, TX ...	1.0564
Elkhart, IN		Galveston, TX	
2335 Elmira, NY	0.8247	2960 Gary, IN	0.9633
Chemung, NY		Lake, IN	
2340 Enid, OK	0.7962	Porter, IN	
Garfield, OK		2975 Glens Falls, NY	0.8386
2360 Erie, PA	0.8862	Warren, NY	
Erie, PA		Washington, NY	
2400 Eugene-Springfield, OR	1.1435	2980 Goldsboro, NC	0.8443
Lane, OR		Wayne, NC	
2440 Evansville-Henderson, IN- KY	0.8641	2985 Grand Forks, ND-MN	0.8745
Posey, IN		Polk, MN	
Vanderburgh, IN		Grand Forks, ND	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
2995 Grand Junction, CO	0.9090
Mesa, CO	
3000 Grand Rapids-Muskegon- Holland, MI	1.0147
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8803
Cascade, MT	
3060 Greeley, CO	1.0097
Weld, CO	
3080 Green Bay, WI	0.9097
Brown, WI	
3120 Greensboro-Winston-Salem- High Point, NC	0.9351
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9064
Pitt, NC	
3160 Greenville-Spartanburg-An- derson, SC	0.9059
Anderson, SC	
Rankin, MS	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9681
Washington, MD	
3200 Hamilton-Middletown, OH ...	0.8767
Butler, OH	
3240 Harrisburg-Lebanon-Car- lisle, PA	1.0187
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.2562
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7192
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8686
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1816
Honolulu, HI	
3350 Houma, LA	0.7854
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9855
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
3400 Huntington-Ashland, WV- KY-OH	0.9160
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8485
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9848
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9413
Johnson, IA	
3520 Jackson, MI	0.9052
Jackson, MI	
3560 Jackson, MS	0.7760
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8522
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.8969
Clay, FL	
Duval, FL	
Nassau, FL	
St Johns, FL	
3605 Jacksonville, NC	0.6973
Onslow, NC	
3610 Jamestown, NY	0.7552
Chautauque, NY	
3620 Janesville-Beloit, WI	0.8824
Rock, WI	
3640 Jersey City, NJ	1.1412
Hudson, NJ	
3660 Johnson City-Kingsport-Bris- tol, TN-VA	0.9114
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8378
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7443
Craighead, AR	
3710 Joplin, MO	0.7510
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0668
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.8653
Kankakee, IL	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
3760 Kansas City, KS-MO	0.9564
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9196
Kenosha, WI	
3810 Killeen-Temple, TX	1.0252
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8831
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8416
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.8749
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8206
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9174
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7776
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8806
Polk, FL	
4000 Lancaster, PA	0.9481
Lancaster, PA	
4040 Lansing-East Lansing, MI ...	1.0088
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.7325
Webb, TX	
4100 Las Cruces, NM	0.8646
Dona Ana, NM	
4120 Las Vegas, NV-AZ	1.0592
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8608
Douglas, KS	
4200 Lawton, OK	0.9045
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9536
Androscoggin, ME	
4280 Lexington, KY	0.8390
Bourbon, KY	
Clark, KY	
Fayette, TN	
Jessamine, KY	
Madison, KY	
Scott, KY	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Woodford, KY	
4320 Lima, OH	0.9185
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9231
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8490
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8613
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2232
Los Angeles, CA	
4520 Louisville, KY-IN	0.9507
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8400
Lubbock, TX	
4640 Lynchburg, VA	0.8228
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9227
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0055
Dane, WI	
4800 Mansfield, OH	0.8639
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4475
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8371
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0354
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.8819
Brevard, FL	
4920 Memphis, TN-AR-MS	0.8589
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	1.0947
Merced, CA	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index	Urban Area (Constituent counties or county equivalents)	Wage index
5000 Miami, FL	0.9859	Plaquemines, LA	
Dade, FL		St Bernard, LA	
5015 Middlesex-Somerset- Hunterdon, NJ	1.1059	St Charles, LA	
Hunterdon, NJ		St James, LA	
Middlesex, NJ		St John The Baptist, LA	
Somerset, NJ		St Tammany, LA	
5080 Milwaukee-Waukesha, WI ...	0.9819	5600 New York, NY	1.4449
Milwaukee, WI		Bronx, NY	
Ozaukee, WI		Kings, NY	
Washington, WI		New York, NY	
Waukesha, WI		Putnam, NY	
5120 Minneapolis-St Paul, MN- WI	1.0733	Queens, NY	
Anoka, MN		Richmond, NY	
Carver, MN		Rockland, NY	
Chisago, MN		Westchester, NY	
Dakota, MN		5640 Newark, NJ	1.1980
Hennepin, MN		Essex, NJ	
Isanti, MN		Morris, NJ	
Ramsey, MN		Sussex, NJ	
Scott, MN		Union, NJ	
Sherburne, MN		Warren, NJ	
Washington, MN		5660 Newburgh, NY-PA	1.1283
Wright, MN		Orange, NY	
Pierce, WI		Pike, PA	
St Croix, WI		5720 Norfolk-Virginia Beach-New- port News, VA-NC	0.8316
5160 Mobile, AL	0.8455	Currutuck, NC	
Baldwin, AL		Chesapeake City, VA	
Mobile, AL		Gloucester, VA	
5170 Modesto, CA	1.0794	Hampton City, VA	
Stanislaus, CA		Isle of Wight, VA	
5190 Monmouth-Ocean, NJ	1.0934	James City, VA	
Monmouth, NJ		Mathews, VA	
Ocean, NJ		Newport News City, VA	
5200 Monroe, LA	0.8414	Norfolk City, VA	
Ouachita, LA		Poquoson City, VA	
5240 Montgomery, AL	0.7671	Portsmouth City, VA	
Autauga, AL		Suffolk City, VA	
Elmore, AL		Virginia Beach City VA	
Montgomery, AL		Williamsburg City, VA	
5280 Muncie, IN	0.9173	York, VA	
Delaware, IN		5775 Oakland, CA	1.5068
5330 Myrtle Beach, SC	0.8072	Alameda, CA	
Horry, SC		Contra Costa, CA	
5345 Naples, FL	1.0109	5790 Ocala, FL	0.9032
Collier, FL		Marion, FL	
5360 Nashville, TN	0.9182	5800 Odessa-Midland, TX	0.8660
Cheatham, TN		Ector, TX	
Davidson, TN		Midland, TX	
Dickson, TN		5880 Oklahoma City, OK	0.8481
Robertson, TN		Canadian, OK	
Rutherford TN		Cleveland, OK	
Sumner, TN		Logan, OK	
Williamson, TN		McClain, OK	
Wilson, TN		Oklahoma, OK	
5380 Nassau-Suffolk, NY	1.3807	Pottawatomie, OK	
Nassau, NY		5910 Olympia, WA	1.0901
Suffolk, NY		Thurston, WA	
5483 New Haven-Bridgeport- Stamford-Waterbury-Danbury, CT	1.2618	5920 Omaha, NE-IA	0.9421
Fairfield, CT		Pottawattamie, IA	
New Haven, CT		Cass, NE	
5523 New London-Norwich, CT ...	1.2013	Douglas, NE	
New London, CT		Sarpy, NE	
5560 New Orleans, LA	0.9566	Washington, NE	
Jefferson, LA		5945 Orange County, CA	1.1605
Orleans, LA		Orange, CA	
		5960 Orlando, FL	0.9397
		Lake, FL	
		Orange, FL	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index	Urban Area (Constituent counties or county equivalents)	Wage index
Osceola, FL		6020 Parkersburg-Marietta, WV- OH	0.8046
Seminole, FL		Washington, OH	
5990 Owensboro, KY	0.7480	Wood, WV	
Daviess, KY		6080 Pensacola, FL	0.8193
6015 Panama City, FL	0.8337	Escambia, FL	
Bay, FL		Santa Rosa, FL	
6020 Parkersburg-Marietta, WV- OH	0.8046	6120 Peoria-Pekin, IL	0.8571
Washington, OH		Peoria, IL	
Wood, WV		Tazewell, IL	
6080 Pensacola, FL	0.8193	Woodford, IL	
Escambia, FL		6160 Philadelphia, PA-NJ	1.1398
Santa Rosa, FL		Burlington, NJ	
6120 Peoria-Pekin, IL	0.8571	Camden, NJ	
Peoria, IL		Gloucester, NJ	
Tazewell, IL		Salem, NJ	
Woodford, IL		Bucks, PA	
6160 Philadelphia, PA-NJ	1.1398	Chester, PA	
Burlington, NJ		Delaware, PA	
Camden, NJ		Montgomery, PA	
Gloucester, NJ		Philadelphia, PA	
Salem, NJ		6200 Phoenix-Mesa, AZ	0.9606
Bucks, PA		Maricopa, AZ	
Chester, PA		Pinal, AZ	
Delaware, PA		6240 Pine Bluff, AR	0.7826
Montgomery, PA		Jefferson, AR	
Philadelphia, PA		6280 Pittsburgh, PA	0.9725
6200 Phoenix-Mesa, AZ	0.9606	Allegheny, PA	
Maricopa, AZ		Beaver, PA	
Pinal, AZ		Butler, PA	
6240 Pine Bluff, AR	0.7826	Fayette, PA	
Jefferson, AR		Washington, PA	
6280 Pittsburgh, PA	0.9725	Westmoreland, PA	
Allegheny, PA		6323 Pittsfield, MA	1.0960
Beaver, PA		Berkshire, MA	
Butler, PA		6340 Pocatello, ID	0.9586
Fayette, PA		Bannock, ID	
Washington, PA		6360 Ponce, PR	0.4589
Westmoreland, PA		Guayanilla, PR	
6323 Pittsfield, MA	1.0960	Juana Diaz, PR	
Berkshire, MA		Penuelas, PR	
6340 Pocatello, ID	0.9586	Ponce, PR	
Bannock, ID		Villalba, PR	
6360 Ponce, PR	0.4589	Yauco, PR	
Guayanilla, PR		6403 Portland, ME	0.9627
Juana Diaz, PR		Cumberland, ME	
Penuelas, PR		Sagadahoc, ME	
Ponce, PR		York, ME	
Villalba, PR		6440 Portland-Vancouver, OR- WA	1.1344
Yauco, PR		Clackamas, OR	
6403 Portland, ME	0.9627	Columbia, OR	
Cumberland, ME		Multnomah, OR	
Sagadahoc, ME		Washington, OR	
York, ME		Yamhill, OR	
6440 Portland-Vancouver, OR- WA	1.1344	Clark, WA	
Clackamas, OR		6483 Providence-Warwick-Paw- lucket, RI	1.1049
Columbia, OR		Bristol, RI	
Multnomah, OR		Kent, RI	
Washington, OR		Newport, RI	
Yamhill, OR		Providence, RI	
Clark, WA		Washington, RI	

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index	Urban Area (Constituent counties or county equivalents)	Wage index	Urban Area (Constituent counties or county equivalents)	Wage index
6520 Provo-Orem, UT	1.0073	Placer, CA		Luguillo, PR	
Utah, UT		Sacramento, CA		Manati, PR	
6560 Pueblo, CO	0.8450	6960 Saginaw-Bay City-Midland, MI	0.9564	Morovis, PR	
Pueblo, CO		Bay, MI		Naguabo, PR	
6580 Punta Gorda, FL	0.8725	Midland, MI		Naranjito, PR	
Charlotte, FL		Saginaw, MI		Rio Grande, PR	
6600 Racine, WI	0.8934	6980 St Cloud, MN	0.9544	San Juan, PR	
Racine, WI		Benton, MN		Toa Alta, PR	
6640 Raleigh-Durham-Chapel Hill, NC	0.9818	Stearns, MN		Toa Baja, PR	
Chatham, NC		7000 St Joseph, MO	0.8366	Trujillo Alto, PR	
Durham, NC		Andrews, MO		Vega Alta, PR	
Franklin, NC		Buchanan, MO		Vega Baja, PR	
Johnston, NC		7040 St Louis, MO-IL	0.9130	Yabucoa, PR	
Orange, NC		Clinton, IL		7460 San Luis Obispo- Atascadero-Paso Robles, CA	1.1374
Wake, NC		Jersey, IL		San Luis Obispo, CA	
6660 Rapid City, SD	0.8345	Madison, IL		7480 Santa Barbara-Santa Maria- Lompoc, CA	1.0688
Pennington, SD		Monroe, IL		Santa Barbara, CA	
6680 Reading, PA	0.9516	St Clair, IL		7485 Santa Cruz-Watsonville, CA	1.4187
Berks, PA		Franklin, MO		Santa Cruz, CA	
6690 Redding, CA	1.1790	Jefferson, MO		7490 Santa Fe, NM	1.0332
Shasta, CA		Lincoln, MO		Los Alamos, NM	
6720 Reno, NV	1.0768	St Charles, MO		Santa Fe, NM	
Washoe, NV		St Louis, MO		7500 Santa Rosa, CA	1.2815
6740 Richland-Kennewick-Pasco, WA	0.9918	St Louis City, MO		Sonoma, CA	
Benton, WA		Warren, MO		7510 Sarasota-Bradenton, FL	0.9757
Franklin, WA		Sullivan City, MO		Manatee, FL	
6760 Richmond-Petersburg, VA ...	0.9152	7080 Salem, OR	0.9935	Sarasota, FL	
Charles City County, VA		Marion, OR		7520 Savannah, GA	0.8638
Chesterfield, VA		Polk, OR		Bryan, GA	
Colonial Heights City, VA		7120 Salinas, CA	1.4513	Chatham, GA	
Dinwiddie, VA		Monterey, CA		Effingham, GA	
Goochland, VA		7160 Salt Lake City-Ogden, UT ...	0.9857	7560 Scranton-Wilkes-Barre- Hazleton, PA	0.8539
Hanover, VA		Davis, UT		Columbia, PA	
Henrico, VA		Salt Lake, UT		Lackawanna, PA	
Hopewell City, VA		Weber, UT		Luzerne, PA	
New Kent, VA		7200 San Angelo, TX	0.7780	Wyoming, PA	
Petersburg City, VA		Tom Green, TX		7600 Seattle-Bellevue-Everett, WA	1.1339
Powhatan, VA		7240 San Antonio, TX	0.8499	Island, WA	
Prince George, VA		Bexar, TX		King, WA	
Richmond City, VA		Comal, TX		Snohomish, WA	
6780 Riverside-San Bernardino, CA	1.1307	Guadalupe, TX		7610 Sharon, PA	0.8783
Riverside, CA		Wilson, TX		Mercer, PA	
San Bernardino, CA		7320 San Diego, CA	1.2193	7620 Sheboygan, WI	0.7862
6800 Roanoke, VA	0.8402	San Diego, CA		Sheboygan, WI	
Botetourt, VA		7360 San Francisco, CA	1.4180	7640 Sherman-Denison, TX	0.8499
Roanoke, VA		Marin, CA		Grayson, TX	
Roanoke City, VA		San Francisco, CA		7680 Shreveport-Bossier City, LA	0.9381
Salem City, VA		San Mateo, CA		Bossier, LA	
6820 Rochester, MN	1.0502	7400 San Jose, CA	1.4332	Caddo, LA	
Olmsted, MN		Santa Clara, CA		Webster, LA	
6840 Rochester, NY	0.9524	7440 San Juan-Bayamon, PR	0.4625	7720 Sioux City, IA-NE	0.8031
Genesee, NY		Agua Buenas, PR		Woodbury, IA	
Livingston, NY		Barceloneta, PR		Dakota, NE	
Monroe, NY		Bayamon, PR		7760 Sioux Falls, SD	0.8712
Ontario, NY		Canovanas, PR		Lincoln, SD	
Orleans, NY		Carolina, PR		Minnehaha, SD	
Wayne, NY		Catano, PR		7800 South Bend, IN	0.9868
6880 Rockford, IL	0.9081	Ceiba, PR		St Joseph, IN	
Boone, IL		Comerio, PR		7840 Spokane, WA	1.0486
Ogle, IL		Corozal, PR		Spokane, WA	
Winnebago, IL		Dorado, PR		7880 Springfield, IL	0.8713
6895 Rocky Mount, NC	0.9029	Fajardo, PR		Menard, IL	
Edgecombe, NC		Florida, PR		Sangamon, IL	
Nash, NC		Guaynabo, PR		7920 Springfield, MO	0.7989
6920 Sacramento, CA	1.2202	Humacao, PR		Christian, MO	
El Dorado, CA		Juncos, PR			
		Los Piedras, PR			
		Loiza, PR			

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0740
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9635
Centre, PA	
8080 Steubenville-Weirton, OH- WV	0.8645
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.1496
San Joaquin, CA	
8140 Sumter, SC	0.7842
Sumter, SC	
8160 Syracuse, NY	0.9464
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1016
Pierce, WA	
8240 Tallahassee, FL	0.8332
Gadsden, FL	
Leon, FL	
8280 Tampa-St Petersburg-Clear- water, FL	0.9103
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8614
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8664
Miller, AR	
Bowie, TX	
8400 Toledo, OH	1.0390
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9438
Shawnee, KS	
8480 Trenton, NJ	1.0380
Mercer, NJ	
8520 Tucson, AZ	0.9180
Pima, AZ	
8560 Tulsa, OK	0.8074
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8187
Tuscaloosa, AL	
8640 Tyler, TX	0.9567
Smith, TX	
8680 Utica-Rome, NY	0.8398
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3754
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.0946
Ventura, CA	
8750 Victoria, TX	0.8474

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0110
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9924
Tulare, CA	
8800 Waco, TX	0.7696
McLennan, TX	
8840 Washington, DC-MD-VA- WV	1.0911
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8640
Black Hawk, IA	
8940 Wausau, WI	1.0545
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	1.0372
Palm Beach, FL	
9000 Wheeling, OH-WV	0.7707
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9403
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7646
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8548
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.1538
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9322
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0102
Yakima, WA	
9270 Yolo, CA	1.1431
Yolo, CA	
9280 York, PA	0.9415
York, PA	
9320 Youngstown-Warren, OH	0.9937

TABLE 2.I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent counties or county equivalents)	Wage index
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0324
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9732
Yuma, AZ	

TABLE 2.I.—WAGE INDEX FOR RURAL AREAS	
Nonurban area	Wage index
Alabama	0.7260
Alaska	1.2302
Arizona	0.7989
Arkansas	0.6995
California	0.9977
Colorado	0.8129
Connecticut	1.2617
Delaware	0.8925
Florida	0.8838
Georgia	0.7761
Hawaii	1.0229
Idaho	0.8221
Illinois	0.7644
Indiana	0.8161
Iowa	0.7391
Kansas	0.7203
Kentucky	0.7772
Louisiana	0.7383
Maine	0.8468
Maryland	0.8617
Massachusetts	1.0718
Michigan	0.8923
Minnesota	0.8179
Mississippi	0.6911
Missouri	0.7205
Montana	0.8302
Nebraska	0.7401
Nevada	0.8914
New Hampshire	0.9717
New Jersey ¹	
New Mexico	0.8070
New York	0.8401
North Carolina	0.7937
North Dakota	0.7360
Ohio	0.8434
Oklahoma	0.7072
Oregon	0.9975
Pennsylvania	0.8421
Puerto Rico	0.3939
Rhode Island ¹	
South Carolina	0.7921
South Dakota	0.6983
Tennessee	0.7353
Texas	0.7404
Utah	0.8926
Vermont	0.9314
Virginia	0.7782
Washington	1.0221
West Virginia	0.7938
Wisconsin	0.8471
Wyoming	0.8247

¹ All counties within the State are classified urban.

E. Relationship of RUG-III Classification System to Existing Skilled Nursing Facility Level of Care Criteria

Section 1814(a)(2)(B) of the Act provides that, in order for Part A to make payment under the extended care benefit, a physician, nurse practitioner, or clinical nurse specialist must initially certify (and periodically recertify) that the beneficiary needs a specific level of care, specifically, skilled nursing or rehabilitation services on a daily basis which, as a practical matter, can only be provided in an SNF on an inpatient basis. Longstanding administrative criteria for determining whether a beneficiary meets this statutory SNF level of care definition appear in regulations at §§ 409.31 through 409.35 and manual instructions in the Medicare Intermediary Manual, Part 3 (MIM-3), §§ 3132ff and the Skilled Nursing Facility Manual §§ 214ff. These criteria entail a retrospective review that focuses primarily on a beneficiary's need for and receipt of specific, individual skilled services as indicators of the need for a covered SNF level of care. (The certification/recertification procedure itself is implemented in regulations at § 424.20.)

In this context, the RUG-III system serves three distinct but related purposes:

- Streamlining and simplifying the process for determining that a beneficiary meets the statutory criteria for an SNF level of care (which is a prerequisite for making program payment under the extended care benefit), by automatically classifying those beneficiaries assigned to any of the highest 26 of the 44 RUG-III groups as meeting the definition. (For those beneficiaries assigned to the lowest 18 groups, level of care determinations are performed on an individual basis, using the existing administrative criteria established for this purpose.)

- Determining the level of the Part A per diem payment under the SNF PPS, which varies with the resource intensity of the particular RUG-III group to which an individual beneficiary is assigned. In addition to developing a per diem payment rate for each of the RUG-III groups, we are also creating a default payment rate (as discussed previously in section II.B.11.) to address situations such as those in which the facility's failure to submit a completed assessment in a timely manner prevents the beneficiary from being assigned to a particular RUG-III group. In order to receive payment at the default rate in the absence of completing an assessment timely, the SNF would have to submit sufficient information to its

Medicare fiscal intermediary (FI) to enable the FI to establish coverage under the existing administrative criteria.

- Providing an additional basis for making an administrative presumption (under regulations at § 409.60(c)(2)) that an SNF resident who has exhausted Part A benefits continues to meet the skilled level of care definition in the SNF, since a resident assigned to any of the upper 26 RUG-III groups is automatically classified as meeting this definition. Such a resident continues to be considered an "inpatient" of the SNF for purposes of prolonging his or her current benefit period under section 1861(a)(2) of the Act and § 409.60(b)(2) of the regulations.

As discussed below, we believe that certain specific modifications are appropriate in the existing administrative criteria that are used for making SNF level of care determinations, in order to achieve greater consistency between them and the RUG-III classification system. Under the demonstration, those beneficiaries assigned to any of the highest 26 of the 44 RUG-III groups have been defined as meeting the SNF level of care specified in the statute. Thus, the RUG-III classification system used under the demonstration and the existing administrative level of care criteria essentially represent two different approaches toward achieving the same objective—identifying those beneficiaries who meet the SNF level of care definition in section 1814(a)(2)(B) of the Act. Under the demonstration, RUG-III has been used as a means of qualifying beneficiaries for coverage, not disqualifying them. That is, those beneficiaries assigned to any of the upper 26 groups are automatically classified as meeting the SNF level of care definition while those beneficiaries assigned to any of the lower 18 groups are not automatically classified as either meeting or not meeting the definition, but instead receive an individual level of care determination using the existing administrative criteria. This procedure will continue under the new SNF PPS. Thus, a beneficiary who is assigned to one of the upper 26 RUG-III groups is automatically designated as meeting the SNF level of care definition, and the required initial certification under § 424.20(a) regarding such a beneficiary's general need for an SNF level of care would, in effect, simply serve to confirm the correctness of this designation. Accordingly, we are amending the regulations at § 424.20(a) to provide that, at the option of the individual completing it, the initial certification for a beneficiary who is

assigned to one of the upper 26 RUG-III groups can either consist of the existing content described in that provision or, alternatively, can state simply that the beneficiary's assignment to that particular RUG-III group is correct.

Under this type of framework, it is not essential for the RUG-III system to conform exactly to the existing administrative criteria, since any beneficiary who does not initially meet the criteria for coverage under the former will then receive an individual level of care determination under the latter. Nevertheless, it is desirable from a programmatic standpoint to reconcile, whenever possible, any specific inconsistencies that may exist between these two approaches in their treatment of particular conditions and circumstances. Further, for the reasons discussed below, we believe that resolving these inconsistencies in favor of the approach taken under RUG-III would also help bring the existing administrative criteria more into line with the current state of clinical practice. We note that these changes in the existing administrative criteria will become effective with the introduction of the Part A SNF PPS and its RUG-III classification system (that is, for cost reporting periods beginning on or after July 1, 1998), and will be implemented on a prospective basis only.

Accordingly, we will advise Medicare contractors that any beneficiary who, upon the effective date of these changes, is currently in a covered SNF stay will not have his or her coverage terminated on the basis of these revisions for the duration of that covered stay.

The existing administrative criteria for making SNF level of care determinations focus primarily on the use of specific, individual skilled services as indicators of a beneficiary's need for a covered level of care. The particular services identified in these criteria date back to the Senate Finance Committee Report language (S. Rep. No. 92-1230, pp. 282-285) that accompanied the Social Security Amendments of 1972 (Public Law 92-603). However, in the 25 years since that legislation was enacted, the state of clinical practice for the nursing home population has advanced dramatically, to the point where some of the specific types of services cited in the Committee Report either have fallen largely into disuse or have now become routinely available in less intensive settings. Accordingly, with the passage of time, some of the individual services identified as skilled in the existing administrative criteria no longer, in themselves, represent valid indicators of

the need for a covered SNF level of care. Consequently, while such services might still be considered "skilled" in a technical sense (in that they may arguably require rendition by skilled personnel in order to be furnished safely and effectively), we believe that they are no longer appropriate for inclusion in the SNF level of care criteria.

For example, we believe that from a clinical as well as programmatic standpoint, it is no longer necessary or appropriate to include "hypodermoclysis" (injection of fluids into the subcutaneous tissues to supply the body with liquids quickly) in the list of examples of skilled nursing services at § 409.33(b). Medically, this service is equivalent to giving fluids in an intravenous infusion. As more SNFs have become proficient in the administration of intravenous medications and fluids, the number of cases in which this service would be appropriate becomes extremely small. Although there may be a very small number of beneficiaries who cannot be hydrated with intravenous fluids, it is likely that they would be sufficiently medically complex as to be classified into one of the top 26 RUG-III categories, regardless of the use of hypodermoclysis.

We also believe that the ordering of subcutaneous injections can no longer be considered sufficient in itself to justify the designation of a covered SNF level of care. We note that the most frequently administered type of subcutaneous medication is insulin, which has long been defined as a nonskilled service with respect to any beneficiary who is capable of self-administration. Further, with the evolving state of clinical practice over time, the administration of a subcutaneous injection has now become commonly accepted as a nonskilled service even in less intensive settings such as physician offices and home health agencies, making its continued categorization as a skilled service in the SNF context increasingly anomalous. In the RUG-III classifications, an insulin-dependent diabetic beneficiary who is clinically unstable enough to have had two physician order changes within the preceding 7 days would be assigned to one of the top 26 groups and, thus, would automatically be classified as meeting the standard for a covered level of care. By contrast, a beneficiary who has stabilized and continues to receive subcutaneous injections on a chronic basis will, in all likelihood, have already exhausted the 100 days of available SNF coverage per benefit period at that point. In this situation, categorizing the injections as a

nonskilled service would actually work to the beneficiary's advantage, as it would enable such a beneficiary to end that benefit period in the SNF under regulations at § 409.60(b)(2).

The vast majority of urinary catheters are placed in the urethra, but a few are suprapubic. The current administrative criteria also identify the insertion into the urethra and sterile irrigation of urinary catheters as a skilled nursing service. However, RUG-III does not consider any of these catheters in assigning patients to a RUG-III category. Further, we believe that it may well be inherently undesirable to specify the use of urinary catheters as a criterion that effectively governs SNF coverage determinations, because of the risk that this creates of providing an unwarranted incentive for the inappropriate use of urinary catheters. It is widely recognized that there is a significant amount of unnecessary use of catheters for the convenience of care givers, with the potential to place beneficiaries at increased risk of infection. Nevertheless, we also recognize that a catheter can be medically necessary, especially in those particular situations where obstruction is present. Accordingly, we are not deleting this particular procedure from the administrative criteria at this time. We invite comments on whether the care of suprapubic catheters should be considered skilled.

The RUG-III groups recognize enteral feeding as a criterion for patient classification only if it is providing the patient with more than 26 percent of his or her calories and at least 501 milliliters of hydration daily. Historically, the administrative criteria have only required the mere presence of a "Levin tube" (now referred to as a nasogastric tube) or a gastrostomy tube for enteral feeding. We note that, in recent years, gastrostomy tube feedings have become the more commonly used procedure, as the chronic use of nasogastric tubes has been replaced because of the increased risk of pneumonia from aspirating fluid into the lungs. The demonstration took a more specifically defined approach because a few beneficiaries in all the demonstration states were found to have had feeding tubes retained even though they were no longer used (or even usable), with the only apparent purpose being to maintain the beneficiary's "skilled" status. Because we believe that it is clearly inappropriate for such a practice to serve as an indicator of the need for a covered level of care, we are revising the administrative criteria to adopt the RUG-III system's more specific approach. That approach incorporates specific criteria (that is, comprising at least 26 per cent of daily

calorie requirements and providing at least 501 milliliters of fluid per day) that effectively limit the recognition of enteral feeding as a skilled service (regardless of whether administered by nasogastric, gastrostomy, or gastrojejunostomy tube) to those instances in which it currently is clinically relevant to the beneficiary. We note that this particular change would not result in removing enteral feeding altogether from the list of skilled nursing services in § 409.33(b), but merely would provide more specific, objective criteria for ensuring that coverage determinations take this particular procedure into account only in those instances where its use is, in fact, reasonable and necessary in accordance with section 1862(a)(1) of the Act.

Under the existing administrative criteria, "management and evaluation of a care plan," "observation and assessment," and "patient education" needed to teach a patient self-maintenance during the initial stages of treatment would be sufficient in themselves to justify the need for skilled nursing services. The RUG-III system uses nursing rehabilitation frequency of physician visits and number of days on which physician orders change as criteria to assign patients. "Nursing rehabilitation" is defined in the *Long Term Care Resident Assessment Manual*. The services considered to be nursing rehabilitation in the PPS system include, but are not limited to, teaching self-care for diabetic management, self-administration of medications, and ostomy care.

It is our experience in the demonstration that these criteria effectively serve as proxies to the existing categories of "management and evaluation of a care plan," "observation and assessment," and "patient education" (see the preceding discussion on the RUG-III Clinically Complex category). Observation and assessment (§ 409.33(a)(2)) involves a medically fragile beneficiary who (although not presently receiving any specific skilled services) could potentially undergo a sudden and rapid decline at any time and, consequently, may require skilled expertise on the part of facility staff in order to recognize and respond quickly to the earliest signs of an impending change in condition.

Because the category of observation and assessment is, by definition, limited to a beneficiary whose condition is potentially unstable, the RUG-III criteria for frequency of physician visits and number of order changes clearly represent appropriate proxies in this situation. They similarly serve as appropriate proxies for the category of

skilled management and evaluation (§ 409.33(a)(1)) of an aggregate of nonskilled services (which is generally invoked only during the first few days of a beneficiary's SNF stay, until more specific skilled care needs can be identified through the completion of the resident assessment) and of patient education (§ 409.33(a)(3), which involves teaching self-maintenance during the initial stages of treatment), since these categories are generally confined to the initial portion of the SNF stay, typically before the beneficiary's condition has stabilized. Accordingly, because we anticipate that essentially all patients falling into these categories will be assigned to one of the highest 26 RUG-III groups, we believe that it is no longer necessary to retain these particular categories in the administrative criteria.

As noted above, the dramatic advances in the state of medical and nursing practice that have occurred over the past 25 years have necessitated a reevaluation of some of the specific elements in the existing SNF level of care criteria. These advances in clinical practice have also been accompanied by a significant improvement in the ability to collect and utilize clinical data for program purposes, as exemplified by the MDS and RUG-III. Therefore, we believe it may be appropriate to consider the feasibility of ultimately moving beyond the limited, incremental adjustments in the existing SNF level of care criteria discussed above, in favor of a more fundamental change in the overall process of performing SNF level of care determinations themselves. Specifically, it may be possible to eliminate the use of the existing administrative criteria altogether, by utilizing RUG-III as the exclusive means for making these determinations rather than as a mere adjunct to the administrative criteria.

We believe that the RUG-III system's basic approach, which provides for an ongoing evaluation of an entire cluster of patient indicators, may well represent a more predictable and reliable way of making accurate SNF level of care determinations than the existing administrative criteria's primary focus on reviewing claims information retrospectively for the presence or absence of individual skilled services. Besides being a far simpler procedure from an administrative standpoint, we believe that basing SNF level of care determinations exclusively on the RUG-III system would represent a significant improvement over certain aspects of the existing criteria:

- *Greater reliability in predicting in advance whether a particular*

beneficiary will qualify for coverage.

Under the current process of determining Medicare coverage with the existing administrative criteria based on a retrospective claims review, it can be difficult to predict with certainty whether a particular beneficiary's SNF care will be covered. One early attempt to address the resulting problem of retroactive coverage denials was the enactment of the "presumed coverage" provision in section 228(a) of Public Law 92-603, which was designed to grant periods of SNF coverage prospectively on the basis of a beneficiary's diagnosis. However, in section 941 of the Omnibus Reconciliation Act of 1980 (Public Law 96-499), the Congress ultimately repealed this provision as unworkable. Thus, while the subsequently-enacted hospital PPS was able to use diagnosis successfully as a predictor of resource intensity for acute care, the long-term care setting required the development of indicators that were more sensitive to the particular characteristics of patients in this setting. We believe that in the RUG-III classification system, we have now developed such an instrument, with the potential to bring greater reliability and predictability to the SNF coverage determination process.

- *Increased consistency and uniformity among different contractors in making level of care determinations.*

The process of retrospective claims review conducted under the existing administrative criteria inherently relies upon the medical judgment of the individual reviewer. Thus, it would be possible for two claims with essentially identical sets of facts to be adjudicated differently by different contractors. By contrast, RUG-III utilizes a unified set of specific clinical criteria that is more coherent and objective, thus diminishing the potential for variation based on differences in individual judgment.

It is worth noting that even the existing criteria implicitly acknowledge the limitations of an approach that looks solely at the presence or absence of individual skilled services. As mentioned previously, the existing criteria have historically recognized situations that may require skilled overall management and evaluation of the care plan of a beneficiary who receives only an aggregate of unskilled services, or that may require skilled observation and assessment of changes in the condition of an extremely unstable and medically fragile beneficiary, even though the beneficiary does not presently receive any specific skilled services. Further, RUG-III's approach of evaluating a broad cluster

of services and other patient indicators is consistent with the recent Medicare trend of grouping individual services into increasingly larger bundles for program purposes, as exemplified by the SNF PPS and Consolidated Billing provisions.

Another reason that it may now be feasible to rely exclusively on the RUG-III system in making level of care determinations is that the upper 26 RUG-III categories and the existing administrative criteria (as now modified) should serve to identify increasingly similar sets of patients as meeting the SNF level of care definition. We also note a steady decline over the course of the demonstration in the proportion of covered days for those beneficiaries assigned to any of the lower 18 RUG-III groups (which initially represented approximately 15 percent of total covered days), to the point where such beneficiaries ultimately accounted for only about 5 to 8 percent of total covered days. Thus, one possible approach might be simply to establish that beneficiaries assigned to the highest 26 groups meet the SNF level of care definition, while those assigned to the lowest 18 groups do not, and we specifically solicit comments on the feasibility of this approach.

However, we also solicit comments on the possible extent and specific nature of situations in which beneficiaries who are assigned to one of the lower 18 RUG-III groups might nonetheless meet the statutory standard for an SNF level of care, including information on their clinical profiles as well as the specific basis on which they would qualify for Medicare SNF coverage.

We are also creating a new, rebuttable presumption of an SNF resident's continued "inpatient" status for benefit period purposes, based on his or her assignment to one of the upper 26 RUG-III groups. We are adding this new administrative presumption to paragraph (c)(2) of § 409.60 rather than to paragraph (c)(1) since, unlike the presumptions included in paragraph (c)(1), it is not limited to instances in which a claim for Medicare SNF benefits is actually filed. Thus, a benefit period determination under this presumption could be rebutted by presenting evidence establishing that the beneficiary should have been assigned to one of the lower 18 RUG-III groups which, in turn, would permit a determination that the beneficiary was not actually receiving a covered level of care.

III. Three-Year Transition Period

Under sections 1888(e) (1) and (2) of the Act, during a facility's first three

cost reporting periods that begin on or after July 1, 1998 (transition period), the facility's PPS rate will be equal to the sum of a percentage of an adjusted facility-specific per diem rate and a percentage of the adjusted Federal per diem rate. After the transition period, the PPS rate will equal the adjusted Federal per diem rate. The transition period payment method will not apply to SNFs that first received Medicare payments (interim or otherwise) on or after October 1, 1995 under present or previous ownership; these facilities will be paid based on 100 percent of the Federal rate.

The facility-specific per diem rate is the sum of the facility's total allowable Part A Medicare costs and an estimate of the amounts that would be payable under Part B for covered SNF services for cost reporting periods beginning in fiscal year 1995 (base year). The base year cost report used to compute the facility-specific per diem rate in the transition period must be the latest available cost report. It may be settled (either tentative or final) or as-submitted for Medicare payment purposes. Under section 1888(e)(3) of the Act, any adjustments to the base year cost report made as a result of settlement or other action by the fiscal intermediary, including cost limit exceptions/exemptions, results of an appeal, etc., will result in a retroactive adjustment to the facility-specific per diem rate. The instructions below should be used to calculate the facility-specific per diem rate.

A. Determination of Facility-Specific Per Diem Rates

1. Part A Cost Determination

The facility-specific per diem rate reflects the total allowable Part A Medicare cost (routine, ancillary, and capital-related) incurred during a facility's cost reporting period beginning in Federal fiscal year 1995 (base year). The facility-specific per diem rate will be adjusted to account for the amounts of (1) exceptions granted to the inpatient routine services cost limits under § 413.30(f), and (2) new provider exemptions from the cost limits under § 413.30(e), only to the extent that routine service costs do not exceed 150 percent of applicable unadjusted cost limits.

Part A Medicare costs associated with approved educational activities, as defined in § 413.85, are not included in the facility-specific per diem rate. A facility's actual reasonable costs of approved educational activities will be separately identified and apportioned to the Medicare program for payment

purposes on the Medicare cost report effective for cost reporting periods beginning on or after July 1, 1998.

Under section 1888(e)(3)(B)(ii) of the Act, for facilities participating in the Nursing Home Case-Mix and Quality Demonstration (RUG-III), the Part A Medicare costs used to compute the facility-specific per diem rate will be the aggregate RUG-III payment received for services furnished in the cost reporting period beginning calendar year 1997 plus the routine capital costs and ancillary costs (other than occupational therapy, physical therapy, and speech pathology costs) as reported on the facility's Medicare cost report that begins in calendar year 1997.

For those low volume SNFs that received a prospectively determined payment rate for SNF routine services, under section 1888(d) of the Act and part 413, subpart I, the facility-specific per diem rate will be the applicable prospectively determined payment rate plus Medicare ancillary cost per diem.

Calculations to determine Medicare Part A costs are to be made as follows:

- Freestanding Skilled Nursing Facilities.* (1) Skilled Nursing Facilities Without an Exception for Medical and Paramedical Education (§ 413.30(f)(4)) or a New Provider Exemption in the Base Year.

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA-2540-92, worksheet D-1, line 23 or HCFA-2540-96, worksheet D-1, line 25).

Step 2. Determine Medicare Routine medical education costs—worksheet B, part I, line 16, column 14 divided by total patient days (Worksheet S-3, line 1, column 7) then multiplied by total Medicare days (Worksheet S-3, line 1, column 4).

Step 3. Subtract amount in Step 2. from amount in Step 1. above.

Step 4. Compare amount in Step 3. above to the inpatient routine service cost limitation, including exception amounts other than Medical and Paramedical Education: see (2) below (HCFA-2540-92, worksheet D-1, line 24 or HCFA-2540-96, worksheet D-1, line 27) and take the lesser of the two amounts.

Step 5. Add the amount in Step 4. to the program capital related cost (HCFA-2540-92, worksheet D-1, line 20 or HCFA-2540-96, worksheet D-1, line 22).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA-

2540-92 or HCFA-2540-96, Worksheet E, part I, line 1).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I, calculate separately each line 21-33, dividing column 14 by column 18. Multiply the resulting percentage by the corresponding line (lines 21-33) on worksheet D, column 4. Total the resulting amounts calculated for lines 21-33.

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

iii. Part A Cost Equals the Amount in i. Step 5. Plus the Amount in ii. Step 3. Above

(2) Skilled Nursing Facilities With an Exception for Medical and Paramedical Education in the Base Year.

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA-2540-92, worksheet D-1, line 23 or HCFA-2540-96, worksheet D-1, line 25).

Step 2. Determine Medicare Routine medical education costs—worksheet B, part I, line 16, column 14 divided by total patient days (Worksheet S-3, line 1, column 7) then multiplied by total Medicare days (Worksheet S-3, line 1, column 4).

Step 3. Subtract the amount in Step 2. from the amount in Step 1. above

Step 4. From the inpatient routine service cost limitation, including all exception amounts granted, (HCFA-2540-92, worksheet D-1, line 24 or HCFA-2540-96, worksheet D-1, line 27) subtract the exception amount granted for medical and paramedical education costs.

Step 5. Compare amount in Step 3. above with the amount in Step 4. above and take the lesser of the two amounts.

Step 6. Add amount in Step 5. to the program capital related cost (HCFA-2540-92, worksheet D-1, line 20 or HCFA-2540-96, worksheet D-1, line 22).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA-2540-92 or HCFA-2540-96, Worksheet E, part I, line 1).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I, calculate separately each line 21-33, dividing column 14 by column 18. Multiply the resulting percentage by the corresponding line (lines 21-33) on worksheet D, column 4. Total the amounts calculated for lines 21-33.

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

iii. Part A Cost Equals the Amount in i. Step 6. Plus the Amount in ii. Step 3. Above

(3) Skilled Nursing Facilities With New Provider Exemptions From the Cost Limits in the Base Year.

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA-2540-92, worksheet D-1, line 23 or HCFA-2540-96, worksheet D-1, line 25).

Step 2. Determine Medicare Routine medical education costs—worksheet B, part I, line 16, column 14 divided by total patient days (Worksheet S-3, line 1, column 7) then multiplied by total Medicare days (Worksheet S-3, line 1, column 4).

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

Step 4. Multiply the unadjusted inpatient routine service cost limitation (the cost limit amount had the SNF not received an exemption, which is normally reported on HCFA-2540-92, worksheet D-1, line 24 or HCFA-2540-96, worksheet D-1, line 27) by 1.5.

Step 5. Compare amount in Step 3. above with the amount in Step 4. above and take the lesser of the two amounts.

Step 6. Add to the amount in Step 5. the program capital related cost (HCFA-2540-92, worksheet D-1, line 20 or HCFA-2540-96, worksheet D-1, line 22).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA-2540-92 or HCFA-2540-96, Worksheet E, part I, line 1).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I, calculate separately each line 21-33, dividing column 14 by column 18. Multiply the resulting percentage by the corresponding line (lines 21-33) on worksheet D, column 4. Total the amounts calculated for lines 21-33.

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

iii. Part A Cost Equals the Amount in i. Step 6. Plus the Amount in ii. Step 3. Above

b. *Hospital-based skilled nursing facilities.* (1) Skilled Nursing Facilities Without an Exception for Medical and Paramedical Education or a New Provider Exemption:

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 76).

Step 2. Determine Medicare Routine medical education costs—worksheet B part I, line 34, sum of columns 21 and 24 (only amounts that are for approved education programs), divided by total patient days (worksheet S-3, part I, line 11 (HCFA-2552-92) or part I, line 15 (HCFA-2552-96) column 6) then multiplied by total Medicare days (worksheet S-3, part I, line 11 (HCFA-2552-92) or part I, line 15 (HCFA-2552-96), column 4).

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

Step 4. Compare amount in Step 3. above to the inpatient routine service cost limitation, including exception amounts other than Medical and Paramedical education; see (2) below, (HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 78) and take the lesser of the two amounts.

Step 5. Add to amount in Step 4. The program capital related cost (HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 73).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 80).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I, (calculate separately each line 37-59), dividing the sum of columns 21 and 24 (approved programs only) by column 27. Multiply the resulting percentage by the corresponding line (lines 37-59) on worksheet D-4 (SNF), column 3. Total the amounts calculated for lines 37-59.

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

iii. Part A Cost Equals the Amount in i. Step 5. Plus the Amount in ii. Step 3. Above

(2) Skilled Nursing Facilities With an Exception for Medical and Paramedical Education in the Base Year.

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 76).

Step 2. Determine Medicare Routine medical education costs—worksheet B part I, line 34, sum of columns 21 and 24 (only amounts that are for approved education programs), divided by total patient days (worksheet S-3, part I, line 11 (HCFA-2552-92) or part I, line 15 (HCFA-2552-96) column 6) then multiplied by total Medicare days (worksheet S-3, part I, line 11 (HCFA-2552-92) or part I, line 15 (HCFA-2552-96), column 4).

2552-92) or part I, line 15 (HCFA-2552-96), column 4).

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

Step 4. From the inpatient routine service cost limitation, including all exception amounts granted, (HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 78) subtract the exception amount granted for medical and paramedical education costs.

Step 5. Compare amount in Step 3. above with the amount in Step 4. above and take the lesser of the two amounts.

Step 6. Add to the amount in Step 5. the program capital related cost (HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 73).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 80).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I (calculate separately each line 37-59), dividing the sum of columns 21 and 24 (approved programs only) by column 27. Multiply the resulting percentage by the corresponding line (lines 37-59) on worksheet D-4 (SNF), column 3. Total the amounts calculated for lines 37-59.

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

iii. Part A Cost Equals the Amount in i. Step 6. plus the amount in ii. Step 3. Above

(3) Skilled Nursing Facilities with exemptions from the cost limits in the base year.

i. Routine Costs

Step 1. Determine total program routine service costs for comparison to the cost limitation (HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 76).

Step 2. Determine Medicare Routine medical education costs—worksheet B, part I, line 34, sum of columns 21 and 24 (only amounts that are for approved education programs), divided by total patient days (worksheet S-3, part I, line 11 (HCFA-2552-92) or part I, line 15 (HCFA-2552-96), column 6) then multiplied by total Medicare days (worksheet S-3, part I, line 11 (HCFA-2552-92) or part I, line 15 (HCFA-2552-96), column 4).

Step 3. Subtract amount in Step 2. from the amount in Step 1. above.

Step 4. Multiply the unadjusted inpatient routine service cost limitation (the cost limit amount had the SNF not received an exemption, which is normally reported on HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 78) by 1.5.

Step 5. Compare amount in Step 3. above with the amount in Step 4. above and take the lesser of the two amounts.

Step 6. Add to the amount in Step 4. the program capital related cost (HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 73).

ii. Part A Ancillary Costs

Step 1. Determine total program inpatient ancillary services (HCFA-2552-92 or HCFA-2552-96, worksheet D-1, part III, line 80).

Step 2. Determine Medicare Ancillary medical education costs—worksheet B, part I (calculate separately each line 37-59), dividing the sum of columns 21 and 24 (approved programs only) by column 27. Multiply the resulting percentage by the corresponding line (lines 37-59) on worksheet D-4 (SNF), column 3. Total the amounts calculated for lines 37-59.

Step 3. Subtract the amount in Step 2. from the amount in Step 1. above.

iii. Part A Cost Equals the Amount in i. Step 6. Plus the Amount in ii. Step 3. Above

c. Medicare low volume Skilled Nursing Facilities electing prospectively determined payment rate (fewer than 1500 Medicare days).

(1) Providers Filing HCFA-2540-S-87.

Step 1. Determine inpatient ancillary services Part A (HCFA-2540-S-87, worksheet E, part A, line 1).

Step 2. Determine inpatient routine PPS amount (HCFA-2540-S-87, worksheet E, part A, line 6).

Step 3. Part A cost equals the amount in Step 1. plus the amount in Step 2. above.

(2) Providers Filing HCFA-2540 or HCFA-2552.

Step 1. Determine the prospective payment amount is used as the routine cost.

Step 2. Follow the steps under a.(1)(ii) if you are a freestanding SNF or b.(1)(ii) if you are a hospital-based SNF to calculate the ancillary costs.

Step 3. Part A cost equals the amount in Step 1. plus the amount in Step 2. above.

d. Providers participating in the multistate nursing home case-mix and quality demonstration—calculation of the prospective payment system rate. For providers that received payment under the RUGs-III demonstration during a cost reporting period that began in calendar year 1997, we will determine their facility-specific per diem rate using the methodology described below. It is possible that some providers participated in the demonstration but did not have a cost reporting period that began in calendar

year 1997. For those providers, we will determine their facility-specific per diem rate by using the calculations in (a), (b), or (c) above. As with the facility-specific per diem applicable to other providers, the allowable costs will be subject to change based on the settlement of the cost report used to determine the total payment under the demonstration. In addition, we derive a special market basket inflation factor to adjust the 1997 costs to the midpoint of the rate setting period (July 1, 1998 to September 30, 1999).

Step 1. Determine the aggregate payment during the cost reporting period that began in calendar year 1997—RUGs-III payment plus routine capital costs plus ancillary costs (other than Occupational Therapy, Physical Therapy, and Speech Pathology).

Step 2. Divide the amount in Step 1. by the applicable total inpatient days for the cost reporting period.

Step 3. Adjust the amount in Step 2. by 1.031532 (inflation factor)—Do not use Table 4.F.

The amount in Step 3 is the facility-specific rate that is applicable for the facility's first cost reporting period beginning after July 1, 1998. A separate calculation for Part B services is not required.

e. Base period cost reports that are adjusted for exception amounts or other post settlement adjustments.

Intermediaries will calculate a provider's Medicare Part A costs, as described above, using the latest available version of the cost report in the settlement process. Adjustments made in subsequent cost report versions, through the settlement or reopening process, will result in a revision to the facility-specific rate. Examples of these adjustments include exception amounts or other post-settlement adjustments.

B. Determination of the Part B Estimate

HCFA will supply each intermediary with the estimated Part B charges for each provider that it serves. As explained above, the BBA 1997 requires that the facility-specific per diem rates reflect items and services (other than those specifically excluded) for which, prior to July 1, 1998, payment had been made under Part B but furnished to SNF residents during a Part A covered stay. Accordingly, it was necessary to determine the Part B allowable charges (including coinsurance) associated with the SNFs contained in the cost report data base. This was accomplished by matching 100 percent of the Medicare Part B SNF claims associated with Part A covered SNF stays related to the SNF cost reporting periods beginning in the

1995 base year. The matched Part B allowable charges were computed at a facility level by the appropriate cost report cost center (for example, laboratory services, supplies) with the cost report data.

C. Calculation of the Facility-Specific Per Diem Rate

The facility-specific per diem rate is equal to the sum of Medicare Part A costs as determined in section III.A above and the Medicare Part B estimate described in section III.B above.

Example: The rules as shown under b.(2) above will be used in this example.

ABC SNF is a hospital-based SNF which received an exception of \$10,000 of which \$5,000 was for Medical and Paramedical Education costs in accordance with the rules at § 413.30(f)(4) in its base year. ABC SNF filed its cost report using HCFA-2552-96. ABC's facility-specific per diem rate for its first cost reporting period beginning in the transition period is calculated as follows:

Step 1. ABC SNF reported program routine service costs for comparison to the cost limits on worksheet D-1, part III, line 76 of \$200,000.

Step 2. Total (all patients) routine medical education costs (approved programs) from worksheet B, part I, line 34, the sum of columns 21 and 24 totaled \$25,000. Total patient days from worksheet S-3, part I, line 15, column 6 were 5,000 and total Medicare days (worksheet S-3, part I, line 15, column 4) were 1,000. Dividing the total costs of \$25,000 by the total days of 5,000 gives you a cost per day of \$5.00. Multiply the cost per day by the Medicare days of 1,000, which results in the total Medicare routine medical education cost of \$5,000.

Step 3. Subtract the amount in Step 2. (\$5,000) from the amount in Step 1. (\$200,000) or \$195,000 (\$195.00 per Medicare day).

Step 4. ABC-SNF's inpatient routine service cost limitation amount without any exception amounts is \$180,000, the amount with all exception amounts—including the \$5,000 exception amount for medical and paramedical education costs from worksheet D-1, part III, line 78 is \$190,000 (\$180,000 plus \$10,000). Subtract the exception amount for medical and paramedical education of \$5,000 to equal \$185,000.

Step 5. Determine the lesser amount in Step 3. and Step 4. above—\$185,000.

Step 6. Add the program capital-related cost of \$20,000 from worksheet D-1, part III, line 73 to the amount in Step 5 above to equal \$205,000.

Step 7. ABC SNF has total program inpatient ancillary services costs on

worksheet D-1, part III, line 80 of \$350,000.

Step 8. Determine Medicare ancillary medical education costs (approved programs) from worksheet B, part I, lines 37-59. Calculating each line (separately calculate each line) by taking the sum of columns 21 and 24 and dividing by column 27 (approved programs only). Multiply this percentage by the corresponding line (lines 37-59) on worksheet D-4 (SNF), column 3. Totaling the amounts calculated for lines 37-59 ABC SNF had Medicare ancillary medical education costs of \$35,000.

Step 9. Subtract amount in Step 8 (\$35,000) from line 7 (\$350,000) or \$315,000.

Step 10. Determine the estimated Part B amount supplied by HCFA for ABC. Assume, for this example, that this amount is \$50,000.

Step 11. Add amounts in Step 6 (\$205,000), Step 9 (\$315,000), and Step 10 (\$50,000) to determine the facility-specific per diem rate of \$570.00 (\$570,000 divided by 1,000 Medicare days).

RUG group	Labor portion*	Wage index	Adjusted labor	Nonlabor portion*	Adjusted rate	Medicare days	Payment
RVC	\$224.74	0.9635	\$216.54	\$71.41	\$287.95	50	\$14,398
RHC	206.06	.9635	198.54	65.47	264.01	100	26,401
Total						150	40,799

*From Table 2.G.

Step 3.

Apply transition period percentages:

Facility-specific per diem rate	\$599.35	150 days=	\$89,903
Times transition percentage (75 percent)		x .75	
Actual facility-specific PPS payment	\$67,427		
Federal PPS payment	\$40,799		
Times transition percentage (25 percent)		x .25	
Actual Federal PPS payment	\$10,200		

Step 4.

Compute total PPS payment
ABC's total PPS payment
(\$67,427+\$10,200)

IV. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires the Secretary to establish an SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. Accordingly, as described below, we have developed an SNF market basket index that

D. Computation of the Skilled Nursing Facility Prospective Payment System Rate During the Transition

For the first three cost reporting periods beginning on or after July 1, 1998 (transition period), an SNF's payment under the PPS is the sum of a percentage of the facility-specific per diem rate and a percentage of the Federal per diem rate. Under section 1888(e)(2)(C) of the Act, for the first cost reporting period in the transition period, the SNF payment will be the sum of 75 percent of the facility-specific per diem rate and 25 percent of the Federal per diem rate. For the second cost reporting period, the SNF payment will be the sum of 50 percent of the facility-specific per diem rate and 50 percent of the Federal per diem rate. For the third cost reporting period, the SNF payment will be the sum of 25 percent of the facility-specific per diem rate and 75 percent of the Federal per diem rate. For all subsequent cost reporting periods beginning after the transition period, the SNF payment will be equal

to 100 percent of the Federal per diem rate. See the example below.

Example of computation of adjusted PPS rates and SNF payment:

Using the ABC SNF described in this section, the following shows the adjustments made to the facility-specific per diem rate and the Federal per diem rate to compute the provider's actual per diem PPS payment in the transition period. ABC's 12-month cost reporting period begins July 1, 1998.

Step 1.

Compute:

Facility-specific per diem rate	\$570.00
Market Basket Adjustment (Table 4.F)	x 1.05149
Adjusted facility-specific rate	\$599.35

Step 2.

Compute Federal per diem rate:
SNF ABC from above is located in State College, PA with a wage index of 0.9635.

encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses.

A. Rebasing and Revising of the Skilled Nursing Facility Market Basket

1. Background

Effective for cost reporting periods beginning on or after October 1, 1979, we developed and adopted a routine SNF input price index, that is, the SNF market basket using data from 1977 as the base year.

Although "market basket" technically describes the mix of goods and services needed to produce SNF care, this term is also commonly used to denote the input price index that includes both weights (mix of goods and services) and price factors. Accordingly, the term "market basket" used in this rule refers to the SNF input price index.

The 1977-based routine SNF market basket was for routine costs (ancillary services and capital-related costs were excluded). The percentage change in the 1977-based routine market basket reflects the average change in the price

of a fixed set of goods and services purchased by SNFs to furnish routine services. We first used the market basket to adjust SNF cost limits to reflect the average increase in the prices of the goods and services used to furnish routine reasonable costs for SNF care. This approach linked the increase in the cost limits to the efficient utilization of resources. For background information, see the August 31, 1979 Federal Register (44 FR 51542).

For purposes of SNF PPS, the total cost SNF market basket is a fixed-weight (Laspeyres type) price index constructed in three steps. First, a base period is selected and total base period expenditure for cost shares is estimated for mutually exclusive and exhaustive spending categories. Total costs for routine services, ancillary costs, and capital-related costs are used. These proportions are called "cost" or "expenditure" weights. The second step essential for developing an input price index is to match each expenditure category to a price/wage variable, called a price proxy. These price proxy variables are drawn from publicly

available statistical series published on a consistent schedule, preferably at least quarterly. In the final step, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products (that is, weights multiplied by proxy index levels) for all cost categories yields the composite index level in the market basket for a given quarter or year. Repeating the third step for other quarters and years produces a time series of market basket index levels. Dividing one index level by an earlier index level produces rates of growth in the input price index.

The market basket is described as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent or prior to the base period are, by design, not considered.

To implement section 1888(e)(5)(A) of the Act, it is necessary to revise and rebase the routine cost market basket so the cost weights and price proxies reflect the mix of goods and services that SNFs purchase for all costs (routine, ancillary, and capital-related) encompassed by SNF PPS. The current SNF routine cost weights (excluding ancillary costs and capital-related costs) are from calendar year 1977. To the extent feasible, the data used to revise and rebase the SNF market basket are from fiscal year 1992. If data from an earlier period supplement fiscal year 1992 data, they have been aged forward for price changes.

2. Rebasing and Revising the Skilled Nursing Facility Market Basket

The terms "rebasing" and "revising," while often used interchangeably, actually denote different activities. Rebasing means moving the base year for the structure of costs of an input price index (for example, for this rule, we have moved the base year cost structure from calendar year 1977 to fiscal year 1992). Revising means changing data sources, cost categories, and/or price proxies used in the input price index.

To implement section 1888(e)(5)(A) of the Act, we are rebasing and revising the routine SNF market basket (excluding ancillary and capital-related costs) to reflect 1992 total cost data (routine, ancillary, and capital-related), the latest available relatively complete data on the structure of SNF costs; and to modify certain variables used as the price proxies for some of the cost categories.

In developing the revised market basket, we reviewed SNF expenditure data for the market basket cost categories. We reviewed Medicare Cost Reports for PPS-9 for each freestanding SNF that had Medicare expenses greater than 1 percent of total expenses. PPS-9 cost reports are those with cost reporting periods beginning after September 30, 1991 and before October 1, 1992. Data on SNF expenditures for six major expense categories (wages and salaries, employee benefits, contract labor, pharmaceuticals, capital-related, and a residual "all other") were edited and tabulated. After totals for these main cost categories were calculated, we then determined the proportion of total costs that each category represented. The proportions represent the revised and rebased major market basket weights for total costs including routine, ancillary, and capital-related costs.

Relative weights within the six categories were derived using U.S. Department of Commerce data for the nursing home industry. Relative cost shares from the Bureau of the Census' 1992 Asset and Expenditure Survey and the Bureau of Economic Analysis' (BEA) 1992 Input-Output Tables were used to disaggregate and allocate costs within the six categories from the 1992 SNF Medicare Cost Reports. The BEA Input-Output database, which is updated at 5-year intervals, was most recently described in the Survey of Current Business, "Benchmark Input-Output Accounts for the U.S. Economy, 1992" (November 1997).

We developed the capital-related portion of the rebased and revised SNF PPS market basket using the same overall methodology used to develop the hospital PPS capital input price index. The methodology for hospitals is described in full detail in the May 31, 1996 (61 FR 27466) and the August 30, 1996 (61 FR 46196) Federal Register publications. The strength of this HCFA methodology is that it reflects the vintage nature of capital, which is the acquisition and use of capital over time. Price levels are determined for capital acquired in current and prior years and vintage-weighted based on historical capital acquisition patterns. These vintage-weighted price changes reflect the price changes associated with the capital acquisition process.

Because there are fewer data on capital-related costs for the SNF industry than for the hospital industry, we developed a methodology that makes the maximum use of the existing SNF data. We have developed a framework that integrates existing SNF capital data with related data sources and assumptions. We determined that

reasonable changes in the capital-related assumptions have little impact on the overall SNF market basket (routine costs, capital-related costs, and ancillary costs). We also compared the price changes from the capital-related component of the SNF market basket to the price changes in the hospital PPS capital input price index and other price indexes. The comparison showed that the changes in the different indexes were reasonable in relation to changes with the SNF capital-related component. A detailed explanation of how both the cost category weights and the vintage weights were determined, which price proxies were chosen, the effect of using different assumptions, and a comparison of capital-related components of the rebased SNF PPS market basket to other price indexes is given in the Appendix.

Our work resulted in 21 separate categories for the rebased and revised total market basket. The 1977-based routine cost SNF market basket had 12 separate cost categories. Detailed descriptions of each cost category and respective price proxy in the 1992-based market basket are provided in the Appendix to this rule. The six major categories for the revised and rebased cost categories and weights derived from SNF Medicare Cost Reports are summarized in Table 4.A below.

TABLE 4.A—1992 SKILLED NURSING FACILITY MARKET BASKET MAJOR COST CATEGORIES AND WEIGHTS FROM MEDICARE COST REPORTS

Cost categories	1992-based skilled nursing facility market basket weights (percent)
Wages and Salaries	47.805
Employee Benefits	10.023
Contract Labor	12.852
Pharmaceuticals	2.531
Capital-related Costs	9.777
All Other Costs	17.012
Total Costs	100.000

After the 21 cost weights for the revised and rebased SNF market basket were developed, we selected the most appropriate wage and price proxies currently available to monitor the rate of increase for each expenditure category. With three exceptions (all for the Capital-Related Expenses cost category), the wage and price proxies are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

- Employment Cost Indexes—Employment Cost Indexes (ECIs)

measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in occupation or industry mix. ECIs were not available when we developed the calendar year 1977-based routine SNF market basket. ECIs are superior to Average Hourly Earnings (AHEs) as price proxies for input price indexes for two reasons: (1) they measure pure price

change, and (2) they are available by occupational groups, not just by industry.

• Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by consumers. CPIs were only used when the purchases were similar to those of retail consumers rather than purchases at the wholesale level, or if no appropriate Producer Price Index (PPI) were available.

• Producer Price Indexes—PPIs are used to measure price changes for goods sold in other than retail markets. For

example, a PPI for movable equipment was used, rather than a CPI for equipment.

The contract labor weight of 12.852 was reallocated to (1) wages and salaries, (2) employee benefits, and (3) the all other expenses cost category so that the same price proxies that were used for direct labor and nonlabor costs could be applied to contract costs. The rebased and revised cost categories, weights, and price proxies for the 1992-based SNF market basket are listed in Table 4.B below.

TABLE 4.B—1992-BASED COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Cost category	1992-based market basket weight	Price proxy
Operating Expenses	90.223	
Compensation	67.059	
Wages and Salaries	54.262	ECI for Wages and Salaries for Private Nursing Homes
Employee benefits	12.797	ECI for Benefits for Private Nursing Homes
Nonmedical professional fees	1.916	ECI for Compensation for Private Professional, Technical and Specialty workers
Utilities	2.500	
Electricity	1.626	PPI for Commercial Electric Power
Fuels, nonhighway	0.332	PPI for Commercial Natural Gas
Water and sewerage	0.542	CPI-U for Water and Sewerage
Other Expenses	18.747	
Other Products	10.964	
Pharmaceuticals	2.531	PPI for Prescription Drugs
Food	3.353	
Food, wholesale purchase	2.577	PPI for Processed Foods
Food, retail purchase	0.776	CPI-U for Food Away From Home
Chemicals	0.720	PPI for Industrial Chemicals
Rubber and plastics	1.529	PPI for Rubber and Plastic Products
Paper products	1.005	PPI for Converted Paper and Paperboard
Miscellaneous products	1.826	PPI for Finished Goods
Other Services	7.783	
Telephone Services	0.385	CPI-U for Telephone Services
Labor-intensive Services	3.686	ECI for Compensation for Private Service Occupations
Non labor-intensive services	3.713	CPI-U for All Items
Capital-related Expenses	9.777	
Total Depreciation	5.915	
Building & Fixed Equipment	4.118	Boeckh Institutional Construction Index
Movable Equipment	1.797	PPI for Machinery & Equipment
Total Interest	3.189	
Government & Nonprofit SNFs	1.658	Average Yield Municipal Bonds (Bond Buyer Index-20 bonds)
For-Profit SNFs	1.531	Average Yield Moody's AAA Bonds
Other Capital-related Expenses	0.674	CPI-U for Residential Rent
Total	* 100.000	

* may not add due to rounding

In the 1992-based total costs market basket, the labor-related share is 75.888 percent, while the non-labor-related share is 24.112 percent. The labor-related share for the 1977-based routine cost market basket (81.2 percent) included wages and salaries, employee benefits, health services, business services, and miscellaneous costs, while the labor-related share of the 1992 total cost market basket (75.888 percent) includes wages and salaries, employee benefits, professional fees, labor-intensive services, and a 33 percent

share of capital-related expenses as shown on Table 4.C below. The share of labor-related costs in 1992 reflects the change from only routine costs to total costs (routine, ancillary, and capital-related) and the changing mix of SNF services between 1977 and 1992.

The labor-related share for capital-related expenses was determined to be 33 percent of capital-related expenses, or 3.227 percent of the total PPS SNF market basket. This share was estimated from a statistical analysis of individual SNF Medicare Cost Reports for 1993

since nearly all reports from this year were settled. The statistical analysis was necessary because the proportion of capital-related expenses related to local area wage costs cannot be directly determined from the SNF capital-related market basket as it can for operating and ancillary costs.

We performed regression analysis with capital-related costs per day in SNFs as the dependent variable and relevant explanatory variables for size, complexity, efficiency, age of capital, and local wage variation. To account for

these factors, we used number of beds, case-mix indexes, occupancy rate, ownership, age of assets, length of stay, FTEs per bed, and the wage index values based on hospital wage index (wages and employee benefits) as independent variables. The regression statistics showed each variable was statistically significant and an adjusted r-square that was acceptable given the large number of observations. The independent variable most relevant for our purpose is the wage index values based on hospital wage data, since this index is being used to adjust payments under SNF PPS for geographic variation in local labor costs. The regressions use log transformations for the dependent and independent variables, hence the coefficients can be interpreted as elasticities. The coefficient for the wage index value was 0.33 with a t-value of 4.3. The interpretation of this coefficient as an elasticity is that a 10 percent increase in the wage index value leads to a 3.3 percent increase in capital-related costs per day. This coefficient is equivalent to the portion of capital-related expenses in the SNF market basket that are considered to be labor-related. Multiplying the 0.33 by the capital-related share of 9.777 yields a labor-related share for capital of 3.227 percent of the total SNF market basket.

Conceptually it seems appropriate that capital-related expenses would vary less with local wages than would operating expenses for SNFs. Operating expenses for SNFs are determined in large part from the labor inputs for relatively low-skilled employees that are tightly linked to local wage levels in local labor markets. Wages, salaries, and benefits constitute a majority of the operating costs of providing SNF services; the labor-related share of operating expenses is 80.6 percent. For capital-related expenses, however, annual costs in the current year are for capital purchased over time. Capital-related expenses are determined in some proportion by local area costs (such as construction worker wages and building materials costs) that are reflected in the price of the capital asset. However, many other inputs that determine capital costs are not related to local area wage costs, such as equipment prices and interest rates. We found a similar lower share for capital-related expenses in hospitals.

We also conducted regression analyses with operating and total costs per day for SNFs as the dependent variable. The findings of our analysis of SNF operating and total costs per day are consistent with the PPS SNF market basket weights and structure. For operating costs per day, the regression

analysis yielded a coefficient nearly the same as the operating labor-related share from the SNF market basket. The regression of total costs per day yielded a coefficient of 0.74 percent, nearly the same as the total labor-related share (operating and capital-related) from the SNF market basket. We also conducted a similar regression analysis on hospital costs per case and determined the results to be consistent with the PPS hospital market basket.

Approaching the labor-related share several different ways validated the appropriateness of using regression analysis. Therefore, we are using this analysis in determining the labor-related share for PPS SNF capital-related expenses.

TABLE 4.C—1992-BASED LABOR-RELATED SHARE

Cost category	1992-based market basket weight
Wages and Salaries	54.262
Employee Benefits	12.797
Nonmedical Professional Fees	1.916
Labor-intensive Services	3.686
Capital-related	3.227
Total	75.888

All price proxies for the rebased SNF market basket are listed in Table 4.B and summarized in the Appendix to this rule. A comparison of the yearly historical percent changes from 1994 through 1996 for the current 1997-based routine costs market basket and the 1992-based total cost market basket is shown below in Table 4.D.

TABLE 4.D—COMPARISON OF THE 1977-BASED SKILLED NURSING FACILITY ROUTINE COSTS MARKET BASKET AND THE 1992-BASED SKILLED NURSING FACILITY TOTAL COSTS MARKET BASKET, PERCENT CHANGES, 1994–1996*

Fiscal years beginning October 1	Skilled Nursing Facility Routine Market Basket, CY 1977 base	Skilled nursing facility total cost market basket, FY 1992 base
Historical:		
October 1993, FY 1994	3.6	3.2
October 1994, FY 1995	2.8	3.0
October 1995, FY 1996	2.6	2.7

TABLE 4.E—COMPARISON OF THE 1977-BASED SKILLED NURSING FACILITY ROUTINE COSTS MARKET BASKET AND THE 1992-BASED SKILLED NURSING FACILITY TOTAL COSTS MARKET BASKET, PERCENT CHANGES, 1994–1996*—Continued

Fiscal years beginning October 1	Skilled Nursing Facility Routine Market Basket, CY 1977 base	Skilled nursing facility total cost market basket, FY 1992 base
Historical Average: 1994–1996	3.0	3.0

* Note: The 1992 total cost market basket is measuring a different cost concept than the 1977 routine cost market basket. Differences between the two indexes are expected.

Source: Standard & Poor's DRI HCC, 4th QTR, 1997; @USSIM/TREND25YR1197 @CISSIM/CONTROL974.
Released by HCFA, OACT, National Health Statistics Group.

Note that the historical average rate of growth for 1994 through 1996 for the SNF 1992-based total cost market basket is equal to that of the 1977-based routine market basket. We believe that the 1992-based SNF total cost market basket provides a more current measure of the annual increases in total cost care than the 1977-based SNF market basket because: (1) the cost structure includes routine, ancillary, and capital-related costs, not just routine cost, (2) the cost structure reflects the structure of costs for the most recent year for which there are relatively complete data, and (3) superior new wage-price variables have been incorporated into the 1992-based index. The forecasted rates of growth used to compute the projected SNF market basket percentages, described in the next section, are shown below in Table 4.E.

TABLE 4.E—SKILLED NURSING FACILITY TOTAL COST MARKET BASKET, FORECASTED CHANGE, 1997–2000

Fiscal years beginning October 1	Skilled Nursing Facility total cost market basket
October 1996, FY 1997	2.4
October 1997, FY 1998	2.8
October 1998, FY 1999	3.0
October 1999, FY 2000	3.1
Forecasted Average: 1997–2000	2.8

Source: Standard & Poor's DRI HCC, 4th QTR, 1997; @USSIM/TREND25YR1197 @CISSIM/CONTROL974.
Released by HCFA, OACT, National Health Statistics Group.

We are considering a mechanism to adjust future SNF PPS rates for forecast errors. The forecasted SNF total cost market basket changes shown in Table 4.E are based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming rate setting period. In any given year, there may be unanticipated price fluctuations that may result in differences between the actual increases in prices faced by SNFs and the forecast used in calculating the update factors. We are reviewing the analytical framework for updating the standard Federal rate under the hospital PPS to account for forecast errors. If this framework is chosen to update the SNF PPS rate, an adjustment would be made only if the forecasted market basket percentage change for any year differs from the actual percentage change by 0.25 percentage points or more. There would be a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for an error in forecasting the 1997 market basket percentage used to compute the PPS rates effective with this interim final rule through an adjustment to the fiscal year 1999 update to the SNF PPS rates.

B. Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket

percentage as the percentage change in the SNF market basket index, described in the previous section, from the midpoint of the prior fiscal year (or period) to the midpoint of the fiscal year (or other period) involved. The facility-specific portion and Federal portion of the SNF PPS rates effective with this rule are based on cost reporting periods beginning in Federal fiscal year 1995 (base year). The percentage increases in the SNF market basket index will be used to compute the update factors to reflect cost increases occurring between the cost reporting periods represented in the base year and the midpoint of the fiscal year (or other period). We used the Standard & Poor's DRI CC, 4th quarter 1997 historical and forecasted percentage increases of the revised and rebased SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factors. The update factors, as described below, will be used to adjust the base year costs for computing the facility-specific portion and Federal portion of the SNF PPS rates.

1. Facility-Specific Rate Update Factor

Under section 1888(e)(3)(D)(i) of the Act, for the facility-specific portion of the SNF PPS rate, we will update a facility's base year costs up to the facility's first cost reporting period beginning on or after July 1, 1998 and

before October 1, 1999 (initial period) by the SNF market basket percentage, reduced by one percentage point. We took the following steps to develop the 12-month cost reporting period facility-specific rate update factors shown in Table 4.F.

Step 1. Determine the cumulative growth from the average market basket level for each 12-month cost report period to the average market basket level for its corresponding 12-month period beginning on or after July 1, 1998.

Step 2. From the cumulative growth in Step 1, determine the average annual rate of growth for the period from each beginning 12-month period's average market basket index level to its corresponding 12-month period beginning on or after July 1, 1998.

Step 3. Subtract 1.0 percentage point from each average annual rate of growth calculated in Step 2.

Step 4. Determine what the revised cumulative growth for each 12-month's period average index level would have been, using the revised average annual rates of growth from Step 3. The resulting update factors are shown in Table 4.F.

TABLE 4.F—UPDATE FACTORS¹ FOR FACILITY-SPECIFIC PORTION OF THE SNF PPS RATES—ADJUST TO 12-MONTH COST REPORTING PERIODS BEGINNING ON OR AFTER JULY 1, 1998 AND BEFORE OCTOBER 1, 1999 [(INITIAL PERIOD) FROM COST REPORTING PERIODS BEGINNING IN FY 1995 (BASE YEAR)]

If 12-month cost reporting period in initial period begins	Adjust from 12-month cost reporting period in base year that begins	Using update factor of
July 1, 1998	July 1, 1995	1.05149
August 1, 1998	August 1, 1995	1.05197
September 1, 1998	September 1, 1995	1.05253
October 1, 1998	October 1, 1994	1.07116
November 1, 1998	November 1, 1994	1.07125
December 1, 1998	December 1, 1994	1.07126
January 1, 1999	January 1, 1995	1.07143
February 1, 1999	February 1, 1995	1.07176
March 1, 1999	March 1, 1995	1.07226
April 1, 1999	April 1, 1995	1.07270
May 1, 1999	May 1, 1995	1.07308
June 1, 1999	June 1, 1995	1.07340
July 1, 1999	July 1, 1995	1.07381
August 1, 1999	August 1, 1995	1.07428
September 1, 1999	September 1, 1995	1.07484

¹ Source: Standard & Poor's DRI, 4th Qtr 1997; @USSIM/TREND25YR1197@CISSIM/CONTROL974

A 12-month cost reporting period that begins on July 1, August 1, or September 1 will have two cost reporting periods within the initial period. Table 4.F provides update factors for these three beginning dates for 1998 and 1999. The

1998 cost reporting period is considered the first cost reporting period for the purposes of applying the facility-specific percentage in the transition period. The 1999 cost reporting period, for the same provider, is considered the

second cost reporting period for the purposes of applying the facility-specific percentage in the transition period. The transition period percentages are presented elsewhere in this rule.

SNFs may have cost reporting periods that are fewer than 12 months in duration (short period). This may occur, for example, when a provider enters the Medicare program after its selected fiscal year has already begun, or when a provider experiences a change of ownership before the end of the cost reporting period. Since short periods affect a small number of providers, relative to the total number of SNFs, and the facility-specific portion of the SNF PPS rate is subject to a transition period, we do not believe consideration of computing a "short period specific"

update factor is warranted. Accordingly, we will apply the following rules to short periods.

a. *Short period in base year.* First, select the later short period in the base year for the affected provider. Second, if necessary, adjust the beginning or end of the short period as follows. Short periods may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process of determining the short period update factor, if the short period begins before the 16th of the month, it will be adjusted to a beginning date of

the 1st of that month. If the short period begins on or after the 16th of the month, it will be adjusted to the beginning of the next month. Also, if the short period ends before the 16th of the month, it will be adjusted to the end of the preceding month, or, if the short period ends on or after the 16th of the month, it will be adjusted to the end of that month. Third, determine the midpoint of the short period. Fourth, use the following midpoint guidelines to determine which 12-month update factor to use from Table 4.F.

If the midpoint of short period falls between	Use factor for this 12-month period
March 16, 1995–April 15, 1995	October 1994–September 1995
April 16, 1995–May 15, 1995	November 1994–October 1995
May 16, 1995–June 15, 1995	December 1994–November 1995
June 16, 1995–July 15, 1995	January 1995–December 1995
July 16, 1995–August 15, 1995	February 1995–January 1996
August 16, 1995–September 15, 1995	March 1995–February 1996
September 16, 1995–October 15, 1995	April 1995–March 1996
October 16, 1995–November 15, 1995	May 1995–April 1996
November 16, 1995–December 15, 1995	June 1995–May 1996
December 16, 1995–January 15, 1996	July 1995–June 1996
January 16, 1996–February 15, 1996	August 1995–July 1996
February 16, 1996–March 15, 1996	September 1995–August 1996

b. *Short period in initial period.* Providers with short periods that begin on or after July 1, 1998 and before October 1, 1999 (initial period) should use the instructions above to adjust the beginning date of the short period and then use the 12-month factor that corresponds to the beginning date of the "adjusted to period" in Table 4.F. The first short period in the initial period is considered the first cost reporting period for the purposes of applying the facility-specific percentage in the transition period. Each subsequent short period, for the same provider, of any duration is considered the second or third cost reporting period for the purposes of applying the facility-specific percentage in the transition period. The transition period percentages are presented elsewhere in this rule.

c. *Short period between base year and initial period.* A provider may experience a change of ownership or may receive proper approval to change its cost reporting period between the base year cost reporting period and the initial period. If this occurs, the base year cost reporting period may begin on a date that is different than that of the initial period. In these instances, use the beginning date of the initial period to determine the 12-month factor that corresponds to the beginning date of the "adjusted to period" in Table 4.F.

2. Federal Rate Update Factor

To develop the Federal rates, we updated each facility's base year costs up to the midpoint of the initial period by the SNF market basket percentages, reduced by one percentage point. We developed the Federal rate adjustment factors using the following methodology:

Step 1. Determine the cumulative growth from the average market basket level for each 12-month cost reporting period to the average market basket level for the 15-month common period.

Step 2. From the cumulative growth in Step 1., determine the average annual rate of growth for the period from each beginning 12-month period's average market basket index level to the average market basket index level of the ending 15-month common period.

Step 3. Subtract 1.0 percentage point from each average annual rate of growth calculated in Step 2.

Step 4. Determine what the revised cumulative growth for each period's average index level would have been, using the revised average annual rates of growth from Step 3.

Step 5. Apply the revised cumulative percentage growth to the average market basket index level for the beginning cost reporting period, which yields revised 15-month average index levels for the common ending period.

Step 6. Using the revised 15-month average index levels determined in Step

5, calculate the ratio of each revised average index level to the original average common period index level.

Step 7. To determine the revised factors to apply to SNF cost reporting periods beginning between October 1, 1994 and September 30, 1995, multiply each factor for adjusting cost reports to the common period by the ratios determined in Step 6. This yields revised factors that reflect an average annual rate equal to the SNF market basket percentage minus 1 percentage point.

These revised update factors were used to compute the Federal portion of the SNF PPS rate shown in Tables 2.A and 2.B.

V. Consolidated Billing

A. Background of the Skilled Nursing Facility Consolidated Billing Provision

Section 4432(b) of the BBA 1997 amended the Social Security Act to establish a requirement for SNF Consolidated Billing, effective for items and services furnished on or after July 1, 1998. SNF Consolidated Billing is a comprehensive billing requirement (similar to the one that has been in effect for inpatient hospital services for well over a decade), under which the SNF itself is responsible for billing Medicare for virtually all of the services that its residents receive. SNF Consolidated Billing is necessary for a number of reasons.

Historically, an SNF could choose to furnish services to its residents either directly with its own resources, or under an "arrangement" with an outside source; in either instance, the SNF itself was responsible for submitting the bill for the service to its Medicare fiscal intermediary (FI). However, the SNF has also had the additional option of "unbundling" a service altogether; that is, permitting an outside supplier to furnish the service directly to an SNF resident and to submit a bill independently to the carrier under Part B, in lieu of any actual involvement by the SNF itself. The ability on the part of suppliers to submit separate bills directly to the carrier for these unbundled services has been extremely problematic in several ways.

First, it has created a potential for duplicate billing. For example, an SNF might include a particular service in its bill to the FI under Part A at the same time that an outside supplier is improperly submitting a Part B claim to the carrier for the identical service. Unless the Medicare contractors detect this inappropriate duplication in billing, the program ultimately pays twice for the same service.

Further, even in instances where only the supplier bills for the service, the practice of unbundling has resulted in additional out-of-pocket liability for the beneficiary. Under Part A, an SNF resident's only financial liability during a covered stay is for the SNF coinsurance that begins after the 20th day of the stay. The SNF coinsurance amount is set at a flat rate per day (which, by law, represents 1/3 of the current inpatient hospital deductible amount), and this amount does not vary with the number of services that the resident actually receives from one day to the next. This means that even if the SNF furnishes some additional services on a given day, the resident's daily coinsurance amount under Part A does not increase. However, if the SNF decides instead to unbundle those services to an outside supplier which then bills the carrier under Part B, this causes the resident to incur an additional out-of-pocket liability for any unmet deductible under Part B, as well as for Part B's 20 percent coinsurance.

Finally, along with the potential for duplicate billing and for subjecting the beneficiary to needless expense, unbundling has raised quality of care and program integrity concerns for SNF residents—including those who are not in a covered Part A stay—by dispersing the responsibility for providing resident care among a myriad of outside suppliers. This fragmentation in the provision and billing of services has

diminished the SNF's own capacity to oversee, coordinate, and account for the total package of care that its residents receive, and has rendered the SNF less able to guard against inappropriate billing practices and utilization.

For years, HCFA pursued legislative proposals to prohibit the practice of unbundling in SNFs, but without success. As with inpatient hospital services, the event that finally brought about a comprehensive billing requirement for SNF services was the creation of a PPS for SNFs. In order to have a prospective payment that includes all of the medically necessary services that an SNF resident receives, it is essential to tie all of those services into a single facility package, by prohibiting unbundling. Otherwise, the Medicare program would once again be faced with potentially paying twice for the same service—once to the SNF under the Part A prospective payment, and again to an outside supplier under Part B.

B. Skilled Nursing Facility Consolidated Billing Legislation

Under the SNF Consolidated Billing requirement established by section 4432(b) of the BBA 1997, the SNF itself has the Medicare billing responsibility for virtually all of the Medicare-covered services that its residents receive. The following is a discussion of the specific provisions of the legislation.

1. Specific Provisions of the Legislation

• Section 4432(b)(1) of the BBA 1997 adds a new paragraph (18) to section 1862(a) of the Act, which prohibits Medicare coverage of services furnished to an SNF resident (other than those services that are specifically excluded from the SNF Consolidated Billing requirement) unless they are furnished or arranged for by the SNF itself.

• Section 4432(b)(2) of the BBA 1997 adds a new paragraph (E) to section 1842(b)(6) of the Act, which specifies that, for any such services that are covered under Part B, Medicare makes payment to the SNF rather than to the beneficiary.

• Section 4432(b)(3) of the BBA 1997 adds to section 1888(e) of the Act a new paragraph (9), which requires that the payment amount for Part B services furnished to an SNF resident shall be the amount prescribed in the otherwise applicable fee schedule, and a new paragraph (10), which requires the SNF's Part B bills to identify all items and services through a uniform coding system to be specified by the Secretary. Under this authority, we are specifying the HCFA Common Procedure Coding System (HCPCS) as the coding system to

be used. The HCPCS coding requirement is intended to enable the Medicare contractor to identify individual items and services more readily on the claim; this, in turn, will help enable the contractor to limit the amounts it pays the SNF to any applicable Part B fee schedule amounts in accordance with section 1888(e)(9) of the Act.

• Section 4432(b)(4) of the BBA 1997 adds a new paragraph (t) to section 1842 of the Act, which requires physicians to include the SNF's Medicare provider number on bills for physician services furnished to SNF residents that are separately billable to the Part B carrier (see discussion in section V.B.2. below).

• Section 4432(b)(5) of the BBA 1997 includes a series of conforming amendments. The SNF Consolidated Billing provision requires an SNF to furnish virtually all services to its residents, either directly or under "arrangements" with an outside source in which the SNF itself bills Medicare. Accordingly, section 4432(b)(5)(D) amends section 1861(h) of the Act to expand the scope of SNF services that Part A can cover under the extended care benefit to include services furnished under arrangements between the SNF and an outside source, as discussed in section VI. below. Section 4432(b)(5)(F) adds a new clause (ii) to section 1866(a)(1)(H) of the Act to make compliance with the SNF Consolidated Billing provision a specific requirement under the terms of an SNF's Medicare provider agreement.

2. Types of Services That Are Subject to the Provision

Like the SNF PPS itself, SNF Consolidated Billing applies comprehensively to the "covered skilled nursing facility services" described in section 1888(e)(2)(A)(i) of the Act when furnished to SNF residents, except for those services that appear on a short list of exclusions described in section 1888(e)(2)(A)(ii) of the Act. However, in practical terms, the SNF Consolidated Billing and PPS provisions encompass slightly different sets of services, since the SNF PPS includes a few individual services that are not subject to the Consolidated Billing provision. This is because the SNF PPS encompasses the entire range of Part A extended care services that are coverable under section 1861(h) of the Act when furnished or arranged for by the SNF itself, including an extremely small number of such services (for example, dialysis services) that section 1888(e)(2)(A)(ii) of the Act specifically identifies as alternatively being billable separately under Part B.

Similarly, the Consolidated Billing provision encompasses a small number of services that are not coverable under Part A or includable in the PPS payment, even though furnished or arranged for by the SNF itself during a covered Part A stay. This is because the services included in the SNF PPS payment are, by definition, limited to the range of diagnostic and therapeutic services that are coverable under the Part A extended care benefit, while the Consolidated Billing provision encompasses not only those types of services, but also certain preventive and screening services that are not considered diagnostic or therapeutic in nature and, thus, are coverable only under Part B. (See the portion of section 1861(h) of the Act following paragraph (7), which limits the scope of coverage under the Part A extended care benefit to those "diagnostic and therapeutic" services that are coverable under the inpatient hospital benefit, and section 1862(a)(1) of the Act, which describes preventive services to avoid the occurrence of a medical condition altogether (paragraph (B)) and screening services to detect the presence of a medical condition while it is still in an asymptomatic state (paragraph (F)) as being separate and distinct categories from services to diagnose or treat a condition that has already manifested itself (paragraph (A)). Thus, for example, if an SNF resident receives a vaccination for pneumococcal pneumonia or hepatitis B in the course of a covered Part A stay, this would not represent a diagnostic or therapeutic service that could be covered under the Part A extended care benefit, but a preventive service that is coverable only as one of the "medical and other health services" included under Part B (see section 1861(s)(10) of the Act). Accordingly, while the SNF's Part A PPS payment would not include this service, the Consolidated Billing provision would still require the SNF itself to submit the bill for the service to Part B.

The statutory list of excluded services in section 1888(e)(2)(A)(ii) of the Act consists of a number of specific service categories. These include several types of practitioner services that are exempt from the Consolidated Billing requirement and, thus, are still to be billed separately to the Part B carrier. These exempt practitioner services include the following:

- Physicians' services furnished to individual SNF residents (section 4432(b)(4) of the BBA 1997 requires such bills to include the SNF's Medicare provider number).

- Physician assistants working under a physician's supervision.
- Nurse practitioners and clinical nurse specialists working in collaboration with a physician.
- Certified nurse-midwives.
- Qualified psychologists.
- Certified registered nurse anesthetists.

In addition to these exempt categories of practitioner services, section 1888(e)(2)(A)(ii) of the Act also excludes the following types of services:

- Home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies as described in section 1861(s)(2)(F) of the Act;
- Erythropoietin (EPO) for certain dialysis patients as described in section 1861(s)(2)(O) of the Act, subject to methods and standards established by the Secretary in regulations for its safe and effective use (see §§ 405.2163(g) and (h)); and

- For services furnished during 1998 only: The transportation costs of electrocardiogram equipment for electrocardiogram test services (HCPCS Code R0076) furnished during 1998. This reflects section 4559 of the BBA 1997, which temporarily restores separate Part B payment for the transportation of portable electrocardiogram equipment used in furnishing tests during 1998.

Further, we note that hospice care (as defined in section 1861(dd) of the Act) is not subject to Consolidated Billing when an SNF resident elects to receive care under the Medicare hospice benefit, since the hospice (rather than the SNF) assumes the overall responsibility for those care needs relating to the beneficiary's terminal condition, while the SNF itself retains responsibility only for those aspects of the beneficiary's care needs that are not related to the terminal condition (see further discussion in section V.B.4. below). In addition, as discussed in section V.B.4. below, we are clarifying that in terms of ambulance services, the Consolidated Billing provision applies only to ambulance transportation furnished during the SNF stay, and not to an ambulance trip that occurs at either the beginning or end of the stay.

With regard to the services of physicians and other practitioners, even though the SNF Consolidated Billing requirement generally does not apply to the specific types of practitioners listed above, it does apply to certain particular subcategories of their services, which must be billed by and paid to the SNF. Section 1888(e)(2)(A)(ii) of the Act specifies that physical, occupational,

and speech-language therapy services furnished to SNF residents are subject to Consolidated Billing and, therefore, must be billed by the SNF itself, regardless of whether these services are furnished by (or under the supervision of) a physician or other health care professional. In effect, this statutory provision converts the coverage of what would otherwise be practitioner services into provider (that is, SNF) services. Thus, those practitioner services that fall within the categories of physical, occupational, or speech language therapy services must be billed by the SNF to its FI, and the practitioner cannot submit a separate bill to the Part B carrier. (We note that the Physicians' Current Procedural Terminology (CPT) coding used on physician and other practitioner bills enables the Part B carrier to identify those services that are physical, occupational, and speech-language therapy services.)

Further, with respect to physicians' services, we are providing—consistent with the longstanding policy under the bundling requirement for inpatient hospital services—that the SNF Consolidated Billing provision excludes only those particular physicians' services that meet the criteria described in § 415.102(a) for payment on a fee schedule basis. Essentially, these are services (ordinarily requiring performance by a physician) that the physician personally furnishes to an individual beneficiary, which contribute directly to that beneficiary's diagnosis or treatment and, in the case of radiology or laboratory services, meet the additional requirements specified in §§ 415.120 and 415.130, respectively. By contrast, this exclusion of the types of physicians' services described in § 415.102(a) does not extend to more generalized physician functions that typically occur in the provider setting (such as quality control activities), which are performed not for an individual beneficiary but for the overall benefit of the provider's entire patient population, and are considered a provider cost under §§ 415.55 and 415.60.

In addition, the Consolidated Billing requirement does not exempt those types of nonphysician services that would otherwise be billed to the Part B carrier in conjunction with related physician services and paid under a single, global fee. For example, payment for diagnostic radiology services is sometimes made through a global fee that includes both a technical component (for the diagnostic test itself) and a professional component (for the physician's interpretation of the test). However, under Consolidated Billing,

when such services are furnished to an SNF resident, only the professional (physician) component is billed separately as a physician's service, while the technical (nonphysician) component must be billed by the SNF itself.

Also, while the SNF Consolidated Billing provision does not apply to the professional services that a physician or other exempt practitioner performs personally, it does apply to those services that are furnished to an SNF resident by someone other than the practitioner, as an incident to the practitioner's professional service. This position is consistent with the approach that has long been taken under the hospital bundling requirement, as well as with section 1888(e)(2)(A)(ii) of the Act, which specifically identifies "physicians' services" themselves as the service category that is excluded from SNF Consolidated Billing. Physicians' services, in turn, are covered by Part B under section 1861(s)(1) of the Act and are defined in section 1861(q) as being performed by a physician, while "incident to" services are covered under a separate statutory authority (section 1861(s)(2)(A) of the Act) and are, by definition, not performed by a physician. Similarly, for the other types of practitioner services that are exempt from the SNF Consolidated Billing requirement, we are specifying that this exemption applies only to the professional services that the practitioner performs personally, and that services furnished by others as an incident to the practitioner's professional service are themselves subject to the Consolidated Billing requirement.

We believe that to do otherwise with regard to these "incident to" services would effectively create a loophole through which a potentially broad and diverse array of services could be unbundled, merely by virtue of being furnished under the general auspices of such practitioners. This, in turn, would ultimately defeat the very purpose of the SNF Consolidated Billing provision—that is, to make the SNF itself responsible for billing Medicare for essentially all of its residents' services, other than those identified in a small number of narrow and specifically delimited exclusions. Further, as noted above, both the Consolidated Billing and SNF PPS provisions employ the same statutory list of excluded services. Thus, the approach we are adopting with regard to the limited range of services that qualify for exclusion is essential not only to safeguard the integrity of the Consolidated Billing

requirement, but also that of the SNF PPS itself.

Finally, we note that laboratory services are subject to the SNF Consolidated Billing requirement. Thus, when an outside laboratory performs tests for SNF residents, the Medicare billing must be done by the SNF itself rather than by the outside laboratory. However, it will be necessary for the Congress to make a conforming change in section 1833(h)(5)(A) of the Act, in order to resolve a technical inconsistency in the text of that provision. The current wording of that section of the Act generally allows Part B to make payment for clinical diagnostic laboratory tests only to the person or entity that actually performs (or supervises the performance of) the test. This provision already contains a specific exception at section 1833(h)(5)(A)(iii) of the Act that permits a hospital to receive Part B payment for laboratory services that the hospital obtains under arrangements made with an outside laboratory. As mentioned previously, hospitals have long had a comprehensive Medicare billing requirement, which served as a model for the one now being established for SNFs. Accordingly, we believe that the BBA 1997's lack of a conforming change that explicitly extends the payment provision's existing hospital exception to SNFs is merely an inadvertent oversight, and we plan to pursue a technical amendment to make an appropriate conforming change in the text of section 1833(h)(5)(A) of the Act.

3. Facilities That Are Subject to the Provision

In terms of facilities (as explained in the following discussion of SNF "resident" status), the Consolidated Billing requirement applies to Medicare-participating SNFs, including distinct part SNFs. Consolidated Billing does not apply to a nursing home that has no Medicare certification whatsoever, such as a nursing home that does not participate at all in either the Medicare or Medicaid programs, or a nursing home that exclusively participates only in the Medicaid program as a nursing facility (NF). However, Consolidated Billing does apply to services furnished to residents in any nursing home of which a distinct part is a Medicare-participating SNF. This means that if any portion of a nursing home has Medicare SNF certification, Consolidated Billing applies to the entire nursing home. (This avoids creating a perverse incentive for SNFs to set aside a nonparticipating section in which they could otherwise circumvent the Consolidated Billing requirement for

those residents who are not in a covered Part A stay.)

Thus, when a nursing home limits its Medicare participation as an SNF to only a distinct part of the overall institution—

- In terms of program payment, Part A coverage under the extended care benefit is limited to the portion of the nursing home that actually participates in Medicare as an SNF; and
 - In terms of Medicare billing responsibility, the Consolidated Billing requirement applies to the entire nursing home.
- We note that if the surrounding institution that houses a Medicare distinct part SNF includes an entity other than a nursing home (that is, a hospital, or a domiciliary or "board and care" home), then the Consolidated Billing requirement would not apply to that entity, but would apply only to the nursing home itself (including the nursing home's participating distinct part SNF along with any nonparticipating remainder).

4. Skilled Nursing Facility "Resident" Status for Purposes of This Provision

For purposes of determining program payment in the specific context of the Part A extended care benefit, section 1861(h) of the Act limits coverage to those beneficiaries who reside in an SNF, which section 1819(a) of the Act defines as an institution (or a distinct part of an institution) that is actually certified as meeting the SNF requirements for participation. However, in excluding Medicare coverage for unbundled services furnished to SNF residents, section 4432(b)(1) of the BBA 1997 further specifies that this provision applies to services furnished to any beneficiary who " * * * is a resident of a skilled nursing facility or of a part of a facility that includes a skilled nursing facility (as determined under regulations) * * * ." This statutory language establishes that, for purposes of the SNF Consolidated Billing provision, the Congress intended:

- That the definition of an SNF resident should include not only those beneficiaries who reside in the certified area of a nursing home, but also (as discussed in the preceding section) those who reside in the nonparticipating portion of any nursing home that also includes a Medicare-certified distinct part SNF; and
- To grant the Secretary the specific authority to define the concept of "services furnished to SNF residents" further in regulations.

Accordingly, for purposes of the SNF Consolidated Billing provision, we are

defining an SNF "resident" in the regulations as including beneficiaries who reside in Medicare-certified SNFs, as well as those beneficiaries who reside anywhere within a nursing home if that nursing home includes a distinct part that is a Medicare-certified SNF.

We note that the SNF Consolidated Billing legislation defines the scope of this provision in terms of a comprehensive package of services furnished to an SNF resident. For example, in terms of ambulance services, the initial ambulance trip that first brings a beneficiary to the SNF would not be subject to the Consolidated Billing provision (since the beneficiary, at that point, has not yet been admitted to the SNF as a resident). Similarly, an ambulance trip that occurs at the end of an SNF stay, in connection with one of the events that (as discussed below) ends a beneficiary's status as an SNF resident for Consolidated Billing purposes, would not be subject to the Consolidated Billing provision. By contrast, ambulance transportation furnished during an SNF stay is subject to the SNF Consolidated Billing provision.

As noted above, the Consolidated Billing requirement is intended to encompass a comprehensive package of services furnished to an SNF resident. Accordingly, we believe that it is necessary to prevent a facility from being able to circumvent this requirement and unbundle particular services that would otherwise be an integral part of the package, merely by temporarily discontinuing a beneficiary's status as a "resident" of the SNF just long enough to receive the services (for example, by briefly sending the beneficiary offsite to receive them as a hospital or clinic outpatient), and immediately thereafter reinstating the beneficiary's status as an SNF "resident." Therefore, we are providing that a beneficiary's departure from the facility does not automatically end his or her status as an SNF "resident" for Consolidated Billing purposes. Rather, the beneficiary's status as an SNF resident in this context would end when one of the following events occurs—

- The beneficiary is admitted as an inpatient to a Medicare-participating hospital or critical access hospital (CAH, formerly referred to as a rural primary care hospital (RPCH)) or as a resident to another SNF;
- The beneficiary receives services, under a plan of care, from a Medicare-participating home health agency;
- The beneficiary receives outpatient services from a Medicare-participating hospital or CAH (but only with respect to those services that are not furnished

pursuant to the resident assessment or the comprehensive care plan required under § 483.20); or

- The beneficiary is formally discharged or otherwise departs from the SNF (for example, on a leave of absence), unless readmitted to that or another SNF within 24 consecutive hours. This means that the facility's responsibilities under the Consolidated Billing provision (including its responsibility to furnish or make arrangements for needed care and services) remain in effect until the beneficiary's status as an SNF "resident" ends due to the occurrence of one of the events described above.

We are providing that, for purposes of determining the applicability of the SNF Consolidated Billing requirement, a beneficiary's status as an SNF resident ends at the point when the beneficiary is admitted as an inpatient to a participating hospital or CAH, or as a resident to another SNF, even if the beneficiary subsequently returns to the original SNF within 24 hours of departure. This is because these settings all represent situations in which another provider has assumed the ongoing responsibility for the beneficiary's comprehensive care needs. For the same reason, we are including the receipt of services from a participating home health agency under a plan of care as another event that would end a beneficiary's status as an SNF "resident" for Consolidated Billing purposes. We note that these situations are distinct, however, from one in which a terminally ill SNF resident elects to receive care under the Medicare hospice benefit, since a hospice assumes responsibility only for those care needs that relate to the beneficiary's terminal condition, while the SNF itself remains responsible for any care needs that are unrelated to the terminal condition. This is equally true whether an SNF resident receives the hospice care while still in the SNF or during a temporary absence from the facility. Accordingly, an SNF resident's election to receive care under the Medicare hospice benefit would not result in a blanket exclusion of all services furnished to that resident from the Consolidated Billing requirement; rather, as discussed previously in section V.B.2., only the specific aspects of such a resident's care that are actually provided under the hospice benefit are excluded from the Consolidated Billing provision, while care that is unrelated to the resident's terminal condition remains subject to the provision.

Similarly, when an SNF resident receives outpatient services at a hospital, the hospital does not

necessarily assume any ongoing responsibility for the resident's comprehensive care needs beyond the outpatient visit itself, which often may represent nothing more than a single, isolated encounter. We do not believe that such an event, when followed shortly thereafter by the resident's return to the SNF, should serve to relieve the SNF categorically of any Medicare billing responsibility for services furnished during the outpatient visit, especially with respect to those types of services that SNFs would ordinarily include within the comprehensive package of care furnished to a resident (such as physical, occupational, and speech-language therapy, or types of medical supplies and diagnostic tests that are routinely furnished or arranged for by SNFs).

At the same time, however, we recognize that there are certain types of intensive diagnostic or invasive procedures that are specific to the hospital setting and that are well beyond the normal scope of SNF services. Further, we note that Medicare's longstanding comprehensive billing or "bundling" requirement for inpatient hospital services under section 1862(a)(14) of the Act was subsequently expanded to apply to outpatient hospital services as well, and that section 4523 of the BBA 1997 provides for the establishment of a PPS for these outpatient hospital services. Thus, when an SNF resident is sent to a hospital to receive outpatient services, it is necessary to delineate the respective areas of responsibility for the SNF under the Consolidated Billing provision, and for the hospital under the outpatient bundling provision, with regard to these services.

Accordingly, we are providing that in situations where a beneficiary receives outpatient services from a Medicare-participating hospital or CAH while temporarily absent from the SNF, the beneficiary continues to be considered an SNF resident specifically with regard to those services that are furnished pursuant to the comprehensive care plan required under the regulations at § 483.20(d), which is developed to address the resident's care needs identified in the comprehensive assessment under § 483.20(b). Such services are, therefore, subject to the SNF Consolidated Billing provision, while those other services that, under commonly accepted standards of medical practice, lie exclusively within the purview of hospitals rather than SNFs, are not subject to SNF Consolidated Billing, but are instead bundled to the hospital (for example,

cardiac catheterization, CT scans, magnetic resonance imaging, ambulatory surgery involving the use of an operating room). We believe that it is appropriate to specify the resident's comprehensive care plan as the basis for defining the extent of the SNF's responsibility in this situation, since it is this same resident assessment and care planning process that provides the basis for establishing SNF coverage and determining the actual level of Part A payment under the SNF PPS. In effect, this defines the SNF's responsibility in terms of the scope of services included under the extended care benefit, as explained below. This same scope of services would effectively define the extent of the SNF's responsibility with regard to a beneficiary who has resided exclusively in the institution's nonparticipating portion which, under the law, is subject to the SNF Consolidated Billing provision but not to the SNF requirements for participation regarding resident assessment and care planning.

As indicated in § 483.20(d)(1), the resident assessment must thoroughly identify the resident's medical, nursing, and mental and psychosocial needs, and the plan of care must describe in a comprehensive manner the services that the SNF itself assumes the responsibility to furnish, or make arrangements for, in order to address these needs. However, the comprehensive care plan does not typically address emergency services (which, by their nature, cannot be anticipated and planned in advance) or those types of intensive diagnostic or invasive procedures that, as discussed previously, appropriately lie within the purview of hospitals rather than SNFs. By contrast, the care plan must address the beneficiary's need for the broad categories of services that section 1861(h) of the Act identifies as being included within the scope of the extended care benefit, such as nursing care and associated room and board (sections 1861(h)(1) and (2) of the Act); physical, occupational, and speech-language therapy (section 1861(h)(3) of the Act); medical social services (section 1861(h)(4) of the Act); drugs, biologicals, supplies, appliances, and equipment that represent an ordinary part of the facility's inpatient care and treatment (section 1861(h)(5) of the Act); and services that an SNF furnishes through its transfer agreement hospital (section 1861(h)(6) of the Act).

As amended by the BBA 1997, section 1861(h)(7) of the Act also includes coverage of other types of services that SNFs generally provide, either directly or under arrangements with outside

sources. As discussed in section VI. below with regard to the conforming revisions in regulations at § 409.27, longstanding administrative policy has also included within this category most of the medical and other health services described in section 1861(s) of the Act, with certain exceptions. For example, physician services (section 1861(s)(1) of the Act) cannot be regarded as services that are "generally provided" by SNFs, since they are not within the scope of the inpatient hospital benefit (see section 1861(b)(4) of the Act) and, accordingly, are also not within the scope of the extended care benefit (see section 1861(h) of the Act following paragraph (7)). In addition, as discussed previously in section V.B.2., preventive services such as vaccines for pneumococcal pneumonia or hepatitis B (section 1861(s)(10) of the Act) and screening services such as screening mammographies or pap smears (sections 1861(s)(13) and (14) of the Act, respectively) are not within the scope of the extended care benefit, since they are not considered reasonable and necessary for the diagnosis or treatment of a condition that has already manifested itself. Finally, the extended care benefit does not include the types of acute or emergent services discussed above as being exclusively within the purview of hospitals rather than SNFs, since these are types of services that SNFs themselves do not generally provide, either directly or under arrangements.

We specifically invite comments on the treatment of outpatient hospital services furnished to SNF residents under the SNF Consolidated Billing provision, including other possible ways to exempt those particular outpatient hospital procedures that are clearly beyond the scope of SNF services while preserving the integrity of the SNF service package itself. We also note that further refinements in this policy may eventually become necessary, in order to ensure consistency with the new outpatient hospital PPS as its specific characteristics are developed.

In addition, effective January 1, 1999, section 4541 of the BBA 1997 imposes an annual per beneficiary limit of \$1,500 on all outpatient physical therapy services (including speech-language therapy services), and imposes a similar limit on all outpatient occupational therapy services, but specifically excludes services furnished by a hospital's outpatient department from each of these annual limits. We note that this exclusion of hospital outpatient department services does not apply to services furnished to a

beneficiary who is an SNF resident for Consolidated Billing purposes. For an SNF resident who is not in a covered stay and has reached the annual \$1,500 limit, this avoids creating a perverse incentive to have a hospital outpatient department furnish therapy services that the resident could appropriately receive from the SNF itself. We will specifically address this point in the regulations that we are currently developing to implement section 4541 of the BBA 1997.

Another event that would generally end a beneficiary's "resident" status for SNF Consolidated Billing purposes would be the beneficiary's formal discharge from the SNF, or a departure from the SNF without a formal discharge (for example, for a trial visit home on a leave of absence), unless followed within 24 consecutive hours by a readmission to that or another SNF. We are using a 24-hour timeframe for readmission following any discharge or other departure from the SNF because we believe that this duration should generally be sufficient to preclude situations in which the beneficiary is temporarily sent outside the SNF for only a brief period to receive a service offsite (for example, through an outpatient visit to a hospital or clinic), merely to circumvent the SNF Consolidated Billing requirement. Further, as indicated above, we believe that in most situations where a beneficiary with comprehensive care needs is absent from the SNF for 24 consecutive hours, another provider will have already assumed the ongoing responsibility for those comprehensive care needs by that point in time.

In addition, we note that section 1886(a)(4) of the Act includes a preadmission "payment window" provision for hospitals, under which certain Part B services furnished by a hospital or by an entity wholly owned or operated by the hospital within 3 days (or, for non-PPS hospitals, within 1 day) before an inpatient admission to that hospital are included in the Medicare Part A payment for the hospital admission itself (see §§ 412.2(c)(5) (for PPS hospitals) and 413.40(c)(2) (for non-PPS hospitals)). Further, section 1833(d) of the Act prohibits payment under Part B for any services for which Part A can make payment. Thus, if a hospital inpatient has spent a portion of the preadmission period as a resident of an SNF that is wholly owned or operated by the admitting hospital, this would preclude coverage (and SNF billing) under Part B for diagnostic services and other admission-related services received as an SNF resident during the

preadmission period, since those services would be included in the hospital's Part A payment for the subsequent inpatient admission.

5. Effects of This Provision

For those services that are subject to the SNF Consolidated Billing requirement, Medicare will no longer permit "unbundling" (that is, Medicare billing by any entity other than the SNF itself). Rather, the SNF itself will have to furnish the services—either directly, or under arrangements with an outside supplier in which the SNF itself (rather than the supplier) bills Medicare. Section 1861(w)(1) of the Act defines "arrangements" as those in which the SNF's receipt of Medicare payment for a beneficiary's covered service discharges the liability of the beneficiary or any other person to pay for the service. Further, longstanding manual instructions at MIM-3, § 3007 and § 206 of the Medicare SNF Manual provide that in making such arrangements, an SNF should not act merely as a billing conduit, but should also exercise professional responsibility over the arranged-for services. However, the requirement for the SNF to furnish under "arrangements" any services that it obtains from an outside supplier does not mandate the SNF itself to meet the applicable supplier standards for that service, but merely to select an outside supplier that meets them. For example, when an SNF bills for ambulance services furnished to its residents under arrangements with an outside supplier, this does not make the SNF itself responsible for meeting the ambulance regulations' standards regarding vehicles and vehicle staffing (see § 410.40(a)), but merely for selecting an outside supplier that itself meets these standards. Similarly, under the requirements for participation at § 483.75(k)(1)(ii), if an SNF elects to provide portable x-ray services under arrangements with an outside supplier, the SNF is responsible only for selecting a portable x-ray supplier that itself meets the applicable Medicare conditions for coverage (see subpart C of part 486); under § 483.75(k)(1)(i), an SNF must itself meet the applicable provider standards for diagnostic radiology services (at § 482.28) only if the SNF elects to provide such services directly with its own resources.

When the SNF furnishes services under an arrangement with an outside supplier, the outside supplier must look to the SNF instead of to Medicare Part B for payment, and the terms of the supplier's payment by the SNF are established exclusively through contractual agreements negotiated

between the two parties themselves, rather than being prescribed for them by the Medicare program. For a resident in a covered Part A stay, all services furnished by the SNF (either directly, or under arrangements with an outside supplier) are included in the SNF's Part A bill. For a resident who is not in a covered Part A stay (Part A benefits exhausted, posthospital or level of care requirements not met, etc.), the SNF itself submits all bills to Part B.

We note that while new section 1888(e)(9) of the Act provides that the amount of Part B payment shall be the amount provided under the applicable fee schedule for an SNF's services—including those services provided under arrangements with an outside supplier—the law is silent with regard to how much (if any) of this fee schedule amount the SNF itself can retain when it pays the supplier. If an outside supplier agrees to furnish services to the SNF for less than the applicable fee schedule amount, we are concerned that allowing the SNF to retain the difference for each service billed to Part B is likely to create a financial incentive for the SNF to provide unnecessary services. The approach that we favor as a means of solving this problem would be to request legislation to limit the SNF's Part B payment to the lower of the applicable fee schedule amount or the amount that the supplier actually charges the SNF. Another option—which we did not select—would be to require that the SNF pay to the supplier the entire fee schedule payment amount, less a reasonable charge for administration. We specifically invite comments on the extent to which this problem may arise and on the advisability of pursuing our suggested legislative approach or other approaches.

While the SNF Consolidated Billing requirement prohibits Medicare billing by any entity other than the SNF, we note that this does not preclude an SNF from engaging the services of an outside entity to assist the SNF in performing the specific tasks involved in actually completing and sending in the bill itself. This practice, known as "contract billing," is permissible as long as the billing takes place under the SNF's Medicare provider number, and the SNF itself remains the legally responsible billing party. However, an SNF is precluded from relinquishing or reassigning to any other party the actual legal responsibility for and control over a claim. This reflects the Medicare law's general prohibitions with regard to the reassignment of claims at sections 1815(c) and 1842(b)(6) of the Act and

regulations at subpart F of part 424, as well as the specific prohibitions on reassignment of provider claims discussed in the manual instructions at MIM-3, §§ 3488ff.

The changes introduced by the Consolidated Billing provision will bring about a number of significant program improvements. First, this requirement provides an essential foundation for the new Part A SNF PPS, by bundling into a single facility package those services that the PPS payment is intended to capture. Second, it spares beneficiaries who are in covered Part A stays from incurring out-of-pocket liability for Part B deductibles and coinsurance. Third, it eliminates the potential for duplicative billings for the same service to the FI by the SNF and to the carrier by an outside supplier. Fourth, this requirement will help promote greater quality of care, by enhancing the SNF's capacity to meet its existing responsibility to oversee and coordinate the entire package of care that each of its residents receives. Finally, by making the SNF itself more directly accountable for this overall package of care and services, the Consolidated Billing requirement may help restrain certain inappropriate billing practices, while at the same time helping to ensure that each resident actually receives those services for which there is a legitimate medical need.

C. Effective Date for Consolidated Billing

Unlike the SNF PPS itself, the effective date of the Consolidated Billing requirement is not tied to the start of the individual SNF's first cost reporting period that begins on or after July 1, 1998. Rather, the Consolidated Billing provision is effective for services furnished on or after July 1, 1998. We note that in April 1998, HCFA issued Program Memorandum (PM) No. AB-98-18, which contains operational instructions for Medicare contractors on the implementation of consolidated billing. The PM provides that, for individual facilities that lack the capability to perform consolidated billing as of the July 1 effective date, the SNF must begin consolidated billing with respect to items and services furnished on or after the earlier of (1) January 1, 1999 or (2) the date the facility comes under the PPS.

VI. Changes in the Regulations

As discussed below, we are making a number of revisions in the regulations in order to implement both the prospective payment system and the SNF Consolidated Billing provision and

its conforming statutory changes. First, we are revising the regulations in 42 CFR part 410, subpart I, which deal with payment of benefits under Part B, in order to implement section 1842(b)(6)(E) of the Act, as amended by section 4432(b)(2) of the BBA 1997. Specifically, we are adding a new paragraph (b)(14) to § 410.150, which specifies that for those services subject to the SNF Consolidated Billing requirement, Medicare makes Part B payment to the SNF rather than to the beneficiary. We are also making certain conforming changes to provisions in part 410, subpart B, which describe Part B coverage of individual medical and other health services, such as outpatient hospital services (§ 410.27(a)(1)(i)), hospital or CAH diagnostic tests (§ 410.28(a)(1)), diagnostic tests (§ 410.32(e)), and ambulance services (§ 410.40(b)).

In addition, we are revising the regulations in part 411, subpart A, which deal with exclusions from Medicare coverage, in order to implement section 1862(a)(18) of the Act, as amended by section 4432(b)(1) of the BBA 1997. Specifically, we are adding a new paragraph (p)(1) to § 411.15, which excludes from coverage any service furnished to an SNF resident (other than those individual services listed in new paragraph (p)(2) of this section) by an entity other than the SNF itself. In addition, a new paragraph (p)(3) will set out the definition of an SNF "resident" for purposes of this provision, as discussed previously in section V.B.4.

We are revising the regulations in part 413, which deal with Medicare payment to providers of services. Section 413.1 establishes that providers are generally paid on the basis of reasonable cost, and then sets out several specific exceptions to this general principle. Currently, the only exception for SNFs is at § 413.1(g), with regard to the existing Part A PPS under section 1888(d) of the Act, which applies exclusively to low volume SNFs. However, under sections 4432(a) and (b)(5)(H) of the BBA 1997, the existing SNF Part A payment methodologies (that is, on a reasonable cost basis, or under a PPS established specifically for low volume SNFs) will be superseded by the new PPS for SNFs generally, effective with cost reporting periods beginning on or after July 1, 1998. Accordingly, we are revising § 413.1(g) as follows, to reflect the BBA 1997 provisions for a general SNF PPS, as well as its related conforming changes. In paragraph (g)(1), we clarify that the previous SNF payment methodology (that is, either on a reasonable cost basis or under the low

volume SNF PPS) is effective only for those cost reporting periods beginning before July 1, 1998. In paragraph (g)(2)(i), we provide that effective with cost reporting periods beginning on or after July 1, 1998, payment for services furnished during a covered Part A stay will be made in accordance with the new SNF PPS under section 1888(e) of the Act, as implemented by regulations in the new subpart J of part 413. This new subpart will set forth the regulatory framework of the new PPS. It specifically discusses the scope and basis of the PPS rates as well as the methodology for computing them. It also describes the transition phase of the PPS and related rules.

In paragraph (g)(2)(ii), we implement section 1888(e)(9) of the Act (as amended by section 4432(b)(3) of the BBA 1997), which provides that the payment amount for services that are not furnished during a covered Part A stay shall be the amount provided under the otherwise applicable Part B fee schedule. Unlike the new Part A PPS for SNFs, the effective date for the Part B fee schedule provision is not tied to the beginning of an individual SNF's cost reporting period, but rather, is effective for all services furnished on or after July 1, 1998. Consequently, we note that there is a potential overlap between this provision and the reasonable cost provision described in paragraph (g)(1), during the period of time running from July 1, 1998, until the conclusion of an individual SNF's last cost reporting period beginning prior to that date. Accordingly, we are revising the beginning of paragraph (g)(1), to clarify that Part B payment during that period of time is made according to the new fee schedule provision rather than the previous payment methodology. Finally, we are implementing a conforming change in section 4432(b)(5)(A) of the BBA 1997 by revising paragraph (b)(4) of § 483.20, to indicate that the frequency of resident assessments specified in that section of the regulations is subject to the timeframes prescribed under the SNF PPS in new subpart J of part 413.

We are revising the portion of part 424 dealing with the prescribed certification and recertification (§ 424.20) that the requirements for a covered SNF level of care are met, along with that portion of part 409 that sets out the level of care requirements themselves (at § 409.30), to reflect the use of the RUG-III groups, as discussed previously in section II.D. of this preamble. We are also revising certain portions of part 424 that deal with claims for payment. Specifically, we are revising § 424.32(a)(2) to require the

inclusion of an SNF's Medicare provider number on claims for physician services furnished to an SNF resident. We are also adding to § 424.32(a) the requirement for an SNF to include HCPCS coding on its Part B claims.

We are also revising the regulations in part 489, subpart B (which deal with the basic requirements of Medicare provider agreements), in order to implement section 1866(a)(1)(H)(ii) of the Act, as amended by section 4432(b)(5)(F) of the BBA 1997. Specifically, we are adding a new paragraph (s) to § 489.20, which will require a participating SNF, under the terms of its provider agreement, to furnish all services that are subject to the Consolidated Billing provision, either directly or under an arrangement with an outside source in which the SNF itself bills Medicare.

In addition, we are making a number of conforming changes in part 409, subpart C of the regulations, as discussed below. Section 1861(h) of the Act describes coverage of "extended care" (that is, Part A SNF) services. In addition to the specific service categories set out in paragraphs (1) through (6) of section 1861(h), paragraph (7) provides for coverage of other services that are generally provided in this setting. Prior to the BBA 1997, coverage of services "generally provided by" SNFs under this statutory authority required not only for a particular service to be "generally provided" (that is, for the provision of that type of service to be the prevailing practice among SNFs nationwide), but also for the service to be provided directly "by" the SNF itself. However, section 4432(b)(5)(D) of the BBA 1997 has now expanded section 1861(h)(7) of the Act to include coverage of services that are generally provided "under arrangements... made by" SNFs with outside sources. As a result, the extended care benefit now covers the full range of services that SNFs generally provide, either directly or under arrangements with outside sources. For example, the services of respiratory therapists have until now been specifically coverable as extended care services only when provided directly by those therapists who are employees of the SNF's transfer agreement hospital under section 1861(h)(6) of the Act. Since these are services that SNFs historically have "generally provided" (albeit in the limited context of the transfer agreement hospital provision), we are now revising the regulations at § 409.27 to permit coverage of respiratory therapy services under amended section 1861(h)(7) of the Act when provided under an arrangement between the SNF and a

respiratory therapist, regardless of whether the therapist is employed by the SNF's transfer agreement hospital.

We are also revising this section of the regulations to incorporate longstanding manual instructions in MIM-3, § 3133.9.A and in § 230.10.A. of the SNF Manual, which specify that the medical and other health services identified in section 1861(s) of the Act are considered to be generally furnished by SNFs and, therefore, coverable under the Part A extended care benefit. We specify that such coverage would be subject to any applicable limitations or exclusions. For example, the Part A extended care benefit cannot include coverage of those services (such as physician services) that are not within the scope of the inpatient hospital benefit. As discussed previously in section V.B.2., the preventive and screening procedures specified in section 1861(s) of the Act are not coverable as extended care services, since they are not considered to be reasonable and necessary for diagnosing or treating a condition that has already manifested itself. Finally, coverage under this provision does not include specific types of services (such as the intensive or emergency types of hospital services discussed previously in section V.B.4.) that SNFs themselves do not generally provide, either directly or under arrangements.

In addition to specifically revising the regulations at § 409.27 to reflect the recent BBA 1997 amendment of section 1861(h)(7) of the Act, we are also taking this opportunity to revise the overall organization of subpart C of part 409 so that it more accurately reflects the format of its statutory authority, section 1861(h) of the Act. As a result, we are making the following revisions in this subpart:

- We are renumbering the provisions in § 409.20(a) to conform more closely to the numbering used in the corresponding statutory authority at section 1861(h) of the Act.
- A new § 409.21, entitled "Nursing care," corresponds to section 1861(h)(1) of the Act, which authorizes coverage under the extended care benefit of nursing care provided by or under the supervision of a registered professional nurse. This new section also includes a more direct statement of the policy with regard to coverage of private duty nurses in SNFs, which until now has been reflected in § 409.20(b)(1) when read in combination with § 409.12(b).
- A new § 409.24, entitled "Medical social services," corresponds to section 1861(h)(4) of the Act, which authorizes coverage under the extended care benefit of medical social services. This new section incorporates the services

described in longstanding manual instructions at § 3133.4 of MIM-3 and § 230.4 of the Medicare SNF Manual, and which also appear (in the context of Comprehensive Outpatient Rehabilitation Facility (CORF) services) in existing regulations at § 410.100(h) of this chapter.

- The material previously contained in §§ 409.24 ("Drugs and biologicals") and 409.25 ("Supplies, appliances, and equipment") is combined into a new § 409.25, entitled "Drugs, biologicals, supplies, appliances, and equipment," which corresponds to section 1861(h)(5) of the Act.

- The material previously contained in §§ 409.26 ("Services furnished by an intern or a resident-in-training") and 409.27 ("Other diagnostic or therapeutic services") is combined into a new § 409.26, entitled "Transfer agreement hospital services," which corresponds to section 1861(h)(6) of the Act. We are also clarifying that the references in this context to an institution that has a swing-bed approval apply specifically to those services that the institution furnishes to its own SNF-level inpatients under its swing bed approval.

- A new § 409.27, entitled "Other services generally provided by (or under arrangements made by) SNFs," corresponds to section 1861(h)(7) of the Act, as amended by section 4432(b)(5)(D) of the BBA 1997. We are also including a conforming change in the section heading and text of § 409.20(b)(2).

Further, in view of the previously discussed statutory change to allow Part A coverage of the full range of services that SNFs generally provide, either directly or under arrangements with outside sources, we are making a conforming change to the long-term care facility requirements for participation at § 483.75(h) of this chapter. Previously, § 483.75(h) provided for the furnishing of any services by outside sources under either an "arrangement" (which, by definition, makes the facility itself responsible for billing the program) or an "agreement" (which does not necessarily mandate this result). We are now revising this provision so that it more accurately reflects the statutory authority at section 1819(b)(4)(A) of the Act, as well as revised section 1861(h)(7). Section 1819(b)(4)(A) of the Act, which specifies the range of services that a nursing home must furnish in order to participate in the Medicare program as an SNF, allows for "agreements" only with respect to dental services (for which virtually no coverage exists under the Medicare program), and provides that all other required services must be furnished

either directly by the SNF itself or under "arrangements" with an outside source in which the SNF itself bills Medicare.

Finally, as discussed in section II.D., we are making certain specific modifications in the existing SNF level of care criteria contained in part 409, subpart D. Further, we are also adding to subpart F of part 409 a new administrative presumption with regard to the ending of a benefit period in an SNF, at § 409.60(c)(2).

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on *Federal Register* documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the *DATES* section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the *Federal Register* and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule. We find that the circumstances surrounding this rule make it impracticable to pursue a process of notice-and-comment rulemaking before the provisions of this rule take effect.

The BBA 1997 was enacted on August 5, 1997. As discussed earlier in this rule, the effective date for the SNF PPS is for cost reporting periods beginning on or after July 1, 1998. In addition, section 4432(a) of the BBA 1997 requires publication of the prospective payment rates prior to May 1, 1998. The resulting timeframe allowed HCFA 9 months to complete the process of development and review of the regulations to implement the PPS and related changes. The immense scope of SNF PPS development combined with this limited time period made it impracticable to conduct notice-and-comment rulemaking before the statutory effective date of the PPS. In addition to the normal length of time needed to develop and review a

regulation of this magnitude, the time schedule associated with the completion of development of a number of critical components of the PPS made it impossible to complete the calculation of the payment rates in time to promulgate a notice of proposed rulemaking. For example, the national case-mix indices and SNF market basket index, set forth earlier in this rule, had to be developed. As discussed earlier, these indices are an essential element of the case-mix payment and rate setting methodology. In addition, these indices are essential for standardizing and updating the Federal payment rates as required by the BBA 1997. Also, the redesign and validation of the MEDPAR analog, development of the Part B estimate included in the PPS rates, and research related to application of the case-mix adjustment to certain ancillary services (for example, drugs, laboratory services, medical supplies) were important components of the rate setting methodology, which required much time to develop.

We believe it evident that HCFA could not compute payment rates and complete the numerous components of the PPS and Consolidated Billing requirements that are described in this rule until immediately prior to the publication date required by statute and, therefore, it was impracticable to complete notice-and-comment rule making before May 1. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim final basis. We are providing a 60-day comment period for public comment.

Effect of the Contract with America Advancement Act, Pub. L. 104-121

This rule has been determined to be a major rule as defined in Title 5, United States Code, section 804(2). Ordinarily, under 5 U.S.C. 801, as added by section 251 of Pub. L. 104-121, major rule shall take effect 60 days after the later of (1) the date a report on the rule is submitted to the Congress or (2) the date the rule is published in the *Federal Register*. However, section 808(2) of Title 5, United States Code, provides that, notwithstanding 5 U.S.C. 801, a major rule shall take effect at such time as the Federal agency promulgating the rule determines if for good cause the agency finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. As indicated above, for good cause we find that it was impracticable to complete notice and comment procedures before publication of this rule. Accordingly, pursuant to 5 U.S.C.

808(2), these regulations are effective on July 1, 1998.

IX. Regulatory Impact Statement

We have examined the impacts of this interim final rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, and the Regulatory Flexibility Act (RFA) (Public Law 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more annually). The payment changes set forth in this interim final rule due to the BBA 1997 will result in projected savings for fiscal years 1999 through 2002 in excess of \$100 million per year. Because the projected savings resulting from this interim final rule are expected to exceed \$100 million, it is considered a major rule.

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million. This interim final rule does not mandate any requirements for State, local, or tribal governments. We believe the private sector costs of this rule fall below these thresholds, as well.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and governmental agencies. Most SNFs and suppliers are considered small entities, either by nonprofit status or by having revenues of \$5 million or less annually. Intermediaries and carriers are not considered to be small entities.

A. Background

This interim final rule sets forth a schedule of prospectively determined per diem rates to be used for payments under the Medicare program as well as a Consolidated Billing requirement. Section 1888(e)(4)(H) of the Act requires that the Secretary establish and publish prospectively determined per diem rates at least 60 days prior to the beginning of the period to which such rates are to be applied.

As required under section 1888(e)(4)(H), this interim final rule sets forth the first schedule of unadjusted Federal per diem rates, to be used for payment beginning July 1, 1998.

While section 1888(e) specifies the base year and certain other components of computing the payment rates, the statute does allow us broad authority in the establishment of several key elements of the system, and HCFA had some opportunity to consider alternatives for these elements. These include the case-mix methodology (including the assessment schedule), market basket index, wage index, and urban/rural distinction used in the development and/or adjustment of the Federal rates. In addition, the incorporation of the case mix methodology into the coverage requirements involved discretion on HCFA's part. Most of these elements, and the alternatives that were considered, were discussed in detail earlier in the preamble of this rule. Several that may warrant some additional discussion include the case mix system and associated assessment schedule.

Regarding the case mix system, as we have noted in the background portion of the preamble, we are aware of a variety of case-mix systems used by various States in the administration of their Medicaid payment systems for nursing homes. However, due to the different range of covered services furnished by Medicaid nursing homes and differences in approaches taken by the unique State systems, none of these case-mix systems met our needs. As a classification and weighting system, the only case-mix system that was suited for the Medicare patient population is the RUG-III methodology we are implementing as part of this PPS.

With regard to the assessment schedule, the schedule adopted in this rule was the result of analysis of information from our Multistate Nursing Home Case-Mix and Quality Demonstration. In developing this schedule, we weighed the need for the payment system to capture changes in patient condition against the burden on SNFs and their staffs. The resulting schedule is designed to balance these competing considerations.

B. Impact of This Interim Final Rule

Below, the impact of this rule is discussed in terms of its fiscal impact on the budget and in terms of its impact on providers and suppliers. The estimated fiscal impact of this rule is discussed first.

1. Budgetary Impact

The effect of this rule is that the rates will result in estimated 5-year annual savings ranging from \$30 million to \$4.28 billion, as shown in Table IX.1 below. (It should also be noted that Table IX.1 shows the impact for FYs 2000 through 2002 even though an update to this rule will go out effective October 1, 1999 (and every subsequent fiscal year) that will set forth a new

schedule of rates to be used for FY 2000. These numbers are shown to provide a full picture of the impact of this new payment system once it is fully phased in to 100 percent of the Federal rate.) These savings include both the savings to Medicare fee-for-service and managed care payments. The managed care savings make up approximately 25 percent of the total savings.

This table takes into account the behaviors that we believe SNFs will

engage in order to minimize any perceived adverse effects of section 4432 of the BBA 1997 on their payments. We believe these behavioral offsets might include an increase in the number of covered days and an increase in the average case-mix for each facility. We believe that, on average, these behavioral offsets will result in a 45 percent reduction in the effects these rates might otherwise have on an individual SNF.

TABLE IX.1—SAVINGS TO THE MEDICARE PROGRAM
(In millions of dollars)

(A) FY	(B) Transition	(C) Inflation	(D) Other	(E) Part A	(F) Part B	(G) Total
1998	0	30	-20	10	20	30
1999	90	1500	-70	1520	60	1580
2000	240	2880	-80	3040	60	3100
2001	410	3480	-80	3810	70	3880
2002	610	3690	-90	4210	70	4280

Column (A) shows the savings from the transition to the Federal rate. This reflects the effect of eliminating exceptions and limiting exemptions as required by the Act and discussed earlier in this rule. This was estimated by calculating the effect for a sample of SNFs which had exceptions and exemptions and extrapolating the results to the entire SNF industry. It also reflects the effect of applying a lower weight to the higher per diem costs of hospital-based SNFs in computing the Federal rates as required by the Act as amended by the BBA 1997 and described earlier in this rule. Column (B) shows the savings from using the statutorily determined update factor,

which will result in lower payment increases than allowed under the current cost-based system. These payment increases under the cost-based system were computed using historical trends of these increases and projecting a continuation of those trends into the future. As can be seen from the table, most of the savings are the result of this provision. As noted, this component of the rate setting methodology is required by statute and does not allow for our consideration of any alternatives. Column (C) shows the cost of shifting the Consolidated Billing piece into Part A of Medicare. Column (D) shows the total savings to Part A of Medicare. It is column (A) plus column (B) plus

column (C). Column (E) shows the total savings to Part B of Medicare resulting from the Consolidated Billing provisions. The sum of column (E) and Column (C) represents the impact of the Consolidated Billing provision on the Part B coinsurance. Column (F) is the total savings from this rule and is column (D) plus column (E).

2. Impact on Providers and Suppliers

Table IX.2 below shows the number of facilities projected to experience a decrease in Medicare SNF payments under the new prospective payment rates and the percentage change for the type of facility.

TABLE IX.2—IMPACT ON SNFS BY TYPE

Type of SNF	(A) Total number of SNFs	(B) Number of SNFs with lower payment	(C) Estimated average percentage reduction in payments
MSA Freestanding	5617	5568	17
MSA Hospital Based	683	676	19
Non-MSA Freestanding	2204	2185	17
Non-MSA Hospital Based	533	529	18
Total	9037	8958	17

Specifically, column (A) of the table shows the total number of SNFs in the data base for FY 1995 cost reporting periods. Column (B) shows the number of SNFs whose payment rate for cost reporting periods beginning July 1, 1998 would be lower than the payment they would have received under the former cost-based methodology for cost

reporting periods beginning July 1, 1998. We estimated the payments received under the new system based on a facility level case-mix score developed using the case-mix indices and the MEDPAR analog described earlier in this rule. We estimated the payments received under the former system by using the same average inflation factor

from the 1995 data for each facility. Column (C) shows the expected reduction in payments between the two payment methodologies on a percentage basis.

The results listed in Table IX.2 should be viewed with caution and as illustrative of broad groupings of SNFs. The effects of these provisions on

individual SNFs are unknown. As stated previously, in developing these estimates, we assumed each facility would increase costs at the national average rate. This national average increase includes the higher costs of new facilities entering the program. Therefore this increase is slightly higher than the true amount for existing facilities. We do, however, expect total payments to SNFs to decrease compared to payments that would have occurred under the former cost-based methodology. The effects of this decrease in payments to any individual SNF will depend on that SNF's ability to operate under the new payment methodology and on the proportion of its revenues that comes from the Medicare program.

Under the RFA, an economic impact is significant if the annual total costs or revenues of a substantial number of entities will increase or decrease by at least 3 percent. Medicare payments generally do not account for a high proportion of SNF revenue (about 10 percent on average) and this rule reduces those payments by approximately 17 percent on average. Therefore, total revenues for SNFs will be reduced by about 1.7 percent. As stated above we are unable to determine the effects on individual SNFs and therefore are unable to determine if the new SNF per diem rates will result in a substantial number of SNFs experiencing significant decreases in their total revenues.

We do not expect suppliers of items and services to SNFs to be significantly affected economically by the Consolidated Billing provisions. Total Medicare reimbursement to suppliers is about \$4 billion each year. As shown in Table IX.1, column (E), the reimbursement for these items and services is about \$60 million each year. Therefore, Consolidated Billing related to the services provided to patients in Part A SNF stays should have a minimal impact on suppliers, generally. The majority of ancillary services are provided directly by SNFs or under arrangements with suppliers and are, therefore, already billed to Medicare by the SNFs. While there is a possibility that, for those services now being consolidated, a sizeable number of these suppliers would likely be reimbursed at rates lower than the rates at which they were reimbursed under the previous system, this is highly dependent on the reaction each individual supplier has to the new payment system.

In addition, with regard to Consolidated Billing related to services provided to SNF patients who are not in a covered Part A stay, to the extent that

these services have been necessary in the past, they will still be required and provided to these patients by suppliers. Accordingly, it is anticipated that the total impact on suppliers will be minimal. However, determining the effect on individual suppliers is not possible due to a lack of data. Therefore we are not able to determine if these new SNF per diem rates will result in a substantial number of suppliers experiencing significant decreases in their total revenues.

Our experience with the inpatient hospital PPS has been that providers will now have incentives to provide the most cost efficient care possible while still providing the level of care necessary for the patient. The SNF PPS system provides some of the same incentives as does the hospital DRG/PPS system, and many of the changes that have taken place in the inpatient hospital system can be expected for these providers.

C. Rural Hospital Impact Statement

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We have not prepared a rural impact statement since we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

X. Collection of Information Requirements

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget

Pursuant to sections 3506(c)(2)(A) and 3507(j) of the Paperwork Reduction Act of 1995 (PRA), the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) a request for emergency review. We are requesting an emergency review because the collection of information described below is needed prior to the expiration of the time limits under

OMB's regulations at 5 CFR, Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because of the statutory requirement, as set forth in section 4432 of the BBA 1997, to implement these requirements on July 1, 1998.

HCFA is requesting OMB review and approval of this collection within 11 working days, with a 180-day approval period. Written comments from the public will be accepted and considered if received by the individuals designated below, within 10 working days of publication of this regulation in the *Federal Register*. During this 180-day period, HCFA will pursue OMB clearance of this collection under 5 CFR 1320.5.

In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

Section 413.343 Resident Assessment Data

SNFs are required to submit the resident assessment data as described at § 483.20 of this chapter in the manner necessary to administer the payment rate methodology described in § 413.337. Pursuant to sections 4204(b) and 4214(d) of OBRA 1987, the current requirements related to the submission and retention of resident assessment data are not subject to the PRA, but it has been determined that the new requirement to maintain performance of patient assessment data for the 5th, 30th, and 60th days following admission, necessary to administer the payment rate methodology described in § 413.337, is subject to the PRA. The burden associated with this requirement is the time required to maintain MDS data submitted electronically to a State agency or an agent of the State. We do not believe there is any additional burden associated with the transmission of the data itself, since the supplemental data will be submitted as part of the routine monthly transfer of provider MDS data.

There are an estimated 17,000 facilities that will be required to maintain the minimum data set. It is estimated that it will require 5 minutes per facility, per month, to electronically store the additional MDS data for a total annual burden of 1 hour per facility.

Section 424.32 Basic Requirements For All Claims

The requirements of this section, currently approved under OMB number 0938-0008, are being modified to require that a claim for services furnished to an SNF resident under § 411.15(p)(2)(i) of this chapter must also include the SNF's Medicare provider number and a Part B claim filed by an SNF must include appropriate HCPCS coding.

The burden associated with these requirements is the time required to include the two data elements, as necessary, on a Medicare claim. Given that the burden is minimal and is captured during the completion of a HCFA-1500 common claim form, approved under OMB number 0938-0008, we are assigning 1 token-hour for the annual burden per facility associated with these new requirements. We will include these requirements as part of the supporting requirements for the HCFA-1500, when we resubmit the HCFA-1500 to OMB for reapproval.

We have submitted a copy of this rule to OMB for its review of the information collection requirements above. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, and HCFA regulation identifier HCFA-1913, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

As noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designee referenced below, within 10 working days of publication of this collection in the Federal Register:

Health Care Financing Administration,
Office of Information Services,
Information Technology Investment
Management Group, Division of
HCFA Enterprise Standards, Room
C2-26-17, 7500 Security Boulevard,
Baltimore, MD 21244-1850; Attn:
John Burke HCFA-1913; Fax Number:
(410) 786-1415

And,
Office of Information and Regulatory
Affairs, Office of Management and
Budget, Room 10235, New Executive
Office Building, Washington, DC

20503, Attn: Allison Herron Eydt,
HCFA Desk Officer; Fax Number:
(202) 395-6974 or (202) 395-5167.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions,
Kidney diseases, Laboratories,
Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting
and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases,
Medicare, Puerto Rico, Reporting and
recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health
facilities, Health professions, Medicare.

42 CFR Part 483

Grant programs-health, Health
facilities, Health professions, Health
records, Medicaid, Medicare, Nursing
homes, Nutrition, Reporting and
recordkeeping requirements, Safety.

42 CFR Part 489

Health facilities, Medicare, Reporting
and recordkeeping requirements.

For the reasons set forth in the
preamble, 42 CFR chapter IV is
amended as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

A. Part 409 is amended as set forth below:

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the
Social Security Act (U.S.C. 1302 and
1895hh).

Subpart C—Posthospital SNF Care

2. In § 409.20, the introductory text to paragraph (a) is revised, paragraphs (a)(6) and (a)(7) are revised, paragraph (a)(8) is removed, and paragraph (b)(2) is revised to read as follows:

§ 409.20 Coverage of services.

(a) *Included services.* Subject to the conditions and limitations set forth in this subpart and subpart D of this part, "posthospital SNF care" means the following services furnished to an inpatient of a participating SNF, or of a participating hospital or critical access hospital (CAH) that has a swing-bed approval.

(6) Services furnished by a hospital with which the SNF has a transfer agreement in effect under § 483.75(n) of this chapter; and

(7) Other services that are generally provided by (or under arrangements made by) SNFs.

(b) *Excluded services—*

(2) *Services not generally provided by (or under arrangements made by) SNFs.* Except as specifically listed in §§ 409.21 through 409.27, only those services generally provided by (or under arrangements made by) SNFs are considered as posthospital SNF care. For example, a type of medical or surgical procedure that is ordinarily performed only on an inpatient basis in a hospital is not included as "posthospital SNF care," because such procedures are not generally provided by (or under arrangements made by) SNFs.

3. A new § 409.21 is added to read as follows:

§ 409.21 Nursing care.

(a) *Basic rule.* Medicare pays for nursing care as posthospital SNF care when provided by or under the supervision of a registered professional nurse.

(b) *Exception.* Medicare does not pay for the services of a private duty nurse or attendant. An individual is not considered to be a private duty nurse or attendant if he or she is an SNF employee at the time the services are furnished.

4. Section 409.24 is revised to read as follows:

§ 409.24 Medical social services.

Medicare pays for medical social services as posthospital SNF care, including—

(a) Assessment of the social and emotional factors related to the beneficiary's illness, need for care, response to treatment, and adjustment to care in the facility;

(b) Case work services to assist in resolving social or emotional problems that may have an adverse effect on the beneficiary's ability to respond to treatment; and

(c) Assessment of the relationship of the beneficiary's medical and nursing requirements to his or her home situation, financial resources, and the community resources available upon discharge from facility care.

5. Section 409.25 is revised to read as follows:

§ 409.25 Drugs, biologicals, supplies, appliances, and equipment.

(a) *Drugs and biologicals.* Except as specified in paragraph (b) of this section, Medicare pays for drugs and biologicals as posthospital SNF care only if—

(1) They represent a cost to the facility;

(2) They are ordinarily furnished by the facility for the care and treatment of inpatients; and

(3) They are furnished to an inpatient for use in the facility.

(b) *Exception.* Medicare pays for a limited supply of drugs for use outside the facility if it is medically necessary to facilitate the beneficiary's departure from the facility and required until he or she can obtain a continuing supply.

(c) *Supplies, appliances, and equipment.* Except as specified in paragraph (d) of this section, Medicare pays for supplies, appliances, and equipment as posthospital SNF care only if they are—

(1) Ordinarily furnished by the facility to inpatients; and

(2) Furnished to inpatients for use in the facility.

(d) *Exception.* Medicare pays for items to be used after the individual leaves the facility if—

(1) The item is one that the beneficiary must continue to use after leaving, such as a leg brace; or

(2) The item is necessary to permit or facilitate the beneficiary's departure from the facility and is required until he or she can obtain a continuing supply, for example, sterile dressings.

6. Section 409.26 is revised to read as follows:

§ 409.26 Transfer agreement hospital services.

(a) *Services furnished by an intern or a resident-in-training.* Medicare pays for medical services that are furnished by an intern or a resident-in-training (under a hospital teaching program approved in accordance with the provisions of § 409.15) as posthospital SNF care, if the intern or resident is in—

(1) A participating hospital with which the SNF has in effect an agreement under § 483.75(n) of this chapter for the transfer of patients and exchange of medical records; or

(2) A hospital that has a swing-bed approval, and is furnishing services to an SNF-level inpatient of that hospital.

(b) *Other diagnostic or therapeutic services.* Medicare pays for other diagnostic or therapeutic services as posthospital SNF care if they are provided—

(1) By a participating hospital with which the SNF has in effect a transfer

agreement as described in paragraph (a)(1) of this section; or

(2) By a hospital or a CAH that has a swing-bed approval, to its own SNF-level inpatient.

7. Section 409.27 is revised to read as follows:

§ 409.27 Other services generally provided by (or under arrangements made by) SNFs.

In addition to those services specified in §§ 409.21 through 409.26, Medicare pays as posthospital SNF care for such other diagnostic and therapeutic services as are generally provided by (or under arrangements made by) SNFs, including—

(a) Medical and other health services as described in subpart B of part 410 of this chapter, subject to any applicable limitations or exclusions contained in that subpart or in § 409.20(b); and

(b) Respiratory therapy services prescribed by a physician for the assessment, diagnostic evaluation, treatment, management, and monitoring of patients with deficiencies and abnormalities of cardiopulmonary function.

Subpart D—Requirements for Coverage of Posthospital SNF Care

8. In § 409.30, the introductory text is revised to read as follows:

§ 409.30 Basic requirements.

Posthospital SNF care, including SNF-type care furnished in a hospital or CAH that has a swing-bed approval, is covered only if the beneficiary meets the requirements of this section and only for days when he or she needs and receives care of the level described in § 409.31. A beneficiary in an SNF is also considered to meet the requirements of this section and of § 409.31 when assigned to one of the Resource Utilization Groups that is designated (in the annual publication of Federal prospective payment rates described in § 413.345 of this chapter) as representing the required level of care.

9. In § 409.33, paragraph (a) is removed, and paragraphs (b), (c), and (d) are redesignated as paragraphs (a), (b), and (c), respectively; and newly redesignated paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 409.33 Examples of skilled nursing and rehabilitation services.

(a) *Services that qualify as skilled nursing services.* (1) Intravenous or intramuscular injections and intravenous feeding.

(2) Enteral feeding that comprises at least 26 per cent of daily calorie

requirements and provides at least 501 milliliters of fluid per day.

Subpart F—Scope of Hospital Insurance Benefits

10. In § 409.60, the heading of paragraph (c) is republished, paragraphs (c)(2)(i) through (c)(2)(iii) are redesignated as paragraphs (c)(2)(ii) through (c)(2)(iv), respectively, and a new paragraph (c)(2)(i) is added to read as follows:

§ 409.60 Benefit periods.

(c) *Presumptions.*

(2) * * *

(i) To have met the skilled level of care requirements during any period for which the beneficiary was assigned to one of the Resource Utilization Groups designated as representing the required level of care, as provided in § 409.30.

Part 410—Supplementary Medical Insurance (SMI) Benefits

B. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)), unless otherwise indicated.

Subpart B—Medical and Other Health Services

2. In § 410.27, paragraph (a)(1)(i) is revised to read as follows:

§ 410.27 Outpatient hospital services and supplies incident to physicians' services: Conditions.

(a) * * *

(1) * * *

(i) By or under arrangements made by a participating hospital, except in the case of an SNF resident as provided in § 411.15(p) of this chapter; and

3. In § 410.28, paragraph (a)(1) is revised to read as follows:

§ 410.28 Hospital or CAH diagnostic services furnished to outpatients: Conditions.

(a) * * *

(1) They are furnished by or under arrangements made by a participating hospital or participating CAH, except in the case of an SNF resident as provided in § 411.15(p) of this chapter.

4. In § 410.32, the introductory text to paragraph (e) is republished, and a new

paragraph (e)(7) is added to read as follows:

§ 410.32 Diagnostic X-ray texts, diagnostic laboratory tests, and other diagnostic tests: Conditions.

(e) *Diagnostic laboratory tests.* Medicare Part B pays for covered diagnostic laboratory tests that are furnished by any of the following:

(7) An SNF to its resident under § 411.15(p) of this chapter, either directly (in accordance with § 483.75(k)(1)(i) of this chapter) or under an arrangement (as defined in § 409.3 of this chapter) with another entity described in this paragraph.

5. In § 410.40, the introductory text to paragraph (b) is republished, paragraphs (b)(2) and (b)(3)(ii) are revised, and a new paragraph (b)(4) is added to read as follows:

§ 410.40 Ambulance services: Limitations.

(b) *Limits on coverage of ambulance transportation.* Medicare Part B pays for ambulance transportation only if—

(2) Medicare Part A payment is not available for the service;

(3)
(ii) The transportation is furnished by an ambulance service with which the hospital does not have an arrangement (as defined in § 409.3 of this chapter), and the hospital has a waiver (in accordance with § 489.23 of this chapter) under which Medicare Part B payment may be made to the ambulance service; and

(4) In the case of an SNF resident (as defined in § 411.15(p)(3) of this chapter), the transportation is furnished by, or under arrangements made by, the SNF.

Subpart I—Payment of SMI Benefits

6. In § 410.150, the heading of paragraph (a) is republished, paragraph (a)(2) is revised, the introductory text to paragraph (b) is republished, and a new paragraph (b)(14) is added to read as follows:

§ 410.150 - To whom payment is made.

(a) *General rules.*

(2) The services specified in paragraphs (b)(5) through (b)(14) of this section must be furnished by a facility that has in effect a provider agreement or other appropriate agreement to participate in Medicare.

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of

this section, Medicare Part B pays as follows:

(14) To an SNF for services (other than those described in § 411.15(p)(2) of this chapter) that are furnished to a resident (as defined in § 411.15(p)(3) of this chapter) of the SNF.

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

C. Part 411 is amended as set forth below:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Exclusions and Exclusion of Particular Services

2. In § 411.15, the introductory text is republished; in the heading to paragraph (m) of this section, the word "furnished" is added before the word "to"; and a new paragraph (p) is added to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

(p) *Services furnished to SNF residents.* (1) *Basic rule.* Except as provided in paragraph (p)(2) of this section, any service furnished to a resident of an SNF by an entity other than the SNF, unless the SNF has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to the SNF's residents. Services subject to exclusion under this paragraph include, but are not limited to—

(i) Any physical, occupational, or speech-language therapy services regardless of whether or not the services are furnished by, or under the supervision of, a physician or other health care professional; and

(ii) Services furnished as an incident to the professional services of a physician or other health care professional specified in paragraph (p)(2) of this section.

(2) *Exceptions.* The following services are not excluded from coverage:

(i) Physicians' services that meet the criteria of § 415.102(a) of this chapter for payment on a fee schedule basis, provided that the claim for payment includes the SNF's Medicare provider number in accordance with § 424.32(a)(2) of this chapter.

(ii) Services performed under a physician's supervision by a physician

assistant who meets the applicable definition in section 1861(aa)(5) of the Act.

(iii) Services performed by a nurse practitioner or clinical nurse specialist who meets the applicable definition in section 1861(aa)(5) of the Act and is working in collaboration (as defined in section 1861(aa)(6) of the Act) with a physician.

(iv) Services performed by a certified nurse-midwife, as defined in section 1861(gg) of the Act.

(v) Services performed by a qualified psychologist, as defined in section 1861(ii) of the Act.

(vi) Services performed by a certified registered nurse anesthetist, as defined in section 1861(bb) of the Act.

(vii) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act.

(viii) Erythropoietin (EPO) for dialysis patients, as defined in section 1861(s)(2)(O) of the Act.

(ix) Hospice care, as defined in section 1861(dd) of the Act.

(x) An ambulance trip that initially conveys an individual to the SNF to be admitted as a resident, or that conveys an individual from the SNF in connection with one of the circumstances specified in paragraphs (p)(3)(i) through (p)(3)(iv) of this section as ending the individual's status as an SNF resident.

(xi) *For services furnished during 1998 only.* The transportation costs of electrocardiogram equipment for electrocardiogram test services (HCPCS code R0076).

(3) *SNF resident defined.* For purposes of this paragraph, a beneficiary who is admitted to a Medicare-participating SNF (or to the nonparticipating portion of a nursing home of which a distinct part is a Medicare-participating SNF) is considered to be a resident of the SNF, regardless of whether Part A covers the stay. Whenever such a beneficiary leaves the facility, the beneficiary's status as an SNF resident for purposes of this paragraph (along with the SNF's responsibility to furnish or make arrangements for the services described in paragraph (p)(1) of this section) ends when one of the following events occurs—

(i) The beneficiary is admitted as an inpatient to a Medicare-participating hospital or CAH, or as a resident to another SNF;

(ii) The beneficiary receives services from a Medicare-participating home health agency under a plan of care;

(iii) The beneficiary receives outpatient services from a Medicare-participating hospital or CAH (but only

with respect to those services that are not furnished pursuant to the comprehensive care plan required under § 483.20 of this chapter); or

(iv) The beneficiary is formally discharged (or otherwise departs) from the SNF, unless the beneficiary is readmitted (or returns) to that or another SNF within 24 consecutive hours.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

D. Part 413 is amended as set forth below:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart A—Introduction and General Rules

2. In § 413.1, paragraph (g) is revised to read as follows:

§ 413.1 Introduction.

(g) *Payment for services furnished in SNFs.* (1) Except as specified in paragraph (g)(2)(ii) of this section, the amount paid for services furnished in cost reporting periods beginning before July 1, 1998, is determined on a reasonable cost basis or, where applicable, in accordance with the prospectively determined payment rates for low-volume SNFs established under section 1888(d) of the Act, as set forth in subpart I of this part.

(2) The amount paid for services (other than those described in § 411.15(p)(2) of this chapter)—

(i) That are furnished in cost reporting periods beginning on or after July 1, 1998, to a resident who is in a covered Part A stay, is determined in accordance with the prospectively determined payment rates for SNFs established under section 1888(e) of the Act, as set forth in subpart J of this part.

(ii) That are furnished on or after July 1, 1998, to a resident who is not in a covered Part A stay, is determined in accordance with any applicable Part B fee schedule or, for a particular item or service to which no fee schedule applies, by using the existing payment methodology utilized under Part B for such item or service.

3. The heading for subpart I of part 413 is revised to read as follows:

Subpart I—Prospectively Determined Payment Rates for Low-Volume Skilled Nursing Facilities, for Cost Reporting Periods Beginning Prior to July 1, 1998

4. A new subpart J, consisting of §§ 413.330, 413.333, 413.335, 413.337, 413.340, 413.343, 413.345, and 413.348, is added to part 413 to read as follows:

Subpart J—Prospective Payment for Skilled Nursing Facilities

Sec.

413.330 Basis and scope.

413.333 Definitions.

413.335 Basis of payment.

413.337 Methodology for calculating the prospective payment rates.

413.340 Transition period.

413.343 Resident assessment data.

413.345 Publication of Federal prospective payment rates.

413.348 Limitation on review.

Subpart J—Prospective Payment for Skilled Nursing Facilities

§ 413.330 Basis and scope.

(a) *Basis.* This subpart implements section 1888(e) of the Act, which provides for the implementation of a prospective payment system for SNFs for cost reporting periods beginning on or after July 1, 1998.

(b) *Scope.* This subpart sets forth the framework for the prospective payment system for SNFs, including the methodology used for the development of payment rates and associated adjustments, the application of a transition phase, and related rules.

§ 413.333 Definitions.

As used in this subpart—

Case-mix index means a scale that measures the relative difference in resource intensity among different groups in the resident classification system.

Market basket index means an index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered skilled nursing services.

Resident classification system means a system for classifying SNF residents into mutually exclusive groups based on clinical, functional, and resource-based criteria. For purposes of this subpart, this term refers to the current version of the Resource Utilization Groups, as set out in the annual publication of Federal prospective payment rates described in § 413.345.

Rural area means any area outside of an urban area.

Urban area means a metropolitan statistical area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Office of Management and Budget, or a New England county

deemed to be an urban area, as listed in § 412.62(f)(1)(ii)(B) of this chapter.

§ 413.335 Basis of payment.

(a) *Method of payment.* Under the prospective payment system, SNFs receive a per diem payment of a predetermined rate for inpatient services furnished to Medicare beneficiaries. The per diem payments are made on the basis of the Federal payment rate described in § 413.337 and, during a transition period, on the basis of a blend of the Federal rate and the facility-specific rate described in § 413.340. These per diem payment rates are determined according to the methodology described in § 413.337 and § 413.340.

(b) *Payment in full.* The payment rates represent payment in full (subject to applicable coinsurance as described in subpart G of part 409 of this chapter) for all costs (routine, ancillary, and capital-related) associated with furnishing inpatient SNF services to Medicare beneficiaries other than costs associated with operating approved educational activities as described in § 413.85.

§ 413.337 Methodology for calculating the prospective payment rates.

(a) *Data used.* (1) To calculate the prospective payment rates, HCFA uses—

(i) Medicare data on allowable costs from freestanding and hospital-based SNFs for cost reporting periods beginning in fiscal year 1995. SNFs that received "new provider" exemptions under § 413.30(e)(2) are excluded from the data base used to compute the Federal payment rates. In addition, allowable costs related to exceptions payments under § 413.30(f) are excluded from the data base used to compute the Federal payment rates;

(ii) An appropriate wage index to adjust for area wage differences;

(iii) The most recent projections of increases in the costs from the SNF market basket index;

(iv) Resident assessment and other data that account for the relative resource utilization of different resident types; and

(v) Medicare Part B SNF claims data reflecting amounts payable under Part B for covered SNF services (other than those services described in § 411.15(p)(2) of this chapter) furnished during SNF cost reporting periods beginning in fiscal year 1995 to individuals who were residents of SNFs and receiving Part A covered services.

(b) *Methodology for calculating the per diem Federal payment rates.* (1) *Determining SNF costs.* In calculating the initial unadjusted Federal rates

applicable for services provided during the period beginning July 1, 1998 through September 30, 1999. HCFA determines each SNF's costs by summing its allowable costs for the cost reporting period beginning in fiscal year 1995 and its estimate of Part B payments (described in paragraphs (a)(1)(i) and (a)(1)(v) of this section).

(2) *Use of market basket index.* The SNF market basket index is used to adjust the SNF cost data to reflect cost increases occurring between cost reporting periods represented in the data and the initial period (beginning July 1, 1998 and ending September 30, 1999) to which the payment rates apply. For each year, the cost data are updated by a factor equivalent to the annual market basket index percentage minus 1 percentage point.

(3) *Calculation of the per diem cost.* For each SNF, the per diem cost is computed by dividing the cost data for each SNF by the corresponding number of Medicare days.

(4) *Standardization of data for variation in area wage levels and case-mix.* The cost data described in paragraph (b)(2) of this section are standardized to remove the effects of geographic variation in wage levels and facility variation in case-mix. The cost data are standardized for geographic variation in wage levels using the wage index. The cost data are standardized for facility variation in case-mix using the case-mix indices and other data that indicate facility case-mix.

(5) *Calculation of unadjusted Federal payment rates.* HCFA calculates the national per diem unadjusted payment rates by urban and rural classification in the following manner:

(i) By computing the average per diem standardized cost of freestanding SNFs weighted by Medicare days.

(ii) By computing the average per diem standardized cost of freestanding and hospital-based SNFs combined weighted by Medicare days.

(iii) By computing the average of the amounts determined under paragraphs (b)(5)(i) and (b)(5)(ii) of this section.

(c) *Calculation of adjusted Federal payment rates for case-mix and area wage levels.* The Federal rate is adjusted to account for facility case-mix using a resident classification system and associated case-mix indices that account for the relative resource utilization of different patient types. This classification system utilizes the resident assessment instrument completed by SNFs as described at § 483.20 of this chapter, according to the assessment schedule described in § 413.343(b). The Federal rate is also adjusted to account for geographic

differences in area wage levels using an appropriate wage index.

(d) *Annual updates of Federal unadjusted payment rates.* HCFA updates the unadjusted Federal payment rates on a fiscal year basis.

(1) For fiscal years 2000 through 2002, the unadjusted Federal rate is equal to the rate for the previous period or fiscal year increased by a factor equal to the SNF market basket index percentage minus 1 percentage point.

(2) For subsequent fiscal years, the unadjusted Federal rate is equal to the rate for the previous fiscal year increased by the applicable SNF market basket index amount.

§ 413.340 Transition period.

(a) *Duration of transition period and proportions for the blended transition rate.* Beginning with an SNF's first cost reporting period beginning on or after July 1, 1998, there is a transition period covering three cost reporting periods. During this transition phase, SNFs receive a payment rate comprising a blend of the adjusted Federal rate and a facility-specific rate. For the first cost reporting period beginning on or after July 1, 1998, payment is based on 75 percent of the facility-specific rate and 25 percent of the Federal rate. For the subsequent cost reporting period, the rate is comprised of 50 percent of the facility-specific rate and 50 percent of the Federal rate. In the final cost reporting period of the transition, the rate is comprised of 25 percent of the facility-specific rate and 75 percent of the Federal rate. For all subsequent cost reporting periods, payment is based entirely on the Federal rate.

(b) *Calculation of facility-specific rate for the first cost reporting period.* The facility-specific rate is computed based on the SNF's Medicare allowable costs from its fiscal year 1995 cost report plus an estimate of the amounts payable under Part B for covered SNF services (other than those services described in § 411.15(p)(2) of this chapter) furnished during fiscal year 1995 to individuals who were residents of SNFs and receiving Part A covered services.

Allowable costs associated with exceptions, as described in § 413.30(f), are included in the calculation of the facility-specific rate. Allowable costs associated with exemptions, as described in § 413.30(e)(2), are included in the calculation of the facility-specific rate but only to the extent that they do not exceed 150 percent of the routine cost limit. Low Medicare volume SNFs that were paid a prospectively determined rate under § 413.300 for their cost reporting period beginning in fiscal year 1995 will utilize that rate as

the basis for the allowable costs of routine (operating and capital-related) expenses in determining the facility-specific rate. Each SNF's allowable costs are updated to the first cost reporting period to which the payment rates apply using annual factors equal to the SNF market basket percentage minus 1 percentage point.

(c) *SNFs participating in the Multistate Nursing Home Case-Mix and Quality Demonstration.* SNFs that participated in the Multistate Nursing Home Case-Mix and Quality Demonstration in a cost reporting period that began in calendar year 1997 will utilize their allowable costs from that cost reporting period, including prospective payment amounts determined under the demonstration payment methodology.

(d) *Update of facility-specific rates for subsequent cost reporting periods.* The facility-specific rate for a cost reporting period that is subsequent to the first cost reporting period is equal to the facility-specific rate for the first cost reporting period (described in paragraph (a) of this section) updated by the market basket index.

(1) For a subsequent cost reporting period beginning in fiscal years 1998 and 1999, the facility-specific rate is equal to the facility-specific rate for the previous cost reporting period updated by the applicable market basket index percentage minus one percentage point.

(2) For a subsequent cost reporting period beginning in fiscal year 2000, the facility-specific rate is equal to the facility-specific rate for the previous cost reporting period updated by the applicable market basket index percentage.

(e) *SNFs excluded from the transition period.* SNFs that received their first payment from Medicare, under present or previous ownership, on or after October 1, 1995, are excluded from the transition period, and payment is made according to the Federal rates only.

§ 413.343 Resident assessment data.

(a) *Submission of resident assessment data.* SNFs are required to submit the resident assessment data described at § 483.20 of this chapter in the manner necessary to administer the payment rate methodology described in § 413.337. This provision includes the frequency, scope, and number of assessments required.

(b) *Assessment schedule.* In accordance with the methodology described in § 413.337(c) related to the adjustment of the Federal rates for case-mix, SNFs must submit assessments according to an assessment schedule. This schedule must include

performance of patient assessments on the 5th, 14th, 30th, 60th, and 90th days following admission and such other assessments that are necessary to account for changes in patient care needs.

(c) *Noncompliance with assessment schedule.* HCFA pays a default rate for the Federal rate when a SNF fails to comply with the assessment schedule in paragraph (b) of this section. The default rate is paid for the days of a patient's care for which the SNF is not in compliance with the assessment schedule.

§ 413.345 Publication of Federal prospective payment rates.

HCFA publishes information pertaining to each update of the Federal payment rates in the *Federal Register*. This information includes the standardized Federal rates, the resident classification system that provides the basis for case-mix adjustment (including the designation of those specific Resource Utilization Groups under the resident classification system that represent the required SNF level of care, as provided in § 409.30 of this chapter), and the wage index. This information is published before May 1 for the fiscal year 1998 and before August 1 for the fiscal years 1999 and after.

§ 413.348 Limitation on review.

Judicial or administrative review under sections 1869 or 1878 of the Act or otherwise is prohibited with regard to the establishment of the Federal rates. This prohibition includes the methodology used in the computation of the Federal standardized payment rates, the case-mix methodology, and the development and application of the wage index. This prohibition on judicial and administrative review also extends to the methodology used to establish the facility-specific rates but not to determinations related to reasonable cost in the fiscal year 1995 cost reporting period used as the basis for these rates.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

E. Part 424 is amended as set forth below:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (U.S.C. 1302 and 1895hh).

Subpart A—General Provisions

2. In § 424.3, the following definition is added, in alphabetical order, to read as follows:

§ 424.3 Definitions.

HCPCS means HCFA Common Procedure Coding System.

Subpart B—Certification and Plan of Treatment Requirements

3. In § 424.20, the introductory text and paragraph (a) are revised to read as follows:

§ 424.20 Requirements for posthospital SNF care.

Medicare Part A pays for posthospital SNF care furnished by an SNF, or a hospital or CAH with a swing-bed approval, only if the certification and recertification for services are consistent with the content of paragraph (a) or (c) of this section, as appropriate.

(a) *Content of certification.*—(1) *General requirements.* Posthospital SNF care is or was required because—

(i) The individual needs or needed on a daily basis skilled nursing care (furnished directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in an SNF or a swing-bed hospital on an inpatient basis, and the SNF care is or was needed for a condition for which the individual received inpatient care in a participating hospital or a qualified hospital, as defined in § 409.3 of this chapter; or

(ii) The individual has been correctly assigned to one of the Resource Utilization Groups designated as representing the required level of care, as provided in § 409.30 of this chapter.

4. In § 424.32, the introductory text to paragraph (a) is republished, paragraph (a)(2) is revised, and a new paragraph (a)(5) is added, to read as follows:

§ 424.32 Basic requirements for all claims.

(a) A claim must meet the following requirements:

(2) A claim for physician services must include appropriate diagnostic coding using ICD-9-CM and, for services furnished to an SNF resident under § 411.15(p)(2)(i) of this chapter, must also include the SNF's Medicare provider number.

(5) A Part B claim filed by an SNF must include appropriate HCPCS coding.

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

F. Part 483 is amended as set forth below:

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

2. In § 483.20, paragraph (b)(4) is revised to read as follows:

§ 483.20 Resident assessment.

(b) *Comprehensive assessments.*

(4) *Frequency.* Subject to the timeframes prescribed in § 413.343(b) of this chapter, assessments must be conducted—

(i) No later than 14 days after the date of admission;

(ii) Promptly after a significant change in the resident's physical or mental condition; and

(iii) In no case, less often than once every 12 months.

3. In § 483.75, paragraph (h)(1) is revised to read as follows:

§ 483.75 Administration.

(h) *Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement described in section 1861(w) of the Act or (with respect to services furnished to NF residents and dental services furnished to SNF residents) an agreement described in paragraph (b)(2) of this section.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

G. Part 489 is amended to read as follows:

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Essentials of Provider Agreements

2. In § 489.20, the introductory text is republished, and a new paragraph (s) is added to read as follows:

§ 489.20 Basic commitments.

The provider agrees to the following:

(s) In the case of an SNF, either to furnish directly or make arrangements (as defined in § 409.3 of this chapter) for all Medicare-covered services furnished to a resident (as defined in § 411.15(p)(3) of this chapter) of the SNF, except the following:

(1) Physicians' services that meet the criteria of § 415.102(a) of this chapter for payment on a fee schedule basis.

(2) Services performed under a physician's supervision by a physician assistant who meets the applicable definition in section 1861(aa)(5) of the Act.

(3) Services performed by a nurse practitioner or clinical nurse specialist who meets the applicable definition in section 1861(aa)(5) of the Act and is working in collaboration (as defined in section 1861(aa)(6) of the Act) with a physician.

(4) Services performed by a certified nurse-midwife, as defined in section 1861(gg) of the Act.

(5) Services performed by a qualified psychologist, as defined in section 1861(ii) of the Act.

(6) Services performed by a certified registered nurse anesthetist, as defined in section 1861(bb) of the Act.

(7) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act.

(8) Erythropoietin (EPO) for dialysis patients, as defined in section 1861(s)(2)(O) of the Act.

(9) Hospice care, as defined in section 1861(dd) of the Act.

(10) An ambulance trip that initially conveys an individual to the SNF to be admitted as a resident, or that conveys an individual from the SNF in connection with one of the circumstances specified in § 411.15(p)(3)(i) through (p)(3)(iv) of this chapter as ending the individual's status as an SNF resident.

(11) For services furnished during 1998 only. The transportation costs of electrocardiogram equipment for electrocardiogram test services (HCPCS code R0076).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 22, 1998.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing
Administration.

Approved: April 28, 1998.

Donna E. Shalala,
Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix A—Technical Features of the 1992 Skilled Nursing Facility Total Cost Market Basket Index

As discussed in the preamble of this rule, we are revising and rebasing the SNF market basket. This appendix describes the technical aspects of the 1992-based index that we are implementing in this rule. We present this description of the market basket in three steps:

- A synopsis of the structural differences between the 1977- and the 1992-based market baskets.
- A description of the methodology used to develop the cost category weights in the 1992-based market basket.
- A description of the data sources used to measure price change for each component of the 1992-based market basket, making note of the differences from the price proxies used in the 1977-based market basket.

I. Synopsis of Structural Changes Adopted in the Revised and Rebased 1992 Skilled Nursing Facility Total Cost Market Basket

Four major structural differences exist between the current 1977-based and the 1992-based SNF market baskets.

- The 1992-based market basket has total costs (routine, ancillary, and capital-related) whereas the 1977-based market basket had only routine costs.

- More recent SNF cost data are used in the revised and rebased SNF market basket.

The 1977-based market basket contained cost shares that were derived from 1977 National Center for Health Statistics data. The 1992-based market basket uses data from the PPS-9 Medicare Cost Reports for freestanding SNFs with Medicare expenses greater than 1 percent of total expenses for five major categories of cost. PPS-9 cost reports have cost reporting periods beginning after September 30, 1991 and before October 1, 1992. Cost allocations with the six major cost categories use two Department of Commerce data sources, the 1992 Asset and Expenditure Survey, Bureau of the Census, Economics and Statistics Administration, and the 1992 Bureau of Economic Analysis Input-Output Tables.

- Some cost categories have been disaggregated and some cost categories have been combined. These category changes reflect the availability of data in the cost reports, the Asset and Expenditure Survey, and the Input-Output Tables. The cost categories for Fuel Oil, Coal, etc. and Natural Gas have been combined into Fuels. Nonhighway. The Supplies category has been disaggregated into several subcategories: Paper, Rubber and Plastics, and Chemicals. The 1977-based Miscellaneous Costs cost category was disaggregated into Miscellaneous Products and Other Services,

which was then further disaggregated into Telephone, Labor-Intensive Services, and Non Labor-Intensive Services. The Capital-related Expenses major cost category was added, and then disaggregated into five subcategories, including Depreciation expenses for Building and Fixed Equipment and for Movable Equipment, Interest expenses for Government and Nonprofit SNFs and for For-profit SNFs, and Other Capital-related expenses.

- Some new price proxies have been incorporated in the revised and rebased market basket.

II. Methodology for Developing the Cost Category Weights

Cost category weights for the 1992-based market basket were developed in two stages. First, base weights for six main categories (wages and salaries, employee benefits, contract labor, pharmaceuticals, capital-related expenses, and a residual all other) were derived from the SNF Medicare Cost Reports described above. The residual "all other" cost category was divided into subcategories, using U.S. Department of Commerce data sources for the nursing home industry. Relationships from the 1992 Input-Output Tables were used to allocate the "all other" cost category.

Below we describe the source of the six main category weights and their subcategories in the 1992-based market basket.

- **Wages and Salaries:** The wages and salaries cost category is one of the six base weights derived from using 1992 SNF Medicare Cost Reports.
- **Employee Benefits:** The ratio used in the employee benefits cost category is derived from 1993 SNF Medicare cost reports. The 1993 cost reports contained information from which to derive the ratio of employee benefits to wages and salaries that was not available in the 1992 SNF cost reports.
- **Pharmaceuticals:** The ratio used in the pharmaceuticals cost category was derived from 1993 SNF Medicare cost reports. The 1993 cost reports contained information from which to derive the ratio of pharmaceuticals costs to that cost that was not available in the 1992 cost reports.
- **Capital-related:** The weight for the overall capital-related expenses cost category was derived using 1992 SNF Medicare Cost Reports. The subcategory and vintage weights within the overall capital-related expenses were derived using additional data sources. The methodology for deriving these weights is described below.

In determining the subcategory weights, we used a combination of information from the 1992 and 1993 SNF Medicare Cost Reports, the 1992 Census Asset and Expenditure Survey, and the 1992 hospital Medicare Cost Reports. We estimated the depreciation expense share of capital-related expenses, including the distribution between building and fixed equipment and movable equipment, from the 1992 Asset and Expenditure Survey. Depreciation expenses cannot be disaggregated from the Medicare Cost Reports due to multiple reporting methods. From these calculations, depreciation expenses, not including

depreciation expenses implicit from leases, were estimated to be 50.7 percent of total capital-related expenditures in 1992.

The interest expense share of capital-related expenses was derived from a special file of the 1993 SNF Medicare Cost Reports. Interest expenses are not identifiable in the 1992 SNF Medicare Cost Reports and not reported in the 1992 Asset and Expenditure Survey. We determined the split between for-profit interest expense and not-for-profit interest expense based on the distribution of long-term debt outstanding by type of SNF (for-profit or not-for-profit) from the 1992 SNF Medicare Cost Reports. Interest expense, not including interest expenses from leases, was estimated to be 27.3 percent of total capital-related expenditures in 1992.

A small category, other capital-related expenses (insurance, taxes, other), was calculated using a ratio from the 1992 hospital Medicare Cost Reports. We determined the ratio of other capital-related expenses to book values for hospital

depreciable assets by type of hospital control (for-profit, not-for-profit, and government) from the 1992 hospital Medicare Cost Reports. We then applied this ratio by type of SNF control to the book values of SNF depreciable assets from the 1992 SNF Medicare Cost Reports to determine other capital-related expenses for SNFs. This methodology assumes that by type of control, hospitals and SNFs have the same proportion of other capital-related expenses to depreciable assets. This assumption was necessary since other capital-related expenses not including leases were not directly available from the SNF Medicare Cost Reports. Other capital-related expenses, not including other capital-related expenses implicit from leases, were estimated to be 4.5 percent of total capital-related expenditures in 1992.

Consistent with the methodology from the hospital PPS capital input price index, we calculated lease expenses as a residual by subtracting depreciation, interest, and other

capital-related expenses from total capital-related expenses. We then assumed that roughly 10 percent of lease expenses were overhead, the same assumption used in the hospital PPS capital input price index, and included them in the other capital-related expense category. The remaining 90 percent of lease expenses were distributed across the depreciation (61.5 percent = 50.7/82.5), interest (33.1 percent = 27.3/82.5), and other capital-related expenses (5.4 percent = 4.5/82.5) categories using the shares determined by the methodology described above. The amount of lease expenses applied to the depreciation subcategories, building and fixed equipment (93.9 percent) and movable equipment (6.1 percent), were determined using the 1992 Asset and Expenditure Survey distribution of lease expenses. The table below shows the final capital-related expense distribution, including expenses from leases, in the SNF PPS market basket:

	SNF capital-related expenses*	SNF capital-related expenses**
Total	100.0	9.8
Depreciation	60.5	5.9
Building and Fixed	42.1	4.1
Equipment		
Movable Equipment	18.4	1.8
Interest	32.6	3.2
Other capital-related expense	6.9	0.7

* As a percent of total capital-related expenses.

** As percent of total SNF expenses.

As explained in the Rebased and Revising the SNF market basket section of the preamble, the HCFA methodology for determining the price change of capital-related expenses accounts for the vintage nature of capital, which is the acquisition and use of capital over time. In order to capture this vintage nature, the price proxies must be vintage-weighted. The determination of these vintage weights occurs in two steps. First, we must determine the expected life of capital and debt instruments in SNFs. Second, we must identify the proportion of expenditures within a cost category that are attributable to each year over the life of capital assets in that category, or the vintage weights. Each of these steps is explained in detail below.

The expected life of capital must be determined for both building and fixed equipment and movable equipment. The expected life for each of these cost categories is determined by dividing end of year book value amounts by annual depreciation expenses for SNFs from the 1992 Asset and Expenditure Survey. This calculation produced an expected life of 23 years for building and fixed equipment and 10 years for movable equipment. Implicit in this calculation is the assumption that all book values are currently depreciable. In the absence of data on capital debt instruments held by SNFs, the expected life of capital debt instruments is assumed to be 22 years for both for-profit and not-for-profit debt

instruments, the same as for the hospital PPS capital input price index.

Given the expected life of capital and debt instruments as determined from the methodology above, we must determine the proportion of capital expenditures attributable to each year of the expected life by cost category. These proportions represent the vintage weights. We were not able to find historical time-series of capital expenditures by SNFs. Therefore, we approximated the capital expenditure patterns of SNFs over time using alternative SNF data sources. For building and fixed equipment, we used the stock of beds in nursing homes from the HCFA's National Health Accounts for 1962 through 1991. We then used the change in the stock of beds each year to approximate building and fixed equipment purchases for that year. This procedure assumes that bed growth reflects the growth in capital-related costs in SNFs for building and fixed equipment. We believe this assumption is reasonable since the number of beds reflects the size of the SNF, and as the SNF adds beds, it also adds fixed capital.

For movable equipment, we used available SNF data to capture the changes in intensity of SNF services that would cause SNFs to purchase movable equipment. We estimated the change in intensity as the trend in the ratio of non-therapy ancillary costs to routine costs from the 1989 through 1993 SNF Medicare Cost Reports. We estimated this ratio for 1962 through 1988 using regression analysis. The time series of non-therapy

ancillary costs to routine costs for SNFs measures changes in intensity in SNF services, which are assumed to be associated with movable equipment purchase patterns. The assumption here is that as non-therapy ancillary costs increase compared with routine costs, the SNF caseload is more complex and would require more movable equipment. Again, the lack of direct movable equipment purchase data for SNFs over time required us to use alternative SNF data sources. The resulting two time series, determined from beds and the ratio of non-therapy ancillary to routine costs, reflect real capital purchases of building and fixed equipment and movable equipment over time, respectively.

To obtain nominal purchases, which are used to determine the vintage weights for interest, we converted the two real capital purchase series from 1963 through 1991 determined above to nominal capital purchase series using their respective price proxies (Boeckh institutional construction index and PPI for machinery and equipment). We then combined the two nominal series into one nominal capital purchase series for 1963 through 1991. Nominal capital purchases are needed for interest vintage weights to capture the value of the debt instrument.

Once these capital purchase time series were created for 1963 through 1991, we averaged different periods to obtain an average capital purchase pattern over time. For building and fixed equipment we

averaged seven 23-year periods, for movable equipment we averaged twenty 10-year periods, and for interest we averaged eight 22-year periods. The vintage weight for a given year is calculated by dividing the capital purchase amount in any given year by the total amount of purchases during the expected life of the equipment or debt

instrument. For example, for the 23-year period of 1963 through 1985 for building and fixed equipment, the vintage weight for year 1 is calculated by dividing the real annual capital purchase amount of building and fixed equipment in 1963 into the total amount of real annual capital purchases of building and fixed equipment over the entire

1963 through 1985 period. We performed this calculation for each year in the 23-year period, and for each of the seven 23-year periods. We then calculated an average of the seven 23-year periods. The resulting vintage weights for each of these cost categories are shown in Table A-1 below:

Appendix Table A-1—Vintage Weights for SNF PPS Capital-Related Price Proxies

Year	Building and fixed equipment	Movable equipment	Interest
1	0.059	0.089	0.038
2	0.078	0.093	0.046
3	0.086	0.096	0.046
4	0.079	0.101	0.047
5	0.074	0.104	0.051
6	0.071	0.104	0.054
7	0.073	0.104	0.060
8	0.075	0.114	0.064
9	0.064	0.101	0.062
10	0.056	0.097	0.055
11	0.052		0.056
12	0.048		0.056
13	0.041		0.055
14	0.034		0.050
15	0.026		0.042
16	0.019		0.044
17	0.017		0.039
18	0.016		0.036
19	0.013		0.025
20	0.004		- 0.027
21	0.003		0.023
22	0.005		0.026
23	0.009		
Total	1.000	1.000	1.000

Sources: 1992 SNF Medicare Cost Reports; HCFA, National Health Accounts.

Note: Totals may not sum to 1.000 due to rounding.

In developing the capital-related expenses portion of the SNF input price index, we considered numerous alternatives for developing the cost category and vintage weights. Our analysis showed that using any of these alternatives would have a minimal impact on the capital-related expense portion of the SNF index. Since the capital-related

expense share of the total SNF market basket is just 9.777 percent, these minimal differences have no effect on the total SNF market basket percent change.

We compared the price change in the capital-related expense component to changes in other relevant price indexes to evaluate our methodology. The table below shows the four-quarter moving-average percent change in the SNF PPS capital-

related expense component, the hospital PPS capital input price index, the Boeckh institutional construction index, and the CPI-all items for FY 1992 to FY 1997. Since the two HCFA capital indexes include an adjustment for interest rates that have been declining in recent years, the capital-related expense component of the SNF PPS market basket appears to be within a reasonable range of the other price indexes.

APPENDIX TABLE A-2—PERCENT CHANGE IN HCFA CAPITAL-RELATED EXPENSE SHARE OF SNF PPS INPUT PRICE INDEX COMPARED TO OTHER PRICE INDEXES

	HCFA capital-related expense share of SNF PPS input price index	HCFA hospital PPS capital input price index	Boeckh institutional construction index	CPI—all items
FY92	2.4	1.5	2.6	3.0
FY93	2.0	1.1	2.4	3.0
FY94	1.8	1.1	2.8	2.6
FY95	1.8	1.3	3.1	2.8
FY96	1.6	1.0	2.3	2.8
FY97	1.4	0.9	2.4	2.7

Contract labor: The weight for the contract labor cost category was derived using 1992 Medicare Cost Reports. It was then distributed among the wages and

salaries, employee benefits, and "all other" cost categories, so that contract costs will have the same price proxies as direct cost categories.

All Other: Subcategory weights for the All Other category were derived using information from a U.S. Department of Commerce data source. The 1992 Input-

Output Tables were used to apportion all other costs within the SNF Medicare Cost Reports.

III. Price Proxies Used To Measure Cost Category Growth

• **Wages and Salaries:** For measuring price growth in the wages and salaries cost component of the 1992-based market basket, the percentage change in the ECI for wages and salaries for private nursing homes is used. This is a revision from the 1977-based market basket, in which the AHE for Nursing and Personal Care Facilities was used to measure the percentage change in wages and salaries. The ECI for wages and salaries for private nursing homes is a fixed-weight index that measures the rate of change in employee wage rates per hour worked. It measures pure price change and is not affected by shifts among occupations. The previous measure, AHE, confounds changes in the proportion of different occupations with changes in earnings levels for a given occupation.

• **Employee Benefits:** For measuring price growth in the 1992-based market basket, the percentage change in the ECI for benefits for private nursing homes is used. This is a revision from the 1977-based market basket, in which the BEA Supplement to Wages and Salaries per employee (BLS) was used to measure this component. The ECI for benefits for private nursing homes is also a fixed-weight index that measures pure price change and is not affected by shifts in occupation. In contrast to the ECI, the BEA Supplement to Wages and Salaries per employee (BLS) is not specific to the nursing home industry and is not as conceptually sound for our purpose.

• **All Other Expenses:**
+ **Nonmedical professional fees:** The ECI for compensation for Private Industry Professional, Technical, and Specialty Workers is used to measure price changes in nonmedical professional fees. This is a revision from the 1977-based index in which the cost of nonmedical professional fees was not specifically measured.

+ **Electricity:** For measuring price change in the Electricity cost category, the PPI for Commercial Electric Power is used. This is a revision from the 1977-based index in which the Implicit Price Deflator-Electricity (PCE) was used.

+ **Fuels, nonhighway:** For measuring price change in the Fuels, Nonhighway cost category, the PPI for Commercial Natural Gas is used. This is a revision from the 1977-based market basket, in which the Implicit Price Deflator-Fuel Oil (PCE) and the Implicit Price Deflator-Natural Gas (PCE) were used for separate cost categories.

+ **Water and Sewerage:** For measuring price change in the Water and Sewerage cost category, the CPI-U (Consumer Price Index for All Urban Consumers) for Water and Sewerage is used. The same price proxy was used in the 1977-based index.

+ **Food-wholesale purchases:** For measuring price change in the Food-wholesale purchases cost category, the PPI for Processed Foods is used. The same price proxy was used in the 1977-based index.

+ **Food-retail purchases:** For measuring price change in the Food-retail purchases cost category, the CPI-U for Food Away From Home is used. This is a change from the 1977-based index, when the CPI-U for Food and Beverages was used, and reflects the use of contract food service by some SNFs.

+ **Pharmaceuticals:** For measuring price change in the Pharmaceuticals cost category, the PPI for Prescription Drugs is used. The same price proxy was used for this cost category in the 1977-based index.

+ **Chemicals:** For measuring price change in the Chemicals cost category, the PPI for Industrial Chemicals is used. This is a revision from the 1977-based index, in which the cost of chemicals was not specifically measured.

+ **Rubber and Plastics:** For measuring price change in the Rubber and Plastics cost category, the PPI for Rubber and Plastic Products is used. This too is a revision from the 1977-based index, in which the cost of rubber and plastic products was not specifically measured.

+ **Paper Products:** For measuring price change in the Paper Products cost category, the PPI for Converted Paper and Paperboard is used. The cost of paper products was not specifically measured in the 1977-based index.

+ **Miscellaneous Products:** For measuring price change in the Miscellaneous Products cost category, the PPI for Finished Goods is used. The cost of miscellaneous products was not specifically measured in the 1977-based index.

+ **Telephone Services:** The percentage change in the price of Telephone service as measured by the CPI-U is applied to this component. This is a revision from the 1977-based index, in which the cost of telephone services was not specifically measured.

+ **Labor-intensive Services:** For measuring price change in the Labor-intensive Services cost category, the ECI for Compensation for Private Service Occupations is used. The cost of Labor-intensive Services was not specifically measured in the 1977-based index.

+ **Non Labor-Intensive Services:** For measuring price change in the Non Labor-Intensive Services cost category, the CPI-U for All Items is used. The 1977-based index did not specifically measure the cost of Non Labor-Intensive Services.

• **Capital-related:** All capital-related expense categories are new cost categories in the revised SNF market basket. The price proxies chosen are the same as those used for the hospital PPS capital input price index described in the August 30, 1996 Federal Register (61 FR 46326). The price proxies for the SNF capital-related expenses are described below:

+ **Depreciation—Building and Fixed Equipment:** The Boeckh Institutional Construction Index for unit prices of fixed assets.

+ **Depreciation—Movable Equipment:** The PPI for Machinery and Equipment.

+ **Interest—Government and Nonprofit SNFs:** The Average Yield for Municipal Bonds from the Bond Buyer Index of 20 bonds. HCFA input price indexes, including this rebased SNF index, are concerned with the rate of change in the price proxy and not the level of the price proxy. While SNFs may face different interest rate levels than hospitals, the rate of change in most interest rates is not significantly different. Our research on this issue regarding hospitals has been presented in the August 30, 1996 Federal Register (61 FR 46201).

+ **Interest—For-profit SNFs:** The Average Yield for Moody's AAA Corporate Bonds. Again, the rebased SNF index focuses on the rate of change in this interest rate and not the level of the interest rate.

+ **Other Capital-related Expenses:** The CPI-U for Residential Rent.

Appendix Table A-3—A Comparison of Price Proxies Used in the 1992-Based and 1977-Based Skilled Nursing Facility Market Baskets

Cost category	1992-based price proxy	1977-based price proxy
Wages and Salaries	ECI for Wages and Salaries for Private Nursing Homes	AHE—Private Nursing and Personal Care Facilities
Employee Benefits	ECI for Benefits for Private Nursing Homes	BEA Supplement to Wages and Salaries per worker (BLS)
Nonmedical professional fees	ECI for Compensation for Private Professional and Technical Workers	n/a
Electricity	PPI for Commercial Electric Power	Implicit Price Deflator—Electricity (PCE)
Fuels	PPI for Commercial Natural Gas	Implicit Price Deflator—Fuel Oil (PCE) and Implicit Price Deflator—Natural Gas (PCE)
Water and sewerage	CPI-U for Water and Sewerage	CPI-U for Water and Sewerage
Food—Wholesale purchases	PPI—Processed Foods	PPI—Processed Foods
Food—Retail purchases	CPI-U—Food Away From Home	CPI-U—Food and Beverages
Pharmaceuticals	PPI for Prescription Drugs	PPI—Prescription Drugs

Appendix Table A-3—A Comparison of Price Proxies Used in the 1992-Based and 1977-Based Skilled Nursing Facility Market Baskets—Continued

Cost category	1992-based price proxy	1977-based price proxy
Chemicals	PPI for Industrial Chemicals	n/a
Rubber and plastics	PPI for Rubber and Plastic Products	n/a
Paper products	PPI for Converted Paper and Paperboard	n/a
Miscellaneous products	PPI for Finished Goods	n/a
Telephone services	CPI-U for Telephone Services	n/a
Labor-intensive services	EI for Compensation for Private Service Occupations.	n/a
Non labor-intensive services	CPI-U for All Items	n/a
Depreciation: Building and Fixed Equipment.	Boeckh Institutional Construction Index	n/a
Depreciation: Movable Equipment	PPI for Machinery and Equipment	n/a
Interest: Government and Nonprofit SNFs.	Average Yield Municipal Bonds (Bond Buyer Index-20 bonds).	n/a
Interest: For-profit SNFs	Average Yield Moody's AAA Bonds	n/a
Other Capital-related Expenses	CPI-U for Residential Rent	n/a

[FR Doc. 98-12208 Filed 5-5-98; 12:57 pm]
BILLING CODE 4120-01-P

Tuesday
May 12, 1998

federal register

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410 et al.

Medicare Program: Changes to the
Hospital Inpatient Prospective Payment
Systems and Fiscal Year 1998 Rates;
Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 412, 413, 415, and 485

(HCFA-1878-F, formerly BPD-878)

RIN 0938-AH55

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to public comments received on those portions of a final rule with comment period published in the *Federal Register* on August 29, 1997, that revised the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes resulting from the Balanced Budget Act (BBA) of 1997, Public Law 105-33. This rule also addresses public comments on other BBA changes relating to cost limits for hospitals and hospital units excluded from the prospective payment systems as well as direct graduate medical education payments that were included in the August 29, 1997 document. Generally, these BBA changes were applicable to hospital discharges occurring on or after October 1, 1997.

EFFECTIVE DATE: This final rule is effective on June 11, 1998.

FOR FURTHER INFORMATION CONTACT:

Nancy Edwards, (410) 786-4531, Operating Prospective Payment and Wage Index Issues

Tzvi Hefter, (410) 786-4487, Capital Prospective Payment, Excluded Hospitals Critical Access Hospitals, and Graduate Medical Education Issues

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SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) is based on prospectively-set rates. Under this system, which was established effective with hospital cost reporting periods beginning on or after October 1, 1983, Medicare payment for hospital inpatient operating costs is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the hospital inpatient prospective payment system are located in 42 CFR Part 412.

As required by section 1886(g) of the Act, effective with cost reporting periods beginning on or after October 1, 1991, we also use a prospective payment methodology for hospital inpatient capital-related costs. Under the capital-related cost methodology, a predetermined payment amount per discharge is made for Medicare inpatient capital-related costs.

The prospectively set rates and methodologies are updated annually as required by law or as new legislation is enacted.

B. Summary of the Provisions of the August 29, 1997 Final Rule with Comment Period Resulting from the Balanced Budget Act of 1997

On August 29, 1997, we published a final rule with comment period in the *Federal Register* (62 FR 45966) setting

forth statutorily required changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs, which were effective for discharges occurring on or after October 1, 1997. This final rule with comment period followed a proposed rule published in the *Federal Register* on June 2, 1997 (62 FR 29902) that set forth proposed updates and changes. Following issuance of the June 2, 1997 proposed rule, the Balanced Budget Act (BBA) of 1997, Public Law 105-33, was enacted on August 5, 1997. This new law made major changes to the hospital prospective payment systems, effective October 1, 1997. Therefore, a major part of the August 29, 1997 final rule with comment period incorporated changes made by the BBA. Because the BBA was enacted after we had issued the June 2 proposed rule and because most of the BBA changes were effective October 1, 1997, we issued the August 29, 1997 document as a final rule with comment period.

The BBA made major changes that affected Medicare payments for inpatient hospital services under the prospective payment systems, and the cost limits applicable to excluded hospitals and hospital units as well as payment for the direct costs of graduate medical education. The provisions of the BBA that we implemented in the August 29, 1997 final rule with comment period related to the following:

- The hospital operating payment update factor. (Sections 4401(a) and (b))
- The hospital capital rate reduction. (Section 4402)
- Reductions in payments to disproportionate share hospitals. (Section 4403)
- Elimination of payment of indirect medical education (IME) and disproportionate share adjustment on outlier payments. (Section 4405)
- Base payment rate to Puerto Rico hospitals. (Section 4406)
- Special reclassification of Stanly County, North Carolina for purposes of the prospective payment system. (Section 4408)
- New guidelines for geographic reclassification of certain hospitals for Federal fiscal year 1998 and subsequent fiscal years. (Sections 4409 and 4410(c))
- Floor on area wage index. (Sections 4410(a) and (b))
- Revision of the IME formula, limitations on full-time equivalent residents, and payment to teaching hospitals for IME costs associated with Medicare managed care discharges. (Sections 4621(a), 4621(b), and 4622)
- Classification of rural referral centers (RRC) for FY 1998 and

subsequent fiscal years. (Section 4202(b))

- Special treatment of Medicare-dependent, small rural hospitals (MDHs). (Section 4204)
 - Reinstatement of the add-on payment for blood clotting factor for inpatient beneficiaries with hemophilia. (Section 4452)
 - Counting residents for direct graduate medical education. (Section 4623)
 - Payments to managed care plans for graduate medical education. (Section 4624)
 - Payment to nonhospital providers for the direct costs of medical education incurred in the operation of an approved medical residency training program. (Section 4625)
 - Payment for combined medical residency training programs. (Section 4627)
 - Payment update for excluded hospitals and hospital units. (Section 4411)
 - Reductions in capital payment amounts for certain excluded hospitals and hospital units. (Section 4412)
 - Rebased target amounts for excluded hospitals. (Section 4413)
 - Cap on target amounts for excluded hospitals and hospital units (psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals) for FYs 1998 through 2002. (Section 4414)
 - Bonus and relief payments to excluded hospitals and hospital units. (Section 4415)
 - Change in payment and target amount for new providers. (Sections 4416 and 4419)
 - Treatment of certain long-term care hospitals. (Sections 4417(a) and 4417(b))
 - Exclusion of certain cancer hospitals from the prospective payment system. (Section 4418)
 - Establishment of a new "Medicare Rural Hospital Flexibility Program" to replace the existing Essential Access Community Hospital/Rural Primary Care Hospital (EACH/RPCH) program that operates in seven States. (Section 4201)
 - Beginning with the FY 1999 update, a change in the publication dates for the DRG prospective payment rate methodology and the recommended hospital prospective payment updates as a proposed rule by April 1 and as a final rule by August 1 of each year. (Section 4644(a)(1) and (b)(1))
- As a conforming change, the deadline for applications for geographic reclassification for years beginning with FY 2000 was moved from October 1 to September 1. Because the FY 1999 applications were due on October 1,

1997, we shortened the deadlines for decisionmaking by the Medicare Geographic Classification Review Board (MGCRRB), so that a final decision for all applications is made by June 15, 1998. (Section 4644(c))

II. Summary of the BBA Provisions and Discussion of Public Comments

A. General

We received a total of 180 pieces of correspondence containing public comments on the BBA changes addressed in the August 29, 1997 final rule with comment period. Below we discuss the BBA provisions, the changes we made to implement these provisions, the public comments received on each provision, and our response to the public comments.

B. Hospital Operating Payment Update Factor

1. General Provision

The BBA made several revisions to the applicable percentage change (the update factor) to the Federal rates for prospective payment hospitals. Section 4401(a)(1) of the BBA amended section 1886(b)(3)(B)(i) of the Act to revise the update factors for the Federal rates for inpatient operating costs for FYs 1998 through 2002. The update factor for FY 1998 was set at 0 percent for hospitals in all areas. For FY 1999, the update for hospitals in all areas is the market basket rate of increase minus 1.9 percentage points. For FY 2000, the update for all areas is the market basket rate of increase minus 1.8 percentage points. For FY 2001 and FY 2002, the update for all areas is the market basket rate of increase minus 1.1 percentage points. For FY 2003 and subsequent years, the update for all areas is the market basket rate of increase.

In the August 29 final rule with comment period, we made necessary changes to § 412.63 of our regulations.

Comment: One commenter asserted that while the 0 percent update of the prospective payment rates for FY 1998 is consistent with the requirements of section 4401(a)(2) of the BBA, it is inappropriate given circumstances in the real world.

Response: As the commenter noted, HCFA is required by statute to implement the 0 percent update to the prospective payment rates for FY 1998. We believe that the 0 percent update is appropriate for the reasons discussed in both our update recommendation in the June 2 proposed rule (62 FR 30035) and our responses to comments on that recommendation in the August 29 final rule with comment period (62 FR 46139).

2. Special Update for Certain Nonteaching, Nondisproportionate Share Hospitals that do not Qualify as MDHs

Section 4401(b) of the BBA provided a temporary special payment for FYs 1998 and 1999 for certain hospitals that do not receive any additional payment through the IME or DSH adjustment and do not meet the criteria to be classified as an MDH. As set forth in section 4401(b)(2), in order to qualify for the special payment, a hospital must be located in a State in which the aggregate operating prospective payment for hospitals that meet the special payment criteria (that is, non-IME, non-DSH, non-MDH hospitals) is less than the aggregate allowable operating costs of inpatient hospital services (referred to hereafter as a negative operating prospective payment margin) for those hospitals for their cost reporting periods that began during FY 1995. In addition, a hospital must have a negative operating prospective payment margin during the cost reporting period at issue (beginning in FY 1998 or 1999).

Under the provisions of section 4401(b)(1), for these hospitals, the percentage increase otherwise applicable to the standardized amount for FY 1998 was increased by 0.5 percentage points and, for FY 1999, the applicable percentage increase will be increased by 0.3 percentage points. Based on current statutory provisions, this means that these hospitals will receive an update of 0.5 percent for FY 1998 (the update for all other hospitals is 0) and, for FY 1999, an update of the market basket increase minus 1.6 percentage points (1.9 for all other hospitals). Under section 4401(b)(1), in applying these updates, the increase provided in FY 1998 will not apply in computing the update for FY 1999 and neither update will affect the updates provided for discharges in fiscal years after FY 1999.

In accordance with section 4401(b)(2) of the BBA, in determining whether a hospital qualifies for the special payment for a given cost reporting period, we looked first at statewide aggregate data for non-IME, non-DSH, non-MDH hospitals for cost reporting periods beginning during FY 1995, and second at hospital-specific characteristics for the cost reporting period at issue to determine whether the hospital has a negative operating prospective payment margin for that period, and whether the hospital received IME or DSH payments or qualified as an MDH for that period. Using the latest cost reporting data, we identified 17 States that met the criteria

set forth in section 4401(b)(2): Alaska, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maine, Missouri, New Hampshire, New Jersey, Ohio, Puerto Rico, Rhode Island, Vermont, and Wisconsin. The fiscal intermediaries will make interim payment to hospitals in these 17 designated States, beginning with discharges occurring on or after October 1, 1997, based on the higher standardized amount during the fiscal year. However, as noted above, the final decision as to a hospital's qualification for the additional payment is determined based on whether the hospital has a negative operating prospective payment margin during its FY 1998 or FY 1999 cost reporting period. Therefore, the final determination will be made at cost report settlement.

In the August 29 final rule with comment period, we added a new § 412.107 to the regulations and revised § 412.90 to implement this provision.

Comment: Two hospital associations commented that any hospital identified by its fiscal intermediary as likely to qualify for an update of 0.5 percentage points under the temporary special payment provision of section 4401(b) of the BBA should be given the option of declining the higher interim payments. The commenters were concerned that some hospitals that receive the additional money on an interim basis might have difficulty paying back the funds should the intermediary determine at cost report settlement that the hospital does not qualify for the update.

Response: If a hospital that has been identified as eligible for the higher interim payment believes that ultimately it may not qualify for the higher update and wishes to decline the higher interim payments, it should notify its intermediary.

C. Hospital Capital Rate Reduction

Section 4402 of the BBA amended section 1886(g)(1)(A) of the Act to require that, for discharges occurring on or after October 1, 1997, the Secretary must apply the budget neutrality adjustment factor used to determine the Federal capital payment rate in effect on September 30, 1995 (as described in § 412.352) to the unadjusted standard Federal capital payment rate (as described in § 412.308(c)) effective September 30, 1997, and the unadjusted hospital-specific rate (as described in § 412.328(e)(1)) effective September 30, 1997. For discharges occurring on or after October 1, 1997, and before September 30, 2002, the Secretary must

reduce the same rates an additional 2.1 percent.

The budget neutrality adjustment factor effective September 30, 1995 was 0.8432 (59 FR 45416), which is equivalent to a 15.68 percent $((1.0 - 0.8432) \cdot 100)$ reduction in the unadjusted standard Federal capital payment rate and the unadjusted hospital-specific rate in effect on September 30, 1997. The additional 2.1 percent reduction to the rates reduces the rates in effect on September 30, 1997 by a total of 17.78 percent. The unadjusted standard Federal rate must be distinguished from the annual Federal rate actually used in making payment under the capital PPS system. The unadjusted standard Federal rate is the underlying or base rate used to determine the Federal rate for each Federal fiscal year by applying the formula described in § 412.308(c). The annual Federal rate is the result of that determination process in § 412.308(c). In accordance with the broad authority conferred in section 1886(g) of the Act, to implement a capital prospective payment system, we extended the reduction to the capital rates to the Puerto Rico capital rates and incorporated it in § 412.374(a).

Under the statute, the additional 2.1 percent reduction applies to discharges occurring "before September 30, 2002". This provision would have required us to calculate special rates that would be in effect for only one day. Because we believed that the Congress intended to apply the reduction to discharges occurring through September 30, 2002, we indicated in the August 29 final rule with comment period that we plan to seek a technical correction to change the date that the 2.1 percent reduction expires from September 29, 2002, to September 30, 2002. Since we assumed this technical error would be corrected, we used the September 30, 2002 expiration date in our regulations.

When we restore the 2.1 percent reduction to the Federal rate after September 30, 2002, we plan to restore the rate to the level that it would have been without the reduction. We determined the adjustment factor for FY 1998 by deducting both cuts $(0.1568 \text{ and } 0.021)$ from 1 $(1 - 0.1568 - 0.021 = 0.8222)$. We then applied 0.8222 to the unadjusted standard Federal rate. The adjustment factor to restore the 2.1 percent cut would be the adjustment without the 2.1 percent cut (0.8432) divided by the adjustment with the 2.1 percent cut (0.8222) . $(0.8432 / 0.8222 = 1.02554)$. To restore the 2.1 percent reduction, we will apply 1.02554 to the unadjusted standard Federal capital payment rate in setting

rates for discharges after September 30, 2002.

Section 412.328(e) of the regulations provides that the hospital-specific rate for each fiscal year is determined by adjusting the previous fiscal year's hospital specific rate by the hospital specific rate update factor and the exceptions payment adjustment factor. After these two adjustments are applied, a net adjustment to the rate is determined. The previous year's hospital specific rate is analogous to the standard Federal rate, which is updated each year to become the annual Federal rate.

When the 2.1 percent reduction is restored, most hospitals will have completed the transition to a fully prospective payment system for capital related costs. However, new hospitals might be eligible for hold harmless payments beyond the transition, so we may need to continue to compute a hospital specific rate. If we need to restore the 2.1 percent reduction to the hospital specific rates, we will do so in a manner similar to that described above with respect to the unadjusted standard Federal capital payment rate.

In the August 29 final rule with comment period, we revised two sections of the capital prospective payment system regulations to implement these statutory requirements. Specifically, we revised §§ 412.308(c) and 412.328(e) to provide for the required 15.68 and 2.1 percent reduction to the rates. The 2.1 percent reduction will be restored after September 30, 2002.

Comment: One commenter noted that as a result of the high capital rate paid in FY 1997, many hold-harmless hospitals switched from being paid based on a blend of their old and new capital to being paid based on 100 percent of the Federal rate, because the Federal rate was higher than their old and new capital payment would have been. The commenter also stated that when Congress reduced the capital rate as part of the provisions of the BBA, many hospitals' payments would have been higher had they been allowed to return to their previous old capital and new capital payment methodology. The commenter suggested deleting the requirement at § 412.344(b) that once a hospital is paid based on 100 percent of the Federal rate, it cannot return to payments based on a blend of its old and new capital costs. The commenter also noted that when the Federal capital rate was reduced under the provisions of OBRA 1993, fiscal intermediaries were given specific authority to redetermine each hospital's payment methodology.

Response: In section 13501(a)(3) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), Congress reduced the Federal capital rate and not the hospital-specific rate. Hospital payment methodology redeterminations were expressly provided for in that section of the statute. However, in 1997, when Congress reduced both the hospital-specific rate and the Federal capital rate as part of the BBA, hospital payment methodology redeterminations were not provided for by the legislation and we do not believe that it would be appropriate to provide for redeterminations by regulation. In addition, we do not believe it would be appropriate to allow hospitals to return to payment based on their ratio of old and new capital once they have been paid based on 100 percent of the Federal rate. We are in the seventh year of the 10 year transition to a fully prospective capital payment system. By October 1, 2002, all hospitals will be paid based on 100 percent of the Federal rate. It would not be appropriate to allow hospitals to return to cost-based payment this point in the transition.

D. Disproportionate Share Hospital (DSH) Payments

Section 4403(a) of the BBA reduced the payment for hospitals that treat a disproportionately large number of low-income patients. The payment a hospital would otherwise receive under the disproportionate share formula is reduced by 1 percent for FY 1998, 2 percent for FY 1999, 3 percent for FY 2000, 4 percent for FY 2001, 5 percent for FY 2002, and 0 percent for FY 2003 and each subsequent fiscal year. In the August 29 final rule with comment period, we added a new paragraph (e) to § 412.106 to implement this provision.

Comment: One commenter asked that we clarify the applicability of the provisions of section 4403(a) of the BBA, which relate to disproportionate share operating payments, to the prospective payment system for capital related costs. Specifically, the commenter requested that we verify that the phased-in 5 percent reduction of operating DSH payments does not apply to capital DSH payments. The commenter also asked us to codify our decision as to the applicability of this provision in the appropriate section of the capital regulations governing DSH.

Response: The commenter is correct. Section 4403 amended section 1886(d)(5)(F) of the Act to reduce the amount otherwise payable for operating DSH. The capital DSH adjustment set forth at § 412.320 references the operating DSH definition of low income patients at § 412.106(b) and uses the

definition of the disproportionate patient percentage at § 412.106(c)(2), but section 4403 does not affect capital DSH payments. In response to the commenter's request that we codify in the regulations the applicability of the BBA operating provisions to capital payments, we do not believe that it is necessary to do so. The capital regulations that are affected will be automatically included by their reference to the appropriate section of the operating regulations. The capital regulations that are not affected (regarding the reduction to DSH payments need not be revised).

E. Outlier Payments

Section 4405 of the BBA amended sections 1886(d)(5)(B)(i)(I) and (d)(5)(F)(ii)(I) of the Act to provide that, in determining the payment for hospitals that receive indirect medical education or disproportionate share payments, the IME and DSH adjustment factors are applied only to the base DRG payment, not the sum of the base DRG payment and any cost outlier payments, effective with discharges occurring on or after October 1, 1997. The same section of the BBA also amended section 1886(d)(5)(A)(ii) of the Act to require that the fixed loss cost outlier threshold is based on the sum of DRG payments and IME and DSH payments for purposes of comparing costs to payments. Therefore, in the August 29 final rule with comment period, we revised our regulations at § 412.84(g) to remove the provision that costs be reduced by the IME and DSH adjustment factors for purposes of comparing costs to payments to determine if costs exceed the fixed loss cost outlier threshold, as well as to delete § 412.80(c). Conforming changes were made to § 412.105(a) (IME adjustment) and § 412.106(a)(2) (DSH adjustment). We also made a corresponding change to the capital cost outlier methodology. We received two comments on this provision, both of which concurred with HCFA's interpretation of section 4405 of the BBA.

F. Payment Rate for Puerto Rico Hospitals

1. Operating Payment Rate

Section 4406 of the BBA amended section 1886(d)(9)(A) of the Act to revise the Puerto Rico and national shares of the Puerto Rico payment rate. Beginning with discharges occurring on or after October 1, 1997, the Puerto Rico payment rate will be a blend of 50 percent of the Puerto Rico standardized amount and 50 percent of a national

standardized amount (compared to a blend of 75 and 25 percent, respectively, prior to enactment of the BBA). In the August 29 final rule with comment period, we revised § 412.204 of the regulations to conform with this amendment.

2. Capital Payment Rate

Under the broad authority of section 1886(g) of the Act, in the August 29 final rule with comment period, we revised the calculation of capital payments to Puerto Rico to parallel the change that was made in the calculation of operating payments to Puerto Rico. Effective October 1, 1997, we will base capital payments to hospitals in Puerto Rico on a blend of 50 percent of the national rate and 50 percent of the Puerto Rico-specific rate. This change will increase payments to Puerto Rico hospitals since the national rate is higher than the Puerto Rico rate.

We did not receive any public comments on either of these provisions.

G. Special County Designation

In the August 29 final rule with comment period, the Secretary exercised the authority granted to her by section 4408 of the BBA to include Stanly County in the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina MSA for purposes of the prospective payment system. This change was reflected in the final wage index included in that document.

We did not receive any public comments on this provision.

H. Changes to the Medicare Geographic Classification Review Board (MGCRB) Guidelines and Timeframes

Various provisions of the BBA addressed the guidelines the MGCRB uses to reclassify hospitals to other geographic areas as well as the timetable under which hospitals must submit applications for reclassification and when the MGCRB and the Secretary must make decisions on those applications.

1. Revised Application and MGCRB Timeframes

Prior to the enactment of the BBA, a hospital had to submit an application to the MGCRB for geographic reclassification for a fiscal year by the first day of the preceding fiscal year (that is, October 1, 1997 for reclassification effective in FY 1999). The MGCRB had 180 days to make a decision on that application (no later than March 31 of the fiscal year), the hospital has 15 days to request a review of that decision by the Administrator of HCFA (by April 15), and the

Administrator had up to 90 days to issue a final decision (July 15). The July 15 deadline allowed the final geographic reclassification decisions to be incorporated in the wage index and payment rates that were published in the final rule (on or about September 1).

Sections 4644(a)(1) and (b)(1) of the BBA amended section 1886(d)(6) and (e) of the Act to provide that the prospective payment system final rule setting the payment rates for years beginning with FY 1999 must be published by August 1. Because this change in publication date would conflict with the timetable for geographic reclassification decisions, section 4644(c) of the BBA amended section 1886(d)(10)(C)(ii) of the Act to require a hospital, beginning with applications filed for reclassification for FY 2000, to submit its application for reclassification no later than the first day of the month preceding the beginning of the Federal fiscal year (that is, by September 1). Under this timetable, the amount of time the MGCRB and the Administrator have to make decisions will not change from the existing schedule.

In addition, because applications filed for reclassification effective in FY 1999 were not due until October 1, 1997, section 4644(c)(2) required us to shorten the deadlines under section 1886(d)(10)(C) of the Act so that all final decisions on MGCRB applications will be completed by June 15, 1998.

In the August 29 final rule with comment period, we revised §§ 412.256 and 412.274 to implement the change in the application deadline.

2. Alternative Wage Index Reclassification Guidelines for Individual Hospitals

Effective for FY 1998 reclassification, sections 4409 and 4410 of the BBA required the Secretary to establish alternative wage index guidelines for geographic reclassification for certain disproportionately large hospitals. In the case of a hospital that is owned by a municipality and that was reclassified as an urban hospital for FY 1996, in calculating the hospital's average hourly wage for the purposes of geographic reclassification for FY 1998 only, section 4410(c) of the BBA required the exclusion of general service wages and hours of personnel associated with a skilled nursing facility that is owned by the hospital of the same municipality and that is physically separated from the hospital to the extent that such wages and hours of such personnel are not shared with the hospital and are separately documented. Because the application and decisionmaking

processes for FY 1998 reclassification were already completed, we had to provide special guidelines for hospitals to apply for reclassification under these provisions for FY 1998.

A hospital seeking reclassification for FY 1998 under either section 4409 or 4410(c) had to submit its application to the MGCRB (7 copies) by September 15, 1997. If the MGCRB rendered a favorable decision on a hospital's application, the hospital was reclassified for purposes of the wage index for FY 1998 as if that decision had been made under the usual guidelines and timetable.

We also extended the existing appeal rights for decisions on requests for reclassification to decisions made under sections 4409 and 4410. Therefore, for such appeals, in the August 29 final rule with comment period, we incorporated the existing appeals and review process (including the timetables for a hospital to request review and for the Administrator to complete review) even though that process was not finalized until after the beginning of the fiscal year. We revised the regulations at § 412.230(e) to implement section 4409. However, because the provision of section 4410(c) applied for only one year, we did not revise the codified regulations text to reflect that provision.

3. Reclassification for Rural Referral Centers and the Disproportionate Share Adjustment

Currently, under section 1886(d)(10)(D) of the Act, rural referral centers (RRCs) are allowed to apply to the MGCRB to be reclassified for purposes of the wage index adjustment. To be reclassified, RRCs must meet the following criteria:

- The hospital's average hourly wage must be at least 108 percent of the Statewide rural hourly wage.
- The hospital's average hourly wage must be at least 84 percent of the average hourly wage of the target urban area to which the RRC is applying.

Section 4202 of the BBA prohibits the MGCRB from rejecting a hospital's request for reclassification on the basis of any comparison between the hospital's own average hourly wage and the average hourly wage of hospitals in the area in which the hospital is located if the hospital was ever classified as an RRC. However, RRCs will continue to be required to have an average hourly wage that is at least 84 percent of the average hourly wage of the target urban area to which the RRC is applying. In addition, while RRCs do not have to meet the proximity requirements for reclassification, they continue to be required to seek reclassification to the

nearest urban area. In the August 29 final rule with comment period, we revised § 412.230(a)(3) to implement this provision.

Section 4203 of the BBA provided that, for a limited time, a rural hospital may apply and qualify for reclassification to another area for purposes of disproportionate share adjustment payments whether or not the standardized amount is the same for both areas. For 30 months after the date of enactment of the BBA, the MGCRB will consider the application under section 1886(d)(10)(C)(i) of the Act from a hospital requesting a change in the hospital's geographic classification for purposes of determining, for a fiscal year, eligibility for and additional payment amounts under section 1886(d)(5)(F) of the Act. The MGCRB will apply the guidelines for standardized amount reclassification (§ 412.230(d)) until the Secretary establishes separate guidelines. Therefore, hospitals seeking such reclassification for FY 1999 must have submitted a reclassification application to the MGCRB by October 1, 1997. Decisions based on these applications will be effective for FY 1999 (beginning on October 1, 1998). Section 4203 of the BBA is effective for the 30-month period beginning on the date of enactment. Accordingly, hospitals may seek reclassification for purposes of DSH for FY 1999, FY 2000, and FY 2001. In the August 29 final rule with comment period, we revised § 412.230(a)(5)(ii) of the regulations to implement this provision.

Comment: One commenter questioned the effective date of sections 4202 and 4203 of the BBA, which exempt RRCs from the 108 percent criterion in applying for wage index reclassification and allow a hospital to reclassify to another area for purposes of the disproportionate share adjustment even if the standardized amount of both areas is the same, respectively. The commenter asserted that the conference report accompanying the statute clearly states that the effective date of these provisions is "enactment" of the BBA, that is, August 5, 1997. Therefore, the commenter believes that hospitals should have been allowed to apply to the MGCRB and reclassify under these provisions for FY 1998 reclassifications, which were effective beginning October 1, 1997. The August 29 final rule with comment period limited the effect of these provisions to reclassifications beginning in FY 1999.

Response: We agree that the provisions of sections 4202 and 4203 of the BBA are effective August 5, 1997. However, the statutory language contains no

directive to apply these provisions to hospital reclassifications effective for FY 1998 (compare sections 4409 and 4410(c) of the BBA, both of which specifically stated that their provisions were effective for FY 1998 reclassifications). Section 4202 amends section 1886(d)(10)(D) of the Act to provide that the MGCRB "may not reject the application" of a hospital on the basis of a comparison specified in the statute. Accordingly, if the MGCRB considers an application on or after August 5, 1997, it will not reject the application on the basis specified in the statute. Section 4202 does not require the MGCRB to re-evaluate applications that the MGCRB rejected before August 5, 1997.

Similarly, section 4203 provides that, for the 30-month period beginning on August 5, 1997, the MGCRB "shall consider" a hospital's application for reclassification for purposes of DSH payments. Accordingly, if a hospital submits an application to be reclassified for purposes of DSH on or after August 5, 1997, the MGCRB will consider the application. Generally, the deadline for FY 1998 reclassifications was October 1, 1996. Section 4203, unlike other provisions of the BBA, does not require the MGCRB to grant reclassifications for FY 1998 notwithstanding this deadline.

Thus, hospitals may apply for reclassification under the provisions of sections 4202 and 4203 after August 5, 1997. The first such applications would be those for FY 1999 reclassification beginning on October 1, 1998, which were due by October 1, 1997. We note that, although the provisions of section 4202 are permanent, section 4203 is effective for 30 months and applies only to those reclassifications effective for FY 1999, 2000, and 2001.

I. Floor on Area Wage Index

As provided by section 4410(a) of the BBA, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in the State in which the hospital is located. For FY 1998, this change affected 128 hospitals in 32 MSAs. Furthermore, this wage index floor is to be implemented in such a manner as to assure that aggregate prospective payment system payments are not greater or less than those which would have been made in the year if this section did not apply.

We did not receive any public comments on this provision.

J. Indirect Medical Education (IME) Adjustment

1. Operating IME Adjustment

In the August 29 final rule with comment period, we revised our regulations to incorporate the provisions of section 4621 of the BBA, which amended section 1886(d)(5)(B) of the Act in several ways. First, it gradually reduces the current level of the IME adjustment (approximately a 7.7 percent increase for every 10 percent increase in the resident-to-bed ratio) over the next several years according to the following schedule: 7.0 percent for discharges during FY 1998; 6.5 percent during FY 1999; 6.0 percent during FY 2000; and 5.5 percent during FY 2001 and thereafter.

Second, section 4621 established certain limits both on the full-time equivalent (FTE) number of residents counted by each hospital and on the resident-to-bed ratio. Effective for discharges on or after October 1, 1997, section 4621(b)(1) added a new section 1886(d)(5)(B)(v) to the Act to require that a hospital's total number of resident FTEs in the fields of allopathic and osteopathic medicine may not exceed the total number of such resident FTEs counted by the hospital during its most recent cost reporting period ending on or before December 31, 1996. Furthermore, section 1886(d)(5)(B)(vi)(I) provides that the ratio of residents-to-beds may not exceed the ratio calculated during the prior cost reporting period (after accounting for the cap on the number of resident FTEs).

Third, for cost reporting periods beginning on or after October 1, 1997, and subject to the new limit on counting residents described above (as well as the expansion of allowable settings to off-site services, as described below), section 1886(d)(5)(B)(vi)(II) provides that "the total number of full-time equivalent residents for payment purposes shall equal the average of the actual full-time equivalent resident count for the cost reporting period and the preceding two cost reporting periods." For the first cost reporting period beginning on or after October 1, 1997, this provision "shall be applied using the average for such period and the preceding cost reporting period." For purposes of this provision, section 1886(d)(5)(B)(vii) requires the Secretary to make appropriate modifications in the event of a cost reporting period other than 12 months.

With respect to medical residency training programs established on or after January 1, 1995, section 1886(d)(5)(B)(viii) provides that the Secretary must develop rules to apply

these limits to such new programs, giving special consideration to "facilities that meet the needs of underserved areas," and to facilitate the application of aggregate limits in the case of affiliated groups (as defined by the Secretary). Finally, "(t)he Secretary may require any entity that operates a medical residency training program . . . to submit to the Secretary such additional information as the Secretary considers necessary to carry out such (limits)." We revised the regulations at § 413.86(g)(6) to comply with these directions for both the indirect and direct GME FTE counts.

Finally, section 4621(b)(2) amended section 1886(d)(5)(B)(iv) of the Act to allow all the time spent by a resident in patient care activities under an approved medical residency training program at an entity in a nonhospital setting to be counted towards the determination of full-time equivalency if the hospital incurs all, or substantially all, of the costs for the training program in the setting. Therefore, in the August 29 final rule with comment period, we revised § 412.105(g)(1)(ii)(C), which allowed hospitals to include the time residents spent in patient care activities in nonhospital settings, for purposes of IME. The eligibility criteria for this provision is similar to a provision regarding direct graduate medical education payments at section 1886(h)(4)(E) of the Act, and implemented at § 413.86(f)(iii). For IME purposes, we intend to rely upon the same criteria as are applied for the direct GME to identify eligible situations under this new provision.

In the August 29 final rule with comment period we revised § 412.105 to reflect these changes, and issued instructions to fiscal intermediaries to implement these changes prior to October 1, 1997. In response to our discussion of the changes enacted by the BBA, we received numerous comments seeking clarification on many of these issues.

Comment: Several commenters noted a discrepancy in the preamble of the August 29 document concerning the effective date of the cap on allopathic and osteopathic FTEs. In the preamble summary of the BBA changes at 62 FR 45968, the effective date of the provision is stated as "cost reporting periods beginning on or after October 1, 1997." In the full discussion of the provision in the preamble at 62 FR 46003, the provision is made effective for "discharges on or after October 1, 1997."

Response: The effective date for applying the cap on allopathic and osteopathic FTEs, as set forth in section

1886(d)(5)(B)(v) of the Act, is for "discharges on or after October 1, 1997." This effective date citation in the preamble summary at 62 FR 45968 was a typographic error.

Comment: Commenters noted that the requirements set forth in section 1886(h)(4)(H) of the Act concerning special rules for applying the FTE limits for direct graduate medical education for new programs and affiliated groups also apply to IME payments. The commenters requested that they be added to the regulations at § 412.105.

Response: The commenters are correct. Under section 1886(d)(5)(B)(viii) of the Act, as added by section 4621(b)(1) of the BBA, rules similar to the rules set forth at section 1886(h)(4)(H) of the Act apply for purposes of implementing: the cap on resident FTEs; the cap on the resident-to-bed ratio; and the 3-year rolling average resident count. We are revising § 412.105(f)(1)(vi) and (vii) accordingly.

The count of residents in accordance with the rules for special circumstances (new programs and affiliated groups) under section 1886(d)(5)(B)(viii) of the Act is described in sections II.N.3 and 4 of this final rule. We note that this section of the Act applies only to the limits set forth in sections 1886(d)(5)(B)(v) and (vi) of the Act.

Comment: Several commenters objected to our interpretation of the language of section 1886(d)(5)(B)(vi) of the Act, which describes the cap on the resident-to-bed ratio. In the August 29 final rule with comment period, we stated that this is a cap on the total resident FTE count including dental and podiatry residents. The commenters believe the Congress intended that dental and podiatry residents should be exempt from this cap in addition to their exemption from the cap established for resident FTEs. In support of their interpretation, the commenters noted the reference to the FTE cap in establishing the cap on the ratio (section 1886(d)(5)(B)(vi) of the Act). One commenter stated that including dental and podiatry residents in the FTE calculation before applying the ratio cap leads to a nonsensical result since the Congress established a cap on allopathic and osteopathic residents but explicitly did not include dental and podiatry residents under this cap.

Another commenter supported applying the cap to total FTEs, including dentists and podiatrists. This commenter noted that the ratio could increase after a one-year lag to reflect additional dental or podiatry residents.

Response: Section 1886(d)(5)(B)(vi) of the Act, as amended by the BBA, establishes a cap on the value of "r,"

which is defined in section 1886(d)(5)(B)(ii) of the Act as "the ratio of the hospital's full-time equivalent interns and residents to beds." The IME formula defined in this section of the Act explicitly includes the value 'r' in the IME calculation. Therefore, 'r' has a very precise and significant value.

Section 1886(d)(5)(B)(v) of the Act (as amended) states that "the total number of full-time equivalent interns and residents in the fields of allopathic and osteopathic medicine" may not exceed the number of such residents in either a hospital or nonhospital setting with respect to the hospital's most recent cost reporting period ending on or before December 31, 1996. This section sets a cap on a subset (allopathic and osteopathic medical residents) of the total number of residents. The numerator of the ratio is the total number of residents including the effect of the cap; the Congress did not provide that 'r' would be computed using only a subset of residents. In fact, one could argue that under such an interpretation, there would be no explicit methodology in the Act for including dental and podiatry residents in the IME calculation. The reference in section 1886(d)(5)(B)(vi)(I) of the Act to "the limit under clause (v)" means that the numerator includes the effect of the cap on allopathic and osteopathic residents, not that the numerator is limited to those residents. Thus, the statutory language requires that we apply the cap on the ratio after including all residents, dental and podiatry as well as allopathic and osteopathic, in the calculation of the numerator.

Comment: Other commenters believe that it is inappropriate not to allow exceptions to the ratio cap when hospitals are voluntarily closing inpatient beds. In addition, commenters requested that the cap be adjusted to include the residents' time spent in nonprovider settings.

Response: Section 4621 of the BBA addresses the application of the cap, specific situations where special rules are appropriate, and the allowance of residents' time spent in nonprovider settings. In addition, we note that the ratio could increase after a one-year delay for legitimate changes in either the numerator or the denominator. That is, the ratio is capped based on its value during the prior cost reporting period. An increase in the ratio thereby establishes a higher cap for the following cost reporting period.

Comment: One commenter requested clarification of the term "the prior cost reporting period" as used in the preamble of the final rule with comment period when describing the application

of the cap on the ratio of residents-to-beds (62 FR 46003).

Response: The phrase "prior cost reporting period" refers to the immediately preceding period. A hospital's cost reporting period beginning July 1, 1998 would have its ratio capped at the value of its ratio for its cost reporting period ending June 30, 1998. In determining a hospital's resident-to-bed ratio for a cost reporting period that begins before October 1, 1997 (the effective date of the cap on allopathic and osteopathic FTEs) and ends after that date, the ratio for that period will reflect a prorated resident FTE count. That is, the numerator is determined through averaging the uncapped and capped FTE amounts based on the number of months in the cost reporting period before and after October 1, 1997. This FTE count will also be used to determine the rolling average amount for subsequent years.

Comment: Commenters requested an explanation of how the ratio cap would be determined under the special rules implemented pursuant to section 1886(d)(5)(B)(viii) of the Act (that is, the new program and affiliated group provisions).

Response: The ratio is first determined by calculating the resident FTE count taking into account all of the relevant limitations and applicable rolling averages, and the denominator in the ratio is the hospital's available bed count during the current cost reporting period. If this results in a ratio in excess of the previous cost reporting period's ratio, the hospital's IME adjustment is based on the ratio from the previous cost reporting period.

Special rules apply for the special circumstances at section 1886(d)(5)(B)(viii) of the Act. In the event that the application of section 1886(d)(5)(B)(viii) results in a higher resident-to-bed ratio for a hospital compared to its most recently completed cost reporting period, the special rule will be applicable only for the portion of the higher ratio due to the increase in residents. In such instances, the ratio during the prior cost reporting period is similarly applicable, but it is adjusted for the additional residents allowed by the special circumstances rule. In practice, this is accomplished by adding the additional residents to the resident FTE count used in the prior cost reporting period's resident-to-bed ratio. It should be noted that this adjustment is the result of a special rule for applying the cap on 'r' for new programs and affiliated groups as set forth in section 1886(d)(5)(B)(viii) of the Act. Therefore, no adjustment to the ratio is made for an increase in dental

or podiatry residents during the cost reporting period in which an increase occurs.

In the case of recognized affiliation arrangements, each hospital will be paid on the basis of its individual resident-to-bed ratio. Under such an arrangement, the ratio is the number of residents counted by the hospital in accordance with the special FTE counting rules for these arrangements, over the hospital's bed count during the current cost reporting period. As described above, the ratio may increase during a particular cost reporting period due to an increase in the number of residents allowed under the special affiliation arrangement. Any such exemption from the ratio cap will be limited to the increase in residents and will not reflect changes in hospital bed size.

Comment: Commenters were concerned about the language establishing the resident FTE cap (section 1886(d)(5)(B)(v) of the Act) that the number of allopathic and osteopathic residents may not exceed "the number of such full-time equivalent interns and residents in the hospital" during the most recent cost reporting period ending on or before December 31, 1996. The commenters believed that this disadvantages the programs that have already been training residents in nonprovider settings. Commenters suggested that we support the effort to delete the phrase "in the hospital" from this section.

Response: As is indicated by the comments, residents in nonhospital settings during the most recent cost reporting period ending on or before December 31, 1996, are excluded by the Act from the determination of the allopathic and osteopathic cap. Furthermore, although we recognize that many of these arrangements that were in existence during 1996 reflected the demand for more primary care physicians, we would note that the purpose of allowing hospitals to count this time in the future is to create an incentive for even more primary care training. In that regard, hospitals that had previously established residency training in nonhospital settings did so in response to the existing incentives at that time.

Comment: Several commenters suggested that the reduction in the IME adjustment factor (from approximately a 7.7 percent increase for every 10 percent increase in the ratio of residents to beds to 7.0 percent for discharges during FY 1998, and gradually reducing further for 3 years beyond that) places a disproportionate share of the cost-

cutting burden on teaching hospitals, especially academic medical centers.

Response: The reduction to the IME adjustment factor is set forth in the statute. However, given the gradual reduction in the factor and the recent very high Medicare operating margins for teaching hospitals (especially major teaching hospitals), we disagree that the reductions to the IME adjustment unfairly burden these hospitals. We note that HCFA and the Prospective Payment Assessment Commission (ProPAC) have both supported a reduction in the IME adjustment for several years based on our analysis of the indirect effect of graduate medical education programs on total hospital costs.

2. Capital IME Adjustment

Comment: One commenter asked us to clarify whether the following conclusions are correct in applying the IME provisions of the BBA to the capital prospective payment system:

(1) The cap on the number of residents training in the fields of allopathic and osteopathic medicine for purposes of computing the operating IME adjustment does pertain to the capital IME adjustment;

(2) The rolling average resident count for purposes of computing the operating IME adjustment does pertain to the capital IME adjustment; and

(3) The cap on the ratio of interns and residents to beds for purposes of computing the operating IME adjustment does not pertain to the ratio of interns and residents to the average daily census for purposes of computing the capital IME adjustment.

As with the DSH provisions, the commenter also asked us to codify our policy on the applicability of these operating provisions in the appropriate sections of the capital regulations governing the IME adjustment.

Response: Cap on Number of Residents in Allopathic and Osteopathic Medicine—The regulations at § 412.322 describe the capital IME adjustment. Section 412.322(a)(1) provides that the hospital's number of full-time equivalent (FTE) residents is determined in accordance with § 412.105(f) of the operating regulation. Since the BBA provisions affected § 412.105(f)(iv) by capping the number of allopathic and osteopathic interns and residents at the number of interns and residents reported on a hospital's cost report for the period ending December 31, 1996, the capital IME intern and resident count for allopathic and osteopathic residents is also capped automatically.

Rolling Average Resident Count—The BBA provision implementing a rolling

average resident count (section 4623) is also included in § 412.105(f) of the operating IME regulations. Since the capital IME regulations reference the operating IME regulation at § 412.105(f), the capital IME FTE count is affected by the rolling average resident count as well.

Cap on Ratio of Interns to Beds—The cap on the number of interns and residents to beds (section 4621) does not have an impact on the capital IME payments because we use the ratio of hospital FTEs to average daily census to determine the capital IME adjustment factor.

In response to the commenter's request that we codify in the regulations the applicability of these BBA operating IME provisions to capital payments, we do not believe that it is necessary to do so. The capital regulations that are affected (regarding the cap on the number of residents in allopathic and osteopathic medicine, and the rolling average resident count) will be automatically included by their reference to the appropriate section of the operating regulations. The capital regulations that are not affected (regarding the cap on the ratio of interns to beds) need not be revised.

It has come to our attention that there has also been some question raised about the applicability of sections 4001 and 4622 of the BBA—Payment to Hospitals of Indirect Medical Education Costs for Medicare+Choice Enrollees to capital IME payments. Section 4001 of the BBA instructs the Secretary to exclude from the Medicare+Choice capitation rate payment adjustments for the indirect costs of medical education under section 1886(d)(5)(B) of the Act. Section 4622 of the BBA provides for payments to teaching hospitals for discharges associated with Medicare managed care beneficiaries for portions of cost reporting periods beginning on or after January 1, 1998.

Section 4001 of the BBA refers only to the indirect costs of medical education as defined in section 1886(d)(5)(B) of the Act. This section refers to operating IME payments and not capital IME payments, which were established by regulation. Thus, section 4001 affects only operating IME payments.

K. Rural Referral Centers

Based on section 1886(d)(5)(C)(i) of the Act and the Conference Committee Report accompanying Public Law 98-21 (the original legislation implementing the prospective payment system), we established qualifying criteria for referral center status to identify those rural hospitals that, because of bed size,

a large number of complicated cases, a high number of discharges, or a large number of referrals from other hospitals or from physicians outside the hospital's service area, were likely to have operating costs more similar to urban hospitals than to the average smaller community hospitals. The regulations implementing the referral center provision are codified at § 412.96.

In 1984, after a year's experience with the referral center criteria, we determined that once approved for the referral center adjustment, a hospital would retain its status for a 3-year period. At the end of the 3-year period, we would review the hospital's performance to determine whether it should be requalified for an additional 3-year period. The requirement for triennial review was added to the regulations in 1984 (§ 412.96(f)) to be effective for cost reporting periods beginning on or after October 1, 1987 (the end of the first 3 years of the referral center adjustment). However, since then, three statutory moratoria on the performance of the triennial reviews were enacted by Congress. When the third of these moratoria expired at the end of cost reporting periods that began during FY 1994, we implemented the triennial review requirements and some hospitals lost their referral center status. (See the September 1, 1993 final rule (58 FR 46310) for a detailed explanation of the moratoria and the implementation of the triennial reviews.)

Hospitals could lose rural referral center status in other ways. With the creation of the MGRB and a hospital's ability, beginning in FY 1992, to request that it be reclassified from one geographic location to another, we stated that if a referral center was reclassified to an urban area for purposes of the standardized amount, it would, in most instances, be voluntarily terminating its referral center status. (See the June 4, 1991 final rule with comment period (56 FR 25482).) This was true because, in most instances, a hospital's ability to qualify as a "rural referral center" was contingent upon (among other criteria) its status as a rural hospital.

In addition, rural referral centers located in areas that were redesignated as urban by the Office of Management and Budget (OMB) lost their referral center status. These hospitals had qualified for referral center status under criteria applicable only to hospitals located in rural areas. OMB's designation of the areas to urban status meant that such hospitals were urban for all purposes and thus could no longer qualify as rural referral centers.

Section 4202(b)(1) of the BBA states that, "Any hospital classified as a rural referral center by the Secretary . . . for fiscal year 1991 shall be classified as such a rural referral center for fiscal year 1998 and each subsequent fiscal year." Thus, many of the hospitals that lost their referral center status for the reasons listed above must be reinstated. For the purpose of implementing this provision, we consider that a hospital that was classified as a referral center for any day during FY 1991 (October 1, 1990 through September 30, 1991) meets the reinstatement criterion.

In the August 29 final rule with comment period, we reinstated rural referral center status for all hospitals that lost the status due to triennial review or MGRB reclassification regardless of whether it was classified as an RRC during FY 1991. We did not reinstate rural referral center status to hospitals in areas redesignated as urban by OMB because they are no longer rural hospitals. We also did not reinstate the status of the six hospitals that voluntarily requested termination of their RRC status. However, we would allow any of these six hospitals to requalify if they so desire.

In addition, we terminated the requirement for triennial reviews of referral center status. Thus, §§ 412.96(f) and (g) (1) and (2) were deleted in the August 29 final rule with comment period. If we later discover some hospital or class of hospitals that we believe should not be allowed to retain referral center status because they fail to meet some basic requirement we believe is essential to receiving this special designation, we will consider reinstating some type of annual or periodic qualifying criteria.

Finally, we eliminated our policy that terminated RRC status for any hospital that is reclassified as urban by the MGRB.

Comment: One commenter expressed agreement with our decision to reinstate hospitals that lost their RRC status as a result of failure to meet triennial review requirements or due to MGRB reclassification to an urban area for purposes of the standardized amount. The commenter further commended HCFA for terminating triennial reviews and eliminating the policy that a hospital loses its RRC status if it is reclassified as urban by the MGRB. However, the commenter disagreed with our decision to not restore the RRC status of hospitals that are in areas redesignated as urban by OMB. The commenter believes that this policy unfairly disadvantages those hospitals when applying for reclassification for the wage index. That is, they will be

unable to reclassify under the special provisions of section 1886(d)(10)(D)(iii) of the Act as amended by section 4202(a) of the BBA if they meet all requirements except the 108 percent rule.

Response: The language of section 4202(b)(1) states that any hospital classified as a rural referral center for FY 1991, " . . . shall be classified as such a rural referral center for fiscal year 1998 and each subsequent year." (Emphasis added.) Hospitals located in areas redesignated as urban by OMB are no longer physically located in a rural area. Designation by OMB of an area to urban status means that any hospital located in that area becomes urban for all purposes and thus could no longer qualify as rural referral centers. In reinstating referral center status, section 4202(b) of the BBA did not revise the qualifying criteria for these hospitals. Thus, we believe that our decision to not reinstate hospitals located in urban areas as rural referral centers is appropriate.

We note, however, that these hospitals are not precluded from taking advantage of the provisions of section 1886(d)(10)(D)(iii) of the Act, which state that the MGRB is prohibited from rejecting a hospital's application for reclassification on the basis of any comparison between its hourly wage and the average hourly wage of the hospitals in the area in which the hospital is located if the hospital "has ever been classified by the Secretary as a rural referral center." (Emphasis added.) This means that the hospital need not currently be classified as an RRC in order to take advantage of this provision.

L. Medicare-Dependent Small, Rural Hospitals

Section 4204 of the BBA amended section 1886(d)(5)(G) of the Act to reinstate the classification of Medicare-dependent, small rural hospitals (MDHs) for cost reporting periods beginning on or after October 1, 1997 and before October 1, 2001. This category of hospitals was originally created by section 6003(f) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239), enacted on December 19, 1989, which added a new section 1886(d)(5)(G) of the Act. The statute provides that the special payment for MDHs was to be available for cost reporting periods beginning on or after April 1, 1990 and ending on or before March 31, 1993. Hospitals classified as MDHs were paid using the same methodology applicable to sole community hospitals.

Section 13501(e)(1) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), enacted on August 10, 1993, extended the MDH provision through discharges occurring before October 1, 1994. Under this revised provision, after the hospital's first three 12-month cost reporting periods beginning on or after April 1, 1990, the additional payment to an MDH whose applicable hospital-specific rate exceeded the Federal rate was limited to 50 percent of the amount by which that hospital-specific rate exceeded the Federal rate.

In reinstating the MDH special payment for discharges occurring on or after October 1, 1997 and before October 1, 2001, section 4204 of the BBA did not revise either the qualifying criteria for these hospitals nor the most recent payment methodology. Therefore, the criteria a hospital must meet in order to be classified as an MDH are the same as before. Since classification as an MDH is not optional, we reinstated all qualifying hospitals as of October 1, 1997.

In the August 29 final rule with comment period, we revised §§ 412.90 and 412.108 to reflect the reinstatement of the MDH special payment.

Section 4204(a)(3) of the BBA permits those hospitals that qualify as an MDH and that applied and were approved for reclassification to a large urban area for purposes of receiving the large urban rates through the MGRB to decline that reclassification for FY 1998. Normally, hospitals approved for reclassification have only 45 days from the date of the proposed rule to withdraw their request for reclassification. However, the statute provides that, in this situation, hospitals may withdraw their request for FY 1998 reclassification to a large urban area for purposes of the standardized amount. Any hospital that does not requalify for MDH reinstatement for FY 1998 because of a reclassification to an urban area by the MGRB for FY 1998 will be notified and given the opportunity to decline that reclassification.

Comment: Three commenters support the reinstatement of the special payment for MDHs. However, the commenters recommended that HCFA establish a process for identifying those hospitals that did not qualify previously but now meet the criteria for classification as an MDH.

Response: Since section 4204 of the BBA did not revise the criteria for classification as an MDH, it is unlikely that there will be new hospitals that qualify except for those hospitals that met all of the original criteria except bed size.

We have instructed our fiscal intermediaries to review their records to determine if there are any hospitals that did not meet the criteria in 1994 and that do now; for example, a hospital that had more than 100 beds in 1994 and now has 100 or fewer beds. In addition, as discussed in the August 29, 1997 final rule (62 FR 46000), at the time of a hospital's year-end cost report settlement, the fiscal intermediary will determine if the hospital met the criteria to qualify as an MDH.

Although the fiscal intermediaries are making every effort to identify and notify all affected hospitals, any hospital that believes it meets the criteria for MDH status but has not received notification should contact its fiscal intermediary.

M. Reinstatement of the Add-On Payment for Blood Clotting Factor for Hemophilia Inpatients

Section 4452 of the BBA amended section 6011(d) of Public Law 101-239 to reinstate the add-on payment for the costs of administering blood clotting factor to Medicare beneficiaries who have hemophilia (which was previously in effect from June 19, 1990 through September 30, 1994) and who are hospital inpatients for discharges occurring on or after October 1, 1997. The payment is based on a predetermined price per unit of clotting factor multiplied by the number of units provided.

In our August 29, 1997 final rule with comment period, we stated that we would calculate the add-on payment for FY 1998 using the same methodology we have used in the past (62 FR 46002). Thus, we established a price per unit of clotting factor based on the current price listing available from the 1997 Drug Topics Red Book, the publication of pharmaceutical average wholesale prices (AWP). We set separate add-on amounts for the following clotting factors, as described by HCFA's Common Procedure Coding System (HCPCS). The add-on payment amount for each HCPCS code is based on the median AWP of the several products available in that category of factor, discounted by 15 percent.

Based on this methodology, we established the following prices per unit of factor for discharges occurring on or after October 1, 1997:

J7190 Factor VIII (antihemophilic factor-human)	\$0.76
J7192 Factor VIII (antihemophilic factor-recombinant)	1.00
J7194 Factor IX (complex)	0.32
J7196 Other hemophilia clotting factors (e.g., anti-inhibitors)	1.10

In the August 29 final rule with comment period, we solicited comments on the appropriateness of the add-on payment amount and suggestions for the best methodology to calculate this amount.

Comment: We received five comments on this issue. The commenters indicated that the payment add-ons for blood clotting factors were appropriate with the exception of the payment amount under HCPCS code J7194, Factor IX (complex). The commenters asserted that "purified" Factor IX products (that is, products that contained Factor IX only) constituted a distinctly different and much more costly group of products than Factor IX (complex); thus, it was inappropriate to group all "Factor IX" products together under one HCPCS code. They recommended that HCFA either allow the purified Factor IX products to be billed under HCPCS code J7196 (Other hemophilia clotting factors) or establish a separate HCPCS code (or codes) for the purified Factor IX products.

Response: We agree that there is a need for further distinctions among the Factor IX products. Therefore, as suggested by the commenters, we are establishing the following two new HCPCS billing codes for purified Factor IX products:

Q0160 Factor IX (antihemophilic factor, purified, nonrecombinant)	\$0.93
Q0161 Factor IX (antihemophilic factor, purified, recombinant)	1.00

(Note that "Q-codes" are national temporary HCPCS codes that HCFA establishes unilaterally. We will request approval for permanent HCPCS codes at the next session of the national HCPCS panel.)

We will issue instructions to Medicare hospitals and fiscal intermediaries stating that payment should be made under these codes for all applicable discharges occurring on or after the effective date of this rule (that is, June 11, 1998). As discussed in the August 29 document, payment will be made for blood clotting factor only if there is an ICD-9-CM diagnosis code for hemophilia included on the bill.

N. Counting Residents for Direct Graduate Medical Education

1. Limit on the Count of Residents

Section 4623 of the BBA added section 1886(h)(4)(F) of the Act to establish a limit on the number of allopathic and osteopathic residents that a hospital can include in its full time equivalent (FTE) count for direct GME payment. Residents in dentistry and podiatry are exempt from the cap. For cost reporting periods beginning on or after October 1, 1997, a hospital's

unweighted direct medical education FTE count may not exceed the hospital's unweighted FTE count for its most recent cost reporting period ending on or before December 31, 1996.

Section 1886(h)(4)(H)(iii) of the Act gives the Secretary authority to collect whatever data are necessary to implement this provision. Hospitals have been required to report resident-specific information to their fiscal intermediaries under longstanding requirements of § 413.86, and we believe it is possible to implement section 1886(h)(4)(F) without mandating significant additional reporting. We expect to amend the Medicare cost report in light of all of the provisions of the BBA addressing indirect and direct GME payments. We believe that the data, for the most recent cost reporting periods ending on or before December 31, 1996, necessary to implement the indirect and direct GME provisions is already available to fiscal intermediaries through the intern and resident information system.

We believe the hospital's unweighted FTE limit for its most recent cost reporting period ending on or before December 31, 1996 should be based on a 12 month cost reporting period. If the hospital's most recent cost reporting period ending on or before December 31, 1996 is a short period report, the fiscal intermediaries shall make adjustments so that the hospital's unweighted FTE limit corresponds to the equivalent of a 12-month cost reporting period. In the August 29 final rule with comment period, we revised § 413.86(g)(4) accordingly.

Comment: We received comments that many hospitals received approval from the Accreditation Council on Graduate Medical Education (ACGME) to expand existing medical residency training programs prior to enactment of the BBA. The additional residents associated with these program expansions may not have been included in the hospital's most recent cost reporting period ending on or before December 31, 1996. Some commenters felt that it was not the intent of the Congress to "unduly burden residency programs and hospitals by putting into effect regulations which retroactively punish programs attempting to expand." These commenters stated that even if it was Congressional intent to halt program expansion, programs serving rural and rural underserved areas should be exempt. Some commenters urged that the cap be adjusted to allow for situations where documented expansion plans were approved by national credentialing bodies or state regulatory agencies prior to August 5,

1997, or where hospitals made commitments to residents for the 1997/1998 academic year. Other commenters stated that HCFA should allow all residents training before August 5, 1997, to be included in hospital FTE caps. One commenter suggested that HCFA consider the number of approved slots rather than the actual number of residents on December 31, 1996, for purposes of calculating the FTE cap. This commenter did not believe that Congress intended to punish well-established programs that happened to have an open slot on a particular date, nor to force programs with significant activity in the training of rural physicians to reduce their number of residency slots. Some commenters recognized that the statute requires the Secretary to establish hospital specific FTE caps from the hospitals' most recent cost reporting period ending on or before December 31, 1996, even in situations where hospitals made commitments to training additional residents after their cost reporting period ending during 1996 and before the enactment of the BBA. The commenters urged HCFA to recommend a statutory change to the 1996 cost report year provision to ameliorate the retrospective nature of this provision.

Response: Under sections 1886(d)(5)(B)(v) and 1886(h)(4)(F), as amended by the BBA, the number of a hospital's residents in allopathic medicine and osteopathic medicine may not exceed the number of such residents for the hospital's most recent cost reporting period ending on or before December 31, 1996. The limit applies to discharges occurring on or after October 1, 1997, for indirect medical education and to cost reporting periods beginning on or after October 1, 1997, for direct GME. Thus, for an individual hospital, the amount of Medicare payment for direct and indirect GME is limited by the number of residents in a base year specified by the statute.

Many of the comments we received indicated that hospitals made commitments to expand existing residency programs between their most recent cost reporting periods ending on or before December 31, 1996, and their first cost reporting period in which the caps apply. As a result, the hospital may have more residents in its current cost reporting period than its FTE cap. If we adjusted the caps for these hospitals we would effectively give them a base year contrary to the one specified by the statute.

Similarly, establishing FTE caps based on the number of residents training on August 5, 1997 or in the 1997-1998 program year would be

inconsistent with the statutory base year. In response to the comment that we establish FTE caps based on approved slots rather than the actual number of residents in training, the statute specifically establishes that the cap equals the number of allopathic and osteopathic FTE residents (before the application of the initial residency period weighting factors) in the hospital's most recent cost reporting period ending on or before December 31, 1996. The Conference Report for the BBA states that "the conference agreement provides for a 'cap' or limit on the number of residents that may be reimbursed by the Secretary, on a national and a facility level."

Section 1886(h)(5)(H) states that the Secretary shall give special consideration to facilities that meet the needs of underserved areas but only in the context of prescribing rules for medical residency training programs created on or after January 1, 1995. Thus, we disagree with these commenters that hospitals that meet the needs of rural underserved areas should be exempt from the FTE caps.

Comment: We received several comments on the need for flexibility in the FTE caps. These comments stated that an institution-specific cap does not allow training to move from one hospital to another even if those sites become undesirable. One commenter suggested that a hospital's FTE resident count should be allowed to increase if the residents are moved from another teaching hospital because that hospital no longer provides a desirable training site. Another commenter stated that program sponsors are responsible for ensuring that residency program sites meet accreditation requirements, and that a program sponsor is required to move residency slots if an affiliated hospital cannot or does not want to continue to support residency program changes. These commenters noted that if the sponsor of a residency program moves residents from one hospital to another, the receiving hospital will not be paid for those residents above its cap even though there is no net growth in the number of residents. These commenters requested that the regulations be modified to allow a hospital's FTE cap to increase if the residents are moved from one teaching hospital to another by the program sponsor if there is no net growth in residency slots. One comment proposed setting the cap at the number of residents included in an institution's sponsored programs as an alternative to the unweighted cap based on the time a resident works at a facility. Rotating residents would be counted outside the

cap since the increase in FTEs at one institution due to rotations is balanced by a decrease in the FTEs at the originating institution. One commenter stated that since hospitals now "own" residency slots, program sponsors are put at a disadvantage in negotiating with affiliated hospitals for reimbursement of resident salaries and faculty supervision costs, and an affiliated hospital may choose to "sell its residency slots to the highest bidder."

Response: The statute does not prohibit program sponsors from restructuring a residency training program or resident rotation schedules. Sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) only provide for hospital-specific FTE caps for purposes of determining Medicare payment for indirect and direct GME. We believe the concerns of these commenters may be addressed by our rules for affiliated groups, which permit hospitals to elect to apply the caps on an aggregate basis. As discussed later, if two or more hospitals are members of the same affiliated group, they can, by mutual agreement, adjust each respective hospital's FTE cap under an aggregate FTE cap. Absent this mutual agreement, we do not believe it is appropriate for the Secretary to establish rules that allow adjustments to hospital-specific FTE caps based on unilateral decisions by the residency training program director.

With regard to the comment that the hospital's FTE caps should be based on the hospital's sponsored programs, sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) specifically limit the hospital's FTEs for determining Medicare payment to the number included in the hospital's most recent cost reporting period ending on or before December 31, 1996. We would further note that medical residency training programs may also be sponsored by medical schools. If we were to adopt this commenter's suggestion that the FTE cap be equal to the number of residents in a hospital's sponsored programs, residents in programs sponsored by medical schools would not be included in any hospital's FTE cap.

We recognize the concern of the commenter who stated that the FTE caps may result in changes in financial relationships between program sponsors and affiliated training sites to the disadvantage of program sponsors. If, indeed, program sponsors are at a disadvantage in negotiating financial arrangements, it is a result of the BBA statutory requirement that Medicare payment for direct and indirect GME be

limited by hospital specific FTE caps and not a result of any regulations promulgated by the Secretary.

Comment: One commenter stated that because of osteopathic medicine's commitment to primary care and work in underserved communities, HCFA should create an exemption to the residency cap for osteopathic residency programs. Other commenters stated concerns about the adequacy of postgraduate medical education training positions for osteopathic medicine residents. One commenter stated that the osteopathic medical profession is currently 3,000-3,500 positions in deficit, based on the postdoctoral needs of all students who are currently and will register in colleges of osteopathic medicine over the next 3 years. The commenter argues that, since the allopathic positions total approximately 143 percent of U.S. allopathic medical graduates, a similar restriction on U.S. osteopathic positions does not seem warranted. This commenter stated that a mechanism should be permitted to allow the osteopathic profession the flexibility to enhance osteopathic training positions by approximately 3,000-4,000 positions. Another commenter noted that osteopathic physicians serve disproportionately in rural areas and appear to fulfill physician workforce objectives, which represents an additional justification for maintaining osteopathic residency slots. One commenter noted that it is important that a GME FTE cap not adversely affect training osteopathic surgical subspecialty physicians. According to this commenter, osteopathic medical graduates do not have access to allopathic surgical subspecialty programs.

Response: Section 1886(h)(4)(F) provides for a cap on the total number of FTE residents in a hospital's "approved medical residency training programs in the fields of allopathic and osteopathic medicine." The statutory limit on the number of residents paid for by Medicare specifically encompasses residents in osteopathic medicine.

Comment: Several commenters asked about application of the cap for hospitals that merged after December 31, 1996 but before the BBA, where only one hospital maintains its provider number and participation agreement. Another commenter stated that the law and regulations do not address application of the resident cap for hospital mergers and acquisitions. These commenters do not believe that it was the intent of the BBA to eliminate funding for residents when hospitals merge. Another commenter stated that

applying the limits based on cost reports ending on or before December 31, 1996, does not allow for the long-term plans of providers attempting to reduce medical education costs and consolidate programs. The commenters recommended that HCFA interpret the BBA provisions to allow hospitals that merged after the base year to include the count of both hospitals. Some commenters suggested that another approach would be to redefine an affiliated group to include hospitals that merged after the December 31, 1996, cost reporting period. Another commenter stated that where there is a merger involving two hospitals, the merged cap should reflect a 12-month cost reporting period. This commenter suggested we amend the regulations specifically to ensure that the FTE cap is based on the equivalent of a 12-month cost report in the context of a merger.

Response: We agree with the commenters that when there is a merger, the cap for the hospital should reflect the base year FTE counts for the hospitals that merged. This is consistent with the principle of limiting payments based on the base year specified in the statute. Also, in implementing the COBRA 1985 provision establishing a hospital-specific per resident amount in the situation of a merger, we have calculated the revised per resident amount for the merged hospital using an FTE weighted average of each of the respective hospital's per resident amount which is part of the merger. We believe that it would be appropriate to address the FTE caps using the same principle. For purposes of this final rule, where two or more hospitals merge after each hospital's cost reporting period ending during FY 1996, the merged hospital's FTE cap will be an aggregation of the FTE cap for each hospital participating in the merger. We are modifying § 413.86(g)(6) to reflect this change.

With regard to the comment that we modify the regulations to ensure that the FTE caps are applied on the basis of a 12-month cost reporting period specifically in the context of mergers and acquisitions, the existing regulations state that the fiscal intermediary may make appropriate modifications to apply the FTE cap based on the equivalent of a 12-month cost reporting period. We do not believe that additional regulatory revisions are warranted.

Comment: Several commenters argued that we should adjust the caps when a hospital began training additional residents after its cost reporting period ending during 1996 because another hospital closed or discontinued its

teaching programs during the July 1996-June 1997 residency year. One commenter stated that there should be a mechanism for allowing FTE positions from merged or closed osteopathic residency programs to be used by other programs. One commenter suggested that we allow an adjustment to the FTE cap if the hospital met the following criteria: (1) During the July 1996-June 1997 residency year the hospital assumed additional medical residents from a hospital that was closing or discontinuing its training programs; (2) The hospital added the residents with the intent of allowing them to complete their education program; and (3) The hospital that closed does not seek reimbursement for the residents. If a hospital meets these three criteria, this commenter stated that it should have an unweighted FTE count which equals its unweighted FTE count for its most recent cost reporting period ending on or before December 31, 1996, adjusted for the additional residents added from residency programs at the closed hospital.

Response: Similar to the situation of a merger, we agree that, when a hospital takes on residents because another hospital closes or discontinues its program, a temporary adjustment to the cap is appropriate and consistent with the base year system. In these situations, residents may have partially completed a medical residency training program and would be unable to complete their training without a residency position at another hospital. We believe that it is appropriate to allow temporary adjustments to the FTE caps for a hospital that provides residency positions to medical residents who have partially completed a residency training program at a hospital which closed.

For purposes of this final rule, we will allow for temporary adjustments to a hospital's FTE cap to reflect residents affected by a hospital closure. That is, we will allow an adjustment to a hospital's FTE cap if the hospital meets the following criteria: (1) During the July 1996-June 1997 residency year the hospital assumed additional medical residents from a hospital that was closing; (2) The hospital added the residents with the intent of allowing them to complete their education program; and (3) The hospital that closed does not seek reimbursement for the residents. As stated above, this adjustment will be temporary to allow Medicare payment for those residents from the closed hospital. After this period, the hospital's cap will be based solely on the statutory base year. Hospitals seeking an adjustment for this situation must document to their

intermediary that an adjustment is warranted for this purpose and the length of time that the adjustment is needed.

Comment: One commenter stated that an appeals process must be established for providers to present cases when they believe their particular medical education programs have been unfairly penalized.

Response: Since the direct and indirect medical education FTE counts are used in determining hospital payments on the basis of a cost reporting period and the hospital has appeal rights on the settlement of the cost report under 42 CFR Part 405, we do not believe that a new appeals process needs to be established.

2. Counting Residents Based on a 3-Year Average

Section 1886(h)(4)(G)(iii) of the Act, as added by section 4623 of the BBA, provides that for the hospital's first cost reporting period beginning on or after October 1, 1997, the hospital's weighted FTE count for payment purposes equals the average of the weighted FTE count for that cost reporting period and the preceding cost reporting period. For cost reporting periods beginning on or after October 1, 1998, section 1886(h)(4)(G) of the Act requires that hospitals' direct medical education weighted FTE count for payment purposes equal the average of the actual weighted FTE count for the payment year cost reporting period and the preceding 2 cost reporting periods. This provision provides incentives for hospitals to reduce the number of residents in training by phasing in the associated reduction in payment over a 3-year period. In the August 29 final rule with comment period, we revised § 413.86(g)(5) accordingly.

For cost reporting periods beginning on or after October 1, 1997, we indicated in the August 29 final rule with comment period how we would determine direct GME payments.

To address situations in which a hospital increases the number of FTE residents over the cap, notwithstanding the limit established under section 1886(h)(4)(F), in the August 29 final rule with comment period we established the following policy for determining the hospital's weighted direct GME FTE count for cost reporting periods beginning on or after October 1, 1997.

- Determine the ratio of the hospital's weighted FTE count for residents in allopathic and osteopathic medicine to the hospital's unweighted number of FTE residents without application of the cap for the cost reporting period at issue.

- Multiply the ratio determined above by the hospital's FTE cap. Add the weighted count of residents in dentistry and podiatry to determine the weighted FTEs for the cost reporting period. This methodology should be used for purposes of determining payment for cost reporting periods beginning on or after October 1, 1997. The hospital's unweighted count of interns and residents for a cost reporting period beginning before October 1, 1997 will not be subject to the FTE limit.

If a hospital's unweighted count of residents in specialties other than dentistry and podiatry does not exceed the limit, the weighted FTE count equals the actual weighted FTE count for the cost reporting period. The weighted FTE count in either instance will be used to determine a hospital's payment under the 3-year rolling average payment rules. We believe this proportional reduction in the hospital's unweighted FTE count is an equitable mechanism for implementing the statutory provision.

Section 1886(h)(4)(G)(iii) of the Act provides that the Secretary makes appropriate modifications to ensure that the average FTE resident counts are based on the equivalent of full 12 month cost reporting periods. In the August 29 final rule with comment period, we revised § 413.86(g)(5) to allow the fiscal intermediaries to make the appropriate adjustments to ensure that 3-year and 2-year average FTE counts are based on the equivalent of 12-month periods.

Comment: Some commenters stated that application of the 3-year rolling average rule penalizes hospitals that participate in an affiliated group and increase residents under an aggregate FTE cap. We received comments stating that the 3-year rolling average may penalize hospitals that legitimately qualify for an increase in their FTE count because they established a medical residency training program on or after January 1, 1995. The commenters argue that, in these cases, hospitals should be able to choose to have IME or direct GME payments based on the current year count of FTE residents or the 3-year rolling average. One commenter stated that the rolling average methodology arbitrarily penalizes areas of the country undergoing substantial growth.

Response: Section 1886(h)(4)(H)(i) states that "the Secretary shall, consistent with the principles of subparagraphs (F) and (G), prescribe rules for the application" of the FTE caps and the 3-year rolling average in the case of medical residency programs established after January 1, 1995. We agree with these commenters that FTE

residents participating in new medical residency training programs should be included in the direct and indirect GME FTE counts after application of the 3-year averaging methodology. Accordingly, we are revising § 413.86(g)(5) to determine a hospital's 3-year average FTE count prior to adding residents participating in new medical residency training programs consistent with section 1886(h)(4)(H)(i). However, section 1886(h)(4)(H)(ii) states that "the Secretary may prescribe rules which allow institutions which are members of the same affiliated group (as defined by the Secretary) to elect to apply the limitation of subparagraph (F) on an aggregate basis." Since the statute provides that the Secretary's rules regarding affiliated groups should only apply to the FTE cap, we believe the 3-year rolling average should be applied for affiliated groups. That is, we will apply the 3-year rolling average for hospitals that are part of an affiliated group, subject to application of the aggregate cap.

Comment: We received some comments asking HCFA to clarify that dental and podiatric residents are not included in the rolling average resident count. Several other commenters suggested that we modify the regulations so that dental and podiatric residents are not included in the 3-year averaging of FTE counts. The commenters asserted that the intent of the provision was that the count of dental and podiatric positions be made separately.

Response: Although the FTE caps established under sections 1886(d)(5)(B)(v) and (h)(4)(F) are limited to residents in allopathic and osteopathic medicine, there is no similar limitation in section 1886(d)(5)(B)(vi) and (h)(4)(G) when determining indirect and direct GME payments based on a 3-year average. These provisions state that the Secretary shall determine payment based on an "average of the actual full-time equivalent resident count for the cost reporting period and the preceding two cost reporting periods." There is no statutory distinction between dental, podiatric and other residents in determining payment based on the 3-year averaging rules.

Comment: One commenter stated that capping FTEs for individual cost reporting periods in calculating the 3-year average is not the intention of the statute. This commenter stated that capping the FTEs in the individual years depreciates the FTE count for that year, misrepresenting the total number of FTEs during that year. This commenter recommended that in

calculating the 3-year rolling average, the gross number of FTEs should be used in the calculation.

Response: Section 1886(h)(4)(G), as added by the BBA, provides that the computation of the rolling average is "subject to the limit described in subparagraph (F)". The 3-year rolling average must reflect application of the FTE cap.

3. Special Rules for Applying the Direct GME FTE Limit and Rolling Average

Under section 1886(h)(4)(H)(i) of the Act, as added by the BBA, the Secretary is required, consistent with the principles of establishing a limitation on the number of residents paid for by Medicare and the 3-year rolling average, to establish rules with respect to the counting of residents in medical residency training programs established on or after January 1, 1995. Such rules must give special consideration to facilities that meet the needs of underserved rural areas. Language in the Conference Report for the BBA indicates concern that there be proper flexibility to respond to changing needs given the sizeable number of hospitals that elect to initiate new (or terminate existing) training programs.

Pursuant to the statute, in the August 29 final rule with comment period, we established the following rules for applying the FTE limit and determining the FTE count for hospitals that established new medical residency training programs on or after January 1, 1995. For purposes of this provision, a "program" would be considered newly established if it is accredited for the first time, including provisional accreditation, on or after January 1, 1995, by the appropriate accrediting body. The Secretary has broad authority to prescribe rules for counting residents in new programs, but the Conference Report for the BBA indicates concern that the aggregate number of FTE residents should not increase over current levels. Accordingly, we indicated that we would continue to monitor growth in the aggregate number of residency positions and may consider changes to the policies described below if there continues to be growth in the number of residency positions.

Comment: One commenter believed that the Congress intended to create exceptions for circumstances where commitments to begin new training programs had been made prior to enactment of the cap, including situations where programs had begun prior to enactment but were not filled in 1996 and situations where a new facility opens after enactment, and had no residents in the base year.

Response: The regulations published on August 29, 1997 provide for adjustments to hospital FTE caps for hospitals that previously did not participate in GME training and hospitals that established new medical residency training programs on or after January 1, 1995 and on or before the August 5, 1997 enactment of the BBA.

Comment: Some commenters questioned the definition of "new medical residency training program" established for purposes of section 1886(h)(4)(H) of the Act. The regulation defines a new program as one that receives initial accreditation on or after July 1, 1995. Several commenters stated that the definition of new program should recognize programs that have not yet received accreditation but are approved GME programs eligible for payment. The commenter suggested that the current definition of "new medical residency training program" would not recognize programs leading to an American Board of Medical Specialties certification since they are not accredited by an accreditation body, even though such programs qualify as approved GME programs and are eligible for payment. Some commenters suggested that the new program definition be based on the date the residents begin training rather than the date of an accreditation letter. These commenters noted that the majority of programs starting July 1, 1995, received their accreditation letters prior to January 1, 1995, and would not qualify as new programs. Other commenters believed that a new medical residency program should be determined based on the date a program received approval from the accrediting body. One commenter stated that programs which receive "provisional accreditation" should be included in the regulatory definition of a new program. One commenter stated that the new program definition should include programs for which hospitals submitted a formal application before August 5, 1997. The commenter noted that it takes from 8-12 months before accreditation action is taken. Another comment requested clarification that the documentation required under this section (42 CFR 413.86(g)(6)(iv)) related solely to justifying the existence of a new program.

Response: We inadvertently used the date "July 1, 1995" when we added § 413.86(g)(7) in the final rule with comment published August 29, 1997. We are correcting the date to January 1, 1995 in this final rule.

As the comments reflect, establishing a newly accredited medical residency training program can be a costly and

time consuming process. We recognize that hospitals that either received accreditation for a new medical residency training program or began training residents in the new program may have expended substantial resources during the accreditation process. We also recognize that hospitals usually do not begin training residents immediately upon receiving an accreditation letter. For these reasons, we believe it is appropriate to consider a medical residency training program to be newly established if the program received initial accreditation or began training residents on or after January 1, 1995. We are modifying the regulation accordingly.

A hospital seeking to qualify as a new program must provide documentation to the intermediary indicating the date a program received accreditation and/or the date the residents begin training for the hospital to receive an adjustment to its FTE cap. We are not allowing programs to be considered newly established based on the date the sponsor began seeking accreditation since the date of an accreditation application is not indicative of a substantial commitment of resources that warrant an adjustment to FTE caps.

Comment: Some commenters requested that the example in the August 29 final rule with comment period at 62 FR 46006, on programs that received direct GME before January 1, 1995, clearly state that dentistry and podiatry positions are not subject to the cap and that hospitals may add new programs in dentistry and podiatry without being subject to the Secretary's rules for establishment of new programs. The commenter would also like the statement on page 46006 that HCFA "will continue to monitor growth in the aggregate number of residency positions and may consider changes to the policies described below if there continues to be growth in the number of residency positions" modified to indicate that it applies only to allopathic and osteopathic residency positions.

Response: The regulations and preamble published on August 29, 1997, clearly stated that hospitals may include dental and podiatric residents in their FTE counts for purposes of direct and indirect medical education payment without limit, regardless of whether it is an expansion of an existing program or the establishment of a new program. We do not believe modification of the regulation is necessary.

Comment: Several commenters requested clarification about adjustments to the FTE cap for new osteopathic rotating internships.

Another commenter suggested that the osteopathic rotating internship should be exempt from the cap as are residents in dentistry and podiatry. One commenter noted that the rules call for counting the number of first year residents in the third year of the residency program. The commenter proposed that a consistent rule for internships would adjust the FTE cap for a new internship program based on the number of internship positions filled in the third year. One commenter expressed concern that our rules should recognize that specialty training in osteopathic medical specialties occurs subsequent to the osteopathic rotating internship in the second postgraduate year and that we should separately make adjustments to the FTE caps for new osteopathic internships and new osteopathic specialty training programs.

Response: The osteopathic rotating internship is the first postgraduate year of training for osteopathic medical graduates and precedes all subsequent specialty training. Since osteopathic rotation internship programs are individually accredited, we are applying the same rules for new osteopathic rotating internships that we apply for all other new medical residency training programs. That is, if a hospital qualifies for an adjustment to its FTE cap for a new osteopathic rotating internship, the adjustment will be equal to the product of the minimum accredited length for the osteopathic rotating internship (that is, one year) and the number of FTEs participating in the internship in its third year of existence. Since osteopathic rotating internships are one year in length, the minimum accredited length is equal to one year.

We will allow adjustments to FTE caps for new osteopathic specialty programs based on the product of the minimum length for the accredited program and the highest number of residents in any program year subsequent to the osteopathic rotating internship (that is, program year 2, program year 3 or program year 4) in the third year of the program's existence. We are applying the same rule for new allopathic training programs (that is, the adjustment for the new medical residency program is based on the highest number of residents in any program year in the third year of the program's existence). The adjustment to the hospital's FTE cap may not exceed the number of accredited resident slots for the new medical residency training program. In response to the comment that the osteopathic rotating internship be exempt from FTE caps, as stated earlier, the FTE caps under sections 1886(d)(5)(B)(v) and (h)(4)(F)

specifically encompass residents participating in allopathic and osteopathic training programs.

o. Hospitals with no residents prior to January 1, 1995. Section 1886(b)(4)(H) of the Act allows the Secretary to prescribe special rules for the application of the FTE caps and 3-year averaging for medical residency training programs established on or after January 1, 1995. In the August 29, 1997 final rule with comment period (62 FR 46005), we provided a special rule for application of the FTE resident cap for hospitals which did not participate in GME training prior to January 1, 1995. Under this special rule, we allowed hospitals to establish their FTE cap based on the product of the number of first year residents participating in accredited GME training programs in the third year that the hospital received payment for GME and the minimum accredited length for the type of program.

Comment: Some commenters stated that hospitals that did not receive GME payments prior to January 1, 1995, and subsequently become teaching hospitals by affiliating with an existing training program, should be eligible for GME payments if they incur substantially all of the costs of the resident training and the overall number of residents does not increase. In this situation, the location of settings in which residents receive training changes but there is no net increase in the number of residents. One commenter stated that the limit on resident growth in new hospitals to those from "newly accredited programs" severely limits flexibility of moving residents and requires a duplicative administrative burden to start new programs when sharing residents would work just as well. Another commenter asked whether new hospitals may include residents transferred from other hospitals if all parties concur. To ensure that this does not increase the number of resident slots, hospitals transferring residents would have their caps correspondingly reduced. Several commenters asked how the cap would apply to hospitals that decide to become teaching institutions and will have residency programs that will be a mix of new programs and programs currently running in another hospital.

Response: Under § 413.86(g)(4), hospitals that are part of the same affiliated group may elect to apply the FTE cap under section 1886(h)(4)(F) on an aggregate basis. If a hospital that did not receive direct or indirect GME payment prior to January 1, 1995, qualifies to be part of the same affiliated group with another hospital that

participates in residency training, these hospitals can, by mutual agreement, provide for adjustments to each respective hospital's FTE cap under an aggregate cap for the affiliated hospitals.

With regard to application of the cap for hospitals that become teaching institutions on or after January 1, 1995, and on or before August 5, 1997, our policy is that a hospital can receive an adjustment to its FTE cap for a new medical residency training program and can affiliate with hospitals that have existing medical residency training programs. Hospitals in urban areas that participate in medical residency training programs for the first time, after the August 5, 1997 enactment date of the BBA may receive an adjustment only for new medical residency training programs; they cannot affiliate with hospitals that have existing medical residency training programs. We are establishing this policy because of our concern that hospitals with existing medical residency training programs may affiliate with hospitals that establish new medical residency programs solely for the purpose of moving the new residency program to its own hospital and receiving an upward adjustment to its FTE cap under an affiliation agreement.

We will allow hospitals in rural areas that qualify for an adjustment to its FTE cap for new medical residency training programs to affiliate with hospitals in urban areas. However, we will only allow a rural hospital that qualifies for an adjustment to its FTE cap for a new medical residency training program to be a member of the same affiliated group with an urban hospital if the rural hospital provides training for the FTE equivalent of at least one third of the residents participating in the joint programs of the affiliated hospitals. We are allowing these affiliations between rural and urban hospitals to recognize that rural hospitals may not have sufficient patient care utilization to be able to establish a training program within the rural area to meet accreditation standards. However, we remain concerned that there needs to be a sizeable component of training in the rural area for the policy to provide appropriate consideration for hospitals meeting the needs of underserved rural areas. We believe that providing for at least one third of the training in rural area will allow programs which focus on, but are not exclusively limited to training in those areas.

Comment: One commenter argued that there is an inconsistency between the rules for teaching hospitals that had residents prior to January 1, 1995, and nonteaching hospitals that became

teaching hospitals between January 1, 1995, and August 5, 1997. Hospitals in the former category may have their limits adjusted upward for all new programs established prior to August 5, 1997, while hospitals in the latter category are allowed an adjustment only for residents in the first program created even though additional programs may have been created prior to August 5, 1997. This commenter recommended that all hospitals be entitled to cap adjustment for programs created before August 5, 1997.

Response: We agree and will establish the FTE cap for a hospital which did not participate in residency training prior to January 1, 1995, based on the product of the minimum length for the type of program and highest number of residents in any program year for all residency programs created in the 3rd year after residents first begin training (§ 413.86(g)(60)(i) and (ii)). This policy addresses adjustments for all new medical residency programs established prior to August 5, 1997.

Comment: One commenter suggested (1) allowing a new hospital 5 years to build its residency programs, and not differentiating between new and established programs, (2) using the 3-year methodology outlined in the rule but not differentiating between new and established programs, or (3) allowing the cap to move with the residents when programs are transferred from one hospital to another. Another commenter suggested that permitting hospitals to transfer residency programs to other hospitals by mutual agreement is necessary to provide cooperating hospitals, or hospitals within networks, the necessary flexibility to determine requirements for a quality training program and how they will meet them.

Response: One of these commenters is suggesting three alternatives for establishing the FTE cap for a new hospital that establishes a medical residency training program. Under the first two options, the commenter is suggesting that we should not distinguish between whether the hospital's resident count is adjusted for new medical residency training programs or previously established programs where some or all of the residents are transferred to the new hospital. As stated earlier, hospitals that did not participate in a medical residency training program prior to August 5, 1997, and establish a new medical residency training program for the first time after the enactment date of BBA will have their FTE caps established in the third year in which they participate in residency training.

We are not allowing hospitals that first participate in medical residency training programs to affiliate with hospitals that already have an established FTE cap because of our concern that hospitals with existing medical residency training programs would affiliate with hospitals that do not currently train residents solely for purposes of establishing a higher FTE cap, which is inconsistent with sections 1886(d)(5)(B)(v) and (h)(4)(F) of the Act. As a result of this concern, we are reluctant to adopt the first two approaches suggested by this commenter for adjusting the FTE cap for a hospital which participates in medical residency training for the first time after August 5, 1997. This commenter has also suggested allowing the FTE cap to move between hospitals when programs are transferred. Hospitals that qualify to be members of the same affiliated group can mutually agree to adjustments in their respective FTE caps.

Comment: One commenter stated that the requirement that all new programs begin at the same time in new hospitals is contradictory to the Accreditation Council on Graduate Medical Education requirement that certain new programs be started in hospitals that already have other programs. Under HCFA's regulations, a new hospital must start all new programs at once in order to receive an adjustment to the FTE cap based on the number of residents participating in all of the hospital's accredited programs in the third year that the hospital participates in training. The commenter suggested that HCFA provide an adequate time period for new hospitals to build complementary residency programs that do not conflict with Accreditation Council on Graduate Medical Education requirements. One commenter stated that basing the resident cap for new residency programs on the first program(s) will inhibit growth of other primary care programs or the introduction of new primary care programs. One commenter stated that nothing in the statute suggests that recognition of new programs should be limited to the first program. This commenter stated that if an internal medicine program is accredited in April 1996 with its first residents in July and a specialty program is developed in 1997 with residents beginning in 1998, the cap should be adjusted to account for the additional residents in the second program. One commenter recommended that the cap for new programs be adjusted based on all programs established in the hospital's first year rather than the first programs simultaneously established. One

commenter suggested that the cap adjustment for new programs in hospitals should be available without a cut-off date. Another commenter recommended allowing hospitals a period of time, no less than 5 years, to establish their GME training programs. One commenter stated that the resident count should be determined in the third year of the program based on the number of residents in either the first, second, or third residency year, whichever is the highest. In addition, the regulations should allow the limits to be adjusted upward for each of the first two years of the program to permit payments for residents present during that period.

Response: We agree that hospitals that establish new medical residency programs will need time to establish complementary residency programs. Additionally, we are concerned that hospitals may be disadvantaged by basing the adjustment on the number of first year residents in the third year of the program's existence. Therefore, we are revising § 413.86(g)(6)(i) to state that the hospital's cap adjustment is based on the product of the minimum accredited length for the specialty program and the highest number of residents training in any program year during the 3rd year of the program's existence. For purposes of determining the FTE cap for hospitals which first participate in GME training on or after January 1, 1995, we will establish the hospital's FTE cap 3 years after the first medical residency program is established. The hospital's cap will reflect an adjustment based on the product of the minimum accredited length for the program and the highest number of residents in any program year for each new medical residency program in existence at the time the cap is established. The hospital's FTE cap may not exceed the number of accredited resident slots available to the hospital.

b. Hospitals with residents prior to January 1, 1995 not located in rural areas. In the August 29, 1997 final rule with comment period, we also provided a special rule for the application of the FTE cap for hospitals that participated in GME training before January 1, 1995 and established medical residency training programs on or after January 1, 1995. Under this special rule, we allowed hospitals with new medical residency training programs established on or after January 1, 1995 and on or before August 5, 1997 to adjust their FTE caps. The hospital's FTE caps are adjusted for the incremental increase in residents participating in the new medical residency training program which are not reflected in the hospital's

cost reporting period ending during calendar year 1996.

Comment: We received comments stating that an adjustment should be made to the FTE cap for programs established prior to January 1, 1995, that had not reached their third year or minimum accredited length for the type of program during the cost reporting period ending on or before December 31, 1996.

Response: Section 1886(h)(4)(H) states that the Secretary shall prescribe rules for application of the FTE cap and 3-year rolling average "in the case of medical residency training programs established on or after January 1, 1995." Our policy of limiting adjustments to FTE caps for medical residency training programs established on or after January 1, 1995 is consistent with this statutory requirement.

Comment: We received comments stating that HCFA should allow adjustments to the FTE cap for new residency programs established on or after August 5, 1997 in hospitals with existing residency programs. Many commenters believed that the August 5, 1997 date was unfair to primary care programs since several new family practice programs were accredited in September 1997 and there are a number of additional programs that will be established in the next 1 to 2 years. According to these commenters, if a public policy goal is to increase the number of primary care physicians, HCFA should allow for adjustments for programs created before September, 1999. One comment stated that urban hospitals will be deterred from opening new, desirable residency programs such as ambulatory care training programs if they cannot receive an adjustment for programs established after August 5, 1997. If HCFA does not allow hospitals in urban areas to create additional programs after August 5, 1997, this commenter suggested that HCFA allow adjustments for primary care programs where the majority of training is in ambulatory care. One commenter requested that the Secretary consider the needs of elderly beneficiaries in rural areas and allow adjustments to a hospital's FTE cap for new medical residency training in geriatric medicine. Another commenter stated that the Secretary should be required to give special consideration to facilities that establish residency training programs on or after January 1, 1995 "which meet the needs of geriatric populations, including mental health needs of the aged."

Response: As we have stated earlier, sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) limit the number of allopathic and osteopathic residents that

a hospital may include in its FTE count for purposes of indirect and direct GME payments. The Conference Report further states that "a facility limit on the number of residents was provided, rather than any direction on payments according to specialty of physicians in training, to specifically avoid the involvement by the Secretary in decision making about workforce matters. The Conferees emphatically believe that such decisions should remain within each facility, which is best able to respond to clinical needs and opportunities."

Since sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) provide for an FTE cap for medical residents in all allopathic and osteopathic specialties and the Conference Report states that the Secretary should not be involved in workforce matters, we disagree with these commenters that we should allow for adjustments to FTE caps for programs that train primary care residents, programs that focus on ambulatory training or geriatric training programs. We believe the statute anticipates that each facility, within its FTE cap, will make decisions about training programs based on the needs of its own institution.

c. Rural underserved areas. Consistent with section 1886(h)(4)(H), we provided a special rule for the application of the FTE cap to give special consideration to hospitals that meet the needs of underserved rural areas. Under this special rule, we provide adjustments to FTE caps for hospitals located in rural areas that established medical residency training programs on or after January 1, 1995. The caps can be adjusted for all programs created on or after January 1, 1995 including programs created after the enactment of BBA. The adjustment to an individual hospital's FTE cap is based on the product of the number of first year residents participating in the newly established program in the program's third year of existence and the minimum accredited length for the program.

Comment: Many commenters recommended that an exception to the FTE caps should be permitted to encourage existing programs to expand to meet the needs of rural, underserved areas. Several commenters also suggested providing an exception to the cap that would allow a geographic area with substantial population growth to expand existing medical residency training programs to hospitals which previously have not participated in residency training. Some commenters suggested that the needs of rural (and other underserved) areas are frequently met by facilities that do not exist within

those areas, but whose graduates subsequently practice there. This commenter requested that HCFA redesignate certain urban MSAs as rural for residency training purposes. One commenter suggested that the designation of programs in underserved areas receiving special consideration might better be phrased as "programs whose graduates serve underserved areas," in order to be consistent with the purpose of this language. Many commenters stated that Congress' intent that special consideration be given to facilities that meet the needs of underserved rural areas was meant to include entire States that have low "per population" ratios of both physicians and residents. This commenter suggested that this special rule could be limited to the five States with lowest physician to population ratios.

One commenter stated that without an exception, the FTE cap could have a "chilling" effect on urban hospitals sending residents to rural settings. This commenter stated that there have been several recent expansions in family practice residency programs that include a rural training track, with residents located in outlying hospitals, or with satellite programs designed specifically to train residents to work in areas with underserved populations. The commenter suggested that urban hospitals should be eligible for exceptions to the cap if they place residents in rural, underserved areas. One commenter recommended that the FTE cap should be adjusted for urban programs that provide 25 percent of their training in rural areas that are designated as medically underserved areas and/or health professional shortage areas.

Another commenter stated that, given the value of rural training to the needs of underserved populations, HCFA should develop additional exception language for rural training tracks or programs that seek to train residents in working with underserved populations. The commenter recommended that HCFA consider, in designating rural and rural underserved areas, the population served by the program and where the graduates practice upon completion of the program rather than the location of the training of the residents. We received comments indicating that hospitals will be unlikely to benefit from the special rules for hospitals located in rural areas. The commenters believed that it is unlikely that a rural hospital will establish a residency program because the smallest program which may be accredited is for 12 residents. Another commenter stated that the majority of physicians will

settle within 100 miles of their residency training location and suggested that programs which serve underserved rural areas should be defined as:

- (a) Any residency program with more than 10 health professional shortage areas within 100 miles of the program;
- (b) Residencies that have identified themselves prior to August 5, 1997 as having the mission of training rural physicians, and have placed more than 10 percent of residents in the preceding 2 years in rural underserved areas and more than 40 percent in rural areas; or
- (c) Residencies within States where greater than 70 percent of the land mass is rural; and
- (d) Programs meeting the above qualifications and those located within health professional shortage areas would be disqualified by being in a community of greater than 100,000.

Response: We believe that the Congress enacted sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) because of a concern about the growing supply of physicians in combination with reports that the United States may be training too many physicians for practice in the 21st century. The Conference Report accompanying the BBA states that the "conference agreement provides for a 'cap' or limit on the number of residents that may be reimbursed by the Secretary, on a national and a facility level." At the same time, the Conference Report acknowledged that the FTE caps could create problems in several circumstances. Accordingly, the statute provides for special rules for medical residency programs created on or after January 1, 1995, and directs the Secretary to "give special consideration to facilities that meet the needs of rural underserved areas."

Given the hospital specific FTE caps mandated by the statute and the Conference Report language that the number of FTE residents paid for by Medicare should not exceed current levels, we believe our policy with regard to medical residency training programs created on or after January 1, 1995, establishes an appropriate balance between the competing goals of limiting the number of residents in training nationally and making appropriate payments for necessary training. Although we acknowledge that GME programs that provide a component of training in rural areas also include significant training in hospitals located in urban areas, we are concerned about the impact of providing adjustments to the FTE limit for hospitals located in non-rural areas until we have more experience with the current special

rules. As we stated above, we will make adjustments to the caps for rural hospitals that establish new medical residency training programs and will allow those hospitals to affiliate with hospitals in nonrural areas. Taken together, these policies allow rural hospitals, in combination with urban hospitals, to establish training programs which can receive Medicare payment for direct and indirect GME. Finally, based on a review of the 1997/1998 *Graduate Medical Education Directory*, we would note that, in limited circumstances, family practice programs of fewer than 12 residents that focus on rural training may be accredited.

Comment: One commenter suggested that many osteopathic training programs are located in underserved, urban areas called Empowerment Zones and that these programs should receive a waiver from the FTE caps. Another commenter recommends that exceptions be permitted for urban hospitals serving underserved populations.

Response: As stated above, sections 1886(d)(5)(B)(v) and 1886(h)(4)(F) cap the number of osteopathic and allopathic physicians a hospital may include in its FTE count. Section 1886(h)(4)(H)(i) requires the Secretary to prescribe special rules for application of the cap and the 3-year rolling average for medical residency training programs created on or after January 1, 1995, and states that the Secretary should give special consideration to hospitals that meet the needs of rural underserved areas in drafting these rules. The statute includes osteopathic medical residency training programs in the FTE caps and the Secretary is directed by the statute to give special preference only to rural underserved areas. Consistent with the statute, we are providing for adjustment to FTE caps for new medical residency training programs created on or after January 1, 1995 and are not providing for the types of adjustments suggested by these commenters.

Comment: Several commenters noted that medicine is constantly evolving, leading to new specialty training programs. According to the commenters, new specialties do not necessarily replace old specialties so absent explicit recognition of new specialties, the cap on resident training will hamper the ability of teaching institutions to implement new training programs without downsizing or eliminating existing programs. The commenters urged HCFA, in consultation with the medical profession, to look at constructive ways to address this issue.

Response: As we have stated earlier, sections 1886(d)(5)(B)(v) and (h)(4)(F) provide for limits on the number of

residents used in determining Medicare payment for indirect and direct GME. It does not preclude hospitals from establishing new medical training programs. Nevertheless, we do acknowledge that Medicare's payments for GME may be important in decisionmaking about training and the FTE caps mandated by the BBA may have an effect on the future developments in GME training. These issues would be appropriate consideration for Congress as well as the Medicare Payment Advisory Commission and the National Bipartisan Commission on the Future of Medicare. Section 4629 of the BBA requires the Medicare Payment Advisory Commission to report on the "extent Medicare payment policies and other Federal policies regarding teaching hospitals and graduate medical education should be changed." Section 4021 of the BBA creates a National Bipartisan Commission on the Future of Medicare which is required to "make recommendations regarding the financing of graduate medical education."

Comment: One commenter stated that there are no instructions on how to apply for an exception to the FTE cap.

Response: Hospitals seeking to receive payments under the rules for a new medical residency training program should consult with and provide supporting documentation to their fiscal intermediary.

4. Aggregate Direct GME FTE Limit for Affiliated Institutions

Section 1886(h)(4)(H)(ii) of the Act permits but does not require the Secretary to prescribe rules that allow institutions that are members of the same affiliated group (as defined by the Secretary) to elect to apply the FTE resident limit on an aggregate basis. This provision would permit hospitals flexibility in structuring rotations within a combined cap when they share residents.

a. Definition of affiliated group. Pursuant to the broad authority conferred by the statute, in the August 29, 1997 final rule with comment period, we established criteria to define "affiliated group". We defined "affiliated group" as

- Hospitals in the same geographic wage area that rotate residents to other hospitals of the group during the course of the approved program; or
- Hospitals that are not located in the same geographic wage area and are jointly listed as "major participating institutions" as that term is used in the *Graduate Medical Education Directory* for one or more programs.

Comment: Some commenters requested that we clarify whether the term geographic wage area included reclassification for purposes of the wage index or the national standardized amounts or both. These commenters have questioned whether "geographic wage area" means a metropolitan statistical area (MSA) before the effect of reclassification and some commenters were unsure whether the term geographic wage area included the effect of reclassification for the standardized amount or the wage index or both.

Response: For purposes of defining an affiliated group, we are using the terms "urban area" and "rural area" before the effect of geographic reclassification under part 412. To avoid further confusion, we are revising § 413.86(b) to use the terms "urban area" and "rural area" (as those terms are defined in § 412.62(f)) for the purpose of defining an affiliated group. Section 412.62(f) states that an urban area means a metropolitan statistical area or New England County Metropolitan Area as defined by the Executive Office of Management and Budget. A rural area means any area outside of an urban area.

Comment: Some commenters recommended allowing hospitals to be part of an affiliated group if they are located in the same State or located in contiguous geographic wage areas.

Response: We agree with this recommendation and are revising the criteria specified in § 413.86(b) as follows. Specifically, we are revising this section to provide that hospitals in the same urban area or a contiguous urban area may be part of the same affiliated group if the hospitals participate jointly in training residents in at least one training program. If a hospital is located in a rural area, it may affiliate with any hospital in which it jointly participates in training residents in the same rural area or a contiguous area.

Comment: Many commenters disagreed with the limitation of affiliated group to geographic areas. Some commenters stated that hospital systems today are geographically diverse, the wage area distinction is dysfunctional, and the requirement that hospitals be located in the same geographic wage area or jointly listed as major participating institutions in the *Graduate Medical Education Directory* is too limited. These commenters requested that the wage area and joint listing requirements be eliminated.

Response: The criteria we established to determine whether two or more hospitals qualify to be an affiliated group were designed to identify hospitals that have relationships for

training residents and to allow those hospitals to continue to have the flexibility to rotate residents under an aggregate FTE cap. By focusing on hospitals that rotate residents within a geographic area and on whether they are recognized for jointly participating in residency training by the accrediting body, we are identifying hospitals that are affiliated for purposes of GME training. We believe that our approach for identifying hospitals that require flexibility under an aggregate FTE cap is reasonable and consistent with section 1886(h)(5)(H) of the Act, which provides the Secretary with authority to define hospitals that are members of the same affiliated group. We believe that the geographic boundary provided by an urban or rural area is an appropriate basis upon which to identify hospitals that share residents for purposes of GME training. We agree, however, that focusing solely on hospitals located within an MSA is limiting and are making the qualifying criteria for being members of the same affiliated group less restrictive. Under this final rule, we are allowing hospitals to be members of the same affiliated group which jointly participate in residency training and are located in the same or a contiguous MSA or the same rural area and a contiguous area.

Comment: One commenter stated that the rules regarding "major participating institution" are disadvantageous to residency programs in small towns and relatively small geographic wage areas because the definition of "major participating institution" requires that the hospital provide rotations of at least one-sixth of the program length or 6 months. Since rural hospitals are more likely to sponsor shorter rotations, hospitals in rural areas would be much less able to meet the criteria to become part of an affiliated group. The commenter believes this does not meet with Congressional intent to provide special consideration for rural areas.

Response: As discussed above, we are modifying the definition of affiliated group to permit affiliations between hospitals located in rural areas and hospitals located in an area contiguous to the rural area.

Comment: Some commenters recommended allowing entities under common ownership or part of the same "system" to be an affiliated group for purposes of aggregating their caps. Another commenter recommended creating an additional "affiliated group" definition that would allow aggregation of FTE residents for hospitals under common ownership and operation with one or more medical schools (the program sponsors) provided such

hospitals are within the geographic border of a single state. Another commenter suggested that hospitals that certify they operate as a single health care system should be considered an affiliated group, regardless of the hospitals' geographic locations. These systems functionally operate coordinated and centrally controlled GME programs and often rotate their residents among their various facilities depending on training needs and other considerations.

Response: We agree with the commenters who suggested that hospitals that are under common ownership should be permitted to be part of the same affiliated group regardless of geographic boundaries and are modifying § 413.86(b) accordingly.

Comment: One commenter stated that Medicare's related party principle should be a basis for defining affiliated group because that would allow hospitals to better manage training of residents.

Response: We do not agree that Medicare's related party principle should govern which hospitals qualify to be part of the same affiliated group. The criteria for being part of an affiliated group are intended to identify a relationship among hospitals for sharing residents. The related party principle is used under principles of Medicare cost reimbursement to determine the costs of a related party which may be claimed on a hospital's cost report. Under the related party principle, hospitals may claim costs of a related party which may not be a hospital. For instance, a hospital may include the costs of a related medical school on its cost report. Since the related party principle is used in determining which costs of a related party a hospital is entitled to claim and is not indicative of joint participation in a training program, we do not believe the related party principle is appropriate criteria for determining whether hospitals may be part of the same affiliated group.

Comment: One commenter stated that the "affiliation" policy should allow for situations where not all affiliated institutions choose to elect to apply for an aggregate cap.

Response: Hospitals that could qualify to be part of an affiliated group do not have to affiliate. As we describe in more detail below, for purposes of applying an aggregate cap hospitals must affiliate by explicit agreement. If a hospital does not affiliate, that hospital will remain subject to a cap based on its FTE count in its most recent cost reporting period ending on or before December 31, 1996. The aggregate cap will only be applied

for hospitals that elect to be part of an affiliated group.

Comment: Other commenters suggested that unrelated hospitals that jointly sponsor programs should be allowed to be part of the same affiliated group.

Response: Under our regulations, common sponsorship will qualify two or more hospitals to be part of the same affiliated group. We are revising § 413.86(b) to clarify that hospitals that are jointly listed for one or more medical residency training programs in the *Graduate Medical Education Directory* as a sponsor, primary clinical site or major participating institution may qualify to be an affiliated group for purposes of an aggregate FTE cap.

Comment: Many commenters stated that program sponsors should be able to make decisions about where training should occur and the hospital FTE caps should be adjusted accordingly. Several commenters stated that hospitals in an affiliated group should be allowed to arrange residencies in the manner that best fits their community. One commenter stated that we should permit adjustments to caps to reflect rotations resulting from restructuring training programs brought about by changes in provider affiliations, giving preference to the sponsoring teaching hospital to subsume residency positions that were previously in affiliated institutions.

Response: Although we agree that program sponsors are likely the best qualified to determine how and where training should occur, we do not believe that it would be appropriate to allow hospital specific adjustments to FTE caps based on unilateral decisions by program sponsors or the hospital which sponsors the training program. In situations where the sponsor of the program is a medical school and not a hospital, we do not believe it would be appropriate to make adjustments to hospital FTE caps based on the decision of an entity that has no relationship to the Medicare program. Furthermore, since medical schools do not provide cost reports or counts of FTE residents to Medicare, we do not believe there would be an appropriate mechanism for making adjustments to hospital FTE caps under the aggregate caps if decisions regarding affiliations and adjustments are not being made by hospitals. We would also note that hospitals may be involved in many medical residency training programs involving different program directors. Making adjustments to hospital caps based on the decisions of multiple people within the hospital would not be administratively feasible. Further, since hospitals may not sponsor all of the

programs they participate in, we do not believe that it is appropriate to make downward adjustments in a hospital's FTE cap based on a unilateral decision of another hospital.

Comment: Several commenters noted that the *Graduate Medical Education Directory* does not include osteopathic training programs and requested a reference to an official listing of American Osteopathic Association approved training programs.

Response: We agree with the commenters who suggested that the regulation needs a comparable reference for osteopathic medical residency training programs to the *Graduate Medical Education Directory*, which only lists allopathic training programs. Medical residency programs accredited by the American Osteopathic Association are listed in a publication called *Opportunities, Directory of Osteopathic Postdoctoral Programs*. For purposes of this final rule, if two hospitals are not located in the same MSA or a contiguous MSA, they may qualify to be part of the same affiliated group if the hospitals are jointly listed for one or more programs in *Opportunities* as the sponsor or under the heading "affiliations and outside rotations" (413.86(b)).

Comment: One commenter stated that the American Osteopathic Association is requiring all accredited osteopathic GME programs to be part of an osteopathic postdoctoral training institution (OPTI) by July 1, 1999. There are several hospitals that are currently participating in an approved OPTI. The commenter was concerned that the OPTI is a consortium of providers and these consortia would not qualify as an affiliated group. The commenter recommended that HCFA recognize a formally organized osteopathic GME consortia without geographic limit. Further, the commenter stated that any affiliation should be recognized for aggregation purposes even if the hospitals are not in the same geographic wage area.

Response: We have reviewed materials regarding the OPTI concept from the American Osteopathic Association and note that an OPTI may include an "associate institution" that provides 6 months or more of training per year and an "affiliate institution" where less than 6 months of rotations per year are occurring. Since the OPTI concept is not yet fully implemented, we believe it would be premature to begin recognizing institutions which are part of an OPTI under the definition of affiliated groups for purposes of an aggregate FTE cap. However, we will continue to evaluate whether hospitals

participating in an OPTI could be part of an affiliated group, and we will specifically focus on the duration of rotations among hospitals within the OPTI in making this decision.

Comment: Several commenters stated that accreditation requirements mandated an increase in their hospital's FTE resident count due to the transfer of residents from a Veterans Affairs Medical Center or a Department of Defense facility. These commenters stated that an exception to the FTE cap should be allowed when a hospital's resident count increased in situations where the aggregate count of residents among the affiliated hospitals, including Veterans' Affairs Medical Centers, remains unchanged. Other commenters recommended that HCFA give program sponsors the ability to transfer residents from Veterans Affairs hospitals to non-Veterans' Affairs hospitals.

Response: Sections 1886(d)(5)(B)(v) and (h)(4)(F) of the Act provide for FTE caps on the basis of a hospital's most recent cost reporting period ending on or before December 31, 1996. Section 1886(h)(4)(H) of the Act allows hospitals that are part of the same affiliated group to apply the FTE cap on an aggregate basis. Veterans' Affairs and Department of Defense hospitals do not have cost reporting periods for Medicare payment purposes and do not provide data on FTE resident counts to Medicare. We believe that hospitals that do not participate in Medicare should not be part of an affiliated group since the statute caps the number of residents based on the number of residents reported by the hospital in its Medicare cost reporting periods. In addition, hospitals that do not participate in Medicare do not submit cost reports to a fiscal intermediary; therefore, we would be unable to apply an aggregate FTE cap to an affiliated group that included these hospitals.

In summary, we are defining an affiliated group as follows:

- Hospitals in the same urban area or in contiguous urban areas which rotate residents to other hospitals of the group during the course of the program year;
- Hospitals located in the same rural area or in contiguous rural and urban areas that rotate residents to other hospitals of the group during the course of the program year; or
- Hospitals that are—
 - Jointly listed as the sponsor, primary clinical site or major participating institution as those terms are used in the *Graduate Medical Education Directory* for one or more programs; or
 - Jointly listed as the program sponsor or under affiliations and outside

rotations in *Opportunities*, the directory of osteopathic graduate medical education programs; or

- Hospitals which are under common ownership.

b. Application of the FTE caps to an affiliated group. In the August 29, 1997 final rule, we addressed application of the FTE cap for hospitals which are members of the same affiliated group. Hospitals which qualify to be part of the same affiliated group may elect to have the individual FTE caps applied on an aggregate basis. This means that we would apply a cap to the group as a whole, and the cap for the group would equal the sum of the individual FTE caps for all hospitals that are part of the affiliated group. Indirect and direct graduate medical education payment would be based on hospital specific FTE counts under an aggregate FTE cap. In the August 29, 1997 final rule with comment period, we stated that the aggregate FTE cap for an affiliated group would be applied on an institution-wide basis. We recognize that hospitals may participate in many different specialty programs and may share residents for one specialty program with one hospital but share residents for a different program with another hospital, but we did not believe it would be administratively feasible to apply the FTE cap on a program by program basis. That is, the aggregate cap under the August 29, 1997 final rule with comment period would be the combined individual caps of each hospital that elects to be part of an affiliated group.

Comment: One commenter stated that hospitals may have rotation relationships with a number of different hospitals. According to these commenters, aggregation of resident counts among all hospitals is not practical or feasible. Many commenters suggested that we should permit hospitals to aggregate resident numbers at the program level if the hospitals provide supporting documentation that the aggregate count of residents within the program remains unchanged. One commenter who supported affiliations at the program level stated that HCFA should require hospitals to report FTEs by program sponsor and include a separate count of each program on the Medicare cost report. Hospitals would have multiple FTE caps and would be responsible for reconciling each individual program cap with the intermediary. Several commenters stated that HCFA should allow affiliated hospitals to transfer programs and that each hospital's cap be adjusted based on a joint letter from the affected providers.

Response: As we stated in the August 29, 1997 final rule with comment period, we recognize that many hospitals may share residents for particular specialty programs. We stated that hospital affiliations must be on an institution-wide basis because of our concern about the administrative feasibility of allowing affiliations on a program-by-program basis. Although we continue to have concerns that program specific affiliations may generate enormous complexity in monitoring FTE resident counts for fiscal intermediaries and may impose significant documentation burdens on hospitals, we agree with the commenters that it would be appropriate for Medicare to accommodate agreements between individual hospitals for specific programs. A hospital could have an agreement with one hospital for a particular program and another hospital for a different program. An agreement between two hospitals does not mean only those hospitals are an affiliated group, if those hospitals also have agreements with other hospitals. Rather, the affiliated group includes the original two hospitals that have an agreement and every hospital that has an agreement with any of those hospitals. We will continue to apply the FTE cap on an aggregate basis for institutions that are part of an affiliated group. That is, we will combine the individual caps for each institution that has an agreement to be an affiliated group to verify that the sum total of the resident counts for all institutions does not exceed the aggregate cap. We will make payment to individual hospitals based on hospital specific FTE counts.

Each agreement must specify the adjustment to each hospital's FTE counts from the cost reporting period ending during calendar year 1996 for purposes of applying the aggregate FTE cap for the period of the agreement. The agreements must specify the adjustment to the IME and direct GME FTE counts separately since hospitals are subject to two different FTE counts for each respective cap. Since medical residency training programs generally follow a July 1 to June 30 residency training year, each agreement should specify adjustments to FTE counts on a 12-month basis from July 1 to June 30 of each year. The agreements must be for a minimum of one program year but may be for more than one year. A hospital will be permitted to engage in multiple agreements with different hospitals as illustrated below. For example, hospital A can have an agreement with hospital B for an

internal medicine program and another agreement with hospital C for emergency medicine. Although hospitals B and C do not have an agreement for any program, the affiliated group is A, B, and C, we will apply the cap on an aggregate basis for A, B, and C; that is the FTE resident counts at hospitals A, B, and C can not exceed the sum of the combined caps for the three hospitals.

If the combined FTE counts for hospitals A, B, and C does not exceed the aggregate cap, we will pay each hospital based on its hospital specific FTE count. If the combined FTE counts for hospitals A, B, and C exceed the aggregate cap, we need individual caps for each hospital in order to limit payment to the number of FTEs included under the aggregate FTE cap. In this situation, each hospital will be

paid based on its actual FTE up to its individual FTE cap as adjusted per agreements. We will allow each respective institution's individual cap to reflect the adjustment per their individual agreements. However, we are requiring that agreements regarding application of the aggregate cap planned for the year be completed by the beginning of each residency training year (that is, July 1). The hospitals in the affiliated group may adjust the initial FTE counts by June 30 of each residency training year if actual FTE counts for the program year are different than projected in the original agreement.

If a hospital cost report does not correspond with a July 1 to June 30 residency training year, we will prorate the changes specified in the agreement to each hospital's FTE cap on the basis of a cost reporting period. In the

example illustrated below, there is an agreement between hospitals A and B to allow hospital A an additional 10 residents that were previously included in hospital B's FTE count. Hospital B also has an agreement with hospital C to allow hospital B an additional five residents previously counted by hospital C. We are also assuming that these agreements are for two years. The aggregate FTE cap for hospitals A, B, and C will be the combined FTE cap for the these hospitals. For instance, if hospital A, B, and C each have an FTE cap of 100 residents, the aggregate cap will be 300 residents. The cap will be applied as follows per the planned changes assuming hospital A has a July 1 to June 30 cost reporting period and hospital B has a October 1 to September 30 cost reporting period and hospital C has a calendar year cost report:

Hospital	Cost reporting period	Planned change in FTE count (for 07/01–06/30)	Planned change for cost reporting period
Hospital A	07/01/98–6/30/99	+10 per agreement with B	+10.00
Hospital B	10/01/97–09/30/98	–10 per agreement with A	–2.50
	10/01/98–9/30/99		–10.00
Hospital B	10/01/97–09/30/98	+5 per agreement with C	+1.25
	10/01/98–09/30/99		+5.00
Hospital B (total)	10/01/97–09/30/98	–5 per total agreements	–1.25
	10/01/98–09/30/99		–5.00
Hospital C	01/01/98–12/31/98	–5 per agreement with B	–2.50
	01/01/99–12/31/99		–5.00

Since the agreements are effective July 1, 1998, the agreements are only in effect for 3 months or 25 percent of the year for hospital B's October 1, 1997 to September 30, 1998 cost report and the FTE reduction for the portion of the residency training year included in that cost report is a net –1.25 FTEs (–2.5 to 1.25) for agreements with hospitals A and C. The agreements are ongoing for the July 1, 1999 to June 30, 2000 residency training year and the adjustment to hospital B's cap is a net –5.0 FTEs for the October 1, 1998 to September 30, 1999 cost reporting period (effectively –3.75 for the October 1, 1998 to June 30, 1999 portion of the cost reporting period included in the residency training year and –1.25 for the July 1, 1999 to September 30, 1999 portion of the cost reporting period included in the residency training year). Similarly, a prorated portion of the FTE reduction for hospital C is included in the January 1, 1998 to December 31, 1998 cost reporting period for the agreement with hospital B. That is, the FTE reduction for the portion of the July 1, 1998 to June 30, 1999 residency training year included in hospital C's

calendar year 1998 cost report is –2.5 FTE. Since the agreement is ongoing for the July 1, 1999 to June 30, 2000 residency training year, there is a –5.0 FTE reduction for the calendar year 1999 cost report (effectively –2.5 for the January 1, 1999 to June 30, 1999 portion of the residency training year included in the cost report and –2.5 FTE for the July 1, 1999 to December 30, 1999 portion of the residency training year included in the cost report). If the group's actual FTE count exceeds the aggregate cap, which equals the combined individual caps for each hospital (hospitals A, B, and C in the example above), we will apply the individual FTE caps as adjusted per agreements. For instance, the combined individual caps for hospitals A, B, and C equals 300 residents. If the total number of residents for the cost reporting periods ending in 1999 for hospitals A, B, and C exceeds 300 residents, we will make payments to each hospital based on the individual cap as adjusted per agreements. Hospital A would be paid with a cap based on 110 residents (100 + 10) for its July 1, 1998 to June 30, 1999 cost reporting

period. Hospital B would be paid based on a cap of 95 residents for its October 1, 1998 to September 30, 1999 cost reporting period. Hospital C would be paid based on 95 residents for its January 1, 1999 to December 31, 1999 cost reporting period. Each hospital that exceeds its individual cap after the adjustments per the agreements will be paid based on the methodology described in August 29, 1997 final rule with comment period (62 FR 46004 and 46005) and repeated in the table found in the Appendix to this final rule. That is, we will multiply the hospital's unweighted FTE cap (as adjusted per the agreements) by the ratio of the weighted to unweighted FTE's for the cost reporting period.

Each agreement must also specify the adjustment to each respective hospital cap in the event the agreement terminates, dissolves or, if the agreement is for a specified time period, for residency training years and cost reporting periods subsequent to the period of the agreement for purposes of applying the FTE cap on an aggregate basis. In the absence of an agreement on the FTE caps for each respective institution following the end of the

agreement, each hospital's FTE cap will be the indirect and direct medical education FTE count from each hospital's cost reporting periods ending in 1996 and the cap will not be applied on an aggregate basis. The net effect of adjustments to each hospital's FTE cap for each agreement must total zero on a program basis, as provided for in the above example. That is, if the agreement involves two hospitals, any positive adjustment for one hospital must be offset by a negative adjustment for the other hospital of at least the same amount.

We are allowing individual hospitals to enter into agreements with multiple hospitals, as illustrated above with hospital B. However, we are concerned about the administrative feasibility of monitoring the aggregate FTE caps under these agreements. The situation that concerns us is reconciling adjustments to FTE caps under an aggregate cap when the agreements involve hospitals with different fiscal intermediaries. For instance, in the situation where hospital A and hospital B are serviced by the same fiscal intermediary but hospital C has a different intermediary, hospitals A and B's fiscal intermediary will receive two agreements: one between hospital A and hospital B and one between hospital B and C. Hospital C's fiscal intermediary must receive the agreement between hospitals A and B as well as the agreement between hospitals B and C, for the adjustments to be reconciled in the aggregate. In the absence of the agreement between hospitals B and C, hospital C's fiscal intermediary would be unaware that a downward adjustment to hospital C's cap is required. In the absence of the agreement between hospitals A and B, hospital C's fiscal intermediary would be unable to reconcile the aggregate FTE cap between hospitals A, B, and C.

We believe the only way for aggregate FTE caps to be reconciled based on multiple agreements between hospitals is for each agreement to be sent to each hospital's fiscal intermediary. Attached to each agreement would be copies of other agreements that each hospital which is part of the original agreement has with other hospitals. This would require hospital A and B's fiscal intermediary to receive the agreements between hospitals A and B and hospitals B and C and any other hospitals which have agreements with those hospitals. Thus, if hospitals A, B, and C constitute the affiliated group, hospital A and B's fiscal intermediary would have to receive copies of the agreements between hospitals A and B and hospitals B and C. Hospital C's

fiscal intermediary also would have to receive copies of the agreements between hospitals B and C and hospitals A and B. The original and subsequent agreements must include the provider number of each respective institution which is part of the agreement, signatures of each hospital representative, the date of the agreement, and the respective adjustment to each hospital's FTE cap for indirect and direct graduate medical education. Each agreement must indicate that copies are being sent to HCFA. Copies of the original agreement must be sent to: Division of Acute Care, C5-08-27, 7500 Security Boulevard, Baltimore, Maryland 21244. We will consider changes to the process described above if we find a less burdensome approach to reconciling individual FTE caps under aggregate caps.

We are establishing this process for application of an aggregate FTE cap pursuant to section 1886(h)(4)(H) of the Act, which states that the "Secretary may prescribe rules which allow institutions which are members of the same affiliated group (as defined by the Secretary) to elect to apply" the FTE caps on an aggregate basis. The statute provides the Secretary with broad authority to define what is an affiliated group and how to apply the FTE caps to members of that group and we are establishing the process described above under this broad authority. Our policy provides a mechanism to make payments to individual hospitals under an overall cap that is consistent with the caps of the individual hospitals included in the affiliated group. As we have stated earlier, although we have concerns about the ability to reconcile multiple agreements, we are providing this policy to allow hospitals that jointly participate in training the flexibility to change arrangements for training residents.

Comment: Some commenters stated that hospitals will not have incentives to form affiliated groups if one hospital will have to relinquish its FTEs included in its cap to another hospital. These commenters recommended that HCFA, through the aggregation rules, give program sponsors the ability to aggregate and then transfer residency positions between participating hospitals. Another commenter suggested that we consider allowing hospitals to aggregate FTEs at the level of the sponsoring institution. One commenter stated that medical schools that are not part of academic medical centers are at a particular disadvantage in assuring that they will be able to move their residents among affiliates.

Response: As we have stated previously, sections 1886(d)(5)(B)(v) and (h)(4)(F) of the Act limit the number of FTEs that hospitals can count for Medicare payment for indirect and direct GME, respectively. While Congress did extend authority to the Secretary to develop rules that allow hospitals that are part of the same affiliated groups to elect to apply the FTE cap on an aggregate basis, section 1886(h)(4)(H)(ii) of the Act states that "institutions which are members of the same affiliated group" may "elect to apply the limitation of subparagraph (F) on an aggregate basis". Since Medicare makes payment to hospitals and subparagraph (F) provides for the FTE cap on the basis of hospital cost reporting periods, we do not believe it would be appropriate to allow program sponsors that, as stated above, may or may not be hospitals to make decisions about hospital FTE caps for purposes of Medicare payment. Furthermore, participation in an affiliated group is voluntary. Even in situations where the program sponsor is a hospital, we believe it would be inappropriate to allow one hospital to make a decision about the application of individual FTE caps under an aggregate FTE cap, without the second hospital's agreement.

We recognize that hospitals may be reluctant to agree to lower individual FTE caps under an aggregate cap. However, the aggregate limit is a voluntary provision. Affiliation is an option that hospitals may "elect," in accordance with rules established by the Secretary, to allow for the movement of residents among participating hospitals under an aggregate FTE cap.

Comment: One commenter stated that the IME resident-to-bed ratio and the FTE resident caps should be applied in the aggregate for institutions that are members of an affiliated group. The commenter believed that the application of the cap, as proposed, will have "the unintended affect of discouraging multi-hospital and ambulatory site program configurations". The commenter noted that there is no provision in the regulation which would allow an adjustment to the IME FTE and resident-to-bed ratio cap for affiliated groups.

Response: We agree that § 412.105 should reference § 413.86(g)(4) for purposes of applying the IME FTE cap on an aggregate basis. Section 412.105 should also be modified to reference § 413.86(g)(6) for purposes of adjusting the IME FTE cap for new medical residency training programs. We are including these references in § 412.105. However, we disagree that the intern and resident-to-bed ratio for an affiliated

group should be determined in the aggregate. Section 1886(h)(4)(H) of the Act gives the Secretary the authority to develop rules that allow affiliated hospitals to elect to apply the FTE caps on an aggregate basis. The statute applies the affiliation provision solely to the FTE cap.

Comment: One commenter requested that HCFA further clarify the aggregate adjustment to the caps for affiliated programs. The commenter asked how the aggregate cap would be calculated for an institution that has several GME programs but is affiliated with another institution for only one program. The commenter requested that HCFA provide several examples of aggregate limit calculations. One commenter asked whether, in determining the aggregate FTE resident count, affiliated hospitals will pool their total unweighted FTE count from their respective cost reports ending on or before December 31, 1996.

Response: We have provided more detailed information above on the application of the FTE caps for hospitals that are members of the same affiliated group.

Comment: Several commenters recommended that an adjustment be made for hospitals that jointly participated in a residency training program prior to December 31, 1996 and subsequently ended the arrangement. If a hospital ended a joint training agreement, the sponsor will have to find another training site but may not be able to find an alternative unless the FTEs of the previously affiliated hospital can be counted by the new hospital that affiliates with the sponsor. Similarly, one commenter suggested that a group of hospitals that is "legally" affiliated should be allowed to include the base year FTEs of all member hospitals in application of the cap, even if those hospitals are no longer involved in resident training and the programs are moved to other hospitals in the group. Another commenter stated that HCFA should apply both institutional and aggregate caps using a flexible methodology that recognizes changes in hospital clinical and teaching affiliations. This commenter stated that the application of the resident cap should be governed by a methodology that ensures fair and equitable treatment of providers whose resident counts change as a consequence of disaffiliation or other major programmatic changes. One commenter recommended that hospitals that disaffiliate have the option of determining the distribution of resident counts among each of the hospitals so long as the aggregate limit is not

exceeded. If hospitals cannot reach an agreement, limits could be based on their respective base year resident counts.

Response: Hospitals that no longer have a relationship for training residents do not meet the criteria for being members of the same affiliated group even if those hospitals jointly participated in residency training in the past. The criteria for being members of the same affiliated group are intended to recognize that hospitals which have relationships for training residents need flexibility in those arrangements under an aggregate FTE cap. If hospitals no longer have a relationship for training residents, we do not believe there is a need for this same flexibility. We recognize there are situations where the sponsor of a training program terminated its relationship for training residents with a hospital after 1996 and, as a result, there may be fewer FTE residents that may be counted for indirect and direct graduate medical education payment purposes. However, this is a direct result of the Balanced Budget Act which specifically required FTE caps to be based on 1996 FTE counts.

Comment: One commenter requested instructions on how hospitals should apply to be part of an affiliated group.

Response: As stated above, hospitals seeking to receive payments as an affiliated group must provide agreements specifying adjustments to FTE caps by July 1 of each year for the contemporaneous residency training year.

In summary, we will apply the FTE caps for an affiliated group as follows:

- Hospitals that qualify to be members of the same affiliated group for the current residency training year and elect an aggregate cap must provide an agreement to the fiscal intermediary and HCFA specifying the planned changes to individual hospital counts under an aggregate FTE cap by July 1 for the contemporaneous (or subsequent) residency training year.

- Each agreement must be for a minimum of one year and may specify the adjustment to each respective hospital cap under an aggregate cap in the event the agreement terminates, dissolves or, if the agreement is for a specified time period, for residency training years and cost reporting periods subsequent to the period of the agreement. In the absence of an agreement on the FTE caps for each respective institution following the end of the agreement, each hospital's FTE cap will be the IME and direct GME FTE count from each hospital's cost reporting periods ending in 1996.

- Each agreement must specify that any positive adjustment for one hospital must be offset by a negative adjustment for the other hospital of at least the same amount.

- The original agreements must be signed and dated by representatives of each respective hospital that is a party to the agreement and that agreement must be provided to the hospital's fiscal intermediary with a copy to the HCFA. Copies of agreements that each hospital which is part of the original agreement has with other hospitals must also be attached.

- Hospitals that provided an earlier agreement for planned changes in hospital FTE counts may provide a subsequent agreement on June 30 of each year modifying the agreement for applying the individual hospital caps under an aggregate FTE cap.

If the combined FTE counts for the individual hospitals that are members of the same affiliated group do not exceed the aggregate cap, we will pay each hospital based on its hospital specific FTE count. If the combined FTE counts for the individual hospitals that are members of the same affiliated group do not exceed the aggregate cap, we will pay each hospital based on its FTE cap as adjusted per agreements.

O. Payment to Managed Care Plans for Graduate Medical Education

Section 4624 of the BBA amended section 1886(h)(3) of the Act to provide a 5-year phase-in of payments to teaching hospitals for GME associated with services to Medicare managed care discharges for portions of cost reporting periods occurring on or after January 1, 1998. The amount of payment is equal to the product of the per resident amount, the total weighted number of FTE residents working in all areas of the hospital (and nonhospital settings in certain circumstances) subject to the limit on number of FTE residents under section 1886(h)(4)(F) and the averaging rules under section 1886(h)(4)(G) of the Act, the ratio of the total number of inpatient bed days that are attributable to Medicare managed care enrollees to total inpatient days, and an applicable percentage. The applicable percentages are 20 percent in 1998, 40 percent in 1999, 60 percent in 2000, 80 percent in 2001, and 100 percent in 2002 and subsequent years.

In the August 29 final rule with comment period, we revised § 413.86(d)(2) to establish a 5-year phase-in payment methodology to hospitals for direct GME payments based on Medicare managed care enrollees for portions of cost reporting

periods beginning on or after January 1, 1998.

Section 4001 of the BBA adds section 1853(a)(3)(C) of the Act. New section 1853(a)(3)(C) requires the Secretary to implement a risk adjustment methodology that accounts for variations in per capita costs based on health status and other demographic factors in Medicare payments to managed care organizations by no later than January 1, 2000. The BBA also added section 1853(a)(3)(B) of the Act to require the Secretary to collect data necessary from managed care organizations to implement this provision.

Comment: One commenter supported using teaching hospitals, not managed care plans, as the source of statistics for indirect and direct GME payments for Medicare managed care beneficiaries. This commenter also supported including payments for Medicare managed care beneficiaries in periodic interim payments (PIP) made to hospitals because of the current lengthy delays in receiving payments from managed care organizations. Another commenter supported careful implementation of this provision and expressed particular concern about identifying and verifying managed care patients days and discharges. One commenter stated that HCFA should use data from "no pay" claims from hospitals to make GME payments for Medicare managed care beneficiaries. This commenter had strong concerns that an alternate claims submission and reporting mechanism which relies upon managed care entities to submit DRG and related patient information is fraught with potential problems which will likely affect data integrity and cash flow. One commenter suggested that HCFA utilize the expertise available in the hospital field to develop an administratively simple and low-cost mechanism to make GME payments to hospitals for Medicare managed care patients.

Response: As we stated in the final rule with comment published on August 29, 1997, section 4001 of the BBA requires the Secretary to implement a risk adjustment methodology that accounts for variations in per capita costs based on health status and other demographic factors in Medicare payments to managed care organizations. Section 1853(a)(3)(B) requires the Secretary to collect the necessary data to implement the provision. Under section 4622 and 4624 of the BBA, teaching hospitals may receive indirect and direct GME payments associated with Medicare+Choice discharges. Since

publication of the final rule with comment on August 29, 1997, we have consulted with hospitals, managed care plans, and fiscal intermediaries for purposes of developing a process to implement these provisions.

We anticipate teaching hospitals will need to submit claims associated with Medicare+Choice discharges to the fiscal intermediaries for purposes of receiving indirect and direct medical education payments. When the claims are processed, the fiscal intermediaries will make the IME payment associated with a Medicare+Choice discharge directly to the teaching hospital. Teaching hospitals will also be required to submit bills associated with Medicare+Choice organizations to the managed care plans. The inpatient encounter data from these bills will be submitted by the managed care plans to HCFA for purposes of implementing the risk adjustment methodology. The fiscal intermediaries should revise interim payments to reflect the Medicare direct GME payment associated with Medicare+Choice discharges. However, until the fiscal intermediaries have more experience with paying hospitals for direct GME associated with Medicare+Choice discharges, we believe the fiscal intermediaries will have limited data upon which to base interim payment. We are making adjustments to the Medicare cost report to allow for settlement of the cost report reflective of direct GME payment associated with Medicare+Choice discharges.

P. Payment to Nonhospital Providers

Under section 4625 of the BBA, for cost reporting periods beginning on or after October 1, 1997, the Secretary is authorized but not required to establish rules for payment to "qualified nonhospital providers" for the direct costs of medical education incurred in the operation of an approved medical residency training program. Under the statute, qualified nonhospital providers include Federally Qualified Health Centers, Rural Health Clinics, Medicare+Choice organizations and such other nonhospital providers the Secretary determines to be appropriate. We invited comments on how to implement this provision, particularly on how to determine appropriate payment for ambulatory sites.

We recently published a proposed rule to implement section 4625 of the BBA.

Q. Payment for Combined Medical Residency Training Programs

1. Initial Residency Period

Under § 413.86(g)(2) residents within an initial residency period are weighted as 1.0 FTE for purposes of the direct GME payment. Section 413.86(g)(3) requires residents beyond the initial residency period to be weighted as 0.5 FTE for purposes of determining GME payment. The initial residency period is defined as the minimum number of years required to become board eligible in specialty and is determined at the time a resident enters a medical residency training program. In the August 30, 1996 final rule (61 FR 46211), we clarified that the initial residency period for residents in combined medical residency training programs is limited to the time required to complete the longer of the composite programs.

Effective for residents in or beginning training on or after July 1, 1997, section 4627 of the BBA amended section 1886(h)(5)(G) of the Act to require that for combined programs consisting only of primary care training, the initial residency period equals the longer of the composite programs plus one year. A primary care resident is a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine, or osteopathic general practice. This provision also added one year to the initial residency period for combined primary care and obstetrics and gynecology programs. In the August 29 final rule with comment period, we amended § 413.86(g)(1) to implement the provisions of section 1886(h)(5)(G).

Comment: One commenter sponsors a dual program in Family Practice/Osteopathic Manipulative Medicine and noted that it was not recognized in the regulations as a combined primary care residency program that is eligible for an additional year in the initial residency period limit under the special rule for combined primary care medical residency programs.

Response: Section 1886(h)(5)(H) defines primary care resident to mean a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine, or osteopathic general practice. Since osteopathic manipulative medicine is not included in the definition of a primary care resident, the special rule for primary care combined programs does not apply.

2. Effective Dates

Comment: One commenter stated that the effective dates for IME and direct GME are inconsistent; one is "effective for discharges on or after October 1, 1997" while the other is for "cost reporting periods on or after October 1, 1997".

Response: We have received a number of questions regarding the effective dates for the provisions of the BBA related to GME. Section 4621(b) of the BBA, which amended section 1886(d)(5)(B)(v) of the Act to establish the FTE cap for the indirect medical education adjustment, is effective for discharges occurring on or after October 1, 1997. The cap on the intern and resident to bed ratio mandated by section 1886(d)(5)(B)(vi) (as amended by section 4621(b) of the BBA) is effective beginning with the hospital's first cost reporting period occurring on or after October 1, 1997. Section 4623 of the BBA establishes the FTE cap for direct graduate medical education and is effective beginning with a hospital's first cost reporting period beginning on or after October 1, 1997.

3. Accrediting Body Reference

Comment: One commenter recommended that we revise our regulations to indicate that the accrediting body for dental residencies is the Commission on Dental Accreditation rather than the Council on Dental Education.

Response: We are amending § 415.152 to reflect this comment.

R. Special Categories of Excluded Hospitals (§ 412.23)

Section 4417(b) of the BBA allows certain hospitals with an average length of stay of less than 25 days to be excluded from the prospective payment system as a long-term care hospital. In order to be excluded under this provision, a hospital must have first been excluded as a long-term care hospital in calendar year 1986, have an average inpatient length of stay of greater than 20 days, and demonstrate that 80 percent or more of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in Federal fiscal year 1997 have a principal diagnosis that reflects a finding of neoplastic disease. We revised § 412.23(e) to implement this provision.

Section 4418 of the BBA provides an additional category of hospitals that can qualify as cancer hospitals for purposes of exclusion from the prospective payment system. As amended, section 1886(d)(1)(B)(v) of the Act includes a hospital that meets the following criteria:

- The hospital was recognized as a comprehensive cancer center or clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of April 20, 1983.

- The hospital must have applied for and been denied, on or before December 31, 1990, classification as a cancer hospital.

- The hospital was licensed for fewer than 50 acute care beds as of the date of enactment of this subclause (that is, August 5, 1997).

- The hospital is located in a State that, as of December 19, 1989, was not operating a demonstration project under section 1814(b) of the Act.

- The hospital demonstrates that, for the 4-year period ending on December 31, 1996, at least 50 percent of the hospital's total discharges have a principal finding of neoplastic disease; that is, the discharge has a principal diagnosis code of 140-239, V58.0, V58.1, V66.1, V66.2, or 990.

A hospital that meets these criteria is classified as an excluded cancer hospital for cost reporting periods beginning on or after January 1, 1991. In addition, for purposes of payment, the base period applicable to such a hospital is the hospital's cost reporting period beginning during FY 1990 or the period under new section 1886(b)(3)(F) of the Act. In the August 29 final rule with comment period, we revised the regulations at § 412.23(f) to incorporate this provision.

We received no public comments on these revisions.

S. Payment of Hospitals and Units Excluded from the Prospective Payment System (§ 413.40)

The BBA significantly altered the payment provisions for excluded hospitals and units. Prior to the passage of the BBA, the payment provisions for excluded hospitals and units applied consistently to all categories of excluded providers (that is, psychiatric, rehabilitation, long-term care, children's, and cancer). However, effective for cost reporting periods beginning on or after October 1, 1997, there are specific payment provisions for psychiatric, rehabilitation, and long-term care providers, and modifications to payment provisions for all excluded providers. We received 19 comments on our implementation of the BBA provisions for PPS-excluded hospitals and units. Below we discuss the statutory and regulatory provisions (see 62 FR 46016 through 46020), as well as our comments and responses.

1. Rate-of-Increase Percentages for Excluded Hospitals and Units (§ 413.40(c) and (g))

Section 4411 of the BBA amended section 1886(b)(3)(B) of the Act regarding the rate-of-increase percentages to be applied to target amounts. The applicable rate-of-increase percentage for the cost reporting period beginning during FY 1998 is 0 percent. For cost reporting periods beginning in FY 1999 through FY 2002, the applicable rate-of-increase percentage is the market basket rate of increase percentage minus a factor based on the percentage by which the hospital's operating costs exceed the hospital's ceiling for the most recent cost reporting period for which information is available.

Comment: One commenter requested that we clarify the data needed to calculate the applicable rate-of-increase percentages under section 4411(b).

Response: Under section 1886(b)(3)(B)(vi) of the Social Security Act, as added by section 4411 of the BBA, the update factor for a given cost reporting period is determined by comparing the hospital's allowable costs "for the most recent cost reporting period for which information is available" to the hospital's target amount "for such cost reporting period." In the August 29, 1997 final rule with comment period, we provided four examples of the calculation of the applicable rate-of-increase percentages for cost reporting periods beginning in FY 1999. These examples reflect the information necessary to compute the applicable rate-of-increase percentages. The fiscal intermediary will compute the applicable rate-of-increase before the beginning of each cost reporting period, using the most recent cost report data.

2. Request for a new base period (§ 413.40(b))

Sections 4413(a) and 4413(b) of the BBA amended sections 1886(b)(3) of the Act in order to permit excluded hospitals and units to elect ("in a form and manner determined by the Secretary") a rebasing of the target amount for the 12-month cost reporting period beginning during FY 1998 (October 1, 1997 through September 30, 1998).

Comment: One commenter argued that, if an excluded hospital or unit does not request a new base period under the new statutory payment methodologies of sections 4413(a) and (b), the hospital should nevertheless be permitted to obtain a new base period at any time pursuant to the previously published regulation at § 413.40(i) and to receive

payments under the payment methodology of the new statutory provision. Another commenter asserted a hospital should be allowed to choose the five cost reporting periods for calculating a rebased FY 1998 target amount per discharge, in order to reflect expected cost report reopenings.

Response: Under sections 4413(a) and (b) of BBA, an excluded hospital or unit may elect rebasing and receive a revised target amount for the hospital's 12-month cost reporting period beginning during FY 1998 (October 1, 1997 through September 30, 1998). As indicated in the August 29 final rule with comment period, this is a one time option (for FY 1998 only). If a hospital does not elect rebasing for the cost reporting period beginning during fiscal year 1998, it cannot elect rebasing at a later date for a later cost reporting period.

With regard to the suggestion of the commenter that we allow hospitals to choose which cost reports to use to calculate a rebased target amount, the statute requires the Secretary to use the five "most recent settled cost reports as of the date of enactment" of the BBA (August 5, 1997).

Comment: Three commenters believe that the timeframe for requesting a new base period under section 4413 is unduly short, arguing that the required information is difficult to obtain. One commenter suggested the timeframe be extended to 90 days after the beginning of the cost reporting period beginning in FY 1998.

Response: In the August 29 final rule with comment period, we stated that a hospital that elects rebasing must submit its request for rebasing by the later of November 1, 1997 or 60 days prior to the beginning of its cost reporting period beginning during FY 1998. We believe that this is a reasonable timeframe for a hospital to elect rebasing. The information required for an election includes the hospital's name, provider number, cost reporting period, and the cost per case from the hospital's five most recent settled cost reports. All of this information should be readily available to the hospital.

A hospital's target amount for a cost reporting period should be established before the beginning of the cost reporting period, so that, among other things, the hospital can appropriately structure its costs within the target amount. Due to the extremely short timeframe between the enactment of the BBA and the beginning of FY 1998, we established a special rule to address hospitals whose cost reporting periods begin early in FY 1998. As noted above, we believe our timeframes are

reasonable and that is not necessary or appropriate to extend the timeframes.

Comment: One commenter asked that we further clarify the calculation of the disproportionate share percentage to determine whether a long-term care hospital is eligible for rebasing under section 4413(b) of the BBA.

Response: Under the statute, a long-term care hospital may elect rebasing under section 4413(b) of the BBA if, among other things, "the hospital would have a disproportionate patient percentage of at least 70 percent (as determined by the Secretary under subsection (d)(5)(F)(vi)) if the hospital were a subsection (d) hospital." As stated both in the preamble of the final rule (62 FR 46018) and at § 413.40(v) of the regulation text (62 FR 46032), the calculation of the disproportionate patient percentage is addressed at § 412.106 of the Medicare regulations. Fiscal intermediaries are familiar with the calculation of the disproportionate patient percentage and can assist a long-term care hospital if necessary.

3. Limitation on the Target Amount for Excluded Hospitals and Units (§ 413.40(c))

Section 4414 of the BBA amended section 1886(b)(3) of the Act to establish caps on the target amounts for excluded hospitals or units for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. The statute directs the Secretary to calculate "the 75th percentile of target amounts" for three classes of hospitals—psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals—for "cost reporting periods ending during fiscal year 1996."

Similarly, section 4416 of the BBA (discussed further below) establishes a new statutory payment methodology for new excluded hospitals. To determine payments for a new excluded hospital, the statute directs the Secretary to calculate "110 percent of the national median of target amounts for hospitals in the same class as the hospital for cost reporting periods ending during fiscal year 1996." The amount calculated in section 4416 is updated and adjusted for differences in area wage levels, and the resulting figure is a limit on payments for the new hospital or unit.

Thus, sections 4414 and 4416 both direct the Secretary to examine target amounts for three classes of hospitals for cost reporting periods ending during FY 1996. However, section 4416, unlike section 4414, requires that the calculation applicable to new hospitals reflect an adjustment for differences in area wage levels.

The 75th percentile of the target amounts for cost reporting periods ending during fiscal year 1996, as updated by the market basket up to FY 1998 (as corrected in a correction notice published March 6, 1998 (63 FR 11148)) are as follows:

- (1) Psychiatric hospitals and units: \$10,534
- (2) Rehabilitation hospitals and units: \$19,104
- (3) Long-term care hospitals: \$37,688

In the August 29, 1997 final rule with comment period, we stated that if a hospital has a target amount that is capped at the 75th percentile, the hospital would not be granted an exception payment as governed by §§ 413.40(a) and (g) based solely on a comparison of its costs or patient mix in its base year to its costs or patient mix in the payment year would be irrelevant. However, exception payments would still be available for hospitals that have target amounts that are determined by the hospital's costs in a base year and are unaffected by the 75th percentile cap.

Comment: One commenter suggested that § 413.40(c)(4)(iii) of the regulations be modified to clarify that in the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the target amount for FYs 1998 through 2002 is equal to the lower of—

- The hospital specific target amount (the net allowable costs in a base period increased by the update factor for the subject period); or
- The 75th percentile of target amounts for hospitals in the same class (psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital) for cost reporting periods ending during FY 1996, increased by the applicable market basket percentage for the subject period.

Response: We agree with the commenter and are modifying § 413.40(c)(4)(iii) to incorporate this clarification.

Comment: Five commenters argued that section 4414 requires the Secretary to estimate, but not implement, caps using the 75th percentile of the target amounts for psychiatric and rehabilitation hospitals or units, and long-term care hospitals. One commenter asserted that the Secretary should have waited for additional legislation to implement caps on the target amounts and then independently determine whether to implement in light of the impacts of other provisions of the BBA.

Response: The title of section 4414 of the BBA is "Cap on the TEFRA limits." The Conference Report indicates that

the provision limits, or caps, target amounts for hospitals excluded from PPS. The statute requires us to calculate a cap for cost reporting periods beginning during fiscal year 1998, and requires updates to the caps for cost reporting periods beginning during fiscal years 1999 through 2002. We do not believe the Congress intended that we calculate these numbers but not apply them as a cap. Moreover, since the statute requires us to calculate a cap for cost reporting periods beginning during fiscal year 1998, we do not believe the application of the caps should be delayed until subsequent years.

Comment: Two commenters believe the payment caps on target amounts for rehabilitation hospitals and units and long-term care hospitals under section 4414 and section 4416 are not correct because separate caps were not established within each class of excluded hospital (in particular rehabilitation and long-term care hospitals) to reflect hospitals specializing in the treatment of high cost patients, such as a rehabilitation unit which specializes in treating Medicare patients with spinal cord injuries.

Response: Section 4414 provides that, "In the case of a hospital or unit that is within a class of hospital described in clause (iv), the Secretary shall estimate the 75th percentile of the target amounts for such hospitals within such class * * *." Similarly, section 4416 provides that "in the case of a hospital or unit that is within a class described in subparagraph (B) which first receives payments under this section on or after October 1, 1997," the amount of payment is based in part on "110 percent of the national median of the target amount for hospitals in the same class as the hospital * * *." Both statutory provisions list three classes of hospitals and indicate that each "shall be treated as a separate class of hospitals." We believe the best reading of the statutory language is that we calculate the caps for each class of hospital as a whole. If a hospital chooses to subspecialize in high cost patients, it will need to consider the impacts the caps on the target amounts will have on its reimbursement.

Comment: Four commenters believed the caps on the target amounts that were calculated under section 4414 are not correct because discharge weighting and wage adjustments were not applied to the FY 1996 target amounts in determining the 75th percentile caps on the target amounts.

Response: The statute directs the Secretary to "estimate the 75th

percentile of the target amounts" for three classes of hospitals. Section 4414 does not direct the Secretary to estimate the 75th percentile of discharge-weighted target amounts.

Several commenters contended that we should implement a wage adjustment in applying the caps for individual hospitals. Under such a wage adjustment, the hospitals within a class of hospitals would be capped at different numbers, reflecting different wage adjustments for different geographic areas. Implementation of a wage adjustment would adversely affect some hospitals. In the August 29 final rule with comment period, we calculated the caps without wage adjustments. We continue to believe that our methodology for establishing the caps reflects the best interpretation of the statute. As discussed below, we believe that the statutory language, the statutory scheme, and the legislative history, viewed together, strongly argue against making a wage adjustment in applying the TEFRA caps.

Section 1886(b)(3)(H)(i) of the Act, as added by section 4414 of the BBA, states that, "In the case of a hospital or unit that is within a class of hospital described in clause (iv), the Secretary shall estimate the 75th percentile of the target amounts for such hospitals within such class for cost reporting periods ending during fiscal year 1996." (Emphasis added.) Clause (iv), in turn, lists three classes of hospitals and indicates that each "shall be treated as a separate class of hospital." Thus, the statute directs the Secretary to examine target amounts in a prior period and to calculate a single number—the 75th percentile of those target amounts—for each of three classes of hospitals.

Pursuant to this mandate, we examined the best available data to identify hospitals within each class of hospitals for the cost report period ending during fiscal year 1996, to identify those hospitals that were actually subject to a target amount for the cost reporting period ending during fiscal year 1996, and to determine the target amounts for those hospitals. We then calculated the 75th percentile of those target amounts for each class. Thus, we did exactly what the statute directs us to do.

The statutory language directs the Secretary to calculate the 75th percentile of target amounts, but it does not explicitly direct or even authorize the Secretary to make adjustments to that number after the number is calculated. Contrary to the belief of some commenters, our decision not to implement a wage adjustment is not based solely on the fact that the statute

does not explicitly require one. We agree that the absence of an explicit instruction, in and of itself, does not necessarily mean that the Secretary cannot implement a wage adjustment. However, congressional "silence" on this issue must be construed in light of the statutory scheme and the legislative history, as well as policy considerations.

Two aspects of the statutory scheme argue against making a wage adjustment in applying the caps. First, as discussed above, section 4414 requires us to calculate a separate number for each class of hospitals. Congress has established a scheme which directs us to recognize differences across types of hospitals, but does not direct us to recognize differences in wages. If we were to calculate numbers as directed by Congress, and then adjust those numbers for factors that the Congress did not address, we would arguably undermine the scheme established by the Congress.

In addition to the "scheme" of section 4414 itself, one should also consider section 4414 in light of the other statutory provisions. Several commenters have pointed out that in several other statutory provisions the Congress did explicitly require a wage adjustment. We agree that this is significant, but unlike the commenters we believe it argues *against* making a wage adjustment in this context. We concluded that, because the Congress explicitly requires wage adjustments in some contexts, congressional failure to require a wage adjustment in this context reflects a judgment by the Congress that the agency should not make one here.

In addition to the statutory text and scheme, the legislative history also supports a single cap applied to all hospitals within each class of hospitals. The Conference Report indicates that, under the House Bill, a target amount for a PPS-exempt hospital "could not be greater than the 90th percentile of the target amounts for cost reporting periods beginning during that fiscal year." This language indicates that all hospitals within a class would be capped at a single number (the 90th percentile). The Conference Report indicates that the Senate Amendment contained a similar provision "except that the target amount could not be greater than the 75th percentile of the target amount for each class of hospitals." Again, this language indicates that all hospitals within a given class would be capped at the same number (in this case, the 75th percentile rather than the 90th percentile).

The Conference Report then indicates that "[t]he conference agreement includes the House bill, with

amendments. The Secretary would be required to estimate the 75th percentile of the target amounts for each category of hospitals * * *. There is no reference anywhere in the Conference Report to a wage adjustment to the TEFRA caps.

Thus, we believe the statutory text, the statutory scheme, and the legislative history all support a cap that is not adjusted for wages. None of these factors by itself is necessarily dispositive, but taken together, we believe the best interpretation of the statute is that we should not make a wage adjustment.

While from a broad policy perspective a wage adjustment might be appropriate, policy considerations do not dictate a wage adjustment. While a wage adjustment might be preferable policy, the lack of a wage adjustment is not unreasonable. Congress could reasonably have made a judgment that all hospitals within a class should be subject to the same cap, whether for administrative ease, budgetary considerations, or some other reason.

Some commenters argue that failure to make a wage adjustment is inconsistent with other Medicare payment policies. But a payment cap is different from a payment rate. A payment cap does not affect every hospital, only hospitals that are above the cap. Therefore, a wage adjustment is less imperative in this context. And one could reasonably conclude that the Congress made a judgment that the 75th percentile reflects a reasonable cap regardless of geographic area. Although we believe implementation of the cap without a wage adjustment represents the best reading of the statute, we believe that accounting for area wage differences is an appropriate policy and would support a hospital sponsored legislative change. We would work with Congress to develop such a policy and its ramifications.

Taking into consideration the statutory language, the statutory scheme, and the legislative history, we believe the best reading of the statute enacted by the Congress is that we should calculate a single number for hospitals within each class and not apply a wage adjustment. We believe that, in any event, the Secretary's policy is consistent with the statute and is reasonable.

Comment: Three commenters objected to the data we used to calculate the caps on the target amounts for long-term care hospitals under section 4414. Six commenters objected to the data we used to calculate 110 percent of the national median of target amounts for long-term care hospitals under section 4416. The commenters asserted that the

data set used to compute the cap incorrectly excluded hospitals, incorrectly included hospitals, and reflected inaccurate 1996 target amounts for Medicare certified long-term care hospitals. One commenter recommended that the caps on target amounts for long-term care hospitals be recalculated from "time to time" to reverify the data.

Response: As explained in the final rule with comment period (62 FR 46018), we developed the caps on the target amounts using the best available data to identify hospitals in each class that were subject to a target amount and to determine the target amounts for those hospitals. We verified the data to the extent possible during the extraordinarily short timeframe between the enactment of the BBA (August 5, 1997) and the required publication date of the final rule (August 29, 1997).

The commenters contended that the data we used to calculate the caps was faulty. First, they argue that we incorrectly excluded 20 hospitals that were subject to a target amount in 1996 from the calculation of the new hospital cap. We have determined that this argument is largely erroneous. In fact, 16 of these 20 hospitals were new hospitals in their exemption period during 1996; these hospitals were exempt from the target amount system and were not subject to a target amount in their cost reporting period ending during FY 1996. The statute directs us to calculate the 75th percentile "of target amounts," so these hospitals were correctly excluded from the calculation.

Of the remaining four hospitals, two hospitals became PPS hospitals during or after FY 1996 but did have a target amount for the cost reporting period ending in FY 1996. When we were developing the August 29, 1997 rule, we believed that the two remaining hospitals were in their exemption period during FY 1996, but in light of the comments, we have determined that these hospitals were subject to a target amount during their cost reporting period ending during FY 1996. As discussed further below, we are revising the caps (prospectively) to reflect the target amounts for these four hospitals.

The commenters also asserted that the Secretary has the discretion to include an additional 15 target amounts for long-term care hospitals that were in their exemption period for the cost reporting period during FY 1996. The commenters argue that the cost reporting period ending during FY 1996 serves as the base period for these hospitals and thus the Secretary should include the data for these hospitals in the 110 percent of the median

calculation. Based on the comments, we reexamined these hospitals and confirmed that these 15 hospitals were in their exemption period for the cost reporting period ending during FY 1996. If a hospital was within its exemption period, it was not subject to a target amount for the cost reporting period ending in FY 1996, whether or not that period was ultimately used as the hospital's base period for calculating the target amount for future years. Since the statute directs us to examine "target amounts," the data for these hospitals were properly excluded from the calculations.

The commenters also contended that we inappropriately included hospitals with an average length of stay of less than 25 days in the 110 percent of the median calculation. Under the statute, a hospital may be excluded as a long-term hospital if its average length of stay is greater than 25 days. Under our implementing regulations, a hospital qualifies to be paid as a long-term care hospital for a given cost reporting period if its average length of stay for a prior period is greater than 25 days. Therefore, a hospital may be classified as a long-term care hospital for a given cost reporting period even if its average length of stay for that period ultimately turns out to be less than 25 days.

The hospitals cited by the commenters were classified as long-term care hospitals for the cost reporting period ending during FY 1996, and were paid under the target amount methodology. Accordingly, these hospitals were properly included in the calculations.

Thus, the commenter's assertions regarding our data were largely erroneous. Nevertheless, in light of the information that is now available to us, including information in the public comments, we are revising the calculations. We are revising the 110 percent of the median calculation to include the target amounts for the two hospitals described earlier that converted to PPS after the cost reporting period ending during FY 1996, and the target amounts for the two hospitals that we originally believed to be in the exemption period in FY 1996. The target amounts for these hospitals appropriately should be included in the 110 percent of the median and 75th percentile calculation. The addition of these data did not change the 75th percentile calculation. We are also including the target amounts for three hospitals which were previously excluded because of a lack of wage index data. The target amounts for these three hospitals were already included in the 75th percentile calculation because

a lack of wage index data did not impact the calculation of the 75th percentile cap.

As a result of these revisions, the updated 110 percent of the national median target amounts for new long-term care hospitals is \$21,494 for FY 1998. The labor-related share is \$15,380 and non labor-related share \$6,114.

We are applying these revised caps prospectively. For a new long-term care hospital whose cost reporting period began prior to the effective date of this final rule, the revised calculations would apply to the portion of the cost reporting period that occurs after the revision becomes effective. We note that these revised caps shall be the basis for the caps applicable for future cost reporting periods.

We are making a one-time mid-year revision to the caps because of the extraordinary circumstances presented by the timing of the enactment of the BBA. We do not agree with the commenter who argued that the caps on target amounts for long-term care hospitals should be recalculated from "time to time" in order to reverify the data. The statute provides that the cap in a future year shall be determined by taking the cap for the previous year and applying an update factor.

Comment: One commenter disagreed with the elimination of exception payments for a hospital with a target amount that was capped.

Response: Section 4414 of the BBA establishes a cap, that is, a limit, on the target amounts for rehabilitation hospitals and units, psychiatric hospitals and units, and long-term care hospitals. Generally, we believe it would be anomalous to set a cap on a hospital's target amount and then grant the hospital an exception so that it could receive payments above the cap.

4. Bonus and Relief Payments (§ 413.40(d))

a. Bonus payments. Section 4415 of the BBA amended section 1886(b)(1)(A) of the Act to provide that for cost reporting periods beginning on or after October 1, 1997, the amount of a bonus payment is the lower of the following:

- (1) 15 percent of the difference between the inpatient operating costs and the ceiling, or
- (2) 2 percent of the ceiling.

In addition, section 4415 of the BBA amended section 1886(b)(2) of the Act to provide for "continuous improvement bonus payments" for hospitals that meet certain criteria.

b. Relief payments. Section 4415 of the BBA amended section 1886(b)(1) of the Act to provide that for cost reporting periods beginning on or after October 1,

1997, if a hospital's operating costs are greater than the ceiling but less than 110 percent of the ceiling, payment will equal the ceiling. If a hospital's costs are greater than 110 percent of the ceiling, payment will equal the ceiling plus 50 percent of the costs in excess of 110 percent of the ceiling. Total payment may not exceed 110 percent of the ceiling. Because section 4415 of the BBA does not provide relief for costs that are within 110 percent of the ceiling, we made a corresponding change to the exception payment provision at § 413.40(g)(1) so that qualification for the amount of an exception payment does not encompass costs within 110 percent of the ceiling.

We received no public comments on this corresponding change.

5. New Excluded Hospitals and Units (§ 413.40(f))

With the enactment of sections 4416 and 4419 of the BBA, which amended section 1886(b)(4) of the Act and added section 1886(b)(7) of the Act, Congress established a new framework for payments for new excluded providers. First, section 4419(a) amended section 1886(b)(4)(A)(i) of the Act, to eliminate "exemptions" for all classes of excluded entities except children's hospitals. Second, section 4416 added a new section 1886(b)(7) of the Act to establish a new statutory payment methodology for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals which first receives payments on or after October 1, 1997. For these hospitals, the amount of payment for each of the first two cost reporting periods is the lesser of (1) the operating costs per case, or (2) 110 percent of the national median of target amounts for the same class of hospitals for cost reporting periods ending during FY 1996, updated to the first cost reporting period and adjusted for differences in area wage levels. The target amount for the succeeding cost reporting periods will be based on the payment amount in the second 12-month cost reporting period increased by the applicable update factors.

Comment: One commenter requested clarification as to whether the 6-month qualification period, during which a long-term care hospital demonstrates an average length of stay of greater than 25 days, will be included as part of the 2-year exemption period for new excluded hospitals under section 4419.

Response: As explained in the August 29 final rule with comment period (62 FR 46019), section 4419 eliminates the 2-year exemption period for all classes of excluded hospitals except children's hospitals. Thus, effective October 1,

1997, we will no longer grant an exemption for new long-term care hospitals. If a hospital qualifies as a new long-term care hospital, the statutory payment methodology under section 4416 applies for the hospital's first two years as a long-term care hospital. A hospital is not classified as a long-term care hospital during the 6-month qualification period.

Comment: Two commenters suggested that § 413.40(f) of the regulations be modified to state that the new statutory payment methodology of section 4416 does not apply to a hospital or unit that changes the basis of its exclusion (for example, from long-term care to rehabilitation) on or after October 1, 1997. One commenter, a long-term care hospital chain, objected to our policy and asserted that we had engaged in retroactive rulemaking and incorrect statutory interpretation because an existing PPS hospital that is acquired and recertified as a long-term care hospital on or after October 1, 1997 will now be subject to lower new long-term care hospital caps.

Response: Section 1886(b)(7) of the Act, as amended by section 4416 of the BBA, applies "in the case of a hospital or unit that is within a class of hospital described in subparagraph (B) which first receives payments on or after October 1, 1997." Thus, the statutory payment methodology of section 4416 of the BBA applies if two conditions are met: (1) the hospital or unit is within one of the classes of hospitals specified in the statute (psychiatric, rehabilitation, long-term care), and (2) the hospital "first receives payments on or after October 1, 1997." We believe these two conditions should be read together. That is, section 4416 applies if the hospital first receives payments on or after October 1, 1997 as a hospital within one of the excluded classes.

Thus, if a hospital first receives payments on or after October 1, 1997 as a PPS-excluded hospital in one of the specified classes (psychiatric, rehabilitation, or long-term care), then it is subject to the statutory payment methodology for new excluded hospitals under section 1886(b)(7) of the Act. The methodology for new excluded hospitals applies if a hospital received payments as a PPS hospital before October 1, 1997 and became excluded on or after October 1, 1997. If a hospital received payments as a PPS-excluded hospital in one of the classes before October 1, 1997, the hospital would be subject to the cap for non-new hospitals under section 1886(b)(3)(H) of the Act, as added by section 4414 of the BBA.

6a. Grandfathering of Certain Hospitals-Within-Hospitals

Section 4417 of the BBA specifies that a hospital that was classified by the Secretary on or before September 30, 1995 as an excluded long-term hospital shall continue to be so classified, notwithstanding that it is located in the same building as, or on the same campus as another hospital. While this provision is specific to long-term care hospitals, we believe the considerations underlying the legislation also apply to other types of hospitals-within-hospitals. Therefore, as explained in the preamble to the August 29, 1997 interim final rule with comment period (62 FR 46014), we revised our regulations applicable to prospective payment system exclusions of "hospitals within hospitals" to implement section 4417 (a)(1) of the BBA, by specifying that if a hospital was excluded from the prospective payment system on or before September 30, 1995, the criteria applicable to hospitals within hospitals do not apply to it (see § 412.22(f)). We also noted that in light of this revision, we were withdrawing our earlier proposal to include a specific provision for State-owned hospitals-within-hospitals. That provision, described in the June 2, 1997 proposed rule (62 FR 29902), was designed to allow continued exclusion of State-owned facilities that had been operated for many years as hospitals-within-hospitals but had not been able to restructure themselves because of the requirements of State law.

Since publication of the August 29, 1997 final rule with comment period, some hospital managers and representatives have asked whether § 412.22(f) applies only to hospitals that were and were also organized as hospitals-within-hospitals on or before September 30, 1995, or to any hospitals that may have been excluded from the prospective payment system on or before that date.

We wish to clarify that the rule is a grandfathering provision that applies only to those hospitals that were excluded from the prospective payment system on or before September 30, 1995, and were also organized as hospitals-within-hospitals on or before that date. Hospitals that were PPS-excluded on or before September 30, 1995, but were not excluded as hospitals-within-hospitals at that time, do not qualify for exclusion under section 4417(a). If they choose to reorganize themselves in ways that result in application of the hospital-within-a-hospital criteria, they will have to meet these criteria to preserve their prospective payment system exclusion

status. We are making changes in § 412.22(f) to clarify this point.

6b. Capital Payments for Excluded Hospitals and Units (§ 413.40(j))

Section 4412 of the BBA amended section 1886(g) of the Act to establish a 15 percent reduction on capital payments for certain hospitals and hospital distinct part units excluded from the prospective payment system for cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. The capital reduction applies to psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

Comment: One commenter suggested that § 413.40(j) of the regulations be modified to state that the 15-percent reduction for capital-related costs required by section 4412 of the BBA does not apply to capital-related costs for outpatient services.

Response: We agree with the commenter and are modifying § 413.40(j).

7. Report on Adjustment Payments to the Ceiling (§ 413.40(g))

Section 4419(b) of the BBA amended section 1886(b)(4) of the Act to require the Secretary to publish annually, in the *Federal Register*, a report describing the total adjustment payments made to excluded hospitals and units for cost reporting periods ending during the previous fiscal year. We will publish this report in the annual rulemaking documents for the hospital inpatient prospective payment systems.

T. Limited-Service Rural Hospital Program

Prior to the BBA, the statute authorized a seven State Essential Access Community Hospital (EACH) and Rural Primary Care Hospitals (RPCH) program. RPCCHs were limited-service rural hospitals that provided outpatient and short-term inpatient hospital care on an urgent or emergency basis and then released patients or transferred them to an EACH or other acute care hospital.

Montana also has a separate, limited service hospital program called the Medical Assistance Facility (MAF), that has been in operation since 1988 and operates under a demonstration waiver from HCFA. These limited service hospitals are reimbursed for providing treatment to Medicare beneficiaries even though they are not required to meet all requirements applicable to hospitals. A total of 12 MAFs have been licensed and certified.

The BBA replaced the EACH/RPCH program with the Medicare Rural Hospital Flexibility Program (MRHFP).

The MRHFP is available in any State that chooses to set up such a program and provides HCFA with the necessary assurances that it has developed, or is in the process of developing, a State rural health care plan meeting certain requirements, and that it has designated, or is in the process of designating, rural nonprofit hospitals or facilities as critical access hospitals (CAHs).

To be eligible as a CAH, a facility must be a rural public or nonprofit hospital located in a State that has established a MRHFP, and must be either located more than a 35-mile drive from any other hospital or CAH or certified by the State as being a necessary provider of health care services to residents in the area. In mountainous terrain or in areas with only secondary roads available, the mileage criterion is 15 miles. In addition, the facility must make available 24-hour emergency care services, provide not more than 15 beds for acute (hospital-level) inpatient care, and keep each inpatient for no longer than 96 hours, unless a longer period is required because of inclement weather or other emergency conditions, or a PRO or other equivalent entity, on request, waives the 96-hour restriction. An exception to the 15-bed requirement is made for swing-bed facilities, which are allowed to have up to 25 inpatient beds that can be used interchangeably for acute or SNF-level care, provided that not more than 15 beds are used at any one time for acute care. The facility is also required to meet certain staffing and other requirements that closely parallel the requirements for RPCHs.

The BBA also defined a rural health network as an organization consisting of at least one CAH and at least one acute care hospital, the members of which have entered into agreements with at least one other member regarding patient referral and transfer, the development and use of communications systems, and the provision of emergency and nonemergency transportation. In addition, each CAH in a network must have an agreement for credentialing and quality assurance with at least one hospital that is a member of the network, or with a PRO or equivalent entity, or with another appropriate and qualified entity identified in the rural health care plan for the State.

Under the BBA, no new EACH designations will be made, but rural hospitals designated as EACHs under previous statutory provisions may continue to be paid as sole community

hospitals. The previous payment provisions applicable to RPCHs are repealed, and the statute instead provides that CAHs will be paid on a reasonable cost basis for their inpatient and outpatient services. The statute specifically provides that existing RPCHs and MAFs will be deemed as CAHs if these facilities or hospitals are otherwise eligible to be designated by the State as CAHs. Under a special provision applicable to the MAF program, the MAF demonstration project is extended until at least October 1, 1998, to allow for an appropriate transition between the MAF and CAH programs.

The BBA also provided considerable flexibility to a CAH with a swing-bed agreement to use inpatient beds for either SNF or acute care, as long as the total number of inpatient beds does not exceed 25 and the number of beds used at any one time for acute care does not exceed 15.

To allow the changes made by the enactment of the BBA to be implemented by the statutory effective date of October 1, 1997, we published the August 29, 1997 final rule with comment period that retained the provisions of then existing RPCH regulations, except where the BBA clearly required us to make a change. In the August 29 final rule with comment period, we described in detail the substantive changes that we made to parts 409, 410, 412, 413, and 485 to implement the section 4201 amendments (62 FR 46008). We also made nomenclature changes to reflect the statutory change from RPCHs to CAHs.

In the August 29 final rule with comment period, we discussed in detail the process for review and acceptance of State assurances from States interested in establishing a MRHFP (62 FR 46009). Specifically, we described the assurances and information that must be included in a State's application. We solicited comments on whether the information and assurances were sufficient, or whether other information or assurances are needed.

Section 1820(k) of the Act, as in effect prior to the enactment of the BBA, explicitly authorized States with EACH programs to designate facilities in adjacent States as EACHs or RPCHs if certain conditions were met. Section 4201 of BBA revoked that authority. Therefore, a facility can be designated as a CAH only by a State in which it is located. We revised § 485.606 to remove any reference to this authority.

Section 1820(f)(1)(B) of the Act, as in effect prior to the enactment of the BBA, explicitly allowed, under certain

circumstances, States with EACH programs to designate facilities as RPCHs even though the facilities had closed and were no longer functioning as hospitals at the time they applied for RPCH status. The BBA removed that authority so there is now no basis on which a closed facility can be designated as a CAH. We revised § 485.612 to reflect this change.

We received 33 letters of comment. We summarize the comments and give our responses below.

1. State Rural Health Care Plan Review and Approval

Comment: One commenter stated that in view of differences between the various States that may set up a MRHFP, HCFA should not impose common standards or criteria on all State plans or, if some common standards are needed, should give States advance notice of the standards and how they will be applied. Other commenters stated that the regulations regarding the development of State rural health plans should allow States maximum flexibility in the development of CAHs in rural areas of the State. Specifically, the commenters suggested that the reference to "certain requirements" for the State rural health care plan be clarified. The commenters believed that States should be given maximum flexibility within a defined format to plan for their rural health care access needs. Also, since the creation of a State rural health care plan is reflective of the needs of the health care recipients in a given State, the commenters believed it would be appropriate to give the regional offices authority to approve these State plans. Another commenter stated the CAHs need to be designed to permit as much flexibility as possible and to allow linkages with other programs to maximize their abilities to serve the frontier areas of the individual state. The State rural health care plan must address the unique needs and conditions of the particular rural settings within their boundaries.

Response: We recognize that the factors limiting access to care can vary from State to State, and even from one rural area to another within a State. To account for this diversity, we agree that States should be allowed as much flexibility as possible to tailor plans to meet the unique needs of their residents and the conditions of the particular rural setting, including the needs of those living in frontier areas. We also agree that CAHs within a State be given as much flexibility as possible. At the same time, however, the BBA requires that all State rural health care plans meet certain minimum requirements.

Regarding State responsibilities, the statute specifies that the rural health care plan must provide for the creation of one or more rural health networks, promote regionalization of rural health services in the State, and improve access to hospital and other health services for rural residents of the State. In addition, the statute requires the State to develop the rural health care plan in consultation with the hospital association of the State, rural hospitals located in the State, and the State office of rural health. We intend to impose the common standards for State rural health care plans only to the extent that they are mandated by statute. If HCFA develops any additional common standards for the State rural health care plan beyond those mandated by the current statute to ensure that the new legislation is administered in a fair and predictable way, those requirements would be communicated through regulation. Regarding regional office approval, we agree that the regional offices should have authority to approve the State rural health care plans, and have issued instructions that allow them to do this. We do, of course, expect that the regional offices will consult with HCFA's central office on any issues having national policy significance.

Comment: Other commenters stated that given their experience under the RPCH program, they recommend greater emphasis on the creation and maintenance of a rural health network. They suggested that the MRHFP will be better served by more fully defining network requirements and mandating network membership for CAHs. Another commenter noted that the financial incentives used for network formation benefit Medicare beneficiaries. They stated that their rural health network has been extremely helpful as an enhancement to the care they can provide. One commenter suggested that there needs to be a better definition of the network described in the regulations, regarding the actual functions of the network.

Response: We support the creation of rural health networks as envisioned in the legislation. However, the legislation does not preclude an otherwise eligible hospital from becoming a CAH solely because it is not a network member. In view of this, we do not believe it would be appropriate at this point to mandate network membership. We also note that section 1820(d) of the Act defines "rural health network" and does not explicitly authorize the imposition of any additional requirements on networks. In view of these considerations, at this point, we have decided not to mandate network membership for CAHs or

impose further requirements on networks.

Comment: Given the fragile and unstable financial condition of small rural hospitals, a lengthy process for reviewing and approving State rural health care plans is untenable. Several commenters suggested that HCFA should set a 30 or 60 day time limit for review and approval of State rural health care plans, and allow States to proceed to designate and certify facilities as CAHs based on assurances in a draft rural health plan, as long as the State pledges to complete the plan in a timely fashion. Another commenter did not specify a timeframe for action, but emphasized that HCFA should act quickly on State rural health care plans and that all requests for additional information should be reasonable in scope, with consistency among regional offices as to the type and extent of additional information requested.

Response: We agree that State rural health care plans should be reviewed and approved as quickly as possible, and that requests for additional information should be reasonable and specific, so that the approval process is not unduly delayed. However, we do not believe a self-imposed deadline would be useful to help achieve an expedited approval process. States are free to designate facilities under a draft plan, but no facility will be assigned a CAH provider number and give a provider agreement until the State rural health care plan has been approved and the CAH is certified as meeting all the requirements following an initial survey by the State agency.

Comment: Because changes in their circumstances may affect rural hospitals' interest in participating in the MRHFP, any list of facilities that the State has designated or plans to designate as CAHs will not be static, but will change frequently. Commenters suggested that instead of requiring the State to submit such a list, HCFA should simply ask for a description of the process for State designation, and of the criteria used to select hospitals for designation.

Response: We recognize that there may be frequent changes in any list of facilities that the State plans to designate, and agree that it is important for the State to describe its selection process and criteria clearly. However, we continue to believe a list of current and prospective designees is useful in developing an overall view of the State program.

Comment: Some commenters stated that HCFA should allow States great flexibility in making "necessary provider" certifications, and in defining

key terms such as "mountainous terrain" or "secondary roads." The commenter recommended that States be allowed to perform these functions without special waivers or centralized review. One commenter asked that we refer to States as "designating" rather than certifying necessary providers. Another commenter stated that the statute gives States broad authority to designate facilities as CAHs, even if they do not meet statutory requirements such as distance. Still another commenter suggested that necessary provider status be dependent solely on State designation with no Federal oversight. However, one commenter took the opposite view, stating that it is important that HCFA provide clear implementation instructions that allow providers and HCFA staff to know whether the criteria are met. This commenter believed that unless such criteria are developed and issued, there could be confusion as to what constitutes mountainous terrain or secondary roads.

Response: We agree that States should have great flexibility in making these certifications and in determining how to apply the distance requirements in making State designations. However, consistent implementation of the statute requires that the regional office also exercise oversight over these functions through the State rural health care plan approval process, and by ensuring that hospitals are given CAH status by the Secretary only if they meet applicable statute and regulations. To emphasize the importance of complying with applicable statute and regulations, we are revising § 485.606(b)(1) to specify that facilities (other than grandfathered facilities) will be recognized as CAHs by HCFA only after they have been surveyed and found to meet applicable requirements.

We are also revising the section heading for § 485.606 and the paragraph for § 485.606(b) to refer to "certification" rather than designation by HCFA. This change in terminology is being made for consistency with section 1820(e) of the Act which also refers to certification by the Secretary.

Regarding the terms used to describe State findings of necessary provider status, we will continue to refer to hospitals "certified" by the State as necessary providers because that is the term used in the statute (section 1820(c)(2)(B)(i)(II) of the Act) and because designation is used in another context to denote a finding by the State that the hospital meets all requirements to be a CAH under its plan, not merely the location requirements (sections 1820(b)(2) and (c)(1) and (2) of the Act).

2. Criteria for Designation as a CAH

Comment: One commenter stated that the existence of the 35-mile restriction fails to recognize the value of providing services even when certain rural providers are within 35 miles of another hospital, and that it fails to take into account the significantly greater population density of these rural areas and the importance of maintaining service for an older and poorer population where no significant transportation systems are in place. The commenter encouraged HCFA to reconsider its policy encouraging such limits as the 35-mile and rather encourage overall implementation of CAH status for many rural hospitals in the country. Commenters also noted that in some States there are no hospitals located more than 35 miles from others, and recommended that the regulations be revised to allow States to develop alternative mileage criteria for State designations.

Response: The statute at section 1820(c)(2)(B)(i)(I) of the Act specifically includes the requirement that a hospital seeking CAH status be more than 35 miles (or, in mountainous areas or those with only secondary roads, 15 miles) from the nearest other hospital or CAH, and HCFA does not have the authority to allow States to substitute another standard. However, the statute also authorizes States to designate otherwise eligible facilities that do not meet the standard as CAHs if the State finds the facility is a "necessary provider". We believe this provision allows States adequate flexibility to deal with specific situations in which access is limited even though the prospective CAH is within 35 miles of another hospital.

Comment: One commenter was concerned about the location requirements at § 485.610(b)(4) which provide that a CAH must be located more than a 35-mile drive from a hospital or another CAH or the CAH must be certified by the State as being a necessary provider of health care services to residents in the area. The commenter interpreted this provision to mean that either the quantified criteria fit a particular situation or it is left to the State to determine the appropriateness of the necessary provider situation. The commenter also stated that the second means of establishing CAH eligibility is not a waiver of the first standard; it simply stands apart from the mileage criteria.

Response: As stated previously, section 1820(c)(2)(B)(i)(I) of the Act includes a general requirement that a hospital seeking CAH status be more than 35 miles (or, in mountainous areas

or those with only secondary roads, 15 miles) from the nearest hospital or CAH. Section 1820(c)(2)(B)(i)(II) provides an exception to that general requirement for a hospital that is certified by the State as a necessary provider of health care services to residents in the area. We do not agree with the commenter's view that the provision for "necessary provider" certification somehow stands apart from the basic requirement. On the contrary, it clearly is set up as an alternative method of qualifying for a facility which cannot meet the basic mileage rule. In this context, we also wish to clarify that the necessary provider certification must be specific to each hospital, and that we would not accept a blanket statement, unsupported by any other information, to the effect that a State considers all hospitals it has designated as CAHs to be "necessary providers." We would expect that State criteria for making the "necessary provider" certification will be defined in the State rural health care plan. The States can make the designation of necessary provider of health care services to residents of an area, however, this is just one of several criteria the facility must satisfy to qualify as a CAH. The assertion that these other criteria have been met is subject to Secretarial review and approval. Section 1820(b)(3) makes it clear that the Secretary may require, as part of the application process, "other information and assurances." As to the "necessary provider" determination, the Secretary may require the State to submit the information that formed the basis of the State's determination.

Comment: One commenter suggested that the regulations be clarified to allow a State's "necessary provider" certification as an alternative to the distance criteria. The commenter believed that State criteria should be related to community needs and access issues, and State criteria should be outlined in the State rural health care plan.

Response: While we agree that the State should outline its criteria in its plan, the regulations at § 485.610(b)(4) already provide for certification by the State of a "necessary provider" in place of the distance requirement and we believe no further clarification is necessary.

Comment: One commenter stated that a per-stay limitation on the length of inpatient stay, such as the 96-hour limit imposed under the MRHFP, may be more restrictive than the average length of stay rule applicable to RPHs. The commenter noted that PROs are authorized to waive the per-stay limit for particular cases, but suggested that

obtaining such waivers would be burdensome for both the facility and the PRO and therefore should be used only rarely. Therefore, the commenter indicated an interest in seeking a legislative change to return to a rule based on a facility-wide average length of stay, saying that such a limit would allow CAHs greater flexibility to serve patients.

Response: Because a change in the statute would be needed to authorize use of a length-of-stay limit based on facility averages, we have not revised the regulations based on this comment. We will, of course, consider the commenter's views in deciding whether to support any proposed amendments to the provisions imposing a per-stay limit.

Comment: One commenter noted that the definition of "rural" used under both the RPH and MRHFP regulations, which is the same definition used for other Medicare payment purposes, considers each individual county to be either "urban" or "rural" in its entirety. The commenter pointed out that there are some large counties that encompass both densely populated urban areas and very small, remote rural areas. Another commenter expressed the view that the statute should be changed to allow use of a definition that recognizes some areas of such counties as being "rural," and asked that we support such a change. Another commenter simply asked that the implementing regulation at § 485.610(b)(2) be changed to reflect this type of situation.

Response: We agree that a change in the statute would be needed to authorize such a definition, since section 1820(c)(2)(B)(i) of the Act mandates use of the "rural" definition in section 1886(d)(2)(D) of the Act. Thus we did not revise the regulations based on these comments.

Comment: One commenter stated that in order to extend acute care services to areas that have not previously had access to these services, facilities other than hospitals should be considered eligible for designation as critical access hospitals. The commenter suggested that Congress intended that this be done so that extremely remote areas, such as some parts of Alaska, would have access to hospital-level services for the first time through the MRHFP.

Response: We do not agree that the intent of the legislation as enacted was to expand acute care capacity into new areas. On the contrary, we believe it is intended to preserve existing acute care capacity by encouraging appropriate downsizing and reduction in the scope of services in order to use the remaining capacity in the most efficient manner. Furthermore, we note that section

1820(c)(2)(B)(i) of the Act, specifies that a State may designate a facility as a CAH only if the facility is a hospital. In view of the specificity of the statute on this point, we do not believe that either the States or HCFA have discretion to designate nonhospital facilities as CAHs.

3. Grandfathering/Transition Issues

Comment: One commenter asked that we clarify the statutory language that would allow RPHs to be grandfathered as CAHs. A commenter suggested that the regulations be revised to grandfather all existing RPHs as CAHs immediately, and all MAFs as CAHs effective October 1, 1998, following the phaseout of the MAF program. Another commenter suggested that existing RPHs be grandfathered as CAHs without regard to whether they are otherwise eligible for State designation. Another commenter expressed concern regarding the interpretation of the term "otherwise eligible"; the intent being that RPH facilities that do not meet all the new requirements will not be grandfathered in. They believe that automatic designation of all existing MAFs and RPHs as CAHs is the only approach that reflects the common meaning of the term "grandfathering." One commenter believed all existing RPH facilities must be grandfathered and be consistent with the current rules that were in effect when the facility was designated as such.

Response: Under section 1820(h) of the Act, grandfathering is available only to MAFs operating in Montana and to RPHs designated as such by the Secretary under section 1820 prior to enactment of the BBA (August 5, 1997), if they are otherwise eligible for designation by the State under section 1820(c). We have no authority to extend grandfathering to other facilities that do not meet these requirements. Moreover, when a State represents that a facility should qualify as a grandfathered CAH, HCFA may request data to support that representation pursuant to section 1820(b)(3) of the Act.

Comment: One commenter suggested that some special provision be made for facilities that were designated as RPHs under previous legislation, but cannot meet the 35-mile distance criterion imposed by the new legislation. The commenter noted that such facilities will likely be designated as CAHs under the new legislation, and suggested that they continue to be treated as RPHs at least until the State has submitted a rural health care plan under the new MRHFP.

Response: As noted in previous responses, the statute has provided

States with the authority to certify facilities as "necessary providers" if the 35-mile criterion is not met. However, for a RCH to be treated as a CAH (assuming it meets the other statutory requirements) in lieu of the 35 mile criterion, it will need to be certified by the State as being a necessary provider of health care services to residents in its area by the beginning of its next cost reporting period. However, section 1820(h) of the Act allows grandfathering of a MAF or RCH only if the facility or hospital is otherwise eligible and we intend to implement this provision of the statute.

4. Payment Issues

Comment: Under the EACH/RCH program, EACHs participating in the program received sole community status as an incentive for participating as a member of a EACH/RCH network. One commenter pointed out that while the regulations allow for the continuation of enhanced reimbursement to EACHs, there is no such enhanced payment to acute care facilities serving as resources to CAH facilities. The commenter recommended sole community reimbursement to those acute care hospitals that will assist CAHs.

Response: Section 4201(c)(4) of the BBA authorized the continuation of payment for those hospitals who had participated as EACHs in the EACH/RCH program and, thus, were designated sole community hospitals. The regulations reflect this statutory provision. However, we have no statutory authority to adopt the commenter's recommendation of allowing sole community status for those hospitals assisting the CAHs under the MRHFP.

Comment: One commenter stated that the amendments made by the BBA do not necessarily eliminate the all-inclusive payment option for outpatient services that was explicitly provided for under prior law (section 1834(g)(1)(B) of the Act, as in effect before enactment of the BBA). The commenter noted that section 1834(g) of the Act was amended to provide for payment of the reasonable cost of the CAH in providing the outpatient services, and suggested that the all-inclusive rate method, as a cost-based method, would be permitted by the new legislation. Commenters also argued that the all-inclusive rate method furthers one of the goals of the BBA, in that it encourages the development of integrated rural health networks. Thus, the commenter recommended that the regulations be revised to again make the all-inclusive rate method available for outpatient services. Another commenter also recommended that the all-inclusive

rate option be made available to critical access hospitals or, as an alternative, that the RCHs that had elected the all-inclusive method continue to be paid under that method at least until October 1, 1998.

One commenter stated that some facilities that had operated provider-based rural health clinics in the past closed those clinics and instead elected payment under the all-inclusive rate option, thereby benefiting by being able to claim payment at levels of cost higher than would be permitted under the physician fee schedule. The commenter stated that such facilities may choose to reopen their rural health clinics if they are not allowed to continue to claim payment under the all-inclusive rate method. The commenter suggested that reopening the facilities as RCHs would entail considerable administrative expense for the facility and suggested that this could be avoided if the all-inclusive option were retained. One commenter stated that because of the all-inclusive method they have been able to enter into legally binding contracts with health professionals to provide skilled medical services. To interrupt these contracts (by discontinuing the all-inclusive method) could result in the discontinuation of these services to their patients and could prove financially detrimental to the well-being of the hospital.

Other commenters also expressed concern regarding the elimination of the all-inclusive method. Of these commenters, one stated that this method enabled small rural hospitals to recruit and retain physicians because they could integrate the physician and hospital payments. Another stated that this method simplified the billing process because, by combining the professional portion of an encounter with the technical service, time and paperwork are reduced. Several commenters stated that elimination of the all-inclusive method will have significant financial implications, prevent some hospitals who would otherwise benefit from the program from participating, and many rural patients will lose access to specialists because this option strengthened the ability to recruit traveling physician clinics. Another commenter stated that the all-inclusive-rate method should be reinstated or, at a minimum, a professional fee should be included in the facility cost structure for CAHs.

Response: We reviewed the commenters' concerns carefully, but we do not agree that we have discretion to retain the all-inclusive rate option. Under Medicare, physician services to hospital patients are not paid through

the hospital, but are billed separately to the Medicare carrier and paid for under the physician fee schedule (sections 1832(a)(1), 1861(s)(1), and 1842 of the Act). Facility services are billed to the Medicare intermediary. Previous law (specifically, section 1834(g)(1)(B) of the Act, as in effect before the enactment of the BBA), explicitly authorized an exception to this practice, in that it permitted RCHs to elect to be paid for services to outpatients under an all-inclusive rate method, described in that section, which reflects the costs of both facility and physician services.

The BBA amended section 1834(g) of the Act to eliminate the RCH payment methods, including the all-inclusive rate option. Under the statute, as amended, the option of paying for physician services to hospital patients through payment to the CAH for its costs no longer exists. On the contrary, CAHs are to be paid for their reasonable costs of facility services. Physician services will be billed separately to the Medicare Part B carrier, and payment will be made under the physician fee schedule. We also considered the proposal that RCHs that had elected to be paid for outpatient services under the all-inclusive rate method be allowed to continue receiving payment under that method until October 1, 1998. At this time, we are allowing existing RCHs that are to be grandfathered as CAHs to continue to receive payment under the all-inclusive payment until each facility's first cost reporting period beginning after October 1, 1997. However, since the statute made no provision for extension of this payment methodology for CAHs, this payment methodology will be eliminated at the end of the period stated above. Continuation of previous payment methods for MAFs through September 30, 1998, is possible because section 4201(c)(6) of the BBA explicitly authorizes such a transition period for them. However, there is no similar provision for RCHs.

Regarding RHC conversions, we do not accept the commenter's claim that eliminating the all-inclusive payment method will force hospitals to set up RHCs. Physicians who provide services to outpatients of CAHs are entitled to bill for these services on the same basis as if they had been furnished in a hospital outpatient department.

We agree that one major goal of the legislation is to foster networking and appropriate integration of services. However, we believe that integration of services through improved coordination, sharing of patient information, and other clinical measures does not require that physician billing

and facility billing be integrated, nor that such financial integration necessarily encourages clinical integration.

Comment: Several commenters requested that HCFA clarify that coinsurance amounts for CAH services are to be determined based on the hospital's charges, as is the case for full-service hospitals and most other providers.

Response: We agree and have made appropriate revisions to § 410.152(k) in these final rules.

Comment: The principle of lesser of cost or charges was not applied to RCH payment determinations under previous statutory provisions. Commenters recommended that HCFA clarify that this principle also does not apply in determining the amount of payment for CAH services.

Response: We agree and have made revisions to §§ 413.13(c)(2) and 413.70 to specify that this principle does not apply to CAH payment determinations.

Comment: One commenter stated that some CAHs may need to use locum tenens (temporary substitute) physicians to maintain the availability of emergency services on a 24-hour basis. The commenter recommended that the regulations be revised to state that costs of locum tenens physicians are allowable.

Response: As is the case for full-service hospitals, standby costs of emergency room physicians who are present at the emergency room are allowable costs and will, to the extent they are reasonable in amount, be taken into account in computing Medicare payment. However, Medicare does not recognize costs of "on-call" physicians as allowable costs of operating a CAH.

Comment: One commenter asked for clarification as to which specific reasonable cost payment principles will be applied in determining payment to CAHs. Specifically the commenter asked whether, for inpatient services, CAHs would be subject to the principles of lesser of cost or charges, ceilings on the rate of hospital cost increases, limits on payment for services of physical, occupational, and other therapy services furnished under arrangements, reasonable compensation equivalent (RCE) limits on payments for services of physicians to providers, and the SNF routine nursing service cost limits. With respect to outpatient services, the commenter asked whether payment would be subject to the principles of lesser of cost or charges, reasonable compensation equivalent (RCE) limits on payments for services of physicians to providers, the 5.8 percent operating cost reduction, the capital cost

reduction, blended payment amounts for ASC, radiology, and other diagnostic services, and the fee schedule for clinical laboratory tests.

Response: We plan to apply the limits on physical, occupational, speech, and other therapy services furnished under arrangements in determining the reasonableness of costs of both inpatient and outpatient services. We do not plan to apply the principles of lesser of cost or charges; ceilings on the rate of hospital cost increases; any type of reductions of operating or capital costs under § 413.24 or § 413.130(j)(7); the blended payment amounts for ambulatory surgical centers (ASC) services, radiology, and other diagnostic services; or the clinical laboratory fee schedule. We do not plan to apply RCE limits on payments of physicians to providers. However, we note that the costs of these services will be subject to both the prudent buyer principle (section 2103 of the Medicare Provider Reimbursement Manual) and the requirement that costs not be "substantially out of line" with those of other, similar institutions (§ 413.9(c)(2)). Intermediaries are authorized to examine all claimed costs to make sure they are not substantially out of line. An intermediary might in this respect refer to the RCE limits as one guide as to what may be reasonable in a given case. We have not specified that the SNF routine cost limits do not apply to CAHs, since this is self-evident.

Comment: One commenter suggested that, to ensure that payment policies are applied uniformly in all States and to make it easier for critical access hospitals to have questions answered and problems resolved, a single national intermediary should be designated to handle all CAH payment.

Response: In the case of both hospitals and CAHs, the intermediary for a particular facility is determined by the location of the facility. In general, each facility is serviced by a nonprofit or commercial insurance plan that also administers other health insurance programs for facilities in the State, and is familiar with characteristics of health care delivery systems in that State. Therefore, use of the existing intermediaries to make payment to CAHs should help contribute to an orderly transition to the new program, since the intermediary servicing a facility as a CAH would also have serviced it as a hospital or RCH and would be fully familiar with the facility's operation and cost characteristics. However, we agree that use of a single national intermediary (or regional intermediaries) would appear to have some advantages in terms of

ensuring that payment is made uniformly and consistently. We will consider this suggestion further and evaluate the feasibility of a single national intermediary at some time in the future.

5. Other Issues

Comment: One commenter stated that both the RCH and CAH regulations allow facilities to close at times when there are no inpatients, as long as the emergency services requirements in § 485.618 are met. The commenter stated that existing regulations allow emergency services to be provided through a triage and on-call system, while anti-dumping requirements under section 1867 of the Act require that all patients coming to the emergency room be seen by a physician or midlevel practitioner. The commenter stated that compliance with the provisions of section 1867 of the Act will increase a CAH's cost of operating an outpatient department and suggested that retention of the all-inclusive rate is needed to meet the added cost.

Response: The emergency services requirements for CAHs are exactly the same as they were for RCHs, as are the section 1867 provisions on examination and treatment for emergency medical conditions and women in labor (as implemented under §§ 489.20(q) and 489.24). Except for the change in terminology from RCH to "critical access hospital", the regulations at § 485.618 were not changed in any way. With respect to personnel, these regulations provide (in paragraph (d)) that there must, on a 24-hour a day basis, be a practitioner with training and experience in emergency care on call and immediately available by telephone or radio contact, and available on site within 30 minutes. The practitioner referred to may be an M.D. or D.O., a physician assistant, or a nurse practitioner. Within this minimum staffing requirement, the CAH is obligated by the regulations at § 489.24 to provide an appropriate medical screening examination and, if necessary, stabilizing treatment to any person who comes to the emergency room and requests examination or treatment, or has such a request made on his or her behalf. As noted in § 489.24, these services need only be provided within the capability of the CAH's emergency department. Thus, the transition to CAH status should not generate any additional costs for the facility.

Comment: One commenter stated that Congress clearly intended to allow CAHs to maintain swing beds, and suggested that restricting CAH swing-bed agreements to those facilities that

had such agreements as full-service hospitals or as RPHs would be unfair to other hospitals and former RPHs, and could limit access to skilled nursing services for Medicare patients. Therefore, the commenter suggested that we revise the regulations to make it clear that hospitals or RPHs that do not have swing-bed agreements at the time they become CAHs are free to enter into those agreements later, if they meet the requirements in § 485.645.

Response: We agree and have revised § 485.645(a)(1) to eliminate the requirement that a facility have had a hospital swing-bed agreement when it applied for CAH designation.

Comment: One commenter recommended that, for purposes of waiving the 96-hour length of stay restriction under § 482.620(b), we provide that peer review organizations (PROs) should have discretion to base decisions only on clinical judgment of specific cases, without having to follow guidelines imposed by HCFA. One commenter also states that the 96 hours length of stay should be an average of 96 hours.

Response: We agree that PROs will necessarily have to make case-specific clinical judgments to implement this waiver provision, and do not plan to release any guidelines to them in the near future. However, further experience with the program may indicate a need for centralized guidelines to ensure that the waiver provision is implemented uniformly in all States, and if such guidelines are needed they will be issued. As to an average of 96 hours length of stay, the statute is clear that the longest stay permitted will be a 96-hour period, that is, the 96-hour limit will be applied on a per-stay basis rather than to the facility-wide average length of stay. Consequently, we made no changes in the regulations based on this comment.

Comment: One commenter stated that revised § 485.612 ("Compliance with hospital requirements at time of application") would effectively eliminate participation in the CAH program by hospitals that are licensed but not certified. The commenter believed the intent of Congress was to limit CAH candidates to only hospitals in full compliance with the Medicare/Medicaid conditions of participation at the time of application.

Response: We agree, the MRHFP was established through changes to the Medicare law and its purpose is to preserve access to services by Medicare beneficiaries. Hospitals that do not participate in Medicare cannot be paid for nonemergency services to Medicare patients, and thus do not serve as a

source of care for most Medicare services. In view of this, we do not believe there is any basis for making CAH designations available to these hospitals. This approach is consistent with previous RPH policy and with the statutory requirement that only hospitals be designated as CAHs.

Comment: One commenter stated that it would serve the Medicare program well to permit CAHs more flexibility in the realm of surgery. As a RPH, they performed only ambulatory type surgeries, while as an acute care hospital they performed several types of low complexity general surgeries. These low complexity cases were done safely, economically, and close to home. They believe that this flexibility would serve to enhance their ability in emergency cases.

Response: Under previous statute and regulations (section 1820(f)(1)(F)(ii) and 42 CFR 485.614(b)(3)), RPHs were restricted to certain types of inpatient surgical and other services requiring general anesthesia, except in emergency cases where the attending physician certified that the risk of transfer to a hospital outweighed the benefits of the transfer. This restriction was removed by the BBA, and § 485.614 was also removed in the August 29, 1997 final rule with comment period. Of course, CAHs are still required to comply with any State licensure laws affecting their scope of services.

Comment: One commenter stated that CAH legislation requires credentialing and quality assurance review to be done by another facility. Currently, many providers that might seek CAH designation do their own credentialing and quality assurance review. The commenter believes that requiring outside performance of these functions would be unreasonable and would recommend some type of grandfathering of these responsibilities.

Response: The commenter correctly notes that the statute requires that a network CAH's credentialing and quality assurance review be done by an outside entity. We have amended § 485.603(c) to reflect this and require all network CAHs to have an agreement for credentialing and quality assurance with at least one hospital that is a network member, one PRO or equivalent entity, or one other appropriate and qualified entity identified in the State rural health care plan. We have also made a conforming change and have revised § 485.641(b)(4) to allow the same three options for the review of the quality and appropriateness of the diagnosis and treatment furnished by doctors of medicine or osteopathy at the CAH. We recognize that where a facility

is located in an extremely remote area, performance review and credentialing by an outside entity can present practical problems. On the other hand, given the small numbers of practitioners furnishing services in a CAH, it may be difficult or impossible to achieve objective in-house review. The majority of CAHs have a limited number of staff and resources to accomplish credentialing and quality assurance in an efficient and effective manner. Assistance from a knowledgeable source outside the facility will enable the CAH to be more efficient in the utilization of their immediate resources. We encourage CAHs to develop strategies for electronic sharing of patient records and other data related to practitioner performance and quality assurance.

Comment: One commenter noted that the statutory provision authorizing grandfathering of essential access community hospitals (EACHs) required only that the hospitals have been designated by the Secretary as EACHs under the statute in effect on September 30, 1997 (section 1886(d)(5)(D) of the Act, as amended by section 4201(c)(4) of the BBA). In this commenter's view the revised regulations at § 412.109(a) are more restrictive, in that they would require the hospital, to retain its EACH status, to comply with the terms, conditions, and limitations that were applicable when HCFA designated the hospital as an EACH. The commenter noted that the definition of "network" under the new legislation differs from the regulatory criteria for EACH designation that were in effect before October 1, 1997, in that previously regulations required the EACH to provide emergency and medical backup services to RPHs participating in the network of which it is a member as well as to other RPHs throughout its service area, while the new statutory definition of a "network" does not include a specific requirement for emergency and medical backup services. The commenter stated that an EACH should not lose its EACH designation solely because it changes its network agreements to conform to the new statutory requirements.

Response: This commenter is correct in noting that the network definition under the current statute differs from the EACH designation criteria previously in effect. We agree that network agreements entered into after the effective date of the new provision (October 1, 1997) should reflect current statutory requirements. However, it does not necessarily follow that a hospital should be able to change the terms of its agreements made under a previous statutory provision, while maintaining

an advantageous level of payment available under that same previous statutory provision. Thus, if a hospital designated as an EACH under prior statute wants to retain its sole community hospital status, it will have to abide by the agreements it made in order to obtain its EACH designation. If the hospital wants to scale down its responsibilities to the level required by current statute for an acute care hospital that is a network member, it is free to do so but will no longer be able to claim sole community hospital status. The hospital clearly will not be permitted to scale down its obligations but continue to be paid as if it were assuming those responsibilities.

Comment: Two commenters asserted that managed care involvement should be allowed with recognition and protection for low volume. They recommended that Medicare+Choice plans should allow for CAH participation.

Response: There is no prohibition on the use of CAH services under managed care or Medicare+Choice. However, we have no authority to mandate the level of payment by these plans to the CAHs.

Comment: Two commenters recommended that CAHs be allowed to link formally with other Federal programs such as Rural Health Clinics, Public Health, and emergency medical service.

Response: Under the new legislation, a new MRHFP was established. Under this program, States are encouraged to set up rural health networks. These networks are defined as an organization consisting of at least one CAH and at least one full-service hospital. As to the CAH linking with other types of organizations, there is no statutory prohibition against a State establishing these linkages under its rural health care plan, and there is nothing in the regulations that precludes CAHs from participating in other Federal programs. Each program would be required to independently meet the applicable Federal regulations. A CAH that participates in any additional Federal programs would be responsible for compliance with all the Medicare CAH requirements and any other program requirements in which it participates.

Comment: Communities with CAHs should receive an exception to the EMS restrictions, since they do not have the funds to provide quality EMS service.

Response: We do not believe our emergency medical service requirements are complicated or complex requirements. Rather, in our development of the original conditions of participation, we attempted to be flexible and sympathetic to the need of

these facilities. We do not believe we can be any more flexible and remain within the confines of the statute.

Comment: Several commenters requested additional funding to support survey and certification activities. They believe that Federal grant funding should be used to support survey and certification activities, combined CAH and hospital surveys should be allowed, and States should recognize CAH participation in EMS and trauma planning.

Response: Congress did not authorize an appropriation of additional funds to survey critical access hospitals. CAH initial surveys will be scheduled and conducted by the State survey agencies in accordance with national priorities which reflect statutorily mandated workload requirements and budget realities. Federal grant funding is not authorized to support survey and certification activities. In addition, CAH and hospital surveys would not be combined, as these providers are statutorily and categorically different entities and subject to separate requirements. We do not see the added value of attempting to combine hospital and CAH surveys. Regarding the comment that States should recognize CAH participation in EMS and trauma planning, we believe this comment is addressed to the States rather than to HCFA in implementation of the MRHFP.

Comment: Some commenters recommended that HCFA take action to increase understanding of the Medicare Rural Hospital Flexibility Program and simplify its implementation.

Response: We agree, and have attempted to provide interim guidance wherever possible to clarify the requirements of the Medicare Rural Hospital Flexibility Program legislation. For example, we recently provided our regional offices with guidance on implementing the requirement that a hospital seeking CAH designation provide not more than 15 (or, in the case of a swing-bed facility, 25) acute care inpatient beds. Because of the specificity of the law on this point, a State rural health care plan would not be approvable unless it specified that potential CAHs would provide not more than the allowed number of acute care inpatient beds, and a hospital that provided more than the allowed number of beds would not be eligible for State designation as a CAH, and could not be certified by the Secretary as a CAH. CAHs are, as limited-service facilities, subject to less rigorous standards than full-service hospitals and it is important to ensure that they are truly low-volume, short-stay facilities as

envisioned in the statute. However, this does not mean that each hospital seeking CAH designation must necessarily reduce its State licensure to the 15 or 25-bed level. It does mean the hospital must reduce its number of Medicare certified beds to the allowed level (15 or 25 beds) and that it has to actually provide no more than the number of inpatient acute beds for which it is Medicare-certified, or risk termination of its Medicare participation agreement and loss of all Medicare revenue. Since the CAH designation is related to how the facility is certified for participation under the Medicare program, we believe the use of Medicare certified beds is appropriate. Further, the use of Medicare certified beds is consistent with the policies on hospital and CAH swing-beds (see §§ 482.66 and 485.645).

We note that for cost reporting and certain payment provisions (for example, Medicare-dependent hospitals and the indirect medical education adjustment), a facility's bed size is based on the average number of beds available and maintained over the cost reporting period. We do not believe it would be appropriate to use this measure of bed size for purposes of CAH certification. First, it is based on an average number of beds that are available over the cost reporting period. The statute establishes an absolute limit on the number of beds that may be provided at any point in time during the cost reporting period. Secondly, this measure can only determine bed size retrospectively and is not useful as a prospectively applicable measure of compliance with the limits on beds provided by CAHs.

Comment: Two commenters suggested that CAHs and their communities that have been given incentives to provide services in underserved areas (HPSAs or MUAs) should be allowed to keep those incentives after the need for them has passed, so the practitioners recruited through the incentives do not leave, leading to new shortages.

Response: With regard to the commenters' concern regarding previously given incentives, such incentives were not granted by us, and therefore, we have no authority to permit the continuance of such incentives. The MRHFP was established to assist such rural hospitals that may need the support of other facilities by setting up networks with agreements with full service facilities concerning transportation and communications, not as an incentive for recruitment of practitioners.

III. Provisions of the Final Rule

In summary, in this final rule, we are making changes to the following regulations in 42 CFR as described in the preceding portions of this preamble:

- Section 410.152
- Section 412.105
- Section 413.13
- Section 413.40
- Section 413.70
- Section 413.86
- Section 415.152
- Section 485.603
- Section 485.641
- Section 485.645

Technical Corrections

• Regarding the Medicare geographic classifications, we are making two technical changes:

—In § 412.230, paragraph (e)(3), the phrase "If a hospital is a rural referral center," is revised to read "If a hospital was ever a rural referral center".

—In § 412.256, paragraph (a)(2), the phrase "the month preceding" is revised to read "the 13-month period preceding".

• In regard to inpatient hospital capital costs, we are making a cross-reference change in § 412.322(a)(1) to change the phrase "under § 412.105(g)" to read "under § 412.105(f)".

IV. Impact Statement

We have examined the impact of this final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief for small businesses, unless we certify that the regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, most hospitals, and most other providers, physicians and health care suppliers are small entities, either by nonprofit status or by having revenues of \$5 million or less annually.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals

located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98-21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classify these hospitals as urban hospitals. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

In the August 29, 1997 final rule with comment period, we discussed in detail the impact of the provisions of the BBA (62 FR 46115). We stated that several provisions of the statute made significant changes in inpatient hospital payments for the operating and capital prospective payment systems during FY 1998. The major portion of this final rule merely responds to comments on the August 29 final rule with comment period and makes clarifying changes. However it does make a few policy changes that have an impact on hospitals as follows:

1. Graduate Medical Education

Section 4623 of the BBA established a limitation on the number of residents that a hospital can receive Medicare direct and indirect medical education payments. This final rule will provide hospitals with more opportunities to receive adjustments to the FTE caps for GME for medical residency programs established on or after January 1, 1995. While this may result in Medicare paying for more residents than under the policies announced in the August 29, 1997 final rule with comment period, we anticipate this impact will be modest. In addition, hospitals that are members of the same affiliated group will also have more flexibility relative to the August 29, 1997 final rule with comment period under an aggregate FTE cap. We believe that these changes will have a minimal (if any) financial impact on the Medicare program.

2. Excluded Hospitals and Units

a. Limitations on the Target Amount

In accordance with section 4416 of the BBA, we calculated a cap on the TEFRA target amounts for new PPS-excluded hospitals. This cap is set at 110 percent of the median target amount

for each type of hospital. We have recalculated the 110 percent of the median target amount for new long-term care hospitals, based on a review of the data. As a result the limit will be revised from \$18,947 to \$21,494. Therefore, fewer new long-term care hospitals will be adversely affected by the cap. Although we do not know the precise financial impact of this change, we estimate that any additional costs to the Medicare program will be small given the small number of long-term care hospitals that could potentially be affected.

b. Critical Access Hospitals—Credentialing and Quality Assurance

We are requiring all CAHs to have an agreement for credentialing and quality assurance with at least one hospital that is a network member, one PRO or equivalent entity, or one other appropriate and qualified entity identified in the State rural health care plan. For facilities located in an extremely remote area, performance review and credentialing by an outside entity can present practical problems. However, given the small numbers of practitioners furnishing services in a CAH, it may be difficult or impossible to achieve objective in-house review. Therefore, making the requirements consistent will allow the providers more flexibility in selecting an entity to perform the credentialing and quality assurance functions. We believe that this requirement would not present an additional financial burden to the provider.

c. Critical Access Hospitals—Swing-Bed Agreements

Previously, swing-bed agreements were restricted to those facilities that had hospital swing-bed agreements at the time of their becoming a CAH. However, due to comments received, we have changed the regulations to clarify that hospitals or rural primary care hospitals that do not have swing-bed agreements at the time they become CAHs may enter into such agreements at a later time if they meet the swing-bed requirements. This change will increase the number of CAHs that may qualify for swing-bed agreements, and thus may lead to additional utilization of SNF-level services and higher costs. However, at this time, we are unable to estimate the number of facilities that will request participation in the swing-bed program, or estimate whether or not utilization and costs will increase.

For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has

fewer than 50 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 415

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

A. Part 410 is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)), unless otherwise indicated.

Subpart I—Payment of SMI Benefits

§ 410.152 [Amended]

2. In § 410.152, paragraph (k), second sentence, the phrase "coinsurance amounts, as described in § 413.70(b)(3) of this chapter" is revised to read "coinsurance amounts with Part B coinsurance being calculated as 20 percent of the customary (in so far as reasonable) charges of the CAH for the services".

B. Part 412 is amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment System for Inpatient Operating Costs and Inpatient Capital-Related Costs

2. In § 412.22, paragraph (f) is revised to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

(f) *Application for certain hospitals.* If a hospital was excluded from the prospective payment systems under the provisions of this section on or before September 30, 1995, and at that time occupied space in a building also used by another hospital, or in one or more buildings located on the same campus as buildings used by another hospital, the criteria in paragraph (e) of this section do not apply to the hospital.

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

3. In § 412.105, the last sentence of paragraph (a)(1) is revised, the parenthetical phrase in the last sentence of paragraph (f)(1)(v) is revised, and new paragraphs (f)(1)(vi) and (vii) are added to read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

(a) * * *

(1) * * * Except for the special circumstances for affiliated groups and new programs described in paragraphs (f)(1)(vi) and (f)(1)(vii) of this section, for a hospital's cost reporting periods beginning on or after October 1, 1997, this ratio may not exceed the ratio for the hospital's most recent prior cost reporting period.

* * * * *

(f) * * *

(1) * * *

(v) * * * (subject to the requirements set forth in paragraphs (f)(1)(ii)(C) and (f)(1)(iv) of this section) * * *

(vi) Hospitals that are part of the same affiliated group (as described in § 413.86(b)) may elect to apply the limit

at paragraph (f)(1)(iv) of this section on an aggregate basis.

(vii) If a hospital establishes a new medical residency training program, the hospital's FTE cap may be adjusted in accordance with the provisions of § 413.86(g)(6)(i) through (iv).

* * * * *

Subpart L—The Medicare Geographic Classification Review Board

§ 412.230 [Amended]

4. In § 412.230, paragraph (e)(3), the phrase "If a hospital is a rural referral center," is revised to read "If a hospital was ever a rural referral center".

§ 412.256 [Amended]

5. In § 412.256, paragraph (a)(2), the phrase "the month preceding" is revised to read "the 13-month period preceding".

Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs

§ 412.322 [Amended]

6. In § 412.322(a)(1), the phrase "under § 412.105(g)" is revised to read "under § 412.105(f)".

C. Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart A—Introduction and General Rules

2. In section 413.13, a new paragraph (c)(2)(iv) is added to read as follows:

§ 413.13 Amount of payment if customary charges for services furnished are less than reasonable costs.

* * * * *

(c) * * *

(2) * * *

(iv) *Critical access hospital (CAH) services.* The lesser of costs or charges principle does not apply in determining payment for inpatient or outpatient services furnished by a CAH under § 413.70.

* * * * *

Subpart C—Limits on Cost Reimbursement

3. Section 413.40 paragraphs (c)(4)(iii) and (j) are revised to read as follows.

§ 413.40 Ceiling on the rate-of-increase in hospital inpatient costs.

(c) * * *

(4) * * *

(iii) In the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the target amount is the lower of—

(A) The hospital-specific target amount (the net allowable costs in a base period increased by the applicable update factors); or

(B) One of the following for the applicable cost reporting period—

(1) For cost reporting periods beginning during fiscal year 1998, the 75th percentile of target amounts for hospitals in the same class (psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital) for cost reporting periods ending during FY 1996, increased by the applicable market basket percentage up to the first cost reporting period beginning on or after October 1, 1997.

(2) For cost reporting periods beginning during fiscal years 1999 through 2002, the amount determined under paragraph (c)(4)(iii)(B)(1) of this section, increased by the market basket percentage up through the subject period, subject to the provisions of paragraph (c)(4)(iv) of this section.

(j) *Reduction to capital-related costs.* For psychiatric hospital and units, rehabilitation hospitals and units, and long-term care hospitals, the amount otherwise payable for capital-related costs for hospital inpatient services is reduced by 15 percent for portions of cost reporting periods occurring on or after October 1, 1997 through September 30, 2002.

Subpart E—Payments to Providers

4. Section 413.70 is revised to read as follows:

§ 413.70 Payment for services of a CAH.

(a) Except as provided in paragraph (b) of this section, payment for inpatient and outpatient services of a CAH is the reasonable costs of the CAH in providing such services, as determined in accordance with section 1861(v)(1)(A) of the Act and the applicable principles of cost reimbursement in this part and in part 415 of this chapter.

(b) The following payment principles are excluded when determining

payment for CAH inpatient and outpatient services:

(i) For inpatient services—
(i) Lesser of cost or charges;
(ii) Ceilings on hospital operating costs; and

(iii) Reasonable compensation equivalent (RCE) limits for physician services to providers;

(2) For outpatient services—
(i) Lesser of costs or charges;
(ii) RCE limits;
(iii) Any type of reduction to operating or capital costs under § 413.124 or § 413.130(j)(7) of this part;

(iv) Blended payment amounts for ASC, radiology, and other diagnostic services; and

(v) Clinical laboratory fee schedule.

Subpart F—Specific Categories of Costs

5. In § 413.86, the definition of "affiliated group in paragraph (b) is revised, paragraph (g)(5) is amended by adding new sentences at the end of the paragraph, and paragraphs (g)(6)(i), (g)(6)(ii), and (g)(7) are revised to read as follows:

§ 413.86 Direct graduate medical education payments.

(b) * * *

Affiliated group means—

(1) Two or more hospitals located in the same urban or rural area (as those terms are defined in § 412.62(f) of this subchapter) or in contiguous areas if individual residents work at each of the hospitals during the course of the program; or

(2) If the hospitals are not located in the same or a contiguous urban or rural area, the hospitals are jointly listed—

(i) As the sponsor, primary clinical site or major participating institution for one or more of the programs as these terms are used in *Graduate Medical Education Directory, 1997–1998*; or

(ii) As the sponsor or under "affiliations and outside rotations" for one or more programs in operation in *Opportunities, Directory of Osteopathic Postdoctoral Education Programs*.

(3) The hospitals are under common ownership.

(g) *Determining the weighted number of FTE residents.* * * *

(5) * * * If a hospital qualifies for an adjustment to the limit established under paragraph (g)(4) of this section for new medical residency programs created under paragraph (g)(6) of this section, the count of residents participating in new medical residency

training programs above the number included in the hospital's FTE count for the cost reporting period ending during calendar year 1996 is added after applying the averaging rules in this paragraph for a period of years. Residents participating in new medical residency training programs are included in the hospital's FTE count before applying the averaging rules after the period of years has expired. For purposes of this paragraph, the period of years equals the minimum accredited length for the type of program. The period of years begins when the first resident begins training.

(6) * * *

(i) If a hospital had no residents before January 1, 1995, and it

establishes a new medical residency training program on or after that date, the hospital's unweighted FTE resident cap under paragraph (g)(4) of this

section may be adjusted based on the product of the highest number of residents in any program year during the third year of the first program's

existence for all new residency training programs and the number of years in which residents are expected to

complete the programs based on the minimum accredited length for the type of program. For these hospitals the cap

will only be adjusted for the programs established on or after January 1, 1995. Except for rural hospitals, the cap will

not be revised for new programs established after the 3 years. Only rural hospitals that qualify for an adjustment

to its FTE cap under this paragraph are permitted to be part of the same

affiliated group for purposes of an aggregate FTE limit.

(ii) If a hospital had residents in its most recent cost reporting period ending before January 1, 1995, the hospital's

unweighted FTE cap may be adjusted for new medical residency training programs established on or after January

1, 1995 and on or before August 5, 1997. Adjustments to the hospital's FTE

resident limit for the new program are based on the product of the highest

number of residents in any program year of the newly established program and

the number of years in which residents are expected to complete each program

based on the minimum accredited length for the type of program. The

hospital's unweighted FTE limit for a cost reporting period may be adjusted to

reflect the number of residents in its most recent cost reporting period ending on or before December 31, 1996, and up to the incremental increase in its FTE

(7) For purposes of paragraph (g) of this section, a new medical residency training program means a medical residency that receives initial accreditation by the appropriate accrediting body or begins training residents on or after January 1, 1995.

D. Part 415 is amended as set forth below:

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

1. The authority citation for Part 415 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart D—Physician Services in Teaching Settings**§ 415.152 [Amended]**

2. In § 415.152, under the definition of "approved graduate medical education (GME)", the phrase "Council on Dental Education of the American Dental Association" is revised to read "Commission on Dental Accreditation of the American Dental Association".

E. Part 485 is amended as set forth below:

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

1. The authority citation for Part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart F—Conditions of Participation: Critical Access Hospitals (CAHs)

2. Section 485.603 is amended by revising paragraph (c) to read as follows:

§ 485.603 Rural health network.

(c) Each CAH has an agreement with respect to credentialing and quality assurance with at least—

(1) One hospital that is a member of the network when applicable;

(2) One PRO or equivalent entity; or

(3) One other appropriate and qualified entity identified in the State rural health care plan.

3. In 485.606, the section heading, the heading and introductory text of paragraph (b), and paragraph (b)(1) are revised to read as follows:

§ 485.606 Designation and Certification of CAHs

(b) Criteria for HCFA certification. HCFA certifies a facility as a CAH if—

(1) The facility is designated as a CAH by the State in which it is located and has been surveyed by the State survey agency or by HCFA and found to meet all conditions of participation in this Part and all other applicable requirements for participation in Part 489 of this chapter.

4. In § 485.641 the introductory text of paragraph (b) is republished and paragraph (b)(4) is revised to read as follows:

§ 485.641 Condition of participation: Periodic evaluation and quality assurance review.

(b) *Standard: Quality assurance.* The CAH has an effective quality assurance program to evaluate the quality and appropriateness of the diagnosis and treatment furnished in the CAH and of the treatment outcomes. The program requires that—

(4) The quality and appropriateness of the diagnosis and treatment furnished by doctors of medicine or osteopathy at the CAH are evaluated by—

(i) One hospital that is a member of the network, when applicable;

(ii) One PRO or equivalent entity; or

(iii) One other appropriate and qualified entity identified in the State rural health care plan; and

5. Section 485.645 is revised to read as follows:

§ 485.645 Special requirements for CAH providers of long-term care services ("swing-beds")

A CAH must meet the following requirements in order to be granted an approval from HCFA to provided post-hospital SNF care, as specified in § 409.30 of this chapter, and to be paid for SNF-level services, in accordance with paragraph (c) of this section.

(a) *Eligibility.* A CAH must meet the following eligibility requirements:

(1) The facility has been certified as a CAH by HCFA under § 485.606(b) of this subpart; and

(2) The facility provides not more than 25 inpatient beds, and the number of beds used at any time for acute care inpatient services does not exceed 15 beds. Any bed of a unit of the facility that is licensed as distinct-part SNF at the time the facility applies to the State for designation as a CAH is not counted under paragraph (a) of this section.

(b) *Facilities participating as rural primary care hospitals (RPHs) on September 30, 1997.* These facilities must meet the following requirements:

(1) Notwithstanding paragraph (a) of this section, a CAH that participated in Medicare as a RPH on September 30, 1997, and on that date had in effect an approval from HCFA to use its inpatient facilities to provide post-hospital SNF care may continue in that status under the same terms, conditions and limitations that were applicable at the time those approvals were granted.

(2) A CAH that was granted swing-bed approval under paragraph (b)(1) of this section may request that its application to be a CAH and swing-bed provider be reevaluated under paragraph (a) of this section. If this request is approved, the approval is effective not earlier than October 1, 1997. As of the date of approval, the CAH no longer has any status under paragraph (b)(1) of this section and may not request reinstatement under paragraph (b)(1) of this section.

(c) *Payment.* Payment for inpatient RPH services to a CAH that has qualified as a CAH under the provisions in paragraph (a) of this section is made in accordance with § 413.70 of this chapter. Payment for post-hospital SNF-level of care services is made in accordance with the payment provisions in § 413.114 of this chapter.

(d) *SNF services.* The CAH is substantially in compliance with the following SNF requirements contained in subpart B of part 483 of this chapter:

(1) Residents rights (§ 483.10(b)(3) through (b)(6), (d) (e), (h), (i), (j)(1)(vii) and (viii), (l), and (m) of this chapter).

(2) Admission, transfer, and discharge rights (§ 483.12(a) of this chapter).

(3) Resident behavior and facility practices (§ 483.13 of this chapter).

(4) Patient activities (§ 483.15(f) of this chapter), except that the services may be directed either by a qualified professional meeting the requirements of § 485.15(f)(2), or by an individual on the facility staff who is designated as the activities director and who serves in consultation with a therapeutic

recreation specialist, occupational therapist, or other professional with experience or education in recreational therapy.

(5) Social services (§ 483.15(g) of this chapter).

(6) Comprehensive assessment, comprehensive care plan, and discharge planning (§ 483.20(b), (d), and (e) of this chapter).

(7) Specialized rehabilitative services (§ 483.45 of this chapter).

(8) Dental services (§ 483.55 of this chapter).

(9) Nutrition (§ 483.25(i) of this chapter).
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.771, Medicare—Supplementary Medical Insurance)

Dated: April 24, 1998.
Nancy-Ann Min DeParle,
Administrator, Health Care Financing Administration.

Dated: May 1, 1998.
Donna E. Shalala,
Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix: Illustration of Determination of GME Payment

HOSPITAL COST REPORTING PERIOD
ENDING 12/31/96

Type of FTE	Number of FTEs
Unweighted	¹ 100

HOSPITAL COST REPORTING PERIOD
ENDING 12/31/96—Continued

Type of FTE	Number of FTEs
Weighted	¹ 90

¹ Allopathic and Osteopathic Residents.

HOSPITAL COST REPORTING PERIOD
BEGINNING 1/12/97

Type of FTE	Number of FTEs
Unweighted	¹ 110
Weighted	¹ 100
Adjusted Weighted	² 100.00
Dentists and Podiatrists	5.00
Total	105.00

¹ Allopathic and Osteopathic Residents.

² Since the FTE cap does not apply until 01/01/98 the adjusted weighted FTEs are equal to the weighted FTEs.

HOSPITAL COST REPORTING PERIOD
BEGINNING 1/12/98

Type of FTE	Number of FTEs
Unweighted	¹ 110
Weighted	¹ 100
Adjusted Weighted	² 90.91
Dentists and Podiatrists	5.00
Total	95.91

¹ Allopathic and Osteopathic Residents.

² The adjusted weighted=((Current year's Weighted FTEs/Current year's Unweighted FTEs) * FTE cap)-((100/110) * 100).

HOSPITAL COST REPORTING PERIOD
BEGINNING 1/12/99

Type of FTE	Number of FTEs
Unweighted	¹ 90
Weighted	¹ 90
Adjusted weighted	90
Dentists and podiatrists	5.00
Total	95.00

¹ Allopathic and Osteopathic Residents.

DETERMINATION OF PAYMENTS FOR HOSPITAL COST REPORTING PERIOD BEGINNING 1/12/99

Type of resident	Per resident amount	FTEs	Total resident amount
Primary Care	\$50,000	80.00	\$4,000,000
Other	47,000	15.00	705,000
		95.00	4,705,000

Total resident amount	Total number of FTEs	Average per resident amount
\$4,705,000	95.00	¹ \$49,526

Total # of FTEs (for 01/01/97)	Total # of FTEs (for 01/01/98)	Total # of FTEs (for 01/01/99)	3-year average FTEs
105.00	95.91	95.00	² 98.64

Average per resident amount	3-Year average FTEs	Aggregate approved amount
\$49,526	98.64	³ \$4,885,096
Aggregate approved amount	Medicare patient load	Direct GME payment
\$4,885,096	0.5	⁴ \$2,442,548

¹ The Average Per Resident Amount = (Total Resident Amount/Total number of FTEs).

² The 3-Year Average = (the sum of the Total number of FTEs for 3 cost reporting periods/3).

³ The Aggregate Amount = (Average Per Resident Amount * 3-year Average FTEs).

⁴ The Direct GME Payment = (Aggregate Approved Amount * Medicare Patient Load).

Tuesday
May 12, 1998

federal register

Part IV

Department of the
Interior

Minerals Management Service

30 CFR Parts 202, et al.

Royalties on Gas, Gas Analysis Reports,
Oil and Gas Production Measurement,
Surface Commingling, and Security; Final
Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 216, and 250

RIN 1010-AC23

Royalties on Gas, Gas Analysis Reports, Oil and Gas Production Measurement, Surface Commingling, and Security

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule amends MMS's regulations governing oil and gas operations in the Outer Continental Shelf (OCS) to update production measurement, surface commingling, and security requirements. It also amends the standards for reporting and paying royalties on gas. MMS needs this rule to implement a system to verify that gas sales are reported accurately.

EFFECTIVE DATES: July 13, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Research Branch, at (703) 787-1147.

SUPPLEMENTARY INFORMATION: On February 26, 1997, MMS published the proposed rule for 30 CFR part 250, Subpart L in the *Federal Register* (62 FR 8665). During the 90-day comment period that ended on May 27, 1997, MMS received comments from five organizations.

Similarly, on April 4, 1997, MMS published the proposed rule for 30 CFR parts 202 and 216 (62 FR 16121). During the 30-day comment period that ended on May 5, 1997, MMS did not receive any formal comments. This final rule combines both of these proposed rules. We have combined RIN numbers 1010-AB97 and 1010-AC23 and we are now using the most recent RIN 1010-AC23 for this rule. The rule is necessary to:

- Reflect current industry technology;
- Form the basis for a gas verification system (GVS), and
- Require tracking of gas lost or used on the lease.

The Response to Comments section discusses the comments that MMS received from the proposed rule on oil and gas production measurement, surface commingling, and security. We appreciate the suggestions and comments that we received.

Response to Comments

Section 250.181 Definitions

MMS received comments to revise the following definitions to make them clearer or to align them with industry use and standards. In many cases, we agreed and made the appropriate changes to the definition.

- *Allocation meter*—We revised the definition to make it clearer, but we did not align it with the standard industry definition because the term carries a different meaning for purposes of this subpart.

- *British Thermal Unit (Btu)*—We revised the definition to align it with text book use, but we did not add a requirement to use Gas Processors Association (GPA) standards to calculate the ideal heating value at this time. We are further analyzing the GPA standards.

- *Calibration*—We revised the definition for clarity. We also added a phrase to show that, in this subpart, calibration includes testing (verifying) and correcting (if necessary) a measuring device.

- *Fractional analysis*—We changed "fractional" to "compositional" analysis for clarity. However, we rejected the recommendation in the comments to state that it is always on a gas analysis report, because the compositional analyses may not be on that report.

- *Gas lost*—One commenter suggested that we define this term. We agree, and have added it to the final rule. Gas lost is gas that is neither sold nor used on the lease or unit nor used internally by the producer.

- *Gas allocation meter*—We deleted the definition because it is covered under the definition of allocation meter.

- *Gas meter*—We received a comment suggesting that we delete the term gas meter because it is not necessary. We agree and deleted it accordingly.

- *Gas processing plant and gas processing plant statement*—We revised the definitions for clarity. We received a comment to the effect that the inlet stream is not always measured for volume and quality and that the statement may be a large document. We will work with industry to get the information that we need in the most convenient format. Also, we do not expect to need more than a few gas processing plant statements per year. We are accounting for the cost in the information collection report.

- *Gas royalty meter malfunction*—We revised the definition for clarity.

- *Gas volume statement*—We revised the definition for clarity. We agree with comments to the effect that the owner of the meter is not always the transporter

of the gas. We therefore eliminated the descriptive statement that the owner of the gas meter prepares the document.

- *Inventory tank*—We added the definition for inventory tank because we use it in this subpart.

- *Liquid hydrocarbon*—We revised the definition for clarity. Contrary to the suggestion of one commenter, we did not define liquid hydrocarbons as hydrocarbons that always pass through lease facilities, because the processing plants are sometimes located onshore and not on an OCS lease.

- *Natural gas*—We revised the definition of natural gas for clarity.

- *Operating meter*—We revised the definition to clarify that the term includes only royalty and allocation meters.

- *Pressure base and temperature base*—We revised the definitions to require that these bases be used for reporting quality as well as volume.

- *Prove*—We revised the definition to agree with industry standards.

- *Retrograde condensate*—We revised the definition to agree with industry standards and added the term "pipeline" condensate here and throughout this subpart.

- *Royalty meter*—We revised the definition for clarity and accuracy.

- *Royalty tank*—We added this definition because it was cited under § 250.182(l) and not previously defined.

- *You or your*—We changed the word "contractor" in this definition to "lessee's representative" because much of the work in this subpart is performed by the lessee's representative.

Section 250.182 Liquid Hydrocarbon Measurement

- (b)(1)(i)—We received a comment to add turbine meters in addition to the positive displacement meters referenced in the proposed rule. We also received a comment that coriolis meters might be used. We agree. We have therefore made more general requirements.

- (b)(1)(v)—We added that a sediment and water monitor must be located upstream of the divert valve to recognize this common industry practice.

- (b)(4)(i)—We received a comment suggesting that we reference the industry standards for sampling. We agree and we revised the language accordingly.

- (b)(4)(iii)—We received a comment to be more specific about the sample probe location. We agree and made the suggested changes.

- (c)—We distinguished the requirements for run tickets that result from royalty meters from the requirements for run tickets pertaining to royalty tanks because they should be

treated slightly differently. We also reorganized this paragraph in order of importance.

- (d)(4)—We added a statement that allows for provings on a schedule that is different than monthly if the Regional Supervisor approves. This allows for unique situations that may occur.

- (e)(1)—We received a suggestion to require that the master meter be proved at several different rates to allow for the development of a meter factor curve. We realize that industry sometimes does this, and we will continue to evaluate this suggestion. We may address this, as well as technology advances, in a future rulemaking on gas measurement after the GVS is implemented.

- (h)(1)—We received a comment to change this phrase to the passive voice. MMS did not adopt this

recommendation because we are trying to write in the active voice to clarify who must meet the requirement. We also received a comment to list the decimal value and the percentage for the differences in proof runs. We did not adopt this recommendation throughout because, in some cases, the output is an absolute number and in other cases the calculation leads to a percentage. We therefore, kept them separate.

- (h)(2)—We received a comment to change the language on the master meter proof runs to conform with industry standards. We have adopted the recommendation.

- (i)(1)(i)—We received a comment to add the term "inspect" before adjusting a meter to conform with industry standards. We agree, and we revised the language.

- (i)(2)(iii)—We changed the location of reporting unregistered production from the proving report to the run ticket because this is standard practice.

- (k)(1)—We agree with a comment to add the modifier "proportional to flow" to clarify the meaning of taking a sample continuously. Therefore, we revised the language.

- (k)(6)—We received a comment that adjusting and reproving the meter (if a meter factor differs from a previous meter factor by a specified percentage) is an accounting adjustment and not a physical one. The comment is not accurate. This provision refers to a physical adjustment of the meter.

- (k)(7) and (k)(8)—We received a comment to combine these statements. We have not combined them because another commenter recommended that we recognize that turbine meters cannot be adjusted. Combining the statements would not properly list the requirements for turbine meters. Also, paragraph (k)(8) discusses the required procedure when the meter factor differs

by seven percent or more, in contrast to paragraph (k)(7)'s applicability to a meter factor difference of between two and seven percent. However, we have clarified the language to more precisely delineate the differences.

- (k)(9)—We added clarification that MMS may witness allocation meter provings. While this is not a change in policy, there seemed to be some question in the comments regarding whether MMS may witness allocation meter provings in addition to royalty meter provings.

- (l)—We separated tank facilities into "royalty" and "inventory" tank facilities because they should be treated differently.

Section 250.183 Gas Measurement

- (b)—We received a comment recommending that we include "operators" with "lessees" as parties who must meet this section's requirements. We agree. However, since the term "you" or "your" expressly includes operators and other lessee's representatives, this objective is accomplished by using the term "you," which we have done throughout the final rule.

- (b)(2)—We received a comment to add the term "verifiable" instead of the word "complete" before "measurement." We agree, and we modified the language.

- (b)(3)—We received a comment to add the phrase that measurement components "should demonstrate consistent levels of accuracy throughout the system" instead of "compatible with their connected systems." We added the phrase with the exception of the "should." MMS regulations are replacing forms of "shall" with "must."

- (b)(4)—We received comments saying that real time data should be displayed at the flow computer only. We agree, and we eliminated the phrase in the second sentence and referenced the industry standards.

- (b)(5)—We received comments saying that using on-line chromatographic analyzers is not necessary and not an industry practice because spot samples are sometimes taken. We agree, and we modified the language to reflect this. However, we did not restrict it to royalty sales meters because, like the current requirements on gas measurement, this also applies to allocation meters. However, less than 10 percent of the approved meters are allocation meters. Also, because MMS does not want to burden industry with additional sampling requirements, we changed the requirement from "monthly" to at least "every 6 months"

to correspond with current industry practice.

- (b)(6)—MMS may need to see the gas quality information gathered from sampling; therefore, we added a reporting requirement on gas sampling information that is already available to the lessee. However, we anticipate that we will only occasionally request the information.

- (b)(7)—We added that the standard conditions for reporting gross heating value reflect the same degree of water saturation as in the gas volume to agree with Royalty Management regulations. We understand that this is standard industry practice.

- (b)(8)—We received a comment that we need to clarify that we will accept copies of the gas volume statements. We agree, and we made this change. We also received a comment that it is unclear as to how and when the statements will be requested, and if this is a limited sampling program. The Regional Supervisor will request, from the lessee or the lessees' representative, a sampling of the statements, at various times during the year, covering the previous month. We expect the emphasis to be on OCS gas royalty meters.

- (b)(9)—We received comments saying that the data that the Regional Supervisor may request in this requirement is too open ended. We agree, and we modified the language accordingly. We recognize that occasionally the data that we need concerning volume and quality dispositions may not be on the gas volume statement; therefore, this requirement is meant to encompass that data. We also modified the Information Collection Request to reflect that, at first, this data may take longer to retrieve than we originally estimated. However, we feel that this will become routine after the first few submittals.

- (c)(1)—We received a comment saying that we should not change the current rates for calibrations. However, a monthly calibration is needed to ensure that the meters stay accurate, so we have not made the recommended change.

- (c)(2)—We received a comment saying that we should add "test (verify), repair, or/and calibrate the meter." We agree that these are the steps; however, our definition of calibration includes these steps so we changed the language to say "calibrate each meter by using the manufacturer's specifications."

- (c)(3)—We deleted the reference to specific meter types because other meters may be used. We also recognize that, as the commenter said, gas turbine meters are not customarily calibrated

but are subject to operational testing. In addition, we added that the calibration should be as close as possible to the average hourly rate because we received a comment that the flow rate may be beyond the control of those responsible for calibration. We also received a comment that a meter factor curve should be allowed because it will increase accuracy. We are still evaluating this comment and we will analyze it for use in future rulemakings.

• (c)(4)—We received a comment that we should delete the term "test data." We agree, and we changed the language to require that calibration reports, rather than test data, be retained.

• (c)(5)—We received a comment that MMS should witness only OCS royalty meter calibrations so we should change the rule to reflect this. We disagree. MMS may witness any calibrations for OCS royalty or allocation meters as defined in this subpart. In fact, the requirements in § 250.183 apply to both OCS gas royalty and allocation meters. This is not a change from the current requirements or the current policy. However, less than 10 percent of the approved meters are allocation meters. Inspections are needed if royalty is affected.

• (d)—We received a comment to add "out of calibration or" before "malfunctioning" because orifice meters are referred to as "out of calibration." We agree, and we made the change. We also received a comment that a meter malfunction is when it is not operating within contractual tolerances. We agree, and we revised the language and the definition.

• (d)(1)—We received a comment that the requirement to calibrate gas meters should only refer to royalty meters. We disagree. Gas allocation meters must also be calibrated. This is not a change from current requirements.

• (d)(2)(i)—One commenter recommended removing the statement that MMS "does not require retroactive volume adjustments for allocation beyond 21 days" that was made in the proposed rule after the requirement to calculate the volume adjustment for the determinable period of a calibration error. The commenter felt that the quoted statement would hinder industry in obtaining monetary adjustments from purchasers for periods longer than 21 days for which adjustments for allocation would be nevertheless required because the error period could not be determined. We agree, and we revised the final rule accordingly.

• (e)(1)(i)—We received a comment to add that we are requiring only a copy of the gas processing plant statement. We agree, and we revised the final rule.

We also received a comment to be more specific about what we are asking for on the statement. We agree, and the new paragraph (e)(1)(ii), specifies that we need the gross heating values of the inlet and residue streams if they are not reported on the gas plant statement. However, we believe that most gas plant statements will have the necessary information.

• (e)(1)(ii)—We received a comment saying that we should delete the requirement to submit gas volume statements for each meter facility because the information will already be on the gas volume statement that we may request. We agree, and we deleted the requirement.

• (e)(1)(iii)—We received a comment saying that gathering the compositional fractional analyses for the gas plant statements will be very time consuming for industry. We agree, and we deleted the term "composite fractional analyses."

• (e)(2)—One commenter inquired why MMS would inspect gas plants. MMS recognizes that most of the royalty measuring points for gas meters in the Gulf of Mexico OCS are located on OCS offshore facilities. However, that is not the case in the Pacific OCS where almost all of the oil and gas royalty measuring points are located at an onshore oil and gas plant facility and operated by the lessee.

Though most onshore oil and gas plants are on State owned property, the oil and gas that comes into the plant is still oil and gas produced from the Federal OCS and subject to all of the laws and regulations pertaining to Federal royalty and inspection requirements. This includes access to the onshore facility's Liquid Automatic Custody Transfer (LACT) Unit and gas sales meters for the purpose of witnessing a LACT meter proving, a gas meter calibration, or site security for both royalty measuring points. These inspections will continue to be conducted by MMS inspectors. However, we only expect to need information from a relatively few gas plants each year.

Section 250.184 Surface Commingling

• (a)(2)(iii)—We received a comment saying that this requirement was too open ended as stated. We agree. In the end, we deleted most of the specific requirements concerning the contents of a commingling application because we did not want to create a misunderstanding that no other kinds of information would ever be necessary. Because each commingling application is unique, it is best to contact the

Regional Supervisor prior to submitting a commingling application.

• (a)(3)—We received a comment saying that MMS should publish the paper presented at the May 29, 1996, Acadian Flow Measurement Society Conference. Because it is only an example of a commingling application, we have not published it as part of the regulations. However, the paper is available to the public. Please contact the Regional Supervisor in the Gulf of Mexico OCS Region if you would like a copy.

• (a)(4)—We received a comment that MMS should delete this requirement [currently (a)(2)] because it is inappropriate. We agree that as written it may be confusing; therefore, we significantly re-wrote the requirement for clarity.

Section 250.185 Site Security

• (a)(2)—We received a request to clarify if this requirement pertains to onshore or offshore tanks and to stock or surge tanks. This applies to both inventory and royalty tanks (onshore and offshore) which are used in the royalty determination process. Therefore, by definition, this includes surge tanks. We clarified the requirement.

• (b)(1)—We received a comment to add the term "meter" after "royalty." We agree, and we revised the final rule for clarification.

• (b)(1)(i)—We received a comment saying that it is impractical to seal the conduit leading to the control room. We agree, and we modified the language to clarify the location for the seals.

• (b)(1)(ii)—We received a comment requesting clarification on the seals for sampling systems. We agree, and we removed the term *chains*.

• (b)(2)—We received comments concerning our statement in the preamble that we may require seals on gas meters. A comment stated that it is impractical to seal an orifice meter. Another comment said that to seal all valves and gas metering devices in the Gulf of Mexico is needless. We did not intend to have orifice meter, or all valves and gas meter devices, sealed. Therefore, we changed the language to say *seal all bypass valves of gas royalty and allocation meters*. We are including the increased cost of the seals in our economic analysis.

Section 250.186 Measuring Gas Lost or Used on a Lease

In the final rule, MMS moved this section to new paragraphs in § 250.183 (f) (1) through (5) because it relates to gas measurement.

• (a)—We received comments that MMS should not require a lessee to measure the gas lost or used on a lease in every case because we currently allow them to either estimate or measure those volumes. We agree, and we modified the language.

• (b)—We received a comment that the cost of measuring gas lost or used on a lease would be substantial if the meters are not currently in place. We agree, and we modified the language to give the lessee the option of measuring or estimating the gas lost or used. We also received a question concerning what we mean by gas lost. Gas lost is gas that is neither sold nor used on the lease or unit nor used internally by the producer. We have added a definition of this term in § 250.181.

• (d)—We received a comment that documents are not always retained at the site but they can be easily obtained for an inspector to see. We agree, and we modified the language in the final rule. We also added that the documents must be kept for *at least* 2 years for consistency with audit requirements. If an audit occurs, MMS requires 6 years of documents under separate regulations governing audits. However, the inspectors will only need to see documents for the previous 2 years.

General Comments

• We received comments concerning the time it will take to submit copies of gas volume statements. We intend for this to be a sampling approach—on an "as needed" basis, upon the request of the Regional Supervisor. We realize that at first it will take longer to submit the copies of the statements. Also, occasionally we anticipate that the statement may not have the usual and customary volume and quality information or the saturation conditions. However, in time, the needed information should become relatively routine to obtain. We will work with industry to minimize the burden and to make the reporting and the methods of reporting as accommodating as possible. We also modified the information collection to reflect the possibility of some

information being more difficult to obtain at first.

• We received comments on the subject of "Documents Incorporated." The comment said that we need to incorporate three additional Chapters from the American Petroleum Institute (API) Manual of Petroleum Measurement Standard (MPMS). After reviewing the Chapters, we have incorporated: Chapter 1, Vocabulary; Chapter 20.1, Allocation Measurement; and Chapter 21.1, Electronic Gas Measurement as referenced in 30 CFR 250, Subpart A. MMS regulations that are different than the cited standards supersede the standard. For example, MMS has a few slightly different definitions and a different calibration rate than the cited standard, but MMS requirements will supersede the standard. Further, by adopting the API MPMS Chapter 20.1, Allocation Measurement, MMS is not automatically adopting the API MPMS Chapter 14.1, Collecting and Handling of Natural Gas Samples for Custody Transfer, which is cited in the standard document. We are reviewing that standard. Also, the new tabular format for the documents that we incorporate was created to assist users to easily find the citations for the documents that we incorporate by reference. We hope that you find this useful.

• In the proposed rule, MMS also sought comments on the applicable industry standards listed in 30 CFR 250.1 and incorporated by reference in the proposed rule (62 FR 8666). MMS received no negative comments on the use of those standards.

Executive Order (E.O.) 12866

This rule is not significant under E.O. 12866 and has not been reviewed by the Office of Management and Budget. The estimated total annual cost of compliance is less than \$100 million, and the estimated level of newly imposed costs should not affect business and operating decisions in the OCS.

E.O. 12988

The Department of the Interior (DOI) has certified to the Office of Management and Budget (OMB) that

this rule meets the applicable reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of \$100 million or more in any year on State, local, and tribal governments, or the private sector.

Regulatory Flexibility Act

DOI has determined that because this rule applies to all OCS lessees, the lessees that are small businesses will be affected. However, the new economic burden, that includes collecting information and keeping records, is not a significant burden when compared to the amount of funding that is required to operate in the OCS. The annual burden to all OCS lessees is expected to be \$186,550 for reporting and recordkeeping. In addition, the annual burden for complying with new seal and sampling requirements that are not standard practice is estimated to be \$21,000. The impact is calculated using \$35 per burden hour. In comparison, the average annual operating cost for each facility on the OCS is approximately \$1 million per facility and \$300,000 per well. This is in addition to the capital cost for the facility which may be greater than \$200 million. Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734-3247.

Paperwork Reduction Act (PRA)

This rule contains information collections with different OMB approval numbers. The information collections are affected by this rule as shown in the following table.

The information collections in	Have the OMB approval number	and
Parts 202 and 216	1010-0040	Are not modified by this rule.
Subpart L of part 250	1010-0051	Are modified by this rule.

As part of the notice of proposed rulemaking (NPR) process, we

submitted the revised information

collection requirements in 30 CFR part 250, Subpart L, to OMB for approval.

OMB approved the information collection under OMB Control No. 1010-0051. A discussion of the comments received on the information collection aspects of the NPR for this subpart is included in the preamble. Based on changes made in this rule, we've submitted a revised information collection package to OMB for approval. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection aspects of this final rule will not take effect until approved by OMB. We will publish a notice in the **Federal Register** announcing the OMB approval of the revised collection of information associated with 30 CFR 250, Subpart L.

We invite the public and other Federal agencies to comment on this collection of information. Send comments regarding any aspect of the collection to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (1010-0051), 725 17th Street N.W., Washington, D.C. 20503. Send a copy of your comments to the Information Collection Clearance Officer, Minerals Management Service, 1849 C Street N.W., MS 4230, Washington, D.C. 20240. OMB is required to make a decision concerning the collection of information contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, your comments are best assured of being considered by OMB if OMB receives them by June 11, 1998.

This final rule for 30 CFR part 250, Subpart L, makes very few changes to the information collection requirements approved for the proposed rulemaking. Minor changes include relocating or separating various requirements for clarity and specificity. We reestimated the burdens for providing gas volume statements to reflect that, at first, these data may take longer to retrieve than we originally estimated. We also made slight adjustments to other estimates. There are two new requirements at §§ 250.182(a)(4) and (d)(4). The first requires lessees to submit pipeline (retrograde) condensate volumes upon request; and the second accommodates unique situations that may occur and allows for provings on a schedule that is different than monthly if the Regional Supervisor approves.

MMS collects the information required in Subpart L in order to ensure that the volumes of hydrocarbons produced are measured accurately, and royalties are paid on the proper

volumes. Specifically, MMS uses the information to:

- Determine if measurement equipment is properly installed, provides accurate measurement of production on which royalty is due, and is operating properly;
- Obtain rates of production data in allocating the volumes of production measured at royalty sales meters which can be examined during field inspections;
- Ascertain if all removals of oil and condensate from the lease are reported;
- Determine the amount of oil that was shipped when measurements are taken by gauging the tanks rather than being measured by a meter;
- Ensure that the sales location is secure and production cannot be removed without the volumes being recorded; and
- Review proving reports to verify that data on run tickets are calculated and reported accurately.

Responses are mandatory. We will protect information considered proprietary under applicable law and under regulations at § 250.18 of this part and 30 CFR part 252 of this chapter.

Respondents are approximately 130 Federal OCS oil and gas lessees. The reporting and recordkeeping hour burden varies by section of the rule. We estimate the total burden will average approximately 41 hours per respondent. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may contact the MMS Information Collection Clearance Officer at 202/208-7744 to obtain a copy of the burden breakdown and the complete supporting statement submitted to OMB. In calculating the burdens, we've assumed that respondents perform some of the requirements and maintain records in the normal course of their activities. We consider these to be usual and customary. We invite your comments if you disagree with this assumption.

(1) We specifically solicit comments on the following questions:

- (a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?
- (b) Are the burden hour estimates reasonable for the proposed collection?
- (c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?
- (d) Is there a way to minimize the information collection burden on the applicants, including the use of appropriate automated electronic,

mechanical, or other forms of information technology?

(2) In addition, the PRA requires us to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. We need your comments on this item. Your response should split the cost estimate into two components:

- (a) Total capital and startup cost component; and
- (b) Annual operation, maintenance, and purchase of services component.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

Takings Implication Assessment

DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

DOI determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 216

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Natural gas, Petroleum, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: April 24, 1998.

Bob Armstrong,
Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) is amending 30 CFR parts 202, 216, and 250 as follows:

PART 202—ROYALTIES

1. The authority citation for part 202 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*, 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*, 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*, 31 U.S.C. 9701 *et seq.*, 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

Subpart D—Federal and Indian Gas

2. Revise § 202.152(a)(1) to read as follows:

§ 202.152 Standards for reporting and paying royalties on gas.

(a)(1) If you are responsible for reporting production or royalties, you must:

- (i) Report gas volumes and British thermal unit (Btu) heating values, if

applicable, under the same degree of water saturation;

- (ii) Report gas volumes in units of 1,000 cubic feet (mcf); and

- (iii) Report gas volumes and Btu heating value at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60° F.

* * *

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*, 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*, 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*, 31 U.S.C. 3716, 3720A, 9701, 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

Subpart B—Oil and Gas, General

2. Revise § 216.54 to read as follows:

§ 216.54 Gas Analysis Report.

When requested by MMS, any operator must file a Gas Analysis Report (GAR) (Form MMS-4055) for each royalty or allocation meter. The form must contain accurate and detailed gas analysis information. This requirement applies to offshore, onshore, or Indian leases.

(a) MMS may request a GAR when you sell gas, or transfer gas for processing, before the point of royalty computation.

(b) When MMS first requests this report, the report is due within 30 days. If MMS requests subsequent reports, they will be due no later than 45 days after the end of the month covered by the report.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. Revise § 250.1 to read as follows:

§ 250.1 Documents incorporated by reference.

(a) MMS is incorporating by reference the documents listed in the table in paragraph (d) of this section. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(1) MMS will publish any changes to these documents in the **Federal Register**.

(2) The rule change will become effective without prior opportunity to comment when MMS determines that the revisions to a document result in safety improvements or represent new industry standard technology, and do not impose undue costs on the affected parties.

(b) MMS has incorporated each document or specific portion by reference in the sections noted. The entire document is incorporated by reference, unless the text of the corresponding sections in this part calls for compliance with specific portions of the listed documents. In each instance, the applicable document is the specific edition or specific edition and supplement or addendum cited in this section.

(c) In accordance with §§ 250.3 (c), and 250.14(b), you may comply with a later edition of a specific document incorporated by reference provided:

(1) You demonstrate that compliance with the later edition provides a degree of protection, safety, or performance equal to or better than that which would be achieved by compliance with the listed edition; and

(2) You obtain the prior written approval for alternative compliance from the authorized MMS official.

(d) You may inspect these documents at the Minerals Management Service, 381 Elden Street, Room 3313, Herndon, Virginia; or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C.. You may obtain the documents from the publishing organizations at the addresses given in the following table.

For	Write to
ACI Standards	American Concrete Institute, P. O. Box 19150, Detroit, MI 48219.
AISC Standards	AISC—American Institute of Steel Construction, Inc., P.O. Box 4588, Chicago, IL 60680.
ANSI/ASME Codes	American National Standards Institute, Attention Sales Department, 1430 Broadway, New York, NY 10018; and/or American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017.
API Recommended Practices, Specs, Standards, Manual of Petroleum Measurement Standards (MPMS) chapters.	American Petroleum Institute, 1220 L Street N.W., Washington, D.C. 20005.
ASTM Standards	American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.
AWS Codes	American Welding Society, 550 N.W., LeJeune Road, P.O. Box 351040, Miami, FL 33135.
NACE Standards	National Association of Corrosion Engineers, P.O. Box 218340, Houston, TX 77218.

(e) In order to easily reference text of the corresponding sections with the list of documents incorporated by reference, the list is in alphanumerical order by organization and document.

Title of document	Incorporated by reference at
ACI Standard 318-95, Building Code Requirements for Reinforced Concrete, plus Commentary on Building Code Requirements for Reinforced Concrete (ACI 318R-95).	§ 250.138(b)(4)(i), (b)(6)(i), (b)(7), (b)(8)(i), (b)(9), (b)(10), (c)(3), (d)(1)(v), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (e)(1)(i), (e)(2)(i).
ACI Standard 357-R-84, Guide for the Design and Construction of Fixed Offshore Concrete Structures, 1984.	§ 250.130(g); § 250.138 (c)(2), (c)(3).
AISC Standard, Specification for Structural Steel for Buildings, Allowable Stress Design and Plastic Design, June 1, 1989, with Commentary.	§ 250.137(b)(1)(ii), (c)(4)(iii), (c)(4)(vii).
ANSI/ASME Boiler and Pressure Vessel Code, Section I, Power Boilers including Appendices, 1995 Edition.	§ 250.123(b)(1), (b)(1)(i); § 250.292(b)(1), (b)(1)(i).
ANSI/ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers including Non-mandatory Appendices A, B, C, D, E, F, H, I, and J, and the Guide to Manufacturers Data Report Forms, 1995 Edition.	§ 250.123(b)(1), (b)(1)(i); § 250.292(b)(1), (b)(1)(i).
ANSI/ASME Boiler and Pressure Vessel Code, Section VIII, Pressure Vessels, Divisions 1 and 2, including Nonmandatory Appendices, 1995 Edition.	§ 250.123(b)(1), (b)(1)(i); § 250.292(b)(1), (b)(1)(i).
ANSI/ASME B 16.5-1988 (including Errata) and B 16.5a-1992 Addenda, Pipe Flanges and Flanged Fittings.	§ 250.152(b)(2).
ANSI/ASME B 31.8-1995, Gas Transmission and Distribution Piping Systems	§ 250.152(a).
ANSI Z88.2-1992, American National Standard for Respiratory Protection	§ 250.67(g)(4)(iv), (j)(13)(ii).
ANSI/ASME SPPE-1-1994 and SPPE-1d-1996, ADDENDA, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations.	§ 250.126(a)(2)(ii).
API RP 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms Working Stress Design, Nineteenth Edition, August 1, 1991, API Stock No. 811-00200.	§ 250.130(g); § 250.142(a).
API RP 2D, Recommended Practice for Operation and Maintenance of Offshore Cranes, Third Edition, June 1, 1995, API Stock No. G02D03.	§ 250.20(c); § 250.260(g).
API RP 14B, Recommended Practice for Design, Installation, Repair and Operation of Sub-surface Safety Valve Systems, Fourth Edition, July 1, 1994, with Errata dated June 1996, API Stock No. G14B04.	§ 250.121(e)(4); § 250.126(d).
API RP 14C, Recommended Practice for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Fourth Edition, September 1, 1986, API Stock No. 811-07180.	§ 250.121(e)(4); § 250.124(a)(1)(i); § 250.126(d).
API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems, Fifth Edition, October 1, 1991, API Stock No. G07185.	§ 250.122(b), (e)(2); § 250.123(a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v), (c)(2); § 250.124(a), (a)(5); § 250.152(d); § 250.154(b)(9); § 250.291(c), (d)(2); § 250.292(b)(2), (b)(4)(v); § 250.293(a).
API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Offshore Production Platforms, Third Edition, September 1, 1991, API Stock No. G07190.	§ 250.122(e)(3); § 250.291(b)(2), (d)(3).
API RP 14G, Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms, Third Edition, December 1, 1993, API Stock No. G07194.	§ 250.53(c); § 250.123(b)(9)(v); § 250.292(b)(4)(v).
API RP 14H, Recommended Practice for Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, Fourth Edition, July 1, 1994, API Stock No. G14H04.	§ 250.123(b)(8), (b)(9)(v); § 250.292(b)(3), (b)(4)(v).
API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, First Edition, June 1, 1991, API Stock No. G06005.	§ 250.122(d); § 250.126(d).
API RP 2556, Recommended Practice for Correcting Gauge Tables for Incrustation, Second Edition, August 1993, API Stock No. H25560.	§ 250.53(b); § 250.122(e)(4)(i); § 250.123(b)(9)(i); § 250.291(b)(3); (d)(4)(i); § 250.292(b)(4)(i).
API Spec Q1, Specification for Quality Programs, Third Edition, June 1990, API Stock No. 811-00001a.	§ 250.182(i)(4).
API Spec 6A, Specification for Wellhead and Christmas Tree Equipment, Seventeenth Edition, February 1, 1996, API Stock No. G06A17.	§ 250.126(a)(2)(ii).
API Spec 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, First Edition, February 1, 1996, API Stock No. G06AV1.	§ 250.126 (a)(3); § 250.152(b)(1), (b)(2).
API Spec 6D, Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves), Twenty-first Edition, March 31, 1994, API Stock No. G03200.	§ 250.126(a)(3).
API Spec 14A, Specification for Subsurface Safety Valve Equipment, Ninth Edition, July 1, 1994, API Stock No. G14A09.	§ 250.152(b)(1).
API Spec 14D, Specification for Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Ninth Edition, June 1, 1994, with Errata dated August 1, 1994, API Stock No. G07183.	§ 250.126(a)(3).
API Standard 2545, Method of Gaging Petroleum and Petroleum Products, October 1965, reaffirmed October 1992; also available as ANSI/American Society of Testing Materials (ASTM) D 1085-65, API Stock No. H25450.	§ 250.126(a)(3).
API Standard 2551, Standard Method for Measurement and Calibration of Horizontal Tanks, First Edition, 1965, reaffirmed October 1992; also available as ANSI/ASTM D 1410-65, re-approved 1984, API Stock No. H25510.	§ 250.182(i)(4).
API Standard 2552, Measurement and Calibration of Spheres and Spheroids, First Edition, 1966, reaffirmed October 1992; also available as ANSI/ASTM D 1408-65, reapproved 1984, API Stock No. H25520.	§ 250.182(i)(4).

Title of document	Incorporated by reference at
API Standard 2555, Method for Liquid Calibration of Tanks, September 1966, reaffirmed October 1992; also available as ANSI/ASTM D 1406-65, reapproved 1984, API Stock No. H25550.	§ 250.182(i)(4).
MPMS, Chapter 1, Vocabulary, Second Edition, July 1994, API Stock No. H01002	§ 250.181.
MPMS, Chapter 2, Tank Calibration, Section 2A, Measurement and Calibration of Upright Cylindrical Tanks by the Manual Strapping Method, First Edition, February 1995, API Stock No. H022A1.	§ 250.182(i)(4).
MPMS, Chapter 2, Section 2B, Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method, First Edition, March 1989; also available as ANSI/ASTM D4738-88, API Stock No. H30023.	§ 250.182(i)(4).
MPMS, Chapter 3, Tank Gauging, Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, First Edition, December 1994, API Stock No. H031A1.	§ 250.182(i)(4).
MPMS, Chapter 3, Section 1B, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, First Edition, April 1992, API Stock No. H30060.	§ 250.182(i)(4).
MPMS, Chapter 4, Proving Systems, Section 1, Introduction, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30081.	§ 250.182(a)(3), (f)(1).
MPMS, Chapter 4, Section 2, Conventional Pipe Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30082.	§ 250.182(a)(3), (f)(1).
MPMS, Chapter 4, Section 3, Small Volume Provers, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30083.	§ 250.182(a)(3), (f)(1).
MPMS, Chapter 4, Section 4, Tank Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30084.	§ 250.182(a)(3), (f)(1).
MPMS, Chapter 4, Section 5, Master-Meter Provers, First Edition, October 1988, reaffirmed October 1993, API Stock No. H30085.	§ 250.182(a)(3), (f)(1).
MPMS, Chapter 4, Section 6, Pulse Interpolation, First Edition, July 1988, reaffirmed October 1993, API Stock No. H30086.	§ 250.182(a)(3), (f)(1).
MPMS, Chapter 4, Section 7, Field-Standard Test Measures, First Edition, October 1988, API Stock No. H30087.	§ 250.182(a)(3), (f)(1).
MPMS, Chapter 5, Metering, Section 1, General Considerations for Measurement by Meters, Third Edition, September 1995, API Stock No. H05013.	§ 250.182(a)(3).
MPMS, Chapter 5, Section 2, Measurement of Liquid Hydrocarbons by Displacement Meters, Second Edition, November 1987, reaffirmed October 1992, API Stock No. H30102.	§ 250.182(a)(3).
MPMS, Chapter 5, Section 3, Measurement of Liquid Hydrocarbons by Turbine Meters, Third Edition, September 1995, API Stock No. H05033.	§ 250.182(a)(3).
MPMS, Chapter 5, Section 4, Accessory Equipment for Liquid Meters, Third Edition, September 1995, with Errata, March 1996, API Stock No. H05043.	§ 250.182(a)(3).
MPMS, Chapter 5, Section 5, Fidelity and Security of Flow Measurement Pulsed-Data Transmission Systems, First Edition, June 1982, reaffirmed October 1992, API Stock No. H30105.	§ 250.182(a)(3).
MPMS, Chapter 6, Metering Assemblies, Section 1, Lease Automatic Custody Transfer (LACT) Systems, Second Edition, May 1991, API Stock No. H30121.	§ 250.182(a)(3).
MPMS, Chapter 6, Section 6, Pipeline Metering Systems, Second Edition, May 1991, API Stock No. H30126.	§ 250.182(a)(3).
MPMS, Chapter 6, Section 7, Metering Viscous Hydrocarbons, Second Edition, May 1991, API Stock No. H30127.	§ 250.182(a)(3).
MPMS, Chapter 7, Temperature Determination, Section 2, Dynamic Temperature Determination, Second Edition, March 1995, API Stock No. H07022.	§ 250.182 (a)(3), (i)(4).
MPMS, Chapter 7, Section 3, Static Temperature Determination Using Portable Electronic Thermometers, First Edition, July 1985, reaffirmed March 1990, API Stock No. H30143.	§ 250.182 (a)(3), (i)(4).
MPMS, Chapter 8, Sampling, Section 1, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, Third Edition, October 1995; also available as ANSI/ASTM D 4057-88, API Stock No. H30161.	§ 250.182 (b)(4)(i), (i)(4).
MPMS, Chapter 8, Section 2, Standard Practice for Automatic Sampling of Liquid Petroleum and Petroleum Products, Second Edition, October 1995; also available as ANSI/ASTM D 4177, API Stock No. H30162.	§ 250.182 (a)(3), (i)(4).
MPMS, Chapter 9, Density Determination, Section 1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, reaffirmed October 1992; also available as ANSI/ASTM D 1298, API Stock No. H30181.	§ 250.182 (a)(3), (i)(4).
MPMS, Chapter 9, Section 2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, reaffirmed October 1992, API Stock No. H30182.	§ 250.182 (a)(3), (i)(4).
MPMS, Chapter 10, Sediment and Water, Section 1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method, First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 473, API Stock No. H30201.	§ 250.182 (a)(3), (i)(4).
MPMS, Chapter 10, Section 2, Determination of Water in Crude Oil by Distillation Method, First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 4006, API Stock No. H30202.	§ 250.182 (a)(3), (i)(4).
MPMS, Chapter 10, Section 3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure), First Edition, April 1981, reaffirmed December 1993; also available as ANSI/ASTM D 4007, API Stock No. H30203.	§ 250.182 (a)(3), (i)(4).
MPMS, Chapter 10, Section 4, Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure), Second Edition, May 1988; also available as ANSI/ASTM D 96, API Stock No. H30204.	§ 250.182 (a)(3), (i)(4).

Title of document	Incorporated by reference at
MPMS, Chapter 11.1, Volume Correction Factors, Volume 1, Table 5A—Generalized Crude Oils and JP-4 Correction of Observed API Gravity to API Gravity at 60°F, and Table 6A—Generalized Crude Oils and JP-4 Correction of Observed API Gravity to API Gravity at 60°F, First Edition, August 1980, reaffirmed October 1993; also available as ANSI/ASTM D 1250, API Stock No. H27000.	§ 250.182 (a)(3), (g)(3), (l)(4).
MPMS, Chapter 11.2.1, Compressibility Factors for Hydrocarbons: 0–90° API Gravity Range, First Edition, August 1984, reaffirmed May 1996, API Stock No. H27300.	§ 250.182(a)(3),(g)(4).
MPMS, Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.350–0.637 Relative Density (60°F/60°F) and –50°F to 140°F Metering Temperature, Second Edition, October 1986, reaffirmed October 1992; also available as Gas Processors Association (GPA) 8286–86, API Stock No. H27307.	§ 250.182(a)(3),(g)(4).
MPMS, Chapter 11, Physical Properties Data, Addendum to Section 2.2, Compressibility Factors for Hydrocarbons, Correlation of Vapor Pressure for Commercial Natural Gas Liquids, First Edition, December 1994; also available as GPA TP–15, API Stock No. H27308.	§ 250.182(a)(3).
MPMS, Chapter 11.2.3, Water Calibration of Volumetric Provers, First Edition, August 1984, reaffirmed, May 1996, API Stock No. H27310.	§ 250.182(f)(1).
MPMS, Chapter 12, Calculation of Petroleum Quantities, Section 2, Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors, Including Parts 1 and 2, Second Edition, May 1995; also available as ANSI/API MPMS 12.2–1981, API Stock No. H30302.	§ 250.182(a)(3), (g)(1), (g)(2).
MPMS, Chapter 14, Natural Gas Fluids Measurement, Section 3, Concentric Square-Edged Orifice Meters, Part 1, General Equations and Uncertainty Guidelines, Third Edition, September 1990; also available as ANSI/API 2530, Part 1, 1991, API Stock No. H30350.	§ 250.183(b)(2).
MPMS, Chapter 14, Section 3, Part 2, Specification and Installation Requirements, Third Edition, February 1991; also available as ANSI/API 2530, Part 2, 1991, API Stock No. H30351.	§ 250.183(b)(2).
MPMS, Chapter 14, Section 3, Part 3, Natural Gas Applications, Third Edition, August 1992; also available as ANSI/API 2530, Part 3, API Stock No. H30353.	§ 250.183(b)(2).
MPMS, Chapter 14, Section 5, Calculation of Gross Heating Value, Relative Density, and Compressibility Factor for Natural Gas Mixtures From Compositional Analysis, Revised, 1996; also available as ANSI/API MPMS 14.5–1981, order from Gas Processors Association, 6526 East 60th Street, Tulsa, Oklahoma 74145.	§ 250.183(b)(2).
MPMS, Chapter 14, Section 6, Continuous Density Measurement, Second Edition, April 1991, API Stock No. H30346.	§ 250.183(b)(2).
MPMS, Chapter 14, Section 8, Liquefied Petroleum Gas Measurement, First Edition, February 1983, reaffirmed May 1996, API Stock No. H30348.	§ 250.183(b)(2).
MPMS, Chapter 20, Section 1, Allocation Measurement, First Edition, September 1993, API Stock No. H30701.	§ 250.182(k)(1).
MPMS, Chapter 21, Section 1, Electronic Gas Measurement, First Edition, September 1993, API Stock No. H30730.	§ 250.183(b)(4).
ASTM Standard C33–93, Standard Specification for Concrete Aggregates including Nonmandatory Appendix.	§ 250.138(b)(4)(i).
ASTM Standard C94–96, Standard Specification for Ready-Mixed Concrete	§ 250.138(e)(2)(i).
ASTM Standard C150–96a, Standard Specification for Portland Cement	§ 250.138(b)(2)(i).
ASTM Standard C330–89, Standard Specification for Lightweight Aggregates for Structural Concrete.	§ 250.138(b)(4)(i).
ASTM Standard C595–94, Standard Specification for Blended Hydraulic Cements	§ 250.138(b)(2)(i).
D1.1–96, Structural Welding Code—Steel, 1996, including Commentary	§ 250.137(b)(1)(i).
D1.4–79, Structural Welding Code—Reinforcing Steel, 1979	§ 250.138 (e)(3)(ii).
NACE Standard MR–01–75–96, Sulfide Stress Cracking Resistant Metallic Materials for Oil Field Equipment, January 1996.	§ 250.67 (p)(2).
NACE Standard RP 0176–94, Standard Recommended Practice, Corrosion Control of Steel Fixed Offshore Platforms Associated with Petroleum Production.	§ 250.137(d).

3. Revise Subpart L to read as follows: 250.184 Surface commingling.
250.185 Site security.

Subpart L—Oil and Gas Production Measurement Surface Commingling, and Security

- Sec.
250.180 Question index table.
250.181 Definitions.
250.182 Liquid hydrocarbon measurement.
250.183 Gas measurement.

Subpart L—Oil and Gas Production Measurement, Surface Commingling, and Security

§ 250.180 Question Index Table.

The table in this section lists questions concerning Oil and Gas Production Measurement, Surface Commingling, and Security.

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Frequently asked questions	CFR citation
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§ 250.181 Definitions.

Terms not defined in this section have the meanings given in the applicable chapter of the API MPMS, which is incorporated by reference in 30 CFR 250.1. Terms used in Subpart L have the following meaning:

Allocation meter—a meter used to determine the portion of hydrocarbons attributable to one or more platforms, leases, units, or wells, in relation to the total production from a royalty or allocation measurement point.

API MPMS—the American Petroleum Institute's Manual of Petroleum Measurement Standards, chapters 1, 20, and 21.

British Thermal Unit (Btu)—the amount of heat needed to raise the temperature of one pound of water from 59.5 degrees Fahrenheit (59.5 °F) to 60.5 degrees Fahrenheit (60.5 °F) at standard pressure base (14.73 pounds per square inch absolute (psia)).

Calibration—testing (verifying) and correcting, if necessary, a measuring device to industry accepted, manufacturer's recommended, or regulatory required standard of accuracy.

Compositional Analysis—separating mixtures into identifiable components expressed in mole percent.

Gas lost—gas that is neither sold nor used on the lease or unit nor used internally by the producer.

Gas processing plant—an installation that uses any process designed to remove elements or compounds (hydrocarbon and non-hydrocarbon) from gas, including absorption, adsorption, or refrigeration. Processing does not include treatment operations, including those necessary to put gas into marketable conditions such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, desulfurization, and

compression. The changing of pressures or temperatures in a reservoir is not processing.

Gas processing plant statement—a monthly statement showing the volume and quality of the inlet or field gas stream and the plant products recovered during the period, volume of plant fuel, flare and shrinkage, and the allocation of these volumes to the sources of the inlet stream.

Gas royalty meter malfunction—an error in any component of the gas measurement system which exceeds contractual tolerances.

Gas volume statement—a monthly statement showing gas measurement data, including the volume (Mcf) and quality (Btu) of natural gas which flowed through a meter.

Inventory tank—a tank in which liquid hydrocarbons are stored prior to royalty measurement. The measured volumes are used in the allocation process.

Liquid hydrocarbons (free liquids)—hydrocarbons which exist in liquid form at standard conditions after passing through separating facilities.

Malfunction factor—a liquid hydrocarbon royalty meter factor that differs from the previous meter factor by an amount greater than 0.0025.

Natural gas—a highly compressible, highly expandable mixture of hydrocarbons which occurs naturally in a gaseous form and passes a meter in vapor phase.

Operating meter—a royalty or allocation meter that is used for gas or liquid hydrocarbon measurement for any period during a calibration cycle.

Pressure base—the pressure at which gas volumes and quality are reported. The standard pressure base is 14.73 psia.

Prove—to determine (as in meter proving) the relationship between the

volume passing through a meter at one set of conditions and the indicated volume at those same conditions.

Pipeline (retrograde) condensate—liquid hydrocarbons which drop out of the separated gas stream at any point in a pipeline during transmission to shore.

Royalty meter—a meter approved for the purpose of determining the volume of gas, oil, or other components removed, saved, or sold from a Federal lease.

Royalty tank—an approved tank in which liquid hydrocarbons are measured and upon which royalty volumes are based.

Run ticket—the invoice for liquid hydrocarbons measured at a royalty point.

Sales meter—a meter at which custody transfer takes place (not necessarily a royalty meter).

Seal—a device or approved method used to prevent tampering with royalty measurement components.

Standard conditions—atmospheric pressure of 14.73 pounds per square inch absolute (psia) and 60° F.

Surface commingling—the surface mixing of production from two or more leases or units prior to measurement for royalty purposes.

Temperature base—the temperature at which gas and liquid hydrocarbon volumes and quality are reported. The standard temperature base is 60° F.

You or your—the lessee or the operator or other lessees' representative engaged in operations in the Outer Continental Shelf (OCS).

§ 250.182 Liquid hydrocarbon measurement.

(a) What are the requirements for measuring liquid hydrocarbons? You must:

(1) Submit a written application to, and obtain approval from, the Regional

Supervisor before commencing liquid hydrocarbon production or making changes to previously approved measurement procedures;

(2) Use measurement equipment that will accurately measure the liquid hydrocarbons produced from a lease or unit;

(3) Use procedures and correction factors according to the applicable chapters of the API MPMS as incorporated by reference in 30 CFR 250.1, when obtaining net standard volume and associated measurement parameters; and

(4) When requested by the Regional Supervisor, provide the pipeline (retrograde) condensate volumes as allocated to the individual leases or units.

(b) *What are the requirements for liquid hydrocarbon royalty meters?* You must:

(1) Ensure that the royalty meter facilities include the following approved components (or other MMS-approved components) which must be compatible with their connected systems:

(i) A meter equipped with a nonreset totalizer;

(ii) A calibrated mechanical displacement (pipe) prover, master meter, or tank prover;

(iii) A proportional-to-flow sampling device pulsed by the meter output;

(iv) A temperature measurement or temperature compensation device; and

(v) A sediment and water monitor with a probe located upstream of the divert valve.

(2) Ensure that the royalty meter facilities accomplish the following:

(i) Prevent flow reversal through the meter;

(ii) Protect meters subjected to pressure pulsations or surges;

(iii) Prevent the meter from being subjected to shock pressures greater than the maximum working pressure; and

(iv) Prevent meter bypassing.

(3) Maintain royalty meter facilities to ensure the following:

(i) Meters operate within the gravity range specified by the manufacturer;

(ii) Meters operate within the manufacturer's specifications for maximum and minimum flow rate for linear accuracy; and

(iii) Meters are re proven when changes in metering conditions affect the meters' performance such as changes in pressure, temperature, density (water content), viscosity, pressure, and flow rate.

(4) Ensure that sampling devices conform to the following:

(i) The sampling point is in the flowstream immediately upstream or

downstream of the meter or divert valve (in accordance with the API MPMS as incorporated by reference in 30 CFR 250.1);

(ii) The sample container is vapor-tight and includes a power mixing device to allow complete mixing of the sample before removal from the container; and

(iii) The sample probe is in the center half of the pipe diameter in a vertical run and is located at least three pipe diameters downstream of any pipe fitting within a region of turbulent flow. The sample probe can be located in a horizontal pipe if adequate stream conditioning such as power mixers or static mixers are installed upstream of the probe according to the manufacturer's instructions.

(c) *What are the requirements for run tickets?* You must:

(1) For royalty meters, ensure that the run tickets clearly identify all observed data, all correction factors not included in the meter factor, and the net standard volume.

(2) For royalty tanks, ensure that the run tickets clearly identify all observed data, all applicable correction factors, on/off seal numbers, and the net standard volume.

(3) Pull a run ticket at the beginning of the month and immediately after establishing the monthly meter factor or a malfunction meter factor.

(4) Send all run tickets for royalty meters and tanks to the Regional Supervisor within 15 days after the end of the month;

(d) *What are the requirements for liquid hydrocarbon royalty meter provings?* You must:

(1) Permit MMS representatives to witness provings;

(2) Ensure that the integrity of the prover calibration is traceable to test measures certified by the National Institute of Standards and Technology;

(3) Prove each operating royalty meter to determine the meter factor monthly, but the time between meter factor determinations must not exceed 42 days;

(4) Obtain approval from the Regional Supervisor before proving on a schedule other than monthly; and

(5) Submit copies of all meter proving reports for royalty meters to the Regional Supervisor monthly within 15 days after the end of the month.

(e) *What are the requirements for calibrating a master meter used in royalty meter provings?* You must:

(1) Calibrate the master meter to obtain a master meter factor before using it to determine operating meter factors;

(2) Use a fluid of similar gravity, viscosity, temperature, and flow rate as

the liquid hydrocarbons that flow through the operating meter to calibrate the master meter;

(3) Calibrate the master meter monthly, but the time between calibrations must not exceed 42 days;

(4) Calibrate the master meter by recording runs until the results of two consecutive runs (if a tank prover is used) or five out of six consecutive runs (if a mechanical-displacement prover is used) produce meter factor differences of no greater than 0.0002. Lessees must use the average of the two (or the five) runs that produced acceptable results to compute the master meter factor;

(5) Install the master meter upstream of any back-pressure or reverse flow check valves associated with the operating meter. However, the master meter may be installed either upstream or downstream of the operating meter; and

(6) Keep a copy of the master meter calibration report at your field location for 2 years.

(f) *What are the requirements for calibrating mechanical-displacement provers and tank provers?* You must:

(1) Calibrate mechanical-displacement provers and tank provers at least once every 5 years according to the API MPMS as incorporated by reference in 30 CFR 250.1; and

(2) Submit a copy of each calibration report to the Regional Supervisor within 15 days after the calibration.

(g) *What correction factors must I use when proving meters with a mechanical-displacement prover, tank prover, or master meter?* Calculate the following correction factors using the API MPMS as referenced in 30 CFR 250, Subpart A:

(1) The change in prover volume due to the effect of temperature on steel (Cts);

(2) The change in prover volume due to the effect of pressure on steel (Cps);

(3) The change in liquid volume due to the effect of temperature on a liquid (Ctl); and

(4) The change in liquid volume due to the effect of pressure on a liquid (Cpl).

(h) *What are the requirements for establishing and applying operating meter factors for liquid hydrocarbons?*

(1) If you use a mechanical-displacement prover, you must record proof runs until five out of six consecutive runs produce a difference between individual runs of no greater than .05 percent. You must use the average of the five accepted runs to compute the meter factor.

(2) If you use a master meter, you must record proof runs until three consecutive runs produce a total meter

factor difference of no greater than 0.0005. The flow rate through the meters during the proving must be within 10 percent of the rate at which the line meter will operate. The final meter factor is determined by averaging the meter factors of the three runs;

(3) If you use a tank prover, you must record proof runs until two consecutive runs produce a meter factor difference of no greater than .0005. The final meter factor is determined by averaging the meter factors of the two runs; and

(4) You must apply operating meter factors forward starting with the date of the proving.

(i) *Under what circumstances does a liquid hydrocarbon royalty meter need to be taken out of service, and what must I do?* (1) If the difference between the meter factor and the previous factor exceeds 0.0025 it is a malfunction factor, and you must:

(i) Remove the meter from service and inspect it for damage or wear;

(ii) Adjust or repair the meter, and reprove it;

(iii) Apply the average of the malfunction factor and the previous factor to the production measured through the meter between the date of the previous factor and the date of the malfunction factor; and

(iv) Indicate that a meter malfunction occurred and show all appropriate remarks regarding subsequent repairs or adjustments on the proving report.

(2) If a meter fails to register production, you must:

(i) Remove the meter from service, repair and reprove it;

(ii) Apply the previous meter factor to the production run between the date of that factor and the date of the failure; and

(iii) Estimate and report unregistered production on the run ticket.

(3) If the results of a royalty meter proving exceed the run tolerance criteria and all measures excluding the adjustment or repair of the meter cannot bring results within tolerance, you must:

(i) Establish a factor using proving results made before any adjustment or repair of the meter; and

(ii) Treat the established factor like a malfunction factor (see paragraph (i)(1) of this section).

(j) *How must I correct gross liquid hydrocarbon volumes to standard conditions?* To correct gross liquid hydrocarbon volumes to standard conditions, you must:

(1) Include Cpl factors in the meter factor calculation or list and apply them on the appropriate run ticket.

(2) List Ctl factors on the appropriate run ticket when the meter is not automatically temperature compensated.

(k) *What are the requirements for liquid hydrocarbon allocation meters?* For liquid hydrogen allocation meters you must:

(1) Take samples continuously proportional to flow or daily (use the procedure in the applicable chapter of the API MPMS as incorporated by reference in 30 CFR 250.1);

(2) For turbine meters, take the sample proportional to the flow only;

(3) Prove allocation meters monthly if they measure 50 or more barrels per day per meter; or

(4) Prove allocation meters quarterly if they measure less than 50 barrels per day per meter;

(5) Keep a copy of the proving reports at the field location for 2 years;

(6) Adjust and reprove the meter if the meter factor differs from the previous meter factor by more than 2 percent and less than 7 percent;

(7) For turbine meters, remove from service, inspect and reprove the meter if the factor differs from the previous meter factor by more than 2 percent and less than 7 percent;

(8) Repair and reprove, or replace and prove the meter if the meter factor differs from the previous meter factor by 7 percent or more; and

(9) Permit MMS representatives to witness provings.

(l) *What are the requirements for royalty and inventory tank facilities?* You must:

(1) Equip each royalty and inventory tank with a vapor-tight thief hatch, a vent-line valve, and a fill line designed to minimize free fall and splashing;

(2) For royalty tanks, submit a complete set of calibration charts (tank tables) to the Regional Supervisor before using the tanks for royalty measurement;

(3) For inventory tanks, retain the calibration charts for as long as the tanks are in use and submit them to the Regional Supervisor upon request; and

(4) Obtain the volume and other measurement parameters by using correction factors and procedures in the API MPMS as incorporated by reference in 30 CFR 250.1.

§ 250.183 Gas measurement.

(a) *To which meters do MMS requirements for gas measurement apply?* MMS requirements for gas measurements apply to all OCS gas royalty and allocation meters.

(b) *What are the requirements for measuring gas?* You must:

(1) Submit a written application to and obtain approval from the Regional Supervisor before commencing gas production or making changes to previously approved measurement procedures.

(2) Design, install, use, maintain, and test measurement equipment to ensure accurate and verifiable measurement. You must follow the recommendations in API MPMS as incorporated by reference in 30 CFR 250.1.

(3) Ensure that the measurement components demonstrate consistent levels of accuracy throughout the system.

(4) Equip the meter with a chart or electronic data recorder. If an electronic data recorder is used, you must follow the recommendations in API MPMS as referenced in 30 CFR 250.1.

(5) Take proportional-to-flow or spot samples upstream or downstream of the meter at least once every 6 months.

(6) When requested by the Regional Supervisor, provide available information on the gas quality.

(7) Ensure that standard conditions for reporting gross heating value Btu are at a base temperature of 60° F and at a base pressure of 14.73 psia and reflect the same degree of water saturation as in the gas volume.

(8) When requested by the Regional Supervisor, submit copies of gas volume statements for each requested gas meter. Show whether gas volumes and gross Btu heating values are reported at saturated or unsaturated conditions; and

(9) When requested by the Regional Supervisor, provide volume and quality statements on dispositions other than those on the gas volume statement.

(c) *What are the requirements for gas meter calibrations?* You must:

(1) Calibrate meters monthly, but do not exceed 42 days between calibrations;

(2) Calibrate each meter by using the manufacturer's specifications;

(3) Conduct calibrations as close as possible to the average hourly rate of flow since the last calibration;

(4) Retain calibration reports at the field location for 2 years, and send the reports to the Regional Supervisor upon request; and

(5) Permit MMS representatives to witness calibrations.

(d) *What must I do if a gas meter is out of calibration or malfunctioning?* If a gas meter is out of calibration or malfunctioning, you must:

(1) If the readings are greater than the contractual tolerances, adjust the meter to function properly or remove it from service and replace it.

(2) Correct the volumes to the last acceptable calibration as follows:

(i) If the duration of the error can be determined, calculate the volume adjustment for that period.

(ii) If the duration of the error cannot be determined, apply the volume adjustment to one-half of the time

elapsed since the last calibration or 21 days, whichever is less.

(e) *What are the requirements when natural gas from a Federal lease on the OCS is transferred to a gas plant before royalty determination?* If natural gas from a Federal lease on the OCS is transferred to a gas plant before royalty determination:

(1) You must provide the following to the Regional Supervisor upon request:

(i) A copy of the monthly gas processing plant allocation statement; and

(ii) Gross heating values of the inlet and residue streams when not reported on the gas plant statement.

(2) You must permit MMS to inspect the measurement and sampling equipment of natural gas processing plants that process Federal production.

(f) *What are the requirements for measuring gas lost or used on a lease?*

(1) You must either measure or estimate the volume of gas lost or used on a lease.

(2) If you measure the volume, document the measurement equipment used and include the volume measured.

(3) If you estimate the volume, document the estimating method, the data used, and the volumes estimated.

(4) You must keep the documentation, including the volume data, easily obtainable for inspection at the field location for at least 2 years, and must retain the documentation at a location of your choosing for at least 7 years after the documentation is generated, subject to all other document retention and production requirements in 30 U.S.C. 1713 and 30 CFR part 212.

(5) Upon the request of the Regional Supervisor, you must provide copies of the records.

§ 250.184 Surface commingling.

(a) *What are the requirements for the surface commingling of production?*

You must:

(1) Submit a written application to and obtain approval from the Regional Supervisor before commencing the commingling of production or making changes to previously approved commingling applications.

(2) Upon the request of the Regional Supervisor, lessees who deliver State lease production into a Federal commingling system must provide volumetric or fractional analysis data on the State lease production through the designated system operator.

(b) *What are the requirements for a periodic well test used for allocation?*

You must:

(1) Conduct a well test at least once every 2 months unless the Regional Supervisor approves a different frequency;

(2) Follow the well test procedures in 30 CFR part 250, Subpart K; and

(3) Retain the well test data at the field location for 2 years.

§ 250.185 Site security.

(a) *What are the requirements for site security?* You must:

(1) Protect Federal production against production loss or theft;

(2) Post a sign at each royalty or inventory tank which is used in the royalty determination process. The sign must contain the name of the facility operator, the size of the tank, and the tank number;

(3) Not bypass MMS-approved liquid hydrocarbon royalty meters and tanks; and

(4) Report the following to the Regional Supervisor as soon as possible,

but no later than the next business day after discovery:

(i) Theft or mishandling of production;

(ii) Tampering or bypassing any component of the royalty measurement facility; and

(iii) Falsifying production measurements.

(b) *What are the requirements for using seals?* You must:

(1) Seal the following components of liquid hydrocarbon royalty meter installations to ensure that tampering cannot occur without destroying the seal:

(i) Meter component connections from the base of the meter up to and including the register;

(ii) Sampling systems including packing device, fittings, sight glass, and container lid;

(iii) Temperature and gravity compensation device components;

(iv) All valves on lines leaving a royalty or inventory storage tank, including load-out line valves, drain-line valves, and connection-line valves between royalty and non-royalty tanks; and

(v) Any additional components required by the Regional Supervisor.

(2) Seal all bypass valves of gas royalty and allocation meters.

(3) Number and track the seals and keep the records at the field location for at least 2 years; and

(4) Make the records of seals available for MMS inspection.

[FR Doc. 98-11803 Filed 5-11-98; 8:45 am]

BILLING CODE 4310-MR-P

federal register

Tuesday
May 12, 1998

Part V

Department of Agriculture

Cooperative State Research, Education,
and Extension Service

Grant Funds Availability and Proposals
(RFP) Request for the Community Food
Projects Competitive Grants Program;
Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research,
Education, and Extension ServiceAnnouncement of Availability of Grant
Funds and Request for Proposals
(RFP) for the Community Food
Projects Competitive Grants ProgramREQUEST FOR PROPOSALS (RFP):
Community Food Projects Competitive
Grants Program.

SUMMARY: The Federal Agriculture Improvement and Reform Act of 1996 established new authority for a program of Federal grants to support the development of community food projects designed to meet the food needs of low-income people; increase the self-reliance of communities in providing for their own food needs; and promote comprehensive responses to local food, farm, and nutrition issues.

This RFP sets out the objectives for these projects, the eligibility criteria for projects and applicants, and the application procedures. Proposals are requested for projects designed to increase food security in a community (termed Community Food Projects).

This RFP contains the entire set of instructions needed to apply for a Fiscal Year (FY) 1998 Community Food Projects Competitive Grants Program (CFPCGP) grant. A key change from last year's RFP is that there is no solicitation this fiscal year for training and technical assistance proposals.

DATE: Applications must be received on or before June 19, 1998. (See Part IV—Submission of a proposal below for information on where and when to submit an application.) Proposals received after June 19, 1998 will be returned without review.

FOR FURTHER INFORMATION CONTACT: Dr. Mark R. Bailey, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2241, 1400 Independence Avenue, S.W., Washington, D.C. 20250-2241; telephone: (202) 401-1898; Internet: mbailey@reeusda.gov, or Dr. Elizabeth Tuckermanty, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250-2240, telephone: (202) 205-0241; Internet: etuckermanty@reeusda.gov

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Part I—General Information

A. Legislative Authority

Section 25 of the Food Stamp Act of 1977, as amended by Section 401(h) of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. No. 104-127) (7 U.S.C. 2034), authorized a new program of Federal grants to support the development of community food projects; \$16 million is authorized over seven years (1996-2002). For FY 1998, approximately \$2.5 million is available (\$2.5 million has been authorized in each subsequent year through fiscal year 2002). These grants are intended to assist eligible private nonprofit entities that need a one-time infusion of Federal dollars to establish and sustain a multi-purpose community food project.

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

- (1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service and any other officer or employee of the Department to whom the authority involved may be delegated.
- (2) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.
- (3) *Authorized organizational representative* means the president, director, or chief executive officer of the applicant organization or the official, designated by the president or chief

executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(6) *Community Food Project* is a project that requires a one-time infusion of Federal assistance to become self-sustaining and is designed to: (i) meet the food needs of low-income people; (ii) increase the self-reliance of communities in providing for their own food needs; and (iii) promote comprehensive responses to local food, farm, and nutrition issues. These activities help to increase food security in a community.

(7) *Department or USDA* means the United States Department of Agriculture.

(8) *Grant* means the award by the Secretary of funds to a private, non-profit entity to assist in meeting the costs of conducting, for the benefit of the public, an identified Community Food Project which is intended and designed to accomplish the purpose of the CFPCGP as identified in these guidelines.

(9) *Grantee* means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(10) *Matching* means that portion of project costs not borne by the Federal Government, including the value of third party in-kind contributions.

(11) *Review experts* means a group of experts qualified by training and experience in particular fields to give expert advice on the merit of grant applications in such fields, and who evaluate eligible proposals submitted to this program in their personal and professional area(s) of expertise.

(12) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(13) *Private non-profit entity* means any corporation, trust, association, cooperative or other organization which (i) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (ii) is not organized primarily for profit; and (iii) uses its net proceeds to maintain, improve, and/or expand its operations. The term private nonprofit organization excludes public entities, including State, local, and Federally recognized Indian tribal governments.

(14) *Project* means the particular activity within the scope of the program supported by a grant award.

(15) *Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(16) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(17) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

(18) *Third Party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefitting and specifically identifiable to a funded project or program.

C. Eligibility

Grantees under the CFPCGP are statutorily limited to private, nonprofit entities. Because proposals for Community Food Projects must promote comprehensive responses to local food, farm, and nutrition issues, applicants are encouraged to seek and create partnerships among public, private nonprofit, and private for-profit entities. However, no more than one-third of an award for a Community Food Project may be subawarded to a for-profit organization or firm.

To be eligible for a Community Food Project grant, a private nonprofit applicant must meet three requirements:

- (1) have experience in the area of:
 - (a) community food work that involves the provision of food to low-income people and familiarity with developing new markets in low-income communities to enhance their access to fresher, more nutritious foods; and/or
 - (b) job training and business development activities for food-related activities in low-income communities to increase the potential for long-term sustainability in the food security project being proposed;
- (2) demonstrate competency to implement a project, provide fiscal accountability and oversight, collect data, and prepare reports and other appropriate documentation; and
- (3) demonstrate a commitment and willingness to share information with researchers, practitioners, and other interested parties.

The intent of the CFPCGP is to encourage and support community-

based, grass-roots efforts that enhance food security. To that end, applicants are strongly encouraged to link with academic and/or other appropriate professionals, and to involve other relevant community-based organizations and local government entities, as they plan for and then develop proposals that serve the mutual interests that support community food security projects.

Successful applicants must provide matching funds, either in cash and/or third party in-kind, amounting to at least 50 percent of the total cost of the project (i.e., an amount equal to or greater than the amount of Federal funds being requested) during the term of the grant award as provided by section 25(e) of the Food Stamp Act of 1977. The Federal share of the project costs can be no more than 50 percent of the total.

Part II—Program Description

A. Purpose and Scope of the Program

Proposals are invited for competitive grant awards under the CFPCGP for FY 1998. This program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) of the U.S. Department of Agriculture (USDA). The purpose of this program is to support the development of Community Food Projects with a one-time infusion of Federal dollars to make such projects self-sustaining. Community Food Projects should be designed to: (i) meet the food needs of low-income people; (ii) increase the self-reliance of communities in providing for their own food needs; and (iii) promote comprehensive responses to local food, farm, and nutrition issues.

Community Food Projects are intended to take a comprehensive approach to developing long-term solutions to an identified community food need that help to ensure food security in communities by linking the food production and processing sectors to community development, economic opportunity, and environmental enhancement. Comprehensive solutions may include elements such as: (i) improved access to high quality, affordable food among low-income households; (ii) expanded economic opportunities for community residents through local businesses or other economic development, improved employment opportunities, job training, youth apprenticeship, school-to-work transition, and the like; and (iii) support for local food systems, from urban gardening to local farms that provide high quality fresh foods, ideally with minimal adverse environmental impact.

Any solution proposed must tie into community food needs.

Project goals should integrate multiple objectives into their design. Proposed projects should seek to address impacts beyond a specific goal such as increasing food produced or available for a specific group. Goals and objectives should integrate economic, social, and environmental impacts such as job training, employment opportunities, small business expansion, neighborhood revitalization, open space development, transportation assistance or other community enhancements.

B. Available Funds and Award
Limitations

The total amount of funds available in FY 1998 for support of this program is approximately \$2,500,000. Applicants should request a budget commensurate with the project proposed. However, due to the effort required to properly evaluate proposals, USDA strongly urges that the Federal funds requested for a Community Food Project not be less than \$10,000.

The spirit of the authorizing legislation is that no one grant should command a significant portion of the total funds available and that many grants be awarded each year. Therefore, USDA has concluded that no single grant shall exceed \$100,000 in any single year or more than \$250,000 over the life of the project.

Applicants may request one, two, or three years of funding, but in all cases, the grant term may not exceed three years for any one project. A Community Food Project may be supported by only a single grant under this program.

Awards will be made based on the merit of the proposed project with budgets considered only after the merits of the project have been determined. USDA reserves the right to negotiate final budgets with successful applicants. It is intended that the grantee will perform the substantive effort on the project. No more than one-third of the award, as determined by budget expenditures, may be subawarded to for-profit organizations. For purposes of obtaining additional knowledge or expertise that is not currently within the applicant organization, funds for expert consultation may be included in the All Other Direct Costs section of the proposed budget.

C. Matching Funds Requirement

Federal funds requested must be matched, at a minimum, on a dollar-for-dollar basis. The Federal share of the cost of establishing or carrying out a Community Food Project that receives

assistance under this program, may not exceed 50 percent of the cost of the project during the term of the grant. Grantees may provide for the non-Federal share through cash and/or third party in-kind contributions, fairly evaluated, including facilities, equipment, and services. A grantee may provide for the non-Federal share of the funding through State government, local government, or private sources. Examples of matching funds include direct costs such as: rent for office space used exclusively for the funded project; duplication or postage costs; and staff time from an entity other than the applicant for job training or nutrition education.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials will be made available to interested entities upon request. These materials include information about the purpose of the program, how the program will be conducted, and the required contents of a proposal, as well as the forms needed to prepare and submit grant applications under the program. To obtain program application materials, please contact the Proposal Services Unit, Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250-2245; Telephone: (202) 401-5048. When contacting the Proposal Services Unit, please indicate that you are requesting application materials for the Community Food Projects Competitive Grants Program.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1998 Community Food Projects Competitive Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

You may also download this RFP and the application forms by contacting the agency home page at www.reeusda.gov, and clicking on "Funding Opportunities," that brings up "All Funding Opportunities," and then click on "Community Food Projects Program."

B. Content of a Proposal

(1) General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each

proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½" x 11") white paper, one inch margins, typed or word processed using no type smaller than 12 point font, and single spaced. Use an easily readable font face (e.g., Geneva, Helvetica, CG Times). Once accepted for review, your proposal will be read by at least three expert reviewers. Thus it is to your advantage to ensure that your proposal is not difficult to read.

(b) Each page of the proposal, including the Project Summary, budget pages, required forms, and appendices, should be numbered sequentially in the top right corner.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 9 copies (10 total) must be submitted in one package, along with 20 copies of the "Project Summary" as a separate attachment.

(2) Cover Page

Complete Form CSREES-661, Application for Funding, in its entirety. This form is to be utilized as the Cover Page. In Block 14., note the total amount of Federal dollars being requested.

(a) Blocks 7., 13., 18., 19., 20., and 21. have been completed for you.

(b) In Block 8., enter "Community Food Project". Ignore all references to a program number.

(c) Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(d) The original copy of the Application for Funding form must contain the pen-and-ink signatures of the project director(s) and authorized organizational representative for the applicant organization.

(e) Note that by signing the Application for Funding form, the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The three certification forms are included in this application package for informational purposes only. It is not necessary to sign and submit the forms to USDA as part of the proposal.

(3) Table of Contents

For ease in locating information, each proposal must contain a detailed table of contents just after the Cover Page. The Table of Contents should include page numbers for each component of the proposal. Page numbers, shown in the

top right corner, should begin with the first page of the project summary.

(4) Project Summary

The proposal must contain a project summary of 250 words or less on a separate page. The summary must be self-contained and describe the overall goals and relevance of the project. The summary should also contain a listing of the major organizations participating in the project. The Project Summary should immediately follow the Table of Contents. In addition to the summary, this page must include the title of the project, the name of the applicant organization, the authorized organizational representative, and the project director(s), followed by the summary.

(5) Project Narrative

PLEASE NOTE: The Project Narrative shall not exceed 10 pages. This maximum has been established to ensure fair and equitable competition. Reviewers are instructed that they need to read only the first 10 pages of the Project Narrative and to ignore information on additional pages. The Project Narrative must repeat and answer each of the following eight questions ((a) through (h) below):

(a) What is the community and the need(s) to be served by the proposed project? This part of the narrative lays the foundation as to the significance of the proposed project.

Succinctly describe critical elements of the local food economy or food system, demographics, income, and geographic characteristics of the area to be served and any other pertinent information, such as the community's assets and needs.

(b) What organizations will be involved in carrying out the proposed project and which segments of the local food economy or system do they link? This information will inform the reviewers on the extent to which the community is involved.

Include a description of the relevant experience of the organizations, including the applicant organization, that will be involved, and any project history. Letters from the organizations involved acknowledging their support and contributions must be provided in an appendix to the proposal. Letters specifying the type and amount of support, where appropriate, are strongly encouraged, for this provides evidence of community involvement. Proposals should demonstrate extensive community linkages and coalitions.

If an applicant organization has received CFPCGP support in the past, information on the results from that

prior funding is required as an appendix to this application. This information will be used in the review of the proposal and is limited in length to one page per award. For each award, list the CFPCGP award number, the amount and period of support, the title of the project, a summary of the results of the completed work, and the long-term effects of these results, and any publications resulting from the CFPCGP award.

(c) What are the goals or purposes to be achieved by the proposed project?

List these goals and/or purposes of the project and a justification for the goals in terms of the needs stated above.

(d) How will the goals be achieved?

Provide a systematic description of the approach by which the goals will be accomplished.

(e) What are the major milestones that will indicate progress toward achieving the project goals?

Provide a time line or description for accomplishing major project objectives.

(f) The legislation outlines three major objectives of the CFPCGP: (i) meet the food needs of low-income people; (ii) increase the self-reliance of communities in providing for their own food needs; and (iii) promote comprehensive responses to local food, farm and nutrition issues.

What measures will be used to assess project progress toward each of these three objectives? How will you assess whether or to what degree the project achieves these outcomes?

For example, an applicant may propose to develop a farmers' market in a low-income urban area, selling produce grown by farmers in the surrounding area, and employing staff from both the urban and rural communities. The goals may be to increase access to fresh produce by community residents (addresses objective i), increase employment and the income of farmers (addresses objective ii), and reduce the extent of poor nutrition among low-income residents (addresses objective iii). Possible outcome measures are the change in the consumption of produce by customers, the number of jobs created by the market, and the change in income experienced by the farmers supplying the market.

Community Food Project proposals should contain a strong evaluation component. Innovative evaluation strategies are especially encouraged. Evaluations should focus on the measurement of success in meeting the major objectives of the CFPCGP.

Through the CFPCGP, USDA also hopes to learn more about what happens to make such projects succeed, partially

succeed, or fail. Therefore, proposals are encouraged that include both process evaluations (developing and monitoring indicators of progress towards the objectives) and outcome evaluations (to determine whether the objectives were met). Applicants should seek the help of experts in evaluation design and implementation as appropriate.

(g) How does the proposed project address each of the following issues: (i) development of innovative linkages and coalitions between two or more sectors of the food system; (ii) support for entrepreneurial and job-training projects; and (iii) encouragement of both short-term and long-term planning activities that encompass many agencies and organizations with different food security interests and missions in order to promote multi-system, interagency approaches?

Provide a description of how each of these issues, as appropriate, will be addressed. Entrepreneurial projects should provide evidence (e.g., in the form of a market analysis or the outline of a business plan) to demonstrate that it is likely to become self-sustaining and provide employees with important job skills.

(h) What are the plans for achieving self-sustainability?

Describe why a one-time infusion of Federal funds will be sufficient for the proposed Community Food Project to advance local capacity-building and deliver sustainability.

(6) Supplementary Considerations

In drafting the project narrative, applicants should keep in mind the intent of the program. Proposed projects should seek solutions rather than be focused on short-term food relief. They should seek comprehensive solutions to problems across all levels of the food system from producer to consumer. This point is emphasized because many proposals submitted previously were primarily for expanding applicant efforts in food relief and assistance, or for connecting established or partially established programs (such as community gardens and farmers' markets) with little evidence of strategic planning and participation by stakeholders in the proposed project design. Proposals must emphasize a food system and/or food security approach (i.e., an applicant must describe the large food-related picture in the community and the place of the proposed project within it). They must also show evidence of information sharing, coalition building, and substantial community linkages.

Applicants should be aware of several USDA policy themes and initiatives that

have the potential to strengthen the impact and success of some community food projects. These include food recovery and gleaning efforts; connecting the low-income urban consumer with the rural food producer; aiding citizens in leaving public assistance and achieving self-sufficiency; and utilizing micro enterprise and/or development projects related to community food needs. Relevant ongoing USDA and other Federal initiatives include farmers' markets; CSREES programs and activities under the Fund for Rural America; U.S. Department of Housing and Urban Development designated Empowerment Zones, Enterprise Communities, and Champion Communities; and the AmeriCorps National Service Program (a potential source of staff support for Community Food Projects).

Applicants should also recognize the role played by food and nutrition assistance programs administered by USDA and may want to discuss in their proposals the utilization of these programs by the community and the connection to the proposed Community Food Project. These programs include: the Food Stamp Program; child nutrition programs such as the School Lunch, School Breakfast, Women, Infants, and Children (WIC) Supplemental Nutrition, Child and Adult Care Food, and Summer Food Service Programs; and commodity distribution programs.

Applicants also should be cognizant of resources available from other Federal programs with similar or related goals, such as the Community Food and Nutrition Program (CFNP) and Job Opportunities for Low-Income Individuals (JOLI) program administered by the Office of Community Services within the U.S. Department of Health and Human Services.

The community, not the individual per se, is the unit of analysis and medium for action. Many solutions to food access problems may come from beyond a community's own boundaries, since most food also comes from outside. In that context, wherever possible, Community Food Projects should support food systems based on strategies that improve the availability of high-quality locally or regionally produced foods to low-income people.

Community Food Projects are intended to bring together stakeholders from the distinct parts of the food system. Solutions to hunger and access to food should reflect a process that involves partnership building among the public, private nonprofit, and

private for-profit sectors. Together, these parties can address issues such as: the capacity of the community to produce food and support local growers; the need for, and location of, grocery stores that market affordable, high quality food; transportation constraints; economic opportunities for residents to increase income, thereby increasing access to high quality nutritious food; community development issues; the environment; and so on.

Community Food Projects should not be designed to merely support individual food pantries, farmers' markets, community gardens or other established projects. Rather, proposed Community Food Projects should build on these experiences and encourage innovative long-term efforts. A project should be designed to endure and outlive the one-time infusion of government and other matching funds. Community Food Projects should be intended to become self-supporting (or have a sustainable funding source) and expand or prove to be a replicable model.

The primary objectives of the CFPCGP are to increase the food self-reliance of communities; promote comprehensive responses to local food, farm and nutrition issues; develop innovative linkages between the public, for-profit, and nonprofit food sectors; and encourage long-term planning activities and multi-system inter-agency approaches. The following are some examples of these objectives in practice:

- Developing a working link between a food bank and area farmers to market fresh produce to a community through community-supported agriculture. Community members provide the financial support while the project develops links to institutions such as restaurants, food pantries, schools, and other institutions. The process increases community awareness and commitment to local agriculture, while providing farmers a local market for their goods, thereby expanding the supply of and access to high-quality food.

- Implementing a comprehensive strategic plan for a lower-income neighborhood to increase residents' access to high-quality, affordable food through farmers' markets, community gardens, supermarkets, and other food programs. Such a plan should include transportation assistance, business development, and/or neighborhood improvement. As with other sector planning, the community participates in identifying its food-related priorities and works with institutions through a collaborative interagency process to meet its objectives.

- Developing a system of community farm stands sponsored by neighborhood organizations and managed by youth that sell locally grown produce in low-income communities. The project provides skills training and/or jobs and aims to become self-supporting within a reasonable time. It increases participants' understanding of the food system, including food production and distribution, expands interest in good nutrition, and provides entrepreneurial training opportunities for young people.

- A local food policy council may develop and implement a plan that creates several new food ventures, including a new supermarket in a low-income neighborhood. The council serves as the planning and coordinating entity that brings together local farmers, for-profit food operators such as restaurants, processors, and retailers with low-income neighborhood development organizations and job training groups, emergency food providers, city hall, and other community service entities.

- Developing a comprehensive community response to job and food needs by creating job opportunities in food-related activities that respond to the needs of local businesses, building technical expertise that leads to well-paid jobs. It will be necessary to bring together resources that facilitate the development of work skills, work ethics, education completion and that respond to community food and nutrition needs.

(7) Key Personnel

Identify the key personnel to be involved in the project, including the project director, if known. (An organizational chart may be included if available.) What is their relevant experience? Include resumes or vitae that provide adequate information for proposal reviewers to make an informed judgment as to the capabilities and experience of the key personnel. For new positions in the project or for positions that are currently unfilled, a job description should be provided.

(8) Budget

(a) Budget Form: Prepare the budget form in accordance with instructions provided with the form. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. (For example, for a three-year project, the proposal would include four budget forms; one for each of the three years of the project and one cumulative budget for the full three years.) The budget form may be reproduced as needed by applicants.

Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a budget explanation sheet to explain and justify their budgets.

We judge the relative merits of each proposal without initially considering proposed budgets. Once proposals are ranked based on the evaluation criteria, we then examine budgets closely. Thus, applicants should attach an explanation for all budget items to the budget form. Such information is useful to the reviewers and CSREES staff in making final budget recommendations to the Administrator.

(b) Matching Funds

(1) Proposals should include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(i) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (a) the name, address, and telephone number of the donor; (b) the name of the applicant organization; (c) the title of the project for which the donation is made; (d) the dollar amount of the cash donation; and (e) a statement that the donor will pay the cash contribution during the grant period; and

(ii) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (a) the name, address, and telephone number of the donor; (b) the name of the applicant organization; (c) the title of the project for which the donation is made; (d) a good faith estimate of the current fair market value of the third party in-kind contribution; and (e) a statement that the donor will make the contribution during the grant period.

(2) The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the budget form. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

(3) Applicants should refer to OMB Circulars A-110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations, and A-122, Cost Principles for Non-Profit Organizations, for further guidance and other requirements relating to matching and allowable costs.

(9) Current and Pending Support

All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The application material includes Form CSREES-663, Current and Pending Support, which is suitable for listing current and pending support. Note that the project being proposed should be included in the proposed section of the form.

(10) Compliance with the National Environmental Policy Act (NEPA)

As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In most cases, based on previously funded projects, the preparation of environmental data is not usually required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES-1234, NEPA Exclusions Form, must be included in the proposal indicating whether the applicant is of the opinion that the project falls within

a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES-1234 and supporting documentation should be the last page of the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity. This will be the case if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect. However, this rarely occurs.

Part IV—Submission of a Proposal

A. What to Submit

An original and nine copies of the complete proposal must be submitted. Each copy of the proposal must be stapled in the upper left-hand corner. DO NOT BIND. In addition, submit 20 copies of the proposal's Project Summary. All copies of the proposal and Project Summary must be submitted in one package.

B. Where and When to Submit

Proposals must be received by June 19, 1998. Proposals that are hand-delivered, delivered by courier, or sent via overnight delivery services must be sent or delivered to: Community Food Projects Competitive Grants Program c/o Proposal Services Unit, Office of Extramural Programs, USDA/CSREES, Room 303, Aerospace Center 901 D Street, SW, Washington, DC 20024, Telephone: (202) 401-5048.

Note: Applicants are strongly encouraged to submit their completed proposals via overnight mail or delivery services to ensure timely receipt by the USDA.

Proposals sent via the U.S. Postal Service must be sent to the following address: Community Food Projects Competitive Grants Program c/o Proposal Services Unit, Office of Extramural Programs, USDA/CSREES, STOP 2245, 1400 Independence Avenue, SW, Washington, DC 20250-2245, Telephone: (202) 401-5048

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain an identifying proposal number. Once your proposal has been assigned an identification number, please cite that number in future correspondence.

Part V—Selection Process and Evaluation Criteria

A. Selection Process

Proposals must be received on or before June 19, 1998. Since the award process must be completed by September 30, 1998, applicants should submit fully developed proposals that meet all the requirements set forth in this RFP and have fully developed budgets as well. However, USDA does retain the right to conduct discussions with applicants to resolve technical and/or budget issues as it deems necessary.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure it meets the basic eligibility requirements as set forth in this RFP. Proposals not meeting the requirements as set forth in this RFP will be returned without review. Second, each proposal that meets the eligibility requirements will be evaluated and judged on its merits by expert reviewers.

A number of individual experts will review and evaluate each proposal that is accepted for review basing their evaluation on the stated criteria. The reviewers will be selected from among those recognized as uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals being reviewed. These reviewers will be drawn from a number of areas, among them government, universities, and other pertinent entities involved primarily in community food security organizations or activities. The views of the individual reviewers will be used by CSREES to determine which proposals will be recommended to the Administrator for funding.

Proposals will be ranked relative to all those received, and ranking will be based on how well the applicant answered the eight questions in the Project Narrative, the potential for achieving project goals and objectives, the extent to which appropriate community organizations are involved, and whether, in the judgment of the reviewers, the project will become self-sustaining. Final approval for those proposals recommended for an award will be made by the agency Administrator (or designee).

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual, potential, and/or the appearance of conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, expert reviewers, and the project

director(s), to the extent permitted by law.

B. Evaluation Criteria

The evaluation of proposals will be based on the following criteria, weighted relative to each other as noted in the parentheses following each criteria discussion.

(1) The degree to which the proposed project addresses the three statutory objectives of the CFPCGP, namely i) meet the food needs of low-income people; ii) increase the self-reliance of communities in providing for their own food needs; and iii) promote comprehensive responses to local food, farm, and nutrition issues (25);

(2) The food security problem(s) being discussed, including an informative description of the community, its characteristics, assets, and needs (15);

(3) The goals and purposes of the project and how these goals will be achieved. The Secretary, in accordance with the legislation authorizing this program, will give preference to proposed projects that include one or more of the following goals, which will be given equal weight: (i) developing linkages between two or more sectors of the food system; (ii) supporting the development of entrepreneurial activities as part of the proposed project; (iii) developing innovative linkages between the for-profit and nonprofit food sectors; and (iv) encouraging long-term planning activities and multi-system, interagency approaches (25);

(4) A discussion of the organizations, including the applicant entity, to be involved in the proposed project, highlighting their relevant experience and extent of support. The extent to which an applicant private, nonprofit organization can demonstrate a history of commitment to and direct involvement in food security projects in low income communities or in communities with low income groups is an important evaluation element. In addition, the ability of applicants to meet the objectives of prior CFPCGP grants will be considered. (See PART III, B., (5)(b), Project Narrative.) The qualifications of staff involved with the proposed project and/or organizational leadership should reflect the expertise necessary to carry out the proposed activities or similar types of activities. Experience in and connections with the community will be considered as important as academic or professional credentials in this regard (15);

(5) The viability of plans for achieving self-sufficiency with a one-time infusion of federal funds (15);

(6) The strength of the proposed project's evaluation component (3); and

(7) The time line for accomplishing project goals and objectives (2).

Part VI—Supplementary Information

A. Access to Review Information

Copies of summary reviews will be sent to all applicant project directors automatically, as soon as possible after the review process has been completed. The identity of the individual expert reviewers will not be provided.

B. Grant Awards

(1) General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015, 3016, and 3019 of 7 CFR).

(2) Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Administrator has awarded a

grant under the terms of this request for proposals;

(b) Title of project;

(c) Name(s) and address(es) of project director(s) chosen to direct and control approved activities;

(d) Identifying grant number assigned by the Department;

(e) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(g) Legal authority(ies) under which the grant is awarded;

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without additional support at a future date.

C. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Reporting Requirements

The grantee must prepare an annual report that details all significant activities towards achieving the goals and objectives of the project. The narrative should be succinct and be no longer than five pages, using 12-point, single-spaced type. A budget summary should be attached to this report, which will provide an overview of all monies spent during the reporting period.

(3) Changes in Project Plans

(a) The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the project

director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the CSREES ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers.

(e) Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Nevertheless, the total duration of any grant, including any period(s) of extension, may not exceed 3 years. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

(f) Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project

grants awarded under this program. These include but are not limited to:

7 CFR Part 1, as amended—USDA implementation of the Freedom of Information Act.

7 CFR Part 3, as amended—USDA implementation of OMB Circular No. A-129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015, as amended—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A-21 and A-122) and incorporating provisions of 31 U.S.C. 6301-6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016, as amended—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019, as amended—USDA implementation of OMB Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052 (62 Federal Register 45947)—USDA implementation of OMB Circular No. A-133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504,

Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of

statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Evaluation of Program

Section 25(h) of the Food Stamp Act of 1977, as amended, requires USDA to provide for an evaluation of the success of community food projects supported under this authority. All grantees shall be expected to assist USDA by providing relevant information on their respective projects. Applicants need to plan for their own internal self-assessments and evaluations to measure the effectiveness of each project.

Done at Washington, D. C., this 6th day of May 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98-12460 Filed 5-11-98; 8:45 am]

BILLING CODE 3410-22-P

federal register

Tuesday
May 12, 1998

Part VI

Department of Housing and Urban Development

24 CFR Part 3280
Manufactured Home Construction and
Safety Standards: Metal Roofing;
Interpretative Bulletin I-2-98; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR-4271-N-01]

RIN 2502-AH05

Manufactured Home Construction and Safety Standards: Metal Roofing; Interpretative Bulletin I-2-98

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interpretative Bulletin.

SUMMARY: In January 1994 HUD amended the Manufactured Home Construction and Safety Standards to improve the resistance of manufactured homes to wind forces in areas prone to hurricanes. In part, the amendments provided that manufactured homes designed to be sited in high wind areas must be designed to resist either the design wind loads in a specified industry performance standard or alternative wind pressures set out in a prescriptive Table included in the regulations. Some questions have arisen concerning: Whether manufacturers that design their products using the wind pressures in the Table must provide roof sheathing under metal roofing; and the appropriateness of the testing of metal roofing that has been done. Therefore, the Department finds it necessary to reiterate, through this Interpretative Bulletin (IB), its current policy with regard to the regulations. A related advance notice of proposed rulemaking is published elsewhere in today's Federal Register.

DATES: Effective Date: May 12, 1998.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 9156, Washington, DC 20410, telephone: (202) 708-6401 (this is not a toll-free number). For hearing and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: In this Interpretative Bulletin ("IB") HUD clarifies the meaning of the standard in 24 CFR 3280.305(c)(1)(ii)(B) as applied to metal roofing. Under this provision, elements of manufactured homes that are designed for high wind areas currently must be designed to resist wind pressures prescribed in a Table of Design Wind Pressures ("Table").

(Alternatively, under § 3280.305(c)(1)(ii)(A), the design may be qualified using general performance standards that utilize the design wind loads in ANSI/ASCE 7-88; this IB does not affect the option to use those performance standards.) This IB is issued pursuant to 24 CFR 3280.9 and 3282.113.

HUD has received requests from manufacturers and Design Approval Primary Inspection Agencies (DAPIAs) for clarification of design and testing requirements for metal roofing in wind zones II and III under the provisions in § 3280.305(c)(1)(ii)(B). Because these requirements are not being applied uniformly by DAPIAs and manufacturers, and HUD agrees with industry representatives that the regulation needs clarification, the Secretary has determined that the public's interest in the manufacture of housing that is safe for the conditions under which the housing is sited would best be served by the issuance of this IB. Issuance of the IB also is in the interest of competitive fairness to members of the industry. This IB does not denote any change in policy or interpretation formulated by HUD, but clarifies requirements that were adopted as part of an extensive notice-and-comment rulemaking process.

Therefore, because of the need for resolution of any question regarding the requirements applicable under the Manufactured Home Construction and Safety Standards ("standards") to metal roofing in wind zones II and III, and the fact that this is not a change in the position or policy of the Department, in accordance with 24 CFR 3282.113, the Secretary has deemed it not to be in the public interest to issue the interpretation for public comment under 24 CFR part 3282, subpart C.

The Department understands, however, that there may be concerns about the requirements or implementation of roofing standards for manufactured homes sited in high-wind areas. In that regard, persons interested in recommending any changes to the policy clarified in this IB are directed to the advance notice of proposed rulemaking published elsewhere in today's Federal Register.

Background

The manufactured housing construction standards in 24 CFR 3280.305(c)(1)(ii) for wind zones II and III were established by HUD in a rule published on January 14, 1994 (59 FR 2469) ("January 1994 rule"). It is clear from the history of this rule, which amended the Federal Manufactured Home Construction and Safety

Standards in 24 CFR part 3280 to improve the resistance of manufactured homes to wind forces in areas prone to hurricanes, that HUD was intending to create prescriptive standards that manufacturers could elect to comply with as an alternative to the general performance standards that utilize the design wind loads in ANSI/ASCE 7-88. In particular, the January 1994 rule provided that each manufactured home designed for wind zones II or III must be designed to resist either the design wind loads in ANSI/ASCE 7-88 or the wind pressures specified in the Table.

A question has been raised concerning whether manufacturers that design their homes using the wind pressures in the Table must provide roof sheathing under metal roofing to meet the requirement for resisting the wind pressures specified for roof coverings in the Table. Although the preamble of the January 1994 rule does not address the issue of metal roofing and roof sheathing directly, there is ample evidence of HUD's objectives in establishing the higher wind standards. The January 1994 rule clearly reflects HUD's intent to provide, through the prescriptive Table, an option that would provide comparable rigidity ("a rigid box"),¹ as an alternative to designing manufactured homes using the design wind loads of ANSI/ASCE 7-88. This intent also is consistent with the statement in § 3280.301 that subpart D of 24 CFR part 3280, which includes § 3280.305, is intended "to assure that the manufactured home will provide: (a) Structural strength and rigidity * * *."

The January 1994 Rule

Although it is more prescriptive than the ANSI/ASCE 7-88 performance standard, the Table allows manufacturers to use alternative materials for the roof structure as long as those materials, and the entire manufactured home, meet the requirements in the Table.² In explaining the need for the January 1994 rule, HUD noted that storm damage to manufactured housing is primarily in the form of roof failure, loss of roof diaphragm material, connection failures, and tiedown/foundation failures. HUD also noted that in Hurricane Andrew, manufactured homes "became dangerous flying missiles, inflicting more property damage on neighboring

¹ Note, i.e., the option of using the Table would provide structural performance within permissible deflection limits.

² One kind of roof design, which is specified in footnote 7 of the Table, has been deemed to meet the performance requirements of the Table without the need for additional engineering analysis or load tests.

structures." (See 59 FR at 2457, "Problem to be Addressed.") In the "Summary" in the preamble of the January 1994 rule, HUD stated: "The revised standard also requires exterior roof and wall coverings to be fastened adequately to sheathing and framing members, to resist higher design wind pressures. The purpose of this rule is to increase the safety of manufactured homes, thereby reducing deaths and injuries and extensive property damage losses in areas where wind-induced damage is a particular hazard and risk." (59 FR at 2456.)

Also in the preamble, HUD related that "[a]mong the major deficiencies contributing to manufactured housing damage in Hurricane Andrew were inadequate connections between exterior roof or wall coverings and supporting sheathing or framing and between walls, roofs, and floors" (59 FR at 2458, "Field Investigations"). This portion of the preamble continues:

In particular, losses of roof coverings were widespread, and were considered by some to be the first mode of failure for manufactured homes damaged in Hurricane Andrew. Other roof-related damage was due to loss of sheathing, failure of connections, or a combination of these problems * * *

* * * Metal or plastic siding used in manufactured housing was readily damaged or penetrated by flying debris during the high winds in Hurricane Andrew. Loss of roof or wall cladding allows the building to be penetrated by the weather and has far-reaching consequences beyond the area of envelope integrity.

* * * In addition, failure of coverings or attachments to the manufactured home structure also caused missile-type damage to other homes.

* * * Edges and corners of roofs and endwalls of manufactured homes appeared to have been particularly vulnerable to the high wind forces, according to the damage typically reported in these areas * * * (59 FR at 2458)

Later in the preamble, these same themes were sounded. For example: "Commonly observed failures included loss of roof membranes and blow-off of roof sheathing * * *" (59 FR at 2458.)

HUD also cited a Federal Emergency Management Agency (FEMA) report on the damage in Hurricane Andrew:

It was observed that the breakup of corrugated metal siding and roofed buildings such as manufactured homes and pre-engineered metal frame buildings contributed significantly to the generation of airborne debris. This was evident from debris damage to nearby downwind structures.

(59 FR at 2462, "Cost Considerations").

HUD did state its expectation that the manufactured housing industry would

be innovative in developing designs, components, and construction techniques that meet the standards but maintain the affordability of manufactured homes. It was clear, however, that the final product would be expected to perform at an acceptable level. In fact, HUD's stated intent was to strengthen the requirements for structural assemblies, components, connectors, fasteners, and a number of other areas so that the manufactured home would be able to resist the same wind forces as required for site-built and modular housing. (59 FR at 2467.)

HUD also notes that the economic analysis prepared by an industry trade association factored into the predicted costs of compliance with HUD's higher wind standard proposals the cost of roof sheathing.³ Therefore, the indications are that the industry itself, at the time the rule was being developed, understood that the requirement was for a rigid box.

Finally, in summarizing the changes made by the January 1994 rule to § 3280.305(c), the preamble states that:

Exterior roof and wall coverings (excluding glazing), sheathing, and fastenings need not be evaluated for the design pressures specified by the Table, when fastened to a 3/8" structural rated sheathing and the sheathing is oriented and secured to framing members in accordance with the fastening schedule specified in the Table. (59 FR at 2467.)

An IB that was published by HUD in the Federal Register on July 1, 1994 (59 FR 34294), further bolsters the intent of the January 1994 rule. In that IB, HUD recognized that metal siding (such as vertical steel siding) could, under strict circumstances, be approved as both a structural wall sheathing and an exterior covering material. The strict circumstances specified in the IB ensured that the metal siding/exterior covering would, in effect, maintain a rigid box, including covering and fastening requirements, and would resist the full design pressures specified in the Table. The same reasoning applies to metal roofs in Wind Zones II and III in this IB.

Subsequent Testing of Metal Roofs

In reviewing tests performed under the higher wind standards on metal roof systems without sheathing, the Department has found that none of the tests satisfied all of the requirements of the standards. The test methods used introduced additional resistance for the test assemblies that would not be

³ See attachments to the comments submitted by the Manufactured Housing Institute (commenter #112 in Docket #FR-3380) on the proposed rule that was finalized in the January 1994 rule.

available under actual conditions of application or construction, contrary to the requirements of § 3280.303(c). The test methods also did not consider the combined effect on fasteners and components of horizontal wind forces, nor the compression load added as a result of the sole use of metal roofing without sheathing. The tests also did not measure deflection, as required under § 3280.401 and as would be necessary to ensure compliance with §§ 3280.305 (a) and (h).

Other specific questions about the tests include:

- Concerns about whether the laboratory tests simulated factory conditions for replicating the workmanship associated with the small edge distance and installation of the large number of fasteners required;
 - The ability of the quality control system to prevent production problems that would be caused because of the large number of fasteners required and the small edge distance for the outermost row of fasteners at the metal-to-rim rail connection of the roof, which is likely to cause damage to wood rim members or tearing of the metal during production or when design wind loads are applied;
 - Failure of the tests to include all of the fasteners required in actual production, which would have further damaged the rim rail and weakened the tested assemblies; and
 - Lack of information about deformation criteria for the connectors (fastener slip) or other conditions that would constitute failure of the test assembly, such as rim rail rotation.
- Accordingly, under the authority of 42 U.S.C. 3535(d), Interpretative Bulletin I-2-98 is issued by the Department as follows:

Note: HUD Interpretative Bulletin I-2-98 will not appear in the Code of Federal Regulations.

Interpretative Bulletin I-2-98—Manufactured Home Construction and Safety Standards: Metal Roofing (24 CFR Part 3280)

Under section 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403, the Secretary is authorized to establish, amend, and revoke by order appropriate Federal manufactured home construction and safety standards ("standards"). On January 14, 1994 (59 FR 2456), HUD published certain changes to the standards for high wind areas, as codified in 24 CFR part 3280. Subsequently, HUD has published interpretations of the January 1994 rule at 59 FR 19072 (April 21, 1994) and 59 FR 34294 (July 1, 1994). In the April 21,

1994, Interpretative Bulletin, HUD indicated that it may issue additional Interpretative Bulletins to provide further assistance in the implementation of the new standards. This Interpretative Bulletin I-2-98¹ is issued to clarify requirements applicable to the use of metal roofing in wind zones II and III. All section references are to sections of 24 CFR part 3280.

HUD interprets § 3280.305(c)(1)(ii)(B) to require every design for manufactured housing for high wind areas to include roof sheathing or alternative roof material that performs like sheathing in resisting the wind pressures specified in the Table of Design Wind Pressures ("Table"), whenever the Table is used as the basis for qualifying the design. The phrase "performs like sheathing" means that the roofing system will transfer the higher wind loads to which the Table is formulated to structural support members and components without compromising the integrity of those members and components to such an extent that they cannot resist the applicable design pressures specified in the Table.² In developing the Table, HUD contemplated a design that utilizes structural rated roof sheathing that is at least 3/8 of an inch thick and is installed in accordance with footnote 7. If roof sheathing is not used in the design for the roof system, in accordance with § 3280.303(c) load tests or engineering analyses used to determine that the manufactured home complies with the Table must account for the additional high-wind loads transferred to other parts of the structure because of the absence of separate load-resistant sheathing. Thus, metal roofs without sheathing may be used if they are strong enough to perform like sheathing and can meet all of the requirements discussed in this paragraph.

When separate sheathing is utilized in a design, the sheathing must be shown to be capable of resisting the wind pressures specified for sheathing in the Table, unless the sheathing is structural rated roof sheathing that is at least 3/8 of an inch in thickness and is installed and secured as provided in footnote 7 of the Table. A manufacturer that includes in its design sheathing that complies with the specifications set out in

footnote 7 can avoid having to substantiate the sheathing as being in compliance with the loading requirements for sheathing in the Table. In both of these cases, however, all other loading requirements in the Table and requirements of the standards would still have to be met.

Of course, manufacturers continue to have the additional option, set forth in § 3280.305(c)(1)(ii)(A), to design any manufactured home, including the roof (metal or nonmetal), using the design wind loads for Exposure C as specified in ANSI/ASCE 7-88 and the applicable design wind speed.

Testing Protocols

To be acceptable under the standards, all roofs, including metal roofs, must be designed using either engineering analysis or suitable load testing protocols, in accordance with § 3280.303(c). Until the higher standards were adopted for wind zones II and III, metal roofs for manufactured homes generally had been qualified using engineering analysis. Manufacturers have chosen to test metal roofs intended for wind zones II and III using the design wind pressures in the Table, apparently because the metal roofs may not have been able to qualify under the higher standards through engineering analysis.

The regulations set forth a series of requirements regarding testing. Under § 3280.303(c), if the strength and rigidity of a unit or component is to be determined by testing, the load tests must replicate the actual loads and conditions of application, not just approximate those loads and conditions. A manufacturer relying on § 3280.401 to establish the acceptability of a compliance alternative also must meet all of the requirements established in that section. Section 3280.401(b), for example, requires that deflection measurements be taken.³ Further, if a manufacturer cannot perform an engineering analysis to demonstrate compliance with the § 3280.305(h) design requirements for roofs and the § 3280.305(c) design requirements for systems, components, and framing, the

manufacturer must comply fully with established testing protocols or obtain HUD approval of special testing under § 3280.303(g).

Section 3280.303(g) allows for the development of special testing procedures that demonstrate structural properties and significant characteristics when there is no recognized or suitable testing procedure. In the absence of an established suitable testing protocol, a manufacturer that wants to establish compliance with a standard through testing must submit the testing protocol to HUD for approval. HUD would anticipate that such a protocol would address test set-up, loading apparatus, and size and dimensions of the test assembly, and would establish failure criteria. Section 3280.303(g) places the burden on manufacturers for developing such testing procedures to demonstrate structural properties and significant characteristics of a material, assembly, component, or member.

Summary of Requirements, Using Table

Because there has been confusion about the requirements of the regulations in question, HUD will allow a grace period of 30 days after the date of publication of this IB for compliance with the requirements as clarified in this IB. Thus, in qualifying any roof through testing, HUD will not recognize as being in compliance with the requirements of the Table a metal roof system that is installed on any unit for which the manufacturing process is completed beyond the grace period, unless that metal roof system is able to resist the appropriate wind pressures specified in the Table and complies with at least one of the following conditions:

(1) The metal roofing is a covering, which is designed to resist the applicable wind pressures specified for roof coverings in Table and is installed in conjunction with structural rated roof sheathing that is at least 3/8 of an inch in thickness and is fastened as provided in footnote 7 of the Table;

(2) The metal roofing is a covering, which is designed to resist the applicable wind pressures specified for roof coverings in Table and is installed in conjunction with roof sheathing that does not qualify as acceptable automatically under footnote 7 in the Table, but that has been qualified through engineering analysis or appropriate testing procedures as capable of resisting the wind pressures established for roof sheathing in the Table; or

(3) The metal roof itself has been tested, using procedures that either meet all of the requirements of §§ 3280.303(c)

and 3280.401 (or another suitable load test) or have been developed and approved in accordance with § 3280.303(g), and the metal roof has been determined to perform like sheathing by transferring the higher wind loads to structural support members and components without compromising the integrity of those members and components to such an

extent that they cannot resist the applicable design pressures specified in the Table.⁴

As noted, in the absence of recognized testing procedures, a manufacturer may develop and submit to HUD for approval, in accordance with § 3280.303(g), a testing procedure that would demonstrate the requisite

⁴ See footnote 2, above.

structural properties and significant characteristics of the alternate design or material.

Authority: 42 U.S.C. 3535(d) and 5424.
Dated: April 29, 1998.

Art Agnos,
Acting General Deputy Assistant Secretary
for Housing.

[FR Doc. 98-12341 Filed 5-11-98; 8:45 am]

BILLING CODE 4210-27-P

¹ This designation indicates that this is the second interpretative bulletin issued in 1998. The interpretative bulletin issued on February 18, 1998 (63 FR 8330) was not officially designated as I-1-98 because it was an amendment to an earlier interpretative bulletin designated as I-1-76.

² In order for the metal roof to resist the uplift loads applicable in Wind Zones II and III and transfer the design loads, the Department expects that the metal roof would be fastened to the support members (trusses, edge members, etc.).

³ This concern with deflection measurements, and the concept of a sound structural frame, are also seen in § 3280.305(h), which specifically requires that roofs be of sufficient strength to withstand the load requirements in § 3280.305(c) without exceeding established deflections, and in § 3280.305(a), which states:

Each manufactured home shall be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of this standard, and shall be capable of transmitting these loads to stabilizing devices without exceeding the allowable stresses or deflections* * *

federal register

Tuesday
May 12, 1998

Part VII

**Department of
Housing and Urban
Development**

24 CFR Part 3280
Manufactured Home Construction and
Safety Standards: Metal Roofing;
Advance Notice; Proposed Rule

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR-4271-A-02]

RIN 2502-AH05

**Manufactured Home Construction and
Safety Standards: Metal Roofing;
Advance Notice of Proposed
Rulemaking****AGENCY:** Office of the Assistant
Secretary for Housing-Federal Housing
Commissioner, HUD.**ACTION:** Advance notice of proposed
rulemaking.

SUMMARY: Elsewhere in today's *Federal Register*, the Department is publishing an Interpretative Bulletin (IB) on roofing requirements for manufactured homes designed to be sited in high wind areas. That IB reiterates the Department's current policy as it addresses questions that have arisen concerning: Whether manufacturers that design their products using the wind pressures specified in a table in the Manufactured Home Construction and Safety Standards must provide roof sheathing under metal roofing; and the appropriateness of the testing of metal roofing that has been done under current regulations. By this advance notice of proposed rulemaking, the Department is providing an opportunity for interested persons to make recommendations regarding any changes in the table with respect to

roofing requirements for manufactured homes designed to be sited in high wind areas. The Department will review any comments received in response to this advance notice and consider them in making a determination whether to revise the applicable Federal standards and regulations.

DATES: Comment Due Date: July 13, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking to the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 9156, Washington, DC 20410, telephone: (202) 708-6401 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Prospective commenters should review Interpretative Bulletin I-2-98 published elsewhere in today's *Federal Register* for an explanation of the Department's interpretation of the standard in 24 CFR 3280.305(c)(1)(ii)(B), which includes the Table of Design Wind Pressures ("Table"), as applied to metal roofing in wind zones II and III. In that IB, HUD interprets the standard to require every design for manufactured housing for high wind areas to include roof sheathing or alternative roof material that performs like sheathing in resisting the wind pressures specified in the Table, whenever the Table is used as the basis for qualifying the design.

If the Department receives or develops information that indicates the standard codified in 24 CFR 3280.305(c)(1)(ii)(B) should be revised, the Department may propose revisions for further review and public comment in subsequent rulemaking. To ensure that all interested parties are given access to any advice the Department receives on this subject, a public docket has been opened. Comments received in response to this advance notice will be included in the public docket for inspection and copying.

Authority: 42 U.S.C. 3535(d) and 5424.

Dated: April 29, 1998.

Art Agnos,*Acting General Deputy Assistant Secretary
for Housing.*

[FR Doc. 98-12342 Filed 5-11-98; 8:45 am]

BILLING CODE 4210-27-P

Tuesday
May 12, 1998

Part VIII

Department of
Education

Even Start Family Literacy Program for
Federally Recognized Indian Tribes and
Tribal Organizations; Inviting Applications
for New Awards Using Fiscal Year 1998
Funds; Notices

federal register

DEPARTMENT OF EDUCATION

(CFDA No.: 84.258)

Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations; Notice Inviting Applications for New Awards Using Fiscal year (FY) 1998 Funds

AGENCY: Department of Education.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Even Start Family Literacy Program for Indian tribes and tribal organizations is designed to help break the cycle of poverty and illiteracy by improving the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribes and tribal organizations.

Eligible Applicants: Federally recognized Indian tribes and tribal organizations.

Deadline for Transmittal of Applications: July 15, 1998.

Available Funds: The Department estimates that there will be sufficient FY 1998 funds for one to two new projects after funding continuation awards in FY 1998.

Estimated Range of Awards: \$100,000–\$250,000.

Estimated Average Size of Awards: \$175,000.

Estimated Number of Awards: 1–2

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

- (1) 34 CFR Part 75 (Direct Grant Programs).
- (2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).
- (3) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
- (4) 34 CFR Part 81 (General Education Provisions Act—Enforcement).
- (5) 34 CFR Part 82 (New Restrictions on Lobbying).
- (6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program: Under the authority of section 1202(a)(1)(C) of the Elementary and Secondary Education Act (ESEA), the Assistant Secretary of Elementary and Secondary Education (Assistant Secretary) awards grants to eligible applicants for projects that—

- (1) Improve the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribe and tribal organization projects;
- (2) Are implemented through cooperative activities that build on existing community resources to create a new range of services for federally recognized Indian tribe and tribal organization projects;
- (3) Promote achievement of the National Education Goals one, three, five, and eight that address school readiness, student achievement, adult literacy, and parent involvement in the education of their children; and
- (4) Assist children and adults to achieve to challenging State content standards and challenging State student performance standards.

Eligible participants. Eligible participants are children and their parents who also meet the following conditions specified in section 1206(a) of the ESEA:

- (1) The parent or parents must be eligible for participation in an adult education program under the Adult Education Act; or
- (2) For a parent or parents within the State's compulsory school attendance age range, a local educational agency must provide (or ensure the availability of) the basic education component; and
- (3) The child or children must be younger than eight years of age.

Note: Family members of eligible participants described in paragraphs one through three, above, also may participate in Even Start Family Literacy Program activities when appropriate to serve Even Start purposes. In addition, section 1206(b) of the ESEA generally permits families to remain eligible for Even Start Family Literacy services until all family members become ineligible for participation. For example, in the case of a family in which the parent or parents have become ineligible due to educational advancement, eligibility would continue until all children in the family reach age eight. If all children in a family have reached the age of eight, the family continues to be eligible for two more years, or until the parents no longer are eligible for adult education under the Adult Education Act, whichever occurs earlier.

Budget period. Under 34 CFR 75.112 and 75.117, an eligible applicant must propose a project period (up to four

years) and provide budgetary information for each year of that proposed project period in its initial application. The budgetary information provided should include, for each year, an amount for each key project component with an accompanying breakdown of any subcomponents. A written justification for all requested amounts should be provided.

An applicant is also required under 34 CFR 75.112(b) to describe how and when, in each budget period of the project, it plans to meet each objective of the project.

Note: This information will be used by the Assistant Secretary, in conjunction with the grantee's annual performance report required under 34 CFR 75.118(a), to determine whether to make a continuation award for the subsequent budget year. Under 34 CFR 75.253 a grantee may receive a continuation award only if it demonstrates that it either has made substantial progress toward meeting the objectives of the approved project, or has received the Assistant Secretary's approval of changes in the project to enable it to meet the objectives in the succeeding budget periods.

Federal and local funding. An Even Start Family Literacy project's funding is comprised of both a Federal portion of funds (Federal share) and a portion contributed by the eligible applicant (local project share). The local share of the project may be provided in cash or in kind and may be obtained from any source, including other Federal programs funded by the ESEA. The Federal share of the project may not exceed—

- 90 percent of the total cost of the project in the first year;
- 80 percent in the second year;
- 70 percent in the third year;
- 60 percent in the fourth year; and
- 50 percent in any subsequent year.

The Federal share for any grantee receiving a grant for a second grant cycle may not exceed 50 percent. Any grantee that wishes to reapply for a second grant cycle at the end of its first project period (up to 4 years) must re compete for funding with new applicants.

Indirect costs. Even Start Family Literacy Program funds generally may not be used for the indirect costs of a project. Recipients of an Even Start Indian tribe and tribal organization grant may request the Secretary to waive this requirement. To obtain a waiver, however, the recipient must demonstrate to the Secretary's satisfaction that the recipient otherwise would not be able to participate in the Even Start Family Literacy Program.

National and Local Evaluations: The Department is conducting a national

evaluation of Even Start Family Literacy projects. Grantees are required to participate in the Department's national evaluation and to conduct a separate independent local evaluation consistent with the grantee's responsibilities under 34 CFR 75.590.

The Even Start Family Literacy Program has a set of performance indicators developed for use in managing and reporting purposes. These indicators, which follow this application notice, have been approved by the Office of Management and Budget and shared with the Congress. Applicants are encouraged to use these indicators as a framework when developing their programs.

The Secretary suggests that each applicant budget for evaluation activities as follows: a project with an estimated cost of up to \$120,000 should designate \$5,000 for this purpose; a project with an estimated cost of over \$120,000 should designate \$10,000 for these activities. These funds will be used for expenditures related to the collection and aggregation of data required for the Department's national evaluation. The Secretary also recommends that projects budget for the cost of travel to Washington, DC, and two nights' lodging for the project director and the project evaluator, for their participation in annual evaluation meetings.

Technical Assistance: The Department holds annual technical assistance conferences for professional development. Grantees are strongly encouraged to participate in these conferences.

The Secretary suggests that each applicant budget \$2,000 each year for these activities. These funds should cover the cost of travel to the West Coast, and two nights' lodging for the project director and one staff member, for their participation in annual technical assistance conferences.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for grants under this competition.

- (1) The maximum composite score for all of these criteria is 100 points.
- (2) The maximum score for each criterion is indicated in parentheses.

(a) **Meeting the purposes of the authorizing statute.** (10 points). The Secretary considers how well the project will meet the purpose of the Even Start Family Literacy Program for federally recognized Indian tribes and tribal organizations, which under sections 1201 and 1202(a)(1)(C) of the ESEA is to help break the cycle of poverty and illiteracy by awarding grants for projects that—

- Improve the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribe and tribal organization projects;
- Are implemented through cooperative projects that build on existing community resources to create a new range of services for Indian tribe and tribal organization projects;
- Promote achievement of the National Education Goals; and
- Assist children and adults from low-income families to achieve to challenging State content standards and challenging State student performance standards.

(b) **Need for project.** (15 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

- (i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.
- (ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

Note: The Secretary invites applicants to address such factors as the following: the number of families in the area who need Even Start services, the lack of availability of comprehensive family literacy services for that population, other resources that will be used to benefit project participants, and any other factors that the applicant considers relevant to the extent of need for the project.

(c) **Significance.** (10 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

- (i) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.
- (ii) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.
- (iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(d) **Quality of the project design.** (15 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the

design of the proposed project, the Secretary considers the following factors:

- (i) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.
- (ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.
- (iii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

Note: In designing the project, an eligible applicant must propose a project that incorporates, at a minimum, the following program elements required by section 1205 of the ESEA:

(A) Identification and recruitment of families most in need of services provided under the Even Start Family Literacy Program, as indicated by a low level of income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators.

(B) Screening and preparation of parents, including teenage parents and children, to enable those parents to participate fully in the activities and services provided under the Even Start Family Literacy Program, including testing, referral to necessary counseling, other developmental and support services, and related services.

(C) Design that accommodates the participants' work schedule and other responsibilities, including the provision of support services, when those services are unavailable from other sources, but are necessary for participation in the activities assisted under the Even Start Family Literacy Program, such as—

- Scheduling and location of services to allow joint participation by parents and children;
- Child care for the period that parents are involved in the project; and
- Transportation to enable parents and their children to participate in the project.

(D) High-quality, intensive instructional programs that promote adult literacy and empower parents to support the educational growth of their children, developmentally appropriate early childhood educational services, and preparation of children for success in regular school programs.

(E) Special training of staff, including child care staff, to develop the skills necessary to work with parents and young children in the full range of instructional services offered through the Even Start Family Literacy Program.

(F) Providing and monitoring of integrated instructional services to participating parents and children through home-based programs.

(C) Operation on a year-round basis, including the provision of some program services, instructional or enrichment, during the summer months.

(H) Coordination with—

- Programs assisted under other parts of Title I and other programs under the ESEA;
- Any relevant programs under the Adult Education Act, the Individuals with Disabilities Education Act, and the Job Training Partnership Act; and
- The Head Start program, volunteer literacy programs, and other relevant programs.

(I) Ensuring that the proposed project will serve those families most in need of the activities and services provided by the Even Start Family Literacy Program.

(J) An independent evaluation of the project.)

(e) *Quality of project services.* (20 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

Note: An eligible applicant must propose a project that has "high-quality, intensive instructional programs" in the three core instructional areas (early childhood education, adult education, and parenting education), as required by section 1205(d) of the ESEA. Concerning the quality of project services, the Secretary invites applicants to describe the level of intensity in these three core instructional services that the applicant believes sufficient to produce positive and sustainable outcomes for families, and how the project will provide that level of intensity of services.

(f) *Quality of project personnel.* (5 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition,

the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(g) *Adequacy of resources.* (5 points.) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

Note: Applicants may address this criteria in any way that is reasonable. An eligible applicant must provide an increasing local project share over the grant period (at least the following amounts: 10% in the first year, 20% in the second year, 30% in the third year, and 40% in the fourth year), as required by section 1204(b) of the ESEA. In addressing adequacy of resources, the Secretary invites applicants to describe the resources that they will use to increase the amount of the local project's share over the four years of the grant, which will contribute to the applicant's ability to sustain the project at the end of the Federal funding.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iii) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(h) *Quality of the management plan.* (10 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are

brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(i) *Quality of project evaluation.* (10 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: Patricia McKee (CFDA #84.258), Compensatory Education Programs, Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202-4725

or,

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: Patricia McKee (CFDA #84.258), Compensatory Education Programs, Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202-4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, and various assurances and certifications.

a. Instructions for the Application Narrative.

b. Estimated Public Reporting Burden Statement.

c. Notice to All Applicants.

d. Objectives and Performance Indicators for the Even Start Family Literacy Program.

e. Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

f. Budget Information—Non-Construction Programs (ED Form No. 524) and instruction.

g. Assurances—Non-Construction Programs (Standard Form 424B).

h. Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013, 6/90).

i. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions. (NOTE: ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department.)

j. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications. However, the application

form, assurances, and certifications must each have an original signature. No grant may be awarded unless a completed application form, including the signed assurances and certifications, have been received.

FOR FURTHER INFORMATION CONTACT:

Laura Chow, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW (4400, Portals), Washington, DC 20202-6132. Telephone (202) 260-2683. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiocassette, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>

<http://www.ed.gov/news.html>

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1-888-293-6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202) 219-1511 or, toll free, 1-800-222-4922. The documents are located under Option G-Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. section 6362(a)(1)(C).

Dated: May 7, 1998.

Gerald N. Tirozzi,
Assistant Secretary, Elementary and Secondary Education.

Instructions for the Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of the selection criteria in the order in which the criteria are listed in this application package; and

3. Provide the following in response to the attached "Notice to all Applicants": (1) a reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

4. Provide a copy of the signed set of assurances specified in section 14306(a) of the ESEA (20 U.S.C. 8856(a)) that the applicant has filed with its SEA and that is applicable to this grant application.

5. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is 1810-0540. The time required to complete this information collection is estimated to average 15 hours per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you

have comments or concerns regarding the status of your individual submission of this form, write directly to: Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Room 4400, Portals Building, Washington D.C. 20202-6132.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *All Applicants for New Awards Must Include Information in Their Applications To Address This New Provision in Order To Receive Funding Under This Program.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of

certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

Objectives and Performance Indicators for the Even Start Family Literacy Program

For your information, following are objectives and performance indicators for the Even Start Family Literacy Program (Part B of Title I of the ESEA) that the Department has developed in accordance with the Government Performance and Results Act.

Objective 1. The literacy of participating families will improve.

1.1 Adult literacy achievement. Increasing percentages of adults will achieve significant learning gains on literacy measures. *In 1996, 53% of adults achieved and posttest a moderate-to large-sized gain between pretest on a test of functional math skills, 19% on a test of functional reading skills, 17% on a test of math achievement, and 14% on a test of reading achievement.*

1.2 Adult educational attainment. Increasing percentages of adults will obtain their high school diploma or equivalent. *In 1996, 10% of adults earned a GED since participating in Even Start.*

1.3 Children's school readiness and success. Increasing percentages of children participating in Even Start will attain significant gains on measures of school readiness and achievement. *In 1996, 80% of children made better than expected gains on a test of school readiness, and 63% achieved moderate to large gains on a test of language development.*

1.4 Parenting skills. Increasing percentages of parents will show significant gains on measures of parenting skills, knowledge, and expectations for their children. *In 1996, 41% of parents scored 75% or higher correct on the posttest measuring the quality of cognitive stimulation and emotional support provided to children in the home.*

Objective 2. Self-sufficiency outcomes of participating families will improve.

2.1 Adult employment. Increasing percentages of adults will attain employment during or after participating in Even Start. *In 1996, 13% of parents unemployed at intake found employment by the end of the year.*

2.2 Continuing adult education. Increasing percentages of adults will continue in their education.

Objective 3. Even Start projects will reach their target population of families that are most in need of services.

3.1 Recruitment of most in need. The projects will recruit low-income, disadvantaged families with low literacy levels. *In 1996, 71% of families had less*

than \$12,000 in annual income and 47% of parents had less than a ninth grade education at intake.

Objective 4. Local Even Start projects will provide comprehensive instructional and support services of high quality to all families in a cost-effective manner.

4.1 Service hours. Projects will offer increasingly higher levels of service hours annually. *In 1996, projects averaged 371 hours of adult education,*

201 hours of parenting education, and 530 hours of early childhood education.

4.2 Participation, retention and continuity. Projects will increasingly improve retention and continuity of services. *In 1996, 60% of families were expected to continue. The adult education participation national average in 1996 was 114 hours, parenting education, 27 hours.*


4.3 Local collaborations. Projects will increasingly promote high-quality, cost-

effective collaborations. *In 1996, on average, projects had 11 collaborators.*

Objective 5. The Department of Education will provide effective guidance and technical assistance and will identify and disseminate reliable information on effective approaches.

5.1 Federal technical assistance. An increasing percentage of local project directors will be satisfied with technical assistance and guidance.

BILLING CODE 4000-01-P

		U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION		OMB Control No. 1875-0102	
NON-CONSTRUCTION PROGRAMS		Expiration Date: 9/30/98		Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.	
Name of Institution/Organization					

SECTION A - BUDGET SUMMARY U.S. DEPARTMENT OF EDUCATION FUNDS						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

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SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS	
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION C - OTHER BUDGET INFORMATION (see instructions)						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

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Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 4248 (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610--

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 800 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0048Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____	
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____			5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____		
6. Federal Department/Agency: _____			7. Federal Program Name/Description: _____ CFDA Number, if applicable: _____		
8. Federal Action Number, if known: _____			9. Award Amount, if known: \$ _____		
10. a. Name and Address of Lobbying Entity Registrant (if individual, last name, first name, MI): _____			b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): _____		
11. Amount of Payment (check all that apply): <input type="checkbox"/> actual <input type="checkbox"/> planned			12. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____		
13. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____					
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: _____ (Attach Continuation Sheet(s) of LLL-A, if necessary)					
15. Continuation Sheet(s) of LLL attached: <input type="checkbox"/> Yes <input type="checkbox"/> No					
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Federal Use Only			Authorized for Local Reproduction Standard Form - LLL		

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawardees include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1996 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

federal register

Tuesday
May 12, 1998

Part IX

The President

Proclamation 7093—Mother's Day, 1998

Federal Register

Vol. 63, No. 91

Tuesday, May 12, 1998

Presidential Documents

Title 3—

The President

Proclamation 7093 of May 7, 1998

Mother's Day, 1998

By the President of the United States of America

A Proclamation

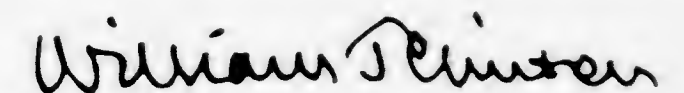
Mothers are the heart of our families and the soul of our society. They are the nurturers of life, our teachers, confidants, counselors, and lifelong friends. They believe in our dreams and help us to achieve them. They help us develop the values, self-esteem, strength of character, and generosity of spirit we need to embrace the wider world beyond the family. Above all, mothers provide us with the blessing of their love.

While this special love between mother and child is unchanging, the challenges of motherhood are not. The role of women in our society has changed dramatically during the past century. Millions of American women today pursue full-time careers in addition to carrying out their duties as parents, balancing family, job, and community responsibilities. Whether they stay home with their children or become working mothers, mothers today care for their families and meet the new demands of our complex society with strength, courage, and quiet selflessness. On Mother's Day, let us honor all mothers—biological or adoptive, foster or stepmother—whose unconditional love has strengthened us and whose many gifts have graced our lives.

The Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as "Mother's Day" and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 10, 1998, as Mother's Day. I urge all Americans to express their love, respect, and appreciation for the contributions mothers have made to all of us, and I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 98-12689

Filed 05-11-98; 8:45 am]

Billing code 3195-01-P

federal register

Tuesday
May 12, 1998

Part X

President

Presidential Determination No. 98-21—
Presidential Determination on the
Proposed Agreement for Cooperation
Between the United States of America
and Ukraine Concerning Peaceful Uses of
Nuclear Energy

Federal Register

Vol. 63, No. 91

Tuesday, May 12, 1998

Presidential Documents

Title 3—

The President

Presidential Determination No. 98-21 of April 28, 1998

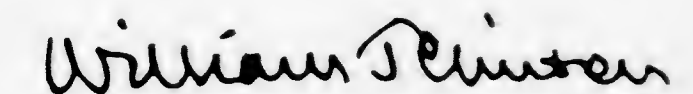
Presidential Determination on the Proposed Agreement for Cooperation Between the United States of America and Ukraine Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the United States of America and Ukraine Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, April 28, 1998.

[FR Doc. 98-12816
Filed 5-11-98; 8:45 am]
Billing code 4710-10-M

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Federal Register

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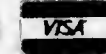
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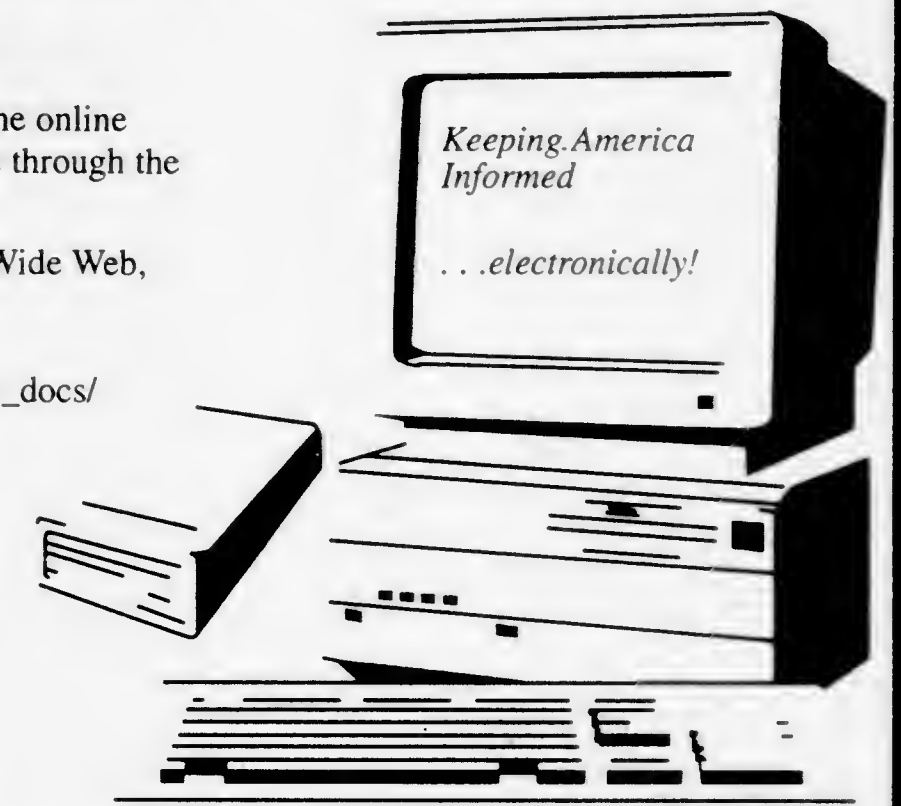
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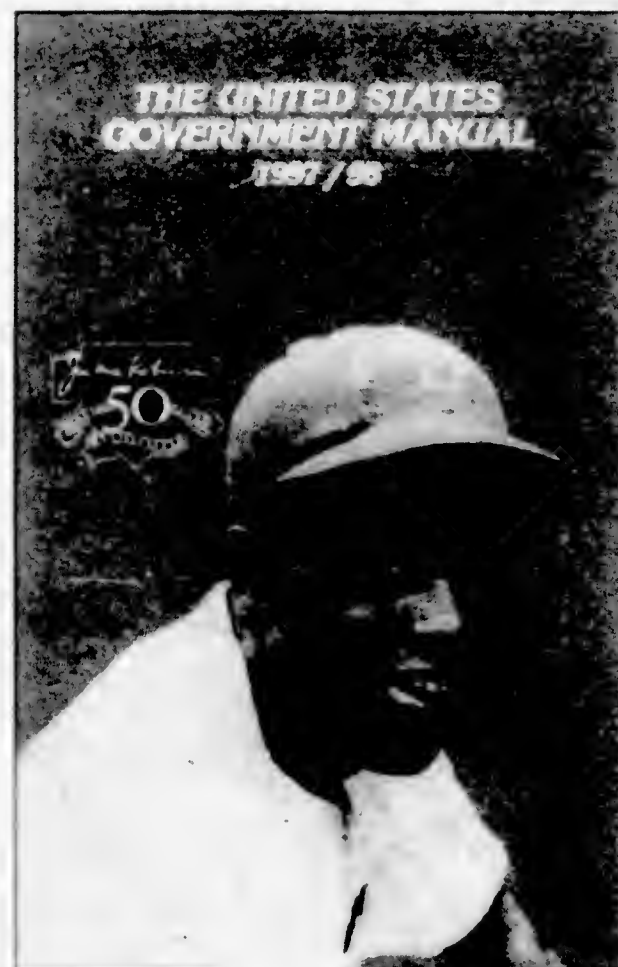
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Rules and Regulations

Federal Register

Vol. 63, No. 92

Wednesday, May 13, 1998

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 351 and 630

RIN 3206-AH64

Reduction in Force and Mandatory Exceptions

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that implement legislation giving employees the right to use annual leave to establish initial retirement eligibility for employees in reduction in force and other restructuring situations. These regulations also implement related provisions concerning the availability of annual leave to qualify for continuance of health benefits in the same situation.

DATES: These regulations are effective June 12, 1998.

FOR FURTHER INFORMATION CONTACT: (part 351) Thomas A. Glennon or Jacqueline R. Yeatman, (202) 606-0960, FAX (202) 606-2329; (part 630) Jo Ann Perrini, (202) 606-2858, FAX (202) 606-0824.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1997, OPM published interim regulations at 62 FR 10681 to implement section 634 of the Treasury, Postal Service, and General Government Appropriations Act, 1997, as contained in section 101(f) of the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208, approved September 30, 1996). Section 634 of the Act is codified in 5 U.S.C. 6302(g).

The regulations were effective upon publication in the *Federal Register*. Interested parties could submit written comments to OPM concerning the regulations in the 60 day period following publication of the regulations.

As authorized by section 634 of the Act, the interim regulations provide that an employee who has received a specific notice of involuntary separation by reduction in force, or by adverse action after declining relocation (including transfer of function), has the right to use annual leave past the effective date the employee would otherwise have been separated in order to establish initial eligibility for immediate retirement, including discontinued service or voluntary early retirement. The same option is also available for the employee to acquire initial eligibility for continuation of health benefits into retirement.

Comments

OPM received four comments, all from Federal agencies, on the interim regulations.

One agency concurred with the regulations as published.

The second agency asks that sections 351.606(b) (1) and (2), and section 351.608(e)(1), be revised to specify that an agency must elect to provide voluntary early retirement authority in order for an employee retained under Section 634 to separate under that early retirement option.

After reviewing the regulations, no further revision was made because even without the voluntary early retirement option, the employee would still have the right to separate under the discontinued service retirement option.

The third agency asked that 5 CFR part 630 be revised to provide that an employee retained under section 634 of the Act would not be required to return to duty for the last day of employment in order to receive a lump sum payment for terminal leave. Specifically, the agency commented that under 5 U.S.C. 5551, the employee would be entitled to a lump-sum payment for the annual leave earned during this period of terminal leave.

The agency stated that a previous Comptroller General opinion required that an employee on terminal leave report for duty on his or her last workday to receive leave credit (B-223876, June 12, 1987). The agency recommended that OPM waive the requirement that an employee on terminal leave must return to duty on his or her last workday in order to accrue annual leave for that period so as to allow such annual leave to be included in a lump-sum payment.

Under 5 U.S.C. 6302(g), Congress specifically provided employees an entitlement to elect to use their annual leave to remain on the agency's rolls for the time needed to establish initial eligibility for immediate retirement and/or to acquire eligibility to continue health benefits into retirement. There is no statutory requirement that employees must return to work on their last workday in order to accrue annual leave for the period of absence. For purposes of § 630.212, an employee continues to accrue annual leave while in a paid leave status. We do not believe a waiver or a new regulatory provision is necessary, since the entitlement in 5 U.S.C. 6302(b) supersedes any previous Comptroller General opinion to the contrary.

The fourth agency asks for clarification of 5 CFR part 630 concerning whether a leave recipient would be permitted to continue to use donated annual leave if the medical emergency that served as the basis for the donated leave ends before the employee attains first eligibility for benefits under section 634 of the Act.

In section 630.212(b)(3), an agency may permit an approved leave recipient to use any or all donated annual leave made available to the employee under the agency's voluntary leave transfer and/or leave bank programs for the purpose of establishing initial retirement eligibility and/or qualifying for continuance of health benefits.

Under § 630.910(d), an agency may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive donations of annual leave (e.g., to permit retroactive substitution of donated annual leave for any advance leave or leave without pay taken during the medical emergency or to arrange for or attend the funeral of the family member affected by the medical emergency). However, § 630.910(c) states that when a medical emergency terminates, no further requests for donated annual leave may be granted and any unused donated annual leave must be returned to the leave donor(s). Therefore, if a medical emergency terminates prior to establishing initial retirement eligibility and/or qualifying for continuance of health benefits, the employee may not continue to use donated annual leave. Agencies are responsible for continuously monitoring

the status of a medical emergency affecting a leave recipient to ensure that the leave recipient continues to be affected by the medical emergency. We encourage agencies to verify the status of a medical emergency before granting approval to a leave recipient to use any and all donated annual leave for the purpose of establishing initial retirement eligibility and/or qualifying for continuance of health benefits.

Final Regulations

After consideration of all comments, the interim regulations published at 62 FR 10681 are published as final regulations without further revision.

Regulatory Flexibility Act

"I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in Parts 351 and 630

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, the interim rule published March 10, 1997 (62 FR 10681) is adopted as final without change.

[FR Doc. 98-12632 Filed 5-12-98; 8:45 am]
BILLING CODE 3325-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 27

[Docket No. SW003; Special Conditions No. 27-003-SC]

Special Conditions: Eurocopter Model AS-355 E, F, F1, F2, N "Ecureuil II/Twinstar" Helicopters, Electronic Flight Instruments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for the Eurocopter Model AS-355 E, F, F1, F2, N "Ecureuil II/Twinstar" helicopters. These helicopters will have a novel or unusual design feature associated with the Electronic Flight Instruments. The applicable airworthiness regulations do not contain adequate or appropriate safety standards to protect systems that perform critical control functions, or provide critical displays, from the effects of high-

intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

DATES: The effective date of this special condition is April 30, 1998. Comments must be received on or before July 13, 1998.

ADDRESSES: Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket No. SW003, Fort Worth, Texas 76193-0007 or deliver in duplicate to the Office of the Regional Counsel at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Rules Docket No. SW003. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193-0111; telephone 817-222-5121, fax 817-222-5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, notice and opportunity for prior public comment are unnecessary since the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making this special condition effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special condition may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to

acknowledge receipt of their comments submitted in response to this special condition must include a self-addressed, stamped postcard on which the following statement is made:

"Comments to Rules Docket No. SW003." The postcard will be date stamped and returned to the commenter.

Background

On February 25, 1998, American Eurocopter announced their intent to amend, under their Designated Airworthiness Authority (DAS), the Supplemental Type Certificate (STC) SH7714AW-D to add electronic flight instruments, including an Attitude Display Instrument. This amendment and the original STC are effective for the Models AS-355 E, F, F1, F2, N "Ecureuil II/Twinstar" helicopters. These are normal category five-passenger helicopters powered by two Allison 250-C20 engines for the Model AS-355 E, F, F1, F2 helicopters and by two Turbomeca Arrius 1A engines for the Model AS-355 N helicopters.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Eurocopter must show that the Model AS-355 E, F, F1, F2, N "Ecureuil II/Twinstar" helicopters meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet (TCDS) No. H11EU or the applicable regulations in effect on the date of notification of intent to change the Models AS-355 E, F, F1, F2, N. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in H11EU are as follows: § 21.29 and, for Models AS-355 E, F, F1, F2, 14 CFR part 27, effective February 1, 1965 plus Amendments 27-1 through 27-16; for Model AS-355 N, part 27, effective February 1, 1965, plus Amendments 27-1 through 27-20, and the following sections of Amendment 27-1: 27.21, 27.45, 27.71, 27.79, 27.143, 27.151, 27.161, 27.173, 27.175, 27.177, 27.672, 27.673, 27.729, 27.735, 27.779, 27.807, 27.1329, 27.1413, 27.1519, 27.1525, 27.1555, 27.1585, and 27.1587. In addition, the certification basis includes certain other special conditions.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Models AS-355 E, F, F1, F2, N must comply with the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92-574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Eurocopter Model AS-355 E, F, F1, F2, N "Ecureuil II/Twinstar" helicopters will incorporate the following novel or unusual design features: Electrical, electronic, or combination of electrical/electronic (electrical/electronic) systems, such as electronic flight instruments, that will be providing displays critical to the continued safe flight and landing of the helicopter. Electronic flight instruments provide information critical for operation in instrument meteorological conditions.

Discussion

The Eurocopter Model AS-355 E, F, F1, F2, N "Ecureuil II/Twinstar" helicopters, at the time of application, were identified as having modifications that incorporate one and possibly more electrical/electronic systems, such as electronic flight instruments. After the design is finalized, Eurocopter will provide the FAA with a preliminary hazard analysis that will identify any other critical functions, required for safe flight and landing, performed by the electrical/electronic systems.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical/electronic systems that perform critical control functions, or provide critical displays. These advanced systems respond to the transient effects of induced electrical current and voltage caused by HIRF incident on the external surface of the helicopter. These induced transient currents and voltages can

degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of § 27.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) Increased use of sensitive electronics that perform critical functions, (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials, (3) adverse service experience of military aircraft using these technologies, and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to (1) determine and define electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified two levels of the HIRF environment that a helicopter could be exposed to, one environment for Visual Flight Rules (VFR) operations and a different environment for Instrument Flight Rules (IFR) operations. While the

HIRF rulemaking requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical control functions, or provides critical displays. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopters' electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the exposure for a helicopter operating under VFR or IFR.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

This special condition will require the systems that perform critical control functions, or provide critical displays, as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests. Control system failures and malfunctions can more directly and abruptly contribute to a catastrophic event than display system failures and malfunctions. Therefore, it is considered appropriate to require more rigorous HIRF verification methods for critical control systems than for critical display systems.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF test environment. The FAA has determined that the test environment defined in Table 1 is acceptable for critical control functions in helicopters. The test environment defined in Table 2 is acceptable for critical display systems in helicopters.

The applicant may also demonstrate by a laboratory test that the electrical/electronic systems that perform critical control functions or provide critical displays can withstand a peak electromagnetic field strength in a frequency range of 10 KHz to 18 GHz. If a laboratory test is used to show

compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 volts per meter (v/m) is appropriate for critical display systems. A level of 200 v/m is appropriate for critical control functions. Laboratory test levels are defined according to RTCA/DO-160D Section 20 Category W (100 v/m and 150 mA) and Category Y (200 v/m and 300 mA). As defined in DO-160D Section 20, the test levels are defined as the peak of the root means squared (rms) envelope. As a minimum, the modulations required for RTCA/DO-160D Section 20 Categories W and Y will be used. Other modulations should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80 percent depth of modulation in the frequency range from 10 KHz to 400 MHz and 1 KHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause an unsafe condition that would prevent the continued safe flight and landing of the helicopters. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection. A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions, including control and display.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable

but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—VFR ROTORCRAFT, FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10-100 KHz	150	150
100-500	200	200
500-2000	200	200
2-30 MHz	200	200
30-100	200	200
100-200	200	200
200-400	200	200
400-700	730	200
700-1000	1400	240
1-2 GHz	5000	250
2-4	6000	490
4-6	7200	400
6-8	1100	170
8-12	5000	330
12-18	2000	330
18-40	1000	420

TABLE 2.—IFR ROTORCRAFT FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10-100 KHz	50	50
100-500	50	50
500-2000	50	50
2-30 MHz	100	100
30-70	50	50
70-100	50	50
100-200	100	100
200-400	100	100
400-700	700	50
700-1000	700	100
1-2 GHz	2000	200
2-4	3000	200
4-6	3000	200
6-8	1000	200
8-12	3000	300
12-18	2000	200
18-40	600	200

Applicability

As previously discussed, this special condition is applicable to the Model AS-355 E, F, F1, F2, N helicopters. Should American Eurocopter apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special condition would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model series of helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter.

The substance of this special condition has been subjected to the notice and comment period in several

prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason and because a delay would significantly affect the certification of the helicopter, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting this special condition upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Parts 21 and 27

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions is as follows: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701-44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for Eurocopter Models AS 355 E, F, F1, F2, N "Ecureuil II/Twinstar" helicopters.

Protection for Electrical and Electronic Systems from High Intensity Radiated Fields.

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on April 30, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate
Aircraft Certification Service, ASW-100.
[FR Doc. 98-12710 Filed 5-12-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-103-AD; Amendment 39-10518; AD 98-10-07]

RIN 2120-AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASK 21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASK 21 sailplanes that have certain modifications installed. This AD requires changing the sailplane flight manual's weight and balance information. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the operator from using inaccurate weight and balance information provided in the sailplane flight manual (SFM), which could lead to hazardous flight conditions.

DATES: Effective June 26, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 26, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-103-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6932; facsimile: (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Alexander Schleicher Model ASK 21 sailplanes was published in the *Federal Register* as a notice of proposed rulemaking (NPRM) on February 12, 1998 (63 FR 7083). The NPRM proposed to require changing the SFM by replacing two pages referencing the trim weight information. Accomplishment of the proposed installation would be in accordance with the Action section of Alexander Schleicher Technical Note No. 13 a, dated June 4, 1984.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish this action, and that the average labor rate is approximately \$60 an hour. There are no parts required for this action. This action may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Based on these figures, there is no cost impact of this AD on U.S. operators.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98-10-07 Alexander Schleicher Segelflugzeugbau: Amendment 39-10518; Docket No. 97-CE-103-AD.

Applicability: Model ASK 21 sailplanes, all serial numbers, certificated in any category, that are equipped with the modifications in Alexander Schleicher Technical Note (TN) 3 or TN 7.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent the operator from using inaccurate weight and balance information provided in the sailplane flight manual (SFM), which could lead to hazardous flight conditions, accomplish the following:

(a) Replace page 2 (dated May 16, 1984) and page 13 (dated February 16, 1984) from the Alexander Schleicher Model ASK 21 SFM with new pages 2 and 13, both dated June 4, 1984, in accordance with Alexander Schleicher ASK 21 Technical Note No. 13 a, dated June 4, 1984.

(b) Incorporating the SFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Alexander Schleicher ASK 21 Technical Note No. 13 a, dated June 4, 1984, should be directed to Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The replacement required by this AD shall be done in accordance with Alexander Schleicher ASK 21 Technical Note No. 13 a, dated June 4, 1984. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 84-32/2 Schleicher, dated June 12, 1984.

(g) This amendment becomes effective on June 26, 1998. Issued in Kansas City, Missouri, on April 30, 1998.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12380 Filed 5-12-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-297-AD; Amendment 39-10519; AD 98-10-08]

RIN 2120-AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model C-212 series airplanes, that requires a one-time inspection of the lower shaft and support structure of the rudder for corrosion, repair of any discrepancy found, and modification of the structure. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent corrosion from developing in the lower shaft and support structure of the rudder, which could result in the failure of the rudder lower shaft and consequent reduced controllability of the airplane.

DATES: Effective June 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 17, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager,

International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain CASA Model C-212 series airplanes was published in the *Federal Register* on March 10, 1998 (63 FR 11631). That action proposed to require a one-time inspection of the lower shaft and support structure of the rudder for corrosion, repair of any discrepancy found, and modification of the structure.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$400 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$31,160, or \$820 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under

Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-10-08 Construcciones Aeronauticas, S.A. (CASA): Amendment 39-10519. Docket 97-NM-297-AD.

Applicability: Model C-212 series airplanes, as listed in CASA Service Bulletin SB-212-27-34, dated November 22, 1993, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion from developing in the lower shaft and support structure of the rudder, which could result in the failure of the rudder lower shaft and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 7 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with CASA Service Bulletin SB-212-27-34, dated November 22, 1993.

(1) Inspect the rudder lower shaft and support structure for corrosion; and, prior to further flight, repair any discrepancy found. And

(2) Modify the rudder lower shaft and support structure to prevent the entry and accumulation of water.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with CASA Service Bulletin SB-212-27-34, dated November 22, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 06/96, dated May 21, 1996.

(e) This amendment becomes effective on June 17, 1998.

Issued in Renton, Washington, on May 5, 1998.

D. L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12519 Filed 5-12-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-CE-24-AD; Amendment 39-10517; AD 98-10-06]

RIN 2120-AA64

Airworthiness Directives; Burkhart Grob Luft-und Raumfahrt Models G115C, G115C2, G115D, and G115D2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 96-19-07, which currently requires the following on Burkhart Grob Luft-und Raumfahrt (Grob) Models G115C, G115C2, G115D, and G115D2 airplanes: installing a placard that restricts the never exceed speed (Vne) of the affected airplane models from 184 knots to 160 knots; installing on the airspeed indicator glass a red line at 296 km/h (160 knots); installing a placard that prohibits aerobatic maneuvers; and placing a copy of the AD in the Limitations Section of the airplane flight manual. This AD will temporarily retain the flight restrictions that are currently required by AD 96-19-07; and will eventually require accomplishing certain inspections and modifications, as terminating action for these flight restrictions. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent loss of control of the airplane caused by excessive speed or aerobatic maneuvers.

DATES: Effective June 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Burkhart Grob Luft-und Raumfahrt, D-8939 Mattsies, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-24-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane

Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6934; facsimile: (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Grob Models G115C, G115C2, G115D, and G115D2 airplanes was published in the *Federal Register* as a notice of proposed rulemaking (NPRM), on March 6, 1998 (63 FR 11171). The NPRM proposed to supersede AD 96-19-07, Amendment 39-9765 (61 FR 49250, September 19, 1996), which currently requires installing a placard that restricts the never exceed speed (Vne) of the affected airplane models from 184 knots to 160 knots; installing on the airspeed indicator glass a red line at 296 km/h (160 knots); installing a placard that prohibits aerobatic maneuvers; and placing a copy of the AD in the Limitations Section of the airplane flight manual. The NPRM proposed to temporarily retain the flight restrictions that are currently required by AD 96-19-07, and eventually require the inspections and modifications specified in the service information previously referenced, as terminating action for the flight restrictions. Accomplishment of the proposed actions as specified in the NPRM would be in accordance with the following service documents: Grob Service Bulletin No. 1078-59/3, dated October 24, 1996; Grob Installation Instructions 1078-64, dated December 11, 1996, as referenced in both Grob Service Bulletin No. 1078-64/2, dated April 8, 1997; and Grob Service Bulletin No. 1078-64, dated December 11, 1996; and Grob Service Bulletin No. 1078-66, dated February 10, 1997.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections

will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 23 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 40 workhours (modification: 36 workhours; inspection: 4 workhours) per airplane to accomplish this action, and that the average labor rate is approximately \$60 an hour. Grob will provide parts free of charge as part of its warranty program. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$55,200, or \$2,400 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 (Amended)

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 96-19-07, Amendment 39-9765, and by adding a new AD to read as follows:

98-10-06 Burkhardt Grob Luft-und Raumfahrt: Amendment 39-10517; Docket No. 98-CE-24-AD; Supersedes AD 96-19-07, Amendment 39-9765.

Applicability: Models G115C, G115C2, G115D, and G115D2 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent loss of control of the airplane caused by excessive speed or aerobatic maneuvers, accomplish the following:

(a) For all serial numbered airplanes, prior to further flight after September 26, 1996 (the effective date of AD 96-19-07), accomplish the following:

(1) Install, on the limitation placard at the left-hand cabin wall, the airspeed placard that is included with Grob Service Bulletin No. 1078-59/2, dated September 2, 1996. This placard reduces the maximum airspeed to 296 kilometers per hour (km/h); equal to 160 knots per hour.

(2) Modify the airspeed indicator glass by accomplishing the following:

(i) Place a red radial line on the indicator glass at 296 km/h (160 knots). The minimum dimensions for this radial line are 0.05-inch in width and 0.30-inch in length.

(ii) Place a white 0.05-inch minimum width slippage index mark that connects both the instrument glass and bezel. This slippage index mark shall not obscure any airspeed markings.

(3) Install, near the airspeed indicator, the red placard included with Grob Service Bulletin No. 1078-59/2 that has the words: "Aerobatic maneuvers are prohibited."

(4) Insert a copy of this AD into the Limitations Section of the airplane flight manual.

Note 2: The actions of paragraph (a), including all subparagraphs, are the same as that required by AD 96-19-07, which is superseded by this action. These requirements are being temporarily retained in this AD to provide a grace period for accomplishing the other actions required by this AD.

(b) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, accomplish the following:

(1) For all serial numbered airplanes, inspect the nose wheel steering, the sliding canopy and canopy locking mechanism, the attachment of the horizontal stabilizer, the elevator installation, the vertical stabilizer, the rudder installation, and the weights and residual moments of the control surfaces in accordance with the instructions in Grob Service Bulletin No. 1078-59/3, dated October 24, 1996. Prior to further flight, repair any discrepancies in accordance with the above-referenced service bulletin.

(2) For airplanes incorporating a serial number in the range of 82001 through 82077, replace the elevator hinges with parts of improved design in accordance with Grob Installation Instructions 1078-64, dated December 11, 1996, as specified in both Grob Service Bulletin No. 1078-64/2, dated April 8, 1997; and Grob Service Bulletin No. 1078-64, dated December 11, 1996.

(3) For airplanes incorporating a serial number in the range of 82001 through 82077, after accomplishing the replacement required by paragraph (b)(2) of this AD, adjust the mass and residual moments in accordance with Grob Service Bulletin No. 1078-66, dated February 10, 1997.

(c) Accomplishing the actions required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD eliminates the placard and flight restriction requirements of paragraph (a), including all subparagraphs, of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 96-19-07 are not considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Questions or technical information related to service information previously referenced should be directed to Burkhardt Grob Luft-und Raumfahrt, D-8939 Mattsies, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) The inspection required by this AD shall be done in accordance with Grob Service Bulletin No. 1078-59/3, dated October 24, 1996. The replacement required by this AD shall be done in accordance with Grob Installation Instructions 1078-64, dated December 11, 1996, as specified in both Grob Service Bulletin No. 1078-64/2, dated April 8, 1997; and Grob Service Bulletin No. 1078-64, dated December 11, 1996. The adjustment

required by this AD shall be done in accordance with Grob Service Bulletin No. 1078-66, dated February 10, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Burkhardt Grob Luft-und Raumfahrt, D-8939 Mattsies, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German AD 96-270/2, dated December 5, 1996; German AD 96-270/3, dated December 4, 1997; and German AD 97-143, dated May 22, 1997.

(h) This amendment supersedes AD 96-19-07, Amendment 39-9765.

(i) This amendment becomes effective on June 28, 1998.

Issued in Kansas City, Missouri, on May 1, 1998.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12355 Filed 5-12-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-SW-32-AD; Amendment 39-10520; AD 97-18-11]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron (Bell) Model 204B, 205A, and 205A-1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the *Federal Register* an amendment adopting Airworthiness Directive (AD) 97-18-11, issued on August 29, 1997, which was sent previously to all known U.S. owners and operators of Bell Model 204B, 205A, and 205A-1 helicopters by individual letters. This AD requires modification and inspections of the vertical fin spar. If any crack is discovered, replacement of the vertical fin spar with an airworthy vertical fin spar is required before further flight. This amendment is prompted by several failures of the vertical fin spar, including those with steel doublers, caused by fatigue cracks that result from a large number of high-power events. The actions specified by this AD are intended to prevent in-flight failure of

the vertical fin spar and subsequent loss of control of the helicopter.

DATES: Effective May 28, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 97-18-11, issued on August 29, 1997, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before July 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW-32-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harrison, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5447, fax (817) 222-5783.

SUPPLEMENTARY INFORMATION: On August 29, 1997, the FAA issued priority letter AD 97-18-11, applicable to Bell Model 204B, 205A, and 205A-1 helicopters, which requires modification and inspections of the vertical fin spar. If any crack is discovered, replacement of the vertical fin spar with an airworthy vertical fin spar is required before further flight. Priority letter AD 97-18-11 superseded priority letter AD 97-18-01, issued on August 19, 1997. AD 97-18-01 contained the same basic requirements as is contained in AD 97-18-11. However, AD 97-18-11 was needed to clarify the method of compliance for the Model 204B helicopters, and to correct an error in a vertical fin spar part number (P/N). AD 97-18-01 incorrectly stated the P/N as P/N 205-030-851 instead of P/N 205-032-851. This AD is prompted by an accident involving the in-flight failure of the vertical fin spar on a Model 205A-1 helicopter. Two other accidents on restricted category (military surplus) aircraft of similar type design have occurred. One of the accidents resulted in a fatality. In 1971, the FAA issued AD 71-21-02, which addressed this problem by requiring the addition of a steel doubler to the inside edge of the vertical fin spar. There have been several additional failures since that AD was issued. A large number of high-power events can cause fatigue cracks which will cause the vertical fin spar to fail. This condition, if not corrected, could result in in-flight failure of the vertical fin spar and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other Bell

Model 204B, 205A, and 205A-1 helicopters of the same type design, the FAA issued priority letter AD 97-18-11 to prevent in-flight failure of the vertical fin spar and subsequent loss of control of the helicopter. The AD requires, within 8 hours time-in-service (TIS) after the effective date of this AD, modification and inspection of the vertical fin spar. Then, at intervals not to exceed 8 hours TIS, further inspections of the vertical fin spar for cracks are required. If any crack is discovered, replacement of the vertical fin spar with an airworthy vertical fin spar is required before further flight.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on August 29, 1997 to all known U.S. owners and operators of Bell Model 204B, 205A, and 205A-1 helicopters. These conditions still exist, and the AD is hereby published in the *Federal Register* as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 265 helicopters will be affected by this proposed AD, that it will take approximately 203 work hours to accomplish the modification, inspection, and spar replacement, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$3,227,700.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-SW-32-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AD 97-18-11 Bell Helicopter Textron: Amendment 39-10520. Docket No. 97-SW-32-AD.

Applicability: Model 204B, 205A, and 205A-1 helicopters, with tailboom vertical fin spar, part number (P/N) 205-032-899, 205-030-846, or 205-032-851, all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent in-flight failure of the tailboom vertical fin spar (vertical fin spar) and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model 204B helicopters, within 8 hours time-in-service (TIS) after the effective date of this AD, modify the vertical fin spar as follows:

(1) Remove the 42° gearbox cover and open the drive shaft cover on the vertical fin spar assembly (see Figure 1).

(i) Remove the first four rivets from the vertical fin spar located at the bottom of the vertical fin spar left-hand side at the tailboom and vertical fin spar junction, and the first four rivets aft of the junction along the lower edge of the vertical fin spar skin (skin) as shown (see Figure 2). CAUTION: Extreme care must be taken when drilling and removing rivets from the side of vertical fin spar to ensure the vertical fin spar assembly is not damaged.

(ii) Trim the vertical fin spar left-hand skin using extreme care to not damage the vertical fin spar assembly (see Figure 3).

(iii) Deburr the rivet holes and trimmed skin edges. Remove all debris. In a ventilated work area, remove any surface contaminants with a cloth that has been dampened with aliphatic naphtha or an equivalent cleaning solvent.

(iv) Reattach the skin to the vertical fin spar using MS 20470AD rivets. DO NOT install the bottom two rivets into the vertical fin spar where the skin was trimmed.

(v) Reinstall the vertical fin spar skin lower edge rivets using M 7885/6-5 rivets (see Figure 6).

(vi) Refinish all reworked areas.

(vii) After modifying the vertical fin spar, immediately inspect the vertical fin spar in accordance with paragraphs (a)(2)(iii) and (a)(2)(iv) of this AD.

(2) After the initial modification and inspection of the vertical fin spar have been accomplished in accordance with paragraph (a)(1) of this AD, thereafter, at intervals not to exceed 8 hours TIS, inspect the vertical fin spar in accordance with paragraphs (a)(2)(iii) and (a)(2)(iv) of this AD for cracks as follows:

(i) Remove the lower aft tailboom inspection door, located at tailboom station 180 (see Figure 4).

(ii) Remove the 42° gearbox cover and open the drive shaft cover on the vertical fin (see Figure 1).

(iii) Through the lower aft tailboom inspection door, using a bright light and an inspection mirror, inspect the vertical fin spar assembly adjacent to the tailboom top skin on the forward side, paying special attention to the left-hand edge and the adjacent surfaces (see Figure 5).

(iv) In a ventilated work area, clean all surfaces to be inspected with a cloth dampened with aliphatic naphtha or an equivalent cleaning solvent. Using a bright light and a 10x magnifying glass, inspect the vertical fin spar assembly adjacent to the tailboom top-skin on the in-board and out-board sides, the vertical edge, and the two open rivet holes. Using a bright light and a mirror, inspect the aft side of the vertical fin spar in the same area. Special attention must be given to the left-hand edge of the vertical fin spar and any adjacent surfaces between fin stations 66.31 and 71.31 (see Figure 5).

(3) If any crack is discovered on the vertical fin spar as a result of the inspection specified in paragraphs (a)(2)(iii) or (a)(2)(iv) of this AD, replace the vertical fin spar assembly with an airworthy vertical fin spar assembly before further flight.

(b) For Model 205A and 205A-1 helicopters, within 8 hours TIS after the effective date of this AD, modify the vertical fin spar as follows:

(1) Remove the 42° gearbox cover and open the drive shaft cover on the vertical fin spar assembly (see Figure 1).

(i) Remove the clip, P/N 212-030-099-091, and the radius block, P/N 212-030-099-095, (see Figures 5 and 6).

(ii) Remove the first four rivets from the vertical fin spar, located at the bottom of the vertical fin spar left-hand side at the tailboom and vertical fin spar junction as shown (see Figure 5). CAUTION: Extreme care must be taken when drilling and removing rivets from the side of vertical fin spar to ensure the vertical fin spar assembly is not damaged.

(iii) Trim the vertical fin left-hand side skin and retainer, P/N 205-032-851-045, using extreme care to not damage the vertical fin spar assembly (see Figure 7).

(iv) Deburr the rivet holes and trimmed retainer and skin edges. Remove all debris. In a ventilated work area, remove any surface contaminants with a cloth that has been dampened with aliphatic naphtha or an equivalent cleaning solvent.

(v) Reattach the skin and retainer to the vertical fin spar using MS 20470AD rivets, DO NOT install the bottom two rivets into the vertical fin spar where the skin and retainer were trimmed.

(vi) Reinstall the clip and radius block with M 7885/6-5 rivets (see Figure 5).

(vii) Refinish all reworked areas.

(viii) After modifying the vertical fin spar, immediately inspect the vertical fin spar in accordance with paragraphs (b)(2)(iii) and (b)(2)(iv) of this AD.

(2) After the initial modification and inspection of the vertical fin spar have been accomplished in accordance with paragraph (b)(1) of this AD, thereafter, at intervals not to exceed 8 hours TIS, inspect the vertical fin spar in accordance with paragraphs (b)(2)(iii) and (b)(2)(iv) of this AD for cracks as follows:

(i) Remove the lower aft tailboom inspection door, located at tailboom station 180 (see Figure 4).

(ii) Remove the 42° gearbox cover and open the drive shaft cover on the vertical fin spar (see Figure 1).

(iii) Through the lower aft tailboom inspection door, using a bright light and an inspection mirror, inspect the vertical fin spar assembly adjacent to the tailboom top skin on the forward side, paying special attention to the left-hand edge and the adjacent surfaces (see Figure 5).

(iv) In a ventilated work area, clean all surfaces to be inspected with a cloth dampened with aliphatic naphtha or an equivalent cleaning solvent. Using a bright light and a 10x magnifying glass, inspect the vertical fin spar assembly adjacent to the tailboom top-skin on the in-board and out-board sides, the vertical edge and the two open rivet holes. Using a bright light and a mirror, inspect the aft side of the vertical fin spar in the same area. Special attention must be given to the left-hand edge of the vertical fin spar and any adjacent surfaces between fin stations 66.31 and 71.31 (see Figure 5).

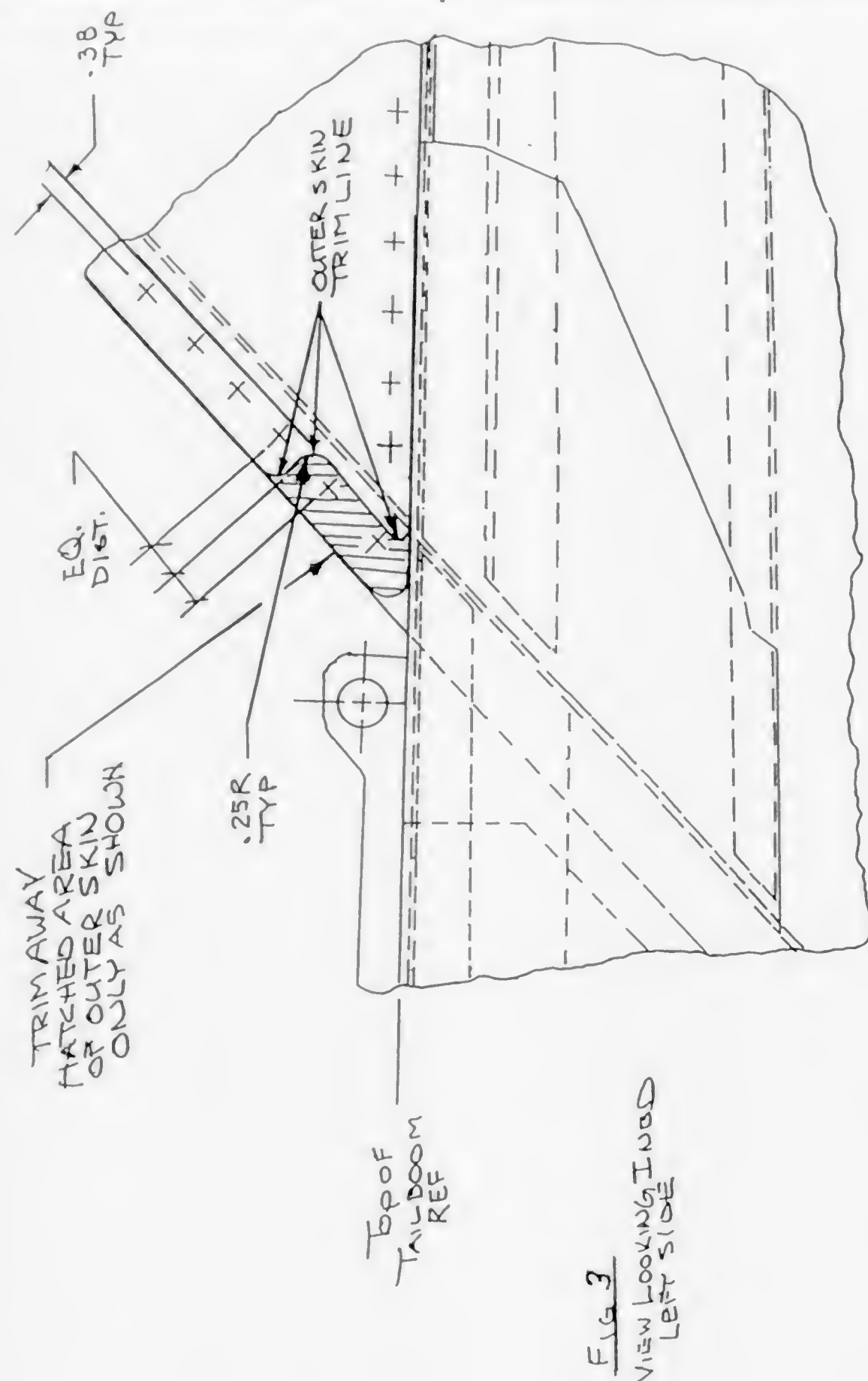
(3) If any crack is discovered on the vertical fin spar as a result of the inspection specified in paragraphs (b)(2)(iii) or (b)(2)(iv) of this AD, replace the vertical fin spar assembly with an airworthy vertical fin spar assembly before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

BILLING CODE 4910-13-U



204B CONFIGURATION

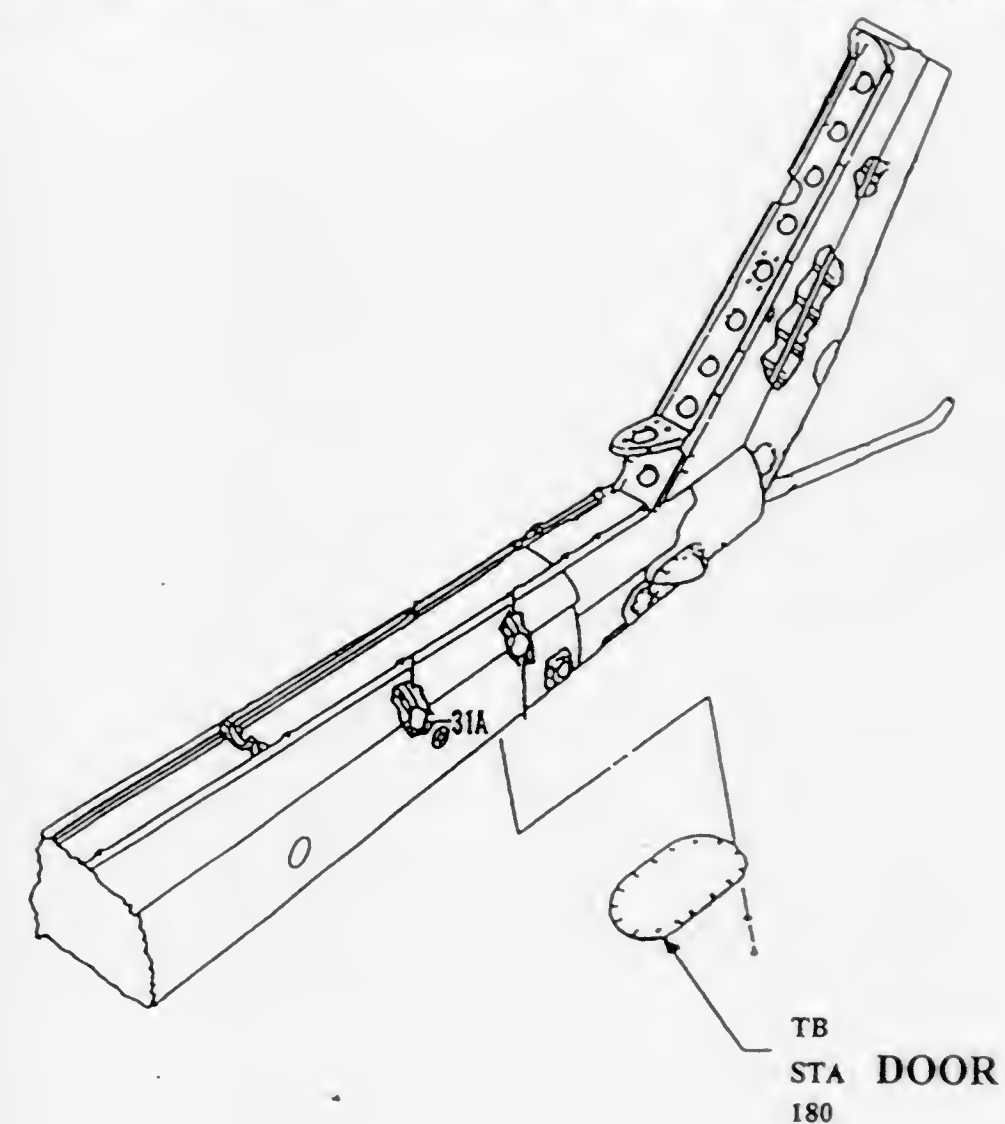
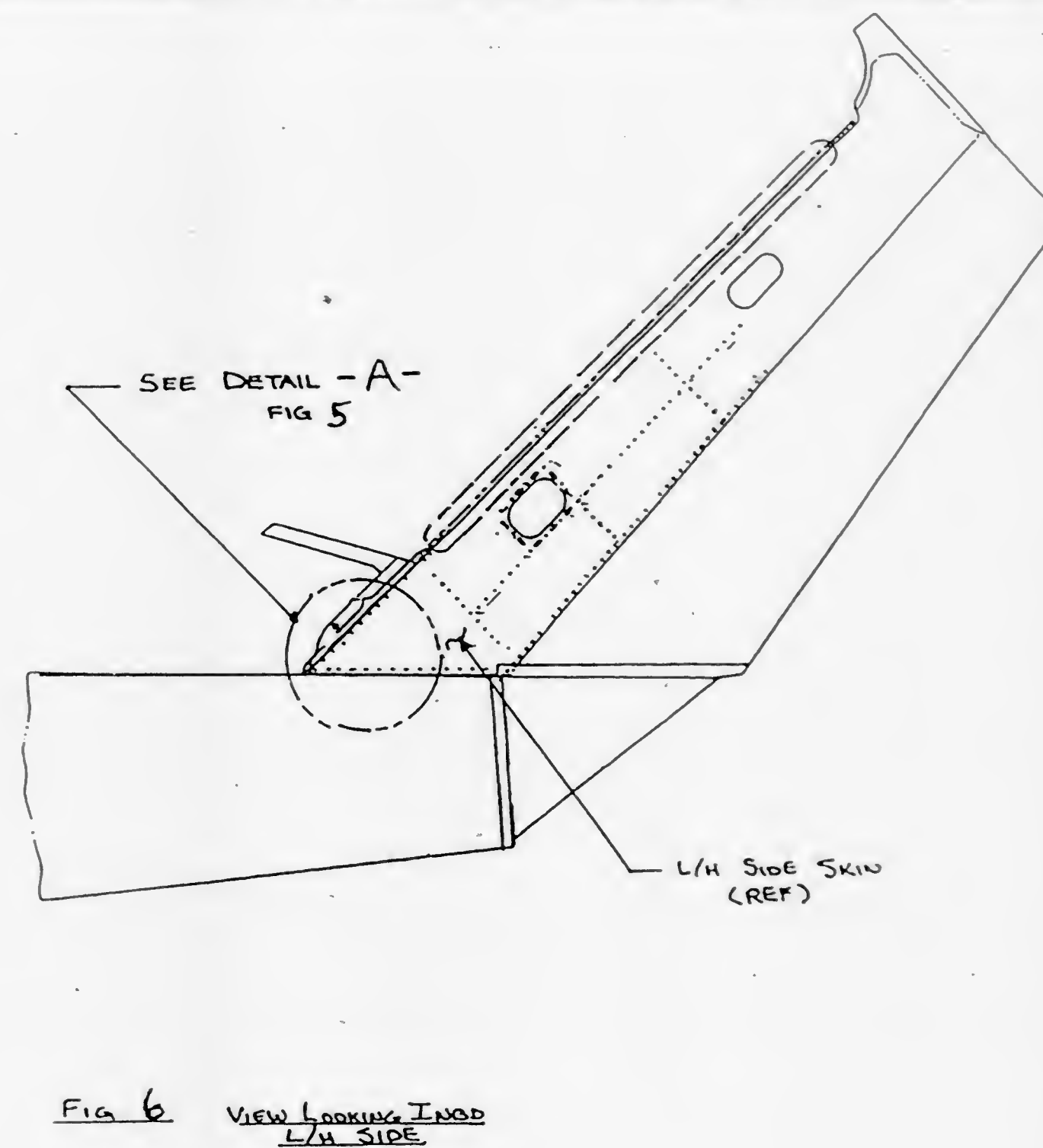
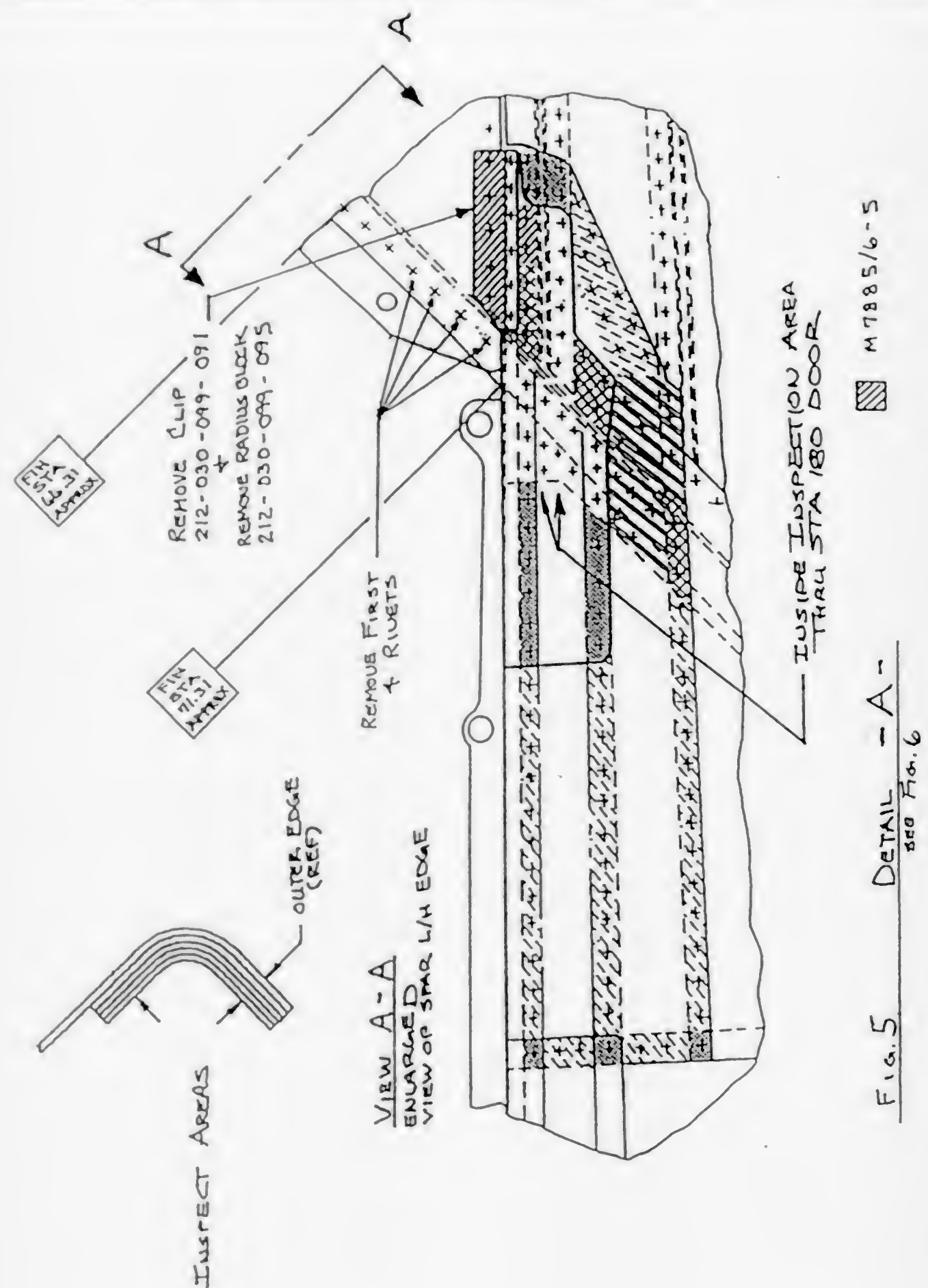
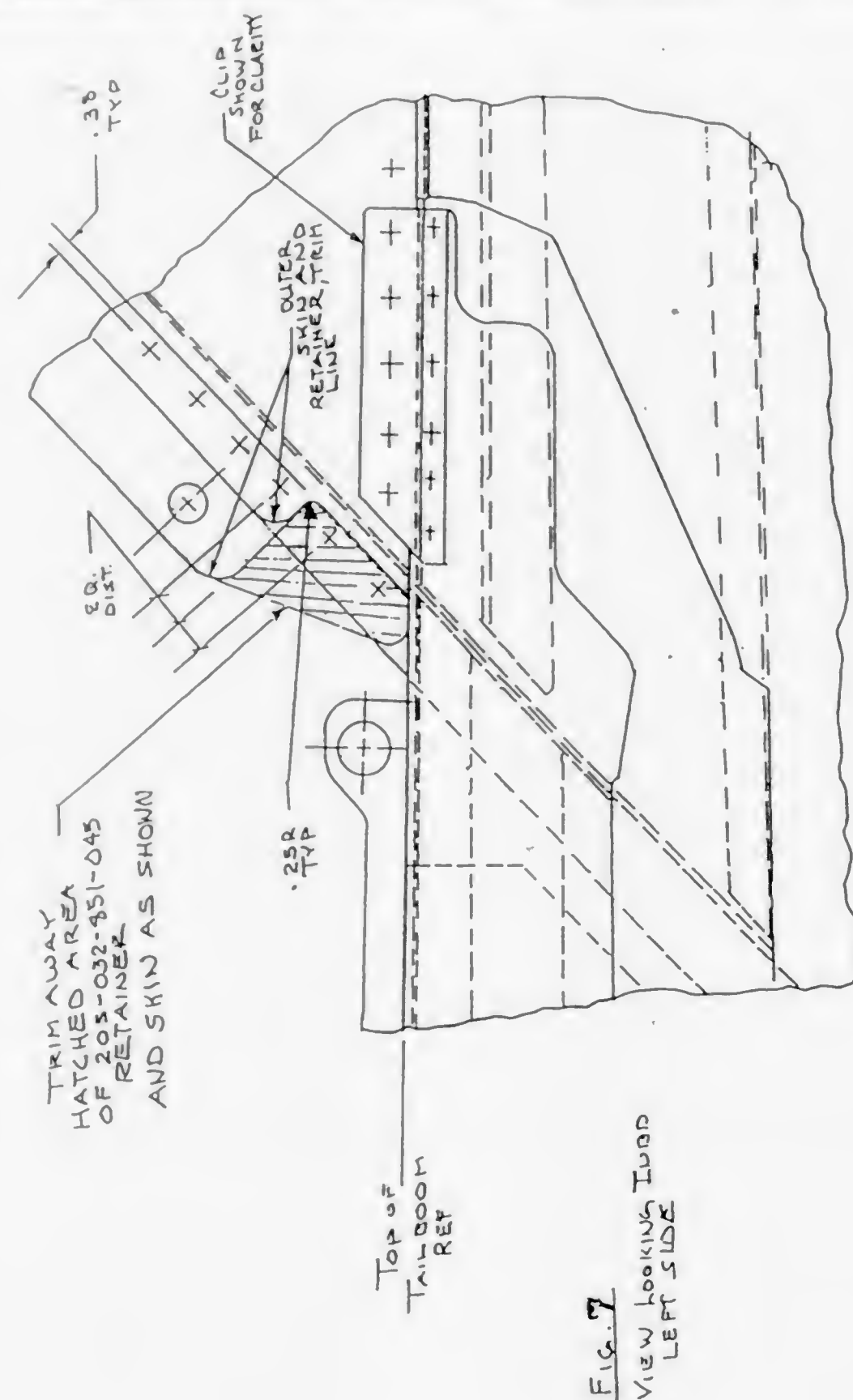


Fig. 4





(e) This amendment becomes effective on May 28, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 97-18-11, issued August 29, 1997, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on May 4, 1998.

Eric Bries.

Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.
[FR Doc. 98-12508 Filed 5-12-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-SW-35-AD; Amendment 39-10521; AD 97-20-09]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron (Bell)-manufactured Model HH-1K, TH-1F, TH-1L, UH-1A, UH-1B, UH-1E, UH-1F, UH-1H, UH-1L, and UH-1P Helicopters; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A-1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Bell-manufactured Model HH-1K, TH-1F, TH-1L, UH-1A, UH-1B, UH-1E, UH-1F, UH-1H, UH-1L, and UH-1P helicopters; and Southwest Florida Aviation SW204, SW204HP, and SW205 helicopters, that currently requires modification and inspections of the

vertical fin spar. This amendment requires the same modification and inspections required by the existing priority letter AD, but adds the Southwest Florida Aviation Model SW205A-1 and Utah State University UH-1H helicopters to the applicability of this AD. This amendment is prompted by accidents involving in-flight failure of the tailboom vertical fin spar. The actions specified by this AD are intended to prevent in-flight failure of the vertical fin spar and subsequent loss of control of the helicopter.

DATES: Effective May 28, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW-35-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harrison, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5447, fax (817) 222-5960.

SUPPLEMENTARY INFORMATION: On September 17, 1997, the FAA issued priority letter AD 97-20-09, applicable to Bell-manufactured Model HH-1K, TH-1F, TH-1L, UH-1A, UH-1B, UH-1E, UH-1F, UH-1H, UH-1L, and UH-1P helicopters; and Southwest Florida Aviation SW204, SW204HP and SW205 helicopters, which requires modification and inspections of the vertical fin spar. That priority letter AD was prompted by two accidents involving in-flight failures of the tailboom vertical fin spars (vertical fin spars) on Model TH-1L and UH-1B helicopters. One other accident occurred on a Model 205A-1 helicopter which is of similar type design. One of the accidents resulted in a fatality. As a result of those accident investigations, the FAA determined that a large number of high-power events can cause fatigue cracks which will cause the vertical fin spar to fail. This condition, if not corrected, could result in in-flight failure of the vertical fin spar and subsequent loss of control of the helicopter.

Since the issuance of that priority letter AD, the FAA has determined that additional helicopter models are affected by the same unsafe condition.

Since an unsafe condition has been identified that is likely to exist or develop on other Bell-manufactured Model HH-1K, TH-1F, TH-1L, UH-1A, UH-1B, UH-1E, UH-1F, UH-1H, UH-1L, and UH-1P helicopters; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A-1 helicopters of a similar type design, this AD supersedes priority letter AD 97-20-09 to add the Model SW205A-1 helicopters and the Utah State University UH-1H helicopters to the applicability of this AD. The short compliance time involved is required

because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore the inspections and modification are required within 8 hours time-in-service and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 68 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per helicopter for the initial modification and inspection, 200 work hours to replace the vertical fin spar, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$8,000 per helicopter to replace the vertical fin spar. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$1,370,200 to modify the vertical fin, conduct an initial inspection, and replace the vertical fin spars on all helicopters in the U.S. fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before

the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-SW-35-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft,

and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39-10521, to read as follows:

AD 97-20-09 California Department of Forestry; Firefly Aviation Helicopter Services (Previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Ranger Helicopter Services; Robinson Airplane; Scott Paper Co.; Smith Helicopters; Southern Helicopter; Southwest Florida Aviation; Utah State University; Western International Aviation, Inc.; UNC Helicopters; and U.S. Helicopter, Inc.: Amendment 39-10521. Docket No. 97-SW-35-AD. Supersedes priority letter AD 97-20-09.

Applicability: Model HH-1K (Type Certificate Data Sheet (TCDS) H5NM), TH-1F (TCDS H12NM, and R0008AT), TH-1L (TCDS H5NM, H7SO, and H4NM), UH-1A (TCDS H3SO), UH-1B (TCDS H1RM, H3NM, H13WE, H3SO, H5SO, and R00012AT), UH-1E (TCDS H5NM, H7SO, H8NM, and H4NM), UH-1F (TCDS H2NM, H7NE, H11SW, H12NM, and R0008AT), UH-1H (TCDS H13WE, H3SO, and H15NM), UH-1L (TCDS H5NM, H7SO, and H4NM), UH-1P (TCDS H12NM, and R0008AT), and SW204 (TCDS H6SO), SW204HP (TCDS H6SO), SW205 (TCDS H6SO), and SW205A-1 (TCDS H6SO)

helicopters, with tailboom vertical fin spar, part number (P/N) 205-032-899, 205-030-846, or 205-032-851, all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight failure of the tailboom vertical fin spar (vertical fin spar) and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 8 hours time-in-service (TIS) after the effective date of this AD, modify the vertical fin spar as follows:

(1) Remove the 42° gearbox cover and open the drive shaft cover on the vertical fin spar assembly (see Figure 1).

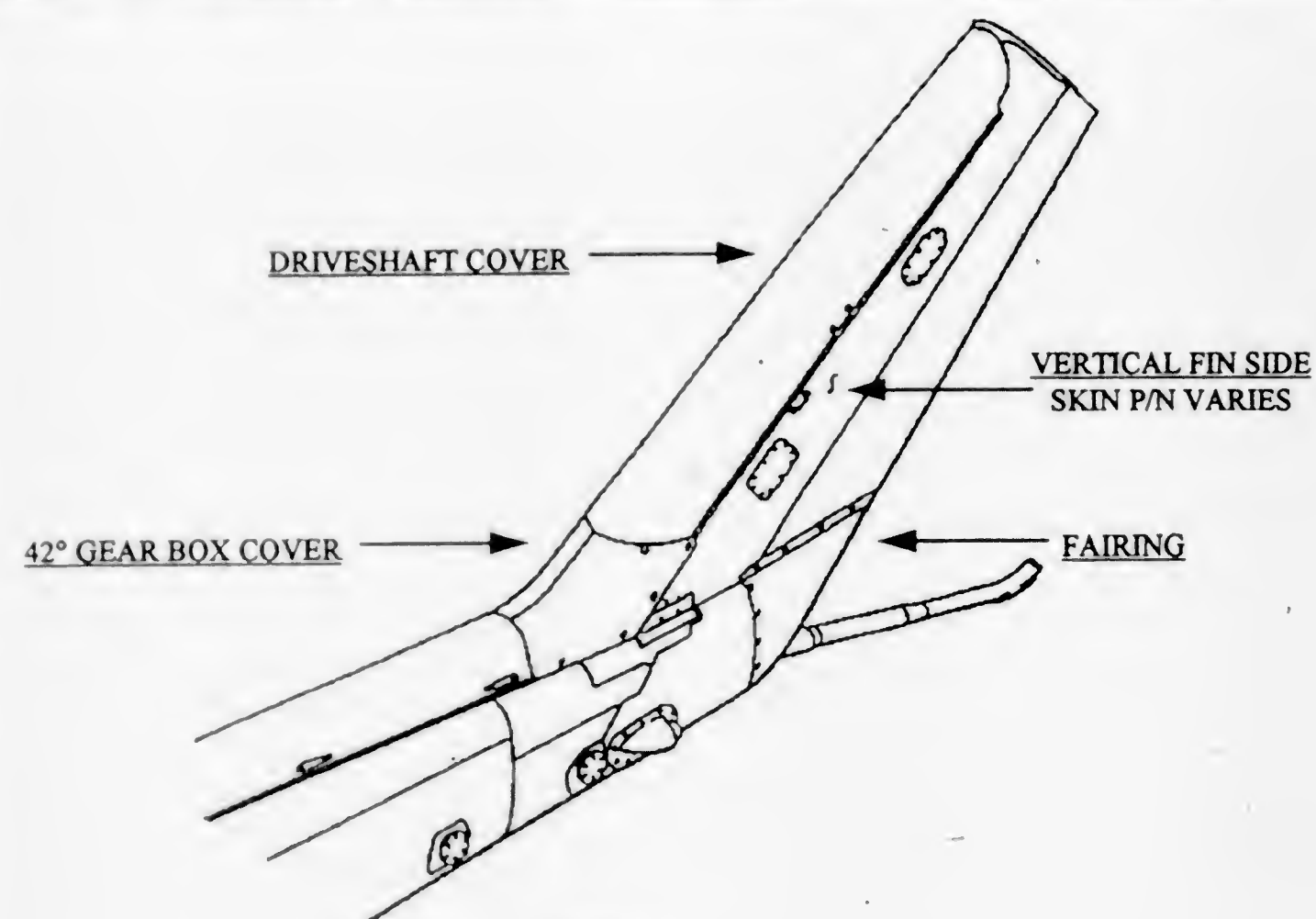


Figure 1

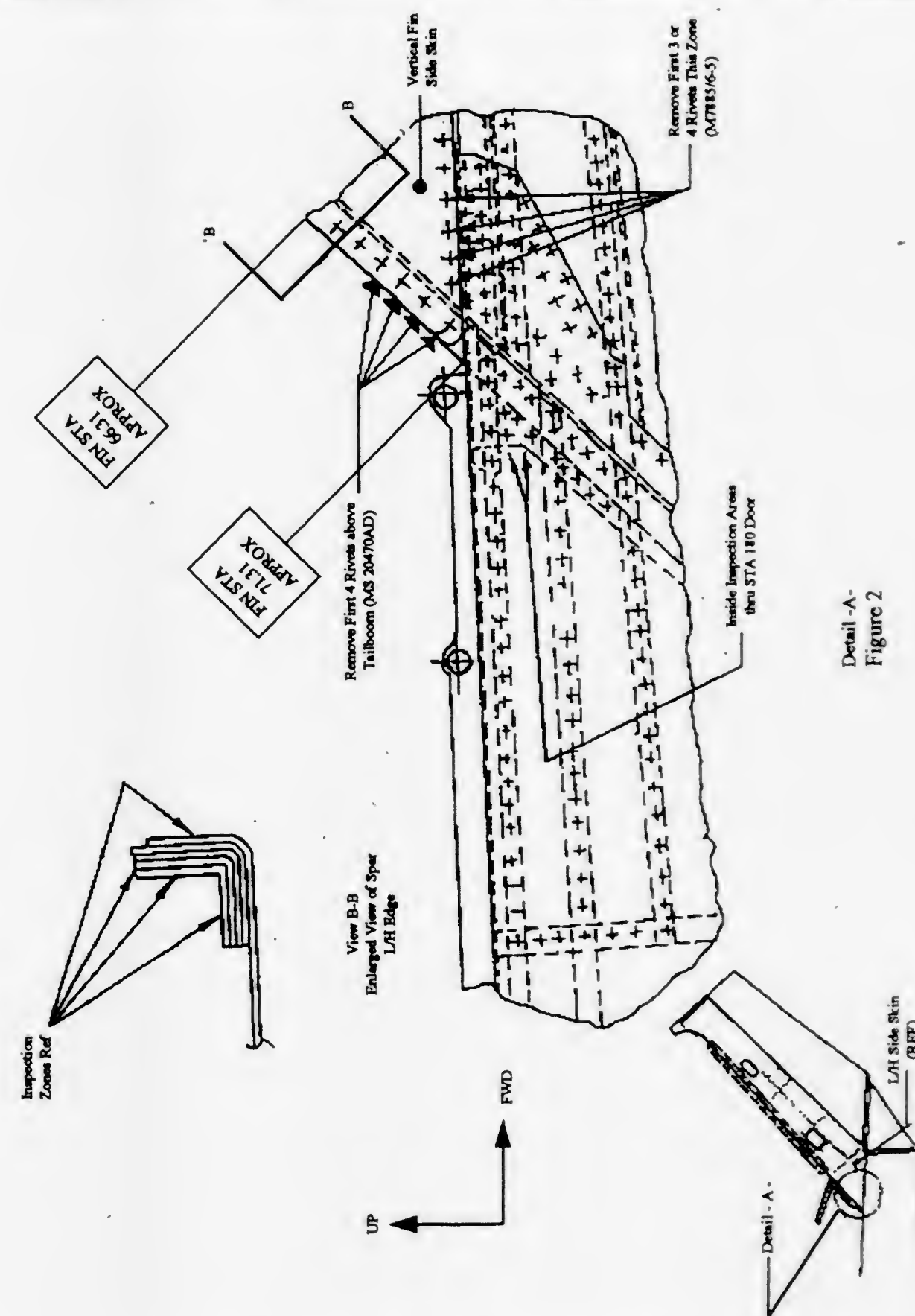
(2) Remove the first four rivets from the vertical fin spar located at the bottom of the vertical fin spar left-hand side at the tailboom and vertical fin spar junction, and the first four rivets aft of the junction along the lower

edge of the vertical fin spar side-skin as shown (see Figure 2).

Caution: Extreme care must be taken when drilling and removing rivets from the side of

the vertical fin spar to ensure the vertical fin spar assembly is not damaged.

BILUNG CODE 4910-13-P



(3) Trim the vertical fin spar left-hand skin using extreme care to not damage the vertical fin spar assembly (see Figure 3).

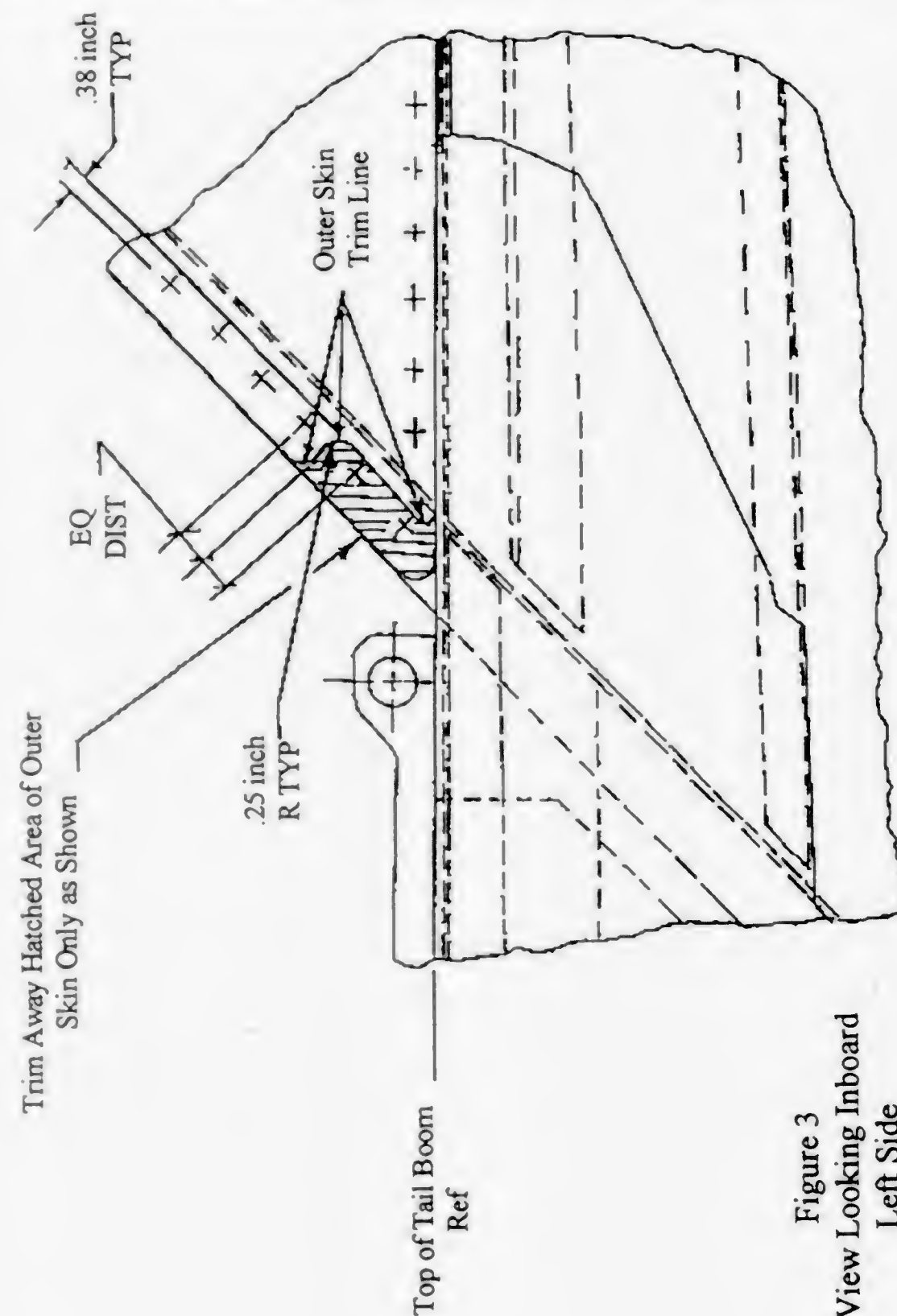


Figure 3
View Looking Inboard
Left Side

BILLING CODE 4910-13-C

(4) Deburr the rivet holes and trimmed skin edges. Remove all debris. In a ventilated work area, remove any surface contaminants with a cloth that has been dampened with aliphatic naphtha or an equivalent cleaning solvent.

(5) Reattach the side-skin to the vertical fin spar using MS 20470AD rivets. DO NOT install the bottom two rivets into the vertical fin spar where the skin was trimmed.

(6) Reinstall the vertical fin spar skin lower edge rivets using M 7885/6-5 rivets (see Figure 2).

(7) Refinish all reworked areas.

(8) After modifying the vertical fin spar, immediately inspect the vertical fin spar in accordance with paragraphs (b)(3) and (b)(4) of this AD.

(b) After the initial modification and inspection of the vertical fin spar have been

accomplished in accordance with paragraph (a) of this AD, thereafter, at intervals not to exceed 8 hours TIS, inspect the vertical fin spar for cracks as follows:

(1) Remove the lower aft tailboom inspection door, located at tailboom station 180 (see Figure 4).

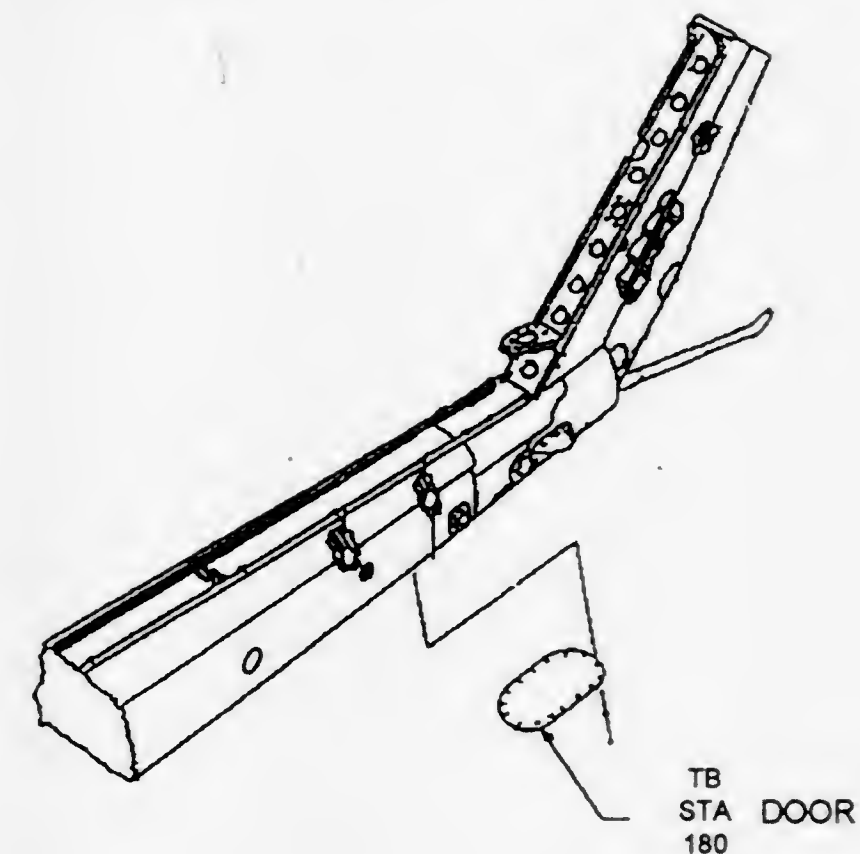


Figure 4

(2) Remove the 42° gearbox cover and open the drive shaft cover on the vertical fin (see Figure 1).

(3) Through the lower aft tailboom inspection door, using a bright light and an inspection mirror, inspect the vertical fin spar assembly adjacent to the tailboom top skin on the forward side, paying special attention to the left-hand edge and the adjacent surfaces (see Figure 2).

(4) In a ventilated work area, clean all surfaces to be inspected with a cloth dampened with aliphatic naphtha or an equivalent cleaning solvent. Using a bright light and a 10x magnifying glass, inspect the vertical fin spar assembly adjacent to the tailboom top-skin on the in-board and out-board sides, the vertical edge, and the two open rivet holes. Using a bright light and a mirror, inspect the aft side of the vertical fin spar in the same area. Special attention must be given to the left-hand edge of the vertical fin spar and any adjacent surfaces between fin stations 66.31 and 71.31 (see Figure 2).

(c) If any crack is discovered on the vertical fin spar as a result of the inspection specified in paragraphs (b)(3) or (b)(4) of this AD,

replace the vertical fin spar assembly with an airworthy vertical fin spar assembly before further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on May 28, 1998.

Issued in Fort Worth, Texas, on May 4, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.

[FR Doc. 98-12509 Filed 5-12-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-18]

Revocation of Class D Airspace,
Lubbock Reese AFB, TX, and Revision
of Class E Airspace, Lubbock, TX

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of
effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revokes Class D airspace at Lubbock Reese AFB, TX, and revises Class E airspace at Lubbock, TX.

EFFECTIVE DATE: The direct final rule published at 63 FR 11989 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 12, 1998 (63 FR 11989). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.
Albert L. Viselli,
Acting Manager, Air Traffic Division,
Southwest Region.
 [FR Doc. 98-12711 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-19]

Revision of Class E Airspace; Gallup, NM

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Gallup Municipal Airport, Gallup, NM.

EFFECTIVE DATE: The direct final rule published at 63 FR 12989 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort

Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 17, 1998 (63 FR 12989). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.
Albert L. Viselli,
Acting Manager, Air Traffic Division,
Southwest Region.
 [FR Doc. 98-12712 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-20]

Revision of Class E Airspace; Eastland Municipal, TX

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Eastland Municipal Airport, Eastland, TX.

EFFECTIVE DATE: The direct final rule published at 63 FR 12988 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 17, 1998 (63 FR 12988). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse

comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.
Albert L. Viselli,
Acting Manager, Air Traffic Division,
Southwest Region.
 [FR Doc. 98-12713 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ASW-28]

Revision of Class E Airspace; Bartlesville, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Director final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Bartlesville, OK.

EFFECTIVE DATE: The direct final rule published at 63 FR 12627 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 16, 1998 (63 FR 12627). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.

Albert L. Viselli,
Acting Manager, Air Traffic Division,
Southwest Region.
 [FR Doc. 98-12714 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ASW-29]

Establishment of Class E Airspace; Cleveland, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Cleveland, OK.

EFFECTIVE DATE: The direct final rule published at 63 FR 12625 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 16, 1998 (63 FR 12625). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.

Albert L. Viselli,
Acting Manager, Air Traffic Division,
Southwest Region.
 [FR Doc. 98-12729 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-01]

Establishment of Class E Airspace; Coalgate, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Coalgate, OK.

EFFECTIVE DATE: The direct final rule published at 63 FR 12629 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 16, 1998 (63 FR 12629). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.

Albert L. Viselli,
Acting Manager, Air Traffic Division,
Southwest Region.
 [FR Doc. 98-12730 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-02]

Establishment of Class E Airspace; Pawnee, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Pawnee, OK.

EFFECTIVE DATE: The direct final rule published at 63 FR 12624 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 16, 1998 (63 FR 12624). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX on May 5, 1998.
Albert L. Viselli,
Acting Manager, Air Traffic Division,
Southwest Region.
 [FR Doc. 98-12731 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-03]

Establishment of Class E Airspace; Wagoner, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Wagoner, OK.

EFFECTIVE DATE: The direct final rule published at 63 FR 12639 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region,

comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.
Albert L. Viselli,
*Acting Manager, Air Traffic Division,
 Southwest Region.*
 [FR Doc. 98-12739 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-16]

Revision of Class E Airspace; Tahlequah, OK

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Tahlequah, OK.

EFFECTIVE DATE: The direct final rule published at 63 FR 12634 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 16, 1998 (63 FR 12634). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.
Albert L. Viselli,
*Acting Manager, Air Traffic Division,
 Southwest Region.*
 [FR Doc. 98-12740 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-07]

Revision of Class E Airspace; Grove, OK

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Grove, OK.

EFFECTIVE DATE: The direct final rule published at 63 FR 12635 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 16, 1998 (63 FR 12635). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.
Albert L. Viselli,
*Acting Manager, Air Traffic Division,
 Southwest Region.*
 [FR Doc. 98-12742 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-08]

Revision of Class E Airspace; Henryetta, OK

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Director final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Henryetta, OK.

EFFECTIVE DATE: The direct final rule published at 63 FR 12622 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 16, 1998 (63 FR 12622). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.
Albert L. Viselli,
*Acting Manager, Air Traffic Division,
 Southwest Region.*
 [FR Doc. 98-12743 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-09]

Revision of Class E Airspace; Idabel, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Idabel, OK.

EFFECTIVE DATE: The direct final rule published at 63 FR 12620 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 16, 1998 (63 FR 12620). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.
Albert L. Viselli,
*Acting Manager, Air Traffic Division,
 Southwest Region.*
 [FR Doc. 98-12744 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-10]

Revision of Class E Airspace; McAlester, OK

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at McAlester, OK.

EFFECTIVE DATE: The direct final rule published at 63 FR 12623 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region,

Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 16, 1998 (63 FR 12623). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.
Albert L. Viselli,
*Acting Manager, Air Traffic Division,
 Southwest Region.*
 [FR Doc. 98-12745 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-11]

Establishment of Class E Airspace; Miami, OK

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Miami, OK.

EFFECTIVE DATE: The direct final rule published at 63 FR 12619 is effective 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817-222-5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the *Federal Register* on March 16, 1998 (63 FR 12619). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule

advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 5, 1998.
Albert L. Viselli,
*Acting Manager, Air Traffic Division,
 Southwest Region.*
 [FR Doc. 98-12746 Filed 5-12-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MR-041-FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program (hereinafter referred to as the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions to its regulations pertaining to bonding. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: May 13, 1998.

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937-2153.

SUPPLEMENTARY INFORMATION:
 I. Background on the Maryland Program.
 II. Submission of the Proposed Amendment.
 III. Director's Findings.
 IV. Summary and Disposition of Comments.
 V. Director's Decision.
 VI. Procedural Determinations.

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the

conditions of approval can be found in the December 1, 1980, *Federal Register* (45 FR 79449). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of the Proposed Amendment

By letter dated March 6, 1997 (Administrative Record No. MD-552.18), Maryland submitted a proposed amendment to its program pursuant to SMCRA in response to required amendments at 30 CFR 920.16 (h), (i), (j), and (n). Maryland is revising the Code of Maryland Regulations (COMAR) at section 26.20.14.01B—Performance Bonds. Specifically, Maryland proposes to require that a performance bond be conditioned upon the permittee faithfully performing every requirement of Subtitle 5 of the Annotated Code of Maryland, the Regulatory Program, the permit, and the reclamation plan. Maryland is also formally submitting an actuarial study which reviews the adequacy of its alternative bonding system.

OSM announced receipt of the proposed amendment in the March 25, 1997, *Federal Register* (62 FR 14079), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on April 24, 1997. OSM reopened the public comment period on April 6, 1998 (63 FR 16730) and clarified that Maryland's alternative bonding system was originally submitted with the understanding that it would cover acid mine drainage. Further, Maryland submitted additional changes to its program at COMAR 26.20.14.03 and 26.20.14.04 which pertain to performance bond requirements. In 1991, OSM approved changes to former COMAR 08.13.09.15C (now 26.20.14.03) and COMAR 08.13.09.15D (now 26.20.14.04) [56 FR 63649, December 5, 1991]. However, Maryland subsequently chose not to promulgate these approved changes. Instead, it now proposes to readopt the language at these sections. The comment period closed on April 21, 1998.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions not specifically discussed below concern nonsubstantive wording changes and paragraph notations to reflect

organizational changes resulting from this amendment.

1. *COMAR 26.20.14.01B—Performance Bonds.* Maryland is proposing to require that performance bonds be payable to the State, on forms provided by the Bureau of Mines, and conditioned on the permittee faithfully performing every requirement of Environmental Article, Title 15, Subtitle 5, Annotated Code of Maryland, the Regulatory Program, the permit, and the reclamation plan. The Director finds that the proposed revision is no less effective than the Federal regulation at 30 CFR 800.11(a) and he is removing the required amendment at 30 CFR 920.16(h).

2. *COMAR 26.20.14.03—Performance Bonds (formerly 08.13.09.15C).* Maryland is proposing to require that the amount of the performance bond be based upon the estimated cost to perform the reclamation required to achieve compliance with the regulatory program and the requirements of the permit in the event of a forfeiture. In addition, a separate bond for revegetation in the amount of \$600 per acre of affected land and a general bond in the amount of \$1500 per acre for the approved open acre limit is established. The Director finds that the proposed revision is no less effective than the Federal regulation at 30 CFR 800.14(b).

3. *COMAR 26.20.14.04—Performance Bonds (formerly 08.13.09.15D).* Maryland is proposing to require that the amount of the performance bond be adjusted as acreage in the permit area is revised, methods of mining operation change, standards of reclamation change, or when the cost of reclamation or restoration work changes. The Director finds that the proposed revision is no less effective than the Federal regulation at 30 CFR 800.15(a) and he is removing the required amendment at 30 CFR 920.16(j).

4. *Actuarial Study.* Maryland is formally submitting "Actuarial Analysis of the Alternative Bonding System for Surface Mine Reclamation" prepared by Arthur Andersen LLP (Administrative Record No. MD-552-12). The analysis concluded that Maryland's bonding system appears to be solvent on a short term basis. Short term solvency was defined as "the ability to pay for all currently outstanding known reclamations plus one average cost reclamation project." The analysis also concluded that Maryland's long term solvency based on its current rate structure is adequate until 1999, at which time rates may have to be adjusted for inflation. Long term solvency was defined as the ability of the fund to collect sufficient revenue to

pay for reclamation costs incurred in the future. Several recommendations were made concerning fund caps, bond amounts, contingency reserves, and catastrophe plans. OSM reviewed the document and concluded that the study was comprehensive and closely aligned with OSM's bonding guidance document, "Alternative Bonding Systems: An Analytical Approach and Identified Factors to Consider for Evaluating Alternative Bonding Systems." Maryland's alternative bonding system was originally submitted with the understanding that it would cover acid mine drainage. Maryland has since adopted a policy that will limit the liability of the alternative bonding system by increasing the permittee's individual bond amount where unanticipated acid mine drainage develops on a site. The Director is approving Maryland's alternative bonding system based on the results of the actuarial study. Maryland's bonding system achieves the objectives of and is no less effective than the Federal regulations at 30 CFR 800.11(e). He is removing the required amendments at 30 CFR 920.16(i) and (n).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. The U.S. Department of Labor, Mine Safety and Health Administration and the U.S. Department of the Army, Army Corps of Engineers, concurred without comment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Maryland proposed to make in this amendment pertain to air or water quality standards.

Therefore, OSM did not request EPA's concurrence.

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

V. Director's Decision

Based on the above findings, the Director approves Maryland's proposed amendment as submitted on March 6, 1997. As discussed in Finding 1, the Director is removing the required amendment at 30 CFR 920.16(h). As discussed in Finding 4, the Director is removing the required amendments at 30 CFR 920.16 (i) and (n). He is also removing the required amendment at 30 CFR 920.16(j) because at COMAR 26.20.14.04A, Maryland is required to adjust the amount of the performance bond liability as acreage in the permit area is revised, as discussed in Finding 3.

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*)

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a submittal number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million of more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 1, 1998.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submissions date	Date of final publication	Citation/description
March 6, 1997	May 13, 1998	COMAR 26.20.14.01B, 26.20.14.03, 26.20.14.04, Actuarial Study.

§ 920.16 [Amended]

3. Section 920.16 is amended by removing and reserving paragraphs (h), (i), (j), and (n).

[FR Doc. 98-12646 Filed 5-12-98; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 100**

[CGD07-98-013]

RIN 2115-AE46

Special Local Regulations; River Race Augusta, Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the River Race Augusta, which will be held annually on the third Friday, Saturday and Sunday of May, between 7 a.m. and 5 p.m. Eastern Daylight Time (EDT) each day. Historically, there have been approximately sixty participants racing 16 to 18 foot outboard power boats on the Savannah River at Augusta, GA, between mile markers 199 and 197. These regulations are necessary to provide for the safety of life on navigable waters during the event, as the nature of the event and the closure of the Savannah River creates an extra or unusual hazard on the navigable waters.

DATES: These rules become effective May 13, 1998.

FOR FURTHER INFORMATION CONTACT: LTJG A.L. Cooper, Coast Guard Group Charleston at (803) 720-7748.

SUPPLEMENTARY INFORMATION:**Regulatory History**

The Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on March 24, 1998 (63 FR 14057). No comments were received during the comment period.

Background and Purpose

These regulations are intended to provide for the safety of life and to promote safe navigation on the waters off Augusta on the Savannah River during the River Race August, by controlling the traffic entering, exiting and traveling within these waters. The concentration of spectator and participant vessels associated with the River Race poses safety concerns, which are addressed in these special local

regulations. These regulations prohibit the entry of non-participating vessels in the area downstream from the U.S. Highway 1 Bridge on the Savannah River between mile markers 199 and 197, annually from 7 a.m. to 5 p.m. each day, on the third Friday, Saturday and Sunday of May. These regulations permit the movement of spectator vessels and other non-participants after the termination of the race each day, and during intervals between scheduled events.

In accordance with 5 U.S.C. 553, good cause exists for making these regulations effective in less than 30 days after Federal Register publication. Delaying its effective date would be impracticable, as there was not sufficient time remaining from the receipt of the permit request to allow for a comment period and a full 30 day effective date period after publication. Delaying the effective date would also be contrary to the public interest because the event would be held with no regulations in force, creating a safety hazard.

Regulatory Evaluation

This rule is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. These regulations will be in effect three days each year for only 10 hours each day.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and government jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 606(b) that this rule would not have a significant economic impact on a substantial number of small entities as the regulations would only be in effect for ten hours in a limited area

of the Savannah River for three days each year.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule consistent with Section 2.B.2 of Commandant Instruction M16475.1C. In accordance with that section, this action has been environmentally assessed (EA completed) and the Coast Guard has concluded that it will not significantly affect that quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact has been prepared and are available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.732 is added to read as follows:

§ 100.732 Annual River Race Augusta; Savannah River, Augusta GA.

(a) *Definitions:* (1) *Regulated Area.* The regulated area is formed by a line drawn directly across the Savannah River at the U.S. Highway 1 Bridge at mile marker 199 and directly across the Savannah River at mile marker 197. The regulated area would encompass the width of the Savannah River between these two lines.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast

Guard Group Charleston, South Carolina.

(b) *Special Local Regulations.* (1) Entry into the regulated area is prohibited to all non-participants.

(2) After termination of the River Race Augusta each day, and during intervals between scheduled events, at the discretion of the Coast Guard Patrol Commander, all vessels may resume normal operations.

(3) The Captain of the Port Charleston will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the special local regulations and the restrictions imposed.

(c) *Dates.* These regulations become effective annually from 7 a.m. to 5 p.m. EDT each day, on the third Friday, Saturday and Sunday of May, unless otherwise specified in the notice to mariners.

Dated: May 1, 1998.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 98-12846 Filed 5-11-98; 12:35 pm]

BILLING CODE 4910-15-M

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 21**

RIN 2900-A185

Veterans' Training: Time Limit for Submitting Certifications under the Service Members Occupational Conversion and Training Act

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This document amends the training assistance and training benefit regulations of the Department of Veterans Affairs (VA). It places deadlines for submitting the certifications needed for both periodic payments and lump-sum deferred-incentive payments under the Service Members Occupational Conversion and Training Act (SMOCTA). Since the Act has a sunset provision, all work for which payments are due has been completed. This final rule allows VA to close the administration of SMOCTA.

DATES: Effective Date: July 13, 1998.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Adviser, Education Service, Veterans Benefits Administration, 202-273-7187.

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on November 10, 1997 (62 FR 60464), VA proposed to amend the

"Administration of Educational Assistance Programs" regulations that are set forth in 38 CFR 21.4001 et seq. VA proposed placing two-year deadlines for submitting the certifications required for both periodic payments and lump-sum deferred-incentive payments under the Service Members Occupational Conversion and Training Act (SMOCTA), 10 U.S.C. 1143 note.

Interested parties were given 60 days to submit comments. VA received no comments. Accordingly, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The final rule will affect some small entities. However, the effect of the final rule, requiring employers to submit certifications within two years of the end of SMOCTA training, would not impose any additional costs on the employer. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

No Catalog of Federal Domestic Assistance number has been assigned to the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Educational institutions, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 5, 1998.

Togo D. West, Jr.,

Acting Secretary.

For the reasons set forth in the preamble, 38 CFR part 21 (subpart F-3) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION**Subpart F-3—Service Members Occupational Conversion and Training Program**

1. The authority for part 21, subpart F-3 continues to read as follows:

Authority: 10 U.S.C. 1143 note; sec. 4481-4487, Pub. L. 102-484, 106 Stat. 2757-2769; sec. 610, Pub. L. 103-446, 108 Stat. 4673-4674, unless otherwise noted.

2. In § 21.4832, paragraphs (e)(3) and (e)(4) are added to read as follows:

§ 21.4832 Payments to employers.

(e) * * *
(3) VA will not release any periodic payments for training provided by an employer if VA receives the employer's certification for that training after September 30, 1999.

(4) VA will not release any lump sum deferred incentive payment if VA receives either the veteran's or employer's certification required for that payment after January 31, 2000.

(Authority: 106 Stat. 2762, Pub. L. 102-484, sec. 4487(b); 10 U.S.C. 1143, note)

[FR Doc. 98-12633 Filed 5-12-98; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[NH31-1-7160a; FRL-6010-7]

Approval and Promulgation of Air Quality Implementation Plans; Reasonably Available Control Technology for Nitrogen Oxides for the State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes and requires Reasonably Available Control Technology (RACT) at three stationary sources of nitrogen oxides (NO_x). The intended effect of this action is to approve source specific orders which require major stationary sources of NO_x to reduce their emissions in accordance with requirements of the Clean Air Act.

DATES: This rule is effective on July 13, 1998 without further notice unless the Agency receives relevant adverse comments by June 12, 1998. Should the

Agency receive such comments, it will publish a timely withdrawal of this direct final rule in the *Federal Register* and inform the public that the rule did not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203-2211. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; as well as the Air Resources Division, New Hampshire Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, Environmental Engineer, Air Quality Planning Unit (CAQ), U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203-2211; (617) 565-2773; Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) requires that States develop RACT regulations for all major stationary sources of NO_x in areas which have been classified as "moderate," "serious," "severe," and "extreme" ozone nonattainment areas, and in all areas of the Ozone Transport Region (OTR). EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979). This requirement is established by sections 182(b)(2), 182(f), and 184(b) of the CAA.

These CAA NO_x requirements are further described by EPA in a notice entitled, "State Implementation Plans: Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620). The November 25, 1992 notice, also known as the NO_x Supplement, should be referred to for more detailed information on NO_x requirements. Additional EPA guidance memoranda, such as those included in the "NO_x Policy Document for the Clean Air Act of 1990," also known as the NO_x Policy Document, (EPA-452/R-96-005, March 1996), should also be referred to for more information on NO_x requirements. Similarly, the "Economic Incentive

Program Rules," or EIP (67 FR 16690, April 7, 1997), and the Emissions Trading Policy Statement, or ETPS (51 FR 43814, December 4, 1986), should be referred to for information on EPA's policy concerning emissions averaging and/or trading by sources subject to NO_x RACT.

New Hampshire has three designated ozone nonattainment areas. First, the area which includes all of Merrimack County, part of Hillsborough County, and part of Rockingham County is classified as a marginal nonattainment area (see 40 CFR Part 81 for the list of affected towns). Second, all of Strafford County and part of Rockingham County is classified as a serious non-attainment area (see 40 CFR Part 81, § 81.330 for the list of affected towns). Third, the part of southern New Hampshire that is located within the Boston-Lawrence-Salem Consolidated Metropolitan Statistical Area (CMSA) is also classified as a serious nonattainment area (see 40 CFR Part 81, § 81.330 for the list of affected towns). Additionally, section 184(a) of the CAA also establishes the northeastern United States, which includes all of the State of New Hampshire, as part of the OTR.

Section 182(b)(2) of the CAA requires States to require implementation of RACT with respect to all major sources of volatile organic compounds (VOCs). This RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications. Section 182(f) states that, "the plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen." Additionally, section 184(b)(2) requires major stationary sources in the OTR to meet the requirements applicable to major sources if the area were classified as a moderate nonattainment area, unless already classified at a higher nonattainment level. These sections of the CAA, taken together, establish the requirements for New Hampshire to submit a NO_x RACT regulation which covers major sources.

Section 302 of the CAA generally defines "major stationary source" as a facility or source of air pollution which has the potential to emit 100 tons per year or more of air pollution. This definition applies unless another provision of the CAA explicitly defines major source differently. Therefore, for NO_x, a major source is one with the potential to emit 100 tons per year or more in marginal and moderate areas, as well as in attainment areas in the OTR.

However, for serious nonattainment areas, a major source is defined by section 182(c) as a source that has the potential to emit 50 tons per year or more.

In New Hampshire's Strafford County, in the part of Rockingham County that is classified as serious nonattainment, and in the Boston-Lawrence-Salem CMSA, a major stationary source of NO_x is a facility which has a potential to emit of 50 tons per year or more of NO_x. Throughout the rest of the State, a major stationary source of NO_x is a facility with the potential to emit 100 tons or more per year of NO_x. Such facilities are subject to NO_x RACT requirements.

II. State Submittal

On April 14, 1997, May 6, 1997, and September 24, 1997, the New Hampshire Department of Environmental Services (DES) submitted revisions to its SIP concerning Public Service Company of New Hampshire (PSNH), Hampshire Chemical Corporation (HCC), and Crown Vantage (Crown), respectively. The Crown and HCC SIP submittals define RACT for various pieces of equipment at their facilities which are subject to the miscellaneous NO_x RACT provisions of New Hampshire's NO_x RACT regulation "Env-A 1211 Nitrogen Oxides" (Env-A 1211). The submittal for Crown also defines alternative emission limits for two industrial boilers at the Berlin facility. The PSNH SIP submittal establishes an emissions averaging plan for the two utility boilers at PSNH's Merrimack Station (Merrimack). Additionally, the submittal for Merrimack involves an emission quantification protocol for the creation and/or use of discrete emission reductions.

Previously, DES submitted regulation Part Env-A 1211 and a source-specific NO_x RACT determination as a SIP revision in response to the CAA requirements that RACT be required for all major sources of NO_x. On April 9, 1997, EPA published a *Federal Register* notice approving those NO_x RACT submittals. See 62 FR 17137. That notice, however, stated that RACT determinations were still outstanding for Crown and HCC. Subsequently, DES submitted NO_x RACT determinations to EPA for Crown and HCC on September 24, 1997 and May 6, 1997, respectively. Additionally, on April 14, 1997 DES submitted an emissions averaging plan and emission credit quantification protocol for PSNH as an alternative RACT determination and economic incentive program revision to the SIP.

III. Description of Submittal

The following is a description of the three SIP actions. For a more detailed description of these RACT related actions, the reader should refer to the technical support document and attachment and/or to the RACT orders themselves, located at the addresses listed above. The orders have been evaluated against the relevant EPA guidance documents, including the NO_x Supplement, the NO_x Policy Document, the EIP, and the ETPS.

A. Crown Vantage

There are a number of devices at Crown's Berlin facility which fall under the miscellaneous NO_x RACT requirements of Env-A 1211.02(l), i.e., the Chemical Recovery Unit #11, the #2 lime kiln, and four space heaters. The space heaters each have heat input capacities of less than 2 million Btu per hour (mmBtu/hr). Because these units operate only during the heating season and have relatively small NO_x emissions, it has been determined that emission controls for this unit size would not be cost effective. Therefore, RACT for these units has been defined as no additional controls. For the Chemical Recovery Unit #11, RACT has been defined as a NO_x limitation of 120 parts per million on a wet volume basis (ppmv), corrected to 8% oxygen, on a 24 hour calendar day basis. For the #2 lime kiln, RACT has been defined as an emission limitation of 120 ppmv, corrected to 10% oxygen, on a 24 hour calendar day basis. These limits are comparable to RACT limits established for similar types of equipment in other States in the northeastern United States.

Additionally, there are a number of devices at the Crown facility for which it has been demonstrated that meeting the emission limits of Env-A 1211 is not economically or technically feasible. Subsequently, alternative emission limitations have been determined pursuant to Env-A 1211.17 for these units, i.e., Boiler #3 and Boiler #12. Crown has demonstrated that for Boiler #3, low NO_x burners (LNB) would reduce NO_x at a cost-effectiveness of almost \$4700 per ton of NO_x reduced. Similarly, they have shown that for Boiler #12, the cost-effectiveness would be approximately \$8800 per ton of NO_x reduced. The costs required to achieve these reductions are considerably higher than the high end of the cost-effectiveness range recommended by EPA (see "NO_x Policy Document for the Clean Air Act of 1990," (EPA-452/R-96-005, March 1996)). Therefore, for Boiler #3, Final RACT Order ARD-97-003 sets a NO_x emission limit of 0.45

pounds/million Btu (lb/mmBtu) on an annual basis and 0.60 lb/mmBtu on a 24 hour basis. For Boiler #12, Final RACT Order ARD-97-0903 sets a NO_x emission limitation of 0.45 lb/mmBtu. These limits are acceptable as alternative RACT emission limits. In addition, the facility must meet the record keeping and reporting requirements of Env-A 901.06 and Env-A 901.07.

On June 10, 1997, DES proposed RACT Order ARD-97-003. On July 23, 1997, DES held a public hearing. On June 26, 1997, EPA submitted written comments to the public record. On September 24, 1997, DES submitted Final RACT Order ARD-97-003, including the miscellaneous and alternative RACT determinations, to EPA as a revision to the New Hampshire SIP. On October 16, 1997, EPA deemed the package administratively and technically complete.

B. Hampshire Chemical Corporation

There are a number of devices at HCC's Nashua facility which fall under the miscellaneous NO_x RACT requirements of Env-A 1211.02(l), i.e., a hot oil heater and six kilns. All of the kilns are small units, having heat input capacities of less than 5 mmBtu/hr. Therefore, RACT for these units has been defined as no additional NO_x controls. The hot oil heater has a heat input capacity of 13.3 mmBtu/hr. Although technically the unit is not a boiler, it has similar mechanical and thermal characteristics. Therefore, RACT for the oil heater has been defined as an annual tune-up, which is also required of industrial boilers of the same size under Env-A 1211.05. In addition, the facility must meet the record keeping and reporting requirements of Env-A 901.06 and Env-A 901.07.

New Hampshire formally proposed RACT Order ARD-95-011 on December 4, 1995 and held a public hearing on January 9, 1996. EPA submitted written comments on that proposal on January 16, 1996. New Hampshire submitted Final RACT Order ARD-95-011 on May 6, 1997. EPA deemed the submittal administratively and technically complete on May 28, 1997.

C. Public Service of New Hampshire's Merrimack Station

During 1995 and 1996, EPA received and commented on several draft RACT orders concerning PSNH's Merrimack facility. These draft orders proposed to allow PSNH to meet the NO_x emission limitations of Env-A 1211.03(c)(1)(b) at units 1 (MK1) and 2 (MK2) through the use of emissions averaging, or bubbling,

as provided for in Env-A 1211.13. In an effort to comply with the emission limitations of Env-A 1211.03(c)(1)(b), PSNH had installed NO_x control systems on both units in 1995. The selective non-catalytic reduction (SNCR) controls on MK1, however, did not reduce emissions as well as expected and the unit was unable to meet the emission rate limitation set by Env-A 1211. Fortunately, the selective catalytic reduction (SCR) NO_x control system on MK2 performed better than expected. This reduction allowed MK2 to run at emission rates lower than its limits in Env-A 1211. The enhanced performance of MK2 makes emissions averaging or trading a viable means of achieving the NO_x reductions anticipated by RACT regulations.

Basically, the bubble for Merrimack requires MK1 and MK2 to meet daily emissions caps as well as emission rate limitations. The first cap applies to the emissions of the two units combined. The second cap applies only to the emissions of MK1 when MK2 is not at full capacity. The order also adds a weekly emission rate limitation on MK1. MK2 remains subject to a daily emission cap and emission rate limitation under Env-A 1211.

More specifically, MK1 and MK2 are required to meet a combined daily emission cap which achieves an equivalent level of NO_x reduction that would be achieved if both units met the applicable emission limitations in Env-A 1211.03(c)(1)(b), (d), and (f). This combined emissions cap is in addition to the emissions cap on MK2 imposed by Env-A 1211.03 (d) and (f). The order also imposes a separate emissions cap on MK1 when MK2 is not operating during all 24 hours of a day. This second cap is equal to a historical actual emission rate (i.e., the sixth highest average weekly value from January to October 1996) of MK1 multiplied by its throughput capacity. As described in the ETPS, because the use of emissions averaging should not result in an increase in total emissions, the second cap is needed to ensure that MK1 will not exceed its historical level of emissions during days when MK2 is not at full capacity. Similarly, the order adds a weekly emission rate limitation (i.e., the sixth highest value from January to October 1996) to ensure that the emission rate from MK1 does not exceed historical rates of emissions experienced during the operation of the NO_x control system on MK1.

Additionally, the PSNH SIP submittal includes an emission quantification protocol for the creation or use of discrete emission reductions (DERs) of NO_x at Merrimack. Basically, the

protocol describes a method for quantifying the difference between the daily unit-specific RACT emission limitations (baseline), as established in Env-A 1211.03, and the actual daily average emission rate that each unit achieves for the hours that the unit operated. The protocol requires that actual emissions be measured by a continuous emission monitoring systems (CEMS). For MK1, the more stringent emission rate limitation of Env-A 1211.03(c)(1)(b) is used as the baseline to yield the fewest number of credits and the greatest number of debits. For MK2, which is subject to both an emission rate limitation under Env-A 1211.03(c)(1)(b) and an emissions cap under Env-A 1211.03(d), the protocol requires that the calculation be done using each of the two RACT limits and that the lesser quantity of DERs calculated be considered creditable.

The SIP submittal also includes data documenting that the protocol was used to quantify the creation of 142.5 DERs at Merrimack from June 1, 1995 to September 30, 1995. The documentation shows that the quantity is above and beyond any DERs that were used for RACT compliance at either MK1 or MK2 during that time period. The protocol is intended as a methodology to calculate the generation or use of DERs for RACT compliance, either by PSNH or by others who would purchase the DERs from PSNH. The order requires that prior to the use of the PSNH DERs by others, however, a DER use protocol (if different from the method described in the attachment to the order) be approved by DES and EPA, either on a case-by-case basis or by approval of New Hampshire's emissions trading regulations Env-A 3000 and 3100. EPA has not yet acted on those regulations and will do so in a future notice.

The order also discusses the use of the DERs as early reduction allowances as part of the Ozone Transport Commission's NO_x budget and allowance trading program. New Hampshire has not yet adopted this regulation. Therefore, EPA cannot judge the compatibility of these provisions with the allowance trading program at this time. The order does, however, discuss the potential for double-counting the emission reductions under both programs. The order commits DES to taking steps in the future to avoid such double-counting.

New Hampshire proposed RACT Order ARD-97-001 for Merrimack on January 28, 1997. EPA provided written comments to DES concerning that proposal on March 11, 1997. On April 14, 1997, DES submitted Final RACT Order ARD-97-001 as a revision to the

SIP. On May 28, 1997, EPA sent a letter to DES deeming the submittal administratively and technically complete.

IV. Issues

The final RACT order for PSNH includes a protocol for the creation and/or use of credits for compliance at Merrimack. This protocol would allow the use of one-time or carry over credits during time periods other than when they were generated (i.e., the intertemporal use of credits). The credits produced at Merrimack, however, are the result of the operation of extra control capacity on MK2. This means that at any given time, extra reductions are balancing the use of earlier credits. In this way, the generation or use of credits from Merrimack should produce no increase in NO_x emissions, or "spiking," due to the use of credits for compliance with RACT limits. Therefore, the use of these credits is consistent with the requirements of the New Hampshire SIP, RFP and ROP plans, and area-wide RACT requirements.

V. Final Action

EPA review of the NO_x RACT SIP submittals, including the miscellaneous NO_x RACT submittals for HCC and Crown, indicates that New Hampshire has sufficiently defined the NO_x RACT requirements for these sources. Additionally, EPA review of the emissions averaging plan and emissions quantification protocol for PSNH's Merrimack facility indicates that these economic incentive programs meet applicable EPA guidance. Therefore, EPA is approving these submittals into the New Hampshire SIP as meeting the requirements of the CAA.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this *Federal Register* publication, EPA is publishing a separate document that will serve as the proposal should relevant adverse comments be filed. This rule will become effective on July 13, 1998 without further notice unless the Agency receives relevant adverse comment by June 12, 1998.

Should the Agency receive such comments, it will publish a timely document in the *Federal Register* withdrawing the final rule and informing the public that this rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA

will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 13, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

To reduce the burden of Federal regulations on States and small governments, President Clinton issued Executive Order 12875 on October 26, 1993, entitled "Enhancing the Intergovernmental Partnership." Under

Executive Order 12875, EPA may not issue a regulation which is not required by statute unless the Federal Government provides the necessary funds to pay the direct costs incurred by the State and small governments or EPA provides OMB with a description of the prior consultation and communications the Agency has had with representatives of State and small governments and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected and other representatives of State and small governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

The present action satisfies the requirements of Executive Order 12875 because it is required by statute and because it does not contain a significant unfunded mandate. Section 110(k) of the Clean Air Act requires that EPA act on implementation plans submitted by States. This rulemaking implements that statutory command. In addition, this rule approves preexisting state requirements and does not impose new Federal mandates that bind State or small governments.

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law and imposes no

new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3).

EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. This rule only affects three specifically-named entities, PSNH's Merrimack facility in Bow, New Hampshire, HCC in Nashua, New Hampshire, and Crown in Berlin, New Hampshire.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 21, 1998.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(54) to read as follows:

§ 52.1520 Identification of plan.

(c) * * *

(54) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on April 14, 1997, May 6, 1997, and September 24, 1997.

(i) Incorporation by reference.

(A) Letters from the New Hampshire Air Resources Division dated April 14, 1997, May 6, 1997, and September 24, 1997 submitting revisions to the New Hampshire State Implementation Plan.

(B) New Hampshire NO_x RACT Order ARD-97-001, concerning Public Service Company of New Hampshire in Bow, effective on April 14, 1997.

(C) New Hampshire NO_x RACT Order ARD-95-011, concerning Hampshire Chemical Corporation, effective on May 6, 1997.

(D) New Hampshire NO_x RACT Order ARD-97-003, concerning Crown Vantage, effective September 24, 1997.

3. In § 52.1525 Table 52.1525 is amended by adding new state citations for "Final RACT Order ARD-97-001," "Final RACT Order ARD-95-011," and "Final RACT Order ARD-97-003," to read as follows:

§ 52.1525 EPA—approved New Hampshire state regulations

* * * * *

TABLE 52.1525.—EPA—APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
Source specific order.	Order ARD-97-001.	04/14/97	5/13/98	[Insert FR citation from published date].	(c)(54)	Source specific NO _x RACT order for Public Service of New Hampshire in Bow, NH.
Source specific order.	Order ARD-95-011.	05/06/97	5/13/98	[Insert FR citation from published date].	(c)(54)	Source specific NO _x RACT order for Hampshire Chemical Corporation in Nashua, NH.
Source specific order.	Order ARD-97-003.	9/24/97	5/13/98	[Insert FR citation from published date].	(c)(54)	Source specific NO _x RACT order for Crown Vantage in Berlin, NH.

[FR Doc. 98-12716 Filed 5-12-98; 8:45 am]
BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR 66-7281a; FRL-6006-8]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves Oregon Department of Environmental Quality's (ODEQ) new sections to Division 30 as submitted on June 1, 1995, and revisions to Divisions 20, 21, 22, 25, and 30, as submitted on January 22, 1997, for inclusion into their State Implementation Plan (SIP).

DATES: This rule is effective without further notice on July 13, 1998, unless the Agency receives relevant adverse comment by June 12, 1998. Should the Agency receive such comments, it will publish a timely withdrawal informing the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ-107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101. Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth

Avenue (OAQ-107), Seattle, Washington 98101, and ODEQ, 811 S.W. Sixth Avenue, Portland, OR 97204. FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ-107), EPA, Seattle, Washington 98101, (206) 553-1814.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1995, the ODEQ submitted two new sections under Division 30 of the SIP. These included: OAR-340-030-0320, Requirement for Operation and Maintenance Plans, and OAR-340-030-0330, Source Testing, which were originally adopted on April 14, 1995 and state effective on May 1, 1995. However, they were subsequently revised and adopted by ODEQ on October 11, 1996, and submitted to EPA for inclusion into the SIP on January 22, 1997. The contents of both the new sections for Division 30 and their subsequent revisions have been reviewed, with no adverse concerns regarding their content or changes. OAR-340-030-0320 and -0330 are approved as well as their subsequent revisions.

On January 22, 1997, the ODEQ submitted revisions to the SIP, which included: OAR-340-020-0047, State of Oregon Clean Air Act Implementation Plan; OAR-340-022-0170, Surface Coating in Manufacturing; OAR-340-022-0840, Innovative Products; OAR-340-022-0930, Requirements for Manufacture, Sale and Use of Spray Paint; OAR-340-022-0055, Fuel Burning Equipment; OAR-340-028-0110, Definitions; OAR-340-028-0400, Information Exempt From Disclosure; OAR-340-028-0630, Typically Achievable Control Technology; OAR-340-028-1010, Requirement for Plant Site Emission Limits; OAR-340-028-1720, Permit Required; OAR-340-030-0015, Wood Waste Boilers; OAR-340-

030-0044, Requirement for Operation and Maintenance Plans (Medford-Ashland AQMA Only); OAR-340-030-0050, Continuous Monitoring; and OAR-340-030-0055, Source Testing. All of these revisions, with the exception of OAR-340-022-0170, -028-0630, -021-0025 and -021-0027, are editorial and housekeeping in nature and are approved. OAR-340-022-0170 reflects a correction to delete a reference to "metal" parts of section (4) and a revision to say "Miscellaneous Metal Parts and Products" as the rule's title in 5(j). OAR-340-028-0630 reflects a revision that would exempt sources from the Typically Achievable Control Technology only when specific design or performance standards in Division 30 apply. This corrects a previous state rule which exempts sources covered by any emission standard in Division 30. OAR-340-021-0025 and -0027 have been superseded by more specific incinerator rules in Division 25; therefore, they are repealed from the SIP. The revisions to all the above rules are approved.

II. Summary of Action

EPA is approving ODEQ's new sections to Division 30, as submitted on June 1, 1995, and revisions to Divisions 20, 21, 22, 25, and 30, as submitted on January 22, 1997. OAR-340-021-0025 and -0027 are repealed from the SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial

amendment and anticipates no adverse comments. However, in the proposed rules section of this *Federal Register* publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective July 13, 1998, without further notice unless the Agency receives relevant adverse comments by June 12, 1998.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 13, 1998, and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds.

Union Electric Co. v. E.P.A., 427 U.S.

246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: April 20, 1998.

Chuck Clark,

Regional Administrator, Region X.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (125) to read as follows:

§ 52.1970 Identification of plan.

(c) * * *

(125) On June 1, 1995 and January 22, 1997, the Director of ODEQ submitted to the Regional Administrator of EPA new sections to Division 30 and revisions to Divisions 20, 21, 22, 25, and 30.

(i) Incorporation by reference.

(A) OAR-340-020-0047; OAR-340-022-0170; OAR-340-022-0840; OAR-340-022-0930; OAR-340-022-0055; OAR-340-028-0110; OAR-340-028-0400; OAR-340-028-0630; OAR-340-028-1010; OAR-340-028-1720; OAR-340-030-0015; OAR-340-030-0044; OAR-340-030-0050; OAR-340-030-0055; OAR-340-030-0320; OAR-340-030-0330: These rules were all state adopted on October 11, 1996.

[FR Doc. 98-12434 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-60-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD067-3025a; FRL-6012-5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Definition of the Term "Major Stationary Source of VOC"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision pertains to amendments to Maryland's definition of the term major stationary source of volatile organic compounds (VOC). This action is being taken in accordance with the SIP submittal and revision provisions of the Act.

DATES: This final rule is effective July 13, 1998 unless on or before June 12, 1998, adverse or critical comments are received. If adverse comments are received EPA will publish a timely withdrawal in the *Federal Register* and inform the public that the rule did not take effect.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Section, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 566-2181, at the EPA Region III address above, or via e-mail at pino.maria@epamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

Description of the State's Submittal

On July 12, 1995, the Maryland Department of the Environment submitted amendments to its air quality regulations to EPA as a SIP revision. The July 12, 1995 submittal contains amendments to the definition of the term "major stationary source of VOC" and Maryland's major source VOC

reasonably available control technology (RACT) regulation, COMAR 26.11.19.01B(4) and 26.11.19.02G, respectively. Maryland revised its definition by lowering the major source size "threshold" in the Maryland portion of the Washington, DC ozone nonattainment area, Calvert, Charles, Frederick, Montgomery, and Prince George's Counties, and by requiring RACT on these newly defined major sources. This action pertains only to Maryland's revisions to COMAR 26.11.19.01B(4), the definition of the term "major stationary source of VOC." Revisions to Maryland's major source VOC RACT regulation are the subject of a separate rulemaking action.

Maryland's July 1995 submittal lowers the major source size "threshold" in the Maryland portion of the Washington, DC ozone nonattainment area from 50 to 25 tons per year (TPY) of VOC as is already required in the Baltimore ozone nonattainment area. The term "major stationary source of VOC," COMAR 26.11.19.01B(4), has been amended, therefore, to mean any stationary source with the potential to emit: (a) 25 TPY of VOC or more in the City of Baltimore and Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's Counties, and (b) 50 TPY in the remainder of the State.

As required by 40 CFR 51.102, the State of Maryland has certified that public hearings with regard to these proposed revisions were held in Maryland on December 15, 1994 in Baltimore, Maryland.

EPA's Evaluation

Maryland's July 12, 1995 SIP revision submittal contains revisions to lower the major source size "threshold" for the Maryland portion of the Washington, DC serious ozone nonattainment area, Calvert, Charles, Frederick, Montgomery, and Prince George's Counties, and required RACT on these newly defined major sources. These revisions are needed as part of Maryland's plan to meet the Clean Air Act's rate-of-progress (ROP) requirements in the Maryland portion of the Washington, DC ozone nonattainment area. Under the Clean Air Act's ROP provisions, in section 182, any ozone nonattainment area classified as serious or worse is required to reduce emissions of VOCs by three percent per year from 1990 until the area's attainment date for the 1-hour National Ambient Air Quality Standard (NAAQS) for ozone. One of the control measures Maryland is using to reduce VOC emissions in the Washington, DC

nonattainment area is RACT on VOC sources with the potential to emit between 25 and 50 TPY.

This revision strengthens the Maryland SIP and will result in VOC emission reductions. EPA is, therefore, approving this revision to the Maryland SIP.

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this *Federal Register* publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse or critical comments be filed. This rule will be effective July 13, 1998 without further notice unless the Agency receives relevant adverse comments by June 12, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal of the final rule and inform the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 13, 1998 and no further action will be taken on the proposed rule.

Final Action

EPA is approving Maryland's July 12, 1995 revisions to the definition of the term "major stationary source of VOC," COMAR 26.11.19.01B(4), and incorporating those revisions into the Maryland SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or

final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to revisions to Maryland's definition of the term "major stationary source of VOC," must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: April 24, 1998.

Thomas V. Taggio,

Acting Regional Administrator, Region III.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(128) to read as follows:

§ 52.1070 Identification of plan.

(c) * * *

(128) Revisions to the Maryland State Implementation Plan submitted on July 12, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 12, 1995 from the Maryland Department of the Environment transmitting additions and deletions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Revisions to COMAR 26.11.19.01B(4), definition of the term "Major stationary source of VOC," adopted by the Secretary of the Environment on April 13, 1995, and effective on May 8, 1995.

(ii) Additional material.

(A) Remainder of the July 12, 1995 Maryland State submittal pertaining to COMAR 26.11.19.01B(4), definition of the term "Major stationary source of VOC."

[FR Doc. 98-12719 Filed 5-12-98; 8:45 am]
BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-6001-3]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of California; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA) and through the California Air Resources Board, the South Coast Air Quality Management District (SCAQMD) requested approval to implement and enforce its "Rule 1421: Control of Perchloroethylene Emissions from Dry Cleaning Systems" (Rule 1421) in place of the "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities" (dry cleaning NESHAP) for area sources under SCAQMD's jurisdiction. The Environmental Protection Agency (EPA) has reviewed this request and has found that it satisfies all of the requirements necessary to qualify for approval. Thus, EPA is hereby granting SCAQMD the authority to implement and enforce Rule 1421 in place of the dry cleaning NESHAP for area sources under SCAQMD's jurisdiction.

DATES: This rule is effective on July 13, 1998 without further notice, unless EPA receives relevant adverse comments by June 12, 1998. If EPA receives such

comment, then it will publish a timely withdrawal in the *Federal Register* informing the public that this rule will not take effect.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1998.

ADDRESSES: Comments must be submitted to Andrew Steckel at the EPA Region IX office listed below. Copies of SCAQMD's request for approval are available for public inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR-4), Air Division, 75 Hawthorne Street, San Francisco, California 94105-3901. Docket # A-96-25.
California Air Resources Board, Stationary Source Division, 2020 "L" Street, P.O. Box 2815, Sacramento, California 95812-2815.

FOR FURTHER INFORMATION CONTACT: Mao Wang, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901, (415) 744-1200.

SUPPLEMENTARY INFORMATION:

I. Background

On September 22, 1993, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for perchloroethylene dry cleaning facilities (see 58 FR 49354), which was codified in 40 CFR Part 63, Subpart M, "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities" (dry cleaning NESHAP). On May 21, 1996, EPA approved the California Air Resources Board's (CARB) request to implement and enforce section 93109 of Title 17 of the California Code of Regulations, "Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning Operations" (dry cleaning ATCM), in place of the dry cleaning NESHAP for area sources (see 61 FR 25397). This approval became effective on June 20, 1996.

Thus, under Federal law, from September 22, 1993, to June 20, 1996, all dry cleaning facilities located within the jurisdiction of the South Coast Air Quality Management District (SCAQMD) that used perchloroethylene were subject to and required to comply with the dry cleaning NESHAP. Since June 20, 1996, all such dry cleaning facilities that also qualify as area sources are subject to the Federally-approved dry cleaning ATCM; major sources, as defined by the dry cleaning

NESHAP, remain subject to the dry cleaning NESHAP and the Clean Air Act (CAA) Title V operating permit program.

On November 13, 1997, EPA received, through CARB, SCAQMD's request for approval to implement and enforce its June 13, 1997, revision of "Rule 1421: Control of Perchloroethylene Emissions from Dry Cleaning Operations" (Rule 1421), as the Federally-enforceable standard for area sources under SCAQMD's jurisdiction. SCAQMD's request, however, does not include the authority to determine equivalent emission control technology for dry cleaning facilities in place of 40 CFR 63.325. This *Federal Register* action for the SCAQMD excludes the Los Angeles County portion of the Southeast Desert Air Quality Management Area, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.¹

II. EPA Action

A. SCAQMD's Dry Cleaning Rule

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR Part 63, Subpart E (see 58 FR 62262, dated November 26, 1993). Under these regulations, a local air pollution control agency has the option to request EPA's approval to substitute a local rule for the applicable Federal rule. Upon approval, the local agency is given the authority to implement and enforce its rule in place of the otherwise applicable Federal rule. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.93 must be met.

After reviewing the request for approval of SCAQMD's Rule 1421, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l)

¹ The State has recently changed the names and boundaries of the air basins located within the Southeast Desert Modified Air Quality Management Area. Pursuant to State regulation the Coachella-San Jacinto Planning Area is now part of the Salton Sea Air Basin (17 Cal. Code Reg. § 60114); the Victor Valley/Barstow region in San Bernardino County and Antelope Valley Region in Los Angeles County is a part of the Mojave Desert Air Basin (17 Cal. Code Reg. § 60109). In addition, in 1996 the California Legislature established a new local air agency, the Antelope Valley Air Pollution Control District, to have the responsibility for local air pollution planning and measures in the Antelope Valley Region (California Health & Safety Code § 40106).

and 40 CFR 63.91 and 63.93.

Accordingly, with the exception of the dry cleaning NESHAP provisions discussed in sections II.A.1 and II.A.2 below, as of the effective date of this action, SCAQMD's Rule 1421 is the Federally-enforceable standard for area sources under SCAQMD's jurisdiction. This rule will be enforceable by the EPA and citizens under the CAA. Although SCAQMD now has primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112.

1. Major Dry Cleaning Sources

Under the dry cleaning NESHAP, dry cleaning facilities are divided between major sources and area sources. SCAQMD's request for approval included only those provisions of the dry cleaning NESHAP that apply to area sources. Thus, dry cleaning facilities using perchloroethylene that qualify as major sources, as defined by the dry cleaning NESHAP, remain subject to the dry cleaning NESHAP and the CAA Title V operating permit program.

2. Authority to Determine Equivalent Emission Control Technology for Dry Cleaning Facilities

Under the dry cleaning NESHAP, any person may petition the EPA Administrator for a determination that the use of certain equipment or procedures is equivalent to the standards contained in the dry cleaning NESHAP (see 40 CFR 63.325). In its request, SCAQMD did not seek approval for the provisions in Rule 1421 that would allow for the use of alternative emission control technology without previous approval from EPA (i.e., Rule 1421(c)(17), (d)(3)(A)(v), (d)(4)(B)(ii)(III), and (j)). A source seeking permission to use an alternative means of emission limitation under CAA section 112(h)(3) must receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112.

B. California's Authorities to Implement and Enforce CAA Section 112 Standards

1. Penalty Authorities

As part of its request for approval of the dry cleaning ATCM, CARB submitted a finding by California's Attorney General stating that "State law provides civil and criminal enforcement authority consistent with [40 CFR] 63.91(b)(1)(i), 63.91(b)(6)(i), and 70.11, including authority to recover penalties

and fines in a maximum amount of not less than \$10,000 per day *per violation*" * * * [emphasis added]. In accordance with this finding, EPA understands that the California Attorney General interprets section 39674 and the applicable sections of Division 26, Part 4, Chapter 4, Article 3 ("Penalties") of the California Health and Safety Code as allowing the collection of penalties for multiple violations per day. In addition, EPA also understands that the California Attorney General interprets section 42400(c)(2) of the California Health and Safety Code as allowing for, among other things, criminal penalties for knowingly rendering inaccurate any monitoring *method* required by a toxic air contaminant rule, regulation, or permit.

As stated in section II.A above, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112, including the authority to seek civil and criminal penalties up to the maximum amounts specified in CAA section 113.

2. Variances

SCAQMD's Rule 504 and Division 26, Part 4, Chapter 4, Articles 2 and 2.5 of the California Health and Safety Code provide for the granting of variances under certain circumstances. EPA regards these provisions as wholly external to SCAQMD's request for approval to implement and enforce a CAA section 112 program or rule and, consequently, is proposing to take no action on these provisions of state or local law. EPA does not recognize the ability of a state or local agency who has received delegation of a CAA section 112 program or rule to grant relief from the duty to comply with such Federally-enforceable program or rule, except where such relief is granted in accordance with procedures allowed under CAA section 112. As stated above, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112.

Similarly, section 39666(f) of the California Health and Safety Code allows local agencies to approve alternative methods from those required in the ATCMs, but only as long as such approvals are consistent with the CAA. As mentioned in section II.A.2 above, a source seeking permission to use an alternative means of emission limitation under CAA section 112 must also receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112.

III. Administrative Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals under 40 CFR 63.93 do not create any new requirements, but simply approve requirements that the state or local agency is already imposing. Therefore, because this approval does not impose any new requirements, it does not have a significant impact on affected small entities.

B. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

C. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

D. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

E. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. section 7412.

Dated: April 10, 1998.

Felicia Marcus,
Regional Administrator, Region IX.

Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 63.14 is amended by revising paragraph (d)(1) to read as follows:

§ 63.14 Incorporation by reference.

(d) * * *
(1) *California Regulatory Requirements Applicable to the Air*

Toxics Program, April 6, 1998, IBR approved for § 63.99(a)(5)(ii) of subpart E of this part.

Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by revising paragraph (a)(5)(ii) introductory text and adding paragraph (a)(5)(ii)(C), to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(5) * * *

(ii) Affected sources must comply with the *California Regulatory Requirements Applicable to the Air Toxics Program*, April 6, 1998 (incorporated by reference as specified in § 63.14) as described below.

(C) The material incorporated in Chapter 3 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (South Coast Air Quality Management District Rule 1421) pertains to the perchloroethylene dry cleaning source category in the South Coast Air Quality Management District, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of Subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(1) Authorities not delegated.

(i) South Coast Air Quality Management District is not delegated the Administrator's authority to implement and enforce Rule 1421 in lieu of those provisions of Subpart M which apply to major sources, as defined in § 63.320(g).

Dry cleaning facilities which are major sources remain subject to Subpart M.

(ii) South Coast Air Quality Management District is not delegated the Administrator's authority of § 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation, under sections (c)(17), (d)(3)(A)(v), (d)(4)(B)(ii)(III), and (j) of Rule 1421, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.

[FR Doc. 98-12430 Filed 5-12-98; 8:45 am]
BILLING CODE 5560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300651; FRL-5788-2]

RIN 2070-AB78

Pyriproxyfen; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of pyriproxyfen in or on citrus fruit, juice, dried pulp, and oil; pears; and tomatoes. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on citrus, pears, and tomatoes. This regulation establishes maximum permissible levels for residues of pyriproxyfen in these food and feed commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerances will expire and are revoked on July 31, 1999.

DATES: This regulation is effective May 13, 1998. Objections and requests for hearings must be received by EPA on or before July 13, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300651], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300651], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-

docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300651]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT:

Telephone numbers and e-mail addresses: For pyriproxyfen on citrus: Andrea Beard (703) 308-9356, e-mail: beard.andrea@epamail.epa.gov; For pyriproxyfen on pears or tomatoes: Virginia Dietrich (703) 308-9359, e-mail: dietrich.virginia@epamail.epa.gov. Office location (both): Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. By mail (both): Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the pesticide pyriproxyfen, in or on citrus fruit at 0.3 parts per million (ppm), citrus juice and dried citrus pulp at 1.0 ppm, and citrus oil at 300 ppm; pears at 0.2 ppm; and tomatoes at 0.1 ppm. These tolerances will expire and are revoked on July 31, 1999. EPA will publish a document in the *Federal Register* to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The FQPA (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the FIFRA, 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a

tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Pyriproxyfen on Citrus and FFDCA Tolerances

Pyriproxyfen on Citrus: A request was received from California for use of pyriproxyfen on citrus to control red scale, which has developed resistance to available controls, in some localized citrus-producing areas of California, causing significant losses to the affected citrus producers.

Pyriproxyfen on Pears: A request was received from Oregon for the use of pyriproxyfen on pears for control of pear psylla, which has developed

resistance to currently available controls, and is expected to cause significant economic loss if not adequately controlled.

Pyriproxyfen on Tomatoes: A request was received from Florida for the use of pyriproxyfen on tomatoes for control of whiteflies. A recently introduced strain or species of whitefly has caused extensive damage over the past several years to various vegetable crops in southern areas of the U.S., including tomatoes. This pest has demonstrated resistance to available materials and is expected to cause significant economic losses if not adequately controlled.

EPA has authorized under FIFRA section 18 the use of pyriproxyfen on citrus for control of red scale in California; on pears for control of pear psylla in Oregon; and, on tomatoes for control of whiteflies in Florida. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of pyriproxyfen in or on citrus, pears, and tomatoes. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on July 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on citrus commodities, pears and tomatoes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether pyriproxyfen meets EPA's registration requirements for use on citrus, pears, or tomatoes, or whether permanent tolerances for these uses

would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of pyriproxyfen by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than California, Oregon, and Florida to use this pesticide on these crops under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for pyriproxyfen, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. **Threshold and non-threshold effects.** For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor

is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of FQPA, this assessment has been

expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of

the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (Children 1 - 6 Years Old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of pyriproxyfen and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of pyriproxyfen on citrus fruit at 0.3 ppm, citrus juice and dried citrus pulp at 1.0 ppm, and citrus oil at 300 ppm; pears at 0.2 ppm; and tomatoes at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as

the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyriproxyfen are discussed below.

1. *Acute toxicity.* There are no acute dietary endpoints of concern for pyriproxyfen. No concern exists for acute dietary exposure to pyriproxyfen residues.

2. *Short - and intermediate - term toxicity.* There are no endpoints and no concern exists for short- or intermediate-term toxicity from pyriproxyfen.

3. *Chronic toxicity.* EPA has established the RfD for pyriproxyfen at 0.35 milligrams/kilogram/day (mg/kg/day). This RfD is based on 2-year and 90-day feeding studies in rats with a NOEL of 35.1 mg/kg/day and an uncertainty factor of 100, based on intra- and interspecies differences. At the LOEL of 141.28 mg/kg/day, there was a decrease in body weight gain in females.

4. *Carcinogenicity.* Pyriproxyfen has been classified in Group E of EPA's cancer classification system, indicating there is evidence of non-carcinogenicity for humans. Therefore, there is no concern for cancer risk from exposure to pyriproxyfen.

B. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances have been established (40 CFR 180.510) for the residues of pyriproxyfen, in or on cotton commodities, in association with the use under emergency exemptions. There are currently no registered food uses for pyriproxyfen, and thus no permanent tolerances established. Risk assessments were conducted by EPA to assess dietary exposures and risks from pyriproxyfen as follows:

Chronic exposure and risk. As stated above, there are time-limited tolerances for cotton commodities established in connection with use under emergency exemptions. This risk assessment took these into account, as well as these tolerances being established for citrus commodities, pears, and tomatoes. The chronic dietary (food only) risk assessment used tolerance level residues and assumed 100% crop treated. Therefore, the resulting exposure estimates should be viewed as conservative; further refinement using anticipated residues and/or percent of crop treated would result in lower dietary exposure estimates. For chronic dietary (food only) risk estimates, the two most highly exposed subgroups,

Non-Nursing Infants (<1 Year Old) and Children (1-6 Years Old) had 1.54 and 1.84% of the RfD utilized, respectively. All other population subgroups had less than 1% of the RfD utilized.

2. *From drinking water.* A Tier II drinking water assessment of pyriproxyfen was conducted, using computer models which simulate the fate in a surface water body. The estimated environmental concentrations (EECs) are generated for high exposure agricultural scenarios and represent one in ten years EECs in a stagnant pond with no outlet that receives pesticide loading from an adjacent 100% cropped, 100% treated field. As such, these computer generated EECs represent conservative screening levels for ponds and lakes and are used only for screening. The EECs for surface water ranged from a peak of 0.677 ppb, to a 60-days average of 0.142 ppb, to a 1-year average of 0.103 ppb. These estimates are based on 2 applications at a rate of 0.11 lb. active ingredient per acre. For ground water, a computer model was used which resulted in estimated 60-day average concentrations of pyriproxyfen of 0.006 ppb.

Chronic exposure and risk. A human health drinking water level of concern (DWLOC) is the concentration in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that chemical from food, water and non-occupational (residential) sources. The DWLOC for chronic risk is the concentration in drinking water as a part of the aggregate chronic exposure, that occupies no more than 100% of the RfD. In conducting these calculations, default body weights are used of 70 kg (adult male), 60 kg (adult female) and 10 kg (child); default consumption values of water are used of 2 liters per day for adults and 1 liter per day for children. Using these assumptions and the levels provided by the computer models, given above, the resultant percentage of the RfD utilized for both children and adults was calculated to be 0.35%. Therefore, taking into account present uses, including this use on citrus under section 18, EPA concludes that there is reasonable certainty of no harm if these tolerances are established.

3. *From non-dietary exposure.* Pyriproxyfen is currently registered for use on the following residential non-food sites: Products for flea and tick control, including foggers, aerosol sprays, emulsifiable concentrates, and impregnated material (pet collars).

Chronic exposure and risk. Long-term exposure to pyriproxyfen in residential use products is not expected. Consumer use of these products typically results in

short-term intermittent exposures. Hence, a chronic residential exposure assessment is not required.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether pyriproxyfen has a common mechanism

of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyriproxyfen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyriproxyfen has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* There are no acute dietary endpoints of concern for pyriproxyfen. No concern exists for acute dietary exposure to pyriproxyfen residues.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to pyriproxyfen from food and drinking water will utilize 0.67 and 0.35% of the RfD, respectively, for the U.S. population (total of 1.02% RfD utilized). The major identifiable subgroup with the highest aggregate exposure is Children (1-6 Years Old), with 1.84 and 0.35% of the RfD utilized by food and drinking water, respectively, for a total of 2.19% of the RfD utilized. This is discussed further below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyriproxyfen residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. There are no endpoints and no concern exists for short- or intermediate-term toxicity from pyriproxyfen.

D. Aggregate Cancer Risk for U.S. Population

Pyriproxyfen has been classified in Group E of EPA's cancer classification system, indicating there is evidence of non-carcinogenicity for humans. Therefore, there is no concern for cancer risk from exposure to pyriproxyfen.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the

potential for additional sensitivity of infants and children to residues of pyriproxyfen, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the developmental study in rats, the maternal (systemic) NOEL was 100 mg/kg/day, based on decreased bodyweight, body weight gain, food consumption, and increased water consumption at the LOEL of 300 mg/kg/day. The developmental (fetal) NOEL was 300 mg/kg/day, based on increased skeletal variations and unspecified visceral variations at the LOEL of 1,000 mg/kg/day.

In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 100 mg/kg/day, based on abortions, soft stools, emaciation, decreased activity, and bradypnea at the LOEL of 300 mg/kg/day. The developmental (pup) NOEL was 300 mg/kg/day, based on decreased viable litters available for examination at the LOEL of 1,000 mg/kg/day.

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOEL was 87/96 mg/kg/day for Males/Females, based on decreased body

weights, body weight gains, and increased liver weight associated with histopathological findings in the liver at the LOEL of 453/498 mg/kg/day for M/F. The developmental (pup) NOEL was 87/96 mg/kg/day, based on decreased body weight on lactation days 14 and 21 at the LOEL of 453/498 mg/kg/day. The reproductive NOEL was 453/498 mg/kg/day for M/F (the highest dose tested).

iv. *Pre- and post-natal sensitivity.* In both rats and rabbits, developmental studies demonstrated that the developmental findings occurred at dose levels at which maternal toxicity was also present, demonstrating no special pre-natal sensitivity for developing fetuses. In the post-natal evaluation to infants and children, as shown in the results of the rat reproduction study, the NOEL and LOEL for both parental systemic toxicity and pup toxicity occurred at the same dose levels, demonstrating no special post-natal sensitivity for infants and children.

v. *Conclusion.* Given the fact that there is a complete toxicity data base for pyriproxyfen, and no special pre- or post-natal sensitivities are indicated for infants and children, an additional 10-fold safety factor is not warranted. EPA concludes that there is reasonable certainty of safety for infants and children exposed to dietary residues of pyriproxyfen.

2. *Acute risk.* There are no acute dietary endpoints of concern for pyriproxyfen. No concern exists for acute dietary exposure to pyriproxyfen residues.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to pyriproxyfen from food will utilize 1.84% of the RfD for Children 1-6 years old, the most highly exposed subgroup of infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The risk from drinking water is conservatively estimated to utilize 0.35% of the RfD for infants and children, as discussed above. Despite the potential for exposure to pyriproxyfen in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyriproxyfen residues.

4. *Short- or intermediate-term risk.* There are no endpoints and no concern exists for short- or intermediate-term toxicity from pyriproxyfen.

V. Other Considerations

A. Metabolism In Plants and Animals

For the purposes of these uses under section 18, the nature of the residue in plants is adequately understood, and the residue to be regulated is parent pyriproxyfen *per se* [4-phenoxyphenyl (RS)-2-(2-pyridyloxy)propyl ether]. There are no detectable residues expected in animal commodities as a result of these uses.

B. Analytical Enforcement Methodology

Adequate analytical methodology is available to enforce the tolerance expression, in residue analytical method RM-33P-2 using gas chromatography with a nitrogen-phosphorus detector. This has been validated by EPA and is available from the Registrant of pyriproxyfen, Valent U.S.A. Corporation, Dublin, California.

C. Magnitude of Residues

Residues of pyriproxyfen are not expected to exceed 0.3 ppm in/on citrus fruit, 1.0 ppm in citrus juice and dried citrus pulp, and 300 ppm in citrus oil; 0.2 ppm in/on pears; and 0.1 ppm in/on tomatoes; no detectable residues are expected to occur in animal commodities, as a result of these emergency exemption uses.

D. International Residue Limits

There are no Canadian, Mexican, or Codex maximum residue limits (MRLs) for residues of pyriproxyfen in/on citrus, pears, or tomatoes.

E. Rotational Crop Restrictions

There are no applicable rotational crop restrictions for these emergency exemption uses.

VI. Conclusion

Therefore, the tolerances are established for residues of pyriproxyfen in/on citrus fruit at 0.3 ppm, citrus juice and dried citrus pulp at 1.0 ppm, and citrus oil at 300 ppm; 0.2 ppm in/on pears; and 0.1 ppm in/on tomatoes.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the

submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 13, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300651] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for

inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408(d) in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the time-limited tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's *Federal Register*. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 27, 1998.

James Jones,
Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.510, in paragraph (b) by alphabetically adding the following commodities to the table to read as follows:

§ 180.510 Pyriproxyfen; tolerances for residues.

• • • • •

(b) • • •

Commodity	Parts per million	Expiration/revocation date
Citrus fruit	0.3	7/31/99
Citrus juice	1.0	7/31/99
Citrus oil	300	7/31/99
Citrus pulp, dried	1.0	7/31/99
•	•	•
•	•	•
•	•	•
Pears	0.2	7/31/99
Tomatoes	0.1	7/31/99
•	•	•
•	•	•

[FR Doc. 98-12426 Filed 5-12-98; 8:45 am]
BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300636A; FRL-5787-6]

RIN 2070-AB78

N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; Time-Limited Pesticide Tolerance, Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting the time-limited tolerance levels for the combined residues of the herbicide N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety in or on corn, field, grain; corn, field, forage; corn, field, stover, and soybean seed.

DATES: This correction is effective on April 10, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of April 10, 1998 (63 FR 17692)(5782-9), EPA issued a regulation establishing time-limited pesticide tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) for

residues of N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on "corn, field, forage," and "corn, field, grain" corn, field, stover, and soybean seed (40 CFR 180.527). Inadvertently, the tolerance levels for corn, field, grain and corn, field, forage were transposed. This document corrects the tolerance levels by correcting § 180.527.

I. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's *Federal Register*. This is not a "major rule" as defined by 5 U.S.C. 804(2)."

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 29, 1998

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is corrected as follows:

PART 180—[CORRECTED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By correcting § 180.527, to read as follows:

§ 180.527 N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; tolerances for residues.

(a) *General.* (1) Time-limited tolerances are established for combined residues of the herbicide, N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/Revocation Date
Corn, field, forage ..	0.4	4/30/03
Corn, field, grain	0.05	4/30/03
Corn, field, stover ..	0.4	4/30/03
Soybean seed	0.1	4/30/03

(2) Residues in these commodities not in excess of the established tolerance resulting from the use described in paragraph (a) of this section remaining after expiration of the time-limited tolerance will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of the above regulation.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98-12490 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300661; FRL-5790-8]

RIN 2070-AB78

Bromoxynil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for bromoxynil and DBHA in or on cotton. In addition, this regulation establishes tolerances for bromoxynil and DBHA in or on meat, meat by products, and fat of cattle, hogs, horses, goats, and sheep. Further, this regulation establishes tolerances for bromoxynil and DBHA in milk, eggs, and poultry meat, meat by-products, and fat. Rhone-Poulenc Ag Company requested the tolerances for cotton under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170).

DATES: This regulation is effective May 13, 1998. Objections and requests for hearings must be received by EPA on or before July 13, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300661], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300661], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and

hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300661]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of November 26, 1997 (62 FR 63170) (FRL-5755-6), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) 3F4233 for tolerance by Rhone-Poulenc Ag Company. This notice included a summary of the petition prepared by Rhone-Poulenc Ag Company, the registrant. Comments in response to the notice of filing were received from public interest groups, individual concerned citizens, agricultural extension agents, representatives of State agencies, individual growers, and industry groups. The issues raised were the same issues raised in response to the proposed rule (May 2, 1997, 62 FR 24065) (FRL-5617-5) for the bromoxynil tolerance that expired on January 1, 1998. Many of the comments are addressed in this document. Responses to other significant comments are presented in Unit III. of the final rule for last year's tolerance (June 18, 1997, 62 FR 33019) (FRL-5724-9) or in a Response to Comments document that has been included in the docket for that action.

The petition requested that 40 CFR 180.324 be amended by establishing tolerances for residues of the herbicide bromoxynil plus its metabolite DBHA (3,5-dibromo-4-hydroxybenzoic acid) resulting from the application of octanoic and heptanoic acid esters of bromoxynil to cotton: undelinted cottonseed at 7 parts per million (ppm), cotton gin byproducts at 50 ppm, and cotton hulls at 21 ppm. (Active ingredient codes are 35302 for the octanoic acid ester, and 128920 for the heptanoic acid ester. CAS Reg. Nos. are

1689-99-2 for the octanoic acid ester, and 56634-95-8 for the heptanoic acid ester.) The tolerances established in this final rule differ from these tolerances proposed by the registrant as the result of the review of residue data for bromoxynil and DBHA in cotton commodities submitted by the registrant after the petition was filed. In addition, the petition requested that the maximum allowable cotton acreage that can be treated annually with bromoxynil be increased from 400,000 acres to 1.3 million acres.

In the *Federal Register* of May 24, 1995 (60 FR 27414) (FRL-4953-9), EPA established a time-limited tolerance under section 408 of the FFDCA, 21 U.S.C. 346a, for residues of the herbicide bromoxynil, (3,5-dibromo-4-hydroxybenzonitrile) on cottonseed. This tolerance expired on April 1, 1997. The tolerance was established in response to a petition filed by the Rhone-Poulenc AG Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.

In the *Federal Register* of May 2, 1997 (62 FR 24065), EPA issued a proposed rule for establishment of tolerances on cotton commodities and poultry, eggs, and milk, and revision of tolerances on other livestock. In the *Federal Register* of June 18, 1997 (62 FR 33019), EPA issued a final rule for establishment of tolerances on cotton commodities and poultry, eggs, and milk, and revision of tolerances on other livestock. The tolerances for the cotton commodities expired on January 1, 1998.

1. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for

cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to the pesticide residues from treated food and contaminated drinking water is typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of the Food Quality Protection Act of 1996 (FQPA), this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure

can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a

million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of bromoxynil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for bromoxynil and DBHA on undelinted cottonseed at 1.5 ppm; cotton gin byproducts at 7.0 ppm; and cotton hulls at 5.0 ppm; in or on cattle, hogs, horses, goats, and sheep at 0.5 ppm in meat, 3.5 ppm in meat by-products (mby), and 1.0 ppm in fat; at 0.1 ppm in milk; at 0.05 ppm in eggs; at 0.05 ppm in poultry meat and fat; and at 0.3 ppm in poultry mby. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by bromoxynil are discussed in the proposed rule (May 2, 1997, 62 FR 24065).

B. Toxicological Endpoints

The toxicological endpoints for bromoxynil are discussed in Unit IV. "Dose Response Assessment" of the proposed rule for last year's tolerance (May 2, 1997, 62 FR 24065).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.324) for the residues of bromoxynil, in or on a variety of raw agricultural commodities. Tolerances for the residues of bromoxynil, resulting from the application of octanoic and heptanoic acid esters of bromoxynil to cotton, have been established in or on cattle, hogs, horses, goats, and sheep at 0.5 ppm in meat, 3.0 ppm in mby, and 1.0 ppm in fat. Tolerances for residues

of bromoxynil, resulting from the application of octanoic and heptanoic acid esters of bromoxynil to cotton have been established at 0.1 ppm in milk; and at 0.05 ppm in eggs; at 0.05 ppm in poultry meat, mby, and fat. Risk assessments were conducted by EPA to assess dietary exposures and risks from bromoxynil as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. A revised acute dietary risk assessment was conducted for bromoxynil. This revised acute dietary assessment differs from the assessment used for last year's tolerance as follows: (a) The results of a new cotton residue study were used to determine anticipated bromoxynil residues; (b) a probabilistic assessment submitted by the registrant was used. The acute assessment used a NOEL of 4 milligram/kilograms body weight/day (mg/kg bw/day) based on developmental effects with the population subgroup of concern being females ≥ 13 years old and a NOEL of 8 mg/kg bw/day based on systemic effects for all populations except females ≥ 13 years old. The acute analysis estimates the distribution of single-day exposures for the overall U.S. population and certain subgroups. The MOE is a measure of how closely the exposure comes to the NOEL and is calculated as a ratio of the NOEL to the exposure. The calculated MOE for acute risk of bromoxynil for the general U. S. Population is $>58,000$ and for females ≥ 13 years old is $>24,000$. For the most exposed subgroups, the calculated MOE for acute risk of bromoxynil is $>32,000$ for non-nursing infants, $>36,000$ for all infants, and $>35,000$ for children 1-6 years old. These figures are above the required MOE of 1,000 for females ≥ 13 years old and 100 for the general population and all other population subgroups, indicating that the potential for an adverse effect from a single day exposure is unlikely. The level of concern for the general U.S. population and all population subgroups except for females ≥ 13 years is based on interspecies extrapolation (10x) and intraspecies variability (10x). For females ≥ 13 years, an added factor of 10x is used pursuant to section 408(b)(2)(C) (See Unit II.E.b. of this document).

ii. *Chronic exposure and risk.* For chronic exposure to bromoxynil, the reference dose (0.015 mg/kg/day) is based upon a NOEL/LOEL of 1.5 mg/kg/day, from a 1-year canine study, with additional uncertainty factors applied

for intra- (10x) and interspecies (10x) variability.

A DRES chronic exposure analysis was conducted using anticipated residue levels for all registered commodities and livestock, and percent crop treated information to estimate dietary exposure for the general population and several population subgroups. The chronic analysis showed that for chronic effects other than cancer, for all population subgroups, less than 1% of the reference dose was consumed.

When EPA establishes, modifies, or leaves in effect a tolerance, section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided five years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than five years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (a) That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; (b) that the exposure estimate does not underestimate exposure for any significant subpopulation group; and (c) if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on percent crop treated.

The Agency used percent crop treated (PCT) information as follows. A routine chronic dietary exposure analysis for bromoxynil was based on 10% of the cotton crop treated, 10% of all cereal grain crops (wheat, corn, oats, barley, rye, sorghum) treated, 62% of the onion crop treated, 100% of the garlic crop treated, and 71% of peppermint and spearmint crop treated. PCT of 10% for cotton was based on the petitioner's

request that the Agency permit up to 1.3 million acres of cotton to be treated annually with bromoxynil, which amounts to 10% of the cotton crop grown in the U.S. The registration of bromoxynil will restrict treatment of bromoxynil on cotton to no more than 1.3 million acres during 1998.

The Agency believes that the three conditions listed above have been met. With respect to (a), EPA finds that the PCT information described above for bromoxynil used on cotton is reliable and has a valid basis. The registration of bromoxynil will restrict treatment of bromoxynil on cotton to no more than 1.3 million acres during 1998. Before the petitioner can increase the treatment of greater than 1.3 million acres of cotton per year, permission from the Agency must be obtained. For crops other than cotton, the Agency has utilized the latest statistical data from RFF (Resources For The Future), Doane, and the U.S. Department of Agriculture (USDA), the best available sources for such information. As to (b) and (c), regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing bromoxynil in a particular area.

The cancer risk from all food sources is 1.5 in a million if 10% of the cotton is treated. These risk estimates are based on anticipated residues and percent crop treated information.

2. *From drinking water.* Based on the chemical characteristics and monitoring data, bromoxynil residues are not expected to be found in ground water. For the action last year (June 18, 1997, 62 FR 33019), an analysis of surface water based on cotton use was conducted using the PRZM-EXAMS computer model (Pesticide Root Zone Model Version 2.3 plus Exposure Analysis Modeling System Version 2.94). The maximum or peak estimated concentration for bromoxynil was 12.3 parts per billion (ppb) and the maximum estimated long-term mean was 0.24 ppb (based on modeling using

36 years of weather data). These values represent what might be expected in a small water body near a cotton field highly prone to runoff. The maximum peak estimated concentration for bromoxynil from the model correlates with the highest value detected in the U.S. Geological Survey (USGS) monitoring data, 12.2 ppb, which has been corrected for an analytical recovery rate of 50%. For this action, the Agency has reevaluated the concentrations of bromoxynil in surface water to be used to assess risk associated with drinking water. EPA reviewed USGS national monitoring data and determined which of these sites were likely to have bromoxynil use. To estimate a reasonable high end exposure, EPA focussed on the calculated time weighted annual mean concentrations of bromoxynil at each of 11 USGS monitoring sites, which the EPA views as located in watersheds likely to have bromoxynil use. (These values were not corrected for the analytical recovery rate of 50%.) These time weighted annual mean concentrations ranged from 0.011 ppb to 0.18 ppb, with 10 out of the 11 sites with time weighted annual mean concentrations below 0.05 ppb. Six of the 10 sites had time weighted annual mean concentrations at or below 0.014 ppb. The highest annual time-weighted mean (0.18 ppb) was located in a relatively small watershed (approximately 100 square miles) and a relatively small water body, and the calculated annual mean value at this site was significantly influenced by the presence of a single high value (the highest value found in all of the available monitoring data). Based on this information, EPA believes that 0.05 ppb is a reasonable high end estimate for purposes of estimating drinking water exposure. However, EPA is imposing surface water monitoring requirements as a condition of registration to allow use of more precise estimates in the future.

i. *Acute exposure and risk.* Acute drinking water exposure was calculated by multiplying the estimated concentration of bromoxynil in surface water (12.3 ppb) by the estimated water consumption (2 liters for adults, 1 liter for children) and then dividing by body weight (70 kg for males, 60 kg for females, and 10 kg for children). Acute drinking water exposure is calculated to be 3.5×10^{-4} mg/kg/day for adult males and females, and 1.2×10^{-4} mg/kg/day for children. The MOE for drinking water for all three population subgroups is >10,000.

ii. *Chronic exposure and risk.* Chronic drinking water risk was calculated in the same way as acute risk, except that

the estimated mean concentrations of 0.24 ppb, 0.05 ppb, and 0.01 ppb were used. At 0.24 ppb, the highest of these concentrations, chronic drinking water exposure is calculated to be 2×10^{-5} mg/kg/day for children, 7×10^{-6} mg/kg/day for males, and 8×10^{-6} mg/kg/day for females. All of these exposures are <1% of the RfD of 0.015 mg/kg/day. The cancer risk (calculated based on a 70-year lifetime) is calculated to be 8×10^{-7} at a chronic water exposure concentration of 0.24 ppb, 2×10^{-7} at a concentration of 0.05 ppb, and 3×10^{-8} at a concentration of 0.01 ppb. The Agency has determined that a concentration of 0.05 ppb for bromoxynil is a reasonable high end of exposure for bromoxynil in surface water; therefore, the cancer risk from exposure to bromoxynil in drinking water is calculated at 2×10^{-7} .

EPA believes the estimates of bromoxynil exposure in water derived from the PRZM-EXAMS model, particularly the estimates pertaining to chronic exposure, are significantly overstated for several reasons. The PRZM-EXAMS model was designed to estimate exposure for ecological risk assessments and thus uses a scenario of a body of water approximating the size of a 1 hectare (2.5 acres) pond. This tends to overstate chronic drinking water exposure levels for the following reasons. First, surface water source drinking water generally comes from bodies of water that are substantially larger than a 1 hectare (2.5 acres) pond. Second, the modeled scenario also assumes that essentially the whole basin receives an application of the pesticide. Yet, in virtually all cases, basins large enough to support a drinking water facility will contain a substantial fraction of the area which does not receive the pesticide. Third, there is often at least some flow (in a river) or turn over (in a reservoir or lake) of the water so the persistence of the pesticide near the drinking water facility is usually overestimated. Fourth, even assuming a reservoir is directly adjacent to an agricultural field, the agricultural field may not be used to grow a crop on which the pesticide in question is registered for use. Fifth, the PRZM-EXAMS modeled scenario does not take into account reductions in residue-loading due to applications of less than the maximum application rate or no treatment of the crop at all (percent crop treated data).

3. *From non-dietary exposure.* Bromoxynil is currently not registered for use on any residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.*

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether bromoxynil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a

common mechanism of toxicity, bromoxynil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that bromoxynil has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The MOE for all dietary sources (food plus water) is >16,000 for the entire U.S. population, >11,000 for females ≥ 13 years old, and >5,000 for children 1-6 years old. These MOEs are greater than the levels of concern of 1,000 for females ≥ 13 years and 100 for all other population groups. Accordingly, EPA concludes that there is a reasonable certainty that no harm will result to the general population and major identifiable population subgroups from aggregate acute exposure to bromoxynil.

2. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to bromoxynil from food and drinking water will utilize <1% of the RfD for the U.S. population. EPA has also concluded that aggregate exposure to bromoxynil will utilize <1% of the RfD for the most highly exposed subpopulation, children 1-6 years old (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Accordingly, EPA concludes that there is a reasonable certainty that no harm will result to the general population and major identifiable population subgroups from aggregate chronic exposure to bromoxynil.

D. Aggregate Cancer Risk for U.S. Population

The aggregate cancer risk for the U.S. population calculated for use of bromoxynil is 1.7×10^{-6} . EPA believes that a risk estimate of this level generally represents a negligible risk, as EPA has traditionally applied that concept. EPA has commonly referred to a negligible risk as one that is at or below 1 in 1 million (1×10^{-6}). Quantitative cancer risk assessment is not a precise science. There are a significant number of uncertainties in both the toxicology used to derive the cancer potency of a substance and in the data used to measure and calculate exposure. Thus, EPA generally does not attach great significance to numerical estimates that differ by approximately a factor of 2. Therefore, EPA considers the

carcinogenic risk from bromoxynil to be negligible within the meaning of that standard as it has been traditionally applied by EPA. Accordingly, EPA concludes that there is a reasonable certainty that no harm will result to the general population and major identifiable population subgroups from aggregate exposure to bromoxynil. Specific risks to infants and children other than cancer are discussed below.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of bromoxynil, EPA considered all available developmental and reproductive toxicity data. A total of 12 developmental and 3 reproductive toxicity studies were available for review. These include oral prenatal developmental toxicity studies (four in rats, two in rabbits, and one in mice with the phenol; one in rats with the octanoate), dermal prenatal developmental toxicity studies (one each in rats and rabbits with both the phenol and the octanoate), and dietary two-generation reproduction studies in rats (two with the phenol; one with the octanoate). The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Analysis.* Developmental toxicity was observed, following *in utero* exposure to bromoxynil, in multiple studies, by two routes of exposure, and in three species. The induction of supernumerary ribs was shown to be the most sensitive indicator of developmental toxicity in fetal rats, mice, and (in certain studies) rabbits. In EPA's 1997 tolerance action concerning bromoxynil (62 FR 33019, June 18, 1997), EPA concluded that the children's safety factor was not necessary to protect the safety of infants and children. That decision rested on the view that, given the large number of studies available on bromoxynil, EPA had a high degree of certainty regarding the level at which effects would occur in experimental animals. Since that action, EPA revisited the children's safety factor decision and concluded that the safety factor should be retained. This revised decision is based on EPA's conclusion that the standard 100-fold safety factor may not be adequate to protect the safety of infants and children given the clear showing of increased susceptibility of fetuses, the steep dose response curve, and the demonstrated severe developmental effects at doses above the LOEL. Nevertheless, EPA's decision at this time remains tentative due to the fact that EPA has only recently sought external science review of its approach to the children's safety factor and also instituted an internal reexamination process. Given the toxicological factors noted above, EPA is unwilling to make safety determinations regarding this pesticide without using the additional tenfold safety factor.

EPA believes that the population of concern for which the safety factor should be retained is the developing fetus and the endpoint of concern is supernumerary ribs. This endpoint, a developmental anomaly, results from *in utero* exposure. Although some systems in infants and children continue developing, it is unlikely that supernumerary ribs, even though observed across multiple species, would result from postnatal exposure. Since the acute dietary endpoint for females ≥ 13 years old is based on developmental effects, it was determined that the 10-fold safety factor should be applied to the acute risk assessment for females ≥ 13 years old (the population subgroup that is relevant to *in utero* exposure), but is not needed for children and infants. A 10-fold factor safety factor applied to females ≥ 13 years old will provide additional protection for infants and children and ensure a reasonable certainty of no harm to this sensitive subpopulation.

2. *Acute risk.* The MOE of $>5,000$ for children 1-6 years old, the most highly exposed subpopulation, is greater than the level of concern of 100. For females ≥ 13 years old, the population subgroup that is most relevant to the development of *in utero* exposure, the MOE of 11,000 is greater than the level of concern of 1000. Therefore acute risk for children does not trigger any concerns.

3. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to bromoxynil from food will utilize $<1\%$ of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, the Agency concludes that there is a reasonable certainty of no harm to infants and children as a result of chronic dietary exposure to bromoxynil.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature (metabolism) of bromoxynil residues in plants and livestock is adequately understood for the purposes of these tolerances. In all the plant and animal (poultry and ruminants) metabolism studies submitted, the residues of concern were parent bromoxynil and the metabolite DBHA. The tolerances for cotton commodities and livestock are expressed in terms of bromoxynil and DBHA.

Pending receipt of additional metabolism data for DBHA in livestock, the Agency has assumed that DBHA is of equal toxicity to the parent and translates proportionately to the parent for livestock commodities. The Agency believes these assumptions are adequately protective for purposes of these tolerances.

B. Analytical Enforcement Methodology

Adequate analytical methodology is available for data collection and tolerance enforcement for bromoxynil *per se* in plants. Method I in PAM, Vol. II, is a GLC/MCD that has undergone a successful EPA method validation on wheat grain. This method involves alkaline hydrolysis in methanolic KOH to convert residues to bromoxynil, cleanup by liquid-liquid partitioning, methylation using diazomethane, further cleanup on a Florisil column, and determination by GLC/MCD. Method Ia is the same method, but uses GC/ECD for determination of methylated bromoxynil.

The analytical method "Bromoxynil: Method of Analysis for Bromoxynil and its Metabolite, 3,5-Dibromo-4-hydroxybenzoic Acid in Cottonseed, Gin Trash, and Seed Processed Fractions using GC-MSD." (Method RES9603) has been the subject of an Independent Laboratory Validation (ILV) and an Agency Petition Method Validation (PMV). The method validation data are being reviewed by the Agency; approval of the method for enforcement purposes is anticipated.

Method A is a GC/MCD or ECD method for the analysis of bromoxynil *per se* in livestock tissues and is essentially the same as Method I. Method B is a GC/ECD method that is also similar to Method I, with modifications to the cleanup procedures. A method for DBHA in animal commodities has been developed and is currently in the process of review and validation by the Agency.

C. Magnitude of Residues

In the petition for these tolerances, the registrant requested that 40 CFR 180.324 be amended by establishing tolerances for residues of the herbicide bromoxynil and its metabolite DBHA on cotton at 7 ppm for undelinted cottonseed, 50 ppm for cotton gin byproducts, and 21 ppm for cotton hulls. These proposed tolerances are the same as those issued in the June 18, 1997 final rule (62 FR 33019). Immediately prior to establishing these tolerances, the registrant reduced the maximum label rate as a result of Agency risk concerns. The tolerances were determined by extrapolating from residue studies conducted at the former maximum label rate (4.5 lb ai/A). Following the submission of the tolerance petition, the registrant submitted residue data for bromoxynil and DBHA in cotton commodities at the revised maximum application rate of 3 applications at 0.5 lb ai/A each for a total of 1.5 lb ai/A. These data show that bromoxynil and DBHA residues in cotton commodities are lower than the values determined for the June 18, 1997 final rule. Based on the new residue data, tolerances for bromoxynil and DBHA in cotton commodities are being changed to 7.0 ppm in cotton gin byproducts, 5.0 ppm in cotton hulls, and 1.5 ppm in undelinted cottonseed.

In the June 18, 1997 final rule, tolerances for livestock commodities (including milk and eggs) were expressed as bromoxynil *per se* only; the Agency concluded that measurement of bromoxynil *per se* in livestock commodities could serve as a marker to indicate the amount of DBHA

present in livestock. After further consideration, the Agency has determined that measurement of bromoxynil *per se* in livestock is not adequate to determine the amount of DBHA present. Therefore, in this action, tolerances are expressed as bromoxynil and DBHA instead of only as bromoxynil *per se* in livestock.

Tolerances for ruminant commodities (meat, fat, and meat by products) were recalculated since issuing the June 18, 1997 final rule due to new information. First, new residue data for bromoxynil and DBHA in cotton commodities were used to determine expected maximum theoretical dietary exposure to bromoxynil and DBHA via ingestion of cotton commodities. Second, maximum theoretical residues in livestock commodities were recalculated based on a revision in the dosing levels used in livestock feeding studies. Doses were previously calculated in terms of bromoxynil octanoate; however, since tolerances in RACs (raw agricultural commodities) are for bromoxynil *per se*, doses were recalculated as such. Finally, changes were made to the relative contributions of feed items in the diet as a result of grazing restrictions for grass, and information provided by the registrant on the amount of cotton gin trash in beef and dairy cattle diets. These changes did not affect tolerances for residues in milk, eggs, or meat and fat of ruminants and poultry; however, the tolerances for residues in meat by-products increased to 3.5 ppm for ruminants and to 0.3 ppm for poultry.

D. International Residue Limits

There are no established or proposed Codex MRLs for bromoxynil residues.

E. Rotational Crop Restrictions

Required additional limited field rotational crop studies have not been submitted to the Agency; acceptable studies previously submitted in support of reregistration reflect a maximum seasonal and single application rate of 0.5 lb ai/A, but the use on cotton constitutes a maximum seasonal application rate of 1.5 lb ai/A. Pending receipt of these studies registered labels must restrict rotation of cotton fields treated at a rate of greater than 0.5 lb ai/A/season to cotton.

IV. Conclusion

Therefore, tolerances are established for bromoxynil and DBHA in undelinted cottonseed at 1.5 ppm, cotton gin byproducts at 7.0 ppm, and cotton hulls at 5.0 ppm. In addition, this document establishes tolerances for the residues of bromoxynil and DBHA, resulting from the application of octanoic and

heptanoic acid esters of bromoxynil to cotton, in or on cattle, hogs, horses, goats, and sheep to 0.5 ppm in meat, 3.5 ppm in mby, and 1.0 ppm in fat. Further, this document establishes tolerances for residues of bromoxynil and DBHA, resulting from the application of octanoic and heptanoic acid esters of bromoxynil to cotton, at 0.1 ppm in milk; at 0.05 ppm in eggs; at 0.05 ppm in poultry meat and fat; and at 0.3 ppm in poultry mby.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (f)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 13, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300661] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does

not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 1985, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 6, 1998.

James Jones,
Director, Registration Division, Office of
Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.324, paragraph (a) is revised to read as follows:

§ 180.324 Bromoxynil; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic and/or heptanoic acid ester in or on the following commodities:

Commodity	Parts per million
Alfalfa, seeding	0.1 ppm
Barley, grain	0.1 ppm
Barley, straw	0.1 ppm
Corn, fodder (dry)	0.1 ppm
Corn, fodder (green)	0.1 ppm
Corn, fodder, field (dry)	0.1 ppm
Corn, fodder, field (green)	0.1 ppm
Corn, grain	0.1 ppm
Corn, grain, field	0.1 ppm
Flaxseed	0.1 ppm
Flax straw	0.1 ppm
Garlic	0.1 ppm
Grass, canary, annual, seed	0.1 ppm
Grass, canary, annual, straw	0.1 ppm
Mint hay	0.1 ppm
Oats, forage, green	0.1 ppm
Oats, grain	0.1 ppm
Oats, straw	0.1 ppm
Onions (dry bulb)	0.1 ppm
Rye, forage, green	0.1 ppm
Rye, grain	0.1 ppm
Rye, straw	0.1 ppm
Sorghum, fodder	0.1 ppm
Sorghum, forage	0.1 ppm
Sorghum, grain	0.1 ppm
Wheat, forage, green	0.1 ppm
Wheat, grain	0.1 ppm
Wheat, straw	0.1 ppm

(2) Tolerances are established for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) and its metabolite 3,5-dibromo-4-hydroxybenzoic acid (DBHA) resulting from application of its octanoic and/or heptanoic acid ester in or on the following commodities:

Commodity	Parts per million
Cattle, fat	1 ppm
Cattle, mby	3.5 ppm
Cattle, meat	0.5 ppm
Cotton gin byproducts	7.0 ppm
Cotton, hulls	5.0 ppm
Cotton, undelinted seed	1.5 ppm
Eggs	0.05 ppm
Goats, fat	1 ppm
Goats, mby	3.5 ppm
Goats, meat	0.5 ppm
Hogs, fat	1 ppm
Hogs, mby	3.5 ppm
Hogs, meat	0.5 ppm
Horses, fat	1 ppm
Horses, mby	3.5 ppm
Horses, meat	0.5 ppm
Milk	0.1 ppm
Poultry, fat	0.05 ppm
Poultry, mby	0.3 ppm
Poultry, meat	0.05 ppm
Sheep, fat	1 ppm
Sheep, mby	3.5 ppm
Sheep, meat	0.5 ppm

[FR Doc. 98-12639 Filed 5-8-98; 9:42 am]

BILLING CODE 6540-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300660; FRL-5790-5]

RIN 2070-AB78

Diffubenzuron; Temporary Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary tolerance for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl]amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice grain at 0.01 ppm. Uniroyal Chemical Company, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 requesting this temporary tolerance in association with an Experimental Use Permit (EUP) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: This regulation is effective May 13, 1998. Objections and requests for hearings must be received by EPA on or before July 13, 1998.

ADDRESSES: Written objections and hearing requests, identified by the

docket control number, [OPP-300660], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300660], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300660]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Paul Schroeder, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6602, e-mail: schroeder.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 25, 1998 (63 FR 9528) (FRL-5775-3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP 6G4771) from Uniroyal Chemical Company, Inc., Bethany, CT proposing to amend 40 CFR part 180 by establishing a tolerance for residues of the insect growth regulator, diflubenzuron and metabolites

convertible to p-chloroaniline, expressed as diflubenzuron in or on rice straw at 0.8 ppm. The notice included a summary of the petition prepared by Uniroyal Chemical Company, Inc., the registrant. In the Federal Register of March 9, 1998 (63 FR 11445) (FRL-5777-8), a clarification of the notice of filing was published explaining that Uniroyal had submitted two petitions, 6G4771, for the establishment of a temporary tolerance in or on rice at 0.01 ppm in association with a 3,000 acre EUP, and 8F4925, to amend 40 CFR 180.377 to include a tolerance for residues of the insect growth regulator, diflubenzuron and metabolites convertible to p-chloroaniline, expressed as diflubenzuron in or on rice straw at 0.8 ppm. There were no comments received in response to the notice of filing or the clarification.

I. Risk Assessment and Statutory Findings

EPA establishes maximum legal levels (tolerances) for pesticide residues on food under section 408 of FFDCA. EPA performs a number of analyses to determine the risk from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of residues of the insecticide diflubenzuron (N-[[4-chlorophenyl]amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice grain at 0.01, and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl]amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice grain at 0.01. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by diflubenzuron (N-[4-chlorophenyl]amino-carbonyl-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron have been fully described in the Reregistration Eligibility Decision (RED) document (EPA 738-R-97-008, August 1997), a copy of which is in the public docket.

B. Toxicological Endpoints

1. *Acute toxicity.* A risk assessment for acute dietary exposure (1 day) is not necessary. One day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 milligrams/kilograms (mg/kg) of diflubenzuron (25% wettable powder formulation). Sulfhemoglobin levels and Heinz bodies were not affected.

2. *Short- and intermediate-term toxicity.* The toxicology endpoint for short-term occupational or residential exposure (1 to 7 days) is sulfhemoglobinemia observed in the 14-day subchronic oral study in mice dosed with technical grade diflubenzuron. The no observed effect level (NOEL) in this study was 40 mg/kg/day and the lowest effect level (LEL) was 200 mg/kg/day.

The toxicology endpoint for intermediate-term occupational or residential exposure (1 week to several months) is methemoglobinemia observed in the 13-week subchronic feeding study in dogs. For the purpose of risk assessments, the NOEL of 1.64 mg/kg/day in this study should be considered to be 2 mg/kg/day so as to be consistent with the NOEL of 2 mg/kg/day in the chronic study used to calculate the RfD.

The LEL in this study was 6.24 mg/kg/day. There were no acceptable dermal absorption studies available. However, a dermal absorption rate was selected from an acceptable dermal absorption submitted to the Agency on June 25, 1996. From that study, a dermal absorption rate of 0.50% for exposures of 1 to 10 hours was determined for use in an occupational exposure assessment.

3. *Chronic toxicity.* The RfD was determined to be 0.02 mg/kg/day and is based on the NOEL of 2.0 mg/kg/day in the 52-week chronic oral study in dogs.

Increases in methemoglobin and sulfhemoglobin were observed at the next higher dose level of 10.0 mg/kg/day. An uncertainty factor of 100 was applied to account for the interspecies extrapolation and intraspecies variability. Diflubenzuron has been reviewed by the FAO/WHO joint committee on pesticide residues and an Acceptable Daily Intake (ADI) of 0.02 mg/kg/day was established in 1985. The ADI was based upon the one-year oral toxicity study in dogs with a NOEL of 2.0 mg/kg/day. A safety factor of 100 was applied to account for the interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity.* Based on the available evidence, which included adequate carcinogenicity studies in rats and mice and a battery of negative mutagenicity studies, diflubenzuron *per se* has been classified as Group E (evidence of non-carcinogenicity for humans). However, p-chloroaniline (PCA), a metabolite of diflubenzuron, was classified as a Group B2 carcinogen (probable human carcinogen). The classification for PCA was based on the results of a National Toxicology Program (NTP) study reported in July 1989 in which p-chloroaniline hydrochloride was administered by gavage to rats and mice for 2 years. In rats, clearly increased incidences of uncommon sarcomas (fibrosarcomas, hemangiosarcomas and/or osteosarcomas) of the spleen were observed in males. In females, two additional sarcomas of the spleen were also found. Pheochromocytomas of the adrenal gland may also have been associated with the test material in male and female rats. In mice, increased incidences of hepatocellular neoplasms in the liver and of hemangiosarcomas in the spleen and/or liver were observed in males. In females, no evidence of carcinogenic activity was observed. The results of several mutagenicity studies on PCA were also included in the same NTP report. PCA was mutagenic in Salmonella strains TA98 and TA100 with metabolic activation. Gene mutations were induced by PCA in cultured mouse lymphoma cells with and without metabolic activation. In cultured Chinese hamster ovary (CHO) cells, treatment with PCA produced significant increases in sister chromatid exchanges (SCEs) with and without metabolic activation. Chromosomal aberrations were also significantly increased in CHO cells in the presence of metabolic activation.

For the purpose of calculating dietary risk assessments, the following procedure was used:

a. P-chlorophenylurea (CPU) and p-chloroacetanilide (PCAA), additional metabolites of diflubenzuron that are closely related to PCA and for which there are no adequate carcinogenicity data available, should be considered to be potentially carcinogenic and to have the same carcinogenic potency (Q1*) as PCA.

b. The sum of PCA, CPU and PCAA residues in ingested food should be used to estimate the dietary exposure of humans to the carcinogenic metabolites of diflubenzuron.

c. In addition to ingested residues of these three metabolites, amounts of PCA, CPU, and/or PCAA formed *in vivo* following ingestion of diflubenzuron should also be included when estimating the total exposure of humans to the carcinogenic metabolites of diflubenzuron. The *in vivo* conversion of ingested diflubenzuron to PCA and/or CPU was estimated to be 2.0%, based on data in the rat metabolism study.

The Q1* (estimated unit risk) for PCA, based upon spleen sarcoma rates in male rats, was calculated to be 6.38×10^{-2} (mg/kg/day)⁻¹ in human equivalents.

Where no PCA, CPU, and/or PCAA are present, the toxicological endpoint for diflubenzuron *per se* should be used for risk assessments.

Regarding potential carcinogenic risks to humans resulting from dermal and/or inhalation exposures to PCA, CPU, and/or PCAA occurring during occupational or residential exposures to diflubenzuron, it has been determined that these risks are likely to be negligible since exposure to these metabolites is not anticipated. Only in the event that direct exposure to one or more of these metabolites of diflubenzuron is demonstrated would it be necessary to perform such risk assessments.

It has been determined that PCAA does not occur in animal or plant tissues in significant amounts.

5. *Special sensitivity to infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of diflubenzuron, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproductive toxicity study in the rat. Developmental toxicity studies are designed to evaluate adverse effects on the developing fetus resulting from maternal pesticide exposure during gestation. Reproductive toxicity studies provide information relating to pre- and post-natal effects from exposure to the pesticide, information on the reproductive capability of mating animals, and data on systemic toxicity

FFDCA section 408 provides that EPA shall apply an additional 10-fold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the no observed effect level in the animal study appropriate to the particular risk assessment. This 100-fold uncertainty (safety) factor/margin of exposure (safety) is designed to account for inter-species extrapolation and intra-species variability. EPA believes that reliable data support using the 100-fold margin/factor, rather than the 1,000-fold margin/factor, when EPA has a complete data base under existing guidelines, and when the severity of the effect in infants or children, the potency or unusual toxic properties of a compound, or the quality of the exposure data do not raise concerns regarding the adequacy of the standard margin/factor.

a. *Developmental toxicity studies—i. Rats.* In the developmental study in rats, the maternal (systemic) NOEL was 1,000.0 mg/kg/day [HDT]. The developmental (fetal) NOEL was 1,000.0 mg/kg/day, [HDT].

ii. *Rabbits.* In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 1,000.0 mg/kg/day, [HDT]. The developmental (pup) NOEL was 1,000.0 mg/kg/day, [HDT].

b. *Reproductive toxicity studies.* In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOEL was <36 males/<42 females mg/kg/day, [LDT] based on hematological effects at all dose levels tested. The reproductive (pup) NOEL was 427.0 mg/kg/day, based on decreases in the F-1 pup weight at the LEL of 2,454.0 mg/kg/day [HDT].

c. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for diflubenzuron is complete with respect to current data requirements. There is an ongoing review of these data with respect to the requirements of the Food Quality Protection Act. However, a preliminary decision, for purposes of this temporary tolerance, is that there is no extra sensitivity for pre- or post-natal effects and that there are reliable data to

support use of a 100-fold margin of exposure/uncertainty factor, to protect infants and children.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.377) for residues of diflubenzuron *per se*, in or on citrus, artichokes, walnuts, mushrooms, cottonseed, soybean, and associated livestock commodities. Existing tolerances range from 0.05 ppm in/on soybeans to 6.0 ppm in/on artichokes. Tolerances of 0.05 ppm have also been established for residues of diflubenzuron in animal commodities.

For the dietary risk assessment, anticipated residues levels for were calculated in livestock commodities. Anticipated residue estimates for diflubenzuron were not calculated for raw agricultural commodities. Percent crop treated data were utilized where available.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: (1) That the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of these estimates of percent crop treated as required by section 408(b)(2)(F), EPA may require registrants to submit data on percent crop treated (PCT).

Dietary exposure estimates were based on the following percent crop treated estimates: grass/rangeland, 1%; cottonseed, 3%; soybean, 1%; cattle bolus, 5%. Other commodities were assumed to be 100 percent treated. The Agency believes that the three conditions listed above have been met. With respect to (1), EPA finds that the PCT information described above for diflubenzuron is reliable and has a valid basis. The Agency has utilized statistical data from public and proprietary sources, including DOANE, and checked these against data provided by the registrant. These are the best available sources for such information. Concerning (2) and (3), regional consumption information and consumption information for significant

subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing diflubenzuron in a particular area.

Risk assessments were conducted as follows:

a. *Acute exposure and risk.* A risk assessment for acute dietary exposure (1 day) is not necessary. One day single dose oral studies in rats and mice indicated only marginal effects on methemoglobin levels at a dose level of 10,000 mg/kg of diflubenzuron (25% wettable powder formulation). Sulfhemoglobin levels and Heinz bodies were not affected.

b. *Chronic exposure and risk.* A chronic dietary risk assessment is required for diflubenzuron. The RfD used for the chronic dietary analysis for diflubenzuron is 0.02 mg/kg bwt/day. The DRES analysis utilized anticipated residues and percent crop treated, where available. The proposed diflubenzuron tolerance result in a dietary exposure that is equivalent to the following percent of the RfD:

Subgroups	Diflubenzuron
U.S. population (48 states)	< 1%
Hispanics	< 1%
Non-hispanic others	< 1%
Nursing Infants (< 1 year old)	< 1%
Non-nursing infants (< 1 year old)	< 1%
Females (13+ years, pregnant)	< 1%
Females (13+ years, nursing)	< 1%
Children (1-6 years old)	1%
Children (7-12 years old)	< 1%
Females (20+ years, not pregnant, not nursing)	< 1%

EPA does not consider the chronic dietary risk to exceed the level of concern.

c. *Cancer risk from consumption of PCA and related metabolites.* The Agency has determined that there are three sources of carcinogenic metabolites from the current uses of diflubenzuron and has added these three sources together to estimate the total cancer risk for PCA and related metabolites.

The first source is mushrooms. The Agency used results from mushroom metabolism studies to determine the percent of Total Radioactive Residue (TRR) present as PCA or the related compound CPU in mushrooms. The percent crop treated value for mushrooms, 30%, is an upper bound estimate. The overall U.S. dietary exposure is 0.0000045 mg/kg/day for a risk estimate of 2.9×10^{-7} .

For the second source, animal commodities, tolerance levels for diflubenzuron in animal commodities were used and, adjusting for percent

crop treated of feed items, total levels of PCA and related compounds were estimated. The overall U.S. dietary exposure is 0.000004 mg/kg/day for a risk estimate of 2.7×10^{-7} .

Finally, based on the results of a rat metabolism study, assumption of a 2.0% conversion of diflubenzuron to PCA in humans was assumed. Using the above exposure estimate for rice and currently registered uses of diflubenzuron, the calculated exposure is 0.00008 mg/kg/day for a risk estimate of 1.0×10^{-7} .

The total of these three estimates gives a total cancer risk estimate for PCA and related metabolites from all dietary sources of diflubenzuron of 6.6×10^{-7} .

2. *From drinking water.* HED has calculated drinking water levels of concern (DWLOCs) for chronic (non-cancer) exposure to diflubenzuron in surface and ground water for the U.S. population and children (1-6 yrs). They are 700 and 200 ppb, respectively. For

chronic (cancer) exposure to CPU in surface and ground water, the DWLOC is 0.21 ppb for the U.S. population. To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from DRES) was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to diflubenzuron in drinking water. To calculate the DWLOC for chronic exposures relative to a carcinogenic toxicity endpoint, the chronic (cancer) dietary food exposure was subtracted from the ratio of the negligible cancer risk to the Q^* to obtain the acceptable chronic (cancer) exposure to diflubenzuron in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

a. *Chronic risk:* Chronic RfD = 0.002 mg/kg/day. Maximum H_2O = 0.002 - Food Exposure.

Subgroup	Food Exposure (from DRES mg/kg/day)	Maximum H_2O Exposure (mg/kg/day)
U.S. population	0.000080	0.01992
Children (1-6 years)	0.00021	0.01980

U.S. Population: DWLOC = 700 ppb
Children (1-6 years): DWLOC = 200 ppb

b. *Cancer risk:* $Q^* = 6.38 \times 10^{-2}$ (mg/kg/day) -- Maximum H_2O = 1.6×10^{-5} - Food Exposure

Subgroup	Food Exposure (mg/kg/day)	Maximum H_2O Exposure (mg/kg/day)
U.S. population	0.0000101	0.0000059

U.S. population: DWLOC = 0.21 ppb

The estimated average concentration of diflubenzuron in surface water sources is not expected to exceed 0.05 ppb. Estimated average concentrations of CPU in surface water sources is not expected to exceed 0.85 ppb. The estimated average concentrations of diflubenzuron in surface water are less than EPA's levels of concern for diflubenzuron in drinking water as a contribution to chronic (non-cancer) aggregate exposure. However, the estimated average concentration (0.85 ppb) of CPU in surface water exceeds EPA's levels of concern for CPU in drinking water (0.21 ppb) as a contribution to chronic (cancer) aggregate exposure.

EPA believes the estimates of CPU exposure in water derived from the PRZM-EXAMS model, particularly the estimates pertaining to chronic

exposure, are significantly overstated for several reasons. The PRZM-EXAMS model was designed to estimate exposure from ecological risk assessments and thus uses a scenario of a body of water approximating the size of a 1 hectare (2.5 acres) pond. This tends to overstate chronic drinking water exposure levels for the following reasons. First, surface water source drinking water generally comes from bodies of water that are substantially larger than a 1 hectare (2.5 acres) pond. Second, the modeled scenario also assumes that essentially the whole basin receives an application of the pesticide. Yet in virtually all cases, basins large enough to support a drinking water facility will contain a substantial fraction of the area which does not receive pesticide. Third, there is often at least some flow (in a river) or turnover (in a reservoir or lake) of the water so

the persistence of the pesticide near the drinking water facility is usually overestimated. Fourth, even assuming a reservoir is directly adjacent to an agricultural field, the agricultural field may not be used to grow a crop on which the pesticide in question is registered for use. Fifth, the PRZM-EXAMS modeled scenario does not take into account reductions in residue-loading due to applications of less than the maximum application rate or no treatment of the crop at all (percent crop treated data). Although there is a high degree of uncertainty to this analysis, these are the best available estimates of concentrations of CPU in drinking water. EPA believes that these numbers justify asking for field runoff monitoring for CPU in conjunction with the registered use on cotton.

EPA bases this determination on a comparison of estimated concentrations

of diflubenzuron and CPU in surface waters and ground waters to back-calculated "levels of concern" for diflubenzuron and CPU in drinking water. These levels of concern in drinking water were determined after EPA has considered all other non-occupational human exposures for which it has reliable data, including all current uses, and uses considered in this action. The estimates of diflubenzuron and CPU in surface and ground waters are derived from water quality models that use conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of concern in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of diflubenzuron and CPU on drinking water as a part of the aggregate risk assessment process.

3. *From non-occupational non-dietary exposure.* Diflubenzuron is a restricted use pesticide and therefore not available for use by homeowners. However, non-agricultural uses of diflubenzuron may expose people in residential locations. Based on the low dermal absorption rate (0.5%), and the extremely low dermal and inhalation toxicity, these uses are expected to result in insignificant risk.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." An explanation of the current Agency approach to assessment of pesticides with a common mechanism of toxicity may be found in the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961).

Diflubenzuron is structurally similar to other substituted benzoylurea insecticides including triflumuron and flucyclohexuron. EPA does not have, at this time, available data to determine whether diflubenzuron has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diflubenzuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this

tolerance action, therefore, EPA has not assumed that diflubenzuron has a common mechanism of toxicity with other substances.

D. *Aggregate Risks and Determination of Safety for U.S. Population, Infants, and Children*

1. *Acute risk.* There is no risk from acute dietary exposure (1 day) to diflubenzuron as there is no toxic endpoint identified.

2. *Chronic.* For the U.S. population, <1% of the RfD is occupied by dietary (food) exposure. The estimated average concentrations of diflubenzuron in surface and ground water are less than OPP's levels of concern for diflubenzuron in drinking water. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants, children, or adults from chronic aggregate (food plus water) exposure to diflubenzuron residues.

3. *Carcinogenic aggregate exposure and risk.* For the U.S. population, cancer risk resulting from dietary (food) exposure is 6.6×10^{-7} . The estimated average concentration (0.85 ppb) of CPU in surface water exceeds EPA's levels of concern for CPU in drinking water (0.21 ppb) as a contribution to chronic (cancer) aggregate exposure. However, EPA believes that these PRZM-EXAMS model overestimates exposures for the reasons given above. EPA does not generally use surface water modeling values for quantitative risk assessment. However, due to the statistical uncertainties regarding the significance of cancer risks which are near 1×10^{-6} , EPA has calculated that the cancer risk resulting from 0.85 ppb of CPU in drinking water is 1.55×10^{-6} . The aggregate cancer risk is thus 2.2×10^{-6} (6.6×10^{-7} for food + 1.55×10^{-6} for water).

4. *Determination of safety.* EPA believes that the total risk estimate for CPU in food and drinking water of 2.2×10^{-6} generally represents a negligible risk, as EPA has traditionally applied that concept. EPA has commonly referred to a negligible risk as one that is at or below 1 in 1 million (1×10^{-6}). Quantitative cancer risk assessment is not a precise science. There are a significant number of uncertainties in both the toxicology used to derive the cancer potency of a substance and in the data used to measure and calculate exposure. The Agency does not attach great significance to numerical estimates for carcinogenic risk that differ by approximately a factor of 2.

III. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of the residue in plants is adequately understood based on data from citrus, mushroom, and soybean metabolism studies. The Agency has concluded that tolerances should be expressed in terms of the combined residues of diflubenzuron and metabolites convertible to PCA (CPU and PCAA) expressed as diflubenzuron. However, for the purposes of this temporary tolerance petition, diflubenzuron *per se* should be the regulated residue in plants.

The nature of the residue in animals is adequately understood based on acceptable poultry and ruminant metabolism studies reflecting oral dosing. Terminal residues identified in animal tissues, milk, and eggs include diflubenzuron, 2-hydroxy-diflubenzuron (2HDFB), 2,6-difluorobenzamide (DFBAM), 2,6-difluorobenzoic acid (DFBA), N-(4-chlorophenyl)urea (CPU), and PCA. For the purposes of this temporary tolerance petition, diflubenzuron should be the regulated residue in animals.

B. Analytical Enforcement Methodology

Adequate methods are available for the analysis of Diflubenzuron in rice grain (0.01 ppm), rice straw (0.01 ppm) and water (0.001 ppm). The method for measuring PCA in rice grain recovers only about 50% at the 0.025 ppm level. As part of the reregistration of diflubenzuron, the Agency concluded that tolerances should be expressed in terms of the combined residues of diflubenzuron and metabolites. Until suitable methodology is developed, regulation of diflubenzuron *per se* is an acceptable alternative. Three enforcement methods for diflubenzuron are published in PAM, Vol. II as Methods I, II, and III. Method II is a GC/ECD method that can separately determine residues of diflubenzuron, CPU, and PCA in eggs, milk, and animal tissues. All three methods have undergone successful Agency validations and are acceptable for enforcement purposes. The FDA PESTDATA data base dated 1/94 (PAM Vol. I, Appendix II) contains no information on diflubenzuron recovery using Multiresidue Methods PAM, Vol. I Sections 302, 303, and 304. However, the registrant has submitted multi-residue testing data that the Agency has forwarded to the FDA.

C. Magnitude of Residues

Uniroyal Chemical Company submitted data from 10 tests depicting residues of diflubenzuron in/on rice.

Ten trials were conducted in Arizona (2), California (2), Louisiana (1), Mississippi (2), and Texas (3). At each site rice grain and straw were harvested at normal maturity following one broadcast application of diflufenuron (25% WP, EPA Reg. No. 400-465; 2 lb/gal FIC, EPA Reg. No. 400-461) at 0.25 lb. ai/A (1x the maximum proposed application rate). A single application was made 10 days or 2 weeks following permanent flood or rice emergence, respectively. Applications of the WP/D and FIC formulation were made in 10 gal of water/A using ground equipment. Aerial applications of the FIC formulation were made at 5-10 gal of water/A. Residues of diflufenuron and PCA in/on treated rice grain were <LOQ for all samples. The submitted field trial data indicate that residues of diflufenuron will not exceed the proposed temporary tolerance of 0.01 ppm in/on rice grain. As an adjunct to the magnitude of the residue study on rice, the petitioner also conducted residue studies to determine the magnitude of the residue of diflufenuron in treated rice flood waters. Residue levels were determined from samples taken from the treated and untreated plots of the diflufenuron crop field trials. Five trials were conducted in California (2), Louisiana (1), and Texas (2). Following one broadcast application of diflufenuron as a 25% WP formulation or 2 lb/gal FIC formulation at 0.25 lb. ai/A (1x the maximum proposed application rate) as described in the crop field trial discussion, one control and duplicate treated samples of water were collected from each plot at each test site at intervals of 0, 1, 3, 7, 14, 21, and 28 days following insecticide application. For the sampling intervals 0, 1, 3 and 7 days after application of diflufenuron at 1x the maximum proposed application rate (0.25 lb. ai/A), residues of diflufenuron in treated rice flood waters were 0.011 to 0.04 ppm, 0.0007 to 0.027 ppm, <0.0003 to 0.020 ppm, and <0.0003 to 0.0014 ppm; residues were <LOQ for all samples collected 14 or more days after treatment.

There are several active SLNs [SLN Nos. AL930004, FL910004, HI940003, CA850041, CA870049, and NV940003] which allow the application of diflufenuron to water at a maximum rate 0.25 lb. ai/A for mosquito abatement. Labels prohibit the use of treated water for irrigation or human consumption. The proposed label recommends the retention of flood waters for 14 days to allow for the dissipation of diflufenuron residues. Residue data indicate that

diflufenuron residues >LOQ may be present in rice flood waters <14 days after application of diflufenuron.

D. Magnitude of the Residue in Processed Commodities

Uniroyal Chemical Company submitted data depicting the potential for concentration of diflufenuron residues in the processed commodities of rice. Two tests were conducted in Mississippi (1) and Texas (1). At each site, rice grain was harvested at maturity, 82 to 85 days following a post-permanent flood application of the 2 lb/gal FIC formulation at 2 lb. ai/A (8x the proposed maximum application rate). Samples were processed according to simulated commercial procedures into hulls, bran, and polished rice. Residues of diflufenuron were non-detectable (LOQ <0.01 ppm) and 0.26 and 0.87 ppm in four treated samples of the RAC, and did not concentrate in processed commodities of rice harvested 82 to 85 days following a single 2 lb. ai/A (8x) of diflufenuron. As the residues of diflufenuron did not concentrate in the hull, bran, or whole rice fractions of processed rice grain, a tolerance for residues in rice processed commodities is not required.

E. Magnitude of Secondary Residues in Meat/Milk/Poultry/Eggs

Rice grain, straw, hulls and bran may be fed to livestock and/or poultry. However, the incremental exposure of diflufenuron residues to livestock and poultry is minimal when compared to the existing exposure. EPA concludes that the current tolerances on meat, milk, poultry and eggs are adequate to cover the added residues resulting from the experimental use on rice.

F. International Residue Limits

There are no Codex proposals, Canadian, or Mexican limits for residues of diflufenuron on rice. A compatibility issue is not relevant to the proposed temporary tolerance.

G. Rotational Crop Restrictions.

The nature of the residue in rotational crops is adequately understood for purposes of reregistration (residue chemistry chapters for the Reregistration Eligibility Decision (RED) document, March 16, 1995). Although EPA concluded that the available confined rotational crop study was inadequate to fully satisfy GLN 165-1 reregistration requirements, another confined rotational crop study will not be required because the study allowed EPA to make regulatory conclusions regarding the need for limited rotational crop studies (GLN 165-2) and to

comment on the appropriateness of the currently established plantback interval (PBI) on diflufenuron end-use product labels.

Residue data on field-grown rotational crops are not available. Although the confined study was deemed inadequate, the available data indicate that diflufenuron and CPU may exceed 0.01 ppm in rotational crops planted up to 4 months after a 1x application of diflufenuron to the primary crop and in cereal grains planted up to 12 months after a 1x application.

IV. Conclusion

Therefore, the temporary tolerance is established for residues of the insecticide diflufenuron (N-[[4-chlorophenyl]amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflufenuron on rice grain at 0.01 ppm.

V. Objections and Hearing Requests

The new FFDC section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (f)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 13, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the

material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300660] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a temporary tolerance for the residues of diflufenuron (N-[[4-chlorophenyl]amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflufenuron on rice grain at 0.01 ppm under FFDC section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDC section 408(d), such as the tolerances for the residues of diflufenuron (N-[[4-chlorophenyl]amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflufenuron on rice grain at 0.01 ppm in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.377 to read as follows:

§ 180.377 Diflufenuron; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide diflufenuron (N-[[4-chlorophenyl]amino]-carbonyl]-2,6-difluorobenzamide) in or on the following raw agricultural commodities:

Commodity	Parts per million
Artichokes	6.0
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Cottonseed	0.2
Eggs	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Grapefruit	0.5
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05

Commodity	Parts per million
Horses, mbyp	0.05
Horses, meat	0.05
Milk	0.05
Mushrooms	0.2
Orange	0.5
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05
Soybeans	0.5
Tangerine	0.5
Walnuts	0.1

(2) A temporary tolerance expiring June 30, 1999, is established for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl]amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice grain at 0.01 ppm.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of diflubenzuron in or on the following raw agricultural commodities:

Commodity	Parts per million
Grass, pasture	1.0
Grass, range	3.0

(d) Indirect or inadvertent residues. [Reserved]

[FR Doc. 98-12640 Filed 5-12-98; 8:45 am]
BILLING CODE 6560-60-F

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

(FTR Amendment 72)

RIN 3090-AG72

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to change the maximum per diem rate prescribed in FTR Amendment 68 (62 FR 63798, December 2, 1997) for El Paso (El Paso County), Texas.

The General Services Administration (GSA), after an analysis of additional data, has determined that the current lodging allowance for El Paso, Texas does not adequately reflect the costs of lodging accommodations near Federal Government facilities. To provide adequate per diem reimbursement for Federal employee travel to El Paso, Texas, the maximum lodging allowance is being changed to \$78 and the meals and incidental expenses (M&IE) rate remains at \$34, resulting in a maximum per diem rate of \$112.

EFFECTIVE DATE: This final rule is effective May 13, 1998, and applies for travel performed on or after May 13, 1998.

FOR FURTHER INFORMATION CONTACT: Joddy Garner, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202-501-1538.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the *Federal Register* for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

For the reasons set out in the preamble, under 5 U.S.C. 5701-5709 title 41, Chapter 301 of the Code of Federal Regulations is revised to read as follows:

CHAPTER 301—TRAVEL ALLOWANCES

Appendix A to chapter 301 is amended by removing the corresponding lodging, M&IE, and maximum per diem rates for El Paso, Texas, and inserting in their places the following entry:

Appendix A To Chapter 301—Prescribed Maximum Per Diem Rates For Conus

El Paso	El Paso	78	34
112			

Dated: May 6, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98-12827 Filed 5-12-98; 8:45 am]

BILLING CODE 6820-14-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1215 and 2507

RIN 3045-AA16

Freedom of Information Act Regulation and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") has revised its regulations under the Freedom of Information Act (FOIA). The Corporation redesignated the existing regulations under former ACTION's CFR chapter as updated regulations under the Corporation's CFR chapter. These procedures facilitate the public's access to Corporation records, and implement the Electronic Freedom of Information Act Amendments of 1996.

DATES: This final rule is effective June 12, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Hudson, Corporation FOIA/Privacy Act Officer, at (202) 606-5000, ext. 265.

SUPPLEMENTARY INFORMATION: The Corporation published a notice of proposed rulemaking on March 12, 1998 (63 FR 12068) announcing its intention to redesignate the existing regulations under former ACTION's CFR chapter as updated regulations under the Corporation's CFR chapter. The functions of the ACTION agency, including the VISTA and senior volunteer programs, were transferred to the Corporation on April 4, 1994. The Corporation operates under two statutes, the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501 *et seq.*, and the Domestic Volunteer Service Act of 1973, as amended, 42 U.S.C. 4950 *et seq.*

The Corporation received only two comments on this proposed rule. One comment requested that the Corporation publish a more detailed index list of documents available on its internet web site. The Corporation's FOIA Officer will publish a more detailed index list on its internet web site as additional types of documents become available on that site. The other comment was a request to grant the Corporation's Office of Inspector General (OIG) authority to make the final determination on all FOIA appeals where the OIG denied the initial request for any document in its possession. The Corporation has determined that its Chief Operating

Officer (COO) will continue to make the final determination on all appeals filed as a result of the OIG's initial determination to deny the release of documents to a FOIA requester.

This final rule redesignates ACTION's policy at 45 CFR Chapter XII, Part 1215, to be revised as 45 CFR Chapter XXV, Part 2507, and governs the Corporation as a whole.

Distribution Table

Old 45 CFR part 1215	New 45 CFR part 2507
1215.1	2507.1
1215.2	2507.2
1215.3	2507.3
1214.4	2507.4
1215.5	2507.5
1215.6	2507.6
1215.7	2507.7
1215.8	2507.8
1215.9	2507.9
1215.10	2507.10
Appendix 1(A)	Appendix A
Appendix 1(B)	Appendix B

Regulatory Flexibility Act

The General Counsel, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs for searching for, reviewing, and duplicating the records processed for requesters. Thus, fees accessed by the Corporation are nominal. Further, the "small entities" that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866. The Office of Management and Budget has reviewed this rule and has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 45 CFR Parts 1215 and 2507

Confidential business information, Freedom of information.

Accordingly, and under the authority of 42 U.S.C. 12501 *et seq.*, the Corporation amends 45 CFR chapters XII and XXV as follows:

PART 1215—[REDESIGNATED AS PART 2507]

1. Part 1215 in 45 CFR chapter XII is redesignated as part 2507 in 45 CFR chapter XXV and is revised to read as follows:

PART 2507—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

- 2507.1 Definitions.
- 2507.2 What is the purpose of this part?
- 2507.3 What types of records are available for disclosure to the public?
- 2507.4 How are requests for records made?
- 2507.5 How does the Corporation process requests for records?
- 2507.6 Under what circumstances may the Corporation extend the time limits for an initial response?
- 2507.7 How does one appeal the Corporation's denial of access to records?
- 2507.8 How are fees determined?
- 2507.9 What records will be denied disclosure under this part?
- 2507.10 What records are specifically exempt from disclosure?
- 2507.11 What are the procedures for the release of commercial business information?
- 2507.12 Authority.
- Appendix A to Part 2507—Freedom of Information Act Request Letter (Sample)
- Appendix B to Part 2507—Freedom of Information Act Appeal for Release of Information (Sample)

Authority: 42 U.S.C. 12501 *et seq.*

§ 2507.1 Definitions.

As used in this part, the following definitions shall apply:

(a) *Act* means section 552 of Title 5, United States Code, sometimes referred to as the "Freedom of Information Act",

and Pub. L. 104-231, 110 Stat. 3048, sometimes referred to as the "Electronic Freedom of Information Act Amendments of 1996."

(b) *Agency* means any executive department, military department, government corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus, the Corporation is a Federal agency.

(c) *Commercial use request* means a request from, or on behalf of, a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. The use to which the requester will put the records sought will be considered in determining whether the request is a commercial use request.

(d) *Corporation* means the Corporation for National and Community Service.

(e) *Educational institution* means a pre-school, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program of scholarly research.

(f) *Electronic data* means records and information (including e-mail) which are created, stored, and retrievable by electronic means.

(g) *Freedom of Information Act Officer (FOIA Officer)* means the Corporation official who has been delegated the authority to make the initial determination on whether to release or withhold records, and to assess, waive, or reduce fees in response to FOIA requests.

(h) *Non-commercial scientific institution* means an institution that is not operated substantially for purposes of furthering its own or someone else's business trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

(i) *Public interest* means the interest in obtaining official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about what their government is doing.

(j) *Record* includes books, brochures, electronic mail messages, punch cards, magnetic tapes, cards, discs, paper tapes, audio or video recordings, maps, pamphlets, photographs, slides, microfilm, and motion pictures, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation pursuant

to Federal law or in connection with the transaction of public business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, programs, or other activities. Record does not include objects or articles such as tangible exhibits, models, equipment, or processing materials; or formulas, designs, drawings, or other items of valuable property. Record does not include books, magazines, pamphlets or other materials acquired solely for reference purposes. Record does not include personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Record does not include information stored within a computer for which there is no existing computer program for retrieval of the requested information. A record must exist and be in the possession and control of the Corporation at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. See § 2507.5(d) with respect to creating a record in the electronic environment.

(k) *Representative of the news media* means a person who is actively gathering information for an entity organized to publish, broadcast or otherwise disseminate news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). Freelance journalists will be treated as representatives of a new media entity if they can show a likelihood of publication through such an entity. A publication contract would be the clearest proof, but the Corporation may also look to the past publication record of a requester in making this determination.

(l) *FOIA request* means a written request for Corporation records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency, an order from a court, or a fugitive from the law, that either explicitly or implicitly involves the FOIA, or this part. Written requests may be received by postal service or by facsimile.

(m) *Review* means the process of examining records located in response to a request to determine whether any record or portion of a record is permitted to be withheld. It also includes processing records for disclosure (i.e., excising portions not subject to disclosure under the Act and otherwise preparing them for release). Review does not include time spent resolving legal or policy issues regarding the application of exemptions under the Act.

(n) *Search* means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and quicker way to comply with the request.

§ 2507.2 What is the purpose of this part?

The purpose of this part is to prescribe rules for the inspection and release of records of the Corporation for National and Community Service pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, as amended. Information customarily furnished to the public in the regular course of the Corporation's official business, whether hard copy or electronic records which are available to the public through an established distribution system, or through the Federal Register, the National Technical Information Service, or the Internet, may continue to be furnished without processing under the provisions of the FOIA or complying with this part.

§ 2507.3 What types of records are available for disclosure to the public?

(a) (1) The Corporation will make available to any member of the public who requests them, the following Corporation records:

(i) All publications and other documents provided by the Corporation to the public in the normal course of agency business will continue to be made available upon request to the Corporation;

(ii) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of administrative cases;

(iii) Statements of policy and interpretation adopted by the agency and not published in the Federal Register;

(iv) Administrative staff manuals and instructions to the staff that affect a member of the public; and

(v) Copies of all records, regardless of form or format, which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(2) Copies of a current index of the materials in paragraphs (a)(1)(i) through (v) of this section that are maintained by the Corporation, or any portion thereof, will be furnished or made available for inspection upon request.

(b) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Corporation may delete identifying details from materials furnished under this part.

(c) Brochures, leaflets, and other similar published materials shall be furnished to the public on request to the extent they are available. Copies of any such materials which are out of print shall be furnished to the public at the cost of duplication, provided, however, that, in the event no copy exists, the Corporation shall not be responsible for reprinting the document.

(d) All records of the Corporation which are requested by a member of the public in accordance with the procedures established in this part shall be duplicated for the requester, except to the extent that the Corporation determines that such records are exempt from disclosure under the Act.

(e) The Corporation will not be required to create new records, compile lists of selected items from its files, or provide a requester with statistical or other data (unless such data has been compiled previously and is available in the form of a record.)

(f) These records will be made available for public inspection and copying in the Corporation's reading room located at the Corporation for National and Community Service, 1201 New York Avenue, NW., Room 8200, Washington, D.C. 20525, during the hours of 9:30 a.m. to 4:00 p.m., Monday through Friday, except on official holidays.

(g) Corporation records will be made available to the public unless it is determined that such records should be withheld from disclosure under subsection 552(b) of the Act and or in accordance with this part.

§ 2507.4 How are requests for records made?

(a) *How made and addressed.* (1) Requests for Corporation records under the Act must be made in writing, and can be mailed, hand-delivered, or received by facsimile, to the FOIA Officer, Corporation for National and Community Service, Office of the

General Counsel, 1201 New York Avenue, N.W., Room 8200, Washington, D.C. 20525. (See Appendix A for an example of a FOIA request.) All such requests, and the envelopes in which they are sent, must be plainly marked "FOIA Request". Hand-delivered requests will be received between 9 a.m. and 4 p.m., Monday through Friday, except on official holidays. Although the Corporation maintains offices throughout the continental United States, all FOIA requests must be submitted to the Corporation's Headquarters office in Washington, DC.

(2) Corporation records that are available in the Corporation's reading room will also be made available for public access through the Corporation's "electronic reading room" internet site under "Resource Links". The following address is the Corporation's Internet Web site: <http://www.nationalservice.org>.

(b) *Request must adequately describe the records sought.* A request must describe the records sought in sufficient detail to enable Corporation personnel to locate the records with reasonable effort, and without unreasonable burden to or disruption of Corporation operations. Among the kinds of identifying information which a requester may provide are the following:

(1) The name of the specific program within the Corporation which may have produced or may have custody of the record (e.g., AmeriCorps*State/National Direct, AmeriCorps*NCCC (National Civilian Community Corps), AmeriCorps*VISTA (Volunteers In Service To America), Learn and Serve America, National Senior Service Corps (NSSC), Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), Senior Companion Program (SCP), and HUD Hope VI);

(2) The specific event or action, if any, to which the record pertains;

(3) The date of the record, or an approximate time period to which it refers or relates;

(4) The type of record (e.g. contract, grant or report);

(5) The name(s) of Corporation personnel who may have prepared or been referenced in the record; and

(6) Citation to newspapers or other publications which refer to the record.

(c) *Agreement to pay fees.* The filing of a request under this section shall be deemed to constitute an agreement by the requester to pay all applicable fees, up to \$25.00, unless a waiver of fees is sought in the request letter. When filing a request, a requester may agree to pay a greater amount, if applicable. (See § 2507.8 for further information on fees.)

§ 2507.5 How does the Corporation process requests for records?

(a) *Initial processing.* Upon receipt of a request for agency records, the FOIA Officer will make an initial determination as to whether the requester has reasonably described the records being sought with sufficient specificity to determine which Corporation office may have possession of the requested records. The office head or his or her designees shall determine whether the description of the record(s) requested is sufficient to permit a determination as to existence, identification, and location. It is the responsibility of the FOIA Officer to provide guidance and assistance to the Corporation staff regarding all FOIA policies and procedures. All requests for records under the control and jurisdiction of the Office of the Inspector General will be forwarded to the Inspector General, through the FOIA Officer, for the Corporation's initial determination and reply to the requester.

(b) *Insufficiently identified records.* On making a determination that the description contained in the request does not reasonably describe the records being sought, the FOIA Officer shall promptly advise the requester in writing or by telephone if possible. The FOIA Officer shall provide the requester with appropriate assistance to help the requester provide any additional information which would better identify the record. The requester may submit an amended request providing the necessary additional identifying information. Receipt of an amended request shall start a new 20 day period in which the Corporation will respond to the request.

(c) *Furnishing records.* The Corporation is required to furnish only copies of what it has or can retrieve. It is not compelled to create new records or do statistical computations. For example, the Corporation is not required to write a new program so that a computer will print information in a special format. However, if the requested information is maintained in computerized form, and it is possible, without inconvenience or unreasonable burden, to produce the information on paper, the Corporation will do this if this is the only feasible way to respond to a request. The Corporation is not required to perform any research for the requester. The Corporation reserves the right to make a decision to conserve government resources and at the same time supply the records requested by consolidating information from various records rather than duplicating all of them. For example, if it requires less

time and expense to provide a computer record as a paper printout rather than in an electronic medium, the Corporation will provide the printout. The Corporation is only required to furnish one copy of a record.

(d) *Format of the disclosure of a record.* The requester, not the Corporation, will be entitled to choose the form of disclosure when multiple forms of a record already exist. Any further request for a record to be disclosed in a new form or format will have to be considered by the Corporation, on a case-by-case basis, to determine whether the records are "readily reproducible" in that form or format with "reasonable efforts" on the part of the Corporation. The Corporation shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of replying to a FOIA request.

(e) *Release of record.* Upon receipt of a request specifically identifying existing Corporation records, the Corporation shall, within 20 days (excepting Saturdays, Sundays, and legal public holidays), either grant or deny the request in whole or in part, as provided in this section. Any notice of denial in whole or in part shall require the FOIA Officer to inform the requester of his/her right to appeal the denial, in accordance with the procedures set forth in § 2507.7. If the FOIA Officer determines that a request describes a requested record sufficiently to permit its identification, he/she shall make it available unless he/she determines, as appropriate, to withhold the record as being exempt from mandatory disclosure under the Act.

(f) *Form and content of notice granting a request.* The Corporation shall provide written notice of a determination to grant access within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of the request. This will be done either by providing a copy of the record to the requester or by making the record available for inspection at a reasonable time and place. If the record cannot be provided at the time of the initial response, the Corporation shall make such records available promptly. Records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

(g) *Form and content of notice denying request.* The Corporation shall notify the requester in writing of the denial of access within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of the request. Such notice shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for denial, including the specific exemption(s) under the Act on which the Corporation has relied in denying each document that was requested;

(3) A statement that the denial may be appealed under § 2507.7, and a description of the requirements of that § 2507.7;

(4) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

§ 2507.6 Under what circumstances may the Corporation extend the time limits for an initial response?

The time limits specified for the Corporation's initial response in § 2507.5, and for its determination on an appeal in § 2507.7, may be extended by the Corporation upon written notice to the requester which sets forth the reasons for such extension and the date upon which the Corporation will respond to the request. Such extension may be applied at either the initial response stage or the appeal stage, or both, provided the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension under this section may include the following:

(a) Time necessary to search for and collect requested records from field offices of the Corporation;

(b) Time necessary to locate, collect and review voluminous records; or

(c) Time necessary for consultation with another agency having an interest in the request; or among two or more offices of the Corporation which have an interest in the request; or with a submitter of business information having an interest in the request.

§ 2507.7 How does one appeal the Corporation's denial of access to records?

(a) *Right of appeal.* A requester has the right to appeal a partial or full denial of an FOIA request. The appeal must be put in writing and sent to the reviewing official identified in the denial letter. The requester must send the appeal within 60 days of the letter denying the appeal.

(b) *Contents of appeal.* The written appeal may include as much or as little information as the requester wishes for the basis of the appeal.

(c) *Review process.* The Chief Operating Officer (COO) is the

designated official to act on all FOIA appeals. The COO's determination of an appeal constitutes the Corporation's final action. If the appeal is granted, in whole or in part, the records will be made available for inspection or sent to the requester, promptly, unless a reasonable delay is justified. If the appeal is denied, in whole or in part, the COO will state the reasons for the decision in writing, providing notice of the right to judicial review. A decision will be made on the appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays), from the date the appeal was received by the COO.

(d) *When appeal is required.* If a requester wishes to seek review by a court of an unfavorable determination, an appeal must first be submitted under this section.

§ 2507.8 How are fees determined?

(a) *Policy.* It is the policy of the Corporation to provide the widest possible access to releasable Corporation records at the least possible cost. The purpose of the request is relevant to the fees charged.

(b) *Types of request.* Fees will be determined by category of requests as follows:

(1) *Commercial use requests.* When a request for records is made for commercial use, charges will be assessed to cover the costs of searching for, reviewing for release, and reproducing the records sought.

(2) *Requests for educational and non-commercial scientific institutions.* When a request for records is made by an educational or non-commercial scientific institution in furtherance of scholarly or scientific research, respectively, charges may be assessed to cover the cost of reproduction alone, excluding charges for reproduction of the first 100 pages. Whenever the total fee calculated is \$18.00 or less, no fee shall be charged.

(3) *Requests from representatives of the news media.* When a request for records is made by a representative of the news media for the purpose of news dissemination, charges may be assessed to cover the cost of reproduction alone, excluding the charges for reproduction of the first 100 pages. Whenever the total fee calculated is \$18.00 or less, no fee shall be charged.

(4) *Other requests.* When other requests for records are made which do not fit the three preceding categories, charges will be assessed to cover the costs of searching for and reproducing the records sought, excluding charges for the first two hours of search time and for reproduction of the first 100 pages. (However, requests from

individuals for records about themselves contained in the Agency's systems of records will be treated under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a) which permit the assessment of fees for reproduction costs only, regardless of the requester's characterization of the request.) Whenever the total fee calculated is \$18.00 or less, no fee shall be charged to the requester.

(c) *Direct costs.* Fees assessed shall provide only for recovery of the Corporation's direct costs of search, review, and reproduction. Review costs shall include only the direct costs incurred during the initial examination of a record for the purposes of determining whether a record must be disclosed under this part and whether any portion of a record is exempt from disclosure under this part. Review costs shall not include any costs incurred in resolving legal or policy issues raised in the course of processing a request or an appeal under this part.

(d) *Charging of fees.* The following charges may be assessed for copies of records provided to a requester:

(1) Copies made by photostat shall be charged at the rate of \$0.10 per page.

(2) Searches for requested records performed by clerical/administrative personnel shall be charged at the rate of \$4.00 per quarter hour.

(3) Where a search for requested records cannot be performed by clerical administrative personnel (for example, where the tasks of identifying and compiling records responsive to a request must be performed by a skilled technician or professional), such search shall be charged at the rate of \$7.00 per quarter hour.

(4) Where the time of managerial personnel is required, the fee shall be \$10.25 for each quarter hour of time spent by such managerial personnel.

(5) Computer searches for requested records shall be charged at a rate commensurate with the combined cost of computer operation and operator's salary attributable to the search.

(6) *Charges for non-release.* Charges may be assessed for search and review time, even if the Corporation fails to locate records responsive to a request or if records located are determined to be exempt from disclosure.

(e) *Consent to pay fees.* In the event that a request for records does not state that the requester will pay all reasonable costs, or costs up to a specified dollar amount, and the FOIA Officer determines that the anticipated assessable costs for search, review and reproduction of requested records will exceed \$25.00, or will exceed the limit specified in the request, the requester

shall be promptly notified in writing. Such notification shall state the anticipated assessable costs of search, review and reproduction of records requested. The requester shall be afforded an opportunity to amend the request to narrow the scope of the request, or, alternatively, may agree to be responsible for paying the anticipated costs. Such a request shall be deemed to have been received by the Corporation upon the date of receipt of the amended request.

(f) *Advance payment.* (1) Advance payment of assessable fees are not required from a requester unless:

(i) The Corporation estimates or determines that assessable charges are likely to exceed \$250.00, and the requester has no history of payment of FOIA fees. (Where the requester has a history of prompt payment of fees, the Corporation shall notify the requester of the likely cost and obtain written assurance of full payment.)

(ii) A requester has previously failed to pay a FOIA fee charged in a timely fashion (i.e., within 30 days of the date of the billing).

(2) When the Corporation acts under paragraphs (f)(1)(i) or (ii) of this section, the administrative time limits prescribed in § 2507.5(a) and (b) will begin to run only after the Corporation has received fee payments or assurances.

(g) *Interest on non-payment.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

The Corporation may use the authorization of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including disclosure to consumer reporting agencies and the use of collection agencies, to encourage payment of delinquent fees.

(h) *Aggregating requests.* Where the Corporation reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Corporation may aggregate those requests and charge accordingly. The Corporation may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, the Corporation will aggregate them only where there exists a solid basis for determining that aggregation is warranted under the circumstances involved. Multiple

requests involving unrelated matters will not be aggregated.

(i) *Making payment.* Payment of fees shall be forwarded to the FOIA Officer by check or money order payable to "Corporation for National and Community Service". A receipt for any fees paid will be provided upon written request.

(j) *Fee processing.* No fee shall be charged if the administrative costs of collection and processing of such fees are equal to or do not exceed the amount of the fee.

(k) *Waiver or reduction of fees.* A requester may, in the original request, or subsequently, apply for a waiver or reduction of document search, review and reproduction fees. Such application shall be in writing, and shall set forth in detail the reason(s) a fee waiver or reduction should be granted. The amount of any reduction requested shall be specified in the request. Upon receipt of such a request, the FOIA Officer will determine whether a fee waiver or reduction should be granted.

(1) A waiver or reduction of fees shall be granted only if release of the requested information to the requester is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation, and it is not primarily in the commercial interest of the requester. The Corporation shall consider the following factors in determining whether a waiver or reduction of fees will be granted:

(i) Does the requested information concern the operations or activities of the Corporation?

(ii) If so, will disclosure of the information be likely to contribute to public understanding of the Corporation's operations and activities?

(iii) If so, would such a contribution be significant?

(iv) Does the requester have a commercial interest that would be furthered by disclosure of the information?

(v) If so, is the magnitude of the identified commercial interest of the requester sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester?

(2) In applying the criteria in paragraph (k)(1) of this section, the Corporation will weigh the requester's commercial interest against any public interest in disclosure. Where there is a public interest in disclosure, and that interest can fairly be regarded as being of greater magnitude than the requester's commercial interest, a fee waiver or reduction may be granted.

(3) When a fee waiver application has been included in a request for records, the request shall not be considered officially received until a determination is made regarding the fee waiver application. Such determination shall be made within five working days from the date any such request is received in writing by the Corporation.

§ 2507.9 What records will be denied disclosure under this part?

Since the policy of the Corporation is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a Corporation record made under the provisions of the FOIA may be denied when:

(a) The record is subject to one or more of the exemptions of the FOIA.

(b) The record has not been described clearly enough to enable the Corporation staff to locate it within a reasonable amount of effort by an employee familiar with the files.

(c) The requestor has failed to comply with the procedural requirements, including the agreement to pay any required fee.

(d) For other reasons as required by law, rule, regulation or policy.

§ 2507.10 What records are specifically exempt from disclosure?

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of portions which are exempt under this section. The following categories are examples of records maintained by the Corporation which, under the provision of 5 U.S.C. 552(b), are exempted from disclosure:

(a) *Records required to be withheld under criteria established by an Executive Order in the interest of national defense and policy and which are in fact properly classified pursuant to any such Executive Order.* Included in this category are records required by Executive Order No. 12958 (3 CFR, 1995 Comp., p. 333), as amended, to be classified in the interest of national defense or foreign policy.

(b) *Records related solely to internal personnel rules and practices.* Included in this category are internal rules and regulations relating to personnel management operations which cannot be disclosed to the public without substantial prejudice to the effective performance of significant functions of the Corporation.

(c) Records specifically exempted from disclosure by statute.

(d) *Information of a commercial or financial nature including trade secrets*

given in confidence. Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(e) *Interagency or intra-agency memoranda or letters which would not be available by law to a party other than a party in litigation with the Corporation.* Included in this category are memoranda, letters, inter-agency and intra-agency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records meant to be used as part of deliberations by staff, or ordinarily used in arriving at policy determinations and decisions.

(f) *Personnel, medical and similar files.* Included in this category are personnel and medical information files of staff, individual national service applicants and participants, lists of names and home addresses, and other files or material containing private or personal information, the public disclosure of which would amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) *Investigatory files.* Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and adjudicative proceedings, provided however, that such records shall be made available to the extent that their production will not:

- (1) Interfere with enforcement proceedings;
- (2) Deprive a person of a right to a fair trial or an impartial adjudication;
- (3) Constitute an unwarranted invasion of personal privacy;
- (4) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished by confidential source;
- (5) Disclose investigative techniques and procedures; or
- (6) Endanger the life or physical safety of law enforcement personnel.

§ 2507.11 What are the procedures for the release of commercial business information?

(a) *Notification of business submitter.* The Corporation shall promptly notify a business submitter of any request for Corporation records containing business information. The notice shall either specifically describe the nature of the

business information requested or provide copies of the records, or portions thereof containing the business information.

(b) *Business submitter reply.* The Corporation shall afford a business submitter 10 working days to object to disclosure, and to provide the Corporation with a written statement specifying the grounds and arguments why the information should be withheld under Exemption (b)(4) of the Act.

(c) *Considering and balancing respective interests.* (1) The Corporation shall carefully consider and balance the business submitter's objections and specific grounds for nondisclosure against such factors as:

- (i) The general custom or usage in the occupation or business to which the information relates that it be held confidential; and
- (ii) The number and situation of the individuals who have access to such information; and
- (iii) The type and degree of risk of financial injury to be expected if disclosure occurs; and
- (iv) The length of time such information should be regarded as retaining the characteristics noted in paragraphs (c)(1) (i) through (iii) of this section in determining whether to release the requested business information.

(2)(i) Whenever the Corporation decides to disclose business information over the objection of a business submitter, the Corporation shall forward to the business submitter a written notice of such decision, which shall include:

- (A) The name, and title or position, of the person responsible for denying the submitter's objection;
 - (B) A statement of the reasons why the business submitter's objection was not sustained;
 - (C) A description of the business information to be disclosed; and
 - (D) A specific disclosure date.
- (ii) The notice of intent to disclose business information shall be mailed by the Corporation not less than six working days prior to the date upon which disclosure will occur, with a copy of such notice to the requester.

(d) *When notice to business submitter is not required.* The notice to business submitter shall not apply if:

- (1) The Corporation determines that the information shall not be disclosed;
- (2) The information has previously been published or otherwise lawfully been made available to the public; or
- (3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(e) *Notice of suit for release.* Whenever a requester brings suit to

compel disclosure of business information, the Corporation shall promptly notify the business submitter.

§ 2507.12 Authority.

The Corporation receives authority to change its governing regulations from the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 et seq.).

Appendix A to Part 2507—Freedom of Information Act Request Letter (Sample)

Freedom of Information Act Officer _____
Name of Agency _____
Address of Agency _____
City, State, Zip Code _____

Re: Freedom of Information Act Request.

Dear _____: This is a request under the Freedom of Information Act.

I request that a copy of the following documents (or documents containing the following information) be provided to me: [Identify the documents or information as specifically as possible].

[Sample requester descriptions]

—A representative of the news media affiliated with the _____ newspaper (magazine, television station, etc.) and this request is made as part of news gathering and not for commercial use.

—Affiliated with an educational or non-commercial scientific institution, and this request is not for commercial use.

—An individual seeking information for personal use and not for commercial use.

—Affiliated with a private corporation and am seeking information for use in the company's business.

[Optional] I am willing to pay fees for this request up to a maximum of \$_____. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in my commercial interest. [Include a specific explanation.]

In order to help you determine my status to assess fees, you should know that I am (insert a suitable description of the requester and the purpose of the request).

Thank you for your consideration of this request.

Sincerely,

Name _____
Address _____
City, State, Zip Code _____
Telephone Number [Optional] _____

Appendix B to Part 2507—Freedom of Information Act Appeal for Release of Information (Sample)

Appeal Officer _____
Name of Agency _____
Address of Agency _____
City, State, Zip Code _____

Re: Freedom of Information Act Appeal.

Dear _____: This is an appeal under the Freedom of Information Act.

On (date), I requested documents under the Freedom of Information Act. My request was assigned the following identification number _____.

On (date), I received a response to my request in a letter signed by (name of official). I appeal the denial of my request.

[Optional] The documents that were withheld must be disclosed under the FOIA because _____.

[Optional] *Respond for waiver of fees.* I appeal the decision to deny my request for a waiver of fees. I believe that I am entitled to a waiver of fees. Disclosure of the documents I requested is in the public interest because the information is likely to contribute significantly to public understanding of the operation or activities of government and is not primarily in my commercial interest. (Provide details)

[Optional] I appeal the decision to require me to pay review costs for this request. I am not seeking the documents for a commercial use. (Provide details)

[Optional] I appeal the decision to require me to pay search charges for this request. I am a reporter seeking information as part of news gathering and not for commercial use.

Thank you for your consideration of this appeal.

Sincerely,

Name _____
Address _____
City, State, Zip Code _____
Telephone Number [Optional] _____

Dated: May 8, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98-12650 Filed 5-12-98; 8:45 am]

BILLING CODE 6050-28-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket 96-128; DA 98-701]

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; AT&T Request for Limited Waiver of the Per-Call Compensation Obligation

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification and waivers.

SUMMARY: The Common Carrier Bureau adopted an Order ("Order"), which clarifies certain requirements set forth in the *Per-phone Compensation Waiver Order*. The Order clarifies the following: the data to be used for the payment of payphone compensation for the fourth quarter of 1997 and first quarter of 1998 for payphones that are not capable of providing payphone-specific coding digits; the method for allocating among

payors the payphone compensation requirements for payphones served by non-equal access switches; and the eligibility of payphones on automatic number identification ("ANI") lists.

DATES: Effective April 10, 1998.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau, (202) 418-0960.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Order in CC Docket No. 96-128 [DA 98-701], adopted on April 10, 1998, and released on April 10, 1998. The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036.

SUMMARY OF ORDER

Introduction

1. In the Order, the Bureau clarifies certain requirements set forth in the *Per-phone Compensation Waiver Order*,¹ published elsewhere in this issue of the *Federal Register*, which was adopted on April 3, 1998, by the Common Carrier Bureau ("Bureau"). The *Per-phone Compensation Waiver Order* granted interexchange carriers ("IXCs") a limited waiver of the payphone compensation requirements set forth in the *Payphone Orders*² to enable IXCs to pay to payphone service providers ("PSPs") per-phone instead of per-call compensation for subscriber 800 and access code calls originated from payphones when payphone-specific

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order, DA 98-642 (rel. Apr. 3, 1998) ("Per-phone Compensation Waiver Order").

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 61 FR 52307 (October 7, 1996) ("Report and Order"); Order on Reconsideration, 61 FR 65341 (December 12, 1996) ("Order on Reconsideration") (together the "Payphone Orders"). The Payphone Orders were affirmed in part and vacated in part. See *Illinois Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) ("Illinois Public Telecomm."); see also *Second Report and Order*, 13 FCC Rcd 1778 (1997) ("Second Report and Order"), p. 1780, n. 1 (pending review pending, MCI Telecomm. Corp. v. FCC, D.C. Circuit No. 97-1675 (filed Nov. 7, 1997); *Sprint Corp. v. FCC*, D.C. Circuit No. 97-1685 (filed Nov. 13, 1997); *Personal Communications Industry Association v. FCC*, D.C. Circuit No. 97-1709 (filed Dec. 1, 1997); *Illinois Public Telecommunications Association v. FCC*, D.C. Circuit No. 97-1713 (filed Dec. 3, 1997).

coding digits³ are not available from those payphones. The Bureau's Order clarifies the following: (1) The data to be used for the payment of payphone compensation for the fourth quarter of 1997 and first quarter of 1998 for payphones that are not capable of providing payphone-specific coding digits; (2) the method for allocating among payors the payphone compensation requirements for payphones served by non-equal access switches; and (3) the eligibility of payphones on automatic number identification ("ANI") lists.

II. Background

2. In the *Per-phone Compensation Waiver Order*, the Bureau concluded that the waiver granted therein to allow IXCs to pay per-phone compensation when payphone-specific coding digits are not available from a payphone is necessary to ensure that PSPs receive fair compensation while local exchange carriers ("LECs"), PSPs, and IXCs transition to providing and receiving payphone-specific coding digits to identify calls from payphones.

3. Previously, the Bureau had adopted the *Bureau Coding Digit Waiver Order* clarifying the payphone-specific coding digit requirements set forth in the *Payphone Orders* and granting limited waivers of the requirement that LECs provide payphone-specific coding digits to PSPs, and that PSPs provide payphone-specific coding digits from their payphones to IXCs, before PSPs can receive per-call compensation from IXCs for subscriber 800 and access code calls. The Bureau explained in the *Per-phone Compensation Waiver Order* that the order serves as a companion order to the *Bureau Coding Digit Waiver Order*, because in the *Per-phone Compensation Waiver Order*, the Bureau granted IXCs⁴ a waiver of the per-call compensation requirement so they may pay per-phone instead of per-call

³ Payphone-specific coding digits provide a method for LECs to transmit, with the automatic number identification (ANI), information (coding number or digits) identifying a call as having been placed specifically from a payphone. Order on Reconsideration, 11 FCC Rcd 21,265-66, para. 64. See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order, CC Docket No. 96-128, DA 98-481 (rel. Mar. 9, 1998) 63 FR 20534 (April 27, 1998) ("Bureau Coding Digit Waiver Order").

⁴ For purposes of paying compensation for compensable calls and other associated obligations, such as tracking calls, we note that the term "IXC" includes an LEC when it provides interstate, intraLATA toll service. See Report and Order, 61 FR 52307 (October 7, 1996); Order on Reconsideration, 11 FCC Rcd at 21,270, paras. 74-75 & 21,278, para. 92. Carriers required to pay per-call compensation pursuant to the Payphone Orders also are referred to as "payors" in this order.

compensation for the payphones for which the Bureau granted waivers in the *Bureau Waiver Order*⁵ and the *Bureau Coding Digit Waiver Order*.

III. Discussion

A. Payphone Compensation Payments

4. The *Bureau Coding Digit Waiver Order* required that payments for payphone compensation be remitted at least on a quarterly basis. That order required that the payment for the October 1997 through December 31, 1997 period be paid no later than April 1, 1998. The Bureau stated in the *Per-phone Waiver Order* that because some IXCs will have to obtain additional information and calculate their per-phone compensation amounts, these IXCs may need additional time to make the payments to PSPs for the October 1997 through December 31, 1997 period for payphone compensation. Thus, the order stated that IXCs may make this payment no later than April 30, 1998, but must include additional interest for the period after April 1, 1998, at the rate of 11.25 percent simple interest per year, if the payment was not made by April 1, 1998.

5. In the *Per-phone Waiver Order*, the Bureau required that pursuant to the waiver granted therein, with the exception of the compensation method for those payphones that are able to provide payphone-specific coding digits, IXCs must use call volume information obtained from October 1997 through March 31, 1998 (the "sample period"), to establish average subscriber 800 and access code call volumes per-phone to compensate PSPs for calls originated from their payphones during the fourth quarter of 1997 and the first quarter of 1998 (from October 7, 1997 through March 31, 1998). In the *Order*, the Bureau clarifies that if calculating the average call volumes using the six-month "sample period" of data will delay payment for the fourth quarter of 1997 beyond the deadline set forth in that order, IXCs must compensate PSPs for the fourth quarter of 1997 based on data from the fourth quarter of 1997, and compensate PSPs for the first quarter of 1998 based on data from the first quarter of 1998 using the same methodology specified in the *Per-phone Waiver Order* but revised to accommodate a three-month rather than a six-month period of call volume and payphone information.

⁵ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 62 FR 58659, (October 30, 1997) ("Bureau Waiver Order").

B. Payphone Compensation for Payphones Served by Non-Equal Access Switches

6. In the *Per-phone Waiver Order*, the Bureau stated that payphones served by non-equal access switches must be compensated for 16 calls per-phone per month, until payphone-specific coding digits are available for those payphones. Because the number of payphones on non-equal access switches and the number of calls for which such payphones should be compensated is small, the Bureau finds it is appropriate to allocate compensation obligations for these payphones among payors in a different manner than other payphones. Therefore, per-phone compensation for PSP payphones served by non-equal access switches will be based on call distribution data submitted to the Commission by the LEC Coalition. The LEC Coalition provided data from three Bell Operating Companies ("BOCs") in an aggregated form illustrating the average calls per-phone per month, and the percentage of average calls per month of the total calls received by each payor. The Bureau finds, however, compensation due to PSP payphones served by non-equal access switches should be allocated among the top ten carriers receiving the highest amount of subscriber 800 and access code calls as indicated by the LEC Coalition data, because the number of calls for which compensation is due is so small. Were the Bureau to require all carriers to compensate payphones served by non-equal access switches, many carriers would be forced to compensate PSPs for mere fractions of calls.

7. Therefore, to compensate PSPs for payphones served by non-equal access switches, each IXC listed in the *Order* will multiply its percentage of average calls per month total as stated in the LEC Coalition data by 16 calls per-phone per month.⁶ That number is the average number of calls for which that carrier must compensate the PSP for payphones served by non-equal access switches. That number will then be multiplied by three, to determine the quarterly call volume, and then by \$0.284 to determine the amount owed.

8. The Bureau finds that the LEC Coalition data is an appropriate basis upon which to allocate compensation for payphones served by non-equal access switches because the compensation due is small.

⁶ The LEC Coalition data indicates the following percentage allocation: (1) AT&T: 37.08%; (2) MCI: 25.33%; (3) WorldCom: 12.17%; (4) Sprint: 10.76%; (5) LCI: 2.83%; (6) Frontier: 2.75%; (7) BOC weighted average: 2.19%; (8) Alltel Dial 1 Service: 1.14%; (9) Cable & Wireless: 0.95%; (10) Switched Services: 0.63%. *Id.*

Notwithstanding the Bureau's decision in the *Per-phone Waiver Order* that this data is not appropriate to assess compensation obligations for all payphones, here this data is representative of the number of compensable calls made from payphones on non-equal access switches and is appropriate for allocating each carrier's share of compensation obligations. Therefore, the concerns raised in reference to using this data as a compensation method for all payphones are not present here.

C. Payphones on the ANI List

9. In the *Per-phone Waiver Order*, the Bureau stated that payphones can receive compensation only for those months that they were in service. The *Bureau Waiver Order* stated that payphones appearing on the LEC-provided lists of payphones are eligible for per-call compensation even if they do not transmit payphone-specific coding digits. The Bureau clarifies that as stated in the *Bureau Waiver Order*, for payphones that do not provide payphone-specific coding digits, payors must look to the ANI lists to determine which payphones⁷ are eligible for compensation. Prior to the *Bureau Coding Digit Waiver Order*, LECs were required to provide ANI lists on a quarterly basis. That order required that LECs make available on request monthly ANI lists. Thus, for the fourth quarter of 1997 and the first quarter of 1998, payors must use quarterly ANI lists. Thereafter, payors must use the monthly ANI lists that payors can obtain from LECs. If there are disputes between IXCs and PSPs regarding whether certain payphones were in service during a specific period even if they are on the ANI lists, such disputes should not be a basis for delay of payphone compensation payments.

IV. Conclusion and Ordering Clauses

10. The Bureau concluded in the *Order* that the clarifications to the *Per-phone Compensation Waiver Order* are in the public interest, because they will further the goals of Section 276 of the Act, and that PSPs should be compensated for each and every completed call and will ease the transition to per-call compensation.

11. Accordingly, pursuant to authority contained in Sections 1, 4, 201–205, 218, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 218, 226, and 276, and the authority delegated by §§ 0.91 and 0.291 of the

⁷ Bureau Waiver Order, 12 FCC Rcd at 16,390–91, paras. 9–14.

Commission's rules, 47 C.F.R. 0.91, 0.291, the policies and requirements set forth in the payphone proceeding and the *Per-phone Compensation Waiver Order* are clarified.

Federal Communications Commission.

Robert W. Spangler,

Acting Chief, Enforcement Division, Common Carrier Bureau.

[FR Doc. 98–12346 Filed 5–12–98; 8:45 am]

BILLING CODE 6712-01-J

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket 96–128; DA 98–642]

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; AT&T Request for Limited Waiver of the Per-Call Compensation Obligation

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification and waivers

SUMMARY: The Common Carrier Bureau adopted a Memorandum Opinion and Order ("Order"), which grants interexchange carriers ("IXCs") a waiver of the payphone compensation requirements of the *Payphone Orders*¹ to enable them to pay to payphone service providers ("PSPs") per-phone instead of per-call compensation for subscriber 800 and access code calls from payphones when payphone-specific coding digits are not available from those payphones. The Order also serves as a companion to the *Bureau Coding Digit Waiver Order*, because in the Order the Bureau grants IXCs a waiver of the per-call compensation requirement so they may pay per-phone instead of per-call compensation for the payphones for which the Bureau granted waivers in the *Bureau Coding Digit Waiver Order*.

DATES: Effective April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau, (202) 418–0960.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Memorandum Opinion and Order in CC Docket No. 96–128 [DA 98–642], adopted on April 3, 1998, and released on April 3, 1998. The full text of the Memorandum Opinion and Order ("Order") is available for inspection and copying during normal business hours in the

FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036.

MEMORANDUM OPINION AND ORDER

I. Introduction

1. In the *Order*, the Common Carrier Bureau ("Bureau") grants interexchange carriers ("IXCs") a waiver of the payphone compensation requirements of the *Payphone Orders*¹ to enable them to pay to payphone service providers ("PSPs") per-phone instead of per-call compensation for subscriber 800 and access code calls from payphones when payphone-specific coding digits are not available from those payphones. On March 9, 1998, the Bureau adopted a Memorandum Opinion and Order clarifying the payphone-specific coding digit requirements set forth in the *Payphone Orders* and granting limited waivers of the requirement that local exchange carriers ("LECs") provide payphone-specific-coding digits to PSPs, and that PSPs provide coding digits from their payphones to IXCs, before PSPs can receive per-call compensation from IXCs for subscriber 800 and access code calls.² The *Order* serves as a companion to the *Bureau Coding Digit Waiver Order*, because in the order the Bureau grants IXCs a waiver of the per-call compensation requirement so they may pay per-phone instead of per-call compensation for the payphones for which the Bureau granted waivers in the *Bureau Coding Digit Waiver Order*.

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Report and Order, 61 FR 52307 (October 7, 1996) ("Report and Order"); Order on Reconsideration, 61 FR 65341 (December 12, 1996). ("Order on Reconsideration") (together the "Payphone Orders"). The *Payphone Orders* were affirmed in part and vacated in part. See *Illinois Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) ("Illinois Public Telecomm."). See also Second Report and Order, 13 FCC Rcd 1778 (1997) ("Second Report and Order"), pels. for recon. pending, review pending, *MCI Telecomm. Corp. v. FCC*, D.C. Circuit No. 97–1675 (filed November 7, 1997); *Sprint Corp. v. FCC*, D.C. Circuit No. 97–1685 (filed November 13, 1997); *Personal Communications Industry Association v. FCC*, D.C. Circuit No. 97–1709 (filed December 1, 1997); *Illinois Public Telecommunications Association v. FCC*, D.C. Circuit No. 97–1713 (filed December 3, 1997).

² See *Bureau Coding Digit Waiver Order*, Memorandum Opinion and Order, CC Docket No. 96–128, DA 98–481 at paras. 19–20 (rel. March 9, 1998), 63 FR 20534 (April 27, 1998).

*Order*³ and the *Bureau Coding Digit Waiver Order*.⁴

2. Moreover, in the *Order*, the Bureau addresses a letter filed by AT&T Corporation ("AT&T") requesting that AT&T, and other similarly situated IXCs, receive a waiver to pay per-phone rather than per-call compensation when payphone-specific coding digits are not available for a payphone. The *Order* grants in part AT&T's request that AT&T and other similarly situated IXCs be permitted to compensate PSPs on a per-phone basis, where payphone-specific coding digits are not available. The *Order* concludes that the waiver granted therein, which allows IXCs to pay per-phone compensation when payphone-specific coding digits are not available from a payphone, is necessary to ensure that PSPs receive fair compensation while LECs, PSPs, and IXCs transition to providing and receiving payphone-specific coding digits to identify calls from payphones. In the *Order*, the Bureau also concludes that granting the waiver and allowing IXCs to pay per-phone instead of per-call compensation where payphone-specific coding digits are not available is in the public interest.

3. The *Bureau Coding Digit Waiver Order* required that payments be remitted at least on a quarterly basis. That order required that the payment for the October 1997 through December 31, 1997 period must be paid no later than April 1, 1998. In the *Order*, however, the Bureau notes that the waiver granted therein will require some IXCs to obtain additional information and calculate their per-phone compensation amounts, and that these IXCs may need additional time to make the payments to PSPs for the October 1997 through December 31, 1997 period for payphone compensation. Thus, the Bureau stated that IXCs may make this payment no later than April 30, 1998, but must include additional interest for the period after April 1, 1998, at the rate of 11.25 percent per year, if the payment is not made by April 1, 1998.

4. The waiver granted in the *Order* is effective on April 3, 1998, to ensure that all PSPs continue to receive compensation, as required by the *Payphone Orders* and the *Second Report and Order*. Without this waiver, many

³ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 62 FR 58659 (October 30, 1997), (*Bureau Waiver Order*).

⁴ This waiver order relies on the record established for the *Bureau Coding Digit Waiver Order*, 63 FR 20534 (April 27, 1998), and ex partes received subsequent to the release of that order. *Pleading Cycle Established for Petitions to Waive Payphone Coding Digits*, Public Notice, 12 FCC Rcd 17,340 (1997) (*Public Notice*).

PSPs would not be compensated for payphone calls that began October 7, 1997, because the LECs servicing them are not yet able to provide payphone-specific coding digits, and some of the IXC's are unable to identify certain payphone calls. The immediate implementation of the waiver is crucial to the Commission's efforts to ensure fair compensation for all PSPs, encourage the deployment of payphones, and enhance competition among PSPs, as mandated by Section 276.

5. The *Second Report and Order*, established a default compensation rate of \$0.284 per call, absent a negotiated agreement, for subscriber 800, access code, inmate, and 0+ calls. In the *Order* the Commission also extended the default per-call compensation period from one to two years, for the first two years of per-call compensation, i.e., from October 7, 1997 until October 6, 1999, to allow participants, including IXC's, LECs, and PSPs, additional time to adjust to market-based per-call payphone compensation for subscriber 800 and access code calls.

6. In the *Payphone Orders*, the Commission imposed a requirement that, by October 7, 1997, LECs transmit payphone-specific coding digits to PSPs, and that PSPs transmit those digits from their payphones to IXC's. The Commission also required IXC's to implement methods to track payphone calls. In the *Order on Reconsideration*, the Commission clarified that the provision of payphone-specific coding digits is a prerequisite to payphone per-call compensation payments by IXC's to PSPs for subscriber 800 and access code calls and that each payphone must transmit coding digits that "specifically identify it as a payphone, and not merely as a restricted line." Finally, that order clarified that LECs must make available to PSPs, on a tariffed basis, such coding digits as part of their ANI for each payphone.

7. On October 7, 1997, the Bureau provided, on its own motion, a limited waiver until March 9, 1998, for those payphones from which the necessary coding digits to identify individual payphone calls were not provided. The limited waiver was to afford LECs, IXC's, and PSPs an extended transition period for the provision of payphone-specific coding digits without further delaying the payment of per-call compensation for each and every call originated from a payphone as required by Section 276 of the Communications Act. This limited waiver applies to the requirement that LECs provide payphone-specific coding digits to PSPs, and that PSPs provide coding digits

from their payphones before they can receive per-call compensation from IXC's for subscriber 800 and access code calls. The Bureau stated, however, that LECs and PSPs capable of transmitting coding digits for some or all of their serving area remained obligated to do so.

8. On March 9, 1998, in the *Bureau Coding Digit Waiver Order*, the Bureau clarified the requirements established in the *Payphone Orders* for the provision of payphone-specific coding digits by LECs and PSPs, to IXC's. Specifically, the Bureau clarified that flexible automatic numbering identification ("FLEX ANI") and automatic number information indicators ("ANI ii") are the methods to provide payphone-specific coding digits that comply with the requirements of the *Payphone Orders*. The Bureau also clarified the requirement for federal tariffs that LECs must file pursuant to the *Payphone Orders*. The Bureau also granted permissions and waivers under Part 69 of the Commission's rules allowing LECs to establish rate elements to recover the costs of implementing FLEX ANI to provide payphone-specific coding digits for per-call compensation. In addition, the Bureau granted, on its own motion, limited waivers to LECs, PSPs, and IXC's to facilitate the transition to per-call compensation and affirmed its grant, in the *Bureau Waiver Order*, of a limited waiver of five months, until March 9, 1998, to those LECs and PSPs who asserted that they could not provide payphone-specific coding digits as required by the *Payphone Orders*.

9. In the *Bureau Coding Digit Waiver Order*, the Bureau emphasized that the IXC obligation to pay per-call compensation established in the *Payphone Orders* remains in effect. As required in the *Bureau Waiver Order*, payphones appearing on the LEC-provided lists of payphones are eligible for per-call compensation even if they do not transmit payphone-specific coding digits. As required in the *Payphone Orders* and the *Second Report and Order*, absent a negotiated agreement, IXC's must pay per-call compensation of \$0.284, for all calls not otherwise compensated that they receive from payphones. LECs that have certified to the IXC that they comply with the requirements of the *Payphone Orders* must receive per-call compensation.

II. Discussion

A. AT&T Request for Per-phone Compensation

10. Beginning October 7, 1997, IXC's were required to pay compensation on

a per-call basis. AT&T states, however, that it will be unable to pay per-call compensation because of the waiver granted in the *Bureau Waiver Order*, which provides LECs and PSPs an extended time period within which to provide payphone-specific coding digits.

11. In the *Order*, the Bureau grants, in part, AT&T's request that the Bureau waive the payphone compensation provisions and permit IXC's to pay per-phone—instead of per-call—compensation when payphone-specific coding digits are not provided with a payphone call's ANI. In the *Report and Order*, the Commission concluded that the requisite technology exists for IXC's to track calls from payphones. The Commission recognized, however, that tracking capabilities vary from carrier to carrier, and that it may be appropriate, for an interim period, for some carriers to pay compensation for "each and every completed intrastate and interstate call" on a flat-rate basis until per-call tracking capabilities are in place. In the *Bureau Coding Digit Waiver Order*, the Bureau explained that the record indicates that LECs, PSPs, and IXC's are encountering problems with transitioning to per-call compensation. Therefore, the Bureau concluded that AT&T had shown special circumstances for IXC's to pay per-phone instead of per-call compensation when payphone specific coding digits are not available, particularly in light of the waivers granted within the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order*.

12. Other IXC's also indicate a problem paying per-call compensation during the waiver period when payphone-specific coding digits are not available and that in certain circumstances, such as payphones served by nonequal access switches, payphone-specific coding digits will not be available until the switches are replaced. Therefore, the Bureau also concludes in the *Order* that it is in the public interest to grant the waiver conditioned upon an IXC's compliance with the methodology set forth herein, which allows IXC's to pay per-phone compensation where payphone-specific coding digits are unavailable from a payphone. The Bureau further stated that it is in the public interest to grant the waiver to require per-phone compensation where payphone-specific coding digits are unavailable from a payphone, so that there is no further delay in the payment of payphone compensation. This waiver is consistent with the Commission's conclusion in the *Payphone Orders* that it is

appropriate for carriers to pay flat-rate or per-phone compensation for an interim period until carriers fully implement tracking capabilities. The waiver granted therein does not apply if either the "27" coding digit or FLEX ANI coding digits ("27," "70," "29") are available from a LEC for that payphone and that payphone is able to provide payphone-specific coding digits; where the payphone-specific coding digit is available, the per-call compensation requirements apply.

B. Per-call and Per-phone Compensation Requirements

1. Compensation Requirements

13. In the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order*, the Bureau required IXC's to pay per-call compensation. Pursuant to the waiver granted in the *Order*, beginning October 7, 1997, IXC's must either pay per-call, or per-phone compensation as described in the *Order*, for payphones that do not provide payphone-specific coding digits. IXC's must pay per-call compensation for all payphones capable of providing a "27" ANI ii coding digit or FLEX ANI coding digits ("27," "70," "29") for compensable calls. IXC's must compensate payphones that do not provide payphone-specific coding digits ("27," "70," "29") either on a per-call basis or the per-phone method described in the *Order* and set forth in the brief below. Therefore, according to the *Order*, IXC's who choose to pay per-phone compensation pursuant to the waiver granted therein, must use payphone call volume information that is available to them already to determine the call volumes for which a payphone should be compensated when payphone-specific coding digits are not available for a specific payphone. An IXC may choose to compensate those payphones that are not capable of providing payphone-specific coding digits on a per-call basis where the IXC maintains a per-call tracking mechanism, such as tracking payphone calls from payphones that transmit an "07" digit and then comparing those calls to ANI lists. The *Order* specifies, however, that an IXC may not compensate some payphones that do not provide payphone-specific coding digits (but do provide an "07" ANI ii coding digit) on a per-call basis and other payphones that do not provide payphone-specific coding digits (but do provide an "07" ANI ii coding digit) on a per-phone basis, except for those payphones that are in the process of changing from per-phone to per-call compensation. The Bureau notes that the default rate established in the

Second Report and Order, \$0.284, which terminates at the conclusion of per-call compensation—October 7, 1999—will continue to remain in effect as a default compensation rate, absent a negotiated agreement, for calls originated from those payphones that are not able to provide payphone-specific coding digits.

14. LECs must provide ANI lists and lists of end offices that are not providing payphone-specific coding digits that specifically identify smart and dumb payphones to IXC's. In accordance with the compensation mechanism described in the *Order*, IXC's must pay per-call compensation, not per-phone compensation, once FLEX ANI is available in an end office. If payphone-specific coding digits are available for a payphone in an end office, the fact that an IXC may decide not to take FLEX ANI from the LEC for that end office does not relieve the IXC of paying per-call compensation for that payphone once payphone-specific coding digits are available. The waiver to pay per-phone compensation does not apply in this case.

15. In the *Order*, the Bureau also clarifies the requirements set forth in the *Bureau Coding Digit Waiver Order*, that LECs provide IXC's and PSPs with certain information on request. Because IXC's choosing to pay per-call compensation for smart payphones even when payphone-specific coding digits are not available will have to compare calls with an "07" ANI ii digit with a LEC ANI list, the *Order* requires that the LEC ANI lists provided to the IXC's as required in the *Bureau Coding Digit Waiver Order* also indicate whether the smart payphones are transmitting the "07" digit. LECs also must provide FLEX ANI and ANI ii payphone-specific coding digits as soon as they are available on a switch to each IXC once the IXC requests the service for payphone compensation.

2. Compensation Methodology

16. IXC's must pay per-call compensation for a payphone if ANI ii payphone-specific coding digits ("27") or FLEX ANI payphone-specific coding digits ("27," "70," "29") are available to the IXC. In the *Order*, the Bureau grants a waiver to IXC's and allows them to compensate PSPs on a per-phone basis for those payphones that are not able to provide payphone-specific coding digits conditioned upon the IXC's compliance with the methodology set forth in the *Order*. IXC's electing to pay per-phone compensation in accordance with the waiver granted in the *Order*, must calculate the average number of subscriber 800 and access code calls

based on information obtained from BOC dumb payphones transmitting the "27" coding digit. The *Order* divides payphones into five categories for determining the methodology used to calculate per-phone compensation: (1) Payphones able to provide payphone-specific coding digits; (2) LEC payphones that are not able to provide payphone-specific coding digits served by equal access switches (except those payphones subject to category (5)); (3) independent PSP payphones that are not able to provide payphone-specific coding digits served by equal access switches (except those payphones subject to category (5)); (4) payphones served by non-equal access switches; and (5) payphones on equal access switches owned by small and midsized LECs granted a waiver from the implementation of FLEX ANI because they are unable to recover the cost of FLEX ANI implementation over a reasonable period ("small and midsized LEC waiver") pursuant to paragraph 76 of the *Bureau Coding Digit Waiver Order*.

17. Although the *Order* describes the compensation method for these categories individually, with the exception of compensation for those payphones that are able to provide payphone-specific coding digits, IXC's must use call volume information obtained from October 1997 through March 31, 1998 (the "sample period"), to establish average subscriber 800 and access code call volumes per-phone to compensate PSPs for calls originated from their payphones during the fourth quarter of 1997 and the first quarter of 1998 (from October 7, 1997 through March 31, 1998). Thereafter, IXC's paying per-phone compensation will base compensation owed to PSPs for payphones that are not able to provide payphone-specific coding digits on call volumes obtained from BOC dumb payphones that are able to provide payphone-specific coding digits representative of the quarter for which compensation is owed.⁵ Regardless of whether a payor pays per-call or per-phone compensation, each payor must compensate PSPs \$0.284 per call, adjusted for interest where appropriate. In addition, although the compensation mechanism calculates compensation on a monthly basis, compensation must be remitted at least on a quarterly basis absent alternative arrangements between the PSP and the IXC. Payphones can

⁵ For example, if compensation is due to PSPs for the second quarter of 1998, IXC's will pay PSPs based on call volumes collected from BOC dumb payphones during April–June 1998.

receive compensation only for those months that they were in service.

18. IXCs must maintain the information they use to develop the per-call and per-phone compensation payments to PSPs. In the *Report and Order*, the Commission required that IXCs initiate an annual verification of their per-call tracking functions to be made available for FCC inspection upon request, for the 1998 calendar year to ensure that IXCs are tracking all of the calls for which they are obligated to pay compensation. Nothing in the *Order* relieves IXCs of the responsibility of maintaining this information. When paying per-phone compensation as described therein, payphone compensation payors should note that payments by each payor for each payphone being compensated by that payor on a per-phone basis will be the same, although different payors will vary in the number of calls for which they must compensate payphones receiving per-phone compensation. Payors must be prepared to submit their compensation calculations and payment records if requested by the Bureau.

a. Payphones capable of providing payphone-specific coding digits.

19. The first category, payphones capable of providing payphone-specific coding digits, must be compensated on a per-call basis. Compensation must be remitted at least on a quarterly basis absent alternative arrangements between the PSP and the IXC. If a payphone that is not able to provide payphone-specific coding digits becomes capable of providing payphone-specific coding digits in the first 60 days of a quarter, then the IXC will be responsible for compensating that particular PSP on a per-call—instead of per-phone—basis beginning the next quarter. The payor will multiply the number of calls received from each PSP's payphone capable of providing payphone-specific coding digits by \$0.284 to compute compensation owed to that PSP.

b. LEC payphones that are not capable of providing payphone-specific coding digits. 20. The second category, LEC payphones that are not able to provide payphone-specific coding digits, will be compensated on a per-phone basis. In the *Order*, the Bureau bases compensation for LEC payphones that are not capable of providing payphone-specific coding digits on the average number of subscriber 800 and access code calls realized from BOC dumb payphones that are able to provide payphone-specific coding digits. There is insufficient information on the record to suggest that LEC payphones that are not able to provide payphone-specific coding digits realize different call

volumes than BOC payphones that are able to provide payphone-specific coding digits. Therefore, in the *Order*, the Bureau found that it is appropriate to base compensation for LEC payphones that are not able to provide payphone-specific coding digits on call volumes realized by BOC payphones that are able to provide payphone-specific coding digits.

21. To determine the amount of compensation due to LEC payphones that are not able to provide payphone-specific coding digits,⁶ the payor will calculate the average number of subscriber 800 and access code calls it received from BOC dumb payphones that are able to provide payphone-specific coding digits (the "27" coding digit) from October 1, 1997 through March 31, 1998 (the sample period). First, the IXC will sum the number of completed subscriber 800 and access code calls it received from all BOC dumb payphones that were capable of providing payphone-specific coding digits during this period and divide by six. This results in the average number of subscriber 800 and access code calls received from all BOC dumb payphones per month. Second, the payor will obtain from the BOCs the number of BOC dumb payphones that were capable of providing payphone-specific coding digits as of the first of each month for the sample period. The payor will sum the figures and divide by six. This is the average number of BOC dumb payphones able to provide payphone-specific coding digits during the sample period. Third, the payor will divide the average number of calls calculated above in step one (1) by the average number of payphones calculated in step two (2). This division results in the average call volume per month for BOC dumb payphones that are providing the "27" coding digit (either through ANI or FLEX ANI). This average number will be the number of calls for which compensation is due per month to each LEC payphone that is not capable of providing payphone-specific coding digits.⁷ Lastly, the payor will multiply the average monthly call volume by \$0.284 to compute compensation owed per-phone per month. As discussed above, this data will be used to compensate payphones for the last quarter of 1997 and the first quarter of 1998. Thereafter, LEC dumb payphones

⁶ The Bureau notes that this compensation method is for those payphones that are located on equal access switches.

⁷ In calculating the amount owed to PSPs per-phone for the month of October, the payor may divide the monthly average per-phone rate for the month by 31 days and subtract for six days to begin per-phone compensation on October 7, 1998.

will be compensated using this same methodology based on call volume information obtained from BOC dumb payphones during the applicable quarter using three months of data rather than six months of data. In the *Order*, the Bureau declines to adjust call volume calculations to account for the possibility that BellSouth may place dumb payphones only in the lowest call volume locations. Due to the different placement strategies and the variance among payphone types, call volumes will vary among BOCs. Therefore, omitting what might be the lowest call volume data from the sample would not lead to an unbiased estimate of BOC payphone call volumes, because it would artificially leave in the highest remaining data.

c. Independent PSP payphones that are not capable of providing payphone-specific coding digits. 22. The third category, independent PSP payphones that are not capable of providing payphone-specific coding digits,⁸ also will be compensated on a per-phone basis as calculated above for LEC payphones that are not capable of providing payphone-specific coding digits. In the *Order*, the Bureau declines to increase the average call volumes calculated above from BOC payphone call volumes for independent PSPs payphones, because data on the record indicates that the call volumes may be similar, and further, in the *Report and Order*, despite limited (if any) call volumes between BOCs and independent payphones, the Commission established one call volume for independent and LEC PSPs. In adopting a uniform rate, the Commission noted that some differences may exist among various PSPs, but found that each PSP should receive the same compensation amount for subscriber 800 and access code calls. The Commission also sought to allow all competitors equal opportunity to compete for essential aspects of the payphone business. In the *Order*, the Bureau also declined to establish separate call volume amounts for the purpose of this limited waiver, and concludes instead that call volumes should not be treated differently based on ownership characteristics.

d. Payphone on non-equal access switches. 23. The fourth category involves payphones on non-equal access switches. Non-equal access switches do not provide payphone-specific coding digits; therefore, these payphones must

⁸ To clarify, payphones that will receive compensation under the mechanism described in this section are independent payphones that are not capable of providing payphone-specific coding digits and are served by equal access switches.

be compensated on a per-phone basis until they are able to provide payphone-specific coding digits. Both IXCs and LECs have indicated that payphones served by nonequal access switches receive lower call volumes than other payphones. Parties have provided limited information to establish a call volume for these payphones. GTE indicates that it has a total of 289 payphones on non-equal access switches, which receive an average of 14.35 calls per payphone per month, and a small company in Iowa, Heart of Iowa Telecommunications Cooperative, which maintains 11 payphones, receives an average of 65 calls per payphone per month. Based on this limited data submitted on the record illustrating that call volumes for payphones on non-equal access switches and switches in rural areas receive substantially less calls than BOC dumb payphones, in the *Order*, the Bureau concluded that payphones on non-equal access switches cannot be compensated based on the average call volumes for BOC dumb payphones. Accordingly, payors must compensate payphones served by non-equal access switches based on the weighted average of call volumes submitted in this record for payphones served by non-equal access switches and payphones served by rural switches, 16 calls per-phone per month.⁹

24. In the *Order*, the Bureau stated that it expected parties to submit additional information on the record regarding call volumes for non-equal access areas. The Bureau stated that it would consider revisions to the compensation methodology for payphones served by non-equal access switches if it received additional record information on call volumes for non-equal access payphones that suggests that call volumes are different than the data upon which we rely herein.

e. Payphones served by LECs granted small and midsize LEC waiver. 25. In the *Bureau Coding Digit Waiver Order*, the Bureau granted a limited waiver to midsize and small LECs for equal access switches where a LEC is unable to recover its costs of implementing FLEX ANI, through a monthly charge for no longer than a 10 year period, from all

⁹ The weighted average is derived as follows: 289 GTE payphones x 14.35 calls per payphone per month = 4147.15 total calls. We then determined the total number of calls for the small payphone company in Iowa: 11 x 65 = 715 calls. Finally, we found the total number of calls to be 4862.15 (4147.15 + 715) and divided that by the total number of payphones (300), which results in an average call volume of 16 calls per-phone per month.

payphones in its serving area.¹⁰ This waiver is specifically granted for small and midsize LECs for which the cost of implementing FLEX ANI would be unreasonably burdensome, despite provisions in the *Bureau Coding Digit Waiver Order* for cost recovery. This waiver was provided for small and midsize LECs with a small number of payphones per switch. Payphones served by LECs that would qualify for this waiver, would be located in more rural areas than other payphones and thus would have lower call volumes. Therefore, in the *Order*, the Bureau concludes that these payphones should receive per-phone compensation as described above for payphones served by nonequal access switches until payphone-specific coding digits are available for these payphones. The Bureau stated, however, that if it received additional information on the record indicating that call volumes are different for small and midsize LECs that have deferred FLEX ANI implementation pursuant to the small and midsize LEC waiver it may subsequently require different call volumes for these two categories.

3. Alternative Per-Call Compensation Methodologies

26. In the *Order*, the Bureau declined to adopt the flat-rate interim compensation approach set forth in the *Payphone Orders*, which required IXCs with annual toll revenues in excess of \$100 million to pay, collectively, a flat-rate interim compensation amount of \$45.85 per payphone per month, in shares proportionate to their share of total market long distance revenues. In the *Order*, the Bureau noted that the court in *Illinois Public Telecomm.* vacated the Commission's flat-rate interim compensation plan stating that the Commission did not justify basing flat-rate compensation on total toll revenues, and therefore, acted arbitrarily and capriciously by only requiring payments from the largest IXCs. The court further stated that the Commission had not shown a nexus between toll revenues and the number of access code and subscriber 800 calls a particular carrier carries.

27. The *Order* also rejects basing per-phone compensation aggregated call volume data supplied by the Coalition because the data is limited in nature, accounting for only 20 percent of the payphones, may neglect regional

¹⁰ This limited waiver for small and midsize LECs that are not able to recover their costs of implementing FLEX ANI over up to a 10 year period is not available to price cap, CLASS A, and Tier 1 LECs. In 1996, the Class A LECs included all price cap LECs.

variations, may not be representative of all BOCs, and provides insufficient information to establish per-phone call volumes for small carriers, a problem faced in the allocation method used in the *Report and Order* that was vacated by the court.

28. In the *Order*, the Bureau also concludes that a retroactive adjustment of payphone compensation for the period covered by the *Bureau Waiver Order* and the *Bureau Coding Digit Waiver Order* is not necessary, because the methodology adopted therein to provide fair compensation through a per-phone mechanism that reasonably approximates call volumes for PSP payphones.

4. Miscellaneous

29. The *Order* also declines to require, as USTA requests, that LECs be compensated for all blocked calls, because, USTA argues, blocked calls are the result of IXCs using FLEX ANI or LIDB for fraud detection, pursuant to CC Docket No. 91-35. The Commission defined a completed call as a call answered by the called party. Because a blocked call is by definition not a completed call, the *Payphone Orders* do not require such compensation. The *Order* also declines to require that any waiver granted in response to AT&T's request be granted only after IXCs have paid interim compensation and only to IXCs that demonstrate that they cannot track compensable calls using LEC ANI lists.

30. APCC requests that the Bureau clarify the obligations of facilities-based IXCs who provide 800 service to disclose information about switch-based resellers who provide 800 number service resold from the facilities based carriers so that PSPs can identify who they should bill for payphone compensation. APCC indicates that its members are unable to identify the switch-based reseller to bill for payphone compensation. In the *Report and Order* the Commission acknowledged that telecommunications services are sold in advance, particularly in the debit card context, and resold to other carriers, thus making it difficult in those situations to identify the carrier liable for per-call compensation. The Commission also stated that facilities-based carriers may recover the expense of payphone per-call compensation from their reseller customers. As clarified in the *Order on Reconsideration*, switched-based resellers are responsible for paying per-call compensation. When facilities-based IXCs providing 800 service have determined that they are not required to pay compensation on particular 800

number calls because their switch-based reseller customers have identified themselves as responsible for paying the compensation, those facilities-based carriers must cooperate with PSPs seeking to bill for resold services. Thus, a facilities-based carrier may not indicate, on request by the billing PSP, whether it is paying per-call compensation for a particular number. If it is not, then it must identify the switch based reseller responsible for paying payphone compensation for that particular 800 number. Facilities-based IXC's and switched-based resellers may not avoid compensating PSPs by withholding the name of the carrier responsible for paying per-call compensation, thereby avoiding the requirements of the *Payphone Orders* and Section 276.

IV. Conclusion and Ordering Clauses

31. For the foregoing reasons, we grant in part AT&T's letter request to pay per-phone compensation to PSPs where payphone-specific coding digits are not available. We find that allowing AT&T and other similarly situated IXCs to pay per-phone instead of per-call compensation based on the methodology set forth above, is in the public interest, because it will further the goals of Section 276 of the Act, that PSPs be compensated for each and every completed call and will ease the transition to per-call compensation.

32. Accordingly, pursuant to authority contained in Sections 1, 4, 201-205, 218, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201-205, 218, 226, and 276, that the policies and requirements set forth herein are adopted.

33. It is further ordered that this order is effective immediately upon release thereof.

34. It is further ordered that AT&T's letter request to pay on a per-phone instead of a per-call basis is granted to the extent described herein and is otherwise denied.

Federal Communication Commission.

A. Richard Metzger, Jr.,

Chief, Common Carrier Bureau.

[FR Doc. 98-12347 Filed 5-12-98; 8:45 am]

BILLING CODE 0712-01-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92-297; FCC 98-77]

Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules to adopt partitioning and disaggregation rules for the Local Multipoint Distribution Service (LMDS). This action will encourage spectrum efficiency and the more rapid deployment of service to the public. The effect of these rules is to provide LMDS licensees greater flexibility to respond to marketplace demands.

EFFECTIVE DATE: May 28, 1998.

FOR FURTHER INFORMATION CONTACT:

Susan Magnotti of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at 202-418-0680 or via email at smagnott@fcc.gov.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Fourth Report and Order* to allow partitioning and disaggregation for LMDS spectrum.

2. On March 11, 1997, the Commission adopted the *Second Report and Order* (*Second Report and Order*), 62 FR 23148; April 29, 1997, *Order on Reconsideration*, and *Fifth Notice of Proposed Rule Making* (*Fifth NPRM*), 62 FR 16514; April 7, 1997, wherein it established service rules to govern licensing of LMDS and competitive bidding rules to select among mutually exclusive LMDS applications. The Commission concluded that its actions would open the door for new broadband wireless services and that LMDS spectrum could be used to provide competition to both local exchange carriers (LECs) and cable television systems. It envisioned that our LMDS service and licensing rules would foster the future growth of this new service and permit LMDS licensees to satisfy a broad array of their customer's communications needs. In addition, the Commission permitted partitioning and disaggregation by LMDS licensees to encourage spectrum efficiency and the more rapid deployment of service, and to leave the decision of determining the correct size of licenses to the licensees and the marketplace. It concluded that allowing partitioning and disaggregation for LMDS spectrum would create

powerful tools for licensees to concentrate on core areas or to deliver services outside of the major market areas. The Commission further found that LMDS partitioning and disaggregation would provide opportunities for small businesses seeking to enter the multipoint video distribution and local telephony marketplaces.

3. In the *Fifth NPRM*, the Commission sought comment on specific procedural, administrative and operational rules to govern LMDS partitioning and disaggregation. It sought comment on how rights and obligations of LMDS licensees would be affected if such licensees were permitted to avail themselves of the partitioning and disaggregation options. It also sought comment on whether there are any technical or regulatory constraints unique to the LMDS service that would render any aspects of partitioning and disaggregation impractical or administratively burdensome. In this connection, the Commission noted that it had recently adopted specific procedures for partitioning and disaggregation in the broadband Personal Communications Services (PCS) and sought comment on whether such procedures would be appropriate for LMDS. A total of five comments and five reply comments were received in response to the *Fifth NPRM*.

A. Available License Area

4. *Background.* In the *Fifth NPRM*, the Commission tentatively concluded that parties to a LMDS partitioning agreement should be afforded flexibility in defining partitioned license areas. It sought comment on this tentative conclusion and, in particular, asked whether there are any technical or other issues unique to LMDS that would dictate a different approach.

5. *Discussion.* We conclude that LMDS licensees should have broad flexibility in defining partitioned license areas. As we noted in the *Fifth NPRM*, such an approach is consistent with our treatment of partitioning in other services, particularly broadband PCS. In addition, we believe that allowing LMDS licensees to partition their service areas along any boundaries they wish will enhance their ability to respond quickly to consumer demands. In this connection, we agree with CellularVision USA, Inc. (CellularVision) that such an approach will allow LMDS licensees to consider unique geographical or market characteristics when designing their business plans. We also are concerned that requiring LMDS partitioned areas to be based upon a uniform standard, such

as geopolitical boundaries or county lines, might unnecessarily restrict LMDS partitioning opportunities. For example, Hardin predicts that LMDS operations will most likely consist of cell sites with a small range. In this context, Hardin contends that partitioning based upon a minimum standard, such as geopolitical boundaries or county lines, would not accommodate small-scale partitioning options which may be desirable for LMDS spectrum. We also previously concluded that LMDS has the capacity to meet the more circumscribed needs of smaller operators and niche markets. We find that permitting partitioning into smaller units will further assist small operators to meet their business goals and will encourage the development of niche markets and innovative service offerings. Thus, we believe that more flexible partitioning will better serve the interests of LMDS licensees and the public.

6. As we have in all other contexts in which we have permitted partitioning, we will require that parties seeking approval to partition an LMDS license submit a description of the partitioned service area. The partitioned service area must be defined by coordinate points at every 3 degrees along the partitioned service area agreed to by both parties, unless either (1) an FCC-recognized service area is utilized (i.e., Metropolitan Statistical Area, Rural Service Area or Economic Area) or (2) county lines are followed. If the partitioned service area includes an FCC-recognized service area or county and additional areas, applicants are required to identify the FCC-recognized service areas or county and give the aforementioned coordinate data for the additional areas. These geographical coordinates must be specified in degrees, minutes and seconds to the nearest second of latitude and longitude. For areas located in the coterminous United States and Alaska the geographical coordinates must be based upon the 1983 North American Datum (NAD83). For locations in areas such as Hawaii, Puerto Rico, the South Pacific Islands, etc. the geographical coordinates must be based upon the World Geodetic System of 1984 (WGS84). This coordinate data should be supplied as an attachment to the assignment application, but maps need not be supplied. In cases where an FCC recognized service area or county lines are being utilized, applicants must list the specific area(s) (through use of FCC designations) or counties that comprise the partitioned area.

B. Disaggregation Standards

7. *Background.* In conjunction with the general rule permitting disaggregation of LMDS spectrum in the *Second R&O*, the Commission did not propose any restrictions on the amount of spectrum that licensees could disaggregate. In the *Fifth NPRM*, it nonetheless requested comment as to whether there should be spectrum limits on disaggregation. The Commission asked commenters to indicate any unique characteristics of LMDS which would warrant such limitations.

8. *Discussion.* We conclude that no minimum or maximum limits should be imposed on disaggregation of LMDS spectrum. We agree with commenters' arguments that we should establish similar rules in LMDS for disaggregation as we established for other wireless services such as broadband PCS. We also agree with WebCel that regulatory parity will be achieved by adopting a similar disaggregation rule for all wireless services. As with partitioning, we believe that permitting market forces to determine whether and how much spectrum is disaggregated will ensure that LMDS licensees are able to use their spectrum more efficiently and to respond quickly to customer demand. In addition, we believe that affording LMDS licensees this flexibility will facilitate participation by small businesses in the provision of LMDS.

9. Based on our review of the record, we are not persuaded that there should be any restrictions on the amount of spectrum that LMDS licensees can disaggregate. We disagree with Texas Instruments' argument that LMDS licensees cannot provide competition to LECs and cable television operators unless they are required to retain a substantial portion of their spectrum. To the contrary, we find that requiring LMDS licensees to retain a substantial portion of their spectrum could potentially exclude small businesses from entering the LMDS marketplace. We believe that such a result would ultimately limit, rather than encourage, competition. We also disagree with Texas Instruments' contention that LMDS has unique characteristics warranting a requirement that a licensee retain a predominant share of its LMDS spectrum. Texas Instruments argues that we should follow the example of our decision in the direct broadcast satellite (DBS) proceeding. In the *DBS R&O*, 60 FR 65587; December 20, 1995, we required that DBS licensees, after 5 years from date of license grant, use a predominant share of their authorized spectrum for DBS service. Texas Instruments argues that we should

adopt a similar requirement for LMDS licensees with the majority of LMDS spectrum remaining with the original licensee and being used to provide LMDS. We disagree that LMDS licensees should be required to retain a certain amount of their spectrum. In the *DBS R&O*, we required licensees to use a portion of their spectrum to provide DBS service to ensure that this spectrum is used principally for DBS service. We enacted this restriction to ensure the viability of the DBS service and to carry out the international allocation of this spectrum for DBS use. By contrast, there are no similar unique characteristics of LMDS, particularly in light of the fact that LMDS licensees can provide a wide array of terrestrial services. The fact that licensees have the freedom under our rules to use their spectrum for different applications makes it potentially constraining to adopt a minimum disaggregation standard. Therefore, we find there is no public interest reason to restrict the amount of LMDS spectrum that can be disaggregated.

C. Combined Partitioning and Disaggregation

10. *Background.* In the *Fifth NPRM*, the Commission tentatively concluded that combined partitioning and disaggregation should be permitted to provide LMDS licensees with the additional flexibility they need to respond to market forces and service demands. With combined partitioning and disaggregation, it contemplated that an entity would have the flexibility to obtain a portion of Block A or Block B spectrum in only a portion of the original licensee's BTA.

11. *Discussion.* We conclude that permitting combined partitioning and disaggregation will afford interested parties flexibility to provide a variety of service offerings, including those of particular interest to niche markets. We believe that this approach will further our regulatory goals of facilitating the provision of competitive service offerings, encouraging new market entrants, and promoting quality service to the public.

12. While several parties agree that combined partitioning and disaggregation should be permitted, WebCel and Alcatel contend that such an approach could be problematic. WebCel expresses concern regarding the potential administrative burdens associated with processing numerous partitioning and disaggregation requests. WebCel argues that such an approach would create the potential for a large number of applications overwhelming the Commission's processing resources and delaying delivery of LMDS service

to the public. We are unpersuaded by WebCel's speculative concern. We note that while this potential also theoretically exists in the other wireless services for which we have adopted partitioning and disaggregation rules, our experience has shown that we have been able to handle the partitioning and disaggregation applications without any resulting undue delay in the delivery of new services. In addition, we believe that any administrative burden of processing partitioning and disaggregation applications will be lessened by implementation of the Universal Licensing System (ULS) for wireless services, including LMDS, which is already partially on-line accepting electronically-filed applications. We expect that the electronic filing and mapping capabilities of the ULS will ultimately allow for the expeditious processing of LMDS partitioning and disaggregation applications.

13. Alcatel argues that it is unclear how LMDS licensees are to conduct frequency coordination for partitioned and disaggregated licenses. Accordingly, Alcatel seeks clarification as to the frequency coordination obligations of LMDS partitionees and disaggregatees. We clarify that all LMDS licensees, including partitionees and disaggregatees, are required to comply with the frequency coordination provisions set forth in § 101.103 of the Commission's Rules. We adopted this approach in the *Second R&O* and herein we do not provide an exception for partitioning and disaggregation. We further note that the identity of neighboring LMDS licensees should be readily available in the Commission's database, particularly with the implementation of ULS. Thus, we conclude that the concerns expressed by WebCel and Alcatel do not present sufficient reasons for not permitting combined partitioning and disaggregation.

D. Construction Requirements

14. *Background.* LMDS licensees must provide "substantial service" to their service area within ten years. In the *Fifth NPRM*, the Commission proposed that, for partitioned LMDS licenses, the partitionee must certify that it will satisfy the same construction requirements as the original licensee. The partitionor and partitionee would therefore be required to meet separate substantial service requirements for their respective portions of the partitioned service area. For disaggregation, the Commission proposed that the parties would be required to submit a certification, signed

by both the disaggregator and disaggregatee, stating whether one or both of the parties will retain responsibility for meeting the substantial service requirement for the service area. It proposed that, if one party takes responsibility for meeting the performance requirement, then actual performance by that party would be taken into account in a renewal proceeding at the end of the license term, but such performance would not affect the status of the other party's license. If the parties agreed to share the responsibility for meeting the performance requirement, then the performance of each of the parties would be taken into account in their respective renewal proceedings.

15. *Discussion Partitioned Licenses.* We conclude that the public interest would be furthered by adopting an approach analogous to that used in other contexts, particularly broadband PCS, rather than adopting our proposal for partitioning. In other wireless services, we have allowed licensees the flexibility to negotiate which party will be responsible for meeting the applicable construction requirements. In each of those cases, our goal has been to ensure that licensees had the flexibility to structure their business plans while ensuring that partitioning not be used as a vehicle to circumvent the applicable construction requirements. We have allowed parties to partitioning agreements in other wireless services the flexibility to choose between two options for satisfying the construction requirements. For example, we allow broadband PCS licensees the option of either agreeing to meet the construction requirements for their respective portions of the partitioned market or for the original licensee to certify that it had or would meet the five- and ten-year construction requirements for the entire market. We adopted this second option to allow parties the flexibility to agree that one party would take responsibility for meeting the construction requirement for the entire licensed area. Similarly, we believe that parties interested in entering into LMDS partitioning arrangements should be afforded the same flexibility. Under the first option, the partitionor and partitionee would each certify that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee fails to meet its substantial service requirement during the relevant license term, the non-performing licensee's authorization would be subject to cancellation at the end of the license

term. Under the second option, the partitionor certifies that it has met or will meet the substantial service requirement for the entire market. If the partitionor fails to meet the substantial service standard during the relevant license term, however, only its license would be subject to cancellation at the end of the license term. The partitionee's license would not be affected by that failure.

16. As indicated in the *Second R&O*, the availability of partitioning will promote and facilitate smaller-scale service offerings and market niches to develop which would be appropriate for smaller operators who could not manage an entire BTA. Our decision to offer two options is based on our belief that LMDS licensees may be motivated to enter into partitioning arrangements for different reasons and under various circumstances. For example, as discussed by DBC, a LMDS licensee might be motivated to partition its license in order to reduce its construction costs. In that case, the original licensee would have less population to cover in order to meet its substantial service requirement. Thus, it may find the first option most attractive for its purposes. Under another scenario, a LMDS licensee that has met or is close to meeting its substantial service requirement may be approached by another entity interested in serving a niche market in a portion of the service area. Under these circumstances, the second option may seem most attractive to the parties. We believe that the partitioning rules for LMDS should address both of these scenarios. We further believe that in both contexts partitioning cannot be used to circumvent the LMDS construction requirements. In any event, we note that we will examine each situation on a case-by-case basis when the licensees file their renewal applications and will be able to address any abuses of the partitioning options in that context.

17. In addition, pursuant to CellularVision's request, we clarify if a partitionor and partitionee elect to meet the substantial service for their respective partitioned areas, then we would make an independent assessment of the construction efforts of the partitionor and partitionee based on the partitioned area, population served, and actual service provided. We acknowledge CellularVision's observation that the service offering provided by a partitionee might be quite different than that provided by the original licensee.

18. *Disaggregated Licenses.* As we proposed in the *Fourth NPRM*, 61 FR 44177; August 28, 1996, we establish

two options for disaggregating licensees. This approach is consistent with what we have done in other wireless contexts. We believe that it would be appropriate for either the disaggregator or the disaggregatee to assume full responsibility for construction within the shared service area, because service would be offered over the relevant population, even if not on the entire spectrum. As DBC points out in its comments, *supra*, we agree that this option could encourage a LMDS licensee to make some of its spectrum available to others. Accordingly, we will permit two options for meeting the construction requirements by disaggregators and disaggregatees. Under the first option, the disaggregator and disaggregatee would certify that they each will share responsibility for meeting the substantial service requirement for the geographic service area. If parties choose this option, both parties' performance will be evaluated at the end of the relevant license term and both licenses could be subject to cancellation. The second option would allow the parties to agree that either the disaggregator or the disaggregatee would be responsible for meeting the substantial service requirement for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the nonperforming party would be subject to cancellation.

19. We continue to believe that these build-out provisions fulfill our obligations under Section 309(j)(4)(B). We also believe that the auction and service rules which we are adopting for LMDS, together with our overall competition and universal service policies, constitute effective safeguards and performance requirements for LMDS licensing. We believe that service to rural areas will be promoted by our proposal to allow partitioning and disaggregation of LMDS spectrum. The options established herein are intended to provide the greatest possible flexibility to licensees and partitionees while ensuring that rural and niche market areas receive LMDS services. Accordingly, we continue to reserve the right to impose additional, more stringent construction requirements on LMDS licensees in the future in the event of actual anticompetitive or rural service problems and if more stringent construction requirements can effectively ameliorate those problems.

E. License Term and Renewal Expectancy

20. *Background.* LMDS licenses are granted for ten-year terms. In addition,

an LMDS licensee involved in a comparative renewal proceeding may qualify for a renewal expectancy if the licensee demonstrates that it has provided substantial service during its license term, and that it has substantially complied with the Communications Act and applicable Commission rules and policies. In the *Fifth NPRM*, the Commission sought comment on whether our LMDS rules should provide that parties obtaining LMDS licenses for partitioned areas or disaggregated spectrum hold their license for the remainder of the original licensee's ten-year term. It noted that, in the *Broadband PCS R&O*, 62 FR 696, January 6, 1997, the Commission found that allowing parties acquiring licenses through partitioning and disaggregation to "re-start" the license term from the date of the grant of the assignment application could allow parties to circumvent our rules regarding license terms and unnecessarily delay service to the public. It also sought comment on whether LMDS partitionees and disaggregatees should be afforded the same renewal expectancy as other LMDS licensees.

21. *Discussion.* We find that LMDS partitionees and disaggregatees should hold their licenses for the remainder of the original licensee's ten-year term. This approach is supported by the commenters and is consistent with our action in other wireless services. We see no reason to adopt a different approach for LMDS. As we did with licensees in other wireless services, we believe that LMDS licensees would have less of an incentive to fully utilize their available spectrum if they were permitted to wait until the end of their license term to partition a portion of their market or disaggregate a portion of their spectrum to another entity that would receive a full ten year license term. By limiting the license term for LMDS partitionees and disaggregatees, we believe that there will be maximum incentive for parties to quickly utilize their spectrum and expedite the delivery of LMDS services to the public.

22. In addition, we will permit partitionees and disaggregatees to obtain a renewal expectancy on the same basis as other licensees. All licensees meeting the substantial service requirement will be deemed to have met this facet of the renewal expectancy requirement regardless of which of the construction options the licensees chose. CellularVision asks that we clarify whether LMDS partitionees and disaggregatees may seek a renewal expectancy that is based upon their reduced license period. CellularVision maintains that it would be inequitable,

for example, to require a LMDS partitionee with a three-year initial license term to meet the same level of substantial service to obtain a renewal expectancy as the original licensee. We decline to recognize a "scaled-down" substantial service construction requirement for partitionees and disaggregatees. Rather, we believe that parties interested in availing themselves of the partitioning and/or disaggregation opportunities should factor in their ability to meet the substantial service requirement when determining the timing of such transactions. We believe that the provisions we have made for construction options for partitioned and disaggregated licenses provide appropriate flexibility, while ensuring that a reasonable standard of service will be provided to the public and that licensees will not be able to bypass our construction requirements. Moreover, we will address each situation on a case-by-case basis taking into account the amount of time the licensee has had to employ its service along with other factors.

F. Competitive Bidding Issues

23. *Background.* When the Commission adopted the *Fifth NPRM*, the competitive bidding rules for LMDS included installment payments and bidding credits for qualified entities. It also adopted rules to prevent unjust enrichment by such entities that seek to transfer licenses obtained through use of these special provisions to an entity that would not have qualified for them. Subsequent to our adoption of the *Fifth NPRM*, the Commission eliminated installment payments for LMDS. Therefore, the proposals in the *Fifth NPRM* concerning whether partitionees and disaggregatees should be able to qualify for installment payments and how to apportion the remaining government obligation between the parties are now moot.¹ We note, however, that three levels of bidding credits are available to LMDS applicants. In the *Fifth NPRM*, the Commission sought comment on how to calculate unjust enrichment payments for LMDS licensees that are awarded bidding credits and subsequently partition or disaggregate to a larger business. It asked commenters to address whether the unjust enrichment payments should be calculated on a proportional basis, using population of the partitioned area and amount of

¹ We therefore do not need to consider the alternative proposals set forth by CellularVision and DBC concerning the handling of installment payments with respect to LMDS partitioning and disaggregation. See CellularVision Comments at 11-13; DBC Reply Comments at 5-6.

spectrum disaggregated as the objective measures.

24. *Discussion.* We recently adopted a provision in Part 1 of the Commission's Rules for all auctionable services that follows the approach set forth in the *Fifth NPRM* for calculating unjust enrichment payments in the context of partitioning and disaggregation. Thus, we will follow the uniform procedure set forth in Part 1 of our Rules and calculate unjust enrichment based on population for partitioned areas and on the amount of spectrum for disaggregated spectrum. We note that population will be calculated based upon the latest available census data. We have consistently adopted this approach for other wireless services, and we agree with WebCel that this approach provides an objective means of calculating unjust enrichment payments in the context of partitioning and disaggregation. For purposes of applying our unjust enrichment requirements when a combined partitioning and disaggregation is proposed, we will use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these *pro rata* calculations.

G. Licensing

25. *Background.* Because partitioning and disaggregation involves the assignment of a portion of a licensee's service area or spectrum to another entity, in the *Fifth NPRM* the Commission proposed to treat the partitioning and disaggregation of LMDS licenses as assignments requiring its prior approval. It proposed to follow the existing assignment procedures set forth in Part 101 of our rules for purposes of reviewing LMDS partitioning and disaggregation transactions.

26. *Discussion.* We adopt the procedures set forth in our *Fifth NPRM* for review and approval of LMDS partitioning and disaggregation transactions. We agree with CellularVision that all LMDS partitioning and disaggregation agreements should be subject to our formal assignment process. We decline to adopt WebCel's proposal that we permit parties to enter into agreements to partition and disaggregate without prior Commission approval so long as notification is given to the Commission by the original LMDS licensee upon consummation of the transaction. Under WebCel's proposal, the original licensee would retain an ownership interest in the license and would continue to be responsible for compliance with the Commission's rules, maintaining records as to the spectrum allocated and geographic areas served by the different

parties, and engaging in frequency coordination among all LMDS license holders within its BTA. WebCel states that this model would operate like a "landlord-tenant-subtenant" relationship. By contrast, we consider partitioning and disaggregation transactions to be partial assignments of license, for which Commission review and approval is necessary under Section 310(d) of the Communications Act.² Although arrangements such as that proposed by WebCel might be permissible, we note that the Commission requires that the licensee remain in control of its license, and for this determination, the Commission relies on the test announced in *Intermountain Microwave*. As a result, any arrangement that would result in a licensee losing control of its license pursuant to the *Intermountain Microwave* indicia would be inconsistent with our requirements for licensee responsibility.

27. WebCel's proposal also does not offer procedures for reviewing transactions where licensees desire to assign a portion of their market or spectrum outright to another entity and do not wish to hold the assigned portion. We thus believe that adoption of WebCel's approach would run counter to our goal of providing LMDS licensees with flexibility to structure partitioning and disaggregation transactions to meet their specific business plans. We conclude that WebCel's proposed model is not an appropriate construct for characterizing partitioning and disaggregation transactions. For these reasons, we will not adopt the alternative proposal suggested by WebCel. The procedures we adopt herein correspond to the procedures we have adopted for reviewing partitioning and disaggregation transactions in other wireless services. We find that adoption of similar partitioning and disaggregation procedures for all wireless services will provide regulatory parity, will permit our processing staff

² 47 U.S.C. 310(d). We note that we recently determined that we would forbear from applying our procedures for reviewing *pro forma* transfers of control and assignments of license involving wireless telecommunications carriers and we decided to allow these carriers to simply notify the Commission after the *pro forma* transaction has been consummated. See Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers, *Memorandum Opinion and Order*, FCC 98-18 (February 4, 1998). However, partitioning and disaggregation transactions are not *pro forma* in nature and, therefore, the rationale we followed in that proceeding would not apply here.

to develop common forms and procedures for reviewing all partitioning and disaggregation applications, and will streamline and expedite the review of such applications.

28. We will require that parties seeking approval for an LMDS partitioning or disaggregation transaction follow the existing assignment procedures set forth in Part 101 of our Rules. Such applications will be placed on Public Notice and will be subject to petitions to deny. The LMDS licensee will be required to file an FCC Form 702 that is signed by both the licensee and the partitionee or disaggregatee. The partitionee or disaggregatee will also be required to file an FCC Form 430 to demonstrate its qualifications, unless a current FCC Form 430 is already on file with the Commission.

H. Other Matters

29. *Background.* In our *Second R&O*, we determined that two LMDS licenses, one for 1150 MHz and one for 150 MHz, would be awarded for each Basic Trading Area (BTA) and adopted an eligibility restriction that prohibits incumbent LECs and incumbent cable companies from obtaining an attributable interest in in-region 1,150 MHz LMDS licenses for three years. We stated, however, that incumbent LECs and incumbent cable companies could obtain LMDS licenses at auction and use partitioning as a means to divest an overlapping portion of the BTA to comply with the eligibility restrictions. In its comments, WebCel argues that the Commission should reconsider this action and should not permit incumbent LECs and cable companies to use partitioning as a means of curing eligibility problems.

30. *Discussion.* We decided the issue of whether we should permit incumbent LECs and cable companies to use partitioning to come into compliance with the eligibility restrictions in our *Second R&O*. The purpose of our *Fifth NPRM* was not to revisit this issue but to decide the mechanics of implementing partitioning and disaggregation for LMDS. Therefore, we find that, while they were styled as "Comments," a portion of WebCel's pleading is actually an untimely-filed petition for reconsideration of the eligibility rules from our *Second R&O*. We agree with Bell Atlantic, RTG and Sprint that this portion of WebCel's Comments should not be considered in this phase of the proceeding. In this connection, we addressed WebCel's arguments in the *Third Order on Reconsideration* in this proceeding and affirmed the divestiture provision.

31. We conclude that the rules we adopt herein will provide LMDS licensees with the flexibility to structure partitioning and disaggregation agreements which meet their business needs. We have followed the general framework for partitioning and disaggregation that we have previously adopted for other wireless services in an effort to create regulatory parity among all licensees. As with the other service and licensing rules we have adopted for LMDS, we believe that this action will result in more efficient use of spectrum, will increase opportunities for small businesses and other entities to enter the LMDS marketplace, and will speed service to unserved areas.

I. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

32. The Final Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, is contained in the attachment.

B. Ordering Clauses

33. Accordingly, it is ordered that, pursuant to the authority of Sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), § 101.1111 of the Commission's Rules, 47 CFR 101.1111, is amended as set forth in the rule changes attachment.

34. It is further ordered that the rule change adopted herein shall become effective July 13, 1998. This action is taken pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

35. It is further ordered that the Director, Office of Public Affairs, shall send a copy of this *Fourth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601(a).

List of Subjects in 47 CFR Part 101

Communications equipment, Radio.
Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

Part 101 of title 47 of the Code of Federal Regulations is amended as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 101.1111 is revised to read as follows:

§ 101.1111 Partitioning and disaggregation.

(a) *Definitions.—Disaggregation.* The assignment of discrete portions or "blocks" of spectrum licensed to a geographic licensee or qualifying entity.

Partitioning. The assignment of geographic portions of a licensee's authorized service area along geopolitical or other boundaries.

(b) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 101.53. Parties shall submit the forms set forth in § 101.15(e).

(2) Licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(c) *Technical Standards.—(1) Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include, as an attachment, a description of the partitioned service area. The partitioned service area shall be defined by coordinate points at every 3 degrees along the partitioned service area unless an FCC recognized service area is utilized (*i.e.*, Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service Area or Economic Area) or county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area. In such partitioning cases where an unjust enrichment payment is owed the Commission, the request for authorization for partial assignment of a license must include, as an attachment, a calculation of the population of the partitioned service area and the licensed geographic service area.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount.

(3) *Combined Partitioning and Disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(d) *License Term.* The license term for a partitioned license area and for disaggregated spectrum shall be the

remainder of the original licensee's license term as provided for in § 101.67 of this chapter.

(e) *Construction Requirements.* Applications requesting approval for partitioning or disaggregation must include a certification by each party that it will satisfy the construction requirement set forth in § 101.1011 of this chapter. Failure by a party to meet its respective construction requirement will result in the automatic cancellation of its license without further Commission action.

Note: The following attachment will not appear in the Code of Federal Regulations.

Attachment—Final Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Fifth Notice of Proposed Rule Making (*Fifth NPRM*) in CC Docket No. 92-297. The Commission sought written public comment on the proposals in the *Fifth NPRM*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis in this *Fourth Report and Order* (*Fourth R&O*) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.

A. Need for and Purpose of This Action

In the *Fourth R&O*, the Commission modifies the Local Multipoint Distribution Service (LMDS) rules to permit partitioning and disaggregation for all licensees. With more open partitioning and disaggregation, additional entities, including small businesses, may participate in the provision LMDS without needing to acquire wholesale an existing license (with all of the bundle of rights currently associated with the existing license). Acquiring "less" than the current license will presumably be a more flexible and less expensive alternative for entities desiring to enter these services.

B. Summary of Issues Raised in Response to the Initial Regulatory Flexibility Analysis

None of the commenters submitted comments that were specifically in response to the IRFA.

C. Description and Number of Small Entities Involved

The rules adopted in the *Fourth R&O* will affect all small businesses which avail themselves of these rule changes, including small businesses that will obtain LMDS licenses through auction and subsequently decide to partition or disaggregate, and small businesses who may acquire licenses through partitioning and/or disaggregation.

The Commission has not developed a definition of small entities applicable to LMDS. In the *Second Order on Reconsideration*, the Commission adopted criteria for defining small businesses for purposes of determining eligibility for special provisions such as bidding credits. The Commission has adopted a three-tier definition of small businesses: businesses with gross annual revenues of not more than

\$15 million, businesses with gross annual revenues of more than \$15 million but not more than \$40 million and businesses with gross revenues of more than \$40 million but not more than \$75 million. We will use these definitions for estimating the potential number of entities choosing to partition or disaggregate or who may acquire licenses through partitioning and disaggregation that are small businesses.

It is not possible to predict how many LMDS licensees meeting one of the above definitions will be successful at auction and subsequently decide to partition or disaggregate. The Commission plans to issue 2 licenses each for 493 Basic Trading Areas (BTAs). Thus, 986 licenses will be made available for authorization. It is expected that a significant number of successful bidders in the LMDS auction will satisfy one of the above definitions. There is only one company, CellularVision USA, Inc. (CellularVision), that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, it is assumed that CellularVision is a small business under all of the above outlined definitions. Similarly, it is not possible to determine how many of those entities obtaining licenses through partitioning and disaggregation will meet one of the above definitions. However, it is expected that many entities meeting one of the above definitions will use partitioning and disaggregation as a means to obtain LMDS licenses at lower costs.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

The rules adopted in the *Fourth R&O* will impose reporting and recordkeeping requirements on small businesses seeking licenses through partitioning and disaggregation. The information requirements will be used to determine whether the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. This information will be given in a one-time filing by any applicant requesting such a license. The information will be submitted on the FCC Form 702 which is currently in use and has already received Office of Management and Budget clearance. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that 75 percent of the respondents (which may include small businesses) will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information.

E. Steps Taken To Minimize Burdens on Small Entities

The rules adopted in the *Fourth R&O* are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services and are consistent with the Communications Act's

mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services.

Allowing non-restricted partitioning and disaggregation will facilitate market entry by parties who may lack the financial resources for participation in auctions, including small businesses. Some small businesses may have been unable to obtain LMDS licenses through auction due to high bidding. By allowing open partitioning and disaggregation, small businesses will be able to obtain licenses for smaller service areas and smaller amounts of spectrum at presumably reduced costs, thereby providing a method for small businesses to enter the LMDS marketplace.

Allowing geographic partitioning of LMDS licenses by service areas defined by the parties will provide an opportunity for small businesses to obtain partitioned LMDS license areas designed to serve smaller, niche markets. This will permit small businesses to enter the LMDS marketplace by reducing the overall cost of acquiring a partitioned LMDS license.

Allowing disaggregation of spectrum in any amount will also promote participation by small businesses who may seek to acquire a smaller amount of LMDS spectrum tailored to meet the needs of their proposed service.

F. Significant Alternatives Considered and Rejected

The Commission considered and rejected the following alternative proposals concerning LMDS partitioning and disaggregation.

The Commission rejected a plan set forth by WebCel Communications, Inc. (WebCel). Instead of requiring all partitioning and disaggregation transactions to comply with our existing assignment procedures, WebCel suggested that the Commission permit parties to enter into agreements to partition and disaggregate without prior Commission approval so long as notification is given to the Commission by the original LMDS licensee. The Commission considers partitioning and disaggregation transactions to be essentially partial assignments of license, and Commission review and approval is necessary to ensure compliance with its rules. Thus, the Commission concluded that WebCel's proposed model is not an appropriate construct for characterizing partitioning and disaggregation transactions.

Finally, the Commission rejected a suggestion by CellularVision that LMDS partitionees and disaggregates should be allowed to qualify for a renewal expectancy which is based upon their reduced license period. The Commission found that this approach would contradict its construction requirements for LMDS partitionees and disaggregates which require these entities to meet a separate substantial service requirement by the end of their license term. Partitionees and disaggregates are not permitted to meet a scaled-down substantial service construction requirement simply because of the fact that they had a license term of less than ten years. The Commission found that, by requiring LMDS partitionees

and disaggregates to meet the same substantial service requirement for renewal expectancy as all other licensees, LMDS licensees will be encouraged to quickly develop their markets and fully utilize their available spectrum.

G. Report to Congress

The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this *Fourth R&O*, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

[FR Doc. 98-12667 Filed 5-8-98; 5:08 pm]

BILLING CODE 6712-01-U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 553

[NHTSA-98-3815]

RIN 2127-AG62

Rulemaking Procedures

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule reaffirms the agency's policy of focusing its international harmonization activities on identifying and adopting those foreign vehicle safety standards that clearly reflect best practices, i.e., that require significantly higher levels of safety performance than the counterpart U.S. standards. This final rule also announces the agency's policy regarding those instances in which the agency's comparison of standards indicates that the safety performance required by a foreign standard is not significantly higher, but is still better than or at least as good as that required by the counterpart U.S. standard.

To aid in implementing these policies, this final rule amends the agency's regulation concerning rulemaking procedures to set forth the process that the agency will use in comparing U.S. and foreign vehicle safety standards and in determining what rulemaking response, if any, is appropriate. The agency will assess whether the safety performance of vehicles or equipment manufactured under the foreign standard is better than or at least functionally equivalent to that of vehicles or equipment manufactured under the U.S. standard, i.e., whether the vehicles or equipment manufactured under the foreign standard produce more or at least as many safety benefits

as those produced by the vehicles or equipment manufactured under the U.S. standard.

This final rule also emphasizes that the agency's policy is to deny any rulemaking petition seeking to have a foreign standard added to its counterpart U.S. standard as a compliance alternative or to harmonize the U.S. standard with the foreign standard if the petition does not contain an analysis of the relative benefits of the two standards. This policy is necessary to minimize the impact that NHTSA's consideration of such rulemaking petitions might otherwise have on the agency's use of its resources to upgrade its safety standards.

DATES: Effective Date: The amendments become effective on May 13, 1998.

Petitions for reconsideration: Petitions for reconsideration must be received by June 29, 1998.

ADDRESSES: Petitions should refer to the docket and notice number of this notice and be submitted to: The Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Ms. Julie Abraham, Office of International Harmonization, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-2114. Fax: (202) 366-2106.

For legal issues: Rebecca MacPherson, Attorney Advisor, Office of Chief Counsel, NCC-20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-2992. Fax: (202) 366-3820.

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I. Overview

This final rule reaffirms the agency's policy of focusing its international harmonization activities on identifying and adopting those foreign vehicle safety standards that clearly reflect best practices, i.e., that require significantly higher levels of safety performance than the counterpart U.S. standard. NHTSA's policy is to pick the best standard in those instances. This final rule also announces the agency's policy regarding instances in which the agency's comparison of standards indicates that the safety performance required by a foreign standard is not significantly higher, but is still better than or at least as good as that required by the counterpart U.S. standard. In those instances, the agency will consider the possibility of amending the U.S. standard to allow manufacturers to comply with either standard or to harmonize the U.S. standard with the foreign standard.

To aid in implementing these policies, this final rule amends the agency's regulation concerning rulemaking procedures by adding an appendix that sets forth the process that the agency will use in comparing U.S. and foreign vehicle safety standards and in determining what rulemaking response, if any, is appropriate. In the first instance, NHTSA will follow this process in determining whether to commence a rulemaking proceeding on the basis that the mandatory requirements of a foreign motor vehicle safety standard appear to be better than or at least functionally equivalent to those of a Federal Motor Vehicle Safety Standard (FMVSS). If the agency commences a rulemaking proceeding, it will follow the same process in comparing the safety performance of vehicles or equipment produced under the two standards, and then in determining whether the foreign standard is, in fact, better than or at least functionally equivalent to the U.S. standard. This determination would be made by assessing whether the vehicles or equipment manufactured under the foreign standard produce more or at least as many safety benefits as the vehicles or equipment manufactured under the U.S. standard. This assessment would be made on the basis of real world data concerning benefits, or, if such data are unavailable, on the basis of either compliance test data or data generated by additional research and development.

This final rule emphasizes that there will be appropriate opportunities for public participation. Any rulemaking notice that proposes to amend a safety standard and that is based on a tentative determination of functional equivalence will be subject to the notice and comment requirements of the Administrative Procedure Act and all applicable substantive statutory criteria, most notably the requirement that the standards meet the need for motor vehicle safety.

This final rule also emphasizes that the agency's policy is to deny any rulemaking petition seeking to have a foreign standard added to its counterpart U.S. standard as a functionally equivalent compliance alternative or to harmonize the U.S. standard with the foreign standard if the petitioner does not provide an analysis, based to the extent practicable on crash data, comparing safety performance under the two standards and supporting the making of a determination that the foreign standard is, in fact, better or at least functionally equivalent. This policy is necessary to minimize the impact that NHTSA's consideration of rulemaking petitions involving such functional equivalence claims might otherwise have on the agency's use of its finite resources to upgrade its safety standards.

Finally, since the agency's priority in international harmonization is to focus on those foreign safety standards that represent best practices, NHTSA will give priority to petitions requesting the upgrading of one of its standards to the level of a superior foreign standard over petitions simply asking the agency to add a compliance alternative, if resource limitations necessitate making a choice between competing petitions in granting or processing them.

II. Guiding Principles for the Harmonization of Standards and the Amendment of Standards Based on Functional Equivalence

At the April 1996 Transatlantic Automotive Industry Conference on International Regulatory Harmonization¹ in Washington, DC,

¹ At that conference, the United States-European Union automotive industry met and developed recommendations to the United States and European Union on international harmonization and the intergovernmental regulatory process needed to achieve such harmonization. One of the recommendations was to develop a process for agreeing upon "functional equivalence" of dissimilar existing standards addressing the same aspect of performance. Martin Bangemann, the European Industry Commissioner on the European Commission, said at the conference that a first step toward achieving common standards between the

Continued

NHTSA emphasized that three goals must remain of primary importance as the agency explores the possibility of harmonizing its standards² with those of other countries and regions in appropriate circumstances. First, the agency must ensure that there is no degradation of the safety provided by a regulation as a result of achieving harmonization. Second, the agency must preserve the quality and transparency of its regulatory process by inviting all interested parties to be heard and duly considered, including the general public. Third, the agency must preserve its ability to respond, through future rulemaking, to changing safety technology and problems and make appropriate improvements in its safety standards. NHTSA noted that the same goals must be met by the agency in considering whether a foreign motor vehicle safety standard is better than or at least functionally equivalent to its counterpart FMVSS.

This notice reaffirms those goals and emphasizes the agency's top priority in its vehicle safety rulemaking activities will remain the development and adoption of more effective and beneficial safety standards.

III. Policy Statement Concerning Functional Equivalence

A. Background

The harmonization of product standards has become a matter of increasing importance in the last several decades. The manufacturing and marketing of products have become increasingly globalized. In response to that trend, countries and regions have moved to adjust and coordinate their regulatory practices to the extent consistent with consumer protection policies. Efforts to coordinate regulatory practices on a global scale have resulted in several international agreements that seek to promote and guide the process of harmonization, while taking care to preserve the right of countries and regions to adopt and maintain standards they believe necessary to address safety, environmental and other needs within their respective jurisdictions.

The GATT Agreement on Technical Barriers to Trade (TBT), known as the Standards Code, was negotiated during the Tokyo Round of General Agreement on Tariffs and Trade Multinational

Trade Negotiations, and implemented in this country by the Trade Agreements Act of 1979 (Pub. L. 103-465; 19 U.S.C. 2531-2582). A new TBT agreement was reached as a result of the General Agreement on Tariffs and Trade Uruguay Round of Multinational Trade Negotiations. The Uruguay Round Agreements, which were concluded in early 1994, established the World Trade Organization. Article 2.7 of the new TBT Agreement provides that members of the World Trade Organization:

Shall give positive consideration to accepting as *equivalent* technical regulations of other Members, even if these regulations differ from their own, *provided they are satisfied that these regulations adequately fulfill the objectives of their own regulations.* (Emphasis added.)

At the Transatlantic Business Dialogue Conference (TABD), held in Seville, Spain in late 1995, participants made a series of joint recommendations aimed at building a stronger framework for trade between the United States and the European Union. Later that year, at the Madrid Summit, President Clinton signed a joint United States-European Union "New Transatlantic Agenda," which was based in part on the TABD recommendations. The Agenda called for strengthening regulatory cooperation and addressing technical and non-tariff barriers to trade resulting from divergent regulatory processes. Within the framework of action established by the Agenda, a Joint United States-European Union Action Plan was issued. Among its goals are facilitating international regulatory harmonization, taking into account the respective policies of the United States and European Union concerning safety and environmental protection. The April 1996 Transatlantic Automotive Industry Conference on International Regulatory Harmonization, mentioned above in part I, built on the TABD recommendations and Action Plan by generating specific recommendations regarding harmonization and regulatory coordination in the automotive sector.

At the 15th International Technical Conference on Enhanced Safety of Vehicles (ESV), held in May 1996 in Melbourne, Australia, participating countries adopted the International Harmonized Research Agenda (IHRA). One of the six research priorities was developing the technical and scientific aspects of an acceptable model for assessing relative benefits and determining the functional equivalence of existing regulatory requirements. The United States and Australia were designated as the lead countries for this developmental activity. The other

research priorities seek improvements in such areas of vehicle safety as biomechanics, advanced offset frontal crash protection, vehicle compatibility, Intelligent Transportation Systems (ITS), and pedestrian safety.

In response to these events, NHTSA published a notice requesting comments on the recommendations made by the United States/European Union automotive industry at the April 1996 Transatlantic Automotive Industry Conference on International Regulatory Harmonization in Washington, D.C. (61 FR 30657; June 17, 1996). The agency stated that the comments would assist it in determining how to respond to those recommendations as well as ensuring that harmonization does not result in any degradation of safety or environmental protection in the United States. One of the specific requests was for comments on issues relating to the development of a process for determining the functional equivalence of the vehicle safety standards of different countries and regions.

Written comments on the June 1996 notice were submitted by the American Automobile Manufacturers Association (AAMA), Association of International Automobile Manufacturers, Inc., (AIAM), Truck Manufacturers Association (TMA), Coalition of Small Volume Automobile Manufacturers (COSVAM), Coalition for Vehicle Choice (CVC), Consumers Union (CU), Center for Auto Safety, American Insurance Association (AIA), Insurance Institute for Highway Safety (IIHS), Congressman Tom Sawyer, and Advocates for Highway Safety (Advocates).

The commenters focused their comments on the general issue and consequences of standards harmonization. Many emphasized that the agency should not permit any reduction in safety to occur as a result of any rulemaking based on a determination of functional equivalence or any other rulemaking seeking to harmonize standards. Both manufacturers' associations and public interest groups stated that a foreign standard should be determined to be at least functionally equivalent to a counterpart U.S. standard only if the foreign standard provides at least the same level of protection. In no event, IIHS and several consumers groups said, should harmonization result in the adoption of lowest common denominator standards. These groups urged that the agency focus its harmonization efforts on raising the level of U.S. standards to the level of the best practices worldwide. AIAM urged the agency not to adopt a rigid

definition of functional equivalence and made several suggestions for promoting the future evolution of the concept of functional equivalence.

B. November 1996 Request for Comments

On November 14, 1996, NHTSA published in the **Federal Register** a generic flowchart describing a process for use by the regulatory agencies of the United States and other countries in making determinations of functional equivalence of vehicle safety standards (61 FR 58362). The agency developed the flowchart based on the comments on the June notice and other available information. The November notice announced plans for a January 1997 public workshop to discuss the flowchart and solicited the submission of written comments following the workshop. The agency said that the public input would assist the agency in deciding its future course of action regarding international harmonization, specifically the determination of functional equivalence as outlined in the International Harmonized Research Agenda (IHRA). The IHRA was established in meetings held in conjunction with the May 1996 International Technical Conference on the Enhanced Safety of Vehicles (ESV) in Australia. The notice also announced that NHTSA would be developing requirements and procedures regarding petitions for rulemaking based on a claim of functional equivalency.

C. Summary of Oral and Written Comments on November 1996 Notice

The January 1997 workshop was attended by representatives of U.S. and Canadian governmental agencies, motor vehicle manufacturers, equipment manufacturers, insurance groups and consumer interest groups. The attendees included the U.S. Environmental Protection Agency, U.S. Department of Commerce, Transport Canada, Industry Canada, AAMA, AIAM, Association des Constructeurs Européens d'Automobiles (ACEA), Ford, General Motors, Chrysler, Toyota, Land Rover, Volkswagen, Mitsubishi, BMW, Motor Vehicle Equipment Manufacturers Association, Lear, Jetro, Sierra Products, Truck-Lite, Auto Occupant Restraint Council, Rubber Manufacturers Association, Transportation Safety Equipment Institute, IIHS, Advocates, and American Insurance Association (AIA).

After the workshop, the agency received six written comments on the November 1996 notice. The commenters were American Suzuki Motor Corporation (Suzuki), CU, Advocates, Sierra Products, Inc., Sekurit Saint-

Gobain, and Nissan North America, Inc. (Nissan).

The highlights of the oral and written comments are set forth below.

Nissan expressed concern that the proposed process may rely too much on estimates of real world safety benefits and compliance test data as bases for determining functional equivalence:

In most cases, such data would have to be developed specially to enable a comparison, and it would be rather difficult for most of the countries to develop them through research, because of cost, limited resources, etc. The approach of relying primarily on a comparison of safety benefits would not be a realistic means of demonstrating functional equivalence* * *

Suzuki expressed a similar concern. In a related comment, Chrysler stated that quantification of real world safety benefits may be impossible in the case of the crash avoidance standards. The relative merits of two different crash avoidance standards addressing the same safety need would be much easier to assess in terms of their impact on vehicle or equipment performance (an input measure) instead of their impact on the number of crashes or of deaths and injuries (an output measure).

AIAM stated that the proposed process fails to include consideration of what it termed the "same design approach." AIAM noted that the AAMA functional equivalence process includes that concept. That organization argued that, given difficulty of measuring output, i.e., benefits, NHTSA should consider input, as represented by similarity of design approaches.

Advocates said that the process should include a statement of NHTSA's commitment to upgrading the FMVSSs when the agency determines that the benefits of a foreign standard are greater than those of the counterpart FMVSS:

* * * if the FE process is to provide any significant safety benefit to the public, upgrading safety standards must be treated as a mandatory requirement, not as a secondary or optional activity.

CU supported the concept of a functional equivalence determination process that would result in both increased safety and increased efficiency and stated that the proposed process could be an appropriate procedure toward that end. IIHS and AIA agreed that the ultimate goal should be higher standards.

Commenters differed as to whether the issues of determining functional equivalence and possibly increasing the stringency of a FMVSS should be considered in the same rulemaking proceeding. Advocates said that if the agency determines that a foreign

standard offers greater benefits, the agency should conduct a single rulemaking proceeding that results in upgrading the counterpart FMVSS. NHTSA should not, according to that group, conduct two separate, sequential rulemaking proceedings: the first one adding the foreign standard as a compliance alternative and a subsequent one upgrading that FMVSS. However, AAMA and Land Rover argued that there should be two separate rulemaking proceedings.

Advocates implicitly recognized that the upgrading of a FMVSS might not be appropriate in every instance in which the agency concludes that the counterpart foreign standard yields greater benefits. That organization noted that the upgrading of a FMVSS would be subject to public comment and other aspects of the typical rulemaking proceeding. Among other things, the agency would need to conduct a cost-benefit analysis to determine whether an upgrade would be worthwhile. Land Rover and Sierra Products agreed. Further, Advocates said that if NHTSA decides not to propose to upgrade a FMVSS found by the agency to yield fewer benefits than a counterpart foreign standard, the agency should explain why upgrading is not warranted.

AIAM, Ford and Advocates expressed support for the making of "qualified functional equivalence determinations." As described by Advocates, such a determination would be made when NHTSA finds:

That a particular foreign standard would be equivalent to the FMVSS counterpart if an additional requirement contained in the FMVSS is also required. This qualified acceptance is appropriate where the two standards are functionally equivalent in terms of the estimated safety benefits, but the FMVSS standard contains a specific provision or practice that is not required under the foreign standard.

Advocates expressed concern that, by focusing on the level of safety benefits of counterpart standards, the process might lead the agency to overlook important differences between standards:

Advocates is concerned that distinctly different standards with important safety differences will be treated as equivalent simply because the overall estimate of benefits is comparable (or one is greater than the other). A process that is focused only on a single performance measure, i.e., total quantitative safety benefit, will overlook important qualitative differences in approach that benefit different vehicle occupants, benefit occupants in different ways, or accrue to non-occupants, i.e., pedestrians.

Finally, Advocates urged that the agency adopt a policy ensuring that

² United States and the European Union could be an intermediate one of mutual recognition of another country's standards, provided that they were determined to be at least functionally equivalent.

³ As used in this notice, the term "standard" refers to mandatory requirements and thus has the same meaning given the term "technical regulation" in Annex 1 to the World Trade Organization Technical Barriers to Trade Agreement.

rulemaking petitions based on a claim of functional equivalence will be granted only when it will not interfere with other agency activities and not delay other pending rulemakings. To that end, that organization urged that petitioners be required to submit sufficient data and analysis to support their petitions. Transport Canada and IIHS expressed similar concerns.

D. Pending Rulemaking Petitions Based on a Claim of Functional Equivalence

NHTSA notes that it has already received several petitions based on claims of functional equivalence. The AAMA has already petitioned the agency to amend several of the FMVSSs, on the basis that their European counterparts are functionally equivalent, to provide the alternative of complying with those European standards. The FMVSSs include FMVSS 103, Windshield Defrosting and Defogging Systems; FMVSS 104, Windshield Wiping and Washing Systems; the headlamp concealment device requirements in FMVSS 108, Lamps, Reflective Devices, and Associated Equipment; FMVSS 202, Head Restraints; and FMVSS 209, Seat Belt Assemblies. Noting that the petitions were not accompanied by sufficient data and analysis, the agency informed the petitioner that additional materials were needed in order to assess the merits of the petition.

Additionally, the AAMA, AIAM and IIHS have jointly petitioned the agency to amend FMVSS 214, Side Impact Protection, to give vehicle manufacturers the option of complying with either current FMVSS 214 or the counterpart European standard during a 7-year period. The petition also requested that, at the end of the 7-year period, compliance with the European standard become mandatory.

E. Policy Statement

1. General Description

NHTSA is amending Part 553, Rulemaking Procedures, by adding a new Appendix B setting forth the process it intends to follow in considering whether to commence a rulemaking proceeding based on a claim that a foreign motor vehicle safety standard is better than or at least functionally equivalent to its counterpart among the FMVSSs and in making determinations about relative benefits and functional equivalence. The process is set forth in the form of a flowchart and accompanying explanation.

The agency believes that the process in Appendix B meets the concerns

expressed at the public workshop and in the written public comments. The process is essentially the same as the generic process published by the agency in November 1996 for public comment, except for several clarifying or simplifying changes.

The generic process, which refers to "Country A" and "Country B," has been modified for the purpose of its application by this country. The reference to "Country A" has been replaced by a reference to "NHTSA," so that the process as adopted in this final rule refers to "NHTSA" and "Country B." The rulemaking box, formerly located in the upper left corner of the chart, has been combined with a similar box located in the upper center of the chart. The agency has eliminated the references to three notes formerly included in the explanation. Those notes became unnecessary after the agency expanded the discussion within the rulemaking box and the discussion elsewhere in the explanation of the chart. As recognized at the public workshop, any rulemaking to upgrade a FMVSS would have to satisfy statutory criteria for establishing a FMVSS and would be subject to the provisions of Executive Order 12866 regarding the analysis of costs and benefits. This has been reflected in discussion in the rulemaking box in the upper center of the chart. Per a request by AAMA, descriptive titles have been added to some of the key decision points in the chart.

Neither the chart nor its explanation has been modified to include a reference to the "design approach" of determining functional equivalence, as suggested by AIAM. As agency personnel noted at the workshop, consideration of compliance test data would be necessary to determine objectively whether various design approaches are really the same. The chart already provides for consideration of compliance test data as a method of determining relative benefits and functional equivalence.

The explanation that accompanies the chart in Figure 1 has been expanded to describe how the functional equivalence process would affect each stage of a rulemaking proceeding. In response to concerns expressed about the suitability of the process for comparing crash avoidance standards, the explanation has been revised to note that the types of benefits examined in comparing two standards might differ depending on whether the standards are crash avoidance standards or crashworthiness standards. Translating differences in performance (an input measure) into numbers of crashes or numbers of deaths and injuries (output measures) is

more difficult in the case of crash avoidance standards. Thus, while the relative benefits of two crashworthiness standards would typically be assessed in terms of their impacts on deaths and injuries in crashes, the relative merits of two different crash avoidance standards might well be assessed in terms of their impact on measured vehicle or equipment performance.

The explanation accompanying the flowchart also emphasizes the flexibility of the process that will be employed by this agency. For example, if one type of data specified in the flowchart were unavailable, a petitioner's request for a functional equivalency determination will not automatically be rejected. Instead, the petitioner should submit analyses based on the types of specified data which either are available or can be produced by means of additional testing or research that can be performed within a reasonable time and at a reasonable cost.

2. The Process as it Will Be Applied in the United States

- Determining whether to grant the petition. NHTSA is announcing in this notice that it will not grant any rulemaking petition seeking to have a foreign standard added to its counterpart U.S. standard as a compliance alternative on the basis that the foreign standard is better than or at least functionally equivalent to the U.S. standard or to harmonize the U.S. standard with the foreign standard, if the petition is not accompanied by an analysis of the relative benefits of the two standards. The analysis must be based, to the extent practicable, on crash data, compare safety performance under the two standards, and support the making of a determination, in accordance with the process described in the flowchart in Figure 1 of Appendix B to Part 553 of Title 49 CFR, that the foreign standard is better or at least functionally equivalent to the U.S. standard. This policy is necessary to preserve the agency's ability to focus its resources on its priorities. Part 552 of Title 49 CFR, Petitions for rulemaking, defect and noncompliance orders, expressly provides that, in making a decision whether to grant a petition for rulemaking, the agency may consider a variety of factors, include agency priorities and allocation of agency resources. See Section 552.8.

Upon receiving a sufficiently supported rulemaking petition asking NHTSA to amend a FMVSS based on a claim that a foreign standard is better than or at least functionally equivalent to that FMVSS, the agency will consider the merits of the petition in accordance

with Part 552 and with the functional equivalence process set forth in the flowchart. If it appears that there is reason to believe that the foreign standard provides greater or at least equivalent safety benefits than the FMVSS, and if adding an alternative compliance alternative does not appear likely to create an unacceptable enforcement burden, the agency will likely grant the petition and commence a rulemaking proceeding.

However, the agency emphasizes that its priority with respect to international harmonization is identifying and adopting those foreign safety standards that represent best practices. Accordingly, if resource limitations make it necessary to choose between competing petitions, the agency would give priority to granting a petition asking the agency to upgrade one of its standards to the level of a superior foreign standard over granting another petition simply asking the agency to add a compliance alternative. The agency would follow the same priorities in processing the petitions it grants. Finally, NHTSA notes that the granting of a petition does not signify that the rule in question will be issued, but rather that the petition appears to merit a fuller comparison of performance under the two standards and, if appropriate, the development of a proposal for public comment.

- Development of proposal. If NHTSA grants the petition, it will proceed, as in any other rulemaking regarding the FMVSSs, to determine whether amending a FMVSS would be appropriate under the applicable statutory criteria in chapter 301 of title 49, U.S.C. Following the process set forth in the flowchart, the agency will use the analysis and data submitted by the petitioner, supplemented by data from other sources, to compare performance and tentatively determine whether the foreign standard specified in the petition is better than or at least functionally equivalent to the FMVSS specified in the petition.

The comparison could have a variety of possible outcomes:

- *The comparison may indicate that the foreign standard's safety benefits are less than those of the counterpart FMVSS.* If the comparison indicates that the foreign standard results in fewer safety benefits than the counterpart FMVSS, NHTSA will terminate the rulemaking proceeding.

- *The comparison may indicate that the foreign standard's safety benefits are approximately equal to those of the counterpart FMVSS.* If the comparison indicates that the safety benefits of a foreign standard are approximately

equal to those of a FMVSS, NHTSA will tentatively determine that the foreign standard is at least functionally equivalent to the FMVSS and take one of two possible steps in most instances. One possibility is that it will develop a notice of proposed rulemaking (NPRM) proposing to amend the FMVSS by adding the foreign standard as an alternative to the existing requirements of the FMVSS.³ The other possibility is that the agency will develop an NPRM proposing to harmonize the FMVSS with the foreign standard. The second approach would enable NHTSA to maintain a single set of requirements and test procedures in its standard, thereby minimizing any drain on its enforcement resources. An additional possibility that might be considered in some instances would be "qualified functional equivalence." Under this third approach, the agency would regard Country B's standard to be functionally equivalent if it is supplemented by a specified requirement in the counterpart FMVSS.

- *The comparison may indicate that the foreign standard's safety benefits are greater than those of the counterpart FMVSS.* If the comparison indicates that the foreign standard results in greater safety benefits than the counterpart FMVSS, and if upgrading the FMVSS is appropriate, based on the incremental benefits and costs and applicable statutory criteria, NHTSA will tentatively determine that the foreign standard has greater benefits and develop an NPRM proposing to upgrade the requirements of the FMVSS to the level of those in the foreign standard. The upgrading could be accomplished in a number of ways, such as by increasing the stringency of the requirements presently in the FMVSS or by replacing the provisions of the FMVSS with those of the foreign standard. If upgrading is not appropriate, NHTSA may propose to add the foreign standard to the FMVSS as an alternative compliance option to the existing requirements of the FMVSS. The proposal of such an option would include a statement of the basis for the agency's conclusion that upgrading the FMVSS is inappropriate.

If NHTSA issues an NPRM, it will request comment on the tentative determination and the proposed amendment.

- *Final Rule Amending FMVSS.* Any final decision to make a determination regarding relative benefits and

³ NHTSA might have to modify or supplement the test procedures in the foreign standard to comply with the requirements in NHTSA's authorizing statute that FMVSSs be practicable and be stated in objective terms.

functional equivalency and to amend the FMVSS will be made in accordance with the process in the flowchart and applicable law and only after careful consideration and analysis of the public comments.

IV. Draft UN/ECE Agreement on Global Technical Regulations; Public Participation

To provide for the development of global technical regulations for motor vehicles and motor vehicle equipment, the United States, the European Union, and Japan reached accord in March of this year on a text of an Agreement on Global Technical Regulations to supplement the existing revised 1958 United Nations/Economic Commission for Europe Agreement providing for uniform technical prescriptions for wheeled vehicles, equipment, and parts, as well as the conditions for reciprocal recognition of type approvals.⁴ The draft text is subject to a final round of comment by governments participating in the UN/ECE Working Party on the Construction of Vehicles (known as Working Party 29) and other interested governments. The draft Agreement contains procedures for establishing global regulations by harmonizing existing regulations or by developing a new regulation. The new regulation might be one that yields more benefits than existing regulations addressing a particular problem or it might be an entirely new regulation, i.e., a regulation addressing a problem not addressed by any existing regulations.

In anticipation of the successful conclusion of efforts regarding the draft Agreement, NHTSA wishes to reaffirm its prior public statements about its commitment to transparency and public participation in connection with international harmonization activities. That commitment has guided the agency's work on the draft Agreement. The agency is cognizant of the 1991 recommendation by the Administrative Conference of the United States regarding "Federal Agency Cooperation with Foreign Government Regulators" (Recommendation 91-1). The Conference recommended that:

(w)here appropriate, agencies should, so far as considerations of time and international relations permit, afford affected private and public interests timely notice of any formal system of collaboration with foreign regulatory bodies that exists and an opportunity where reasonable to participate

⁴ Public notice that NHTSA and the Environmental Protection Agency would participate in negotiations regarding an international agreement was published March 8, 1994 (59 FR 10846).

EXPLANATION OF FLOWCHART

A. ULTIMATE GOAL

The ultimate goal in comparing standards is to assess the real world safety performance of the covered vehicles or equipment. Particularly in the case of crashworthiness standards, the most reliable basis for making that assessment is fatality and injury data directly drawn from actual crashes. Accordingly, NHTSA will make appropriate efforts to ensure the availability of such data regarding crashes in the U.S.

B. GUIDING PRINCIPLES

Best Practices

NHTSA pursues a "best practices" policy in comparing U.S. and foreign safety standards, i.e., NHTSA will propose to upgrade its standards if it tentatively concludes that a Country B standard offers greater benefits than the counterpart FMVSS, and if upgrading appears appropriate, considering the incremental costs and benefits and applicable statutory criteria. (For a discussion of another type of rulemaking proposal that may be considered in these circumstances, see the paragraph below on comparisons that indicate that a foreign standard's safety benefits are greater than those of the counterpart FMVSS.)

Conservatism

1. NHTSA places priority on preserving the safety benefits of the FMVSSs.

2. NHTSA can best preserve those benefits by being conservative in reaching any conclusion that a Country B standard is better than or at least functionally equivalent to the counterpart FMVSS. One reason for conservatism is that differences from vehicle model to vehicle model and manufacturer to manufacturer in margins of compliance may confound efforts to assess the relative benefits of two standards. Further, there may be circumstantial differences, such as special environmental conditions, driver demographics, driver behavior, occupant behavior (e.g., level of safety belt use), road conditions, size distribution of vehicle fleet (e.g., proportion of big versus small vehicles and disparity between extremes), that could influence real world safety benefits. These differences may result in a particular standard having a safety record in a foreign country that would not necessarily be repeated in the United States.

Best Available Evidence

1. NHTSA will base its comparison of standards on the best available evidence. If available, estimates of real world safety benefits based on fatality and injury data directly drawn from actual crashes are the best evidence. If such data are not available, then estimates based on other information, such as compliance test data, may be used, although increased caution needs to be exercised in making judgment based on those estimates. If sufficient crash data regarding real world safety benefits are available, and a comparison of those benefits shows that the Country B standard is less beneficial than the counterpart Federal Motor Vehicle Safety Standard (FMVSS), NHTSA would avoid wasting resources making comparisons on the basis of less probative types of evidence.

2. The types of benefits examined in comparing two standards might differ depending on whether the standards are crash avoidance standards or crashworthiness standards. Translating differences in performance (an input measure) into numbers of crashes or numbers of deaths and injuries (output measures) is more difficult in the case of crash avoidance standards. As a result, while the relative benefits of two crashworthiness standards would typically be assessed in terms of their impacts on deaths and injuries in crashes, the relative merits of two different crash avoidance standards might well be assessed in terms of their impact on vehicle or equipment performance.

Sufficiency of Evidence

1. Many types of data are available for a comparison of two standards. Often there is an abundance of one type of data and little or no data from other sources. If insufficient data are available, and such data either cannot be generated through engineering analysis (e.g., real world safety benefits estimates), or conducting additional research and development is not cost effective, then NHTSA will stop consideration of such data and consider the other available data instead.

2. The essentially horizontal, left-to-right path through the flowchart is intended to illustrate the sources of data that will be considered and provide a rough idea of the priority they will receive. Each step branches independently to the tentative determination of relative benefits and functional equivalency by its "yes" path. This may seem to preclude later steps once any "yes" path is encountered. In practice, however, all data sources will be considered to the extent that they are available before a final determination regarding these matters is made.

Reciprocity

1. NHTSA will take steps to encourage reciprocity by other countries in the making of functional equivalence determinations.

2. When NHTSA's comparison of standards indicates that one of the FMVSSs has benefits equal to or greater than the counterpart Country B standard, NHTSA may forward the results of that comparison to Country B and request that consideration be given by Country B to determining that the FMVSS is better than or at least functionally equivalent to the counterpart Country B standard, and to subsequently amending its standard accordingly.

C. AGENCY DECISIONS IN WHICH FLOWCHART IS USED

This flowchart guides agency decisions in connection with a rulemaking proceeding that involves the issue of relative benefits and functional equivalence.

1. *Decision whether to grant a rulemaking petition.* If the agency receives a petition for rulemaking based on a claim that one of Country B's standards is better than or at least functionally equivalent to one of the Federal Motor Vehicle Safety Standards (FMVSSs), the agency will consider the merits of the petition in accordance with 49 CFR Part 552, Petitions for rulemaking, defect, and noncompliance orders, and with

the functional equivalence process set forth in the flowchart. If it appears that there is reason to believe that Country B's standard provides safety benefits are greater than or at least equal to those of the FMVSS, the agency will likely grant the petition and commence a rulemaking proceeding.

The agency emphasizes that its priority with respect to international harmonization is identifying and adopting those foreign safety standards that represent best practices. Accordingly, if resource limitations make it necessary to choose between competing petitions in granting or processing them, the agency would give priority to petitions asking the agency to upgrade one of its standards to the level of a superior foreign standard over petitions simply asking the agency to add a compliance alternative.

2. *Decision whether to issue a notice of proposed rulemaking.* If NHTSA grants the petition, it will proceed, as in any other rulemaking regarding the FMVSSs, to determine whether amending an FMVSS would be appropriate under the applicable statutory criteria in chapter 301 of title 49, U.S.C. Following the process set forth in the flowchart, the agency will use data submitted by the petitioner, supplemented by data from other sources, to compare performance and tentatively determine whether Country B's standard specified in the petition is better than or at least functionally equivalent to the FMVSS specified in the petition.

This comparison could have a variety of possible outcomes:

a. *The comparison may indicate that the foreign standard's safety benefits are less than those of the counterpart FMVSS.* If NHTSA determines that the foreign standard results in fewer safety benefits than the counterpart FMVSS, it will terminate the rulemaking proceeding.

b. *The comparison may indicate that the foreign standard's safety benefits are approximately equal to those of the counterpart FMVSS.* If the agency tentatively determines that the safety benefits of a foreign standard are approximately equal to those of a FMVSS, it will take one of two steps in most instances. One possibility is that it will develop a notice of proposed rulemaking (NPRM) proposing to amend the FMVSS by adding the foreign standard as an alternative to the existing requirements of the FMVSS. The other possibility is that the agency will develop an NPRM proposing to harmonize the FMVSS with the foreign standard. This second approach would enable NHTSA to maintain a single set of requirements and test procedures in its standard, thereby minimizing any drain on its enforcement resources. An additional possibility that might be considered in some instances would be "qualified functional equivalence." Under this third approach, the agency would regard Country B's standard to be functionally equivalent if it is supplemented by a specified requirement in the counterpart FMVSS.

c. *The comparison may indicate that the foreign standard's safety benefits are greater than those of the counterpart FMVSS.* If NHTSA tentatively determines that the foreign standard results in greater safety benefits than the counterpart FMVSS, and if

upgrading is appropriate, based on the incremental benefits and costs and applicable statutory criteria, the agency issues an NPRM proposing to upgrade the FMVSS to the level of Country B's std. If upgrading is not appropriate, NHTSA considers issuing an NPRM proposing to add the requirements of Country B's std to the FMVSS as an alternative compliance option. The proposal to add the compliance option would set forth the basis for the agency's conclusion that upgrading the FMVSS is inappropriate. If NHTSA issues an NPRM, it would request comment on the tentative determination and the proposed amendment.

3. *Decision whether to issue a final rule.* Any final decision to make a determination regarding relative benefits and functional equivalency and to amend the FMVSS will be made in accordance with the process in the flowchart and applicable law and only after careful consideration and analysis of the public comments.

Issued on May 6, 1998.

Ricardo Martinez,
Administrator.

[FR Doc. 98-12598 Filed 5-12-98; 8:45 am]

BILLING CODE 4910-69-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE06

Endangered and Threatened Wildlife and Plants; Final Rule to List the Preble's Meadow Jumping Mouse as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. The Preble's meadow jumping mouse, a small rodent in the family Zapodidae, is known to occur in seven counties in Colorado and two counties in Wyoming. Historical records document its former presence in additional counties in Colorado and Wyoming. The Preble's meadow jumping mouse lives primarily in heavily vegetated riparian habitats. Habitat loss and degradation caused by agricultural, residential, commercial, and industrial development imperil its continued existence. This action implements the protection of the Act for Preble's meadow jumping mouse.

DATES: This rule is effective June 12, 1998.

ADDRESSES: The complete file for this rule is available for public inspection,

by appointment, during normal business hours at the U.S. Fish and Wildlife Service's Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson, Field Supervisor, Colorado Field Office, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225-0207 (telephone 303/275-2370).

SUPPLEMENTARY INFORMATION:

Background

The Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's) is a small rodent in the family Zapodidae and is 1 of 12 recognized subspecies of the species *Z. hudsonius*, the meadow jumping mouse (Knutzsch 1954, Whitaker 1972, Hafner 1981). The family *Zapus* consists of small to medium-sized mice with long tails and long feet adapted for jumping. Knutzsch (1954) provided a revision of the taxonomy of the genus *Zapus* in North America and recognized three living species, *Z. hudsonius*, *Z. trinotatus*, and *Z. princeps*. As the most recent revision of *Z. hudsonius*, this stands as the authority for taxonomy. Fitzgerald et al. (1994) described *Z. hudsonius* as greyish to yellowish-brown in color with an indistinct mid-dorsal band of darker hair and paler sides, large hindlegs and hindfeet, and a sparsely haired tail that accounts for more than 60 percent of the total length.

In his 1899 revision of North American jumping mice, E. A. Preble referred specimens of the meadow jumping mouse from Colorado and southeastern Wyoming to the subspecies *Z. h. campestris* (Preble 1899, cited by Knutzsch 1954). Knutzsch (1954) described and named *Z. h. preblei* as separate from *Z. h. campestris*, indicating as the holotype a specimen obtained by E. A. Preble in July 1895 from Loveland, Larimer County, Colorado. All records of Preble's are from southeastern Wyoming and eastern Colorado. The coloration of Preble's was described by Knutzsch (1954) as "color dull, back from near Clay Color to near Tawny-Olive with a mixture of black hair forming poorly defined dorsal band; sides lighter than back from near Clay Color to near Cinnamon-Beff; lateral line distinct and clear Ochraceous-Beff; belly white, sometimes faint wash of clear Ochraceous-Beff; tail bicolored, brownish to light brownish-black above, grayish-white to yellowish-white below" (capitalized color terms refer to a scientific standard, while lower case

terms reflect common usage). Knutzsch (1954) also provided a technical description of the skull of Preble's, which can prove important to its identification.

There is a similarity of appearance between the Preble's meadow jumping mouse and *Z. princeps*, which also occurs in portions of Colorado and Wyoming. In general, *Z. hudsonius* may be distinguished from *Z. princeps* by average external size and cranial size (Knutzsch 1954, Whitaker 1972). Preble's may be distinguished from *Z. princeps* by a less pronounced mid-dorsal band, smaller average total length, and a skull that is small and light with a narrower braincase and smaller molars (Fitzgerald et al. 1994). Since coloration of the mid-dorsal band and total length are not definitive characteristics, skull measurements are most useful for positive identification. Ranges of the Preble's and *Z. princeps* are not known to overlap in Colorado but the relationships between respective ranges in Wyoming is less clear (Garber 1995, Armstrong 1972).

Knutzsch (1954) commented on the presence of physical habitat barriers and lack of known intergradation between the Preble's meadow jumping mouse, known only from eastern Colorado and southeastern Wyoming, and other identified subspecies of *Z. hudsonius* ranging to the east and north. Among recognized subspecies, Knutzsch found that Preble's most closely resembled *Z. campestris* from northeastern Wyoming, but summarized differences in coloration and skull characteristics. Knutzsch concluded that considerable differences existed between Preble's and related subspecies. In contrast, Jones (1981) studied specific and intraspecific relationships within *Zapus* and recognized no subspecies of *Z. hudsonius*. Jones did, however cite that *Z. hudsonius* populations in Colorado and southeastern Wyoming were apparently isolated from other populations. Hafner et al. (1981) described an additional subspecies *Z. hudsonius luteus* present in New Mexico and Arizona and differentiated it from Preble's. This subspecies was previously considered *Z. princeps luteus*, a subspecies of the western jumping mouse. Recently, *Z. h. luteus* was found in Las Animas County, Colorado (Riggs et al. 1997), the furthest north that the subspecies has been recorded, but over 100 miles south of the confirmed range of Preble's in Colorado.

Results from genetic analysis of mice from Rocky Flats Environmental Technology Site (Rocky Flats) in Jefferson County, Colorado, *Z.*

hudsonius from Minnesota and Indiana, and, *Z. princeps* from Colorado, provided clear evidence that the Rocky Flats mice were of the species *Z. hudsonius*. However, the analysis did not provide a means of separating subspecies of *Z. hudsonius* (Bruce Wunder, Colorado State University, pers. comm. 1996). Under a cost-sharing agreement with the U.S. Fish and Wildlife Service, the Colorado Division of Wildlife supported genetic studies of Preble's trapped in Colorado and Wyoming during the 1996 and 1997 field seasons. Tissue samples from presumed Preble's trapped at 23 locations in Colorado and 2 in Wyoming were assessed, through mitochondrial DNA analysis, and compared to reference samples of *Z. princeps* and to samples of *Z. hudsonius* from outside the known range of Preble's. The analysis indicated that mice from Albany County, Wyoming (Medicine Bow National Forest) to western Las Animas County, Colorado (San Isabel National Forest) formed a coherent genetic group (Riggs et al. 1997). The report concluded that "data appear consistent with the view that a geographically contiguous set of populations previously recognized as Preble's meadow jumping mouse (*Z. h. preblei*) form a homogenous group recognizably distinct from other nearby populations and from geographically-adjacent species of the genus" (Riggs et al. 1997). However, some specimens of *Z. hudsonius* from outside the known range of Preble's, including *Z. h. campestris* from northern Wyoming, were indistinguishable from Preble's based on the analysis. Hafner (1998) reviewed the report cited above and found no fault with the currently accepted taxonomic relationship of the subspecies *Z. h. preblei*, *Z. h. campestris*, and *Z. h. luteus*. He commented that current recognition of these subspecies is appropriately based on geographic variation of morphological traits and distribution.

Other conclusions of interest from the Riggs et al. (1997) genetic study included a specimen from San Isabel National Forest, Las Animas County, Colorado, which was identified as *Z. princeps* when it was collected, but was later determined to be most similar to Preble's meadow jumping mouse. The presence of Preble's in Las Animas County would significantly expand its known range southward. Reexamination of this specimen confirmed diagnostic dentation of *Z. princeps* (Cheri Jones, Denver Museum of Natural History, in litt. 1998). A mouse from Lone Tree Creek, Weld County, Colorado, and six

mice from F.E. Warren Air Force Base, Laramie County, Wyoming, were identified as Preble's when they were trapped and later determined to be most similar to *Z. princeps* (Riggs et al. 1997). Hafner (1998) suggested that the discrepancies in species associations found in the analysis by Riggs et al. (1997) could be due to the specific DNA segment chosen for analysis, or to limited hybridization in areas where the two species' ranges overlap. Riggs et al. (1997), Hafner (1998), Tanya Shenk (Colorado Division of Wildlife, in litt. 1998), and David Armstrong (University of Colorado, in litt. 1998) encouraged additional genetic and morphological investigations to further define relationships among *Zapus* in the region.

The Preble's meadow jumping mouse has not been studied as extensively as other subspecies of *Z. hudsonius* have been studied elsewhere. Preble's is thought to be similar to other *Z. hudsonius* in patterns of diet, behavior, breeding, and habitat utilization. In general, *Z. hudsonius* subsists on seeds, small fruits, fungi, and insects, and hibernates from October to May (Whitaker 1972, Fitzgerald et al. 1994). It is adapted for digging, creates nests of grasses, leaves, and woody material several centimeters below the ground, and is primarily nocturnal or crepuscular, but can be observed during daylight. During the breeding season (June to mid-August), females typically have 2 to 3 litters of 5 to 6 young per litter (Quimby 1951, Fitzgerald et al. 1994). *Z. hudsonius* hibernates approximately 7 months of the year in an underground burrow that it excavates itself (Quimby 1951, Whitaker 1963).

Krutzsch (1954), Quimby (1951), and Armstrong (1972) agree that across its range, *Z. hudsonius* occurs mostly in low undergrowth consisting of grasses, forbs (herbaceous plants other than grasses), or both, in open wet meadows and riparian corridors, or where tall shrubs and low trees provide adequate cover. In addition, *Z. hudsonius* prefers lowlands with medium to high moisture over drier uplands. Whitaker (1972) concluded that *Z. hudsonius* avoids the sparse vegetation that is generally associated with low moisture habitats. Fitzgerald et al. (1994) described *Z. hudsonius* as most common in lush vegetation along watercourses or in herbaceous understories in wooded areas. Tester et al. (1993) suggested that proximity to water may be the most important factor influencing habitat selection and utilization by *Z. hudsonius*.

Some aspects of Preble's meadow jumping mouse life history, behavior,

and habitat utilization have been documented. Armstrong et al. (1997) and Shenk (in litt. 1998) have compiled summaries of information on Preble's gleaned from recent studies. Data on the timing of the initial breeding period and time of hibernation of the Preble's meadow jumping mouse have been gathered by researchers at Rocky Flats (PTI Environmental Services 1996a). The month of May marks the beginning of the active period for Preble's, with May 5 the earliest capture date at Rocky Flats. Breeding probably occurs soon after emergence. Adults begin hibernation in early September, while juveniles enter hibernation from mid-September to late October. The latest recorded date of capture of Preble's at Rocky Flats is October 27. Adults reach approximately 20 percent body fat before going into hibernation (Wunder pers. com. 1997).

Little information exists on Preble's meadow jumping mouse food preferences. It has been speculated that Preble's may need an open water source to fulfill dietary water requirements. Armstrong et al. (1997) reported that trapping success in ephemeral drainages decreased notably in late summer after creekflow ceased.

Preble's meadow jumping mouse has been shown to move a significant distance along drainages but has not been shown to cross dry uplands to reach adjacent drainages. A male Preble's was recaptured 1.6 kilometers (km) (1 mile) (mi) upstream from a previous capture site and a female Preble's captured 1.2 km (.75 mi) downstream from a previous capture site (Thomas Ryon, PTI Environmental Services, pers. com. 1998).

At Rocky Flats, the Preble's meadow jumping mouse appears to be primarily dependent on riparian shrublands, and on mesic mixed grasslands that are adjacent to shrublands and in close proximity to streams (PTI Environmental Services 1996b). Field studies at Rocky Flats led to the conclusion that Preble's is typically found in or near complex riparian communities with multi-strata woodland and herbaceous species (Harrington et al. 1996). Capture locations were typically humid with high litter content. In a spring 1996 study at Rocky Flats, all captures were within 25 meters (m) (82 feet) (ft) of streams, with 48 percent of captures within 5 m (16 ft) of streams (PTI Environmental Services 1996a). In the same study, 90 percent of captures occurred within 5 m (16 ft) of canopy edge consisting of *Salix exigua* (coyote willow), *Symphoricarpos occidentalis* (western snowberry), *Prunus americana*

(choke cherry), and other species. Margins of artificial ponds at Rocky Flats are thought to be important foraging sites (Harrington et al. 1996).

Most successful capture sites at Rocky Flats were in dense vegetation that presented burrowing or nesting opportunities. Five nests were located in dense vegetation (Harrington et al. 1995). Based on a single underground hibernaculum, located through use of telemetry, upland habitats may be used for hibernation by Preble's (Fred Harrington, Pawnee Natural History Society, pers. comm. 1995). Robert Schorr (Colorado Natural Heritage Program, pers. com. 1997) reported four apparent hibernacula located by telemetry from 7 m (23 ft) to 31 m (101 ft) from the creek bed of Monument Creek, U.S. Air Force Academy, El Paso County, Colorado. All four hibernacula appeared to be below *Salix exigua*.

Ryon (1996) reported that four of five recent (1990 or later) Preble's meadow jumping mouse capture sites he evaluated in Colorado had five structural habitat components: trees, tall shrubs, short shrubs, herbaceous vegetation, and ground cover. The fifth site had few trees. In contrast, historical capture sites where Ryon failed to capture Preble's generally lacked one or more of these components.

Preble's was captured along Monument Creek within the U.S. Air Force Academy lands primarily in densely vegetated riparian communities where *Salix* spp., *Symphoricarpos occidentalis*, *Populus angustifolia* (narrow-leaf cottonwood), and thick grass understory were dominant (Corn et al. 1995). Garber (1995) characterized capture sites along Lodgepole Creek, Albany County, Wyoming as moist areas near beaver ponds with dense sedges and *Salix* sp. Ryon (1996) suggested that where Preble's occupies habitat along intermittent streams, adjacent wet meadows and seeps may be important habitats in dry periods.

Armstrong et al. (1997, p. 77) described typical Preble's meadow jumping mouse habitat as "well-developed plains riparian vegetation with relatively undisturbed grassland and a water source in close proximity." Also noted was a preference for "dense herbaceous vegetation consisting of a variety of grasses, forbs and thick shrubs." Meaney et al. (1997) suggested that Preble's has a broader ecological tolerance than previously thought and while they require diverse vegetation and well developed cover, this can be met in a variety of circumstances. Recent captures that were exceptions to the typical habitat described include individuals found along a small

irrigation ditch and in a mesic grassy field on City of Boulder Open Space land (Clint Miller, City of Boulder, in litt. 1996). Ensight Technical Services (1997) reported instances of Preble's meadow jumping mouse trapped at or near sites of human alteration including ditches along roads and driveways, and wetlands adjacent to highways. Meaney et al. (1997) emphasized that vegetated ditches may be a significant habitat for Preble's and may provide dispersal routes.

Preble's meadow jumping mouse may never have been widespread in the period since western settlement. Armstrong (1972) described it as poorly known in Colorado and apparently nowhere abundant. The known historical range of Preble's may represent a relict of a more southern range of *Z. hudsonius*, occupied when the climate was cooler and more damp (Fitzgerald et al. 1994). The apparent local extirpation of Preble's from historically occupied sites in Colorado and Wyoming, and the difficulty in finding it in patches of apparently adequate but fragmented habitat isolated by human land uses, suggests a decline in populations of Preble's in recent decades.

Records for Preble's meadow jumping mouse define a range including Adams, Arapahoe, Boulder, Denver, Douglas, El Paso, Elbert, Jefferson, Larimer, and Weld Counties in Colorado; and Albany, Laramie, Platte, Goshen, and Converse Counties in Wyoming (Krutzsch 1954, Compton and Hugie 1993). Historical sites in Colorado were further discussed by Meaney and Clippinger (1995), Ryon (1996), and Ryon and Harrington (1996). Garber (1995) discussed historical sites from Wyoming and suggested that some *Zapus* from Wyoming may have been misidentified. He indicated that based on study skins alone (without skulls) positive identification was not possible. Garber concluded that two specimens from the University of Wyoming collection listed as Preble's were probably *Z. princeps*, and that several specimens listed as *Z. princeps* are believed to be Preble's.

As one might expect, given the intensity of recent surveys for Preble's meadow jumping mouse, more individuals have been trapped in the decade of the 1990's than were documented prior to 1990. Preble's is thought to currently exist in seven counties in Colorado and two in Wyoming, but it is not known to be present in three other counties in Colorado and three counties in Wyoming where it was previously documented.

Colorado

Recent (since 1992) presence of Preble's meadow jumping mouse in Colorado has been documented in seven counties along the following watercourses and their tributaries: South Boulder Creek and St. Vrain Creek (Boulder County); Coal Creek, and Ralston Creek, and Rock Creek, Walnut Creek and Woman Creek at Rocky Flats (Jefferson County); East Plum Creek, West Plum Creek, and Indian Creek (Douglas County); Monument Creek and tributaries including West Monument Creek, Smith Creek, Beaver Creek, Pine Creek, Jackson Creek, Dirty Woman Creek, and Cottonwood Creek (El Paso County); Lone Tree Creek (Weld County); Rabbit Creek and Lone Pine Creek (Larimer County); and, Running Creek (Elbert County).

A number of historical and recent records of Preble's meadow jumping mouse exist for Boulder County. A summary of past records and a report of 1995 survey results was provided by Armstrong et al. (1996). In 1995, extensive surveys were conducted, through a challenge grant cost-share agreement with the Service, to determine the presence of Preble's on City of Boulder and Boulder County Open Space lands supporting suitable habitat. Of 13 sites surveyed, Preble's were captured from 2 sites, both along South Boulder Creek (Armstrong et al. 1996). In 1996, 3 Preble's were captured on City of Boulder Open Space along South Boulder Creek, during an extensive study of grassland biodiversity entailing 6,600 trapnights (one trap set for one night equals one trapnight) of effort (Miller in litt. 1996). Perhaps indicative of population fluctuations, Carron Meaney (Denver Museum of Natural History, in litt. 1998) reported a total of 55 individual Preble's captured during 1997 studies along South Boulder Creek.

Meaney et al. (1996) reported capturing at least seven different Preble's meadow jumping mice at a Boulder County Open Space site on St. Vrain Creek, the only captures on five Boulder County sites they surveyed in 1996. A 1997 survey failed to find Preble's on a site along St. Vrain Creek near the 1996 capture site (Meaney et al. 1997). However, 1997 surveys conducted for the Colorado Department of Transportation along State Highway 36 at St. Vrain Creek, and at various wetland sites up to two miles south, resulted in captures of Preble's in six of seven locations (Ensight Technical Services 1997).

Annual studies have taken place at Rocky Flats since the discovery of the

Preble's meadow jumping mouse there in 1991 (Harrington et al. 1996). Recent populations have been reported in all four major drainages within the Rocky Flats buffer zone. During the 1995 field season, 61 Preble's were trapped at Rocky Flats, bringing the total number of individual mice trapped since 1991 to 161 (Harrington pers. comm. 1995). Estimated density of Preble's in areas trapped during 1995 studies ranged up to 36 per hectare (ha) (15 per acre (ac)). Spring 1996 trapping studies at Rocky Flats, designed to document emergence from hibernation, resulted in 29 captures of Preble's in 3,553 trapnights (PTI Environmental Service 1996a). During summer 1996 studies at Rocky Flats, 3,882 trapnights of effort resulted in capture of only 4 Preble's (PTI Environmental Service 1996b).

During 1996 and 1997 the Colorado Natural Heritage Program reviewed numerous sites on Jefferson County Open Space lands for potential presence of Preble's meadow jumping mouse and trapped at eight sites. In 1996, Preble's were captured on Jefferson County Open Space land near the mouth of Coal Creek Canyon, west of Rocky Flats (Fleming et al. 1996). In 1997, Preble's were captured at Ralston Creek (White Ranch Park, Jefferson County Open Space) (Peterson 1997).

In Douglas County, Preble's meadow jumping mice were captured from a site on East Plum Creek, near Larkspur in 1995 (Harrington 1995). Also in 1995, the Colorado Natural Heritage Program located Preble's at two sites, one on East Plum Creek and one on West Plum Creek, Douglas County. Surveys in 1996 (Meaney et al. 1996) located Preble's at an additional site on West Plum Creek south of Sedalia, and at a Colorado Division of Wildlife property on Indian Creek (a tributary to Plum Creek) south of Louviers. In 1997 the Colorado Natural Heritage Program identified, through aerial photographs, 104 sites in the Plum Creek watershed in Douglas County that appeared to have suitable Preble's habitat. Preble's were captured on 10 of 13 private land sites trapped. Use of a habitat relationships model provided an estimate of 30.6 miles of occupied streamside habitat in the watershed (Chris Pague and Parker Schuerman, The Nature Conservancy, *in litt.* 1998). Meaney et al. (1997) captured Preble's at two of three sites they trapped within the Plum Creek drainage in 1997; Willow Creek in Roxborough State Park, and a site along East Plum Creek currently being purchased by The Conservation Fund.

In El Paso County, the Colorado Natural Heritage Program discovered the Preble's meadow jumping mouse on

U.S. Air Force Academy lands along Monument Creek while performing small mammal surveys in 1994. In comprehensive 1995 studies, 67 Preble's were captured (Corn et al. 1995). Using varying assumptions regarding trapping results and habitat available, total population estimates for Air Force Academy property of 308 and 449 Preble's were generated. These correspond to density estimates in occupied habitat of 2.00 per ha (0.81 per ac) and 2.92 per ha (1.18 per ac). Twenty Preble's were captured in 1996 on private land along Smith Creek, east of the Air Force Academy (Meaney et al. 1996). Trapping surveys submitted to the Service in 1997 from sites of proposed construction documented Preble's within the Monument Creek drainage off of Air Force Academy property at Monument Creek, Pine Creek, Black Squirrel Creek, Cottonwood Creek, and Dirty Woman Creek. Meaney et al. (1997) located Preble's within the Monument Creek drainage on Beaver Creek.

Meaney et al. (1997) reported an improved ability to recognize suitable habitat and, by targeting mostly small drainages with dense vegetation, captured Preble's meadow jumping mouse at 7 of 10 sites trapped, including sites in 3 counties not known to have extant populations. Preble's were captured at Rabbit Creek and Lone Pine Creek, within Cherokee Park State Wildlife Management Area, Larimer County. A single apparent Preble's was captured on private land along Lone Tree Creek, Weld County (see discussion of genetic studies by Riggs et al. 1997). In Elbert County, a single Preble's was found at Hay Gulch, a tributary of Running Creek. Among sites recommended for future surveys were the confluence of Lone Tree Creek and the South Platte River (Weld County), and Bijou Creek, Kiowa Creek, and Running Creek (Elbert County) (Meaney et al. 1997).

Wyoming

In Wyoming, Preble's meadow jumping mouse has been recently documented in two counties, along Crow Creek at F.E. Warren Air Force Base (Laramie County) and in the Lodgepole Creek drainage, within the Medicine Bow National Forest (Albany County). The Wyoming Cooperative Research Unit successfully captured two Preble's on F.E. Warren Air Force Base, Laramie County, in the 1995 field season (Garber 1995). Garber conducted Preble's surveys at four Wyoming sites during the 1995 field season. He was unable to locate any Preble's on F.E. Warren Air Force Base, but did find

Preble's at two locations in the Lodgepole Creek drainage within the Medicine Bow National Forest in Albany County. The Colorado Natural Heritage Program surveyed for Preble's at Warren Air Force Base in 1996 and captured 8 apparent Preble's (see discussion of genetic studies by Riggs et al. 1997) in 2,200 trapnights of effort (Schuerman and Pague 1997).

Previous Federal Action

The Service included the Preble's meadow jumping mouse as a category 2 candidate species in the 1985 Animal Notice of Review (50 FR 37958) and retained that status in subsequent notices, published in the **Federal Register** on January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58810), and November 15, 1994 (59 FR 58982). In 1996 the Service discontinued the practice of maintaining a list of category 2 species and the Preble's did not appear in the February 28, 1996 (61 FR 7596), Notice of Review. Category 2 species were those species for which information in the Service's possession indicated that listing was possibly appropriate, but for which substantive data on biological vulnerability and threats were not available to support a proposed rule. Candidate species are currently defined as those species for which the Service has sufficient information on file detailing biological vulnerability and threats to support issuance of a proposed rule, but issuance of the proposed rule is precluded by other listing actions.

On August 16, 1994, the Service received a petition from the Biodiversity Legal Foundation to list the Preble's meadow jumping mouse as endangered or threatened throughout its range and to designate critical habitat within a reasonable amount of time following the listing. The petitioner submitted information that Preble's populations in Colorado and Wyoming are imperiled by: ongoing and increasing urban, industrial, agricultural, ranching, and recreational development; ongoing and increasing wetland/riparian habitat destruction and/or modification; small size of known populations; and inadequacy or lack of governmental protection for the species and its habitats.

On March 15, 1995 (60 FR 13950), the Service published notice of the 90-day finding that the petition presented substantial information indicating that listing the Preble's meadow jumping mouse may be warranted, and requested comments and biological data on the status of the mouse. On March 25, 1997, the Service issued a 12 month finding on the petitioned action along with a

proposed rule to list Preble's as an endangered species and announced a 90-day public comment period (62 FR 14093). On May 5, 1997, the Service announced three public hearings regarding the proposed rule and extended the comment period through July 28, 1997 (62 FR 24387). The Service reopened the public comment period on December 23, 1997, for a period of 30 days, through January 22, 1998 (62 FR 67041).

Summary of Comments and Recommendations

In the March 25, 1997, proposed rule and associated notifications, and in subsequent notices to extend or reopen the public comment period, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The public comment period was extended through July 28, 1997 (62 FR 24387) and reopened from December 23, 1997, through January 22, 1998 (62 FR 67041). Various Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Rocky Mountain News (Denver, CO), the Colorado Springs Gazette-Telegraph (CO), the Boulder Daily Camera (CO), the Casper Star Tribune (WY), and the Wyoming Eagle Tribune (Cheyenne, WY), which invited general public comment and attendance at public hearings.

Public hearings were initiated by the Service and held May 19, 1997, in Cheyenne, Wyoming; May 21, 1997, in Colorado Springs, Colorado; and May 22, 1997, in Denver, Colorado. Each hearing began with opening comments by the Service followed by an opportunity for public comments. In Cheyenne, 8 people attended and 1 commented; in Colorado Springs 28 attended and 8 commented; and in Denver 27 attended and 4 commented.

One hundred and thirty-eight comments were received. Significant issues are discussed below. Several individuals or groups submitted comments in both the original and the reopened comment periods, or during hearings and later in writing. Senator Craig Thomas of Wyoming opposed the proposal. Two Federal agencies commented and opposed the proposal; the Department of Energy's Rocky Flats Field Office supported a 6-month extension of the proposed rule. The Department of Energy's Western Area Power Administration supported a threatened listing. Six State agencies commented, four from Wyoming and

two from Colorado. From Wyoming, three State agencies opposed the proposal (two of the three supported an extension) and one Wyoming agency neither supported nor opposed the proposed rule. From Colorado, one agency opposed the proposal and supported an extension and one neither supported nor opposed the proposed rule. Of 128 comments by individuals or other groups, 29 supported the proposed rule, 74 opposed it, and 25 were neutral. Five stockgrowers or farm organizations provided comments opposing the proposal. Five of six conservation or environmental groups supported the proposal and one was neutral.

Written comments and oral statements presented at the public hearings and received during the comment periods are addressed in the following summary. Comments of similar nature are grouped under a number of general issues.

Issue 1: The Preble's meadow jumping mouse is not a valid subspecies since genetic studies conducted to date have not conclusively differentiated it from certain other subspecies of *Z. hudsonius*.

Response: Preble's is widely recognized as a valid subspecies by the scientific community. Genetic studies point to an aggregate of similar *Z. hudsonius* populations consistent with ecological, distributional, and morphological information on Preble's (*Z. h. preblei*).

Issue 2: Preble's meadow jumping mouse identification in the field is not possible because of the similarity between Preble's and *Z. princeps*.

Response: Field identification of *Zapus* is difficult when attempted by individuals not thoroughly familiar with both species. To date, no overlap has been documented between the range of Preble's and the range of *Z. princeps* in Boulder, Jefferson, Douglas, and El Paso Counties in Colorado. These counties support the vast majority of currently known Preble's populations. Since the two species may coexist in portions of southeastern Wyoming, some historical records from Wyoming are difficult to confirm. Recent genetic studies may indicate some uncertainty regarding the identity of apparent Preble's trapped in Weld County, Colorado and Laramie County, Wyoming. However, populations of *Zapus* that are consistent morphologically and ecologically with Preble's, will be considered Preble's by the Service pending conclusive studies resolving the identities of the two species. Identification of any *Zapus* captured in Weld County, Colorado (as well as in adjacent Larimer County, Colorado) and in southeastern Wyoming

should be thoroughly documented and tissue samples should be obtained for future genetic analysis.

Issue 3: Historical trapping records support the contention that Preble's meadow jumping mouse has long been a rare mammal and they provide a poor baseline from which to measure current trends in populations.

Response: Conclusions regarding the status and trends of Preble's made by the Service are based on the best available historical and recent population information on Preble's, the distribution of its preferred habitats, and on the significant threats to these habitats. While historical records come from diverse trapping efforts that rarely targeted *Zapus*, they document a former presence in locations where Preble's is not currently found. Recent surveys of several historical sites have failed to locate Preble's. Loss of these populations has been attributed to changes in habitat.

Issue 4: Comprehensive trapping surveys throughout Preble's meadow jumping mouse range are needed to ascertain its true status and distribution.

Response: Existing data are sufficient to determine the overall status of Preble's. Additional trapping studies will be conducted to better document Preble's status within certain portions of its range. Since 1992, numerous studies have addressed the status and distribution of Preble's. Trapping studies supported by the Colorado Division of Wildlife in 1995, 1996, and 1997 helped to document distribution of Preble's in Colorado. In 1997 alone, more than 120 locations in Colorado were trapped, with a minimum of 400 trapnights of effort at each location. Limited access to private lands has hampered survey efforts at some locations and will probably continue to do so in the future.

Issue 5: Since Preble's exists on some sites where grazing, mowing, and other human land uses occur, these activities should not be considered threats.

Response: Land uses that have a dramatic adverse impact on habitats that the Preble's meadow jumping mouse requires can present significant threats to its existence. The relationships between human land use and Preble's populations are undoubtedly complex and need further study. The manner, timing, and extent of grazing or mowing may dictate what effects these activities have on Preble's and its habitat. However, Preble's do coexist in grazed areas such as the Medicine Bow National Forest in Wyoming and Boulder Open Space lands in Colorado, and some ranching and farming practices are thought likely to be

compatible with maintaining Preble's populations. The Service believes that best management ranching and farming practices, which avoid adverse effects on habitat characteristics, are compatible with many natural resource objectives.

Issue 6: Water projects and irrigation may be beneficial to the Preble's meadow jumping mouse, since these activities can create wetland habitat.

Response: Preble's seems largely dependent on moist habitat with dense vegetation in or near riparian corridors. Effects of water projects on Preble's and its habitat can vary greatly. Water projects can effectively eliminate, degrade, or fragment Preble's habitat. However, activities that enhance and extend such habitat can benefit Preble's.

Issue 7: Trapping studies are a significant threat to Preble's meadow jumping mouse.

Response: The scientific value of trapping studies will be measured against the threats such studies represent to Preble's. The Service will issue permits to qualified individuals conducting approved trapping studies on Preble's. While "live traps" are being used, the Service is aware of a few mortalities associated with recent trapping. Trapping techniques that best safeguard Preble's will be required by the Service.

Issue 8: Predators may be a threat to the Preble's meadow jumping mouse and should be controlled.

Response: While Preble's has co-existed with a community of predators over time, little is known regarding the effect of predators or competing species on Preble's populations. Human activities have undoubtedly altered predator populations. Human development may, for example, increase numbers of great-horned owls and raccoons. However, there is presently insufficient evidence to demonstrate that control of predators would benefit Preble's.

Issue 9: Captive breeding and release, and relocation of the Preble's meadow jumping mouse should be used to stabilize populations and eliminate the need for listing.

Response: Scarcity of suitable habitat presumably limits current Preble's distribution. Maintenance of quality habitat is the principal conservation goal. Relocation and reintroduction of Preble's into unoccupied sites with suitable habitat may become a part of the future recovery of this species.

Issue 10: If the Preble's meadow jumping mouse were protected on Federal land there would be no need to protect it on private land.

Response: The Service is working with the U.S. Air Force, the Department of Energy, and the Forest Service to assure that conservation of Preble's is carried out on all Federal lands on which it currently exists. While both the Air Force Academy and Rocky Flats support apparently stable populations of Preble's, these sites compose a small fraction of the total Preble's range. Protection of these sites alone would not alleviate the need for listing of Preble's or achieve recovery.

Issue 11: Local regulations exist that currently protect the Preble's meadow jumping mouse and its habitat.

Response: The Service has received from the Colorado Department of Natural Resources a summary of local regulations, incentive programs, Colorado Water Conservation Board instream flow decrees, and open space purchase programs that help protect habitats that support Preble's. A variety of regulations apply to activities in riparian areas and, in effect, contribute to conservation of Preble's. However, few local ordinances currently provide direct protection of Preble's or its habitat. Natural areas and wildlife habitat may be considered in zoning or development review, but most ordinances will permit significant variance and provide for considerable latitude in interpretation. For example, construction within the 100-year floodplain may be tightly restricted by such measures, but the mowing, cutting, or overgrazing of Preble's habitat is generally not addressed. The City of Boulder wetlands protection ordinance has a specific provision designed to protect rare and declining species including Preble's. Fort Collins provides protection for "endangered species habitat" in development review, but apparently does not address rare, declining, or threatened species. Incentives and purchase programs contribute to riparian conservation but afford no direct legal protection for Preble's. While often beneficial to Preble's, public acquisition of riparian areas may, at times, result in increased human use incompatible with Preble's.

The Service supports use of local land use regulations to conserve Preble's and its habitat; however, the best measure of their past effectiveness in protecting Preble's is the success of these regulations in maintaining the integrity of riparian systems within Preble's range. Direct and secondary effects of human activity continue to cause alteration of riparian areas despite these protections. The Service is currently engaged in discussions with the Colorado Department of Natural Resources and the Colorado Preble's

Meadow Jumping Mouse Working Group to determine how local regulations and acquisition programs can be used more effectively to protect Preble's and its habitat.

Issue 12: The Service should designate critical habitat for Preble's meadow jumping mouse.

Response: The Service has determined that designation of critical habitat will not provide additional benefits beyond that achieved by the listing of Preble's at this time (see the Critical Habitat section of this rule). The Service could reevaluate designation of critical habitat at some future time should circumstances change and more becomes known about Preble's, its habitat, and potential benefit to the species to be gained from designation of critical habitat.

Issue 13: The Service should extend the proposed rule for a period of 6 months.

Response: The Service can only extend a proposed rule when it finds that there is a substantial disagreement among scientists knowledgeable about the species regarding the sufficiency or accuracy of the data available relevant to the listing. The Service finds no substantial disagreement among scientists knowledgeable about Preble's that would serve as a basis for extension of the proposed rule.

Issue 14: The collaborative planning process for Preble's meadow jumping mouse conservation, initiated by the State of Colorado, should be pursued as an alternative to listing.

Response: Consistent with the spirit and intent of the 1995 "Memorandum of Agreement between the State of Colorado and the Department of Interior Concerning Programs to Manage Colorado's Declining Native Species," the Service fully supports the collaborative planning process for Preble's conservation that is under way in Colorado. The intent of the Memorandum of Agreement is to facilitate and promote collaboration and cooperation in managing and conserving fish and wildlife in Colorado. It was not intended to serve as an alternative to listing threatened or endangered species as required by the Endangered Species Act. The collaborative planning process includes stakeholders from local governments, the private sector, the State, and Federal agencies. This final rule to list Preble's as a threatened species is not intended to discourage or detract from this conservation effort; however, the Service recognizes that it will take time and commitment on the part of numerous stakeholders for this process to achieve meaningful protection of Preble's. The Service

believes that, ultimately, this process will produce a conservation plan and implementation agreements that both protect Preble's and its habitat over the long term and will minimize regulatory and economic effects of this listing. These products may form the basis of one or more Habitat Conservation Plans or a rule prepared in accordance with section 4(d) of the Endangered Species Act. To this end, the Service is providing financial support to help move this process forward.

Issue 15: Rodents are destructive and carry disease. Listing the Preble's meadow jumping mouse may impact pest control and lead to disease or increased crop losses.

Response: Preble's has not been implicated as a vector for human disease. Its rarity and dependence on riparian and wetland areas minimize its potential as a pest. Pest control efforts within and around residences and other buildings, and in crop fields when carried out in accordance with pesticide label restrictions, are unlikely to conflict with Preble's conservation. However, in some cases the application or discharge of agrichemicals, or other pollutants, and pesticides, onto plants, soil, ground water, or other surfaces within areas that drain into streams occupied by Preble's may result in the deterioration of Preble's habitat and cause harm to the species. Use of such chemicals in violation of label directions, or any use following Service notification that such use, application or discharge is likely to harm the species, would be evidence of unauthorized use, application or discharge.

Peer Review

In accordance with policy promulgated July 1, 1994 (59 FR 34270), the Service solicited the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

The data and assumptions regarding the Preble's meadow jumping mouse were reviewed by three specialists. Peer reviewers were identified through inquiries to research institutions, universities, and museums for individuals with recognized expertise with the subject taxa. The reviewers were asked to comment upon specific assumptions and conclusions regarding

the species. Their comments have been incorporated into the final rule as appropriate and are summarized below.

One reviewer provided a context for species status over time scales reflecting long-term climate change and effects of European settlement within Preble's meadow jumping mouse range. The same reviewer (citing a relative lack of species-specific trapping efforts prior to the 1990's and geographical gaps in recent survey efforts) stated that while conclusions regarding recent Preble's decline might be accurate, they were not strongly supported by capture data. The reviewer suggested that examination of the adverse changes to the riparian habitats required by Preble's could provide additional insight to population status and trends.

The reviewers of the Preble's meadow jumping mouse information concluded that additional study of habitat requirements and population biology are needed to implement effective conservation of Preble's. Specifically, the limited knowledge of hibernation habitat requirements was cited by two reviewers. A better understanding of Preble's movement patterns was cited by two reviewers as important. One reviewer emphasized that more information on Preble's food habits is needed.

All three reviewers discussed threats to the Preble's meadow jumping mouse. One reviewer suggested that known populations at the Air Force Academy and Rocky Flats reflect the long-term protection of these sites from human disturbance rather than presence of optimal Preble's habitat. Another reviewer concluded that currently only two or three sites supporting Preble's are adequately protected. Threats discussed by reviewers included fragmentation of riparian corridors, gravel mining, and alteration of water regimes and the resulting effects on riparian vegetation.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be a threatened or endangered species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. After reviewing the best scientific data

currently available, the Service believes that Preble's meadow jumping mouse has undergone a decline in range and that populations within its remaining range have been lost. Habitat loss and fragmentation resulting from human land uses have adversely impacted Preble's populations, and continue to do so. Armstrong (*in litt.* 1997) concluded that the meadow jumping mouse, in this region as elsewhere, is a habitat specialist, and that its specialized habitat is declining. As the summary below demonstrates, a variety of known and potential threats to its habitat have been documented.

The Colorado Natural Heritage Program ranks Preble's meadow jumping mouse as T2, imperiled globally, and S2, imperiled in Colorado; the Wyoming Natural Diversity database ranks Preble's as S1, critically imperiled in Wyoming (Schuerman and Pague 1997).

A study by Compton and Hugie (1993), which was funded by the Service, found it difficult to assess historical trends and current status of Preble's meadow jumping mouse due to the scarcity of demographic data. Based on their review, they recommended that Preble's be federally listed as a threatened species. However, after a largely unsuccessful search for suitable habitat in Wyoming and unsuccessful trapping surveys for Preble's at five sites in southeastern Wyoming in 1993, they concluded that Preble's might be extirpated from Wyoming (Compton and Hugie 1994). Their revised recommendation was that Preble's be federally listed as an endangered species.

Since 1993, efforts to document existing populations of Preble's meadow jumping mouse have increased commensurate with rising concern over its status. Recent trapping efforts have located Preble's meadow jumping mouse populations in some areas (Douglas, El Paso, and Elbert counties, Colorado) where few or no historical records exist. However, recent trapping has also failed to produce captures at historical sites and sites with apparently suitable habitat within Preble's historical range. Preble's is not known to be currently present in Adams, Arapahoe, and Denver counties in Colorado where it was historically documented.

Ryon (1996, *in litt.* 1997) investigated nine historical Preble's meadow jumping mouse capture sites in six Colorado counties through trapping and site history. Ryon concluded that Preble's was absent at all nine sites and related absence of Preble's to changes in habitat (see also Ryon and Harrington

1996). Specific human activities impacting habitat at these sites included real estate development, highway construction, stream alteration, and grazing. In addition, offsite impacts may have caused isolation of sites that rendered them unsuitable for Preble's. Ryon concluded that the range of Preble's has decreased, especially adjacent to or east of the Interstate Highway 25 urban corridor.

Extensive studies of public lands in Boulder County in 1995 resulted in capture of 23 Preble's, on 2 of 13 sites surveyed, in 17,800 trapnights of effort (Armstrong et al. 1996). Sites were selected, in part, based on documented historical presence and perceived quality of habitat. Among the authors' conclusions were that Preble's is not abundant in the Colorado Piedmont of Boulder County and that suitable habitat appeared to be present on some sites where trapping was unsuccessful.

Recent surveys for Preble's meadow jumping mouse at certain other sites with potential habitat in Colorado have been unsuccessful in documenting presence. Surveys funded and carried out by the Department of the Army at the Army's Fort Carson Military Reservation in El Paso and Pueblo counties resulted in no Preble's captures despite 3,311 trapnights of effort in apparently suitable habitat (Bunn et al. 1995). Private researchers and U.S. Department of Agriculture Forest Service personnel found no Preble's in limited surveys of seemingly adequate habitats within the Forest Service's Pawnee National Grassland in northern Weld County (Harrington pers. comm. 1995).

Patterns of capture suggest that populations may fluctuate over time at occupied sites (Shenk *in litt.* 1998). This raises questions regarding security of documented populations and significance of unsuccessful trapping reports. However, trapping surveys provide the best available information regarding current status and distribution of Preble's.

Over 150 surveys for Preble's meadow jumping mouse have been conducted in recent years at locations where development is anticipated. In 1997, results of 104 Colorado surveys were submitted to the Service for proposed or potential development sites that supported potential Preble's habitat. Nine of 35 surveys in El Paso County, 7 of 19 in Boulder County, and 1 of 17 from Jefferson County documented Preble's presence. All successful surveys in El Paso County were on Monument Creek and its tributaries upstream from (north of) downtown Colorado Springs. In contrast,

approximately 15 trapping studies from El Paso County downstream of the Cottonwood Creek and Monument Creek confluence (on Monument Creek, Fountain Creek, and their tributaries) failed to document Preble's. Six of 7 successful Boulder County surveys were near a 2-mile segment of State Highway 36 near Lyons (Ensign Technical Services 1997). Thirty-three 1997 surveys from Adams, Arapahoe, Denver, Douglas, Larimer, and Weld counties failed to locate Preble's. Fragmentation and isolation of habitat have apparently caused local extirpation of Preble's in highly developed areas. Shenk (*in litt.* 1998) suggested that development of the Denver metropolitan area has created a north-south gap in Preble's range.

In contrast to surveys above at anticipated development sites, Meaney et al. (1997) targeted likely Preble's meadow jumping mouse habitat throughout its known range and successfully trapped Preble's at 7 of 10 sites in 1997. Their results filled gaps regarding Preble's status in north-central Colorado and suggest that their ability to identify Preble's habitat has improved over their 1995 and 1996 efforts which found Preble's at 0 of 10 and 4 of 10 sites respectively.

While historical status in Wyoming is less clear (Garber 1995), Preble's meadow jumping mouse is not currently known from its former range in Albany, Goshen, and Natrona counties. Garber documented Preble's persisting at only two Wyoming sites, commented on the difficulty of capturing Preble's at these sites, and concluded that substantial additional work was needed to fully determine the status of Preble's in Wyoming. The Wyoming Game and Fish Department (Bill Wichers *in litt.* 1997) concurred with the conclusion that Preble's has likely been extirpated from most or all of its historical range in Wyoming.

Trapping surveys provide evidence that the Preble's meadow jumping mouse has declined throughout portions of its range. This decline and future threats to existing Preble's populations are linked to widespread habitat alteration. The Colorado Piedmont east of the Front Range and adjacent areas of southeastern Wyoming have changed from predominantly prairie habitat intermixed with perennial and intermittent streams and associated riparian habitats, to a more agricultural and urban setting with grazing, residential, commercial, industrial, and recreational development. The Colorado Front Range urban corridor represents only about 4 percent of the State's land area but supports 80 percent of its population (Wright 1993).

Unfortunately, this area of development corresponds almost directly to known Preble's range. Fueled by human population increases, an increase of 1 million people is estimated by 2020, development in this area continues at an unprecedented rate.

Compton and Hugie (1993, 1994) cited human activities that have adversely impacted Preble's meadow jumping mouse including: conversion of grasslands to farms; livestock grazing; water development and management practices; and residential and commercial development. They mentioned the effects of urbanization occurring from Colorado Springs, Colorado, to Cheyenne, Wyoming, as a continuing threat to remaining populations. Ryon (1995) commented that recent capture sites he observed were on large, historically undisturbed lands supporting native plant communities.

Shenk (*in litt.* 1998) linked potential threats to ecological requirements of Preble's meadow jumping mouse and suggested that factors which impacted vegetation composition and structure, riparian hydrology, habitat structure, distribution, geomorphology, and animal community composition must be addressed in any conservation strategy.

Some researchers hypothesize that overgrazing by livestock may be an important cause of the decline of the Preble's meadow jumping mouse. Compton and Hugie (1994) stated that in southeastern Wyoming almost all private land of appropriate topography and hydrology to support Preble's habitat was heavily grazed by livestock and that overgrazing was the most significant factor in reducing habitat for Preble's. While not mentioning grazing specifically, the Wyoming Game and Fish Commission (Wichers *in litt.* 1997) cited riparian degradation as the primary cause of Preble's decline in Wyoming and stated that the situation would not improve without active management. Ryon (1996) cited livestock grazing as a contributor to lack of structural habitat diversity he observed on historical Preble's sites in Colorado. Two of the largest documented populations of Preble's exist on Federal properties (Rocky Flats and the U.S. Air Force Academy) where livestock grazing is excluded.

The importance of "late season obesity" (the buildup of fat reserves) in meadow jumping mice and its positive correlation to hibernation survival, post-hibernation development, and successful reproduction has been well documented (Nichols and Conley 1982, Muchlinski 1980). Preble's meadow jumping mice entering hibernation with

low fat reserves are less likely to survive the winter or to successfully breed the following spring. Late season grazing of Preble's habitat, as well as mowing or burning, could adversely affect Preble's by reducing the availability of food resources essential for buildup of fat reserves.

City of Boulder Open Space lands endured intensive grazing, farming, or haying regimes until they became part of the City of Boulder Open Space system. Grazing and haying continue on sites supporting the Preble's meadow jumping mouse, largely as land management tools. Impacts of current management practices to Preble's and their habitats are largely unknown.

The Preble's meadow jumping mouse has been documented to coexist on sites supporting grazing, including the Medicine Bow National Forest in Wyoming and Plum Creek, Douglas County, in Colorado. Armstrong et al. (1997) suggested that timing and intensity of grazing are probably important factors in maintaining Preble's habitat and that maintenance of woody vegetative cover may be a key consideration.

Human development has produced profound changes in the hydrology of streams flowing east from the Colorado Front Range. Riparian habitat on which the Preble's meadow jumping mouse depends is in turn dependent on surface flows and groundwater. Water development and management in its various forms can alter Preble's meadow jumping mouse habitat, often, but not always, with adverse impacts. Fitzgerald et al. (1994) stated that inundation of riparian areas to create reservoirs had decreased available Preble's habitat. Compton and Hugie (1993) concluded that management of water for commercial and residential use tends to channelize and isolate water resources, and has reduced in size and fragmented riparian habitats used by Preble's. They found development of irrigated farmland had a negative impact on Preble's habitat, and that any habitat creation it produced was minimal. However, Preble's has been shown to use overgrown water conveyance ditches and pond edges and may use ditches for dispersal (Meaney et al. 1997, Shenk *in litt.* 1998).

Water diversions and associated land use changes can impact Preble's meadow jumping mouse habitat directly, as well as through hydrologic alterations to Preble's habitat located downstream. While an integrated natural resource management plan at the Air Force Academy includes specific provisions for Preble's conservation, Corn et al. (1995)

expressed concern over the hydrologic integrity of Monument Creek and its tributaries because of activities upstream of the Air Force Academy. Flood control, through the placement of riprap and other structural stabilization options, has been proposed on areas that support Preble's, including portions of Monument Creek and its tributaries.

While Rocky Flats supports one of the largest known populations of Preble's meadow jumping mouse and has served as a refuge for Preble's, the future conservation of Preble's at this site is uncertain due to possible impacts to occupied habitats. Without careful planning, Preble's meadow jumping mouse habitats at Rocky Flats could be impacted by the Department of Energy's planned bioremediation (the detoxification of toxic substances using biological agents) and hazardous contaminant cleanup, associated water management practices designed to contain hazardous materials spills and prevent their migration offsite, and dam safety and maintenance activities. An additional threat is potential disruption of the current hydrology by mining operations. There are proposals to expand existing commercial sand and gravel extraction and processing activities in the Rock Creek drainage both outside and within the boundary of Rocky Flats. The Department of Energy does not control mineral rights on the land in question. The Service is currently working with the Department of Energy to provide permanent protection of Preble's habitat at Rocky Flats.

Alluvial aggregate extraction, often in or near riparian habitats, continues to expand as development intensifies along the Colorado Front Range. Ryon (1996) and Armstrong et al. (1997) suggested that such mining can destroy and fragment Preble's meadow jumping mouse habitat. Armstrong (*in litt.* 1997) suggested that mining impacts are significant and, unlike some other human uses, cause permanent changes to Preble's habitat. Mining also targets gravel deposits that may provide key hibernation sites.

Residential and commercial development, accompanied by highway and bridge construction, and instream alterations to implement flood control, directly remove Preble's meadow jumping mouse habitat, or reduces, alters, fragments, and isolates habitat to the point where Preble's meadow jumping mouse can no longer persist. Corn et al. (1995) proposed that a 100 m (328 ft) buffer of unaltered habitat be established to protect the floodplain of Monument Creek from a range of human activities that might adversely effect

Preble's or its habitat. At some historical capture sites, habitat appears intact, but isolation has probably rendered the sites unsuitable for Preble's (Ryon 1996).

Roads, trails, or other linear development through Preble's habitat may act as barriers to movement. Shenk (1998) suggested that on a landscape scale, maintenance of acceptable dispersal corridors linking patches of Preble's habitat may be critical to its conservation.

Development and heavy use of trails within occupied Preble's meadow jumping mouse habitats may impact the species by destroying its habitat, nests, and food resources, or by disrupting behavior. Recreational trail systems have been established or are proposed along many riparian corridors within Preble's range. Heavily used recreational trails currently exist on City of Boulder Open Space lands, including sites that support Preble's. A current study near a new paved trail along South Boulder Creek is assessing impacts to a known Preble's population (Meaney *in litt.* 1998).

Habitat alteration may encourage invasion of weeds. While little is known regarding impact of invasive, nonnative vegetation on Preble's meadow jumping mouse, Ryon (1996) expressed concern and Garber (1995) stated that this may represent one of the most serious problems facing the mouse. Corn et al. (1995) discussed both the problem of invasive weeds degrading Preble's habitat and the potential problem of weed control programs removing cover and thereby impacting Preble's habitat.

In summary after reviewing the best scientific data currently available, the Service finds that Preble's meadow jumping mouse has undergone a decline in range and that populations within its remaining range have been lost. Habitat alteration, degradation, loss, and fragmentation resulting from residential, commercial, recreational, flood control and water development, and agricultural and livestock grazing land uses have adversely impacted and fragmented Preble's populations. Significant threats to the continued existence of Preble's are also posed by hazardous materials, mining, and highway and bridge construction. This species is also highly susceptible to localized extinction from naturally occurring events such as flooding, predation, and disease outbreaks.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Preble's meadow jumping mouse has no known commercial or recreational value. Scientific and educational collecting has not been widespread over the past century. While

the Service is aware of a small amount of incidental mortality associated with recent scientific studies, this is not thought to present a threat to Preble's populations.

C. Disease or predation. The Preble's meadow jumping mouse, as well as other native rodents, carries parasites and diseases that may reduce vigor, curtail reproductive success, and cause death. There is no evidence whether or not any epizootic disease has caused significant impact to Preble's. While plague is regularly found in other rodent species within Preble's range, its impact to Preble's populations is not known.

Predation on the Preble's meadow jumping mouse has always existed as a naturally occurring association between predator and prey. While evidence is scant, human development may have altered this relationship. Armstrong et al. (1996) recommended studies be conducted on influences of the suburban environment and associated densities of species such as striped skunk (*Mephitis mephitis*), raccoon (*Procyon lotor*), and the domestic cat (*Felis catus*) on Preble's. Free-ranging domestic cats may locally present a problem to Preble's. Corn et al. (1995) recommended a 1.5 km (.9 mi) setback of housing development from Preble's habitat to exclude predation by "house cats." As an alternative they suggested a strict prohibition on free-ranging cats. More information is needed about the effects from predation by domestic and feral cats, and perhaps dogs (*Canis familiaris*), on Preble's.

D. The inadequacy of existing regulatory mechanisms. The decline of the Preble's meadow jumping mouse is partially due to the inherent weakness or non-application of the existing laws and regulations that could serve to protect Preble's and its habitat. Relevant Federal laws include the Clean Water Act, Endangered Species Act, Federal Power Act, Fish and Wildlife Coordination Act, Food Security Act, and National Environmental Policy Act. Federal regulations and policies have limited protection authority and scope for non-listed species. These statutes only recommend, not require, that projects carried out, funded, or permitted by the Federal government attempt to mitigate impacts to species of special concern due to scarcity or decline.

Colorado Division of Wildlife Regulations (Chapter 10, Article IV) classify *Z. hudsonius* as a "nongame" species. This designation means that permits must be obtained for take of Preble's meadow jumping mouse related to scientific, educational, or rehabilitation purposes. Preble's is a

"species of special concern" in Colorado; however, this is not a statutory designation. Preble's is currently under consideration for endangered species designation in Colorado. In Wyoming, the Wyoming Game and Fish Department has classified *Z. hudsonius* as a nongame species protected under Wyoming Game and Fish Department Nongame Wildlife Regulations promulgated by WF23-1-103 and 23-1-302. This designation protects Preble's from takings and sales by only issuing permits for the purpose of scientific collection. While the above regulations limit the taking of Preble's, they provide no measures to protect the species' habitats. State listing encourages State agencies to allocate funds and exercise authority to achieve recovery, stimulate research, and allow redirection of priorities within State natural resource departments. However, without additional measures to protect habitat, such State laws are generally inadequate.

There are few regional or local laws, regulations, or ordinances that specifically protect Preble's meadow jumping mouse or its habitat from inadvertent or intentional adverse impacts. A myriad of local regulations, incentive programs, and open space programs exist, as documented in materials forwarded to the Service by the Colorado Department of Natural Resources. While certain regulations are designed to conserve wetlands or floodplains, it is unlikely that they effectively control land uses (grazing, mowing, cutting, burning) that may impact vegetation on which Preble's depends. Further, Preble's may be dependent on hibernacula sites outside the protected wetlands or floodplains. Many existing local regulations create a process of site plan review which "considers" or "encourages" conservation of wildlife, wetlands, and natural habitats. Effectiveness of local regulations in maintaining naturally functioning riparian corridors may vary greatly depending on how these apparently flexible regulations are implemented. Beyond direct impact to Preble's habitat, secondary impacts of development (increased recreational use, altered flow regimes and groundwater levels, and increase in domestic predators) may not currently be addressed at the local level.

Of note is the 1997 creation of a Preble's Meadow Jumping Mouse Working Group, organized by the Colorado Department of Natural Resources to initiate a collaborative planning process designed to produce a legally and scientifically sound approach to conservation of Preble's.

This effort is supported in part by appropriations from Congress, specifically for the Preble's planning process. The Service is an active participant in this process and is fully supportive of the goal of developing a Preble's conservation plan and implementing agreements. However, there are no such plans or agreements currently in place. The Service anticipates that this planning process may lead to the creation of one or more Habitat Conservation Plans or to the application of the Service's discretionary rule-making authority pursuant to section 4(d) of the Endangered Species Act.

E. Other natural or manmade factors affecting its continued existence. Use of pesticides and herbicides has undoubtedly increased across known Preble's meadow jumping mouse range as human land use has intensified. These chemicals could directly poison Preble's or may be ingested through contaminated food or water. Specific impacts to Preble's from pesticides and herbicides are not currently known. Intensive human development creates a range of additional environmental impacts (including but not limited to noise, and the degradation of air and water quality) that could alter Preble's behavior, increase the levels of stress, and ultimately contribute to loss of vigor or death of individuals, and extirpation of populations.

In summary, the Preble's meadow jumping mouse, historically a rare mammal, has declined. Seven counties in Colorado and two in Wyoming are known to support Preble's populations. Riparian habitats required to support Preble's have been severely modified or destroyed by human activities in many areas east of the Colorado Front Range and in southeastern Wyoming. With current human population increases, the loss and modification of riparian habitat continues. Existing regulations have proven to be inadequate to protect Preble's, as witnessed by its apparent decline and the continued destruction and modification of its habitats.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in developing this rule. Based on this evaluation, the preferred action is to list the Preble's meadow jumping mouse as a threatened species. The Service has determined that the Preble's meadow jumping mouse is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and therefore meets the requirements to be listed as threatened. Based on 1997

survey data, Preble's is now known to exist in several additional sites in Colorado. In addition, 1997 studies in Douglas County, Colorado, suggest substantial occupied habitat exists along East Plum Creek and West Plum Creek. For this reason, the Service believes that a designation as threatened more accurately reflects the threats facing this species than the endangered status that was identified in the March 25, 1997, proposed rule. The Service knows of no substantial disagreement among scientists knowledgeable about Preble's regarding the sufficiency or accuracy of the available data relevant to this determination, which would serve as a basis for extension of the proposed rule. Critical habitat is not being proposed for the reasons stated below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for Preble's meadow jumping mouse for the reasons described below.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see Available Conservation Measures section). As such, designation of critical habitat may affect activities on Federal

lands and may affect activities on non-Federal lands where such a Federal nexus exists. Potential benefits of critical habitat designation derive from section 7(a)(2) of the Act, which requires Federal agencies, in consultation with the Service, to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of critical habitat of such species.

Critical habitat, by definition, applies only to Federal agency actions. 50 CFR 402.02 defines "jeopardize the continued existence of" as meaning to engage in an action that would reasonably be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. Both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In the section 7(a)(2) consultation process, the jeopardy analysis focuses on potential effects on the species' populations, whereas the destruction or adverse modification analysis focuses on habitat value, specifically on those constituent elements identified in the critical habitat listing.

Common to both jeopardy and destruction or adverse modification biological opinions is the requirement that the Service find an appreciable effect on both the species' survival and recovery. This is in contrast to the public perception that the adverse modification standard sets a lower threshold for violation of section 7 than that for jeopardy. Thus, Federal actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of designated critical habitat does not materially affect the outcome of consultation. Biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but is not likely to jeopardize the species for which it is designated are extremely rare historically; none have been issued in recent years. Thus, the Service believes that, from a section 7 consultation perspective, little or no additional conservation benefit would be achieved for Preble's meadow jumping mouse by the designation of critical habitat.

Additionally, designation of critical habitat provides protection only on Federal lands or on non-Federal lands when there is Federal involvement, through authorization or funding or

participation, in a project or activity. Four populations of the Preble's meadow jumping mouse are located on Federal lands administered by the U.S. Forest Service, U.S. Air Force and the Department of Energy. These agencies are aware of the species' occurrence at these sites and the requirement to consult with the Service. The Department of Energy (DOE) at Rocky Flats and the Air Force Academy have both been active in Preble's meadow jumping mouse survey, research and conservation. The DOE continues to study Preble's at Rocky Flats, has mapped occupied and potential habitat, and is developing a PMJM Protection Plan for the facility. The Air Force Academy has been active in surveying for Preble's and continues to support research into habitat use including radio tracking of animals. Warren Air Force Base and the Forest Service have supported some survey work with additional work remaining to be accomplished. In each case these facilities, Rocky Flats and the Air Force Academy, both of which support important populations, are well aware of their responsibilities regarding section 7. The designation of critical habitat would provide no change in their present operations and impart no additional benefit. Therefore, informing these agencies of the species location and need to consult is unnecessary.

Designation of critical habitat provides no limitations or constraints on private landowners if there is no Federal nexus, and, as such, provides the species no benefit. Activities on private lands rarely have a Federal nexus. A Federal nexus may in some cases be found for parcels of lands where there is an activity either funded, authorized or permitted by a Federal agency. Under the Clean Water Act section 404 a permit is required for any activity resulting in the discharge of dredge and fill material from jurisdictional waters. Generally such activities on small parcels of private lands are excluded from individual permit requirements under the Corps section 404 Nationwide Permit program. In all cases where there is a Federal nexus to an activity occurring on private lands, any underlying Federal action (the issuance of a permit) triggering the standard for adverse modification would also be found to trigger the jeopardy standard, with the existence of designated critical habitat not materially affecting the outcome of consultation. Therefore such designation of critical habitat on balance would not afford the Preble's meadow jumping mouse any additional benefit.

Expansive blocks of public lands ensures that Federally sponsored activities will receive the benefit of section 7 consultation, regardless of whether or not critical habitat is designated. Protection of the habitat of the species will also be addressed through the Act's recovery process. Only through the recovery process will a recovery plan be created that will prescribe specific management actions and the establishment of numerical population goals. In addition, the landowners may choose to develop a habitat conservation plan through the section 10 permitting process that will manage for the conservation of the species. Thus, protection of habitat can be addressed through the recovery, section 10 and section 7 consultation processes, and designation of critical habitat would afford the Preble's meadow jumping mouse no additional benefit.

Listing of the Preble's meadow jumping mouse as a threatened species also publicizes the present vulnerability of this species and, thus, can be reasonably expected to increase the threat of vandalism or intentional destruction of the species habitat. In light of the vulnerability of this species to vandalism or the intentional destruction of its habitat (for example poisoning, lethal trapping, burning or cutting of habitat), the designation of critical habitat in and of itself and the publication of maps providing its precise locations and descriptions of essential elements, as required for the designation of critical habitat, would reasonably be expected to increase the degree of threat to the species and its habitat, increase the difficulties of law enforcement, and further contribute to the decline of Preble's.

The Service acknowledges that critical habitat may provide some minor benefit in that it may identify areas important to a species, call attention to those areas in special need of protection and contribute a positive influence for securing funding or land acquisitions, etc., if a parcel of land is designated as critical habitat. However, in this case, where identification of such areas is expected to exacerbate a potentially serious additional threat (vandalism), information regarding the special needs of the species for protection can be disseminated more effectively through alternative means, and such designation could also impart negative connotations and dissuade people from participating in conservation activities simply because an area is designated critical habitat.

Therefore, because of the increased threat of taking, the fact that designation

of critical habitat would provide little different or greater benefit than that provided by the jeopardy standard under section 7 regulations, and that any minor benefits accruing from such designation are outweighed by its negative effects, the Service has determined that the designation of critical habitat for the Preble's meadow jumping mouse is not prudent.

The Service will continue its efforts to obtain more information on Preble's meadow jumping mouse biology and ecology, including essential habitat characteristics, current and historical distribution, and existing and potential sites that can contribute to conservation of the species. The information resulting from this effort will be used to identify measures needed to achieve conservation of the species, as defined under the Act. Such measures could include, but are not limited to, development of conservation agreements with the States, other Federal agencies, local governments, and private landowners and organizations.

Available Conservation Measures

Conservation measures provided to a species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition, cooperation with the States, and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Preble's meadow jumping mouse occurs on lands administered by the U.S. Air Force, Department of Energy, U.S. Forest Service, Colorado Division of Wildlife, Colorado State Parks, Boulder County, Jefferson County, City of Boulder, and on private lands. For Federal lands where Preble's occur, the Act would require the appropriate land management agency to evaluate potential impacts to Preble's that may result from activities they authorize or permit. The Act requires consultation under section 7 of the Act for activities on Federal, State, county, or private lands, including tribal lands, that may impact the survival and recovery of Preble's, if such activities are funded, authorized, carried out, or permitted by Federal agencies. The Federal agencies that may be involved as a result of this proposed rule include the Service, Department of Energy, Forest Service, U.S. Army Corps of Engineers, Natural Resources Conservation Service, Bureau of Land Management, Bureau of Reclamation, Department of the Army, Department of the Air Force, Office of Surface Mining, Western Area Power Administration, Rural Utilities Service, Federal Energy Regulatory Commission, Department of Housing and Urban Development, Federal Highway Commission, and Environmental Protection Agency. Federally listing Preble's as a threatened species will require these agencies to consider potential impacts to Preble's prior to approval of any activity authorized or permitted by them (e.g., Clean Water Act's section 404 permits, grazing management, military maneuvers, bioremediation and hazardous materials cleanup, mining permitting and expansion, highway construction, etc.).

Federal agency actions that may require consultation as described in the preceding paragraph include: removing, thinning or altering vegetation; implementing livestock grazing management that alters vegetation during warm seasons; construction of roads or access along or through riparian areas; channelization and other alteration of perennial and intermittent streams and their hydrological regimes for flood control and other water management purposes; permanent and temporary damming of streams to create water storage reservoirs or deviate the stream's course; human activities in or near Preble's meadow jumping mouse habitats; construction of residential, commercial, and industrial developments, including roads, bridges, public utilities and telephone lines, pipelines, and other structures; bioremediation and hazardous materials

management, containment, and cleanup efforts such as those at Rocky Flats; and, sand and gravel and other types of mining activities within or upstream of Preble's meadow jumping mouse habitats.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all listed wildlife. The prohibitions codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving listed wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or incidental take in connection with otherwise lawful activities. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office and Management and Budget clearance number 1018-0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.32.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (telephone 303/236-8155, Facsimile 303/236-8192).

The Service adopted a policy on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The Service believes that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, mineral development, housing and commercial development, recreational trail development, road and dam construction, hazardous material containment and cleanup activities, prescribed burns, pest control activities, pipelines or utility lines crossing riparian/wet meadow habitats, logging, military maneuvers and training) when such activity is conducted in accordance with any incidental take statement prepared by the Service in accordance with section 7 of the Act;

(2) Activities such as grazing management, flood and erosion control, agricultural conversions, wetland and riparian habitat modification, mineral development, housing and commercial development, road and dam construction, recreational trail development, hazardous material containment and cleanup activities, prescribed burns, pest control activities, pipelines or utility lines crossing riparian/wet meadow habitats, logging, military maneuvers and training when such activity does not occur in habitats suitable for the survival and recovery of the Preble's meadow jumping mouse, does not alter downstream hydrology or riparian habitat supporting Preble's, and does not result in actual death or injury to the species by significantly modifying essential behavioral patterns;

(3) Within the hibernation period and outside denning areas, controlled burns and mowing, or other activities that temporarily alter the Preble's meadow jumping mouse food sources. The period when mowing and burning activities would not impact the Preble's meadow jumping mouse nourishment may vary at specific locations, but would usually fall between October 15 and April 15 of every year;

(4) Human recreational activities undertaken on foot or horseback at breeding, feeding, and hibernating sites that do not degrade Preble's meadow jumping mouse habitat (e.g., waterfowl hunting, bird watching, sightseeing, photography, camping, hiking); and,

(5) Application of pesticides in accordance with label instructions, in areas that do not drain into Preble's meadow jumping mouse habitats.

Activities that the Service believes could potentially result in a violation of section 9 include, but are not limited to:

(1) Unauthorized or unpermitted collecting, handling, harassing, or taking of the species;

(2) Activities that directly or indirectly result in the actual death or

injury death of Preble's meadow jumping mice, or that modify the known habitat of the species, thereby significantly modifying essential behavioral patterns (e.g., plowing, mowing, or cutting; conversion of wet meadow or riparian habitats to residential, commercial, industrial, recreational areas, or cropland; overgrazing; road and trail construction; water development or impoundment; mineral extraction or processing; off-highway vehicle use; and, hazardous material cleanup or bioremediation); when such activities are not carried out pursuant to either a section 10(a)(1)(B) permit issued by the Service; a protective regulation issued under section 4(d) necessary and advisable for the conservation of the species, or in accordance with any reasonable and prudent measures given by the Service under section 7(b)(4)(C)(ii) of the Act.

(3) The application or discharge of agricultural chemicals, or other pollutants, and pesticides, onto plants, soil, ground water, or other surfaces in violation of label directions, or any use following Service notification that such use, application or discharge is likely to harm the species; would be evidence of unauthorized use, application or discharge.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Colorado Field Office (see ADDRESSES section).

The prohibition against intentional and unintentional "take" of listed species applies to all landowners regardless of whether or not their lands are within designated critical habitat (see 16 U.S.C. 1538(a)(1), 1532(1a) and 50 CFR 17.3). Section 10(a)(1)(B) authorizes the Service to issue permits for the taking of listed species incidental to otherwise lawful activities such as agriculture, surface mining, and urban development. Take permits authorized under section 9 must be supported by a habitat conservation plan (HCP) under section 10 that identifies conservation measures that the permittee agrees to implement to conserve the species, usually on the permittee's lands. The Service would approve an HCP, and issue a section 10(a)(1)(B) permit only if the plan would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the

National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited is available upon request from the Colorado Field Office (see **ADDRESSES** above).

Author. The primary author of this document is Peter Plage of the Colorado Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of

the Code of Federal Regulations, as amended, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.
* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:							
Mouse, Preble's meadow jumping.	<i>Zapus hudsonius preblei</i> .	U.S.A. (CO, WY) .....	.....do	T	636	NA	NA

Dated: May 8, 1998.
John G. Rogers,
Director, Fish and Wildlife Service.
[FR Doc. 98–12828 Filed 5–12–98; 8:45 am]
BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 63, No. 92
Wednesday, May 13, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL
MANAGEMENT

5 CFR PART 351
RIN 3206–AH95

Reduction in Force Offers of Vacant
Positions

AGENCY: Office of Personnel
Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management is proposing retention regulations that clarify existing policy on reduction in force offers of vacant positions.

DATES: Written comments will be considered if received no later than July 13, 1998.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment Service, Office of Personnel Management, Room 6F08, 1900 E Street, NW; Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon, or Jacqueline R. Yeatman, 202–606–0960, FAX 202–606–2329.

SUPPLEMENTARY INFORMATION:

Assignment Rights-General

Reduction in force assignment rights are covered in part 351, subpart G, of title 5, Code of Federal Regulations. Section 351.701(a) provides that a competing employee in retention tenure Groups I and II with current performance ratings of at least “Minimally Successful” who has been released from a competitive level is entitled to an offer of assignment under the retention regulations if the employee has “Bumping” or “Retreating” rights to an available position in the same competitive area.

Section 351.701(a) provides that the assignment right is limited to positions lasting at least 3 months with the same work schedule, and in the same competitive area, as the position of the released employee. The assignment

right is to another position which requires no reduction, or the least possible, reduction, in representative rate.

Section 351.701(b)(2) covering bumping rights, and § 351.701(c)(2) covering retreat rights, provide that the available position must be within three grades or grade-intervals (or equivalent) of the employee's present position. However, under § 351.702(c)(2), an employee who is eligible for veterans' preference under the retention regulations, and who has a service-connected disability of 30 percent or more, has a retreat right to positions up to five grades or grade-intervals (or equivalent) of the employee's present position.

Assignment Rights-Offer of Vacant
Positions

Section 351.201(b) provides that an agency is not required to offer a vacant position during a reduction in force. However, if the agency chooses to fill a vacancy with an employee who has been released under authority of 5 CFR part 351 from a competitive level, then the agency must make the offer consistent with the provisions found in subpart G of that part.

Section 351.704(a)(1) provides that an agency may satisfy an employee's right to assignment under section 351.701 by offering the employee assignment to a vacant position under § 351.201(b) if the offered position has a representative rate equal to the employee's entitlement under § 351.701. (As another option, § 351.704(a)(1) also provides that an agency may satisfy an employee's right to assignment under the administrative assignment provisions of § 351.705.)

Section 351.704(a)(1) is now revised to clarify longstanding OPM policy that an agency may also offer an employee assignment to a vacant position in lieu of separation by reduction in force under 5 CFR part 351.

Section 351.704(a)(1) is also revised to clarify longstanding OPM policy that an offer of assignment to a vacant position must be consistent with § 351.201(b) and § 351.701, including the grade limits applicable to bump and retreat set forth in § 351.701(b)(2) and § 351.701(c)(2). This revision modifies the decision of the Merit Systems Protection Board in *Monk v. Department of the Navy*, 68 M.S.P.R. 560 (1995), in which the Board held that the usual grade limits applicable to bump and

retreat rights do not apply to reduction in force offers of vacant positions. Agencies may still make offers of vacant positions below the applicable grade limits under other authority (e.g., as an offer of voluntary change to lower grade in lieu of reduction in force).

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management

Janice R. Lachance,
Director.

Accordingly, OPM proposes to amend part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503, Section 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.704, paragraph (a)(1) is revised to read as follows:

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment to a vacant position under § 351.201(b), or by assignment under any applicable administrative assignment provisions of § 351.705, to a position having a representative rate equal to that the employee would be entitled under § 351.701. An agency may also offer an employee assignment under § 351.201(b) to a vacant position in lieu of separation by reduction in force under 5 CFR part 351. Any offer of assignment under § 351.201(b) to a vacant position must meet the requirements set forth under § 351.701.

[FR Doc. 98–12623 Filed 5–12–98; 8:45 am]
BILLING CODE 6325–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 922, 931, 932, 933, 934, and 941

(No. 98-11)

RIN 3069-AA55

Election of Federal Home Loan Bank Directors

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulations on the election of Federal Home Loan Bank (Bank) directors. The rule would devolve responsibility for determining the eligibility of elective directors and administering the Bank director election process from the Finance Board to the Banks. The proposed rule is part of the Finance Board's continuing effort to transfer management and governance responsibilities to the Banks and is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

DATES: The Finance Board will accept comments on the proposed rule in writing on or before June 29, 1998.

ADDRESSES: Mail comments to Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, Compliance Assistance Division, Office of Policy, 202/408-2872, or Roy S. Turner, Jr., Attorney-Advisor, Office of General Counsel, 202/408-2512, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Pursuant to section 7 of the Federal Home Loan Bank Act (Act), which sets forth the eligibility requirements and the procedures for electing and appointing Bank directors, and regulations promulgated thereunder, the Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), determined the eligibility of all Bank directors, administered the Bank director elections, and appointed public interest directors. See 12 U.S.C. 1427 (1989); 12 CFR part 522 (1989). After Congress abolished the FHLBB in 1989, see Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub.L. 101-73, sec. 401, 103 Stat. 183 (Aug. 9, 1989), the Finance

Board adopted the FHLBB regulations on Bank directors, without change. See 54 FR 36757 (Sept. 5, 1989), *codified at* 12 CFR part 932. The Finance Board subsequently amended its regulations to implement the changes FIRREA made to the eligibility requirements for, and to apply the conflicts of interest limitations FIRREA imposed on, Bank directors. 55 FR 1393 (Jan. 16, 1990); 56 FR 55205 (Oct. 25, 1991); see FIRREA, secs. 707, 710(b)(4), 103 Stat. 417, 418, *codified at* 12 U.S.C. 1427.

Since the enactment of FIRREA the Finance Board has determined the eligibility of all Bank directors, has administered the election of Bank directors, and has appointed public interest directors. As part of the Finance Board's continuing effort to devolve management and governance responsibilities to the Banks, the Finance Board believes it appropriate to transfer the administration of the elections, including the responsibility to determine the eligibility of elective directors, to the Banks. The proposal would not affect the appointment of public interest directors, which remains within the sole discretion of the Finance Board.

The proposed rule would amend, redesignate, or eliminate various provisions of part 932, and would include conforming amendments to parts 931, 933, 934, and 941. The Finance Board also is proposing to revise the current conflicts of interest and financial disclosure requirements established by part 922 of its regulations for appointed members of the Board of Directors of the Finance Board. All of the proposed changes are consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review. See E.O. 12861, 58 FR 48255 (Sept. 11, 1993).

II. Analysis of the Proposed Rule

The proposal would include a separate definition section for the election regulations, the principal provisions of which are described below.

A. Definitions—§ 932.1

1. "Bona Fide Resident"—§ 932.1

Both the Act and current regulation use the term "bona fide resident" to identify individuals eligible to serve as a director of a Bank. See 12 U.S.C. 1427(a); 12 CFR 932.18(a)(2) (1997). Neither the Act nor the regulation, however, defines the term. The proposed rule would define "bona fide resident" of a Bank district. The definition would include alternative

means of being considered a "bona fide resident" of a Bank district.

First, an individual would be a "bona fide resident" if he or she maintains a principal place of residence within the Bank's district. The concept of a principal place of residence generally requires both physical presence and intent to remain, or an intent to return after an absence. An individual's principal place of residence usually is the same as the permanent residence reported to the Internal Revenue Service.

There have been some instances in which an officer or director of a member located in one state maintains a principal residence in an adjacent state, which happens to be in another Bank district. In such cases, the individual would not be eligible to serve as Bank director under a "principal residence" test. By interpretation, and on a case-by-case basis, the Finance Board has allowed such individuals to serve as Bank directors, provided they own or lease a residence, other than their principal residence, in the district.

As a second means of being deemed a "bona fide resident," the proposal would codify this interpretation. The rule would deem an individual to be a "bona fide resident" if he or she owns or leases in his or her name a residence within the Bank's district, and maintains a requisite employment nexus, *i.e.*, if an elective director, he or she also is a director or officer of a member located within the district or, if an appointive director, he or she is employed within the Bank district. Qualifying residences might include vacation homes, or other homes used seasonally or on a part-time basis, that the individual owns or leases in his or her name. For elective directors, a person is eligible to serve only as a representative of the state in which the principal place of business of his or her employer (the member) is located, although the residence, whether principal or otherwise, may be in any state within the district.

2. "Docket Number"—§ 932.1

Various provisions of the current regulations require a Bank to identify its members by name, city or county and state. As a matter of practice, the Finance Board assigns a docket number to each new member, which is used by the Finance Board and the Banks to identify that member. The proposed rule would define "docket number" as the number assigned by the Finance Board and used by the Finance Board and the Banks to identify a particular member. The term is used in several provisions of the proposed regulation and is

intended to assist staff of the Banks in administering the elections by distinguishing between members that have the same or similar names.

3. "Member"—§ 932.1

Section 2(4) of the Act defines "member" as an institution that has subscribed for stock in a Bank. 12 U.S.C. 1422(4). For purposes of the election of directors, section 7(b) of the Act defines the term "member" as "a member of a Federal Home Loan Bank which was a member of such bank at the end of" the calendar year preceding the election. 12 U.S.C. 1427(b). The proposed rule would define "member" as an institution admitted to membership and owning capital stock in a Bank, which tracks the general definition of "member." To conform to the section 7 definition of "member," the proposal would include textual references to the "record date" where appropriate.

4. "Record Date"—§ 932.1

The proposed rule defines December 31 of the year preceding the election as the "record date" for the Bank director elections.

5. "Voting State"—§ 932.1

The proposed rule would define a "voting state" to mean the District of Columbia, Puerto Rico, or state in the United States in which a member's principal place of business is located as of the record date. Puerto Rico would be designated as the voting state for members whose principal place of business is located in the Virgin Islands, which conforms to current practice. Hawaii would be designated as the voting state for members whose principal place of business is located in Guam, which conforms to current practice, as well as for members whose principal place of business is located in American Samoa and the Commonwealth of Northern Mariana Islands, which is new.

B. Dates—§ 932.2

Section 932.14(f) of the current regulation provides that if a date prescribed in the regulations falls on Saturday, Sunday or holiday, the next business day shall be included in the time allowed. See 12 CFR 932.14(f)(1997). The proposed rule would amend this provision by substituting "federal holiday" for "holiday" and expanding it to include dates set by the Banks pursuant to the proposal, as well as those specified in the regulations.

C. Director Elections—§ 932.3

1. Responsibilities of the Banks

Under the existing regulation, the Finance Board is solely responsible for the conduct and administration of the director elections. Proposed § 932.3 would transfer this responsibility to the Banks and would require them to administer and conduct an annual election to fill those directorships, the terms of which have been designated by the Finance Board as commencing on January 1 of the following year. That would include existing directorships that have been designated as continuing, plus any newly designated seats. The disinterested members of the board of directors, or a committee of disinterested directors, would have the responsibility for administering the election, which would allow their oversight and approval of the process, and would not preclude the use of staff as well. The proposal would provide that the term of each elective directorship shall commence on January 1 of the year immediately following the election. Each Bank would have the discretion to determine the dates for the various stages of the election process, so long as the Bank completes the process in sufficient time to allow newly elected directors to assume their seats on January 1 of the year following the election.

2. Designation of Elective Directorships

Section 7(a) of the Act provides that the board of directors of each Bank shall have a minimum of fourteen members: eight elective directors and six appointive directors. See 12 U.S.C. 1427(a). Section 7(b) of the Act requires the Finance Board to designate the number of elective directorships representing the members of each state in a Bank district. See *id.* 1427(b). The Act also requires the Finance Board to allocate the elective directorship seats among the states within the Bank district based upon the ratio of the required Bank stock held by members in the state to the total required Bank stock in the district, ensuring that "in the case of each state such number shall not be less than one and shall be not more than six." See *id.* 1427(c).

Section 932.3(b) of the proposed rule carries forward the requirements of sections 7(a), 7(b) and 7(c) of the Act, requiring the Finance Board annually to designate the number of elective directorships for each Bank district. The proposed rule would specify the methodology by which the Finance Board would make the required allocation of directors. The process would begin by allocating one elective

directorship to each state within a Bank district. If the number of elective directorships so allocated is less than eight, the proposed rule § 932.3(b)(2) would require the Finance Board to allocate the remaining directorships by using the method of equal proportions, until the total number allocated for the district equals eight. The method of equal proportions is the formula used by Congress to apportion congressional seats among the fifty states. The Act does not prescribe details of the Finance Board's allocation, and the Finance Board is proposing to adopt this method because it believes that the method is a reasonable means of implementing congressional intent on how Bank director seats should be allocated.

The Act also includes a grandfather provision, which guarantees that each state is entitled to at least the number of elective directorships that it had on December 31, 1960. See 12 U.S.C. 1427(c). Section 932.3(b)(3) carries this requirement forward in the proposed rule, requiring the Finance Board to allocate any additional elective directorships necessary to comply with the grandfather provision.

Section 7(e) of the Act authorizes the Finance Board to add an elective seat to the board of the Bank of the district in which Puerto Rico is located if at the time the district has fewer than five states. See 12 U.S.C. 1427(e). Section 932.9 of the current regulation allocates one additional elective directorship to the Bank of New York, representing the Commonwealth of Puerto Rico. Section 932.3(b)(4) of the proposal would implement this requirement.

The Act also provides the Finance Board with the discretionary authority to increase the number of elective directorships up to thirteen, and the number of appointive directorships up to three-fourths of the number of elective directorships, in any district with five or more states. See 12 U.S.C. 1427(a). The proposal would include this provision, and would provide that in creating any additional appointive directorships the Finance Board may round up to the nearest whole number.

Section 932.3(c) of the proposed rules would require the Finance Board to notify each Bank, by May 10 of each year, of the total number of elective directorships established for the Bank and the number of elective directorships representing the members in each state in the district. The proposal also would codify current practice of allowing incumbent directors to retain their seats for the remainder of their term in the event that the Finance Board were to reduce the number of seats allocated to a particular state as part of the annual

designation of seats. The proposal also would include a transition provision, making clear that these amendments do not affect the current terms of office of the elective directors, and precluding the Banks from altering the commencement or termination dates of those terms. Thus, the proposal would retain the current staggering of elective directorship terms at each Bank.

D. Capital Stock Report—§ 932.4

Section 932.12 of the existing regulation requires each Bank to submit to the Finance Board by April 15 a report detailing the number of shares of Bank stock each of its members was required to hold at the end of the preceding calendar year. See 12 CFR 932.12 (1997). Proposed § 932.4 would continue this requirement, but would require submission of the report by April 10. Each Bank's report must include the following information for its district: the number of members within each voting state and the number of shares of capital stock required to be held by each member as of the record date and the aggregate total number of shares of capital stock required to be held by all members in each voting state as of the record date. The number of shares of stock is to be the greater of either the advances-to capital stock requirement or the minimum capital stock requirement. If a member has elected to purchase its minimum capital stock holding in installments, the number of shares of capital stock the member would be deemed to own for these purposes would be the cumulative total of shares actually purchased as of the record date.

As is currently the practice, the Finance Board would rely upon information from the capital stock report to designate elective directorships among the states in each Bank district. Each Bank also must notify each of its members of its minimum capital holdings pursuant to § 933.22(b)(1) and must certify to the Finance Board that it has done so and that to the best of its knowledge, the information within the capital stock report is accurate and complete.

Proposed § 932.4 would permit a member to object to its required capital holdings pursuant to § 933.22(b)(1), provided it does so in writing to the Finance Board within 15 days after the date on which it receives that information. The Finance Board then must promptly resolve any differences about the data, after which the Finance Board's determination would be final.

E. Determination of Member Votes—§ 932.5

Section 7(b) of the Act provides that in electing directors, each member may cast a number of votes equal to the number of shares of capital stock in the Bank the member was required to hold as of the record date, which may not exceed the average number of shares required to be held by all of the members as of the record date. See 12 U.S.C. 1427. At present, the Finance Board determines the number of votes each member may cast. Under the proposal, the Banks would assume this responsibility.

There are a number of provisions in the current regulations terminating voting rights on the basis of events occurring after the record date, such as a merger, withdrawal from membership or receivership. See 12 CFR §§ 933.24–933.28 (1997). By keying the existence of voting rights exclusively to the number of shares held as of the record date, the proposal would allow the legal successor to any such member to exercise whatever voting rights the member could have exercised in the election. In years subsequent to such a transaction, the successor's right to vote, if any, would be determined by its own membership status.

F. Elective Director Nominations—§ 932.6

1. Election Announcement

Section 932.13 of the existing regulation requires the Finance Board to provide a written election announcement to the members by June 15 and to allow members until July 15 to submit nominating certificates. See 12 CFR 932.13(a), (b) (1997). Under proposed § 932.6, the Banks would provide to each member a written announcement of the upcoming annual director election, and would be required to do so within a reasonable time in advance of the election. The election announcement must include: (1) the number of elective directorships designated as representing the members in each voting state in the Bank district; (2) the name of each Bank director, the name and city or county and state of the member each elective director serves as an officer or director or the organization with which each appointive director is affiliated, if any, and the expiration date of each director's term of office, (3) an attachment indicating the name and city, county and state of every member in the member's voting state, and the number of votes each such member may cast in the election; and (4) a nominating certificate for the appropriate voting state. If there is no

election in a state, the Bank need not provide the attachment and the nominating certificate.

2. Nominations

Consistent with section 7(b) of the Act, proposed § 932.6(b) authorizes any member eligible to vote in an election to nominate a qualified individual to run for election for any open elective directorship in its voting state. See U.S.C. 1427(b). In order to do so, a member must submit to its Bank, before a deadline to be designated by the Bank, a nominating certificate that has been duly adopted or certified by its governing body or by an individual with authority to act on behalf of its governing body. The certificate must include the name of the nominee and the name, location and docket number of the member at which the nominee serves as an officer or director. A member may submit only one nominating certificate for each open directorship. Unlike the current rule, members would submit nominating certificates exclusively to their Bank; the Finance Board would no longer receive or review the certificates.

To provide members with sufficient time to complete and submit nominating certificates, proposed § 932.6(b)(3) requires the Banks to set a deadline for submissions to the Bank, which must be at least 30 days after the date on which the Bank mails the notice of the election. The Bank may not consider nominating certificates received after the deadline. To facilitate compliance reviews by Finance Board examiners, proposed § 932.6(b)(3) requires a Bank to retain all nominating certificates it receives for at least two (2) years after the date of election.

3. Accepting Nominations

Proposed § 932.6(c) requires each Bank, upon receiving a nomination, to notify the nominee in writing. The Bank will notify the nominee once regardless of the number of nominations received by the nominee. To accept a nomination, the nominee must submit an executed Form E-1 (See Appendix A to the Preamble) to the Bank prior to a deadline established by the Bank, which must be at least 30 days after the date of the notice of the nomination. A nominee may decline the nomination by advising the Bank in writing or by failing to submit the Form E-1 before the deadline.

G. Eligibility Requirements for Elective Directors—§ 932.7

Proposed § 932.7 would require the Banks to verify that nominees meet statutory and regulatory eligibility

requirements for elective directors before placing their names on the ballots. See 12 U.S.C. 1427. Under the current rule, the Finance Board makes the determination regarding eligibility. See 12 CFR 932.14 (1997).

The Banks must determine that each elective director-nominee is a citizen of the United States and a bona fide resident of the Bank's district. In addition, the nominee must be an officer or director of a member that is located in the voting state to be represented by the elective directorship and was a member as of the record date. The member also must meet the minimum capital requirements of its appropriate federal or state regulator.

The proposed rule would require information concerning state regulatory requirements only if the member is not subject to supervision by a federal regulator. If a member is subject to regulation by both a state and federal regulator, i.e., state-chartered financial institution insured by the Federal Deposit Insurance Corporation, the individual need only submit information concerning the federal regulator's capital requirements. The term "appropriate federal regulator" has the same meaning as the term "appropriate Federal banking agency" in section 2(3) of the Federal Deposit Insurance Act, and, for federally insured credit unions, means the National Credit Union Administration. See 12 U.S.C. 1813(q); 12 CFR 931.26 (1997). The proposed regulation would continue to define the term "appropriate state regulator" to mean any state officer, agency, supervisor or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a member. See 12 CFR 933.1(f) (1997).

Under the proposed rule, the Banks would (as the Finance Board has done) verify a nominee's eligibility by relying on the information each nominee provides on Form E-1. The proposed rule does not provide for any review of an adverse decision on a particular nominee's eligibility. The Finance Board considered establishing some such mechanism, but has opted not to do so, principally due to the time constraints involved and the relatively straightforward nature of the eligibility requirements. Moreover, the procedures adopted for making such determinations will be subject to the scrutiny of the Finance Board's examiners. The Finance Board specifically requests comments on the need for such a provision.

To assist the Banks in their eligibility determinations, the proposed rule includes three provisions describing situations in which a nominee would

not be eligible to be a director. Each of these provisions is based on a statutory prohibition. Specifically, a nominee is not eligible to become an elective director if he or she is currently an elective director, unless the current term of office would expire before the commencement of the new term of office. In addition, a nominee's prospective service must not be barred by the term limit provisions of the Act, and a nominee may not be an incumbent appointive director. The term limit provision makes ineligible any person who has been elected to, and served all or part of, each of three consecutive full terms of office as an elective director, if less than two years have passed since the expiration of the last term. See 12 U.S.C. 1427(d)(term limit provision). Any such individual would be eligible to run for an elective directorship that begins two years after the end of that director's third term.

H. Election Process—§ 932.8

1. Ballots

Similar to the current process conducted by the Finance Board, the proposed rule would require the Bank to prepare a ballot for each voting state with a directorship to be filled in the election, and to mail the ballot to all members located in that state that were members as of the record date. An institution that becomes a member after the record date is not eligible to vote in that year's election, and a Bank may not provide any such institution with a ballot or allow it to vote during that year. The ballot must include certain minimum information, including an alphabetical listing of the names of each nominee, the name, location and docket number of the member at which each nominee serves, the nominee's title or position with the member, and the number of elective directorships to be filled. The Bank must prepare and mail the ballot promptly after verifying the eligibility of the nominees, and must include on the ballot a statement that write-in candidates are not permitted and a confidentiality statement that the Bank will not disclose how the member voted, which is intended to maintain ballot secrecy.

The rule would allow a Bank to include other relevant information on the ballot, at its discretion, such as the number of votes that the respective member may cast. The proposed rule permits Banks to conduct a 30-day balloting period, at a minimum.

2. Lack of Nominees

In those instances where the number of nominations received for an open

elective directorship in any state is less than or equal to the number of directorships to be filled in the elections, the proposed § 932.8(b) requires a Bank to declare elected any eligible nominee. The Bank also must notify the members in the affected voting state that the directorships have been filled without an election due to a lack of nominees. If there is no nominee for a particular seat, the Bank shall declare the seat vacant and the Bank's board of directors shall fill the vacancy by majority vote, in accordance with the provision regarding vacant Bank directorships. Any person chosen to fill a vacancy must meet all of the eligibility requirements for that seat, which means that it could not be filled by a director or officer of a member located in another state, or by a person barred by the term limits provisions from serving as an elective director.

3. Voting

The proposed rule provides that a member may cast a number of votes equal to the amount of stock required to be held as of the record date. The rule also would provide that a member may not pool its votes for a single nominee, when there are two or more open elective directorships to be filled; any nominee selected will receive only the number of votes that the member is entitled to cast. Proposed § 932.8(c) also would prohibit a member from splitting its votes among the nominees for a single open elective directorship.

Proposed § 932.8(c) further requires a member to vote for only one nominee for each available elective directorship. Each nominee shall receive all of the votes the member is entitled to cast. The member must execute the ballot by resolution of its governing body or by an individual with authority to act on behalf of its governing body, and deliver it to the Bank before the closing date established by the Bank. The closing date must be at least 30 days after the ballots are mailed to the members. A member may not change a ballot after it has been delivered to the Bank, and any ballots not cast in accordance with these requirements will be void.

4. Counting Ballots

Proposed § 936.8(d) provides that a Bank may not open any ballot until after the closing date and may not include any ballot delivered after the closing date. Promptly after the polls close, each Bank must tabulate the votes cast in accordance with the regulatory requirements and declare elected the nominee who received the highest number of votes. If more than one elective directorship is to be filled, the

Bank must declare elected the nominee who received the next highest number of votes and so on until all open elective directorships are filled. In the event of a tie for the last available seat, the proposed rule requires the board of directors of the Bank, by majority vote, to declare elected one of the nominees for whom the number of votes cast was tied. Proposed § 932.8(d)(3) requires the Bank to retain all ballots for at least two (2) years after the date of the election, and bars it from disclosing the way in which a particular member voted.

5. Report of Election

Promptly following the election, proposed § 932.8(e) requires each Bank to provide written notice of the election results to the Finance Board, all members in its district, and each nominee. The report of the election must include: (1) the name of the newly elected director, the name and location of the member at which he or she serves and his or her title or position at the member; (2) the voting state the newly elected director represents; (3) the expiration date of the new director's term of office; (4) the number of members voting in the election and the number of votes actually cast, each reported by voting state; and (5) the number of votes cast for each nominee.

I. Prohibition on Actions to Influence Director Elections—§ 932.9

1. Prohibition

Section 932.9 of the proposed rule revises and restates the coverage of the prohibition on actions to influence the election of Bank directors contained in § 931.15 of the current rule. See 12 CFR 931.15 (1997). Proposed § 932.5(a)(1) would prohibit any director, officer, attorney, employee, or agent of the Finance Board or of a Bank from directly or indirectly communicating, in any form, support for the nomination or election of a particular individual for an elective directorship, or from taking any other action to influence the votes for the directorship. Proposed § 932.9 would extend to members the prohibition on communications indicating that any official of the Finance Board or of a Bank supports a particular candidate, but members would not be subject to the "take any other action" element of the prohibition. In effect, the provision would allow members to express opinions about director nominees so long as they do not suggest that the Finance Board or the Bank endorses a particular candidate.

2. Exception for Incumbent Bank Directors

Proposed § 932.9(b) would provide an exception from the prohibition on actions to influence the election. The exception would permit an incumbent Bank director acting in his or her personal capacity to support the nomination or election of any individual, provided that the director does not purport to represent the views of the Bank, the Finance Board, or any director, officer, attorney, employee or agent of the Bank or of the Finance Board. The use of the word "any" is intended to allow a director to promote his or her own candidacy, as well as that of other persons. The reference to "personal capacity" is intended to preclude the use of a director's official title, position, or authority associated with the position of Bank director, such as through use of Bank stationery, to endorse a candidate.

J. Selection of Appointive Directors—§ 932.10

1. Selection

Consistent with section 7(a) of the Act, proposed § 932.10 would provide that the Finance Board has sole discretion to select all appointive directors. See 12 U.S.C. 1427(a). For ease of administration and to ensure uniform treatment and rigorous review, the Finance Board will continue to rely upon Form A-1 (See Appendix A to the Preamble), the Appointive Director Eligibility Certification Form, to elicit the information it requires to determine whether prospective and incumbent appointive directors meet all of the statutory eligibility requirements. In order to reduce the reporting burden, the Finance Board has revised Form A-1 and is proposing to eliminate Form A-2.

2. Term of Office

Proposed § 932.10 designates January 1 as the commencement date for appointive directors' terms of office.

K. Conflicts of Interest Policy for Bank Directors—§ 932.11

1. Adoption of Conflicts of Interest Policy

To prevent conflicts of interest that may affect a Bank director in the performance of his or her official duties, the proposed rule includes a conflicts of interest provision that would replace the financial disclosure requirements and the prohibitions on service, financial interests, financial relationships, and gifts in the current regulation. See 12 CFR 932.18(b)-(d), 932.21(b)-(c) (1997). The proposal

would require the board of directors of each Bank to adopt a written conflicts of interest policy, and would specify its minimum contents. The Finance Board intends the proposed provisions, which are somewhat more general in nature and afford more latitude to the Banks, to more closely parallel the requirements of general corporate practices.

Under proposed § 932.11(a), the conflicts of interest policy each Bank adopts, at a minimum, must:

- (1) Require the directors to administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower, See 12 U.S.C. 1427(j);
- (2) Prohibit the use of a director's official position for personal gain;
- (3) Require directors to disclose actual or apparent conflicts of interest, and establish procedures for addressing such conflicts;
- (4) Provide internal controls to ensure that reports are filed and the conflicts are disclosed and resolved in accordance with the conflicts of interest requirements; and
- (5) Establish procedures to monitor compliance with the conflicts of interest policy.

2. Disclosure and Recusal

Proposed § 932.11(b) requires a director to inform promptly the board of directors of any and all situations where the director or any immediate family member has a financial interest in a matter before the board of directors. This disclosure also applies to any financial interest the director may have in any organization or any individual doing business with the Bank, excluding any interest relating to the member at which the director serves. The proposed rule also requires each director to refrain from participating in deliberations, determinations or voting concerning any matter, that directly or indirectly affects the financial or other personal interests of the director or a member of his or her immediate family, or that would result in a detriment to the Bank or unfair advantage to the Bank or its members. For example, this prohibition would preclude a director from serving as a consultant to his or her Bank. All directors also are required to provide any additional information required by the board or its designee to consider and resolve any conflicts of interest.

The proposed rule also would prohibit directors from disclosing or using any confidential information the director acquires in the course of official duties, to obtain a financial benefit for

themselves, their immediate family, or their member.

3. Gifts

Section 932.11(c) of the proposed regulation would prohibit a director or immediate family member from accepting any substantial gift that the recipient has reason to believe is given in order to influence a director's actions, or where acceptance of the gift could have the appearance of influencing the director's performance of his or her official duties. For purposes of this provision, § 932.11(e) defines the term "substantial gift" to mean gifts of more than token value; (ii) entertainment or hospitality the cost of which is in excess of what considered reasonable, customary, and accepted business practice; (iii) any other items or services for which a director pays less than market value.

4. Compensation

Section 931.11(d) of the proposed regulation would prohibit a director from accepting compensation for services performed for the Bank from any source other than the Bank for which the services are performed.

5. Definitions

Proposed § 932 defines terms that are used in the conflicts of interest section of the regulation.

Section 932.11(e)(1) of the proposed rule defines "immediate family member" to mean a Bank director's parent, sibling, spouse, child, or dependent or any other relative sharing the same residence as the director.

Section 932.11(e)(2) defines the term "financial interest" to mean a direct or indirect interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to: (i) Any contractual right to the payment of money, whether contingent or fixed; (ii) ownership or control of 10 percent or more of any class of equity security, or any security, including subordinated debt; (iii) employment in a policy making position; or (iv) service as an officer, director, partner, or as a trustee or in a similar fiduciary capacity.

L. Reporting Requirements for Bank Directors—§ 932.12

1. Annual Report

Under §§ 932.18(f) and 932.21(g) of the current rules, every appointive and elective director must annually submit to his or her Bank either an executed form A-1 (appointive directors) or E-1 (elective directors). The Finance Board believes that the current annual

reporting requirements may be unnecessarily burdensome and duplicative when there have been no changes since the director last submitted such information. Therefore, under § 932.12(a) of the proposed rule, if there have been no changes since a director last submitted the requested information, a director need only annually submit a certification stating that no changes have occurred. The director must make this certification by signing section A of the appropriate parts of Form E-1, for elective directors, or A-1, for appointive directors. If changes have occurred, proposed § 932.12(a) would require the director to complete the appropriate parts of either Form E-1 or A-1. Under the proposed rule, both elective and appointive directors would submit their annual reports to their Bank, but the Banks would be required to forward a copy of the Form A-1 to the Finance Board.

2. Report of Noncompliance

Proposed § 932.12(b) carries forward the requirements of the existing regulation that appointive and elective directors who know or have reason to believe at any time they no longer meet the statutory or regulatory eligibility requirements, must report the facts causing the loss of eligibility in writing within 30 days of first discovering those facts. See 12 CFR 932.18(f); 12 CFR 932.21(g)(2)(1997). Under the current regulation, such reports are filed only with the Finance Board; the proposal would require all directors to notify the Bank, but appointive directors also would be required to forward a copy to the Finance Board.

M. Ineligible Bank Directors—§ 932.13

Consistent with section 7(f) of the Act, § 932.13 of the proposed rule provides that a directorship (whether elective or appointive) will immediately become vacant upon the determination by the Finance Board or the Bank (for elective directors) or by the Finance Board (for appointive directors) that the director no longer meets any of the statutory or regulatory eligibility requirements, or has failed to comply with the reporting requirements under proposed § 932.12. See 12 U.S.C. 1427(f). As is the case under the existing regulation, an elective director who has been determined to be ineligible or to have failed to comply with the reporting requirements may not continue to act as a director. See 12 U.S.C. 1427(f)(3); 12 CFR 932.21(f) (1997). Also, consistent with the existing regulation an appointive director who has been determined to be ineligible or who has failed to comply with the reporting

requirements may continue to serve as a director until a successor assumes the appointive directorship or the term of office expires, whichever occurs first. See 12 U.S.C. 1427(f)(2); 12 CFR 932.18(e)(1). The Finance Board, in its sole discretion, would retain the authority to grant an appointive director a period of time, not longer than ninety (90) days, to come into compliance with the eligibility or reporting requirements.

N. Vacant Bank Directorships—§ 932.14

1. Vacant Elective Directorships

Proposed § 932.14 implements the provisions of section 7(f) of the Act that concern vacant elective directorships. See 12 U.S.C. 1427(f)(1), (3). Under the proposed rule, as soon as practicable after a vacancy occurs, a Bank must fill the unexpired term of office of a vacant elective directorship by a majority vote of the remaining directors, and may do so regardless of whether the remaining directors constitute a quorum of the board. A person filling a vacancy must satisfy all of the statutory and regulatory eligibility requirements for elective directors, which the Bank must verify before allowing the person to assume the office. Promptly after verifying the individual's eligibility, the Bank must provide a written notice to the Finance Board and each of its members that includes the name of the new elective director, the name and location of the member for which the new director serves, the new director's title or position with the member, the voting state the new director represents, and the expiration date of the new director's term of office.

2. Vacant Appointive Directorships

Proposed § 932.14(b) implements the provisions of section 7(f) of the Act that concern vacant appointive directorships. See 12 U.S.C. 1427(f)(1), (2). Under the proposed rule, as soon as practicable after a vacancy occurs, the Finance Board must fill the unexpired term of office of a vacant appointive directorship in the same manner it fills open appointive directorships. Promptly after filling a vacant appointive directorship, the Finance Board must provide a written notice to the appropriate Bank that includes the name of the new appointive director, the name and location of the organization with which the new director is affiliated, if any, the new director's title or position with such organization, and the expiration date of the new director's term of office. The Bank, in turn, must promptly provide this information to each of the members within its district.

O. Minimum Number of Elective Directorships—§ 932.15

Proposed § 932.15 redesignates the list of grandfathered directorships and revises it to identify only those states that were entitled to more than one elective directorship on December 31, 1960. The substance of the grandfather provision for the remaining states is preserved through the proposed designation provision, which would allocate a minimum of one seat to each state.

P. Technical Changes to Part 932

Additional changes to provisions of part 932 that concern Bank directors are intended to eliminate obsolete references and reorganize provisions that appear in the current regulation. Accordingly, the Finance Board is proposing to redesignate the following provisions of Part 932 without change: § 932.26, concerning the location of Bank board of directors and committee meetings, redesignated to § 932.16 of subpart B; § 932.27, concerning the compensation and expenses of Bank directors, to § 932.17 of subpart B; § 932.40, concerning selection by the Bank of officers and employees, to § 932.18 of subpart C; and § 932.41, concerning compensation of Bank officers and employees, to § 932.19 of subpart C. The Finance Board is proposing to eliminate provisions of part 932 that would be rendered obsolete by the proposed changes. See 12 CFR 932.23, 932.28–29, 932.50–51, 932.60–62.

Q. Part 922

The Finance Board has identified the financial and service prohibitions and reporting requirements applicable to the four Finance Board directors appointed by the President, by and with the advice of the Senate (appointed Finance Board directors) as unnecessarily burdensome or duplicative. See 12 U.S.C. 1422a(b)(1)(B); 12 CFR part 922. Accordingly, the Finance Board proposes to eliminate part 922 of its regulations. Repeal of part 922 is consistent with the goal of the Regulatory Reinvention Initiative of the National Performance Review to reduce the total number of regulations of executive agencies.

Section 2A(b)(1)(B) of the Act requires appointed Finance Board directors to be citizens of the United States. See 12 U.S.C. 1422a(b)(1)(B). Because an individual appointed Finance Board director must satisfy all statutory conditions, § 922.2, which essentially reiterates the statutory requirements is unnecessary.

Section 2A(b)(2)(C) imposes conflicts of interest limitations on appointed Finance Board directors, including a prohibition on serving as a director or officer of any Bank or any member of any Bank, or holding shares of, or any other financial interest in, any member of any Bank. See 12 U.S.C. 1422a(b)(2)(C). Under the Ethics in Government Act of 1978, as amended, 5 U.S.C. App. 101 *et seq.*, and the implementing regulations promulgated by the Office of Government Ethics (OGE), 5 CFR parts 2635 and 2636, appointed Finance Board directors are subject to conflicts of interest limitations that are more exacting than, and encompass the prohibitions imposed by, section 2A of the Act. OGE regulations also require appointed Finance Board directors to disclose as a part of the Senate confirmation process and annually thereafter in writing to the Finance Board's designated agency ethics official and OGE, detailed information regarding financial interests that may pose conflicts of interest. See 5 U.S.C. App. 101(c); 5 CFR 2634.201, 2634.202 (1997). Therefore, the conflicts of interest provisions contained in §§ 922.3 through 922.5, essentially duplicate existing reporting requirements, and thus are unnecessary.

R. Parts 931, 933, 934, and 941

The Finance Board is proposing to make conforming changes to parts 931, 933, 934, and 941 of its regulations. See 12 CFR parts 931, 933, 934, and 941. The Finance Board is proposing to eliminate definitions of terms that appear currently in part 932 but would no longer be used under the proposal. See *id.* §§ 931.13–40.

Section 932.3 of the current rule concerns Bank dividends which the Finance Board is proposing to redesignate without change to part 934 of the Finance Board's regulations, which concerns the operations of the Banks. See *id.* part 934.

Part 933 of the Finance Board's regulations concern membership in the Banks. See *id.* part 933. The proposed changes to part 932 would conflict with certain provisions of the membership rule that concern voting rights. Accordingly, the Finance Board is proposing to eliminate all references to voting rights that appear in § 933.18 and §§ 933.24 through 933.28.

III. Regulatory Flexibility Act

The proposed rule implements statutory requirements binding on all Banks, all Bank members, and all prospective and incumbent Bank directors. The Finance Board is not at liberty to make adjustments in those

requirements to accommodate small entities. The Finance Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities. In addition, in an effort to reduce the reporting burden on prospective and incumbent Bank directors, the Finance Board has streamlined Form E–1, the Elective Director Eligibility Certification Form, and Form A–1, the Appointive Director Eligibility Certification Form, eliminated Forms E–2 and A–2, and will allow individuals to certify that no changes have occurred since they last submitted required information rather than completing anew the entire form. Thus, in accordance with the provisions of the Regulatory Flexibility Act, the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

IV. Paperwork Reduction Act

The Finance Board has submitted to the Office of Management and Budget (OMB) an analysis of the collection of information contained in Forms E–1 and A–1 and the proposed rule, described more fully in part II of the *Supplementary Information*. The Finance Board will use the information collection to determine whether prospective and incumbent appointive directors satisfy the statutory and regulatory eligibility and reporting requirements. Only individuals meeting these requirements may serve as appointive Bank directors. See 12 U.S.C. 1427(a), (f)(2). The Banks and, where appropriate, the Finance Board, will use the information collection to determine whether prospective and incumbent elective directors satisfy the statutory and regulatory eligibility and reporting requirements. Only individuals meeting these requirements may serve as elective Bank directors. See *id.* 1427(a), (b), (f)(3). Responses are required to obtain or retain a benefit. See *id.* 1427. The Finance Board and Banks will maintain the confidentiality of information obtained from respondents pursuant to the collection of information as required by applicable statute, regulation, and agency policy. Books or records relating to this collection of information must be retained as provided in the regulation.

Likely respondents and/or recordkeepers will be the Banks, Bank members, and prospective and incumbent Bank directors. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information

displays a currently valid control number assigned by the OMB. See 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents	3,442
b. Total annual responses	3,442
Percentage of these responses collected electronically	0
c. Total annual hours requested	1,172
d. Current OMB inventory	376
e. Difference	796

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs	\$180,000.00
b. Total annual costs (O&M)	24,000.00
c. Total annualized cost requested ..	0
d. Current OMB inventory	0
e. Difference	\$204,000.00

Comments concerning the accuracy of the burden estimates and suggestions for reducing the burden may be submitted to the Finance Board in writing at the address listed above.

The Finance Board has submitted the collection of information to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3507(d). Comments regarding the proposed collection of information may be submitted in writing to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Federal Housing Finance Board, Washington, D.C. 20503 by June 29, 1998.

List of Subjects

12 CFR Part 922

Conflict of interests.

12 CFR Part 931

Banks, banking, Federal home loan banks.

12 CFR Part 932

Banks, banking, Conflict of interests, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

12 CFR Part 933

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 934

Federal home loan banks, Securities, Surety bonds.

12 CFR Part 941

Federal home loan banks, Organization and functions (Government agencies).

Accordingly, the Federal Housing Finance Board hereby proposes to amend chapter IX, title 12, parts 922, 931, 932, 933, 934, and 941 of the Code of Federal Regulations as follows:

PART 922—[REMOVED]

1. Under the authority in 12 U.S.C. 1422a and 1422b, remove part 922.

PART 931—DEFINITIONS

1. The authority citation for part 931 continues to read as follows:

Authority: 12 U.S.C. 1422a and 1422b.

§§ 931.13 through 931.40 [Removed]

2. Remove §§ 931.13 through 931.40.

§§ 931.11 and 931.12 [Redesignated as §§ 931.5 and 931.6]

3. Redesignate §§ 931.11 and 931.12 as §§ 931.5 and 931.6, respectively.

PART 934—OPERATIONS OF THE BANKS

1. The authority citation for part 934 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431(g), 1432(a), and 1442.

§ 932.3 [Redesignated as § 934.17]

2. Redesignate § 932.3 as § 934.17.

PART 932—DIRECTORS, OFFICERS, AND EMPLOYEES OF THE BANKS

1. Revise the heading of part 932 to read as set forth above.

2. Revise the authority citation for part 932 to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, and 1427; 42 U.S.C. 8101 *et seq.*

3. Revise the table of contents of part 932 to read as follows:

Subpart A—Definitions

Sec.

932.1 Definitions.

932.2 Dates.

Subpart B—Bank Directors

932.3 Director Elections.

932.4 Capital Stock Report.

932.5 Determinations of member votes.

932.6 Elective director nominations.

932.7 Eligibility requirements for elective directors.

932.8 Elections process.

932.9 Prohibition on actions to influence director elections.

932.10 Selection of appointive directors.

932.11 Conflicts of interest policy for Bank directors.

932.12 Reporting requirements for Bank directors.

932.13 Ineligible Bank directors.

932.14 Vacant Bank directorships.

932.15 Minimum number of elective directorships.

932.16 Site of board of directors and committee meetings.

932.17 Compensation and expenses of Bank directors.

Subpart C—Selection of Bank Officers and Employees.

932.18 Selection of Bank officer and employees.

932.19 Compensation of Bank officers and employees.

4. Designate §§ 932.1 and 932.2 as subpart A and add a subpart heading to read as follows:

Subpart A—Definitions

5. Revise § 932.1 to read as follows:

§ 932.1 Definitions.

For purposes of this part:

Act means the Federal Home Loan Act, as amended (12 U.S.C. 1421 *et seq.*).

Bank or *Banks* means a Federal Home Loan Bank or the Federal Home Loan Banks.

Bona fide resident of a Bank district means an individual who:

(1) Maintains a principal residence within the Bank district; or

(2) Owns or leases in his or her own name a residence within the Bank district and, if serving as an elective director, is an officer or director of a member located in a voting state within the Bank district; or

(3) If serving as an appointive director, is employed within a voting state within the Bank district.

Docket Number means the number assigned to each member by the Finance Board and used by the Finance Board and the Banks to identify a particular member.

Finance Board means the agency established as the Federal Housing Finance Board.

Member means an institution admitted to membership and owning capital stock in a Bank.

Record date means December 31 of the calendar year immediately preceding the election year.

Voting state means the District of Columbia, Puerto Rico, or the state of the United States in which a member's principal place of business, as determined in accordance with part 933 of this chapter, is located as of the record date. The voting state of a member with a principal place of business located in the U.S. Virgin Islands as of the record date shall be Puerto Rico, and the voting state of a member with a principal place of business located in American Samoa,

Guam, or the Commonwealth of the Northern Mariana Islands as of the record date shall be Hawaii.

6. Add § 932.2 to subpart A to read as follows:

§ 932.2 Dates.

If any date specified in this part, or specified by a Bank pursuant to this part, falls on a Saturday, Sunday, or federal holiday, the relevant time period shall be deemed to include the next business day.

7. Designate §§ 932.3 through 932.17 as subpart B and add a subpart heading to read as follows:

Subpart B—Bank Directors

8. Add § 932.3 to subpart B to read as follows:

§ 932.3 Director elections.

(a) *Responsibilities of the Banks.* Each Bank annually shall conduct an election the purpose of which is to fill all elective directorships designated by the Finance Board as commencing on January 1 of the calendar year immediately following the year of the election. Subject to the provisions of the Act and in accordance with the requirements of this part, the disinterested members of the board of directors of each Bank, or a committee of disinterested directors, shall administer and conduct the annual election of directors. The term of office of each elective directorship shall be two years and shall commence on January 1 of the calendar year immediately following the year in which the election is held. Each Bank shall complete the election in sufficient time to allow newly elected directors to assume their seats on January 1 of the year immediately following the election.

(b) *Designation of elective directorships.* The Finance Board annually shall establish the number of elective directorships for each Bank, which are to be allocated as follows:

(1) One elective directorship shall be allocated to each state within the Bank district;

(2) If the total number of elective directorships allocated pursuant to paragraph (b)(1) of this section is less than eight, the Finance Board shall allocate additional elective directorships among the states, using the method of equal proportions, until the total allocated for the Bank equals eight;

(3) If the number of elective directorships allocated to any state pursuant to paragraphs (b)(1) and (2) of this section is less than the number allocated to that state on December 31, 1960, as specified in § 932.15, the

Finance Board shall allocate such additional elective directorships to that state until the total allocated equals the number allocated to the Bank on December 31, 1960;

(4) Pursuant to section 7(e) of the Act, the Federal Home Loan Bank of New York is hereby allocated one additional elective directorship, which is designated as representing the members in the Commonwealth of Puerto Rico;

(5) Pursuant to section 7(a) of the Act, in any Bank district that includes five or more states, the Finance Board may increase the number of elective directorships up to thirteen, and the number of appointive directorships up to three-fourths of the number of elective directorships. In determining the number of appointive directorships, the Finance Board may round up to the nearest whole number.

(c) *Notification.* On or before May 10 of each year, the Finance Board shall notify each Bank in writing of the total number of elective directorships established for the Bank and the number of elective directorships designated as representing the members in each voting state in the Bank district. If the Finance Board's annual designation of elective directorships for a particular state would result in a decrease in the number of seats allocated to that state for the following year, the decrease shall not require any incumbent director to surrender his or her directorship prior to the expiration of the full term of office.

(d) *Transition.* The term of office of each elective directorship existing on the effective date of this section shall continue to its scheduled expiration date, and the Banks may not thereafter alter the commencement or expiration date for any elective directorship in conducting the annual election of directors.

9. Add § 932.4 to subpart B to read as follows:

§ 932.4 Capital Stock Report.

(a) On or before April 10 of each year, each Bank shall submit to the Finance Board, for its use in designating the elective directorships, and to each member a capital stock report that indicates, as of the record date, the number of members in each voting state in the Bank's district, and the number of shares of capital stock required to be held by each member (identified by docket number), and the aggregate total number of shares of capital stock required to be held by all members in each voting state in the Bank's district. The Bank shall certify to the Finance Board that to the best of its knowledge the information provided in the capital

stock report is accurate and complete, and that it has notified each member of its minimum capital holdings pursuant to § 933.22(b)(1) of this chapter. A member may object to its required capital holdings determined under § 933.22(b)(1) of this chapter by notifying the Finance Board and its Bank in writing within 15 days after the date on which the member receives that information. The Finance Board shall promptly resolve any differences, which determination by the Finance Board shall be final.

(b) A Bank shall determine the number of shares of capital stock each member is required to hold as of the record date in the following manner:

(1) The number of shares of capital stock shall be equal to the greater of the advances-to-capital stock requirement under § 935.15(a) of this chapter, or the minimum capital stock requirement under § 933.20(a) of this chapter.

(2) If a member has elected to purchase its minimum required capital stock in installments under § 933.20(b)(2) of this chapter, the number of shares of capital stock required to be held as of the record date shall be the cumulative total of shares of capital stock actually purchased as of the record date.

10. Add § 932.5 to subpart B to read as follows:

§ 932.5 Determination of member votes.

(a) *Authority.* The Bank shall determine, in accordance with this section, the number of votes each member of the Bank may cast in the election of directors.

(b) *Determination.* The number of votes a member may cast for any elective director nominee shall be the lesser of the number of shares of capital stock the member was required to hold as of the record date, as determined in accordance with § 932.4(b), or the average number of shares of capital stock required to be held by all of the members in its voting state as of the record date.

11. Add § 932.6 to subpart B read as follows:

§ 932.6 Elective director nominations.

(a) *Election announcement.* Within a reasonable time in advance of an election, a Bank shall provide to each member in its district a written notice of the election that includes:

(1) The number of elective directorships designated as representing the members in each voting state in the Bank district;

(2) The name of each incumbent Bank director, the name and location of the member at which each elective director

serves, and the name and location of the organization with which each appointive director is affiliated, if any, and the expiration date of each Bank director's term of office;

(3) An attachment indicating the name, location, and docket number of every member in the member's voting state, and the number of votes each such member may cast in the election, as determined in accordance with § 932.5(b); and

(4) A nominating certificate.

(b) *Nominations.* (1) Any member that is entitled to vote in the election may nominate an eligible individual to fill each available elective directorship for its voting state by submitting to its Bank, prior to a deadline to be established by the Bank, a nominating certificate duly adopted by the member's governing body or by an individual authorized to act on behalf of the member's governing body.

(2) The nominating certificate shall include the name of the nominee and the name, location, and docket number of the member at which the nominee serves as an officer or director.

(3) The Bank shall establish a deadline for submitting nominating certificates, which shall be no earlier than 30 calendar days after the date on which the Bank mails the notice required by paragraph (a) of this section, and the Bank shall not accept certificates received after that deadline. The Bank shall retain all nominating certificates for at least two years after the date of the election.

(c) *Accepting nominations.* A Bank shall notify in writing any person nominated for an elective directorship promptly upon receipt of the nominating certificate. A person may accept the nomination only by submitting an executed Form E-1 to the Bank prior to the deadline established by the Bank. (Form E-1 is available pursuant to § 900.51 of this chapter). A Bank shall allow each nominee at least 30 calendar days after the date of the notice of nomination within which to submit the executed form. A nominee may decline the nomination by so advising the Bank in writing, or by failing to submit the Form E-1 prior to the deadline. Each Bank shall retain all information received under this paragraph for at least two years after the date of the election.

12. Add § 932.7 to subpart B read as follows:

§ 932.7 Eligibility requirements for elective directors.

(a) *Eligibility verification.* A Bank shall verify that each nominee meets all of the eligibility requirements for

elective directors set forth in the Act and this part before placing that nominee on the ballot prepared by the Bank under § 932.8(a).

(b) *Eligibility requirements.* Each elective director, and each nominee, shall be:

(1) A citizen of the United States;

(2) A bona fide resident of the Bank district; and

(3) An officer or director of a member that is located in the voting state to be represented by the elective directorship, was a member of the Bank as of the record date, and meets all minimum capital requirements established by its appropriate federal regulator or appropriate state regulator. For purposes of this paragraph (b)(3), the term *appropriate federal regulator* has the same meaning as the term "appropriate Federal banking agency" in section 2[3] of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and, for federally insured credit unions, shall mean the National Credit Union Administration, and the term *appropriate state regulator* means any state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a member.

(c) *Restrictions.* A nominee is not eligible if he or she:

(1) Is an incumbent elective director, unless:

(i) The incumbent director's term of office would expire before the new term of office would begin; and

(ii) The new term of office would not be barred by the term limit provision of section 7(d) of the Act.

(2) Is a former elective director whose service would be barred by the term limit provision of section 7(d) of the Act.

(3) Is an incumbent appointive director.

13. Revise § 932.8 to read as follows:

§ 932.8 Election process.

(a) *Ballots.* Promptly after verifying the eligibility of all nominees in accordance with § 932.7(a), a Bank shall prepare a ballot for each voting state for which an elective directorship is to be filled and shall mail the ballot to all members within that state that were members as of the record date. A ballot shall include at least the following provisions:

(1) An alphabetical listing of the names of each nominee for the member's voting state, the name, location, and docket number of the member at which each nominee serves, the nominee's title or position with the member, and the number of elective directorships to be filled by members in that voting state in the election;

(2) A statement that write-in candidates are not permitted; and

(3) A confidentiality statement prohibiting the Bank from disclosing how a member voted.

(b) *Lack of nominees.* If, for any voting state, the number of nominees is equal to or less than the number of elective directorships to be filled in the election, the Bank shall not prepare or distribute a ballot, and shall declare elected any eligible nominee, declare vacant any elective directorship that lacks an eligible nominee, and notify the members in the affected voting state in writing that the directorships have been filled without an election due to a lack of nominees. If necessary, as soon thereafter as practicable, the board of directors shall fill, by a majority vote, any elective directorship that has been declared vacant for a lack of a nominee, in accordance with § 932.14(a).

(c) *Voting.* For each directorship to be filled, a member may cast the number of votes determined by the Bank pursuant to § 932.5. A member may not split its votes among multiple nominees for a single directorship, nor, where there are multiple directorships to be filled for a voting state, may it cumulatively vote for a single nominee. To vote, a member shall:

(1) Mark on the ballot the name of not more than one of the nominees for each elective directorship to be filled in the member's voting state. Each nominee so selected shall receive all of the votes that the member is eligible to cast.

(2) Execute the ballot by resolution of the member's governing body, or by an appropriate writing signed by an individual authorized to act on behalf of the governing body.

(3) Deliver the executed ballot to the Bank on or before the closing date that has been established by the Bank, which shall be no earlier than 30 calendar days after the date the ballots are mailed in accordance with paragraph (b) of this section. A member may not change a ballot after it has been delivered to the Bank.

(4) Any ballots cast in violation of this subsection shall be void.

(d) *Counting ballots.* A Bank shall not open any ballot until after the closing date, and may not include in the election results any ballot received after the closing date. Promptly after the closing date, each Bank shall tabulate, by each voting state, the votes cast in accordance with paragraph (c) of this section, and shall declare elected the nominee receiving the highest number of votes.

(1) If more than one elective directorship is to be filled in a voting state, the Bank shall declare elected

each successive nominee receiving the next highest number of votes until all open elective directorships for that voting state are filled.

(2) In the event of a tie for the last available seat, the incumbent board of directors of the Bank shall, by a majority vote, declare elected one of the nominees for whom the number of votes cast was tied.

(3) The Bank shall retain all ballots it receives for at least two years after the date of the election, and shall not disclose how any member voted.

(e) *Report of election.* Promptly following the election, each Bank shall provide written notice to its members, to each nominee, and to the Finance Board of the following:

(1) The name of each director-elect, the name and location of the member at which he or she serves, and his or her title or position at the member;

(2) The voting state represented by each director-elect;

(3) The expiration date of the term of office of each director-elect;

(4) The number of members voting in the election and the total number of votes cast, both reported by states; and

(5) The number of votes cast for each nominee.

14. Revise § 932.9 to read as follows:

§ 932.9 Prohibition on actions to influence director elections.

(a) *Prohibition.* Except as provided in paragraph (b) of this section:

(1) No director, officer, attorney, employee, or agent of the Finance Board or of a Bank may:

(i) Communicate in any manner that a director, officer, attorney, employee, or agent of the Finance Board or of a Bank, directly or indirectly, supports the nomination or election of a particular individual for an elective directorship; or

(ii) Take any other action to influence votes for a directorship.

(2) No member may take any action prohibited by paragraph (a)(1)(i) of this section.

(b) *Exception for incumbent Bank directors.* A Bank director acting in his or her personal capacity may support the nomination or election of any individual for an elective directorship, provided that no Bank director shall purport to represent the views of the Bank, the Finance Board, any other director, or any officer, attorney, employee, or agent of the Bank or of the Finance Board concerning the nomination or election of a particular individual for an elective directorship.

15. Revise § 932.10 to read as follows:

§ 932.10 Selection of appointive directors.

(a) *Selection.* In accordance with the Act, the Finance Board, in its sole discretion, shall select all appointive directors.

(b) *Term of office.* The term of office of each appointive directorship shall commence on January 1.

16. Revise § 932.11 to read as follows:

§ 932.11 Conflict of interests policy for Bank directors.

(a) *Adoption of conflict of interests policy.* Each Bank shall adopt a written conflict of interests policy that shall apply to all Bank directors. At a minimum, the conflicts of interest policy of each Bank shall:

(1) Require the directors to administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower;

(2) Prohibit the use of a director's official position for personal gain;

(3) Require directors to disclose actual or apparent conflict of interests and establish procedures for addressing such conflicts;

(4) Provide internal controls to ensure that reports are filed and that conflicts are disclosed and resolved in accordance with this section; and

(5) Establish procedures to monitor compliance with the conflict of interests policy.

(b) *Disclosure and recusal.* (1) A director shall promptly inform the board of directors whenever he or she, or any immediate family member, has any financial interest in any matter before the board. Directors also shall disclose any financial interest in any organizations or with any individuals doing business with the Bank, other than an interest relating to the member at which the director serves. All directors shall refrain from considering, or voting on, any issue before the board that could result in a conflict, self-dealing, or any other circumstances that would result in a detriment to the Bank or in a noncompetitive, favored, unfair advantage either to the Bank or its members.

(2) All directors promptly shall provide to the full board of directors, audit committee of the board of directors, or to such other committee as the board of directors may establish for this purpose, any information relating to conflicts or potential conflicts of interests.

(3) Directors shall not disclose or use confidential information received by them solely by reason of their position with the Bank to obtain a financial interest for themselves or their immediate family members or member

institutions of which they are an officer or director.

(c) *Gifts.* Directors and their immediate family members shall not accept any substantial gift where the recipient has reason to believe that the gift is given in order to influence the director's actions as a member of the Bank's board of directors, or where acceptance of such gift gives the appearance of influencing the director's actions as a member of the board.

(d) *Compensation.* Directors shall not accept compensation for services performed for the Bank from any source other than the Bank for whom the services are performed.

(e) *Definitions.* For purposes of this section:

(1) *Immediate family member* means parent, sibling, spouse, child, or dependent, or any other relative sharing the same residence as the director.

(2) *Financial interest* means a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to:

(i) Any contractual right to the payment of money, whether contingent or fixed;

(ii) Ownership or control of ten percent or more of any class of equity security, or any security, including subordinated debt;

(iii) Employment in a policy making position; or

(iv) Service as an officer, director, partner, or as a trustee or in a similar fiduciary capacity.

(3) *Substantial Gifts* includes:

(i) Gifts of more than token value;

(ii) Entertainment or hospitality, the cost of which is in excess of what is considered reasonable, customary, and accepted business practices; or

(iii) Any other items or services for which a director pays less than market value.

17. Revise § 932.12 to read as follows:

§ 932.12 Reporting requirements for Bank directors.

(a) *Annual reporting.* On or before March 1 of each year, each director shall submit to his or her Bank an executed Form E-1 (for elective directors) or an executed Form A-1 (for appointive directors), as appropriate. (Form A-1 is available pursuant to § 900.51 of this chapter). The Bank shall promptly forward a copy of each Form A-1 to the Finance Board.

(b) *Report of noncompliance.* If an elective or appointive director knows or has reason to believe that he or she no longer meets the eligibility requirements set forth in the Act or this part, the

director shall so inform the Bank in writing within 30 calendar days of first learning of the facts causing the loss of eligibility. An appointive director also shall inform the Finance Board at the same time, and in the same manner, that he or she informs the Bank.

18. Revise § 932.13 to read as follows:

§ 932.13 Ineligible Bank directors.

(a) *Elective directors.* Upon a determination by the Finance Board or a Bank that an elective director no longer satisfies the eligibility requirements set forth in the Act or this part, or has failed to comply with the reporting requirements of § 932.12, the elective directorship shall immediately become vacant. Any elective director that is determined to have failed to comply with the eligibility or reporting requirements shall not continue to act as a Bank director.

(b) *Appointive directors.* Except as provided herein, upon a determination by the Finance Board that an appointive director no longer satisfies the eligibility requirements set forth in the Act, or has failed to comply with the reporting requirements of § 932.12, the appointive directorship shall immediately become vacant. Notwithstanding the vacancy, an appointive director may continue to serve until a successor assumes the directorship or the term of office expires, whichever occurs first, and the Finance Board, in its sole discretion, may allow an appointive director up to 90 calendar days to comply with the eligibility or reporting requirements.

19. Revise § 932.14 to read as follows:

§ 932.14 Vacant Bank directorships.

(a) *Vacant elective directorships.* (1) As soon as practicable after a vacancy occurs, a Bank shall fill the unexpired term of office of a vacant elective directorship by a majority vote of the remaining Bank directors regardless of whether the remaining Bank directors constitute a quorum of the Bank's board of directors.

(2) An individual so selected to fill a vacant elective directorship shall satisfy all of the eligibility requirements for elective directors set forth in the Act and this part, and shall provide to the Bank an executed Form E-1. The Bank shall verify the individual's eligibility in accordance with § 932.7(a) before allowing the individual to assume the directorship, and shall retain the information it receives in accordance with § 932.6(c).

(3) Promptly after verifying the individual's eligibility under paragraph (a)(2) of this section, a Bank shall notify the Finance Board and each member

located in the Bank's district in writing of the following:

(i) The name of the new elective director, the name and location of the member (identified by docket number) at which the new director serves, and the new director's title or position with the member;

(ii) The voting state that the new elective director represents; and

(iii) The expiration date of the new elective director's term of office.

(b) *Vacant appointive directorships.*

(1) As soon as practicable after a vacancy occurs, the Finance Board shall fill the unexpired term of office of a vacant appointive directorship.

(2) Promptly after filling a vacant appointive directorship, the Finance Board shall notify the new appointive director's Bank in writing of the following:

(i) The name of the new appointive director, the name and location of the organization with which the new director is affiliated, if any, and the new director's title or position with such organization; and

(ii) The expiration date of the new appointive director's term of office.

(2) Promptly after receiving the notice required by paragraph (b)(2)(i) of this section, a Bank shall provide each of its members with the information described in paragraphs (b)(2)(i) and (ii) of this section.

§§ 932.15 through 932.19 [Removed]

20. Remove §§ 932.15 through 932.19.

§ 932.20 [Redesignated as § 932.15]

21. Redesignate § 932.20 as § 932.15 and revise the second sentence and table to read as follows:

§ 932.15 Minimum number of elective directorships.

* * * The following list sets forth the states whose members held more than one (1) seat on December 31, 1960:

State	No. of elective directorships on Dec. 31, 1960
California	3
Colorado	2
Illinois	4
Indiana	5
Iowa	3
Kansas	3
Kentucky	2
Louisiana	2
Massachusetts	3
Michigan	3
Minnesota	2
Missouri	2
New Jersey	4
New York	4
Ohio	4

State	No. of elective directorships on Dec. 31, 1960
Oklahoma	2
Pennsylvania	6
Tennessee	2
Texas	3
Wisconsin	4

§§ 932.21 through 932.25 [Removed]

22. Remove §§ 932.21 through 932.25.

§ 932.26 [Redesignated as § 932.16]

23. Redesignate § 932.26 as § 932.16 of subpart B.

§ 932.27 [Redesignated as § 932.17]

24. Redesignate § 932.27 as § 932.17 of subpart B.

§§ 932.28 through 932.39 [Removed]

25. Remove §§ 932.28 through 932.39.

26. Designate §§ 932.18 and 932.19 as subpart C and add a subpart heading to read as follows:

Subpart C—Selection of Bank Officers and Employees

§ 932.40 [Redesignated as § 932.18]

27. Redesignate § 932.40 as § 932.18 of subpart C, remove paragraph (d), and revise the section heading and paragraph (a) introductory text to read as follows:

§ 932.18 Selection of Bank officers and employees.

(a) *Bank presidents.* The board of directors of each Bank may appoint a president, who shall be the chief executive officer of the Bank, subject to the following limitations:

§ 932.41 [Redesignated as § 932.19]

28. Redesignate § 932.41 as § 932.19 of subpart C and revise the section heading to read as follows:

§ 932.19 Compensation of Bank officers and employees.

* * * * *

§§ 932.42 through 932.62 [Removed]

29. Remove §§ 932.42 through 932.62.

PART 933—MEMBERS OF THE BANKS

1. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Amend § 933.18 by revising paragraph (e) to read as follows:

§ 933.18 Determination of appropriate Bank district for membership.

* * * * *

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes, but shall not affect voting rights in the year of the transfer and shall not be subject to the provisions on termination of membership set forth in section 6 of the Act or §§ 933.27, 933.28, and 933.30, including the restriction on reacquiring Bank membership set forth in § 933.31.

§ 933.24 [Amended]

3. Amend § 933.24 by removing paragraph (b)(4).

§ 933.25 [Amended]

4. Amend § 933.25 by removing paragraph (f).

§ 933.26 [Amended]

5. Amend § 933.26 by removing paragraph (e).

§ 933.27 [Amended]

6. Amend § 933.27 by removing paragraph (g).

§ 933.28 [Amended]

7. Amend § 933.28 by removing paragraph (d).

PART 941—OPERATIONS OF THE OFFICE OF FINANCE

1. The authority citation for part 941 continues to read as follows:

Authority: 12 U.S.C. 1422b, 1431.

2. Amend § 941.7 by revising paragraph (f)(2) to read as follows:

§ 941.7 Office of Finance Board of Directors.

(f)

(2) *Private Citizen member.* The Office of Finance shall pay compensation and expenses to the Private Citizen member

of the OF board of directors in accordance with the requirements for payment of compensation and expenses to Bank directors set forth in § 932.17 of this chapter, except that, for these purposes:

(i) The Office of Finance policy on director compensation must be approved by the board of directors of the Finance Board;

(ii) Section 932.15(a)(3) and (c)(1)(ii) of this chapter shall not apply; and

(iii) The terms "average compensation per director" and "ACPD," as used in § 932.15 of this chapter, shall be deemed to mean "maximum compensation of the Private Citizen member".

Note: The following Appendix will not appear in the Code of Federal Regulations Appendix A to Preamble—Director Eligibility Certification Forms A-1 and E-1

BILLING CODE 6725-01-U

Federal Home Loan Bank System

Appointive Director Eligibility Certification Form (A-1)

INSTRUCTIONS

If you need assistance in completing this form or have any questions, please contact (name, title, phone and fax numbers, e-mail address) at the Federal Housing Finance Board (Finance Board).

Please return this completed form and any attachments by the applicable deadline to (name and title or office), at the Finance Board.

Who Must File and When

Prospective FHLBank Appointive Directors

If the Finance Board is considering you for, or has selected you to fill, a Federal Home Loan Bank (FHLBank) appointive directorship and you want to accept the appointment, if offered, you must complete this form and return it to the Finance Board on or before the deadline it establishes. The time allowed includes the next business day if the date specified by the Finance Board occurs on a Saturday, Sunday, or federal holiday. Any individual who does not submit this form to the Finance Board by the deadline will be deemed to have declined the appointment.

Current FHLBank Appointive Directors

On or before March 1 of each year during your term of office as a FHLBank appointive director other than the calendar year in which you were appointed, you must complete this form and return it to the Finance Board to update, if necessary, the information previously provided concerning compliance with the eligibility requirements for appointive directors. If you do not submit this form by the March 1 deadline, the Finance Board may declare the appointive directorship you fill to be vacant. The time allowed includes the next business day if March 1 occurs on a Saturday, Sunday, or federal holiday.

Part I -- General Information

The Finance Board will use the information you provide in Part I to ensure that its records are as up-to-date and accurate as possible.

Section A -- Certification

If no changes have occurred since the last time you completed Part I, you may complete Part I by signing the certification.

Section B -- Questions

If you have never completed, or if changes have occurred since the last time you completed, Part I, you must provide answers to each of the questions.

1. Please place your initials on the line that applies to you. You may check only one line. For example, if you are currently serving as a FHLBank appointive director and are filing the required annual update, check the line marked "I am a FHLBank appointive director."

2. Please print or type your full name.

3. Please list the name of each organization with which you are currently employed whether you work full- or part-time or are paid for your work, your title or position at that organization, the telephone and fax numbers where you can be reached, your electronic mail address, if any, the organization's street address, and, if different, the organization's mailing address. You may attach additional sheets if necessary.

4. For each directorship you currently hold, please list the name of the organization and the city or county and state in which the organization is located. You may attach additional sheets if necessary.

5. For each full-time public office to which you have been appointed or elected, please list the public office, your title or position, and the term of office.

6. For each full-time position you hold with a political party, please list the name of the political party, your title or position, and the date you entered into the position.

7. Section 1427(a) of the Federal Home Loan Bank Act (Bank Act) imposes certain conflicts of interest limitations on FHLBank appointive directors. See 12 U.S.C. § 1427(a). In order for the Finance Board to ensure your compliance with the statutory limitations, please attach a copy of the most recent information you disclosed to your FHLBank under its conflicts of interest policy concerning your or your immediate family's financial or other personal interests.

Part II -- Eligibility Requirements

The Finance Board will use the information you provide in Part II to determine whether you meet, or continue to meet, the statutory eligibility requirements for FHLBank appointive directors. See 12 U.S.C. § 1427. Only individuals who satisfy these requirements may be appointed as, or continue to serve as, appointive directors.

Section A -- Certification

If no changes have occurred since the last time you completed Part II, you may complete Part II by signing the certification.

Section B -- Questions

If you have never completed, or if changes have occurred since the last time you completed, Part II, you must provide answers to each of the questions.

1. Section 1427(a) of the Bank Act requires each FHLBank appointive director to be a United States citizen. See 12 U.S.C. § 1427(a). Please place your initials in the appropriate column.

2. Section 1427(a) of the Bank Act requires each FHLBank appointive director to be a bona fide resident of a state within the FHLBank district served or to be served by the director. See 12 U.S.C. § 1427(a). Please place your initials on the appropriate line. You will be deemed a bona fide resident of a FHLBank district under two circumstances. First, you will be deemed a bona fide resident if you maintain a principal place of residence in a state within the FHLBank district. To claim a location as your principal place of residence generally requires both physical presence and intent to remain or to return after an absence. Your principal place of residence usually is the same as the permanent residence reported to the Internal Revenue Service. Please list that address. Second, you will be deemed a bona fide resident if you own or lease in your own name a residence in, and are employed in, a state within the FHLBank district. The second basis for a finding of bona fide residence requires "residence plus," that is, simple residence and an employment nexus, rather than residence with domiciliary intent. Please list the address of every other residence you either own or lease in your own name, including vacation homes or homes you use seasonally or on a part-time basis, and the name and location of your employer and any consumer or community organization of which you are a director, officer, employee, or member. The term "consumer or community organization" means an organization that currently is representing, and has represented for at least two years, consumer or community interests on banking services, credit needs, housing, or financial consumer protections. You may attach additional sheets if necessary.

3. Finance Board policy requires each community interest FHLBank appointive director to represent currently, and to have represented actively or been involved with for at least two years, consumer or community interests on banking services, credit needs, housing, or financial consumer protections. Please place your initials on the appropriate line. Please provide a description of your experience, including the length of time you have represented these interests. You may attach additional sheets if necessary.

4 and 5. Section 1427(a) of the Bank Act and Finance Board policy require each community interest FHLBank appointive director to be a director, officer, employee, or member of a consumer or community organization that currently is representing, and has represented for at least two years, consumer or community interests on banking services, credit needs, housing, or financial consumer protections, and that operates in a state within the district of the appropriate FHLBank. See 12 U.S.C. § 1427(a). For both questions 4 and 5, please place your initials on the appropriate line. In answering question 5, please provide a description of the consumer or community organization with which you are affiliated, including the length of time it has represented consumer or community interests on banking services, credit needs, housing, or financial consumer protections. You may attach additional sheets if necessary.

Federal Home Loan Bank System
Appointive Director Eligibility Certification Form

The reporting period is January 1, 19__ through December 31, 19__.

PART I
GENERAL INFORMATION

Section A -- Certification

I hereby certify that no changes have occurred since I last completed and submitted to the Finance Board Part I of the FHLBank Appointive Director Eligibility Certification Form.

Signature _____ Date _____

Section B -- Questions

1. Check one of the following:

____ I am a prospective FHLBank appointive director

____ I am currently a FHLBank appointive director

2. Print or type your full name: _____

3. List your current employment:

Name of organization _____ Your title or position _____

Telephone number _____ Fax number _____ E-mail address _____

Street _____ City or county _____ State _____ Zip code _____

Mailing address (if different) Street _____ City or county _____ State _____ Zip code _____

PART II
ELIGIBILITY REQUIREMENTS

Section A -- Certification

I hereby certify that no changes have occurred since I last completed and submitted to the Finance Board Part II of the FHLBank Appointive Director Eligibility Certification Form.

Signature _____ Date _____

Section B -- Questions

For each question, place your initials in the appropriate column.

Yes No

1. _____ Are you a citizen of the United States?

2. _____ Are you a bona fide resident of a state within the FHLBank district?

Provide the address of your permanent residence:

Street _____ City or county _____ State _____ Zip code _____

Provide the address of every other residence you either own or lease in your own name:

Street _____ City or county _____ State _____ Zip code _____

Street _____ City or county _____ State _____ Zip code _____

Provide the location of your employer and any consumer or community organization of which you are a director, officer, employee, or member:

Name of organization _____ City or county _____ State _____ Your title or position _____

Name of organization _____ City or county _____ State _____ Your title or position _____

Yes No

3. ☐ ☐ Are you currently representing and have you actively represented or been involved with for at least two years, consumer or community interests on banking services, credit needs, housing, or financial consumer protections?

Describe your experience, including the length of time you have represented these interests.

Yes No

4. ☐ ☐ Are you a director, officer, employee, or member of a consumer or community organization that operates in a state within the FHLBank district?
5. ☐ ☐ Is the consumer or community organization with which you are affiliated currently representing, and has it represented for at least two years, consumer or community interests on banking services, credit needs, housing, or financial consumer protections?

Describe the consumer or community organization, including the length of time it has represented these interests:

I HEREBY CERTIFY that the information provided on this FHLBank Appointive Director Eligibility Certification Form and on any attachments hereto is true, correct, and complete to the best of my knowledge.

Signature _____ Date _____

State of _____)
County of _____)

Signed and sworn to before me on this _____ day of _____.

Signature of Notary Public

(Seal)

My commission expires: _____

Yes No

3. ☐ ☐ Are you currently representing and have you actively represented or been involved with for at least two years, consumer or community interests on banking services, credit needs, housing, or financial consumer protections?

Describe your experience, including the length of time you have represented these interests.

Yes No

4. ☐ ☐ Are you a director, officer, employee, or member of a consumer or community organization that operates in a state within the FHLBank district?
5. ☐ ☐ Is the consumer or community organization with which you are affiliated currently representing, and has it represented for at least two years, consumer or community interests on banking services, credit needs, housing, or financial consumer protections?

Describe the consumer or community organization, including the length of time it has represented these interests:

I HEREBY CERTIFY that the information provided on this FHLBank Appointive Director Eligibility Certification Form and on any attachments hereto is true, correct, and complete to the best of my knowledge.

Signature _____ Date _____

State of _____)
County of _____)

Signed and sworn to before me on this _____ day of _____.

Signature of Notary Public

(Seal)

My commission expires: _____

Federal Home Loan Bank System

Elective Director Eligibility Certification Form (E-1)

INSTRUCTIONS

If you need assistance in completing this form or have any questions, please contact (name, title, phone and fax numbers, e-mail address) at the Federal Home Loan Bank (FHLBank) of _____.

Please return this completed form and any attachments by the applicable deadline to (name and title), Federal Home Loan Bank of _____, (address).

Who Must File and When

FHLBank Elective Director Nominees

If you have been notified by your FHLBank that a member has nominated you to be a FHLBank elective director, and you want to accept the nomination, you must complete this form and return it to your FHLBank on or before the deadline established by the FHLBank. The time allowed includes the next business day if the date specified by the FHLBank occurs on a Saturday, Sunday, or federal holiday. Any nominee who does not submit this form to his or her FHLBank by the deadline will be deemed to have declined the nomination.

Current FHLBank Elective Directors

On or before March 1 of each year during your term of office as a FHLBank elective director, other than the calendar year in which you were elected, you must complete this form and return it to your FHLBank to update, if necessary, the information previously provided concerning continued compliance with the eligibility requirements for elective directors. If you do not submit this form by the March 1 deadline, the FHLBank may declare the elective directorship you fill to be vacant and you will no longer be eligible to serve as a FHLBank director. The time allowed includes the next business day if March 1 occurs on a Saturday, Sunday, or federal holiday.

Individuals Selected to Fill a Vacancy

If you have been selected by your FHLBank to fill the unexpired term of office of a vacant FHLBank elective directorship, you must complete this form and return it to your FHLBank on or before the deadline established by the FHLBank. The time allowed includes the next business day if the date specified by the FHLBank occurs on a Saturday, Sunday, or federal holiday.

Part I -- General Information

Your FHLBank will use the information you provide in Part I to ensure that its records are as up-to-date and accurate as possible.

Section A -- Certification

If no changes have occurred since the last time you completed Part I, you may complete Part I by signing the certification.

Section B -- Questions

If you have never completed, or if changes have occurred since the last time you completed, Part I, you must provide answers to each of the questions.

1. Please place your initials on the line that applies to you. You may check only one line. For example, if you are currently serving as a FHLBank elective director and are filing the required annual update, place your initials on the line marked "I am a FHLBank elective director."
2. Please print or type your full name.
3. Please list the name of each organization with which you are currently employed whether you work full- or part-time or are paid for your work, your title or position at that organization, the telephone and fax numbers where you can be reached, your electronic mail address, if any, the organization's street address, and, if different, the organization's mailing address. You may attach additional sheets if necessary.
4. For each directorship you currently hold, please list the name of the organization and the city or county and state in which the organization it is located. You may attach additional sheets if necessary.

Part II -- Eligibility Requirements

Your FHLBank will use the information you provide in Part II to determine whether you meet, or continue to meet, the statutory and regulatory eligibility requirements for FHLBank elective directors. See 12 U.S.C. § 1427; 12 C.F.R. § 932.7. Only individuals who satisfy these requirements may run for an elective directorship or serve as an elective director.

Section A -- Certification

If no changes have occurred since the last time you completed Part II, you may complete Part II by signing the certification.

Section B -- Questions

If you have never completed, or if changes have occurred since the last time you completed, Part II, you must provide answers to each of the questions.

1. Section 1427(a) of the Federal Home Loan Bank Act (Bank Act) and the Federal Housing Finance Board (Finance Board) regulation concerning FHLBank elective director eligibility require each elective director to be a United States citizen. See 12 U.S.C. § 1427(a); 12 C.F.R. § 932.7(b)(1). Please place your initials in the appropriate column.
2. Section 1427(a) of the Bank Act and the Finance Board regulation concerning FHLBank elective director eligibility require each elective director to be a bona fide resident of a state within the FHLBank district served or to be served by the director. See 12 U.S.C. § 1427(a); 12 C.F.R. § 932.7(b)(2). Please place your initials in the appropriate column. You will be deemed a bona fide resident of a FHLBank district under two circumstances. First, you will be deemed a bona fide resident if you maintain a principal place of residence in a state within the FHLBank district. To claim a location as your principal place of residence generally requires both physical presence and intent to remain or to return after an absence. Your

principal place of residence usually is the same as the permanent residence reported to the Internal Revenue Service. Please list that address. Second, you will be deemed a bona fide resident if you own or lease in your own name a residence in a state, and are a director or officer of a member within a voting state located in, within the FHLBank district. A member's "voting state" is the state where its principal place of business is located. See 12 C.F.R. § 932.1(f). The second basis for a finding of bona fide residence requires "residence plus," that is, simple residence and an employment nexus, rather than residence with domiciliary intent. Please list the address of every other residence you either own or lease in your own name, including vacation homes or homes you use seasonally or on a part-time basis, and the location of the principal place of business of each FHLBank member you serve as an officer or director. You may attach additional sheets if necessary.

3. Section 1427(b) of the Bank Act and the Finance Board regulation concerning FHLBank elective director eligibility require each elective director to be either an officer or a director of a member located in a state within the FHLBank district served or to be served by the director. See 12 U.S.C. § 1427(b); 12 C.F.R. § 932.7(b)(3). Please place your initials in the appropriate column. The member you serve as an officer or director will be deemed within the FHLBank district if the member's principal place of business, as determined by your FHLBank in accordance with the Finance Board's membership regulation, is located in a state that is part of the district. See 12 C.F.R. § 933.18.

4. Section 1427(b) of the Bank Act and the Finance Board regulation concerning FHLBank elective director eligibility requires every member an elective director serves as an officer or director to meet all minimum capital requirements of its appropriate federal regulator or, if applicable, appropriate state regulator. See 12 U.S.C. § 1427(b); 12 C.F.R. § 932.7(b)(3). Please place your initials in the appropriate column. For each FHLBank member you serve as an officer or a director that is subject to regulation by a federal regulator, other than credit unions or insurance companies, please provide the name of its appropriate federal regulator, its actual regulatory capital ratios as of the most recent quarter end, and the minimum regulatory capital requirements of the federal regulator. A member's appropriate federal regulator generally is its primary federal regulator. See 12 C.F.R. § 932.7(b)(3). For each credit union FHLBank member you serve as an officer or a director, please provide the name of its appropriate regulator, its actual regulatory reserves as of the most recent quarter end, the minimum regulatory reserve requirement of its regulator, and the National Credit Union Administration's regulatory reserve requirement if it was required to transfer funds as of the most recent quarter end. For each insurance company FHLBank member you serve as an officer or director, please provide the name of its appropriate regulator, the regulatory capital ratios contained in its most recent regulatory financial report, and the minimum statutory and regulatory requirements and the capital standards established by the National Association of Insurance Commissioners. For each FHLBank member you serve as an officer or a director that is not subject to regulation by a federal regulator, please provide the name and the minimum regulatory capital requirements of the member's appropriate state regulator. Generally, an appropriate state regulator is any state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against it. See 12 C.F.R. § 932.7(b)(3). For instance, if you are an officer or director of a state-chartered financial institution insured by the Federal Deposit Insurance Corporation (FDIC), you should provide information concerning the FDIC's capital requirements even though the institution may be subject to regulation by a state. Similarly, if you are an officer or director of an institution subject only to state regulation, please provide information concerning the appropriate state regulatory capital requirements. You may attach additional sheets if necessary.

5. The Finance Board regulation concerning FHLBank elective director eligibility prohibits an incumbent elective director from running for an open elective directorship unless the director's term of office expires before the new term of office would begin. See 12 C.F.R. § 932.7(c)(1)(i). Please place your initials in the appropriate column.

6. Section 1427(d) of the Bank Act and the Finance Board regulation concerning FHLBank elective director eligibility prohibit an individual from running for an elective directorship if he or she has been

elected to, has served for all or part of each, and is currently serving in the third of, three consecutive terms of office as an elective director. See 12 U.S.C. § 1427(d); 12 C.F.R. § 932.7(c)(1)(ii). Please place your initials in the appropriate column.

7. The Finance Board regulation concerning FHLBank elective director eligibility prohibits an incumbent FHLBank appointive director from running for an open elective directorship. See 12 C.F.R. § 932.7(c)(3). Please place your initials in the appropriate column.

Federal Home Loan Bank System

Elective Director Eligibility Certification Form

The reporting period is January 1, 19__ through December 31, 19__.

PART I **GENERAL INFORMATION**

Section A -- Certification

I hereby certify that no changes have occurred since I last completed and submitted to my FHLBank Part I of the FHLBank Elective Director Eligibility Certification Form.

Signature _____ Date _____

Section B -- Questions

1. Place your initials on the appropriate line:

_____ I am a FHLBank elective director nominee

_____ I am currently a FHLBank elective director

_____ I have been selected to fill a vacant FHLBank elective directorship

2. Print or type your full name:

3. List your current employment:

Name of organization _____ Your title or position _____

Telephone number _____ Fax number _____ E-mail address _____

Street _____ City or county _____ State _____ Zip code _____

Mailing address (if different) street _____ City or county _____ State _____ Zip code _____

Name of organization _____ Your title or position _____

Telephone number _____ Fax number _____ E-mail address _____

Street _____ City or county _____ State _____ Zip code _____

Mailing address (if different) street _____ City or county _____ State _____ Zip code _____

4. List all current directorships:

Name of Organization _____ Address (city or county and state) _____

PART II ELIGIBILITY REQUIREMENTS

Section A -- Certification

I hereby certify that no changes have occurred since I last completed and submitted to my FHLBank Part II of the FHLBank Elective Director Eligibility Certification Form.

Signature _____

Date _____

Section B -- Questions

For each question, place your initials in the appropriate column.

Yes No

1. _____ Are you a citizen of the United States?

Yes No

2. _____ Are you a bona fide resident of a state within the FHLBank district?

Provide the address of your permanent residence:

Street _____

City or county _____

State _____

Zip code _____

Provide the address of every other residences you either own or lease in your own name:

Street _____

City or county _____

State _____

Zip code _____

Street _____

City or county _____

State _____

Zip code _____

Provide the location of the principal place of business of each FHLBank member you serve as an officer or a director:

Name of member _____

City or county _____

State _____

Your title or position _____

Name of member _____

City or county _____

State _____

Your title or position _____

Yes No

3. _____ Are you an officer or director of a member located in a state within the FHLBank district?

4. _____ Are you an officer or director of a member that meets all applicable minimum capital requirements of its appropriate federal or state regulator?

A. For each FHLBank member other than credit unions and insurance companies you serve as an officer or director, provide the following information as of the most recent quarter end:

Name of member's appropriate regulator: _____

Member's actual regulatory capital ratios as of _____ Minimum regulatory capital requirements
quarter/year

_____ % Total Risk-based Capital _____

_____ % Tier 1 (Core) Risk-based Capital _____

_____ % Leverage Capital
(non-OTS regulated members only) _____

_____ % Tangible Capital
(OTS regulated members only) _____

B. For each credit union FHLBank member you serve as an officer or director, provide the following information as of the most recent quarter end:

Name of member's appropriate regulator: _____

Member's actual regulatory reserves as of _____ Minimum regulatory capital requirements
quarter/year

_____ % Statutory Reserves* / Risk Assets _____

* Statutory Reserves include the total of the Regular Reserve, the Allowance for Loan Losses Account, and the Allowance for Investment Losses Account.

Provide the following information if the member was required to transfer funds under the National Credit Union Administration's regulatory reserve requirements as of the date noted above:

\$ _____ Gross Income

_____ % Transfer Percent Required

\$ _____ Actual Transfer Amount _____ Date of Transfer

C. For each insurance company FHLBank member you serve as an officer or director, provide the following information as of its most recent report:

Name of member's appropriate regulator: _____

The member's actual regulatory capital ratios contained in its most recent regulatory financial report filed with its appropriate regulator:

The minimum statutory and regulatory requirements and the capital standards established by the National Association of Insurance Commissioners:

Yes No

5. _____ Are you currently serving as an elective FHLBank director?

_____ If yes, does the term of office of your directorship expire on or before the last day of the calendar year in which the election is being held?

6. _____ Are you currently serving in the third of three terms of office as an elective FHLBank director?

Yes No

7. _____ Are you currently serving as an appointive FHLBank director?

I HEREBY CERTIFY that the information provided on this FHLBank Elective Director Eligibility Certification Form and on any attachments is true, correct, and complete to the best of my knowledge.

Signature _____ Date _____

State of _____)
County of _____)

Signed and sworn to before me on this _____ day of _____.

Signature of Notary Public

(Seal)

My commission expires: _____

By the Board of Directors of the Federal Housing Finance Board.

Dated: March 25, 1998.

Bruce A. Morrison,
Chairperson.

[FR Doc. 98-12651 Filed 5-12-98; 8:45 am]

BILLING CODE 6725-01-C

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

Management of Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of public meetings.

SUMMARY: On September 16, 1997, the Department of the Treasury ("Treasury") published a Notice of Proposed Rulemaking in which Treasury proposed making available to Federal payment recipients an account to access their Federal payments. The account, commonly referred to as the Electronic Transfer Account or "ETASM," will be offered through a Federally-insured financial institution and will be available at a reasonable cost and with the same consumer protections afforded other account holders at the same financial institution. Treasury is hosting two meetings, open to the public, to discuss the advantages and disadvantages of two approaches to offering this account. One meeting will be for the purpose of obtaining comments from representatives of community-based and consumer organizations; the other meeting will be for the purpose of obtaining comments from representatives of financial institutions.

DATES: May 21, 1998. 9:30 a.m. to 11:30 a.m. (community-based and consumer organization meeting); 2:00 p.m. to 4:00 p.m. (financial institution meeting).

ADDRESSES: Marriott Hotel at Metro Center, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons wishing to attend and observe either meeting are requested to contact Martha Thomas-Mitchell at (202) 874-6757 or Diana Shevlin at (202) 874-7032, or send an Internet e-mail to Martha.Thomas-Mitchell@fms.sprint.com or Diana.Shevlin@fms.sprint.com, by 12:00 noon Eastern time on May 19, 1998, to make arrangements for attendance. Seating will be available on a first come, first served basis.

SUPPLEMENTARY INFORMATION: On September 16, 1997, Treasury issued a Notice of Proposed Rulemaking (62 FR 48714) ("208 NPRM") implementing the electronic payment requirement of the Debt Collection Improvement Act of 1996 (the "Act"). The Act requires that, subject to the authority of the Secretary of the Treasury to grant waivers, all Federal payments (other than payments

under the Internal Revenue Code of 1986) made after January 1, 1999, must be made by electronic funds transfer ("EFT"). The Act further requires that Treasury ensure that individuals who are required to have an account because of the EFT mandate have access to an account at a financial institution at a reasonable cost and with the same consumer protections afforded other account holders at the same financial institution. In the 208 NPRM, Treasury proposed that such an account would be provided by one or more financial institutions designated as Treasury's Financial Agents for the provision of these accounts.

In addition to reviewing comments received on the 208 NPRM and its own analysis of alternative approaches to offering the account, Treasury will hold two meetings, both of which will include a discussion of two alternative approaches to providing the ETASM. One meeting will focus on comments from community-based and consumer organizations. The other meeting will focus on comments from financial institutions.

Treasury has invited certain commenters and other interested parties to take part in the meetings. These participants will comment on questions posed by the Treasury and take part in a discussion. Members of the public are invited to observe.

After these meetings, Treasury intends to publish a notice in the *Federal Register* describing proposed features of ETASM. As indicated in the 208 NPRM, this notice will be published for public comment.

Possible Approaches

Treasury is currently considering two approaches to offering the ETASM to recipients through financial institutions. The first approach would involve selecting a small number of financial institutions to act as Treasury's Financial Agents in providing ETAsSM within certain geographic areas. Financial Agents would be selected on a competitive basis through an Invitation for Expressions of Interest. Terms and conditions for providing the accounts, including account attributes, would be stipulated contractually in financial agency agreements with the selected financial institutions. The account would be electronically accessed by debit cards issued by the Financial Agent. These Financial Agents would work to sign-up local financial institutions who would market and originate ETAsSM in their communities. The cost to the recipient to access funds would be determined by the market as a result of the competitive process.

Under the second approach, Treasury would publish standards for providing the ETASM, including account attributes, and would allow any Federally-insured financial institution to provide the ETASM in accordance with these standards. Treasury would monitor and make available to the public a list of financial institutions offering the ETASM. Under this approach, a financial institution would have the option of offering recipients either electronic access to their accounts or over-the-counter transactions or both. Treasury would establish a price cap for fees imposed on recipients to access their funds.

Questions

Treasury is interested in responses to the following questions:

(1) Which approach will most likely provide recipients with convenient local access at a low cost?

(2) Which approach will make an ETASM available to the largest number of recipients?

Dated: May 8, 1998.

Richard L. Gregg,

Commissioner.

[FR Doc. 98-12691 Filed 5-12-98; 8:45 am]

BILLING CODE 4810-36-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH31-1-7160b; FRL-6010-6]

Approval and Promulgation of Air Quality Implementation Plans; Reasonably Available Control Technology for Nitrogen Oxides for the State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes and requires Reasonably Available Control Technology (RACT) at three stationary sources of nitrogen oxides (NO_x). In the Final Rules Section of this *Federal Register*, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this amendment as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to the direct final rule, no

further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before June 12, 1998.

ADDRESSES: Comments may be mailed to Susan Studien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; and the Air Resources Division, New Hampshire Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, Environmental Engineer, Air Quality Planning Unit (CAQ), U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203-2211; (617) 565-2773; Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 21, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98-12715 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR66-7281a; FRL-6006-9]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Oregon Department of Environmental Quality's (ODEQ) new sections to Division 30 as submitted on June 1, 1995, and the revisions to Divisions 20,

21, 22, 25, and 30, as submitted on January 22, 1997, of their State Implementation Plan (SIP). In the Final Rules Section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by June 12, 1998.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ-107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. EPA, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101 and ODEQ, 811 S.W. Sixth Avenue, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality, EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553-1814.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Dated: April 20, 1998.

Chuck Clarke,

Regional Administrator Region X.

[FR Doc. 98-12435 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ30-1-177, FRL-6013-3]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of New Jersey. This action is required because the revision changes one of the primary design considerations of the existing automobile inspection and maintenance (I/M) program. The intended effect of this action is to propose approving changes in the inspection frequency from annual to biennial and the addition of a gas cap inspection, which will result in a net increase in overall emissions reductions as previously approved by EPA.

DATES: Comments must be received on or before June 12, 1998.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866.

Copies of the State's submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Richard Graciano, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1998 New Jersey submitted a revision to its State Implementation Plan (SIP) changing the inspection frequency, from annual to biennial, of its existing automobile

inspection and maintenance (I/M) program, through the addition of a regulation found at N.J.A.C. 13:20-43.7. Prior to this proposal, neither the New Jersey rules nor statutes adequately addressed the testing frequency for the transitional phase of the program, during which New Jersey is converting its basic I/M program to the enhanced I/M program. New Jersey has had a basic I/M program in place since 1974. This program, in its current form, was subject to its most recent amendment on January 21, 1985, which was approved by EPA and incorporated into the SIP on September 17, 1992. 57 FR 42893. EPA conditionally approved New Jersey's enhanced I/M program on May 14, 1997. 62 FR 26405. On January 30, 1998, the State submitted performance standard modeling to EPA, fulfilling the remaining condition required by EPA in its approval notice.

Under provisions of sections 182, 184, and 187 of the Clean Air Act (Act), New Jersey is required to implement an enhanced I/M program throughout the entire State. In its July 10, 1995 and March 27, 1996 SIP submittals, the State indicated that the enhanced I/M program would require biennial inspections, and suggested that early implementation of biennial testing may be necessary to facilitate system upgrades.

In the February 26, 1998 request for a SIP revision, New Jersey indicated that during the transition period between the existing program and the new enhanced program, the State will require vehicles to be inspected biennially, rather than annually, to accommodate the decreased availability of centralized inspection lanes while they are being retrofitted for enhanced testing. The February 26, 1998 SIP revision states that, "[t]he transition period will begin on the start date of the contract for the implementation of the enhanced I/M program and will end when the enhanced I/M program becomes mandatory." Pursuant to section 193 of the Act, such a change could not be approved if it results in increased emissions of volatile organic compounds (VOCs) and/or carbon monoxide (CO). In order to offset the increased VOC emissions, New Jersey is proposing early implementation of the test that checks the functional operation of vehicle gas caps. The gas cap checks will be implemented during the transition period from the existing program to the enhanced program rather than at the start of the enhanced program. New Jersey expects that this strategy will offset the increase in VOCs resulting from the conversion to biennial testing and has submitted modeling results that support this. New

Jersey estimates that the resulting VOC emissions increase from changing the program frequency to biennial will be about 0.026 grams per mile. The VOC emissions reduction associated the functional gas cap test are estimated to be about 0.033 grams per mile, resulting in a net benefit of 0.007 grams per mile.

New Jersey also estimates that CO emissions will increase about 0.365 grams per mile as a result of the change in inspection frequency. In its revision package, the State notes that the carbon monoxide benefits gained through vehicle fleet turnover from January 1, 1996 through January 1, 1998 are about 0.745 grams per mile. However, EPA points out that this emission reduction is not a function of the SIP *per se*. EPA acknowledges that the most efficient means to achieve significant carbon monoxide reduction and ultimate attainment is through the speedy implementation of the State's enhanced I/M program. Specifically, EPA expects that the State's enhanced I/M implementation will result in excess carbon monoxide benefits beyond the required performance standard. These are approximately 0.526 grams per mile.

These air quality benefits cannot be achieved without accommodating the practical obstacles associated with retrofitting centralized test only stations, which include transitional biennial testing.

Since the State is currently in the process of awarding construction and/or operation contracts for its approved enhanced program, New Jersey has requested that EPA proceed with an expedited decision process for this revision to the existing program. Therefore, approval of this revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the State's proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas specified in this document, EPA will publish a final rulemaking on the revisions. Final rulemaking action by EPA will occur only after the SIP revision has been adopted by New Jersey and submitted formally to EPA for incorporation into the SIP. In addition, any action by the State resulting in undue delay in the contract award or selection process may result in a reproposal altering the approvability of the SIP.

Conclusion

EPA believes New Jersey has provided an adequate rationale for early conversion of the existing program from annual to biennial testing. Furthermore, EPA supports the calculations submitted by the State indicating that the emissions shortfalls resulting from this change will be sufficiently offset by the strategies proposed and by the benefits of enhanced I/M implementation. Since the State is reducing the testing frequency of its current program to facilitate the implementation of the enhanced I/M program, EPA's approval of this testing frequency conversion under the terms of this SIP revision only applies after the State awards the necessary construction contracts for its enhanced I/M program.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The

Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. versus U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Regional Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: April 30, 1998.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 98-12720 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-60-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD067-3025b; FRL-6012-6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Definition of the Term "Major Stationary Source of VOC"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision pertains to amendments to Maryland's definition of the term major stationary source of volatile organic compounds (VOC). In the Final Rules section of this *Federal Register*, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 12, 1998.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Section, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division,

U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 566-2181, at the EPA Region III address above, or via e-mail at pino.maria@epamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title, pertaining to revisions to Maryland's definition of the term "major stationary source of VOC," which is located in the Rules and Regulations Section of this *Federal Register*.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 24, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98-12717 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-6012-2]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of California; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA) and through the California Air Resources Board, South Coast Air Quality Management District (SCAQMD) requested approval to implement and enforce its "Rule 1421: Control of Perchloroethylene Emissions from Dry Cleaning Systems" (Rule 1421) in place of the "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities" (dry cleaning NESHAP) for area sources under SCAQMD's jurisdiction. In the Rules section of this *Federal Register*, EPA is granting SCAQMD the authority to implement and enforce Rule 1421 in place of the dry cleaning NESHAP for area sources under SCAQMD's jurisdiction as a direct final rule without prior proposal because the Agency views this as a noncontroversial action

and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this document, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 12, 1998.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the submitted request are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Telephone: (415) 744-1200.

SUPPLEMENTARY INFORMATION: This document concerns SCAQMD Rule 1421, Control of Perchloroethylene Emissions from Dry Cleaning Systems, revised on June 13, 1997. For further information, please see the information provided in the direct final action which is located in the Rules section of this *Federal Register*.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C., Section 7412.

Dated: April 10, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98-12429 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-60-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL-OW-6013-4]

RIN-2040-AC65

Water Quality Standards for Alabama

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule; Re-opening of public comment period.

SUMMARY: EPA is re-opening the public comment period on the proposed water quality standards that would be applicable to certain waters of the United States in the State of Alabama.

DATES: EPA will now accept public comments on this proposed rulemaking until June 3, 1998. Comments postmarked after this date may not be considered.

ADDRESSES: An original plus 2 copies, and if possible an electronic version of comments either in WordPerfect or ASCII format, should be addressed to Fritz Wagener, Water Quality Standards Coordinator, U.S. EPA Region 4, Water Management Division, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia, 30303-3104. The administrative record for this proposed rule is available for public inspection at U.S. EPA Region 4, Water Management Division, 15th Floor, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia, 30303-3104, between 8:00 a.m. to 4:30 p.m. Copies of all or portions of the record will be made available for a charge of 20 cents per page.

FOR FURTHER INFORMATION CONTACT: Fritz Wagener, Water Quality Standards Coordinator, U.S. EPA Region 4, Water Management Division, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia, 30303-3104 (telephone: 404-562-9267).

SUPPLEMENTARY INFORMATION: This proposed rule appeared in the *Federal Register* on March 5, 1998 (63 FR 10799) and provided for a public comment period of 60 days which closed on May 4, 1998. EPA has received requests from several interested parties for additional time to comment. These parties cited difficulty in obtaining and reviewing certain documents referenced in the administrative record within the comment period provided by EPA.

Dated: May 7, 1998.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 98-12690 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-60-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 412, and 413

[HCFA-1003-CN]

RIN 0938-AI22

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates; Corrections

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; correction.

SUMMARY: In the May 8, 1998 issue of the *Federal Register* (63 FR 25575), we published a proposed rule to revise the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. This document corrects technical errors made in that document.

FOR FURTHER INFORMATION CONTACT: Nancy Edwards, (410) 786-4531,

Operating Prospective Payment, DRG, and Wage Index Issues.

Tzvi Hefter, (410) 786-4487, Capital Prospective Payment, Excluded Hospitals, and Graduate Medical Education Issues.

SUPPLEMENTARY INFORMATION: In the May 8, 1998 proposed rule, we addressed caps on the target amounts for cost reporting periods beginning in FY 1999 for hospitals excluded from the hospital inpatient prospective payment systems. The caps that we published inadvertently reflect updates to the amounts published in the August 29, 1997 final rule with comment period (62 FR 46019), rather than updates to the corrected amounts published in the March 6, 1998 correction notice for the final rule with comment period (63 FR 11148). This document corrects that error. Also incorrect amounts were listed in Tables 1A, 1C, 1D, 1E, and 1F. We inadvertently published the amounts from the August 29, 1997 final rule with comment period. Therefore, we are making the following corrections to the proposed rule:

1. On page 25601, end of the third column, the table is replaced with the following:
 - (1) Psychiatric hospitals and units: \$10,797
 - (2) Rehabilitation hospitals and units: \$19,582
 - (3) Long-term care hospitals: \$38,630
2. On pages 25620 through 26521, Tables 1A, 1C, 1D, 1E, and 1F are corrected to read as follows:

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,791.45	1,134.64	2,747.26	1,116.68

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	2,767.78	1,125.02	2,767.78	1,125.02
Puerto Rico	1,331.29	535.88	1,310.21	527.40

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	377.25
Puerto Rico	180.73

TABLE 1E.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR "TEMPORARY RELIEF" HOSPITALS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,799.77	1,138.02	2,755.44	1,120.01

TABLE 1F.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR "TEMPORARY RELIEF" HOSPITALS IN PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	2,776.03	1,128.37	2,776.03	1,128.37
Puerto Rico	1,335.26	537.48	1,314.11	528.97

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance; and No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: May 8, 1998.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resource Management.

[FR Doc. 98-12805 Filed 5-8-98; 4:26 pm]

BILLING CODE 4120-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1 and 10

[USCG-1998-3824]

RIN 2115-AF58

Maritime Course Approval Procedures

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the regulations which govern Maritime Course Approval Procedures, by streamlining the process by which courses are submitted to and reviewed by the Coast Guard. We also propose to add a mechanism to allow us to suspend or revoke approvals for courses. Although the regulations govern training schools with approved courses, only a methodology for course approval is provided. Revising the regulations to include a mechanism for withdrawal of approval will motivate schools to maintain a uniformly high standard, improve compliance with course approval regulations, and ultimately promote public safety.

DATES: Comments must reach the Docket Management Facility on or before July 13, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility,

(USCG-1998-3824), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001, or deliver them to room PL-401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room PL-401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions about the docket, contact Ms. Paulette Twine, Chief, Documentary Services Division, Department of

Transportation, telephone 202-366-9329. For questions about this notice, contact Gerald Miente, Project Manager, National Maritime Center (NMC), 703-235-0018.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to submit written data, views, or arguments. If you submit comments, you should include your name and address, identify this notice (USCG-1998-3824) and the specific section or question in this document to which your comments apply, and give the reason for each comment. Please submit one copy of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want us to acknowledge receiving your comments, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public meeting. You may request a public meeting by submitting a request to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that a public meeting should be held, it will hold the meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Regulations for merchant mariner course approvals have been in place for several years and are found in 46 CFR part 10. Courses were first approved for education mandated by regulation such as radar observer, fire-fighting, and first aid. Courses were then approved for formal training instead of required sea service for both renewal and raise in grade of license or an endorsement, and to substitute for a Coast Guard examination.

With the publication of a Focus Group Study, *Licensing 2000 and Beyond* in 1993, the Coast Guard began approving courses to substitute for certain modules of examination, especially for lower level licenses. Now, with the implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) of the International Maritime Organization (IMO), requirements for basic entry-level education, structured shipboard training programs, and specific assessment protocols, the course

approval burden has increased considerably.

Presently, the Coast Guard has approved in excess of 500 courses presented by over 200 schools and the number is growing weekly. As part of a Quality Standard System (QSS), Coast Guard Regional Examination Centers (RECs) are charged with oversight of these widespread training institutions.

The majority of schools consistently operate according to the regulations governing course approvals. There are times, however, when audits of a particular school show evidence of infractions ranging from incomplete recordkeeping to major deficiencies dealing with examination tampering, operating outside the conditions of the course approval, and outright misrepresentation of course material. Some primary reasons for suspending or revoking a course approval would include (but are not limited to):

- Failure to comply with the provisions of the course approval.
- Failure to comply with the provisions of parts 10, 12, 13 or 15 of Title 46, Code of Federal Regulations (46 CFR) especially Part 10, Subpart C.
- Scheduling and teaching an approved course at a location other than the site required in the application for approval and authorized in the approval letter unless prior site approval is requested of and granted by the Officer in Charge, Marine Inspection (OCMI) of the Regional Exam Center in whose area of responsibility the "remote site" is located.

• Not adhering to the approved length of the course; cutting short instructional time on a daily or weekly basis. Substituting "homework" or "preparation time," either on computer-based questions or artificially drawn-out plotting exercises for quality classroom instructional contact hours.

• Using unqualified instructors, substandard facilities or otherwise presenting the course in a manner that is not sufficient for or conducive to achieving the learning objectives of the course.

• Not giving a final (end-of-course) exam equal in scope and difficulty to the Coast Guard exam for that particular license or endorsement. Also, for not giving a final exam or a "re-take" exam which is totally different than any homework, classroom "practice exercise" or exam previously viewed by the student.

• Issuing certificates of course completion to students who have not demonstrated competency or who have not otherwise met the course requirements.

• Advertising, holding a course, or issuing certificates of course completion to students as having passed a course of instruction for which the school does not hold a valid Coast Guard approval.

• Assisting a student in passing the final (end-of-course) exam by either directly or indirectly providing any assistance including, but not limited to, supplying answers, hinting at the correct answer, grading and returning the exam for completion and indicating that certain answers or choices are incorrect prior to grading.

• Giving a student a final (end-of-course) exam orally. The authority to give an oral examination rests with the OCMI per 46 CFR 10.205.

• Allowing a student to enroll or join the course after the beginning of course instruction.

In order to prevent these infractions, and ensure the integrity of Coast Guard approved courses, it is necessary to establish suspension, revocation, and appeal provisions in our regulations.

Discussion of Proposed Rule

1. The Coast Guard proposes to amend section 10.302(a) to require training organizations seeking course approval to submit course packages to the Commanding Officer, National Maritime Center, (NMC) directly rather than via the OCMI.

Amended paragraph (a) would also reflect that the title of the Director, National Maritime Center has been changed to the Commanding Officer, National Maritime Center.

At present, course packages are submitted to the OCMI who then conducts a preliminary review of the course, including an inspection of the proposed teaching facility and a review of instructor qualifications. Upon completion of this preliminary review, the course package is then forwarded to the NMC with the OCMI's recommendation for approval or disapproval. The NMC then conducts its review of the course and either issues or denies approval. Under the proposed rule, courses will be submitted directly to the NMC, who will then direct the OCMI to conduct an inspection of the teaching facility and evaluation of the proposed instructors. This will allow the OCMI and NMC to conduct their reviews concurrently, thereby reducing the time between initial submission of the course by the training organization and approval of the course by the NMC.

Paragraph (a) would be amended to indicate that the Coast Guard now approves training that satisfies regulatory requirements or that substitutes for a Coast Guard

examination or a portion of a sea service requirement.

2. The Coast Guard proposes to amend section 10.302, paragraphs (c) and (d), to add, in each paragraph, that approvals expire when a school closes or when a school no longer offers the course.

3. The Coast Guard also proposes to add three paragraphs to section 10.302. New paragraph (e) would enumerate the conditions that allow the NMC or OCMI to suspend a course approval. Approval may be suspended if the Coast Guard determines that a specific course does not comply with 46 CFR Parts 10, 12, 13 or 15 or the requirements specified in the course approval, if the course substantially deviates from the course framework that was initially submitted for approval, or if the course is presented in a manner that is not sufficient for, or conducive to, achieving learning objectives. If such a determination is made, the cognizant OCMI may suspend the approval, may direct the surrender of the certificate of approval and/or direct the holder to cease claiming the course is Coast Guard approved. In the event of suspension, the cognizant OCMI will notify the approval holder in writing of the impending suspension, and give them an opportunity to correct the reasons for suspension. If the approval holder fails to correct the reasons for suspension, the course will be suspended and the matter referred to the Commanding Officer, NMC. Upon such suspension, the Commanding Officer, National Maritime Center will notify the approval holder that the course fails to meet applicable requirements and will explain how those deficiencies can be corrected. The NMC may grant the approval holder up to 60 days in which to correct the deficiencies.

New paragraph (f) would identify conditions that allow the Commanding Officer, National Maritime Center to revoke an approval. Approval(s) may be revoked for failure to correct deficiencies identified by the Commanding Officer, National Maritime Center. The Coast Guard may also revoke any or all course approvals held by an approval holder if there has been a determination that the approval holder has a demonstrated history of failure to comply with applicable requirements of their course approvals. In such instances, the approval holder has shown a clear disregard for the terms of their approval such that it is reasonable to infer that they are not adhering to their approval in any of their courses. This revocation would ensure the integrity of Coast Guard approved training by revoking all approvals if that

approval holder's conduct is such that there is reasonable cause to suspect that all training offered by that approval holder is not being conducted in compliance with the Code of Federal Regulations or the requirements of their course approvals. Course approvals can also be revoked if there is a demonstrated history of substantial deviations from course curricula or, presenting courses in a manner that is not sufficient for, or conducive to, achieving learning objectives.

New paragraph (g) would outline the appeal procedure for any of the above actions. Persons directly affected by a suspension or revocation of an approval may appeal to the Commandant via the Commanding Officer, National Maritime Center as provided for by 46 CFR Part 1.03-15.

Regarding appeals, 46 CFR 1.03-15(h)(3) and 1.03-45 would be amended to reflect that the title of the Director, National Maritime Center has been changed to Commanding Officer, National Maritime Center, and would add language about appeals regarding suspension or revocation of course approvals.

4. In addition, the Coast Guard proposes to amend section 10.303(e) to require training organizations to submit change requests to approved courses to the Commanding Officer, National Maritime Center (NMC-4B) directly rather than via the OCMI.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Course approval suspensions, revocations, or expirations do not impose specific requirements on any course holder that would cause an economic effect. Rather, this rule establishes a standard enforcement method for the rare number of course approval holders who do not comply with applicable statutes, regulations, and the terms of course approval.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The small entities affected by this rule are privately owned and operated schools with one to several employees, community colleges, and maritime labor union owned and operated schools. Suspension or revocation of an approval for a course or courses depends on the nature and severity of the infraction with the resultant loss of revenue for the specific period.

However, we realize that most schools operate within the confines of course approval regulations, guidelines and letters. This notice of proposed rulemaking would provide a standard mechanism, in regulation, for the rare instances when a school might deviate from those course approval regulations, guidelines and letters. Also, this rule would provide an opportunity for the approval holder to correct any deficiencies prior to revocation.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. We will mail copies of the notice of proposed rulemaking to all schools teaching approved courses to facilitate small businesses' ability to respond with comments. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance

please contact Gerald Miente, 703-235-0018.

Collection of Information

This proposed rule contains no new collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Collection of information control number OMB 2115-0111 is assigned to this section.

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under paragraph 2.B.2.e.(34)(a) of Commandant Instruction M16475.1B, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 1 and 10 as follows:

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 49 CFR 1.45, 1.46; § 1.01-35 also issued under the authority of 44 U.S.C. 3507.

2. In § 1.03-15, revise paragraph (h)(3) to read as follows:

§ 1.03-15 General.

(h) * * * * *

(3) Commanding Officer, National Maritime Center, for appeals involving vessel documentation issues and suspension or revocation of course approvals.

3. Revise § 1.03-45 to read as follows:

§ 1.03-45 Appeals from decisions or actions involving documentation of vessels and suspension or revocation of course approvals.

Any person directly affected by a decision or action of an officer or employee of the Coast Guard acting on or in regard to the documentation of a vessel under part 67 or suspension or revocation of course approvals under part 10 of this chapter, may make a formal appeal of that decision or action to the Commandant (G-MO) via the Commanding Officer, National Maritime Center, in accordance with procedures contained in §§ 1.03-15 through 1.03-25 of this subpart.

PART 10—LICENSING OF MARITIME PERSONNEL

4. The authority citation for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

5. In § 10.302, in paragraphs (c) and (d), immediately preceding the words "or on the date of", add the words "when the school closes, when the school no longer offers the course,"; revise paragraph (a) introductory text; and add paragraphs (e), (f), and (g) to read as follows:

§ 10.302 Course approval.

(a) The Coast Guard approves courses satisfying regulatory requirements and those that substitute for a Coast Guard examination or a portion of a sea service requirement. The owner or operator of a training school desiring to have a course approved by the Coast Guard shall submit a written request to the Commanding Officer, National Maritime Center, NMC-4B, 4200 Wilson Boulevard, Suite 510, Arlington, VA 22203-1804, that contains:

(e) *Suspension of approval.* If the Coast Guard determines that a specific course does not comply with the provisions of 46 CFR parts 10, 12, 13 or 15, or the requirements specified in the course approval; or substantially deviates from the course curriculum package as submitted for approval; or if the course is being presented in a manner that is insufficient to achieve learning objectives; the cognizant OCMI may suspend the approval, may require the holder to surrender the certificate of approval, if any, and may direct the holder to cease claiming the course is Coast Guard approved. The cognizant OCMI will notify the approval holder in writing of its intention to suspend the

approval and the reasons for suspension. If the approval holder fails to correct the reasons for suspension, the course will be suspended and the matter referred to the Commanding Officer, National Maritime Center. The Commanding Officer, National Maritime Center, will notify the approval holder that the specific course fails to meet applicable requirements, and explain how those deficiencies can be corrected. The Commanding Officer, National Maritime Center may grant the approval holder up to 60 days in which to correct the deficiencies.

(f) *Revocation of approval.* (1) The Commanding Officer, National Maritime Center may revoke approval for any course when the approval holder fails to correct the deficiency(ies) of a suspended course approval within a time period allowed under paragraph (e) of this section.

(2) The Commanding Officer, National Maritime Center may revoke approval of any or all courses by an approval holder upon a determination that the approval holder has demonstrated a pattern or history of:

- (i) Failing to comply with the applicable regulations or the requirements of course approvals;
- (ii) Substantial deviations from their approved course curricula; or
- (iii) Presenting courses in a manner that is insufficient to achieve learning objectives.

(g) *Appeals of suspension and revocation of approval.* Anyone directly affected by a decision to suspend or revoke an approval may appeal the decision to the Commandant via the Commanding Officer, National Maritime Center, as provided in § 1.03-45 of this chapter.

6. In § 10.303, revise paragraph (e) to read as follows:

§ 10.303 General standards.

(e) Not change its approved curriculum unless approved, in writing, after the request for change has been submitted in writing to the Commanding Officer, National Maritime Center (NMC-4B).

Dated: April 13, 1998.

Joseph J. Angelo,
Acting Assistant Commandant for Marine Safety and Environmental Protection.
[FR Doc. 98-12659 Filed 5-12-98; 8:45 am]

BILLING CODE 4910-15-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

(I.D. 030398C)

Magnuson Act Provisions; Essential Fish Habitat

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed recommendations for Essential Fish Habitat for Pacific coast salmon, groundfish, and coastal pelagics; reopening of comment period.

SUMMARY: NMFS requests public comments on proposed recommendations for Essential Fish Habitat (EFH) to the Pacific Fishery Management Council (Council) for its Fishery Management Plans (FMPs) for salmon, groundfish, and coastal pelagics. To provide greater opportunity for public comment, the comment period on proposed EFH recommendations for these FMPs is reopened until May 22, 1998.

DATES: Comments will be accepted until May 22, 1998.

ADDRESSES: Send comments or requests for copies of the proposed EFH recommendations for the salmon and groundfish FMPs to Northwest Region, Sustainable Fisheries Division, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115. Send comments or requests for a copy of the proposed EFH recommendations for the coastal pelagics FMP to Southwest Region, Sustainable Fisheries Division, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, NMFS Northwest Region, 206-526-6143, on salmon EFH; Yvonne deReynier, NMFS Northwest Region, 206-526-6120, on groundfish EFH; and Mark Helvey, NMFS Southwest Region, 707-575-7585, on coastal pelagics EFH.

SUPPLEMENTARY INFORMATION: Councils are required to amend their FMPs by October 11, 1998, by describing and identifying EFH for each managed fishery by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). NMFS promulgated an

interim final rule on December 19, 1997 (62 FR 66531-66559), providing guidelines to assist the Councils in describing and identifying EFH in FMPs (including adverse impacts on EFH) and in consideration of actions to ensure the conservation and enhancement of EFH. The Magnuson-Stevens Act also requires NMFS to provide each Council with recommendations and information regarding EFH for each fishery under that Council's authority.

NMFS announced the availability of its proposed EFH recommendations for the Pacific Council's FMPs for salmon, groundfish, and coastal pelagics and a series of public meetings to receive public comments on March 9, 1998 (63 FR 11402-11403). For copies of the proposed EFH recommendations, see ADDRESSES. Public comments are requested by May 22, 1998.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 8, 1998.

James P. Burgess,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 98-12701 Filed 5-12-98; 8:45 am]

BILLING CODE 3510-22-F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting; Board of Directors Meeting

PLACE: ADF Headquarters.

DATE: Monday, 18 May 5:00-7:00 p.m. and Tuesday, 19 May 9:00-11:00 a.m.

STATUS: Open.

Agenda

Monday, 18 May 1998

5:00-7:00 p.m. Meeting

Tuesday, 19 May 1998

9:00 a.m. Chairman's Report;
President's Report; Trade and
Investment Initiative
11:00 a.m. Adjournment

If you have any questions or comments, please direct them to Paul Magid, General Counsel, who can be reached at (202) 673-3916.

William R. Ford,
President.

[FR Doc. 98-12792 Filed 5-8-98; 4:15 pm]

BILLING CODE 8116-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

National Park Service

Joint Secretarial Order; Pisgah National Forest, North Carolina and Blue Ridge Parkway; Joint Order Transferring Administrative Jurisdiction of National Forest System Lands

By virtue of the authority vested in the Secretary of Agriculture and in the Secretary of the Interior by the Act of June 8, 1940, which amended the Act of June 30, 1936 (16 U.S.C. 460a-1), it is ordered as follows:

The National Forest System lands described as portions of Tract V-1, Parcels 1 and 2 in Section 2-S and Parcel 1 in Section 2-T of the Blue Ridge Parkway, which are part of the Pisgah National Forest located in Henderson, Buncombe, Haywood and Transylvania Counties, North Carolina, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Interior subject to outstanding rights or interests of record. Pursuant to the Act of June 8, 1940, which amended the act of June 30, 1936, the National Forest lands transferred to the Department of the Interior shall be administered as part of the Blue Ridge Parkway.

A description of the lands to be transferred and a map are available for public inspection at the Office of the Chief, Forest Service, U.S. Department of Agriculture, Auditors Building, 201 14th Street, S.W., at Independence Avenue, S.W., Washington, D.C. 20250.

Daniel R. Glickman,
Secretary of Agriculture.

Bruce Babbitt,
Secretary of the Interior.

[FR Doc. 98-12697 Filed 5-12-98; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Committee of Scientists is scheduled for May 27-29 in Boulder, Colorado. The purpose of the meeting is for the committee to continue to draft its report and recommendations for the Secretary of Agriculture and the Chief of the Forest Service. The meeting is open to the public.

DATES: A meeting is scheduled for May 27-29 in Boulder, Colorado.

ADDRESSES: The meeting will be held at the Holiday Inn, 800 28th Street, Boulder, Colorado. The meeting will begin at 9 a.m. and end at 5 p.m. on all 3 days.

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339 or

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the Committee may be accessed via the Internet at www.cof.orst.edu/org/scicomm/.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Designated Federal Official to the Committee of Scientists, Telephone: 202-205-2494.

SUPPLEMENTARY INFORMATION: The Committee of Scientists was chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997).

Dated: May 6, 1998.

Robert C. Joslin,

Deputy Chief, National Forest System.

[FR Doc. 98-12626 Filed 5-12-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 980427105-8105-01]

RIN 0648-ZA41

Sea Grant Industry Fellows Program

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of request for proposals.

SUMMARY: This notice announces that proposals may be submitted for a Fellowship program sponsored by the National Sea Grant Office (NSGO) to strengthen ties between academia and industry and to fulfill its broad educational responsibilities. With required matching funds from private industrial sponsors, Sea Grant expects to support up to four new Industrial fellows in 1998. Each fellow will be a graduate student selected through national competition, and will be known as a Company Name/Sea Grant Industrial Fellow. Proposals must be submitted by academic institutions who have identified a graduate fellow and an industrial sponsor who will provide matching funds.

DATES: Proposals must be submitted by June 12, 1998 to the nearest state Sea Grant College Program.

ADDRESSES: Applications should be requested from the nearest Sea Grant college program. The addresses of the Sea Grant college program directors can be found on Sea Grant's home page (<http://www.mdsq.umd.edu/NSGO/index.html>). The addresses may also be obtained by contacting the Program Manager at the National Sea Grant Office (see below).

FOR FURTHER INFORMATION CONTACT: Dr. Vijay G. Panchang, Program Manager, National Sea Grant Office/NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713-2435 ext. 142; e-mail: Vijay.Panchang@noaa.gov.

SUPPLEMENTARY INFORMATION:

A. Program Authority

Authority: 33 U.S.C. 1127(a).

B. Catalog of Federal Domestic Assistance

CFDA No. 11.417—Sea Grant Support.

C. Introduction

Today's global economy is putting unprecedented demands on the US industrial community for innovation and new technology. Two critical components of success in that endeavor are well-trained human resources and high rates of technology commercialization. This situation presents challenges to industry and universities to develop new paradigms that will create more efficient utilization of available human, fiscal, and technical resources and closer collaboration between universities and industry. Successful methods of transferring technology from academia to industry include hiring graduates trained in particular technologies and developing opportunities for collaboration between industrial and academic scientists and engineers. To strengthen ties between academia and industry, Sea Grant developed the Industrial Fellows Program in 1995. With required matching funds from private industrial sponsors, Sea Grant expects to support up to four new Industrial fellows in 1998. Each fellow will be a graduate student selected through national competition, and will be known as a Company Name/Sea Grant Industrial Fellow.

D. Fellowship Program Goals

To enhance the education and training provided to top graduate students in US colleges and universities; to provide real-world experience of industrial issues to graduate students to accelerate their career development; to increase interactions between the nation's top scientists and engineers and

their industrial counterparts; to accelerate the exchange of information and technologies between universities and industry; to provide a mechanism for industry to influence Sea Grant research priorities and solve problems of importance to industry; and to forge long-term relationships between Sea Grant colleges and industrial firms.

E. Program Description

The Sea Grant Industrial Fellows Program provides, in cooperation with specific companies, support for highly-qualified graduate students who are pursuing research on topics of interest to a particular industry/company. In a true partnership, the student, the faculty adviser, the Sea Grant college or institute, and the industry representative work together on a project from beginning to end. Research facilities and the cost of the activity are shared. University faculty are the major source for identifying potential industrial collaborators and suitable research topics. However, other sources can be used to identify potential industrial partners including the Sea Grant Marine Advisory Services, university industrial relations offices, and the Sea Grant Review Panel. Sea Grant directors are encouraged to use a variety of sources in building successful partnerships with industry.

F. Proposal Features

Interested members of US institutions of higher education may submit a proposal through the nearest Sea Grant program for a grant to support up to 50 percent of the total budget. The fellowship can be for a maximum of three years, though funding will be in annual increments. No more than \$30,000 of federal funds may be requested per year. Indirect costs on federal funds are limited to 10 percent of total modified direct costs. The proposal must include a written matching commitment, equal to the federal request, from the industrial partner to support the budget for the period of the award. Allocation of matching funds must be specified in the budget. Use of the industrial matching funds for student stipend support will be looked on favorably.

The budget should include adequate travel funds for the student and the faculty advisor to meet at least twice per year during the fellowship period, preferably at the site of the industrial partner. Funds should also be allocated for one trip per year to NOAA offices in Silver Spring, Maryland, for a meeting of all fellows, advisors, and industrial partners.

Proposal Form and Content

Proposals are limited to 10 pages of text (8.5 inches by 11 inches, 10 point type) exclusive of budgets, vitae, letters of commitment, company description, and required forms. Proposals should contain the following:

1. The problem and its importance: What is the problem being addressed and what is its scientific and economic importance to the advancement of technology, to the cooperating industrial partner, and to the region or nation?
2. The research proposed: What are the goals, objectives, and anticipated approach of the proposed research? While a detailed work plan is not expected, the proposal should present evidence that there has been thoughtful consideration of the approach to the problem under study. What capabilities does the industrial partner possess that will benefit the research program?
3. Benefits: Upon successful completion of the project, what are the anticipated benefits to the student, the industrial partner, the university and its faculty, the sponsoring Sea Grant program, and the nation?
4. References/Bibliography.
5. Budget for each year and a cumulative budget.
6. Letter of commitment from the industrial partner.
7. Vitae of the student, the faculty advisor, and the company-appointed research mentor (limited to two pages per person).
8. A brief (one-page) description of the industrial firm.

Participant Interest

Interested graduate students or faculty advisors should contact the nearest Sea Grant program director for further details regarding proposal submission. Proposals must be submitted to the nearest Sea Grant program director by June 12, 1998. The addresses of the directors can be found on Sea Grant's home page (<http://www.mdsq.umd.edu/NSGO/index.html>). The addresses of the directors may also be obtained from Dr. Vijay Panchang, Program Manager, National Sea Grant Office/NOAA, 1315 East-West Highway, Silver Spring, MD 20910; Tel. 301-713-2435, ext. 142.

Sea Grant Program—Proposal Submission

The Sea Grant program directors must ensure that the original and two copies of all proposals, all required NOAA forms (Sea Grant Project Summary and Budget forms), OMB forms (SF424, SF424a, SF424b), form CD-511, mail reviews, and a cover letter are received at the NSGO on or before July 13, 1998.

Proposals should be mailed to: Dr. Vijay Panchang, Program Manager, National Sea Grant Office/NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713-2435, ext. 142. Fellows receive funds directly from the National Sea Grant Colleges as part of a project awarded to the submitting Sea Grant program.

Proposal Evaluation

1. The sponsoring Sea Grant program is responsible for conducting the mail peer review of the proposed project for significance and importance of the problem being addressed; scientific and technical merit; and benefit to the discipline, field, and nation. Proposals may be revised on the basis of reviewer comments. All proposals must be accompanied by copies of the peer reviews and a letter from the Sea Grant director describing what, if any, changes have been made to the proposal as a result of the review process.

2. Proposals will be reviewed at the National Sea Grant Office by a panel composed of individuals from academia, industry, and the federal government with particular expertise in industry/academic interactions. The panel will be asked to assess each proposal, taking into account all mail peer review ratings, based on the following criteria:

- a. The importance of the problem and the benefits expected to the industrial partner and the nation due to the advancement of technology (40%).
- b. The benefit accruing to the student from his or her participation as a Sea Grant Industrial Fellow (20%).
- c. The level of commitment of the industrial partner to the project, particularly student stipend support (20%).
- d. The potential for the establishment of a long-term relationship between the Sea Grant program and the industrial firm (20%).

Selection Procedures

All proposals will be evaluated and ranked by the peer review panelists, who will make individual recommendations to the selecting officer, the Director of the National Sea Grant College program.

G. Timetable

June 12, 1998—Proposals due in the nearest Sea Grant College Program office.

July 13, 1998—Proposals due in the National Sea Grant September 1, 1998 (approximate)—Funds awarded to selected recipients; fellowship begins.

Other Requirements

(1) **Federal Policies and Procedures**—Recipients and subrecipients are subject to all Federal laws and Federal and DoC policies, regulations, and procedures applicable to Federal financial assistance awards.

(2) **Past Performance**—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(3) **Preaward Activities**—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DoC to cover preaward costs.

(4) **No Obligation for Future Funding**—If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC.

(5) **Delinquent Federal Debts**—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

- i. The delinquent account is paid in full,
- ii. A negotiated repayment schedule is established and at least one payment is received, or
- iii. Other arrangements satisfactory to DoC are made.

(6) **Name Check Review**—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(7) **Primary Applicant Certifications**—All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

- i. **Nonprocurement Debarment and Suspension.** Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;
- ii. **Drug-Free Workplace.** Grantees (as defined at 15 CFR part 26, section 605)

are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

iii. **Anti-Lobbying.** Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than \$100,000, and loans and loan guarantees for more than \$150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

iv. **Anti-Lobbying Disclosures.** Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(8) **Lower Tier Certifications**—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to DoC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

(9) **False Statements.** A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(10) **Intergovernmental Review**—Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act. This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The Project Summary Form has been approved by the Office of Management and Budget under control number 0648-0019, with an average response estimated to take 20 minutes; the Sea Grant Budget Form has been approved under Control Number 0648-0034, with an average response estimated to take 15 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these estimates or any other aspect of these collections to National Sea Grant Office/NOAA, 1315 East-West Highway, Silver Spring, MD 20910 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Dated: May 8, 1998.
 Elbert W. Friday, Jr.,
 Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.
 [FR Doc. 98-12750 Filed 5-12-98; 8:45 am]
 BILLING CODE 3510-12-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050698A]

Marine Mammals; File No. 782-1455 and File No. 738-1454

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that the Douglas P. DeMaster, Ph.D., National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0070, has applied in due form for a permit to take Northern fur seals (*Callorhinus ursinus*), Steller sea lions (*Eumetopias jubatus*), and California sea lions (*Zalophus californianus*) for purposes of scientific research. In

addition, Carole Conway, Genomic Variation Laboratory, Department of Animal Science, Meyer Hall, University of California, Davis, CA 95616-3322, has applied in due form for a permit to import blue whale (*Balaenoptera musculus*) skin samples from Canada for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 12, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment: See **SUPPLEMENTARY INFORMATION**.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dr. DeMaster (File No. 782-1455) seeks authorization to: monitor the status of the northern fur seal population (*Callorhinus ursinus*); evaluate the condition of pups from each cohort (health or strength of year-class); monitor the diet of fur seals in the Bering Sea during the summer; document the movement patterns and foraging behavior of various age and sex classes of fur seals; and incidentally disturb Steller sea lions (*Eumetopias jubatus*) and California sea lions (*Zalophus californianus*) while conducting the above-listed activities.

Carole Conway (File No. 738-1454) requests a permit to import blue whale

(*Balaenoptera musculus*) skin samples from Canada over a 5-year period. The samples are necessary for a global study of the genetic structure of populations which will provide critical information for conservation management of this species.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

The application and related documents submitted by Dr. DeMaster may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0070;

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802-1668.

The application and related documents submitted by Ms. Conway may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

Dated: May 7, 1998.

Ann D. Terbush,
 Chief, Permits and Documentation Division,
 Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98-12699 Filed 5-12-98; 8:45 am]
 BILLING CODE 3510-22-F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Futures Contracts in Corn and Soybeans; Order To Designate Contract Markets and Amendment Order of November 7, 1997, as Applied to Such Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order to Chicago Board of Trade.

SUMMARY: The Commodity Futures Trading Commission (Commission), by letter dated December 19, 1996, commenced a proceeding under section 5a(a)(10) of the Act by issuing to the Board of Trade of the City of Chicago (CBT) a notification that the delivery specifications of its corn and soybean futures contracts no longer accomplish the statutory objectives of "permit[ing] the delivery of any commodity * * * at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce." 61 FR 67998 (December 26, 1996). The Commission, on November 7, 1997, issued an Order under section 5a(a)(10) of the Act to change and to supplement the delivery specifications of the CBT corn and soybean futures contracts. 62 FR 60831 (November 13, 1998). By letter dated November 17, 1997, the CBT notified the Commission that it would submit for Commission review an alternative to the contract terms ordered by the Commission and thereafter submitted draft applications for contract market designation for corn and soybeans, beginning with contract months in the year 2000.

The Commission on May 7, 1998, ordered that the applications for contract market designation in corn and in soybeans submitted by the CBT on December 19, 1997, and supplemented on March 20, 1998, be granted and amended its Order of November 7, 1997, as applied to the newly approved contracts to the extent stated. Under this Order, the Commission permits the CBT: (i) to add the southern Illinois River as delivery locations for soybeans and to delete the Toledo, Ohio switching district as a delivery location for soybeans; (ii) to modify the premiums for delivery of soybeans and corn at non-par locations from a percentage of the freight tariff to a specified fixed cents per bushel schedule of premiums; (iii) to modify the contingency plan to include a conforming fixed cents-per-bushel

schedule of locational adjustments; and (iv) to add a minimum net worth eligibility requirement for issuers of shipping certificates of \$5 million. Nothing in the Commission's Order vacates the designation of the current corn and soybean futures contracts, vacates the applicability of the November 7, 1997 Order to those contracts, or amends the terms of the November 7, 1997 Order as applied to those contracts.

The Commission has determined that publication of this Order in the public interest, will provide the public with notice of its action, and is consistent with the purposes of the Commodity Exchange Act.

DATES: This Order became effective on May 7, 1998.

ADDRESSES: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Steven Manaster, Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, D.C. 20581, (202) 418-5260, or electronically, Mr. Architzel at [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION: Section 5a(a)(10) of the Act provides that, as a condition of contract market designation, boards of trade are required to:

permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce * * *.

The Commission, on November 7, 1997, issued an Order under section 5a(a)(10) of the Act to change and to supplement the delivery specifications of the CBT corn and soybean futures contracts. 62 FR 60831 (November 13, 1998). By letter dated November 17, 1997, the CBT notified the Commission that it would submit for Commission review an alternative to the contract terms ordered by the Commission and thereafter submitted draft applications for contract market designation for corn and soybeans, beginning with contract months in the year 2000. The Commission, on December 1, 1997, published in the **Federal Register** notice of the CBT's draft proposal. 62 FR 63529. Subsequently, on December 19, 1997, the CBT submitted its proposal, and on March 20, 1998, the CBT

amended its proposal. The Commission on May 7, 1998, designated the CBT as contract markets in corn and soybeans and amended the November 7, 1997 Order as applied to the newly approved contracts to the extent stated. The text of the Order is set forth below.

In the Matter of the Section 5a(a)(10) Notification to the Board of Trade of the City of Chicago Dated December 19, 1996. Regarding Delivery Point Specifications of the Corn and Soybean Futures Contracts.

Dated: May 7, 1998.

The Commodity Futures Trading Commission (CFTC or Commission) hereby orders that the applications for contract market designation in corn and in soybeans submitted by the Board of Trade of the City of Chicago (CBT) on December 19, 1997 and supplemented on March 20, 1998, be granted and hereby amends its Order under section 5a(a)(10), dated November 7, 1997, to permit the applications for designation to be granted. Under this Order, the Commission takes the following actions:

(1) Grants under section 5 of the Commodity Exchange Act (Act) the CBT's application for designation as a contract market in soybeans and approves under section 5a(a)(12) of the Act all of the proposed rules of the contract market contained in Attachment 1 to this Order;

(2) Grants under section 5 of the Act the CBT's application for designation as a contract market in corn and approves under section 5a(a)(12) of the Act all of the proposed rules of the contract market contained in Attachment 2 to this Order;

(3) Amends its Order of November 7, 1997, making all changes necessary to effect the above actions, as follows:

(i) permits the CBT to add the southern Illinois River as delivery locations for soybeans and to delete the Toledo, Ohio switching district as a delivery location for soybeans;

(ii) permits the CBT to modify the premiums for delivery of soybeans and corn at non-par locations from a percentage of the freight tariff to a fixed cents per bushel schedule of premiums;

(iii) permits the CBT to modify the contingency plan in the Order of November 7, 1997, to include a conforming fixed cents-per-bushel schedule of locational adjustments; and

(iv) permits the CBT to add a minimum net worth eligibility requirement for issuers of shipping certificates of \$5 million;

Nothing in this Order precludes the CBT from listing for trading the soybean and corn contracts designated under this Order for contract months prior to the January 2000 soybean futures

contract month and the March 2000 corn futures contract month, the initial contract months for which the Order of November 7, 1997, became effective.

Nothing in this Order vacates the designation of the current corn and soybean futures contracts, vacates the applicability of the November 7, 1997 Order to those contracts, or amends the terms of the November 7, 1997 Order as applied to those contracts. Both or either of the currently designated contracts and the contracts designated by this Order may be traded.

Nothing in this Order mandates that Toledo, Ohio, cease operation as a delivery location in any commodity, either for futures contracts traded on the CBT, for futures contracts for which any other board of trade which might choose to seek contract market designation, or for any of Toledo's substantial cash market operations.

The Commission, as discussed below, bases these actions on its findings that available deliverable supplies of corn and soybeans under the CBT's present revisions are not so inadequate under section 5a(a)(10) as to require that the Commission mandate additional delivery points. However, the adequacy of corn and soybean supplies cannot be accurately and fully ascertained until after there is a history of deliveries occurring under the terms of the revised contracts. If in operation the revised contract terms result in inadequate deliverable supplies of corn or soybeans, the Commission will reconsider the need to require additional delivery points for the revised contracts. To that end, the Commission directs the CBT to report on the experience with deliveries and expiration performance in the revised corn and soybean futures contracts on an annual basis for a five-year period after contract expirations begin under the revised contracts.

The revised CBT proposed locational price differentials for the corn and soybean futures contracts fall within the range of commonly observed or expected commercial price differences, as required by section 5a(a)(10) of the Act and Commission policy. However, in light of the great variability in where the differential for each river segment falls within the range of commonly observed cash price differences, the Commission directs the CBT as part of the above reports on delivery and expiration performance also to report on the extent to which particular locational price differentials may discourage or encourage deliveries to be made from that location. This report should relate rates of delivery by river segment to the applicable differentials, focussing with

particularity on September deliveries from all locations and on deliveries from the Peoria-Pekin and Havana-Grafton river segments year-round.

The Commission's conclusions are supported by factual analyses made by the CFTC staff and by written comments submitted to the Commission by commercial users of the corn and soybean futures contracts and by other interested persons both prior to and in response to the Commission's issuance of the Order of November 7, 1997, and in response to the Commission's request for comment in the **Federal Register** on the CBT's recent proposal. The Commission, in reaching its conclusions in this Order, considered the record before it, which includes a substantial amount of documentary evidence, a record number of written comments submitted in response to four requests for comment, and the transcriptions of statements presented by the CBT and interested members of the public during two open meetings of the Commission to consider these issues.

The Commission has reached its conclusions based upon the legal standards of the Commodity Exchange Act. Section 5a(a)(10) of the Act requires that exchanges establish such delivery points as will tend to prevent or diminish price manipulation, market congestion and the abnormal movement of commodities in interstate commerce. In carrying out the requirements of section 5a(a)(10), the Commission is not free to direct exchanges to add particular delivery locations if the Commission finds that the contract meets the statutorily-required level of deliverable supplies. Thus, the Commission's approval of the delivery locations selected by the CBT for its revised corn and soybean futures contracts is not based upon a finding that Toledo, Ohio, is in any way an inappropriate delivery point for these or any other futures contracts. To the contrary, Toledo currently is an active cash market for corn, soybeans and wheat, with over 120 million bushels of these commodities being received at that location in 1997. The available data indicate that Toledo will continue to be an active cash market center for these commodities in the future.¹ As the Commission in its Order of November 7, 1997, Toledo has proven to be an effective futures delivery point for corn

¹ In this regard, Toledo continues to perform a vital role in futures markets due to its position as the primary delivery point for the CBT wheat futures contract. In this respect, Toledo is located within one of the few primary production areas for soft red winter wheat and has provided the bulk of the deliverable supply for that futures contract for many years.

and soybeans. 62 FR 60854.

Accordingly, nothing precludes the CBT, if it chooses, from continuing to list for trading the soybean futures contract provided under the Order of November 7, 1997, which includes Toledo as a delivery point, or precludes any other exchange from seeking designation for a contract with Toledo as a delivery point.

The Commission's action in designating contract markets for corn and soybeans under the terms which the CBT has recently proposed does not vacate or negate the existing designated contracts which are the subject of the Order of November 7, 1997. That Order remains in effect as to the current contracts and, as modified herein, applies to the revised contracts. Until the designation for such contracts are vacated, the CBT may trade both the current and the revised contracts simultaneously, if it so chooses.² Moreover, the CBT may begin trading the revised contracts for contract months with expirations prior to year 2000.

I. The Section 5a(a)(10) Proceeding

The Commission, by letter dated December 19, 1996, commenced a proceeding under section 5a(a)(10) of the Act by issuing to the CBT a notification that the delivery specifications of its corn and soybean futures contracts no longer accomplish the statutory objectives of "permit[ting] the delivery of any commodity . . . at such points or point and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce." Letter of December 19, 1996, to Patrick Arbor from the Commission, 61 FR 67998 (December 26, 1996) (section 5a(a)(10) notification). The section 5a(a)(10) notification detailed long-term trends in the storage, transportation and processing of corn and soybeans, related those trends to changes in cash market conditions at the CBT delivery locations, and analyzed the lack of consistency between the cash market for these commodities and the delivery provisions of the contracts. *Id.* at 68000-68004.

The closure of three of the six existing Chicago warehouses regular for delivery

² Of course, if the CBT elected simultaneously to list the current and revised futures contracts for trading and intends to list options on those futures contracts, it must submit for prior Commission approval applications for designation as a contract market in options on either the revised or current futures contracts to assure that the CBT is properly authorized to trade options on both futures contracts.

under the futures contracts during the year prior to the section 5a(a)(10) notification underscored the need to address without delay the fundamental problems with the contract's delivery specifications. However, the CBT membership defeated contract modifications recommended by its board of directors in October 1996.³ After an additional Chicago delivery warehouse stopped accepting soybeans and corn in late October 1996, the Commission formally commenced this proceeding under section 5a(a)(10) of the Act on December 19, 1996, by finding that the CBT corn and soybean futures contracts no longer met the requirements of that section of the Act.

Subsequently, on April 16, 1997, the CBT submitted its response to the section 5a(a)(10) notification in the form of proposed exchange rule amendments (1997 proposal). Those proposed rule amendments would have replaced the existing delivery system involving delivery of warehouse receipts representing stocks of grain stored at terminal elevators in Chicago, Toledo, and St. Louis with delivery of shipping certificates.⁴ Such shipping certificate would have provided for corn or soybeans to be loaded into a barge at one of the shipping stations located along a 153-mile segment of the Illinois River from Chicago (including Burns Harbor, Indiana) to Pekin, Illinois and additionally to be delivered in Chicago by rail or vessel. Delivery at all eligible locations would have been at par. The CBT's 1997 proposal would have eliminated the current delivery points on its corn and soybean futures contracts at Toledo, Ohio and St. Louis, Missouri and would have restricted firms eligible to issue shipping certificates to those meeting a minimum net worth requirement of \$40 million, in addition to a number of other requirements.

The Commission previously had published the substance of the CBT's 1997 proposed amendments in the **Federal Register** for a 15-day comment period (62 FR 12156 (March 14, 1997), later extended until June 16, 1997 (62 FR 19977). The Commission received almost 700 comments, the largest

³ The CBT task force spent a year developing proposed changes to the contract's specifications. Those recommendations were modified by the CBT's board of directors, and the modified proposal was then defeated by a vote of the CBT membership on October 17, 1996.

⁴ A shipping certificate is a negotiable instrument that represents a commitment by the issuer to deliver (e.g., load into a barge) corn or soybeans to the certificate holder pursuant to terms specified by the CBT whenever the holder pursuant to terms specified by the CBT whenever the holder decides to surrender the certificate to the issuer.

number of comments ever received by the Commission on any issue before it. On June 12 1997, the Commission held a public meeting at the CBT's request to accept oral and written statements by the CBT and interested members of the public. 62 F.R. 29107 (May 29, 1997). The participants represented a cross-section of views, both favoring and opposing the CBT proposal.⁵

On September 15, 1997, the Commission issued a proposed order, publishing its text in the **Federal Register** with a request for public comment.⁶ 62 FR 49474 (September 22, 1997). The comment period on the proposed order expired on October 22, 1997. Over 230 commenters submitted comments to the Commission on the proposed order.⁷ In addition, the Commission held a public hearing on October 15, 1997, at which the CBT was afforded the opportunity mandated under section 5a(a)(10) of the Act to appear before the Commission and to be heard. In addition to its oral presentations, the CBT submitted written statements and documentary evidence.⁸ The CBT also filed exceptions to the proposed order as provided under the Act.

On November 7, 1997, the Commission issued a final Order (Order) to the CBT under section 5a(a)(10) of the Act. 62 FR 60831 (November 13, 1997). The Commission's Order found that the CBT's 1997 proposal failed to meet the requirements of sections 5a(a)(10), 5a(a)(12), 8a(7), and 15 of the Act because of (1) an inadequate amount of deliverable supplies of soybeans; (2) the

⁵ A transcript of the meeting has been entered into the Commission's comment file. Participants included a United States Senator, a United States Representative and a state government representative from the state of Ohio; a United States Representative and a state government representative from the state of Michigan; representatives of six commercial users of the contracts; representatives of three producer associations; and six persons representing the CBT.

⁶ Subsequently, the Commission also published for public comment notice that it was proposing to disapprove application of the terms proposed by the CBT to the January 1999 soybean futures contract and the March 1999 corn futures contract. 62 FR 5108 (September 30, 1997). The CBT purportedly listed those futures contracts for trading after issuance of the September 15, 1997, proposed order. The comment period on that notice also ended October 22, 1997.

⁷ Comments were received by the Commission offering a wide range of opinion. Many took issue with the philosophy underlying the section 5a(a)(10) statutory authority which permits the Commission to order an exchange to change or to supplement contract terms that violate that provision of the Act. Others took issue with the Commission for not proposing additional remedial changes, particularly for the corn contract.

⁸ A transcript of the hearing and all attendant written statements and documents have been included in the public comment file of this proceeding.

failure to include required locational differentials; (3) the failure to provide an adequate contingency plan for alternative deliveries if river transportation were obstructed; and (4) the unnecessary limitation on eligibility for issuing corn and soybean shipping certificates imposed by the CBT's proposed \$40 million minimum net worth requirement.

Based on these findings, the Commission Order changed and supplemented the delivery locations for CBT's soybean futures contract by retaining the Toledo, Ohio switching district and the St. Louis/East St. Louis/Alton areas as delivery locations, with Toledo priced at par and the St. Louis/East St. Louis/Alton area priced at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois. The Commission also required that both corn and soybeans from shipping locations on the northern Illinois River be deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price. For both the CBT corn and soybean futures contracts, the Commission ordered that the contingency plan for alternative delivery procedures when traffic on the northern Illinois River is obstructed be changed and supplemented and that the \$40 million minimum net worth eligibility requirement for issuers of shipping certificates be eliminated.

The Commission's Order explicitly permitted the CBT to seek appropriate modifications to it, stating that the Commission had not "precluded the CBT from submitting for Commission review and approval under sections 5a(a)(10) and 5a(a)(12) of the Act any alternative proposed delivery specifications for its corn or soybean futures contracts." 62 FR 60833. To the contrary, the Order provided that the CBT

will continue to be free to propose revisions of the new terms to the Commission for its consideration under sections 5a(a)(10) and 5a(a)(12) or to submit a petition to the Commission to reconsider or to amend this Order. If the CBT believes that an alternative to the new terms and to its original proposal would better serve its business interests and would also meet the statutory requirements, the CBT should submit such a proposed rule revision or petition.

Id. at 60834.

By letter dated November 17, 1997, the CBT notified the Commission that it

would submit for Commission review an alternative to the contract terms ordered by the Commission and thereafter submitted draft applications for contract market designation for corn and soybeans, beginning with contract months in the year 2000. The Commission, on December 1, 1997, published in the *Federal Register* notice of the CBT's draft proposal of revised contract terms. 62 FR 63529. The Commission requested comment on five specific issues: (1) whether the deliverable supplies under the CBT draft proposal would meet the requirements of section 5a(a)(10) of the Act; (2) whether the CBT draft proposal's locational price differentials would reflect cash market practice; (3) whether the CBT draft proposal's load-out provision would conform to commercial practice; (4) whether the CBT draft proposal's reimbursement scheme under the contingency plan would reflect commercial practices; and (5) whether the CBT draft proposal's minimum net worth requirements would unduly limit eligibility of firms to become issuers of shipping certificates. 62 FR 63532.⁹

The Commission received twenty-seven comment letters in response to this notice, thirteen of which supported the CBT alternatives. Of the ten comments opposing the CBT alternative, nine questioned the CBT's proposed elimination of Toledo as a delivery point. Three commenters opposed the draft proposal's locational price differentials as not reflective of cash price differentials, and three opposed as too high the net worth requirement for issuers of shipping certificates.¹⁰

By submission dated March 20, 1998, the CBT amended its applications for designation and provided additional information (1998 proposal). The March 20, 1998 submission modified the draft proposal for the soybean contract by changing the segmentation of delivery zones within the delivery area as proposed, modifying the schedule of locational price differentials applicable to those zones and making the equivalent schedule of locational price adjustments applicable under the contingency delivery plan; modifying the performance requirement for deliverers in the Alton-St. Louis area;

⁹ By letter to the CBT, dated January 9, 1998, the Commission's Division of Economic Analysis terminated fast-track review of the designation applications. In light of the outstanding Order under section 5a(a)(10), the Commission ruled that these applications are ineligible for fast-track treatment.

¹⁰ An additional four comment letters neither favored nor opposed the specific CBT proposal, but rather addressed other issues.

and reducing the proposed eligibility requirement for issuers of shipping certificates from a proposed requirement to register for delivery of a minimum of 30 barges to a \$5 million minimum net worth requirement.

The Commission has reviewed the CBT's 1998 proposal to determine whether it meets the requirements of the Commission's Order and of the Act and regulations thereunder.¹¹ The CBT's 1998 proposal differs from the Commission's Order with respect to: (1) the delivery locations for the soybean contract; (2) the locational price differentials for both the soybean and corn futures contract; and (3) for both contracts, the minimum net worth eligibility requirement for issuers of shipping certificates. These differences from the provisions of the Commission's Order are analyzed below.

II. Deliverable Supply

A. The Commission's Order

In determining whether the CBT's first proposal met the requirements of section 5a(a)(10) of the Act, the Commission initially assessed whether the available deliverable supplies of the commodity at the delivery points specified by the CBT for all delivery months on the contract would be sufficiently large and available to market participants so that futures deliveries, or the credible threat thereof, could assure an appropriate convergence of cash and futures prices and thereby tend to prevent or to diminish price manipulation, market congestion, and the abnormal movement of the commodity in interstate commerce. 62 FR 60838. The Commission determined the appropriate standard for measuring the adequacy of deliverable supplies under the 1997 proposal by examining the relationship between the level of deliverable stocks for corn and soybeans and the presence of a price premium for the expiring futures month over the next futures month (a price inverse).¹²

¹¹ Section 5(b) conditions designation of a board of trade as a contract market, among other requirements, on the "governing board . . . making effective the orders issued pursuant to the provisions of section 5a of this Act . . .". Accordingly, the Commission has reviewed the proposed applications for designation to determine whether they violate any specific criterion set forth in, or term of, the Order. Where they violate a provision of the Order, the Commission has determined whether amendment of the Order to remove conflicts between the two would be appropriate. In addition, the Commission has reviewed the applications for contract market designation under all of the statutory and regulatory requirements generally applicable to contract market designation.

¹² The Commission explained in the order that:

Based on an analysis of these relationships, the Commission used as a measure of an inadequate level of deliverable supplies under section 5a(a)(10) deliverable supplies below the level of 2,400 contracts for soybeans and below the level of 3,000 contracts for corn. However, the Commission also noted that a higher level of deliverable supplies historically may, in fact, be necessary to protect against price manipulation. As the Commission explained in its Order, to avoid a repetition of the July 1989 soybean futures contract expiration, when both the Commission and the CBT acted on their belief that a sizable long position posed a significant threat of manipulation, deliverable supplies of at least 4,000 contracts would be necessary. 62 FR 60839. The Commission considered both of these measures, as well as other relevant information, in its analysis of the adequacy of deliverable supply.

Applying these measures of adequacy of deliverable supply to the 1997 proposal,¹³ the Commission found that the proposed delivery provisions of the soybean contract "clearly fail to meet the statutory requirement for adequate levels of deliverable supplies throughout the summer months of July, August, and September . . ." 62 FR 60850. As to the CBT proposal for corn, the Commission found that "gross deliverable supplies throughout the year appear to be adequate except for September"¹⁴ and that, in light of the other changes and supplements which the Commission was making to the proposal and absent actual trading experience to the contrary, it did not find that additional delivery points for corn were required.

Having found that section 5a(a)(10) of the Act required that delivery points for soybeans be added to those proposed by the CBT in order to increase available deliverable supplies, the Commission supplemented the 1997 by proposal by

The presence of such a premium is an indication of tight deliverable supplies, potentially creating a price distortion. In situations where limited supplies lead to such a price inverse, futures contracts are significantly vulnerable to price manipulation, market congestion, and the abnormal movement of the commodity in interstate commerce under the terms of section 5a(a)(10), particularly when traders hold large positions. 62 FR 60838.

¹³ The Commission's Order at 60839-60850 explains in detail the methodology by which the Commission determined the potentially available gross deliverable supplies of corn and soybeans under the 1997 proposal and the necessary reductions from those gross supplies.

¹⁴ The Commission found that deliverable supplies of corn in September may be further supplemented by new crop production and that, as a transition month, the September contract month would be somewhat less likely to be subject to manipulation than other months. 62 FR 60850.

retaining the existing contract's delivery points. With the addition of the retained delivery locations and other changes and supplements,

potentially available gross deliverable supplies of soybeans are at or above the 2,400-contract level in both July and August during each of the past 11 years and in September during all but one of the 11 years. Indeed, the gross deliverable supplies are also at or above the 4,000-contract level for 25 of the 33 months examined. 62 FR 60854.

The Commission's decision to order that delivery locations be added to the 1997 soybean proposal to increase deliverable supplies was based solely upon its finding that available deliverable supplies would not otherwise meet the levels required by section 5a(a)(10) of the Act. Moreover, the Commission's determination of how to remedy the shortfall in deliverable supplies was narrowly focused. Thus, the Commission did not consider the merits of other possible, but untried delivery locations as a means of increasing deliverable supplies. Instead, the Commission deferred to the CBT's expressed preferences for delivery locations on the contract. Accordingly, the Commission "accept[ed] the

delivery points in the proposal itself as a starting point." 62 FR 60854. The Commission next considered delivery points which previously had been chosen and used by the CBT. The Commission found that the existing delivery points of St. Louis and Toledo, "having been chosen by the CBT as appropriate delivery points for its soybean contract and having been used as delivery points for the contract for a number of years . . .", are feasible, workable and acceptable." *Id.* Finally, the Commission noted that, "the CBT continues to be free to indicate by proposed rule or petition that its business preference for delivery locations is otherwise, and the Commission would consider such a new proposal . . ." *Id.* at n. 39.

B. Adequacy of the 1998 Proposal's Delivery Points.

The 1998 proposal for the CBT's soybean futures contract would omit Toledo as a delivery point and would add the southern Illinois River from Pekin south to river's mouth at Grafton as a delivery point.¹⁵ The CBT supports

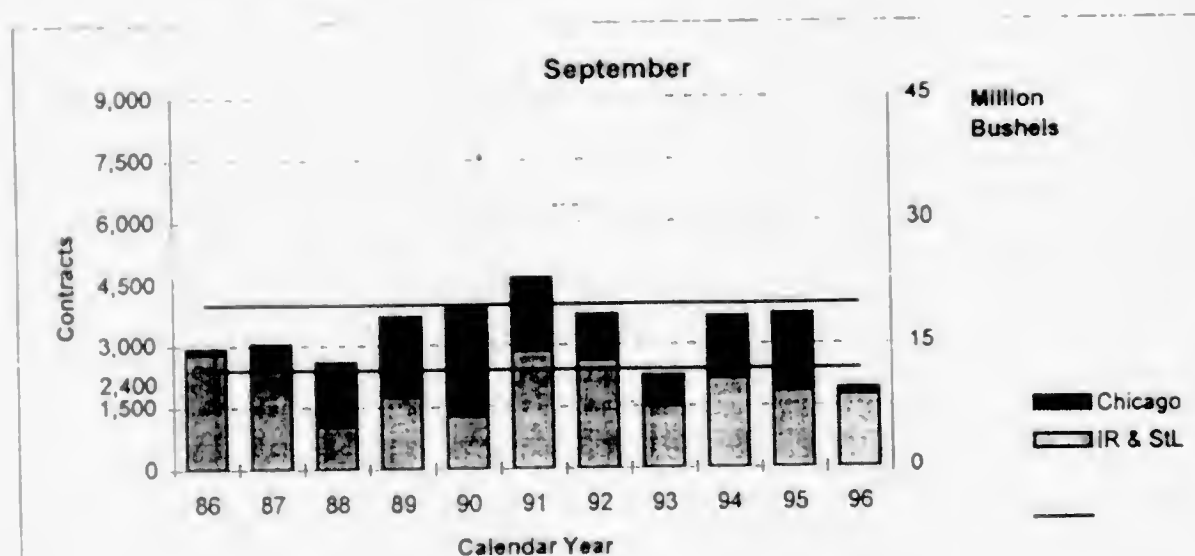
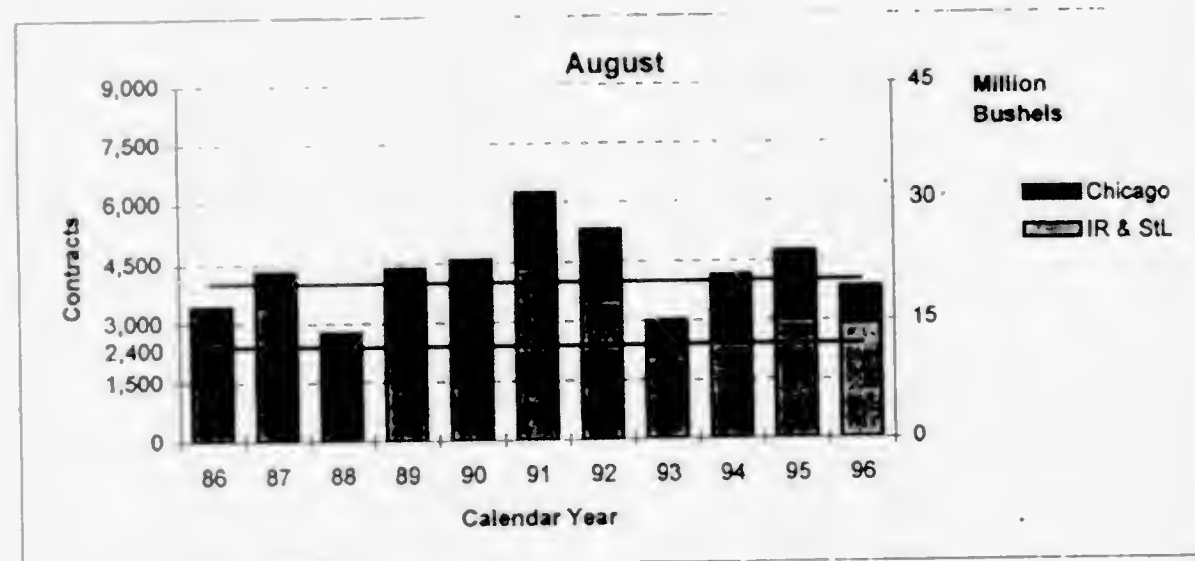
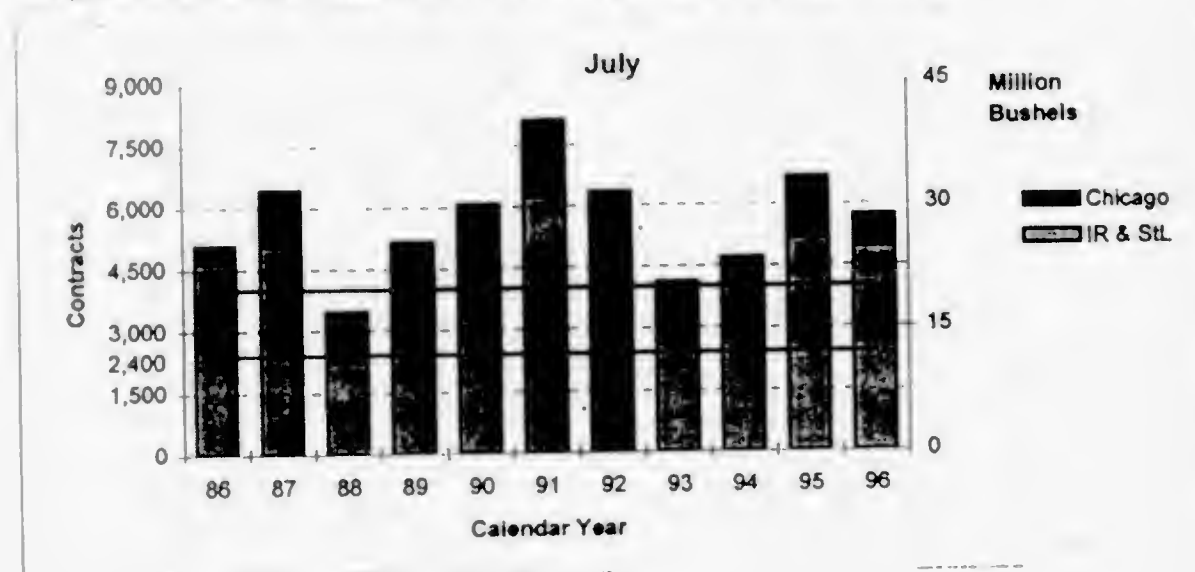
¹⁵ The CBT's proposed delivery locations for corn are the same as in the Commission's Order.

its proposal on the grounds that the delivery area "represent[s] the major markets along the Illinois Waterway, including Burns Harbor, IN and in St. Louis, Missouri." (CBT December 17, 1997, submission at 16.) The CBT proposal contains a total of 46 potential shipping stations with a cumulative daily barge loading capability of 145 barges—about 1,627 contracts (8,134,000 bushels) of soybeans—located within the proposed delivery areas for the soybean futures contract. (CBT January 23, 1998, submission, Table 1.) The CBT maintains that based on the analysis used by the Commission in its Order, available deliverable supply levels under its 1998 proposal "meet the statutory requirements and benchmarks" of the Order for the critical summer months of July, August and September. (CBT December 17, 1997, submission at 16.)

The following chart details gross deliverable soybean supplies attributable to firms eligible to issue shipping certificates available from the 1998 proposed delivery areas for the critical contract months of July, August and September.

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Soybeans -- Gross Deliverable Supplies for July, August and September Under the 1998 CBT Proposal, Eligible Firms



BILLING CODE 6351-01-C

Such estimated gross deliverable supplies for eligible firms exceeded the Commission's benchmark levels of 2,400 contracts in each of the past eleven years during July and August.¹⁶ They reached or exceeded the 4,000 contract benchmark level in ten of eleven years during July and in seven of eleven years during August.¹⁷

The estimated gross deliverable soybean supplies for September meet the level of 2,400 contracts in nine of the eleven years. However, they meet the 4,000 contract level in only one of eleven years. As noted in the Order, deliverable supply concerns for September may be mitigated by the availability of new crop production in that month and the imminent harvest of

¹⁶ The gross deliverable supply estimates were derived using the same procedures as were used to calculate the estimates for the Commission's final order. Specifically, for the Illinois River and St. Louis, supplies for each contract month were estimated by summing barge shipments for that month and all subsequent months of the crop year (ending with September), with adjustments being made to exclude new crop shipments during September. For Chicago, the estimates were calculated as the sum of stocks available at the beginning of the contract month plus receipts during the month, with adjustments being made to reflect the recent sharp decline in storage capacity at Chicago. The gross deliverable supply estimates for eligible firms were further adjusted to reflect only barge shipments from the Illinois River and St. Louis by the eight firms believed to be capable of meeting the CBT's proposed \$5 minimum net worth requirement.

The term "gross deliverable supplies" reflects the fact that these are estimates of the maximum level of deliverable supplies likely to be available for the futures contracts before any adjustment is made for other factors that are likely to reduce deliverable supplies. These factors, discussed in more detail below, include the 1998 proposal's continued reliance on Chicago as a source of deliverable supplies, the proposed three-day barge queuing and priority load-out requirements, and prior commercial commitments of available supplies. A detailed description of the estimation procedure is presented in the Commission's Order.

¹⁷ The Commission also estimated gross deliverable supplies for all firms, including those which are not expected to be able to meet the CBT's proposed minimum net worth eligibility requirement of \$5 million. These estimates reflect total shipments from the Illinois River and St. Louis, and were analyzed because it is likely that at least part of the soybeans shipped by the smaller, ineligible firms readily could be diverted to eligible delivery facilities for futures delivery purposes at economic prices and, thus, should be regarded as part of the contract's deliverable supply. The all-firms estimates have not been included in this Order because they result in levels which are only marginally greater than those for eligible-firms and exhibit essentially the same results as do the eligible-firm estimates when measured against the Commission's benchmark standards. However, in a few years particularly during the month of September, the addition of minor amounts of deliverable supplies from ineligible firms results in estimates which exceed a benchmark level which did not otherwise do so. Specifically, the all-firms estimates exceeded the 2,400 threshold when eligible firm estimates did not in September 1993 and the 4,000 threshold in September 1990, 1994 and 1995.

even greater supplies in October. In particular, as shown in Table 1, estimated September soybean production in areas immediately adjacent to the proposed delivery area ranged from 1,636 contracts in 1996 to 14,623 contracts in 1994. These amounts are greater for soybeans than under the Commission's Order (compare 62 FR 60847) because the 1998 proposal expanded delivery locations along the Illinois River, a major production area. It reasonably can be expected that some portion of this September soybean production would potentially be deliverable on the September futures contract within normal commercial marketing channels. As a result, it is likely that the level of gross deliverable supplies available in September would be somewhat higher than the above estimates.

TABLE 1.—ESTIMATED SOYBEAN PRODUCTION LOCATED NEAR PROPOSED DELIVERY POINTS AS OF SEPTEMBER 30

(In 5,000 bushel contract units)	
Crop year	Soybeans
1986	5,608
1987	10,622
1988	8,527
1989	8,606
1990	3,416
1991	12,972
1992	5,721
1993	2,263
1994	14,623
1995	7,258
1996	1,636

* The production as of September 30 of each year was estimated by multiplying U.S. Department of Agriculture harvesting progress estimates for the Illinois and Indiana crop reporting districts adjacent to the proposed delivery points by U.S.D.A. production data for counties located within about 25 miles of the proposed delivery points.

The potentially available gross deliverable supplies must be reduced, however, by the following factors identified in the Order and which remain applicable here: (1) Continuing reliance, impart, on Chicago as a source of deliverable supplies; (2) a three-business-day barge queuing and priority load-out requirement; and (3) prior commercial commitments of available supplies.¹⁸

¹⁸ Other factors affecting deliverable supplies identified in the Commission's Order included locational price differentials and foreseeable disruptions in barge shipping on the Illinois River. However, as discussed below, the 1998 proposal satisfactorily addresses these factors.

a. Reliance on Chicago

To the extent that potentially available gross deliverable supplies of soybeans have reached or exceeded the 2,400 and 4,000 contract levels, they have frequently depended on Chicago supplies to do so. During July, deliverable supplies from locations other than Chicago reached or exceeded the 2,400 level in ten, and reached or exceeded the 4,000 level in six, of the eleven years analyzed. During August, deliverable supplies from locations other than Chicago reached or exceeded the 2,400 contract level in seven, and the 4,000 contract level in one, of the years analyzed. For September, deliverable supplies from locations other than Chicago reached or exceeded the 2,400 contract level in four of the eleven years and never reached the 4,000 contract level during this period.

The 1998 proposal's reliance on Chicago deliverable supplies to meet the Commission's benchmark levels may result in future shortfalls. As the Commission's Order stated:

Cash market activity in Chicago is likely to continue its historical decline. While the estimation procedure for gross deliverable supplies used in this analysis tried to correct for the precipitous decline of the cash market in Chicago by using 100 percent of the current capacity as a constraint on past supplies, that method certainly overstates the actual deliverable supplies that may originate from Chicago in the future. Chicago elevators from many years have held stocks well below their maximum capacity levels, particularly in the critical summer months. . . . Chicago supplies will most likely be reduced significantly in the future and would not be available in significant quantities under the CBT proposal.

62 FR 60850.

b. The Three-Day Barge Queuing and Priority Load-Out Requirements

The 1998 proposal retains the provisions of the 1997 proposal requiring a shipping certificate issuer to begin loading onto the certificate holder's barges within three business days after receiving instructions and the holder's barges are at the delivery facility ready to load. As the commenters to the 1997 proposal made clear, requiring the shipping certificate issuer to give preference to shipping certificate holders over customers and proprietary business for eight hours of load-out capacity per day is contrary to cash market practice. The Order questioned the merits of the CBT's justification of this provision, which merely assumes that issuers would be willing and able to meet this requirement and accommodate their cash business simply by extending their

hours of operation. The Commission finds here, as it did in its prior Order, that:

While the effect of the proposed loading requirements on the willingness of issuers to issue shipping certificates for futures delivery is difficult to measure in advance, it represents a significant departure from cash market practice and most likely would reduce the amount of gross deliverable supplies.

62 FR 60850.

c. Prior Commercial Commitments of Stocks for Shipment

An additional factor which would reduce the above estimates of gross deliverable supplies is prior commitment of stocks for shipment. As the Order reasoned, "determining deliverable supplies on the basis of shipment information does not make necessary deductions for that amount of the shipments which would be unavailable for futures delivery because they were otherwise committed and because no substitution was possible at an equivalent market price." 62 FR 60850. When such committed stocks are removed from total shipments, "it is likely that the actual available deliverable supplies for the futures contracts would be significantly less than indicated by the above gross estimates."

d. Conclusion

In summary, under the 1998 proposal gross deliverable supplies for soybeans during the months of July and August reach or exceed the 2,400 contract benchmark in every year, and the 4,000 contract benchmark in most years. Although the estimates for gross deliverable supplies during September failed to reach the 2,400 contract benchmark level in two of the past eleven years and failed to reach the 4,000 contract level in all years but one, those estimates may be supplemented by new crop production in September. Overall, the number of contract months for which estimated gross deliverable supplies of soybeans under the 1998 proposal would have reached or exceeded benchmark levels compares favorably with the number of contract months reaching or exceeding the benchmark levels under the Commission's Order for soybeans (and for corn). On this basis, the Commission does not find soybean deliverable supplies to be so inadequate as to require delivery points additional to, or different from, those proposed by the CBT.

However, in light of the reductions from gross deliverable supplies that may result from prior commercial

commitments and the contract's three-business-day load requirement, the extent to which available deliverable supplies actually would meet or exceed the Commission's deliverable supply standards is uncertain. Equally uncertain is whether future available deliverable supplies would meet or exceed the Commission's deliverable supply standards. This will depend in part upon the degree to which Chicago remains a viable source of deliverable supplies of soybeans or upon growth in the other delivery areas sufficient to compensate for declining activity in Chicago. Because only actual trading experience will reveal whether the level of available deliverable supplies meets the requirements of section 5a(a)(10) of the Act, the Commission directs the CBT to report on the actual delivery and contract expiration experience on an annual basis for the first five years after contract expirations begin under the revised soybean contract.¹⁹ These reports will allow the Commission to revisit the issue of adequacy of available deliverable supplies in the future if actual experience with the contract suggests that such supplies are not adequate.

III. Differentials

A. The Commission's Order

The Commission's Order found that, in light of the significant locational price differences in the cash market among the proposed delivery locations, section 5a(a)(10) required setting differentials for the delivery locations on the corn and soybean futures contracts. Specifically, the Order found that:

the cash market on the northern Illinois River clearly reflects a unidirectional flow of corn and soybeans and exhibits significant locational price differences at the proposed delivery points which have a stable relationship with one another. The failure of the CBT proposal to provide for locational price differentials reflecting the cash market not only would reduce available deliverable supplies on the contracts, but would result in price distortions and susceptibility to price manipulation, market congestion, and the abnormal movement of corn and soybeans.

62 FR 60851.

¹⁹ This is consistent with the Commission's direction to the CBT in the Order to report on the delivery experience in corn. That requirement was grounded in the Commission's finding that deliverable supplies of corn under the CBT's 1997 proposal were not so inadequate to require additional delivery points under section 5a(a)(10). Inasmuch as the 1997 and 1998 proposals for delivery points for corn are the same, that finding and the Commission's direction to file annual reports for five years has not been modified by this order.

The Commission's Order found that cash market differences in the value of corn and soybeans for various delivery points on the northern Illinois River are based primarily upon the cost of barge freight to the Gulf of Mexico. Based on Commission policy requiring that locational price differentials on futures contracts be set within the range of commonly observed or expected commercial price differences, the Order found that 150 percent of the Waterways Freight Bureau Tariff No. 7 rate "provides an appropriate basis for the differential."²⁰ The percentage of tariff specified by the Order (150%) was based on analysis of barge freight rates for Illinois River shipments for the period 1990 through 1996. The Order found that 150% of tariff "is well within the range of commonly observed freight rates and closely approximates the average percent of tariff quoted by barge companies for Illinois River shipments," particularly during the critical summer months. 62 FR 60856.

The Order also changes and supplemented the differential provided under a proposed contingency plan to take effect during times when river traffic is obstructed to make it consistent with the differentials in effect at other times. The Commission's Order found that obstructions of river traffic caused by adverse weather conditions or announced lock repair and maintenance were commonplace and that "it is not an appropriate use of exchange emergency authority to address such foreseeable disruptions to the operation of contract terms." 62 FR 60853. Accordingly, the Commission found further that, because "prolonged obstruction of transportation on the river would increase the susceptibility of the futures contract to manipulation by issuers," section 5a(a)(10) required a "contingency plan" rule for the proposed contract. *Id.*

The Order found that the contingency plan proposed by the CBT fell short of achieving the statutory objectives in a number of ways, including its computation of the reimbursement in transportation costs for deliveries at

²⁰ Chicago and Toledo were ordered to be valued at par.

Percent of tariff is a common means of quoting freight prices and is used extensively in cash market trading. The Waterways Freight Bureau Tariff No. 7 specifies the cost per ton of shipping commodities via barge to New Orleans from specified river segments (barge tariff zones) on the Illinois, Mississippi and Ohio Rivers. This tariff schedule was issued by the Interstate Commerce Commission in 1976 as part of its regulatory program for barge freight rates. Although this tariff schedule no longer serves a regulatory purpose, the barge industry routinely quotes barge freight rates as a percentage of the tariff schedule.

alternative locations when the contingency plan was in effect based upon 100 percent of the Waterways Freight Bureau Tariff No. 7 barge freight rate schedule. This rate would have been different from the rate found by the Commission to be appropriate at all other times. The Commission found that, "the application of different

differentials to the contracts, depending upon whether deliveries were subject to the contingency rule or to normal delivery procedures, could also contribute to price manipulation, market congestion, or the abnormal movement of commodities in interstate commerce." 62 FR 60852.

B. Adequacy of the 1998 Proposal's Differentials

The 1998 proposal differs from the Order in the amount of the locational price differentials specified for the corn and soybean futures contracts. The CBT proposes to substitute the following locational differentials for those ordered by the Commission:

TABLE 2.—THE PROPOSED LOCATIONAL PRICE DIFFERENTIALS FOR THE SOYBEAN AND CORN FUTURES CONTRACTS IN CENTS PER BUSHEL

Location	Soybean differential	Corn differential
Chicago	par	par
Lockport to Seneca	+2 cents	+2 cents
Ottawa to Chillicothe	+2.5 cents	+2.5 cents
Peoria to Pekin	+3 cents	+3 cents
Havana to Grafton	+3.5 cents	Not applicable
St. Louis/East St. Louis/Alton	+6 cents	Not applicable

In support of its proposal, the CBT states that, "Statistics using barge freight rate differentials and F.O.B. shipping station minus F.O.B. Chicago differentials during the period from 1990–1996 show that the proposed locational differentials are also within the range of commonly observed commercial barge and price differences." (CBT January 23, 1998, submission at 2.)

To determine whether the CBT's proposed differentials fall within the range of commonly observed or expected commercial price differences, the Commission analyzed the frequency of opportunities for economic delivery from each delivery location at the specified differential. Deliveries from a location would most likely be made when the relative difference in the cost of barge freight between Chicago and the delivery point to New Orleans is equal to or less than the differential specified in the futures contract for that location. The Commission estimated the cost of barge freight using data on weekly offers for freight for the period of January 1990 through October 1997.

Significantly, during the critical summer months of July and August (but not September),²¹ the 1998 proposed differentials for most delivery locations

clearly fall at or above the mid-point of estimated cash price differences. Accordingly, the 1998 proposed differentials based on the estimated cost of freight would result in relatively frequent opportunities for economic delivery—generally exceeding 50 percent of the observations—during July and August for most locations. The opportunities for economic delivery at some locations would be less frequent, however, at times of the year other than during the summer months, but overall deliverable supplies are greater at those times. For the period January 1990 through October 1997, the relative estimated frequency with which economic delivery likely would be feasible from the majority of locations generally exceeded 30 percent.²² Accordingly, the CBT's proposed differentials reasonably can be expected to fall within the range of commonly observed or expected commercial price differences and thus tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of the commodities in interstate commerce.

However, the delivery locations of Peoria-Pekin for corn and soybeans, and Havana-Grafton for soybeans, appear to

fall at the low end of the range of estimated barge freight differences. In light of the variation among river segments in the estimated frequency of opportunities for economic deliveries from the various locations, the Commission directs the CBT to report annually for a period of five years on the extent to which particular locational price differentials may discourage or encourage deliveries to be made from that location. This report should compare rates of delivery by river segment to the applicable differentials, focusing with particularity on September deliveries from all locations and on deliveries from the Peoria-Pekin and Havana-Grafton river segments year-round. Such reporting will allow the Commission to revisit the issue of adequacy of locational differentials if actual experience with the contracts suggests that the differentials are not adequate.

C. Contingency Plan Differentials

The 1998 proposal's contingency plan differs from the Commission's Order in the method of calculating the appropriate reimbursement for the change in transportation costs for deliveries at alternative locations when the contingency plan is in effect. The Order specified that the contingency plan reimbursement be calculated by reference to the same differentials between delivery locations required under the Order to be applicable under normal (non-contingency) conditions. The 1998 proposal modifies the reimbursement calculation and changes the amount of the contingency plan differentials to conform them to the proposed cents per bushel differentials generally applicable under the 1998 proposal to the contracts. This change is

²¹ This result is due to the substantial increases in barge freight rates that are commonly observed beginning in September caused by the increasing demand for shipping as the harvest season begins. The Commission considers the lower frequency with which the future contract's differentials will be at or above cash price freight differentials to be of less regulatory concern in September than at other times of the year. The seasonal movement of abundant supplies for shipment in commercial channels from all delivery locations reduces the likelihood that the proposed differentials would lead to the prohibited effects under section 5a(a)(10).

²² As noted above, the barge industry routinely quotes freight rates as a percentage of the tariff schedule. As a consequence of this pricing convention, the relative cost of shipping among various river locations at any one time is stable. However, barge freight rates (quoted as a percent of the tariff schedule) fluctuate over time in response to increases or decreases in supply and demand for barge shipping. The proposed CBT differentials which are specified in cents-per-bushel at half-cent intervals do not translate precisely to a uniform percentage of tariff. Accordingly, as barge freight rates rise and fall in relation to the futures contracts' fixed locational differentials, the frequency with which deliveries would be made would vary somewhat from one location to another.

consistent with the Commission's Order in that the relative value of locational differentials during normal conditions is maintained during times when the contingency plan is in effect.

IV. Minimum Net Worth Requirement

A. The Commission's Order

The Commission's Order also eliminated a proposed \$40 million net worth requirement for eligibility of shipping certificate issuers. Section 15 of the Act requires the Commission, when considering exchange rule proposals or amendments, to consider the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the Act.²³ Accordingly, as the Commission stated in the Order, "the CBT proposal's possible anticompetitive effects must be evaluated against its potential effectiveness in achieving the policies and purposes of the Act." 62 FR 60853.

The Order found that the \$40 million minimum net worth requirement would limit issuance of shipping certificates to four of seven grain firms with shipping stations in the delivery area, result in an extremely high level of concentration, increase the Herfindahl-Hirschman Index (HHI) to 3,300 (an increase of 530 points over the current delivery system), and act as a barrier to new entrants. 62 FR 60853. Although protecting the financial integrity of the delivery process is a reasonable objective, the Order concluded that the CBT failed to provide a reasonable justification for the \$40 million minimum net worth requirement in light of the 1997 proposal's other proposed financial integrity measures.²⁴ 62 FR 60857. Accordingly, the Commission eliminated the \$40 million minimum net worth eligibility requirement, finding that it would have resulted in a high level of concentration and imposed a substantial and impermissible bar to entry to otherwise eligible firms without a demonstrated regulatory need for the requirement. 62 FR 60857.

²³ *British American Commodity Options Corp. v. Bogley*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,245 at 21,334 (S.D.N.Y., 1976), *aff'd in part and rev'd in part on other grounds*, 552 F.2d 282 (2d Cir. 1977), *cert. denied*, 434 U.S. 938 (1977).

²⁴ These additional financial integrity provisions included the requirement that issuers of certificates obtain an irrevocable letter of credit in an amount equal to the value of their delivery commitments, maintain a minimum of two million dollars in working capital and be limited to issuing certificates of a value no greater than 25 percent of the issuer's net worth.

B. The 1998 Net Worth Proposal

The 1998 proposal would restore a net worth eligibility requirement for shipping certificate issuers in the amount of \$5 million. As under the 1997 proposal, this requirement is in addition to the other financial guarantees and conditions relating to working capital, letters of credit and a variable net worth requirement related to the value of outstanding shipping certificates. The CBT supports the requirement on the grounds that:

The Exchange is responsible for ensuring the financial integrity of the delivery process through the specification of minimum financial requirements. Currently, the Exchange requires that firms approved as regular for delivery in the agricultural markets have a minimum net worth equal to \$5,000 per contract of regular capacity. Firms which are regular for delivery on the grain contracts must also meet minimum working capital and performance bonding requirements based on their federally licensed storage capacity.

In order to ensure the financial, operation, and administrative integrity of the shipping certificate delivery process, all market participants must view all certificates as equally fungible and be indifferent between issuers. Certificates issued by low net worth firms have several distinct disadvantages, particularly, a higher risk of default and lower operational efficiencies due to fewer shipping station locations, and therefore, potentially higher costs to the taker in assembling the minimum number of certificates necessary to load a barge. Furthermore, the cumulative contribution of low net worth firms does not substantially increase deliverable supply.

CBT March 20, 1998, submission at 4.

Section 15 of the Act requires that the Commission evaluate the 1998 proposal's anticompetitive effects against its effectiveness in achieving the policies and purposes of the Act. The effect of the proposed \$5 million net worth requirement would be to limit issuance of shipping certificates to firms able to meet the requirement. However, the \$5 million net worth requirement constitutes a far lower barrier to entry than did the 1997 proposal's \$40 million requirement, which as the Order found, would have limited participation to "four large grain firms." In contrast, for the corn futures contract, under a \$5 million net worth requirement, five of the seven firms operating barge-loading facilities on the northern Illinois River potentially qualify for eligibility as shipping certificate issuers. For the soybean futures contract, eight of the eleven barge-loading firms operating on the Illinois River and at St. Louis would meet this eligibility requirement.²⁵ The

proposed \$5 million net worth requirement would constitute a lower barrier to entry. It also would have a more modest effect on reducing deliverable supplies for the futures contracts. United States Army Corps of Engineers' data for the 1995-96 crop year indicates that eligible firms shipped about 95 percent of all corn and soybeans from the proposed delivery areas.

Balanced against its anticompetitive effect, the \$5 million net worth requirement may serve the regulatory purpose of increasing the efficiency of the contract's delivery mechanism.²⁶ Delivery takers are expected to attempt to reduce their costs by assembling the requisite number of shipping certificates from a single delivery facility to fill a barge. (A barge with a 55,000 bushel capacity will require assembly of 11-5,000 bushel certificates for delivery.) However, the smallest firms may not qualify to issue sufficient certificates for economically efficient consolidation and assembly.²⁷ Moreover, the \$5 million net worth requirement may significantly reduce the CBT's administrative burden related to monitoring the financial status of eligible shipping certificate issuers on an on-going basis. Small, less financially secure firms likely would require more careful monitoring than financially stronger firms.

For the above reasons, the Commission finds that the anticompetitive effect of the \$5 million proposed net worth eligibility requirement is not so great as to outweigh the regulatory purpose identified by the CBT and that its approval by the Commission is not contrary to section 15 of the Act.

Accordingly, for the reasons discussed above, the Commission grants the CBT applications for designation for futures contracts in corn and soybeans submitted on December 17, 1997, as supplemented on March 19, 1998, and amends its Order of November 9, 1997, as applicable to such contracts so as to be consistent with this action.

It is further ordered that this grant of designation shall be subject to CBT's

from 3,300 under the 1997 soybean proposal to 2,918 under the 1998 proposal and for the corn proposals from 3,300 to 2,762.

²⁶ Protecting the integrity of the delivery process is a fundamental objective of the Act. See, e.g., Sections 5a(a), 5a(a)(3), 5a(a)(4), 5a(a)(5), 5a(a)(7), and 5a(a)(10) of the Act. In particular, section 5a(a)(7) of the Act specifically recognizes that contract markets may impose reasonable requirements "as to location, accessibility and suitability for warehousing and delivery purposes."

²⁷ The issuer must limit the value of its outstanding certificates to one-quarter of its net worth.

compliance with all sections of the Act applicable to the CBT as a contract market under the Act.

Dated: May 7, 1998.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

The Commission has determined that publication of the Order will provide notice to interested members of the public of its action, is consistent with the Commodity Exchange Act and is in the public interest.

Issued in Washington, DC, this 7th day of May 1998, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-12664 Filed 5-12-98; 8:45 am]

BILLING CODE 8351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [Vol. 63, No. 74/Friday, April 17, 1998/19245].

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, May 21, 1998.

CHANGES IN MEETING: The time has changed from 10:00 a.m. to 2:00 p.m. for the Commission Agenda and Priorities public hearing.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: May 8, 1998.

Todd A. Stevenson,

Deputy Secretary.

[FR Doc. 98-12794 Filed 5-8-98; 4:33 pm]

BILLING CODE 8355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Joint Military Intelligence College: Notice of Closed Meeting

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board

of Visitors has been scheduled as follows:

DATES: Monday, 8 June 1998, 0800 to 1800; and Tuesday, 9 June 1998, 0800 to 1200.

ADDRESSES: Joint Military Intelligence College, Washington, DC 20340-5100.

FOR FURTHER INFORMATION CONTACT:

Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340-5100 (202/231-3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: May 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-12684 Filed 5-12-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows.

DATES: 20 and 21 May 1998 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340-5100.

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340-1328 (202) 231-4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the

Director, DIA, on related scientific and technical matters.

Dated: May 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-12685 Filed 5-12-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 28 May 1998 (800am to 1600pm).

ADDRESS: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340-5100.

FOR FURTHER INFORMATION CONTACT: Maj. Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340-1328 (202) 231-4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: May 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR 98-12686 Filed 5-12-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary; Defense Policy Board Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session from 8 am until 6 pm, 19 June 1998 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: May 6, 1998.
L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 98-12688 Filed 5-12-98; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary, Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on June 2, 1998; June 9, 1998; June 16, 1998; June 23, 1998; and June 30, 1998, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92-463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301-4000.

Dated: May 6, 1998.
L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
[FR Doc. 98-12687 Filed 5-12-98; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.
ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 12, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information

collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 7, 1998.
Hazel Fiers,
Acting Deputy Chief Information Officer,
Office of the Chief Information Officer,
Office of Educational Research and Improvement

Type of Review: Revision.
Title: Application for Grants Under the Eisenhower Federal Activities Program.

Frequency: Annually.
Affected Public: Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping: Responses: 1,000.
Burden Hours: 40,000.

Abstract: Eisenhower Federal Activities is a discretionary grants program that supports activities of national significance that will contribute to the development and implementation of high-quality professional development in the core academic subjects.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (OMB Control No. 1890-0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98-12641 Filed 5-12-98; 8:45 am]
BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Notice of Solicitation for the Development of Centers of Automotive Technology Excellence Under the Graduate Automotive Technology Education (GATE) Program, Financial Assistance Solicitation No. DE-SC02-98EE50519

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of availability of a financial assistance solicitation for cooperative agreement proposals.

SUMMARY: The Department of Energy (DOE) Office of Advanced Automotive Technologies (OATT) announces its interest in receiving applications from colleges and universities with accredited graduate engineering programs in the United States to develop Centers of Automotive Technology Excellence under the Graduate Automotive Technology Education (GATE) Program. The Centers are intended to provide multi-disciplinary engineering training for graduate students in specific areas of advanced automotive technology. The goal of the GATE Program is to overcome technology barriers preventing the development and production of cost-effective high-efficiency vehicles for the U.S. market.

DATES AND ADDRESSES: The complete solicitation document will be available on the Internet on or about May 18, 1998 by accessing the DOE Chicago Internet Home Page at <http://www.ch.doe.gov/business/ACQ.html> under the heading "Current Acquisition Activities" Solicitation No. DE-SC02-98EE50519. Applications are due no later than 3:00 p.m. Central Daylight Time (CDT), on July 17, 1998. Any amendments to the solicitation will continue to be posted on the Internet. Please note that users are not alerted when the solicitation is issued or when amendments are posted. Prospective offeror(s) are therefore advised to check the above Internet address on a daily basis. Awards are anticipated by August 30, 1998.

SUPPLEMENTARY INFORMATION: Completed applications referencing Solicitation No. DE-SC02-98EE50519 must be submitted to the U.S. Department of Energy, Chicago Operations Office, Attn: Dennis L. Wilson, Bldg. 201, Rm. 3F-08, 9800 South Cass Avenue, Argonne, IL 60439-4899. As a result of this solicitation, DOE may award five (5) cooperative agreements, one for each desired technology area. The period of performance is expected to be September 1, 1998 to August 30, 2000. Available funding, irrespective of the number of offerors selected, is \$500,000.00 in FY 1998, and follow-on funding of approximately \$500,000.00 for FY 1999. Colleges and universities that respond to this solicitation must already have significant experience with one or more of the desired technologies and have access to laboratory facilities

and equipment to support their proposed programs.

FOR FURTHER INFORMATION CONTACT: Dennis L. Wilson, Acquisition and Assistance Group, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439; Telephone No. (630) 252-2413; Fax No. (630) 252-5045, or by e-mail at dennis.wilson@ch.doe.gov

Issued in Chicago, Illinois on April 30, 1998.

James Bieschke,
Director of Operations Division, Acquisition and Assistance Group.
[FR Doc. 98-12680 Filed 5-12-98; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Thursday, May 28, 1998; 6 p.m.-9 p.m., 6:30 p.m. to 7 p.m. (public comment session).

ADDRESSES: Taos Convention Center, Taos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665-5048.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:00 p.m. Call to Order by DOE
6:00 p.m. Welcome by Chair, Roll Call, Approval of Agenda and Minutes from March 21, 1998 and April 28, 1998 Meetings
6:30 p.m. Public Comments
7:00 p.m. Break
7:15 p.m. Board Business—Formation of Committees, Charter, Budget Status, Workshop Announcements
8:30 p.m. Review of Outstanding Environmental Restoration/Waste Management Recommendations

9:00 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois, at (505) 665-5048. A sign-up sheet will also be available at the door of the meeting room for members of the public to indicate their desire to address the Board. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mr. Mat Johansen, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185-5400.

Issued at Washington, DC on May 7, 1998.
Rachel Samuel,
Deputy Advisory Committee Management Officer.
[FR Doc. 98-12679 Filed 5-12-98; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Solicitation for Research and Development for Fuel Cells, Direct Injection Engines, and Fuels: Energy Efficiency and Renewable Energy Technology for Transportation and Buildings

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of solicitation availability.

SUMMARY: The U. S. Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy announces its interest in receiving financial assistance applications for research and development (R&D) on automotive fuel cells, direct injection engines, and fuels in support of the Government/automotive industry Partnership for a New Generation of Vehicles (PNGV). The Partnership is

developing light-duty vehicles that achieve up to 3 times the fuel economy of comparable conventional vehicles, meet emissions standards, and offer the same level of performance and cost as today's vehicles. Direct injection engines and fuel cells have been selected for their potential for attaining the goal of 80-mpg fuel economy in a six-passenger sedan. In support of the DOE Office of Energy Efficiency and Renewable Energy fuel cell cross-cutting technologies, the Office of Building Technologies also plans to acquire research and development (R&D) of fuel cell technologies for building applications.

DATES AND ADDRESSES: The complete solicitation document will be available on or about July 1, 1998 on the DOE Chicago Internet Home Page at <http://www.ch.doe.gov/business/ACQ.htm> under the heading "Current Acquisition Activities." Solicitation No. DE-SC02-98EE50526 with applications due August 17, 1998. Any amendments to this solicitation will be posted on the Internet. Please note that users will not be alerted when the solicitation is issued on the Internet or when amendments are posted on the Internet. Prospective applicants are therefore advised to check the above Internet address on a daily basis. The cooperative agreements are expected to be awarded on or about March 1, 1999.

FOR FURTHER INFORMATION CONTACT: John O'Keefe, at (630) 252-2125, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439-4899; by fax at (630) 252-5045; or by e-mail at john.o'keefe@ch.doe.gov.

SUPPLEMENTARY INFORMATION: Topic 1 includes research on proton-exchange-membrane (PEM) fuel cells for transportation and buildings. Proposals for light-duty transportation applications are sought in three areas and building applications in another area: (1) Fuel cell system integration issues, including delivery of complete sub-scale fuel cell power systems; one to DOE for experiments to validate fuel cell system models, another for use at the contractor(s) laboratory facilities to develop engineering solutions for operation at extreme conditions while ensuring water balance and demonstrating freeze-thaw capability. DOE also seeks to update existing cost analyses incorporating the principles of design for manufacturability. (2) Fuel cell component R&D, including development of CO tolerant anodes, higher activity cathodes, manufacturing technologies, air compressor/expanders, controls and sensors, coolants, stack sealants, gaskets, and adhesives for

stack durability. (3) Fuel processing R&D, including CO clean-up and design for manufacturability of preferential oxidation system(s), start-up and transient response, durability, and innovative ideas for reducing size, weight, and cost of the fuel processing system. (4) The Fuel Cell for Buildings Program seeks advanced components for PEM fuel cell cogeneration systems which are simple in construction with no heavily loaded mechanical subsystems that limit life and reliability; operate at a pressure of 1.5 atm or below; have heat rejection temperatures in excess of 100°C to provide access to a broad range of applications for cogeneration systems and reduce the cost of heat rejection when operating in a power only mode; and are highly reliable during long-term operation on natural gas reformat from low-cost fuel processors. PEM fuel cell technologies based on Nafion™ or similar materials as an electrolyte are unlikely to meet these system requirements. In an activity which cross-cuts with the needs of the transportation fuel cell program, the Fuel Cell for Buildings Program seeks to acquire research and development of advanced high temperature membrane(s) with performance equal to or better than that of Nafion™.

Topic 2 includes research in three areas: (1) Compression-ignition direct injection engines (CIDI), (2) spark-ignition direct injection engines (SIDI), and (3) innovative concepts. The primary technical barrier facing automotive DI engines is the development of combustion and emission control technology able to reliably meet stringent emission regulations. (1) The focus of the CIDI engine research is on NO_x and particulate matter (PM) emissions control technology for light-duty vehicle applications. Emission control component development includes research on advanced after-treatment technologies that will enable PNV-candidate CIDI engines (operating on low-sulfur diesel fuel) and SIDI engines (operating on reformulated gasoline) to meet NO_x and PM emissions targets (0.2 g/mi NO_x and 0.01 g/mi PM) as well as other requirements (e.g., cost and efficiency). Examples of components being sought are advanced fuel injection systems (high-pressure, rate shaping) and exhaust gas recirculation in combination with after-treatment approaches such as lean NO_x catalysts, non-thermal plasma, and regenerative particulate traps. (2) The focus of the SIDI efforts will be the development of durable fuel injectors and associated

equipment for light-duty vehicles. After treatment devices and associated sensors for SIDI engines are needed as well. (3) In addition, proposals are sought for innovative, high-risk research into novel means of reducing emissions or improving the efficiency of SIDI, CIDI or conventional gasoline-fueled, spark-ignition engines. New, forward thinking devices and systems that make significant improvements in engine performance and are practical to implement are sought.

Topic 3 includes research on fuels and lubricants. Proposals are sought in four areas: (1) Optimized CIDI fuels, including research on advanced fuel formulations, fuel characterization test development, and lubricity additive performance mechanisms. Advanced CIDI fuel formulations including but not limited to oxygenate additives and cetane enhancers which facilitate meeting future passenger car emission standards are being sought. Recommendations for fuel characterization test methods may include, among others, means for determining compatibility with CIDI after-treatment systems, storage stability, thermal stability, fuel system and engine deposit forming potential, compatibility with engine and fuel system materials, blending compatibility with petroleum fuels, combustion particulate forming potential, cold start, and low-temperature operation. Determination of CIDI fuel lubricity additive performance will include evaluation of additive mechanisms such as surface adsorption at the temperature and pressure of operation. (2) CIDI engine lubrication research, including advanced lubricant formulations to help meet vehicle fuel economy and exhaust emission targets, demonstrated through lubricant bench test characterization methods. (3) Research to identify, characterize, and test fuels specifically optimized for automotive fuel cells. The work may include an analysis and/or formulation of fuels that offer advantages for on-board reforming processes (e.g., less coking, ease of operation at extreme ambient conditions, greater hydrogen yield, and emissions reductions) and a determination of the cost of producing these fuels and the impact of these fuels on the fueling infrastructure and oil imports. Offerors should assess candidate fuels using current automotive-type partial oxidation reformers as the fuel processing baseline. (4) Research on innovative natural gas compressors to reduce the size, noise, and cost of the compressor island, significantly lower energy

consumption for compression, and reduce maintenance requirements. Innovative concepts for gas storage, gas dispensing, operating strategies for the storage capacity, and providing the small amount of highest-pressure gas needed to complete vehicle fueling are desired. Research is also sought in the area of truly conformable tank technology (i.e., storage devices that are integral to the vehicle), either with or without storage density enhancement techniques. The objective is to develop storage vessels in non-cylindrical shapes that are conducive to incorporation into automobiles and light trucks.

A major DOE program objective is to increase the involvement of the automotive industry supplier base in key engine-related R&D programs.

The Department of Energy anticipates that approximately twenty-five cooperative agreements will result from this solicitation. Under Topic 1 there will be approximately twelve awards, with periods of performance ranging from eighteen to thirty months and total estimated DOE funding of \$10,000,000.00 to \$30,000,000.00. Under Topic 2 there will be approximately five awards, with periods of performance of thirty months and total estimated DOE funding of \$40,000,000.00. Under Topic 3 there will be approximately eight awards with periods of performance of thirty-six months and total estimated DOE funding of \$10,000,000.00. Cost sharing requirements will vary from zero to fifty percent, depending on the topic area, and will be specified in the solicitation. Awards are subject to the availability of funds and the solicitation will not obligate DOE to make any award(s). Any non-profit or for-profit organization, university or other institution of higher education, or non-federal agency or entity is eligible to apply. Federal laboratory participation shall be minimal and will be subject to DOE approval. The solicitation will provide further guidance in this area. Awards resulting from this solicitation will be subject to the requirements of the Energy Policy Act of 1992 which in general requires that the awardee be a United States-owned company (including certain non-profits) or that the foreign country in which the parent company is located meets certain conditions of reciprocity in the treatment of investments, access to research and development programs, and protection of intellectual property. All responsible sources, as indicated above, may submit an application which shall be considered by the government.

Issued in Chicago, Illinois on May 4, 1998.
J. D. Greenwood,
Acquisition and Assistance Group Manager.
[FR Doc. 98-12677 Filed 5-12-98; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-114-001]

K N Interstate Gas Transmission Company; Notice of Amendment to Application

May 7, 1998.

Take notice that on May 1, 1998, K N Interstate Gas Transmission Company (Applicant), P.O. Box 281304, Lakewood, Colorado 80228, filed a request in Docket No. CP98-114-001 to amend its application filed December 4, 1997, in Docket No. CP98-114-000. Applicant had filed in Docket No. CP98-114-000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate thirteen new delivery taps, under blanket certificate issued in Docket No. CP83-140-000, *et al.*¹ Applicant's application to amend its request for authorization is on file with the Commission and open for public inspection.

Applicant proposed in Docket No. CP98-114-000 to construct thirteen new delivery taps located in Adams, Antelope, Buffalo, Custer, Pierce, and Sherman Counties, Nebraska and Kearny County, Kansas.² Pursuant to Rule 215 of the Commission's Rules of Practice and Procedure, Applicant proposes to amend its application pending in Docket No. CP98-114-000 to delete from its request ten delivery tap facilities. Applicant has been advised that certain of the retail customers who initially requested service at the proposed taps described in Docket No. CP98-114-000 as Tap Nos. 1 through 6, 9 through 11, and 13 no longer desire natural gas service at the locations specified in that application.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 14, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a

¹ See, 22 FERC ¶ 62,330 (1983).

² On January 26, 1998, the Kansas Corporation Commission filed a timely protest in Docket No. CP98-114-000. Since the protest was neither withdrawn nor resolved within the 30-day resolution period the prior notice request converted to a Section 7 proceeding.

protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98-12663 Filed 5-12-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP-403-000]

NorAm Gas Transmission Company; Notice of Application for Abandonment

May 7, 1998.

Take notice that on April 29, 1998, NorAm Gas Transmission Company (NGT), 1111 Louisiana Street, Houston Texas 77210-4455 filed in Docket No. CP98-403-000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of certain pipeline facilities in Panola County, Texas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, NGT proposes to abandon Line ST-17, composed of approximately 374 feet of 8-inch pipe, in the W.C. Gray Survey A-245 in Panola County, Texas. NGT says this line was constructed in 1982 and certificated in Docket No. CP91-400, to receive gas supply from the discharge side of the Champlin Compressor Station and deliver it through an interconnection with Texas Gas Transmission Corporation. NGT indicates that as a result of changes in its business, this interconnection is no longer needed and has not been utilized for an extensive period.

NGT plans to abandon Line ST-17, in its entirety, along with an 8-inch dual meter run, 6-inch dual regulatory, and above ground appurtenant equipment. NGT relates that it will reclaim a 63 foot segment of ST-17 starting at the yard piping in the Champlin Compressor Station yard and abandon in place the remaining 311 feet of pipe. NGT says the 63 feet of pipe will be junked and the cost to reclaim this pipe is estimated to be \$2,370.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NGT to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 98-12635 Filed 5-12-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9985-024]

Rivers Electric Company, Inc.; Notice of Availability of Draft Environmental Assessment

May 7, 1998.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the license for the Mill Pond Hydroelectric Project. The application is to increase the operating level of the project impoundment 2 feet that would result in more efficient operation of the project. The EA finds that approval of the amendment would not constitute a major federal action significantly affecting the quality of the human environment. The project is located on Catskill Creek, near Leeds, New York.

Copies of the EA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 9985-024 to all comments. For further information, please contact John K. Novak, Environmental Assessment Coordinator, at (202) 219-2828.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12636 Filed 5-12-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License To Enlarge Project Boundary

May 7, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License to Enlarge Project Boundary.

b. *Project No.:* 2743-034.

c. *Dated filed:* April 27, 1998.

d. *Applicant:* Alaska Energy Authority.

e. *Name of Project:* Terror Lake.

f. *Location:* The project is located approximately 25 miles southwest of the City of Kodiak, Alaska on the Terror and Kizhuyak rivers and their tributaries.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C., § 791(a)-825(r).

h. *Applicant Contact:* Mr. Stan Sieczkowski, Operations Manager, Alaska Energy Authority, 480 West Tudor Road, Anchorage, Alaska 99503, Phone: (907) 269-3000.

i. *FERC Contact:* Mohamad Fayyad, (202) 219-2665.

j. *Comment Date:* June 19, 1998.

k. *Description of Amendment:* The licensee proposes to revise its erosion control system, which would consist of a dike structure armored with gabions and Reno mattresses, along the westerly side of the Kizhuyak River in the vicinity of the powerhouse. The construction of this dike requires modifying the project boundary to include an additional 20 acres. The purpose of the dike is to provide protection of project's facilities from erosion and flooding by the Kizhuyak River. The licensee proposes to complete the work in 1998.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12634 Filed 5-12-98; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50840; FRL-5789-2]

Receipt of a Notification to Conduct Small-Scale Field Testing of a Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt from DuPont Agricultural Products of a notification (352-NMP-A) of intent to conduct small-scale field testing involving baculoviruses, which have been genetically engineered to express synthetic genes which encode for an insect-specific toxin. The tests will be small-scale and will not involve more than a cumulative total of 10 acres per pest per year. Any food or feed crops shall be destroyed or consumed only by experimental animals. The Agency has determined that the notification may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this notification. Q02

DATES: Written comments must be received on or before June 12, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: William R. Schneider, PM 90, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th floor CS1 2800 Crystal Drive, Arlington, VA, (703) 308-8683, e-mail: schneider.william@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Notice of receipt of this notification does not imply a decision by the Agency on this notification.

EPA received a notification from DuPont Agricultural Products of Delaware (352-NMP-A). The proposed small-scale field trials involve the introduction of genetically engineered isolates of nuclear polyhedrosis baculoviruses, which have been genetically engineered to express a synthetic gene which encodes for an insect-specific toxin. The purpose of the proposed testing will be to assess and compare the efficacy of formulated and unformulated genetically engineered constructs, formulated and unformulated wild type nuclear polyhedrosis baculoviruses, and various controls against agriculture pest insects. These tests are similar to testing previously approved by EPA in 1996 (notification 352-NMP-4) and 1997 (notification 352-NMP-5). Following review of DuPont's notification and any comments received in response to this notice, EPA may approve the tests, ask for additional data, require additional modifications to the test protocols, or require an Experimental Use Permit application to be submitted. In

accordance with 40 CFR 172.50, under no circumstances shall the proposed tests proceed until the submitter has received notice from EPA of its approval of such tests.

II. Public Record and Electronic Submissions

The official record for this document, as well as the public version, has been established for this document under docket control number "OPP-50840" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP-50840." Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Dated: April 29, 1998.

Kathleen F. Knox;

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98-12721 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00535; FRL-5786-8]

Changes to Registration Priority System Involving Organophosphate (OP) Alternatives and Reduced Risk Candidates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is soliciting comments on a draft, updated policy for the prioritization and expedited review of applications for significant OP alternative new active ingredients and new use registration applications for

conventional pesticides handled by the Registration Division (RD). This proposed policy would also change how reduce-risk candidates will be treated in the priority system. The proposal is available as a draft Pesticide Registration (PR) Notice entitled "Changes to Registration Priority System Involving Organophosphate (OP) Alternatives and Reduced Risk Candidates," which is available upon request as indicated under Unit IV.

DATES: Written comments, identified by the docket number [OPP-00535], must be received on or before June 12, 1998.

ADDRESSES: Submit written comments identified by the docket control number OPP-00535 by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. In person, bring comments directly to the OPP Docket Office, which is located in Room 119 of Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions under Unit IV of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: By mail: Peter Caulkins, Environmental Protection Agency (7505C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, 22202, (703) 305-5447, fax: (703) 305-6920, e-mail: caulkins.peter@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This Federal Register notice announces the availability of the draft Pesticide Registration (PR) Notice and solicits comments on the proposed guidance. **Electronic Availability:** Internet

Electronic copies of this document and the draft PR Notice also are available from the EPA Home page at

the Federal Register - Environmental Documents entry for this document under "Laws and Regulations" (<http://www.epa.gov/fedrgstr/>).

Fax-on-Demand

Using a faxphone call (202) 401-0527 and select item 6111 for a copy of this document and the PR Notice.

I. Purpose

The purpose of the proposed PR Notice is to update EPA's policy for the prioritization and expedited review of applications for significant OP alternative new active ingredients and new uses for conventional, primarily agricultural pesticides. This notice also changes how reduce-risk candidates will be treated in the priority system.

II. Background

The Office of Pesticide Programs' (OPP) Reduced-Risk Committee has screened five active ingredients (AIs) that are potentially significant alternatives for OPs. These five AIs have all passed the reduced-risk screen and have been placed into expedited review. Given how important it will be to have as many OP alternatives in the market as possible, OPP will use the reduced-risk screening mechanism to identify significant OP alternatives. If the Reduced-Risk Committee determines that a pending registration action is a potentially significant OP alternative, it could recommend that action for expedited review even if it does not qualify for reduced-risk status.

III. Policy Change

The proposed PR notice would amend the EPA's current priority scheme by making OP alternatives that pass the reduced-risk screen would be the second highest priority (#2) behind methyl bromide alternatives (#1). Also, any submission that is determined to be a significant OP alternative, which is not granted reduced-risk status, but is recommended by the Reduced-Risk Committee for expedited review, would become an Agency priority as well. Furthermore, any submission that passes the reduced-risk screen would become an Agency priority. An Agency priority does not count against a company's limit of five priorities.

IV. Public Record and Electronic Submissions

A record has been established for this action under docket number "OPP-00535" (including comments and data submitted electronically as described above). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30

a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

V. Schedule for Finalizing the PR Notice

EPA plans to issue and make effective the final PR Notice as soon as possible. We anticipate that the guidance will be made final and effective within the next 3 months.

List of Subjects

Environmental protection, Agricultural pesticides.

Dated: April 22, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98-12580 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPP-181063; FRL 5789-9]

Carbofuran; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Mississippi Department of Agriculture, (hereafter referred to as the "Applicant") to use the pesticide flowable Carbofuran (Furadan 4F Insecticide/Nematicide) (EPA Reg. No. 279-2876) to treat up to 1 million acres of cotton in Mississippi, to control cotton aphids. The Applicant proposes the use of a chemical which has been the subject of a Special Review within EPA's Office of Pesticide Programs. The granular formulation of carbofuran was the subject of a Special

Review between the years of 1986-1991, which resulted in a negotiated settlement whereby most of the registered uses of granular carbofuran were phased out. While the flowable formulation of carbofuran is not the subject of a Special Review, EPA believes that the proposed use of flowable carbofuran on cotton could pose a risk similar to the risk assessed by EPA under the Special Review of granular carbofuran. Additionally, in 1997 EPA denied requests made under provisions of section 18 for this use of flowable carbofuran. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 28, 1998.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-181063," should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instruction under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be included in the public record by EPA without prior notice.

The public docket is available for public inspection in Rm. 119, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: CM#2, 1921

Jefferson Davis Highway, Arlington, VA, (703) 308-9358; e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue a specific exemption for the use of carbofuran on cotton to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the state of Mississippi is likely to experience non-routine infestations of aphids during the 1998 cotton growing season. The applicant further claims that, without a specific exemption of FIFRA for the use of flowable carbofuran on cotton to control cotton aphids, cotton growers in the state will suffer significant economic losses. The applicant details a use program designed to minimize risks to pesticide handlers and applicators, non-target organisms (both Federally-listed endangered species, and non-listed species), and to reduce the possibility of drift and runoff.

The Applicant proposes to make no more than two applications of flowable carbofuran on cotton at the rate of 0.25 lb. active ingredient (a.i.) [(8 fluid oz.)] in a minimum of 2 gallons of finished spray per acre by air, or 10 gallons of finished spray per acre by ground application. The total maximum proposed use during the 1998 growing season June 1, 1998 until September 30, 1998 would be 0.5 lb. a.i. (16 fluid oz.) per acre. The applicant proposes that the maximum acreage which could be treated under the requested exemption would be 1 million acres. If all acres were treated at the maximum proposed rates, then 500,000 lbs. a.i. (125,000 gallons Furadan 4F Insecticide/Nematicide) would be used in Mississippi.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a chemical (i.e., an active ingredient) which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar to the risk assessed by EPA under the previous Special Review. Such notice provides for

opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP-181063] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-181063]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Mississippi Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: May 5, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98-12722 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

May 7, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a

collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 12, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202-418-0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0211.

Title: Section 73. 1493 Political File.
Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15,817.

Estimated Time Per Response: 0.25 hours per request (each station is estimated to have 25 political broadcasts per year).

Frequency of Response: On occasion.
Cost to Respondents: N/A.

Total Annual Burden: 98,856 hours.

Needs and Uses: Section 73.1943 requires licensees of broadcast stations to keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such request. The data are used by the public to assess money expended and time allocated to a political candidate and to ensure that

equal access was afforded to other qualified candidates.

OMB Control No.: 3060-0454.

Title: CC Docket No. 90-337.

Regulation of International Accounting Rates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 12.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion.

Cost to Respondents: \$5,850. Carriers are expected to contract for 5% of the burden hours to outside law firms to prepare submissions to the FCC, especially in their first submission. It is estimated that Respondents would pay the law firm approximately \$150 per hour to file the data as the collection of the data will be handled in-house. This figure is based on a small survey of local firms in the D.C. area and is considered a conservative estimate.

Total Annual Burden: 780 hours.

Needs and Uses: The FCC requests this collection of information as a method to monitor the international accounting rates to insure that the public interest is being served and also to enforce Commission policies. By requiring a U.S. carrier to make an equivalency showing and to file other documents for end users interconnected international private lines, the FCC will be able to preclude one-way bypass and safeguard its international settlements policy. The data collected is required by Section 43.51 (d) of the FCC's rules.

OMB Control No.: 3060-0502.

Title: Section 73. 1942 Candidate Rates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 11,518.

Estimated Time Per Response: 0.5 hours per disclosure (each station is estimated to make 25 disclosures of the lowest unit charge to candidates annually).

Frequency of Response: On occasion.

Cost to Respondents: N/A.

Total Annual Burden: 650,767 hours.

Needs and Uses: Section 315(b) of the Communications Act directs broadcast stations to charge political candidates the "lowest unit charge of the station" for the same class and amount of time for the same period, during the 45 day preceding a primary or runoff election and the 60 days preceding a general or special election.

Section 73.1942 requires broadcast licensees to disclose any station

practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time (immediately preemptible, preemptible with notice, fixed, fire sale, and make good). Section 73.1942 also requires licensees to calculate the lowest unit charge. Furthermore, stations are required to review their advertising records throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. The disclosure would assure candidates that they are receiving the same lowest unit charge as other advertisers.

OMB Control No.: 3060-0788.

Title: DTV Showings/Interference Agreements

Form No.: FCC 301/FCC 340

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 20.

Estimated Time Per Response: 55 hours (5 hours per applicant; 50 hours for advisory committee).

Frequency of Response: On occasion; Third Party Disclosure.

Cost to Respondents: Undetermined.
Total Annual Burden: 100 hours.

Needs and Uses: Section V-D of the FCC 301/340 Forms begins with a "Certification Checklist." This checklist contains a series of questions by which applicants may certify compliance with key processing requirements. The first certification requires conformance with the DTV Table of Allotments. In the Sixth Report and Order in MM Docket No. 87-268, the Commission allowed flexibility for DTV facilities to be constructed at locations within five kilometers of the reference allotment sites without consideration of additional interference to analog or DTV service, provided the DTV service does not exceed the allotment reference height above average terrain or effective radiated power. In order for the Commission to process applications that can not certify affirmatively, the rules adopted in the Sixth Report and Order require applicants to submit a technical showing to establish that their proposed facilities will not result in additional interference to TV broadcast and DTV operations.

Additionally, in the Sixth Report and Order, the Commission permitted broadcasters to agree to proposed DTV facilities that do not conform to the initial allotment parameters, even though they might be affected by potential new interference. The Commission also recognized that industry frequency coordination

could help to facilitate the implementation of the DTV service, and it encouraged the broadcast industry to continue their voluntary coordination efforts through a process open to all affected parties. In this regard, the Commission will consider granting applications on the basis of interference agreements, including agreements obtained through the coordination process, if it finds that such grants will serve the public interest. These agreements must be signed by all parties to the agreement. In addition, the Commission needs the following information to enable such public interest determination: a list of parties predicted to receive additional interference from the proposed facility, a showing as to why a grant based on the agreements would serve the public interest, and technical studies depicting the additional interference. Applicants who use a voluntary coordination process should provide the name, address and telephone number of the person who coordinated studies and a description of how the coordination process was open to all interested parties.

The technical showings and interference agreements will be used by FCC staff to determine if the public interest would be served by the grant of the application and to ensure that the proposed facilities will not result in additional interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-12666 Filed 5-12-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

[FCC 98-61]

Order to Show Cause and Notice of Opportunity for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission will hold a hearing to determine whether to issue a Cease and Desist Order, and whether a forfeiture will be imposed for the unlicensed operation of a radio station in violation of the Communications Act in docket case CI 98-45.

DATES: Prehearing on May 18, 1998, 9:00 am; Hearing on June 16, 1998; 10:00 am.

ADDRESSES: All pleadings and papers must be mailed to Office of the Secretary, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, Hearings held at Offices of the Commission.

FOR FURTHER INFORMATION CONTACT: Norman Goldstein and James Shook,

Mass Media Bureau, (202) 418-1430, e-mail ngoldste@fcc.gov and jshook@fcc.gov

SUPPLEMENTARY INFORMATION:

Released: April 6, 1998

The Commission has under consideration information concerning the transmission of radio signals without a license by Lewis B. Arnold ("Arnold"). For the reasons that follow, we order Arnold to show cause, pursuant to Section 312(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. 312(c), why we should not issue a cease and desist order which prohibits further unauthorized transmissions on his part. Also, pursuant to Section 1.80(g) of the Commission's Rules (the "rules"), 47 CFR 1.80(g), this order constitutes a notice of opportunity for hearing to determine whether, in addition to or as an alternative to the issuance of a cease and desist order, a forfeiture should be imposed for violations of the Act and the rules.

2. **Background.** On June 26, 1997, Dennis Anderson, the Seattle, Washington, District Director of the Commission's Compliance and Information Bureau ("CIB"), received information from Eric Carpenter ("Carpenter"), General Manager of AM/FM broadcast stations KCVL/KCRK in Colville, Washington, concerning an unauthorized radio station operating on 95.3 MHz in Chewelah, Washington. Carpenter alleged that the unauthorized station caused economic harm and interference to the reception of his station on 92.1 MHz. On July 7, 1997, the CIB Seattle Field Office received additional information from Carpenter to the effect that the Chewelah station was owned by Arnold. On July 9, 1997, a warning letter was sent to Arnold regarding the unlicensed radio station on 95.3 MHz. In pertinent part, the warning letter stated:

Under Section 301 of the Communications Act of 1934, as amended, and the Commission's Rules and Regulations, radio transmitting apparatus, (other than certain low powered devices operated in accordance with Part 15 of the Commission's Rules and Regulations), may be operated only upon issuance by this Commission of a station license covering such apparatus. Unlicensed operation may subject the operator to serious penalties provided for in the Communications Act. Because unlicensed operation creates a definite danger of interference to important radio communications services and may subject the operator to the penalties provided for in the Communications Act, the importance of complying strictly with the legal requirements mentioned above is emphasized.

The letter also requested that Arnold submit a written explanation concerning the circumstances leading to the

unauthorized operation of transmitting equipment and what corrective action had been or would be taken to prevent any future recurrence. Commission records reveal no response from Arnold to this letter.

Thereafter, on August 20, 1997, Agents Donald Roberson ("Roberson") and Michael Rothe ("Rothe") proceeded to the Chewelah area and detected a radio signal on 95.3 using radio direction-finding techniques. Further monitoring led Roberson and Rothe to conclude that the signal originated from a vertical dipole antenna mounted on a pole attached to a building located at N 103 4th Street East, Chewelah. Field strength measurements indicated signal levels, when extrapolated to 3 meters, of 1,261,500 "V/m and 60,700 "V/m. Part 15 of the rules allows unlicensed operation of a low power radio transmitter in the FM broadcast band provided the signal level is below 250 "V/m at a distance of 3 meters. 47 CFR 15.239. Thus, the field strength measurements taken exceeded those allowed by Part 15 of the rules.

Again, on August 22, 1997, Roberson and Rothe located through radio direction-finding techniques an unlicensed radio station operating on 95.3 MHz at N 103 4th Street East, Chewelah. At approximately 12:05 p.m., Roberson and Rothe, accompanied by Chewelah Police Officer Mark Burrows, entered the property at N 103 4th Street East and requested to inspect the station. Arnold invited the agents into his station and gave them permission to inspect the radio transmission equipment.

5. Roberson and Rothe observed various pieces of audio gear and an FM stereo transmitter, an amplifier rated at one Watt output, and a vertical dipole antenna.¹ Arnold then acknowledged the following: (1) There is no license for the facilities; (2) he was fully responsible for the unlicensed station; (3) he was operating unlicensed to see if there was community support for his operation; (4) he had put the radio equipment together from a kit; (5) he has a web page for the radio station on the Internet; and (6) he had received the FCC warning letter.² By warning letter hand-delivered by Roberson and Rothe,

¹ Arnold requested that his signal be checked without the amplifier on. A field strength measurement revealed that with the amplifier off he was still exceeding Part 15 limits.

² Arnold also admitted that he holds an Amateur Extra Class operator license, call sign KJ7VR. On February 28, 2005, such license is due to expire. Should Arnold be found in violation of the Commission's Rules and the Communications Act based on the evidence before the Commission, any questions raised about Arnold's qualifications to remain a Commission licensee will be addressed in a separate proceeding.

Arnold again was advised that operation of the radio station violated federal law, and he was ordered to cease operations. Arnold shut the station off at 1:02 pm, as the agents were leaving. Subsequently, by letter dated August 25, 1997, Carpenter alleged that Arnold had resumed broadcasting on 95.3 MHz. On September 9, 1997, Carpenter telephoned District Director Anderson in the CIB Seattle Field Office, reiterating his complaint that Arnold's unlicensed transmissions were continuing. On March 21, 1998, at 10:00 am, Roberson confirmed that Arnold's transmissions were in fact continuing and that the signal levels far exceeded Part 15 limits.

6. Discussion. Section 301 of the Act, 47 U.S.C. § 301, provides in pertinent part: It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission. * * * No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State * * * to another place in the same State * * * except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Anyone transmitting radio transmissions in the United States must have authority from the Commission to do so. See 47 U.S.C. § 301; *U.S. v. Medina*, 718 F. Supp. 928 (S.D. Fla. 1989); *U.S. v. Weiner*, 701 F.Supp. 15 (D.Mass. 1988), *aff'd*, 887 F.2d 259 (1st Cir. 1989); *Stephen Paul Dunifer*, 11 FCC Rcd 718, 720-21, ¶¶ 7-9 (1995) (regarding Commission's licensing requirement); and *Order to Show Cause and Notice of Apparent Liability*, 50 FR 20603, published May 17, 1985 (Alan H. Weiner). As the facts recited above reflect, it appears that Arnold has violated and may currently be violating Section 301 of the Act.

Ordering Clauses

7. Accordingly, *It Is Ordered* that, pursuant to Section 312(c) of the Act, Lewis B. Arnold Is Directed To Show Cause why he should not be ordered to Cease And Desist from violating Section 301 of the Act, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

1. To determine whether Lewis B. Arnold has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.
2. To determine whether, based on the evidence adduced pursuant to the preceding issue, Lewis B. Arnold should be ordered to cease and desist from violating Section 301 of the Act.

8. *It Is further ordered* that, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Compliance and Information Bureau with respect to issues 1 and 2.

9. *It Is further ordered* that this Order to Show Cause shall constitute a Bill of Particulars with respect to all foregoing issues.

10. *It Is further ordered* that, to avail himself of the opportunity to be heard, Lewis B. Arnold, pursuant to Sections 1.91(c) of the Commission's Rules, in person or by attorney, Shall File in triplicate with the Commission within twenty (20) days of the mailing of this Order, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in this Order.

11. *It Is further ordered* that, without regard as to whether the hearing record warrants an order that Lewis B. Arnold cease and desist from violating the Act or the rules, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an Order For Forfeiture in an amount not to exceed \$11,000¹ shall be issued against Lewis B. Arnold for the alleged violations of Section 301 of the Act.

12. *It is further ordered* that in connection with the possible forfeiture liability noted above, this document constitutes a notice of opportunity for hearing pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules.

13. *It is further ordered* that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order Shall Be Served on the counsel of record appearing on behalf of the Chief, Compliance and Information Bureau. Parties may inquire as to the identity of such counsel by calling the Compliance and Information Bureau at (202) 418-1100, TTY (202) 418-2544. Such service Shall Be Addressed to the named counsel of record, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

14. *It is further ordered* that the Office of Public Affairs, Reference Operations Division of the Commission send a copy

¹ This figure reflects the maximum appropriate forfeiture amount in light of the specific facts at issue. See 47 U.S.C. § 503(b)(2)(C); 47 CFR 1.80(b)(3), (b)(4), (b)(5); see also *In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997) (petitions for reconsideration pending).

of this Order by Certified Mail—Return Receipt Requested to: Lewis B. Arnold, N 103 4th Street East, 2741 Flowery Trail Road, Chewelah, Washington 99109.

Also forward to: Lewis B. Arnold, The Independent, P.O. Box 5, Chewelah, Washington 99109.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-12811 Filed 5-12-98; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 98-62]

Order To Show Cause and Notice of Opportunity for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission will hold a hearing to determine whether to issue a Cease and Desist Order, and whether a forfeiture will be imposed for the unlicensed operation of a radio station in violation of the Communications Act in docket case CI 98-46.

DATES: Prehearing on May 20, 1998, 9:00 am; Hearing on June 30, 1998, 10:00 am.

ADDRESSES: All pleadings and papers must be mailed to Office of the Secretary, 1919 M Street, N.W., Room 222, Washington, D.C. 20554; Hearings held at Offices of the Commission.

FOR FURTHER INFORMATION CONTACT: Norman Goldstein and James Shook, Mass Media Bureau, (202) 418-1430, e-mail ngoldste@fcc.gov and jshook@fcc.gov

SUPPLEMENTARY INFORMATION:

Released: April 6, 1998

1. The Commission has under consideration information concerning Keith Perry's transmission of radio signals without a license. For the reasons that follow, we order Keith Perry to show cause, pursuant to Section 312(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 312(c), why we should not issue a cease and desist order which prohibits further unauthorized transmissions on his part. Also, pursuant to Section 1.80(g) of the Commission's Rules (the "rules"), 47 C.F.R. § 1.80(g), this order constitutes a notice of opportunity for hearing to determine whether, in addition to or as an alternative to the issuance of a cease and desist order, a forfeiture should be

imposed for violations of the Act and the rules.

2. *Background.* On March 24, 1997, the Compliance and Information Bureau's (CIB) Dallas Field Office received a complaint from the Texas Association of Broadcasters concerning an unauthorized radio station operating on 88.5 MHz, northwest of Austin, Texas. On June 6, 1997, Loyd P. Perry ("Agent Perry"), the Houston, Texas, resident agent of the CIB and CIB Dallas Field Office Director James D. Wells ("Agent Wells") were on duty in the Austin, Texas, area in a mobile automatic direction finding (MADF) vehicle. Agents Perry and Wells detected a radio signal on the frequency 88.5 MHz in the area of north Austin. Further monitoring led Agents Perry and Wells to determine that the signal originated from a vertical beam antenna mounted on a tower on the rear of the residence located at 607 Osage Drive, Leander, Texas, over fifteen miles from the location Agents Perry and Wells first detected the signal. Because the radio station utilized an external antenna over fifty feet in height and the signal could be received over fifteen miles away, Agents Perry and Wells concluded that the radio transmitting equipment exceeded the lower power limits set forth in Part 15 of the rules, 47 CFR § 15.239(b).

3. At approximately 12:47 p.m., Agents Perry and Wells approached the residence identified above. Leander Police Officer Tim Meaner was on hand to assist if necessary. Keith Perry identified himself as owner of the residence. Mr. Keith Perry admitted the operation of radio transmitting equipment at the residence, but refused entry into the residence. After a lengthy conversation, Keith Perry directed Agents Loyd Perry and Wells to a window at the east side of the residence where the agents were allowed to view the transmitting equipment.

4. Agents Perry and Wells observed a satellite dish mounted on the exterior of the house and audio cables from an unknown source, feeding into a small transmitter. Keith Perry stated that the cables provided audio from a satellite source received by the satellite dish on the residence. The transmitter, in turn, fed into another small transmitter, with cables leading to the vertical beam antenna located on a tower approximately sixty feet high, mounted at the rear of the residence. Agent Perry conducted radio frequency power measurements at the output of the transmitter, using an in-line wattmeter. Forward power was measured at 30 watts, reflected power at 2½ watts. Agents Perry and Wells concluded that

the use of that amount of power and the use of an external antenna exceeded the limits set forth in part 15 of the rules, 47 CFR 15.239(b).

5. Keith Perry stated that he began operating the station in February 1997. He voluntarily disconnected the power to the transmitter during the inspection. Upon their return to the MADF vehicle, Agents Perry and Wells confirmed that the signal earlier detected was no longer present on the unit's receiving equipment.

6. On June 25, 1997, Agent Perry sent a letter under his signature by certified mail to Keith Perry.¹ In pertinent part, the letter stated:

Radio transmitting equipment (other than certain low powered devices operated in accordance with Part 15 of the Rules) may be operated only upon issuance by this Commission of a station license covering such equipment. Unlicensed operation is a violation of Section 301 of the Act, 47 U.S.C. § 301, and may subject the operator to substantial monetary fines, in rem forfeiture action, and criminal sanctions including imprisonment. See 47 U.S.C. §§ 401, 501, 503, 510. Because unlicensed operation creates a danger of interference to important radio communications services and may subject the operator to severe penalties, we emphasize the importance of complying strictly with these legal requirements. Operation of radio transmitting equipment without proper authority granted by the Commission should cease immediately. (emphasis in the original).

7. The letter informed Keith Perry that he need not reply but, if desired, he could submit relevant information to the Commission's Houston Field Office. On July 24, 1997, Keith Perry submitted a written response to the warning letter. Keith Perry argued that: the FCC has no power to regulate FM broadcast stations operating with transmitter power of less than 100 watts; Agents Perry and Wells trespassed on his property and illegally parked their vehicle in front of his home; the FCC has no authority to inspect unlicensed stations; Agent Perry had no authority to operate the transmitter while conducting his tests; the agents slandered Keith Perry to the Leander Police Department; and insufficient postage was placed on the warning letter.

8. On August 29, 1997, Agent Perry was on duty in Austin, Texas, in a MADF vehicle. Agent Perry detected a radio signal on the frequency 95.9 MHz in the area of north Austin. Further monitoring led Agent Perry to conclude that the signal originated from a vertical

¹ The June 25, 1997, letter mistakenly asserted that Keith Perry had transmitted on 87.9 MHz. By letter dated September 26, 1997, Agent Perry corrected the frequency referenced to reflect transmission on 88.5 MHz.

beam antenna mounted on a tower on the rear of the residence located at 607 Osage Drive, Leander, Texas. No contact was made with Keith Perry at that time. On March 20, 1997, using direction finding techniques, Agent Perry confirmed that Keith Perry was continuing to operate.

9. Discussion. Section 301 of the Act, 47 U.S.C. § 301, provides in pertinent part:

It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission. * * * No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State * * * to another place in the same State * * * except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Anyone transmitting radio transmissions in the United States must have authority from the Commission to do so. See *U.S. v. Medina*, 718 F. Supp. 928 (S.D. Fla. 1989); *U.S. v. Weiner*, 701 F.Supp. 15 (D.Mass. 1988), *aff'd*, 887 F.2d 259 (1st Cir. 1989); *Stephen Paul Dunifer*, 11 FCC Rcd 718, 720-21, ¶¶ 7-9 (1995) (regarding Commission's licensing requirement); and *Order to Show Cause and Notice of Apparent Liability*, 50 FR 20603, published May 17, 1985 (Alan H. Weiner). As the facts recited above reflect, it appears that Keith Perry has violated and may currently be violating Section 301 of the Act.

Ordering Clauses

10. Accordingly, *It is ordered* that, pursuant to Section 312(c) of the Act, Keith Perry Is Directed To Show Cause why he should not be ordered to Cease And Desist from violating Section 301 of the Act, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

1. To determine whether Keith Perry has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.

2. To determine whether, based on the evidence adduced pursuant to the preceding issue, Keith Perry should be ordered to cease and desist from violating Section 301 of the Act.

11. *It is further ordered* that, pursuant to Section 312(d) of the Act, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Compliance and Information Bureau with respect to issues 1 and 2.

12. *It is further ordered* that this Order to Show Cause shall constitute a Bill of Particulars with respect to all foregoing issues.

13. *It is further ordered* that, to avail himself of the opportunity to be heard, Keith Perry, pursuant to Section 1.91(c) of the rules, in person or by attorney, Shall File in triplicate with the Commission within twenty (20) days of the mailing of this Order, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in this Order.

14. *It is further ordered* that, without regard as to whether the hearing record warrants an order that Keith Perry cease and desist from violating the Act or the rules, it shall be determined, pursuant to Section 503(b) of the Act, whether an Order For Forfeiture in an amount not to exceed \$11,000² shall be issued against Keith Perry for the alleged violations of Section 301 of the Act.

15. *It is further ordered* that in connection with the possible forfeiture liability noted above, this document constitutes a notice of opportunity for hearing pursuant to Section 503(b) of the Act and Section 1.80 of the rules.

16. *It is further ordered* that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order Shall Be Served on the counsel of record appearing on behalf of the Chief, Compliance and Information Bureau. Parties may inquire as to the identity of such counsel by calling the Compliance and Information Bureau at (202) 418-1100, TTY (202) 418-2544. Such service Shall Be Addressed to the named counsel of record, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

17. It Is Further Ordered that the Office of Public Affairs, Reference Operations Division of the Commission send a copy of this Order by Certified Mail—Return Receipt Requested to:

Keith Perry, 607 Osage Drive, Leander, Texas 78641.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-12813 Filed 5-12-98; 8:45 am]

BILLING CODE 6712-01-P

² This figure reflects the maximum appropriate forfeiture amount in light of the specific facts at issue. See 47 U.S.C. § 503(b)(2)(C); 47 CFR §§ 1.80(b)(3), (b)(4), (b)(5); see also *In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997) (petitions for reconsideration pending).

FEDERAL COMMUNICATIONS COMMISSION

[FCC 98-60]

Order To Show Cause and Notice of Opportunity for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission will hold a hearing to determine whether to issue a Cease and Desist Order, and whether a forfeiture will be imposed for the unlicensed operation of a radio station in violation of the Communications Act in docket case CI 98-44.

DATES: Prehearing on May 19, 1998, 9:00 am; Hearing on June 23, 1998, 10:00 am.

ADDRESSES: All pleadings and papers must be mailed to Office of the Secretary, 1919 M Street, N.W., Room 222, Washington, D.C. 20554; Hearings held at Office of the Commission.

FOR FURTHER INFORMATION CONTACT: Norman Goldstein and James Shook, Mass Media Bureau, (202) 418-1430, e-mail ngoldste@fcc.gov and jshook@fcc.gov

SUPPLEMENTARY INFORMATION:

Released: April 6, 1998.

1. The Commission has under consideration information concerning the transmission of radio signals without a license by Joseph Frank Ptak ("Ptak"). For the reasons that follow, we order Ptak to show cause, pursuant to Section 312(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. 312(c), why we should not issue a cease and desist order which prohibits further unauthorized transmissions on his part. Also, pursuant to Section 1.80(g) of the Commission's Rules (the "rules"), 47 CFR 1.80(g), this order constitutes a notice of opportunity for hearing to determine whether, in addition to or as an alternative to the issuance of a cease and desist order, a forfeiture should be imposed for violations of the Act and rules.

2. *Background.* On April 9, 1997, Loyd P. Perry ("Perry"), one of the Houston, Texas, resident agents of the Commission's Compliance and Information Bureau ("CIB"), received information from the San Marcos (Texas) Police Department concerning an unauthorized radio station operating on 105.9 MHz. Perry and CIB Dallas Director James D. Wells ("Wells") proceeded to the San Marcos area in mobile automatic direction finder ("MADF") unit FC-660. About 10 miles south of San Marcos, Perry and Wells

detected a radio signal on 105.9 MHz, which increased in strength as they approached San Marcos. Further monitoring led Perry and Wells to conclude that the signal originated from a vertical dipole antenna mounted on a tower situated on the grounds of a residence located at 505 Patricia Drive, San Marcos. Further, considering the height above ground of the antenna and the distance from the antenna to the location where they first detected the signal, Perry and Wells concluded that the signal strength exceeded 250 µV/m at 3 meters, the limit for unlicensed operation as set forth in Section 15.239(b) of the rules, 47 CFR 15.239(b).

3. At approximately 3:18 p.m., Perry and Wells heard a signal identified as "KIND" on 105.9 MHz. At approximately 3:29 p.m., Perry and Wells, accompanied by San Marcos Police Officer Royce Smith, entered upon the property at 505 Patricia Drive and asked to speak with the owner. Ptak identified himself as such. Perry then requested permission to inspect the radio transmission equipment to which Ptak granted his request.

4. In a bedroom of the residence, Perry and Wells observed a transmitter with a cable exiting a window. The cable, in turn, was connected to a vertical dipole antenna mounted on a 25 to 30 foot tower adjacent to the rear of the residence. An unconnected wattmeter was located next to the transmitter. Ptak then acknowledged the following: (1) There is no license for the facilities; (2) the transmitter output was 30 watts; (3) operation had begun on March 26, 1997, and had continued 24 hours per day since March 26; and (4) the station was operated by the Hayes County Guardian newspaper and staffed with volunteers. Perry, thereupon, orally advised Ptak that operation of the radio station violated federal law, and he ordered Ptak to cease operations. Ptak refused. Thereafter, at 4:00 p.m. on April 9, Perry and Wells again identified the source of a signal on 105.9 MHz as the facilities observed at 505 Patricia Drive.

5. On April 17, 1997, Perry sent a letter under his signature by certified mail to Ptak. In pertinent part, the letter stated:

Operation of radio transmitting equipment, other than certain low powered devices operated in accordance with Part 15 of the Rules, may be operated only upon issuance by this Commission of a station license. Unlicensed operation is a violation of Section 301 of the Act, 47 U.S.C. 301, and may subject the operator to substantial monetary fines, *in rem* forfeiture action, and criminal sanctions including imprisonment. See 47 U.S.C. 401, 501, 503, 510. Because

unlicensed operation creates a danger of interference to important radio communications services and may subject the operator to severe penalties, we emphasize the importance of complying strictly with the legal requirements mentioned above. Operation of radio transmitting equipment without proper authority granted by the Commission should cease immediately. (emphasis in the original).

The letter also informed Ptak that he need not reply but, if desired, he could submit relevant information to Perry. Commission records reveal no response from Ptak.

6. By a letter dated May 12, 1997 and transmitted via facsimile on May 13, 1997, a further complaint from the San Marcos Police Department concerning Ptak's unlicensed operation was received by Perry. Among other things, the complaint reflected that unauthorized transmissions by Ptak were continuing. Perry's investigations indicated that the unauthorized transmissions by Ptak were still ongoing. On March 20, 1998, using direction finding techniques, Perry confirmed that Ptak was continuing to operate.

7. *Discussion.* Section 301 of the Act, 47 U.S.C. 301, provides in pertinent part:

It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission. . . . No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State . . . to another place in the same State . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Anyone transmitting radio transmissions in the United States must have authority from the Commission to do so. See *U.S. v. Medina*, 718 F. Supp. 928 (S.D. Fla. 1989); *U.S. v. Weiner*, 701 F.Supp. 15 (D.Mass. 1988), *aff'd*, 887 F.2d 259 (1st Cir. 1989); *Stephen Paul Dunifer*, 11 FCC Rcd 718, 720-21, ¶¶ 7-9 (1995) (regarding Commission's licensing requirement); and *Order to Show Cause and Notice of Apparent Liability*, 50 FR 20603, published May 17, 1985 (Alan H. Weiner). As the facts recited above reflect, it appears that Ptak has violated and may currently be violating Section 301 of the Act.

Ordering Clauses

8. Accordingly, It Is Ordered that, pursuant to Section 312(c) of the Act, Joseph Frank Ptak Is Directed To Show Cause why he should not be ordered to Cease And Desist from violating Section 301 of the Act, at a hearing to be held at a time and location specified in a

subsequent Order, upon the following issues:

1. To determine whether Joseph Frank Ptak has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.

2. To determine whether, based on the evidence adduced pursuant to the preceding issue, Joseph Frank Ptak should be ordered to cease and desist from violating Section 301 of the Act.

9. *It is further ordered* that, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Compliance and Information Bureau with respect to issues 1 and 2.

10. *It is further ordered* that this Order to Show Cause shall constitute a Bill of Particulars with respect to all foregoing issues.

11. *It is further ordered* that, to avail himself of the opportunity to be heard, Joseph Frank Ptak, pursuant to Section 1.91(c) of the rules, in person or by attorney, Shall File in triplicate with the Commission within twenty (20) days of the mailing of this Order, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in this Order.

12. *It is further ordered* that, without regard as to whether the hearing record warrants an order that Joseph Frank Ptak cease and desist from violating the Act or the rules, it shall be determined, pursuant to Section 503(b) of the Act, whether an Order For Forfeiture in an amount not to exceed \$11,000¹ shall be issued against Joseph Frank Ptak for the alleged violations of Section 301 of the Act.

13. *It is further ordered* that in connection with the possible forfeiture liability noted above, this document constitutes a notice of opportunity for hearing pursuant to Section 503(b) of the Act and Section 1.80 of the rules.

14. *It is further ordered* that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record appearing on behalf of the Chief, Compliance and Information Bureau. Parties may inquire as to the identity of such counsel by calling the Compliance and Information Bureau at (202) 418-1100, TTY (202) 418-2544. Such service Shall be addressed to the

¹ This figure reflects the maximum appropriate forfeiture amount in light of the specific facts at issue. See 47 U.S.C. 503(b)(2)(C); 47 CFR 1.80(b)(3), (b)(4), (b)(5); see also *In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997) (petitions for reconsideration pending).

named counsel of record, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

15. *It is further ordered* that the Office of Public Affairs, Reference Operations Division of the Commission send a copy of this Order by Certified Mail—Return Receipt Requested to: Joseph Frank Ptak, 505 Patricia Drive, San Marcos, Texas 78666.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-12815 Filed 5-12-98; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 98-63]

Order To Show Cause and Notice of Opportunity for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission will hold a hearing to determine whether to issue a Cease and Desist Order, and whether a forfeiture will be imposed for the unlicensed operation of a radio station in violation of the Communications Act in docket case CI 98-47.

DATES: Prehearing on May 19, 1998, 9:00 am; Hearing on June 23, 1998, 10:00 am.

ADDRESSES: All pleadings and papers must be mailed to Office of the Secretary, 1919 M Street, N.W., Room 222, Washington, D.C. 20554; Hearings held at Offices of the Commission.

FOR FURTHER INFORMATION CONTACT: Norman Goldstein and James Shook, Mass Media Bureau, (202) 418-1430, e-mail ngoldste@fcc.gov and jshook@fcc.gov

SUPPLEMENTARY INFORMATION:

Released: April 6, 1998

1. The Commission has under consideration information concerning the transmission of radio signals without a license by Mark A. Rabenold ("Rabenold"). For the reasons that follow, we order Rabenold to show cause, pursuant to Section 312(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. 312(c), why we should not issue a cease and desist order which prohibits further unauthorized transmissions on his part. Also, pursuant to Section 1.80(g) of the Commission's Rules (the "rules"), 47 CFR 1.80(g), this order constitutes a notice of opportunity for hearing to

determine whether, in addition to or as an alternative to the issuance of a cease and desist order, a forfeiture should be imposed for violations of the Act and the rules.

2. *Background.* On August 21, 1997, Michael P. Rothe ("Rothe") and Donald C. Roberson ("Roberson"), employees of the Commission's Compliance and Information Bureau ("CIB") stationed in the Seattle Field Office observed an unauthorized FM broadcast station operating on 105.1 MHz in the Oroville, Washington, area. Using directional finding techniques, they determined that the signals came from an antenna at the back of the building at 1214 Main Street, Oroville. Rothe and Roberson measured the strength of the signal from two locations. At a distance of 103 meters from the antenna, the signal strength was measured at 6.5 mV/m, while, from a slightly different angle and at a distance of 99.3 meters, the signal strength was measured at 5.8 mV/m. Rothe and Roberson calculated that these values are the equivalent of 223,900 "V/m at 3 meters and 180,400 "V/m at 3 meters, respectively, both of which exceed the limit for unlicensed operation in the FM band of 250 "V/m at 3 meters prescribed by Section 15.239 of the rules, 47 C.F.R. § 15.239. Further investigation by Rothe and Roberson appeared to indicate that the operator was Rabenold.

3. That same day, Rothe and Roberson located Rabenold. Rabenold informed them that he would let them inspect the station if they filled out a questionnaire he had prepared. After Rothe and Roberson refused to complete the questionnaire, Rabenold stated he would not let them inspect the station. Rothe and Roberson then handed Rabenold a letter, which advised Rabenold that no license had been issued by the Commission to him for broadcast operations on 105.1 MHz. The letter also stated that:

[O]peration of radio transmitting equipment without a valid radio station authorization and/or refusal to allow inspection of your radio station constitutes violation of the Federal laws cited above and could subject the owner, operator or anyone aiding and abetting this illegal operation to an administrative penalty of monetary forfeiture under Section 503(b) of the Act, 47 U.S.C. 503(b) * * * UNLICENSED OPERATION OF THIS RADIO STATION MUST BE DISCONTINUED IMMEDIATELY. (emphasis in original).

The letter also solicited Rabenold's comments on the matter and advised him that he could request an interview with the Commission to discuss the matter.

By certified letter dated September 25, 1997, Dennis J. Anderson ("Anderson"), District Director of the Seattle Field Office, informed Rabenold that Commission agents had determined that he was operating illegally on 105.1 MHz in that the field strength of the signal transmitted by Rabenold exceeded the maximum authorized for operation without a license by Section 15.239(b) of the rules, 47 CFR 15.239(b). Anderson's letter advised Rabenold immediately to cease operating the unlicensed FM radio broadcast station and that operation of a radio transmitter without proper authorization could subject Rabenold to a forfeiture as well as criminal penalties. Anderson's letter requested a reply describing the steps that had been taken to ensure that illegal broadcasts did not recur. Commission records indicate that Rabenold appears to have signed the return receipt but that he did not submit a response. On March 12, 1998, Roberson confirmed that Rabenold's unauthorized transmissions are continuing.

5. *Discussion.* Section 301 of the Act, 47 U.S.C. 301, provides in pertinent part:

It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission. * * * No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State * * * to another place in the same State * * * except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Anyone transmitting radio transmissions in the United States must have authority from the Commission to do so. See *U.S. v. Medina*, 718 F. Supp. 928 (S.D. Fla. 1989); *U.S. v. Weiner*, 701 F.Supp. 15 (D.Mass. 1988), *aff'd*, 887 F.2d 259 (1st Cir. 1989); *Stephen Paul Dunifer*, 11 FCC Rcd 718, 720-21, ¶¶ 7-9 (1995) (regarding Commission's licensing requirement); and *Order to Show Cause and Notice of Apparent Liability*, 50 FR 20603, published May 17, 1985 (Alan H. Weiner). As the facts recited above reflect, it appears that Rabenold has violated and may currently be violating Section 301 of the Act.

Ordering Clauses

6. Accordingly, it is ordered that, pursuant to Section 312(c) of the Act, Mark A. Rabenold Is Directed To Show Cause why he should not be ordered to Cease And Desist from violating Section 301 of the Act, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

1. To determine whether Mark A. Rabenold has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.

2. To determine whether, based on the evidence adduced pursuant to the preceding issue, Mark A. Rabenold should be ordered to cease and desist from violating Section 301 of the Act.

7. It is further ordered that, pursuant to Section 312(d) of the Act, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Compliance and Information Bureau with respect to issues 1 and 2.

8. It is further ordered that this Order to Show Cause shall constitute a Bill of Particulars with respect to all foregoing issues.

9. It is further ordered that, to avail himself of the opportunity to be heard, Mark A. Rabenold, pursuant to Sections 1.91(c) of the rules, in person or by attorney, Shall File in triplicate with the Commission within twenty (20) days of the mailing of this Order, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in this Order.

10. It is further ordered that, without regard as to whether the hearing record warrants an order that Mark A. Rabenold cease and desist from violating the Act or the rules, it shall be determined, pursuant to Section 503(b) of the Act, whether an Order For Forfeiture in an amount not to exceed \$11,000¹ shall be issued against Mark A. Rabenold for the alleged violations of Section 301 of the Act.

11. It is further ordered that in connection with the possible forfeiture liability noted above, this document constitutes a notice of opportunity for hearing pursuant to Section 503(b) of the Act and Section 1.80 of the rules.

12. It is further ordered that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order Shall Be Served on the counsel of record appearing on behalf of the Chief, Compliance and Information Bureau. Parties may inquire as to the identity of such counsel by calling the Compliance and Information Bureau at (202) 418-1100, TTY (202) 418-2544. Such service Shall Be Addressed to the named counsel of record, Compliance and Information Bureau, Federal

¹ This figure reflects the maximum appropriate forfeiture amount in light of the specific facts at issue. See 47 U.S.C. 503(b)(2)(C); 47 CFR 1.80(b)(3), (b)(4), (b)(5); see also *In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997)(petitions for reconsideration pending).

Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

13. It is further ordered that the Office of Public Affairs, Reference Operations Division of the Commission send a copy of this Order by Certified Mail—Return Receipt Requested to: Mark A. Rabenold, 960 Swanson Mill Road, Tonasket, Washington 98855.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 98-12812 Filed 5-12-98; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 98-64]

Order To Show Cause and Notice of Opportunity for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission will hold a hearing to determine whether to issue a Cease and Desist Order, and whether a forfeiture will be imposed for the unlicensed operation of a radio station in violation of the Communications Act in docket case CI 98-48.

DATES: Prehearing on May 21, 1998, 9:00 am; Hearing on June 23, 1998, 10:00 am.

ADDRESSES: All pleadings and papers must be mailed to Office of the Secretary, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, Hearings held at Offices of the Commission.

FOR FURTHER INFORMATION CONTACT: Norman Goldstein and James Shook, Mass Media Bureau, (202) 418-1430, e-mail ngoldste@fcc.gov and jshook@fcc.gov

SUPPLEMENTARY INFORMATION:

Released: April 6, 1998.

1. The Commission has under consideration information concerning the transmission of radio signals without a license by Jerry Szoka ("Szoka"). For the reasons that follow, we order Szoka to show cause, pursuant to Section 312(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. 312(c), why we should not issue a cease and desist order which prohibits further unauthorized transmissions on his part. Also, pursuant to Section 1.80(g) of the Commission's Rules (the "rules"), 47 CFR 1.80(g), this order constitutes a notice of opportunity for hearing to determine whether, in addition to or as an alternative to the issuance of a cease

and desist order, a forfeiture should be imposed for violations of the Act and the rules.

2. Background. On November 4, 1996, James A. Bridgewater ("Bridgewater"), the Detroit Field Office Director of the Commission's Compliance and Information Bureau, received information from Mark Krieger, Chairman of the Society of Broadcast Engineers, concerning an unauthorized radio station operating as "The Grid," on 96.9 MHz. On February 20, 1997, Bridgewater sent a letter under his signature by certified mail to "The Grid." In pertinent part, the letter stated:

Unlicensed operation is a violation of Section 301 of the Act, 47 U.S.C. 301, and may subject the operator to substantial monetary fines, in rem forfeiture action, and criminal sanctions including imprisonment. See 47 U.S.C. 401, 501, 503, 510. Because unlicensed operation creates a danger of interference to important radio communications services and may subject the operator to severe penalties, we emphasize the importance of complying strictly with the legal requirements mentioned above. Operation of radio transmitting equipment without proper authority granted by the Commission should cease immediately. (Emphasis in the original).

The letter also informed "The Grid" that a response was required within 15 days of receipt of the letter. On March 31, 1997, the Commission received an unsigned reply dated March 26, 1997, from Szoka, in which he acknowledged receipt of Bridgewater's letter and stated that he would take necessary actions to meet FCC requirements. He also urged the Commission to ignore the unlicensed operation because the station is top quality, provides a much needed community service without commercials, and is not interfering with other stations.

3. On June 11, 1997, Bridgewater sent Szoka a second warning letter regarding the unlicensed operation on 96.9 MHz. That letter also required a reply within 15 days of receipt. Commission records reveal no response from Szoka.

4. Between June 18, 1997, and September 9, 1997, the Commission received four additional complaints regarding the unlicensed broadcast operation at 96.9 MHz. Each complaint indicated that unauthorized transmissions were continuing.

5. On September 11, 1997, FCC Agents Patrick G. Patterson ("Patterson") and Paul S. Mako ("Mako") drove to Cleveland, Ohio, in a Commission mobile direction finding vehicle. At approximately 5:10 p.m., Patterson and Mako positively identified the location of the transmitted signal as emanating from 1281 West 9th

Street, Cleveland, Ohio. This address is the location of "The Grid," a commercial night club. Patterson and Mako observed that the transmitting antenna was located at the top of the 4 1/2 story building on the north side and approximately half way between the front and back of the building. Patterson and Mako also determined that the coaxial cable connected to the antenna entered the building housing the establishment known as "The Grid." The agents took a field strength measurement of the signal identified as "The Grid." The measurement was made approximately 171 meters (561 feet) from the transmitting antenna and recorded a value of 35.55 millivolts/meter (33,550 microvolts/meter). This measurement far exceeds the limit set out in Section 15.239(b) of the rules, 47 CFR 15.239(b), which allows unlicensed operation of a low power radio transmitter in the FM broadcast band provided the signal level is below 250 µV/m at a distance of 3 meters. The 96.9 FM signal was also monitored via the direction finding vehicle's normal AM/FM radio by Patterson and Mako while exiting the Cleveland area and heading west on I-90. The signal could be heard for approximately 18.6 miles. On Friday, March 19, 1998, at 4:57 pm, FCC Agent Patterson confirmed that the station was still operating.

6. Discussion. Section 301 of the Act, 47 U.S.C. 301, provides in pertinent part: It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission. * * * No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State * * * to another place in the same State * * * except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Anyone transmitting radio transmissions in the United States must have authority from the Commission to do so. See *U.S. v. Medina*, 718 F. Supp. 928 (S.D. Fla. 1989); *U.S. v. Weiner*, 701 F.Supp. 15 (D.Mass. 1988), *aff'd*, 887 F.2d 259 (1st Cir. 1989); *Stephen Paul Dunifer*, 11 FCC Rcd 718, 720-21, ¶¶ 7-9 (1995) (regarding Commission's licensing requirement); and *Order to Show Cause and Notice of Apparent Liability*, 50 FR 20603, published May 17, 1985 (Alan H. Weiner). As the facts recited above reflect, it appears that Szoka has violated and may currently be violating Section 301 of the Act.

Ordering Clauses

7. Accordingly, It Is Ordered that, pursuant to Section 312(c) of the Act,

Jerry Szoka Is Directed To Show Cause why he should not be ordered to Cease And Desist from violating Section 301 of the Act, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

a. To determine whether Jerry Szoka has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.

b. To determine whether, based on the evidence adduced pursuant to the preceding issue, Jerry Szoka should be ordered to cease and desist from violating Section 301 of the Act.

8. *It Is Further Ordered* that, pursuant to Section 312(d) of the Act, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Compliance and Information Bureau with respect to issues a and b.

9. *It Is Further Ordered* that this Order to Show Cause shall constitute a Bill of Particulars with respect to all foregoing issues.

10. *It Is Further Ordered* that, to avail himself of the opportunity to be heard, Jerry Szoka, pursuant to Sections 1.91(c) of the rules, in person or by attorney, Shall File in triplicate with the Commission within twenty (20) days of the mailing of this Order, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in this Order.

11. *It Is Further Ordered* that, without regard as to whether the hearing record warrants an order that Jerry Szoka cease and desist from violating the Act or the rules, it shall be determined, pursuant to Section 503(b) of the Act, whether an Order For Forfeiture in an amount not to exceed \$11,000¹ shall be issued against Jerry Szoka for the alleged violations of Section 301 of the Act.

12. *It Is Further Ordered* that in connection with the possible forfeiture liability noted above, this document constitutes a notice of opportunity for hearing pursuant to Section 503(b) of the Act and Section 1.80 of the rules.

13. *It Is Further Ordered* that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order Shall Be Served on the counsel of record appearing on behalf of the Chief, Compliance and Information Bureau. Parties may inquire as to the identity of such counsel by calling the Compliance and Information

Bureau at (202) 418-1100, TTY (202) 418-2544. Such service Shall Be Addressed to the named counsel of record, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

14. *It Is Further Ordered* that the Office of Public Affairs, Reference Operations Division of the Commission send a copy of this Order by Certified Mail—Return Receipt Requested to: Jerry Szoka, The Grid, 1281 West 9th Street, Cleveland, Ohio 44113.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 98-12814 Filed 5-12-98; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 6, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

Federal Communications Commission.

OMB Control No.: 3060-0330.
Expiration Date: 04/30/2001.
Title: Part 62 - Applications to Hold Interlocking Directorates.
Form No.: N/A.
Respondents: Business or other for-profit.

Estimated Annual Burden: 10 respondents; 2 hour per response (avg.); 20 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Description: Persons seeking to hold interlocking positions with more than one carrier subject to the Communications Act of 1934, as amended, where any carrier sought to be interlocked has been found by the Commission to have market power and is defined as a dominant carrier or where any carrier has not yet been

found to be non-dominant, except for cellular licensees in different geographic markets must file an application pursuant to 47 CFR Part 62. The collection of information is authorized by 47 U.S.C. Section 212. Congress mandated information collection under 47 U.S.C. Section 212 to be conducted by the Federal Communications Commission to monitor the effect of interlocking directorates on the telecommunications industry and to ensure they will not have any anticompetitive impact. Part 62 of the Commission's Rules and Regulations implements the statute. The information is used by Commission staff to deter anticompetitive practices. Obligation to respond: Mandatory.

OMB Control No.: 3060-0807.

Expiration Date: 04/30/2001.

Title: 47 CFR Section 51.803 and Supplementation Procedures for Petitions to Section 252(e)(5) of the Communications Act of 1934, as amended.

Form No.: N/A.
Respondents: Business or other for-profit.

Estimated Annual Burden: 52 respondents; 39.23 hour per response (avg.); 2040 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.
Frequency of Response: On occasion.

Description: Any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act shall notify the Commission as follows: (1) file with the Secretary of the Commission a detailed petition, supported by an affidavit, that states with specificity the basis for any claim that it has failed to act; and (2) serve the state commission and other parties to the proceeding on the same day that the party serves the petition on the Commission. Within 15 days of the filing of the petition, the state commission and parties to the proceeding may file a response to the petition. See 47 U.S.C. Section 252 and CFR Section 51.803. In a Public Notice (DA 97-2256), the Commission set out procedures for filing petitions for preemption pursuant to section 252(e)(5) of the Communications Act of 1934, as amended. Section 252(e)(5) provides that "[i]f a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall

assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission." a. Filing of Petitions for Preemption. Each party seeking preemption should caption its preemption petition, "Petition of [Petitioner's Name] pursuant to Section 252(e)(5) of the Communications Act (the Act)." In addition, on the date of the petition's filing, the petitioner should serve a copy of the petition by hand delivery on the Common Carrier Bureau, and send a copy to the Commission's contractor for public service records duplication. Section 51.803(a)(2) of the Commission's rules requires each party seeking preemption pursuant to section 252(e)(5) to "ensure that the state commission and the other parties to the proceeding or matter for which preemption is sought are served with the petition ... on the same date that the petitioning party serves the petition on the Commission." Therefore, each section 252(e)(5) petitioner should state in its certificate of service the steps it is taking to comply with this requirement (e.g., hand delivery or overnight mail). Petitions seeking preemption must be supported by affidavit and state with specificity the basis for the petition and any information that supports the claim that the state has failed to act. See 47 CFR 51.803. Each petitioner should append to its petition the full text of any State commission decision regarding the proceeding or other matter giving rise to the petition as well as the relevant portions of any transcripts, letters, or other documents on which the petitioner relies. Each petitioner should also provide a chronology of that proceeding or matter that lists, along with any other relevant dates, the date the petitioner requested interconnection, services, or network elements pursuant to section 251 of the Act, the dates of any requests for mediation or arbitration pursuant to section 252(a)(2) or (b)(1), and the dates of any arbitration decisions in connection with the proceeding or matter. (No. of respondents: 50; hours per response: 40 hours; annual burden: 2000 hours). b. Submission of Written Comments by Interested Third Parties. Interested third parties may file comments on a preemption petition in accordance with a public notice to be issued by the Commission. Commenters should provide identical material to that required of petitioners to the extent the relevant documents or information is not already included in the record in the proceeding. (No. of respondents: 2; hours per response: 20 hours; annual

burden: 40 hours). All of the requirements are used to ensure that petitioners have complied with their obligations under the Communications Act of 1934, as amended. Obligation to respond: Required to obtain benefit.

OMB Control No.: 3060-0830.

Expiration Date: 10/31/98.

Title: Year 2000 Data Request (CCB).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 41 respondents; 30.04 hour per response (avg.); 1232 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: One time.

Description: Many computer software programs used throughout the world were not designed to take into account the date change that will occur when we enter the year 2000. Computer and technology experts are uncertain as to the likely total effect of this so-called "Millennium Bug." All sectors of the global economy rely on telecommunications networks. Failure to avert significant network failures could be calamitous. It is critical that the telecommunications industry take comprehensive and effective action to address the Year 2000 (Y2K) problem. Government and industry must work together to ensure that whatever disruptions occur do not lead to outages and failures throughout the nation's networks. Certain telecommunications carriers and major equipment manufacturers have been asked to provide information as requested in letters mailed to them regarding steps that have been taken to prevent Y2K computer system failures when the year 2000 arrives and to share information with other companies, and post their responses to the questions on their World Wide Website. Authority: 47 U.S.C. sections 151, 218, 403. The information collected will be used to better inform the FCC as to the magnitude of the threat posed by the year 2000 problem, and to determine if the FCC must act if it appears that the remedial measures taken by industry are not sufficient to avert significant network outages. The public must be assured that the telecommunications industry is taking sufficient steps to meet the challenges presented by the Millennium Bug. Obligation to respond: Mandatory.

OMB Control No.: 3060-0810.

Expiration Date: 05/31/2001.

Title: Procedures for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the

Communications Act of 1934, as amended.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 35 respondents; 47.14 hour per response (avg.); 1650 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Description: The Communications Act of 1934, as amended (the Act), mandates that, after the date the Commission's rules implementing section 254 of the Act, only eligible telecommunications carriers may receive universal service support. The Commission's rules implementing section 254 of the Act take effect on January 1, 1998. Under the Act, state commissions must designate telecommunications carriers as eligible. On December 1, 1997 Public Law 105-125 added subsection (e)(6) to section 214(e) of the Act. New section 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. Specifically, section 214(e)(6) states that "[i]n the case of a common carrier ... that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission" The Commission must evaluate whether such telecommunications carriers, almost all of which are expected to be companies owned by Native American tribes, meet the eligibility criteria set forth in the Act. The Commission must obtain sufficient information to verify compliance with section 214(e)(6) so that final action may be taken to avoid hardship on these carriers who will otherwise lose the support that they are currently receiving. a. Petition for Designation as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6). Carriers seeking designation from the Commission pursuant to section 214(e)(6) must demonstrate that they fulfill the requirements of section 214(e)(1). Carriers seeking designation from the Commission early in 1998 are instructed to provide a petition. b. Submission of Written Comments by Interested Third Parties. Oppositions or comments on petitions are due 10 days after a Public Notice announcing receipt of a petition is released. Reply comments are due 7 days after comments are due. The Commission will use the information

¹ This figure reflects the maximum appropriate forfeiture amount in light of the specific facts at issue. See 47 U.S.C. 503(b)(2)(C); 47 CFR §§ 1.80(b)(3), (b)(4), (b)(5); see also *In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997)(petitions for reconsideration pending).

collected to determine whether the telecommunications carriers providing the data are eligible to receive universal service support. Obligation to comply: Required to obtain benefit.

OMB Control No.: 3060-0828.

Expiration Date: 10/31/98.

Title: State Forward-Looking Cost Studies for Federal Universal Service Support (Public Notice).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 47 respondents; 19 hour per response (avg.); 893 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Description: Pursuant to Congress's directive in section 254 of the Telecommunications Act of 1996 (1996 Act) that the Commission establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, the Commission determined in the Order released May 8, 1997 that universal service support for rural, insular, and high cost areas (collectively referred to as high cost areas) should be based on forward-looking economic costs. The Commission stated that it will select a forward-looking economic cost mechanism for non-rural carriers by August 1998 that will replace current support mechanisms for non-rural carriers on January 1, 1999. In the Universal Service Order, the Commission concluded that states could submit forward-looking economic cost studies as the basis for calculating federal universal service high cost support for non-rural carriers in lieu of using the federal mechanism for determining federal universal service high cost support for non-rural carriers. The Commission adopted specific criteria to guide the states as they conduct those studies. The Commission stated that it will review each study submitted by a state, along with applicable comments. If the Commission finds that a state cost study meets the specified criteria, the Commission will approve the study for use in calculating federal support for non-rural eligible telecommunications carriers in rural, insular, and high cost areas in that state in accordance with the Universal Service Order. If a state cost study fails to meet the criteria adopted in the Universal Service Order, or if a state does not submit a study, the Commission will determine non-rural carriers' forward-looking economic cost of providing universal service in that state according to the Commission's

forward-looking cost methodology. In a Public Notice, we set forth the information we need to evaluate whether a state's cost study complies with the criteria set forth in the Universal Service Order. To enable the Commission to make its determination in a timely fashion, we also set forth the manner in which this information should be presented. This collection, developed with the assistance of the Joint Board, is to be used by all states submitting cost studies, and should simplify and standardize the submission and review of state cost studies for the Commission, the states, and other interested parties. The Commission will use the information collected to evaluate whether state cost studies meet the criteria established in the Universal Service Order. Obligation to respond: Voluntary.

OMB Control No.: 3060-0253.

Expiration Date: 04/30/2001.

Title: Part 68 - Connection of Telephone Equipment to the Telephone Network (Sections 68.106, 68.108, 68.110).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 57,540 respondents; .056 hour per response (avg.); 3270 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Description: Title II of the Communications Act of 1934, as amended, 47 U.S.C. Section 201 et al provides the statutory authority for the Commission to promulgate the rules and regulations contained in Part 68 of FCC Rules, 47 CFR 68. Part 68 of FCC's rules and regulations establishes nationwide technical standards for telephone and data equipment designed for connection to the network. Part 68 also sets forth the terms and conditions for connection and for the registration of customer provided terminal equipment. The purpose of part 68 is to protect the network from certain types of harm and interference to other subscribers. Information submitted is used by the Common Carrier Bureau staff and FCC Laboratory for evaluation of equipment to determine whether such equipment meets the criteria set forth in part 68 of the Commission's Rules. This is necessary in order to prevent improperly designed equipment from causing harm to the nation's telephone network. Part 68 also contains third party disclosures requirements and notifications which are designed to ensure that the appropriate parties are notified when devices and equipment

are connected to the network. Section 68.106 requires customers connecting terminal equipment or protective circuitry to the telephone network to provide, upon request, the particular line(s) to which such connection is made, the FCC registration number and ringer equivalence numbers necessary to the telephone company. The customer may be subject to other requirements depending on the components of the system being connected to the network. For example, customers who intend to connect premises wiring other than "fully protected" premises wiring to the telephone network are required to give notice to the telephone company in accordance with section 68.215(e). (No. of respondents: 50,000; hours per response: .05 hours; total annual burden: 2500 hours). Section 68.108 requires telephone companies to notify customers of possible discontinuance of service when customer's equipment is malfunctioning and to inform them of their right to file a complaint. (No. of respondents: 7500; hours per response .10 hours; total annual burden: 750 hours). Section 68.110 requires telephone companies to provide technical information concerning interface parameters not specified in Part 68 and to notify customers of changes in telephone company facilities, equipment, operations or procedures where such changes can be reasonably expected to render any customer's terminal equipment incompatible with the telephone company's communication facilities. (No. of respondents: 40; hours per response: .05 hours; total annual burden: 20 hours). The purpose of the program is to prevent harm to the telephone network when customer-provided telephone equipment is connected to telephone network company lines and assure that customers will not overload the telephone lines with excessive equipment which could degrade service to the customer and to others. Obligation to comply: Required.

OMB Control No.: 3060-0806.

Expiration Date: 08/31/98.

Title: Universal Service, Schools and Libraries Universal Service.

Form No.: FCC Forms 470 and 471.

Respondents: Business or other for-profit.

Estimated Annual Burden: 60,000 respondents; 6 hour per response (avg.); 360,000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Description: On May 8, 1997, the Commission adopted rules in CC Docket 96-45 providing discounts on all

telecommunications services, Internet access, and internal connections for all eligible schools and libraries. The following forms are used to implement these requirements and obligations: a. FCC Form 470 - Description of Services Requested and Certification. Schools and libraries ordering telecommunications services, Internet access, and internal connections under the universal service discount program must submit a description of the services desired to the Administrator. Schools and libraries may use the same description they use to meet the requirement that they generally face to solicit competitive bids. The Administrator will then post a description of the services sought on a website for all potential competing service providers to see and respond to as if they were requests for proposals (RFPs). 47 CFR 54.504(b)(92), 47 CFR 54.504(b)(3). Pursuant to section 254(h) of the 1996 Act, schools and libraries must certify under oath that: (1) the school or library is an eligible entity under section 254(h)(4); (2) the services requested will be used solely for educational purposes; (3) the services will not be sold, resold, or transferred in consideration for money or any other thing of value; and (4) if the services are being purchased as part of an aggregated purchase with other entities, the identities of all co-purchasers and the portion of the services being purchased by the school or library. 47 CFR 54.504(b)(2). For schools ordering telecommunications services at the individual school level (i.e., primarily non-public schools), the person ordering such services should certify to the Administrator the percentage of students eligible in that school for the national school lunch program (or other comparable indicator of economic disadvantage ultimately selected by the Commission). This requirement arises in the context of determining which schools are eligible for the greater discounts being offered to economically disadvantaged schools. For schools ordering telecommunications services at the school district level, the person ordering such services for the school district should certify to the Administrator the number of students in each of its schools eligible for the national school lunch program (or other comparable indicator of economic disadvantage). Schools and libraries must also certify that they have developed a technology plan that has been approved by an independent entity or the Administrator. The technology plan should demonstrate that they will be able to deploy any necessary

hardware, software, and wiring, and to undertake any necessary teacher training required to use the services ordered pursuant to the section 254(h) discount effectively. 47 CFR 54.504(b)(2). (No. of respondents: 50,000; hours per response: 6 hours; total annual burden: 300,000). b. FCC Form 471 - Services Ordered and Certification. Schools and libraries that have ordered telecommunications services, Internet access, and internal connections under the universal service discount program must file FCC form 471 with the Administrator. This form requires schools and libraries to indicate whether funds are being requested for an existing contract, a master contract or whether it wishes to terminate service. Form 471 requires schools and libraries to list all services that have been ordered and the corresponding discount to which it is entitled. The school or library must also estimate its funding needs for the current funding year and for the following funding year. 47 CFR 54.504(b)(2). (No. of respondents: 60,000; hours per response: 6 hours; total annual burden: 360,000). All schools and libraries planning to order services eligible for universal service discounts must file FCC forms 470 and 471. The purpose of this information is to help determine which schools are eligible for the greater discounts. Schools and libraries must certify to the Administrator that they have developed an approved technology plan via Form 470. Copies of the forms may be obtained via e-mail from: <www.neca.org>. Obligation to respond: Required to obtain benefits.

OMB Control No.: 3060-0804.

Expiration Date: 08/31/98.

Title: Universal Service - Health Care Providers Universal Service Program.

Form No.: FCC Forms 465, 466, 467, and 468.

Respondents: Business or other for-profit.

Estimated Annual Burden: 18,400 respondents; 6.6 hour per response (avg.); 121,500 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Description: FCC Form 465 - Description of Services Requested and Certification. All health care providers requesting services eligible for universal service support must file a Description of Services and Certification form with the Administrator. Filing this form is the first step a health care providers must take to participate in the universal service program. The Administrator will then post a description of the services sought on a website for all potential

competing service providers to see and respond to as if they were requests for proposals (RFPs). (No. of respondents: 12,000; hours per response: 2.5; total annual burden: 30,000). FCC Form 466 - Services Ordered and Certification. All health care providers ordering services that are eligible for universal service support must file a Services Ordered and Certification Form with the Administrator. 47 CFR 54.603(b)(4). Form 466, Services Ordered and Certification will be used to ensure health care providers have selected the most cost-effective method of providing the requested services as set forth in 47 CFR 54.603(b)(4). FCC Form 466 is also the means by which an applicant informs the Administrator that it has entered a contract with a telecommunications service provider for services that are supported under the universal services support program. The administrator must receive this form before it can commit universal service funds to support the services for which the applicant has contracted. (No. of respondents: 15,000; hours per response: 1.5 hours; total annual burden: 22,500 hours). FCC Form 467, Receipt of Service Confirmation. All health care providers that are receiving supported telecommunications service must file this form with the Administrator. The data in the report will be used to ensure that health care providers are receiving the services they have contracted for with telecommunications service providers so that universal service support may be appropriate to the telecommunications service provider pursuant to 47 CFR 54.611. (No. of respondents: 12,000; hours per response: 1.5 hours; total annual burden: 18,000 hours). FCC Form 468, Telecommunications Service Providers Support. All health care providers ordering services eligible for universal service support must file this form. The data in the report will be used to ensure that health care providers have calculated the amount of universal service support as set forth in 47 CFR 54.609(b). Telecommunications carriers must complete Form 468 by indicating the rural and urban rates for the service they have provided and the amount of the discount for which they must be reimbursed, and return it to the health care provider. The health care provider must attach it to Form 466 and file both forms with the administrator. (No. of respondents: 3400; hours per response: 1.5 hours; total annual burden: 51,000 hours (assuming 10 submissions per respondent)). These forms are used to administer the health care providers universal service program. The

information is used primarily to determine eligibility. Copies of the forms may be obtained via e-mail from: <www.neca.org>. Obligation to respond: Required to obtain benefit. Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554. Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 98-12665 Filed 5-12-98; 8:45 am]
BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2275]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

May 7, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800. Oppositions to these petitions must be filed May 28, 1998 See § 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service (MM Docket No. 87-268, FCC 98-23).

Number of Petitions Filed: 10.

Federal Communications Commission,
Magalie Roman Salas,
Secretary.

[FR Doc. 98-12669 Filed 5-12-98; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Affordable Housing Advisory Board Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., established by the Resolution Trust Corporation Completion Act, Pub. L. 103-204, section 14(b), 107, Stat. 2369, 2393-2395 (1993), announcement is hereby published of the first meeting of the Affordable Housing Advisory Board (AHAB) for 1998. Due to administrative scheduling, this meeting notice will be published less than fifteen days prior to the meeting. The meeting is open to the public.

DATES: The Federal Deposit Insurance Corporation, Affordable Housing Advisory Board will hold its first meeting of 1998 on Wednesday, May 27, 1998 in Washington, D.C., from 2:00 pm to 4:00 pm.

ADDRESSES: The meeting will be held at the following location: Federal Deposit Insurance Corporation, Board Room 6010, 550 17th Street, Northwest, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Danita M.C. Walker, Committee Management Officer, Federal Deposit Insurance Corporation, 1776 F Street, NW, Room 3064, Washington, D.C. 20429, (202) 898-6711.

SUPPLEMENTARY INFORMATION: The Board consists of the Secretary of Housing and Urban Development (HUD) or delegate; the Chairperson of the Board of Directors of the FDIC, or delegates; the Chairperson of the Oversight Board, or delegate; four persons appointed by the General Deputy Assistant Secretary of HUD who represents the interests of individuals and organizations involved in using the affordable housing programs, and two former members of the Resolution Trust Corporations Regional Advisory Boards. The AHAB's original charter was issued March 9, 1994 and re-chartered on February 26, 1996, and January 15, 1998.

Agendas: An agenda will be available at the meeting. At this session, the Board will (1) Report on the status of the FDIC Affordable Housing Program Sales and Monitoring, (2) Discuss the status of Board recommendations of the roles that regulators can play in facilitating affordable housing, (3) Discuss status of transitioning the Affordable Housing Program to the FDIC Dallas office and, (4) Discuss other policies and programs related to the provision of affordable housing. The AHAB will develop recommendations at the conclusion of the Board meeting.

The AHAB's chairperson or its Delegated Federal Officer may authorize a member or members of the public to address the AHAB during the public forum portion of the session.

Statements: Interested person may submit, in writing, data, information or views on the issues pending before the Affordable Housing Advisory Board prior to or at the meeting. Seating for the public is available on a first-come first-served basis.

Dated: May 8, 1998.

Danita M.C. Walker,
Committee Management Officer, Federal Deposit Insurance Corporation.

[FR Doc. 98-12675 Filed 5-12-98; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 27, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *CM/FS Reeves Investments, L.P.*, West Point, Georgia (Charles M. Reeves and Frances S. Reeves, general partners); to retain voting shares of Valley National Corporation, Lanett, Alabama, and thereby indirectly retain voting shares of Valley National Bank of Lanett, Lanett, Alabama.

Board of Governors of the Federal Reserve System, May 7, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98-12620 Filed 5-12-98; 8:45 am]
BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 8, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Farmers Bancshares, Inc.*, Hardinsburg, Kentucky; to acquire up to 30 percent of the voting shares of Leitchfield Deposit Bancshares, Inc., Leitchfield, Kentucky, and thereby indirectly acquire Leitchfield Deposit Bank & Trust Company, Leitchfield, Kentucky.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Farmers Bancshares, Lincoln*, Kansas; to merge with Beverly Bankshares, Inc., Beverly, Kansas, and thereby indirectly acquire Beverly State Bank, Beverly, Kansas.

Board of Governors of the Federal Reserve System, May 7, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98-12621 Filed 5-12-98; 8:45 am]
BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 8, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Union Bankshares Corporation*, Bowling Green, Virginia; to merge with Rappahannock Bankshares, Inc., Washington, Virginia, and thereby indirectly acquire The Rappahannock National Bank of Washington, Washington, Virginia.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. *First TeleBanc Corporation*, Sanford, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Boca Raton First National Bank, Boca Raton, Florida.

2. *Regions Financial Corporation*, Birmingham, Alabama; to merge with Villages Bankshares, Inc., Tampa, Florida, and thereby indirectly acquire The Village Bank of Florida, Tampa, Florida.

3. *Regions Financial Corporation*, Birmingham, Alabama; to merge with First Community Banking Services (formerly Fayette County Bancshares), Peachtree City, Georgia, and thereby indirectly acquire First Community Bank (formerly Fayette County Bank), Peachtree City, Georgia.

4. *Regions Financial Corporation*, Birmingham, Alabama; to acquire 100 percent of the voting shares of Etowah Bank, Canton, Georgia.

Board of Governors of the Federal Reserve System, May 8, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98-12657 Filed 5-12-98; 8:45 am]
BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.
ACTION: Notice.

SUMMARY: The FTC is soliciting public comments on proposed extensions of Paperwork Reduction Act clearances for information collection requirements for a regulation that the Commission issues and enforces and for a study to assess the effectiveness of Commission divestiture orders in merger cases. These Office of Management and Budget (OMB) clearances expire on July 31, 1998. The FTC proposes that OMB extend its approval for the regulation an additional three years from clearance expiration and that approval for the divestiture order study be extended through December 31, 1999. The proposed information collection requirements described below will be submitted to OMB for review, as required by the Paperwork Reduction Act.

DATES: Comments must be submitted on or before July 13, 1998.

ADDRESSES: Send written comments to Gary M. Greenfield, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580, (202) 326-2753. All comments should be identified as responding to this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Gary M. Greenfield, Attorney, Office of the General Counsel, 202-326-2753.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to solicit comments from members of the public

and affected agencies concerning the proposed collections of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The FTC will submit the proposed information collection requirements to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The relevant information collection requirements are as follows:

1. The Telemarketing Sales Rule, 16 CFR Part 310 (OMB Control Number 3084-0097)

Description of the collection of information and proposed use: The Telemarketing Sales Rule implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108 ("Telemarketing Act" or "the Act"). The Act seeks to prevent deceptive or abusive telemarketing practices. The Act mandates certain disclosures by telemarketers, and directs the Commission to consider recordkeeping requirements in its promulgation of a telemarketing rule to address such practices. As required by the Act, the Telemarketing Rule mandates certain disclosures regarding telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The disclosures provide consumers with information necessary to make informed purchasing decisions. The records are available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule.

Estimate of information collection annual hourly burden: 9,053,000 hours. The estimated recordkeeping burden hours are 50,000. The estimated combined burden hours related to the required disclosures under the Rule are 9,003,000, for an estimated total of 9,053,000 burden hours.

Recordkeeping: At the time the Commission issued the Rule, it estimated that during the initial and subsequent years after the Rule took effect, only 100 entities a year would find it necessary to revise their practices to conform with the Rule and that it would take each such entity approximately 100 hours to assemble information or develop a compliant recordkeeping system, for a total of 10,000 burden hours a year. The Commission received no comments of any kind in connection with this estimate when it was issued and this estimate continues to be appropriate. There is no reason to believe that the number of new entrants into the telemarketing field who find it necessary to create a different recordkeeping system as a result of the Rule's recordkeeping requirements has increased. Of the estimated 39,900 industry members who have already assembled or maintained the required records and recordkeeping system, staff estimates that each member requires only one hour a year to comply with the Rule's recordkeeping requirements (39,900 hours). Therefore, the total yearly burden hours associated with the Rule's recordkeeping requirements is 49,900. The Commission requests this figure be rounded to 50,000 hours.

Disclosure: In connection with issuing the Rule and obtaining MOB clearance, staff previously estimated that the 39,900 (rounded to 40,000) industry members make approximately 9 billion calls per year, or 225,000 calls per year per company. The Telemarketing Sale Rule provides that if an industry member chooses to solicit inbound calls from consumers by advertising media other than direct mail or by using direct mail solicitations that make certain required disclosures, that member is exempted from complying with other disclosures required by the Rule. Because the burden of complying with written disclosures is less than the burden of complying with the Rule's oral disclosure requirements, staff estimated that at least 9,000 firms will choose to adopt marketing methods that exempt them from the oral disclosure requirements.

In connection with issuing the Rule, staff estimated that it takes 7 seconds for telemarketers to disclose the required outbound call information described above. Staff also estimated that at least 60% of calls result in "hang-ups" before the seller or telemarketer can make all the required disclosures. Staff estimated that "hang-up" calls last for only 2 seconds. Accordingly, staff estimates that the total disclosure burden associated with these initial disclosure

requirements is approximately 250 hours per firm (90,000 non-hang up calls (40% of 225,000) \times 7 seconds per call + 135,000 hang-up calls (60% of 225,000) \times 2 seconds per call). Thus, the total burden for the 31,000 firms choosing marketing methods that require these oral disclosures is 7.75 million hours. When the Commission initially published this estimate, it received no comments and staff believes such estimates remain appropriate.

The Rule also requires additional disclosures before the customer pays for goods or services. Specifically, the sellers or telemarketers must disclose the total costs to purchase, receive, or use the offered goods or services; all material restrictions; and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies if a representation about the policy is a part of the sales offer. If a prize promotion is involved, the telemarketer must also disclose information about the non-purchase entry method for the prize promotion. Staff estimates that approximately 10 seconds is necessary to make these required disclosures. However, these disclosures need only be made where a call results in an actual sale or before the consumer pays. Staff estimates that sales occur in approximately 6 percent of telemarketing calls. Accordingly, the estimated burden for the disclosures is 37.5 hours per firm (13,500 calls—3% of 225,000—resulting in a sale \times 10 seconds) or 1.163 million hours for the 31,000 firms choosing marketing methods that require oral disclosures. When the Commission initially published this estimate, it received no comments and staff believes such estimates remain appropriate.

Alternatively, the disclosures required before the customer pays for goods or services may be in writing. Usually, this would occur during a solicitation or mass mailing. Staff estimates that approximately 9,000 firms will choose to comply with this optional written disclosure requirement. Those firms are likely to be the same firms that would choose to advertise through written materials, and the burden of adding the disclosures required by the Rule is probably minimal. However, staff has no reliable data from which to conclude that there is no separately identifiable burden associated with this provision. Therefore, staff estimates that a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule, for an estimated burden of 90,000 hours. When the Commission initially published this estimate, it received no

comments and staff believes such estimates remain appropriate.

Estimate of information collection and cost burden: \$34,411,000.

(a) *Total capital and start up costs:* Staff estimates that the capital and start up costs associated with the Telemarketing Sales Rule's information collection requirements are *de minimis*. The Rule's recordkeeping requirements do not mandate that records be kept in any particular form. While the recordkeeping requirements necessitate that the affected entity have some storage device, virtually every entity is likely to already possess the means to store the required records. Most entities keep the type of records required by the Rule in the ordinary course of business. Even assuming that an entity found it necessary to purchase a storage device, which could be as inexpensive as a cardboard box, when the cost of the device is annualized over its useful life, the annual expenditure is likely to be very small.

The Rule's disclosure requirements require no capital expenditures.

(b) *Total operation/maintenance/purchase of services costs:* The Rule's recordkeeping requirements necessitate that companies maintain records. Accordingly, affected entities have to expend some capital on office supplies such as file folders, computer diskettes, or paper in order to comply with the Rule's recordkeeping requirements. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, staff estimates that the approximately 40,000 industry members affected by the Rule spend an annual amount of \$50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of \$2,000,000.

In connection with the Rule's disclosure requirements, telemarketing firms may incur additional costs for telephone service, assuming that the firms spend more time on the telephone with customers as a result of the required disclosures. As indicated above, staff believes that the hour burdens relating to the required disclosures amount to 9,003,000 hours. Assuming all calls to customers are long distance and a commercial calling rate of 6 cents per minute (\$3.60 an hour), affected entities as a whole may incur up to \$32,410,800 in telecommunications costs as a result of the Rule's disclosure requirements.

As indicated previously, staff estimates that approximately 9,000 entities will choose to comply with the Rule through written disclosures. However, staff estimated that those

companies incur no additional capital expenses as a result of the Rule's requirements because they are likely to provide written information to prospective customers in the ordinary course of business and adding the required disclosures to that written information does not require any supplemental expenditures. Thus, the total estimated cost burdens associated with the Rule's information collection is \$34,411,000 (rounded to nearest thousand).

2. Study of the Effectiveness of Commission Divestiture Orders in Merger Cases (OMB Control Number 3084-0115)

Description of the collection of information and proposed use: The Commission is directed to prevent "unfair methods of competition" under Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45, and is authorized to enforce the Clayton Act's proscriptions against anticompetitive mergers, 15 U.S.C. 18, 21. Under these general authorities, the Commission examines transactions to determine whether anticompetitive effects are likely and then fashions remedies that it believes are necessary to alleviate the likely anticompetitive effects.

In 1978, the Commission began a divestiture remedy similar to what appears in current orders. Generally, respondents are asked to divest a package of assets (deemed to be commercially viable based on the investigative staff's knowledge of the relevant market) within a specified time to a buyer to be approved by the Commission.

In 1995, the FTC's Bureau of Competition and Bureau of Economics undertook a pilot study to determine whether a more comprehensive study of Commission divestiture orders would be feasible and productive. The staff concluded that further study is necessary to draw more general conclusions about the effectiveness of the Commission's divestiture process as the circumstances surrounding the orders vary widely. OMB subsequently granted clearance for such an expanded study. Pursuant to that authority, FTC staff have interviewed numerous buyers of assets or businesses and respondents in the study. As with the pilot study, the information that staff have obtained continues to offer important insights into the effectiveness of the divestiture process.

Accordingly, the Commission's Bureau of Competition and Bureau of Economics staff will continue to conduct interviews with buyers and

respondents in order to complete its review of the 36 sample orders comprising its study. Thereafter, staff will interview third-parties and solicit sales data from buyers and respondents. The objectives of the study continue to be to determine: (1) The effectiveness of Commission orders that seek to preserve or reestablish competition where the Commission has permitted a merger but required divestiture of certain assets; (2) The influence of certain provisions in Commission orders (e.g., length of time permitted for divestiture of "crown jewel" provisions) on the timeliness of divestitures and on the success of the business or assets divested; (3) The influence of divestiture procedures used by respondent to find a buyer on the timeliness of the divestitures and on the success of the business or assets divested; (4) The influence of the divestiture contract on the success of the divested business or assets; (5) The influence of the type of assets divested on the success of the divested business; (6) The influence of the type of buyer on the success of the divested business; and (7) Whether respondents have fully complied with the requirements under the order.

Securing information about the success of divested businesses (or businesses that have acquired divested assets) would provide a better understanding of the kind of order provisions most likely to lead to successful divestitures. The survey is designed to expand the Commission's knowledge by eliciting, across a broad spectrum of industries, information to evaluate the success of divestitures. Such information is likely to enhance the Commission's law enforcement mission.

Estimate of information collection annual hourly burden: 1,000 hours (rounded). The information to be collected will be obtained by telephone interviews, document requests, and a questionnaire. Staff will conduct telephone interviews with respondents, buyers of divested assets or businesses, and third parties (such as competitors, customers, and suppliers). The divestiture study includes a total of 51 divestitures arising out of 36 orders. Staff have already interviewed 32 buyers and 6 respondents; thus it will contact another 19 buyers and 30 respondents. It will also contact 153 third-parties (on average, three per divestiture) for a total of 202 remaining telephone interviews. All of the remaining interviews, like those already conducted, should take about 1.5 hours to complete, for a total burden estimate of approximately 303 hours.

After interviewing buyers and respondents, staff will ask them to submit financial documents for a five-year period beginning the year before the divestiture occurred. To the extent that no such financial documents exist, staff will not request that such documents be prepared. Because only documents already in existence will be requested, the anticipated burden of producing these documents will be minimal, approximately two hours per participant, for a total of 174 hours (51 buyers + 36 respondents = 87, 87 × 2 = 174).

Staff is also asking respondents and buyers to complete a two-question chart that requests sales in dollars and units of the product that was the subject of the Commission's concern in the case over a five-year period beginning the year before the divestiture. Staff estimates that the burden on each participant to provide this information will be 4 hours, for a total of 348 hours (51 buyers + 36 respondents = 87, 87 × 4 = 348). The total cumulative burden of the document production will be 522 hours (174 + 348). The estimated total burden for the entire study is therefore calculated to be 825 hours (303 + 522), which has been rounded to 1,000 hours to allow for small additions such as subsequent buyers of divested assets.

Estimate of Information Collection Annual Cost Burden: none.

Capital equipment/start-up/operation and maintenance/other non-labor costs: Not applicable. The date for the study are being collected in two principal ways. Staff is conducting telephone interviews and asking respondents to respond to a brief questionnaire. Neither the telephone interviews nor respondents' responses to questionnaires require any capital expenditure by respondents. Interviews solely involve respondents making available one or more company officials for approximately 1½ hours. The questionnaires ask respondents to provide only information that they maintain within the ordinary and usual course of their business. No additional cost burden is imposed on respondents.

Debra A. Valentine,

General Counsel.

[FR Doc. 98-12661 Filed 5-12-98; 8:45 am]

BILLING CODE 5750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98054]

Programs for the Prevention of Fire Related Injuries; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1998 funds for cooperative agreements for programs to prevent fire related injuries.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Unintentional Injuries. (For ordering a copy of "Healthy People 2000," see the Section "WHERE TO OBTAIN ADDITIONAL INFORMATION.")

Authority

This program announcement is authorized under Sections 301, 317, and 391A (42 U.S.C. 241, 247b, and 280b-280b-3) of the Public Health Service Act as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official State public health agencies or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau.

Applicants funded under Program Announcement 780 are eligible to apply under this Announcement. The proposed target areas for this Announcement must be different than those currently being funded by CDC.

Note: Effective January 1, 1996, Public Law 104-65 states that an organization described

in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

Availability of Funds

Approximately \$2,000,000 is available in FY 1998 to fund 11 to 13 awards, ranging from \$150,000 to \$170,000. It is expected that the award will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their sub-tier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Public Law 105-78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relations, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Prohibition on Use of CDC Funds for Certain Gun Control Activities

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998 specifies that: "None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention (CDC) may be used to advocate or promote gun control."

Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a Member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence Members of Congress with regard to specific legislation or appropriation by Congress.

In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the new language in the CDC's 1998 Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

Background

In 1995, there were an estimated 414,000 home fires in the United States, which killed 3,640 individuals (1.4/100,000) and injured an additional 18,650 people. Accordingly, a Healthy People 2000 objective is the reduction of residential fire deaths to no more than 1.2 per 100,000 people by the Year 2000. Direct property damage caused by these fires exceeded \$4.2 billion. In 1994, the monetary equivalent of all fire deaths and injuries, including deaths and injuries to fire fighters, was estimated at \$14.8 billion.

Residential fire deaths occur disproportionately in the southeastern States. They also occur disproportionately during the winter months of December-February, a period during which more than one-third of home fires occur, compared to one-sixth in the summer months of June-August. Many subgroups within the population remain highly vulnerable to fire morbidity and mortality. The rate of death due to fire is higher among the poor, minorities, children under age 5, adults over age 65, low-income communities in remote rural areas or in poor urban communities, and among individuals living in manufactured

homes built before 1976, when the U.S. Department of Housing and Urban Development construction safety standards became effective. Other risk factors for fire-related deaths include:

- Inoperative smoke alarms,
- Careless smoking,
- Abuse of alcohol or other drugs,
- Incorrect use of alternative heating sources including usage of devices inappropriate or insufficient for the space to be heated,
- Inadequate supervision of children, and
- Insufficient fire safety education.

The majority of fire-related fatalities occur in fires that start at night while occupants are asleep, a time when effective detection and alerting systems are of special importance. Operable smoke alarms on every level provide the residents of a burning home with sufficient advance warning for escape from nearly all types of fires. If a fire occurs, homes with functional smoke alarms are half as likely to have a death occur as homes without smoke alarms. As a result, operable residential smoke alarms can be highly effective in preventing fire-related deaths. It is important to understand that any smoke alarm—whether ionization or photoelectric, AC or battery powered—will offer adequate warning for escape, provided that the alarm is listed by an independent testing laboratory and is properly installed and maintained.

For Residential Fire Injury Prevention Programs the definition for high-risk target populations is a community (an area with no more than 50,000 people) or geographic area known to have: (1) a high prevalence of residential fire deaths, and (2) a composition of primarily low-income residents.

Community organizations for project collaboration may include churches, Salvation Army, Boy/Girl Scouts, Goodwill Industries, ethnic organizations, Meals on Wheels, National Guard, International Association of Black Fire Fighters, American Red Cross, SAFE KIDS Coalitions, thrift stores/charitable organizations, Area Agency on Aging, Senior Centers, private sector businesses, and Social clubs/community centers serving the target populations. This list is not exhaustive, as each community differs in their social make-up.

Purpose

The purpose of this cooperative agreement is to prevent fire-related injuries through the distribution and installation of smoke alarms in high-risk homes that do not have adequate smoke alarm coverage.

Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Identify a minimum of two different communities with fire mortality and fire incidence rates above the State averages and mean household income below the poverty line.
2. In Year 01 implement the project in the identified targeted communities. Continue to run the project in all identified targeted communities during Years 02 and 03.
3. Provide program management oversight in collaboration with the local public health agencies in the identified targeted communities. Identify coordinators at the State and local levels.
4. Mobilize a minimum of three community organizations which already serve the target populations to provide education on fire safety and to distribute smoke alarms appropriate to residents' needs, (i.e. strobe-lighted for visually impaired persons, high-pitched for hearing impaired persons, etc.).
5. Collaborate with fire departments, firefighter associations, and fire safety coalitions at the local level.
6. Distribute appropriate alarms, as specific needs are identified, in communities with the highest rates of residential fire injury and death.
7. Facilitate installation of smoke alarms, as requested by residents, through collaboration with fire safety personnel and/or community workers who are trained in fire safety education, proper installation and placement of smoke alarms, adequate number of alarms for each home, smoke alarm maintenance and testing, fire escape planning and practice, etc.
8. Develop an evaluation plan that includes a comparison of pre-and post-intervention residential fire incidence, injuries, and deaths in intervention communities. Evaluation plan should include, as a minimum, follow-up assessment in each intervention community to determine the continued presence and functionality of program-installed smoke alarms.
9. Establish a system to track smoke alarms distributed by the program.

B. CDC Activities

1. Provide technical consultation on program planning, implementation, and evaluation methods.

2. Establish communication mechanisms among participating States by facilitating the transfer of technical and programmatic information and delivery methodology.

3. Provide technical assistance for management of program operations, including the application of continuous quality improvement.

4. Conduct ongoing assessment of program activities to ensure the use of effective and efficient implementation strategies.

5. Facilitate collaborative efforts to compile and disseminate program results through presentations and publications.

Technical Reporting Requirements

An original and two copies of semiannual progress reports (and an electronic copy submitted by electronic mail to the project officer) are required of all awardees. Time lines for the reports will be established at the time of award. Final financial status and performance reports are required no later than 90 days after the end of the project period. All reports will be submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

Semiannual progress reports should include:

A. A brief, updated program description, and a one-page summary of bi-annual activities.

B. A status report on accomplishment of program goals and objectives, accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period. Include target population, intervention activities, collaborations, and progress on evaluation plan.

C. If established goals and objectives were not accomplished or were delayed, describe the reason for the deviation, the recommendation for corrective action or deletion of the activity, and lessons learned.

D. Other pertinent information, including changes in staffing, contractors, or partners.

Application Content

Each application, including appendices, should not exceed 70 pages and the Proposal; Narrative section should not exceed 30 pages. Pages should be clearly numbered and a complete index to the application and any appendices included. The project narrative section must be double-spaced. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unredacted type (font size 10 point

or greater) on 8-1/2" by 11" paper, with at least 1" margins, headers and footers, and printed on one side only.

The applicant should provide a detailed description of first-year activities and briefly describe future year objectives and activities.

The application must include:

A. Abstract

A one page abstract and summary of the proposed program.

B. Background and Need:

Describe and quantify the magnitude of the residential fire problem within the State, providing background information that highlights the need for a residential fire prevention (smoke alarm promotion) program. Identify populations at risk based on analysis of residential fire data, including demographics of the State compared to the targeted communities.

C. Goals and Objectives:

Specify overall goals the applicant anticipates accomplishing by the end of the three-year project period. Include specific time-framed, measurable and achievable objectives which can be accomplished during the first budget period. Objectives should relate directly to the project goal to increasing the prevalence of functional smoke alarms in targeted communities.

D. Methods:

Describe how the residential fire injury prevention program will be implemented in the applicant's setting. Describe activities at the State and local levels that are designed to achieve each of the program objectives during the budget period. A time line should be included which indicates when each activity will occur and the assigned staff for each proposed activity. Include an organizational chart identifying placement of the residential fire-related injury prevention program. Describe how pre-and post-intervention residential fire incidence data will be compared as well as plans for conducting analyses. Provide a description of plans to educate residents in target communities on fire safety and smoke alarm installation and testing. Describe how records of smoke alarm distribution and promotional activities will be maintained and provided to the State coordinator.

Women, Racial and Ethnic Minorities. A description of the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

E. Evaluation:

Provide a detailed description of the methods and design to evaluate program effectiveness, including what will be evaluated, data to be used, and the time frame. Document staff availability, expertise, and capacity to evaluate program activities and effectiveness, and demonstrate evaluation data availability. Evaluation should include progress in meeting the objectives and conducting activities on residential smoke alarm programs (process evaluation measures), and increasing residential smoke alarm prevalence and functionality (outcome measures).

F. Capacity and Staffing:

Describe the roles and responsibilities of the State Project Coordinator and each Local Program Coordinator. Provide letters of support from partnering agencies, sub-contractors, and consultants, documenting their concurrence and/or specific involvement in proposed program activities. Describe how a coalition of appropriate individuals, agencies, and grass root organizations will be organized to generate community input and support for smoke alarm promotion campaigns. Provide a description of the relationship between the program and community organizations, agencies, and health department units that are collaborating to implement the program. Specifically, identify and describe the role of State and/or local coalitions and their individual commitments. Letters of support from public safety officials should also be included if related activities are undertaken. Describe previous experience in implementing injury prevention programs, demonstrating the capacity to conduct a residential fire prevention program.

G. Budget and Accompanying Justification:

Provide a detailed budget with accompanying narrative justifying all individual budget items, which make up the total amount of funds requested. The budget should be consistent with stated objectives and planned activities. The budget should include funds for two trips to Atlanta by the State Project Coordinator and one trip for 2 Local Program Coordinators for skill building.

H. Human Subjects:

This section must describe the degree to which human subjects may be at risk and the assurance that the project will be subject to initial and continuing review by the appropriate institutional review committees.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (30 Percent)

The extent to which the applicant describes the magnitude of the residential fire injury problem in the State, and the extent to which low-income communities within the State are affected. Describe how the likely results of proposed activities will impact the problem.

2. Goals and Objectives (15 Percent)

The extent to which the goals and objectives are relevant to the purpose of the proposal, feasible for accomplishment during the project period, measurable, and specific in terms of what is to be done and the time involved. The extent to which the objectives address all activities necessary to accomplish the purpose of the proposal.

3. Methods (30 Percent)

The extent to which the applicant provides a detailed description of proposed activities, which are likely to achieve program goals and objectives, including individuals responsible for each action. The extent to which the applicant provides a reasonable and complete schedule for implementing activities. The extent to which position descriptions, lines of command, and collaborations are appropriate to accomplish program goals and objectives. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; and (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

4. Evaluation (15 Percent)

The extent to which the proposed evaluation plan is detailed and will document program implementation strategies and results (i.e. process and outcome objectives). The extent to which the applicant demonstrates staff and/or collaborator availability,

expertise, and capacity to perform the evaluation.

5. Capacity and Staffing (10 Percent)

The extent to which the applicant can provide adequate facilities, staff and/or collaborators, and resources to accomplish the proposed goals and objectives during the project period. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, previous experience, and capacity to conduct the program successfully.

6. Budget and Justification (not scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with the stated objectives and planned program activities.

7. Human Subjects (not scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46)

Executive Order 12372

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Dwyne, III, Grants Management Officer, ATTN: Joanne Wojcik, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, GA 30305, no later than 60 days after the application deadline. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance (CFDA) number for this project is 93.136.

Other Requirements

Human Subjects Requirements

If a project involves research on human subjects, assurance (in accordance with Department of Health and Human Services Regulations, 45 CFR Part 46) of the protection of human subjects is required. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved with or will support the research. If any American Indian community is involved, its Tribal government must also approve that portion of the project applicable to it. Unless the grantee holds a Multiple Project Assurance, a Single Project Assurance is required, as well as an assurance for each subcontractor or cooperating institution that has immediate responsibility for human subjects.

The Office for Protection from Research Risks (OPRR) at the National Institutes of Health (NIH) negotiates assurances for all activities involving human subjects that are supported by the Department of Health and Human Services.

Requirements for Inclusion of Women and Racial and Ethnic

Minorities in Research
It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further

guidance to this policy is contained in the *Federal Register*, Vol. 60, No. 179, pages 47947-47951, and dated Friday, September 15, 1995.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 (Revised 7/92, OMB Control number 0937-0189) must be submitted to Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E-13, Atlanta, GA 30305, on or before July 14, 1998.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review committee. For proof of timely mailing, applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. Late Applications: Applications that do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

The program announcement and application forms may be downloaded from internet: www.cdc.gov (look under funding). You may also receive a complete application kit by calling 1-888-GRANTS4. You will be asked to identify the program announcement number and provide your name and mailing address. A complete announcement kit will be mailed to you.

If you have questions after reviewing the forms, for business management technical assistance contact Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE.,

Mailstop E-13, Atlanta, GA 30305, Internet: jcw6@cdc.gov, telephone (404) 842-6535.

Programmatic assistance may be obtained from Mark Jackson, R.S., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K-63, Atlanta, GA 30341-3724, telephone (770) 488-4652.

Please refer to Announcement 98054 when requesting information and submitting an application.

The potential applicant may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800.

A copy of American Society for Testing and Materials (ASTM) Number 1292 may be obtained from ASTM, Customer Services, 1916 Race Street, Philadelphia, PA 19103-1187, telephone (215) 299-5585.

Dated: May 7, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-12644 Filed 5-12-98; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98046]

National Comprehensive Cancer Control Program; Notice of Availability of Fiscal Year 1998 Funds

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1998 for cooperative agreements to implement comprehensive cancer control plans.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority area of Cancer. (To order a copy of "Healthy People 2000," see the section "Where To Obtain Additional Information.")

Authority

This program is authorized by Sections 317 and 1507 [42 U.S.C. 247b] and [42 U.S.C. 300n-3] of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Assistance will be provided only to the official public health agencies of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of the Palau. In consultation with States, assistance may be provided to political subdivisions of States.

Applicants must complete the Eligibility Assurance Form included in the application packet and must attach a reproducible copy of the State/Territory's comprehensive Cancer Control Plan to that form. Only one eligible application from a State/Territory will be funded. Applicants from each State/Territory are encouraged to coordinate and combine their efforts prior to submitting the application for their State/Territory.

Availability of Funds

Approximately \$1.5 million is available in FY 1998 to fund approximately 5 awards. It is expected that the average award will be \$300,000 ranging from \$250,000 to \$350,000. It is expected that these awards will begin on or about September 30, 1998, and will be made for 12-month budget periods within a project period of up to 4 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

These funds are intended for comprehensive cancer control and

should not be used to directly support other existing programs such as breast and cervical cancer programs, cancer registry programs, laboratory or clinical services, or tobacco control programs. These funds should be used to assist with the coordination of these and other categorical programs into comprehensive cancer control activities. Funds awarded under this program announcement may not be used to supplant existing program efforts.

Comprehensive cancer control activities should adhere to current accepted public health recommendations by the U.S. Preventive Services Task Force, or current Division of Cancer Prevention and Control (DCPC) guidance (See Section on Where To Obtain Additional Information).

In the event that additional federal categorical funding becomes available under this announcement, Grantees must coordinate and integrate newly funded activities into the existing National Comprehensive Cancer Control Program.

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their sub-tier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Public Law 105-78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State Legislature, except in presentation to the Congress or any State legislature itself. No part of any appropriation contained in this Act shall be used to

pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

In the United States, cancer is the second leading cause of death, exceeded only by heart disease. Among adults younger than 65 years, cancer is the leading cause of death and is rapidly overtaking heart disease as the primary cause of death among older Americans (Kennedy 1994). One of every four deaths in the United States is from cancer with approximately 564,800 people expected to die of cancer this year (American Cancer Society 1998). The overall cancer death rate has been steadily rising in the United States during the last 50 years. The age-adjusted death rate in 1950 was 127.7 per 100,000 population (National Center for Health Statistics 1968); it rose to 129.9 per 100,000 in 1995 (National Center for Health Statistics 1997).

While cancer currently is a major cause of morbidity and mortality in the United States, a large proportion of cancer could be controlled through prevention, early detection, and treatment. In recent years, DCPC has worked with state and local health agencies to increase the number and quality of cancer-related programs that are available to the U.S. population. New organizational structures, increased professional expertise, improved understanding of the challenges of delivering community-based health education and health promotion and an increased ability to demonstrate program accountability to program funders have reinforced the public health infrastructure available for cancer prevention and control at the national, State and community levels. In addition, in 1997, an American Cancer Society-appointed Blue Ribbon Advisory Group on Community Cancer Control recommended that prevention be a primary goal and focus. (American Cancer Society 1997).

The majority of the programs developed by CDC are categorical in nature, i.e., built around specific cancer sites or risk factors. For example, CDC has developed important initiatives and programs to address breast and cervical cancer, skin cancer, colorectal cancer, prostate cancer, oral cancer, nutrition and physical activity, and tobacco control; these categorical programs indicate impressive accomplishments in their areas. However, coordination and collaboration among these programs are uncommon, often leading to duplication

of effort and missed opportunities for cancer prevention and control at the community level.

In 1994, DCPC initiated discussions related to the coordination and integration of cancer prevention and control programs across categorical boundaries. DCPC sponsored a number of activities to explore options for comprehensive cancer control. One of the key tasks was to develop a working definition of comprehensive cancer control. The following definition was determined to be encompassing and appropriate for future planning and implementation activities:

Comprehensive cancer control—an integrated and coordinated approach to reduce the incidence, morbidity and mortality [of cancer] through prevention, early detection, treatment, rehabilitation, and palliation.

Purpose

The purpose of this program is to support States/Tribes/Territories in the implementation of up-to-date State/Territory wide comprehensive cancer control plans. (See Glossary for definitions of comprehensive cancer control plan and comprehensive cancer control program.)

Program Requirements

Recipients of this funding should adhere to current accepted public health recommendations based on the U.S. Preventive Services Task Force, or current DCPC guidance (See Section on Where To Obtain Additional Information).

In conducting activities to achieve the purpose of this program, the recipient of this cooperative agreement will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for conducting activities under B. (CDC Activities).

A. Recipient Activities

1. Identify and hire necessary key staff to implement the comprehensive cancer control plan.

2. Maintain or enhance a broad-based state/tribe/territorywide cancer control coalition that includes representation from throughout the state/tribe/territory health department, as well as key private, professional, voluntary, and nonprofit cancer control organizations, policymakers, consumers (including cancer survivors), payors, media, State and federal agencies, cancer registries, research and academic institutions, schools, etc.

3. Implement priorities as established by the State/Territory's comprehensive cancer control plan, which provides a framework for

planning and action to reduce the burden of cancer in the State/Tribe/Territory. Implementation should be guided by goals and objectives documented in the implementation plan included in this application.

4. Promote collaboration and coordination among existing State/Tribe/Territory-based surveillance systems (e.g., the statewide Central Cancer Registry, Surveillance, Epidemiology, and End Results, (SEER), vital statistics, and other databases, including Behavioral Risk Factor Surveillance System (BRFSS), for use in monitoring changes in cancer disease burden and programmatic impact of the comprehensive cancer control efforts. Data should be used for program modifications and improvements, evaluation, and updating the comprehensive cancer control plan, as appropriate.

5. Evaluate progress and impact of the program based on a systematic evaluation plan. In addition to evaluating progress in meeting goals, process and impact objectives as stated in the implementation plan, the programs should develop performance indicators to use as benchmarks for improvement and to determine the success of the overall comprehensive cancer control effort.

6. Promote the development and dissemination of information and education programs that will contribute to comprehensive cancer control; and participate in CDC-developed national cancer prevention, early detection, and control campaigns. Programs should use existing education resources as well as develop materials and activities that address specific needs of their populations, as necessary and appropriate. School health education and policies should be considered as part of these strategies. In addition to addressing educational needs of the targeted populations, programs should also consider activities that attempt to make individual, policy, organizational or environmental interventions and changes that can encourage primary prevention at all levels, e.g., organizational changes that can reinforce and support individual behavior changes.

7. Participate in CDC-sponsored trainings, meetings, site visits, and conferences.

B. CDC Activities

1. Convene meetings for information-sharing or training among recipients of cooperative agreements.

2. Facilitate the exchange of information and collaboration among recipients.

3. Disseminate to recipients relevant state-of-the-art research findings and public health recommendations related to comprehensive cancer control.

4. Provide ongoing guidance, consultation, and technical assistance in conducting Recipient Activities.

5. Conduct site visits to assess program progress, and mutually resolve problems, as needed, and coordinate reverse site visits to CDC in Atlanta, Georgia.

6. Identify and develop national cancer prevention and control campaigns and materials that can be integrated into comprehensive cancer control programs; facilitate coordination between programs and CDC on national campaigns.

Technical Reporting Requirements

An original and two copies of an annual progress report must be submitted 30 days after the end of each budget period. These progress reports must include: (1) a comparison of actual accomplishments to the goals and objectives established for the period; (2) activities and other issues to be addressed during the subsequent reporting period. The final performance report is required no later than 90 days after the end of the project period.

Annual financial status report (FSR) must be submitted no later than 90 days after the end of each budget period. The final financial status and progress reports are required no later than 90 days after the end of the project period. All reports are submitted to Grants Management Branch, CDC.

Application Content

All applicants must develop their applications in accordance with information contained in this program announcement and the instructions below. Applications should not exceed 30 double-spaced pages (no smaller than 10 point type) including budget and justification. Applicants should also submit appendices (including CVs, job descriptions, organizational chart, and any other supporting documentation), which should not exceed an additional 20 pages. All materials must be provided in an unbound, one-sided, 8½ x 11" print format, suitable for photocopying (i.e., no audiovisual materials, posters, tapes, etc.). A reproducible copy of the State/Tribe/Territory's comprehensive cancer control plan (attached to the Eligibility Assurance Form), and the letters of support should be included in separate tabbed sections of the application. (The comprehensive cancer control plan and letters of support are not included in the

page limit for the application or appendices.)

I. Executive Summary

The applicant should provide a clear, concise one to two page written summary to include:

- The need for implementing the comprehensive cancer control plan.
- The major proposed objectives and activities for implementation of the comprehensive cancer control plan.
- The requested amount of federal funding.
- Applicant's capability to implement the comprehensive cancer control plan.

II. Background and Need

The applicant should describe:

A. The cancer disease burden for their State/Tribe/Territory:

- The most recently available State/Tribe/Territory, age-adjusted, overall cancer incidence and mortality rates by age, gender, and racial and ethnic groups. Please cite the source for and time period covered by these data.
- The estimated State/Tribe/Territory cancer incidence and mortality rates for 1998.

(Please refer to the section on "Where To Obtain Additional Information" for possible data sources.)

B. Relevant experiences in the development and implementation of cancer prevention and control programs.

C. Relevant experiences in coordination and collaboration between and among existing programs.

D. Existing initiatives, capacity, and infrastructure (e.g., coalition and partnerships; surveillance activities and systems; evaluation activities; information, media and health communications, education and outreach strategies) on which a coordinated comprehensive cancer control program will be established.

E. Description of the need for comprehensive cancer control funding to enhance existing efforts.

III. Collaborative Partnership and Community Involvement

The applicant should include:

- A description of proposed linkages to coordinate within the State/Tribe/Territory health department (e.g., across risk factors, categorically funded programs, disciplines), with other key private, professional, voluntary, and non-profit cancer control organizations, policymakers, consumers (including cancer survivors), payors, federal, State and local agencies, research and academic institutions, schools, and other groups, agencies, and businesses in the community that provide health care and related human services.

B. A description of the proposed broad-based State/Tribe/Territory wide coalition that will advise and support the program, including the identification of current members or proposed representatives, their charge, and proposed roles and responsibilities. Taking a broad cancer prevention and control perspective, the State/Tribe/Territory should consider including a wide range of representatives from risk factor and other public health programs that address cancer-related issues such as, nutrition, environmental, oral health, and school health activities. Specific subcommittees and the rationale for these subcommittees of the coalition should be described.

C. Letters of support (in a separate tabbed section of the application) that indicate the nature and extent of existing or planned collaborative support.

IV. Cancer Control Plan

The applicant should:

- Submit a copy of the (a) current existing state/tribe/territory wide comprehensive cancer control plan, or (b) a current detailed final draft plan. Attach a reproducible, one-sided, 8½ x 11" unbound copy of the plan, to the completed Eligibility Assurance Form. A comprehensive cancer control plan should include:

- An assessment of cancer burden in the State/Tribe/Territory using population-based data.
- Short-term and long-term goals and objectives to address cancer control issues within the State/Tribe/Territory based on identified needs.
- Proposed strategies to meet the objectives.
- An assessment of existing and needed resources to implement the comprehensive cancer control priorities.
- The full range of cancer prevention and control activities, including primary prevention, early detection, diagnosis, treatment, rehabilitation and palliation.

B. Describe the process by which the plan was developed. (If the plan is in draft, describe the process for assuring readiness for implementation by September 30, 1998.) Include a description of the participating agencies' and organizations' involvement in the development of the plan. Clearly describe a mechanism to review, evaluate, and update the plan to meet evolving needs.

C. Describe who will be responsible for maintaining the comprehensive cancer control plan and assuring that the coalition is involved throughout the process, and that comprehensive cancer control efforts proceed according to the State/Tribe/Territory's plan.

V. Implementation of the Comprehensive Cancer Control Plan

The successful coordination and integration of cancer activities, based on the comprehensive cancer control plan, requires that priorities be determined based on a clear data-driven rationale and justification.

The applicant should include an implementation plan that:

A. Describes the process for determining priorities to be addressed in implementing the comprehensive cancer control plan, the process for assuring that these decisions are data-based and grounded in sound science, and the role of the coalition and/or collaborators in the priority-setting process.

B. Includes specific, measurable, attainable, realistic, and time-framed process and outcome objectives designed to achieve goals identified in the comprehensive cancer control plan. The implementation plan for this RFA need not address each goal and objective outlined in the comprehensive cancer control plan; the applicant should make clear how goals and objectives resulting from the priority-setting process relate to the comprehensive cancer control plan.

C. Provides a description of the process for implementing goals and objectives for the identified priorities of the comprehensive cancer control plan. This should include discrete timeframes; responsible agencies, organizations, or organizational units; and activities proposed to meet the objectives within the comprehensive cancer control plan. It should also include a description of how the proposed activities will facilitate coordination and cooperation among existing categorical program efforts. The applicant should include goals for all four years, and specific objectives for Year 01.

D. Describes how surveillance data will be integrated into program activities and used to assess program progress, and inform program decision making.

Description should include evidence that existing surveillance systems enable programs to do the following:

- Collect population-based information on the demographics, incidence, staging of cancer at diagnosis, morbidity and mortality from cancer. Mechanisms should be in place to ensure timeliness, quality, and completeness of data.
- Identify segments of the population who are at higher risk for incidence, morbidity, and mortality.
- Identify factors contributing to the disease burden, such as behavioral risk

factors and limited or inequitable access to services.

4. When appropriate, monitor the number and characteristics of people served by relevant programs.

5. When appropriate, develop linkages between the above-mentioned data bases and routinely monitor to determine the effectiveness of interventions.

E. Includes the current or proposed plan for evaluating (1) the program's progress in meeting specific objectives outlined in the implementation plan, and (2) overall success of the comprehensive cancer control effort, based on indicators established by the applicant. Describe the types of indicators to be used to assess outcomes such as coordination, integration and collaboration that have occurred as a result of this funding. Such indicators might assess organizational or institutional changes, reduced duplication of effort, environmental and policy changes. Baseline measures should be identified and assessed, to allow for comparisons after implementation has begun. For each type of evaluation, specify the kind of data/indicator that will be used, how the data will be obtained, how information will be used to improve the overall program, as well as individual program components, who is responsible for each evaluation task, and a time line for accomplishing each evaluation task.

F. Describes proposed information and education efforts. Identify the mechanisms through which information, material, and successful strategies will be consistently and systematically shared and disseminated at the State/Tribe/Territory and local levels, as well as with other cooperative agreement recipients. Include in this description a discussion of plans for collaborating with CDC on national campaigns or educational efforts.

G. Describes mechanism for assuring that the core components of a comprehensive cancer control program including primary prevention/risk factor reduction; education, outreach, health communications; screening, diagnostic, and treatment services; surveillance; and evaluation are consistent with accepted science and prevailing standards of public health practice. The primary prevention components should address risk factors that will have the greatest impact on reducing the overall disease burden of cancer and are not limited to prevention activities of the specific cancers addressed in the State/Tribe/Territory's comprehensive cancer control program.

H. Describes existing programs funded by other sources that will be coordinated with the comprehensive cancer control effort.

VI. Management and Organization

The applicant should:

A. Submit a management plan that includes a description of the proposed management structure that addresses the use of qualified and diverse technical, program, and administrative staff (including in-kind staff), organizational relationships including lines of authority, internal and external communication systems, and a system for sound fiscal management. Minimal staffing should include a full-time program coordinator. The management structure description should include discussion of the integration and coordination of risk factor and cancer-related programs and activities. It is important that the management plan address how coordination and cooperation among existing categorical program efforts will be facilitated, while allowing each program to maintain individual integrity and identity.

B. Provide (in the appendices) a copy of the organizational chart indicating the placement of the proposed program in the department or agency. The chart should clearly demonstrate internal linkages necessary for comprehensive cancer control planning, implementation and evaluation.

C. Provide (in the appendices) CVs and job descriptions of key staff to be partially or fully funded through this RFA, as well as any staff to be providing in-kind support. Applicant should clearly indicate who is responsible for overall direction of the program.

VII. Budget With Justification

The applicant should provide a detailed budget request and complete line item justification of all proposed operating expenses consistent with the Recipient Activities. If in-kind contributions are being provided by the applicant, these should be documented.

The annual budget should include funds for two staff members to make two two-day trips to Atlanta.

Non-Competing Continuation Application Content

In compliance with 45 C.F.R. 92.10(b)(4), as applicable, non-competing continuation applications submitted within the project period need only include:

A. A progress report describing the accomplishments made from award date to the date of the continuation application. These progress reports must include: (1) a comparison of actual

accomplishments with the goals and objectives established for the period, and

(2) other activities and issues to be addressed during the subsequent reporting period.

B. Any new or significantly revised items or information (objectives, scope of activities, operational methods, evaluation, etc.) not included in the Year 01 application.

C. An annual budget and justification. Existing budget items that are unchanged from the previous budget period do not need rejustification. Simply list the items in the budget and indicate that they are continuation items. Supporting justification should be provided where appropriate.

Evaluation Criteria (Total 100 Points)

Objective Review panels evaluate the scientific and technical merit of applications and their responsiveness to the information requested in the Application Content section above. Applications will be reviewed and evaluated according to the following criteria:

I. Background and Need (10 points)

The extent of need based on disease burden by age, gender, and racial and ethnic groups, mortality rates, incidence, cancer program experience, existing capacity and infrastructure, and funding need.

II. Collaborative Partnership and Community Involvement (15 points)

The comprehensiveness and appropriateness of:

A. Existing or proposed linkages within and outside the State/Tribe/Territory health department to coordinate diverse cancer control, risk factor and other primary prevention programs and activities among various agencies, organizations, professional groups, and individuals.

B. The current or proposed broad-based State/Tribe/Territory wide coalition to advise and support the program, including defined roles, responsibilities, and specified subcommittees.

C. Letters of support that indicate the nature and extent of existing or planned collaborative support.

III. Cancer Control Plan (15 points)

The quality of the comprehensive cancer control plan in terms of:

A. An integrated and coordinated State/Tribe/Territory wide approach to prevention, early detection, treatment, rehabilitation, and palliation of cancer; assessment of the State/Tribe/Territory's cancer burden; short-term and long-term

goals, objectives, and strategies to address cancer control issues; assessment of existing and needed resources to develop the comprehensive cancer control program; the full range of cancer prevention and control activities, including primary prevention, early detection, diagnosis, treatment, rehabilitation and palliation.

B. The extent to which a broad range of partners and stakeholders are included throughout the process to develop, implement, review, and update the plan; mechanisms to review, evaluate and update the plan to meet evolving needs, and personnel who will be responsible for maintaining the plan, assuring that it is current and regularly reviewed and updated are clearly identified.

IV. Implementation of the Comprehensive Cancer Control Plan (35 points)

The extent to which the applicant's implementation plan describes:

A. Process; justification, and rationale for priorities established for implementation.

B. Specific, measurable, realistic, time-framed objectives based on the comprehensive cancer control plan.

C. The process for implementing priorities identified in the plan, to include discrete time frames, responsible agencies and organizations, linkages of activities to objectives, and how the proposed activities will facilitate coordination and collaboration among existing categorical program efforts.

D. How surveillance data will be integrated into program activities and used to assess program progress and assist program decision making; the surveillance systems and collection of relevant and appropriate population-based information on the demographics, behavioral, disease burden and incidence, etc.; and any linkages between databases and routine monitoring to determine effectiveness of interventions.

E. Plans for evaluating the program's progress in meeting specific objectives outlined in the implementation plan, and overall success of the comprehensive cancer control effort.

F. Proposed information and education efforts, including collaborating with CDC on national campaigns.

G. Methods for assuring that: the core components of a comprehensive cancer control program including primary prevention/risk factor reduction; education, outreach, and health communications; screening, diagnostic, and treatment services; surveillance;

and evaluation are consistent with accepted science and prevailing public health practice; the primary prevention components address risk factors that will have the greatest impact on reducing the overall disease burden of cancer and are not limited to prevention activities of the specific cancers addressed in the State/Tribe/Territory's comprehensive cancer control program.

H. Description of other existing programs funded by other sources that will be coordinated with the comprehensive cancer control effort.

V. Management and Organization (25 points)

A. The feasibility and clarity of the proposed management plan that addresses the use of qualified and diverse technical, program, and administrative staff, organizational relationships including lines of authority, internal and external communication systems, cooperation and coordination among categorical cancer-related programs, and a system for sound fiscal management.

B. The appropriateness of the organizational structure and the existing and proposed internal and external linkages.

C. The quality and appropriateness of CVs and job descriptions of current and proposed key staff, to include who is responsible for overall direction of the program.

VI. Budget With Justification (Not Weighted)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This order sets up a system for State/Territory/Tribe and local review of proposed federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to expected announcements of cooperative agreement funds and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each State. A current list of SPOCs is included in the application kit. Indian territories are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations or if SPOCs have any State process recommendations on

applications submitted to CDC, they should send them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E-18, Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to accommodate or explain the State or tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.919.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 individuals or more and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the completed application Form CDC 0.1246(E) (OMB Number 0348-0043) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E-18, Atlanta, GA 30305 on or before July 1, 1998.

1. Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the stated deadline date; or
b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. Late Applications. Applications that do not meet the criteria in 1.a. or 1.b., above, are considered late applications. Late applications will not be considered in the current

competition and will be returned to the applicant.

3. Acceptable Materials. Applicants must send all materials in an unbound, one-sided 8 1/2 x 11" printed format, suitable for photocopying. All other application materials will not be reviewed.

4. Only one eligible application from a State/Tribe/Territory will be funded. Applicants from each State/Tribe/Territory are encouraged to coordinate and combine their efforts prior to submitting the application for their State/Tribe/Territory.

Where To Obtain Additional Information

Complete information on application procedures is contained in the application package. Business management technical assistance may be obtained from Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E-18, Atlanta, GA 30305, telephone (404) 842-6801; by fax (404) 842-6513; by Internet or CDC WONDER electronic mail at gcg4@cdc.gov.

Programmatic technical assistance may be obtained from Jeannette May, MPH, or Diane Narkunas, MPH, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K-57, Atlanta, GA 30341-3717, telephone (404) 488-4880 and by fax (404) 488-4727; by Internet or CDC WONDER electronic mail at jxm5@cdc.gov or dxn3@cdc.gov.

Please refer to Program Announcement Number 98046 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325; telephone (202) 512-1800.

Copies of the U.S. Preventive Services Task Force Guide to Clinical Preventive Services, 2nd ed. (Williams & Wilkins, October 1995) referenced above may be obtained by calling 1-800-358-3538, or from the world wide web at <http://www.wilkins.com/books/data/0-683-08508-5.html>.

Data on cancer incidence and mortality can be obtained from the following sources:

1. The State Cancer Registry.
2. The American Cancer Society, Facts and Figures, 1998. 1-800-ACS-2345.

3. Mortality Statistics Branch, Division of Vital Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention at (301) 436-8884, fax (301) 436-7066. Available at <http://www.cdc.gov/nchswww/about/major/dvs/mortdata.htm>.

4. SEER Cancer Statistics Review, 1973-1994, NIH Pub. No. 97-2789. Available at <http://www-seer.ims.nci.nih.gov/Publications/CSR7394/index.html> or by calling the Cancer Statistics Branch Cancer Control Research Program Division of Cancer Prevention and Control, National Cancer Institute at (301) 496-8510.

CDC suggests using the Internet, following all instructions in this announcement and leaving messages on the contact person's voice mail for more timely responses to any questions.

Eligibility Assurance Form

All applicants MUST complete this check-list and attach appropriate documentation supporting eligibility (the state/tribe/territory wide comprehensive cancer control plan). The plan must be attached to this check-list, should not be incorporated into the body of the application or the appendices, and therefore does not affect the page limit for the application (30 pages) or appendices (20 pages). A copy of this form, with an attached reproducible plan, should be included with each copy of the application as a separate tabbed section.

- A state/tribe/territory wide comprehensive cancer control plan has been developed. Plan is either:
 - an existing up-to-date plan ready for implementation, or
 - an up-to-date detailed final draft ready for implementation by September 30, 1998.

At a minimum,

- Plan documents an integrated and coordinated state/tribe/territory wide approach to prevention, early detection, treatment, rehabilitation, and palliation of cancer (i.e., not a summation or compilation of categorical risk factor/specific cancer programs).
- Plan identifies priorities to be addressed based on needs identified through assessment of the burden of the major detectable/preventable cancers in the State/Tribes/Territory.
- Copy of the State/Tribes/Territory wide comprehensive cancer control

plan document is attached. (A reproducible, unbound, one-sided, 8 1/2 x 11" copy of the plan should be attached to this form.)

Glossary

Terms are defined by DCPC in this Glossary to clarify issues for applicants under this RFA only. They are not meant to apply to all DCPC or CDC programs, activities, or RFAs.

Comprehensive Cancer Control: An integrated and coordinated approach to reduce the incidence, morbidity, and mortality [of cancer] through prevention, early detection, treatment, rehabilitation, and palliation.

Comprehensive Cancer Control Plan: Document that is developed as an optimal blueprint for achieving comprehensive cancer control in that State/Tribes/Territory. It should address information on cancer burden; short-and long-term goals and objectives; proposed strategies to meet objectives; assessment of existing and needed resources; and a plan for promoting access to full range of cancer control services.

At a minimum, a Comprehensive Cancer Control Plan: (1) documents an integrated and coordinated state/tribe/territory wide approach to prevention, early detection, treatment, rehabilitation, and palliation of cancer (i.e., not a summation or compilation of categorical risk factor/specific cancer programs); and (2) identifies the priorities to be addressed based on an assessment of the burden of the major detectable/preventable cancers in the State/Tribes/Territory.

Comprehensive Cancer Control Program: Based on goals and objectives established in the comprehensive cancer control plan, the overall set of actions that are conducted with available resources to translate the optimal plan into feasible reality.

Implementation: Conducting activities that are designed to achieve goals and objectives outlined in the Comprehensive Cancer Control Plan. Implementing the Plan is the same thing as conducting comprehensive cancer control activities or programs. For the purposes of programs funded under this RFA, implementation of the plan does not require that all goals and objectives in the State/Tribes/Territory wide comprehensive cancer control plan be implemented; implementation will be guided by the goals and objectives in the implementation plan developed for this RFA.

Indicator: A performance measure used to track critical processes over time to signify progress toward a particular desired outcome of the program. For

example, one "indicator" for better coordination among categorical programs might be a certain number of meetings held among categorical program staff to assure that efforts are being coordinated. Another "indicator" for the same outcome might be that each related program has a representative on the coalition that advises and directs the program.

State/Tribes/Territory wide: Covering the entire State/Tribes/Territory, rather than just limited 34 metropolitan or county areas within the State/Tribes/Territory. For example, State/Tribes/Territory wide comprehensive cancer control plan addresses cancer, programs, activities, and services throughout the State/Tribes/Territory.

U.S. Preventive Services Task Force Guide to Clinical Preventive Services, 2nd ed.: The Guide clearly outlines and establishes, for the clinician, the current state of research on the efficacy of the major preventive interventions. A well-specified methodology based on scientific evidence is used to assess efficacy. Based on the work of a distinguished panel of nationally recognized experts, and reviewed by more than 650 federal and nonfederal experts, it provides recommendations on screening, counseling, and immunizations according to patients' personal characteristics and health risk factors.

Dated: May 7, 1998.

Joseph R. Carter,
Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).
[FR Doc. 98-12645 Filed 5-12-98; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 98037]

Initiatives by Organizations To Strengthen National Tobacco Control Activities in the United States; Notice of Availability of Funds for Fiscal Year 1998; Amendment

A notice announcing the availability of Fiscal Year 1998 funds for cooperative agreements for Initiatives by Organizations to Strengthen National Tobacco Control Activities in the United States was published in the *Federal Register* on April 23, 1998, [63 FR 20197]. The notice is amended as follows:

On page 20202, second column, under the heading "Application Submission

and Deadline," first paragraph on the last line is amended to read: " * * * on or before June 8, 1998.

All other information and requirements of the April 23, 1998, *Federal Register* notice remain the same.

Dated: May 7, 1998.

Joseph R. Carter,
Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).
[FR Doc. 98-12643 Filed 5-12-98; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Amendment to Stockbridge-Munsee Community Band of Mohican Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution numbered 04-98, of the Stockbridge-Munsee Community Band of Mohican Indians was duly adopted by the Stockbridge-Munsee Tribal Council on January 20, 1998. The amendment to the Stockbridge-Munsee Liquor Control Ordinance, published December 11, 1992 at 57 FR 58938, allows licensees to provide complimentary beverages on lands subject to the jurisdiction of the Stockbridge-Munsee Community Band of Mohican Indians.

DATES: This amendment is effective May 13, 1998.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Office of Tribal Services, 1849 C Street NW, MS 4641-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

SUPPLEMENTARY INFORMATION: The amendment to the Stockbridge-Munsee Liquor Control Ordinance, Stockbridge-Munsee Tribal Council resolution numbered 04-98, reads as follows:

Section 3 1.1 (E) 4 which reads "No licensee may give away or sell alcohol beverages at a loss" is stricken and eliminated from the Community Liquor Control Ordinance.

Dated: April 30, 1998.

Kevin Gever,
Assistant Secretary—Indian Affairs.
[FR Doc. 98-12654 Filed 5-12-98; 8:45 am]
BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(CA-067-1210) CACA 035087]

Wilderness Management; Planning Initiation

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, El Centro Field office, will conduct public open house meetings May 13, 15, and 19, 1998 to gather from the public comments and concerns to be addressed in activity level wilderness management plans. Comments will be solicited primarily for the 10 wilderness areas managed by the El Centro office, but comments regarding any of the 67 wilderness areas managed by the California Desert District will be accepted.

DATES: Open house meetings will be held at the following dates, times, and locations: May 13, 1998: 4:00 pm to 9:00 pm, at the Imperial Irrigation District Auditorium, 1284 Main Street, El Centro, CA; on May 15, 1998: 4:00 pm to 10:00 pm, at the Yuma BLM office, 2555 Gila Ridge Road, Yuma, AZ, and on May 19, 1998: 4:00 pm to 10:00 pm, at the Comfort Inn, 8000 Parkway Drive, La Mesa, CA. For a period of 45 days after publication of this notice in the *Federal Register*, interested parties may submit comments to the Field Manager, Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this action. In the absence of any objections, this action will be the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Tim Finger, Wilderness Coordinator, at the above address or telephone (760) 337-4442.

Dated: May 6, 1998.
Elayn Briggs,
Acting Field Manager.
[FR Doc. 98-12642 Filed 5-12-98; 8:45 am]
BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for the Establishment of the World War II Memorial, Washington, D.C.

ACTION: Notice of availability of environmental assessment.

SUMMARY: Pursuant to the Council of Environmental Quality regulations and National Park Service policy, this notice announces the availability of an environmental assessment (EA) for the establishment of the World War II Memorial in Washington, D.C.

DATES: There will be a 30-day public review period for comment on this document. Comments on the EA should be received no later than June 12, 1998.

ADDRESSES: Comments on the EA should be submitted to: Mr. John G. Parsons, Associate Superintendent for Stewardship and Partnerships, National Capital Support Office, National Park Service, 1100 Ohio Drive, S.W., Room 220, Washington, D.C., 20240. Public reading copies of the EA will be available for review at the following locations: National Capital Region, National Park Service, 1100 Ohio Drive, S.W., First Floor Lobby, Washington, D.C., 20242; and American Battle Monuments Commission, 2300 Clarendon Boulevard, Suite 500, Arlington, Virginia, 22201.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Parsons, Associate Superintendent, Stewardship and Partnerships, National Capital Support Office, National Park Service, 1100 Ohio Drive, S.W., Room 220, Washington, D.C., 20242, Telephone: (202) 619-7025. A limited number of copies of the EA are available on request.

SUPPLEMENTARY INFORMATION: The EA on this memorial on park land describes the proposed design concept and analyzes pertinent environmental impacts of its establishment and construction and any necessary mitigation measures for the identified impacts.

The World War II Memorial is being established by the American Battle Monuments Commission, an independent agency of the U.S. Government, pursuant to the Commemorative Works Act, 40 U.S.C. 1001 *et seq.* The World War II Memorial was authorized by Public Law 103-32 (May 25, 1993). In Public Law 103-422, Congress authorized its placement within Area I (the area comprising the central Monumental Core of the District of Columbia, as defined in the Act). The memorial will be in West Potomac Park

which is administered by the National Park Service. The actual location is known as the Rainbow Pool site, along 17th Street between the Lincoln Memorial and the Washington Monument.

Along with analyzing the environmental impacts of memorial construction and the completed memorial based on this design concept, this EA also considers how it affects visitor use, vehicular and pedestrian circulation, and existing periodic uses of the site for various activities.

Pursuant to the Commemorative Works Act, one approved, this design concept will be refined to produce a preliminary design and a final memorial design which are subject to additional review by the National Park Service, the National Capital Planning Commission, and the Commission of Fine Arts.

Dated: May 6, 1998.

Joseph Lawer,

Regional Director, National Capital Region.

[FR Doc. 98-12698 Filed 5-12-98; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 2, 1998. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013-7127. Written comments should be submitted by May 28, 1998.

Carol D. Shull,

Keeper of the National Register

ARKANSAS

Bradley County

St. Luke's Catholic Church, 508 W. Pine, Warren, 98000581

Cross County

Giboney—Robertson—Stewart House, 734 Hamilton Ave., Wynne, 98000585

Independence County

National Guard Armory, 380 S. Ninth St., Batesville, 98000579

Jefferson County

Mills House, 715 W. Barraque, Pine Bluff, 98000584

Miller County

Miller County Courthouse, 400 Laurel St., Texarkana, 98000578

Phillips County

Richardson—Turner House, 1469 AR 1 N. Lexa, 98000583

Washington County

Mineral Springs Community Building, Cty Rd. 34, E. of West Fork, West Fork vicinity, 98000580

Yell County

First Presbyterian Church—Berry House, 203 Pecan St., Dardanelle, 98000582

COLORADO

Arapahoe County

Little Estate, 1 Littleridge Ln., Cherry Hills Village, 98000610

El Paso County

Cragmor Sanatorium, 1420 Austin Bluffs Pkwy, Colorado Springs, 98000586

FLORIDA

Alachua County

Masonic Temple, 215 N. Main St., Gainesville, 98000589

Citrus County

Crystal River Old City Hall, 532 N. Citrus Ave., Crystal River, 98000588

Manatee County

Midway Subdivision Historic District, 7201 15th St. E., Sarasota vicinity, 98000587

KANSAS

Marion County

Peabody Downtown Historic District, Along Walnut St. between Division and First Sts., Peabody, 98000590

KENTUCKY

Boyle County

Danville National Cemetery (Civil War Era National Cemeteries MPS) 277 N. First St., Danville, 98000591

Pulaski County

Mill Springs National Cemetery (Civil War Era National Cemeteries) 9044 West Hwy 80, Nancy, 98000592

LOUISIANA

St. Tammany Parish

Jay House, Facing the Tchefuncte R., within Fairview-Riverside State Park, Madisonville vicinity, 98000593

MAINE

York County

Saco Historic District, Roughly bounded by Elm, North Beach, and Main Sts., Saco, 98000594

MARYLAND

Baltimore Independent City

Northwood Historic District, Loch Raven Blvd., The Alameda, and Cold Spring Ln., Baltimore, 98000596

MASSACHUSETTS

Barnstable County

Hinckley's Corner Historic District, 0, 25, and 40 Way #112, Wellfleet, 98000595

MISSOURI

Cooper County

New Lebanon Historic District, MO A, Lebanon, 98000597

NEW JERSEY

Morris County

Ayres' Farm, 25 Cooper Rd., Denville vicinity, 98000598

NEW MEXICO

Bernalillo County

Luna Lodge (Route 66 Through New Mexico MPS) 9019 Central Ave. NE, Albuquerque, 98000600

Tewa Lodge (Route 66 Through New Mexico MPS) 5715 Central Ave. NE, Albuquerque, 98000599

OHIO

Lucas County

Englewood Historic District, Roughly bounded by W. Bancroft, Lawrence, Oakwood, Hoag, and Detroit Sts., Toledo, 98000601

OREGON

Curry County

Port Orford Coast Guard Station, 92331 Coast Guard Hill Rd., Port Orford, 98000606

Deschutes County

Liberty Theater, 849 NW Wall St., Bend, 98000608

Putnam, George Palmer and Dorothy Binney House, 606 NW Congress St., Bend, 98000607

Gilliam County

Condon Commercial Historic District, Roughly bounded by Ward, Spring, and Oregon Sts., and mid-block between Walnut and Frazier Sts., Condon, 98000609

Hood River County

Hood River County Library and Georgiana Smith Park, 502 State St., Hood River, 98000605

Linn County

Perry, E.C., Buidling, 38731 N. Main St., Scio, 98000604

TEXAS

Lubbock County

Holden Properties Historic District, 3103, 3105, 3105A, 3105B, 3107, 3109, and 3111 20th St., Lubbock, 98000602

VIRGINIA

Mecklenburg County

Buffalo Springs Historical Archeological District, Address Restricted, Buffalo Junction, 98000603

A Request for Removal is hereby made for the following properties:

OREGON

Clatsop County

Herschell, Allan, Two-Abreast Carousel (Oregon Historic Wooden Carousels TR) 300 Broadway Seaside, 87001382

Multnomah County

Looff, Charles, 20-Sweep Menagerie Carousel (Oregon Historic Wooden Carousels TR) Holladay St. and NE Eighth Ave., Portland, 87001379

[FR Doc. 98-12647 Filed 5-12-98; 8:45 am]

BILLING CODE 4310-70-U

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Gooseberry Valley, Utah in the Control of the Fishlake National Forest, USDA Forest Service, Richfield, UT

AGENCY: National Park Service, Interior ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Gooseberry Valley, Utah in the control of the Fishlake National Forest, USDA Forest Service, Richfield, UT.

A detailed assessment of the human remains was made by University of Utah Museum of Natural History, University of Utah Department of Anthropology, and USDA Forest Service professional staff in consultation with representatives of the Duckwater Shoshone Tribe, Fort McDermitt Paiute and Shoshone Tribes, Hopi Tribe, Kaibab Band of Paiute Indians, Navajo Nation, Northwestern Band of Shoshoni Nation, Paiute Indian Tribe of Utah, Pueblo of Acoma, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Zia, Pueblo of Zuni, Shoshone-Bannock Tribes of the Fort Hall Reservation, Shoshone-Paiute Tribes of the Duck Valley Reservation, Skull Valley Band of Goshute Indians, Southern Paiute Consortium (on behalf of the Kaibab Paiute Band, Cedar City Paiute Band, Indian Peak Paiute Band, Kanosh Paiute Band, Koosharem Paiute Band, Las Vegas Paiute Band, Moapa Paiute Band, and Shivwits Paiute Band), Southern Ute Indian Tribe, Summit Lake Paiute Tribe, Ute Mountain Ute Tribe, Ute Tribe of the Uintah and Ouray Reservation, and the Yomba Shoshone Tribe.

During the 1980s, human remains representing one individual were recovered from Wareit House (42SV 1060) in the Fishlake National Forest during legally authorized excavations conducted by University of Utah Department of Anthropology and currently curated at the Utah Museum of Natural History. No known individual was identified. No associated funerary objects are present.

Based on material culture of the site, the Wareit House site has been identified as a Fremont occupation dating between 780-1260 A.D. Based on the context of the burial, this individual has been identified as Native American. On review of the available evidence concerning Fremont culture and settlement of this area, continuities of agriculture, basketry, and ceramics indicate affiliation between the Fremont of this area and later puebloan groups. Additionally, continuities of ceramics and projectile point chronologies also indicate cultural affiliation between the Fremont of this area and the historic Numic-speaking groups identified in the area during the contact period. Consultation evidence provided by representatives of the Hopi Tribe, the Paiute Tribe of Utah, the Pueblo of Zuni, and the Ute Tribe of the Uintah and Ouray Reservation have presented data from oral traditions that indicate ancestral groups and/or specific clans or lineages from their cultures inhabited portions of the area associated with the Fremont from the very earliest times onward.

Based on the above mentioned information, officials of the USDA Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. While not clearly culturally affiliated, officials of the USDA National Forest Service have further determined that, pursuant to 25 U.S.C. 3003 (d)(2)(C), there is a reasonable belief of shared group identity given the totality of the circumstances surrounding the acquisition of these Native American human remains with the Hopi Tribe, the Paiute Tribe of Utah, the Pueblo of Zuni, and the Ute Tribe of the Uintah and Ouray Reservation.

This notice has been sent to officials of the Duckwater Shoshone Tribe, Fort McDermitt Paiute and Shoshone Tribes, Hopi Tribe, Kaibab Band of Paiute Indians, Navajo Nation, Northwestern Band of Shoshoni Nation, Paiute Indian Tribe of Utah, Pueblo of Acoma, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of

Santa Clara, Pueblo of Santo Domingo, Pueblo of Zia, Pueblo of Zuni, Shoshone-Bannock Tribes of the Fort Hall Reservation, Shoshone-Paiute Tribes of the Duck Valley Reservation, Skull Valley Band of Goshute Indians, Southern Paiute Consortium (on behalf of the the Kaibab Paiute Band, Cedar City Paiute Band, Indian Peak Paiute Band, Kanosh Paiute Band, Koosharem Paiute Band, Las Vegas Paiute Band, Moapa Paiute Band, and Shivwits Paiute Band), Southern Ute Indian Tribe, Summit Lake Paiute Tribe, Ute Mountain Ute Tribe, Ute Tribe of the Uintah and Ouray Reservation, Yomba Shoshone Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Robert Leonard, Forest Archeologist, Fishlake National Forest, 115 East 900 North, Richfield, UT 84602-3600; telephone: (801) 896-9233, before June 12, 1998. Repatriation of the human remains to the Hopi Tribe, the Paiute Tribe of Utah, the Pueblo of Zuni, and the Ute Tribe of the Uintah and Ouray Reservation may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: May 7, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98-12648 Filed 5-12-98; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force: Public Meeting

AGENCY: Bureau of Reclamation (Reclamation), Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting will be held on Tuesday, June 30, 1998, at 1 to 4 p.m.

ADDRESSES: The meeting will be at the: Federal Building, Bureau of Reclamation, 2800 Cottage Way, Conference Room E-2901, Sacramento, California 95825, Telephone: 916/978-5113.

FOR FURTHER INFORMATION CONTACT: Mr. Russell P. Smith, Chief, Environmental

and Natural Resource Division, Northern California Area Office, 16349 Shasta Dam Boulevard, Shasta Lake, California, 96019. Telephone: 530/275-1554.

SUPPLEMENTARY INFORMATION: Task Force members will approve the Three-Year Action Plan for FY 1999; will comment on reauthorization of the Trinity River Basin Fish and Wildlife Management Program; and, will discuss renewal of the Charter under the Federal Advisory Committee Act. Task Force members will be briefed on the Trinity River Flow Evaluation and Trinity River Mainstem Fishery Restoration Environmental Impact Statement/Report.

The meeting of the Task Force is open to the public. Any member of the public may file a written statement with the Task Force in person or by mail before, during, or after the meeting. To the extent that time permits, the Task Force Chairman may allow public presentation of oral statements at the meeting.

Dated: May 5, 1998.

Roger K. Patterson,
Regional Director.

[FR Doc. 98-12655 Filed 5-12-98; 8:45 am]

BILLING CODE 4310-09-U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-352]

Andean Trade Preference Act: Effect on the U.S. Economy and on Andean Drug Crop Eradication

AGENCY: International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with 1997 annual report.

EFFECTIVE DATE: May 5, 1998.

FOR FURTHER INFORMATION CONTACT: Joanne Guth (202-205-3264), Country and Regional Analysis Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND: Section 206 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3204) requires that the Commission submit annual reports to the Congress regarding:

(1) The actual economic effect of ATPA on the U.S. economy generally as well as on specific industries which produce articles that are like, or directly competitive with, articles being imported under the Act;

(2) The probable future effect of ATPA on the U.S. economy generally and on industries affected by the Act; and

(3) The estimated effect of ATPA on drug-related crop eradication and crop substitution efforts of beneficiary countries.

In addition, in this year's report the Commission plans to examine the effectiveness of ATPA in promoting export-oriented growth and diversification of production in the beneficiary countries. Notice of institution of the investigation and the schedule for such reports was published in the *Federal Register* of March 10, 1994 (59 FR 11308). The Commission's fifth annual report on ATPA, covering calendar year 1997, is to be submitted by September 30, 1998.

Written Submissions

The Commission does not plan to hold a public hearing in connection with the preparation of the fifth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked

"Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than June 30, 1998.

Address all submissions to Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

Issued: May 7, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98-12682 Filed 5-12-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-227]

Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with 1997 annual report.

EFFECTIVE DATE: May 5, 1998.

FOR FURTHER INFORMATION CONTACT: Joanne Guth (202-205-3264), Country and Regional Analysis Division, Office of Economics, U.S. International Trade Commission, Washington, D.C. 20436.

BACKGROUND: Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit annual reports to the Congress and the President regarding:

(1) The actual economic effect of CBERA on the U.S. economy generally as well as on specific industries which produce articles that are like, or directly competitive with, articles being imported under the Act; and

(2) The probable future effect of CBERA on the U.S. economy generally and on industries affected by the Act.

In addition, in this year's report the Commission plans to examine the effectiveness of CBERA in promoting export-oriented growth and diversification of production in the beneficiary countries. Notice of institution of the investigation and the schedule for such reports was published in the *Federal Register* of May 14, 1986 (51 FR 17678). The thirteenth report, covering calendar year 1997, is to be submitted by September 30, 1998.

Written Submissions

The Commission does not plan to hold a public hearing in connection with the thirteenth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will

be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than June 30, 1998.

Address all submissions to the Secretary to the Commission, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

Issued: May 7, 1998.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-12683 Filed 5-12-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-409]

Certain CD-ROM Controllers and Products Containing Same-II; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 7, 1998, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Oak Technology, Inc., 139 Kifer Court, Sunnyvale, California 94086. On April 20 and April 24, 1998, Oak filed supplements to its complaint. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain CD-ROM controllers and products containing same by reason of infringement of claims 1-5 and 8-10 of U.S. Letters Patent 5,581,715. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a

permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

FOR FURTHER INFORMATION CONTACT: Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (1997).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on May 7, 1998, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain CD-ROM controllers or products containing same by reason of infringement of claims 1, 2, 3, 4, 5, 8, 9, or 10 of U.S. Letters Patent 5,581,715, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Oak Technology, Inc., 139 Kifer Court, Sunnyvale, CA 94086.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: MediaTek, Inc., No. 13 Innovation Road I, Science-Based Industrial Park, Hsinchu, Taiwan

United Microelectronics Corporation, No. 3, Li-Hsin Road II, Science-Based Industrial Park, Hsinchu, Taiwan

Lite-On Technology Corp., 5F, 16, Sec. 4, Nanking E. Rd., Taipei, Taiwan

AOOpen, Inc., 6F, #88, Sec. 1, Hsin Tai Wu Rd., Hsichih, Taipei Hsien, Taiwan 221

(c) Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401-J, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 7, 1998.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-12676 Filed 5-12-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-401]

Certain CD-ROM Controllers and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement and Withdrawal of the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement and withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3107.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 20, 1997, based on a complaint filed by Oak Technology, Inc. ("Oak Technology"). Oak Technology alleged that respondents Winbond Electronics Corp. ("WEC"), Winbond Electronic North America Corp., Wearnes Technology (Private) Ltd., Wearnes Electronics Malaysia Sdn. Bhd., and Wearnes Peripheral International (Pte.) Ltd. (collectively "respondents") violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by importing, selling for importation, or selling within the United States after importation certain CD-ROM controllers and products containing same that infringe certain claims of Oak Technology's U.S. Letters Patent 5,535,327 and U.S. Letters Patent 5,581,715.

On March 18, 1998, Oak Technology and respondents filed a joint motion to terminate the investigation based on a settlement agreement between Oak Technology and WEC and Oak Technology's agreement to withdraw its complaint against the other respondents.

On March 30, 1998, the Commission investigative attorney ("IA") moved to make public certain additional portions of the settlement agreement. The motion was unopposed.

On April 15, 1998, the ALJ issued an ID (Order No. 9) terminating the investigation on the basis of the

settlement agreement and withdrawal of the complaint. The ALJ also granted the IA's motion to make public certain additional portions of the settlement agreement. The ALJ found no indication that termination of the investigation on the basis of the settlement agreement would adversely impact the public interest. No party filed a petition to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.21, 19 CFR 210.21. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

Issued: May 8, 1998.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-12700 Filed 5-12-98; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-410]

Certain Coated Optical Waveguide Fibers and Products Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 9, 1998, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Corning, Inc., 1 Riverfront Plaza, Corning, NY 14831. Supplements to the complaint were filed on April 28, 1998, and May 6, 1998. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain coated optical waveguide fibers, and products containing same, made by

a process that infringes claim 1 of U.S. Letters Patent 4,792,347. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2580.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (1997).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on May 7, 1998, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain coated optical waveguide fibers, or products containing same, made by a process that infringes claim 1 of U.S. Letters Patent 4,792,347, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Corning Incorporated, 1 Riverfront Plaza, Corning, NY 14831.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Plasma Optical Fibre, B.V., Zwaanstraat 1, 5651 CA Eindhoven, The Netherlands

Chromatic Technologies, Inc., 9 Forge Park, Franklin, MA 02038

(c) Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401-H, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 8, 1998

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 98-12681 Filed 5-12-98; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States v. American Recovery Company, et al.*, Civil Action No. 95-1590, was lodged on April 22, 1998 with the United States District Court for the Western District of Pennsylvania. The United States filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to recover past and future response costs incurred at or in connection with the Municipal and Industrial Disposal Company Site. The Consent Decree requires defendant Neville Chemical Company to pay \$100,000 (plus interest) to reimburse a portion of the United States' past costs associated with the investigation and clean up of the Municipal & Industrial Disposal Company Superfund Site ("Site"), located in Elizabeth Township, Pennsylvania.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. American Recovery Company, et al.*, DO Ref. #90-11-2-949.

The proposed consent decree may be examined at the office of the United States Attorney, 633 Post Office & Courthouse, 7th & Grant Streets, Pittsburgh, PA 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$4.75 (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

Joel M. Gross,
Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.

[FR Doc. 98-12629 Filed 5-12-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 C.F.R. § 50.7, notice is hereby given that a consent decree in *Clark Fork Pend Oreille Coalition, et al. vs. Idaho Transportation Department, et al.*, Civil No. 95-0300-N-EJL (D. Idaho), was lodged with the United States District Court for the District of Idaho on April 15, 1998. The proposed consent decree concerns violations of section 401 of the Clean Water Act, 33 U.S.C. §§ 1342 and 1344(a), involving the discharge of dredged or fill materials into the Sand Creek, its tributaries and adjacent ponds and wetlands by the Idaho Department of Transportation ("DOT") during 1994 road construction on U.S. Highway 95 in Bonner County, Idaho.

The Consent Decree includes the following terms: (1) Restoration of environmental harm; (2) an admission that ITD violated the CWA; (3) a penalty of \$200,00 to be deposited into a trust account entitled "Clark Fork Pend Oreille Wetlands Trust Fund," to protect, preserve, improve or enhance wetlands in Bonner County within the natural drainage to Pend Oreille Lake and Clark Fork River; (4) develop a program to educate ITD personnel about the requirements of the CWA; (5) establish an environmental inspector position for each major highway construction project to coordinate all CWA permitting issues for ITD projects; and, (6) adopt new contract procedures providing standards for erosion control, wetlands identification and the incorporation of Section 404 Permits into all construction contracts. The Army Corps of Engineers' headquarters, and the Corps Walla Walla, Washington District, as well as the United States Attorney's Office for the District of Idaho, support the settlement.

The Department of Justice will receive written comments relating to the Consent Decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, United States Department of Justice, Attention: Deborah A. Hill, Assistant United States Attorney, District of Idaho, P.O. Box 32, Boise, ID 83707, and should refer to *Clark Fork Pend Oreille Coalition, et al. vs. Idaho Transportation Department, et al.*, U.S. Attorney, No. reference N-95-0096.

The Consent Decree may be examined at the following offices:

Office of the United States Attorney,
District of Idaho, 877 W. Main Street,
Suite 201, Boise, Idaho 83702
Office of District Counsel, Corps of
Engineers, Walla Walla District, 201
N. 3rd Avenue, Walla Walla, WA
99362-1876.

A copy may be requested by calling
Deborah A. Hill, Assistant United States
Attorney, at (208) 334-1211. In
requesting a copy, please enclose a
check payable to the Treasury of the
United States in the amount of \$6.00 for
a copy of the Consent Decree with
attachments and postage.

Deborah A. Hill,

Assistant U.S. Attorney, District of Idaho.

[FR Doc. 98-12627 Filed 5-12-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA")

Notice is hereby given that on April
21, 1998, a proposed Consent Decree
was lodged with the United States
District Court for the Northern District
of Iowa in *United States v. Foxley Cattle
Co., et al.*, Civil Action No. C98-4032
DEO, (N.D. Iowa). The proposed
Consent Decree settles claims asserted
by the United States at the request of the
United States Environmental Protection
Agency ("EPA") under Section 107(a) of
the Comprehensive Environmental
Response, Compensation, and Liability
Act of 1980 ("CERCLA"), 42 U.S.C.
9607(a), in a complaint filed
concurrently with the lodging of the
proposed Consent Decree. The
complaint seeks reimbursement of
response costs incurred and to be
incurred by the United States in
response to the release or threatened
release of hazardous substances at the
Mid-America Tanning Company
Superfund Site, located in Woodbury
County, Iowa.

Under the proposed Consent Decree,
defendant Foxley Cattle Company shall,
inter alia, reimburse the EPA Hazardous
Substance Superfund \$642,000, plus
interest, shall pay \$100,000 for payment
of Natural Resource Damages to the
United States, and shall conduct and
perform groundwater sampling and
analysis at the Site in accordance with
an EPA approved plan. Defendant
Andrew M. Hain shall, *inter alia*,
reimburse the EPA Hazardous
Substance Superfund \$100,000. In

exchange, and conditioned upon the
complete and satisfactory performance
of their obligations under the proposed
Consent Decree, the settling defendants
shall receive a covenant not to sue
pursuant to Sections 106 and 107(a) of
CERCLA, 42 U.S.C. 9606 and 9607(a),
and Section 7003 of RCRA, 42 U.S.C.
6973, to undertake response actions or
to recover response costs at or in
connection with the Site. Foxley also
shall receive a covenant not to sue
pursuant to Section 107(a) of CERCLA,
42 U.S.C. 9607(a), for Natural Resource
Damages related to the Site. In addition,
the settling defendants receive
contribution protection under Section
113(f)(2), 42 U.S.C. 9613(f)(2), for
matters addressed in the proposed
Consent Decree. The United States
reserves the right to pursue the settling
defendants in certain circumstances if
previously unknown conditions or
information indicates that response
action performed at the Site is not
protective of human health or the
environment.

The Department of Justice will receive
written comments relating to the
proposed Consent Decree for thirty (30)
days from the date of publication of this
notice. Comments should be addressed
to the Assistant Attorney General of the
Environment and Natural Resources
Division, U.S. Department of Justice,
Washington, D.C. 20503, and should
refer to *United States v. Foxley Cattle
Co., et al.*, DOJ #90-11-2-1185A. The
proposed Consent Decree may be
examined at the EPA Region 7 Office at
726 Minnesota Ave., Kansas City, KS
66101. A copy of the proposed Consent
Decree may be obtained in person or by
mail from the Consent Decree Library,
1120 G Street, N.W., 4th Floor,
Washington, D.C. 20005 (202) 624-0892.
In requesting a copy, please enclose a
check in the amount of \$10.50 (25 cents
per page) payable to the "Consent
Decree Library".

Joel Gross,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.

[FR Doc. 98-12628 Filed 5-12-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that on April
17, 1998, a proposed Consent Decree
was lodged with the United States
District Court for the District of Kansas
in *United States v. Texaco Pipeline,
Inc., et al.*, Civ. No. 96-2152-GTV (D.

Kan.). The proposed Consent Decree
settles claims asserted by the United
States at the request of the United States
Environmental Protection Agency
("EPA") in an action originally filed on
April 1, 1996. The United States filed
this action pursuant to the Federal
Water Pollution Control Act, commonly
referred to as the Clean Water Act
("CWA" or "Act"), 33 U.S.C. §§ 1251 *et
seq.* The complaint requested the
assessment of civil penalties and
injunctive relief against defendants
Texaco Pipeline, Inc. ("Texaco
Pipeline") and Texaco Trading and
Transportation, Inc. ("Texaco Trading")
for discharges of oil into navigable
waters of the United States or adjoining
shorelines in violation of Sections 301
and 311 of the CWA, 33 U.S.C. 1311 and
1321. These discharges took place from
the defendants' pipeline systems in the
State of Kansas.

Under the proposed Consent Decree,
the defendants' collectively will pay to
the United States a \$925,000 civil
penalty. In addition, Texaco Trading
shall purge and permanently remove
from service specified portions of its
pipeline system. The defendants also
shall undertake additional injunctive
relief which includes the lowering of
pipeline, improved maintenance of
pipeline, and inspection of pipeline
within the State of Kansas.

The Department of Justice will receive
written comments relating to the
proposed Consent Decree for thirty (30)
days from the date of publication of this
notice. Comments should be addressed
to the Assistant Attorney General of the
Environment and Natural Resources
Division, U.S. Department of Justice,
Washington, D.C. 20530, and should
refer to *United States v. Texaco Pipeline
Inc., et al.*, DOJ #90-5-1-1-4272. The
proposed Consent Decree may be
examined at the EPA Region 7 Office at
726 Minnesota Ave., Kansas City, KS
66101. A copy of the proposed Consent
Decree may be obtained in person or by
mail from the Consent Decree Library,
1120 G Street, N.W., 4th Floor,
Washington, D.C. 20005 (202) 624-0892.
In requesting a copy, please enclose a
check in the amount of \$8.00 (25 cents
per page) payable to the "Consent
Decree Library".

Joel Gross,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.

[FR Doc. 98-12630 Filed 5-12-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection
under review; (Reinstatement, without
change, of a previously approved
collection for which approval has
expired), State Identification Systems
Formula Grant Program Application Kit.

The Department of Justice, Office of
Justice Programs, Bureau of Justice
Assistance, has submitted the following
information collection request to the
Office of Management and Budget
(OMB) for review and clearance in
accordance with emergency review
procedures of the Paperwork Reduction
Act of 1995. OMB approval has been
requested by May 26, 1998. The
proposed information collection is
published to obtain comments from the
public and affected agencies. If granted,
the emergency approval is only valid for
180 days. Comments should be directed
to OMB, Office of Information
Regulation Affairs, Attention: Mr.
Dennis Marvich, (202) 395-3122,
Department of Justice Desk Officer,
Washington, DC 20530. During the first
60 days of this same review period, a
regular review of this information
collection is also being undertaken. All
comments and suggestions, or questions
regarding additional information, to
include obtaining a copy of the
proposed information collection
instrument with instructions, should be
directed to Margaret H. Shelko, (202)
515-6638, South Branch State and Local
Assistance Division, Bureau of Justice
Assistance, 810 7th Street, NW.,
Washington DC 20531.

Request written comments and
suggestions from the public and affected
agencies concerning the proposed
collection information. Your comments
should address one or more of the
following four points:

- (1) Evaluate whether the proposed
collection of information is necessary
for the proper performance of the
functions of the agency, including
whether the information will have
practical utility;
- (2) Evaluate the accuracy of the
agency's estimate of the burden of the
proposed collection of information,
including the validity of the
methodology and assumptions used;
- (3) Enhance the quality, utility, and
clarity of the information to be
collected; and
- (4) Minimize the burden of the
collection of information on those who

are to respond, including through the
use of appropriate automated,
electronic, mechanical, or other
technological collection techniques or
other forms of information technology,
e.g., permitting electronic submission of
responses.

Overview of This Information

(1) *Type of Information Collection:*
Reinstatement of collection for which
OMB Clearance has expired.

(2) *Title of the Form/Collection:* State
Identification Systems Formula Grant
Program Application Kit.

(3) *Agency form number, if any, and
the applicable component of the
Department sponsoring the collection:*
None. Bureau of Justice Assistance,
Office of Justice Programs, United States
Department of Justice.

(4) *Affected public who will be as or
required to respond, as well as a brief
abstract:* Primary: State Government.
Other: None. The State Identification
Systems Formula Grant Program was
authorized under the Antiterrorism and
Effective Death Penalty Act of 1996 to
make funds available to state
governments to enhance identification
systems of criminal justice agencies at
the state and local level.

(5) *An estimate of the total number of
respondents and the amount of time
estimated for an average respondent to
respond/reply:* The time burden of the
52 respondents to complete the survey's
is 30 minutes per application.

(6) *An estimate of the total public
burden (in hours) associated with the
collection:* The total annual hour burden
to complete applications for the State
Identification Systems Formula Grant
Program is 26 annual burden hours.

If additional information is required
contact: Ms. Brenda E. Dyer, Deputy
Clearance Officer, United States
Department of Justice, Information
Management and Security Staff Justice
Management Division, Suite 850,
Washington Center, 1001 G Street NW.,
Washington, DC 20530.

Dated: May 7, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United
States Department of Justice.

[FR Doc. 98-12649 Filed 5-12-98; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

SUMMARY: The Department of Justice
(DOJ), National Institute of Corrections

(NIC) announces the availability of
funds in FY 98 for a cooperative
agreement to fund "The Management of
Institution Mission Change" project. A
similar announced project in FY 97 was
not awarded.

PURPOSE: The National Institute of
Corrections is seeking applications for a
cooperative agreement to survey,
identify, and research departments of
corrections and individual prisons that
have experienced significant mission
change because of changing inmate
profiles, crowding of prisons,
elimination of programs and/or
reduction of resources, change in staff to
inmate ratios, and other factors. The
methodology, processes, and strategies
for successful management of mission
change will be studied and documented.
A report discussing the study and its
findings will be submitted and
presented in a forum for correctional
leaders in which program strategies will
be identified for addressing the mission
change issue.

AUTHORITY: Public Law 93-415.

FUNDS AVAILABLE: The award will be
limited to a maximum total of \$100,000
(direct and indirect costs) and project
activity must be completed within 12
months of the date of award. Funds may
not be used for construction, or to
acquire or build real property. This
project will be a collaborative venture
with the NIC Prisons Division.

DEADLINE FOR RECEIPT OF APPLICATIONS:
Applications must be received in NIC's
Washington, D.C. office by 4:00 p.m.,
Eastern daylight savings time, Friday,
July 10, 1998.

ADDRESSES AND FURTHER INFORMATION:
Requests for the application kit, which
includes further details on the project's
objectives, etc., should be directed to
Judy Evens, Cooperative Agreement
Control Office, National Institute of
Corrections, 320 First Street, N.W.,
Room 5007, Washington, D.C. 20534 or
by calling 800-995-6423, ext. 159 or
202-307-3106, ext. 159. All technical
and/or programmatic questions this
announcement should be directed to
Dick Franklin at the above address or by
calling 800-995-6423 or 202-307-1300,
ext. 145, or by E-mail via
rfranklin@bop.gov.

REVIEW CONSIDERATIONS: Applications
received under this announcement will
be subjected to an NIC 3 to 5 member
Peer Review Process.

NUMBER OF AWARDS: One (1).

NIC APPLICATION NUMBER: 97P07. This
number should appear as a reference
line in your cover letter and also in box
11 of Standard Form 424.

EXECUTIVE ORDER 12372: This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States that option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on proposed projects serving more than one State.

The Catalog of Federal Domestic Assistance number is: 16.603.

Dated: May 11, 1998.

Morris L. Thigpen,

Director, National Institute of Corrections

[FR Doc. 98-12836 Filed 5-12-98; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 8:00 a.m. to 12 noon on Tuesday, June 23, 1998.

PLACE: DoubleTree Hotel—World Arena, 1775 East Cheyenne Mountain Boulevard, Colorado Springs, Colorado 80906.

STATUS: Open.

MATTERS TO BE CONSIDERED: Fees for Technical/Training Resource Providers; Updates on Strategic Planning and Interstate Compact Activities; and Program Division Reports and FY 1999 Service Plan Recommendations.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, (202) 307-3106, ext. 155.

Morris L. Thigpen,

Director,

[FR Doc. 98-12662 Filed 5-12-98; 8:45 am]

BILLING CODE 4410-36-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power and Light Company Susquehanna Steam Electric Station, Units 1 and 2; Correction

The April 27, 1998, Federal Register contained a "Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing," for the Susquehanna Steam Electric Station, Unit 1 and 2. This notice corrects the notice published in

the Federal Register on April 27, 1998 (63 FR 20667). The application date should read August 1, 1996, instead of August 6, 1996.

Dated at Rockville, Maryland, this 4th day of May 1998.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-12673 Filed 5-12-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NUREG-1600, Rev. 1]

Revision of NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing a complete revision of the agency's Enforcement Policy (NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions") based on (1) a 2-year review of the revised Enforcement Policy, that was effective June 30, 1995, and (2) a consolidation of changes to the Enforcement Policy since June 30, 1995. **DATES:** This action is effective May 13, 1998, while comments are being received. Submit comments on or before June 29, 1998.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415-2741.

SUPPLEMENTARY INFORMATION: On June 30, 1995, the Commission published a complete revision of the NRC's Enforcement Policy (60 FR 34381). The changes to the Enforcement Policy resulted from the efforts of a review team established in 1994 to assess the NRC's enforcement program. The review team published its recommendations in

NUREG-1525, "Assessment of the NRC Enforcement Program," and the Commission made revisions to the Enforcement Policy after considering those recommendations. The revisions to the Enforcement Policy were intended to, among other things:

- Emphasize the importance of identifying problems before events occur, and of taking prompt, comprehensive corrective action when problems are identified;
- Direct agency attention at licensees with multiple enforcement actions in a relatively short period; and
- Focus on current performance of licensees.

The revisions to the Enforcement Policy were also intended to better focus the inspection and enforcement process on safety, provide greater incentives for strong self-monitoring and corrective action programs in the civil penalty assessment process, provide more predictability and consistency in the civil penalty assessment process, and to better convey clear regulatory messages.

When the Commission published the revised Enforcement Policy in the Federal Register on June 30, 1995, it stated that it would provide the public an opportunity to comment on the revised Enforcement Policy after it had been in effect for about 18 months. On February 5, 1997 (62 FR 5495), the Commission published an opportunity for the public to comment on the revised Enforcement Policy.

The NRC has reviewed approximately 2 years of experience under the revised Enforcement Policy and considered public comments. The NRC staff prepared a report (NUREG-1622,¹ "NRC Enforcement Policy Review: July 1995—July 1997," November 1997) that concluded that the changes made to the Enforcement Policy in 1995 (especially in the civil penalty assessment process) have helped to improve the predictability and consistency of enforcement actions, while maintaining the agency's desire to use enforcement sanctions for providing appropriate emphasis and deterrence in a way that helps to support the agency's overall safety mission. This conclusion is

¹ Copies of NUREG-1622 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20555-0001. The report is also included on the NRC's Office of Enforcement's homepage on the Internet at www.nrc.gov/OE/.

reflected in several aspects of the Enforcement Policy:

- The current Enforcement Policy is appropriately geared toward creating deterrence (i.e., taking action in a manner that provides incentives to identify and correct violations that have occurred and discourage future violations) and is properly structured for nuclear regulation.

- The Enforcement Policy recognizes that violations have varying degrees of safety significance, and that in considering the significance of a violation, it is appropriate to consider the technical significance (i.e., actual and potential consequences) and the regulatory significance. In addition, risk is an appropriate consideration in evaluating the technical significance of a violation.

- The Enforcement Policy is appropriately structured to maintain a focus on safety.

- The current civil penalty assessment process is appropriately structured to reflect issues the agency believes are appropriate to consider in assessing whether a civil penalty should be proposed, i.e., past performance, identification, corrective action, and those warranting discretion.

- The use of discretion and judgment throughout the deliberative process recognizes that enforcement of NRC requirements does not lend itself to mechanistic treatment.

Notwithstanding the general satisfaction with the Enforcement Policy, the review included a number of recommendations to the Commission for revisions to the Enforcement Policy and for development of additional enforcement guidance. The Commission is issuing this policy statement after considering those recommendations and the bases for them in NUREG-1622.

The more significant changes to the Enforcement Policy (in the order that they appear in the Policy) are described below:

I. Introduction and Purpose

This section has been modified to include a brief discussion on the meaning of "safety" and "compliance" as they are used in the context of this policy statement. This section also references a new appendix (Appendix A) that describes the nexus between safety and compliance.

III. Responsibilities

This section has been modified to reflect that the Chief Financial Officer (CFO) is delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees. The

Office of the Chief Financial Officer (OCFO) was created as part of the NRC's January 5, 1997, reorganization. The Office of the Controller has now been incorporated into the OCFO and the position of the Director, Office of the Controller (previously identified in the policy as having the issuing authority), has been subsumed by the CFO.

This section has also been modified to emphasize that the technical and regulatory significance of violations are considered in conjunction with the principles of the policy statement and the surrounding circumstances when the agency determines the appropriate enforcement strategy.

This section has also been revised to indicate that the Commission is to be provided notification (where appropriate, based on the uniqueness or significance of the issue) for a plant meeting the criteria of Section VII.B.6 (mitigation for violations involving special circumstances). This is consistent with the policy revision to Section VII issued on December 26, 1996 (61 FR 68070).

IV. Severity of Violations

This section has been modified such that minor violations will no longer be noted as Non-Cited Violations (NCVs) when they are documented in inspection reports. Instead, if a minor violation warrants documentation, it will be noted as a violation of minor significance that is not subject to formal enforcement action. The definition of an NCV included in footnote 6 has also been deleted. The purpose of these changes is to avoid confusion between minor violations dispositioned as NCVs in accordance with Section IV and Severity Level IV violations dispositioned as NCVs in accordance with Section VII.B.1, "Licensee-Identified Severity Level IV Violations." Use of the term "NCV" will now be reserved for those Severity Level IV violations that meet the criteria for discretion in Section VII.B.1.

V. Predecisional Enforcement Conferences

This section has been modified to indicate that a predecisional enforcement conference is not required if the NRC has sufficient information to make an informed enforcement decision. If a conference is not held, the licensee may be requested to provide a written response to an inspection report as to the licensee's views on the apparent violations and their root causes and a description of planned or implemented corrective actions. (The previous discussion indicated that the licensee will normally be requested to

provide a written response.) It is the NRC's intent that this approach will normally be taken in the event a civil penalty is under consideration. This section has also been modified to include an additional option when a conference is not held, such that the NRC may proceed to issue an enforcement action without first obtaining the licensee's response to the inspection report, if the NRC has sufficient information to conclude that a civil penalty is not warranted. This approach would still: (1) Provide licensees an opportunity to request a conference to dispute the action, (2) provide licensees an opportunity to dispute the action in writing through the provisions of 10 CFR 2.201 (as with any Notice of Violation), (3) allow the NRC to conduct a conference where matters are disputed or where the licensee's documented corrective actions are not sufficiently prompt and comprehensive, and (4) provide for modification or rescission of the NOV, if appropriate.

It should be noted that these modifications are not meant to be construed as exclusive enforcement options. In other words, it does not change the existing practice whereby the NRC may choose to issue an enforcement action (including civil penalties and orders) without conducting a conference. These changes are being made in an effort to make the enforcement process more efficient (by reducing the number of conferences and reducing the workload of both the NRC and licensees and improving the timeliness of enforcement actions).

VI. Enforcement Actions

This general discussion of the NRC's philosophy and approach to taking enforcement has been modified by including the recognition that circumstances regarding a violation may warrant discretion such that the NRC may refrain from issuing a Notice of Violation or other enforcement action. This discussion was previously included in Section VI.A, "Notice of Violation," and has been more appropriately relocated to this section.

A. Notice of Violation

The NRC has had a long-standing policy that licensees are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that are not avoidable by reasonable licensee quality assurance measures or management controls. This discussion has been deleted from this section and more appropriately included in the discussion on mitigation of sanctions in

Section VII.B.6, "Violations Involving Special Circumstances."

B. Civil Penalty

1. Base Civil Penalty

Table 1A has been revised to correct the inadvertent omission of a footnote that indicates that large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material be considered as industrial processors. Table 1A had included this footnote prior to the 1995 policy revision and this footnote was included in the table in the draft Federal Register notice that the Commission approved for publication and in the table in Section II.D.7.c of NUREG-1525. Table 1A has also been revised to include additional guidance in determining which category material users should be considered under by including "other large material users" in category "c" and "other small materials users" in category "d."

VII. Exercise of Discretion

B. Mitigation of Enforcement Sanctions

Section VII.B.1, "Licensee-Identified Severity Level IV Violations," is being modified to address licensee-identified violations that are identified as a result of an event. On December 10, 1996 (61 FR 65088), the Commission issued a revision to the Enforcement Policy that included a modification to the criterion in Section VII.B.1.a. Specifically, the phrase "including identification through an event" was deleted from the criterion. The modification was intended to make it clear that use of discretion is not automatic if the violation is identified through an event. A footnote is being included to the criterion to address how the NRC will normally consider violations that are identified as a result of an event.

The Commission recognizes that there may be particular circumstances in a case where discretion is warranted and the NRC should refrain from issuing enforcement action. Sections VII.B.3, VII.B.4, and VII.B.6 of the Enforcement Policy provide that discretion may be warranted for certain Severity Level II and III violations. If the circumstances of a particular case may warrant discretion at Severity Level II or III, then discretion may also be appropriate at Severity Level IV. Therefore, changes have been made to the examples to reflect that the NRC may choose to refrain from issuing a Notice of Violation for a Severity Level IV violation.

Section VII.B.6 was also modified to include additional factors for consideration, including whether the

regulatory requirement that was violated was clear, or given the NRC's current information, appropriate. As previously addressed, this section also includes that the NRC may refrain from issuing enforcement action for violations resulting from matters beyond a licensee's control. However, licensees are generally responsible for the actions of its employees. The revised text, consistent with long-standing NRC interpretation, makes it clear that licensees are also responsible for the actions of their contractors.

Appendix A: Safety and Compliance

This appendix has been added to address the NRC's philosophy on the nexus between safety and compliance.

Appendix B: Supplements—Violation Examples

This appendix was administratively created as a result of the addition of Appendix A and includes the previous guidance included in the Supplements section of the policy.

Supplement VII—Miscellaneous Matters

Examples B.4 and C.4 have been revised to reflect NRC practice in applying Severity Level II and III categorization for violations involving discrimination. In particular, Severity Level II categorization is appropriate for discriminatory acts by middle to upper management, not simply any level above first-line supervision. Severity Level III categorization is appropriate for low-level supervision and management, even if they are above a first-line supervisor.

Paperwork Reduction Act

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has

determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, the NRC Enforcement Policy is revised to read as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

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Preface

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission (NRC or Commission) and

the NRC staff (staff) in initiating enforcement actions, and of the presiding officers and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment.¹ This statement of general policy and procedure will be published as NUREG-1600 to provide widespread dissemination of the Commission's Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as appropriate under the circumstances of a particular case.

I. Introduction and Purpose

The purpose of the NRC enforcement program is to support the NRC's overall safety mission in protecting the public and the environment. Consistent with that purpose, enforcement action should be used:

- As a deterrent to emphasize the importance of compliance with requirements, and
- To encourage prompt identification and prompt, comprehensive correction of violations.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees, contractors,² and their employees, who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects.³ Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of this enforcement policy. In no case, however, will licensees who cannot achieve and maintain adequate levels of safety be permitted to conduct licensed activities.

For purposes of this policy statement, safety means avoiding undue risk, i.e.,

¹ Antitrust enforcement matters will be dealt with on a case-by-case basis.

² The term "contractor" as used in this policy includes vendors who supply products or services to be used in an NRC-licensed facility or activity.

³ This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. Therefore, the term "licensee" is used throughout the policy. However, in those cases where the NRC determines that it is appropriate to take enforcement action against a non-licensee or individual, the guidance in this policy will be used, as applicable. These non-licensees include contractors and subcontractors, holders of, or applicants for, NRC approvals, e.g., certificates of compliance, early site permits, or standard design certificates and the employees of these non-licensees. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

providing reasonable assurance of adequate protection for the public in connection with the use of source, byproduct and special nuclear materials. Compliance means meeting regulatory requirements. Appendix A to this policy statement describes the nexus between safety and compliance.

II. Statutory Authority and Procedural Framework

A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

Section 161 of the Atomic Energy Act authorizes the NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes the NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes the NRC to impose civil penalties not to exceed \$100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes the NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes the NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Notwithstanding the \$100,000 limit stated in the Atomic Energy Act, the Commission may impose higher civil penalties as provided by the Debt Collection Improvement Act of 1996. Under the Act, the Commission is required to modify civil monetary penalties to reflect inflation. The adjusted maximum civil penalty amount is reflected in 10 CFR 2.205 and this Policy Statement.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal

penalties (i.e., monetary fines and imprisonment) for willful violations of the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

B. Procedural Framework

Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the civil penalty process is initiated by issuing a Notice of Violation and Proposed Imposition of a Civil Penalty. The licensee or other person is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the response, the civil penalty may be mitigated, remitted, or imposed. An opportunity is provided for a hearing if a civil penalty is imposed. If a civil penalty is not paid following a hearing or if a hearing is not requested, the matter may be referred to the U.S. Department of Justice to institute a civil action in District Court.

The procedure for issuing an order to institute a proceeding to modify, suspend, or revoke a license or to take other action against a licensee or other person subject to the jurisdiction of the Commission is set forth in 10 CFR 2.202. The licensee or any other person adversely affected by the order may request a hearing. The NRC is authorized to make orders immediately effective if required to protect the public health, safety, or interest, or if the violation is willful. Section 2.204 sets out the procedures for issuing a Demand for Information (Demand) to a licensee or other person subject to the Commission's jurisdiction for the purpose of determining whether an order or other enforcement action should be issued. The Demand does not

provide hearing rights, as only information is being sought. A licensee must answer a Demand. An unlicensed person may answer a Demand by either providing the requested information or explaining why the Demand should not have been issued.

III. Responsibilities

The Executive Director for Operations (EDO) and the principal enforcement officer of the NRC, the Deputy Executive Director for Regulatory Effectiveness, hereafter referred to as the Deputy Executive Director, has been delegated the authority to approve or issue all escalated enforcement actions.⁴ The Deputy Executive Director is responsible to the EDO for the NRC enforcement program. The Office of Enforcement (OE) exercises oversight of and implements the NRC enforcement program. The Director, OE, acts for the Deputy Executive Director in enforcement matters in his absence or as delegated.

Subject to the oversight and direction of OE, and with the approval of the Deputy Executive Director, where necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. However, subject to the same oversight as the regional offices, the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) may also issue Notices of Violation and proposed civil penalties for certain activities. Enforcement orders are normally issued by the Deputy Executive Director or the Director, OE. However, orders may also be issued by the EDO, especially those involving the more significant matters. The Directors of NRR and NMSS have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions not associated with compliance issues. The Chief Financial Officer has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees.

In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of this

⁴ The term "escalated enforcement action" as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem) or any order based upon a violation.

penalty, after considering the general principles of this statement of policy and the technical and regulatory significance of the violations and the surrounding circumstances.

Unless Commission consultation or notification is required by this policy, the NRC staff may depart, where warranted in the public's interest, from this policy as provided in Section VII, "Exercise of Enforcement Discretion." The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will also be provided notice the first time that discretion is exercised for a plant meeting the criteria of Section VII.B.2. The Commission is also to be provided notification (where appropriate, based on the uniqueness or significance of the issue) for a plant meeting the criteria of Section VII.B.6. In addition, the Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

- (1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation;
- (2) Proposals to impose a civil penalty for a single violation or problem that is greater than 3 times the Severity Level I value shown in Table 1A for that class of licensee;
- (3) Any proposed enforcement action that involves a Severity Level I violation;
- (4) Any action the EDO believes warrants Commission involvement;
- (5) Any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and
- (6) Any proposed enforcement action on which the Commission asks to be consulted.

IV. Severity of Violations

Regulatory requirements⁵ have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory

⁵ The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

significance, is evaluated as the first step in the enforcement process. In considering the significance of a violation, the staff considers the technical significance, i.e., actual and potential consequences, and the regulatory significance. In evaluating the technical significance, risk is an appropriate consideration.

Consequently, for purposes of formal enforcement action, violations are normally categorized in terms of four levels of severity to show their relative importance within each of the following eight activity areas:

- I. Reactor Operations;
- II. Facility Construction;
- III. Safeguards;
- IV. Health Physics;
- V. Transportation;
- VI. Fuel Cycle and Materials Operations;
- VII. Miscellaneous Matters; and
- VIII. Emergency Preparedness.

Licensed activities will be placed in the activity area most suitable in light of the particular violation involved including activities not directly covered by one of the above listed areas, e.g., export license activities. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level IV violations are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant regulatory concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern.

The Commission recognizes that there are other violations of minor safety or environmental concern which are below the level of significance of Severity Level IV violations. These minor violations are not the subject of formal enforcement action and are not usually described in inspection reports. To the extent such violations are described, they will be noted as violations of minor significance that are not subject to formal enforcement action.

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

Supplements I through VIII provide examples and serve as guidance in determining the appropriate severity level for violations in each of the eight activity areas. However, the examples

are neither exhaustive nor controlling. In addition, these examples do not create new requirements. Each is designed to illustrate the significance that the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level best suited to the significance of the particular violation. In some cases, special circumstances may warrant an adjustment to the severity level categorization.

A. Aggregation of Violations

A group of Severity Level IV violations may be evaluated in the aggregate and assigned a single, increased severity level, thereby resulting in a Severity Level III problem, if the violations have the same underlying cause or programmatic deficiencies, or the violations contributed to or were unavoidable consequences of the underlying problem. Normally, Severity Level II and III violations are not aggregated into a higher severity level.

The purpose of aggregating violations is to focus the licensee's attention on the fundamental underlying causes for which enforcement action appears warranted and to reflect the fact that several violations with a common cause may be more significant collectively than individually and may, therefore, warrant a more substantial enforcement action.

B. Repetitive Violations

The severity level of a Severity Level IV violation may be increased to Severity Level III, if the violation can be considered a repetitive violation.⁶ The purpose of escalating the severity level of a repetitive violation is to acknowledge the added significance of the situation based on the licensee's failure to implement effective corrective action for the previous violation. The decision to escalate the severity level of a repetitive violation will depend on the circumstances, such as, but not limited to, the number of times the violation has occurred, the similarity of the violations and their root causes, the adequacy of

⁶ The term "repetitive violation" or "similar violation" as used in this policy statement means a violation that reasonably could have been prevented by a licensee's corrective action for a previous violation normally occurring (1) within the past 2 years of the inspection at issue, or (2) the period within the last two inspections, whichever is longer.

previous corrective actions, the period of time between the violations, and the significance of the violations.

C. Willful Violations

Willful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the Commission or a licensee. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization. Although removal of the person is not necessarily required, substantial disciplinary action is expected.

Therefore, the severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness. The term "willfulness" as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., inadvertent clerical errors in a document submitted to the NRC. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee official⁷ or non-supervisory employee), the significance of any underlying violation, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

However, if a licensee refuses to correct a minor violation within a reasonable

⁷ The term "licensee official" as used in this policy statement means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.

time such that it willfully continues, the violation should be categorized at least at a Severity Level IV.

D. Violations of Reporting Requirements

The NRC expects licensees to provide complete, accurate, and timely information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event that it failed to report. A licensee will, on the other hand, normally be cited for a failure to report a condition or event if the licensee knew of the information to be reported, but did not recognize that it was required to make a report.

V. Predecisional Enforcement Conferences

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a contractor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, contractor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) A common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective actions taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

If the NRC concludes that it has sufficient information to make an informed enforcement decision, a conference will not normally be held. However, an opportunity for a conference will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person. If a conference is not held, the licensee may be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and a

description of planned or implemented corrective actions. However, if the NRC has sufficient information to conclude that a civil penalty is not warranted, it may proceed to issue an enforcement action without first obtaining the licensee's response to the inspection report.

During the predecisional enforcement conference, the licensee, contractor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, contractors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in the regional offices and are normally open to public observation. Conferences will not normally be open to the public if the enforcement action being contemplated:

(1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;

(2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;

(3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or

(4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

(5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or

(6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more intervenors or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, notwithstanding the above normal criteria for opening or closing

conferences, with the approval of the Executive Director for Operations, conferences may either be open or closed to the public after balancing the benefit of the public's observation against the potential impact on the agency's decision-making process in a particular case.

The NRC will notify the licensee that the conference will be open to public observation. Consistent with the agency's policy on open meetings, "Staff Meetings Open to Public," published September 20, 1994 (59 FR 48340), the NRC intends to announce open conferences normally at least 10 working days in advance of conferences through (1) notices posted in the Public Document Room, (2) a toll-free telephone recording at 800-952-9674, (3) a toll-free electronic bulletin board at 800-952-9676, and on the World Wide Web at the NRC Office of Enforcement homepage (www.nrc.gov/OE). In addition, the NRC will also issue a press release and notify appropriate State liaison officers that a predecisional enforcement conference has been scheduled and that it is open to public observation.

The public attending open conferences may observe but may not participate in the conference. It is noted that the purpose of conducting open conferences is not to maximize public attendance, but rather to provide the public with opportunities to be informed of NRC activities consistent with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the "Standard Operating Procedures For Providing Security Support For NRC Hearings and Meetings," published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18" be permitted, and that disruptive persons may be removed. The open conference will be terminated if disruption interferes with a successful conference. NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

For a case in which an NRC Office of Investigations (OI) report finds that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report may be made public, subject to withholding certain information (i.e., after appropriate redaction), in which

case the associated predecisional enforcement conference will normally be open to public observation. In a conference where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as "complainant") will normally be provided an opportunity to participate in the predecisional enforcement conference with the licensee/employer. This participation will normally be in the form of a complainant statement and comment on the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written response to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response. For cases involving potential discrimination by a contractor, any associated predecisional enforcement conference with the contractor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. The purpose of the complainant's participation is to provide information to the NRC to assist it in its enforcement deliberations.

A predecisional enforcement conference may not need to be held in cases where there is a full adjudicatory record before the Department of Labor. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences,

or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

VI. Enforcement Actions

This section describes the enforcement sanctions available to the NRC and specifies the conditions under which each may be used. The basic enforcement sanctions are Notices of Violation, civil penalties, and orders of various types. As discussed further in Section VI.D, related administrative actions such as Notices of Nonconformance, Notices of Deviation, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information are used to supplement the enforcement program. In selecting the enforcement sanctions or administrative actions, the NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters.

Usually, whenever a violation of NRC requirements of more than a minor concern is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, a Notice of Violation or a Notice of Nonconformance is the normal action.

However, circumstances regarding the violation findings may warrant discretion being exercised such that the NRC refrains from issuing a Notice of Violation or other enforcement action. (See Section VII.B, "Mitigation of Enforcement Sanctions.")

A. Notice of Violation

A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The Notice of Violation normally requires the recipient to provide a written statement describing (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) corrective steps that have been taken and the results achieved; (3) corrective steps that will be taken to prevent recurrence; and (4) the date when full compliance will be achieved. The NRC may waive all or portions of a written response to the extent relevant information has already been provided to the NRC in writing or documented in an NRC inspection report. The NRC may

require responses to Notices of Violation to be under oath. Normally, responses under oath will be required only in connection with Severity Level I, II, or III violations or orders.

The NRC uses the Notice of Violation as the usual method for formalizing the existence of a violation. Issuance of a Notice of Violation is normally the only enforcement action taken, except in cases where the criteria for issuance of civil penalties and orders, as set forth in Sections VI.B and VI.C, respectively, are met.

B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the Energy Reorganization Act. Civil penalties are designed to deter future violations both by the involved licensee as well as by other licensees conducting similar activities and to emphasize the need for licensees to identify violations and take prompt comprehensive corrective action.

Civil penalties are considered for Severity Level III violations. In addition, civil penalties will normally be assessed for Severity Level I and II violations and knowing and conscious violations of the reporting requirements of section 206 of the Energy Reorganization Act.

Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus licensees' attention on violations of significant regulatory concern.

Although management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of management involvement may not be used to mitigate a civil penalty. Allowing mitigation in the latter case could encourage the lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

1. Base Civil Penalty

The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, contractors, and other persons. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes

into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider as necessary an increase or decrease on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

2. Civil Penalty Assessment

In an effort to (1) emphasize the importance of adherence to requirements and (2) reinforce prompt self-identification of problems and root causes and prompt and comprehensive correction of violations, the NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties shown in Table 1A and 1B for Severity Level I, II, and III violations as described below.

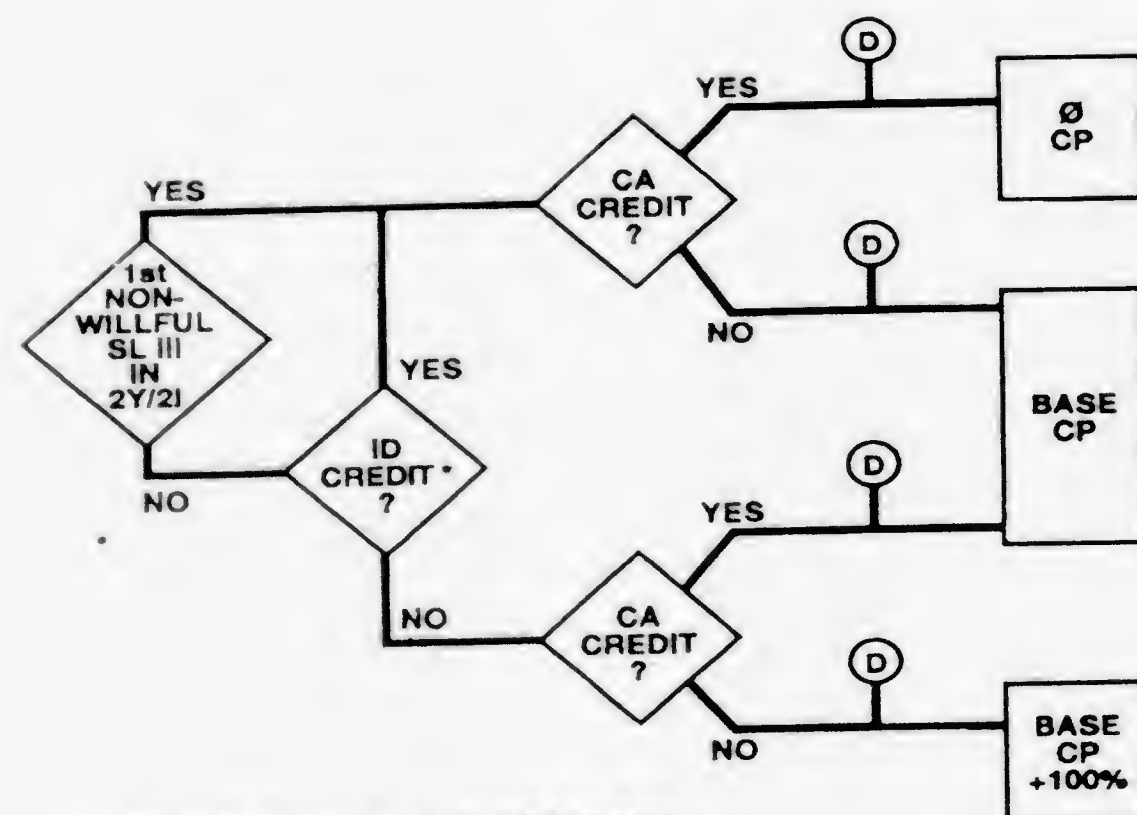
The civil penalty assessment process considers four decisional points: (a) Whether the licensee has had any previous escalated enforcement action (regardless of the activity area) during the past 2 years or past 2 inspections, whichever is longer; (b) whether the licensee should be given credit for actions related to identification; (c) whether the licensee's corrective actions are prompt and comprehensive; and (d) whether, in view of all the circumstances, the matter in question requires the exercise of discretion. Although each of these decisional points may have several associated

considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one

of the following three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100%. The flow chart presented below is a graphic

representation of the civil penalty assessment process.

BILLING CODE 7590-01-P



* Should the licensee be given credit for actions related to Identification?

(D) Discretion, e.g., SL I and II violations should normally result in a civil penalty regardless of ID and CA.

BILLING CODE 7590-01-C

a. *Initial Escalated Action.* When the NRC determines that a non-willful Severity Level III violation or problem has occurred, and the licensee has not had any previous escalated actions (regardless of the activity area) during the past 2 years or 2 inspections, whichever is longer, the NRC will consider whether the licensee's corrective action for the present violation or problem is reasonably prompt and comprehensive (see the discussion under Section VI.B.2.c, below). Using 2 years as the basis for assessment is expected to cover most situations, but considering a slightly longer or shorter period might be warranted based on the circumstances of a particular case. The starting point of this period should be considered the date when the licensee was put on notice of the need to take corrective action. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists requiring corrective action. For an NRC-identified

violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

If the corrective action is judged to be prompt and comprehensive, a Notice of Violation normally should be issued with no associated civil penalty. If the corrective action is judged to be less than prompt and comprehensive, the Notice of Violation normally should be issued with a base civil penalty.

b. *Credit for Actions Related to Identification.* (1) If a Severity Level I or II violation or a willful Severity Level III violation has occurred—or if, during the past 2 years or 2 inspections, whichever is longer, the licensee has been issued at least one other escalated action—the civil penalty assessment should normally consider the factor of identification in addition to corrective action (see the discussion under Section VI.B.2.c, below). As to identification, the NRC should consider whether the

licensee should be given credit for actions related to identification.

In each case, the decision should be focused on identification of the problem requiring corrective action. In other words, although giving credit for *Identification* and *Corrective Action* should be separate decisions, the concept of *Identification* presumes that the identifier recognizes the existence of a problem, and understands that corrective action is needed. The decision on *Identification* requires considering all the circumstances of identification including:

(i) Whether the problem requiring corrective action was NRC-identified, licensee-identified, or revealed through an event*;

* An "event," as used here, means (1) an event characterized by an active adverse impact on equipment or personnel, readily obvious by human observation or instrumentation, or (2) a radiological impact on personnel or the environment in excess of regulatory limits, such as an overexposure, a release of radioactive material above NRC limits, or a loss of radioactive material. For example, an equipment failure discovered through a spill of liquid, a loud noise, the failure to have a system

(ii) Whether prior opportunities existed to identify the problem requiring corrective action, and if so, the age and number of those opportunities;

(iii) Whether the problem was revealed as the result of a licensee self-monitoring effort, such as conducting an audit, a test, a surveillance, a design review, or troubleshooting;

(iv) For a problem revealed through an event, the ease of discovery, and the degree of licensee initiative in identifying the root cause of the problem and any associated violations;

(v) For NRC-identified issues, whether the licensee would likely have identified the issue in the same time-period if the NRC had not been involved;

(vi) For NRC-identified issues, whether the licensee should have identified the issue (and taken action) earlier; and

(vii) For cases in which the NRC identifies the overall problem requiring corrective action (e.g., a programmatic issue), the degree of licensee initiative or lack of initiative in identifying the problem or problems requiring corrective action.

(2) Although some cases may consider all of the above factors, the importance of each factor will vary based on the type of case as discussed in the following general guidance:

(i) *Licensee-Identified.* When a problem requiring corrective action is licensee-identified (i.e., identified before the problem has resulted in an event), the NRC should normally give the licensee credit for actions related to identification, regardless of whether prior opportunities existed to identify the problem.

(ii) *Identified Through an Event.* When a problem requiring corrective action is identified through an event, the decision on whether to give the licensee credit for actions related to identification normally should consider the ease of discovery, whether the event occurred as the result of a licensee self-monitoring effort (i.e., whether the licensee was "looking for the problem"), the degree of licensee initiative in identifying the problem or problems requiring corrective action, and whether prior opportunities existed to identify the problem.

respond properly, or an annunciator alarm would be considered an event; a system discovered to be inoperable through a document review would not. Similarly, if a licensee discovered, through quarterly dosimetry readings, that employees had been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

Any of these considerations may be overriding if particularly noteworthy or particularly egregious. For example, if the event occurred as the result of conducting a surveillance or similar self-monitoring effort (i.e., the licensee was looking for the problem), the licensee should normally be given credit for identification. As a second instance, even if the problem was easily discovered (e.g., revealed by a large spill of liquid), the NRC may choose to give credit because noteworthy licensee effort was exerted in ferreting out the root cause and associated violations, or simply because no prior opportunities (e.g., procedural cautions, post-maintenance testing, quality control failures, readily observable parameter trends, or repeated or locked-in annunciator warnings) existed to identify the problem.

(iii) *NRC-Identified.* When a problem requiring corrective action is NRC-identified, the decision on whether to give the licensee credit for actions related to *Identification* should normally be based on an additional question: should the licensee have reasonably identified the problem (and taken action) earlier?

In most cases, this reasoning may be based simply on the ease of the NRC inspector's discovery (e.g., conducting a walkdown, observing in the control room, performing a confirmatory NRC radiation survey, hearing a cavitating pump, or finding a valve obviously out of position). In some cases, the licensee's missed opportunities to identify the problem might include a similar previous violation, NRC or industry notices, internal audits, or readily observable trends.

If the NRC identifies the violation but concludes that, under the circumstances, the licensee's actions related to *Identification* were not unreasonable, the matter would be treated as licensee-identified for purposes of assessing the civil penalty. In such cases, the question of *Identification* credit shifts to whether the licensee should be penalized for NRC's identification of the problem.

(iv) *Mixed Identification.* For "mixed" identification situations (i.e., where multiple violations exist, some NRC-identified, some licensee-identified, or where the NRC prompted the licensee to take action that resulted in the identification of the violation), the NRC's evaluation should normally determine whether the licensee could reasonably have been expected to identify the violation in the NRC's absence. This determination should consider, among other things, the timing of the NRC's discovery, the information

available to the licensee that caused the NRC concern, the specificity of the NRC's concern, the scope of the licensee's efforts, the level of licensee resources given to the investigation, and whether the NRC's path of analysis had been dismissed or was being pursued in parallel by the licensee.

In some cases, the licensee may have addressed the isolated symptoms of each violation (and may have identified the violations), but failed to recognize the common root cause and taken the necessary comprehensive action. Where this is true, the decision on whether to give licensee credit for actions related to *Identification* should focus on identification of the problem requiring corrective action (e.g., the programmatic breakdown). As such, depending on the chronology of the various violations, the earliest of the individual violations might be considered missed opportunities for the licensee to have identified the larger problem.

(v) *Missed Opportunities to Identify.* Missed opportunities include prior notifications or missed opportunities to identify or prevent violations such as (1) through normal surveillances, audits, or quality assurance (QA) activities; (2) through prior notice, i.e., specific NRC or industry notification; or (3) through other reasonable indication of a potential problem or violation, such as observations of employees and contractors, and failure to take effective corrective steps. It may include findings of the NRC, the licensee, or industry made at other facilities operated by the licensee where it is reasonable to expect the licensee to take action to identify or prevent similar problems at the facility subject to the enforcement action at issue. In assessing this factor, consideration will be given to, among other things, the opportunities available to discover the violation, the ease of discovery, the similarity between the violation and the notification, the period of time between when the violation occurred and when the notification was issued, the action taken (or planned) by the licensee in response to the notification, and the level of management review that the notification received (or should have received).

The evaluation of missed opportunities should normally depend on whether the information available to the licensee should reasonably have caused action that would have prevented the violation. Missed opportunities is normally not applied where the licensee appropriately reviewed the opportunity for application to its activities and reasonable action was either taken or

planned to be taken within a reasonable time.

In some situations the missed opportunity is a violation in itself. In these cases, unless the missed opportunity is a Severity Level III violation in itself, the missed opportunity violation may be grouped with the other violations into a single Severity Level III "problem." However, if the missed opportunity is the *only* violation, then it should not normally be counted twice (i.e., both as the violation and as a missed opportunity—"double counting") unless the number of opportunities missed was particularly significant.

The timing of the missed opportunity should also be considered. While a rigid time-frame is unnecessary, a 2-year period should generally be considered for consistency in implementation, as the period reflecting relatively current performance.

(3) When the NRC determines that the licensee should receive credit for actions related to *Identification* the civil penalty assessment should normally result in either no civil penalty or a base civil penalty, based on whether *Corrective Action* is judged to be reasonably prompt and comprehensive. When the licensee is not given credit for actions related to *Identification* the civil penalty assessment should normally result in a Notice of Violation with either a base civil penalty or a base civil penalty escalated by 100%, depending on the quality of *Corrective Action*, because the licensee's performance is clearly not acceptable.

c. *Credit for Prompt and Comprehensive Corrective Action.* The purpose of the *Corrective Action* factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirement(s); and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root causes.

Regardless of other circumstances (e.g., past enforcement history, identification), the licensee's corrective actions should always be evaluated as part of the civil penalty assessment process. As a reflection of the importance given to this factor, an NRC judgment that the licensee's corrective action has not been prompt and comprehensive will always result in issuing at least a base civil penalty.

In assessing this factor, consideration will be given to the timeliness of the corrective action (including the promptness in developing the schedule for long term corrective action), the adequacy of the licensee's root cause analysis for the violation, and, given the significance and complexity of the issue, the comprehensiveness of the corrective action (i.e., whether the action is focused narrowly to the specific violation or broadly to the general area of concern). Even in cases when the NRC, at the time of the enforcement conference, identifies additional peripheral or minor corrective action still to be taken, the licensee may be given credit in this area, as long as the licensee's actions addressed the underlying root cause and are considered sufficient to prevent recurrence of the violation and similar violations.

Normally, the judgment of the adequacy of corrective actions will hinge on whether the NRC had to take action to focus the licensee's evaluative and corrective process in order to obtain comprehensive corrective action. This will normally be judged at the time of the predecisional enforcement conference (e.g., by outlining substantive additional areas where corrective action is needed). Earlier informal discussions between the licensee and NRC inspectors or management may result in improved corrective action, but should not normally be a basis to deny credit for *Corrective Action*. For cases in which the licensee does not get credit for actions related to *Identification* because the NRC identified the problem, the assessment of the licensee's corrective action should begin from the time when the NRC put the licensee on notice of the problem. Notwithstanding eventual good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, corrective action would not be considered prompt and comprehensive.

Corrective action for violations involving discrimination should normally only be considered comprehensive if the licensee takes prompt, comprehensive corrective action that (1) addresses the broader environment for raising safety concerns in the workplace, and (2) provides a remedy for the particular discrimination at issue.

In response to violations of 10 CFR 50.59, corrective action should normally be considered prompt and comprehensive only if the licensee:

(i) Makes a prompt decision on operability; and either

(ii) Makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as found condition; or

(iii) Promptly initiates corrective action consistent with Criterion XVI of 10 CFR 50, Appendix B, if it intends to restore the facility or procedure to the FSAR description.

d. *Exercise of Discretion.* As provided in Section VII, "Exercise of Discretion," discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects the NRC's concern regarding the violation at issue and that it conveys the appropriate message to the licensee. However, in no instance will a civil penalty for any one violation exceed \$110,000 per day.

TABLE 1A—BASE CIVIL PENALTIES

a. Power reactors and gaseous diffusion plants.....	\$110,000
b. Fuel fabricators, industrial processors, ¹ and independent spent fuel and monitored retrievable storage installations.....	27,500
c. Test reactors, mills and uranium conversion facilities, contractors, waste disposal licensees, industrial radiographers, and other large material users.....	11,000
d. Research reactors, academic, medical, or other small material users ²	5,500

¹ Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

² This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

TABLE 1B—BASE CIVIL PENALTIES

[In percent]

Severity level	Base civil penalty amount ¹
I	100
II	80
III	50

¹ Percent of amount listed in Table 1A.

C. Orders

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (see 10 CFR 2.202). Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate for Severity Level I, II, or III

violations. Orders may be issued as follows:

1. License Modification orders are issued when some change in licensee equipment, procedures, personnel, or management controls is necessary.

2. Suspension Orders may be used:

(a) To remove a threat to the public health and safety, common defense and security, or the environment;

(b) To stop facility construction when, (i) Further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component; or (ii) The licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;

(c) When the licensee has not responded adequately to other enforcement action;

(d) When the licensee interferes with the conduct of an inspection or investigation; or

(e) For any reason not mentioned above for which license revocation is legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

3. Revocation Orders may be used:

(a) When a licensee is unable or unwilling to comply with NRC requirements;

(b) When a licensee refuses to correct a violation;

(c) When licensee does not respond to a Notice of Violation where a response was required;

(d) When a licensee refuses to pay an applicable fee under the Commission's regulations; or

(e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

4. Cease and Desist Orders may be used to stop an unauthorized activity that has continued after notification by the NRC that the activity is unauthorized.

5. Orders to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, or applicants for any of them, and to employees of any of the foregoing, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is deliberately submitted or where the

NRC loses its reasonable assurance that the licensee will meet NRC requirements with that person involved in licensed activities.

Unless a separate response is warranted pursuant to 10 CFR 2.201, a Notice of Violation need not be issued where an order is based on violations described in the order. The violations described in an order need not be categorized by severity level.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show why the order should not be issued in the proposed manner by way of a Demand for Information. (See 10 CFR 2.204)

D. *Related Administrative Actions.* In addition to the formal enforcement actions, Notices of Violation, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its enforcement program. The NRC expects licensees and contractors to adhere to any obligations and commitments resulting from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

1. Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

2. Notices of Nonconformance are written notices describing contractors' failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices of Nonconformance request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

3. Confirmatory Action Letters are letters confirming a licensee's or contractor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

4. Letters of Reprimand are letters addressed to individuals subject to Commission jurisdiction identifying a significant deficiency in their performance of licensed activities.

5. Demands for Information are demands for information from licensees or other persons for the purpose of enabling the NRC to determine whether an order or other enforcement action should be issued.

VII. Exercise of Discretion

Notwithstanding the normal guidance contained in this policy, as provided in Section III, "Responsibilities," the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action appropriately reflects the level of NRC concern regarding the violation at issue and conveys the appropriate message to the licensee.

A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. The application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC may apply its full enforcement authority where the action is warranted. NRC action may include (1) escalating civil penalties, (2) issuing appropriate orders, and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$110,000 per violation, per day.

1. *Civil penalties.* Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, the NRC may exercise discretion by either proposing a civil penalty where application of the factors would otherwise result in zero penalty or by escalating the amount of the resulting civil penalty (i.e., base or twice the base civil penalty) to ensure that the proposed civil penalty reflects the significance of the circumstances and conveys the appropriate regulatory message to the licensee. The Commission will be notified if the deviation in the amount of the civil penalty proposed under this discretion from the amount of the civil penalty assessed under the normal process is

more than two times the base civil penalty shown in Tables 1A and 1B. Examples when this discretion should be considered include, but are not limited to the following:

(a) Problems categorized at Severity Level I or II;

(b) Overexposures, or releases of radiological material in excess of NRC requirements;

(c) Situations involving particularly poor licensee performance, or involving willfulness;

(d) Situations when the licensee's previous enforcement history has been particularly poor, or when the current violation is directly repetitive of an earlier violation;

(e) Situations when the violation results in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase;

(f) Situations when the licensee made a conscious decision to be in noncompliance in order to obtain an economic benefit;

(g) Cases involving the loss of a source. In addition, unless the licensee self-identifies and reports the loss to the NRC, these cases should normally result in a civil penalty in an amount at least in the order of the cost of an authorized disposal of the material or of the transfer of the material to an authorized recipient; or

(h) Severity Level II or III violations associated with departures from the Final Safety Analysis Report identified after two years from October 18, 1996. Such a violation or problem would consider the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted).

2. *Orders.* The NRC may, where necessary or desirable, issue orders in conjunction with or in lieu of civil penalties to achieve or formalize corrective actions and to deter further recurrence of serious violations.

3. *Daily civil penalties.* In order to recognize the added technical safety significance or regulatory significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of \$110,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware or clearly should have been aware of a violation, or if the licensee had an opportunity to identify

and correct the violation but failed to do so.

B. Mitigation of Enforcement Sanctions

The NRC may exercise discretion and refrain from issuing a civil penalty and/or a Notice of Violation, if the outcome of the normal process described in Sections VI.A and VI.B does not result in a sanction consistent with an appropriate regulatory message. In addition, even if the NRC exercises this discretion, when the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report. The approval of the Director, Office of Enforcement, with consultation with the Deputy Executive Director as warranted, is required for exercising discretion of the type described in Section VII.B.1.b where a willful violation is involved, and of the types described in Sections VII.B.2 through VII.B.6. Commission notification is required for exercising discretion of the type described in: (1) Section VII.B.2 the first time discretion is exercised during that plant shutdown, and (2) Section VII.B.6 where appropriate based on the uniqueness or significance of the issue. Examples when discretion should be considered for departing from the normal approach in Sections VI.A and VI.B include, but are not limited to the following:

1. *Licensee-Identified Severity Level IV Violations.* The NRC, with the approval of the Regional Administrator or his or her designee, may refrain from issuing a Notice of Violation for a Severity Level IV violation that is documented in an inspection report (or official field notes for some material cases) and described therein as a Non-Cited Violation (NCV) provided that the inspection report includes a brief description of the corrective action and that the violation meets all of the following criteria:

(a) It was identified by the licensee;⁹

(b) It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or a previous licensee finding that occurred within the past 2 years of the inspection at issue, or the period within the last two inspections, whichever is longer;

(c) It was or will be corrected within a reasonable time, by specific corrective

⁹ Discretion is not warranted when a licensee identifies a violation as a result of an event where the root cause of the event is obvious or the licensee had prior opportunity to identify the problem but failed to take action that would have prevented the event. Discretion may be warranted if the licensee demonstrated initiative in identifying the violation's root cause.

action committed to by the licensee by the end of the inspection, including immediate corrective action and comprehensive corrective action to prevent recurrence;

(d) It was not a willful violation or if it was a willful violation;

(i) The information concerning the violation, if not required to be reported, was promptly provided to appropriate NRC personnel, such as a resident inspector or regional section or branch chief;

(ii) The violation involved the acts of a low-level individual (and not a licensee official as defined in Section IV.C);

(iii) The violation appears to be the isolated action of the employee without management involvement and the violation was not caused by lack of management oversight as evidenced by either a history of isolated willful violations or a lack of adequate audits or supervision of employees; and

(iv) Significant remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization. Although removal of the employee from licensed activities is not necessarily required, substantial disciplinary action is expected.

2. *Violations Identified During Extended Shutdowns or Work Stoppages.* The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after (i) the NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or (ii) the licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time, provided that the violation is documented in an inspection report (or official field notes for some material cases) and that it meets all of the following criteria:

(a) It was either licensee-identified as a result of a comprehensive program for problem identification and correction that was developed in response to the shutdown or identified as a result of an employee allegation to the licensee; (If the NRC identifies the violation and all of the other criteria are met, the NRC should determine whether enforcement action is necessary to achieve remedial action, or if discretion may still be appropriate.)

(b) It is based upon activities of the licensee prior to the events leading to the shutdown;

(c) It would not be categorized at Severity Level I;

(d) It was not willful; and

(e) The licensee's decision to restart the plant requires NRC concurrence.

3. *Violations Involving Old Design Issues.* The NRC may refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was a licensee-identified as a result of its voluntary initiative;

(b) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification (this action should involve expanding the initiative, as necessary, to identify other failures caused by similar root causes); and

(c) It was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities.

In addition, the NRC may refrain from issuing a Notice of Violation for a Severity Level II, III, or IV violation that meets the above criteria provided the violation was caused by conduct that is not reasonably linked to present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

(a) The NRC identifies the violation unless it was likely in the staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's initiative (provided the schedule provides for completion of the licensee's initiative within two years after October 18, 1996;

(b) The licensee identifies the violation as a result of an event or surveillance or other required testing

where required corrective action identifies the FSAR issue;

(c) The licensee identifies the violation but had prior opportunities to do so (was aware of the departure from the FSAR) and failed to correct it earlier;

(d) There is willfulness associated with the violation;

(e) The licensee fails to make a report required by the identification of the departure from the FSAR; or

(f) The licensee either fails to take comprehensive corrective action or fails to appropriately expand the corrective action program. The corrective action should be broad with a defined scope and schedule.

4. *Violations Identified Due to Previous Enforcement Action.* The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after the NRC has taken enforcement action, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was licensee-identified as part of the corrective action for the previous enforcement action;

(b) It has the same or similar root cause as the violation for which enforcement action was issued;

(c) It does not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation; and

(d) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.

(e) It would not be categorized at Severity Level I;

5. *Violations Involving Certain Discrimination Issues.* Enforcement discretion may be exercised for discrimination cases when a licensee who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the

evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (e.g., by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations), allegations of discrimination where a history of findings of discrimination by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

6. *Violations Involving Special Circumstances.* Notwithstanding the outcome of the normal enforcement process addressed in Section VI.A or the normal civil penalty assessment process addressed in Section VI.B, the NRC may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level II, III, or IV violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the technical and regulatory significance of the violation, the clarity of the requirement, the appropriateness of the requirement, the overall sustained performance of the licensee has been particularly good, and other relevant circumstances, including any that may have changed since the violation. This discretion is expected to be exercised only where application of the normal guidance in the policy is unwarranted. In addition, the NRC may refrain from issuing enforcement action

for violations resulting from matters not within a licensee's control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees and contractors. Accordingly, this policy should not be construed to excuse personnel or contractor errors.

C. Exercise of Discretion for an Operating Facility

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. In these circumstances, the NRC staff may choose not to enforce the applicable TS or other license condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. A licensee seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether or not to issue a NOED.

The appropriate Regional Administrator, or his or her designee, may issue a NOED where the noncompliance is temporary and nonrecurring when an amendment is not practical. The Director, Office of Nuclear Reactor Regulation, or his or her designee, may issue a NOED if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). The person exercising enforcement discretion will document the decision.

For an operating plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for

the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) The equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue. In each case where the NRC staff has chosen to issue a NOED, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used. The enforcement action is intended to emphasize that licensees should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended, or plant startup may be delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forego enforcement is discretionary. When enforcement discretion is to be

exercised, it is to be exercised only if the NRC staff is clearly satisfied that such action is warranted from a health and safety perspective.

VIII. Enforcement Actions Involving Individuals

Enforcement actions involving individuals, including licensed operators, are significant personnel actions, which will be closely controlled and judiciously applied. An enforcement action involving an individual will normally be taken only when the NRC is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (i.e., with more than mere negligence) failed to take required actions which have actual or potential safety significance. Most transgressions of individuals at the level of Severity Level III or IV violations will be handled by citing only the facility licensee.

More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as against the facility licensee. Action against the individual, however, will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the facility licensee.
- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.
- Compliance with an express direction of management, such as the Shift Supervisor or Plant Manager, resulted in a violation unless the individual did not express his or her concern or objection to the direction.
- Individual error directly resulting from following the technical advice of an expert unless the advice was clearly unreasonable and the licensed individual should have recognized it as such.
- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Listed below are examples of situations which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement action may be taken directly against the individual. However, violations involving willful conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against a licensee that may impact an individual. The situations include, but are not limited to, violations that involve:

- Willfully causing a licensee to be in violation of NRC requirements.
- Willfully taking action that would have caused a licensee to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.
- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully defeating alarms which have safety significance.
- Unauthorized abandoning of reactor controls.
- Dereliction of duty.
- Falsifying records required by NRC regulations or by the facility license.
- Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.
- Submitting false information and as a result gaining unescorted access to a nuclear power plant.
- Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR Part 50, Appendix B, or other regulatory requirement.
- Willfully providing false certification that components meet the requirements of their intended use, such as ASME Code.
- Willfully supplying, by contractors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.
- Willfully performing unauthorized bypassing of required reactor or other facility safety systems.
- Willfully taking actions that violate Technical Specification Limiting Conditions for Operation or other

license conditions (enforcement action for a willful violation will not be taken if that violation is the result of action taken following the NRC's decision to forego enforcement of the Technical Specification or other license condition or if the operator meets the requirements of 10 CFR 50.54 (x), (i.e., unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency).

Normally, some enforcement action is taken against a licensee for violations caused by significant acts of wrongdoing by its employees, contractors, or contractors' employees. In deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee, the NRC recognizes that judgments will have to be made on a case by case basis. In making these decisions, the NRC will consider factors such as the following:

1. The level of the individual within the organization.
 2. The individual's training and experience as well as knowledge of the potential consequences of the wrongdoing.
 3. The safety consequences of the misconduct.
 4. The benefit to the wrongdoer, e.g., personal or corporate gain.
 5. The degree of supervision of the individual, i.e., how closely is the individual monitored or audited, and the likelihood of detection (such as a radiographer working independently in the field as contrasted with a team activity at a power plant).
 6. The employer's response, e.g., disciplinary action taken.
 7. The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility.
 8. The degree of management responsibility or culpability.
 9. Who identified the misconduct.
- Any proposed enforcement action involving individuals must be issued with the concurrence of the Deputy Executive Director. The particular sanction to be used should be determined on a case-by-case basis.¹⁰ Notices of Violation and Orders are

¹⁰ Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

examples of enforcement actions that may be appropriate against individuals. The administrative action of a Letter of Reprimand may also be considered. In addition, the NRC may issue Demands for Information to gather information to enable it to determine whether an order or other enforcement action should be issued.

Orders to NRC-licensed reactor operators may involve suspension for a specified period, modification, or revocation of their individual licenses. Orders to unlicensed individuals might include provisions that would:

- Prohibit involvement in NRC licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, e.g., completing specified training or meeting certain qualifications.
- Require notification to the NRC before resuming work in licensed activities.
- Require the person to tell a prospective employer or customer engaged in licensed activities that the person has been subject to an NRC order.

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a Notice of Violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's cutoff levels, if lower. However, normally only a Notice of Violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties or evidence of prolonged use. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to 3 years the second time a licensed operator exceeds those cutoff levels. In the event there are less than 3 years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the Part 55 license the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is also subject to license suspension, revocation, or denial.

In addition, the NRC may take enforcement action against a licensee that may impact an individual, where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, appropriate enforcement actions may be taken regarding matters that raise issues of integrity, competence, fitness-for-duty, or other matters that may not necessarily be a violation of specific Commission requirements.

In the case of an unlicensed person, whether a firm or an individual, an order modifying the facility license may be issued to require (1) the removal of the person from all licensed activities for a specified period of time or indefinitely, (2) prior notice to the NRC before utilizing the person in licensed activities, or (3) the licensee to provide notice of the issuance of such an order to other persons involved in licensed activities making reference inquiries. In addition, orders to employers might require retraining, additional oversight, or independent verification of activities performed by the person, if the person is to be involved in licensed activities.

IX. Inaccurate and Incomplete Information

A violation of the regulations involving submittal of incomplete and/or inaccurate information, whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement will be made on a case-by-case basis and will be reserved for egregious violations. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a licensee normally will be categorized based on the guidance herein, in Section IV, "Severity of Violations," and in Supplement VII.

The Commission recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, the Commission must be able to rely on oral communications from licensee officials concerning significant information. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to factors such as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training,

and experience; (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information; (3) the degree of intent or negligence, if any, involved; (4) the formality of the communication; (5) the reasonableness of NRC reliance on the information; (6) the importance of the information which was wrong or not provided; and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a Notice of Violation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the licensee prior to reliance by the NRC, or before the NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available or the advancement in technology was made, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the licensee later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described in this section.

X. Enforcement Action Against Non-Licensees

The Commission's enforcement policy is also applicable to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, quality assurance program approvals, or applicants for any of them, and to employees of any of the foregoing, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or knowing submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, e.g., 10 CFR 30.10 and 50.5.

Contractors who supply products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with licensees, suppliers may be required to have quality assurance programs that meet applicable requirements, e.g., 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Contractors supplying certain products or services

to licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that contractors have failed to fulfill contractual commitments (e.g., 10 CFR Part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their contractors have programs that meet applicable requirements. Notices of Violation will be issued for contractors who violate 10 CFR Part 21. Civil penalties will be imposed against individual directors or responsible officers of a contractor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Nonconformance will be used for contractors who fail to meet commitments related to NRC activities.

XI. Referrals to the Department of Justice

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice (DOJ) for investigation. Referral to the DOJ does not preclude the NRC from taking other enforcement action under this policy. However, enforcement actions will be coordinated with the DOJ in accordance with the Memorandum of Understanding between the NRC and the DOJ, 53 FR 50317 (December 14, 1988).

XII. Public Disclosure of Enforcement Actions

Enforcement actions and licensees' responses, in accordance with 10 CFR 2.790, are publicly available for inspection. In addition, press releases are generally issued for orders and civil penalties and are issued at the same time the order or proposed imposition of the civil penalty is issued. In addition, press releases are usually issued when a proposed civil penalty is withdrawn or substantially mitigated by some amount. Press releases are not normally issued for Notices of Violation that are not accompanied by orders or proposed civil penalties.

XIII. Reopening Closed Enforcement Actions

If significant new information is received or obtained by NRC which indicates that an enforcement sanction was incorrectly applied, consideration may be given, dependent on the

circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the Deputy Executive Director.

Appendix A: Safety and Compliance

As commonly understood, safety means freedom from exposure to danger, or protection from harm. In a practical sense, an activity is deemed to be safe if the perceived risks are judged to be acceptable. The Atomic Energy Act of 1954, as amended, establishes "adequate protection" as the standard of safety on which NRC regulation is based. In the context of NRC regulation, safety means avoiding undue risk or, stated another way, providing reasonable assurance of adequate protection for the public in connection with the use of source, byproduct and special nuclear materials.

The definition of compliance is much simpler. Compliance simply means meeting applicable regulatory requirements. The relationship between compliance and safety is discussed below.

- Safety is the fundamental regulatory objective, and compliance with NRC requirements plays a fundamental role in giving the NRC confidence that safety is being maintained. NRC requirements, including technical specifications, other license conditions, orders, and regulations, have been designed to ensure adequate protection—which corresponds to "no undue risk to public health and safety"—through acceptable design, construction, operation, maintenance, modification, and quality assurance measures. In the context of risk-informed regulation, compliance plays a very important role in ensuring that key assumptions used in underlying risk and engineering analyses remain valid.

- Adequate protection is presumptively assured by compliance with NRC requirements. Circumstances may arise, however, where new information reveals, for example, that an unforeseen hazard exists or that there is a substantially greater potential for a known hazard to occur. In such situations, the NRC has the statutory authority to require licensee action above and beyond existing regulations to maintain the level of protection necessary to avoid undue risk to public health and safety.

- The NRC has the authority to exercise discretion to permit continued operations—despite the existence of a noncompliance—where the noncompliance is not significant from a risk perspective and does not, in the particular circumstances, pose an undue risk to public health and safety. When non-compliances occur, the NRC must evaluate the degree of risk posed by that non-compliance to determine if specific immediate action is required. Where needed to ensure adequate protection of public health and safety, the NRC may demand immediate licensee action, up to and including a shutdown or cessation of licensed activities. In addition, in determining the appropriate action to be

taken, the NRC must evaluate the non-compliance both in terms of its direct safety and regulatory significance and by assessing whether it is part of a pattern of non-compliance (i.e., the degree of pervasiveness) that can lead to the determination that licensee control processes are no longer adequate to ensure protection of the public health and safety. Based on the NRC's evaluation, the appropriate action could include refraining from taking any action, taking specific enforcement action, issuing orders, or providing input to other regulatory actions or assessments, such as increased oversight (e.g., increased inspection).

- Since some requirements are more important to safety than others, the Commission should use a risk-informed approach when applying NRC resources to the oversight of licensed activities (this includes enforcement).

Appendix B: Supplements—Enforcement Examples

This appendix provides examples of violations in each of four severity levels as guidance in determining the appropriate severity level for violations in each of eight activity areas (reactor operations, Part 50 facility construction, safeguards, health physics, transportation, fuel cycle and materials operations, miscellaneous matters, and emergency preparedness).

Supplement I—Reactor Operations

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of reactor operations.

A. *Severity Level I*—Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications being exceeded;
2. A system¹¹ designed to prevent or mitigate a serious safety event not being able to perform its intended safety function¹² when actually called upon to work;
3. An accidental criticality; or
4. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

B. *Severity Level II*—Violations involving for example:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function;
2. A licensed operator involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages, within the protected area;

¹¹ The term "system" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

¹² "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

3. A licensed operator at the control of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol; or

4. Failures to meet 10 CFR 50.59 including several unreviewed safety questions, or conflicts with technical specifications, involving a broad spectrum of problems affecting multiple areas, some of which impact the operability of required equipment.

C. **Severity Level III**—Violations involving for example:

1. A significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, in the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement; or

(b) In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement.

2. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability (e.g., component parameters outside approved limits such as pump flow rates, heat exchanger transfer characteristics, safety valve lift setpoints, or valve stroke times);

3. Inattentiveness to duty on the part of licensed personnel;

4. Changes in reactor parameters that cause unanticipated reductions in margins of safety;

5. [Reserved]

6. A licensee failure to conduct adequate oversight of contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;

8. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation;

9. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

10. The failure to meet 10 CFR 50.59 where an unreviewed safety question is involved, or a conflict with a technical specification, such that a license amendment is required;

11. The failure to perform the required evaluation under 10 CFR 50.59 prior to implementation of the change in those situations in which no unreviewed safety question existed, but an extensive evaluation

would be needed before a licensee would have had a reasonable expectation that an unreviewed safety question did not exist;

12. Programmatic failures (i.e., multiple or recurring failures) to meet the requirements of 10 CFR 50.59 and/or 50.71(e) that show a significant lack of attention to detail, whether or not such failures involve an unreviewed safety question, resulting in a current safety or regulatory concern about the accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met. Application of this example requires weighing factors such as: a) the time period over which the violations occurred and existed, b) the number of failures, c) whether one or more systems, functions, or pieces of equipment were involved and the importance of such equipment, functions, or systems, and d) the potential significance of the failures;

13. The failure to update the FSAR as required by 10 CFR 50.71(e) where the unupdated FSAR was used in performing a 10 CFR 50.59 evaluation and as a result, an inadequate decision was made demonstrating a significant regulatory concern; or

14. The failure to make a report required by 10 CFR 50.72 or 50.73 associated with (a) an unreviewed safety question, (b) a conflict with a technical specification, or (c) any other Severity Level III violation.

D. **Severity Level IV**—Violations involving for example:

1. A less significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or

(b) In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable;

2. [Reserved]

3. A failure to meet regulatory requirements that have more than minor safety or environmental significance;

4. A failure to make a required Licensee Event Report;

5. Relatively isolated violations of 10 CFR 50.59 not involving severity level II or III violations that do not suggest a programmatic failure to meet 10 CFR 50.59. Relatively isolated violations or failures would include a number of recently discovered violations that occurred over a period of years and are not indicative of a programmatic safety concern with meeting 10 CFR 50.59 or 50.71(e);

6. A relatively isolated failure to document an evaluation where there is evidence that an adequate evaluation was performed prior to the change in the facility or procedures, or the conduct of an experiment or test;

7. A failure to update the FSAR as required by 10 CFR 50.71(e) where an adequate evaluation under 10 CFR 50.59 had been performed and documented; or

8. A past programmatic failure to meet 10 CFR 50.59 and/or 10 CFR 50.71(e) requirements not involving Severity Level II or III violations that does not reflect a current safety or regulatory concern about the accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met.

E. Minor Violations

A failure to meet 10 CFR 50.59 requirements that involves a change to the FSAR description or procedure, or involves a test or experiment not described in the FSAR, where there was not a reasonable likelihood that the change to the facility or procedure or the conduct of the test or experiment would ever be an unreviewed safety question. In the case of a 10 CFR 50.71(e) violation, where a failure to update the FSAR would not have a material impact on safety or licensed activities. The focus of the minor violation is not on the actual change, test, or experiment, but on the potential safety role of the system, equipment, etc., that is being changed, tested, or experimented on.

Supplement II—Part 50 Facility Construction

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of Part 50 facility construction.

A. **Severity Level I**—Violations involving structures or systems that are completed¹³ in such a manner that they would not have satisfied their intended safety related purpose.

B. **Severity Level II**—Violations involving for example:

1. A breakdown in the Quality Assurance (QA) program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). These deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. **Severity Level III**—Violations involving for example:

1. A deficiency in a licensee QA program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). This significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. A failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. A failure to make a required 10 CFR 50.55(e) report.

D. **Severity Level IV**—Violations involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I.

¹³ The term "completed" as used in this supplement means completion of construction including review and acceptance by the construction QA organization.

II, or III violations that have more than minor safety or environmental significance.

Supplement III—Safeguards

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of safeguards.

A. **Severity Level I**—Violations involving for example:

1. An act of radiological sabotage in which the security system did not function as required and, as a result of the failure, there was a significant event, such as:

(a) A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, was exceeded;

(b) A system designed to prevent or mitigate a serious safety event was not able to perform its intended safety function when actually called upon to work; or

(c) An accidental criticality occurred;

2. The theft, loss, or diversion of a formula quantity¹⁴ of special nuclear material (SNM); or

3. Actual unauthorized production of a formula quantity of SNM

B. **Severity Level II**—Violations involving for example:

1. The entry of an unauthorized individual¹⁵ who represents a threat into a vital area¹⁶ from outside the protected area;

2. The theft, loss or diversion of SNM of moderate strategic significance¹⁷ in which the security system did not function as required; or

3. Actual unauthorized production of SNM.

C. **Severity Level III**—Violations involving for example:

1. A failure or inability to control access through established systems or procedures, such that an unauthorized individual (i.e., not authorized unescorted access to protected area) could easily gain undetected access¹⁸ into a vital area from outside the protected area;

2. A failure to conduct any search at the access control point or conducting an inadequate search that resulted in the introduction to the protected area of firearms, explosives, or incendiary devices and reasonable facsimiles thereof that could significantly assist radiological sabotage or theft of strategic SNM;

3. A failure, degradation, or other deficiency of the protected area intrusion detection or alarm assessment systems such that an unauthorized individual who represents a threat could predictably circumvent the system or defeat a specific

¹⁴ See 10 CFR 73.2 for the definition of "formula quantity."

¹⁵ The term "unauthorized individual" as used in this supplement means someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

¹⁶ The phrase "vital area" as used in this supplement includes vital areas and material access areas.

¹⁷ See 10 CFR 73.2 for the definition of "special nuclear material of moderate strategic significance."

¹⁸ In determining whether access can be easily gained, factors such as predictability, identifiability, and ease of passage should be considered.

zone with a high degree of confidence without insider knowledge, or other significant degradation of overall system capability;

4. A significant failure of the safeguards systems designed or used to prevent or detect the theft, loss, or diversion of strategic SNM;

5. A failure to protect or control classified or safeguards information considered to be significant while the information is outside the protected area and accessible to those not authorized access to the protected area;

6. A significant failure to respond to an event either in sufficient time to provide protection to vital equipment or strategic SNM, or with an adequate response force;

7. A failure to perform an appropriate evaluation or background investigation so that information relevant to the access determination was not obtained or considered and as a result a person, who would likely not have been granted access by the licensee, if the required investigation or evaluation had been performed, was granted access; or

8. A breakdown in the security program involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. **Severity Level IV**—Violations involving for example:

1. A failure or inability to control access such that an unauthorized individual (i.e., authorized to protected area but not to vital area) could easily gain undetected access into a vital area from inside the protected area or into a controlled access area;

2. A failure to respond to a suspected event in either a timely manner or with an adequate response force;

3. A failure to implement 10 CFR Parts 25 and 95 with respect to the information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

4. A failure to make, maintain, or provide log entries in accordance with 10 CFR 73.71 (c) and (d), where the omitted information (i) is not otherwise available in easily retrievable records, and (ii) significantly contributes to the ability of either the NRC or the licensee to identify a programmatic breakdown;

5. A failure to conduct a proper search at the access control point;

6. A failure to properly secure or protect classified or safeguards information inside the protected area which could assist an individual in an act of radiological sabotage or theft of strategic SNM where the information was not removed from the protected area;

7. A failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area but which was neither easily nor likely to be exploitable;

8. A failure to conduct an adequate search at the exit from a material access area;

9. A theft or loss of SNM of low strategic significance that was not detected within the time period specified in the security plan, other relevant document, or regulation; or

10. Other violations that have more than minor safeguards significance.

Supplement IV—Health Physics (10 CFR Part 20)

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of health physics, 10 CFR Part 20.¹⁹

A. **Severity Level I**—Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 25 rems total effective dose equivalent, 75 rems to the lens of the eye, or 250 rads to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 2.5 rems total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 2.5 rems total effective dose equivalent, 7.5 rems to the lens of the eye, or 25 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 1.0 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 50 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i); or

6. Disposal of licensed material in quantities or concentrations in excess of 10 times the limits of 10 CFR 20.2003.

B. **Severity Level II**—Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 10 rems total effective dose equivalent, 30 rems to the lens of the eye, or 100 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 1.0 rem total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 1 rem total effective dose equivalent; 3.0 rems to the lens of the eye, or 10 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 0.5 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 10 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

6. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.2003; or

7. A failure to make an immediate notification as required by 10 CFR 20.2202 (a)(1) or (a)(2).

C. **Severity Level III**—Violations involving for example:

¹⁹ Personnel overexposures and associated violations incurred during a life-saving or other emergency response effort will be treated on a case-by-case basis.

1. A radiation exposure during any year of a worker in excess of 5 rems total effective dose equivalent, 15 rems to the lens of the eye, or 50 rems to the skin of the whole body or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 0.5 rem total effective dose equivalent (except when doses are in accordance with the provisions of Section 20.1208(d));

3. A radiation exposure during any year of a minor in excess of 0.5 rem total effective dose equivalent; 1.5 rems to the lens of the eye, or 5 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. A worker exposure above regulatory limits when such exposure reflects a programmatic (rather than an isolated) weakness in the radiation control program;

5. An annual exposure of a member of the public in excess of 0.1 rem total effective dose equivalent (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

6. A release of radioactive material to an unrestricted area at concentrations in excess of two times the effluent concentration limits referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

7. A failure to make a 24-hour notification required by 10 CFR 20.2202(b) or an immediate notification required by 10 CFR 20.2201(a)(1)(i);

8. A substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20 Sections 20.1001-20.2401 whether or not an exposure or release occurs;

9. Disposal of licensed material not covered in Severity Levels I or II;

10. A release for unrestricted use of contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public to levels or doses exceeding the annual dose limits for members of the public, or that reflects a programmatic (rather than an isolated) weakness in the radiation control program;

11. Conduct of licensee activities by a technically unqualified person;

12. A significant failure to control licensed material; or

13. A breakdown in the radiation safety program involving a number of violations that are related (or, if isolated, that are recurring) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. **Severity Level IV**—Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.1201, 20.1207, or 20.1208 not constituting Severity Level I, II, or III violations;

2. A release of radioactive material to an unrestricted area at concentrations in excess of the limits for members of the public as referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

3. A radiation dose rate in an unrestricted or controlled area in excess of 0.002 rem in

any 1 hour (2 millirem/hour) or 50 millirems in a year;

4. Failure to maintain and implement radiation programs to keep radiation exposures as low as is reasonably achievable;

5. Doses to a member of the public in excess of any EPA generally applicable environmental radiation standards, such as 40 CFR Part 190;

6. A failure to make the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 20.2203(a);

7. A failure to make a timely written report as required by 10 CFR 20.2201(b), 20.2204, or 20.2206;

8. A failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d) or a failure to take corrective action for an exceedance, as required by 10 CFR 20.1101(d); or

9. Any other matter that has more than a minor safety, health, or environmental significance.

Supplement V—Transportation

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of NRC transportation requirements²⁰.

A. **Severity Level I**—Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that the material caused a radiation exposure to a member of the public and there was clear potential for the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 50 times the NRC limit; or

3. External radiation levels in excess of 10 times the NRC limit.

B. **Severity Level II**—Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 10, but not more than 50 times the NRC limit;

3. External radiation levels in excess of five, but not more than 10 times the NRC limit; or

4. A failure to make required initial notifications associated with Severity Level I or II violations.

C. **Severity Level III**—Violations involving for example:

1. Surface contamination in excess of five but not more than 10 times the NRC limit;

2. External radiation in excess of one but not more than five times the NRC limit;

3. Any noncompliance with labeling, placarding, shipping paper, packaging,

loading, or other requirements that could reasonably result in the following:

(a) A significant failure to identify the type, quantity, or form of material;

(b) A failure of the carrier or recipient to exercise adequate controls; or

(c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material;

4. A failure to make required initial notification associated with Severity Level III violations; or

5. A breakdown in the licensee's program for the transportation of licensed material involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. **Severity Level IV**—Violations involving for example:

1. A breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding five times the NRC limit;

2. Surface contamination in excess of but not more than five times the NRC limit;

3. A failure to register as an authorized user of an NRC-Certified Transport package;

4. A noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;

5. A failure to demonstrate that packages for special form radioactive material meet applicable regulatory requirements;

6. A failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or

7. Other violations that have more than minor safety or environmental significance.

loading, or other requirements that could reasonably result in the following:

(a) A significant failure to identify the type, quantity, or form of material;

(b) A failure of the carrier or recipient to exercise adequate controls; or

(c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material;

4. A failure to make required initial notification associated with Severity Level III violations; or

5. A breakdown in the licensee's program for the transportation of licensed material involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. **Severity Level IV**—Violations involving for example:

1. A breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding five times the NRC limit;

2. Surface contamination in excess of but not more than five times the NRC limit;

3. A failure to register as an authorized user of an NRC-Certified Transport package;

4. A noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;

5. A failure to demonstrate that packages for special form radioactive material meet applicable regulatory requirements;

6. A failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or

7. Other violations that have more than minor safety or environmental significance.

Supplement VI—Fuel Cycle and Materials Operations

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle and materials operations.

A. **Severity Level I**—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function;

3. A nuclear criticality accident;

4. A failure to follow the procedures of the quality management program, required by 10 CFR 35.32, that results in a death or serious injury (e.g., substantial organ impairment) to a patient;

5. A safety limit, as defined in 10 CFR 76.4, the Technical Safety Requirements, or the application being exceeded; or

6. Significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not.

B. **Severity Level II**—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event being inoperable;

3. A failure to establish, implement, or maintain all criticality controls (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

4. A failure to establish, implement, or maintain all but one criticality control (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

5. A failure, during radiographic operations, to have present at least two qualified individuals or to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34;

6. A failure to submit an NRC Form 241 as required by 10 CFR 150.20;

7. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet the safety guidelines; or a change in the

quantity or type of radioactive material being processed or used that has radiological significance;

8. A failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;

9. A failure to keep the records required by 10 CFR 35.32 or 35.33;

10. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

11. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

12. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

13. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but could have been sufficient to result in a nuclear criticality.

Supplement VII—Miscellaneous Matters

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations involving miscellaneous matters.

A. **Severity Level I**—Violations involving for example:

1. Inaccurate or incomplete information²¹ that is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

3. Information that the licensee has identified as having significant implications for public health and safety or the common defense and security ("significant information identified by a licensee") and is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A knowing and intentional failure to provide the notice required by 10 CFR Part 21; or

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event being inoperable;

3. A substantial programmatic failure in the implementation of the quality management program required by 10 CFR 35.32 that results in a misadministration;

4. A failure to establish, implement, or maintain all criticality controls (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

5. The potential for a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not (e.g., movement of liquid UF₆ cylinder by unapproved methods).

C. **Severity Level III**—Violations involving for example:

1. A failure to control access to licensed materials for radiation protection purposes as specified by NRC requirements;

2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;

3. Use of radioactive material on humans where such use is not authorized;

4. Conduct of licensed activities by a technically unqualified or uncertified person;

5. A substantial potential for exposures, radiation levels, contamination levels, or releases, including releases of toxic material caused by a failure to comply with NRC regulations, from licensed or certified activities in excess of regulatory limits;

6. Substantial failure to implement the quality management program as required by 10 CFR 35.32 that does not result in a misadministration; failure to report a misadministration; or programmatic weakness in the implementation of the quality management program that results in a misadministration;

7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;

8. A failure, during radiographic operations, to have present at least two qualified individuals or to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34;

9. A failure to submit an NRC Form 241 as required by 10 CFR 150.20;

10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet the safety guidelines; or a change in the

quantity or type of radioactive material being processed or used that has radiological significance;

11. A failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;

12. A failure to keep the records required by 10 CFR 35.32 or 35.33;

13. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

14. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

15. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

16. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but could have been sufficient to result in a nuclear criticality.

Supplement VII—Miscellaneous Matters

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations involving miscellaneous matters.

A. **Severity Level I**—Violations involving for example:

1. Inaccurate or incomplete information²¹ that is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

3. Information that the licensee has identified as having significant implications for public health and safety or the common defense and security ("significant information identified by a licensee") and is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A knowing and intentional failure to provide the notice required by 10 CFR Part 21; or

6. A failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

7. Other violations that have more than minor safety or environmental significance;

8. A failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;

9. A failure to keep the records required by 10 CFR 35.32 or 35.33;

10. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

11. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

12. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

13. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but could have been sufficient to result in a nuclear criticality.

Supplement VII—Miscellaneous Matters

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations involving miscellaneous matters.

A. **Severity Level I**—Violations involving for example:

1. Inaccurate or incomplete information²¹ that is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

3. Information that the licensee has identified as having significant implications for public health and safety or the common defense and security ("significant information identified by a licensee") and is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A knowing and intentional failure to provide the notice required by 10 CFR Part 21; or

6. A failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

7. Other violations that have more than minor safety or environmental significance;

8. A failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;

9. A failure to keep the records required by 10 CFR 35.32 or 35.33;

10. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

11. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

12. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

13. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but could have been sufficient to result in a nuclear criticality.

quantity or type of radioactive material being processed or used that has radiological significance;

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification;

12. A significant failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In an autoclave, where a containment isolation valve is inoperable for a period in excess of that allowed by the action statement; or

(b) Cranes or other lifting devices engaged in the movement of cylinders having inoperable safety components, such as redundant braking systems, or other safety devices for a period in excess of that allowed by the action statement;

13. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless utilities available, materials or components not according to specifications); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability;

14. Changes in parameters that cause unanticipated reductions in margins of safety;

15. A significant failure to meet the requirements of 10 CFR 76.68, including a failure such that a required certificate amendment was not sought;

16. A failure of the certificate holder to conduct adequate oversight of contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

17. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

18. A failure to establish, maintain, or implement all but one criticality control (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

19. A failure, during radiographic operations, to stop work after a pocket dosimeter is found to have gone off-scale, or after an electronic dosimeter reads greater than 200 mrem, and before a determination is made of the individual's actual radiation exposure.

D. **Severity Level IV**—Violations involving for example:

1. A failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance;

3. A failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;

4. A failure to keep the records required by 10 CFR 35.32 or 35.33;

6. A failure to substantially implement the required fitness-for-duty program.²²

B. *Severity Level II*—Violations involving for example:

1. Inaccurate or incomplete information that is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. "Significant information identified by a licensee" and not provided to the Commission because of careless disregard on the part of a licensee official;

4. An action by plant management or mid-level management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A failure to provide the notice required by 10 CFR Part 21;

6. A failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or take action for on duty misuse of alcohol, prescription drugs, or over-the-counter drugs;

7. A failure to take reasonable action when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use;

8. A deliberate failure of the licensee's Employee Assistance Program (EAP) to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities; or

9. The failure of licensee management to take effective action in correcting a hostile work environment.

C. *Severity Level III*—Violations involving for example:

1. Incomplete or inaccurate information that is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely

would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. A failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;

4. An action by first-line supervision or other low-level management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR Part 21 report would have been made;

6. A failure to complete a suitable inquiry on the basis of 10 CFR Part 26, keep records concerning the denial of access, or respond to inquiries concerning denials of access so that, as a result of the failure, a person previously denied access for fitness-for-duty reasons was improperly granted access;

7. A failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;

8. A failure to assure, as required, that contractors have an effective fitness-for-duty program;

9. A breakdown in the fitness-for-duty program involving a number of violations of the basic elements of the fitness-for-duty program that collectively reflect a significant lack of attention or carelessness towards meeting the objectives of 10 CFR 26.10; or

10. Threats of discrimination or restrictive agreements which are violations under NRC regulations such as 10 CFR 50.7(f).

D. *Severity Level IV*—Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance that is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information that the NRC requires be kept by a licensee and that is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation;

3. An inadequate review or failure to review under 10 CFR Part 21 or other procedural violations associated with 10 CFR Part 21 with more than minor safety significance;

4. Violations of the requirements of Part 26 of more than minor significance;

5. A failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73; or

6. Discrimination cases which, in themselves, do not warrant a Severity Level III categorization.

Supplement VIII—Emergency Preparedness

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of emergency preparedness. It should be noted that citations are not normally made for violations involving emergency preparedness occurring during emergency exercises. However, where exercises reveal (i) training, procedural, or repetitive failures for which

corrective actions have not been taken, (ii) an overall concern regarding the licensee's ability to implement its plan in a manner that adequately protects public health and safety, or (iii) poor self critiques of the licensee's exercises, enforcement action may be appropriate.

A. *Severity Level I*—Violations involving for example:

In a general emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff.)

B. *Severity Level II*—Violations involving for example:

1. In a site emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. A licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. *Severity Level III*—Violations involving for example:

1. In an alert, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff);

2. A licensee failure to meet or implement one emergency planning standard involving assessment or notification; or

3. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. *Severity Level IV*—Violations involving for example:

A licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.

Dated at Rockville, Maryland, this 6th day of May, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.

[FR Doc. 98-12534 Filed 5-12-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-285]

Omaha Public Power District, Fort Calhoun Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Omaha Public Power District, holder of Facility Operating License No. DPR-40 for operation of the Fort Calhoun Station, Unit No. 1 located in Washington County, Nebraska.

Environmental Assessment Action

Identification of Proposed Action

The proposed action would exempt Omaha Public Power District from the requirements of 10 CFR part 50, appendix R, Section III.O, with respect to certain unpressurized components. Section III.O requires reactor coolant pumps be equipped with an oil collection system if the containment is not inerted during normal operation. The collection systems shall be capable of collecting lube oil from all potential pressurized and unpressurized leakage sites in the reactor coolant pump lube oil systems. Leakage shall be collected and drained to a vented closed container that can hold the entire lube oil system inventory.

The proposed action is in accordance with the licensee's application for exemption dated September 30, 1997, as supplemented by letter dated January 29, 1998.

The Need for the Proposed Action

The proposed action is needed because it would be extremely difficult for the licensee to design, install, and maintain the specified portions of the collection system due to location, arrangement, equipment interferences, and radiation dose as low as reasonably achievable (ALARA) considerations.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact associated with the proposed exemption. The unpressurized components at issue do not present a significant risk of oil leakage that could lead to fire in containment during normal or design basis accident conditions. The proposed action, therefore, will not increase the probability or consequences of

accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for the Fort Calhoun Station, Unit No. 1, dated August 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on April 27, 1998, the staff consulted with the Nebraska State official, Ms. Cheryl Rodgers of the Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 30, 1997, and supplemental letter dated January 29, 1998, which are available for public inspection at the Commission's Public Document Room, which is located at

The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 7th day of May 1998.

For the Nuclear Regulatory Commission.

Raynard Wharton,

Project Manager Project Directorate IV-2,
Division of Reactor Projects III/IV Office of
Nuclear Reactor Regulation.

[FR Doc. 98-12672 Filed 5-12-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket 72-1021]

Transnuclear, Inc.; Issuance of Environmental Assessment and Finding of No Significant Impact

By letter dated March 11, 1998, Transnuclear, Inc. (TN or applicant) requested an exemption, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.234(c). TN, located in Hawthorne, New York, is seeking Nuclear Regulatory Commission (NRC or the Commission) approval to fabricate five TN-32 dry spent fuel storage casks prior to receipt of a Certificate of Compliance (COC). The casks are intended for use under the general license provisions of subpart K of 10 CFR part 72 by Duke Power Company (Duke) at the McGuire Nuclear Station (McGuire) located in Cornelius, North Carolina. The TN-32 dry spent fuel storage cask is currently used at Surry Power Station under a site-specific license.

Environmental Assessment (EA)

Identification of Proposed Action: The applicant is seeking Commission approval to fabricate five TN-32 casks prior to the Commission's issuance of a COC. The applicant requests an exemption from the requirements of 10 CFR 72.234(c), which state that "Fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask model." The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

Need for the Proposed Action: TN requested the exemption to ensure the availability of storage casks so that Duke can maintain full core off-load capability at McGuire. McGuire Unit 2 will lose full core off-load capability in August 2000. McGuire has proposed an initial cask loading in September 2000.

To support training and dry runs prior to the initial loading, Duke requests the delivery of the first cask by January 2000. TN states that to meet this schedule, purchase of cask components must begin promptly and fabrication must begin by September 1998.

The TN-32 COC application, dated September 24, 1997, is under consideration by the Commission. It is anticipated, if approved, the TN-32 COC may be issued in late 1999.

The proposed fabrication exemption will not authorize use of the casks to store spent fuel. That will occur only when, and if, a COC is issued. NRC approval of the fabrication exemption request should not be construed as an NRC commitment to favorably consider TN's application for a COC. TN will bear the risk of all activities conducted under the exemption, including the risk that the five casks TN plans to construct may not be usable because they may not meet specifications or conditions placed in a COC that NRC may ultimately approve.

Environmental Impacts of the Proposed Action: The Environmental Assessment for the final rule, "Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites", (55 FR 29181 (1990)) considered the potential environmental impacts of casks which are used to store spent fuel under a COC and concluded that there would be no significant environmental impacts. The proposed action now under consideration would not permit use of the casks, but only fabrication. There are no radiological environmental impacts from fabrication since cask fabrication does not involve radiological or radioactive materials. The major non-radiological environmental impacts involve use of natural resources due to cask fabrication. Each TN-32 storage cask weighs approximately 100 tons and is fabricated mainly from steel and plastic. The estimated 500 tons of steel required for five casks is expected to have very little impact on the steel industry. Additionally, the estimated 5 tons of plastic required for five casks is insignificant compared to the millions of tons of plastic produced annually. Cask fabrication would be at a metal fabrication facility, not at the reactor site. Fabrication of five casks is insignificant compared to the amount of metal fabrication performed annually in the United States. If the casks are not usable, the casks could be disposed of or recycled. The amount of material disposed of is insignificant compared to the amount of steel and plastic that is disposed of annually in the United States. Based upon this information, the fabrication of five casks will have no

significant impact on the environment since no radioactive materials are involved, and the amount of natural resources used is minimal.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and, therefore, not allow cask fabrication until a COC is issued. However, the environmental impacts of the proposed action and the alternative action would be the same.

Given that there are no significant differences in environmental impacts between the proposed action and the alternative considered and that the applicant has a legitimate need to fabricate the casks prior to certification and is willing to assume the risk that the fabricated casks may not be certified or may require modification, the Commission concludes that the preferred alternative is to grant the exemption.

Agencies and Persons Consulted: The North Carolina Division of Radiation Protection was consulted about the EA for the proposed action and had no concerns.

References used in preparation of the EA:

1. NRC, Environmental Assessment Regarding Final Rule, "Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites," 55 FR 29181.
2. NRC, 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.234(c) so that TN may fabricate five TN-32 casks prior to issuance of a COC will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

This application was docketed under 10 CFR part 72, Docket 72-1021. For further details with respect to this action, see the application dated March 11, 1998, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and the Local Public Document Room at the J. Murrey

Atkins Library, University of North Carolina at Charlotte, UNCC Station, Charlotte, NC 28223.

Dated at Rockville, Maryland, this 6th day of May 1998.

For the Nuclear Regulatory Commission,
Susan F. Shankman,
Acting Deputy Director, Spent Fuel Project
Office, Office of Nuclear Material Safety and
Safeguards.

[FR Doc. 98-12670 Filed 5-12-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket 72-1027]

Transnuclear, Inc.; Issuance of Environmental Assessment and Finding of No Significant Impact

By letter dated January 23, 1998, Transnuclear, Inc. (TN or applicant) requested an exemption, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.234(c). TN, located in Hawthorne, New York, is seeking Nuclear Regulatory Commission (NRC or the Commission) approval to fabricate nine TN-68 dry spent fuel storage casks prior to receipt of a Certificate of Compliance (COC). The TN-68 cask is similar in design to the TN-32 and TN-40 dry spent fuel storage casks which have been approved for use at Independent Spent Fuel Storage Installations with site-specific licenses. The TN-68 casks are intended to be used by PECO Energy Company (PECO) at the Peach Bottom Atomic Power Station (PBAPS) located in Delta, Pennsylvania, under the general license provisions of subpart K of 10 CFR Part 72.

Environmental Assessment (EA)

Identification of Proposed Action: The applicant is seeking Commission approval to fabricate nine TN-68 casks prior to the Commission's issuance of a COC. The applicant requests an exemption from the requirements of 10 CFR 72.234(c), which states that "fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask model." The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

Need for the Proposed Action: TN requests the exemption to ensure the availability of storage casks by July 2000, so that PECO can maintain full core off-load capability at PBAPS. TN states that to meet this schedule, purchase of cask components must

begin promptly and fabrication must begin in the summer of 1998. The TN-68 COC application, dated January 23, 1998, is under consideration by the Commission. It is anticipated, if approved, the TN-68 COC may be issued in 2000.

The proposed fabrication exemption will not authorize use of the casks to store spent fuel. That will occur only when, and if, a COC is issued. NRC approval of the fabrication exemption request may not be construed as an NRC commitment to favorably consider TN's application for a COC. TN will bear the risk of all activities conducted under the exemption, including the risk that the nine casks TN plans to construct may not be usable because they may not meet specifications or conditions placed in a COC that NRC may ultimately approve.

Environmental Impacts of the Proposed Action: The Environmental Assessment for the final rule, "Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites" (55 FR 29181 (1990)), considered the potential environmental impacts of casks which are used to store spent fuel under a COC and concluded that there would be no significant environmental impacts. The proposed action now under consideration would not permit use of the casks, but only fabrication. There are no radiological environmental impacts from fabrication since cask fabrication does not involve radiological or radioactive materials. The major non-radiological environmental impacts involve use of natural resources due to cask fabrication. Each TN-68 storage cask weighs approximately 100 tons and is fabricated mainly from steel and plastic. The estimated 900 tons of steel required for nine casks is expected to have very little impact on the steel industry. Additionally, the estimated 9 tons of plastic required for nine casks is insignificant compared to the millions of tons of plastic produced annually. Cask fabrication would be at a metal fabrication facility, not at the reactor site. Fabrication of nine casks is insignificant compared to the amount of metal fabrication performed annually in the United States. If the casks are not usable, the casks could be disposed of or recycled. The amount of material disposed of is insignificant compared to the amount of steel and plastic that is disposed of annually in the United States. Based upon this information, the fabrication of nine casks will have no significant impact on the environment since no radioactive materials are involved, and the amount of natural resources used is minimal.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and, therefore, not allow cask fabrication until a COC is issued. However, if a COC is issued and fabrication of the casks occurs, the environmental impacts of the proposed action and the alternative action would be the same.

Given that there are no significant differences in environmental impacts between the proposed action and the alternative considered and that the applicant has a legitimate need to fabricate the casks prior to certification and is willing to assume the risk that the fabricated casks may not be certified or may require modification, the Commission concludes that the preferred alternative is to grant the exemption.

Agencies and Persons Consulted: The Pennsylvania Department of Environmental Protection was consulted about the EA for the proposed action and had no comments.

References used in preparation of the EA:

1. NRC, Environmental Assessment Regarding Final Rule, "Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites," 55 FR 29181.
2. NRC, 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.234(c) so that TN may fabricate nine TN-68 casks prior to issuance of a COC will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

This application was docketed under 10 CFR part 72, Docket 72-1027. For further details with respect to this action, see the application dated January 23, 1998, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and the Local Public Document Room at the State Library of Pennsylvania, Walnut Street

and Commonwealth Avenue, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 5th day of May 1998.

For the Nuclear Regulatory Commission,
Susan F. Shankman,
Acting Deputy Director, Spent Fuel Project
Office, Office of Nuclear Material Safety and
Safeguards.

[FR Doc. 98-12674 Filed 5-12-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Number 07003085; License Number SNM-2001]

Public Meeting To Discuss the Decommissioning of the Babcock and Wilcox Shallow Land Disposal Area in Parks Township, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting.

SUMMARY: This notice is to inform the public of a meeting to discuss the decommissioning of the Babcock and Wilcox (B&W) Shallow Land Disposal Area (SLDA) in Parks Township, PA. The meeting will be held on May 27, 1998, in the Leechburg High School Cafeteria on Siberian Avenue, in Leechburg, PA. The meeting will begin at 7 p.m. and will end at 9:30 p.m. The meeting will consist of a facilitated discussion, followed by an opportunity for comments by interested members of the public.

SUPPLEMENTARY INFORMATION: The SLDA is located in Armstrong County, PA, approximately 23 miles east-northeast of Pittsburgh. The SLDA consists of ten waste disposal trenches comprising approximately 1.2 acres surrounded by a 40-acre fenced buffer area. The SLDA was formerly owned by Nuclear Materials and Equipment Corporation (NUMEC) which also operated the nearby Apollo Nuclear Fuel Fabrication Facility. In the 1960s and 1970s, the SLDA was used by NUMEC to dispose of radioactively contaminated (primarily uranium and thorium) and non-radioactive wastes in accordance with NRC regulations at 10 CFR 20.304. NRC rescinded 10 CFR 20.304 in 1981. In 1967, Atlantic Richfield Company (ARCO) purchased stock in NUMEC and then sold it to B&W in 1971.

In September 1994, B&W submitted several remediation alternatives for the SLDA to NRC. B&W's preferred alternative was to stabilize the waste in place by covering the buried waste with a soil and synthetic cover and isolating

the waste from the groundwater with slurry walls, grout curtains and other engineered barriers. Based on B&W's proposed alternative for decommissioning the SLDA, NRC published a notice in the *Federal Register* announcing NRC's intent to develop an Environmental Impact Statement (EIS) for the decommissioning of the site. NRC conducted an EIS scoping meeting in Leechburg, PA, on January 26, 1995, and released a scoping summary report on May 30, 1995. In August 1997, NRC completed development of a draft EIS (DEIS) and published a Notice of Availability in the *Federal Register* on September 4, 1997. NRC withdrew the DEIS on September 24, 1997, so that NRC staff could develop additional information regarding the alternatives presented in the DEIS.

CONDUCT OF MEETING: The meeting will be held on May 27, 1998, in the Leechburg High School Cafeteria on Siberian Avenue, in Leechburg, PA. The meeting will begin at 7:00 p.m. and will end at 9:30 p.m. The meeting will be facilitated by Mr. F. X. Cameron, NRC's Special Counsel for Public Liaison. The purpose of this meeting will be to discuss, with representative stakeholders and the public, the status of the decommissioning of the SLDA. The meeting will involve representatives from the NRC, local government and citizen groups and the public. These representatives will participate in a facilitated discussion. In addition, the public will be afforded the opportunity to provide comments at specified points during the discussion.

FOR FURTHER INFORMATION CONTACT: Dominick Orlando, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop T-8F37, Washington, DC, telephone (301) 415-6749, e-mail DAO@NRC.GOV

Dated at Rockville, Maryland, this 5th day of May 1998.

For the Nuclear Regulatory Commission,
John W.N. Hickey,
Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.
[FR Doc. 98-12678 Filed 5-12-98; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of May 11, 18, 25, and June 1, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 11

Wednesday, May 13

10:30 a.m. Affirmation Session (Public Meeting)

a: Final Rule: Amendments to 10 CFR Parts 30, 40, 50, 70, and 72-Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensee

b: Final Rule: Revision of 10 CFR 32.14 (D) to Place Timepieces Containing Gaseous Tritium Light Sources on the Same Regulatory Basis as Timepieces Containing Tritium Paint (Contact: Ken Hart, 301-415-1659)

Week of May 18—Tentative

There are no meetings the week of May 18.

Week of May 25—Tentative

Friday, May 29

10:30 a.m. Affirmation Session (Public Meeting) (if needed)

1:00 p.m. Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Week of June 1—Tentative

Wednesday, June 3

8:30 a.m. Briefing on Remaining Issues Related to Proposed Restart of Millstone Unit 3. (Public Meeting) (Contact: Bill Travers, 301-415-1200)

12:30 p.m. (Continuation of Millstone meeting.)

Thursday, June 4

3:30 p.m. Affirmation Session (Public Meeting) (if needed)

Friday, June 5

10:00 a.m. Briefing by EPRI on their Strategic Plan for the Future (Public Meeting)

*The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact Person for more information: Bill Hill (301) 415-1661.

ADDITIONAL INFORMATION: The Commission meeting, "Discussion of Management Issues (Closed—Ex. 2 and 6)," previously scheduled for Thursday, April 30, was held on Thursday, May 7.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,
SECY Tracking Officer/Office of the Secretary.
[FR Doc. 98-12793 Filed 5-8-98; 4:17 pm]
BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Draft NUREG-1628 "Staff Responses to Frequently Asked Questions Concerning Decommissioning of Nuclear Power Reactors; Correction"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; Correction.

SUMMARY: This document corrects a notice appearing in the *Federal Register* on April 27, 1998 (63 FR 20673), that announces the availability of Draft NUREG-1628 and requests public comment on the draft report. This action is necessary to include an inadvertent omission of the comment expiration date.

FOR FURTHER INFORMATION CONTACT: John L. Minns, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301 415-3166.

SUPPLEMENTARY INFORMATION: Dates: The comment period expires October 1, 1998.

Dated at Rockville, Maryland, this 7th day of May 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,
Director, Non-Power Reactors and Decommissioning of Project Directorate, Division of Reactor Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98-12671 Filed 5-12-98; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39963; File No. SR-CBOE-98-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees

May 6, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on April 22, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.³ The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to change its Order Book Official ("book") rate schedule for index options. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in

sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to change the book fee schedule applicable to index options. The Exchange recently changed the book fees for equity options.⁴ The book fees are billed at the end of each month and so this change will be reflected in the bills for all May transactions. These fees changes are being implemented by the Exchange pursuant to CBOE Rule 2.22. Under the new schedule, index option book execution services will be capped at a rate of \$1.25 per contract. The current rate schedule for index options assess various charges for book executions depending on the premium and the order size. The current schedule for index options is as follows:

Premium ⁵	First ten contracts	Eleven and above
Accommodation Liquidations	\$0.10	\$0.10
Cabinet trades	0.10	0.10
Under \$0.50	0.35	0.28
\$0.50-1	0.525	0.455
1-2	0.63	0.525
2-4	0.77	0.63
4-8	1.05	0.91
8-14	1.40	1.05
14-20	1.75	1.295
20 and above	2.10	1.61

The new schedule will be as follows:

Premium	First ten contracts	Eleven and above
Accommodation Liquidations	\$0.10	\$0.10
Cabinet trades	0.10	0.10
Under \$0.50	0.35	0.28
\$0.50-1	0.525	0.455
1-2	0.63	0.525
2-4	0.77	0.63
4-8	1.05	0.91
8-14	1.25	1.05
14 and above	1.25	1.25

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposed rule change required a technical amendment to clarify the fee schedule. Telephone conversation between Timothy Thompson, Senior Attorney, CBOE, and Karl Varner, Staff Attorney, SEC, on April 29, 1998.

⁴ Securities Exchange Act Release No. 39618 (February 4, 1998), 63 FR 7019 (February 11, 1998) [File No. SR-CBOE-98-01] (changing the book fee rate for equity options to \$0.45 per contract).

⁵ Premium equals the option price in dollars, calculated on a per-share basis for equity option contracts, and calculated on a per-unit basis for

index option contracts. The ranges set forth include their lower bounds.

Accommodation liquidations and cabinet trades are off-market trades at a price of \$1 per option contract.

The definitions were clarified during a telephone conversation between Timothy Thompson, Senior Attorney, CBOE, and Karl Varner, Staff Attorney, SEC, on May 5, 1998.

As with the previous schedule, cabinet trades/accommodation liquidations, as described in CBOE Rules 6.54 and 21.15, will continue to be charged \$0.10 per contract. In addition, as in the previous schedule, no execution fee will be assessed for market orders for any index option sent to the book prior to the opening and executed during opening rotation. Also, as before, no execution fee will be assessed for limit orders in options on the Standard & Poor's 100 Index sent to the book prior to the opening and executed during opening rotation. The new fee schedule should reduce the overall Order Book Official book fees paid by all Exchange members. The Exchange believes that the reduction in the book fees will allow the Exchange to compete more effectively for business in these types of products.

The proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective immediately upon filing with the Commission, pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (e)(2) of Rule 19b-4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.¹⁰ Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-98-16 and should be submitted by June 3, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12707 Filed 5-12-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39965; International Series Release No. 1133; File No. SR-CBOE-98-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Chicago Board Options Exchange, Incorporated Relating To Listing and Trading Warrants on a Narrow-Based Index

May 6, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 23, 1998, the Chicago Board Options

Exchange, incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange also submitted an amendment to the filing dated April 30, 1998.³ The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade warrants on an equal dollar-weighted, narrow-based index ("Index"), comprised of 15 to 20 actively traded common stocks, no more than four of which will be foreign issued and traded. The remaining stocks will be listed on the American Stock Exchange, Incorporated ("Amex"), New York Stock Exchange, Incorporated ("NYSE") or through the facilities of the National Association of Securities Dealers Automated Quotation ("Nasdaq") system and are reported national market system securities ("Nasdaq/NMS"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and represented that it did not receive any comments on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is permitted to list and trade stock index warrants under CBOE Rule 31.5E. The Exchange now is proposing to list and trade cash-settled,

stock index warrants linked to the Index. At the time of listing and trading, the warrants will meet all of the generic criteria for stock index warrants as set forth in Exchange Rule 31.5E.

Rule 31.5E requires, among other things, that: (1) the issuer has a tangible net worth in excess of \$250,000,000 and otherwise substantially exceeds earnings requirements in Rule 31.5(A) or meet the alternate guidelines in paragraph (4) of Rule 31.5E; (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of \$4,000,000; and (4) foreign country securities or American Depositary Receipts that are not subject to a comprehensive surveillance agreement and have less than 50% of their global trading volume in dollar value in the United States, shall not, in the aggregate, represent more than 20% of the weight of an index, unless such index is otherwise approved for warrant or option trading.

Index Design and Stock Selection Criteria. The Exchange represents that the Index will be categorized as narrow-based. The stocks to be included in the Index will be selected by a member firm of the Exchange and will be announced at or as close as possible to the time of the offering, and included in the Issuer's offering materials. The component stocks in the Index will meet the following criteria prior to trading of the warrants: (1) minimum market capitalization of \$150 million, except that two component stocks may have a market capitalization of not less than \$50 million; (2) trading volume during each of the six months prior to the offering of the warrants of not less than one million shares, except that two of the component securities may have a trading volume during each of the six months prior to the offering of the warrants of not less than 500,000 shares; (3) at least 80 percent of the component stocks will meet the then current criteria for standardized options trading set forth in CBOE Rule 5.3 and; (4) at least 80% of the Index components will be listed on the Amex, NYSE, or will be Nasdaq/NMS securities.

Calculation and Dissemination of the Index Value. The Index will be calculated using an equal dollar-weighting methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index. To create the Index, a portfolio of equity securities will be established by a member firm of the

Exchange representing an investment of \$10,000 in each component security (rounded to the nearest whole share). The value of the Index will equal the market value of the sum of the assigned number of shares of each of the component securities divided by an Index divisor. The Index divisor initially will be set to provide a benchmark value of 100 at the time that the warrants are priced for sales to the investing public.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security also may be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer, or the imposition of certain foreign taxes on shareholders of a foreign issuer. Shares of a component security may be replaced (or supplemented) with another security only under certain circumstances, such as in the event of a merger or consolidation, the conversion of a component security into another class of security, the termination of a depositary receipt program, or the spin-off of a subsidiary.⁴ If the security remains in the Index, the number of shares of the security may be adjusted to the nearest whole share to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the value of the Index.

Prices for any non-U.S. traded stock included in the Index will be based upon prevailing prices for such stock(s) at their primary exchange(s). Primary and backup pricing sources will be used to obtain prices for such stocks. All non-U.S. traded stocks will be valued in U.S. dollars using each country's cross-rate to the U.S. dollar. Bloomberg's composite New York rates, or comparable rates, quoted at 2:00 p.m. Chicago time the previous day, will be used to convert any non-U.S. traded stock price from the respective countries

to U.S. dollars. If there are several quotes, the first quoted rate in that minute will be used to calculate the Index. In the event that there is no Bloomberg exchange rate for a country's currency at 2:00 p.m. the previous day, stocks will be valued at the first U.S. dollar cross-rate quoted before 2:00 p.m. Chicago time the previous day.

The value of the Index will be calculated and disseminated by CBOE every 15 seconds.

Index Warrant Trading (Exercise and Settlement). The warrants will be direct obligations of their issuer, subject to cash settlement in U.S. dollars and will be exercisable throughout their life (i.e., American-Style) or exercisable at expiration (i.e., European-Style). Upon exercise (or at the warrant expiration date in the case of warrants with European-Style exercise), the holder of a Warrant structured as a "put" will receive payment in U.S. dollars to the extent that the value of the Index has declined below a pre-stated cash settlement value. Conversely, upon exercise (or at the warrant expiration date in the case of warrants with European-Style exercise), the holder of a Warrant structured as a "call" will receive payment in U.S. dollars to the extent that the value of the Index has increased above the pre-stated cash settlement value. Warrants that are "out-of-the-money" at the time of expiration will expire worthless.

Warrant Listing Standards and Customer Safeguards. Sales practice rules applicable to the trading of index warrants are provided for in Exchange Rule 30.50 and to the extent provided by Rule 30.52 they are also contained in Chapter IX of the Exchange's Rules. Rule 30.50 governs, among other things, communications with the public. Rule 30.52 subjects the transaction of customer business in stock index warrants to many of the requirements of Chapter IX of the Exchange's rules dealing with public customer business, including suitability. For example, no member organization may accept an order from a customer to purchase a stock index warrant unless that customer's account has been approved for options transactions. The same suitability and use of discretion provisions that are applicable to transactions in options will be equally applicable to the warrants pursuant to CBOE rules. The listing and trading of index warrants on the Index will be subject to these guidelines and rules.

Other Applicable Exchange Rules. As previously stated, the CBOE represents that the Index will be categorized as narrow-based. As such, the generic

⁴ No attempt will be made to find a replacement stock or to otherwise compensate for a stock which is extinguished due to bankruptcy or similar circumstances.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78a(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(e)(2).

¹⁰ In reviewing this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78a(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Stephanie C. Mullins, Attorney, CBOE to Marianne H. Duffy, Special Counsel, Division of Market Regulation, SEC, dated April 30, 1998 ("Amendment No. 1"). Amendment No. 1 clarifies, among other things, that the Index, as defined above, is narrow-based and will comply with the generic narrow-based margin requirements (CBOE Rule 30.53) and position limited requirements (CBOE Rule 30.35) of the Exchange.

narrow-based standards regarding margin requirements provided for under Exchange Rules 30.53 and 12.3 will apply. The applicable generic narrow-based position and exercise limits will be determined pursuant to Exchange Rule 30.35.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5)⁶ in particular, in that it will permit trading in warrants based on the Index pursuant to Exchange rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, and Amendment No. 1 thereto, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78(b)(5).

inspection and copying at the principal office of CBOE. All submissions should refer to file number SR-CBOE-98-17 and should be submitted by June 3, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-12708 Filed 5-12-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39973; File No. SR-NYSE-98-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating To Changes in Bond Listing Procedures and Practices

May 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 15, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On April 30, 1998, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.² The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Listed Company Manual to make certain changes regarding the listing requirements for debt securities and other debt security practices.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make certain changes to its rules, standards and procedures relating to debt securities. The changes are designed to facilitate the process for listing debt securities on the Exchange and to update certain rules and policies to conform to today's practices.

(a) *Interest Payments.* Paragraph 204.18 (Interest Payments) of the Listed Company Manual requires an issuer or its paying agent to notify the Exchange whenever it makes an interest payment. The obligation can be satisfied through the use of confirmation cards where that is appropriate. It also requires the issuer to notify the press and the Exchange whenever it does not meet its interest obligations. The Exchange proposes to delete the obligation to inform the Exchange of interest payments, whether by confirmation cards or otherwise.

Instead, the Exchange feels that reliance upon an issuer's obligation to report its failure to meet a payment obligation adequately protects the holders of debt securities. The Exchange is also proposing to add to the end of Paragraph 204.18 a cross-reference to 202.00, which reminds issuers that they are required to disclose material information (including the inability to meet payment obligations).

The Exchange believes that the issuer's obligation to report immediately to the press and the Exchange a failure to meet an interest payment or any unusual circumstance or condition relating to its ability to meet an interest payment makes the practice of mailing and collecting interest payment confirmation cards an administrative burden that is not necessary to the proper monitoring and surveillance of debt securities.

(b) *Multiple Facsimile Signatures.* Paragraph 501.06 (Bond Signatures) requires bonds to be executed, either manually or by facsimile machine, by two of the issuer's officers. Whether the issuer uses one facsimile signature (and one manual signature) or two facsimile signatures, the Exchange currently requires the issuer to submit an opinion

of counsel that states that the use of each facsimile signature (a) is specifically authorized by (or at least is not inconsistent with) the issuer's charter or by-laws and the issuer's indenture, and (b) is valid and effective under the laws of the state of the issuer's incorporation. In the case of the use of a single facsimile signature, the opinion of counsel must also state that the actual facsimile signature to be used has been duly adopted. In the case of the use of two facsimile signatures, the issuer is required to submit to the Exchange the board resolution adopting the actual signatures to be used.

The Exchange believes that it remains appropriate to subject an issuer's use of facsimile signatures to each of those requirements. However, the Exchange believes that it is not necessary to require the issuer to provide opinions of counsel and board resolutions to the Exchange in connection with those requirements.

The Exchange therefore proposes to continue to require issuers to authorize the use of facsimile signatures, to adopt the specific facsimile signatures to be used, to comply with charter, by-law and indenture provisions and to comply with state laws, but to discontinue the practice of requiring issuers to submit opinions of counsel and board resolutions in respect of those requirements. The Exchange believes that improvements in facsimile technology, increased acceptance of facsimile signatures in the business world and the streamlining of the listing process will justify the proposed updating of rules regulating the use of facsimile signatures.

(c) *Discharge of Obligation upon Default of Funds.* Paragraph 602.01 (Requirements for a Depository for Funds) and Subparagraph (D) of paragraph 703.06 each require, in part, that a debt security's indenture may not discharge the issuer's payment obligation if the funds representing payment are deposited with the trustee, depository or paying agent more than ten days before the date on which the funds become available to bond holders. The prohibition addresses the practice of depositing securities with the trustee in advance of a payment obligation as a way of satisfying a restrictive covenant where the indenture does not provide for prepayment.

The Exchange adopted those provisions to protect bondholders prior to the enactment of the Trust Indenture Act and the widespread use of early call provisions. However, the practice of advance security deposits is no longer in use. That plus (a) the protections afforded to bondholders by the Trust

Indenture Act and (b) the fact that an issuer's defeasance does not normally discharge the issuer's payment obligation to the bondholder as set forth in the debt instrument have led the Exchange to believe that it is appropriate to remove the prohibition from the Listed Company Manual.

(d) *Clearance of Terms.* Subparagraph (B) (Clearance of Terms) of Paragraph 703.06 currently asks an issuer to submit the indenture and registration terms to the Exchange prior to applying to list the bond and to receive the Exchange's clearance of the terms of those documents before the company is permitted to use a "listing intention statement" in the offering prospectus. The Exchange no longer believes that early submission and prior clearance are necessary to the listing process and proposes to eliminate both requirements.

Today, in determining whether a bond qualifies for listing on the Exchange, the Exchange determines whether (a) the issuer's equity security is listed on the Exchange (in which case, the issuer's debt securities qualify for listing) or (b) if the issuer does not list its equity security on the Exchange, a nationally recognized security rating organization has rated the debt issue no lower than a Standard & Poor's "B" rating or its equivalent. As a result, the Exchange no longer needs to pre-clear the issuer's financial statements and the like in determining whether the debt security qualifies for an Exchange listing. The one item that has required the Exchange to continue to review indenture terms has been the prohibition against defeasance discussed in paragraph (iii) above. However, by eliminating that requirement, the Exchange eliminates the last justification of its need to pre-clear indenture and registration terms. Of course, if an issuer is uncertain as to whether it will qualify for listing, it is welcome to contact the Exchange to discuss the issue's eligibility prior to engaging in the process of completing a listing application.

The Exchange also proposes to make some non-substantive changes to Subparagraph (B) that clarifies the remaining portions of that Subparagraph.

(e) *Delivery of Prospectus, Mortgage and/or Indenture.* Subparagraph (F) (Debt Securities Listing Application Supporting Documents) of Paragraph 703.06 currently requires the issuer to provide with its listing application four copies of a security's prospectus if the debt security has been issued for 12 months or less and to provide one copy of the prospectus if the debt security has

been issued for more than 12 months. It also requires the issuer to provide one final copy of an issuer's mortgage or indenture.

The Exchange proposes to change those document delivery requirements if the issuer makes the document publicly available by means of a disclosure service (such as Disclosure, Inc.) that the Exchange finds satisfactory. If the document is available in that manner, the Exchange would no longer require the issuer to submit the final copy (in the case of a mortgage or indenture) and would require the issuer to submit only one copy of the prospectus, even if the debt security has been issued for 12 months or less.

The Exchange feels that modern technologies grant the Exchange ready and dependable access to documents and thereby reduce the need to require issuers to provide documents themselves.

(f) *Opinion of Counsel.* Subparagraph (G) (Opinion of Counsel) of Paragraph 703.06 currently requires the issuer to provide the Exchange with an opinion of counsel that verifies such things as the validity of the debt securities and the authorization for the issuance. While the Exchange continues to believe that the opinion plays an important role in the listing process, the Exchange believes that its physical possession of the opinion is not necessary in most cases. Specifically, the Exchange believes that an issuer's affirmation of the existence of the opinion of counsel will suffice for issues that a registered broker-dealer purchases from the issuer with a view toward resale, whether through an underwritten public offering or otherwise. (The Exchange would continue to require the submission of the opinion of counsel for Rule 144A offerings.) The Exchange proposes to amend Subparagraph (G) accordingly.

Substituting the affirmation for a copy of the opinion facilitates the listing process for issuers because it forestalls any need of the issuer to procure counsel's consent to share the opinion with the Exchange.

In addition, the Exchange believes that it is appropriate to eliminate certain of the items that it requires for inclusion in the opinion of counsel. Specifically, the Exchange believes that it is no longer necessary to require the opinion (a) to set forth the date, nature and status of orders or proceedings of regulatory authorities relating to the issuance of securities that are the subject of a listing application, (b) to state that the Board has authorized the issuing and listing of the securities, and (c) to disclose an affiliation of the counsel to the issuer.

The Exchange has rarely used or relied upon the opinion's description of regulatory proceedings. Its deletion would sacrifice little, while serving to simplify the opinion. In addition, the Exchange believes that the listing-application signature of an authorized officer of the issuer provides sufficient assurance of the board's authorization of the issue and of listing the issue on the Exchange.³

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be pro and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

³ As for the elimination of the requirement to disclose counsel's affiliation to the issuer, in Amendment No. 1, the NYSE stressed that in most cases issuers no longer would have to furnish the opinion of counsel. The Exchange notes that if it needed to request, review, and/or rely on an opinion, the NYSE could then inquire about the opinion's source and any relevant affiliations. See Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR-NYSE-98-12 and should be submitted by June 3, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12706 Filed 5-12-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39970; File No. SR-PCX-97-28]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to Exchange-Sponsored Hand-Held Terminals for Options Floor Brokers

May 7, 1998.

I. Introduction

On July 3, 1997, and December 12, 1997, respectively, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

proposed rule change and Amendment No. 1 thereto to adopt rules to allow the use of Exchange-Sponsored Floor Broker Hand-Held Terminals ("Exchange-Sponsored Terminals") on the floor of the Exchange. The Exchange also proposed an interpretation to Rule 6.67 which would not require members' orders entered through Exchange-Sponsored Terminals to be in writing. Finally, the Exchange proposed Rule 6.88(b) to prohibit the use of a floor broker hand-held terminal for market making. On March 30, 1998, the Exchange filed Amendment No. 2 to the proposed rule change with the Commission.³ In Amendment No. 2, the Exchange amends Rule 6.67. Commentary .02 to indicate that orders sent through proprietary Terminals would also be deemed to be written orders for the purposes of Rule 6.67.

The proposed rule change, and Amendment No. 1 thereto were published for comment in the Federal Register on January 16, 1998.⁴ No comments were received on the proposal. This order approves the proposal as amended, including Amendment No. 2 on an accelerated basis.

II. Description of the Proposal

A. General Description

The Exchange's Member Firm Interface ("MFI")⁵ currently permits Exchange Member Firms to use an electronic link with the Exchange to send their option orders directly to the Exchange for delivery to POETS (Pacific Option Exchange Trading System).⁶ Under the proposal, member firms

³ See Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy PCX to David Sieradzki, Attorney, Division of Market Regulation ("Division"). SEC dated March 27, 1998 ("Amendment No. 2").

⁴ Securities Exchange Act Release No. 39532 (Jan. 9, 1998), 63 FR 2711 (Jan. 16, 1998).

⁵ The MFI is an electronic order delivery and reporting system that allows member firms to route orders for execution by the automatic execution feature of POETS as well as to route limit orders to the Options Public Limit Order Book. Orders that do not reach those two destinations are defaulted to a member firm booth. MFI also provides member firms with instant confirmation of transactions to their systems. Member firms may access POETS by establishing an MFI mainframe-to-mainframe connection.

⁶ Orders entered via MFI are delivered to one of three destinations: (a) To Auto-Ex, where they are automatically executed at the disseminated bid or offering price; (b) to Auto-Book, which maintains non-marketable limit orders based on limit price and time of receipt; or (c) to a Member Firm's default destination—a particular firm booth or remote entry site—if the order fails to meet the eligibility criteria necessary for either Auto-Ex or Auto-Book or if the Member Firm requests such default for its orders. See generally Exchange Act Release No. 27633 (Jan. 18, 1990), 55 FR 2466 (Jan. 24, 1990) ("POETS Approval Order").

would be able to use the MFI connection to route orders directly to the member firm booth (not by default) or to a floor broker's Exchange-Sponsored Terminal located in the trading crowd.⁷ The Commission notes that the PCX's proposal does not restrict the use of other Hand-Held terminal systems provided that they do not interfere electronically with existing Exchange systems.⁸

Under the program, Member Firms will be permitted to send their orders electronically to the Exchange via MFI and route them to one of three destinations on the trading floor: (a) To a floor broker standing in the trading crowd; (b) to a Member Firm booth location on the trading floor; or (c) to POETS, where they will be automatically executed by Auto-Ex or maintained in Auto-Book. All orders so transmitted will first be sent through the PCX's system that stores and processes all data for the Exchange-Sponsored Terminals ("Server").⁹ Orders sent to a Member Firm booth via the Server may be sent subsequently either to POETS or to a floor broker in the trading crowd. Orders sent via the Server to a floor broker in the trading crowd may subsequently be transmitted to a Member Firm booth, to POETS, or to another floor broker on the trading floor.

The Exchange intends to furnish Exchange-Sponsored Terminals to be used by floor brokers under the program. In addition, the Exchange will supply booth devices that will have the capability to retrieve and display all orders that were submitted through the device. The Exchange intends to assess users a monthly rental fee for such use after the implementation of the floor-wide program in Phase II.¹⁰

Exchange rules on order representation and order execution will

⁷ In that regard, the Exchange is proposing to add a new Rule 6.88(a), which provides: "Members and Member Organizations may send orders electronically through the Exchange's Member Firm Interface and route them directly to POETS, to a Member Firm booth on the Options Floor, to a Floor Broker Hand-Held Terminal located on the Options Floor, or to any other location designated by the Exchange, provided that the Member or Member Organization has been approved by the Exchange to do so."

⁸ See note 16 *infra* and accompanying text.

⁹ Accordingly, the Exchange stated that there will be no appreciable delay in order entry due to the transmission of orders through the Server. The Exchange also stated that if a Member Firm routes an order to POETS via MFI for automatic execution or maintenance in Auto-Book, the order will not be sent through the Server. Only orders to be transmitted through the Hand-Held Terminal system will be sent through the Server.

¹⁰ The Exchange will submit a separate rule filing to the Commission to establish these fees. See note 19 *infra* and accompanying text.

be unchanged under the program.¹¹ However, the Exchange is proposing to modify one of its rules on orders to provide that an order sent electronically through MFI will be deemed to be a "written order" for purposes of Rule 6.67. The order information that must be reported to the Exchange in connection with each transaction that is executed on the trading floor will be also unchanged under the program.¹²

Under the proposal, initially, floor brokers using Exchange-Sponsored Terminals will not need to write up order tickets because the trade-related floor broker terminal information will be passed electronically to POETS and then to POPS (Pacific Options Processing Information) for clearing purposes. Yet the party on the other side of the trade, if it is executed by a market maker or a floor broker not using a terminal, will have to submit a paper order ticket to the Exchange for processing. Later, when advancements in technology allow for it, no paper tickets will be required because all market makers and floor brokers will be able to interface with each other through Exchange-Sponsored Terminals.¹³ The order ticket requirement shall be the same with Exchange-Sponsored Terminals as it is for proprietary hand held terminals,¹⁴ i.e., if the trade information is not sent to the Exchange electronically, it will have to be conveyed by means of a written order ticket.

Once an order has been executed, the Exchange-Sponsored Terminal system will route trade information to POETS, which, in turn, will route the information to a computer for trade match and clearing purposes. At the same time, the Exchange will send a trade report to the Member Firm that entered the order. In addition, the Exchange will transmit trade information to OCC, OPRA and certain vendors.

Order information sent through the Exchange Sponsored Terminal system will become audit trail information that is available to the Exchange for

¹¹ See, e.g., PCX Rules 5.1(e), 6.43-6.48 and Options Floor Procedure Advices A-1-A-11 and G-1-G12.

¹² See PCX Rule 6.69.

¹³ The Commission notes that the Exchange should consult with the Commission to determine if any future changes in technology used on the Exchange floor would be required to be submitted to the Commission pursuant to Section 19(b) of the Act. Moreover, any additional conditions or limitations placed on the use of hand held terminals should be submitted to the Commission as a proposed rule change pursuant to Section 19(b) of the Act. See *Interactive Brokers LLC*, Admin. Proc. File No. 3-9237 (March 19, 1998) (opinion of the Commission).

¹⁴ See note 15 *infra*.

regulatory purposes. However, if an order is routed to the Member Firm booth by telephone or wire, and not through MFI, and the order is then sent to POETS or to a floor broker in the crowd using the Exchange-Sponsored Terminals, the audit trail information will commence when the order is sent from the booth. An audit trail of all actions taken by the Exchange-Sponsored Terminal that result in an interaction with the Server will be maintained. Upon receipt of an order in the Server from POETS or a booth device, the order will be time stamped and retained in the Server's database. When orders are executed at a Exchange-Sponsored Terminal, they will be time stamped upon receipt by the Server. Accordingly, the Exchange believes that the audit trail information should be more accurate than current information, which is recorded manually on order tickets.

The Exchange will not prohibit floor brokers from using proprietary hand-held terminals¹⁵ for order entry on the Options Floor as long as they do not interfere with any Exchange-Sponsored Terminals, with POETS or with other equipment on the floor.¹⁶

B. Prohibition of Market Making Function

The Exchange is proposing to adopt new Rule 6.88(b) providing that no Floor Broker may knowingly use a Exchange-Sponsored Terminal, on a regular and continuous basis, to simultaneously represent orders to buy and sell options contracts in the same series for the account of the same beneficial holder. The rule further provides that if the Exchange determines that a person or entity has been sending, on a regular and continuous basis, orders to simultaneously buy and sell option contracts in the same series for the account of the same beneficial holder, the Exchange may prohibit orders for the account of such person or entity

¹⁵ The Commission notes that a rule filing to permit Exchange floor brokers to use proprietary order routing terminals on the Options Trading Floor is currently pending before the Commission. See Securities Exchange Act Release No. 38270 (Feb. 11, 1997), 62 FR 7286 (Feb. 18, 1997) (Notice of filing of SR-PSE-97-02).

¹⁶ The term "interfere" refers to electronic interference that may occur between a member's proprietary device and another electronic system or piece of equipment on the Trading Floor. For example, if the use of a proprietary device on the floor caused the POETS automatic execution to halt, or if it disrupted telephonic communications on the floor, or if it prevented another member firm from being able to receive electronic orders through another order-routing system, then the device causing the interference could not be used on the floor until it was rendered compatible with the order electronic systems in use.

from being sent through the Exchange's Member Firm Interface for such period of time as the Exchange deems appropriate.¹⁷

C. Implementation

The Exchange is proposing a two-phase approach to integrating the new hand-held technology into the floor environment. In Phase I, the Exchange will allow limited implementation of the program to evaluate the use of Exchange-Sponsored Terminals and to identify and correct any problems that may arise. In this regard, the Exchange will select a representative cross-section of floor members and off-floor members for the execution of various types of order flow in both lightly-traded and heavily-traded issues. Phase I will last for about four months. It will involve approximately two off-floor Member Firms, two Member Firm booth devices and 12 Exchange-Sponsored Terminals. The Exchange, in conjunction with its Options Floor Trading Committee, will select Members and Member Firms to participate in Phase I on an objective basis.¹⁸ During Phase I, floor brokers will not be permitted to transmit orders to other floor brokers (they will be limited to transmitting orders either to POETS or to a Member Firm booth).

In Phase II, the Exchange will roll out the program on a floor-wide basis, allowing any qualified Floor Member or off-floor Member who wishes to participate in the program to do so.¹⁹ When Phase II is implemented, the Exchange-Sponsored Terminals program will be fully rolled out. Exchange-Sponsored Terminals will be approved for use in all trading crowds and will

¹⁷ The Commission notes that a member would have the right to appeal any decision to suspend a member from using an Exchange-Sponsored Terminal pursuant to Exchange Rule 11.7, *Hearings and Review of Committee Act*.

¹⁸ Factors will include the nature of order flow (retail or institutional), the nature of the issue (lightly-traded or heavily-traded), nature of the floor brokerage operation, time of application, limitations in the number of participants who may participate, and other such factors.

¹⁹ The term "qualified Floor Member or off-floor Member" refers to the requirement that all floor brokers and order flow providers who participate in the program must be approved by the Exchange to do so. Floor brokers are eligible to participate if they are registered with the Exchange as floor brokers pursuant to Rule 6.44 and have arranged with a member firm to receive order flow through the system. Member firms are eligible to participate in the program if they have made arrangements with a floor broker for the transmission and execution of orders. Moreover, after Phase II is implemented, the Exchange has represented that it intends to impose a fee upon participants in the program in an amount to be specified in a rule change proposal to be filed with the Commission under Section 19(b) of the Act.

allow floor brokers to transmit orders to other floor brokers.

III. Discussion

Section 6(b)(5) of the Act²⁰ requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and in general to protect investors and the public interest. Section 6(b)(7) of the Act²¹ requires that the rules of an Exchange be in accordance with Section 6(d) of the Act,²² and in general that an Exchange provide a fair procedure for the disciplining of members and determining whether to prohibit or limit a person's access to services offered by the exchange. Section 6(b)(8) of the Act²³ requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 11A(a)(1)(C)(ii) of the Act²⁴ states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers. For the reasons set forth below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5), 6(b)(7), 6(b)(8), and 11A(a)(1)(C) of the Act.²⁵

The Commission believes that the Exchange's proposal should foster coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by expediting and making more efficient the process by which members can receive and execute options orders on the floor of the Exchange. The proposal also will promote fair competition among brokers and dealers

²⁰ 15 U.S.C. 78b(5).

²¹ 15 U.S.C. 78b(7).

²² 15 U.S.C. 78f(d). Section 6(d) of the Act, among other things, require that an exchange, in any proceeding to determine whether a member should be disciplined, bring specific charges, notify such member of and provide him with an opportunity to defend himself against such charges, and keep a record.

²³ 15 U.S.C. 78b(8).

²⁴ 15 U.S.C. 78k-1(a)(1)(C).

²⁵ In approving these rules, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

and facilitate transactions in options on the Exchange. Finally, for the reasons described in more detail below, the Commission believes that the market making prohibition on the use of the Exchange-Sponsored Terminals adequately balances the potential benefits to be derived from Exchange-Sponsored Terminals with the important regulatory issues that are raised in connection with the potential use of Exchange-Sponsored Terminals for market making.

As described above, proposed Rule 6.88(b) provides that no Floor Broker may knowingly use an Exchange-Sponsored Terminal, on a regular and continuous basis, to simultaneously represent orders to buy and sell options contracts in the same series for the account of the same beneficial holder. The Rule further provides that if the Exchange determines that a person or entity has been sending, on a regular and continuous basis, orders to simultaneously buy and sell option contracts in the same series for the account of the same beneficial holder, the Exchange may prohibit orders for the account of such person or entity from being sent through the Exchange's Member Firm Interface for such period of time as the Exchange deems appropriate.

The Commission finds that the market making restriction is consistent with the Act for the following reasons. The Commission believes that the PCX's restriction on market making through the use of Exchange-Sponsored Terminals has been effected in a clear and reasonable manner that is not ambiguous nor overbroad, and that takes into account regulatory and market impact concerns, including those relating to quote competition and price discovery.²⁶ Notably, the Exchange's proposal does not bar all two-sided limit orders. Instead it only restricts the acceptance of two-sided limit orders placed by the same beneficial holder in the performance of a market making function. The distinction between market making and brokerage activity is well established among market participants. Moreover, the language of proposed Rule 6.88(b) expressly restricts a floor broker from, on a regular and continuous basis, simultaneously representing orders to buy and sell options contracts in the same series for the account of the same beneficial holder, not the occasional entry of two-sided limit orders. This definition of

²⁶ Cf., Securities Exchange Act Release No. 25842 (June 23, 1988), 53 FR 24539 (approving certain restrictions on the use of telephones on the floor of the New York Stock Exchange), *aff'd per curiam*, 866 F.2d 47 (2d Cir. 1989).

market making activity is consistent with the definition of market maker under the Act which states that a market maker "holds himself out as being willing to buy and sell [a] security for his own account on a regular or continuous basis."²⁷ Thus, the market making restriction on Exchange-Sponsored Terminal use for routing limit orders is the minimum necessary for the Exchange to bar Terminal use for off-floor market making.

Further, as the Commission has previously stated in approving market making restrictions similar to that being adopted by PCX, the Commission does not believe it unreasonable for a market to determine that the introduction of unregulated market making through floor brokerage hand held terminals may undermine its market maker system and potentially create disincentives for market makers to remain on an exchange trading floor.²⁸ Accordingly, any burden on competition that arguably exists from PCX's restriction on using Exchange-Sponsored Terminals for market making is, in the Commission's view, justified as reasonable and appropriate to ensure adequate regulation of the PCX market.²⁹

The Exchange represents that it intends to implement the use of Exchange-Sponsored Terminals through the use of a two-phase approach. The Commission believes that it is consistent with the Act for the Exchange to limit the introduction of Exchange-Sponsored Terminals at this time given the Exchange's stated desire to identify and correct any problems that may arise. Further, the Exchange has stated that participants in Phase I will be selected on the basis of certain objective criteria.³⁰ The Commission notes that after the completion of Phase I, which the Exchange represents should last approximately four months, Phase II will begin, allowing any qualified Floor Member or off-floor member who wishes to participate in the program to

²⁷ 15 U.S.C. 78c(a)(38).

²⁸ See Securities Exchange Act Release No. 38054 (Dec. 16, 1996), 61 FR 67365 (Dec. 20, 1996) (order approving SR-CBOE-95-48).

²⁹ While the Commission recognizes that there may be ways to address the regulatory issues presented by off-floor market making through the use of floor broker hand-held terminals, the Act does not dictate that any particular approach be taken. The Commission believes that the manner in which the Exchange has chosen to address the regulatory issues presented by off-floor market making reflects the considered judgment of the PCX regarding the attributes of Exchange membership and the organization of its trading floor, and is a fair exercise of its powers as a national securities exchange.

³⁰ See *supra* note 18.

do so.³¹ As noted by the Exchange, all floor brokers that have registered with the Exchange as floor brokers pursuant to Rule 6.44 and have arranged with a member firm to receive order flow through the system will be eligible to participate in the Exchange-Sponsored Terminals program. The Commission expects the Exchange to allow any floor broker that meets the above requirements to participate in the program.

In addition, the Commission believes that the proposed interpretation to Rule 6.67, under which the transmission of an order that is received by means of an Exchange-Sponsored Terminal or proprietary hand-held terminal will be deemed to constitute a written order for the purposes of Rule 6.67, in general, protects investors and the public interest. The Commission believes the proposed commentary to Rule 6.67 will provide a more efficient means of communicating orders on the floor. The Commission notes that while this proposed Commentary effects the format of the order ticket, the Exchange has represented and the Commission expects that the required content of the order ticket would not be altered.³²

Finally, regarding the use of proprietary hand-held terminal systems on the floor of the Exchange; the Exchange has represented that it intends to allow the use of proprietary hand-held terminal systems on the floor of the Exchange provided that they do not electronically interfere³³ with existing Exchange systems.³⁴ As discussed

³¹ The term "qualified Floor Member or off-floor Member" refers to the requirement that all floor brokers and order flow providers who participate in the program must be approved by the Exchange to do so. Floor brokers are eligible to participate if they are registered with the Exchange as floor brokers pursuant to Rule 6.44 and have arranged with a member firm to receive order flow through the system. Member firms are eligible to participate in the program if they have made arrangements with a floor broker for the transmission and execution of orders. Moreover, after Phase II is implemented, program participants will be required to pay the Exchange a fee in an amount to be specified in a rule change proposal to be filed with the Commission.

³² Telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy PCX and David Sieradzki, Attorney, Division, SEC on April 22, 1998. The Commission notes that any change to the required content of an order ticket would have to be submitted to the Commission as a proposed rule change under Section 19(b) of the Act.

³³ The term "interfere" refers to electronic interference that may occur between a member's proprietary device and another electronic system or piece of equipment on the Trading Floor.

³⁴ The Exchange has represented that this policy includes allowing Exchange members to interface electronically with MFI, POETS or the limit order book; provided that the proprietary system is properly configured to interface with these systems. Telephone conversation between Michael D.

above, the Exchange notes that if, for example, the use of a proprietary device on the floor caused the POETS automatic execution to halt, or if it disrupted telephonic communications on the floor, or if it prevented another member firm from being able to receive electronic orders through another order-routing system, then the device causing the interference could not be used on the floor until it was rendered compatible with the other electronic systems in use. The Commission finds that this restriction is reasonable given that it is limited to electronic interference with other exchange systems and that an interfering system would be permitted to return to the floor once it is made compatible with other exchange systems. The Commission notes that any implementation of this provision to restrict competition or the introduction of new technology onto the floor of the Exchange would be inconsistent with the Exchange's rules and with the Act. In summary, the Commission emphasizes and finds it very important that approval of the PCX's Exchange-Sponsored Terminals proposal will not restrict members from using their own proprietary terminal systems provided that they do not electronically interfere with existing Exchange systems.³⁵

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 amends the language in proposed Commentary .02 to Rule 6.67 to indicate that orders received through proprietary hand held terminals will be considered to be in writing for the purposes of Rule 6.67. Commentary .02, as originally proposed, applied only to Exchange-Sponsored Terminals. Amendment No. 2 ensures that all systems, whether Exchange sponsored or not will have the same regulatory requirements. As a result, the Commission does not believe that Amendment No. 2 raises any new regulatory issues. Further, the Commission notes that the original proposal was published for the full 21-day comment period and no comments were received by the Commission. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act, to approve Amendment No. 2 to the

Pierson, Senior Attorney, Regulatory Policy, PCX and David Sieradzki, Attorney, Division, SEC on April 8, 1998.

³⁵ See *supra* note 18.

³⁶ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78b(b).

Exchange's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-PCX-97-28 and should be submitted by June 3, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁷ that the proposed rule change (SR-PCX-97-28) is approved as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12702 Filed 5-12-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39972; File No. SR-PHLX-98-20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change By the Philadelphia Stock Exchange, Inc. To Adopt, on a Pilot Basis, a System Enhancement to the X-Station Electronic Book

May 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),

³⁷ 15 U.S.C. 78s(b)(2).

³⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

notice is hereby given that on April 24, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b-4 under the Act, proposes, as a six month pilot, to adopt a system enhancement to the X-Station electronic book on the options floor which matches incoming Automatic Execution System ("AUTO-X") orders with orders residing on the specialist's book.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As described in Phlx Rule 1080, Comment .02, the electronic order book is an automated mechanism for specialists to hold and display orders based on price/time priority. The Exchange is currently preparing floor-wide deployment of the new X-Station electronic book on the options floor. The new X-Station provides certain improvements such as expedited non-AUTO-X order execution as well as expedited cancel replacement processing.

AUTO-X is the automatic execution feature of the Automated Options Market ("AUTOM") System, the electronic order delivery and routing system for options orders. Currently, AUTO-X orders are executed against a "shadow account" for which the specialist is ultimately responsible. The execution is immediately reported back to the sending firm, and then, the specialist must manually input the

contra-side interest representing the booked order that becomes due as a result of the AUTO-X trade.

At this time, the Phlx proposes to adopt, as a six month pilot, a system enhancement to the electronic book that matches incoming AUTO-X orders with booked orders. The proposed matching ability would allow the specialist to match these two participants directly, without the specialist participating in the trade, by dropping the order to manual status. The match would not be automatic, as the specialist must ensure that crowd participation under current parity/priority rules is not due before executing the trade; thus, the specialist must "select" the orders to execute the trade. Since the AUTO-X order has dropped to manual, the sending firm will not receive an execution report until the specialist selects and executes the trade.

The proposed enhancement affords specialists relief from the manual burden of inserting trade participant and clearing information by writing an order ticket for the booked order. Without the X-Station itself, the booked order appears on an actual order ticket, which the specialist submits for key punch entry. Thus, implementing the X-Station without the matching feature is more burdensome than the process required without the X-Station itself because it requires more ticket-writing. The proposed enhancement should reduce the amount of paper processed on the options floor. This in turn should reduce handling and processing time, including the likelihood of errors, thereby facilitating more prompt and accurate trade reporting.

For these reasons, the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency through automation in the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act² and Rule 19b-4(e)(5)³ thereunder. The proposal effects a change in an existing order-entry or trading system of a self-regulatory organization that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system.⁴

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No.

² 15 U.S.C. 78s(b)(3)(A).

³ 17 CFR 240.19b-4(e)(5).

⁴ In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SR-PHLX-98-20 and should be submitted by June 3, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12704 Filed 5-12-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39964; File No. SR-Phlx-98-09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Revise Exchange Rule 1101A Relating To Index Options Strike Price Intervals

May 6, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on February 5, 1998, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange rule 1101A(a), "Terms of Option Contracts," to revise the strike (exercise) price intervals for index options. The proposal would change the intervals between index option strike prices to facilitate the prompt dissemination of quote information and to more accurately reflect the strike prices currently being listed.

Currently, Rule 1101A(a) establishes the strike price interval at \$5, except: (i) where the strike price exceeds \$500, the strike price interval may be \$10; and (ii) where the strike price exceeds \$1,000, the interval may be \$20. The Exchange may also determine to list strike prices at wider intervals in "out-of-the-money" or far term series, generally \$25, except: (i) where the strike price exceeds \$500, the interval may be \$50; and (ii) where the strike price exceeds \$1,000, the interval may be \$100. Also, where strike price intervals would be greater than \$5,

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

the Exchange may list alternative strike prices at \$5 intervals in response to demonstrated customer interest or specialist request.

At this time, the Exchange is proposing an index option strike price interval of \$5 for the three consecutive near-term months, \$10 for the fourth month, and \$30 for the fifth month. However, the Exchange will retain the ability to list alternative strike prices at \$5 intervals in response to demonstrated customer interest or specialist request.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

During recent years, the number of new option products and total series listed by the national securities exchanges has increased dramatically, thereby increasing the number of continuous quote changes disseminated by the exchanges to the Options Price Reporting Authority ("OPRA"), and by OPRA to securities information vendors. In an effort to curb the growth of strike price dissemination and to more accurately reflect the strike prices currently being listed, the Exchange proposes to amend Exchange rule 1101A(a) to change the intervals between index option strike prices.

Currently, Exchange Rule 1101A(a) establishes a formula for strike price intervals which takes into consideration the index value and time remaining until expiration. The Rule establishes a strike price interval at \$5, except: (i) where the strike price exceeds \$500, the strike price interval may be \$10; and (ii) where the strike price exceeds \$1,000, the interval may be \$20. The Exchange may also determine to list strike prices at wider intervals in "out-of-the-money"

or far term series, generally \$25, except: (i) where the strike price exceeds \$500, the interval may be \$50; and (ii) where the strike price exceeds \$1,000, the interval may be \$100. Also, where strike price intervals would be greater than \$5, the Exchange may list alternative strike prices at \$5 intervals in response to demonstrated customer interest or specialist request.

The Exchange's proposed rule change would establish new strike price intervals of: (i) \$5 for the three consecutive near-term months; (ii) \$10 for the fourth month; and (iii) \$30 for the fifth month. However, the Exchange would retain the ability to list alternative strike prices at \$5 intervals in response to demonstrated customer interest or specialist request, as well as to list strike prices at wider intervals. The Exchange believes the continued ability to add strike prices at alternative \$5 intervals in response to customer interest will maintain flexibility in the marketplace and will preserve specific trading opportunities.

The current version of Exchange Rule 1101A(a) was adopted in 1996,² and was likewise intended to improve the Exchange's strike price dissemination policy. Based on its experience implementing Rule 1101A(a), the Exchange has determined to revise and simplify the Rule for easier administration. The Exchange believes the revised Rule will more accurately reflect the needs of the marketplace. Specifically, basing the strike price interval on an option's value (in the case of option greater than \$500 or \$1000) has not proven useful. The Exchange believes that widening the interval in far-term series should continue to reduce the number of outstanding series listed.

The Exchange also believes that listing far-term series and long-term options at wider strike price intervals should improve the efficiency of quotation dissemination and facilitate speedy pricing by reducing the number of listed strike prices. The Exchange believes the immediate effect should be a reduction in the number of index option strike prices. Furthermore, the Exchange believes it will experience a reduction in its systems capacity and usage as well as its operational burdens. For instance, strike prices currently occupy trading floor screen space and consume transmission line traffic to OPRA and outside vendors that disseminate Exchange trading information. Further, the role of the

specialist in monitoring multitudes of strike prices should be enhanced.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,³ in general, and with Section 6(b)(5),⁴ in particular, in that it is designed to promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange further believes that the proposed rule change will protect investors and the public interest by eliminating excess strike prices, thereby improving quotation dissemination capabilities, while maintaining investors' flexibility to better trailer index option trading to meet their investment objectives. According to the Exchange, the proposed rule change strikes a reasonable balance between reducing option series and accommodating the needs of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on completion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-98-09 and should be submitted by June 3, 1998.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.⁵

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 98-12705 Filed 5-12-98; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice No. 2819]

Bureau of Oceans and International Environmental and Scientific Affairs; Public Meeting on Preparations for an International Agreement Through the United Nations Environment Program on Persistent Organic Pollutants

SUMMARY: The United States government, through an interagency working group chaired by the U.S. Department of State, is preparing for negotiations through the United Nations Environment Program (UNEP) on a global agreement to address certain persistent organic pollutants that result in risks of a transboundary nature. The first negotiating session is scheduled to take place in Montreal, Canada, on June 29-July 3 this year. The Department of State will host a public meeting in advance of this session to outline issues likely to arise in the context of the negotiations. The meeting will take place on Wednesday, June 3 from 10:30-12:30 in Room 1912 of the U.S.

Department of State, 2201 C Street Northwest, Washington, D.C. to expedite their entrance into the building, attendees should provide Eunice Mourning (tel. 202-647-9266, fax 202-647-5947) with their date of birth and social security number by close of business on Monday, June 1. Attendees should enter at the "C" Street entrance and bring picture identification with them.

For further information, please contact Mr. Trigg Talley, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street NW, Washington, D.C. 20520. Phone 202-647-5808, fax 202-647-5947.

Supplementary Information: The United States, through an interagency working group chaired by the U.S. Department of State, is preparing for negotiations through the U.N. Environment Programme (UNEP) on an agreement that will establish global controls on certain pollutants that, because of their physico-chemical properties, pose risks of a transboundary or global nature. These pollutants, which have been termed "persistent organic pollutants" in a number of international discussions, share four characteristics: they are toxic, persist in the environment for long periods of time, bioaccumulate in the fatty tissue of humans and animals, and are prone to long-distance transport. These pollutants are generally heavily controlled in the United States. Well-known examples of chemicals that exhibit these characteristics include dichlorodiphenyl trichloroethane (DDT), polychlorinated biphenyls (PCBs) and polychlorinated dibenzodioxins (PCDDs) and polychlorinated dibenzo-furans (PCDFs).

POPs have been linked to a variety of adverse effects on humans and wildlife, including immune and metabolic system dysfunction, neurological deficits, reproductive abnormalities, and cancer. POPs biomagnify through the food chain, and have been measured in fatty tissue (including in fish and marine mammals consumed by humans) at concentrations many orders of magnitude greater than those found in the surrounding environment. Because of these characteristics, several POPs continue to raise concerns decades after controls have been put into place in the United States. For example, DDT remains ubiquitous in the environment and human tissue twenty-five years after its control in the United States. Likewise, continuing PCB contamination led to fish advisories in watersheds in 34 U.S. states in 1995

(including the Great Lakes), some twenty years after initial controls.

Certain POPs also behave in a manner that can result in effects that are transboundary or global in nature. Many of these POPs are "semi-volatile," meaning that they tend to vaporize at warmer temperatures and condense as the air gets cooler. Due to prevailing atmospheric circulation patterns, and the propensity of certain POPs for successive re-volatilization, there is evidence to support the systematic migration of such substances to cooler latitudes. Deposition in the Arctic region is particularly significant. POPs can also travel long distance through other mechanisms as well.

Studies have identified significant deposits of many of these chemicals in the tissues of fish, mammals, birds and humans in locations thousands of miles from any known source. Studies have in particular found deposits of a number of POPs in the Arctic environment where they have been measured at high levels in humans and wildlife. For certain native populations whose traditional diet is heavy in fish and marine mammals, measured levels of several POPs, including DDT and PCBs, approach or exceed levels of concern.

The United States and many other countries have already taken substantial action to address risks associated with the pollutants identified for action in international bodies. Nonetheless, certain of them remain in use and production in parts of the world, and there appears to be continuing transboundary deposition of a number of these chemicals. For example, analysis of DDT samples taken in North America suggest fairly recent deposition, probably from sources in the tropics.

In response to mounting evidence of potentially significant transboundary deposition of and exposure to these chemicals, the United States has for some time supported action on the most problematic POPs in several regional bodies, in addition to UNEP's work. In North America, the United States has been involved in efforts to address POPs risks through the Great Lakes Water Quality Agreement, as well as through the North American Agreement on Environmental Cooperation. Finally, the United States and over 50 other countries recently concluded negotiations on a protocol on persistent organic pollutants through the U.N. Economic Commission for Europe's Convention on Long-Range Transboundary Air Pollution (LRTAP). The protocol calls for prohibitions or restrictions on thirteen pesticides and commercial chemicals (DDT, PCBs,

aldrin, dieldrin, endrin, toxaphene, mirex, hexachlorobenzene, heptachlor, chlordane, chlordecone, hexabromobiphenyl, and hexachlorocyclohexane); and controls on significant emissions from releases from stationary sources of four by-products of industrial processes (PCDDs, PCDFs, hexachlorobenzene and certain polycyclic aromatic hydrocarbons). All of these pollutants are subject to stringent controls in the United States. The agreement also establishes a mechanism for considering action on additional pollutants once the agreement comes into force. More information on this protocol and the LRTAP Convention can be found at <http://www.unepce.org>.

Activities to Date through the U.N. Environment Program

The United States and other countries recognized several years ago that the global nature of POPs dispersion (and particularly continuing releases in different regions of the world) meant that regional activities would not be sufficient to fully address the problem. Accordingly, preparatory work was begun through UNEP and other technical organizations in 1995 toward global action to address some of the most harmful persistent organic pollutants. Countries identified twelve pollutants in particular for early assessment and global action.

The pollutants identified include nine pesticides, eight of which are banned for use in the United States (DDT, chlordane, aldrin, dieldrin, endrin, toxaphene, mirex, and hexachlorobenzene; the ninth, heptachlor, is severely restricted); PCBs, a family of industrial chemicals that are no longer produced in the United States but which remain in use in electrical equipment and other uses; and PCDDs and PCDFs, two toxic by-products of combustion and other industrial processes.

Countries recognized that addressing these three different classes of POP will require different management approaches. For example; commercially produced POPs such as pesticides would be subject to use and production controls; in contrast, addressing PCDDs and PCDFs will require a variety of measures aimed at reducing releases of PCDDs into the environment. Finally, to the extent that there are significant stocks of PCB equipment as well as other POPs stockpiles, such stocks would need to be managed and disposed of in an environmentally sound manner.

In December 1995, 105 countries at the Washington Conference on Land-

² See Securities Exchange Act Release No. 37003 (Mar. 21, 1996), 61 FR 13913 (Mar. 28, 1996).

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(5).

⁵ 17 CFR 200.30-3(a)(12).

Based Sources of Marine Pollution called for the development of a global legally binding instrument addressing the twelve substances, as well as the development of a procedure for consideration of additional pollutants in the future. An Ad Hoc Working Group on POPs under the Intergovernmental Forum on Chemical Safety (IFCS), meeting in June 1996, also concluded that a global agreement was necessary, and issued a set of recommendations to the U.N. Environment Program regarding specific types of actions. In February 1997, the U.N. Environment Program authorized establishment of an international negotiating committee, to work on the basis of a negotiating mandate provided in UNEP Decision 19/13C. The Decision, which closely reflects the recommendations of the IFCS Ad Hoc Working Group on POPs, can be found in full on the internet on the POPs Home Page, which can be accessed through UNEP's Chemicals Home Page (<http://irptc.unep.ch>). The POPs Home Page contains the IFCS recommendations and other information on POPs and related activities as well.

Among other things, countries represented in the U.N. Environment Program's Governing Council concluded that international action, including a global legally binding instrument, is required to reduce the risks to human health and the environment arising from the release of the twelve specific POPs. Countries decided that immediate international action should be initiated to protect human health and the environment through measures which will reduce and/or eliminate the emissions and discharges of the twelve POPs and, where appropriate, eliminate production and subsequently the remaining use of those POPs that are intentionally produced. Countries recognized that such action should include: use of separate, differentiated approaches to take action on pesticides, industrial chemicals, and unintentionally produced by-products and contaminants; use of transition periods, with phased implementation for various proposed actions; careful and efficient management of existing stocks of the specified persistent organic pollutants and, where necessary and feasible, their elimination; training in enforcement and monitoring of use to discourage the misuse of POP pesticides; and remediation of contaminated sites and environmental reservoirs, where feasible and practicable taking into account national and regional considerations in the light of the global significance of the problem.

The Decision calls for the U.N. Environment Program to prepare for and convene, together with the World Health Organization and other relevant international organizations, an intergovernmental negotiating committee, with a mandate to prepare an international legally binding instrument for implementing international action initially beginning with the twelve specified POPs and to take into account the conclusions and recommendations of the Ad Hoc Working Group on Persistent Organic Pollutants of the Intergovernmental Forum on Chemical Safety. It also notes the need to develop science-based criteria and a procedure for identifying additional persistent organic pollutants as candidates for future international action, and requests the intergovernmental negotiating committee to establish, at its first meeting, an expert group to carry out this work. It specifies that the group should work expeditiously, proceeding concurrently with the intergovernmental negotiating committee process, to develop criteria for consideration by the intergovernmental negotiating committee in the negotiation of a legally binding instrument. It specifies that the process should incorporate criteria pertaining to persistence, bioaccumulation, toxicity and exposure in different regions and should take into account the potential for regional and global transport including dispersion mechanisms for the atmosphere and the hydrosphere, migratory species and the need to reflect possible influences of marine transport and tropical climates. The Decision also calls for the U.N. Environment Program to undertake a variety of actions to lead to more effective ways of addressing specific aspects of POPs.

The Decision calls for negotiations to begin this year and to be completed by the year 2000. It is expected that negotiating sessions will occur every six months or so, with technical work occurring in the interim.

The Administration is preparing its position for this negotiation, and has scheduled a public meeting to be held on Wednesday, June 3 from 10:30 to 12:30 in Room 1912 of the U.S. Department of State. Members of the interagency working group will provide an overview of U.S. preparations for the first meeting. The U.S. Department of State is issuing this notice to help ensure that potentially affected parties are aware of and knowledgeable about these negotiations. In subsequent briefings, we will be contacting organizations that have expressed an

interest by mail or fax. Those organizations that cannot attend the June 3 meeting, but wish to remain informed, should provide Mr. Trigg Talley of the Department of State (202-647-5808; tel. 202-647-5947 fax; LTalley@state.gov) with their address, and telephone and fax numbers.

Dated: May 8, 1998.

Trigg Talley,
Foreign Affairs Officer, Office of
Environmental Policy.
[FR Doc. 98-12748 Filed 5-12-98; 8:45 am]
BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on February 19, 1998 [62 FR 8517].

DATES: Comments must be submitted on or before June 12, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Robinson, NHTSA Information Collection Clearance Officer at (202) 366-9456.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration (NHTSA)

(1) Title: Assigning DOT code Numbers to Glazing Material Manufacturers.

OMB Control Number: 2127-0038.

Type Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: Title 49, Chapter 30115 of the U.S. Code specifies that the Secretary of Transportation shall require every manufacturer or distributor of a motor vehicle or motor vehicle equipment to furnish the distributor or dealer at the time of delivery certification that each item of motor

vehicle equipment conforms to all applicable Federal Motor Vehicle Safety Standards (FMVSS). Using this authority, the agency issued FMVSS No. 571.205, Glazing Materials. This standard specifies requirements for glazing materials for use in passengers cars, multipurpose passenger vehicle, trucks, buses, motorcycle, slide-in campers, and pickup covers designed to carry persons while in motion. Also, this standard specifies certification and marking of each piece of glazing materials. Certification for the items listed comes in the form of a label, tag or marking on the outside of the motor vehicle equipment and is permanently affixed and visible for the life of the motor vehicle equipment. The purpose of this standard is to aid in reducing injuries resulting from impact to glazing surfaces, and to ensure a necessary degree of transparency for driver visibility. Both glass and plastics are considered to be glazing materials which provide safety and minimize the possibility of occupants being thrown through the vehicle window in the event of an accident.

Estimated Annual Burden: 10.5 hours.

(2) Title: 49 CFR Part 566

Manufacturers' Identification.

OMB Control Number: 2127-0043.

Type Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: The National Highway Traffic Safety Administration's statute at 49 U.S.C. 30118 Notification of defects and noncompliance requires manufacturers to determine if the motor vehicle or item or replacement equipment contains a defect related to motor vehicle safety or fails to comply with an applicable Federal Motor Vehicle Safety Standard. Following such a determination, the manufacturer is required to notify the Secretary of Transportation, owners, purchasers and dealers of motor vehicles or replacement equipment, of the defect or noncompliance and to remedy the defect or noncompliance without charge to the owner. With this determination, NHTSA issued 49 CFR Part 566, Manufacturer Identification. Part 566 requires every manufacturer of motor vehicles and/or replacement equipment to file with the agency on a one time basis, the required information specified in Part 566.

Estimated Annual Burden: 25 hours.

(3) Title: Names and Addresses of First Purchasers of Motor Vehicles.

OMB Control Number: 2127-0044.

Type Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: 49 U.S.C. 30117 Providing information to, and maintaining records on, purchasers at subparagraph (b) Maintaining purchaser records and procedures states in part: A manufacturer of a motor vehicle or tire (except a retreaded tire) shall maintain a record of the name and address of the first purchasers of each vehicle or tire it produces and, to the extent prescribed by regulations of the Secretary, shall maintain a record of the name and address of the first purchaser of replacement equipment (except a tire) that the manufacturer produces. This agency has no regulation specifying how the information is to be collected or maintained. When NHTSA's authorizing statute was enacted in 1966, Congress determined that an efficient recall of defective or noncomplying motor vehicles required the vehicle manufacturers to retain an accurate record of vehicle purchasers. By virtue of quick and easy access to this information, the manufacturer is able to quickly notify vehicle owners in the event of a recall. Experience with this statutory provision has shown that manufacturers have retained this information in a manner sufficient to enable them to expeditiously notify vehicle purchasers in case of a recall. Based on this experience, NHTSA has determined that no regulation is needed. Without this type of information readily available, manufacturers would either need to spend more time or money to notify purchasers of a recall.

Estimated Annual Burden: 950,000 hours.

(4) Title: 49 CFR Part 556, Petitions for Inconsequentiality.

OMB Control Number: 2127-0045.

Type Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: The National Highway Traffic Safety Administration's statute at 49 U.S.C. 30113 General exemptions at subsection (b) Authority to exempt and procedures, authorizes the Secretary of Transportation upon application of a manufacturer, to exempt the applicant from the notice and remedy requirements of 49 U.S.C. Chapter 301, if the Secretary determines that the defect or noncompliance is inconsequential as it relates to motor vehicle safety. The notice and remedy requirements of Chapter 301 are set forth in 49 U.S.C. 30120 Remedies for defects and noncompliance. Those section require a manufacturer of motor

vehicles or motor vehicle equipment to notify distributors, dealers and purchasers if any of the manufacturer's products are determined either to contain a safety-related defect or to fail to comply with an applicable Federal motor vehicle safety standard. The manufacturer is under a concomitant obligation to remedy such defects or noncompliance. NHTSA exercised this statutory authority to excuse inconsequential defects or noncompliance when it promulgated 49 CFR Part 556, Petitions for Inconsequentiality—this regulation establishes the procedures for manufacturers to submit such petitions to the agency will use in evaluating those petitions. Part 556 allows the agency to ensure that petitions filed under 15 U.S.C. 30113(b) are both properly substantiated and efficiently processed.

Estimated Annual Burden: 30 hours.

(5) Title: 49 CAR Section 571, 125-Warning Devices.

OMB Control Number: 2127-0506.

Type Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: 49 U.S.C. 30111, 30112 and 30117 (Appendix 1) of the National Traffic and Motor Vehicle Safety Act of 1966, authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS). The Secretary is authorized to issue, amend, and revoke such rules and regulations as she/he deems necessary. Using this authority, the agency issued FMVSS No. 125, Warning Devices which applies to devices, without self contained energy sources, that are designed to be carried mandatorily in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 pounds and voluntarily in other vehicles. These devices designed to be permanently affixed to the vehicle.

Estimated Annual Burden: 5.7 hours.

(6) Title: 49 CFR 571.218, Motorcycle Helmets (Labeling).

OMB Control Number: 2127-0518.

Type Request: Extension of a currently approved collection.

Affected Public: Federal, Local, State or Tribal Government, Business or other for-profit.

Abstract: The National Traffic and Motor Vehicle Safety statute at 49 U.S.C. Subchapter II Standards and Compliance, Sections 30111 and 30117 authorizes the issuance of Federal motor vehicle safety standards (FMVSS). The Secretary is authorized to issue, amend, and revoke such rules and regulations as he/she deems necessary. The Secretary is also authorized to require

manufacturers to provide information to first purchasers of motor vehicles or motor vehicle equipment when the vehicle or equipment is purchased, in a printed matter placed in the vehicle or attached to or accompanying the equipment. Using this authority, the agency issued the initial FMVSS No. 218, Motorcycle Helmets, in 1974. Motorcycle helmets are the devices used for protecting motorcyclists and other motor vehicle users in motor vehicle accidents. Federal Motor Vehicle Safety Standard No. 218 requires that each helmet shall be labeled permanently and legibly (S5.6), in a manner such that the label(s) can be read easily without removing padding or any other permanent part.

Estimated Annual Burden: 4,000 hours.

(7) *Title:* Replaceable Light Source Dimensional Information Collection, 49 CFR 54.

OMB Control Number: 2127-0563.

Type Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: Title 49 U.S.C. 322, 30111, 30115, 30117 and 30166, with delegation of authority at 49 CFR, 49 CFR 1.50, authorize the issuance of Federal Motor Vehicle Safety Standards (FMVSS) and the collection of data which supports their implementation. The agency, in prescribing an FMVSS, is to consider available relevant motor vehicle safety data, and to consult with other agencies as it deems appropriate. Further, the Title 49 U.S.C. mandates, that in issuing any FMVSS, the agency consider whether the standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, and whether such standards will contribute to carrying out the purpose of Title 49 U.S.C.

The Secretary is authorized to revoke such rules and regulations as deemed necessary to carry out this subchapter. Using this authority, the agency issued the initial FMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment, specifying requirements for vehicle lighting for the purposes of reducing traffic accidents and their tragic result by providing adequate roadway illumination, improved a vehicle conspicuity, appropriate information transmission through signal lamps, in both day, night, and other conditions of reduced visibility. The standard has been amended numerous times in order to permit new headlighting designs. In recent years,

the standard had become burdensome to both regulators and regulated parties in the standard has not been able to fully accommodate the styling needs of motor vehicle designers, while at the same time assuring the safety on the highways. This resulted in numerous burdensome petitions for rulemaking to be submitted by the vehicle and lighting manufacturers to change the design restrictive language.

The reason for this burden was that as originally adopted the standard was more equipment design oriented, rather than performance oriented. Recent amendments have helped to rectify this situation. The requirement for replaceable light source dimensional information has resulted in a further extension of that effort to make the standard more performance oriented, and reduce the burden of petitioning for amendments to the standard. The standard now allows headlamp light sources (bulbs) that are specified in the standard as well as those listed in Part 564, to assure proper photometric performance upon replacement of the light sources upon failure of the original. The original manufacturer may be the same as that of the aftermarket replacement, consequently, headlamp bulbs regardless of where they are listed, are required to be standardized by inclusion of their interchangeability dimensions and other fit and photometric aspects, thus requiring all identical type bulbs to be manufactured to those pertinent interchangeability specifications. Implementation of Part 564 reduces the burden to manufacturers and user of new light sources by eliminating the 18 month petitioning process and substituting a 1 month agency review. Upon completion of the review, the new bulb's interchangeability information is listed in Part 564 and the new bulbs may be used 1 month later on new vehicles.

Estimated Annual Burden: 20 hours.

(8) *Title:* Compliance Labeling of Retroreflective Materials for Heavy Trailer Conspicuity.

OMB Control Number: 2127-0569.

Type Request: Extension of a currently approved collection

Affected Public: Business or other for-profit.

Abstract: 49 U.S.C. 30111, 30112, and 30117 of the National Traffic and Motor Vehicle Safety Act of 1966 authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS) and the collection of data which supports their implementation. The agency, in prescribing a FMVSS, is to consider available relevant motor vehicle safety data, and to consult with other agencies

as it deems appropriate. Further, the Act mandates, that in issuing any FMVSS, the agency consider whether the standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, and whether such standards will contribute to carrying out the purpose of the Act. The Secretary is authorized to promulgate such rules and regulations as deemed necessary to carry out this subchapter. Using this authority, the agency issued the initial FMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment, specifying requirements for vehicle lighting for the purpose of improved vehicle conspicuity, appropriate information transmission through signal lamps, in both day, night, and other conditions of reduced visibility. The standard has been amended numerous times, and the subject amendment, which became effective on December 1, 1993, increases the conspicuity of large trailers would be reduced by about 15 percent if retroreflective material having certain essential properties is used to mark the trailers. The amendment requires the permanent marking of the letters DOT-C2, DOT-C3 or DOT-C4 at least 3mm high at regular intervals on retroreflective sheeting material having adequate performance to provide effective trailer conspicuity. The high reflective brightness of the material and its ability to reflect light which strikes it at an angle are special properties required by the safety standard.

The high brightness is required because the material must be effective even when it is dirty. One of the principal goals of the standard is to prevent crashes in which the side of the trailer is blocking the road and it is not sufficiently visible at night to fast traffic. Frequently, the side of the trailer is not perpendicular to approaching traffic and the conspicuity material must reflect light which strikes it at an angle in order to be effective. There exist many types of retroreflective material similar in appearance to the required materials but lacking in its requisite properties. The manufacturers of new trailers are required to certify that their products are equipped with retroreflective material complying with the requirements of the standard. The Federal Highway Administration Office of Motor Carrier Safety enforces this and other standards through roadside inspections of trucks. There is no practical field test for the performance requirements, and labeling is the only objective way of distinguishing truck conspicuity grade material from lower

performance material. Without labeling, FHWA will not be able to enforce the performance requirements, and labeling is the only objective way of distinguishing truck conspicuity grade material from lower performance material. Without labeling, FHWA will not be able to enforce the performance requirements of the standard, and the compliance testing of new trailers will be complicated. Labeling is also important to small trailer manufacturers because it may help them to certify compliance. As a result of the comments to the NPRM, the agency decided to allow wider stripes of material of lower brightness than originally proposed as alternate means of providing the minimum safety performance.

Therefore, the marking system serves the additional role of identifying the minimum stripe width required for the retroreflective brightness of the particular material.

Estimated Annual Burden: 1 hour.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on May 7, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98-12638 Filed 5-12-98; 8:45 am]

BILLING CODE 4910-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Amarillo International Airport, Amarillo, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Amarillo for Amarillo International Airport under the provisions of Title 49 U.S.C., Chapter 475 (hereinafter referred to as "Title 49") and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the City of Amarillo under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before October 27, 1998.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is April 30, 1998. The public comment period ends June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Linda F. Stoltz, Department of Transportation, Federal Aviation Administration, Fort Worth Texas, 76193-0650, (817) 222-5608. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the City of Amarillo are in compliance with applicable requirements of Part 150, effective April 30, 1998. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 27, 1998. This notice also announces the availability of this program for public review and comment.

Under Title 49, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the

measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Amarillo submitted to the FAA on December 16, 1997, noise exposure maps, descriptions and other documentation which were produced during the Amarillo International Airport FAR Part 150 Update. It was requested that the FAA review this material as the noise exposure maps, as described in Title 49, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Title 49.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Amarillo. The specific maps under consideration are the Existing Noise Exposure Map, 1995, page C.36, and Future Noise Exposure Map, 2002, page G.4 in the submission.

The FAA has determined that these maps for Amarillo International Airport are in compliance with applicable requirements. This determination is effective on April 30, 1998. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning

agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Amarillo International Airport, a'so effective on April 30, 1998. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 27, 1998.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration,
Airports Division, 2601 Meacham
Boulevard, Fort Worth, Texas 76137
Amarillo International Airport, 10801
Airport Boulevard, Amarillo, Texas
79111-1211

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas, April 30, 1998.

Edward N. Agnew,
Acting Manager, Airports Division.
[FR Doc. 98-12741 Filed 5-12-98; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

**Environmental Impact Statement:
Piedmont Triad International Airport
Greensboro, North Carolina**

AGENCY: Federal Aviation
Administration, DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Aviation Administration (FAA) intends to prepare an Environmental Impact Statement (EIS) to address environmental and related impacts expected to be associated with the expansion of Piedmont Triad International Airport located at Greensboro, North Carolina.

FOR FURTHER INFORMATION CONTACT:
Thomas M. Roberts; Federal Aviation
Administration; Atlanta Airports
District Office; 1701 Columbia Avenue,
Suite 2-260; College Park, Georgia
30337-2747; Telephone 404/305-7153.

SUPPLEMENTARY INFORMATION: The FAA will prepare an EIS for the proposed project to construct and operate a 9,000-foot parallel runway west of the existing runway 5/23 with associated taxiways and other related facilities. The proposed location of the new parallel runway is approximately 5,500 feet west of the existing 5/23 runway.

The FAA plans to coordinate with federal, state, and local agencies which have jurisdiction by law or special expertise with respect to any environmental impacts associated with the proposed project.

The EIS will also evaluate cumulative impacts anticipated to occur as a result of the implementation of other foreseeable future improvements at Piedmont Triad International Airport.

It is anticipated that a Request for Qualifications will be advertised in May of this year for a consultant to prepare the EIS.

Public Scoping: The FAA will hold a scoping meeting to solicit input from federal, state, and local agencies which have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the project. In addition a public scoping meeting will be held and the public may submit written comments on the scope of the environmental study to the address identified in the **FOR FURTHER INFORMATION CONTACT** paragraph. A Public Notice issued at a later time will provide the date, time, and place of the scoping meeting and the period for written comments.

Issued on April 30, 1998.

Dell T. Jernigan,

Manager, Atlanta Airports District Office.
[FR Doc. 98-12747 Filed 5-12-98; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

**Notice of Intent To Rule on Application
To Impose and Use the Revenue From
a Passenger Facility Charge (PFC) at
New Orleans International Airport, New
Orleans, LA**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of intent to rule on
application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at New Orleans International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 12, 1998.
ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, Fort Worth, Texas 76193-0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Edward Levell, Jr., Director of Aviation, at New Orleans International Airport at the following address: Mr. Edward Levell, Jr., Director of Aviation, New Orleans International Airport, PO Box 20007, New Orleans, LA 70141.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, Fort Worth, Texas 76193-0610, (817) 222-5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

comment on the application to impose and use the revenue from a PFC at New Orleans International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 58 of the Federal Aviation Regulations (14 CFR Part 158).

On April 30, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 19, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: July 1, 2008.

Proposed charge expiration date: March 1, 2010.

Total estimated new PFC revenue: \$11,072,644.

PFC application number: 98-04-C-00-MSY.

Brief description of proposed projects:

Project to Use PFC'S

Terminal Improvements.

Projects to Impose and Use PFC'S

LaFon Roads and Utilities and Upper Level Roadway Canopy.

Proposed class or classes of air carriers to be exempted from collecting PFC's:

FAR Part 135 On-demand air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW-610D, 2601 Meacham Blvd., Fort Worth, Texas 76193-4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at New Orleans International Airport.

Issued in Fort Worth, Texas on April 30, 1998.

Edward N. Agnew,
Acting Manager, Airports Division.
[FR Doc. 98-12709 Filed 5-12-98; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 98-3763]

**Request for Emergency Processing of
Currently Approved Information
Collection; Federal Motor Carriers
Safety Regulations, Driver's Record of
Duty Status**

AGENCY: Federal Highway
Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. 3501-3520), the FHWA is submitting a request to the Office of Management and Budget (OMB) for emergency processing clearance of a currently approved information collection. OMB clearance, for a six-month period, is being requested by May 31, 1998, when the current information collection is due to expire. The FHWA published its intent to request a three-year renewal to continue the current information collection in the *Federal Register* dated March 11, 1998, at 63 FR 11948. Comments to that notice are due on or before May 11, 1998. In addition, the FHWA published a Notice of proposed rulemaking (NPRM) relating to this information collection in the *Federal Register* dated April 20, 1998, at 63 FR 19457. This NPRM proposes to amend the FHWA regulations affecting the hours-of-service recordkeeping requirements. Comments to the NPRM are due on or before June 19, 1998.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection clearance request may be obtained by contacting the DOT, FHWA Information Collection Liaison, Mr. Earl Coles, Office of Information and Management Services, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001, (202)366-9084. Office hours are from 7:45 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Driver's Record of Duty Status.
OMB Number: 2125-0016.

Background: Motor carriers operating in interstate commerce are required to limit their drivers' hours of service. 49 CFR Section 395.8 requires that the drivers record their hours of service to assure compliance with the maximum driving and on-duty time limitations set forth in the Federal Motor Carrier Safety Regulations (FMCSRs). The record of duty status (RDS) is the primary regulatory tool used by Federal and

State enforcement personnel and motor carriers to determine compliance with the maximum time limitations prescribed in the FMCSRs. Compliance with the hours of service requirement is a factor in determining a motor carrier's overall safety compliance rating. It is a valuable instrument to both government and industry to help ensure the safety of the general public by reducing the number of fatigued drivers on highways. This information collection is necessary for the FHWA to continue to determine compliance with the regulations.
Respondents: Motor carriers and drivers.

Number of Respondents: 3,300,000.
Frequency: Daily.

Estimated Total Annual Burden: 14,799,033.

Authority: 49 U.S.C 31136, 31141 and 31502 and 49 CFR 1.48.

Issued on: May 5, 1998.

Frederick G. Wright,
Acting Associate Administrator for
Administration.

[FR Doc. 98-12637 Filed 5-12-98; 8:45 am]
BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-55 (Sub-No. 562X)]

**CSX Transportation, Inc.—
Abandonment Exemption—in Rocky
Mount, Nash County, NC**

On April 23, 1998, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its Florence Service Lane, North End Subdivision, extending from Valuation Station 4+30 at Falls Road to Valuation Station 36+00 at the end of the track near Earl Street, which traverses U.S. Postal Service ZIP Code 27804, a distance of 0.60 miles, in Rocky Mount, Nash County, NC. CSXT indicates that there are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.R. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 11, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 2, 1998. Each trail use request must be accompanied by a \$150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-55 (Sub-No. 562X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001; and (2) Charles M. Rosenberger, 500 Water Street—150, Jacksonville, FL 32202.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1545. [TDD for the hearing impaired is available at (202) 565-1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: May 5, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.
Vernon A. Williams,
Secretary.
[FR Doc. 98-12589 Filed 5-12-98; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-414 (Sub-No. 2X)]

Iowa Interstate Railroad, Ltd.; Abandonment Exemption—In Marion County, IA

On April 23, 1998, Iowa Interstate Railroad, Ltd. (IAIS) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its line of railroad extending from milepost 123.5 near Otley to the end of the line at or near milepost 114.80 in Pella, a total distance of 8.70 miles in Marion County, IA. The lines traverse U.S. Postal Service Zip Codes 50214 and 50219, and includes the station at Pella (milepost 114).

The line does not contain federally granted rights-of-way. Any documentation in IAIS's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 11, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 2, 1998. Each trail use request must be accompanied by a \$150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-414 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001; and (2) T. Scott Bannister, 1300 Des Moines Bldg., 405 Sixth Ave., Des Moines, IA 50309.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public

Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1545. [TDD for the hearing impaired is available at (202) 565-1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: May 6, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.
Vernon A. Williams,
Secretary.

[FR Doc. 98-12692 Filed 5-12-98; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-544X]

Sea Lion Railroad—Abandonment Exemption—In King County, WA

On April 23, 1998, Sea Lion Railroad, a/k/a Adventure Trail, Inc. (SLR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903-10905¹ to abandon a line of railroad between the end of the line at milepost 2.70 and milepost 0.09 in the Ballard District of Seattle, WA, a distance of approximately 3.00 miles, in King County, WA. The line traverses U.S. Postal Service Zip Codes 98107 and 98117. There are no existing rail stations.

The line contains federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

¹ In addition to an exemption from 49 U.S.C. 10903, SLR seeks exemption from 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 11, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 2, 1998.² Each trail use request must be accompanied by a \$150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-544X and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001, and (2) Charles H. Montagne, 426 NW 162d Street, Seattle, WA 98177. Replies to the SLR petition are due on or before June 2, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1545. [TDD for the hearing impaired is available at (202) 565-1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation.

² In the petition, SLR indicates that it consents to a request by the City of Seattle for issuance of a notice of interim trail use/rail banking. SLR adds that, once the City has acquired the line for trail use/rail banking by means of transfer from petitioner, Ballard Terminal Railroad Company will operate the line under contract with the City pursuant to a modified certificate of public convenience and necessity. We note, however, that a modified certificate is issued however, only when a state or political subdivision of a state acquires an abandoned line with the intent to provide rail service itself or to contract with an operator for such service. Trail use and rail banking are normally not contemplated under such a procedure. SLR's apparent intent here to transfer the line to the City for continued rail service. The use of rail banking to transfer a line for continued rail service appears questionable.

Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: May 8, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.
Vernon A. Williams,
Secretary.
[FR Doc. 98-12818 Filed 5-12-98; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension without change of an information collection titled (MA)—Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program (12 CFR part 21).

DATES: Written comments should be submitted by July 13, 1998.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557-0180, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202)874-5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection may be obtained by contacting Jessie Gates or Camille Dickerson, (202)874-5090, Legislative and Regulatory Activities Division (1557-0180), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: (MA)—Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program (12 CFR 21).

OMB Number: 1557-0180.

Form Number: None.

Abstract: The collections of information contained in 12 CFR Part 21 are as follows:

Minimum Security Devices and Procedures (12 CFR 21.2 and 21.4)

Under 12 CFR 21.2, each national bank must designate a security officer. The bank security officer must develop a written security program to protect the bank from robberies, burglaries, and larcenies.

Under 12 CFR 21.4, the bank security officer must report annually to the bank's board of directors on the effectiveness of the bank's security program. The substance of the report must be reflected in the minutes of the board meeting in which the report is presented.

Suspicious Activity Reports (SAR)(12 CFR 21.11)

Under 12 CFR 21.11, national banks must file SARs in certain instances. The bank must retain the SAR and the original of any related documentation for five years.

Procedures for Monitoring Bank Secrecy Act Compliance (12 CFR 21.21)

Under 12 CFR 21.21, national banks must develop and maintain procedures to assure compliance with the Bank Secrecy Act and Treasury regulations at 31 CFR part 31.

These information collection requirements are required to ensure compliance with applicable statutes, further bank safety and soundness, provide protections for banks, and further public policy interests.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 3,000.

Total Annual Responses: 45,527.

Frequency of Response: On occasion.

Total Annual Burden: 30,160 Hours.

COMMENTS: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 1998.

Karen Solomon,
Director, Legislative & Regulatory Activities Division.

[FR Doc. 98-12622 Filed 5-12-98; 8:45 am]
BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review proposed revisions to an information collection titled Examination Questionnaire.

DATES: Comments regarding this information collection are welcome and should be submitted to the OMB Reviewer and the OCC. Comments are due on or before June 12, 1998.

ADDRESSES: A copy of the submission may be obtained by calling the OCC Contact listed. Direct all written comments to the Communications Division, Attention: 1557-0199, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874-5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

SUPPLEMENTARY INFORMATION:

OMB Number: 1557-0199.
Form Number: CC-2000-01 (Rev) and CC-2000-02 (Rev).

Type of Review: Revision.
Title: Examination Questionnaire.

Description: This notice covers a revision of a currently approved collection of information titled Examination Questionnaire. Completed Examination Questionnaires provide the OCC with information needed to properly evaluate the effectiveness of the examination process and agency communications. The OCC will use the information to identify problems or trends that may impair the effectiveness of the examination process, to identify ways to improve its service to the banking industry, and to analyze staff and training needs.

There are two versions of the questionnaire—one for community and mid-sized banks and one for large banks. Community and mid-sized banks will receive the questionnaire as part of each safety and soundness examination or other examination-related activity. Large banks will be invited to provide comments annually.

Respondents: Businesses or other for-profit.

Number of Respondents: 2,600.
Total Annual Responses: 3,900.
Frequency of Response: On occasion.
Estimated Total Annual Burden: 650 burden hours.

OCC Contact: Jessie Gates or John Ference, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202) 395-7340, Paperwork Reduction Project 1557-0199, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

The OCC may not conduct or sponsor, and respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Comments are invited on:

(1) Whether the proposed revisions to the following collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the information collection as it is proposed to be revised;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 1998.

Karen Solomon,
Director, Legislative & Regulatory Activities Division.
[FR Doc. 98-12624 Filed 5-12-98; 8:45 am]
BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR-77-86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing temporary regulation, LR-77-86 (TD 8124), Certain Elections Under the Tax Reform Act of 1986 (§ 5h.5).

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Elections Under the Tax Reform Act of 1986.

OMB Number: 1545-0982.

Regulation Project Number: LR-77-86.

Abstract: Section 5h.5 (a) of this regulation sets forth general rules for the time and manner of making various elections under the Tax Reform Act of 1986. The regulation enables taxpayers to take advantage of various benefits provided by the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Responses: 114,710.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 28,678.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 8, 1998.

Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 98-12723 Filed 5-12-98; 8:45 am]
BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-209020-86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG-209020-86 (TD 8210), Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations (§§ 1.905-3T, 1.905-4T, 1.905-5T and 301.6689-1T).

DATES: Written comments should be received on or before July 13, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations.

OMB Number: 1545-1056.

Regulation Project Number: REG-209020-86 (formerly INTL-61-86).

Abstract: This regulation relates to a taxpayer's obligation under section 905(c) of the Internal Revenue Code to file notification of a foreign tax redetermination, to make adjustments to a taxpayer's pools of foreign taxes and earnings and profits, and the imposition of the civil penalty for failure to file such notice or report such adjustments.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, and business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Respondents: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 7, 1998.

Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 98-12724 Filed 5-12-98; 8:45 am]
BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-209274-85]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulations, REG-209274-85 (TD 8033), Tax-Exempt Entity Leasing (§ 1.168).

DATES: Written comments should be received on or before July 13, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:
Title: Tax-Exempt Entity Leasing.
OMB Number: 1545-0923.
Regulation Project Number: REG-209274-85.

Abstract: These regulations provide guidance to persons executing lease agreements involving tax-exempt entities under 168(h) of the Internal Revenue Code. The regulations are necessary to implement Congressionally enacted legislation and elections for certain previously tax-exempt organizations and certain tax-exempt controlled entities.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 4,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98-12725 Filed 5-12-98; 8:45 am]
 BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS-127-86; PS-128-86; PS-73-88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS-127-86, PS-128-86, and PS-73-88 (TD 8644), Generation-Skipping Transfer Tax (§§ 26.2601-1, 26.2632-1, 26.2642-1, 26.2642-2, 26.2642-3, 26.2642-4, 26.2652-2, and 26.2662-1).

DATES: Written comments should be received on or before July 13, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue

Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Generation-Skipping Transfer Tax.

OMB Number: 1545-0985.

Regulation Project Number: PS-127-86; PS-128-86; PS-73-88.

Abstract: This regulation provides rules relating to the effective date, return requirements, definitions, and certain rules covering the generation-skipping transfer tax. The information required by the regulation will require individuals and/or fiduciaries to report information on Forms 706, 706NA, 706GS(D), 706GS(D-1), 706GS(T), 709, and 843 in connection with the generation skipping transfer tax. The information will facilitate the assessment of the tax and taxpayer examinations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 3,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98-12726 Filed 5-12-98; 8:45 am]
 BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL-29-91]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL-29-91 (TD 8556), Computation and Characterization of Income and Earnings and Profits Under the Dollar Approximate Separate Transactions Method of Accounting (DASTM) (§ 1.985-3).

DATES: Written comments should be received on or before July 13, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Computation and Characterization of Income and Earnings and Profits Under the Dollar Approximate Separate Transactions Method of Accounting (DASTM).

OMB Number: 1545-1051.

Regulation Project Number: INTL-29-91.

Abstract: This regulation provides that taxpayers operating in hyperinflationary currencies must use the United States dollar as their functional currency and compute income using the dollar approximate separate transactions method (DASTM). Small taxpayers may elect an alternate method by which to compute income or loss. For prior taxable years in which income was computed using the profit and loss method, taxpayers may elect to recompute their income using DASTM.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 700.

Estimated Time Per Respondent: 1 hour, 26 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology;

and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98-12727 Filed 5-12-98; 8:45 am]
 BILLING CODE 4830-01-U

DEPARTMENT OF TREASURY

Internal Revenue Service

Notice of Meeting With Current and Prospective Tax Software Developers for Electronic Filing of Form 1065, U.S. Partnership Return of Income

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: This announcement serves as notice that the Internal Revenue Service will hold a meeting of current and prospective tax software developers to share the thinking about the strategic direction for mandating electronic filing for partnerships with more than 100 partners and to get initial reactions from the software developers to these strategies. In addition to discussing partnership returns, information will be provided on other electronic business returns and a session will be held to address questions from the March 3 and 4, 1998 software developers meeting.

DATES: The tentative agenda is as follows: June 16 from 12:30 pm to 4:30 pm will be for the issues from the March 3-4, 1998 software developers meeting; June 17 from 9:30 am to 4 pm, discussion on the Form 1065 electronic filing strategy; and on June 18 from 9 am to 11:30 am, information on electronically filed business returns will be discussed.

ADDRESSES: The meeting will be held at the New Carrollton Federal Building, 5000 Ellin Road, B1-303, Lanham, MD 20706 Room.

FOR FURTHER INFORMATION CONTACT:

Questions or concerns should be directed to Lee Lawrence at IRS, Electronic Tax Administration, T:ETA:O, 5000 Ellin Road C4-237, Lanham, MD 20706 or by telephone at (202) 283-0445 (not a toll-free number). To register for this meeting, please call Carol Jakes at (202) 283-0559. A registration form will be mailed or faxed which must be completed and returned to the IRS by June 8, 1998. If you have any questions or issues which you would like to have addressed during the meeting, you may submit them

beforehand by faxing them to: Lee
Lawrence ETA (202) 283-4786.

Terry Lutes,

*National Director, Electronic Program
Operations Office, Electronic Tax
Administration.*

[FR Doc. 98-12728 Filed 5-12-98; 8:45 am]

BILLING CODE 4830-01-U

Wednesday
May 13, 1998

federal register

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Within
the Territory and Airspace of
Afghanistan; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27744; SFAR 67]

RIN 2120-AG56

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This action amends Special Federal Aviation Regulation (SFAR) 67 by extending until May 10, 2000, the prohibition on flight operations within portions of the territory and airspace of Afghanistan by any United States air carrier and commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier; the amendment also permits flight operations by the aforementioned persons through Afghan airspace east of 070°35' east longitude, or south of 33° north latitude. This action is necessary to continue the prevention of an undue hazard to persons and aircraft engaged in such flight operations as a result of the ongoing civil war in Afghanistan.

DATES: This action is effective May 7, 1998.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 267-8166.

SUPPLEMENTARY INFORMATION:

Availability of This Action

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service ((703) 321-3339), the Federal Register's electronic bulletin board service ((202) 512-1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service ((800) 322-2722 or (202) 267-5948). Internet users may reach the FAA's web page at <http://www.faa.gov> or the Federal Register's web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the

Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267-9677. Communications must identify the docket number of this action.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM-27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 1-888-551-1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at <http://www.faa.gov> and may send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.dot.gov.

Background

On May 10, 1994, the FAA issued SFAR 67 in response to the threat to civil aviation due to the civil war in Afghanistan (59 FR 25282; May 14, 1994). SFAR 67 was originally scheduled to expire after one year. Notices of the extension of SFAR 67 were published on May 15, 1995 (60 FR 25980) and May 14, 1996 (61 FR 24430). On May 9, 1997, the FAA again extended the expiration date to May 10, 1998, and permitted flight operations by affected persons through Afghan airspace over the Wakhan Corridor (62 FR 26890; May 15, 1997).

Fighting between government and opposition forces, and the resulting threat to civil aviation, continues in portions of Afghanistan, although at a lower level and intensity in the areas to be opened to U.S. civil aviation than when SFAR 67 was originally issued, and later amended. The Taliban have controlled all of southern Afghanistan for a considerable time; currently the fighting is primarily confined to the

central Kabul area and northern and northwestern Afghanistan. While other areas of the country continue to be the scene of sporadic fighting, the factions involved have little or no capability to target aircraft operating at normal cruising altitudes in the areas being opened to U.S. operators. The area where civil aviation is most threatened in Afghanistan lies in an area north of 33° north latitude and west of 070°35' east longitude.

The primary factions, the Taliban and a loose coalition of opposition forces, still possess a wide range of sophisticated surface- and air-based weapons that potentially could be used to attack civil aircraft overflying central, northern, and northwestern Afghanistan at cruising altitudes. These weapons include fighter and attack aircraft armed with cannons and air-to-air missiles, and surface-to-air missiles (SAM) systems. Although aircraft have been used primarily for ground attacks against airfields and other key facilities, air-to-air encounters also have been observed. Press reports also suggest that a number of Afghan military and civil aircraft have been shot down using SAMs. The fluctuations in the level and intensity of combat create an unsafe environment for transiting civilian aircraft in the vicinity of Kabul and northern and northwestern Afghanistan.

Advisories issued by the International Civil Aviation Organization (ICAO) urging civil aircraft to avoid Afghan airspace remain valid for at least a portion of Afghan airspace. In a letter dated April 8, 1994, Assad Kotaite, President of the ICAO Council, issued a notice urging air carriers to discontinue flights over Afghanistan. In a subsequent letter dated November 14, 1994, Dr. Kotaite warned of the continuing risks associated with flights over Afghanistan, including operations using certain routes developed by the Afghan government or neighboring countries. On September 18, 1995, in yet another letter addressing flight safety over Afghanistan, Dr. Kotaite advised that "the safety of international civil flight operations through the Kabul [Flight Information Region] can not be assured." Dr. Kotaite did indicate in this letter that if operators were using Afghan airspace, flying time over Afghanistan should be minimized and that route V500, promulgated by a Pakistani notice to airmen (NOTAM), involves only a two minute flying time over Afghanistan. A letter of May 10, 1996, advised of a report by the crew of a Boeing 747 cargo aircraft of anti-aircraft fire in the vicinity of Kabul; however, at 37,000 feet altitude, the aircraft was never in any danger. These

advisories, which are still germane, reflect the uncertain nature of the situation and underscore the dangers to flights in portions of Afghan airspace. On April 29, 1998, Dr. Kotaite sent a letter to the United States supporting the approach taken in the proposal. Further, Dr. Kotaite stated that ICAO is considering issuing another letter to all ICAO member states indicating that flights could be permitted in the eastern and southern areas of Afghanistan.

In the past, at least two major factions in Afghanistan have deliberately targeted civil aircraft. Such policies occasionally have been publicly announced. In a statement released in September 1995, General Dostam, who at the time opposed the nominal Rabbani Government, warned all international air carriers that his forces would force or shoot down any airplane venturing into airspace controlled by his faction without first obtaining proper clearance from them. This statement followed a similar warning issued in 1994 by an opposition council. Air corridors over central Afghanistan have been closed frequently as a result of these threats and active factional fighting.

Currently, none of the factions in the civil war has a clear intent to deliberately target a foreign-flagged commercial air carrier. However, the Taliban's continued frustration with the airlift of arms, ammunition, and supplies to other factions, combined with the other factions' interest in bringing down Taliban flights, creates a potentially hazardous environment whereby an airliner might be misidentified and inadvertently targeted in the central, northern, and northwestern portions of Afghanistan. The FAA has received reports that scheduled passenger flights have been intercepted by opposition fighter aircraft. In July 1996, a fighter intercepted a Pakistan International Airlines flight enroute from London to Lahore. Some reporting indicates that the aircraft may have been 40-50 NM off its assigned international air route. Charter flights appear to be equally or more vulnerable. A Russian-operated charter flight from the UAE carrying unmanifested ammunition to Kabul was forced to land in Kandahar; the aircraft and its crew were held there for almost one year before escaping in August 1996.

The control and operation of Afghanistan's limited air traffic control facilities remains relatively stable. Although central Afghan government control over installations critical to air traffic navigation and communication changed hands when the Taliban took

control of Kabul, the transfer of authority went smoothly. Indeed, most air traffic control employees remained on the job and only the senior leadership was replaced. If opposition forces retake Kabul, the realignment of control to the previous occupants should be smooth as well.

The greatest threat to civil aviation is within the area over Afghanistan north of 33° north latitude and west of 070°35' east longitude. The fighting described above, and the resulting threat to civil aviation, has occurred well away from the Wakhan Corridor, which the FAA opened to U.S. operators in May 1997 by allowing operations east of 071°35' east longitude. Several non-U.S. carriers also utilize international air corridor V876, just west of the Wakhan Corridor, as an alternate to the Wakhan Corridor. The area surrounding V876 (east of 070°35' east longitude) is remote and sparsely populated. There is no evidence that Afghan factions or terrorist elements would target or make preparations for specific operations against U.S. or other international air carriers overflying Afghanistan east of 070°35' east longitude, which includes V876. While an action aimed at shooting down or intercepting an aircraft on V876 cannot be absolutely ruled out, it is considered unlikely. The U.S. Government assesses the overall risk for flights using V876 as low; the risk for the Wakhan Corridor continues to be assessed as minimal. The slightly higher threat along V876 comes mainly from the fact that flights could cross factional boundaries and areas of expected fighting. This threat is mitigated by the lack of surface-to-air missiles and fighter aircraft in this area and the lack of intent to target aircraft by the armed factions in the area. Several non-U.S. air carriers currently operate safely along the V876 airway, and the International Air Transport Association endorses its use. Therefore, the FAA is removing the flight prohibition for that portion of Afghan airspace east of 070°35' east longitude.

Similarly, civil aviation operations along several routes south of 33° north latitude—particularly G202 and V922—would encounter minimal to low risk. The Taliban has controlled all of southern Afghanistan, including the areas encompassing the routes south of the 33° north latitude. That area has remained relatively stable, with no fighting observed for at least 2 years. Therefore, the FAA is removing the flight prohibition for that portion of Afghan airspace south of the 33° north latitude.

Consideration of Comments

On April 1, 1998, the FAA proposed to revise SFAR 67 (62 FR 16078). Three comments were received in the docket. The Air Transport Association supported the amendment as proposed citing the economic benefits of reducing the circumnavigation of Afghan airspace. The Air Line Pilots' Association concurred with continuing flight prohibitions in certain areas of Afghanistan as proposed. The International Civil Aviation Organization supported the approach taken by the United States as proposed. Therefore, the FAA will adopt the amendment as proposed.

Amendment of Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that continued action by the FAA is necessary to prevent the injury to U.S. operators or loss of certain U.S.-registered aircraft conducting flights in the vicinity of Afghanistan. I find that the current civil war in Afghanistan continues to present an immediate hazard to the operation of civil aircraft within portions of Afghan airspace. Accordingly, I am extending for 2 years the prohibition under SFAR 67 on flight operations within the territory and airspace of Afghanistan. This action is necessary to prevent an undue hazard to aircraft and to protect persons and property on board those aircraft. SFAR 67 expires on May 10, 2000. Because the circumstances described herein warrant continued action by the FAA to maintain the safety of flight within certain portions of Afghan airspace, I find good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with the obligations under section 40105 of Title 49, United States Code to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

I also am ordering the amendment of SFAR 67 to allow flights by United States air carriers and commercial operators, by any person exercising the privileges of a certificate issued by the FAA, or by an operator using aircraft registered in the United States through Afghan airspace east of 070°35' east longitude or south of 33° north latitude.

The Department of State has been advised of and has no objections to the actions taken herein.

Regulatory Evaluation Summary

In accordance with SFAR 67, United States air carriers and commercial operators currently use alternate routes to avoid Afghan territory and airspace. Navigating around Afghanistan results in increased variable operating costs, primarily for United States air carriers operating between Europe and India. Based on data identified during the promulgation of SFAR 67, the FAA estimates that the weighted-average variable cost for a wide-body aircraft is approximately \$3,200 per hour. Based on data received from two United States air carriers, the additional time it takes to navigate around Afghanistan ranges from 10 minutes by flying over Iran to between one and four hours by flying over Saudi Arabia (depending on the flight's origin and destination). Additional costs associated with these alternate routes range from little, if any, by flying over Iran to between \$3,200 to \$12,700 per flight over Saudi Arabia.

Last year the FAA amended SFAR 67 to allow for flights along the route V500 airway that passes through the Wakhan Corridor. This amendment to the extension to SFAR 67, further allows United States air carriers access to Afghan airspace east of 070°35' east longitude and south of 33° north latitude. There is no inordinate hazard to persons and aircraft, due to the remote, sparsely populated nature of the area surrounding the Wakhan Corridor and V876, and because no significant combat action is known to have occurred in the area east of 070°35' east longitude and south of 33° north latitude for at least 2 years. This amendment provides U.S. air carriers with an option to operate along route V876 rather than route V500 or route G8 which goes over Iran and Pakistan. If U.S. air carriers choose to fly route V876 over the Wakhan region, they could experience the same cost savings that route V500 offered, which ranged from approximately \$530 by flying over Iran, and between \$3,200 to \$12,700 per flight over Saudi Arabia.

This action imposes no additional cost burden on U. S. air carriers, only cost savings. In view of the foregoing, the FAA has determined that the extension to SFAR 67 is cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The Act requires that whenever an agency publishes a general notice of proposed

rulemaking, an initial regulatory flexibility analysis identifying the economic impact on small entities, and considering alternatives that may lessen those impacts must be conducted if the rule would have a significant economic impact on a substantial number of small entities.

The FAA has determined that none of the United States air carriers or commercial operators are small entities. Therefore, the SFAR will not impose a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

When the FAA promulgated SFAR 67, it found that the SFAR could have an adverse impact on the international flights of United States air carriers and commercial operators because it could marginally increase their operating costs and flight times relative to foreign carriers who continue to overfly Afghanistan. This action does not impose any restrictions on United States air carriers or commercial operators beyond those originally imposed by SFAR 67. Therefore, the FAA believes that the SFAR will have little, if any, effect on the sale of United States aviation products and services in foreign countries.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice

to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory actions.

This rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed \$100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This amendment contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Federalism Determination

This amendment will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 4168; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Significance

The FAA has determined that this action is not a "significant regulatory action" under Executive Order 12866. This action is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Afghanistan are not currently being conducted by United States air carriers or commercial operators, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 47122, 47508, 47528-47531.

2. Paragraphs 3 and 5 of SFAR 67 are revised to read as follows:

**SPECIAL FEDERAL AVIATION
REGULATIONS NO. 67—PROHIBITION
AGAINST CERTAIN FLIGHTS WITHIN THE
TERRITORY AND AIRSPACE OF
AFGHANISTAN**

3. *Permitted Operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Afghanistan:

- a. Where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government with the approval of the FAA; or
- b. East of 070°35' east longitude, or south of 33° north latitude.

5. *Expiration.* This Special Federal Aviation Regulation remains in effect until May 10, 2000.

Issued in Washington, DC on May 7, 1998.

Jane F. Garvey,

Administrator.

[FR Doc. 98-12631 Filed 5-8-98; 10:11 am]

BILLING CODE 4910-13-P

federal register

Wednesday
May 13, 1998

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 3, et al.
Removal of Regulations Regarding
Certification of Drugs Composed Wholly
or Partly of Insulin; Proposed Rule and
Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 3, 5, 10, 16, 25, 50, 56, 58, 71, 200, 201, 207, 210, 211, 310, 312, 314, 369, 429, 800, and 812

[Docket No. 98N-0210]

Removal of Regulations Regarding Certification of Drugs Composed Wholly or Partly of Insulin; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing this companion proposed rule to the direct final rule, published elsewhere in this issue of the *Federal Register*, which is intended to repeal FDA's regulations governing certification of drugs containing insulin and make conforming amendments to other sections of the agency's regulations. The agency is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA repealed the statutory provision in the Federal Food, Drug, and Cosmetic Act (the act) under which the agency certified drugs containing insulin. FDAMA also made conforming amendments to the act.

DATES: Comments must be received on or before July 27, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

SUPPLEMENTARY INFORMATION:

I. Background

Section 125(a) of FDAMA (Pub. L. 105-115) repealed section 506 of the act (21 U.S.C. 356) and made other conforming amendments to the act and another provision of Federal law. Section 506 was the statutory provision in the act under which the agency certified drugs containing insulin. FDA is proposing to remove all regulations relating to the certification of insulin products, remove citations to section 506 of the act in various authority sections in title 21 of the Code of Federal Regulations (CFR), and

eliminate citations to section 506 in regulations that do not deal primarily with the certification of insulin. FDA is also proposing to eliminate out-of-date provisions dealing with labeling and testing of insulin and to update the definition of insulin found in 21 CFR 200.15.

II. Additional Information

This proposed rule is a companion to the direct final rule published elsewhere in this issue of the *Federal Register*. The companion proposed rule and the direct final rule are identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comment and is withdrawn. The comment period for the companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule.

Most of the amendments in this rule are a direct result of the repeal of the statutory certification provision. The remainder of the amendments repeal or update out-of-date, noncontroversial regulations dealing with insulin. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to the companion proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect on September 25, 1998. If FDA receives significant adverse comments, the agency will withdraw the direct final rule. FDA will proceed to respond to all of the comments received regarding the rule and, if appropriate, the rule will be finalized under this companion proposed rule using usual notice-and-comment procedures.

For additional information, see the corresponding direct final rule published elsewhere in this issue of the *Federal Register*. All persons who wish to comment should review the detailed rationale for these amendments set out in the preamble discussion of the direct final rule. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of this companion proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of \$100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on small entities. The only two current manufacturers marketing insulin drug products in the United States are not small entities. Furthermore, by eliminating the certification process, this direct final rule would lower market entry barriers for small entities. The agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Act requires an agency to prepare a budgetary impact statement before issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of \$100 million (adjusted annually for inflation) in any 1 year. The elimination of the insulin certification program will lower the

costs of marketing insulin drug products by eliminating both the direct cost of applying for certification and the cost of holding batches of insulin while awaiting certification. Because this rule will not result in an expenditure of \$100 million or more on any governmental entity or the private sector, no budgetary impact statement is required.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104-13) is not required.

VI. Request for Comments

Interested persons may, on or before September 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. This comment period runs concurrently with the comment period for the direct final rule; any comments received will be considered as comments regarding the direct final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 3

Administrative practice and procedure, Biologics, Drugs, Medical devices.

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 50

Human research subjects, Prisoners, Reporting and recordkeeping requirements, Safety.

21 CFR Part 56

Human research subjects, Reporting and recordkeeping requirements, Safety.

21 CFR Part 58

Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 71

Administrative practice and procedure, Color additives, Confidential business information, Cosmetics, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 200

Drugs, Prescription drugs.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR 207

Drugs, Reporting and recordkeeping requirements.

21 CFR 210

Drugs, Packaging and containers.

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

21 CFR Part 429

Administrative practice and procedure, Drugs, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 800

Administrative practice and procedure, Medical devices, Ophthalmic goods and services, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 3, 5, 10, 16, 25, 50, 56, 58, 71, 200, 201, 207, 210, 211, 310, 312, 314, 369, 429, 800, and 812 be amended as follows:

PART 3—PRODUCT JURISDICTION

1. The authority citation for 21 CFR part 3 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 357, 360, 360c-360f, 360h-360j, 360gg-360ss, 371(a), 379e, 381, 394; 42 U.S.C. 216, 262.

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

2. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; 15 U.S.C. 1451-1461; 21 U.S.C. 41-50, 61-63, 141-149, 321-394, 467f, 679(b), 801-886, 1031-1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242i, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1; 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124-131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220-223.

§ 5.31 [Amended]

3. Section 5.31 *Petitions under part 10* is amended by removing and reserving paragraphs (f)(2)(iii) and (f)(2)(iv).

§ 5.73 [Removed]

4. Section 5.73 *Certification of insulin* is removed.

§ 5.74 [Removed]

5. Section 5.74 *Issuance, amendment, or repeal of regulations pertaining to drugs containing insulin* is removed.

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

6. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 21 U.S.C. 41-50, 141-149, 321-394, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 263b, 264; 15 U.S.C. 1451-1461; 5 U.S.C. 551-558, 701-721; 28 U.S.C. 2112.

§ 10.50 [Amended]

7. Section 10.50 *Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing* is amended by removing and reserving paragraph (c)(10).

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

8. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 21 U.S.C. 41-50, 141-149, 321-394, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 264; 15 U.S.C. 1451-1461; 28 U.S.C. 2112.

§ 16.1 [Amended]

9. Section 16.1 *Scope* is amended in paragraph (b)(2) by removing the entry for "§ 429.50."

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

10. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: 21 U.S.C. 321-393; 42 U.S.C. 262, 263b-264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500-1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531-533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123-124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356-360.

§ 25.31 [Amended]

11. Section 25.31 *Human drugs and biologics* is amended in paragraph (f) by removing the words "or insulin."

PART 50—PROTECTION OF HUMAN SUBJECTS

12. The authority citation for 21 CFR part 50 is revised to read as follows:

Authority: 21 U.S.C. 321, 346, 346a, 348, 352, 353, 355, 357, 360, 360c-360f, 360h-360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b-263n.

§ 50.1 [Amended]

13. Section 50.1 *Scope* is amended in the last sentence of paragraph (a) by removing the number "506."

PART 56—INSTITUTIONAL REVIEW BOARDS

14. The authority citation for 21 CFR part 56 is revised to read as follows:

Authority: 21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 357, 360, 360c-360f, 360h-360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b-263n.

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

15. The authority citation for 21 CFR part 58 is revised to read as follows:

Authority: 21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 357, 360, 360b-360f, 360h-360j, 371, 379e, 381; 42 U.S.C. 216, 262, 263b-263n.

PART 71—COLOR ADDITIVE PETITIONS

16. The authority citation for 21 CFR part 71 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 351, 355, 357, 360, 360b-360f, 360h-360j, 361, 371, 379e, 381; 42 U.S.C. 216, 262.

PART 200—GENERAL

17. The authority citation for 21 CFR part 200 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 358, 360e, 371, 374, 375.

18. Section 200.15 is revised to read as follows:

§ 200.15 Definition of term "Insulin."

For purposes of sections 801 and 802 of the act and this title, the term insulin means the active principle of the pancreas that affects the metabolism of carbohydrates in the animal body and which is of value in the treatment of diabetes mellitus. The term includes synthetic and biotechnologically derived products that are the same as, or similar to, naturally occurring insulins in structure, use, and intended effect and are of value in the treatment of diabetes mellitus.

PART 201—LABELING

19. The authority citation for 21 CFR part 201 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 358, 360, 360b, 360gg-360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

§ 201.50 [Amended]

20. Section 201.50 *Statement of identity* is amended in paragraph (b) by removing the second sentence.

§ 201.100 [Amended]

21. Section 201.100 *Prescription drugs for human use* is amended in paragraph (c)(2) by removing the number "506."

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

22. The authority citation for 21 CFR part 207 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 357, 360, 360b, 371, 374; 42 U.S.C. 262.

§ 207.25 [Amended]

23. Section 207.25 *Information required in registration and drug listing* is amended in paragraphs (b)(2), (b)(5), and (b)(6) by removing the number "506," and in paragraph (b)(4) by removing the number "506."

§ 207.31 [Amended]

24. Section 207.31 *Additional drug listing information* is amended in paragraph (a)(1) by removing the number "506," and in paragraphs (a)(2), (a)(3), and (c) by removing the number "506."

§ 207.37 [Amended]

25. Section 207.37 *Inspection of registrations and drug listings* is

amended in paragraph (a)(2)(i) by removing the number "506."

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; GENERAL

26. The authority citation for 21 CFR part 210 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 357, 360b, 371, 374.

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

27. The authority citation for 21 CFR part 211 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 357, 360b, 371, 374.

PART 310—NEW DRUGS

28. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

29. The authority citation for 21 CFR part 312 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 371; 42 U.S.C. 262.

30. The authority citation for 21 CFR part 312, subpart E is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 355, 357, 371; 42 U.S.C. 262.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

31. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 371, 374, 379e.

§ 314.170 [Amended]

32. Section 314.170 *Adulteration and misbranding of an approved drug* is amended in the first sentence by removing the phrase "under sections 505, 506, and 507" and adding in its place the phrase "under sections 505(j) and 507".

§ 314.430 [Amended]

33. Section 314.430 *Availability for public disclosure of data and*

information in an application or abbreviated application is amended in paragraph (f)(6) by removing the phrase "under sections 505(j), 506, and 507" and adding in its place the phrase "under sections 505(j) and 507".

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

34. The authority citation for 21 CFR part 369 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 371.

§ 369.5 [Removed]

35. Section 369.5 *Warning required on insulin intended for over-the-counter sale* is removed

§ 369.21 [Amended]

36. Section 369.21 *Drugs; warning and caution statements required by regulations* is amended by removing the entry for "INSULIN".

PART 429—DRUGS COMPOSED WHOLLY OR PARTLY OF INSULIN

37. Under authority of section 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)) and section 125(a) of the Food and Drug Modernization Act (Pub. L. 105-115), amend Title 21 of the Code of Federal Regulations by removing part 429.

PART 800—GENERAL

38. The authority citation for 21 CFR part 800 is revised to read as follows:

Authority: 21 U.S.C. 321, 334, 351, 352, 355, 357, 360e, 360i, 360k, 361, 362, 371.

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

39. The authority citation for 21 CFR part 812 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 357, 360, 360c-360f, 360h-360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b-263n.

Dated: April 17, 1998:

William B. Schultz,
Deputy Commissioner for Policy.

[FR Doc. 98-12452 Filed 5-12-98; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 3, 5, 10, 16, 25, 50, 56, 58, 71, 200, 201, 207, 210, 211, 310, 312, 314, 369, 429, 800, and 812

[Docket No. 98N-0210]

Removal of Regulations Regarding Certification of Drugs Composed Wholly or Partly of Insulin

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is repealing its regulations governing certification of drugs containing insulin and making conforming amendments to other sections of its regulations. The agency is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA repealed the statutory provision in the Federal Food, Drug, and Cosmetic Act (the act) under which the agency certified drugs containing insulin. FDAMA also made conforming amendments to the act. FDA is using direct final rulemaking for this action because the agency expects that there will be no significant adverse comment on the rule. Most of the amendments in this rule are a direct result of the repeal of the statutory certification provision. The remainder of the amendments repeal or update out-of-date, noncontroversial regulations dealing with insulin. Elsewhere in this issue of the *Federal Register*, FDA is publishing a companion proposed rule under FDA's usual procedure for notice-and-comment rulemaking to provide a procedural framework to finalize the rule in the event the agency receives significant adverse comments and withdraws this direct final rule.

DATES: This regulation is effective September 25, 1998. Submit written comments on or before July 27, 1998. If no timely significant adverse comments are received, the agency will publish a document in the *Federal Register* before August 26, 1998, confirming the effective date of the direct final rule. If timely significant adverse comments are received, the agency will publish a document of significant adverse comment in the *Federal Register* withdrawing this direct final rule before August 25, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug

Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the President signed FDAMA (Pub. L. 105-115). Section 125(a) of FDAMA repealed section 506 of the act (21 U.S.C. 356). Section 506 was the section of the act under which the agency certified drugs composed wholly or partly of insulin. Section 125(a) of FDAMA also removed references to section 506 from section 301(i)(1) and (j) of the act (21 U.S.C. 331(i)(1) and (j)). Section 301(i) of the act prohibits fraudulent use of certain labeling required under various provisions of the act; while section 301(j) prohibits any person from using, or the unauthorized disclosure of, trade secret information obtained under authority of various provisions of the act.

Section 125(a) of FDAMA also repealed section 502(k) of the act (21 U.S.C. 352(k)), which provided that any drug that is, or is represented to be, composed wholly or partly of insulin is misbranded unless it has been certified or released under authority of section 506 of the act.

FDAMA also removed references to section 506 of the act in section 510(j)(1)(A) and (j)(1)(D) of the act (21 U.S.C. 360(j)(1)(A) and (j)(1)(D)), which is part of the drug listing provisions of the act, and section 125(a) of FDAMA amended a law governing procurement of drugs by certain Federal agencies (38 U.S.C. 8126(h)(2)) by removing a reference to drugs certified under authority of section 506 of the act.

FDAMA added drugs composed wholly or partly of insulin to the prohibition in section 801(d) of the act (21 U.S.C. 381(d)) against the reimportation of prescription drugs except by the original manufacturer. This amendment to section 801(d) of the act does not require implementing regulations. FDA will, however, place language reflecting this provision of FDAMA in relevant sections of a separate rule implementing the Prescription Drug Marketing Act of 1987 (Pub. L. 100-293). That rulemaking was initiated with the proposed rule published in the *Federal Register* of March 14, 1994 (59 FR 11842).

Finally, section 125(c) of FDAMA amended section 802 of the act (21

U.S.C. 382) to exempt insulin drugs from the export requirements of section 802 if the drugs meet the requirements of section 801(e)(1) of the act.

II. Direct Final Rulemaking

FDA has determined that the subjects of this rulemaking are suitable for a direct final rule. The actions taken should be noncontroversial, and the agency does not anticipate receiving any significant adverse comments.

The repeal of section 506 of the act eliminated the statutory provision on which the agency relied to certify drugs composed wholly or partly of insulin. FDA will, therefore, remove all provisions of title 21 of the Code of Federal Regulations (CFR) relating to the certification of insulin products. FDA will also make various ministerial changes to title 21, such as removing references to section 506 of the act in authority sections and regulations whose subjects are not certification of insulin.

FDA has also determined that it is appropriate to use direct final rulemaking to update the definition of insulin in § 200.15 (21 CFR 200.15). The statutory references in the definition are being changed to reflect changes in the law and the scope of the definition is being clarified to reflect the existence of new forms of insulin that have been introduced since the definition was originally issued.

If FDA does not receive significant adverse comment on or before July 27, 1998, the agency will publish a document in the *Federal Register* before August 25, 1998, confirming the effective date of the direct final rule. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment, unless the comment states why this rule would be ineffective without the additional change. If timely significant adverse comments are received, the agency will publish a document of significant adverse comment in the *Federal Register* withdrawing this direct final rule before August 26, 1998.

The companion proposed rule, which is identical to the direct final rule, provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final rule runs concurrently with that of the

companion proposed rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered comments to the companion proposed rule, and the agency will consider such comments in developing a final rule. FDA will not provide additional opportunity for comment on the companion proposed rule.

If a significant adverse comment applies to part of this rule and that part may be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment. A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the *Federal Register* of November 21, 1997 (62 FR 62466).

III. Description of the Rule

The rule eliminates references to section 506 of the act in all authority citations in 21 CFR, chapter I.

The rule amends the delegation of authority provisions in 21 CFR part 5 to eliminate provisions dealing with the authority to sign citizen petitions regarding the certification of insulin, the authority to certify batches of insulin, and the authority to issue regulations under section 506 of the act pertaining to drugs containing insulin.

The rule eliminates a reference to section 506(c) of the act in 21 CFR 10.50, which deals with issuance of regulations and orders after an opportunity for a formal evidentiary public hearing. Former section 506(c) of the act dealt with the issuance of insulin regulations prescribing tests or methods of assay for batch certification that differed from those specified in an official compendium.

The rule removes a reference to 21 CFR 429.50, which relates to suspension of certification services for certain persons, in 21 CFR 16.1, which defines the scope of 21 CFR part 16.

The regulations in 21 CFR 25.31 (see 62 FR 40570 at 40595, July 29, 1997) are amended to eliminate testing and certification of batches of insulin under section 506 of the act from a list of actions that are categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement.

The rule removes a reference to section 506 of the act in 21 CFR 50.1, which defines the scope of 21 CFR part 50.

This rule amends the statutory references in the definition of insulin

found in § 200.15 to reflect the repeal of sections 502(k) and 506 of the act; the addition of insulin drug products to the reimportation provision of section 801(d) of the act by FDAMA; the use of the term "insulin" in the export labeling provisions of section 801(f) of the act, which was added by the Technical Amendments to the FDA Export Reform and Enhancement Act of August 6, 1996 (Pub. L. 104-180); and FDAMA's addition of section 802(i) to the act, which exempts insulin drugs from the export requirements of section 802 of the act. The new definition also clarifies the scope of the term "insulin" to reflect the existence of synthetic and biotechnologically derived human insulin. The definition is designed to encompass chemical analogs of insulin, the first of which, insulin lispro (an Eli Lilly & Co. product), was recently approved.

The labeling requirements found in part 201 (21 CFR part 201) are being amended by this rule. Section 201.50(b) is amended to remove a sentence that refers to labeling requirements contained in part 429 (21 CFR part 429), which is also being eliminated by this rule. A reference to section 506 of the act is being removed from § 201.100(c)(2).

Several references to section 506 of the act are being removed from 21 CFR parts 207 and 314.

FDA is repealing all of part 429 and those portions of part 369 (21 CFR part 369) that deal with insulin drug products.

Part 429 contains the primary provisions the agency has relied on to carry out the batch certification of drugs composed wholly or partly of insulin. Subpart A of part 429 defines key terms used in the insulin certification regulations; subpart B of part 429 contains packaging and labeling requirements for products subject to batch certification; subparts C and D of part 429 contain applicable standards and tests and methods of assay for determining whether batches of insulin may be certified; subpart E of part 429 contains the requirements for submitting a request for certification; subpart F of part 429 contains the administrative procedures and fees applicable to insulin certification; and subpart G of part 429 imposes additional recordkeeping requirements applicable to batch certified insulin products. With the repeal of section 506 of the act, and the elimination of the insulin batch certification program, the agency is eliminating these subparts.

The agency notes that several of the provisions in part 429, such as those covering packaging and labeling and

tests and methods of assay, could be retained under provisions of the act other than section 506 of the act. However, the agency has determined, as explained in this section of this document, that it would not be appropriate or necessary to do so at this time.

The current regulations in § 429.10 require insulin drug products to be packaged in sterile immediate containers with closures through which the insulin may be withdrawn with a conventional hypodermic syringe and needle. Section 429.10 also provides for distinctive containers for certain insulin drug products, none of which is currently marketed. Although all insulin drug products are currently marketed in immediate containers that meet the requirements contained in § 429.10, there is no assurance that a new, safe, and effective container/closure system would conform to the regulation. To avoid having to amend the regulation each time a new, acceptable container/closure system is developed, the agency is removing § 429.10 and, instead, will rely on the new drug approval process to approve appropriate container/closure systems for drug products containing insulin. Applicants for drug products containing insulin submit descriptions of the container/closure system with the new drug application (NDA); FDA reviews the container/closure system for use with the drug product and, if appropriate, approves its use with the drug product as part of the NDA approval. This system is used to approve container/closure systems for most new drug products on the market today, and it provides the flexibility necessary to provide for approval of new, safe, and effective container/closure systems.

The current regulations in §§ 369.21, 429.11, and by cross reference § 369.5, set out detailed requirements for the labeling of insulin drug products. The current regulations require, among other information and warnings, information on potency of the drug product, expiration date of the lot, storage instructions, instructions on injecting insulin, and descriptions of how the type of insulin-containing drug product differs from other types of insulin drug products.

FDA is removing §§ 369.5 and 429.11 and those portions of § 369.21 that apply to insulin drug products, and will rely on the new drug approval process, in conjunction with the general drug labeling requirements found in part 201, to establish appropriate labeling requirements for each drug product containing insulin. Applicants submit copies of proposed labeling with the

marketing applications for all new drug products, including those containing insulin; FDA then reviews the application and, if appropriate, approves it, after the applicant has made necessary changes. This system is used to establish labeling for most new drug products and provides the flexibility necessary to provide adequate labeling for new types of insulin drug products. Because all currently marketed insulin drug products are the subject of effective NDA's under section 505(b) of the act, the labeling of these products is not expected to change as a result of the removal of these rules.

The current regulations in § 429.12 contain a distinguishing color scheme, which is outdated. The current system includes distinguishing colors for 40 units per milliliter strengths of insulin drug products, which are no longer being marketed. It also provides an identifying color scheme for insulin zinc globin, which is also not marketed. Under § 429.12, most of the currently marketed insulin drug products are identified by the color combination of black and white, which provides limited usefulness. No provisions are made for either of the two types of mixtures of human insulin and insulin suspension isophane currently being marketed or insulin lispro, a human insulin analogue. Accordingly, FDA is removing § 429.12.

Major insulin manufacturers, working with the International Diabetes Federation (IDF), have developed a new color coding system in which each type of insulin would be identified with a distinctive color. FDA has been favorably impressed with the IDF system. However, the agency believes that it is administratively more efficient to remove part 429 in its entirety at this time, and implement the IDF system in a separate rulemaking proceeding or incorporate it into a guidance issued under FDA's "Good Guidance Practices" published in the *Federal Register* of February 27, 1997 (62 FR 8961).

FDA is also removing § 429.25, which establishes standards of quality and purity for protamine, and § 429.26, which establishes standards of quality and purity for globin hydrochloride. (No insulin products using globin hydrochloride are currently being marketed.) FDA does not, at this time, intend to issue regulations directly establishing other product standards relating to drugs composed wholly or partly of insulin. Insulin manufacturers and FDA laboratories use the requirements set out in the approved NDA for analyzing an insulin drug product and, where appropriate, the

standards set out in the United States Pharmacopeia (USP).

FDA is also removing § 429.30, which sets out testing and assay methods. Section 429.30 provides, generally, that insulin injection, insulin suspension protamine zinc, insulin zinc globin, insulin suspension isophane, insulin zinc suspension, insulin zinc suspension prompt, and insulin zinc suspension extended be tested and assayed according to methods set out in the USP. Section 429.30 also provides tests for isophane ratio, chloride in globin hydrochloride, sulfate in protamine, nitrogen, and zinc. At least one of these products (insulin zinc globin) is no longer marketed. The tests and methods of assay for the remaining products are either outdated or if still in use, have been incorporated into the applicable NDA.

FDA intends to avoid the potential for this type of outdated, codified specification by not proposing at this time regulations specifying testing or assay methods. Instead, insulin will be required to conform to all applicable USP monographs and the approved NDA for each product. This will mean that insulin drug products will be regulated just as other new drugs are regulated by FDA.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of \$100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. As discussed below, the agency believes that this final rule is consistent with the

regulatory philosophy and principles identified in the Executive Order. In addition, the direct final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on small entities. The only two manufacturers currently marketing insulin drug products in the United States are not small entities. Furthermore, by eliminating the certification process, this direct final rule would lower market entry barriers for small entities. The agency certifies that the direct final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires an agency to prepare a budgetary impact statement before issuing any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of \$100 million (adjusted annually for inflation) in any 1 year. The elimination of the insulin certification program will lower the costs of marketing insulin drug products, by eliminating both the direct cost of applying for certification and the cost of holding batches of insulin while awaiting certification. Because this rule will not result in an expenditure of \$100 million or more on any governmental entity or the private sector, no budgetary impact statement is required.

VI. Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Request for Comments

Interested persons may, on or before July 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 3

Administrative practice and procedure, Biologics, Drugs, Medical devices.

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 50

Human research subjects, Prisoners, Reporting and recordkeeping requirements, Safety.

21 CFR Part 56

Human research subjects, Reporting and recordkeeping requirements, Safety.

21 CFR Part 58

Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 71

Administrative practice and procedure, Color additives, Confidential business information, Cosmetics, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 200

Drugs, Prescription drugs.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR 207

Drugs, Reporting and recordkeeping requirements.

21 CFR 210

Drugs, Packaging and containers.

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

21 CFR Part 429

Administrative practice and procedure, Drugs, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 800

Administrative practice and procedure, Medical devices, Ophthalmic goods and services, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 3, 5, 10, 16, 25, 50, 56, 58, 71, 200, 201, 207, 210, 211, 310, 312, 314, 369, 429, 800, and 812 are amended as follows:

PART 3—PRODUCT JURISDICTION

1. The authority citation for 21 CFR part 3 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 357, 360, 360c-360f, 360h-360j, 360gg-360ss, 371(a), 379e, 381, 394; 42 U.S.C. 216, 262.

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

2. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; 15 U.S.C. 1451-1461; 21 U.S.C. 41-50, 61-63, 141-149, 321-394, 467f, 679(b), 801-886, 1031-1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242i, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1; 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124-131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220-223.

§ 5.31 [Amended]

3. Section 5.31 *Petitions under part 10* is amended by removing and reserving paragraphs (f)(2)(iii) and (f)(2)(iv).

§ 5.73 [Removed]

4. Section 5.73 *Certification of insulin* is removed.

§ 5.74 [Removed]

5. Section 5.74 *Issuance, amendment, or repeal of regulations pertaining to drugs containing insulin* is removed.

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

6. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 21 U.S.C. 41-50, 141-149, 321-394, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 263b, 264; 15 U.S.C. 1451-1461; 5 U.S.C. 551-558, 701-721; 28 U.S.C. 2112.

§ 10.50 [Amended]

7. Section 10.50 *Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing* is amended by removing and reserving paragraph (c)(10).

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

8. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 21 U.S.C. 41-50, 141-149, 321-394, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 264; 15 U.S.C. 1451-1461; 28 U.S.C. 2112.

§ 16.1 [Amended]

9. Section 16.1 *Scope* is amended in paragraph (b)(2) by removing the entry for "§ 429.50."

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

10. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: 21 U.S.C. 321-393; 42 U.S.C. 262, 263b-264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500-1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531-533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123-124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356-360.

§ 25.31 [Amended]

11. Section 25.31 *Human drugs and biologics* is amended in paragraph (f) by removing the words "or insulin."

PART 50—PROTECTION OF HUMAN SUBJECTS

12. The authority citation for 21 CFR part 50 is revised to read as follows:

Authority: 21 U.S.C. 321, 346, 346a, 348, 352, 353, 355, 357, 360, 360c-360f, 360h-360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b-263n.

§ 50.1 [Amended]

13. Section 50.1 *Scope* is amended in the last sentence of paragraph (a) by removing the number "506,".

PART 56—INSTITUTIONAL REVIEW BOARDS

14. The authority citation for 21 CFR part 56 is revised to read as follows:

Authority: 21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 357, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

15. The authority citation for 21 CFR part 58 is revised to read as follows:

Authority: 21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 357, 360, 360b–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 262, 263b–263n.

PART 71—COLOR ADDITIVE PETITIONS

16. The authority citation for 21 CFR part 71 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 351, 355, 357, 360, 360b–360f, 360h–360j, 361, 371, 379e, 381; 42 U.S.C. 216, 262.

PART 200—GENERAL

17. The authority citation for 21 CFR part 200 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 358, 360e, 371, 374, 375.

18. Section 200.15 is revised to read as follows:

§ 200.15 Definition of term "insulin."

For purposes of sections 801 and 802 of the act and this title, the term insulin means the active principle of the pancreas that affects the metabolism of carbohydrates in the animal body and which is of value in the treatment of diabetes mellitus. The term includes synthetic and biotechnologically derived products that are the same as, or similar to, naturally occurring insulins in structure, use, and intended effect and are of value in the treatment of diabetes mellitus.

PART 201—LABELING

19. The authority citation for 21 CFR part 201 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

§ 201.50 [Amended]

20. Section 201.50 *Statement of identity* is amended in paragraph (b) by removing the second sentence.

§ 201.100 [Amended]

21. Section 201.100 *Prescription drugs for human use* is amended in paragraph (c)(2) by removing the number "506,".

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

22. The authority citation for 21 CFR part 207 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 357, 360, 360b, 371, 374; 42 U.S.C. 262.

§ 207.25 [Amended]

23. Section 207.25 *Information required in registration and drug listing* is amended in paragraphs (b)(2), (b)(5), and (b)(6) by removing the number "506," and in paragraph (b)(4) by removing the number "506,".

§ 207.31 [Amended]

24. Section 207.31 *Additional drug listing information* is amended in paragraph (a)(1) by removing the number "506," and in paragraphs (a)(2), (a)(3), and (c) by removing the number "506,".

§ 207.37 [Amended]

25. Section 207.37 *Inspection of registrations and drug listings* is amended in paragraph (a)(2)(i) by removing the number "506,".

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; GENERAL

26. The authority citation for 21 CFR part 210 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 357, 360b, 371, 374.

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

27. The authority citation for 21 CFR part 211 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 357, 360b, 371, 374.

PART 310—NEW DRUGS

28. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

29. The authority citation for 21 CFR part 312 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 371; 42 U.S.C. 262.

30. The authority citation for 21 CFR part 312, subpart E is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 355, 357, 371; 42 U.S.C. 262.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

31. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 371, 374, 379e.

§ 314.170 [Amended]

32. Section 314.170 *Adulteration and misbranding of an approved drug* is amended in the first sentence by removing the phrase "under sections 505, 506, and 507" and adding in its place the phrase "under sections 505(j) and 507".

§ 314.430 [Amended]

33. Section 314.430 *Availability for public disclosure of data and information in an application or abbreviated application* is amended in paragraph (f)(6) by removing the phrase "under sections 505(j), 506, and 507" and adding in its place the phrase "under sections 505(j) and 507".

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

34. The authority citation for 21 CFR part 369 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 371.

§ 369.5 [Removed]

35. Section 369.5 *Warning required on insulin intended for over-the-counter sale* is removed.

§ 369.21 [Amended]

36. Section 369.21 *Drugs; warning and caution statements required by regulations* is amended by removing the entry for "INSULIN".

PART 429—DRUGS COMPOSED WHOLLY OR PARTLY OF INSULIN**Part 429 [Removed]**

37. Under authority of section 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)) and section 125(a) of the Food and Drug Modernization Act (Pub. L. 105–115), amend Title 21 of the Code of Federal Regulations by removing part 429.

PART 800—GENERAL

38. The authority citation for 21 CFR part 800 is revised to read as follows:

Authority: 21 U.S.C. 321, 334, 351, 352, 355, 357, 360e, 360i, 360k, 361, 362, 371.

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

39. The authority citation for 21 CFR part 812 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

Dated: April 17, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–12452 Filed 5–12–98; 8:45 am]

BILLING CODE 4180–01–F

federal register

Wednesday
May 13, 1998

Part IV

Department of Housing and Urban Development

24 CFR Parts 200 and 207
Electronic Submission of Required Data
by Multifamily Mortgagees to Report
Mortgage Delinquencies, Defaults,
Reinstatements, Assignment Elections,
and Withdrawals of Assignment
Elections; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 207

[Docket No. FR-4303-P-01]

RIN 2502-AH11

Electronic Submission of Required Data by Multifamily Mortgagees to Report Mortgage Delinquencies, Defaults, Reinstatements, Assignment Elections, and Withdrawals of Assignment Elections

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule; Notice of proposed information collection requirements.

SUMMARY: This proposed rule would require mortgagees that hold or service multifamily mortgages insured by HUD to submit certain data electronically to HUD in a HUD prescribed format. Electronic submission is necessary because the manual submission of HUD forms has become a burden to servicing mortgagees, as well as to HUD. This proposed rule would apply to all multifamily mortgagees in their responsibility to report mortgage delinquencies, mortgage defaults, mortgage reinstatements, elections to assign mortgages to HUD, and withdrawal of assignment elections.

DATES: Comment due date: July 13, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each comment submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) eastern time at the above address.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Business Products, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

HUD obtains data regarding the status of delinquent insured mortgage loans on multifamily projects by using Form HUD-92426, *Multifamily Default Status Report*. HUD needs the information submitted on the form in order to monitor mortgage loans for which the mortgagees are experiencing payment or other difficulties. In accordance with the requirements of 24 CFR part 207, the mortgagee must prepare and sign this form under the specified circumstances and mail it to HUD. When HUD receives the form, it must sign it and return it to the mortgagee to acknowledge receipt of the form.

To replace this burdensome paperwork process, HUD has developed a method for mortgagees to submit the data currently collected on Form HUD-92426, as well as to report the date of the mortgagees' last physical inspection of the project, using the Internet. According to this new method, the mortgagee will electronically submit the required data to HUD, after which an electronic receipt will automatically be returned. HUD will provide, at no cost to mortgagees, "stand alone" software and technical support for that software, which is designed to run on IBM-compatible personal computers (PCs). Mortgagees will, however, need to provide their own PCs and Internet connections. Mortgagees that do not choose to initiate Internet access for themselves may contract with another entity or individual to act on their behalf to report the data electronically; HUD believes that this is not likely to be necessary in most cases.

One of HUD's primary concerns is the costs mortgagees may incur in establishing Internet access if they have not already done so. For this reason, HUD has decided to allow for a staggered implementation of this rulemaking, under which smaller mortgagees would be given more time to comply with the new electronic reporting requirements. HUD believes, however, that electronic tracking of the default and reinstatement data generally will reduce costs for mortgagees. HUD has field-tested electronic submission of this data on a voluntary pilot basis with a number of mortgagees, and has received generally favorable responses.

While HUD hopes to begin implementing the electronic reporting requirements in this rule in July 1998, HUD encourages mortgagees to comply with these requirements voluntarily to the extent possible, in order for the mortgagees and HUD to realize an early advantage of cost savings.

II. This Proposed Rule

This document proposes to amend the regulations in 24 CFR parts 200 and 207 related to multifamily housing mortgage insurance, in order to require mortgagees with insured multifamily mortgage loans to submit information reporting mortgage delinquencies, defaults, reinstatements, assignment elections, and withdrawals of assignment elections electronically, rather than in writing on Form HUD-92426. Specifically, this document proposes to amend the regulations as follows:

(1) This proposed rule would add a new subpart B to part 200, entitled "Electronic Submission of Required Data for Mortgage Defaults and Mortgage Insurance Claims for Insured Multifamily Mortgagees." This new subpart B would require multifamily mortgagees to submit the data electronically, and it would provide the staggered schedule of effectiveness. As mentioned above, HUD would allow smaller mortgagees (i.e., those with fewer insured mortgage loans) more time to comply with the electronic submission requirements. This new subpart would also provide for an exception to the electronic submission requirements, subject to HUD approval, for very small mortgagees for which compliance would represent a financial hardship.

(2) This document also proposes several conforming changes to the current requirements in part 207. In § 207.256, which requires mortgagees to notify HUD of defaults, this document proposes to require mortgagees to notify HUD in the manner prescribed in the new subpart B of part 200, rather than in writing. This document would similarly amend § 207.256a, which requires mortgagees to notify HUD if a mortgage loan is reinstated, and § 207.258, which requires mortgagees to notify HUD if they elect to assign a mortgage to HUD or to acquire a property and convey title to HUD.

III. Other Matters

A. Paperwork Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

In accordance with 5 CFR 1320.5(a)(1)(iv), HUD is setting forth the following concerning the proposed collection of information:

Description	Number of respondents	Total annual response	Minutes per response	Total hours
Electronic transfer of information	420	2000	10	333

Interested persons are invited to submit comments regarding the information collection requirements in this proposed rule. Comments must be received within 60 days of the date of this proposal. Comments must refer to the proposed rule by name and docket number (FR 4303), and must be sent to Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

B. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The electronic submission requirements in this proposed rule should reduce burden and costs for all mortgagees. As stated above, HUD will also reduce the burden on mortgagees by providing the software and technical support necessary to facilitate the electronic submission requirements. Therefore, HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding this determination, HUD specifically invites comments regarding alternatives to this proposed rule that will meet HUD's objectives as described in this preamble.

C. Environmental Impact

This proposed rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). The proposed addition to part 200 of a new subpart B falls within the exclusion provided by 24 CFR 50.19(c)(1), in that it does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. The proposed amendments to part 207 are categorically excluded under 24 CFR 50.19(c)(2), because they amend an existing document, and the existing document as a whole would not fall within the exclusion in 24 CFR

50.19(c)(1), but the amendments by themselves would.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule relates only to the manner in which mortgagees submit required information to HUD, and it would not affect the federalism concerns addressed in the Order. As a result, this proposed rule is not subject to review under the Order.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule would not impose any Federal mandates on any State, local, or tribal government, or on the private sector, within the meaning of the UMRA.

F. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.155.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR Chapter II is proposed to be amended as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701-1715z-18; 42 U.S.C. 3535(d).

2. In part 200, a new subpart B, consisting of §§ 200.120 through 200.121, is added to read as follows:

Subpart B—Electronic Submission of Required Data for Mortgage Defaults and Mortgage Insurance Claims for Insured Multifamily Mortgagees

Sec. 200.120 Purpose and applicability.
200.121 Requirements and effectiveness.

§ 200.120 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart B is to require mortgagees of all multifamily projects whose mortgages are insured or coinsured by HUD to submit electronically information regarding mortgage delinquencies, defaults, reinstatements, elections to assign, and withdrawals of assignment elections, and related information, as that information is required by 24 CFR part 207 and Form HUD-92426 (which is available at the Department of Housing and Urban Development, HUD Custom Service Center, 451 7th Street, SW, Room B-100, Washington, DC 20410; telephone (800) 767-7465).

(b) *Applicability.* This subpart applies to all HUD multifamily mortgage insurance and coinsurance programs.

§ 200.121 Requirements and effectiveness.

(a) Multifamily mortgagees, which are required by 24 CFR part 207 to report mortgage delinquencies, defaults, reinstatements, assignment elections, withdrawals of assignment elections, and related information, must submit this information electronically, over the Internet, in accordance with the following schedule of effectiveness:

(1) Mortgagees having 70 or more insured mortgage loans must comply with this section by no later than January 1, 1999;

(2) Mortgagees having from 26 to 69 insured mortgage loans must comply with this section by no later than January 1, 2000;

(3) Mortgagees having from 11 to 25 insured mortgage loans must comply with this section by no later than January 1, 2001;

(4) Mortgagees having 10 or fewer insured mortgage loans must comply with this section by no later than January 1, 2002.

(b) *Exception.* On or after January 1, 2002, mortgagees that hold or service fewer than 10 multifamily mortgages may continue to report mortgage delinquencies, defaults, reinstatements, assignment elections, withdrawals of assignment elections, and related information in writing on Form HUD-92426 only with specific HUD approval. HUD will grant such approval, upon application by the mortgagee, for reasons of hardship due to insufficient financial resources to purchase the required hardware and Internet access.

(c) HUD will not accept reports of information regarding defaults, reinstatements, assignment elections, and related information in a manner that is not in accordance with this section. Failure on the part of mortgagees to report this information as required by 24 CFR part 207 and this section may result in HUD's application of the sanctions and surcharges specified in 24 CFR part 207.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z-11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

4. Section 207.256 is revised to read as follows:

§ 207.256 Notice.

(a) If the default as defined in § 207.255 is not cured within the 30 days grace period, the mortgagee must, within 30 days thereafter, notify the Commissioner of such default, in the manner prescribed in 24 CFR part 200, subpart B.

(b) Notwithstanding § 207.255(a)(2), the mortgagee must give notice to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of the failure of the mortgagor to comply with such covenant, regardless of the fact the mortgagee may not have elected to accelerate the debt.

5. Section 207.256a is revised to read as follows:

§ 207.256a Reinstatement of defaulted mortgage.

If, after default and prior to the completion of foreclosure proceedings, the mortgagor cures the default, the insurance shall continue as if a default had not occurred, provided the mortgagee gives notice of reinstatement to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

6. Section 207.258 is amended by revising paragraphs (a) and (b)(1), to read as follows:

§ 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.* When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(c), it must, within 45 days thereafter, give the Commissioner notice, in the manner prescribed in 24 CFR part 200, subpart B, of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section.

(b) * * *

(1) *Notice of assignment.* On the date the assignment of the mortgage is filed for record, the mortgagee must notify the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of such assignment, and must also notify the FHA Comptroller by telegram of such recordation.

April 8, 1998.

Dated: May 6, 1998.

Art Agnos,

Acting General Deputy, Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 98-12615 Filed 5-12-98; 8:45 am]

BILLING CODE 4210-27-P

Wednesday
May 13, 1998

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Certification of Screening Companies;
Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. 28852; Notice No. 97-3]

RIN 2120-AG31

Certification of Screening Companies

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Advanced notice of proposed rulemaking (ANPRM); withdrawal.

SUMMARY: In early 1997, the FAA sought public comment on issues relating to FAA certification of screening companies and other enhancements to air carrier screening of passengers, property, and baggage. The FAA issued the advance notice in response to a recommendation made by the White House Commission on Aviation Safety and Security, and to a requirement in the Federal Aviation Reauthorization Act of 1996. The Reauthorization Act requires the FAA to certify companies providing security screening and to develop uniform performance standards for providing security screening services. The FAA is currently developing, field testing, and evaluating an automated screener testing system which will provide uniform data regarding screener performance. The FAA plans to propose to require performance standards as an integral part of the certification of screening companies rule, develop and incorporate the specific standards in a security program, and measure subsequent company performance based on the data that this system provides. Therefore, the FAA is withdrawing the ANPRM to allow this automated system to be adequately field tested and evaluated before proceeding with rulemaking.

DATES: This withdrawal is effective May 13, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Kris Mason, Office of Civil Aviation Security Policy and Planning, ACP-100, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591, telephone (202) 267-8184.

SUPPLEMENTARY INFORMATION:

Background

Following the tragic crash of TWA 800 on July 17, 1996, the President created the White House Commission on

Aviation Safety and Security (the Commission). The Commission issued an initial report on September 9, 1996, with 20 specific recommendations for improving security, one of which was the development of uniform performance standards for the selection, training, certification, and recertification of screening companies and their employees.

On October 9, 1996, the President signed the Federal Aviation Reauthorization Act of 1996, Pub. L. 104-264 (the Act). Section 302 provides:

The Administrator of the Federal Aviation Administration is directed to certify companies providing security screening and to improve the training and testing of security screeners through development of uniform performance standards for providing security screening services.

Discussion of Comments

In response to the Congressional mandate and to the Commission report, the FAA published an ANPRM on March 17, 1997, (62 FR 12724) requesting comments on certification of companies providing security screening. The FAA received 20 comments from the public on the ANPRM, which are briefly summarized below.

While commenters disagreed on several issues, including the level of oversight responsibility air carriers should have over certificated screening companies, commenters generally agreed that national standards for security screening operations are needed. Approximately one-third of the commenters stated that certification of individual screeners would have a greater impact on improving safety than certification of screening companies. Most of these commenters also stated that the certification of individual screeners would improve screener professionalism and performance.

Approximately half of the commenters agreed that air carriers conducting screening operations should be subject to the same standards as certificated screening companies. A majority of commenters stated that the same screening operation requirements that apply to U.S. carriers should apply to foreign carriers providing services in this country. Several commenters disagreed with any proposal by the FAA to regulate joint-use checkpoints and checkpoint operational configurations.

Reason for Withdrawal

While certificating companies providing security screening can result in many important changes to the way

that carriers and screening companies conduct screening in the U.S., a critical step in this process is having a reliable and consistent way to measure the screeners' performance. By measuring performance, the FAA can hold certificated screening companies and carriers accountable for safe, effective screening operations. Both the FAA and many commenters to the ANPRM recognize the importance of establishing national performance, training, and testing standards.

The FAA is currently developing, field testing, and evaluating an automated screener testing system called Threat Image Projection (TIP) which is expected to yield uniform data regarding screener performance. When TIP is installed on existing x-ray machines, it tests screeners' detection capabilities by projecting both random images of threats into live bags being screened, and randomly projecting images of bags containing threats onto x-ray screens. Screeners are then responsible for positively identifying the threat image. Once prompted, TIP indicates to the screener whether the threat is real and then records the screener's performance in a database that the FAA can access to analyze performance trends.

TIP is currently being field tested, and its reliability and functional use must be validated prior to general use. The FAA is closely monitoring TIP's capabilities in an operational environment and is making necessary adjustments. The FAA is also beginning to gather and analyze data which it can use to develop screener performance standards and measure subsequent screening company performance. The FAA estimates that this validation period will require another 6-8 months to complete. Because the FAA sees this technology as such an integral part in developing both a program to certificate screening companies, and uniform performance standards, it is delaying rulemaking action until the validation is complete.

Decision

In consideration of the above, Notice No. 97-3, published on March 17, 1997, is hereby withdrawn.

Issued in Washington, DC on May 8, 1998.

Anthony Fainberg,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 98-12749 Filed 5-11-98; 8:45 am]

BILLING CODE 4910-13-M

Wednesday
May 13, 1998

Part VI

The President

Executive Order 13082—Joint Mexican-United States Defense Commission

federal register

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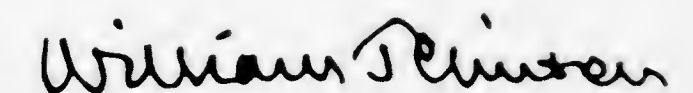
Executive Order 13082 of May 8, 1998

The President

Joint Mexican-United States Defense Commission

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to add a member of the Joint Staff to the Joint-Mexican-United States Defense Commission, it is hereby ordered that the third paragraph of Executive Order 9080 of February 27, 1942, as amended by Executive Order 10692 of December 22, 1956, and by Executive Order 12377 of August 6, 1982, is further amended to read as follows:

"The United States membership of the Commission shall consist of an Army member, a Navy member, an Air Force member, a Marine Corps member, and a Joint Staff member, each of whom shall be designated by the Secretary of Defense and serve during the pleasure of the Secretary. The Secretary shall designate from among the United States members a Chair thereof and may designate alternate United States members of the Commission."



THE WHITE HOUSE,
May 8, 1998.

[FR Doc. 98-12963
Filed 5-12-98; 11:08 am]
Billing code 3195-01-P

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Vol. 63 No. 93
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The President

Proclamation 7094 of May 8, 1998

National Defense Transportation Day and National Transportation Week, 1998

By the President of the United States of America

A Proclamation

America's transportation system is the finest in the world. The web of streets, highways, bridges, and railroads that crisscross our Nation and our complex network of shipping lanes and air routes keep us connected to one another and the world. They enable us to move people and goods swiftly and efficiently across the country and around the globe and fuel the engine of our robust economy. Whether building subways, constructing new highways, or improving airplane safety, the dedicated and hardworking men and women of our national transportation system keep America moving.

As we look forward to a new century, we must build on our record of achievement. As always, our first priority must be the safety of those who use our Nation's transportation system. We have already made great progress in improving highway safety—the traffic fatality rate today is two-and-a-half times less than it was 30 years ago. However, by increasing seat belt use, ensuring that our children are properly secured in our vehicles, and lowering the threshold for drunk driving to a blood alcohol concentration of .08, we can further reduce the number of traffic accidents and the harm they cause.

We also must strive to keep our Nation's transportation system secure and our borders safe from terrorists and drug traffickers. Today, through improved training techniques and advanced technology, we have increased security at our airports, and programs such as the Coast Guard's Operation Frontier Shield have helped to seize tons of illegal drugs and abort numerous drug smuggling attempts.

While recognizing the many benefits we derive from our transportation system, we also acknowledge the need to use and develop it responsibly to ensure the protection of our environment. We are making progress in this goal as well: we have funded many projects to improve transit services and accommodations for bicyclists and pedestrians; we are turning historic railroad terminals into multimodal transportation centers; and funds from transportation programs have helped to support wetlands restoration projects and have aided communities in planning both transit projects and sustainable development. We must build on these efforts by also working to reduce the pollutants and greenhouse gases that our transportation system creates.

Recognizing the need for safety, security, and environmental stewardship in America's transportation system, we also must invest in our transportation infrastructure. Together with the Congress, my Administration has provided funding for construction projects in communities across the country, creating 700,000 new transportation-related jobs in the last 5 years. Our fiscal 1999 budget proposal for transportation infrastructure is 42 percent higher than the average level of investment from 1990 to 1993. The 240 trade agreements we have signed since 1993, including 27 "open skies" aviation agreements in the last 3 years, have opened markets around the world for American products. America's transportation system will enable us to seize these unprecedented opportunities for trade and economic growth.

In recognition of the importance of our Nation's transportation system to our national security and economic success, and in gratitude to the outstanding men and women who ensure its continued excellence, the United States Congress, by joint resolution approved May 16, 1957 (36 U.S.C. 160), has designated the third Friday in May of each year as "National Defense Transportation Day" and, by joint resolution approved May 14, 1962 (36 U.S.C. 166), declared that the week in which that Friday falls be designated "National Transportation Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Friday, May 15, 1998, as National Defense Transportation Day and May 10 through May 16, 1998, as National Transportation Week. I urge all Americans to observe these occasions with appropriate ceremonies and activities, giving due recognition to the individuals and organizations that build, operate, and maintain this country's modern transportation systems.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98-13041
Filed 5-13-98; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register

Vol. 63, No. 93

Thursday, May 14, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

RIN 0560-AF14

Special Combinations for Tobacco Allotments and Quotas

AGENCY: Farm Service Agency, USDA.

ACTION: Interim Rule and Technical Correction.

SUMMARY: This notice corrects a reference contained in a final rule, published on February 24, 1998, (63 FR 9126) which amended the tobacco regulations. Also, to provide greater flexibility to tobacco farmers, this notice further amends the regulations to: allow for special farm combinations even where neither of the farms to be combined has a production flexibility contract (PFC) and to modify the consent requirements for the special combinations allowed under that section. In addition other corrections have been made to the regulation for purposes of clarity.

DATES: Effective: May 14, 1998. Comments must be received by July 13, 1998, to be assured of consideration.

ADDRESSES: Submit comments on the interim rule to: Director, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20013-0514. Comments may be faxed to (202) 690-2298. All written submissions made pursuant to this rule will be made available for public inspection in Room 5750 of the South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., during regular Federal workdays.

FOR FURTHER INFORMATION CONTACT: Joe Lewis, Jr., Agricultural Program Specialist, Tobacco Branch, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence

Avenue, SW, Washington, DC 20250-0514, telephone 202-720-0795.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and therefore was not reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim rule since the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This interim rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this interim rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR parts 780 and 711, as applicable, must be exhausted.

Paperwork Reduction Act

This interim rule does not contain new or revised information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*). A FR notice with a 60-day comment period for the information collections required in 7 CFR part 723 was published on September 25, 1997 (62 FR 50286). No comments were received. A request for revision and reinstatement has been submitted for approval.

Effective Date of Rule

It has been determined for purposes of all limitations that might apply, including any provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 that might apply, that this rule should be effective immediately because the planting season for all kinds of tobacco began in early April and tobacco producers must make their final rotation and planting decisions. The nature of this interim rule and notice is to: (1) Correct a reference contained in a previous rule; (2) add greater flexibility for producers in combining farms for tobacco purposes only. As the rule simply provides for such flexibility and should not adversely affect anyone, it would be contrary to the public interest to delay the implementation date of the new regulations.

Background and Discussion

The final rule published on February 24, 1998, (63 FR 9126), adopted and modified the interim rule published on April 2, 1997 (62 FR 15599) which allowed, under § 723.209, for special combinations of flue-cured tobacco allotments and quotas on participating and nonparticipating farms with PFCs. Though the regulations, as modified through the February 24 rule were correct, the preamble to the February 24 publication incorrectly indicated that the special combinations allowed by that rule were limited to cases where the two farms being combined were owned by the same person. That was not the intention of the rule nor was such a limitation actually contained in the adopted regulations themselves. That erroneous reference in the February 24, 1998, preamble is hereby corrected. In addition, this rule adopts clarifying language for § 723.209 and further amends § 723.209 so as to explicitly

allow special combinations even if no PFC farm is involved. This will permit variances from normal combination rules that would otherwise apply under 7 CFR part 718. Such variances will allow for greater flexibility to farmers with special needs as might arise for tobacco-only combinations. There is a special need for farm combinations with respect to the tobacco program because it is one of the few programs with an existing farm-oriented poundage or quota system and because of limitations that exist with respect to the leasing of allotments and quotas. These special combinations allow for better farming practices, including crop rotation and mirror long-term practices in tobacco. The amendments to § 723.209 would, in addition, provide explicitly that for all special combinations allowed under § 723.209, the Deputy Administrator may waive consent requirements that would normally apply for combinations under the rules in 7 CFR part 718. Under the 7 CFR part 718 regulations, normally all of the owners and operators of both farms to be combined must consent to the combination. However, § 723.209 deals with limited and temporary, perhaps frequent, combinations that can involve tobacco farms that have many owners as the farms have been passed down among several generations. Locating, and obtaining a verifiable consent from all of the owners of tobacco farms for each such transaction can be very difficult and is not purposeful given that the farm will be continuing its basic operation in a manner similar to the way it has operated in the past.

List of Subjects in 7 CFR Part 723

Acreage allotments, Auction warehouses, Dealers, Domestic manufacturers, Marketing quotas, Penalties, Reconstitutions, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 723 is amended as follows:

PART 723—[AMENDED]

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1 and 1445–2.

2. The heading for § 723.209 is revised and paragraph (c) is revised to read as follows:

§ 723.209 Determination of acreage allotments, marketing quotas, yields for combined farms; and special tobacco combinations.

(c) *Special tobacco combinations.* Notwithstanding other provision of this title, the Deputy Administrator may, upon proper application and to the extent deemed consistent with other obligations, permit farms, with respect to tobacco allotments and tobacco quotas, to be considered combined for purposes of this part and part 1464 of this title only without being combined for other purposes. This allowance shall apply for tobacco of all kinds and types and with respect to all farms even if one or more of the farms to be combined is the subject of a production flexibility contract (PFC) executed in connection with the program operated under the provisions of 7 CFR part 1412. Such special, limited combinations must otherwise meet the requirements of 7 CFR part 718 for combinations, except the signature (consent) requirements of § 718.201(a)(2) of that part. The Deputy Administrator may set such consent requirements for special farm combinations under this section as the Deputy Administrator believes necessary or appropriate. Further, in any case in which one of the farms is a PFC farm, none of the land on any PFC farm that would have been used for the production of tobacco can be used for the production of a "PFC commodity" as defined in this section. Such permission shall be conditioned upon the agreement of all interested parties that land on the PFC allotment or quota farm that would have been used for the production of tobacco shall not be used for the production of any PFC commodity. In the event that such production nonetheless occurs, the special tobacco combination may be made void, retroactive to the date of original approval. Such curative action will likely result in a finding of excess tobacco plantings and sanctions and remedies, which would likely include liability for penalties and other sanctions for excess marketings of tobacco. The Deputy Administrator may set such other conditions on the combinations as needed or deemed appropriate to serve the goals of the tobacco program and the goals of the PFC. The term *PFC commodity* for purposes of this section means wheat, corn, grain sorghum, barley, oats, upland cotton, and rice.

Signed at Washington, DC, on May 8, 1998.

Bruce R. Weber,
Acting Administrator,
Farm Service Agency.

[FR Doc. 98–12860 Filed 5–13–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–72–AD; Amendment 39–10516; AD 98–10–05]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models B200, B200C, and B200T Airplanes

AGENCY: Federal Aviation Administration, DOT.
ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Models B200, B200C, and B200T airplanes (formerly referred to as Beech Models B200, B200C, and B200T airplanes). This AD requires replacing the wiring for the engine fire detector system with fire resistant wiring. This AD is the result of the discovery during aircraft production of the potential for the existing engine fire detector system wiring on the affected airplanes to fail because of high heat and/or fire. The actions specified by this AD are intended to prevent failure of the engine fire detector system if high heat and/or fire stopped an electrical signal between the engine fire detectors and the engine fire warning annunciator lights located in the cockpit, which could result in passenger injury in the event of an airplane fire.

DATES: Effective June 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–72–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Griffith, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4145; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Models B200, B200C, and B200T airplanes was published in the *Federal Register* as a notice of proposed rulemaking (NPRM) on December 3, 1997 (62 FR 63914). The NPRM proposed to require replacing the wiring for the engine fire detector system with fire resistant wiring by incorporating Engine Fire Detector Harness Kit, part number 101–3208–1. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Raytheon Mandatory Service Bulletin No. 2701, Issued: May, 1997.

The NPRM was the result of the discovery during aircraft production of the potential for the existing engine fire detector system wiring on the affected airplanes to fail because of high heat and/or fire.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 77 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the modification required by this AD, and that the average labor rate is approximately \$60 an hour. Parts will be provided by the manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$18,480, or \$240 per airplane. These figures are based on the presumption that no owner/operator of the affected airplanes has incorporated this modification.

Raytheon has informed the FAA that approximately 40 kits have been

shipped from the Raytheon Aircraft Authorized Service Center. Presuming that each of the 40 kits is incorporated on an affected airplane, this will reduce the cost impact of this AD by \$9,600, from \$18,480, to \$8,880.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–10–05 Raytheon Aircraft Company: Amendment 39–10516; Docket No. 97–CE–72–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
B200	BB–1439, BB–1444 through BB–1447, BB–1449, BB–1450, BB–1452, BB–1453, BB–1455, BB–1456, and BB–1458 through BB–1512;
B200C	BL–139 and BL–140;
B200C (C–12R)	BW–1 through BW–5; and
B200T	BT–35 through BT–38.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent failure of the engine fire detector system if high heat and/or fire stopped an electrical signal between the engine fire detectors and the engine fire warning annunciator lights located in the cockpit, which could result in passenger injury in the event of an airplane fire, accomplish the following:

(a) Replace the existing engine fire protection system wiring with fire resistant wiring by incorporating Engine Fire Detector Harness Kit, part number 101–3208–1. Accomplish this replacement in accordance with the instructions included with the above kit, as referenced in Raytheon Mandatory Service Bulletin No. 2701, Issued: May, 1997.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The replacement required by this AD shall be done in accordance with the instructions to Raytheon Engine Fire Detector

Harness Kit, part number 101-3208-1, as referenced in Raytheon Mandatory Service Bulletin No. 2701, issued: May, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on June 27, 1998.

Issued in Kansas City, Missouri, on April 30, 1998.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12507 Filed 5-13-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 921

[Docket #980427108-8108-01]

RIN 0694-AL16

National Estuarine Research Reserve System Regulations

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is making a correction to its regulations concerning the National Estuarine Research Reserve System (NERRS) to clarify that certain types of financial assistance awards are not subject to specified limits on amounts. The Coastal Zone Protection Act of 1996 amended the Coastal Zone Management Act (CZMA) by, among other things, eliminating the state match requirement in cases where financial assistance was coming from proceeds of a natural resource damage action. In 1997, NOAA issued a rule to amend the NERRS regulations to conform to the statutory amendments. That rule specified that the state match requirement was eliminated in cases where natural resource damage proceeds were being used to fund NERRS activities. However, the rule did not address what the effects of other limits on financial assistance (caps on funding, rather than

state match) would be in these cases. This final rule clarifies that, in cases where financial assistance is coming from natural resource damage funds, the caps on financial assistance to not apply.

EFFECTIVE DATE: May 14, 1998.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien, Attorney-Adviser, Office of General Counsel, 1305 East-West Highway, Silver Spring, Maryland 20910. Telephone: 301-713-2967.

SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued under the authority of the Coastal Zone Management Act, CZMA, 16 U.S.C. 1451 *et seq.*, as amended.

II. Background

Section 315 of the CZMA authorizes grants to states for the selection, designation, management, and use of National Estuarine Research Reserves. However, section 315 of the CZMA limits, in most cases, the proportion of federal financial assistance that may be provided to states for program activities. The 1996 amendments to the CZMA provided that notwithstanding these statutory limits, financial assistance provided from amounts recovered as a result of damage to natural resources located in the coastal zone may be used to pay 100 percent of the costs of activities carried out with the assistance. In 1997, NOAA issued a rule, the intent of which was to bring the program regulations into conformity with the statutory change.

Following NOAA's 1997 rule, questions arose as to the effects of the amendment on certain statutory and regulatory limits on amounts. While it was clear the amendments eliminated the match requirement in cases where financial assistance is coming from natural resource damage funds, questions remained as to the appropriate interpretation, in these cases, of provisions limiting the amount of financial assistance that may be granted to any one reserve for certain activities. Specifically, the statute provides a \$5,000,000 cap on federal financial assistance for acquisition activities at any one reserve. The regulations contain not only that cap, but also a \$100,000 cap on federal financial assistance for certain pre-designation activities (site selection, draft management plan and environmental impact statement preparation, and basic characterization studies).

The NERRS was established by Congress to provide for a system of

representative estuarine ecosystems, with each site contributing to the biogeographical and typological balance of the system. It was envisioned that the completed system would ultimately contain 25-35 sites. Throughout the course of the program, there has been a need to ensure that limited appropriations are distributed equitably among reserve sites. Hence, the statute and the regulations provided caps to restrict the amount of funds that could be granted to any one site.

In the case of reserve activities being funded with amounts recovered as a result of natural resource damages, the concern that gave rise to the establishment of the caps does not exist. Natural resource damage funds do not come out of the NERRS appropriation. When such funds are used to establish a reserve or pay for reserve activities, there is no reduction in the appropriation and thus no effect, financial speaking, on other reserves in the system or on states wishing to advance reserve proposals. For this reason, it is not appropriate to apply the NERRS limits on federal financial assistance when activities are being funded from natural resource damage proceeds.

Congress recognized as much in the 1996 amendments to the CZMA. New section 315(e)(3)(C) explicitly stated that notwithstanding the 50 percent/\$5,000,000 cap, financial assistance provided from natural resource damage funds could be used to pay 100 percent of the costs of such activities. Congress did not address the \$100,000 pre-designation cap, because that cap was established by regulation rather than by statute.

III. Discussion of Change

The purpose of this rule is to amend the regulations to clarify that, consistent with the changes made to the CZMA in 1996, the \$5,000,000 and \$100,000 limits on federal financial assistance for certain activities are not applicable with the funding for these activities is being provided from amounts recovered as a result of damage to natural resources.

IV. Rulemaking Requirements

A. This rule was determined to be "not significant" for purposes of Executive Order 12866.

B. This rule relates to public property, loans, grants, benefits, and contracts, and therefore, it is exempt from every requirement of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, including notice and comment and delayed effective date.

C. Because a notice of proposed rulemaking is not required by 5 U.S.C.

553, or by any other law, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required and was not prepared.

D. This rule involves collections of information subject to the Paperwork Reduction Act and cleared by the Office of Management and Budget under control number 0648-0119. The estimated response times for these requirements are 480 hours for management program approval and 8 hours for program amendment and routine program changes. The response estimates shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining needed data, and completing and reviewing the collection of information. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

E. NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the environment. Therefore, an environmental impact statement under the National Environmental Policy Act, 43 U.S.C. 4321 *et seq.* is not required.

F. This rule contains no mandates, under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, for state, local, or tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

G. NOAA has concluded that this regulatory action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 921

Administrative practice and procedure, Coastal zone, Grant programs—Natural resources, Reporting and recordkeeping requirements.

Dated: May 11, 1998.

Nancy Foster,
Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons set forth in the Preamble, 15 CFR part 921 is amended as follows:

PART 921—NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM REGULATIONS

1. The authority citation for part 921 continues to read as follows:

Authority: Section 315 of the Coastal Zone Management Act, as amended (16 U.S.C. 1461).

2. Paragraph (f) of § 921.1 is amended by revising the fourth sentence to read as follows:

§ 921.1 Mission, goals and general provisions.

(f) * * * Notwithstanding any financial assistance limits established by this Part, when financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, such assistance may be used to pay 100 percent of all actual costs of activities carried out with this assistance, as long as such funds are available. * * *

3. Paragraph (a) of § 921.10 is amended by adding a new sentence, after the third sentence, to read as follows:

§ 921.10 General.

(a) * * * Notwithstanding the above, when financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, such assistance may be used to pay 100 percent of all actual costs of activities carried out with this assistance, as long as such funds are available. * * *

4. Paragraph (b) of § 921.10 is amended by adding a new sentence, after the last sentence, to read as follows:

§ 921.10 General.

(b) * * * Notwithstanding the above, when financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, such assistance may be used to pay 100 percent of all actual costs of activities carried out with this assistance, as long as such funds are available.

5. Section 921.20 is amended by revising the last sentence to read as follows:

§ 921.20 General

* * * In any case, the amount of Federal financial assistance provided to a coastal state with respect to the acquisition of lands and waters, or interests therein, for any one National Estuarine Research Reserve may not exceed an amount equal to 50 percent

of the costs of the lands, waters, and interests therein or \$5,000,000, whichever amount is less, except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of all actual costs of activities carried out with this assistance, as long as such funds are available.

6. Section 921.31 is amended by revising the fourth sentence to read as follows:

§ 921.31 Supplemental acquisition and development awards.

* * * Acquisition awards for the acquisition of lands or waters, or interests therein, for any one reserve may not exceed an amount equal to 50 percent of the costs of the lands, waters, and interests therein of \$5,000,000, whichever amount is less, except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of all actual costs of activities carried out with this assistance, as long as such funds are available. * * *

[FR Doc. 98-12880 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-06-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N-0274]

Food Labeling; Petitions for Nutrient Content and Health Claims, General Provisions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to define the conditions under which certain petitions for nutrient content and health claims shall be deemed to be denied and to codify the statutory timeframe within which the agency will complete rulemakings on such petitions. FDA is taking this action in response to the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: This regulation is effective May 14, 1998. Submit written comments by June 15, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch

(HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hilario R. Duncan, Center for Food Safety and Applied Nutrition (HFS-24), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-8281.

SUPPLEMENTARY INFORMATION: On November 21, 1997, President Clinton signed into law FDAMA (Pub. L. 105-115). Section 302 of FDAMA amended section 403(r)(4)(A)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(4)(A)(i)) so that certain nutrient content claim and health claim petitions are deemed denied if FDA does not act by certain deadlines. In particular, under amended section 403(r)(4)(A)(i) of the act, if FDA fails to make a filing decision on either type of petition within 100 days of receipt of the petition by the agency, the petition shall be deemed to be denied unless an extension is mutually agreed upon by FDA and the petitioner. If the petition is deemed to be denied in this manner without filing, the petition shall not be made available to the public. In addition, if FDA fails to issue a proposed rule within 90 days of filing of either type of petition, that petition shall be deemed to be denied unless an extension is mutually agreed upon by FDA and the petitioner. Accordingly, FDA is amending §§ 101.69(m) and 101.70(j) (21 CFR 101.69(m) and 101.70(j)) to include the statutory language, i.e., "Secretary" is replaced with "FDA" in the appropriate places in the regulations. For consistency, FDA also is making a few editorial changes in § 101.69, i.e., replacing "the Commissioner of Food and Drugs" with "FDA" in the appropriate places in the regulation.

Under amended section 403(r)(4)(A)(i) of the act, FDA also must publish a final rule within 540 days of receipt of the petition, or FDA is required to provide the relevant House and Senate legislative committees with the reasons for failing to do so. Accordingly, FDA is amending §§ 101.69(m) and 101.70(j) to state that rulemakings on health and certain nutrient content claim petitions shall be completed within 540 days of receipt of those petitions. The agency notes that § 101.70(j) provides that a

final rule in response to a health claim petition will be published by FDA within 270 days of the date of publication of the proposal but that, for cause, the agency may extend the period for agency action no more than twice with each extension being for no more than 90 days. In view of amended section 403(r)(4)(A)(i) of the act, the agency advises that, to ensure final action shall be within 540 days of the date of receipt of the petition, the agency may be limited to only one such extension for cause, and such extension may be limited to fewer than 90 days.

Additionally, the agency is taking this opportunity to correct and clarify some inconsistent references in § 101.69 to FDA and to the Commissioner of Food and Drugs so that all references are to the FDA.

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has examined the economic implications of this final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of \$100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The agency finds that this final rule is not a significant rule as defined by Executive Order 12866. No analysis is required for this rule under the Regulatory Flexibility Act (5 U.S.C. 601-612) because, as discussed in this document, FDA is issuing it without publishing a general notice of proposed rulemaking.

Finally, in accordance with the Small Business Regulatory Enforcement Fairness Act, the administrator of the

Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that this final rule is not a major rule for the purpose of congressional review.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Because the amendments set forth in this document incorporate the language of section 302 of FDAMA into §§ 101.69 and 101.70, FDA finds, for good cause, that notice and public procedure are unnecessary and, therefore, are not required under 5 U.S.C. 553. Nonetheless, under 21 CFR 10.40(e), FDA is providing an opportunity for comment on whether the regulations set forth in this document should be modified or revoked. Interested persons may, on or before June 15, 1998, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.69 is amended in paragraph (c) by removing "FDA's Center for Food Safety and Applied Nutrition" and adding in its place "the Food and Drug Administration's (FDA) Center for Food Safety and Applied Nutrition"; in paragraph (d) by removing "the Food and Drug Administration" and adding in its place

"FDA"; and in paragraphs (l), (m)(4), (n)(3) and (n)(4), and (o)(3) and (o)(4) by removing "the Commissioner of Food and Drugs", wherever it appears, and adding in its place "FDA"; by revising paragraph (m)(3); and by adding paragraphs (m)(4)(iii) and (m)(5) to read as follows:

§ 101.69 Petitions for nutrient content claims.

(m) * * *

(3) Within 100 days of the date of receipt of the petition, FDA will notify the petitioner by letter that the petition has either been filed or denied. If denied, the notification shall state the reasons therefor. If filed, the date of the notification letter becomes the date of filing for the purposes of section 403(r)(4)(A)(i) of the act. If FDA does not act within such 100 days, the petition shall be deemed to be denied unless an extension is mutually agreed upon by the FDA and the petitioner. A petition that has been denied, or has been deemed to be denied without filing, shall not be made available to the public. A filed petition shall be available to the public as provided under paragraph (g) of this section.

(4) * * *

(iii) If FDA does not act within 90 days of the filing date, the petition shall be deemed to be denied unless an extension is mutually agreed upon by FDA and the petitioner.

(5) If FDA issues a proposal, the rulemaking shall be completed within 540 days of the date of receipt of the petition.

3. Section 101.70 is amended by revising paragraph (j)(2), by adding paragraph (j)(3)(iii), and by revising paragraph (j)(4)(ii) to read as follows:

§ 101.70 Petitions for health claims.

(j) * * *

(2) Within 100 days of the date of receipt of the petition, FDA will notify the petitioner by letter that the petition has either been filed for comprehensive review or denied. The agency will deny a petition without reviewing the information contained in "B. Summary

of Scientific Data" if the information in "A. Preliminary Requirements" is inadequate in explaining how the substance conforms to the requirements of § 101.14(b). If the petition is denied, the notification will state the reasons therefor, including justification of the rejection of any report from an authoritative scientific body of the U.S. Government. If filed, the date of the notification letter becomes the date of filing for the purposes of this regulation. If FDA does not act within such 100 days, the petition shall be deemed to be denied unless an extension is mutually agreed upon by FDA and the petitioner. A petition that has been denied, or has been deemed to be denied, without filing will not be made available to the public. A filed petition will be available to the public to the extent provided under paragraph (e) of this section.

(3) * * *

(iii) If FDA does not act within 90 days of the filing date, the petition shall be deemed to be denied unless an extension is mutually agreed upon by FDA and the petitioner.

(4) * * *

(ii) For cause, FDA may extend, no more than twice, the period in which it will publish a final rule; each such extension will be for no more than 90 days. FDA will publish a notice of each extension in the *Federal Register*. The document will state the basis for the extension, the length of the extension, and the date by which the final rule will be published, which date shall be within 540 days of the date of receipt of the petition.

Dated: May 6, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98-12832 Filed 5-13-98; 8:45 am]

BILLING CODE 4180-01-F

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219-AB03

Civil Penalties; Correction

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects the RIN number to the final rule for criteria and procedures for proposed assessment of civil penalties published in the *Federal Register* on April 22, 1998.

EFFECTIVE DATE: May 14, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On April 22, 1998, (63 FR 20032) MSHA published a final rule on criteria and procedures for proposed assessment of civil penalties. This document corrects an error that appears on the front page of the notice. The RIN number 1219-AA49 is corrected to read 1219-AB03.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 98-12759 Filed 5-13-98; 8:45 am]

BILLING CODE 4510-43-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL-6013-2]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for the Urban Bus Rebuild Requirements.

EFFECTIVE DATE: This final rule is effective June 15, 1998.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (Mail Code 6403-J), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 564-9297.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to list those information requirements promulgated under the Urban Bus Rebuild Requirements which appeared in the *Federal Register* on April 21, 1993 (58 FR 21359). The affected regulations are codified at 40 Code of Federal Regulations (CFR) §§ 85.1401 through 85.1415. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and record keeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 15, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 5, 1998.

Richard D. Wilson,
Acting Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, part 9 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT [AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding the new entries under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

40 CFR citation	OMB control No.
85.1403	2060–0302
85.1404	2060–0302
85.1406	2060–0302
85.1407	2060–0302
85.1408	2060–0302
85.1409	2060–0302
85.1410	2060–0302
85.1411	2060–0302
85.1412	2060–0302
85.1413	2060–0302
85.1414	2060–0302
85.1415	2060–0302

[FRDoc. 98–12852 Filed 5–13–98; 8:45 am]

BILLING CODE 8560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–007–FON FRL–6010–3]

Finding of Failure To Submit Required State Implementation Plans for Carbon Monoxide; Arizona; Phoenix Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (Act), EPA is taking final action to find that the State of Arizona has failed to make required State Implementation Plan (SIP) submittals for the metropolitan Phoenix carbon monoxide (CO) nonattainment area. These required submittals are the serious area plan requirements for attainment of the CO national ambient air quality standards (NAAQS). The deadline for these submittals was February 28, 1998.

This final action triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a Federal Implementation Plan under the Act. This action is consistent with the Act's mechanism for assuring timely SIP submissions.

EFFECTIVE DATE: April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901, telephone (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

A. Serious Area CO Planning Requirements for the Phoenix Metropolitan Area

Under sections 107(d)(1)(C) and 186(a) of the Clean Air Act (Act or CAA), the Phoenix metropolitan area was designated nonattainment and classified as "moderate" for carbon monoxide. The nonattainment designation and classification are codified in 40 CFR part 81. See 56 FR 56694 (November 6, 1991). Moderate CO nonattainment areas were given until December 31, 1995 to attain the CO NAAQS.

The Act provides that moderate areas that the Administrator finds have failed to attain by their moderate area deadlines are reclassified to serious by operation of law, CAA section 186(b)(2). Reclassified areas are then required to submit revised SIPs to address the

serious area CO requirements. These planning requirements are set forth in CAA section 187(b).

On July 29, 1996, EPA published a final reclassification of the metropolitan Phoenix CO nonattainment area to serious (61 FR 39343). The reclassification became effective 30 days later on August 28, 1996. Under the schedule established by the Administrator pursuant to CAA section 187(f) in the reclassification notice, the State of Arizona was required to submit a serious area plan addressing the CO NAAQS for the area by February 28, 1998, 18 months after the effective date of the reclassification.

These requirements, as they pertain to the Phoenix nonattainment area, include:

(a) A demonstration of attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000 including annual emission reductions as are necessary to attain the standard by that date (CAA sections 187(a)(7) and 186(a)(1));

(b) A forecast of vehicle miles traveled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts (CAA section 187(a)(2)(A));

(c) A comprehensive, accurate, and current inventory of actual emissions from all sources (CAA section 187(a)(1));

(d) Adopted contingency measures (CAA sections 172(c)(9) and 187(a)(3)), and

(e) Adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips (CAA sections 187(b)(2)).

B. Consequences of a Failure to Submit Finding

The Maricopa Association of Governments, the Arizona Department of Environmental Quality, and the Maricopa County Environmental Services Department have been working on the serious area CO plan since the Phoenix area was reclassified in July, 1996. These efforts have included development of an emission inventory, regional and "hotspot" air quality modeling, and evaluation of candidate control measures.

Notwithstanding the significant efforts by these agencies, the State has failed to meet the February 28, 1998 deadline for the required SIP submittals;

¹ Serious CO nonattainment areas are also required to adopt and implement enhanced vehicle inspection and maintenance programs, see CAA section 187(a)(6). Arizona has already made the required submission of this program and EPA approved the program on May 8, 1995 (60 FR 22519).

therefore, EPA is required to find that the State of Arizona has failed to make the required SIP submittals for the Phoenix area CO nonattainment area.

The CAA establishes specific consequences if EPA finds that a state has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking.

If Arizona has not made the required complete submittals within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made complete submittals 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.² In addition, CAA section 110(c) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a).

The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal of a plan addressing the serious area CO requirements for Phoenix area. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittals and EPA takes final action to approve the submittals within 2 years of EPA's findings (section 110(c)(1) of the Act).

II. Final Action

A. Rule

EPA is making a finding of failure to submit for the Phoenix CO nonattainment area, due to failure of the State to submit SIP revisions addressing the Clean Air Act's serious area plan requirements for the CO standard.

² In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act."

B. Effective Date under the Administrative Procedures Act

Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies.

The action will be effective on the date this action is signed, April 27, 1998. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the *Federal Register* if an agency has good cause to mandate an earlier effective date. This action concerns SIP submittals that are already overdue and the State and general public are aware of applicable provisions of the CAA relating to overdue SIPs. In addition, this action simply starts a "clock" that will not result in sanctions for 18 months and that the State may "turn off" through the submission of complete SIP submittals. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This action is a final agency action but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submittals, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis

assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

As discussed in section III.C. below, findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that today's action does not have a significant impact on small entities.

C. Unfunded Mandates Act

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

In addition, under the Unfunded Mandates Act, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed, under section 203, a small government agency plan.

EPA has determined that today's action is not a Federal mandate. The CAA provision discussed in this notice requires states to submit SIPs. This notice merely provides findings that Arizona has not met that requirement. This notice does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief

statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 27, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Judicial Review

Under CAA Section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the appropriate circuit by July 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401 *et seq.*
Dated: April 27, 1998.

Felicia Marcus,
Regional Administrator, Region IX.
[FR Doc. 98-12853 Filed 5-13-98; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Centers for Disease Control and Prevention

42 CFR Part 493

[HCFA-2239-F]

RIN 0938-AH82

CLIA Program; Simplifying CLIA Regulations Relating to Accreditation, Exemption of Laboratories Under a State Licensure Program, Proficiency Testing, and Inspection

AGENCY: Health Care Financing Administration (HCFA), and Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to selected comments received on a final rule with a comment period implementing the Clinical Laboratory Improvement Amendments of 1988, which was published in the **Federal Register** on February 28, 1992, in the areas of proficiency testing and inspections for clinical laboratories. In responding to these comments, we accommodate, when possible, the Administration's regulatory reform initiative by reducing duplicative material, emphasizing outcome-oriented results, and simplifying regulations. In that regard, we also are streamlining our regulations in the areas of State exemption, and granting deemed status to laboratories accredited by an approved accreditation organization. **EFFECTIVE DATE:** These regulations are effective on June 15, 1998.

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SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 1992, we published in the **Federal Register**, at 57 FR 7002, final regulations with an opportunity for public comment, "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA)," that set forth requirements for laboratories that are subject to CLIA. CLIA requirements apply to any laboratory that examines human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. The regulations at 42 CFR part 493 establish uniform requirements for all laboratories regardless of location, size, or type. A laboratory must meet these Federal requirements, or a laboratory may meet the requirements if it is either accredited by a private, nonprofit accreditation organization approved by HCFA, and holds a valid CLIA certificate, or it is located in a State that HCFA has granted an exemption from CLIA requirements because the State has in effect laws that provide for requirements equal to or more stringent than CLIA requirements.

On July 31, 1992, we published in the **Federal Register**, at 57 FR 33992, a final rule that established the criteria used to approve accreditation organizations and State licensure programs. These regulations are found in subpart E of part 493 and are based on statutory requirements in section 353 (e) and (p) of the Public Health Service Act.

II. Provisions of the Final Regulations

These regulations respond to public comments received on the February 28, 1992 rule concerning the inspection of laboratories and the regulatory use of proficiency testing. In responding to the concerns of the commenters, we

accommodate, whenever possible, the Administration's regulatory reform commitment by:

(1) Eliminating duplicative material and reorganizing regulations concerning accreditation by a private, nonprofit accreditation organization and exemption from CLIA requirements under an approved State licensure program (subpart E of part 493); (2) emphasizing education in proficiency testing to improve laboratory performance (subpart H of part 493); and (3) focusing on an outcome-oriented approach in laboratory inspections (subpart Q of part 493).

A. Accreditation of a Laboratory by a Private, Nonprofit Accreditation Organization or Exemption From CLIA Requirements Under an Approved State Laboratory Program (Subpart E)

Based on the requirements in section 353(e) and (p) of the Public Health Service Act and regulations in part 493, subpart E, HCFA has approved six accreditation organizations. They are: American Association of Blood Banks, American Osteopathic Association, American Society for Histocompatibility and Immunogenetics, College of American Pathologists, Commission on Office Laboratory Accreditation, and Joint Commission on Accreditation of Healthcare Organizations. We have also approved three State licensure programs for CLIA exemption of licensed laboratories within the State: Washington, New York, and Oregon.

The existing regulations in subpart E contain duplicative information, which we are eliminating by restructuring subpart E and consolidating requirements. The revised subpart better reflects the process involved and better organizes the information required from organizations and States to obtain HCFA approval. This restructuring does not change the current requirements, but only redesignates them into a more customer-oriented document, making them easier for users to understand. In this process, we use new section numbers, but retain all the requirements in subpart E.

B. Participation in Proficiency Testing for Laboratories Performing Tests of Moderate Complexity (Including the Subcategory of Provider-performed Microscopy), High Complexity, or Any Combination of These Tests (Subpart H)

Proficiency testing (PT) is the testing of laboratory samples, the values of which are unknown to the laboratory, to assess the accuracy of the laboratory's results. PT serves as a test performance indicator, as well as provides invaluable

feedback. Under the CLIA regulations, laboratories test PT samples three times a year for the tests the laboratory performs, which are listed in subpart I of part 493. Samples for these three testing events are provided and graded by HCFA-approved PT programs. A laboratory's performance is described as satisfactory performance, unsatisfactory performance, or unsuccessful performance. Satisfactory performance occurs when a laboratory attains a passing score for all analytes, subspecialties, or specialties. Unsatisfactory performance occurs when a laboratory fails to attain the minimum satisfactory score for an analyte, subspecialty, or specialty for a testing event. Unsuccessful performance occurs when a laboratory fails to attain the minimum satisfactory score for an analyte, subspecialty, or specialty for two consecutive or two of three consecutive testing events.

Comments Concerning Regulatory Use of PT

In response to the concerns of commenters received on the final rule published February 28, 1992, we are emphasizing our existing policy that uses PT as an outcome indicator of laboratory performance and for educational purposes. We found that the commenters' recommendations were consistent with our regulatory reform initiative.

Comment: Many commenters recommended that we use PT performance more for educational purposes than for punitive actions. Commenters stated that PT is an excellent mechanism for assisting laboratories to identify and solve problems, evaluate personnel, and improve test performance; however, while PT is a valuable educational tool, it has limitations that should preclude it from use as the sole indicator for regulatory intervention.

Response: We agree with the commenters. We allow a laboratory to undertake education or training, or both, to correct initial unsuccessful PT performance for each laboratory specialty in which it performs PT. An educational focus for an initial occurrence of unsuccessful PT affords the laboratory further opportunity to undertake training of its personnel, or to obtain technical assistance, or both, to identify, correct, and prevent the problems that led to PT failures. We are revising subpart H to clarify and emphasize HCFA's educational approach. This approach will not release the laboratory from its responsibility to perform patient testing accurately and reliably. It is, however,

less punitive than some laboratories' initial perception of the PT actions we would impose, and provides an incentive, as well as a mechanism for laboratories to improve their performance.

The enforcement provisions in § 493.1838 give a laboratory the opportunity to train personnel or to obtain technical assistance, or both, when the laboratory has performed PT unsuccessfully. We are adding a new paragraph (c) to § 493.803, which sets forth the educational emphasis of PT, to respond to comments received on PT requirements. These regulatory additions unify commenters' recommendations with the Administration's Reinventing Government initiative by focusing on education as a correction to the problem, as opposed to punitive measures.

Comment: Commenters recommended that HCFA use PT performance as an index of performance or a screening tool to identify potential problems.

Commenters also suggested that we impose stricter sanctions (that is, that we remove from a laboratory's certificate the laboratory's authorization to test a specific analyte) when a laboratory demonstrates an unwillingness or inability to correct the problems that caused the failure.

Response: We agree with the commenters. We have also established some exceptions at § 493.803(c) that encompass the commenters' suggestions. We would take more assertive actions when there is an immediate jeopardy to patient health and safety, when a laboratory demonstrates an inability or unwillingness to provide evidence that it has taken steps to correct its PT problem(s), or if it has a history of noncompliance with CLIA requirements other than proficiency testing (for example, a laboratory that has had condition level deficiencies in quality control).

C. Inspection—Subpart Q

We are revising part 493 subpart Q. Inspections, in response to commenters' concerns. We are also reconstructing this subpart into a more concise format, using succinct, easier to understand language. Additionally, we are redirecting the HCFA inspection process to focus more on outcomes, rather than a solely process-oriented review of a laboratory. These actions also follow the Administration's Reinventing Government initiative in that the onsite survey is less process dependent.

1. Alternate Quality Assessment Survey

Comment: We received comments requesting that we inspect laboratories onsite every 2 years, but provide a "paper inspection" that the laboratory would complete between biennial onsite inspections.

Response: We believe that it would be a prudent use of our resources, and a sensible means of allowing greater flexibility than the program currently provides, to have an inspection scheme that gears itself to the variations we see in laboratory compliance. For those laboratories that we believe pose potential risks to public health and safety, judging from their compliance history, we continue to believe that regular onsite inspections present the most viable course of assuring ourselves that these laboratories maintain compliance with CLIA requirements. On the other hand, for those laboratories that have a sustained record of maintaining compliance, the need to have a constantly recurring onsite presence is not as compelling.

We believe that the statute specifically authorizes our focussed use of limited inspection resources. Specifically, section 353(g)(2) of the Public Health Service Act calls for inspections to be performed on a biennial basis, "or with such other frequency as the Secretary determines to be necessary to assure compliance" with CLIA standards. We believe that the use of the Alternate Quality Assurance Survey allows us to be in a position to inspect onsite with less frequency than we have before, while still assuring that those laboratories that require the closest supervision will continue to receive it. This approach would further the statutory mandate that we have a schedule for inspections that enables us to ensure facility compliance with program requirements.

With input from our partners in the State survey agencies and our regional office surveyors, we will review and evaluate information, such as the type and number of deficiencies (if any) cited at the last onsite inspection, proficiency testing performance, and complaints lodged against the laboratory. We consider information of this type in determining whether a laboratory may be a candidate for this self-inspection (the Alternate Quality Assessment Survey). We believe that a self-inspection process will motivate laboratories to improve their performance. It is also an example of the Reinventing Government initiative put into practice.

A laboratory may receive the Alternate Quality Assessment Survey in

lieu of an onsite inspection. Based on a review of the completed Alternate Quality Assessment Survey form and information submitted by the laboratory, should we conclude that, for any reason, the laboratory is not performing in a manner expected by the statute and regulations, we will follow the Alternate Quality Assessment Survey with an onsite inspection to verify that the laboratory is in compliance with CLIA requirements. A laboratory will not receive the Alternate Quality Assessment Survey for two consecutive certification cycles.

We will monitor and evaluate the effectiveness of the Alternate Quality Assessment Survey process through verification inspections of approximately 5 percent of the laboratories receiving the self-survey questionnaire. We will adjust the self assessment process, as indicated.

2. Outcome-oriented Survey Process

Comment: Among the commenters' recommendations were indications that our February 28, 1992 regulations implementing the CLIA requirements may not be applicable to all functions of all laboratories. We were reminded that certain standards might not be required for every type of testing performed; for example, the requirements for specimen preparation and storage of specimens would not directly apply to most point-of-care testing and, typically, have minimum impact on the quality of testing in this setting. Although HCFA surveyors have not held laboratories to requirements that are not applicable to a particular laboratory's testing activities, there was a concern from the commenters that the surveyors would interrupt direct patient care and spend an inordinate amount of time performing a line-by-line comparison of regulations that would not apply to the type of testing performed by the entity.

Response: In an effort to be responsive to those concerns, we are enhancing our inspection or survey process by focusing on outcomes. The outcome-oriented survey is the onsite inspection mechanism that is used for all laboratories. Onsite inspections are performed for: initial surveys for newly regulated laboratories; validation inspections of accredited or CLIA-exempt laboratories, laboratories that do not qualify for the Alternate Quality Assessment Survey; and for alternate cycles for those laboratories completing the Alternate Quality Assessment Survey. The emphasis of the survey is on the quality of the laboratory's performance and is based on a review of the laboratory's oversight and monitoring of its preanalytical,

analytical, and postanalytical testing processes using the quality assurance requirements in the regulations. Surveyors will review laboratory performance from the perspective of the effect on patient care rather than a line-by-line comparison for regulatory compliance. While we will look at outcomes as indicators of compliance, should we identify noncompliance with requirements set forth in the CLIA rules, we will cite deficiencies and, if necessary, impose sanctions. Our improvements to the survey mechanism are also in line with the Administration's Reinventing Government initiative by focusing on outcomes, as opposed to process.

In summary, on commenters' recommendations, we are providing to laboratories an onsite survey process that is less process dependent and more outcome-oriented, as well as a self-evaluative assessment (the Alternate Quality Assessment Survey), to motivate laboratories toward self-monitoring of their overall performance.

3. Specific Comments and Responses on Issues Concerning Inspection of Laboratories

We received 114 comments concerning subpart Q, Inspections. Many of the commenters raised identical or closely related issues, and we combined them, when appropriate.

Comment: We received numerous comments regarding announced versus unannounced inspections. Some commenters believed that only a physician office laboratory should have announced inspections, especially when direct patient care is provided. They believed that it would be a waste of the inspector's time if, at the time of the inspection, the laboratory was closed, the director unavailable, or the laboratory was not conducting testing. Other commenters believed that the option for announced inspections should be provided to all laboratories. These commenters believed that, even if given advance notice of an inspection, a laboratory would still not be able to "falsify" documentation or other data that would not be readily identified by a competent inspector. Another group of commenters stated that follow-up inspections should be unannounced. One commenter believed that we should set standards limiting agency discretion to conduct unannounced inspections. Still another commenter believed that "warrants" should be required when the laboratory owner does not give advance consent for his or her laboratory to be inspected.

Response: We agree with commenters who recommended announced

inspections for all laboratories. We have instituted a policy of announced inspections for all initial and recertification inspections, which allows a laboratory the latitude to include multiple members of the staff in the inspection process for the educational value. Announced, routine inspections are more efficient, in that the laboratory can make previous testing records more accessible before the inspection, and these inspections are also less intrusive when the laboratory is a health care facility providing direct patient care.

We are revising subpart Q by eliminating the modifiers "announced and unannounced" and keeping only the unqualified term "inspections." This is in accordance with section 353(g)(1) of the Public Health Service Act, which clearly provides for either announced or unannounced inspections. This provision applies to all laboratories, in keeping with the site-neutral intent of the CLIA statute. However, we are maintaining our policy that all complaint and follow-up inspections are unannounced and are conducted during routine hours of operation. Because these inspections are most probably for cause, laboratories are evaluated during normal operating conditions so that an appropriate assessment can be made.

We disagree with the commenter who believed that we should develop standards limiting agency discretion to conduct unannounced inspections. The law allows the Secretary to determine when announced or unannounced inspections should be conducted and does not call for standards to be developed limiting this provision. We believe that the survey procedures and instructions contained in the HCFA State Operations Manual (HCFA Pub. 7) adequately outline situations in which an announced or unannounced inspection should be conducted.

We disagree with the commenter who suggested that we require a "warrant" when the laboratory owner does not give advance consent for the laboratory to be inspected. The law provides us with the authority to enter a laboratory for the purpose of conducting an inspection. If an owner, director, or any employee of the laboratory refuses our reasonable request for permission to inspect the laboratory and its operations, the laboratory may be subject to revocation of its CLIA certificate, as provided in section 353(i)(1)(E) of the Public Health Service Act and § 493.1840 of the regulations.

Comment: A few commenters said the word "will" should be changed to "may" in the following context: "HHS

will conduct announced or unannounced surveys" at § 493.1776(a) (now found at § 493.1775(b)).

Response: We agree with the commenters. However, as previously explained, we are removing the specific words "announced" and "unannounced," and the pertinent portion of § 493.1775(b) now reads, " * * * HCFA or a HCFA agent may conduct an inspection at any time during the laboratory's hours of operation * * * " to be consistent with the rest of the subpart.

Comment: One commenter believed that CLIA requires yearly inspections, while other commenters recommended that we conduct inspections every other year onsite with a paper inspection in alternate years.

Response: Section 353(g)(1) of the Public Health Service Act requires inspections on a biennial basis or with such other frequency that the Secretary determines necessary to ensure compliance with the CLIA requirements. We conduct complaint inspections, as necessary, after we determine that the complaint alleges a violation of CLIA requirements. We agree with the commenters' recommendation for onsite inspections to be alternated with a self-evaluative survey. We have developed a self-assessment form, the Alternate Quality Assessment Survey, to be used in alternate cycles for laboratories with a history of compliance because there is less need to have a constantly recurring presence in those laboratories.

Comment: Some commenters suggested that inspections be conducted by professional organizations. There was concern that surveyors would not be knowledgeable about specialty testing or regulatory requirements, and might inappropriately apply requirements. Another group of commenters believed that cytology inspections should be conducted by a qualified pathologist and cytotechnologist.

Response: Inspections for laboratories holding certificates of compliance are performed by HCFA regional office laboratory consultants or State survey agency personnel, or both, and stress an outcome-oriented focus. In addition to mandatory participation at a HCFA-sponsored laboratory surveyor training program and one-on-one training with an experienced surveyor, we also provide written guidelines to assist surveyors in evaluating laboratory compliance with Federal regulations. This training provides the surveyor with comprehensive, detailed information regarding the regulations, outcome-oriented survey process, and surveyor

guidelines, all of which complement their technical background. Training is also provided at the State and Federal regional levels on an on-going basis. Moreover, we have a contract in place with an organization of cytology professionals, which provides specialized reviews of selected cytology laboratories. The individuals who participate in these reviews are qualified as general supervisors and technical supervisors in cytology. This contract has been in effect since 1989.

HCFA also has approved six professional organizations as accrediting bodies under CLIA. These organizations sought deeming authority for their programs, which were equal to, or more stringent than, the CLIA requirements taken as a whole. A laboratory may, therefore, choose to apply for a certificate of accreditation; in which case, a HCFA-approved accreditation organization would serve as its inspecting agency for CLIA.

Comment: One organization believed that it is inappropriate for a surveyor to interview an employee during an inspection, and if a disgruntled employee makes false or specious comments against his or her employer, it may impugn the reputation of the laboratory director.

Response: We disagree. Any interviews conducted during the course of an inspection are to assist the surveyor in gathering information for the determination of the laboratory's compliance with the applicable requirements under part 493. Any pertinent information received during an inspection is verified, and determination of a facility's compliance is based on all elements of the inspection process, not just individual interviews.

Comment: Another group of commenters was concerned that patient records will be reviewed during the course of the inspection and believed that patient privacy may be compromised.

Response: We understand the commenters' concerns; however, laboratory surveyors are health care professionals who are familiar with the need for patient privacy. Confidentiality of patient and laboratory information is also reinforced during surveyor training sessions. Laboratory surveyors appreciate and respect patient confidentiality. Therefore, we do not believe patient privacy would be compromised.

Comment: A few commenters believed that we should only conduct inspections for cause. One commenter believed that complaints should be better defined. Another commenter

believed that complaints should be verified before a complaint inspection is conducted.

Response: Section 353(g)(2) of the Public Health Service Act requires that we conduct inspections biennially or with such frequency as the Secretary determines is necessary. For those laboratories with a history of compliance, there is less need to have a constantly recurring onsite presence, and we have developed a self-evaluative survey, the Alternate Quality Assessment Survey, to be used in alternate cycles. We believe the use of the Alternate Quality Assessment Survey allows us to be in a position to inspect onsite with less frequency than we have before, while still ensuring that those laboratories that require the closest supervision will continue to receive it.

A complaint is an allegation against a laboratory by any individual for any perceived or real violation of the CLIA requirements. For example, there may be a complaint that a laboratory is operating without a certificate or that a laboratory is performing testing outside of the certificate it holds. Inspectors are instructed to determine if the complaint involves CLIA requirements or regulations under the jurisdiction of another agency. If the complaint involves a violation of State or other Federal law that is under the jurisdiction of another agency (for example, the Occupational Safety and Health Administration), we refer the complaint to the appropriate State or agency for investigation. If the complaint is an alleged violation of the CLIA requirements, we may conduct an unannounced onsite inspection focusing on the alleged violations.

Comment: A commenter wanted the phrase "including allegations that individuals other than physicians are performing microscopic exams" added at § 493.1776(a)(2). Another group of commenters believed that we should conduct unannounced inspections to substantiate which individuals are performing testing.

Response: When a complaint alleges that an individual performing tests is not qualified, we investigate the laboratory's compliance with the CLIA personnel qualification requirements. It is our policy to conduct unannounced complaint inspections. To clarify this policy we are moving § 493.1776(a)(2) to § 493.1775(b) and also referencing this in § 493.1773(f).

Comment: Some commenters objected to "onsite proficiency testing" as part of the inspection process as being inappropriate based on the complications involved in testing PT

samples and suggested that we delete § 493.1777(b)(1).

Response: We disagree with the commenters. Section 493.1777(b)(1), now § 493.1773(b)(1), provides the surveyor with the authority to require a laboratory to perform testing, which may include analysis of PT samples from a HCFA-approved PT program, as part of the inspection. We are aware of the complications referred to by the commenters. Although the option of requiring a laboratory to perform testing on PT samples exists, it is not routinely employed by surveyors. If it were employed, it would be structured to address complications expressed by the commenters.

Comment: One commenter believed that we should require onsite (proficiency) testing during routine inspections for laboratories holding a certificate of waiver.

Response: Section 353(d)(2)(C) of the Public Health Service Act specifically exempts laboratories performing only waived tests from routine inspections and all quality standards including PT. We, therefore, may not require this testing or routinely inspect waived testing.

Comment: A few commenters suggested that we add the following language to § 493.1775, "States may coordinate the Medicare/Medicaid compliance surveys for skilled nursing facilities, nursing facilities, and intermediate care facilities for the mentally retarded with CLIA compliance activities."

Response: We encourage coordination of inspections under the Medicare, Medicaid, and CLIA programs. Due to separate laws and funding, resources, expertise, and availability, we can do no more than encourage inspectors from different programs to coordinate inspections to reduce the burden on facilities. Thus, we are making no change to the regulations.

Comment: Commenters also suggested that we change § 493.1775(d) to read: " * * * payments for laboratory services to the laboratory or * * * " to ensure that a suspension of Medicare payments for laboratory services by a provider could not result in the suspension of payments for any non-laboratory services.

Response: We are moving this requirement from § 493.1775(d) to § 493.1773(g). As stated above, CLIA and Medicare/Medicaid are separate programs. Actions we take under the CLIA program may result in a laboratory being unable to perform certain tests. We notify the Medicare and Medicaid programs, as appropriate, of any action we take to suspend, limit or revoke the

CLIA certificate, which may have an impact on the facility's overall participation in Medicare/Medicaid.

Comment: One commenter suggested that we change § 493.1780(b)(4)(ii) to ensure that inspection reports from accreditation bodies are readily available to inspectors.

Response: The current regulations require that an accrediting organization submit pertinent information to HCFA, which includes inspection reports from the accreditation organization's surveys. We find that performing validation inspections without prior knowledge of the organization's findings offers a more unbiased approach for our surveyors than performing inspections with prior knowledge. Therefore, inspection reports from accreditation organizations are not normally made available to surveyors before they perform validation inspections. However, these reports are used in the comparability review of the organization's inspection.

Comment: Some commenters urged us to approve the College of American Pathologists as an accrediting organization, so that laboratories that are accredited by this organization will meet CLIA requirements.

Response: HCFA approved the College of American Pathologists as an accreditation organization (see notice published February 9, 1995 in the *Federal Register* at 60 FR 7774). Five other organizations have also been approved as accreditation organizations: American Association of Blood Banks; American Osteopathic Association; American Society for Histocompatibility and Immunogenetics; Commission on Office Laboratory Accreditation; and

Joint Commission on Accreditation of Health Care Organizations.

Comment: Several commenters indicated that it is possible for mobile laboratories providing services in more than one State to operate under one certificate. They questioned which State would have the responsibility to inspect the laboratories.

Response: When a mobile laboratory provides service in more than one State under one certificate, the State in which the laboratory's home base is located has the responsibility to ascertain compliance with the regulations. This may involve contacting other State survey agencies and coordinating survey activity or scheduling the survey to coincide with testing performed in the State in which the home base is located.

Comment: Another commenter suggested that we inspect a mobile laboratory when it reaches a specific mileage limit.

Response: Section 353(g)(2) of the Public Health Service Act requires that we conduct inspections on a biennial basis or with such other frequency as the Secretary determines to be necessary to assure compliance with CLIA requirements and standards. While there is latitude in determining frequency of inspection, we believe the assurance of accurate testing is independent of mileage traveled. Therefore, we will continue to inspect mobile laboratories with the same frequency as other types of laboratories.

Conforming Changes

To avoid the continued use of an overly long term in the text of the regulations, we are adding a definition for the term, "State licensure program,"

which means a State laboratory licensure or approval program.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the *Federal Register* and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

With regard to all elements of this regulation except one, we are responding to comments we received in previous rulemaking documents and, in response to earlier rules. Accordingly, a final rule is justified. The one exception concerns the rewritten subpart E. But here, since we are making no substantive changes, but merely condensing and reorganizing content, we believe that it is unnecessary and not in the public interest to delay the effectiveness of this clarification, as would happen were we to issue a proposed rule.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule.

IV. Redesignation Table

The following table is a guide to readers in identifying the source of requirements in the final rule.

Existing section	New section
493.501(a) introductory text	493.551(a)
493.501(a)(1)	493.551(a)(1)
493.501(a)(2)	493.551(a)(2)
493.501(b) introductory text	493.551(b)
493.501(b)(1)	493.551(a)(3)
493.501(b)(2)	493.551(a)(3)
493.501(b)(3)	493.551(b)(1)
493.501(b)(4)	493.551(b)(2)
493.501(c) introductory text	493.553(a)
493.501(c)(1)	493.557(a)(1)
493.501(c)(2)	493.553(a)(1)
493.501(c)(3)	493.553(a)(2) (i)-(iv) & (vi)
493.501(c)(4)	493.553(a)(3)
493.501(c)(5)	493.557(a)(2)
493.501(c)(6)	493.557(a)(3) (i)-(iii)
493.501(c)(7)	493.553(a)(4)
493.501(c)(8)	493.553(a)(5)
493.501(c)(9)	493.553(a)(6)
493.501(c)(10)	493.557(a)(4)
493.501(c)(11)	493.557(a)(5)
493.501(c)(12)	493.553(a)(2)(v)
493.501(d) introductory text	493.553(b)
493.501(d)(1)	493.553(b)(1)
493.501(d)(2)	493.553(b)(2)

Existing section	New section
493.501(d)(3)	493.553(b)(3)
493.501(d)(4)	493.553(c)
493.501(d)(5)	493.553(d)
493.501(d)(6)	493.561(a)(1)
493.501(d)(7)	493.561(b)(1)-(3)
493.501(d)(8)	493.561(a)(2)
493.501(e) introductory text	493.559(a)
493.501(e)(1)	493.559(b)(1)
493.501(e)(2)	493.559(b)(4)
493.501(e)(3)	493.559(b)(2)(ii)
493.501(e)(4)	493.559(b)(5)
493.503(a)	493.551(b)(3)
493.503(b)(1)	493.551(b)(4)
493.503(b)(2)	493.551(b)(4)
493.503(b)(3)	493.551(b)(5)-(6)
493.503(b)(4)	493.551(b)(6)
493.504	493.551(c)
493.506(a)	493.559(b)(2)(i) & 493.557(a)(1)
493.506(b)(1)	493.555(a)
493.506(b)(2)(i)	493.557(a)(3)(i)-(iii)
493.506(b)(2)(ii)	493.555(b)
493.506(b)(2)(iii)	493.557(a)(6)
493.506(b)(2)(iv)	493.557(a)(7)
493.506(b)(2)(v)	493.557(a)(8)
493.506(b)(2)(vi)	493.557(a)(9)
493.506(b)(2)(vii)	493.557(a)(10)
493.506(b)(2)(viii)	493.557(a)(11)
493.506(b)(3)(i)	493.555(c)(1)
493.506(b)(3)(ii)	493.555(c)(2)
493.506(b)(3)(iii)	493.555(c)(3)(i)
493.506(b)(3)(iv)	493.555(c)(4)
493.506(b)(3)(v)	493.555(c)(5)
493.506(b)(3)(vi)	493.557(b)(12)(i)-(ii)
493.506(b)(3)(vii)	493.557(b)(13)
493.506(b)(3)(viii)	493.557(b)(14)
493.507(a) introductory text	493.563(a)(1)
493.507(a)(1)	493.563(b)
493.507(a)(2)	493.563(c)
493.507(b)	493.565
493.507(c)	493.567
493.507(d)	493.569
493.507(e)	493.571
493.507(f)	493.563(e) + (d)
493.509(a)	493.573(a)
493.509(b)	493.573(b)
493.509(c)	493.573(c)
493.509(d)	493.573(d)
493.511(a)(1)	493.575(a)(1)
493.511(a)(2)	493.575(a)(3)
493.511(a)(3)	493.575(a)(4) & (a)(4)(i)
493.511(b)	493.575(b)(1)
493.511(c)	493.575(b)(2)
493.511(d) introductory text	493.575(c)
493.511(d)(1)	493.575(c)(1)
493.511(d)(2)	493.575(c)(2)
493.511(d)(3)-(4)	493.575(c)(3)
493.511(d)(5)	493.575(c)(4)
493.511(e)	493.575(d)
493.511(f)	493.575(e)
493.511(g)	493.575(f)
493.511(h)	493.575(g)(1) & (g)(3)
493.511(i)	493.575(h)(1)
493.511(j)	493.575(k)
493.513(a) introductory text	493.553(c) & 493.551(a)
493.513(a)(1)-(2)	493.551(a)(1)
493.513(a)(3)	493.551(a)(2)
493.513(a)(4)	493.557(b)(1)
493.513(a)(5)	493.557(b)(2)
493.513(a)(6)	493.557(b)(3)
493.513(a)(7)	493.557(b)(4)
493.513(a)(8)	493.557(b)(5)
493.513(b)(1)-(2)	493.551(a)(3)
493.513(c) introductory text	493.553(a)
493.513(c)(1)	493.553(a)(1)

Existing section	New section
493.513(c)(2)	493.553(a)(2)(i)-(vi)
493.513(c)(3)	493.557(b)(1)
493.513(c)(4)	493.553(a)(3)
493.513(c)(5)	493.553(a)(4)
493.513(c)(6)	493.553(a)(5)
493.513(c)(7)	493.553(a)(6)
493.513(c)(8)	493.553(b)(6)
493.513(d)(1)	493.557(b)(7)
493.513(d)(2)	493.557(b)(8)(i)-(iii)
493.513(e)	493.553(b)(1)
493.513(f)	493.553(b)(2)
493.513(g)	493.553(b)(3)
493.513(h)	493.561(c)
493.513(i)	493.553(d)
493.513(j)	493.561(a)(1)
493.513(k)	493.559(a)
493.513(k)(1)	493.559(b)(1)
493.513(k)(2)	493.559(b)(4)
493.513(k)(3)	493.559(b)(3)
493.513(k)(4)	493.559(b)(5)
493.513(l)	493.557(b)(14)
493.513(m)	493.561(a)(2)
493.515(a)(1)	493.555(a)
493.515(a)	493.555 introductory text
493.515(a)(2)	493.555(b)
493.515(a)(2)(ii)	493.557(b)(9)
493.515(a)(2)(iii)	493.557(b)(10)
493.515(a)(3) introductory text	493.555(c) introductory text
493.515(a)(3)(i)	493.555(c)(1)
493.515(a)(3)(ii)	493.555(c)(2)
493.515(a)(3)(iii)	493.555(c)(4)
493.515(a)(3)(iv)	493.557(b)(11)
493.515(a)(3)(v)	493.557(b)(12)
493.515(a)(3)(vi)	493.557(b)(13)
493.515(a)(3)(vii)	493.555(c)(3)(ii)
493.515(a)(3)(viii)	493.555(c)(5)
493.517(a)	493.563(a)(2)(i)-(ii)
493.517(a)(1)	493.563(b)(1)(2)
493.517(a)(2)	493.563(c)(1)-(2)
493.517(b)(1)	493.565(a)
493.517(b)(2)	493.565(b)
493.517(b)(3)	493.565(c)
493.517(c)	493.567(b)
493.517(d)	493.569(b)
493.517(e)	493.571(b) and (c)
493.517(f)	493.563(f)
493.519(a)	493.573(a)
493.519(b)	493.573(b)
493.519(c)(1)	493.573(c)(1)
493.519(c)(2)	493.573(c)(2)
493.519(d) introductory text	493.573(d)(1)(iii)
493.519(d)(1)-(4)	493.573(d)(2)(i)-(iv)
493.521(a)(1)	493.575(a)(2)
493.521(a)(2)	493.575(a)(3)
493.521(a)(3)	493.575(a)(4) & (4)(ii)
493.521(b)	493.575(b)(1)
493.521(c)	493.575(b)(2)
493.521(d)	493.575(c)
493.521(e)	493.575(d)
493.521(f)	493.575(e)
493.521(g)	493.575(i)
493.521(h)	493.575(h)
493.521(i)	493.575(f)
493.521(j)	493.575(g)(2)-(3)
493.521(k)	493.575(j)(1)-(2)
493.521(l)	493.575(k)
493.1775(a)	493.1773(a); 493.1775(a)
493.1775(b)(1)	493.1773(b)(2)
493.1775(b)(2)	493.1773(b)(4)
493.1775(b)(3)	493.1773(b)(3)
493.1775(b)(4)(1)-(ii)	493.1773(f); 493.1775(b)(1)-(4)
493.1775(b)(4)(iii)-(iv)	493.1775(a)
493.1775(b)(5)	493.1773(b)(5)
493.1775(c)	493.1773(d)

Existing section	New section
493.1775(d)	493.1773(g)
493.1776(a) introductory text	493.1773(a); 493.1775(a) & (b)
493.1776(a)(1)-(4)	493.1773(f); 493.1775(a)
493.1776(a)(4) (uncoded text)	deleted; redundant
493.1776(b)(1)	493.1773(b)(2)
493.1776(b)(2)	493.1773(b)(4)
493.1776(b)(3)	493.1773(b)(3)
493.1776(b)(4)	493.1773(f); 493.1775(b)(1)-(4)
493.1776(b)(5)	493.1773(b)(5)
493.1776(c)	493.1773(d)
493.1776(d)	493.1773(g)
493.1777 introductory text	493.1773(a), (f); 493.1777(a)-(c)
493.1777(a)	493.1777(a)-(b)
493.1777(b)	493.1773(b)
493.1777(c)	493.1773(c)
493.1777(d)	deleted; redundant
493.1777(e)	493.1773(d)
493.1777(f)	493.1773(e)
493.1777(g)	493.1773(g)
493.1780(a)	493.1773(a); 493.1780(a)
493.1780(b)	493.1773(a), (f); 493.1780(b)
493.1780(c)	493.1773(b)
493.1780(d)	493.1773(c)
493.1780(e)	deleted; redundant
493.1780(f)	493.1773(d)
493.1780(g)	493.1773(g); 493.1780(c)

V. Regulatory Impact Statement

A. General

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all clinical laboratories are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

B. Provisions of the Final Regulations

This rule has been drafted in response to comments pertaining to proficiency testing and the CLIA inspection process. As our responses to commenters' concerns were developed, it became apparent that we were also fulfilling the Administration's regulatory reform initiative. This initiative directs us to revise regulations that are outdated or otherwise in need of reform. We have, therefore, also included subpart E of part 493 in this rule.

Subpart E

Subpart E of part 493 provides for the accreditation of a laboratory by an accreditation organization, and the exemption of laboratories within a particular State from CLIA requirements when the accreditation organization or State applies requirements that are equal to, or more stringent than, the CLIA requirements taken as a whole. Subpart E contains requirements for State licensure programs, accreditation organizations, laboratories seeking deemed status by virtue of accreditation by a HCFA-approved accreditation organization, and laboratories that operate within a State that HCFA has determined maintains requirements that are equal to or more stringent than the CLIA requirements. We are revising subpart E by removing duplicative information. We are reorganizing subpart E to distinguish accreditation organization and State licensure program responsibilities from those of laboratories. We are combining common requirements for accreditation organizations and State licensure programs. These actions will accommodate the Administration's regulatory reform initiative. We are making no substantive changes to the content or the intent. Therefore, we are not imposing additional burden. The relief established by reorganizing and combining like requirements is not quantifiable, but it should aid in the submission of materials for approvals and reapprovals.

Subpart H

The changes we are making in § 493.803(c) reflect HCFA's policy of an educational focus for proficiency testing. We are clarifying existing enforcement options in response to comments received concerning PT sanctions. In this rule, subpart H provides that, if a laboratory is initially unsuccessful in PT, it must obtain technical assistance, or undertake training of personnel, or both, rather than having HCFA impose principal or alternative sanctions. This affords the laboratory an additional opportunity to correct the problem that caused the PT failure, encouraging quality testing in a more positive manner. We believe that a laboratory should have ample opportunity to investigate the reason for its initial failure, to obtain the necessary technical assistance or training, or both, to correct the problems that caused the failure and implement a plan of action, which should prevent reoccurrence. This requirement also exists in subpart R, Enforcement Procedures. Principal and alternative sanctions may apply if the laboratory refuses to correct its problems, has repeated compliance problems, or immediate jeopardy exists. While this educational approach has always been a viable option, based on comments received on previous rulemaking, we believe that it is important to clarify that this option exists and will be exercised. We are revising the regulation accordingly.

We are not imposing any additional burden with this clarification; we are

only identifying which of our enforcement actions or options we implement in a particular circumstance.

Subpart Q

We are eliminating redundant information by restructuring and organizing all generic requirements for an onsite inspection into one section of the regulations. In addition we have implemented the commenter-recommended laboratory self-inspection process (the Alternate Quality Assessment Survey). Although an onsite inspection may not be performed, the survey agency personnel must still review and evaluate the self-inspection responses submitted by the laboratory and take any necessary action. While travel and onsite time is eliminated for inspections of these laboratories, the laboratory surveyors, however, may realize little or no reduction in the time spent on the overall process. We expect laboratories that perform the Alternate Quality Assessment Survey to benefit from the educational aspects realized by performing this self evaluative survey and minimized disruption to their activities.

Our onsite survey process, which is outcome-oriented, concentrates on a review of each laboratory's specific testing activities and its impact on patient health and safety. We are unable to predict the long term effects because they are dependent upon each individual laboratory's compliance and testing activities. Although it is difficult to quantify the financial impact due to the variability from laboratory to laboratory, we expect that our collective efforts to streamline and clarify the regulations may reduce the laboratory costs associated with CLIA in many cases, without diminishing quality.

C. Conclusion

For these reasons, we have determined, and the Secretary certifies,

that this regulation does not result in a significant impact on a substantial number of small entities and does not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

D. OMB Review

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

E. Collection of Information Requirements

This final rule contains information collections that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Section 493.803 and subpart Q (newly revised §§ 493.1771 through 493.1780 previously numbered §§ 493.1775 through 493.1780) are currently approved under OMB approval number 0938-0612 with an expiration date of April 30, 2001. Subpart E (newly revised sections §§ 493.551, 493.553, 493.555, 493.557, 493.559, and 493.561, which were previously contained in §§ 493.501, 493.506, 493.513 and 493.515) is currently approved under OMB approval number 0938-0686 with an expiration of April 30, 1999.

Section 493.803 contains the requirement that a laboratory must successfully participate in a PT program approved by HCFA for the specialties,

subspecialties, and analytes listed in the regulation, if these tests are performed by the laboratory. The burden associated with this requirement is the testing of PT specimens and recording the results.

Subpart Q sets forth conditions and standards for inspection of laboratories. The burden associated with inspections of laboratories, or alternative mechanisms to determine compliance, consists of retrieving records and documentation necessary for the inspector to ascertain compliance, participating in entrance and exit conferences for onsite inspections, responding to a statement of deficiencies that may result from an inspection, and documenting any corrective action.

Subpart E sets forth the requirements and process for a private, nonprofit accreditation organization voluntarily seeking approval under the CLIA program and a State licensure program voluntarily seeking exemption for its laboratories within the State from the CLIA program. The burden associated with these sections is the compilation of specific information that must be submitted for evaluation as well as the requirements for providing ongoing information.

Description of Respondents

Respondents for § 493.803 and subpart Q, §§ 493.1771 through 493.1780 fall in the categories of: small businesses or organizations, businesses or other for-profit, non-profit institutions, State and local governments, and Federal agencies.

Respondents for subpart E, §§ 493.551, 493.553, 493.555, 493.557, 493.559, and 493.561 are private nonprofit accreditation organizations and State licensure programs.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

CFR section	Annual number of respondents	Annual frequency	Average burden per response in hours	Annual burden in hours
Subpart E 493.551 through 493.561	11	varies, as needed	192	2112
Subpart H 493.803	63,600	3 events	1	190,800
Subpart Q 493.1771 through 493.1780	36,918	biennial	4	4,618

Persons interested in commenting on these currently approved information collections should send comments to the following address: Health Care Financing Administration, Office of Information Services, Information Technology Investment Management

Group, Room C2-26-17, 7500 Security Boulevard, Baltimore, Maryland, 21244-1850. Attn: HCFA-2239-F.

List of Subjects in 42 CFR Part 493

Grant programs-health, Health facilities, Laboratories, Medicaid,

Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 is revised to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11) through 1395x(s)(16)).

Subpart A—General Provisions**§ 493.2 [Amended]**

2. Section 493.2 is amended by adding in alphabetical order the following definition of *State licensure program*:

State licensure program means a State laboratory licensure or approval program.

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program**§§ 493.501 through 493.521 [Removed]**

3. Sections 493.501 through 493.521 are removed.

4. In subpart E, new §§ 493.551, 493.553, 493.555, 493.557, 493.559, 493.561, 493.563, 493.565, 493.567, 493.569, 493.571, 493.573, and 493.575 are added to read as follows:

Sec.

493.551 General requirements for laboratories.

493.553 Approved process (application and reapplication) for accreditation organizations and State licensure programs.

493.555 Federal review of laboratory requirements.

493.557 Additional submission requirements.

493.559 Publication of approval of deeming authority or CLIA exemption.

493.561 Denial of application or reapplication.

493.563 Validation inspections—Basis and focus.

493.565 Selection for validation inspection—laboratory responsibilities.

493.567 Refusal to cooperate with validation inspection.

493.569 Consequences of a finding of noncompliance as a result of a validation inspection.

493.571 Disclosure of accreditation, State and HCFA validation inspection results.

493.573 Continuing Federal oversight of private nonprofit accreditation organizations and approved State licensure programs.

493.575 Removal of deeming authority or CLIA exemption and final determination review.

§ 493.551 General requirements for laboratories.

(a) *Applicability.* HCFA may deem a laboratory to meet all applicable CLIA program requirements through accreditation by a private nonprofit accreditation program (that is, grant deemed status), or may exempt from CLIA program requirements all State licensed or approved laboratories in a State that has a State licensure program established by law, if the following conditions are met:

(1) The requirements of the accreditation organization or State licensure program are equal to, or more stringent than, the CLIA condition-level requirements specified in this part, and the laboratory would meet the condition-level requirements if it were inspected against these requirements.

(2) The accreditation program or the State licensure program meets the requirements of this subpart and is approved by HCFA.

(3) The laboratory authorizes the approved accreditation organization or State licensure program to release to HCFA all records and information required and permits inspections as outlined in this part.

(b) *Meeting CLIA requirements by accreditation.* A laboratory seeking to meet CLIA requirements through accreditation by an approved accreditation organization must do the following:

(1) Obtain a certificate of accreditation as required in subpart D of this part.

(2) Pay the applicable fees as required in subpart F of this part.

(3) Meet the proficiency testing (PT) requirements in subpart H of this part.

(4) Authorize its PT organization to furnish to its accreditation organization the results of the laboratory's participation in an approved PT program for the purpose of monitoring the laboratory's PT and for making the annual PT results, along with explanatory information required to interpret the PT results, available on a reasonable basis, upon request of any person. A laboratory that refuses to authorize release of its PT results is no longer deemed to meet the condition-level requirements and is subject to a full review by HCFA, in accordance with subpart Q of this part, and may be subject to the suspension or revocation of its certificate of accreditation under § 493.1840.

(5) Authorize its accreditation organization to release to HCFA or a HCFA agent the laboratory's PT results that constitute unsuccessful participation in an approved PT program, in accordance with the definition of "unsuccessful

participation in an approved PT program," as specified in § 493.2 of this part, when the laboratory has failed to achieve successful participation in an approved PT program.

(6) Authorize its accreditation organization to release to HCFA a notification of the actions taken by the organization as a result of the unsuccessful participation in a PT program within 30 days of the initiation of the action. Based on this notification, HCFA may take an adverse action against a laboratory that fails to participate successfully in an approved PT program.

(c) *Withdrawal of laboratory accreditation.* After an accreditation organization has withdrawn or revoked its accreditation of a laboratory, the laboratory retains its certificate of accreditation for 45 days after the laboratory receives notice of the withdrawal or revocation of the accreditation, or the effective date of any action taken by HCFA, whichever is earlier.

§ 493.553 Approved process (application and reapplication) for accreditation organizations and State licensure programs.

(a) *Information required.* An accreditation organization that applies or reapplies to HCFA for deeming authority, or a State licensure program that applies or reapplies to HCFA for exemption from CLIA program requirements of licensed or approved laboratories within the State, must provide the following information:

(1) A detailed comparison of the individual accreditation, or licensure or approval requirements with the comparable condition-level requirements; that is, a crosswalk.

(2) A detailed description of the inspection process, including the following:

(i) Frequency of inspections.
(ii) Copies of inspection forms.
(iii) Instructions and guidelines.
(iv) A description of the review and decision-making process of inspections.
(v) A statement concerning whether inspections are announced or unannounced.

(vi) A description of the steps taken to monitor the correction of deficiencies.

(3) A description of the process for monitoring PT performance, including action to be taken in response to unsuccessful participation in a HCFA-approved PT program.

(4) Procedures for responding to and for the investigation of complaints against its laboratories.

(5) A list of all its current laboratories and the expiration date of their accreditation or licensure, as applicable.

(6) Procedures for making PT information available (under State confidentiality and disclosure requirements, if applicable) including explanatory information required to interpret PT results, on a reasonable basis, upon request of any person.

(b) *HCFA action on an application or reapplication.* If HCFA receives an application or reapplication from an accreditation organization, or State licensure program, HCFA takes the following actions:

(1) HCFA determines if additional information is necessary to make a determination for approval or denial of the application and notifies the accreditation organization or State to afford it an opportunity to provide the additional information.

(2) HCFA may visit the accreditation organization or State licensure program offices to review and verify the policies and procedures represented in its application and other information, including, but not limited to, review and examination of documents and interviews with staff.

(3) HCFA notifies the accreditation organization or State licensure program indicating whether HCFA approves or denies the request for deeming authority or exemption, respectively, and the rationale for any denial.

(c) *Duration of approval.* HCFA approval may not exceed 6 years.

(d) *Withdrawal of application.* The accreditation organization or State licensure program may withdraw its application at any time before official notification, specified at § 493.553(b)(3).

§ 493.555 Federal review of laboratory requirements.

HCFA's review of an accreditation organization or State licensure program includes, but is not limited to, an evaluation of the following:

(a) Whether the organization's or State's requirements for laboratories are equal to, or more stringent than, the condition-level requirements for laboratories.

(b) The organization's or State's inspection process to determine the comparability of the full inspection and complaint inspection procedures and requirements to those of HCFA, including, but not limited to, inspection frequency and the ability to investigate and respond to complaints against its laboratories.

(c) The organization's or State's agreement with HCFA that requires it to do the following:

(1) Notify HCFA within 30 days of the action taken, of any laboratory that has—

(i) Had its accreditation or licensure suspended, withdrawn, revoked, or limited;

(ii) In any way been sanctioned; or

(iii) Had any adverse action taken against it.

(2) Notify HCFA within 10 days of any deficiency identified in an accredited or CLIA-exempt laboratory if the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.

(3) Notify HCFA, within 30 days, of all newly—

(i) Accredited laboratories (or laboratories whose areas of specialty/subspecialty testing have changed); or

(ii) Licensed laboratories, including the specialty/subspecialty areas of testing.

(4) Notify each accredited or licensed laboratory within 10 days of HCFA's withdrawal of the organization's deeming authority or State's exemption.

(5) Provide HCFA with inspection schedules, as requested, for validation purposes.

(6) Provide HCFA with inspection schedules, as requested, for validation purposes.

(7) A demonstration of its ability to provide HCFA with electronic data and reports in compatible code, including the crosswalk specified in § 493.553(a)(1), that are necessary for effective validation and assessment of the organization's inspection process.

(8) A demonstration of its ability to provide HCFA with electronic data, in compatible code, related to the adverse actions resulting from PT results constituting unsuccessful participation in PT programs as well as data related to the PT failures, within 30 days of the initiation of adverse action.

(9) A demonstration of its ability to provide HCFA with electronic data, in compatible code, for all accredited laboratories, including the area of specialty or subspecialty.

(10) Information defining the adequacy of numbers of staff and other resources.

(11) Information defining the organization's ability to provide adequate funding for performing required inspections.

(12) Any facility-specific data, upon request by HCFA, which includes, but is not limited to, the following:

(i) PT results that constitute unsuccessful participation in a HCFA-approved PT program.

(ii) Notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation.

(iii) An agreement to provide written notification to HCFA at least 30 days in advance of the effective date of any proposed change in its requirements.

(iv) An agreement to disclose any laboratory's PT results upon reasonable request by any person.

(v) *Specific requirements for a State licensure program.* In addition to requirements in §§ 493.553 and 493.555, as part of the approval and review process, when a State licensure program applies or reapplies for exemption from the CLIA program, the State must do the following:

laboratories that fail to meet the organization's standards.

(5) A proposed agreement between HCFA and the accreditation organization with respect to the notification requirements specified in § 493.555(c).

(6) Procedures for monitoring laboratories found to be out of compliance with its requirements. (These monitoring procedures must be used only when the accreditation organization identifies noncompliance. If noncompliance is identified through validation inspections, HCFA or a HCFA agent monitors corrections, as authorized at § 493.565(d)).

(7) A demonstration of its ability to provide HCFA with electronic data and reports in compatible code, including the crosswalk specified in § 493.553(a)(1), that are necessary for effective validation and assessment of the organization's inspection process.

(8) A demonstration of its ability to provide HCFA with electronic data, in compatible code, related to the adverse actions resulting from PT results constituting unsuccessful participation in PT programs as well as data related to the PT failures, within 30 days of the initiation of adverse action.

(9) A demonstration of its ability to provide HCFA with electronic data, in compatible code, for all accredited laboratories, including the area of specialty or subspecialty.

(10) Information defining the adequacy of numbers of staff and other resources.

(11) Information defining the organization's ability to provide adequate funding for performing required inspections.

(12) Any facility-specific data, upon request by HCFA, which includes, but is not limited to, the following:

(i) PT results that constitute unsuccessful participation in a HCFA-approved PT program.

(ii) Notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation.

(iii) An agreement to provide written notification to HCFA at least 30 days in advance of the effective date of any proposed change in its requirements.

(iv) An agreement to disclose any laboratory's PT results upon reasonable request by any person.

(v) *Specific requirements for a State licensure program.* In addition to requirements in §§ 493.553 and 493.555, as part of the approval and review process, when a State licensure program applies or reapplies for exemption from the CLIA program, the State must do the following:

laboratories that fail to meet the organization's standards.

(5) A proposed agreement between HCFA and the accreditation organization with respect to the notification requirements specified in § 493.555(c).

(6) Procedures for monitoring laboratories found to be out of compliance with its requirements. (These monitoring procedures must be used only when the accreditation organization identifies noncompliance. If noncompliance is identified through validation inspections, HCFA or a HCFA agent monitors corrections, as authorized at § 493.565(d)).

(7) A demonstration of its ability to provide HCFA with electronic data and reports in compatible code, including the crosswalk specified in § 493.553(a)(1), that are necessary for effective validation and assessment of the organization's inspection process.

(8) A demonstration of its ability to provide HCFA with electronic data, in compatible code, related to the adverse actions resulting from PT results constituting unsuccessful participation in PT programs as well as data related to the PT failures, within 30 days of the initiation of adverse action.

(9) A demonstration of its ability to provide HCFA with electronic data, in compatible code, for all accredited laboratories, including the area of specialty or subspecialty.

(10) Information defining the adequacy of numbers of staff and other resources.

(1) Demonstrate to HCFA that it has enforcement authority and administrative structures and resources adequate to enforce its laboratory requirements.

(2) Permit HCFA or a HCFA agent to inspect laboratories in the State.

(3) Require laboratories in the State to submit to inspections by HCFA or a HCFA agent as a condition of licensure or approval.

(4) Agree to pay the cost of the validation program administered in that State as specified in §§ 493.645(a) and 493.646(b).

(5) Take appropriate enforcement action against laboratories found by HCFA not to be in compliance with requirements equivalent to CLIA requirements.

(6) Submit for Medicare and Medicaid payment purposes, a list of the specialties and subspecialties of tests performed by each laboratory.

(7) Submit a written presentation that demonstrates the agency's ability to furnish HCFA with electronic data in compatible code, including the crosswalk specified in § 493.553(a)(1).

(8) Submit a statement acknowledging that the State will notify HCFA through electronic transmission of the following:

(i) Any laboratory that has had its licensure or approval revoked or withdrawn or has been in any way sanctioned by the State within 30 days of taking the action.

(ii) Changes in licensure or inspection requirements.

(iii) Changes in specialties or subspecialties under which any licensed laboratory in the State performs testing.

(9) Provide information for the review of the State's enforcement procedures for laboratories found to be out of compliance with the State's requirements.

(10) Submit information that demonstrates the ability of the State to provide HCFA with the following:

(i) Electronic data and reports in compatible code with the adverse or corrective actions resulting from PT results that constitute unsuccessful participation in PT programs.

(ii) Other data that HCFA determines are necessary for validation and assessment of the State's inspection process requirements.

(11) Agree to provide HCFA with written notification of any changes in its licensure/approval and inspection requirements.

(12) Agree to disclose any laboratory's PT results in accordance with a State's confidentiality requirements.

(13) Agree to take the appropriate enforcement action against laboratories found by HCFA not to be in compliance

with requirements comparable to condition-level requirements and report these enforcement actions to HCFA.

(14) If approved, reapply to HCFA every 2 years to renew its exempt status and to renew its agreement to pay the cost of the HCFA-administered validation program in that State.

§ 493.559 Publication of approval of deeming authority or CLIA exemption.

(a) *Notice of deeming authority or exemption.* HCFA publishes a notice in the *Federal Register* when it grants deeming authority to an accreditation organization or exemption to a State licensure program.

(b) *Contents of notice.* The notice includes the following:

(1) The name of the accreditation organization or State licensure program.

(2) For an accreditation organization:

(i) The specific specialty or subspecialty areas for which it is granted deeming authority.

(ii) A description of how the accreditation organization provides reasonable assurance to HCFA that a laboratory accredited by the organization meets CLIA requirements equivalent to those in this part and would meet CLIA requirements if the laboratory had not been granted deemed status, but had been inspected against condition-level requirements.

(3) For a State licensure program, a description of how the laboratory requirements of the State are equal to, or more stringent than, those specified in this part.

(4) The basis for granting deeming authority or exemption.

(5) The term of approval, not to exceed 6 years.

§ 493.561 Denial of application or reapplication.

(a) *Reconsideration of denial.* (1) If HCFA denies a request for approval, an accreditation organization or State licensure program may request, within 60 days of the notification of denial, that HCFA reconsider its original application or application for renewal, in accordance with part 488, subpart D.

(2) If the accreditation organization or State licensure program requests a reconsideration of HCFA's determination to deny its request for approval or reapproval, it may not submit a new application until HCFA issues a final reconsideration determination.

(b) *Resubmittal of a request for approval—accreditation organization.* An accreditation organization may resubmit a request for approval if a final reconsideration determination is not pending and the accreditation program meets the following conditions:

(1) It has revised its accreditation program to address the rationale for denial of its previous request.

(2) It demonstrates that it can provide reasonable assurance that its accredited facilities meet condition-level requirements.

(3) It resubmits the application in its entirety.

(c) *Resubmittal of request for approval—State licensure program.* The State licensure program may resubmit a request for approval if a final reconsideration determination is not pending and it has taken the necessary action to address the rationale for any previous denial.

§ 493.563 Validation inspections—Basis and focus.

(a) *Basis for validation inspection—(1) Laboratory with a certificate of accreditation.* (i) HCFA or a HCFA agent may conduct an inspection of an accredited laboratory that has been issued a certificate of accreditation on a representative sample basis or in response to a substantial allegation of noncompliance.

(ii) HCFA uses the results of these inspections to validate the accreditation organization's accreditation process.

(2) *Laboratory in a State with an approved State licensure program.* (i) HCFA or a HCFA agent may conduct an inspection of any laboratory in a State with an approved State licensure program on a representative sample basis or in response to a substantial allegation of noncompliance.

(ii) The results of these inspections are used to validate the appropriateness of the exemption of that State's licensed or approved laboratories from CLIA program requirements.

(b) *Validation inspection conducted on a representative sample basis.* (1) If HCFA or a HCFA agent conducts a validation inspection on a representative sample basis, the inspection is comprehensive, addressing all condition-level requirements, or it may be focused on a specific condition-level requirement.

(2) The number of laboratories sampled is sufficient to allow a reasonable estimate of the performance of the accreditation organization or State.

(c) *Validation inspection conducted in response to a substantial allegation of noncompliance.* (1) If HCFA or a HCFA agent conducts a validation inspection in response to a substantial allegation of noncompliance, the inspection focuses on any condition-level requirement that HCFA determines to be related to the allegation.

(2) If HCFA or a HCFA agent substantiates a deficiency and determines that the laboratory is out of compliance with any condition-level requirement, HCFA or a HCFA agent conducts a full CLIA inspection.

(d) *Inspection of operations and offices.* As part of the validation review process, HCFA may conduct an onsite inspection of the operations and offices to verify the following:

(1) The accreditation organization's representations and to assess the accreditation organization's compliance with its own policies and procedures.

(2) The State's representations and to assess the State's compliance with its own policies and procedures, including verification of State enforcement actions taken on the basis of validation inspections performed by HCFA or a HCFA agent.

(e) *Onsite inspection of an accreditation organization.* An onsite inspection of an accreditation organization may include, but is not limited to, the following:

(1) A review of documents.

(2) An audit of meetings concerning the accreditation process.

(3) Evaluation of accreditation inspection results and the accreditation decision-making process.

(4) Interviews with the accreditation organization's staff.

(f) *Onsite inspection of a State licensure program.* An onsite inspection of a State licensure program office may include, but is not limited to, the following:

(1) A review of documents.

(2) An audit of meetings concerning the licensure or approval process.

(3) Evaluation of State inspection results and the licensure or approval decision-making process.

(4) Interviews with State employees.

§ 493.565 Selection for validation inspection—laboratory responsibilities.

A laboratory selected for a validation inspection must do the following:

(a) Authorize its accreditation organization or State licensure program, as applicable, to release to HCFA or a HCFA agent, on a confidential basis, a copy of the laboratory's most recent full, and any subsequent partial inspection.

(b) Authorize HCFA or a HCFA agent to conduct a validation inspection.

(c) Provide HCFA or a HCFA agent with access to all facilities, equipment, materials, records, and information that HCFA or a HCFA agent determines have a bearing on whether the laboratory is being operated in accordance with the requirements of this part, and permit HCFA or a HCFA agent to copy material or require the laboratory to submit material.

(d) If the laboratory possesses a valid certificate of accreditation, authorize HCFA or a HCFA agent to monitor the correction of any deficiencies found through the validation inspection.

§ 493.567 Refusal to cooperate with validation inspection.

(a) *Laboratory with a certificate of accreditation.* (1) A laboratory with a certificate of accreditation that refuses to cooperate with a validation inspection by failing to comply with the requirements in § 493.565—

(i) Is subject to full review by HCFA or a HCFA agent, in accordance with this part; and

(ii) May be subject to suspension, revocation, or limitation of its certificate of accreditation under this part.

(2) A laboratory with a certificate of accreditation is again deemed to meet the condition-level requirements by virtue of its accreditation when the following conditions exist:

(i) The laboratory withdraws any prior refusal to authorize its accreditation organization to release a copy of the laboratory's current accreditation inspection, PT results, or notification of any adverse actions resulting from PT failure.

(ii) The laboratory withdraws any prior refusal to allow a validation inspection.

(iii) HCFA finds that the laboratory meets all the condition-level requirements.

(b) *CLIA-exempt laboratory.* If a CLIA-exempt laboratory fails to comply with the requirements specified in § 493.565, HCFA notifies the State of the laboratory's failure to meet the requirements.

§ 493.569 Consequences of a finding of noncompliance as a result of a validation inspection.

(a) *Laboratory with a certificate of accreditation.* If a validation inspection results in a finding that the accredited laboratory is out of compliance with one or more condition-level requirements, the laboratory is subject to—

(1) The same requirements and survey and enforcement processes applied to laboratories that are not accredited and that are found out of compliance following an inspection under this part; and

(2) Full review by HCFA, in accordance with this part; that is, the laboratory is subject to the principal and alternative sanctions in § 493.1806.

(b) *CLIA-exempt laboratory.* If a validation inspection results in a finding that a CLIA-exempt laboratory is out of compliance with one or more condition-level requirements, HCFA

directs the State to take appropriate enforcement action.

§ 493.571 Disclosure of accreditation, State and HCFA validation inspection results.

(a) *Accreditation organization inspection results.* HCFA may disclose accreditation organization inspection results to the public only if the results are related to an enforcement action taken by the Secretary.

(b) *State inspection results.* Disclosure of State inspection results is the responsibility of the approved State licensure program, in accordance with State law.

(c) *HCFA validation inspection results.* HCFA may disclose the results of all validation inspections conducted by HCFA or its agent.

§ 493.573 Continuing Federal oversight of private nonprofit accreditation organizations and approved State licensure programs.

(a) *Comparability review.* In addition to the initial review for determining equivalency of specified organization or State requirements to the comparable condition-level requirements, HCFA reviews the equivalency of requirements in the following cases:

(1) When HCFA promulgates new condition-level requirements.

(2) When HCFA identifies an accreditation organization or a State licensure program whose requirements are no longer equal to, or more stringent than, condition-level requirements.

(3) When an accreditation organization or State licensure program adopts new requirements.

(4) When an accreditation organization or State licensure program adopts changes to its inspection process, as required by § 493.575(b)(1), as applicable.

(5) Every 6 years, or sooner if HCFA determines an earlier review is required.

(b) *Validation review.* Following the end of a validation review period, HCFA evaluates the validation inspection results for each approved accreditation organization and State licensure program.

(c) *Reapplication procedures.* (1) Every 6 years, or sooner, as determined by HCFA, an approved accreditation organization must reapply for continued approval of deeming authority and a State licensure program must reapply for continued approval of a CLIA exemption. HCFA provides notice of the materials that must be submitted as part of the reapplication procedure.

(2) An accreditation organization or State licensure program that does not meet the requirements of this subpart, as determined through a comparability or

validation review, must furnish HCFA, upon request, with the reapplication materials HCFA requests. HCFA establishes a deadline by which the materials must be submitted.

(d) *Notice.* (1) HCFA provides written notice, as appropriate, to the following:

(i) An accreditation organization indicating that its approval may be in jeopardy if a comparability or validation review reveals that it is not meeting the requirements of this subpart and HCFA is initiating a review of the accreditation organization's deeming authority.

(ii) A State licensure program indicating that its CLIA exemption may be in jeopardy if a comparability or validation review reveals that it is not meeting the requirements of this subpart and that a review is being initiated of the CLIA exemption of the State's laboratories.

(2) The notice contains the following information:

(i) A statement of the discrepancies that were found as well as other related documentation.

(ii) An explanation of HCFA's review process on which the final determination is based and a description of the possible actions, as specified in § 493.575, that HCFA may impose based on the findings from the comparability or validation review.

(iii) A description of the procedures available if the accreditation organization or State licensure program, as applicable, desires an opportunity to explain or justify the findings made during the comparability or validation review.

(iv) The reapplication materials that the accreditation organization or State licensure program must submit and the deadline for that submission.

§ 493.575 Removal of deeming authority or CLIA exemption and final determination review.

(a) *HCFA review.* HCFA conducts a review of the following:

(1) A deeming authority review of an accreditation organization's program if the comparability or validation review produces findings, as described at § 493.573. HCFA reviews, as appropriate, the criteria described in §§ 493.555 and 493.557(a) to reevaluate whether the accreditation organization continues to meet all these criteria.

(2) An exemption review of a State's licensure program if the comparability or validation review produces findings, as described at § 493.573. HCFA reviews, as appropriate, the criteria described in §§ 493.555 and 493.557(b) to reevaluate whether the licensure program continues to meet all these criteria.

(3) A review of an accreditation organization or State licensure program, at HCFA's discretion, if validation review findings, irrespective of the rate of disparity, indicate widespread or systematic problems in the organization's accreditation or State's licensure process that provide evidence that the requirements, taken as a whole, are no longer equivalent to CLIA requirements, taken as a whole.

(4) A review of the accreditation organization or State licensure program whenever validation inspection results indicate a rate of disparity of 20 percent or more between the findings of the organization or State and those of HCFA or a HCFA agent for the following periods:

(i) One year for accreditation organizations.

(ii) Two years for State licensure programs.

(b) *HCFA action after review.* Following the review, HCFA may take the following action:

(1) If HCFA determines that the accreditation organization or State has failed to adopt requirements equal to, or more stringent than, CLIA requirements, HCFA may give a conditional approval for a probationary period of its deeming authority to an organization 30 days following the date of HCFA's determination, or exempt status to a State within 30 days of HCFA's determination, both not to exceed 1 year, to afford the organization or State an opportunity to adopt equal or more stringent requirements.

(2) If HCFA determines that there are widespread or systematic problems in the organization's or State's inspection process, HCFA may give conditional approval during a probationary period, not to exceed 1 year, effective 30 days following the date of the determination.

(c) *Final determination.* HCFA makes a final determination as to whether the organization or State continues to meet the criteria described in this subpart and issues a notice that includes the reasons for the determination to the organization or State within 60 days after the end of any probationary period. This determination is based on an evaluation of any of the following:

(1) The most recent validation inspection and review findings. To continue to be approved, the organization or State must meet the criteria of this subpart.

(2) Facility-specific data, as well as other related information.

(3) The organization's or State's inspection procedures, surveyors' qualifications, ongoing education, training, and composition of inspection teams.

(4) The organization's accreditation requirements, or the State's licensure or approval requirements.

(d) *Date of withdrawal of approval.* HCFA may withdraw its approval of the accreditation organization or State licensure program, effective 30 days from the date of written notice to the organization or State of this proposed action, if improvements acceptable to HCFA have not been made during the probationary period.

(e) *Continuation of validation inspections.* The existence of any validation review, probationary status, or any other action, such as a deeming authority review, by HCFA does not affect or limit the conduct of any validation inspection.

(f) *Federal Register notice.* HCFA publishes a notice in the **Federal Register** containing a justification for removing the deeming authority from an accreditation organization, or the CLIA-exempt status of a State licensure program.

(g) *Withdrawal of approval-effect on laboratory status.* (1) *Accredited laboratory.* After HCFA withdraws approval of an accreditation organization's deeming authority, the certificate of accreditation of each affected laboratory continues in effect for 60 days after it receives notification of the withdrawal of approval.

(2) *CLIA-exempt laboratory.* After HCFA withdraws approval of a State licensure program, the exempt status of each licensed or approved laboratory in the State continues in effect for 60 days after a laboratory receives notification from the State of the withdrawal of HCFA's approval of the program.

(3) *Extension.* After HCFA withdraws approval of an accreditation organization or State licensure program, HCFA may extend the period for an additional 60 days for a laboratory if it determines that the laboratory submitted an application for accreditation to an approved accreditation organization or an application for the appropriate certificate to HCFA or a HCFA agent before the initial 60-day period ends.

(h) *Immediate jeopardy to patients.* (1) If at any time HCFA determines that the continued approval of deeming authority of any accreditation organization poses immediate jeopardy to the patients of the laboratories accredited by the organization, or continued approval otherwise constitutes a significant hazard to the public health, HCFA may immediately withdraw the approval of deeming authority for that accreditation organization.

(2) If at any time HCFA determines that the continued approval of a State licensure program poses immediate jeopardy to the patients of the laboratories in that State, or continued approval otherwise constitutes a significant hazard to the public health, HCFA may immediately withdraw the approval of that State licensure program.

(i) *Failure to pay fees.* HCFA withdraws the approval of a State licensure program if the State fails to pay the applicable fees, as specified in §§ 493.645(a) and 493.646(b).

(j) *State refusal to take enforcement action.* (1) HCFA may withdraw approval of a State licensure program if the State refuses to take enforcement action against a laboratory in that State when HCFA determines it to be necessary.

(2) A laboratory that is in a State in which HCFA has withdrawn program approval is subject to the same requirements and survey and enforcement processes that are applied to a laboratory that is not exempt from CLIA requirements.

(k) *Request for reconsideration.* Any accreditation organization or State that is dissatisfied with a determination to withdraw approval of its deeming authority or remove approval of its State licensure program, as applicable, may request that HCFA reconsider the determination, in accordance with subpart D of part 488.

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests

5. In § 493.803, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 493.803 Condition: Successful participation.

(b) Except as specified in paragraph (c) of this section, if a laboratory fails to participate successfully in proficiency testing for a given specialty, subspecialty, analyte or test, as defined in this section, or fails to take remedial action when an individual fails gynecologic cytology, HCFA imposes sanctions, as specified in subpart R of this part.

(c) If a laboratory fails to perform successfully in a HCFA-approved proficiency testing program, for the initial unsuccessful performance, HCFA may direct the laboratory to undertake training of its personnel or to obtain technical assistance, or both, rather than

imposing alternative or principle sanctions except when one or more of the following conditions exists:

(1) There is immediate jeopardy to patient health and safety.

(2) The laboratory fails to provide HCFA or a HCFA agent with satisfactory evidence that it has taken steps to correct the problem identified by the unsuccessful proficiency testing performance.

(3) The laboratory has a poor compliance history.

Subpart Q—Inspection

6. In subpart Q, new §§ 493.1771 and 493.1773 are added to read as follows:

§ 493.1771 Condition: Inspection requirements applicable to all CLIA-certified and CLIA-exempt laboratories.

(a) Each laboratory issued a CLIA certificate must meet the requirements in § 493.1773 and the specific requirements for its certificate type, as specified in §§ 493.1775 through 493.1780.

(b) All CLIA-exempt laboratories must comply with the inspection requirements in §§ 493.1773 and 493.1780, when applicable.

§ 493.1773 Standard: Basic inspection requirements for all laboratories issued a CLIA certificate and CLIA-exempt laboratories.

(a) A laboratory issued a certificate must permit HCFA or a HCFA agent to conduct an inspection to assess the laboratory's compliance with the requirements of this part. A CLIA-exempt laboratory and a laboratory that requests, or is issued a certificate of accreditation, must permit HCFA or a HCFA agent to conduct validation and complaint inspections.

(b) General requirements: As part of the inspection process, HCFA or a HCFA agent may require the laboratory to do the following:

(1) Test samples, including proficiency testing samples, or perform procedures.

(2) Permit interviews of all personnel concerning the laboratory's compliance with the applicable requirements of this part.

(3) Permit laboratory personnel to be observed performing all phases of the total testing process (preanalytic, analytic, and postanalytic).

(4) Permit HCFA or a HCFA agent access to all areas encompassed under the certificate including, but not limited to, the following:

(i) Specimen procurement and processing areas.

(ii) Storage facilities for specimens, reagents, supplies, records, and reports.

(iii) Testing and reporting areas.

(5) Provide HCFA or a HCFA agent with copies or exact duplicates of all records and data it requires.

(c) Accessible records and data: A laboratory must have all records and data accessible and retrievable within a reasonable time frame during the course of the inspection.

(d) Requirement to provide information and data: A laboratory must provide, upon request, all information and data needed by HCFA or a HCFA agent to make a determination of the laboratory's compliance with the applicable requirements of this part.

(e) Reinspection: HCFA or a HCFA agent may reinspect a laboratory at any time to evaluate the ability of the laboratory to provide accurate and reliable test results.

(f) Complaint inspection: HCFA or a HCFA agent may conduct an inspection when there are complaints alleging noncompliance with any of the requirements of this part.

(g) Failure to permit an inspection or reinspection: Failure to permit HCFA or a HCFA agent to conduct an inspection or reinspection results in the suspension or cancellation of the laboratory's participation in Medicare and Medicaid for payment, and suspension or limitation of, or action to revoke the laboratory's CLIA certificate, in accordance with subpart R of this part.

7. Section 493.1775 is revised to read as follows:

§ 493.1775 Standard: Inspection of laboratories issued a certificate of waiver or a certificate for provider-performed microscopy procedures.

(a) A laboratory that has been issued a certificate of waiver or a certificate for provider-performed microscopy procedures is not subject to biennial inspections.

(b) If necessary, HCFA or a HCFA agent may conduct an inspection of a laboratory issued a certificate of waiver or a certificate for provider-performed microscopy procedures at any time during the laboratory's hours of operation to do the following:

(1) Determine if the laboratory is operated and testing is performed in a manner that does not constitute an imminent and serious risk to public health.

(2) Evaluate a complaint from the public.

(3) Determine whether the laboratory is performing tests beyond the scope of the certificate held by the laboratory.

(4) Collect information regarding the appropriateness of tests specified as waived tests or provider-performed microscopy procedures.

(c) The laboratory must comply with the basic inspection requirements of § 493.1773.

§ 493.1776 [Removed]

8. Section 493.1776 is removed.
9. Section 493.1777 is revised to read as follows:

§ 493.1777 Standard: Inspection of laboratories that have requested or have been issued a certificate of compliance.

(a) *Initial inspection.* (1) A laboratory issued a registration certificate must permit an initial inspection to assess the laboratory's compliance with the requirements of this part before HCFA issues a certificate of compliance.

(2) The inspection may occur at any time during the laboratory's hours of operation.

(b) *Subsequent inspections.* (1) HCFA or a HCFA agent may conduct subsequent inspections on a biennial basis or with such other frequency as HCFA determines to be necessary to ensure compliance with the requirements of this part.

(2) HCFA bases the nature of subsequent inspections on the laboratory's compliance history.

(c) *Provider-performed microscopy procedures.* The inspection sample for review may include testing in the subcategory of provider-performed microscopy procedures.

(d) *Compliance with basic inspection requirements.* The laboratory must comply with the basic inspection requirements of § 493.1773.

10. Section 493.1780 is revised to read as follows:

§ 493.1780 Standard: Inspection of CLIA-exempt laboratories or laboratories requesting or issued a certificate of accreditation.

(a) *Validation inspection.* HCFA or a HCFA agent may conduct a validation inspection of any accredited or CLIA-exempt laboratory at any time during its hours of operation.

(b) *Complaint inspection.* HCFA or a HCFA agent may conduct a complaint inspection of a CLIA-exempt laboratory or a laboratory requesting or issued a certificate of accreditation at any time during its hours of operation upon receiving a complaint applicable to the requirements of this part.

(c) *Noncompliance determination.* If a validation or complaint inspection results in a finding that the laboratory is not in compliance with one or more condition-level requirements, the following actions occur:

(1) A laboratory issued a certificate of accreditation is subject to a full review by HCFA, in accordance with subpart E of this part and § 488.11 of this chapter.

(2) A CLIA-exempt laboratory is subject to appropriate enforcement actions under the approved State licensure program.

(d) *Compliance with basic inspection requirements.* CLIA-exempt laboratories and laboratories requesting or issued a certificate of accreditation must comply with the basic inspection requirements in § 493.1773.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program, Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 13, 1997.

Nancy-Ann Min DeParle,
Deputy Administrator, Health Care Financing Administration.

Dated: September 18, 1997.

David Satcher,
Director, Centers for Disease Control and Prevention.

Approved: February 2, 1998.

Donna E. Shalala,
Secretary.

[FR Doc. 98-12752 Filed 5-13-98; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF JUSTICE

48 CFR Part 2802 and 2846

[Justice Acquisition Circular 98-1]

Amendment to the Justice Acquisition Regulations (JAR Regarding: Definitions

AGENCY: Justice Management Division, Justice.

ACTION: Final rule, correction.

SUMMARY: This document contains corrections to the final regulations (Justice Acquisition Regulations) that were published Thursday, April 2, 1998 (63 FR 16118-16136). The regulations related to the reissuance of the JAR to implement regulatory changes resulting from the Federal Acquisition Reform Act, the Federal Acquisition Streamlining Act and the recommendations of the National Performance Review.

EFFECTIVE DATE: May 14, 1998.

FOR FURTHER INFORMATION CONTACT: Janis Sposato, Procurement Executive, Justice Management Division (202) 514-3103.

SUPPLEMENTARY INFORMATION:

A. Background

The final regulations that are the subject of these corrections superseded

the 1985 version of the JAR and all amendments (Justice Acquisition Circulars 85-1 through 97-1) issued prior to the date of publication of that final rule.

B. Regulatory Flexibility Act

The Department of Justice certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the amendment sets forth only corrections to internal departmental procedures.

C. Paperwork Reduction Act

The final rule imposes no new information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). All information collection requirements have been submitted to OMB. In those cases where an OMB control number has been assigned, the control number is included in the regulation.

List of Subjects in 48 CFR Parts 2802 and 2846

Government procurement.
Stephen R. Colgate,
Assistant Attorney General for Administration.

Accordingly, 48 CFR parts 2802 and 2846 are corrected by making the following correcting amendments.

1. The authority citation for 48 CFR Parts 2802 and 2846 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2802—DEFINITIONS OF WORDS AND TERMS—[CORRECTED]

2. On page 16121, in the middle of the first column, the citation set forth as Subpart 2.1—Definitions in the table of contents of part 2802 and in the accompanying text which immediately follows, is corrected to read as follows:

Subpart 2802.1—Definitions

PART 2802—QUALITY ASSURANCE—[CORRECTED]

3. On page 16134, in the lower third of the third column, under Part 2846, a paragraph number and title (2846.610, General) are added as set forth below, to the table of contents and the text that appears directly under Subpart 2846.6—Material Inspection and Receiving reports.

PART 2846—QUALITY ASSURANCE

Subpart 2846.6—Material Inspection and Receiving Reports

2846.601 General.

Subpart 2846.7—Warranties

2846.704 Authority for use of warranties.

Subpart 2846.6—Material Inspection and Receiving reports

§ 2846.601 General.

Bureaus shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports and commercial shipping document/packing lists to evidence Government inspection.

[FR Doc. 98-12791 Filed 5-13-98; 8:45 am]

BILLING CODE 4410-AR-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018-AE94

Amendment to Appendix III Listing of Bigleaf Mahogany Under the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule announces an amendment to the Appendix III listing of bigleaf mahogany (*Swietenia macrophylla*) under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention). The species in the Americas and its logs, sawn wood, and veneer sheets have been included in Appendix III since November 1995, based on an action by the Government of Costa Rica. The Government of Bolivia has recently supplied information to the CITES Secretariat to independently include its population in Appendix III to support its national legislation for the species and the need for cooperation of other CITES countries in controlling the international trade. The Service will consider any comments received on whether to enter a reservation on the Republic of Bolivia's action for its population.

DATES: The change to the Appendix III listing for the Bolivian population of the species as set forth in this rule entered into force on March 19, 1998, under the

terms of the Convention. This rule is effective on May 14, 1998.

ADDRESSES: Please send correspondence concerning the amendment announced in this rule to Chief, Office of Scientific Authority, ARLSQ 750; U.S. Fish and Wildlife Service; Washington, DC 20240; fax number 703-358-2276. Express and messenger deliveries should be addressed to Chief, Office of Scientific Authority, Room 750; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Arlington, Virginia 22203.

The text of the Appendix III notification from the Convention's Secretariat is available on request, and related materials are available for public inspection by appointment from 8:00 a.m. to 4:00 p.m. Monday through Friday, at the above address in Arlington, Virginia.

Please send certificate/permit questions or any applications concerning this regulation to Chief, Office of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Room 700; Arlington, Virginia 22203; fax number 703-358-2281. Express and messenger deliveries should be addressed to Chief, Office of Management Authority, at that Arlington address.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Office of Scientific Authority, phone 703-358-1708, fax 703-358-2276, e-mail susan_lieberman@mail.fws.gov; or the Office of Management Authority, telephone 800-358-2104, e-mail r9oma_cites@mail.fws.gov

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (TIAS 8249) regulates international trade in certain animal and plant species. The species for which trade in particular specimens is controlled are listed in Appendices I, II, and III to the Convention. Appendix III comprises the list of species subject to regulation within any CITES Party country that has requested the cooperation of the other Parties in regulating international trade in the specified specimens of the species.

This rule revises the list of CITES species that is reproduced in the U.S. Code of Federal Regulations (CFR) at 50 CFR 23.23(f). The current information following COP10 (see below) was published in the *Federal Register* of August 22, 1997 (62 FR 44627). As advanced by the Government of Bolivia pursuant to Article XVI paragraph 1 of the Convention, the present rule acknowledges that now both Bolivia and

Costa Rica have added *Swietenia macrophylla* (bigleaf mahogany [called mara or caoba]) to Appendix III in support of their domestic conservation measures and need for cooperation of other Parties.

The species continues to be included in Appendix III in the Americas (i.e., South America, Central America, the Caribbean, and North America), including only its logs, sawn wood, and veneer sheets as the parts or derivatives covered by the provisions of the Convention. Thus, products such as finished furniture are excluded. Moreover, export of specimens from plantations located outside the Americas is not regulated. (At COP10 in June 1997, the categories saw-logs, sawn wood, and veneers were revised slightly to the above for several such listings; cf. 62 FR 44627.)

The CITES Secretariat notified all Party countries on December 19, 1997 (in Notification No. 1011), of this addition to Appendix III by Bolivia of their population of this species. In accordance with Article XVI paragraph 2, such an amendment becomes effective 90 days after notification, in this case on March 19, 1998. All the shipments of bigleaf mahogany originating from Bolivia that are exported on or after that date must be accompanied by the appropriate documentation as required by CITES (usually an export permit), which is to be presented upon import to the Party countries.

International trade in Appendix III species and their parts and derivatives that are specified as being included requires the issuance of either an export permit, a certificate of origin, a re-export certificate, or a pre-Convention certificate, by the exporting or the re-exporting Party. An export permit, which signifies that the specimens were not obtained in contravention of the laws of that country for conservation, is required if the shipment originates from the Party that added the species to Appendix III, in this case Bolivia, as well as Costa Rica, which had earlier added the species to Appendix III, effective November 16, 1995 (see *Federal Register* of February 22, 1996, 61 FR 6793-6795).

Export from the other countries in the Americas requires the issuance of either a certificate from the country of origin, a certificate from the country of re-export, or a pre-Convention certificate (from the country of export). (The species is native from Bolivia and Brazil to Mexico.) These documents legally verify either: (1) that the specimens originated in a non-listing country; (2) that they are being re-exported after a

legal importation in accordance with CITES; or (3) that they were acquired before the provisions of the Convention applied to them. All the countries of South America, Central America, and North America and some countries in the Caribbean are Parties to the Convention. Article X of CITES and Resolution Conf. 9.5 specify the requirements for comparable documentation from countries not party to the treaty. The pre-Convention date for *Swietenia macrophylla* (bigleaf mahogany) remains November 16, 1995.

The Convention's Secretariat and U.S. Office of Management Authority in 1995 (and sometimes since) have inquired regarding certificates of origin or permits that exporting range countries issue for shipments of the specimens of this species (i.e., logs, sawn wood, and veneer sheets). Responses have been received from Mexico, Guatemala, Belize, Honduras, Nicaragua, Venezuela, Peru, and Brazil (cf. Secretariat's December 19, 1997, Notification No. 1004). Costa Rica and Bolivia, as Parties listing the species in Appendix III, use their regular documents (e.g., permits). Importation or exportation of CITES-regulated plant specimens must be through particular designated U.S. Department of Agriculture ports (50 CFR 24.12), which includes additional ports designated for logs and lumber. For information on the types of documents required for such mahogany importation into the United States, as well as requests for any documents needed for such re-export or export from the United States, contact the Service's Office of Management Authority (address and phone number above).

Any Party at any time may enter a reservation on a species (or pertinent population) added to Appendix III. A Party that has entered a reservation is treated as a country that is not party to the Convention with respect to the trade in the species concerned (until such time as that Party withdraws its reservation). The limited effects of a reservation in alleviating importers and exporters from documentation requirements with the other CITES Parties were thoroughly discussed in a *Federal Register* notice on November 17, 1987 (52 FR 43924). In a subsequent *Federal Register* notice of March 28, 1988 (53 FR 9945; see also 53 FR 12497, April 14, 1988), the Service made a

procedural change in requesting comments about such reservations for species added to Appendix III. Because the effects of such a reservation are limited, and there is also no time limit for reserving on a species or a population added to Appendix III, a proposed rule is not published at the time the list in § 23.23 is amended. Regardless of any U.S. decision to enter a reservation, this particular amendment to Appendix III entered into force on March 19, 1998, under terms of the Convention. Publishing this rule informs the public of this international action while still affording those interested the opportunity and time to assess the merits of entering a reservation. Therefore, good cause exists to omit a proposed-rule notice and public-comment process, since it is unnecessary and contrary to the public interest [5 U.S.C. 553(b)]. Because bigleaf mahogany in the Americas was added to Appendix III of the Convention effective on November 16, 1995, and because of the other reasons stated herein, the Service finds that good cause exists for making this rule effective upon its date of publication [5 U.S.C. 553(d)]. Accordingly, 50 CFR 23.23(f) is amended at the conclusion of this document.

At the tenth meeting of the Conference of the Parties to the Convention (COP10) in June 1997, the United States was among 67 of 112 Parties that voted to include this species in Appendix II; this 60 percent of the Parties in favor, however, fell short of the two-thirds majority needed for adoption of the proposal (see the *Federal Register* notice of August 22, 1997 [62 FR 44627]). After the vote, Bolivia in plenary stated its intention to include its population of the species in Appendix III (cf. Resolution Conf. 9.25 (Rev.)). The Service has not recommended entering a reservation on this enhanced status for the Bolivian population of the species in Appendix III. Consideration for doing so would be given if valid and compelling reasons are shown that implementation of this listing would be contrary to the interests or laws of the United States. The Service now solicits comments on whether to enter a reservation, and particularly seeks any new information that becomes available. The Service will consider all comments received, and if appropriate,

will consider recommending that the United States submit a reservation to the depositary government (which is Switzerland).

Other Procedural Requirements

The Department has determined that changes to the Convention Appendices, which result from actions of the Parties to the treaty, do not require preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321-4347). This rule recognizes the Republic of Bolivia's decision to include one of their native species in CITES Appendix III and serves public notice of their decision. As such, this rulemaking does not constitute an agency action under the Administrative Procedure Act.

This document was prepared by Dr. Bruce MacBryde and Dr. Susan Lieberman, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, 87 Stat. 884, as amended).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, and Treaties.

Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, for the reasons set out above in this document, Part 23, Subpart C of Title 50 (Chapter I, Subchapter B) of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

2. Section 23.23(f) is amended by revising the entry of *Swietenia macrophylla* under the plant family Meliaceae to read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	First listing date (month/day/year)
Plant Kingdom:	PLANTS:		
Family Meliaceae:	Mahogany family:		
<i>Swietenia macrophylla</i> populations in the Americas (including logs, sawn wood, and veneer sheets, but no other parts or derivatives, e.g., products).	Bigleaf mahogany	III (Bolivia, Costa Rica)	11/16/95

Dated: May 5, 1998.

Donald Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98-12803 Filed 5-13-98; 8:45 am]

BILLING CODE 4310-55-P

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-132-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300, A310, and A300-600 series airplanes. This proposal would require a one-time operational test and repetitive functional tests of the free fall control mechanism of the landing gear, to ensure proper release of the main landing gear (MLG), and corrective action, if necessary. This proposal also would require eventual modification of the free fall control mechanism of landing gear, which constitutes terminating action for the repetitive functional tests. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent malfunction of the free fall control mechanism of the landing gear, which could result in the inability to extend the MLG in the event of failure of the hydraulic extension system.

DATES: Comments must be received by June 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-132-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this

location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-132-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No.

Federal Register

Vol. 63, No. 93

Thursday, May 14, 1998

98-NM-132-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300, A310, and A300-600 series airplanes. The DGAC advises that during training flights on two Airbus Model A300 series airplanes, the flight crew reported difficulty in extending the main landing gear (MLG) by means of the free fall control mechanism of the landing gear. The free fall control mechanism allows the flight crew to extend the landing gear in the event of failure of the hydraulic system that normally is used to extend the landing gear. A functional test of the free fall control mechanism on both airplanes revealed that this mechanism was rigged incorrectly, which caused the cockpit control handle of the free fall control mechanism to reach its mechanical stop before the MLG was released for extension by free fall. Malfunction of the free fall control mechanism, if not corrected, could result in the inability to extend the MLG in the event of failure of the hydraulic extension system.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Industrie All operator Telex (AOT) 32-14, dated February 3, 1997, and Revision 01, dated March 13, 1997, which describe procedures for a one-time operational test and repetitive functional tests of the free fall control mechanism of the landing gear, and corrective action, if necessary. Procedures for the one-time operational test of the free fall control mechanism include inspecting the free fall control mechanism of the MLG with the landing gear extended and the weight of the airplane on the landing gear. Procedures for the repetitive functional test of the free fall control mechanism of the landing gear while the airplane is on jacks. Corrective actions, if necessary, including readjusting the telescopic rods of the MLG uplock of the free fall control mechanism, or completely reregging the free fall control mechanism by adjusting specified components of the mechanism. The AOT also recommends that operators of airplanes

on which installation of Airbus Modification 04443 is pending need not accomplish the scheduled operational test of the free fall control mechanism of the landing gear.

The manufacturer also has issued Airbus Industrie Service Bulletins A300-32-0425, Revision 01; A310-32-2111, Revision 01; and A300-32-6072, Revision 01; all dated October 10, 1997. These service bulletins describe procedures for modification of the free fall control mechanism of the landing gear on Airbus Model A300, A310, and A300-600 series airplanes. The Modification includes removing telescope rods and cranks or crank assemblies from the MLG part of the free fall control mechanism of the landing gear, replacing the telescopic rods with new parts, and replacing the cranks or crank assemblies with improved parts. Accomplishment of the modification eliminates the need for the repetitive inspections described previously.

Accomplishment of the actions specified in the AOT's and service bulletins described previously is intended to adequately address the identified unsafe condition. The DGAC classified the AOT's and service bulletins as mandatory and issued French airworthiness directive 97-113-322(B)R1, dated December 3, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOT's and the service bulletins described previously.

Cost Impact

The FAA estimates that 24 Model A300 series airplanes, 41 Model A310 series airplanes, and 61 Model A300-600 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 3 work hours per airplane to accomplish the proposed operational test, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed operational test on U.S. operators is estimated to be \$22,680, or \$180 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed functional test, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed functional test on U.S. operators is estimated to be \$15,120, or \$120 per airplane, per test cycle.

It would take approximately 26 work hours per airplane to accomplish the proposed modification on the Model A300 and A300-600 series airplanes, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$2,630 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators of Model A300 or A300-600 series airplanes is estimated to be \$356,150, or \$4,190 per airplane.

It would take approximately 28 work hours per airplane to accomplish the proposed modification on the Model A310 series airplanes, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$3,710 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators of Model A310 series airplanes is estimated to be \$220,990, or \$5,390 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1)

Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98-NM-132-AD.

Applicability: Model A300, A310, and A300-600 series airplanes; on which Airbus Industrie Modification 02781 has been accomplished, and on which Airbus Industrie Modification 03433 or 04443 has not been accomplished; certificated in any category.

Note: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the free fall control mechanism of the landing gear, which could result in the inability to extend the main landing gear (MLG) in the event of

failure of the hydraulic extension system, accomplish the following:

(a) Within 600 flight hours after the effective date of this AD, perform a one-time operational test of the free fall control mechanism of the landing gear to ensure proper release of the MLG for extension by free fall, in accordance with Airbus Industrie All Operator Telex (AOT) 32-14, dated February 3, 1997, or Revision 01, dated March 13, 1997. If any discrepancy is detected in the functioning of the free fall control mechanism of the landing gear, prior to further flight, readjust the mechanism, and repeat the operational test in accordance with the AOT. If any discrepancy is detected in the second operational test, prior to further flight, rereg the free fall control mechanism in accordance with the AOT, and accomplish the actions required by paragraph (b) of this AD.

(b) Within 10 months after the effective date of this AD, perform a functional test of the free fall control mechanism of the landing gear to ensure proper release of the MLG for extension by free fall, in accordance with AOT 32-14, dated February 3, 1997, or Revision 01, dated March 13, 1997. Thereafter, repeat the functional test of the free fall control mechanism of the landing gear at intervals not to exceed 12 months, until the modification required by paragraph (c) of the AD has been accomplished. During any test performed in accordance with paragraph (b) of this AD, if the free fall control mechanism of the landing gear fails to fully extend the MLG, prior to further flight, readjust or rereg the mechanism in accordance with the AOT.

(c) Within 66 months after the effective date of this AD, modify the free fall control mechanism of the landing gear in accordance with Airbus Industrie Service bulletin A300-32-0425, Revision 01 (for Model A300 series airplanes); A310-32-2111, Revision 01 (for Model A310 series airplanes); or A300-32-6072, Revision 01 (for Model A300-600 series airplanes); all dated October 10, 1997; as applicable. Accomplishment of the modification constitutes terminating action for the repetitive functional tests required by paragraph (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97-113-221(B)R1, dated December 3, 1997.

Issued in Renton, Washington, on May 7, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12807 Filed 5-13-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 207, 807, and 1271

[Docket No. 97N-484R]

RIN 0910-AB05

Establishment Registration and Listing for Manufacturers of Human Cellular and Tissue-Based Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require manufacturers of certain human cellular and tissue-based products to register with the agency and list their products. In addition, the agency is proposing to amend the registration and listing regulations that currently apply to human cellular and tissue-based products regulated as drugs, devices, and/or biological products. This action is being taken to establish a unified registration and listing program for human cellular and tissue-based products.

DATES: Submit written comments on the proposed rule by August 12, 1998. Submit written comments on the information collection provisions by June 15, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503. Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy or Paula S. McKeever, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-827-6210.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is putting in place a comprehensive new system of

regulation for human cellular and tissue-based products. As a first step toward accomplishing this goal, the agency is proposing regulations that will require establishments that manufacture those products to register and list their products with the agency.

A. Background

The term "human cellular and tissue-based products" encompasses an array of medical products derived from the human body and used for replacement, reproductive, or therapeutic purposes. Skin, tendons, bone, heart valves, and corneas have long been used as replacements for damaged or diseased tissues. Semen, ova, and embryos are transferred for reproductive purposes. Currently, some human cellular and tissue-based products are being developed for new therapeutic uses. For example, scientists are studying the use of manipulated human cells to treat viral infections, Parkinson's disease, and diabetes, among other diseases.

Human cellular and tissue-based products serve a crucial role in medicine, and they have the potential for providing important new therapies. Yet they also raise public health concerns. With the development of new products, and new uses for existing products, come questions about safety and effectiveness that need to be answered through clinical investigation. Furthermore, all human cellular and tissue-based products, because they contain components of the human body, pose some risk of carrying pathogens that could cause disease in health-care personnel, other handlers of tissue, recipients, and family members or other close contacts of recipients.

FDA has never had a single regulatory program for human cellular and tissue-based products. Instead, it has regulated these products on a case-by-case basis responding as it determined appropriate to the particular characteristics of and concerns raised by each type of product. Some tissues have been regulated as medical devices under section 201 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*). Corneal lenticules, dura mater, heart valve allografts, and umbilical cord vein grafts fall into this category. Other products have been considered biological products under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262) and drugs under the act (hereinafter referred to as biological drugs). Somatic cell therapy products and some gene therapy products fall

into this category. (See 58 FR 53248, October 14, 1993.)

FDA has also relied on section 361 of the PHS Act (42 U.S.C. 264), which provides the authority to issue regulations to prevent the spread of communicable diseases, to regulate tissues that it has chosen not to regulate as devices or biological drugs. In 1993, in response to concerns about the safety of human tissue intended for transplantation, FDA used this authority to require testing and screening of tissue donors for hepatitis and human immunodeficiency viruses. (See 58 FR 65514, December 14, 1993.) Until it issued those regulations ("Human Tissues Intended for Transplantation," codified in title 21 of the Code of Federal Regulations (CFR) part 1270), FDA exerted little or no regulatory control over certain types of human cellular and tissue-based products. Instead, human tissue for transplantation was subject to some State regulation and to voluntary accreditation systems. Even today, FDA's human tissue regulations do not address the infectious disease risk of donating, processing, and storing reproductive cells and tissue.

FDA has evaluated its approach to regulating human cellular and tissue-based products and has determined that changes are needed. In light of the development of new products, coupled with a growing awareness of infectious-disease concerns, the agency believes that the current patchwork of regulatory policies is no longer adequate and plans to create a comprehensive regulatory program that will cover a broad range of human cellular and tissue-based products. The agency has considered the relevant provisions of the act and the PHS Act and has concluded that these two statutes provide sufficiently broad authority for the proposed regulatory program.

The agency announced its plans for reform in two documents released in February 1997: "Reinventing the Regulation of Human Tissue," and "A Proposed Approach to the Regulation of Cellular and Tissue-Based Products" (hereinafter "Proposed Approach document"). The agency requested written comments on its proposed approach and, on March 17, 1997, held a public meeting to solicit information and views from the interested public. (See 62 FR 9721, March 4, 1997) (Docket No.: 97N-0068). FDA has considered the comments submitted at the public meeting and to the docket in drafting this proposed rule. FDA welcomes comments on the proposed rule from all interested parties.

B. The Proposed Approach

FDA seeks to achieve several goals with its new approach to regulating human cellular and tissue-based products. Primary among them is the improved protection of the public health without the imposition of unnecessary restrictions on research, development, or the availability of new products. Under the new program, the degree of scrutiny afforded different types of products will be commensurate with the risks presented, enabling the agency to use its resources more effectively. Consolidating the regulation of human cellular and tissue-based products into one regulatory program is expected to lead to increased consistency and greater efficiency. Together, these planned improvements should increase the safety of human cellular and tissue-based products, and public confidence in that safety, while encouraging the development of new products.

In developing its proposed approach, FDA examined five issues that it considered fundamental to the proper regulation of the various types of human cellular and tissue-based products. First, the agency asked how the transmission of communicable disease by these products occurs and could be prevented. Second, the agency looked at the types of handling, processing, and manufacturing controls that are necessary to prevent contamination and to preserve the integrity and function of these products. Third, the agency examined concerns about the products' clinical safety and effectiveness. Fourth, FDA considered the type of labeling necessary for proper use of the products and the kind of promotion that would be permissible. Finally, the agency asked how it could best monitor and communicate with the cell and tissue industry.

Through examination of these five public-health and regulatory concerns, FDA was able to develop a proposed comprehensive regulatory scheme tailored to the relevant characteristics of human cellular and tissue-based products. In order to devise an umbrella approach, the agency first focused on the products' common attributes. Then, to ensure appropriate levels of regulation, the agency differentiated between the various types of products based on the public health risks associated with them. For example, the risks posed by cells that are extensively manipulated in a laboratory and then implanted for their systemic effect on a patient are different from those of an unmanipulated tissue that is

transplanted into a patient to replace an injured structural tissue.

Taking into account these differences, the agency designed a risk-based tiered approach intended to regulate human cellular and tissue-based products only to the extent necessary to protect public health. Some products will be subject to little or no regulation. For example, no regulatory requirements will be imposed on tissues transplanted into the same patient during the same surgical procedure.

As the potential risk posed by a product increases, so will the level of oversight afforded that product. Thus, minimally processed tissues transplanted from one person to another for their normal structural functions would be subject to infectious disease screening and testing and to requirements for good handling procedures, but would not need FDA premarket review or marketing approval. In contrast, premarket approval would generally be required for cells and tissues that are processed extensively, are combined with noncellular or nontissue components, are labeled or promoted for purposes other than their normal functions, or have a systemic effect. In addition, these products would be subject to requirements for good tissue practices and infectious disease screening and testing, as well as to the good manufacturing practice requirements applicable to drugs and devices.

Although FDA's proposed regulatory approach is far more comprehensive in scope than its present system, some products will not be covered. Among the products not included under the approach are vascularized organs and minimally manipulated bone marrow, both of which fall under the purview of the Health Resources Services Administration. FDA already comprehensively regulates transfusable blood products (e.g., whole blood, red blood cells, platelets, and plasma) under a different regulatory scheme and will not at this time regulate those products as human cellular and tissue-based products. Xenograft transplantation (transplantation using tissues derived from animals) raises different public health issues from transplantation with human tissue, and so will not be subject to the new regulatory program. The new program will also exclude from coverage ancillary products used in cell or tissue propagation, storage, or processing, as well as products that are secreted by or extracted from cells or tissues (e.g., human milk, collagen, urokinase, cytokines, and growth factors), because these products often raise different manufacturing, safety, and effectiveness

issues, and generally are covered by other rules, regulations, or standards.

II. Registration of Human Cellular and Tissue-Based Products

FDA is now proposing to extend registration and listing requirements to manufacturers of human cellular and tissue-based products not currently subject to such requirements.

A. Need for Registration and Listing

In order to implement its new approach to the regulation of human cellular and tissue-based products, FDA needs to be able to assess the state of the cell and tissue industry. Although some human cellular and tissue-based products are currently regulated by the agency as devices or biological drugs—and thus are covered by registration and listing requirements—others have not been subject to such regulation. As a result, FDA does not know the full size and scope of the cell and tissue industry and its products.

Through the current proposal to extend the requirements of registration and product listing to members of the tissue and cell industry not presently under such obligations, FDA seeks to accrue the basic knowledge about the industry that is necessary for its effective regulation. Without reliable data on the tissue and cell industry (e.g., names and addresses of manufacturers and types of products) FDA cannot apply appropriate oversight to a rapidly changing industry. FDA must keep informed of the state of the industry, including developments such as the introduction of new products, in order to understand and respond to all relevant public health issues. Because FDA intends to calibrate its level of regulation to the risks posed by various types of cellular and tissue-based products, it is crucial for the agency to have accurate information about those products.

The proposed registration requirement will facilitate communication between the agency and industry. Once FDA has a complete list of the cell and tissue industry and its products, the agency will be able to reach members of the industry with educational materials and information regarding FDA policies, guidances, and requirements. Important information (e.g., about a newly identified public health risk) can also be quickly disseminated to the industry. Moreover, information obtained through the new registration and listing regulation will permit the agency to monitor the industry more effectively. For example, FDA will be able to identify quickly which establishments should be

inspected for compliance with applicable laws and regulations, including those to be issued as part of the new tissue regulation program. Required updating of industry registrations and product lists will ensure that FDA's information about the industry remains current.

B. How Registration Will Be Achieved

In proposing these new registration regulations, FDA seeks to improve the way it collects and manages information about the cell and tissue industry and its products. The agency plans to create a single, comprehensive data base with information about human cellular and tissue-based products, maintained by the Center for Biologics Evaluation and Research (CBER). By requiring registration and product listing from manufacturers not presently subject to such requirements, and by consolidating that new information with data currently being collected, FDA will be able to develop a less fragmented and more efficient oversight program. Meanwhile, manufacturers already under a registration obligation will benefit from the availability of new, electronic procedures.

The main set of regulations being proposed, new part 1271 of title 21 of the CFR, will apply to those human cellular and tissue-based products that the agency will regulate under section 361 of the PHS Act. Proposed part 1271 will cover those products, including products consisting of reproductive cells or tissue, that: (1) Are minimally manipulated; (2) are not promoted or labeled for any use other than a homologous use; (3) have not been combined with or modified by the addition of any noncellular or nontissue component that is a drug or device; and (4) do not have a systemic effect, except in cases of autologous use, transplantation into a first-degree blood relative, or reproductive use. For convenience these products will be referred to as "products regulated under section 361" or "361 products." (However, the use of these terms does not indicate that other products will not be regulated under section 361 of the PHS Act. In fact, FDA intends to rely in part on section 361 of the PHS Act when imposing requirements on human cellular and tissue-based products regulated as biological drugs or devices under the act and/or section 351 of the PHS Act.) Examples of products to be regulated under section 361 of the PHS Act include bone, tendons, skin, corneas, and sclera. If all other criteria are met, products with a systemic effect that could come under section 361 of the PHS Act include peripheral and

cord blood stem cells used autologously or in first degree blood relatives and sperm, oocytes, and embryos for reproductive use.

Establishments that manufacture human cellular or tissue-based products that meet the criteria set out above would be required to register and list those products under proposed part 1271. However, certain exceptions would apply. For example, although the agency's proposed definition of "manufacture" includes distribution, commercial carriers would not need to register. Also, certain scientific, educational, or other uses of cellular or tissue-based products would not be covered by part 1271. These and other exceptions are discussed in greater detail in section III of this document.

In order to unify its registration system, FDA also proposes to amend parts 207 and 807 (21 CFR parts 207 and 807) so that information on human cellular and tissue-based products regulated as biological drugs or devices will be submitted to the same data base used for 361 products. Parts 207 and 807 contain the registration and listing requirements for drugs and devices. Under the proposed amendments, manufacturers of human cellular and tissue-based products regulated as biological drugs or devices will be required to comply with the registration and listing requirements in part 207 or 807, as applicable, by following the procedures set out in proposed part 1271.

Human cellular and tissue-based products subject to regulation as biological drugs or devices are those that do not meet the criteria set out above for regulation under section 361 of the PHS Act. That is, they are: (1) More than minimally manipulated; (2) are promoted or labeled for a nonhomologous use; (3) have been combined with or modified by the addition of a noncellular or nontissue component that is a drug or device; or (4) have a systemic effect (except in cases of autologous use, transplantation into a first degree blood relative, or reproductive use). Examples include: Hematopoietic stem cells intended for use in recipients who are not close blood relatives of the cell donor or for uses other than to reconstitute the cellular components of the blood; more than minimally manipulated bone marrow; hematopoietic stem cells that have been expanded or modified as part of gene therapy; cloned and/or activated lymphocyte therapies for cancer or infectious diseases; bone combined with collagen or growth factors; and manipulated cells for autologous structural use (MAS cells), such as

expanded chondrocytes to repair damaged knee cartilage.

Under the proposed regulatory system, some products that are currently regulated as medical devices might be regulated as section 361 products instead. One such product under consideration is dura mater, the collagenous connective tissue that covers the human brain and spinal cord. Dura mater is excised from cadavers shortly after death, washed, cut into smaller pieces, sterilized, preserved, and reconstituted before use in neurosurgical, gynecological, oral, otolaryngological, and general surgical procedures. This manner of processing does not change the tissue's original characteristics relating to its ability to carry out reconstruction, repair, or replacement and, therefore, would be considered minimal manipulation as defined in proposed part 1271. Moreover, dura mater does not have a systemic effect. Thus, dura mater that is not combined with or modified by the addition of any nontissue or noncellular component that is a drug or device, and that is not promoted or labeled for any use other than a homologous use, appears to meet the proposed criteria in part 1271 for regulation under section 361 of the PHS Act.

Recent reports linking the transmission of Creutzfeldt-Jakob Disease (CJD) to several recipients of human cadaveric dura mater have raised questions as to the controls needed to regulate dura mater. Following discussion of data and information relating to dura mater, on October 6 and 7, 1997, FDA's Transmissible Spongiform Encephalopathy Advisory Committee recommended that FDA adopt measures intended to decrease the risk of CJD transmission via dura mater. These recommendations include specific handling procedures to reduce or eliminate CJD infectious agents in cadaveric dura mater and histological examinations of brain biopsies taken from donor cadavers. In light of these recent developments and the committee's recommendations, FDA is requesting comments on whether FDA's proposal to regulate dura mater under the authority of section 361 of the PHS Act will provide adequate controls, or, conversely, whether tissues with certain risk and disease factors should be subject to premarket submission requirements found in the act and in section 351 of the PHS Act. The agency invites comments regarding the appropriate controls for dura mater and like products, and whether such controls may be appropriately addressed in "good tissue practice" requirements specific to these products issued under

the authority of section 361 of the PHS Act. In the meantime, FDA will continue to regulate dura mater as a device.

The agency intends to regulate as 361 products human heart valve allografts that meet the criteria of proposed § 1271.10, which are now subject to regulation as medical devices. In the past, these products were considered by FDA to be class III medical devices. In 1994, in a stipulated order of dismissal in *Northwest Tissue Center v. Shalala*, No. 91-C-6515 (N.D. Ill., October 7, 1994), FDA stipulated that it would not enforce the class III requirement of premarket approval for human heart valve allografts. In 1995, the American Red Cross (ARC) requested that FDA regulate human heart valve allografts as human tissues for transplantation, rather than as medical devices. ARC's request for jurisdictional change for the regulation of human heart allografts was supported by the Northwest Tissue Center.

The agency now proposes to regulate, as section 361 products, heart valve allografts that are minimally manipulated, do not have a systemic effect, and are not promoted for a nonhomologous use or combined with a nontissue or noncellular component that is a drug or a device.

C. Legal Authority

FDA is proposing to issue new regulations in part 1271 solely under the authority of section 361 of the PHS Act. Under that section, FDA may make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or from foreign countries into the States. (See sec. 1, Reorg. Plan No. 3 of 1966 at 42 U.S.C. 202 for delegation of section 361 authority from the Surgeon General to the Secretary, Health and Human Services; see 21 CFR 5.10(a)(4) for delegation from the Secretary to the Food and Drug Administration.) Intrastate transactions may also be regulated under section 361 of the PHS Act. (See *Louisiana v. Mathews*, 427 F. Supp. 174, 176 (E.D. La. 1977).)

Because of their nature as derivatives of the human body, all human cellular and tissue-based products pose a potential risk of transmitting diseases. FDA has determined that it may appropriately and effectively regulate certain of these products (described in section II.B of this document) by controlling the infectious disease risks they present rather than by requiring premarket approval or licensing under the act or the PHS Act.

In order to prevent the spread of infectious disease, FDA must obtain the type of basic information about the industry and its products that these proposed regulations will require be provided to the agency. This information will enable the agency to react swiftly to newly discovered or understood risks by alerting members of the industry of its concerns and, when appropriate, by conducting establishment inspections.

Moreover, the registration regulations now being proposed lay the foundation for a regulatory program that will further the goal of preventing the transmission of communicable disease. FDA intends to propose regulations to be issued at a later date that would require such measures as the maintenance of "good tissue practices" and various tests for communicable diseases. Without the information that the agency will collect through establishment registration and product listing, FDA cannot effectively monitor compliance with these future regulations—and, thus, prevent the transmission of communicable disease.

Authority for the enforcement of section 361 of the PHS Act is provided by section 368 of the PHS Act (42 U.S.C. 271). Under section 368(a), any person who violates a regulation prescribed under section 361 of the PHS Act may be punished by imprisonment for up to 1 year, a fine of not more than \$1,000, or both (42 U.S.C. 271(a)). In addition, Federal District Courts have jurisdiction to enjoin individuals and organizations from violating regulations implementing section 361 of the PHS Act. The agency intends, in a future rulemaking, to issue regulations including requirements for testing, good tissue practices, and enforcement under the authority of section 361 of the PHS Act.

Human cellular and tissue-based products that do not meet FDA's criteria set forth in part 1271 for regulation solely under section 361 of the PHS Act are subject to regulation as biological drugs or devices, and their manufacturers are required to register with the agency under section 510 of the act. Regulations implementing section 510 are found under parts 207 and 807, among other parts. As discussed earlier, in order to consolidate its data base on the cell and tissue industry and thus to improve its oversight functions, FDA proposes to amend parts 207 and 807 to require registering establishments to follow the procedures set out in part 1271. Section 510 of the act remains the authority for the substantive registration requirement for products subject to parts 207 and 807. Because harmonizing the registration and listing procedures

applicable to the various human cellular and tissue-based products is intended to further the goal of preventing the spread of communicable disease, the agency is also relying on the additional authority of section 361 of the PHS Act for the proposed amendments to parts 207 and 807.

III. Summary of the Proposed Regulations

A. Purpose, Coverage, and Exceptions of Part 1271

1. Purpose

The purpose of part 1271, as set out in § 1271.1, is to establish a unified registration and product listing system for establishments that manufacture human cellular and tissue-based products.

2. Coverage

Section 1271.1 states that manufacturers of human cellular and tissue-based products regulated under section 361 of the PHS Act are required by part 1271 to register and list their products with CBER. These products are further described in § 1271.10, which states who must register and submit a list. The products are those that: (1) Are minimally manipulated; (2) are not promoted for any use other than homologous use; (3) are not combined with or modified by the addition of any nontissue or noncellular component that is a drug or device; and (4) do not have a systemic effect, except in cases of autologous or family-related allogeneic systemic use or reproductive use. Many of these terms are defined in the definition section of the regulation, § 1271.3.

In addition, § 1271.1 notes that manufacturers of products regulated under section 351 of the PHS Act and/or the act are required to register and list their products following the procedures in subpart B of part 1271.

3. Exceptions

Section 1271.20 sets out exceptions to the provisions of part 1271. These exceptions are for activities that do not raise issues the agency currently believes warrant regulation.

a. The use of human cellular or tissue-based products solely for nonclinical scientific or educational purposes does not trigger the registration or listing requirements. Any use for implantation, transplantation, infusion, or transfer into humans is considered clinical use and would be subject to part 1271.

b. An establishment or person that removes human cellular or tissue-based products from an individual and then implants, transplants, infuses, or transfers those cells or tissues into the

same individual is not required to register or list with the agency, so long as the human cellular or tissue-based product is quarantined pending completion of the surgery. For example, a surgeon might remove a saphenous vein from a patient for use in a later coronary bypass in the same patient. Registration and listing would not be required unless the saphenous vein was stored with other cellular or tissue-based products. Storage in the same location as other human cellular or tissue-based products gives rise to concerns about the spread of infectious disease and would be considered beyond the bounds of the exception.

c. Carriers that accept, receive, carry, hold, or deliver human cellular or tissue-based products in the usual course of business are not required to register or list.

d. Establishments that receive human cellular or tissue-based products solely for implantation, transplantation, infusion, or transfer within the same facility do not come under the terms of part 1271. This exception is intended only for end-user establishments, that is, establishments that do not procure, distribute, or otherwise manufacture human cellular or tissue-based products.

B. Definitions

Section 1271.3 contains definitions of many of the terms used in part 1271. Some of the definitions relate to the types of product covered by part 1271, e.g., § 1271.3(d) defines "homologous use." Other definitions are intended to clarify the sorts of activities that will trigger the requirements of part 1271, e.g., § 1271.3(f) defines "manufacture."

1. Human Cellular or Tissue-Based Product

A human cellular or tissue-based product is defined in § 1271.3(e) as a product containing human cells or tissues, or any cell or tissue-based component of such a product.

The following products are excluded from this definition: Vascularized human organs for transplantation; products that are secreted or extracted from humans, such as milk, collagen, and cell factors; minimally manipulated bone marrow; ancillary products used in the propagation of cells or tissues, and cells, tissues, or organs derived from animals.

Whole blood, blood components, or blood derivative products subject to listing under 21 CFR part 607 are also excluded. Such products include, among others, whole blood, red blood cells, cryoprecipitated AHF, platelets, leukocytes/granulocytes, plasma, blood

products for diagnostic use, and blood bank reagents. In contrast, peripheral and cord blood stem cells are not subject to the exception for whole blood, blood components and blood derivative products and therefore are subject to part 1271.

2. Minimal Manipulation

One of the criteria for regulation of a human cellular or tissue-based product under section 361 of the PHS Act and part 1271 is that it be minimally manipulated. *Minimal manipulation* is defined in § 1271.3(g). For structural tissue, minimal manipulation is defined as processing that does not alter the original relevant characteristics of the tissue that relate to the tissue's utility for reconstruction, repair, or replacement. For example, separation of structural tissue into components whose relevant characteristics relating to reconstruction or repair are not altered would be considered minimal manipulation, as would extraction or separation of cells from structural tissue in which the remaining structural tissue's relevant characteristics relating to reconstruction and repair remain unchanged. Other examples of procedures that would be considered minimal manipulation include: Cutting, grinding, and shaping; soaking in antibiotic solution; sterilization by ethylene oxide treatment or irradiation; cell separation; lyophilization; cryopreservation; and freezing.

For cells (structural and nonstructural) and nonstructural tissues, minimal manipulation is defined as processing that does not alter the relevant biological characteristics and, thus potentially, the function or integrity of the cells or tissues. For example, FDA considers cell selection (e.g., selection of stem cells from amongst lymphocytes and mature cells of other lineages) to be minimal manipulation.

FDA considers the processing of cells and tissue to be "more than minimal" if information does not exist to show that the process meets the definition of minimal manipulation. Examples of manipulation not considered minimal, based on current scientific knowledge, include cell expansion, encapsulation, activation, and genetic modification. FDA recognizes that the subsequent accumulation of clinical data and experience about a particular process may demonstrate that it does not alter the original relevant characteristics of the cells or tissue, and the agency will consider this information in determining whether a procedure should be considered minimal as opposed to more-than-minimal

manipulation. For example, FDA previously considered demineralized bone products (DMB) to be more than minimally manipulated. However, at the March 17, 1997, public meeting, and during a July 11, 1997, meeting between the American Association of Tissue Banks and FDA, the agency was urged to reconsider its position regarding the regulatory status of DMB. After reviewing information provided, the agency believes that the relevant characteristics that relate to DMB's utility for replacement, reconstruction and repair are not altered by processing bone specimens into DMB. Therefore, FDA proposes to regulate DMB under section 361 of the PHS Act provided it is used for homologous function and is not combined with a noncellular or nontissue component that is a drug or device because FDA believes DMB falls within the minimal manipulation definition.

3. Homologous Use

The second criterion for regulation under part 1271 is that a human cellular or tissue-based product not be promoted or labeled for any use other than homologous use. *Homologous use* is defined in § 1271.3(d) as the use of a cellular or tissue-based product for replacement or supplementation of a recipient's cells or tissues. Homologous use of a structural tissue-based product occurs when the tissue is used for the same basic structural function that it fulfills in its native state, in a location where such structural function normally occurs. Basic function of a structural tissue is what the tissue does from a biological/physiological point of view, or is capable of doing when in its native state. For example, the agency considers structural tissue to be used for a homologous function when it is used to replace an analogous structural tissue that has been damaged or otherwise does not function adequately. Conversely, the agency would consider structural tissue to be performing a nonhomologous function when it is fulfilling a function that is different from the basic function it fulfills in its native state.

Examples of homologous use claims for structural tissues that would fall within the scope of part 1271 include bone allograft obtained from a long bone but labeled for use in a vertebra; skin allograft obtained from the arm but labeled for use as a skin graft on the face; pericardium, a structural membranous covering of the heart, labeled for use as a structural membranous covering for the brain; and heart valves labeled for use as heart valves. An example of a nonhomologous

use claim for structural tissue is cartilage labeled for placement under the submucosal layer of the urinary bladder to change the angle of the ureter and thereby prevent backflow of urine from the bladder into the ureter. The cartilage would be performing a structural function (adding volume to change the angle of the ureter) which is different from the function in its native state (to afford flexibility and provide musculoskeletal support).

According to the definition, homologous use of nonstructural cellular or tissue-based products occurs when the cells or tissues are used to perform the function(s) that they performed in the donor. An example of a homologous use claim would be hematopoietic stem cells labeled for use for hematopoietic reconstitution. An example of a nonhomologous use claim for the same cellular product would be a claim for treatment of adrenal leukodystrophies (congenital metabolic deficiencies).

In determining whether a product comes under part 1271 or is instead required to comply with premarketing requirements, FDA has tentatively decided to focus on whether a cellular or tissue-based product is promoted or labeled by its manufacturer for a nonhomologous use, rather than on the intent of the practitioner who uses the product. Accordingly, the actual use of a cellular or tissue-based product for a nonhomologous function would not trigger premarket review requirements if the product was not labeled or promoted for nonhomologous use. This change from the Proposed Approach document comes in response to industry concerns and is expected to lead to the more efficient use of the agency's resources. The agency specifically requests comments on this new language.

4. Nontissue or Noncellular Component

Products combined with or modified by the addition of any *nontissue or noncellular component that is a drug or device* will not be regulated under part 1271. Because "nontissue or noncellular component" is self-explanatory, FDA does not consider it necessary to define the term. However, the agency has modified the phrase "nontissue or noncellular component" with the words "that is a drug or device" in order to clarify that water and buffers would not ordinarily be considered nontissue or noncellular components. In contrast, a product composed of human cells or tissue in combination with a mechanical or synthetic component, such as epithelial cells on a biomatrix to cover burns, would not come under part 1271

and would be regulated under section 351 of the PHS Act and/or the act.

5. Systemic Effect

The final requirement for a product to be regulated under part 1271 is that the product not have a systemic effect. Given that "systemic" is a commonly used medical term, FDA is not proposing a regulatory definition of the word. The agency would consider the insertion of pancreatic islet cells, pituitary cells, or stem cells into an individual to have a mainly systemic effect. In contrast, the insertion of replacement bone would not have a mainly systemic effect; the effect would be limited to the immediate area around the insertion. FDA recognizes that some products may have both systemic and structural effects but intends that a product's primary effect be determinative.

Earlier discussions of FDA's regulatory plans, including the Proposed Approach document, used the term "metabolic function." After considering concerns raised by comments on the proposed approach, FDA has decided that "systemic effect" more accurately reflects the agency's intended meaning.

6. Autologous, Allogeneic, Family-Related Allogeneic, and Reproductive Uses

Under § 1271.10(d), there are several exceptions to the requirement that a human cellular or tissue-based product not have a systemic effect to be regulated under part 1271. These exceptions are for cases of autologous or family-related allogeneic systemic use and for reproductive use. Thus, products with a systemic effect that are utilized for autologous, family-related allogeneic, or reproductive use and that meet the other criteria set out in § 1271.10 will be regulated under part 1271.

Autologous use is defined in § 1271.3(a) as the implantation, transplantation, infusion, or transfer of a cellular or tissue-based product back into the individual from whom the cells or tissue comprising such product were removed. Several comments on the Proposed Approach document pointed out that the agency had used "Autologous" in a confusing manner. With the previous definition, the agency intends to clarify the meaning of the word. In contrast with autologous use, allogeneic use (not defined in this regulation) is the transplantation of cells or tissue obtained from a different individual.

FDA is using the phrase "family-related" for situations where the

recipient of cells or tissue is a biological parent, child, or sibling of the donor. Thus, *family-related allogeneic use* is defined in § 1271.3(c) as the implantation, transplantation, infusion, or transfer of a human cellular or tissue-based product into a first-degree blood relative of the individual from whom cells or tissue comprising such product were removed. Some comments on the Proposed Approach document have disagreed with FDA's definition of "family-related," arguing that its scope should be made broader to include such relatives as cousins and grandparents. Other comments have argued against an exception for family related allogeneic use, asserting that the family-related allogeneic use of products with a systemic effect should be treated no differently from any other allogeneic use. The agency specifically requests further comment on this issue.

The third situation in which a product with a systemic effect will be regulated under part 1271 is when the product contains human reproductive cells or tissue and is for *reproductive use*. In contrast to other tissues with a systemic effect, transfer of reproductive tissues such as semen and ova pose less risk to the health of the recipient from rejection, graft-versus-host disease, and compatibility. In addition, the failure of a reproductive-tissue product will generally cause lesser health risks to the individual than the failure of other systemic products. FDA has decided that it is not necessary to define "reproductive use" in the regulation, because the term is well understood.

7. Transfer

Some of the definitions in § 1271.3 contain the terms implantation, transplantation, and infusion, which FDA believes are generally understood. However, FDA is proposing to define, for the purpose of this part, *transfer*, which may not be as well understood, to mean "the placement of human reproductive cells or tissues into a human recipient." This definition, in § 1271.3(k), reflects the way the term "transfer" is used within the reproductive tissue industry.

8. Establishment and Manufacture

Other terms defined in § 1271.3 relate to the manufacturing of human cellular and tissue-based products. An *establishment* is defined as a place of business under one management, at one general physical location that engages in the manufacture of human cellular or tissue-based products. The term includes facilities that engage in contract manufacturing services for a manufacturer. The term also includes

any individual, partnership, corporation, association, or other legal entity engaged in the manufacture of human cellular or tissue-based products.

Under § 1271.3(f), the term *manufacture* includes all steps in the recovery, screening, testing, processing, storage, labeling, packaging, or distribution of any human cellular or tissue-based product. The agency interprets certain terms used in the definition of "manufacture" in the following ways. By "recovery" FDA means obtaining cells or tissues from a donor that are intended for use in human transplantation, infusion, implantation, or transfer. "Storage" would include holding human cells or tissue for future distribution or use. "Processing" means any activity, other than recovery, performed on a human cellular or tissue-based product, including preventing contamination and preserving the function and integrity of the product. Processing includes preparation, preservation for storage, removal from storage, and any steps to inactivate and remove adventitious agents. "Distribution" includes any conveyance or shipment of human cellular or tissue-based product (including importation and exportation), whether or not such conveyance or shipment is entirely intrastate and whether or not possession of the human cellular or tissue-based product is taken.

Many entities and individuals that would be considered manufacturers under part 1271 because they recover human cells or tissues expressed concerns that they would be subject to registration requirements. FDA anticipates that individuals engaged solely in the procurement or recovery of cells or tissues and under contract to organizations that coordinate procurement or recovery of human cells or tissues will not have to independently register under part 1271. Registration will be the responsibility of the employer or contracting organization, which will also be required under future rulemaking to ensure that its employees, agents, and contractors that engage in the recovery of cells or tissues comply with applicable regulations or procedures regarding the collection, safe handling, and proper shipment of human cells or tissues.

C. Procedures for Registration and Listing

The procedures for complying with proposed part 1271, found in subpart B, are designed to impose only a minimal burden on manufacturers while providing FDA with the basic

information needed to underpin its regulatory program. Under § 1271.21(a), registration and listing are required within 5 days after the initiation of an establishment's operations. Registration updates are required annually, by December 31, under § 1271.21(b). Section 1271.21(c) governs the semi-annual updating of product lists. Product lists must be updated with the following information: (1) Each human cellular or tissue-based product introduced by the registrant for distribution that has not been included in any list previously submitted; (2) each human cellular or tissue-based product formerly listed for which distribution has been discontinued; (3) each human cellular or tissue-based product for which a notice of discontinuance was submitted and for which distribution has been resumed; and (4) any material change in any information previously submitted. Product list updates must be submitted each June and December; alternatively, they may be submitted at the time the change occurs. When no changes have occurred since the previously submitted product list, no update is required.

Section 1271.22 requires registration, listing, and annual updates to be submitted on Form FDA 3356. That section also tells how to obtain the form and where to submit it, including information on obtaining the form electronically. The agency anticipates that some firms may prefer the ease of obtaining the registration and listing form electronically. For this reason, an electronic version of this form is currently being developed. It will be available by the time the final regulations go into effect.

Section 1271.25 sets out the information required for registration and listing, including the name and address of the establishment. Information required for product listings includes the established and proprietary names of each product, as well as a statement of whether the product meets the criteria set out in § 1271.10. (Any change in whether a product meets these criteria will be considered a "material change" subject to reporting under § 1271.21(c)(iv).)

Under § 1271.26, changes in an establishment's ownership or location are to be submitted as an amendment to registration within 5 days of such changes. Section 1271.27 states that the agency will provide the registrant with a permanent registration number. Section 1271.37 sets out the registration and product listing information that will be made available to the public.

At this time, the agency is not proposing to charge a fee for registration

or product listing. FDA is evaluating its authority to assess a fee and the impacts of such a fee. If it determines that a fee is appropriate, the agency will make such a proposal in a future rulemaking.

D. Amendments to Parts 207 and 807

FDA proposes to add new paragraph (f) to § 207.20 and new paragraph (e) to § 807.20. These additions will state that owners and operators of establishments that recover, screen, test, process, store, label, package, or distribute human cellular or tissue-based products, as defined in § 1271.3(f), shall register and list those products with CBER on Form FDA 3356, following the procedures found in subpart B of part 1271. Thus, instead of following the procedures in subpart C of part 207 (e.g., procedures contained in §§ 207.21, 207.22, 207.25, 207.26, and 207.30), establishments that manufacture human cellular or tissue-based products regulated as biological drugs under the act and the PHS Act would follow the procedures set out in part 1271, subpart B. Regulations that do not pertain to the procedural requirements for registration and listing (e.g., § 207.39, on misbranding) would still apply. In addition, new § 207.20(f) will specifically state that the procedures for submitting additional information, in § 207.31, remain applicable.

With respect to human cellular or tissue-based products regulated as devices under the act, manufacturers would follow the registration and listing procedures of part 1271, subpart B, instead of those found in part 807, subpart B (e.g., procedures in §§ 807.21, 807.22, 807.25, 807.26, and 807.30). As would be the case for devices, the requirements for additional listing information in § 807.31 will remain in place and regulations that do not pertain to registration and listing (e.g., § 807.39) would still be applicable.

IV. Analysis of Economic Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601-612), and under the Unfunded Mandates Reform Act (Pub. L. 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

The Regulatory Flexibility Act requires agencies to analyze whether a rule may have a significant impact on a

substantial number of small entities and, if it does, to analyze regulatory options that would minimize the impact. The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 (adjusted annually for inflation) in any 1 year. The agency has determined that the proposed rule is a significant rule as described in the Executive Order, but not a significant action as defined in the Unfunded Mandates Reform Act. Aggregate impacts of the rule, and aggregate expenditures caused by the rule, will not approach \$100 million for either the public or the private sector.

An analysis of available information suggests that costs to the entities most affected by this rule, including small entities, are not expected to be significant, as described in the analysis below. Therefore, the agency certifies that this rule will not have a significant impact on a substantial number of small entities.

A. Objective and Basis of the Proposed Action

FDA is proposing this action as a first step in the regulation of the rapidly evolving industry of human cellular and tissue-based products. This industry has not been previously subject to a comprehensive regulatory program by FDA or other public health authorities. Lack of a single regulatory approach or registration system has prevented the agency from acquiring information regarding the full size of the cell and tissue industry and the scope of its products. The proposed rule will require all manufacturers of human cellular and tissue-based products to register with the agency and to submit to the agency a list of their products. Through registration and listing, FDA will be able to identify industry participants and the products manufactured. This will enable the agency to more efficiently monitor the industry, distribute new information such as guidances, policies, or requirements, and identify entities that may be subject to inspection by FDA. This action is taken solely under the authority of section 361 of the PHS Act. Section 361 is also used as authority to amend parts 207 and 807 so that the registration data bases developed for drugs and devices may be consolidated with the data base of the proposed human cell and tissue registration program. Section 510 of the act remains the substantive registration requirement

for products subject to parts 207 and 807. FDA has reviewed related Federal rules and has not identified any rules that duplicate, overlap, or conflict with the proposed rule.

B. Small Entities Affected

This proposal affects both entities that currently register with FDA and submit product lists to the agency under applicable sections of the act (parts 207 and 807), and those entities that are not presently required to register or list with the agency. FDA has structured registration and listing to have a minimal impact on affected entities. However, the agency anticipates that the impact will be greater for those entities that do not currently register or list.

The number of entities that will be required to begin registration and listing under part 1271 is difficult to ascertain. Because the agency has not previously regulated certain human cellular and tissue-based products, the agency can only approximate the number of entities that may fall under the requirements of the proposed rule. This lack of accessible, accurate information is, in fact, a major reason behind the agency's registration and listing initiative. In calculating the burden, the agency has used information obtained from various trade organizations related to the human cellular and tissue-based industry. Several organizations also provided estimates of what portion of the industry their membership represented, and the agency included in its analysis the 65 manufacturers of human cellular and tissue-based device products that are registered with the agency under part 807. The Musculoskeletal Transplant Foundation lists approximately 25 tissue and organ recovery members, which it estimates to be about one-third of the tissue and organ procurement organizations in the United States. The National Bone Marrow Donor Program, which includes establishments that recover peripheral blood stem cells, lists approximately 101 donor centers and 114 collection centers in the United States. The American Association of Tissue Banks (AATB) lists approximately 60 tissue banks. The Eye Bank Association of America represents about 112 eye banks, which it estimates is about 95 percent of the U.S. eye banks. The American Society for Reproductive Medicine has a membership of approximately 7,200 physicians, researchers, and other health care professionals, of which perhaps only 120 are fertility doctors who would be subject to the registration and listing requirements. In addition, it is estimated that there are about 90 semen

depositories in commercial operation. Any of the entities described above that engage in manufacture (including, but not limited to, recovery, screening, testing, processing, storage, labeling, packaging, or distribution) of human cellular or tissue-based products would be affected by the proposed rule. A great majority of these approximately 680 entities would be considered "small" under criteria established by the Small Business Administration. FDA invites comments on this analysis of the number of entities that may be affected by the proposed registration and listing rule.

C. Nature of the Impact

The main cost involved in implementing the proposed rule would be the time required to obtain the form, read the instructions, and complete and submit the form. FDA has no precise estimate of the initial registration and listing procedure but estimates that it should require an average of 1 hour of staff time per registrant. This estimate is supported by the estimates prepared for the completion of the blood product registration on FDA Form 2830, which is similar in length, type of information requested, and complexity to the proposed Form FDA 3356 (62 FR 11898, March 13, 1997). In addition, the proposed rule will require an update of the product list which is estimated to require about 0.5 hour of staff time. Thus, registration and listing is anticipated to require about 1.5 hours of staff time per annum. At an estimated \$38.00/hour value of staff time, most registrants are expected to incur an annual cost of approximately \$57.00 to comply with the requirements of the proposed rule. There are no specific educational or technical skills required to complete and submit the registration and listing form. Similar activities are generally completed by trained and qualified employees of an establishment who are intimately involved with the operations of the entity.

The proposed rule is the first step in creating a tiered, risk-based regulatory scheme that will tailor the degree of scrutiny afforded to different products to the risks associated with each product. Through registration and listing, FDA will acquire the information needed to characterize the

nature and extent of the human cellular and tissue-based industry. This information will enable FDA to efficiently and effectively respond to emerging public health concerns related to human cellular or tissue-based products. Lists of industry members and their products will also help FDA disseminate educational materials and other important information regarding FDA policies, guidances, and requirements.

D. Minimizing the Impact on Small Entities

FDA recognizes that a large number of the establishments that would be required to register and list under the proposed rule will be small entities with limited resources. In recognition of this, the agency is proposing that the information to be provided during registration and listing be only that which is necessary to achieve the agency's goals of industry characterization and identification of its participants. To alleviate the impact on entities, especially small entities, FDA proposes that Form FDA 3356 be electronically retrievable. Future development of registration and listing will consider the use of electronic submissions (e-mail or Internet) and electronic signatures.

V. Proposed Effective Date

The agency proposes that any final rule that may issue based on this proposed rule become effective 180 days after its date of publication in the *Federal Register*.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that is categorically excluded from the preparation of an environmental assessment because these actions, as a class, will not result in the production or distribution of any substance and therefore will not result in the production of any substance into the environment.

VII. The Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under

the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, gathering necessary information, and completing and reviewing the report.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Establishment Registration and Product Listing for Manufacturers of Human Cellular and Tissue-based Products.

Description: FDA is proposing to require establishments that recover, screen, test, process, store, label, package, or distribute any human cellular or tissue-based product to register with FDA and submit lists of the manufactured products to be updated twice a year. FDA proposes to define certain terms relevant to registration and listing, define which manufactures will be subject to the provisions of the proposed rule, and provide a form (Form FDA 3356) to be used for the entry of an entity's name and location information and its product list. FDA is proposing this action in response to the agency's public health concerns regarding products comprised of human cells or tissues, or that incorporate such cells or tissues. Through this initiative the agency will improve its ability to protect the public health by controlling the spread of communicable diseases.

Description of Respondents: Manufacturers of human cellular and tissue-based products.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response (average)	Total Hours
1271	FDA 3356	680	2	1,360	0.75	1,020
207.20	FDA 3356	1	2	2	0.75	1.5

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹—Continued

21 CFR	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response (average)	Total Hours
807.20	FDA 3356	65	2	130	0.75	97.5
TOTAL		746	2	1,492	0.75	1,119

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Because many manufacturers of products using human cells or tissues have not been required to register or list with FDA, the agency's ability to predict how many entities would be affected by the proposed rule is limited. The estimates for number of respondents are based on the number of entities currently registered with FDA as manufacturers of human cellular or tissue-based devices, membership information obtained from trade organizations related to the manufacturing of products utilizing human cells or tissues, and an estimate of entities that are not presently registered with FDA or members of trade organizations but that would be subject to registration under the proposed rule. The annual frequency of responses is based on the requirement in the proposed rule for the submission of an annual registration and a biannual product list updating. In practice, it is expected that the annual registration, or annual confirmation of registration for entities that have already registered once, and the first product list update of the biannual requirement will be completed simultaneously on the same form. The hours for response was obtained by averaging the estimates of 1 hour of staff time for the initial, or confirmatory registration and 0.5 hour of staff time for the update of the product list. The "Total Hours" column provides the estimated total number of hours for registration and listing by manufacturers of human cellular and tissue-based products under proposed part 1271, existing §§ 207.20 and 807.20 as they would be amended by the proposal, and a cumulative total for registration and listing by manufacturers of such products under all three sections.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted a copy of this proposed rule to OMB for review of the information collection provisions. Interested persons are requested to submit written comments regarding information collection by June 15, 1998, to the Office of Information and Regulatory Affairs, OMB (address above), Attention: Desk Officer for FDA.

VIII. Request for Comments

Interested person may, on or before August 12, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal, except that comments regarding information collection provisions should be submitted in accordance with the instructions in section VII of this document. Two copies of any comments on issues other than information collection are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 207

Drugs, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 1271

Human cellular and tissue-based products, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that chapter I of title 21 of the Code of Federal Regulations be amended as follows:

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

1. The authority citation for 21 CFR part 207 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 356, 357, 360, 360b, 371, 374; 42 U.S.C. 262, 264, 271.

2. Section 207.20 is amended by adding new paragraph (f) to read as follows:

§ 207.20 Who must register and submit a drug list.

(f) Owners and operators of establishments or persons engaged in the recovery, screening, testing, processing, storage, or distribution of human cellular or tissue-based products, as defined in § 1271.3(e) of this chapter, that are regulated under section 351 of the Public Health Service Act and/or the Federal Food, Drug, and Cosmetic Act shall register and list those products with the Center for Biologics Evaluation and Research on Form FDA 3356 following the procedures set out in subpart B of part 1271 of this chapter, except that the additional listing information requirements in § 207.31 remain applicable.

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

3. The authority citation for 21 CFR part 807 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374; 42 U.S.C. 264, 271.

4. Section 807.20 is amended by adding new paragraph (e) to read as follows:

§ 807.20 Who must register and submit a device list.

(e) Owners and operators of establishments or persons engaged in the recovery, screening, testing, processing, storage, or distribution of human cellular or tissue-based products, as defined in § 1271.3(e) of this chapter, that are regulated under section 351 of the Public Health Service Act and/or the Federal Food, Drug, and Cosmetic Act shall register and list those products with the Center for Biologics Evaluation and Research on Form FDA 3356 following the procedures set out in subpart B of part 1271 of this chapter, except that the additional listing information requirements in § 807.31 remain applicable.

5. New part 1271 is added to read as follows:

PART 1271—ESTABLISHMENT REGISTRATION AND PRODUCT LISTING FOR MANUFACTURERS OF HUMAN CELLULAR AND TISSUE-BASED PRODUCTS

Subpart A—General Provisions

Sec.

- 1271.1 Purpose.
1271.3 Definitions.
1271.10 Who must register and submit a list.
1271.20 Establishments not required to register or list under this part.

Subpart B—Procedures for Registration and Listing

- 1271.21 When to register and list.
1271.22 How and where to register and list.
1271.25 Information required for registration and listing.
1271.26 Amendments to registration.
1271.27 Assignment of a registration number.
1271.37 Inspection of establishment registration and product lists.

Authority: 42 U.S.C. 216, 243, 264, 271.

Subpart A—General Provisions

§ 1271.1 Purpose.

The purpose of this part is to create a unified registration and product listing system for establishments that manufacture human cellular and tissue-based products. Manufacturers of human cellular and tissue-based products regulated under the authority of section 361 of the Public Health Service Act are required by this part to register and list their products with the Food and Drug Administration, Center for Biologics Evaluation and Research. Under §§ 207.20(f) and 807.20(e) of this chapter, manufacturers of human cellular and tissue-based products regulated under section 351 of the Public Health Service Act and/or the Federal Food, Drug, and Cosmetic Act are required to register and list their products following the procedures in subpart B of this part.

§ 1271.3 Definitions.

The following definitions apply only to this part:

- (a) *Autologous* use means the implantation, transplantation, infusion, or transfer of a human cellular or tissue-based product back into the individual from whom the cells or tissue comprising such product were removed.
(b) *Establishment* means a place of business under one management, at one general physical location, that engages

in the manufacture of human cellular or tissue-based products. The term includes, among others, facilities that engage in contract manufacturing services for a manufacturer of human cellular or tissue-based products. The term also includes any individual, partnership, corporation, association, or other legal entity engaged in the manufacture of human cellular or tissue-based products, except that an individual engaged solely in the procurement or recovery of cells or tissues or under contract to a registered establishment is not required to independently register.

(c) *Family-related allogeneic use* means the implantation, transplantation, infusion, or transfer of a human cellular or tissue-based product into a first-degree blood relative of the individual from whom cells or tissue comprising such product were removed.

(d) *Homologous use* means the use of a cellular or tissue-based product for replacement or supplementation and:

- (1) For structural tissue-based products, occurs when the tissue is used for the same basic function that it fulfills in its native state, in a location where such structural function normally occurs; or
(2) For cellular and nonstructural tissue-based products, occurs when the cells or tissue is used to perform the function(s) that they perform in the donor.

(e) *Human cellular or tissue-based product* means a product containing human cells or tissues or any cell or tissue-based component of such a product. The following products are not considered human cellular or tissue-based products and establishments that manufacture only one or more of the following would not be subject to the registration or listing provisions of this part:

- (1) Vascularized human organs for transplantation;
(2) Whole blood or blood components or blood derivative products subject to listing under part 607 of this chapter;
(3) Secreted or extracted human products, such as milk, collagen, and cell factors;
(4) Minimally manipulated bone marrow;
(5) Ancillary products used in the propagation of cells or tissues; or
(6) Cells, tissues or organs derived from animals.

(f) *Manufacture* means, but is not limited to, any or all steps in the recovery, screening, testing, processing, storage, labeling, packaging, or distribution of any human cellular or tissue-based product.

(g) *Minimal manipulation* means:

- (1) For structural tissue, processing that does not alter the original relevant characteristics of the tissue relating to the tissue's utility for reconstruction, repair, or replacement; and
(2) For cells and nonstructural tissues, processing that does not alter the relevant biological characteristics of cells or tissues.
(h) *Transfer* means the placement of human reproductive cells or tissues into a human recipient.

§ 1271.10 Who must register and submit a list.

All owners and operators of establishments, both foreign and domestic, that manufacture human cellular and tissue-based products, whether or not the product enters into interstate commerce, are required under this part to register with the Food and Drug Administration and submit to the agency a list of each human cellular or tissue-based product manufactured, if such product is:

- (a) Minimally manipulated;
(b) Not promoted or labeled for any use other than a homologous use;
(c) Not combined with or modified by the addition of any nontissue or noncellular component that is a drug or a device; and
(d) Does not have a systemic effect; except that a human cellular or tissue-based product that meets the requirements in paragraphs (a), (b), and (c) of this section may have a systemic effect if the product is for:
(1) Autologous use;
(2) Family-related allogeneic use; or
(3) Reproductive use and contains human reproductive cells or tissue.

§ 1271.20 Establishments not required to register or list under this part.

The following establishments are not required to register or submit product listings under this part:

- (a) Establishments that use human cellular or tissue-based products solely for nonclinical scientific or educational purposes;
(b) Establishments that remove human cellular or tissue-based products from an individual and implant such cells or tissues into the same individual during the same surgical procedure;
(c) Carriers who accept, receive, carry, hold, or deliver human cellular or tissue-based products in the usual course of business as carriers; and
(d) Establishments that only receive or store human cellular or tissue-based products solely for pending scheduled implantation, transplantation, infusion, or transfer within the same facility.

Subpart B—Procedures for Registration and Listing

§ 1271.21 When to register and list.

(a) Owners and operators of establishments required to register and list under § 1271.10 or required under other provisions of this chapter to follow the procedures in subpart B of this part shall register within 5 days after beginning operations and shall submit a list of every product that is manufactured.

(b) Owners and operators of establishments shall update their registration annually by December 31, except as required by § 1271.26. Annual registration may be accomplished in conjunction with the updating of product lists under paragraph (c) of this section.

(c)(1) Owners and operators of establishments shall update their product lists during each June and December or, at their discretion, at the time the change occurs, with the following information:

(i) A list of each human cellular or tissue-based product introduced by the registrant for distribution that has not been included in any list previously submitted. The registrant shall provide all of the information required by § 1271.25(b) for each such product.

(ii) A list of each human cellular or tissue-based product formerly listed in accordance with paragraph (a) of this section and for which distribution has been discontinued, including for each product so listed, the identity by established name and proprietary name, and the date of discontinuance. It is requested but not required that the reason for discontinuance of distribution be included with this information.

(iii) A list of each human cellular or tissue-based product for which a notice of discontinuance was submitted under paragraph (c)(1)(ii) of this section and for which distribution has been resumed, including the identity by established name and proprietary name, the date of resumption, and any other information required by § 1271.25(b) not previously submitted.

(iv) Any material change in any information previously submitted. Material changes include any change in whether the product meets the criteria set out in § 1271.10.

(2) When no changes have occurred since the previously submitted list, no report is required.

§ 1271.22 How and where to register and list.

(a) Establishment registration, product listing, and updates of registration and

listing shall be submitted on Form FDA 3356 to the Center for Biologics Evaluation and Research (HFM-370), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, Attention: Tissue Establishment Registration Coordinator, or electronically in accordance with instructions provided with Form FDA 3356.

(b) Copies of Form FDA 3356 can be obtained from the Center for Biologics Evaluation and Research (HFM-370), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, Attention: Tissue Establishment Registration Coordinator (from any Food and Drug Administration district office); by calling the CBER Voice Information System at 1-800-835-4709 or 301-827-1800, or by calling the Fax Information System at 1-888-CBER-FAX or 301-827-3844. Persons with access to the Internet may obtain the document using the World Wide Web (WWW) by connecting to: CBER at "http://www.fda.gov/cber/publication.htm".

§ 1271.25 Information required for registration and listing.

(a) Registration shall include:

- (1) The legal name(s) of the establishment;
(2) Each location, including the street address of the establishment and the postal service zip code;
(3) The name, address, and title of the reporting official; and
(4) A signed and dated statement by the reporting official affirming that all information contained in the registration and listing form is true and accurate.

(b) Listing information shall include all human cellular or tissue-based products (including the established name and the proprietary name) that are recovered, screened, tested, processed, stored, labeled, packaged, and distributed. Listing information shall also include a statement of whether each product meets the criteria set out in § 1271.10.

(c) Copies of all contract service agreements shall be available at the time of inspection of the establishment.

§ 1271.26 Amendments to registration.

Changes in the ownership or location of an establishment shall be submitted as an amendment to registration within 5 days of such changes.

§ 1271.27 Assignment of a registration number.

(a) A permanent registration number will be assigned to each location.

(b) FDA acceptance of establishment registration and listing forms for human

cellular and tissue-based products does not constitute a determination that an establishment is in compliance with applicable rules and regulations.

§ 1271.37 Inspection of establishment registration and product lists.

(a) A copy of the Form FDA 3356 filed by each establishment will be available for inspection at the Office of Communication, Training, and Manufacturers Assistance (HFM-48), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. In addition, there will be available for inspection at each of the Food and Drug Administration district offices the same information for firms within the geographical area of such district office. Upon request and receipt of a self-addressed stamped envelope, verification of a registration number or the location of a registered establishment will be provided. The following information submitted under the human cellular and tissue-based product requirements is illustrative of the type of information that will be available for public disclosure when it is compiled:

- (1) A list of all human cellular and tissue-based products;
(2) A list of all human cellular and tissue-based products manufactured by each establishment;
(3) A list of all human cellular and tissue-based products discontinued; and
(4) All data or information that has already become a matter of public record.

(b) Requests for information regarding human cellular and tissue-based product establishment registrations and product listings should be directed to the Office of Communication, Training and Manufacturers Assistance (HFM-48), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448.

Dated: March 10, 1998.

Michael A. Friedman,
Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.
[FR Doc. 98-12751 Filed 5-13-98; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70 and 71

RIN 1219-AB05

Occupational Noise Exposure; Correction

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the RIN number to the rule for health standards for occupational noise exposure published in the *Federal Register* on December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

Correction

On December 31, 1997, (62 FR 68468) MSHA published a supplemental proposed rule on health standards for occupational noise exposure. This document corrects an error that appears on the front page of the notice. The RIN number 1219-AA53 is corrected to read 1219-AB05.

Dated: May 7, 1998.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 98-12757 Filed 5-13-98; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Ch. I

46 CFR Ch. I

[USCG-1997-3198]

Alternate Convention Tonnage

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments; extension of comment period.

SUMMARY: The Coast Guard is extending the comment period on its notice requesting comments on the potential implementation of alternate convention tonnage thresholds to October 15, 1998, to allow additional time for public comment.

DATES: Comments must be received on or before October 15, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG-1997-3198], U.S. Department of

Transportation, room PL-401, 400 Seventh Street SW., Washington DC 20590-0001, or deliver them to room PL-401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room PL-401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions about the notice, call Lieutenant John G. White, Office of Standards Evaluation and Development (G-MSR-2), Coast Guard, telephone 202-267-6885. For information on the public docket, call Carol Kelley, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this request by submitting written data, views, or arguments. If you submit comments, you should include your name and address, identify this notice (USCG-1997-3198) and the specific section or question in this document to which your comments apply, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

The Coast Guard may schedule a public meeting depending on input received in response to this notice. You may request a public meeting by submitting a request to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that a public meeting should be held, it will hold the meeting at a time and place announced by a later notice in the *Federal Register*.

Background and Purpose

On February 4, 1998, the Coast Guard published a notice requesting comments in the *Federal Register* (63 FR 5767) to announce it was considering development of alternate tonnage thresholds for certain vessels based on the measurement system established under the International Convention on Tonnage Measurement of Ships, 1969. Existing tonnage thresholds in domestic laws and regulations are based on the U.S. regulatory measurement system. Establishing alternate convention tonnages as an option for the application of domestic regulations may result in the building of safer, more efficient vessels and may enable designers and operators of U.S. vessels to be more competitive in the international market. The Coast Guard asked for comments on the issues and questions listed in the notice. Due to the special need for public comment on this issue and requests for a comment period extension from the public, the Coast Guard is extending the comment period to October 15, 1998.

Dated: May 8, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environment Protection.

[FR Doc. 98-12847 Filed 5-13-98; 8:45 am]

BILLING CODE 4910-15-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 256

[Docket No. RM 98-4]

Cable Compulsory Licenses: Application of the 3.75% Rate

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed amendments and policy statement.

SUMMARY: On April 30, 1997, the Copyright Office published an amendment to its rules to allow a cable system to calculate its copyright liability for carriage of distant signals on a partially permitted/partially non-permitted basis where applicable. Under the new rule, a cable system will apply the current base rates and the syndicated exclusivity surcharge, where applicable, to those subscribers in communities where the signal would have been permitted on or before June 24, 1981, and the 3.75% rate to those subscribers in communities where the signal would not have been permitted before that date. Both the base rate fee

and the 3.75% fee shall be applied toward the required minimum fee. These changes, however, are not reflected clearly in the current regulations. Therefore, the Copyright Office is proposing amendments which would harmonize the existing regulations with the new methodology for calculating the royalty fees for carriage of partially permitted/partially non-permitted distant signals.

DATES: Comments on the proposed technical amendments are due June 15, 1998.

FOR FURTHER INFORMATION CONTACT:

David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone (202) 707-8380 or Telefax (202) 707-8366.

SUPPLEMENTARY INFORMATION: Section 111 of the Copyright Act, 17 U.S.C., establishes a compulsory license which authorizes a cable system to make secondary transmissions of copyrighted works embodied in broadcast signals provided that it pays a royalty fee according to the fee structure set out in section 111 and meets all other conditions of the statutory license. The license also provides for an opportunity to adjust the statutory royalty rates once every five years, see 17 U.S.C. 803(a)(2), or whenever the Federal Communications Commission (FCC) amends its rules to allow a cable system to carry additional signals beyond the local service area of the primary transmitter, or its rules governing syndicated program and sports exclusivity. See 17 U.S.C. 801(b)(2)(B)-(C).

The FCC's distant signal and syndicated program exclusivity rules were promulgated in 1972. Cable Television Report and Order, 36 F.C.C. 2d 143 (1972). In 1976 after Congress created the cable compulsory license, the FCC conducted an inquiry to reexamine the need for these rules and determined ultimately that there was no longer a need for maintaining the distant signal and syndicated program exclusivity rules. Report and Order in Docket Nos. 20988 and 21284, 79 FCC2d 663 (1980).

In response to the FCC's order repealing its distant signal carriage and program syndication exclusivity restrictions on cable retransmissions, see Report and Order in Docket Nos. 20988 and 21284, 79 F.C.C. 2d 663 (1980),¹ the National Cable Television

¹ The U.S. Court of Appeals for the Second Circuit stayed the FCC order pending an appeal of its decision. On June 16, 1981, the court upheld the FCC order. see *Malrite T.V. of New York, Inc. v.*

Association (NCTA) filed a petition with the former Copyright Royalty Tribunal (CRT) to initiate a cable rate adjustment proceeding in 1981.² In that proceeding, the CRT set two new rate structures, apart from those specified in the statute, to compensate the copyright owners for the loss of the surrogate copyright protection afforded them under the FCC rules: a 3.75% rate for the secondary transmission of formerly non-permitted distant signals, and a syndicated exclusivity surcharge for the secondary transmission of permitted signals that had been subject to the FCC's former syndicated program exclusivity regulations. 47 FR 52146 (November 19, 1982).

In 1984, the Copyright Office adopted final regulations to implement the new rate decision of the CRT, but when questions concerning the proper application of the rules concerning the 3.75% rate arose, the Office decided to take no position on this issue. See 49 FR 26722, 26726 (June 29, 1984). Instead, the Office allowed each cable system to decide whether to report a distant signal as entirely permitted, entirely non-permitted, or in some instances as partially permitted and partially non-permitted, and calculate its copyright liability accordingly.

This practice comes to an end under a regulation promulgated last year which directs cable systems to calculate the 3.75% rate fee for distant signals on a "partially permitted/partially non-permitted" basis. 62 FR 23360 (April 30, 1997). Under the new rule, a cable system shall calculate its royalty fees for a partially permitted/partially non-permitted signal on the basis of gross receipts from subscribers within the relevant communities, without regard to whether the subscriber actually receives the signal. If the distant signal is considered permitted with respect to particular communities under the Federal Communication Commission's former distant carriage rules in effect on June 24, 1981 (or in the case of those systems that commenced operation after June 24, 1981, would have been considered permitted subject to these regulations), then the cable system shall apply the base rate to the signal in those communities. Alternatively, if the FCC rules would not have allowed carriage of the signal with respect to specific communities, then the cable system

F.C.C., 652 F.2d 1140 (2d Cir. 1981), cert. denied, 454 U.S. 1143 (1982), and vacated the stay on June 25, 1981.

² The American Society of Composers, Authors, and Publishers (ASCAP), and the Motion Picture Association of America (MPAA) also filed separate petitions requesting an adjustment of the cable rates with the CRT in 1981.

must apply the 3.75% rate to the signal. 62 FR 23360 (April 30, 1997). In an effort to clarify how to file a statement of account in those instances where the cable system carries partially permitted/partially non-permitted signals, the Office proposes additional regulatory language describing how to create discrete subscriber groups for calculating the appropriate 3.75% fee, the base fee, and any applicable syndicated exclusivity surcharge. Similarly, for the accounting period beginning January 1, 1998, we have begun revision of the statement of account form to include some specific changes and special instructions to guide cable systems in making these computations.

The Office also proposes amending 37 CFR 256.2 by specifying "paragraphs (a)(2) through (4)" when the reference is to the base fee in place of the more general reference to "paragraph (a)." The Office makes this proposal because paragraph (a)(1) explains how to calculate the minimum fee whereas paragraphs (a)(2) through (4) explain the methodology for calculating the base fee. The Office also suggests adding amendatory language to § 256.2(a)(1) which makes it clear that both the base fee and the 3.75% fee shall be applied toward the cable system's obligation to pay a statutory minimum.³ 17 U.S.C. 111(d)(1)(B)(i). These suggested changes do not effect the substance of the current regulations in any material way.

List of Subjects

37 CFR Part 201

Cable television, Copyright, Jukeboxes, Literary works, Satellites.

37 CFR Part 256

Cable television, Copyright.

In consideration of the foregoing, parts 201 and 256 are proposed to be amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.17(h)(2)(iv) is amended by adding the phrase "and the

³ In a policy statement issued in 1986, the Office considered whether a cable system could apply both the base fee and the 3.75% fee toward the minimum fee imposed by law, see 17 U.S.C. 111(d)(1)(B)(i), and determined that the minimum fee would not be added to the base fee in those instances where the 3.75% fee exceeded the minimum fee. 51 FR 599 (January 7, 1986). In making this decision, the Office relied upon statements in the House report accompanying the Copyright Act of 1976, which indicated that any fee for a distant signal should be applied against the minimum. H.R. Rep. No. 94-1476, at 96 (1976).

syndicated exclusivity surcharge, where applicable," after the phrase "the current base rate".

3. Section 201.17(h)(2)(iv) is amended by adding three sentences to the end of the paragraph to read as follows:

§ 201.17 **Statements of Account** covering compulsory licenses for secondary transmissions by cable systems.

(h) . . .

(2) . . .

(iv) . . . The calculations shall be based upon the gross receipts from subscribers within the relevant communities. No cable system shall make its calculations based solely on the number of subscribers receiving a particular signal. For partially-distant stations, gross receipts shall be the total gross receipts from subscribers outside the local service area."

PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

4. The authority citation for part 256 continues to read as follows:

Authority: 17 U.S.C. 801–803.

5. Section 256.2(a)(1) is amended by removing the word "fee" and adding the word "fees" before the phrase ", if any."

6. Section 256.2(a)(1) is amended by adding the phrase "and (c)" after "(4)".

7. Section 256.2(c) is amended by adding the phrase "(2) through (4)" after the "(a)" in the phrase which reads "the royalty rate shall be in lieu of the royalty rates specified in paragraphs (a) and (d) of this section."

Dated: May 7, 1998.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 98–12652 Filed 5–13–98; 8:45 am]

BILLING CODE 1410–31–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 97, and 101

[WT Docket No. 98–20; DA 98–827]

Facilitate the Development and Use of the Universal Licensing System

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Commission has released an order which extends the filing

deadlines for comments on its *Notice of Proposed Rulemaking* (FCC 98–25) regarding the Universal Licensing System. We also waive the rules that require the paper filing of comments and replies. Consequently, the electric filing of comments and replies will be permitted. These steps have been taken to permit more thorough, detailed comments and replies on the proposed rulemaking to be filed with the Commission. The effect will be to improve the quality of the Commission's final determinations in this rulemaking.

DATES: Comments are due on or before May 22, 1998; reply comments are due on or before June 8, 1998.

ADDRESSES: Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wilbert Nixon or Chris Gacek of the Policy & Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, (202) 418–7240.

SUPPLEMENTARY INFORMATION: The following documents relate to the aforementioned rulemaking *Notice of Proposed Rulemaking*, WT Docket No. 98–20, FCC 98–25, 63 FR 16938, April 7, 1998, (ULS NPRM); Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order*, GC Docket No. 97–113, FCC 98–56, 63 FR 24121, May 1, 1998; Implementation of Section 255 of the Telecommunications Act of 1996, *Notice of Proposed Rulemaking*, WT Docket No. 96–198, FCC 98–55 (adopted April 2, 1998; released April 20, 1998), paragraph 185.

The order may be found on the internet at: <<http://www.fcc.gov/Bureaus/Wireless/Orders/1998/da980827.txt>>.

Federal Communications Commission.

Ramona E. Melson,

Chief, Policy & Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 98–12835 Filed 5–13–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[MM Docket No. 98–35; DA: 98–854]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Pursuant to the request of the National Association of Broadcasters, the Chief, Mass Media Bureau, acting under delegated authority, extends the comment and reply comment deadlines, on whether any or all of its broadcast ownership rules are no longer in the public interest as a result of competition, for sixty days. The new deadlines will be July 21, 1998, for comments and August 21, 1998, for reply comments.

DATES: Comments are now due by July 21, 1998, and reply comments are due by August 21, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division, (202) 418–2134, or Dan Bring, Mass Media Bureau, Policy and Rules Division, (202) 418–2170.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order* in MM Docket No. 98–35, DA–854, adopted and released May 7, 1998. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036. The *Order* is also available on the Internet at the Commission's web site: <http://www.fcc.gov>.

1. On March 12, 1998, the Commission, pursuant to Section 202(h) of the Telecommunications Act of 1996 ("Telecom Act"),¹ adopted a Notice of Inquiry ("Notice"), 63 FR 15353, March 31, 1998, in this proceeding soliciting comment on all of the Commission's broadcast ownership rules except for those already being examined in pending proceedings. The deadline for filing comments was set at May 22, 1998, and for reply comments June 22, 1998.

2. On April 20, 1998, the National Association of Broadcasters ("NAB") filed a "Motion for Extension of Time of Comment and Reply Comment Deadlines" seeking a sixty-day extension of the comment and reply comment deadlines. NAB states that it has identified several areas pertinent to the biennial review in which it plans to complete research and analysis. It believes that the results of these studies, and additional studies currently being

¹ Pub. L. No. 104–104, 110 Stat. 56 (1996).

discussed among NAB's staff and other parties, will be helpful to the Commission's inquiry. Furthermore, NAB asserts, the issues raised by the Notice, and the NAB's position on them, will be major subjects of its Joint Board of Directors meeting scheduled June 27–30, 1998.

3. We will grant the requested extension. Although the Commission has a policy of not routinely granting extensions of time for filing comments in rulemaking proceedings,² this proceeding raises a number of complex issues concerning the nature, dimension, and competitiveness of the several markets in which the subject rules operate. A well-documented record will best conduce to an informed decision as to which of the Commission's broadcast ownership rules are no longer necessary in the public interest as a result of competition. Additionally: (1) The National Association of Broadcasters represents many of the parties that will most directly be affected by any actions we take in this proceeding; (2) it has shown good cause why a sixty-day extension will enable it to provide more well-informed comments; and (3) no party will be prejudiced by this extension. Rather, all may make good use of this added time to prepare and present well-supported comments on these important issues.

4. This action is taken pursuant to the authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and sections 204(b), 0.283, and 1.45 of the Commission's Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 98–12668 Filed 5–13–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. FHWA–97–3201]

RIN 2125–AE15

Parts and Accessories Necessary for Safe Operation; Rear Impact Guards and Rear Impact Protection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

² 47 CFR 1.46.

SUMMARY: The FHWA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require that certain trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds) or more, and manufactured on or after January 26, 1998, be equipped with rear impact guards that meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 223. The rear impact guards would be installed to ensure that the trailer or semitrailer meets the rear impact protection requirements of FMVSS No. 224. This rulemaking is intended to ensure that the rear impact protection requirements of the FMCSRs are consistent with the FMVSSs and to improve the safety of operation of commercial motor vehicles (CMVs) by reducing the incidence of passenger compartment intrusion during underride accidents in which the passenger vehicle strikes the rear of the trailer. With regard to trailers manufactured before January 26, 1998, the FHWA is not proposing that motor carriers be required to retrofit a rear impact guard that conforms to FMVSS No. 223. However, motor carriers operating these trailers would be required to continue complying with the FHWA's current requirements for rear impact guards and rear impact protection.

DATES: Comments must be received on or before July 13, 1998.

ADDRESSES: Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., et., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., et., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the

universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: <http://www.nara.gov/nara/fedreg> and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

Background

On January 24, 1996 (61 FR 2003), the National Highway Traffic Safety Administration (NHTSA) published a final rule creating Federal Motor Vehicle Safety Standards (FMVSSs) Nos. 223, Rear Impact Guards, and 224, Rear Impact Protection. The requirements apply to trailers manufactured on or after January 26, 1997.

The first standard, FMVSS No. 223 (49 CFR 571.223), specifies performance requirements that rear impact guards must meet before they can be installed on new trailers and semitrailers. It specifies strength requirements for the impact guards as well as test procedures that manufacturers and the NHTSA will use to determine compliance with the standard. The standard also requires the guard manufacturer to permanently label the impact guard to certify that the device meets the requirements and to provide instructions on the proper installation of the guard.

The second standard, FMVSS No. 224 (49 CFR 571.224), requires that most new trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or more be equipped with a rear impact guard meeting FMVSS No. 223. Requirements for the location of the guard relative to the rear end and sides of the trailer are also specified in the vehicle standard. In addition, the vehicle standard requires that the guard be mounted on the trailer or semitrailer in accordance with the instructions of the guard manufacturer.

History of Current FHWA Requirements

The first Federal requirements concerning heavy vehicle rear underride protection were issued in 1952 by the Bureau of Motor Carriers of the Interstate Commerce Commission (ICC) (presently the Office of Motor Carriers of the Federal Highway Administration). The regulation, which is still in effect (49 CFR 393.86), requires heavy trucks, trailers, and semitrailers to be equipped with a rear-end protection device

designed to help prevent underride. The rule requires that the ground clearance of the underride guard be no more than 760 mm (30 inches) when the vehicle is empty. The rule also requires that the underride guard be located no more than 610 mm (24 inches) forward of the rear of the vehicle and that it extend laterally to within 460 mm (18 inches) of each side. The underride device is required to be "substantially constructed and firmly attached."

The language that the ICC adopted was based upon the recommendations of the Bumper Heights Committee of the Society of Automotive Engineers (SAE). On January 2, 1947, the Director of the Bureau of Motor Carriers sent a letter to the SAE requesting that the Bumper Heights Committee consider expanding its work on passenger car bumpers to include recommendations for rear bumpers on heavy vehicles. The SAE provided a report entitled "Recommendations Covering Rear Bumpers on Trucks and Trailers," in September 1947. A copy of the report is included in the docket file.

NHTSA and FHWA Efforts To Develop Improved Underride Regulations

Efforts to improve the Federal requirements for rear underride protection started in the late 1960's. On October 14, 1967, the FHWA's National Highway Safety Bureau (NHSB, the predecessor of the NHTSA) issued an advance notice of proposed rulemaking (ANPRM) requesting comments on possible amendments to the Federal Motor Vehicle Safety Standards (32 FR 14278).

On March 19, 1969, the NHSB issued a notice of proposed rulemaking on rear underride protection devices (34 FR 5383). The proposal would have applied to all new trucks and trailers (except pole trailers) with a GVWR greater than 4,536 kgs (10,000 pounds). The maximum ground clearance for the underride protection would have been 457 mm (18 inches). The proposal also included a static strength test that would have required that the device deflect no more than 381 mm (15 inches) forward of the rearmost part of the vehicle when a force of 333,600 Newtons (75,000 pounds) was applied.

In 1970, the NHSB (acting as a regulatory agency within the Department of Transportation but independent of the FHWA) issued a supplemental notice of proposed rulemaking (SNPRM) in response to comments to the 1969 NPRM (35 FR 12956, August 14, 1970). The commenters had expressed concern about operational problems that would be created if the ground clearance for

the rear underride guard could not exceed 457 mm (18 inches). Commenters also expressed concerns about the test procedures. Although the NHSB did not increase the ground clearance for the underride guard, the agency proposed reducing the test force requirements from 333,600 Newtons (75,000 pounds) to 222,400 Newtons (50,000 pounds).

The NHTSA (successor to the NHSB pursuant to the Highway Safety Act of 1970) terminated the rulemaking on rear underride on June 18, 1971 (36 FR 11750). The NHTSA stated that "[b]ased upon the information received in response to the notices and evaluations of cost and accident data, the Administration has concluded that, at the present time, the safety benefits achievable in terms of lives and injuries saved would not be commensurate with the cost of implementing the proposed requirements."

In response to a petition for rulemaking from the Insurance Institute for Highway Safety (IIHS) and a March 16, 1977, hearing before the Senate Committee on Commerce, Science, and Transportation on auto-truck crash safety, the NHTSA and the FHWA jointly issued an ANPRM requesting information on possible revisions to 49 CFR 571 and 49 CFR 393.86 (42 FR 43414, August 29, 1977). The notice stated:

[I]t is the conclusion of the Department of Transportation that the present requirements should be reexamined because the problem of rear underride accidents remains, and it is likely to become more severe as automobiles become smaller and are used in greater numbers. Improved rear end protection devices on heavy motor vehicles that may contribute substantially to saving lives and preventing injuries may be possible without incurring either unacceptable costs or unacceptable restrictions on operations.

The notice also indicated that the FHWA was starting a research program to "establish the level of rear underride protection needed to reduce injuries and fatalities in a variety of realistic accident situations." The goals of the research program were described:

This will be an attempt to develop a number of rear underride designs to determine the desired level of performance, giving due consideration to cost, weight, and operational problems. Results of this contract effort will be used in determining what form any amendments to FMCSR Section 393.86 and FMVSS Part 571 should take.

The FHWA and the NHTSA worked together in developing a rear underride research program and initiated two separate studies. The FHWA contracted with the Texas Transportation Institute (TTI) of Texas A&M University to

develop low-cost underride guards that would be practical and effective in preventing underride. The NHTSA contracted with Dynamic Sciences, Inc. (DSI) to develop compliance test procedures for the guards. These joint contract efforts were intended to generate sufficient data to support a rule applicable to vehicles with a GVWR greater than 4,536 kg (10,000 pounds).

The research contracts focused on preventing excessive underride primarily through the use of a rigid guard having a low ground clearance. This approach was similar to that followed by IIHS in a test program conducted in 1976. The tests performed by TTI and DSI demonstrated what the IIHS program had shown earlier: Excessive underride could be prevented with rigid guards. However, the tests also indicated that rigid guards increase the deceleration forces experienced by passenger car occupants during a crash and therefore increase the risk of injury due to hazards other than underride.

Restrainted anthropomorphic test devices (commonly referred to as test dummies) placed in passenger cars that were crashed into the rigid guards at speeds of 56.3 km/hr (35 mph) or more experienced injury responses (forces detected by sensors in the test dummies) that were outside of the ranges allowed under FMVSS No. 208, Occupant Crash Protection. This was significant because the accident statistics available at that time indicated that most accidents in which a passenger car collided with a heavy vehicle rear end were survivable. The data further indicated that a majority of the fatalities that occurred took place in accidents that did not involve excessive underride.

Dynamic Sciences, Inc. also tested production underride devices that were typical of the guards in use at the time. The guards were not able to prevent small cars from excessively underriding test trailers at collision speeds above 48.3 km/hr (30 mph). In these tests, the dummies experienced injury responses that were above the limits of FMVSS No. 208. When small cars were crashed into the guards, the guards did not fail (i.e., did not permanently deform). In tests of large cars at collision speeds of 48.3 km/hr (30 mph), underride was excessive in offset collisions but not when the collision was centric. Occupant injury responses were within the allowable limits of FMVSS No. 208 and none of the guards failed. Occupant injury responses were also within the permissible limits of FMVSS No. 208 when the large cars were crashed into the guard at 64.4 km/hr (40 mph). However, the underride was excessive

and the guards were permanently deformed.

In addition, the TTI program tested a hydraulic energy-absorbing guard manufactured by Quinton-Hazell Automotive Ltd. (Quinton-Hazell). The Quinton-Hazell device was very effective at preventing excessive underride, reducing occupant injury responses, and reducing damage to the colliding vehicle.

The TTI also conducted two tests in which passenger vehicles were crashed into a van-type trailer that had no guard but whose adjustable rear wheels were set in the rearmost position. The purpose of these tests was to determine the effectiveness of rear tandems as a means for preventing underride. The tests demonstrated that the rear wheels, when placed at the extreme rear of the truck or trailer, prevent excessive underride at approximately 56.3 km/hr (35 mph). Further, the restrained dummies used in these tests experienced injury responses that were within the allowable limits of FMVSS No. 208.

The NHTSA issued an NPRM on January 8, 1981 (46 FR 2136). The proposed standard would have required large trucks and trailers to be equipped with an underride guard that met specified strength requirements and prescribed requirements concerning the configuration of the impact guard. The proposed standard differed from the FHWA's regulation in three ways. First, the NHTSA's proposal included objective strength requirements for the guard. Second, the proposed configuration requirements would have resulted in the guard having a lower ground clearance and being closer to the rear of the vehicle. Third, the NHTSA's proposed impact guard would have been wider (i.e., closer to the sides of the vehicle).

Based upon comments received in response to the 1981 NPRM and the results of the TTI and DSI studies, the NHTSA published a supplemental notice of proposed rulemaking (SNPRM) (57 FR 252, January 3, 1992). Instead of a vehicle-based safety standard as proposed in 1981, the NHTSA proposed separate standards for the impact guard as an item of motor vehicle equipment and for the vehicle. The equipment standard would specify the strength requirements that the guard would have to meet when attached to a rigid test fixture rather than the vehicle. The vehicle standard would require vehicle manufacturers to install a guard meeting the equipment standard, and to certify that the trailer has an impact guard installed at the required location.

The NHTSA's Vehicle Research and Test Center (VRTC) initiated a program to develop and evaluate the effectiveness of a rear impact guard design that would meet the proposed requirements. The VRTC developed a static test fixture and fabricated an impact guard design that met, but did not exceed, the minimum requirements. A number of additional guards were fabricated and tested to evaluate the repeatability of the design.

In addition, a rigid simulated trailer was developed to mount the guard for dynamic testing. Two sub-compact and two compact vehicle models were selected for crash testing to evaluate the effectiveness of the guard design in preventing rear underride injuries. Tests were conducted using the simulated trailer and an actual tractor trailer. A crash test was also performed with a rigid guard configuration for comparison with the results of the design. The researchers concluded that:

1. The currently proposed maximum guard height of 22 inches appeared to adequately engage the structures of all 4 vehicles tested (Honda Civic, Ford Tempo, General Motors Saturn, and Chevrolet Corsica). The test vehicles were all high sales volume sub-compact and compact models with a low frontal profile.

a. The guards contacted each vehicle just above the bumper, engaging hood and fenders, engine, and upper suspension support structures.

b. The air bag restraints of all 4 vehicles deployed early enough to provide protection for the unbelted driver dummy.

2. For the test conducted, the 22 inch guard height prevented occupant compartment intrusion as long as the attachment at the guard/trailer interface was sufficiently strong. In one test (the first Saturn test), the guard attachment hardware failed. In the first test with the production trailer, the trailer sub-frame rails to which the guard was attached also failed. In each case, the mounting hardware was changed and all subsequent tests produced no interface failure or occupant compartment intrusion by the rear end of the trailer.

3. There is a trade-off between energy absorption, which reduces occupant accelerations by allowing the guard to give, and limiting underride, which reduces the possibility of passenger compartment intrusion. It is possible to significantly increase the strength of the guard, without exceeding the NHTSA's Occupant Crash Protection criteria [FMVSS No. 208 (49 CFR 571.208) Occupant Crash Protection].

The Corsica test with the "minimally compliant" guard design resulted in a clearance of 0.2 inches between the rear of the trailer and the forward-most part of the windshield after the collision, and low test dummy injury responses. A rigid guard test for the same vehicle resulted in 32.2 inches of clearance to the windshield. Dummy injury

responses increased with one chest response just over 60 g's [60 times gravitational acceleration, 9.825 m/sec² (32.2 feet/sec²)], but in general response levels were similar to that seen in [FMVSS No. 208 compliance] tests.

A copy of the NHTSA's report, "Heavy Truck Rear Underride Protection," DOT HS 808-081, June 1993, has been placed in the docket file.

On January 24, 1996, the NHTSA issued a final rule establishing new safety standards for rear impact guards and rear impact protection (61 FR 2004). The rule applies to certain trailers manufactured on or after January 26, 1998. One of the major differences between the final rule and the SNPRM is the addition of a requirement for energy absorption. The SNPRM would have permitted fairly rigid guards because it did not require the guard to yield in response to force. The preamble to the final rule indicated that rigid guards may stop the passenger vehicles too quickly, causing occupant deaths and injuries.

The NHTSA also changed some of the impact guard configuration requirements to allow rounded guard ends. To account for high rear overhang on trailers such as automobile transporters, the NHTSA changed the definition of the vertical zone to be considered when determining the trailer's rear extremity. The location of the guard is based upon the location of the rear extremity.

On January 26, 1998, the NHTSA issued a final rule responding to petitions for reconsideration of the 1996 final rule, and making technical amendments to the rear impact guard requirements (63 FR 3654). The 1998 final rule clarified the applicability of the energy-absorption requirements with regard to cargo tank motor vehicles, as defined in 49 CFR 171.8, excluded pulpwood trailers from the rear impact protection requirements (a definition of pulpwood trailer was added to § 571.224), and revised the definition of special purpose vehicle.

Discussion of the FHWA Proposal

To ensure that the safety benefits intended by the NHTSA rulemaking are achieved, the FHWA is proposing to amend § 393.86 to establish a requirement that certain trailers manufactured on or after January 26, 1998, and operated in interstate commerce, be equipped to comply with FMVSS Nos. 223 and 224. This action is necessary because the FMVSSs are applicable only to vehicle and vehicle component manufacturers. In the absence of an amendment to the FMCSRs, there would be no Federal

requirement that motor carriers maintain their trailers to conform to the rear impact protection requirements of FMVSS No. 224, or repair damaged rear impact guards. Motor carriers could also replace rear impact guards with devices that failed to comply with the NHTSA requirements.

Paragraph (a) of § 393.86 would provide a general statement of the applicability of the new rear impact guard requirements and cross reference FMVSS Nos. 223 and 224. Paragraph (a) would also identify the types of trailers (which would be defined in § 393.5) that are exempted from the new rear impact guard requirements. Paragraphs (b) through (e) would specify the following requirements, respectively: The minimum width for the impact guard; the maximum ground clearance; the maximum distance from the rear of the vehicle to the rear surface of the impact guard; and the cross-sectional vertical height of the horizontal member of the guard. Paragraph (f) would specify the certification and labeling requirements. The agency is proposing to include detailed requirements in § 393.86(b) through (f) to help motor carriers quickly determine if the underride device on a newly manufactured trailer meets the NHTSA's requirements, and to assist State agencies responsible for enforcing motor carrier safety regulations.

The existing requirements (for all commercial motor vehicles manufactured after December 31, 1952, except trailers or semitrailers manufactured on or after January 26, 1998) would be covered under paragraphs (g) through (i). Paragraph (g) would specify the minimum dimensions for the rear impact guard as installed on the motor vehicle. Paragraph (h) would specify that the impact guard must be substantially constructed and attached by bolts, welding, or other comparable means. Paragraph (h) differs from the current attachment requirements in that the phrase "firmly attached" would be replaced with "attached by means of bolts, welding, or other comparable means" to make the regulations easier to understand and enforce.

The current language contained in paragraph (e) would be revised and included in a new paragraph (i). The FHWA would specify that low chassis vehicles, special purpose vehicles, and wheels-back vehicles which are constructed and maintained so that the body, chassis, or other parts of the vehicle provide rear end protection comparable to an impact guard(s) conforming to the requirements of paragraph (g) of § 393.86 shall be

considered in compliance with the requirements.

Retrofitting

The FHWA is not proposing a retrofitting requirement for improved rear impact protection on trailers and semitrailers manufactured before January 26, 1998. There is insufficient accident, cost, and research data to support such a proposal at this time. The types of data required to justify a retrofitting requirement would be much more detailed than the information analyzed by the NHTSA.

Section 393.86(g) does not specify minimum strength requirements, or energy absorption capabilities, nor does it prohibit the use of impact guards that have a ground clearance less than 762 mm (30 inches), and impact guards that are closer than 61 cm (24 inches) to the rear and 45.7 cm (18 inches) to the sides of the vehicle. In addition, the existing standard allows impact guards to be constructed of more than one section provided the distance between the sections does not exceed 610 mm (24 inches). As a result, manufacturers have used a number of rear impact guard designs to satisfy the FHWA's requirements.

To develop a sound technical basis for a retrofitting proposal, the FHWA would have to establish criteria for determining which of the older impact guard designs should be considered acceptable, and which ones should be replaced. The FHWA would then have to estimate the total number of guards that would have to be replaced or modified, the total cost for replacing or modifying those guards (including lost revenues while the trailer was being retrofitted), and the benefits in lives saved and injuries prevented if a certain number of vehicles were retrofitted. This is particularly difficult because some rear impact guards currently in use may meet or exceed the NHTSA's strength requirements but fail to meet dimensional or energy absorption requirements. Others may meet the dimensional requirements but fall short of the minimum strength requirements.

The FHWA does not have test data or engineering analyses concerning the performance capabilities of any of the rear impact guard designs currently in use. The ICC did not have authority to regulate vehicle and component manufacturers when it issued the first rear underride protection requirements in 1952 and, consequently, had no authority to compel manufacturers to provide technical data on their products. Also, the initial FMVSSs issued by the FHWA did not include rear impact protection requirements.

Therefore, the agency did not have access to this information during the relatively short period of time (between 1966 and 1970, when the NHTSA was established) in which vehicle and component manufacturers were regulated by the FHWA. Because of the lack of technical data concerning the performance capabilities of underride devices currently in use, the agency cannot prepare an accurate estimate of the costs and benefits associated with a retrofitting requirement.

The FHWA specifically requests comments from any interested party with data relevant to the costs and benefits of retrofitting.

Applicability to Canadian and Mexican Vehicles

The FHWA is not proposing an exemption for CMVs operated in the United States by Canada- and Mexico-based motor carriers. Although the Federal governments of Canada and Mexico have not indicated whether they intend to require rear impact guards (which meet the NHTSA standard) on newly manufactured trailers operating in their countries, the FHWA believes that it is appropriate to require such guards on foreign-based trailers manufactured on or after the effective date of the NHTSA requirements if those vehicles are operated within the United States.

Vehicles operated in the United States by Canada- and Mexico-based motor carriers are required to comply with the existing rear underride device requirements. The proposed revision of § 393.86 would require that trailers and semitrailers manufactured on or after January 26, 1998, and operated by foreign-based motor carriers meet the NHTSA standards. The FHWA specifically requests comments from Canada- and Mexico-based motor carriers and original equipment manufacturers that sell trailers and semitrailers for the Canadian and Mexican markets.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the FHWA may adopt a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the public docket, relevant information that becomes available after the

comment closing date. Interested persons should continue to examine the public docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. This rule would, if adopted, require that certain trailers and semitrailers manufactured on or after January 26, 1998, be equipped with rear impact protection devices meeting the requirements of FMVSS No. 223 and installed on trailers in accordance with FMVSS 224. Motor carriers would be responsible for maintaining the underride protection devices on these trailers. It is anticipated that the economic impact of this proposed requirement would be minimal because the NHTSA requires trailer manufacturers to equip new trailers and semitrailers with rear impact guards and the FHWA's rulemaking would only require motor carriers to maintain the improved underride protection devices. It is expected that the costs of repairing damaged underride devices would be the only economic burden placed upon motor carriers and that this burden generally would not exceed the costs of properly repairing underride devices on trailers manufactured prior to the effective date of the NHTSA's requirements. Accordingly, a full regulatory evaluation is not required. For the purposes of the Department of Transportation's regulatory policies and procedures, however, the proposed rule would be significant because of the substantial public interest in the prevention of rear-underride accidents involving commercial motor vehicles.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this proposed rule on small entities. This rule would modify the rear impact protection standards for trailers in the Federal Motor Carrier Safety Regulations (FMCSRs) to make them consistent with the manufacturing standards in the FMVSS No. 224, which requires the installation of rear impact protection devices conforming to FMVSS No. 223 on certain newly-manufactured semitrailers and trailers. The FHWA believes that maintenance costs of the rear impact protection devices required under the new FMVSSs will be minimal. Therefore, the FHWA hereby certifies that this action would not have a significant economic

impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Unfunded Mandates Reform Act

This proposal would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or \$100 million or more in any one year.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

Issued on: April 28, 1998.

Kenneth R. Wykle,
Administrator, Federal Highway
Administration.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, subchapter B, chapter III, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. Section 393.5 is amended by adding the definitions of "low chassis vehicle," "special purpose vehicle," and "wheels back vehicle," and by revising the definitions of "pulpwood trailer," "rear extremity," and "side extremities" (now "side extremity") to read as follows:

§ 393.5 Definitions.

Low chassis vehicle. A trailer or semitrailer having a chassis which extends behind the rearmost point of the rearmost tires and a lower rear surface that meets the guard width, height, and rear surface requirements of § 571.224. For vehicles not subject to the requirements of § 571.224 on the date of manufacture, the configuration requirements of § 393.86(g) may be used.

Pulpwood trailer. A trailer or semitrailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container.

Rear extremity. The rearmost point on a vehicle that falls above a horizontal plane located 560 mm (22 inches) above the ground and below a horizontal plane located 1,900 mm (75 inches) above the ground when the vehicle is stopped on level ground; unloaded; its fuel tanks are full; the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations; and the vehicle's cargo doors, tailgate, or other permanent structures are positioned as they normally are when the vehicle is in motion. Nonstructural protrusions such as taillamps, rubber bumpers, hinges and latches are excluded from the determination of the rearmost point.

Side extremity. The outermost point on a side of the vehicle that is above a horizontal plane located 560 mm (22 inches) above the ground, below a

horizontal plane located 1,900 mm (75 inches) above the ground, and between a transverse vertical plane tangent to the rear extremity of the vehicle and a transverse vertical plane located 305 mm (12 inches) forward of that plane when the vehicle is unloaded; its fuel tanks are full; and the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations. Non-structural protrusions such as taillights, hinges and latches are excluded from the determination of the outermost point.

Special purpose vehicle. A trailer or semitrailer having work-performing equipment that, while the vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear impact guard, as defined by the guard width, height and rear surface requirements of § 571.224 (paragraphs S5.1.1 through S5.1.3).

Wheels back vehicle. A trailer or semitrailer whose rearmost axle is permanently fixed and is located such that the rearmost surface of the tires (of the size recommended by the vehicle manufacturer for the rear axle) is not more than 305 mm (12 inches) forward of the transverse vertical plane tangent to the rear extremity of the vehicle.

3. Section 393.86 is revised to read as follows:

§ 393.86 Rear impact guards and rear end protection.

(a) **General requirements for trailers and semitrailers manufactured on or after January 26, 1998.** Each trailer and semitrailer with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or more, and manufactured on or after January 26, 1998, must be equipped with a rear impact guard that meets the requirements of Federal Motor Vehicle Safety Standard No. 223 (49 CFR 571.223) in effect at the time the vehicle was manufactured. When the rear impact guard is installed on the trailer or semitrailer, the vehicle must, at a minimum, meet the requirements of FMVSS No. 224 (49 CFR 571.224) in effect at the time the vehicle was manufactured. Trailers and semitrailers subject to this paragraph must meet the requirements of paragraphs (b) through (f) of this section. The requirements of paragraphs (a) through (f) do not apply to pole trailers (as defined in § 390.5); pulpwood trailers, low chassis trailers, special purpose trailers, wheels back trailers (as defined in § 393.5); and trailers towed in driveway-towaway operations (as defined in § 390.5).

(b) **Impact guard width.** The outermost surfaces of the horizontal member of the guard must extend to within 100 mm (4 inches) of the side extremities of the vehicle. The outermost surface of the horizontal member shall not extend beyond the side extremity of the vehicle.

(c) **Guard height.** The vertical distance between the bottom edge of the horizontal member of the guard and the ground shall not exceed 560 mm (22 inches) at any point across the full width of the member. Guards with rounded corners may curve upward within 255 mm (10 inches) of the longitudinal vertical planes that are tangent to the side extremities of the vehicle.

(d) **Guard rear surface.** At any height 560 mm (22 inches) or more above the ground, the rearmost surface of the horizontal member of the guard must be within 305 mm (12 inches) of the rear extremity of the vehicle. This paragraph shall not be construed to prohibit the rear surface of the guard from extending beyond the rear extremity of the vehicle. Guards with rounded corners may curve forward within 255 mm (10 inches) of the side extremity.

(e) **Cross-sectional vertical height.** The horizontal member of each guard must have a cross sectional vertical height of at least 100 mm (3.94 inches) at any point across the guard width.

(f) **Certification and labeling requirements for rear impact protection guards.** Each rear impact guard used to satisfy the requirements of paragraph (a) of this section must be permanently marked or labeled as required by FMVSS No. 223 (49 CFR 571.223, S5.3). The label must be on the forward-facing surface of the horizontal member of the guard, 305 mm (12 inches) inboard of the right end of the guard. The certification label must contain the following information:

- (1) The impact guard manufacturer's name and address;
- (2) The statement "Manufactured in _____" (inserting the month and year that the guard was manufactured); and,
- (3) The letters "DOT", constituting a certification by the guard manufacturer that the guard conforms to all requirements of FMVSS No. 223.

(g) **Requirements for motor vehicles manufactured after December 31, 1952 (except trailers or semitrailers manufactured on or after January 26, 1998).** Each motor vehicle manufactured after December 31, 1952, (except of truck tractors, pole trailers, or vehicles in driveway-towaway operations) in which the vertical distance between the rear bottom edge of the body (or the chassis assembly if the chassis is the

rearmost part of the vehicle) and the ground is greater than 76.2 cm (30 inches) when the motor vehicle is empty, shall be equipped with a rear impact guard(s). The rear impact guard(s) must be installed and maintained in such a manner that:

(1) The vertical distance between the bottom of the guard(s) and the ground does not exceed 76.2 cm (30 inches) when the motor vehicle is empty;

(2) The maximum distance between the closest points between guards, if more than one is used, does not exceed 61 cm (24 inches);

(3) The outermost surfaces of the horizontal member of the guard are no more than 45.7 cm (18 inches) from each side extremity of the motor vehicle;

(4) The impact guard(s) are no more than 61 cm (24 inches) forward of the rear extremity of the motor vehicle.

(h) **Construction and attachment.** The rear impact guard(s) must be substantially constructed and attached by means of bolts, welding, or other comparable means.

(i) **Vehicle components and structures that may be used to satisfy the requirements of paragraph (g) of this section.** Low chassis vehicles, special purpose vehicles, or wheels back vehicles constructed and maintained so that the body, chassis, or other parts of the vehicle provide the rear end protection comparable to impact guard(s) conforming to the requirements of paragraph (g) of this section shall be considered to be in compliance with those requirements.

[FR Doc. 98-12753 Filed 5-13-98; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE86

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing on Proposed Endangered Status for Devils River Minnow (*Diionda diabolii*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held on the proposed determination of endangered status for the Devils River minnow (*Diionda diabolii*). This fish is found in

Val Verde and Kinney counties, Texas, and Coahuila, Mexico. All interested parties are invited to submit comments on this proposal.

DATES: The public hearing will be held from 5:30 p.m. to 8 p.m. on May 28, 1998, in Del Rio, Texas. The comment period closes July 27, 1998.

ADDRESSES: The public hearing will be held at the Freshmen School Cafeteria of the San Felipe-Del Rio Independent School District, located at 90 Memorial Drive in Del Rio, Texas. Written comments and materials concerning the proposal should be sent to the Field Supervisor, Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas, 78758. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nathan Allan, Fish and Wildlife Biologist (see **ADDRESSES** section) (telephone 512/490-0057; facsimile 512/490-0974).

SUPPLEMENTARY INFORMATION:

Background

The current range of the Devils River minnow is limited to three stream systems in Val Verde and Kinney counties, Texas, and one drainage in Coahuila, Mexico. The species' range has been significantly contracted and fragmented. In addition, the numbers of Devils River minnows collected during fish surveys has declined dramatically over the past 25 years; the species has declined from one of the most abundant fish to one of the least abundant. Based on the current information, the decline of the species in both distribution and abundance may be attributed in large part to the effects of habitat loss and modification and the introduction of nonnative fish into habitats of the Devils River minnow.

On March 27, 1998, the Service published a proposed rule to list the Devils River minnow as endangered under the Endangered Species Act (Act) of 1973, as amended. Section 4(b)(5)(E) of the Act requires that a public hearing be held if requested within 45 days of the proposal's publication in the *Federal Register*. Because of the past public interest in the listing of this species, the Service opened the public comment period for 120 days and planned the public hearing in advance of a request.

The Service has scheduled this hearing for 5:30 p.m. to 8 p.m. on May 28, 1998, at the Freshmen School Cafeteria of the San Felipe-Del Rio

Independent School District, located at 90 Memorial Drive in Del Rio, Texas. Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement to be presented to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments presented at this hearing or mailed to the Service. Legal notices announcing the date, time and location of the hearing are being published in newspapers concurrently with this *Federal Register* notice.

The comment period on the proposal will remain open until July 27, 1998. Written comments may be submitted until that date to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Nathan Allan (see **ADDRESSES** section) (telephone 512/490-0057; facsimile 512/490-0974).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 7, 1998.

Nancy M. Kaufman,
Regional Director, Fish and Wildlife Service.
[FR Doc. 98-12839 Filed 5-13-98; 8:45 am]
BILLING CODE 4310-56-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[Docket No. 980501114-8114-01; I.D. 041698G]

RIN 0648-AK48

Stone Crab Fishery of the Gulf of Mexico; Amendment 6

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 6 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). Amendment 6 would extend, for up to 4 years, the existing temporary moratorium on the Federal registration

of stone crab vessels. The intended effect is to provide additional time for the industry and Florida to develop and implement a limited access system for the fishery.

DATES: Written comments will be considered if received on or before June 29, 1998.

ADDRESSES: Send comments on the proposed rule to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Requests for copies of Amendment 6, which includes a regulatory impact review and an environmental assessment, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; Phone: 813-228-2815; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-570-5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 654.

Background

Final regulations implemented the FMP on September 30, 1979 (44 FR 53519), and apply only to the exclusive economic zone (EEZ) off Florida's west coast (including Monroe County), the primary location of the directed stone crab fishery.

The original FMP required vessels to be registered by the appropriate state or Federal agency and assigned an identification number and color code for the vessel and gear. Federal regulations allowed fishermen to obtain a Federal identification number and color code from the NMFS Southeast Regional Office, if the applicant could not obtain an identification number and color code from Florida. However, the NMFS Southeast Regional Office has never issued an identification number and color code to anyone to participate in the stone crab fishery because fishermen could obtain them from Florida.

Amendment 5, implemented on April 14, 1995 (60 FR 13918), placed a 3-year moratorium (April 15, 1995 - June 30, 1998) on the Federal registration of stone crab vessels. The Council recommended, and NMFS approved and implemented, the Federal moratorium because the Florida Legislature passed a moratorium on the issuance of state permits, effective July 1, 1995, while the Florida Marine Fisheries Commission (FMFC), in cooperation with the stone crab industry, considered development

of a limited access system. Without the Federal moratorium, fishermen could have circumvented the state moratorium.

The Council recommended Amendment 6 to extend the Federal moratorium on vessel registration for up to 4 years (i.e., through June 30, 2002) because it is concerned that legislative action by Florida to create a limited access system may be delayed beyond June 30, 1998.

If the Federal moratorium expires on June 30, 1998, anyone could apply to NMFS for vessel registration. Substantial entry into the stone crab fishery would adversely affect current participants in the fishery by reducing their respective shares of the harvest. The fishery is already overcapitalized both in gear deployed, with approximately 798,000 traps deployed in 1995-96, and in the number of permitted vessels. As of July 1, 1995, there were 6,501 commercial permits issued. Only 1,556 permit holders, however, had stone crab landings, and 70 percent of them, or 1,102 permittees, had annual landings of 500 lb (225 kg) or less. Landings have not increased significantly since 1982-83, when approximately 350,000 traps were deployed. Catch-per-unit-of-effort has declined significantly since then.

In cooperation with the stone crab industry, the FMFC has proposed to the Florida Legislature a limited access program that contains provisions for a license limitation system that would exclude permit holders with no record of landings during recent years. The Florida Legislature is expected to pass this limited access program in 1999 with the state law to become effective July 1, 1999. The Council will then submit a regulatory amendment to extend the license limitation program to Federal waters off Florida's Gulf coast, including Monroe County.

Management Measures in Amendment 6

Amendment 6 would continue, for up to 4 years, the FMP's temporary moratorium on the Federal registration of stone crab vessels. This Federal moratorium would end no later than June 30, 2002.

Control Date

At the Council's request, NMFS published a control date of July 24, 1995, for the commercial fishery (60 FR 37868, July 24, 1995). That action notified fishermen entering the commercial stone crab fishery that after

that date they may not be allowed to participate in the fishery if that date is used in a limited access program to limit entry.

Availability of and Comments on Amendment 6

Additional background and rationale for the measures discussed above are contained in Amendment 6, the availability of which was announced in the *Federal Register* on April 23, 1998 (63 FR 20163). Written comments on Amendment 6 must be received on or before June 22, 1998. Comments that are received by NMFS on or before June 22, 1998, whether specifically directed to Amendment 6 or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 6. Comments received after that date will not be considered by NMFS in this decision. All comments received on Amendment 6 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

At this time, NMFS has not made a final determination that the provisions of Amendment 6 are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. In making that final determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Council for Legislation and Regulation of the Department of Commerce, based on the Council's Regulatory Impact Review (RIR) that assesses the economic impact of management measures proposed in this rule on fishery participants, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The regulations are not likely to change annual gross revenues by more than 5 percent. Instead, the Federal moratorium would simply maintain current rules, and vessels would not be subjected to a regulatory-induced reduction in gross revenue.

Annual compliance costs are not likely to increase total costs of production for small entities by more than 5 percent. It has been estimated that there would be no additional costs associated with compliance with the

provisions of this amendment, as no additional permits, gear modifications, or other changes are required.

Compliance costs as a percent of sales for small entities are not likely to be at least 10 percent higher than compliance costs as a percent of sales for large entities. All the firms expected to be impacted by the rule are small entities and hence there is no differential impact.

Capital costs of compliance are not likely to represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities. Significant effects of this type are not expected to occur from any of the alternatives that would extend the moratorium.

The requirements of the regulations are not likely to force a number of the small entities to cease operations. The action to extend the moratorium would not force any vessels out of the fishery.

As a result, a regulatory flexibility analysis was not prepared. A copy of the RIR is available from the Council (see ADDRESSES).

List of Subjects in 50 CFR Part 654

Fisheries, Fishing.

Dated: May 8, 1998.

David L. Evans,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 654 is proposed to be amended as follows:

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 654 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 654.3, paragraph (d) is revised to read as follows.

§ 654.3 Relation to other laws.

(d) Under Amendment 6 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, there is a temporary moratorium on the issuance by the Regional Director of Federal identification numbers and color codes for vessels and gear in the stone crab fishery in the management area. The moratorium will end not later than June 30, 2002. During the moratorium, fishermen must obtain identification numbers and color codes for these vessels and gear from Florida. (See § 654.6(a).)

[FR Doc. 98-12843 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-22-F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Appeals Division

Notice of Request for Approval of an Information Collection

AGENCY: National Appeals Division, USDA.

ACTION: Proposed collection.

SUMMARY: Notice. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the National Appeals Division (NAD) to request approval of an information collection for the purpose of setting customer service standards.

DATES: Comments on this notice must be received by July 13, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Day, Jr., USDA/NAD Suite 1020, 3101 Park Center Drive, Alexandria, VA 22302, (703-305-2538).

SUPPLEMENTARY INFORMATION: Title: National Appeals Division Customer Service Survey

OMB Number. Not yet designated.

Type of Request: Approval of new information collection.

Abstract: Executive Order 12862 requires Federal agencies to identify the customers who are, or should be served by the Agency and survey those customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Agencies will then use the results of the survey to establish customer service standards.

The National Appeals Division (NAD) of the U.S. Department of Agriculture was established by the Secretary of Agriculture on October 20, 1994, by Secretary's Memorandum 1010-1, pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, section 271 *et seq.* (October 13, 1994). The Act consolidated the appellate functions and staffs of several

USDA agencies to provide for independent hearings and reviews of adverse agency decisions. NAD is responsible for all administrative appeals arising from program activities of assigned Agencies, as well as such other administrative appeals arising from decisions of agencies and offices of USDA as may be assigned by the Secretary. NAD appeals involve program decisions of the Farm Service Agency, Risk Management Agency, Natural Resources Conservation Service, Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service.

Need for the Information: The information collection in this request is essential for NAD to comply with the requirement of Executive Order 12862 to set customer service standards. The information collected is used only by authorized representatives of the USDA.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: The primary respondents will be individuals and/or households who are participants in Farm Service Agency and Rural Housing Service programs. A small percentage of respondents may be businesses, institutions or state and local governments.

Estimated Number of Respondents: 210.

Estimated Number of Responses per Respondent: 1.00.

Estimated Total Annual Burden on Respondents: 52.5.

Copies of this information collection can be obtained from Robert J. Day, Jr., National Appeals Division at (703) 305-2538.

Send comments regarding, but not limited to the following: (a) whether the collection of the information is necessary for the proper performance of the functions of NAD, including whether the information will have a practical utility; (b) the accuracy of NAD's estimate of the burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological

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collection techniques, or other forms of information technology. Comments should be addressed to Robert J. Day, Jr., Deputy Director for Planning, Training and Quality Control, USDA/NAD, Suite 1020, 3101 Park Center Drive, Alexandria, VA 22302. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 7, 1998.

Norman G. Cooper,
Director, National Appeals Division.
[FR Doc. 98-12797 Filed 5-13-98; 8:45 am]
BILLING CODE 3410-WY-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98-041-1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Notice of Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: We are giving notice that we anticipate renewing the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases for a 2-year period. The Secretary is soliciting nominations for membership for this Committee.

DATES: Consideration will be given to nominations received on or before June 29, 1998.

ADDRESSES: Nominations should be addressed to the person listed under FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Dr. Joe Annelli, Chief Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737-1231, (301) 734-8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to keep foreign diseases of livestock and poultry from being introduced into the United States. In addition, the Committee advises on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The Committee Chairperson and Vice Chairperson shall be elected by the Committee from among its members.

Terms will expire for the current members of the Committee in June 1998. We are soliciting nominations from interested organizations and individuals to replace members on the Committee. An organization may nominate individuals from within or outside its membership. The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) and U.S. Department of Agriculture (USDA) Regulation 1041-1. Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC, this 8th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-12845 Filed 5-13-98; 8:45 am]

BILLING CODE 3410-34-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 3:30 p.m. on June 2, 1998, at the Catholic Charities/Catholic Families Services, Inc., Conference Room, 467 Bloomfield Avenue, Bloomfield, Connecticut 06002. The purpose of the meeting is: (1) follow up discussion of the Civil Rights Leadership Conference and its report and (2) program planning of future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Neil Macy, 860-242-7287, or Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact

the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 7, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98-12872 Filed 5-13-98; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on June 19, 1998, at the Red Lion Hotel, Columbia River, 1401 North Hayden Island Drive, Portland, Oregon 97217. The purpose of the meeting is to ascertain the status of civil rights in Oregon and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213-894-3437 (TDD 213-894-3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 7, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98-12873 Filed 5-13-98; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general

public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: R. David Belli, U.S. Department of Commerce, Bureau of Economic Analysis, BE-50(OC), Washington, DC 20230 (Telephone: 202-606-9800).

SUPPLEMENTARY INFORMATION:

I. Abstract

The BE-47 Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons will obtain data on U.S. sales to unaffiliated foreign persons of construction, engineering, architectural, and mining services. The information gathered is needed, among other purposes, to support U.S. trade policy initiatives and to compile the U.S. international transactions, input-output, and national income and product accounts. BEA is proposing to drop the requirement to report data on Form BE-47 by individual project and instead require reporting only by country. This proposed change will bring the format and design of the survey generally more into line with those of other surveys of international services transactions that BEA conducts. In addition, BEA is proposing a change in the way transactions are coded by type of service. Currently, eight codes are used to classify the data reported on Form BE-47 by type of service. These codes are based on the 1987 U.S. Standard Industrial Classification (SIC) system. BEA proposes to collapse these eight codes into three broad groupings, which will be based on the new North American Industry Classification System that is replacing the SIC. These proposed changes will result in a small reduction in the estimated time per response.

II. Method of Collection

The survey will be sent each year to potential respondents in January and responses are due by March 31. A U.S.

person providing construction, engineering, architectural, or mining services to unaffiliated foreign persons is required to report if the gross value of new contracts received or the gross operating revenues from all existing contracts is \$1 million or more during the covered year. A U.S. person that receives a form but is not required to report data must file an exemption claim.

III. Data

OMB Number: 0608-0015.

Form Number: BE-47.

Type of Review: Regular submission.

Affected Public: U.S. business or other for-profit institutions providing construction, engineering, architectural, and mining services to unaffiliated foreign persons.

Estimated Number of Responses: 155.

Estimated Time Per Response: 4.5 hours.

Estimated Total Annual Burden Hours: 700.

Estimated Total Annual Cost: \$21,000 (based on an estimated reporting burden of 700 hours and an estimated hourly cost of \$30).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 8, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12820 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE

International Trade Administration

Commercial News USA

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230. Phone number: (202) 482-3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Jana Nelhybel, U.S. & Foreign Commercial Service, Export Promotion Service, Room 2202, 14th and Constitution Avenue, NW., Washington, DC 20230. Phone number: (202) 482-5367, and fax number (202) 482-5362.

SUPPLEMENTARY INFORMATION:

I. Abstract

Commercial News USA (CNUSA), published twelve times a year by a private sector firm, is the U.S. Department of Commerce's export catalog-magazine. The product information in CNUSA reaches more than 145,000 distributors, government officials, and potential buyers overseas through direct distribution from U.S. embassies and consulates. Firms use the form to request that their product information be published in CNUSA, a service for which the firms pay a minimum fee of \$445.

This information collection item allows the U.S. Department of Commerce to promote U.S. products and services available for export as part of the USDOC's trade promotion activities. CNUSA is a unique export promotion service for U.S. manufacturers, service firms, and publishers of trade and technical literature; nothing similar is available to them through the private sector. The product promotions in CNUSA differ from paid advertisements in that they

must meet program criteria. Because U.S. embassies and consulates handle distribution, the product information reaches a vast, screened readership not only through direct dissemination but also via counseling by commercial officers and through walk-in visits to commercial libraries where CNUSA is displayed. Further, American Chambers of Commerce, local business editors, and other trade entities that reprint information from CNUSA or display or disseminate the entire magazine provide a multiplier effect.

II. Method of Data Collection

The requests are sent to the private sector publisher.

III. Data

OMB Number: 0625-0061.

Form Number: ITA-4063P.

Type of Review: Renewal; regular submission.

Affected Public: Companies interested in placing their product information available for export in Commercial News USA.

Estimated Number of Respondents: 2,200.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 917.

Estimated Total Annual Costs: \$32,095.

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 8, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12821 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-FF-P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: R. David Belli, U.S. Department of Commerce, Bureau of Economic Analysis, BE-50 (OC), Washington, DC 20230 (Telephone: 202-606-9800).

SUPPLEMENTARY INFORMATION:

I. Abstract

The BE-82 Annual Survey of Financial Services Transactions between U.S. Financial Services Providers and Unaffiliated Foreign Persons will obtain data on financial services transactions between U.S. financial services providers and unaffiliated foreign persons and covers all transactions above a size-exemption level. The data from the survey will update the data collected in the quinquennial BE-80 benchmark survey of such services. The information gathered is needed, among other purposes, to support U.S. trade policy initiatives and to compile the U.S. international transactions, input-output, and national income and product accounts. BEA is requesting only an extension of a currently approved collection and is not proposing any changes in either language or data collected.

II. Method of Collection

The survey will be sent each year to potential respondents in January and

responses are due by March 31. A U.S. person that is a financial services provider is required to report if its total receipts from, or total payments to, unaffiliated foreign persons for financial services exceeded \$5 million during the covered year. A U.S. person that receives a form but is not required to report data must file an exemption claim.

III. Data

OMB Number: 0608-0063.

Form Number: BE-82.

Type of Review: Regular submission.

Affected Public: U.S. businesses or other for-profit institutions engaging in international financial services transactions.

Estimated Number of Responses: 425.

Estimated Time Per Response: 7.5 hours.

Estimated Total Annual Burden Hours: 3,200.

Estimated Total Annual Cost: \$96,000 (based on an estimated reporting burden of 3,200 hours and an estimated hourly cost of \$30).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 8, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12822 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Income and Program Participation Wave 9 of the 1996 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael McMahon, Bureau of the Census, FOB 3, Room 3319, Washington, DC 20233-0001, (301) 457-3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the Survey of Income and Program Participation (SIPP) which is a household-based survey designed as a continuous series of national panels, each lasting four years. Respondents are interviewed once every four months, in monthly rotations. Approximately 37,000 households are in the current panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulations depend heavily upon SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits, and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such

as obtaining information about the terms of child support agreements and whether they are being fulfilled by the absent parent, examining the program participation status of persons with specific health and disability statuses, and obtaining detailed information needed to understand the current status of the employment-based health care system and changes that have occurred. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 1996 Panel Wave 9 collect information about:

- (1) Assets, Liabilities, and Eligibility,
- (2) Medical Expenses/Utilization of Health Care Services,
- (3) Work Related Expenses and Child Support Paid.

Wave 9 interviews will be conducted from December 1998 through March 1999.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every 4 years, with each panel having a duration of 4 years in the survey. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves) at 4-month intervals, making the SIPP a longitudinal survey. Sample persons (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP Primary Sampling Unit will be followed and interviewed at their new address. Persons 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these persons move, they are not followed unless they happen to move along with a Wave 1 sample person.

III. Data

OMB Number: 0607-0813.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 77,700.

Estimated Time Per Response: 30 minutes per person.

Estimated Total Annual Burden Hours: 117,800.

Estimated Total Annual Cost: \$31,269,000.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 8, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12823 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Office of the Secretary

Revision to the Commerce Acquisition Regulation (CAR) Clause at 1352.219-109 Entitled "Insurance Requirements"

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Deborah O'Neill, Department of Commerce, 14th and Constitution Avenue, NW, Room 6422, Washington, DC, 20230. Her telephone number is (202) 482-0202.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce requires the contractor to procure and maintain certain kinds of insurance, in contracts for construction, alteration and repair of ships as specified in the Commerce Acquisition Regulation (CAR) clause 1352.219-109, "Insurance Requirements." This insurance is necessary to protect the multi-million dollar ships and the interests of the U.S. taxpayers. Prior to the commencement of work, the contractor is required to present proof of this insurance to the Government. As evidence that it has obtained insurance specified, the Contractor must furnish the Contracting Officer with a certificate of certificates executed by an agent of the insurer authorized to execute such certificates. The requirement to present proof of insurance is contract specific. Therefore, there is no duplication of effort from contract to contract. There is no outside source of information that can be used to obtain the required information. The Department has minimized the burden by requiring the proof of insurance only once. The levels of insurance that the Department requires its contractor to maintain are based upon industry standards and is consistent with the levels of insurance required by the U.S. Navy and U.S. Coast Guard. Commerce collects only the minimum amount of information needed to ensure that the ships are protected and that the terms of its contracts are complied with.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0690-0010.

Form Number: N/A.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 30.

Estimated Time per Response: 1.

Estimated Total Annual Burden Hours: 30.

Estimated Total Annual Cost: \$0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 7, 1998.

Linda Engelmeier,
Departmental Forms Clearance Officer, Office
of Management and Organization.

[FR Doc. 98-12890 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-EC-P

DEPARTMENT OF COMMERCE

Office of the Secretary

Department of Commerce Partners in Quality Contracts (PQC) Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Deborah O'Neill, Department of Commerce, 14th and Constitution Avenue, NW, Room 6422, Washington, DC, 20230. Her telephone number is (202) 482-0202.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Performance Review (NPR) conducted by Vice President Gore outlined several objectives, including improving the Federal acquisition process. Along with the NPR objectives are associated Administration initiatives, such as greater emphasis on contractor's past performance; expanding the use of alternative

disputes' resolution procedures; and improving communications overall between industry and government. The Department of Commerce (DOC) has developed a program that is philosophically consistent with NPR, known as the Partners in Quality Contracting (PQC) Program. PQC is a creative nonmonetary recognition program that showcases the importance of quality in the government acquisition process. It is intended as an effective yet inexpensive means of recognizing quality performance from both DOC contractors and acquisition personnel. The information collected is used to determine qualifications of applicants by DOC for purposes of recognizing DOC contractors and acquisition personnel who have promoted excellence in contracting through quality performance. The DOC PQC Evaluation Committee will be an independent committee, comprised of DOC employees from key functional areas. The universe of applicants includes all DOC contractors that have performed a DOC contract valued during the previous fiscal year at or above \$100,000, if a large business, \$50,000 or above, if a small one. A small business is defined as "a business, including an affiliate, that is independently owned and operated, is not dominant in producing or performing the supplies or services being purchased, and has no more than 500 employees." Eligible contractors would "self nominate" through the submission of a company profile than an application that would be independently evaluated against pre-established criteria. Finalists would be site visited, as appropriate, by a government team before the final selections are made. Award recipients will be selected by consensus of the Committee. Award recipients will be invited to send representatives to attend an award reception.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0690-0012.

Form Number: N/A.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: 38.

Estimated Total Annual Burden Hours: 1,900.

Estimated Total Annual Cost: \$0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 7, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office
of Management and Organization.

[FR Doc. 98-12891 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-EC-P

DEPARTMENT OF COMMERCE

Office of the Secretary

Women-Owned Small Business Sources

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce a paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c)(2) (A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Deborah O'Neill, Department of Commerce, 14th and Constitution Avenue, NW, Room 6422,

Washington, DC 20230. Her telephone number is (202) 482-0202.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is collected in order to respond to the Executive Order 12138 to promote women-owned business enterprises. Additionally, it is the intent of Congress to promote federal contracting opportunities for women-owned businesses as expressed in the proposed legislation in H.R. 3517, "The Women's Business Procurement Assistance Act." The Department of Commerce through its use of the clause entitled "Women-Owned Small Business Sources" in certain Commerce contracts, implements this policy and encourages the use of women-owned small businesses in its acquisition programs. The Department currently provides opportunities to women-owned businesses on their mailing lists to receive solicitations for contracts. By allowing these firms to compete for, and receive, a fair proportion of the Department's contracts, it reduces a significant economic impact on a substantial number of small entities. This clause is used by the Federal Acquisition Regulation (FAR) Clause 52.219-9, entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" for all negotiated contracts with large businesses which exceed \$500,000. The FAR clause requires the successful offeror to negotiate a small business and small disadvantaged subcontracting plan which provides subcontracting goals for utilization of both small businesses and small disadvantaged concerns. The Department of Commerce clause adds the requirement to include subcontracting goals for women-owned businesses in these subcontracting plans. The clause also requires the contractors to maintain lists of qualified potential women-owned firms. The Commerce Office of Small and Disadvantaged Business Utilization (OSDBU) provides assistance to the contractors in complying with the required list of potential subcontractors. They also submit the Department's proposal goals for award of contracts and subcontracts for women-owned businesses to the Small Business Administration (SBA).

II. Method of Collection

Written submission.

III. Data

OMB Number: 0605-0019.

Form Number: N/A.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 20.

Estimated Time per Response: 12.

Estimated Total Annual Burden Hours: 240.

Estimated Total Annual Cost: \$0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 7, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office
of Management and Organization.

[FR Doc. 98-12892 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-EC-U

DEPARTMENT OF COMMERCE

Office of the Secretary

Department of Commerce Solicitations: Requests for Proposals (RFPs) or Invitations for Bids (IFBs)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Deborah O'Neill, Department of Commerce, 14th and Constitution Avenue, NW, Room 6422, Washington, DC, 20230. Her telephone number is (202) 482-0202.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce (DOC) is required by the Competition in Contracting Act (Pub. L. 98-369) to seek maximum competition when issuing contracts for supplies and services. The Federal Acquisition Regulations (FAR) require each Federal agency to obtain needed supplies and services by soliciting proposals from prospective contractors prior to entering into contracts necessary to accomplish the missions of the agency. The Department is required to issue solicitations which require prospective contractors to prepare and submit technical and cost proposals as part of the Federal acquisition process for awarding these contracts. In soliciting proposals, the agency collects, from each competing contractor, the information necessary to evaluate the proposals and make a decision as to which proposal offers the most benefit to the Government. In its solicitations, the Commerce Department uses Standard Forms and uniform solicitation format which are prescribed by the FAR. Each competing contractor is required to submit a proposal comprising various parts (technical, business, and cost). Instructions for the preparation of the proposal is tailored to the statement of work, the amount of information to be submitted in the proposal will vary with the complexity and size of the work. The proposal will be evaluated by the Government using criteria which must be stated in the solicitation. The results of the evaluation are used to make a decision as to which firm shall be selected for the contract. Commerce collects no information other than that needed to evaluate and select contractors to meet the unique requirements of the Department, and to meet the requirement of the Federal procurement system.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0690-0008.

Form Number: N/A.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 250.

Estimated Time per Response: 20.

Estimated Total Annual Burden Hours: 5,000.

Estimated Total Annual Cost: \$0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 7, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12893 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-EC-P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Census Advisory Committees

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, as amended by Pub. L. 94-409, P.L. 96-523, and Pub. L. 97-375), we are giving notice of a joint meeting of the Commerce Secretary's 2000 Census Advisory Committee (CAC), the CAC of Professional Associations, the CAC on the African American Population, the CAC on the American Indian and

Alaska Native Populations, the CAC on the Asian and Pacific Islander Populations, and the CAC on the Hispanic Population. The meeting will convene on June 3, 1998, at the Holiday Inn Hotel and Suites, 625 First Street, Alexandria, VA 22314. The agenda will be limited to discussion on issues involved in the tabulation and presentation of data on race from Census 2000 within the framework of the decision on standards for maintaining, collecting, and presenting Federal data on race and ethnicity issued by the Office of Management and Budget (OMB) in October 1997. This discussion will also assist the Census Bureau in providing input into the OMB process of developing final guidelines on the tabulation of data on race for use across the Federal system.

DATES: On Wednesday, June 3, 1998, the meeting will begin at 9 a.m. and adjourn for the day at 4:30 p.m.

ADDRESSES: The meeting will take place at the Holiday Inn Hotel and Suites, 625 First Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Anyone wishing additional information about this meeting, or who wishes to submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, Federal Building 3, Washington, DC 20233, telephone: 301-457-2308.

SUPPLEMENTARY INFORMATION: The Commerce Secretary's 2000 Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 35 member organizations, all appointed by the Secretary of Commerce. The Advisory Committee considers the goals of Census 2000 and user needs for information provided by that census and provides a perspective from the standpoint of the outside user community about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Advisory Committee considers all aspects of the conduct of the 2000 Census of Population and Housing and makes recommendations to the Secretary of Commerce for improving that census.

The CAC of Professional Associations is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairman of the Board of the American Marketing Association. The Committee advises the Director, Bureau of the Census, on the full range of Census

Bureau programs and activities in relation to its areas of expertise.

The CACs on the African American, American Indian and Alaska Native, Asian and Pacific Islander, and Hispanic Populations are composed of nine members each appointed by the Secretary of Commerce. The Committees provide an organized and continuing channel of communications between the communities they represent and the Bureau of the Census on its efforts to reduce the differential in the count for Census 2000 and on ways that census data can be disseminated to maximum usefulness to their communities and other users.

A brief period will be set aside for public comment and questions. However, individuals with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer on 301-457-2308, TDD 301-457-2540.

Dated: May 6, 1998.

Lee Price,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 98-12764 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; David Irwin Portnoy; Order Denying Permission To Apply for or Use Export Licenses

In the matter of: David Irwin Portnoy, 2315 W. 5th Street, Irving, Texas 75060.

On August 1, 1997, David Irwin Portnoy (Portnoy) was convicted in the United States District Court for the Northern District of Texas, Dallas Division, on three counts of violating the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)) (IEEPA). Specifically, Portnoy was convicted of knowingly and willfully exporting and causing to be exported from the United States to Switzerland, for transshipment to Libya, shipments of electronic components and telecommunications equipment.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app.

§§ 2401-2420 (1991 & Supp. 1998)) (the Act),¹ provides that, at the discretion of the Secretary of Commerce,² no person convicted of violating the IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (1997)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to §§ 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Portnoy's conviction for violating the IEEPA, and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Portnoy permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on August 1, 2007. I have also decided to revoke all licenses issued pursuant to the Act in which Portnoy had an interest at the time of his conviction.

Accordingly, it is hereby Ordered.

I. Until August 1, 2007, David Irwin Portnoy, 2315 W. 5th Street, Irving, Texas 75060, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997), continued the Export Administration Regulations in effect under the IEEPA.

² Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may do, directly or indirectly, any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm,

corporation, or business organization related to Portnoy by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until August 1, 2007.

VI. A copy of this Order shall be delivered to Portnoy. This Order shall be published in the Federal Register.

Dated: May 5, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98-12786 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Acting Affecting Export Privileges; Wayne P. Smith; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Wayne P. Smith currently incarcerated at: Federal Correction Institute, USM No. 09046-035, Federal Detention Center, 5010 Whatley Road, Oakdale, Louisiana 71463 and with an address at: 2333 Big Woods Edgerly Road, Rt. 1, Box 845c, Vinton, Louisiana 70668.

On July 3, 1996, Wayne P. Smith (Smith) was convicted in the United States District Court for the Western District of Louisiana, Lake Charles Division, on one count of violating Section 38 of the Arms Export Control Act (currently codified at 22 U.S.C.A. 2778 (1990 & Supp. 1998)) (the AECA). Specifically, Smith was convicted of knowingly and willfully exporting and causing to be exported to England 80 plain self-aligning ball bearings designed for and used on the McDonald Douglas F-4 Phantom II military jet, without obtaining the required export license from the Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act),¹ provides that, at the discretion of

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997), continued the

Continued

the Secretary of Commerce,² no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (1997)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notifications that a person has been convicted of violating the AECA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Smith's conviction for violating the AECA, and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Smith permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on July 3, 2006. I have also decided to revoke all licenses issued pursuant to the Act in which Smith had an interest at the time of his conviction.

Accordingly, it is hereby ordered.

I. Until July 3, 2006, Wayne P. Smith, currently incarcerated at the Federal Correction Institute, USM No. 09046-035, Federal Detention Center, 5010 Whatley Road, Oakdale, Louisiana 71463, and with an address at 2333 Big Woods Edgerly Road, Rt. 1, Box 845c, Vinton, Louisiana 70668, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity

Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. Secs. 1701-1706 (1991 & Supp. 1998)).

² Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may do, directly or indirectly, any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization

related to Smith by affiliation, ownership, control, or position of responsibility in the conduct or trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until July 3, 2006.

VI. A copy of this Order shall be delivered to Smith. This Order shall be published in the **Federal Register**.

Dated: May 5, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98-12769 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 24-98]

Foreign-Trade Zone 169—Manatee County, Florida Application For Foreign-Trade Subzone Status Aso Corporation (Adhesive Bandages) Sarasota County, Florida

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Manatee County Port Authority, grantee of FTZ 169, requesting special-purpose subzone status for the first aid dressings manufacturing facility (adhesive bandages, sterile pads, waterproof adhesive tapes) of Aso Corporation (Aso), located in Sarasota County, Florida. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 5, 1998.

The Aso facility (65,000 sq. ft. on 38 acres) is located at 300 Sarasota Center Blvd., within the International Trade Industrial Park, east of Sarasota (Sarasota County), Florida. The facility (148 employees) is used for the manufacture of first aid dressings, including adhesive bandages, sterile pads, and waterproof adhesive tapes. However, the applicant is only requesting to use FTZ procedures for the production of adhesive bandages (HTSUS 3005.10.50) using foreign-sourced adhesive tape (HTSUS 3919.90.50).

Zone procedures would enable Aso to choose the lower duty rate that applies

to the finished products (duty-free) instead of the duty rate that would otherwise apply to foreign adhesive tape (duty rate—5.8%). The application indicates that the savings from zone procedures would help improve the plant's competitiveness and increase exports.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 13, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 28, 1998. A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary,
Foreign-Trade Zones Board, U.S.
Department of Commerce, Room
3716, 14th and Pennsylvania Avenue,
N.W., Washington, D.C. 20230.

U.S. Department of Commerce Export
Assistance Center, 1130 Cleveland St.,
Clearwater, Florida 34615.

Dated: May 7, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98-12883 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

ACTION: Extension of deadline for submitting comments.

SUMMARY: On April 16, 1998, the Department of Commerce ("the Department") published in the **Federal Register** a notice of Policy Bulletin; request for comments (63 FR 18871). In response to requests for extension of the deadlines contained in that notice, the Department has granted an extension until May 18, 1998 for the submission of written comments and until June 8,

1998, for the submission of rebuttal comments.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482-1560 or Mark A. Barnett, Office of Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482-2866.

SUPPLEMENTARY INFORMATION: The policy bulletin proposes policies regarding the conduct of five-year ("sunset") reviews of antidumping and countervailing duty orders and suspended investigations pursuant to the provisions of sections 751(c) and 752 of the Tariff Act of 1930, as amended, and the Department's regulations. In the request for comment, the Department stated that to be assured of consideration, written comments must be received not later than May 12, 1998, and rebuttal comments must be received not later than June 2, 1998. In response to requests from several parties, we have granted an extension of these deadlines. Therefore, in order to be assured of consideration, written comments must be received not later than May 18, 1998. Rebuttal comments must be received not later than June 8, 1998. The filing requirements contained in the notice of April 16, continue to apply.

Dated: May 8, 1998.

Robert S. LaRossa,

Assistant Secretary for Import Administration.

[FR Doc. 98-12886 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration (A-588-804)

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative reviews.

SUMMARY: On March 27, 1998, the United States Court of International Trade affirmed the Department of Commerce's final remand results affecting final assessment rates for the second administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller

bearings) and parts thereof from Japan with respect to NSK. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. As there is now a final and conclusive court decision in these actions, we are amending our final results of reviews and we will subsequently instruct the U.S. Customs Service to liquidate entries subject to these reviews.

EFFECTIVE DATE: May 14, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa Tomlinson or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4733.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1992, the Department published its final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from Japan *et al.* covering the period May 1, 1990 through April 30, 1991. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992). These final results were amended on July 24, 1992, and December 14, 1992, to correct clerical errors. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 57 FR 32969, and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amendment to Final Results of Antidumping Duty Administrative Reviews*, 57 FR 59080, respectively. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain

bearings and parts thereof (SPBs). Subsequently, two domestic producers, the Torrington Company and Federal-Mogul, and a number of other interested parties, filed lawsuits with the U.S. Court of International Trade (CIT) challenging the final results. These lawsuits were litigated at the CIT and the United States Court of Appeals for the Federal Circuit (CAFC). On February 23, 1998, as a result of a final court decision, we issued amended final results for all firms whose dumping margins had changed as a result of litigation except for NSK. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews* (63 FR 8908). At that time our determination of NSK's dumping margins was still subject to outstanding litigation.

On March 27, 1998, the CIT affirmed the Department's remand results for *Final Results of Redetermination Pursuant to Court Remand, NSK Ltd. And NSK Corporation v. United States*, Slip Op. 97-122 (CIT August 28, 1997), and dismissed this case. *NSK Ltd. and NSK Corp. v. United States*, Slip Op. 98-37 (CIT March 27, 1998). As a result of this and other litigation cited in our February 23, 1998, amended final results notice, the CIT (in some cases based on decisions by the CAFC) ordered the Department to make methodological changes and to recalculate the dumping margins for NSK. Specifically, the CIT ordered the Department, *inter alia*: (1) To change its methodology to account for value-added taxes with respect to the comparison of U.S. and home market prices; (2) not to deduct pre-sale inland freight incurred in the home market if the Department determined that there was no statutory authority to make such a deduction; (3) to develop a methodology which removes post-sale price adjustments and rebates paid on out-of-scope merchandise from any adjustment made to foreign market value or to deny such an adjustment if a viable method could not be found; (4) remove zero-priced United States sample sales from our antidumping calculations; and (5) to correct certain clerical errors.

As there is now a final and conclusive court decision with respect to NSK, we are amending our final results of review for this firm and we will subsequently instruct the U.S. Customs Service to liquidate NSK's entries subject to these reviews.

Amendment to Final Results

Pursuant to section 516A(e) of the Tariff Act, we are now amending the

final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan for the period May 1, 1990, through April 30, 1991, with respect to NSK. The revised weighted-average percentage margins are as follows:

Company	BBs	CRBs	SPBs
NSK	4.63	12.47	(¹)

¹ AA(1) No U.S. sales during the review period.

Accordingly, the Department will determine and the U.S. Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by NSK. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department will issue appraisement instructions to the U.S. Customs Service after publication of these amended final results of reviews.

This notice is published pursuant to section 751(a) of the Tariff Act.

Dated: May 7, 1998.

Robert S. LaRossa,
Assistant Secretary for Import Administration.

[FR Doc. 98-12884 Filed 5-13-98; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration [A-549-813]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand; Correction

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Correction.

SUPPLEMENTARY INFORMATION: This notice corrects the case number previously published in the *Federal Register* on April 9, 1998 (Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 17357). On page 17357, we used the incorrect case number to reference this case. The correct case number is "A-549-813."

Dated: May 7, 1998.

Richard W. Moreland,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 98-12760 Filed 5-13-98; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration [A-201-601]

Certain Fresh Cut Flowers From Mexico; Notice of Final Results of Antidumping Duty Administrative Review, and Revocation of Antidumping Duty Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review, and Revocation of Antidumping Duty Order in Part.

SUMMARY: On January 9, 1998, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Mexico and intent to revoke in part with respect to respondent Rancho del Pacifico (Pacifico). This review covers one producer/exporter, Pacifico, and the period April 1, 1996 through March 31, 1997.

We gave interested parties an opportunity to comment on our preliminary results; however, we received no comments from interested parties. We have not changed the results from those presented in the preliminary results of review. We have also determined to revoke the order in part, with respect to Pacifico.

EFFECTIVE DATE: May 14, 1998.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482-0197 or (202) 482-3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 353 (1996).

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1998, the Department published in the *Federal Register* (63 FR 1428) the preliminary results of the administrative review of the

antidumping duty order on certain fresh cut flowers from Mexico, 52 FR 13491 (April 23, 1987), wherein we gave notice of our intent to revoke the order with respect to Pacifico's sales of the subject merchandise. We did not receive any comments from interested parties.

Scope of the Review

The products covered by this review are certain fresh cut flowers, defined as standard carnations, standard

chrysanthemums, and pompon chrysanthemums (pompons). During the period of review (POR), such merchandise was classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) items 0603.10.7010 (pompons), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTSUS item numbers are provided for convenience and Customs purposes

only. The written description remains dispositive as to the scope of the order.

This review covers one manufacturer/exporter of fresh cut flowers from Mexico, Pacifico, and the period April 1, 1996 through March 31, 1997.

Final Results of Review and Revocation of the Order in Part

We determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Rancho del Pacifico	04/01/96-03/31/97	0.00

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service.

We further determine that Pacifico sold fresh cut flowers at not less than NV for three consecutive review periods, including this review period, and it is not likely that Pacifico will in the future sell subject merchandise at less than NV. Additionally, Pacifico has submitted the required certifications, and has agreed to its immediate reinstatement in the antidumping duty order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 353.22(f) that, subsequent to revocation, it sold the subject merchandise at less than NV. Furthermore, we received no comments from any interested party contesting the revocation. For these reasons, we are revoking the order on certain fresh cut flowers from Mexico with respect to Pacifico in accordance with section 751(d) of the Act and 19 CFR 353.25(a)(2).

This revocation applies to all entries of the subject merchandise from Pacifico entered, or withdrawn from warehouse, for consumption on or after April 1, 1997. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposit or bonds. The Department will further instruct the Customs Service to refund with interest any cash deposits on entries made on or after April 1, 1997.

The following deposit rates will be effective upon publication of these final results of administrative review for all shipments of certain fresh cut flowers from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act:

(1) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the investigation of sales at less than fair value, which is 18.20 percent. See 52 FR 6361 (March 3, 1987). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.25(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review, revocation in part, and notice are in accordance with section 751(a)(1) of the

Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 and 353.25.

Dated: May 5, 1998.

Robert S. LaRossa,
Assistant Secretary for Import Administration.

[FR Doc. 98-12885 Filed 5-13-98; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Transition Orders; Final Schedule and Grouping of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final schedule and grouping of five-year reviews of transition orders.

SUMMARY: The Department of Commerce ("the Department") hereby publishes its final schedule for the conduct of the initial five-year reviews of transition orders and the International Trade Commission's ("the Commission") final grouping of reviews.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482-1560, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205-3176.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1997, the Department published its proposed schedule for the conduct of the initial five-year reviews of transition orders and the Commission's proposal for grouping reviews (Transition Orders; Schedule and Grouping of Five-Year Reviews, 62 FR 52686), as amended on November

17, 1997 (Transition Orders; Schedule and Grouping of Five-year Reviews, 62 FR 61294). We invited comments from interested parties on the proposed schedule and grouping of reviews. On December 8, 1997, the Department and the Commission received comments. On January 6, 1998, the Department and the Commission received rebuttal comments.

Comments on Schedule

We received comments from 22 parties, 11 of which addressed the proposed schedule. Five commenters requested that the proposed schedule be amended. After consideration of these comments, and following consultations with the Commission, the Department has decided to continue to apply the methodology described in the notice of proposed schedule and leave the schedule intact, with the exceptions caused by changes to specific groupings and revocations that have taken place since the publication of the proposed schedule. In addition, because of the embargo on imports from Iran, the Department has not scheduled the sunset review of the antidumping duty order on pistachios from Iran at this time.

Counsel for petitioners with respect to the antidumping duty order on stainless steel plate from Sweden requested that initiation of the sunset review of that order be rescheduled at a later time. Counsel suggests that an affirmative duty absorption determination is possible in the administrative review that the Department may initiate in July 1998. Counsel stated that the 1998 review offers the first opportunity to examine the issue of duty absorption because there was a zero margin on imports from respondent Avesta Sheffield AB ("Avesta") at the time of the administrative review initiated in 1996 and, thus, there was no duty absorption to be found. Counsel for Avesta objected to any delay stating that an affirmative duty absorption determination is highly speculative and the Commission is not required to consider a duty absorption determination unless one exists.

The Department is not delaying the sunset review of stainless steel plate from Sweden. If we were to adopt the position of petitioners, we would need to delay the initiation of the sunset review of any order for which there is a theoretical potential for an affirmative duty absorption determination in the fourth review. Such a step would not be practical in light of the deadlines imposed by the statute and the need to begin sunset reviews of transition order in July 1998. In addition, we note that

a duty absorption finding was possible in the second review (because dumping margins were found); however, petitioners did not request that the Department examine this issue.

Counsel for Roquette Frères requested that the initiation of the sunset review of the order on sorbitol from France be accelerated from October 1998 to July 1998. Among the reasons cited in support, counsel noted that: imports should have ceased altogether; there is no likelihood of resumption of imports; no interested party is expected to request that the order remain in effect; given Roquette Frères' investment in U.S. production facilities, no comment suggesting continuation of the order is expected from interested parties other than competing producers; and given the order is not grouped with any others, it is administratively convenient and will contribute to an expeditious sunset of the order. The Department is not accelerating the schedule for review of the order on sorbitol from France. Consideration of case specific facts such as the level of imports, their likelihood of resumption, and the willingness of domestic producers to participate in a sunset review is more appropriately done in the course of the sunset review itself. It is inappropriate for us to consider many of these substantive issues which may be relevant to the sunset determination itself in the context of scheduling the sunset reviews. The Department, instead, has elected to stay with its objective criteria described in its October 9, 1997 notice.

Counsel for domestic producers of circular welded non-alloy steel pipe, light-walled rectangular pipe and tube, and oil country tubular goods requested that these products be considered as three separate groupings and that a staggered schedule of March, May, and July be established for initiation of sunset reviews on these three groups because simultaneous initiation would impose a burden on counsel and the domestic producers it represents. Similarly, counsel for interested parties in cases covering industrial belts, V belts, drafting machines, small business telephone systems, and mechanical transfer presses requested separation of initiations of sunset reviews on these orders by at least a few months in order to allow adequate representation of clients in each of these cases that the proposed schedule would make almost impossible. While we are sympathetic to the administrative burden imposed on counsel, we do not consider that this schedule denies adequate representation to any parties desiring to participate in sunset reviews. Additionally, we do not

find these reasons sufficient to depart from the methodology used to develop the proposed schedule. Therefore, we have not adopted these suggested changes to the schedule.

Counsel for Norsk Hydro Canada Inc., a producer and exporter from Canada of pure magnesium and alloy magnesium objected to the proposed schedule for initiation of reviews on the antidumping order on pure magnesium and the countervailing duty orders on pure and alloy magnesium. Counsel stated that the proposed schedule results in the Department, prior to initiating sunset reviews on the magnesium orders, initiating sunset reviews of fifteen orders issued subsequent to the issuance of the magnesium orders. In support of its request, counsel stated that: the SAA requires that, to the maximum extent practical, older orders be reviewed first; the Department provided no reason for reviewing the newer orders out of chronological sequence; the Department did not identify any special problem that would justify the out-of-sequence review; the proposed groupings by the Commission, which group orders covering products that are not identical, do not support the out-of-sequence review for the majority of the fifteen orders; given that subsequent reviews are to follow the same time frame as initial reviews, companies following non-sequential reviews are penalized forever; and the proposed schedule for review of the fifteen orders favors trade with other countries over trade with Canada. For these reasons, counsel requested that the Department and Commission reconsider the proposed schedule and groupings.

We continue to believe that the methodology used to develop the proposed schedule results in the creation of a schedule that permits the Department and the Commission to conduct sunset reviews of over 300 transition orders consistent with the provisions of the statute and, at the same time, provides the most rational and equitable schedule for interested parties. As explained in the Methodology section of the notice of proposed schedule and groupings (62 FR at 52686), the groups were created by combining orders involving the same domestic product or related like products. The schedule placed the groups in chronological sequence based on the average date of the group. Each of the fifteen orders cited by counsel was grouped with older orders such that the average date of the group pre-dated the orders on pure and alloy magnesium. This is the type of "special problem" that may arise where reviews of transition orders are grouped and

which has been addressed through the use of the average date of the orders in the group. We continue to believe that the proposed groupings are appropriate and have not revised the schedule.

Comments on Grouping

Commenters objected to five specific groupings proposed in the notice.¹ The Commission has decided to modify one of these groups and leave the remaining three intact.

The Ad Hoc Committee of Domestic Nitrogen Producers and Mississippi Potash Corp. objected to the proposed grouping of 17 antidumping orders concerning solid urea with a suspension agreement concerning an antidumping investigation relating to potassium chloride (potash) from Canada. The Commission has concluded that consolidating reviews of urea and potash would not enhance administrative efficiency because urea and potash are chemically distinct, do not serve as practical or functional substitutes, and the only two U.S. producers that produce both urea and potash do so through distinct production facilities and entities. Accordingly, the Commission has not included the suspension agreement concerning potash from Canada within the group of urea orders.

The Cookware Manufacturers Association and counsel for three U.S. cookware manufacturers, objected to the proposed grouping of four antidumping and countervailing duty orders concerning porcelain-on-steel cookware,

on the one hand, with four antidumping and countervailing duty orders on top-of-the-stove stainless steel cookware, on the other. Although these commenters are correct in asserting that the Commission has not previously determined that porcelain-on-steel and stainless steel cookware are within the same domestic like product, the legislative history of the Uruguay Round Agreements Act does not limit the Commission's ability to group reviews to those reviews involving identical like products. Instead, the legislative history indicates that the Commission may group reviews involving related products when such consolidation will promote administrative efficiency in conducting the review. Although the Commission is not defining domestic like products at this time, it has concluded that porcelain-on-steel and stainless steel cookware are sufficiently similar that consolidating reviews of all orders concerning these products into a single group will promote administrative efficiency.

Counsel for eight U.S. producers of circular welded non-alloy steel pipe, six U.S. producers of light-walled rectangular pipe and tube, and four U.S. producers of oil country tubular goods, objected to the grouping of 18 antidumping and countervailing duty orders involving various types of carbon steel pipe and tube products. The Commission has concluded that there is sufficient similarity among the products and overlap among the producers that a

grouped review of these orders would promote administrative efficiency. The Commission has consequently decided not to modify this group.

The Japan Bearing Industrial Association objected to the proposed "bearings" group encompassing 22 antidumping and countervailing duty orders. It requested that the Commission group orders involving tapered roller bearings separately from orders involving other antifriction bearings. By contrast, Timken Co. and Torrington Co., respectively the petitioners in the original tapered roller bearings and antifriction bearings investigations, stated in comments that they did not object to the proposed "bearings" grouping. Because of the overall similarity of the products and the existence of some overlap among producers, the Commission has concluded that including all bearings in a single group will promote administrative efficiency. Accordingly, it has not modified the "bearings" group.

Final Schedule and Grouping

After considering the comments received, the Department and the Commission have developed, in consultation, the final schedule and grouping provided in the Appendix to this notice.

Dated: May 8, 1998.

Robert S. LaRussa,
Assistant Secretary for Import
Administration.

FINAL SCHEDULE AND GROUPING

Initiation month/year	Group average date month/year	Effective date (mm.dd.yy)	DOC Case No.	ITC Case No.	Country	Product
July 98	9. 66	09. 13. 66	A-122-006	AA-49	Canada	Steel Jacks.
	6. 72	06. 9. 72	A-588-029	AA-85	Japan	Fish Netting of Manmade Fiber.
	6. 72	06. 14. 72	A-427-030	AA-86	France	Large Power Transformers.
	6. 72	06. 14. 72	A-475-031	AA-87	Italy	Large Power Transformers.
	6. 72	06. 14. 72	A-588-032	AA-88	Japan	Large Power Transformers.
	9. 72	08. 28. 68	A-843-803	AA-51	Kazakhstan	Titanium Sponge.
	9. 72	08. 28. 68	A-821-803	AA-51	Russia	Titanium Sponge.
	9. 72	08. 28. 68	A-823-803	AA-51	Ukraine	Titanium Sponge.
	9. 72	11. 30. 84	A-588-020	A-161	Japan	Titanium Sponge.
	11. 72	11. 22. 72	A-588-038	AA-98	Japan	Bicycle Speedometers.
	3. 73	03. 23. 73	A-602-039	AA-110	Australia	Canned Bartlett Pears.
	4. 73	04. 12. 73	A-588-028	AA-111	Japan	Roller Chain.
	6. 73	06. 08. 73	A-401-040	AA-114	Sweden	Stainless Steel Plate.
	7. 73	07. 10. 73	A-588-041	AA-115	Japan	Synthetic Methionine.
	12. 73	12. 06. 73	A-588-046	AA-129	Japan	Polychloroprene Rubber.
Aug. 98	12. 73	12. 17. 73	A-122-047	AA-127	Canada	Elemental Sulphur.
	2. 74	02. 27. 74	A-122-050	AA-137	Canada	Racing Plates.
	8. 76	08. 30. 76	A-588-055	AA-154	Japan	Acrylic Sheet.
	2. 77	02. 02. 77	A-588-056	AA-162	Japan	Melamine.
	3. 77	03. 15. 77	C-351-037	C4-21	Brazil	Cotton Yarn.
Sep. 98	10. 77	10. 21. 77	A-475-059	AA-167	Italy	Pressure Sensitive Tape.

¹ U.S. producers of gray portland cement calcium aluminate flux objected to the proposed cement/

flux grouping. The Commission agreed that these products should not be grouped. However, on April

7, 1998, the Department revoked the antidumping duty order on flux; therefore this issue is moot.

FINAL SCHEDULE AND GROUPING—Continued

Initiation month/year	Group average date month/year	Effective date (mm.dd.yy)	DOC Case No.	ITC Case No.	Country	Product
Oct. 98	12. 77	12. 22. 77	A-428-062	AA-172	Germany	Animal Glue.
	2. 78	02. 17. 78	A-433-064	AA-173	Austria	Railway Track Equipment.
	5. 78	05. 25. 78	A-588-066	AA-176	Japan	Impression Fabric.
	12. 78	12. 08. 78	A-588-068	AA-188	Japan	Steel Wire Strand.
	4. 79	03. 21. 79	A-405-071	AA-191	Finland	Rayon Staple Fiber.
	4. 79	05. 15. 79	C-401-056	C4-13	Sweden	Rayon Staple Fiber.
	6. 79	07. 31. 78	C-408-046	C4-7	EC	Sugar.
	6. 79	06. 13. 79	A-423-077	AA-198	Belgium	Sugar.
	6. 79	06. 13. 79	A-427-078	AA-199	France	Sugar.
	6. 79	06. 13. 79	A-428-082	AA-200	Germany	Sugar.
	6. 79	04. 09. 80	A-122-085	A-3	Canada	Sugar and Syrups.
	12. 79	03. 10. 71	A-588-015	AA-66	Japan	Television Receivers.
	12. 79	04. 30. 84	A-580-008	A-134	Korea (South)	Color Television Receivers.
	12. 79	04. 30. 84	A-583-009	A-135	Taiwan	Color Television Receivers.
	11. 80	11. 06. 80	A-588-090	A-7	Japan	Small Electric Motors (SA).
	1. 81	01. 07. 81	A-427-098	A-25	France	Anhydrous Sodium Metasilicate.
	4. 82	04. 09. 82	A-427-001	A-44	France	Sorbitol.
	7. 82	07. 20. 82	A-588-005	A-48	Japan	High Power Microwave Amplifiers.
	2. 83	06. 25. 81	A-428-061	A-31	Germany	Barium Carbonate.
	2. 83	10. 17. 84	A-570-007	A-149	China, PR	Barium Chloride.
Nov. 98	9. 83	09. 16. 83	A-570-101	A-101	China, PR	Griega Polyester Cotton Print Cloth.
	10. 83	09. 27. 82	C-357-004	C-None	Argentina	Carbon Steel Wire Rod (SA).
	10. 83	11. 23. 84	A-357-007	A-157	Argentina	Carbon Steel Wire Rod.
	11. 83	11. 07. 83	C-559-001	C-None	Singapore	Refrigeration Compressors (SA).
	1. 84	01. 19. 84	A-469-007	A-126	Spain	Potassium Permanganate.
	1. 84	01. 31. 84	A-570-001	A-125	China, PR	Potassium Permanganate.
	3. 84	03. 22. 84	A-570-002	A-130	China, PR	Chloropicrin.
	3. 85	10. 16. 80	C-533-063	C3-13	India	Iron Metal Castings.
	3. 85	03. 05. 86	A-122-503	A-263	Canada	Iron Construction Castings.
	3. 85	05. 09. 86	A-351-503	A-262	Brazil	Iron Construction Castings.
Dec. 98	3. 85	05. 09. 86	A-570-502	A-265	China, PR	Iron Construction Castings.
	3. 85	05. 15. 86	C-351-504	C-249	Brazil	Heavy Iron Construction Castings.
	3. 85	03. 01. 85	A-475-401	A-165	Italy	Brass Fire Protection Equipment.
	3. 85	3. 12. 85	C-301-401	C-None	Colombia	Textiles & Textile Products (SA).
	3. 85	3. 12. 85	C-549-401	C-None	Thailand	Certain Textile Mill Products (SA).
	4. 85	03. 02. 83	C-351-005	C-184	Brazil	Frozen Concentrated Orange Juice (SA).
	4. 85	05. 05. 87	A-351-605	A-326	Brazil	Frozen Concentrated Orange Juice.
	4. 85	04. 18. 85	A-588-401	A-189	Japan	Calcium Hypochlorite.
	5. 85	03. 16. 78	C-351-029	C4-20	Brazil	Castor Oil.
	5. 85	07. 14. 94	A-570-825	A-653	China, PR	Sebacic Acid.
Jan. 99	6. 85	06. 24. 85	A-122-401	A-196	Canada	Red Raspberries.
	8. 85	08. 15. 85	C-122-404	C-224	Canada	Live Swine.
	10. 85	10. 22. 85	C-351-406	C-223	Brazil	Tillage Tools.
	11. 85	11. 13. 85	A-357-405	A-208	Argentina	Barbed Wire.
	12. 85	12. 04. 85	A-614-502	A-246	New Zealand	Brazing Copper Wire & Rod.
	12. 85	01. 29. 86	A-791-502	A-247	South Africa	Brazing Copper Wire & Rod.
	12. 85	12. 19. 85	A-588-405	A-207	Japan	Cellular Mobile Phones.
	2. 86	02. 14. 86	A-570-501	A-244	China, PR	Paint Brushes.
	3. 86	10. 04. 83	A-570-003	A-103	China, PR	Shop Towels.
	3. 86	03. 09. 84	C-535-001	C-202	Pakistan	Shop Towels.

FINAL SCHEDULE AND GROUPING—Continued

Initiation month/year	Group average date month/year	Effective date (mm.dd.yy)	DOC Case No.	ITC Case No.	Country	Product
Feb. 99	11. 86	05. 21. 86	A-351-505	A-278	Brazil	Malleable Cast Iron Pipe Fittings.
	11. 86	05. 23. 86	A-580-507	A-279	Korea (South)	Malleable Cast Iron Pipe Fittings.
	11. 86	05. 23. 86	A-583-507	A-280	Taiwan	Malleable Cast Iron Pipe Fittings.
	11. 86	07. 06. 87	A-588-605	A-347	Japan	Malleable Cast Iron Pipe Fittings.
	11. 86	08. 20. 87	A-549-601	A-348	Thailand	Malleable Cast Iron Pipe Fittings.
	1. 87	12. 02. 86	A-570-506	A-298	China, PR	Porcelain-on-Steel Cooking Ware.
	1. 87	12. 02. 86	A-201-504	A-297	Mexico	Porcelain-on-Steel Cooking Ware.
	1. 87	12. 02. 86	A-583-508	A-299	Taiwan	Porcelain-on-Steel Cooking Ware.
	1. 87	12. 12. 86	C-201-505	C-265	Mexico	Porcelain-on-Steel Cooking Ware.
	1. 87	01. 20. 87	A-580-601	A-304	Korea (South)	Top-of-the-Stove Stainless Steel Cooking Ware.
Mar. 99	1. 87	01. 20. 87	C-580-602	C-267	Korea (South)	Top-of-the-Stove Stainless Steel Cooking Ware.
	1. 87	01. 20. 87	C-583-604	C-268	Taiwan	Top-of-the-Stove Stainless Steel Cooking Ware.
	1. 87	01. 20. 87	A-583-603	A-305	Taiwan	Top-of-the-Stove Stainless Steel Cooking Ware.
	3. 87	03. 12. 87	C-421-601	C-278	Netherlands	Standard Chrysanthemums.
	3. 87	03. 18. 87	A-301-602	A-329	Colombia	Fresh Cut Flowers.
	3. 87	03. 18. 87	A-331-602	A-331	Ecuador	Fresh Cut Flowers.
	3. 87	03. 19. 87	C-337-601	C-276	Chile	Standard Carnations.
	3. 87	03. 20. 87	A-337-602	A-328	Chile	Standard Carnations.
	3. 87	04. 23. 87	A-779-602	A-332	Kenya	Standard Carnations.
	3. 87	04. 23. 87	A-201-601	A-333	Mexico	Fresh Cut Flowers.
	3. 87	04. 23. 87	C-333-601	C3-18	Peru	Pompon Chrysanthemums.
	5. 87	01. 08. 87	C-351-604	C-269	Brazil	Brass Sheet & Strip.
	5. 87	01. 12. 87	A-351-603	A-311	Brazil	Brass Sheet & Strip.
	5. 87	01. 12. 87	A-122-601	A-312	Canada	Brass Sheet & Strip.
	5. 87	01. 12. 87	A-580-603	A-315	Korea (South)	Brass Sheet & Strip.
	5. 87	03. 06. 87	C-427-603	C-270	France	Brass Sheet & Strip.
	5. 87	03. 06. 87	A-427-602	A-313	France	Brass Sheet & Strip.
	5. 87	03. 06. 87	A-428-602	A-317	Germany	Brass Sheet & Strip.
	5. 87	03. 06. 87	A-475-601	A-314	Italy	Brass Sheet & Strip.
	5. 87	03. 06. 87	A-401-601	A-316	Sweden	Brass Sheet & Strip.
	5. 87	08. 12. 88	A-588-704	A-379	Japan	Brass Sheet & Strip.
	5. 87	08. 12. 88	A-421-701	A-380	Netherlands	Brass Sheet & Strip.
	7. 87	07. 14. 87	A-831-801	A-340	Armenia	Solid Urea.
	7. 87	07. 14. 87	A-832-801	A-340	Azerbaijan	Solid Urea.
	7. 87	07. 14. 87	A-822-801	A-340	Belarus	Solid Urea.
	7. 87	07. 14. 87	A-447-801	A-340	Estonia	Solid Urea.
	7. 87	07. 14. 87	A-833-801	A-340	Georgia	Solid Urea.
	7. 87	07. 14. 87	A-843-801	A-340	Kazakhstan	Solid Urea.
	7. 87	07. 14. 87	A-835-801	A-340	Kyrgyzstan	Solid Urea.
	7. 87	07. 14. 87	A-449-801	A-340	Latvia	Solid Urea.
	7. 87	07. 14. 87	A-451-801	A-340	Lithuania	Solid Urea.
	7. 87	07. 14. 87	A-841-801	A-340	Moldova	Solid Urea.
	7. 87	07. 14. 87	A-485-601	A-339	Romania	Solid Urea.
	7. 87	07. 14. 87	A-821-801	A-340	Russia	Solid Urea.
	7. 87	07. 14. 87	A-842-801	A-340	Tajikistan	Solid Urea.
	7. 87	07. 14. 87	A-843-801	A-340	Turkmenistan	Solid Urea.
	7. 87	07. 14. 87	A-823-801	A-340	Ukraine	Solid Urea.
	7. 87	07. 14. 87	A-844-801	A-340	Uzbekistan	Solid Urea.
	8. 87	08. 19. 87	C-508-605	C-286	Israel	Industrial Phosphoric Acid.
	8. 87	08. 19. 87	A-508-604	A-366	Israel	Industrial Phosphoric Acid.

FINAL SCHEDULE AND GROUPING—Continued

Initiation month/year	Group average date month/year	Effective date (mm.dd.yy)	DOC Case No.	ITC Case No.	Country	Product
Apr. 99	1. 88	01. 19. 88	A-122-701	A-374	Canada	Potassium Chloride (Potash) (SA).
	6. 88	08. 08. 76	A-588-054	AA-143	Japan	Tapered Roller Bearings, 4 Inches and Under.
	6. 88	06. 15. 87	A-570-601	A-344	China, PR	Tapered Roller Bearings.
	6. 88	06. 19. 87	A-437-601	A-341	Hungary	Tapered Roller Bearings.
	6. 88	06. 19. 87	A-485-602	A-345	Romania	Tapered Roller Bearings.
	6. 88	10. 06. 87	A-588-604	A-343	Japan	Tapered Roller Bearings, Over 4 Inches.
	6. 88	05. 15. 89	A-427-801	A-392	France	Cylindrical Roller Bearings.
	6. 88	05. 15. 89	A-427-801	A-392	France	Ball Bearings.
	6. 88	05. 15. 89	A-427-801	A-392	France	Spherical Plain Bearings.
	6. 88	05. 15. 89	A-428-801	A-391	Germany	Spherical Plain Bearings.
	6. 88	05. 15. 89	A-428-801	A-391	Germany	Cylindrical Roller Bearings.
	6. 88	05. 15. 89	A-428-801	A-391	Germany	Ball Bearings.
	6. 88	05. 15. 89	A-475-801	A-393	Italy	Ball Bearings.
	6. 88	05. 15. 89	A-475-801	A-393	Italy	Cylindrical Roller Bearings.
	6. 88	05. 15. 89	A-588-804	A-394	Japan	Cylindrical Roller Bearings.
	6. 88	05. 15. 89	A-588-804	A-394	Japan	Spherical Plain Bearings.
	6. 88	05. 15. 89	A-588-804	A-394	Japan	Ball Bearings.
	6. 88	05. 15. 89	A-485-801	A-395	Romania	Ball Bearings.
	6. 88	05. 15. 89	A-559-801	A-396	Singapore	Ball Bearings.
	6. 88	05. 15. 89	A-401-801	A-397	Sweden	Ball Bearings.
	6. 88	05. 15. 89	A-401-801	A-397	Sweden	Cylindrical Roller Bearings.
	6. 88	05. 15. 89	A-412-801	A-399	United Kingdom	Cylindrical Roller Bearings.
	6. 88	05. 15. 89	A-412-801	A-399	United Kingdom	Ball Bearings.
	6. 88	06. 07. 88	A-588-703	A-377	Japan	Forklift Trucks.
	6. 88	06. 16. 88	A-588-706	A-384	Japan	Nitrile Rubber.
May 99	8. 88	05. 07. 84	A-583-008	A-132	Taiwan	Small Diameter Carbon Steel Pipe and Tube.
	8. 88	03. 07. 86	C-489-502	C-253	Turkey	Welded Carbon Steel Pipes and Tubes.
	8. 88	03. 07. 86	C-489-502	C-253	Turkey	Welded Carbon Steel Line Pipe.
	8. 88	03. 11. 86	A-549-502	A-252	Thailand	Welded Carbon Steel Pipes and Tubes.
	8. 88	05. 12. 86	A-533-502	A-271	India	Welded Carbon Steel Pipes and Tubes.
	8. 88	05. 15. 86	A-489-501	A-273	Turkey	Welded Carbon Steel Pipes and Tubes.
	8. 88	06. 16. 86	A-122-506	A-276	Canada	Oil Country Tubular Goods.
	8. 88	06. 18. 86	A-583-505	A-277	Taiwan	Oil Country Tubular Goods.
	8. 88	11. 13. 86	A-559-502	A-296	Singapore	Small Diameter Standard & Rectangular Pipe & Tube.
	8. 88	03. 06. 87	A-508-602	A-318	Israel	Oil Country Tubular Goods.
	8. 88	03. 06. 87	C-508-601	C-271	Israel	Oil Country Tubular Goods.
	8. 88	03. 27. 89	A-583-803	A-410	Taiwan	Light Walled Rectangular Tubing.
	8. 88	05. 26. 89	A-357-802	A-409	Argentina	Light Walled Rectangular Tubing.
	8. 88	11. 02. 92	A-351-809	A-532	Brazil	Circular-Welded Non-Alloy Steel Pipe.
	8. 88	11. 02. 92	A-580-809	A-533	Korea (South)	Circular-Welded Non-Alloy Steel Pipe.
	8. 88	11. 02. 92	A-201-805	A-534	Mexico	Circular-Welded Non-Alloy Steel Pipe.
	8. 88	11. 02. 92	A-583-814	A-536	Taiwan	Circular-Welded Non-Alloy Steel Pipe.
	8. 88	11. 02. 92	A-307-805	A-537	Venezuela	Circular-Welded Non-Alloy Steel Pipe.
	8. 88	08. 24. 88	A-588-707	A-386	Japan	Granular Polytetrafluoroethylene Resin.
	8. 88	08. 30. 88	A-475-703	A-385	Italy	Granular Polytetrafluoroethylene Resin.
	3. 89	12. 17. 86	A-351-602	A-308	Brazil	Carbon Steel Butt-Weld Pipe Fittings.

FINAL SCHEDULE AND GROUPING—Continued

Initiation month/year	Group average date month/year	Effective date (mm.dd.yy)	DOC Case No.	ITC Case No.	Country	Product
	3. 89	12. 17. 86	A-583-605	A-310	Taiwan	Carbon Steel Butt-Weld Pipe Fittings.
	3. 89	02. 10. 87	A-588-602	A-309	Japan	Carbon Steel Butt-Weld Pipe Fittings.
	3. 89	07. 06. 92	A-570-814	A-520	China, PR	Carbon Steel Butt-Weld Pipe Fittings.
	3. 89	07. 06. 92	A-549-807	A-521	Thailand	Carbon Steel Butt-Weld Pipe Fittings.
	4. 89	04. 03. 89	A-588-802	A-389	Japan	Micro Disks.
	4. 89	04. 17. 89	A-484-801	A-406	Greece	Electrolytic Manganese Dioxide.
	4. 89	04. 17. 89	A-588-806	A-408	Japan	Electrolytic Manganese Dioxide.
Jun. 99	6. 89	06. 14. 89	A-428-802	A-419	Germany	Industrial Belts Except Synchronous & V Belts.
	6. 89	06. 14. 89	A-475-802	A-413	Italy	Synchronous and V-Belts.
	6. 89	06. 14. 89	A-588-807	A-414	Japan	Industrial Belts.
	6. 89	06. 14. 89	A-559-802	A-415	Singapore	V-Belts.
	9. 89	08. 10. 83	A-427-009	A-96	France	Industrial Nitrocellulose.
	9. 89	07. 10. 90	A-351-804	A-439	Brazil	Industrial Nitrocellulose.
	9. 89	07. 10. 90	A-570-802	A-441	China, PR	Industrial Nitrocellulose.
	9. 89	07. 10. 90	A-428-803	A-444	Germany	Industrial Nitrocellulose.
	9. 89	07. 10. 90	A-588-812	A-440	Japan	Industrial Nitrocellulose.
	9. 89	07. 10. 90	A-580-805	A-442	Korea (South)	Industrial Nitrocellulose.
	9. 89	07. 10. 90	A-412-803	A-443	United Kingdom	Industrial Nitrocellulose.
	9. 89	10. 16. 90	A-479-801	A-445	Yugoslavia	Industrial Nitrocellulose.
	9. 89	09. 15. 89	A-122-804	A-422	Canada	Steel Rail.
	9. 89	09. 22. 89	C-122-805	C-297	Canada	Steel Rail.
	12. 89	12. 29. 89	A-588-811	A-432	Japan	Drafting Machines.
	1. 90	12. 11. 89	A-588-809	A-426	Japan	Small Business Telephone Systems.
	1. 90	12. 11. 89	A-583-806	A-428	Taiwan	Small Business Telephone Systems.
	1. 90	02. 07. 90	A-580-803	A-427	Korea (South)	Small Business Telephone Systems.
	2. 90	02. 16. 90	A-588-810	A-429	Japan	Mechanical Transfer Presses.
	11. 90	11. 19. 90	A-588-813	A-455	Japan	Multiangle Laser Light Scattering Instruments.
	2. 91	02. 13. 91	A-588-816	A-462	Japan	Benzyl Paraben.
Jul. 99	2. 91	02. 19. 91	A-570-803	A-457	China, PR	Bars, Wedges.
	2. 91	02. 19. 91	A-570-803	A-457	China, PR	Axes, Adzes.
	2. 91	02. 19. 91	A-570-803	A-457	China, PR	Picks, Mattocks.
	2. 91	02. 19. 91	A-570-803	A-457	China, PR	Hammers, Sledges.
	2. 91	02. 19. 91	A-570-805	A-466	China, PR	Sulfur Chemicals (Sodium Thiosulfate).
	2. 91	02. 19. 91	A-428-807	A-465	Germany	Sulfur Chemicals (Sodium Thiosulfate).
	2. 91	02. 19. 91	A-412-805	A-468	United Kingdom	Sulfur Chemicals (Sodium Thiosulfate).
	4. 91	01. 03. 83	C-469-004	C-178	Spain	Stainless Steel Wire Rods.
	4. 91	12. 01. 93	A-533-808	A-638	India	Stainless Steel Wire Rods.
	4. 91	01. 28. 94	A-351-819	A-636	Brazil	Stainless Steel Wire Rods.
	4. 91	01. 28. 94	A-427-811	A-637	France	Stainless Steel Wire Rods.
	4. 91	12. 03. 87	A-401-603	A-354	Sweden	Seamless Stainless Steel Hollow Products.
	4. 91	12. 30. 92	A-580-810	A-540	Korea (South)	Welded Stainless Steel Pipes.
	4. 91	12. 30. 92	A-583-815	A-541	Taiwan	Welded Stainless Steel Pipes.
	4. 91	04. 12. 91	A-403-801	A-454	Norway	Fresh & Chilled Atlantic Salmon.
	4. 91	04. 12. 91	C-403-802	C-302	Norway	Fresh & Chilled Atlantic Salmon.
	6. 91	06. 05. 91	A-580-807	A-459	Korea (South)	Polyethylene Terephthalate Film.
	6. 91	06. 18. 91	A-570-804	A-464	China, PR	Sparklers.
	8. 91	03. 25. 88	A-588-702	A-376	Japan	Stainless Steel Butt-Weld Pipe Fittings.

FINAL SCHEDULE AND GROUPING—Continued

Initiation month/year	Group average date month/year	Effective date (mm.dd.yy)	DOC Case No.	ITC Case No.	Country	Product
Aug. 99	8. 91	02. 23. 93	A-580-813	A-563	Korea (South)	Stainless Steel Butt-Weld Pipe Fittings.
	8. 91	06. 16. 93	A-583-816	A-564	Taiwan	Stainless Steel Butt-Weld Pipe Fittings.
	8. 91	08. 30. 90	A-201-802	A-451	Mexico	Grey Portland Cement and Cement Clinker.
	8. 91	05. 10. 91	A-588-815	A-461	Japan	Grey Portland Cement and Cement Clinker.
	8. 91	02. 27. 92	A-307-803	A-519	Venezuela	Grey Portland Cement and Cement Clinker (SA).
	8. 91	03. 17. 92	C-307-804	C3-21	Venezuela	Grey Portland Cement and Cement Clinker (SA).
	9. 91	09. 04. 91	A-588-817	A-469	Japan	Flat Panel Displays (Electroluminescent).
	9. 91	09. 20. 91	A-570-808	A-474	China, PR	Chrome-Plated Lug Nuts.
	9. 91	09. 20. 91	A-583-810	A-475	Taiwan	Chrome-Plated Lug Nuts.
	11.91	11.21.91	A-570-811	A-497	China, PR	Tungsten Ore Concentrates.
Sep. 99	6.92	06.02.92	A-614-801	A-516	New Zealand	Kiwifruit.
	8.92	08.31.92	C-122-815	C-309	Canada	Pure Magnesium.
	8.92	08.31.92	C-122-815	C-309	Canada	Alloy Magnesium.
	8.92	08.31.92	A-122-814	A-528	Canada	Pure Magnesium.
	10.92	10.07.92	A-557-805	A-527	Malaysia	Extruded Rubber Thread.
	12.92	10.16.92	A-843-802	A-539	Kazakhstan	Uranium (SA).
	12.92	10.16.92	A-835-802	A-539	Kyrgyzstan	Uranium (SA).
	12.92	10.16.92	A-821-802	A-539	Russia	Uranium (SA).
	12.92	10.16.92	A-844-802	A-539	Uzbekistan	Uranium (SA).
	12.92	08.30.93	A-823-802	A-539	Ukraine	Uranium.
	1.93	06.13.79	A-583-080	AA-197	Taiwan	Carbon Steel Plate.
	1.93	10.11.85	C-401-401	C-231	Sweden	Carbon Steel Products.
	1.93	08.17.93	C-423-806	C-319	Belgium	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C-351-818	C-320	Brazil	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C-427-810	C-348	France	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.17.93	C-428-817	C-322	Germany	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C-428-817	C-349	Germany	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.17.93	C-428-817	C-340	Germany	Cold-Rolled Carbon Steel Flat Products.
	1.93	08.17.93	C-580-818	C-342	Korea (South)	Cold-Rolled Carbon Steel Flat Products.
	1.93	08.17.93	C-580-818	C-350	Korea (South)	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.17.93	C-201-810	C-325	Mexico	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C-469-804	C-326	Spain	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C-401-804	C-327	Sweden	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C-412-815	C-328	United Kingdom	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A-602-803	A-612	Australia	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.19.93	A-423-805	A-573	Belgium	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A-351-817	A-574	Brazil	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A-122-822	A-614	Canada	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.19.93	A-122-823	A-575	Canada	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A-405-802	A-576	Finland	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A-427-808	A-615	France	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.19.93	A-428-815	A-616	Germany	Corrosion-Resistant Carbon Steel Flat Products.

FINAL SCHEDULE AND GROUPING—Continued

Initiation month/year	Group average date month/year	Effective date (mm.dd.yy)	DOC Case No.	ITC Case No.	Country	Product
	1.93	08.19.93	A-428-814	A-604	Germany	Cold-Rolled Carbon Steel Flat Products.
	1.93	08.19.93	A-428-816	A-578	Germany	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A-588-826	A-617	Japan	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.19.93	A-580-816	A-618	Korea (South)	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.19.93	A-580-815	A-607	Korea (South)	Cold-Rolled Carbon Steel Flat Products.
	1.93	08.19.93	A-201-809	A-582	Mexico	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A-421-804	A-608	Netherlands	Cold-Rolled Carbon Steel Flat Products.
	1.93	08.19.93	A-455-802	A-583	Poland	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A-485-803	A-584	Romania	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A-469-803	A-585	Spain	Cut-to-Length Carbon Steel Plate.
Oct. 99	1.93	08.19.93	A-401-805	A-586	Sweden	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A-412-814	A-587	United Kingdom	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.92	A-570-815	A-538	China, PR	Sulfanilic Acid.
	1.93	03.02.93	C-533-807	C-318	India	Sulfanilic Acid.
	1.93	03.02.93	A-533-806	A-561	India	Sulfanilic Acid.
	3.93	03.22.93	C-351-812	C-314	Brazil	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	A-351-811	A-552	Brazil	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	A-427-804	A-553	France	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	C-427-805	C-315	France	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	C-428-812	C-316	Germany	Hot-Rolled Lead & Bismuth Carbon Steel Products.
Nov. 99	3.93	03.22.93	A-428-811	A-554	Germany	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	C-412-811	C-317	United Kingdom	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	A-412-810	A-555	United Kingdom	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	5.93	06.10.91	A-570-806	A-472	China, PR	Silicon Metal.
	5.93	07.31.91	A-351-806	A-471	Brazil	Silicon Metal.
	5.93	09.26.91	A-357-804	A-470	Argentina	Silicon Metal.
	5.93	03.11.93	A-570-819	A-567	China, PR	Ferrosilicon.
	5.93	04.07.93	A-843-804	A-566	Kazakhstan	Ferrosilicon.
	5.93	04.07.93	A-823-804	A-569	Ukraine	Ferrosilicon.
	5.93	05.10.93	C-307-808	C3-23	Venezuela	Ferrosilicon.
Dec. 99	5.93	06.24.93	A-821-804	A-568	Russia	Ferrosilicon.
	5.93	06.24.93	A-307-807	A-570	Venezuela	Ferrosilicon.
	5.93	03.14.94	A-351-820	A-641	Brazil	Ferrosilicon.
	5.93	10.31.94	A-823-805	A-673	Ukraine	Silicomanganese (SA).
	5.93	12.22.94	A-351-824	A-671	Brazil	Silicomanganese.
	5.93	12.22.94	A-570-828	A-672	China, PR	Silicomanganese.
	5.93	05.10.93	A-580-812	A-556	Korea (South)	DRAMS of 1 Megabit and Above.
	7.93	07.12.93	A-588-823	A-571	Japan	Electric Cutting Tools.
	8.93	06.28.93	A-583-820	A-625	Taiwan	Helical Spring Lock Washers.
	8.93	10.19.93	A-570-822	A-624	China, PR	Helical Spring Lock Washers.
Dec. 99	9.93	09.07.93	A-570-820	A-621	China, PR	Compact Ductile Iron Waterworks Fittings and Glands.
	2.94	02.09.94	A-533-809	A-639	India	Forged Stainless Steel Flanges.
	2.94	02.09.94	A-583-821	A-640	Taiwan	Forged Stainless Steel Flanges.

FINAL SCHEDULE AND GROUPING—Continued

Initiation month/year	Group average date month/year	Effective date (mm.dd.yy)	DOC Case No.	ITC Case No.	Country	Product
	3. 94	03. 02. 94	A-588-829	A-643	Japan	Defrost Timers.
	6. 94	06. 24. 94	A-421-805	A-652	Netherlands	Aramid Fiber.
	7. 94	06. 07. 94	C-475-812	C-355	Italy	Grain-Oriented Electrical Steel.
	7. 94	06. 10. 94	A-588-831	A-660	Japan	Grain-Oriented Electrical Steel.
	7. 94	08. 12. 94	A-475-811	A-659	Italy	Grain-Oriented Electrical Steel.
	8. 94	08. 12. 94	A-588-832	A-661	Japan	Color Negative Photo Paper & Chemical Components (SA).
	8. 94	08. 12. 94	A-421-806	A-662	Netherlands	Color Negative Photo Paper & Chemical Components (SA).
	11. 94	11. 16. 94	A-570-831	A-683	China, PR	Garlic.
	11. 94	11. 25. 94	A-570-826	A-663	China, PR	Paper Clips.
	12. 94	12. 28. 94	A-570-827	A-669	China, PR	Cased Pencils.

[FR Doc 98-2887 Filed 5-13-98; 8:45 am]
BILLING CODE 3510 DS-P

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts will review revised designs for the World War II Memorial at its meeting on May 21, 1998. Please note the special time and location: 10:30 AM in the lecture hall of the West Building, National Gallery of Art at 6th Street and Constitution Avenue, NW. The building can be entered from the Constitution Avenue entrance after 10:00 AM, and is fully accessible. For those persons wishing to attend this meeting, please contact the Commission offices at 202-504-2200 to register. For those wishing to testify, statements should be brief, no more than five minutes.

Prior to the meeting, the Commission will view a partial mock-up of the Memorial on its site next to 17th Street, NW, at the Rainbow Pool on the Mall. Individuals wishing to view this mock-up are welcome and need not register in advance.

The remaining items on the agenda will be considered at the Commission's offices at the National Building Museum, 441 F Street, NW., Suite 312 following the World War II Memorial review.

Dated in Washington, DC, May 8, 1998.

Charles H. Atherton,
Secretary.

[FR Doc. 98-12861 Filed 5-13-98; 8:45 am]
BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Korea

May 8, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 62 FR 66057, published on December 17, 1997). Also

see 62 FR 67833, published on December 30, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 8, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period January 1, 1998 through December 31, 1998.

Effective on May 20, 1998, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit ¹
Group I 200-223, 224-V ² , 224-O ³ , 225, 226, 227, 300- 326, 360-363, 369pt. ⁴ , 400- 414, 464, 469pt. ⁵ , 600- 629, 666, 669- P ⁶ , 669pt. ⁷ , and 670-O ⁸ , as a group.	382,507,864 square meters equivalent.
Sublevel within Group I 619/620	94,397,452 square meters.
Sevlevels within Group II 338/339	1,228,179 dozen.

Category	Adjusted limit ¹
340	648,052 dozen of which not more than 329,995 dozen shall be in Category 340- D ⁹ .

¹ The limits have not been adjusted to account for any imports exported after December 31, 1997.

² Category 224-V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

³ Category 224-O: all remaining HTS numbers in Category 224.

⁴ Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905, (Category 369-L); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

⁵ Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

⁶ Category 669-P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

⁷ Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669-P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

⁸ Category 670-O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670-L).

⁹ Category 340-D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98-12888 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

May 8, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 20, 1998.

FOR FURTHER INFORMATION CONTACT:

Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased by receding unused carryforward and special carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67837, published on December 30, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 8, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period January 1, 1998 through December 31, 1998.

Effective on May 20, 1998, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit ¹
331/631	3,210,404 dozen pairs.
335/835	311,324 dozen.
336/636/836	434,683 dozen.
340/640	1,276,084 dozen.
341/641	2,100,508 dozen of which not more than 1,400,339 dozen shall be in Category 341 and not more than 1,400,339 dozen shall be in Category 641.

Category	Adjusted limit ¹
342/642/842	735,857 dozen.
347/348/847	1,103,659 dozen.
363	13,679,396 numbers.
369-S ²	855,842 kilograms.
840	330,239 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1997.

² Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98-12889 Filed 5-13-98; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, And OMB Number; Export-Controlled DoD Technical Data Agreement; DD Form 2345; OMB Number 0704-0207.

Type of Request: Extension.

Number of Respondents: 6,000.

Responses Per Respondent: 1.

Annual Responses: 6,000.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 2,000.

Needs and Uses: The Information collection requirement is necessary as a basis for certifying individuals or businesses to have access to DoD export-controlled militarily critical technical data subject to the provisions of 32 CFR 250. Individuals and enterprises who need access to unclassified DoD-controlled militarily critical technical data must certify on DD Form 2345, Militarily Critical Technical Data Agreement, that data will be used only in ways that will inhibit unauthorized access and maintain the protection afforded by U.S. export control laws.

The information collected is disclosed only to the extent consistent with prudent business practices, current regulations, and statutory requirements

and is so indicated on the Privacy Act statement of DD Form 2345. Use of DD Form 2345 permits U.S. and Canada defense contractors to certify their eligibility to obtain certain unclassified technical data with military and space applications. Nonavailability of the form prevents defense contractors from accessing certain restricted databases and obstructs conference attendance where restricted data will be discussed.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: on occasion
Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.
Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: May 8, 1998.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-12763 Filed 5-13-98; 8:45 am]
BILLING CODE 5090-04-M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The "Going to Space" Space Control Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet at Los Angeles Air Force Base, CA on May 26-28, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for the Going to Space 1998 Summer Study.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697-8404.

Barbara A. Carmichael,
Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98-12894 Filed 5-13-98; 8:45 am]
BILLING CODE 3910-01-P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The "Going to Space" Space Control Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet in Chantilly, VA and Rosslyn, VA on June 2, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for Going to Space 1998 Summer Study.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697-8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98-12895 Filed 5-13-98; 8:45 am]
BILLING CODE 3910-01-P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The 1998 Summer Study General Board Meeting in support of the HQ USAF Scientific Advisory Board will meet at the Arnold and Mabel Beckman Center, National Academies of Engineering & Sciences, Irvine, CA on June 15-26, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for the 1998 Summer Study topic on Going to Space.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697-8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98-12896 Filed 5-13-98; 8:45 am]
BILLING CODE 3910-01-P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 12-13 May 1998.

Time of Meeting: 0800-1700, 12 May 1998, 0900-1600, 13 May 1998.

Place: Arlington, VA.

Agenda: The Army Science Board's (ASB) Issue Group Study Panel on "Impacts of Precision Guided Munitions on Future Tank and Howitzer Capabilities" will meet for briefings and discussions on the study subject. The open portions of these meetings are open to the public. Any person may attend, appear before or file statements with the committee. The closed portions of these meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). For further information, please contact our office at (703) 604-7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98-12798 Filed 5-13-98; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 20 May 1998.

Time of Meeting: 1230-1630.

Place: Ft. Monmouth, NJ.

Agenda: The Army Science Board's (ASB) Issue Group Panel on "Schedule Realism" will meet for briefings and discussions on the Ground Based Common Sensor its past technical and programmatic problems. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For

further information, please contact our office at (703) 604-7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98-12799 Filed 5-13-98; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board. Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 22-23 May 1998.

Time of Meeting: 0830-1630.

Place: Owego, New York.

Agenda: The Army Science Board's (ASB) Issue Group Panel on "Schedule Realism" will meet for briefings and discussions on the Ground Based Common Sensor its past technical and programmatic problems. These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C. specifically subparagraphs (1) and (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portions of these meetings. For further information, please contact our office at (703) 604-7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98-12800 Filed 5-13-98; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of committee: Army Science Board (ASB).

Date of meeting: 21 May 1998.

Time of meeting: 0830-1200.

Place: Ft. Monmouth, NJ.

Agenda: The Army Science Board's (ASB) Issue Group Panel on "Schedule Realism" will meet for briefings and discussions on the Ground Based Common Sensor its past technical and programmatic problems. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraphs (1) and (4)

thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact our office at (703) 604-7490.

Wayne Joyner,

Program Support Specialist Army Science Board.

[FR Doc. 98-12801 Filed 5-13-98; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-196-001]

Algonquin Gas Transmission Company; Notice of Supplemental Filing

May 8, 1998.

Take notice that on May 5, 1998, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the corrected "hard copy" of the following tariff sheet to become effective May 31, 1998: Thirty First Revised Sheet No. 20A.

Algonquin states that the filing is submitted in supplement of its April 29, 1998 filing in Docket No. RP98-196-000 providing for the recovery of upstream transition costs of \$5,519.88 billed to Algonquin by Texas Eastern Transmission Corporation. Algonquin states that the sole purpose of this supplemental filing is to correct the pagination on the hard copy of Tariff Sheet No. 20A, and that the electronic version of such tariff sheet filed on April 29, 1998 needs no correction, since it was correct in the April 29, 1998 filing.

Algonquin states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12783 Filed 5-13-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

American Electric Power Service Corporation, Central and South West Services, Inc.; Notice of Extension of Time

May 8, 1998.

On May 4, 1998, the Commission issued a notice of filing in the above-docketed proceedings, respectively. The due date for comments and protests was set for May 20, 1998. By this notice, the date for the filing of interventions and protests is hereby extended to and including June 30, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12838 Filed 5-13-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP72-50-001 and CP72-274-001]

Georgia-Pacific Corporation; Notice of Amendment

May 8, 1998

Take notice that on April 8, 1998, Georgia-Pacific Corporation (Georgia-Pacific), 233 Peachtree Street N.E., Atlanta, Georgia 30303, filed in Docket Nos. CP72-50-001 and CP72-274-001, an application as supplemented on May 6, 1998, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, to amend the certificate of public convenience and necessity issued in Docket Nos. CP72-50-000 and CP72-274-000 to authorize Georgia-Pacific to increase the maximum certificated capacity of its 8-inch diameter pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Georgia-Pacific proposes to increase the maximum certificated capacity of its 19.5 mile, 8-inch diameter pipeline (the Crossett Pipeline) located in Morehouse Parish, Louisiana and Ashley County,

Arkansas from 23,460 Mcf per day to 56,000 Mcf per day by increasing the maximum operating pressure of the Crossett Pipeline from 460 psig to 960 psig which is within the maximum allowable operating pressure (MAOP) for the pipeline. Georgia-Pacific states that the increased capacity is required to accommodate increased quantities of gas to be purchased by Georgia-Pacific and transported on the Crossett Pipeline for consumption by Georgia-Pacific in its pulp, paper, and chemical plant (the Crossett Plant). Georgia-Pacific further states that it has never utilized any of its pipeline facilities to provide transportation services for another party.

Any person desiring to be heard or making any protest with reference to said application should on or before May 29, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings

associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Georgia-Pacific to appear or be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98-12780 Filed 5-13-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-142-009]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

May 8, 1998.

Take notice that on May 5, 1998, K N Interstate Gas Transmission Co. (KNI), tendered for filing as part of its FERC Gas Tariff, of the following actual tariff sheets, to be effective November 1, 1997:

Third Revised Volume No. 1-B
1st Rev Original Sheet No. 24
First Revised Volume No. 1-D
1st Rev Original Sheet No. 21
1st Rev First Revised Sheet No. 4

KNI states that the above referenced actual tariff sheets are being filed in compliance with the Commission's May

1, 1998 letter order, to be effective November 1, 1997. On April 28, 1998, KNI filed actual tariff sheets, which included those referenced above, as a result of the July 2, 1997 order approving ProForma sheets KNI filed on May 1, 1997.

KNI states the three tariff sheets referenced in this filing were submitted inadvertently with incorrect pagination. Therefore, KNI is submitting for acceptance and approval these corrected tariff sheets, to be effective November 1, 1997.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies and all parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12782 Filed 5-13-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-2284-000]

MEG Marketing, LLC; Notice of Issuance of Order

May 8, 1998.

MEG Marketing, LLC (MEG) submitted for filing a rate schedule under which MEG will engage in wholesale electronic power and energy transactions as a marketer. MEG also requested waiver of various Commission regulations. In particular, MEG requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by MEG.

On May 4, 1998, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MEG should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, MEG is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MEG's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 3, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12785 Filed 5-13-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

United States of America Federal Energy Regulatory Commission

[Docket No. RP98-214-000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 8, 1998.

Take notice that on May 5, 1998, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Ninth Revised Sheet No. 1
Sixth Revised Sheet No. 5B.02
Third Revised Sheet No. 5B.03
Fifth Revised Sheet No. 72
Second Revised Sheet No. 91B

Transwestern states that the purpose of this filing is to notify the Commission and submit the appropriate tariff sheet

changes with respect to the assignment of firm capacity between Transwestern and Santa Fe Energy Resources, Inc. to Texaco Natural Gas Inc.; update the Table of Contents of Transwestern's Tariff to reference the Park 'N' Ride Rate Schedule; to eliminate the reference to the FTS-2 Rate Schedule under Form D of the Form of Service Agreement and to update Transwestern's General Terms and Conditions section of the tariff to reflect Transwestern's revised Internet address.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12784 Filed 5-13-98; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11591 Alaska]

City of Wrangell (Sunrise Lake Water Supply and Hydroelectric Project); Notice of Intent to Conduct Environmental Scoping Meetings and a Site Visit

May 8, 1998.

The Energy-Policy Act of 1992 allows applicants to prepare their own Environmental Assessment (EA) for hydropower projects and file it with the Federal Energy Regulatory Commission (Commission) along with their license application as part of the applicant-prepared EA (APEA) process. The City of Wrangell (City) intends to prepare an EA to file with the Commission for the proposed Sunrise Lake Water Supply and Hydroelectric Project (Sunrise Lake

Project), No. 11591. The City will hold two scoping meetings; pursuant to the National Environmental Policy Act (NEPA) of 1969, to identify the scope of environmental issues that should be analyzed in the EA.

Scoping Meetings

The times and locations of the two scoping meetings are:

	Agency meeting	Public meeting
Date:	Wednesday, May 27, 1998.	Wednesday, May 27, 1998
Place:	City Hall, Wrangell, Alaska.	City Hall, Wrangell, Alaska
Time:	2:00 P.M.	7:00 P.M.

At the scoping meetings, the City will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) outline any resources they believe would not require a detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantitative data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA.

All interested individuals, organizations, and agencies are invited and encouraged to attend either or both meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, the City prepared and distributed an Initial Stage Consultation Document (ISCD) in January 1998, and a Scoping Document on May 7, 1998. Copies of the ISCD and the Scoping Document can be obtained by calling Mr. Stephen M. Hart of R.W. Beck, Inc., the City's agent, at (206) 695-4720. Copies of both documents will also be available at both scoping meetings.

Site Visit

For those who intend to participate in scoping, the City will also conduct a site visit to the proposed Sunrise Lake Project on Thursday, May 28, 1998. Those attending the site visit should meet at Wrangell airport at 10:00 A.M. We will promptly leave for the project site, via helicopter. Those being shuttled by helicopter to the project site may need to sign a waiver of liability regarding helicopter use. Because of the remoteness and difficulty of ground access at the project site, those attending the site visit should be physically fit and must wear appropriate clothing and

footgear. Participants must provide their own sack lunches.

To plan on helicopter use in advance of the visit, the City must identify the number of individuals interested in the site visit. Therefore, if you intend on visiting the proposed project site, you must register with Ms. Christy Jamieson at (907) 874-2381, no later than May 20, 1998. If inclement weather prevents a site visit on May 28, the alternative date will be May 29 at the same time and location.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting under the APEA process, the Commission will not conduct a NEPA scoping meeting after the application and draft EA are filed with the Commission.

Both scoping meetings will be recorded by a stenographer or tape recorder, and will become part of the formal record of the proceedings for this project.

Those who choose not to speak during the scoping meetings may instead submit written comments on the project. Written comments must be submitted by June 26, 1998, and should be mailed to: Mr. Stephen M. Hart, P.E., R.W. Beck, Inc., 1001 Fourth Avenue, Suite 2500, Seattle, Washington 98154-1004. All correspondence should show the following caption on the first page: Scoping Comments, Sunrise Lake Water Supply and Hydroelectric Project, Project No. 11591, Alaska.

For further information please contact Stephen M. Hart at (206) 695-4720, or Nick Jayjack of the Commission at (202) 219-2825.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-12781 Filed 5-13-98; 8:45 am]

BILLING CODE 5717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-00239; FRL-5785-3]

Toxic Substances; Generic Collection of Economic and Program Support Data; Agency Information Collection Activities; Proposed Renewal and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12. Before submitting the following ICR to OMB for review and reapproval, EPA is soliciting comments on specific aspects of the information collection, which is briefly described under Unit I. and Unit II. of this document. The ICR is a continuing ICR entitled "Collection of Economic and Program Support Data; Request for Generic Clearance," EPA ICR No. 1170.06, OMB No. 2070-0034. This ICR covers the reporting of economic or other data that EPA may use in developing regulatory or voluntary actions. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

DATES: Written comments must be submitted on or before July 18, 1998.

ADDRESSES: Each comment must bear the docket control number "OPPTS-00239" and administrative record number 196. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G-099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit III. of this document. No TSCA Confidential Business Information (CBI) should be submitted through e-mail.

All comments that contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551, e-mail: TSCA-Hotline@epamail.epa.gov. For technical information contact: Robert Lenahan, Economics, Exposure, and Technology Division (7406), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-1672; Fax: (202) 260-0981; e-mail: lenahan.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Availability:

Internet

Electronic copies of the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under "Laws and Regulations" (<http://www.epa.gov/fedrgstr/>).

Fax-on-Demand

Using a faxphone call (202) 401-0527 and select item 4061 for a copy of the ICR.

1. Background

Affected entities: Entities potentially affected by this action are persons in the United States who manufacture, distribute, process, import, use or dispose of chemical substances or mixtures.

For the collection of information addressed in this notice, EPA would like to solicit comments to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

II. Information Collection

EPA is seeking comments on the following ICR, as well as the Agency's intention to renew the corresponding OMB approval, which is currently scheduled to expire on August 31, 1998.

Title: Collection of Economic and Program Support Data; Request for Generic Clearance.

ICR numbers: EPA ICR No. 1170.06, OMB No. 2070-0032.

Abstract: Staff of EPA's Office of Pollution Prevention and Toxics (OPPT) are obliged to provide a wide array of analyses in support of Agency activities. These analyses allow OPPT staff to provide statistically valid information to assist in the development of regulations and voluntary activities that minimize costs and maximize net societal benefits. While some questions can be answered satisfactorily through information that EPA has in its possession or through existing secondary sources of data, there are others for which no relevant sources exist. Moreover, much of the work OPPT does requires information in a timely manner. Because of various pressures, the Agency often has to make decisions quickly. The ability for OPPT to collect information in relatively short periods to support such decisions is essential in ensuring that EPA makes sound decisions.

OPPT is required, through statute, to consider the economic impacts of actions taken to control the manufacture, distribution, processing, use, or disposal of chemical substances or mixtures that present unreasonable risks of injury to human health or the environment. OPPT uses cost-benefit analyses to determine that a proposed regulatory action maximizes the net benefits to society when compared to the alternatives. Given the record regarding the lack of publicly available information on many chemicals, and other situations that arise during the course of determining regulatory options, an information collection activity often is required to collect the needed data. OPPT and other EPA staff then use these data to evaluate the regulatory options available, to determine the impact of a specific program, or to develop non-regulatory, voluntary options.

Responses to this collection of information are voluntary.

Burden statement: The burden to respondents for complying with this ICR is estimated to total 6,000 hours per year with an annual cost of \$490,000. These totals are based on an average burden of 1.5 hour per response for an estimated 4,000 respondents making one or more

responses annually. These estimates include the time needed to determine applicability; review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

III. Public Record and Electronic Submissions

The official record for this document, as well as the public version, has been established for this document under docket control number "OPPTS-00239" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at: oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS-00239" and administrative record number 196. Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Information collection requests, Reporting and recordkeeping.

Dated: May 6, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98-12854 Filed 5-13-98; 8:45 am]

BILLING CODE 6560-60-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6013-7]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: Johnson Matthey Incorporated (JM) has submitted to EPA a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR Part 85, Subpart O. The equipment, referred to by JM as the Cam Converter Technology (CCT™) upgrade kit, consists of proprietary cam shafts, a CEM I™ catalytic exhaust muffler containing an oxidation catalyst, specified engine rebuild parts, and a set of instructions. The candidate kit is applicable to all Detroit Diesel Corporation (DDC) 6V92TA DDEC two-cycle urban bus diesel engines from model years 1985 to 1993 with power ratings of 253 and 277 horsepower (hp).

JM intends this equipment to be certified to the particulate matter standard of 0.10 grams per brake-horsepower-hour (g/bhp-hr). JM has not submitted life cycle cost information and does not intend that certification of the equipment trigger (initiate) any new program requirements for urban bus operators.

Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. EPA will review this notification of intent to certify, as well as any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XXI-A of Public Docket A-93-42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located at the address listed below.

Today's notice initiates a 45-day period during which EPA will accept written comments relevant to whether or not the equipment included in this

notification of intent to certify should be certified. Comments should be provided in writing to the addresses below.

DATES: Comments must be submitted on or before June 29, 1998.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Air Docket A-93-42 (Category XXI-A), Room M-1500, 401 M Street S.W., Washington, DC 20460.

2. William Rutledge, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 "M" Street S.W., Washington, DC 20460.

The JM notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 564-9297.

SUPPLEMENTARY INFORMATION:

I. Program Background

On April 21, 1993, EPA published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Option 1 establishes particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Option 2 is a fleet averaging program that establishes a specific annual target level for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is certification of retrofit/rebuild equipment, which begins when an equipment manufacturer submits an application for certification (referred to in the rule as a notification of intent to certify). To meet either of the two

compliance options, operators of the affected buses must use equipment that has been certified by EPA. Emissions requirements under either of the two options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Option 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Option 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program.

Under Option 1, additional information regarding cost must be submitted in the notification, in order for certification of that equipment to initiate (or trigger) program requirements for a particular engine model. In order for the equipment to serve as a trigger, the certifier must guarantee that the equipment will be offered to affected operators for \$7,940 or less at the 0.10 g/bhp-hr PM level, or for \$2,000 or less for the 25 percent or greater reduction in PM. Both of the above amounts are based on 1992 dollars and include life cycle costs incremental to the cost of a standard rebuild.

II. Notification of Intent To Certify

In a notification of intent to certify equipment signed March 6, 1998, Johnson Matthey (JM) applied for certification of equipment under the Environmental Protection Agency's (EPA) Urban Bus Retrofit/Rebuild Program. The candidate kit is applicable to 6V92TA DDEC urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1985 to 1993 with power ratings of 253 and 277 hp. The notification states that the candidate equipment achieves a particulate matter (PM) level of 0.10 g/bhp-hr.

The equipment, referred to as the Cam Converter Technology (CCT™) upgrade kit, consists of a CEM II™ catalytic exhaust muffler, proprietary cam shafts, turbocharger, piston dome kits, piston skirts, ring sets, cylinder liners, blower drive gear, blower assembly, blower bypass valve, rebuilt fuel injectors, and offset key. The CCT™ kit would be available in two horsepower levels (253, and 277) for 6V92TA DDEC engines.

The CEM II is a diesel oxidation catalyst that is the same size and shape as the CEM™. However, JM states that the CEM II™ contains a catalyst with a different formulation than the original CEM, and the CCT™ kit cannot be used

with the previously certified CEM™ in place of the new CEM II™. The CEM II is a direct, bolt-on replacement for the original equipment muffler, and is designed to fit the specific bus/engine combination (over 68 models are available).

The piston crowns are 15:1 compression ratio and are DDC parts. JM indicates that the original coach engine cylinder liner has a 0.95 inch inlet port. The cylinder liner of the candidate kit has 0.85 inch inlet ports. The proprietary camshafts increase the amount of time that the combustion gases stay in each cylinder, similar to internal exhaust gas recirculation. The blower drive gear is a 40 tooth gear. The blower assembly is a 100-percent bypass blower for increased fuel efficiency. The turbocharger is a standard DDC part that has been specifically selected. The offset replaces the standard key used to mount the front pulley or gear that also holds the speed sensor pulse wheel. When the engine rebuild with the candidate kit is complete, it may be necessary to change the ECM program. The notification lists the correct ECM program, which varies by engine rotation direction, engine power rating, and diesel fuel type. The program can be changed at a local DDC distributor.

The CCT™ kit is to be used in conjunction with an engine rebuild performed in accordance with standard DDC rebuild procedures using specified engine rebuild parts. The kit is installed using standard DDC rebuild practices except where amended by JM. The specific parts and parts numbers for the components of the candidate kit are listed in the JM notification. No cylinder heads are listed as part of the kit. EPA requests comment regarding whether cylinder heads should be included as a component of the kit.

The kit instructions specifies fuel injector height, offset key size, and electronic control module (ECM) program. The JM notification contains an installation guide for the CCT upgrade kit.

JM presents exhaust emissions data from testing a DDC 6V92TA engine model, once rebuilt with the candidate kit and again rebuilt in a baseline configuration. Testing was conducted in accordance with procedures set forth at 40 CFR Part 86, Subparts N and I. The notification provides lists of the DDC parts used for rebuilding the baseline and certification test engines. Table 1 below summarizes the data.

TABLE 1.—SUMMARY OF JM TESTING

Gaseous and particulate test	Transient engine test (g/bhp-hr)		
	1991 HODE standards	1991 6V92TA DDEC II baseline ¹	6V92TA DDEC II with CCT™ ¹
HC	1.3	0.46	0.2
CO	15.5	1.2	0.6
NO _x	5.0	4.9	5.0
PM	0.25	0.19	0.091
BSFC ²		0.483	0.489
Hp (R/O) ³		277/271	277/270
Smoke test	Percent opacity		
	Standards (percent)		
ACCEL	20	2.7	2.3
LUG	15	1.2	1.2
PEAK	50	3.7	3.7

¹ All 6V92TA testing was performed on engine identification number 6VF186640.

² Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.

³ Horsepower (Rated/Observed during testing).

As shown in Table 1 above, JM presents baseline test data from a 1991 model year configuration which documents PM emissions of 0.19 g/bhp-hr. The data of Table 1 indicate that, when the engine is rebuilt with the candidate CCT™ kit, PM emissions are less than 0.10 g/bhp-hr, and emissions of hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_x), and smoke opacity are less than or equal to the federal standards applicable for the 1993 model year.

Based on this testing demonstration, apparently all CCT-equipped engines would meet the 0.10 g/bhp-hr PM standard because installation of the kit results in the replacement of all emissions related parts with a specific set of parts, the combination of which results in a documented PM level of 0.09 g/bhp-hr. The PM emissions level of an original engine, prior to installation of the candidate kit, appears irrelevant because all emissions-related parts are required to be replaced upon installation of the kit. EPA requests comments on whether or not all engines for which certification is intended, will meet the 0.10 g/bhp-hr PM standard.

Both the federal and California exhaust emissions standards for NO_x were lowered to 5.0 g/bhp-hr beginning with the 1991 model year. The emissions data of the above table indicate that engines equipped with the candidate equipment can meet the 5.0 g/bhp-hr NO_x standard. Therefore, if certified, the equipment could be used for all applicable engines, including those originally certified for use in California.

The combination of the specified engine rebuild parts, proprietary camshafts, new settings of the kit, and CEM-II, results in a PM level less than 0.10 g/bhp-hr and NO_x level in compliance with the 1991 federal standard of 5.0 g/bhp-hr. EPA requests comments on whether the emissions test data presented by JM demonstrate that all engines for which certification is requested will meet the 0.10 g/bhp-hr PM standard and applicable federal and California NO_x standards with the candidate kit installed.

Even if ultimately certified by EPA, the equipment described in JM's notification may require additional review by the California Air Resources Board (CARB) before use in California. EPA recognizes that special situations may exist in California that are reflected in the unique emissions standards, engine calibrations, and fuel specifications of the State. While requirements of the federal urban bus program apply to several metropolitan areas in California, EPA understands the view of CARB that equipment certified under the urban bus program, to be used in California, must be provided with an executive order exempting it from the anti-tampering prohibitions of that State. Those interested in additional information should contact the Aftermarket Part Section of CARB, at (818) 575-6848.

No life cycle costs information has been submitted by JM, because JM does not intend certification of this equipment to trigger program requirements. If certified, no new requirements would be placed on operators, and no operator would be

required to purchase this equipment as a result of certification of the candidate equipment.

Certification of the candidate JM equipment would affect operators as follows. EPA has not yet certified equipment, for the applicable DDEC engines, to comply with the 0.10 g/bhp-hr standard and as being available for less than the applicable life cycle cost. Therefore, the 0.10 g/bhp-hr PM standard has not been triggered for the applicable engines. If the candidate equipment is certified, then no new requirements would be placed on operators and no operator would be required to purchase this equipment as a result of certification.

If EPA certifies other equipment that triggers the 0.10 g/bhp-hr standard, then urban bus operators who choose to comply with compliance Option 1 of this regulation will be required to use equipment certified to the 0.10 g/bhp-hr standard no later than six months after certification, when applicable engines are rebuilt or replaced.

If the candidate CCT kit is certified, then it would be available to be used in full compliance with urban bus program requirements. Certification of the CMX™ converter/muffler manufactured by the Engelhard Corporation (60 FR 28402; May 31, 1995) triggered the requirement for the applicable engines, when rebuilt or replaced, to reduce PM by at least 25 percent. Until such time that the 0.10 g/bhp-hr standard is triggered, the certification of the CMX™ means that operators who elect to use compliance program 1 must use equipment certified to reduce PM emissions by at least 25 percent, when

rebuilding or replacing the applicable engines. If certified, the candidate kit would meet, and exceed, this requirement. The candidate kit could also be used in full compliance if the program requirement to use equipment certified to the 0.10 g/bhp-hr standard is triggered.

If the Agency certifies the candidate equipment, then operators who choose to comply with Program 2 and install this equipment, would use the 0.10 g/bhp-hr certification level in their calculations for fleet level attained (FLA) as specified in the program regulations.

The date of this notice initiates a 45-day period during which EPA will accept written comments relevant to whether the equipment described in the JM notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review this notification, and provide written comments during the 45-day review period. Separate comments should be provided in writing to each of the addresses listed under the Addresses section of this notice.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) the certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify.

EPA requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

EPA will review this notification of intent to certify, along with comments received from the interested parties, and attempt to resolve or clarify issues as necessary. During the review process, EPA may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment.

Dated: May 5, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation

[FR Doc. 98-12849 Filed 5-13-98; 8:45 am]

BILLING CODE 5550-60-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6013-8]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Certification of Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of EPA certification of equipment provided by Detroit Diesel Corporation.

SUMMARY: Today's Federal Register notice announces EPA's decision to certify equipment to the 0.10 g/bhp-hr standard for the Urban Bus Retrofit/Rebuild Program. The equipment is provided by the Detroit Diesel Corporation (DDC).

DDC submitted to EPA a notification of intent to certify equipment, in materials signed July 16, 1997, pursuant to the program regulations at 40 CFR Part 85, Subpart O. On November 6, 1997, EPA published a notice in the Federal Register that the DDC notification had been received and made the notification available for public review and comment for a period of 45 days (62 FR 60077). EPA has completed its review and the Director of the Engine Programs and Compliance Division has determined that it meets all requirements for certification. Therefore, EPA certified this equipment in a letter to DDC dated April 6, 1998.

The equipment consists of the base engine components used on the 25% reduction retrofit/rebuild kit certified by DDC, components from the 25% retrofit catalyst kit certified by Engine Control Systems, Ltd. (ECS) and a TurboPac supercharger system supplied by Turbodyne Systems, Inc. that supplies additional air for combustion during engine acceleration.

The kit is applicable to 6V92TA urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 and equipped with mechanical unit injectors (MUI), and may be used immediately by transit operators in compliance with program requirements. The kit would be available in three horsepower levels (253, 277, and 294).

EPA has determined that this DDC kit complies with the 0.10 gram per brake horsepower-hour (g/bhp-hr) particulate matter (PM) standard for the applicable engines. EPA has not determined that DDC's notification complies with the life cycle cost requirements of the program regulations because no life cycle costs were supplied with the application.

Today's Federal Register notice does not trigger any additional program requirements for transit operators. The 0.10 g/bhp-hr PM level has already been triggered for all engines covered by this notification.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XX-A of Public Docket A-93-42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment." This docket is located at the address listed below.

Additional details concerning this certification, the DDC's kit, and responsibilities of transit operators, are provided below.

DATES: EPA certified this equipment in a letter to DDC dated April 6, 1998. Today's Federal Register notice announces this certification. The 0.10 g/bhp-hr standard was triggered on March 14, 1997 (62 FR 12166) for all engines covered by this certification.

ADDRESSES: The DDC notification, as well as other material specifically relevant to it, are contained at the U.S. Environmental Protection Agency's Public Air Docket A-93-42 (Category XX-A), Room M-1500, 401 "M" Street SW, Washington, DC 20460.

The DDC notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 "M" St. SW, Washington, D.C. 20460. Telephone: (202) 564-9259.

SUPPLEMENTARY INFORMATION:

I. Description of the Certified Kit

The certified kit described in today's Federal Register notice is provided by DDC. It is certified to the 0.10 g/bhp-hr standard but does not comply with the applicable life cycle cost requirements of the program. No cost data was provided in the notification.

The certification described in today's notice applies to 1979 through 1989 model year DDC 6V92TA engines that are equipped with mechanical unit injectors (MUI) and certified to federal emissions standards. It does not apply to engines certified to California emissions standards. The impact of this decision on transit operators is discussed in more detail in the "Transit Operator Requirements" section below.

The kit, described further below, consists of base engine components used on the 25% reduction kit certified by DDC earlier, a catalytic exhaust muffler supplied by Engine Control Systems, Ltd. (ECS), and a TurboPac supercharger system supplied by Turbodyne Systems, Inc. that supplies additional combustion air during acceleration. The kit is available in three horsepower (hp) ratings (253, 277, and 294 hp).

For retrofit with the DDC kit, an engine is rebuilt in accordance with standard DDC rebuild procedures, using specified engine components. This component set essentially includes the equipment certified by EPA to provide a 25% particulate reduction on October 2, 1995, at 60 FR 51472. These components are provided in two separate sets of parts. The first set of components is comprised of newly manufactured parts, including a gasket kit, air inlet hose, cylinder kits (piston assemblies and cylinder liners) a bypass valve and a truck type throttle delay. The second set of components includes Reliabil™ remanufactured parts, including the fuel injectors, camshafts, blower assembly, turbocharger, and head assemblies. Kit usage is based on engine rotation (righthand (RH) or lefthand (LH)), engine orientation, right bank cam gear mounting (bolt or nut), and engine power output based on injector size. The only difference from the previously certified equipment according to DDC is the inclusion of a truck-style throttle delay, adjustment of the throttle delay and injector timing settings to improve driveability. Additionally, the cylinder kit components have been modified to improve durability.

The converter is the same size and shape as the catalytic converter muffler certified by ECS for the Urban Bus Program as described in the Federal Register on January 6, 1997 (61 FR 746), is a direct replacement for the original equipment muffler, and is designed to fit the specific bus/engine combination. The use of diesel fuel that has been mixed with crankcase oil is prohibited by DDC.

The third constituent of the kit consists of an electrically powered supercharger system which is supplied by Turbodyne Systems, Inc. This component set, referred to as the TurboPac™, supplies additional intake air during engine acceleration from low engine speeds. DDC states that in addition to decreasing PM emissions and visible smoke during engine acceleration, the supercharger also improves engine response and vehicle driveability by reducing the fuel

modulation during acceleration. The basic system consists of a supercharger blower, a diverter valve, a boost pressure sensor, an electrical control box and power cables, and a throttle switch for detecting the start of the engine acceleration mode, and will be supplied in two kits. One includes those components common to all installations and a second kit to accommodate the installation requirements of the various engine and vehicle configurations.

To complete an engine rebuild two (2) base engine component kits, one (1) converter muffler kit, and two (2) supercharger kits are required. The specific kits used will depend on the engine/vehicle combination.

DDC states there are no differences in the service intervals or maintenance practices for the base engine associated with the installation of the upgrade kit. The converter/muffler requires no regularly scheduled maintenance, only an occasional cleaning if the maximum back pressure of the exhaust system is exceeded. The supercharger does not require scheduled maintenance; however, a visual inspection for air leaks is recommended whenever the engine is serviced.

Standard procedures as described in the service manual for 92 Series engines are to be used when rebuilding the base engines using the candidate equipment. No unique rebuild procedures are required.

Use of the candidate kit is restricted to 6V92TA Detroit Diesel Corporation engines manufactured from January 1979 through December 1989, equipped with mechanical unit fuel injectors (MUI), and originally certified to meet Federal emission standards. The required fuel is low sulphur (0.05% max by weight) diesel fuel, either number 1 or number 2. Complete rebuild kits will be sold by DDC through normal distribution channels.

All of the testing presented by DDC for this certification was conducted using original equipment (OE) parts, except for the converter muffler and the TurboPac components. EPA has no assurance that engines rebuilt using parts that are not (OE) would comply with the 0.10 g/bhp-hr standard. Therefore, use of engine parts that are not the specified OE parts are not covered by the certification described in today's Federal Register notice.

Pursuant to 40 CFR 85.1409, DDC will provide a 100,000-mile defect warranty and a 150,000-mile emissions performance warranty for the kit, and all of its components.

EPA's certification of the Engelhard Corporation's ETX™ kit (62 FR 12166; March 14, 1997) triggered the 0.10 g/

bhp-hr standard for 1979-1989 6V92TA MUI engines. That kit provided the three power ratings: 253, 277, and 294 hp that are included in this certification. Consequently, the certification of the DDC kit described in today's Federal Register notice, does not trigger the 0.10 g/bhp-hr standard for engines included in the certification.

II. Background and Basis for Certification

In a notification of intent to certify equipment, composed of an initial document signed July 16, 1997 and subsequent documents, DDC applied for certification of the kit under the Environmental Protection Agency's (EPA) Urban Bus Retrofit/Rebuild Program. Engines applicable to the certified kit are 6V92TA urban bus engine models made by Detroit Diesel Corporation (DDC) from model years 1979 to 1989 that are equipped with mechanical unit injectors (MUI) and certified to, or rebuilt to, comply with federal emissions standards. The certifier's principal place of business is: Detroit Diesel Corporation, 13400 Outer Drive, West, Detroit, Michigan 48329-4001.

Using engine dynamometer (transient) testing in accordance with the Federal Test Procedure for heavy-duty diesel engines, DDC demonstrated compliance with the 0.10 g/bhp-hr particulate matter (PM) emissions standard. Engine dynamometer data, shown below in Table A, is the basis for the certification approval of the kit when used on applicable engines. The emissions test data is part of DDC's notification of intent to certify, which is available in the public docket located at the above-mentioned address. All testing was conducted using #2 low-sulfur diesel fuel.

TABLE A.—EXHAUST EMISSIONS SUMMARY

Gaseous and particulate test	g/bhp-hr	
	1989 HODE standards	6V92TA MUI with DDC kit
HC	1.3	0.1
CO	15.5	0.4
NOx	10.7	9.8
PM	0.60	0.091
BSFC ¹ .....	.....	0.464
Smoke Test:	Standards	.....
ACCEL	20%	3.3%
LUG	15%	2.5%
PEAK	50%	4.2%

¹ Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.

The exhaust emissions data presented by DDC is from testing a Detroit Diesel Corporation (DDC) engine model 6V92TA, in accordance with procedures set forth at 40 CFR Part 86, Subparts N and I. The engine model was tested after being equipped with the DDC kit. The 6V92 engine was tested in one horsepower (hp) rating: 277hp.

The data of Table A demonstrates that the test engine, when rebuilt with the DDC kit, PM emissions are less than 0.10 g/bhp-hr and, emissions of hydrocarbon (HC), carbon monoxide (CO), NO_x and smoke opacity are within applicable federal standards.

This action applies a PM emissions level of 0.10 g/bhp-hr to all 1979 through 1989 DDC 6V92TA MUI urban bus engines, when properly equipped with the DDC kit and when using either diesel fuel #1 or #2. Table B lists the applicable engine models and certification levels associated with the certification announced in today's Federal Register.

TABLE B.—CERTIFICATION LEVEL OF DDC KIT

Engine models	Engine codes	Certification PM level
1979–1989 DDC 6V92TA MUI.	All certified to meet federal emissions standards.	0.10 g/bhp-hr.

All engines for which the DDC kit is intended to apply are expected to meet the 0.10 g/bhp-hr PM standard because the kit instructs the rebuilder to replace all emissions-related parts during the rebuild with DDC specified parts included in the kit, install the converter muffler and install the TurboPac system. The engine-out emissions level (upstream of the catalyst) is expected to be predictable because all emission-related parts are replaced using the DDC specified emissions-related parts and settings of the kit. As demonstrated by the test engine, the combination of the specified parts, the specified settings of the kit, the converter muffler and the TurboPac system, result in a PM level less than 0.10 g/bhp-hr.

A life cycle cost analysis is necessary only for certification of equipment that is meant to trigger a program emissions standard. Certification of Engelhard Corporation's ETX™ kit triggered the 0.10 g/bhp-hr standard for 6V92TA MUI engines, and made available kits rated at 253, 277, and 294 hp. The DDC certification does not include a cost analysis and one is not necessary for this certification. DDC states that

engines equipped with the kit will have no additional maintenance or service requirements.

III. Summary and Analysis of Comments and Concerns

Comments were received from five parties in response to the Federal Register notice of November 6, 1997 (62 FR 60077). The commenters are Johnson Matthey Incorporated (JMI), Engelhard Corporation (Engelhard), the Washington Metropolitan Area Transit Authority (WMATA), the Maryland Department of Transportation Mass Transit Administration (MTA), and the Milwaukee County Transit System (MCTS). JMI and Engelhard provided extensive comment. JMI is a manufacturer of equipment certified to meet the 0.10 g/bhp-hr standard for the 1979–1989 6V92TA MUI engines (see 62 FR 12166; March 14, 1997). WMATA, the MTA, and the MCTS are large transit bus operators in major metropolitan areas, which are subject to requirements of the urban bus program. The transits provided generally favorable comments on their experience with the equipment.

Comments or issues fell into the following general categories: (A) applicability of the kit; (B) description of the kit; (C) testing demonstration and documentation; (D) life cycle cost analysis; (E) warranty; (F) durability, and (G) in-use experience. All correspondence, comments, and other documentation are located in the public docket at the address above.

(A) Applicability

In the November 6, 1997, Federal Register notice, EPA stated that the information provided in DDC's notification applied to 6V92TA DDC engines manufactured from January 1979 to December 1989 equipped with mechanical unit injectors (MUI) and originally certified to meet Federal emission standards.

In comments dated December 19, 1997, Engelhard stated that DDC has failed to provide information demonstrating that this retrofit system can be applied safely to all vehicles. Engelhard commented that the electrical charging systems of urban buses can vary by make and design and asked how can we be sure that this system can be installed in all urban buses without an assessment of the charging system and information on the stress that the system that the DDC system will place on the

charging system. Additionally, Engelhard commented that the Turbodyne system uses a high speed motor that draws over 300 amps for 8 seconds while the bus is accelerating. This will dramatically increase the load on the bus' electrical system and will cause premature wear of the alternator, battery and electrical systems according to Engelhard. The motor that Turbodyne uses to drive the compressor can also fail. Engelhard asked if there are any durability data or effective life data for this motor, and noted that because urban buses stop and start continuously the Turbodyne system will be operating during a large portion of the bus operating time.

According to Engelhard this system is not designed to operate continuously and the urban bus application will require it to operate much more frequently than it is designed to operate. DDC needs to provide information, demonstrating that it is reasonable to expect the Turbodyne system will remain operational for 150,000 miles. Engelhard commented that it had thoroughly tested the Turbodyne system and found air leaks and malfunctioning of the controller system occurred frequently. In its comments of December 19, 1997 JMI states that the Turbodyne system appears to have two states: on and off. Considering the performance cycle of a typical urban bus, this system would be turned on every time a bus would pull away from the curb. Since the system has a high amperage draw on the bus' electrical system long term use could prematurely wear out the battery or starter solenoid. What are the long term impacts on the life to the electrical system? Was a standard bus battery/starter system used in the test cell? How high is the amperage and could this require modifications to the bus' electrical system? Could rewiring be required and are there concerns of shorts, or fire hazards?

In response to these comments, DDC states that The TurboPac unit is intended to compensate for the inherent lag in the engine turbocharger during rapid accelerations from low speed/light load conditions. During these periods the TurboPac operates at high speed with a current draw of approximately 300 amps. At all other times when the engine is operational, the TurboPac runs at low speed in the "standby" condition with a current draw of about 10 amps. Accelerations sufficient to trigger high speed TurboPac operation are expected to occur quite frequently in urban bus applications. However, the duration of the high speed TurboPac operation is very short. The system limits high speed operation to a maximum of eight

seconds. In most cases the system returns to standby operation in a shorter period of time after a preset air box pressure has been achieved. DDC logged data on a pilot bus installation at MATS in Milwaukee to determine the real-world duty cycle and current draw of the TurboPac 2500. The bus was run on a city route through downtown Milwaukee in November 1997. The data logger recorded data for approximately eight hours in one second intervals. The data analyzed encompass a 3 hour time period from just before noon to approximately 3:00 p.m. This portion was chosen due to the relatively low idle time in this sample and the inability of the software to accommodate additional data. In the evaluation, when off it was assumed to draw 10 amps and when it was on it was assumed to draw 300 amps. The data based on this evaluation indicates that the TurboPac will be active in the high speed mode approximately 10% of the time. The time average draw is about 35 amps.

DDC states that in order to operate on a dedicated electrical circuit, unit power is taken directly from the battery, so there are no modification necessary to the bus electrical system. A 500 amp fuse is installed on the circuit to the controller to protect the system in case of a short. DDC began field trials of the retrofit system in July 1997. To date, eight complete retrofit units have been installed in buses and are in regular revenue operation at four major U.S. transit services. DDC stated that there have been no problems with the electrical systems or batteries on these buses. These units have almost 40,000 miles of customer service with the high mileage unit having accrued over 13,000 miles. In addition, TurboPac systems were installed on two buses operating in transit service. One of these units experienced an early failure of a hand assembled prototype controller. The other bus has operated over 18,000 miles with no failures to the TurboPac system.

DDC states that the in-use evaluation program has not revealed any problems with leaks. Consequently, no improvements have been found necessary to reduce leaks. Since leaks have not been a problem, DDC has not quantified the size of leak that would be sufficient to impair performance. With regard to the Engelhard comment concerning system leaks, DDC commented that the TurboPac system which Engelhard evaluated in early 1996 was a prototype design. In this design, the TurboPac and the engine turbocharger compressor were configured in parallel and a diverter

valve was placed downstream where the two flow paths merged. During TurboPac operation, the valve was positioned to permit flow from the TurboPac to enter the engine and to block off flow from the turbocharger. When the TurboPac was not operational, the valve assumed the opposite position. In some early units, the diverter valve did not seal adequately and there was backflow through the turbocharger during TurboPac operation which resulted in reduced system performance. The current system has been completely redesigned to alleviate this problem. The TurboPac and engine turbocharger are now in a series arrangement. A check valve is placed downstream of the TurboPac and allows the engine to draw its intake air either from the TurboPac or directly from the engine air cleaner. The check valve has been shown to seal adequately and prevent backflow during TurboPac operation. DDC noted that the check valve operates in a relatively low pressure zone compared to the earlier diverter valve which was exposed to the full pressure supplied by the turbocharger.

Additional batteries or larger capacity alternators have not been installed in any of the pilot units and there have been no problems with the electrical system. DDC states that because the electrical connections for the TurboPac system are independent of the bus electrical system, it is not necessary to rewire electrical systems on buses. No fires or electrical shorts are expected and none have been reported during the pilot installations. DDC does not expect any negative impacts on the long term viability and integrity of bus electrical systems. During emission testing electrical power for the TurboPac was better supplied.

DDC has stated that the Delco-Remy 50dn alternator rated at 270 or 300 amps is the standard in the transit industry and is the only alternator that DDC offered with the 6V–92 transit engines. DDC cannot state that no other alternator is or could be used on affected transit buses, but does state that the use of another type alternator would be extremely rare. Delco-Remy provided a statement that the 50dn alternator is an approved candidate for use with the DDC kit. It further states that the 50dn charging system is designed to operate at full capacity and that electrical demand beyond the alternators capacity will not adversely affect the alternators performance, reliability or durability.

Based on the above discussion and the responses provided by DDC concerning the comments, EPA finds no clear evidence that the DDC system is

inadequately designed to operate on the urban bus engines to which it applies. Further, the in use evaluation program has demonstrated the ability to operate without adversely affecting the bus electrical systems. Therefore, EPA can find no reason based on the above comments not to grant certification of this kit. EPA further notes that DDC is required to provide a 100,000 mile defect warranty and 150,000 mile emissions performance warranty for the DDC kit and all of its components.

JMI commented that a Turbodyne representative stated publicly at APTA's Urban Bus Retrofit/Rebuild Program Panel session in Nashville, TN in August 1997, that Transit buses with routes that would require the TurboPac to operate more than 30% of the time would not be good candidates for using this system to reduce PM levels below 0.1 g/bhp-hr. JMI noted that this was not referenced in the notice of intent to certify and asked if this statement is still accurate? What data is available to substantiate DDC/Turbodyne's claim and is industry be informed of this comment? In response, Turbodyne provided information in letters dated February 23 and February 27, 1998 that during the August 1997 APTA Bus Maintenance Workshop in Nashville, a transit operator commented that the TurboPac on his routes "would be on all the time." The Turbodyne representative replied that he would not recommend the TurboPac for applications that exceeded 30% high-speed duty cycle. The ceiling of a 30% duty cycle was based on the assumption that the bus alternator would not have sufficient excess capacity for this type of duty cycle. Excess alternator capacity is a direct function of the accessory load and alternator rating. In citing an example, a 270-amp system with a total electrical load including the accessories of lighting and air conditioning would be 160 amps. The excess alternator capacity in this situation would be 110 amps. Assuming a 10% duty cycle, this system would have more than sufficient excess alternator capacity to meet the average current draw from the TurboPac of 35 amps.

However, if a hypothetical duty cycle of 40% were to exist, the TurboPac would require a time-average draw of 140 amps and in this scenario the alternator would need to be upgraded before the TurboPac would be appropriate. Turbodyne stated, however, that duty cycles that exceed 30% are not expected. In practice, Turbodyne stated it would be very hard to envision a scenario that would demand 30% high speed operation for more than a few minutes. However,

DDC/Turbodyne will analyze and make recommendations for any situation in which the operator believes the vehicle electrical system capacity may be in question.

(B) Description of the DDC Kit

In its comments Engelhard asked how DDC will ensure that future rebuilds using this kit will use a new catalyst and not an existing catalyst. Will all parts be purchased from DDC? What is the price? Will the catalyst be different from the standard ECS 25% catalyst? Will the catalyst be labeled as part of the DDC kit? Can DDC ensure catalysts are not swapped between buses? In response, DDC states that a converter muffler will be part of each rebuild kit. Complete kits will be sold by DDC through normal distribution channels. It will not be possible to purchase a complete rebuild kit without a converter/muffler assembly included. Swapping of catalysts between buses should not be an issue since a new catalyst is provided with each kit. The converter muffler which will be included in the DDC rebuild kits are supplied by Engine Control Systems, LTD (ECS) and are identical to the ECS converter/mufflers certified to provide a 25% reduction in PM emissions on DDC engines on January 6, 1997 as referenced earlier. The catalyst will be labeled with an ECS serial and model number. Pricing information on the catalyst was not provided as this kit is not being certified within the cost ceiling requirements.

In its comments, JMI asked how many superchargers are actually installed on the engine? What are the physical space requirements for the supercharger(s)? Will there be adequate space for the supercharger(s) on all engines and why are two base engine component kits required?

DDC indicates that one TurboPac Supercharger unit is required for each installation. However, the equipment will be supplied in two kits, one containing components required for all installations and a second which includes those components needed to accommodate the installation requirements of the various engine and vehicle configurations. With regard to the space issue, DDC indicates that it has performed pilot installations on eight different buses which represent five different configurations and all have had adequate space to install all kit components. According to DDC, these configurations represent over 60% of the MUI buses in operation. The remaining designs have been reviewed by DDC and found to be similar.

JMI and Engelhard commented that the DDC instructions for installation tell the installer to, "provide support to the TurboPac as required." JMI asked what support is required and if the TurboPac is not supported as required does this negate the warranty? Engelhard asked if this means that additional support of the unit is necessary to prevent damage to it or to keep it from contacting other engine components. Engelhard also expressed the concern that the directions for installation of the Turbodyne TurboPac are insufficient to ensure proper installation and operation of the system. Engelhard further noted that the instructions require the assembler to "mount the controller in the engine compartment. The location of the controller must be in a position which will allow connection of the motor leads directly to the TurboPac. The location should provide easy connection to the engines starter and in a location which will receive adequate air circulation." Engelhard asked what is adequate air circulation? Engelhard asked if heat would damage the controller and whether the unit needs to be shielded?

In regard to the support concerns, DDC states that the motor and compressor weigh 16.5 pounds and will need to be properly supported. There are mounting holes on the unit to which the bracket can be attached. In the pilot installations, either the transit property or the DDC distributor has fabricated a simple bracket to support the unit. DDC will provide installation instructions in the assembly and installation manual provided with each kit to assist maintenance personnel in selecting appropriate support. DDC states that if the equipment is not properly installed, damage to the TurboPac due to faulty support is not warrantable. DDC states that support failure will not damage the engine because the location of the motor and compressor is sufficiently away from the engine and does not require contact of any kind with the engine components. DDC states that extreme heat would damage the controller. Therefore, the controller will be located away from exhaust system components, preferably in a area where air can circulate around it. It is not recommended that the electronic controller be shielded. DDC will provide guidance on locating the controller in the installation instructions that are provided with each kit. EPA finds that based on the pilot installation experience cited by DDC and its review of remaining designs, the guidance provided by DDC in its installation instructions should be adequate to

properly support and locate the kit components. EPA further notes that failure of kit components which are installed according to DDC instructions will be covered under the warranty provisions.

Engelhard commented that DDC did not provide a component list for the retrofit engine and stated that the list is necessary for comparison of the parts used in a standard rebuild to the DDC retrofit kit. Engelhard asked if the truck check valve was installed on the test engine and whether it will be included in the DDC retrofit kit? In response DDC provided information that the build list for the test engine corresponds to "new part kit" number 23522349 and "reliabilt kit" number R3518035 included in Parts List Number 3 of the notification; TurboPac kits as defined in Parts List Number 5 and converter muffler part number 6000-005D as shown in Parts List Number 6 also in the notification. The check valve is integral to the throttle delay assembly and was included in the "new part kit" on the test engine.

JMI commented that the DDC application states that "the throttle delay was set for optimum vehicle driveability." JMI questioned how you adjust for optimum vehicle driveability in the engine test cell? Was the throttle delay changed to account for the faster response of the engine with the TurboPac? If not, what is the rationale behind this decision? In response, DDC stated that the throttle delay is a dashpot device which delays the movement of the injector rack to the full fuel position. The setting dimension controls the rack position at which delays are incurred. A higher numerical setting dimension results in the rack being further from the full fuel position and results in more delay and poorer driveability. The minimum numeric setting dimension positions the rack closest to the full fuel position before any delay is incurred. This results in the minimum delay and the best driveability. During development testing for the retrofit system, DDC determined that the 0.10g/bhp-hr PM level and acceptable engine smoke opacity could be achieved with the minimum throttle delay setting of 0.490 inches. The orifice through which the oil is purged during engine acceleration is the same for both truck and bus throttle delays. The truck throttle delay has a smaller fill hole which slows the fill rate of the oil in the throttle delay body. Bus throttle delays have a larger fill hole to provide a more rapid fill. The use of the retrofit system has shown that the more rapid fill of the bus throttle delay is no longer required to achieve 0.10 g/bhp-hr PM and

acceptable smoke control. Therefore, a truck type throttle delay was specified in order to provide improved driveability.

JMI commented that in the notification DDC states that; "Pursuant to 40 CFR Section 85.1406(e), * * * does not alter or render inoperative any feature of the on-board diagnostic system incorporated by the engine manufacturer." JMI asked what type of diagnostic systems are incorporated on MUI engines? In response, DDC states that MUI engines are not equipped with a computer which can store problem codes that can be used later by a service technician to diagnose an engine problem. The reference statement was provided by DDC as part of the standard format for notifications of intent to certify under the urban bus retrofit/rebuild program.

(c) Testing

JMI commented that the notification started that the rebuilt engine for the test program was originally a 1984 engine but it doesn't state that the engine was rebuilt to a 1984 configuration prior to testing. What was the configuration of the baseline engine and is it consistent with the claims made by DDC? Engelhard commented that DDC has not included a baseline test for comparison with the proposed retrofit kit and that this data is necessary to verify that the equipment being installed on the engine does not affect engine performance or fuel economy.

EPA notes that DDC did not perform baseline testing for this notification. Under the urban bus retrofit/rebuild program baseline testing is required when certification is requested within specified life cycle cost limitations. In such cases, baseline testing is needed to demonstrate equipment impact on fuel economy and associated life cycle costs. EPA does not require baseline testing when demonstrating compliance with the 0.10 g/bhp-hr PM standard when certification with life cycle cost requirements is not requested and if all applicable engines are to be converted to the test engine configuration during retrofit/rebuild. In view of the fact that this certification is not being made within life cycle cost limits, and all converted engines will be retrofit to the test engine configuration, baseline testing is not required for this certification.

Prior to performance of the emissions test, the test engine was rebuilt using the DDC kit. DDC stated that the test engine was in a post-rebuild configuration which is not related to a particular model year. However, DDC

noted that the test engine was mechanically similar to a 1989 configuration.

JMI commented that DDC stated in the notification that the 277 hp rating was chosen because, "it represents the engine injector combination on which the candidate equipment will be used." JMI commented that this statement is understandable if DDC is certifying only 277 hp engine kits. However, the DDC application also claims 0.10 g/bhp-hr PM levels for 253 hp and 294 hp engine kits. JMI asked what FTP test date is available to demonstrate that this technology is effective on 253 hp and 294 hp engine. JMI stated that the EPA should require DDC to demonstrate that they can attain 0.10 g/bhp-hr level for these two horsepower ratings before including them in DDC's application.

Additionally, Engelhard commented that DDC has not tested the worst case engine for its system. The Turbodyne system is designed to force additional air into the intake before the standard turbocharger can spool up. According to Engelhard, it is the amount of air supplied during acceleration that allows better combustion which reduces the particulate emissions during acceleration. The amount of air supplied is critical for obtaining PM reduction. The emissions data supplied by DDC is for a 277 hp engine. Engelhard states that to meet the 0.10 g/bhp-hr level, the Turbodyne system will have to supply more air for a 294 hp engine. However, DDC has provided no justification or data demonstrating that the device is large enough to accommodate the air flow requirements of the 294 hp engine. This requirement is supported by the fact that DDC uses a different turbo with a higher A/R ratio for the 294 hp engine than the 277 hp engine.

DDC stated that it selected the 277 hp engine rating for certification testing because this is the rating most commonly used in transit bus operations. DDC agrees that the 294 hp engine will require more airflow than an engine rated at 277 hp when both engines are operating at their respective full rated power. DDC also points out that the TurboPac is not intended to deliver the full airflow requirements of the engine. The purpose of the TurboPac is to provide additional air during engine accelerations to compensate for the lag of the engine turbocharger, and its air supply performance is the same for all engines regardless of power rating. DDC states that an engine at the 294 hp rating is capable of injecting more fuel than an engine at the 277 hp rating, but the difference in fueling is small. The 294 hp rating has a peak torque of 875 lb-ft at 1200 rpm while the

277 hp rating has a peak torque of 880 lb-ft at 1000 rpm. At 1200 rpm, full load, under steady state conditions, the 294 hp rating delivers 71.0 lb/hr of fuel vs. 68.5 lb/hr for the 277 hp engine. DDC notes that this is only a 3.6% difference. DDC has not measured fueling differences for the two ratings during rapid accelerations, but because the throttle delay limits fueling to some fraction of the full rack fueling, the fueling difference during acceleration would be somewhat less than the steady state difference. Since the fueling difference is small, DDC believes the TurboPac will provide sufficient supplementary air to provide adequate particulate control with the 294 hp engine.

EPA's urban bus certification requirements for heavy-duty urban bus diesel engines, 40 CFR 85.1406 (a)(2)(i) states "The test engine used must represent the 'worst case' with respect to particulate emissions of all those engine configurations for which the retrofit/rebuild equipment is being certified. The worst case engine configuration shall be the engine configuration having the highest engine-out particulate matter emission levels, when properly maintained and used, prior to installation of the retrofit/rebuild equipment." Based on available information, it is not clear whether an engine rated at 253 hp, 277 hp, or 294 hp would have significantly different exhaust emissions or, which would represent the worst case for this certification decision.

EPA believes that a comparison with the criteria for selecting test engines under EPA's new engine certification program is relevant. EPA's new engine certification requirements for heavy-duty diesel engines, 40 CFR § 86.090-24 (b)(3)(ii) for test engine selection state " * * * Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected" for a test engine. In a facsimile dated March 7, 1998, DDC provided information on the fuel feed rate for each hp at maximum rated torque. That information shows that the fuel feed per stroke for the 277 hp engine clearly exceeds the 253 hp at maximum rated torque (88.8 mm/stroke vs. 77.4 mm/stroke). With regard to the 294 hp engine, DDC has provided information that the fuel feed per stroke for the 277 hp engine is virtually identical to the fuel feed per stroke of the 294 hp engine at maximum rated torque (88.8 vs. 88.9 mm/stroke). While a strict comparison of this data indicates that the 277 hp engine does not meet the "highest fuel

feed per stroke" criteria as stated, it is within one-tenth of one percent of the 294 hp rating with regard to this measurement. DDC's March 27, 1998 submission has been placed in the docket at the above address.

In conjunction with the discussion above and the following reasons, EPA believes that the 6V92TA engine equipped with the DDC kit rated at 277hp, is acceptable for compliance at the 253, 277 and 294 hp ratings. First, the 6V92TA MUI test engine is clearly the engine model for which DDC is claiming applicability of the DDC kit. Further, the hp rating of the certification is the most popular power rating. It is therefore the most representative power rating. Second, it is consistent with the use of a 277hp test engine by JMI for certification applicable to various hp ratings applicable to 6V92TA model engines (see 62 FR 60079; November 6, 1997). In EPA's approval of this JMI certification kit, EPA allowed the certification test engine at the 277 hp rating to represent additional hp ratings which were certified. No additional information was presented by JMI or Engelhard in their respective comments relative to different emission levels from the various ratings. Lacking such information EPA can find no reason to change from the decision made in the JMI certification to allow the 277 hp test engine to represent the additional ratings. Additionally, it is not clear that an engine of the DDC rated 253 hp or 294 hp would have significantly different exhaust emissions from the certified test engine. Because of the above noted reasons, and consistent with EPA's decision in that JMI certification, EPA finds that the 277 hp rating is acceptable to represent the 253 hp and the 294 hp ratings in this certification. EPA retains the authority to conduct in-use testing of any certified equipment for compliance with the 150,000 mile performance warranty on all certified equipment.

JMI commented that the test data states that the muffler was installed 6 feet from the turbocharger exit. JMI asked if this is the way it will be installed in the buses. JMI noted that the converter muffler is a direct bolt on replacement for the original muffler. With the extreme variation in diameter from muffler to muffler, how many different size catalyst elements are used? If more than one, which one was used during the FTP test? If only one, the EPA should require DDC to provide assurances that the catalyst was sized to achieve 0.1 g/bhp-hr PM for the complete range of 6V92TA MUI engines from 1979 to 1989.

DDC stated that the converter muffler was tested at a location of six feet from the turbocharger outlet. The installation on a particular urban bus will vary based on the original muffler location. DDC tested at this distance as most urban bus mufflers are installed within this distance from the turbocharger and chose this location to represent a worst case in terms of exhaust temperature. EPA accepts the placement of the converter at six feet from the turbocharger in this instance and notes that EPA has accepted this distance in previous certification approvals.

DDC stated that parts list number six in the notification provides a listing of the different converter/muffler configurations that will be used. The particular converter/muffler configuration used to generate the emission test results in the notification was a 12 inch by 23 inch oval cross section design, 22 inches in length. This unit has the minimum catalyst volume of the different converter/muffler configurations that will be used according to DDC and corresponds to part number 6000-005D of that list.

Engelhard asked how the backpressure was set for emissions testing. DDC testing was performed at Southwest Research Institute in San Antonio, Texas. With a standard muffler installed in the test cell exhaust system, the damper was closed (with the test engine at rated speed) to adjust the backpressure to 80% of the specified maximum, or 2 inches of mercury. The standard muffler was then removed, and the catalyst was installed in its place. Certification testing was conducted without changing the position of the throttling valve. The resulting backpressure was 2.7 inches of mercury with the catalyst installed. Engelhard asked where did the original muffler come from and is it a bus muffler? The muffler was provided by the testing facility and was selected to represent an urban bus muffler.

(D) Life Cycle Cost Analysis

Engelhard commented that DDC has not provided a life cycle cost calculation for this retrofit equipment. Engelhard noted that this is extremely important due to the complexity of the installation required for the Turbodyne system, the potentially expensive maintenance of the system, the detrimental effect of the huge electrical demand of the Turbodyne system on the buses charging system, and the increased fuel consumption of the Turbodyne system. Engelhard commented that this information is needed so bus companies can make a valid assessment of this technology's cost effectiveness. DDC's

application also did not include prices or installation costs for any of the retrofit kits. JMI also commented on the cost of the DDC/Turbodyne kit. It asked about the labor costs to install the DDC/Turbodyne system because the addition of a supercharger is over and above what is done during a standard rebuild. Are there any periodic maintenance requirements that would increase the cost of the system? What is the impact of the DDC/Turbodyne technology on fuel consumption? Should a fuel penalty be assessed?

As stated earlier, DDC has not provided life cycle cost information in conjunction with this notification. Such a cost analysis is necessary for certification of equipment that is meant to trigger a program emissions standard. Certification of Engelhard Corporation's ETX™ kit triggered the 0.10 g/bhp-hr standard for 6V92TA MUI engines, and made available kits rated at 253, 277, and 294 hp. The DDC certification does not include a cost analysis, and one is not necessary for this certification. DDC states that engines equipped with the kit will have no additional maintenance or service requirements and the system will not have a detrimental impact on the electrical system as discussed earlier. Based on the field installations to date, DDC estimates that the installation of the TurboPac unit will average an additional eight hours of labor beyond the labor associated with a standard rebuild. However, this figure could vary depending on the specific installation requirements. No claims have been made by DDC with regard to the impact of this system on fuel economy and the impact of this system on fuel economy is undetermined. No specific information on fuel economy impact was provided in the comments. EPA notes that it is not appropriate to assess a fuel economy penalty in a certification that does not contain life cycle cost information. With regard to fuel consumption, the brake specific fuel consumption (BSFC) measured during emission testing of the DDC kit was 0.464 lb/bhp-hr. In testing conducted for the three notifications for 0.1 g/bhp-hr PM certification for 6V92TA MUI engine models that EPA has received to date, the BSFC measured during emission testing after the installation of the retrofit/rebuild kits has been between 0.438 and 0.471 lb/bhp-hr.

JMI asked if there are any components or ancillary parts that are required in order to install the DDC/Turbodyne system that are not included on any of the parts lists included with DDC's application? If so, what are the additional costs associated with these

parts? In response, DDC states that the parts list in the application does not include the electrical wire (16 AWG and 00 cable), and some nuts and bolts. DDC states that it believes these are standard items commonly available in bus repair facilities. Total cost for all of these parts is estimated by DDC to be between \$20 and \$40, depending on the length of the 00 cable. No additional batteries or other changes are required to the battery charging system. No rewiring of the bus electrical system is needed according to DDC.

(E) Warranty

Engelhard commented that DDC does not provide any coverage for damage resulting to other engine components, such as the charging system, due to the installation of its retrofit kit. In response, DDC notes that field evaluations have not resulted in any failures to bus charging or electrical systems. Neither DDC nor Delco-Remy anticipate that use of the TurboPac system will increase failure rates of the vehicle charging and electrical systems. Standard warranty coverages, if not expired, will remain in effect for any failures which may occur in these systems. DDC will not provide additional warranty coverage for these systems. Based on the review of comments and the in-use pilots, EPA is not award of any damage to other components as a result of the installation of this equipment and does not see reason not to approve this certification. If significant in-use problems were to develop, EPA can take action and, ultimately, has authority to decertify equipment.

(F) Durability

JMI commented that DDC stated in its notification: "The cylinder kit components were modified to improve durability." JMI expressed concerns that changes to any parts of the cylinder kits could result in increased soot formation in the oil or increased oil consumption. JMI further questioned what the modifications were, how will they be made, who will make them, how DDC will control uniformity and quality, whether the change was made for all 92 series engines or just the engines with the kit and whether the parts will be made available on a nationwide basis. Engelhard commented that though durability data is not a requirement of the Urban Bus regulation, the EPA has required verification of durability and data supporting the claim that the system will last 150,000 miles.

In response DDC stated that the primary change in the cylinder kit is the elimination of a "J-relief" groove. The J-

relief was a machining process to the lower side of the bottom compression ring groove which was designed to relieve any pressure build-up between the upper and lower compression rings. The change to the piston eliminates the machining operation. DDC states that this change has no effect on the combustion process, and will have no effect on generation of soot during the combustion process. According to DDC the change was made strictly to improve the durability of the lower compression ring. The changes have been incorporated in the cylinder kits used to service all DDC series 92 engines, whether used to service truck, bus, or nonroad engines. The new piston domes are also used on production engines. Therefore, the parts are subject to the same quality control as any other DDC production or service part. The new kits are available worldwide through DDC's distributor network.

EPA is concerned, in general, with equipment durability, and believes that certifiers will want to evaluate the durability of their equipment in order to minimize their liability resulting from the emissions defect and performance warranties. However, program regulations do not require a durability demonstration. EPA believes that DDC's explanation does not indicate a durability concern with the equipment certified in today's notice, and therefore, does not provide sufficient basis to deny certification on these grounds. EPA has the authority to conduct in-use testing of certified equipment to determine compliance with the requirements of the program. In addition, equipment certifiers must provide a 100,000 mile defect warranty and a 150,000 miles emissions performance warranty on all certified equipment.

(G) In-Use Experience

The Washington Metropolitan Area Transit Authority (WMATA), the Maryland Department of Transportation Mass Transit Administration (MTA), and the Milwaukee County Transit System (MCTS) provided favorable comments on the DDC system. WMATA noted that one DDC kit was installed on September 17, 1997 and that WMATA has not encountered any installation or servicing problems with the engine and there have been no failures. The MTA commented that it has installed the DDC kit and it has performed "flawlessly." The MCTS commented that it has installed five DDC kits. The first kit was installed in September 1997. To date, MCTS has not experienced "any" electrical component problems on the buses. By electrical problems, MCTS stated it meant any alternator, regulator,

battery, or wiring problems. MCTS commented that it experienced "one" TurboPac electrical turbo motor failure early in the test process. MCTS commented that the DDC kit is reliable but that it was too early in the process to determine if there are any fuel or power increases.

IV. Certification

The Agency has reviewed the notification of intent to certify and other information provided by DDC, along with comments received from interested parties, and finds that the DDC kit described above:

- (1) Complies with the particulate matter exhaust emissions standard of 0.10 g/bhp-hr, without causing the applicable engine families to exceed other exhaust emissions standards;
 - (2) Will not cause an unreasonable risk to the public health, welfare, or safety;
 - (3) Will not result in any additional range of parameter adjustability; and,
 - (4) Meets other requirements necessary for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR Sections 85.1401 through 85.1415).
- Therefore, today's **Federal Register** notice announces certification of the above-described DDC kit for use in the urban bus retrofit/rebuild program as discussed below in section V.

V. Transit Operator Responsibilities

Today's **Federal Register** notice announces certification of the above-described DDC kit, when properly applied, as meeting the 0.10 g/bhp-hr particulate matter standard of the Urban Bus Retrofit/Rebuild Program.

In a **Federal Register** notice dated March 14, 1997 (62 FR 12166), EPA announced certification of a retrofit/rebuild kit produced by the Engelhard Corporation (the ETX™ kit). That certification means that urban bus operators using compliance program 1 must use equipment certified to the 0.10 g/bhp-hr standard when rebuilding or replacing applicable 1979 through 1989 model year DDC 6V92TA MUI model engines after September 14, 1997. The certified DDC equipment described in today's notice may be used by operators in compliance with the 0.10 g/bhp-hr standard. Operators using compliance program 2 having applicable engines may use the certified DDC kit and claim the certification PM level from Table B above, when calculating their Fleet Level Attained (FLA). Under program 2, an operator must use sufficient certified equipment so that its actual fleet emission level complies with the target level for its fleet.

As mentioned above, certification of the Engelhard ETX™ kit triggered the 0.10 g/bhp-hr standard for applicable 1979–1989 6V92TA MUI engines. That kit provides three power ratings: 253, 277, and 294 horsepower. DDC will offer the DDC kit in these three power ratings as well: 253, 277, and 294hp.

Engines of urban buses certified to meet California emissions standards are not applicable to the DDC kit discussed in today's Federal Register notice. Additionally, the 0.10 g/bhp-hr PM standard is not triggered for engines certified to meet California emission standards. Operators of such urban buses, who choose to comply with program 1, are not required to use equipment certified to the 0.10 g/bhp-hr PM standard until the standard has been triggered for such engines. Operators of urban buses having engines certified to meet California emission standards, and who choose to comply with program 2, may not use the DDC kit described in today's notice to meet program requirements.

As stated in the program regulations (40 CFR 85.1401 through 85.1415), operators must, beginning January 1, 1995, maintain records for each engine in their fleet to demonstrate that they are in compliance with the requirements of the Urban Bus Retrofit/Rebuild Program. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding or urban bus engines.

Dated: May 5, 1998.

Richard D. Wilson,
Acting Assistant Administrator for Air and
Radiation.

[FR Doc. 98–12850 Filed 5–13–98; 8:45 am]
BILLING CODE 6660–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6013–6]

Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA today announces the allocation of allowances to small diesel refineries for desulfurization of fuel during 1997. The eligibility for and calculation of allowances to small diesel refineries is in accordance with Section 410(h) of the Clean Air Act, implemented at 40 CFR part 73, subpart G.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, EPA Acid Rain Division (6204), 401 M St., SW, Washington DC; telephone (202) 564–9074; or the Acid Rain Hotline at (202) 564–9620. Electronic copies of this rulemaking and technical support documents can be accessed through the Acid Rain Division website at www.epa.gov/acidrain.

SUPPLEMENTARY INFORMATION: EPA's Acid Rain Program was established by Title IV of the Clean Air Act Amendments of 1990 (CAAA) to reduce

acid rain in the continental United States. The Acid Rain Program will achieve a 50 percent reduction in sulfur dioxide (SO₂) emissions from utility units. The SO₂ reduction program is a flexible market-based approach to environmental management. As part of this approach, EPA allocates "allowances" to affected utility units. Each allowance is a limited authorization to emit up to one ton of SO₂. At the end of each calendar year, each unit must hold allowances in an amount equal to or greater than its SO₂ emissions for the year. Allowances may be bought, sold, or transferred between utilities and other interested parties. Those utility units whose annual emissions are likely to exceed their allocations may install control technologies or switch to cleaner fuels to reduce SO₂ emissions or buy additional allowances.

Section 410(h) of the Clean Air Act provides allowances for small diesel refineries that desulfurize diesel fuel from October 1, 1993 through December 31, 1999. Small refineries are not otherwise affected by the Acid Rain Program and do not need the allowances to comply with any provision of the Clean Air Act. Thus, the allowances serve as a financial benefit to small diesel refineries desulfurizing diesel fuel.

The following table lists allowances to be allocated to eligible refineries for desulfurization of diesel fuel during calendar year 1997.

Refiner	Refinery/location	Allocation
Big West Oil	Flying J	1304
Cenex	Laurel, Montana	1500
Frontier	Cheyenne, Wyoming	1500
Giant	Ciniza	1500
	Giant	1151
Holly	Lea	1469
	Navajo	1420
	Montana	329
Hunt	Tuscaloosa, Alabama	1402
Inland Refining	Woods Cross, Utah	757
Kern	Bakersfield, California	1500
La Gloria	Crown Refinery, Tyler, Texas	1500
Lion	El Dorado	1500
Paramount	Paramount, California	1282
Pennzoil	Atlas	1500
	Rasville	487
Pride	Abilene, Texas	1226
Sinclair	Little America	1500
	Sinclair, Wyoming	1500
	Tulsa, Oklahoma	1500
U.S. Oil & Refining	Tacoma, Washington	1072
Witco	Golden Bear	66
Wyoming Refining	Denver, Colorado	691

A total of 27,656 allowances are allocated to 17 refineries, which produced

55,111 thousand barrels of desulfurized

diesel fuel. These allowances have a compliance year of 1998.

Requests for allowances for desulfurization during 1998 are due no later than April 1, 1999. Allowances allocated in 1999 will have a compliance year of 1999.

Dated: May 7, 1998.

Edward Callahan,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 98–12848 Filed 5–13–98; 8:45 am]

BILLING CODE 6660–50–U

FEDERAL ELECTION COMMISSION Sunshine Act Meeting

* * * * *

DATE & TIME: Tuesday, May 19, 1998 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE & TIME: Wednesday, May 20, 1998 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION: Perot '96, Inc.,

DATE & TIME: Thursday, May 21, 1998 at 10:00 a.m.

PLACE: 999 E Street, NW. Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes. Advisory Opinion 1998–07:

Pennsylvania Democratic Party by C.M. Tartaglione, Acting Chairman.

Advisory Opinion 1998–08: Iowa Democratic Party by Michael Peterson, Chairman.

Advisory Opinion 1998–09: New Mexico Republican Party by John Dendahl, Chairman.

Petition for Rulemaking on Qualified Nonprofit Corporations: Draft Notice of Disposition.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,
Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–13018 Filed 5–12–98; 12:34 p.m.]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Services (NCVHS) Executive Subcommittee.

Times and Dates: 9:00 a.m.–5:00 p.m., May 21, 1998.

Place: Conference Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The Executive Subcommittee will hold a work planning session on May 21. In addition to reviewing the status of current work plans and activities, the Subcommittee will plan future priorities and activities and consider future work plans and schedules. The Subcommittee also will plan the agenda for the June 16–17 meeting of the full committee.

Contact Person for More Information:

Substantive information as well as an agenda for the meeting and a roster of committee members may be obtained by visiting the NCVHS website (<http://aspe.os.dhhs.gov/ncvhs>), where an agenda will be posted prior to the meeting. You may also call James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: May 6, 1998.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 98–12762 Filed 5–13–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the CDC Advisory Committee on HIV and STD Prevention of the Department of Health and Human Services, has been renewed for a 2-year period beginning May 12, 1998, through May 11, 2000.

For further information, contact Ronald O. Valdiserri, M.D., M.P.H., Deputy Director, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road NE, MS E–07, Atlanta, Georgia 30333, phone 404–639–8002, fax 404–639–8600, e-mail rov1@cdc.gov.

Dated: May 7, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–12826 Filed 5–13–98; 8:45 am]

BILLING CODE 4163–19–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Task Group Session of the Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 8 a.m.–5:30 p.m., August 5–7, 1998.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia, 22314.

Status: Open 8 a.m.–8:30 a.m. August 5, 1998; Closed 8:30 a.m.–5:30 p.m. August 5, 1998; Closed 8 a.m.–5:30 p.m. August 6, 1998; Closed 8 a.m.–5:30 p.m. August 7, 1998.

Purpose: A Task Group of the SOHSS will review, discuss, and evaluate grant application(s) received in response to the sponsoring Institute's numbered solicitations as follows: Request For Application Number 98044 entitled, "Implementation of the National Occupational Research Agenda (NORA)," which pertains to broad-based research endeavors outlined as follows: (a)

Causal research to identify and investigate the relationships between hazardous working conditions and associated occupational disease and injury; (b) the nature and magnitude of special risk factors experienced by older and/or minority workers; (c) methods research to develop more sensitive means of evaluating hazards at work sites; and (d) evaluations of the effectiveness of new approaches or combinations of techniques such as control technologies and personal protective equipment, work organization changes, worker participation programs, and training in reducing or eliminating traumatic injuries and work-related musculoskeletal injuries.

Request For Application Number 98030 entitled, "Occupational Radiation and Energy-Related Health Research Grants," which pertains to research endeavors outlined as follows:

(a) Research to identify and investigate the relationships between health outcomes and occupational exposure to radiation and other hazardous agents; (b) epidemiological methods research relevant to energy-related occupational health research; and (c) research related to assessing occupational exposures. The focus of proposed research should reflect the following topical areas, emphasizing field research: (1) Retrospective exposure assessment; (2) radiation measurement issues; (3) non-cancer morbidity and mortality outcomes; (4) meta-analysis and combined analysis methodologies; (5) uncertainty analysis; (6) effects of measurement error on risk estimates; (7) studies of current workers; and (8) risk communication and worker outreach.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals as outlined above which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses. It is anticipated that research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene in open session from 8-8:30 a.m. on August 5, 1998, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed sessions. The purpose of the closed sessions is for the Task Group to consider safety and occupational health grant applications related to the cited solicitation. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92-463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285-5979.

Dated: May 7, 1998.

John C. Burckhardt,
Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-12825 Filed 5-13-98; 8:45 am]

BILLING CODE 4183-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on June 1, 1998, 8:30 a.m. to 5:30 p.m., and June 2, 1998, 8 a.m. to 5:30 p.m.

Location: Gaithersburg Hilton, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4090, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 1, 1998, the committee will discuss: (1) New drug application (NDA) 20-892 AD 32 (valrubicin 40 milligrams/milliliter), Anthra Pharmaceuticals, Inc., indicated for the treatment of refractory carcinoma *in situ* of the urinary bladder; and (2) NDA supplement 20-449/S-005 Taxotere® (docetaxel) for injection concentrate, Rhone-Polenc Rorer Pharmaceuticals, Inc., indicated for the treatment of patients with locally advanced or metastatic breast cancer who have failed previous chemotherapy. On June 2, 1998, the committee will discuss: (1) Biologics license application (BLA) 97-1325 ONTAK™ (denileukin difitox) injection (DAB389 IL-2), Seragen, Inc.,

indicated for the treatment of cutaneous T-cell lymphoma (CTCL); and (2) NDA supplement 20-671/S-004 Hycamtin® (topotecan HCl) for injection, SmithKline Beecham Pharmaceuticals, indicated for the second-line treatment of patients with small cell lung cancer.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 22, 1998. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m., on June 1, 1998, and between approximately 8:15 a.m. and 8:45 a.m., on June 2, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 15, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 7, 1998.

Michael A. Friedman,
Deputy Commissioner for Operations.

[FR Doc. 98-12756 Filed 5-13-98; 8:45 am]

BILLING CODE 4180-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D-0284]

Guidance for Industry on Classifying Resubmissions in Response to Action Letters; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Classifying Resubmissions in Response to Action Letters." This guidance explains how the agency will classify resubmissions of new drug applications (NDA's) and license applications (LA's) and specifies the agency's response timeframes. The guidance also recommends procedures for making resubmissions.

DATES: Written comments may be submitted on the guidance by August 12, 1998. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at <http://www.fda.gov/cder/guidance/index.htm>, or <http://www.fda.gov/cber/guidelines.htm>. Submit written comments on this guidance to the Dockets Management Branch (HFD-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Comments are to be identified with the docket number found in brackets in the heading of this document. After the comment period, comments may be submitted to one of the centers at the address below.

FOR FURTHER INFORMATION CONTACT:

Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD-002), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5400, or

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM-10), 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-0373.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "Classifying Resubmissions in Response to Action Letters." In the Prescription Drug User Fee Act of 1992 (PDUFA), FDA committed to certain user fee performance goals, including the goal of responding to an applicant's resubmission of an original NDA or LA in 6 months or less. In her letter to Congress regarding the reauthorization of PDUFA in November 1997 as part of the Food and Drug Administration Modernization Act of 1997 (Modernization Act), the Secretary of Health and Human Services committed FDA to recognizing two classes of resubmissions: Class 1 and Class 2. This guidance describes the classification of resubmissions as Class 1 or Class 2 based on the information submitted by the applicant in response to the action letter. In addition, the guidance specifies the percentages of resubmissions in each class that will be reviewed and acted upon within a certain time period from the date the resubmission is received by FDA, based on the fiscal year in which the resubmission is received.

This guidance is being implemented immediately without prior public comment because the guidance is needed to implement the Modernization Act. However, the agency wishes to solicit comment from the public and is providing a 90-day comment period and establishing a docket for the receipt of comments.

This guidance is issued as a Level 1 guidance consistent with FDA's good

guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on classifying resubmissions in response to action letters. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 8, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98-12830 Filed 5-13-98; 8:45 am]

BILLING CODE 4180-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D-0282]

Guidance for Industry on Submitting and Reviewing Complete Responses to Clinical Holds; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Submitting and Reviewing Complete Responses to Clinical Holds." This guidance describes how to submit a complete response if an investigational new drug application is placed on clinical hold.

DATES: Written comments may be submitted on this guidance document by August 12, 1998. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at <http://www.fda.gov/cder/guidance/index.htm>; or <http://www.fda.gov/cber/guidelines.htm>. Submit written comments on this guidance to the Dockets Management Branch (HFD-305), Food and Drug Administration,

12420 Parklawn Dr., rm 1-23, Rockville, MD 20857. Comments are to be identified with the docket number found in brackets in the heading of this document. After the comment period, comments may be submitted to one of the centers at the addresses that follow.

FOR FURTHER INFORMATION CONTACT:

Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD-002), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5400; or

Robert A. Yetter, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-0373.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "Submitting and Reviewing Complete Responses to Clinical Holds." Section 117 of the Food and Drug Administration Modernization Act of 1997 (Modernization Act), signed into law by President Clinton on November 21, 1997, provides that a written request that a clinical hold be removed shall receive a decision in writing, specifying the reasons for that decision, within 30 days after receipt of such request. In addition, the agency committed to user fee performance goals incorporating the same response time. This guidance describes how sponsors should submit responses to clinical holds so that they may be identified as complete responses and the agency can track the time to response.

This guidance document is being implemented immediately without prior public comment because the guidance is needed to implement the Modernization Act. However, the agency wishes to solicit comment from the public and is providing a 90-day comment period and establishing a docket for the receipt of comments.

This guidance for industry is a Level 1 guidance consistent with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on submitting complete responses to clinical holds. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The guidance and comments received in the Dockets Management Branch (address above) are available for public examination between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 8, 1998.
 William B. Schultz,
 Deputy Commissioner for Policy.
 [FR Doc. 98-12831 Filed 5-13-98; 8:45 am]
 BILLING CODE 4190-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration
 [Document Identifier: HCFA-R-229]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Development of an Assessment System for post Acute Care; **Form No.:** HCFA-R-229, OMB #0938-0720; **Use:** The Minimum Data Set- Post Acute Care (MDS-PAC) will be used to establish patient case mix groups including classes of patients in the rehabilitation facility for the payment system. It will also provide data and seek input from the rehabilitation industry for HCFA to formulate policy and promulgate regulations. **Frequency:** On occasion; **Affected Public:** Individuals or Households, Business or other for-profit, Not-for-profit; **Number of Respondents:** 10,465; **Total Annual Responses:** 10,465; **Total Annual Hours:** 23,301.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2-26-17, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: May 5, 1998.
 John P. Burke III,
 HCFA Reports Clearance Officer, Division of
 HCFA Enterprise Standards, Health Care
 Financing Administration.
 [FR Doc. 98-12766 Filed 5-13-98; 8:45 am]
 BILLING CODE 4120-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-250 through HCFA-254]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We

are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. This is necessary to collect information from beneficiaries on health insurance coverage that is primary to Medicare. Collection of this information allows HCFA to identify those Medicare beneficiaries who have other group health insurance that would pay before Medicare, resulting in savings to the Medicare Trust Fund. The annual savings from the Medicare Secondary Payer (MSP) program are more than \$3 billion per year. Emergency approval is needed to prevent a disruption in the information collection and to continue the savings to the Medicare Trust Fund. We cannot reasonably comply with the normal clearance procedures because public harm is likely to result because eligible individuals may not receive the health insurance protections under the statute.

HCFA is requesting OMB review and approval of this collection 15 working days after the publication of this **Federal Register** notice, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below 14 working days after the publication of this notice. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: Reinstatement, without change, of a previously approved collection for which approval has expired;
Title of Information Collection: Medicare Secondary Payer Information Collection and Supporting Regulations in 42 CFR 489.20;

Form Number: HCFA-250 through HCFA-2545 (OMB approval #: 0938-0214);

Use: Medicare Secondary Payer (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits, and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. HCFA contracts with health insuring organizations, herein referred to as intermediaries and carriers, to process Medicare claims. HCFA charges its Medicare intermediaries and carriers with various tasks to detect MSP cases; develops and disseminates tools to enable them to

better perform their tasks; and monitors their performance in achievement of their assigned MSP functions. Because intermediaries and carriers are also marketing health insurance products that may have liability when Medicare is secondary, the MSP provisions create the potential for conflict of interest. Recognizing this inherent conflict, HCFA has taken steps to ensure that its intermediaries and carriers process claims in accordance with the MSP provisions, regardless of what other insurer is primary. These information collection requirements describe the MSP requirements.

Frequency: One time only;
Affected Public: Individuals or Households;
Number of Respondents: 14,204,000;
Total Annual Responses: 14,204,000;
Total Annual Hours Requested: 773,240.

• 42 CFR 489.20(f)—Third Party Identification.

Identification and collection of information concerning proper payers during the admission process is a common business practice in the health care field. HCFA hospital reviews indicate that only one additional question is required as compared with the normal admissions process for non-Medicare patients. In addition, many hospitals have and will continue to reap significant benefits due to identification of primary payers during the admission process. This relates to the fact that a private payer's rate of payment is normally based on a percentage of charges, whereas for Medicare patients the hospital receives the Medicare payment, which is generally an amount paid under the prospective payment system.

• Initial Enrollment Questionnaire (IEQ)—P.L. 103-432 Sec. 151

The IEQ contractor states that the average number of IEQs mailed each calendar year is 1,903,960. The time required to complete the IEQ is approximately 15 minutes per beneficiary. Therefore, the burden is 1,903,960 × 15 minutes = 475,990 of burden hours per year. The total burden is 773,240 hours (297,250 + 475,990).

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your

request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection requirements must be mailed and/or faxed to the designees referenced below fourteen days after the publication of this **Federal Register** notice:

Health Care Financing Administration,
 Office of Information Services,
 Information Technology Investment
 Management Group, Division of
 HCFA Enterprise Standards, Room
 C2-26-17, 7500 Security Boulevard,
 Baltimore, MD 21244-1850. Fax
 Number: (410) 786-1415. Attn: Louis
 Blank HCFA-250 through HCFA-254
 and,
 Office of Information and Regulatory
 Affairs, Office of Management and
 Budget, Room 10235, New Executive
 Office Building, Washington, DC
 20503, Fax Number: (202) 395-6974
 or (202) 395-5167. Attn: Allison
 Herron Eydt, HCFA Desk Officer.

Dated: May 6, 1998.

John P. Burke III,
 HCFA Reports Clearance Officer, HCFA,
 Office of Information Services, Information
 Technology Investment Management Group,
 Division of HCFA Enterprise Standards.
 [FR Doc. 98-12802 Filed 5-13-98; 8:45 am]
 BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration
 [HCFA-3888-NC]

Medicare and Medicaid Programs: Request for Public Comments on the Quality Improvement System for Managed Care

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Solicitation of comments; notice of public meeting.

SUMMARY: The Quality Improvement System for Managed Care (QISMC) is a document that represents the best thinking on what managed care organizations contracting with Medicare and Medicaid should do to protect and improve the health and satisfaction of enrolled beneficiaries. This notice solicits comments on the review draft of the QISMC document, and informs the

public of a meeting to discuss the quality improvement system initiative.

DATES: We request that comments be submitted on or before May 26, 1998.

Public Meeting: In addition to seeking written comments from the public, we will hold a public meeting on Tuesday, May 26, 1998, from 8:30 a.m. to 3:30 p.m. e.d.t.

ADDRESSES: The May 26, 1998 public meeting will be held in the Health Care Financing Administration Auditorium at 7500 Security Boulevard, Baltimore, Maryland 21207. (For details, see section III of this notice.)

Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-3888-NC, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201,

or
 Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850

Comments may also be submitted electronically to the following e-mail address: hcfa3888nc.hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-3888-NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

FOR FURTHER INFORMATION CONTACT: Brian Agnew, (410) 786-5964.

SUPPLEMENTARY INFORMATION:

I. Background

The QISMC initiative began in 1996 with the following basic goals:

- To develop a coordinated Medicare and Medicaid quality oversight system that would reduce duplicative or conflicting efforts and send a uniform

message on quality to organizations and consumers.

To make the most efficient use of available quality measurement and improvement tools, while allowing sufficient flexibility to incorporate new developments in the rapidly advancing state of the art.

To support the development of QISM, HCFA contracted with the National Academy for State Health Policy to produce a conceptual framework for a unified Medicare-Medicaid quality oversight system, a set of quality standards for managed care organizations, and interpretive guidelines for these standards.

The National Academy for State Health Policy gave selected individuals and organizations the opportunity to comment on a review draft of the QISM document in January 1998, and the breadth and depth of the comments received have convinced us that further investigation is necessary before we make any final policy decisions. Therefore, we have decided to give all interested parties an opportunity to comment on the review draft of the QISM document.

At this time, the QISM standards are not binding on Medicare and Medicaid managed care organizations. However, we intend to draw upon the QISM document in establishing regulatory quality assurance requirements under Medicaid managed care and Medicare+Choice regulations yet to be published.

II. Issues To Be Resolved

As mentioned, we have already received comments from selected individuals and organizations on the review draft of the QISM document. However, to ensure that we consider the full range of public opinion, we are using this notice as a vehicle to inform the general public that now it too has an opportunity to comment on the review draft of the QISM document. We will consider written public comments that are received timely as we finalize the QISM document.

The review draft of the QISM document is available on our internet web site (<http://www.hcfa.gov/quality/qly-3e.htm>). Although we welcome comments on all aspects of the draft, we are particularly interested in comments on certain issues identified as especially significant in comments received during the January 1998 comment period. These issues will be identified on our internet web site as well.

For those unable to access the QISM document via the internet, hard copies may be obtained by calling Ms.

Bronwyn Price of Casals and Associates, Inc. (C & A) at (703) 920-1234.

III. May 26, 1998 Public Meeting

In addition to seeking written comments from the public, we will hold a public meeting on Tuesday, May 26, 1998, from 8:30 a.m. to 3:30 p.m., in our auditorium at 7500 Security Boulevard, Baltimore, Maryland. In the morning, we will hold a plenary session devoted to general information about QISM. In the afternoon, we will convene three breakout sessions: the first devoted to technical aspects of quality improvement activities, such as setting minimum performance levels and establishing the phase-in; the second devoted to issues relating to quality monitoring (such as deeming and external review); and the third devoted to issues affecting HCFA and the State Medicaid agencies in their roles as purchasers.

Because seating is limited, attendees must register for the meeting in advance. Registration must be made by May 18. In order to obtain a registration form for this meeting, please contact Ms. Jennifer Fink at C & A. Ms. Fink can be reached via telephone, (703) 920-1234; fax, (703) 920-5750; or email, jfink@casals.com. Once your registration form has been received and processed, C & A will provide you with a confirmation form. You must bring the confirmation form with you in order to be guaranteed participation in the meeting. C & A will also provide you with directions to HCFA Central Office.

(Section 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh))
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 4, 1998.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing
Administration.

[FR Doc. 98-13040 Filed 5-12-98; 2:54 pm]
BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: April 1998

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions. During the month of April 1998, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is

imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
Program-Related Convictions:	
Advanced Clinical Associates, Baltimore, MD	05/20/1998
Baig, Sharif, Grosse Ile, MI	05/20/1998
Beich, Michael N, Windham, ME	05/20/1998
Bracks, Oscar JR, Farmers Branch, TX	10/28/1997
Celestain, Vickie, Beaumont, TX	05/20/1998
Duarte, Angela, Woonsocket, RI	05/20/1998
Dworzanin, Gregory, Plymouth Twnshp, MI	05/20/1998
Goldbaum, Henry Romero, Frederick, MD	05/20/1998
Greene, Rose Marie, Baltimore, MD	05/20/1998
Hester, Angela Dailey, Ruston, LA	05/20/1998
Hunt, Aurelia Hilda, Sacramento, CA	05/20/1998
Jiggetts, Wayne R SR, Baltimore, MD	05/20/1998
Lewis, Jeffrey Blaine, Manchester, KY	07/21/1997
Missakian, Hratch, Glendale, CA	05/20/1998
Misto, Ralph L, Cranston, RI	05/20/1998
Ricci Pharmacy Inc, Brooklyn, NY	05/20/1998
Salerno, David Martin, Monroe, CT	05/20/1998
Salinski, Theodore, Chicago, IL	05/20/1998
Sazama, Gary P, Logan, UT	05/20/1998
Schoonover, Hazel, Columbus, OH	05/20/1998
Spisak, Irene P, Quincy, FL	05/20/1998
Swan, Maria, Miami, FL	05/20/1998
Terrace View Diversified Health, Seattle, WA	05/20/1998
Towanit, Pol, Blythe, CA	05/20/1998
Valdes, Daisy R, Glade Valley, NC	05/20/1998
Valdes, Maximino D, Glade Valley, NC	05/20/1998
Weiss, Edward, New York, NY	05/20/1998
White, Kimberly Anne, Salt Lake City, UT	05/20/1998
Wikiera, John S, Woonsocket, RI	05/20/1998
Williams, Gary W, Vincennes, IN	05/20/1998
Patient Abuse/Neglect Convictions:	
Basham, Melalaine Devera, Colorado Spngs, CO	05/20/1998
Brown, Robert W, N Salt Lake, UT	05/20/1998
Carpenter, Robert D, Joanna, SC	05/20/1998
Davis, Sigmond Earl, Baltimore, MD	05/20/1998
Day, Maria, Austin, TX	05/20/1998
Dewberry, Elizabeth, Clarksdale, MS	05/20/1998
Hart, Velda Belinda, Baltimore, MD	05/20/1998
Heselon, Sharon, Saugus, MA	05/20/1998
Hough, Judy Ann, Swartz Creek, MI	05/20/1998
Huggins, Curtis Dale, Sand Springs, OK	05/20/1998
Manfredo, Louis, Johnston, RI	05/20/1998
Manville, James Ervin, McMillan, MI	05/20/1998
Mathers, Julie, N Kingstown, RI	05/20/1998
McConaughy, William Eugene, Mountain View, AR	05/20/1998
Milam, Deborah Sue, Garland, TX	05/20/1998
Persall, Elsie, Vestaburg, MI	05/20/1998
Roy, Gerald, Colorado Spngs, CO	05/20/1998
Sanders, Felicia J, Oklahoma City, OK	05/20/1998
Sanon, Claudette, Somerville, MA	05/20/1998
Smith, Dorothy Julia, Baltimore, MD	05/20/1998
Taylor, Rachelle A, New Orleans, LA	05/20/1998
Thomas, Tawanna Ann, Arkansas AR	05/20/1998
Wall, George, Cranston, RI	05/20/1998
Winegarden, Terry Lee, Enid, OK	05/20/1998
Woodruff, Susie, Mineral Wells, TX	05/20/1998
Conviction for Health Care Fraud:	
Barner, Belinda Sue, Tucson, AZ	05/20/1998
Branch, Kelly Edward, Baltimore, MD	05/20/1998
Culligan, Thomas R IV, St Louis, MO	05/20/1998
Culligan, Lorrie Jean, St Louis, MO	05/20/1998
Grace, Sheri, Mio, MI	05/20/1998
Welch, Cora Joyce, Shreveport, LA	05/20/1998
License Revocation/Suspension/Surrendered:	
Aldrich, Edith N, Lisbon, NH	05/20/1998
Alexander, Allyson L, Mckeesport, PA	05/20/1998

Subject, city, state	Effective date	Subject, city, state	Effective date	Subject, city, state	Effective date
Alexander, Sharon Lucille, Richmond, VA	05/20/1998	Dinsmore, Peterson, Warwick, RI	05/20/1998	Doran, Jan, Mariette, PA	05/20/1998
Anusavice, Gary, Shrewsbury, MA	05/20/1998	Eldridge, Tina Mischka, Poquoson, VA	05/20/1998	Elgin, Kimberly Mae, Charlotte Ct House, VA	05/20/1998
Arrington, Kay C, Richmond, VA	05/20/1998	Elliott, Henrietta, Roanoke, VA	05/20/1998	Epps, Veronica B, Petersburg, VA	05/20/1998
Bailey, Lisa Perkins, Louisa, VA	05/20/1998	Estep, Connie, Richlands, VA	05/20/1998	Feliz, Jose, Westland, MI	05/20/1998
Bartlett, Robin D, Midlothian, VA	05/20/1998	Fogarty, Helen Moses, New York, NY	05/20/1998	Fors, Gregory C, Bemidji, MN	05/20/1998
Bayash, Frances D, Alexandria, VA	05/20/1998	Forti, Lewis A, Buffalo, NY	05/20/1998	Free, Kevin, Cedar Grove, NJ	05/20/1998
Bealka, Neil M Sr, Stillwater, MN	05/20/1998	Freeman, Richard, Detroit, MI	05/20/1998	Gaither, Michelle, Chicago, IL	05/20/1998
Belfield, John D, Janesville, WI	05/20/1998	Gallagher, Michael, Ionia, MI	05/20/1998	Gallagher, Ronald L, Toano, VA	05/20/1998
Bender, Judy M, Easthampton, MA	05/20/1998	Gambino, Vivian M, Richmond, VA	05/20/1998	Gams, Cheryl Ann, Perry, OK	05/20/1998
Blanchard, Darlene Kay, San Diego, CA	05/20/1998	Ghorieshi, Abbas, Weston, MA	05/20/1998	Ghota, Boonga, Richmond, VA	05/20/1998
Boyd, Justine R, Richmond, VA	05/20/1998	Glass, Kimberley Ann, Newport News, VA	05/20/1998	Glover, Nicole N, Norfolk, VA	05/20/1998
Brockhoff, Gayle C, Hugo, MN	05/20/1998	Goldberg, Lisa A, Silver Spring, MD	05/20/1998	Goldgruber, Gail Louise, Pinole, CA	05/20/1998
Brown, Richard D, Merrifield, MN	05/20/1998	Goodrich, Debra A, Seminole, FL	05/20/1998	Greenwald, Stephen M, Edina, MN	05/20/1998
Brown, Belinda T, Richmond, VA	05/20/1998	Haff, Leslie A, Brainerd, MN	05/20/1998	Halverson, Terry Lynn, Minneapolis, MN	05/20/1998
Brown, Stanley, Stony Brook, NY	05/20/1998	Hansen, Terrence, Gilroy, CA	05/20/1998	Harroun, Cynthia D, Mankato, MN	05/20/1998
Burstein, David Lee, Woodland, CA	05/20/1998	Harry, Lorleen Yvonne, Cambria Hgts, NY	05/20/1998	Harvey, Nancy C, Monterey, VA	05/20/1998
Butta, Delbert, Boones Mill, VA	05/20/1998	Hendricks, David Martin, Sumter, SC	05/20/1998	Honaker, Rhonda Darlene, Meadowview, VA	05/20/1998
Cacatian, Melody G, Virginia Beach, VA	05/20/1998	Hopewell, Christine J, Williamsburg, VA	05/20/1998	Hopper, Cheryl Renee, Corpus Christi, TX	05/20/1998
Caltider, Robert S, Glen Burnie, MD	05/20/1998	Huff, Linda G, Gloucester, VA	05/20/1998	Hydnick, Robert, Grand Rapids, MI	05/20/1998
Campbell, Lloyd R, Forest Park, GA	05/20/1998	Jagusich, John R, Waupun, WI	05/20/1998	Jones, Judy N, Richmond, VA	05/20/1998
Campbell, Robert E, Henderson, NV	05/20/1998	Jones, Geraldine B, Mora, MN	05/20/1998	Jones, Linda, Chicago, IL	05/20/1998
Canganelli, Vincent G, Clearwater, FL	05/20/1998				
Carter, La'Keisha C, Axton, VA	05/20/1998				
Castille, Joyce S, Dallas, TX	05/20/1998				
Chabebe, Roberto, Elmhurst, NY	05/20/1998				
Chandler, Gail, Wallingford, CT	05/20/1998				
Clark, Douglas H, Concord, NC	05/20/1998				
Clemmer, Anne Susan Hays, Churchville, VA	05/20/1998				
Colich, Steven N, Coon Rapids, MN	05/20/1998				
Converse, Joan A, Bloomington, MN	05/20/1998				
Crabbs, Jerry, Crestview Hills, KY	05/20/1998				
Crowder, Susan L, Henderson, Clover, VA	05/20/1998				
Curtiss, Audrey D, Providence Forge, VA	05/20/1998				
Cutter, Gail E, Hillsboro, NH	05/20/1998				
Davis, Cynthia W, Stuarts Draft, VA	05/20/1998				
Defretas-Badlu, Mary C, Ozone Park, NY	05/20/1998				
Deyo, Ylonda Renee, Austin, TX	05/20/1998				

Subject, city, state	Effective date	Subject, city, state	Effective date	Subject, city, state	Effective date
Kendall, Betty, Springfield, IL	05/20/1998	Penn, Laurelia Owens, Houston, TX	05/20/1998	Speeth, Kathleen, Chapel Hill, NC	05/20/1998
Kharod, Prabhakar J., Pasadena, MD	05/20/1998	Perales, Maria H, Eagle Pass, TX	05/20/1998	Stewart-Carballo, Charles W, Fayetteville, NC	05/20/1998
Kier, Rosalie D, Waubun, MN	05/20/1998	Perconte, Salvatore Gerard, Chester, NY	05/20/1998	Sutherland, Karen, Clarendon Hills, IL	05/20/1998
Kimker, Stephen C, Brooklyn Center, MN	05/20/1998	Perkins, Michael, Chicago, IL	05/20/1998	Swanson, Melanie G, Vinton, VA	05/20/1998
King, Jewel H, Rural Retreat, VA	05/20/1998	Peters, Jane E, Martinsville, VA	05/20/1998	Talbott, Mary Mitchell, Mechanicsville, VA	05/20/1998
Kinsella, Lydia E, Oakville, CT	05/20/1998	Petteruti, Stephen J, Warwick, RI	05/20/1998	Tatum, Donna S, Richmond, VA	05/20/1998
Kouyoumdjian, Meguerdich, Ogdensburg, NY	05/20/1998	Piazza, Gary Gerard, Edison, NJ	05/20/1998	Tezel, Hasan K, Binghamton, NY	05/20/1998
Kovar, Milan, Johnstown, NY	05/20/1998	Pierce, Thelma Maureen, Spearman, TX	05/20/1998	Toland, Alicia, E Moline, IL	05/20/1998
Lacuanan, Edwin Dumlaog, Yonkers, NY	05/20/1998	Pojar, Judith A, White Bear Lake, MN	05/20/1998	Turnage-Davis, Teresa, Salem, IL	05/20/1998
Landon, Mark Terry, Asheboro, NC	05/20/1998	Potter, William, Providence, RI	05/20/1998	Valley, Shirley T, Winnisquam, NH	05/20/1998
Langford, Susan Tucker, Midlothian, VA	05/20/1998	Presson, Sharon Leigh, Suffolk, VA	05/20/1998	Van De Castle, Robert L, Charlottesville, VA	05/20/1998
Lanier, Edith J, Richmond, VA	05/20/1998	Price, Monica T, Brunchville, VA	05/20/1998	Vasquez, Javier A, Manchester, KY	05/20/1998
Leo, Jacqueline, Duluth, MN	05/20/1998	Price, Leonard A, Santa Barbara, CA	05/20/1998	Walder, David, Pekin, IL	05/20/1998
Lindsey, Tommy, Mt Morris, MI	05/20/1998	Provisor, Deborah, Indianapolis, IN	05/20/1998	Walker, Teresa L, Bealeton, VA	05/20/1998
Lofton, Toni, Chicago Hgts, IL	05/20/1998	Pugatch, Donald, N Andover, MA	05/20/1998	Warwick, Susan R, Manassas, VA	05/20/1998
Louden, Stella, West Point, VA	05/20/1998	Ratchford, William B, Glenview, IL	05/20/1998	Welch, Martin, Jr, Oak Park, IL	05/20/1998
Lowe, James E Jr, Briardliff Manor, VA	05/20/1998	Ray, Darlene Levels, Austin, TX	05/20/1998	White, Sandra Wright, Suffolk, VA	05/20/1998
Mabunga, Rogelio F, Seattle, WA	05/20/1998	Redd, Sharon K, Windsor, VA	05/20/1998	Williams, Carolyn A, Norfolk, VA	05/20/1998
Manis, Robin, Chesapeake, VA	05/20/1998	Ricca, Francis Martin, New York, NY	05/20/1998	Wittlake, Mark A, Moxee, WA	05/20/1998
Marshall, Charles, Chicago, IL	05/20/1998	Robertson, James William, Federal Way, WA	05/20/1998	Wong, Samuel, Munster, IN	05/20/1998
Mason-Pigott, Mavis, Norfolk, VA	05/20/1998	Robinson, Susanne D, Manassas, VA	05/20/1998	Wooding, Sandra R, Gretna, VA	05/20/1998
Mayer, Eve, Evanston, IL	05/20/1998	Roby, Neil, Clarksville, MD	05/20/1998	Yousens, Robyn C, Nashua, NH	05/20/1998
McCormack, Kns Anthony, Wetumpka, AL	05/20/1998	Romuar, Benjamin, Arlington Hgts, IL	05/20/1998	Zamzam, Salih M, Beaver, WV	05/20/1998
McNally, Marilyn R, Presque Isle, ME	05/20/1998	Rudominer, Arnold, E Palo Alto, CA	05/20/1998	Federal/State Exclusion/Suspension:	
McWilliams, Kristin Elaine, Suffolk, VA	05/20/1998	Ryan, Madonna, Naperville, IL	05/20/1998	Hanft, Cyndi, Shawnee, OK	05/20/1998
Metcalfe, John Franklin, Wickliffe, KY	05/20/1998	Schermerhorn, Laura J, Mora, MN	05/20/1998	Johnson, Ray L, Boise, ID	05/20/1998
Miller, Tina Marie, Chesterfield, VA	05/20/1998	Schmoll, Carmen K, Clearwater, MN	05/20/1998	Karber, Heidi L, St Maries, ID	05/20/1998
Milner, Toshika R, Fieldale, VA	05/20/1998	Schultz, Steven, Brooklyn, NY	05/20/1998	Kim, Sung J, Yonkers, NY	05/20/1998
Mills, Catherine Spenser, Richmond, VA	05/20/1998	Schwarz, Herbert, Yonkers, NY	05/20/1998	McDonald, Elleva Joy, Minnetonka, MN	05/20/1998
Mintz, Myron, Woodside, CA	05/20/1998	Scott, William, Austin, IN	05/20/1998	Mellenthin, Michelle, Nampa, ID	05/20/1998
Morgan, Richard L, Newport News, VA	05/20/1998	Sears, Alexia Lou, Gran Prairie, TX	05/20/1998	Rumpel, Aimee L, Boise, ID	05/20/1998
Morris, David, Greenview, IL	05/20/1998	Setelin, Theresa L, Glen Allen, VA	05/20/1998	Fraud/Kickbacks:	
Muehlbauer, Michelle R, Herman, MN	05/20/1998	Severson, Dan E, Minneapolis, MN	05/20/1998	Ross, Keith, Erial, NJ	01/30/1998
Newman, Carolyn E, Richmond, VA	05/20/1998	Sharpe, Thomas, Gouverneur, NY	05/20/1998	Sakson, Hugo, Florence, KY	05/20/1998
Nickerson, Sandra, Round Lake Beach, IL	05/20/1998	Shorter, Dwayne L, Midlothian, VA	05/20/1998	Owned/Controlled by Convicted/Excluded:	
Noble, Mary Sue Bennett, Check, VA	05/20/1998	Shultz, Richard Raymond, San Leandro, CA	05/20/1998	Blue Med Health, Inc, Glade Valley, NC	05/20/1998
O'Neil, Olen Cecil, Jai, NM	05/20/1998	Simon, Franklin S, Rockaway Park, NY	05/20/1998	Mediview Consulting, Inc, Rocky Point, NY	05/20/1998
Paddock, Lisa A, Kennebunk, ME	05/20/1998	Smith, Sharon Richardson, Richmond, VA	05/20/1998	Tikes Enterprises Ltd, Auburn, ME	05/20/1998
Pearson, Brenda S, Richmond, VA	05/20/1998			Default on Heal Loan:	
Pellert, Carol Ann, Lauren, NY	05/20/1998			Allen, Lawrence P, Temecula, CA	05/20/1998
				Altwater, Robert F, Bakersfield, CA	05/20/1998
				Bailey, Brian K, Calabasas, CA	05/20/1998
				Bakhit, Morad F, Medway, MA	05/20/1998

Subject, city, state	Effective date	Subject, city, state	Effective date	Proposed Collection
Baptiste, Donna M, Kettering, MD	05/20/1998	Exclusion Based on Settlement Agreement:		<p>Title: Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture.</p> <p>Type of Information Collection Request: O REINSTATEMENT, with change.</p> <p>Need and Use of Information Collection: The Agricultural Health Study has assembled a cohort of over 90,000 private and commercial applicators and spouses of private applicators. Baseline information has been collected. The cohort will be contacted to update exposure information since enrollment and changes in health status and family medical history. Additional dietary information will be requested. A collection of buccal (cheek) cells is planned.</p> <p>Frequency of Response: Single time reporting.</p> <p>Affected Public: Individuals or households, Farms.</p> <p>Type of Respondents: Private and commercial pesticide applicators and the spouses of private applicators. The annual reporting burden is as follows:</p> <p>Estimated Number of Respondents: 25,271;</p> <p>Estimated Number of Responses per Respondent: 1.0;</p> <p>Average Burden Hours Per Response: 1.167; and</p> <p>Estimated Total Annual Burden Hours Requested: 24,682.</p> <p>The annualized cost to respondents is estimated at: \$246,820. The Capital Costs are \$12,018 and the Operating or Maintenance Costs are \$3,511.</p> <p>Request for Comments</p> <p>Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.</p> <p>FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of</p>
Bram, Keith M, Euclid, OH	05/20/1998	Atlantic Medical Equipment, Miami, FL	08/14/1997	
Brown, Kerry S, Milwaukee, WI	05/20/1998	Crist Yiret Medical Supply, Miami Lakes, FL	10/18/1997	
Brown (Troxell), Sally T, San Diego, CA	05/20/1998	Cueto, Yanet, Miami, FL	08/14/1997	
Bunting, William T, Encinitas, CA	05/20/1998	Cueto, Rolando, Miami, FL	08/14/1997	
Burks, Osborne David, Jr, Memphis, TN	05/20/1998	Cueto Enterprises, Inc, Miami, FL	08/14/1997	
Cally, James J, Hudson, NY	05/20/1998	Fernandez-Cano, Orestes, Miami, FL	12/17/1997	
Campos, Helar E, Jamaica, NY	05/20/1998	Good Choice Med Supplies, Corp, Miami, FL	08/14/1997	
Cochrane, Gregg A, San Diego, CA	05/20/1998	Hernandez, Jose F, Pembroke Pines, FL	07/15/1997	
Crane, Steven H, W Orange, NJ	05/20/1998	Kendall Med Home, Inc, Miami, FL	08/14/1997	
Daniels, Gennaro A, Albany, NY	05/20/1998	Lopez, Carmen, Pembroke Pines, FL	07/15/1997	
Dates, Richard J, Elk Grove, IL	05/20/1998	Medic Care & DME Distribution, Pembroke Pines, FL	07/15/1997	
Dunlap, David A, Bayonne, NJ	05/20/1998	Melco Medical Equipment Dist, Miami, FL	07/15/1997	
Edwards, Peter L, Coeur D'Alene, ID	05/20/1998	Melendez, Hector C, Miami, FL	07/15/1997	
Ford, Jerold R, Modesto, CA	05/20/1998	Melendez, Leonidas, Miami, FL	07/15/1997	
Fruin, Jeffrey W, Reseda, CA	05/20/1998	Moreno, Martha Lucia, Miami Lakes, FL	10/18/1997	
Gonzalez, Rocio Revuelta, Los Angeles, CA	05/20/1998	Shalom Medical Center, Miami Lakes, FL	10/18/1997	
Hansraj, Kenneth K, Poughkeepsie, NY	05/20/1998	Socarras, Jenis, Miami Lakes, FL	10/18/1997	
Johnson, Gerald A, Madison, AL	05/20/1998	Stat Billing Services, Inc, FL	07/15/1997	
Jones, Thomas P, Kenesa, GA	05/20/1998	Stat Medical Residential Suppl, Miami, FL	07/15/1997	
Kirkpatrick, Ira P, Kerrville, TX	05/20/1998	Velez, Rosa, Miami, FL	07/15/1997	
Kobulnicky, Paul JR, San Diego, CA	05/20/1998			
Levitt, David M, Lake Stevens, WA	05/20/1998			
Liston, Lawrence E, Bloomington, IL	02/26/1998			
Mednitsky, Shari N, San Diego, CA	05/20/1998			
Miller, Jerry Sydney, Watertown, NY	05/20/1998			
Miller (Kustek), Alane Marie, Los Angeles, CA	05/20/1998			
Miroshnichenko, Natalia, Decatur, GA	05/20/1998			
Morrone, Mark J, St Petersburg, FL	05/20/1998			
Muenker, Mark E, Van Nuys, CA	05/20/1998			
Pratt, Edwin S JR, Yuba City, CA	05/20/1998			
Quinton, Susan A, Ringold, GA	05/20/1998			
Reed, Bruce J, Tampa, FL	05/20/1998			
Reneau, David D, Rigby, ID	05/20/1998			
Ripley, David A, George, IA	05/20/1998			
Rosales, Anna Marie, Hondo, TX	05/20/1998			
Saavedra, Eugene G, Littleton, CO	05/20/1998			
Smith, Richard, Dania, FL	05/20/1998			
Weimmer, Frederick J, Lakehurst, NJ	05/20/1998			
Ziker, Wayne J, New Rochelle, NY	05/20/1998			

Dated: May 5, 1998.

Joanne Lanahan,
Director, Health Care Administrative
Sanctions, Office of Inspector General.

[FR Doc. 98-12788 Filed 5-13-98; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment
Request; Agricultural Health Study—A
Prospective Cohort Study of Cancer
and Other Diseases Among Men and
Women in Agriculture

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

the data collection plans and instruments, contact Michael C.R. Alavanja, Dr. P.H., Epidemiology and Biostatistics Program, Division of Cancer Etiology, National Cancer Institute, EPN 418, 6130 Executive Boulevard, Rockville, MD 20852, or call (310) 496-9093, or E-mail your request, including your address to: alavanjam@epndc.nci.nih.gov

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before July 13, 1998.

Date: May 6, 1998.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 98-12778 Filed 5-17-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, June 4, 1998, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. The topics proposed for discussion include: (1) Enhancing Diversity in Biomedical Research at NIH; (2) Bioengineering Conference; (3) Report from the Working Group on Research Tools; (4) Bioethics; and (5) DHHS Report on Research Misconduct. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Special Assistant to the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892-0159, telephone (301) 496-0959, fax (301) 496-7451, will furnish the meeting agenda, roster of committee members, and available substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than May 29, 1998.

Date: May 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12774 Filed 5-13-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings in conjunction with the National Institute of Dental Research and the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

Name of SEP: Nutrition Academic Awards.

Date: June 10-11, 1998.

Time: 9:00 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

Contact Person: Louise Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, Maryland 20892-7924, (301) 435-0270.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: National Food and Nutrient Analysis Program—Interagency Agreement Protocol.

Date: June 12, 1998.

Time: 9:30 a.m.

Place: Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Abby Ershow, M.D. Two Rockledge Center, Room 9186, 6701 Rockledge Drive, Bethesda, MD 20892-7924, (301) 435-0526.

Purpose/Agenda: To review and evaluate an Interagency Agreement Protocol.

Name of SEP: Heart Failure Research: New Approaches to Pathogenesis—NHLBI/NIA.

Date: June 14-16, 1998.

Time: 7:00 p.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Diane M. Reid, M.D., Two Rockledge Center, Room 7182, 6701 Rockledge Drive, Bethesda, MD 20892-7924, (301) 435-0277.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Date: May 7, 1998.

Date: May 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12771 Filed 5-13-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Endothelial Dysfunction in HIV Infection.

Date: June 9-10, 1998.

Time: 7:00 p.m.

Place: Holiday Inn Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

Contact Person: Ramesh Vemuri, Ph.D., Two Rockledge Center, Room 7194, 6701 Rockledge Drive, Bethesda, Maryland 20892-7924, (301) 435-0476.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Molecular and Physical Characterization of the Vulnerable Plaque.

Date: June 17-18, 1998.

Time: 7:00 p.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Ivan Baines, Ph.D., Two Rockledge Center, Room 7184, 6701 Rockledge Drive, Bethesda, Maryland 20892-7924, (301) 435-0277.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Date: May 7, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12776 Filed 5-13-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Child Health and Human Development; Notice of Meeting of the National Advisory Child Health and Human Development Council and Its Subcommittee on Planning and Policy

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council on June 1-2, 1998. The meeting will be held in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. The Subcommittee on Planning and Policy will be held on June 1, 1998, in Building 31, Conference Room 7, from 12:00 p.m. to 1:30 p.m. The Subcommittee meeting will be open to the public and the agenda includes program plans and the agenda for the next Council meeting. Attendance by the public will be limited space available.

The Council meeting will be open to the public on June 1 from 8:00 a.m. until 5:30 p.m. The agenda includes: (1) A report by the Director, NICHD; (2) A presentation of the new K-series awards for support of clinical research; (3) a presentation of inclusion of children in clinical research; (4) observance of the Institute's thirty-fifth anniversary, and (5) other business of the Council. The meeting will be open on June 2 upon completion of the review of applications at approximately 1:00 p.m. to adjournment if any policy issues are raised which need further discussion.

In accordance with the provisions set forth in section 552b(c)(4), and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the full Council will be closed to the public on June 2 from 8:00 a.m. to approximately 1:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NACHHD Council, 6100 Executive Boulevard, Room 5E03, National Institutes of Health, Bethesda, Maryland, 20892-7510, 301-594-7232, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research, and 93.865, Research for Mothers and Children], National Institutes of Health.)

Date: May 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12770 Filed 8-13-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS) on June 11, 1998, in Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public June 11 from 8:30 a.m. to 12:00 p.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on June 11 from 1:00 p.m. to adjournment in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal property.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Steven Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council NIAMS, Natcher

Building, Room 5AS-13, Bethesda, Maryland 20892 (301) 594-2463.

A summary of the meeting and roster of the members may be obtained from the Extramural Programs Office, NIAMS, Natcher Building, Room 5AS-13, National Institutes of Health, Bethesda, Maryland 20892 (301) 594-2363.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Date: May 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-12772 Filed 5-13-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Violence and Traumatic Stress Review Committee.

Date: May 27-May 28, 1998.

Time: 8:30 a.m.

Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007.

Contact person: Sheri L. Schwartzback, Parklawn, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 446-6470.

Committee Name: Clinical Psychopathology Review Committee.

Date: June 8-June 9, 1998.

Time: 8:30 a.m.

Place: River Inn, 924 25th Street NW, Washington, DC 20037.

Contact person: Gavin T. Wilkom, Parklawn, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-1340.

Committee Name: Child Psychopathology and Treatment Review Committee.

Date: June 11-June 12, 1998.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact person: W. Gregory Zimmerman, Parklawn, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-1340.

Committee Name: Child/Adolescent Development, Risk, and Prevention Review Committee.

Date: June 11-June 12, 1998.

Time: 9 a.m.

Place: St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.

Contact person: Phyllis D. Artis, Parklawn, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-6470.

Committee Name: Health Behavior and Prevention Review Committee.

Date: June 17, 1998.

Time: 8:30 a.m.

Place: One Washington Circle, One Washington Circle, N.W., Washington, DC 20037.

Contact person: Monica F. Woodfork, Parklawn, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-6470.

Committee Name: Perception and Cognition Review Committee.

Date: June 18-June 19, 1998.

Time: 8:30 a.m.

Place: One Washington Circle, One Washington Circle, N.W., Washington, DC 20047.

Contact Person: Deborah A. DeMasse, Parklawn, Room 9-101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-3936.

Committee Name: Social and Group Processes Review Committee.

Date: June 18-June 19, 1998.

Time: 8 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tarsha Johnson, Parklawn, Room 9-101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-64700.

Committee Name: Clinical Centers and Special Projects Review Committee.

Date: June 25-June 26, 1998.

Time: 8:30 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857 Telephone: 301, 443-1340.

Committee Name: Mental Disorders of Aging Review Committee.

Date: June 25-June 26, 1998.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Henry Haigler, Parklawn, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-1340.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(2)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: May 6, 1998.

LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98-12773 Filed 5-13-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: June 22-23, 1998.

Time: 8:30 a.m. until adjournment.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Mary Stephens-Frazier, Ph.D., Building 45, Room 3AN-28, 45 Center Drive, Bethesda, MD 20892, (301) 594-5971.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel (NINR/ORMH Mentored Research Scientist Development Award for Minority Investigators).

Date: June 24, 1998.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Mary Stephens-Frazier, Ph.D., Building 45, Room 3AN-18, 45 Center Drive, Bethesda, MD 20892, (301) 594-5971.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: May 7, 1998.

LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98-12775 Filed 5-13-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center

for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: May 12, 1998.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4114, Telephone Conference.

Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435-1782.

Name of SEP: Clinical Sciences.

Date: May 13, 1998.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4114, Telephone Conference.

Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435-1782.

Name of SEP: Clinical Sciences.

Date: May 18, 1998.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4114, Telephone Conference.

Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435-1782.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applicants and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 83.893, National Institutes of Health, HHS)

Dated: May 7, 1998.

LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98-12777 Filed 5-13-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Availability of the Report on Carcinogens, Eighth Edition

Background

The National Toxicology Program (NTP) announces the availability of the Report on Carcinogens, Eighth Edition.

The Report on Carcinogens (RoC) is a Congressionally-mandated listing of known human carcinogens and reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (HHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, (HHS), shall publish a report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

The new entries for the 8th RoC have undergone a multiphased peer review process involving two Federal scientific review groups and one non-government, scientific peer review body (a subcommittee of the NTP Board of Scientific Counselors) which met in an open, public meeting that included a public comment session. All data relevant to the criteria for inclusion of candidate agents, substances or mixtures in the RoC have been evaluated by the three scientific review committees.

In the 8th RoC, the NTP is adding 14 agents, substances or mixtures to the existing list. In addition, thiotepa, which is currently listed in previous Reports on Carcinogens as reasonably anticipated to be a human carcinogen is moved to the known human carcinogen list. These agents, substances or mixtures are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers and listing.

Hard copies of the 8th RoC, or the 8th RoC Summary (which contains the same

information that is in the full Report with the exception of specific information on regulations promulgated by regulatory health agencies) can be obtained by contacting the NIEHS Environmental Health Information Service, ATTN: Order Processing, P.O. Box 12510, Research Triangle Park, NC 27709-2510, fax number (919) 541-0763, email: ehis@niehs.nih.gov. The 8th RoC Summary is also available on the internet and can be accessed from the NIEHS Environmental Health Information Service Home Page at: <http://ehis.niehs.nih.gov/> or from the NTP Home Page at: <http://ntp-server.niehs.nih.gov/>.

Questions or comments concerning the 8th RoC should be directed to: Dr. C.W. Jameson, National Toxicology Program, Report on Carcinogens, MD EC-14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541-4096, fax: (919) 541-2242, email: jameson@niehs.nih.gov.

Kenneth Olden,
Director, National Toxicology Program.

SUMMARY FOR AGENTS, SUBSTANCES OR MIXTURES NEWLY LISTED IN THE REPORT ON CARCINOGENS, EIGHTH EDITION

Chemical/CAS number	Primary uses	Newly listed as
AZACITIDINE/320-67-2	Used as a cytostatic agent in the treatment of acute leukemia	Reasonably Anticipated to be a Human Carcinogen
p-CHLORO-o-TOLUIDINE and its HCl salt/95-69-2	Used to produce azo dyes for cotton, silk acetate and nylon and as intermediate in production of Pigment Red 7 and Pigment Yellow 49. Also an impurity in and a metabolite of the pesticide chlordimethom.	Reasonably Anticipated to be a Human Carcinogen.
CHLOROZOTOCIN/54749-90-5	Used as a cytostatic agent in the treatment of cancers of the stomach, large intestine, pancreas and lung; melanoma; and multiple myeloma.	Reasonably Anticipated to be a Human Carcinogen.
CYCLOSPORIN/59865-13-3	Used as an immunosuppressive agent in the prevention and treatment of graft-vs-host reactions in bone marrow transplantation and for the prevention of rejection of kidney, heart, and liver transplants.	Known to be a Human Carcinogen.
DANTHRON/(1,8-Dihydroxyanthraquinone) 117-10-2	Used as a laxative and as an intermediate in the manufacture of dyes	Reasonably Anticipated to be a Human Carcinogen
1,6-DINITROPYRENE/42397-64-8	Not used commercially, detected in ambient atmospheric samples and as a constituent of diesel exhaust.	Reasonably Anticipated to be a Human Carcinogen
1,8-DINITROPYRENE/42397-65-9	Not used commercially, detected in ambient atmospheric samples and as a constituent of diesel exhaust.	Reasonably Anticipated to be a Human Carcinogen
DISPERSE BLUE 1/(1,4,5,8-Tetraaminoanthraquinone) 2475-45-8	Used as an anthraquinone based dyestuff in hair color formulations and in coloring fabrics and plastics.	Reasonably Anticipated to be a Human Carcinogen
FURAN/100-00-9	Used as an intermediate in the synthesis and production of other organic compounds.	Reasonably Anticipated to be a Human Carcinogen
O-NITROANISOLE/91-23-6	Used as a precursor in the synthesis of o-anisidine which is used in the manufacture of over 100 azo dyes.	Reasonably Anticipated to be a Human Carcinogen.
6-NITROCHRYSENE/7495-02-8	Not used commercially, detected in ambient atmospheric samples	Reasonably Anticipated to be a Human Carcinogen.
1-NITROPYRENE/5522-43-0	Not used commercially, detected in ambient atmospheric samples and as a constituent of diesel and gasoline engine exhaust.	Reasonably Anticipated to be a Human Carcinogen.
4-NITROPYRENE/57835-92-4	Not used commercially, detected in ambient atmospheric samples	Reasonably Anticipated to be a Human Carcinogen.
THIOTEPA/52-24-4	Used as a cytostatic agent in the treatment of lymphomas and a variety of solid tumors, such as breast and ovary. It has also been used at high doses in combination chemotherapy with cyclophosphamide in patients with refractory malignancies treated with autologous bone transplantation.	Known to be a Human Carcinogen.

SUMMARY FOR AGENTS, SUBSTANCES OR MIXTURES NEWLY LISTED IN THE REPORT ON CARCINOGENS, EIGHTH EDITION—Continued

Chemical/CAS number	Primary uses	Newly listed as
1,2,3-TRICHLOROPROPANE/96-18-4.	Used as a polymer crosslinking agent, paint and varnish remover, solvent and degreasing agent. It has been found as an impurity in certain nematocides and soil fumigants and has been detected in drinking and ground water in various parts of the United States.	Reasonably Anticipated to be a Human Carcinogen.

[FR Doc. 98-12779 Filed 5-13-98; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration

(SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Community Mental Health Centers (CMHC) Construction Grantee Checklist—0930-0104—Extension, no change—Recipients of Federal CMHC construction funds are obligated to use the constructed facilities to provide mental health services. The CMHS Act

was repealed in 1981 except for the provision requiring grantees to continue using the facilities for mental health purposes for a 20-year period. In order for the Center for Mental Health Services to monitor compliance of construction grantees the grantees are required to submit an annual report. The Checklist enables grantees to supply necessary information efficiently and with a minimum of burden.

	Annual respondents	Responses/respondent	Hours per response	Annual burden
CMHS Grantee Construction Checklist [42 CFR 54.209(h), 42 CFR 54.213, 42 CFR 54.214]	* 68	1	.33	22

* Average over the 3-year approval period as grantees with service obligations continue to complete their period of obligation.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 7, 1998.
Richard Kopanda,
Executive Officer, SAMHSA.
[FR Doc. 98-12824 Filed 5-13-98; 8:45 am]
BILLING CODE 4182-20-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Applicant: The Raptor Resource Project, Ridgeway, Iowa; Robert Anderson, Director.

The applicant requests a permit to take (capture, handle, draw blood, and release) peregrine falcon (*Falco peregrinus*) in the states of Iowa, Minnesota, and Wisconsin. Activities are proposed for the purpose of scientific research aimed at enhancement and survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056. Telephone: (612) 713-5332; FAX: (612) 713-5292).

Dated: May 7, 1998.
Matthias A. Kerschbaum,
Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.
[FR Doc. 98-12804 Filed 5-13-98; 8:45 am]
BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-350-1540-01]

Extension of Approved Information Collection, OMB Number 1004-0009

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request an extension of existing approval to collect certain information from applicants who wish to acquire a Land Use Authorization (form 2920-1) on public lands under the Federal Land Policy and Management Act (FLPMA) of 1976. The regulations at 43 CFR 2920 provide for non-Federal use of Bureau-administered land by means of lease or

permit. Uses include agriculture, trade, or manufacturing concerns and business uses such as outdoor recreation concession. The BLM will determine the validity of uses proposed by private individuals and other qualified proponents from information provided by the proponent on the Land Use Application and Permit form.

DATES: Comments on the proposed information collection must be received by July 13, 1998 to be considered.

ADDRESSES: Comments may be mailed to: Director (420), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WoComment@wo.blm.gov Please include "ATTN: 1004-0009" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Carl C. Gammon, (202) 452-7777.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the *Federal Register* concerning a collection of information contained in a published current rule to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The FLPMA of 1976 (43 U.S.C. 1732, 1740), provides for issuance of land use authorizations which may include leases or permits, to eligible proponents. The BLM has implemented the provisions of this requirement through

the issuance of 43 CFR 2922.2-1, which provides for the submission of the "Land Use Application and Permit," or application, Form 2920-1. The information collected on the application is used by the BLM to identify the proposed land use and activities, describe all facilities for which authorization is sought, to identify the location, to determine a schedule for construction and to identify access requirements. Since the information collected is unique to each application, no other suitable means of information collection has been identified which could gather the information at a lesser burden. If the BLM fails to properly collect the required information, the BLM will reject the application.

Based on BLM's experience administering the activities described above, approximately 620 applications (577 Permits, 43 Leases) are received annually. It will take an average of 30 minutes for over 94 percent of the applicants to supply the needed information. For the other 6 percent of the applicants who are applying for leases, the average burden is 121 hours to supply the necessary information. The range in burden hours is due to the fact that a lease application, because of its nature, requires more time on the part of an applicant to supply the needed information. For example, a lease application to construct a multi-million dollar ski facility could involve construction drawings, site and facility plans, other Federal and State licenses and permits, and other preauthorizing requirements involving many days to process. Conversely, a relatively routine application (permit) to use public lands for agricultural purposes could be processed in 1/2 an hour.

The estimated total annual burden on new respondents is about 5,955 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 30, 1998.

Carole J. Smith,
Bureau of Land Management, Information Clearance Officer.
[FR Doc. 98-12787 Filed 5-13-98; 8:45 am]
BILLING CODE 4310-94-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-1220-00]

Meeting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Central California Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Resource Advisory Council for Central California will meet in Coalinga, California.

DATES: May 21-22, 1998.

ADDRESSES: Thursday, May 21 field trip begins at 9 a.m. at the Oak Flat Campground on Clear Creek Canyon Road in southern San Benito County. Friday, May 22 session begins at 8 a.m. in Room 8 of the Speech/Arts Building, West Hills Community College, 300 Cherry Lane, Coalinga, California.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council is appointed by the Secretary of the Interior to advise the Bureau of Land Management on public land issues. On Thursday morning, May 21, the Council will tour the Clear Creek Management Area with the State of California Off Highway Motor Vehicle Commission. In the afternoon, the Council will visit public land at the Joaquin Rocks. Discussion will involve land use planning, and the unique plants and minerals of the area. The Council will meet in Room SA-8 of West Hills College in Coalinga beginning at 8 a.m. Thursday, May 22. Items to be discussed include noxious weeds, and the proposed Carrizo Plain Natural Area National Conservation Area designation and how it will affect oil exploration of the area. A public comment period is scheduled for 10 a.m. Friday when may address the Council about any public and issue. Written comments will also be accepted at the address below. After lunch, the Council will tour the public lands of the Panoche Hills in western Fresno County. The public is welcome to attend Resource Advisory Council meetings. Those wishing to participate in the field trips must supply their own transportation, food and drink.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801

Pegasus Drive, Bakersfield, CA 93308,
telephone 805-391-6010.

Dated: May 4, 1998.
John Skibinski,
Assistant Field Office Manager.
[FR Doc. 98-12878 Filed 5-13-98; 8:45 am]
BILLING CODE 4310-40-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-990-1020-00]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management,
Upper Columbia—Salmon Clearwater
Districts, Idaho.

ACTION: Notice of Resource Advisory
Council Meeting.

SUMMARY: In accordance with the
Federal Land Policy and Management
Act and the Federal Advisory
Committee Act of 1972 (FACA), 5 U.S.C.
Appendix, the Bureau of Land
Management (BLM) announces the
meeting of the Upper Columbia—
Salmon Clearwater Districts Resource
Advisory Council (RAC) on Thursday,
June 18, 1998 and Friday, June 19, 1998
in Missoula, Montana.

Agenda items include: Election of
officers; update and briefing on the
weed issue; an update from the
recreation subgroup and other matters
as time permits. The meeting will begin
at 1:00 p.m. (MDT), June 18, 1998 at the
4B's Inn and Conference Center, 3803
Brooks Rd., Missoula, Montana. The
public may address the Council during
the public comment period from 2:00
p.m.—2:30 p.m. on June 18, 1998.

SUPPLEMENTARY INFORMATION: All
Resource Advisory Council meetings are
open to the public. Interested persons
may make oral statements to the
Council, or written statements may be
submitted for the Council's
consideration. Depending on the
number of persons wishing to make oral
statements, a per-person time limit may
be established by the District Manager.

The Council's responsibilities include
providing long-range planning and
establishing resource management
priorities.

FOR FURTHER INFORMATION CONTACT:
Ted Graf (208) 769-5004.

Dated: May 4, 1998.
Ted Graf,
Acting District Manager.
[FR Doc. 98-12881 Filed 5-13-98; 8:45 am]
BILLING CODE 4310-66-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-935-1430-01; COC34289]

Realty Action: Section 302 Lease;
Classification in Grand County,
Colorado

AGENCY: Bureau of Land Management,
Department of the Interior.

ACTION: The proposed leasing of public
land for a Non-Competitive Lease in
Grand County.

SUMMARY: In response to a request from
the Silver Creek Holdings, Colorado, the
following public lands have been
examined and found suitable for leasing
under the provisions of Section 302, of
the Federal Land Policy and
Management Act (FLPMA) of 1976 and
43 CFR 2920. Other lands in the vicinity
are currently leased to Silver Creek Ski
Area for ski trails and associated
facilities.

Affected Public Land

Sixth Principal Meridian, Colorado

T. 1N., R. 76W.,

Sec. 9, Lots 3, 6 (W $\frac{1}{2}$), 7 (E $\frac{1}{2}$), 8 and 9
approximately 135.73 acres.

The affected public lands would be
used for the development of an 18-hole
championship golf course. This would
enable Silver Creek Holdings to achieve
the primary goal of their Master Plan
Vision, prepared in 1997/1998, to
develop amenities which will provide
year-round use of the Silver Creek
community. These lands were selected
to reduce the impact on wetlands and
wildlife habitat in the original proposal
by Silver Creek. Appropriate federal and
local permits and approvals have been
acquired or are in the review stage. The
lease of these lands will serve important
public and private objectives which
cannot be achieved on lands other than
public lands administered by the
Bureau of Land Management. The
Bureau of Land Management would
amend the existing 30 year lease to
Silver Creek.

FOR FURTHER INFORMATION CONTACT:
Other information concerning this
proposed lease is available for review by
contacting Madeline Dzielak at the
Kremmling Resource Area Office at
1116 Park Avenue, PO Box 68,
Kremmling, Colorado, 80459, (970) 724-
3437.

SUPPLEMENTARY INFORMATION: The
publication of this notice in the Federal
Register segregates the public land from
the operation of the public land laws,
including the mining laws, except for
conveyance under Section 302 of the

Federal Land Policy and Management
Act sale and exchange, for a period of
two years from the date of publication
of this notice. The segregative effect
shall terminate upon issuance of a lease,
upon rejection of the application, or two
years from the date of publication of this
notice.

For a period of 45 days from the date
of publication of this notice interested
parties may submit comments to the
District Manager, Grand Junction
District Office, Bureau of Land
Management, 2815 H Road, Grand
Junction, CO 81506. Any adverse
comments will be evaluated by the State
Director, who may sustain, vacate, or
modify this realty action. In the absence
of any adverse comments, this realty
action will become the final
determination of the Department of the
Interior.

Dated: April 29, 1998.

Mark T. Morse,
District Manager.

[FR Doc. 98-12882 Filed 5-13-98; 8:45 am]
BILLING CODE 4310-JB-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-1430-01; N-62223]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following described land
in Elko County, Nevada has been
examined and found suitable for
classification for lease/purchase under
the Recreation and Public Purposes Act
(R&PP) of June 14, 1926, as amended (43
U.S.C. 869 *et seq.*). The lands will not
be offered for lease/purchase until at
least 60 days after the date of
publication of this Notice in the Federal
Register.

Mount Diablo Meridian, Nevada

T. 33 N., R. 55 E.,

Sec. 6, lot 8, 9, 10, 14, 15.

Containing 182.82 acres, more or less.

DATES: The land will become segregated
on May 14, 1998. Comments are due in
this office by June 29, 1998.

FOR FURTHER INFORMATION CONTACT:
Detailed information concerning this
action is available for review at the
Bureau of Land Management, Elko Field
Office, 3900 Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: The City
of Elko, Nevada intends to use the land
to construct an effluent storage
reservoir. The lease/patent, when
issued, will be subject to the provisions

of the Recreation and Public Purposes
Act, applicable regulations of the
Secretary of the Interior, and will
contain the following reservations to the
United States:

1. A right-of-way thereof for ditches
and canals constructed by the authority
of the United States; Act of August 30,
1890 (43 U.S.C. 945).

2. All mineral deposits in the lands so
patented, and to it, or persons
authorized by it, the right to prospect
for, mine and remove such deposits
from the same under applicable laws
and regulations to be established by the
Secretary of Interior. The land is not
required for any Federal purpose. The
classification and subsequent lease/
conveyance are consistent with the
Bureau's planning for the area. Upon
publication of this Notice of Realty
Action in the Federal Register, the
subject lands will be segregated from all
forms of appropriation under the public
land laws, including locations under the
mining laws, except for recreation and
public purposes. The segregative effect
shall terminate upon issuance of a
patent or as specified in an opening
order to be published in the Federal
Register, whichever occurs first. For a
period of 45 days from the date of
publication of this notice in the Federal
Register, interested parties may submit
comments to the District Manager, Elko
Field Office, 3900 Idaho Street, Elko,
NV 89801. Any objections will be
evaluated by the State Director, who
may sustain, vacate or modify this realty
action. In the absence of timely filed
objections, the classification of the lands
described in this Notice will become
effective July 13, 1998.

Classification Comments

Interested parties may submit
comments involving the suitability of
the land for lease/conveyance under the
Recreation and Public Purposed Act.
Comments on the classification are
restricted to whether the land is
physically suited for the proposal,
whether the use will maximize the
future use or uses of the land, whether
the use is consistent with local planning
and zoning, or if the use is consistent
with State and Federal programs.

Application Comments

Interested parties may submit
comments regarding the specific use
proposed in the application and plan of
development, whether the BLM
followed proper administrative
procedures in reaching the decision, or
any other factor not directly related to
the suitability of the land for lease/
purchase under the Recreation and
Public Purposes Act.

Dated: May 4, 1998.

Helen Hankins,
District Manager.

[FR Doc. 98-12796 Filed 5-13-98; 8:45 am]
BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-960-1420-00] ES-49627, Group 31,
Illinois

Notice of Filing of Plat of Survey; Illinois

The plat of the dependent resurvey of
a portion of the east boundary, portions
of the subdivisional lines and the survey
of the Lock and Dam No. 26 acquisition
boundary, Township 6 North, Range 11
West, Third Principal Meridian, Illinois,
will be officially filed in Eastern States,
Springfield, Virginia at 7:30 a.m., on
June 19, 1998.

The survey was requested by the U.S.
Army Corps of Engineers.

All inquiries or protests concerning
the technical aspects of the survey must
be sent to the Chief Cadastral Surveyor,
Eastern States, Bureau of Land
Management, 7450 Boston Boulevard,
Springfield, Virginia 22153, prior to
7:30 a.m., June 19, 1998.

Copies of the plat will be made
available upon request and prepayment
of the reproduction fee of \$2.75 per
copy.

Dated: May 8, 1998.

Stephen G. Kopach,
Chief Cadastral Surveyor.

[FR Doc. 98-12870 Filed 5-13-98; 8:45 am]
BILLING CODE 4310-6J-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-960-1420-00] ES-49629, Group 175,
Minnesota

Notice of Filing of Plat of Survey; Minnesota

The plat of the survey of Four Islands
in Five Island Lake in sections 20 and
21, Township 62 North, Range 23 West,
4th Principal Meridian, Minnesota, will
be officially filed in Eastern States,
Springfield, Virginia at 7:30 a.m., on
June 22, 1998.

The survey was executed in response
to the applications for survey submitted
by Marcene Wiebusch Anderson, Key
Largo, Florida, Rowena Hawkinson,
Cook, Minnesota, and Byron B. Meyers,
Barrington, Illinois.

All inquiries or protests concerning
the technical aspects of the survey must

be sent to the Chief Cadastral Surveyor,
Eastern States, Bureau of Land
Management, 7450 Boston Boulevard,
Springfield, Virginia 22153, prior to
7:30 a.m., June 22, 1998.

Copies of the plat will be made
available upon request and prepayment
of the appropriate fee.

Dated: May 6, 1998.

Stephen G. Kopach,
Chief Cadastral Surveyor.

[FR Doc. 98-12877 Filed 5-13-98; 8:45 am]
BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-957-00-1420-00; G8-0184]

Filing of Plats of Survey; Oregon/ Washington

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the
following described lands are scheduled
to be officially filed in the Oregon State
Office, Portland, Oregon, thirty (30)
calendars days from the date of this
publication.

Willamette Meridian

Oregon

T. 7S., R. 2E., accepted April 1, 1998
T. 30S., R. 4W., accepted March 13, 1998
T. 29S., R. 7W., accepted April 13, 1998
T. 10S., R. 20W., accepted April 13, 1998
T. 30S., R. 10W., accepted April 17, 1998
T. 6S., R. 11W., Accepted April 13, 1998
T. 30S., R. 15W., Accepted April 17, 1998

Washington

T. 10N., R. 11E., accepted April 23, 1998
T. 11N., R. 11E., accepted April 23, 1998
T. 25N., R. 21E., accepted April 3, 1998

If protests against a survey, as shown
on any of the above plat(s), are received
prior to the date of official filing, the
filing will be stayed pending
consideration of the protests(s). A plat
will not be officially filed until the day
after all protests have been dismissed
and become final or appeals from the
dismissal affirmed.

The plat(s) will be placed in the open
files of the Oregon State Office, Bureau
of Land Management, 1515 S.W. 5th
Avenue, Portland, Oregon 97201, and
will be available to the public as a
matter of information only. Copies of
the plat(s) may be obtained from the
above office upon required payment. A
person or party who wishes to protest
against a survey must file with the State
Director, Bureau of Land Management,
Portland, Oregon, a notice that they wish

to protest prior to the proposed official filing date given above. A statement of reasons or a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: May 7, 1998.

Robert D. DeViney, Jr.,
Chief, Branch of Realty and Records Services.
[FR Doc. 98-12875 Filed 5-13-98; 8:45 am]
BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-958-1430-01; GP8-0086; OR-52939]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 196.01 acres of lands, of which 184.60 acres are public lands and 11.41 acres are non-Federal lands, to protect the facilities and unique values of the Row River Trail. This notice closes the lands for up to 2 years from surface entry and mining. The public lands have been and will remain open to mineral leasing. Upon acquisition, the non-Federal lands will be opened to the mineral leasing laws.

EFFECTIVE DATE: Comments and requests for a public meeting must be received by August 13, 1998.

ADDRESSES: Comments and meetings requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208-2965.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, 503-952-6189.

SUPPLEMENTARY INFORMATION: On April 17, 1998, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands and non-Federal lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30

U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Public Lands

T. 21 S., R. 1 W.,

Sec. 31, lot 2 of Tract No. 38.

The portions of the following lands as more particularly identified and described by metes and bounds in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Eugene District Office, Eugene, Oregon:

T. 21 S., R. 1 W.,

Sec. 19, lots 1, 2, 4, and 5, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and Donation Land Claim No. 37;

Sec. 30, lots 1, 2, 3, and 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and Donation Land Claim No. 37;

Sec. 31, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 32, SW $\frac{1}{4}$.

T. 20 S., R. 2 W.,

Sec. 30, lots 3, 4, and 6, and Donation Land Claim Nos. 40 and 42;

Sec. 31, Donation Land Claim No. 39;

Sec. 32, lots 1 and 3, S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and Donation Land Claim Nos. 38 and 39;

Sec. 33, lots 2, 6, and 7, and Donation Land Claim Nos. 41, 43, and 45;

Sec. 34, Donation Land Claim No. 43.

T. 21 S., R. 2 W.,

Sec. 2, lots 1 and 2, and Donation Land Claim No. 44;

Sec. 3, lot 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and Donation Land Claim Nos. 40 and 44;

Sec. 11, Donation Land Claim Nos. 42 and 45;

Sec. 13, Donation Land Claim Nos. 42 and 43;

Sec. 14, lot 1 and Donation Land Claim No. 42;

Sec. 24, lots 1 and 2.

T. 22 S., R. 1 W.,

Sec. 5, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 21 S., R. 3 W.,

Sec. 1, lot 4 and Donation Land Claim No. 60.

T. 20 S., R. 3 W.,

Sec. 25, Donation Land Claim 74;

Sec. 26, Donation Land Claim Nos. 65, 66, and 74.

The areas described aggregate approximately 184.60 acres in Lane County.

Non-Federal Lands

T. 21 S., R. 1 W.,

Sec. 31, lot 1 of Tract 38.

The following lands as more particularly identified and described by metes and bounds in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Eugene District Office, Eugene, Oregon:

T. 21 S., R. 1 W.,

Sec. 19, lot 1;

Sec. 31, SE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 32, W $\frac{1}{2}$ NW $\frac{1}{4}$.

The areas described aggregate approximately 11.41 acres in Lane County.

The purpose of the proposed withdrawal is to protect the facilities and unique recreational values of the approximate 14 miles of improved recreational trail converted from an abandoned railroad right-of-way.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Dated May 5, 1998.

Robert D. DeViney, Jr.,
Chief, Branch of Realty and Records Services.
[FR Doc. 98-12871 Filed 5-13-98; 8:45 am]
BILLING CODE 4310-33-P

DEPARTMENT OF JUSTICE

President's Advisory Board on Race

ACTION: President's Advisory Board on Race; Notice of meeting.

SUMMARY: This revises the notice of May 6, 1998 regarding the President's Advisory Board on Race meeting on May 19, 1998.

The Advisory Board will meet from 10:00 a.m. until approximately 1:00 p.m. at the Dorothy Betts Marvin Theater in the Marvin Center, 800 21st Street, NW., Washington, DC. The agenda includes remarks from Attorney

General Janet Reno and a roundtable discussion of issues relating to race, crime and the administration of justice.

The public is welcome to attend the Advisory Board meeting on a first-come, first-seated basis. Members of the public may also submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, facsimile, or electronic mail, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any. The address of the President's Initiative on Race is 725 17th Street, N.W., Washington, DC 20503. The electronic mail address is <http://www.whitehouse.gov/initiatives/OneAmerica>.

FOR FURTHER INFORMATION CONTACT: Comments or questions regarding this meeting may be directed to Randy D. Ayers, (202) 395-1010, or via facsimiles, (202) 395-1020.

Dated: May 11, 1998.

Randy D. Ayers,
Executive Officer.
[FR Doc. 98-12879 Filed 5-13-98; 8:45 am]
BILLING CODE 4410-13-M

DEPARTMENT OF JUSTICE

National Advisory Council on Violence Against Women

AGENCY: United States Department of Justice and United States Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Council on Violence Against Women, co-chaired by the Attorney General and Secretary of Health and Human Services, will meet May 29, 1998 in Room 800 of the United States Department of Health and Human Services, 200 Independent Avenue, NW, Washington DC 20201. Scheduled to begin at 8:30 a.m. and adjourn at 4:30 p.m., the meeting will include opening remarks by the Attorney General and Secretary Shalala, presentation on violence against women resource centers, committee meetings, and an afternoon plenary session.

Committee meetings and the plenary session will be open to the public on a space-available basis. Reservations are required and a photo ID will be requested for admittance. To reserve a space and advise of any special needs, interested persons should call Mr. Jerry Silverman at the Department of Health and Human Services at (202) 690-6461. Sign language interpreters will be provided. Anyone wishing to submit

written questions to this session should notify the Department of Health and Human Services, Office of the Secretary by Tuesday, May 26, 1997. The notification may be delivered by mail, telegram, or facsimile or in person. It should contain the requestor's name and his or her corporate designation, consumer affiliation, or government designation along with a short statement describing the topic to be addressed. Interested parties are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be sent to the Office of the Secretary, United States Department of Health and Human Services, Room 615F, 200 Independence Avenue, NW, Washington, DC 20201 or directed to Mr. Jerry Silverman, telephone (202) 690-6461, facsimile (202) 690-5514.

Bonnie J. Campbell,
Director, Violence Against Women Office,
United States Department of Justice.
[FR Doc. 98-12789 Filed 5-13-98; 8:45 am]
BILLING CODE 4410-88-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as Amended, and the Resource Conservation and Recovery Act

Notice is hereby given that a proposed consent decree in the action entitled *United States v. PO Corporation*, Civil Action No. 98CV10759 EFH, was lodged on April 30, 1998, with the United States District Court for the District of Massachusetts. The proposed consent decree resolves the United States's claims against PQ Corporation, Nyacol Products, Inc., Robert Lurie, and Thomas O'Connor at the Nyanza Chemical Waste Dump Superfund Site, Located in Ashland, Massachusetts ("Site"), under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. § 6973. Defendants PQ, NPI, Lurie and O'Connor are current or former owners and operator of the Site. The consent decree will also resolve the claims of the Commonwealth of Massachusetts ("Commonwealth") in connection with the Site under CERCLA and the Massachusetts Oil and Hazardous material Release Prevention and Response Act, M.G.L. c. 21E. Finally, the consent decree will also resolve the claims of the United States and the

Commonwealth against Robert Lurie and Thomas O'Connor under M.G.L. c. 109A.

Under the proposed consent decree, the settlers jointly will make payments to the United States and the Commonwealth in the amount of \$8,000,000, plus interest. Of the total payments, \$923,077 will be paid to the United States and the Commonwealth in connection with claims for natural resource damages at the Site. The remaining money will be paid 80% to the United States and 20% the Commonwealth as reimbursement for response costs incurred and to be incurred at the Site.

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States v. PO Corporation*, DOJ Ref. Number 90-11-2-340e. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973.

The proposed consent decree may be examined at the Environmental Protection Agency, One Congress Street, Boston, Massachusetts (contact Joanna Jerison at 617-565-3350) and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$18.00 (72 pages at 25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,
Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98-12874 Filed 5-13-98; 8:45 am]
BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and the Clean Air Act

Under 28 CFR 50.7 notice is hereby given that on April 8, 1998, a proposed Consent Decree ("Decree") in *United States and League of Women Voters of*

New Orleans, et al. v. Sewerage & Water Board of New Orleans, et al., Civil Action No. 93-3212, was lodged with the United States District Court for the Eastern District of Louisiana.

In this action the United States sought civil penalties and injunctive relief for violations of the Clean Air Act and the Clean Water Act that occurred at the East Bank Sewage Treatment Plant and its collection system in New Orleans, Louisiana. The League of Women Voters, Lake Ponchartrain Basin Foundation, Orleans Audubon Society, and Louisiana Environmental Action Network also were Plaintiff-Intervenor in this action, and the State of Louisiana was a statutory Defendant.

Under the Decree, the Sewerage & Water Board of New Orleans ("Board") and the City of New Orleans agreed to perform Clean Water Act remedial measures, estimated at more than \$200 million, including renovating the sewer collection system, implementing a preventive maintenance program, improving reporting procedures for unauthorized discharges from the sewer collection system, implementing a response action plan when sewage is discharged, and conducting storm sewer monitoring. The Board agreed to Clean Air Act remedial measures contained in the Operation and Maintenance Plan for the Fluidized Bed Incinerator at the East Bank Sewage Treatment Plant. The Board also agreed to pay a civil penalty of \$1.5 million and to perform a \$2 million Supplemental Environmental Project that creates wetlands and a vegetative buffer at an abandoned local beach area. The Decree does not resolve the contingent liability of the State under Section 309(e) of the Act, 33 U.S.C. 1319(e).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and the League of Women Voters of New Orleans, et al. v. Sewerage & Water Board of New Orleans, et al.*, D.J. Ref. No. 90-5-1-4032.

The Decree may be examined at the Office of the United States Attorney, Hale Boggs Building, Room 210, 501 Magazine Street, New Orleans, Louisiana, 70130, at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree

Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy, please indicate whether you want the text of the Decree only, the Decree with all attachments (except oversize maps) in black and white, or the Decree with all attachments (except oversize maps) in color. Enclose a check in the amount of \$15.75 for the text of the Decree only, \$527.00 for the Decree with all attachments (except oversize maps) in black and white, \$785.00 for the Decree with all attachments (except oversize maps) in color, payable to the Consent Decree Library. Reproduction costs are 25 cents per page for normal pages and \$1.15 per page for color copies. For copies of the oversize maps, please add an additional \$325.000 to the total amount.

Joel M. Gross,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.

[FR Doc. 98-12790 Filed 5-13-98; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF LABOR

Employment and Training Administration

Interstate Arrangement for Combining Employment and Wages

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (C)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Interstate Arrangement For Combining Employment and Wages, ETA 586.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before

July 13, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Mary E. Montgomery, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S-4516, 200 Constitution Avenue, NW., Washington, DC. 20210, telephone number (202) 219-5340, ext. 178 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3304(a)(9)(B), of the Internal Revenue Code (IRC) of 1986, requires States to participate in an arrangement for combining employment and wages covered under the different State laws for the purpose of determining unemployed workers' entitlement to unemployment compensation. The Interstate Arrangement For Combining Employment and Wages (CWC), promulgated at 20 CFR part 616, requires the prompt transfer of all available employment and wages between States upon request. The Benefit Payment Promptness Standard, 20 CFR part 640, requires the prompt payment of unemployment compensation including benefits paid under the CWC arrangement. The ETA 586 report provides the ETA/Unemployment Insurance Service with information necessary to measure the scope and effect of the CWC program and monitor the performance of each State in responding to wage transfer requests and the payment of benefits.

II. Current Actions

This information is necessary in order for ETA to analyze program performance, know when program

performance action plans are needed and to target technical assistance resources. Without this report, it would be impossible for the ETA to identify activity under the CWC program and carry out the Secretary's responsibility for oversight.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Interstate Arrangement for Combining Employment and Wages.

OMB Number: 1205-0029.

Agency Number: ETA 586.

Recordkeeping: 3 years.

Affected Public: State Government.

Cite/Reference/Form: ETA Handbook No. 401, ETA 586.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 4 hours.

Estimated Total Burden Hours: 848.

Total Burden Cost (capital/startup): N/A.

Total Burden Cost: \$16,960.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 1998.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 98-12859 Filed 5-13-98; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

Notice of Previously Held Meeting

TIME AND DATE: 10:30 a.m., Tuesday, May 12, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

STATUS: Closed.

MATTERS CONSIDERED:

1. Personnel Matter Related to the OPM Report. Closed pursuant to exemptions (2) and (6).
2. Personnel Action. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice, that it be closed to the public, and that earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions

stated above. Deputy General Counsel James Engel certified that the meeting could be closed under those exemptions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518-6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98-13052 Filed 5-12-98; 3:46 pm]

BILLING CODE 7535-01-M

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation Proposal/Award Information—Grant Proposal Guide

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: National Science Foundation is announcing plans to request renewed clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

SEND COMMENTS TO: Gail A. McHenry, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 245, Arlington, Virginia 22230 or send email to gmchenry@nsf.gov. Written comments should be received within 60 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Mrs. McHenry on (703) 306-1125 x2010 or send email to gmchenry@nsf.gov. You may also obtain a copy of the data collection instrument and instructions from Mrs. McHenry.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

"National Sciences Foundation Proposal/Award Information—Grant Proposal Guide." The missions of the NSF are to: increase the Nation's base of scientific and engineering knowledge

and strengthen its ability to support research in all areas of science and engineering; and promote innovative science and engineering education programs that can better prepare the Nation to meet the challenges of the future. The Foundation is committed to ensuring the Nation's supply of scientists, engineers, and science educators. In its role as leading Federal supporter of science and engineering, NSF also has an important role in national science policy planning.

Use of the Information

The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 30,000 proposals annually for new projects, and makes approximately 10,000 new awards. Support is made primarily through grants, contracts, and other agreements awarded to approximately 2,800 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on evaluations of proposal merit submitted to the Foundation (proposal review is cleared under OMB Control No. 3145-0060).

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public

The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 38,000 proposals are expected during the course of one year. These figures compute to an estimated 4,560,000 public burden hours annually.

Dated: May 8, 1998.

Gail A. McHenry,

NSF Reports Clearance Officer.

[FR Doc. 98-12829 Filed 5-13-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification issued under the Antarctic Conservation of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On March 24, 1998 notice was published in the Federal Register of a request for modification to permit 95WM1-NSFA/ASA for waste management activities at all U.S. Antarctic Program facilities in Antarctica. The requested modification would make Antarctic Support Associates sole holder of the permit. The requested modification has been granted. All special conditions of the original permit remain the same except for the deletion of references to Naval Support Force Antarctica (NSFA).

Nadene G. Kennedy, Permit Officer.
[FR Doc. 98-12862 Filed 5-13-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 97-87).

Date and Time: June 2-3, 1998; 8:30 am-5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, Biotechnology Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306-1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the 1998 Biotechnology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as

salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 11, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-12864 Filed 5-13-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Infrastructure (1754).

Date & Time: June 2-5, 1998; 9am-5pm daily.

Place: Room 1235, NSF, 4201 Wilson Boulevard, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Dr. Judith Verbeke, Program Director, Plant Genome Research, Division of Biological Infrastructure, Room 615, NSF, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306-1470.

Purpose of Meeting: To provide advance and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Plant Genome Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 11, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-12867 Filed 5-13-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: June 2, 3, 4, 1998, 8:00 a.m.—5:30 p.m.

Place: Rooms 310, 320, 330, 340, 360, 375, 380, 580, and 730, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of meeting: Closed.

CONTACT PERSON: Dr. George A. Hazelrigg, Program Director, Design and Integration Engineering Program, Dr. Delcie Durham, Program Director, Materials Processing and Manufacturing Program, Dr. Ming Leu, Program Director, Manufacturing Machines and Equipment Program, (703) 306-1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 11, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-12866 Filed 5-13-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications System (1196).

Date and Time: June 2-3, 1998; 8:30 a.m. to 5:00 p.m.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Tien P. Lee, Program Director, Physical Foundations of Enabling Technologies (PEET), Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230, Telephone: (703) 306-1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals in the Physical Foundations of Enabling Technologies program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as

salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c)(4) and (6) the Government in the Sunshine Act.

Dated: May 11, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-12865 Filed 5-13-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Integrative Activities (1373).

Date and Time: June 1 & 2, 1998, 8:30 a.m.—5:00 p.m.

Place: Rooms 330 and 340, NSF, 4201 Wilson Blvd., Arlington, Va.

Type of Meeting: Closed.

Contact Person: Dr. Nathaniel G. Pitts, Director, Office of Integrative Activities, Room 1270, 4201 Wilson Blvd, Arlington, Virginia 22230; Telephone: (703) 306-1040.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate applications submitted to the Collaboratives to Integrate Research and Education (CIRE).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 11, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-12863 Filed 5-13-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Physics (1208).

Date and Time: June 4-5, 1998 from 8:00 am to 5:00 pm.

Place: University of Rochester, River Campus, B&L Building, Rochester, NY 14627.

Type of Meeting: Closed.

Contact Person: Dr. Barry Schneider, Program Director for Theoretical Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306-1808.

Purpose of Meeting: To provide advice and recommendations concerning further NSF support of the Center for Theoretical and Computational Research in Optical Science (CTR) at the University of Rochester.

Agenda: To review and evaluate the progress and future plans of the Rochester Theory Center.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 11, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-12868 Filed 5-13-98; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-482]

Wolf Creek Nuclear Operating Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Nuclear Generating Station, located in Coffee County, Kansas.

The proposed amendment would add a new action statement to Technical Specification 3/4.3.2, Table 3.3-3, Functional Unit 7.b., Refueling Water Storage Tank Level—Low-Low Coincident with Safety Injection.

On May 5, 1998, Wolf Creek Nuclear Operating Corporation (WCNOC) control room personnel were reviewing the technical specifications associated with the refueling water storage tank (RWST) level, instrumentation and the performance of surveillance procedure, STS IC-201, "Analog Channel Operational Test 7300 Process Instrumentation Protection Set 1 (Red)." During that review, control room personnel identified that when the RWST level channel is taken into the test position, the channel is actually put in a tripped condition. However, the

associated Technical Specification Action Statement (TS 3.3-2, Functional Unit 7.b., Action 16) for an inoperable channel indicates that the inoperable channel must be placed in the bypass condition. There is no time limit allowance for placing an inoperable channel in the bypass condition associated with Action 16. Since this surveillance would render the channel inoperable, and there is no way of performing the surveillance with the channel in the bypass condition, WCNOC personnel determined that a technical specification amendment would be needed to allow the surveillance test to be completed.

The RWST level instrumentation analog channel operational test (STS IC-201) was last performed on February 5, 1998. The surveillance is required by Technical Specification Surveillance Requirement 4.3.2.1 to be performed on a quarterly basis. Taking into account the extra 25 percent allowance from Technical Specification 4.0.2, this surveillance would go overdue, rendering the channel inoperable, on May 31, 1998. The first surveillance test (STS IC-202) for an RWST level channel would go overdue on May 29, 1998, and another channel surveillance test (STS IC-203) will go overdue on May 30, 1998. With two channels being inoperable, entry into Technical Specification 3.0.3 would be required, forcing shutdown of Wolf Creek Generating Station (WCGS). The time between initial discovery of this event (May 5, 1998) and the date when a forced shutdown of WCGS (May 30, 1998) is less than 30 days; therefore, there is not enough time for normal processing of an amendment.

WCNOC believes that, given the circumstances surrounding the discovery of this event and the complexity of the instrumentation function, WCNOC has made a best effort to submit a timely application for this amendment. WCNOC has not delayed any actions in order to create the need for exigency and therefore take advantage of the procedure described in 10 CFR 50.91 for exigent amendments. WCNOC believes that this exigent amendment is unavoidable and meets the criterion of 10 CFR 50.91(a)(6) for an exigent request.

The staff finds the licensee acted in a timely manner, the licensee has not abused the exigent provisions and there is not sufficient time to process this amendment request in the routine manner as described in 10 CFR 50.91 without causing an unnecessary plant shutdown.

Before issuance of the proposed license amendment, the Commission

will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The new Action Statement 30 for Functional Unit 7.b. of Table 3.3-3, Automatic Switchover to Containment Sump or RWST Level Low-Low Coincident with Safety Injection, reflects the current plant design and testing practices. As discussed in License Amendment No. 43 and associated submittals, the increase in allowed outage time was evaluated and the associated unavailability and risk was shown to be equivalent to, or less than, that of other functional units evaluated in WCAP-10271, Supplement 2, Revision 1. The proposed change does not change any previously evaluated accident and therefore does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not result in physical alteration to any plant system nor will there be a change in the method by which any safety-related plant system performs its safety function. The proposed change does not alter the functioning of the Engineered Safety Features Actuation System (ESFAS) or change the manner in which the ESFAS provides plant protection. Therefore, there is no possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not alter any safety limits, limiting safety system settings, or limiting conditions for operation. The proposed change will not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by 4:30 p.m. eastern time on May 28, 1998 will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the *Federal Register* a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 15, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714

which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and at the Washburn University School of Law Library, Topeka, Kansas 66621. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific

sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained

absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 8, 1998, as supplemented by letter dated May 11, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms, located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and at the Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 11th day of May 1998.

For the Nuclear Regulatory Commission,
Kristine M. Thomas,
Project Manager, Project Directorate IV-2,
Division of Reactor Projects—III/IV, Office of
Nuclear Reactor Regulation.

[FR Doc. 98-12965 Filed 5-13-98; 8:45 am]

BILLING CODE 7590-01-P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Railroad Service and Compensation Reports; OMB 3220-0008 Under Section 6 of the Railroad Unemployment Insurance Act (RUIA) and Section 9 of the Railroad Retirement

(Act (RRA), the Railroad Retirement Board (RRB) maintains for each railroad employee a record of compensation paid to that employee by all railroad employers for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the compensation by the employee's railroad employer(s), except in cases when an employee files a protests pertaining to his or her reported compensation within the statute of limitations cited in Section 6 of the RRA and Section 9 of the RRA.

To enable the RRB to establish and maintain the record of compensation, employers are required to file with the RRB, in such manner and form and at such times as the RRB prescribes, reports of compensation of employees. The information reporting requirements are prescribed in 20 CFR 209.6. The RRB utilizes Form BA-3a, Annual Report of Compensation and Form BA-4, Report of Creditable Compensation Adjustments, to secure the required information from railroad employees. Employers have the option of submitting the reports on the aforementioned forms, or, in like format, on magnetic tape, tape cartridges or PC diskettes as outlines in the RRB's Reporting Instructions to Employers. Submission of the reports is mandatory. One response is required of each respondent. No changes are proposed to Form BA-3a or BA-4.

The completion time for Form BA-3a is estimated at 85 hours per response. The completion time for Form BA-4 is estimated at 60 minutes per response.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 98-12765 Filed 5-13-98; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23175; 812-11096]

Pax World Fund, Incorporated, et al.; Notice of Application

May 7, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: The requested order would permit certain registered open-end management investment companies to invest excess cash in an affiliated money market fund.

APPLICANTS: Pax World Fund, Incorporated ("PWF"), Pax World Growth Fund, Inc. ("PWGF"), Pax World Money Market Fund, Inc. ("PWMMF"), and Pax World Management Corp. ("PWMC").

FILING DATES: The application was filed on April 2, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 1, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 222 State Street, Portsmouth, NH 03801-3853.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, or George J. Zornada, Branch Chief, at (202) 942-0564 (Division of Investment Management,

Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

Applicants' Representations

1. PWF and PWGF are open-end management investment companies registered under the Act and organized as Delaware corporations. PWMC, a Delaware corporation, serves as the investment adviser to PWF and PWGF. H.G. Wellington Capital Management ("HGW") serves as investment sub-adviser to PGWF. HGW and PWMC are registered under the Investment Advisers Act of 1940 ("Advisers Act").

2. PWMMF is an open-end management investment company registered under the Act and organized as a Maryland corporation. PWMMF seeks to maintain a stable net asset value and is subject to rule 2a-7 under the Act. PWMC serves as investment adviser to PWMMF. Reich & Tang Asset Management, L.P. ("R&T") serves as investment sub-adviser to PWMMF. R&T is registered under the Advisers Act. (PWMC, HGW, and R&T, collectively, the "Investment Advisers").

3. PWF and PWGF have, or may be expected to have, uninvested cash ("Uninvested Cash") held by their custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new monies received from investors. Currently, PWF and PWGF may invest Uninvested Cash directly in individual short-term money market instruments.

4. PWF and PWGF (the "Investing Funds") wish to have the flexibility to invest their Uninvested Cash in PWMMF.¹ Any investment of Uninvested Cash in shares of PWMMF will be in accordance with each Investing Fund's investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectuses and statements of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's outstanding total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by the investment company.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction (or classes thereof) from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors.

3. Applicants request relief under section 12(d)(1)(J) to permit the Investing Funds to use Uninvested Cash to acquire shares of PWMMF in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases the Investing Fund's aggregate investment of Uninvested Cash in shares of PWMMF will not exceed 25% of the Investing Fund's total assets at any time. Applicants also request relief to permit PWMMF to sell its securities to an Investing Fund in excess of the percentage limitations in section 12(d)(1)(B). Applicants represent that PWMMF will not acquire securities of any other investment company in excess of the limitation contained in section 12(d)(1)(A) of the Act.

4. Applicants believe that the proposed arrangement does not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of PWMMF sold to the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee. In addition, the Investment Advisers will waive their investment advisory fees for each Investing Fund in an amount that offsets the amount of the advisory fees of PWMMF incurred by the Investing Fund.

5. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser to the investment company and any person directly or indirectly controlling, controlled by, or under common control with the investment adviser. The Investing Funds and PWMMF share a common investment adviser and thus may be deemed to be under common control. As a result, section 17(a) would prohibit the sale of the shares of PWMMF to the Investing Funds, and the redemption of the shares by PWMMF.

6. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and with the general purposes of the Act.

7. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

8. Applicants submit that their request for relief satisfies the standards in sections 17(b) and 6(c). Applicants state that the Investing Funds will retain their ability to invest Uninvested Cash directly in money market instruments as authorized by their respective investment objectives and policies, if they believe they can obtain a higher rate of return, or for any other reason. Similarly, PWMMF has the right to discontinue selling shares to any of the Investing Funds if PWMMF's board of directors determines that such sale would adversely affect its portfolio management and operations. In addition, applicants note that shares of PWMMF will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder.

9. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating or effecting any transaction in connection with any joint enterprise

or joint arrangement in which the investment company participates. Applicants believe that each Investing Fund, by participating in the proposed transactions, and each Investment Adviser of an Investing Fund, by managing the assets of the Investing Funds and PWMMF, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d-1 under the Act.

10. In considering whether to grant an exemption under rule 17d-1, the Commission considers whether the investment company's participation in such joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds will participate in the proposed transactions on a basis not different from or less advantageous than that of any other participant and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Shares of PWMMF sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD's Conduct Rules).

2. The Investment Advisers will waive their advisory fee for each Investing Fund in an amount that offsets the amount of the advisory fees of PWMMF incurred by the Investing Fund.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, PWMMF only to the extent that the Investing Fund's aggregate investment in PWMMF does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of PWMMF will be in accordance with each Investing Fund's respective socially responsible criteria and investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectuses and statements of additional information.

5. Each Investing Fund and any future fund that may rely on the order requested hereunder will be advised by

PWMC or an entity controlling, controlled by, or under common control with PWMC.

6. PWMMF shall not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12810 Filed 5-13-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Rogers Cantel Inc., 10 1/2% Senior Secured Notes Due 2006; 9 1/2% Senior Secured Debentures Due 2008; 9 1/2% Senior Secured Debentures Due 2016) File No. 1-14393

May 8, 1998.

Rogers Cantel Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities ("Securities")¹ from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities were issued pursuant to three indentures, each dated May 30, 1996, and qualified under the Trust Indenture Act of 1939, between the Company and The Chase Manhattan Bank (formerly Chemical Bank) as U.S. Trustee and CIBC Mellon Trust Company (formerly The R-M Trust Company) as Canadian Trustee and were sold in May 1996 pursuant to the Registration Statement filed with the Commission pursuant to the Securities Act of 1933. The Securities are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on the NYSE. There are currently Cdn\$160,000,000 of the 2006 Notes, US\$510,000,000 of the 2008 Debentures; and US\$175,000,000 of the

¹ When referred to individually, the Securities are identified by their due dates (i.e., the "2006 Notes", the "2008 Debentures", and the "2016 Debentures").

2016 Debentures issued and outstanding for trading on the NYSE.

The Company believes that this application to withdraw the Securities from listing and registration on the NYSE under Section 12(b) of the Exchange Act should be granted for the following reasons:

1. The Securities are held by a small number of holders. As of each of January 1, 1997, and October 3, 1997, there were eight registered holders of the 2006 Notes, one registered holder of the 2008 Debentures, and one registered holder of the 2016 Debentures. Moreover, there are fewer than 300 holders of record in aggregate of the Securities and of all other registered securities of the Company.

2. There has been no reported trading in the Securities. No trading in the Securities has been reported on the NYSE since their original issuance in May 1996, and, because of the small number of holders, the Company believes that it is unlikely that there will be any significant public interest in trading the Securities on the NYSE in the future.

Any interested person may, on or before May 29, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary

[FR Doc. 98-12856 Filed 5-13-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Teletouch Communications, Inc., Common Stock, \$.001 Par Value; Class A Redeemable Common Stock Purchase Warrants)
File No. 1-13436

May 8, 1998.

Teletouch Communications, Inc. ("Company") has filed an application with the Securities and Exchange

Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Company's Securities have been listed for trading on the BSE pursuant to a Registration Statement on Form 8-A which became effective on December 23, 1994. Subsequently, pursuant to a Registration Statement on Form 8-A, at the opening of business on April 6, 1998, trading in the Securities commenced on the American Stock Exchange, Inc. ("Amex").

The Company has complied with all rules and requirements of the BSE relating to the withdrawal of its Securities from listing and registration on the BSE, setting forth in detail to the BSE the reasons for and facts supporting such proposed withdrawal. In making the decision to withdraw its Securities from listing and registration on the BSE, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Securities on the Amex and the BSE. The Company does not see any particular advantage in the dual trading of its Securities and believes that dual listing would fragment the market for its Securities.

By letter dated April 24, 1998, from the Company's counsel to the BSE, the Company set forth its reasons for seeking withdrawal therefrom. By letter dated April 24, 1998, the BSE informed the Company that it has no objection to the withdrawal of the Company's Securities from listing and registration on the BSE.

By reason of Section 12(b) of the Act and the rules and regulations thereunder, the company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the Amex.

Any interested person may, on or before May 29, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless

the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary

[FR Doc. 98-12858 Filed 5-13-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-39976; File No. SR-PCX-98-22)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Rule Changes for Specialist Performance Evaluations

May 8, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 29, 1998,¹ the Pacific Exchange Incorporated ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b-4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.² The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to modify Rule 5.36(d), Commentary .03 and Rule 5.37 to codify previously approved changes to the Exchange's Specialist Evaluation

¹ On May 5, 1998, the Exchange filed Amendment No. 1, technical in nature, to the proposed rule change, the substance of which is incorporated into the notice. See letter from Jeffrey S. Norris, Manager, Regulatory Development and Oversight, PCX, to Sharon M. Lawson, Senior Special Counsel, Market Regulation, Commission, dated May 4, 1998 ("Amendment No. 1").

² The Exchange has represented that this proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing. The Exchange also has provided at least five business days' notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b-4(e)(6) under the Act.

Program and to modify language regarding the imposition of restrictions and the procedures on certain specialists. The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 22, 1997, the Commission approved a one-year extension of the Exchange's pilot program for the evaluation of Equity specialists.³ The filing established an overall score and individual passing scores for specialists, replaced the "Bettering the Quote" criterion with "Price Improvement," and lowered the weighting of the "Specialist Evaluation Questionnaire" criterion from 15% to 10% so that Price Improvement could be given a weight of 10%. The Commission stated in footnote 14 of the Approval Release that the PCX intended to file changes to its rules to reflect these modifications. This filing would codify those changes.

In addition, the proposed rule change clarifies the language regarding the applicability of restrictions on specialists who fail to obtain an overall or individual passing score minimum. The following are examples of the language changes: mitigating circumstances language was taken out of the rule and language was added to indicate that decisions will now be done on a case-by-case basis; the language regarding the formal and informal meeting process was made clear; and other technical changes were made. In addition, rule language that had made it mandatory for the Equity Allocation Committee ("EAC") to apply restrictions to specialists in the bottom 10% was

eliminated because the Exchange believes it was necessary due to the other changes to the Specialist Evaluation Performance Program establishing an overall passing score and individual passing scores. However, the Exchange kept the discretion to look at specialists that ranked in the bottom 10% in order to have the ability to review specialists that continually fall in the bottom 10% even though they passed the other standards. Changes were made that now give discretion to the Equity Allocation Committee to decide: (1) whether to meet with the specialists who are ranked in the bottom 10% of their respective trading floors; and (2) whether restrictions should be imposed if the EAC does meet with the specialists in the bottom 10%.

The Exchange intends to file with the Commission by October 30, 1998, a proposal to extend the pilot beyond January 1, 1999, as well as a report describing its experience with the pilot.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴ in particular, in that it is designated to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change has been filed by the Exchange as a "noncontroversial" rule change pursuant to paragraph (e)(6) of Rule 19b-4.⁵ Consequently, because the proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until 30 days after the date of filing, and the Exchange provided the Commission written notice of its intent

to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (e)(6) of Rule 19b-4 thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-98-22 and should be submitted by June 4, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary

[FR Doc. 98-12857 Filed 5-13-98; 8:45 am]
BILLING CODE 8010-01-M

³ See Securities Exchange Act Release No. 39477 (December 22, 1997), 62 FR 68334 (December 30, 1997) ("Approval Release").

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 240.19b-4(e)(6).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39975; File No. SR-PHLX-98-03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Trading Disputes and Floor Official Rulings

May 7, 1998.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to replace the current text of PHLX Rule 124, "Disputes," with new text. In the filing, the PHLX also proposed to adopt Floor Procedure Advice ("Advice") F-27, "Floor Official Rulings—Options" and F-27, "Floor Official Rulings—Equity" (together, the "Advices"), which incorporate and expand upon the provisions of PHLX Rule 124. On March 3, 1998, the PHLX amended its proposal.³ Notice of the proposed rule change and Amendment No. 1 to the proposed rule change were published for comment in the *Federal Register* on March 17, 1998.⁴ No comments were received regarding the proposal. This

order approves the proposed rule change, as amended.

II. Description of the Proposal

The PHLX proposes to codify its current procedures regarding floor officials' rulings by replacing the text of PHLX Rule 124⁵ with new text and adopting two Advices. The Advices will be published in the PHLX's Floor Procedure Advice handbook. According to the PHLX, the proposal will incorporate expressly into the PHLX's rules the Exchange's current procedures for resolving trading disputes and the role of floor officials in resolving trading disputes.

New PHLX Rule 124 also acknowledges that, in addition to resolving trading disputes, floor officials may issue citations for violations of Floor Procedure Advices pursuant to PHLX Rule 970, "Floor Procedure Advices: Violations, Penalties, and Procedures," and for violations of the PHLX's order and decorum regulations, pursuant to PHLX Rule 60, "Assessments for Breach of Regulations." The PHLX's proposal contains two provisions applicable to all rulings by floor officials. First, the Advices set forth a conflict of interest provision which states that a floor official should not render a decision or authorize a citation where the floor official was involved in or affected by the dispute, or in any situation where the floor official is not able to objectively and fairly render a decision. Second, PHLX Rule 124(b) states that all rulings by floor officials are effective immediately and must be complied with promptly. Failure to comply promptly with a ruling concerning a trading dispute may result in a referral to the PHLX's Business Conduct Committee ("BCC"). Failure to comply with a floor official's ruling issued pursuant to PHLX Rule 60 or PHLX Rule 970 may result in an additional violation of those rules. For example, a first violation for disorderly conduct that does not cease promptly after the floor official issues the violation will result in a second violation, also for disorderly conduct.

The remaining provisions of new PHLX Rule 124 concern trading disputes. Specifically, new PHLX Rule

124(a) states that disputes occurring on and relating to the trading floor, if not settled by agreement between the interested members, shall be settled, if practicable, by vote of the members knowing of the transaction; if not so settled, the disputes shall be settled by a floor official summoned to the trading crowd. In resolving trading disputes, floor officials may institute the course of action deemed to be most fair to all parties under the circumstances at the time. A floor official may direct the execution of an order on the floor or adjust the transaction terms or participants to an executed order. In addition, two floor officials may nullify a transaction if they determine that the transaction violated certain enumerated PHLX rules.⁶ The Advices state that floor officials need not render decisions unless the request for a ruling is made within a reasonable period of time.

PHLX Rule 124(c) identifies the procedures for review of floor officials' rulings. Specifically, PHLX Rule 124(c) states that floor officials' rulings issued under the PHLX's order and decorum regulations are reviewable pursuant to PHLX Rule 60, and that floor officials' rulings issued under Floor Procedure Advices are reviewable pursuant to PHLX Rule 970. Floor officials' rulings in connection with trading disputes are reviewable pursuant to the procedures established in new PHLX Rule 124(d).

Under PHLX Rule 124(d), floor officials' rulings for options and FCO trading are reviewable by a minimum of three members of the applicable Subcommittee on Rules and Rulings or by the Chairperson of the applicable standing committee⁷ (or his or her designee) if three Subcommittee members cannot be convened promptly. With respect to equity trading, floor officials' rulings are reviewable by a minimum of three members of the Floor Procedure Committee, or the Chairperson of the Floor Procedure Committee (or his or her designee) if three members cannot be convened promptly. This will be the designated review panel for floor officials' rulings.

The Advices state that a member must submit a request for review of a floor official's ruling to the Director of the PHLX's Market Surveillance Department (or his or her designee) within 15 minutes from the time the contested ruling was rendered.⁸ Floor officials'

rulings may be sustained, overturned, or modified by a majority vote of the review panel members present.⁹ In making the determination, the review panel may consider facts and circumstances not available to the ruling floor official as well as actions taken by the parties in reliance on the floor official's ruling (e.g., cover, hedge, and related trading activity). Decisions of the review panel are final and may be appealed to the PHLX's Board of Governors as a final decision of the standing floor committee pursuant to PHLX By-Law Article XI, "Appeals." The PHLX notes that neither floor officials' rulings or reviews of floor officials' rulings preclude a person from seeking redress through the PHLX's arbitration facilities.¹⁰

The Advices reiterate the provisions in PHLX Rule 124 and provide additional details regarding the operation of PHLX Rule 124. Among other things, the Advices state that floor officials shall try to be prompt in rendering decisions. However, a floor official may delay rendering a ruling until discovery is completed if the floor official determines that the benefits of further discovery as to the facts and circumstances of the matter under review outweigh the monetary risks of a delayed ruling.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and, in particular, with Section 6(b)(5) of the Act, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.¹¹ According to the PHLX, the proposal codifies the Exchange's existing procedures for resolving trading disputes, including the role and authority of floor officials in resolving trading disputes and the means for appealing floor officials' decisions. By codifying the Exchange's procedures for resolving trading disputes, the Commission believes that the proposal will help to ensure that PHLX members

convening a review panel proves to be difficult due to the time of day, heavy trading volume, or scheduling conflicts. In addition, the PHLX notes that, in connection with options trading, the obligations to maintain a fair and orderly market or the due diligence requirements of PHLX Rule 1063 may prevail over the obligation of a floor official to provide a ruling or attend a review.

⁶ See PHLX rule 124(d).

⁷ See PHLX Rule 950, "Arbitration."

⁸ See 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

are aware of the PHLX's rules governing the resolution of trading disputes and will facilitate compliance with those rules. In addition, the Commission believes that the trading dispute resolution procedures in PHLX Rule 124 and the Advices will help to ensure that the PHLX's markets function in a fair, orderly, and efficient manner.

PHLX Rule 124(a) allows a member to summon a floor official to settle a dispute on the trading floor if neither the interested members or members with knowledge of the transaction are able to resolve the dispute. The Commission notes that the trading dispute resolution authority granted to floor officials under PHLX Rule 124 and the accompanying Advices is similar to the authority granted to floor officials under the rules of other securities exchanges.¹²

In addition, the Commission believes that several requirements in PHLX Rule 124 and the Advices will provide members and floor officials with guidance concerning the resolution of trading disputes and help to enhance the fairness, accuracy, and integrity of floor officials' decisions. In this regard, PHLX Rule 124(a) and the Advices require a floor official resolving a trading dispute to institute the course of action he or she deems to be most fair to all parties under the circumstances at the time. In addition, the Advices allow a floor official to delay rendering a ruling if the floor official believes that the benefits of further discovery concerning the facts and circumstances of a matter outweigh the monetary risks of a delayed ruling. The Advices also establish a conflict of interest provision applicable to all ruling by floor officials.¹³ Specifically, the Advices state that a floor official should not render a decision or authorize a citation when the floor official was involved in or affected by dispute, or in any situation where the floor official is not able to objectively and fairly render a decision.

The Commission believes that the proposal will provide additional clarity to the process of resolving trading disputes by specifying the remedies available to floor officials resolving such disputes. In this regard, PHLX Rule 124(a) and the Advices state that a floor

official resolving a trading dispute may direct the execution of an order on the floor or adjust the transaction terms or participants to an executed order. In addition, two floor officials may nullify a transaction if they conclude that the transaction violated any of the PHLX rules enumerated in PHLX Rule 124(a)¹⁴ and in the Advices. The Commission believes that permitting floor officials to nullify transactions only for violations of these enumerated rules will provide guidance to floor officials concerning the circumstances under which it may be appropriate to nullify a trade. In addition, requiring the approval of two floor officials to nullify a transaction will help to ensure that this remedy is used appropriately.¹⁵

The Commission believes that several provisions in new PHLX Rule 124(b) and in the Advices will facilitate the enforcement of floor officials' rulings. In this regard, PHLX Rule 124(b) and the Advices indicate that all rulings by floor officials are effective immediately and must be complied with promptly. Moreover, PHLX Rule 124(b) and the Advices note that failure to comply with a floor official's ruling in a trading dispute may result in a referral to the PHLX's BCC, and failure to comply with rulings issued pursuant to PHLX Rule 60 or to Floor Procedure Advices may result in the finding of an additional violation of those rules.

PHLX Rule 124 and the Advices also specify the procedures for requesting a ruling from a floor official and for appealing a floor official's ruling in connection with a trading dispute.¹⁶ As noted above, PHLX Rule 124(a) allows a member to summon a floor official to resolve a trading dispute. The Advices state that floor officials need not render a decision unless the request for a ruling was made within a reasonable period of time. In addition, the Advices indicate that a member must submit a request for review of a floor official's ruling to the PHLX's Director of Market Surveillance

¹⁴ See Amendment No. 1, *supra* note 3.

¹⁵ The Commission notes that the rules of the Chicago Board Options Exchange, Inc. ("CBOE") also permit two floor officials to nullify a transaction. Specifically, Interpretation and Policy .05 to CBOE Rule 6.20, "Admission to and Conduct on the Trading Floor," allows two floor officials to nullify a transaction or adjust its terms if they determine that the transaction violated any of the following CBOE rules: (1) 6.43 (manner of bidding and offering); (2) 6.45 (priority of bids and offers); (3) 6.46 (transactions outside the book's last quoted range); (4) 6.47 (priority on split price transactions); or (5) 8.51 (trading crowd firm disseminated market quotes).

¹⁶ Floor officials' rulings issued pursuant to the PHLX's order and decorum regulations are reviewable pursuant to PHLX Rule 60; floor officials' rulings issued pursuant to Floor Procedure Advices are reviewable pursuant to PHLX Rule 970. See PHLX Rule 124(c).

¹ 15 U.S.C. 78e(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Linda S. Christie, Counsel, PHLX, to Yvonne Fraticelli, Attorney, Division of Market Regulation ("Division"), Commission, dated March 3, 1998 ("Amendment No. 1"). Amendment No. 1 revises the text of PHLX Rule 124 to make the rule consistent with the Advices. Specifically, Amendment No. 1 modifies the text of PHLX Rule 124 to indicate that two options floor officials (rather than one floor official) may nullify a transaction if they determine that the transaction violated any of the following PHLX Rules: 1014, "Obligations and Restrictions Applicable to Specialists and ROTs;" 1015, "Quotation Guarantees;" 1017, "Priority and Parity at Openings in Options;" 1033, "Bids and Offers—Premium;" or 1080, "PHLX Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)." In addition, Amendment No. 1 indicates that two equity floor officials (rather than one floor official) may nullify a transaction if they determine that the transaction violated any of the following PHLX Rules: 110, "Bids and Offers—Precedence;" 111, "Bids and Offers Binding;" 118, "Bids and Offers Outside Best Bid and Offer;" 119, "Precedence of Highest Bid;" 120, "Precedence of Offers at Same Price;" 126, "Crossing Orders;" 203, "Agreement of Specialist;" 218, "Customer's Order Receives Priority;" 229, "Philadelphia Stock Exchange Automated Communication and Execution System (PACE);" 232, "Handling Orders When the Primary Market is Not Open for Free Trading (EXP, PPS, GTX Orders);" or 455, "Short Sales."

⁴ See Securities Exchange Act Release No. 39741 (March 11, 1998), 63 FR 13087.

⁵ See Amendment No. 1, *supra* note 3.

⁷ See note 5, *supra*, for a description of the jurisdiction of the standing committee.

⁸ The review panel will try to meet as soon as practicable after notice of a request for a review of a floor official's rulings. The PHLX notes, however, that this time frame will apply to the extent practicable under the circumstances, particularly if

(or his or her designee) within 15 minutes from the time the contested ruling was rendered.¹⁷ The Commission believes that these provisions will facilitate the prompt resolution of trading disputes while providing members with an adequate opportunity to obtain a ruling from a floor official or to appeal a floor official's ruling. In addition, the Commission notes that these procedures are described in the Advises, which will be readily available to members in the PHLX's Floor Procedure Handbook. Accordingly, the Commission believes that PHLX members will have sufficient notice of the Exchange's procedures for obtaining a ruling from a floor official and appealing a floor official's decision.

Under PHLX Rule 124(d), a review panel, consisting of either three members of the applicable Subcommittee on Rules and Rulings (in the case of options trading) or three members of the Floor Procedure Committee (in the case of equity trading),¹⁸ may sustain, overturn or modify a floor official's ruling. In making its decision, the review panel may consider facts and circumstances not available to the ruling floor official and action taken by the parties in reliance on the floor official's ruling (e.g., cover, hedge, and related trading activity). A member may appeal the review panel's decision to the Exchange's Board of Governors pursuant to PHLX By-law Article XI. The Commission believes that these procedures will provide for prompt and effective review of floor officials' rulings in trading disputes and help to ensure that trading disputes are resolved fairly.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-PHLX-98-03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

¹⁷ According to the PHLX, a "reasonable period of time" will depend on market and trading floor conditions (e.g., volume, systems functioning, and quotation updating). Floor officials will determine what constitutes a reasonable period of time for requesting a ruling. The PHLX believes that it is necessary to provide floor officials with flexibility in making this determination. Telephone conversation between Linda S. Christie, Counsel, PHLX, and Yvonne Fraticelli, Attorney, Division, Commission, on April 27, 1998.

¹⁸ If three committee members cannot be convened promptly, the Chairperson of the applicable committee, or his or her designee, may review the ruling. See PHLX Rule 124(d).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-12809 Filed 5-13-98; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Submissions for OMB Review

This notice lists information collection packages that have been sent to the Office of Management and Budget (OMB) for clearance, in compliance with Public Law 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

Wage Reports and Pension Information—0960-0547. The information obtained through Regulation OR-418P, found in 20 CFR, section 422.122(b), is used by SSA to identify the requester of pension plan information and to confirm that the individual is entitled to the data we provide. The respondents are requesters of pension plan information.

Number of Respondents: 1,211.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 606 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA) Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965-4125 or write to him at the address listed above.

Dated: May 8, 1998.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98-12834 Filed 5-13-98; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2812]

Determination and Certification Under Section 40A of the Arms Export Control Act

Pursuant to Section 40A of the Arms Export Control Act (Pub. L. 90-629), as added by the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104-132) (22 U.S.C. 2771 *et. seq.*) and Executive Order 11958, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts:

Afghanistan;
Cuba;
Iran;
Iraq;
Libya;
North Korea;
Sudan; and
Syria.

This determination and certification shall be transmitted to the Congress and published in the *Federal Register*.

Dated: May 4, 1998.

Strobe Talbott,

Acting Secretary of State.

[FR Doc. 98-12795 Filed 5-13-98; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 2813]

Government Activities on International Harmonization of Chemical Classification and Labeling Systems; Public Meeting

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs (OES), Department of State.

ACTION: Notice of a public meeting regarding Government Activities on International Harmonization of Chemical Classification and Labeling Systems.

SUMMARY: This public meeting will provide an update on current activities related to international harmonization since the previous public meeting, conducted January 23, 1998. (See Department of State Public Notice 2708, on page 1987 of the *Federal Register* of January 13, 1998.) The meeting will also offer interested organizations and individuals the opportunity to provide

information and views for consideration in the development of United States Government policy positions. For more complete information on the harmonization process, please refer to State Department Public Notice 2526, pages 15951-15957 of the *Federal Register* of April 3, 1997.

The meeting will take place from 10 a.m. until noon on June 16 in Room N5437 CD, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC. Attendees should use the entrance at C and Third Streets NW. To facilitate entry, please have a picture ID available and/or a U.S. Government building pass if applicable.

FOR FURTHER INFORMATION CONTACT: For further information or to submit written comments or information, please contact Mary Frances Lowe, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street NW, Washington, DC 20520. Phone (202) 736-4660, fax (202) 647-5947. A public docket is also available for review (OSHA docket H-022H.)

SUPPLEMENTARY INFORMATION: The Department of State is announcing a public meeting of the interagency committee concerned with the international harmonization of chemical hazard classification and labeling systems (an effort often referred to as the "globally harmonized system" or GHS). The purpose of the meeting is to provide interested groups and individuals with an update on activities since the January 23, 1998, public meeting, a preview of key upcoming international meetings, and an opportunity to submit additional information and comments for consideration in developing U.S. Government positions. Representatives of the following agencies participate in the interagency group: the Department of State, the Environmental Protection Agency, the Department of Transportation, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Food and Drug Administration, the Department of Commerce, the Department of Agriculture, the Office of the U.S. Trade Representative, and the National Institute of Environmental Health Sciences.

The Agenda of the public meeting will include:

1. Introduction
2. Reports on recent international meetings
 - Meeting of the Organization for Economic Cooperation and Development (OECD) Aquatic Toxicity Working Group, April 20-21, in London, UK.
 - Meeting of the OECD Advisory

Group on Harmonization of Classification and Labelling, April 22-24, in London, UK. This meeting focused on classification criteria proposals for health and environmental endpoints including skin and eye irritation/corrosion, target organ toxicity, reproductive toxicity, aquatic toxicity, acute toxicity, and the review of an integrated document to be comprised of introductory sections on cross-cutting issues and individual chapters on each covered endpoint. The goal is to have the integrated proposal and other issues resolved as much as possible before a high level OECD meeting, now scheduled for September 3-4, 1998, in Paris, France.

—First meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC) Working Group concerning the Implementation of the Globally Harmonised System of Classification and Labelling, May 21-22, in London, UK. This working group is charged with identifying the functions of the institutional "body" or organization required to oversee the maintenance and updating of the GHS on an ongoing basis. A background paper prepared by the UK has been circulated and placed in the docket.

3. Preparation for upcoming meetings

- First meeting of the IOMC/International Labour Organisation Working Group for the Harmonization of Chemical Hazard Communication, June 22, in London, UK. This meeting will focus on the elaboration of terms of reference work plan and time table for the hazard communication elements of the GHS.

—IOMC Coordinating Group for the Harmonization of Chemical Classification Systems, June 23-24, London, UK. This group provides overall management direction to the development of the GHS. Among the agenda items is further consideration of a paper clarifying the scope and application of the GHS discussed at the last two Coordinating Group meetings, in June and November, 1997. The original paper, U.S. comments, and a report of the November 1997 meeting are in the public docket. A revised version is expected later this month and will be placed in the docket, along with other papers received for the June 23-24 meeting.

—OECD Working Group on Mixtures,

June 25-27, in London, UK. This group is charged with developing harmonized approaches for the classification of mixtures. This will be its second meeting, and participants will be discussing areas for harmonization based on a detailed review document outlining the components of major existing hazard classification systems for mixtures.

—Meeting of the UN Subcommittee of Experts on the Transport of Dangerous Goods, June 29-July 9, in Geneva, Switzerland. The Subcommittee has hosted the working group developing classification criteria proposals for physical hazards and largely completed this work in December 1997. It is also involved in consideration of OECD proposals on acute toxicity classifications, the institutional framework for the ongoing maintenance of the GHS, and hazard communication issues as they relate to goods in transport.

4. Public Comments

5. Concluding Remarks

Interested parties are invited to submit their comments as soon as possible for consideration in the development of U.S. positions for the international meetings listed above, and to present their views orally and/or in writing at the public meeting. Participants in the meeting may also address other topics relating to harmonization of chemical classification and labeling systems and are particularly invited to identify issues of concern to specific sectors that may be affected by the GHS.

All written comments will be placed in the public docket (OSHA docket H-022H). The docket is open from 10 a.m. until 4 p.m., Monday through Friday, and is located at the Department of Labor, Room 2625, Constitution Avenue, NW., Washington, DC (Telephone: 202-219-7894; Fax: 202-219-5046). The public may also consult the docket to review previous Federal Register notices, comments received, Questions and Answers about the GHS, a response to comments on the April 3 *Federal Register* notice, and other relevant documents.

Dated: May 11, 1998.

Michael Metelits,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 98-12840 Filed 5-13-98; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF STATE

(Public Notice #2816)

United States International Telecommunications Advisory Committee; Telecommunication Standardization Sector (ITAC-T) National Committee and Study Group D; Meeting

The Department of State announces that a meeting of the United States International Telecommunications Advisory Committee (ITAC), will be held as follows: Study Group D on Wednesday, May 20, 1998 and the National committee on Monday, June 29 and July 22, 1998, all beginning at 9:30 a.m. and scheduled for all day, in Room 1408 of the Department of State, 22nd and C Streets, NW., Washington, D.C.

The purpose of ITAC is to advise the Department on policy, technical, and operational matters and to provide strategic planning recommendations, with respect to international telecommunication and information issues. The purpose of these meetings is to develop United States positions for upcoming ITU-T meetings dealing with standards activities of the International Telecommunication Union (ITU). In particular, the Study Group D meeting will include preparation for the planned meeting of ITU-T Study Group 8, to be held June 9-18, and other issues within the jurisdiction of Study Group D. The National Committee meetings will include preparation for the Telecommunication Sector Advisory Group meeting to be held September 7-11, 1998. Questions regarding the agenda or ITAC-T Sector activities in general may be directed to the Study Group D Chair, Gary Fereno, telephone 703 607-6166 or the National Committee Chair, Marion Gordon, 202 647-0197.

All participants may join in discussions, subject to instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to (202 647-7407) at least 24 hours before the meeting, providing name, affiliation, date of birth, and social security number, to arrange for pre-clearance. One of the following valid photo IDs is required for admittance to the State Department building: US driver's license with picture, passport, Government ID. Enter from the C Street Main Lobby.

Dated: May 6, 1998.

Richard E. Shrum,
Executive Director, ITAC.

[FR Doc. 98-12944 Filed 5-12-98; 10:30 am]

BILLING CODE 4710-45-M

DEPARTMENT OF STATE

(Public Notice #2814)

Shipping Coordinating Committee, Council and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:00 AM on Tuesday, June 2nd, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001. The purpose of the meeting is to finalize preparations for the 80th session of Council, and the 45th session of Technical Cooperation Committee of the International Maritime Organization (IMO) which is scheduled for 15-19 June 1998, at the IMO Headquarters in London. At the meeting, discussions will focus on papers received and draft U.S. positions. Among other things, the items of particular interest are:

- Reports of the IMO committees
- Review of the IMO technical cooperation activities
- Relations with the United Nations
- Reports for World Maritime University and International Maritime Law Institute
- Administrative and financial matters.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, U.S. Coast Guard Headquarters (G-CI), 2100 Second Street, SW; Room 2114, Washington, DC 20593-0001, by calling: (202) 267-2280, or by faxing: (202) 267-4588.

Dated: May 1, 1998.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 98-12869 Filed 5-13-98; 8:45 am]

BILLING CODE 4710-07-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Advisory Committee for Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the June 11, 1998, meeting of the Advisory Committee for Trade Policy and Negotiations will be held from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:30 p.m. and open to the public from 1:30 p.m. to 2:00 p.m.

SUMMARY: The Advisory Committee for Trade Policy and Negotiation will hold

a meeting on June 11, 1998 from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:30 p.m. to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for June 11, 1998, unless otherwise notified.

ADDRESSES: The meeting will be held at the Madison Hotel in the Dolly Madison Room, located at 15th & M Streets NW, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Bill Daley, Office of the United States Trade Representative, (202) 395-6120.

Charlene Barshefsky,
United States Trade Representative.

[FR Doc. 98-12837 Filed 5-13-98; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Tarrant County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing a third notice to advise the public that the scope of the environmental impact statement (EIS) for the proposed State highway 121 (SH 121) project in Tarrant County, Texas, will be revised.

FOR FURTHER INFORMATION CONTACT: Walter C. Waidelich, District Engineer, Federal Highway Administration, 826 Federal Office Building, 300 E 8th Street, Austin, Texas 78701 Telephone: (512) 916-5988 or Dianna F. Noble, Director, Environmental Affairs Division, Texas Department of

Transportation, 125 East 11th Street, Austin, Texas 78701-2483 Telephone: (512) 416-2734.

SUPPLEMENTARY INFORMATION: The project was initially planned to be studied in a single EIS with limits from Interstate Highway 35 West (IH 35W) in Fort Worth, Tarrant County, to State Highway 174 (SH 174) in Johnson County. A first Notice of Intent (NOI) was published in the August 4, 1988, Federal Register with the SH 121 EIS limits being proposed for the South Section of the project. A second NOI was published in the April 5, 1990, Federal Register with the SH 121 EIS limits being proposed for the North Section of the project. This third NOI will change the scope of the EIS. The result will be a change of the limits and scope of the freeway project with portions that are proposed to be developed as a toll road where it is determined to be economically feasible. The limits of the EIS for the proposed project are now portions of the North and the South Sections of SH 121 and will extend from Interstate Highway 30 (IH 30) in Fort Worth to Farm-to-Market Road 1187 (FM 1187), all within Tarrant County. The previous documentation was subdivided into a Draft Environmental Impact Statement (DEIS) for the North Section with another DEIS for the South Section. The DEIS for South Section was completed and a public hearing was held but a Record of Decision was not issued. The DEIS for the North Section was not completed and work was suspended. The new EIS for the proposed facility will cover a part of the South Section from IH 20 to FM 1187 and part of the North Section from IH 30 to IH 20. Companion documentation is being prepared separately for the remainder of the North Section of the proposed facility from IH 35W to IH 30 in Fort Worth, Tarrant County, as well as the remainder of the South Section of the proposed facility from FM 1187 in Tarrant County to U.S. Highway 67 (US 67) in Cleburne; Johnson County.

Numerous public involvement activities have taken place during the development of the proposed project and will continue until a general consensus is reached on a preferred alternative. Many alternatives and routes have been considered. Among the alternatives considered for a proposed project are build nothing, freeway development, and toll road development.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions

are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA or TxDOT at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Walter C. Waidelich,
District Engineer.

[FR Doc. 98-12876 Filed 5-13-98; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) received from the Burlington Northern Santa Fe Railroad (BNSF) a request for a waiver of compliance with certain requirements of the Code of Federal Regulations. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

Burlington Northern Santa Fe Railroad, Docket Number RST-97-6

This notice covers the request of the BNSF to be relieved of compliance with Section 213.57(b) of the Federal Track Safety Standards (49 CFR 213) for the operation of National Passenger Corporation (Amtrak) trains at up to five (5) inches of unbalance on the former Santa Fe Railroad. Since 1994, Amtrak trains have been operating at up to 4 inches of unbalance or cant deficiency on the former Burlington Northern Railroad. This petition would extend the waiver to the former Santa Fe Railroad and increase the level of unbalance from 4 inches to 5 inches.

Section 213.57(b) refers to the maximum allowable train operating speeds on non-tangent track as a function of existing curvature and superelevation and, further, introduces the concept of unbalanced superelevation (cant deficiency) in particular modes of train operation. The idea of trains negotiating curved track at speeds producing either positive or negative unbalance was discussed previously in the Federal Register (52 FR 38035 on October 13, 1987). Currently, Section 213.57(b) permits a maximum of 3 inches to be used as the underbalance term in the formulation of curve/speed tables by track maintenance

engineers defining intermediate train speeds and curved track superelevations for any route between two points.

BNSF petitioned for permission to substitute the value of 5 inches instead of 3 inches in determining maximum train speeds on track owned by the railroad and used under contract by Amtrak in the provision of transcontinental passenger train service. BNSF is requesting the waiver to assist Amtrak in improving its operating efficiency.

Interested parties may submit written views, data, or comments on this petition. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-97-6), and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590.

Communications received within 30 days from the publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at FRA's offices at 1120 Vermont Avenue, NW, Room 7051, Washington, DC 20005.

Issued in Washington, DC on May 4, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98-12767 Filed 5-13-98; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

(FRA Docket No. RST-97-5)

Petition for Exemption or Waiver of Compliance With the Requirements of Section 213.233(c) of the Federal Track Safety Standards; New Jersey Transit Rail Operations, Inc.

In accordance with 49 CFR 211.41, notice is hereby given that the New Jersey Transit Rail Operations, Incorporated, (NJTR) has submitted a petition, dated December 3, 1997, for a

waiver of compliance with certain requirements of Title 49, Code of Federal Regulations, Part 213: Track Safety Standards.

The purpose of the petition is to request of the Federal Railroad Administration (FRA) relief from compliance with the provisions of 49 CFR 213.233(c) of the Federal Track Safety Standards. The petitioner requests approval to eliminate one of two weekly visual track inspections required by this section for track carrying passenger traffic. Petitioner proposes, in the interest of equivalent safety, to substitute for the eliminated visual inspection the operation of a track geometry measuring vehicle over the affected main track and sidings on a quarterly basis. Such equipment does not operate over the tracks of the petitioner today.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Number RST-97-5 and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590. Communications received within 30 days of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m. to 5:00 p.m.) in Room 7051, 1120 Vermont Avenue, NW, Washington, DC, 20005.

Issued in Washington, D.C. on May 4, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98-12768 Filed 5-13-98; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB-32 (Sub-No. 86X) and AB-355 (Sub-No. 24X)]

Boston and Maine Corporation— Abandonment Exemption—in Middlesex County, MA and Springfield Terminal Railway Company— Discontinuance of Service Exemption—in Middlesex County, MA

Boston & Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances* for B&M to abandon and ST to discontinue service over a 1.82-mile line of railroad known as the Watertown Branch from milepost 5.85 (Engineering Station 87+90) to milepost 7.67 (Engineering Station 184+25) in Middlesex County, MA. The line traverses United States Postal Service Zip Code 02172.¹

B&M and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 13, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental

issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 26, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 3, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant representative: John R. Nadolny, Esq., Boston and Maine Corporation, Law Department, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

B&M and ST have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 19, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by May 14, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: May 6, 1998.

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

³ Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,000. See 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98-12696 Filed 5-13-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC-17: OTS No. 0325]

First Kansas Federal Savings Association, Osawatomie, KS; Approval of Conversion Application

Notice is hereby given that on May 4, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Kansas Federal Savings Association, Osawatomie, Kansas, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039-2010.

Dated: May 8, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98-12817 Filed 5-13-98; 8:45 am]

BILLING CODE 6720-01-M

Corrections

Federal Register

Vol. 63, No. 93

Thursday, May 14, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting***Correction*

In notice document 98-12235 appearing on page 25863, in the issue of Monday, May 11, 1998, make the following correction:

On page 25863, in the third column, in the thirteenth line "FAX 770/ 488-1129." should read "FAX 770/488-8282."

BILLING CODE 1505-01-D

Thursday
May 14, 1998**federal register****Part II****Environmental
Protection Agency****Guidelines for Ecological Risk
Assessment; Notice**

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6011-2]

Guidelines for Ecological Risk Assessment

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of final Guidelines for Ecological Risk Assessment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today publishing in final form a document entitled Guidelines for Ecological Risk Assessment (hereafter "Guidelines"). These Guidelines were developed as part of an interoffice program by a Technical Panel of the Risk Assessment Forum. These Guidelines will help improve the quality of ecological risk assessments at EPA while increasing the consistency of assessments among the Agency's program offices and regions.

These Guidelines were prepared during a time of increasing interest in the field of ecological risk assessment and reflect input from many sources both within and outside the Agency. The Guidelines expand upon and replace the previously published EPA report Framework for Ecological Risk Assessment (EPA/630/R-92/001, February 1992), which proposed principles and terminology for the ecological risk assessment process. From 1992 to 1994, the Agency focused on identifying a structure for the Guidelines and the issues that the document would address. EPA sponsored public and Agency colloquia, developed peer-reviewed ecological assessment case studies, and prepared a set of peer-reviewed issue papers highlighting important principles and approaches. Drafts of the proposed Guidelines underwent formal external peer review and were reviewed by the Agency's Risk Assessment Forum, by Federal interagency subcommittees of the Committee on Environment and Natural Resources of the Office of Science and Technology Policy, and by the Agency's Science Advisory Board (SAB). The proposed Guidelines were published for public comment in 1996 (61 FR 47552-47631, September 9, 1996). The final Guidelines incorporate revisions based on the comments received from the public and the SAB on the proposed Guidelines. EPA appreciates the efforts of all participants in the process and has tried to address their recommendations in these Guidelines.

DATES: The Guidelines will be effective on April 30, 1998.

ADDRESSES: The Guidelines will be made available in several ways:

(1) The electronic version will be accessible on the EPA National Center for Environmental Assessment home page on the Internet at <http://www.epa.gov/ncea/>.

(2) 3 1/2" high-density computer diskettes in WordPerfect format will be available from ORD Publications, Technology Transfer and Support Division, National Risk Management Research Laboratory, Cincinnati, OH; telephone: 513-569-7562; fax: 513-569-7566. Please provide the EPA No. (EPA/630/R-95/002Fa) when ordering.

(3) This notice contains the full document. (However, because of Federal Register format limitations, text boxes that would normally be included at their point of reference in the document are instead listed at the end of the Guidelines as text notes.) Copies of the Guidelines will be available for inspection at EPA headquarters and regional libraries, through the U.S. Government Depository Library program, and for purchase from the National Technical Information Service (NTIS), Springfield, VA; telephone: 703-487-4650, fax: 703-321-8547. Please provide the NTIS PB No. (PB98-117849) when ordering.

FOR FURTHER INFORMATION, CONTACT: Dr. Bill van der Schalie, National Center for Environmental Assessment-Washington Office (8623), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone: 202-564-3371; e-mail: Eco-Guidelines@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Ecological risk assessment "evaluates the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors" (U.S. EPA, 1992a). It is a flexible process for organizing and analyzing data, information, assumptions, and uncertainties to evaluate the likelihood of adverse ecological effects. Ecological risk assessment provides a critical element for environmental decision making by giving risk managers an approach for considering available scientific information along with the other factors they need to consider (e.g., social, legal, political, or economic) in selecting a course of action.

To help improve the quality and consistency of the U.S. Environmental Protection Agency's ecological risk assessments, EPA's Risk Assessment Forum initiated development of these Guidelines. The primary audience for this document is risk assessors and risk managers at EPA, although these Guidelines also may be useful to others

outside the Agency. These Guidelines expand on and replace the 1992 report *Framework for Ecological Risk Assessment* (referred to as the Framework Report; see Appendix A). They were written by a Forum technical panel and have been revised on the basis of extensive comments from outside peer reviewers as well as Agency staff. The Guidelines retain the Framework Report's broad scope, while expanding on some concepts and modifying others to reflect Agency experiences. EPA intends to follow these Guidelines with a series of shorter, more detailed documents that address specific ecological risk assessment topics. This "bookshelf" approach provides the flexibility necessary to keep pace with developments in the rapidly evolving field of ecological risk assessment while allowing time to form consensus, where appropriate, on science policy (default assumptions) to bridge gaps in knowledge. EPA will revisit guidelines documents as experience and scientific consensus evolve. The Agency recognizes that ecological risk assessment is only one tool in the overall management of ecological risks. Therefore, there are ongoing efforts within the Agency to develop other tools and processes that can contribute to an overall approach to ecological risk management, addressing topics such as ecological benefits assessment and cost-benefit analyses.

Ecological risk assessment includes three primary phases: Problem formulation, analysis, and risk characterization. In problem formulation, risk assessors evaluate goals and select assessment endpoints, prepare the conceptual model, and develop an analysis plan. During the analysis phase, assessors evaluate exposure to stressors and the relationship between stressor levels and ecological effects. In the third phase, risk characterization, assessors estimate risk through integration of exposure and stressor-response profiles, describe risk by discussing lines of evidence and determining ecological adversity, and prepare a report. The interface among risk assessors, risk managers, and interested parties during planning at the beginning and communication of risk at the end of the risk assessment is critical to ensure that the results of the assessment can be used to support a management decision. Because of the diverse expertise required (especially in complex ecological risk assessments), risk assessors and risk managers frequently work in multidisciplinary teams.

Both risk managers and risk assessors bring valuable perspectives to the initial

planning activities for an ecological risk assessment. Risk managers charged with protecting the environment can identify information they need to develop their decision, risk assessors can ensure that science is effectively used to address ecological concerns, and together they can evaluate whether a risk assessment can address identified problems. However, this planning process is distinct from the scientific conduct of an ecological risk assessment. This distinction helps ensure that political and social issues, while helping to define the objectives for the risk assessment, do not introduce undue bias.

Problem formulation, which follows these planning discussions, provides a foundation upon which the entire risk assessment depends. Successful completion of problem formulation depends on the quality of three products: Assessment endpoints, conceptual models, and an analysis plan. Since problem formulation is an interactive, nonlinear process, substantial reevaluation is expected to occur during the development of all problem formulation products.

The analysis phase includes two principal activities: Characterization of exposure and characterization of ecological effects. The process is flexible, and interaction between the two evaluations is essential. Both activities evaluate available data for scientific credibility and relevance to assessment endpoints and the conceptual model. Exposure characterization describes sources of stressors, their distribution in the environment, and their contact or co-occurrence with ecological receptors. Ecological effects characterization evaluates stressor-response relationships or evidence that exposure to stressors causes an observed response. The bulk of quantitative uncertainty analysis is performed in the analysis phase, although uncertainty is an important consideration throughout the entire risk assessment. The analysis phase products are summary profiles that describe exposure and the stressor-response relationships.

Risk characterization is the final phase of an ecological risk assessment. During this phase, risk assessors estimate ecological risks, indicate the overall degree of confidence in the risk estimates, cite evidence supporting the risk estimates, and interpret the adversity of ecological effects. To ensure mutual understanding between risk assessors and managers, a good risk characterization will express results clearly, articulate major assumptions and uncertainties, identify reasonable

alternative interpretations, and separate scientific conclusions from policy judgments. Risk managers use risk assessment results, along with other factors (e.g., economic or legal concerns), in making risk management decisions and as a basis for communicating risks to interested parties and the general public.

After completion of the risk assessment, risk managers may consider whether follow-up activities are required. They may decide on risk mitigation measures, then develop a monitoring plan to determine whether the procedures reduced risk or whether ecological recovery is occurring. Managers may also elect to conduct another planned tier or iteration of the risk assessment if necessary to support a management decision.

Dated: April 30, 1998.

Carol M. Browner,
Administrator.

Part A: Guidelines for Ecological Risk Assessment

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1. Introduction

Ecological risk assessment is a process that evaluates the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to

one or more stressors (U.S. EPA, 1992a). The process is used to systematically evaluate and organize data, information, assumptions, and uncertainties in order to help understand and predict the relationships between stressors and ecological effects in a way that is useful for environmental decision making. An assessment may involve chemical, physical, or biological stressors, and one stressor or many stressors may be considered.

Ecological risk assessments are developed within a risk management context to evaluate human-induced changes that are considered undesirable. As a result, these Guidelines focus on stressors and adverse effects generated or influenced by anthropogenic activity. Defining adversity is important because a stressor may cause adverse effects on one ecosystem component but be neutral or even beneficial to other components. Changes often considered undesirable are those that alter important structural or functional characteristics or components of ecosystems. An evaluation of adversity may include a consideration of the type, intensity, and scale of the effect as well as the potential for recovery. The acceptability of adverse effects is determined by risk managers. Although intended to evaluate adverse effects, the ecological risk assessment process can be adapted to predict beneficial changes or risk from natural events.

Descriptions of the likelihood of adverse effects may range from qualitative judgments to quantitative probabilities. Although risk assessments may include quantitative risk estimates, quantitation of risks is not always possible. It is better to convey conclusions (and associated uncertainties) qualitatively than to ignore them because they are not easily understood or estimated.

Ecological risk assessments can be used to predict the likelihood of future adverse effects (prospective) or evaluate the likelihood that effects are caused by past exposure to stressors (retrospective). In many cases, both approaches are included in a single risk assessment. For example, a retrospective risk assessment designed to evaluate the cause for amphibian population declines may also be used to predict the effects of future management actions. Combined retrospective and prospective risk assessments are typical in situations where ecosystems have a history of previous impacts and the potential for future effects from multiple chemical, physical, or biological stressors. Other terminology related to ecological risk assessment is referenced in text note 1-1.

1.1. The Ecological Risk Assessment Process

The ecological risk assessment process is based on two major elements: Characterization of effects and characterization of exposure. These provide the focus for conducting the three phases of risk assessment: Problem formulation, analysis, and risk characterization.

The overall ecological risk assessment process¹ is shown in figure 1-1. The format remains consistent with the diagram from the 1992 report Framework for Ecological Risk Assessment (referred to as the Framework Report). However, the

¹ Changes in process and terminology from EPA's previous ecological risk assessment framework (U.S. EPA, 1992a) are summarized in Appendix A.

process and products within each phase have been refined, and these changes are detailed in figure 1-2. The three phases of risk assessment are enclosed by a dark solid line. Boxes outside this line identify critical activities that influence why and how a risk assessment is conducted and how it will be used.

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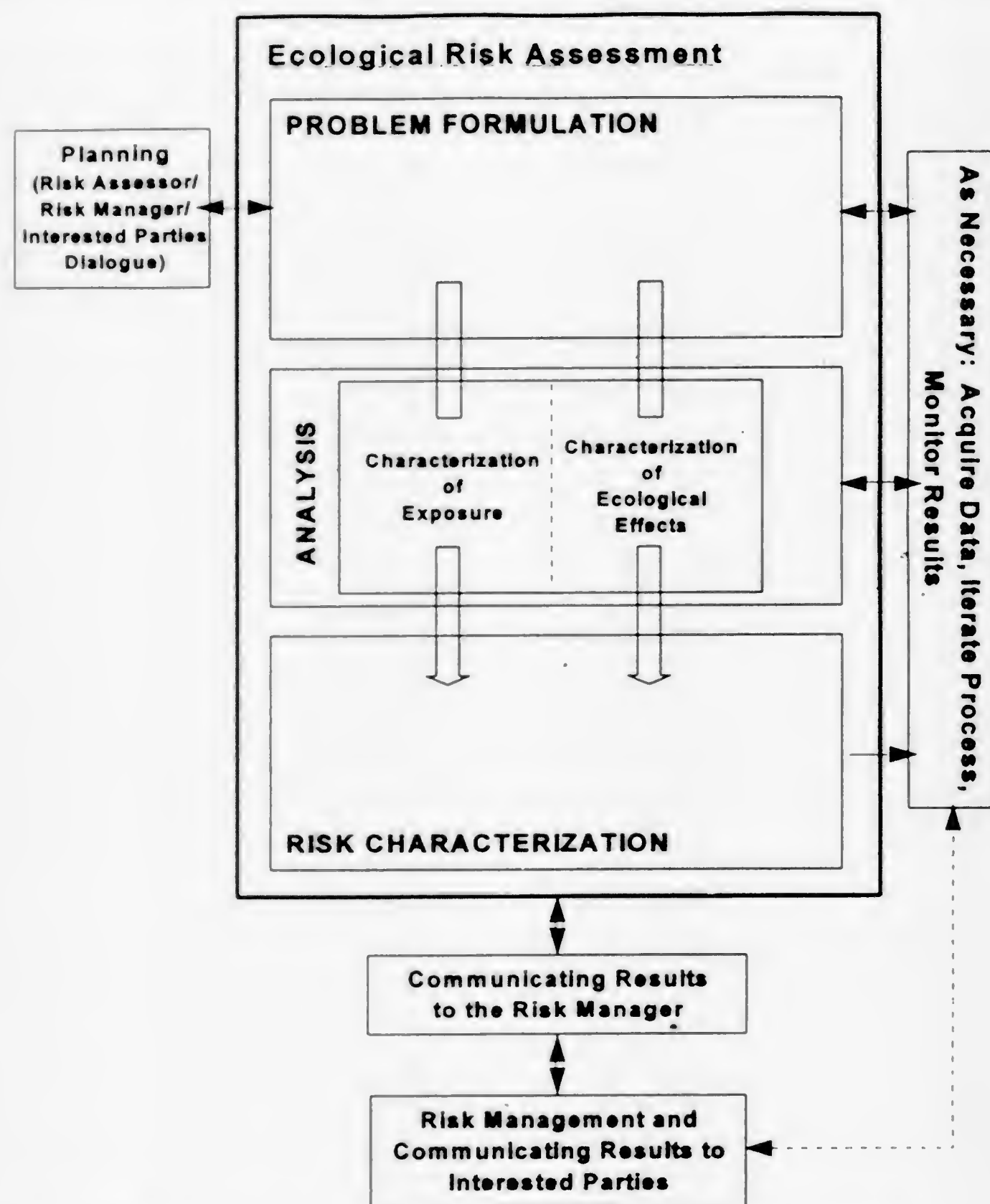


Figure 1-1. The framework for ecological risk assessment (modified from U.S. EPA, 1992a).

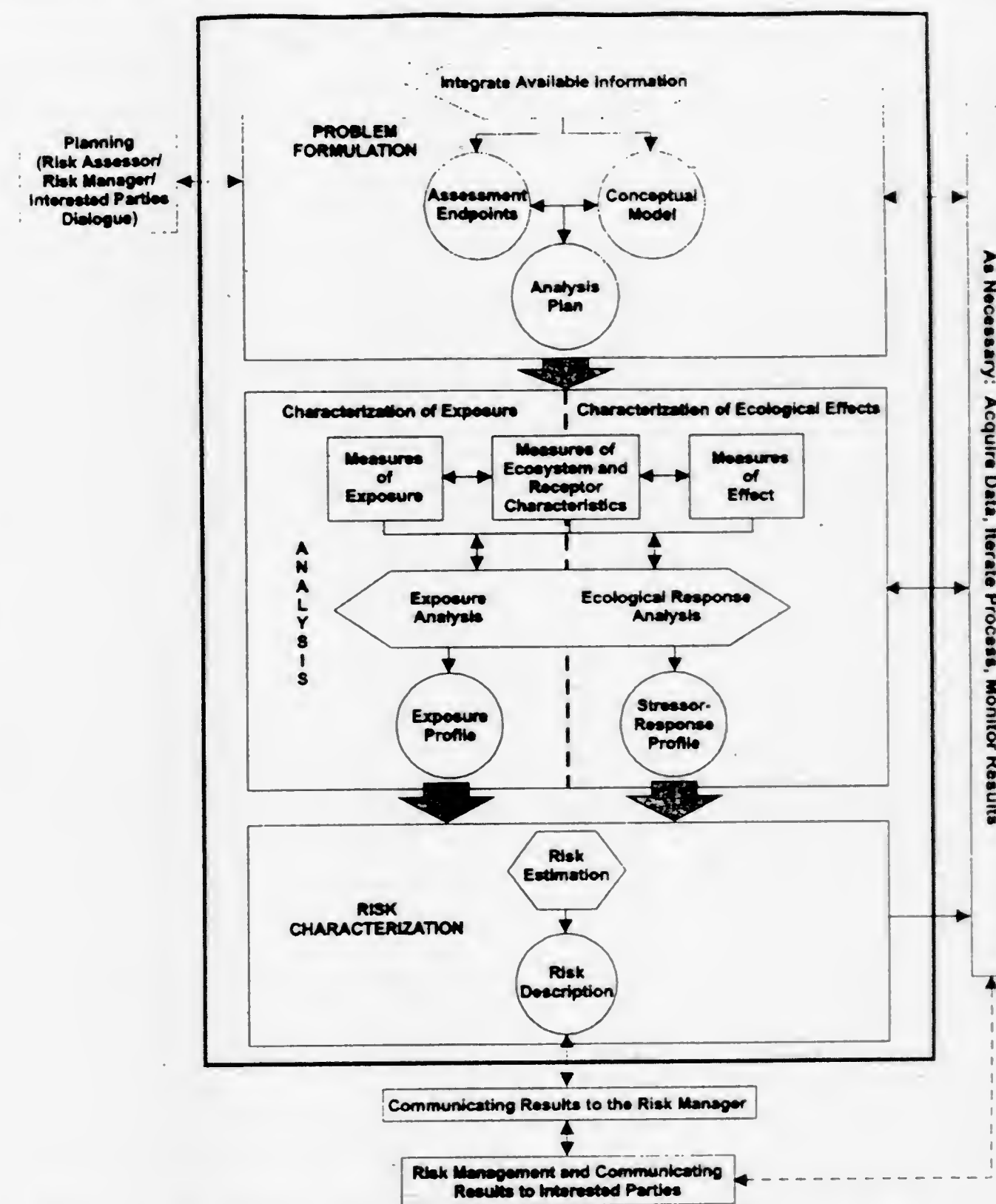


Figure 1-2. The ecological risk assessment framework, with an expanded view of each phase. Within each phase, rectangles designate inputs, hexagons indicate actions, and circles represent outputs. Problem formulation, analysis, and risk characterization are discussed in sections 3, 4, and 5, respectively. Sections 2 and 6 describe interactions between risk assessors and risk managers.

Problem formulation, the first phase, is shown at the top. In problem formulation, the purpose for the assessment is articulated, the problem is defined, and a plan for analyzing and characterizing risk is determined. Initial work in problem formulation includes the integration of available information on sources, stressors, effects, and ecosystem and receptor characteristics. From this information two products are generated: Assessment endpoints and conceptual models. Either product may be generated first (the order depends on the type of risk assessment), but both are needed to complete an analysis plan, the final product of problem formulation.

Analysis, shown in the middle box, is directed by the products of problem formulation. During the analysis phase, data are evaluated to determine how exposure to stressors is likely to occur (characterization of exposure) and, given this exposure, the potential and type of ecological effects that can be expected (characterization of ecological effects). The first step in analysis is to determine the strengths and limitations of data on exposure, effects, and ecosystem and receptor characteristics. Data are then analyzed to characterize the nature of potential or actual exposure and the ecological responses under the circumstances defined in the conceptual model(s). The products from these analyses are two profiles, one for exposure and one for stressor response. These products provide the basis for risk characterization.

During risk characterization, shown in the third box, the exposure and stressor-response profiles are integrated through the risk estimation process. Risk characterization includes a summary of assumptions, scientific uncertainties, and strengths and limitations of the analyses. The final product is a risk description in which the results of the integration are presented, including an interpretation of ecological adversity and descriptions of uncertainty and lines of evidence.

Although problem formulation, analysis, and risk characterization are presented sequentially, ecological risk assessments are frequently iterative. Something learned during analysis or risk characterization can lead to a reevaluation of problem formulation or new data collection and analysis (see text note 1-2).

Interactions among risk assessors, risk managers, and other interested parties are shown in two places in the diagram. The side box on the upper left represents planning, where agreements are made about the management goals, the purpose for the risk assessment, and

the resources available to conduct the work. The box following risk characterization represents when the results of the risk assessment are formally communicated by risk assessors to risk managers. Risk managers generally communicate risk assessment results to interested parties. These activities are shown outside the ecological risk assessment process diagram to emphasize that risk assessment and risk management are two distinct activities. The former involves the evaluation of the likelihood of adverse effects, while the latter involves the selection of a course of action in response to an identified risk that is based on many factors (e.g., social, legal, political, or economic) in addition to the risk assessment results.

The bar along the right side of figure 1-2 highlights data acquisition, iteration, and monitoring. Monitoring data provide important input to all phases of a risk assessment. They can provide the impetus for a risk assessment by identifying changes in ecological condition. They can also be used to evaluate a risk assessment's predictions. For example, follow-up studies could determine whether mitigation efforts were effective, help verify whether source reduction was effective, or determine the extent and nature of ecological recovery. It is important for risk assessors and risk managers to use monitoring results to evaluate risk assessment predictions so they can gain experience and help improve the risk assessment and risk management process (Commission on Risk Assessment and Risk Management, 1997).

Even though the risk assessment focuses on data analysis and interpretation, acquiring the appropriate quantity and quality of data for use in the process is critical. If data are unavailable, the risk assessment may stop until data are obtained. The process is more often iterative than linear, since the evaluation of new data or information may require revisiting a part of the process or conducting a new assessment (see text note 2-8). The dotted line between the side bar and the risk management box indicates that additional data acquisition, iteration, or monitoring, while important, are not always required.

1.2. Ecological Risk Assessment in a Management Context

Ecological risk assessments are designed and conducted to provide information to risk managers about the potential adverse effects of different management decisions. Attempts to eliminate risks associated with human

activities in the face of uncertainties and potentially high costs present a challenge to risk managers (Ruckelshaus, 1983; Suter, 1993a). Although many considerations and sources of information are used by managers in the decision process, ecological risk assessments are unique in providing a scientific evaluation of ecological risk that explicitly addresses uncertainty.

1.2.1. Contributions of Ecological Risk Assessment to Environmental Decision Making

At EPA, ecological risk assessments are used to support many types of management actions, including the regulation of hazardous waste sites, industrial chemicals, and pesticides, or the management of watersheds or other ecosystems affected by multiple nonchemical and chemical stressors. The ecological risk assessment process has several features that contribute to effective environmental decision making:

- Through an iterative process, new information can be incorporated into risk assessments, which can be used to improve environmental decision making. This feature is consistent with adaptive management principles (Holling, 1978) used in managing natural resources.
- Risk assessments can be used to express changes in ecological effects as a function of changes in exposure to stressors. This capability may be particularly useful to the decision maker who must evaluate tradeoffs, examine different alternatives, or determine the extent to which stressors must be reduced to achieve a given outcome.

- Risk assessments explicitly evaluate uncertainty. Uncertainty analysis describes the degree of confidence in the assessment and can help the risk manager focus research on those areas that will lead to the greatest reductions in uncertainty.

- Risk assessments provide a basis for comparing, ranking, and prioritizing risks. The results can also be used in cost-benefit and cost-effectiveness analyses that offer additional interpretation of the effects of alternative management options.

- Risk assessments consider management goals and objectives as well as scientific issues in developing assessment endpoints and conceptual models during problem formulation. Such initial planning activities help ensure that results will be useful to risk managers.

1.2.2. Factors Affecting the Value of Ecological Risk Assessment for Environmental Decision Making

The wide use and important advantages of ecological risk assessments do not mean they are the sole determinants of management decisions; risk managers consider many factors. Legal mandates and political, social, and economic considerations may lead risk managers to make decisions that are more or less protective. Reducing risk to the lowest level may be too expensive or not technically feasible. Thus, although ecological risk assessments provide critical information to risk managers, they are only part of the environmental decision-making process.

In some cases, it may be desirable to broaden the scope of a risk assessment during the planning phase. A risk assessment that is too narrowly focused on one type of stressor in a system (e.g., chemicals) could fail to consider more important stressors (e.g., habitat alteration). However, options for modifying the scope of a risk assessment may be limited when the scope is defined by statute.

In other situations, management alternatives may be available that completely circumvent the need for a risk assessment. For example, the risks associated with building a hydroelectric dam may be avoided by considering alternatives for meeting power needs that do not involve a new dam. In these situations, the risk assessment may be redirected to assess the new alternative, or one may not be needed at all.

1.3. Scope and Intended Audience

These Guidelines describe general principles and give examples to show how ecological risk assessment can be applied to a wide range of systems, stressors, and biological, spatial, and temporal scales. They describe the strengths and limitations of alternative approaches and emphasize processes and approaches for analyzing data rather than specifying data collection techniques, methods, or models. They do not provide detailed guidance, nor are they prescriptive. This approach, although intended to promote consistency, provides flexibility to permit EPA's offices and regions to develop specific guidance suited to their needs.

Agency preferences are expressed where possible, but because ecological risk assessment is a rapidly evolving discipline, requirements for specific approaches could soon become outdated. EPA intends to develop a series of shorter, more detailed

documents on specific ecological risk assessment topics following publication of these Guidelines.

The interface between risk assessors and risk managers is discussed in the Guidelines. However, details on the use of ecological risk assessment in the risk management process are beyond the scope of these Guidelines. Other EPA publications discuss how ecological concerns have been addressed in decision making at EPA (U.S. EPA, 1994a), propose ecological entities that may be important to protect (U.S. EPA, 1997a), and provide an introduction to ecological risk assessment for risk managers (U.S. EPA, 1995a).

Policies in this document are intended as internal guidance for EPA. Risk assessors and risk managers at EPA are the primary audience, although these Guidelines may be useful to others outside the Agency. This document is not a regulation and is not intended for EPA regulations. The Guidelines set forth current scientific thinking and approaches for conducting and evaluating ecological risk assessments. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. As with other EPA guidelines (e.g., developmental toxicity, 56 FR 63798-63826; exposure assessment, 57 FR 22888-22938; and carcinogenicity, 61 FR 17960-18011), EPA will revisit these Guidelines as experience and scientific consensus evolve.

These Guidelines replace the Framework Report (U.S. EPA, 1992a). They expand on and modify framework concepts to reflect Agency experience since the Framework Report was published (see Appendix A).

1.4. Guidelines Organization

These Guidelines follow the ecological risk assessment format as presented in figures 1-1 and 1-2. Section 2 (planning) describes the dialogue among risk assessors, risk managers, and interested parties before the risk assessment begins. Section 3 (problem formulation) describes how management goals are interpreted, assessment endpoints selected, conceptual models constructed, and analysis plans developed. Section 4 (analysis) addresses how to evaluate potential exposure of receptors and the relationship between stressor levels and ecological effects. Section 5 (risk characterization) describes the process of estimating risk through the integration of exposure and stressor-response profiles and discusses lines of evidence, interpretation of adversity, and uncertainty. Finally, section 6 (on

relating ecological information to risk management decisions) addresses communicating the results of the risk assessment to risk managers.

2. Planning the Risk Assessment

Ecological risk assessments are conducted to transform scientific data into meaningful information about the risk of human activities to the environment. Their purpose is to enable risk managers to make informed environmental decisions. To ensure that risk assessments meet this need, risk managers and risk assessors (see text notes 2-1 and 2-2) and, where appropriate, interested parties (see text note 2-3), engage in a planning dialogue as a critical first step toward initiating problem formulation (see figure 1-2).

The planning dialogue is the beginning of a necessary interface between risk managers and risk assessors. However, it is imperative to remember that planning remains distinct from the scientific conduct of a risk assessment. This distinction helps ensure that political and social issues, though helping define the objectives for the assessment, do not bias the scientific evaluation of risk.

The first step in planning may be to determine if a risk assessment is the best option for supporting the decision. Risk managers and risk assessors both consider the potential value of conducting a risk assessment to address identified problems. Their discussion explores what is known about the degree of risk, what management options are available to mitigate or prevent it, and the value of conducting a risk assessment compared with other ways of learning about and addressing environmental concerns. In some cases, a risk assessment may add little value to the decision process because management alternatives may be available that completely circumvent the need for a risk assessment (see section 1.2.2). In other cases, the need for a risk assessment may be investigated through a simple tiered risk evaluation based on minimal data and a simple model (see section 2.2.2).

Once the decision is made to conduct a risk assessment, the next step is to ensure that all key participants are appropriately involved. Risk management may be carried out by one decision maker in an agency such as EPA or it may be implemented by several risk managers working together as a team (see text note 2-1). Likewise, risk assessment may be conducted by a single risk assessor or a team of risk assessors (see text note 2-2). In some cases, interested parties play an important role (see text note 2-3).

Careful consideration up front about who will participate, and the character of that participation, will determine the success of planning.

2.1. The Roles of Risk Managers, Risk Assessors, and Interested Parties in Planning

During the planning dialogue, risk managers and risk assessors each bring important perspectives to the table. Risk managers, charged with protecting human health and the environment, help ensure that risk assessments provide information relevant to their decisions by describing why the risk assessment is needed, what decisions it will influence, and what they want to receive from the risk assessor. It is also helpful for managers to consider and communicate problems they have encountered in the past when trying to use risk assessments for decision making.

In turn, risk assessors ensure that scientific information is effectively used to address ecological and management concerns. Risk assessors describe what they can provide to the risk manager, where problems are likely to occur, and where uncertainty may be problematic. In addition, risk assessors may provide insights to risk managers about alternative management options likely to achieve stated goals because the options are ecologically grounded.

In some risk assessments, interested parties also take an active role in planning, particularly in goal development. The National Research Council describes participation by interested parties in risk assessment as an iterative process of "analysis" and "deliberation" (NRC, 1996). Interested parties may communicate their concerns to risk managers about the environment, economics, cultural changes, or other values potentially at risk from environmental management activities. Where they have the ability to increase or mitigate risk to ecological values of concern that are identified, interested parties may become part of the risk management team (see text note 2-1). However, involvement by interested parties is not always needed or appropriate. It depends on the purpose of the risk assessment, the regulatory requirements, and the characteristics of the management problem (see section 2.2.1). When interested parties become risk managers on a team, they directly participate in planning.

During planning, risk managers and risk assessors are responsible for coming to agreement on the goals, scope, and timing of a risk assessment and the resources that are available and necessary to achieve the goals. Together

they use information on the area's ecosystems, regulatory requirements, and publicly perceived environmental values to interpret the goals for use in the ecological risk assessment. Examples of questions that risk managers and risk assessors may address during planning are provided in text note 2-4.

2.2. Products of Planning

The characteristics of an ecological risk assessment are directly determined by agreements reached by risk managers and risk assessors during planning dialogues. These agreements are the products of planning. They include (1) clearly established and articulated management goals, (2) characterization of decisions to be made within the context of the management goals, and (3) agreement on the scope, complexity, and focus of the risk assessment, including the expected output and the technical and financial support available to complete it.

2.2.1. Management Goals

Management goals are statements about the desired condition of ecological values of concern. They may range from "maintain a sustainable aquatic community" (see text notes 2-5 and 2-6) to "restore a wetland" or "prevent toxicity." Management goals driving a specific risk assessment may come from the law, interpretations of the law by regulators, desired outcomes voiced by community leaders and the public, and interests expressed by affected parties. All involve input from the public. However, the process used to establish management goals influences how well they provide guidance to a risk assessment team, how they foster community participation, and whether the larger affected community will support implementation of management decisions to achieve the goal.

A majority of Agency risk assessments incorporate legally established management goals found in enabling legislation. In these cases, goals were derived through public debate among interested parties when the law was enacted. Such management goals (e.g., the Clean Water Act goals to "protect and restore the chemical, physical and biological integrity of the Nation's waters") are often open to considerable interpretation and rarely provide sufficient guidance to a risk assessor. To address this, the Agency has interpreted these goals into regulations and guidance for implementation at the national scale (e.g., water quality criteria, see text note 3-17). Mandated goals may be interpreted by Agency managers and staff into a particular risk

assessment format and then applied consistently across stressors of the same type (e.g., evaluation of new chemicals). In cases where laws and regulations are specifically applied to a particular site, interaction between risk assessors and risk managers is needed to translate the law and regulations into management goals appropriate for the site or ecosystem of concern (e.g., Superfund site cleanup).

Although this approach has been effective, most regulations and guidance are stated in terms of measures or specific actions that must or must not be taken rather than establishing a value-based management goal or desired state. As environmental protection efforts shift from implementing controls toward achieving measurable environmental results, value-based management goals at the national scale will be increasingly important as guidance for risk assessors. Such goals as "no unreasonable effects on bird survival" or "maintaining areal extent of wetlands" will provide a basis for risk assessment design (see also U.S. EPA, 1997a, for additional examples and discussion).

The "place-based" or "community-based" approach for managing ecological resources recommended in the Edgewater Consensus (U.S. EPA, 1994b) generally requires that management goals be developed for each assessment. Management goals for "places" such as watersheds are formed as a consensus based on diverse values reflected in Federal, State, tribal, and local regulations and on constituency-group and public concerns. Public meetings, constituency-group meetings, evaluation of resource management organizational charters, and other means of looking for shared goals may be necessary to reach consensus among these diverse groups, commonly called "stakeholders" (see text note 2-3). However, goals derived by consensus are normally general. For use in a risk assessment, risk assessors must interpret the goals into more specific objectives about what must occur in a place in order for the goal to be achieved and identify ecological values that can be measured or estimated in the ecosystem of concern (see text note 2-6). For these risk assessments, the interpretation is unique to the ecosystem being assessed and is done on a case-by-case basis as part of the planning process. Risk assessors and risk managers should agree on the interpretations.

Early discussion on and selection of clearly established management goals provide risk assessors with a fuller understanding of how different risk management options under

consideration may result in achieving the goal. Such information helps the risk assessor identify and gather critical data and information. Regardless of how management goals are established, those that explicitly define ecological values to be protected provide the best foundation for identifying actions to reduce risk and generating risk assessment objectives. The objectives for the risk assessment derive from the type of management decisions to be made.

2.2.2. Management Options To Achieve Goals

Risk managers must implement decisions to achieve management goals (see text note 2-7). These risk management decisions may establish national policy applied consistently across the country (e.g., premanufacture notices (PMN) for new chemicals, protection of endangered species) or be applied to a specific site (e.g., hazardous waste site cleanup level) or management concern (e.g., number of combined sewer overflow events allowable per year) intended to achieve an environmental goal when implemented. Management decisions often begin as one of several management options identified during planning. Management options may range from preventing the introduction of a stressor to restoration of affected ecological values. When several options are defined during planning for a particular problem (e.g., leave alone, clean up, or pave a contaminated site), risk assessments can be used to predict potential risk across the range of these management options and, in some cases, combined with cost-benefit analyses to aid decision making. When risk assessors are made aware of possible options, they can use them to ensure that the risk assessment addresses a sufficient breadth of issues.

Explicitly stated management options provide a framework for defining the scope, focus, and conduct of a risk assessment. Some risk assessments are specifically designed to determine if a preestablished decision criterion is exceeded (e.g., see the data quality objectives process, U.S. EPA, 1994c, and section 3.5.2 for more details). Decision criteria often contain inherent assumptions about exposure, the range of possible stressors, or conditions under which the targeted stressor is operating. To ensure that decision options include appropriate assumptions and the risk assessment is designed to address management issues, these assumptions need to be clearly stated.

Decision criteria are often used within a tiering framework to determine how extensive a risk assessment should be.

Early screening tiers may have predetermined decision criteria to answer whether a potential risk exists. Later tiers frequently do not because the management question changes from "yes-no" to questions of "what, where, and how great is the risk." Results from these risk assessments require risk managers to evaluate risk characterization and generate a decision, perhaps through formal decision analysis (e.g., Clemen, 1996), or managers may request an iteration of the risk assessment to address issues of continuing concern (see text note 2-8).

Risk assessments designed to support management initiatives for a region or watershed where multiple stressors, ecological values, and political and economic factors influence decision making require great flexibility and more complex iterative risk assessments. They generally require an examination of ecological processes most influenced by diverse human actions. Risk assessments used in this application are often based on a general goal statement and multiple potential decisions. These require significant planning to determine which array of management decisions may be addressed and to establish the purpose, scope, and complexity of the risk assessment.

2.2.3. Scope and Complexity of the Risk Assessment

Although the purpose for conducting a risk assessment determines whether it is national, regional, or local in scope, resource availability determines its extent, complexity, and the level of confidence in results that can be expected. Each risk assessment is constrained by the availability of valid data and scientific understanding, expertise, time, and financial resources. Risk managers and risk assessors consider the nature of the decision (e.g., national policy, local impact), available resources, opportunities for increasing the resource base (e.g., partnering, new data collection, alternative analytical tools), potential characteristics of the risk assessment team, and the output that will provide the best information for the required decisions (see text note 2-9). They must often be flexible in determining what level of effort is warranted for a risk assessment. The most detailed assessment process is neither applicable nor necessary in every instance. Screening assessments may be the appropriate level of effort. One approach for determining the needed level of effort in the risk assessment is to set up tiered evaluations, as discussed in section 2.2.2. Where tiers are used, specific

descriptions of management questions and decision criteria should be included in the plan.

Part of the agreement on scope and complexity is based on the maximum uncertainty that can be tolerated for the decision the risk assessment supports. Risk assessments completed in response to legal mandates and likely to be challenged in court often require rigorous attention to potential sources of uncertainty to help ensure that conclusions from the assessment can be defended. A frank discussion is needed between the risk manager and risk assessor on the sources of uncertainty and ways uncertainty can be reduced (if necessary or possible) through selective investment of resources. Resource planning may account for the iterative nature of risk assessment or include explicitly defined steps, such as tiers that represent increasing cost and complexity, each tier designed to increase understanding and reduce uncertainty. Advice on addressing the interplay of management decisions, study boundaries, data needs, uncertainty, and specifying limits on decision errors may be found in EPA's guidance on data quality objectives (U.S. EPA, 1994c).

2.3. Planning Summary

The planning phase is complete when agreements are reached on (1) the management goals for ecological values, (2) the range of management options the risk assessment is to support, (3) objectives for the risk assessment, including criteria for success, (4) the focus and scope of the assessment, and (5) resource availability. Agreements may encompass the technical approach to be taken in a risk assessment as determined by the regulatory or management context and reason for initiating the risk assessment (see section 3.2), the spatial scale (e.g., local, regional, or national), and the temporal scale (e.g., the time frame over which stressors or effects will be evaluated).

In mandated risk assessments, planning agreements may be codified in regulations, and little documentation of agreements is warranted. In others, a summary of planning agreements may be important for ensuring that the risk assessment remains consistent with its original intent. A summary can provide a point of reference for determining if early decisions need to be changed in response to new information. There is no predetermined format, length, or complexity for a planning summary. It is a useful reference only and should be tailored to the risk assessment it represents. However, a summary will help ensure quality communication

between risk managers and risk assessors and will document agreed-upon decisions.

Once planning is complete, the formal process of risk assessment begins. During problem formulation, risk assessors should continue the dialogue with risk managers, particularly following assessment endpoint selection and completion of the analysis plan. At these points, potential problems can be identified before the risk assessment proceeds.

3. Problem Formulation Phase

Problem formulation is a process for generating and evaluating preliminary hypotheses about why ecological effects have occurred, or may occur, from human activities. It provides the foundation for the entire ecological risk assessment. Early in problem formulation, objectives for the risk assessment are refined. Then the nature of the problem is evaluated and a plan for analyzing data and characterizing risk is developed. Any deficiencies in problem formulation will compromise all subsequent work on the risk assessment (see text note 3-1). The quality of the assessment will depend in part on the team conducting the assessment and its responsiveness to the risk manager's needs.

The makeup of the risk assessment team assembled to conduct problem formulation depends on the requirements of the risk assessment. The team should include professionals with expertise directly related to the level and type of problem under consideration and the ecosystem where the problem is likely to occur. Teams may range from one individual calculating a simple quotient where the information and algorithm are clearly established to a large interdisciplinary, interagency team typical of ecosystem-level risk assessments involving multiple stressors and ecological values.

Involvement by the risk management team and other interested parties in problem formulation can be most valuable during final selection of assessment endpoints, review of the conceptual models, and adjustments to the analysis plan. The degree of participation is commensurate with the complexity of the risk assessment and the magnitude of the risk management decision to be faced. Participation normally consists of approval and refinement rather than technical input (but see text note 2-3). The format used to involve risk managers needs to gain from, and be responsive to, their input without compromising the scientific validity of the risk assessment. The level

of involvement by interested parties in problem formulation is determined by risk managers.

3.1. Products of Problem Formulation

Problem formulation results in three products: (1) Assessment endpoints that adequately reflect management goals and the ecosystem they represent, (2) conceptual models that describe key relationships between a stressor and assessment endpoint or between several stressors and assessment endpoints, and (3) an analysis plan. The first step toward developing these products is to integrate available information as shown in the hexagon in figure 3-1; the products are shown as circles. While the assessment of available information is begun up front in problem formulation and the analysis plan is the final product, the order in which assessment endpoints and conceptual models are produced depends on why the risk assessment was initiated (see section 3.2). To enhance clarity, the following discussion is presented as a linear progression. However, problem formulation is frequently interactive and iterative rather than linear. Reevaluation may occur during any part of problem formulation.

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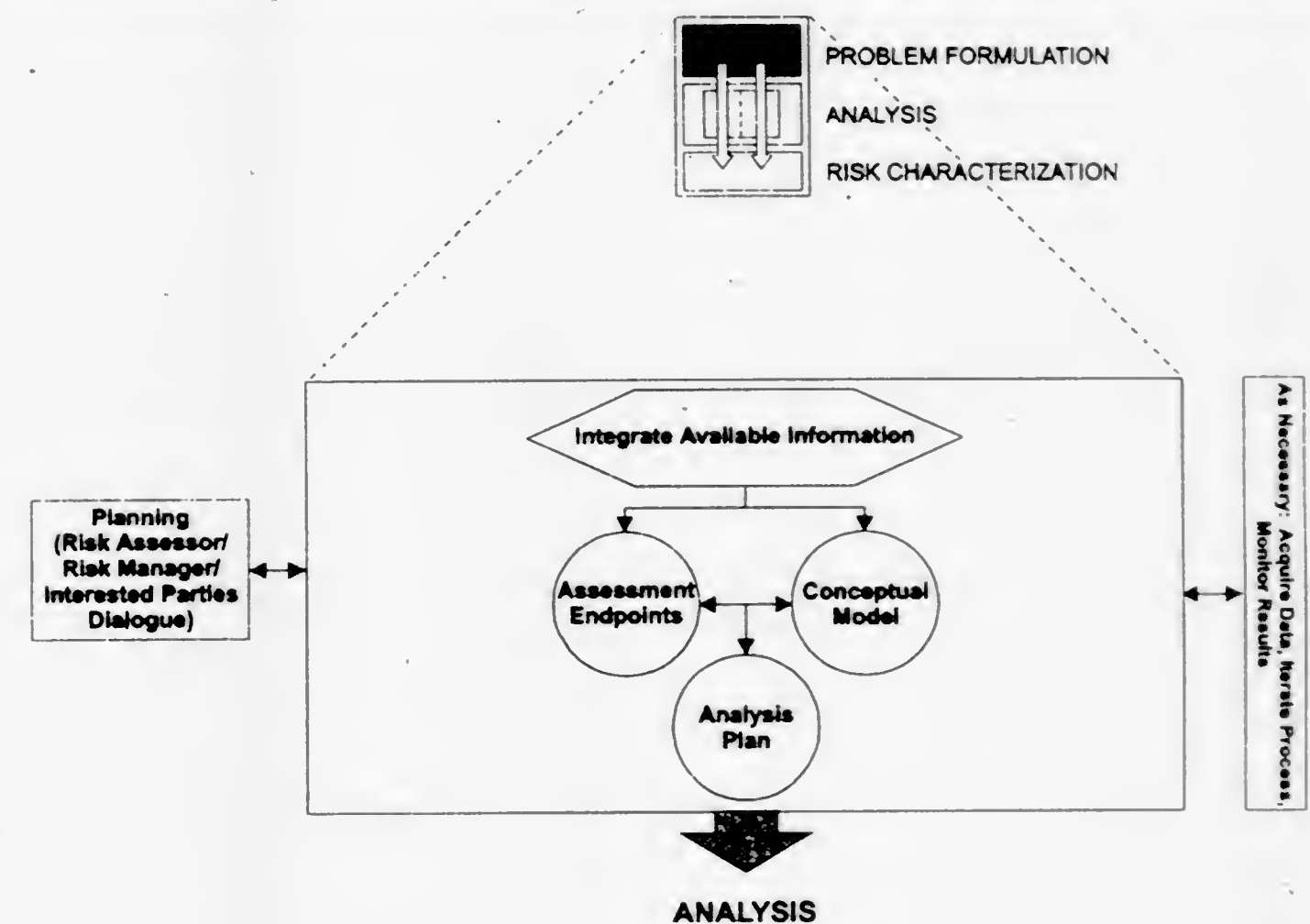


Figure 3-1. Problem formulation phase.

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3.2. Integration of Available Information

The foundation for problem formulation is based on how well available information on stressor sources and characteristics, exposure opportunities, characteristics of the ecosystem(s) potentially at risk, and ecological effects are integrated and used (see figure 3-1). Integration of available information is an iterative process that normally occurs throughout problem formulation. Initial evaluations often provide the basis for generating preliminary conceptual models or assessment endpoints, which in turn may lead risk assessors to seek other types of available information not previously recognized as needed.

The quality and quantity of information determine the course of problem formulation. When key information is of the appropriate type and sufficient quality and quantity, problem formulation can proceed effectively. When data are unavailable, the risk assessment may be suspended while additional data are collected or, if this is not possible, may be developed on the basis of what is known and what can be extrapolated from what is known. Risk assessments are frequently begun without all needed information, in which case the problem formulation process helps identify missing data and provides a framework for further data collection. Where data are few, the limitations of conclusions, or uncertainty, from the risk assessment should be clearly articulated in risk characterization (see text note 3-2).

The impetus for an ecological risk assessment influences what information is available at the outset and what information should be collected. For example, a risk assessment can be initiated because a known or potential stressor may enter the environment. Risk assessors evaluating a source or stressor will seek data on the effects with which the stressor might be associated and the ecosystems in which it will likely be introduced or found. If an observed adverse effect or change in ecological condition initiates the assessment, risk assessors will seek information about potential stressors and sources that could have caused the effect. When a risk assessment is initiated because of a desire to better manage an ecological value or entity (e.g., species, communities, ecosystems, or places), risk assessors will seek information on the specific condition or effect of interest, the characteristics of relevant ecosystems, and potential stressors and sources (see text note 3-3).

Information (actual, inferred, or estimated) is initially integrated in a scoping process that provides the foundation for developing problem formulation. Knowledge gained during scoping is used to identify missing information and potential assessment endpoints, and it provides the basis for early conceptualization of the problem being assessed. As problem formulation proceeds, information quality and applicability to the particular problem of concern are increasingly scrutinized. Where appropriate, further iterations may result in a comprehensive evaluation that helps risk assessors generate an array of risk hypotheses (see section 3.4.1). Once analysis plans are being formed, data validity becomes a significant factor for risk assessors to evaluate (see section 4.1 for a discussion of assessing data quality). Thus an evaluation of available information is an ongoing activity throughout problem formulation. The level of effort is driven by the type of assessment.

As the complexity and spatial scale of a risk assessment increase, information needs often escalate. Risk assessors consider the ways ecosystem characteristics directly influence when, how, and why particular ecological entities may become exposed and exhibit adverse effects due to particular stressors. Predicting risks from multiple chemical, physical, and biological stressors requires an effort to understand their interactions. Risk assessments for a region or watershed, where multiple stressors are the rule, require consideration of ecological processes operating at larger spatial scales.

Despite our limited knowledge of ecosystems and the stressors influencing them, the process of problem formulation offers a systematic approach for organizing and evaluating available information on stressors and possible effects. It can function as a preliminary risk assessment that is useful to risk assessors and decision makers. Text note 3-4 provides a series of questions that risk assessors should attempt to answer. This exercise will help risk assessors identify known and unknown relationships, both of which are important in problem formulation.

Problem formulation proceeds with the identification of assessment endpoints and the development of conceptual models and an analysis plan (discussed below). Early recognition that the reasons for initiating the risk assessment affect the order in which products are generated will help facilitate the development of problem formulation (see text note 3-3).

3.3. Selecting Assessment Endpoints

Assessment endpoints are explicit expressions of the actual environmental value that is to be protected, operationally defined by an ecological entity and its attributes (see section 3.3.2). Assessment endpoints are critical to problem formulation because they structure the assessment to address management concerns and are central to conceptual model development. Their relevance is determined by how well they target susceptible ecological entities. Their ability to support risk management decisions depends on whether they are measurable ecosystem characteristics that adequately represent management goals. The selection of ecological concerns and assessment endpoints at EPA has traditionally been done internally by individual Agency program offices (U.S. EPA, 1994a). More recently, interested and affected parties have helped identify management concerns and assessment endpoints in efforts to implement watershed or community-based environmental protection.

This section provides guidance on selecting and defining assessment endpoints. It is presented in two parts. Section 3.3.1 establishes three criteria (ecological relevance, susceptibility, and relevance to management goals) for determining how to select, among a broad array of possibilities, the specific ecological characteristics to target in the risk assessment that are responsive to general management goals and are scientifically defensible. Section 3.3.2 then provides specific guidance on how to convert selected ecological characteristics into operationally defined assessment endpoints that include both a defined entity and specific attributes amenable to measurement.

3.3.1. Criteria for Selection

All ecosystems are diverse, with many levels of ecological organization (e.g., individuals, populations, communities, ecosystems, landscapes) and multiple ecosystem processes. It is rarely clear which of these characteristics are most critical to ecosystem function, nor do professionals or the public always agree on which are most valuable. As a result, it is often a challenge to consider the array of possibilities and choose which ecological characteristics to protect to meet management goals. Those choices are critical, however, because they become the basis for defining assessment endpoints, the transition between broad management goals and the specific measures used in a risk assessment.

Three principal criteria are used to select ecological values that may be appropriate for assessment endpoints: (1) Ecological relevance, (2) susceptibility to known or potential stressors, and (3) relevance to management goals. Of these, ecological relevance and susceptibility are essential for selecting assessment endpoints that are scientifically defensible. However, to increase the likelihood that the risk assessment will be used in management decisions, assessment endpoints are more effective when they also reflect societal values and management goals. Given the complex functioning of ecosystems and the interdependence of ecological entities, it is likely that potential assessment endpoints can be identified that are both responsive to management goals and meet scientific criteria. Assessment endpoints that meet all three criteria provide the best foundation for an effective risk assessment (e.g., see text note 3-5).

3.3.1.1. Ecological Relevance

Ecologically relevant endpoints reflect important characteristics of the system and are functionally related to other endpoints (U.S. EPA, 1992a). Ecologically relevant endpoints may be identified at any level of organization (e.g., individual, population, community, ecosystem, landscape). The consequences of changes in these endpoints may be quantified (e.g., alteration of community structure from the loss of a keystone species) or inferred (e.g., survival of individuals is needed to maintain populations). Ecological entities are not ecologically relevant unless they are currently, or were historically, part of the ecosystem under consideration.

Ecologically relevant endpoints often help sustain the natural structure, function, and biodiversity of an ecosystem or its components. They may contribute to the food base (e.g., primary production), provide habitat (e.g., for food or reproduction), promote regeneration of critical resources (e.g., decomposition or nutrient cycling), or reflect the structure of the community, ecosystem, or landscape (e.g., species diversity or habitat mosaic). In landscape-level risk assessments, careful selection of assessment endpoints that address both species of concern and landscape-level ecosystem processes becomes important. It may be possible to select one or more species and an ecosystem process to represent larger functional community or ecosystem processes.

Ecological relevance is linked to the nature and intensity of potential effects,

the spatial and temporal scales where effects may occur, and the potential for recovery (see Determining Ecological Adversity, section 5.2.2). It is also linked to the level of ecological organization that could be adversely affected (see U.S. EPA, 1997a, for a discussion of how different levels of organization are used by the Agency in defining assessment endpoints). When changes in selected ecosystem entities are likely to cause multiple or widespread effects, such entities can be powerful components of assessment endpoints. They are particularly valuable when risk assessors are trying to identify the potential cascade of adverse effects that could result from loss or reduction of a species or a change in ecosystem function (see text note 3-6). Although a cascade of effects may be predictable, it is often difficult to predict the nature of all potential effects. Determining ecological relevance in specific cases requires professional judgment based on site-specific information, preliminary surveys, or other available information.

3.3.1.2. Susceptibility to Known or Potential Stressors

Ecological resources are considered susceptible when they are sensitive to a stressor to which they are, or may be, exposed. Susceptibility can often be identified early in problem formulation, but not always. Risk assessors may be required to use their best professional judgment to select the most likely candidates (see text note 3-7).

Sensitivity refers to how readily an ecological entity is affected by a particular stressor. Sensitivity is directly related to the mode of action of the stressors (e.g., chemical sensitivity is influenced by individual physiology and metabolic pathways). Sensitivity is also influenced by individual and community life-history characteristics. For example, stream species assemblages that depend on cobble and gravel habitat for reproduction are sensitive to fine sediments that fill in spaces between cobbles. Species with long life cycles and low reproductive rates are often more vulnerable to extinction from increases in mortality than species with short life cycles and high reproductive rates. Species with large home ranges may be more sensitive to habitat fragmentation when the fragment is smaller than their required home range compared to species with smaller home ranges that are encompassed within a fragment. However, habitat fragmentation may also affect species with small home ranges where migration is a necessary part of their life history and

fragmentation prevents migration and genetic exchange among subpopulations. Such life-history characteristics are important to consider when evaluating potential sensitivity.

Sensitivity can be related to the life stage of an organism when exposed to a stressor. Frequently, young animals are more sensitive to stressors than adults. For instance, Pacific salmon eggs and fry are very sensitive to fine-grain sedimentation in river beds because they can be smothered. Age-dependent sensitivity, however, is not only in the young. In many species, events like migration (e.g., in birds) and molting (e.g., in harbor seals) represent significant energy investments that increase vulnerability to stressors. Finally, sensitivity may be enhanced by the presence of other stressors or natural disturbances. For example, the presence of insect pests and disease may make plants more sensitive to damage from ozone (Heck, 1993). To determine how sensitivity at a particular life stage is critical to population parameters or community-level assessment endpoints may require further evaluation.

Measures of sensitivity may include mortality or adverse reproductive effects from exposure to toxics. Other possible measures of sensitivity include behavioral abnormalities; avoidance of significant food sources and nesting sites; loss of offspring to predation because of the proximity of stressors such as noise, habitat alteration, or loss; community structural changes; or other factors.

Exposure is the second key determinant in susceptibility. Exposure can mean co-occurrence, contact, or the absence of contact, depending on the stressor and assessment endpoint. Questions concerning where a stressor originates, how it moves through the environment, and how it comes in contact with the assessment endpoint are evaluated to determine susceptibility (see section 4.2 for more discussion on characterizing exposure). The amount and conditions of exposure directly influence how an ecological entity will respond to a stressor. Thus, to determine which entities are susceptible, it is important that the assessor consider the proximity of an ecological value to stressors of concern, the timing of exposure (both in terms of frequency and duration), and the intensity of exposure occurring during sensitive periods.

Adverse effects of a particular stressor may be important during one part of an organism's life cycle, such as early development or reproduction. They may result from exposure to a stressor or to the absence of a necessary resource

during a critical life stage. For example, if fish are unable to find suitable nesting sites during their reproductive phase, risk is significant even when water quality is high and food sources abundant. The interplay between life stage and stressors can be very complex (see text note 3-8).

Exposure may occur in one place or time, but effects may not be observed until another place or time. Both life-history characteristics and the circumstances of exposure influence susceptibility in this case. For instance, the temperature of the egg incubation medium of marine turtles affects the sex ratio of hatchlings, but population impacts are not observed until years later when the cohort of affected turtles begins to reproduce. Delayed effects and multiple-stressor exposures add complexity to evaluations of susceptibility (e.g., although toxicity tests may determine receptor sensitivity to one stressor, susceptibility may depend on the co-occurrence of another stressor that significantly alters receptor response). Conceptual models (see section 3.4) need to reflect these factors. If a species or other ecological entity is unlikely to be directly or indirectly exposed to the stressor of concern, or to the secondary effects of stressor exposure, it may be inappropriate as an assessment endpoint (see text note 3-7).

3.3.1.3. Relevance to Management Goals

Ultimately, the effectiveness of a risk assessment depends on whether it is used and improves the quality of management decisions. Risk managers are more willing to use a risk assessment for making decisions when it is based on ecological values that people care about. Thus, candidates for assessment endpoints include endangered species or ecosystems, commercially or recreationally important species, functional attributes that support food sources or flood control (e.g., wetland water sequestration), aesthetic values such as clean air in national parks, or the existence of charismatic species such as eagles or whales. However, selection of assessment endpoints based on public perceptions alone could lead to management decisions that do not consider important ecological information. While responsiveness to the public is important, it does not obviate the requirement for scientific validity.

The challenge is to find ecological values that meet the necessary scientific rigor as assessment endpoints that are also recognized as valuable by risk managers and the public. As an illustration, suppose an assessment is

designed to evaluate the risk of applying pesticide around a lake to control insects. At this lake, however, midges are susceptible to the pesticide and form the base of a complex food web that supports a native fish population popular with sportsmen. While both midges and fish represent key components of the aquatic community, selecting the fishery as the value for defining the assessment endpoint targets both ecological and community concerns. Selecting midges would not. The risk assessment can then characterize the risk to the fishery if the midge population is adversely affected. This choice maintains the scientific validity of the risk assessment while being responsive to management concerns. In those cases where a critical assessment endpoint is identified that is unpopular with the public, the risk assessor may find it necessary to present a persuasive case in its favor to risk managers based on scientific arguments.

Practical issues may influence what values are selected as potential assessment endpoints, such as what is required by statute (e.g., endangered species) or whether it is possible to achieve a particular management goal. For example, in a river already impounded throughout its reach by multiple dams, goals for reestablishing spawning habitat for free-living anadromous salmon may be feasible only if dams are removed. If this will not be considered, selection of other ecological values as potential endpoints in this highly modified system may be the only option. Another concern may be whether it is possible to directly measure important variables. Where it is possible to directly measure attributes of an assessment endpoint, extrapolation is unnecessary, thus preventing the introduction of a source of uncertainty. Assessment endpoints that cannot be measured directly but can be represented by measures that are easily monitored and modeled may still provide a good foundation for a risk assessment. However, while established measurement protocols are convenient and useful, they do not determine whether an assessment endpoint is appropriate. Data availability alone is not an adequate criterion for selection.

To ensure scientific validity, risk assessors are responsible for selecting and defining potential assessment endpoints based on an understanding of the ecosystem of concern. Risk managers and risk assessors should then come to agreement on the final selection.

3.3.2. Defining Assessment Endpoints

Once ecological values are selected as potential assessment endpoints, they need to be operationally defined. Two elements are required to define an assessment endpoint. The first is the identification of the specific valued ecological entity. This can be a species (e.g., eelgrass, piping plover), a functional group of species (e.g., piscivores), a community (e.g., benthic invertebrates), an ecosystem (e.g., lake), a specific valued habitat (e.g., wet meadows), a unique place (e.g., a remnant of native prairie), or other entity of concern. The second is the characteristic about the entity of concern that is important to protect and potentially at risk. Thus, it is necessary to define what is important for piping plovers (e.g., nesting and feeding conditions), a lake (e.g., nutrient cycling), or wet meadow (e.g., endemic plant community diversity). For an assessment endpoint to serve as a clear interpretation of the management goals and the basis for measurement in the risk assessment, both an entity and an attribute are required.

What distinguishes assessment endpoints from management goals is their neutrality and specificity. Assessment endpoints do not represent a desired achievement (i.e., goal). As such, they do not contain words like "protect," "maintain," or "restore," or indicate a direction for change such as "loss" or "increase." Instead they are ecological values defined by specific entities and their measurable attributes, providing a framework for measuring stress-response relationships. When goals are very broad it may be difficult to select appropriate assessment endpoints until the goal is broken down into multiple management objectives. A series of management objectives can clarify the inherent assumptions within the goal and help a risk assessor determine which ecological entities and attributes best represent each objective (see text box 2-6). From this, multiple assessment endpoints may be selected. See text note 3-9 for examples of management goals and assessment endpoints.

Assessment endpoints may or may not be distinguishable from measures, depending on the assessment endpoints selected and the type of measures. While it is the entity that influences the scale and character of a risk assessment, it is the attributes of an assessment endpoint that determine what to measure. Sometimes direct measures of effect can be collected on the attribute of concern. Where this occurs, the assessment endpoint and measure of

effect are the same and no extrapolation is necessary (e.g., if the assessment endpoint is "reproductive success of blue jays," egg production and fledgling success could potentially be directly measured under different stressor exposure scenarios). In other cases, direct measures may not be possible (e.g., toxicity in endangered species) and surrogate measures of effect must be selected. Thus, although assessment endpoints must be defined in terms of measurable attributes, selection does not depend on the ability to measure those attributes directly or on whether methods, models, and data are currently available. For practical reasons, it may be helpful to use assessment endpoints that have well-developed test methods, field measurement techniques, and predictive models (see Suter, 1993a). However, it is not necessary for methods to be standardized protocols, nor should assessment endpoints be selected simply because standardized protocols are readily available. The appropriate measures to use are generally identified during conceptual model development and specified in the analysis plan. Measures of ecosystem characteristics and exposure are determined by the entity and attributes selected and serve as important information in conceptual model development. See section 3.5.1 for issues surrounding the selection of measures.

Clearly defined assessment endpoints provide direction and boundaries for the risk assessment and can minimize miscommunication and reduce uncertainty; where they are poorly defined, inappropriate, or at the incorrect scale, they can be very problematic. Endpoints may be too broad, vague, or narrow, or they may be inappropriate for the ecosystem requiring protection. "Ecological integrity" is a frequently cited but vague goal and is too vague for an assessment endpoint. "Integrity" can only be used effectively when its meaning is explicitly characterized for a particular ecosystem, habitat, or entity. This may be done by selecting key entities or processes for an ecosystem and describing attributes that best represent integrity for that system. Assessment endpoints that are too narrowly defined may not support effective risk management. If an assessment is focused only on protecting the habitat of an endangered species, for example, the risk assessment may overlook other equally important characteristics of the ecosystem and fail to include critical variables (see text note 3-8). Finally, the assessment endpoint could fail to represent the ecosystem at risk. For

instance, selecting a game fish that grows well in reservoirs may meet a "fishable" management goal, but it would be inappropriate for evaluating risk from a new hydroelectric dam if the ecosystem of concern is a stream in which salmon spawn (see text note 3-5). Although the game fish will satisfy "fishable" goals and may be highly desired by local fishermen, a reservoir species does not represent the ecosystem at risk. Substituting "reproducing populations of indigenous salmonids" for a vague "viable fish populations" assessment endpoint could therefore prevent the development of an inappropriate risk assessment.

When well selected, assessment endpoints become powerful tools in the risk assessment process. One endpoint that is sensitive to many of the identified stressors, yet responds in different ways to different stressors, may provide an opportunity to consider the combined effects of multiple stressors while still distinguishing their effects. For example, fish population recruitment may be adversely affected at several life stages, in different habitats, through different ways, and by different stressors. Therefore, measures of effect, exposure, and ecosystem and receptor characteristics could be chosen to evaluate recruitment and provide a basis for distinguishing different stressors, individual effects, and their combined effects.

The assessment endpoint can provide a basis for comparing a range of stressors if carefully selected. The National Crop Loss Assessment Network (Heck, 1993) selected crop yields as the assessment endpoint to evaluate the cumulative effects of multiple stressors. Although the primary stressor was ozone, the crop-yield endpoint also allowed the risk assessors to consider the effects of sulfur dioxide and soil moisture. As Barnhouse et al. (1990) pointed out, an endpoint should be selected so that all the effects can be expressed in the same units (e.g., changes in the abundance of 1-year-old fish from exposure to toxicity, fishing pressure, and habitat loss). This is especially true when selecting assessment endpoints for multiple stressors. However, in situations where multiple stressors act on the structure and function of aquatic and terrestrial communities in a watershed, an array of assessment endpoints that represent the community and associated ecological processes is more effective than a single endpoint. When based on differing susceptibility to an array of stressors, carefully selected assessment endpoints can help risk assessors distinguish the

effects of diverse stressors. Exposure to multiple stressors may lead to effects at different levels of biological organization, for a cascade of adverse effects that should be considered.

Professional judgment and an understanding of the characteristics and function of an ecosystem are important for translating general goals into usable assessment endpoints. The less information available, the more critical it is to have informed professionals help in the selection. Common problems encountered in selecting assessment endpoints are summarized in text note 3-10.

Final assessment endpoint selection is an important risk manager-risk assessor checkpoint during problem formulation. Risk assessors and risk managers should agree that selected assessment endpoints effectively represent the management goals. In addition, the scientific rationale for their selection should be made explicit in the risk assessment.

3.4. Conceptual Models

A conceptual model in problem formulation is a written description and visual representation of predicted relationships between ecological entities and the stressors to which they may be exposed. Conceptual models represent many relationships. They may include ecosystem processes that influence receptor responses or exposure scenarios that qualitatively link land-use activities to stressors. They may describe primary, secondary, and tertiary exposure pathways (see section 4.2) or co-occurrence among exposure pathways, ecological effects, and ecological receptors. Multiple conceptual models may be generated to address several issues in a given risk assessment. Some of the benefits gained by developing conceptual models are featured in text note 3-11.

Conceptual models for ecological risk assessments are developed from information about stressors, potential exposure, and predicted effects on an ecological entity (the assessment endpoint). Depending on why a risk assessment is initiated, one or more of these categories of information are known at the outset (refer to section 3.2 and text note 3-3). The process of creating conceptual models helps identify the unknown elements.

The complexity of the conceptual model depends on the complexity of the problem: the number of stressors, number of assessment endpoints, nature of effects, and characteristics of the ecosystem. For single stressors and single assessment endpoints, conceptual models may be simple. In some cases,

the same basic conceptual model may be used repeatedly (e.g., in EPA's new chemical risk assessments). However, when conceptual models are used to describe pathways of individual stressors and assessment endpoints and the interaction of multiple and diverse stressors and assessment endpoints (e.g., assessments initiated to protect ecological values), more complex models and several submodels will often be needed. In this case, it can be helpful to create models that also represent expected ecosystem characteristics and function when stressors are not present.

Conceptual models consist of two principal components:

- A set of risk hypotheses that describe predicted relationships among stressor, exposure, and assessment endpoint response, along with the rationale for their selection.
- A diagram that illustrates the relationships presented in the risk hypotheses.

3.4.1. Risk Hypotheses

Hypotheses are assumptions made in order to evaluate logical or empirical consequences, or suppositions tentatively accepted to provide a basis for evaluation. Risk hypotheses are specific assumptions about potential risk to assessment endpoints (see text note 3-12) and may be based on theory and logic, empirical data, mathematical models, or probability models. They are formulated using a combination of professional judgment and available information on the ecosystem at risk, potential sources of stressors, stressor characteristics, and observed or predicted ecological effects on selected or potential assessment endpoints. These hypotheses may predict the effects of a stressor before they occur, or they may postulate why observed ecological effects occurred and ultimately what caused the effect. Depending on the scope of the risk assessment, risk hypotheses may be very simple, predicting the potential effect of one stressor on one receptor, or extremely complex, as is typical in value-initiated risk assessments that often include prospective and retrospective hypotheses about the effects of multiple complexes of stressors on diverse ecological receptors. Risk hypotheses represent relationships in the conceptual model and are not designed for statistically testing null and alternative hypotheses. However, they can be used to generate questions appropriate for research.

Although risk hypotheses are valuable even when information is limited, the amount and quality of data and

information will affect the specificity and level of uncertainty associated with risk hypotheses and the conceptual models they form. When preliminary information is conflicting, risk hypotheses can be constructed specifically to differentiate between competing predictions. The predictions can then be evaluated systematically either by using available data during the analysis phase or by collecting new data before proceeding with the risk assessment. Hypotheses and predictions set a framework for using data to evaluate functional relationships (e.g., stressor-response curves).

Early conceptual models are normally broad, identifying as many potential relationships as possible. As more information is incorporated, the plausibility of specific hypotheses helps risk assessors sort through potentially large numbers of stressor-effect relationships, and the ecosystem processes that influence them, to identify those risk hypotheses most appropriate for the analysis phase. It is then that justifications for selecting and omitting hypotheses are documented. Examples of risk hypotheses are provided in text note 3-13.

3.4.2. Conceptual Model Diagrams

Conceptual model diagrams are a visual representation of risk hypotheses. They are useful tools for communicating important pathways clearly and concisely and can be used to generate new questions about relationships that help formulate plausible risk hypotheses.

Typical conceptual model diagrams are flow diagrams containing boxes and arrows to illustrate relationships (see Appendix C). When this approach is used, it is helpful to use distinct and consistent shapes to distinguish stressors, assessment endpoints, responses, exposure routes, and ecosystem processes. Although flow diagrams are often used to illustrate conceptual models, there is no set configuration. Pictorial representations can be very effective (e.g., Bradley and Smith, 1989). Regardless of the configuration, a diagram's usefulness is linked to the detailed written descriptions and justifications for the relationships shown. Without this, diagrams can misrepresent the processes they are intended to illustrate.

When developing conceptual model diagrams, factors to consider include the number of relationships depicted, the comprehensiveness of the information, the certainty surrounding a linkage, and the potential for measurement. The number of relationships that can be depicted in one flow diagram depends

on their complexity. Several models that increasingly show more detail for smaller portions can be more effective than trying to create one model that shows everything at the finest detail. Flow diagrams that highlight data abundance or scarcity can provide insights on how the analyses should be approached and can be used to show the risk assessor's confidence in the relationship. They can also show why certain pathways were pursued and others were not.

Diagrams provide a working and dynamic representation of relationships. They should be used to explore different ways of looking at a problem before selecting one or several to guide analysis. Once the risk hypotheses are selected and flow diagrams drawn, they set the framework for final planning for the analysis phase.

3.4.3. Uncertainty in Conceptual Models

Conceptual model development may account for one of the most important sources of uncertainty in a risk assessment. If important relationships are missed or specified incorrectly, the risk characterization may misrepresent actual risks. Uncertainty arises from lack of knowledge about how the ecosystem functions, failure to identify and interrelate temporal and spatial parameters, omission of stressors, or overlooking secondary effects. In some cases, little may be known about how a stressor moves through the environment or causes adverse effects. Multiple stressors are the norm and a source of confounding variables, particularly for conceptual models that focus on a single stressor. Professionals may not agree on the appropriate conceptual model configuration. While simplification and lack of knowledge may be unavoidable, risk assessors should document what is known, justify the model, and rank model components in terms of uncertainty (see Smith and Shugart, 1994).

Uncertainty associated with conceptual models can be explored by considering alternative relationships. If more than one conceptual model is plausible, the risk assessor may evaluate whether it is feasible to follow separate models through analysis or whether the models can be combined to create a better model.

Conceptual models should be presented to risk managers to ensure that they communicate well and address managers' concerns. This check for completeness and clarity is a way to assess the need for changes before analysis begins. It is also valuable to revisit and where necessary revise conceptual models during risk

assessments to incorporate new information and recheck the rationale. If this is not feasible, it is helpful to present any new information during risk characterization along with associated uncertainties.

Throughout problem formulation, ambiguities, errors, and disagreements will occur, all of which contribute to uncertainty. Wherever possible, these sources of uncertainty should be eliminated through better planning. Because all uncertainty cannot be eliminated, a description of the nature of the uncertainties should be summarized at the close of problem formulation. See text note 3-14 for recommendations on how to address uncertainty.

3.5. Analysis Plan

The analysis plan is the final stage of problem formulation. During analysis planning, risk hypotheses are evaluated to determine how they will be assessed using available and new data. The plan includes a delineation of the assessment design, data needs, measures, and methods for conducting the analysis phase of the risk assessment. Analysis plans may be brief or extensive depending on the assessment. For some assessments (e.g., EPA's new chemical assessments), the analysis plan is already part of the established protocol and a new plan is generally unnecessary. As risk assessments become more unique and complex, the importance of a good analysis plan increases.

The analysis plan includes pathways and relationships identified during problem formulation that will be pursued during the analysis phase. Those hypotheses considered more likely to contribute to risk are targeted. The rationale for selecting and omitting risk hypotheses is incorporated into the plan and includes acknowledgment of data gaps and uncertainties. It also may include a comparison of the level of confidence needed for the management decision with that expected from alternative analyses in order to determine data needs and evaluate which analytical approach is best. When new data are needed, the feasibility of obtaining them can be taken into account.

Identification of the most critical relationships to evaluate in a risk assessment is based on the relationship of assessment endpoints to ecosystem structure and function, the relative importance or influence and mode of action of stressors on assessment endpoints, and other variables influencing ecological adversity (see section 5.2.2). However, final selection

of relationships that can be pursued in analysis is based on the strength of known relationships between stressors and effects, the completeness of known exposure pathways, and the quality and availability of data.

In situations where data are few and new data cannot be collected, it may be possible to extrapolate from existing data. Extrapolation allows the use of data collected from other locations or organisms where similar problems exist. For example, the relationship between nutrient availability and algal growth is well established and consistent. This relationship can be acknowledged despite differences in how it is manifested in particular ecosystems. When extrapolating from data, it is important to identify the source of the data, justify the extrapolation method, and discuss recognized uncertainties.

A phased, or tiered, risk assessment approach (see section 2.2) can facilitate management decisions in cases involving minimal data sets. However, where few data are available, recommendations for new data collection should be part of the analysis plan. When new data are needed and cannot be obtained, relationships that cannot be assessed are a source of uncertainty and should be described in the analysis plan and later discussed in risk characterization.

When determining what data to analyze and how to analyze them, consider how these analyses may increase understanding and confidence in the conclusions of the risk assessment and address risk management questions. During selection, risk assessors may ask questions such as: How relevant will the results be to the assessment endpoint(s) and conceptual model(s)? Are there sufficient data of high quality to conduct the analyses with confidence? How will the analyses help establish cause-and-effect relationships? How will results be presented to address managers' questions? Where are uncertainties likely to become a problem? Consideration of these questions during analysis planning will improve future characterization of risk (see section 5.2.1 for discussion of lines of evidence).

3.5.1. Selecting Measures

Assessment endpoints and conceptual models help risk assessors identify measurable attributes to quantify and predict change. However, determining what measures to use to evaluate risk hypotheses is both challenging and critical to the success of a risk assessment. There are three categories of measures. Measures of effect are

measurable changes in an attribute of an assessment endpoint or its surrogate in response to a stressor to which it is exposed (formerly measurement endpoints; see text note 3-15). Measures of exposure are measures of stressor existence and movement in the environment and their contact or co-occurrence with the assessment endpoint. Measures of ecosystem and receptor characteristics are measures of ecosystem characteristics that influence the behavior and location of entities selected as the assessment endpoint, the distribution of a stressor, and life-history characteristics of the assessment endpoint or its surrogate that may affect exposure or response to the stressor. Examples of the three types of measures are provided in text note 3-16 (see also Appendix A.2.1).

The selection of appropriate measures is particularly complicated when a cascade of ecological effects is likely to occur from a stressor. In these cases, the effect on one entity (i.e., the measure of effect) may become a stressor for other ecological entities (i.e., become a measure of exposure) and may result in impacts on one or more assessment endpoints. For example, if a pesticide reduces earthworm populations, change in earthworm population density could be the direct measure of effect of toxicity and in some cases may be an assessment endpoint. However, the reduction of worm populations may then become a secondary stressor to which worm-eating birds become exposed, measured as lowered food supply. This exposure may then result in a secondary measurable effect of starvation of young. In this case, although "bird fledgling success" may be an assessment endpoint that could be measured directly, measures of earthworm density, pesticide residue in earthworms and other food sources, availability of alternative foods, nest site quality, and competition for nests from other bird species may all be useful measurements.

When direct measurement of assessment endpoint responses is not possible, the selection of surrogate measures is necessary. The selection of what, where, and how to measure surrogate responses determines whether the risk assessment is still relevant to management decisions about an assessment endpoint. As an example, an assessment may be conducted to evaluate the potential risk of a pesticide used on seeds to an endangered species of seed-eating bird. The assessment endpoint entity is the endangered species. Example attributes include feeding behavior, survival, growth, and reproduction. While it may be possible

to directly collect measures of exposure and assessment endpoint life-history characteristics on the endangered species, it would not be appropriate to expose the endangered species to the pesticide to measure sensitivity. In this case, to evaluate susceptibility, the most appropriate surrogate measures would be on seed-eating birds with similar life-history characteristics and phylogeny. While insectivorous birds may serve as an adequate surrogate measure for determining the sensitivity of the endangered bird to the pesticide, they do not address issues of exposure.

Problem formulations based on assessment endpoints and selected measures that address both sensitivity and likely exposure to stressors will be relevant to management concerns. If assessment endpoints are not susceptible, their use in assessing risk can lead to poor management decisions (see section 3.3.1). To highlight the relationships among goals, assessment endpoints, and measures, text note 3-17 illustrates how these are related in water quality criteria. In this example, it is instructive to note that although water quality criteria are considered risk-based, they are not full risk assessments. Water quality criteria provide an effects benchmark for decision making and do not incorporate measures of exposure in the environment. Within that benchmark, there are a number of assumptions about significance (e.g., aquatic communities will be protected by achieving a benchmark derived from individual species' toxicological responses to a single chemical) and exposure (e.g., 1-hour and 4-day exposure averages). Such assumptions embedded in decision rules are important to articulate (see section 3.5.2).

The analysis plan provides a synopsis of measures that will be used to evaluate risk hypotheses. The plan is strongest when it contains explicit statements for how measures were selected, what they are intended to evaluate, and which analyses they support. Uncertainties associated with selected measures and analyses and plans for addressing them should be included in the plan when possible.

3.5.2. Ensuring That Planned Analyses Meet Risk Managers' Needs

The analysis plan is a risk manager-risk assessor checkpoint. Risk assessors and risk managers review the plan to ensure that the analyses will provide information the manager can use for

decision making. These discussions may also identify what can and cannot be done on the basis of a preliminary evaluation of problem formulation. A reiteration of the planning discussion helps ensure that the appropriate balance of requirements for the decision, data availability, and resource constraints is established for the risk assessment. This is also an appropriate time to conduct a technical review of the planning outcome.

Analysis plans include the analytical methods planned and the nature of the risk characterization options and considerations to be generated (e.g., quotients, narrative discussion, stressor-response curve with probabilities). A description of how data analyses will distinguish among risk hypotheses, the kinds of analyses to be used, and rationale for why different hypotheses were selected and eliminated are included. Potential extrapolations, model characteristics, types of data (including quality), and planned analyses (with specific tests for different types of data) are described. Finally, the plan includes a discussion of how results will be presented upon completion and the basis used for data selection.

Analysis planning is similar to the data quality objectives (DQO) process (see text note 3-18), which emphasizes identifying the problem by establishing study boundaries and determining necessary data quality, quantity, and applicability to the problem being evaluated (U.S. EPA, 1994c). The most important difference between problem formulation and the DQO process is the presence of a decision rule in a DQO that defines a benchmark for a management decision before the risk assessment is completed. The decision rule step specifies the statistical parameter that characterizes the population, specifies the action level for the study, and combines outputs from the previous DQO steps into an "if . . . then" decision rule that defines conditions under which the decision maker will choose alternative options (often used in tiered assessments; see also section 2.2.2). This approach provides the basis for establishing null and alternative hypotheses appropriate for statistical testing for significance that can be effective in this application. While this approach is sometimes appropriate, only certain kinds of risk assessments are based on benchmark decisions. Presentation of stressor-response curves with uncertainty

bounds will be more appropriate than statistical testing of decision criteria where risk managers must evaluate the range of stressor effects to which they compare a range of possible management options (see Suter, 1996).

The analysis plan is the final synthesis before the risk assessment proceeds. It summarizes what has been done during problem formulation, shows how the plan relates to management decisions that must be made, and indicates how data and analyses will be used to estimate risks. When the problem is clearly defined and there are enough data to proceed, analysis begins.

4. Analysis Phase

Analysis is a process that examines the two primary components of risk, exposure and effects, and their relationships between each other and ecosystem characteristics. The objective is to provide the ingredients necessary for determining or predicting ecological responses to stressors under exposure conditions of interest.

Analysis connects problem formulation with risk characterization. The assessment endpoints and conceptual models developed during problem formulation provide the focus and structure for the analyses. Analysis phase products are summary profiles that describe exposure and the relationship between the stressor(s) and response. These profiles provide the basis for estimating and describing risks in risk characterization.

At the beginning of the analysis phase, the information needs identified during problem formulation should have already been addressed (text note 4-1). During the analysis phase (figure 4-1), the risk assessor:

- Selects the data that will be used on the basis of their utility for evaluating the risk hypotheses (section 4.1)
- Analyzes exposure by examining the sources of stressors, the distribution of stressors in the environment, and the extent of co-occurrence or contact (section 4.2)
- Analyzes effects by examining stressor-response relationships, the evidence for causality, and the relationship between measures of effect and assessment endpoints (section 4.3)
- Summarizes the conclusions about exposure (section 4.2.2) and effects (section 4.3.2).

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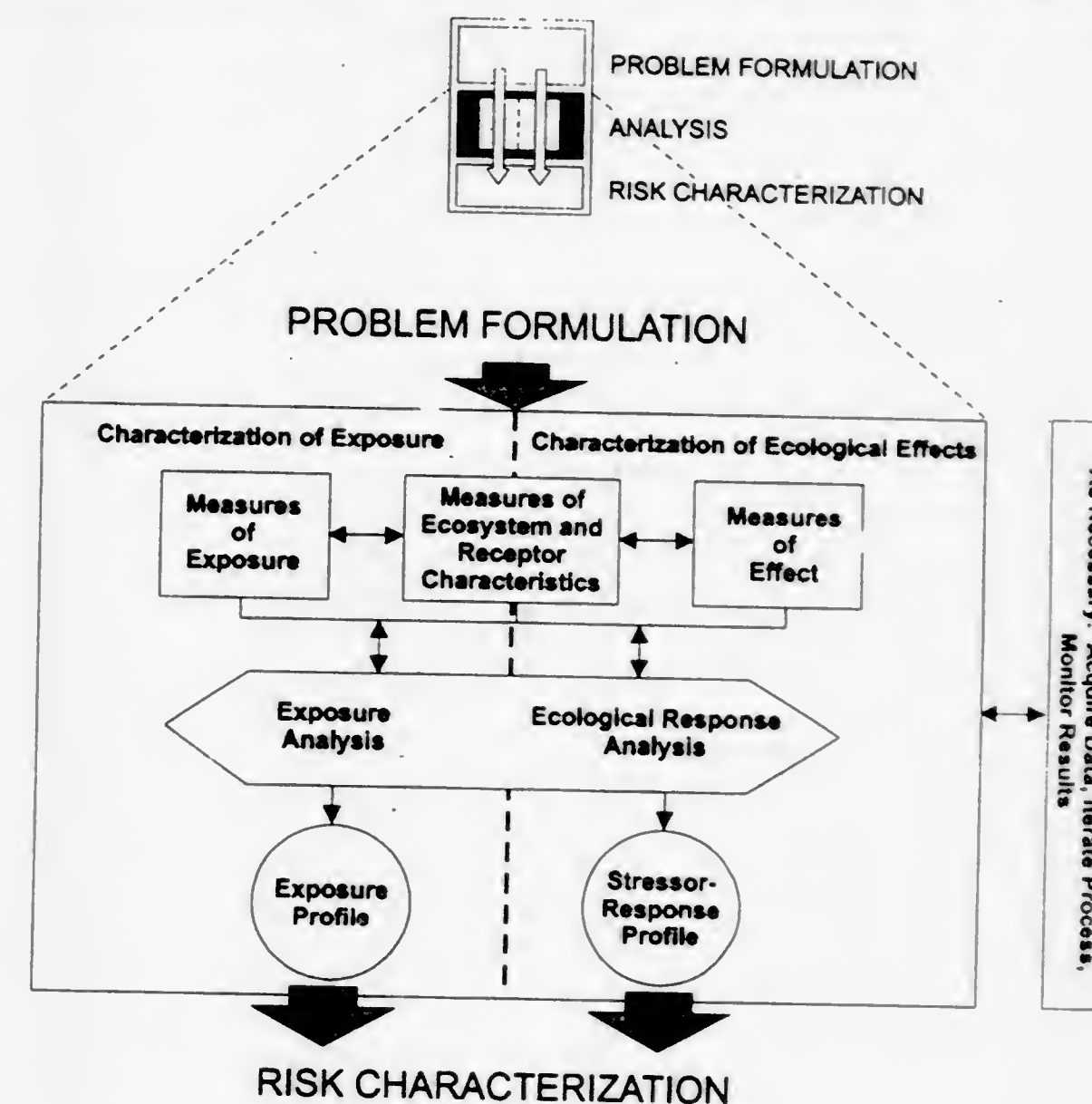


Figure 4-1. Analysis phase.

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The analysis phase is flexible, with substantial interaction between the effects and exposure characterizations as illustrated by the dotted line in figure 4-1. In particular, when secondary stressors and effects are of concern, exposure and effects analyses are conducted iteratively for different ecological entities, and they can become intertwined and difficult to differentiate. In the bottomland hardwoods assessment, for example (Appendix D), potential changes in the plant and animal communities under different flooding scenarios were examined. Risk assessors combined the stressor-response and exposure analyses within the FORFLO model for primary effects on the plant community and within the Habitat Suitability Index for secondary effects on the animal community. In addition, the distinction between analysis and risk estimation can become blurred. The model results developed for the bottomland hardwoods assessment were used directly in risk characterization.

The nature of the stressor influences the types of analyses conducted. The results may range from highly quantitative to qualitative, depending on the stressor and the scope of the assessment. For chemical stressors, exposure estimates emphasize contact and uptake into the organism, and effects estimations often entail extrapolation from test organisms to the organism of interest. For physical stressors, the initial disturbance may cause primary effects on the assessment endpoint (e.g., loss of wetland acreage). In many cases, however, secondary effects (e.g., decline of wildlife populations that depend on wetlands) may be the principal concern. The point of view depends on the assessment endpoints. Because adverse effects can occur even if receptors do not physically contact disturbed habitat, exposure analyses may emphasize co-occurrence with physical stressors rather than contact. For biological stressors, exposure analysis is an evaluation of entry, dispersal, survival, and reproduction (Orr et al., 1993). Because biological stressors can reproduce, interact with other organisms, and evolve over time, exposure and effects cannot always be quantified with confidence; therefore, they may be assessed qualitatively by eliciting expert opinion (Simberloff and Alexander, 1994).

4.1. Evaluating Data and Models for Analysis

At the beginning of the analysis phase, the assessor critically examines the data and models to ensure that they

can be used to evaluate the conceptual model developed in problem formulation (see sections 4.1.1 and 4.1.2). Section 4.1.3 addresses uncertainty evaluation.

4.1.1. Strengths and Limitations of Different Types of Data

Many types of data can be used for risk assessment. Data may come from laboratory or field studies or may be produced as output from a model. Familiarity with the strengths and limitations of different types of data can help assessors build on strengths and avoid pitfalls. Such a strategy improves confidence in the conclusions of the risk assessment.

Both laboratory and field studies (including field experiments and observational studies) can provide useful data for risk assessment. Because conditions can be controlled in laboratory studies, responses may be less variable and smaller differences easier to detect. However, the controls may limit the range of responses (e.g., animals cannot seek alternative food sources), so they may not reflect responses in the environment. In addition, larger-scale processes are difficult to replicate in the laboratory.

Field observational studies (surveys) measure biological changes in uncontrolled situations. Ecologists observe patterns and processes in the field and often use statistical techniques (e.g., correlation, clustering, factor analysis) to describe an association between a disturbance and an ecological effect. For instance, physical attributes of streams and their watersheds have been associated with changes in stream communities (Richards et al., 1997). Field surveys are often reported as status and trend studies. Messer et al. (1991) correlated a biotic index with acid concentrations to describe the extent and proportion of lakes likely to be impacted.

Field surveys usually represent exposures and effects (including secondary effects) better than estimates generated from laboratory studies or theoretical models. Field data are more important for assessments of multiple stressors or where site-specific factors significantly influence exposure. They are also often useful for analyses of larger geographic scales and higher levels of biological organization. Field survey data are not always necessary or feasible to collect for screening-level or prospective assessments.

Field surveys should be designed with sufficient statistical rigor to define one or more of the following:

- Exposure in the system of interest

- Differences in measures of effect between reference sites and study areas

- Lack of differences. Because conditions are not controlled in field studies, variability may be higher and it may be difficult to detect differences. For this reason, it is important to verify that studies have sufficient power to detect important differences.

Field surveys are most useful for linking stressors with effects when stressor and effect levels are measured concurrently. The presence of confounding factors can make it difficult to attribute observed effects to specific stressors. For this reason, field studies designed to minimize effects of potentially confounding factors are preferred, and the evidence for causality should be carefully evaluated (see section 4.3.1.2). In addition, because treatments may not be randomly applied or replicated, classical statistical methods need to be applied with caution (Hurlbert, 1984; Stewart-Oaten et al., 1986; Wiens and Parker, 1995; Eberhardt and Thomas, 1991). Intermediate between laboratory and field are studies that use environmental media collected from the field to examine response in the laboratory. Such studies may improve the power to detect differences and may be designed to provide evidence of causality.

Most data will be reported as measurements for single variables such as a chemical concentration or the number of dead organisms. In some cases, however, variables are combined and reported as indices. Several indices are used to evaluate effects, for example, the rapid bioassessment protocols (U.S. EPA, 1989a) and the Index of Biotic Integrity, or IBI (Karr, 1981; Karr et al., 1986). These have several advantages (Barbour et al., 1995), including the ability to:

- Provide an overall indication of biological condition by incorporating many attributes of system structure and function, from individual to ecosystem levels
- Evaluate responses from a broad range of anthropogenic stressors
- Minimize the limitations of individual metrics for detecting specific types of responses.

Indices also have several drawbacks, many of which are associated with combining heterogeneous variables. The final value may depend strongly on the function used to combine variables. Some indices (e.g., the IBI) combine only measures of effects. Differential sensitivity or other factors may make it difficult to attribute causality when many response variables are combined. To investigate causality, such indices may need to be separated into their

components, or analyzed using multivariate methods (Suter, 1993b; Ott, 1978). Interpretation becomes even more difficult when an index combines measures of exposure and effects because double counting may occur or changes in one variable can mask changes in another. Measures of exposure and effects may need to be separated in order to make appropriate conclusions. For these reasons, professional judgment plays a critical role in developing and applying indices.

Experience from similar situations is particularly useful in assessments of stressors not yet released (i.e., prospective assessments). Lessons learned from past experiences with related organisms are often critical in trying to predict whether an organism will survive, reproduce, and disperse in a new environment. Another example is toxicity evaluation for new chemicals through the use of structure-activity relationships, or SARs (Auer et al., 1994; Clements and Nabholz, 1994). The simplest application of SARs is to identify a suitable analog for which data are available to estimate the toxicity of a compound for which data are lacking. More advanced applications use quantitative structure-activity relationships (QSARs), which mathematically model the relationships between chemical structures and specific biological effects and are derived using information on sets of related chemicals (Lipnick, 1995; Cronin and Dearden, 1995). The use of analogous data without knowledge of the underlying processes may substantially increase the uncertainty in the risk assessment (e.g., Bradbury, 1994); however, use of these data may be the only option available.

Even though models may be developed and used as part of the risk assessment, sometimes the risk assessor relies on output of a previously developed model. Models are particularly useful when measurements cannot be taken, for example, when predicting the effects of a chemical yet to be manufactured. They can also provide estimates for times or locations that are impractical to measure and can provide a basis for extrapolating beyond the range of observation. Because models simplify reality, they may omit important processes for a particular system and may not reflect every condition in the real world. In addition, a model's output is only as good as the quality of its input variables, so critical evaluation of input data is important, as is comparing model outputs with measurements in the system of interest whenever possible.

Data and models for risk assessment are often developed in a tiered fashion (also see section 2.2). For example, simple models that err on the side of conservatism may be used first, followed by more elaborate models that provide more realistic estimates. Effects data may also be collected using a tiered approach. Short-term tests designed to evaluate effects such as lethality and immobility may be conducted first. If the chemical exhibits high toxicity or a preliminary characterization indicates a risk, then more expensive, longer-term tests that measure sublethal effects such as changes to growth and reproduction can be conducted. Later tiers may employ multispecies tests or field experiments. Tiered data should be evaluated in light of the decision they are intended to support; data collected for early tiers may not support more sophisticated needs.

4.1.2. Evaluating Measurement or Modeling Studies

The assessor's first task in the analysis phase is to carefully evaluate studies to determine whether they can support the objectives of the risk assessment. Each study should include a description of the purpose, methods used to collect data, and results of the work. The assessor evaluates the utility of studies by carefully comparing study objectives with those of the risk assessment for consistency. In addition, the assessor should determine whether the intended objectives were met and whether the data are of sufficient quality to support the risk assessment. This is a good opportunity to note the confidence in the information and the implications of different studies for use in the risk characterization, when the overall confidence in the assessment is discussed. Finally, the risk assessor should identify areas where existing data do not meet risk assessment needs. In these cases, collecting additional data is recommended.

EPA is in the process of adopting the American Society for Quality Control's E-4 guidelines for assuring environmental data quality throughout the Agency (ASQC, 1994) (text note 4-2). These guidelines describe procedures for collecting new data and provide a valuable resource for evaluating existing studies. Readers may also refer to Smith and Shugart, 1994; U.S. EPA, 1994d; and U.S. EPA, 1990, for more information on evaluating data and models.

A study's documentation determines whether it can be evaluated for its utility in risk assessment. Studies should contain sufficient information so that results can be reproduced, or at

least so the details of the author's work can be accessed and evaluated. Ideally, one should be able to access findings in their entirety; this provides the opportunity to conduct additional analyses of the data, if needed. For models, a number of factors increase the accessibility of methods and results. These begin with model code and documentation availability. Reports describing model results should include all important equations, tables of all parameter values, any parameter estimation techniques, and tables or graphs of results.

Study descriptions may not provide all the information needed to evaluate their utility for risk assessment. Assessors should communicate with the principal investigator or other study participants to gain information on study plans and their implementation. Useful questions for evaluating studies are shown in text note 4-3.

4.1.2.1. Evaluating the Purpose and Scope of the Study

Assessors should pay particular attention to the objectives and scope of studies that were designed for purposes other than the risk assessment at hand. This can identify important uncertainties and ensure that the information is used appropriately. An example is the evaluation of studies that measure condition (e.g., stream surveys, population surveys). While the measurements used to evaluate condition may be the same as the measures of effects identified in problem formulation, to support a causal argument they must be linked with stressors. In the best case, this means that the stressor was measured at the same time and place as the effect.

Similarly, a model may have been developed for purposes other than risk assessment. Its description should include the intended application, theoretical framework, underlying assumptions, and limiting conditions. This information can help assessors identify important limitations in its application for risk assessment. For example, a model developed to evaluate chemical transport in the water column alone is of limited utility for a risk assessment of a chemical that partitions readily into sediments.

The variables and conditions examined by studies should also be compared with those identified during problem formulation. In addition, the range of variability explored in the study should be compared with that of the risk assessment. A study that examines animal habitat needs in the winter, for example, may miss important breeding-season

requirements. Studies that minimize the amount of extrapolation needed are preferred. These are studies that represent:

- The measures identified in the analysis plan (i.e., measures of exposure, effects, and ecosystem and receptor characteristics)
- The time frame of interest
- The ecosystem and location of interest
- The environmental conditions of interest
- The exposure route of interest.

4.1.2.2. Evaluating the Design and Implementation of the Study

The assessor evaluates study design and implementation to determine whether the study objectives were met and the information is of sufficient quality to support the risk assessment. The study design provides insight into the sources and magnitude of uncertainty associated with the results (see section 4.1.3 for further discussion of uncertainty). Among the most important design issues of an effects study is whether it has enough statistical power to detect important differences or changes. Because this information is rarely reported (Peterman, 1990), the assessor may need to calculate the magnitude of an effect that could be detected under the study conditions (Rotenberry and Wiens, 1985).

Part of the exercise examines whether the study was conducted properly:

- For laboratory studies, this may mean determining whether test conditions were properly controlled and control responses were within acceptable bounds.
- For field studies, issues include identification and control of potentially confounding variables and careful reference site selection. (A discussion of reference site selection is beyond the scope of these Guidelines; however, it has been identified as a candidate topic for future development.)
- For models, issues include the program's structure and logic and the correct specification of algorithms in the model code (U.S. EPA, 1994d).

Evaluation is easier if standard methods or quality assurance/quality control (QA/QC) protocols are available and followed by the study. However, the assessor should still consider whether the identified precision and accuracy goals were achieved and whether they are appropriate for the risk assessment. For instance, detection limits identified for one environmental matrix may not be achievable for another, and thus it may not be possible to detect concentrations of interest. Study results

can still be useful even if a standard method was not used. However, this places an additional burden on both the authors and the assessors to provide and evaluate evidence that the study was conducted properly.

4.1.3. Evaluating Uncertainty

Uncertainty evaluation is a theme throughout the analysis phase. The objective is to describe and, where possible, quantify what is known and not known about exposure and effects in the system of interest. Uncertainty analyses increase the credibility of assessments by explicitly describing the magnitude and direction of uncertainties, and they provide the basis for efficient data collection or application of refined methods. Uncertainties characterized during the analysis phase are used during risk characterization, when risks are estimated (section 5.1) and the confidence in different lines of evidence is described (see section 5.2.1).

This section discusses sources of uncertainty relevant to the analysis of ecological exposure and effects; source and example strategies are shown in text note 4-4. Section 3.4.3 discusses uncertainty in conceptual model development. Readers are also referred to the discussion of uncertainties in the exposure assessment guidelines (U.S. EPA, 1992b).

Sources of uncertainty that are encountered when evaluating information include unclear communication of the data or its manipulation and errors in the information itself (descriptive errors). These are usually characterized by critically examining the sources of information and documenting the decisions made when handling it. The documentation should allow the reader to make an independent judgment about the validity of the assessor's decisions.

Sources of uncertainty that primarily arise when estimating the value of a parameter include variability, uncertainty about a quantity's true value, and data gaps. The term variability is used here to describe a characteristic's true heterogeneity. Examples include the variability in soil organic carbon, seasonal differences in animal diets, or differences in chemical sensitivity in different species. Variability is usually described during uncertainty analysis, although heterogeneity may not reflect a lack of knowledge and cannot usually be reduced by further measurement. Variability can be described by presenting a distribution or specific percentiles from it (e.g., mean and 95th percentile).

Uncertainty about a quantity's true value may include uncertainty about its magnitude, location, or time of occurrence. This uncertainty can usually be reduced by taking additional measurements. Uncertainty about a quantity's true magnitude is usually described by sampling error (or variance in experiments) or measurement error. When the quantity of interest is biological response, sampling error can greatly influence a study's ability to detect effects. Properly designed studies will specify sample sizes large enough to detect important signals. Unfortunately, many studies have sample sizes that are too small to detect anything but gross changes (Smith and Shugart, 1994; Peterman, 1990). The discussion should highlight situations where the power to detect difference is low. Meta-analysis has been suggested as a way to combine results from different studies to improve the ability to detect effects (Laird and Mosteller, 1990; Petitti, 1994). However, these approaches have thus far been applied primarily in human epidemiology and are still controversial (Mann, 1990).

Interest in quantifying spatial uncertainty has increased with the increasing use of geographic information systems (GIS). Strategies include verifying the locations of remotely sensed features and ensuring that the spatial resolution of data or a method is commensurate with the needs of the assessment. A growing literature is addressing other analytical challenges often associated with using spatial data (e.g., collinearity and autocorrelation, boundary and scale effects, lack of true replication) (Johnson and Gage, 1997; Fotheringham and Rogerson, 1993; Wiens and Parker, 1995). Large-scale assessments generally require aggregating information at smaller scales. It is not known how aggregation affects uncertainty (Hunsaker et al., 1990).

Nearly every assessment must treat situations where data are unavailable or available only for parameters other than those of interest. Examples include using laboratory data to estimate a wild animal's response to a stressor or using a bioaccumulation measurement from a different ecosystem. These data gaps are usually bridged with a combination of scientific analyses, scientific judgment, and perhaps policy decisions. In deriving an ambient water quality criterion (text note 3-17), for example, data and analyses are used to construct distributions of species sensitivity for a particular chemical. Scientific judgment is used to infer that species selected for testing will adequately represent the range of sensitivity of species in the

environment. Policy defines the extent to which individual species should be protected (e.g., 90% vs. 95% of the species). It is important to distinguish these elements.

Data gaps can often be filled by completing additional studies on the unknown parameter. When possible, the necessary data should be collected. At the least, opportunities for filling data gaps should be noted and carried through to risk characterization. Data or knowledge gaps that are so large that they preclude the analysis of either exposure or ecological effects should also be noted and discussed in risk characterization.

An important objective is to distinguish variability from uncertainties that arise from lack of knowledge (e.g., uncertainty about a quantity's true value) (U.S. EPA, 1995b). This distinction facilitates the interpretation and communication of results. For instance, in their food web models of herons and mink, MacIntosh et al. (1994) separated expected variability in individual animals' feeding habits from the uncertainty in the mean concentration of chemical in prey species. They could then place error bounds on the exposure distribution for the animals using the site and estimate the proportion of the animal population that might exceed a toxicity threshold.

Sources of uncertainty that arise primarily during model development and application include process model structure and the relationships between variables in empirical models. Process model descriptions should include assumptions, simplifications, and aggregations of variables (see text note 4-5). Empirical model descriptions should include the rationale for selection and model performance statistics (e.g., goodness of fit). Uncertainty in process or empirical models can be quantitatively evaluated by comparing model results to measurements taken in the system of interest or by comparing the results of different models.

Methods for analyzing and describing uncertainty can range from simple to complex. When little is known, a useful approach is to estimate exposure and effects based on alternative sets of assumptions (scenarios). Each scenario is carried through to risk characterization, where the underlying assumptions and the scenario's plausibility are discussed. Results can be presented as a series of point estimates with different aspects of uncertainty reflected in each. Classical statistical methods (e.g., confidence limits, percentiles) can readily describe

parameter uncertainty. For models, sensitivity analysis can be used to evaluate how model output changes with changes in input variables, and uncertainty propagation can be analyzed to examine how uncertainty in individual parameters can affect the overall uncertainty in the results. The availability of software for Monte Carlo analysis has greatly increased the use of probabilistic methods; readers are encouraged to follow suggested best practices (e.g., U.S. EPA, 1996a, 1997b). Other methods (e.g., fuzzy mathematics, Bayesian methodologies) are available but have not yet been extensively applied to ecological risk assessment (Smith and Shugart, 1994). The Agency does not endorse the use of any one method and cautions that the poor execution of any method can obscure rather than clarify the impact of uncertainty on an assessment's results. No matter what technique is used, the sources of uncertainty discussed above should be addressed.

4.2. Characterization of Exposure

Exposure characterization describes potential or actual contact or co-occurrence of stressors with receptors. It is based on measures of exposure and ecosystem and receptor characteristics that are used to analyze stressor sources, their distribution in the environment, and the extent and pattern of contact or co-occurrence (discussed in section 4.2.1). The objective is to produce a summary exposure profile (section 4.2.2) that identifies the receptor (i.e., the exposed ecological entity), describes the course a stressor takes from the source to the receptor (i.e., the exposure pathway), and describes the intensity and spatial and temporal extent of co-occurrence or contact. The profile also describes the impact of variability and uncertainty on exposure estimates and reaches a conclusion about the likelihood that exposure will occur.

The exposure profile is combined with an effects profile (discussed in section 4.3.2) to estimate risks. For the exposure profile to be useful, it should be compatible with the stressor-response relationship generated in the effects characterization.

4.2.1. Exposure Analyses

Exposure is contact or co-occurrence between a stressor and a receptor. The objective is to describe exposure in terms of intensity, space, and time in units that can be combined with the effects assessment. In addition, the assessor should be able to trace the paths of stressors from the source(s) to the receptors (i.e., describe the exposure pathway).

A complete picture of how, when, and where exposure occurs or has occurred is developed by evaluating sources and releases, the distribution of the stressor in the environment, and the extent and pattern of contact or co-occurrence. The order of these topics here is not necessarily the order in which they are executed. The assessor may start with information about tissue residues, for example, and attempt to link these residues with a source.

4.2.1.1. Describe the Source(s)

A source can be defined in two general ways: as the place where the stressor originates or is released (e.g., a smokestack, historically contaminated sediments) or the management practice or action (e.g., dredging) that produces stressors. In some assessments, the original sources may no longer exist and the source may be defined as the current location of the stressors. For example, contaminated sediments might be considered a source because the industrial plant that produced the contaminants no longer operates. A source is the first component of the exposure pathway and significantly influences where and when stressors eventually will be found. In addition, many management alternatives focus on modifying the source.

Exposure analyses may start with the source when it is known, begin with known exposures and attempt to link them to sources, or start with known stressors and attempt to identify sources and quantify contact. In any case, the objective of this step is to identify the sources, evaluate what stressors are generated, and identify other potential sources. Text note 4-6 provides some useful questions to ask when describing sources.

In addition to identifying sources, the assessor examines the intensity, timing, and location of stressors' release. The location of a source and the environmental media that first receive stressors are two attributes that deserve particular attention. For chemical stressors, the source characterization should also consider whether other constituents emitted by a source influence transport, transformation, or bioavailability of the stressor of interest. The presence of chloride in the feedstock of a coal-fired power plant influences whether mercury is emitted in divalent (e.g., as mercuric chloride) or elemental form (Meij, 1991), for example. In the best case, stressor generation is measured or modeled quantitatively; however, sometimes it can only be qualitatively described.

Many stressors have natural counterparts or multiple sources, so it

may be necessary to characterize these as well. Many chemicals occur naturally (e.g., most metals), are generally widespread from other sources (e.g., polycyclic aromatic hydrocarbons in urban ecosystems), or may have significant sources outside the boundaries of the current assessment (e.g., atmospheric nitrogen deposited in Chesapeake Bay). Many physical stressors also have natural counterparts. For instance, construction activities may release fine sediments into a stream in addition to those coming from a naturally undercut bank. Human activities may also change the magnitude or frequency of natural disturbance cycles. For example, development may decrease the frequency but increase the severity of fires or may increase the frequency and severity of flooding in a watershed.

The assessment scope identified during planning determines how multiple sources are evaluated. Options include (in order of increasing complexity):

- Focus only on the source under evaluation and calculate the incremental risks attributable to that source (common for assessments initiated with an identified source or stressor).
- Consider all sources of a stressor and calculate total risks attributable to that stressor. Relative source attribution can be accomplished as a separate step (common for assessments initiated with an observed effect or an identified stressor).
- Consider all stressors influencing an assessment endpoint and calculate cumulative risks to that endpoint (common for assessments initiated because of concern for an ecological value).

Source characterization can be particularly important for introduced biological stressors, since many of the strategies for reducing risks focus on preventing entry in the first place. Once the source is identified, the likelihood of entry may be characterized qualitatively. In their risk analysis of Chilean log importation, for example, the assessment team concluded that the beetle *Hylurgus ligniperda* had a high potential for entry into the United States. Their conclusion was based on the beetle's attraction to freshly cut logs and tendency to burrow under the bark, which would provide protection during transport (USDA, 1993).

4.2.1.2. Describe the Distribution of the Stressors or Disturbed Environment

The second objective of exposure analysis is to describe the spatial and temporal distribution of stressors in the

environment. For physical stressors that directly alter or eliminate portions of the environment, the assessor describes the temporal and spatial distribution of the disturbed environment. Because exposure occurs when receptors co-occur with or contact stressors, this characterization is a prerequisite for estimating exposure. Stressor distribution in the environment is examined by evaluating pathways from the source as well as the formation and subsequent distribution of secondary stressors (see text note 4-7).

4.2.1.2.1. Evaluating Transport Pathways

Stressors can be transported via many pathways (see text note 4-8). A careful evaluation can help ensure that measurements are taken in the appropriate media and locations and that models include the most important processes.

For a chemical stressor, the evaluation usually begins by determining into which media it can partition. Key considerations include physicochemical properties such as solubility and vapor pressure. For example, chemicals with low solubility in water tend to be found in environmental compartments with higher proportions of organic carbon such as soils, sediments, and biota. From there, the evaluation may examine the transport of the contaminated medium. Because chemical mixture constituents may have different properties, the analysis should consider how the composition of a mixture may change over time or as it moves through the environment. Guidance on evaluating the fate and transport of chemicals (including bioaccumulation) is beyond the scope of these Guidelines; readers are referred to the exposure assessment guidelines (U.S. EPA, 1992b) for additional information. The topics of bioaccumulation and biomagnification have been identified as candidates for further development.

The attributes of physical stressors also influence where they will go. The size of suspended particles determines where they will eventually deposit in a stream, for example. Physical stressors that eliminate ecosystems or portions of them (e.g., fishing activities or the construction of dams) may require no modeling of pathways—the fish are harvested or the valley is flooded. For these direct disturbances, the challenge is usually to evaluate secondary stressors and effects.

The dispersion of biological stressors has been described in two ways, as diffusion and jump-dispersal (Simberloff and Alexander, 1994). Diffusion involves a gradual spread

from the establishment site and is primarily a function of reproductive rates and motility. Jump-dispersal involves erratic spreads over periods of time, usually by means of a vector. The gypsy moth and zebra mussel have spread this way, the gypsy moth via egg masses on vehicles and the zebra mussel via boat ballast water. Some biological stressors can use both strategies, which may make dispersal rates very difficult to predict. The evaluation should consider factors such as vector availability, attributes that enhance dispersal (e.g., ability to fly, adhere to objects, disperse reproductive units), and habitat or host needs.

For biological stressors, assessors should consider the additional factors of survival and reproduction. Organisms use a wide range of strategies to survive in adverse conditions; for example, fungi form resting stages such as sclerotia and chlamydospores and some amphibians become dormant during drought. The survival of some organisms can be measured to some extent under laboratory conditions. However, it may be impossible to determine how long resting stages (e.g., spores) can survive under adverse conditions: many can remain viable for years. Similarly, reproductive rates may vary substantially depending on specific environmental conditions. Therefore, while life-history data such as temperature and substrate preferences, important predators, competitors or diseases, habitat needs, and reproductive rates are of great value, they should be interpreted with caution, and the uncertainty should be addressed by using several different scenarios.

Ecosystem characteristics influence the transport of all types of stressors. The challenge is to determine the particular aspects of the ecosystem that are most important. In some cases, ecosystem characteristics that influence distribution are known. For example, fine sediments tend to accumulate in areas of low energy in streams such as pools and backwaters. Other cases need more professional judgment. When evaluating the likelihood that an introduced organism will become established, for instance, it is useful to know whether the ecosystem is generally similar to or different from the one where the biological stressor originated. Professional judgment is used to determine which characteristics of the current and original ecosystems should be compared.

4.2.1.2.2. Evaluating Secondary Stressors

Secondary stressors can greatly alter conclusions about risk; they may be of

greater or lesser concern than the primary stressor. Secondary stressor evaluation is usually part of exposure characterization; however, it should be coordinated with the ecological effects characterization to ensure that all potentially important secondary stressors are considered.

For chemicals, the evaluation usually focuses on metabolites, biodegradation products, or chemicals formed through abiotic processes. As an example, microbial action increases the bioaccumulation of mercury by transforming inorganic forms to organic species. Many azo dyes are not toxic because of their large molecular size, but in an anaerobic environment, the polymer is hydrolyzed into more toxic water-soluble units. Secondary stressors can also be formed through ecosystem processes. Nutrient inputs into an estuary can decrease dissolved oxygen concentrations because they increase primary production and subsequent decomposition. Although transformation can be investigated in the laboratory, rates in the field may differ substantially, and some processes may be difficult or impossible to replicate in a laboratory. When evaluating field information, though, it may be difficult to distinguish between transformation processes (e.g., oil degradation by microorganisms) and transport processes (e.g., volatilization). Although they may be difficult to distinguish, the assessor should be aware that these two different processes will largely determine if secondary stressors are likely to be formed. A combination of these factors will also determine how much of the secondary stressor(s) may be bioavailable to receptors. These considerations reinforce the need to have a chemical risk assessment team experienced in physical/chemical as well as biological processes.

Physical disturbances can also generate secondary stressors, and identifying the specific consequences that will affect the assessment endpoint can be a difficult task. The removal of riparian vegetation, for example, can generate many secondary stressors, including increased nutrients, stream temperature, sedimentation, and altered stream flow. However, it may be the temperature change that is most responsible for adult salmon mortality in a particular stream.

Stressor distribution in the environment can be described using measurements, models, or a combination of the two. If stressors have already been released, direct measurement of environmental media or a combination of modeling and

measurement is preferred. Models enhance the ability to investigate the consequences of different management scenarios and may be necessary if measurements are not possible or practicable. They are also useful if a quantitative relationship of sources and stressors is desired. As examples, land use activities have been related to downstream suspended solids concentrations (Oberts, 1981), and downstream flood peaks have been predicted from the extent of wetlands in a watershed (Novitski, 1979; Johnston et al., 1990). Considerations for evaluating data collection and modeling studies are discussed in section 4.1. For chemical stressors, readers may also refer to the exposure assessment guidelines (U.S. EPA, 1992b). For biological stressors, distribution may be difficult to predict quantitatively. If it cannot be measured, it can be evaluated qualitatively by considering the potential for transport, survival, and reproduction (see above).

By the end of this step, the environmental distribution of the stressor or the disturbed environment should be described. This description provides the foundation for estimating the contact or co-occurrence of the stressor with ecological entities. When contact is known to have occurred, describing the stressor's environmental distribution can help identify potential sources and ensure that all important exposures are addressed.

4.2.1.3. Describe Contact or Co-Occurrence

The third objective is to describe the extent and pattern of co-occurrence or contact between stressors and receptors (i.e., exposure). This is critical—if there is no exposure, there can be no risk. Therefore, assessors should be careful to include situations where exposure may occur in the future, where exposure has occurred in the past but is not currently evident (e.g., in some retrospective assessments), and where ecosystem components important for food or habitat are or may be exposed, resulting in impacts to the valued entity (e.g., see figure D-2). Exposure can be described in terms of stressor and receptor co-occurrence, actual stressor contact with receptors, or stressor uptake by a receptor. The terms in which exposure is described depend on how the stressor causes adverse effects and how the stressor-response relationship is described. Relevant questions for examining contact or co-occurrence are shown in text note 4-9.

Co-occurrence is particularly useful for evaluating stressors that can cause effects without physically contacting ecological receptors. Whooping cranes

provide a case in point: they use sandbars in rivers for their resting areas, and they prefer sandbars with unobstructed views. Manmade obstructions such as bridges can interfere with resting behavior without ever actually contacting the birds. Co-occurrence is evaluated by comparing stressor distributions with that of the receptor. For instance, stressor location maps may be overlaid with maps of ecological receptors (e.g., bridge placement overlaid on maps showing historical crane resting habitat). Co-occurrence of a biological stressor and receptor may be used to evaluate exposure when, for example, introduced species and native species compete for the same resources. GIS has provided new tools for evaluating co-occurrence.

Most stressors must contact receptors to cause an effect. For example, tree roots must contact flood waters before their growth is impaired. Contact is a function of the amount or extent of a stressor in an environmental medium and activity or behavior of the receptors. For biological stressors, risk assessors usually rely on professional judgment; contact is often assumed to occur in areas and during times where the stressor and receptor are both present. Contact variables such as the mode of transmission between organisms may influence the contact between biological stressors and receptors.

For chemicals, contact is quantified as the amount of a chemical ingested, inhaled, or in material applied to the skin (potential dose). In its simplest form, it is quantified as an environmental concentration, with the assumptions that the chemical is well mixed or that the organism moves randomly through the medium. This approach is commonly used for respired media (water for aquatic organisms, air for terrestrial organisms). For ingested media (food, soil), another common approach combines modeled or measured contaminant concentrations with assumptions or parameters describing the contact rate (U.S. EPA, 1993a) (see text note 4-10).

Finally, some stressors must not only be contacted but also must be internally absorbed. A toxicant that causes liver tumors in fish, for example, must be absorbed and reach the target organ to cause the effect. Uptake is evaluated by considering the amount of stressor internally absorbed by an organism. It is a function of the stressor (e.g., a chemical's form or a pathogen's size), the medium (sorptive properties or presence of solvents), the biological membrane (integrity, permeability), and the organism (sickness, active uptake) (Suter et al., 1994). Because of

interactions between these four factors, uptake will vary on a situation-specific basis. Uptake is usually assessed by modifying an estimate of contact with a factor indicating the proportion of the stressor that is available for uptake (the bioavailable fraction) or actually absorbed. Absorption factors and bioavailability measured for the chemical, ecosystem, and organism of interest are preferred. Internal dose can also be evaluated by using a pharmacokinetic model or by measuring biomarkers or residues in receptors (see text note 4-11). Most stressor-response relationships express the amount of stressor in terms of media concentration or potential dose rather than internal dose; this limits the utility of uptake estimates in risk calculations. However, biomarkers and tissue residues can provide valuable confirmatory evidence that exposure has occurred, and tissue residues in prey organisms can be used for estimating risks to their predators.

The characteristics of the ecosystem and receptors must be considered to reach appropriate conclusions about exposure. Abiotic attributes may increase or decrease the amount of a stressor contacted by receptors. For example, naturally anoxic areas above contaminated sediments in an estuary may reduce the time bottom-feeding fish spend in contact with sediments and thereby reduce their exposure to contaminants. Biotic interactions can also influence exposure. For example, competition for high-quality resources may force some organisms into disturbed areas. The interaction between exposure and receptor behavior can influence both initial and subsequent exposures. Some chemicals reduce the prey's ability to escape predators, for instance, and thereby may increase predator exposure to the chemical as well as the prey's risk of predation. Alternatively, organisms may avoid areas, food, or water with contamination they can detect. While avoidance can reduce exposure to chemicals, it may increase other risks by altering habitat usage or other behavior.

Three dimensions should be considered when estimating exposure: intensity, time, and space. Intensity is the most familiar dimension for chemical and biological stressors and may be expressed as the amount of chemical contacted per day or the number of pathogenic organisms per unit area.

The temporal dimension of exposure has aspects of duration, frequency, and timing. Duration can be expressed as the time over which exposure occurs, some threshold intensity is exceeded, or intensity is integrated. If exposure

occurs as repeated discrete events of about the same duration, frequency is the important temporal dimension of exposure (e.g., the frequency of high-flow events in streams). If the repeated events have significant and variable durations, both duration and frequency should be considered. In addition, the timing of exposure, including the order or sequence of events, can be an important factor. Adirondack Mountain lakes receive high concentrations of hydrogen ions and aluminum during snow melt; this period also corresponds to the sensitive life stages of some aquatic organisms.

In chemical assessments, intensity and time are often combined by averaging intensity over time. The duration over which intensity is averaged is determined by considering the ecological effects of concern and the likely pattern of exposure. For example, an assessment of bird kills associated with granular carbofuran focused on short-term exposures because the effect of concern was acute lethality (Houseknecht, 1993). Because toxicological tests are usually conducted using constant exposures, the most realistic comparisons between exposure and effects are made when exposure in the real world does not vary substantially. In these cases, the arithmetic average exposure over the time period of toxicological significance is the appropriate statistic (U.S. EPA, 1992b). However, as concentrations or contact rates become more episodic or variable, the arithmetic average may not reflect the toxicologically significant aspect of the exposure pattern. In extreme cases, averaging may not be appropriate at all, and assessors may need to use a toxicodynamic model to assess chronic effects.

Spatial extent is another dimension of exposure. It is most commonly expressed in terms of area (e.g., hectares of paved habitat, square meters that exceed a particular chemical threshold). At larger spatial scales, however, the shape or arrangement of exposure may be an important issue, and area alone may not be the appropriate descriptor of spatial extent for risk assessment. A general solution to the problem of incorporating pattern into ecological assessments has yet to be developed; however, landscape ecology and GIS have greatly expanded the options for analyzing and presenting the spatial dimension of exposure (e.g., Pastorok et al., 1996).

The results of exposure analysis are summarized in the exposure profile, which is discussed in the next section.

4.2.2. Exposure Profile

The final product of exposure analysis is an exposure profile. Exposure should be described in terms of intensity, space, and time in units that can be combined with the effects assessment. The assessor should summarize the paths of stressors from the source to the receptors, completing the exposure pathway. Depending on the risk assessment, the profile may be a written document or a module of a larger process model. In any case, the objective is to ensure that the information needed for risk characterization has been collected and evaluated. In addition, compiling the exposure profile provides an opportunity to verify that the important exposure pathways identified in the conceptual model were evaluated.

The exposure profile identifies the receptor and describes the exposure pathways and intensity and spatial and temporal extent of co-occurrence or contact. It also describes the impact of variability and uncertainty on exposure estimates and reaches a conclusion about the likelihood that exposure will occur (see text note 4-12).

The profile should describe the applicable exposure pathways. If exposure can occur through many pathways, it may be useful to rank them, perhaps by contribution to total exposure. As an illustration, consider an assessment of risks to grebes feeding in a mercury-contaminated lake. The grebes may be exposed to methyl mercury in fish that originated from historically contaminated sediments. They may also be exposed by drinking lake water, but comparing the two exposure pathways may show that the fish pathway contributes the vast majority of exposure to mercury.

The profile should identify the ecological entity that the exposure estimates represent. For example, the exposure estimates may describe the local population of grebes feeding on a specific lake during the summer months.

The assessor should explain how each of the three general dimensions of exposure (intensity, time, and space) was treated. Continuing with the grebe example, exposure might be expressed as the daily potential dose averaged over the summer months and over the extent of the lake.

The profile should also describe how exposure can vary depending on receptor attributes or stressor levels. For instance, the exposure may be higher for grebes eating a larger proportion of bigger, more contaminated fish. Variability can be described by using a distribution or by describing where a

point estimate is expected to fall on a distribution. Cumulative-distribution functions (CDFs) and probability-density functions (PDFs) are two common presentation formats (see Appendix B, figures B-1 and B-2). Figures 5-3 to 5-5 show examples of cumulative frequency plots of exposure data. The point estimate/descriptor approach is used when there is not enough information to describe a distribution. Descriptors discussed in U.S. EPA, 1992b, are recommended, including central tendency to refer to the mean or median of the distribution, high end to refer to exposure estimates that are expected to fall between the 90th and 99.9th percentile of the exposure distribution, and bounding estimates to refer to those higher than any actual exposure.

The exposure profile should summarize important uncertainties (e.g., lack of knowledge; see section 4.1.3 for a discussion of the different sources of uncertainty). In particular, the assessor should:

- Identify key assumptions and describe how they were handled
- Discuss (and quantify, if possible) the magnitude of sampling and/or measurement error
- Identify the most sensitive variables influencing exposure
- Identify which uncertainties can be reduced through the collection of more data.

Uncertainty about a quantity's true value can be shown by calculating error bounds on a point estimate, as shown in figure 5-2.

All of the above information is synthesized to reach a conclusion about the likelihood that exposure will occur, completing the exposure profile. It is one of the products of the analysis phase and is combined with the stressor-response profile (the product of

the ecological effects characterization discussed in the next section) during risk characterization.

4.3. Characterization of Ecological Effects

To characterize ecological effects, the assessor describes the effects elicited by a stressor, links them to the assessment endpoints, and evaluates how they change with varying stressor levels. The characterization begins by evaluating effects data to specify the effects that are elicited, verify that they are consistent with the assessment endpoints, and confirm that the conditions under which they occur are consistent with the conceptual model. Once the effects of interest are identified, the assessor conducts an ecological response analysis (section 4.3.1), evaluating how the magnitude of the effects change with varying stressor levels and the evidence that the stressor causes the effect, and then linking the effects with the assessment endpoint. Conclusions are summarized in a stressor-response profile (section 4.3.2).

4.3.1. Ecological Response Analysis

Ecological response analysis examines three primary elements: the relationship between stressor levels and ecological effects (section 4.3.1.1), the plausibility that effects may occur or are occurring as a result of exposure to stressors (section 4.3.1.2), and linkages between measurable ecological effects and assessment endpoints when the latter cannot be directly measured (section 4.3.1.3).

4.3.1.1. Stressor-Response Analysis

To evaluate ecological risks, one must understand the relationships between stressors and resulting responses. The stressor-response relationships used in a particular assessment depend on the

scope and nature of the ecological risk assessment as defined in problem formulation and reflected in the analysis plan. For example, an assessor may need a point estimate of an effect (such as an LC₅₀) to compare with point estimates from other stressors. The shape of the stressor-response curve may be needed to determine the presence or absence of an effects threshold or for evaluating incremental risks, or stressor-response curves may be used as input for effects models. If sufficient data are available, the risk assessor may construct cumulative distribution functions using multiple-point estimates of effects. Or the assessor may use process models that already incorporate empirically derived stressor-response relationships (see section 4.3.1.3). Text note 4-13 provides some questions for stressor-response analysis.

This section describes a range of stressor-response approaches available to risk assessors following a theme of variations on the classical stressor-response relationship (e.g., figure 4-2). More complex relationships are shown in figure 4-3, which illustrates a range of projected responses of zooplankton populations to pesticide exposure based on laboratory tests. In field studies, the complexity of these responses could increase even further, considering factors such as potential indirect effects of pesticides on zooplankton populations (e.g., competitive interactions between species). More complex patterns can also occur at higher levels of biological organization; ecosystems may respond to stressors with abrupt shifts to new community or system types (Holling, 1978).

BILLING CODE 6540-50-P

a: Stressor-response curves
(e.g., dose-% mortality)

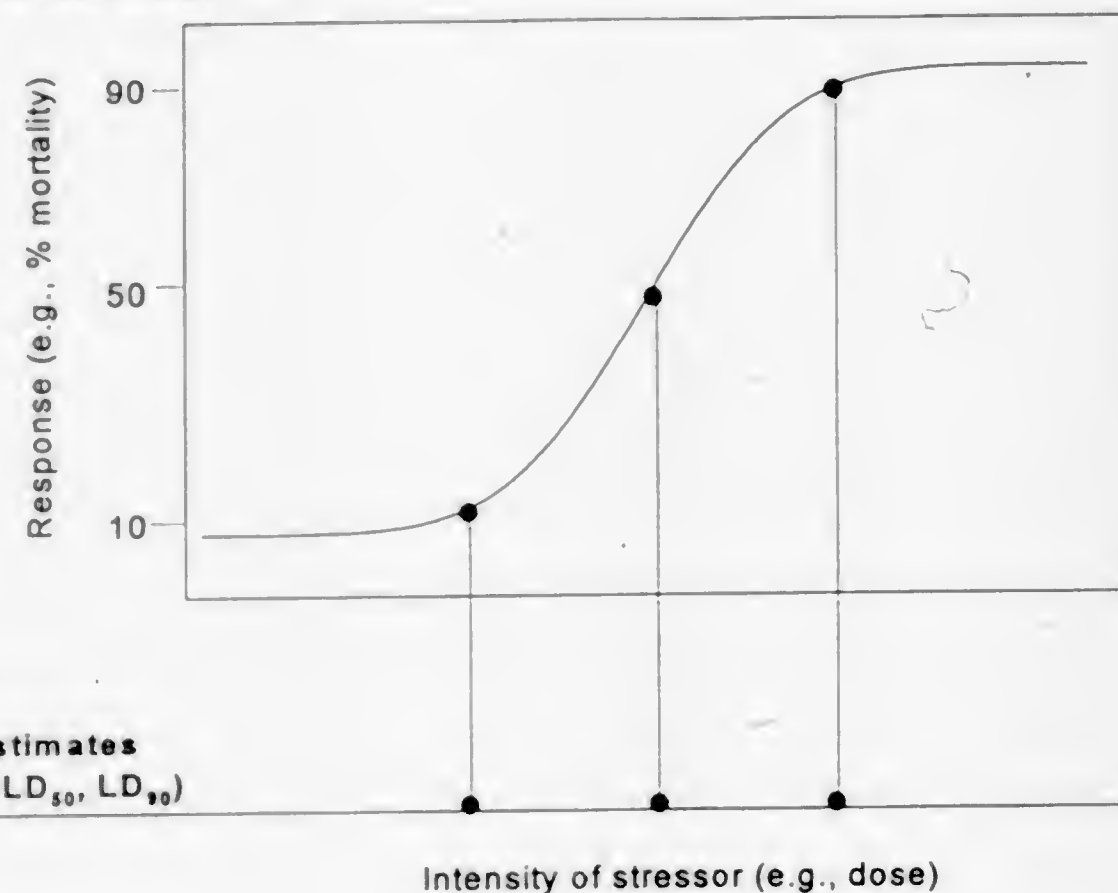


Figure 4-2. A simple example of a stressor-response relationship. Substantially more complex relationships are typical of many ecological risk assessments, given the range of stressors, endpoints, and environmental situations often encountered.

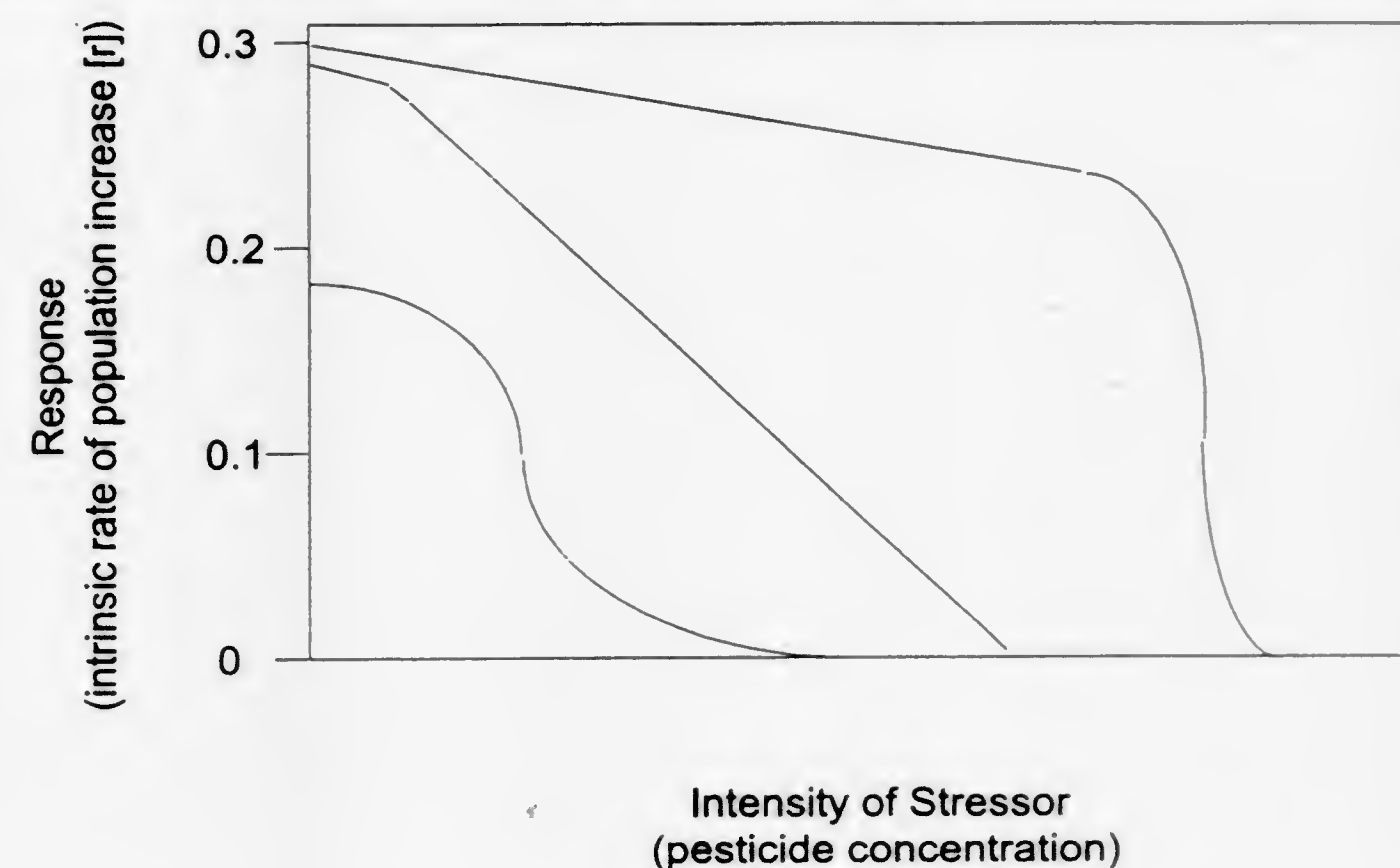


Figure 4-3. Variations in stressor-response relationships. These curves illustrate a range of responses to pesticide exposure of the intrinsic rate of increase of zooplankton populations (adapted from Schindler, 1987).

BILLING CODE 6560-50-C

In simple cases, one response variable (e.g., mortality, incidence of abnormalities) is analyzed, and most quantitative techniques have been developed for univariate analysis. If the response of interest is composed of many individual variables (e.g., species abundances in an aquatic community), multivariate techniques may be useful. These have a long history of use in ecology (see texts by Gauch, 1982; Pielou, 1984; Ludwig and Reynolds, 1988) but have not yet been extensively applied in risk assessment. While quantifying stressor-response relationships is encouraged, qualitative evaluations are also possible (text note 4-14).

Stressor-response relationships can be described using intensity, time, or space. Intensity is probably the most familiar of these and is often used for chemicals (e.g., dose, concentration). Exposure duration is also commonly used for chemical stressor-response relationships; for example, median acute effects levels are always associated with a time parameter (e.g., 24 hours). As noted in text note 4-14, the timing of exposure was the critical dimension in evaluating the relationship between seed germination and soil moisture (Pearlstone et al., 1985). The spatial dimension is often of concern for physical stressors. For instance, the extent of suitable habitat was related to the probability of sighting a spotted owl (Thomas et al., 1990), and water-table depth was related to tree growth by Phipps (1979).

Single-point estimates and stressor-response curves can be generated for some biological stressors. For pathogens such as bacteria and fungi, inoculum levels (e.g., spores per milliliter; propagules per unit of substrate) may be related to symptoms in a host (e.g., lesions per area of leaf surface, total number of plants infected) or actual signs of the pathogen (asexual or sexual fruiting bodies, sclerotia, etc.). For other biological stressors such as introduced species, simple stressor-response relationships may be inappropriate.

Data from individual experiments can be used to develop curves and point estimates both with and without associated uncertainty estimates (see figures 5-2 and 5-3). The advantages of curve-fitting approaches include using all of the available experimental data and the ability to interpolate to values other than the data points measured. If extrapolation outside the range of experimental data is required, risk assessors should justify that the observed experimental relationships remain valid. A disadvantage of curve fitting is that the number of data points

required to complete an analysis may not always be available. For example, while standard toxicity tests with aquatic organisms frequently contain sufficient experimental treatments to permit regression analysis, this is often not the case for toxicity tests with wildlife species.

Risk assessors sometimes use curve-fitting analyses to determine particular levels of effect. These point estimates are interpolated from the fitted line. Point estimates may be adequate for simple assessments or comparative studies of risk and are also useful if a decision rule for the assessment was identified during the planning phase (see section 2). Median effect levels (text note 4-15) are frequently selected because the level of uncertainty is minimized at the midpoint of the regression curve. While a 50% effect level for an endpoint such as survival may not be appropriately protective for the assessment endpoint, median effect levels can be used for preliminary assessments or comparative purposes, especially when used in combination with uncertainty modifying factors (see text note 5-3). Selection of a different effect level (10%, 20%, etc.) can be arbitrary unless there is some clearly defined benchmark for the assessment endpoint. Thus, it is preferable to carry several levels of effect or the entire stressor-response curve forward to risk estimation.

When risk assessors are particularly interested in effects at lower stressor levels, they may seek to establish "no-effect" stressor levels based on comparisons between experimental treatments and controls. Statistical hypothesis testing is frequently used for this purpose. (Note that statistical hypotheses are different from the risk hypotheses discussed in problem formulation; see text note 3-12). An example of this approach for deriving chemical no-effect levels is provided in text note 4-16. A feature of statistical hypothesis testing is that the risk assessor is not required to pick a particular effect level of concern. The no-effect level is determined instead by experimental conditions such as the number of replicates as well as the variability inherent in the data. Thus it is important to consider the level of effect detectable in the experiment (i.e., its power) in addition to reporting the no-effect level. Another drawback of this approach is that it is difficult to evaluate effects associated with stressor levels other than the actual treatments tested. Several investigators (Stephan and Rogers, 1985; Suter, 1993a) have proposed using regression analysis as an

alternative to statistical hypothesis testing.

In observational field studies, statistical hypothesis testing is often used to compare site conditions with a reference site(s). The difficulties of drawing proper conclusions from these types of studies (which frequently cannot employ replication) have been discussed by many investigators (see section 4.1.1). Risk assessors should examine whether sites were carefully matched to minimize differences other than the stressor and consider whether potential covariates should be included in any analysis. In contrast with observational studies, an advantage of experimental field studies is that treatments can be replicated, increasing the confidence that observed differences are due to the treatment.

Experimental data can be combined to generate multiple-point estimates that can be displayed as cumulative distribution functions. Figure 5-5 shows an example for species sensitivity derived from multiple-point estimates (EC₅₀s) for freshwater algae (and one vascular plant species) exposed to an herbicide. These distributions can help identify stressor levels that affect a minority or majority of species. A limiting factor in the use of cumulative frequency distributions is the amount of data needed as input. Cumulative effects distribution functions can also be derived from models that use Monte Carlo or other methods to generate distributions based on measured or estimated variation in input parameters for the models.

When multiple stressors are present, stressor-response analysis is particularly challenging. Stressor-response relationships can be constructed for each stressor separately and then combined. Alternatively, the relationship between response and the suite of stressors can be combined in one analysis. It is preferable to directly evaluate complex chemical mixtures present in environmental media (e.g., wastewater effluents, contaminated soils (U.S. EPA, 1986a)), but it is important to consider the relationship between the samples tested and the potential spatial and temporal variability in the mixture. The approach taken for multiple stressors depends on the feasibility of measuring them and whether an objective of the assessment is to project different stressor combinations.

In some cases, multiple regression analysis can be used to empirically relate multiple stressors to a response. Detenbeck (1994) used this approach to evaluate change in the water quality of wetlands resulting from multiple physical stressors. Multiple regression

analysis can be difficult to interpret if the explanatory variables (i.e., the stressors) are not independent. Principal components analysis can be used to extract independent explanatory variables formed from linear combinations of the original variables (Pielou, 1984).

4.3.1.2. Establishing Cause-and-Effect Relationships (Causality)

Causality is the relationship between cause (one or more stressors) and effect (response to the stressor(s)). Without a sound basis for linking cause and effect, uncertainty in the conclusions of an ecological risk assessment is likely to be high. Developing causal relationships is especially important for risk assessments driven by observed adverse ecological effects such as bird or fish kills or a shift in the species composition of an area. This section describes considerations for evaluating causality based on criteria developed by Fox (1991) primarily for observational data and additional criteria for experimental evaluation of causality modified from Koch's postulates (e.g., see Woodman and Cowling, 1987).

Evidence of causality may be derived from observational evidence (e.g., bird kills are associated with field application of a pesticide) or experimental data (laboratory tests with the pesticides in question show bird kills at levels similar to those found in the field), and causal associations can be strengthened when both types of information are available. But since not all situations lend themselves to formal experimentation, scientists have looked for other criteria, based largely on observation rather than experiment, to support a plausible argument for cause and effect. Text note 4-17 provides criteria based on Fox (1991) that are very similar to others reviewed by Fox (U.S. Department of Health, Education, and Welfare, 1964; Hill, 1965; Susser, 1986a, b). While data to support some criteria may be incomplete or missing for any given assessment, these criteria offer a useful way to evaluate available information.

The strength of association between stressor and response is often the main reason that adverse effects such as bird kills are linked to specific events or actions. A stronger response to a hypothesized cause is more likely to indicate true causation. Additional strong evidence of causation is when a response follows after a change in the hypothesized cause (predictive performance).

The presence of a biological gradient or stressor-response relationship is another important criterion for

causality. The stressor-response relationship need not be linear. It can be a threshold, sigmoidal, or parabolic phenomenon, but in any case it is important that it can be demonstrated. Biological gradients, such as effects that decrease with distance from a toxic discharge, are frequently used as evidence of causality. To be credible, such relationships should be consistent with current biological or ecological knowledge (biological plausibility).

A cause-and-effect relationship that is demonstrated repeatedly (consistency of association) provides strong evidence of causality. Consistency may be shown by a greater number of instances of association between stressor and response, occurrences in diverse ecological systems, or associations demonstrated by diverse methods (Hill, 1965). Fox (1991) adds that in ecotoxicology, an association's occurrence in more than one species and population is very strong evidence for causation. An example would be the many bird species killed by carbofuran applications (Houseknecht, 1993). Fox (1991) also believes that causality is supported if the same incident is observed by different persons under different circumstances and at different times.

Conversely, inconsistency in association between stressor and response is strong evidence against causality (e.g., the stressor is present without the expected effect, or the effect occurs but the stressor is not found). Temporal incompatibility (i.e., the presumed cause does not precede the effect) and incompatibility with experimental or observational evidence (factual implausibility) are also indications against a causal relationship.

Two other criteria may be of some help in defining causal relationships: specificity of an association and probability. The more specific or diagnostic the effect, the more likely it is to have a consistent cause. However, Fox (1991) argues that effect specificity does little to strengthen a causal claim. Disease can have multiple causes, a substance can behave differently in different environments or cause several different effects, and biochemical events may elicit many biological responses. But in general, the more specific or localized the effects, the easier it is to identify the cause. Sometimes, a stressor may have a distinctive mode of action that suggests its role. Yoder and Rankin (1995) found that patterns of change observed in fish and benthic invertebrate communities could serve as indicators for different types of

anthropogenic impact (e.g., nutrient enrichment vs. toxicity).

For some pathogenic biological stressors, the causal evaluations proposed by Koch (see text note 4-18) may be useful. For chemicals, ecotoxicologists have slightly modified Koch's postulates to provide evidence of causality (Suter, 1993a). The modifications are:

- The injury, dysfunction, or other putative effect of the toxicant must be regularly associated with exposure to the toxicant and any contributory causal factors.
- Indicators of exposure to the toxicant must be found in the affected organisms.
- The toxic effects must be seen when organisms or communities are exposed to the toxicant under controlled conditions, and any contributory factors should be manifested in the same way during controlled exposures.
- The same indicators of exposure and effects must be identified in the controlled exposures as in the field.

These modifications are conceptually identical to Koch's postulates. While useful, this approach may not be practical if resources for experimentation are not available or if an adverse effect may be occurring over such a wide spatial extent that experimentation and correlation may prove difficult or yield equivocal results.

Woodman and Cowling (1987) provide a specific example of a causal evaluation. They proposed three rules for establishing the effects of airborne pollutants on the health and productivity of forests: (1) The injury or dysfunction symptoms observed in the case of individual trees in the forest must be associated consistently with the presence of the suspected causal factors, (2) the same injury or dysfunction symptoms must be seen when healthy trees are exposed to the suspected causal factors under controlled conditions, and (3) natural variation in resistance and susceptibility observed in forest trees also must be seen when clones of the same trees are exposed to the suspected causal factors under controlled conditions.

Experimental techniques are frequently used for evaluating causality in complex chemical mixtures. Options include evaluating separated components of the mixture, developing and testing a synthetic mixture, or determining how a mixture's toxicity relates to that of individual components. The choice of method depends on the goal of the assessment and the resources and test data that are available.

Laboratory toxicity identification evaluations (TIEs) can be used to help determine which components of a chemical mixture cause toxic effects. By using fractionation and other methods, the TIE approach can help identify chemicals responsible for toxicity and show the relative contributions of different chemicals in aqueous effluents (U.S. EPA, 1988a, 1989b, c) and sediments (e.g., Ankley et al., 1990).

Risk assessors may utilize data from synthetic chemical mixtures if the individual chemical components are well characterized. This approach allows for manipulation of the mixture and investigation of how varying the components that are present or their ratios may affect mixture toxicity, but it also requires additional assumptions about the relationship between effects of the synthetic mixture and those of the environmental mixture. (See section 5.1.3 for additional discussion of mixtures.)

4.3.1.3. Linking Measures of Effect to Assessment Endpoints

Assessment endpoints express the environmental values of concern for a risk assessment, but they cannot always be measured directly. When measures of effect differ from assessment endpoints, sound and explicit linkages between them are needed. Risk assessors may make these linkages in the analysis phase or, especially when linkages rely on professional judgment, work with measures of effect through risk estimation (in risk characterization) and then connect them with assessment endpoints. Common extrapolations used to link measures of effect with assessment endpoints are shown in text note 4-19.

4.3.1.3.1. General Considerations

During the preparation of the analysis plan, risk assessors identify the extrapolations required between assessment endpoints and measures of effect. During the analysis phase, risk assessors should revisit the questions listed in text note 4-20 before proceeding with specific extrapolation approaches.

The nature of the risk assessment and the type and amount of data that are available largely determine how conservative a risk assessment will be. The early stages of a tiered risk assessment typically use conservative estimates because the data needed to adequately assess exposure and effects are usually lacking. When a risk has been identified, subsequent tiers use additional data to address the uncertainties that were incorporated

into the initial assessment(s) (see text note 2-8).

The scope of the risk assessment also influences extrapolation through the nature of the assessment endpoint. Preliminary assessments that evaluate risks to general trophic levels such as herbivores may extrapolate between different genera or families to obtain a range of sensitivity to the stressor. On the other hand, assessments concerned with management strategies for a particular species may employ population models.

Analysis phase activities may suggest additional extrapolation needs. Evaluation of exposure may indicate different spatial or temporal scales than originally planned. If spatial scales are broadened, additional receptors may need to be included in extrapolation models. If a stressor persists for an extended time, it may be necessary to extrapolate short-term responses over a longer exposure period, and population-level effects may become more important. Whatever methods are employed to link assessment endpoints with measures of effect, it is important to apply them in a manner consistent with sound ecological principles and use enough appropriate data. For example, it is inappropriate to use structure-activity relationships to predict toxicity from chemical structure unless the chemical under consideration has a similar mode of toxic action to the reference chemicals (Bradbury, 1994). Similarly, extrapolations between two species may be more credible if factors such as similarities in food preferences, body mass, physiology, and seasonal behavior (e.g., mating and migration habits) are considered (Sample et al., 1996). Rote or biologically implausible extrapolations will erode the assessment's overall credibility.

Finally, many extrapolation methods are limited by the availability of suitable databases. Although many data are available for chemical stressors and aquatic species, they do not exist for all taxa or effects. Chemical effects databases for wildlife, amphibians, and reptiles are extremely limited, and there is even less information on most biological and physical stressors. Risk assessors should be aware that extrapolations and models are only as useful as the data on which they are based and should recognize the great uncertainties associated with extrapolations that lack an adequate empirical or process-based rationale.

The rest of this section addresses the approaches used by risk assessors to link measures of effect to assessment endpoints, as noted below.

- Linkages based on professional judgment. This is not as desirable as empirical or process-based approaches, but is the only option when data are lacking.

- Linkages based on empirical or process models. Empirical extrapolations use experimental or observational data that may or may not be organized into a database. Process-based approaches rely on some level of understanding of the underlying operations of the system of interest.

4.3.1.3.2. Judgment Approaches for Linking Measures of Effect to Assessment Endpoints

Professional-judgment approaches rely on the professional expertise of risk assessors, expert panels, or others to relate changes in measures of effect to changes in assessment endpoints. They are essential when databases are inadequate to support empirical models and process models are unavailable or inappropriate. Professional-judgment linkages between measures of effect and assessment endpoints can be just as credible as empirical or process-based expressions, provided they have a sound scientific basis. This section highlights professional-judgment extrapolations between species, from laboratory data to field effects, and between geographic areas.

Because of the uncertainty in predicting the effects of biological stressors such as introduced species, professional-judgment approaches are commonly used. For example, there may be measures of effect data on a foreign pathogen that attacks a certain tree species not found in the United States, but the assessment endpoint concerns the survival of a commercially important tree found only in the United States. In this case, a careful evaluation and comparison of the life history and environmental requirements of both the pathogen and the two tree species may contribute toward a useful determination of potential effects, even though the uncertainty may be high. Expert panels are typically used for this kind of evaluation (USDA, 1993).

Risks to organisms in field situations are best estimated from studies at the site of interest. However, such data are not always available. Frequently, risk assessors must extrapolate from laboratory toxicity test data to field effects. Text note 4-21 summarizes some of the considerations for risk assessors when extrapolating from laboratory test results to field situations for chemical stressors. Factors altering exposure in the field are among the most important factors limiting extrapolations from laboratory test

results, but indirect effects on exposed organisms due to predation, competition, or other biotic or abiotic factors not evaluated in the laboratory may also be significant. Variations in direct chemical effects between laboratory tests and field situations may not contribute as much to the overall uncertainty of the extrapolation.

In addition to single-species tests, laboratory multiple-species tests are sometimes used to predict field effects. While these tests have the advantage of evaluating some aspects of a real ecological system, they also have inherent scale limitations (e.g., lack of top trophic levels) and may not adequately represent features of the field system important to the assessment endpoint.

Extrapolations based on professional judgment are frequently required when assessors wish to use field data obtained from one geographic area and apply them to a different area of concern, or to extrapolate from the results of laboratory tests to more than one geographic region. In either case, risk assessors should consider variations between regions in environmental conditions, spatial scales and heterogeneities, and ecological forcing functions (see below).

Variations in environmental conditions in different geographic regions may alter stressor exposure and effects. If exposures to chemical stressors can be accurately estimated and are expected to be similar (e.g., see text note 4-21), the same species in different areas may respond similarly. For example, if the pesticide granular carbofuran were applied at comparable rates throughout the country, seed-eating birds could be expected to be similarly affected by the pesticide (Houseknecht, 1993). Nevertheless, the influence of environmental conditions on stressor exposure and effects can be substantial.

For biological stressors, environmental conditions such as climate, habitat, and suitable hosts play major roles in determining whether a biological stressor becomes established. For example, climate would prevent establishment of the Mediterranean fruit fly in the much colder northeastern United States. Thus, a thorough evaluation of environmental conditions in the area versus the natural habitat of the stressor is important. Even so, many biological stressors can adapt readily to varying environmental conditions, and the absence of natural predators or diseases may play an even more important role than abiotic factors.

For physical stressors that have natural counterparts, such as fire;

flooding, or temperature variations, effects may depend on the difference between human-caused and natural variations in these parameters for a particular region. Thus, the comparability of two regions depends on both the pattern and range of natural disturbances.

Spatial scales and heterogeneities affect comparability between regions. Effects observed over a large scale may be difficult to extrapolate from one geographical location to another, mainly because the spatial heterogeneity is likely to differ. Factors such as number and size of land-cover patches, distance between patches, connectivity and conductivity of patches (e.g., migration routes), and patch shape may be important. Extrapolations can be strengthened by using appropriate reference sites, such as sites in comparable ecoregions (Hughes, 1995).

Ecological forcing functions may differ between geographic regions. Forcing functions are critical abiotic variables that exert a major influence on the structure and function of ecological systems. Examples include temperature fluctuations, fire frequency, light intensity, and hydrologic regime. If these differ significantly between sites, it may be inappropriate to extrapolate effects from one system to another.

Bedford and Preston (1988), Detenbeck et al. (1992), Gibbs (1993), Gilbert (1987), Gosselink et al. (1990), Preston and Bedford (1988), and Risser (1988) may be useful to risk assessors concerned with effects in different geographical areas.

4.3.1.3.3. Empirical and Process-Based Approaches for Linking Measures of Effect to Assessment Endpoints

A variety of empirical and process-based approaches are available to risk assessors, depending on the scope of the assessment and the data and resources available. Empirical and process-based approaches include numerical extrapolations between measures of effects and assessment endpoints. These linkages range in sophistication from applying an uncertainty factor to using a complex model requiring extensive measures of effects and measures of ecosystem and receptor characteristics as input. But even the most sophisticated quantitative models involve qualitative elements and assumptions and thus require professional judgment for evaluation. Individuals who use models and interpret their results should be familiar with the underlying assumptions and components contained in the model.

4.3.1.3.3.1. Empirical Approaches

Empirical approaches are derived from experimental data or observations. Empirically based uncertainty factors or taxonomic extrapolations may be used when adequate effects databases are available but the understanding of underlying mechanisms of action or ecological principles is limited. When sufficient information on stressors and receptors is available, process-based approaches such as pharmacokinetic/pharmacodynamic models or population or ecosystem process models may be used. Regardless of the options used, risk assessors should justify and adequately document the approach selected.

Uncertainty factors are used to ensure that measures of effects are sufficiently protective of assessment endpoints. Uncertainty factors are empirically derived numbers that are divided into measure of effects values to give an estimated stressor level that should not cause adverse effects to the assessment endpoint. Uncertainty factors have been developed most frequently for chemicals because extensive ecotoxicologic databases are available, especially for aquatic organisms. Uncertainty factors are useful when decisions must be made about stressors in a short time and with little information.

Uncertainty factors have been used to compensate for assessment endpoint/effect measures differences between endpoints (acute to chronic effects), between species, and between test situations (e.g., laboratory to field). Typically, they vary inversely with the quantity and type of measures of effects data available (Zeeman, 1995). They have been used in screening-level assessments of new chemicals (Nabholz, 1991), in assessing the risks of pesticides to aquatic and terrestrial organisms (Urban and Cook, 1986), and in developing benchmark dose levels for human health effects (U.S. EPA, 1995c).

Despite their usefulness, uncertainty factors can also be misused, especially when used in an overly conservative fashion, as when chains of factors are multiplied together without sufficient justification. Like other approaches to bridging data gaps, uncertainty factors are often based on a combination of scientific analysis, scientific judgment, and policy judgment (see section 4.1.3). It is important to differentiate these three elements when documenting the basis for the uncertainty factors used.

Empirical data can be used to facilitate extrapolations between species, genera, families, or orders or functional groups (e.g., feeding guilds)

(Suter, 1993a). Suter et al. (1983), Suter (1993a), and Barnhouse et al. (1987, 1990) developed methods to extrapolate toxicity between freshwater and marine fish and arthropods. As Suter notes (1993a), the uncertainties associated with extrapolating between orders, classes, and phyla tend to be very high. However, one can extrapolate with fair certainty between aquatic species within genera and genera within families. Further applications of this approach (e.g., for chemical stressors and terrestrial organisms) are limited by a lack of suitable databases.

In addition to taxonomic databases, dose-scaling or allometric regression is used to extrapolate the effects of a chemical stressor to another species. Allometry is the study of change in the proportions of various parts of an organism as a consequence of growth and development. Processes that influence toxicokinetics (e.g., renal clearance, basal metabolic rate, food consumption) tend to vary across species according to allometric scaling factors that can be expressed as a nonlinear function of body weight. These scaling factors can be used to estimate bioaccumulation and to improve interspecies extrapolations (Newman, 1995; Kenaga, 1973; U.S. EPA 1992c, 1995d). Although allometric relationships are commonly used for human health risk assessments, they have not been applied as extensively to ecological effects (Suter, 1993a). For chemical stressors, allometric relationships can enable an assessor to estimate toxic effects to species not commonly tested, such as native mammals. It is important that the assessor consider the taxonomic relationship between the known species and the one of interest. The closer they are related, the more likely the toxic response will be similar. Allometric approaches should not be applied to species that differ greatly in uptake, metabolism, or depuration of a chemical.

4.3.1.3.3.2. Process-Based Approaches

Process models for extrapolation are representations or abstractions of a system or process (Starfield and Bleloch, 1991) that incorporate causal relationships and provide a predictive capability that does not depend on the availability of existing stressor-response information as empirical models do (Wiegert and Bartell, 1994). Process models enable assessors to translate data on individual effects (e.g., mortality, growth, and reproduction) to potential alterations in specific populations, communities, or ecosystems. Such models can be used to evaluate risk

hypotheses about the duration and severity of a stressor on an assessment endpoint that cannot be tested readily in the laboratory.

There are two major types of models: Single-species population models and multispecies community and ecosystem models. Population models describe the dynamics of a finite group of individuals through time and have been used extensively in ecology and fisheries management and to assess the impacts of power plants and toxicants on specific fish populations (Barnhouse et al., 1987, 1990). They can help answer questions about short- or long-term changes of population size and structure and can help estimate the probability that a population will decline below or grow above a specified abundance (Ginzburg et al., 1982; Ferson et al., 1989). The latter application may be useful when assessing the effects of biological stressors such as introduced or pest species. Barnhouse et al. (1986) and Wiegert and Bartell (1994) present excellent reviews of population models. Emlen (1989) has reviewed population models that can be used for terrestrial risk assessment.

Proper use of population models requires a thorough understanding of the natural history of the species under consideration, as well as knowledge of how the stressor influences its biology. Model input can include somatic growth rates, physiological rates, fecundity, survival rates of various classes within the population, and how these change when the population is exposed to the stressor and other environmental factors. In addition, the effects of population density on these parameters are important (Hassell, 1986) and should be considered in the uncertainty analysis.

Community and ecosystem models (e.g., Bartell et al., 1992; O'Neill et al., 1982) are particularly useful when the assessment endpoint involves structural (e.g., community composition) or functional (e.g., primary production) elements. They can also be useful when secondary effects are of concern. Changes in various community or ecosystem components such as populations, functional types, feeding guilds, or environmental processes can be estimated. By incorporating submodels describing the dynamics of individual system components, these models permit evaluation of risk to multiple assessment endpoints within the context of the ecosystem.

Risk assessors should determine the appropriate degree of aggregation in population or multispecies model parameters based both on the input data

available and on the desired output of the model (also see text note 4-5). For example, if a decision is required about a particular species, a model that lumps species into trophic levels or feeding guilds will not be very useful. Assumptions concerning aggregation in model parameters should be included in the uncertainty discussion.

4.3.2. Stressor-Response Profile

The final product of ecological response analysis is a summary profile of what has been learned. This may be a written document or a module of a larger process model. In any case, the objective is to ensure that the information needed for risk characterization has been collected and evaluated. A useful approach in preparing the stressor-response profile is to imagine that it will be used by someone else to perform the risk characterization. Profile compilation also provides an opportunity to verify that the assessment endpoints and measures of effect identified in the conceptual model were evaluated.

Risk assessors should address several questions in the stressor-response profile (text note 4-22). Affected ecological entities may include single species, populations, general trophic levels, communities, ecosystems, or landscapes. The nature of the effect(s) should be germane to the assessment endpoint(s). Thus if a single species is affected, the effects should represent parameters appropriate for that level of organization. Examples include effects on mortality, growth, and reproduction. Short- and long-term effects should be reported as appropriate. At the community level, effects may be summarized in terms of structure or function depending on the assessment endpoint. At the landscape level, there may be a suite of assessment endpoints, and each should be addressed separately.

Examples of different approaches for displaying the intensity of effects were provided in section 4.3.1.1. Other information such as the spatial area or time to recovery may also be appropriate. Causal analyses are important, especially for assessments that include field observational data.

Ideally, the stressor-response profile should express effects in terms of the assessment endpoint, but this is not always possible. Where it is necessary to use qualitative extrapolations between assessment endpoints and measures of effect, the stressor-response profile may contain information only on measures of effect. Under these circumstances, risk will be estimated using the measures of effects, and extrapolation to the

assessment endpoints will occur during risk characterization.

Risk assessors need to clearly describe any uncertainties associated with the ecological response analysis. If it was necessary to extrapolate from measures of effect to the assessment endpoint, both the extrapolation and its basis should be described. Similarly, if a benchmark or similar reference dose or concentration was calculated, the extrapolations and uncertainties associated with its development need to be discussed. For additional information on establishing reference concentrations, see Nabholz (1991), Urban and Cook (1986), Stephan et al. (1985), Van Leeuwen et al. (1992), Wagner and Lokke (1991), and Okkerman et al. (1993). Finally, the assessor should clearly describe major

assumptions and default values used in the models.

At the end of the analysis phase, the stressor-response and exposure profiles are used to estimate risks. These profiles provide the opportunity to review what has been learned and to summarize this information in the most useful format for risk characterization. Whatever form the profiles take, they ensure that the necessary information is available for risk characterization.

5. Risk Characterization

Risk characterization (figure 5-1) is the final phase of ecological risk assessment and is the culmination of the planning, problem formulation, and analysis of predicted or observed adverse ecological effects related to the assessment endpoints. Completing risk characterization allows risk assessors to

clarify the relationships between stressors, effects, and ecological entities and to reach conclusions regarding the occurrence of exposure and the adversity of existing or anticipated effects. Here, risk assessors first use the results of the analysis phase to develop an estimate of the risk posed to the ecological entities included in the assessment endpoints identified in problem formulation (section 5.1). After estimating the risk, the assessor describes the risk estimate in the context of the significance of any adverse effects and lines of evidence supporting their likelihood (section 5.2). Finally, the assessor identifies and summarizes the uncertainties, assumptions, and qualifiers in the risk assessment and reports the conclusions to risk managers (section 5.3).

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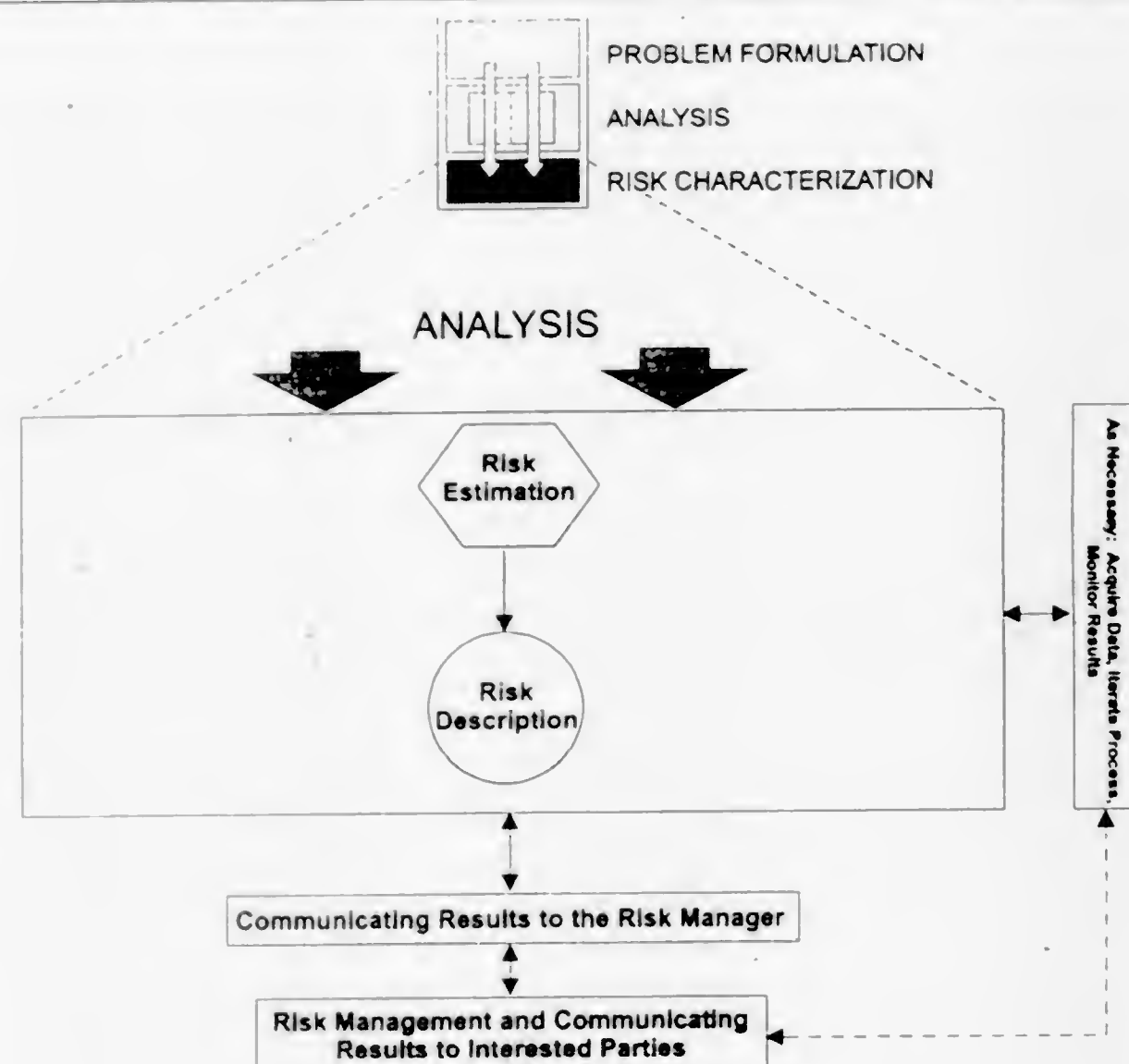


Figure 5-1. Risk characterization.

Conclusions presented in the risk characterization should provide clear information to risk managers in order to be useful for environmental decision making (NRC, 1994; see section 6). If the risks are not sufficiently defined to support a management decision, risk managers may elect to proceed with another iteration of one or more phases of the risk assessment process. Reevaluating the conceptual model (and associated risk hypotheses) or conducting additional studies may improve the risk estimate. Alternatively, a monitoring program may help managers evaluate the consequences of a risk management decision.

5.1. Risk Estimation

Risk estimation is the process of integrating exposure and effects data and evaluating any associated uncertainties. The process uses exposure and stressor-response profiles developed according to the analysis plan (section 3.5). Risk estimates can be developed using one or more of the following techniques: (1) Field observational studies, (2) categorical rankings, (3) comparisons of single-point exposure and effects estimates, (4) comparisons incorporating the entire stressor-response relationship, (5) incorporation of variability in exposure and/or effects estimates, and (6) process models that rely partially or entirely on theoretical approximations of exposure and effects. These techniques are described in the following sections.

5.1.1. Results of Field Observational Studies

Field observational studies (surveys) can serve as risk estimation techniques because they provide empirical evidence linking exposure to effects. Field surveys measure biological changes in natural settings through collection of exposure and effects data

for ecological entities identified in problem formulation.

A major advantage of field surveys is that they can be used to evaluate multiple stressors and complex ecosystem relationships that cannot be replicated in the laboratory. Field surveys are designed to delineate both exposures and effects (including secondary effects) found in natural systems, whereas estimates generated from laboratory studies generally delineate either exposures or effects under controlled or prescribed conditions (see text note 5-1).

While field studies may best represent reality, as with other kinds of studies they can be limited by (1) a lack of replication, (2) bias in obtaining representative samples, or (3) failure to measure critical components of the system or random variations. Further, a lack of observed effects in a field survey may occur because the measurements lack the sensitivity to detect ecological effects. See section 4.1.1 for additional discussion of the strengths and limitations of different types of data.

Several assumptions or qualifications need to be clearly articulated when describing the results of field surveys. A primary qualification is whether a causal relationship between stressors and effects (section 4.3.1.2) is supported. Unless causal relationships are carefully examined, conclusions about effects that are observed may be inaccurate because the effects are caused by factors unrelated to the stressor(s) of concern. In addition, field surveys taken at one point in time are usually not predictive; they describe effects associated only with exposure scenarios associated with past and existing conditions.

5.1.2. Categories and Rankings

In some cases, professional judgment or other qualitative evaluation techniques may be used to rank risks

using categories, such as low, medium, and high, or yes and no. This approach is most frequently used when exposure and effects data are limited or are not easily expressed in quantitative terms. The U.S. Forest Service risk assessment of pest introduction from importation of logs from Chile used qualitative categories owing to limitations in both the exposure and effects data for the introduced species of concern as well as the resources available for the assessment (see text note 5-2).

Ranking techniques can be used to translate qualitative judgment into a mathematical comparison. These methods are frequently used in comparative risk exercises. For example, Harris et al. (1994) evaluated risk reduction opportunities in Green Bay (Lake Michigan), Wisconsin, employing an expert panel to compare the relative risk of several stressors against their potential effects. Mathematical analysis based on fuzzy set theory was used to rank the risk from each stressor from a number of perspectives, including degree of immediate risk, duration of impacts, and prevention and remediation management. The results served to rank potential environmental risks from stressors based on best professional judgment.

5.1.3. Single-Point Exposure and Effects Comparisons

When sufficient data are available to quantify exposure and effects estimates, the simplest approach for comparing the estimates is a ratio (figure 5-2a). Typically, the ratio (or quotient) is expressed as an exposure concentration divided by an effects concentration. Quotients are commonly used for chemical stressors, where reference or benchmark toxicity values are widely available (see text note 5-3).

a: Comparison of point estimates

Exposure estimate
(e.g., mean concentration)

Stressor-response estimate
(e.g., LC₁₀)

b: Comparison of a point estimate of a stressor-response relationship with uncertainty associated with an exposure point estimate

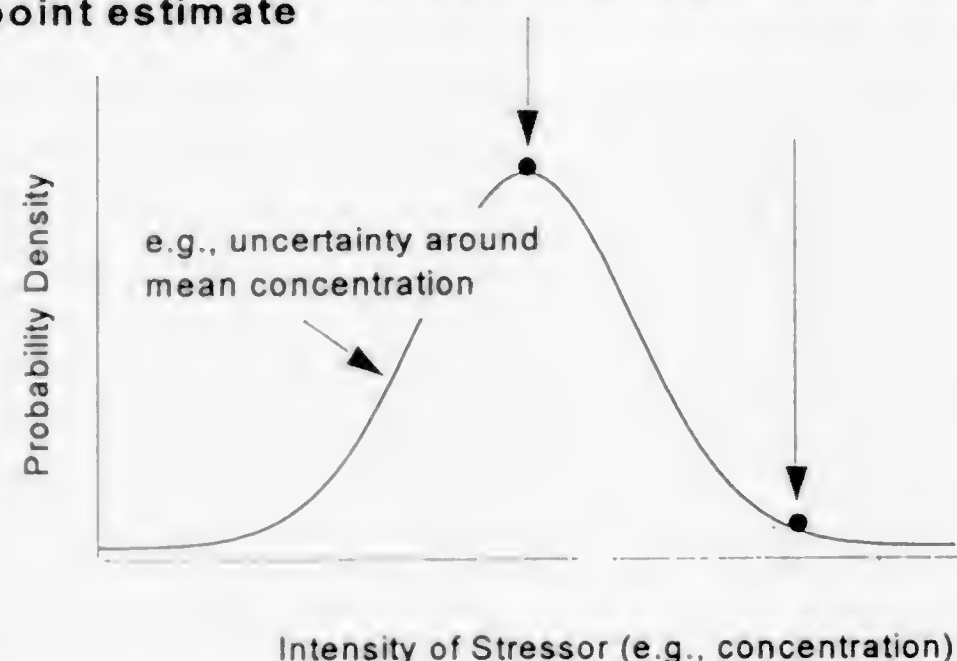


Figure 5-2. Risk estimation techniques. a. Comparison of exposure and stressor-response point estimates. b. Comparison of a point estimate from the stressor-response relationship with uncertainty associated with an exposure point estimate.

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The principal advantages of the quotient method are that it is simple and quick to use and risk assessors and managers are familiar with its application. It provides an efficient, inexpensive means of identifying high- or low-risk situations that can allow risk management decisions to be made without the need for further information.

Quotients have also been used to integrate the risks of multiple chemical stressors: quotients for the individual constituents in a mixture are generated by dividing each exposure level by a corresponding toxicity endpoint (e.g., LC₅₀, EC₅₀, NOAEL). Although the toxicity of a chemical mixture may be greater than or less than predicted from the toxicities of individual constituents of the mixture, a quotient addition approach assumes that toxicities are additive or approximately additive. This assumption may be most applicable when the modes of action of chemicals in a mixture are similar, but there is evidence that even with chemicals having dissimilar modes of action, additive or near-additive interactions are common (Könemann, 1981; Broderius, 1991; Broderius et al., 1995; Hermens et al., 1984a, b; McCarty and Mackay, 1993; Sawyer and Safe, 1985). However, caution should be used when assuming that chemicals in a mixture act independently of one another, since many of the supporting studies were conducted with aquatic organisms, and so may not be relevant for other endpoints, exposure scenarios, or species. When the modes of action for constituent chemicals are unknown, the assumptions and rationale concerning chemical interactions should be clearly stated.

A number of limitations restrict application of the quotient method (see Smith and Cairns, 1993; Suter, 1993a). While a quotient can be useful in answering whether risks are high or low, it may not be helpful to a risk manager who needs to make a decision requiring an incremental quantification of risks. For example, it is seldom useful to say that a risk mitigation approach will reduce a quotient value from 25 to 12, since this reduction cannot by itself be clearly interpreted in terms of effects on an assessment endpoint.

Other limitations of quotients may be caused by deficiencies in the problem formulation and analysis phases. For example, an LC₅₀ derived from a 96-hour laboratory test using constant

exposure levels may not be appropriate for an assessment of effects on reproduction resulting from short-term, pulsed exposures.

In addition, the quotient method may not be the most appropriate method for predicting secondary effects (although such effects may be inferred). Interactions and effects beyond what are predicted from the simple quotient may be critical to characterizing the full extent of impacts from exposure to the stressors (e.g., bioaccumulation, eutrophication, loss of prey species, opportunities for invasive species).

Finally, in most cases, the quotient method does not explicitly consider uncertainty (e.g., extrapolation from tested species to the species or community of concern). Some uncertainties, however, can be incorporated into single-point estimates to provide a statement of likelihood that the effects point estimate exceeds the exposure point estimate (figures 5-2b and 5-3). If exposure variability is quantified, then the point estimate of effects can be compared with a cumulative exposure distribution as described in text note 5-4. Further discussion of comparisons between point estimates of effects and distributions of exposure may be found in Suter et al., 1983.

In view of the advantages and limitations of the quotient method, it is important for risk assessors to consider the points listed below when evaluating quotient method estimates.

- How does the effect concentration relate to the assessment endpoint?
- What extrapolations are involved?
- How does the point estimate of exposure relate to potential spatial and temporal variability in exposure?
- Are data sufficient to provide confidence intervals on the endpoints?

5.1.4. Comparisons Incorporating the Entire Stressor-Response Relationship

If a curve relating the stressor level to the magnitude of response is available, then risk estimation can examine risks associated with many different levels of exposure (figure 5-4). These estimates are particularly useful when the risk assessment outcome is not based on exceedance of a predetermined decision rule, such as a toxicity benchmark level.

There are advantages and limitations to comparing a stressor-response curve with an exposure distribution. The slope of the effects curve shows the magnitude of change in effects

associated with incremental changes in exposure, and the capability to predict changes in the magnitude and likelihood of effects for different exposure scenarios can be used to compare different risk management options. Also, uncertainty can be incorporated by calculating uncertainty bounds on the stressor-response or exposure estimates. Comparing exposure and stressor-response curves provides a predictive ability lacking in the quotient method. Like the quotient method, however, limitations from the problem formulation and analysis phases may limit the utility of the results. These limitations may include not fully considering secondary effects, assuming the exposure pattern used to derive the stressor-response curve is comparable to the environmental exposure pattern, and failure to consider uncertainties, such as extrapolations from tested species to the species or community of concern.

5.1.5. Comparisons Incorporating Variability in Exposure and/or Effects

If the exposure or stressor-response profiles describe the variability in exposure or effects, then many different risk estimates can be calculated. Variability in exposure can be used to estimate risks to moderately or highly exposed members of a population being investigated, while variability in effects can be used to estimate risks to average or sensitive population members. A major advantage of this approach is its ability to predict changes in the magnitude and likelihood of effects for different exposure scenarios and thus provide a means for comparing different risk management options. As noted above, comparing distributions also allows one to identify and quantify risks to different segments of the population. Limitations include the increased data requirements compared with previously described techniques and the implicit assumption that the full range of variability in the exposure and effects data is adequately represented. As with the quotient method, secondary effects are not readily evaluated with this technique. Thus, it is desirable to corroborate risks estimated by distributional comparisons with field studies or other lines of evidence. Text note 5-5 and figure 5-5 illustrate the use of cumulative exposure and effects distributions for estimating risk.

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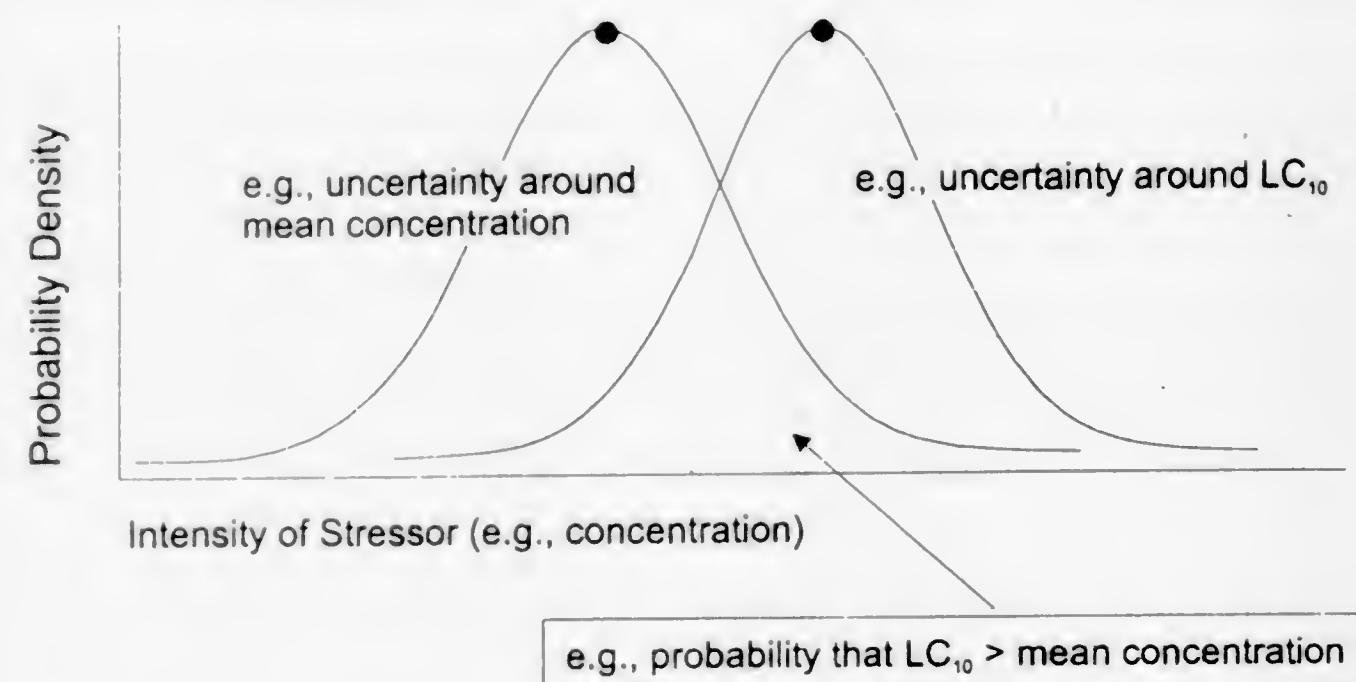


Figure 5-3. Risk estimation techniques: comparison of point estimates with associated uncertainties.

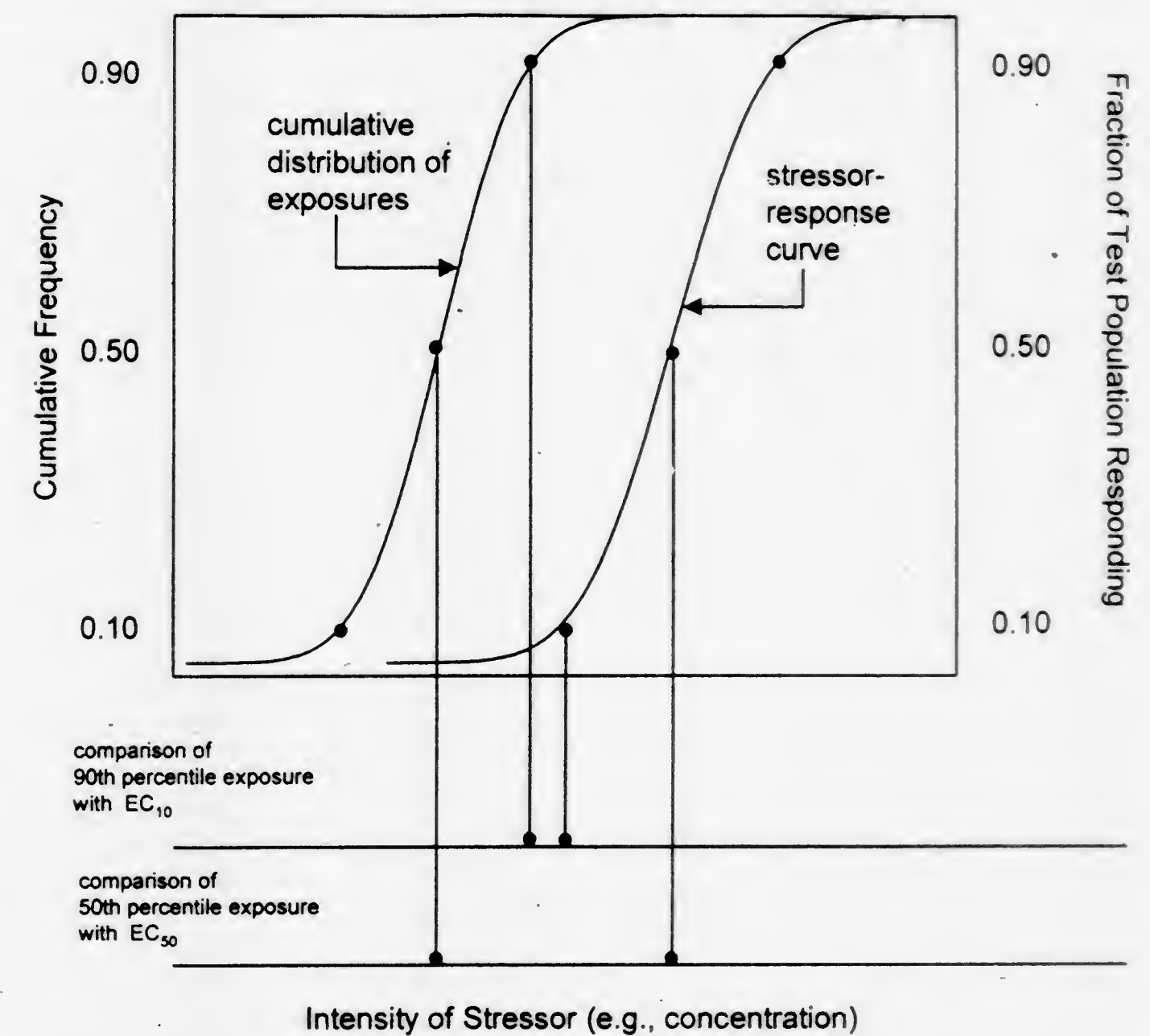


Figure 5-4. Risk estimation techniques: stressor-response curve versus a cumulative distribution of exposures.

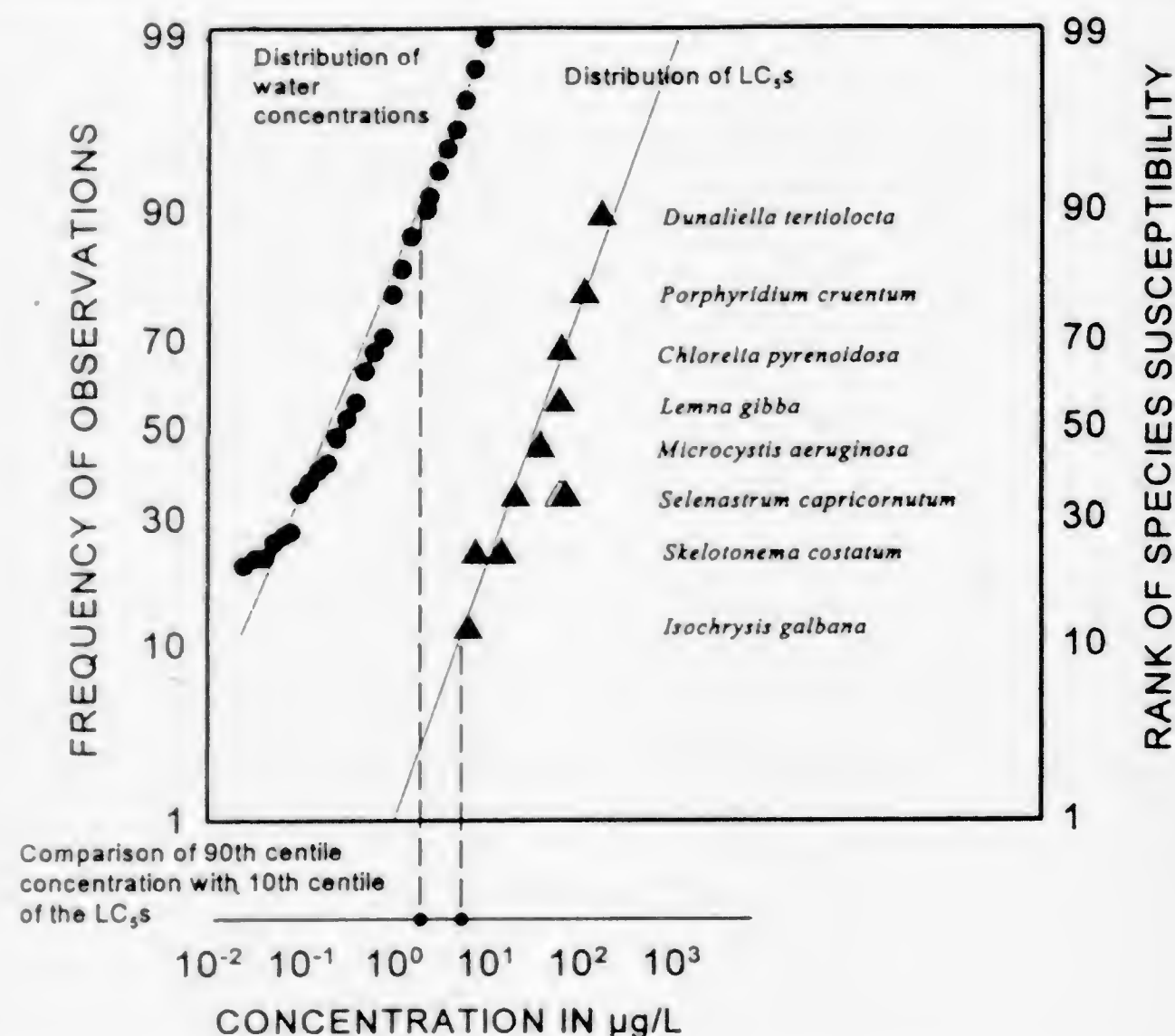


Figure 5-5. Risk estimation techniques: comparison of exposure distribution of an herbicide in surface waters with freshwater single-species toxicity data. See text note 5-4 for further discussion. Redrawn from Baker et al., 1994. (Centile ranks for species LC₅₀ data were obtained using the formula $(100 \times n / (N+1))$, where n is the rank number of the LC₅₀ and N is the total number of data points in the set; adapted from Parkhurst et al., 1995).

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5.1.6. Application of Process Models

Process models are mathematical expressions that represent our understanding of the mechanistic operation of a system under evaluation. They can be useful tools in both analysis (see section 4.1.2) and risk characterization. For illustrative purposes, it is useful to distinguish between analysis process models, which focus individually on either exposure or effects evaluations, and risk estimation process models, which integrate exposure and effects information (see text note 5-6). The assessment of risks associated with long-term changes in hydrologic conditions in bottomland forest wetlands in Louisiana using the FORFLO model (Appendix D) linked the attributes and placement of levees and corresponding water level measurements (exposure) with changes in forest community structure and wildlife habitat suitability (effects).

A major advantage of using process models for risk estimation is the ability to consider "what if" scenarios and to forecast beyond the limits of observed data that constrain techniques based solely on empirical data. The process model can also consider secondary effects, unlike other risk estimation techniques such as the quotient method or comparisons of exposure and effect distributions. In addition, some process models can forecast the combined effects of multiple stressors, such as the effects of multiple chemicals on fish population sustainability (Barnhouse et al., 1990).

Process model outputs may be point estimates, distributions, or correlations; in all cases, risk assessors should interpret them with care. They may imply a higher level of certainty than is appropriate and are all too often viewed without sufficient attention to underlying assumptions. The lack of knowledge on basic life histories for many species and incomplete knowledge on the structure and function of a particular ecosystem is often lost in the model output. Since process models are only as good as the assumptions on which they are based, they should be treated as hypothetical representations of reality until appropriately tested with empirical data. Comparing model results to field data provides a check on whether our understanding of the system was correct (Johnson, 1995), particularly with respect to the risk hypotheses presented in problem formulation.

5.2. Risk Description

Following preparation of the risk estimate, risk assessors need to interpret

and discuss the available information about risks to the assessment endpoints. Risk description includes an evaluation of the lines of evidence supporting or refuting the risk estimate(s) and an interpretation of the significance of the adverse effects on the assessment endpoints. During the analysis phase, the risk assessor may have established the relationship between the assessment endpoints and measures of effect and associated lines of evidence in quantifiable, easily described terms (section 4.3.1.3). If not, the risk assessor can relate the available lines of evidence to the assessment endpoints using qualitative links. Regardless of the risk estimation technique, the technical narrative supporting the risk estimate is as important as the risk estimate itself.

5.2.1. Lines of Evidence

The development of lines of evidence provides both a process and a framework for reaching a conclusion regarding confidence in the risk estimate. It is not the kind of proof demanded by experimentalists (Fox, 1991), nor is it a rigorous examination of weights of evidence. (Note that the term "weight of evidence" is sometimes used in legal discussions or in other documents, e.g., Urban and Cook, 1986; Menzie et al., 1996.) The phrase lines of evidence is used to de-emphasize the balancing of opposing factors based on assignment of quantitative values to reach a conclusion about a "weight" in favor of a more inclusive approach, which evaluates all available information, even evidence that may be qualitative in nature. It is important that risk assessors provide a thorough representation of all lines of evidence developed in the risk assessment rather than simply reduce their interpretation and description of the ecological effects that may result from exposure to stressors to a system of numeric calculations and results.

Confidence in the conclusions of a risk assessment may be increased by using several lines of evidence to interpret and compare risk estimates. These lines of evidence may be derived from different sources or by different techniques relevant to adverse effects on the assessment endpoints, such as quotient estimates, modeling results, or field observational studies.

There are three principal categories of factors for risk assessors to consider when evaluating lines of evidence: (1) Adequacy and quality of data, (2) degree and type of uncertainty associated with the evidence, and (3) relationship of the evidence to the risk assessment questions (see also sections 3 and 4).

Data quality directly influences how confident risk assessors can be in the results of a study and conclusions they may draw from it. Specific concerns to consider for individual lines of evidence include whether the experimental design was appropriate for the questions posed in a particular study and whether data quality objectives were clear and adhered to. An evaluation of the scientific understanding of natural variability in the attributes of the ecological entities under consideration is important in determining whether there were sufficient data to satisfy the analyses chosen and to determine if the analyses were sufficiently sensitive and robust to identify stressor-caused perturbations.

Directly related to data quality issues is the evaluation of the relative uncertainties of each line of evidence. One major source of uncertainty comes from extrapolations. The greater the number of extrapolations, the more uncertainty introduced into a study. For example, were extrapolations used to infer effects in one species from another, or from one temporal or spatial scale to another? Were conclusions drawn from extrapolations from laboratory to field effects, or were field effects inferred from limited information, such as chemical structure-activity relationships? Were no-effect or low-effect levels used to address likelihood of effects? Risk assessors should consider these and any other sources of uncertainty when evaluating the relative importance of particular lines of evidence.

Finally, how directly lines of evidence relate to the questions asked in the risk assessment may determine their relative importance in terms of the ecological entity and the attributes of the assessment endpoint. Lines of evidence directly related to the risk hypotheses, and those that establish a cause-and-effect relationship based on a definitive mechanism rather than associations alone, are likely to be of greatest importance.

The evaluation process, however, involves more than just listing the evidence that supports or refutes the risk estimate. The risk assessor should carefully examine each factor and evaluate its contribution in the context of the risk assessment. The importance of lines of evidence is that each and every factor is described and interpreted. Data or study results are often not reported or carried forward in the risk assessment because they are of insufficient quality. If such data or results are eliminated from the evaluation process, however, valuable information may be lost with respect to

needed improvements in methodologies or recommendations for further studies.

As a case in point, consider the two lines of evidence described for the carbofuran example (see text notes 5-1 and 5-3), field studies and quotients. Both approaches are relevant to the assessment endpoint (survival of birds that forage in agricultural areas where carbofuran is applied), and both are relevant to the exposure scenarios described in the conceptual model (see figure D-1). The quotients, however, are limited in their ability to express incremental risks (e.g., how much greater risk is expressed by a quotient of "2" versus a quotient of "4"), while the field studies had some design flaws (see text note 5-1). Nevertheless, because of the strong evidence of causal relationships from the field studies and consistency with the laboratory-derived quotient, confidence in a conclusion of high risk to the assessment endpoint is supported.

Sometimes lines of evidence do not point toward the same conclusion. It is important to investigate possible reasons for any disagreement rather than ignore inconvenient evidence. A starting point is to distinguish between true inconsistencies and those related to differences in statistical powers of detection. For example, a model may predict adverse effects that were not observed in a field survey. The risk assessor should ask whether the experimental design of the field study had sufficient power to detect the predicted difference or whether the endpoints measured were comparable with those used in the model. Conversely, the model may have been unrealistic in its predictions. While iteration of the risk assessment process and collection of additional data may help resolve uncertainties, this option is not always available.

Lines of evidence that are to be evaluated during risk characterization should be defined early in the risk assessment (during problem formulation) through the development of the conceptual model and selection of assessment endpoints. Further, the analysis plan should incorporate measures that will contribute to the interpretation of the lines of evidence, including methods of reviewing, analyzing, and summarizing the uncertainty in the risk assessment.

Also, risk assessments often rely solely on laboratory or in situ bioassays to assess adverse effects that may occur as a result of exposure to stressors. Although they may not be manifested in the field, ecological effects demonstrated in the laboratory should not be discounted as a line of evidence.

5.2.2. Determining Ecological Adversity

At this point in risk characterization, the changes expected in the assessment endpoints have been estimated and the supporting lines of evidence evaluated. The next step is to interpret whether these changes are considered adverse. Adverse ecological effects, in this context, represent changes that are undesirable because they alter valued structural or functional attributes of the ecological entities under consideration. The risk assessor evaluates the degree of adversity, which is often a difficult task and is frequently based on the risk assessor's professional judgment.

When the results of the risk assessment are discussed with the risk manager (section 6), other factors, such as the economic, legal, or social consequences of ecological damage, should be considered. The risk manager will use all of this information to determine whether a particular adverse effect is acceptable and may also find it useful when communicating the risk to interested parties.

The following are criteria for evaluating adverse changes in assessment endpoints:

- Nature of effects and intensity of effects
- Spatial and temporal scale
- Potential for recovery.

The extent to which the criteria are evaluated depends on the scope and complexity of the risk assessment. Understanding the underlying assumptions and science policy judgments, however, is important even in simple cases. For example, when exceedance of a previously established decision rule, such as a benchmark stressor level, is used as evidence of adversity (e.g., see Urban and Cook, 1986, or Nabholz, 1991), the reasons why this is considered adverse should be clearly understood. In addition, any evaluation of adversity should examine all relevant criteria, since none are considered singularly determinative.

To distinguish adverse ecological changes from those within the normal pattern of ecosystem variability or those resulting in little or no significant alteration of biota, it is important to consider the nature and intensity of effects. For example, for an assessment endpoint involving survival, growth, and reproduction of a species, do predicted effects involve survival and reproduction or only growth? If survival of offspring will be affected, by what percentage will it diminish?

It is important for risk assessors to consider both the ecological and statistical contexts of an effect when evaluating intensity. For example, a

statistically significant 1% decrease in fish growth (see text note 5-7) may not be relevant to an assessment endpoint of fish population viability, and a 10% decline in reproduction may be worse for a population of slowly reproducing trees than for rapidly reproducing planktonic algae.

Natural ecosystem variation can make it very difficult to observe (detect) stressor-related perturbations. For example, natural fluctuations in marine fish populations are often large, with intra- and interannual variability in population levels covering several orders of magnitude. Furthermore, cyclic events of various periods (e.g., bird migration, tides) are very important in natural systems and may mask or delay stressor-related effects. Predicting the effects of anthropogenic stressors against this background of variation can be very difficult. Thus, a lack of statistically significant effects in a field study does not automatically mean that adverse ecological effects are absent. Rather, risk assessors should then consider other lines of evidence in reaching their conclusions.

It is also important to consider the location of the effect within the biological hierarchy and the mechanisms that may result in ecological changes. The risk assessor may rely on mechanistic explanations to describe complex ecological interactions and the resulting effects that otherwise may be masked by variability in the ecological components.

The boundaries (global, landscape, ecosystem, organism) of the risk assessment are initially identified in the analysis plan prepared during problem formulation. These spatial and temporal scales are further defined in the analysis phase, where specific exposure and effects scenarios are evaluated. The spatial dimension encompasses both the extent and pattern of effect as well as the context of the effect within the landscape. Factors to consider include the absolute area affected, the extent of critical habitats affected compared with a larger area of interest, and the role or use of the affected area within the landscape.

Adverse effects to assessment endpoints vary with the absolute area of the effect. A larger affected area may be (1) subject to a greater number of other stressors, increasing the complications from stressor interactions, (2) more likely to contain sensitive species or habitats, or (3) more susceptible to landscape-level changes because many ecosystems may be altered by the stressors.

Nevertheless, a smaller area of effect is not always associated with lower risk.

The function of an area within the landscape may be more important than the absolute area. Destruction of small but unique areas, such as critical wetlands, may have important effects on local and regional wildlife populations. Also, in river systems, both riffle and pool areas provide important microhabitats that maintain the structure and function of the total river ecosystem. Stressors acting on these microhabitats may result in adverse effects to the entire system.

Spatial factors are important for many species because of the linkages between ecological landscapes and population dynamics. Linkages between landscapes can provide refuge for affected populations, and organisms may require corridors between habitat patches for successful migration.

The temporal scale for ecosystems can vary from seconds (photosynthesis, prokaryotic reproduction) to centuries (global climate change). Changes within a forest ecosystem can occur gradually over decades or centuries and may be affected by slowly changing external factors such as climate. When interpreting adversity, risk assessors should recognize that the time scale of stressor-induced changes operates within the context of multiple natural time scales. In addition, temporal responses for ecosystems may involve intrinsic time lags, so responses to a stressor may be delayed. Thus, it is important to distinguish a stressor's long-term impacts from its immediately visible effects. For example, visible changes resulting from eutrophication of aquatic systems (turbidity, excessive macrophyte growth, population decline) may not become evident for many years after initial increases in nutrient levels.

Considering the temporal scale of adverse effects leads logically to a consideration of recovery. Recovery is the rate and extent of return of a population or community to some aspect of its condition prior to a stressor's introduction. (While this discussion deals with recovery as a result of natural processes, risk mitigation options may include restoration activities to facilitate or speed up the recovery process.) Because ecosystems are dynamic and, even under natural conditions, constantly changing in response to changes in the physical environment (e.g., weather, natural disturbances) or other factors, it is unrealistic to expect that a system will remain static at some level or return to exactly the same state that it was before it was disturbed (Landis et al., 1993). Thus, the attributes of a "recovered" system should be carefully defined. Examples might include

productivity declines in a eutrophic system, reestablishment of a species at a particular density, species recolonization of a damaged habitat, or the restoration of health of diseased organisms. The Agency considered the recovery rate of biological communities in streams and rivers from disturbances in setting exceedance frequencies for chemical stressors in waste effluents (U.S. EPA, 1991).

Recovery can be evaluated in spite of the difficulty in predicting events in ecological systems (e.g., Niemi et al., 1990). For example, it is possible to distinguish changes that are usually reversible (e.g., stream recovery from sewage effluent discharge), frequently irreversible (e.g., establishment of introduced species), and always irreversible (e.g., extinction). Risk assessors should consider the potential irreversibility of significant structural or functional changes in ecosystems or ecosystem components when evaluating adversity. Physical alterations such as deforestation in the coastal hills of Venezuela in recent history and in Britain during the Neolithic period, for example, changed soil structure and seed sources such that forests cannot easily grow again (Fisher and Woodmansee, 1994).

The relative rate of recovery can also be estimated. For instance, fish populations in a stream are likely to recover much faster from exposure to a degradable chemical than from habitat alterations resulting from stream channelization. Risk assessors can use knowledge of factors, such as the temporal scales of organisms' life histories, the availability of adequate stock for recruitment, and the interspecific and trophic dynamics of the populations, in evaluating the relative rates of recovery. A fisheries stock or forest might recover in decades, a benthic invertebrate community in years, and a planktonic community in weeks to months.

Risk assessors should note natural disturbance patterns when evaluating the likelihood of recovery from anthropogenic stressors. Alternatively, if an ecosystem has become adapted to a disturbance pattern, it may be affected when the disturbance is removed (e.g., fire-maintained grasslands). The lack of natural analogs makes it difficult to predict recovery from uniquely anthropogenic stressors (e.g., synthetic chemicals).

Appendix E illustrates how the criteria for ecological adversity (nature and intensity of effects, spatial and temporal scales, and recovery) might be used in evaluating two cleanup options for a marine oil spill. This example also

shows that recovery of a system depends not only on how quickly a stressor is removed, but also on how the cleanup efforts themselves affect the recovery.

5.3. Reporting Risks

When risk characterization is complete, risk assessors should be able to estimate ecological risks, indicate the overall degree of confidence in the risk estimates, cite lines of evidence supporting the risk estimates, and interpret the adversity of ecological effects. Usually this information is included in a risk assessment report (sometimes referred to as a risk characterization report because of the integrative nature of risk characterization). While the breadth of ecological risk assessment precludes providing a detailed outline of reporting elements, the risk assessor should consider the elements listed in text note 5-8 when preparing a risk assessment report.

Like the risk assessment itself, a risk assessment report may be brief or extensive, depending on the nature of and the resources available for the assessment. While it is important to address the elements described in text note 5-8, risk assessors should judge the level of detail required. The report need not be overly complex or lengthy; it is most important that the information required to support a risk management decision be presented clearly and concisely.

To facilitate mutual understanding, it is critical that the risk assessment results are properly presented. Agency policy requires that risk characterizations be prepared "in a manner that is clear, transparent, reasonable, and consistent with other risk characterizations of similar scope prepared across programs in the Agency" (U.S. EPA, 1995b). Ways to achieve such characteristics are described in text note 5-9.

After the risk assessment report is prepared, the results are discussed with risk managers. Section 6 provides information on communication between risk assessors and risk managers, describes the use of the risk assessment in a risk management context, and briefly discusses communication of risk assessment results from risk managers to interested parties and the general public.

6. Relating Ecological Information to Risk Management Decisions

After characterizing risks and preparing a risk assessment report (section 5), risk assessors discuss the results with risk managers (figure 5-1).

Risk managers use risk assessment results, along with other factors (e.g., economic or legal concerns), in making risk management decisions and as a basis for communicating risks to interested parties and the general public.

Mutual understanding between risk assessors and risk managers regarding risk assessment results can be facilitated if the questions listed in text note 6-1 are addressed. Risk managers need to know the major risks to assessment endpoints and have an idea of whether the conclusions are supported by a large body of data or if there are significant data gaps. Insufficient resources, lack of consensus, or other factors may preclude preparation of a detailed and well-documented risk characterization. If this is the case, the risk assessor should clearly articulate any issues, obstacles, and correctable deficiencies for the risk manager's consideration.

In making decisions regarding ecological risks, risk managers consider other information, such as social, economic, political, or legal issues in combination with risk assessment results. For example, the risk assessment results may be used as part of an ecological cost-benefit analysis, which may require translating resources (identified through the assessment endpoints) into monetary values. Traditional economic considerations may only partially address changes in ecological resources that are not considered commodities, intergenerational resource values, or issues of long-term or irreversible effects (U.S. EPA, 1995a; Costanza et al., 1997); however, they may provide a means of comparing the results of the risk assessment in commensurate units such as costs. Risk managers may also consider alternative strategies for reducing risks, such as risk mitigation options or substitutions based on relative risk comparisons. For example, risk mitigation techniques, such as buffer strips or lower field application rates, can be used to reduce the exposure (and risk) of a pesticide. Further, by comparing the risk of a new pesticide to other pesticides currently in use during the registration process, lower overall risk may result. Finally, risk managers consider and incorporate public opinion and political demands into their decisions. Collectively, these other factors may render very high risks acceptable or very low risks unacceptable.

Risk characterization provides the basis for communicating ecological risks to interested parties and the general public. This task is usually the responsibility of risk managers, but it

may be shared with risk assessors. Although the final risk assessment document (including its risk characterization sections) can be made available to the public, the risk communication process is best served by tailoring information to a particular audience. Irrespective of the specific format, it is important to clearly describe the ecological resources at risk, their value, and the monetary and other costs of protecting (and failing to protect) the resources (U.S. EPA, 1995a).

Managers should clearly describe the sources and causes of risks and the potential adversity of the risks (e.g., nature and intensity, spatial and temporal scale, and recovery potential). The degree of confidence in the risk assessment, the rationale for the risk management decision, and the options for reducing risk are also important (U.S. EPA, 1995a). Other risk communication considerations are provided in text note 6-2.

Along with discussions of risk and communications with the public, it is important for risk managers to consider whether additional follow-on activities are required. Depending on the importance of the assessment, confidence in its results, and available resources, it may be advisable to conduct another iteration of the risk assessment (starting with problem formulation or analysis) in order to support a final management decision. Another option is to proceed with the decision, implement the selected management alternative, and develop a monitoring plan to evaluate the results (see section 1). If the decision is to mitigate risks through exposure reduction, for example, monitoring could help determine whether the desired reduction in exposure (and effects) is achieved.

7. Text Notes

Text Note 1-1. Related Terminology

The following terms overlap to varying degrees with the concept of ecological risk assessment used in these Guidelines (see Appendix B for definitions):

- Hazard assessment
- Comparative risk assessment
- Cumulative ecological risk assessment
- Environmental impact statement

Text Note 1-2. Flexibility of the Framework Diagram

The framework process (figure 1-1) is a general representation of a complex and varied group of assessments. This diagram represents a flexible process, as illustrated by the examples below.

- In problem formulation, an assessment may begin with a consideration of endpoints, stressors, or ecological effects. Problem formulation is generally interactive and iterative, not linear.

- In the analysis phase, characterization of exposure and effects frequently become intertwined, as when an initial exposure leads to a cascade of additional exposures and secondary effects. The analysis phase should foster an understanding of these complex relationships.

- Analysis and risk characterization are shown as separate phases. However, some models may combine the analysis of exposure and effects data with the integration of these data that occurs in risk characterization.

Text Note 2-1. Who Are Risk Managers?

Risk managers are individuals and organizations who have the responsibility, or have the authority to take action or require action, to mitigate an identified risk. The expression "risk manager" is often used to represent a decision maker in agencies such as EPA or State environmental offices who has legal authority to protect or manage a resource. However, risk managers may include a diverse group of interested parties who also have the ability to take action to reduce or mitigate risk. In situations where a complex of ecosystem values (e.g., watershed resources) is at risk from multiple stressors, and management will be implemented through community action, these groups may function as risk management teams. Risk management teams may include decision officials in Federal, State, local, and tribal governments; commercial, industrial, and private organizations; leaders of constituency groups; and other sectors of the public such as property owners. For additional insights on risk management and manager roles, see text notes 2-3 and 2-4.

Text Note 2-2. Who Are Risk Assessors?

Risk assessors are a diverse group of professionals who bring a needed expertise to a risk assessment team. When a specific risk assessment process is well defined through regulations and guidance, one trained individual may be able to complete a risk assessment given sufficient information (e.g., premanufacture notice of a chemical). However, for complex risk assessments, one individual can rarely provide the necessary breadth of expertise. Every risk assessment team should include at least one professional who is knowledgeable and experienced in using the risk assessment process. Other

team members bring specific expertise relevant to the locations, stressors, ecosystems, scientific issues, and other expertise as needed, depending on the type of assessment.

Text Note 2-3. Who Are Interested Parties?

Interested parties (commonly called "stakeholders") may include Federal, State, tribal, and municipal governments, industrial leaders, environmental groups, small-business owners, landowners, and other segments of society concerned about an environmental issue at hand or attempting to influence risk management decisions. Their involvement, particularly during management goal development, may be key to successful implementation of management plans since implementation is more likely to occur when backed by consensus. Large diverse groups may require trained facilitators and consensus-building techniques to reach agreement.

In some cases, interested parties may provide important information to risk assessors. Local knowledge, particularly in rural communities, and traditional knowledge of native peoples can provide valuable insights about ecological characteristics of a place, past conditions, and current changes. This knowledge should be considered when assessing available information during problem formulation (see section 3.2).

The context of involvement by interested parties can vary widely and may or may not be appropriate for a particular risk assessment. Interested parties may be limited to providing input to goal development, or they may become risk managers, depending on the degree to which they can take action to manage risk and the regulatory context of the decision. When and how interested parties influence risk assessments and risk management are areas of current discussion (NRC, 1996). See additional information in text note 2-1 and section 2.1.

Text Note 2-4. Questions Addressed by Risk Managers and Risk Assessors

Questions Principally for Risk Managers to Answer

What is the nature of the problem and the best scale for the assessment?

What are the management goals and decisions needed, and how will risk assessment help?

What are the ecological values (e.g., entities and ecosystem characteristics) of concern?

What are the policy considerations (law, corporate stewardship, societal

concerns, environmental justice, intergenerational equity)?

What precedents are set by similar risk assessments and previous decisions?

What is the context of the assessment (e.g., industrial site, national park)?

What resources (e.g., personnel, time, money) are available?

What level of uncertainty is acceptable?

Questions Principally for Risk Assessors to Answer

What is the scale of the risk assessment?

What are the critical ecological endpoints and ecosystem and receptor characteristics?

How likely is recovery, and how long will it take?

What is the nature of the problem: Past, present, future?

What is our state of knowledge of the problem?

What data and data analyses are available and appropriate?

What are the potential constraints (e.g., limits on expertise, time, availability of methods and data)?

Text Note 2-5. Sustainability as a Management Goal

To sustain is to keep in existence, maintain, or prolong. Sustainability is used as a management goal in a variety of settings (see U.S. EPA, 1995a). Sustainability and other concepts such as biotic or community integrity may be very useful as guiding principles for management goals. However, in each case these principles should be explicitly defined and interpreted for a place to support a risk assessment. To do this, key questions need to be addressed: What does sustainability or integrity mean for the particular ecosystem? What must be protected to meet sustainable goals or system integrity? Which ecological resources and processes are to be sustained and why? How will we know we have achieved it? Answers to these questions serve to clarify the goals for a particular ecosystem. Concepts like sustainability and integrity do not meet the criteria for an assessment endpoint (see section 3.3.2).

Text Note 2-6. Management Goals for Waquoit Bay

A key challenge for risk assessors when dealing with a general management goal is interpreting the goal for a risk assessment. This can be done by generating a set of management objectives that represent what must be achieved in a particular ecosystem in order for the goal to be met. An example

of this process was developed in the Waquoit Bay watershed risk assessment (U.S. EPA, 1996b).

Waquoit Bay is a small estuary on Cape Cod showing signs of degradation, including loss of eelgrass, fish, and shellfish and an increase in macroalgae mats and fish kills. The management goal for Waquoit Bay was established through public meetings, preexisting goals from local organizations, and State and Federal regulations:

Reestablish and maintain water quality and habitat conditions in Waquoit Bay and associated freshwater rivers and ponds to (1) support diverse self-sustaining commercial, recreational, and native fish and shellfish populations and (2) reverse ongoing degradation of ecological resources in the watershed.

To interpret this goal for the risk assessment, it was converted into 10 management objectives that defined what must be true in the watershed for the goal to be achieved and provide the foundation for management decisions. The management objectives are:

- Reduce or eliminate hypoxic or anoxic events.
- Prevent toxic levels of contamination in water, sediments, and biota.
- Restore and maintain self-sustaining native fish populations and their habitat.
- Reestablish viable eelgrass beds and associated aquatic communities in the bay.
- Reestablish a self-sustaining scallop population in the bay that can support a viable sport fishery.
- Protect shellfish beds from bacterial contamination that results in closures.
- Reduce or eliminate nuisance macroalgal growth.
- Prevent eutrophication of rivers and ponds.
- Maintain diversity of native biotic communities.
- Maintain diversity of water-dependent wildlife.

From these objectives, eight ecological entities and their attributes in the bay were selected as assessment endpoints (see section 3.3.2) to best represent the management goals and objectives, one of which is areal extent and patch size of eelgrass beds. Eelgrass was selected because (1) scallops and other benthic organisms and juvenile finfish depend directly on eelgrass beds for survival, (2) eelgrass is highly sensitive to excess macroalgal growth, and (3) abundant eelgrass represents a healthy bay to human users.

Text Note 2-7. What Is the Difference Between a Management Goal and Management Decision?

Management goals are desired characteristics of ecological values that the public wants to protect. Clean water, protection of endangered species, maintenance of ecological integrity, clear mountain views, and fishing opportunities are all possible management goals. Management decisions determine the means to achieve the end goal. For instance, a goal may be "fishable, swimmable" waters. The management options under consideration to achieve that goal may include increasing enforcement of point-source discharges, restoring fish habitat, designing alternative sewage treatment facilities, or implementing all of the above.

Text Note 2-8. Tiers and Iteration: When Is a Risk Assessment Done?

Risk assessments range from very simple to complex and resource demanding. How is it possible to decide the level of effort? How many times should the risk assessor revisit data and assessment issues? When is the risk assessment done?

Many of these questions can be addressed by designing a set of tiered assessments. These are preplanned and prescribed sets of risk assessments of progressive data and resource intensity. The outcome of a given tier is to either make a management decision, often based on decision criteria, or continue to the next level of effort. Many risk assessors and public and private organizations use this approach (e.g., see Gaudet, 1994; European Community, 1993; Cowan et al., 1995; Baker et al., 1994; Urban and Cook, 1986; Lynch et al., 1994).

An iteration is an unprescribed reevaluation of information that may occur at any time during a risk assessment, including tiered assessments. It is done in response to an identified need, new information, or questions raised while conducting an assessment. As such, iteration is a normal characteristic of risk assessments but is not a formal planned step. An iteration may include redoing the risk assessment with new assumptions and new data.

Setting up tiered assessments and decision criteria may reduce the need for iteration. Up-front planning and careful development of problem formulation will also reduce the need for revisiting data, assumptions, and models. However, there are no rules to dictate how many iterations will be necessary to answer management

questions or ensure scientific validity. A risk assessment can be considered complete when risk managers have sufficient information and confidence in the results of the risk assessment to make a decision they can defend.

Text Note 2-9. Questions To Ask About Scope and Complexity

Is this risk assessment mandated, required by a court decision, or providing guidance to a community?

Will decisions be based on assessments of a small area evaluated in depth or a large-scale area in less detail?

What are the spatial and temporal boundaries of the problem?

What information is already available compared to what is needed?

How much time can be taken, and how many resources are available?

What practicalities constrain data collection?

Is a tiered approach an option?

Text Note 3-1. Avoiding Potential Shortcomings Through Problem Formulation

The importance of problem formulation has been shown repeatedly in the Agency's analysis of ecological risk assessment case studies and in interactions with senior EPA managers and regional risk assessors (U.S. EPA, 1993b, 1994e). Shortcomings consistently identified in the case studies include (1) absence of clearly defined goals, (2) endpoints that are ambiguous and difficult to define and measure, and (3) failure to identify important risks. These and other shortcomings can be avoided through rigorous development of the products of problem formulation as described in this section of the Guidelines.

Text Note 3-2. Uncertainty in Problem Formulation

Throughout problem formulation, risk assessors consider what is known and not known about a problem and its setting. Each product of problem formulation contains uncertainty. The explicit treatment of uncertainty during problem formulation is particularly important because it will have repercussions throughout the remainder of the assessment. Uncertainty is discussed in section 3.4 (Conceptual Models).

Text Note 3-3. Initiating a Risk Assessment: What's Different When Stressors, Effects, or Values Drive the Process?

The reasons for initiating a risk assessment influence when risk assessors generate products in problem formulation. When the assessment is

initiated because of concerns about stressors, risk assessors use what is known about the stressor and its source to focus the assessment. Objectives for the assessment are based on determining how the stressor is likely to come in contact with and affect possible receptors. This information forms the basis for developing conceptual models and selecting assessment endpoints. When an observed effect is the basis for initiating the assessment, endpoints are normally established first. Frequently, the affected ecological entities and their response form the basis for defining assessment endpoints. Goals for protecting the assessment endpoints are then established, which support the development of conceptual models. The models aid in the identification of the most likely stressor(s). Value-initiated risk assessments are driven by goals for the ecological values of concern. These values might involve ecological entities such as species, communities, ecosystems, or places. Based on these goals, assessment endpoints are selected first to serve as an interpretation of the goals. Once selected, the endpoints provide the basis for identifying an array of stressors that may be influencing the assessment endpoints and describing the diversity of potential effects. This information is then captured in the conceptual model(s).

Text Note 3-4. Assessing Available Information: Questions to Ask Concerning Source, Stressor, and Exposure Characteristics, Ecosystem Characteristics, and Effects (derived in part from Barnhouse and Brown, 1994)

Source and Stressor Characteristics

- What is the source? Is it anthropogenic, natural, point source, or diffuse nonpoint?
- What type of stressor is it: chemical, physical, or biological?
- What is the intensity of the stressor (e.g., the dose or concentration of a chemical, the magnitude or extent of physical disruption, the density or population size of a biological stressor)?
- What is the mode of action? How does the stressor act on organisms or ecosystem functions?

Exposure Characteristics

- With what frequency does a stressor event occur (e.g., is it isolated, episodic, or continuous; is it subject to natural daily, seasonal, or annual periodicity)?
- What is its duration? How long does it persist in the environment (e.g., for chemical, what is its half-life, does it bioaccumulate; for physical, is habitat alteration sufficient to prevent recovery; for biological, will it reproduce and proliferate)?

- What is the timing of exposure? When does it occur in relation to critical organism life cycles or ecosystem events (e.g., reproduction, lake overturn)?
- What is the spatial scale of exposure? Is the extent or influence of the stressor local, regional, global, habitat-specific, or ecosystemwide?
- What is the distribution? How does the stressor move through the environment (e.g., for chemical, fate and transport; for physical, movement of physical structures; for biological, life-history dispersal characteristics)?

Ecosystems Potentially at Risk

- What are the geographic boundaries? How do they relate to functional characteristics of the ecosystem?
- What are the key abiotic factors influencing the ecosystem (e.g., climatic factors, geology, hydrology, soil type, water quality)?
- Where and how are functional characteristics driving the ecosystem (e.g., energy source and processing, nutrient cycling)?
- What are the structural characteristics of the ecosystem (e.g., species number and abundance, trophic relationships)?
- What habitat types are present?
- How do these characteristics influence the susceptibility (sensitivity and likelihood of exposure) of the ecosystem to the stressor(s)?
- Are there unique features that are particularly valued (e.g., the last representative of an ecosystem type)?
- What is the landscape context within which the ecosystem occurs?

Ecological Effects

- What are the type and extent of available ecological effects information (e.g., field surveys, laboratory tests, or structure-activity relationships)?
- Given the nature of the stressor (if known), which effects are expected to be elicited by the stressor?
- Under what circumstances will effects occur?

Text Note 3-5. Salmon and Hydropower: Salmon as the Basis for an Assessment Endpoint

A hydroelectric dam is to be built on a river in the Pacific Northwest where anadromous fish such as salmon spawn. Assessment endpoints should be selected to assess potential ecological risk. Of the anadromous fish, salmon that spawn in the river are an

appropriate choice because they meet the criteria for good assessment endpoints. Salmon fry and adults are important food sources for a multitude of aquatic and terrestrial species and are major predators of aquatic invertebrates (ecological relevance). Salmon are sensitive to changes in sedimentation and substrate pebble size, require quality cold-water habitats, and have difficulty climbing fish ladders. Hydroelectric dams represent significant, and normally fatal, habitat alteration and physical obstacles to successful salmon breeding and fry survival (susceptibility). Finally, salmon support a large commercial fishery, some species are endangered, and they have ceremonial importance and are key food sources for Native Americans (relevance to management goals). "Salmon reproduction and population recruitment" is a good assessment endpoint for this risk assessment. In addition, if salmon populations are protected, other anadromous fish populations are likely to be protected as well. However, one assessment endpoint can rarely provide the basis for a risk assessment of complex ecosystems. These are better represented by a set of assessment endpoints.

Text Note 3-6. Cascading Adverse Effects: Primary (Direct) and Secondary (Indirect)

The interrelationships among entities and processes in ecosystems foster a potential for cascading effects: as one population, species, process, or other entity in the ecosystem is altered, other entities are affected as well. Primary, or direct, effects occur when a stressor acts directly on the assessment endpoint and causes an adverse response. Secondary, or indirect, effects occur when the entity's response becomes a stressor to another entity. Secondary effects are often a series of effects among a diversity of organisms and processes that cascade through the ecosystem. For example, application of an herbicide on a wet meadow results in direct toxicity to plants. Death of the wetland plants leads to secondary effects such as loss of feeding habitat for ducks, breeding habitat for red-winged blackbirds, alteration of wetland hydrology that changes spawning habitat for fish, and so forth.

Text Note 3-7. Identifying Susceptibility

Often it is possible to identify ecological entities most likely to be

susceptible to a stressor. However, in some cases where stressors are not known at the initiation of a risk assessment, or specific effects have not been identified, the most susceptible entities may not be known. Where this occurs, professional judgment may be required to make initial selections of potential endpoints.

Once done, available information on potential stressors in the system can be evaluated to determine which of the endpoints are most likely susceptible to identified stressors. If an assessment endpoint is selected for a risk assessment that directly supports management goals and is ultimately found not susceptible to stressors in the system, then a conclusion of no risk is appropriate. However, where there are multiple possible assessment endpoints that address management goals and only some of those are susceptible to a stressor, the susceptible endpoints should be selected. If the susceptible endpoints are not initially selected for an assessment, an additional iteration of the risk assessment with alternative assessment endpoints may be needed to determine risk.

Text Note 3-8. Sensitivity and Secondary Effects: The Mussel-Fish Connection

Native freshwater mussels are endangered in many streams. Management efforts have focused on maintaining suitable habitat for mussels because habitat loss has been considered the greatest threat to this group. However, larval unionid mussels must attach to the gills of a fish host for one month during development. Each species of mussel must attach to a particular host species of fish. In situations where the fish community has been changed, perhaps due to stressors to which mussels are insensitive, the host fish may no longer be available. Mussel larvae will die before reaching maturity as a result. Regardless of how well managers restore mussel habitat, mussels will be lost from this system unless the fish community is restored. In this case, risk is caused by the absence of exposure to a critical resource.

Text Note 3-9. Examples of Management Goals and Assessment Endpoints

Case	Regulatory context/management goal	Assessment endpoint
Assessing Risks of New Chemical Under Toxic Substances Control Act (Lynch et al., 1994).	Protect "the environment" from "an unreasonable risk of injury" (TSCA §2(b)(1) and (2)); protect the aquatic environment. Goal was to exceed a concentration of concern on no more than 20 days a year.	Survival, growth, and reproduction of fish, aquatic invertebrates, and algae.
Special Review of Granular Carbofuran Based on Adverse Effects on Birds (Houseknecht, 1993).	Prevent "unreasonable adverse effects on the environment" (FIFRA §§(c)(5) and 3(c)(6)); using cost-benefit considerations. Goal was to have no regularly repeated bird kills.	Individual bird survival.
Modeling Future Losses of Bottomland Forest Wetlands (Brody et al., 1993).	National Environment Policy Act may apply to environmental impact of new levee construction; also Clean Water Act §404.	(1) Forest community structure and habitat value to wildlife species (2) Species composition of wildlife community.
Pest Risk Assessment on Importation of Logs From Chile (USDA, 1993).	Assessment was done to help provide a basis for any necessary regulation of the importation of timber and timber products into the United States.	Survival and growth of tree species in the western United States.
Baird and McGuire Superfund Site (terrestrial component) (Burmester et al., 1991; Callahan et al., 1991; Menzie et al., 1992).	Protection of the environment (CERCLA/SARA)	(1) Survival of soil invertebrates (2) Survival and reproduction of song birds.
Waquoit Bay Estuary Watershed Risk Assessment (U.S. EPA, 1996b).	Clean Water Act—wetlands protection; water quality criteria—pesticides; endangered species. National Estuarine Research Reserve, Massachusetts, Area of Critical Environmental Concern. Goal was to reestablish and maintain water quality and habitat conditions to support diverse self-sustaining commercial, recreational, and native fish, water-dependent wildlife, and shellfish and to reverse ongoing degradation.	(1) Estuarine eelgrass habitat abundance and distribution (2) Estuarine fish species diversity and abundance (3) Freshwater pond benthic invertebrate species diversity and abundance.

Text Note 3-10. Common Problems in Selecting Assessment Endpoints

- Endpoint is a goal (e.g., maintain and restore endemic populations).
- Endpoint is vague (e.g., estuarine integrity instead of eelgrass abundance and distribution).
- Ecological entity is better as a measure (e.g., emergence of midges can be used to evaluate an assessment endpoint for fish feeding behavior).
- Ecological entity may not be as sensitive to the stressor (e.g., catfish versus salmon for sedimentation).
- Ecological entity is not exposed to the stressor (e.g., using insectivorous birds for avian risk of pesticide application to seeds).
- Ecological entities are irrelevant to the assessment (e.g., lake fish in salmon stream).
- Importance of a species or attributes of an ecosystem are not fully considered (e.g., mussel-fish connection, see text note 3-8).
- Attribute is not sufficiently sensitive for detecting important effects (e.g., survival compared with recruitment for endangered species).

Text Note 3-11. What Are the Benefits of Developing Conceptual Models?

- The process of creating a conceptual model is a powerful learning tool.
- Conceptual models are easily modified as knowledge increases.
- Conceptual models highlight what is known and not known and can be used to plan future work.

- Conceptual models can be a powerful communication tool. They provide an explicit expression of the assumptions and understanding of a system for others to evaluate.

- Conceptual models provide a framework for prediction and are the template for generating more risk hypotheses.

Text Note 3-12. What Are Risk Hypotheses, and Why Are They Important?

Risk hypotheses are proposed answers to questions risk assessors have about what responses assessment endpoints will show when they are exposed to stressors and how exposure will occur. Risk hypotheses clarify and articulate relationships that are posited through the consideration of available data, information from scientific literature, and the best professional judgment of risk assessors developing the conceptual models. This explicit process opens the risk assessment to peer review and evaluation to ensure the scientific validity of the work. Risk hypotheses are not equivalent to statistical testing of null and alternative hypotheses. However, predictions generated from risk hypotheses can be tested in a variety of ways, including standard statistical approaches.

Text Note 3-13. Examples of Risk Hypotheses

Hypotheses include known information that sets the problem in

perspective and the proposed relationships that need evaluation.

Stressor-initiated: Chemicals with a high K_{ow} tend to bioaccumulate. PMN chemical A has a K_{ow} of 5.5 and molecular structure similar to known chemical stressor B.

Hypotheses: Based on the K_{ow} of chemical A, the mode of action of chemical B, and the food web of the target ecosystem, when the PMN chemical is released at a specified rate, it will bioaccumulate sufficiently in 5 years to cause developmental problems in wildlife and fish.

Effects-initiated: Bird kills were repeatedly observed on golf courses following the application of the pesticide carbofuran, which is highly toxic.

Hypotheses: Birds die when they consume recently applied granulated carbofuran; as the level of application increases, the number of dead birds increases. Exposure occurs when dead and dying birds are consumed by other animals. Birds of prey and scavenger species will die from eating contaminated birds.

Ecological value-initiated: Waquoit Bay, Massachusetts, supports recreational boating and commercial and recreational shellfishing and is a significant nursery for finfish. Large mats of macroalgae clog the estuary, most of the eelgrass has died, and the scallops are gone.

Hypotheses: Nutrient loading from septic systems, air pollution, and lawn fertilizers causes eelgrass loss by

shading from algal growth and direct toxicity from nitrogen compounds. Fish and shellfish populations are decreasing because of loss of eelgrass habitat and periodic hypoxia from excess algal growth and low dissolved oxygen.

Text Note 3-14. Uncertainty in Problem Formulation

Uncertainties in problem formulation are manifested in the quality of conceptual models. To address uncertainty:

- Be explicit in defining assessment endpoints; include both an entity and its measurable attributes.
- Reduce or define variability by carefully defining boundaries for the assessment.
- Be open and explicit about the strengths and limitations of pathways and relationships depicted in the conceptual model.
- Identify and describe rationale for key assumptions made because of lack of knowledge, model simplification, approximation, or extrapolation.
- Describe data limitations.

Text Note 3-15. Why Was Measurement Endpoint Changed?

The original definition of measurement endpoint was "a measurable characteristic that is related to the valued characteristic chosen as the assessment endpoint" (Suter, 1989; U.S. EPA, 1992a). The definition refers specifically to the response of an assessment endpoint to a stressor. It does not include measures of ecosystem characteristics, life-history considerations, exposure, or other measures. Because measurement endpoint does not encompass these other important measures and there was confusion about its meaning, the term was replaced with measures of effect and supplemented by two other categories of measures.

Text Note 3-16. Examples of a Management Goal, Assessment Endpoint, and Measures

Goal: Viable, self-sustaining coho salmon population that supports a subsistence and sport fishery.

Assessment Endpoint: Coho salmon breeding success, fry survival, and adult return rates.

Measures of Effects

- Egg and fry response to low dissolved oxygen.
- Adult behavior in response to obstacles.
- Spawning behavior and egg survival with changes in sedimentation.

Measures of Ecosystem and Receptor Characteristics

- Water temperature, water velocity, and physical obstructions.
- Abundance and distribution of suitable breeding substrate.
- Abundance and distribution of suitable food sources for fry.
- Feeding, resting, and breeding behavior.
- Natural reproduction, growth, and mortality rates.

Measures of Exposure

- Number of hydroelectric dams and associated ease of fish passage.
- Toxic chemical concentrations in water, sediment, and fish tissue.
- Nutrient and dissolved oxygen levels in ambient waters.
- Riparian cover, sediment loading, and water temperature.

Text Note 3-17. How Do Water Quality Criteria Relate to Assessment Endpoints?

Water quality criteria (U.S. EPA, 1986b) have been developed for the protection of aquatic life from chemical stressors. This text note shows how the elements of a water quality criterion correspond to management goals, management decisions, assessment endpoints, and measures.

Regulatory Goal

- Clean Water Act, § 101: Protect the chemical, physical, and biological integrity of the Nation's waters.

Program Management Decisions

- Protect 99% of individuals in 95% of the species in aquatic communities from acute and chronic effects resulting from exposure to a chemical stressor.

Assessment Endpoints

- Survival of fish, aquatic invertebrate, and algal species under acute exposure.
- Survival, growth, and reproduction of fish, aquatic invertebrate, and algal species under chronic exposure.

Measures of Effect

- Laboratory LC_{50} s for at least eight species meeting certain requirements.
- Chronic no-observed-adverse-effect levels (NOAELs) for at least three species meeting certain requirements.

Measures of Ecosystem and Receptor Characteristics

- Water hardness (for some metals).
- pH.

The water quality criterion is a benchmark level derived from a distributional analysis of single-species toxicity data. It is assumed that the

species tested adequately represent the composition and sensitivities of species in a natural community.

Text Note 3-18. The Data Quality Objectives Process

The data quality objectives (DQO) process combines elements of both planning and problem formulation in its seven-step format.

Step 1. State the problem. Review existing information to concisely describe the problem to be studied.

Step 2. Identify the decision. Determine what questions the study will try to resolve and what actions may result.

Step 3. Identify inputs to the decision. Identify information and measures needed to resolve the decision statement.

Step 4. Define study boundaries. Specify time and spatial parameters and where and when data should be collected.

Step 5. Develop decision rule. Define statistical parameter, action level, and logical basis for choosing alternatives.

Step 6. Specify tolerable limits on decision errors. Define limits based on the consequences of an incorrect decision.

Step 7. Optimize the design. Generate alternative data collection designs and choose most resource-effective design that meets all DQOs.

Text Note 4-1. Data Collection and the Analysis Phase

Data needs are identified during problem formulation (the analysis plan step), and data are collected before the start of the analysis phase. These data may be collected for the specific purpose of a particular risk assessment, or they may be available from previous studies. If additional data needs are identified as the assessment proceeds, the analysis phase may be temporarily halted while data are collected or the assessor (in consultation with the risk manager) may choose to iterate the problem formulation again. Data collection methods are not described in these Guidelines. However, the evaluation of data for the purposes of risk assessment is discussed in section 4.2.

Text Note 4-2. The American National Standard for Quality Assurance

The Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs (ASQC, 1994) recognize several areas that are important to ensuring that environmental data will meet study objectives, including:

- Planning and scoping.
- Designing data collection operations.
- Implementing and monitoring planned operations.
- Assessing and verifying data usability.

Text Note 4-3. Questions for Evaluating a Study's Utility for Risk Assessment

Are the study objectives relevant to the risk assessment?

Are the variables and conditions the study represents comparable with those important to the risk assessment?

Is the study design adequate to meet its objectives?

Was the study conducted properly?

How are variability and uncertainty treated and reported?

Text Note 4-4. Uncertainty Evaluation in the Analysis Phase

Source of uncertainty	Example analysis phase strategies	Specific example
Unclear communication	Contact principal investigator or other study participants if objectives or methods of literature studies are unclear. Document decisions made during the course of the assessment.	Clarify whether the study was designed to characterize local populations or regional populations.
Descriptive errors	Verify that data sources followed appropriate QA/QC procedures.	Discuss rationale for selecting the critical toxicity study. Double-check calculations and data entry.
Variability	Describe heterogeneity using point estimates (e.g., central tendency and high end) or by constructing probability or frequency distributions. Differentiate from uncertainty due to lack of knowledge.	Display differences in species sensitivity using a cumulative distribution function.
Data gaps	Collect needed data	Discuss rationale for using a factor of 10 to extrapolate between a lowest-observed-adverse-effect level (LOAEL) and a NOAEL.
Uncertainty about a quantity's true value.	Describe approaches used for bridging gaps and their rationales. Differentiate science-based judgments from policy-based judgments. Use standard statistical methods to construct probability distributions or point estimates (e.g., confidence limits). Evaluate power of designed experiments to detect differences. Collect additional data. Verify location of samples or other spatial features. Discuss key aggregations and model simplifications.	Present the upper confidence limit on the arithmetic mean soil concentration, in addition to the best estimate of the arithmetic mean.
Model structure uncertainty (process models).	Compare model predictions with data collected in the system of interest.	Ground-truth remote sensing data. Discuss combining different species into a group based on similar feeding habits.
Uncertainty about a model's form (empirical models).	Evaluate whether alternative models should be combined formally or treated separately. Compare model predictions with data collected in the system of interest.	Present results obtained using alternative models. Compare results of a plant uptake model with data collected in the field.

Text Note 4-5. Considering the Degree of Aggregation in Models

Wiegert and Bartell (1994) suggest the following considerations for evaluating the proper degree of aggregation or disaggregation:

1. Do not aggregate components with greatly disparate flux rates.
2. Do not greatly increase the disaggregation of the structural aspects of the model without a corresponding increase in the sophistication of the functional relationships and controls.
3. Disaggregate models only insofar as required by the goals of the model to facilitate testing.

Text Note 4-6. Questions for Source Description

Where does the stressor originate?

What environmental media first receive stressors?

Does the source generate other constituents that will influence a

stressor's eventual distribution in the environment?

- Are there other sources of the same stressor?
- Are there background sources?
- Is the source still active?
- Does the source produce a distinctive signature that can be seen in the environment, organisms, or communities?

Additional Questions for Introduction of Biological Stressors

Is there an opportunity for repeated introduction or escape into the new environment?

Will the organism be present on a transportable item?

Are there mitigation requirements or conditions that would kill or impair the organism before entry, during transport, or at the port of entry?

Text Note 4-7. Questions to Ask in Evaluating Stressor Distribution

- What are the important transport pathways?
- What characteristics of the stressor influence transport?
- What characteristics of the ecosystem will influence transport?
- What secondary stressors will be formed?
- Where will they be transported?

Text Note 4-8. General Mechanisms of Transport and Dispersal

Physical, Chemical, and Biological Stressors

- By air current.
- In surface water (rivers, lakes, streams).
- Over and/or through the soil surface.
- Through ground water.

Primarily Chemical Stressors

- Through the food web.

Primarily Biological Stressors

- Splashing or raindrops.
- Human activity (boats, campers).
- Passive transmittal by other organisms.
- Biological vectors.

Text Note 4-9. Questions To Ask in Describing Contact or Co-Occurrence

Must the receptor actually contact the stressor for adverse effects to occur?

Must the stressor be taken up into a receptor for adverse effects to occur?

What characteristics of the receptors will influence the extent of contact or co-occurrence?

Will abiotic characteristics of the environment influence the extent of contact or co-occurrence?

Will ecosystem processes or community-level interactions influence the extent of contact or co-occurrence?

Text Note 4-10. Example of an Exposure Equation: Calculating a Potential Dose via Ingestion

$$ADD_{pot} = \sum_{k=1}^m (C_k \times FR_k \times NIR_k)$$

Where:

ADD_{pot} = Potential average daily dose (e.g., in mg/kg-day)

C_k = Average contaminant concentration in the kth type of food (e.g., in mg/kg wet weight)

FR_k = Fraction of intake of the kth food type that is from the contaminated area (unitless)

NIR_k = Normalized ingestion rate of the kth food type on a wet-weight basis (e.g., in kg food/kg body-weight-day).

m = Number of contaminated food types

Note: A similar equation can be used to calculate uptake by adding an absorption factor that accounts for the fraction of the chemical in the kth food type that is absorbed into the organism. The choice of potential dose or uptake depends on the form of the stressor-response relationship. Source: U.S. EPA, 1993a.

Text Note 4-11. Measuring Internal Dose Using Biomarkers and Tissue Residues

Biomarkers and tissue residues are particularly useful when exposure across many pathways must be integrated and when site-specific factors influence bioavailability. They can also be very useful when metabolism and accumulation kinetics are important, although these factors can make interpretation of results more difficult (McCarty and Mackay, 1993). These methods are most useful when they can

be quantitatively linked to the amount of stressor originally contacted by the organism. In addition, they are most useful when the stressor-response relationship expresses the amount of stressor in terms of the tissue residue or biomarker (van Gestel and van Brummelen, 1996). Standard analytical methods are generally available for tissue residues, making them more readily usable for routine assessments than biomarkers. Readers are referred to the review in Ecotoxicology (Vol. 3, Issue 3, 1994), Huggett et al. (1992), and the debate in Human Health and Ecological Risk Assessment (Vol. 2, Issue 2, 1996).

Text Note 4-12. Questions Addressed by the Exposure Profile

How does exposure occur?

What is exposed?

How much exposure occurs? When and where does it occur?

How does exposure vary?

How uncertain are the exposure estimates?

What is the likelihood that exposure will occur?

Text Note 4-13. Questions for Stressor-Response Analysis

Does the assessment require point estimates or stressor-response curves?

Does the assessment require the establishment of a "no-effect" level?

Would cumulative effects distributions be useful?

Will analyses be used as input to a process model?

Text Note 4-14. Qualitative Stressor-Response Relationships

The relationship between stressor and response can be described qualitatively, for instance, using categories of high, medium, and low, to describe the intensity of response given exposure to a stressor. For example, Pearlstone et al. (1985) assumed that seeds would not germinate if they were inundated with water at the critical time. This stressor-response relationship was described simply as a yes or no. In most cases, however, the objective is to describe quantitatively the intensity of response associated with exposure, and in the best case, to describe how intensity of response changes with incremental increases in exposure.

Text Note 4-15. Median Effect Levels

Median effects are those effects elicited in 50% of the test organisms exposed to a stressor, typically chemical stressors. Median effect concentrations can be expressed in terms of lethality or mortality and are known as LC₅₀ or LD₅₀, depending on whether

concentrations (in the diet or in water) or doses (mg/kg) were used. Median effects other than lethality (e.g., effects on growth) are expressed as EC₅₀ or ED₅₀. The median effect level is always associated with a time parameter (e.g., 24 or 48 hours). Because these tests seldom exceed 96 hours, their main value lies in evaluating short-term effects of chemicals. Stephan (1977) discusses several statistical methods to estimate the median effect level.

Text Note 4-16. No-Effect Levels Derived From Statistical Hypothesis Testing

Statistical hypothesis tests have typically been used with chronic toxicity tests of chemical stressors that evaluate multiple endpoints. For each endpoint, the objective is to determine the highest test level for which effects are not statistically different from the controls (the no-observed-adverse-effect level, NOAEL) and the lowest level at which effects were statistically significant from the control (the lowest-observed-adverse-effect level, LOAEL). The range between the NOAEL and the LOAEL is sometimes called the maximum acceptable toxicant concentration, or MATC. The MATC, which can also be reported as the geometric mean of the NOAEL and the LOAEL (i.e., GMATC), provides a useful reference with which to compare toxicities of various chemical stressors. Reporting the results of chronic tests in terms of the MATC or GMATC has been widely used within the Agency for evaluating pesticides and industrial chemicals (e.g., Urban and Cook, 1986; Nabholz, 1991).

Text Note 4-17. General Criteria for Causality (Adapted From Fox, 1991)

Criteria Strongly Affirming Causality

- Strength of association.
- Predictive performance.
- Demonstration of a stressor-response relationship.
- Consistency of association.

Criteria Providing a Basis for Rejecting Causality

- Inconsistency in association.
- Temporal incompatibility.
- Factual implausibility.

Other Relevant Criteria

- Specificity of association.
- Theoretical and biological plausibility.

Text Note 4-18. Koch's Postulates (Pelczar and Reid, 1972)

- A pathogen must be consistently found in association with a given disease.

- The pathogen must be isolated from the host and grown in pure culture.
- When inoculated into test animals, the same disease symptoms must be expressed.
- The pathogen must again be isolated from the test organism.

Text Note 4-19. Examples of Extrapolations To Link Measures of Effect to Assessment Endpoints

Every risk assessment has data gaps that should be addressed, but it is not always possible to obtain more information. When there is a lack of time, monetary resources, or a practical means to acquire more data, extrapolations such as those listed below may be the only way to bridge gaps in available data. Extrapolations may be:

- Between taxa (e.g., bluegill to rainbow trout).
- Between responses (e.g., mortality to growth or reproduction).
- From laboratory to field.
- Between geographic areas.
- Between spatial scales.
- From data collected over a short time frame to longer-term effects.

Text Note 4-20. Questions Related to Selecting Extrapolation Approaches

- How specific is the assessment endpoint?
- Does the spatial or temporal extent of exposure suggest the need for additional receptors or extrapolation models?
- Are the quantity and quality of the data available sufficient for planned extrapolations and models?
- Is the proposed extrapolation technique consistent with ecological information?
- How much uncertainty is acceptable?

Text Note 4-21. Questions To Consider When Extrapolating From Effects Observed in the Laboratory to Field Effects of Chemicals

Exposure Factors

- How will environmental fate and transformation of the chemical affect exposure in the field?
- How comparable are exposure conditions and the timing of exposure?
- How comparable are the routes of exposure?
- How do abiotic factors influence bioavailability and exposure?
- How likely are preference or avoidance behaviors?

Effects Factors

- What is known about the biotic and abiotic factors controlling populations of the organisms of concern?
- To what degree are critical life-stage data available?

How may exposure to the same or other stressors in the field have altered organism sensitivity?

Text Note 4-22. Questions Addressed by the Stressor-Response Profile

- What ecological entities are affected?
- What is the nature of the effect(s)?
- What is the intensity of the effect(s)?
- Where appropriate, what is the time scale for recovery?
- What causal information links the stressor with any observed effects?
- How do changes in measures of effects relate to changes in assessment endpoints?
- What is the uncertainty associated with the analysis?

Text Note 5-1. An Example of Field Methods Used for Risk Estimation

Along with quotients comparing field measures of exposure with laboratory acute toxicity data (see text note 5-3), EPA evaluated the risks of granular carbofuran to birds based on incidents of bird kills following carbofuran applications. More than 40 incidents involving nearly 30 species of birds were documented. Although reviewers identified problems with individual field studies (e.g., lack of appropriate control sites, lack of data on carcass-search efficiencies, no examination of potential synergistic effects of other pesticides, and lack of consideration of other potential receptors such as small mammals), there was so much evidence of mortality associated with carbofuran application that the study deficiencies did not alter the conclusions of high risk found by the assessment (Houseknecht, 1993).

Text Note 5-2. Using Qualitative Categories to Estimate Risks of an Introduced Species

The importation of logs from Chile required an assessment of the risks posed by the potential introduction of the bark beetle, *Hylurgus ligniperda* (USDA, 1993). Experts judged the potential for colonization and spread of the species, and their opinions were expressed as high, medium, or low as to the likelihood of establishment (exposure) or consequential effects of the beetle. Uncertainties were similarly expressed. A ranking scheme was then used to sum the individual elements into an overall estimate of risk (high, medium, or low). Narrative explanations of risk accompanied the overall rankings.

Text Note 5-3. Applying the Quotient Method

When applying the quotient method to chemical stressors, the effects

concentration or dose (e.g., an LC₅₀, LD₅₀, EC₅₀, ED₅₀, NOAEL, or LOAEL) is frequently adjusted by uncertainty factors before division into the exposure number (U.S. EPA, 1984; Nabholz, 1991; Urban and Cook, 1986; see section 4.3.1.3), although EPA used a slightly different approach in estimating the risks to the survival of birds that forage in agricultural areas where the pesticide granular carbofuran is applied (Houseknecht, 1993). In this case, EPA calculated the quotient by dividing the estimated exposure levels of carbofuran granules in surface soils (number/ft²) by the granules/LD₅₀ derived from single-dose avian toxicity tests. The calculation yields values with units of LD₅₀/ft². It was assumed that a higher quotient value corresponded to an increased likelihood that a bird would be exposed to lethal levels of granular carbofuran at the soil surface. Minimum and maximum values for LD₅₀/ft² were estimated for songbirds, upland game birds, and waterfowl that may forage within or near 10 different agricultural crops.

Text Note 5-4. Comparing an Exposure Distribution With a Point Estimate of Effects

The EPA Office of Pollution Prevention and Toxics uses a Probabilistic Dilution Model (PDM3) to generate a distribution of daily average chemical concentrations based on estimated variations in stream flow in a model system. The PDM3 model compares this exposure distribution with an aquatic toxicity test endpoint to estimate how many days in a 1-year period the endpoint concentration is exceeded (Nabholz et al., 1993; U.S. EPA, 1988b). The frequency of exceedance is based on the duration of the toxicity test used to derive the effects endpoint. Thus, if the endpoint was an acute toxicity level of concern, an exceedance would be identified if the level of concern was exceeded for 4 days or more (not necessarily consecutive). The exposure estimates are conservative in that they assume instantaneous mixing of the chemical in the water column and no losses due to physical, chemical, or biodegradation effects.

Text Note 5-5. Comparing Cumulative Exposure and Effects Distributions for Chemical Stressors

Exposure distributions for chemical stressors can be compared with effects distributions derived from point estimates of acute or chronic toxicity values for different species (e.g., HCN, 1993; Cardwell et al., 1993; Baker et al., 1994; Solomon et al., 1996). Figure 5-

5 shows a distribution of exposure concentrations of an herbicide compared with single-species toxicity data for algae (and one vascular plant species) for the same chemical. The degree of overlap of the curves indicates the likelihood that a certain percentage of species may be adversely affected. For example, figure 5-5 indicates that the 10th centile of algal species' EC₅ values is exceeded less than 10% of the time.

The predictive value of this approach is evident. The degree of risk reduction that could be achieved by changes in exposure associated with proposed risk mitigation options can be readily determined by comparing modified exposure distributions with the effects distribution curve.

When using effects distributions derived from single-species toxicity data, risk assessors should consider the following questions:

- Does the subset of species for which toxicity test data are available represent the range of species present in the environment?
- Are particularly sensitive (or insensitive) groups of organisms represented in the distribution?
- If a criterion level is selected (e.g., protect 95% of species—does the 5% of potentially affected species include organisms of ecological, commercial, or recreational significance?

Text Note 5-6. Estimating Risk With Process Models

Models that integrate both exposure and effects information can be used to estimate risk. During risk estimation, it is important that both the strengths and limitations of a process model approach be highlighted. Brody et al. (1993; see Appendix D) linked two process models to integrate exposure and effects information and forecast spatial and temporal changes in forest communities and their wildlife habitat value. While the models were useful for projecting long-term effects based on an understanding of the underlying mechanisms of change in forest communities and wildlife habitat, they could not evaluate all possible stressors of concern and were limited in the plant and wildlife species they could consider. Understanding both the strengths and limitations of models is essential for accurately representing the overall confidence in the assessment.

Text Note 5-7. What Are Statistically Significant Effects?

Statistical testing is the "statistical procedure or decision rule that leads to establishing the truth or falsity of a hypothesis" (Alder and Roessler,

1972). Statistical significance is based on the number of data points, the nature of their distribution, whether intertreatment variance exceeds intratreatment variance in the data, and the a priori significance level (α). The types of statistical tests and the appropriate protocols (e.g., power of test) for these tests should be established as part of the analysis plan during problem formulation.

Text Note 5-8. Possible Risk Assessment Report Elements

- Describe risk assessor/risk manager planning results.
- Review the conceptual model and the assessment endpoints.
- Discuss the major data sources and analytical procedures used.
- Review the stressor-response and exposure profiles.
- Describe risks to the assessment endpoints, including risk estimates and adversity evaluations.
- Review and summarize major areas of uncertainty (as well as their direction) and the approaches used to address them.
- Discuss the degree of scientific consensus in key areas of uncertainty.
- Identify major data gaps and, where appropriate, indicate whether gathering additional data would add significantly to the overall confidence in the assessment results.
- Discuss science policy judgments or default assumptions used to bridge information gaps and the basis for these assumptions.
- Discuss how the elements of quantitative uncertainty analysis are embedded in the estimate of risk.

Text Note 5-9. Clear, Transparent, Reasonable, and Consistent Risk Characterizations

For Clarity

- Be brief; avoid jargon.
- Make language and organization understandable to risk managers and the informed lay person.
- Fully discuss and explain unusual issues specific to a particular risk assessment.

For Transparency

- Identify the scientific conclusions separately from policy judgments.
- Clearly articulate major differing viewpoints of scientific judgments.
- Define and explain the risk assessment purpose (e.g., regulatory purpose, policy analysis, priority setting).
- Fully explain assumptions and biases (scientific and policy).

For Reasonableness

- Integrate all components into an overall conclusion of risk that is complete, informative, and useful in decision making.
- Acknowledge uncertainties and assumptions in a forthright manner.
- Describe key data as experimental, state-of-the-art, or generally accepted scientific knowledge.
- Identify reasonable alternatives and conclusions that can be derived from the data.
- Define the level of effort (e.g., quick screen, extensive characterization) along with the reason(s) for selecting this level of effort.
- Explain the status of peer review.

For Consistency with Other Risk Characterizations

- Describe how the risks posed by one set of stressors compare with the risks posed by a similar stressor(s) or similar environmental conditions.
- Indicate how the strengths and limitations of the assessment compare with past assessments.

Text Note 6-1. Questions Regarding Risk Assessment Results (Adapted From U.S. EPA, 1993c)

Questions Principally for Risk Assessors To Ask Risk Managers

- Are the risks sufficiently well defined (and data gaps small enough) to support a risk management decision?
- Was the right problem analyzed?
- Was the problem adequately characterized?

Questions Principally for Risk Managers To Ask Risk Assessors

- What effects might occur?
- How adverse are the effects?
- How likely is it that effects will occur?
- When and where do the effects occur?
- How confident are you in the conclusions of the risk assessment?
- What are the critical data gaps, and will information be available in the near future to fill these gaps?
- Are more ecological risk assessment iterations required?
- How could monitoring help evaluate the results of the risk management decision?

Text Note 6-2. Risk Communication Considerations for Risk Managers (U.S. EPA, 1995b)

- Plan carefully and evaluate the success of your communication efforts.
- Coordinate and collaborate with other credible sources.
- Accept and involve the public as a legitimate partner.

- Listen to the public's specific concerns.
- Be honest, frank, and open.
- Speak clearly and with compassion.
- Meet the needs of the media.

Text Note A-1. Stressor vs. Agent

Agent has been suggested as an alternative for the term stressor (Suter et al., 1994). Agent is thought to be a more neutral term than stressor, but agent is also associated with certain classes of chemicals (e.g., chemical warfare agents). In addition, agent has the connotation of the entity that is initially released from the source, whereas stressor has the connotation of the entity that causes the response. Agent is used in EPA's Guidelines for Exposure Assessment (U.S. EPA, 1992b) (i.e., with exposure defined as "contact of a chemical, physical, or biological agent"). The two terms are considered to be nearly synonymous, but stressor is used throughout these Guidelines for internal consistency.

Appendix A—Changes From EPA's Ecological Risk Assessment Framework

EPA has gained much experience with the ecological risk assessment process since the publication of the Framework Report (U.S. EPA, 1992a) and has received many suggestions for modifications of both the process and the terminology. While EPA is not recommending major changes in the overall ecological risk assessment process, modifications are summarized here to assist those who may already be familiar with the Framework Report. Changes in the diagram are discussed first, followed by changes in terminology and definitions.

A.1. Changes in the Framework Diagram

The revised framework diagram is shown in figure 1-2. Within each phase, rectangles are used to designate inputs, hexagons indicate actions, and circles represent outputs. There have been some minor changes in the wording for the boxes outside of the risk assessment process (planning; communicating results to the risk manager; acquire data, iterate process, monitor results). "Iterate process" was added to emphasize the iterative (and frequently tiered) nature of risk assessment. The term "interested parties" was added to the planning and risk management boxes to indicate their increasing role in the risk assessment process (Commission on Risk Assessment and Risk Management, 1997). The new diagram of problem formulation contains several changes. The hexagon emphasizes the importance of integrating available information before selecting assessment endpoints and building conceptual models. The three products of problem formulation are enclosed in circles. Assessment endpoints are shown as a key product that drives conceptual model development. The conceptual model remains a central product of problem formulation. The analysis plan has been added as an explicit product of problem formulation to emphasize the need

to plan data evaluation and interpretation before analyses begin.

In the analysis phase, the left-hand side of figure 1-2 shows the general process of characterization of exposure, and the right-hand side shows the characterization of ecological effects. It is important that evaluation of these two aspects of analysis is an interactive process to ensure compatible outputs that can be integrated in risk characterization. The dotted line and hexagon that include both the exposure and ecological response analyses emphasize this interaction. In addition, the first three boxes in analysis now include the measures of exposure, effects, and ecosystem and receptor characteristics that provide input to the exposure and ecological response analyses.

Experience with the application of risk characterization as outlined in the Framework Report suggests the need for several modifications in this process. Risk estimation entails the integration of exposure and effects estimates along with an analysis of uncertainties. The process of risk estimation outlined in the Framework Report separates integration and uncertainty. The original purpose for this separation was to emphasize the importance of estimating uncertainty. This separation is no longer needed since uncertainty analysis is now explicitly addressed in most risk integration methods.

The description of risk is similar to the process described in the Framework Report. Topics included in the risk description include the lines of evidence that support causality and a determination of the ecological adversity of observed or predicted effects. Considerations for reporting risk assessment results are also described.

A.2. Changes in Definitions and Terminology

Except as noted below, these Guidelines retain definitions used in the Framework Report (see Appendix B). Some definitions have been revised, especially those related to endpoints and exposure. Some changes in the classification of uncertainty from the Framework Report are also described in this section.

A.2.1. Endpoint Terminology

The Framework Report uses the assessment and measurement endpoint terminology of Suter (1990), but offers no specific terms for measures of stressor levels or ecosystem characteristics. Experience has demonstrated that measures unrelated to effects are sometimes inappropriately called measurement endpoints, which were defined by Suter (1990) as "measurable responses to a stressor that are related to the valued characteristic chosen as assessment endpoints." These Guidelines replace measurement endpoint with measure of effect, which is "a change in an attribute of an assessment endpoint or its surrogate in response to a stressor to which it is exposed." An assessment endpoint is an explicit expression of the environmental value to be protected, operationally defined by an entity and its attributes. Since data other than those required to evaluate responses (i.e., measures of effects) are required for an ecological risk assessment, two additional types of measures

are used. Measures of exposure include stressor and source measurements, while measures of ecosystem and receptor characteristics include, for example, habitat measures, soil parameters, water quality conditions, or life-history parameters that may be necessary to better characterize exposure or effects. Any of the three types of measures may be actual data (e.g., mortality), summary statistics (e.g., an LC_{50}), or estimated values (e.g., an LC_{50} estimated from a structure-activity relationship).

A.2.2. Exposure Terminology

These Guidelines define exposure in a manner that is relevant to any chemical, physical, or biological entity. While the broad concepts are the same, the language and approaches vary depending on whether a chemical, physical, or biological entity is the subject of assessment. Key exposure-related terms and their definitions are:

- **Source.** A source is an entity or action that releases to the environment or imposes on the environment a chemical, physical, or biological stressor or stressors. Sources may include a waste treatment plant, a pesticide application, a logging operation, introduction of exotic organisms, or a dredging project.
- **Stressor.** A stressor is any physical, chemical, or biological entity that can induce an adverse response. This term is used broadly to encompass entities that cause primary effects and those primary effects that can cause secondary (i.e., indirect) effects. Stressors may be chemical (e.g., toxics or nutrients), physical (e.g., dams, fishing nets, or suspended sediments), or biological (e.g., exotic or genetically engineered organisms). While risk assessment is concerned with the characterization of adverse responses, under some circumstances a stressor may be neutral or produce effects that are beneficial to certain ecological components (see text note A-1). Primary effects may also become stressors. For example, a change in a bottomland hardwood plant community affected by rising water levels can be thought of as a stressor influencing the wildlife community. Stressors may also be formed through abiotic interactions; for example, the increase in ultraviolet light reaching the Earth's surface results from the interaction of the original stressors released (chlorofluorocarbons) with the ecosystem (stratospheric ozone).

• **Exposure.** As discussed above, these Guidelines use the term exposure broadly to mean "subjected to some action or influence." Used in this way, exposure applies to physical and biological stressors as well as to chemicals (organisms are commonly said to be exposed to radiation, pathogens, or heat). Exposure is also applicable to higher levels of biological organization, such as exposure of a benthic community to dredging, exposure of an owl population to habitat modification, or exposure of a wildlife population to hunting.

Although the operational definition of exposure, particularly the units of measure, depends on the stressor and receptor (defined below), the following general definition is applicable: Exposure is the contact or co-occurrence of a stressor with a receptor.

- **Receptor.** The receptor is the ecological entity exposed to the stressor. This term may

refer to tissues, organisms, populations, communities, and ecosystems. While either "ecological component" (U.S. EPA, 1992a) or "biological system" (Cohrssen and Covello, 1989) are alternative terms, "receptor" is usually clearer in discussions of exposure where the emphasis is on the stressor-receptor relationship.

As discussed below, both disturbance and stress regime have been suggested as alternative terms for exposure. Neither term is used in these Guidelines, which instead use exposure as broadly defined above.

- **Disturbance.** A disturbance is any event or series of events that disrupts ecosystem, community, or population structure and changes resources, substrate availability, or the physical environment (modified slightly from White and Pickett, 1985). Defined in this way, disturbance is clearly a kind of exposure (i.e., an event that subjects a receptor, the disturbed system, to the actions of a stressor). Disturbance may be a useful alternative to stressor specifically for physical stressors that are deletions or modifications (e.g., logging, dredging, flooding).

- **Stress Regime.** The term stress regime has been used in at least three distinct ways: (1) To characterize exposure to multiple chemicals or to both chemical and nonchemical stressors (more clearly described as multiple exposure, complex exposure, or exposure to mixtures), (2) as a synonym for exposure that is intended to avoid overemphasis on chemical exposures, and (3) to describe the series of interactions of exposures and effects resulting in secondary exposures, secondary effects, and, finally, ultimate effects (also known as risk cascade (Lipton et al., 1993)), or causal chain, pathway, or network (Andrewartha and Birch, 1984). Because of the potential for confusion and the availability of other, clearer terms, this term is not used in these Guidelines.

A.2.3. Uncertainty Terminology

The Framework Report divided uncertainty into conceptual model formation, information and data, stochasticity, and error. These Guidelines discuss uncertainty throughout the process, focusing on the

conceptual model (section 3.4.3), the analysis phase (section 4.1.3), and the incorporation of uncertainty in risk estimates (section 5.1). The bulk of the discussion appears in section 4.1.3, where the discussion is organized according to the following sources of uncertainty:

- Unclear communication.
- Descriptive errors.
- Variability.
- Data gaps.
- Uncertainty about a quantity's true value.
- Model structure uncertainty (process models).
- Uncertainty about a model's form (empirical models).

A.2.4. Lines of Evidence

The Framework Report used the phrase weight of evidence to describe the process of evaluating multiple lines of evidence in risk characterization. These Guidelines use the phrase lines of evidence instead to de-emphasize the balancing of opposing factors based on assignment of quantitative values to reach a conclusion about a "weight" in favor of a more inclusive approach, which evaluates all available information, even evidence that may be qualitative in nature.

Appendix B—Key Terms (Adapted From U.S. EPA, 1992a)

Adverse ecological effects.—Changes that are considered undesirable because they alter valued structural or functional characteristics of ecosystems or their components. An evaluation of adversity may consider the type, intensity, and scale of the effect as well as the potential for recovery.

Agent.—Any physical, chemical, or biological entity that can induce an adverse response (synonymous with stressor).

Assessment endpoint.—An explicit expression of the environmental value that is to be protected, operationally defined by an ecological entity and its attributes. For example, salmon are valued ecological entities; reproduction and age class structure are some of their important attributes. Together "salmon reproduction and age class structure" form an assessment endpoint.

Attribute.—A quality or characteristic of an ecological entity. An attribute is one component of an assessment endpoint.

Characterization of ecological effects.—A portion of the analysis phase of ecological risk assessment that evaluates the ability of a stressor(s) to cause adverse effects under a particular set of circumstances.

Characterization of exposure.—A portion of the analysis phase of ecological risk assessment that evaluates the interaction of the stressor with one or more ecological entities. Exposure can be expressed as co-occurrence or contact, depending on the stressor and ecological component involved.

Community.—An assemblage of populations of different species within a specified location in space and time.

Comparative risk assessment.—A process that generally uses a professional judgment approach to evaluate the relative magnitude of effects and set priorities among a wide range of environmental problems (e.g., U.S. EPA, 1993d). Some applications of this process are similar to the problem formulation portion of an ecological risk assessment in that the outcome may help select topics for further evaluation and help focus limited resources on areas having the greatest risk reduction potential. In other situations, a comparative risk assessment is conducted more like a preliminary risk assessment. For example, EPA's Science Advisory Board used professional judgment and an ecological risk assessment approach to analyze future ecological risk scenarios and risk management alternatives (U.S. EPA, 1995e).

Conceptual model.—A conceptual model in problem formulation is a written description and visual representation of predicted relationships between ecological entities and the stressors to which they may be exposed.

Cumulative distribution function (CDF).—Cumulative distribution functions are particularly useful for describing the likelihood that a variable will fall within different ranges of x . $F(x)$ (i.e., the value of y at x in a CDF plot) is the probability that a variable will have a value less than or equal to x (figure B-1).

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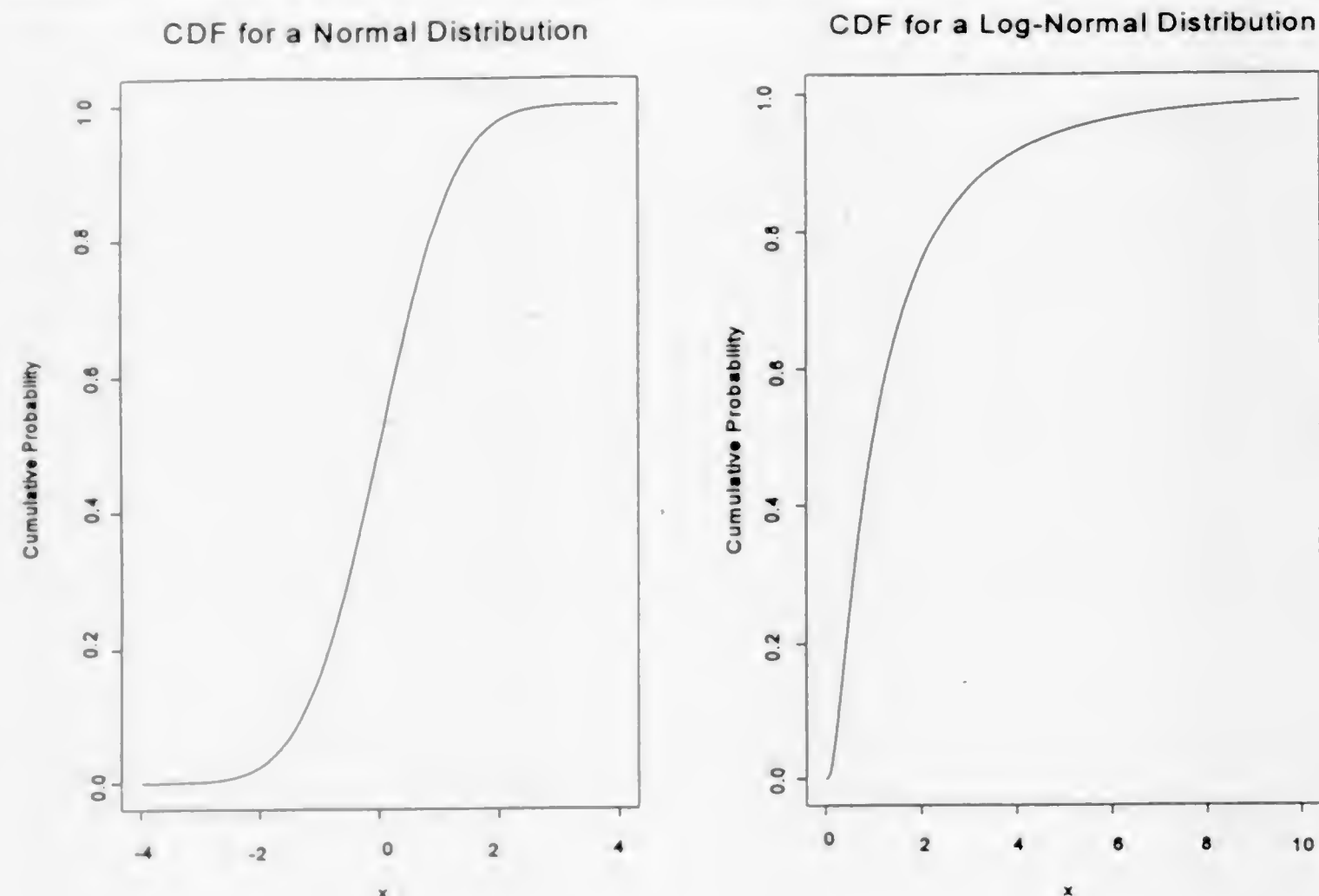


Figure B-1. Plots of cumulative distribution function (CDF).

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Cumulative ecological risk assessment—A process that involves consideration of the aggregate ecological risk to the target entity caused by the accumulation of risk from multiple stressors.

Disturbance—Any event or series of events that disrupts ecosystem, community, or population structure and changes resources, substrate availability, or the physical environment (modified from White and Pickett, 1985).

EC₅₀—A statistically or graphically estimated concentration that is expected to cause one or more specified effects in 50% of a group of organisms under specified conditions (ASTM, 1996).

Ecological entity—A general term that may refer to a species, a group of species, an ecosystem function or characteristic, or a specific habitat. An ecological entity is one component of an assessment endpoint.

Ecological relevance—One of the three criteria for assessment endpoint selection. Ecologically relevant endpoints reflect important characteristics of the system and are functionally related to other endpoints.

Ecological risk assessment—The process that evaluates the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors.

Ecosystem—The biotic community and abiotic environment within a specified location in space and time.

Environmental impact statement (EIS)—Environmental impact statements are prepared under the National Environmental Policy Act by Federal agencies as they evaluate the environmental consequences of proposed actions. EISs describe baseline environmental conditions; the purpose of, need for, and consequences of a proposed action; the no-action alternative; and the consequences of a reasonable range of alternative actions. A separate risk assessment could be prepared for each

alternative, or a comparative risk assessment might be developed. However, risk assessment is not the only approach used in EISs.

Exposure—The contact or co-occurrence of a stressor with a receptor.

Exposure profile—The product of characterization of exposure in the analysis phase of ecological risk assessment. The exposure profile summarizes the magnitude and spatial and temporal patterns of exposure for the scenarios described in the conceptual model.

Exposure scenario—A set of assumptions concerning how an exposure may take place, including assumptions about the exposure setting, stressor characteristics, and activities that may lead to exposure.

Hazard assessment—This term has been used to mean either (1) evaluating the intrinsic effects of a stressor (U.S. EPA, 1979) or (2) defining a margin of safety or quotient by comparing a toxicologic effects concentration with an exposure estimate (SETAC, 1987).

LC₅₀—A statistically or graphically estimated concentration that is expected to be lethal to 50% of a group of organisms under specified conditions (ASTM, 1996).

Lines of evidence—Information derived from different sources or by different techniques that can be used to describe and interpret risk estimates. Unlike the term "weight of evidence," it does not necessarily imply assignment of quantitative weightings to information.

Lowest-observed-adverse-effect level (LOAEL)—The lowest level of a stressor evaluated in a test that causes statistically significant differences from the controls.

Maximum acceptable toxic concentration (MATC)—For a particular ecological effects test, this term is used to mean either the range between the NOAEL and the LOAEL or the geometric mean of the NOAEL and the

LOAEL. The geometric mean is also known as the chronic value.

Measure of ecosystem and receptor characteristics—Measures that influence the behavior and location of ecological entities of the assessment endpoint, the distribution of a stressor, and life-history characteristics of the assessment endpoint or its surrogate that may affect exposure or response to the stressor.

Measure of effect—A change in an attribute of an assessment endpoint or its surrogate in response to a stressor to which it is exposed.

Measure of exposure—A measure of stressor existence and movement in the environment and its contact or co-occurrence with the assessment endpoint.

Measurement endpoint—See "measure of effect."

No-observed-adverse-effect level (NOAEL)—The highest level of a stressor evaluated in a test that does not cause statistically significant differences from the controls.

Population—An aggregate of individuals of a species within a specified location in space and time.

Primary effect—An effect where the stressor acts on the ecological component of interest itself, not through effects on other components of the ecosystem (synonymous with direct effect; compare with definition for secondary effect).

Probability density function (PDF)—Probability density functions are particularly useful in describing the relative likelihood that a variable will have different particular values of x . The probability that a variable will have a value within a small interval around x can be approximated by multiplying $f(x)$ (i.e., the value of y at x in a PDF plot) by the width of the interval (figure B-2).

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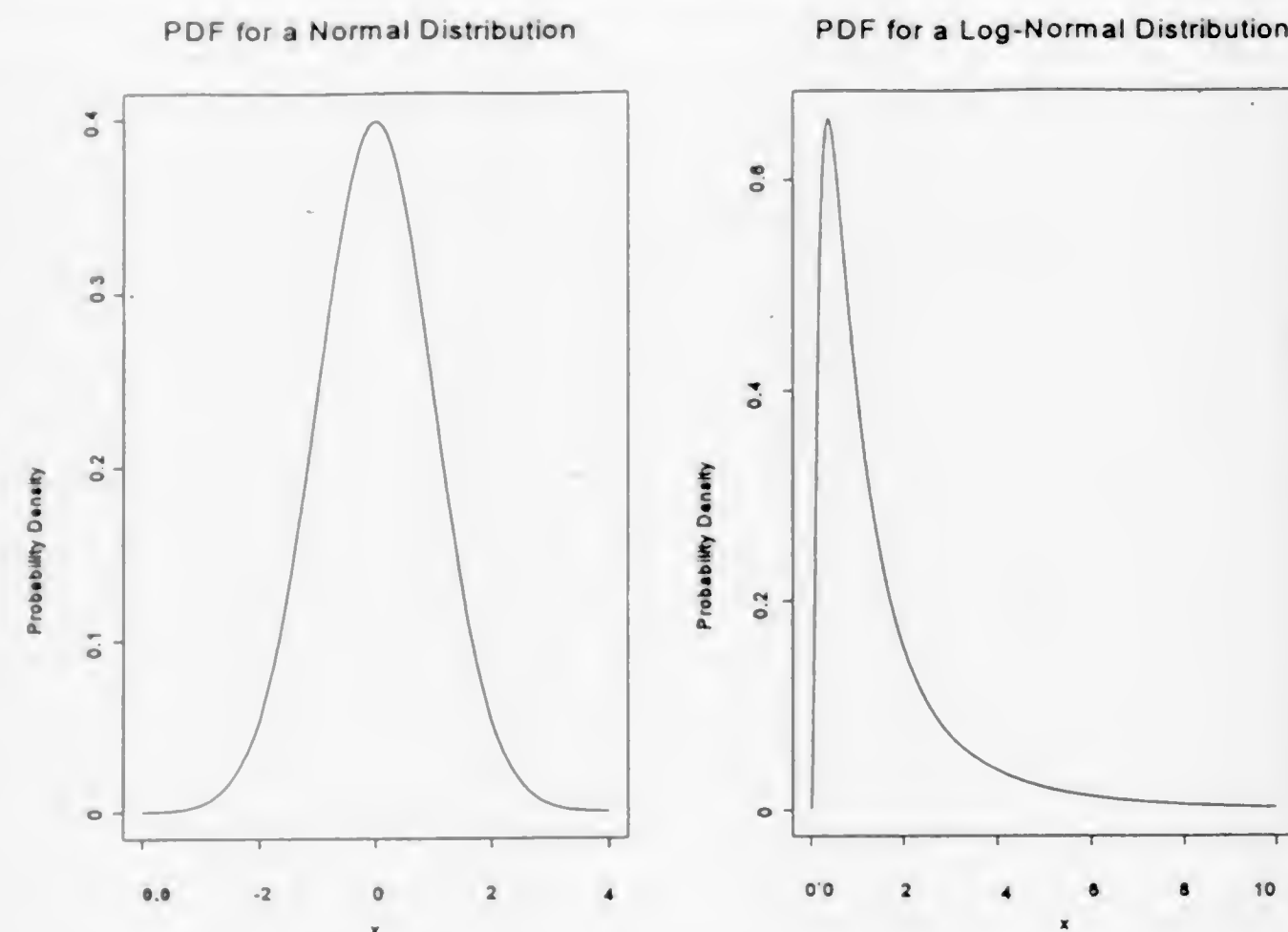


Figure B-2. Plots of probability density functions (PDF).

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Prospective risk assessment—An evaluation of the future risks of a stressor(s) not yet released into the environment or of future conditions resulting from an existing stressor(s).

Receptor—The ecological entity exposed to the stressor.

Recovery—The rate and extent of return of a population or community to some aspect(s) of its previous condition. Because of the dynamic nature of ecological systems, the attributes of a "recovered" system should be carefully defined.

Relative risk assessment—A process similar to comparative risk assessment. It involves estimating the risks associated with different stressors or management actions. To some, relative risk connotes the use of quantitative risk techniques, while comparative risk approaches more often rely on professional judgment. Others do not make this distinction.

Retrospective risk assessment—An evaluation of the causal linkages between observed ecological effects and stressor(s) in the environment.

Risk characterization—A phase of ecological risk assessment that integrates the exposure and stressor response profiles to evaluate the likelihood of adverse ecological effects associated with exposure to a stressor. Lines of evidence and the adversity of effects are discussed.

Secondary effect—An effect where the stressor acts on supporting components of the ecosystem, which in turn have an effect

on the ecological component of interest (synonymous with indirect effects; compare with definition for primary effect).

Source—An entity or action that releases to the environment or imposes on the environment a chemical, physical, or biological stressor or stressors.

Source term—As applied to chemical stressors, the type, magnitude, and patterns of chemical(s) released.

Stressor—Any physical, chemical, or biological entity that can induce an adverse response (synonymous with agent).

Stressor-response profile—The product of characterization of ecological effects in the analysis phase of ecological risk assessment. The stressor-response profile summarizes the data on the effects of a stressor and the relationship of the data to the assessment endpoint.

Stress regime—The term "stress regime" has been used in at least three distinct ways: (1) To characterize exposure to multiple chemicals or to both chemical and nonchemical stressors (more clearly described as multiple exposure, complex exposure, or exposure to mixtures), (2) as a synonym for exposure that is intended to avoid overemphasis on chemical exposures, and (3) to describe the series of interactions of exposures and effects resulting in secondary exposures, secondary effects and, finally, ultimate effects (also known as risk cascade [Lipton et al., 1993]), or causal chain, pathway, or network (Andrewartha and Birch, 1984).

Trophic levels—A functional classification of taxa within a community that is based on feeding relationships (e.g., aquatic and terrestrial green plants make up the first trophic level and herbivores make up the second).

Appendix C—Conceptual Model Examples

Conceptual model diagrams are visual representations of the conceptual models. They may be based on theory and logic, empirical data, mathematical models, or probability models. These diagrams are useful tools for communicating important pathways in a clear and concise way. They can be used to ask new questions about relationships that help generate plausible risk hypotheses. Further discussion of conceptual models is found in section 3.4.

Flow diagrams like those shown in figures C-1 through C-3 are typical conceptual model diagrams. When constructing flow diagrams, it is helpful to use distinct and consistent shapes to distinguish between stressors, assessment endpoints, responses, exposure routes, and ecosystem processes. Although flow diagrams are often used to illustrate conceptual models, there is no set configuration for conceptual model diagrams, and the level of complexity may vary considerably depending on the assessment. Pictorial representations of the processes of an ecosystem can be more effective (e.g., Bradley and Smith, 1989).

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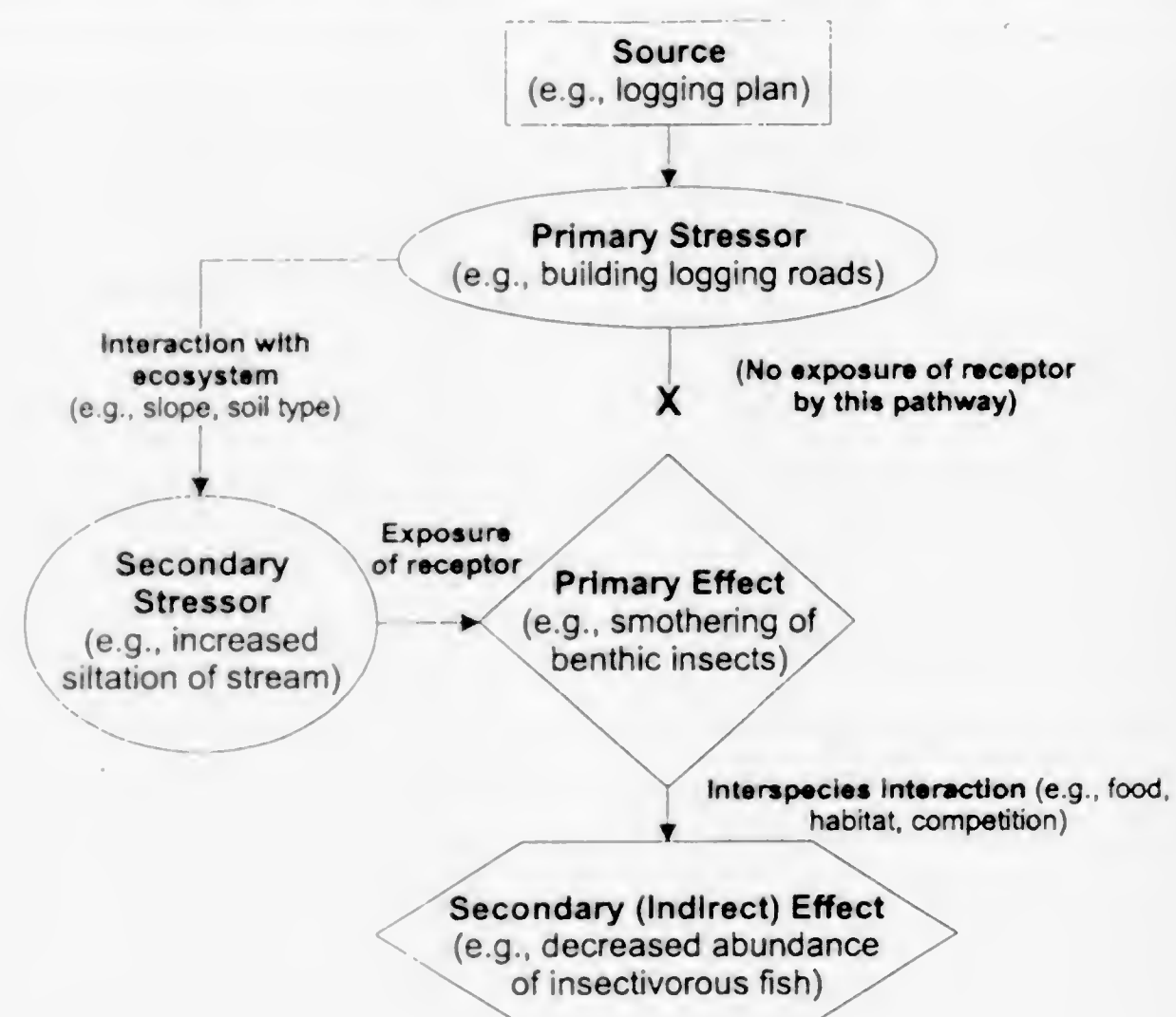


Figure C-1. Conceptual model for logging.

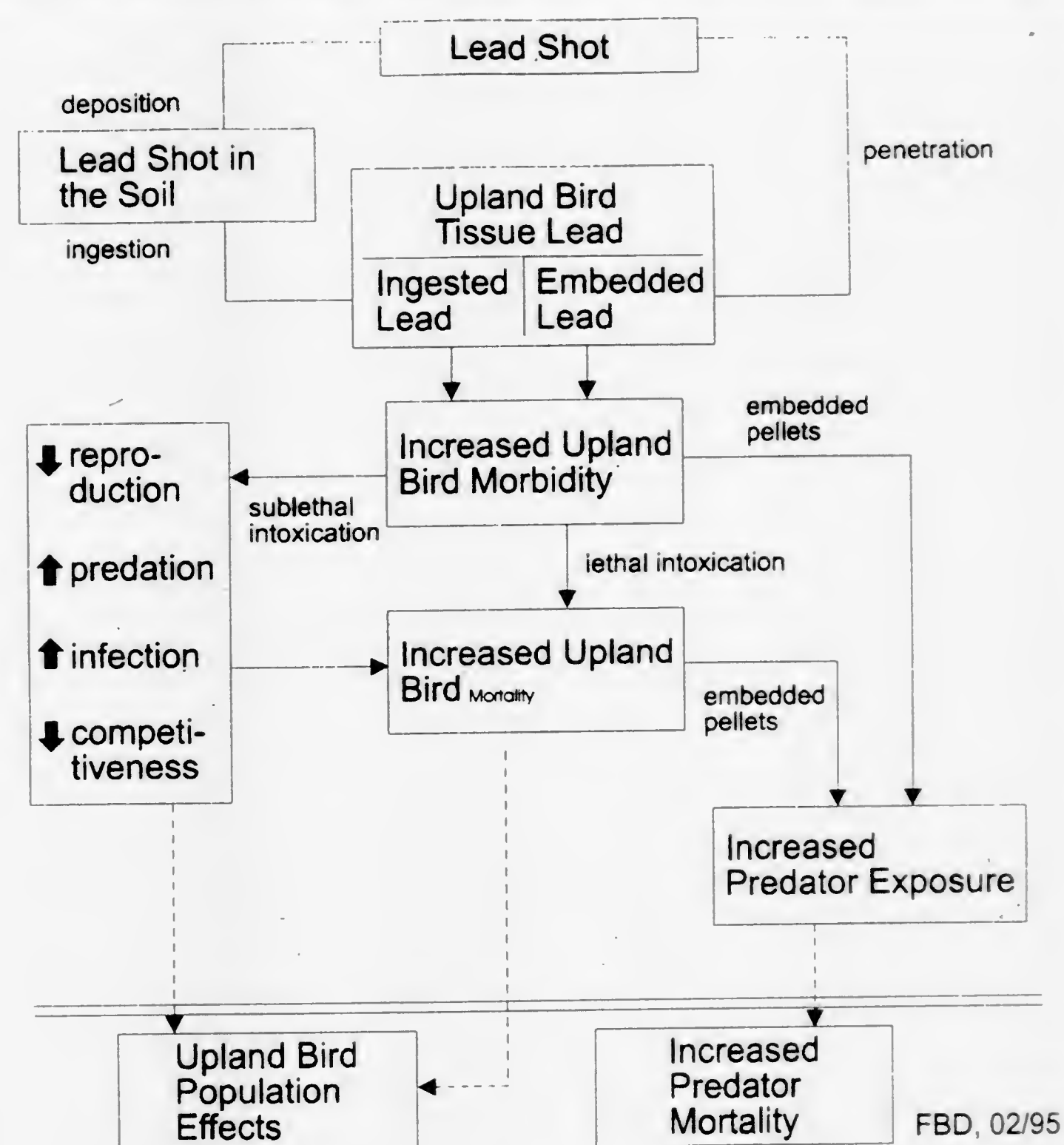


Figure C-2. Conceptual model for tracking stress associated with lead shot through upland ecosystems. Reprinted from *Environmental Toxicology and Chemistry* by Kendall et al. (1996) with permission of the Society of Environmental Toxicology and Chemistry (copyright 1996).

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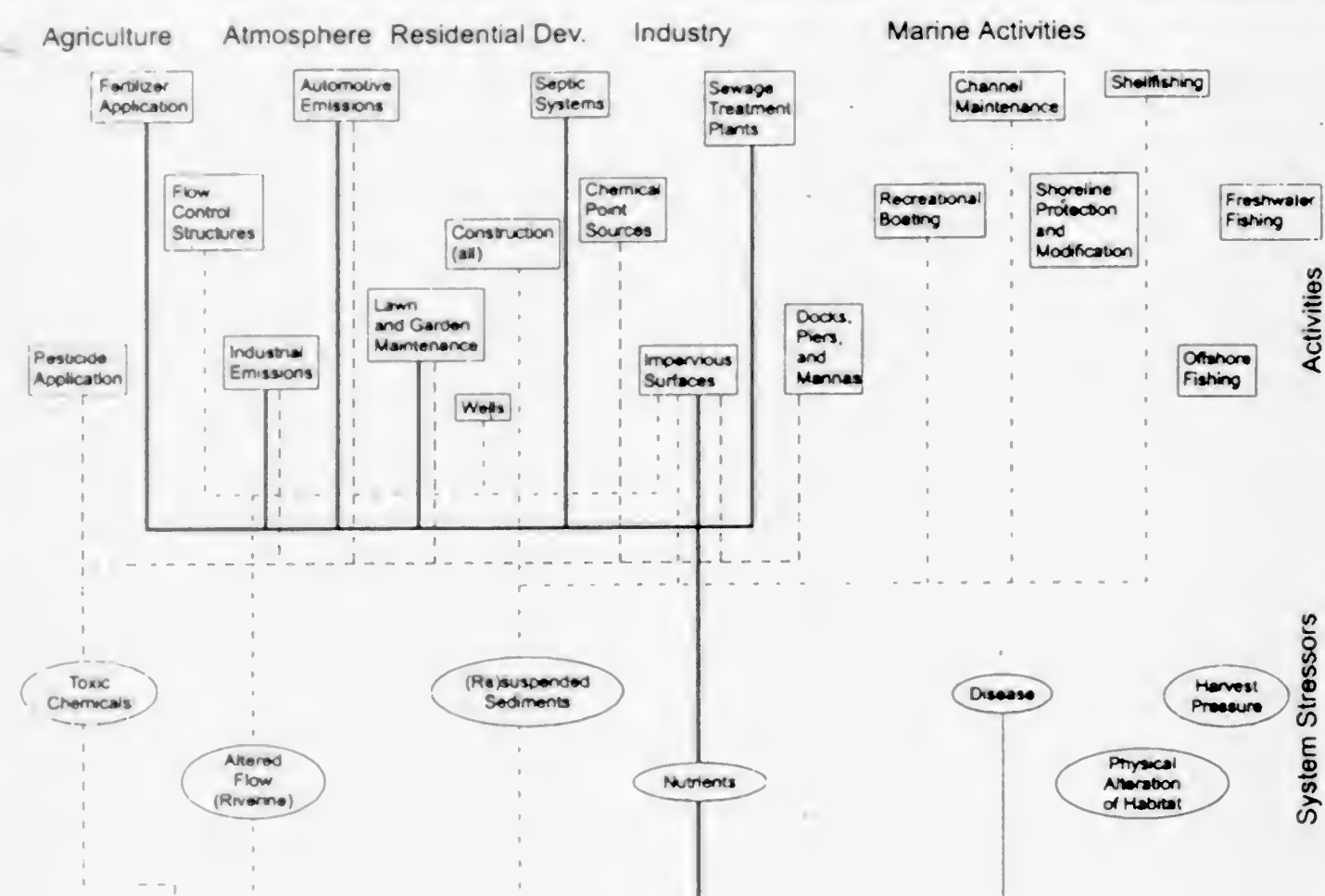


Figure C-3. Waquoit Bay watershed conceptual model.

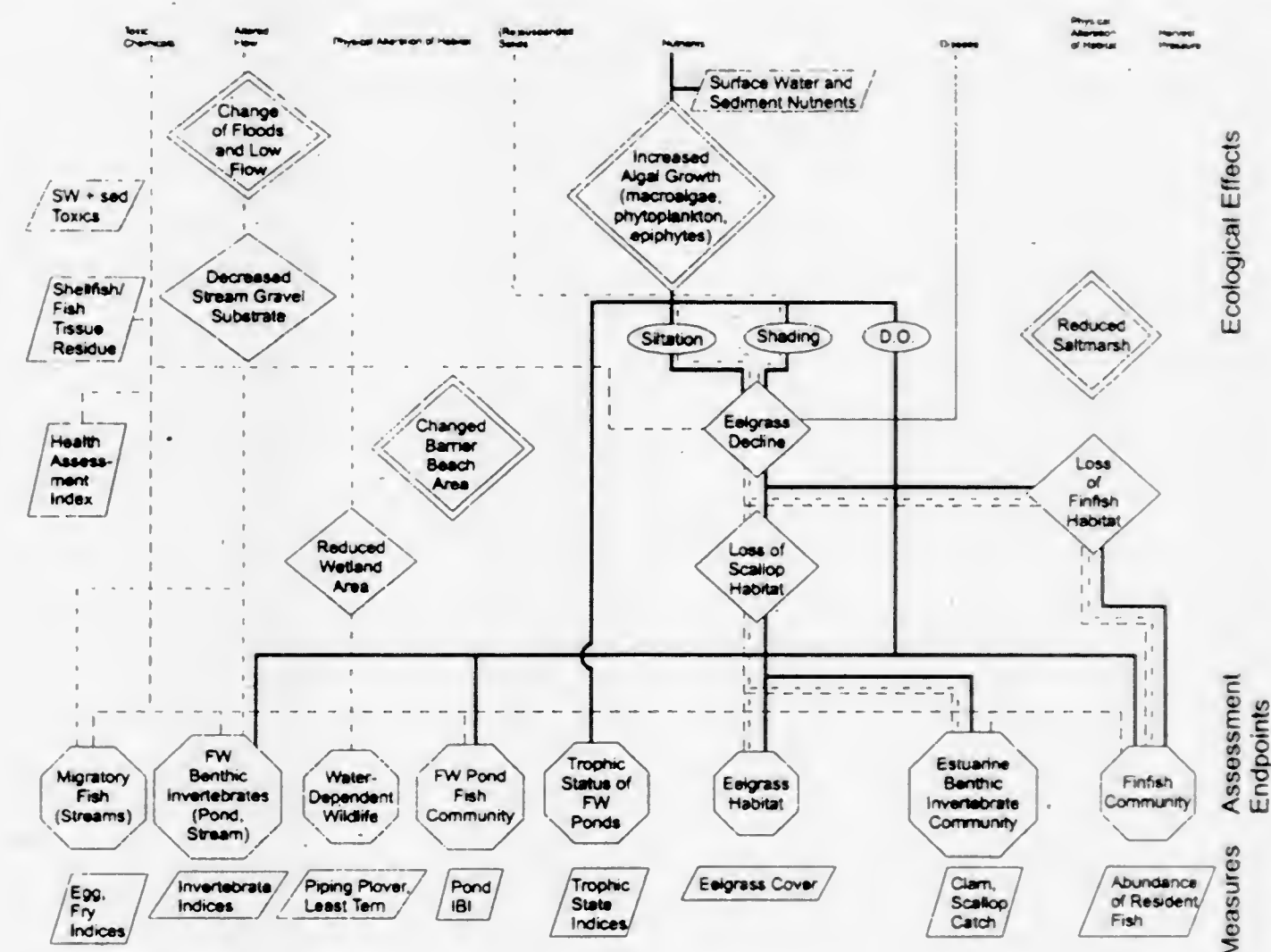


Figure C-3. Waquoit Bay watershed conceptual model (continued).

Figure C-1 illustrates the relationship between a primary physical stressor (logging roads) and an effect on an assessment endpoint (fecundity in insectivorous fish). This simple diagram illustrates the effect of building logging roads (which could be considered a stressor or a source) in ecosystems where slope, soil type, low riparian cover, and other ecosystem characteristics lead to the erosion of soil, which enters streams and smothers the benthic organisms (exposure pathway is not explicit in this diagram). Because of the dependence of insectivorous fish on benthic organisms, the fish are believed to be at risk from the building of logging roads. Each arrow in this diagram represents a hypothesis about the proposed relationship (e.g., human action and stressor, stressor and effect, primary effect to secondary effect). Each risk hypothesis provides insights into the kinds of data that will be needed to verify that the hypothesized relationships are valid.

Figure C-2 is a conceptual model used by Kendall et al. (1996) to track a contaminant through upland ecosystems. In this example, upland birds are exposed to lead shot when it becomes embedded in their tissue after being shot and by ingesting lead accidentally when feeding on the ground. Both are hypothesized to result in increased morbidity

(e.g., lower reproduction and competitiveness and higher predation and infection) and mortality, either directly (lethal intoxication) or indirectly (effects of morbidity leading to mortality). These effects are believed to result in changes in upland bird populations and, because of hypothesized exposure of predators to lead, to increased predator mortality. This example shows multiple exposure pathways for effects on two assessment endpoints. Each arrow contains within it assumptions and hypotheses about the relationship depicted that provide the basis for identifying data needs and analyses.

Figure C-3 is a conceptual model adapted from the Waquoit Bay watershed risk assessment. At the top of the model, multiple human activities that occur in the watershed are shown in rectangles. Those sources of stressors are linked to stressor types depicted in ovals. Multiple sources are shown to contribute to an individual stressor, and each source may contribute to more than one stressor. The stressors then lead to multiple ecological effects depicted again in rectangles. Some rectangles are double-lined to indicate effects that can be directly measured for data analysis. Finally, the effects are linked to particular assessment endpoints. The connections show that one

effect can result in changes in many assessment endpoints. To fully depict exposure pathways and types of effects, specific portions of this conceptual model would need to be expanded to illustrate those relationships.

Appendix D—Analysis Phase Examples

The analysis phase process is illustrated here for a chemical, physical, and biological stressor. These examples do not represent all possible approaches, but they illustrate the analysis phase process using information from actual assessments.

D.1. Special Review of Granular Formulations of Carbofuran Based on Adverse Effects on Birds

Figure D-1 is based on an assessment of the risks of carbofuran to birds under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (Houseknecht, 1993). Carbofuran is a broad-spectrum insecticide and nematicide applied primarily in granular form on 27 crops as well as forests and pine seed orchards. The assessment endpoint was survival of birds that forage in agricultural areas where carbofuran is applied.

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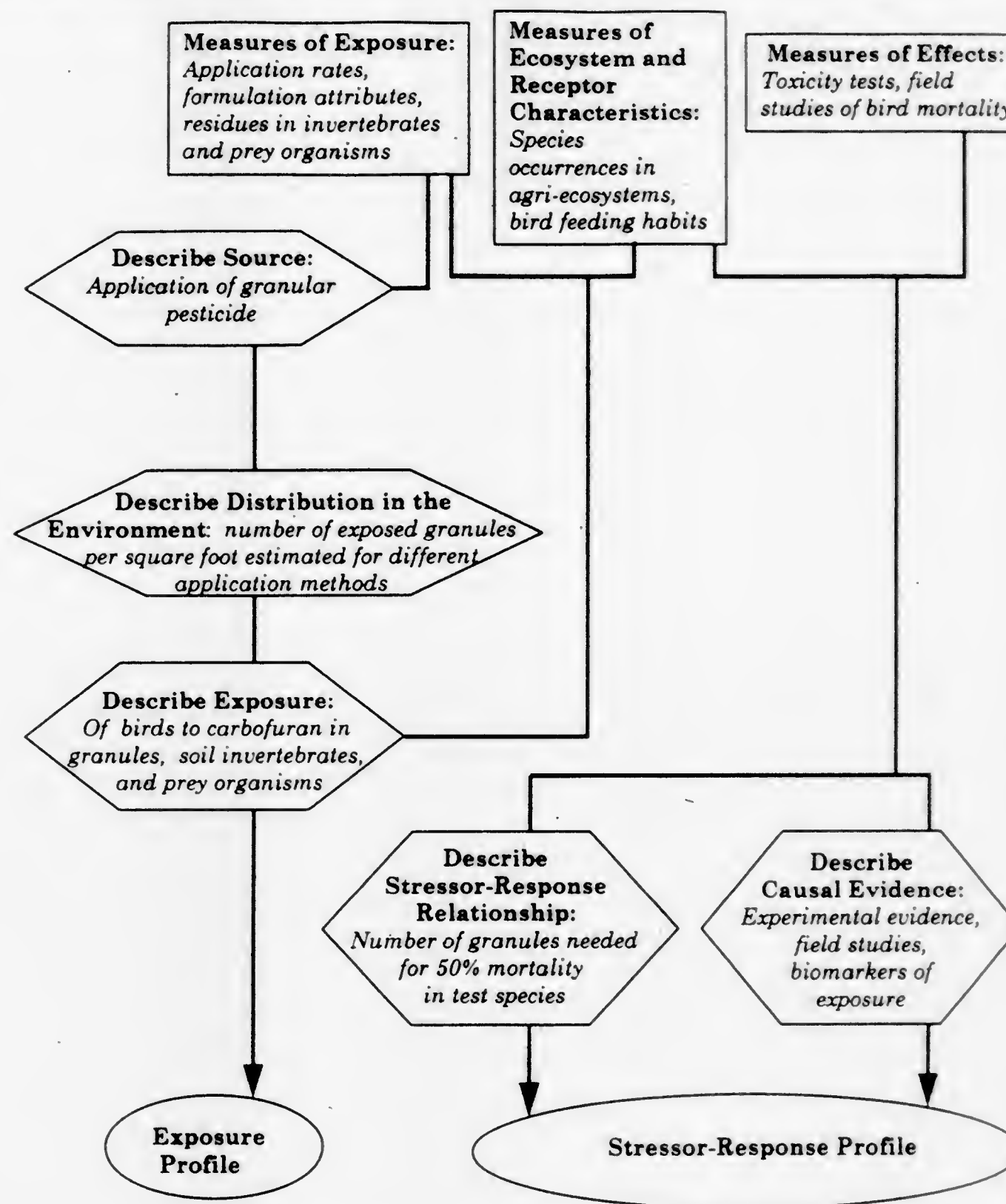


Figure D-1. Example of the analysis phase process: special review of carbofuran. Rectangles indicate inputs, hexagons indicate actions, and circles indicate outputs.

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The analysis phase began by considering primary (direct) effects of water-level changes on plant community composition and habitat characteristics. Measures of exposure included the attributes and placement of the levees and water-level measurements. Measures of ecosystem and receptor characteristics included location and extent of bottomland-hardwood communities, plant species occurrences within these communities, and information on historic flow regimes. Measures of effects included laboratory studies of plant response to moisture and field measurements along moisture gradients.

While the principal stressor under evaluation was the construction of levees, the decreased gradient of the river due to sediment deposition at its mouth also contributed to increased water levels. The extent and frequency of flooding were simulated by the FORFLO model based on estimates of net subsidence rates from levee construction and decreased river gradient. Seeds and seedlings of the tree species were assumed to be exposed to the altered flooding regime. Stressor-response relationships describing plant response to moisture (e.g., seed germination, survival) were embedded within the FORFLO model. This information was used by the model to simulate changes in plant communities: The model tracks the species type, diameter, and age of each tree on simulated plots from the time the tree

enters the plot as a seedling or sprout until it dies. The FORFLO model calculated changes in the plant community over time (from 50 to 280 years). The spatial extent of the three habitat types of interest—wet bottomland hardwoods, dry bottomland hardwoods, and cypress-tupelo swamp—was mapped into a GIS along with the hydrological information. The changes projected by FORFLO were then manually linked to the GIS to show how the spatial distribution of different communities would change. Evidence that flooding would actually cause these changes included comparisons of model predictions with field measurements, the laboratory studies of plant response to moisture, and knowledge of the mechanisms by which flooding elicits changes in plant communities.

Secondary (indirect) effects on wildlife associated with changes in the habitat provided by the plant community formed the second part of the analysis phase. Important measures included life-history characteristics and habitat needs of the wildlife species. Effects on wildlife were inferred by evaluating the suitability of the plant community as habitat. Specific aspects of the community structures calculated by the FORFLO model provided the input to this part of the analysis. For example, the number of snags was used to evaluate habitat value for woodpeckers. Resident wildlife (represented by five species) was assumed to

co-occur with the altered plant community. Habitat value was evaluated by calculating the Habitat Suitability Index (HSI) for each habitat type multiplied by the habitat type's area.

A combined exposure and stressor-response profile is shown in figure D-2; these two elements were combined with the models used for the analysis and then used directly in risk characterization.

D.3. Pest Risk Assessment of Importation of Logs from Chile

Figure D-3 is based on the assessment of potential risks to U.S. forests due to the incidental introduction of insects, fungi, and other pests inhabiting logs harvested in Chile and transported to U.S. ports (USDA, 1993). This risk assessment was used to determine whether actions to restrict or regulate the importation of Chilean logs were needed to protect U.S. forests and was conducted by a team of six experts under the auspices of the U.S. Department of Agriculture Forest Service. Stressors include insects, forest pathogens (e.g., fungi), and other pests. The assessment endpoint was the survival and growth of tree species (particularly conifers) in the western United States. Damage that would affect the commercial value of the trees as lumber was clearly of interest.

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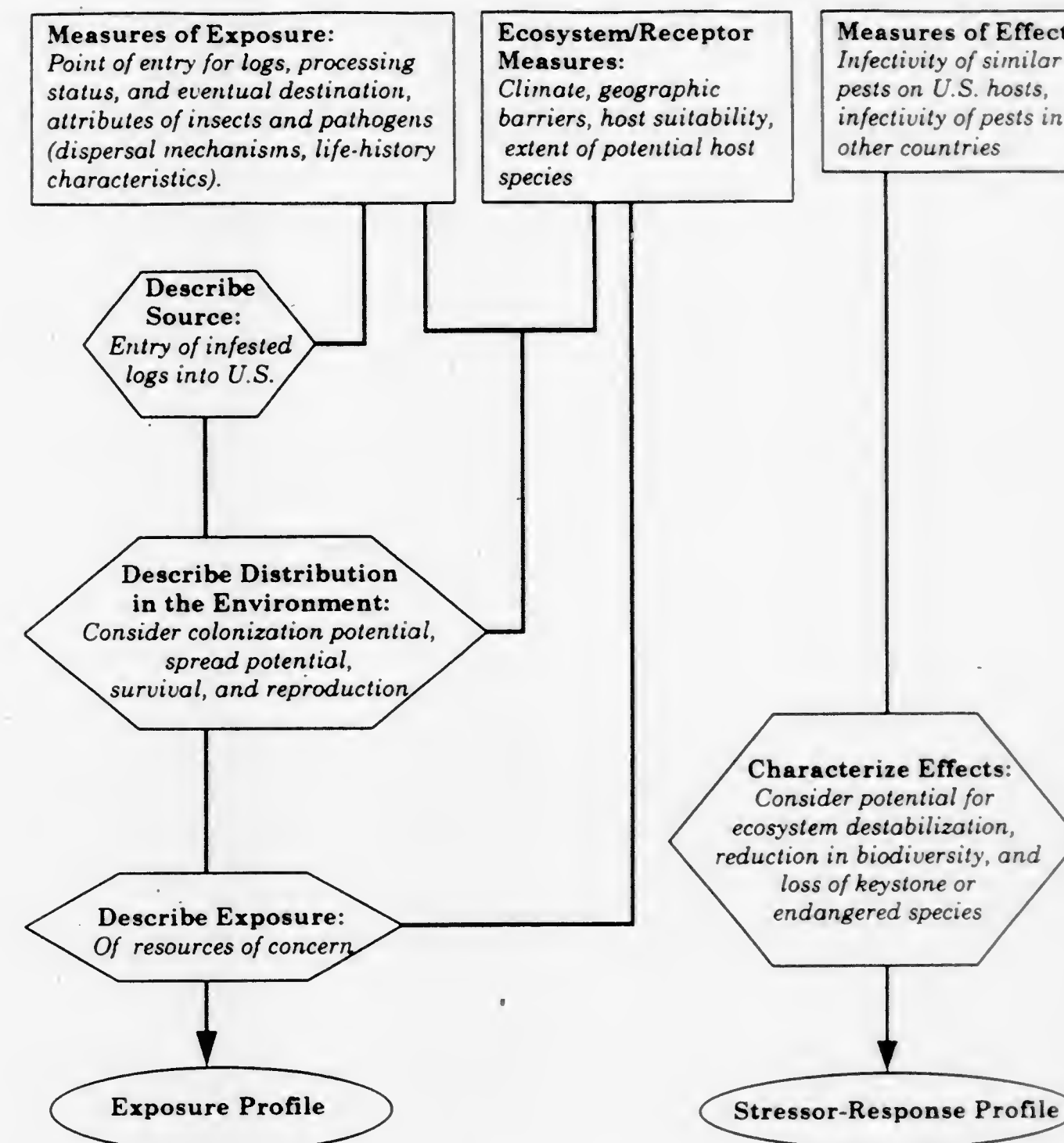


Figure D-3. Example of the analysis phase process: pest risk assessment of the importation of logs from Chile. Rectangles indicate inputs, hexagons indicate actions, and circles indicate outputs.

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The analysis phase was carried out by eliciting professional opinions from a team of experts. Measures of exposure used by the team included distribution information for the imported logs and attributes of the insects and pathogens such as dispersal mechanisms and life-history characteristics. Measures of ecosystem and receptor characteristics included the climate of the United States, location of geographic barriers, knowledge of host suitability, and ranges of potential host species. Measures of effect included knowledge of the infectivity of these pests in other countries and the infectivity of similar pests on U.S. hosts.

This information was used by the risk assessment team to evaluate the potential for exposure. They began by evaluating the likelihood of entry of infested logs into the United States. The distribution of the organism's given entry was evaluated by considering the potential for colonization and spread beyond the point of entry as well as the likelihood of the organisms surviving and reproducing. The potential for exposure was summarized by assigning each of the above elements a judgment-based value of high, medium, or low.

The evaluation of ecological effects was also conducted on the basis of collective professional judgment. Of greatest relevance to this guidance was the consideration of environmental damage potential, defined as the likelihood of ecosystem destabilization, reduction in biodiversity, loss of keystone species, and reduction or elimination of endangered or threatened species. (The team also considered economic damage potential and social and political influences; however, for the purposes of these Guidelines, those factors are considered to be part of the risk management process.) Again, each consideration was assigned a value of high, medium, or low to summarize the potential for ecological effects.

Appendix E—Criteria for Determining Ecological Adversity: A Hypothetical Example (Adapted From Harwell et al., 1994)¹

As a result of a collision at sea, an oil tanker releases 15 million barrels of #2 fuel oil 3 km offshore. It is predicted that prevailing winds will carry the fuel onshore within 48 to 72 hours. The coastline has numerous small embayments that support an extensive shallow, sloping subtidal community and a rich intertidal community. A preliminary assessment determines that if no action is taken, significant risks to the communities will result. Additional risk assessments are conducted to determine which of two options should be used to clean up the oil spill.

Option 1 is to use a dispersant to break up the slick, which would reduce the likelihood of extensive onshore contamination but would cause extensive mortality to the phytoplankton, zooplankton, and ichthyoplankton (fish larvae), which are important for commercial fisheries. Option 2 is to try to contain and pump off as much oil

as possible; this option anticipates that a shift in wind direction will move the spill away from shore and allow for natural dispersal at sea. If this does not happen, the oil will contaminate the extensive sub-and intertidal mud flats, rocky intertidal communities, and beaches and pose an additional hazard to avian and mammalian fauna. It is assumed there will be a demonstrable change beyond natural variability in the assessment endpoints (e.g., structure of planktonic, benthic, and intertidal communities). What is the adversity of each option?

- Nature and intensity of the effect. For both options, the magnitude of change in the assessment endpoints is likely to be severe. Planktonic populations often are characterized by extensive spatial and temporal variability. Nevertheless, within the spatial boundaries of the spill, the use of dispersants is likely to produce complete mortality of all planktonic forms within the upper 3 m of water. For benthic and intertidal communities, which generally are stable and have less spatial and temporal variability than planktonic forms, oil contamination will likely result in severe impacts on survival and chronic effects lasting for several years. Thus, under both options, changes in the assessment endpoints will probably exceed the natural variability for threatened communities in both space and time.

- Spatial scale. The areal extent of impacts is similar for each of the options. While extensive, the area of impact constitutes a small percentage of the landscape. This leaves considerable area available for replacement stocks and creates significant fragmentation of either the planktonic or inter- and subtidal habitats. Ecological adversity is reduced because the area is not a mammalian or avian migratory corridor.

- Temporal scale and recovery. On the basis of experience with other oil spills, it is assumed that the effects are reversible over some time period. The time needed for reversibility of changes in phytoplankton and zooplankton populations should be short (days to weeks) given their rapid generation times and easy immigration from adjacent water masses. There should not be a long recovery period for ichthyoplankton, since they typically experience extensive natural mortality, and immigration is readily available from surrounding water masses. On the other hand, the time needed for reversibility of changes in benthic and intertidal communities is likely to be long (years to decades). First, the stressor (oil) would be likely to persist in sediments and on rocks for several months to years. Second, the life histories of the species comprising these communities span 3 to 5 years. Third, the reestablishment of benthic intertidal community and ecosystem structure (hierarchical composition and function) often requires decades.

Both options result in (1) assessment endpoint effects that are of great severity, (2) exceedances of natural variability for those endpoints, and (3) similar estimates of areal impact. What distinguishes the two options is temporal scale and reversibility. In this regard, changes to the benthic and intertidal ecosystems are considerably more adverse

than those to the plankton. On this basis, the option of choice would be to disperse the oil, effectively preventing it from reaching shore where it would contaminate the benthic and intertidal communities.

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¹ This example is simplified for illustrative purposes. In other situations, it may be considerably more difficult to draw clear conclusions regarding relative ecological adversity

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Part B: Response to Science Advisory Board and Public Comments

1. Introduction

This section summarizes the major issues raised in public comments and by EPA's Science Advisory Board (SAB) on the previous draft of these Guidelines (the Proposed Guidelines for Ecological Risk Assessment, hereafter "Proposed Guidelines"). A notice of availability for public comment of the Proposed Guidelines was published September 9, 1996 (61 FR 47552-47631). Forty-four responses were received. The Ecological Processes and Effects Committee of the SAB reviewed the Proposed Guidelines on September 19-20, 1996, and provided comments in January 1997 (EPA-SAB-EPEC-97-002).

The SAB and public comments were diverse, reflecting the different perspectives of the reviewers. Many of the comments were favorable, expressing agreement with the overall approach to ecological risk assessment. Many comments were beyond the scope

of the Guidelines, including requests for guidance on risk management issues (such as considering social or economic impacts in decision making). Major issues raised by reviewers are summarized below. In addition to providing general comments (section 2), reviewers were asked to comment on seven specific questions (section 3).

2. Response to General Comments

Probably the most common request was for greater detail in specific areas. In some cases, additional discussion was added (for example, on the use of tiering and iteration and the respective roles of risk assessors, risk managers, and interested parties throughout the process). In other areas, topics for additional discussion were included in a list of potential areas for further development (see response to question 2, below). Still other topics are more appropriately addressed by regional or program offices within the context of a certain regulation or issue, and are deferred to those sources.

A few reviewers felt that since ecological risk assessment is a relatively young science, it is premature to issue guidelines at this time. The Agency feels that it is appropriate to issue guidance at this time, especially since the Guidelines contain major principles but refrain from recommending specific methodologies that might become rapidly outdated. To help ensure the continued relevance of the Guidelines, the Agency intends to develop documents addressing specific topics (see response to question 2 below) and will revise these Guidelines as experience and scientific consensus evolve.

Some reviewers asked whether the Guidelines would be applied to previous or ongoing ecological risk assessments, and whether existing regional or program office guidance would be superseded in conducting ecological risk assessments. As described in section 1.3 (Scope and Intended Audience), the Guidelines are principles, and are not regulatory in nature. It is anticipated that guidance from program and regional offices will evolve to implement the principles set forth in these Guidelines. Similarly, some reviewers requested that assessments require a comparison of the risks of alternative scenarios (including background or baseline conditions) or an assignment of particular levels of ecological significance to habitats. These decisions would be most appropriately made on a case-by-case basis, or by a program office in response to program-specific needs.

Several Native American groups noted a lack of acknowledgment of tribal governments in the document. This Agency oversight was corrected by including tribal governments at points in the Guidelines where other governmental organizations are mentioned.

Several reviewers noted that the Proposed Guidelines mentioned the need for "expert judgment" in several places and asked how the Agency defined "expert" and what qualifications such an individual should have. At present, there is no standard set of qualifications for an ecological risk assessor, and such a standard would be very difficult to produce, since ecological assessments are frequently done by teams of individuals with expertise in many areas. To avoid this problem, the Guidelines now use the term "professional judgment," and note that it is important to document the rationale for important decisions.

Some reviewers felt that the Guidelines should address effects only at the population level and above. The Guidelines do not make this restriction for several reasons. First, some assessments, such as those involving endangered species, do involve considerations of individual effects. Second, the decision as to which ecological entity to protect should be the result, on a case-by-case basis, of the planning process involving risk assessors, risk managers, and interested parties, if appropriate. Some suggestions have been proposed (U.S. EPA, 1997a). Finally, there appears to be some confusion among reviewers between conducting an assessment concerned with population-level effects, and using data from studies of effects on individuals (e.g., toxicity test results) to infer population-level effects. These inferences are commonly used (and generally accepted) in chemical screening programs, such as the Office of Pollution Prevention and Toxics Premanufacturing Notification program (U.S. EPA, 1994e).

The use of environmental indices received a number of comments. Some reviewers wanted the Guidelines to do more to encourage the use of indices, while others felt that the disadvantages of indices should receive greater emphasis. The Guidelines discuss both the advantages and limitations of using indices to guide risk assessors in their proper use.

Other reviewers requested that the Guidelines take a more definitive position on the use of "realistic exposure assumptions," such as those proposed in the Agency's exposure guidelines (U.S. EPA, 1992b). Although

the exposure guidelines offer many useful suggestions that are applicable to human health risk assessment, it was not possible to generalize the concepts to ecological risk assessment, given the various permutations of the exposure concept for different types of stressors or levels of biological organization. The Guidelines emphasize the importance of documenting major assumptions (including exposure assumptions) used in an assessment.

Several reviewers requested more guidance and examples using nonchemical stressors, i.e., physical or biological stressors. This topic has been included in the list of potential subjects for future detailed treatment (see response to question 2, below).

3. Response to Comments on Specific Questions

Both the Proposed Guidelines and the charge to the SAB for its review contained a set of seven questions asked by the Agency. These questions, along with the Agency's response to comments received, are listed below.

(1) Consistent with a recent National Research Council report (NRC, 1996), these Proposed Guidelines emphasize the importance of interactions between risk assessors and risk managers as well as the critical role of problem formulation in ensuring that the results of the risk assessment can be used for decision making. Overall, how compatible are these Proposed Guidelines with the National Research Council concept of the risk assessment process and the interactions among risk assessors, risk managers, and other interested parties?

Most reviewers felt there was general compatibility between the Proposed Guidelines and the NRC report, although some emphasized the need for continued interactions among risk assessors, risk managers, and interested parties (or stakeholders) throughout the ecological risk assessment process and asked that the Guidelines provide additional details concerning such interactions. To give greater emphasis to these interactions, the ecological risk assessment diagram was modified to include "interested parties" in the planning box at the beginning of the process and "communicating with interested parties" in the risk management box following the risk assessment. Some additional discussion concerning interactions among risk assessors, risk managers, and interested parties was added, particularly to section 2 (planning). However, although risk assessor/risk manager interrelationships are discussed, too great an emphasis in this area is

inconsistent with the scope of the Guidelines, which focus on the interface between risk assessors and risk managers, not on providing risk management guidance.

(2) The Proposed Guidelines are intended to provide a starting point for Agency programs and regional offices that wish to prepare ecological risk assessment guidance suited to their needs. In addition, the Agency intends to sponsor development of more detailed guidance on certain ecological risk assessment topics. Examples might include identification and selection of assessment endpoints, selection of surrogate or indicator species, or the development and application of uncertainty factors. Considering the state of the science of ecological risk assessment and Agency needs and priorities, what topics most require additional guidance?

Reviewers recommended numerous topics for further development. Examples include:

- Landscape ecology.
- Data sources and quality.
- Physical and biological stressors.
- Multiple stressors.
- Defining reference areas for field studies.
- Ecotoxicity thresholds.
- The role of biological and other types of indicators.
- Bioavailability, bioaccumulation, and bioconcentration.
- Uncertainty factors.
- Stressor-response relationships (e.g., threshold vs. continuous).
- Risk characterization techniques.
- Risk communication to the public.
- Public participation.
- Comparative ecological risk.
- Screening and tiering assessments.
- Identifying and selecting assessment endpoints.

These suggestions will be included in a listing of possible topics proposed to the Agency's Risk Assessment Forum for future development.

(3) Some reviewers have suggested that the Proposed Guidelines should provide more discussion of topics related to the use of field observational data in ecological risk assessments, such as selection of reference sites, interpretation of positive and negative field data, establishing causal linkages, identifying measures of ecological condition, the role and uses of monitoring, and resolving conflicting lines of evidence between field and laboratory data. Given the general scope of these Proposed Guidelines, what, if any, additional material should be added on these topics and, if so, what principles should be highlighted?

In response to a number of comments, the discussion of field data in the

Guidelines was expanded, especially in section 4.1. Nevertheless, many suggested topics requested a level of detail that was inconsistent with the scope of the Guidelines. Some areas may be covered through the development of future Risk Assessment Forum documents.

(4) The scope of the Proposed Guidelines is intentionally broad. However, while the intent is to cover the full range of stressors, ecosystem types, levels of biological organization, and spatial/temporal scales, the contents of the Proposed Guidelines are limited by the present state of the science and the relative lack of experience in applying risk assessment principles to some areas. In particular, given the Agency's present interest in evaluating risks at larger spatial scales, how could the principles of landscape ecology be more fully incorporated into the Proposed Guidelines?

Landscape ecology is critical to many aspects of ecological risk assessment, especially assessments conducted at larger spatial scales. However, given the general nature of these Guidelines and the responses received to this question, the Guidelines could not be expanded substantially at this time. This topic has been added to the list of potential subjects for future development.

(5) Assessing risks when multiple stressors are present is a challenging task. The problem may be how to aggregate risks attributable to individual stressors or identify the principal stressors responsible for an observed effect. Although some approaches for evaluating risks associated with

chemical mixtures are available, our ability to conduct risk assessments involving multiple chemical, physical, and biological stressors, especially at larger spatial scales, is limited. Consequently, the Proposed Guidelines primarily discuss predicting the effects of chemical mixtures and general approaches for evaluating causality of an observed effect. What additional principles can be added?

Few additional principles were provided that could be included in the Guidelines. To further progress in evaluating multiple stressors, EPA cosponsored a workshop on this issue, held by the Society of Environmental Toxicology and Chemistry in September 1997. In addition, evaluating multiple stressors is one of the proposed topics for further development.

(6) Ecological risk assessments are frequently conducted in tiers that proceed from simple evaluations of exposure and effects to more complex assessments. While the Proposed Guidelines acknowledge the importance of tiered assessments, the wide range of applications of tiered assessments make further generalizations difficult. Given the broad scope of the Proposed Guidelines, what additional principles for conducting tiered assessments can be discussed?

Many reviewers emphasized the importance of tiered assessments, and in response the discussion of tiered assessments was significantly expanded in the planning phase of ecological risk assessment. Including more detailed information (such as specific decision criteria to proceed from one tier to the

next) would require a particular context for an assessment. Such specific guidance is left to the EPA program offices and regions.

(7) Assessment endpoints are "explicit expression of the environmental value that is to be protected." As used in the Proposed Guidelines, assessment endpoints include both an ecological entity and a specific attribute of the entity (e.g., eagle reproduction or extent of wetlands). Some reviewers have recommended that assessment endpoints also include a decision criterion that is defined early in the risk assessment process (e.g., no more than a 20% reduction in reproduction, no more than a 10% loss of wetlands). While not precluding this possibility, the Proposed Guidelines suggest that such decisions are more appropriately made during discussions between risk assessors and managers in risk characterization at the end of the process. What are the relative merits of each approach?

Reviewer reaction was quite evenly divided between those who felt strongly that decision criteria should be defined in problem formulation and those who felt just as strongly that such decisions should be delayed until risk characterization. Although the Guidelines contain more discussion of this topic, they still take the position that assessment endpoints need not contain specific decision criteria.

[FR Doc. 98-12302 Filed 5-13-98; 8:45 am]
BILLING CODE 6560-50-P

federal register

Thursday
May 14, 1998

Part III

Environmental Protection Agency

Guidelines For Neurotoxicity Risk
Assessment; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6011-3]

RIN 2080-AA08

Guidelines for Neurotoxicity Risk Assessment

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of final Guidelines for Neurotoxicity Risk Assessment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today publishing in final form a document entitled *Guidelines for Neurotoxicity Risk Assessment* (hereafter "Guidelines"). These Guidelines were developed as part of an interoffice guidelines development program by a Technical Panel of the Risk Assessment Forum. The Panel was composed of scientists from throughout the Agency, and selected drafts were peer-reviewed internally and by experts from universities, environmental groups, industry, and other governmental agencies. The Guidelines are based, in part, on recommendations derived from various scientific meetings and workshops on neurotoxicology, from public comments, and from recommendations of the Science Advisory Board. An earlier draft underwent external peer review in a workshop held on June 2-3, 1992, and received internal review by the Risk Assessment Forum. The Risk Assessment Subcommittee of the Committee on the Environment and Natural Resources of Office of Science and Technology Policy reviewed the proposed Guidelines during a meeting held on August 15, 1995. The Guidelines were revised and proposed for public comment on October 4, 1995 (60 FR 52032-52056). The proposed Guidelines were reviewed by the Science Advisory Board on July 18, 1996. EPA appreciates the efforts of all participants in the process, and has tried to address their recommendations in these Guidelines.

This notice describes the scientific basis for concern about exposure to agents that cause neurotoxicity, outlines the general process for assessing potential risk to humans because of environmental contaminants, and addresses Science Advisory Board and public comments on the 1995 *Proposed Guidelines for Neurotoxicity Risk Assessment* (60 FR:52032-52056). These Guidelines are intended to guide Agency evaluation of agents that are suspected to cause neurotoxicity, in line

with the policies and procedures established in the statutes administered by the Agency.

DATES: The Guidelines will be effective on April 30, 1998.

ADDRESSES: The Guidelines will be made available in several ways:

(1) The electronic version will be accessible from EPA's National Center for Environmental Assessment home page on the Internet at <http://www.epa.gov/ncea>.

(2) 3 1/2" high-density computer diskettes in WordPerfect format will be available from ORD Publications, Technology Transfer and Support Division, National Risk Management Research Laboratory, Cincinnati, OH; Tel: 513-569-7562; Fax: 513-569-7566. Please provide the EPA No.: EPA/630/R-95/001Fa when ordering.

(3) This notice contains the full document. Copies of the Guidelines will be available for inspection at EPA headquarters and regional libraries, through the U.S. Government Depository Library program, and for purchase from the National Technical Information Service (NTIS), Springfield, VA; telephone: 703-487-4650, fax: 703-321-8547. Please provide the NTIS PB No. (PB98-117831) when ordering.

FOR FURTHER INFORMATION CONTACT: Dr. Hugh A. Tilson, Neurotoxicology Division, National Health and Environmental Effects Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Tel: 919-541-2671; Fax: 919-541-4849; E-mail: tilson.hugh@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In its 1983 book *Risk Assessment in the Federal Government: Managing the Process*, the National Academy of Sciences recommended that Federal regulatory agencies establish "inference guidelines" to promote consistency and technical quality in risk assessment, and to ensure that the risk assessment process is maintained as a scientific effort separate from risk management. A task force within EPA accepted that recommendation and requested that Agency scientists begin to develop such guidelines. In 1984, EPA scientists began work on risk assessment guidelines for carcinogenicity, mutagenicity, suspect developmental toxicants, chemical mixtures, and exposure assessment. Following extensive scientific and public review, these first five guidelines were issued on September 24, 1986 (51 FR 33992-34054). Since 1986, additional risk assessment guidelines have been proposed, revised, repropoed, and finalized. These guidelines continue the

process initiated in 1984. As with other EPA guidelines (e.g., developmental toxicity, 56 FR 63798-63826; exposure assessment, 57 FR 22888-22938; and carcinogenicity, 61 FR 17960-18011), EPA will revisit these guidelines as experience and scientific consensus evolve.

These Guidelines set forth principles and procedures to guide EPA scientists in the conduct of Agency risk assessments and to inform Agency decision makers and the public about these procedures. Policies in this document are intended as internal guidance for EPA. Risk assessors and risk managers at EPA are the primary audience, although these Guidelines may be useful to others outside the Agency. In particular, the Guidelines emphasize that risk assessments will be conducted on a case-by-case basis, giving full consideration to all relevant scientific information. This approach means that Agency experts study scientific information on each chemical under review and use the most scientifically appropriate interpretation to assess risk. The Guidelines also stress that this information will be fully presented in Agency risk assessment documents, and that Agency scientists will identify the strengths and weaknesses of each assessment by describing uncertainties, assumptions, and limitations, as well as the scientific basis and rationale for each assessment. The Guidelines are formulated in part to bridge gaps in risk assessment methodology and data. By identifying these gaps and the importance of the missing information to the risk assessment process, EPA wishes to encourage research and analysis that will lead to new risk assessment methods and data.

Dated: April 30, 1998.

Carol M. Browner,
Administrator.

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Part A: Guidelines for Neurotoxicity Risk Assessment

1. Introduction

These Guidelines describe the principles, concepts, and procedures that the U.S. Environmental Protection Agency (EPA) will follow in evaluating data on potential neurotoxicity associated with exposure to environmental toxicants. The Agency's authority to regulate substances that have the potential to interfere with human health is derived from a number of statutes that are implemented through multiple offices within EPA. The procedures outlined here are intended to help develop a sound scientific basis for neurotoxicity risk assessment, promote consistency in the Agency's assessment of toxic effects on the nervous system, and inform others of the approaches used by the Agency in those assessments. This document is not a regulation and is not intended for EPA regulations. The Guidelines set forth current scientific thinking and approaches for conducting and evaluating neurotoxic risk assessments. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States.

1.1. Organization of These Guidelines

This introduction (section 1) summarizes the purpose of these Guidelines within the overall framework of risk assessment at EPA. It also outlines the organization of the guidance and describes several default assumptions to be used in the risk assessment process, as discussed in the recent National Research Council report "Science and Judgment in Risk Assessment" (NRC, 1994).

Section 2 sets forth definitions of particular terms widely used in the field of neurotoxicology. These include "neurotoxicity" and "behavioral alterations." Also included in this section are discussions concerning reversible and irreversible effects and direct versus indirect effects.

Risk assessment is the process by which scientific judgments are made concerning the potential for toxicity in humans. The National Research Council (NRC, 1983) has defined risk assessment as including some or all of the following components (paradigm): hazard identification, dose-response assessment, exposure assessment, and risk characterization. In its 1994 report "Science and Judgment in Risk Assessment" the NRC extended its view of the paradigm to include characterization of each component (NRC, 1994). In addition, it noted the

importance of an approach that is less fragmented and more holistic, less linear and more interactive, and that deals with recurring conceptual issues that cut across all stages of risk assessment. These Guidelines describe a more interactive approach by organizing the process around the qualitative evaluation of the toxicity data (hazard characterization), the quantitative dose-response analysis, the exposure assessment, and the risk characterization. In these Guidelines, hazard characterization includes deciding whether a chemical has an effect by means of qualitative consideration of dose-response relationships, route, and duration of exposure. Determining a hazard often depends on whether a dose-response relationship is present (Kimmel et al., 1990). This approach combines the information important in comparing the toxicity of a chemical with potential human exposure scenarios (section 3). In addition, it avoids the potential for labeling chemicals as "neurotoxicants" on a purely qualitative basis. This organization of the risk assessment process is similar to that discussed in the Guidelines for Developmental Toxicity Risk Assessment (56 FR 63798), the main difference being that the quantitative dose-response analysis is discussed under a separate section in these Guidelines.

Hazard characterization involves examining all available experimental animal and human data and the associated doses, routes, timing, and durations of exposure to determine qualitatively if an agent causes neurotoxicity in that species and under what conditions. From the hazard characterization and criteria provided in these Guidelines, the health-related database can be characterized as sufficient or insufficient for use in risk assessment (section 3.3). Combining hazard identification and some aspects of dose-response evaluation into hazard characterization does not preclude the evaluation and use of data for other purposes when quantitative information for setting reference doses (RfDs) and reference concentrations (RfCs) is not available.

The next step in the dose-response analysis (section 4) is the quantitative analysis, which includes determining the no-observed-adverse-effect-level (NOAEL) and/or the lowest-observed-adverse-effect-level (LOAEL) for each study and type of effect. Because of the limitations associated with the use of the NOAEL, the Agency is beginning to use an additional approach, the benchmark dose approach (BMD) (Crump, 1984; U.S. EPA, 1995a), for

more quantitative dose-response evaluation when sufficient data are available. The benchmark dose approach takes into account the variability in the data and the slope of the dose-response curve, and provides a more consistent basis for calculation of the RfD or RfC. If data are considered sufficient for risk assessment, and if neurotoxicity is the effect occurring at the lowest dose level (i.e., the critical effect), an oral or dermal RfD or an inhalation RfC, based on neurotoxic effects, is then derived. This RfD or RfC is derived using the NOAEL or benchmark dose divided by uncertainty factors to account for interspecies differences in response, intraspecies variability, and other factors of study design or the database. A statement of the potential for human risk and the consequences of exposure can come only from integrating the hazard characterization and dose-response analysis with the human exposure estimates in the final risk characterization.

The section on exposure assessment (section 5) identifies human populations exposed or potentially exposed to an agent, describes their composition and size, and presents the types, magnitudes, frequencies, and durations of exposure to the agent. The exposure assessment provides an estimate of human exposure levels for particular populations from all potential sources.

In risk characterization (section 6), the hazard characterization, dose-response analysis, and exposure assessment for given populations are combined to estimate some measure of the risk for neurotoxicity. As part of risk characterization, a summary of the strengths and weaknesses of each component of the risk assessment is given, along with major assumptions, scientific judgments and, to the extent possible, qualitative and quantitative estimates of the uncertainties. This characterization of the health-related database is always presented in conjunction with information on the dose, route, duration, and timing of exposure as well as the dose-response analysis including the RfD or RfC. If human exposure estimates are available, the exposure basis used for the risk assessment is clearly described, e.g., highly exposed individuals or highly sensitive or susceptible individuals. The NOAEL may be compared to the various estimates of human exposure to calculate the margin(s) of exposure (MOE). The considerations for judging the acceptability of the MOE are similar to those for determining the appropriate size of the uncertainty factor for calculating the RfD or RfC.

The Agency recently issued a policy statement and associated guidance for risk characterization (U.S. EPA, 1995b, 1995c), which is currently being implemented throughout EPA. This statement is designed to ensure that critical information from each stage of a risk assessment is used in forming conclusions about risk and that this information is communicated from risk assessors to risk managers (policy makers), from middle to upper management, and from the Agency to the public. Additionally, the policy provides a basis for greater clarity, transparency, reasonableness, and consistency in risk assessments across Agency programs.

Final neurotoxicity risk assessment guidelines may reflect additional changes in risk characterization practices resulting from implementation activities. Risk assessment is just one component of the regulatory process and defines the potential adverse health consequences of exposure to a toxic agent. The other component, risk management, combines risk assessment with statutory directives regarding socioeconomic, technical, political, and other considerations in order to decide whether to control future exposure to the suspected toxic agent and, if so, the nature and level of control. One major objective of these Guidelines is to help the risk assessor determine whether the experimental animal or human data indicate the potential for a neurotoxic effect. Such information can then be used to categorize evidence that will identify and characterize neurotoxic hazards, as described in section 3.3. Characterization of the Health-Related Database, and Table 8 of these Guidelines. Risk management is not dealt with directly in these Guidelines because the basis for decision making goes beyond scientific considerations alone, but the use of scientific information in this process is discussed. For example, the acceptability of the MOE is a risk management decision, but the scientific bases for establishing this value are discussed here.

1.2. The Role of Environmental Agents in Neurotoxicity

Chemicals are an integral part of life, with the capacity to improve as well as endanger health. The general population is exposed to chemicals in air, water, foods, cosmetics, household products, and drugs used therapeutically or illicitly. During daily life, a person experiences a multitude of exposures to potentially neuroactive substances, singly and in combination, both synthetic and natural. Levels of exposure vary and may or may not pose

a hazard, depending on dose, route, and duration of exposure.

A link between human exposure to some chemical substances and neurotoxicity has been firmly established (Anger, 1986; OTA, 1990). Because many natural and synthetic chemicals are present in today's environment, there is growing scientific and regulatory interest in the potential for risks to humans from exposure to neurotoxic agents. If sufficient exposure occurs, the effects resulting from such exposures can have a significant adverse impact on human health. It is not known how many chemicals may be neurotoxic in humans (Reiter, 1987). EPA's TSCA inventory of chemical substances manufactured, imported, or processed in the United States includes more than 65,000 substances and is increasing yearly. An overwhelming majority of the materials in commercial use have not been tested for neurotoxic potential (NRC, 1984).

Estimates of the number of chemicals with neurotoxic properties have been made for subsets of substances. For instance, a large percentage of the more than 500 registered active pesticide ingredients affect the nervous system of the target species to varying degrees. Of 588 chemicals listed by the American Conference of Governmental Industrial Hygienists, 167 affected the nervous system or behavior at some exposure level (Anger, 1984). Anger (1990) estimated that of the approximately 200 chemicals to which 1 million or more American workers are exposed, more than one-third may have adverse effects on the nervous system if sufficient exposure occurs. Anger (1984) also recognized neurotoxic effects as one of the 10 leading workplace disorders. A number of therapeutic substances, including some anticancer and antiviral agents and abused drugs, can cause adverse or neurotoxicological side effects at therapeutic levels (OTA, 1990). The number of chemicals with neurotoxic potential has been estimated to range from 3% to 28% of all chemicals (OTA, 1990). Thus, estimating the risks of exposure to chemicals with neurotoxic potential is of concern with regard to their overall impact on human health.

1.3. Neurotoxicity Risk Assessment

In addition to its primary role in psychological functions, the nervous system controls most, if not all, other bodily processes. It is sensitive to perturbation from various sources and has limited ability to regenerate. There is evidence that even small anatomical, biochemical, or physiological insults to the nervous system may result in

adverse effects on human health.

Therefore, there is a need for consistent guidance on how to evaluate data on neurotoxic substances and assess their potential to cause transient or persistent and direct or indirect effects on human health.

These Guidelines develop principles and concepts in several areas. They outline the scientific basis for evaluating effects due to exposure to neurotoxicants and discuss principles and methods for evaluating data from human and animal studies on behavior, neurochemistry, neurophysiology, and neuropathology. They also discuss adverse effects on neurological development and function in infants and children following prenatal and perinatal exposure to chemical agents. They outline the methods for calculating reference doses or reference concentrations when neurotoxicity is the critical effect, discuss the availability of alternative mathematical approaches to dose-response analyses, characterize the health-related database for neurotoxicity risk assessment, and discuss the integration of exposure information with results of the dose-response assessment to characterize risks. These Guidelines do not advocate developing reference doses specific for neurotoxicity, but rather support the use of neurotoxicity as one possible endpoint to develop reference doses. EPA offices have published guidelines for neurotoxicity testing in animals (U.S. EPA, 1986, 1987, 1988a, 1991a). The testing guidelines address the development of new data for use in risk assessment.

These neurotoxicity risk assessment guidelines provide the Agency's first comprehensive guidance on the use and interpretation of neurotoxicity data, and are part of the Agency's risk assessment guidelines development process, which was initiated in 1984. As part of its neurotoxicity guidelines development program, EPA has sponsored or participated in several conferences on relevant issues (Tilson, 1990); these and other sources (see references) provide the scientific basis for these Guidelines.

This guidance is intended for use by Agency risk assessors and is separate and distinct from the recently published document on principles of neurotoxicity risk assessment (U.S. EPA, 1994). The document on principles was prepared under the auspices of the Subcommittee on Risk Assessment of the Federal Coordinating Council for Science, Engineering, and Technology and was not intended to provide specific directives for how neurotoxicity risk assessment should be performed. It is expected that, like other EPA risk

assessment guidelines for noncancer endpoints (U.S. EPA, 1991b), this document will encourage research and analysis leading to new risk assessment methods and data, which in turn would be used to revise and improve the Guidelines and better guide Agency risk assessors.

1.4. Assumptions

There are a number of unknowns in the extrapolation of data from animal studies to humans. Therefore, a number of default assumptions are made that are generally applied in the absence of data on the relevance of effects to potential human risk. Default assumptions should not be applied indiscriminately. First, all available mechanistic and pharmacokinetic data should be considered. If these data indicate that an alternative assumption is appropriate or if they obviate the need for applying an assumption, such information should be used in risk assessment. For example, research in rats may determine that the neurotoxicity of a chemical is caused by a metabolite. If subsequent research finds that the chemical is metabolized to a lesser degree or not at all in humans, then this information should be used in formulating the default assumptions. The following default assumptions form the basis of the approaches taken in these Guidelines:

(1) It is assumed that an agent that produces detectable adverse neurotoxic effects in experimental animal studies will pose a potential hazard to humans. This assumption is based on the comparisons of data for known human neurotoxicants (Anger, 1990; Kimmel et al., 1990; Spencer and Schaumburg, 1980), which indicate that experimental animal data are frequently predictive of a neurotoxic effect in humans.

(2) It is assumed that behavioral, neurophysiological, neurochemical, and neuroanatomical manifestations are of concern. In the past, the tendency has been to consider only neuropathological changes as endpoints of concern. Based on data on agents that are known human neurotoxicants (Anger, 1990; Kimmel et al., 1990; Spencer and Schaumburg, 1980), there is usually at least one experimental species that mimics the types of effects seen in humans, but in other species tested, the neurotoxic effect may be different or absent. For example, certain organophosphate compounds produce a delayed-onset neuropathy in hens similar to that seen in humans, whereas rodents are characteristically insensitive to these compounds. A biologically significant increase in any of the manifestations is considered indicative of an agent's

potential for disrupting the structure or function of the human nervous system.

(3) It is assumed that the neurotoxic effects seen in animal studies may not always be the same as those produced in humans. Therefore, it may be difficult to determine the most appropriate species in terms of predicting specific effects in humans. The fact that every species may not react in the same way is probably due to species-specific differences in maturation of the nervous system, differences in timing of exposure, metabolism, or mechanisms of action.

(4) It is also assumed that, in the absence of data to the contrary, the most sensitive species is used to estimate human risk. This is based on the assumption that humans are as sensitive as the most sensitive animal species tested. This provides a conservative estimate of sensitivity for added protection to the public. As with other noncancer endpoints, it is assumed that there is a nonlinear dose-response relationship for neurotoxicants. Although there may be a threshold for neurotoxic effects, these are often difficult to determine empirically. Therefore, a nonlinear relationship is assumed to exist for neurotoxicants.

These assumptions are "plausibly conservative" (NRC, 1994) in that they are protective of public health and are also well founded in scientific knowledge about the effects of concern.

2. Definitions and Critical Concepts

This section defines the key terms and concepts that EPA will use in the identification and evaluation of neurotoxicity. The various health effects that fall within the broad classification of neurotoxicity are described and examples are provided. Adverse effects include alterations from baseline or normal conditions that diminish an organism's ability to survive, reproduce, or adapt to the environment. Neurotoxicity is an adverse change in the structure or function of the central and/or peripheral nervous system following exposure to a chemical, physical, or biological agent (Tilson, 1990). Functional neurotoxic effects include adverse changes in somatic/autonomic, sensory, motor, and/or cognitive function. Structural neurotoxic effects are defined as neuroanatomical changes occurring at any level of nervous system organization; functional changes are defined as neurochemical, neurophysiological, or behavioral effects. Chemicals can also be categorized into four classes: Those that act on the central nervous system, the peripheral nerve fibers, the peripheral

nerve endings, or muscles or other tissues (Albert, 1973). Changes in function can result from toxicity to other specific organ systems, and these indirect changes may be considered adverse. For example, exposure to a high dose of a chemical may cause damage to the liver, resulting in general sickness and a decrease in a functional endpoint such as motor activity. In this case, the change in motor activity could be considered as adverse, but not necessarily neurotoxic. A discussion concerning problems associated with risk assessment of high doses of chemicals in the context of drinking water and health was published by the National Research Council (1986).

The risk assessor should also know that there are different levels of concern based on the magnitude of effect, duration of exposure, and reversibility of some neurotoxic effects. Neurotoxic effects may be irreversible (the organism cannot return to the state prior to exposure, resulting in a permanent change) or reversible (the organism can return to the pre-exposure condition). Clear or demonstrable irreversible change in either the structure or function of the nervous system causes greater concern than do reversible changes. If neurotoxic effects are observed at some time during the lifespan of the organism but are slowly reversible, the concern is also high. There is lesser concern for effects that are rapidly reversible or "transient," i.e., measured in minutes, hours, or days, and that appear to be associated with the pharmacokinetics of the causal agent and its presence in the body. Reversible changes that occur in the occupational setting or environment, however, may be of high concern if, for example, exposure to a short-acting solvent interferes with operation of heavy equipment in an industrial plant. The context of the exposure should be considered in evaluating reversible effects. Setting of exposure limits is not always associated with the determination of a reference dose, which is based on chronic dosing. Data from acute or subacute dosing can be used for health advisories or in studies involving developmental exposures.

It should also be noted that the nervous system is known for its reserve capacity (Tilson and Mitchell, 1983). That is, repeated insult to the nervous system could lead to an adaptation. There are, however, limits to this capacity, and when these limits are exceeded, further exposure could lead to frank manifestations of neurotoxicity at the structural or functional level. The risk assessor should be aware that once damaged, neurons, particularly in the

central nervous system, have a limited capacity for regeneration. Reversibility of effects resulting from cell death or from the destruction of cell processes may represent an activation of repair capacity, decreasing future potential adaptability. Therefore, even reversible neurotoxic changes should be of concern. Evidence of progressive effects (those that continue to worsen even after the causal agent has been removed), delayed-onset effects (those that occur at a time distant from the last contact with the causal agent), residual effects (those that persist beyond a recovery period), or latent effects (those that become evident only after an environmental challenge or aging) have a high level of concern.

Environmental challenges can include stress, increased physical or cognitive workload, pharmacological manipulations, and nutritional deficiency or excess. Evidence for reversibility may depend on the region of the nervous system affected, the chemical involved, and organismic factors such as the age of the exposed population. Some regions of the nervous system, such as peripheral nerves, have a high capacity for regeneration, while regions in the brain such as the hippocampus are known for their ability to compensate or adapt to neurotoxic insult. For example, compensation is likely to be seen with solvents (e.g., n-hexane) that produce peripheral neuropathy because of the repair capacity of the peripheral nerve. In addition, tolerance to some cholinergic effects of cholinesterase-inhibiting compounds may be due to compensatory down-regulation of muscarinic receptors. Younger individuals may have more capacity to adapt than older individuals, suggesting that the aged may be at greater risk to neurotoxic exposure.

Neurotoxic effects can be observed at various levels of organization of the nervous system, including neurochemical, anatomical, physiological, or behavioral. At the neurochemical level, for example, an agent that causes neurotoxicity might inhibit macromolecule or transmitter synthesis, alter the flow of ions across cellular membranes, or prevent release of neurotransmitter from the nerve terminals. Anatomical changes may include alterations of the cell body, the axon, or the myelin sheath. At the physiological level, a chemical might change the thresholds for neural activation or reduce the speed of neurotransmission. Behavioral alterations can include significant changes in sensations of sight, hearing, or touch; alterations in simple or

complex reflexes and motor functions; alterations in cognitive functions such as learning, memory, or attention; and changes in mood, such as fear or rage, disorientation as to person, time, or place, or distortions of thinking and feeling, such as delusions and hallucinations. At present, relatively few neurotoxic syndromes have been thoroughly characterized in terms of the initial neurochemical change, structural alterations, physiological consequence, and behavioral effects. Knowledge of exact mechanisms of action is not, however, necessary to conclude that a chemically induced change is a neurotoxic effect.

Neurotoxic effects can be produced by chemicals that do not require metabolism prior to interacting with their sites in the nervous system (primary neurotoxic agents) or those that require metabolism prior to interacting with their sites (secondary neurotoxic agents). Chemically induced neurotoxic effects can be direct (due to an agent or its metabolites acting directly on sites in the nervous system) or indirect (due to agents or metabolites that produce their effects primarily by interacting with sites outside the nervous system). For example, excitatory amino acids such as domoic acid damage specific neurons directly by activating excitatory amino acid receptors in the nervous system, whereas carbon monoxide decreases oxygen availability, which can indirectly kill neurons. Other examples of indirect effects include cadmium-induced spasms in blood vessels supplying the nervous system, dichloroacetate-induced perturbation of metabolic pathways, and chemically induced alterations in skeletomuscular function or structure and effects on the endocrine system. Professional judgment may be required in making determinations about direct versus indirect effects.

The interpretation of data as indicative of a potential neurotoxic effect involves the evaluation of the validity of the database. This approach and these terms have been adapted from the literature on human psychological testing (Sette, 1987; Sette and MacPhail, 1992), where they have long been used to evaluate the level of confidence in different measures of intelligence or other abilities, aptitudes, or feelings. There are four principal questions that should be addressed: whether the effects result from exposure (content validity); whether the effects are adverse or toxicologically significant (construct validity); whether there are correlative measures among behavioral, physiological, neurochemical, and

morphological endpoints (concurrent validity); and whether the effects are predictive of what will happen under various conditions (predictive validity). Addressing these issues can provide a useful framework for evaluating either human or animal studies or the weight of evidence for a chemical (Sette, 1987; Sette and MacPhail, 1992). The next sections indicate the extent to which chemically induced changes can be interpreted as providing evidence of neurotoxicity.

3. Hazard Characterization

3.1. Neurotoxicological Studies: Endpoints and Their Interpretation

The qualitative characterization of neurotoxic hazard can be based on either human or animal data (Anger, 1984; Reiter, 1987; U.S. EPA, 1994). Such data can result from accidental, inappropriate, or controlled experimental exposures. This section describes many of the general and some of the specific characteristics of human studies and reports of neurotoxicity. It then describes some features of animal studies of neuroanatomical, neurochemical, neurophysiological, and behavioral effects relevant to risk assessment. The process of characterizing the sufficiency or insufficiency of neurotoxic effects for risk assessment is described in section 3.3. Additional sources of information relevant to hazard characterization, such as comparisons of molecular structure among compounds and in vitro screening methods, are also discussed.

The hazard characterization should:

- a. Identify strengths and limitations of the database:
 - Epidemiological studies (case reports, cross-sectional, case-control, cohort, or human laboratory exposure studies);
 - Animal studies (including structural or neuropathological, neurochemical, neurophysiological, behavioral or neurological, or developmental endpoints).
- b. Evaluate the validity of the database:
 - Content validity (effects result from exposure);
 - Construct validity (effects are adverse or toxicologically significant);
 - Concurrent validity (correlative measures among behavioral, physiological, neurochemical, or morphological endpoints);
 - Predictive validity (effects are predictive of what will happen under various conditions).
- c. Identify and describe key toxicological studies.
- d. Describe the type of effects:

- Structural (neuroanatomical alterations);
- Functional (neurochemical, neurophysiological, behavioral alterations).
- e. Describe the nature of the effects (irreversible, reversible, transient, progressive, delayed, residual, or latent).
- f. Describe how much is known about how (through what biological mechanism) the chemical produces adverse effects.
- g. Discuss other health endpoints of concern.
- h. Comment on any nonpositive data in humans or animals.
- i. Discuss the dose-response data (epidemiological or animal) available for further dose-response analysis.
- j. Discuss the route, level, timing, and duration of exposure in studies demonstrating neurotoxicity as compared to expected human exposures.
- k. Summarize the hazard characterization:
 - Confidence in conclusions;
 - Alternative conclusions also supported by the data;
 - Significant data gaps; and
 - Highlights of major assumptions.

3.1.1. Human Studies

It is well established that information from the evaluation of human exposure can identify neurotoxic hazards (Anger and Johnson, 1985; Anger, 1990). Prominent among historical episodes of neurotoxicity in human populations are the outbreaks of methylmercury poisoning in Japan and Iraq and the neurotoxicity seen in miners of metals, including mercury, manganese, and lead (Carson et al., 1987; Silbergeld and Percival, 1987; OTA, 1990). In the past decade, lead poisoning in children has been a prominent issue of concern (Silbergeld and Percival, 1987). Neurotoxicity in humans has been studied and reviewed for many pesticides (Hayes, 1982; NRDC, 1989; Ecobichon and Joy, 1982; Ecobichon et al., 1990). Organochlorines, organophosphates, carbamates, pyrethroids, certain fungicides, and some fumigants are all known neurotoxicants. They may pose occupational risks to manufacturing and formulation workers, pesticide applicators and farm workers, and consumers through home application or consumption of residues in foods. Families of workers may also be exposed by transport into the home from workers' clothing. Data on humans can come from a number of sources, including clinical evaluations, case reports, epidemiologic studies, and human laboratory exposure studies. A

more extensive description of issues concerning human neurotoxicology and risk assessment has been published elsewhere (U.S. EPA, 1993). A review of the types of tests used to assess cognitive and neurological function in children, in addition to a discussion of methodological issues in the design of prospective, longitudinal studies of developmental neurotoxicity in humans, has recently been published (Jacobson and Jacobson, 1996). Stanton and Spear (1990) reviewed assessment measures used in developmental neurotoxicology for their comparability in humans and laboratory animals and their ability to detect comparable adverse effects across species. At the level of the various functional assessments for sensory, motivational, cognitive and motor function, and social behavior, there was good agreement across species among the neurotoxic agents reviewed.

3.1.1.1. Clinical Evaluations

Clinical methods are used extensively in neurology and neuropsychology to evaluate patients suspected of having neurotoxicity. An array of examiner-administered and paper-and-pencil tasks are used to assess sensory, motor, cognitive, and affective functions and personality states/traits. Neurobehavioral data are synthesized with information from neurophysiological studies and medical history to derive a working diagnosis. Brain functional imaging techniques based on magnetic resonance imaging or emission tomography may also be useful in helping diagnose neurodegenerative disorders following chemical exposures in humans (Omerand et al., 1994; Callender et al., 1994). Clinical diagnostic approaches have provided a rich conceptual framework for understanding the functions (and malfunctions) of the central and peripheral nervous systems and have formed the basis for the development of methods for measuring the behavioral expression of nervous system disorders. Human neurobehavioral toxicology has borrowed heavily from neurology and neuropsychology for concepts of nervous system impairment and functional assessment methods. Neurobehavioral toxicology has adopted the neurologic/neuropsychologic model, using adverse changes in behavioral function to assist in identifying chemical- or drug-induced changes in nervous system processes.

Neurological and neuropsychological methods have long been employed to identify the adverse health effects of environmental workplace exposures (Sternman and Schaumburg, 1980).

Peripheral neuropathies (with sensory and motor disturbances), encephalopathies, organic brain syndromes, extrapyramidal syndromes, demyelination, autonomic changes, and dementia are well-characterized consequences of acute and chronic exposure to chemical agents. The range of exposure conditions that produce clinical signs of neurotoxicity also has been defined by these clinical methods. It is very important to make external/internal dose measurements in humans to determine the actual dose(s) that can cause unwanted effects.

Aspects of the neurological examination approach limit its usefulness for neurotoxicological risk assessment. Information obtained from the neurological exam is mostly qualitative and descriptive rather than quantitative. Estimates of the severity of functional impairment can be reliably placed into only three or four categories (for example, mild, moderate, severe). Much of the assessment depends on the subjective judgment of the examiner. For example, the magnitude and symmetry of muscle strength are often judged by having the patient push against the resistance of the examiner's hands. The endpoints are therefore the absolute and relative amount of muscle load sensed by the examiner in his or her arms.

Compared with other methods, the neurological exam may be less sensitive in detecting early neurotoxicity in peripheral sensory and motor nerves. While clinicians' judgments are equal in sensitivity to quantitative methods in assessing the amplitude of tremor, tremor frequency is poorly quantified by clinicians. Thus, important aspects of the clinical neurologic exam may be insufficiently quantified and lack sufficient sensitivity for detecting early neurobehavioral toxicity produced by environmental or workplace exposure conditions. However, a neurological evaluation of persons with documented neurobehavioral impairment would be helpful for identifying nonchemical causes of neurotoxicity, such as diabetes and cardiovascular insufficiency.

Administration of a neuropsychological battery also requires a trained technician, and interpretation requires a trained and experienced neuropsychologist. Depending on the capabilities of the patient, 2 to 4 hours may be needed to administer a full battery; 1 hour may be needed for the shorter screening versions. These practical considerations may limit the usefulness of neuropsychological assessment in large field studies of suspected neurotoxicity.

In addition to logistical problems in administration and interpretation, neuropsychological batteries and neurological exams share two disadvantages with respect to neurotoxicity risk assessment. First, neurological exams and neuropsychological test batteries are designed to confirm and classify functional problems in individuals selected on the basis of signs and symptoms identified by the patient, family, or other health professionals. Their usefulness in detecting low base-rate impairment in workers or the general population is generally thought to be limited, decreasing the usefulness of clinical assessment approaches for epidemiologic risk assessment.

Second, neurological exams and neuropsychological test batteries were developed to assess the functional correlates of the most common forms of nervous system dysfunction: brain trauma, focal lesions, and degenerative conditions. The clinical tests were validated against these neurological disease states. With a few notable exceptions, chemicals are not believed to produce impairment similar to that from trauma or lesions; neurotoxic effects are more similar to the effects of degenerative disease. There has been insufficient research to demonstrate which tests designed to assess functional expression of neurologic disease are useful in characterizing the modes of central nervous system impairment produced by chemical agents and drugs.

It should be noted that alternative approaches are available that avoid many of the limitations of clinical and neurological and traditional neuropsychological methods. Computerized behavioral assessment systems designed for field testing of populations exposed to chemicals in the community or workplace have been developed during the past decade. The most widely used system is the Neurobehavioral Evaluation System (NES) developed by Baker et al. (1985). Advantages of computerized tests include (1) standardized administration to eliminate intertester variability and minimize subject-experimenter interaction; (2) automated data collection and scoring, which is faster, easier, and less error-prone than traditional methods; and (3) test administration requires minimal training and experience. NES tests have proven sensitive to a variety of solvents, metals, and pesticides (Otto, 1992). Computerized systems available for human neurotoxicity testing are critically reviewed in Anger et al. (1996).

3.1.1.2. Case Reports

The first type of human data available is often the case report or case series, which can identify cases of a disease and are reported by clinicians or discerned through active or passive surveillance, usually in the workplace. However, case reports involving a single neurotoxic agent, although informative, are rare in the literature; for example, farmers are likely to be exposed to a wide variety of potentially neurotoxic pesticides. Careful case histories assist in identifying common risk factors, especially when the association between the exposure and disease is strong, the mode of action of the agent is biologically plausible, and clusters occur in a limited period of time.

Case reports can be obtained more quickly than more complex studies. Case reports of acute high-level exposure to a toxicant can be useful for identifying signs and symptoms that may also apply to lower exposure. Case reports can also be useful when corroborating epidemiological data are available.

3.1.1.3. Epidemiologic Studies

Epidemiology has been defined as "the study of the distributions and determinants of disease and injuries in human populations" (Mausner and Kramer, 1985). Knowing the frequency of illness in groups and the factors that influence the distribution is the tool of epidemiology that allows the evaluation of causal inference with the goal of prevention and cure of disease (Friedlander and Hearn, 1980). Epidemiologic studies are a useful means of evaluating the effects of neurotoxic substances on human populations, particularly if effects of exposure are cumulative or exposures are repeated. Such studies are less useful in cases of acute exposure, where the effects are short-term. Frequently, determining the precise dose or exposure concentration in epidemiological studies can be difficult.

3.1.1.3.1. Cross-Sectional Studies.

In cross-sectional studies or surveys, both the disease and suspected risk factors are ascertained at the same time, and the findings are useful in generating hypotheses. A group of people are interviewed, examined, and tested at a single point in time to ascertain a relationship between a disease and a neurotoxic exposure. This study design does not allow the investigator to determine whether the disease or the exposure came first, rendering it less useful in estimating risk. These studies are intermediate in cost and time

required to complete compared with case reports and more complex analytical studies, but should be augmented with additional data.

3.1.1.3.2. Case-Control (Retrospective) Studies.

Last (1986) defines a case-control study as one that "starts with the identification of persons with the disease (or other outcome variable) of interest, and a suitable control population (comparison, reference group) of persons without the disease." He states that the relationship of an "attribute" to the disease is measured by comparing the diseased with the nondiseased with regard to how frequently the attribute is present in each of the groups. The cases are assembled from a population of persons with and without exposure, and the comparison group is selected from the same population; the relative distribution of the potential risk factor (exposure) in both groups is evaluated by computing an odds ratio that serves as an estimate of the strength of the association between the disease and the potential risk factor. The statistical significance of the ratio is determined by calculating a p-value and is used to approximate relative risk.

The case-control approach to the study of potential neurotoxins in the environment provides a great deal of useful information for the risk assessor. In his textbook, Valciukas (1991) notes that the case-control approach is the strategy of choice when no other environmental or biological indicator of neurotoxic exposure is available. He further states: "Considering the fact that for the vast majority of neurotoxic chemical compounds, no objective biological indicators of exposure are available (or if they are, their half-life is too short to be of any practical value), the case-control paradigm is a widely accepted strategy for the assessment of toxic causation." The case-control study design, however, can be very susceptible to bias. The potential sources of bias are numerous and can be specific to a particular study. Many of these biases also can be present in cross-sectional studies. For example, recall bias or faulty recall of information by study subjects in a questionnaire-based study can distort the results. Analysis of the case-comparison study design assumes that the selected cases are representative persons with the disease—either all cases with the disease or a representative sample of them have been ascertained. It further assumes that the control or comparison group is representative of the nonexposed population (or that the

prevalence of the characteristic under study is the same in the control group as in the general population). Failure to satisfy these assumptions may result in selection bias that may invalidate study results.

An additional source of bias in case-control studies is the presence of confounding variables, i.e., factors known to be associated with the exposure and causally related to the disease under study. These should be controlled, either in the design of the study by matching cases to controls on the basis of the confounding factor, or in the analysis of the data by using statistical techniques such as stratification or regression. Matching requires time to identify an adequate number of potential controls to distinguish those with the proper characteristics, while statistical control of confounding factors requires a larger study.

The definition of exposure is critical in epidemiologic studies. In occupational settings, exposure assessment often is based on the job assignment of the study subjects, but can be more precise if detailed company records allow the development of exposure profiles. Positive results from a properly controlled retrospective study should weigh heavily in the risk assessment process.

3.1.1.3.3. Cohort (Prospective, Follow-Up) Studies.

In a prospective study design, a healthy group of people is assembled and followed forward in time and observed for the development of dysfunction. Such studies are invaluable for determining the time course for development of dysfunction (e.g., follow-up studies performed in various cities on the effects of lead on child development). This approach allows the direct estimate of risks attributed to a particular exposure, since toxic incidence rates in the cohort can be determined. Prospective study designs also allow the study of chronic effects of exposure. One major strength of the cohort design is that it allows the calculation of rates to determine the excess risk associated with an exposure. Also, biases are reduced by obtaining information before the disease develops. This approach, however, can be very time-consuming and costly.

In cohort studies information bias can be introduced when individuals provide distorted information about their health because they know their exposure status and may have been told of the expected health effects of the exposure under study. More credence should be given to those studies in which both observer

and subject bias are carefully controlled (e.g., double-blind studies).

A special type of cohort study is the retrospective cohort study, in which the investigator goes back in time to select the study groups and traces them over time, often to the present. The studies usually involve specially exposed groups and have provided much assistance in estimating risks due to occupational exposures. Occupational retrospective cohort studies rely on company records of past and current employees that include information on the dates of employment, age at employment, date of departure, and whether diseased (or dead in the case of mortality studies). Workers can then be classified by duration and degree of exposure. Positive or negative results from a properly controlled prospective study should weigh heavily in the risk assessment process.

3.1.1.4. Human Laboratory Exposure Studies

Neurotoxicity assessment has an advantage not afforded to the evaluation of other toxic endpoints, such as cancer or reproductive toxicity, in that the effects of some chemicals are short in duration and reversible. This makes it ethically possible to perform human laboratory exposure studies and obtain data relevant to the risk assessment process. Information from experimental human exposure studies has been used to set occupational exposure limits, mostly for organic solvents that can be inhaled. Laboratory exposure studies have contributed to risk assessment and the setting of exposure limits for several solvents and other chemicals with acute reversible effects.

Human exposure studies sometimes offer advantages over epidemiologic field studies. Combined with appropriate sampling of biological fluids (urine or blood), it is possible to calculate body concentrations, examine toxicokinetics, and identify metabolites. Bioavailability, elimination, dose-related changes in metabolic pathways, individual variability, time course of effects, interactions between chemicals, and interactions between chemical and environmental/biobehavioral processes (stressors, workload/respiratory rate) are factors that are generally easier to collect under controlled conditions.

Other goals of laboratory studies include the in-depth characterization of effects, the development of new assessment methods, and the examination of the sensitivity, specificity, and reliability of neurobehavioral assessment methods across chemical classes. The laboratory is the most appropriate setting for the

study of environmental and biobehavioral variables that affect the action of chemical agents. The effects of ambient temperature, task difficulty, rate of ongoing behavior, conditioning variables, tolerance/sensitization, sleep deprivation, motivation, and so forth are sometimes studied.

From a methodological standpoint, human laboratory studies can be divided into two categories: between-subjects and within-subjects designs. In the former, the neurobehavioral performance of exposed volunteers is compared with that of nonexposed participants. In the latter, preexposure performance is compared with neurobehavioral function under the influence of the chemical or drug. Within-subjects designs have the advantage of requiring fewer participants, eliminating individual differences as a source of variability, and controlling for chronic mediating variables, such as caffeine use and educational achievement. A disadvantage of the within-subjects design is that neurobehavioral tests must be administered more than once. Practice on many neurobehavioral tests often leads to improved performance that may confound the effect of the chemical/drug. There should be a sufficient number of test sessions in the pre-exposure phase to allow performance on all tests to achieve a relatively stable baseline level.

Participants in laboratory exposure studies may have been recruited from populations of persons already exposed to the chemical/drug or from chemical-naïve populations. Although the use of exposed volunteers has ethical advantages, can mitigate against novelty effects, and allows evaluation of tolerance/sensitization, finding an accessible exposed population in reasonable proximity to the laboratory can be difficult. Chemical-naïve participants are more easily recruited but may differ significantly in important characteristics from a representative sample of exposed persons. Chemical-naïve volunteers are often younger, healthier, and better educated than the

populations exposed environmentally, in the workplace, or pharmacotherapeutically.

Compared with workplace and environmental exposures, laboratory exposure conditions can be controlled more precisely, but exposure periods are much shorter. Generally only one or two relatively pure chemicals are studied for several hours, whereas the population of interest may be exposed to multiple chemicals containing impurities for months or years. Laboratory studies are therefore better at identifying and characterizing effects with acute onset and the selective effects of pure agents. In all cases, the potential for participant bias should be as carefully controlled for as possible. Even the consent form can lead to participant bias, as toxic effects have been reported in some individuals who were warned of such effects in an informed consent form. In addition, double-blind studies have been shown to provide some control for observer bias that may occur in single-blind studies. More credence should be given to those studies in which both observer and subject bias are carefully controlled (Benignus, 1993).

A test battery that examines multiple neurobehavioral functions may be more useful for screening and the initial characterization of acute effects. Selected neurobehavioral tests that measure a limited number of functions in multiple ways may be more useful for elucidating mechanisms or validating specific effects.

Both chemical and behavioral control procedures are valuable for examining the specificity of the effects. A concordant effect among different measures of the same neurobehavioral function (e.g., reaction time) and a lack of effect on some other measures of psychomotor function (e.g., untimed manual dexterity) would increase the confidence in a selective effect on motor speed and not on attention or another nonspecific motor function. Likewise, finding concordant effects among similar chemical or drug classes along with different effects from dissimilar classes would support the specificity of

chemical effect. For example, finding that the effects of a solvent were similar to those of ethanol but not caffeine would support the specificity of solvent effects on a given measure of neurotoxicity.

3.1.2. Animal Studies

This section provides an overview of the major types of endpoints that may be evaluated in animal neurotoxicity studies, describes the kinds of effects that may be observed and some of the tests used to detect and quantify these effects, and provides guidance for interpreting data. Compared with human studies, animal studies are more often available for specific chemicals, provide more precise exposure information, and control environmental factors better (Anger, 1984). For these reasons, risk assessments tend to rely heavily on animal studies.

Many tests that can measure some aspect of neurotoxicity have been used in the field of neurobiology in the past 50 years. The Office of Prevention, Pesticides and Toxic Substances (OPPTS) has published animal testing guidelines that were developed in cooperation with the Office of Research and Development (U.S. EPA, 1991a). While the test endpoints included in the 1991 document serve as a convenient focus for this section, there are many other endpoints for which there are no current EPA guidelines. The goal of the current document is to provide a framework for interpreting data collected in tests frequently used by neurotoxicologists.

Five categories of endpoints will be described: structural or neuropathological, neurophysiological, neurochemical, behavioral, and developmental. Table 1 lists a number of endpoints in each of these categories. It is imperative for the risk assessor to understand that the interpretation of the indicators listed in Table 1 as neurotoxic effects is dependent on the dose at which such changes occur and the possibility that damage to other organ systems may contribute to or cause such changes indirectly.

TABLE 1.—EXAMPLES OF POSSIBLE INDICATORS OF A NEUROTOXIC EFFECT

Structural or neuropathological endpoints:

Gross changes in morphology, including brain weight.

Histologic changes in neurons or glia (neuronopathy, axonopathy, myelinopathy).

Neurochemical endpoints:

Alterations in synthesis, release, uptake, degradation of neurotransmitters.

Alterations in second-messenger-associated signal transduction.

Alterations in membrane-bound enzymes regulating neuronal activity.

Inhibition and aging of neuropathy enzyme.

Increases in glial fibrillary acidic protein in adults.

Neurophysiological endpoints:

Change in velocity, amplitude, or refractory period of nerve conduction.

TABLE 1.—EXAMPLES OF POSSIBLE INDICATORS OF A NEUROTOXIC EFFECT—Continued

Change in latency or amplitude of sensory-evoked potential.
Change in electroencephalographic pattern.
Behavioral and neurological endpoints:
Increases or decreases in motor activity.
Changes in touch, sight, sound, taste, or smell sensations.
Changes in motor coordination, weakness, paralysis, abnormal movement or posture, tremor, ongoing performance.
Absence or decreased occurrence, magnitude, or latency of sensorimotor reflex.
Altered magnitude of neurological measurement, including grip strength, hindlimb splay.
Seizures.
Changes in rate or temporal patterning of schedule-controlled behavior.
Changes in learning, memory, and attention.
Developmental endpoints:
Chemically induced changes in the time of appearance of behaviors during development.
Chemically induced changes in the growth or organization of structural or neurochemical elements.

3.1.2.1. Structural Endpoints of Neurotoxicity

Structural endpoints are typically defined as neuropathological changes evident by gross observation or light microscopy, although most neurotoxic changes will be detectable only at the light microscopic level. Gross changes in morphology can include discrete or widespread lesions in nerve tissue. A change in brain weight is considered to be a biologically significant effect. This is true regardless of changes in body weight, because brain weight is generally protected during undernutrition or weight loss, unlike many other organs or tissues. It is inappropriate to express brain weight changes as a ratio of body weight and thereby dismiss changes in absolute brain weight. Changes in brain weight are a more reliable indicator of alteration in brain structure than are measurements of length or width in fresh brain, because there is little historical data in the toxicology literature.

Neurons are composed of a neuronal body, axon, and dendritic processes. Various types of neuropathological lesions may be classified according to the site where they occur (Spencer and Schaumburg, 1980; WHO, 1986; Krinke, 1989; Griffin, 1990). Neurotoxicant-induced lesions in the central or peripheral nervous system may be classified as a neuronopathy (changes in the neuronal cell body), axonopathy (changes in the axons), myelinopathy (changes in the myelin sheaths), or nerve terminal degeneration. Nerve terminal degeneration represents a very subtle change that may not be detected by routine histopathology, but requires detection by special procedures such as silver staining or neurotransmitter-specific immunohistochemistry. For axonopathies, a more precise location of the changes may also be described (i.e., proximal, central, or distal axonopathy). In the case of some developmental exposures, a neurotoxic chemical might delay or accelerate the differentiation or proliferation of cells or cell types.

Alteration in the axonal termination site might also occur with exposure. In an aged population, exposure to some neurotoxicants might accelerate the normal loss of neurons associated with aging (Reuhl, 1991). In rare cases, neurotoxic agents have been reported to produce neuropathic conditions resembling neurodegenerative disorders, such as Parkinson's disease, in humans (WHO, 1986). Table 2 lists examples of such neurotoxic chemicals, their putative site of action, the type of neuropathology produced, and the disorder or condition that each typifies. Inclusion of any chemical in any of the following tables is for illustrative purposes, i.e., it has been reported that the chemical will produce a neurotoxic effect at some dose; any individual chemical listed may also adversely affect other organs at lower doses. It is important that the severity of each structural union be graded objectively and the grading criteria reported.

TABLE 2.—NEUROTOXICANTS AND DISORDERS WITH SPECIFIC NEUROLOGICAL TARGETS

Site of action	Neurotoxic change	Neurotoxic chemical	Corresponding neurodegenerative disorder
Neuron cell body	Neuronopathy	Methylmercury Quinolinic acid 3-Acetylpyridine	Minamata disease. Huntington's disease. Cerebellar ataxia.
Nerve terminal	Terminal destruction	1-Methyl-4-phenyl 1,2,3,6-tetrahydropyridine (MPTP) (dopaminergic)	Parkinson's disease.
Schwann cell myelin	Myelinopathy	Hexachlorophene	Congenital hypomyelination.
Central-peripheral distal axon	Distal axonopathy	Acrylamide, carbon disulfide, n-hexane.	Peripheral neuropathy.
Central axons	Central axonopathy	Clioquinol	Subacute myelopticonopathy.
Proximal axon	Proximal axonopathy	B,B'-laminodipropionitrile	Motor neuron disease.

Alterations in the structure of the nervous system (i.e., neuronopathy, axonopathy, myelinopathy, terminal degeneration) are regarded as evidence of a neurotoxic effect. The risk assessor should note that pathological changes in

many cases require time for the perturbation to become observable, especially with evaluation at the light microscopic level. Neuropathological studies should control for potential differences in the area(s) and section(s)

of the nervous system sampled; in the age, sex, and body weight of the subject; and in fixation artifacts (WHO, 1986). Concern for the structural integrity of nervous system tissues derives from

their functional specialization and lack of regenerative capacity.

Within general class of nervous system structural alteration, there are various histological changes that can result after exposure to neurotoxicants. For example, specific changes in nerve cell bodies include chromatolysis, vacuolization, and cell death. Axons can undergo swelling, degeneration, and atrophy, while myelin sheath changes include folding, edematous splitting, and demyelination. Although terminal degeneration does occur, it is not readily detectable by light microscopy. Many of these changes are a result of complex effects at specific subcellular organelles, such as the axonal swelling that occurs as a result of neurofilament accumulation in acrylamide toxicity. Other changes may be associated with

regenerative or adaptive processes that occur after neurotoxicant exposure.

3.1.2.2. Neurophysiological Endpoints of Neurotoxicity

Neurophysiological studies measure the electrical activity of the nervous system. The term "neurophysiology" is often used synonymously with "electrophysiology" (Dyer, 1987). Neurophysiological techniques provide information on the integrity of defined portions of the nervous system. Several neurophysiological procedures are available for application to neurotoxicological studies. Examples are listed in Table 3. They range in scale from procedures that employ microelectrodes to study the function of single nerve cells or restricted portions of them, to procedures that employ

macroelectrodes to perform simultaneous recordings of the summed activity of many cells. Microelectrode procedures typically are used to study mechanisms of action and are frequently performed in vitro. Macroelectrode procedures are generally used in studies to detect or characterize the potential neurotoxic effects of agents of interest because of potential environmental exposure. The present discussion concentrates on macroelectrode neurophysiological procedures because it is more likely that they will be the focus of decisions regarding critical effects in risk assessment. All of the procedures described below for use in animals also have been used in humans to determine chemically induced alterations in neurophysiological function.

TABLE 3.—EXAMPLES OF NEUROPHYSIOLOGICAL MEASURES OF NEUROTOXICITY

System/function	Procedure	Representative agents
Retina	Electroretinography (ERG)	Developmental lead.
Visual pathway	Flash-evoked potential (FEP)	Carbon disulfide.
Visual function	Pattern-evoked potential (PEP) (pattern size and contrast).	Carbon disulfide.
Auditory pathway	Brain stem auditory evoked potential (BAER) (clicks).	Aminoglycoside, antibiotics, toluene, styrene.
Auditory function	BAER (tones)	Aminoglycoside, antibiotics, toluene, styrene.
Somatosensory pathway	Somatosensory provoked	Acrylamide, n-hexane.
Somatosensory function	Sensory-evoked potential (SEP) (tactile)	Acrylamide, n-hexane.
Spinocerebellar pathway	SEP recorded from cerebellum	Acrylamide, n-hexane.
Mixed nerve	Peripheral nerve compound action potential (PNAP).	Triethyltin.
Motor axons	PNAP isolate motor components	Triethyltin.
Sensory axons	PNAP isolate sensory components	Triethyltin.
Neuromuscular	Electromyography (EMG)	Dithiobiuret.
General central nervous system/level of arousal.	Electroencephalography (EEG)	Toluene.

3.1.2.2.1. Nerve Conduction Studies. Nerve conduction studies, generally performed on peripheral nerves, can be useful in investigations of possible peripheral neuropathy. Most peripheral nerves contain mixtures of individual sensory and motor nerve fibers, which may or may not be differentially sensitive to neurotoxicants. It is possible to distinguish sensory from motor effects in peripheral nerve studies by measuring activity in sensory nerves or by measuring the muscle response evoked by nerve stimulation to measure motor effects. While a number of endpoints can be recorded, the most critical variables are nerve conduction velocity, response amplitude, and refractory period. It is important to recognize that damage to nerve fibers may not be reflected in changes in these endpoints if the damage is not sufficiently extensive. Thus, the interpretation of data from such studies may be enhanced if evaluations such as

nerve pathology and/or other structural measures are also included.

Nerve conduction measurements are influenced by a number of factors, the most important of which is temperature. An adequate nerve conduction study will either measure the temperature of the limb under study and mathematically adjust the results according to well-established temperature factors or will control limb temperature within narrow limits. Studies that measure peripheral nerve function without regard for temperature are not adequate for risk assessment.

In well-controlled studies, statistically significant decreases in nerve conduction velocity are indicative of a neurotoxic effect. While a decrease in nerve conduction velocity is indicative of demyelination, it frequently occurs later in the course of axonal degradation because normal conduction velocity may be maintained for some time in the face of axonal degeneration. For this

reason, a measurement of normal nerve conduction velocity does not rule out peripheral axonal degeneration if other signs of peripheral nerve dysfunction are present.

Decreases in response amplitude reflect a loss of active nerve fibers and may occur prior to decreases in conduction velocity in the course of peripheral neuropathy. Hence, changes in response amplitude may be more sensitive measurements of axonal degeneration than is conduction velocity. Measurements of response amplitude, however, can be more variable and require careful application of experimental techniques, a larger sample size, and greater statistical power than measurements of velocity to detect changes. The refractory period refers to the time required after stimulation before a nerve can fire again and reflects the functional status of nerve membrane ion channels. Chemically induced changes in

refractory periods in a well-controlled study indicate a neurotoxic effect.

In summary, alterations in peripheral nerve response amplitude and refractory period in studies that are well controlled for temperature are indicative of a neurotoxic effect. Alterations in peripheral nerve function are frequently associated with clinical signs such as numbness, tingling, or burning sensations or with motor impairments such as weakness. Examples of compounds that alter peripheral nerve function in humans or experimental animals include acrylamide, carbon disulfide, n-hexane, lead, and some organophosphates.

3.1.2.2.2. Sensory, Motor, and Other Evoked Potentials. Evoked potential studies are electrophysiological procedures that measure the response elicited from a defined stimulus such as a tone, a light, or a brief electrical pulse. Evoked potentials reflect the function of the system under study, including visual, auditory, or somatosensory; motor, involving motor nerves and innervated muscles; or other neural pathways in the central or peripheral nervous system (Rebert, 1983; Dyer, 1985; Mattsson and Albee, 1988; Mattsson et al., 1992; Boyes, 1992, 1993). Evoked potential studies should be interpreted with respect to the known or presumed neural generators of the responses, and their likely relationships with behavioral outcomes, when such information is available. Such correlative information strengthens the confidence in electrophysiological outcomes. In the absence of such supportive information, the extent to which evoked potential studies provide convincing evidence of neurotoxicity is a matter of professional judgment on a case-by-case basis. Judgments should consider the nature, magnitude, and duration of such effects, along with other factors discussed elsewhere in this document.

Data are in the form of a voltage record collected over time and can be quantified in several ways. Commonly, the latency (time from stimulus onset) and amplitude (voltage) of the positive and negative voltage peaks are identified and measured. Alternative measurement schemes may involve substitution of spectral phase or template shifts for peak latency and spectral power, spectral amplitude, root-mean-square, or integrated area under the curve for peak amplitude. Latency measurements are dependent on both the velocity of nerve conduction and the time of synaptic transmission. Both of these factors depend on temperature, as discussed in regard to nerve conduction, and similar caveats apply for sensory

evoked potential studies. In studies that are well controlled for temperature, increases in latencies or related measures can reflect deficits in nerve conduction, including demyelination or delayed synaptic transmission, and are indicators of a neurotoxic effect.

Decreases in peak latencies, like increases in nerve conduction velocity, are unusual, but the neural systems under study in sensory evoked potentials are complex, and situations that might cause a peak measurement to occur earlier are conceivable. Two such situations are a reduced threshold for afferent neural transmission and a selective loss of cells responding late in the peak, thus making the measured peak occur earlier. Decreases in peak latency should not be dismissed outright as experimental or statistical error, but should be examined carefully and perhaps replicated to assess possible neurotoxicity. A decrease in latency is not conclusive evidence of a neurotoxic effect.

Changes in peak amplitudes or equivalent measures reflect changes in the magnitude of the neural population responsive to stimulation. Both increases and decreases in amplitude are possible following exposure to chemicals. Whether excitatory or inhibitory neural activity is translated into a positive or negative deflection in the sensory evoked potential is dependent on the physical orientation of the electrode with respect to the tissue generating the response, which is frequently unknown. Comparisons should be based on the absolute change in amplitude. Therefore, either increases or decreases in amplitude may be indicative of a neurotoxic effect.

Within any given sensory system, the neural circuits that generate various evoked potential peaks differ as a function of peak latency. In general, early latency peaks reflect the transmission of afferent sensory information. Changes in either the latency or amplitude of these peaks are considered convincing evidence of a neurotoxic effect that is likely to be reflected in deficits in sensory perception. The later-latency peaks, in general, reflect not only the sensory input but also the more nonspecific factors such as the behavioral state of the subject, including such factors as arousal level, habituation, or sensitization (Dyer, 1987). Thus, changes in later-latency evoked potential peaks should be interpreted in light of the behavioral status of the subject and would generally be considered evidence of a neurotoxic effect.

3.1.2.2.3. Seizures/Convulsions. Some neurotoxicants (e.g., lindane, pyrethroids, trimethyltin, dichlorodiphenyltrichloroethane (DDT)) produce observable convulsions. When convulsionlike behaviors are observed, as described in the behavioral section on convulsions, neurophysiological recordings can provide additional information to help interpret the results. Recordings of brain electrical activity that demonstrate seizurelike activity are indicative of a neurotoxic effect.

In addition to producing seizures directly, chemicals may also alter the frequency, severity, duration, or threshold for eliciting seizures through other means by a phenomenon known as "kindling." Such alterations can occur after acute exposure or after repeated exposure to dose levels below the acute threshold. In experiments demonstrating changes in sensitivity following repeated exposures to the test compound, information regarding possible changes in the pharmacokinetic distribution of the compound is required before the seizure susceptibility changes can be interpreted as evidence of neurotoxicity. Increases in susceptibility to seizures are considered adverse.

3.1.2.2.4. Electroencephalography (EEG). EEG analysis is used widely in clinical settings for the diagnosis of neurological disorders, and less often for the detection of subtle toxicant-induced dysfunction (WHO, 1986; Eccles, 1988). The basis for using EEG in either setting is the relationship between specific patterns of EEG waveforms and specific behavioral states. Because states of alertness and stages of sleep are associated with distinct patterns of electrical activity in the brain, it is generally thought that arousal level can be evaluated by monitoring the EEG. Dissociation of EEG activity and behavior can, however, occur after exposure to certain chemicals. Normal patterns of transition between sleep stages or between sleeping and waking states are known to remain disturbed for prolonged periods of time after exposure to some chemicals. Changes in the pattern of the EEG can be elicited by anesthetic drugs and stimuli producing arousal (e.g., lights, sounds). In studies with toxicants, changes in EEG pattern can sometimes precede alterations in other objective signs of neurotoxicity (Dyer, 1987).

EEG studies should be done under highly controlled conditions, and the data should be considered on a case-by-case basis. Chemically induced seizure activity detected in the EEG pattern is evidence of a neurotoxic effect.

3.1.2.3. Neurochemical Endpoints of Neurotoxicity

Many different neurochemical endpoints have been measured in neurotoxicological studies, and some have proven useful in advancing the understanding of mechanisms of action of neurotoxic chemicals (Bondy, 1986; Mailman, 1987; Morell and Mailman,

1987; Costa, 1988; Silbergeld, 1993). Normal functioning of the nervous system depends on the synthesis and release of specific neurotransmitters and activation of their receptors at specific presynaptic and postsynaptic sites. Chemicals can interfere with the ionic balance of a neuron, act as a cytotoxicant after transport into a nerve terminal, block reuptake of

neurotransmitters and their precursors, act as a metabolic poison, overstimulate receptors, block transmitter release, and inhibit transmitter synthetic or catabolic enzymes. Table 4 lists several chemicals that produce neurotoxic effects at the neurochemical level (Bondy, 1986; Mailman, 1987; Morell and Mailman, 1987; Costa, 1988).

TABLE 4.—EXAMPLES OF NEUROTOXICANTS WITH KNOWN NEUROCHEMICAL MECHANISMS

Site of action	Examples
Neurotoxicants acting on ionic balance:	
Inhibit sodium entry	Tetrodotoxin.
Block closing of sodium channel	p,p'-DDT, pyrethroids.
Increase permeability to sodium	Batrachotoxin.
Increase intracellular calcium	Chloroquine.
Synaptic neurotoxicants	MPTP.
Uptake blockers	Hemicholinium.
Metabolic poisons	Cyanide.
Hyperactivation of receptors	Domoic acid.
Blocks transmitter release	Botulinum toxin.
Inhibition of transmitter degradation	Pesticides of the organophosphate and carbamate classes.
Blocks axonal transport	Acrylamide.

As stated previously, any neurochemical change is potentially neurotoxic. Persistent or irreversible chemically induced neurochemical changes are indicative of neurotoxicity. Because the ultimate functional significance of some biochemical changes is not known at this time, neurochemical studies should be interpreted with reference to the presumed neurotoxic consequence(s) of the neurochemical changes. For example, many neuroactive agents can increase or decrease neurotransmitter levels, but such changes are not indicative of a neurotoxic effect. If, however, these neurochemical changes may be expected to have neurophysiological, neuropathological, or neurobehavioral correlates, then the neurochemical changes could be classified as neurotoxic effects.

Some neurotoxicants, such as the organophosphate and carbamate pesticides, are known to inhibit the activity of a specific enzyme, acetylcholinesterase (for a review see Costa, 1988), which hydrolyzes the neurotransmitter acetylcholine. Inhibition of the enzyme in either the central or peripheral nervous system prolongs the action of the acetylcholine at the neuron's synaptic receptors and is thought to be responsible for the range of effects these chemicals produce, although it is possible that these compounds have other modes of action (Eldefrawi et al., 1992; Greenfield et al., 1984; Small, 1990).

There is agreement that objective clinical measures of cholinergic

overstimulation (e.g., salivation, sweating, muscle weakness, tremor, blurred vision) can be used to evaluate dose-response and dose-effect relationships and define the presence and absence of effects. A given depression in peripheral and central cholinesterase activity may or may not be accompanied by clinical manifestations. A depression in RBC and/or plasma cholinesterase activity may or may not be accompanied by clinical manifestations. It should be noted, however, that reduction in cholinesterase activity, even if the anticholinesterase exposure is not severe enough to precipitate clinical signs or symptoms, may impair the organism's ability to adapt to additional exposures to anticholinesterase compounds. Inhibition of RBC and/or plasma cholinesterase activity is a biomarker of exposure, as well as a reflection of cholinesterase inhibition in other peripheral tissues (e.g., neuromuscular junction, peripheral nerve, or ganglia) (Maxwell et al., 1987; Nagymajtenyi et al., 1988; Padilla et al., 1994), thereby contributing to the overall hazard identification of cholinesterase-inhibiting compounds.

The risk assessor should also be aware that tolerance to the cholinergic overstimulation may be observed following repeated exposure to cholinesterase-inhibiting chemicals. It has been reported, however, that although tolerance can develop to some effects of cholinesterase inhibition, the cellular mechanisms responsible for the development of tolerance may also lead

to the development of other effects, i.e., cognitive dysfunction, not present at the time of initial exposure (Bushnell et al., 1991). These adaptive biochemical changes in the tolerant animal may render it supersensitive to subsequent exposure to cholinergically active compounds (Pope et al., 1992).

In general, the risk assessor should understand that assessment of cholinesterase-inhibiting chemicals should be done on a case-by-case basis using a weight-of-evidence approach in which all of the available data (e.g., brain, blood, and other tissue cholinesterase activity, as well as the presence or absence of clinical signs) is considered in the evaluation. Generally, the toxic effects of anticholinesterase compounds are viewed as reversible, but there is human and experimental animal evidence indicating that there may be residual, if not permanent, effects of exposure to these compounds (Steenland et al., 1994; Tandon et al., 1994; Stephens et al., 1995).

A subset of organophosphate agents also produces organophosphate-induced delayed neuropathy (OPIDN) after acute or repeated exposure. Inhibition and aging of neurotoxic esterase (or neuropathy enzymes) are associated with agents that produce OPIDN (Johnson, 1990; Richardson, 1995). The conclusion that a chemical may produce OPIDN should be based on at least two of three factors: (1) Evidence of a clinical syndrome, (2) pathological lesions, and (3) neurotoxic esterase (NTE) inhibition. NTE inhibition is necessary, but not sufficient, evidence

of the potential to produce OPIDN when there is at least 55%–70% inhibition after acute exposure (Ehrlich et al., 1995) and at least 45% inhibition following repeated exposure.

Chemically induced injury to the central nervous system may be accompanied by hypertrophy of astrocytes. In some cases, these astrocytic changes can be seen light microscopically with immunohistochemical stains for glial fibrillary acidic protein (GFAP), the major intermediate filament protein in astrocytes. In addition, GFAP can be quantified by an immunoassay, which has been proposed as a marker of astrocyte reactivity (O'Callaghan, 1988). Immunohistochemical stains have the advantage of better localization of GFAP increases, whereas immunoassay evaluations are superior at detecting and quantifying changes in GFAP levels and establishing dose-response relationships. The ability to detect and quantify changes in GFAP by immunoassay is improved by dissecting and analyzing multiple brain regions. The interpretation of a chemical-induced change in GFAP is facilitated by corroborative data from the neuropathology or neuroanatomy evaluation. A number of chemicals known to injure the central nervous system, including trimethyltin, methylmercury, cadmium, 3-acetylpyridine, and methylphenyltetrahydropyridine (MPTP), have been shown to increase levels of GFAP. Measures of GFAP are now included as an optional test in the Neurotoxicity Screening Battery (U.S. EPA, 1991a).

Increases in GFAP above control levels may be seen at dosages below those necessary to produce damage seen by standard microscopic or histopathological techniques. Because increases in GFAP reflect an astrocyte response in adults, treatment-related increases in GFAP are considered to be evidence that a neurotoxic effect has occurred. There is less agreement as to how to interpret decreases in GFAP relative to an appropriate control group. The absence of a change in GFAP following exposure does not mean that the chemical is devoid of neurotoxic potential. Known neurotoxicants such as cholinesterase-inhibiting pesticides, for example, would not be expected to increase brain levels of GFAP. Interpretation of GFAP changes prior to weaning may be confounded by the possibility that chemically induced increases in GFAP could be masked by changes in the concentration of this protein associated with maturation of the central nervous system, and these data may be difficult to interpret.

Behavior reflects the integration of the various functional components of the nervous system. Changes in behavior can arise from a direct effect of a toxicant on the nervous system, or indirectly from its effects on other physiological systems. Understanding the interrelationship between systemic toxicity and behavioral changes (e.g., the relationship between liver damage and motor activity) is extremely important. The presence of systemic toxicity may complicate, but does not preclude, interpretation of behavioral changes as evidence of neurotoxicity. In addition, a number of behaviors (e.g., schedule-controlled behavior) may

3.1.2.4. Behavioral Endpoints of Neurotoxicity

Behavior reflects the integration of the various functional components of the nervous system. Changes in behavior can arise from a direct effect of a toxicant on the nervous system, or indirectly from its effects on other physiological systems. Understanding the interrelationship between systemic toxicity and behavioral changes (e.g., the relationship between liver damage and motor activity) is extremely important. The presence of systemic toxicity may complicate, but does not preclude, interpretation of behavioral changes as evidence of neurotoxicity. In addition, a number of behaviors (e.g., schedule-controlled behavior) may

require a motivational component for successful completion of the task. In such cases, experimental paradigms designed to assess the motivation of an animal during behavior might be necessary to interpret the meaning of some chemical-induced changes in behavior.

EPA's testing guidelines developed for the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act describe the use of functional observational batteries (FOB), motor activity, and schedule-controlled behavior for assessing neurotoxic potential (U.S. EPA, 1991a). Examples of measures obtained in a typical FOB are presented in Table 5. There are many other measures of behavior, including specialized tests of motor and sensory function and of learning and memory (Tilson, 1987; Anger, 1984).

TABLE 5.—EXAMPLES OF MEASURES IN A REPRESENTATIVE FUNCTIONAL OBSERVATIONAL BATTERY

Home cage and open field	Manipulative	Physiological
Arousal	Approach response.	Body temperature.
Autonomic signs.	Click response.	Body weight.
Convulsions, tremors.	Foot splay.	
Gait	Grip strength	
Mobility	Righting reflex.	
Posture	Tail pinch response.	
Rearing.		
Stereotypy.		
Touch response.		

TABLE 6.—EXAMPLES OF SPECIALIZED BEHAVIORAL TESTS TO MEASURE NEUROTOXICITY

Function	Procedure	Representative agents
Motor Function		
Weakness	Grip strength, swimming endurance, suspension rod, discriminative motor function.	n-Hexane, methyl.
Incoordination	Rotorod, gait assessments, righting reflex	n-Butylketone, carbaryl.
Tremor	Rating scale, spectral analysis	3-Acetylpyridine, ethanol.
Myoclonic spasms	Rating scale	Chloroquine, Type I.
Sensory Function		
Auditory	Discrimination conditioning	Toluene, trimethyltin.
Visual	Reflex modification.	
Somatosensory	Discrimination conditioning	Methylmercury.
Pain sensitivity	Discrimination conditioning	Acrylamide.
Olfactory	Discrimination conditioning	Parathion.
Cognitive Function		
Habituation	Startle reflex	3-Methylindole, methylbromide.
		Diisopropylfluorophosphate.
		Pre/neonatal methylmercury.

TABLE 6.—EXAMPLES OF SPECIALIZED BEHAVIORAL TESTS TO MEASURE NEUROTOXICITY—Continued

Function	Procedure	Representative agents
Classical conditioning	Nictitating membrane	Aluminum.
	Conditioned flavor	Carbaryl.
	aversion	Trimethyltin, IDPN.
	Passive avoidance	Neonatal trimethyltin.
Instrumental conditioning	Olfactory conditioning.	
	One-way avoidance	Chlordecone.
	Two-way avoidance	Pre/neonatal lead.
	Y-maze avoidance	Hypervitaminosis A.
	Biel water maze	Styrene.
	Morris water maze	DFP.
	Radial arm maze	Trimethyltin.
	Delayed matching to sample	DFP.
	Repeated acquisition	Carbaryl.

At the present time, there is no clear consensus concerning the use of specific behavioral tests to assess chemical-induced sensory, motor, or cognitive dysfunction in animal models. The risk assessor should also know that the literature is clear that a number of other behaviors besides those listed in Tables 1, 5, and 6 could be affected by chemical exposure. For example, alterations in food and water intake, reproduction, sleep, temperature regulation, and circadian rhythmicity are controlled by specific regions of the brain, and chemical-induced alterations in these behaviors could be indicative of neurotoxicity. It is reasonable to assume that an NOAEL or LOAEL could be based on one or more of these endpoints.

The following sections describe, in general, behavioral tests and their uses and offer guidance on interpreting data.

3.1.2.4.1. Functional Observational Battery (FOB). An FOB is designed to detect and quantify major overt behavioral, physiological, and neurological signs (Gad, 1982; O'Donoghue, 1989; Moser, 1989). A number of batteries have been developed, each consisting of tests generally intended to evaluate various aspects of sensorimotor function (Tilson and Moser, 1992). Many FOB tests are essentially clinical neurological examinations that rate the presence or absence, and in many cases the severity, of specific neurological signs. Some FOBs in animals are similar to clinical neurological examinations used with human patients. Most FOBs have several components or tests. A typical FOB is summarized in Table 5 and evaluates several functional domains, including neuromuscular (i.e., weakness, incoordination, gait, and tremor), sensory (i.e., audition, vision, and somatosensory), and autonomic (i.e., pupil response and salivation) function.

The relevance of statistically significant test results from an FOB is judged according to the number of signs affected, the dose(s) at which effects are observed, and the nature, severity, and persistence of the effects and their incidence in relation to control animals. In general, if only a few unrelated measures in the FOB are affected, or the effects are unrelated to dose, the results may not be considered evidence of a neurotoxic effect. If several neurological signs are affected, but only at the high dose and in conjunction with other overt signs of toxicity, including systemic toxicity, large decreases in body weight, decreases in body temperature, or debilitation, there is less persuasive evidence of a direct neurotoxic effect. In cases where several related measures in a battery of tests are affected and the effects appear to be dose dependent, the data are considered to be evidence of a neurotoxic effect, especially in the absence of systemic toxicity. The risk assessor should be aware of the potential for a number of false positive statistical findings in these studies because of the large number of endpoints customarily included in the FOB.

FOB data can be grouped into one or more of several neurobiological domains, including neuromuscular (i.e., weakness, incoordination, abnormal movements, gait), sensory (i.e., auditory, visual, somatosensory), and autonomic functions (Tilson and Moser, 1992). This statistical technique may be useful when separating changes that occur on the basis of chance or in conjunction with systemic toxicity from those treatment-related changes indicative of neurotoxic effects. In the case of the developing organism, chemicals may alter the maturation or appearance of sensorimotor reflexes. Significant alterations in or delay of such reflexes is evidence of a neurotoxic effect.

Examples of chemicals that affect neuromuscular function are 3-acetylpyridine, acrylamide, and triethyltin. Organophosphate and carbamate insecticides produce autonomic dysfunction, while organochlorine and pyrethroid insecticides increase sensorimotor sensitivity, produce tremors and, in some cases, cause seizures and convulsions (Spencer and Schaumburg, 1980).

3.1.2.4.2. Motor Activity. Motor activity represents a broad class of behaviors involving coordinated participation of sensory, motor, and integrative processes. Assessment of motor activity is noninvasive and has been used to evaluate the effects of acute and repeated exposure to neurotoxicants (MacPhail et al., 1989). An organism's level of activity can, however, be affected by many different types of environmental agents, including non-neurotoxic agents. Motor activity measurements also have been used in humans to evaluate disease states, including disorders of the nervous system (Goldstein and Stein, 1985).

Motor activity is usually quantified as the frequency of movements over a period of time. The total counts generated during a test period will depend on the recording mechanism and the size and configuration of the testing apparatus. Effects of agents on motor activity can be expressed as absolute activity counts or as a percentage of control values. In some cases, a transformation (e.g., square root) may be used to achieve a normal distribution of the data. In these cases, the transformed data and not raw data should be used for risk assessment purposes. The frequency of motor activity within a session usually decreases and is reported as the average number of counts occurring in each successive block of time. The EPA's

Office of Prevention, Pesticides and Toxic Substances guidelines (U.S. EPA, 1991a), for example, call for test sessions of sufficient duration to allow motor activity to approach steady-state levels during the last 20 percent of the session for control animals. A sum of the counts in each epoch will add up to the total number of counts per session.

Motor activity can be altered by a number of experimental factors, including neurotoxic chemicals. Decreases in activity could occur following high doses of non-neurotoxic agents (Kotsonis and Klaassen, 1977; Landauer et al., 1984). Examples of neurotoxic agents that decrease motor activity include many pesticides (e.g., carbamates, chlorinated hydrocarbons, organophosphates, and pyrethroids), heavy metals (lead, tin, and mercury), and other agents (3-acetylpyridine, acrylamide, and 2,4-dithiobiuret). Some neurotoxicants (e.g., toluene, xylene, triadimefon) produce transient increases in activity by presumably stimulating neurotransmitter release, while others (e.g., trimethyltin) produce persistent increases in motor activity by destroying specific regions of the brain (e.g., hippocampus).

Following developmental exposures, neurotoxic effects are often observed as a change in the ontogenetic profile or maturation of motor activity patterns. Frequently, developmental exposure to neurotoxic agents will produce an increase in motor activity that persists into adulthood or that results in changes in other behaviors. This is evidence of a neurotoxic effect. Like other organ systems, the nervous system may be differentially sensitive to toxicants in groups such as the young. For example, toxicants introduced to the developing nervous system may kill stem cells and thus cause profound effects on adult structure and function. Moreover, toxicants may have greater access to the developing nervous system before the blood-brain barrier is completely formed or before metabolic detoxifying systems are functional.

Motor activity measurements are typically used with other tests (e.g., FOB) to help detect neurotoxic effects. Agent-induced changes in motor activity associated with other overt signs of toxicity (e.g., loss of body weight, systemic toxicity) or occurring in non-dose-related fashion are of less concern than changes that are dose dependent, are related to structural or other functional changes in the nervous system, or occur in the absence of life-threatening toxicity.

13.1.2.4.3. Schedule-Controlled Operant Behavior. Schedule-controlled operant behavior (SCOB) involves the

maintenance of behavior (e.g., performance of a lever-press or key-peck response) by reinforcement. Different rates and patterns of responding are controlled by the relationship between response and subsequent reinforcement. SCOB provides a measure of performance of a learned behavior (e.g., lever press or key peck) and involves training and motivational variables that should be considered in evaluating the data. Agents may interact with sensory processing, motor output, motivational variables (i.e., related to reinforcement), training history, and baseline characteristics (Rice, 1988; Cory-Slechta, 1989). Qualitatively, rates and patterns of SCOB display cross-species generality, but the quantitative measures of rate and pattern of performance can vary within and between species.

In laboratory animals, SCOB has been used to study a wide range of neurotoxicants, including methylmercury, many pesticides, organic and inorganic lead, triethyltin, and trimethyltin (MacPhail, 1985; Tilson, 1987; Rice, 1988). The primary SCOB endpoints for evaluation are response rate and the temporal pattern of responding. These endpoints may vary as a function of the contingency between responding and reinforcement presentation (i.e., schedule of reinforcement). Schedules of reinforcement that have been used in toxicology studies include fixed ratio and fixed interval schedules. Fixed ratio schedules engender high rates of responding and a characteristic pause after delivery of each reinforcement. Fixed interval schedules engender a relatively low rate of responding during the initial portion of the interval and progressively higher rates near the end of the interval. For some schedules of reinforcement, the temporal pattern of responding may play a more important role in defining the performance characteristics than the rate of responding. For other schedules, the reverse may be true. For example, the temporal pattern of responding may be more important than rate of responding for defining performance on a fixed interval schedule. For a fixed ratio schedule, more importance might be placed on the rate of responding than on the post-reinforcement pause.

The overall qualitative patterns are important properties of the behavior. Substantial qualitative changes in operant performance, such as elimination of characteristic response patterns, can be evidence of an adverse effect. Most chemicals, however, can disrupt operant behavior at some dose, and such adverse effects may be due either to neurotoxic or non-neurotoxic

mechanisms. Unlike large qualitative changes in operant performance, small quantitative changes are not adverse. Some changes may actually represent an improvement, e.g., an increase in the index of curvature with a decrease in fixed interval rate of responding. Assessing the toxicological importance of these effects requires considerable professional judgment and evaluation of converging evidence from other types of toxicological endpoints. While most chemicals decrease the efficiency of responding at some dose, some agents may increase response efficiency on schedules requiring high response rates because of a stimulant effect or an increase in central nervous system excitability. Agent-induced changes in responding between reinforcements (i.e., the temporal pattern of responding) may occur independently of changes in the overall rate of responding. Chemicals may also affect the reaction time to respond following presentation of a stimulus. Agent-induced changes in response rate or temporal patterning associated with other overt signs of toxicity (e.g., body weight loss, systemic toxicity, or occurring in a non-dose-related fashion) are of less concern than changes that are dose dependent, related to structural or other functional changes in the nervous system, or occur in the absence of life-threatening toxicity.

3.1.2.4.4. Convulsions. Observable convulsions in animals are indicative of an adverse effect. These events can reflect central nervous system activity comparable to that of epilepsy in humans and could be defined as neurotoxicity. Occasionally, other toxic actions of compounds, such as direct effects on muscle, might mimic some convulsionlike behaviors. In some cases, convulsions or convulsionlike behaviors may be observed in animals that are otherwise severely compromised, moribund, or near death. In such cases, convulsions might reflect an indirect effect of systemic toxicity and are less clearly indicative of neurotoxicity. As discussed in the section on neurophysiological measures, electrical recordings of brain activity could be used to determine specificity of effects on the nervous system.

3.1.2.4.5. Specialized Tests for Neurotoxicity. Several procedures have been developed to measure agent-induced changes in specific neurobehavioral functions such as motor, sensory, or cognitive function (Tilson, 1987; Cory-Slechta, 1989). Table 6 lists several behavioral tests, the neurobehavioral functions they were designed to assess, and agents known to affect the response. Many of these tests in animals have been designed to assess neural functions in humans using similar testing procedures.

A statistically or biologically significant chemically induced change

in any measure in Table 6 may be evidence of an adverse effect. However, judgments of neurotoxicity may involve not only the analysis of changes seen but the structure and class of the chemical and other available neurochemical, neurophysiological, and neuropathological evidence. In general, behavioral changes seen across broader dose ranges indicate more specific actions on the systems underlying those changes, i.e., the nervous system. Changes that are not dose dependent or that are confounded with body weight changes and/or other systemic toxicity may be more difficult to interpret as neurotoxic effects.

3.1.2.4.5.1. Motor Function. Neurotoxicants commonly affect motor function. These effects can be categorized generally into (1) weakness or decreased strength, (2) tremor, (3) incoordination, and (4) spasms, myoclonia, or abnormal motor movements (Tilson, 1987; Cory-Slechta, 1989). Specialized tests used to assess strength include measures of grip strength, swimming endurance, suspension from a hanging rod, and discriminative motor function. Rotorod and gait assessments are used to measure coordination, while rating scales and spectral analysis techniques can be used to quantify tremor and other abnormal movements.

3.1.2.4.5.2. Sensory Function. Gross perturbations of sensory function can be observed in simple neurological assessments such as the hot plate or tail flick test. However, these tests may not be sufficiently sensitive to detect subtle sensory changes. Psychophysical procedures that study the relationship between a physical dimension (e.g., intensity, frequency) of a stimulus and behavior may be necessary to quantify agent-induced alterations in sensory function. Examples of psychophysical procedures include discriminated conditioning and startle reflex modification.

3.1.2.4.5.3. Cognitive Function. Alterations in learning and memory in experimental animals should be inferred from changes in behavior following exposure when compared with that seen prior to exposure or with a nonexposed control group. Learning is defined as a relatively lasting change in behavior due to experience, and memory is defined as the persistence of a learned behavior over time. Table 6 lists several examples of learning and memory tests and representative neurotoxicants known to affect these tests. Measurement of changes in learning and memory should be separated from other changes in behavior that do not involve cognitive or associative processes (i.e., motor

function, sensory capabilities, motivational factors). In addition, any apparent toxicant-induced change in learning or memory should ideally be demonstrated over a range of stimulus and response conditions and testing conditions. In developmental exposures, it should be shown that the animals have matured enough to perform the specified task. Developmental neurotoxicants can accelerate or delay the ability to learn a response or may interfere with cognitive function at the time of testing. Older animals frequently perform poorly on some types of tests, and it should be demonstrated that control animals in this population are capable of performing the procedure. Neurotoxicants might accelerate age-related dysfunction or alter motivational variables that are important for learning to occur. Further, it is not the case that a decrease in responding on a learning task is adverse while an increase in performance on a learning task is not. It is well known that lesions in certain regions of the brain can facilitate the acquisition of certain types of behaviors by removing preexisting response tendencies (e.g., inhibitory responses due to stress) that moderate the rate of learning under normal circumstances.

Apparent improvement in performance is not either adverse or beneficial until demonstrated to be so by converging evidence with a variety of experimental methods. Examples of procedures to assess cognitive function include simple habituation, classical conditioning, and operant (or instrumental) conditioning, including tests for spatial learning and memory.

3.1.2.4.5.4. Developmental Neurotoxicity. Although the previous discussion of various neurotoxicity endpoints and tests applies to studies in which developmental exposures are used, there are particular issues of importance in the evaluation of developmental neurotoxicity studies. This section underscores the importance of detecting neurotoxic effects following developmental exposure because an NRC (1993) report has indicated that infants and children may be differentially sensitive to environmental chemicals such as pesticides. Exposure to chemicals during development can result in a spectrum of effects, including death, structural abnormalities, altered growth, and functional deficits (U.S. EPA, 1991b). A number of agents have been shown to cause developmental neurotoxicity when exposure occurred during the period between conception and sexual maturity (e.g., Riley and Vorhees, 1986; Vorhees, 1987).

Table 7 lists several examples of agents known to produce developmental

neurotoxicity in experimental animals. Animal models of developmental neurotoxicity have been shown to be sensitive to several environmental agents known to produce developmental neurotoxicity in humans, including lead, ethanol, x-irradiation, methylmercury, and polychlorinated biphenyls (PCBs) (Kimmel et al., 1990; Needleman, 1990; Jacobson et al., 1985; Needleman, 1986). In many of these cases, functional deficits are observed at dose levels below those at which other indicators of developmental toxicity are evident or at minimally toxic doses in adults. Such effects may be transient, but generally are considered adverse. Developmental exposure to a chemical could result in transient or reversible effects observed during early development that could reemerge as the individual ages (Barone et al., 1995).

TABLE 7.—EXAMPLES OF COMPOUNDS OR TREATMENTS PRODUCING DEVELOPMENTAL NEUROTOXICITY

Alcohols	Methanol, ethanol.
Antimitotics	X-radiation, azacytidine.
Insecticides	DDT, chlordane.
Metals	Lead, methylmercury, cadmium.
Polyhalogenated hydrocarbons	PCBs, PBBs.

Testing for developmental neurotoxicity has not been required routinely by regulatory agencies in the United States, but is required by EPA when other information indicates the potential for developmental neurotoxicity (U.S. EPA, 1986, 1988a, 1988b, 1989, 1991a, 1991b). Useful data for decision making may be derived from well-conducted adult neurotoxicity studies, standard developmental toxicity studies, and multigeneration studies, although the dose levels used in the latter may be lower than those in studies with shorter term exposure.

Important design issues to be evaluated for developmental neurotoxicity studies are similar to those for standard developmental toxicity studies (e.g., a dose-response approach with the highest dose producing minimal overt maternal or perinatal toxicity, with number of litters large enough for adequate statistical power, with randomization of animals to dose groups and test groups, with litter generally considered as the statistical unit). In addition, the use of a replicate study design provides added confidence in the interpretation of data. A pharmacological/physiological challenge may also be valuable in

evaluating neurological function and "unmasking" effects not otherwise detectable. For example, a challenge with a psychomotor stimulant such as d-amphetamine may unmask latent developmental neurotoxicity (Hughes and Sparber, 1978; Adams and Buelke-Sam, 1981; Buelke-Sam et al., 1985).

Direct extrapolation of developmental neurotoxicity to humans is limited in the same way as for other endpoints of toxicity, i.e., by the lack of knowledge about underlying toxicological mechanisms and their significance (U.S. EPA, 1991b). However, comparisons of human and animal data for several agents known to cause developmental neurotoxicity in humans showed many similarities in effects (Kimmel et al., 1990). As evidenced primarily by observations in laboratory animals, comparisons at the level of functional category (sensory, motivational, cognitive, motor function, and social behavior) showed close agreement across species for the agents evaluated, even though the specific endpoints used to assess these functions varied considerably across species (Stanton and Spear, 1990). Thus, it can be assumed that developmental neurotoxicity effects in animal studies indicate the potential for altered neurobehavioral development in humans, although the specific types of developmental effects seen in experimental animal studies will not be the same as those that may be produced in humans. Therefore, when data suggesting adverse effects in developmental neurotoxicity studies are encountered for particular agents, they should be considered in the risk assessment process.

Functional tests with a moderate degree of background variability (e.g., a coefficient of variability of 20% or less) may be more sensitive to the effects of an agent on behavioral endpoints than are tests with low variability that may be impossible to disrupt without using life-threatening doses. A battery of functional tests, in contrast to a single test, is usually needed to evaluate the full complement of nervous system functions in an animal. Likewise, a series of tests conducted in animals in several age groups may provide more information about maturational changes and their persistence than tests conducted at a single age.

It is a well-established principle that there are critical developmental periods for the disruption of functional competence, which include both the prenatal and postnatal periods to the time of sexual maturation, and the effect of a toxicant is likely to vary depending on the time and degree of exposure

(Rodier, 1978, 1990). It is also important to consider the data from studies in which postnatal exposure is included, as there may be an interaction of the agent with maternal behavior, milk composition, or pup suckling behavior, as well as possible direct exposure of pups via dosed food or water (Kimmel et al., 1992).

Agents that produce developmental neurotoxicity at a dose that is not toxic to the maternal animal are of special concern. However, adverse developmental effects are often produced at doses that cause mild maternal toxicity (e.g., 10%-20% reduction in weight gain during gestation and lactation). At doses causing moderate maternal toxicity (i.e., 20% or more reduction in weight gain during gestation and lactation), interpretation of developmental effects may be confounded. Current information is inadequate to assume that developmental effects at doses causing minimal maternal toxicity result only from maternal toxicity; rather, it may be that the mother and developing organism are equally sensitive to that dose level. Moreover, whether developmental effects are secondary to maternal toxicity or not, the maternal effects may be reversible while the effects on the offspring may be permanent. These are important considerations for agents to which humans may be exposed at minimally toxic levels either voluntarily or involuntarily, because several agents (e.g., alcohol) are known to produce adverse developmental effects at minimally toxic doses in adult humans (Coles et al., 1991).

Although interpretation of developmental neurotoxicity data may be limited, it is clear that functional effects should be evaluated in light of other toxicity data, including other forms of developmental toxicity (e.g., structural abnormalities, perinatal death, and growth retardation). For example, alterations in motor performance may be due to a skeletal malformation rather than nervous system change. Changes in learning tasks that require a visual cue might be influenced by structural abnormalities in the eye. The level of confidence that an agent produces an adverse effect may be as important as the type of change seen, and confidence may be increased by such factors as reproducibility of the effect, either in another study of the same function or by convergence of data from tests that purport to measure similar functions. A dose-response relationship is an extremely important measure of a chemical's effect; in the case of developmental neurotoxicity

both monotonic and biphasic dose-response curves are likely, depending on the function being tested. The EPA Guidelines for Developmental Toxicity Risk Assessment (U.S. EPA, 1991b) may be consulted for more information on interpreting developmental toxicity studies. The endpoints frequently used to assess developmental neurotoxicity in exposed children have been reviewed by Winneke (1995).

3.1.3. Other Considerations

3.1.3.1. Pharmacokinetics

Extrapolation of test results between species can be aided considerably by data on the pharmacokinetics of a particular agent in the species tested and, if possible, in humans. Information on a toxicant's half-life, metabolism, absorption, excretion, and distribution to the peripheral and central nervous system may be useful in predicting risk. Of particular importance for the pharmacokinetics of neurotoxicants is the blood-brain barrier. The vast majority of the central nervous system is served by blood vessels with blood-brain barrier properties, which exclude most ionic and nonlipid-soluble chemicals from the brain and spinal cord. The brain contains several structures called circumventricular organs (CVOs) that are served by blood vessels lacking blood-brain barrier properties. Brain regions adjacent to these CVOs are thus exposed to relatively high levels of many neurotoxicants. Pharmacokinetic data may be helpful in defining the dose-response curve, developing a more accurate basis for comparing species sensitivity (including that of humans), determining dosimetry at sites, and comparing pharmacokinetic profiles for various dosing regimens or routes of administration. The correlation of pharmacokinetic parameters and neurotoxicity data may be useful in determining the contribution of specific pharmacokinetic processes to the effects observed.

3.1.3.2. Comparisons of Molecular Structure

Comparisons of the chemical or physical properties of an agent with those of known neurotoxicants may provide some indication of the potential for neurotoxicity. Such information may be helpful for evaluating potential toxicity when only minimal data are available. The structure-activity relationships (SAR) of some chemical classes have been studied, including hexacarbons, organophosphates, carbamates, and pyrethroids. Therefore, class relationships or SAR may help

predict neurotoxicity or interpret data from neurotoxicological studies. Under certain circumstances (e.g., in the case of new chemicals), this procedure is one of the primary methods used to evaluate the potential for toxicity when little or no empirical toxicity data are available. It should be recognized, however, that effects of chemicals in the same class can vary widely. Moser (1995), for example, reported that the behavioral effects of prototypic cholinesterase-inhibiting pesticides differed qualitatively in a battery of behavioral tests.

3.1.3.3. Statistical Considerations

Properly designed studies on the neurotoxic effects of compounds will include appropriate statistical tests of significance. In general, the likelihood of obtaining a significant effect will depend jointly on the magnitude of the effect and the variability obtained in control and treated groups. The risk assessor should be aware that some neurotoxicants may induce a greater variability in biologic response, rather than a clear shift in mean or other parameters (Laties and Evans, 1980; Glowa and MacPhail, 1995). A number of texts are available on standard statistical tests (e.g., Siegel, 1956; Winer, 1971; Sokal and Rohlf, 1969; Salsburg, 1986; Gad and Weil, 1988).

Neurotoxicity data present some unique features that should be considered in selecting statistical tests for analysis. Data may involve several different measurement scales, including categorical (affected or not), rank (more or less affected), and interval and ratio scales of measurement (affected by some percentage). For example, convulsions are usually recorded as being present or absent (categorical), whereas neuropathological changes are frequently described in terms of the degree of damage (rank). Many tests of neurotoxicity involve interval or ratio measurements (e.g., frequency of photocell interruptions or amplitude of an evoked potential), which are the most powerful and sensitive scales of measurement. In addition, measurements are frequently made repeatedly in control and treated subjects, especially in the case of behavioral and neurophysiological endpoints. For example, OPPTS guidelines for FOB assessment call for evaluations before exposure and at several times during exposure in a subchronic study (U.S. EPA, 1991a).

Descriptive data (categorical) and rank order data can be analyzed using standard nonparametric techniques (Siegel, 1956). In some cases, if it is determined that the data fit the linear

model, the categorical modeling procedure can be used for weighted least-squares estimation of parameters for a wide range of general linear models, including repeated-measures analyses. The weighted least-squares approach to categorical and rank data allows computation of statistics for testing the significance of sources of variation as reflected by the model. In the case of studies assessing effects in the same animals at several time points, univariate analyses can be carried out at each time point when the overall dose effect or the dose-by-time interaction is significant.

Continuous data (e.g., magnitude, rate, amplitude), if found to be normally distributed, can be analyzed with general linear models using a grouping factor of dose and, if necessary, repeated measures across time (Winer, 1971). Univariate analyses of dose, comparing dose groups to the control group at each time point, can be performed when there is a significant overall dose effect or a dose-by-time interaction. Post hoc comparisons between control and treatment groups can be made following tests for overall significance. In the case of multiple endpoints within a series of evaluations, some type of correction for multiple observations is warranted (Winer, 1971).

3.1.3.4. In Vitro Data in Neurotoxicology

Methods and procedures that fall under the general heading of short-term tests include an array of in vitro tests that have been proposed as alternatives to whole-animal tests (Goldberg and Frazier, 1989). In vitro approaches use animal or human cells, tissues, or organs and maintain them in a nutritive medium. Various types of in vitro techniques, including primary cell cultures, cell lines, and cloned cells, produce data for evaluating potential and known neurotoxic substances. While such procedures are important in studying the mechanism of action of toxic agents, their use in hazard identification in human health risk assessment has not been explored to any great extent.

Data from in vitro procedures are generally based on simplified approaches that require less time to yield information than do many in vivo techniques. However, in vitro methods generally do not take into account the distribution of the toxicant in the body, the route of administration, or the metabolism of the substance. It also is difficult to extrapolate in vitro data to animal or human neurotoxicity endpoints, which include behavioral changes, motor disorders, sensory and perceptual disorders, lack of

coordination, and learning deficits. In addition, data from in vitro tests cannot duplicate the complex neuronal circuitry characteristic of the intact animal.

Many in vitro systems are now being evaluated for their ability to predict the neurotoxicity of various agents seen in intact animals. This validation process requires considerations in study design, including defined endpoints of toxicity and an understanding of how a test agent would be handled in vitro as compared to the intact organism. Demonstrated neurotoxicity in vitro in the absence of in vivo data is suggestive but inadequate evidence of a neurotoxic effect. In vivo data supported by in vitro data enhance the reliability of the in vivo results.

3.1.3.5. Neuroendocrine Effects

Neuroendocrine dysfunction may occur because of a disturbance in the regulation and modulation of neuroendocrine feedback systems. One major indicator of neuroendocrine function is secretion of hormones from the pituitary. Hypothalamic control of anterior pituitary secretions is also involved in a number of important bodily functions. Many types of behaviors (e.g., reproductive behaviors, sexually dimorphic behaviors in animals) are dependent on the integrity of the hypothalamic-pituitary system, which could represent a potential site of neurotoxicity. Pituitary secretions arise from a number of different cell types in this gland, and neurotoxicants could affect these cells directly or indirectly. Morphological changes in cells mediating neuroendocrine secretions could be associated with adverse effects on the pituitary or hypothalamus and could ultimately affect behavior and the functioning of the nervous system. Biochemical changes in the hypothalamus may also be used as indicators of potential adverse effects on neuroendocrine function. Finally, the development of the nervous system is intimately associated with the presence of circulating hormones such as thyroid hormone (Porterfield, 1994). The nature of the nervous system deficit, which could include cognitive dysfunction, altered neurological development, or visual deficits, depends on the severity of the thyroid disturbance and the specific developmental period when exposure to the chemical occurred.

3.2. Dose-Response Evaluation

Dose-response evaluation is a critical part of the qualitative characterization of a chemical's potential to produce neurotoxicity and involves the description of the dose-response

relationship in the available data. Human studies covering a range of exposures are rarely available, and therefore animal data are typically used for estimating exposure levels likely to produce adverse effects in humans. Evidence for a dose-response relationship is an important criterion in establishing a neurotoxic effect, although this analysis may be limited when based on standard studies using three dose groups or fewer. The evaluation of dose-response relationships includes identifying effective dose levels as well as doses associated with no increase in adverse effects when compared with controls. The lack of a dose-response relationship in the data may suggest that the effect is not related to the putative neurotoxic effect or that the study was not appropriately controlled. Much of the focus is on identifying the critical effect(s) observed at the LOAEL and the NOAEL associated with that effect. The NOAEL is defined as the highest dose at which there is no statistically or biologically significant increase in the frequency of an adverse neurotoxic effect when compared with the appropriate control group in a database characterized as having sufficient evidence for use in a risk assessment (see section 3.3). The risk assessor should be aware of possible problems associated with estimating a NOAEL in studies involving a small number of test subjects and that have a poor dose-response relationship.

In addition to identifying the NOAEL/LOAEL or BMD, the dose-response evaluation defines the range of doses that are neurotoxic for a given agent, species, route of exposure, and duration of exposure. In addition to these considerations, pharmacokinetic factors and other aspects that might influence comparisons with human exposure scenarios should be taken into account. For example, dose-response curves may exhibit not only monotonic but also U-shaped or inverted U-shaped functions (Davis and Svendsgaard, 1990). Such curves are hypothesized to reflect multiple mechanisms of action, the presence of homeostatic mechanisms, and/or activation of compensatory or protective mechanisms. In addition to considering the shape of the dose-response curve, it should also be recognized that neurotoxic effects vary in terms of nature and severity across dose or exposure level. At high levels of exposure, frank lesions accompanied by severe functional impairment may be observed. Such effects are widely accepted as adverse. At progressively lower levels of exposure, however, the lesions may become less severe and the impairments less obvious. At levels of exposure near the NOAEL and LOAEL, the effects will often be mild, possibly reversible, and inconsistently found. In addition, the endpoints showing responses may be at levels of organization below the whole organism (e.g., neurochemical or electrophysiological endpoints). The

adversity of such effects can be disputed (e.g., cholinesterase inhibition), yet it is such effects that are likely to be the focus of risk assessment decisions. To the extent possible, this document provides guidance on determining the adversity of neurotoxic effects. However, the identification of a critical adverse effect often requires considerable professional judgment and should consider factors such as the biological plausibility of the effect, the evidence of a dose-effect continuum, and the likelihood for progression of the effect with continued exposure.

3.3. Characterization of the Health-Related Database

This section describes a scheme for characterizing the sufficiency of evidence for neurotoxic effects. This scheme defines two broad categories: sufficient and insufficient (Table 8). Categorization is aimed at providing certain criteria for the Agency to use to define the minimum evidence necessary to define hazards and to conduct dose-response analyses. It does not address the issues related to characterization of risk, which requires analysis of potential human exposures and their relation to potential hazards in order to estimate the risks of those hazards from anticipated or estimated exposures. Several examples using a weight-of-evidence approach similar to that described in these Guidelines have been described elsewhere (Tilson et al., 1995; Tilson et al., 1996).

TABLE 8.—CHARACTERIZATION OF THE HEALTH-RELATED DATABASE

Sufficient evidence	The sufficient evidence category includes data that collectively provide enough information to judge whether or not a human neurotoxic hazard could exist. This category may include both human and experimental animal evidence.
Sufficient human evidence	This category includes agents for which there is sufficient evidence from epidemiologic studies, e.g., case control and cohort studies, to judge that some neurotoxic effect is associated with exposure. A case series in conjunction with other supporting evidence may also be judged "sufficient evidence." Epidemiologic and clinical case studies should discuss whether the observed effects can be considered biologically plausible in relation to chemical exposure. (Historically, often much has been made of the notion of causality in epidemiologic studies. Causality is a more stringent criterion than association and has become a topic of scientific and philosophical debate. See Susser [1986], for example, for a discussion of inference in epidemiology.)
Sufficient experimental animal evidence/limited human data.	This category includes agents for which there is sufficient evidence from experimental animal studies and/or limited human data to judge whether a potential neurotoxic hazard may exist. Generally, agents that have been tested according to current test guidelines would be included in this category. The minimum evidence necessary to judge that a potential hazard exists would be data demonstrating an adverse neurotoxic effect in a single appropriate, well-executed study in a single experimental animal species. The minimum evidence needed to judge that a potential hazard does not exist would include data from an appropriate number of endpoints from more than one study and two species showing no adverse neurotoxic effects at doses that were minimally toxic in terms of producing an adverse effect. Information on pharmacokinetics, mechanisms, or known properties of the chemical class may also strengthen the evidence.

TABLE 8.—CHARACTERIZATION OF THE HEALTH-RELATED DATABASE—Continued

Insufficient evidence	This category includes agents for which there is less than the minimum evidence sufficient for identifying whether or not a neurotoxic hazard exists, such as agents for which there are no data on neurotoxicity or agents with databases from studies in animals or humans that are limited by study design or conduct (e.g., inadequate conduct or report of clinical signs). Many general toxicity studies, for example, are considered insufficient in terms of the conduct of clinical neurobehavioral observations or the number of samples taken for histopathology of the nervous system. Thus, a battery of negative toxicity studies with these shortcomings would be regarded as providing insufficient evidence of the lack of a neurotoxic effect of the test material. Further, most screening studies based on simple observations involving autonomic and motor function provide insufficient evaluation of many sensory or cognitive functions. Data, which by itself would likely fall in this category, would also include information on SAR or data from <i>in vitro</i> tests. Although such information would be insufficient by itself to proceed further in the assessment it could be used to support the need for additional testing.
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Data from all potentially relevant studies, whether indicative of potential hazard or not, should be included in this characterization. The primary sources of data are human studies and case reports, experimental animal studies, other supporting data, and *in vitro* and/or SAR data. Because a complex interrelationship exists among study design, statistical analysis, and biological significance of the data, a great deal of scientific judgment, based on experience with neurotoxicity data and with the principles of study design and statistical analysis, is required to adequately evaluate the database on neurotoxicity. In many cases, interaction with scientists in specific disciplines either within or outside the field of neurotoxicology (e.g., epidemiology, statistics) may be appropriate.

The adverse nature of different neurotoxicity endpoints may be a complex judgment. In general, most neuropathological and many neurobehavioral changes are regarded as adverse. However, there are adverse behavioral effects that may not reflect a direct action on the nervous system. Neurochemical and electrophysiological changes may be regarded as adverse because of their known or presumed relation to neuropathological and/or neurobehavioral consequences. In the absence of supportive information, a professional judgment should be made regarding the adversity of such outcomes, considering factors such as the nature, magnitude, and duration of the effects reported. Thus, correlated measures of neurotoxicity strengthen the evidence for a hazard. Correlations between functional and morphological effects, such as the correlation between leg weakness and paralysis and peripheral nerve damage from exposure to tri-ortho-cresyl phosphate, are the most common and striking examples of this form of validity. Correlations support a coherent and logical link between behavioral effects and biochemical mechanisms. Replication of a finding also strengthens the evidence

for a hazard. Some neurotoxicants cause similar effects across most species. Many chemicals shown to produce neurotoxicity in laboratory animals have similar effects in humans. Some neurological effects may be considered adverse even if they are small in magnitude, reversible, or the result of indirect mechanisms.

Because of the inherent difficulty in "proving any negative," it is more difficult to document a finding of no apparent adverse effect than a finding of an adverse effect. Neurotoxic effects (and most kinds of toxicity) can be observed at many different levels, so only a single endpoint needs to be found to demonstrate a hazard, but many endpoints need to be examined to demonstrate no effect. For example, to judge that a hazard for neurotoxicity could exist for a given agent, the minimum evidence sufficient would be data on a single adverse endpoint from a well-conducted study. In contrast, to judge that an agent is unlikely to pose a hazard for neurotoxicity, the minimum evidence would include data from a host of endpoints that revealed no neurotoxic effects. This may include human data from appropriate studies that could support a conclusion of no evidence of a neurotoxic effect. With respect to clinical signs and symptoms, human exposures can reveal far more about the absence of effects than animal studies, which are confined to the signs examined.

In some cases, it may be that no individual study is judged sufficient to establish a hazard, but the total available data may support such a conclusion. Pharmacokinetic data and structure-activity considerations, data from other toxicity studies, or other factors may affect the strength of the evidence in these situations. For example, given that gamma diketones are known to cause motor system neurotoxicity, a marginal data set on a candidate gamma diketone, e.g., 1/10 animals affected, might be more likely to be judged sufficient than equivalent

data from a member of a chemical class about which nothing is known.

A judgment that the toxicology database is sufficient to indicate a potential neurotoxic hazard is not the end of analysis. The circumstances of expression of the hazard are essential to describing human hazard potential. Thus, reporting should contain the details of the circumstances under which effects have been observed, e.g., "long-term oral exposures of adult rodents to compound X at levels of roughly 1 mg/kg have been associated with ataxia and peripheral nerve damage."

4. Quantitative Dose-Response Analysis

This section describes several approaches (including the LOAEL/NOAEL and BMD) for determining the reference dose (RfD) or reference concentration (RfC). The NOAEL or BMD/uncertainty factor approach results in an RfD or RfC, which is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.

The dose-response analysis characterization should:

- Describe how the RfD/RfC was calculated;
- Discuss the confidence in the estimates;
- Describe the assumptions or uncertainty factors used; and
- Discuss the route and level of exposure observed, as compared to expected human exposures.

4.1. LOAEL/NOAEL and BMD Determination

As indicated earlier, the LOAEL and NOAEL are determined for endpoints that are seen at the lowest dose level (so-called critical effect). Several limitations in the use of the NOAEL have been identified and described (e.g., Barnes and Dourson, 1988; Crump, 1984). For example, the NOAEL is derived from a single endpoint from a single study (the critical study) and

ignores both the slope of the dose-response function and baseline variability in the endpoint of concern. Because the baseline variability is not taken into account, the NOAEL from a study using small group sizes may be higher than the NOAEL from a similar study in the same species that uses larger group sizes. The NOAEL is also directly dependent on the dose spacing used in the study. Finally, and perhaps most importantly, use of the NOAEL does not allow estimates of risk or extrapolation of risk to lower dose levels. Because of these and other limitations in the NOAEL approach, it has been proposed that mathematical curve-fitting techniques (Crump, 1984; Gaylor and Slikker, 1990; Glowa, 1991; Glowa and MacPhail, 1995; U.S. EPA, 1995a) be compared with the NOAEL procedure in calculating the RfD or RfC. These techniques typically apply a mathematical function that describes the dose-response relationship and then interpolate to a level of exposure associated with a small increase in effect over that occurring in the control group or under baseline conditions. The BMD has been defined as a lower confidence limit on the effective dose associated with some defined level of effect, e.g., a 5% or 10% increase in response. These guidelines suggest that the use of the BMD should be explored in specific situations. The Agency is currently developing guidelines for the use of the BMD in risk assessment.

Many neurotoxic endpoints provide continuous measures of response, such as response speed, nerve conduction velocity, IQ score, degree of enzyme inhibition, or the accuracy of task performance. Although it is possible to impose a dichotomy on a continuous effects distribution and to classify some level of response as "affected" and the remainder as "unaffected," it may be very difficult and inappropriate to establish such clear distinctions, because such a dichotomy would misrepresent the true nature of the neurotoxic response. The risk assessor should be aware of the importance of trying to reconcile findings from several studies that seem to report widely divergent results. Alternatively, quantitative models designed to analyze continuous effect variables may be preferable. Other techniques that allow this approach, with transformation of the information into estimates of the incidence or frequency of affected individuals in a population, have been proposed (Crump, 1984; Gaylor and Slikker, 1990; Glowa and MacPhail, 1995). Categorical regression analysis has been proposed because it can

evaluate different types of data and derive estimates for short-term exposures (Rees and Hattis, 1994). Decisions about the most appropriate approach require professional judgment, taking into account the biological nature of the continuous effect variable and its distribution in the population under study.

Although dose-response functions in neurotoxicology are generally linear or monotonic, curvilinear functions, especially U-shaped or inverted U-shaped curves, have been reported as noted earlier (section 3.2). Dose-response analyses should consider the uncertainty that U-shaped dose-response functions might contribute to the estimate of the NOAEL/LOAEL or BMD. Typically, estimates of the NOAEL/LOAEL are taken from the lowest part of the dose-response curve associated with impaired function or adverse effect.

4.2. Determination of the Reference Dose or Reference Concentration

Since the availability of dose-response data in humans is limited, extrapolation of data from animals to humans usually involves the application of uncertainty factors to the NOAEL/LOAEL or BMD. The NOAEL or BMD/uncertainty factor approach results in an RfD or RfC, which is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. The oral RfD and inhalation RfC are applicable to chronic exposure situations and are based on an evaluation of all the noncancer health effects, including neurotoxicity data. RfDs and RfCs in the Integrated Risk Information System (IRIS-2) database for several agents are based on neurotoxicity endpoints and include a few cases in which the RfD or RfC is calculated using the BMD approach (e.g., methylmercury, carbon disulfide). The size of the final uncertainty factor used will vary from agent to agent and will require the exercise of scientific judgment, taking into account interspecies differences, the shape of the dose-response curve, and the neurotoxicity endpoints observed. Uncertainty factors are typically multiples of 10 and are used to compensate for human variability in sensitivity, the need to extrapolate from animals to humans, and the need to extrapolate from less than lifetime (e.g., subchronic) to lifetime exposures. An additional factor of up to 10 may be included when only a LOAEL (and not a NOAEL) is available from a study, or

depending on the completeness of the database, a modifying factor of up to 10 may be applied, depending on the confidence one has in the database. Uncertainty factors of less than 10 can be used, depending upon the availability of relevant information. Barnes and Dourson (1988) provide a more complete description of the calculation, use, and significance of RfDs in setting exposure limits to toxic agents by the oral route. Jarabek et al. (1990) provide a more complete description of the calculation, use, and significance of RfCs in setting exposure limits to toxic agents in air. Neurotoxicity can result from acute, shorter term exposures, and it may be appropriate in some cases, e.g., for air pollutants or water contaminants, to set shorter term exposure limits for neurotoxicity as well as for other noncancer health effects.

5. Exposure Assessment

Exposure assessment describes the magnitude, duration, frequency, and routes of exposure to the agent of interest. This information may come from hypothetical values, models, or actual experimental values, including ambient environmental sampling results. Guidelines for exposure assessment have been published separately (U.S. EPA, 1992) and will, therefore, be discussed only briefly here.

The exposure assessment should include an exposure characterization that:

- Provides a statement of the purpose, scope, level of detail, and approach used in the exposure assessment;
- Presents the estimates of exposure and dose by pathway and route for individuals, population segments, and populations in a manner appropriate for the intended risk characterization;
- Provides an evaluation of the overall level of confidence in the estimate of exposure and dose and the conclusions drawn; and
- Communicates the results of the exposure assessment to the risk assessor, who can then use the exposure characterization, along with the hazard and dose/response characterizations, to develop a risk characterization.

A number of considerations are relevant to exposure assessment for neurotoxicants. An appropriate evaluation of exposure should consider the potential for exposure via ingestion, inhalation, and dermal penetration from relevant sources of exposure, including multiple avenues of intake from the same source.

In addition, neurotoxic effects may result from short-term (acute), high-concentration exposures as well as from

longer term (subchronic), lower level exposures. Neurotoxic effects may occur after a period of time following initial exposure or be obfuscated by repair mechanisms or apparent tolerance. The type and severity of effect may depend significantly on the pattern of exposure rather than on the average dose over a long period of time. For this reason, exposure assessments for neurotoxicants may be much more complicated than those for long-latency effects such as carcinogenicity. It is rare for sufficient data to be available to construct such patterns of exposure or dose, and professional judgment may be necessary to evaluate exposure to neurotoxic agents.

6. Risk Characterization

6.1. Overview

Risk characterization is the summarization step of the risk assessment process and consists of an integrative analysis and a summary. The integrative analysis (a) involves integration of the toxicity information from the hazard characterization and dose-response analysis with the human exposure estimates, (b) provides an evaluation of the overall quality of the assessment and the degree of confidence in the estimates of risk and conclusions drawn, and (c) describes risk in terms of the nature and extent of harm. The risk characterization summary communicates the results of the risk assessment to the risk manager in a complete, informative, and useful format.

This summary should include, but is not limited to, a discussion of the following elements:

- Quality of and confidence in the available data;
- Uncertainty analysis;
- Justification of defaults or assumptions;
- Related research recommendations;
- Contentious issues and extent of scientific consensus;
- Effect of reasonable alternative assumptions on conclusions and estimates;
- Highlights of reasonable plausible ranges;
- Reasonable alternative models; and
- Perspectives through analogy.

The risk manager can then use the derived risk to make public health decisions.

An effective risk characterization should fully, openly, and clearly characterize risks and disclose the scientific analyses, uncertainties, assumptions, and science policies that underlie decisions throughout the risk assessment and risk management

processes. The risk characterization should feature values such as transparency in the decision-making process; clarity in communicating with the scientific community and the public regarding environmental risk and the uncertainties associated with assessments of environmental risk; and consistency across program offices in core assumptions and science policies, which are well grounded in science and reasonable. The following sections describe these four aspects of the risk characterization in more detail.

6.2. Integration of Hazard Characterization, Dose-Response Analysis, and Exposure Assessment

In developing the hazard characterization, dose-response analysis, and exposure portions of the risk assessment, the risk assessor should take into account many judgments concerning human relevance of the toxicity data, including the appropriateness of the various animal models for which data are available and the route, timing, and duration of exposure relative to expected human exposure. These judgments should be summarized at each stage of the risk assessment process (e.g., the biological relevance of anatomical variations may be established in the hazard characterization process, or the influence of species differences in metabolic patterns in the dose-response analysis). In integrating the information from the assessment, the risk assessor should determine if some of these judgments have implications for other portions of the assessment and whether the various components of the assessment are compatible.

The risk characterization should not only examine the judgments but also explain the constraints of available data and the state of knowledge about the phenomena studied in making them, including (1) the qualitative conclusions about the likelihood that the chemical may pose a specific hazard to human health, the nature of the observed effects, under what conditions (route, dose levels, time, and duration) of exposure these effects occur, and whether the health-related data are sufficient to use in a risk assessment; (2) a discussion of the dose-response characteristics of the critical effects, data such as the shapes and slopes of the dose-response curves for the various endpoints, the rationale behind the determination of the NOAEL and LOAEL and calculation of the benchmark dose, and the assumptions underlying the estimation of the RfD or RfC; and (3) the estimates of the magnitude of human exposure; the

route, duration, and pattern of the exposure; relevant pharmacokinetics; and the number and characteristics of the population(s) exposed.

If data to be used in a risk characterization are from a route of exposure other than the expected human exposure, then pharmacokinetic data should be used, if available, to make extrapolations across routes of exposure. If such data are not available, the Agency makes certain assumptions concerning the amount of absorption likely or the applicability of the data from one route to another (U.S. EPA, 1992).

The level of confidence in the hazard characterization should be stated to the extent possible, including the appropriate category regarding sufficiency of the health-related data. A comprehensive risk assessment ideally includes information on a variety of endpoints that provide insight into the full spectrum of potential neurotoxicological responses. A profile that integrates both human and test species data and incorporates a broad range of potential adverse neurotoxic effects provides more confidence in a risk assessment for a given agent.

The ability to describe the nature of the potential human exposure is important in order to predict when certain outcomes can be anticipated and the likelihood of permanence or reversibility of the effect. An important part of this effort is a description of the nature of the exposed population and the potential for sensitive, highly susceptible, or highly exposed populations. For example, the consequences of exposure to the developing individual versus the adult can differ markedly and can influence whether the effects are transient or permanent. Other considerations relative to human exposures might include the likelihood of exposures to other agents, concurrent disease, and nutritional status.

The presentation of the integrated results of the assessment should draw from and highlight key points of the individual characterizations of component analyses performed under these Guidelines. The overall risk characterization represents the integration of these component characterizations. If relevant risk assessments on the agent or an analogous agent have been done by EPA or other Federal agencies, these should be described and the similarities and differences discussed.

6.3. Quality of the Database and Degree of Confidence in the Assessment

The risk characterization should summarize the kinds of data brought together in the analysis and the reasoning on which the assessment is based. The description should convey the major strengths and weaknesses of the assessment that arise from availability of data and the current limits of our understanding of the mechanisms of toxicity.

A health risk assessment is only as good as its component parts, i.e., hazard characterization, dose-response analysis, and exposure assessment. Confidence in the results of a risk assessment is thus a function of confidence in the results of the analysis of these elements. Each of these elements should have its own characterization as a part of the assessment. Within each characterization, the important uncertainties of the analysis and interpretation of data should be explained, and the risk manager should be given a clear picture of consensus or lack of consensus that exists about significant aspects of the assessment. Whenever more than one view is supported by the data and choosing between them is difficult, all views should be presented. If one has been selected over the others, the rationale should be given; if not, then all should be presented as plausible alternative results.

6.4. Descriptors of Neurotoxicity Risk

There are a number of ways to describe risks. Several relevant ways for neurotoxicity are as follows:

6.4.1. Estimation of the Number of Individuals

The RfD or RfC is taken to be a chronic exposure level at or below which no significant risk occurs. Therefore, presentation of the population in terms of those at or below the RfD or RfC ("not at risk") and above the RfD or RfC ("may be at risk") may be useful information for risk managers. This method is particularly useful to a risk manager considering possible actions to ameliorate risk for a population. If the number of persons in the at-risk category can be estimated, then the number of persons removed from the at-risk category after a contemplated action is taken can be used as an indication of the efficacy of the action.

6.4.2. Presentation of Specific Scenarios

Presenting specific scenarios in the form of "what if?" questions is particularly useful to give perspective to

the risk manager, especially where criteria, tolerance limits, or media quality limits are being set. The question being asked in these cases is, at this proposed exposure limit, what would be the resulting risk for neurotoxicity above the RfD or RfC?

6.4.3. Risk Characterization for Highly Exposed Individuals

This measure is one example of the just-discussed descriptor. This measure describes the magnitude of concern at the upper end of the exposure distribution. This allows risk managers to evaluate whether certain individuals are at disproportionately high or unacceptably high risk.

The objective of looking at the upper end of the exposure distribution is to derive a realistic estimate of a relatively highly exposed individual or individuals. This measure could be addressed by identifying a specified upper percentile of exposure in the population and/or by estimating the exposure of the highest exposed individual(s). Whenever possible, it is important to express the number of individuals who comprise the selected highly exposed group and discuss the potential for exposure at still higher levels.

If population data are absent, it will often be possible to describe a scenario representing high-end exposures using upper percentile or judgment-based values for exposure variables. In these instances caution should be used in order not to compound a substantial number of high-end values for variables if a "reasonable" exposure estimate is to be achieved.

6.4.4. Risk Characterization for Highly Sensitive or Susceptible Individuals

This measure identifies populations sensitive or susceptible to the effect of concern. Sensitive or susceptible individuals are those within the exposed population at increased risk of expressing the toxic effect. All stages of nervous system maturation might be considered highly sensitive or susceptible, but certain subpopulations can sometimes be identified because of critical periods for exposure, for example, pregnant or lactating women, infants, or children. The aged population is considered to be at particular risk because of the limited ability of the nervous system to regenerate or compensate to neurotoxic insult.

In general, not enough is understood about the mechanisms of toxicity to identify sensitive subgroups for all agents, although factors such as nutrition (e.g., vitamin B), personal

habits (e.g., smoking, alcohol consumption, illicit drug abuse), or preexisting disease (e.g., diabetes, neurological diseases, sexually transmitted diseases, polymorphisms for certain metabolic enzymes) may predispose some individuals to be more sensitive to the neurotoxic effects of specific agents. Gender-related differences in response to neurotoxicants have been noted, but these appear to be related to gender-dependent toxicodynamic or toxicokinetic factors.

In general, it is assumed that an uncertainty factor of 10 for intrapopulation variability will be able to accommodate differences in sensitivity among various subpopulations, including children and the elderly. However, in cases where it can be demonstrated that a factor of 10 does not afford adequate protection, another uncertainty factor may be considered in conducting the risk assessment.

6.4.5. Other Risk Descriptors

In risk characterization, dose-response information and the human exposure estimates may be combined either by comparing the RfD or RfC and the human exposure estimate or by calculating the margin of exposure (MOE). The MOE is the ratio of the NOAEL from the most appropriate or sensitive species to the estimated human exposure level. If a NOAEL is not available, a LOAEL may be used in calculating the MOE. Alternatively, a benchmark dose may be compared with the estimated human exposure level to obtain the MOE. Considerations for the evaluation of the MOE are similar to those for the uncertainty factor applied to the LOAEL/NOAEL or the benchmark dose. The MOE is presented along with a discussion of the adequacy of the database, including the nature and quality of the hazard and exposure data, the number of species affected, and the dose-response information.

The RfD or RfC comparison with the human exposure estimate and the calculation of the MOE are conceptually similar but are used in different regulatory situations. The choice of approach depends on several factors, including the statute involved, the situation being addressed, the database used, and the needs of the decision maker. The RfD or RfC and the MOE are considered along with other risk assessment and risk management issues in making risk management decisions, but the scientific issues that should be taken into account in establishing them have been addressed here.

If the MOE is equal to or more than the uncertainty factor multiplied by any modifying factor used as a basis for an RfD or RfC, then the need for regulatory concern is likely to be small. Although these methods of describing risk do not actually estimate risks per se, they give the risk manager some sense of how close the exposures are to levels of concern.

6.5. Communicating Results

Once the risk characterization is completed, the focus turns to communicating results to the risk manager. The risk manager uses the results of the risk characterization along with other technological, social, and economic considerations in reaching a regulatory decision. Because of the way in which these risk management factors may affect different cases, consistent but not necessarily identical risk management decisions should be made on a case-by-case basis. These Guidelines are not intended to give guidance on the nonscientific aspects of risk management decisions.

6.6. Summary and Research Needs

These Guidelines summarize the procedures that the U.S. Environmental Protection Agency would use in evaluating the potential for agents to cause neurotoxicity. These Guidelines discuss the general default assumptions that should be made in risk assessment for neurotoxicity because of gaps in our knowledge about underlying biological processes and how these compare across species. Research to improve the risk assessment process is needed in a number of areas. For example, research is needed to delineate the mechanisms of neurotoxicity and pathogenesis, provide comparative pharmacokinetic data, examine the validity of short-term in vivo and in vitro tests, elucidate the functional modalities that may be altered, develop improved animal models to examine the neurotoxic effects of exposure during the premating and early postmating periods and in neonates, further evaluate the relationship between maternal and developmental toxicity, provide insight into the concept of threshold, develop approaches for improved mathematical modeling of neurotoxic effects, improve animal models for examining the effects of agents given by various routes of exposure, determine the effects of recurrent exposures over prolonged periods of time, and address the synergistic or antagonistic effects of mixed exposures and neurotoxic response. Such research will aid in the evaluation and interpretation of data on neurotoxicity and should provide

methods to assess risk more precisely. Additional research is needed to determine the most appropriate dose-response approach to be used in neurotoxicity risk assessments.

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Part B: Response to Science Advisory Board and Public Comments

1. Introduction

A notice of availability for public comments of these Guidelines was published in the *Federal Register* in October 1995. Twenty-five responses were received. These Guidelines were presented to the Environmental Health Committee of the Science Advisory Board (SAB) on July 18, 1996. The report of the SAB was provided to the Agency in April 1997. The SAB and public comments were diverse and represented varying perspectives. Many of the comments were favorable and expressed agreement with positions taken in the proposed Guidelines. Some comments addressed items that were more pertinent to testing guidance than risk assessment guidance or were otherwise beyond the scope of these Guidelines. Some of the comments concerned generic points that were not specific to neurotoxicity issues. Others

addressed topics that have not been developed sufficiently and should be viewed as research issues. There were conflicting views about the need to provide additional detailed guidance about decision making in the evaluation process as opposed to promoting extensive use of scientific judgment. Many public comments provided specific suggestions for clarification of details and corrections of factual material in the Guidelines.

2. Response to Science Advisory Board Comments

The SAB found the Guidelines "to be quite successful, and, all things considered, well suited to its intended task." However, recommendations were made to improve specific areas.

The SAB recommended that EPA keep hazard identification as an identifiable qualitative step in the risk assessment process and that steps should be taken to decouple the qualitative step of hazard identification from the more quantitatively rigorous steps of exposure evaluation and dose-response assessment. These Guidelines now include a hazard characterization step that clearly describes a qualitative evaluation of hazard within the context of the dose, route, timing and duration of exposure. This step is clearly differentiated from the quantitative dose-response analysis, which describes approaches for determining an RfD or RfC.

The SAB supported the presumption that what appears to be reversible neurotoxicity, especially when arising from gestational or neonatal exposure and observed before adulthood, should not be dismissed as of little practical consequence. They may be indices of silent toxicity that emerge later in life or may suggest more robust and enduring responses in aged individuals. These Guidelines explain the concept of functional reserve and advise caution in instances where reversibility is seen and in cases where exposure to a chemical may result in delayed-onset neurotoxicity. These Guidelines also indicate that reversibility may vary with the region of the nervous system damaged, the neurotoxic agent involved, and organismic factors such as age.

The SAB restated previous positions concerning cholinesterase-inhibiting chemicals. Agent-induced clinical signs of cholinergic dysfunction could be used to evaluate dose-response and dose-effect relationships and define the presence and absence of given effects in risk assessment. The SAB also indicated that inhibition of RBC and plasma cholinesterase activity could serve as a

biomarker of exposure to cholinesterase-inhibiting agents and thereby corroborate observations concerning the presence of clinical effects associated with cholinesterase inhibition. The SAB also indicated that reduced brain cholinesterase activity should be assessed in the context of the biological consequences of the reduction. These Guidelines indicate that inhibition of cholinesterase in the nervous system reduces the organism's level of "reserve" cholinesterase and, therefore, limits the subsequent ability to respond successfully to additional exposures and that prolonged inhibition could lead to adverse functional changes associated with compensatory neurochemical mechanisms. In general, an attempt was made to coordinate these Guidelines with the views of a recently convened Scientific Advisory Panel regarding the risk assessment of cholinesterase-inhibiting pesticides (Office of Pesticide Programs, Science Policy on the Use of Cholinesterase Inhibition for Risk Assessments of Organophosphate and Carbamate Pesticides, 1997).

The SAB indicated that the Guidelines were inclusive of the major neurotoxicity endpoints of concern. No additional neurochemical, neurophysiological, or structural endpoints were suggested. Comments indicated that there was no need to consider endocrine disruptors differently from other potential neurotoxic agents.

The SAB found that the descriptions of the endpoints used in human and animal neurotoxicological assessments were thorough and well documented. Several sections, particularly concerning some of the neurochemical and neurobehavioral measures, were corrected for factual errors or supported with more detailed descriptions.

The SAB recommended that the use of the threshold assumption should occur after an evaluation of likely biological mechanisms and available data to provide evidence that linear responses would be expected. A strict threshold is not always clear in the human population because of the wide variation in background levels for some functions. Cumulative neurotoxicological effects might also alter the response of some individuals within a special population, which might allow the Agency to characterize the risk to the sensitive population. Although the SAB did not disagree with the Guidelines' assumption of a threshold as a default for neurotoxic effects, it was suggested that the term "nonlinear dose-response curve for most neurotoxicants" be substituted for the term "threshold." The Neurotoxicity

Risk Assessment Guidelines have been amended to harmonize their treatment of the issue of threshold with the presentation and position taken with other guidelines.

The SAB also recommended that the topic of susceptible populations be expanded to include the elderly and other groups. The elderly could be at increased risk of toxic effects for a number of reasons, including a decline in the reserve capacity with aging, changes in the ability to detoxify or excrete xenobiotics with age, and the potential to interact with medicines or other compounds that could synergize interactions with toxic chemicals. The SAB also indicated that other populations should be considered, including those with chronic and debilitating conditions, groups of workers with potential exposure to chemicals that may be neurotoxic, individuals with genetic polymorphisms that could affect responsiveness to certain neurotoxicants, and individuals that may experience differential exposure because of their proximity to chemicals in the environment or diet. The Guidelines have been modified to emphasize the possible presence of all of these susceptible populations. When specific information on differential risk is not available, the Agency will continue to apply a default uncertainty factor to account for potential differences in susceptibility.

The SAB recommended that the benchmark dose (BMD) was not ready for immediate incorporation into adjustment-factor-based safety assessment or to serve as a substitute or replacement for the more familiar NOAEL or LOAEL. The SAB also recommended that research and development on the BMD should be aggressively encouraged and actively supported. The BMD could be a replacement for the NOAEL or LOAEL after the appropriate research has been conducted.

3. Response to Public Comments

In addition to numerous supportive statements, several issues were indicated, although each issue was raised by only a few commentators. The public comment supported the SAB recommendation that there was no clear consensus concerning replacing the NOAEL approach with the BMD to calculate RfDs and RfCs for neurotoxicity endpoints. There was also support for ensuring that dose-response and other experimental design information be considered in interpreting the results of hazard identification studies before proceeding

to quantitative dose-response analysis. Public comment also supported the position that reversibility cannot be ignored in neurotoxicity risk assessment and that the risk assessor should exert caution in interpreting reversible effects, especially where an apparent transient effect is cited to support evidence for relatively benign effects. The public comment also supported the use of clinical signs in the risk assessment of cholinesterase-inhibiting compounds and the finding that inhibition of brain cholinesterase was an adverse effect. The Guidelines emphasize the importance of brain cholinesterase inhibition, particularly in cases of repeated exposure. The public comment agreed with the SAB that RBC and plasma cholinesterase activity are biomarkers of exposure. It was recommended that the Guidelines incorporate additional information addressing the neuroendocrine system as a potential target site, and a section

has been added that defines the vulnerable components of the neuroendocrine system and the behavioral, hormonal, and physiological endpoints that may be indicative of a direct or indirect effect on the neuroendocrine system.

Public comment strongly endorsed the default assumption that there is a threshold for neurotoxic effects. The Guidelines, however, reflect the argument of the SAB that the term "nonlinear dose-response curve for most neurotoxins" be substituted for "threshold" in order to be consistent with the presentation and positions taken by other risk assessment guidelines.

The public comments made a number of recommendations to improve the Guidelines with regard to consistency of language between text and tables, improve the clarity of some of the tables, and improve the description of some of the endpoints used in animal

studies. A number of factual errors were corrected, including the description of the blood-brain barrier and the degree of inhibition of neurotoxic esterase associated with organophosphate-induced delayed-onset neuropathy. Therefore, a number of changes have been made in the Guidelines to clarify and correct specific passages, but every effort was made to maintain the original intent concerning the use and interpretation of results from various neurotoxicological endpoints. Finally, the public comment agreed with the SAB that factors such as nutrition, personal habits, age, or preexisting disease may predispose some individuals to be differentially sensitive to neurotoxic chemicals. The risk characterization section has been expanded to reflect these potentially sensitive subpopulations.

[FR Doc. 98-12303 Filed 5-13-98; 8:45 am]

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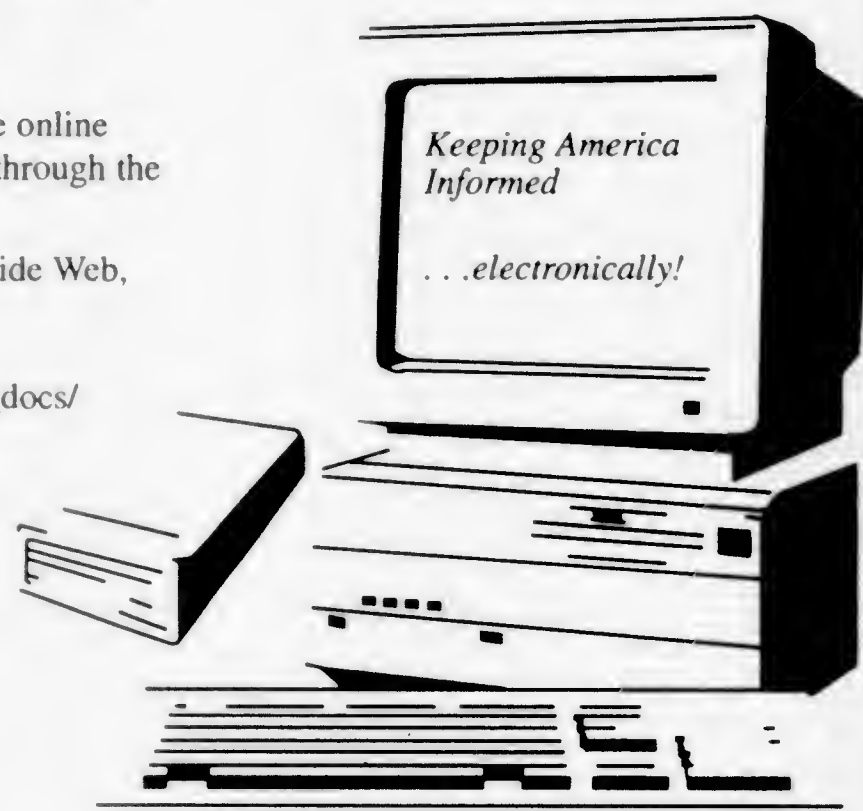
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Vol. 63 No. 94

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(ISSN 0097-6326)

5-15-98
Vol. 63 No. 94
Pages 26955-27192

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Friday, May 15, 1998

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 60, 72, 73, 74, and 75

RIN 3150-AF32

Physical Protection for Spent Nuclear Fuel and High-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify physical protection requirements for spent nuclear fuel and high-level radioactive waste stored at independent spent fuel storage installations (ISFSIs), monitored-retrievable storage (MRS) installations, and geologic repository operations areas (GROAs). These amendments codify standards for protecting spent fuel at the various storage sites licensed under the Commission's regulations.

EFFECTIVE DATE: November 12, 1998.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-8110, e-mail PAD@NRC.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

On August 15, 1995 (60 FR 42079), the Commission published for public comment a proposed rule that would clarify its regulations on the physical protection of spent nuclear fuel and high-level radioactive waste. The proposed regulation would have applied to spent fuel and high-level radioactive waste stored at ISFSIs, power reactors that have permanently ceased reactor operations, MRS installations, and the GROA. The proposed rule stated that the requirements for physically protecting this type of material lacked

clarity in defining which regulations were to be applied at these sites. This resulted in a non-cohesive regulatory base. The proposed rule would provide a set of performance-based requirements, consistent with current programs that are currently licensed and implemented at sites under a unified policy for physical protection.

The proposed rule also indicated that the Commission was studying the need for specific protection against the malevolent use of a vehicle at sites affected by the rule (this is discussed further under the "Protection Goal" heading). The rule also proposed a conforming amendment to 10 CFR Part 60—to require material control and accounting (MC&A) measures at the GROA that would be identical to that required of ISFSIs under Part 72. The proposed rule added a provision under 10 CFR Part 75 to clarify that if GROAs are subject to International Atomic Energy Agency (IAEA) safeguards, then NRC's nuclear material accounting and control regulations for implementing the "Agreement between the United States and the IAEA for the Application of Safeguards in the United States" apply. Finally, the Commission requested specific comment on five questions regarding impacts of the proposed regulation on licensees.

II. Summary and Analysis of Public Comments

The proposed rule was subject to a 90-day public comment period which ended on November 13, 1995. Twenty letters of comment were received. Sources for these comments included a nuclear industry group [the Nuclear Energy Institute (NEI)]; one national laboratory; fifteen utilities involved in nuclear activities; two Federal agencies [the Environmental Protection Agency (EPA) and the Department of Energy (DOE)]; and one citizen's group. Twelve letters of comment explicitly endorsed, either in total or in part, the views expressed by the NEI. Four letters of comment, in part, supported the general objectives of the proposed rulemaking. Correspondence received from EPA indicated no comment. The comments have been grouped under the following general topics:

1. Protection Goal.
2. Basis for Requirements.
3. Required Level of Physical Protection.
4. Backfit and Regulatory Analysis.

5. Rule Language Specifics.

6. GROAs.

7. Staff-Generated Amendments.

8. Summary of Responses to Commission's Specific Questions.

1. Protection Goal

Comment. Commenters noted that, although it was appropriate that a protection goal for spent fuel and high-level radioactive waste be defined, the protection goal needed to be less stringent than the codified design basis threat for radiological sabotage. It was further stated that a 10 CFR Part 100 release, the unofficial criterion for determining radiological sabotage of power reactors, would be extremely difficult to realize with respect to spent fuel and high-level radioactive waste. The citizen's group commented that any protection goal developed for spent fuel should also counter the malevolent use of an airborne vehicle.

Response. The NRC agrees that the establishment of a protection goal should be the first step in the development of any physical protection standards. One issue that may have caused confusion in the proposed rule is that the assumptions for determining "radiological sabotage" differ between Part 72, "Licensing Requirements for the Independent Storage of Spent Fuel and High-Level Radioactive Waste," and Part 73, "Physical Protection of Plants and Material." The differing assumptions are appropriate because "radiological sabotage," as used under Part 73, applies to a power reactor and implies the unofficial criterion of a Part 100 release for power reactors. "Radiological sabotage" as used under Part 72 applies to the storage of spent fuel and high-level radioactive waste and is based on the consequences of a design basis accident as defined under Part 72. Although the same term is used under both 10 CFR Parts; it is based on different assumptions and results in different levels of required protection. The Commission agrees that this is confusing and that "radiological sabotage," as used for operating reactors, is not an appropriate protection level for spent fuel and high-level radioactive waste. The Commission concludes that the protection goal is best characterized by the phrase: "protection against the loss of control of the facility that could be sufficient to cause radiation exposure exceeding the dose as described in 10

CFR 72.106." The final rule has been modified accordingly.

With regard to protection against the malevolent use of a land-based vehicle, NRC has determined, based on the opinions of expert study and a peer review of findings, that there is no compelling justification for requiring a vehicle barrier as perimeter protection for spent fuel and high-level radioactive waste stored under a Part 60 or Part 72 license. Inclusion of an airborne vehicle was assessed for possible inclusion into the protection goal for this rule. However, protection against this type of threat has not yet been determined appropriate at sites with greater potential consequences than spent fuel storage installations. Therefore, this type of requirement is not included within the protection goal for this final rule.

2. Basis for Requirements

Comment. Commenters frequently questioned the need for tying Part 72 requirements to Part 73. The commenters assumed that by involving Part 73 in the rulemaking, it was implied that the level of physical protection normally attributed to power reactors was being required. Phraseology used in the proposed requirements, such as using the term "protected area," (PA) tended to further foster this impression.

Response. The Commission disagrees that placing requirements under Part 73 implies any association with the physical protection requirements for power reactors. It is noted that Part 73 provides, in one consolidated Part, all of the requirements for those facilities needing physical protection. This is one reason why an explicit requirement for the protection of spent fuel and high-level radioactive waste is being added to Part 73. Part 73 includes more stringent requirements for power reactor and Category I fuel cycle facilities and much less stringent requirements for the protection of Category III facilities. With regard to use of the term "protected area," the Commission has determined that the term is correctly used in review of its definition under 10 CFR 73.2. Nonetheless, the Commission has reviewed the physical protection terminology found in the final rule to ensure that it does not imply a different level of physical protection than intended.

3. Level of Physical Protection Needed

Comment. Some commenters expressed the opinion that the level of physical protection described by the proposed amendments was unnecessary and overly burdensome. The industry

group noted that what was truly needed was a level of physical protection comparable to "enhanced industrial security." Cited examples of this type of protection were: use of suitable fencing, locked access points, sufficient illumination, and periodic security patrols. Other commenters questioned the need for some of the redundancy that was included in the proposed rule. One citizen's group believed that physical protection measures should be more stringent than those described in the proposed rule.

Response. The Commission believes that the appropriate level of physical protection for spent fuel and high-level radioactive waste lies somewhere between industrial-grade security and the level that is required at operating power reactors. The Commission also notes that the nature of spent fuel and of its storage mechanisms offers unique advantages in protecting the material. This factor, along with revised consequence considerations, leads the Commission to conclude that physical protection at sites where spent fuel and high-level radioactive waste are stored under a 10 CFR Part 60 or 72 license can be more flexibly applied than previously proposed. Accordingly, the final rule has been revised to minimize redundancy and add flexibility. Specific changes are outlined in Section III, "Summary of Specific Changes Made to the Proposed Rule as a Result of Public Comment."

4. Backfit and Regulatory Analysis

Comment. NEI and a few licensees commented that the proposed regulation imposes a generic backfit as defined under 10 CFR 50.109 and 72.62. The NRC asserted in the proposed rule that the amendments merely codified and standardized physical protection measures that, through license amendment, were already in place at existing sites. Hence, it was concluded that no backfit was involved. Commenters further stated that, in terms of backfit requirements, the cost to implement the proposed rule was not justified based on the potential increase in protection that the rule would afford public health and safety.

Other commenters specifically responded to the Regulatory Analysis that accompanied the rule. These commenters expressed concern that certain provisions of the regulatory analysis could turn into de facto requirements.

Additionally, it was recommended that affected sites should be "grandfathered" under any final rulemaking. Accordingly, these sites would not be required to meet the

provisions of the new physical protection rule because an adequate level of physical protection was already in place at the site, based on an NRC-approved physical protection plan.

Response. Under the proposed rule, the Commission stated that the backfit rule in 10 CFR 50.109 did not apply because the amendments did not impose any additional requirements on Part 50 licensees. Furthermore, the Commission notes that all references to Part 50 licensees are deleted in the final rule.

The Commission further stated that the backfitting requirements in 10 CFR 72.62 did not apply because the proposed amendments neither imposed nor modified procedures or organizations of ISFSIs licensed under Part 72. The Commission considers these statements true based on their assessment of the proposed regulation and its intended implementation. However, on further review, the backfit rule in 10 CFR 72.62 may be applicable to one facility which has only one isolation zone exterior to the perimeter barrier. The NRC staff has identified alternative measures currently in place that provide an equivalent level of physical protection. The staff does not intend to require this facility to establish an interior isolation zone. Thus, no backfit occurs due to the new rule. Because 10 CFR 72.62 does not cover reporting and recordkeeping requirements, the inclusion of 10 CFR 73.51 in 73.71 event reporting is not a backfit.

With respect to grandfathering existing sites, the Commission believes that implementation of this final rule at these sites presents no undue burden to affected licensees and provides a minimum level of physical protection to adequately protect the public health and safety. Accordingly, there is no need for a grandfathering provision and no change has been made in the final rule in response to this comment. The Commission notes that the Regulatory Analysis for the final rule has been revised to reflect changes made in response to public comment and to eliminate ambiguities.

5. Rule Language Specifics

Comment. A variety of comments were received regarding specific rule terminology. The suggestion was made that the term "protected area" be revised to "ISFSI controlled access area."

Response. As indicated previously in this notice, the use of the term "protected area," is consistent with its definition in 10 CFR 73.2. Furthermore, because it is the Commission's position

that a site where spent fuel and high-level radioactive waste is stored be surrounded by a fence, it is not considered adequate to call the enclosure a controlled access area (CAA). Under 10 CFR 73.2, the definition of a CAA requires only a demarcation of the area, not a fence.

Comment. Another commenter supported the Commission position that operating power reactor licensees that store spent fuel under a general license should have the option of using the physical protection measures of either 10 CFR 72.212(b)(5) or the proposed 10 CFR 73.51. The commenter also questioned whether the requirements of 10 CFR 72.182, 72.184, and 72.186 apply to a general license, in addition to Subpart K. A related question requested clarification on how general license holders were to notify NRC regarding which option they would exercise.

Response. The Commission notes that a licensee having a Part 50 license does not fall within the scope of the final rule. The Commission believes it is premature to bring these licensees under the provisions of the final rule because continued protection for spent fuel in storage pools at Part 50 sites is currently under study by the NRC.

Comment. One commenter requested clarification on the specific exclusion of an exemption for ISFSIs from the malevolent use of a vehicle threat within the design basis threat. The commenter indicated that it was not readily apparent and also a cumbersome process to determine the current exempt status of an ISFSI under present regulations.

Response. The Commission agrees and has revised the text of the rule to exclude reference to the design basis threat described under 10 CFR 73.1.

Comment. One commenter questioned whether the proposed rule would apply to a permanently shutdown power plant where spent fuel is stored and the plant is operating with a Part 50 possession-only license.

Response. A facility with a Part 50 license is not subject to the provisions of the final rule. This revision to the final rule has been made because the Commission believes it is premature to include these licensees within the scope of the rule because continued protection for spent fuel in storage pools at Part 50 sites is currently under study by the NRC.

Comment. A commenter requested clarification on the need for back-up power for physical protection-related equipment.

Response. The Commission believes that affected licensees should not be vulnerable to loss of offsite power.

Thus, it is necessary for licensees to assure either continuous operation of required physical protection equipment during power failure or to demonstrate the ability to provide immediate compensation for such failures.

Comment. Required illumination levels, assessment techniques, required frequency of physical protection patrols, and searches before entry to the PA were all subjects of comment. A commenter suggested that illumination be provided only during periods of assessment and that the entire PA need not be illuminated to a level of 0.2 footcandle.

Response. The Commission agrees that illumination to a 0.2 footcandle level represents a large operating cost and may be difficult to achieve, given cask structure. This provision has been amended to more clearly indicate that, while illumination should be maintained during all periods of darkness, only an adequate level of illumination is required within the PA for the detection assessment means used. In addition, required performance capabilities regarding detection are clarified in the final rule by specifying the use of active intrusion detection equipment, as opposed to passive systems.

Comment. Some commenters noted that the frequency of patrols should coincide with watchmen's duty shift lengths, as opposed to once every eight hours as recommended in the proposed rule.

Response. The Commission does not agree that the frequency of patrols should coincide with duty shift lengths. However, the Commission agrees that some flexibility can be provided. Accordingly, this provision of the final rule is revised to require daily random patrols, only.

Comment. Licensees cited the burden of maintaining expensive and delicate explosives detection equipment to meet the proposed requirement for explosives searches conducted before entry to the PA.

Response. The Commission agrees. To clarify this issue, the Commission has revised the proposed rule to require only a visual search for explosives. Because pedestrian and vehicular traffic is not expected to be high volume at facilities affected by the rule, this type of search is not considered an undue burden to affected licensees. Furthermore, the amount of explosives that may cause a radiological release is not easily concealed.

Comment. Other commenters noted redundant records retention requirements in 10 CFR 72.180 and 10 CFR 73.51(c).

Response. This concern has been corrected in the final rule.

Comment. One commenter noted an apparent contradiction in the proposed regulation regarding use of deadly force in the protection of an ISFSI. The commenter had been advised by NRC staff that use of deadly force was not expected of members of the security organization at ISFSIs. The commenter reasoned that this was not consistent with the requirement to protect against radiological sabotage under the proposed rule.

Response. The issue involving the use of the term radiological sabotage has been resolved as discussed previously. Further, the Commission never intended that onsite physical protection personnel at an ISFSI would provide a response to a safeguards event other than calling for assistance from local law enforcement or other designated response force unless their timely response could not be ensured. The Commission also notes that 10 CFR 73.51 only calls for unarmed watchmen, not armed guards.

Comment. Commenters believe that the requirements for redundant alarm monitoring stations and specified staffing levels for the primary alarm station are overly burdensome and unnecessary.

Response. The Commission agrees that the requirement for redundant alarm stations is excessive. Regarding alarm monitoring, this provision is revised in the final rule to require, in the redundant location, only a summary indication that an alarm has been generated. This location need not necessarily be located onsite and could, for example, be a simple readout in a continually-staffed local law enforcement agency office. This is contingent on the assurance that communications with the local law enforcement agency or the designated response force can be maintained. Regarding required staffing levels of the primary alarm station, the Commission has deleted the specific requirement that the physical protection organization be comprised of at least two watchmen from the final rule. This deletion is contingent on the Commission's expectation that a human presence be maintained in the primary alarm station at all times. To achieve this, the Commission clarifies its position that the primary alarm station must be located within the PA, be bullet-resistant, and be configured such that activities within the station are not visible from outside the PA. The intent of these measures is to ensure that a single act cannot destroy the capability of an onsite watchman to call for

assistance. The final rule has been modified accordingly.

Comment. Finally, concerning the actual terminology and format of the proposed rule, commenters expressed support for its performance-based nature but rejected the set of provisions under 10 CFR 73.51(d) as being overly prescriptive.

Response. The Commission responds that the proposed regulation found in 10 CFR 73.51(d) is needed to provide additional clarity in meeting the performance capabilities in 10 CFR 73.51(b) and notes that many of the physical protection measures described under 10 CFR 73.51(d) are relaxed in the final rule and are less prescriptive in a number of cases.

6. GROA

Comment. Two comments were received from DOE on the amendments to Part 60 dealing with the geologic repository. The first commenter requested that it be emphasized in the "Statement of Considerations" for the final rule that the requirement for physical protection of GROAs be applicable only during their operational phases and not after closure.

Response. The Commission agrees with this observation and has clarified the exemption in the final rule to specifically exempt GROAs from the requirements of 10 CFR 73.51 after permanent closures.

Comment. The second commenter requested clarification on apparent conflicts in Part 60, "Disposal of High-Level Radioactive Waste in Geologic Repositories," regarding the level of detail required of physical protection plans during the different phases of the certification process.

Response. The Commission notes that NUREG 1619, "Standard Review Plan for Physical Protection Plans for the Independent Storage of Spent Fuel and High-Level Radioactive Waste," to be issued concurrently with the effective date of the final rule, will contain guidance in this area.

7. NRC Staff-Generated Amendments

Subsequent to publication of the proposed rule, a technical issue arose involving the cooling time of spent fuel as it relates to the degree of physical protection needed. Because a response to this issue continues to evolve within the NRC, the Commission believes it would be inappropriate to apply the provisions of the final rule at this time to a licensee holding a 10 CFR Part 50 license. Hence, licensees holding a 10 CFR Part 50 license are not within the scope of the final rule. Further, review indicated that there was some confusion

pertaining to MC&A requirements for ISFSIs. Specifically, the NRC staff asked if ISFSIs were exempt from the requirements of 10 CFR 74.51 and, if not, why not. Specific MC&A requirements for ISFSIs are found under Part 72. After consideration of the issue, for clarification, the NRC staff has included an amendment to 10 CFR Part 74 that specifically exempts ISFSIs from 10 CFR 74.51 in the final rule.

8. Summary of Responses to Commission's Specific Questions

Question 1. Would the proposed amendments impose any significant additional costs for safeguards of currently stored spent nuclear fuel beyond what is now incurred for that purpose?

Summary of Responses. Five responses from nuclear utilities specifically addressed this issue. All indicated that the amendments, as proposed, would significantly increase costs. Manpower-intensive measures, such as the requirement to maintain a minimum of two watchmen per shift, were most often cited as creating an undue burden. One licensee estimated costs of \$1 to \$2 million to implement, and a continuing cost increase of 30-50 percent, annually, to physical protection operations.

NRC Response. Licensees holding a 10 CFR Part 50 license are no longer within the scope of this rule. The final rule has been revised to minimize redundancy and add flexibility to its implementation. There should be no significant increase in cost to current licensees.

Question 2. Is there reason to expect the costs to future licensees to differ substantially from those of current licensees?

Summary of Responses. Four responses from nuclear utilities specifically addressed this issue. Three utilities cited both higher current and annual operating costs. One utility noted that, to the extent that current licensees have been required to commit to the practices recommended in the proposed rule in initial licensing, there is no anticipated difference in cost.

NRC Response. Licensees holding a 10 CFR Part 50 license are no longer within the scope of this rule. The final rule has been amended to be more consistent with physical protection implemented at sites with currently approved physical protection plans. Hence, there should be no significant increase in costs to future licensees.

Question 3. Are the cost estimates in Table III of the Draft Regulatory Analysis representative of current industry experience? Are there

significant costs that have not been included in the table?

Summary of Responses. Three responses from nuclear utilities specifically addressed this issue. One respondent indicated that the cost estimates in Table III of the "Draft Regulatory Analysis" are sufficiently broad to address industry experience. However, the inclusion of a continual surveillance system is not covered and the respondent suggested that it should be a separate line item. Another respondent indicated that the cost estimates appear to be comprehensive except they do not include construction and maintenance of physical protection office space, a records retention area, and alarm station(s).

NRC Response. The "Regulatory Analysis" has been revised to reflect public comment to include any omissions or changes made to the final rule.

Question 4. Are the costs justified by the benefits that would be afforded by the proposed amendments? Are there alternatives that would afford essentially the same benefits but be more cost effective?

Summary of Responses. Three responses from nuclear utilities specifically addressed this issue. All three indicated that the costs were not justified by the benefits derived from the proposed rule. One respondent stated that the individual measures of 10 CFR 73.51(d) have merit, but, when taken in aggregate, they are not necessary to protect public health and safety. This respondent further stated that redundancy in the proposed rule was not needed and the rulemaking should give affected licensees latitude in selecting and justifying the means of physical protection. Alternatives that were suggested involved the deletion of specific provisions of the proposed rule and also the restructuring of the rule so as to not group all ISFSIs under one set of physical protection criteria.

NRC Response. The Commission has revised the requirements of the proposed rule to eliminate unnecessary redundancies, add flexibility in implementation, and reduce manpower-intensive measures while maintaining an adequate level of physical protection.

Question 5. Are the proposed amendments to 10 CFR 73.51 appropriate for an MRS or geologic repository operated by DOE?

Summary of Response. NEI was the only respondent to this issue. NEI noted that NRC should be mindful of the evolving nature of MRS installations and the geologic repository in the development of physical protection regulations for these sites.

NRC Response. NRC staff continues to work closely with DOE staff in the development of the certification process for MRS installations and the GROA.

III. Summary of Specific Changes Made to the Proposed Rule as a Result of Public Comment

Major changes made to the proposed rule include:

(1) The incorporation of a protection goal, and

(2) Regarding required levels of physical protection, redundancies have been reduced, flexibility added, and manpower-for example—

- Regarding alarm monitoring, the redundant alarm station need only provide a summary indication at a continually staffed location;

- Redundant records retention has been eliminated;

- The required staffing level for the security organization has been eliminated and required siting and configuration of the primary alarm station clarified;

- Hand-held equipment searches for explosives are replaced with visual searches; and

- Illumination levels need only permit adequate assessment of the PA according to the assessment means used. Detection equipment must be active in nature.

As discussed previously, the final rule does not apply to a licensee holding a 10 CFR Part 50 license.

A section-by-section comparison of the proposed and final rules follows.

Part 60—Disposal of High-Level Radioactive Wastes in Geologic Repositories

1. Section 60.21, Content of application. This section is unchanged from the proposed rule.

2. Section 60.31, Construction authorization. This section is unchanged from the proposed rule.

3. Section 60.41, Standards for issuance of a license. This section is unchanged from the proposed rule.

4. Section 60.78, Material control and accounting records and reports. This section is unchanged from the proposed rule.

Part 72—Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste

5. Section 72.24, Contents of application: Technical information. This section is unchanged from the proposed rule. The term "radiological sabotage" is based on Part 72 assumptions and not a Part 100 radiological release.

6. Section 72.180, Physical security plan. This section is unchanged from

the proposed rule except for changing the title to Physical Protection Plan to be consistent with 10 CFR Part 73.

7. Section 72.212, Conditions of general license issued under § 72.210. Revisions to this section have been deleted in their entirety.

Part 73—Physical Protection of Plants and Materials

8. Section 73.1, Purpose and Scope. Paragraph (b)(6) is unchanged from the proposed rule.

9. Section 73.50, Requirements for physical protection of licensed activities. This section remains unchanged from the proposed rule.

10. Section 73.51, Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste. Paragraph (a), Applicability, has been revised to more precisely define the type of material affected by the rule and to eliminate 10 CFR Part 50 licensees from the provisions of the rule.

Paragraph (b)(3), General Performance Objectives, has been revised to read:

"The physical protection system must be designed to protect against loss of control of the facility that could be sufficient to cause radiation exposure exceeding the dose as described in 10 CFR 72.106." This revised statement describes a more appropriate protection goal that is consistent with Part 72. It also allows for a physical protection system less stringent than required to protect against radiological sabotage at operating power reactors.

The introductory text of paragraph (d) has been revised to more clearly indicate the Commission's intent that alternative measures may also be available for meeting the provisions of (d). For example, several questions arose during final rule development as to whether the use of a hardened and protected alarm station sited at an adjacent operating power reactor would meet the intent of paragraph (d)(3) to have a hardened alarm station within the PA of the ISFSI. Staff considers this to be an acceptable alternative measure for meeting this provision of the final rule.

In paragraph (d)(1), the last sentence has been deleted because it is no longer necessary due to the revision cited in the previous paragraph above.

Paragraph (d)(2) has been revised to read: "Illumination must be sufficient to permit adequate assessment of unauthorized penetrations of or activities within the protected area." This revision has been made to permit flexibility in illumination levels.

Paragraph (d)(3) has been revised to read: "The perimeter of the protected

area must be subject to continual surveillance and be protected by an active intrusion alarm system that is capable of detecting penetration through the isolation zone and that is monitored in a continually staffed primary alarm station located within the protected area, and in one additional continually staffed location to ensure that a single act cannot destroy the capability of the onsite watchman to call for assistance. The primary alarm station must be located within the protected area; have bullet-resisting walls, doors, ceiling, and floor; and the interior of the station must not be visible from outside the protected area. A timely means for assessment must also be provided. Regarding alarm monitoring, the redundant location need only provide a summary indication that an alarm has been generated." This clarifies the Commission's position that the necessary level of protection should ensure that a single act cannot destroy the capability of the onsite watchman to call for assistance.

Paragraph (d)(4) has been revised to reduce the frequency of patrol from "not less than once every 8 hours" to "daily random patrols" with additional discussion provided in guidance issued to support the rule.

Paragraph (d)(5) has been revised to read: "A security organization with written procedures must be established. The security organization must include sufficient personnel per shift to provide for monitoring of detection systems and the conduct of surveillance, assessment, access control, and communications to assure adequate response. Members of the security organization must be trained, equipped, qualified and requalified to perform assigned job duties in accordance with Appendix B to Part 73, I.A., (1) (a) and (b); B(1)(a); and the applicable portions of II." This change eliminates a required staffing level and describes qualification and training levels for watchmen, only, as the primary members of the security organization.

Paragraph (d)(6) has been changed to require "timely" response from the designated response forces. If timely response cannot be provided, additional protective measures may be required, to include use of armed guards.

Paragraph (d)(7) has been deleted. Paragraph (d)(8) has been redesignated as paragraph (d)(7) and revised to read as follows: "A personnel identification system and a controlled lock system must be established and maintained to limit access to authorized individuals." This eliminates the unnecessary coupling of the identification system with the system

used for key and lock control as requested by commenters.

Paragraph (d)(9) has been deleted. If a person is authorized access to the PA, properly identified, and subject to search, there is no need for the individual to be escorted.

Paragraph (d)(10) has been redesignated as paragraph (d)(8). Regarding communications, the term "security organization" has been revised to "onsite security force members" to more precisely define communication channels.

Paragraph (d)(11) has been redesignated as paragraph (d)(9) and revised to read as follows: "All individuals, vehicles and hand-carried packages entering the protected area must be checked for proper authorization and visually searched for explosives before entry." This is permissible because the amount of explosives needed to cause a radiological release is not easily concealable.

Paragraph (d)(12) has been redesignated as paragraph (d)(10). The text of this paragraph is unchanged from the proposed rule.

Paragraph (d)(13) has been redesignated as paragraph (d)(11) and revised to read as follows: "All detection systems, surveillance/assessment systems, and supporting subsystems including illumination systems must be tamper-indicating with line supervision and be maintained in operable condition. Timely compensatory measures must be taken after discovery of inoperability to assure that the effectiveness of the physical protection system is not reduced."

Paragraph (d)(14) has been redesignated as paragraph (d)(12) and remains unchanged from the proposed rule.

Paragraph (d)(15) has been redesignated as paragraph (d)(13). This provision has been added to assure that duplication of records under § 72.180 is not required. Paragraph (d)(13)(ii) has been revised to read as follows: "Screening records of members of the security organization." Finally, the log of patrols must contain all patrols, not just routine patrols.

Paragraph (e) has been revised for clarity.

11. Section 73.71, Reporting of safeguards events, remains unchanged from the proposed rule.

Part 74—Material Control and Accounting of Special Nuclear Material

12. In Section 74.51, Nuclear material control and accounting for special nuclear material, paragraph (a) has been revised to read as follows: "General

performance objectives. Each licensee who is authorized to possess five or more formula kilograms of strategic special nuclear material (SSNM) and to use such material at any site, other than a nuclear reactor licensed pursuant to Part 50 of this chapter, an irradiated fuel reprocessing plant, an operation involved with waste disposal, or an independent spent fuel storage facility licensed pursuant to Part 72 of this chapter, shall establish, implement, and maintain a Commission approved material control and accounting (MC&A) system that will achieve the following objectives: * * * This paragraph specifically exempts Part 72 ISFSIs from the requirements of 10 CFR 74.51.

Part 75—Safeguards on Nuclear Material—Implementation of US/IAEA Agreement

13. Section 75.4, Definitions, remains unchanged from the proposed rule.

Criminal Penalties

NRC notes that these final amendments are issued under Sections 161b and i of the Atomic Energy Act of 1954, as amended. Therefore, violation of these regulations may subject a person to criminal sanctions under section 223 of the Atomic Energy Act.

Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(i) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150-0002, 3150-0055, 3150-0123, and 3150-0132.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a "Final Regulatory Analysis" for this final rule. The final analysis examines the benefits and alternatives considered by the Commission. The "Final Regulatory Analysis" is available for

inspection in the NRC Public Document room, 2120 L Street NW (Lower Level), Washington DC. Single copies of the analysis may be obtained from Priscilla A. Dwyer, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The "Final Regulatory Analysis" is available for viewing and downloading from the NRC's rulemaking bulletin board.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule affects operators of ISFSIs and DOE as the operator of the MRS and GROA. The affected licensees do not fall within the scope of the definition of "small entities" set forth in Section 601(3) of the Regulatory Flexibility Act, or the NRC's size standards (10 CFR 2.810).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Backfit Analysis

The Commission has determined that the backfit rule in 10 CFR 50.109 does not apply because this final rule does not impose new requirements on existing 10 CFR part 50 licensees. The backfit rule in 10 CFR 72.62 may be applicable to one facility which has only one isolation zone exterior to the perimeter barrier. However, the NRC staff has identified alternative measures currently in place that provide an equivalent level of physical protection. The staff does not intend to require this facility to establish an interior isolation zone. Thus, no backfit occurs due to the new rule. Because 10 CFR 72.62 does not cover reporting and recordkeeping requirements, the inclusion of 10 CFR 73.51 in 10 CFR 73.71 event reporting is not a backfit. Finally, the transfer of spent fuel from a reactor, licensed under 10 CFR part 50 and subject to 10 CFR 73.55 physical protection requirements, to an ISFSI licensed under 10 CFR part 72, and its associated physical protection provisions (e.g., 10 CFR 73.51) is not a backfit. A new license under 10 CFR art 72 is a matter of compliance with regulations. In all

cases, transition from 10 CFR 73.55 to 73.51 is a relaxation of requirements and not a backfit.

List of Subjects

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553 the NRC is adopting the following amendments to 10 CFR parts 60, 72, 73, 74, and 75.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141) and Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

2. In § 60.21, paragraphs (b)(3), (b)(4), and (c)(10) are revised to read as follows:

§ 60.21 Content of application.

* * *

(b) * * *
(3) A detailed plan to provide physical protection of high-level radioactive waste in accordance with § 73.51 of this chapter. This plan must include the design for physical protection, the licensee's safeguards contingency plan, and security organization personnel training and qualification plan. The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

(4) A description of the program to meet the requirements of § 60.78.

* * *

(c) * * *
(10) A description of the program to be used to maintain the records described in §§ 60.71 and 60.72.

* * *

3. In § 60.31, paragraph (b) is revised to read as follows:

§ 60.31 Construction authorization.

* * *

(b) *Common defense and security.* That there is reasonable assurance that the activities proposed in the application will not be inimical to the common defense and security.

* * *

4. In § 60.41, paragraph (c) is revised to read as follows:

§ 60.41 Standards for issuance of license.

* * *

(c) The issuance of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public.

* * *

5. A new § 60.78 is added to read as follows:

§ 60.78 Material control and accounting records and reports.

DOE shall implement a program of material control and accounting (and accidental criticality reporting) that is the same as that specified in §§ 72.72, 72.74, 72.76, and 72.78 of this chapter.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

6. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat.

929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

7. In § 72.24, paragraph (o) is revised to read as follows:

§ 72.24 Contents of application; Technical information.

* * *

(o) A description of the detailed security measures for physical protection, including design features and the plans required by subpart H. For an application from DOE for an ISFSI or MRS, DOE will provide a description of the physical protection plan for protection against radiological sabotage as required by subpart H.

* * *

8. Section 72.180 is revised to read as follows:

§ 72.180 Physical protection plan.

The licensee shall establish, maintain, and follow a detailed plan for physical protection as described in § 73.51 of this chapter. The licensee shall retain a copy of the current plan as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the plan is superseded, retain the superseded material for 3 years after each change or until termination of the license. The plan must describe how the applicant will meet the requirements of § 73.51 of this chapter and provide physical protection during on-site transportation

to and from the proposed ISFSI or MRS and include within the plan the design for physical protection, the licensee's safeguards contingency plan, and the security organization personnel training and qualification plan. The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

9. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

10. In § 73.1, paragraph (b)(6) is revised to read as follows:

§ 73.1 Purpose and scope.

(b) * * *

(6) This part prescribes requirements for the physical protection of spent nuclear fuel and high-level radioactive waste stored in either an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage (MRS) installation licensed under part 72 of this chapter, or stored at the geologic repository operations area licensed under part 60 of this chapter.

11. The introductory text of § 73.50 is revised to read as follows:

§ 73.50 Requirements for physical protection for licensed activities.

Each licensee who is not subject to § 73.51, but who possesses, uses, or stores formula quantities of strategic special nuclear material that are not readily separable from other radioactive material and which have total external radiation dose rates in excess of 100 rems per hour at a distance of 3 feet from any accessible surfaces without intervening shielding other than at a nuclear reactor facility licensed pursuant to part 50 of this chapter, shall comply with the following:

12. A new § 73.51 is added to read as follows:

§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

(a) *Applicability.* Notwithstanding the provisions of §§ 73.20, 73.50, or 73.67, the physical protection requirements of this section apply to each licensee that stores spent nuclear fuel and high-level radioactive waste pursuant to paragraphs (a)(1)(i), (ii), and (2) of this section. This includes—

(1) Spent nuclear fuel and high-level radioactive waste stored under a specific license issued pursuant to part 72 of this chapter:

(i) At an independent spent fuel storage installation (ISFSI) or

(ii) At a monitored retrievable storage (MRS) installation; or

(2) Spent nuclear fuel and high-level radioactive waste at a geologic repository operations area (GROA) licensed pursuant to part 60 of this chapter;

(b) *General performance objectives.*

(1) Each licensee subject to this section shall establish and maintain a physical protection system with the objective of providing high assurance that activities involving spent nuclear fuel and high-level radioactive waste do not constitute an unreasonable risk to public health and safety.

(2) To meet the general objective of paragraph (b)(1) of this section, each licensee subject to this section shall meet the following performance capabilities.

(i) Store spent nuclear fuel and high-level radioactive waste only within a protected area;

(ii) Grant access to the protected area only to individuals who are authorized to enter the protected area;

(iii) Detect and assess unauthorized penetration of, or activities within, the protected area;

(iv) Provide timely communication to a designated response force whenever necessary; and

(v) Manage the physical protection organization in a manner that maintains its effectiveness.

(3) The physical protection system must be designed to protect against loss of control of the facility that could be sufficient to cause a radiation exposure exceeding the dose as described in § 72.106 of this chapter.

(c) *Plan retention.* Each licensee subject to this section shall retain a copy of the effective physical protection plan as a record for 3 years or until termination of the license for which procedures were developed.

(d) *Physical protection systems, components, and procedures.* A licensee shall comply with the following provisions as methods acceptable to

NRC for meeting the performance capabilities of § 73.51(b)(2). The Commission may, on a specific basis and upon request or on its own initiative, authorize other alternative measures for the protection of spent fuel and high-level radioactive waste subject to the requirements of this section, if after evaluation of the specific alternative measures, it finds reasonable assurance of compliance with the performance capabilities of paragraph (b)(2) of this section.

(1) Spent nuclear fuel and high-level radioactive waste must be stored only within a protected area so that access to this material requires passage through or penetration of two physical barriers, one barrier at the perimeter of the protected area and one barrier offering substantial penetration resistance. The physical barrier at the perimeter of the protected area must be as defined in § 73.2. Isolation zones, typically 20 feet wide each, on both sides of this barrier, must be provided to facilitate assessment. The barrier offering substantial resistance to penetration may be provided by an approved storage cask or building walls such as those of a reactor or fuel storage building.

(2) Illumination must be sufficient to permit adequate assessment of unauthorized penetrations of or activities within the protected area.

(3) The perimeter of the protected area must be subject to continual surveillance and be protected by an active intrusion alarm system which is capable of detecting penetrations through the isolation zone and that is monitored in a continually staffed primary alarm station and in one additional continually staffed location. The primary alarm station must be located within the protected area; have bullet-resisting walls, doors, ceiling, and floor; and the interior of the station must not be visible from outside the protected area. A timely means for assessment of alarms must also be provided. Regarding alarm monitoring, the redundant location need only provide a summary indication that an alarm has been generated.

(4) The protected area must be monitored by daily random patrols.

(5) A security organization with written procedures must be established. The security organization must include sufficient personnel per shift to provide for monitoring of detection systems and the conduct of surveillance, assessment, access control, and communications to assure adequate response. Members of the security organization must be trained, equipped, qualified, and requalified to perform assigned job duties in accordance with appendix B to

part 73, sections I.A, (1) (a) and (b), B(1)(a), and the applicable portions of II.

(6) Documented liaison with a designated response force or local law enforcement agency (LLEA) must be established to permit timely response to unauthorized penetration or activities.

(7) A personnel identification system and a controlled lock system must be established and maintained to limit access to authorized individuals.

(8) Redundant communications capability must be provided between onsite security force members and designated response force or LLEA.

(9) All individuals, vehicles, and hand-carried packages entering the protected area must be checked for proper authorization and visually searched for explosives before entry.

(10) Written response procedures must be established and maintained for addressing unauthorized penetration of, or activities within, the protected area including Category 5, "Procedures," of appendix C to part 73. The licensee shall retain a copy of response procedures as a record for 3 years or until termination of the license for which the procedures were developed. Copies of superseded material must be retained for 3 years after each change or until termination of the license.

(11) All detection systems, surveillance/assessment systems, and supporting subsystems, including illumination systems, must be tamper-indicating with line supervision and be maintained in operable condition. Timely compensatory measures must be taken after discovery of inoperability, to assure that the effectiveness of the security system is not reduced.

(12) The physical protection program must be reviewed once every 24 months by individuals independent of both physical protection program management and personnel who have direct responsibility for implementation of the physical protection program. The physical protection program review must include an evaluation of the effectiveness of the physical protection system and a verification of the liaison established with the designated response force or LLEA.

(13) The following documentation must be retained as a record for 3 years after the record is made or until termination of the license. Duplicate records to those required under § 72.180 of part 72 and § 73.71 of this part need not be retained under the requirements of this section:

(i) A log of individuals granted access to the protected area;

(ii) Screening records of members of the security organization;

(iii) A log of all patrols;

(iv) A record of each alarm received, identifying the type of alarm, location, date and time when received, and disposition of the alarm; and

(v) The physical protection program review reports.

(e) A licensee that operates a GROA is exempt from the requirements of this section for that GROA after permanent closure of the GROA.

13. In § 73.71, paragraphs (b)(1) and (c) are revised to read as follows:

§ 73.71 Reporting of safeguards events.

(b)(1) Each licensee subject to the provisions of §§ 73.20, 73.37, 73.50, 73.51, 73.55, 73.60, or 73.67 shall notify the NRC Operations Center within 1 hour of discovery of the safeguards events described in paragraph I(a)(1) of appendix G to this part. Licensees subject to the provisions of §§ 73.20, 73.37, 73.50, 73.51, 73.55, 73.60, or each licensee possessing strategic special nuclear material and subject to § 73.67(d) shall notify the NRC Operations Center within 1 hour after discovery of the safeguards events described in paragraphs I(a)(2), (a)(3), (b), and (c) of appendix G to this part. Licensees subject to the provisions of §§ 73.20, 73.37, 73.50, 73.51, 73.55, or 73.60 shall notify the NRC Operations Center within 1 hour after discovery of the safeguards events described in paragraph I(d) of appendix G to this part.

(c) Each licensee subject to the provisions of §§ 73.20, 73.37, 73.50, 73.51, 73.55, 73.60, or each licensee possessing SSNM and subject to the provisions of § 73.67(d) shall maintain a current log and record the safeguards events described in paragraphs II (a) and (b) of appendix G to this part within 24 hours of discovery by a licensee employee or member of the licensee's contract security organization. The licensee shall retain the log of events recorded under this section as a record for 3 years after the last entry is made in each log or until termination of the license.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

14. The authority citation for part 74 continues to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

15. In § 74.51, the introductory text of paragraph (a) is revised to read as follows:

§ 74.51 Nuclear material control and accounting for special nuclear material.

(a) *General performance objectives.* Each licensee who is authorized to possess five or more formula kilograms of strategic special nuclear material (SSNM) and to use such material at any site, other than a nuclear reactor licensed pursuant to part 50 of this chapter, an irradiated fuel reprocessing plant, an operation involved with waste disposal, or an independent spent fuel storage facility licensed pursuant to part 72 of this chapter shall establish, implement, and maintain a Commission-approved material control and accounting (MC&A) system that will achieve the following objectives:

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

16. The authority citation for part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

17. In § 75.4, paragraph (k)(5) is revised to read as follows:

§ 75.4 Definitions.

(k) * * *

(5) Any location where the possession of more than 1 effective kilogram of nuclear material is licensed pursuant to parts 40, 60, or 70 of this chapter, or pursuant to an agreement state license.

Dated at Rockville, Maryland, this 11th day of May, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98-12978 Filed 5-14-98; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-CE-48-AD; Amendment 39-10524; AD 98-10-12]

RIN 2120-AA64

Airworthiness Directives; REVO, Incorporated Models Colonial C-2, Lake LA-4, Lake LA-4A, Lake LA-4P, and Lake LA-4-200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all REVO, Incorporated (REVO) Models Colonial C-2, Lake LA-4, Lake LA-4A, Lake LA-4P, and Lake LA-4-200 airplanes. This action requires measuring for a clearance of $\frac{3}{32}$ of an inch between the attachment fitting and the horizontal stabilizer rear beam, and a clearance of $\frac{1}{16}$ of an inch between the attachment fitting and the stabilizer skin. If either area does not meet these minimum measurements, this AD requires removing the affected horizontal tail half from the airplane and inspecting the attachment fitting for any evidence of fretting, cracking, or corrosion. If cracks, fretting, or corrosion are present, the attachment fitting must be replaced with a new fitting, and the stabilizer skin must be trimmed to provide a positive clearance for the fitting. This action is prompted by an incident report of an airplane losing control during flight after the attachment fitting to the horizontal stabilizer fractured. The actions specified by this AD are intended to prevent fatigue cracks to the horizontal and vertical stabilizer attachment fitting, which could result in loss of control of the airplane.

DATES: Effective June 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-48-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from REVO,

Incorporated, 50 Airport Road, Laconia Airport, Laconia, New Hampshire, 03246. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-48-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Noll, Aerospace Engineer, FAA, Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone: (781) 238-7160; facsimile: (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA recently received a report of loss of control on a REVO, Incorporated Lake LA-4 series airplane during flight. The report indicated that during climb-out following take-off, the pilot heard a loud bang, and the airplane pitched over into a vertical dive, with loss of elevator control. During the pilot's efforts to regain control, another loud bang was heard and sufficient control was regained to manage a safe landing. Further investigation of the incident and inspection of the subject airplane revealed interference between the horizontal stabilizer skin and the attachment fitting. This interference caused fretting, which led to fatigue cracking and associated corrosion of the attachment fitting. The fracture of the attachment fitting resulted in loss of directional control of the airplane.

Relevant Service Information

REVO has issued Service Bulletin B-78, dated April 3, 1998, applicable to Models Colonial C-2, Lake LA-4, Lake LA-4A, Lake LA-4P, and Lake LA-4-200 airplanes, which specifies procedures for:

- Measuring the gap between the horizontal stabilizer rear beam and the attachment fitting for a clearance of $\frac{3}{32}$ of an inch,
- If the gap between the stabilizer rear beam and the attachment fitting is less than $\frac{3}{32}$ -inch, removing the fitting and visually inspect for cracks, fretting, or corrosion,
- If cracks, fretting, or corrosion is present, replacing the attachment fitting with a new fitting,
- Measuring the gap between the attachment fitting and the horizontal stabilizer skin for a clearance of $\frac{1}{16}$ of an inch, and
- If the clearance between the horizontal stabilizer skin and the

attachment fitting is less than $\frac{1}{16}$ of an inch, but the other measurement is at or greater than $\frac{3}{32}$ of an inch, trimming the stabilizer skin to provide at least $\frac{1}{16}$ of an inch clearance.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to prevent fatigue cracks in the horizontal stabilizer attachment fitting, which if not detected and corrected, could result in loss of control of the airplane.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other REVO Colonial C-2, Lake LA-4, Lake LA-4A, Lake LA-4P, Lake LA-4-200 airplanes of the same type design, this AD requires measuring the gap between the horizontal stabilizer rear beam and the attachment fitting for correct clearance, and measuring the gap between the attachment fitting and the horizontal stabilizer skin for correct clearance. If the gap between the stabilizer rear beam and the attachment fitting is not the correct clearance, the action requires removing the horizontal tail half to gain access to the fitting, and visually inspecting for cracks, fretting, or corrosion. If cracks, fretting, or corrosion are present, the action requires replacing the attachment fitting with a new fitting. If the clearance between the horizontal stabilizer skin and the attachment fitting is not the correct clearance, but the other measurement is correct, the action requires trimming the stabilizer skin to provide acceptable clearance. The actions are to be done in accordance with the instructions in REVO Service Bulletin B-78, dated April 3, 1998.

Determination of the Effective Date of the AD

Since a situation exists (loss of directional control of the airplane) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons

are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98-CE-48-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not

required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98-10-12 Revo, Incorporated: Amendment 39-10524; Docket No. 98-CE-48-AD.

Applicability: Models Colonial C-2, Lake LA-4, Lake LA-4A, Lake LA-4P, and Lake LA-4-200 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent fatigue cracks in the horizontal and vertical stabilizer attachment fitting, which could result in loss of control of the airplane, accomplish the following:

(a) Measure the gap between the horizontal stabilizer rear beam and the attachment fitting for a clearance of $\frac{3}{32}$ of an inch in accordance with the PROCEDURE section in REVO Service Bulletin B-78, dated April 3, 1998.

(1) If the gap between the stabilizer rear beam and the attachment fitting is less than $\frac{3}{32}$ -inch, prior to further flight, remove the fitting and visually inspect or inspect using a dye penetrant method for cracks, fretting, or corrosion in accordance with the INSPECTION AND REPAIR section in REVO Service Bulletin B-78, dated April 3, 1998.

(2) If any crack, fretting, or corrosion is present, prior to further flight, replace the

attachment fitting with a new fitting in accordance with the INSPECTION AND REPAIR section in REVO Service Bulletin B-78, dated April 3, 1998.

(b) Measure the gap between the attachment fitting and the horizontal stabilizer skin for a clearance of $\frac{1}{16}$ of an inch in accordance with the PROCEDURE section in REVO Service Bulletin B-78, dated April 3, 1998.

(c) If the clearance between the horizontal stabilizer skin and the attachment fitting is less than $\frac{1}{16}$ of an inch, but the measurement required in paragraph (a) of this AD is at or greater than $\frac{3}{32}$ of an inch, prior to further flight, trim the stabilizer skin to provide at least $\frac{1}{16}$ -inch clearance in accordance with the PROCEDURE section in REVO Service Bulletin B-78, dated April 3, 1998.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston ACO.

(f) The inspection, modification, and replacement required by this AD shall be done in accordance with REVO Service Bulletin B-78, dated April 3, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from REVO, Incorporated, 50 Airport Road, Laconia Airport, Laconia, New Hampshire, 03246. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on June 8, 1998.

Issued in Kansas City, Missouri, on May 1, 1998.

Michael Gallagher,
Manager, Small Aircraft Directorate, Aircraft Certification Service.

[FR Doc. 98-12625 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-257-AD; Amendment 39-10526; AD 98-10-14]

RIN 2120-AA64

Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Lockheed Model L-1011-385 series airplanes, that currently requires various types of inspections to detect fatigue cracking of certain areas of the rear spar caps, web, skin, and certain fastener holes; and repair or modification, if necessary. This amendment reduces the repetitive inspection interval for all of the currently required inspections, except for the X-ray inspections. It also revises the terminating modification provision for some airplanes. This amendment is prompted by reports of cracks found during the currently required inspections, which had progressed to lengths greater than predicted. The actions specified by this AD are intended to ensure that fatigue cracking is detected and corrected in a timely manner before it can lead to rupture of the rear spar, extensive damage to the wing, and spillage of fuel.

DATES: Effective June 19, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 19, 1998.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 15, 1996 (61 FR 16379, April 15, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, ACE-116A, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, suite 450,

Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE-116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Atlanta Aircraft Certification Office, Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337-2748; telephone (770) 703-6067; fax (770) 703-6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96-07-13, amendment 39-9563 (61 FR 16379, April 15, 1996), which is applicable to all Lockheed Model L-1011-385 series airplanes, was published in the *Federal Register* on April 1, 1997 (62 FR 15429). That action proposed to supersede AD 96-07-13 to continue to require various types of inspections to detect fatigue cracking of certain areas of the rear spar caps, web, skin, and certain fastener holes; and repair or modification, if necessary. That action also proposed to reduce the repetitive inspection interval for all of the currently required inspections, except for the X-ray inspections. Additionally, it proposed to revise the terminating modification provision for some airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Three commenters support the proposed rule.

Require Compliance With New Service Information

One commenter, the manufacturer, requests that the proposal require compliance with Revision 6 of Lockheed L-1011 Service Bulletin 093-57-203, rather than Revision 5, as cited in the proposal. The manufacturer advises that Revision 6 of the service bulletin contains significant clarification and simplifies the proposed inspections, which will enable operators to perform the proposed inspections in a correct and efficient manner. Further, the manufacturer notes that Revision 6 of the service bulletin contains no additional procedures to be accomplished, and therefore would pose no additional burden on any operator.

The FAA concurs. Since the issuance of the proposed rule, the FAA has reviewed and approved Lockheed L-1011 Service Bulletin 093-57-203,

Revision 6, dated August 18, 1997. The FAA finds that accomplishment of certain requirements of this AD in accordance with Revision 5 of the subject service bulletin adequately addresses the unsafe condition. Therefore, the FAA has revised the final rule to require compliance in accordance with Revision 6 of the service bulletin.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 236 Model L-1011-385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 118 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 96-07-13 will take approximately 64 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. [This work hour estimate assumes that X-ray inspections are done of both upper and lower caps, and that the ultrasonic inspection indicates cracking in each of five bolt holes (per wing), thus requiring subsequent bolt hole eddy current inspections to confirm crack findings. The estimate includes inspections of both wings.] Based on these figures, the cost impact on U.S. operators of the proposed inspection requirements of this AD is estimated to be \$453,120, or \$3,840 per airplane, per inspection cycle. This new AD action adds no new costs to affected operators.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-9563 (61 FR 16379, April 15, 1996), and by adding a new airworthiness directive (AD), amendment 39-10526, to read as follows:

98-10-14 Lockheed: Amendment 39-10526. Docket 96-NM-257-AD. Supersedes AD 96-07-13, Amendment 39-9563.

Applicability: All Model L-1011-385-1, L-1011-385-3, L-1011-385-1-14, and L-1011-385-1-15 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the rear spar due to the problems associated with fatigue cracking, which could result in extensive damage to the wing and fuel spillage, accomplish the following:

Note 2: The inspections and follow-on actions described in Lockheed L-1011 Service Bulletin 093-57-203 include:

- repetitive X-ray (radiographic) inspections;
- repetitive eddy current surface scan inspections;
- bolt hole eddy current inspections at various locations;
- repetitive ultrasonic inspections in conjunction with eddy current surface scan inspections (for certain airplanes); and
- repetitive low frequency eddy current ring probe inspections.

(a) For airplanes on which the inspections and follow-on actions required by AD 96-07-13, amendment 39-9563, have been initiated prior to the effective date of this AD: At the times specified in Table I of Lockheed L-1011 Service Bulletin 093-57-203, Revision 4, dated March 27, 1995; or within 6 months after May 15, 1996 (the effective date of AD 96-07-13, amendment 39-9563), whichever occurs later: Perform initial inspections and various follow-on actions to detect cracking in the areas specified in, at the times indicated in, and in accordance with Lockheed L-1011 Service Bulletin 093-57-203, Revision 4, dated March 27, 1995, or Revision 6, dated August 18, 1997.

(1) If no cracking is found, repeat the repetitive inspections and follow-on actions in accordance with Table I of the Lockheed service bulletin. As of the effective date of this AD, these actions shall be repeated at the times specified only in accordance with Table I of Revision 6 of the Lockheed service bulletin. To avoid unnecessary grounding of airplanes that are currently being inspected in accordance with the schedule specified in Revision 4 of the Lockheed service bulletin, the next repeated action that is to be accomplished after the effective date of this AD shall be performed at the time specified in Table I of Revision 6 of the Lockheed service bulletin, or within 30 days after the effective date of this AD, whichever occurs later.

(2) If any finding of cracking is confirmed, prior to further flight, accomplish paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD.

(i) Repair the cracked area in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Thereafter, perform the repetitive inspections and follow-on actions as specified in paragraph (a)(1) of this AD.

(ii) Repair the rear spar upper and lower caps between IWS 228 and 346 in accordance with the Lockheed Model L-1011 Structural Repair Manual. Thereafter, perform the repetitive inspections and follow-on actions required by paragraph (a)(1) of this AD. Or

(iii) Modify the rear spar upper and lower caps and web in accordance with the applicable Lockheed service bulletin listed in this paragraph, below. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

—Lockheed L-1011 Service Bulletin 093-57-184, Revision 7, dated December 6, 1994, as amended by Change Notification 093-57-184, R7-CN1, dated August 22, 1995; or

—Lockheed L-1011 Service Bulletin 093-57-196, Revision 6, dated December 6, 1994, as amended by Change Notification 093-57-196, R6-CN1, dated August 22, 1995; or

—Lockheed L-1011 Service Bulletin 093-57-215, dated April 11, 1996. Modification of Model L-1011-385-3 airplanes must be accomplished in accordance with this service bulletin.

Note 3: Accomplishment of the modification specified in paragraph (a)(2)(iii) of this AD prior to the effective date of this AD in accordance with the following Lockheed service bulletins, as applicable, is considered to be in compliance with this paragraph:

- Lockheed L-1011 Service Bulletin 093-57-184, Revision 6, dated October 28, 1991;
- Lockheed L-1011 Service Bulletin 093-57-184, Revision 7, dated December 6, 1994;
- Lockheed L-1011 Service Bulletin 093-57-196, Revision 5, dated October 28, 1991; or
- Lockheed L-1011 Service Bulletin 093-57-196, Revision 6, dated December 6, 1994.

(b) For airplanes on which the inspections and follow-on actions required by AD 96-07-13, amendment 39-9563, have not been initiated prior to the effective date of this AD: At the times specified in Table I of Lockheed L-1011 Service Bulletin 093-57-203, Revision 6, dated August 18, 1997; or within 30 days after the effective date of this AD; whichever occurs later: Perform initial inspections and various follow-on actions to detect cracking in the areas specified in, at the times indicated in, and in accordance with Lockheed L-1011 Service Bulletin 093-57-203, Revision 6, dated August 18, 1997.

(1) If no cracking is found: Repeat the inspections and follow-on actions in accordance with the times specified in Table I of Revision 6 of the Lockheed service bulletin.

(2) If any finding of cracking is confirmed: Prior to further flight, accomplish either paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this AD.

(i) Repair the cracked area in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Thereafter, perform the repetitive inspections and follow-on actions at the times specified in Table I of Revision 6 of the Lockheed service bulletin. Or

(ii) Repair the rear spar upper and lower caps between IWS 228 and 346 in accordance with the Lockheed Model L-1011 Structural Repair Manual. Thereafter, perform the repetitive inspections and follow-on actions at the times specified in Table I of Revision 6 of the Lockheed service bulletin. Or

(iii) Modify the rear spar upper and lower caps and web in accordance with paragraph (a)(2)(iii) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add

comments and then send it to the Manager, Atlanta ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) Except as provided by paragraph (a)(2)(i), (a)(2)(ii), (b)(2)(i), and (b)(2)(ii) of this AD, the actions shall be done in accordance with Lockheed L-1011 Service Bulletin 093-57-203, Revision 4, dated March 27, 1995; Lockheed L-1011 Service Bulletin 093-57-203, Revision 6, dated August 18, 1997; Lockheed L-1011 Service Bulletin 093-57-184, Revision 7, dated December 6, 1994, as amended by Change Notification 093-57-184, R7-CN1, dated August 22, 1995; Lockheed L-1011 Service Bulletin 093-57-196, Revision 6, dated December 6, 1994, as amended by Change Notification 093-57-196, R6-CN1, dated August 22, 1995; and Lockheed L-1011 Service Bulletin 093-57-215, dated April 11, 1996.

(1) The incorporation by reference of Lockheed L-1011 Service Bulletin 093-57-203, Revision 6, dated August 18, 1997; and Lockheed L-1011 Service Bulletin 093-57-215, dated April 11, 1996, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Lockheed L-1011 Service Bulletin 093-57-184, Revision 7, dated December 6, 1994, as amended by Change Notification 093-57-184, R7-CN1, dated August 22, 1995; Lockheed L-1011 Service Bulletin 093-57-196, Revision 6, dated December 6, 1994, as amended by Change Notification 093-57-196, R6-CN1, dated August 22, 1995; and Lockheed L-1011 Service Bulletin 093-57-203, Revision 4, dated March 27, 1995, was approved previously by the Director of the Federal Register as of May 15, 1996 (61 FR 16379, April 15, 1996).

(3) Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Systems and Flight Test Branch, ACE-116A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 19, 1998.

Issued in Renton, Washington, on May 7, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 98-12808 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-54-AD; Amendment 39-10525; AD 98-10-13]

RIN 2120-AA64

Airworthiness Directives; Dornier Model 328-100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328-100 series airplanes, that requires modification of the aft avionics fan. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the aft avionics fan due to inadequate cooling airflow through the fan housing, which could result in failure of the avionics equipment.

DATES: Effective June 19, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 19, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D-82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328-100 series airplanes was published in the Federal Register on March 12, 1998 (63 FR 12042). That action proposed to require modification of the aft avionics fan.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required modification, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be \$27,000, or \$540 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98-10-13 Dornier Luftfahrt GMBH: Amendment 39-10525. Docket 98-NM-54-AD.

Applicability: Model 328-100 series airplanes, as listed in Dornier Service Bulletin SB-328-21-215, Revision 1, dated June 12, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the aft avionics fan due to inadequate cooling airflow through the fan housing, which could result in failure of the avionics equipment, accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the aft avionics fan in accordance with Dornier Service Bulletin SB-328-21-215, Revision 1, dated June 12, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Dornier Service Bulletin SB-328-21-215, Revision 1, dated June 12, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D-82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directive 97-158, dated June 19, 1997.

(e) This amendment becomes effective on June 19, 1998.

Issued in Renton, Washington, on May 7, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-12806 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-AGL-62]

Establishment of Class E Airspace; Martin, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Martin, SD. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 32 has been developed for Martin Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled airspace with a 6.7-mile radius for Martin Municipal Airport.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 12, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Martin, SD (63 FR 12044). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Martin, SD, to accommodate aircraft executing the proposed GPS Rwy 32 SIAP at Martin Municipal Airport by creating controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL SD E5 Martin, SD [New]

Martin Municipal Airport, SD (Lat. 43°09'56" N., long. 101°42'46" W.)

That airspace extending upward from 700 feet above the surface within a 6.7 mile radius of the Martin Municipal Airport.

Issued in Des Plaines, Illinois on May 4, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–12996 Filed 5–14–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 98–AGL–12]

Establishment of Class E Airspace; Nauvoo, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Nauvoo, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27 has been developed for Cedar Ridge Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled

airspace with a 6.3-mile radius for Cedar Ridge Airport.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:**History**

On Thursday, March 12, 1998, the FAA proposed to amend 14 CFR Part 71 to modify Class E airspace at Nauvoo, IL (63 FR 12053). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment objecting to the proposal was received. An official at the Iowa State Penitentiary, Fort Madison, IA, stated "We have no objection to the proposal, except aircraft should not be allowed in the airspace above the Iowa State penitentiary, 31 Ave. G, Fort Madison, Iowa 52627. This is a maximum security prison at the east end of the City of Fort Madison." The Cedar Ridge Airport is approximately five (5) nautical miles south-southwest of the penitentiary. The penitentiary actually underlies the Class E airspace for Fort Madison, IA, which is excluded from the Class E airspace at Nauvoo, IL. The ground track of the proposed GPS Rwy 27 SIAP, including the missed approach ground track, keeps aircraft executing this SIAP a minimum of five (5) nautical miles south-southwest of the penitentiary. This airspace proposal does not affect the controlled airspace above the penitentiary.

Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Nauvoo, IL, to accommodate aircraft executing

the proposed GPS Rwy 27 SIAP at Cedar Ridge Airport by creating controlled airspace at the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL IL E5 Nauvoo, IL [New]

Nauvoo, Cedar Ridge Airport, IL (Lat. 40°32'35" N., long. 91°19'51" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Cedar Ridge Airport, excluding the airspace within the Keokuk, IA, and Fort Madison, IA, Class E airspace areas.

Issued in Des Plaines, Illinois on May 4, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–12993 Filed 5–14–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 98–AGL–10]

Modification of Class E Airspace; Casey, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Casey, IL. A Nondirectional Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 4, Amendment 7, has been developed for Casey Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:**History**

On Thursday, March 12, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Casey, IL (63 FR 12051). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14

CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Casey, IL, to accommodate aircraft executing the proposed NDB Rwy 4 SIAP, Amendment 7, at Casey Municipal Airport by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL IL E5 Casey, IL [Revised]

Casey Municipal Airport, IL (Lat. 39°18'08" N, long. 88°00'12" W.)

That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of the Casey Municipal Airport.

Issued in Des Plaines, Illinois on May 4, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–12992 Filed 5–14–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 98–AGL–14]

Establishment of Class E Airspace; Lakeview, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Lakeview, MI. A VHF Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 09, has been developed for Lakeview Airport-Griffith Field. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled airspace with a 7.6-mile radius for this airport.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:**History**

On Thursday, March 12, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Lakeview, MI (63 FR 12054). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Lakeview, MI, to accommodate aircraft executing the proposed VOR Rwy 09 SIAP at Lakeview Airport-Griffith Field by creating controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL MI E5 Lakeview, MI [New]

Lakeview Airport-Griffith Field, MI (Lat. 43°27'08" N., long. 85°16'00" W.)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of the Lakeview Airport-Griffith Field.

Issued in Des Plaines, Illinois on May 4, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–12991 Filed 5–14–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–8]

Modification of Class E Airspace; Portland, IN

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This action modifies Class E Airspace at Portland, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27, has been developed for Portland Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action adds an extension to the east for the existing controlled airspace Portland Municipal Airport.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 12, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Portland,

IN (63 FR 12049). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Portland, IN, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP at Portland Municipal Airport by adding an eastern extension to the existing controlled airspace at the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL IN E5 Portland, IN [Revised]

Portland Municipal Airport, IN (Lat. 40°27'03" N., long. 84°59'24" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Portland Municipal Airport; and within 4.0 miles either side of the 092° bearing from the airport, extending from the 7.0-mile radius to 10.5 miles east of the airport.

Issued in Des Plaines, Illinois on May 4, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–12990 Filed 5–14–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–5]

Modification of Class E Airspace; Milwaukee, WI

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Milwaukee, WI. A VHF Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 32, has been developed for John H. Batten Field. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. In addition, a review of the Class E airspace at Milwaukee, WI, determined a

modification was required to accommodate rising terrain for diverse departures at General Mitchell International Airport, Waukesha County Airport, and Lawrence J. Timmerman Airport. This action increases the radii of the existing controlled airspace for these airports.

EFFECTIVE DATES: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 12, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Milwaukee, WI (63 FR 12045). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

The amendment to 14 CFR part 71 modifies Class E airspace at Milwaukee, WI, to accommodate aircraft executing the proposed VOR Rwy 32 SIAP, at John H. Batten Field by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. In addition, the radii of the controlled airspace for General Mitchell International Airport, Waukesha County Airport, and Lawrence J. Timmerman Airport will be increased because of an airspace review conducted for these airports. The areas will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which

frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL WI E5 Milwaukee, WI [Revised]

General Mitchell International Airport, WI (Lat. 42°56'49" N., long. 87°53'49" W.)

John H. Batten Field, WI

(Lat. 42°45'40" N., long. 87°48'50" W.)

Waukesha County Airport, WI

(Lat. 43°02'28" N., long. 88°14'13" W.)

Lawrence J. Timmerman Airport, WI

(Lat. 43°06'39" N., long. 88°02'04" W.)

That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of the General Mitchell International Airport, and within an 8.1-mile radius of John H. Batten Field, and within a 7.5-mile radius of the Waukesha County Airport, and within an 8.9-mile radius of the Lawrence J. Timmerman Airport.

Issued in Des Plaines, Illinois on May 4, 1998.
 Maureen Woods,
 Manager, Air Traffic Division
 [FR Doc. 98-12989 Filed 5-14-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-7]

Establishment of Class E Airspace; Wautoma, WI

AGENCY: Federal Aviation Administration (FAA), DOT.
 ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Wautoma, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31, has been developed for Wautoma Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled airspace with a radius of 8.3 miles for the Wautoma Municipal Airport.
EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.
SUPPLEMENTARY INFORMATION:

History

On Thursday, March 12, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Wautoma, WI (63 FR 12048). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997,

which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establish Class E airspace at Wautoma, WI to accommodate aircraft executing the proposed GPS Rwy 31 SIAP, at Wautoma Municipal Airport by creating controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL WI E5 Wautoma, WI [New]

Wautoma Municipal Airport, WI
 (lat. 44°02'30" N., long. 89°18'16" W.)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of the Wautoma Municipal Airport.

Issued in Des Plaines, Illinois on May 4, 1998.

Maureen Woods,
 Manager, Air Traffic Division.
 [FR Doc. 98-12988 Filed 5-14-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-9]

Modification of Class E Airspace; Millersburg, OH

AGENCY: Federal Aviation Administration (FAA), DOT.
 ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Millersburg, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27, has been developed for Holmes County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace Holmes County Airport.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 12, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Millersburg, OH (63 FR 12050). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Millersburg, OH, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP at Holmes County Airport by increasing the radius of the existing controlled airspace for the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends as 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL OH E5 Millersburg, OH [Revised]

Millersburg, Holmes County Airport, OH
 (lat. 40°32'14" N., long. 81°57'16" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Holmes County Airport; and within 2.7 miles either side of the 085° bearing from the airport, extending from the 6.7-mile radius to 10.5 miles east of the airport, and within 1.8 miles either side of the 236° bearing from the airport, extending from the 6.7-mile radius to 8.0 miles southwest of the airport.

Issued in Des Plaines, Illinois May 4, 1998.

Maureen Woods,
 Manager, Air Traffic Division.
 [FR Doc. 98-12987 Filed 5-14-98; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-11]

Modification of Class E Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.
 ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Chicago, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 08, has been developed for Lake In The Hills Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the area of the existing controlled airspace for Lake In The Hills Airport.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 12, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Chicago, IL (63 FR 12052). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Chicago, IL, to accommodate aircraft executing the proposed GPS Rwy 08 SIAP, at Lake In The Hills Airport by increasing the area of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL IL E5 Chicago, IL [Revised]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at

lat. 42°29'00" N, long. 88°30'00" W, to lat. 42°29'00" N, long. 88°03'00" W, to lat. 42°40'00" N, long. 88°03'00" W, to lat. 42°43'00" N, long. 87°57'00" W, to lat. 42°30'00" N, long. 87°35'00" W, to lat. 41°55'00" N, long. 87°19'00" W, to lat. 41°38'00" N, long. 87°19'00" W, to lat. 41°33'00" N, long. 87°10'00" W, to lat. 41°28'00" N, long. 87°14'00" W, to lat. 41°22'00" N, long. 87°40'00" W, to lat. 41°22'00" N, long. 88°30'00" W, to lat. 41°41'00" N, long. 88°30'00" W, to lat. 41°53'00" N, long. 88°50'00" W, to lat. 42°01'00" N, long. 88°50'00" W, to lat. 42°01'00" N, long. 88°40'00" W, to lat. 42°15'00" N, long. 88°40'00" W, to lat. 42°15'00" N, long. 88°30'00" W, to lat. 42°21'00" N, long. 88°30'00" W, to the point of beginning.

Issued in Des Plaines, Illinois on May 4, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–12986 Filed 5–14–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–15]

Establishment of Class E Airspace; Watford City, ND, and modification of Class E Airspace, Williston, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Watford City, ND, and modifies Class E airspace at Williston, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 30 has been developed for Watford City Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL), and controlled airspace extending upward from 1200 AGL, is needed to contain aircraft executing the approach. This action creates controlled airspace with a radius of 7.4 miles for the Watford City Airport, and enlarges the controlled airspace at Williston, ND, to the southeast to accommodate the approach. **EFFECTIVE DATE:** 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AEA–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 12, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Watford City, ND and modify Class E airspace at Williston, ND (63 FR 12055). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL and upward from 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997,

which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Watford City, ND, and to modifies Class E airspace at Williston, ND, to accommodate aircraft executing the proposed GPS Rwy 30 SIAP at Watford City Municipal Airport by creating controlled airspace at the airport and modifying controlled airspace nearby the airport. Controlled airspace extending upward from 700 to 1200 feet AGL, and controlled airspace extending upward from 1200 feet AGL, is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points,

dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL ND E5 Watford City, ND [New]

Watford City Airport, ND

(Lat. 47°47'45" N., long. 103°15'13" W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Watford City Airport.

AGL ND E5 Williston, ND [Revised]

Williston, Sloulin Field International

Airport, ND

(Lat. 48°10'41" N., long. 103°38'33" W.)

Williston VORTAC

(Lat. 48°15'12" N., long. 103°45'02" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Sloulin Field International Airport, and within 4.0 miles each side of the Williston VORTAC 317° radial, extending from the 6.6-mile radius to 12.7 miles northwest of the airport, and within 4.0 miles each side of the 124° bearing from the airport, extending from the 6.6-mile radius to 13.4 miles southeast of the airport, and within 3.8 miles each side of the Williston VORTAC 135° radial extending from the 6.6-mile radius to 12.3 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within a 21.8-mile radius of the Williston VORTAC extending from the Williston VORTAC 172° radial clockwise to V–430, and within 39.2 miles miles of the Williston VORTAC extending from V–430 clockwise to V–71, and within a 60.0-mile radius of the Williston VORTAC extending from V–71 clockwise to the 172° radial of the Williston VORTAC, excluding those portions within Federal Airways.

Issued in Des Plaines, Illinois on May 4, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–12985 Filed 5–14–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–01]

Amendment to Class E Airspace; Wrightstown, NJ

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700

feet Above Ground Level (AGL) at Wrightstown, NJ. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Allaire Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 14 SIAP to Allaire Airport.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On January 27, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Wrightstown, NJ, was published in the **Federal Register** (63 FR 11853). The development of a GPS RWY 14 SIAP for Allaire Airport requires the amendment of the Class E airspace at Wrightstown, NJ. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operations and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporate by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Wrightstown, NJ, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 14 SIAP to Allaire Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA NJ E5 Wrightstown, NJ [Revised]

Lakewood Airport, NJ

(lat. 40°04'00" N., long. 74°10'40" W.)

McGuire AFB, NJ

(lat. 40°00'56" N., long. 74°35'37" W.)

Trenton-Robbinsville airport and within 5.7 miles north and 4 miles south of the Robbinsville Airport, NJ

(lat. 40°12'50" N., long. 74°36'07" W.)

Allaire Airport, NJ

(lat. 40°11'13" N., long. 74°07'30" W.)

Robert J. Miller Airpark, NJ

(lat. 39°55'39" N., long. 74°17'33" W.)

Flying W Airport, NJ

(lat. 39°56'00" N., long. 74°48'24" W.)

Lakehurst (Navy) TACAN

(lat. 40°02'13" N., long. 74°21'12" W.)

Colts Neck VOR/DME

(lat. 40°18'42" N., long. 74°09'36" W.)

Coyle VORTAC
(lat. 39°49'02"N., long. 74°25'54"W.)
Robbinsville VORTAC
(lat. 40°12'08"N., long. 74°29'43"W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lakewood Airport and within a 10.5-mile radius of McGuire AFB and within a 11.3-mile radius of the Lakehurst (Navy) TACAN extending clockwise from the Lakehurst (Navy) Tacan 310° radial to the 148° radial and within 4.4 miles each side of the Coyle VORTAC 031° radial extending from the VORTAC to 11.3 miles northeast and within 2.6 miles southwest and 4.4 miles northeast of the Lakehurst (Navy) TACAN 148° radial extending from the TACAN to 12.2 miles southeast and within a 6.4-mile radius of Trenton-Robbinsville Airport and within 5.7 miles north and 4 miles south of the Robbinsville VORTAC 278° and 098° radials extending from 4.8 miles west to 10 miles east of the VORTAC and within a 6.7-mile radius of Allaire Airport and within 1.8 miles each side of the Colts Neck VOR/DME 167° radial extending from the Allaire Airport 6.7-mile radius to the VOR/DME and within 4 miles each side of the 312° bearing from the Allaire airport extending from the 6.7-mile radius of the airport to 9 miles northwest of the airport and within 9.5-mile radius of Flying W Airport and within a 6.5-mile radius of Robert J. Miller Air Park and within 1.3 miles each side of the Coyle VORTAC 044° radial extending from the 6.5-mile radius of Robert J. Miller Air Park to the VORTAC, excluding the portions that coincide with the Berlin, NJ, Princeton, NJ, Vincentown, NJ, Old Bridge, NJ, Matawan, NJ, and North Philadelphia, PA Class E airspace areas.

Issued in Jamaica, New York on May 6, 1998.

Franklin D. Hatfield,
Manager, Air Traffic Division, Eastern Region.
[FR Doc. 98-12984 Filed 5-14-98; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AEA-04]

Amendment to Class E Airspace; Downingtown, PA

AGENCY: Federal Aviation
Administration (FAA) DOT.
ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Shannon Memorial Field Airport, Downingtown, PA. All instrument procedures for the airport have been cancelled. The need for Class E airspace no longer exists for Instrument Flight Rules (IFR) operations at the airport. This action will result in the airspace reverting to Class G airspace.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT:
Mr. Francis Jordan, Airspace Specialist,
Airspace Branch, AEA-520, Air Traffic
Division, Eastern Region, Federal
Aviation Administration, Federal
Building # 111, John F. Kennedy
International Airport, Jamaica, New
York 11430; telephone: (718) 553-4521.
SUPPLEMENTARY INFORMATION:

History

On April 3, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove the Class E airspace extending upward from 700 feet above the surface at Shannon Memorial Field Airport, Downingtown, PA, was published in the *Federal Register* (63 FR 16451).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) removes Class E airspace at Downingtown, PA. The need for controlled airspace extending from 700 feet AGL at the Shannon Memorial Field Airport no longer exists. This area will be removed from the appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations from which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic

impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p.389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA PA E5, Downingtown, PA [Removed]

Issued in Jamaica, New York, on May 6, 1998.

Franklin D. Hatfield,
Manager, Air Traffic Division, Eastern Region.
[FR Doc. 98-12983 Filed 5-14-98; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N-0283]

Food Labeling; Nutrient Content Claims—General Provisions

AGENCY: Food and Drug
Administration, HHS.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations for nutrient content claims by revoking the requirement that the label or labeling of a food for which a nutrient content claim is made must bear a "referral statement" that directs consumers' attention to the panel on the label or labeling that bears nutrition

information. FDA is taking this action in response to section 305 of the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDA also is making some technical conforming amendments to the regulations.

DATES: The regulation is effective May 15, 1998, except for the amendment to § 101.13(q)(3)(iii) (21 CFR 101.13(q)(3)(iii)) that will be effective March 23, 1999. Written comments by June 15, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Hilario R. Duncan, Center for Food Safety and Applied Nutrition (HFS-24), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-8281.

SUPPLEMENTARY INFORMATION: On November 21, 1997, President Clinton signed into law FDAMA (Pub. L. 105-115). Section 305 of FDAMA amended section 403(r)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(2)(B)) to eliminate the requirement that referral statements be made on food labeling whenever nutrient content claims are made. Section 305 of FDAMA retained the requirement that there be disclosure statements when FDA determines that the food for which the nutrient content claim is to be made contains a nutrient at a level that increases to persons in the general population the risk of a disease or health related condition that is diet related, although section 305 of FDAMA changed how the disclosure statement should be worded. The act as amended by the Nutrition Labeling and Education Act of 1990 had previously mandated referral statements whenever nutrient content claims were made on the label or labeling of a food product.

FDA is revising § 101.13 (21 CFR 101.13) to reflect the statutory changes of FDAMA. The agency is doing so by removing the introductory text of § 101.13(g), which requires referral statements whenever nutrient content claims are made; by redesignating and amending § 103.13(g)(1), (g)(2), and (g)(3), which specify the size and placement of referral statements, as paragraphs (h)(4)(i), (h)(4)(ii), and (h)(4)(iii), respectively, to specify the size and placement of disclosure statements; by revising § 101.13(h)(1) to make the disclosure statement language conform to that required by Section 305 of FDAMA; and by making other conforming revisions.

Under amended section 403(r)(2)(B) of the act, and the conforming rule set forth in this document, affected food products are misbranded unless they contain the disclosure statement "See nutrition information for ____ content." This disclosure statement replaces the disclosure statement currently set forth in § 101.13(h), which states: "See [appropriate panel] for information about [nutrient requiring disclosure] and other nutrients." FDA does not believe that Congress intended that food producers immediately relabel their products to include the new disclosure statement, which would create an unnecessary economic burden on them, especially as the old disclosure statement is not false or misleading. Accordingly, FDA advises that, with respect to food products that are subject to the requirements of § 101.13(h), the agency intends at this time to exercise its enforcement discretion by refraining from taking regulatory action against them solely because they continue to use the disclosure statement "See [appropriate panel] for information about [nutrient requiring disclosure] and other nutrients." FDA encourages food producers to revise the labeling for their products that fall under the requirements of § 101.13(h) to include the new disclosure statement "See nutrition information for ____ content" as soon as possible but no later than the next scheduled redesign of the product's label or labeling. Finally, FDA advises that food producers may continue to use the referral statement previously required under § 101.13(g). Because that referral statement is not false or misleading, such a referral statement would not be prohibited under the act.

FDA is also taking this opportunity to correct an error that occurs in the current issue of the Code of Federal Regulations (CFR) in § 101.13(g)(1). In the *Federal Register* of August 12, 1997 (62 FR 43071), in the document entitled "Food and Cosmetic Labeling; Revocation of Certain Regulations," FDA revoked § 101.2(c)(1), (c)(2), and (c)(3) (21 CFR 101.2(c)(1); (c)(2), and (c)(3)) and redesignated remaining paragraphs (c)(4) and (c)(5) as paragraphs (c)(1) and (c)(2), respectively. In making this change, however, FDA inadvertently neglected to change the citation to § 101.2(c)(5) that appeared in § 101.13(g)(1). FDA is correcting that inadvertent omission in § 101.13. Additionally, in a document entitled "Food Labeling; General Requirements for Health Claims for Food" (see 58 FR 2478 at 2534, January 6, 1993), FDA inadvertently used the term "referral" instead of the preferred

term "disclosure", in issuing § 101.14(e)(3) (21 CFR 101.14(e)(3)). FDA is correcting that error in § 101.14(e)(3).

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has examined the economic implications of this final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of \$100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The agency finds that this final rule is not a significant rule as defined by Executive Order 12866. No analysis is required for this rule under the Regulatory Flexibility Act (5 U.S.C. 601-612) because, as discussed herein, FDA is issuing it without publishing a general notice of proposed rulemaking.

Finally, in accordance with the Small Business Regulatory Enforcement Fairness Act, the administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that this final rule is not a major rule for the purpose of congressional review.

FDA concludes that the labeling requirements in this final rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Rather, the labeling statements are "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

Because FDA is revoking a requirement (referral statements for all nutrient content claims) that was issued under legal authority that has been eliminated by Congress in FDAMA, FDA finds, for good cause, that notice and public procedure on this rule are unnecessary and, therefore, are not required under 5 U.S.C. 553.

Nonetheless, under 21 CFR 10.40(e), FDA is providing an opportunity for comment on whether the regulations set forth below should be modified or revoked.

Interested persons may, on or before June 15, 1998, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455, 21 U.S.C. 321, 331, 342, 343, 348, 371

2. Section 101.13 is amended by removing the introductory text of paragraph (g); by redesignating paragraphs (g)(1), (g)(2), and (g)(3) as paragraphs (h)(4)(i), (h)(4)(ii), and (h)(4)(iii), respectively and reserving paragraph (g); by removing the introductory text of paragraph (h); by revising paragraph (h)(1) and newly redesignated paragraphs (h)(4)(i), (h)(4)(ii), and (h)(4)(iii); in paragraphs (j)(2)(ii) and (p)(2) by removing the phrase "with paragraph (g)(1)" and adding in its place the phrase "with paragraph (h)(4)(i)"; by revising the second sentence in paragraph (q)(2) and the last sentence in paragraph (q)(3)(ii); in paragraph (q)(5)(i) by removing the phrase "in paragraphs (g) and (h)" and adding in its place the phrase "in paragraph (h)"; and in paragraph (q)(6) by removing the phrase "of paragraphs (b), (g), and (h)" and adding in its place the phrase "of paragraphs (b) and (h)" to read as follows:

§ 101.13 Nutrient content claims—general principles.

(h)(1) If a food, except a meal product as defined in § 101.13(l), a main dish product as defined in § 101.13(m), or food intended specifically for use by infants and children less than 2 years of

age, contains more than 13.0 g of fat, 4.0 g of saturated fat, 60 milligrams (mg) of cholesterol, or 480 mg of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference amount customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form), then that food must bear a statement disclosing that the nutrient exceeding the specified level is present in the food as follows: "See nutrition information for _____ content" with the blank filled in with the identity of the nutrient exceeding the specified level, e.g., "See nutrition information for fat content."

(4) * * *

(i) The disclosure statement "See nutrition information for _____ content" shall be in easily legible boldface print or type, in distinct contrast to other printed or graphic matter, and in a size no less than that required by § 101.105(i) for the net quantity of contents statement, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the disclosure statement shall be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch, unless the package complies with § 101.2(c)(2), in which case the disclosure statement may be in type of not less than one thirty-second of an inch.

(ii) The disclosure statement shall be immediately adjacent to the nutrient content claim and may have no intervening material other than, if applicable, other information in the statement of identity or any other information that is required to be presented with the claim under this section (e.g., see paragraph (j)(2) of this section) or under a regulation in subpart D of this part (e.g., see §§ 101.54 and 101.62). If the nutrient content claim appears on more than one panel of the label, the disclosure statement shall be adjacent to the claim on each panel except for the panel that bears the nutrition information where it may be omitted.

(iii) If a single panel of a food label or labeling contains multiple nutrient content claims or a single claim repeated several times, a single

disclosure statement may be made. The statement shall be adjacent to the claim that is printed in the largest type on that panel.

* * * * *

(q) * * *

(2) * * * Such claims are exempt from the requirements of section 403(r)(2) of the act (e.g., the disclosure statement also required by § 101.13(h)).

* * * * *

(3) * * *

(ii) * * * All such claims shall be accompanied by any disclosure statement required under paragraph (h) of this section.

* * * * *

§ 101.14 (Amended)

3. Section 101.14 *Health claims: general requirements* is amended in paragraph (e)(3), in the 15th line by removing the word "referral" and adding in its place the word "disclosure".

4. Section 101.54 is amended by revising paragraph (d)(2) to read as follows:

§ 101.54 Nutrient content claims for "good source," "high," "more," and "potency."

* * * * *

(d) * * *

(2) The disclosure shall appear in immediate proximity to such claim, be in a type size no less than one-half the size of the claim and precede any disclosure statement required under § 101.13(h) (e.g., "contains [x amount] of total fat per serving. See nutrition information for fat content").

* * * * *

§ 101.62 (Amended)

5. Section 101.62 *Nutrient content claims for fat, fatty acid, and cholesterol content of foods* is amended in paragraphs (d)(1)(ii)(D), (d)(2)(iii)(C), (d)(2)(iv)(C), (d)(4)(ii)(C), and (d)(5)(ii)(C) by removing the phrase "the referral statement required in § 101.13(g)" wherever it appears and by adding in its place the phrase "any disclosure statement required under § 101.13(h)".

* * * * *

Dated: May 6, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98-12833 Filed 5-14-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 524

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for two approved new animal drug applications (NADA's) from Mallinckrodt Veterinary Operations Inc., to Schering-Plough Animal Health Corp.

EFFECTIVE DATE: May 15, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0213.

SUPPLEMENTARY INFORMATION: Mallinckrodt Veterinary Operations, Inc., Mundelein, IL 60060, has informed FDA that it has transferred the ownership of and all rights and interests in the approved NADA's 102-020 (dichlorophene and toluene capsules) and 111-349 (selenium disulfide suspension) to Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083. The agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to remove the sponsor name for Mallinckrodt Veterinary Operations, Inc., because the firm no longer is the holder of any approved NADA's. The agency is also amending 21 CFR 520.580 and 524.2101 to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 524

Animal drugs. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 (Amended)

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Mallinckrodt Veterinary Operations, Inc."; and in the table in paragraph (c)(2) by removing the entry for "015563".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.580 (Amended)

4. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing "015563," and numerically adding "000061,".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

5. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.2101 (Amended)

6. Section 524.2101 *Selenium disulfide suspension* is amended in paragraph (c) by removing "015563" and adding in its place "000061".

Dated: May 4, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98-12960 Filed 5-14-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Florfenicol Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for a revised warning against use of

florfenicol injectable solution in veal calves.

EFFECTIVE DATE: May 15, 1998.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1644.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 1982, Union, NJ 07083-1982, is sponsor of NADA 141-063 Nuflor® Injectable Solution (300 milligrams florfenicol per milliliter) for veterinary prescription use for intramuscular treatment of cattle for bovine respiratory disease. Schering-Plough filed a supplemental NADA providing for a revised warning against use of the product in veal calves. The supplemental NADA is approved as of April 2, 1998, and the regulations are amended by revising 21 CFR 522.955(d)(1)(iii) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.955 (Amended)

2. Section 522.955 *Florfenicol solution* is amended in paragraph (d)(1)(iii) by removing the sentences

"Not for use in veal calves, calves under 1 month of age, or calves being fed an all milk diet. Use may cause violative tissue residues to remain beyond the withdrawal time." and adding in its place "A withdrawal period has not been established in prurminating calves. Do not use in calves to be processed for veal."

Dated: May 4, 1998.
Andrew J. Beaulieu,
Acting Director, Office of New Animal Drug
Evaluation, Center for Veterinary Medicine.
[FR Doc. 98-12961 Filed 5-14-98; 8:45 am]
BILLING CODE 4150-01-F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.
ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in June 1998.

EFFECTIVE DATE: June 1, 1998.
FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (For TTY/TDD

users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during June 1998.

For annuity benefits, the interest assumptions will be 5.60 percent for the first 25 years following the valuation date and 5.25 percent thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These annuity and lump sum interest assumptions are unchanged from those in effect for May 1998.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that

the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during June 1998, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.
In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 56 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1 , i_2 , . . . , and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_1	for $t =$	i_2	for $t =$	i_3	for $t =$
June 1998	.0560	1-25	.0525	>25	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
56	06-1-98	07-1-98	4.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 8th day of May 1998.

David M. Strauss,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98-12911 Filed 5-14-98; 8:45 am]
BILLING CODE 7708-01-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05-98-032]

Drawbridge Operation Regulations; Pocomoke River

AGENCY: Coast Guard, DOT.
ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Route 675 (U.S. 13 Business Route) drawbridge across the Pocomoke River, mile 15.6, in Pocomoke City, Maryland. Beginning May 17, 1998, through June 16, 1998, this deviation requires three-hours advance notice for drawbridge openings from 9 a.m. through 3 p.m. on weekdays, and from 7 p.m. on Fridays through 6 a.m. on Mondays. This deviation is necessary to allow the contractor to paint the bridge.

DATES: This deviation is effective from May 17, 1998 through June 16, 1998.

FOR FURTHER INFORMATION: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION: Textar Painting Corporation, a contractor for the Maryland Department of Transportation, requested the Coast Guard to approve a temporary deviation from the normal operation of the bridge in order to accommodate painting the

structure. To paint the bridge, a barge will be used. Three-hours advance notice will be required to open the bridge during the requested time periods.

This deviation will not significantly disrupt vessel traffic, since little exists at this location, and mariners may still transit the bridge provided the three-hours advance notice is given. The regulations at 33 CFR 117.569(b) require the draw to open on signal, except between November 1 and March 31 the draw must open only if at least five hours advance notice is given.

From May 17, 1998, through June 16, 1998, this deviation requires three-hours advance notice for openings of the Route 675 Pocomoke River Drawbridge (U.S. 13 Business route) from 9 a.m. through 3 p.m. on weekdays and from 7 p.m. on Fridays through 6 a.m. on Mondays.

Dated: April 30, 1998.
Roger T. Rufe, Jr.,
Vice Admiral, U.S. Coast Guard Commander,
Fifth Coast Guard District.
[FR Doc. 98-13015 Filed 5-14-98; 8:45 am]
BILLING CODE 4910-15-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-6013-9]

Protection of Stratospheric Ozone; Methyl Bromide

AGENCY: Environmental Protection Agency.

ACTION: Notice of clarification.

SUMMARY: This document clarifies a previous statement by EPA about the applicability of a Clean Air Act labeling rule to methyl bromide as a "class I ozone-depleting substance." The labeling rule requires products

"containing" or "manufactured with" a class I ozone-depleting substance to be labeled as such. This document makes clear that any product, including any agricultural product, that "contains" or is "manufactured with" methyl bromide is subject to the labeling rule's requirements. At the same time, EPA is not aware of any agricultural product that "contains" or is "manufactured with" methyl bromide, as those terms are defined by the labeling rule. In particular, raw food commodities grown for the fresh food market and produced with the use of methyl bromide do not meet the definitions of products "containing" or "manufactured with" methyl bromide and are thus not subject to the labeling rule's requirements.

DATES: The effective date of this Notice of Clarification is May 15, 1998.

ADDRESSES: Comments and data relating to the methyl bromide rule are contained in Air Docket A-92-13, U.S. Environmental Protection Agency, OAR Docket and Information Center, Room M-1500, 401 M Street, S.W., Washington, D.C. 20460. Comments and data relating to the labeling rule are contained in Air Docket A-91-60, at the same location. Each of the dockets may be inspected between 8 a.m. and 5:30 p.m. on weekdays. The telephone number for the dockets is (202) 260-7548; the fax number is (202) 260-4400. As provided in 40 CFR, Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Carol Weisner at (202) 564-9193 or fax (202) 565-2096, Stratospheric Protection Division, USEPA, Mail Code 6205J, 401 M Street, SW., Washington, DC 20460. Overnight mail (Fed-Ex, Express Mail, etc.) should be sent to our 501 3rd Street, NW., Washington, DC 20001 street address.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Stratospheric Ozone Protection

Added in 1990, Title VI of the Clean Air Act ("CAA" or "Act") establishes a comprehensive program to protect stratospheric ozone, which helps shield the earth from harmful ultraviolet radiation. In particular, it requires EPA to list substances that have a significant potential to deplete stratospheric ozone as class I ozone-depleting substances, and to require their phaseout by a specified date. It also provides for a multi-faceted regulatory program to minimize the use and release of ozone-depleting substances prior to their phaseout.

B. Labeling Rule

Section 611 of the Act prohibits the introduction into interstate commerce of any product containing a class I substance or manufactured with a process using a class I substance, unless it bears a warning statement indicating that the product contains or is manufactured with ozone-depleting substances. To implement this and other provisions of section 611, EPA issued a final rule on February 11, 1993, at 58 FR 8136, which established labeling requirements for, among other things, products containing, or manufactured with a process that uses, a class I ozone-depleting substance (the "labeling rule.")

The labeling rule defines a "product containing" a class I substance as a "product including, but not limited to, containers, vessels, or pieces of equipment, that physically holds a controlled substance [i.e., a class I or II ozone-depleting substance] at the point of sale to the ultimate consumer which remains within the product." The rule also defines "manufactured with a controlled substance" as follows:

[T]he manufacturer of the product itself used a controlled substance directly in the product's manufacturing, but the product itself does not contain more than trace quantities of the controlled substance at the point of introduction into interstate commerce. The following situations are excluded from the meaning of the phrase "manufactured with" a controlled substance:

- (1) Where a product has not had physical contact with the controlled substance;
- (2) Where the manufacturing equipment or the product has had physical contact with a controlled substance in an intermittent manner, not as a routine part of the direct manufacturing process;
- (3) Where the controlled substance has been transformed, except for trace quantities; or
- (4) Where the controlled substance has been completely destroyed.

The current labeling requirements are codified at 40 CFR Part 82, Subpart E (including sections 82.100-82.124).¹

Section 82.102(a) of the labeling rule specifically provides that, in the case of any substance designated as a class I substance after February 11, 1993, the labeling requirements are applicable beginning one year after the designation of such substance, unless the rulemaking designating such substance provides otherwise.

C. Methyl Bromide Rule

EPA issued a final rule on December 10, 1993, at 58 FR 65018, pursuant to sections 602 and 604 of the CAA, listing methyl bromide as a class I ozone-depleting substance and establishing a phaseout date for its production and importation (the "methyl bromide rule.") Methyl bromide is used as a pesticide and fumigant.

The labeling rule became applicable to methyl bromide on January 1, 1995, one year following the effective date of its designation as a class I substance. In the preamble to the methyl bromide rule, EPA discussed the applicability of the labeling rule to methyl bromide. With respect to containers of methyl bromide, EPA stated that such containers would be subject to the labeling rule. With respect to agricultural products, EPA "determined that activities involved in growing, harvesting, storing and transporting food are part of an agricultural process that falls outside the intent of Congress to require labeling on products 'manufactured with' a class I or II substance" (58 FR at 65043, col. 3.) Based on this determination, EPA concluded that "products treated with methyl bromide would not require labeling." Id.

In reaching its conclusion, EPA recognized that "the general purpose of alerting consumers that certain goods were produced in a manner that may cause harm to stratospheric ozone could apply to certain agricultural products for which methyl bromide is used." Id. The Agency nevertheless concluded that the labeling requirement applicable to products "manufactured with" a class I substance was reasonably interpreted

¹ In a January 19, 1995, rulemaking (60 FR 4010), the labeling rule was revised. Among other revisions, the definition of "manufactured with" was amended to indicate that a product "manufactured with" a controlled substance does not contain more than trace quantities of the controlled substance. The definition was also amended to expand the situations that are excluded from the phrase "manufactured with" to include where a product has physical contact with a controlled substance only in an intermittent manner and not as a routine part of the direct manufacturing process and where the controlled substance has been completely destroyed.

not to apply to agricultural products because "such products are grown and not manufactured." Id. EPA cited Webster's Ninth New Collegiate Dictionary (1983) for the ordinary definition of the word "manufacture" as making something from raw materials by hand or by machinery, which would not include the growing of fruits and vegetables. The Agency also stated that it believed Congress did not anticipate labeling of raw agricultural products given the practical difficulty of labeling such products, many of which are sold without any packaging at all.

D. Litigation

In February, 1994, the National Resources Defense Council, together with other parties, challenged this as well as other aspects of the methyl bromide rule by filing a petition in the U.S. Court of Appeals for the D.C. Circuit. EPA is issuing this clarification pursuant to a settlement agreement in that case.

II. Clarification

The need for this clarification arises out of the breadth of some of the Agency's statements taken out of context. In isolation, statements that "products treated with methyl bromide" and "agricultural products" do not require labeling could be interpreted to mean that any agricultural product is exempt from the labeling rule, regardless of whether and how methyl bromide was used in its production. EPA's discussion of the applicability of the labeling rule to methyl bromide addressed specific activities and types of products. Read in context, the Agency's statements are properly limited to the specific activities and products it addressed. The purpose of this notice is to confirm the limits of those statements and clarify the extent to which the labeling rule is applicable to methyl bromide.

As noted above, EPA addressed specific activities and products in its discussion of the labeling rule's applicability to methyl bromide. The Agency determined that "activities involved in growing, harvesting, storing and transporting food" do not constitute manufacturing under the labeling rule, and that Congress did not intend raw agricultural products such as fruits and vegetables to be labeled. From those determinations, EPA concluded that "products treated with methyl bromide would not require labeling."

EPA's conclusion is appropriate for the specific activities and products addressed. Growing and harvesting, as the Agency explained, do not constitute manufacturing, since they do not fit the

ordinary definition of manufacturing as making something from raw materials by hand or by machinery. Indeed, agricultural crops are generally considered "raw materials" that may or may not be made into something else by hand or by machine. (See, for example, the definition of "raw material" in Webster's Ninth New Collegiate Dictionary (1990): "wheat * * * is a raw material for the flour mill.") As a result, use of methyl bromide as a pesticide in growing a crop does not make the harvested crop a product "manufactured with" methyl bromide.

Generally speaking, use of methyl bromide as a fumigant in storing or transporting also does not make a product "manufactured with" methyl bromide. The labeling rule's definition of "manufactured with" specifies that the manufacturer of the product itself uses a class I substance "directly in the product's manufacturing." Storing and transporting are generally not part of a direct manufacturing process, although they may precede or follow such a process. By themselves, storing and transporting also do not meet the ordinary definition of manufacturing, since neither entails making something from raw materials by hand or by machine. Instead, they simply provide for the safekeeping or movement of a product, either raw or manufactured.

Further, the labeling rule requires that a product be labeled by the time it enters interstate commerce (section 82.124.) If a product has not been "manufactured with" methyl bromide by the time it enters interstate commerce, it does not become "manufactured with" methyl bromide by virtue of being treated with methyl bromide in storage or shipment following its entry into interstate commerce. Section 82.104(n) of the rule defines the possible points of entry into interstate commerce as the "release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance." Obviously, these points of entry will often precede storage or shipment of a product in the United States.

In the methyl bromide rule preamble, EPA also discussed the applicability of the labeling rule to particular products. The particular products addressed by EPA—raw agricultural products, including fruits and vegetables—result from particular activities that EPA determined do not constitute manufacturing—growing, harvesting, storing and transporting. It thus follows

that they are not products "manufactured with" methyl bromide.

For the reasons given above, EPA believes that its discussion in the methyl bromide rulemaking of the labeling rule's applicability to methyl bromide was appropriate for the specific activities and products addressed. However, some members of the public have raised concerns that the discussion may be read to imply that an agricultural product is not subject to the labeling rule even when it contains or is manufactured with methyl bromide. The point of today's notice is to remove any such inadvertent implication.

The labeling rule applies to any product that "contains" or is "manufactured with" a class I ozone-depleting substance. Methyl bromide has been classified as a class I ozone-depleting substance. Therefore, any product containing or manufactured with methyl bromide is subject to the labeling rule's requirements in the same way as a product containing or manufactured with any other class I substance. For the reasons stated above, use of methyl bromide in growing, harvesting, storing or shipping a crop does not constitute "manufacturing with" methyl bromide and so would not subject the crop to the labeling requirement for products "manufactured with" a class I substance. But use of methyl bromide in the direct manufacturing process of a product would subject that product to the requirement.

EPA, however, is not aware of any agricultural product that "contains" or is "manufactured with" methyl bromide, as those terms are defined by the labeling rule. The definition of "product containing" specifies that the product "physically holds a controlled substance at the point of sale." To EPA's knowledge, no agricultural product so holds methyl bromide, nor is it likely that any would, given the volatility of methyl bromide. One of methyl bromide's advantages as a pesticide and fumigant is that it leaves virtually no residues on or in products treated with it. In any event, section 82.106(b)(1) of the labeling rule exempts from its requirements products containing no more than trace quantities of a controlled substance remaining as a residue where the controlled substance serves no useful purpose in or for the product itself. With respect to containers of methyl bromide itself, EPA made clear in the methyl bromide rule that such containers are subject to the labeling requirement for products "containing" a class I substance.

As noted above, EPA is also not aware of any agricultural products

"manufactured with" methyl bromide. EPA has issued several applicability determinations related to the labeling rule. Five of them addressed whether particular uses of a class I substance constitute "manufacturing with" the substance. EPA found that these particular uses did not constitute "manufacturing with" a class I substance because the class I substance did not have physical contact with the product or was used in an intermittent, non-routine manner (which section 82.104(o)(2) of the rule exempts from the definition of "manufactured with.") These applicability determinations are available in the docket for the labeling rule.

Methyl bromide is currently used as a post-harvest pest control tool for raisins. Grapes are typically allowed to dry in the field and are harvested as raisins. They are then typically sold to a packer who treats the raisins with methyl bromide when held in storage. This use of methyl bromide would not require that the raisins be labeled. Storage of the raisins is not manufacturing, nor is it a part of any manufacturing process. Moreover, storage generally occurs after the raisins have been introduced into interstate commerce.

In the case of other dried fruits and nuts, methyl bromide is used in a similar manner. To EPA's knowledge, methyl bromide is not a direct part of any dried fruit or nut "manufacturing" process, but is used as a storage or pre-shipment pest control tool. Since these uses are not part of a direct manufacturing process, labeling is not required.

Methyl bromide is also used to treat empty food processing facilities for pest control. An example of such use is the periodic fumigation of flour mills when they are empty. In these cases, food products are typically removed from the facility prior to the methyl bromide treatment, which takes place on an as-needed basis (typically once or twice a year, depending on pest levels.) The methyl bromide used in these cases has no physical contact with any food products that are manufactured in the facility, so labeling is not required. Even if food products were present in the facility during the methyl bromide treatment, labeling would not be required if the treatment is done on an intermittent or infrequent basis.

EPA may not be aware of the details of all of the processes involving use of methyl bromide. There may be uses that are part of the direct manufacturing process for a product and that are not otherwise exempt from the labeling rule's definition of "manufactured

with." Any such use of methyl bromide would subject the resulting product to the labeling rule. Similarly, any product "containing" methyl bromide, as that phrase is defined by the labeling rule, is subject to the rule.

III. Submission to Congress and the General Accounting Office

The Congressional Review Act ("Act"), 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule.

IV. Additional Information

For more information on methyl bromide, please contact the Stratospheric Protection Hotline at 1-800-296-1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST). **Federal Register** publications can be ordered from the Government Printing Office Order Desk (202) 783-3238; the citation is the date of publication. Each of the final rules referred to in this Notice may also be retrieved from EPA's Ozone Depletion World Wide Web site, at <http://www.epa.gov/docs/ozone/>.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 8, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98-12851 Filed 5-14-98; 8:45 am]

BILLING CODE 8560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300640; FRL-5784-8]

RIN 2070-AB78

Tebufenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of tebufenozide in or on peppers (bell and non-bell). This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on peppers (bell and non-bell).

This regulation establishes a maximum permissible level for residues of tebufenozide in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on September 30, 1999.

DATES: This regulation is effective May 15, 1998. Objections and requests for hearings must be received by EPA on or before July 14, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300640], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300640], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300640]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy.,

Arlington, VA, (703) 308-9367, e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the insecticide tebufenozide, in or on peppers (bell and non-bell) at 0.5 part per million (ppm). This tolerance will expire and is revoked on September 30, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum published in the **Federal Register** of November 13, 1996 (61 FR 58135) (FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions

exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Tebufenozide on Peppers (Bell and Non-bell) and FFDCA Tolerances

The applicant indicates that emergency conditions exist because beet armyworm (BAW) populations have demonstrated resistance to registered insecticides. The survival rate of the pest has been further compounded by a mild winter and unusually dry, hot weather which has increased. Naturally occurring epizootics require cool, wet conditions to have their greatest impact on this pest. The applicant also notes that there are unusually large numbers of BAW and damage due to BAW in peppers could result in a 50% yield loss without the use of an effective pesticide. EPA has authorized under FIFRA section 18 the use of tebufenozide on peppers (bell and non-bell) for control of beet armyworm in Texas. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of tebufenozide in or on peppers (bell and non-bell). In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public

comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on September 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on peppers (bell and non-bell) after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether tebufenozide meets EPA's registration requirements for use on peppers (bell and non-bell) or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of tebufenozide by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Texas to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for tebufenozide, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. **Threshold and non-threshold effects.** For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects

(the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. **Differences in toxic effect due to exposure duration.** The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure

that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute", "short-term", "intermediate term", and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated

considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup

(non-nursing infants (<1 year old)) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of tebufenozide on peppers (bell and non-bell) at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed below.

1. *Acute toxicity.* No acute dietary risk endpoint was identified by the Agency, therefore this risk assessment is not required.

2. *Short- and intermediate-term toxicity—i. Short-term.* NOEL = 1,000 milligrams/kilogram/day (mg/kg/day). Concerning short-term dermal toxicity, the Agency noted that in a 21-day dermal toxicity study in rats there was no systemic toxicity observed at 1,000 mg/kg/day, the highest dose tested (HDT). This risk assessment is not required.

ii. *Intermediate-term.* The Agency did not identify an intermediate-term toxicology endpoint. Additionally, because there is no intermediate exposure scenario with this section 18 request, an intermediate-term risk assessment is not required.

3. *Chronic toxicity.* EPA has established the RfD for tebufenozide at 0.018 mg/kg/day. This RfD is based on a 1-year feeding study in dogs with a NOEL of 1.8 mg/kg/day. An uncertainty factor of 100 was used to account for both the interspecies extrapolation and intraspecies variability. The lowest-effect-level (LEL) of 8.7 mg/kg/day was based on hematopoietic findings (decreased red blood cells, hematocrit, hemoglobin levels, and increased heinz bodies, MCV, MCH, reticulocytes, and platelets).

4. *Carcinogenicity.* Tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," chemical by the Agency.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. A permanent tolerance has been established for the residues of tebufenozide in/on walnuts at 0.1 ppm. A permanent tolerance at 1.0 ppm has also previously been established for imported apples. Time limited tolerances have been established on apples and on associated animal commodities, cottonseed at 0.2 ppm, leafy vegetables (except brassica) at 5.0

ppm, brassica (cole) leafy vegetables at 5.0 ppm, sugar beets at 0.3 ppm, sugarcane at 0.03 ppm, and turnip tops at 5.0 ppm. A time limited tolerance for peppers (bell and non-bell) had been established at 0.5 ppm, however this tolerance expired on February 28, 1998. Risk assessments were conducted by EPA to assess dietary exposures and risks from tebufenozide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Since an acute dietary endpoint has not been identified in the toxicology database, an assessment of acute dietary risk was not conducted for this section 18 request.

ii. *Chronic exposure and risk.* In conducting this exposure assessment, EPA has made very conservative assumptions -- 100% of sugarcane and all other commodities having tebufenozide tolerances will contain tebufenozide residues and those residues would be at the level of the tolerance -- which result in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment. The existing tebufenozide tolerances (published, pending, and including the necessary section 18 tolerances) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

Population Subgroup	TMRC food (mg/kg/day)	%RfD
U.S. Population - 48 States	0.005516	31%
Nursing Infants (<1 year old)	0.007384	41%
Non-Nursing Infants (<1 year old)	0.014348	80%
Children (1-6 years old)	0.010646	59%
Children (7-12 years old)	0.007595	42%
Non-Hispanic Blacks	0.006063	34%
Non-Hispanic Others	0.007358	41%
Western Region	0.006033	34%

The subgroups listed above are: (a) the U.S. population (48 States); (b) those for infants and children; and, (c) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 States).

For chronic dietary risk to tebufenozide, the population subgroup with the largest percentage of the RfD occupied is non-nursing infants (<1 year old) at 80% of the RfD.

2. *From drinking water.* Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. There is no established Maximum Contaminant Level (MCL) for residues of tebufenozide in drinking water. No drinking water Health Advisories have been issued for tebufenozide. There is no entry for tebufenozide in the "Pesticides in Groundwater Database" (EPA 734-12-92-001, September 1992).

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the

potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause tebufenozide to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with tebufenozide in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for any indoor or outdoor residential uses; therefore, no non-dietary residential exposure is anticipated.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better

determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Since no acute endpoint was identified for tebufenozide, no acute risk assessment is required.

2. *Chronic risk.* Using the conservative exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary (food only) exposure to tebufenozide will utilize 31% of the RfD for the U.S. population. The Agency generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water, EPA does not expect the aggregate exposure (food and water) to exceed 100% of the RfD. Since there are no non-dietary non-occupational exposure scenarios for tebufenozide,

there are no additional exposure from those routes. The Agency concludes that there is a reasonable certainty that no harm will result from aggregate chronic exposure to tebufenozide residues.

3. *Short- and intermediate-term risk.* Since there were no toxicity endpoints identified by the Agency for tebufenozide and no indoor/outdoor residential uses, no short- or intermediate-term risk assessment was required.

D. Aggregate Cancer Risk for U.S. Population

Since tebufenozide has been classified as a Group E chemical, "no evidence of carcinogenicity for humans," no cancer risk assessment was required.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies— a. Rats.* In a developmental toxicity study in rats, the maternal (systemic) NOEL

was 250 mg/kg/day. The LOEL was 1,000 mg/kg/day, based on decreased body weight and food consumption. The developmental (pup) NOEL was > 1,000 mg/kg/day (HDT).

b. *Rabbits.* In a developmental toxicity study in rabbits, the maternal and developmental NOELs were >1,000 mg/kg/day (HDT).

iii. *Reproductive toxicity study— Rats.* In a multigeneration reproductive toxicity study in rats, the parental (systemic) NOEL was 0.85 mg/kg/day. Splenic pigmentation changes and extramedullary hematopoiesis occurred at the LOEL of 12.1 mg/kg/day (Female, Male; F₀, F₁). In addition to these effects, decreased body weight gain and food consumption occurred at 171.1 mg/kg/day. The reproductive (pup) NOEL was 125 mg/kg/day. The reproductive LOEL of 171.1 mg/kg/day, based on a slight increase in the number of pregnant females that either did not deliver or had difficulty and had to be sacrificed (F₁). Additionally at the LOEL, in F₁ dams, the length of gestation increased and implantation sites decreased significantly. Finally, the number of pups per litter decreased on Lactation Day (LD) 4 to 90% of the controls for the F₁ and on LD's 0 and 4 to 80% for the second generation.

iv. *Pre- and post-natal sensitivity— a. Pre-natal sensitivity.* The developmental NOELs of >1,000 mg/kg/day (HDT) from the developmental toxicity studies in rats and rabbits demonstrate that there is no developmental (prenatal) toxicity present for tebufenozide. Additionally, these developmental NOELs are greater than 500-fold higher than the NOEL of 1.8 mg/kg/day from the 1-year feeding study in dogs which was the basis of the RfD.

b. *Post-natal sensitivity.* In the reproductive toxicity study in rats, the reproductive NOEL (12.1 mg/kg/day) is 14-fold higher than the parental NOEL (0.85 mg/kg/day) and indicates that post-natal toxicity in the reproductive studies occurs only in the presence of significant parental toxicity. These developmental and reproductive studies indicate that tebufenozide does not have additional post-natal sensitivity for infants and children in comparison to other exposed groups.

2. *Acute risk.* Since no acute endpoint was identified for tebufenozide, no acute risk assessment is required.

3. *Chronic risk.* Using the conservative exposure assumptions described above, HED has concluded that the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of tebufenozide ranges from 41% for nursing infants (< 1 year old) up to 80% for non-nursing

infants (< 1 year old). Despite the potential for exposure to tebufenozide in drinking water, HED does not expect the aggregate exposure (food and water) to exceed 100% of the RfD. Taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, HED concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

V. Other Considerations

A. Metabolism In Plants

The metabolism of tebufenozide in/on plants is adequately understood. The residue of concern is the parent compound, tebufenozide *per se*, as specified in 40 CFR 180.482.

B. Analytical Enforcement Methodology

The Rohm and Haas Analytical Method TR 34-93-119 (HPLC/UV), should be adequate to determine residues of tebufenozide *per se* in/on peppers.

C. Magnitude of Residues

Residues of tebufenozide *per se* are not expected to exceed 0.5 ppm in or on peppers as a result of this section 18 use.

D. International Residue Limits

There are currently no CODEX, Canadian, or Mexican listings for tebufenozide residues, therefore there are no harmonization issues for this action.

VI. Conclusion

Therefore, the tolerance is established for residues of tebufenozide in peppers (bell and non-bell) at 0.5 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 14, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections

and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP-300640] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that

there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General

Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 5, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

Commodity	Parts per million	Expiration/revocation date
Peppers	0.5	9/30/99

[FR Doc. 98-12718 Filed 5-14-98; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 97-218]

Forfeiture Proceedings; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (47 CFR Part 1), which were published in the **Federal Register** of August 14, 1997, (62 FR 43474). The regulations related to Practice and Procedure for Guidelines for Assessing Forfeitures.

DATES: Effective on May 15, 1998.

FOR FURTHER INFORMATION CONTACT: Deborah Hannah, Compliance and Information Bureau, (202) 418-1168, email dhannah@fcc.gov.

SUPPLEMENTARY INFORMATION:

Background

The final rule regulations that are the subject of this correction amended the Commission's rules to incorporate a note to the rule the Commission's policy statement regarding forfeitures.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 1

Penalties.

Accordingly, 47 CFR Part 1 is corrected by making the following correcting amendment:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j); unless otherwise noted.

§ 1.80 [Corrected]

2. In § 1.80, in note to paragraph (b)(4), page 112, the first column, line 27, remove the figure "\$27,500" and add, in its place, "\$275,000".

Federal Communications Commission.

Pamela D. Hairston,

Chief, Compliance Division.

[FR Doc. 98-12904 Filed 5-14-98; 8:45 am]

BILLING CODE 6712-01-F

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.482, in paragraph (b) by revising the entry for "Peppers" in the table to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

(b) * * *

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-16; RM-9213]

Radio Broadcasting Services; Three Rivers, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses a petition filed by Live Oak Broadcasting proposing the allotment of Channel 265A to Three Rivers, Texas. See 63 FR 07360, February 13, 1998. Petitioner failed to file comments indicating its continuing interest in applying for Channel 265A at Three Rivers, Texas, if allotted. Therefore, we have dismissed the petition for rule making by Live Oak Broadcasting. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98-16, adopted April 22, 1998, and released May 1, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of

this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-12907 Filed 5-14-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-205; RM-9161]

Radio Broadcasting Services; Perry, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 228A to Perry, Florida, as that community's second local service in response to a petition filed by Frank Vela. See 62 FR 51824, October 3, 1997. The coordinates for Channel 228A at Perry are 30-07-00 and 83-34-26. There is a site restriction .8 kilometers (.5 miles) east of the community. With this action, this proceeding is terminated. A filing window for Channel 228A at Perry, Florida, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97-205, adopted April 16, 1998, and released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 228A at Perry.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-12905 Filed 5-14-98; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-188; RM-9137]

Radio Broadcasting Services; Macon, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Team Broadcasting Company, Inc., allots Channel 263A to Macon, Mississippi, as the community's first local FM service. See 62 FR 46708, September 4, 1997. Channel 263A can be allotted to Macon in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) west of the community. The coordinates for Channel 263A at Macon, Mississippi, are 33-06-37 NL and 88-39-59 WL. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 15, 1998. A filing window for Channel 263A at Macon, Mississippi, will not be opened at this time. Instead the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97-188, adopted April 22, 1998, and released May 1, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW,

Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Macon, Channel 263A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-12909 Filed 5-14-98; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF AGRICULTURE

48 CFR Parts 401, 402, 403, 407, 408, 409, 411, 416, 419, 422, 424, 425, 432, 434, 436, and 452

[AGAR Case 96-03]

RIN 0599-AA00

Office of Procurement and Property Management; Agriculture Acquisition Regulation; Miscellaneous Amendments

AGENCY: Office of Procurement and Property Management, USDA
ACTION: Direct final rule

SUMMARY: The Department of Agriculture is publishing technical corrections to the Agriculture Acquisition Regulation (AGAR) as a final rule. We use the direct final rule process to make noncontroversial changes to the AGAR. We are amending the AGAR to reflect changes in the Federal Acquisition Regulation through Federal Acquisition Circular 97-01 and to correct minor errors and omissions in the reissuance of the AGAR published on October 15, 1996 (61 FR 53645-53677).

EFFECTIVE DATE: This rule will be effective on July 14, 1998, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before June 15, 1998. If adverse comments are received, the Department will publish a timely

withdrawal of the rule in the Federal Register.

ADDRESSES: Please submit any adverse comments, or a notice of intent to submit adverse comments, in writing to U.S. Department of Agriculture, Office of Procurement and Property Management, Procurement Policy Division, STOP 9303, 1400 Independence Avenue SW, Washington, DC 20250-9303.

FOR FURTHER INFORMATION CONTACT:

Joseph J. Daragan, (202) 720-5729.

SUPPLEMENTARY INFORMATION:

I. Background

II. Dates

III. Procedural Requirements

- A. Executive Order Nos. 12866 and 12988
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act
- D. Small Business Regulatory Enforcement Fairness Act

IV. Electronic Access Addresses

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. The AGAR is being revised to reflect changes in the Federal Acquisition Regulation through Federal Acquisition Circular 97-01 and to correct minor errors and omissions in the AGAR. In this rulemaking document, the Department of Agriculture is making corrections to the AGAR as a direct final rule, since the corrections are non-controversial and unlikely to generate adverse comment. The corrections are clerical or procedural in nature, and do not affect the public.

The following changes have been made to the rule.

(a) AGAR 401.170 is added to inform users about the USDA Departmental Administration Procurement Homepage.

(b) AGAR 402.101 is amended to change the title of the Senior Procurement Executive's organization.

(c) AGAR 403.104-5, 422.608, 422.608-4, 425.203, and 425.204 have been removed to reflect amendments to the FAR.

(d) AGAR 403.104-11, 416.404, 416.404-2, and 416.405 have been redesignated 403.104-10, 416.405, 416.405-2, and 416.406, respectively, to reflect amendments to the FAR.

(e) The title of AGAR subpart 408.7 is amended to refer to the "severely disabled" instead of the "severely handicapped".

(f) The definition of "debaring official" in AGAR 409.403 is amended to clarify the authority of the Executive Vice President, Commodity Credit

Corporation (CCC) to conduct suspension or debarment actions related to CCC commodity contracts. This amendment reflects suspension and debarment authority conferred on CCC by 7 CFR 1407.

(g) AGAR 411.171 and 411.404 have been revised to reflect changes to the numbering of six clauses referenced in these sections.

(h) AGAR 419.602-3 and 425.202 have been revised to reflect amendments to the FAR.

(i) The schedule for submission of subcontract award data to the Office of Small and Disadvantaged Business Utilization by USDA agencies has been changed, and AGAR 419.201-73 is amended accordingly.

(j) The citation to the definition of "major system" in the FAR is corrected to conform to an amendment to the FAR. AGAR 434.001 is revised to cite the definition at FAR 2.101.

(k) AGAR part 436 is revised to remove subpart 436.3 and to redesignate 436.302 as 436.213-2 to reflect an amendment to the FAR.

(l) AGAR 436.575, Maximum workweek—construction schedule, is revised to add a reference to FAR clause 52.236-15, Schedules for Construction Contracts.

(m) Clauses 452.211-1 through 452.211-6 are redesignated 452.211-70 through 452.211-75, respectively, to conform to the numbering scheme established by FAR 1.303. Clause 452.232-1 likewise is redesignated 452.232-70 to conform to this numbering system.

II. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

A work plan was prepared for this regulation and submitted to the Office of Management and Budget pursuant to Executive Order No. 12866. The rule has been determined to be not significant for the purposes of Executive Order No. 12866. Therefore, the rule has not been reviewed by the Office of Management and Budget. This rule has been reviewed in accordance with Executive Order No. 12988, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601-611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. The

corrections to the AGAR do not affect the way in which USDA conducts its acquisitions or otherwise interacts with the public. USDA certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR Part 1320.

D. Small Business Regulatory Enforcement Fairness Act

This final rule has been submitted to each House of Congress and the Comptroller General in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.*

IV. Electronic Access Addresses

You may send electronic mail (E-mail) to JDARAGAN@USDA.GOV, or contact us via fax at (202) 720-8972, if you would like additional information about this rule, or if you wish to submit comments.

List of Subjects in 48 CFR Parts 401, 402, 403, 407, 408, 409, 411, 416, 419, 422, 424, 425, 432, 434, 436, and 452

For the reasons set out in the preamble, 48 CFR Chapter 4 is amended as set forth below:

1. The authority citation for parts 401, 402, 403, 407, 408, 409, 411, 416, 419, 422, 424, 425, 432, 434, 436 and 452, continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

2.-3. Section 401.170 is added to read as follows:

401.170 Electronic access to regulatory information.

The USDA Departmental Administration Procurement Homepage provides access to the AGAR, AGAR amendments (circulars), AGAR Advisories, and other USDA procurement policy and guidance in electronic form. The Internet address for the Procurement Homepage is URL <http://www.usda.gov/da/procure.html>.

402.101 [Amended]

4. In section 402.101 in the definition of *Senior Procurement Executive (SPE)*,

remove the words "Director, Procurement and Property Management, Policy Analysis and Coordination Center" and add, in their place, "Director, Office of Procurement and Property Management".

403.104-5 [Removed]

5. Section 403.104-5 is removed and reserved.

403.104-11 [Redesignated as 403.104-10]

6. Section 403.104-11 is redesignated as 403.104-10.

7.-8. Newly designated section 403.104-10 is amended by revising the heading and paragraph (b) to read as follows:

403.104-10 Violations or possible violations.

(b) Heads of contracting activities (HCA's) or their designees who receive information concerning any violation or possible violation of the Act shall take action in accordance with FAR 3.104-10(b).

407.503 [Amended]

9. In paragraph (b)(4) of section 407.503, remove the word "activity" and add, in its place, the word "activity's".

PART 408—[AMENDED]

10. In Part 408, remove the word "Handicapped" wherever it appears and add, in its place, the word "Disabled".

PART 409—[AMENDED]

11. Section 409.403 is revised to read as follows:

409.403 Definitions.

Debaring official. Pursuant to the Secretary's delegations of authority in 7 CFR 2.24, the Senior Procurement Executive (SPE) is designated as the debaring official (Department Debaring Officer) with the following exceptions:

(a) For commodity contracts awarded on behalf of the Commodity Credit Corporation (CCC), the Executive Vice President, CCC, or his designee is designated as the debaring official pursuant to 7 CFR part 1407.

(b) For contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c), the Department Debaring Officer has delegated debaring authority to the Agricultural Marketing Service (AMS).

PART 411—[AMENDED]

12. Section 411.171 is revised to read as follows:

411.171 Solicitation provisions and contract clauses.

(a) Contracting officers shall insert the provision at 452.211-70, Brand Name or Equal, in solicitations, other than those for construction, where "brand name or equal" purchase descriptions are used.

(b) Contracting officers shall insert the clause at 452.211-71, Equal Products Offered, in solicitations, other than those for construction, where the provision at 452.211-70 is included.

(c) Contracting officers shall insert the clause at 452.211-72, Statement of Work/Specifications, when the description (statement of work) or specification(s) is included in Section J of the solicitation.

(d) Contracting officers shall insert the clause at 452.211-73, Attachment to Statement of Work/Specifications, when there are attachments to the description (statement of work) or specifications.

13. Section 411.404 is revised to read as follows:

411.404 Contract clauses.

(a) The contracting officer shall insert the clause at 452.211-74, Period of Performance, when it is necessary to specify a period of performance, beginning on the date of award, date of receipt of notice of award, or a specified date.

(b) The contracting officer shall insert the clause at 452.211-75, Effective Period of the Contract, when it is necessary to specify the effective period of the contract.

PART 416—[AMENDED]

14. In subpart 416.4, sections 416.404, 416.404-2, and 416.405 are redesignated 416.405, 416.405-2, and 416.406, respectively.

PART 419—[AMENDED]

15. Section 419.201-73 is amended by revising paragraph (b) to read as follows:

419.201-73 Reports.

(b) The following dates must be adhered to in regard to the reporting of subcontract award data.

SF-294 Reports.

Frequency: Twice a Year.
Cut-off date (Reporting Period Ending): March 31.
Date Due at Contracting Activity: April 30.
Cut-off date (Reporting Period Ending): September 30.
Date Due at Contracting Activity: October 30.

SF-295 Reports.

Frequency: Once a Year.
Cut-off date (12 Month-Period Ending): September 30.
Date Due at OSD/BU: October 30.

16. Section 419.602-3 is revised to read as follows:

§ 419.602-3 Resolving differences between the agency and the Small Business Administration.

The HCA is authorized to appeal the issuance of a COC to SBA Headquarters as provided by FAR 19.602-3(a).

422.608 [Removed]

17. Section 422.608 is removed and reserved.

422.608-4 [Removed]

18. Section 422.608-4 is removed.

424.202 [Redesignated as 424.203]

19. Section 424.202 is redesignated as section 424.203.

PART 425—[AMENDED]

20.-21. Section 425.202 is revised to read as follows:

425.202 Policy.

(a) The SPE shall make the determination prescribed in FAR 25.202(a)(3).

(b) If a contracting officer proposes that the use of a particular domestic construction material should be waived for a contract on the grounds that its use would be impracticable, the contracting officer shall submit a proposed determination with supporting information through the HCA to the SPE for approval or disapproval.

425.203 [Removed]

425.204 [Removed]

22. Sections 425.203 and 425.204 are removed and reserved.

432.111 [Amended]

23. In section 432.111, remove "452.232-1" and add, in its place, "452.232-70".

434.001 [Amended]

24. In section 434.001, in the introductory text, remove "34.001" and add, in its place, "2.101".

PART 436—[AMENDED]

25.-26. Sections 436.213 and 436.213-2 are added to read as follows:

436.213 Special procedures for sealed bidding in construction contracting.

436.213-2 Presolicitation notices.

The authority to waive a presolicitation notice is restricted to the HCA.

Subpart 436.3—[Removed]

27. Subpart 436.3 is removed and reserved.

28. Section 436.575 is revised to read as follows:

436.575 Maximum workweek-construction schedule.

The contracting officer shall insert the clause at 452.236-75, Maximum Workweek-Construction Schedule, if the clause at FAR 52.236-15 is used and the contractor's work schedule is restricted by access to the facility or must be coordinated with the schedule of contract administration personnel.

452.211-1—452.211-6 [Redesignated as 452.211-70—452.211-75]

29.—30. Sections 452.211-1 through 452.211-6 are redesignated sections 452.211-70 through 452.211-75, respectively.

452.232-1 [Redesignated as 452.232-70]

31. Section 452.232-1 is redesignated as 452.232-70.

Done at Washington, D.C., this 7th day of May, 1998.

W.R. Ashworth,
Director, Office of Procurement and Property Management.

[FR Doc. 98-12841 Filed 5-14-98; 8:45 am]

BILLING CODE 3410-XE-P

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Parts 426 and 452

[AGAR Case 96-01]

RIN 0599-AA00

Agriculture Acquisition Regulation; Preference for Selected Biobased Products

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Agriculture Acquisition Regulation (AGAR) to establish policy and procedures for set-asides and preferences for products developed with assistance provided by the Alternative Agricultural Research and Commercialization Corporation (AARCC). This amendment is needed to implement the set-asides and preferences described in section 1665 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 5909). USDA will use these new policies and procedures to increase its acquisition of AARCC supported products.

DATES: This rule is effective July 14, 1998.

FOR FURTHER INFORMATION CONTACT: J.R. Holcombe, Jr., (202) 720-8484.

SUPPLEMENTARY INFORMATION:

I. Background

II. Analysis of Comments

III. Procedural Requirements

- A. Executive Order Nos. 12866 and 12988.
- B. Regulatory Flexibility Act.
- C. Paperwork Reduction Act.
- D. Small Business Regulatory Enforcement Fairness Act

IV. Electronic Access Addresses

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. This rule amends the AGAR to establish acquisition preferences for selected biobased products; i.e., nonfood, nonfeed products made from agricultural and forestry materials and animal by-products.

The Alternative Agricultural Research and Commercialization Corporation (AARCC), a wholly-owned government corporation of the Department of Agriculture (USDA), provides financial assistance to private companies and other parties to commercialize biobased products. Section 1665 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5909), added by section 729 of the Federal Agriculture Improvement and Reform Act of 1996 (Section 1665), authorizes Federal executive agencies to establish set-asides and preferences for biobased products that have been commercialized with assistance provided by AARCC.

In a Notice of Proposed Rulemaking (62 FR 52081, October 6, 1997), USDA announced that this proposed amendment to the AGAR was available for public review and comment during a 60-day comment period. One commenter, a trade association, submitted comments on the proposed rule to USDA. We considered these comments and concluded that no changes to the proposed rule were required. In this rulemaking document, USDA is finalizing the proposed amendment to the AGAR.

We are making the following changes to the AGAR:

(a) We are adding AGAR part 426, Other Socioeconomic Programs, with a subpart 426.70, Preference for Selected Biobased Products. This subpart establishes policy and procedures for preferences and set-asides for products developed with AARCC assistance.

(b) Provisions 452.226-70, Preferred Products, 452.226-71, Set-aside for Mandatory Products, and 452.226-72,

Price Preference for Award, are added to AGAR part 452.

II. Analysis of Comments

We received one comment in response to the Notice of Public Rulemaking. A trade association commented that it would be appropriate to include biodiesel fuels and related biobased products on Preference Lists for biobased products established in accordance with AGAR 426.7005. To the extent that such fuels are products developed with assistance from AARCC (AARCC products), they would be eligible for inclusion on the Preference List. Biodiesel fuels that are not AARCC products are outside the scope of the rule and of Section 1665. Since establishing preferences for other than AARCC products is outside the scope of this rule, we did not make any change to the rule.

III. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

A work plan was prepared for this regulation and submitted to the Office of Management and Budget pursuant to Executive Order No. 12866. The rule has been determined to be not significant for the purposes of Executive Order No. 12866. Therefore, the rule has not been reviewed by the Office of Management and Budget. This rule has been reviewed in accordance with Executive Order No. 12988, Civil Justice Reform. The rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601-611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This final rule will not have an adverse impact on a substantial number of small businesses. In Fiscal Year 1997, USDA contract purchases from small business concerns totaled \$710 million, not including commodity purchases. USDA purchases of AARCC products are unlikely to exceed \$1 million annually, even with preferences. The anticipated dollar volume of AARCC product purchases thus would be less than 0.1% of the volume of products and services USDA now purchases from small businesses. Furthermore, AARCC product purchases will be made almost entirely from small businesses.

Our analysis of the impact of AARCC preferences suggests that the AARCC

preference program will benefit small business concerns. While Section 1665 does not require that all AARCC products be manufactured by or provided by small business concerns, the AARCC program concentrates on assistance for small businesses in the development of new commercial items. Almost all AARCC products eligible for set-asides or preferences under this rule will be provided by small businesses. The majority of businesses supported by AARCC are start-up companies. Thus, the overall impact of this final rule on small entities will be positive.

USDA solicited comments from small entities concerning the impact of the proposed rule in the Notice of Proposed Rulemaking publicizing the proposed rule for comment (62 FR 52081, October 6, 1997). No comments from small entities were received.

USDA certifies that this rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this rule. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., or OMB's implementing regulation at 5 CFR Part 1320.

D. Small Business Regulatory Enforcement Fairness Act

This rule has been submitted to each House of Congress and the Comptroller General in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, et seq.

IV. Electronic Access Addresses

You may send electronic mail (E-mail) to RHOLCOMBE@USDA.GOV, or contact us via fax at (202) 720-8972, if you would like additional information about this rule.

List of Subjects in 48 CFR Parts 426 and 452

Agriculture, Government procurement.

For the reasons set out in this preamble, the Department is amending Chapter 4 of Title 48 of the Code of Federal Regulations as follows:

1. Add Part 426 to read as follows:

PART 426—OTHER SOCIOECONOMIC PROGRAMS

Subpart 426.70—Preference for Selected Biobased Products

Sec.

- 426.7000 Scope of subpart.
- 426.7001 Applicability.
- 426.7002 Authority.
- 426.7003 Policy.
- 426.7004 Definitions.
- 426.7005 Preference list.
- 426.7006 Use of a set-aside or a price preference.
- 426.7007 Use of a technical evaluation preference.
- 426.7008 Identification of preferred products.
- 426.7009 Contract provisions.

Authority: 5 U.S.C. 301; 7 U.S.C. 5909; 40 U.S.C. 486(c).

Subpart 426.70—Preference for Selected Biobased Products

426.7000 Scope of subpart.

This subpart supplements the FAR to implement the set-asides and preferences described in section 1665 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 5909).

426.7001 Applicability.

This subpart applies to USDA and all of its components, including corporations.

426.7002 Authority.

Section 1665 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 5909) authorizes USDA to establish set-asides and other preferences for products that have been assisted by the Alternative Agricultural Research and Commercialization Corporation (AARCC).

426.7003 Policy.

(a) AARCC provides financial assistance to private companies and other parties to commercialize nonfood, nonfeed products made from agricultural and forestry materials and animal by-products (biobased products). Biobased products by their nature are environmentally friendly, and, in many instances, use agricultural material that otherwise would be waste. It is the policy of USDA to acquire AARCC products to the maximum extent practicable. This policy applies to all acquisitions of products regardless of dollar value.

(b) USDA shall satisfy its requirements for products the same or essentially the same as AARCC products by applying the preferences or set-asides described by this subpart.

426.7004 Definitions.

As used in this subpart—

AARCC products are products developed with assistance provided by AARCC as authorized by 7 U.S.C. 5905.

Acquisitions of products means an acquisition of one or more products for the use of the Government.

Acquisitions involving the use of products means an acquisition in which a Government contractor uses products in contract performance.

Price preference means an amount, expressed as a percentage, to be used in the evaluation of offers in an acquisition of products.

Set-aside means a requirement that vendors responding to a solicitation offer AARCC products.

Solicitation includes actions taken under parts 12, 13, 14, 15, and 36 of the Federal Acquisition Regulation.

Technical evaluation preference means the use of an award factor or subfactor in which the Government expresses its preference for AARCC products.

426.7005 Preference list.

(a) The Office of Procurement and Policy Management (OPPM) and AARCC jointly shall establish and maintain a Preference List for AARCC products.

(b) The Preference List shall contain the list of preferred products, source information for these products, the type(s) of preference to be applied, the beginning and ending dates for the use of preferences, and other terms established to define the preference given to a product.

(c) The Preference List will be publicized within USDA by means of AGAR Advisories (see 401.371). Copies of the Preference List may be obtained from OPPM. The Preference List will also be posted on the World Wide Web at the USDA Procurement Home Page.

426.7006 Use of a set-aside or a price preference.

Acquisitions for products the same or essentially the same as those products appearing on the Preference List shall either be set-aside exclusively or shall include a price preference for those products shown on the Preference List. The actual price preference to be used shall be determined by the requiring office but may not exceed the percentage shown on the Preference List.

426.7007 Use of a technical evaluation preference.

Acquisitions involving the use of products the same or essentially the same as those products appearing on the Preference List shall include a technical evaluation preference, if authorized in

assessment income from exceeding the amount necessary to administer the program for the 1998-99 fiscal period.

The Committee anticipates that assessment income during the 1997-98 fiscal period will be approximately \$100,000 higher than that estimated for its 1997-98 budget. This is due to a greater level of onion production than anticipated by the Committee during its 1997-98 budget deliberations. The Committee also anticipates that it will not expend \$1,146,916 as budgeted for the 1997-98 fiscal period, but rather will have expenditures totaling approximately \$950,000. At the time the 1997-98 fiscal period budget was recommended, the Committee had estimated that it would draw up to \$216,916 from its operating reserve. However, since current assessment income is greater than anticipated and expenditures are less than budgeted, the operating reserve may actually increase by the end of the fiscal period rather than decrease. As a consequence, the Committee has estimated that its operating reserve will approximate \$1,141,700 by June 30, 1998. Thus, to help ensure that the operating reserve does not exceed the maximum allowed by the order of approximately one fiscal period's expenditures, the Committee recommended that the assessment rate be decreased. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate operating reserve.

The major expenditures recommended by the Committee for the 1998-99 fiscal period include \$215,205 for administration, \$55,000 for production research, \$750,000 for market promotion including paid advertising, \$60,000 for export market development, and \$75,000 for marketing order contingencies. Budgeted expenses for these items in the 1997-98 fiscal period were \$206,716, \$55,200, \$750,000, \$60,000, and \$75,000, respectively.

The Committee has based its recommended assessment rate decrease on the 1998-99 crop estimate, the 1998-99 fiscal period expenditures estimate, as well as the current and projected balance of the operating reserve. The decreased assessment rate should provide \$828,000 in income, which, when combined with interest income of \$55,000 and operating reserve funds of \$272,205, would be adequate to cover budgeted expenses. As noted above, the Committee estimates it will have approximately \$1,141,700 in its operating reserve at the end of the current fiscal period, which should be

adequate to cover any income shortages. This amount is within the maximum permitted by the order of approximately one fiscal period's expenditures (\$958.44).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department and are locally published. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact this rule would have on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 260 onion producers in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of Idaho-Eastern Oregon onion handlers and producers may be classified as small entities.

This rule would decrease the assessment rate established for the Committee and collected from handlers for the 1998-99 and subsequent fiscal

periods from \$0.10 per hundredweight to \$0.09 per hundredweight of onions handled. Both the \$0.09 assessment rate and the 1998-99 budget of \$1,155,205 were unanimously recommended by the Committee at its April 2, 1998, meeting. The proposed assessment rate is \$0.01 lower than the rate currently in effect. The Committee recommended a decreased assessment rate to help ensure that the operating reserve does not exceed the maximum allowed by the order of approximately one fiscal period's expenditures. The anticipated crop of 9,200,000 hundredweight is approximately 400,000 hundredweight larger than the crop estimate used to establish the 1997-98 budget. The \$0.09 rate should provide \$828,000 in assessment income, which, when combined with interest income of \$55,000 and \$272,205 from the operating reserve, would be adequate to meet the 1998-99 fiscal period's budgeted expenses.

The Committee reviewed and unanimously recommended 1998-99 expenditures of \$1,155,205 which includes increases in administrative expenses, salaries, and committee expenses. Prior to recommending this budget, the Committee considered information from various sources, including the Idaho-Eastern Oregon Onion Executive, Research, Promotion and Export Development Committees. Alternative expenditure levels were discussed and rejected by these subcommittees, and ultimately by the full Committee, based upon the relative value of various research and promotion projects to the Idaho-Eastern Oregon onion industry.

The major expenditures recommended by the Committee for the 1998-99 fiscal period include \$215,205 for administration, \$55,000 for production research, \$750,000 for market promotion including paid advertising, \$60,000 for export market development, and \$75,000 for marketing order contingencies. Budgeted expenses for these items in the 1997-98 fiscal period were \$206,716, \$55,200, \$750,000, \$60,000, and \$75,000, respectively.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the F.O.B. price for the 1998-99 onion season could average \$13.10 per hundredweight of onions. Therefore, the estimated assessment revenue for the 1998-99 fiscal period (\$828,000) as a percentage of the projected total F.O.B. revenue (\$120,520,000) would be 0.007 percent. This figure indicates that the \$0.09 assessment rate recommended by the Committee would have a relatively

insignificant impact on the Idaho-Eastern Oregon onion industry.

This action would decrease the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 2, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 15-day comment period is provided to allow interested persons the opportunity to respond to this request for information and comments. Fifteen days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998-99 fiscal period begins on July 1, 1998, and the order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is proposed to be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 958.240 is proposed to be revised to read as follows:

§ 958.240 Assessment rate.

On and after July 1, 1998, an assessment rate of \$0.09 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: May 11, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-13005 Filed 5-14-98; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-18-AD]

RIN 2120-AA64

Airworthiness Directives; General Electric Company CF6-6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6-6 series turbofan engines. This proposal would require removal from service of affected low pressure turbine (LPT) stage 4 disks prior to reaching new, reduced cyclic life limits, and replacement with serviceable parts. This proposal is prompted by reports of LPT stage 4 disk cracking in the blade dovetail slot bottom area. The actions specified by the proposed AD are intended to prevent LPT stage 4 disk cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by June 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-18-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7192, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-ANE-18-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-18-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of low

pressure turbine (LPT) stage 4 disk cracking on General Electric Company (GE) CF6-6 series turbofan engines. The investigation revealed that the dovetail slot bottoms of the LPT stage 4 disks, part numbers (P/Ns) 9010M40P01, 9010M40P02, 9010M40P07, 9010M40P09, and 9010M40P12, have higher than predicted levels of stress during engine operation. In addition, the low cycle fatigue (LCF) material properties have been found to be lower than the original design intent. The disk cracks were found by inspection during engine shop visits. Extensive material testing, and stress and life analyses revealed a minimum calculated LCF cyclic life lower than the published LCF cyclic retirement life for the stage 4 LPT disks. This condition, if not corrected, could result in LPT stage 4 disk cracking, which could result in an uncontained engine failure and damage to the aircraft.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal from service of affected LPT stage 4 disks prior to reaching new, reduced cyclic life limits, and replacement with serviceable parts.

There are approximately 257 engines of the affected design in the worldwide fleet. The FAA estimates that 242 engines installed on aircraft of U.S. registry would be affected by this proposed AD, and that required parts, on a prorated basis, would cost approximately \$22,432 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$5,428,544.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 98-ANE-18-AD.

Applicability: General Electric Company (GE) CF6-6 series turbofan engines, installed on but not limited to McDonnell Douglas DC-10-10 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent low pressure turbine (LPT) stage 4 disk cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service LPT stage 4 disks, part numbers (P/Ns) 9010M40P01, 9010M40P02, 9010M40P07, 9010M40P09, and 9010M40P12, and replace with serviceable parts, in accordance with the following schedule:

(1) For disks with 12,300 or more cycles since new (CSN) but less than 24,000 CSN on the effective date of this AD, remove from service affected disks at the earliest of the following:

(i) The next piece-part exposure after the effective date of this AD; or

(ii) The next engine shop visit after accumulating 16,500 CSN; or

(iii) Within 4,200 cycles in service (CIS) after the effective date of this AD; or

(iv) Prior to exceeding 24,000 CSN.

(2) For disks with 5,000 or more CSN, but less than 12,300 CSN, on the effective date of this AD, remove from service affected disks at the earlier of the following:

(i) Prior to exceeding 16,500 CSN; or

(ii) Within 7,300 CIS after the effective date of this AD.

(3) For disks with less than 5,000 CSN on the effective date of this, remove from service affected disks prior to exceeding 12,300 CSN.

(b) This AD establishes a new cyclic retirement life limit for LPT stage 4 disks of 12,300 CSN. Thereafter, except as provided in paragraph (d) of this AD, no alternative cyclic retirement life limits may be approved for LPT stage 4 disks.

(c) For the purpose of this AD, the following definitions apply:

(1) An engine shop visit is defined as separation of a major, static flange.

(2) Piece-part exposure is when the affected part is completely disassembled in accordance with the disassembly instructions in the engine manual or section of the Instructions for Continued Airworthiness (ICA).

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on May 7, 1998.

Thomas A. Boudreau,
Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98-12915 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-ANE-45-AD]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to Pratt & Whitney JT8D series turbofan engines, that would have required a one-time visual and eddy current inspection of certain stage 3-4 low pressure compressor (LPC) disks and stage 7-12 high pressure compressor (HPC) disks identified by part number and serial number, for arc burns in tie rod, shielding, and pressure balance holes, and, if necessary, repair of tie rod holes. That proposal was prompted by reports of improper fixturing during the electrolytic cleaning process of certain compressor disks at a certified repair station, Avial or Greenwich Air Services, currently GE Engine Services Dallas LP, certificate number RA1R445K of Dallas, Texas, that can result in damage to the disks in the form of arc burns. This action revises the proposed rule by adding a drawdown schedule for removal of affected disks. The actions specified by this proposed AD are intended to prevent compressor disk cracking from arc burns in tie rod holes, shielding holes, or pressure balance holes, which could lead to a fracture of a compressor disk, resulting in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

DATES: Comments must be received by July 14, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-ANE-45-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from GE Engine Services—Dallas LP, 9311 Reeves St., Dallas, TX 75235-2095. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park,

Burlington, MA 01803-5299; telephone (781) 238-7175, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-ANE-45-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-ANE-45-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, was published as a notice of proposed rulemaking (NPRM) in the *Federal Register* on January 22, 1998 (63 FR 3483). That NPRM would have required, at the next shop visit after the effective date of the AD, a one-time visual and eddy current inspection of compressor disks to detect arc burn damage and if appropriate, repair of damaged area. That NPRM was prompted by a report of certain low pressure compressor (LPC) and high

pressure compressor (HPC) disks, installed on PW JT8D series turbofan engines, that were improperly fixtured during the electrolytic cleaning process at a certain repair station. That improper fixturing can lead to damage to compressor disks in the form of arc burns. Arc burns can degrade disk material properties and create a stress concentration that results in premature cracking of a disk and subsequent failure. That condition, if not corrected, could result in compressor disk cracking from arc burns in tie rod holes, shielding holes, or pressure balance holes, which could lead to a fracture of a compressor disk, resulting in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

Since the issuance of that NPRM, the FAA received a comment from the manufacturer stating that a drawdown schedule for removal of affected disks should be added to the proposed rule to maintain an acceptable level of safety, instead of requiring the inspection at the next shop visit. The FAA concurs and has added a drawdown schedule of 3,000 cycles in service (CIS) after the effective date of this AD, or the next shop visit, whichever occurs first.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are a total of 1,388 compressor disks exposed to improper fixturing during the electrolytic cleaning process. The FAA estimates that 1,054 of these disks currently remain in service in the worldwide fleet, which represents approximately 210 engines. The FAA also estimates that 840 of the disks affected by the proposed AD are installed in engines installed on aircraft of U.S. registry. It will take approximately 30 work hours to accomplish the proposed actions per disk, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$23 per disk. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$1,531,320.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 97-ANE-45-AD.

Applicability: Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, -17AR, -209, -217, -217A, -217C, and -219 model turbofan engines which have a compressor disk installed identified by part number and serial number in Table 1 of this airworthiness directive (AD). These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC-9 and MD80 series aircraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent compressor disk cracking from arc burns in tie rod holes, shielding holes, or pressure balance holes, which could lead to a fracture of a compressor disk, resulting in uncontained release of engine fragments, inflight engine shutdown, and airframe damage, accomplish the following:

(a) Within 3,000 cycles in service (CIS) after the effective date of this AD, or the next shop visit, whichever occurs first, remove, visually inspect, eddy current inspect, and repair or replace with a serviceable part disks identified by part number (P/N) and serial number (S/N) in Table 1 of this AD in accordance with GE Engine Services—Dallas, LP, Engineering Bulletin (EB) JT8D-025, dated March 27, 1998. The next shop visit must occur by [insert 10 years from AD effective date].

TABLE 1

Stage	P/N	S/N
3	745803	H13469
3	745803	N48096
3	745803	N48361
3	745803	P77936
3	745803	P77942
3	745803	P78298
3	745803	P98041
3	745803	P98334
3	745803	R18766
3	745803	R18989
3	745803	R19227
3	745803	R73555
3	745803	R74156
4	745704	2A3332
4	745704	2A4258
4	745704	G51920
4	745704	H04195
4	745704	J46788
4	745704	J76639
4	745704	K11388
4	745704	K11483
4	745704	K12946
4	745704	K52509
4	745704	K53069
4	745704	L60864
4	745704	L61145
4	777704	B114AA0034
4	777704	B114AA0178
4	777704	B114AA0274
4	777704	BBDDUA14597
4	777704	BBDDUAH4675
4	777704	BBDDUAH7390
4	777704	J77499
4	777704	J94590
4	777704	K43182
4	777704	L81216
4	777704	L81217
4	777704	L81218
4	777704	L81224
4	777704	L81688
4	777704	M40670
4	777704	M44376
4	777704	M44384
4	777704	M53723
4	777704	M53753
4	777704	M53810
4	777704	M53815
4	777704	N30898
4	777704	N30938
4	777704	N30943

TABLE 1—Continued

4	777704	N30947
4	777704	N30956
4	777704	N53261
4	777704	N53280
4	777704	N53284
4	777704	N53290
4	777704	N53296
4	777704	N53299
4	777704	N53309
4	777704	N53317
4	777704	N53324
4	777704	N53337
4	777704	N53340
4	777704	N53347
4	777704	N53355
4	777704	N53356
4	777704	N53361
4	777704	N53364
4	777704	N53366
4	777704	N53373
4	777704	N53388
4	777704	N53390
4	777704	N53392
4	777704	N53397
4	777704	N53402
4	777704	N53405
4	777704	N53407
4	777704	N53409
4	777704	N53411
4	777704	N53413
4	777704	N53416
4	777704	N53419
4	777704	N53426
4	777704	N53434
4	777704	N53437
4	777704	N53438
4	777704	N53449
4	777704	N63635
4	777704	N63637
4	777704	N63646
4	777704	N63651
4	777704	N63696
4	777704	N63704
4	777704	N63718
4	777704	N63736
4	777704	N63740
4	777704	N63745
4	777704	N63803
4	777704	P50018
4	777704	P50025
4	777704	P50036
4	777704	P50050
4	777704	P50054
4	777704	P50083
4	777704	P63990
4	777704	R21906
4	777704	R21930
4	777704	R21985
4	777704	R21991
4	777704	R41366
4	777704	R42431
4	777704	R56904
4	777704	R56911
4	777704	R56932
4	777704	R56948
4	777704	R75603
4	777704	R75635
4	777704	R75644
4	777704	S28269
4	777704	S28335
4	777704	S28336
4	777704	S65405

TABLE 1—Continued

4	777704	S65417
4	777704	S87903
4	777704	S91630
4	777704	T00466
4	777704	T48099
4	777704	T48101
4	777704	T48105
4	799504	K23796
4	799504	L61578
4	799504	L61597
4	799504	L89794
4	799504	M77214
4	799504	N06109
4	799504	N06248
4	799504	N06731
4	799504	N06908
4	799504	N06911
4	799504	N32484
4	799504	N32493
4	799504	N32514
4	799504	N33627
4	799504	N33880
4	799504	N34238
4	799504	N89280
4	799504	N89817
4	799504	N90599
4	799504	N90812
4	799504	N90849
4	799504	P45299
4	799504	P45435
4	799504	R23598
4	799504	R23753
4	799504	R24022
4	799504	R24310
4	799504	R24543
4	799504	S07095
4	799504	S07147
4	799504	S07164
4	799504	S07250
4	799504	S58162
4	799504	S58237
4	799504	T02774
4	799504	T02897
4	799504	T03020
4	799504	T03027
4	799504	T03038
4	799504	T03047
7	701407	Z25379
7	766007	G11181
7	774407	B207AA0057
7	774407	B207AA0164
7	774407	B207AA0224
7	774407	B207AA0270
7	774407	B207AA0546
7	774407	B207AA0719
7	774407	B207AA0757
7	774407	B207AA0768
7	774407	B207AA0775
7	774407	B207AA0913
7	774407	BENCAH1914
7	774407	BENCAH4273
7	774407	BENCAJ5690
7	774407	BENCAK1601
7	774407	BENCAK5082
7	774407	BENCAK5701
7	774407	BENCAK6044
7	774407	BENCAK6586
7	774407	G78791
7	774407	H19147
7	774407	H75592
7	774407	J08985
7	774407	J17315

TABLE 1—Continued

7	774407	J17370
7	774407	J72117
7	774407	J93428
7	774407	J93669
7	774407	K78068
7	774407	K78149
7	774407	K78378
7	774407	L23953
7	774407	L71885
7	774407	L71922
7	774407	L72170
7	774407	L72261
7	774407	M38646
7	774407	M44626
7	774407	M60192
7	774407	M78767
7	774407	M83783
7	774407	M93487
7	774407	M93549
7	774407	N24007
7	774407	N24131
7	774407	N38891
7	774407	N58905
7	774407	N59040
7	774407	N70414
7	774407	N88273
7	774407	N88281
7	774407	N88306
7	774407	N93477
7	774407	N95003
7	774407	P14688
7	774407	P14851
7	774407	P16547
7	774407	P35320
7	774407	P35374
7	774407	P35475
7	774407	P54474
7	774407	P54594
7	774407	P60383
7	774407	P60383
7	774407	P81375
7	774407	P81382
7	774407	P86353
7	774407	R19478
7	774407	R31305
7	774407	R37450
7	774407	R46879
7	774407	R46934
7	774407	R57593
7	774407	R57744
7	774407	R57769
7	774407	R72169
7	774407	R72236
7	774407	R81458
7	774407	R81507
7	774407	R81527
7	774407	R81612
7	774407	R90895
7	774407	S05652
7	774407	S13843
7	774407	S14099
7	774407	S14103
7	774407	S36805
7	774407	S36885
7	774407	S36896
7	774407	S36994
7	774407	S36995
7	774407	S37166
7	774407	S37554
7	774407	T04613
7	774407	T04687
7	774407	T04739

TABLE 1—Continued

Stage	P/N	S/N
7	774407	T04806
7	774407	T04812
7	774407	T04814
7	774407	T04837
7	774407	T04843
7	774407	T04885
7	774407	T04903
7	774407	T04960
7	774407	T05000
7	774407	T05108
7	5006007-02	BENCAK9696
7	5006007-02	BENCAK9900
7	5006007-02	BENCAL0760
7	5006007-02	BENCAL1937
7	5006007-02	BENCAL4577
7	5006007-02	BENCAL5766
7	5006007-01	AA0297
7	5006007-01	B207AA0069
7	5006007-01	B207AA0135
7	5006007-01	B207AA0155
7	5006007-01	B207AA0172
7	5006007-01	B207AA0177
7	5006007-01	B207AA0354
7	5006007-01	B207AA0355
7	5006007-01	B207AA0421
7	5006007-01	B207AA0493
7	5006007-01	B207AA0533
7	5006007-01	B207AA0571
7	5006007-01	B207AA0684
7	5006007-01	B207AA0756
7	5006007-01	B207AA0811
7	5006007-01	BENCAH3454
7	5006007-01	BENCAH4003
7	5006007-02	BENCAH4004
7	5006007-01	BENCAH4371
7	5006007-01	BENCAH4373
7	5006007-01	BENCAH4794
7	5006007-01	BENCAH4797
7	5006007-01	BENCAH5400
7	5006007-01	BENCAH5401
7	5006007-01	BENCAJ8559
7	5006007-01	BENCAJ8585
7	5006007-01	BENCAJ8614
7	5006007-01	BENCAJ8626
7	5006007-01	BENCAJ8656
7	5006007-01	BENCAJ9106
7	5006007-01	BENCAK5959
7	5006007-01	BENCAK5963
7	5006007-01	BENCAK9770
7	5006007-01	BENCAK9771
7	5006007-01	BENCAL2683
7	5006007-01	BENCAL3622
7	5006007-01	BENCAL3931
7	5006007-01	K20260
7	5006007-01	K20499
7	5006007-01	K20543
7	5006007-01	N09043
7	5006007-01	N65077
7	5006007-01	N65107
7	5006007-01	N65132
7	5006007-01	N93173
7	5006007-01	N93193
7	5006007-01	P23185
7	5006007-01	P23236
7	5006007-01	P49794
7	5006007-01	P49835
7	5006007-01	P92551
7	5006007-01	P92580
7	5006007-01	R12660
7	5006007-01	R12670
7	5006007-01	R12710
7	5006007-01	R35504

TABLE 1—Continued

Stage	P/N	S/N
7	5006007-01	R35530
7	5006007-01	R36545
7	5006007-01	R43821
7	5006007-01	R54576
7	5006007-01	R54634
7	5006007-01	R79460
7	5006007-01	R79466
7	5006007-01	R92415
7	5006007-01	R92431
7	5006007-01	R92435
7	5006007-01	R92442
7	5006007-01	S11034
7	5006007-01	S11058
7	5006007-01	S11154
7	5006007-01	S11156
7	5006007-01	S11179
7	5006007-01	S11182
7	5006007-01	S11186
7	5006007-01	S11202
7	5006007-01	S11206
7	5006007-01	S56884
7	5006007-01	S56888
7	5006007-01	S56998
7	5006007-01	S57073
7	5006007-01	S57075
7	5006007-01	S57117
7	5006007-01	S57120
7	5006007-01	S57156
7	5006007-01	S57157
7	5006007-01	S57192
7	5006007-01	S57220
7	5006007-01	S57332
7	5006007-01	S57354
7	5006007-01	S57405
7	5006007-01	S57412
7	5006007-01	S57420
7	5006007-01	S57424
7	5006007-01	S57437
7	5006007-01	S57452
7	5006007-01	S57467
7	5006007-01	S57470
7	5006007-01	S57589
8	748608	B208AA0043
8	748608	BENCAK1564
8	748608	H50069
8	748608	H64474
8	748608	H64605
8	748608	J57591
8	748608	J94824
8	748608	M54652
8	748608	M54835
8	748608	N14526
8	748608	N84300
8	748608	P-28517
8	748608	P26161
8	748608	P28493
8	748608	P28504
8	748608	P28505
8	748608	P28511
8	748608	P28542
8	748608	P28614
8	748608	P98885
8	748608	S01079
8	748608	S01090
8	748608	S50742
8	748608	S78049
8	748608	S78056
8	748608	S78100
8	787008	J76875
8	787008	K12869
8	787008	M77087
8	787008	N06806

TABLE 1—Continued

Stage	P/N	S/N
8	787008	N32406
8	787008	N34151
8	787008	N89336
8	787008	N89554
8	787008	N90392
8	787008	N90682
8	787028	N89693
8	787208	AA0676
8	787208	B07691
8	787208	B228AA0169
8	787208	B228AA0242
8	787208	B228AA0288
8	787208	B228AA0389
8	787208	B228AA0426
8	787208	B228AA0537
8	787208	B228AA0576
8	787208	B228AA0638
8	787208	B228AA0641
8	787208	B228AA0746
8	787208	B228AA0859
8	787208	B228AA0866
8	787208	B228AA0878
8	787208	B228AA0905
8	787208	B228AA1070
8	787208	B228AA1117
8	787208	BENCAH0302
8	787208	BENCAH1584
8	787208	BENCAH3448
8	787208	BENCAJ5729
8	787208	BENCAJ8175
8	787208	BENCAJ8767
8	787208	BENCAJ8773
8	787208	BENCAJ8790
8	787208	BENCAJ9142
8	787208	BENCAK4678
8	787208	BENCAK4771
8	787208	BENCAK5470
8	787208	BENCAK6156
8	787208	BENCAK6162
8	787208	BENCAK6398
8	787208	BENCAK8259
8	787208	BENCAK9252
8	787208	BENCAK9261
8	787208	BENCAL2604
8	787208	BENCAL2642
8	787208	BENCAL4344
8	787208	BENCAL7699
8	787208	BENCAL9217
8	787208	J76954
8	787208	K11762
8	787208	K12737
8	787208	K12765
8	787208	L89874
8	787208	M41582
8	787208	M41586
8	787208	M41918
8	787208	M76995
8	787208	M77005
8	787208	M77119
8	787208	N06396
8	787208	N33501
8	787208	N33769
8	787208	N33774
8	787208	N33776
8	787208	N33784
8	787208	N34183
8	787208	N34207
8	787208	N89068
8	787208	N89079
8	787208	N89082
8	787208	N89087
8	787208	N89089

TABLE 1—Continued

Stage	P/N	S/N
8	787208	N89404
8	787208	N89409
8	787208	N89699
8	787208	N89702
8	787208	N89708
8	787208	N89895
8	787208	N89898
8	787208	N90251
8	787208	N90344
8	787208	N90990
8	787208	P43853
8	787208	P43872
8	787208	P43891
8	787208	P43956
8	787208	P43986
8	787208	P44338
8	787208	P45405
8	787208	R23233
8	787208	R23836
8	787208	R23873
8	787208	R24174
8	787208	R24227
8	787208	R24677
8	787208	R24739
8	787208	R24816
8	787208	R24824
8	787208	R91601
8	787208	R91825
8	787208	R91870
8	787208	R91947
8	787208	R92114
8	787208	R92308
8	787208	S07578
8	787208	S07629
8	787208	S07758
8	787208	S07768
8	787208	S07775
8	787208	S39269
8	787208	S39468
8	787208	S39513
8	787208	S39638
8	787208	S39655
8	787208	S39663
8	787208	S39753
8	787208	S39822
8	787208	S39837
8	787208	S39951
8	787208	S39973
8	787208	S39995
8	787208	S40027
8	787208	S40038
8	787208	S40077
8	787208	S40079
8	787208	S40095
8	789608	H03942
8	789608	J21516
8	792038	B228AA0039
8	792038	BENCAJ8836
8	797938	B228AA0487
8	797938	B228AA1034
8	797938	BENCAJ8910
8	797938	BENCAL5921
8	797938	N06290
8	797938	N33267
8	797938	N90703
8	797938	N90970
8	797938	S70436
8	797938	T03512
8	5005008-01	T03421
8	5005808-01	B228AA0052
8	5005808-01	B228AA0287
8	5005808-01	B228AA0405

TABLE 1—Continued

Stage	P/N	S/N
8	5005808-01	B228AA0490
8	5005808-01	B228AA0519
8	5005808-01	BENCAH1577
8	5005808-01	L60763
8	5005808-01	M77630
8	5005808-01	N06193
8	5005808-01	N32395
8	5005808-01	N32524
8	5005808-01	N33073
8	5005808-01	N33304
8	5005808-01	N33466
8	5005808-01	N89447
8	5005808-01	N89464
8	5005808-01	P44800
8	5005808-01	P45226
8	5005808-01	R24458
8	5005808-01	R91359
8	5005808-01	R91787
8	5005808-01	S07967
8	5005808-01	S70327
8	5005808-01	S70429
8	5005808-01	S70463
8	5005808-01	S70494
8	5005808-01	S70520
8	5005808-01	T03317
8	5005808-01	T03452
8	5005808-01	T03476
8	5005808-01	T03506
8	5005808-01	T03549
8	5006008-01	R24001
9	701509	5A1936
9	701509	J89101
9	701509	L56782
9	701509	L85804
9	701509	M09404
9	701509	M73608
9	701509	M84236
9	701509	N02058
9	701509	N02998
9	701509	N209AA0242
9	701509	N209AA0246
9	701509	N209AA0323
9	701509	N209AA0418
9	701509	N209AA0634
9	701509	N22582
9	701509	N56942
9	701509	N56952
9	701509	N79878
9	701509	N97637
9	701509	N97707
9	701509	N98354
9	701509	N99323
9	701509	NENCAH0592
9	701509	NENCAH0697
9	701509	NENCAH0883
9	701509	NENCAH1173
9	701509	NENCAH1422
9	701509	NENCAH1432
9	701509	P11303
9	701509	P11463
9	701509	P12707
9	701509	P52176
9	701509	P52596
9	701509	P52608
9	701509	P97654
9	701509	P97704
9	701509	P98673
9	701509	R18109
9	701509	R18342
9	701509	R18385
9	701509	R45763
9	701509	R45850

TABLE 1—Continued

Stage	P/N	S/N
9	701509	R46297
9	701509	R46394
9	701509	R46403
9	701509	R72835
9	701509	R72839
9	701509	R72846
9	701509	R73002
9	701509	R74484
9	701509	S00704
9	701509	S00765
9	701509	S00824
9	701509	S00886
9	701509	S00909
9	701509	S00910
9	701509	S18837
9	701509	S18941
9	701509	S19027
9	701509	S50340
9	701509	S70059
9	701509	S77627
9	701509	S77671
9	701509	S77784
9	701509	S77809
9	701509	T18893
9	701509	T18909
9	701509	T27458
9	701509	T27587
9	739509	H17622
9	772509	K23758
9	772509	K24989
9	772509	K86136
9	772509	L15428
9	772509	M40393
9	772509	M40397
9	772509	N42380
9	772509	N56529
9	772509	N79955
9	772509	N79970
9	772509	N80784
9	772509	N96815
9	772509	N96816
9	772509	N96904
9	772509	N96905
9	772509	N97800
9	772509	N97806
9	772509	N99352
9	772509	N99353
9	772509	N99362
9	772509	N99367
9	772509	N99368
9	772509	N99376
9	772509	P11398
9	772509	P11407
9	772509	P11411
9	772509	P11414
9	772509	P11419
9	772509	P12231
9	772509	P76976
9	772509	P76987
9	772509	P76990
9	772509	P76992
9	772509	P76994
9	772509	R17787
9	772509	S01222</

TABLE 1—Continued

Stage	P/N	S/N
10	772510	B210AA1137
10	772510	BENCAH1958
10	772510	BENCAH2165
10	772510	BENCAH2280
10	772510	BENCAJ5741
10	772510	BENCAJ9159
10	772510	BENCAJ9705
10	772510	BENCAJ9757
10	772510	BENCAJ9767
10	772510	BENCAJ9773
10	772510	BENCAJ9805
10	772510	BENCAK4597
10	772510	BENCAK5154
10	772510	BENCAK5350
10	772510	BENCAK5735
10	772510	BENCAK5773
10	772510	BENCAK6465
10	772510	BENCAK9082
10	772510	BENCAK9123
10	772510	BENCAK9429
10	772510	BENCAK9434
10	772510	BENCAL1600
10	772510	BENCAL1635
10	772510	BENCAL2434
10	772510	BENCAL3279
10	772510	BENCAL5558
10	772510	BENCAL6141
10	772510	BENCAL6373
10	772510	H17769
10	772510	H32904
10	772510	H34713
10	772510	H57950
10	772510	H76378
10	772510	K56398
10	772510	K66132
10	772510	K86040
10	772510	L15008
10	772510	L32061
10	772510	L55910
10	772510	L56859
10	772510	L86006
10	772510	M10588
10	772510	M10987
10	772510	M39587
10	772510	M39591
10	772510	M49011
10	772510	M49358
10	772510	M49359
10	772510	M73918
10	772510	M86490
10	772510	N02251
10	772510	N02274
10	772510	N11091
10	772510	N22833
10	772510	N42134
10	772510	N56280
10	772510	N57181
10	772510	N57382
10	772510	N57418
10	772510	N57437
10	772510	N80225
10	772510	N80703
10	772510	N80716
10	772510	N80718
10	772510	N81110
10	772510	N81114
10	772510	N81474
10	772510	N97025
10	772510	N97067
10	772510	N97527
10	772510	N97553
10	772510	N97574

TABLE 1—Continued

Stage	P/N	S/N
10	772510	N97591
10	772510	N97832
10	772510	N98539
10	772510	N98750
10	772510	N98764
10	772510	N98768
10	772510	N98798
10	772510	P11004
10	772510	P11017
10	772510	P11029
10	772510	P11039
10	772510	P11087
10	772510	P11094
10	772510	P11101
10	772510	P11562
10	772510	P11575
10	772510	P11834
10	772510	P12009
10	772510	P12612
10	772510	P12615
10	772510	P12645
10	772510	P12648
10	772510	P51452
10	772510	P51454
10	772510	P51833
10	772510	P51883
10	772510	P52238
10	772510	P53116
10	772510	P53207
10	772510	P53327
10	772510	P76886
10	772510	P76891
10	772510	P77070
10	772510	P77161
10	772510	P77180
10	772510	P77423
10	772510	P77618
10	772510	P77663
10	772510	P77668
10	772510	P77744
10	772510	P77752
10	772510	P97017
10	772510	P98117
10	772510	P98258
10	772510	P98840
10	772510	R18022
10	772510	R18124
10	772510	R18611
10	772510	R18665
10	772510	R19275
10	772510	R46329
10	772510	R46679
10	772510	R72606
10	772510	R72615
10	772510	R72617
10	772510	R72874
10	772510	R73345
10	772510	R74396
10	772510	S01267
10	772510	S01277
10	772510	S01369
10	772510	S01501
10	772510	S01631
10	772510	S01680
10	772510	S19280
10	772510	S19293
10	772510	S19294
10	772510	S19298
10	772510	S19328
10	772510	S19440
10	772510	S19447
10	772510	S19458

TABLE 1—Continued

Stage	P/N	S/N
10	772510	S19467
10	772510	S19486
10	772510	S19512
10	772510	S51089
10	772510	S51144
10	772510	S51176
10	772510	S51210
10	772510	S78237
10	772510	S78294
10	772510	S78298
10	772510	S78318
10	772510	S78439
10	772510	S78464
10	772510	S78511
10	772510	S78623
10	772510	S78642
10	772510	S78724
10	772510	T19014
10	772510	T19091
10	772510	T19152
10	772510	T19169
10	772510	T28070
10	772510	T28091
10	772510	T28136
10	772510	T28138
10	772510	T49026
10	772510	T49044
10	772510	T49055
10	772510	T49068
10	772510	T49089
11	701411	G29388
11	701411	G43952
11	769611	H16901
11	772511	AA0065
11	772511	B211AA0047
11	772511	B211AA0157
11	772511	B211AA0171
11	772511	B211AA0263
11	772511	B211AA0301
11	772511	B211AA0349
11	772511	B211AA0356
11	772511	B211AA0517
11	772511	B211AA0529
11	772511	B211AA0599
11	772511	B211AA0622
11	772511	B211AA0624
11	772511	B211AA0705
11	772511	B211AA0798
11	772511	B211AA0823
11	772511	B211AA0945
11	772511	B211AA1004
11	772511	B211AA1107
11	772511	B211AA1166
11	772511	B211AA1212
11	772511	B211AA1292
11	772511	B211AA1360
11	772511	BENCAH0264
11	772511	BENCAH2171
11	772511	BENCAH5424
11	772511	BENCAJ8130
11	772511	BENCAK0910
11	772511	BENCAK7121
11	772511	BENCAK7336
11	772511	BENCAK7407
11	772511	BENCAK7412
11	772511	BENCAK7417
11	772511	BENCAK7523
11	772511	BENCAL2881
11	772511	BENCAL2959
11	772511	BENCAL3030
11	772511	H58238
11	772511	H99450

TABLE 1—Continued

Stage	P/N	S/N
11	772511	J24528
11	772511	J68900
11	772511	J88334
11	772511	K24665
11	772511	K35705
11	772511	K85911
11	772511	L15671
11	772511	L30512
11	772511	L84603
11	772511	L84967
11	772511	M11198
11	772511	M11208
11	772511	M40116
11	772511	M49492
11	772511	M49540
11	772511	M49551
11	772511	M61349
11	772511	M61810
11	772511	M61821
11	772511	M61827
11	772511	M73414
11	772511	M86423
11	772511	M86943
11	772511	M87075
11	772511	N02874
11	772511	N03522
11	772511	N21358
11	772511	N22738
11	772511	N41160
11	772511	N41282
11	772511	N41646
11	772511	N41748
11	772511	N42587
11	772511	N42774
11	772511	N56399
11	772511	N56596
11	772511	N57323
11	772511	N57878
11	772511	N57899
11	772511	N57939
11	772511	N57953
11	772511	N80541
11	772511	N80554
11	772511	N80580
11	772511	N81408
11	772511	N93700
11	772511	N96929
11	772511	N96947
11	772511	N96955
11	772511	N97354
11	772511	N97368
11	772511	N97956
11	772511	N97977
11	772511	N98242
11	772511	N98245
11	772511	N98573
11	772511	N98587
11	772511	N98612
11	772511	N98949
11	772511	N98963
11	772511	N98974
11	772511	N98976
11	772511	N98981
11	772511	N98985
11	772511	N99526
11	772511	N99535
11	772511	N99551
11	772511	N99553
11	772511	N99564
11	772511	N99590
11	772511	P03620
11	772511	P11615

TABLE 1—Continued

Stage	P/N	S/N
11	772511	P11637
11	772511	P11959
11	772511	P11981
11	772511	P12385
11	772511	P12387
11	772511	P12399
11	772511	P12743
11	772511	P12777
11	772511	P12930
11	772511	P51979
11	772511	P52109
11	772511	P52732
11	772511	P52903
11	772511	P52910
11	772511	P76731
11	772511	P76820
11	772511	P76832
11	772511	P76857
11	772511	P77637
11	772511	P77642
11	772511	P97786
11	772511	R05382
11	772511	R05539
11	772511	R05747
11	772511	R29690
11	772511	R29884
11	772511	R30070
11	772511	R30119
11	772511	R30137
11	772511	R30157
11	772511	R30194
11	772511	R30226
11	772511	R30258
11	772511	R30313
11	772511	R30429
11	772511	R30504
11	772511	R30534
11	772511	R30617
11	772511	R30625
11	772511	R30808
11	772511	R30810
11	772511	R30906
11	772511	R30941
11	772511	R30993
11	772511	R31009
11	772511	R31035
11	772511	R31073
11	772511	R31118
11	772511	R46248
11	772511	R46361
11	772511	S03667
11	772511	S03741
11	772511	S03745
11	772511	S03805
11	772511	S04156
11	772511	S04451
11	772511	S04460
11	772511	S04473
11	772511	S04542
11	772511	S04543
11	772511	S04557
11	772511	S04564
11	772511	S04582

TABLE 1—Continued

Stage	P/N	S/N
12	772512	N58072
12	772512	N58127
12	772512	N80601
12	772512	N81044
12	772512	N81173
12	772512	N81187
12	772512	N97079
12	772512	N97083
12	772512	N97109
12	772512	N97384
12	772512	N97438
12	772512	N97455
12	772512	N97457
12	772512	N97893
12	772512	N97916
12	772512	N98152
12	772512	N98162
12	772512	N98654
12	772512	N98657
12	772512	N98680
12	772512	N98691
12	772512	N99016
12	772512	N99025
12	772512	N99049
12	772512	N99057
12	772512	N99094
12	772512	N99125
12	772512	P11154
12	772512	P11179
12	772512	P11183
12	772512	P11193
12	772512	P11252
12	772512	P11678
12	772512	P11699
12	772512	P11877
12	772512	P11879
12	772512	P11909
12	772512	P12244
12	772512	P12277
12	772512	P12493
12	772512	P12519
12	772512	P51414
12	772512	P52139
12	772512	P52409
12	772512	P52520
12	772512	P52871
12	772512	P53141
12	772512	P53351
12	772512	P53396
12	772512	P72298
12	772512	P76702
12	772512	P76921
12	772512	P76931
12	772512	P77096
12	772512	P77294
12	772512	P77338
12	772512	P77695
12	772512	P77796
12	772512	P78510
12	772512	P97315
12	772512	R17703
12	772512	R17746
12	772512	R18201
12	772512	R18319
12	772512	R18589
12	772512	R19042
12	772512	R45067
12	772512	R45829
12	772512	R46100
12	772512	R46108
12	772512	R46121
12	772512	R46707

TABLE 1—Continued

Stage	P/N	S/N
12	772512	R52615
12	772512	R72811
12	772512	R73024
12	772512	R73783
12	772512	R74357
12	772512	S01858
12	772512	S01860
12	772512	S01914
12	772512	S01923
12	772512	S01949
12	772512	S01969
12	772512	S01971
12	772512	S01980
12	772512	S01994
12	772512	S02002
12	772512	S02007
12	772512	S19593
12	772512	S19644
12	772512	S19843
12	772512	S51370
12	772512	S51437
12	772512	S51514
12	772512	S51519
12	772512	S51560
12	772512	S51571
12	772512	S78825
12	772512	S78841
12	798512	B212AA0009
12	798512	B212AA0045
12	798512	B212AA0051
12	798512	B212AA0060
12	798512	B212AA0073
12	798512	B212AA0077
12	798512	B212AA0082
12	798512	B212AA0142
12	798512	B212AA0155
12	798512	B212AA0290
12	798512	B212AA0293
12	798512	B212AA0361
12	798512	B212AA0428
12	798512	B212AA0586
12	798512	B212AA0618
12	798512	B212AA0647
12	798512	B212AA0735
12	798512	B212AA0747
12	798512	B212AA0942
12	798512	B212AA0974
12	798512	B212AA1031
12	798512	B212AA1062
12	798512	B212AA1098
12	798512	B212AA1173
12	798512	BENCAH1931
12	798512	BENCAH4104
12	798512	BENCAJ4925
12	798512	BENCAJ6158
12	798512	BENCAJ7821
12	798512	BENCAJ8115
12	798512	BENCAJ9478
12	798512	BENCAJ9497
12	798512	BENCAJ9503
12	798512	BENCAJ9530
12	798512	BENCAJ9617
12	798512	BENCAJ9673
12	798512	BENCAK0455
12	798512	BENCAK2377
12	798512	BENCAK4552
12	798512	BENCAK5787
12	798512	BENCAK8605
12	798512	BENCAK9227
12	798512	BENCAL1655
12	798512	BENCAL2487
12	798512	BENCAL4173

TABLE 1—Continued

Stage	P/N	S/N
12	798512	BENCAL6328
12	798512	BENCAL6602
12	798512	M86993
12	798512	N42703
12	798512	N42708
12	798512	N57617
12	798512	N57629
12	798512	N80087
12	798512	N80088
12	798512	N98138
12	798512	N99136
12	798512	N99144
12	798512	P53305
12	798512	P76909
12	798512	P76916
12	798512	P77722
12	798512	P78317
12	798512	R17334
12	798512	R46556
12	798512	R46562
12	798512	R73201
12	798512	R74214
12	798512	S02217
12	798512	S02254
12	798512	S51853
12	798512	S79575
12	798512	S94530
12	798512	S94534
12	798512	S94538
12	798512	S94539
12	798512	S94569
12	798512	S94579
12	798512	S94590
12	798512	S94615
12	798512	T19187
12	798512	T19213
12	798512	T19220
12	798512	T19242
12	798512	T19277
12	798512	T19292
12	798512	T19314
12	798512	T28638
12	798512	T43059

(b) For the purpose of this AD, a shop visit is defined as an engine removal, where engine maintenance entails separation of pairs of major mating engine flanges or the removal of a disk, hub, or spool regardless of other planned maintenance except where the maintenance performed is being done in lieu of performing the maintenance on wing.

(c) The accomplishment of the inspections and repairs specified in this AD must be performed at GE Engine Services—Dallas, L.P., certificate number RA1R445K of Dallas, Texas. Operators wishing to use another facility to perform the required inspections and repairs must apply for an alternative method of compliance in accordance with paragraph (e) of this AD.

(d) Report the following information on a monthly basis to the Manager of the Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803-5299; fax (781) 238-7199, Internet: Mark.C.Fulmer@faa.dot.gov. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120-0056:

(1) S/N of engines inspected in accordance with paragraph (a) of this AD.

(2) S/N of engines found with arc burns and approximate size of the arc burn.

(3) S/N of engines repaired in accordance with paragraph (a) of this AD.

(4) Hours and CIS since last shop visit and total hours and CIS of disks inspected in accordance with paragraph (a) of this AD.

(5) Report to the Manager of the Engine Certification Office, within two business days of finding one of the following conditions as a result of inspecting a disk in accordance with paragraph (a) of this AD:

(i) A crack depth of more than 5 mils.

(ii) More than 2 tie rod holes with cracks.

(iii) Arc burn depth beyond 9 mils.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on May 7, 1998.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98-12918 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-SW-61-AD]

Airworthiness Directives; McDonnell Douglas Helicopter Systems Model 369D, 369E, 369FF, 369H, MD500N, and MD600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Systems (MDHS) Model 369D, 369E, 369FF, 369H, MD500N, and MD600N helicopters. This proposal would require a one-time visual inspection of certain input shaft coupling assemblies for pitting. This proposal is prompted by three operators' reports of

discovering pitting on the internal spline teeth. The actions specified by the proposed AD are intended to prevent failure of the spline teeth in the input shaft coupling assembly, loss of drive to the main rotor system, and subsequent loss of control of the helicopter.

DATES: Comments must be received by July 14, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW-61-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Conze, Aerospace Engineer, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California, 90712, telephone (562) 627-5261, fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-SW-61-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW-61-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new airworthiness directive (AD) that is applicable to MDHS Model 369D, 369E, 369FF, 369H, MD500N, and MD600N helicopters. This proposal would require a one-time visual inspection of certain input shaft coupling assemblies for pitting below the solid film lubricant layer in the spline area. This proposal is prompted by three operators' reports of discovering pitting on the internal spline teeth. The actions specified by the proposed AD are intended to prevent failure of the spline teeth in the input shaft coupling assembly, loss of drive to the main rotor system, and subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHS Model 369D, 369E, 369FF, 369H, MD500N, and MD600N helicopters of the same type design, the proposed AD would require a one-time visual inspection of affected input shaft coupling assemblies for pitting below the solid film lubricant layer in the spline area.

The FAA estimates that 82 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$638 per coupling assembly. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$67,076 if the coupling assembly is replaced in all 82 helicopters.

The regulations proposed herein, would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action"

under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

McDonnell Douglas Helicopter Systems:
Docket No. 97-SW-61-AD.

Applicability: Model 369D, 369E, 369FF, 369H, MD500N, and MD600N helicopters, with input shaft coupling assemblies, part number (P/N) 369F5133-1, serial number (S/N) 030829-0126 through 030829-0207, installed on main transmission, P/N 369F5100-503, and on overrunning clutch, P/N 369F5450, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 100 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent failure of the spline teeth in each input shaft coupling assembly (coupling assembly), loss of drive to the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Visually inspect the coupling assemblies, P/N 369F5133-1, installed on main transmission, P/N 369F5100-503, and on overrunning clutch, P/N 369F5450, for pitting under the solid film lubricant in the spline area of the coupling.

(b) If there is pitting in the splines, replace the coupling assembly with an airworthy coupling assembly, P/N 369F5133-1, that has been inspected as required by paragraph (a) of this AD.

Note 2: Boeing Service Bulletin SB369H-240, SB369E-085, SB500N-013, SB369D-192, SB369F-072, SB600N-003, dated September 26, 1997, pertains to this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on May 7, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.

[FR Doc. 98-12936 Filed 5-14-98; 8:45 am]
BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ANM-05]

Proposed Establishment of Class E Airspace, Moses Lake, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would establish a Class E surface area at Grant County Airport, Moses Lake, WA. The intended effect of this action is to provide controlled airspace between the surface

and the en route phase of flight when the air traffic control tower is closed.

DATES: Comments must be received on or before June 29, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM-520, Federal Aviation Administration, Docket No. 98-ANM-05, 1601 Lind Avenue SW, Renton, Washington 98055-4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM-520.6, Federal Aviation Administration, Docket No. 98-ANM-05, 1601 Lind Avenue SW, Renton, Washington 98055-4056; telephone number: (425) 227-2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98-ANM-05." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date, for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM-520, 1601 Lind Avenue SW, Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to establish Class E airspace at Grant County Airport, Moses Lake, WA. The commissioning of the Automated Surface Observing system (ASOS) qualifies the Grant County Airport for a Class E surface area. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This proposal would allow controlled airspace between the surface and en route environment when the air traffic control tower is closed.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as a surface area are published in Paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area for an airport.

* * *

ANM WA E2 Moses Lake, WA [New]

Grant County Airport, Moses Lake, WA
(Lat. 47°12'28"N, long. 119°19'13")

That airspace extending upward from the surface within a 5.7-mile radius of the Grant County Airport, excluding that airspace within an area bounded by a line beginning at lat. 47°11'31"N, long. 119°10'59"W; to lat. 47°09'59"N, long. 119°14'55"W; to lat. 47°07'34"N, long. 119°14'55"W; thence counterclockwise via a 5.7-mile radius of the Grant County Airport to the point of beginning. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * *

Issued in Seattle, Washington, on May 5, 1998.

Joe E. Gingles,

Acting Assistant Manager, Air Traffic
Division, Northwest Mountain Region.

[FR Doc. 98-12998 Filed 5-14-98; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-31]

Proposed Establishment of Class E Airspace, Wilmington Clinton Field, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Wilmington Clinton Field, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 21 has been developed for Wilmington Clinton Field. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace for Wilmington Clinton Field.

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 98-AGL-31, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related

aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98-AGL-31." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 112A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Wilmington Clinton Field, OH, to accommodate aircraft executing the proposed GPS Rwy 21 SIAP, Wilmington Clinton Field by creating controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E

airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 206(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL OH 35 Wilmington Clinton Field, OH [New]

Wilmington Clinton Field, OH (Lat. 39°30'10" N., long. 83°51'47".)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Wilmington Clinton Field,

excluding that airspace within the Wilmington, OH, Class E airspace area.

Issued in Des Plaines, Illinois on May 4, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98-12995 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-26]

Proposed Modification of Class E Airspace; Faribault, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace Faribault, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 30 has been developed for Faribault Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would increase the radius of the existing controlled airspace for Faribault Municipal Airport.

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 98-AGL-26, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98-AGL-26." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Faribault, MN, the accommodate aircraft executing the proposed GPS Rwy 30 SIAP at Faribault Municipal Airport by increasing the radius of the existing controlled for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the

approaches. the area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. the incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL MN E Faribault, MN [Revised]

Faribault Municipal Airport, MN (Lat. 44°19'29" N, long. 93°18'39" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Faribault Municipal airport and within 1.1 miles each side of the 200° bearing from the Faribault Municipal airport, extending from the 6.6-mile radius to 7.8 miles southwest of the airport, excluding that airspace within the Owatonna, MN, Class E airspace area.

Issued in Des Plaines, Illinois on May 4, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98-12994 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AEA-07]

Proposed Amendment to Class E Airspace; Farmville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Farmville, VA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Farmville Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before June 15, 1998.

ADDRESSES: Send Comments on the proposal in triplicate to: Manager, Airspace Branch, AEA-520, Docket No. 98-AEA-07, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA-7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA-520,

F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT:

Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA-520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposal rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98-AEA-07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA-7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Farmville, VA. GPS RWY 21 SIAP has been developed for the Farmville Municipal Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p.389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA VA E5 Farmville, VA [Revised]

Farmville Municipal Airport, VA (lat. 37°21'22" N., long. 78°26'19" W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Farmville Municipal Airport

Issued in Jamaica, New York, on May 6, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98-12982 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 97N-0524]

RIN 0910-AA43

Food Labeling: Warning and Notice Statements; Labeling of Juice Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the Federal Register of April 24, 1998 (63 FR 20486). The document would require warning statements on packaged fruit and vegetable juice products that have not been processed to destroy pathogenic microorganisms that may be present. The document was published with some errors. This document corrects those errors:

DATES: Submit written comments by May 26, 1998.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5099.

SUPPLEMENTARY INFORMATION: In FR Doc. 98-11026, beginning on page 20486 in the Federal Register of Friday, April 24, 1998, the following corrections are made:

1. On page 20489, in the third column, in the third full paragraph, in line three, "that" should read "which".
2. On page 20490, in the third column, in the first paragraph, in line three, "that" should read "which".

§ 101.17 [Corrected]

3. On page 20493, in § 101.17(g)(2), in the first column, in the third line, "(g)(7)" should read "(g)(6)".

Dated: May 7, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98-12899 Filed 5-14-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 861]

RIN 1512-AB70

Net Contents Statement on Wine Labels (95R-054P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Based on a petition it has received, the Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to provide that the net contents statement for wine in containers of less than 1 liter may be expressed on the label in centiliters (cl) as an alternative to milliliters (ml). ATF believes that the proposed regulations provide industry members with greater flexibility in labeling their wines, while ensuring the consumer is adequately informed as to the net contents of the product.

The proposed amendments are part of the Administration's efforts to reinvent government by reducing regulatory burdens and streamlining requirements.

DATES: Written comments must be received on or before August 13, 1998.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; ATTN: Notice No. .

FOR FURTHER INFORMATION CONTACT: James P. Ficareta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, D.C. 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as the delegate of

the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer and to provide the consumer with adequate information as to, among other things, the net contents of the product. Regulations which implement the provisions of section 105(e), as they relate to wine, are set forth in title 27, Code of Federal Regulations (CFR), part 4.

Section 4.32(b) provides, in part, that a statement of net contents must appear on the label of all containers of wine in accordance with § 4.37. Section 4.37 provides that the net contents of wine for which a metric standard of fill is prescribed must be stated on the label in the same manner and form as set forth in the standard of fill. The authorized metric standards of fill for American and imported wine, for sale in interstate commerce within the United States, are set forth in § 4.73 as follows:

3 liters
1.5 liters
1 liter
750 milliliters
500 milliliters
375 milliliters
187 milliliters
100 milliliters
50 milliliters

As provided in § 4.37(a), the net contents of wine for which no standard of fill is prescribed, e.g., sake, must be stated in liters and in decimal portions of a liter for quantities larger than one liter, and in milliliters for quantities of less than one liter.

Pursuant to § 4.32(b)(2), if the net contents of the wine is an authorized standard of fill, e.g., 750 milliliters, the net contents statement may appear on any label affixed to the container. If the net contents is a standard of fill other than an authorized standard of fill, e.g., 720 milliliters, the net contents statement must appear on a label affixed to the front of the container.

Since the regulations show "ml" as an abbreviation for milliliter (§ 4.37(a)(2)), that abbreviation may be used in lieu of milliliter, where required. ATF's policy is that the word liter may be abbreviated as "L" or "l" (under certain circumstances), or it may appear in a shortened form such as "Lt.", provided such shortened form is not likely to mislead or confuse the consumer.

Finally, § 4.37 provides that the net contents need not be stated on the label if it is legibly blown, etched, sandblasted, marked by underglaze coloring, or otherwise permanently marked by any method approved by the Director on the side, front, or back of the container in an unobscured location.

Discussion

Metric standards of fill for wine were first prescribed in Treasury Decision (T.D.) ATF-12 (39 FR 45216, December 31, 1974; corrected at 40 FR 1240, January 7, 1975), and became mandatory on January 1, 1979. In order to avoid confusion among consumers, the final rule required metric net contents to be expressed in liters and decimal portions thereof for quantities larger than one liter (e.g., 1.5 liters) and in milliliters for quantities of less than one liter (e.g., 750 milliliters). ATF noted in the preamble of the final rule that statements of net contents in liters or milliliters would standardize the manner by which metric net contents are to be stated while also reflecting the degree of accuracy necessary to measure the content of wine bottles. ATF's decision to express the net contents in milliliters for wine in containers of less than one liter was based, in part, on testimony presented at the hearing which preceded T.D. ATF-12. A representative testifying on behalf of the American National Metric Council made the following comments:

For everyday use the Metric Practice Committee of the American National Metric Council recommends milliliter—ml—as the only submultiple of liter. . . . The important thing is to avoid the confusion of an excessive variety of submultiples, which may cause errors in communication. These other submultiples, which have been used in various parts of the world, would be a deciliter—dl, a centiliter—cl. For American usage, however, we are recommending only milliliter—ml.

Containers for wine may bear statements of net contents in addition to the required metric net contents statement provided such optional statements represent an equivalent volume and are not in any way misleading to the consumer. For example, if the label on a wine container shows the net contents in accordance with § 4.73 as "750 ml," an additional statement such as "75 cl," ".75 L," "25.4 fl. oz.," etc., may appear elsewhere on the container provided its appearance is not in a manner which is misleading to the consumer.

Petition

ATF recently received a petition, filed by Banfi Vintners (Banfi) of Old Brookville, New York, requesting an amendment of the regulations concerning the net contents statement on labels of wine. Specifically, the petitioner has asked that the regulations be amended to provide that the net contents for wine bottled in a 750 milliliter (750 ml) standard of fill be expressed in centiliters, as "75 cl," as an alternative to "750 ml." Banfi states that

75 centiliters is a universally recognized measurement equivalent to 750 milliliters in the metric system. Furthermore, authorizing this alternative net contents statement on wine labels "would simplify current regulations and allow for an easier flow of wines among Europe, the world markets and the United States." In that regard, the European Union (EU) requires a statement of nominal volume (net contents) on labels of wine sold in EU countries. Pursuant to European Council Directive, the nominal volume must be stated in liters, centiliters or milliliters. See Council Regulation (EEC) No. 2392/89 of July 24, 1989 (Title I, Chapter I, Section A1, Article 2(1)(b); Title I, Chapter II, Section A, Article 25(1)(b)); Council Directive 75/106/EEC of December 19, 1974.

Proposed Regulatory Amendments

For many years ATF has permitted additional statements of net contents to appear on wine labels along with the required net contents statement, provided such optional statements represent an equivalent volume. In reviewing numerous certificates of label approval the Bureau finds that an optional statement of net contents frequently appears on labels of imported wine. This is most likely due to the fact that, as mentioned, under EU regulations the net contents of wine may be stated in milliliters, centiliters, or liters. An optional statement usually appears on labels of wine bottled in a 750 milliliter size container (a popular size among consumers) and was often expressed in centiliters, as "75 cl." To a much lesser extent, the optional statement was expressed in decimal portions of a liter, e.g., "0.75 L" ("0.75 L").

Optional statements of net contents expressed in centiliters also appeared on labels of imported wine bottled in other authorized standards of fill. For example, on containers of wine bottled in a 500 milliliter standard of fill the required and optional net contents statements appeared as "500 ml" and "50 cl." respectively. In the case of wine bottled in a 375 milliliter container (375 ml), the additional net contents statement was expressed as "37.5 cl." Thus, ATF believes that consumers are accustomed to seeing the net contents of wine expressed in centiliters.

The Bureau also observed that in many instances the required and optional net contents statements appeared on the same side of the container and, in some cases, in direct conjunction with each other, e.g., "750 ml/75 cl." "375 ml/37.5 cl." etc. As such, ATF believes that consumers

recognize that the required net contents statement, expressed in milliliters, and the optional net contents statement, expressed in centiliters, represent an equivalent amount in the metric system.

Accordingly, ATF is proposing to amend the regulations to provide that the net contents statement for wine in containers of less than 1 liter shall be expressed in either milliliters (ml) or centiliters (cl), or both. The proposed amendment applies to the net contents of wine for which a standard of fill is prescribed in § 4.73, i.e., 750 ml, 500 ml, 375 ml, etc., as well as to the net contents of wine for which no standard of fill is prescribed, e.g., 730 ml (73 cl). ATF is soliciting comments on this proposed amendment to the regulations. ATF is also soliciting comments on the following:

1. Whether the regulations should be amended in accordance with the petitioner's specific request to allow the net contents statement to be expressed in centiliters only on wine bottled in a 750 milliliter standard of fill;

2. Whether the regulations should be amended to authorize the net contents statement for wine in containers of less than 1 liter to be expressed in milliliters, centiliters, or decimal portions of liter. For example, in the case of wine bottled in a 750 milliliter standard of fill the net contents may be stated on the label as "750 ml," "75 cl," or ".75 L"; or

3. Whether the regulations should be amended to be consistent with EU regulations, i.e., regardless of the container size, the net contents of wine shall be expressed in liters, milliliters, or centiliters.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action by Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The proposed rule is liberalizing in nature in that wine producers will have greater choices in labeling their products. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no new requirement to collect information is

proposed. Section 4.37 (previously approved under OMB control number 1512-0482) is being amended to allow producers to state the net contents of their products in centiliters as an alternative to milliliters for wine in containers of less than 1 liter. The proposed amendments are liberalizing in nature, are not substantive, and do not impose any additional burden on the industry.

Public Participation

ATF requests comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of the petition, this notice, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

Authority and Issuance

Accordingly, ATF is proposing to amend Part 4 in Title 27 of the Code of Federal Regulations as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 2. Section 4.37 is amended by revising paragraphs (a)(2), (b)(1), and (b)(2) to read as follows:

§ 4.37 Net contents.

(a) * * *

(2) If less than one liter, net contents shall be stated in milliliters (ml) or centiliters (cl), or both.

(b) * * *

(1) For the metric standards of fill: 3 liters (101 fl. oz.); 1.5 liters (50.7 fl. oz.); 1 liter (33.8 fl. oz.); 750 ml or 75 cl (25.4 fl. oz.); 500 ml or 50 cl (16.9 fl. oz.); 375 ml or 37.5 cl (12.7 fl. oz.); 187 ml or 18.7 cl (6.3 fl. oz.); 100 ml or 10 cl (3.4 fl. oz.); and 50 ml or 5 cl (1.7 fl. oz.).

(2) Equivalent volumes of less than 100 fluid ounces shall be stated in fluid ounces only, accurate to the nearest one-tenth of a fluid ounce; for example, 700 ml or 70 cl (23.7 fl. oz.).

* * *

Paragraph 3. Section 4.38 is amended by revising the first sentence in paragraphs (b)(1) and (b)(2) to read as follows:

§ 4.38 General requirements.

(a) * * *

(b) Size of type. (1) Containers of more than 187 milliliters (18.7 centiliters).

* * *

(2) Containers of 187 milliliters (18.7 centiliters) or less. * * *

* * *

§ 4.71 (Amended)

Paragraph 4. Section 4.71(a)(3) is amended by adding "(18.7 centiliters)" after "187 milliliters".

Paragraph 5. Section 4.73(a) is revised to read as follows:

§ 4.73 Metric standards of fill.

(a) Authorized standards of fill. The standards of fill for wine are the following:

3 liters
1.5 liters
1 liter
750 milliliters (or
75 centiliters)
500 milliliters (or
50 centiliters)
375 milliliters (or 37.5 centiliters)
187 milliliters (or
18.7 centiliters)
100 milliliters (or 10
centiliters)
50 milliliters (or 5

centiliters)

* * *
Signed: March 17, 1998.

John W. Magaw,
Director.

Approved: April 20, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 98-13017 Filed 5-14-98; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11-98-003]

RIN 2115-AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify and expand the geographical boundaries of the permanent security zone codified at 33 CFR 165.1105 as follows: on the waters along the northern shoreline of Naval Air Station North Island, the area enclosed by the following points: Beginning at a point located at 32°42'53.0" N, 117°11'45.0" W, thence running northerly to a point located at 32°42'55.5" N, 117°11'45.0" W, thence running easterly to a point located at 32°42'55.0" N, 117°11'30.5" W, thence running southeasterly to a point located at 32°42'50.5" N, 117°11'26.0" W, thence running northeasterly to a point located at 32°42'52.0" N, 117°11'24.5" W, thence running southeasterly to a point located at 32°42'43.5" N, 117°11'13.0" W, thence running southerly to a point located at 32°42'30.5" N, 117°11'18.0" W, thence running southeasterly to a point located at 32°42'21.0" N, 117°10'48.0" W, thence running southerly to a point located at 32°42'13.0" N, 117°10'51.0" W, thence running generally northwesterly along the shoreline of Naval Air Station North Island to the place of beginning. The perimeter of the security zone will continue to be marked and patrolled by United States Navy security patrol boats.

There were previously only two aircraft carriers homeported at Naval Air Station North Island; however, a third aircraft carrier has recently been designated to homeport at Naval Air Station North Island. The modification and expansion of this security zone is needed to accommodate the

homeporting of this third aircraft carrier at Naval Air Station North Island. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port.

DATES: Comments must be received on or before July 14, 1998.

ADDRESSES: Comments may be mailed to LT Michael A. Arguelles, Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA, 92101-1064, (619) 683-6484. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike Arguelles, USCG, c/o U.S. Coast Guard Captain of the Port, 2716 N. Harbor Drive, San Diego, CA 92101-1064, (619) 683-6484.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or any other materials to the address listed under **ADDRESSES** in this preamble. Persons submitting comments should include their names and addresses, identify the docket number for this rulemaking (CGD11-98-003), the specific section of the proposal to which their comments apply, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process. Persons may request a public hearing by writing to the address listed above in **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the *Federal Register*.

Background and Purpose

This modification of 33 CFR 165.1105 is being proposed to accommodate the homeporting of a new aircraft carrier at Naval Air Station North Island. There were previously only two aircraft carriers homeported at Naval Air Station North Island; however, a third aircraft carrier has recently been designated to homeport at Naval Air Station North Island. The modification and expansion of this security zone is needed to accommodate the homeporting of this third aircraft carrier at Naval Air Station North Island.

The modification and expansion of this security zone will prevent recreational and commercial craft from interfering with military operations involving all naval vessels homeported at Naval Air Station North Island, and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This proposal will have minimal additional impact on vessel traffic because it is only a slight modification and expansion of the existing security zone codified at 33 CFR 165.1105.

Small Entities

Under 5 U.S.C. 601 *et seq.*, the Coast Guard must consider whether this proposal would have significant impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard expects the economic impact of the proposal to be minimal on all entities. Because it

expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposed regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend subpart F of part 165 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for 33 CFR part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g) 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. In § 165.1105 paragraph (a), is revised to read as follows:

§ 165.1105 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: on the waters along the northern shoreline of Naval Air Station North Island, the area enclosed by the following points: beginning at a point located at 32°42'53.0"N, 117°11'45.0"W; thence running northerly to a point located at 32°42'55.5"N, 117°11'45.0"W; thence running easterly to a point located at 32°42'55.0"N, 117°11'30.5"W;

thence running southeasterly to a point located at 32°42'50.5"N, 117°11'26.0"W; thence running northeasterly to a point located at 32°42'52.0"N, 117°11'24.5"W; thence running southeasterly to a point located at 32°42'43.5"N, 117°11'13.0"W; thence running southerly to a point located at 32°42'30.5"N, 117°11'18.0"W; thence running southeasterly to a point located at 32°42'21.0"N, 117°10'48.0"W; thence running southerly to a point located at 32°42'13.0"N, 117°10'51.0"W; thence running generally northwesterly along the shoreline of Naval Air Station North Island to the place of beginning.

Dated: April 20, 1998.

J. C. Card,
Vice Admiral, U.S. Coast Guard, Commander,
Eleventh Coast Guard District.

[FR Doc. 98-13016 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-15-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 141 and 142**

[FRL-6014-2]

National Primary Drinking Water Regulations: Consumer Confidence Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability; request for comments.

SUMMARY: In February 1998, EPA proposed the Consumer Confidence Report rule (62 FR 7606, Feb. 13, 1998). To test certain language that this rule would mandate, EPA convened focus group sessions. These groups of consumers provided comments on proposed definitions of regulatory terms and health effects language, as well as general comments on the consumer confidence reports. EPA will consider the input of the focus groups when making decisions regarding the final rule. The report of the focus group moderator, transcripts of the sessions, and supporting documents are available for review. EPA requests comments on the results of the focus group study.

DATES: Comments must be post-marked by midnight June 15, 1998.

ADDRESSES: Send written comments to CCR Docket Clerk (W-97-18); Water Docket (MC-4101); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460. Submit electronic comments to ow-docket@epamail.epa.gov.

Please submit an original and three copies of your comments and enclosures

(including references). Electronic comments must be submitted as a Word Perfect 5.1 or 6.1 file, or as an ASCII file avoiding the use of special characters. Comments will also be accepted on disks in WordPerfect 5.1 or 6.1, or ASCII file format. Electronic comments on this Notice may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline (800-426-4791) for general information about the proposed rule. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time. For technical inquiries, contact Françoise M. Brasier (202-260-5668) or Rob Allison (202-260-9836).

SUPPLEMENTARY INFORMATION: The Consumer Confidence Report rule would require community water systems to mail to each of their customers an annual report on local drinking water quality. The report would include such information as the source of local drinking water, the levels of any contaminants detected in water delivered to consumers, violations of drinking water regulations, and other information about local water quality. The proposed rule sets few requirements for the format of the reports, thereby allowing water suppliers to tailor their reports around the information that they must present.

EPA proposed several brief definitions of regulatory terms (e.g., "maximum contaminant level") that systems would have to include in their reports. EPA also proposed brief health effects language for each regulated contaminant. Water systems would have to include this language in their reports whenever they detected a regulated contaminant in excess of its legal limit. In the proposal's preamble, EPA discussed options for both sets of language and requested comment on which language would be most useful to consumers.

Availability of Data.

The data to which this Notice refers is available for inspection from 9 to 4 p.m. (Eastern Time), Monday through Friday, excluding legal holidays, at the Water Docket, U.S. EPA Headquarters, 401 M. St., SW, East Tower Basement, Washington, DC 20460. Please call 202-260-3027 to schedule an appointment and refer to W-97-18. The Focus Group Report is also available on the Internet

at www.epa.gov/safewater/ccr/focus.html.

Regulated persons. Potentially regulated persons are community water systems.

Category	Example of regulated entities
Publicly-owned CWSs.	Municipalities; County Governments; Water districts; Water and Sewer Authorities.
Privately-owned CWSs.	Private water utilities; homeowners associations.
Ancillary CWSs.	Persons who deliver drinking water as an adjunct to their primary business (e.g. trailer parks, retirement homes).

Dated: May 8, 1998.

Robert Perciasepe,
Assistant Administrator.

[FR Doc. 98-13025 Filed 5-14-98; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Chapter I**

[CC Docket No. 98-56, RM-9101, FCC 98-72]

Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking seeking comment on various proposed performance measurements and reporting requirements relating to incumbent carriers' operations support systems (OSS). The performance measurements and reporting requirements proposed in the NPRM will complement existing state proceedings and efforts by carriers, independent of regulatory requirements, to incorporate performance measurements into their interconnection agreements.

DATES: Comments are due on or before June 1, 1998 and Reply Comments are due on or before June 22, 1998. Written comments by the public on the proposed information collections are due June 1, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before July 14, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St., N.W., Washington, D.C. 20036. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418-1580. For additional information concerning the information collections contained in this NPRM contact Judy Boley at (202) 418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted April 16, 1998 and released April 17, 1998 (FCC 98-72). This NPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the OMB for review under the PRA. The OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding. The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at <http://www.fcc.gov/Bureaus/CommonCarrier/Orders/fcc9872.wp>, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th St., N.W., Washington, D.C. 20036.

Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens,

invites the general public and OMB to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due July 14, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance.

Form No.: N/A.

Type of Review: New collection.

Information collection	Number of respondents (Approximately)	Estimated time per response (annual) (hours)	Total annual burden (hours)
Pre-Ordering: Average Response Time	11	240	2,640
Ordering/Provisioning: Order Completion Measurements	11	480	5,280
Ordering/Provisioning: Coordinated Customer Conversions	11	240	2,640
Ordering/Provisioning: Order Status Measurements	11	1,200	13,200
Ordering/Provisioning: Held Order Measurement	11	240	2,640
Ordering/Provisioning: Installation Troubles Measurement	11	240	2,640
Ordering/Provisioning: Order Quality Measurements	11	480	5,280
Ordering/Provisioning: 911 Database Update and Accuracy	11	480	5,280
Repair and Maintenance Measurements	11	960	10,560
Billing Measurements	11	480	5,280
General Measurements: Systems Availability	11	240	2,640
General Measurements: Center Responsiveness	11	240	2,640
General Measurements: OS/DA	11	240	2,640
Interconnection: Trunk Blockage Measurements	11	480	5,280
Interconnection: Collocation Measurements	11	720	7,920

Frequency of Response: Monthly; On occasion.

Total Annual Burden: 76,560 hours. Respondents: Business or other for profit.

Estimated costs per respondent. \$800,000.

Needs and Uses: The NPRM seeks comment on certain performance measurements and reporting requirements to implement the interconnection requirements of the 1996 Act. The proposed measurements are intended to permit a direct assessment of whether an incumbent local exchange carrier is complying with its obligations under section 251 of the Communications Act of 1934, as amended.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. In this proceeding, we explore ways to advance a fundamental goal of the Telecommunications Act of 1996—to increase consumer choice by fostering competition in the provision of local telephone service. The 1996 Act requires incumbent local telephone service providers to open their markets to competition.

2. Congress required incumbents to make available to new entrants in a nondiscriminatory, and just and reasonable manner the services and facilities the incumbents use to provide

retail services to their own customers. In order to take advantage of the service and facility offerings that Congress requires incumbents to provide, new entrants need access to the support functions that incumbents use to process orders from their own customers.

3. In this proceeding, we propose a methodology by which to analyze whether new providers of local telephone service are able to access, among other things, the support functions (that is, the functions provided by computer systems, databases, and personnel) of incumbent local telephone companies in a manner consistent with the 1996 Act's nondiscrimination requirement. We seek comment, as explained below, on certain proposed measurements and reports designed to illuminate the performance of incumbent local telephone companies in providing access to these vital support functions. Such performance measurements will assist incumbents, new entrants, and regulators in evaluating an incumbent's performance in meeting its statutory obligations. We do not, however, propose specific performance standards or technical standards. We also seek comment on ways to achieve the statutory goals while also minimizing the burden on all incumbent carriers,

especially small, rural, and mid-sized incumbent local telephone companies.

4. We recognize that some state commissions have undertaken efforts to develop performance measurements and reporting requirements for these support functions. Other states have yet to begin such efforts, but plan to do so. States have sought this Commission's help in developing these measurements. The primary goal of this NPRM, therefore, is to provide guidance, in the most efficient and expeditious manner possible, to the states and the industry on a set of performance measurements and reporting requirements that will help spur the development of local competition. Accordingly, we propose, in the first instance, to adopt model performance measures and reporting requirements, as described in detail herein, that are not legally binding. This approach will allow those states that have commenced proceedings to incorporate the model performance measurements and reporting requirements as they deem beneficial and aid those states that have not begun work in this area. We expect to develop such model performance measurements and reporting requirements as expeditiously as possible once the record closes in this proceeding. The experience we gain from the

development of these model performance measurements and reporting requirements and their application by the states will, we believe, provide a more informed and comprehensive record upon which to decide whether to adopt national, legally binding rules. The adoption of national rules may, however, prove to be unnecessary in light of the states' and carriers' application of the model performance measurements and reporting requirements that we intend to adopt in the first instance. We emphasize our belief that the adoption of model performance measurements and reporting requirements to serve as guidelines for state commissions constitutes the most efficient and effective role for the Commission in this area at this time.

II. Background

A. Procedural History

5. On May 30, 1997, LCI International Telecom Corp. (LCI) and the Competitive Telecommunications Association (CompTel) jointly filed a petition asking the Commission to initiate a rulemaking proceeding ("LCI/CompTel Petition") concerning the requirements governing OSS, interconnection, and other related activities established by the Commission in its *Local Competition First Report and Order*, 61 FR 45476, August 29, 1996. On June 10, 1997, the Commission issued a Public Notice seeking comment on the LCI/CompTel petition. A number of parties, including both incumbent LECs and competing carriers, filed comments and reply comments in response to this Public Notice.

6. Among other things, petitioners ask the Commission to establish: (1) performance measurements and reporting requirements for the provision of operations support systems (OSS) functions; (2) default performance standards or benchmarks that would apply when an incumbent LEC fails, or refuses, to report on its performance; (3) technical standards for OSS interfaces; and (4) remedial provisions that would apply to non-compliant incumbent LECs. In their petition, LCI/CompTel propose that the Commission rely on the Service Quality Measurements adopted by the Local Competition Users Group (LCUG) as the basis for establishing performance measurements, reporting requirements, and default performance standards. On October 8, 1997, LCUG filed a revised proposal that described in detail its proposed performance measurements and default standards. A number of parties filed additional ex

parte comments, offering their own proposed measurements and addressing the specific recommendations made by LCUG in its revised proposal.

B. Summary of Proposals

7. In this NPRM, we tentatively conclude that we should propose model performance measurements and reporting requirements for OSS functions, interconnection, and access to operator services and directory assistance. In Part III, we discuss the respective roles of the Commission and the states with regard to the development and implementation of model rules, as well as with respect to the establishment of legally binding rules. In Part IV, we set forth proposed performance measurements. In Part V, we discuss reporting procedures, and in Part VI we propose methods to evaluate performance measurements. As explained in Part VII, we conclude that we will not address at this time several points raised in the LCI/CompTel petition, such as the establishment of national performance standards, technical standards, and enforcement mechanisms. In addition, we recognize that the proposals set forth in this NPRM may disproportionately impact small, rural, and mid-sized incumbent LECs. Consequently, in Part VIII we also seek comment on the potential burdens that our proposed model rules could impose on these incumbent LECs and we seek comment on possible remedies.

III. Role of Commission and States

8. LCI and CompTel petitioned the Commission to initiate a rulemaking to promulgate performance measurements and reporting requirements. States as well have urged us to assist them in developing these measurements. Indeed, NARUC passed a resolution seeking such assistance. It states in pertinent part:

Resolved: That the FCC be urged to move promptly to advance the establishment of performance guidelines that can be used to evaluate the provision of access to the components of OSS functions * * *.

Individual states have also begun work in this area. For example, California and New York have initiated proceedings to develop OSS requirements, including performance measurements and reporting requirements.

9. The primary goal of this NPRM is to provide the requested guidance to the states in the most efficient and expeditious manner possible. Accordingly, we intend, in the first instance, to adopt a set of model performance measurements and reporting requirements, based on the detailed descriptions provided herein

and subject to whatever modifications we deem appropriate in light of comments received. These model performance measurements and reporting requirements would not be legally binding.

10. We recognize that parties in this proceeding have offered differing opinions concerning our jurisdiction to issue OSS rules. Some have argued that the Eighth Circuit's decision in *Iowa Utilities v. FCC* would preclude our authority to establish rules relating to OSS, while others have argued, to the contrary, that portions of that decision would validate our authority to issue such rules. We invite parties to comment on this issue. Given that our primary goal is to provide guidance to states through the adoption of model rules in the first instance, however, we strongly encourage parties to focus on the substance of the proposed performance measurements and reporting requirements, rather than focusing exclusively on issues of jurisdiction.

IV. Proposed Performance Measurements and Reporting Requirements

A. General Issues

11. In this section, we propose performance measurements for each of the five OSS functions, as well as for interconnection and OS/DA. These measurements are intended to permit a direct assessment of whether an incumbent LEC is complying with its obligations under section 251.

12. In the *Local Competition First Report and Order*, the Commission determined that, because OSS includes the information necessary to obtain other network elements or resold services, providing access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory, just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable. Additionally, the Commission identified OSS itself as a network element and stated that it consisted of five functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing. The Commission concluded that, as with all unbundled network elements, an incumbent LEC must provide access to these five OSS functions that is equivalent to what it provides itself, its own end-user customers, or other carriers.

13. As a practical matter, for those OSS functions provided to competing carriers that are analogous to OSS functions that an incumbent LEC provides itself in connection with retail service offerings, the incumbent LEC must provide access to competing carriers that is equivalent to the level of access that the incumbent LEC provides itself in terms of quality, accuracy, and timeliness. Thus, for example, for those functions that an incumbent LEC itself accesses electronically, the incumbent LEC must provide electronic access for competing carriers. In addition, competing carriers must have access to OSS functions that allows them to make use of such functions in "substantially the same time and manner" as the incumbent LEC. For those OSS functions that have no direct retail analog, such as the ordering and provisioning of unbundled network elements, an incumbent LEC must provide access sufficient to allow an efficient competitor a meaningful opportunity to compete.

14. With respect to interconnection, the Commission concluded that "section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party." Finally, incumbent LECs are obligated under section 251(c)(3) to provide nondiscriminatory access to operator services and directory assistance because they are network elements.

15. The measurements we propose in this NPRM are designed to assist in assessing an incumbent LEC's performance in providing OSS, interconnection, and OS/DA to competing carriers. Various parties presented proposals for performance measurements in this proceeding. We conclude, however, that no single proposal optimally balances our goals of detecting possible instances of discrimination while minimizing, to the extent possible, burdens imposed on incumbent LECs. We therefore propose a set of measurements that we believe provides an appropriate balance of these goals.

16. We recognize that reporting averages of performance measurements alone, without further analysis, may not reveal whether there are underlying differences in the way incumbent LECs treat their own retail operations in relation to the way they treat competing carriers. Consequently, we propose, as part of the model rules proposed herein, the use of statistical tests to determine

whether measured differences in the average performance of incumbent LECs toward their retail customers and toward competing carriers represent true differences in behavior rather than random chance. Further, we recognize that reporting on averages alone may mask potential forms of discrimination. For example, an incumbent LEC may have the same average completion interval in providing service to competing carriers as it has in providing service to its retail customers, but the variation in completion intervals in providing the service may differ greatly. It may be the case, for instance, that the average completion interval is four days for both competing carriers and retail customers, but half of competing carriers' orders are completed in one day and half in seven days, while all of retail customers' orders are completed in exactly four days. For this reason, we seek comment below on the possible use of statistical tests that capture differences in variances between two samples as well as tests of differences in averages. We also seek comment below on whether, as part of the model rules proposed herein, the data underlying the performance measurement results should be made available to competing carriers so that they can evaluate the incumbent LECs' performance in other ways if they choose to do so.

17. Before describing the individual performance measurements, however, we seek comment on a number of general issues that pertain to all performance measurements. These general issues concern: 1) the appropriate balance between the burdens and benefits associated with performance measurements and reporting requirements; 2) the appropriate geographic level for reporting; 3) the scope of activities that incumbent LECs should report; and 4) the relevant electronic interfaces for purposes of reporting the measurements described below.

1. Balance Between Burdens and Benefits

18. Our goal in developing performance measurements, and the associated level of detail, is to isolate the activities in which an incumbent could discriminate when providing services and facilities to competing carriers. We believe that persistent discrimination by an incumbent LEC in any of the activities for which we have proposed performance measurements potentially would undermine a competing carrier's prospects for success in the local market. At the same time, as we have noted previously, although we believe that performance

measurements and reporting requirements will help foster competition in the local exchange market, compliance with performance measurements and reporting requirements imposes certain burdens on incumbent LECs. In developing our proposed performance measurements and reporting requirements, we have sought to balance our goal of detecting possible instances of discrimination with our goal of minimizing, to the extent possible, burdens imposed on incumbent LECs. As a general matter, we seek comment on whether our proposed measurements appropriately balance these twin goals.

19. Additionally, we ask parties to comment generally on the level of detail contained in the proposed performance measurements. Specifically, we seek comment on whether the performance measurements we propose in this NPRM are sufficiently detailed to ensure the collection of meaningful data, or whether greater detail or disaggregation is necessary or whether lesser detail or disaggregation would be sufficient.

2. Geographic Level for Reporting

20. We seek comment on the appropriate geographic level of reporting. In particular, we seek comment on whether carriers should report data for each performance measurement based on state boundaries, LATAs, metropolitan statistical areas (MSAs), or some other relevant geographic area. We also seek comment on whether a uniform geographic level of reporting should apply to all performance measurements, or whether it would be appropriate to require different levels of reporting for separate measurements.

3. Scope of Reporting

21. We believe that, when an incumbent LEC reports the results of the performance measurements, it must do so in a manner that permits a competing carrier to compare the access the incumbent LEC provides to the carrier and other competing carriers with the access the incumbent LEC provides to itself or its affiliates. Accordingly, we tentatively conclude that an incumbent LEC should report separately on its performance as provided to: (1) its own retail customers; (2) any of its affiliates that provide local exchange service; (3) competing carriers in the aggregate; and (4) individual competing carriers. We seek comment on these proposed levels of disaggregation and whether they will permit competing carriers to detect discrimination.

4. Relevant Electronic Interfaces

22. As the Commission has previously noted, an incumbent LEC must provide competing carriers the same electronic access to its OSS functions as it provides itself in accessing its own internal systems and databases. Because incumbent LECs access their systems electronically for retail purposes, we tentatively conclude that incumbent LECs need measure only the access they provide electronically to competing carriers. Therefore, our proposals would only require incumbent LECs to measure the performance of the electronic interfaces that incumbent LECs offer to competing carriers for access to OSS.

23. We recognize that most incumbent LECs provide several types of electronic interfaces, such as a GUI-based interface and an EDI-based interface. We seek comment on whether these incumbent LECs must provide performance measurements for each type of electronic interface. We seek comment on whether an incumbent LEC should measure performance for each of its electronic interfaces or only some subset of the interfaces it offers. To the extent that incumbent LECs report on performance for all electronic interfaces, we tentatively conclude that they should disaggregate the data by interface type when reporting each performance measurement.

24. As noted above, we have sought to balance our goal of detecting possible instances of discrimination with our goal of minimizing, to the extent possible, burdens imposed on incumbent LECs. Because we intend to limit our proposed measurements to the performance of an incumbent LEC's electronic interfaces, we expect that most of the measurements proposed in this NPRM can be collected through electronic coding or some other automatic logging procedure. We seek comment on which, if any, of our proposed measurements may require more labor-intensive collection methods and whether, as a result, they would be unduly burdensome.

B. Proposed Measurements

1. Pre-Ordering Measurements

25. The pre-ordering function allows a competing carrier to gather and confirm information necessary to place an accurate order for its end user. We tentatively conclude that an incumbent LEC must measure the average interval for providing access to pre-ordering information to competing carriers, as well as to itself. The Average Response Time measurement could, however, be based on all queries sent to the pre-

ordering interface or some subset of these queries. We seek comment on whether a sampling approach, such as the one adopted in the *Bell Atlantic/NYNEX Merger Order*, would be a sufficient method for assessing an incumbent LEC's nondiscriminatory provision of pre-ordering information. In addition, we propose that an incumbent LEC disaggregate the results for this measurement according to the pre-ordering sub-functions.

26. We recognize that there may be instances where an incumbent LEC does not provide access to certain pre-ordering sub-functions on a real time basis, but rather via batch files (e.g., street address verification). We seek comment on whether incumbent LECs should exclude those pre-ordering sub-functions that are not provided on a real time basis from this measurement, or whether there are alternative methods to detect possible discriminatory access in such instances.

27. In certain instances a competing carrier may be unable to retrieve pre-ordering information for each query attempt. Instead, it may receive a rejected query notice (also known as a failed attempt notice). We seek comment on whether an incumbent LEC should measure the speed by which it provides rejected query notices to competing carriers as well as to itself. In addition, we seek comment on whether a rejected query notice measurement must be provided as a separate category for the pre-ordering function in general or, alternatively, disaggregated separately for each pre-ordering sub-function. Finally, we seek comment on whether incumbent LECs should measure the number of rejected query notices as a percentage of the total number of pre-ordering queries.

2. Ordering and Provisioning Measurements

a. *Disaggregation of data.* 28. Before describing the proposed ordering and provisioning measurements, this section discusses the levels of disaggregation that we believe should apply to these measurements, as well as to the repair and maintenance measurements discussed in Part IV.B.3. We believe that some level of disaggregation is necessary to ensure the collection of meaningful results. We note that a number of parties have proposed various levels of disaggregation. Although we make no tentative conclusions regarding the appropriate levels of disaggregation for ordering and provisioning measurements and repair and maintenance measurements, we seek comment on the thirteen measurement categories. In order for

competing carriers to track more easily the treatment accorded to certain types of orders throughout the ordering and provisioning process, we propose to use these thirteen measurement categories for the order completion measurements, the order status measurements, the held orders measurement, and the installation troubles measurement. Similarly, in order for competing carriers to observe more easily correlations between the types of services or elements ordered and any subsequent need for repair and maintenance, we propose to use the same thirteen measurement categories for the various repair and maintenance measurements, the Average Time to Restore measurement, the Frequency of Troubles in a Thirty Day Period measurement, the Frequency of Repeat Troubles in a Thirty Day Period measurement and the Percentage of Customer Troubles Resolved within Estimated Time measurement.

29. We seek comment on whether the thirteen proposed measurement categories are appropriate. In particular, we seek comment on whether these categories would disaggregate the data sufficiently to allow the detection of discrimination. We also seek comment on whether fewer levels of disaggregation would sufficiently detect instances of discrimination, but would impose less reporting burden on incumbent LECs.

30. We propose that incumbent LECs first break down the orders by separating resold services, unbundled network elements, and interconnection trunks.

For resold services, we propose to disaggregate the measurements further according to the three broad categories of resold telecommunications services: (1) Residential POTS; (2) business POTS; and (3) special services. We believe that each particular service that is available for resale can be categorized under one of these broader service umbrellas. We propose, however, that each group should be broken down by orders that require the dispatch of a service technician and those that do not. We believe that this breakdown is important because the need for field work has a significant impact on the amount of time necessary to provision a resale order placed by a competing carrier. We seek comment on the proposed levels of disaggregation for resold services.

31. For unbundled network elements, we propose that incumbent LECs report separately the measurement results associated with ordering and provisioning different types of network elements (*i.e.*, unbundled loops,

unbundled switching, and unbundled local transport). We believe that disaggregation by type of network element is necessary because there are varying degrees of order complexity and inter-carrier coordination involved with different types of network elements, including combinations of network elements, and that these variations will affect the time required to provision a network element order. In addition, we propose that orders for unbundled loops should be broken down by whether the loops are provisioned with interim number portability. We believe that the provisioning time for loops with interim number portability may differ from those without. We seek comment on our proposed levels of disaggregation for network element orders. We also seek comment on whether the unbundled loop category should be further disaggregated, as suggested by LCUG, between 2-wire unbundled loops, which are generally used for POTS-type services, and all other loop types, such as 4-wire unbundled loops and unbundled DS1 loops, which may be more complex to provision.

32. Finally, we propose to include interconnection trunks as a separate measurement category. Although interconnection trunks are physically indistinguishable from transport links, interconnection trunks are unique because they are used for the transmission of traffic between two networks, whereas transport links are used for the transmission of traffic within the incumbent's network. As a result, the process for ordering interconnection trunks, as well as the mechanisms for provisioning those trunks, is likely to involve a higher degree of order complexity, as well as greater inter-carrier coordination, and, therefore, may require a separate reporting category. We seek comment on the inclusion of interconnection trunks as a separate measurement category.

b. Order Completion Measurements

33. We tentatively conclude that incumbent LECs must measure the Average Completion Interval and the Percentage of Due Dates Missed for orders placed by their own retail customers and for orders placed by competing carriers.

34. The measurement for the Average Completion Interval seeks to compare the average length of time it takes an incumbent LEC to complete orders for competing carriers with the average length of time it takes to complete comparable incumbent LEC retail orders. For competing carriers' orders, we tentatively conclude that an incumbent LEC must measure the interval from its receipt of a valid order

("Order Submission Date and Time") at its OSS interface until the time it returns a completion notification to the competing carrier ("Date and Time of Notice of Completion"). For its own orders, we propose that an incumbent LEC measure the interval from when its service representative enters an end user customer's order into its order processing system ("Order Submission Date and Time") to the time it completes the order ("Completion Date and Time"). We seek comment on whether our proposed measurement for the Average Completion Interval is sufficient or whether greater or lesser detail is necessary.

35. The Percentage of Due Dates Missed measurement seeks to determine whether the agreed-upon due dates for order completion are equally reliable for orders placed by competing carriers and orders placed by an incumbent LEC's end user customers. We tentatively conclude that an incumbent LEC must calculate this percentage by comparing the total number of orders not completed by the committed due date and time during the specified reporting period to the total number of orders scheduled to be completed during that reporting period. This same measurement would apply to orders for an incumbent LEC's customers and for orders submitted by competing carriers. We seek comment on whether our proposed measurement for Percentage of Due Dates Missed is appropriate or whether additional detail is necessary.

36. With respect to both the Average Completion Interval and Percentage of Due Dates Missed measurements, we tentatively conclude that certain exclusions should apply. We tentatively conclude that incumbent LECs should exclude orders canceled or supplemented by competing carriers from these measurements. We seek comment on whether additional exclusions are needed.

c. Average time for coordinated customer conversions. 37. We tentatively conclude that the incumbent LECs should measure the Average Time for Coordinated Customer Conversions. Specifically, incumbent LECs must measure the average time it takes to disconnect an unbundled loop from the incumbent LEC's switch and cross connect it to a competing carrier's equipment with and without number portability. This performance measurement will assist in determining how long a customer switching to a competing carrier is without local exchange service when the competing carrier utilizes the incumbent LEC's unbundled loop, in conjunction with its own switching equipment, to provide

such service. We believe that this measurement will assist in evaluating the incumbent LEC's provisioning of unbundled loops and the impact on competing carriers' customers.

d. Order status measurements. 38. We have previously stated that a competing carrier must receive information on the status of its orders on the same basis as an incumbent LEC provides such notices to itself.

39. We tentatively conclude that incumbent LECs must provide the following order status measurements: (1) the Average Reject Notice Interval; (2) the Average Firm Order Confirmation (FOC) Notice Interval; (3) the Average Jeopardy Notice Interval; (4) the Percentage of Orders in Jeopardy; and (5) the Average Completion Notice Interval. We tentatively conclude that all incumbent LECs must also measure these intervals for themselves, whether or not they have done so previously, in order to provide a basis for comparison with the average intervals for competing carriers. A comparison of these times can provide information on whether the incumbent is providing nondiscriminatory access to competing carriers. We seek comment on these tentative conclusions. If an incumbent LEC does not currently provide itself with a certain form of notice (e.g., a FOC), we seek comment on the appropriate retail analog that should be measured. We also seek comment on whether all of these order status measurements are necessary to ensure that an incumbent LEC is providing nondiscriminatory access.

40. The Average Reject Notice Interval seeks to measure the amount of time it takes an incumbent LEC to notify the competing carrier that an order has been rejected. An incumbent LEC typically sends an order rejection notice for invalid orders, such as those that have syntax or formatting errors in the order form. The Commission has previously explained that "[t]imely delivery of order rejection notices has a direct impact on a new entrant's ability to service its customers, because new entrants cannot correct errors and resubmit orders until they are notified of their rejection" We tentatively conclude that an incumbent LEC must measure the time it takes to deliver such notices by using the measurement. We propose that an incumbent LEC measure this interval from the time it receives an order at its OSS interface to the time the rejection notice leaves its gateway. We seek comment on these tentative conclusions.

41. The Average FOC Notice Interval seeks to measure the amount of time it takes an incumbent LEC to send a

competing carrier a notice confirming the order. Competing carriers rely on FOC notices to apprise their customers of due dates. We tentatively conclude that an incumbent LEC must measure the time it takes to deliver a FOC notice by using the measurement. We also tentatively conclude that the incumbent LEC must measure this interval from the time it received a valid order at its OSS interface from the competing carrier to the time the FOC leaves its OSS interface and is transmitted to the competing carrier. Because this interval measures only valid orders, we tentatively conclude that incumbent LECs must exclude rejected orders from this measurement. We seek comment on these tentative conclusions.

42. The Average Jeopardy Notice Interval attempts to determine how far in advance a competing carrier receives notice that its customer's order is in jeopardy of not being completed as scheduled, compared to how far in advance an incumbent LEC's service representative receives such notice. The Commission has previously explained that competing carriers need timely order jeopardy notices to inform their customers of the potential need to reschedule the time for service installation. We tentatively conclude that incumbent LECs must measure the amount of time between the originally scheduled order completion date and time (as stated on the FOC) and the date and time a notice leaves the incumbent LEC's interface informing the carrier that the order is in jeopardy of missing the originally scheduled date. We seek comment on this tentative conclusion.

43. We also tentatively conclude that incumbent LECs must measure the Percentage of Orders in Jeopardy. This measurement determines the percentage of orders that the incumbent LEC identifies as being in jeopardy of not being completed on time for any reason. This information will enable a competing carrier to determine whether a significantly higher percentage of its orders are placed in jeopardy than an incumbent LEC's retail orders. Additionally, a competing carrier should receive a jeopardy notification for each of its orders that the incumbent LEC fails to complete on time. A competing carrier can determine whether it is receiving this requisite advance notice by comparing the Percentage of Orders in Jeopardy to the Percentage Due Dates Missed measurement.

44. Finally, the Average Completion Notice Interval measures the amount of time it takes an incumbent LEC to send a competing carrier notice that work on an order has been completed. We

tentatively conclude that an incumbent LEC must use the measurement and must measure the interval by subtracting the date and time that it completed the work from the date and time a valid completion notice leaves its OSS interface. We seek comment on these tentative conclusions.

e. Average interval for held orders. 45. We tentatively conclude that incumbent LECs must measure the Average Interval for Held Orders. This measurement seeks to capture the time required to complete held orders, i.e., those orders pending at the end of the reporting period whose committed due dates have passed. For example, if incumbent LECs report on a monthly basis, a held order would be any order that is overdue at the end of the month. By measuring those orders whose due dates have passed, the Average Held Order measurement will capture those orders not covered by the Average Completion Interval measurement, which measures orders that are completed by the committed due date. We believe that the Average Interval for Held Orders measurement will enable a requesting carrier to determine whether the average period that its orders are pending after the committed due date is no longer than the average period for similar incumbent LEC pending orders. We seek comment on the utility of measuring the average interval for held orders and whether the measurement described below accurately captures the necessary information.

46. To arrive at the Average Interval for Held Orders, we tentatively conclude that the incumbent LEC should first identify all orders with a FOC listing a due date prior to the end of the reporting period in question for which a valid completion notice has not yet been issued. The held order interval for a particular order is the number of calendar days between the completion date listed on that order's FOC and the close of the reporting period. The Average Interval for Held Orders is then calculated by dividing the total number of days since the due date up to the reporting period close date by the number of held orders. Incumbent LECs should measure the Average Interval for Held Orders for both competing carrier orders and their own retail customer orders. We propose that incumbent LECs exclude from this measurement those orders cancelled by a competing carrier. We seek comment on whether these exclusions will assist in producing meaningful results and on whether additional exclusions are needed.

f. Installation troubles. 47. We tentatively conclude that an incumbent LEC must measure Percentage Troubles

in Thirty Days for New Orders. We believe that incumbent LECs must calculate the percentage of new orders for which a competing carrier, or incumbent LEC customer service representative, receives complaints that there is a problem with the service within the first thirty days after completion of the order. Trouble reports often indicate that a customer has not received the exact service ordered, either because the carrier provided the wrong type of service or a lower quality of service than expected. We believe, therefore, that this measurement will provide information about whether the incumbent LEC processed the order accurately. Accordingly, we propose that incumbents LECs measure Percentage Troubles in Thirty Days for New Orders as a substitute for LCUG's proposed measurement of Percentage Orders Processed Accurately. We believe that Percentage Troubles in Thirty Days for New Orders will provide the information sought by LCUG, but will be a less burdensome measurement than measuring order accuracy, which requires an incumbent LEC to compare the original account profile and order sent by the competing carrier to the account profile following completion of the order. Nevertheless, we seek comment on using this measurement as a substitute for order accuracy. We also seek comment on whether thirty days is an appropriate cut-off for measuring trouble reports for new orders.

48. Although we make no tentative conclusions regarding the specific measurement needed to measure Percentage Troubles in Thirty Days for New Orders, we seek comment on the measurement. Specifically, we seek comment on whether this measurement should be disaggregated in the same way as the other ordering and provisioning measurements. It may not be appropriate, for example, to include interconnection trunks because any problems relating to such trunks will likely affect many customers on the competing carrier's network, rather than one specific customer. We seek comment on whether interconnection trunks, or any other categories of disaggregation, should be eliminated for this measurement.

49. Finally, we seek comment on whether it is appropriate to measure percentage troubles on a "per order" basis. We seek comment on whether tracking troubles on a per order basis might mask a higher number of troubles for larger orders. For example, an order of forty new lines may have several problems and yet would be reported as having only one trouble report. We therefore seek comment on whether a

"per circuit" basis for resale orders and "per element" basis for unbundled network element orders might be more useful than a "per order" basis.

g. Ordering quality measurements.

1. Order Flow Through

50. An incumbent LEC's internal ordering system permits its retail service representatives to submit retail customer orders electronically, directly into the ordering system. This is known as "flow through." Similarly, a competing carrier's orders "flow through" if they are transmitted electronically (i.e., with no manual intervention) through the gateway into the incumbent LEC's ordering systems. Order Flow Through applies solely to the OSS ordering function, not the OSS provisioning function. In other words, Order Flow Through measures only how the competing carrier's order is transmitted to the incumbent's back office ordering system, not how the incumbent ultimately completes that order. Electronically processed service orders are more likely to be completed and less prone to human error than orders that require some degree of human intervention.

51. We tentatively conclude that incumbent LECs should measure the percentage of competing carriers' orders that flow through electronically to the incumbent LEC's ordering systems. The Percentage Order Flow Through measurement seeks to calculate the percentage of orders that an incumbent LEC processes electronically through its gateway and accepts into its back office systems without manual intervention (i.e., without additional human intervention once the order is submitted into the system). This measurement only applies to valid orders, that is, orders that have not been rejected for some reason. A separate measurement for rejected orders is in paragraph 53.

52. We tentatively conclude that the Order Flow Through measurement must be disaggregated by the following categories: (1) resale POTS; (2) resale specials; (3) network elements; and (4) combinations of network elements. We note that the proposed categories for the Order Flow Through measurement are less detailed than the categories proposed for the other measurements relating to the ordering process (e.g., order completion and order status measurements). We believe this distinction is justified because the Order Flow Through measurement focuses solely on the OSS ordering function, whereas the other proposed measurements (i.e., those regarding order completion and order status) also focus on the OSS provisioning function.

In the provisioning context, there may be substantial differences in the time required to provide various types of unbundled network elements and services. For example, the time required to complete certain orders may vary based on whether an order requires a dispatch, or merely a billing change. In the order flow through context, such issues are irrelevant. The method of ordering resold services and network elements is not likely to vary between residential and business customers. We seek comment on the proposed levels of disaggregation for the Order Flow Through measurement and whether further disaggregation is necessary.

2. Order Rejections

53. We tentatively conclude that incumbent LECs must report on the Percentage of Rejected Orders. We also tentatively conclude that this measurement must be reported to the same level of disaggregation as the Order Flow Through measurement. The Percentage of Rejected Orders measurement, would determine the percentage of total orders received electronically that are rejected.

54. In addition to the above measurement, we seek comment on whether incumbent LECs should report on the average number of times an order must be resubmitted before it is finally accepted as a valid order. The Average Submissions per Order measurement would require incumbent LECs to measure the number of orders accepted for provisioning and the number of orders rejected during the reporting period in order to calculate the total number of order submissions in the reporting period. The total number of order submissions would then be divided by the total number of orders accepted for provisioning in the reporting period.

h. 911 Database update and accuracy. 55. One of the OSS databases used in ordering and provisioning services and facilities to competing carriers is the 911/E911 database. We seek comment on whether incumbent LECs should measure the provision of 911 and E911 emergency services to competing carriers. The accuracy of 911 and E911 database updates was identified as an important issue in the *Ameritech Michigan 271 Order*, 62 FR 44969, August 25, 1997. We seek comment on whether federal reporting requirements are necessary to monitor possible discrimination, or whether the states' existing oversight functions of 911 and E911 database services adequately monitor carrier-to-carrier discrimination.

56. We also seek comment on what particular measurements would be useful if we were to adopt reporting requirements in this area. In particular, we seek comment on the utility of measuring the percentage of accurate updates for incumbent LEC and competing carrier customers. Such a measurement might assist a competing carrier in determining whether there is discriminatory treatment in updating these databases.

57. We also seek comment on the utility of measuring the timeliness of updates to the 911 and E911 databases. We seek comment on whether incumbent LECs should measure the percentage of missed due dates by establishing due dates, or specific time frames, for updating databases. Alternatively, we seek comment on whether incumbent LECs should measure the mean time to update the 911 and E911 databases.

3. Repair and Maintenance Measurements

58. We tentatively conclude that incumbent LECs must provide the following repair and maintenance measurements: (1) Average Time to Restore; (2) Frequency of Repeat Troubles in Thirty Days; (3) Frequency of Troubles in a Thirty Day Period; and (4) Percentage of Customer Troubles Resolved within the Estimated Time. Incumbent LECs must calculate these measurements for themselves and for competing carriers. We seek comment on whether these four measurements are sufficient to assess whether incumbent LECs provide repair and maintenance in a nondiscriminatory manner, or whether this assessment could be done with fewer measurements. In addition, we seek comment on whether incumbent LECs should disaggregate the repair and maintenance measurements in the manner described with respect to the ordering and provisioning measurements.

59. The Average Time to Restore measurement allows a competing carrier to gauge whether its customers' services are repaired in the same time frame as that of the incumbent LEC's customers. The Average Time to Restore measures the time from when a service problem is reported to the incumbent LEC (i.e., when a "trouble ticket" is logged) to the time when the incumbent LEC returns a trouble ticket resolution notification to the competing carrier.

60. The Frequency of Troubles in a Thirty Day Period measurement reports the percentage of access lines that receive trouble tickets in a thirty day period. This measurement permits a competing carrier to determine on an

ongoing basis whether its customers experience more frequent incidents of trouble than the incumbent LEC's end users. Disparity in this measurement may indicate differences in the underlying quality of the network components supplied by the incumbent LEC. We seek comment on whether thirty days is an appropriate time frame.

61. The Frequency of Repeat Troubles in a Thirty Day Period measurement calculates the percentage of trouble tickets that are repeat trouble tickets. Any differences in this measurement may indicate that the incumbent LEC provides inferior maintenance support in the initial resolution of troubles or, in the alternative, that the incumbent LEC supplies network components of an inferior quality. The Frequency of Repeat Troubles in a Thirty Day Period measurement is calculated by dividing the number of repeat troubles generated in a thirty day period by the total number of trouble tickets received in the same thirty day period. Again, we seek comment on whether thirty days is an appropriate time frame.

62. The Percentage of Customer Troubles Resolved Within the Estimated Time measures whether the estimated times for repairs the incumbent LEC reports to competing carriers are as reliable as the estimated times the incumbent LEC provides to its end user customers. Recognizing that troubles on interconnection trunks may not be customer specific, we seek comment on the utility of requiring incumbent LECs to report on the Percentage of Customer Troubles Resolved Within the Estimated Time with respect to interconnection trunks.

63. We note that LCUG has proposed measurement categories for the Average Time to Restore measurement based on the disposition and cause of the trouble. We seek comment on whether most carriers use the disposition and cause categories proposed by LCUG, and whether such a breakdown would be useful for the repair and maintenance measurements. We also seek comment on whether such a breakdown would place undue burdens on incumbent LECs.

64. We tentatively conclude that incumbent LECs should exclude the following types of trouble reports from the measurements described above: (1) trouble tickets that are cancelled by the competing carrier; (2) incumbent LEC trouble reports associated with the internal or administrative use of local service; and (3) instances where the customer requests a ticket be "held open" for monitoring. With respect to the Frequency of Repeat Troubles measurement, we tentatively conclude

that incumbent LECs should exclude subsequent trouble reports on maintenance tickets that have not been reported as resolved or closed. We seek comment on whether these exclusions will assist in producing meaningful results and whether additional exclusions are needed.

4. Billing Measurements

65. As noted above, an incumbent LEC must provide nondiscriminatory access to billing, as one of the five OSS functions identified by the Commission in the *Local Competition First Report and Order*. A competing carrier is dependent on an incumbent LEC to obtain billing information, regardless of whether it uses unbundled network elements or resold services. Two types of billing information a competing carrier must obtain from an incumbent LEC are: (1) customer usage records (i.e., those records detailing each end user's use of the incumbent's services); and (2) billing invoices, which establish the amount the competing carrier owes the incumbent LEC for use of its services or facilities.

66. We tentatively conclude that a competing carrier can determine whether it is obtaining nondiscriminatory access to these two sets of billing records by obtaining performance measurements on the Average Time to Provide Usage Records and the Average Time to Deliver Invoices. The first measurement (Average Time to Provide Usage Records) seeks to capture the average time it takes an incumbent LEC to provide customer usage records. We tentatively conclude that incumbent LECs should use the measurements for the Average Time to Provide Usage Records in calculating the intervals for competing carriers and for their own retail use. For competing carriers, an incumbent LEC must compare the date and time it records usage data with the date and time it transmits the records from its OSS gateway to the competing carrier. For its own retail use, we propose that an incumbent LEC measure the elapsed time between the date and time of recording the usage record to the date and time it reformat the record on an Electronic Message Record (EMR), or an equivalent, format. We seek comment on these measurements. Additionally, we understand that files and billing for local usage, exchange access usage, and alternately billed usage are separated in the actual billing process, and we seek comment on whether incumbent LECs should disaggregate the Average Time to Provide Usage Records into these three groups.

67. The second measurement (Average Time to Deliver Invoices) seeks to measure the average time it takes an incumbent LEC to transmit a billing invoice to a competing carrier for charges related to resale and/or network elements. We tentatively conclude that incumbent LECs should calculate the Average Time to Deliver Invoices. For competing carriers, an incumbent LEC must compare the date and time it transmits the invoices to the competing carrier to the date and time the billing cycle closes. For an incumbent LEC's own retail use, LCUG has proposed that an incumbent LEC compare the date and time the customer's bills are produced in electronic format (whether or not they are distributed) to the date and time the billing cycle closes. We seek comment on this proposal for retail use and on our tentative conclusion regarding the appropriate measurement for competing carriers. We also seek comment on whether incumbent LECs should report separately for wholesale bill invoices and unbundled element bill invoices for competing carriers. Finally, we seek comment on whether any other measurements for billing are appropriate.

5. General Measurements

a. *Systems Availability*. 68. We tentatively conclude that an incumbent LEC must measure the percentage of time its electronic interfaces for each OSS function are actually operational as compared to the scheduled availability. We propose that an incumbent LEC calculate this measurement by comparing the total time it provides access to a particular interface during the reporting period to the total time the interface was scheduled to be available during the reporting period. We also propose that an incumbent LEC compare the total time its own systems are available to its service representatives to the amount of time that those systems should have been available during the reporting period. We believe that this measurement will assist in determining whether the incumbent LEC provides nondiscriminatory access to its electronic interfaces. We believe that both prolonged outages and frequent unavailability of electronic access to an incumbent LEC's OSS interfaces may significantly and adversely affect a competing carrier's ability to provide service to end users. We tentatively conclude that this measurement must be disaggregated by interface type, such as EDI and GUI, as well as by each separate OSS function provided by the incumbent LEC to competing carriers (e.g., pre-ordering, ordering,

provisioning, repair and maintenance, and billing). We seek comment on our tentative conclusions regarding systems availability measurements.

b. Center Responsiveness. 69. We tentatively conclude that an incumbent LEC must measure the average time to answer calls from competing carriers to an incumbent LEC's wholesale service center. We propose that an incumbent LEC calculate this measurement by tracking the time elapsed from when the service center's call management system is prompted by an incoming call from a competing carrier until the call is answered by an incumbent LEC's service representative. We seek comment on our tentative conclusion to require a measurement for center responsiveness.

c. Operator services and directory assistance. 70. We tentatively conclude that an incumbent LEC must measure the average time it takes its own end user customers and those of competing carriers to access the incumbent LEC's operator services and directory assistance databases or operators. We seek comment on this specific measurement.

71. Incumbent LECs appear to be able to provide separate measurement results for competing carriers that use dedicated trunks to access the incumbent LEC's OS/DA database or operators. Therefore, we tentatively conclude that incumbent LECs must provide separate measurement results in such instances. We seek comment, however, on whether, for purposes of disaggregation, an incumbent LEC is able to differentiate between OS/DA calls from its own end user customers and customers of competing carriers if all such calls are carried over the same OS/DA trunk groups.

6. Interconnection Measurements

72. As previously noted, section 251(c)(2) of the Act requires incumbent LECs to provide interconnection to competing carriers at the same level of quality as used in their own networks. We tentatively conclude that incumbent LECs must measure the quality of interconnection through three different means. As discussed above, we tentatively conclude that incumbent LECs must report separately for interconnection trunks when disaggregating the ordering and provisioning measurements, as well as the repair and maintenance measurements. We also tentatively conclude, as discussed below, that incumbent LECs must report on two sets of interconnection measurements, one for trunk blockage and one for collocation. These two sets of

measurements are intended to reveal the quality of interconnection provided to competing carriers.

a. Trunk Blockage. 73. We tentatively conclude that incumbent LECs must measure trunk blockage, i.e., blockage on final trunk groups within their networks. Blockage on these final trunk groups prevents end user calls from reaching their final destination. The inability of a competing carrier's end users to complete or receive calls has a direct impact on the customer's perception of the competing carrier's quality of service.

74. We believe that competing carriers' traffic can be blocked at two critical points: (1) interconnection trunk groups (e.g., those trunk groups connecting the incumbent LEC's end offices, access tandems, or local tandems with a competing carrier's network); or (2) common trunk groups located within the incumbent LEC's network behind the point of interconnection (e.g., trunks connecting the incumbent's tandem switch with other points in the incumbent LEC's network). We therefore tentatively conclude that an incumbent LEC measure on blockage on both sets of trunk groups. We seek comment on these tentative conclusions.

75. We seek comment on certain general issues associated with measuring trunk blockage. We recognize that inferior service is generally indicated by repeated blockage on the same final trunk groups. We therefore seek comment on whether incumbent LECs should measure whether there is repeated blockage over the same trunk groups for an ongoing period, such as three consecutive months. We also seek comment on whether incumbent LECs should report on blockage exceeding a certain blocking standard for both interconnection and common trunk group measurements. In the *Bell Atlantic/NYNEX Merger Order*, for example, the Commission required Bell Atlantic to report on blockage exceeding a blocking standard of B.01 for interconnection trunks and B.005 for common trunks. We seek comment on whether incumbent LECs should measure blockage exceeding these standards.

76. We also seek comment on methods by which parties may evaluate whether incumbent LECs are providing interconnection in compliance with their statutory obligations under section 251(c)(2). With respect to interconnection trunks, we seek comment on the utility of comparing blockage on interconnection trunks and blockage on the incumbent LEC's interoffice trunk groups carrying its

retail customers' traffic. In the *Ameritech Michigan 271* proceeding, Ameritech provided data on trunk blockage rates for both groups. The Commission determined that a higher percentage of interconnection trunking groups experienced blockage than did Ameritech's interoffice trunking groups serving its retail customers, suggesting that Ameritech's interconnection facilities did not meet the same service standards as those used within its own network. We seek comment on the value of using a comparison similar to that used in the *Ameritech Michigan 271 Order* for gauging whether interconnection trunks are provided in a nondiscriminatory manner. We also seek comment on which set of interoffice trunk groups incumbent LECs should monitor.

77. A competing carrier's ability to provide service to its customers may also be affected by blockage on common trunks located within the incumbent LEC's network behind the point of interconnection. We tentatively conclude that it is necessary to measure common trunk blockage and seek comment on appropriate methods to make such measurements. Specifically, we seek comment on whether incumbent LECs should use the common trunk data report established in BellCore Special Report SR STS-000317, "Common Trunk Transport Group Performance Data," Issue 2, September 1990. While we recognize that this report was intended to provide information about common trunk blockage to interexchange carriers (IXCs), we seek comment on whether this report can provide useful information for competing carriers as well. We also seek comment on whether incumbent LECs generally use this common trunk data report and whether all the measurements in the report are applicable to competing carriers. Additionally, we seek comment on the utility of requiring incumbent LECs to report on blockage on common trunks within their networks that connect to a point of interconnection, as well as on interoffice common trunks that are not connected to a point of interconnection. We seek comment on an incumbent LEC's ability to separately measure and report on blockage over these two types of common trunks (i.e., those trunk groups that connect to a point of interconnection and those that do not) and whether information about these two types of trunk groups will assist a competing carrier in determining whether it is receiving nondiscriminatory interconnection.

78. Finally, we seek comment on whether an incumbent LEC must

measure call completion rates to demonstrate that it is satisfying the statutory requirements of section 251(c)(2). In measuring call completion rates, an incumbent LEC would compare the percentage of calls completed by incumbent LEC customers to competing carrier customers, relative to the percentage of calls completed by incumbent LEC customers to other incumbent LEC customers. In the *Ameritech Michigan 271 Order*, the Commission noted that data regarding the rate of call completion would be useful in assessing the quality of interconnection. We seek comment on the utility of using this measurement to gauge the quality of interconnection provided by an incumbent LEC and on the benefits of using the call completion measurement in addition to, or instead of, the trunk blockage measurement. We also seek comment on the additional costs or burdens that such a measurement would impose on incumbent LECs.

b. Collocation. 79. We tentatively conclude that incumbent LECs must measure certain aspects of providing collocation arrangements. Section 251(c)(6) and our rules require incumbent LECs to provide physical and virtual collocation as a means of interconnection or access to unbundled network elements. Consequently, we tentatively conclude that incumbent LECs must provide measurements concerning their provision of collocation facilities to competing carriers, including the response time for initial requests for collocation. We also tentatively conclude that this measurement must be disaggregated between virtual and physical collocation arrangements. The provision of collocation arrangements involves several steps: (1) the initial query by a competing carrier regarding space for collocation, and the incumbent LEC's response to that query; (2) the actual ordering of the collocation arrangement by the competing carrier; and (3) the completion of that arrangement by the incumbent LEC. We tentatively conclude that incumbent LECs must provide the following measurements: (1) Average Time to Respond to a Collocation Request; (2) Average Time to Provide a Collocation Arrangement; and (3) Percentage of Due Dates Missed with respect to the provision of collocation arrangements. We seek comment on the utility of these proposed measurements.

80. We tentatively conclude that the Average Time to Respond to a Collocation Request must be determined by computing the elapsed time from the incumbent LEC's receipt of a request for

collocation by a competing carrier to the time the incumbent LEC responds to such a request. The Average Time to Provide a Collocation Arrangement must be calculated from the time that the competing carrier submits an order for a collocation arrangement to the time that the arrangement is made available to the competing carrier. Finally, an incumbent LEC must calculate the Percentage of Due Dates Missed by comparing the number of times it missed a committed date for providing collocation facilities to the total number of confirmed due dates for collocation arrangements during the reporting period. We also tentatively conclude that incumbent LECs must disaggregate these measurements by virtual and physical collocation arrangements. We seek comment on these tentative conclusions.

V. Reporting Procedures

81. We also propose model procedures to assist states considering how performance measurements should be reported. These model reporting procedures are intended to facilitate access by competing carriers and states to the measurements produced by the incumbent LECs so that carriers and states can determine whether incumbent LECs are satisfying their statutory obligations pursuant to section 251. This section discusses proposals regarding: (1) who should receive the reports; (2) the frequency of reports; and (3) auditing procedures.

A. Receipt of Reports

82. We seek comment on who should receive these reports from the incumbent LECs on a regular basis. We believe that the main purpose of these performance reports is to permit competing carriers to determine whether they are obtaining access consistent with the requirements of section 251. We tentatively conclude, therefore, that only those carriers that already obtain services or facilities from the incumbent LEC through an interconnection agreement, or under a statement of generally available terms, should have the opportunity to receive reports. Commenters that believe that other groups of carriers, such as those considering whether to enter the market, should also receive reports should explain why the benefits of their receiving reports outweigh the costs to incumbent LECs.

83. In order to minimize unnecessary costs or burdens for incumbent LECs, we further conclude that an incumbent LEC should provide reports to an individual competing carrier only after

receiving a request from the competing carrier for such reports.

84. States may also have an interest in reviewing performance reports. With respect to whether state officials should receive a copy of the reports that we propose in this NPRM, we tentatively conclude that individual states can best assess whether they wish to receive the reports. While this Commission may not need to review reports on a regular basis, we note that the Commission could obtain the reports upon request.

85. Finally, we seek comment on whether reports should be filed with a central clearinghouse so that state commissions, other competing carriers, or the general public can review an incumbent LEC's performance in different states. We seek comment on the benefits and costs involved in developing such a clearinghouse. We also seek comment on what entity should act as a clearinghouse, e.g., a coalition of regulators (such as NARUC) or another organization.

86. We recognize that parties may be concerned about disclosing confidential measurement results if results particular to an incumbent LEC or to an individual competing carrier are reported broadly. We seek comment on the need to keep individual competing carrier information confidential and on whether only aggregate measurement results be made available to other competing carriers or to the general public.

87. With respect to incumbent LEC measurement results, we believe that individual competing carriers must have access to incumbent LEC results so that they can make a meaningful comparison with their own data. We seek comment, however, on whether incumbent LEC measurement results should be protected from disclosure to non-requesting competing carriers or to the general public. If regulatory agencies request incumbent LEC and competing carrier measurement results, we ask parties to comment on whether protective measures are necessary and to propose appropriate mechanisms to keep those results confidential. Similarly, we ask parties to comment on whether competing carriers that receive incumbent LEC measurement results should be required to limit their use and disclosure of those results and to propose appropriate mechanisms for guarding against improper use.

B. Frequency of Reports

88. We also seek comment on how frequently incumbent LECs should file performance reports with competing carriers once requested by those carriers. Specifically, we seek comment

on the costs and benefits of requiring monthly reporting, as opposed to reporting on a less frequent basis, such as quarterly. We also seek comment on how quickly an incumbent LEC should provide a performance report after it is requested.

C. Auditing Requirements

89. As part of a performance monitoring mechanism, several competing carriers proposed that competing carriers be given a reasonable opportunity to conduct audits of performance reports. These commenters have stated that periodic auditing of the performance reports is necessary to ensure that incumbent LECs are using appropriate methodologies and are accurately reporting the required measurements. We believe, however, that some audits may be unnecessary or unduly burdensome for the incumbent LEC. We therefore seek comment on the need to conduct such audits as part of a model performance monitoring scheme. We also seek comment on the types of audits that might impose undue burdens. Finally, we seek comment on mechanisms that will permit competing carriers to conduct audits, when necessary, while protecting incumbent LECs from unduly burdensome or unnecessary audits. In addressing this issue, we ask parties to comment on who should pay for the costs of the audit.

90. In addition to audits, LCUG also proposed that an incumbent LEC should make available, at a competing carrier's request, the raw data underlying a report at the same time it provides the performance report to that competing carrier.

The raw data is that data captured by the incumbent LEC, such as the individual stop and start times, that are used to produce the measurement results. The competing carrier could use this data to validate the incumbent LEC's performance measurements or to perform additional statistical tests to determine whether there is a statistically significant difference in the way in which an incumbent LEC provisions itself compared with the way in which it provisions competing carriers. We seek comment on whether model reporting procedures should include providing access to raw data at this initial stage, rather than in the context of an audit. We recognize that there may be additional burdens or costs to the incumbent LEC in providing the raw data to a competing carrier and that incumbent LECs may wish to keep data regarding services and facilities they provide to themselves confidential. We seek comment on the types and

magnitudes of these burdens or costs. To the extent that commenters support regular provision of the raw data, they should explain why the advantages of obtaining such data outweigh these costs.

91. Finally, we seek comment on how long the incumbent LEC should retain the underlying data. One party proposed that an incumbent LEC retain the data for two years. We seek comment on whether this is an appropriate period for retention, or whether such a requirement is excessive if a competing carrier is also permitted to obtain the raw data on a regular basis along with the report.

VI. Evaluation of Performance Measurements

92. We believe that performance measurements and reporting requirements are necessary to ensure that incumbent LECs provide interconnection and access to OSS functions and OS/DA in compliance with the statutory requirements of section 251 of the Communications Act. As a practical matter, we expect that various parties will use the information contained in performance measurements as bases for determining whether an incumbent LEC is in compliance with the applicable statutory standards. For example, competing carriers may review the measurements to determine whether the incumbent LEC is providing access in a nondiscriminatory manner. In making this determination, parties will inevitably evaluate the results of these measurements using some preestablished set of criteria in order to determine whether the statutory requirements have been satisfied.

93. Although few parties raised the issue in the initial round of comments, several carriers have recently raised questions about how regulators and competing carriers can use the data generated by performance measurements to evaluate whether an incumbent LEC has adhered to its statutory obligations. We seek comment on whether we should recommend use of a uniform evaluation process that relies on objective criteria. We seek comment on whether such an approach will inject more consistency and predictability into determining whether an incumbent is meeting its statutory obligations. We believe that bringing more consistency and predictability to the evaluation process is supported by the pro-competitive goals of the 1996 Act and would benefit both incumbent LECs and competing carriers.

94. Incumbent LECs must comply with various statutory requirements in

their provision of interconnection and access to OSS functions and operator services and directory assistance. We believe that a number of methods for evaluating performance measurements could be used to make an objective determination as to whether an incumbent LEC is meeting these statutory requirements. In particular, the few parties that have addressed this issue have proposed using statistical analysis or performance benchmarks as evaluation methodologies.

95. Statistical analysis can help reveal the likelihood that reported differences in a LEC's performance toward its retail customers and competitive carriers are due to underlying differences in behavior rather than random chance. We seek comment on whether specifying a preferred statistical methodology would assist in evaluating an incumbent LEC's performance, and on whether a uniform statistical methodology would assist in comparing the performance of incumbent LECs across regions. We seek comment on which statistical tests, if any, the Commission should recommend. We believe that simple statistical tests that are widely understood and generally accepted would most likely be perceived as fair and would lead to the least disagreement concerning the interpretation of the statistical results. We seek comment on the use of conventional statistical tests of the equality of means to determine whether observed differences in various performance measurements between an incumbent LEC's own retail customers and competing carriers are likely to reflect actual differences in performance. We also seek comment on whether tests of the equality of variances or of the equality of the proportions of each sample that exceed a given value would be useful. We seek comment on whether any assumptions associated with the statistical methods described above might not be met by the performance measurement data, and on what the appropriate statistical methodology would be in such instances. We request comment on the desirability of using other, more complex forms of statistical analysis, and on whether additional data collection would be necessary to allow use of these techniques.

96. In an *ex parte* submission AT&T proposed using three criteria to determine incumbent LEC compliance with nondiscrimination obligations, including the maximum number of comparisons failing the statistical test for nondiscrimination, the maximum number of repeating measurements failing the test, and that no extreme

differences occur between the results for the incumbent LEC and those for the competing carrier. BellSouth in another proceeding has argued that the appropriate standard is that monthly results for the competing carrier should lie within three standard deviations of the average of the incumbent LEC's monthly performance, and that the results for one of the entities should not be higher than those for the other for three consecutive months. We request comment on AT&T's and BellSouth's proposed approaches to the use of statistical tests in evaluating performance data. We note that, even if statistically significant differences appear between results for the incumbent LEC and the competing carrier, these differences may be too small to have any practical competitive consequence and may not justify a legal conclusion that the incumbent LEC has discriminated against the competing carrier. Consequently we seek comment on whether threshold values of the absolute difference, or the percentage difference, in averages of performance measures should be used in addition to measures of statistical significance. We request comment on whether the form in which an incumbent LEC makes the data available to other parties and to regulators, for instance whether the data should be continuous or in intervals, should be specified, and on whether the data should be provided in a computer file rather than on paper.

VII. Other Issues Raised by Petitioners

97. In developing model rules, we tentatively conclude that it is not appropriate at this time to undertake certain additional actions requested by petitioners. These additional actions include establishing performance standards, technical standards for OSS interfaces, and remedial measures for non-compliant incumbent LECs.

VIII. Small and Midsized LECs

98. We seek comment on whether the proposed model performance measurements and reporting requirements will impose particular costs or burdens on small, rural, or midsized incumbent LECs. We also seek comment on how the proposed model rules should be modified to take into account any particular concerns of these LECs. For example, certain incumbent LECs may believe that the proposed guidelines should be tailored to meet circumstances relating to the areas in which small, rural or midsized LECs are located.

IX. Procedural Matters

A. Ex Parte Presentations

99. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.

B. Initial Paperwork Reduction Act Analysis

100. This Notice contains either a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due 60 days from date of publication of this Notice in the *Federal Register*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Initial Regulatory Flexibility Certification

101. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM) on Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance. Written public comments are requested on the IRFA. Comments must be identified as responses to the

IRFA and must be filed by the deadlines for comments on the NPRM provided below in Part IX. D. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM on Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance and IRFA (or summaries thereof) will be provided in the *Federal Register*.

102. *Need for and Objectives of the Proposed Rule.* We are issuing the NPRM specifically seeking comment on and presenting tentative conclusions on proposed performance measurements and reporting requirements intended to measure whether an incumbent LEC is providing nondiscriminatory access to operations support services (OSS), interconnection, and operator services and directory assistance (OS/DA). We also seek comment on the use of performance standards and other methods to evaluate whether an incumbent LEC is complying with its statutory obligations under section 251. Finally, although we do not set forth proposals in this area, we seek comment on issues related to OSS interface standards and remedial provisions. Based on the comments received in the NPRM, we may issue new rules.

103. *Legal Basis.* The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4, 201, 202, 222, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201, 202, 222, 251, and 303(r).

104. *Description and Estimates of the Number of Small Entities Affected by the Notice of Proposed Rulemaking.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." For the purposes of this order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business

for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be an entity that has no more than 1,500 employees.

105. Although affected incumbent local exchange carriers (ILECs) may have no more than 1,500 employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they either are dominant in their field of operations or are not independently owned and operated, and are therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."

106. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the Census Bureau) reports that at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are either small entities or small incumbent LECs that may be affected by this order.

107. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange services. The closest applicable definition under the SBA's rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service

(TRS). According to our most recent data, 1,371 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, or are dominant we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 small providers of local exchange service are small entities or small ILECs that may be affected by this order.

108. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* We are seeking comment on requiring all incumbent LECs to report on all the measurements. These proposed measurements seek to measure access provided by an incumbent LEC to all five OSS functions, as well as to interconnection and OS/DA. We also seek comment on how often incumbent LECs should provide these measurements, whether and for how long they should retain the measurement data, and whether the incumbent LEC should perform any statistical analysis of the measurement data. Finally we seek comment on reporting procedures, including: (1) whether an incumbent LEC must report separately on performance to itself, any local exchange affiliate, competing carriers in aggregate, and individual competing carriers; (2) whether an incumbent LEC should only provide performance monitoring reports to an individual competing carrier after receiving a request from the competing carrier for such reports on a regular basis; (3) how frequently an incumbent LEC should provide performance monitoring reports; (4) whether to accord confidential treatment to individual competing carrier information and incumbent LEC retail information; (5) whether an incumbent LEC should make available upon the request of a competing carrier or regulator raw data underlying a report; and (6) whether competing carriers should be entitled to ask for and obtain audits of the data underlying performance reports.

109. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* In Part VIII of the NPRM, we seek comment on the expenses involved with the proposed reporting requirements and the particular burdens they would impose on small, rural, or midsize LECs, if any. In Part VIII, we

also seek comment on possible alternatives to these proposed measurements and reporting requirements. We note that certain incumbent LECs might propose ways in which the Commission should tailor its proposals to meet circumstances relating to the areas in which small, rural or midsize LECs are located.

110. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule.* None.

D. Comment Filing Procedures

111. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. Please note, however, that comments and reply comments may be filed electronically. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies.

112. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

113. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C., 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

114. You may also file informal comments or an exact copy of your formal comments electronically via the Internet. To file electronic comments in this proceeding, you may use the electronic filing interface available on the FCC's World Wide Web site at <http://dettifoss.fcc.gov:8080/cgi-bin/ws.exe/beta/ecfs/upload.htm>.

Only one copy of electronically-filed comments must be submitted. Further information on the process of submitting comments electronically is available at that location and at <http://www.fcc.gov/e-file/>.

X. Ordering Clauses

115. Accordingly, it is ordered that, pursuant to sections 1, 2, 4, 201, 202, 222, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 202, 222, 251, and 303(r), a notice of proposed rulemaking is adopted.

116. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Notice of proposed rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, see 5 U.S.C. 605(b).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-12971 Filed 5-14-98; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 98050115-8115-01; I.D. 032498A]

RIN 0648-AK86

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Compensation for Collecting Resource Information

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed emergency rule; request for comments.

SUMMARY: This action, authorized by the Magnuson-Stevens Act, proposes provisions by which a vessel owner or operator who has collected resource information according to a NMFS-approved protocol may be compensated with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions. This action is intended to improve the types and amounts of scientific information available for use in stock assessments and management of the Pacific coast groundfish fishery. It is necessary to

implement this action under the Magnuson-Stevens Act emergency rulemaking authority so that NMFS may contract with commercial fishing vessels to conduct resource surveys during the summer of 1998. The Pacific Fishery Management Council (Council) is considering an amendment to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) that would continue this compensation initiative beyond 1998.

DATES: Comments will be considered if received on or before June 5, 1998.

ADDRESSES: Send comments to William Stelle, Jr., Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or William T. Hogarth, Administrator, Southwest Region, (Regional Administrator) NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Other information relevant to this proposed emergency rule is available for public review during business hours at the Office of the Administrator, Northwest Region, NMFS. Copies of the environmental assessment/regulatory impact review are also available from that address. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirements in this proposed emergency rule, including suggestions for reducing the burden, to one of the NMFS addresses and to the Office on Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140. **SUPPLEMENTARY INFORMATION:** NMFS is proposing an emergency rule and requesting comments on the proposal to allow owners or operators of vessels that collect resource information to be compensated with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions [hereinafter "compensated with fish"]. The Council recommended at its November 1997 meeting in Portland, OR, that NMFS proceed with this proposal immediately so that NMFS may so contract with commercial fishing vessels to conduct resource surveys during the summer of 1998.

The fishing industry, environmental groups, and NMFS have actively explored various ways to expand and improve information used in management of the groundfish fishery and to involve the fishing industry in gathering that information. Part of this effort involves finding more creative means of compensating a fishing

vessel's owner or operator with fish for participating in collecting resource information. On October 11, 1996, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) was amended to authorize the Secretary of Commerce (Secretary) to use the private sector to provide vessels, equipment, and services necessary to survey fishery resources and to pay for these surveys through the sale of fish taken during the survey or, if the quality or amount of fish is not adequate, on a subsequent, commercial fishing trip (sec. 402(e)). Section 303(b)(11) of the Magnuson-Stevens Act enables the Secretary to "reserve a portion of the allowable biological catch of the fishery for use in scientific research." A vessel that is chartered by NMFS to conduct resource surveys becomes a "scientific research vessel" as defined at 50 CFR 600.10, and it may not conduct commercial fishing on the same trip during which a resource survey is conducted.

Background

These provisions must be implemented as quickly as possible in order to include compensation with fish as a component of contracts NMFS will award to commercial fishing vessels to conduct resource surveys during the summer of 1998. Stock assessments for the Dover sole/thornyhead/rawl-caught sablefish (DTS) complex are controversial and have resulted in serious concern over the amount and accuracy of survey data. NMFS is committed to addressing these concerns. However, Federal fiscal constraints have precluded gathering the information needed. This is further compounded by the unavailability of the NOAA ship *Miller Freeman*, the principle vessel used for conducting resource surveys in this fishery, during much of 1998. Implementation of these provisions would enable NMFS to expand sampling in the annual slope survey which provides data for the stock assessments for these and other groundfish species. There is inadequate time to amend the PCGFMP to provide for using fish as compensation (and subtracting the compensation fish from acceptable biological catch (ABC)) before the slope survey is scheduled to begin on August 1, 1998. Therefore, NMFS is proposing this rule under the Secretary's emergency rulemaking authority of the Magnuson-Stevens Act so that these provisions may be implemented in time to support the 1998 slope survey. Concurrently, the Council is preparing an amendment to the PCGFMP for later implementation.

Compensation for a Vessel Conducting a Resource Survey

The Magnuson-Stevens Act authorizes the Secretary, in consultation with the Council and the interested public, to structure competitive solicitations by which a vessel's owner or operator may compete for a contract with NMFS to conduct a resource survey. Resource surveys generally are conducted from chartered fishing vessels, chartered university vessels, and dedicated NOAA vessels. In a resource survey, all samples (fish) are collected according to a specified research plan or protocol. NMFS distinguishes survey activities by a scientific research vessel from commercial fishing activities according to a process of acknowledging scientific research described at 50 CFR 600.745(a). NMFS frequently uses this mechanism to conduct surveys from chartered fishing vessels, and, in some cases, some of the sample has been retained by the vessel owner/operator for sale to reduce waste and to defray some of the costs of the charter. However, any additional harvest taken on a subsequent, commercial trip as payment for the resource survey would not be considered scientific research, and thus, was not authorized under the old provisions of the Magnuson-Stevens Act.

The new provisions of the Magnuson-Stevens Act provide the authority to go beyond allowing the retention and sale of fish caught during the course of a resource survey by providing compensation through the opportunity to harvest fish in excess of current vessel limits and/or outside of other restrictions. This rule proposes to authorize such "compensation fishing" through the issuance of an exempted fishing permit (EFP) in the Pacific Coast groundfish fishery, which would enable the vessel to exceed trip limits (and/or to be exempt from other specified management restrictions) so that the compensation amount could be achieved. The compensation EFP would include terms and conditions that would limit the authorized activities. Conditions for disposition of bycatch or any excess catch and for reporting the value of the amount landed and other appropriate terms and conditions would be specified in the EFP. If the PCGFMP is amended, it is anticipated that compensation fishing would occur no later than the end of September of the year after the survey occurred. Compensation fishing must take place during the period specified in the EFP and must be conducted according to the terms and conditions of the EFP. The compensation EFP may also require the

vessel owner or operator to keep separate records of compensation fishing conducted after the survey is completed and to submit them to NMFS within a specified period of time after the compensation fishing is completed. NMFS and the States of Washington, Oregon, and California may need to modify their catch reporting systems, if necessary, so that fish taken under the compensation EFP are counted separately from commercial landings.

Process

The process incorporates selection of commercial vessels to be used to conduct the resource surveys, issuance of compensation EFPs to provide for compensation with fish, and adjustment of the ABC to account for the compensation fish used.

Competitive Offers

NMFS may initiate a competitive solicitation (request for proposals, or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation. The RFP would be publicized in the *Commerce Business Daily* and would specify factors that NMFS would use in evaluating the proposals. Vessel owners would be expected to submit offers to conduct the resource survey for a combination of dollars and compensation fish.

Consultation

At a Council meeting, NMFS would consult with the Council and receive public comment on upcoming resource surveys to be conducted with groundfish used as whole or partial compensation. For each proposal, NMFS would present (1) the maximum number of vessels expected or needed to conduct the survey, (2) an estimate of the species and amount of fish likely to be needed to compensate the vessel, (3) when the survey and the compensation fish would be taken, and (4) the year in which the compensation fish would be deducted from the ABC before determining the harvest guideline (HG) or quota. This is, in effect, equivalent to NMFS presenting a compensation EFP application to the Council for the compensation amounts. In general, compensation fish should be similar to surveyed species, but there may be reasons to provide compensation with healthier, more abundant, less restricted, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS may also want to

take into account other factors such as expected discards and incidental catches of other species. If the Council does not approve the proposal to use fish as compensation to pay for a resource survey, NMFS would not use fish, other than fish taken during the scientific research, as compensation for that survey.

Awarding the Contract

NMFS would negotiate and award the resource survey contracts in accordance with normal Federal procurement procedures. The contract would include any conditions and limits on compensation fishing, including a requirement to carry on board (1) a letter of acknowledgment of research signed by the Regional Administrator or designee, while conducting any resource survey, and (2) the compensation EFP while conducting compensation fishing and for a period of at least 15 days after the end of any applicable cumulative trip limit period in which compensation fishing occurred.

Retention of Samples

All fishing on a resource survey trip would be required to be conducted according to scientific protocol and would be considered scientific research. However, some fish caught while conducting the survey could be retained and sold as compensation for the vessel's participation. Retention of samples for sale would be at the discretion of the chief scientist aboard, who would consult with the vessel captain. Collection of scientific information and samples would be the highest priority and might interfere with the vessel's ability to retain market-quality fish.

Issuance of the Compensation EFP

Upon successful completion of the resource survey and determination of the amount and/or value of the survey sample that was retained for sale as payment for conducting the survey, NMFS would issue a compensation EFP to the owner or operator of the vessel if full compensation has not been achieved by the cash payment and retention of the survey sample. The compensation EFP would allow the vessel an opportunity to exceed the current commercial fishing limits by the total amount of compensation fish needed. The amount of compensation fish needed is the amount of fish specified in the contract less the amount and/or value of the survey sample retained for sale. The compensation EFP

also would exempt the vessel from other specified management measures.

Accounting for Compensation Fish

Because the species and amounts of fish used as compensation would not be determined until the contract is awarded, it may not be possible to deduct the amount of compensation fish from the ABC or HG in the year that the fish are caught. Even if this could be done, it would cause great confusion with the many allocations and limits that were set before the compensation amounts were known. NMFS, therefore, proposes that the compensation fish be deducted from the ABC the year after they are caught. During the annual specification process (50 CFR 660.321(b)), NMFS would advise the Council of the total amount of fish caught during the year as compensation for conducting a resource survey, which then would be deducted from the following year's ABCs before setting the HGs or quotas.

Compensation for a Commercial Vessel Collecting Resource Information—an EFP With a Compensation Clause

NMFS also intends to conduct smaller-scale cooperative projects on vessels that are operating in the commercial fishery. This type of activity would not be considered scientific research under 50 CFR 600.745(a) because it would not be conducted by a scientific research vessel, even though the vessels would be collecting resource information according to strict scientific standards approved by NMFS. For small-scale cooperative projects, NMFS could issue EFPs to fishing vessels collecting the resource information. The EFP would require the vessel to conduct specific activities and allow it to retain and sell a limited amount of fish above the amount it could take under its regular trip limit. After the resource information has been obtained, the EFP could authorize the vessel to sell the fish that were in the sample. This would be a standard EFP, issued under the procedures at 50 CFR 600.745(b). Fish caught under this EFP would be counted against the ABCs and HGs or quotas in the year they are caught.

In some circumstances, NMFS might want to allow the vessel to harvest slightly more fish than necessary for the particular project. (For the sablefish depth-specific sampling EFP expected in 1998, a vessel would be able to retain the sample plus a modest compensation amount, no larger than the size of the sample, above its normal trip limits. Samples in these cases generally would be expected to involve less than 500–1,500 lb (227–680 kg) of fish per vessel

per month. The extra fish would compensate the vessel for the extra work involved in collecting the samples, may encourage vessels to participate in surveys, and would utilize more of the fish taken during the surveys that is surplus to sampling needs. NMFS could propose the amount of fish that would be used as compensation, or the EFP applicant could propose an amount in the EFP application. In these cases, when NMFS announces receipt of the EFP application and requests comments as required under 50 CFR 600.745(b), NMFS would also announce a window period during which vessels would have an opportunity to submit EFP applications. NMFS contemplates two ways of issuing such EFPs: First, the EFPs could be issued to individuals implementing a protocol approved by NMFS. NMFS would consider the qualified applicants, issue EFPs to all of them, select participation by lottery, issue EFPs to the first applicants, or use other impartial selection methods. Second, NMFS could issue the EFP to a NMFS element, or a state or other Federal research agency, and the research agency's proposal would include an impartial way of selecting fishing vessel participants that would receive individual EFPs under the umbrella EFP held by the research agency.

The following analysis focuses on the use of compensation fishing in the context of chartering vessels to conduct resource surveys because the issues and impacts are of a much greater magnitude than those involved in an EFP with a compensation clause.

Biological Impacts

The biological impacts of using fish as compensation would be expected to be neutral in the short term and positive in the long term. In the short term, the amount of fish used as compensation is intended to be within the ABC, and therefore, would be within current acceptable biological levels. In general, NMFS would be most likely to compensate the owner or operator of a vessel with identical or similar species to those taken in the resource survey. However, NMFS may decline to compensate a vessel with certain species, particularly stocks that are (or are expected to be) overfished, subject to overfishing, or have bycatch that are overfished (or are expected to be) or are subject to overfishing. In the long term, the additional information that is gathered because NMFS is able to compensate vessels with fish will provide more and better data for use in stock assessments, which should result

in better management of the stock and less likelihood of overfishing.

Socio-economic Impacts

The amount of the compensation fish (as a percentage of the ABC) would depend on the value of the compensation species and the cost of the survey. The cost of the survey is relatively fixed, regardless of the abundance and value of the species surveyed. The contract for an extensive survey (e.g., 2 vessels for 60 days at sea each), such as the current NMFS triennial trawl survey, would probably cost less than \$450,000, under 0.5 percent of the landed value of all Pacific coast groundfish, 590 million, or approximately 1 percent of the \$45 million value of the 1996 fisheries for the Dover sole, thornyheads, trawl-caught sablefish complex (DTS). A smaller scale survey targeted on nearshore flatfish (e.g., Petrale sole, English sole, rex sole) would cost close to \$175,000, 2.5 percent of the value of this \$7 million flatfish fishery. However, not all components of the groundfish fishery are useful as compensation fish. Only those groundfish species for which there is a constraining trip limit, season, or other management restriction would be desirable targets as compensation because a vessel is not limited in its catch of other groundfish species. Thus, the above comparison that is most relevant to this discussion is the one for the DTS complex. An unfortunate aspect is that most depressed stocks (such as Pacific ocean perch) cannot afford an allocation of compensation fish, while most healthy stocks (like English sole) have no trip limits or allocations that would be desirable compensation. These considerations do not diminish the utility of using fish as compensation, but they do limit the range of species that could be considered as payment.

Vessels engaged in extended resource surveys may not have an adequate opportunity to take their monthly commercial trip limit. The contract and EFP may address the possibility of allowing the take of a monthly trip limit outside the normal period as one of the activities that might be provided as compensation for conducting the survey.

The amount of compensation fish awarded to a survey vessel would be deducted from the subsequent year's ABC. If compensation fish comprise a large proportion of an HG or quota, then potentially trip or bag limits for that species could be lowered, or other constraints on the fishery could be necessary. However, the amounts used as compensation are expected to be less

than 5 percent of an ABC, well within the range of uncertainty associated with ABCs, inseason catch monitoring, and trip limit derivations. Therefore, it is not likely that awarding fish for compensation would result in lower trip limits or additional or earlier restrictions, although potentially this could occur.

Because the amount of fish used for compensation would be subtracted "off the top" of the ABC, the loss of compensation fish would be shared among all sectors and vessels (commercial, recreational, and tribal) in the fishery.

Use of compensation fish would reduce the Federal outlay of capital, although it would increase the Federal workload by adding additional EFP procedures and potentially complicating the determination of acceptable charter offers for resource surveys.

Use of fish as compensation for conducting resource surveys should increase the participation and interest by members of

the fishing industry, many of whom have been skeptical of NMFS's data and survey procedures. The resulting cooperation between industry and government would provide scientists with valuable guidance from veteran fishers and would provide industry with first-hand insight into scientific sampling procedures.

A survey vessel would receive an extra financial benefit under this proposed process; however, the recipient and level of the benefit would be determined through a competitive process.

Using fish as compensation would enable more data to be gathered than would otherwise be possible. This should lead to better stock assessments and a better long-term prognosis for a sustainable fishery and thus contribute to stability in the fishing industry and in the resources upon which the industry depends.

Classification

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

NMFS has established standards for determining whether an action will have a significant economic impact on a substantial number of small entities. NMFS has

determined that, in general, a substantial number of small entities would be 20 percent of those small entities affected by the rule. Economic impacts on small entities are considered to be "significant" if the proposed action would result in any of the following: (a) reduction in annual gross revenues by more than 5 percent; (b) increase in total costs of production by more than 5 percent as a result of an increase in compliance costs; (c) compliance costs as a percent of sales for small entities are at least 10 percent higher than compliance costs as a percent of sales for large entities; (d) capital cost of compliance represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or, (e) as a rule of thumb, 2 percent of small business entities being forced to cease business operations. The proposed rule would result in no additional compliance costs, and therefore items (b), (c), and (d) are not at issue. Item (e) is not relevant as this action would not force any business to cease operations. Only (a) appears potentially relevant to this issue.

This proposed rule could affect a maximum of 2,270 vessels. Of these, approximately 2,260 (almost 100 percent) are considered small entities. The rule is expected to have several different types of impacts. For vessels that obtain contracts to conduct research in exchange for fish, this rule would provide increased opportunity for profit. This rule is also expected to lead to the availability of increased scientific data on the status of the fishery. The availability of this data will enhance the ability of the agency to manage the fishery and is likely to lead to long-term benefits for all participants.

There is also the small possibility that this rule could result in negative economic impacts on some fishery participants. The fish that are awarded as compensation would be deducted from next year's acceptable biological catch. The amounts likely to be diverted for compensation would be so small as to be within the range of accuracy expected for inseason monitoring of harvest guidelines and quotas, and most likely would not change the size of trip limits or their date of achievement. However, there is a remote possibility that some trip limits would be lowered, or lowered earlier, as a result of the small compensation allocation for survey vessels. If this happens, those vessels that routinely achieve their Dover sole, thornyhead, and trawl-caught sablefish (DTS) limits could experience some degree of economic loss. NMFS estimates that approximately 208 limited entry vessels achieved these limits during at least one trip-limit period between July 1996-June 1997. Thus, 9 percent (208 vessels/2,260 vessels of the affected small entities) could hypothetically experience some economic loss as a result of this rule. NMFS estimates that the total cost of the 1998 compensation fish would be \$135,000. If this amount is divided between the limited entry and open access fleets in proportion to their share of the fishery, then the cost to the limited entry fleet would be approximately \$128,000 and the cost to the open access fleet would be approximately \$7,000.

If the entire \$128,000 share of the survey cost for the limited entry fleet were

supported by the 208 vessels that achieved a cumulative trip limit of one DTS species during one trip-limit period, the average cost to each of these 208 vessels would be \$615. The average annual fishing revenue for limited entry vessels in 1996 was \$204,000. Thus, the average cost per vessel of spreading the \$128,000 cost among 208 vessels would be 0.3 percent (\$615 divided by \$204,000). In addition, NMFS notes that the smallest 12-month revenue for any of these 208 vessels was \$15,000, 5 percent of which is \$750, which is higher than the \$615 average cost of the compensation fish for these 208 vessels. As the vessel revenue increases, which it does for the remaining 207 vessels, the relative impact of the cost of compensation fish becomes smaller, and remains less than 5 percent. From a slightly different perspective, if the cost associated with using fish as compensation were \$128,000 and were distributed amongst the limited entry vessels in proportion to the number of periods in which they attained a limit (during July 1996-June 1997), then the largest reduction in annual revenue for any vessel would be 0.5 percent. NMFS does not anticipate lowering trip limits in the open access fishery, because the maximum amount of fish that this rule could possibly reduce the open access fishery by (\$7,000 worth) is so small.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under OMB control number 0648-0203 for Federal fishing permits. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. The public reporting burden for applications for exempted fishery permits is estimated at 1 hour per response; burden for reporting by exempted fishing permittees is estimated at 30 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Public comment is invited regarding: Whether this proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information

technology. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 11, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.306, paragraph (d) is revised to read as follows:

§ 660.306 Prohibitions.

(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under 50 CFR 600.745 or 660.350.

3. In subpart G, a new § 660.350 is added to read as follows:

§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.

In addition to the reasons stated in § 600.745(b)(1) of this chapter, an EFP may be issued under this subpart G for the purpose of compensating the owner or operator of a vessel for collecting resource information according to a protocol approved by NMFS. The EFP would allow a vessel to retain fish as compensation in excess of trip limits, or to be exempt from other specified management measures for the Pacific coast groundfish fishery.

(a) *Compensation EFP.* A compensation EFP may be issued to the owner or operator of a vessel that conducted a resource survey according to a contract with NMFS. A vessel's total compensation from all sources (in terms of dollars or tons of fish and including fish from survey samples or compensation fish) will be determined

through normal Federal procurement procedures. The compensation EFP will specify the maximum amount or value of fish that may be retained by the vessel after the resource survey is completed.

(1) *Competitive offers.* NMFS may initiate a competitive solicitation (request for proposals or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation, following normal Federal procurement procedures.

(2) *Consultation.* At a Council meeting, NMFS will consult with the Council and receive public comment on upcoming resource surveys to be conducted if groundfish could be used as whole or partial compensation. For each proposal, NMFS will present:

(i) The maximum number of vessels expected or needed to conduct the survey,

(ii) An estimate of the species and amount of fish likely to be needed as compensation,

(iii) When the survey and compensation fish would be taken, and

(iv) The year in which the compensation fish would be deducted from the ABC before determining the harvest guideline or quota. Generally, compensation fish would be similar to surveyed species, but there may be reasons to provide payment with healthier, more abundant, less restricted stocks, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, or that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS also may also consider levels of discards, bycatch, and other factors. If the Council does not approve providing whole or partial compensation for the conduct of a survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey.

(3) *Issuance of the compensation EFP.* Upon successful completion of the survey, NMFS will issue a "compensation EFP" to the vessel if it has not been fully compensated. The procedures in § 600.745(b)(1) through (b)(4) of this chapter do not apply to a compensation EFP issued under this subpart for the Pacific coast groundfish fishery (50 CFR Part 660, subpart G).

(4) *Terms and conditions of the compensation EFP.* Conditions for disposition of bycatch or any excess catch, for reporting the value of the amount landed, and other appropriate terms and conditions will be specified in the EFP. Compensation fishing must occur during the period specified in the

EFP, but no later than the end of September of the fishing year following the survey, and must be conducted according to the terms and conditions of the EFP.

(5) *Reporting the compensation catch.* The compensation EFP may require the vessel owner or operator to keep separate records of compensation fishing and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

(6) *Accounting for the compensation fish.* As part of the annual specification process (50 CFR 660.321), NMFS will advise the Council of the amount of fish retained under a compensation EFP, which then will be deducted from the next year's ABCs before setting the HGs or quotas.

(b) *EFP with a compensation clause.* An EFP may be issued to a commercial fishing vessel for the purpose of collecting resource information in excess of current management limits (50 CFR 600.745(b)). The EFP may include a compensation clause that allows the participating vessel to be compensated with fish for its efforts to collect resource information according to NMFS' approved protocol. If compensation with fish is requested in an EFP application, or proposed by NMFS, the following provisions apply in addition to those at 50 CFR 600.745(b).

(1) *Application.* In addition to the requirements in § 600.745(b) of this chapter, application for an EFP with a compensation clause must clearly state whether a vessel's participation is contingent upon compensation with groundfish and, if so, the minimum amount (in metric tons, round weight) and the species. As with other EFPs issued under § 600.745 of this chapter, the application may be submitted by any individual, including a state fishery management agency or other research institution.

(2) *Denial.* In addition to the reasons stated in § 600.745(b)(3)(iii) of this chapter, the application will be denied if the requested compensation fishery, species, or amount is unacceptable for reasons such as, but not limited to, the following: NMFS concludes the value of the resource information is not commensurate with the value of the compensation fish; the proposed compensation involves species that are (or are expected to be) overfished or subject to overfishing, fishing in times or areas where fishing is otherwise prohibited or severely restricted, or fishing for species that would involve unavoidable bycatch of species that are overfished or subject to overfishing; or NMFS concludes the information can

reasonably be obtained at less cost to the resource.

(3) *Window period for other applications.* If the RA or designee agrees that compensation should be considered, then a window period will be announced in the **Federal Register** during which additional participants will have an opportunity to apply. This notification would be made at the same time as announcement of receipt of the application and request for comments required under § 660.745(b). If there are more qualified applicants than needed for a particular time and area, NMFS will choose among the qualified vessels,

either randomly, in order of receipt of the completed application, or by other impartial selection methods. If the permit applicant is a state, university, or Federal entity other than NMFS and NMFS approves the selection method, the permit applicant may choose among the qualified vessels, either randomly, in order of receipt of the vessel application, or by other impartial selection methods.

(4) *Terms and conditions.* The EFP will specify the amounts that may be taken as scientific samples and as compensation, the time period during which the compensation fishing must

occur, management measures that are waived while fishing under the EFP, and other terms and conditions appropriate to the fishery and the collection of resource information. NMFS may require compensation fishing to occur on the same trip that the resource information is collected.

(5) *Accounting for the catch.* Samples taken under this EFP, as well as any compensation fish, are counted toward the current year's catch or landings. [FR Doc. 98-13049 Filed 5-14-98; 8:45 am]

BILLING CODE 3510-22-F

Notices

This section of the **FEDERAL REGISTER** contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Seedway of Hall, New York, an exclusive license to Plant Variety Protection Certificate Application No. 9800028, Soybean, "Donegal" filed November 19, 1997. "Donegal" is a forage soybean cultivar recommended for forage production in the northeastern states and is not intended for grain production. "Donegal's" Notice of Availability was published in the **Federal Register** on January 8, 1998. **DATES:** Comments must be received on or before July 14, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705-2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301-504-5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Seedway submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument

which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.

Assistant Administrator.

[FR Doc. 98-13007 Filed 5-14-98; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Wolf River Valley Seeds of White Lake, Wisconsin, an exclusive license to Plant Variety Protection Certificate Application No. 9800027, Soybean, "Derry" filed November 19, 1997. "Derry" is a forage soybean cultivar recommended for forage production in the northern midwestern states and is not intended for grain production. "Derry's" Notice of Availability was published in the **Federal Register** on January 8, 1998. **DATES:** Comments must be received on or before July 14, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705-2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301-504-5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Wolf River Valley Seeds submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural

Federal Register

Vol. 63, No. 94

Friday, May 15, 1998

Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.

Assistant Administrator.

[FR Doc. 98-13004 Filed 5-14-98; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97-119-2]

AgrEvo USA Co.; Availability of Determination of Nonregulated Status for Corn Genetically Engineered for Insect Resistance and Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the AgrEvo USA Company's corn line designated as Transformation Event CBH-351, which has been genetically engineered for insect resistance and glufosinate herbicide tolerance, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by AgrEvo USA Company in its petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the AgrEvo USA Company's petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: May 8, 1998.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday.

except holidays. Persons wishing to inspect those documents are requested to call before visiting on (202) 690-2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-4886. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734-4885; e-mail: mkipeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1997, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 97-265-01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, seeking a determination that a corn line designated as Transformation Event CBH-351 (event CBH-351), which has been genetically engineered for insect resistance and glufosinate herbicide tolerance, does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On February 23, 1998, APHIS published a notice in the *Federal Register* (63 FR 8897-8898, Docket No. 97-119-1) announcing that the AgrEvo petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject corn line and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether this corn line posed a plant pest risk. The comments were to have been received by APHIS on or before April 24, 1998. During the designated 60-day comment period, APHIS received 2,271 form letters from farmers expressing support for the subject petition, and a comment letter from a research entomologist at a research unit of the U.S. Department of Agriculture's Agricultural Research Service providing data and information that event CBH-351 corn effectively controls European corn borer (ECB) during all corn developmental stages.

Analysis

Corn event CBH-351 has been genetically engineered to express a Cry9C insect control protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *tolworthi* (*Bt tolworthi*). The petitioner stated that the Cry9C protein is effective in protecting the subject corn line from

damage caused by ECB larvae throughout the growing season. The subject corn line also expresses the *bar* gene derived from the bacterium *Streptomyces hygroscopicus*. The *bar* gene encodes the phosphinothricin acetyltransferase (PAT) enzyme, which, when introduced into the plant cell, confers tolerance to the herbicide glufosinate. The particle bombardment method was used to transfer the added genes into the recipient inbred corn line (PA91 x H99) x H99, and their expression is controlled in part by gene sequences derived from the plant pathogens *Agrobacterium tumefaciens* and cauliflower mosaic virus. While the subject corn line contains the *bla* selectable marker gene, which is normally expressed in bacteria, tests indicate that this gene is not expressed in the plant.

The subject corn line has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, evaluation of field data reports from field tests of the corn conducted under APHIS notifications since 1995 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the environmental release of corn event CBH-351.

Determination

Based on its analysis of the data submitted by AgrEvo, a review of other scientific data and field tests of the subject corn line, and an analysis of comments from the public on the subject petition, APHIS has determined that corn event CBH-351: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than corn lines developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture; and (6) should not reduce the ability to control insects and weeds in corn or other crops when cultivated. Therefore, APHIS has concluded that the subject corn line and any progeny derived from crosses with other corn varieties will be as safe to grow as corn that is not subject to regulation under 7 CFR part 340.

The effect of this determination is that AgrEvo's corn event CBH-351 is no longer considered a regulated article under APHIS regulations in 7 CFR part 340. Therefore, the requirements

pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject corn or its progeny. However, importation of corn event CBH-351 or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that AgrEvo's corn event CBH-351 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 11th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-13006 Filed 5-14-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspaper To Be Used for Publication of Legal Notice of Appealable Decisions and Publications of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As

provided in 36 CFR part 215.5(a) and 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision. In addition, the Responsible Official in the Southern Region will also publish notice of proposed actions under 36 CFR part 215 in the newspaper that are listed in the Supplementary Information section of this notice. As provided in 36 CFR part 215.5(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30367-9102, Phone: 404-347-4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following principal newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper.

The following newspaper will be used to provide notice.

Southern Region

Regional Forester Decisions Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.
Atlanta Journal, published daily in Atlanta, GA

Southern Region

Regional Forester Decisions Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions:
Montgomery Advertiser, published daily in Montgomery, AL
District Ranger Decisions:
Bankhead Ranger District: *Northwest Alabamian*, published weekly (Monday & Thursday) in Haleyville, AL

Conecuh Ranger District: *The Andalusia Star*, published daily (Tuesday through Saturday) in Andalusia, AL
Oakmulgee Ranger District: *The Tuscaloosa News*, published in Tuscaloosa, AL
Shoal Creek Ranger District: *The Anniston Star*, published daily in Anniston, AL
Talladega Ranger District: *The Daily Home*, published daily in Talladega, AL
Tuskegee Ranger District: *Tuskegee News*, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions:
El Nuevo Dia, published daily in Spanish in San Juan, PR
San Juan Star, published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions:
The Times, published daily in Gainesville, GA
District Ranger Decisions:
Armuchee Ranger District: *Walker County Messenger*, published bi-weekly (Wednesday & Friday) in LaFayette, GA
Toccoa Ranger District: *The News Observer* published weekly (Wednesday) in Blue Ridge, GA
Brasstown Ranger District: *North Georgia News*, published weekly (Wednesday) in Blairsville, GA

Tallulah Ranger District: *Clayton Tribune*, published twice weekly (Tuesday & Friday) in Cornelia, GA
Chattooga Ranger District: *Northeast Georgian*, published twice weekly (Tuesday and Friday) in Cornelia, GA
Chieftain & Toccoa Record, published twice weekly (Tuesday & Friday) in Toccoa, GA
White County News Telegraph, published weekly (Thursday) in Cleveland, GA
The Dahlonega Nuggett, published weekly (Thursday) in Dahlonega, GA
Cohutta Ranger District: *Chatsworth Times*, published weekly (Wednesday) in Chatsworth, GA
Oconee Ranger District: *Monticello News*, published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions:
Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)
Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)
District Ranger Decisions:
Ocoee Ranger District: *Polk County News*, published weekly (Wednesday) in Benton, TN
Hiwassee Ranger District: *Daily Post-Athenian*, published daily (Monday-Friday) in Athens, TN
Tellico Ranger District: *Monroe County Advocate*, published weekly (Thursday) in Sweetwater, TN
Nolichucky Ranger District: *Greeneville Sun*, published weekly (Monday-Saturday) in Greeneville, TN
Unaka Ranger District: *Johnson City Press*, published daily in Johnson City, TN
Watauga Ranger District: *Elizabethton Star*, published daily (Sunday-Friday) in Elizabethton, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions:
Lexington Herald-Leader, published daily in Lexington, KY
District Ranger Decisions:
Morehead Ranger District: *Morehead News*, published bi-weekly (Tuesday and Friday) in Morehead, KY
Stanton Ranger District: *The Clay City Times*, published weekly (Thursday) in Stanton, KY
Berea Ranger District: *Jackson County Sun*, published weekly (Thursday) in McKee, KY
London Ranger District: *The Sentinel-Echo*, published tri-weekly (Monday, Wednesday, and Friday) in London, KY

Somerset Ranger District:
Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY

Stearns Ranger District: *McCreary County Record*, published weekly (Tuesday) in Whitley City, KY

Redbird Ranger District: *Manchester Enterprise*, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions:
The Tallahassee Democrat, published daily in Tallahassee, FL

District Ranger Decisions:
Apalachicola Ranger District: *The Liberty Journal*, published weekly (Wednesday) in Bristol, FL

Lake George Ranger District: *The Ocala Star Banner*, published daily in Ocala, FL

Osceola Ranger District: *The Lake City Reporter*, published daily (Monday-Saturday) in Lake City, FL

Seminole Ranger District: *The Daily Commercial*, published daily in Leesburg, FL

Wakulla Ranger District: *The Tallahassee Democrat*, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions:
The State, published daily in Columbia, SC

District Ranger Decisions:
Enoree Ranger District: *Newberry Observer*, published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC

Andrew Pickens Ranger District: *Seneca Journal and Tribune*, published bi-weekly (Wednesday and Friday) in Seneca, SC

Long Cane Ranger District: *The Augusta Chronicle*, published daily in Augusta, GA

Wambaw Ranger District: *News and Courier*, published daily in Charleston, SC

Wetherbee Ranger District: *News and Courier*, published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia

Forest Supervisor Decisions:
Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions:
Lee Ranger District: *Shenandoah Valley Herald*, published weekly (Wednesday) in Woodstock, VA

Warm Springs Ranger District: *The Recorder*, published weekly (Thursday) in Monterey, VA

Pedar Ranger District: *Roanoke Times*, published daily in Roanoke, VA

VA

James River Ranger District: *Virginian Review*, published daily (except Sunday) in Covington, VA

Deerfield Ranger District: *Daily News Leader*, published daily in Staunton, VA

Dry River Ranger District: *Daily News Record*, published daily (except Sunday) in Harrisonburg, VA

Blacksburg Ranger District: *Roanoke Times*, published daily in Roanoke, VA

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman*.)

Glenwood Ranger District: *Roanoke Times*, published daily in Roanoke, VA

New Castle Ranger District: *Roanoke Times*, published daily in Roanoke, VA

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman*.)

Mount Rogers National Recreation Area: *Bristol Herald Courier*, published daily in Bristol, VA

Clinch Ranger District: *Kingsport Times News*, published daily in Kingsport, TN

Wythe Ranger District: *Southwest Virginia Enterprise*, published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions:
Alexandria Daily Town Talk, published daily in Alexandria, LA

District Ranger Decisions:
Caney Ranger District: *Minden Press Herald*, published daily in Minden, LA

Homer Guardian Journal, published weekly (Wednesday) in Homer, LA

Catahoula Ranger District: *Alexandria Daily Town Talk*, published daily in Alexandria, LA

Colfax Chronicle, published weekly (Wednesday) in Colfax, LA

Calcasieu Ranger District: *Alexandria Daily Town Talk*, published daily in Alexandria, LA

Kisatchie Ranger District: *Natchitoches Times*, published daily (Tuesday-Friday and on Sunday) in Natchitoches, LA

Winn Ranger District: *Winn Parish Enterprise*, published weekly (Wednesday) in Winnfield, LA

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions:

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions:
Bienville Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

Chickasawhay Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

Delta Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

De Soto Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

Holly Springs Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

Homochitto Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

Tomigbee Ranger District: *Clarion-Ledger*, published daily in Jackson, MS

Ashe-Erambert Project: *Clarion-Ledger*, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions:
The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions:
Appalachian Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC

Cheoah Ranger District: *Graham Star*, published weekly (Thursday) in Robbinsville, NC

Croatan Ranger District: *The Sun Journal*, published weekly (Sunday through Friday) in New Bern, NC

Grandfather Ranger District: *McDowell News*, published daily in Marion, NC

Highlands Ranger District: *The Highlander*, published weekly (May-Oct Tues & Fri; Oct-April Tues only) in Highlands, NC

The Crossroads Chronicle, published weekly (May-Oct Tues & Fri; Oct-April Tues only) in Cashiers, NC

The Sylva Herald, published weekly on Thursday in Sylva, NC

Pisgah Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC

Tusquitee Ranger District: *Cherokee Scout*, published weekly (Wednesday) in Murphy, NC

Uwharrie Ranger District: *Montgomery Herald*, published weekly (Wednesday) in Troy, NC

Wayah Ranger District: *The Franklin*

Press, published bi-weekly (Wednesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions:
Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions:
Caddo Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Cold Springs Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Fourche Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Jessieville Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Mena Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Oden Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Poteau Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Winona Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Womble Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR

Choctaw Ranger District: *Tulsa World*, published daily in Tulsa, OK

Kiamichi Ranger District: *Tulsa World*, published daily in Tulsa, OK

Tiark Ranger District: *Tulsa World*, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions:
The Courier, published daily (Sunday through Friday) in Russellville, AR

District Ranger Decisions:
Sylamore Ranger District: *Stone County Leader*, published weekly (Tuesday) in Mountain View, AR

Buffalo Ranger District: *Harrison Daily Times*, published daily in Harrison, AR

Bayou Ranger District: *The Courier*, published daily (Sunday through Friday) in Russellville, AR

Pleasant Hill Ranger District: *Johnson County Graphic*, published weekly (Wednesday) in Clarksville, AR

Boston Mountain Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR

Magazine Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR

St. Francis Ranger District: *The Daily World*, published daily (Sunday through Friday) in Helena, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions:
The Lufkin Daily News, published daily in Lufkin, TX

District Ranger Decisions:
Angelina National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX

Davy Crockett National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX

Sabine National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX

Sam Houston National Forest: *The Courier*, published daily in Conroe, TX

Caddo & LBJ National Grasslands: *Denton Record-Chronicle*, published daily in Denton, TX

Dated: May 8, 1998.

Bruce L. Jewell,

Deputy Regional Forester for Natural Resources.

[FR Doc. 98-12951 Filed 5-14-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Kimberling Creek Purchase Unit, Virginia

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Kimberling Creek Purchase Unit.

SUMMARY: The Secretary of Agriculture created the 271-acre Kimberling Creek Purchase Unit in Bland County, Virginia. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATE: Establishment of this purchase unit was effective April 17, 1998.

ADDRESSES: A copy of the map depicting the lands within the purchase unit is on file and available for public inspection in the office of the Director, Lands Staff, 201 14th Street, S.W., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Jack Craven, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090-6090, telephone: (202) 205-1248.

Dated: May 6, 1998.

Gloria Manning,
Associate Deputy Chief, National Forest System.

Proposed Boundary Description for the Establishment of the Kimberling Creek Purchase Unit, Bland County, Virginia

Pursuant to the Secretary of Agriculture's authority under the Act of March 1, 1911, as amended, the Kimberling Creek Purchase Unit is being established and is described as follows:

Those lands in Bland County, Virginia, bounded on the west by State Route 606 being the existing Jefferson National Forest boundary, on the north by the existing Jefferson National Forest boundary, on the east by the Commonwealth of Virginia's Bland State Correctional Farm, and on the south by State Route 42 to the junction with State Route 606, the existing boundary.

The area described contains 271.25 acres, more or less, adjoining the Jefferson National Forest.

The lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: April 17, 1998.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 98-13039 Filed 5-14-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Extension, Ouachita National Forest, Arkansas

AGENCY: Forest Service, USDA.

ACTION: Notice of boundary extension.

SUMMARY: The Secretary of Agriculture has extended the Ouachita National Forest boundary to include 80 acres, more or less, which were recently acquired through exchange, in Le Flore County, Oklahoma. A copy of the Secretary's establishment document, which includes the legal description of the land within the extension, appears at the end of this notice.

EFFECTIVE DATE: The boundary extension was effective April 17, 1998.

ADDRESSES: A copy of the map showing the boundary extension is on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street, SW, Washington, D.C. 20090-6090.

FOR FURTHER INFORMATION CONTACT: Jack Craven, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090-6090 (202) 205-1248.

Dated: May 6, 1998.

Gloria Manning,
Associate Deputy Chief National Forest
System

Ouachita National Forest Boundary Extension

Pursuant to the Secretary of Agriculture's authority under Section 20(d), P.L. 100-499 (102 Stat. 2491), the Ouachita National boundary is hereby extended to include the following lands

LeFlore County, Oklahoma, Indian Base Meridian

T3N, R26E.

Section 1, North Half of the Southeast
Quarter.

Containing 80 acres, more or less.

As provided by P.L. 100-499, the lands described shall be administered by the Secretary of Agriculture in accordance with the Act of March 1, 1911 (36 Stat. 961) and in accordance with the laws, rules, and regulations generally applicable to units of the National Forest System.

Dated: April 17, 1998.

Brian Eliot Burke.

Deputy Under Secretary, Natural Resources
and Environment

[FR Doc. 98-13038 Filed 5-14-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Box Canyon, Papoose, and Squaw Creek Timber Sales; Targhee National Forest, Bonneville County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare
environmental impact statement.

SUMMARY: The Forest Supervisor of the Targhee National Forest gives notice of the agency's intent to prepare an environmental impact statement for the Box Canyon, Papoose, and Squaw Creek Timber Sales. The proposed actions would harvest 1.8 million board feet of timber from 600 acres. Three miles of temporary roads would be built. Easement across private property would be required to access the Papoose and Squaw Creek Sales. The Box Canyon timber sale is located three miles south of Irwan, Idaho and the Papoose and Squaw Creek sales are located three miles southwest of Swan Valley, Idaho. Alternatives will include the proposed action, no action, and any alternatives that respond to significant issues generated during the scoping process. A more detailed description is available from the Palisades Ranger District; see ADDRESSES below.

DATES: Send written comments and suggestions on the issues concerning the proposed action by June 12, 1998.

ADDRESSES: Send written comments to Richard D. Dickemore, District Ranger, Palisades Ranger District, 3659 East Rinie Highway, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Dee Sessions, Interdisciplinary Team Leader, phone (208) 624-3151.

SUPPLEMENTARY INFORMATION: The Targhee National Forest Revised Land Management Plan was approved in 1997. One of the decisions in the revised Plan was to allow for the production and utilization of wood fiber from certain areas of the Forest. The geographic areas where the proposed actions would take place have primarily a prescription of timber management with emphasis on no clear cutting, urban interface fire management (5.1.3b) and elk summer range (5.4c). A prescription for other lands in the area is described below.

Elk and Deer Winter Range (2.7a)—Management emphasis is directed at providing quality elk and deer winter habitat. Habitats are managed for multiple land use benefits, to the extent these land uses are compatible with maintaining or improving elk and deer winter habitat.

Initial public involvement will include mailing maps and project descriptions to interested parties to solicit comments on the proposal. Preliminary issues include: Roadless area, threatened, endangered, and sensitive plant and animal species, recreational traffic, easement across private lands, big game habitat, water quality and aquatic influence zones.

Additional opportunity to comment on the projects will occur on the draft Environmental Impact Statement (draft EIS). The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in September 1998.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the *Federal Register*. At the same time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comment. It is very important that those interested in the proposed action participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First,

reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could have been raised at the draft stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F.Supp 1334,1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be completed in December 1998. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decisions on this proposal.

Responsible Official

Jerry B. Reese, Forest Supervisor, is the responsible official. As responsible official, he will document the selected alternative for the Box Canyon, Papoose, and Squaw Creek Timber Sales EIS and his rationale in a Record of Decision.

The decision for the Box Canyon, Papoose, and Squaw Creek Timber Sales project will be subject to Forest Service Appeal Regulations (36 FR part 215).

Dated: May 6, 1998.

Jerry B. Reese,
Forest Supervisor.

[FR Doc. 98-13036 Filed 5-14-98; 8:45 am]

BILLING CODE 4031-99-M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on June 9, 1998 at the Madras Fire Department Convention Hall located on the corner of Adam and J Street off of Hwy 97 in Madras, Oregon. A combined field trip and business meeting will begin at 9:00 a.m. and finish at 4:30 p.m. Agenda items include: (1) Fuels Management Issues (2) PAC Rechartering (3) Working Group Update (4) Public Forum from 9:00 to 9:20 am at the Madris Fire Hall. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Fort Rock Ranger District, 1230 N. E. 3rd, Bend, Oregon 97701, 541-383-4769.

Dated: May 7, 1998.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 98-13030 Filed 5-14-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Colfax Watershed, Richland County, North Dakota; Notice of Finding of No Significant Impact

AGENCY: Natural Resources
Conservation Service, USDA.

ACTION: Notice of finding of significant
no impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the National Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Colfax Watershed, Richland County, North Dakota.

FOR FURTHER INFORMATION CONTACT: Scott Hoag, Jr., State Conservationist, Natural Resources Conservation Service, 220 East Rosser Avenue, P.O. 1458,

Bismarck, North Dakota 58502-1458, (701) 250-4421.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Scott Hoag, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are for flood control, agricultural water management, and watershed protection. The planned works of improvement include a 300 linear foot dike with overflow, 8,800 linear feet of floodway with pipe drop inlet and grade stabilization structure, 3,000 linear feet of floodway and dike, 12,000 linear feet of floodwater diversion, and 22,500 linear feet of floodway renovation. Associated Land Treatment Measures will be planned and installed on a minimum of 50 percent of the watershed above the structural measures. Seven thousand acres of cropland and 500 acres of grassland are expected to be benefited through the proposed project.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Scott Hoag, Jr., State Conservationist, 220 East Rosser Avenue, P.O. box 1458, Bismarck, North Dakota 58502-1458.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the *Federal Register*.

Scott Hoag, Jr.,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Introduction

The Colfax Watershed is a federally assisted action authorized for planning under Public Law 83-566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with

local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 220 East Rosser Avenue, Bismarck, ND 58501.

Recommended Action

Proposed is the implementation of both structural and associated land treatment measures (ALTM) to reduce flood damages and protect the watershed. The structural components include a 300 linear foot dike with overflow, 8,800 linear feet of floodway with pipe drop inlet and grade stabilization structure, 3,000 linear feet of floodway and dike, 12,000 linear feet of floodwater diversion, and 22,500 linear feet of floodway renovation. The ALTM will be planned and installed on a minimum of 50 percent of the watershed above the structural measures. Seven thousands acres of cropland and 500 acres of grassland are expected to be benefited through the proposed project.

Effect of Recommended Action

The recommended action will protect the watershed hydrologically by improving the soil cover condition, water quality, and reduce overland flow quantities and velocities. Existing floodways will be restored, or built to the extent the peak flood flow rates for a 10 year, 24 hour flood event can be handled.

The proposed action will have little or not effect on wetlands. Only 2.2 acres are expected to be impacted to the point of requiring mitigation. The land treatment applied on 7,500 acres, will improve rainfall infiltration on both cropland and grassland. Sedimentation rates will be reduced from high value low residue crop fields. Integrated crop management will reduce the availability of nutrients and pesticides from entering the Wild Rice River.

The proposed project still encourage and promote farm units in the watershed to manage their natural resources in a safe and productive manner. This action will tend to sustain agricultural diversity and productivity for land users in the watershed. The reduced threat of flooding will provide social and economic benefits to watershed residents.

An initial site leads inventory of cultural resources as they relate to the planned components has been completed. This inventory concludes that no significant adverse impacts will occur to cultural resources in the

watershed should the plan be implemented. The NRCS has consulted with the State Historic Preservation Office on the effects of the planned measures. There is no effect foreseen on significant cultural resources. However, construction of floodways, dikes, grade stabilization structures and diversions have the potential for seriously disrupting individual sites. Therefore, caution shall be exercised in planning and installing any such measures to avoid serious disruption of cultural resource sites.

Significant cultural resources identified during implementation will be avoided or otherwise preserved in place to the fullest extent practical. If significant cultural resources cannot be avoided or preserved, pertinent information will be recovered before construction. If there is a significant cultural resource discovery during construction, appropriate notice will be made by NRCS to the State Historic Preservation Officer and the National Park Service. Consultation and coordination have been made, and will continue to be used, to ensure the provisions of Section 106 of Public Law 89-665 have been met and to include provisions of Public Law 89-523, as amended by Public Law 93-291. NRCS will take action as prescribed in the NRCS GM 420, Part 401, to protect or recover any significant cultural resources discovered during construction.

No threatened or endangered species are known to exist in the watershed.

One of the primary objectives of the project is to reduce agricultural flooding. Approximately 7,000 acres of prime farmland will be protected from frequent flood events. An estimated 20 miles of farm to market roads, and 40 bridges and culverts will be protected by reduced quantities and velocities of flood waters. Flood damages to farmstead buildings for machinery and crop storage will be reduced.

Water quality will be improved in the Wild Rice River by reducing sediment delivery rates, implementing nutrient and pest management systems, and improved soil health and cover. Sediment control basins, along with buffer and filter strips adjacent to the proposed floodways and diversions will significantly reduce non-point source pollutants runoff. Associated land treatment measures (ALTM) will promote total resource management systems on 7,500 acres of land in the watershed. These systems, in addition to addressing management of the soil, water, air, plant, and animal resources will also address the social and

economic resources of the watersheds land users.

Fish and wildlife habitats may be temporarily disturbed in some areas of the watershed during the construction phase. These resources will be restored or enhanced when the project is completed. Improvements in soil health, water quality, and plant diversity should result from the implementation of this project. The value of woodland habitat will not decline. An estimated 2.2 acres of seasonal partially drained wetlands will be lost due to project impacts. These wetland values will be properly mitigated for using the Hydro Geologic Model (HGM).

No wilderness areas are in the watershed.

Scenic values will be complimented with the diversity added by associated land treatment measures. During installation of structural features the scenic values will be temporarily decreased at specific construction locations in the watershed.

No significant adverse environmental impacts will result from installations except for minor inconveniences to local residents during construction.

Alternatives

A total of 7 alternatives were evaluated to address the problems and opportunities the local sponsoring organizations and watershed residents identified in the planning stages. The first 6 alternatives were formulated using varied combinations of floodwater diversions, dikes, and floodways with grade stabilizations structures. Each of these alternatives provided similar flood protection and land treatment benefits with varying economic, social and environmental impacts. The seventh alternative was the "no action" alternative.

It was determined by the sponsoring local organizations and watershed residents that alternative 6 is the recommended plan.

Consultation—Public Participation

Formal agency consultation began with the initiation of the notification of the State Single Point of Contact for Federal Assistance (Office of Intergovernmental Assistance) in March 1992. The Governor and the State Soil Conservation Committee were also notified of the application for Federal Assistance. Agencies were again notified when planning was authorized in October 1993.

Scoping meetings were held in September 1992 and June 1993, and interdisciplinary efforts were used in all cases. An Interagency Watershed Committee (IAWC) was utilized

throughout the planning process. The process involved five Federal agencies (FSA, FS, F&WS, COE, and EPA), five State agencies (Department of Health, State Soil Conservation Committee, Game and Fish Department, State Water Commission, and State Historical Society), two county agencies (Richland County Soil Conservation District and Richland County Water Resource District), and the City of Colfax and the Red River & Western Railroad in part or all of the scoping and planning processes.

Specific consultation was conducted with the State Historic Preservation Officer, U.S. Army Corps of Engineers Regulatory Office, U.S. Fish and Wildlife Service, and North Dakota Department of Health. All of these agencies comments were used in the development of this plan.

The environmental assessment was transmitted to all participating and interested agencies, groups, and individuals for review and comment in March 1998. Three public meetings were held during the planning process to keep all interested parties informed of the study progress and to obtain public input into the plan and environmental evaluation. The last public meeting was held March 1998, in the City of Colfax, during the interagency review process. Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan.

Conclusions

The Environmental Assessment summarized above indicates that this Federal action will not cause significant local, regional, or national impacts. Therefore, based on the above findings, I have determined that an environmental impact statement for the Colfax Watershed is not required.

Dated: May 7, 1998.

Scott Hoag Jr.,

State Conservationist.

[FR Doc. 98-13031 Filed 5-14-98; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service.

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Kentucky

AGENCY: Natural Resources Conservation Service (NRCS) in Kentucky, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NTCS in Kentucky for review and comment.

SUMMARY: It is the intention of the NRCS in Kentucky to issue revised conservation practice standards: Composting Facility (Code 317), Grassed Waterway (Code 412), Heavy Use Area Protection (Code 561), Obstruction Removal (Code 500), and Waste Management System (Code 312).

DATES: Comments will be received until June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to David G. Sawyer, State Conservationist, Natural Resources Conservation Service (NRCS), 771 Corporate Drive, Suite 110, Lexington, KY 40503-5479. Copies of the practice standards are made available upon written request.

SUPPLEMENTAL INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Kentucky will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Kentucky regarding deposition of those comments and a final determination of change will be made.

Dated: April 13, 1998.

William N. Craddock,

Acting State Conservationist, Natural Resources Conservation Service, Lexington, KY.

[FR Doc. 98-10827 Filed 5-14-98; 8:45 am]

BILLING CODE 3410-16-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 15, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Mop Sponge Scrub Brush

M.R. 1012

NPA: Signature Works, Inc., Hazlehurst, Mississippi.

Services

Base Supply Center

Homestead Air Reserve Base, Florida, NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Car Wash Service

U.S. Border Patrol, 1111 N. Imperial

Avenue, El Centro, California

U.S. Border Patrol, 1150 Birch Street, Calexico, California

NPA: Association for Retarded Citizens—Imperial Valley El Centro, California

Furnishings Management Services

Dover Air Force Base, Delaware,

NPA: The Chimes, Inc., Baltimore,

Maryland.

Janitorial/Custodial

PFC Harold P. Lynch USAR Center,

Plattsburgh, New York, Canton

USAR Center, Canton, New York

NPA: Citizen Advocates, Inc., Malone, New York.

Refuse Collection and Disposal

Picatinny Arsenal, New Jersey,

NPA: The First Occupational Center of New Jersey, Orange, New Jersey.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98-13035 Filed 5-14-98; 8:45 am]

BILLING CODE 6353-01-P

COMMISSION ON CIVIL RIGHTS

Hearing on Schools and Religions

AGENCY: Commission on Civil Rights.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments Act of 1994, Section 3, Pub. L. 103-419, 108 Stat. 4338, as amended, and 45 CFR Section 702.3, that a public hearing before the U.S. Commission on Civil Rights will commence on Friday, June 12, 1998, beginning at 9:00 a.m., in the United States Court of International Trade Center, located at 1 Federal Plaza, New York, NY 10007.

The purpose of the hearing is to collect information within the jurisdiction of the Commission, under 45 CFR Section 702.2, to examine the operation of the Equal Access Act and similar laws and the adherence by the public schools to these laws and the Constitution in regard to religious freedom. The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses pursuant to 45 CFR Section 701.2(c). The Commission is an independent bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to

discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the hearing and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division at (202) 376-8105 (TDD (202) 376-8116), at least five (5) working days before the scheduled date of the hearing.

FOR FURTHER INFORMATION CONTACT: Barbara Brooks, Press and Communications, (202) 367-8312.

Dated: May 11, 1998.

Stephanie Y. Moore,
General Counsel.

[FR Doc. 98-12939 Filed 5-14-98; 8:45 am]

BILLING CODE 4335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Permits for Incidental Taking of Endangered or Threatened Species; Proposed Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 14, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Salvini—F/PR3, Office of Protected Resources, Room 13623, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401 ext.130).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et. seq.) imposed prohibitions against the taking of endangered species. In 1982, Congress revised the ESA to allow permits authorizing the taking of endangered species incidental to otherwise lawful activities. The corresponding regulations established procedures for persons to apply for such a permit. In addition, the regulations set forth specific reporting requirements for such permit holders.

The regulations contain three sets of information collections: (1) Applications for incidental take permits, (2) applications for certificates of inclusion, and (3) reporting requirements for permits issued. Certificates of inclusion are only required if a general permit is issued to a representative of a group of potential permit applicants, rather than requiring each entity to apply for and receive a permit. There are currently no general incidental take permits, and no certificates of inclusion, and none are expected in the next three years.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions. In order to issue a permit as required by ESA section 10(a)(2)(B), NMFS must determine that (i) the taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the plan will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (v) any additional measures required by NMFS as being necessary or appropriate for the purposes of the conservation plan will be met.

When a species is listed as threatened, section 4(d) of the ESA requires the Secretary to issue whatever regulations are deemed necessary or advisable to provide for conservation of the species. In many cases those regulations reflect blanket application of the section 9 take prohibition. However, in an interim rule for protection of listed coho salmon NMFS recognized certain exceptions to that prohibition, including one for restoration actions taken in accord with approved watershed action plans in Oregon or California. While watershed plans are prepared for other purposes in coordination with or fulfillment of various state programs, a watershed

group wishing to take advantage of the exception for restoration activities (rather than obtaining a section 10 permit) would have to submit the plan for NMFS review.

II. Method of Collection

Permit applicants must submit an application to NMFS, including all appropriate information listed on the instructions. These instructions are a user-friendly version of the requirements at 50 CFR 222.22(b) for applications for incidental take permits.

Once issued, the permit requires that permit holders submit an annual report on activities. These reports must include information on: The activity causing incidental take, any endangered species taken (species, dates, location, and condition of animal), and the status of implementing a conservation plan to offset the impact to the species.

For watershed plans, a watershed council or other local group would submit its watershed plan to NMFS (and the state) for review against state guidance which meets the standards of 50 CFR 222.22(c). If the plan is found consistent with the state guidance, the group would not need to apply for a section 10 permit for any incidental take that might be associated with a restoration action called for in the plan. No annual or other reporting is associated with the restoration activity exception.

III. Data

OMB Number: 0648-0230.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local, or tribal government; business or other for-profit; individuals; not-for-profit institutions.

Estimated Number of Respondents: 21 (11 permit-related, 10 for watershed plans).

Estimated Time Per Response: 80 hours for a permit application, 10 hours for a watershed plan, 8 hours for a permit report, and 30 minutes for a Certificate of Inclusion application.

Estimated Total Annual Burden Hours: 1,068.

Estimated Total Annual Cost to Public: \$0 (no capital expenditures).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12956 Filed 5-14-98; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Alaska Region Gear Identification; Proposed Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 14, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, F/AK01, NOAA/NMFS, P.O. Box 21668, Juneau, AK 99802-1668 (907-586-7228).

SUPPLEMENTARY INFORMATION:

I. Abstract

Participants in the groundfish fishery in the Alaska Region are required to identify all longline marker buoys carried onboard or used by any vessel. This requirement is currently cleared under OMB Control Number 0648-0305, which dealt with all NOAA gear-marking requirements, but those

requirements will now be submitted on a regional basis.

II. Method of Collection

The vessel's name, Federal fisheries permit number, or the vessel's registration number shall be in characters at least 4 inches (10.16 cm) in height and 0.5 in. (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.

III. Data

OMB Number: New Number to be Assigned.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals, Business and other for-profit (commercial fishermen).

Estimated Number of Respondents: 1,916.

Estimated Time Per Response: 0.25 hour.

Estimated Total Annual Burden Hours: 3,450 hours.

Estimated Total Annual Cost to Public: The cost to fishermen is minimal. Materials needed are paint and paint brush, or permanent ink applicator, and possibly a stencil. Labor costs probably range between \$10 and \$15 per hour with the average estimated time varying from 1 to 5 minutes to paint/mark each buoy. Total estimated cost per vessel varies greatly with the type and amount of gear being used. Given the adverse weather conditions and salt water, we expect each number will need to be repainted, repaired, or replaced annually.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12957 Filed 5-14-98; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Northwest Region Gear Identification Requirements; Proposed Collection

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 14, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William L. Robinson, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115, 206-526-6140.

SUPPLEMENTARY INFORMATION:

I. Abstract

The success of fisheries management programs depends significantly on regulatory compliance. Requirements that fishing gear be marked are essential to facilitate endorsement. The ability to link fishing gear to the vessel owner or operator is crucial to endorsement of regulations issued under the authority of the Magnuson Fishery Conservation and Management Act to govern domestic and foreign fishing, and the Atlantic Tunas Convention act. The marking of fishing gear is also valuable in actions concerning damage, loss, and civil proceedings.

The regulations specify fishing gear must be marked with the vessel's official number, federal permit or tag number, or some other specified form of identification. The regulations further specify how the gear is to be marked,

e.g., location and color. Law endorsement personnel rely on this information to assure compliance with fisheries management regulations. Gear that is not properly identified is confiscated. The identifying number on fishing gear is used by NMFS, the U.S. Coast Guard, and other marine agencies in issuing violations, prosecutions, and other enforcement actions. Gear marking helps ensure that a vessel harvests fish only from its own traps/pots/other gear and that traps/pots/other gear are not illegally placed. Gear violations are more readily prosecuted, and this allows for more cost-effective enforcement. Cooperating fishermen also use the number to report placement or occurrence of gear in unauthorized areas. Regulation-compliant fishermen ultimately benefit as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

These requirements are currently cleared under OMB Control Number 0648-0305, which dealt with all NOAA gear-marking requirements, but those requirements will now be submitted on a regional basis.

II. Method of Collection

The physical marking of fishing buoys is done by the affected public (fishers in the Pacific Coast Groundfish Fishery) according to regulation.

III. Data

OMB Number: New Number to be Assigned.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit (fishers in the Pacific Coast Groundfish Fishery).

Estimated Number of Respondents: 1,835.

Estimated Time Per Response: 15 minutes per marking (with an average of 11.20 buoy markings per vessel).

Estimated Total Annual Burden Hours: 5,140.

Estimated Total Annual Cost to Public: \$5,140 for materials to make markings (e.g. paint and paintbrush or permanent ink applicator, possibly a stencil; or a commercially available plastic tag that is fastened to the trap/pot).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12958 Filed 5-14-98; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Northwest Region Vessel Identification Requirements; Proposed Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 14, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William L. Robinson, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115, 206-526-6140.

SUPPLEMENTARY INFORMATION:

I. Abstract

The success of fisheries management programs depends significantly on regulatory compliance. The vessel identification requirement is essential to facilitate enforcement. The ability to link fishing or other activity to the vessel owner or operator is crucial to enforcement of regulations issued under

the authority of the Magnuson Fishery Conservation and Management Act to govern domestic and foreign fishing, the Atlantic Tunas Convention Act, and the South Pacific Tuna Act of 1988. A vessel's official number (or international radio call sign—IRCS—if a foreign vessel or if fishing in the South Pacific Tuna Fisheries), under most regulations, is required to be displayed on the port and starboard sides of the deckhouse or hull, and on a weather deck. It identifies each vessel and should be visible at distances at sea and in the air.

Vessels that qualify for particular fisheries are readily identified, gear violations are more readily prosecuted, and this allows for more cost-effective enforcement. Cooperating fishermen also use the number to report suspicious activities that they observe. Regulation-compliant fishermen ultimately benefit as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

These requirements are currently cleared under OMB Control Number 0648-0306, which dealt with all NOAA vessel-marking requirements, but those requirements will now be submitted on a regional basis.

II. Method of Collection

Fishing vessel owners physically mark vessel with identification numbers in three locations per vessel.

III. Data

OMB Number: New Number to be Assigned.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit (fishers in the Open Access and Limited Entry Pacific Coast Groundfish Fishery).

Estimated Number of Respondents: 2,026.

Estimated Time Per Response: 45 minutes (15 minutes per marking).

Estimated Total Annual Burden Hours: 1,519 hours.

Estimated Total Annual Cost to Public: \$60,780 (\$30 per vessel).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12959 Filed 5-14-98; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1999 American Community Survey.

Form Number(s): ACS-1, -1(CQ), -3(CQ), -10, -12(L), -13(L), -14(L), -16(L), -20, -30.

Agency Approval Number: 0607-0810.

Type of Request: Revision of a currently approved collection.

Burden: 227,500 hours.

Number of Respondents: 425,000.

Avg Hours Per Response: 32 minutes.

Needs and Uses: The Census Bureau is developing a methodology to produce "long-form" data on a continual basis that we traditionally have collected once a decade as part of the decennial census. This methodology is called continuous measurement (CM). Since the Census Bureau collects the long-form data only once every ten years, the data become out of date over the course of the decade. Also, there is an increasing need for data describing lower geographic detail. CM will provide current data throughout the decade for small areas and small subpopulations.

The American Community Survey (ACS) is the data collection vehicle for CM. The Census Bureau began a test and demonstration of the capabilities of the survey collection and processing system in 1995. Four sites around the country were originally selected. This number has increased slightly through 1998 (presently nine sites). The 1999 ACS

will be conducted in 45 sites, including the current nine sites. Over the next three years (1999-2001), we will be greatly expanding the number of sites covered and comparing ACS results to those of the long form which will be administered in the Census 2000. This 3-year period will help us to understand the differences between the ACS and the Census 2000 long form. Current plans are to put the ACS fully in place in 2003.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Nancy Kirkendall, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-12955 Filed 5-14-98; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Proposed Findings Document, Environmental Assessment, and Finding of No Significant Impact

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and The U.S. Environmental Protection Agency.

ACTION: Notice of availability of proposed findings document, environmental assessment, and finding of no significant impact on approval of the coastal nonpoint pollution control program for Hawaii.

SUMMARY: Notice is hereby given of the availability of the Proposed Findings

Document, Environmental Assessment (EA), and Finding of No Significant Impact for the Hawaii Coastal Nonpoint Pollution Control Program (CNPCP). Coastal states and territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. The Findings document was prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve the State coastal nonpoint pollution control program.

Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires States and territories with coastal zone management programs, approved under section 306 of the Coastal Zone Management Act, to develop and implement coastal nonpoint pollution control programs. These programs shall be developed in close coordination with State and local water quality plans and programs required under the Clean Water Act (CWA) and will provide an update to the State's nonpoint source program. The EA was prepared by NOAA, pursuant to the National Environmental Policy Act (NEPA) 42 U.S.C. sections 4321 *et seq.*, to assess the environmental impacts associated with the approval of the coastal nonpoint pollution control program submitted to NOAA and EPA by Hawaii.

NOAA and EPA have proposed to approve, with conditions, the coastal nonpoint pollution control program submitted by Hawaii on June 28, 1996. The requirements of 40 CFR Parts 1500-1508 (Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act) apply to the preparation of the Environmental Assessment. Specifically, 40 CFR section 1506.6 requires agencies to provide public notice of the availability of environmental documents. This notice is part of NOAA's action to comply with this requirement.

Introduction

Nonpoint source pollution from agriculture, urban development, forestry, wetlands, marinas and recreational boating, and hydromodification is a major cause of water quality impairment nationally and in Hawaii. The State of Hawaii, along with various Federal, State and local agencies, private non-profit groups, private citizens, and landowners are involved in many efforts to reduce and prevent nonpoint source pollution.

Hawaii's CNPCP submittal provides a good description of State activities to address the challenging and critical problems associated with nonpoint source pollution. To improve the effectiveness of the Program, the Hawaii Department of Health (HIDOH) and the Department of Business, Economic Development and Tourism (DEBT) are currently developing an Implementation Plan with extensive input from local, State and Federal agencies, non-government organizations and private individuals. This Plan will identify priority activities, including milestones and lead responsibilities, that the State believes are key to completing development of the State's CNPCP and to improving the effectiveness of the State's program to address nonpoint source pollution generally. In order to develop a full approvable program, the State should also include in the implementation Plan: the actions necessary to meet the conditions identified in the Findings; explain how back-up authorities will be used to ensure implementation, should voluntary efforts fail; and, provide for evaluation, feedback, public review and program adjustments, as necessary.

Background: Description of Hawaii's Nonpoint Source Program

The development and implementation of the Hawaii CNPCP is the joint responsibility of HIDOH and DBEDT. The HIDOH has primary responsibility for the protection of water quality from nonpoint sources of pollution. In 1990, HIDOH completed Hawaii's Assessment of Nonpoint Source Pollution Water Quality Problems and Hawaii's Nonpoint Source (NPS) Pollution Management Plan. The Clean Water Act (CWA) Section 319 required states to develop an assessment report detailing the extent of nonpoint source pollution and a management program specifying nonpoint source controls, in order to be eligible for Federal funding. The State receives Federal funds approximately \$768,000/year under the Clean Water Act, Section 319, to implement the State NPS Plan.

The Office of Planning in DBEDT (formerly Office of State Planning) has primary responsibility for Hawaii's Coastal Zone Management (CZM) Program, approved in 1978. This program is implemented through a network of State and county agencies with responsibility for land and water use controls, resource management and environmental protection. The State receives Federal funds (approximately \$785,000/year) under the Coastal Zone Management Act, Section 306, to implement the CZM Program.

Hawaii's Response to Section 6217 of CZARA

In response to the CZARA requirements, DBEDT and HIDOH undertook a joint effort (August 1993 to June 1996) to develop a CNPCP that would improve the statewide nonpoint source program and comply with CZARA. This effort was designed to strengthen the links between Federal and State coastal zone management and water quality programs. As lead agencies, DBEDT and HIDOH prepared the State submittal with extensive input from both working and focus groups that included representatives from Federal, State and local agencies, affected industries, businesses, environmental organizations and landowners. The State received funds under CZARA Section 6217 to help develop their coastal nonpoint source pollution program from Fiscal Year (FY)92 through FY95. Funding under CZARA, Section 6217 was not appropriated by Congress in FY96 and FY97. In FY98, Hawaii will receive \$52,000 under Section 6217 to assist in the development of its coastal nonpoint pollution control program.

The State CNPCP emphasizes a mix of regulatory and non-regulatory approaches that rely and build on existing authorities at the State and local level. The CNPCP submittal summarizes existing programs, provides an understanding of State and local agencies roles and responsibilities, and helps to identify gaps in the program. The CNPCP includes broad and specific recommendations to strengthen supporting programs, improve coordination, implement management measures and facilitate watershed and/or community-based approaches. The State is developing an Implementation Plan that will describe how these recommendations will be implemented and what other steps the State will take to meet the conditions identified in the proposed Findings.

EPA and NOAA's Review of Hawaii's 6217 Submittal

Hawaii's CNPCP provides a foundation for polluted runoff control. It describes existing Federal, State, and local programs and makes recommendations to improve nonpoint pollution control in the State. However, the proposed Findings conclude that additional work needs to be done to fully address the requirements of CZARA. In summary:

- the State needs to fully describe how the management measures will be incorporated into the State's CNPCP and how they will be implemented;

- the State needs to describe how existing "back-up" authorities will be used to ensure implementation of the management measures, if voluntary efforts fail;

- the State needs to adequately address common program elements related to technical assistance, critical coastal areas, additional management measures and monitoring.

Accordingly, EPA and NOAA's approval of Hawaii's CNPCP includes conditions for addressing the above areas. These conditions must be met within 5 years, as specified in the March 16, 1995 Flexibility Guidance, for the State to receive full program approval. The State, NOAA and EPA will work together to annually review progress toward meeting these conditions, with the goal of developing a fully approvable Hawaii CNPCP that results in environmental and public health protection and meets the requirements of CZARA.

Copies of the Proposed Findings Document, Environmental Assessment, and Finding of No Significant Impact may be obtained upon request from: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, tel. (301) 713-3152 x 201 or Vicki Tshako, U.S. EPA, Pacific Island Contact Office, 300 Ala Moana Blvd., #5152, Honolulu, HI 96850, tel. (808) 541-2710.

DATES: Individuals or organizations wishing to submit comments on the proposed Findings or Environmental Assessment should do so by June 15, 1998.

ADDRESSES: Comments should be made to: Joseph A. Uravitch, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713-3155 x 195. (Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: May 12, 1998.

John Oliver,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans and Watersheds, Environmental Protection Agency.

[FR Doc. 98-13021 Filed 5-14-98; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Proposed Findings Document, Environmental Assessment, and Findings of No Significant Impact

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and The U.S. Environmental Protection Agency.
ACTION: Notice of availability of proposed findings document, environmental assessment, and findings of no significant impact on approval of coastal nonpoint pollution control program for Washington.

SUMMARY: Notice is hereby given of the availability of the Proposed Findings Document, Environmental Assessment (EA), and Finding of No Significant Impact for Washington. Coastal states and territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. The Findings documents were prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve each state and territory coastal nonpoint pollution control program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires states and territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint pollution control programs. The EA's were prepared by NOAA, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. sections 4321 *et seq.*, to assess the environmental impacts associated with the approval of the coastal nonpoint pollution control program submitted to NOAA and EPA by Washington.

NOAA and EPA have proposed to approve, with conditions, the coastal nonpoint pollution control program submitted by Washington. The requirements of 40 CFR Parts 1500-1508 (Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act) apply to the preparation of this Environmental Assessment. Specifically, 40 CFR section 1506.6 requires agencies to provide public

notice of the availability of environmental documents. This notice is part of NOAA's action to comply with this requirement.

Copies of the Proposed Findings Document, Environmental Assessment, and Findings of No Significant Impact may be obtained upon request from: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, tel. (301) 713-3121, x201.

DATES: Individuals or organizations wishing to submit comments on the proposed Findings or Environmental Assessment should do so by June 15, 1998.

ADDRESSES: Comments should be made to: Joseph A. Uravitch, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, tel. (301) 713-3155, x195.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: May 12, 1998.

John Oliver,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans and Watersheds, Environmental Protection Agency.

[FR Doc. 98-13022 Filed 5-14-98; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050798B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for a scientific research permit (1148) and for modifications to scientific research permits (1114, 1115); Issuance of scientific research permits (1059, 1072, 1088, 1102, 1119, 1130, 1131, 1133, 1136, 1137) and modifications to scientific research permits (1042, 1103)

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific

research and/or enhancement: NMFS has received a permit application from the Resource Enhancement and Utilization Technologies Division of the Northwest Fisheries Science Center, NMFS at Seattle, WA (NWFSC) (1148); NMFS has received applications for modifications to existing permits from the Washington Department of Fish and Wildlife at Olympia, WA (WDFW) (1114) and Public Utility District No. 1 of Chelan County at Wenatchee, WA (PUD CC) (1115); NMFS has issued permits subject to certain conditions set forth therein, to: Carl Page (1059), U.S. Bureau of Reclamation at Shasta Lake, CA (BOR) (1072), Bureau of Land Management (BLM)(1088), Washington Department of Fish and Wildlife at Vancouver, WA (WDFW) (1102), U.S. Fish and Wildlife Service at Leavenworth, WA (FWS) (1119), the U.S. Geological Survey at Cook, WA (USGS) (1130), the Port of Portland at Portland, OR (POP) (1131), Andre M. Landry, of Texas A&M University (1133), the Oregon Cooperative Fishery and Wildlife Research Unit at Corvallis, OR (OCFWRU) (1136), and Northwest Fisheries Science Center, NMFS at Seattle, WA (NWFSC) (1137); and NMFS has issued modifications to scientific research permits to William M. Kier Associates (WKA) (1042) and California Department of Forestry and Fire Protection (CDF) (1103).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before June 15, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1102, 1114, 1115, 1119, 1130, 1131, 1136, 1137, and 1148: Protected Resources Division (PRD), F/NW03, 525 NE Oregon Street, Suite 500, Portland, OR 97232-4169 (503-230-5400).

For permits 1042, 1059, 1072, 1088, and 1103: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404-6528 (707-575-6066).

For permit 1133: Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702-2432 (813-893-3141).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401).

FOR FURTHER INFORMATION CONTACT: For permits 1102, 1130, 1131, 1136, 1137, and 1148: Robert Koch, Portland, OR (503-230-5424).

For permits 1114, 1115, and 1119: Tom Lichatowich, Portland, OR (503-230-5438).

For permits 1042, 1059, 1072, 1088, and 1103: Thomas Hablett, Protected Resources Division, (707-575-6066).

For permit 1133: Michelle Rogers, Endangered Species Division, Silver Spring, MD (301-713-1401)

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see ADDRESSES). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of these permits, modifications, and amendments, as required by the ESA, was based on a finding that such permits, modifications, and amendments: (1) Were applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits, modifications, and amendments were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in this Notice

The following species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Coho salmon (*Oncorhynchus kisutch*), Green sea turtle (*Chelonia mydas*), Hawksbill sea turtle (*Eretmochelys imbricata*), Kemp's ridley sea turtle (*Lepidochelys kempii*), Loggerhead sea turtle (*Caretta caretta*), Sockeye salmon (*Oncorhynchus nerka*), and Steelhead trout (*Oncorhynchus mykiss*).

New Application Received

NWFSC requests a 5-year permit (1148) for authorization to take adult and juvenile, endangered, artificially propagated, Snake River sockeye salmon to continue its captive broodstock responsibilities currently authorized

under Permit 1005 which expires on May 31, 1998. The captive broodstock program is a cooperative effort among the Idaho Department of Fish and Game (IDFG), NMFS, the Shoshone-Bannock Tribes, the University of Idaho, the Idaho Department of Environmental Quality, the Oregon Department of Fish and Wildlife (ODFW), and the Bonneville Power Administration (BPA). Funding is provided by BPA. The captive broodstock program is helping to preserve and perpetuate the species and will provide Snake River sockeye salmon for future recovery actions. NWFSC proposes to rear, maintain, breed, tag, and mark the fish, which will then be used to complement recovery efforts at Redfish, Pettit, and Alturas Lakes in Idaho.

Modification Requests Received

WDFW requests modification 1 to scientific research permit 1114. Permit 1114 authorizes a take of juvenile, endangered, naturally produced and artificially propagated, upper Columbia River (UCR) steelhead associated with a smolt monitoring program at Rock Island Dam on the Columbia River. For modification 1, WDFW requests authorization to take adult, endangered, UCR steelhead. WDFW proposes to collect adult fish in a permanent inclined screen trap, handle them to determine hatchery or wild origin, and release them. The information will be used to design operational measures to enhance adult passage survival at the dam. WDFW requests that Modification 1 be valid for the duration of the permit which expires on December 31, 2002.

PUD CC requests modification 1 to scientific research permit 1115. Permit 1115 authorizes a take of juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with two research studies. The purpose of the research is to evaluate the juvenile fish bypass system installed at Rocky Reach Dam, and to monitor juvenile fish gas bubble trauma at Rocky Reach and Rock Island Dams on the Columbia River. For modification 1, PUD CC requests authorization to take adult, endangered, UCR steelhead. PUD CC proposes to collect ESA-listed adult fish at a permanent bypass pipe at Rocky Reach Dam, handle them to determine hatchery or wild origin, and release them. The information will be used to design operational measures to enhance adult passage survival at the dam. PUD CC requests that Modification 1 be valid for the duration of the permit which expires on December 31, 2002.

Permits and Modifications Issued

Notice was published on November 17, 1997 (62 FR 61295), that an application had been filed by WKA for a modification to a scientific research permit. Modification 1 to permit 1042 was issued to WKA on May 5, 1998. Permit 1042 authorizes takes of adult and juvenile, threatened, central California coast (CCC) coho salmon associated with fish population and habitat studies throughout the Evolutionarily Significant Unit (ESU). ESA-listed fish may be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities are also authorized. The modification authorizes takes of juvenile, threatened, southern Oregon/northern California (SONCC) coho salmon associated with fish population and habitat studies throughout the California portion of the ESU. ESA-listed juvenile fish are proposed to be observed and counted. Modification 1 is valid for the duration of the permit which expires on June 30, 1999.

Notice was published on January 15, 1998 (63 FR 2364), that an application had been filed by Carl Page for a scientific research permit. Permit 1059 was issued on April 24, 1998. Permit 1059 authorizes Carl Page takes of adult and juvenile, threatened, SONCC coho salmon; adult and juvenile, threatened, CCC coho salmon; and adult and juvenile, endangered, southern California coast steelhead associated with fish population and habitat studies in coastal drainages throughout California. The studies consist of habitat and biological inventories, and project monitoring and evaluation studies for which ESA-listed fish will be taken. ESA-listed fish will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. Indirect mortalities associated with the research are also authorized. Permit 1059 expires on June 30, 2003.

Notice was published on January 15, 1998 (63 FR 2364), that an application had been filed by BOR for a scientific research permit. Permit 1072 was issued to BOR on May 4, 1998. Permit 1072 authorizes takes of adult and juvenile, threatened, SONCC coho salmon in California within the ESU. The studies consist of coho salmon distribution, abundance and spawner surveys for which ESA-listed fish are proposed to be taken. ESA-listed fish will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect

mortalities associated with the research are also authorized. Permit 1072 expires on June 30, 2003.

Notice was published on January 15, 1998 (63 FR 2364), that an application had been filed by BLM for a scientific research permit. Permit 1088 was issued to BLM on April 24, 1998. Permit 1088 authorizes BLM takes of adult and juvenile, threatened, SONCC coho salmon in California, associated with fish population and habitat studies in the Eel and Mattole River Basins, and Humboldt County coastal stream drainages within the ESU. The studies consist of coho salmon distribution, abundance and spawner surveys for which ESA-listed fish are proposed to be taken. ESA-listed fish will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect mortalities associated with the research are also authorized. Permit 1088 expires on June 30, 2003.

Notice was published on October 31, 1997 (62 FR 58942), and February 25, 1998 (63 FR 9505), that an application had been filed by WDFW for a scientific research permit. Permit 1102 was issued to WDFW on April 24, 1998. Permit 1102 authorizes WDFW an annual take of adult, endangered, UCR steelhead; adult, threatened, Snake River spring/summer chinook salmon; and adult, threatened, Snake River fall chinook salmon associated with two scientific research studies. The purpose of the research is to determine the number and timing of wild and hatchery steelhead adults that pass Bonneville Dam on the Columbia River, and to determine the genetic stock identification of anadromous adult fish harvested in Columbia River fisheries. Data will be used to determine the fishery impacts to ESA-listed stocks and if possible, to shape fisheries to reduce impacts to ESA-listed or depressed stocks while focusing harvest on healthy stocks. Permit 1102 expires on January 31, 2003.

Notice was published on November 5, 1997 (62 FR 59848), that an application had been filed by CDF for a modification to a scientific research permit. Modification 1 to permit 1103 was issued to CDF on April 24, 1998. Permit 1103 authorizes takes of juvenile, threatened, CCC coho salmon associated with fish population and habitat studies throughout the ESU. ESA-listed fish may be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities are also authorized. The modification authorizes

takes of juvenile, threatened, SONCC coho salmon associated with fish population and habitat studies throughout the California portion of the ESU. ESA-listed juvenile fish are proposed to be observed and counted. Modification 1 is valid for the duration of the permit which expires on June 30, 2003.

Notice was published on March 2, 1998, (63 FR 10198), that an application had been filed by FWS for a 5-year scientific research permit. Permit 1119 was issued on May 4, 1998. Permit 1119 authorizes direct takes of juvenile fish released from Winthrop Hatchery. The FWS is authorized takes of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with two scientific research studies. The purpose of the research is to gather data on emerging juvenile salmon and steelhead, and to conduct snorkel surveys in various watersheds as part of inventory and artificial structure monitoring projects. The data obtained from both studies will be used to determine the survival and contribution of ESA-listed steelhead and other unlisted salmonids released from FWS mitigation hatchery programs in central Washington and to provide technical assistance to agencies, tribes, and interest groups using and managing aquatic resources in the mid to upper-Columbia River Basin. Some ESA-listed juvenile fish will be captured with screw traps, handled, and released, and some adult and juvenile fish will be observed during snorkel surveys. Permit 1119 expires on December 31, 2002.

Notice was published on February 25, 1998 (63 FR 9505), that an application had been filed by USGS for a scientific research permit. Permit 1130 was issued to USGS on April 24, 1998. Permit 1130 authorizes USGS takes of juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; juvenile, threatened, Snake River fall chinook salmon; and juvenile, endangered, artificially propagated, upper Columbia River steelhead associated with research designed to determine the movement, distribution, and passage behavior of radio-tagged juvenile salmonids at Bonneville, The Dalles, and John Day Dams on the Columbia River. The results of the research will be used by the U.S. Army Corps of Engineers to assess fish passage efficiency at John Day and The Dalles Dams and to increase bypass efficiency for juvenile salmonids at the dams by effectively designing and positioning prototype surface bypass/collection

structures. Permit 1130 expires on December 31, 2002.

Notice was published on February 25, 1998 (63 FR 9505), that an application had been filed by POP for a scientific research permit. Permit 1131 was issued to POP on April 24, 1998. Permit 1131 authorizes POP takes of juvenile, endangered, Snake River sockeye salmon; adult and juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; adult and juvenile, threatened, Snake River fall chinook salmon; and adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with research designed to determine the presence and distribution of fish in shallow water habitats between the lower end of Hayden Island and the Sandy River delta on the Columbia River. Information will be used to: (1) develop a comprehensive management plan for the lower Columbia River in cooperation with the states of OR and WA, (2) prepare environmental impact assessments associated with shoreline development projects, and (3) design mitigation plans to compensate for the loss of shallow water habitat due to future shoreline development projects. Permit 1131 expires on January 31, 2000.

Notice was published on February 25, 1998 (63 FR 9505), that an application had been filed by Andre M. Landry, Texas A&M University, for a scientific research permit. Permit 1133 was issued on May 1, 1998. Permit 1133 authorizes the take of up to 200 Kemp's ridley, 20 hawksbill, 150 green, and 100 loggerhead turtles annually from locations within the Gulf of Mexico, primarily through the use of entanglement nets for the purpose of conducting studies on population status and recovery potential, habitat preference, movement and migration, foraging patterns, and impact of man's activities such as commercial and recreational fishing, dredging and habitat alteration/pollution. All captured turtles may be weighed, photographed, measured, blood sampled, and PIT and flipper tagged. Certain turtles may be radio, sonic and/or satellite tagged, and fecal and tissue sampled. Additionally, stomach lavage techniques may be deployed where necessary. Permit 1133 expires on January 31, 2003.

Notice was published on March 2, 1998 (63 FR 10198), that an application had been filed by OCFWRU for a scientific research permit. Permit 1136 was issued to OCFWRU on April 24, 1998. Permit 1136 authorizes OCFWRU annual takes of juvenile, endangered,

Snake River sockeye salmon; juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; juvenile, threatened, Snake River fall chinook salmon; and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with research designed to compare biological and physiological indices of wild and hatchery juvenile fish exposed to stress from bypass, collection, and transportation activities at the dams on the Snake and Columbia Rivers. The purpose of the research is to determine effects of manmade structures and management activities on outmigrating salmonids and to provide information that can be used to improve their survival. Permit 1136 expires on December 31, 2000.

Notice was published on March 6, 1998 (63 FR 11220), that an application had been filed by NWFSC for a scientific research permit. Permit 1137 was issued to NWFSC on April 24, 1998. Permit 1137 authorizes NWFSC takes of juvenile, endangered, Snake River sockeye salmon; juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; juvenile, threatened, Snake River fall chinook salmon; and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with four scientific research studies at hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. The purpose of the four studies are: To evaluate a prototype fish separator at Ice Harbor Dam; to establish biological design criteria for fish passage facilities at McNary Dam; to evaluate vertical barrier screens, outlet flow control devices, and methods of debris control at McNary and Little Goose Dams; and to evaluate extended-length bar screens at the first powerhouse of Bonneville Dam. Permit 1137 expires on December 31, 1998.

Dated: May 8, 1998.

Patricia A. Montanio,
Deputy Director, Office of Protected
Resources, National Marine Fisheries Service
[FR Doc. 98-12844 Filed 5-14-98; 8:45 am]
BILLING CODE 3510-22-F

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange Proposed Specialist Market Maker Program

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed new rule and rule amendments of the New York Mercantile Exchange to establish a Specialist Market Maker program.

SUMMARY: The New York Mercantile Exchange ("NYMEX" or "Exchange") has submitted a proposed new rule and rule amendments that would establish a Specialist Market Maker ("SMM") program for certain new or low-volume futures contracts. The Exchange would appoint one SMM for each contract market that it determined would benefit from the SMM program. The SMM would be required to maintain a continuous physical presence on the floor of the Exchange throughout the regular trading session of the contract and to maintain a two-sided market in the contract for which he or she had been appointed. The SMM also would be required to maintain a limit order book of member and non-member (i.e., customer) limit orders. In return for these services, the SMM would be paid a contract development fee and receive various priorities with respect to certain transactions executed in the trading ring for the appointed contract.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets ("Division") has determined to publish the NYMEX proposal for public comment. The Division believes that publication of the proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATE: Comments must be received on or before June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Smith, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5495; or electronic mail: tsmith@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed SMM Program

A. Introduction

By letter dated April 16, 1998, NYMEX submitted proposed new Rule 6.45 ("Specialist Market Maker Program") and proposed amendments to Rule 6.43A ("Broker Registration Requirements") pursuant to Section 5a(a)(12)(A) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(c). The proposed new rule and rule amendments would establish an SMM program for certain new or low-volume futures contracts. The SMM program is intended to provide liquidity for new or

illiquid markets and would be terminated once the contract obtained a predetermined trading volume. The SMM program is patterned after a market maker program at the Chicago Mercantile Exchange that was previously approved by the Commission on April 20, 1995.

NYMEX intends to implement the SMM program in the Cinergy Electricity and Entergy Electricity futures contracts, which were approved by the Commission for trading on March 23, 1998. NYMEX anticipates listing the two new electricity futures contracts for trading within the next few months. The SMM program may be extended to other new or low-volume futures contracts at a later date.

B. SMM Eligibility Criteria

Applications for SMM positions would be accepted from members and member firms. Applications also would be accepted from individuals and firms that were not members or member firms. Appointment as an SMM could not occur however, until the individual or firm had been approved by the NYMEX Board of Directors as a member or member firm.

NYMEX would establish a new Exchange Committee, the Specialist Review Committee ("SRC"). The SRC would assess each SMM applicant's financial resources, operational capabilities, trading experience, regulatory history, and ability and willingness to promote NYMEX as a marketplace and would report its findings to the Board of Directors. Prospective SMM applicants also would need to demonstrate that they have the ability to provide multiple qualified personnel with the capability to perform the defined SMM obligations and have working capital in excess of \$500,000. The Board of Directors would make the final decision as to which applicants to appoint as SMMs.

Only one SMM would be appointed for each contract market eligible for the SMM program. The Board of Directors, however, may appoint a member or member firm as an SMM for more than one contract market.

For any market for which an SMM has been appointed, the Exchange would issue an SMM trading permit to the SMM. The permit would allow the member or member firm to perform the SMM functions without incurring the cost of dedicating a membership for use in that designated futures contract. Thus, for example, if a member firm with two full NYMEX memberships were appointed an SMM in a new contract, the member firm would be permitted to act as the SMM for the new

market while also retaining the trading privileges associated with the two full memberships.

C. Duties of the SMM

The SMM's rights and obligations would be set forth in a written agreement (the "SMM Agreement").¹ The SMM Agreement would require the SMM to provide a continuous physical presence on the floor of the Exchange throughout the regular trading session in order to maintain an orderly market in the appointed futures contract. During the trading session of the appointed market, the SMM would continuously provide bid and offer quotes for outright futures trades and price differentials for spread transactions for the contract delivery months set forth in the SMM Agreement.

The SMM Agreement would establish a maximum bid/offer quote spread and maximum price differential for certain contract delivery months.² At a given bid or offer, the SMM would be obligated to satisfy all bids and offers in the ring at the same price up to a predefined maximum number of contracts for any one trade.³ In complying with this obligation for a particular price, the SMM could fill a bid or offer, as applicable, with one or more limit orders maintained in a limit order book at that price (the limit order book is discussed further below), with a trade for the SMM's proprietary account, or with a combination of limit orders and trading for his or her proprietary account.

NYMEX anticipates that a maximum bid/offer quote spread and maximum price differential would be set only for the "near" months (e.g., for one to three months out from the front-month contract) and the most active spread transactions. In addition, the SMM Agreement may provide for a maximum bid/offer quote spread and price differential during usual market conditions and a larger maximum bid/offer quote spread and price differential during periods of extreme volatility, extreme trading volume, or market emergencies. The SMM Agreement would define these "unusual" market conditions for the purposes of the SMM program.

The SMM also would be required to maintain an order book of limit orders

¹ The SMM Agreement would be negotiated by the SMM and SRC and would be subject to the approval of the NYMEX Board of Directors.

² The duration of the SMM's term would be set forth in the SMM Agreement.

³ The maximum number of contracts that the SMM would be obligated to fill at any one price would be set forth in the SMM Agreement.

("OB") in the markets for which he or she has been appointed an SMM. The limit orders could be for outright futures trades or spread transactions. The term "Order Book Official" ("OBO") would be used to refer to the SMM whenever the SMM was acting in the capacity of managing the OB.

A customer may elect to have a limit order given to the SMM for inclusion in the OB. NYMEX members also may place limit orders for their proprietary accounts with the SMM for inclusion in the OB. The OBO would be obligated to accept all limit orders presented for inclusion in the OB. Customers also may request that non-limit orders be given to the OBO for execution. The OBO would not be obligated to accept non-limit orders.

Upon a request from a member or clerk on the trading floor, the OBO would be required to disclose the prices, quantities and contract delivery months for the limit orders held in the OB. The promptness of the OBO's response would depend upon market conditions. All orders presented to the OBO would have to be in writing. Orders entered into the OB would be executed on a price-priority and time-priority basis. The Exchange would provide the OBO with a time-stamp clock in the trading ring, and the OBO would be required to time-stamp each limit order that he or she received.

The proposal also would provide that the SMM may, at his or her discretion, respond to a request for a bid or offer as part of a large-order execution procedure. The SMM would be permitted to survey the ring to determine if other floor members were interested in participating in responding to the request.⁴

D. Transaction Priorities

The SMM program would provide certain trading priorities to the OBO and to the SMM. With respect to the execution of limit orders in the OB, the OBO would have a 100% priority right over other proprietary traders and floor brokers in the ring for trades that take place at the OBO's bid or offer. For example, if the OB contained limit orders to buy a total of 10 contracts at a price of 40, the OBO would have a right to participate in any transactions executed at a price of 40 in the trading ring until all 10 of the limit orders in the OB were executed. With respect to this priority, no distinction would be made

⁴ NYMEX current does not have a rule governing large-order executions. The Exchange has stated that it would submit a proposed large-order execution rule to the Commission pursuant to Section 5a(a)(12)(A) of the Act and Commission Regulation 1.41(c) prior to its implementation.

between members and customer limit orders in the OB.

In connection with the SMM's proprietary account, the SMM would have priority rights with respect to trades executed (1) against the OB; (2) in the ring and within the SMM's bid/offer spread; and (3) as a cross-trade against the OB. The SMM, however, would not be obligated to exercise his or her priority rights. The extent of each of these priorities is specified below.

The SMM would have a 10% priority right with respect to any transaction executed opposite the OB. For example, if a floor broker executed a trade opposite the OB for 20 contracts at a price of 39, the SMM may exercise his or her priority right and "take" 2 of the contracts at a price of 39 from the floor broker.

The SMM would have a 40% priority right with respect to trades executed in the trading ring that do not involve the OB and are within the SMM's bid/offer spread. For example if the SMM's spread is bid 40 and offer 50, and two floor brokers execute a trade for 20 contracts at a price of 40, the SMM may exercise his or her right to buy 8 of the contracts from the selling floor broker.

The SMM may trade for his or her proprietary account against the OB, provided that the SMM follows the cross-trade procedures set forth in NYMEX Rule 6.40, including announcing the price and quantity of the contracts to be purchased and sold to the trading ring three times and executing the transaction in the presence of an Exchange employee designated to observe such transactions. If one or more floor members respond to the SMM's bid and offer, the SMM may exercise a right of priority to a maximum of 40% of the transaction. For example, if the OB contained limit orders to buy a total of 10 contracts at a price of 30, the SMM may elect to trade opposite the OB by announcing three times the bid and offer for 10 contracts at a price of 30 to the other floor members in the trading ring. If other floor members respond to the announcement by offering to sell 10 contracts at 30, the SMM may elect to exercise his or her priority and trade against four of the contracts in the OB. The remaining six contracts would go to the other floor members in the trading ring who wished to participate in the transaction.⁵

⁵ The proposal would require a member or member firm using the SMM facility for the execution of customer limit orders to disclose in writing to the customer that the SMM may trade against such orders and that the customer may choose not to place a limit order with the SMM.

The SMM's priorities would extend to floor members executing trades for proprietary accounts and floor brokers executing customer orders. Therefore, the SMM's priority may preempt the execution of customer orders.

E. Contract Development Fee

The SMM would receive a contract development fee ("CDF") as an incentive to perform the SMM function. The terms and duration of the CDF would be set forth in the SMM Agreement, and would be based upon the level of customer trading volume in the designated contract. Unless otherwise provided in the SMM Agreement, the SMM would receive \$8,000 per month if monthly customer trading volume was less than 3,500 contracts. Once monthly customer trading volume exceeded 3,500 contracts, the SMM would receive \$8,000 plus a per contract fee for each transaction in excess of 3,500 that involved a customer order.

F. Specialist Floor Brokers

The proposal would permit the SMM to contract with one or more floor brokers ("Specialist Floor Brokers" or "SFB") to perform all or part of the SMM function. For example, the SMM may contract with the SFB to manage the OB and to perform all of the OBO obligations, including the OB's priority with respect to trading against the OB. The proposal would give significant latitude to the SMM to contract with an SFB. However, any contract between an SMM and an SFB would be subject to the review and approval of the SRC. The proposal also would provide that the SMM would be principally liable to the Exchange for the execution of all SMM obligations and duties.

II. Request for Comments

The Commission requests comments from interested persons concerning any aspect of NYMEX's proposed SMM program that the commenters believe raise issues under the Act or Commission Regulations. In particular, the Commission requests comments regarding the appropriateness of: (1) Permitting members to place limit orders for their own accounts in the OB; (2) permitting member limit orders to be executed ahead of customer limit orders that are at the same price, but received by the OBO at a later time; (3) granting the SMMs trading priorities, including the priority to trade against the OB; and (4) permitting the SMM's trading priority to preempt the execution of customer orders in the trading ring.

Copies of the proposed new Rule 6.45 and the proposed amendments to Rule

6.43A and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418-5100.

Any person interested in submitting written data, views, or arguments on the proposed SMM program should send such comments, by the specified date, to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; transmitted by facsimile to (202) 418-5521; or transmitted electronically to secretary@cftc.gov.

Issued in Washington, DC, on May 11, 1998.

Alan L. Seifert,
Deputy Director.

[FR Doc. 98-12970 Filed 5-14-98; 8:45 am]

BILLING CODE 8351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 14, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of

Defense (Personnel and Readiness) (Force Management Policy/DeCA), ATTN: Herman Weaver, 1300 E Avenue, Ft. Lee, Virginia 23801-1800.

FOR FURTHER INFORMATION CONTACT:

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (804) 734-8322.

Title, Associated Form, and OMB Control Number: Commissary Customer Service Survey, DeCA Form 60-28, 0704-0380.

Needs and uses: This information collection requirement is necessary to the Defense Commissary Agency for the purpose of measuring customer service, which is our number one Strategic and Performance goal. This management tool uses a survey instrument designed to extract objective, subjective, and demographic information from our customers so we can better serve their needs. The results will be reported and distributed to the regional headquarters and commissaries to use the past and present trends for the purpose of future improvement. Also, the results will directly affect our policies and quality initiatives for an efficient and cost-effective commissary system.

Affected Public: Individuals or households.

Annual Burden Hours: 1,200 hours.

Number of Respondents: 18,000.

Responses per Respondent: 1.

Average Burden per Response: 4 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The primary purpose of this information collection is to determine how well each commissary is satisfying the customer. This will serve as a baseline measure for future trends and provide defense officials vital information to make cost-effective management decisions. The information received will be of benefit to return patrons, as well as inspire new customers, which should increase our surcharge accounts to provide new commissary construction and renovations. Our primary goal is to preserve the military's most valued benefit through enhanced customer satisfaction.

Each commissary, both stateside and overseas, will receive the Commissary Customer Service Survey. Each commissary officer will select an administrator who will distribute the surveys randomly three times each day (one hour after store opens, mid-day,

and two hours before closing) for ten consecutive days. The following subject areas will be covered in the survey: customer relations, savings, cleanliness, scheduling, atmosphere, quality of meat and produce, managers' and employees' knowledge and helpfulness, and the customer's most valued benefit of commissaries.

Dated: May 11, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-12967 Filed 5-14-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Subcontracting Policies and Procedures—DFARS Part 244; OMB Number 0704-0253.

Type of Request: Extension.

Number of Respondents: 90.

Responses per Respondent: 1.

Annual Responses: 90.

Average Burden per Response: 16 hours.

Annual Burden Hours: 1,400.

Needs and Uses: The collection of this information is considered by the administrative contracting officer before making a decision on granting, withholding, or withdrawing purchasing system approval at the conclusion of a contractor purchasing system review. Withdrawal of purchasing system approval would necessitate Government consent to individual subcontracts in accordance with section 44.102 of the Federal Acquisition Regulation. The information collection includes the requirements of DFARS 244.305-70, which requires the administrative contracting officer, at the completion of the in-plant portion of the contractor purchasing system review, to request the contractor to submit within 15 days, its plan for correcting deficiencies or making improvements to its purchasing system.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: May 11, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-12966 Filed 5-14-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0077]

Submission for OMB Review; Comment Request Entitled Quality Assurance Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Quality Assurance Requirements. A request for public comments was published at 63 FR 11424, March 9, 1998. No comments were received.

DATES: Comments may be submitted on or before June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501-3775.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including

suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000-0077, Quality Assurance Requirements, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Supplies and services acquired under Government contracts must conform to the contract's quality and quantity requirements. FAR Part 46 prescribes inspection, acceptance, warranty, and other measures associated with quality requirements. Standard clauses related to inspection (a) require the contractor to provide and maintain an inspection system that is acceptable to the Government; (b) give the Government the right to make inspections and test while work is in process; and (c) require the contractor to keep complete, and make available to the Government, records of its inspection work.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .25 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents, 950; responses per respondent, 1; total annual responses, 950; preparation hours per response, .25; and total response burden hours, 237.5 (238).

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 58,060; hours per recordkeeper, .68; and total recordkeeping burden hours, 39,481. The total annual burden is 238 + 39,481 = 39,719.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0077, Quality Assurance Requirements, in all correspondence.

Dated: May 12, 1998.
 Sharon A. Kiser,
FAR Secretariat.
 [FR Doc. 98-12949 Filed 5-14-98; 8:45 am]
 BILLING CODE 0820-34-P

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics, (ACES)

AGENCY: U.S. Department of Education.
 ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics (ACES). This notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 21-22, 1998.

TIMES: May 21, 1998—Full Council, 9:00 a.m.-10:45 a.m.; Management Committee, 10:45 a.m.-4:30 p.m.; Statistics Committee, 10:45 a.m.-4:40 p.m.; Strategy/Policy 10:45 a.m.-4:30 p.m.

May 22, 1998—Full Council 12 noon to 3:00 p.m.; Statistics Committee, 8:30 a.m.-12:00 noon; Strategy/Policy Committee, 8:30 a.m. to 12 noon; and Management Committee, 8:30 to 12 noon.

LOCATION: Phoenix Park Hotel, 520 North Capitol Street NW, Washington D.C. 20001.

FOR FURTHER INFORMATION CONTACT: Barbara Marenus, National Center for Education Statistics, 555 New Jersey Ave, NW, Room 400J, Washington, D.C. 20208-5530—(202) 219-1835.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93-380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. In addition, ACES is required to advise the Commissioner of NCES and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Education Progress (NAEP). The meeting of the Council is open to the public.

The proposed agenda for the full Council includes the following:

- A status report from the NCES Commissioner on major Center initiatives; and
 - The presentation of Committee reports.
- Individual meetings of the three ACES subcommittees will focus on specific topics:
- The agenda for the Management Committee includes discussion on the results from the 1997 Customer Service Survey, a report on the development of partnerships with external organizations, a discussion of "capacity building" activities for NCES, and discussion on NCES's program planning activities.
 - The agenda for the Statistics Committee includes a discussion of the emerging issues in NCES's licensing policy, a discussion of the response probability convention in assessment scales, and a report on race/ethnicity reporting issues.
 - The agenda for the Strategy/Policy Committee includes a discussion of redesign issues in the Schools and Staffing Survey, a discussion of a new longitudinal cohort study and a briefing on school crime data collections options.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, NW, Room 400J, Washington, D.C. 20208-7575.

Ricky Takai,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 98-13023 Filed 5-14-98; 8:45 am]
 BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.
 ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, June 3, 1998: 5:30 p.m.—9:00 p.m.

ADDRESSES: U.S. Department of Energy, Nevada Support Facility, Great Basin

Room, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193-8513, phone: 702-295-0197.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m. Call to Order
 5:40 p.m. Presentations
 7:00 p.m. Public Comment/Questions
 7:30 p.m. Break
 7:45 p.m. Review Action Items
 8:00 p.m. Approve Meeting Minutes
 8:10 p.m. Committee Reports
 8:45 p.m. Public Comment
 9:00 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on May 11, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98-12999 Filed 5-14-98; 8:45 am]
 BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.
 ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, June 3, 1998 6:00 p.m.—9:30 p.m.

ADDRESSES: Ramada Inn, 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576-0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: A public informational meeting on the "Intersite Discussion Workshops" being sponsored by the League of Women Voters will be conducted.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576-0314.

Issued at Washington, DC on May 11, 1998.
Rachel Samuel,
Deputy Advisory Committee Management Officer.
 [FR Doc. 98-13000 Filed 5-14-98; 8:45 am]
 BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.
 ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Board.

Committee Meeting: Environmental Management Site-Specific Advisory Board, Monticello Site.

Date and Time: Wednesday, June 17, 1998; 7:00 p.m.

Address: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (970) 248-7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities. **Tentative Agenda:** Update on project status, future land use, and Monticello surface and groundwater.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal

Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248-7727.

Issued at Washington, DC on May 11, 1998.
Rachel Samuel,
Deputy Advisory Committee Management Officer.
 [FR Doc. 98-13001 Filed 5-14-98; 8:45 am]
 BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-521-000]

Columbia Gas Transmission Corporation; Notice of Application

May 11, 1998.

Take notice that on May 5, 1998, Columbia Gas Transmission Corporation (Columbia), P.O. Box 10146, Fairfax, Virginia 22030, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations thereunder for an order granting permission and approval to abandon by transfer certain natural gas facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to abandon twenty (20) meters used to measure receipts of volumes from independent producers located in Ohio, Pennsylvania and New York. On July 31, 1991, Columbia filed for protection under Chapter 11 of the United States Bankruptcy Code. In the process of liquidating claims, Columbia entered into settlement agreements with individual producers which involved, among other things, Columbia's agreement to transfer to the settling producers certain receipt meters. These meters were no longer needed by Columbia to support gas purchase activity but were of interest to the producers who would continue to introduce gas into Columbia's system for transportation.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 1, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary

[FR Doc. 98-12923 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-448-000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

May 11, 1998

Take notice that on May 1, 1998, NorAm Gas Transmission Company (NGT), 1111 Louisiana Street, Houston, Texas 77210-4455, filed in Docket No. CP98-448-000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain facilities in Texas, under NGT's blanket certificate issued in Docket No. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the

Commission and open to public inspection.

NGT specifically proposes to abandon and reclaim a 1-inch, inactive, domestic tap on Line CM-14 in Bowie County, Texas that delivered gas to Arkla, a distribution division on NorAm Energy Corp. for supplementary service to Hooks County School District. Arkla has notified NGT that it no longer needs this tap and that the school has requested that the tap be removed to allow cleanup on the location. NGT will reclaim the tap at an estimated cost of \$579 and Arkla will reimburse NGT for \$464 of this cost.

NGT states that the proposed abandonment is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to NGT's other customers. No service will be abandoned as a result of removing this tap.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is failed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary

[FR Doc. 98-12920 Filed 5-14-98; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-323-001]

Norteño Pipeline Company; Notice of Petition for Waiver

May 11, 1998

Take notice that on April 30, 1998, Norteño Pipeline Company (Norteño) tendered for filing a petition for extension of waiver of certain Commission Order Nos. 587-B, 587-C, and 587-G requirements, or in an alternative, extension of the waiver until abandonment by sale of the pipeline facilities.

Norteño states that it has served copies of the filing on each person designated on the official service list compiled by the Secretary of FERC in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 18, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary

[FR Doc. 98-12928 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-203-001]

Northern Natural Gas Company; Notice of Compliance Filing

May 11, 1998

Take notice that on May 6, 1998, Northern Natural Gas Company (Northern) tendered for filing changes in the its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective June 1 1998:

First Revised Sheet No. 415

First Revised Sheet No. 416

On May 1, 1998, Northern filed in this Docket a general rate case. The reason for this filing is to comply with the Commission's May 5 order in this Docket requiring Northern to refile Sheet Nos. 415 and 416 to correct pagination duplications. No changes were made to the contents of the sheets.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary

[FR Doc. 98-12929 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 20, 472, and 2401]

PacificCorp; Notice of Staff Attendance at Relicensing Meeting

May 11, 1998

Staff from the Federal Energy Regulatory Commission, Office of Hydropower Licensing, will be attending a May 28, 1998, Technical Advisory Committee meeting in Pocatello, Idaho on the relicensing of PacificCorp's Soda, Grace-Cove, and Oneida hydroelectric projects. The meeting will be conducted by PacificCorp and will include briefings on the status of the relicensing process, flow issues, and PacificCorp's proposed enhancement measures.

A meeting agenda may be obtained from Michael Burke of PacificCorp at 503-464-5344.

David P. Boergers,

Acting Secretary

[FR Doc. 98-12924 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. FR98-2270-000]

PEI Power Corporation; Notice of Issuance of Order

May 12, 1998

PEI Power Corporation (PEI) submitted for filing a rate schedule under which PEI will engage in wholesale electric power and energy transactions as a marketer. PEI also requested waiver of various Commission regulations. In particular, PEI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by PEI.

On May 8, 1998, pursuant to delegated authority, the Director,

Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PEI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within the period, PEI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PEI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is June 8, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary

[FR Doc. 98-13002 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-280-002]

Petal Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

May 11, 1998

Take notice that on May 7, 1998, Petal Gas Storage Company (Petal) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, substitute revised tariff sheets (Sheet Nos. 11, 116 and 124) with proposed effective dates of June 1, 1998.

Petal states that the filing is made in compliance with the Commission's April 22, 1998 Letter Order in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provide in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary

[FR Doc. 98-12927 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-464-000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

May 11, 1998

Take notice that on May 1, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed a request with the Commission in Docket No. CP98-464-000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to own, operate and maintain as a jurisdictional NGA facility, an existing delivery point on Texas Eastern's existing 24-inch Line No. 1 in Pulaski County, Arkansas, which had been constructed to make natural gas deliveries to ARKLA, a division of NorAm Energy Corporation, and a local distribution company, authorized in blanket certificate issued in Docket No. CP82-535-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern proposes to construct a delivery tap consisting of a 2-inch tap valve and a 2-inch check valve (Tap) on Texas Eastern's 24-inch Line No. 1, at approximate Mile Post 209.28 in Pulaski County, Arkansas. In addition to the Tap that Texas Eastern installed, ARKLA installed a dual turbine meter run, approximately 25 feet of 4-inch pipeline which extends from the Meter Station to the Tap, and electronic gas measurement equipment.

Texas Eastern states that the authorization requested would have no effect on Texas Eastern's peak day or annual deliveries. Texas Eastern submits that service to Arkla is accomplished without detriment or disadvantage to Texas Eastern's other customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 a protest to the request. If no protest is filed within the allowed time, the proposed activity will be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request will be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Acting Secretary

[FR Doc. 98-12921 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-516-000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

May 11, 1998.

Take notice that on May 4, 1998, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP98-516-000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to replace and reconfigure facilities in Madison County, Tennessee under Texas Gas's blanket certificate issued in Docket No. CP82-407-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that it proposes to replace the existing dual 8-inch meter runs and 6-inch regulation runs with dual 6-inch meter runs and 4-inch regulation runs and associated headers and piping at its Jackson No. 1 delivery meter station located at the

termination of Texas Gas's 8-inch Ripley Jackson Line. In addition the station will also be reconfigured by reversing the current placement of the regulation and the meter runs so that the meter runs will be placed in front of the or upstream of the regulation runs.

Texas Gas states that the estimated cost of reconfiguring these facilities is estimated to be \$215,000 and that the proposal will have no significant effect on Texas Gas's peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary

[FR Doc. 98-12922 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-2884-000, et al.]

Illinois Power Company, et al. Electric Rate and Corporate Regulation Filings

May 7, 1998.

Take notice that the following filings have been made with the Commission:

1. Illinois Power Company

[Docket No. ER98-2884-000]

Take notice that on May 4, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which PPG Industries, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1998.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company, South Beloit Water, Gas & Electric Company Heartland Energy Services and Industrial Energy Applications, Inc.

[Docket Nos. EC96-13-000, ER96-1236-000, and ER96-2560-000]

Take notice that on May 4, 1998, Alliant Services, Inc. (Alliant), on its own behalf and on behalf of IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company, South Beloit Water, Gas & Electric Company, Heartland Energy Services and Industrial Energy Applications, Inc. (the IEC Operating Companies), submitted an amendment to its filing in these dockets.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Rochester Gas and Electric Corporation

[Docket No. ER98-2886-000]

Take notice that on May 4, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the SCANA Energy Marketing, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96-141-000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of April 28, 1998, for the SCANA Energy Marketing, Inc., Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER98-2887-000]

Take notice that on May 4, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which NGE Generation, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 27, 1998.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER98-2888-000]

Take notice that on May 4, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Archer Daniels Midland Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 30, 1998.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Company

[Docket No. ER98-2889-000]

Take notice that on May 4, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Black Hills Power & Light Co.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Rochester Gas and Electric Corporation

[Docket No. ER98-2890-000]

Take notice that on May 4, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Market Based Service Agreement between RG&E and Cinergy Capital & Trading Marketing Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97-3556-000 (80 FERC ¶ 61,284).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of April 20th, Strategic Energy Ltd's Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER98-2891-000]

Take notice that on May 4, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which VTEC Energy, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1998.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER98-2892-000]

Take notice that on May 4, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short term firm transmission service agreement between itself and Pennsylvania Power and Light Company, Inc. (PP&L), under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97-578. Wisconsin Electric respectfully requests an effective date coincident with its filing. Wisconsin Electric is authorized to state that PP&L joins in the requested effective date.

Copies of the filing have been served on PP&L, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Gas Company

[Docket No. ER98-2893-000]

Take notice that on May 4, 1998, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Equitable Power Services Company (EPSC) and Federal Energy Sales, Inc. (FES), as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon EPSC, FES, and the South Carolina Public Service Commission.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER98-2894-000]

Take notice that on May 4, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Central Illinois Light Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 15, 1998.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Illinois Power Company

[Docket No. ER98-2895-000]

Take notice that on May 4, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Tenneco Packaging, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 30, 1998.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER98-2896-000]

Take notice that on May 4, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Illinois State University will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1998.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER98-2897-000]

Take notice that on May 4, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Caterpillar, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are

based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 23, 1998.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER98-2898-000]

Take notice that on May 4, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Granite City Steel Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 22, 1998.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER98-2902-000]

Take notice that on May 4, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which AYP Energy, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 27, 1998.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER98-2903-000]

Take notice that on May 4, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Old Dominion Electric Cooperative will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 15, 1998.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. New York State Electric & Gas Corporation

[Docket No. ER98-2904-000]

Take notice that on May 4, 1998, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and AYP Energy, Inc., (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97-571-000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of May 4, 1998, for the AYP Energy, Inc., Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER98-2905-000]

Take notice that on May 4, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Short Term Firm Transmission Service Agreement between WPSC and Wisconsin Public Power Inc., providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER98-2906-000]

Take notice that on May 4, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Wisconsin Public Power Inc., provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Western Resources, Inc.

[Docket No. ER98-2907-000]

Take notice that on May 4, 1998, Western Resources, Inc., (Western Resources), on its behalf and on behalf of Kansas Gas and Electric Company (KGE), tendered for filing revised exhibits and service schedules to the Electric Power, Transmission and Service contracts between Western

Resources and Kansas Electric Power Cooperative, Inc. (KEPCo), and between KGE and KEPCo. Western Resources states that these revisions more closely align KEPCo's transmission and ancillary service schedules with Western Resources' open-access tariff for such services.

Copies of the filing were served upon Kansas Electric Power Cooperative, Inc., and the Kansas Corporation Commission.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Rochester Gas and Electric Corporation

[Docket No. ER98-2909-000]

Take notice that on May 4, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Market Based Service Agreement between RG&E and Federal Energy Sales, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff), accepted by the Commission in Docket No. ER97-3553-000, *et al.* (80 FERC ¶ 61,284).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of April 29th, Federal Energy Sales, Inc., Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: May 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12932 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL98-43-000, *et al.*]

Minnesota Power Light Company, *et al.*; Electric Rate and Corporate Regulation Filings

May 6, 1998.

Take notice that the following filings have been made with the Commission:

1. Minnesota Power & Light Company

[Docket No. EL98-43-000]

Take notice that on April 24, 1998, Minnesota Power & Light Company (Minnesota Power), submitted for filing revisions to its Schedule 93, Resale Service—Full Requirements Municipalities and Rural Utilities, and Schedule 99, Resale Service—Private Utilities in conjunction with its request for waiver of the Commission's fuel clause regulations.

A copy of the filing has been provided to the Minnesota Public Utilities Commission and the Minnesota Department of Public Service.

Comment date: May 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Power Company

[Docket No. ER97-2398-000]

Take notice that on May 1, 1998, Duke Power, a division of Duke Energy Corporation, tendered for filing an amendment in the above-reference docket.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER98-1106-000]

Take notice that on May 1, 1998, the New England Power Pool (NEPOOL), Executive Committee, acting on behalf of the New England Power Company and the other New England electric utilities that are subject to the Commission's jurisdiction that are parties to the Agreement with Respect to Use of Quebec Interconnection dated as of December 1, 1981, as amended and restated as of September 1, 1985, and as further amended and restated by the Second Amended and Restated Agreement with Respect to Use of Quebec Interconnection, dated as of November 19, 1997 (the Filing Parties), filed an Amendment to Second Amended and Restated Agreement with Respect to Use of Quebec Interconnection (Amendment), dated as of April 8, 1998.

On behalf of the Filing Parties, the NEPOOL Executive Committee states that the Amendment (I) resolves objections of Unifil Power Corp., to the Second Amended and Restated Agreement with Respect to Use of Quebec Interconnection and (ii) resolves a technical issue raised by ISO New England Inc.

The Filing Parties request an effective date of April 30, 1998, for certain of the provisions of the Second Restated Use Agreement that are amended by the Amendment, and an effective date for the remaining provisions of the Amendment on the Second Effective Date. The NEPOOL Executive Committee states that copies of the filing were sent to all participants and indirect participants in the Interconnection, the New England public utility commissions, the New England governors, and all parties to Docket No. ER98-1106-000.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER98-1438-000]

Take notice that on April 30, 1998, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), tendered for filing certain additional executed signature pages in order to supplement its January 15, 1998, filing in Docket No. ER98-1438.

Specifically, the Midwest ISO tendered signature pages to the "Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation," and the "Agency Agreement for Open Access Transmission Service Offered by the Midwest ISO for Nontransferred Transmission Facilities" executed by Interstate Energy Corporation d.b.a. Alliant Corporation on behalf of South Beloit Water, Gas & Electric Company, IES Utilities, Inc., Interstate Power Company and Wisconsin Power & Light Company.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket Nos. ER98-1933-000]

Take notice that on May 1, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Participating Generator Agreement, dated March 31, 1998, between Long Beach Generation LLC

and the ISO for acceptance by the Commission.

The ISO states that the enclosed Participating Generator Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket Nos. ER98-2115-000]

Take notice that on May 1, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Participating Generator Agreement, dated April 8, 1998, between the California Department of Water Resources and the ISO for acceptance by the Commission.

The ISO states that the enclosed Participating Generator Agreement replaces the contract that the ISO filed unilaterally in this proceeding on March 6, 1998. This filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER98-2753-000]

Take notice that on April 30, 1998, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies), submitted a report of short-term transactions that occurred under the Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) during the period January 1, 1998 through March 31, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. The Cincinnati Gas & Electric Company and PSI Energy, Inc.

[Docket No. ER98-2755-000]

Take notice that on April 30, 1998, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing their quarterly transaction report for the calendar quarter ending March 31, 1998.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. NorAm Energy Services, Inc.

[Docket No. ER98-2851-000]

Take notice that on April 29, 1998, NorAm Energy Services, Inc., tendered for filing its quarterly report for short-term transactions under market based rate sales tariffs of Oste Power Generation, L.L.C.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. NorAm Energy Services, Inc.

[Docket No. ER98-2852-000]

Take notice that on April 29, 1998, NorAm Energy Services, Inc., tendered for filing its quarterly report for short-term transactions under market based rate sales tariffs of Mountain Vista Power Generation, L.L.C.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. NorAm Energy Services, Inc.

[Docket No. ER98-2854-000]

Take notice that on April 29, 1998, NorAm Energy Services, Inc., tendered for filing its quarterly report for short-term transactions under market based rate sales tariffs of Ocean Vista Power Generation, L.L.C.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Alden Engineering Company

[Docket No. ER98-2622-000]

Take notice that on April 20, 1998, Alden Engineering Company tendered for filing an Interconnection Agreement with the Public Service Company of New Hampshire.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Freshwater Hydro, Inc.

[Docket No. ER98-2631-000]

Take notice that on April 22, 1998, Freshwater Hydro, Inc., owner of the Ashland Paper Mill Hydroelectric Project (Project No. 5638), made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in Connecticut Valley Electric Company, L.P. *et al.*, Docket Nos. EL94-10, *et al.*, 82 FERC 61,116 (1998).

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Nevada Power Company

[Docket No. ER98-2666-000]

Take notice that on April 14, 1998, Nevada Power Company tendered for filing Amendment No. 1 to Agreement

for Transmission Service Among Nevada Power Company and Overton Power District No. 5, and Lincoln County Power District No. 1.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Orange and Rockland Utilities, Inc.

[Docket No. ER98-2670-000]

Take notice that on April 24, 1998, Orange and Rockland Utilities, Inc. (O&R), tendered for filing its Summary Report of O&R transactions during calendar quarter ending March 31, 1998, pursuant to the market based rate power service tariff, made effective by the Commission on March 27, 1997 in Docket No. ER98-1400-000.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Yadkin, Inc.

[Docket No. ER98-2673-000]

Take notice that on April 24, 1998, Yadkin, Inc., tendered for filing a summary of activity for the quarter ending March 31, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER98-2674-000]

Take notice that on April 24, 1998, Florida Power & Light Company (FPL), filed its quarterly report for transactions during the calendar quarter ending March 31, 1998 under FPL's Market-Based Rate Tariff.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Power

[Docket No. ER98-2677-000]

Take notice that on April 22, 1998, Allegheny Power filed its quarterly report for transactions during the calendar quarter ending March 31, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Delmarva Power & Light Company

[Docket No. ER98-2732-000]

Take notice that on April 29, 1998, Delmarva Power & Light Company (Delmarva), tendered for filing a summary of short-term transactions made during the first quarter of calendar year 1998 under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96-2571-000.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power Corporation

[Docket No. ER98-2733-000]

Take notice that on April 29, 1998, Florida Power Corporation submitted a report of short-term transactions that occurred under its Market-Based Rate Wholesale Power Sales Tariff (FERC Electric Tariff, Original Volume No. 8) during the quarter ending March 31, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Capital & Trading

[Docket No. ER98-2757-000]

Take notice that on April 30, 1998, Cinergy Capital & Trading (CC&T), formerly Wholesale Power Services, Inc., tendered for filing CC&T's quarterly transaction report for the calendar quarter ending March 31, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. PECO Energy Company

[Docket No. ER98-2762-000]

Take notice that on April 30, 1998, PECO Energy Company (PECO), filed a summary of transactions made during the first quarter of Calendar Year 1998 under PECO's Electric Tariff Original Volume No. 1, accepted by the Commission in Docket No. ER95-770, as subsequently amended and accepted by the Commission in Docket No. ER97-316.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. NEV Midwest, L.L.C.

[Docket No. ER98-2771-000]

Take notice that on April 30, 1998, NEV Midwest, L.L.C. (NEV Midwest), submitted for filing in the above-referenced docket its quarterly report regarding transactions that occurred during the period January 1, 1998, through March 31, 1998, pursuant to its Market Rate Schedule accepted by the Commission in Docket No. ER97-4654-000.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. NEV California, L.L.C.

[Docket No. ER98-2780-000]

Take notice that on April 30, 1998, NEV California, L.L.C. (NEV California), submitted for filing in the above-referenced docket its quarterly report

regarding transactions that occurred during the period January 1, 1998 through March 31, 1998, pursuant to its Market Rate Schedule accepted by the Commission in Docket No. ER97-4653-000.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. NEV East, L.L.C.

[Docket No. ER98-2781-000]

Take notice that on April 30, 1998, NEV East, L.L.C. (NEV East), submitted for filing in the above-referenced docket its quarterly report regarding transactions that occurred during the period January 1, 1998 through March 31, 1998, pursuant to its Market Rate Schedule accepted by the Commission in Docket No. ER97-4652-000.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Duke Power, a division of Duke Energy Corporation

[Docket No. ER98-2784-000]

Take notice that on April 30, 1998, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing Schedule MR quarterly transaction summaries for service under Duke's FERC Electric Tariff, Original Volume No. 3, for the quarter ended March 31, 1998.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. New Energy Ventures, L.L.C.

[Docket No. ER98-2788-000]

Take notice that on April 30, 1998, New Energy Ventures, L.L.C. (NEV, L.L.C.), submitted for filing in the above-referenced docket its quarterly report regarding transactions that occurred during the period January 1, 1998 through March 31, 1998, pursuant to its Market Rate Schedule accepted by the Commission in Docket No. ER97-4636-000.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. New Energy Ventures, Inc.

[Docket No. ER98-2789-000]

Take notice that on April 30, 1998, New Energy Ventures, Inc. (NEV, Inc.), submitted for filing in the above-referenced docket its quarterly report regarding transactions that occurred during the period January 1, 1998 through March 31, 1998.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. The California Power Exchange Corporation

[Docket No. ER98-2810-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed unexecuted Meter Service Agreement for PX Participants for Semptra Trading Group for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Semptra Trading Group.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. The California Power Exchange Corporation

[Docket No. ER98-2811-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Northern California Power Agency for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Northern California Power Agency.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. The California Power Exchange Corporation

[Docket No. ER98-2812-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Power Exchange Corp., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998,

the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Power Exchange Corp.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. The California Power Exchange Corporation

[Docket No. ER98-2813-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for The Washington Water Power Company for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Washington Water Power Company.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. The California Power Exchange Corporation

[Docket No. ER98-2814-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for City of Anaheim for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon City of Anaheim.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

for PX Participants for Pacific Power, Loc Investments for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Pacific Power, Loc Investments.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

50. The California Power Exchange Corporation

[Docket No. ER98-2836-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Bonneville Power Authority for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Bonneville Power Authority.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

51. The California Power Exchange Corporation

[Docket No. ER98-2837-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Coral Power, L.L.C., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Coral Power, L.L.C.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

52. The California Power Exchange Corporation

[Docket No. ER98-2838-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Southern Company for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Southern Company.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

53. The California Power Exchange Corporation

[Docket No. ER98-2839-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Montana Power Trading and Marketing Co., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Montana Power Trading and Marketing Co.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

54. The California Power Exchange Corporation

[Docket No. ER98-2840-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for Central and Southwest Energy Services for acceptance by the Commission in

compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon Central and Southwest Energy Services.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

55. The California Power Exchange Corporation

[Docket No. ER98-2841-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for British Columbia Power Exchange for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon British Columbia Power Exchange.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

56. The California Power Exchange Corporation

[Docket No. ER98-2842-000]

Take notice that on May 1, 1998, the California Power Exchange Corporation (PX), tendered for filing a proposed, unexecuted Meter Service Agreement for PX Participants for QST Energy Trading, Inc., for acceptance by the Commission in compliance with the Commission's order issued March 30, 1998, in Docket Nos. ER98-1955-000 and ER96-1663-007. The PX requests an effective date as of March 31, 1998, the day that the PX began operations. The PX also requests confidential treatment of Schedules 1, 2 and 4 on the grounds that such Schedules, when completed, might contain commercially sensitive information.

The PX states that this filing has been served upon QST Energy Trading, Inc.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

57. AES Redondo Beach, L.L.C.

[Docket No. ER98-2843-000]

Take notice that on May 1, 1998, AES Redondo Beach, L.L.C., tendered for filing pursuant to Rule 205, 18 CFR 285.205, a petition for blanket waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 2 (Ancillary Services) to be effective on the date that AES Redondo Beach, L.L.C., acquires a generating facility.

AES Redondo Beach, L.L.C., intends to sell ancillary services at wholesale from an electric plant in Redondo Beach, California, and it proposes to sell four of these services subject to rates, terms and conditions to be negotiated with the buyer. Rate Schedule No. 2 (Ancillary Services) provides for the sale of regulation, spinning reserve, non-spinning reserve, and replacement reserve at prices arranged in the market.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

58. AES Huntington Beach, L.L.C.

[Docket No. ER98-2844-000]

Take notice that on May 1, 1998, AES Huntington Beach, L.L.C., tendered for filing pursuant to Rule 205, 18 CFR 285.205, a petition for blanket waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 2 (Ancillary Services) to be effective on the date that AES Huntington Beach, L.L.C., acquires a generating facility.

AES Huntington Beach, L.L.C., intends to sell ancillary services at wholesale from an electric plant in Huntington Beach, California, and it proposes to sell four of these services subject to rates, terms and conditions to be negotiated with the buyer. Rate Schedule No. 2 (Ancillary Services) provides for the sale of regulation, spinning reserve, non-spinning reserve, and replacement reserve at prices arranged in the market.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

59. Dayton Power and Light Company

[Docket No. ER98-2846-000]

Take notice that on April 30, 1998, Dayton Power & Light Company tendered for filing a summary of 1st quarter market based sales.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

60. PacifiCorp

[Docket No. ER97-2847-000]

Take notice that on April 29, 1998, PacifiCorp tendered for filing in accordance with the Commission's June 26, 1997, Order Docket No. ER97-2801-000, a Report showing PacifiCorp's transactions under PacifiCorp's FERC Electric Tariff, Original Volume No. 12 for the quarter ending on March 31, 1998.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

61. Alliant Service, Inc.

[Docket No. ER98-2848-000]

Take notice that on May 1, 1998, Alliant Services, Inc., tendered for filing an executed Service Agreement for Network Integration Transmission Service and an executed Network Operating Agreement, establishing Wisconsin Public Power Inc., as a Network Customer under the terms of the Alliant Services, Inc., transmission tariff.

Alliant Services, Inc., requests an effective date of June 1, 1997, for the service provided to loads located on its transmission system and an effective date of May 1, 1998, for loads not physically interconnected to the transmission providers system. Alliant Services, Inc., accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

62. Public Service Electric & Gas Company

[Docket No. ER98-2850-000]

Take notice that on April 29, 1998, Public Service Electric & Gas Company tendered for filing copies of the Transaction Summary of its activity for the first quarter of 1998, under its Market Based Rate Tariff, Original Volume No. 6.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

63. NorAm Energy Services, Inc.

[Docket No. ER98-2853-000]

Take notice that on April 29, 1998, NorAm Energy Services, Inc., tendered

for filing its quarterly report for short-term transactions under market based rates sales tariffs of Alta Power Generation, L.L.C.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

64. Northeast Utilities Service Company

[Docket No. ER98-2855-000]

Take notice that on April 30, 1998, Northeast Utilities Service Company tendered for filing its summary report of transactions during the calendar quarter ending March 31, 1998.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

65. Union Electric Company

[Docket No. ER98-2856-000]

Take notice that on April 30, 1998, Union Electric Company tendered for filing its quarterly report detailing sale transactions undertaken for the quarter January 1, 1998 through March 31, 1998.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

66. Tampa Electric Company

[Docket No. ER98-2858-000]

Take notice that on May 1, 1998, Tampa Electric Company (Tampa Electric), tendered for filing a letter agreement that amends an existing letter of commitment providing for the sale of capacity and energy to the Florida Municipal Power Agency (FMPPA).

Tampa Electric proposes that the letter agreement be made effective on May 2, 1998, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on FMPPA and the Florida Public Service Commission.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

67. Orange and Rockland Utilities, Inc.

[Docket No. ER98-2860-000]

Take notice that on May 1, 1998, Orange and Rockland Utilities, Inc. (O&R), tendered for filing its Summary Report of O&R transactions during the calendar quarter ending December 31, 1997, pursuant to the market based rate power service tariff, made effective by the Commission on March 27, 1997 in Docket No. ER97-1400-000.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

68. Tucson Electric Power Company
[Docket No. ER98-2861-000]

Take notice that on April 30, 1998, Tucson Electric Power Company (Tucson), tendered for filing a Transaction Report regarding power purchases and sales under its Market-Based Power Sales Tariff for Affiliate Sales for quarter ended March 31, 1998.
Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

69. Public Service Company of New Mexico

[Dockets No. ER98-2862-000]

Take notice that on May 1, 1998, Public Service Company of New Mexico (PNM), submitted for filing revisions and additions to its Open Access Transmission Tariff (Tariff). The Tariff amendments reflect editorial changes, as well as inclusion of certain industry standard definitions. Pro forma System Impact Study and Facility Addition Study agreements have been added to the Tariff as well as a Form of agreement for Short-Term Firm Point-to-Point Transmission Service.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

70. Wisconsin Public Service Corporation

[Docket No. ER98-2863-000]

Take notice that on May 1, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Wisconsin Public Power Inc., under its Market-Based Rate Tariff, FERC Original Volume No. 10.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

71. New England Power Pool

[Docket No. ER98-2864-000]

Take notice that on May 1, 1998, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by FPL Energy, Inc., (FPL). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of FPL's signature page would permit NEPOOL to expand its membership to include FPL. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make FPL a member in NEPOOL. NEPOOL requests an effective date of July 1, 1998, for commencement of participation in NEPOOL by FPL.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

72. Long Island Lighting Company

[Docket No. ER98-2866-000]

Take notice that on May 1, 1998, Long Island Lighting Company (LILCO), filed an Electric Power Service Agreement between LILCO and NGE Generation, Inc., entered into on April 4, 1998.

The Electric Power Service Agreement listed above was entered into under LILCO's Power Sales Umbrella Tariff as reflected in LILCO's amended filing on February 6, 1998 with the Commission in Docket No. OA98-5-000. The February 6, 1998, filing essentially brings LILCO's Power Sales Umbrella Tariff in compliance with the unbundling requirements of the Commission's Order No. 888.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of April 4, 1998, for the Electric Power Service Agreement listed above because in accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, clarified and reh'g granted in part and denied in part, 65 FERC ¶ 61,081 (1993), service will be provided under an umbrella tariff and the Electric Power Service Agreement is being filed either prior to or within thirty (30) days of the commencement of service. LILCO has served copies of this filing on the customer which is a party to the Electric Power Service Agreement and on the New York State Public Service Commission.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

73. Southwestern Electric Power Company

[Docket No. ER98-2871-000]

Take notice that on May 1, 1998, Southwestern Electric Power Company (SWEPCO), submitted for filing information on the collection in formula rates of post-employment benefits other than pensions as directed by the Statement of Financial Accounting Standard No. 106 (SFAS 106), issued by the Financial Accounting Standards Board and the collection in formula rates of other post-employment benefits as directed by SFAS 112.

SWEPCO has served copies of the filing on all of its formula rate customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

74. Idaho Power Company

[Docket No. ER98-2875-000]

Take notice that on April 30, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission an amended filing with regard to its Restated Agreement for the Sale and Purchase of Firm Capacity and Energy with Truckee-Donner Public Utility District.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

75. Ormond Beach Power Generation, L.L.C.

[Docket No. ER98-2878-000]

Take notice that on May 1, 1998, Ormond Beach Power Generation, L.L.C., tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, authorizing Ormond Beach to make sales at market-based rates. Ormond Beach has requested waiver of the Commission's Regulations to permit an effective date immediately upon this filing.

Ormond Beach Power Generation, L.L.C., intends to sell electric power at wholesale. In transactions where Ormond Beach Power Generation, L.L.C., sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

76. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98-2882-000]

Take notice that on May 1, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with Cargill-Alliant L.L.C., and Cinergy Capital & Trading, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

77. AES Alamos, L.L.C.

[Docket No. ER98-2883-000]

Take notice that on May 1, 1998, AES Alamos, L.L.C., tendered for filing

pursuant to Rule 205, 18 CFR 285.205, a petition for blanket waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 2 (Ancillary Services), to be effective on the date that AES Alamos, L.L.C., acquires a generating facility.

AES Alamos, L.L.C., intends to sell ancillary services at wholesale from an electric plant in Alamos, California, and it proposes to sell four of these services subject to rates, terms and conditions to be negotiated with the buyer. Rate Schedule No. 2 (Ancillary Services) provides for the sale of regulation, spinning reserve, non-spinning reserve, and replacement reserve at prices arranged in the market.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

78. California Independent System Operator Corporation

[Docket Nos. ER98-2899-000]

Take notice that on May 1, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Scheduling Coordinator Agreement, dated March 27, 1998, between the California Department of Water Resources and the ISO for acceptance by the Commission.

The ISO states that the enclosed Scheduling Coordinator Agreement replaces the contract that the ISO filed unilaterally in this proceeding on March 9, 1998. This filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

79. California Independent System Operator Corporation

[Docket No. ER98-2900-000]

Take notice that on April 28, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Meter Service Agreement for ISO Metered Entities, dated April 8, 1998, between the California Department of Water Resources and the ISO for acceptance by the Commission.

The ISO states that the enclosed Meter Service Agreement replaces the contract that the ISO filed unilaterally in this proceeding on March 6, 1998. This filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

80. California Independent System Operator Corporation

[Docket Nos. ER98-2901-000]

Take notice that on May 1, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Meter Service Agreement for Scheduling Coordinators, dated April 8, 1998, between the California Department of Water Resources and the ISO for acceptance by the Commission.

The ISO states that the enclosed Meter Service Agreement replaces the contract that the ISO filed unilaterally in this proceeding on March 9, 1998. This filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

81. Alliant Services, Inc. Interstate Power Company, Wisconsin Power & Light Co., IES Utilities Inc.

[Docket No. OA98-12-000]

Take notice that on April 29, 1998, Alliant Services, Inc., on behalf of IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company and South Beloit Water, Gas & Electric Company, submitted for filing Standards of Conduct in compliance with the Commission's Order Nos. 889 and 889-A and the Commission's regulations at 18 CFR 37.4.

The Public Service Commission of Wisconsin, the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Service Commission have been served a copy of the Standards of Conduct.

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

82. Rochester Gas and Electric Corporation

[Docket No. ER98-2865-000]

Take notice that on May 1, 1998, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the New York Power Authority (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96-141-000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of April 1, 1998, for the New York Power Authority Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

83. Central Wayne Energy Recovery Limited Partnership

[Docket No. QF95-220-002]

Take notice that on April 21, 1998, Central Wayne Energy Recovery Limited Partnership, (Applicant), c/o CE Wayne I, Inc., 250 W. Pratt Street, 23 Floor, Baltimore, MD 21201-2423, filed an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility is located at the Central Wayne County Sanitation Authority's existing municipal solid waste incineration facility in Dearborn Heights, Michigan. A notice of self-certification was filed on April 1, 1998. The Commission previously certified the facility in *Central Wayne Energy Recovery Limited Partnership*, 70 FERC ¶ 62,175 (1995). The instant application for recertification is to reflect certain changes in the upstream ownership of the facility to bring the facility into compliance with the ownership requirements for qualifying small power production facilities prior to the facility's commencement of service.

Comment date: June 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-12919 Filed 5-14-98; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-556-004, et al.]

Pacific Gas and Electric Company, et al. Electric Rate and Corporate Regulation Filings

May 8, 1998.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER98-556-004]

Take notice that on April 30, 1998, Pacific Gas and Electric Company (PG&E) tendered for filing a compliance filing in response to the March 31, 1998, Order Clarifying Prior Order and Granting And Denying Requests for Rehearing, and also tendered for filing a motion for clarification for future rate changes for NCPA.

This filing is part of the comprehensive restructuring proposal for the California electric power industry that is being filed with the Commission.

Copies of this filing have been served upon the parties on the service list and the California Public Utilities Commission.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc.

[Docket No. ER98-2157-001]

Take notice that on May 1, 1998, Western Resources, Inc., acting on behalf of itself and Kansas Gas and Electric Company (collectively, Western Resources), tendered for filing its Compliance Filing in the above-referenced docket.

Comment date: May 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Goodrich Falls Hydroelectric

[Docket No. ER98-2653-000]

Take notice that on April 22, 1998, Goodrich Falls Hydroelectric made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company, Inc. v. Wheelabrator Clarendon Company, L.P., et al.*, Docket Nos. EL94-10-000, et al., 82 FERC ¶ 61,116 (1998).

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Franklin Falls Hydroelectric Corporation

[Docket No. ER98-2654-000]

Take notice that on April 22, 1998, Franklin Falls Hydroelectric Corporation made a conditional tariff filing in compliance with the Commission's order of February 11, 1998 in *Connecticut Valley Electric Company, Inc. v. Wheelabrator Clarendon, L.P., et al.*, Docket Nos. EL94-10-000, et al., 82 FERC ¶ 61,116 (1998).

Comment date: May 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc.

[Docket No. ER98-2908-000]

Take notice that on May 5, 1998, Western Resources, Inc. (Western Resources), tendered for filing a long-term firm transmission agreement between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective May 1, 1998.

Copies of the filing were served upon Western Resources Generation Services and the Kansas Corporation Commission.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER98-2910-000]

Take notice that on May 5, 1998, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing its 1998 annual rate redetermination update (Update) in accordance with the Open Access Transmission Tariff filed in compliance with FERC Order No. 888 in Docket No. OA96-158-000. Entergy Services states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Appendix 1 to Attachment H and Appendix A to Schedule 7.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Boston Edison Company

[Docket No. ES98-28-000]

Take notice that on April 28, 1998, Boston Edison Company submitted an application, under Section 204 of the Federal Power Act, for authorization to issue short-term debt in an aggregate principal amount not to exceed \$350 million, during the period of two years, with an effective date of January 1, 1999.

Comment date: June 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Consumers Energy Company

[Docket No. ES98-31-000]

Take notice that on May 1, 1998, Consumers Energy Company filed an application, under Section 204 of the Federal Power Act, seeking authorization to issue secured and/or unsecured long-term securities, from time to time, in an aggregate principal amount of not more than \$2.1 billion outstanding at any one time, during the period of July 1, 1998 through June 30, 2000, with final maturities no later than 30 years from the date of issue. Consumers also request a waiver of the Commission's competitive bid/negotiated placement requirements for certain securities to be issued pursuant to authorization requested in this docket.

Comment date: June 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12933 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95-1240-002, et al.]

PacifiCorp, et al. Electric Rate and Corporate Regulation Filings

May 11, 1998.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER95-1240-002]

Take notice that on May 6, 1998, PacifiCorp, tendered for filing in accordance with the Commission's Order in Docket No. ER95-1240-000, dated April 21, 1998, Revised Sheet Nos. 126 through 129 of PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11. This filing revises the rate for positive imbalances under Schedule 4, Energy Imbalance Service.

Copies of this filing were supplied to the Colorado Public Utilities Commission, the Wyoming Public Service Commission, the Arizona Corporation Commission, the California Public Utilities Commission, the Montana Public Service Commission, the Public Utility Commission of Oregon, and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Transmission Function's Bulletin Board System through a personal computer by calling (503) 813-5758 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Sithe New England Holdings LLC

[Docket No. ER98-1943-001]

Take notice that on May 5, 1998, Sithe New England Holdings LLC, tendered for filing with the Federal Energy Regulatory Commission forms of service agreements, on behalf of Sithe Mystic LLC, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC and Sithe Wyman LLC (Project LLCs). The forms of service agreements are being filed in compliance with the Commission's order issued April 20, 1998 in the referenced docket.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Virginia Electric and Power Company

[Docket No. ER98-2134-000]

Take notice that on May 4, 1998, Virginia Electric and Power Company

(Virginia Power) tendered for filing an executed version of the Service Agreement for Non-Firm Point-to-Point Transmission Service with Cargill-Alliant, LLC (formerly Cargill Energy Division) which it had filed in unexecuted form on March 10, 1998.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. PECO Energy Company

[Docket No. ER98-2555-000]

Take notice that on May 6, 1998, PECO Energy Company (PECO) filed under Section 205 of the Federal Power Act, an Amendment to its original filing on April 16, 1998, of an Agreement dated February 27, 1998, with Citizens Power Sales (CP SALES) under PECO's FERC Electric Tariff Original Volume No. 1. PECO requests an effective date of April 1, 1998, for the Agreement.

PECO states that copies of this filing have been supplied to CP SALES and to the Pennsylvania Public Utility Commission.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER98-2911-000]

Take notice that on May 6, 1998, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company's FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Utah Municipal Power Agency, Snohomish County PUD No. 1, Eugene Water & Electric Board, LG&E Energy Marketing, Inc., City of Colton, Power Company of America, Grays Harbor County PUD No. 1, Avista Energy, Inc., Pacific Northwest Generating Cooperative, and Tri-State Generation & Transmission Assn., Inc.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. PP&L, Inc.

[Docket No. ER98-2913-000]

Take notice that on May 6, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated April 24, 1998 with American Municipal Power—Ohio (AMP) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds AMP as an eligible customer under the Tariff.

PP&L requests an effective date of May 6, 1998 for the Service Agreement.

PP&L states that copies of this filing have been supplied to AMP and to the

Pennsylvania Public Utility Commission.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corporation

[Docket No. ER98-2914-000]

Take notice that on May 6, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Commonwealth Edison Co. under its Market-Based Rate Tariff.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER98-2915-000]

Take notice that on May 6, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Otter Tail Power Company under its Market-Based Rate Tariff.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Kandiyohi Cooperative Electric Power Association

[Docket No. ER98-2916-000]

Take notice that on May 6, 1998, Kandiyohi Cooperative Electric Power Association (Kandiyohi Cooperative) submitted for filing an Electric Service Agreement between Kandiyohi Cooperative and City of Kandiyohi, pursuant to section 205 of the Federal Power Act, and § 35.12 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.12. Kandiyohi Cooperative's filing is available for public inspection at its offices in Willmar, Minnesota.

Kandiyohi Cooperative requests that the Commission accept the Electric Service Agreement with an effective date of May 21, 1998.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power Service Corporation

[Docket No. ER98-2917-000]

Take notice that on May 6, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997, and has been designated AEP Operating Companies' FERC Electric

Tariff Original Volume No. 5. AEPCS respectfully requests waiver of notice to permit the service agreements to be made effective for service billed on and after April 15, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Energy PM, Inc.

[Docket No. ER98-2918-000]

Take notice that on May 6, 1998, pursuant to Rules 205 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.205 and 18 CFR 385.207, Energy PM, Inc. (Energy PM) filed a petition for waivers, blanket approvals and an order approving its Rate Schedule No. 1, to be effective within sixty (60) days of the date of filing or on the date of the Commission's Acceptance Letter, whichever is earlier.

Energy PM, a subsidiary of Indeck Energy Services, Inc., intends to engage in the marketing of electric energy and capacity. In such transactions, Energy PM will purchase energy and capacity from electric utilities, qualified facilities and independent power producers and resell such energy and capacity to other purchasers. The rates charged by Energy PM will be mutually agreed upon by the parties to each particular transaction.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Company

[Docket No. ER98-2927-000]

Take notice that on May 6, 1998, Boston Edison Company (Boston Edison) filed executed amendments to its contracts with thirteen municipal customers of its Pilgrim Nuclear Power Station. These executed contract amendments are substitutions for the thirteen unexecuted amendments accepted for filing by letter order issued February 25, 1998 in Docket No. ER98-1389-000. Except for the execution of the amendments, this filing makes no changes to the respective rate schedules. Boston Edison requests that the executed contracts be effective as of March 13, 1998, the date the Commission allowed the unexecuted amendments to become effective.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER98-2928-000]

Take notice that on May 4, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing an executed version of the Service Agreement for Firm Point-to-Point Transmission Service with Cargill-Alliant, LLC (formerly Cargill Energy Division) which it had filed in unexecuted form on March 10, 1998.

Comment date: May 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Light Company

[Docket No. ES98-29-000]

Take notice that on April 30, 1998, Central Illinois Light Company (Applicant) filed an application with the Commission seeking authority pursuant to Section 204 of the Federal Power Act to issue from time to time, during the period July 1, 1998 through June 30, 2000, short-term debt obligations in an aggregate principal amount not exceeding \$100,000,000 outstanding at any time with final maturities of not later than June 30, 2001.

Comment date: June 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to Intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-13003 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Georgia Power Company; Notice of Availability of Environmental Assessment

May 11, 1998.

A environmental assessment (EA) is available for public review. The EA was prepared for an application filed by Georgia Power Company, licensee for the Sinclair Hydroelectric Project. In its application, the licensee requests Commission approval to grant a permit to a private developer to construct a small, commercial marina on Lake Sinclair, the project reservoir. The proposed marina would be located near the confluence of Sandy Run Creek and the Oconee River in Hancock County, Georgia.

Based on the environmental analyses presented in the EA, the Commission's staff finds that, with the developer's proposed mitigative measures, the marina development would not be a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA may be obtained by calling the Commission's public reference room at (202) 208-1371.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12925 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

a. *Type of filing:* Notice of Intent to File An Application For a New License.

b. *Project No.:* 2180.

c. *Date filed:* April 24, 1998.

d. *Submitted By:* Tenneco Packaging, parent company of PCA Hydro, Inc., current licensee.

e. *Name of Project:* Grandmother Falls Project.

f. *Location:* On the Wisconsin River, near the City of Tomahawk, in Lincoln County, Wisconsin.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* September 1, 1977.

i. *Expiration date of current license:* June 30, 2003.

j. *The project consists of:* (1) a 34-foot-high, 450-foot-long concrete gravity dam comprising (a) a 100-foot-long nonoverflow section, and (b) a 236-foot-long gated section containing eight 19-foot by 26-foot Taintor gates; (2) a 250-foot-long earthen dike; (3) a 758-acre reservoir at normal pool elevation of 1,419.3 feet U.S.G.S.; (4) an integral powerhouse containing three generating units with a total installed capacity of 3,000 kW; (5) a 5.5-mile-long, 44-kV transmission line; and (6) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Tenneco Packaging, N9090 County Road E, Tomahawk, WI 54487, (715) 453-2131.

l. *FERC contact:* Tom Dean (202) 219-2778.

m. Pursuant to 18 CFR 16.9 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2001.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12926 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93-11-000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods, Minus One Percent

May 11, 1998.

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The index system as set forth at 18 CFR 342.3 is based on the annual change in the Producer Price Index for Finished Goods (PPI-FG), minus one percent. The regulations provide that each year the Commission will publish an index reflecting the final change in the PPI-FG, minus one percent, after the final PPI-FG is made available by the Bureau of Labor Statistics in May of each calendar year.

The annual average PPI-FG index figure for 1996 was 131.3 and the annual average PPI-FG index figure for

1997 was 131.8.¹ Thus, the percent change (expressed as a decimal) in the annual average PPI-FG from 1996 to 1997, minus one percent, is a negative .006192.² Oil pipelines must multiply their July 1, 1997-June 30, 1998 rate ceiling levels by 0.993808 to compute their rate ceiling levels for the period July 1, 1998, through June 30, 1999, in accordance with 18 CFR 342.3(d).

To obtain July 1, 1998-June 30, 1999 ceiling levels, pipelines must first calculate their ceiling levels for the January 1, 1995-June 30, 1995 index period, by multiplying their December 31, 1994 rates by 1.002175. Pipelines must then multiply those ceiling levels by 0.996415 to obtain the July 1, 1995-June 30, 1996 ceiling levels, multiply the July 1, 1995-June 30, 1996 ceiling levels by 1.009124 to obtain the July 1, 1996-June 30, 1997 ceiling levels and multiply the July 1, 1996-June 30, 1997 ceiling levels by 1.016583 to obtain the July 1, 1997-June 30, 1998 ceiling levels. Finally, pipelines must multiply the July 1, 1997-June 30, 1998 ceiling levels by 0.993808 to obtain the July 1, 1998-June 30, 1999 ceiling levels. See Explorer Pipeline Company, 71 FERC ¶ 61,416 at n.6 (1995) for an explanation of how ceiling levels must be calculated.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-12930 Filed 5-14-98; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-100138; FRL-5774-9]

Geologics Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Geologics Corporation has been awarded a contract to perform work for the EPA Office of Enforcement and Compliance Assurance, and will be provided access

¹ The final figures for the annual average PPI-FG is published by the Bureau of Labor Statistics in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Prices Indexes of the Bureau of Labor Statistics, at (202) 606-7705, and is available in print in August in Table 1 of the annual data supplement to the BLS publication *Producer Price Indexes*.

² $[131.8 - 131.3] / 131.3 = .003808 - .01 = -.006192$.

to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Geologics Corporation consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable Geologics to fulfill the obligations of the contract.

DATES: Geologics Corporation will be given access to this information no sooner than May 20, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: C. Jean Sadlowe, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 230, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5362; e-mail: sadlowe.jean@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-D4-0024, Geologics Corporation will perform reviews of production data for pesticide producing establishments and annual pesticide production reports in support of program activities, and to provide related technical support to the Office of Enforcement and Compliance Assurance in the development of alternative training methods for the Section Seven Tracking System (SSTS). Geologics Corporation will require read only access to the system under the terms of this contract. This contract involves no subcontractors.

The Office of Enforcement and Compliance Assurance and Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Geologics Corporation, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release

and to handle it in accordance with the FIFRA Information Security Manual. In addition, Geologics Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officers for this contract in the EPA Office of Enforcement and Compliance Assurance.

All information supplied to Geologics Corporation by EPA for use in connection with this contract will be returned to EPA when Geologics Corporation has completed its work.

List of Subjects

Environmental protection, Transfer of data.

Dated: May 7, 1998

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs

[FR Doc. 98-12855 Filed 5-14-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5491-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 27, 1998 Through May 01, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D-COE-E35084-NC Rating EO2, Randleman Lake and Dam Project, Construction, Piedmont Triad Regional Water Authority (PTRWA), Deep River, Guilford and Randolph Counties, NC.

Summary: EPA expressed environmental objection to the proposed water supply reservoir, because hazardous materials present in the groundwater would potentially

contaminate this water with chlorinated solvents and the abandoned Seaboard Chemical Plant would be situated in the reservoir pool and buffer zone. These sites are undergoing remediation studies by the North Carolina DEHNR. EPA requested that the COE grant its Section 404 permit only on condition that DEHNR guarantee that the Lake would be suitable for its intended purpose, i.e., water supply; and that any on-going remediation studies be completed prior to construction.

ERP No. D-COE-E36176-FL Rating EC2, C-51 West End Flood Control Project, Implementation To Improve the Level of Flood Control, Central and Southern Florida Project, Palm Beach County, FL.

Summary: EPA expressed environmental concern about the efficacy of the proposed stormwater treatment area, as well as the potential long-term environmental consequences of this proposal. EPA suggested that additional data needs to be collected/evaluated to determine the significance of these issues.

ERP No. D-COE-K36123-CA Rating EC2, South Sacramento County Streams Investigation, Proposed to Increase Flood Protection, Non-Federal Sponsor, Sacramento Waste Water Treatment Plant and along portions of Morrison, Elder, Unionhouse and Florin Creeks, Sacramento County, CA.

Summary: EPA expressed environmental concerns regarding air quality mitigation, which may be required by the Corps' upcoming conformity determination, reflected in the draft EIS. EPA urged the Corps to finalize the project's conformity review prior to completion of the final EIS. EPA also expressed concern that the draft EIS did not discuss potential cumulative impacts to the Morrison Creek watershed, particularly impacts associated with sand and gravel mining that is subject to Corps regulatory jurisdiction under the Clean Water Act Section 404. EPA is concerned that the draft EIS did not address pollution prevention mechanisms to the extent recommended in guidance to Federal agencies by the Council on Environmental Quality.

ERP No. D-FRC-B03006-00 Rating EO2, Portland Natural Gas Transmission System (PNCTS)/Maritime Phase I Joint Facilities Project, NPDES Permit, COE Section 10 and 404 Permits, Dracut, MA; Wells, ME and NH.

Summary: EPA expressed environmental objections to the pipeline proposal from the standpoint of growth inducing impacts and the absence of a planning policy and decision-making process (or guidance) for the evaluation

of proposed tie-ins to the pipeline. EPA requested additional information concerning impacts to wetlands containing significant amphibian breeding habitat and impacts of the pipeline to existing and potential wellhead protection areas. EPA also questioned FERC's rationale for analyzing the Phase I Joint Facilities project independent of the other portions of a larger pipeline facility throughout New England.

Final EISs

ERP No. F-BLM-G67003-NM, Little Rock Open-Pit Mine Project, Construction and Operation, Plan of Operations Approval, and several Permits Issuance, Grant County, NM.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F-DOA-G31002-TX, Bexar-Medina-Atascosa Counties Water Conservation Plan, Renovation and Installation, Funding, Medina Lake, Bexar, Medina and Atascosa Counties, TX.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F-FHW-B59000-RI, Newport Marine Facilities Project, To Develop the Marine Mode of the Intermodal Gateway Transportation Center, Selected siting in various locations within the City of Newport, Towns of Middletown and Portsmouth, Funding, COE Section 404 Permit and US Coast Guard Permit, Aquidneck Island, RI.

Summary: EPA had no additional comments regarding the proposed action.

ERP No. F-FRC-B05184-ME, Lower Penobscot River Basin Hydroelectric Project, Application for Licensing for three hydroelectric project: Basin Mills (FERC. NO. 10981), Stillwater (FERC. No. 2712) and Milford (FERC. No. 2534), Penobscot County, ME.

Summary: EPA supported the FERC staff's recommendation not to construct the Basin Mills dam and believes that the staff recommendation is an appropriate outcome to the NEPA process given the serious direct, indirect and commutative environmental impacts associated with dam construction and the inconsistency of the proposal with the public interest and state and federal regulations. Additionally, EPA agreed with FERC staff recommendations to implement various mitigation proposals for the Veazie, Orono, Milford and Stillwater projects.

ERP No. F-FRC-B05189-ME, Kennebec River Basin Hydroelectric

Projects, Changes in Operations and Minor Construction, Licensing of 11 Hydroelectric Projects, (FERC Project Nos. 2671, 2555, 2613, 2556, 2329, 2557, 2325, 2559, 11433, 2552 and 2389), Kennebec, Somerset and Piscataquis Counties, ME.

Summary: EPA supported the FERC staff's recommendation to retire the Edwards project and remove the dam. EPA continued to disagree, however, with FERC's interpretation of the baseline condition, the approach to a specific Clean Water Act Section 401 issue, and the scope of analysis of the EIS.

ERP No. F-FRC-B08003-ME, Granite State Gas Transmission, Construction and Operation of a Liquefied Natural Gas Facility, Permits and Approvals, In the Town of Wells, York County, ME.

Summary: EPA had no objection to the proposed project, EPA did raise concerns regarding potential impacts to wildlife habitat, design of the groundwater monitoring program, and the range of alternatives considered in the FEIS.

Dated: May 12, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98-13024 Filed 5-14-98; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5491-8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 OR (202) 564-7153. Weekly receipt of Environmental Impact Statements Filed May 04, 1998 Through May 08, 1998. Pursuant to 40 CFR 1506.9.

EIS No. 980148, Final EIS, USN, CA, Naval Medical Center Oakland, Disposal and Reuse, Implementation, in the City of Oakland, Alameda County, CA, Due: June 01, 1998, Contact: Gary Muneke (650) 244-3022.

This EIS was inadvertently omitted from the 05-01-98 Federal Register. The official 30 days NEPA review period is calculated from 05-01-98.

EIS No. 980162, Final Supplement, APH, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States, Due: June 15, 1998,

Contact: Jack Edmundson (301) 734-8565.

EIS No. 980163, Final EIS, USN, NV, Fallon Naval Air Station (NAS) Range Training Complex, Withdrawal of Federally Administered Public Lands for Range Safety and Training Purposes, Great Basin, City of Fallon, Churchill County, NV, Due: June 15, 1998, Contact: Sam Dennis (650) 244-3007.

EIS No. 980164, Draft EIS, FHW, WA, Cross-Base Highway Project, New Roadway Construction between I-5 at the Thorne Lane Interchange and WA-7 at 176th Street South, Major Investment Study (MIS), COE Section 404 Permit, Pierce County, WA, Due: June 29, 1998, Contact: Jim Leonard (360) 753-9408.

EIS No. 980165, Final EIS, COE, CA, South Sacramento County Streams Investigation, Proposed to Increase Flood Protection, Non-Federal Sponsor, Sacramento Waste Water Treatment Plant and along portions of Morrison, Elder, Unionhouse and Florin Creeks, Sacramento County, CA, Due: June 15, 1998, Contact: Jane Rinck (916) 557-6715.

EIS No. 980166, Draft EIS, NPS, UT, Capitol Reef National Park, Implementation, General Management Plan, Development Concept Plan, Emery, Garfield, Sevier and Wayne Counties, UT, Due: July 01, 1998, Contact: Charles V. Lundy (435) 425-3791.

EIS No. 980167, Final EIS, FHW, WV, Merrick Creek Connector Improvements Project, between US 60 to WV-2 also a New Interchange at I-64, Funding and COE Section 404 Permit, Cabell County, WV, Due: June 19, 1998, Contact: David E. Bender (304) 347-5928.

EIS No. 980168, Draft EIS, FHW, NM, I-25/I-40 Interchange and Adjacent Sections of I-25 and I-40, Dr. Martin Luther King, Jr. Avenue to Comanche Road and Carlise Boulevard to South Street, Reconstruction, Funding and Right-of-Way Acquisition, Bernalillo County, NM, Due: June 29, 1998, Contact: Geg Rawling (505) 820-2022.

EIS No. 980169, Draft EIS, AFS, WA, Plum Creek Checkerboard Access Project, To Grant Permanent Easements, Cle Elum and Naches Ranger Districts, Wenatchee National Forest, Kittitas County, WA, Due: June 29, 1998, Contact: Floyd Rogalski (509) 674-4411.

EIS No. 980170, Draft EIS, USN, MD, VA, DE, Patuxent River Complex Project, Increased Flight and Related Ground Operations in Test Area, Naval Air Warfare Center Aircraft Division (NAWCAD) Chesapeake Bay,

Patuxent River, Several Counties, MD, DE and VA, Due: June 29, 1998, Contact: Sue Evans (888) 276-5201.

EIS No. 980171, Draft EIS, COE, TX, Dallas Floodway Extension, Flood Damage Reduction and Environmental Restoration, Trinity River Basin, Dallas County, TX, Due: June 29, 1998, Contact: Gene T. Rice, Jr. (817) 978-2110.

EIS No. 980172, Final Supplement, COE, CA, Sacramento River Bank Protection Project, Implementation of Streambank Protection for the Lower American River between RM-0 and 13.7, Updated Information, City of Sacramento, Sacramento County, CA, Due: June 15, 1998, Contact: Matt Davis (916) 557-6708.

EIS No. 980173, Final EIS, COE, CA, San Pedro Creek Section 205 Flood Control Project, Construction, Flood Protection, COE Section 10 and 404 Permits and Permits Approval, San Mateo County, CA, Due: June 15, 1998, Contact: Scott Holmes (415) 977-8670.

EIS No. 980174, Final EIS, FAA, MN, Dual Track Airport Planning Process, Construction and Expansion, Minneapolis-St. Paul International Airport, Twin Cities, Hennepin and Dakota Counties, MN, Due: June 15, 1998, Contact: Glen Orcutt (612) 713-4354.

EIS No. 980175, Final EIS, FHW, CA, CA-37 Highway Improvement, Napa River Bridge to the existing Freeway Section of CA-37 that begins near Diablo Street, Funding and US Army COE Section 404 Permit Issuance, Vallejo, Solano County, CA, Due: June 15, 1998, Contact: John R. Schultz (916) 498-6041.

EIS No. 980176, Draft EIS, FHW, MD, US-301 Transportation Study, Improvements from US 301 North of US 301/MD-5 Interchange at T.B. (Thomas Brooke) near Brandywine to US 50 in Bowie, Northern Corridor Tier I, Prince George's County, MD, Due: June 30, 1998, Contact: George Frick (410) 962-4440.

EIS No. 980177, Draft EIS, DOE, NM, Los Alamos National Laboratory Continued Operation Site-Wide, Implementation, Los Alamos County, NM, Due: July 18, 1998, Contact: Corey Cruz (800) 898-6623.

Dated: May 12, 1998.

William D. Dickerson, Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98-13027 Filed 5-14-98; 8:45 am]

BILLING CODE 6560-50-U

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:01 a.m. on Tuesday, May 12, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 12, 1998.
Federal Deposit Insurance Corporation.
Valerie J. Best,
Assistant Executive Secretary.
[FR Doc. 98-13134 Filed 5-13-98; 3:05 pm]
BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1209-DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA-1209-DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Gordon County for Public Assistance [already designated for Individual Assistance]. Columbia, Peach, and Rockdale Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,
Executive Associate Director, Response and Recovery Directorate.
[FR Doc. 98-12972 Filed 5-14-98; 8:45 am]
BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1216-DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA-1216-DR), dated April 29, 1998, and related determinations.

EFFECTIVE DATE: April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 29, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe storms, tornadoes, and flooding on April 16, 1998, and continuing is of sufficient severity and

magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David P. Grier, IV of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

Adair, Barren, Bell, Casey, Clay, Floyd, Knott, Knox, Metcalfe, Perry, Warren, and Whitley Counties for Individual Assistance.

Adair, Barren, Clay, Floyd, Knott, Knox, Leslie, Metcalfe, Owsley, Perry, Warren and Whitley counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,
Director.
[FR Doc. 98-12974 Filed 5-14-98; 8:45 am]
BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1215-DR]

Tennessee; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA-1215-DR), dated April 20, 1998, and related determinations.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1998:

Gibson County for Individual Assistance. Humphreys and Scott Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,
Executive Associate Director, Response and Recovery Directorate.
[FR Doc. 98-12973 Filed 5-14-98; 8:45 am]
BILLING CODE 6718-02-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 1, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. The First National Bank of Waverly Employee Stock Ownership Plan, Waverly, Iowa; to retain 11.48 percent of the voting shares of First of Waverly Corporation, Waverly, Iowa, and thereby indirectly retain voting shares of The First National Bank of Waverly, Waverly, Iowa.

Board of Governors of the Federal Reserve System, May 12, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98-13032 Filed 5-14-98; 8:45 am]
BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than June 8, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Premier Financial Bancorp, Inc., Georgetown, Kentucky; to acquire 100 percent of the voting shares of Boone County Bank, Inc., Madison, West Virginia (in organization), a *de novo* bank.

2. Premier Financial Bancorp, Inc., Georgetown, Kentucky; to acquire 100 percent of the voting shares of The Bank of Philippi, Inc., Philippi, West Virginia (in organization), a *de novo* bank.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. N.A. Corporation, Roseville, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of North American Banking Company, Roseville, Minnesota, a *de novo* bank.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Sterling Bancshares, Inc., Houston, Texas; to acquire 100 percent of the voting shares of Humble National Bank, Humble, Texas. Comments regarding this application must be received not later than June 3, 1998.

Board of Governors of the Federal Reserve System, May 11, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98-12937 Filed 5-14-98; 8:45 am]
BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. *Salisbury Bancorp, Inc.*, Lakeville, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Salisbury Bank and Trust Company, Lakeville, Connecticut.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Travelers Group Inc.*, New York, New York (Travelers); to become a bank holding company by acquiring Citicorp, New York, New York, and thereby indirectly acquiring Citibank, N.A., New York, New York; Universal Bank, N.A., Columbus, Georgia; Citibank (New York State), Perinton, New York; Citicorp Holdings, Inc., New Castle, Delaware; Citibank Delaware, New Castle, Delaware; Citibank (Nevada), N.A., Las Vegas, Nevada; and Citibank (South Dakota), N.A., Sioux Falls, South Dakota. Upon consummation of the proposed transaction, Travelers would be renamed Citigroup Inc.. Travelers also may form one or more intermediate bank holding companies.

In connection with the proposed transaction, Travelers also has provided notice to acquire all of the nonbank subsidiaries of Citicorp and to engage, directly or indirectly through the nonbank subsidiaries of Travelers and Citicorp, in a variety of nonbanking activities that have been previously determined to be permissible for bank holding companies. These nonbanking activities and companies are described in the notice filed with the Board. They include the following: operating savings associations through Citibank, Federal Savings Bank, San Francisco, California, and Travelers Bank & Trust, F.S.B., Newark, Delaware, pursuant to § 225.28(b)(4)(iii) of Regulation Y; operating industrial loan companies

through Universal Financial Corp., Salt Lake City, Utah, and Commercial Credit Corporation (Hawaii), Honolulu, Hawaii, pursuant to § 225.28(b)(4)(i) of Regulation Y; and engaging in lending activities through The Travelers Bank USA, Newark, Delaware, pursuant to § 225.28(b)(1) of Regulation Y. In addition, Travelers proposes to engage, directly or indirectly through any of its nonbank subsidiaries, in each of the other activities authorized for bank holding companies under 12 CFR 225.28(b), other than certain very limited exceptions, and in all activities that Citicorp currently is authorized by Board Order to conduct. Travelers also proposes to engage through Citicorp Securities, Inc., New York, New York, Salomon Brothers Inc., New York, New York, Smith Barney Inc., New York, New York, and The Robinson-Humphrey Company LLC, Atlanta, Georgia, in a limited amount of underwriting and dealing in all types of debt and equity securities (other than ownership interests in open-end investment companies), in accordance with previous Board decisions. In addition, Travelers proposes to engage, directly or indirectly through its subsidiaries, in certain other activities that the Board previously has approved by Order, including providing administrative services to open-end and closed-end investment companies, acting as a commodity pool operator, providing real estate title abstracting services, providing credit card authorization and lost or stolen credit card reporting services, transmitting money for U.S. customers to third parties located in foreign countries, issuing and selling drafts and wire transfers payable in foreign currencies, and cashing U.S. dollar payroll checks drawn on unaffiliated banks.

Travelers currently engages in and controls companies that engage in activities, or hold investments, that are not authorized for bank holding companies under section 4 of the BHC Act. These activities include certain insurance underwriting activities, insurance agency activities, commodities activities, investment activities, and other activities more fully described in the notice. Travelers proposes to conform each of these activities and investments to the requirements of the BHC Act, including by divestiture or by termination of such activities, within two years of becoming a bank holding company, or such longer period as the Board may grant, in accordance with the limitations and requirements of section 4(a)(2) of the BHC Act. Prior to consummation of the

proposed transaction, Travelers proposes to cease sponsoring, organizing, or distributing shares of any open-end investment company. Comments regarding this application must be received not later than June 16, 1998.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Great Southern Bancorp, Inc.*, Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Great Southern Bank, Springfield, Missouri. Great Southern Bank currently operates as Great Southern Bank, F.S.B.

In connection with this application, Applicant also has applied to acquire Great Southern Capital Management, Inc., Springfield, Missouri, and thereby engage in the activity of providing discount securities brokerage services and related investment advisory services, pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. *First National Bank at St. James ESOP*, St. James, Minnesota; to acquire an additional 1.64 percent, for a total of 24.23 percent, of the voting shares of First National Agency at St. James, St. James, Minnesota, and thereby indirectly acquire First National Bank at St. James, St. James, Minnesota.

2. *Freedom Bancshares, Inc.*, La Crosse, Wisconsin; to become a bank holding company by acquiring at least 80 percent of the voting shares of Park Bank, Holmen, Wisconsin.

Board of Governors of the Federal Reserve System, May 12, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98-13033 Filed 5-14-98; 8:45 am]
BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-10993) published on page 20410 of the issue for Friday, April 24, 1998.

Under the Federal Reserve Bank of New York heading, the entry for K&Z Company LLC, Brooklyn, New York, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice

President) 33 Liberty Street, New York, New York 10045-0001:

1. *The K&Z Company LLC*, Brooklyn, New York; to become a bank holding company by acquiring at least 51 percent, but no more than 75 percent, of the voting shares of The Upstate National Bank, Rochester, New York (formerly known as The First National Bank of Lisbon, Rochester, New York). Comments on this application must be received by May 21, 1998.

Board of Governors of the Federal Reserve System, May 12, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98-13034 Filed 5-14-98; 8:45 am]
BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0118]

Clearance Request Entitled Standard Form 94, Statement of Witness

AGENCY: Federal Vehicle Policy Division, GSA.

ACTION: Notice of request for an extension to an existing OMB clearance (3090-0118).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Standard Form 94, Statement of Witness.

DATES: Comment Due Date: July 14, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Majorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Michael Moses, Federal Vehicle Policy Division (202) 501-2507.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090-0118, concerning Standard Form 94, Statement of Witness. This form is used by all

Federal agencies to report accident information involving U.S. Government vehicles.

B. Annual Reporting Burden

Respondents: 816; annual responses: 1; average hours per response: .20; burden hours: 272.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501-3822, or by faxing your request to (202) 501-3341.

Dated: May 7, 1998.

Ida M. Ustad,
Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98-13020 Filed 5-14-98; 8:45 am]
BILLING CODE 6820-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98066]

A Model Hearing Conservation Program for Coal Miners; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program for A Model Hearing Conservation Program for Coal Miners. This program addresses the "Healthy People 2000" priority area of Occupational Safety and Health.

The purpose of the program is to demonstrate the effectiveness of a model hearing conservation program (HCP) in the prevention of occupational noise-induced hearing loss among coal miners.

When the Coal Mine Health and Safety Act of 1969, the predecessor to the present Federal Mine Health and Safety Act, was enacted, it was already recognized that the high noise levels generated by mining machines posed a serious threat to the health of miners. In 1976, NIOSH published the results of a cross-sectional survey of hearing levels which confirmed the severity of hearing loss among coal miners. The study found that over 70 percent of coal miners had a hearing impairment by the time they retired. In recognition of the extensive hearing loss among miners, regulations were adopted to limit the overexposure of miners to harmful noise, and a program of research to

develop engineering controls to reduce the noise levels of mining equipment was initiated. A recent analysis of a large audiometric data base on coal miners has revealed that the majority of coal miners are still losing their hearing. Over 90 percent of the miners who retired around 1990 had experienced a high frequency hearing loss. This finding can only be explained by the failure of the mining community to pursue a systematic plan of intervention over the last 20 years; such a plan would also have included a mechanism to continuously evaluate the impact of the intervention activities.

The Mine Safety and Health Administration is addressing this situation through new rulemaking. The proposed regulations would require that operators use engineering and administrative controls and provide audiometric tests when a miner's noise exposure exceeds the Permissible Exposure Limit. Although these new regulations can have a positive impact, the elimination of hearing loss as a disease among coal miners can only be realized through the collaborative efforts of labor, management, and government in adopting and supporting comprehensive HCP's.

This program is focused on designing a model HCP for coal miners which incorporates the best practices of well-run programs in other industries, implementing the program at a cooperating underground coal mine, and evaluating it over a 5-year period to demonstrate its efficacy in preventing hearing loss. An effective HCP should include the following critical elements: measurement of worker noise exposure and noise sources, intervention strategies to reduce noise exposures, periodic audiometric evaluations, educational and motivational programs, record keeping, and monitoring to assess effectiveness of program elements. Project results, in combination with other research, will support the implementation of HCP's by providing workshops and recommendations to the mining industry and preparing publications and recommendations to the scientific community.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal

governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104-65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately \$275,000 is available in FY 1998 to fund one award. It is expected that the award will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities) and CDC/NIOSH will be responsible for the activities under B. (CDC/NIOSH).

A. Recipient Activities

1. Prepare study protocol and obtain required approvals. The protocol should include the methodology to be used in developing and evaluating the HCP, technical activities to implement the HCP, data to be collected, and proposed analyses of the data. Present the protocol to a panel of scientific reviewers (if required) and revise the protocol as required for final approval.

2. Implement and manage the HCP with the cooperation of the mine operator and employees.

3. Schedule and conduct worker noise exposure measurements, audiometric testing, and engineering noise control work.

4. Evaluate the effectiveness of the overall HCP, as well as, individual elements of the program, in reducing worker noise exposure levels and preventing hearing loss.

5. Prepare a report summarizing the study methodology, the results of all analyses, and conclusions reached. Report study results in the scientific community via presentations at professional conferences and articles in peer-reviewed journals.

6. Conduct one industry-wide workshop to share the results of this study with the mining industry and to promote the adoption of HCP's by other mines.

B. CDC/NIOSH Activities

1. Provide scientific and technical collaboration for the successful completion of the project.

2. Assist, if necessary, in the measurement, analysis, and evaluation of both worker noise exposures and hearing levels (audiometric data).

3. Assist, if necessary, in the identification of intervention strategies to reduce worker noise exposure levels.

4. Review the results of the study and collaborate, where appropriate, in the preparation and publication of results in peer-reviewed journals.

E. Application Content

Competing Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unredacted font.

F. Submission and Deadline

Letter of Intent

Your letter of intent (LOI) should include the following information. The LOI must be submitted on or before June 1, 1998, to: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98066, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E-13, Atlanta, Georgia 30305-2209.

Application

Submit the original and two copies of PHS 5161-1 (OMB Number 0937-0189). Forms are in the application kit. On or before July 1, 1998, submit the application to: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98066, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E-13, Atlanta, Georgia 30305-2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Plan (35%)

The applicant's overall research plan should reflect a comprehensive understanding of all aspects of the cooperative agreement, including the resources and time required for accomplishing the project. The plan should include a commitment from the participating mine, as evidenced by a written agreement, for the mine operator to work collaboratively with labor and government in support of achieving the objectives of the cooperative agreement.

2. Objectives (25%)

a. The applicant should demonstrate a clear and complete understanding of the objectives of the cooperative agreement. This should reflect the applicant's understanding of the problem to be addressed and the purpose of the project. The objectives should be timed and measurable.

b. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Methods (25%)

The study design and methodology for accomplishing the stated objectives should be thorough and sound. The applicant's proposed methodology should demonstrate an understanding of the pertinent literature on hearing conservation programs, including the need for an on-going process to evaluate the impact of the intervention activities to reduce worker noise exposure levels and prevent any significant hearing loss.

4. Evaluation (15%)

The applicant's proposed plans to ensure project activities are carried out on schedule and to evaluate project accomplishments should be identified.

5. Budget (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

6. Human Subjects (Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

___ YES ___ NO

Comments: _____

H. Other Requirements

Technical Reporting Requirements
Provide CDC with original plus two copies of:

1. progress reports (annual);
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E-13, Atlanta, GA 30305-2209.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I (in the application kit).

AR98-1—Human Subjects

Requirements

AR98-2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR98-7—Executive Order 12372

Review

AR98-9—Paperwork Reduction Act

Requirements

AR98-10—Smoke-Free Workplace

Requirements

AR98-11—Healthy People 2000

AR98-12—Lobbying Restrictions

AR98-14—Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Sections 301(a) and 311, [42 U.S.C. 241(a) and 243], as amended, and Section 21, [29 U.S.C. 670] of the Occupational Safety and Health Act of 1970. The Catalog of Federal Domestic Assistance number is 93.262 for the National Institute for Occupational Safety and Health (NIOSH) in CDC.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1-888-GRANTS4 (1-888 472-6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement [98066], Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E-13, Atlanta, GA 30305-2209, telephone (404) 842-6804, Email address vxw1@cdc.gov.

For program technical assistance, contact J. Alton Burks, Sc.D., Hearing Loss Prevention Branch, Pittsburgh Research Laboratory, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), P.O. Box 18070, Pittsburgh, PA 15236, Telephone (412) 892-6484, Internet: aib5@cdc.gov.

Also, the CDC home page on the Internet: <http://www.cdc.gov> is available

for copies of this Announcement and funding documents.

Dated: May 8, 1998.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-12935 Filed 5-14-98; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care and Development Fund Annual Report on (ACF-700).

OMB No.: 0980-0241.

Description: The Child Care and Development Fund (CCDF) Report request annual tribal aggregate information on services provide through the CCDF which is required per Child Care and Development Block Grant (CCDBG) Final Rule 45 CFR Parts 98 and 99. Tribes are required to submit annual aggregate data appropriate to tribal programs on children and families receiving CCDF-funds or CCDBG funded Child care services. The Statute and regulations require Tribal Lead Agencies to report a supplemental narrative which describes general child care activities and actions in the Tribal Lead Agency's service area and is not restricted to the CCDF-funded activities' other information in addition to the data collected by Form ACF-700. This information will be included in the Secretary's report to Congress, as appropriate, and will be shared with all Tribal Lead Agencies to inform them of CCDF or CCDBG-funded activities in other tribal programs.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF Annual Report	244	1	40	9,760

Estimated total annual burden hours: 9,760.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and

comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 11, 1998.
Bob Sargis,
Acting Reports Clearance Officer.
[FR Doc. 98-12914 Filed 5-14-98; 8:45 am]
BILLING CODE 4194-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No: CB 98-03]

Announcement of the Availability of Financial Assistance and Request for Applications for Fiscal Year 1998 to Support Child Welfare Training Projects as Authorized by Section 426 of the Social Security Act, as Amended. 42 U.S.C. 626, CFDA: 93.648

AGENCY: Children's Bureau, Administration on Children, Youth and Families (ACYF/DHHS).

ACTION: Notice of fiscal year 1998 Child Welfare Training Project priorities, availability of financial assistance, and request for applications to support Child Welfare Training Projects as authorized by section 426 of the Social Security Act, as Amended. 42 U.S.C. 626, CFDA: 93.648.

SUMMARY: The Children's Bureau, Administration on Children, Youth and Families, ACF, announces the availability of FY 1998 funds for competing new discretionary grants to public or other non-profit institutions of higher learning for special projects for training of personnel for work in the field of child welfare.

Federal funds for Child Welfare Training Project Priorities are available for: (1) professional education for public child welfare practitioners; (2) training for the frontline public child welfare agency staff in the use of the Statewide Automated Child Welfare Information Systems (SACWIS); and (3) training for child protective and child welfare services staff for collaboration with community-based agencies to provide services to at-risk families to prevent child abuse and neglect.

DEADLINE DATE: The closing time and date for the receipt of applications

under this announcement is 4:30 p.m. (Eastern Time Zone), on July 20, 1998. Applications received after 4:30 p.m. of the closing date will be classified as late. Post marks and other similar documents DO NOT establish receipt of an application.

ADDRESSES: Mailing and Delivery Instructions: Mailed applications and applications delivered by overnight/express mail services shall be considered as meeting the announced deadline if they are received on or before the deadline receipt date, between the hours of 8:00 a.m. and 4:30 p.m. (Eastern Time Zone) and sent to the Administration on Children, Youth and Families (ACYF) Operations Center, 1225 Jefferson Davis Hwy, Suite 415, Arlington, VA 22202. The telephone number is 1-800-351-2293. Any application received after the deadline time and date will not be considered for competition.

Hand Delivered Applications, Applicant Couriers: If applications hand delivered by applicants or applicant couriers are received on or before the deadline date between the hours of 8:00 a.m. and 4:30 p.m. (Eastern Time Zone) at the Administration on Children, Youth and Families (ACYF) Operations Center, 1225 Jefferson Davis Hwy, Suite 415, Arlington, VA 22202, they shall be considered as meeting the announced deadline.

Electronic Transmissions: ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mail system. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

Program Announcement Requests: Copies of the program announcement may be obtained by contacting the Administration on Children, Youth and Families (ACYF) Operations Center, 1225 Jefferson Davis Hwy, Suite 415, Arlington, VA 22202. The telephone number is 1-800-351-2293. Copies of this announce will be automatically sent

to all universities with accredited undergraduate and graduate social work programs. A copy of this program announcement is also located at the Children's Bureau website at <http://www.acf.dhhs.gov/program/cb>.

SUPPLEMENTARY INFORMATION: Grant awards of FY 1998 funds will be made by September 30, 1998. Under this announcement, approximately \$2 million is available for the new awards. The announcement provides information regarding the funding level for each priority area. Applicants should note that the number of grants to be awarded under this program announcement are subject to the availability of funds.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number of the Child Welfare Training Grants is 93.648.

Dated: May 11, 1998.
James A. Harrell,
Deputy Commissioner Administration on Children, Youth and Families.
[FR Doc. 98-12979 Filed 5-14-98; 8:45 am]
BILLING CODE 4194-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N-0268]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's patent term restoration regulations on due diligence petitions for regulatory review period revision.

DATES: Submit written comments on the collection of information by July 14, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA-

305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions—Part 60 (21 CFR Part 60) (OMB control number 0910-0233—Extension)

FDA's patent extension activities are conducted under the authority of the Drug Price Competition and Patent Term Restoration Act of 1984 and the Animal Drug and Patent Term Restoration Act of 1988 (35 U.S.C. 156). New human drug, animal drug, human biological, medical device, food additive, or color additive products regulated by FDA must undergo FDA safety, or safety and effectiveness review, before marketing is permitted. Where the product is covered by a patent, part of the patent's term may be consumed during this review, which diminishes the value of the patent. In enacting 35 U.S.C. 156, Congress sought to encourage development of new, safer, and more effective medical and food additive products. It did so by authorizing the U.S. Patent and Trademark Office (PTO) to extend the patent term by a portion of the time during which FDA's safety and effectiveness review prevented marketing of the product. The length of the patent term extension is generally limited to a maximum of 5 years, and is calculated by PTO based on a statutory formula. When a patent holder submits an application for patent term extension to PTO, PTO requests information from FDA, including the length of the regulatory review period for the patented product. If PTO concludes that the product is eligible for patent term extension, FDA publishes a notice which describes the length of the regulatory review period, and the dates used to calculate that period. Interested

parties may request, under § 60.24, revision of the length of the regulatory review period, or may petition, under § 60.30, to reduce the regulatory review period by any time where marketing approval was not pursued with "due diligence." The statute defines due diligence as "that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period." As provided in § 60.30(c), a due diligence petition "shall set forth sufficient facts, including dates if possible, to merit an investigation by FDA of whether the applicant acted with due diligence." Upon receipt of a due diligence petition, FDA reviews the petition and evaluates whether any change in the regulatory review period is necessary. If so, the corrected regulatory review period is published in the Federal Register. A due diligence petitioner not satisfied with FDA's decision regarding the petition may, under § 60.40, request an informal hearing for reconsideration of the due diligence determination. Petitioners are likely to include persons or organizations having knowledge that FDA's marketing permission for that product was not actively pursued throughout the regulatory review period. The information collection for which an extension of approval is being sought is the use of the statutorily created due diligence petition.

Since 1992, five requests for revision of the regulatory review period have been submitted under § 60.24. One regulatory review period has been altered. No due diligence petitions have been submitted to FDA, under § 60.30, and consequently there have been no requests for hearings, under § 60.40, regarding the decisions on such petitions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
60.24(a)	1	1	1	100	100
60.30	0	0	0	0	0
60.40	0	0	0	0	0

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 7, 1998.
 William K. Hubbard,
*Associate Commissioner for Policy
 Coordination.*
 [FR Doc. 98-12897 Filed 5-14-98; 8:45 am]
 BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N-0456]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration,
 HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Conditions for the Use of Narcotic Drugs for Treatment of Narcotic Addiction, Reporting and Recordkeeping Requirements," has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 25, 1997 (62 FR 62773), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0140. The approval expires on April 30, 2001.

Dated: May 7, 1998.
 William K. Hubbard,
*Associate Commissioner for Policy
 Coordination.*
 [FR Doc. 98-12902 Filed 5-14-98; 8:45 am]
 BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D-0287]

Guidance for Industry on Buspirone Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing; Availability

AGENCY: Food and Drug Administration,
 HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Buspirone Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing." This is revision 1 of the guidance. The guidance has been revised to reflect the recent availability of buspirone hydrochloride tablets in 15-milligram dosage forms. Bioequivalence is tested using the highest available dosage of the reference listed drug. The revised guidance also notes the nonlinearity of buspirone at multiple-dosing.

DATES: Written comments on agency guidance documents may be submitted at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of "Buspirone Hydrochloride Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing" to the Drug Information Branch (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on this guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sikta Pradhan, Center for Drug Evaluation and Research (HFD-652), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-5847.

SUPPLEMENTARY INFORMATION: This guidance document is a level 2 guidance document consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on buspirone hydrochloride tablets in vivo bioequivalence and in vitro dissolution testing. It does not create or confer any rights for or on any person and does not

operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may submit written comments on the guidance at any time to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 8, 1998.
 William K. Hubbard,
*Associate Commissioner for Policy
 Coordination.*
 [FR Doc. 98-12903 Filed 5-14-98; 8:45 am]
 BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D-0276]

Guidance for Industry on Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements; Availability

AGENCY: Food and Drug Administration,
 HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Standards for the Prompt Review of Efficacy Supplements, Including Priority Efficacy Supplements." As required by the Food and Drug Administration Modernization Act of 1997 (Modernization Act), this guidance for industry describes the standards for the prompt review of efficacy supplements. It also is intended to define those efficacy supplements that are eligible for priority review.

DATES: Written comments may be submitted on the guidance document by August 13, 1998. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at <http://www.fda.gov/cder/guidance/index.htm>, or <http://www.fda.gov/cber/guidelines.htm>. Submit written comments on this guidance to the Dockets Management Branch (HFD-305), Food and Drug Administration,

12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Comments are to be identified with the docket number found in brackets in the heading of this document. After the comment period, comments may be submitted to one of the centers at the addresses below.

FOR FURTHER INFORMATION CONTACT:

Joseph P. Griffin, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041, or Robert A. Yetter, Center for Biologics Evaluation and Research (HFM-10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-0373.

SUPPLEMENTARY INFORMATION: Section 403(a) of the Modernization Act requires that FDA publish in the Federal Register standards for the "prompt review of supplemental applications submitted for approved articles * * *." The legislative history indicates that this provision was directed at certain types of efficacy supplements, i.e., supplemental applications proposing to add a new use of an approved drug to the product labeling.¹ Section 403(b)(3) of the Modernization Act requires that FDA provide guidance to define supplemental applications that are eligible for priority review. This guidance document fulfills both Modernization Act requirements.

Section 101 of the Modernization Act reauthorized for an additional 5 years, with certain technical changes, the user fee program described in the Prescription Drug User Fee Act of 1992. Section 101 of the Modernization Act directed that the user fees authorized by the amendments in that subtitle be dedicated toward expediting the drug development process and the review of human drug applications as set forth in the performance goals identified in letters from the Secretary of Health and Human Services to the chairman of the Committee on Commerce of the House of Representatives and the chairman of the Committee on Labor and Human Resources of the Senate, as set forth in the Congressional Record. The referenced performance goals include standards for the review of efficacy supplements and distinguish between priority and standard supplements. The guidance also defines "priority" for

¹ See U.S. Congress, Senate Committee on Labor and Human Resources, "Food and Drug Administration Modernization Act of 1997," S. Rept. 105-43 on S. 830, pp. 41-42, 105th Cong., 1st sess., 1 July 1997; and House Committee on Commerce, "Prescription Drug User Fee Authorization and Drug Regulation Act of 1997," H. Rept. 105-310 on H.R. 1411, pp. 63-64, 105th Cong., 1st sess., 7 October 1997.

purposes of applying the performance goals.

The guidance document is being issued as a Level 1 guidance consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It is being implemented without prior public comment because the guidance is needed to implement the Modernization Act. However, the agency wishes to solicit comment from the public and is providing a 90-day comment period and establishing a docket for the receipt of comments.

This guidance document represents the agency's current thinking on the standards for the prompt review of efficacy supplements. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance document to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 8, 1998.
 William B. Schultz,
Deputy Commissioner for Policy.
 [FR Doc. 98-12900 Filed 5-14-98; 8:45 am]
 BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D-0100]

Guidance for Industry on Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products; Availability

AGENCY: Food and Drug Administration,
 HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products." The purpose of this guidance is to clarify what clinical evidence of effectiveness should be

provided in new drug applications, biological product license applications, and supplemental applications for new uses of drugs and biologics. The guidance is also intended to fulfill the requirements of certain provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act).

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: An electronic version of this guidance is available via the Internet at <http://www.fda.gov/cder/guidance/index.htm> and at <http://www.fda.gov/cber/guidelines.htm>. Submit written comments on this guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Joseph P. Griffin, Center for Drug Evaluation and Research (HFD-5), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5400.

SUPPLEMENTARY INFORMATION: The draft guidance for industry entitled "Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products" (the draft guidance) was initially developed as part of an effort to get more information about valid uses of marketed drugs into the labeling of these drugs. Uncertainty on the part of the industry about the evidentiary requirements for demonstrating effectiveness for a supplemental indication was believed to be an obstacle to sponsors submitting applications for supplemental indications. The draft guidance was intended to clarify the amount and types of evidence that could be used to demonstrate effectiveness and thereby facilitate submission of additional supplemental applications. In the Federal Register of March 21, 1997 (62 FR 13650), FDA announced the availability of the draft guidance. The notice gave interested persons an opportunity to submit comments by May 20, 1997.

On November 21, 1997, the President signed the Modernization Act (Pub. L. 105-115), which addressed both the standards for providing clinical evidence of effectiveness and the evidentiary requirements for supplemental applications. Section 115 of the Modernization Act amended the definition of substantial evidence in section 505(d) of the Federal Food,

Drug, and Cosmetic Act (the act) (21 U.S.C. 355(d)) to clarify that FDA, at its discretion, may make exception to the general requirement that there must be more than one adequate and well-controlled investigation to support an effectiveness determination. Section 115 of the Modernization Act provides in relevant part that "[i]f the [agency] determines, based on relevant science, that data from one adequate and well-controlled clinical investigation and confirmatory evidence (obtained prior to or after such investigation) are sufficient to establish effectiveness, the [agency] may consider such data and evidence to constitute substantial evidence [of effectiveness]."

In clarifying the standard for substantial evidence, Congress acknowledged the agency's position that there have been major advances in the science and practice of clinical drug development since the effectiveness requirement was added to the act in 1962, and confirmed FDA's interpretation of the substantial evidence of effectiveness standard, as explained in the draft guidance document.

In addition to the provision on the evidence standard, the Modernization Act included section 403, "Approval of Supplemental Applications for Approved Products." Section 403(a) of the Modernization Act requires FDA to publish in the *Federal Register*, within 180 days of enactment, standards for the prompt review of supplemental applications for drugs and biological products. These standards are included in a guidance document for which a notice of availability is published elsewhere in this issue of the *Federal Register*.

Section 403(b) of the Modernization Act requires that FDA, within 180 days of enactment, issue final guidances to clarify the requirements for, and facilitate the submission of data to support, the approval of supplemental applications for drugs and biologics. The guidance issued today fulfills this statutory requirement as it addresses the data requirements for both original drug and biological product applications and supplements to those applications.

In addition, section 403(b)(1) of the Modernization Act requires that FDA provide guidance to "clarify circumstances in which published matter may be the basis for approval of a supplemental application." Section III of the guidance describes the circumstances in which a sponsor may rely in part, or entirely, on published reports of studies to support approval of a supplemental application.

Section 403(b)(2) of the Modernization Act requires that FDA provide guidance to "specify data requirements that will avoid duplication of previously submitted data by recognizing the availability of data previously submitted in support of an original application." Section II of the guidance describes a range of circumstances in which existing data, whether or not previously submitted to an original application, may be used to support an application for a supplemental indication, thus permitting a sponsor to avoid developing unnecessary additional data.

The agency received 13 submissions commenting on the draft guidance, including comments from pharmaceutical and biological products companies and their trade associations, individuals and organizations in academic medicine and clinical pharmacology, patient advocacy organizations, and a consumer. The response to the draft guidance was generally favorable. The guidance was viewed as a significant step forward by the agency in clarifying and better articulating its quantitative and qualitative evidentiary standards for evidence of effectiveness. Comments observed that the principles espoused were scientifically reasonable, practical, and appropriately flexible. The agency has considered all of the comments in making revisions to the guidance document.

This guidance document is being issued as a Level 1 guidance consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on clinical evidence of effectiveness for human drug and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Submit written requests for single copies of the guidance for industry entitled "Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products" to the Drug Information Branch (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Please send one self-addressed adhesive label to assist the offices in processing your

request. The document may also be obtained by mail by calling the CBER Voice Information System at 1-800-835-4709 or 301-827-1800, or by fax by calling the CBER FAX Information System at 1-888-CBERFAX or 301-827-3844.

Interested persons may at any time submit written comments on the guidance to the Dockets Management Branch (address above). Requests and comments should be identified with the docket number found in brackets in the heading of this notice. A copy of the guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 8, 1998.
William B. Schultz,
Deputy Commissioner for Policy.
[FR Doc. 98-12901 Filed 5-14-98; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D-0214]

Guidance for Industry on Pharmacokinetics in Patients with Impaired Renal Function—Study Design, Data Analysis, and Impact on Dosing and Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Pharmacokinetics in Patients with Impaired Renal Function—Study Design, Data Analysis, and Impact on Dosing and Labeling." The guidance is intended for sponsors planning to conduct studies to assess the influence of renal impairment on the pharmacokinetics of an investigational drug.

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm", or "http://www.fda.gov/cber/guidelines.htm". Submit written requests for single copies of "Pharmacokinetics in Patients with Impaired Renal Function—Study Design, Data Analysis, and Impact on Dosing and Labeling" to the Drug Information Branch (HFD-210), Center for Drug Evaluation and Research, Food

and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or Office of Communication, Training and Manufacturers Assistance (HFM-40), 1401 Rockville Pike, Rockville, MD 20852-1448, or by calling 1-800-835-4709 or 301-827-1800. Submit written comments on the guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Shiew-Mei Huang, Center for Drug Evaluation and Research (HFD-850), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5671; or
Martin D. Green, Center for Biologics Evaluation and Research (HFM-579), 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-5344.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance entitled "Pharmacokinetics in Patients with Impaired Renal Function—Study Design, Data Analysis, and Impact on Dosing and Labeling."

The pharmacokinetics (PK) and pharmacodynamics (PD) of drugs primarily eliminated through the kidneys may be altered by impaired renal function to the extent that the dosage regimen needs to be changed from that used in patients with normal renal function. Although the most obvious type of change arising from renal impairment is a decrease in renal excretion (or possibly renal metabolism) of a drug or its metabolites, renal impairment also has been associated with other changes, such as changes in hepatic metabolism, plasma protein binding, and drug distribution. These changes may be particularly prominent in patients with severely impaired renal function and have been observed even when the renal route is not the primary route of elimination of a drug. Thus, for most drugs that are likely to be administered to patients with renal impairment, PK characterization may need to be assessed in subjects with such impairment to provide appropriate dosing recommendations.

The guidance provides specific information on when studies of PK in patients with impaired renal function should be performed and when they may be unnecessary. It also addresses the design and conduct of PK studies in patients with impaired renal function, the design and conduct of PK studies in end stage renal disease patients treated with dialysis, the analysis and reporting of the results of such studies, and

representation of these results in approved product labeling.

In the *Federal Register* of June 16, 1997 (62 FR 32617), FDA announced the availability of a draft version of this guidance, entitled "Pharmacokinetics and Pharmacodynamics in Patients with Impaired Renal Function: Study Design, Data Analysis, and Impact on Dosing and Labeling." The June 16, 1997, document gave interested persons an opportunity to submit comments through August 15, 1997. All comments received through the end of September have been carefully reviewed and incorporated, where appropriate, in this revised guidance.

This guidance is being issued as a Level 1 guidance consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on conducting PK studies on patients with impaired renal function. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance is available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 8, 1998.
William K. Hubbard,
Associate Commissioner for Policy Coordination.
[FR Doc. 98-12898 Filed 5-14-98; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent

applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Molecular Computing Elements: Gates and Flip-Flops

TD Schneider, PN Hengen (NCI)
DHHS Reference No. E-170-97/0 filed Feb. 20, 1998
Licensing Contact: John Fahner-Vihetlic, 301/496-7735 ext. 270

The present invention is a method and apparatus for molecular computing which provides for molecular logic devices analogous to those of electronic computers, such as flip-flops, AND gates, etc. Coupling of the gates allows for molecular computing. The method allows data storage, the transformation of binary information and signal readout. Possible applications include encoding "read only" memory for microscopic identifiers, digital control of gene expression, and quantification of analytes. The computing elements also provide means for complex regulation of gene expression.

Lipooligosaccharide-Based Vaccine for the Prevention of Moraxella (Branhamella) Catarrhalis Infections in Humans

X-X Gu, JB Robbins (NIDCD)
Serial No. 60/071,483 filed Jan 13, 1998
Licensing Contact: Robert Benson, 301/496-7056 ext. 267

This invention is a vaccine for the prevention of disease caused by *M. catarrhalis*, which is the third most common causative agent of otitis media (middle ear infection) and sinusitis in children. The emergence of antibiotic resistant bacteria has caused concern that treatment of otitis media will become more problematic. This invention offers a new approach to managing otitis media. The vaccine is composed of lipooligosaccharide (LOS), isolated from the surface of strains of *M. catarrhalis* and detoxified by removing esterified fatty acids to produce detoxified LOS (dLOS), which is then conjugated to an immunogenic protein carrier such as tetanus toxoid. The conjugates have been shown to be nontoxic by the limulus amebocyte

assay. Antisera raised in rabbits immunized with the conjugate is bacteriocidal *in vitro* against homologous and many heterologous strains of *M. catarrhalis*.

Conjugate Vaccine for Nontypeable Haemophilus Influenzae

X-X Gu, C-M Tsao, DJ Lim, JB Robbins (NIDCD)

Serial No. 08/842,409 filed April 23, 1997

Licensing Contact: Robert Benson, 301/496-7056 ext. 267

This invention is a vaccine for the prevention of disease caused by nontypeable *H. influenzae* (NTHi), which causes 25%-40% of otitis media cases (middle ear infections) in children. The emergence of antibiotic resistant bacteria has caused concern that treatment of otitis media will become more problematic. This invention offers a new approach to managing otitis media. The vaccine is composed of lipooligosaccharide, isolated from the surface of strains of NTHi and treated with hydrazine to remove esterified fatty acids, covalently conjugated to an immunogenic carrier, such as tetanus toxoid. The conjugates have been shown to be nontoxic by the limulus amoebocyte assay, rabbit pyrogen test and in an mouse lethal toxicity test. Antisera raised in rabbits immunized with the conjugate is bacteriocidal *in vitro* against homologous and many heterologous strains of NTHi. A blind controlled trial in chinchillas, an animal model for otitis media, showed that the vaccines are protective against challenge by NTHi.

Calorimeter and Method for Simultaneous Measurement of Thermal Conductivity and Specific Heat of Fluids

NL Gershfeld, CP Mudd, AJ Jin, K Fukada (NIAMS)

Serial No. 08/994,230 filed December 19, 1997

Licensing Contact: John Fahner-Vihtelic, 301/496-7735 ext. 270

The present invention is a novel calorimeter and calorimetry apparatus and method for the ultrasensitive simultaneous measurement of heat capacity and thermal conductivity of fluids. The unique simultaneous measurement of the two parameters avoids sources of error in other methods. The calorimeter shows excellent accuracy of 1 part in 10,000 and run-to-run variability of 1 part in 100,000, as well as excellent long-term reproducibility. The invention is well suited for the study of biomaterials, such as lipids and proteins and other

colloidal systems, which are not easily analyzed using conventional commercial instruments.

A Multi-Slice PET Scanner Constructed From Side-Looking Phoswich Scintillators Coupled to Miniature Position-Sensitive Photomultiplier Tubes: Application in Small Animal Imaging

MV Green (CC)

DHHS Reference No. E-288-97/0 filed Nov 12, 1997

Licensing Contact: John Fahner-Vihtelic, 301/496-7735 ext. 270

The present application describes a new positron emission tomography (PET) scanner. The design of this scanner allows reduction of the detector ring size relative to conventional scanners (thereby reducing cost) while increasing resolution, resolution uniformity and sensitivity. This combination of features makes the invention particularly well-suited for small animal imaging in biomedical research, e.g. evaluating changes in organ function due to genetic manipulations.

Chimeric Vaccine Against Tick-Borne Encephalitis Virus

A Plotenev, R Men, RM Chanock, C-J Lai (NIAID)

Serial No. 60/061, 441 filed Oct 08, 1997
Licensing Contact: Carol Salata, 301/496-7735 ext. 232

The present invention relates to a chimeric virus vaccine against tick-borne encephalitis virus (TBEV). The preM and E structural genes of the tick-borne encephalitis Langat virus and the non-structural genes of the mosquito-borne dengue virus form a live, attenuated chimeric virus vaccine against tick-borne encephalitis virus. The live chimeric vaccine was administered intraperitoneally and exhibited complete attenuation in mice while at the same time providing protection against subsequent challenge with the virulent parental Langat virus which is virulent for mice.

Methods and Apparatuses for Processing Synthesized Models of Complex Medical Structures

RM Summers (CC)

Serial No. 60/056, 452 filed Aug 19, 1997

Licensing Contact: John Fahner-Vihtelic, 301/496-7735 ext. 270

The present invention provides a new algorithm for generating computer models of complex anatomical structures from data such as CT. This algorithm minimizes the problem of "leakage" found in existing algorithms,

which leads to incorrect assignment of voxels as belonging to the feature of interest. This improvement greatly speeds computation time, and anatomical features modeled with this algorithm may be displayed in real time, allowing "virtual endoscopy." The method has been demonstrated in clinical "virtual bronchoscopy." A method for computer-assisted detection of lesions within body cavities is also disclosed.

Simultaneous Multicolor Visualization of Chromogenic Dyes Using Brightfield Microscopy and Spectral Imaging

T Ried, M MacVillie (NHGRI)

Serial No. 60/055,439 filed Aug 8, 1997
Licensing Contact: John Fahner-Vihtelic, 301/496-7735 ext. 270

The present application describes a method and apparatus for spectral imaging. This invention enables one to distinguish permanent chromogenic dyes attached to DNA probes and hybridized to interphase cells from cytological preparations. This technology has application in areas such as analysis of Pap smears or cells from fine needle aspirations. Color identification is based on the measurement of the entire absorption spectrum of chromogenic dyes by means of spectral imaging, which allows for the unambiguous identification of otherwise not discernable dyes. This approach also allows for multi-parameter analysis of immunocytochemical markers and RNA *in situ* hybridization. The diagnosis, staging, and prognosis of human cancers could be greatly improved by complementing morphology with genetic markers for tumor progression using this method.

Methods For Treating Parasitic Infection Using Thiopeptides

MJ Rogers, TF McCutchan, GA McConkey, A Fairfield (NIAID)

DHHS Reference No. E-202-97/0; PCT/US97/11939 filed July 7, 1997.

Licensing Contact: Carol Salata, 301/496-7735 ext. 232

This invention provides a method for treating a parasitic infection (when the parasite has a plastid-like organelle) with a thiopeptide. The parasitic infection may be caused by parasites of the Apicomplexa phylum, the Microspora phylum or the Asctospora phylum. The thiopeptide used to treat the parasitic infection can be any member of the class of compounds characterized as sulfur-rich peptide antibiotics with multiple thiazole rings which inhibit protein synthesis in the plastid-like organelle of the parasites.

The disclosed thiopeptides can be, but are not limited to, thiostreptin, micrococin P. nosiheptide, siomycin, sporangiomycin, althiomycin, the thiocillins and/or thiopeptin, as well as sulfur-rich peptide antibiotic containing multiple thiazole rings, produced by streptomycetes or other peptide antibiotic-producing organisms.

Image Registration Using Closest Corresponding Voxels With an Iterative Registration Process

J Ostuni (LDRR)

Serial No. 08/847,733 filed Apr 28, 1997 (claiming priority date of Apr 29, 1996)

Licensing Contact: John Fahner-Vihtelic, 301/496-7735 ext. 270

The present invention provides a novel method of 3D medical image registration, that is, the alignment of two or more related 3D images. This method overcomes problems seen in conventional registration techniques arising from mismatching of voxel intensities. This is of particular importance when registering images derived from different techniques, such as MRI and CT. The invention allows the registration of images despite the lack of direct relationship between intensity levels in the different techniques, varying patient placement, and occlusion and noise in the image.

System for Synergistic Combination of Multiple Automatic Induction Methods and Automatic Re-Representation of Data

L Hunter (NLM)

DH Reference No. E-118-96/0; PCT/US97/08951 filed May 23 1996

Licensing Contact: John Fahner-Vihtelic, 301/496-7735 ext. 270

The present application describes a unique prototype of an advanced framework which relates to the field of multidimensional data mining, machine learning, and analysis that has been named COEV (for COEVolutional). COEV synergistically combines different methods of statistical analysis, neural networks, decision trees and genetic algorithms for the resolution of data queries. COEV automatically determines the optimal methods and data representations to apply at each step of inquiry and, as a result, can provide outcomes that are significantly more accurate than can be achieved by use of any one methodology alone. The invention uses an evolutionary learning technology to improve predictive outcomes with continued use. COEV is designed to advance the accuracy, flexibility, speed and ease of use of advanced data analysis technologies.

Characteristics of problems that are appropriate for the application of the COEV method are: (1) Appropriate for machine learning, in that there is a well-defined set of input variables and a clear prediction target; (2) difficult for traditional methods, and where a modest improvement in accuracy over existing machine learning methods (e.g., neural networks) would be significant; (3) there is a large amount of training data, ideally thousands of cases.

Possible application areas of interest include the analysis of high-throughput screening data for pharmaceutical discovery, detecting patterns of fraud in insurance claims, or automating screening of medical images.

This invention requires further R&D and testing to make it a practical system for widespread use.

Dated: May 7, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98-13011 Filed 5-14-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of SEP: National Institute on Aging Special Emphasis Panel Stress, Aging and Wound Healing.

Date of Meeting: May 27, 1998.

Time of Meeting: 12:00 p.m. to adjournment.

Place of Meeting: Holiday Inn on the Lane, Columbus, Ohio.

Purpose/Agenda: To review a program project application.

Contact Person: Dr. Mary Nekola, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892-9205, (301) 496-9666.

Name of SEP: National Institute on Aging Special Emphasis Panel QTL, Analysis of Age-Related Phenotypes.

Date of Meeting: May 29, 1998.

Time of Meeting: 11:00 a.m. to adjournment.

Place of Meeting: Chicago O'Hare Marriott, Chicago, Illinois.

Purpose/Agenda: To review a program project application.

Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892-9205, (301) 496-9666.

Name of Committee: National Institute on Aging, Initial Review Group Biology, Aging Review Committee.

Dates of Meeting: June 1-2, 1998.

Times of Meeting: June 1-7:30 p.m. to recess, June 2-8:00 a.m. to adjournment.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Purpose/Agenda: To review a program project application.

Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892-9205, (301) 496-9666.

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date of Meeting: June 2, 1998.

Time of Meeting: 8:00 a.m. to adjournment.

Place of Meeting: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20815.

Purpose/Agenda: to perform the various grant applications.

Contact Person: Dr. William Kachadorian, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health Bethesda, Maryland 20892-9205, (301) 496-9666.

Name of Committee: National Institute on Aging Initial Review Group, Neurosciences of Aging Review Committee.

Date of Meeting: June 8-10, 1998.

Times of Meeting: June 8-7:00 p.m. to recess, June 9-8:00 a.m. to recess, June 10-8:00 a.m. to adjournment.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Purpose/Agenda: To review grant applications.

Contact Person: Dr. Louise Hsu, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892-9205, (301) 496-9666.

Name of SEP: National Institute on Aging Special Emphasis Panel Alzheimer's Disease Patient Registry.

Date of Meeting: June 10, 1998.

Time of Meeting: 4:00 p.m. to adjournment.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Purpose/Agenda: To review research project.

Contact Person: Dr. Louise Hsu, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892-9205, (301) 496-9666.

Name of SEP: National Institute on Aging Special emphasis Panel Group A.

Date of Meeting: June 10, 1998.

Time of Meeting: 8:00 a.m. to 12:00 noon.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Purpose/Agenda: To pilot study review a grant application mostly concerning molecular biology, Alzheimer's disease, biochemistry and neurology of aging.

Contact Person: Dr. Arthur Schaedel, Scientific Review Administrator, Gateway

Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892-9205. (301) 496-9666.

Name of SEP: National Institute on Aging Special Emphasis Panel Group B.

Date of Meeting: June 10, 1998.

Time of Meeting: 8:00 a.m. to 12:00 noon.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Purpose/Agenda: To pilot study review a grant application mostly concerning behavior, social activity memory, cognition, and clinical studies of aging.

Contact Person: Dr. Arthur Schaeferdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892-9205, (301) 496-9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, National Bureau of Economic Research

Date of Meeting: June 15, 1998.

Time of Meeting: 8:00 a.m. to 5:00 p.m.

Place of Meeting: Pooks Hill Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Purpose/Agenda: To review grant applications.

Contact Person: Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892-9205, (301) 496-9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: May 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-13008 Filed 5-14-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 17-18, 1998, convening at 9 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 17 will be open to the public from 9 a.m. to approximately 9:30 a.m., 11:30 a.m. to

noon, and 3:15 p.m. to 3:45 p.m. and on June 18 from 8:30 a.m. to 8:45 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Sharee Pepper at 301-496-4253 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Pub. L. 92-463, the meeting on June 17 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 9:30 a.m. to approximately 11:30 a.m., noon to 3:15 p.m., and 3:45 p.m. to approximately 5 p.m., and on June 18 from 8:45 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Sharee Pepper, Health Scientist Administrator, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-4253, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: May 8, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-13009 Filed 5-14-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on June 11-12, 1998, convening at 9 a.m. on June 11 and at 8:30 a.m. on June 12 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 11 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the

discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Lois Ann Colaiaanni at 301-496-6921 two weeks before the meeting.

In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5 U.S.C., Pub. L. 92-463, the meeting will be closed on June 11 from 10:30 a.m. to approximately 5 p.m. and on June 12 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaiaanni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: May 8, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98-13010 Filed 5-14-98; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel II in May 1998.

A summary of the meetings may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Program Planning and Coordination (OPPC), Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17-89, Rockville, Maryland 20857. Telephone: (301) 443-7390.

Substantive program information may be obtained from the individuals named as Contact for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and

financial information about an individual's proposal. The discussions may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: May 20, 1998.

Place: DoubleTree Hotel—Rockville Room, 1750 Rockville Pike, Rockville, MD 20852.

Closed: May 20, 1998, 9:00 a.m.—adjournment.

Contact: Joan Harrison, Room 17-89, Parklawn Building, Telephone: (301) 443-3042 and FAX: (301) 443-3437.

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: May 27, 1998.

Place: Park Hyatt Hotel, St. James Park Room, 1201 24th Street, NW, Washington, DC 20037.

Closed: May 27, 1998 9:00 a.m.—adjournment.

Contact: George T. Lewis, Ph.D., Room 17-89, Parklawn Building, Telephone: (301) 443-3042 and FAX: (301) 443-3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: May 11, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98-12964 Filed 5-14-98; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meetings

Pursuant to Public Law 92-463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel I and Special Emphasis Panel II in June 1998.

A summary of the meetings may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Program Planning and Coordination (OPPC), Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17-89, Rockville, Maryland 20857. Telephone: (301) 443-7390.

Substantive program information may be obtained from the individuals named as Contact for the meetings listed below.

The first meeting will include the review, discussion and evaluation of individual grant proposals. These

discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: June 1-4, 1998.

Place: DoubleTree Hotel—Halpine Room, 1750 Rockville Pike, Rockville, MD 20852.

Closed: June 1-3, 1998, 9:00 a.m.—5:00 p.m., June 4, 1998, 9:00 a.m.—adjournment.

Panel: Center for Mental Health Services Child Mental Health Initiative.

Contact: Mildred Cannon, Ph.D., Room 17-89, Parklawn Building, Telephone: 301-443-9919 and FAX: 301-443-3437.

The remainder of the meetings will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. These discussions may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: June 8, 1998.

Place: DoubleTree Hotel—Twinbrook Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Closed: June 8, 1998 8:30 a.m.—10:30 a.m.

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: June 8, 1998.

Place: DoubleTree Hotel—Twinbrook Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Closed: June 8, 1998 11:00 a.m.—1:00 p.m.

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: June 8, 1998.

Place: DoubleTree Hotel—Twinbrook Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Closed: June 8, 1998 2:30 p.m.—4:30 p.m.

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: June 9, 1998.

Place: DoubleTree Hotel—Twinbrook Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Closed: June 9, 1998 8:30 a.m.—10:30 a.m.

Contact: Clark Lum, Ph.D., Room 17-89, Parklawn Building, Telephone: 301-443-9919; FAX: 301-443-3437.

Dated: May 11, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98-12969 Filed 5-14-98; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4349-N-18]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 15, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement;

and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 7, 1998.
David S. Cristy,
Director, IRM Policy and Management Division.
Title of Proposal: Section 5(h) Homeownership Program.
Office: Public and Indian Housing.
OMB Approval Number: 2577-0201.
Description of the Need for the Information and Its Proposed Use: Housing Authorities (HAs), after consulting with residents, prepare and submit a homeownership plan to HUD.

The plan has to meet certain HUD criteria. The information provided by HAs will be used by HUD to ensure that they are complying with the requirements imposed by Section 5 (h) of the Housing Act of 1937.
Form Number: None.
Respondents: State, Local, or Tribal Government, Individuals or Households and Not-For-Profit Institutions.
Frequency of Submission: Recordkeeping and Annually.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	50		1		76		3,800
Recordkeeping	50		1		1		50

Total Estimated Burden Hours: 3,850.
Status: Reinstatement without changes.
Contact: Gary Van Buskirk, HUD, (202) 401-8812 x4241, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: May 7, 1998.
[FR Doc. 98-12941 Filed 5-14-98; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
[Docket No. FR-4349-N-19]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 15, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the

date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.
FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).
The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total

number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 8, 1998.
David S. Cristy,
Director, IRM Policy and Management Division.
Title of Proposal: Survey of Title I Borrowers.
Office: Housing.
OMB Approval Number: 2502-XXXX.
Description of the Need for the Information and Its Proposed Use: Title I loans are made by private lenders, and HUD insures the lender against losses from borrower defaults. HUD needs the added data collections to assess consumer satisfaction and improve portfolio management.
Form Number: None.
Respondents: Individuals or Households and Federal Government.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	10,000		1		.0833		833

Total Estimated Burden Hours: 833.
Status: New.
Contact: Maurice Gullledge, HUD, (202) 708-6396; Joseph F. Lackey Jr., OMB, (202) 395-7316.

Dated: May 8, 1998.
[FR Doc. 98-12942 Filed 5-14-98; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4341-N-10]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.
ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-1226; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 7, 1998.
Fred Karnas, Jr.,
Deputy Assistant Secretary for Economic Development.
[FR Doc. 98-12619 Filed 5-14-98; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4315-N-05]

Announcement of OMB Approval Number

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Announcement of the Office of Management and Budget (OMB) approval number.

SUMMARY: The purpose of this document is to announce the OMB approval number for the collection and analysis of information to assess the extent of

conformity with the accessibility provisions of the Fair Housing Amendments Act (the Act) of 1988 requiring newly constructed multifamily dwelling covered under the Act, available for first occupancy after March 13, 1991, be designed and constructed to be accessible to persons with disabilities.

FOR FURTHER INFORMATION CONTACT: Alan Rothman, Social Science Analyst, Office of Policy Development and Research, telephone (202) 708-4370, x5726. A telecommunications device for the hearing impaired (TTY) is available at (202) 708-3259 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: On November 25, 1997 (62 FR 62782), the Department published in the *Federal Register* a notice of proposed data collection and analysis of information to assess the extent of conformity with the accessibility provisions of the Fair Housing Amendments Act (the Act) of 1988 requiring newly constructed multifamily dwellings covered under the Act, available for first occupancy after March 13, 1991, be designed and constructed to be accessible to persons with disabilities. The document, entitled, Notice of Proposed Information Collection for Public Comment, indicated that the information collection requirements in the notice has been submitted to the Office of Management and Budget for review and approval under Section 3506 of the Paper Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The proposal also listed the title of the proposal, description of the need for the information and the proposed use. The present document provides notice of the OMB approval number. Accordingly, the control number approved by the Office of Management and Budget in accordance with the Paper Reduction Act of 1995 (U.S.C. 3501-3520) for the Notice of Proposed Information collection for Public Comment is 2528-0193. This approval number expires on October 31, 1999. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: May 7, 1998.
Paul A. Leonard,
Deputy Assistant Secretary for Policy Development.
[FR Doc. 98-12943 Filed 5-14-98; 8:45 am]
BILLING CODE 4210-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-98-1040-00]

Call for Gila Box Advisory Committee Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for Gila Box Riparian National Conservation Area Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill two positions on the Gila Box Riparian National Conservation Area Advisory Committee, pursuant to Title 2, Section 201, of the Arizona Desert Wilderness Act of 1990.

The purpose of the Advisory Committee is to provide informed advice to the Safford Field Office Manager on management of public lands in the Gila Box Riparian National Conservation Area. Members are currently assisting BLM specialists with the implementation of the Final Gila Box Interdisciplinary Activity Plan. The Advisory Committee will meet approximately one time during (FY 98) to assist with plan implementation. Members serve without salary, but are reimbursed for travel and per diem expenses at current rates for government employees.

To ensure membership of the Advisory Committee is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas related to the primary purposes for which the Gila Box Riparian National Conservation Area was created. These categories of expertise include wildlife conservation, riparian ecology, archaeology, hydrology, recreation, environmental education, or other related disciplines.

Persons wishing to nominate individuals or those wishing to be considered for appointment to serve on the Advisory Committee should provide names, addresses, professions, biographical data, and category of expertise for qualified nominees. Persons selected to serve on the Committee will serve a three-year term, July 31, 1998 to July 31, 2001. Nominations should be submitted in writing to the Safford Field Office Manager at the address provided below.

ADDRESSES: For further information contact, Elmer Walls, Team Leader, Resource Use and Protection Group, Bureau of Land Management, Safford Field Office, 711 14th Avenue, Safford,

Arizona 85546; telephone number (520) 348-4400.

DATES: All nominations should be received by June 1, 1998.

Dated: May 5, 1998.

William T. Clivish,

Field Office Manager.

[FR Doc. 98-12931 Filed 5-14-98; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-930-1020-00 [4000/1790]

Notice of Availability of Final Environmental Impact Statement and Proposed Plan Amendment to Land Use Plans in the Development of Standards for Rangeland Health and Guidelines for Grazing Management on Public Lands in California and Northwestern Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) in California has available a Final Environmental Impact Statement (Final EIS) to address Standards for Rangeland Health and Guidelines for Grazing Management as provided in BLM's grazing regulations (43 CFR Part 4100) and to amend, as necessary, existing Land Use Plans in the State. The Final EIS is prepared in compliance with the National Environmental Policy Act. This notice announces the availability of the Final EIS for public review.

DATES: Protests concerning the Final EIS must be received by June 15, 1998.

ADDRESSES: Protests concerning the Final EIS should be mailed to Director (210), Bureau of Land Management, Attention: Brenda Williams, 1849 C Street, NW., Washington, DC 20240. Requests to receive a copy of the Final EIS should be made to Jim Morrison, Rangeland Health Coordinator, Bureau of Land Management, 2135 Butano Drive, Sacramento, CA 95825-0451 or phone (916) 978-4642.

FOR FURTHER INFORMATION CONTACT: Jim Morrison at (916) 978-4642.

SUPPLEMENTARY INFORMATION: The BLM opened an initial scoping period on March 25, 1996, closing on April 24, 1996 and due to public desires, reopened the scoping period on August 5, 1996, closing September 4, 1996. Information taken during the scoping periods, information developed from BLM's Resource Advisory Councils

(RACs), and other information, both existing and new, were used to formulate alternatives and to analyze the impacts to the environment as documented in a Draft EIS. A Draft EIS was issued May 27, 1997 and provided 90 days for public review and comment. The comments received were analyzed and considered in the development of the Final EIS. The comments and BLM's response are included in the Final EIS document.

As indicated in the previous notices of intent, BLM is required by grazing management regulations (43 CFR Part 4100), effective August 21, 1995 to develop state-wide Standards for Rangeland Health and Guidelines for Grazing Management. The final selected Standards and Guidelines (S&Gs) will be incorporated into existing Land Use Plans as plan amendments. The Final EIS is tied to the national EIS which was completed in early 1995 during the development of the above referenced regulations. The development of rangeland S&Gs for the public owned rangelands in Southern California are not included in this effort and will be developed later in conjunction with the development of coordinated management plans.

There are five alternatives sets of rangeland S&Gs considered in the Final EIS including: (1) a set of S&Gs from each of three RACs which constitutes the proposed action, (2) a consolidated state-wide set of S&Gs, (3) a set of fall-back S&Gs as references in the regulations and constitutes the no action alternative, (4) a set of S&Gs for rapid improvement and recovery of rangeland health and (5) a set of S&Gs as the preferred alternative. The Final EIS analyzes the environmental, social, and economic impacts for each alternative.

This document will also amend 19 existing land use plans in California and portions of Northwestern Nevada. The proposed plan amendments may be protested only by parties who participated in the planning and analysis process and may only protest issues that had been previously raised on the Draft EIS. Protests must be sent to the Director (210), Bureau of Land Management, Attention: Brenda Williams, 1849 C Street, NW., Washington, DC 20240. Protests must be postmarked no later than June 15, 1998. Protests must minimally contain the following information.

1. The name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts being protested. Cite pages, paragraphs,

maps, etc. of the proposed action where practical.

4. A copy of all documents addressing the issue(s) that the protestant submitted during the draft EIS process, or a reference to the date when the protestant discussed the issue(s) for the record.

5. A concise statement why the protestant believes the BLM State Director's proposed action is incorrect.

At the end of the 30-day protest period, the proposed action, excluding any portion under protest will become final. A Record of Decision will be issued for non-protested portions of the proposal, amending land use plans. Approval will be withheld on any portion of the proposal under protest until a final action has been completed on such protest.

No formal public hearings or meetings are anticipated.

Dated: May 6, 1998.

Carl Rountree,

Deputy State Director, Natural Resources.

[FR Doc. 98-12586 Filed 5-14-98; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Termination of Preparation of an Environmental Impact Statement for the Great Egg Harbor National Scenic and Recreational River Comprehensive Management Plan

AGENCY: National Park Service, Interior.

ACTION: Termination of preparation of an environmental impact statement.

SUMMARY: This notice announces the termination of work toward preparation of an Environmental Impact Statement for the development of a Comprehensive Management Plan for the Great Egg Harbor National Scenic and Recreational River in New Jersey. The Notice of Intent for this project appeared in the April 10, 1997 *Federal Register*. A determination has since been made that an Environmental Assessment would suffice to address National Environmental Policy Act requirements for development of the Comprehensive Management Plan. The Environmental Assessment will be circulated for public comment upon its completion.

Following the comment period, we anticipate preparation of a Finding of No Significant Impact. We encourage all who have an interest in this National Park System unit's future to contact Mary Vavra, National Park Service Program Manager, by letter or telephone.

FOR FURTHER INFORMATION CONTACT: Mary Vavra, Project Manager, National Park Service, Philadelphia Support Office, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106, (215) 597-9175.

Dated: May 1, 1998.

Marie Rust,

Field Director, Northeast Field Area, National Park Service.

[FR Doc. 98-12950 Filed 5-14-98; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994), that a meeting of the National Park System Advisory Board will be held on May 20-21, 1998, at the Holiday Inn of Estes Park, 101 South St. Vrain Street, Estes Park, Colorado. On May 20, the Board will tour Rocky Mountain National Park.

On May 21, 1998, the Board meeting will convene at 9:00 a.m., and will adjourn at approximately 4:30 p.m. Following remarks by the Chairman, the Board will be addressed by the Deputy Director of the National Park Service, Denis Galvin. The Board will deliberate issues relating to natural resource management, future growth of the National Park System, and the role of the National Park Service as educator in American society. The Board will review National Historic Landmark nominations during the morning session.

The Board may be addressed at various times by other officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Any one who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW, Washington, DC 20240 (telephone 202-208-7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW, Washington, DC.

Dated: May 8, 1998.

Denis P. Galvin,

Deputy Director, National Park Service.

[FR Doc. 98-12947 Filed 5-14-98; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)-1176]

RIN 1121-ZB13

Announcement of the Availability of the National Institute of Justice Solicitation for "Juvenile Accountability Incentive Block Grant Program Research and Evaluation"

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Juvenile Accountability Incentive Block Grant Program Research and Evaluation Solicitation."

DATES: Due date for receipt of proposals is close of business July 14, 1998.

ADDRESS: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1-800-851-3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1-800-421-6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201-03, as amended, 42 U.S.C. 3721-23 (1994).

Background

The National Institute of Justice (NIJ) is requesting proposals for evaluation and research related to the Juvenile Accountability Incentive Block Grant (JAIBG) program, which is administered by the Office of Juvenile Justice and

Delinquency Prevention (OJJDP). It responds to both the congressional and public demand for accountability and the need to develop a knowledge base that examines policy and programmatic experience and continually recommends improvements to them. This initial announcement seeks to support a three-tiered evaluation approach:

(1) A national evaluation of the implementation of JAIBG. One award of up to \$500,000 is expected to be made, for a period of up to two years.

(2) Topical research regarding issues of policy raised by the mandates that underlie JAIBG. Six awards of up to \$200,000 each are expected to be made, for a period of up to two years each.

(3) Individual practitioner-research partnerships to build local capacity to perform research on crucial areas surrounding the implementation of JAIBG. Ten awards of up to \$75,000 each are expected to be made, for a period of up to fifteen months.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1-800-851-3420 to obtain a copy of "Juvenile Accountability Incentive Block Grant Program Research and Evaluation" (refer to document no. SL000282). For World Wide Web access, connect either to either NIJ at <http://www.ojp.usdoj.gov/nij/funding.htm>, or the NCJRS Justice Information Center at <http://www.ncjrs.org/fedgrant.htm#nij>. Jeremy Travis, Director, National Institute of Justice. [FR Doc. 98-12910 Filed 5-14-98; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Facility in McCreary County, KY

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prisons has determined that, in order to meet increasing demands for additional inmate capacity, a new Federal correctional facility is needed in its system.

The Bureau of Prisons proposes to construct and operate either a high security United States Penitentiary or a medium security Federal Correctional Institution, both with an adjacent minimum security satellite camp, in McCreary County, Kentucky. The high security facility would have a rated capacity of approximately 1,000 inmates. The medium security facility would be designed to have a rated capacity of approximately 1,200 inmates, and the minimum security component would house approximately 150-300. The potential site also would be used for road access, administration, programs and services, parking, and support facilities.

In the process of evaluating several potential sites, several aspects will receive a detailed examination including utilities, traffic patterns, noise levels, visual intrusions, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives

In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

Scoping Process

Informal discussions and meetings with local economic development staff have already been held on the proposed project, and during the preparation of the DEIS, there will be numerous other opportunities for public involvement. The public scoping meeting will begin at 7:00 p.m. on Thursday, May 21, 1998, at the McCreary Central High School Auditorium, located on Raider Way, Stearns, Kentucky. The meeting has been well publicized and is scheduled at a time that will make the meeting possible for the public and interested agencies or organizations to attend.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESS: Questions concerning the proposed action and the DEIS can be answered by: James B. Jones, Deputy Assistant Director, Administration Division, Federal Bureau of Prisons, 320 First Street, NW., Washington, D.C. 20534, Telephone: (202) 307-3230, Telefacsimile: (202) 514-9481.

Dated: May 8, 1998.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 98-13075 Filed 5-14-98; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and superseded decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S-3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be

found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487-4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. This 8th day of May 1998.

Margaret J. Washington

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98-12549 Filed 5-14-98; 8:45 am]

BILLING CODE 4510-27-M

THE NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

Public Meeting

Establishment of the Medicare Commission included in Chapter 3, Section 4021 of the Balanced Budget Act of 1997 Conference Report. The Medicare Commission is charged with holding public meetings and publicizing the date, time and location in the Federal Register.

Notice of Public Meetings to be held on Monday, June 1, 1998 and Tuesday, June 2, 1998 in Washington, DC.

The National Bipartisan Commission on the Future of Medicare will hold public meetings on June 1 and 2, 1998; location to be determined. Please check the Commission's web site for the location of the meeting: <http://Medicare.Commission.Gov>. Monday, June 1, 1998

1:15 PM-5:00 PM

Tentative Agenda:

Modeling Task Force Presentation
Commission Discussion of Benefits,
Cost and Eligibility Issues

Tuesday, June 2, 1998

9:00 AM-11:00 AM

Tentative Agenda:

Commission Discussion of Management,
Administration and Financing Issues

If you have any questions, please contact the Bipartisan Medicare Commission, Ph: 202-252-3380.

Authorized for publication in the Federal Register by Julie Hasler, Office Manager, National Bipartisan Medicare Commission.

I hereby authorize publication of the Medicare Commission meetings in the Federal Register.

Julie Hasler,

Office Manager, National Bipartisan Medicare Commission.

[FR Doc. 98-13029 Filed 5-14-98; 8:45 am]

BILLING CODE 1132-00-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities

Meeting

May 11, 1998.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on May 27, 1998.

The purpose of this meeting is to advise the recently appointed Chairman of the National Endowment for the Humanities with respect to policies and procedures for carrying out his functions.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC from 10:00 a.m. to 3:00 p.m. Because the Council will consider information relating to the internal practices of the agency and information the disclosure of which would significantly affect implementation of proposed agency action, the meeting will not be open to the public pursuant to subsections (c)(2) and (9)(B) of Section 552b of Title 5, United States Code. I have made this determination under the authority granted to me by the Chairman's Delegation of Authority dated July 19, 1993.

Further information about this meeting can be obtained from Ms. Nancy E. Weiss, Advisory Committee Management Officer, 1100 Pennsylvania

Avenue, NW., Suite 530, Washington, DC 20506, Telephone: (202) 606-8322, TDD: (202) 606-8282.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 98-12954 Filed 5-14-98; 8:45 am]

BILLING CODE 7530-01-M

NATIONAL SCIENCE FOUNDATION

National Science Board; Nominations for Membership.

The National Science Board (NSB) is the policymaking body of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director *ex officio*. Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: "The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation."

The Board and the NSF Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biographical information may be forwarded to the Chairman, National Science Board, 4201 Wilson Boulevard, Arlington, VA, 22230, no later than June 15, 1998.

Any questions should be directed to Mrs. Susan E. Fannoney, Staff Assistant, National Science Board Office (703/306-2000).

Susan E. Fannoney,

Staff Assistant, NSB.

[FR Doc. 98-12948 Filed 5-14-98; 8:45 am]

BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Standards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 3-5, 1998, in Conference Room T-2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal

Register on Thursday, November 20, 1997 (62 FR 62079).

Wednesday, June 3, 1998

8:30 a.m.-8:45 a.m.: *Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:45 a.m.-11:15 a.m.: *AP600 Design* (Open)—The Committee will hear presentations by and hold discussions with representatives of the Westinghouse Electric Company and the NRC staff regarding Chapters 3, 6, 14, 16 and 17 of the AP600 Standard Safety Analysis Report, as well as the PRA, regulatory treatment of the non-safety systems, Test and Analysis Program performed by Westinghouse in support of the AP600 design, and the associated NRC staff's evaluation.

11:15 a.m.-12:00 Noon: *Human Performance Plan* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding issues/concerns raised by the ACRS members on the revised Human Performance Plan.

1:00 p.m.-2:30 p.m.: *Core Research Capabilities at NRC* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding core research capabilities at NRC.

2:45 p.m.-4:45 p.m.: *BWR Extended Power Uprate Application* (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the General Electric Company (GE), the Monticello Nuclear Generating Plant licensee, and the NRC staff regarding the GE power uprate plan for operating BWRs, and the application from the Monticello Nuclear Generating Plant for a power level increase of 6.3 percent.

Note: A portion of this session may be closed to discuss the General Electric Company proprietary information.

5:00 p.m.-7:00 p.m.: *Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. During this meeting, the Committee will also discuss a proposed ACRS report on the NRC Safety Research Program.

Thursday, June 4, 1998

8:30 a.m.-8:35 a.m.: *Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.-9:45 a.m.: *Agency-Wide Plan for High-Burnup Fuel* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the Agency-wide plan for high-burnup fuel.

10:00 a.m.-11:00 a.m.: *Operating Plan for the NRC Technical Training Programs* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the Operating Plan for the NRC technical training programs and related matters.

11:00 a.m.-12:30 p.m.: *Proposed Modifications to 10 CFR 50.59, Changes, Tests and Experiments* (Open)—The

Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of staff activities associated with the proposed modifications to 10 CFR 50.59.

1:30 p.m.-2:45 p.m.: *Proposed Final Standard Review Plan (SRP) Section and Regulatory Guide for Risk-Informed Inservice Inspection of Piping* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed SRP Section and Regulatory Guide for risk-informed inservice inspection of piping at nuclear power plants, as well as the issues and concerns raised previously by the ACRS members on this matter.

2:45 p.m.-3:15 p.m.: *Future ACRS Activities* (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

3:15 p.m.-3:30 p.m.: *Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including the EDO response to the comments and recommendations included in the April 8, 1998 ACRS report regarding Plans to Increase the Performance-Based Approaches in Regulatory Activities.

3:45 p.m.-7:00 p.m.: *Preparation of ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Friday, June 5, 1998

8:30 a.m.-9:00 a.m.: *Report of the Planning and Procedures Subcommittee* (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, qualifications of candidates for ACRS membership, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

9:00 a.m.-3:30 p.m. (12:00-1:00 p.m. *Lunch*): *Preparation of ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

3:30 p.m.-4:00 p.m.: *Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will

be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statement should notify Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92-463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), to discuss General Electric Company proprietary information per 5 U.S.C. 552b(c)(4), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch (telephone 301/415-7364), between 7:30 A.M. and 4:15 P.M. EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at <http://www.nrc.gov/ACRSACNW>.

Dated: May 11, 1998.

Andrew L. Bates,
Advisory Committee Management Officer.
[FR Doc. 98-12977 Filed 5-14-98; 8:45 am]
BILLING CODE 7590-01-P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These

rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (<http://www.pbgc.gov>).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in May 1998. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in June 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (described in the statute and the regulation) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

For plan years beginning before July 1, 1997, the applicable percentage of the 30-year Treasury yield was 80 percent. The Retirement Protection Act of 1994 (RPA) amended ERISA section 4006(a)(3)(E)(iii)(II) to change the applicable percentage to 85 percent, effective for plan years beginning on or after July 1, 1997. (The amendment also provides for a further increase in the applicable percentage—to 100 percent—when the Internal Revenue Service adopts new mortality tables for determining current liability.)

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in May 1998 is 5.03 percent (i.e., 85 percent of the 5.92 percent yield figure for April 1998).

(Under section 774(c) of the RPA, the amendment to the applicable percentage was deferred for certain regulated public

utility (RPU) plans for as long as six months. The applicable percentage for RPU plans has therefore remained 80 percent for plan years beginning before January 1, 1998. For "partial" RPU plans, the assumed interest rates to be used in determining variable-rate premiums can be computed by applying the rules in § 4006.5(g) of the premium rates regulation. The PBGC's 1997 premium payment instruction booklet also describes these rules and provides a worksheet for computing the assumed rate.)

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between June 1997 and May 1998. The rates for July through December 1997 in the table (which reflect an applicable percentage of 85 percent) apply only to non-RPU plans. However, the rates for June 1997 and for months after December 1997 apply to RPU (and "partial" RPU) plans as well as to non-RPU plans.

For premium payment years beginning in	The assumed interest rate is
June 1997	5.55
July 1997	5.75
August 1997	5.53
September 1997	5.59
October 1997	5.53
November 1997	5.38
December 1997	5.19
January 1998	5.09
February 1998	4.94
March 1998	5.01
April 1998	5.06
May 1998	5.03

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in June 1998 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of May 1998.

David M. Strauss,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 98-12912 Filed 5-14-98; 8:45 am]
BILLING CODE 7708-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [63 FR 26231, May 12, 1998].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: May 12, 1998.

CHANGE IN THE MEETING: Additional Item.

The following item will be added to the closed meeting scheduled for Thursday, May 14, 1998, at 10 a.m.: Amicus brief.

Commissioner Unger, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942-7070.

Dated: May 13, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98-13109 Filed 5-13-98; 3:05 pm]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3057]

State of California; Amendment #5

In accordance with a notice from the Federal Emergency Management Agency, dated April 30, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on February 2, 1998 and continuing through April 30, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 8, 1998 and for economic injury the termination date is November 9, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 30, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98-12968 Filed 5-14-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3082]

Commonwealth of Kentucky

As a result of the President's major disaster declaration on April 29, 1998, I find that the following counties in Kentucky constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on April 16, 1998 and continuing: Adair, Barren, Bell, Casey, Clay, Floyd, Knott, Knox, Metcalfe, Perry, Warren, and Whitley. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on June 28, 1998, and for loans for economic injury until the close of business on January 29, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Kentucky may be filed until the specified date at the above location: Allen, Boyle, Breathitt, Butler, Cumberland, Edmonson, Green, Harlan, Hart, Jackson, Johnson, Laurel, Leslie, Letcher, Lincoln, Logan, Magoffin, Marion, Martin, McCreary, Monroe, Owsley, Pike, Pulaski, Russell, Simpson, and Taylor.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

Physical Damage:	
Homeowners with credit available elsewhere	7.000%
Homeowners without credit available elsewhere	3.500%
Businesses with credit available elsewhere	8.000%
Businesses and non-profit organizations without credit available elsewhere	4.000%
Others (including non-profit organizations) with credit available elsewhere	7.125%
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000%

The number assigned to this disaster for physical damage is 308212 and for economic injury the number is 985300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 6, 1998.

Bernard Kulik,
Associate Administrator for Disaster Assistance.

[FR Doc. 98-12975 Filed 5-14-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3078]

State of Tennessee; Amendment #1

In accordance with notices from the Federal Emergency Management Agency dated April 27 and 29, and May 4, 1998, the above-numbered Declaration is hereby amended to include the following counties in the State of Tennessee as a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on April 16, 1998 and continuing: Blount, Carroll, Cheatham, Gibson, Giles, Grainger, Hardin, Hawkins, Jefferson, Macon, Monroe, Roane, Sumner, and Williamson.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Benton, Chester, Greene, Hamblen, Henderson, Henry, Jackson, Lincoln, McNairy, Sullivan, Washington, and Weakley Counties in Tennessee; Cherokee and Graham Counties in North Carolina; and Alcorn and Tishomingo Counties in Mississippi.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 19, 1998 and for economic injury the termination date is January 20, 1999.

The economic injury number for Mississippi is 987500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 8, 1998.

Bernard Kulik,
Associate Administrator for Disaster Assistance.

[FR Doc. 98-12976 Filed 5-14-98; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

(Program Announcement No. SSA-ORES-98-2)

Federal Old-Age, Survivors, and Disability Insurance

AGENCY: Social Security Administration.

ACTION: Announcement of the availability of fiscal year 1998 funds for Section 1110 research grants.

SUMMARY: The Social Security Administration (SSA) announces that competing applications will be accepted for new research grants authorized under section 1110 of the Social Security Act. This announcement, consisting of three parts, describes the nature of the grant activities and gives notice of the anticipated availability of fiscal year (FY) 1998 funds in support of the proposed activities. Part I discusses the purpose of the announcement and briefly describes the application process. Part II describes the programmatic priorities under which SSA is soliciting applications for funding. Part III describes the application process and provides guidance on how to submit an application.

DATES: The closing date for the receipt of grant applications in response to this announcement is July 14, 1998.

FOR FURTHER INFORMATION CONTACT: For information on the application or for an application kit: Mr. E. Joe Smith, Grants Management Officer; Office of Operations Contracts and Grants; Office of Acquisition and Grants; Social Security Administration; 1-E-4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland 21207-5279; telephone (410) 965-9503. Mr. Smith's e-mail address is: joe.smith@ssa.gov.

For information on the program content of the announcement: Ms. Eleanor Cooper, Coordinator for Extramural Research; Office of Research, Evaluation and Statistics; Social Security Administration; 4-C-15 Operations; 6401 Security Boulevard; Baltimore, Maryland 21235; telephone (410) 966-9824. Ms. Cooper's e-mail address is: eleanor.l.cooper@ssa.gov.

SUPPLEMENTARY INFORMATION:

Part I. Purpose and The Grants Process

A. Program Purpose

This research is intended to add to existing knowledge about components of economic security and about the changing economic status of the aged or disabled, with emphasis on Social Security beneficiaries. Policymakers and social scientists are potential users of the results.

There is much discussion of Social Security reform and the future shape of the program, which provides economic security for the aged, survivors and those who are disabled. We are interested in focusing our efforts on the major ideas being put forth to help

inform the Social Security reform discussion. Information will be needed both before and after consensus is reached on potential reforms. There is no specific plan contemplated at this time, so information is needed about the many broad reforms being discussed.

In general, SSA will fund a select number of projects in the following areas:

1. Research on issues pertaining to major changes in the structure of Social Security.

2. Research which develops models and other analyses that aid in understanding the likely behavioral consequences of increasing the retirement age.

3. Research on Social Security/Private Pension Integration which will explore how pension integration affects the economic status of retirees.

4. Research that uses data from the Luxembourg Income Study to assess the relative effectiveness of different social insurance systems in combating poverty among elderly women.

5. Research on economic and demographic assumptions that will affect the future financial status of the Social Security Old Age, Survivors and Disability Insurance (OASDI) programs.

B. FY 1998 Grant Process

The grant application process for FY 1998 will consist of a one-stage, full application. Applications are limited to 20 single- or 40 double-spaced pages (excluding resumes, forms, etc.) and must relate to the selection criteria established for review of applications.

Some priority areas in this announcement permit applicants to propose research efforts from 12 to 24 months in duration. In item 11 of the Face Sheet (page 1 of form SSA-96-BK) indicate the priority area under which the application is submitted; i.e., ORES-98-001, ORES-98-002, etc.

Part II. Priority Research Areas and Evaluation Criteria

In general, grant proposals must be based on well-developed rigorous analysis, including at a minimum the elements specified in the evaluation criteria in Part II.B. below.

A. Priority Research Areas

In particular, the following priority project areas will be considered for funding:

1. Issues Pertaining to Major Changes in the Structure of Social Security—ORES-98-001

The 1994-96 Advisory Council on Social Security was appointed to examine the long-term financing

problems facing the Social Security system and to propose possible solutions for putting the system on firm financial footing. As part of this effort, the Council considered many different options designed to restore the long-term fiscal integrity of the program, including options which would lead to a partial privatization of Social Security. In order to respond with better information to the increasing call for Social Security reform, we propose a program of small grants which would foster research regarding Social Security reform.

Research proposals in any of the following general areas are sought: (1) Research into the possible macroeconomic impacts of investing a significant portion of the Social Security trust fund in private equities; (2) research into the possible macroeconomic effects of a full or partial privatization of Social Security; (3) research concerning potential impacts on financial markets, rates of return, and/or capital formation of either partial investment of Social Security trust fund monies in private securities or of the full or partial conversion of the Social Security program into one of individualized accounts; (4) analysis of the financial and economic risks faced by individuals in a privatized Social Security system; (5) analysis to determine whether or not private insurance markets could, or would, provide equivalent retirement, survivors, and disability insurance to that provided by the current Social Security program, as well as investigating the likely cost to individuals of such insurance; (6) research on the possible effects that major changes in the structure of Social Security might have on individuals' saving behavior, national savings, and/or the unified budget; and (7) research into other topics of interest and importance associated with the debate surrounding reform proposals.

Applications may be submitted for multi-year funding not to exceed either 12 months or 24 months in duration. It should be noted that, for grants of 24 months duration, an interim report of research findings will be required at the end of the initial 12-month period. It is particularly important for the agency to receive grant results within the first year on the implications of retirement policy assessments, such as individual accounts, retirement age, other structural changes, etc. It is anticipated that up to \$400,000 will be allocated to fund one or more projects under this priority area for the initial 12-month budget period. Applications for multi-year funding should include a budget

for the first budget period (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will subsequently be provided for up to an additional 12-month budget period dependent on satisfactory performance of the initial budget period, continued relevance of the project, and the availability of FY funds.

2. Retirement Age Changes—ORES-98-002

Social Security's normal retirement age (NRA) is scheduled to rise gradually to 67 by 2027. Concern about the Old Age Survivors Insurance program's long-term financial balance has prompted consideration of additional changes in Social Security's retirement ages. Among the possibilities discussed are: (a) an accelerated rise in the NRA; (b) increasing the NRA beyond age 67; (c) indexing the NRA to reflect changes in life expectancy; (d) increasing Social Security's early retirement age (ERA); or (e) some combination of (a)-(d).

Policy questions of this type have been explored by researchers in the past, and the estimated effects of some of these policy changes on work and retirement patterns are available. The existing estimates were, for the most part, generated using econometric models based on the somewhat dated Retirement History Study data. With the availability of successive waves of new data from the Health and Retirement Survey (HRS) to support new research, as well as other databases that measure the labor force activity of older workers, we seek to fund the development of new retirement models and other analyses.

SSA is primarily interested in research proposals that develop models and other analyses that aid in understanding the likely behavioral consequences of increasing the retirement age. This research should examine the effects of Social Security's retirement ages on the timing of retirement within the context of a framework that jointly addresses the influence of other known factors such as pensions, assets, earnings opportunities, and health. Acceptable proposals might also consider one or more of the following issues: How will the timing of first-receipt of Social Security benefits by persons aged 62 and older change? What will be the effects of raising the retirement age on women? To what extent would this type of policy change affect the mix of part-time and full-time employment desired by older workers? Are "bridge jobs" likely to become more or less important? How will the labor supply response of older workers vary by gender, age, occupation, health

status, and ethnicity? Do other Social Security program features significantly deter work among the elderly, thereby offsetting (at least to some extent) the increased work that a higher retirement age is likely to promote?

It is anticipated that up to \$400,000 will be allocated to fund one or more projects for up to 12 months under this priority area. Preliminary results are to be submitted 6 months after the grant is awarded.

3. Social Security/Private Pension Integration—ORES-98-003

Many employer-provided pension plans contain rules that coordinate pension benefits with Social Security benefits that the retired worker receives. These pension plans are said to be integrated with Social Security. SSA seeks research proposals that explore how pension integration affects the economic status of retirees.

SSA is interested in projects which explore the economics of and rationale for the existence of private pension plan integration provisions. They should document the prevalence of integrated plans and identify any trends and their causes (e.g., to what extent has the shift from defined benefit to defined contribution plans had an impact on the numbers of workers with integrated plans?). The projects should examine the effects of pension integration on the post-retirement distribution of income.

Fully developed proposals might also outline research that addresses one or more of the following issues: What factors are associated with the occurrence of integration provisions in private pension plans? For example, is plan integration associated with employer characteristics, the level of workers' total compensation, the mix of employer-employee contributions, or the generosity of the pension plan? How would changes in basic OASDI program features, such as the Early and Normal Retirement Ages, or in major changes in the structure of the OASDI program, such as individual accounts, likely affect the prevalence and form of integrated pension plans and retirement income? We will entertain proposals for other research projects that contribute to our understanding of how pension plan integration affects the economic well-being of Social Security beneficiaries.

It is anticipated that up to \$100,000 will be allocated to fund a project for up to 12 months under this priority area.

4. Poverty Among Older Women Cross-Nationally—ORES-98-004

Although in recent decades many Western industrialized nations have undergone demographic, labor market,

and social changes akin to those in the United States, poverty rates among older women continue to differ. Older women in the United States, particularly those who are unmarried, fare comparatively worse economically than their counterparts in other industrialized nations. The Luxembourg Income Study is a unique source of information on the economic circumstances of individuals in more than twenty countries. For many of the countries, data are available for multiple years. We seek to fund research that uses these data to assess the relative effectiveness of different social insurance systems in combating poverty among elderly women. The project should include not only a description and comparison of the economic status of elderly women in the chosen countries but also an analysis of its correlates (e.g., marital status, sources and amounts of each type of income). Particular attention should be paid to the institutional structure of each country's social insurance program as it pertains to women (e.g., spousal benefits, widow's and divorced spouse benefits, compensations for interruptions in a woman's work history for child-rearing and caregiving) as well as the extent to which the program is integrated with private sources of retirement income. To isolate the effects of public policies on older women's poverty, consideration of multiple years of data in select countries may be warranted.

It is anticipated that up to \$100,000 will be allocated to fund a project for up to 12 months under this priority area.

5. Economic and Demographic Assumptions Recommended for Study by Past Advisory Councils—ORES-98-005

The past two Advisory Councils on Social Security (as well as other Councils before them) recognized the need to conduct research regarding the assumptions and methods used to project the future financial status of the OASDI programs, including measures of the financial soundness of these programs. In addition to examining the economic and demographic assumptions behind these forecasts, the 1994 Advisory Council on Social Security highlighted the need for research into the feasibility of using stochastic simulation modeling for forecasting future economic and demographic trends. In order to respond to these needs, we propose a program of small grants designed to foster original research in these areas.

Research proposals in the following areas are being sought: (1) Research into the determinants and projection of

productivity and earnings; (2) research into the effects of changes in the number of hours worked and in fringe benefits on the linkages between productivity and covered earnings; (3) research into the interrelationship of interest rates, productivity, wages, and other economic variables, with some focus on the role of the global economy; (4) research into the use of stochastic simulation models to forecast future economic and demographic trends; (5) research concerning the ultimate rates of mortality decline at all ages as well as investigation of various methods of projecting such rates; and (6) research concerning the impact of the age composition of the population (cohort effects) on labor force participation (particularly female labor force participation), fertility, marriage and divorce with the intention of improving our long-range projections of these variables.

Applications may be submitted for multi-year funding not to exceed 24 months in duration. It is anticipated that up to \$200,000 will be allocated to fund one or more projects under this priority area for the initial 12-month budget period. Applications for multi-year funding should include a budget for the first budget period (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will subsequently be provided for up to an additional 12-month budget period dependent on satisfactory performance of the initial budget period, continued relevance of the project, and the availability of FY funds.

Note: To foster the sharing of research, principal investigators for each grant awarded will be required to (1) include in the final report an executive summary which SSA could publish in the quarterly *Social Security Bulletin* and (2) discuss the results of their research with SSA staff. Funds should be included in the grant budget for a meeting at the SSA Office of Research, Evaluation and Statistics, Washington, D.C.

B. Evaluation Criteria

Applications which pass the screening process will be reviewed by at least three individuals. Reviewers will score the applications, basing their scoring decisions on the criteria shown below. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application. Relative weights for the criteria are shown in parentheses.

(1) Project Objective: (25 points)

How closely do the project objectives fit those of the announcement? Is the

need for the project discussed in terms of the importance of the issues to be addressed? Does it describe how the project builds upon previous research? What is the potential usefulness of the anticipated result and expected benefits to the target groups? What is the potential usefulness of the proposed project for the advancement of scientific knowledge?

(2) Project Design: (30 points)

Is the design of the project adequate and feasible as indicated by the appropriateness of the work statement and the technical approach, including: (a) A concise and clear statement of goals and objectives; (b) theoretical analysis of the problem and, if appropriate, hypotheses to be tested and/or parameters to be estimated; (c) specification of data sources; (d) plan for data analysis, including appropriateness of statistical methods to be used; and (e) scheduling of tasks and milestones in the progress of the project? Does the proposal describe specific plans for conducting the project in terms of the tasks to be performed, and how the approach will accomplish the project objectives?

(3) Qualifications: (30 points)

Do the qualifications of the project personnel, as evidenced by training, experience, and publications, demonstrate that they have the knowledge of subject matter and skills required to competently carry out the research and to produce a final report that is comprehensible and usable? Is the staffing pattern appropriate for the proposed research, linking responsibilities clearly to project tasks?

(4) Organization and Budget: (15 points)

Are the resources needed to conduct the project specified, including personnel, time, funds, and facilities? Are any collaborative efforts with other organizations clearly identified and written assurances referenced? Is all budget information provided including a description by category (personnel, travel, etc.) of the total of the Federal funds required, and written assurances referenced? Where appropriate, are justifications and explanations of costs provided? Are the project's costs reasonable in view of the level of effort and anticipated outcome? Does the applicant's organization have adequate facilities and resources to plan, conduct, and complete the project?

Part III. Application Process

A. Eligible Applicants

Any State or local government, public or private organization, nonprofit or for-

profit organization, hospital, or educational institution may apply for a grant under this announcement. Applications will not be accepted from applicants which do not meet the above eligibility criteria at the time of submission of applications.

Individuals are not eligible to apply. For-profit organizations may apply with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered as any amount in excess of the allowable costs of the grant recipient. A for-profit organization is a corporation or other legal entity which is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his/her own behalf.

In accordance with section 18 of the Lobbying Disclosure Act of 1995, 2 U.S.C. 1611, organizations described in section 501(c)(4) of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive grant awards.

B. Availability and Duration of Funding

SSA anticipates allocating funds for each priority area as follows:

ORES-98-001, "Issues Pertaining to Major Changes in the Structure of Social Security"—up to \$400,000 to fund either the 12-month budget period or the initial 12-month budget period (depending on whether a grant is for 1 or 2 years) of one or more projects in this priority area.

ORES-98-002, "Retirement Age Changes"—up to \$400,000 to fund the 12-month budget period for one or more projects in this priority area.

ORES-98-003, "Social Security/Private Pension Integration"—up to \$100,000 to fund the 12-month budget period for a project in this priority area.

ORES-98-004, "Poverty Among Older Women Cross-Nationally"—up to \$100,000 to fund the 12-month budget period for a project in this priority area.

ORES-98-005, "Economic and Demographic Assumptions Recommended for Study by Past Advisory Councils"—up to \$200,000 to fund the initial 12-month budget period of one or more projects in this priority area.

C. Grantee Share of the Project Costs

Grant recipients receiving assistance to conduct these research projects are expected to contribute a minimum of 5 percent towards the total cost of the project (cash or in-kind). No grant will be awarded that covers 100 percent of the project's costs.

D. The Application Process for Proposals Requesting Grant Funds

Organizations wishing to compete for grants under this announcement must submit an application by July 14, 1998. Applications received in response to this announcement will be reviewed by Federal and non-Federal personnel.

Successful applicants may expect funding during the fourth quarter of FY 1998 (prior to September 30, 1998).

1. Availability of Application Forms

Application kits which contain the prescribed application forms for grant funds are available from the Grants Management Team; Office of Operations Contracts and Grants; Office of Acquisition and Grants; Social Security Administration; 1-E-4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland 21207-5279; Mr. E. Joe Smith, Grants Management Officer; telephone (410) 965-9503 (e-mail address: joe.smith@ssa.gov) or Mr. David S. Allshouse, telephone (410) 965-9262 (e-mail address: dave.allshouse@ssa.gov).

When requesting an application kit, the applicant should refer to program announcement number SSA-ORES-98-2 and the date of this announcement to ensure receipt of the proper application kit.

2. Additional Information

For additional information concerning project development, please contact Ms. Eleanor Cooper, Coordinator for Extramural Research; Office of Research, Evaluation and Statistics; Social Security Administration; 4-C-15 Operations; 6401 Security Boulevard, Baltimore, Maryland 21235; telephone (410) 966-9824. Ms. Cooper's e-mail address is: eleanor.l.cooper@ssa.gov.

3. Application Submission

All applications requesting Federal grant funds must be submitted on the standard forms provided by the Grants Management Team. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the grant award.

As part of the project title (page 1 of the application form SSA-96-BK, item 11), the applicant must clearly indicate that the application submitted is in response to this announcement (SSA-ORES-98-2) and must show the appropriate priority area project identifier (i.e., ORES-98-001, -002, -003, -004, or -005).

Applications must be submitted to the Grants Management Team at the address specified in number 7, below.

4. Application Consideration

Applications are initially screened for relevance to this announcement. If judged irrelevant, the applications are returned to the applicants.

Applications that conform to the requirements of this program announcement will be reviewed and evaluated against the evaluation criteria specified in this announcement and evaluated by Federal and non-Federal personnel. The results of this evaluation will assist SSA in selecting the applications to be funded.

5. Application Approval

Grant awards will be issued within the limits of Federal funds available following the approval of the applications selected for funding. The official award document is the "Notice of Grant Award." It will provide the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is contemplated, the amount of grantee financial participation, and any special terms and conditions of the grant award.

6. Screening Requirements

In order for an application to be in conformance, it must meet *all* of the following requirements:

(a) *Number of Copies:* An original signed and dated application plus at least two copies must be submitted. Five additional copies are optional and will expedite processing of the grant application.

(b) *Length:* The narrative portion of the application (Part III of form SSA-96-BK) must not exceed 20 single or 40 double-spaced pages, exclusive of resumes, forms, etc., typewritten on one side only using standard size (8 1/2" x 11") paper. Applications should neither be unduly elaborative nor contain voluminous documentation.

7. Closing Date for Receipt of Applications

The closing date for receipt of grant applications for Federal funds in response to this announcement is July 14, 1998.

Applications may be mailed or sent by commercial carrier or personally delivered to: Grants Management Team; Office of Operations Contracts and Grants; Office of Acquisition and Grants; Social Security Administration; ATTN: SSA-ORES-98-2; 1-E-4 Gwynn Oak Building; 1710 Gwynn Oak

Avenue; Baltimore, Maryland 21207-5279.

Hand-delivered applications are accepted during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

- Received on or before the deadline date at the above address; or
- Mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above criteria are considered late applications. SSA will notify each late applicant that its application will not be considered.

Note: Facsimile Copies Will Not Be Accepted.

Notice Procedures

Paperwork Reduction Act

This notice contains reporting requirements in the "Application Process" section. However, the information is collected using form SSA-96-BK, *Federal Assistance*, which has Office of Management and Budget clearance No. 0960-0184.

Executive Orders 12372 and 12416—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372, as amended by Executive Order 12416, relating to Federal agencies providing opportunities for consultation with State and local elected officials on proposed Federal financial assistance or direct Federal development.

(Catalog of Federal Domestic Assistance: Program No. 96.007, Social Security-Research and Demonstration)

Dated: May 7, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 98-12962 Filed 5-14-98; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF STATE

[Public Notice #2815]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold

its Annual Meeting on Thursday, June 18, 1998, at 9:30 a.m. in Conference Room 6320, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for each attendee. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, SA-29, Room 245, Washington, DC 20522-2902, telephone 703-875-7800, prior to June 7, 1998. Visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting. All attendees must use the C Street entrance to the building.

Dated: May 6, 1998.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 98-12945 Filed 5-14-98; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF STATE

[Public Notice No. 2817]

Secretary of State's Advisory Committee on Private International Law (ACPIL) International Project Finance: Request for Public Comments

The United Nations Commission on International Trade Law (UNCITRAL) is in the process of preparing a "Legislative Guide" for countries to use as a basis for legislation or otherwise, so as to provide enabling authority for infrastructure projects to be privately financed in whole or in part, and to allow private sector development and operation, often for a fixed period of years. Legislation in this field often

seeks to accommodate foreign as well as domestic interests, providing a balance of interests compatible with foreign source capital and management as well as national needs for infrastructure and services delivery. UNCITRAL will consider, at its upcoming Plenary session in June at the United Nations in New York, a draft of six of the approximately twelve chapters currently planned for the Legislative Guide.

The proposed Legislative Guide will include evolving methods by which private and public financing and private sector development and management are employed for long-term infrastructure projects, including build-and-operate (BOT and BOO) and other models. Legislative options to facilitate project design, development and operation, as well as project country regulation and off-shore payment facilities will be considered for inclusion in the Guide.

The Guide will seek to take into account current developments in legal issues involved in overseas project finance, including those at the world Bank, the Inter-American Development Bank, and other international financial institutions, as well as domestic systems. New methods of obtaining longer-term assurances not dependent on recourse to governmental agencies will be considered, including, for example, long-term receivables financing and special purpose corporations. These mechanisms will need to be balanced with appropriate methods for project countries to ensure delivery of services, utilities, construction, etc. It is tentatively proposed that the Guide be organized into sections on general legislative provisions; sector structure and regulation; concessionaire selection; project agreement terms and conclusion; government support; construction phase; operational phase; delays, defects and failures to perform; duration, extension or early termination; governing laws; and settlement of disputes. Additional sections may be added or the present structure modified after review. Initial drafts of the first six chapters are now available for comment.

Comments on these drafts are solicited from any member of the public or any association or other entity that would like the opportunity to do so. Copies of the UNCITRAL draft documents will be provided without charge upon request to the office indicated below. While preliminary comments are welcome prior to June 1, a summary of recommendations made by various participating countries at the Plenary session will be available from the office indicated below after June 20,

1998 upon request, and comments made after that date should take those recommendations into account.

Please contact the Office of the Assistant Legal Adviser for Private International Law (L/PIL) for copies of the relevant UNCITRAL documents at 2430 "E" Street, N.W., Suite 357 South Building, Washington, D.C. 20037-2800, or by fax to (202) 776-8482, or e-mail at pildb@his.com, attention Jeffrey D. Kovar. Documents can be provided by e-mail if requested. For additional information please call (202) 776-8420. Any member of the public who wishes to receive notice of any meetings of the Advisory Committee on this topic should so indicate; meetings of the Advisory Committee are open to the public.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 98-12938 Filed 5-14-98; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF STATE

[Public Notice #2818]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea and Associated Bodies Working Group on Stability and Load Lines and on Fishing Vessels Safety; Notice of Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9 a.m. on Monday, June 15, 1998, in room 6103, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001. This meeting will discuss the upcoming 42nd Session of the Subcommittee on stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on February 8-12, 1999, at the IMO Headquarters in London, England.

Items of discussion will include the following:

- Review of results from SLF 41,
- Harmonization of damage stability provisions in the IMO instruments,
- Safety aspects of ships engaged in a ballast water exchange,
- Revision of the High Speed Craft Code,
- Development of the damage consequence diagrams for inclusion in damage control plan guidelines, and
- Upcoming requirements and future actions with respect to Bulk Carrier

Safety—results of SOLAS Conference and MSC 69.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G-MSE-2), Room 1308, 2100 Second Street, SW, Washington, DC 20593-0001 or by calling (202) 267-2988.

Dated: May 11, 1998.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 98-12946 Filed 5-14-98; 8:45 am]

BILLING CODE 4710-24-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Negotiation of Sectoral Market Opening Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of negotiation of sectoral market opening agreements, and of goods and services that might be affected by such negotiations.

SUMMARY: The United States is participating in discussions with member economies of the Asia Pacific Economic Cooperation (APEC) forum and negotiations with Members of the World Trade Organization (WTO) to enhance market opening in fifteen sectors, including possible elimination, modification or continuance of U.S. tariffs and non-tariff measures, opening of certain service sectors; and certain other sectoral and structural issues. Public comment is being sought on issues associated with these discussions and negotiations.

FOR FURTHER INFORMATION CONTACT: Jane C. Earley, Director, APEC Affairs, Office of Asia Pacific and APEC, USTR (202-395-6813).

SUPPLEMENTARY INFORMATION: In their 1996 Subic Bay Declaration, APEC Leaders directed trade ministers to identify sectors where "early voluntary liberalization would have a positive impact on trade, investment and economic growth in the individual APEC economies as well as the region." In May 1997, APEC trade ministers affirmed that APEC should continue to act as a catalyst to promote the global opening of markets, as it had with the Information Technology Agreement. They therefore directed officials to conduct an intensive process for selecting such sectors, for review and final action by the time of the APEC

ministers and leaders meetings in November 1977. In selecting such sectors, ministers instructed officials to have regard for three factors: the possibility of encompassing both tariff and non-tariff issues, as well as elements of facilitation and economic and technical cooperation; ensuring the fullest possible private sector input and support; and consideration of "critical mass" by developing initiatives supported by significant groups of APEC members, and where appropriate for incorporation in the WTO.

In November 1997, APEC ministers received information on over 40 potential sectors that had been proposed and reviewed by officials. From this list, ministers recommended 15 sectors to APEC leaders for a program of early liberalization. The proposals for liberalization in these sectors are described in detail in the Annex to this notice.

Of the 15 selected sectors, ministers identified nine for early action in 1998: Environmental goods and services, chemicals, energy, medical equipment, forest products, fish and fish products, toys, gems and jewelry, and conclusion of a mutual recognition agreement on telecommunications. In these nine sectors, it was agreed that detailed proposals defining parameters, such as scope of product coverage, phasing of liberalization, and measures covered (i.e., tariffs and/or other measures) would be completed by the date of the APEC trade ministerial meeting in June 1998, with a view toward beginning implementation, in the WTO context where appropriate, in 1999. In addition, ministers directed that work to develop proposals proceed in six additional sectors: oilseeds and oilseed products, food, automotive, civil aircraft, fertilizer, and natural and synthetic rubber. In these sectors, officials were directed to further develop proposals for review and assessment by ministers at the June trade ministers meeting, for possible recommendation to leaders in November 1998.

In accordance with this guidance, APEC officials will work intensively in 1998 to complete plans for early liberalization in the identified sectors. APEC officials meetings are currently scheduled for June, September and November 1998 in Malaysia.

Advice From the U.S. International Trade Commission

On March 18, 1998, the United States Trade Representative (USTR) requested, pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), that the U.S., International Trade Commission (USITC) provide advice concerning

trade liberalization among APEC countries in the nine sectors listed above. On March 25, the USITC initiated an investigation, Inv. No. 332-392, pursuant to section 332(g) of the Tariff Act of 1930 and published a notice requesting public comment and providing notice of a public hearing in connection with the investigation. (63 FR 15861, April 1, 1998). The notice included a list of harmonized tariff system (HTS) numbers that comprise goods under consideration in the nine sectors. The USITC's report will include (1) profiles of the industry sectors (including a description of U.S. and foreign sectors and their competitive positions); (2) an assessment of patterns of U.S. sector imports and exports to APEC trading partners and other trading partners; (3) summaries of U.S. and foreign tariff rates and reported non-tariff barriers affecting the sectors; and (4) information about increased market access opportunities resulting from liberalization. The USITC plans to transmit its report to USTR by June 16, 1998.

Public Comments

In conformity with the regulations of the Trade Policy Staff Committee ("TPSC") (15 CFR Part 2003), the Chairman of the TPSC invites written comments from interested persons on the desirability, the scope, and the economic effects of these proposals for sectoral liberalization. Comments in particular are invited on: (a) Economic costs and benefits to U.S. producers and consumers of the removal of tariff barriers to trade between and among APEC economies in the above-listed product and service sectors; (b) economic effects and benefits to U.S. producers and consumers of removal of non-tariff barriers to trade between and among APEC economies, and of other aspects of the above-described proposals, including their provisions for economic and technical cooperation; (c) existing barriers to trade in services between and among APEC economies, and economic costs and benefits to removing such barriers; and (d) any other measures of practice within these sectors among APEC economies that should be addressed in sectoral market opening negotiations. In addition, comments are invited on other aspects of these sectoral market opening initiatives, including the possible labor and environmental effects.

Interested persons may submit written comments, in five (5) typed copies or less, no later than noon, June 15, 1998, to Gloria Blue, Executive Secretary, TPSC, Office of the U.S. Trade Representative, Room 503, 600 17th

Street, N.W., Washington, D.C. 20508. Comments should state clearly the position taken and should describe with particularity the information supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a non-confidential summary thereof.

Non-confidential submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 Seventeenth Street, N.W., Washington, D.C. An appointment to review the file may be made by calling Brenda Webb at 202-395-6186. The Reading Room is open to the public by appointment only from 9:30 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.

Annex—Description of Sectoral Market Opening Initiatives

Environmental Goods and Services: Elimination of tariffs on environmental goods and liberalization of trade in environmental Services based on the General Agreement on Trade in Services, to be agreed by consensus by June 1998, and to be bound in the WTO. Implementation of commitments would begin six months after the date on which the agreement is concluded. A proposal for addressing non-tariff measures in APEC economies that impede trade will be included. On economic and technical cooperation, economies are encouraged to develop proposals for projects such as seminars to achieve the objective of liberalizing trade.

Medical Equipment. Tariffs would be eliminated in a short period, e.g., 3 years. Proposed schedule and method of implementation would be based on the approach of the Information Technology Agreement. Specific non-tariff measures would be identified and addressed. Economies would be prepared to explore a program of technical assistance in cooperation with the private sector.

Forest Products. Includes pulp and paper products (HS Chapters 47 and 48), wood products (HS Chapter 44), printed materials (HS Chapter 49); wood furniture and pre-fabricated housing (parts of HS Chapter 94), certain vegetable and rattan mats and baskets (parts of HS Chapter 46), and certain rosin products (parts of HS Chapter 38). The proposal has four components: elimination of tariffs on these products in the 2000-2004 timeframe; a study of

non-tariff barriers and other trade distorting policies which may impeded market access in these products; development and adoption of performance-based building standards; and, development of economic and technical assistance measures designed to enable members to develop their industries and to achieve early trade liberalization in these industries.

Fish and Fish Products. The objective of the proposal would be to eliminate tariffs no later than December 31, 2005. Tariffs currently applied at 20% or less would be phased out more quickly. There would also be flexibility for economies to phase out tariffs over a longer period on a limited number of products. Officials would be directed to present a plan for eliminating non-tariff measures for approval at the APEC's November 1998 Trade Ministerial meeting, with the objective of eliminating non-tariff measures no later than December 31, 2007. APEC economies would recommit to elimination of World Trade Organization (WTO)-inconsistent subsidies and sanitary and phytosanitary measures, of which there would also be studies, and commit to some of many suggested ecotech proposal. An annual report to Ministers would also be done within APEC on fisheries management cooperation in the Pacific Ocean, and adjacent regions.

Toys. The proposal is for progressive reduction of tariffs on targeted, toys, beginning from 1998 and completed by a date to be determined by participating economies (2000, and no later than 2005). It would comment to identification of existing technical, regulatory, and other unnecessary non-tariff measures by the end of 1998 and to consultation on actions and a scheduled for elimination of NOMS by the end of 1999. Progressive elimination of all identified non-tariff measures would be determined, preferably by 2000 and no later than 2005.

Gems and Jewelry. This proposal would reduce tariffs to 0-5% by 2005 on products in HTS Chapter 71m, which includes pearls, diamonds, precious stones, silver, gold, platinum, "fine" jewelry, silverware made of silver and silver plate, gold articles, imitation jewelry, and commemorative coins. The proposal would also address non-tariff measures in the same time period and include economic and technical cooperation on education and training.

Mutual Recognition Agreement for Telecommunications services. Proposes that interested APEC economies work to implement an Agreement for Mutual Recognition of Test Results and Certifications, and to complete work on

a Mutual Recognition Agreement and Phase Agreements by June 1998.

Chemicals. This is a proposal for tariff liberalization, starting with a commitment to bring tariffs into conformity with rates established in the Uruguay Round Chemical Tariff Harmonization Agreement (CTHA) in two tranches: starting from applied rates, by 2001 for tariffs up to and including 10%, and by 2004 for tariffs over 10%, and to bring these rates in the WTO. Requests for longer staging would be considered for sensitive products. Once a critical mass has committed to the CTHA, further tariff liberalization would be undertaken starting with subsectors (e.g., fertilizer, cosmetics) where there is interest in moving ahead on an expedited basis. This process would lead to the eventual elimination of all chemical tariffs. Participants would initiate a work program on non-tariff measures. They would also compile a list of customs and regulatory barriers faced by chemical exporters to give to APEC's Committee on Customs Procedures for simplifying and harmonizing customs procedures and facilitating trade. The proposal would also task APEC's Investment Experts Group to undertake a review of investment policy and practices with respect to the chemical industry, which would be used to derive a list of liberalization options that could be selected either for individual action plans, or for collective action. It would additionally encourage economies to participate in international work already ongoing on chemical standards and testing. In cooperation with the private sector, it would develop a program of economic and technical assistance, including but not limited to workshops, seminars, and training activities.

Energy. This proposal includes certain primary energy commodities, electricity, energy products, technologies, services, and equipment. It would progressively remove tariffs on coal and gas and energy-related equipment by 2005, and identify and address existing technical, regulatory, and other non-tariff barriers, including standards and certification. It would establish a work program to identify and remove barriers to trade in services, to commence March 1998. Additionally it would review work of the APEC's Group of Experts on Government Procurement (GPEG) on principles of transparency in government procurement and work with GPEG in any areas where the generic elements and principles of transparency need to be developed to ensure full transparency in this sector. Finally, it would extend the investment facilitation work of APEC's Energy

Working Group and develop a linked database on mining and energy-related investment opportunities, and reduce costs through cooperation on energy standards between 1998 and 2000.

Autos. This proposal calls for a four part work program aimed at establishing a more integrated and competitive auto industry in the region: (1) Standards harmonization, including obtaining APEC endorsement of the "global agreement" on automotive standards; (2) identification of customs issues and barriers, and development of steps to address them; (3) development of an economic and technical cooperation program; and (4) establishment of a regional dialogue of automotive issues, which would discuss trade and investment policy issues, and develop means of addressing them. Industry would participate in parts of the dialogue.

Food. The proposal calls for tariff reductions on a number of 4-digit H.T.S. categories in three food subsectors (fresh fruits and vegetables, processed foods and beverages) and other trade facilitation and ecotech activities, as well as market research studies. The proposal calls for tariff reductions on more than 50 H.T.S. 4-digit categories in three food subsectors: (1) fresh fruits and vegetables; (2) processed foods; and (3) beverages. The initiative proposes a reduction in tariff and other non-tariff measures from 1999 to 2004 to bring applied tariffs to 5% or less by 2004 with the aim of eliminating all tariffs in these subsectors by 2010/2020. An annex contains some additional H.T.S. categories of food products for possible future consideration.

Oilseeds and Oilseed Products. During the Uruguay Round, the United States proposed a "level playing field" initiative on oilseeds and oilseed products. The APEC proposal, which is jointly sponsored by the United States, Canada and Malaysia, exactly tracks this Uruguay Round initiative. The proposal covers basic oilseeds in H.S. 1201, 1203-1207 (e.g., soybeans, rapeseed, sunflowerseed, cottonseed), meals and vegetable oils derived from those rapeseed oil, safflower oil) and soy protein concentrates and isolates. There would be no exceptions on product coverage. The proposal calls for elimination of tariffs, non-tariff measures, export subsidies and other trade-distorting policies on all products by 2002, allowing for limited flexibility for extended staging on a product-by-product, economy-by-economy basis that would be agreed to by consensus of participants.

Rubber. The proposal would establish details for gradual reductions and/or

elimination of tariff and non-tariff measures. It would also call for economic and technical cooperation to cooperate in the development of domestic industries in rubber-producing economies through the transfer of production and manufacturing technology in order to reduce the risk of price fluctuations.

Civil Aircraft. All tariffs would be eliminated in two equal cuts on January 1, 1999 and January 1, 2000 and bound in WTO Schedules at zero. Commitments by non-WTO members could be made on an autonomous basis until WTO accession is complete. There would also be commitments by APEC economies to eliminate all customs duties and other charges of any kind levied on civil aircraft and related products and services (e.g., manufacture, repair, maintenance, etc.).

Fertilizer. This is a proposal to eliminate tariffs by 2002 and bind them in the WTO. It would also call for, by January 1, 2000, collective implementation of national transportation regulations governing the shipment of sulfur and fertilizers in accordance with the International Maritime Dangerous Goods Code, and encourage the development of technical assistance projects that would facilitate trade liberalization in this sector.

[FR Doc. 98-12908 Filed 5-14-98; 8:45 am]
BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-3811]

Notice of Receipt of Petition for Decision That Nonconforming 1990-1993 Bentley Continental R Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990-1993 Bentley Continental R passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990-1993 Bentley Continental R passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and

sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 15, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90-009) has petitioned NHTSA to decide whether 1990-1993 Bentley Continental R passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1990-1993 Bentley Continental R passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1990-1993 Bentley Continental R passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1990-1993 Bentley Continental R passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1990-1993 Bentley Continental R passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side

rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag and knee bolster with U.S.-model components. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on non-U.S. certified 1990-1993 Bentley Continental R passenger cars must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 11, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98-13012 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-3809]

Notice of Receipt of Petition for Decision That Nonconforming 1997-1998 Mercedes-Benz SLK Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1997-1998 Mercedes-Benz SLK passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1997-1998 Mercedes-Benz SLK passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 15, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all

applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90-009) has petitioned NHTSA to decide whether 1997-1998 Mercedes-Benz SLK passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1997-1998 Mercedes-Benz SLK passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler-Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1997-1998 Mercedes-Benz SLK passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1997-1998 Mercedes-Benz SLK passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1997-1998 Mercedes-Benz SLK passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards

Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1997-1998 Mercedes-Benz SLK passenger cars comply with the Bumper Standard found in 49 CFR Part 581 and with the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and

buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 11, 1998.

Marilynne Jacobs,
Director, Office of Vehicle Safety Compliance.
[FR Doc. 98-13013 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-58-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-3810]

Notice of Receipt of Petition for Decision That Nonconforming 1998 Mercedes-Benz Gelaendewagen, Type 463, Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for decision that nonconforming 1998 Mercedes-Benz Gelaendewagen Type 463 multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a decision that a 1998 Mercedes-Benz Gelaendewagen Type 463 MPV that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it has safety features that comply with, or are capable of being altered to comply with, all such standards.

DATE: The closing date for comments on the petition is June 15, 1998.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B)

permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Europa International, Inc. of Santa Fe, New Mexico (Registered Importer No. R-91-002) has petitioned NHTSA to decide whether 1998 Mercedes-Benz Gelaendewagen Type 463 MPVs are eligible for importation into the United States. Europa contends that this vehicle is eligible for importation under 49 U.S.C. § 30141(a)(1)(B) because it has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the 1998 Mercedes-Benz Gelaendewagen Type 463 MPV has safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems* (based on visual inspection), 104 *Windshield Wiping and Washing Systems* (based on operation), 106 *Brake Hoses* (based on visual inspection of certification markings), 113 *Hood Latch Systems* (based on information in owner's manual describing operation of secondary latch mechanism), 116 *Brake Fluids* (based on visual inspection of certification markings and information in owner's manual describing fluids installed at factory), 119 *New Pneumatic Tires for Vehicles other than Passenger Cars* (based on visual inspection of certification markings), 124 *Accelerator Control Systems* (based on operation and comparison to U.S.-certified vehicles), 201 *Occupant Protection in Interior Impact* (based on test data and certification of vehicle to European standard), 202 *Head Restraints* (based on Standard No. 208 test data for prior model year vehicle with same head restraint and certification of vehicle to

European standard), 204 *Steering Control Rearward Displacement* (based on test film for prior model year vehicle), 205 *Glazing Materials* (based on visual inspection of certification markings), 207 *Seating Systems*, (based on test results and certification of vehicle to European standard), 209 *Seat Belt Assemblies* (based on wiring diagram of seat belt warning system and visual inspection of certification markings), 211 *Wheel Nuts, Wheel Discs and Hubcaps* (based on visual inspection), 214 *Side Impact Protection* (based on test results for prior model year vehicle), and 219 *Windshield Zone Intrusion* (based on test results and certification information for prior model year vehicle).

The petitioner also contends that the 1998 Mercedes-Benz Gelaendewagen Type 463 MPV is capable of being altered to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a speedometer/odometer calibrated in miles per hour.

Standard No. 105 *Hydraulic Brake Systems*: (a) installation of a warning label on the brake fluid reservoir cap; (b) installation of a brake warning indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model sealed beam headlamps; (b) installation of U.S.-model side marker lamps and reflectors; (c) installation of a high-mounted stop lamp. The petitioner asserts that testing performed on the taillamp reveals that it complies with the standard, even though it lacks a DOT certification marking, and that all other lights are DOT certified.

Standard No. 111 *Rearview Mirrors*: inscription of the required warning statement on the convex surface of the passenger side rearview mirror.

Standard No. 114 *Theft Protection*: installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 118 *Power-Operated Window Systems*: rewiring of the power window system so that the window transport is inoperative when the front doors are open.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: installation of a tire information placard. The petitioner asserts that even though the tire rims lack a DOT certification marking, they comply with the standard, based on their manufacturer's certification that they comply with the German TUV regulations, as well as their certification

by the British Standards Association and the Rim Association of Australia.

Standard No. 206 *Door Locks and Door Retention Components*: installation of interior locking buttons on all door locks and modification of rear door locks to disable latch release controls when locking mechanism is engaged.

Standard No. 208 *Occupant Crash Protection*: (a) installation of complying driver's and passenger's side air bag systems; (b) installation of a seat belt warning system; (c) placement of an air bag warning label on the visors of vehicles manufactured after November 1996. The petitioner states that the vehicle will meet frontal impact test requirements with structural modifications described in a submission that has been granted confidentiality by NHTSA's Office of Chief Counsel under 49 CFR Part 512.

Standard No. 210 *Seat Belt Assembly Anchorages*: insertion of instructions on the installation and use of child restraints in the owner's manual for the vehicle. The petitioner certifies that the vehicle complies with this standard on the basis of tests performed to the standard's requirements by an independent testing and engineering laboratory.

Standard No. 212 *Windshield Retention*: application of cement to the windshield's edges.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve. The petitioner further claims to have verified that the gas tank on a prior model year vehicle was completely protected within large frame members.

Standard No. 302 *Flammability of Interior Materials*: treatment of fabric seating surfaces with a flame-proof spray. The petitioner additionally states that a vehicle identification number (VIN) plate must be attached to the vehicle's dash so that it is visible to an observer at the driver's side "A" pillar, as required by 49 CFR Part 565. The petitioner also states that a vehicle rollover warning statement must be inserted in the owner's manual and on a sticker affixed to the driver's side visor of short wheelbase Gelaendewagens, as required by 49 CFR 575.105.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the

docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action will be published in the *Federal Register* pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on May 11, 1998.

Marilynne Jacobs,
Director, Office of Vehicle Safety Compliance.
[FR Doc. 98-13014 Filed 5-14-98; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33589]

Gulf & Ohio Railways Holding Co., Inc.—Continuance in Control Exemption—Knoxville & Holston River Railroad Co., Inc.

Gulf & Ohio Railways Holding Co., Inc. has filed a notice of exemption to continue in control of the Knoxville & Holston River Railroad Co., Inc. (KHRR), upon KHRR's becoming a Class III railroad.

The transaction is/was scheduled to be consummated on or after May 7, 1998.

This transaction is related to STB Finance Docket No. 33588, *Knoxville & Holston River Railroad Co., Inc.—Acquisition and Operation Exemption—Norfolk Southern Railway Company*, wherein KHRR seeks to acquire and operate 2 lines of track and incidental overhead trackage rights from the Norfolk Southern Railway Company.

Applicant controls eight existing Class III railroads: Albany Bridge Company, operating in the State of Georgia; Georgia & Florida Railroad Co., Inc., operating in the States of Georgia and Florida; Gulf & Ohio Railways, Inc.,¹ operating in the State of Mississippi and Georgia; Lexington & Ohio Railroad Co., Inc., operating in the State of Kentucky; Live Oak, Perry & Georgia Railroad Company, Inc., operating in the States of Georgia and Florida; Piedmont & Atlantic Railroad, Inc., operating in the State of North Carolina; Rocky Mount & Western Railroad Co., Inc., operating in the State of North Carolina; and Wiregrass Central

¹ Gulf & Ohio Railways, Inc., operates in the State of Mississippi under the trade name of Mississippi Delta Railroad and in the State of Georgia under the trade name of Atlantic & Gulf Railroad.

Railroad Company, Inc., operating in the State of Alabama.

Applicant states that: (i) the rail lines to be operated by KHRR do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect KHRR's lines with any railroad in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33589, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Jo A. DeRoche, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005-4797.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 6, 1998.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98-12694 Filed 5-13-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33588]

Knoxville & Holston River Railroad Co., Inc.—Acquisition and Operation Exemption—Norfolk Southern Railway Company

Knoxville & Holston River Railroad Co., Inc. (KHRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Norfolk Southern Railway Company (NS) and operate 2 lines of track in the State of Tennessee as follows: (1) the North Belt/River Extension, extending from milepost 67.1CG (former) = 0.4RFE, in Knoxville, to the end of the line in Marbledale, a distance of approximately 15.18 miles; and (2) the K&A Belt (formerly the South Knoxville Spur), extending from milepost 0.1, in Knoxville, to the end of the line, also in Knoxville, a distance of approximately 3.8 miles. In addition, KHRR will also acquire incidental overhead trackage rights on 4 segments of NS's trackage in Knoxville as follows: (1) from milepost 0.0C to milepost 3.0C; (2) from milepost 130.0A to milepost 132.4A; (3) from milepost 0.0KA to milepost 1.1KA; and (4) approximately 0.1-mile between NS's K&A Line and its K&A Belt.

The transaction is scheduled to be consummated on or after May 7, 1998.

This transaction is related to STB Finance Docket No. 33589, *Gulf & Ohio Railways Holding Co., Inc.—Continuance in Control Exemption—Knoxville & Holston River Railroad Co., Inc.*, wherein Gulf & Ohio Railways Holding Co., Inc. has concurrently filed a verified notice to continue in control of KHRR upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33588, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Jo A. DeRoche, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005-4797.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 6, 1998.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98-12695 Filed 5-14-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33592]

Providence and Worcester Railroad Company—Corporate Family Transaction Exemption—Connecticut Central Railroad Company

Providence and Worcester Railroad Company (P&W) and Connecticut Central Railroad Company (CCCL),¹ Class III railroads, have jointly filed a verified notice of exemption. The exempt transaction is a merger of CCCL into P&W.

The earliest the transaction can be consummated is May 12, 1998, the effective date of the exemption (7 days after the notice of exemption was filed).

The proposed merger is intended to provide more efficient service to shippers. Moreover, because of P&W's multiple connections to other carriers, it can provide customers on CCCL's lines with price and source competition not previously enjoyed by them.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

¹ CCCL is a wholly owned subsidiary of P&W. CCCL operates in the State of Connecticut, and P&W operates in the States of Connecticut, Massachusetts, Rhode Island and New York.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33592, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Heidi J. Eddins, Esq., Providence and Worcester Railroad Company, 75 Hammond Street, Worcester, MA 01610.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 8, 1998.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98-12819 Filed 5-14-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-103 (Sub-No. 13X)]

The Kansas City Southern Railway Company—Abandonment Exemption—in Webster Parish, LA

The Kansas City Southern Railway Company (KCS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.70-mile line of its railroad between milepost 46.78 at the Arkansas-Louisiana State Line and milepost 48.48 approximately 200 feet south of Vine Street in Springhill, Webster Parish, LA. The line traverses United States Postal Service Zip Code 71075.

KCS has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12

(newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 14, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 26, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 4, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Thomas F. McFarland, Jr., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606-2902.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

KCS has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 20, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), KCS shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by KCS's filing of a notice of consummation by May 15, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: May 6, 1998.

By the Board, David M. Konschnick,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 98-12693 Filed 5-14-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

(Treasury Directive Number 13-20)

Delegation of Responsibilities Relating to the Transfer of the District of Columbia Pension Systems

May 7, 1998.

1. Purpose

Pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997 (the "Act"), certain responsibilities with respect to the pension systems for District of Columbia police officers and firefighters, teachers, and judges are being transferred to the Secretary of the Treasury. The purpose of this Directive is to define administrative functions which are within the scope of duties of the Treasury project manager for the transfer of the District of Columbia pension systems ("DC Pensions Project Manager") and to delegate the authority necessary to carry out these functions to the DC Pensions Project Manager.

2. Delegation

a. The DC Pensions Project Manager is delegated the authority to: (1) Request transfers from the District Retirement Fund pursuant to the Act to cover administrative expenses; (2) serve as the program official to execute reimbursable agreements with Treasury bureaus and other government agencies for providing services, including detailing staff to the project; (3) approve requisitions for procuring goods and services; (4) approve personnel actions; (5) coordinate with the Bureau of Public Debt on operational issues related to the District of Columbia Pension Trust Funds. The DC Pensions Project Manager shall exercise these authorities

only after appropriate consultation with the Assistant Secretary (Financial Markets).

b. This delegation will expedite the performance of the administrative functions necessary to fulfill Treasury's responsibilities under the Act for the DC pension programs. Accordingly, the delegation of authority to perform the listed functions shall be interpreted as broadly as necessary to enable the DC Pensions Project Manager to carry out administrative duties associated with the District of Columbia pension project without impediment.

c. Functions which require the obligation of funds or certification that funds are available shall be coordinated in the usual manner with the Financial Management Division, Departmental Offices.

3. Redelegation

The authority delegated herein to the DC Pensions Project Manager may not be redelegated. However, this authority shall transfer, as appropriate, to any official who subsequently may assume the responsibilities of DC Pensions Project Manager.

4. Authorities

a. TO 101-05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. The National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105-33 (111 Stat. 251, 712).

5. Reference

Memorandum to Under Secretary (Domestic Finance) from Assistant Secretary for Management and Chief Financial Officer dated October 22, 1997.

6. Expiration

This Directive shall expire three years after the date of issuance unless superseded or cancelled prior to that date.

7. Office of Primary Interest

Office of the Assistant Secretary (Financial Markets).

Gary Gensler,

Assistant Secretary (Financial Markets).

[FR Doc. 98-12913 Filed 5-14-98; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of extension of application deadline.

SUMMARY: The Community Development Financial Institutions Fund (hereafter referred to as the "Fund") published a notice of funds availability ("NOFA") for the Community Development Financial Institutions ("CDFI") Program technical assistance ("TA") component (63 FR 13729) and is extending the application deadline for the CDFI Program TA component from May 29, 1998 to June 11, 1998.

DATES: The application deadline for the CDFI Program TA component is extended from May 29, 1998 to June 11, 1998. The deadline for receipt of an application is 6 p.m. EDT on June 11, 1998. Applications received in the offices of the Fund after that date and time will not be accepted and will be returned to the sender. Applications sent electronically or by facsimile will not be accepted.

ADDRESSES: Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Technical Assistance Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, (202) 622-8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On March 20, 1998, the Fund published a NOFA for the CDFI Program TA component (63 FR 13729) and a separate NOFA for the CDFI Program core component (63 FR 13728). The CDFI Program TA component NOFA announced the availability of \$5 million for program awards and specified an application deadline of May 29, 1998. The CDFI Program core component NOFA announced the availability of \$40 million for program awards and specified an application deadline of June 12, 1998.

This Notice extends the application deadline for the CDFI Program TA component from May 29, 1998 to June 11, 1998. However, the application deadline for the CDFI core component remains June 12, 1998. All applications

must be received in the offices of the Fund by 6 p.m. EDT on the respective application due dates.

The Fund is extending the application deadline for the CDFI Program TA component for the following reason. The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) mandates that the Fund conduct a pre-application outreach program to identify and provide information to potential applicants. The Fund conducted pre-application outreach sessions in 12 cities (Atlanta, Boston, Chicago, Cleveland, Dallas, Houston, Los Angeles, Minneapolis, New York, St. Louis, San Francisco, and Washington, DC) in the form of informational workshops about both the CDFI Program TA component and core component. The workshops took place between April 27, 1998 and May 11, 1998. Interested parties familiar with potential applicants to the CDFI Program TA component have advised the Fund that potential applicants need more time between attending the workshops and completing a CDFI Program TA

component application. To ensure that potential applicants attending the workshop sessions have sufficient time to complete their CDFI Program TA component applications, the Fund is extending the application deadline to ensure a minimum of four weeks application preparation time from the date of the last workshop session.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4718; 12 CFR part 1805.

Dated: May 12, 1998.

Ellen Lazar,

Director, Community Development Financial Institutions Fund.

[FR Doc. 98-13019 Filed 5-14-98; 8:45 am]

BILLING CODE 4810-70-P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Sunshine Act Meeting

The Board of Trustees of the Morris K. Udall Scholarship & Excellence in

National Environmental Policy Foundation will hold a meeting beginning at 9:00 a.m. on Thursday, June 18, 1998, at the office of Bracy Williams & Co., 601 13th Street NW, Ste. 900 South, Washington, D.C.

The matters to be considered will include (1) A report on the U. S., Institute of Environmental Conflict Resolution; and (2) A report from the Udall Center for Studies and Public Policy. The meeting is open to the public.

Contact Person for More Information: Christopher L. Helms, 803 East First Street, Tucson, AZ 85719. Telephone: (520) 670-5523.

Dated this 11th day of May, 1998.

Christopher L. Helms,

Director.

[FR Doc. 98-13082 Filed 5-13-98; 11:44 am]

BILLING CODE 6820-FN-M

federal register

Friday
May 15, 1998

Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 375 and 377
Transportation of Household Goods;
Consumer Protection Regulations;
Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 375 and 377

[Docket No. FHWA-97-2979]

RIN 2125-AE30

Transportation of Household Goods;
Consumer Protection RegulationsAGENCY: Federal Highway
Administration (FHWA), DOT.ACTION: Notice of proposed rulemaking
(NPRM); request for comments.

SUMMARY: The FHWA is proposing to amend the regulations governing the transportation of household goods. These regulations protect consumers who ship household goods by motor vehicle. This action is necessary to implement the ICC Termination Act of 1995 (ICCTA) and to update the regulations. This proposal would make the regulations easier to read and understand, require household goods carriers to file an annual arbitration report in place of the outdated annual performance report, address hostage freight problems, modify a consumer protection publication, and make conforming and technical amendments.

DATES: Comments to this NPRM should be received no later than July 14, 1998. Late comments will be considered to the extent practicable.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Vining, Chief, Licensing and Insurance Division (HIA-30), Office of Motor Carrier Information Analysis, (202) 358-7055, Mr. Michael Falk, Motor Carrier Law Division, Office of the Chief Counsel (HCC-20), (202) 366-1384, or Mr. David Miller, Office of Motor Carrier Research and Standards (HCS-10), (202) 366-1790, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

You may download an electronic copy of this document using a personal computer, modem, and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Federal Register's home page at URL: <http://www.nara.gov/nara/fedreg> and at the Government Printing Office's databases at URL: http://www.access.gpo.gov/su_docs.

Background

Many customers of household goods carriers, particularly those customers who move at their own expense and are infrequent users of transportation services, are unsophisticated and less able to protect themselves than commercial shippers. In order to ensure these consumers are protected, the Interstate Commerce Commission (ICC) prescribed regulations governing the transportation of household goods. These regulations were codified at 49 CFR Part 1056.

Following the termination of the ICC, the responsibility for the household goods regulations was delegated to the Secretary of Transportation pursuant to the ICCTA, Pub. L. 104-88, 109 Stat. 803, effective January 1, 1996. The Surface Transportation Board (STB) and the FHWA transferred these regulations from 49 CFR chapter X, Part 1056 to 49 CFR chapter III, Part 375 on October 21, 1996. See 61 FR 54706. On December 27, 1996 (61 FR 68162), the Secretary of Transportation delegated to the Federal Highway Administrator the responsibilities to carry out certain functions and exercise the authority vested in the Secretary under the ICCTA, including 49 U.S.C. 14104, Household goods carrier operations.

In a report to Congress dated October 24, 1994, the ICC reported it received over 8,000 complaints from household goods shippers between October 1, 1992, and August 25, 1994. Since January 1, 1996, the FHWA has also received a high volume of complaints from household goods shippers. The FHWA believes regulations designed to protect this large population of unsophisticated shippers continue to be necessary.

Enactment of the ICCTA requires deletion from the regulations of all

references to the former ICC and repealed sections of the Interstate Commerce Act, revision of the regulations to codify the transfer to the FHWA of oversight responsibilities for the household goods moving industry, and other editorial corrections. We are also redrafting all sections in a more reader-friendly style for clarity.

New Definition of Household Goods

Since the ICCTA changed the definition of "household goods" to eliminate office and trade show movements, it is no longer appropriate to include this kind of transportation within the scope of the household goods regulations. Therefore, we are making conforming changes to the definitions contained in 49 CFR 375.103.

Elimination of Former ICC Dispute
Resolution Functions

The House of Representatives' report accompanying the ICCTA specifically requested that DOT refrain from allocating scarce resources to resolve private disputes, but only to oversee the regulations. Congress modified the arbitration system to afford consumers a forum for resolving loss and damage claims arising from transportation of household goods and to replace the informal dispute resolution functions conducted by the ICC without a statutory requirement. Congress wants "private, commercial disputes to be resolved the way all other commercial disputes are resolved—by the parties." See H.R. Rep. No. 104-311, at 87-88 (1995). See also pages 117 and 121.

Your Rights and Responsibilities When
You Move

The FHWA is proposing to retain most of the former ICC's regulations, including the requirement for motor common carriers of household goods to copy or publish, and distribute a modified version of the ICC's consumer protection publication "Your Rights And Responsibilities When You Move." This modified publication would provide shippers of household goods the same type of common consumer protection information previously required by the ICC. Prior to contracting with an individual shipper, a motor common carrier of property transporting household goods would be required to provide the individual shipper with the booklet explaining the individual shipper's rights and responsibilities under Federal law. The rights and responsibilities booklet basically restates in plain, common English a household goods carrier's obligation to follow specifically 49 CFR Parts 375 and

377, and generally other regulations for all motor carriers.

The FHWA proposes to print the entire revised text of the "Your Rights and Responsibilities When You Move" booklet in appendix A to 49 CFR 375. Household goods carriers would furnish the text of appendix A to their customers. The large number of household goods carriers located throughout the country would ensure appendix A is readily available to any individual who contracts with a household goods carrier.

Discontinuance of Annual Performance
Reports

Under 49 CFR 375.18, household goods carriers were required to submit annual performance reports on Form OCE-101 containing 16 items regarding the number of shipments transported, the number and type of estimates provided, charges billed, timeliness of pickups and deliveries, and claims for loss and damage. The FHWA proposes to abolish this requirement. This is consistent with the intent of the Household Goods Transportation Act of 1980 (Pub. L. 96-454, 94 Stat. 2011) and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) to minimize paperwork requirements on household goods carriers in a manner not compromising the protection of individual shippers. Despite the ICC's best efforts to ensure accurate reporting by requiring carrier certification of the reports, the FHWA is not convinced the performance data is reliable. Periodic audits would be necessary to ensure the performance information reported is accurate. Resources simply do not exist for such review of the carriers. Any value this information would be to the individual shipper would come from a comparative analysis of the data submitted by the carriers. However, requiring motor carriers to report comparative data the FHWA cannot verify is inherently unfair, especially to those carriers who scrupulously comply with the reporting requirements.

Notifying Shippers of Arbitration
Procedures

The overwhelming majority of household goods complaints received by the ICC, and now the FHWA, involve loss and damage claims. The ICCTA imposes an arbitration requirement to handle such claims against all motor carriers providing transportation of household goods in interstate commerce. 49 U.S.C. 14708. The FHWA proposes to amend the former "information for shippers" section of the regulations, formerly 49 CFR 375.2 (proposed to be § 375.213), to replace

the required summary of the carrier's dispute settlement program with a summary of the arbitration procedure.

Arbitration Program Review by the
FHWA

The ICCTA also requires the FHWA to—

"complete a review of the dispute settlement program established under this section. If, after notice and opportunity for comment, the [FHWA] determines that changes are necessary to such a program to ensure the fair and equitable resolution of disputes under this section, the [FHWA] must implement such changes and transmit a report to Congress on such changes." 49 U.S.C. 14708(g).

The FHWA is reviewing the dispute settlement (arbitration) program established by 49 U.S.C. 14708. The FHWA would like comments from the public whether the arbitration program Congress mandated ensures fair and equitable resolution of disputes. If you believe the arbitration program fails to ensure fair and equitable resolutions of disputes, please provide specific comments why it does not and what you would change to make it more fair and equitable. The FHWA will consider these comments in determining whether changes must be made to the arbitration program.

Arbitration Results Report

The FHWA proposes to require all carriers who presently must file an annual performance report, to file in its place an "arbitration results report." This new report would list the motor carrier's arbitration requests and dispositions. Such a report would assist the FHWA in carrying out its statutory responsibility to report to Congress regarding the dispute settlement program, and to provide individual shippers with relevant claims handling information. This report will reduce the existing reporting burden on carriers and provide relevant information concerning the most common household goods shipper complaint, unsatisfactory settlement of loss and damage claims.

The FHWA also proposes to apply a modified version of the ICC's performance report certification requirement to the arbitration results report. The existing certification requires a verification under penalty of perjury and identifies 18 U.S.C. 1001 as the Federal criminal penalty applicable to false statements made in the report. This provision provides for penalties if carriers or their employees fail to make a truthful and accurate report to the Secretary of Transportation. In addition, the FHWA proposes to reference the

civil penalty provisions under 49 U.S.C. 14901 by incorporating them into proposed § 375.1001. The FHWA believes arbitration data submitted by the carriers will be inherently more reliable than the performance-based data in the current reports because of the formal nature of the proceedings and the ability of the FHWA to easily spot check the reported results.

Hostage Freight

The FHWA has been receiving an increasing number of complaints from individual shippers who claim carriers refuse to deliver their goods after the individual shippers offer to pay 110 percent of the estimate as prescribed by 49 CFR 375.3(d). These so-called hostage freight situations defeat the protections of the 110-percent rule and cause serious inconvenience to individual shippers. The FHWA does not have the resources to seek court injunctions to require these carriers to comply with the regulations and release the household goods. The FHWA, therefore, proposes changes to enhance an individual shipper's claim for damages based upon expenses incurred as a result of the carrier's refusal to deliver the household goods, reduce the number of disputes contributing to delays in delivery, and restore price certainty to the transaction.

The FHWA proposes to include in § 375.407 language expressly providing that an individual shipper may assert a cargo delay claim in circumstances where a carrier fails to relinquish a shipment upon the shipper's offer to pay 110 percent of the non-binding estimate. The proviso would state any shipment deliberately withheld from delivery by a carrier after an individual shipper has offered to pay 110 percent of the estimate constitutes a failure to transport a shipment with reasonable dispatch. Thus, hostage freight situations could be the basis for cargo delay claims under 49 CFR part 370.

In addition, the FHWA proposes to require carriers provide each individual shipper a written estimate. The FHWA believes most carriers already provide estimates to individual shippers, though we have heard from individual shippers who allege an estimate was not provided. In many instances, individual shippers allege their carrier explained the price provided to the individual shipper was a "rate quote" but not an estimate.

The FHWA would not require the estimate be binding. The FHWA would continue to allow carriers to negotiate with individual shippers whether the estimated charges would be binding or non-binding upon the parties.

The regulations also would provide, in § 375.403, that a carrier transporting a shipment under a binding estimate reaffirms that estimate and waives any subsequent claims about additional transported items unless its objection is made at the time of pickup. Once the objection is made, the carrier would be required to execute a new binding or non-binding estimate.

Proposed Changes to the Credit Regulations

The American Movers Conference and the Household Goods Carrier's Bureau Committee filed a petition with the ICC on May 3, 1995, requesting an amendment to the credit regulations (now contained in 49 CFR 377.215) to prescribe an increased minimum service charge for the extension of credit. They also petitioned to require assessment of the service charge until the freight bill is paid. Ex Parte No. MC-1 (Sub-No.6), *Payment of Rates and Charges of Motor Carriers—Credit Regulations—Household Goods* (Petition of American Movers Conference and Household Goods Carrier's Bureau To Amend Credit Regulations). On March 26, 1996, the STB served a notice on the parties indicating the ICCTA transferred the regulatory function for the proceeding from the ICC to the Secretary of Transportation. The responsibility for considering such regulatory issues has been delegated to the FHWA. The American Movers Conference changed its name to the American Moving and Storage Association (AMSA) on January 1, 1998.

The household goods transportation regulations require carriers to present their freight bills within 15 days of date of delivery and provide for a credit period of 7 days (excluding weekends and legal holidays). The regulations further provide for the automatic extension of the prescribed 7-day credit period to a total of 30 calendar days for any shipper who has not paid the freight bill within the 7-day period. However, a service charge of one percent of the amount of the freight bill, subject to a minimum charge of \$10.00, must be applied to the extended credit period. The Petitioners requested the ICC to amend this regulation to do both of the following two things:

- (1) Increase the minimum service charge from \$10.00 to \$20.00; and
- (2) Extend the one percent service charge to each 30-day period or fraction thereof after the initial credit period. The Petitioners noted that since the existing credit regulation does not assess any credit charge to shippers who have not paid the carrier's freight bill within the initial 30-day credit period,

delinquent shippers thereafter obtain free credit indefinitely.

The ICC took no action on this petition. The FHWA will incorporate this petition in this rulemaking and discontinue Ex Parte No. MC-1 (Sub-No. 6). For purposes of this rulemaking, the FHWA proposes to adopt the above-described amendments to the credit regulations and solicits public comment regarding their propriety. The FHWA also proposes to move the credit regulations pertaining to household goods transportation from 49 CFR 377.215(c) to 49 CFR 375.807 for ease of reference.

On-Board Trailer Scales

The public has alerted the FHWA to a few motor carriers who have begun to use on-board trailer scales. These are generally non-certified scales and expressly prohibited. The FHWA believes their use is a violation of the former ICC's regulations. The FHWA is affirming the prohibited use of such on-board trailer scales.

The FHWA, however, solicits comments regarding the accuracy, reliability, and acceptability of such non-certified on-board trailer scales, preferably supported by scientific data.

The Maximum Threshold for Weighing Shipments Upon a Certified Platform or Warehouse Scale

The AMSA has asked the FHWA to consider amending § 375.7(a)(5) by raising the 454 kilogram (1,000 pound) maximum threshold requirement for weighing shipments upon a certified platform or warehouse scale. This threshold requirement has remained unchanged since 1939, when the ICC first allowed the practice of weighing small shipments on platform or warehouse scales rather than weighing the entire motor vehicle. See 17 M.C.C. 467.

The AMSA's October 1997 petition states average weights for private transferee C.O.D. household goods shipments have increased from 4,611 pounds in 1982 to 6,023 pounds today. The AMSA believes the industry now considers 1,362 kilograms or less (3,000 pounds or less) shipments to be small rather than 454 kilograms or less (1,000 pounds or less) shipments.

Although the rationale behind the 1,000 pounds weight threshold in § 375.7(a)(5) is unclear, it is possible that the ICC may have linked the 1,000 pounds weight threshold to tariff provisions assessing a minimum charge for shipments weighing less than 1,000 pounds.

The FHWA believes raising the limit to a higher maximum (i.e., 1,362

kilograms) might, in essence, allow movers to charge a minimum rate at the higher weight threshold when the shipment actually weighs less than the higher weight threshold. We are concerned that by adopting the AMSA's definition of a small shipment as one weighing 3,000 pounds or less (1,362 kilograms or less), we could be perceived as giving our blessing to an increase in the minimum rate threshold in household goods carriers' tariffs. The FHWA has no authority to approve or disapprove of household goods carriers' tariff charges. The statute gives this responsibility to the STB.

In addition, the FHWA believes that should an increase in the weight threshold result in higher minimum charges for small shipments, there may be a negative impact upon highway and motor carrier safety. Higher minimum charges might force individual shippers to reconsider using professional carriers to perform the transportation service. These individual shippers, who would otherwise ship their own household goods, might decide to save money by transporting their own household goods using rental trucks. The FHWA believes allowing more individual shippers to operate large, unfamiliar rental vehicles, would add more risks to highway safety than maintaining a lower weight threshold, thereby maintaining a lower minimum charge. The risks might include more accidents, near misses, and personal injuries due to carrying goods improperly or unsecured.

The FHWA would like comments about whether the FHWA should retain, raise, or lower the 454 kilogram maximum threshold. In your comments, please provide any historical background information you may have on this subject.

Replacement of the Term "Money Order"

The FHWA is proposing to replace the individual shipper's use of the term "money order" to pay for transportation of household goods with a much more general term, a "cashier's check." The FHWA proposes to use this term, as it is defined in 12 CFR 229.2(i).

This would allow individual shippers to use financial or depository institutions' official checking systems, or U.S. Postal Service money orders. The regulations at 12 CFR 229.2(k) define a money order as a check, too. Thus, an individual shipper could use a cashier's "money order." The FHWA believes the use of general money orders may compromise the individual shipper's financial safety during a time period when the individual shipper is at a greater risk of losing his ability to pay

for transportation charges. The FHWA believes the use of money orders, generally payable to the bearer, increases the risks of lost funds. The FHWA believes the use of a cashier's check (including a U.S. Postal Service money order) is much safer, allowing the check to be replaced more easily. The individual shipper might ask a financial institution (e.g., a State savings bank, a national bank, credit union, or

savings association) or a U.S. Post Office to draw an official cashier's check for the transportation charges estimated and possibly another check for ten percent of the estimated charges, in case the shipment moves under a non-binding estimate and the resulting transportation charges are more than the non-binding estimate. The FHWA believes the use of the 12 CFR 229.2 definitions will provide consistency. This would

eliminate possible duplicative and contradictory definitions of these common terms. The FHWA solicits comments regarding this change.

Order of the Proposed Regulations

The following table specifies the proposed section of each rule, the old section (if any) where the rule originated, and the title of the proposed section.

PART 375.—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE

Proposed section	Old section	Title of proposed section
SUBPART A—GENERAL REQUIREMENTS		
375.101	375.1(a)	Who must follow these regulations?
375.103	375.1(b)	What are the definitions of terms used in this part?
SUBPART B—BEFORE OFFERING SERVICES TO CUSTOMERS		
Liability Considerations		
375.201	375.12	What is my normal liability for loss and damage when I accept goods from an individual shipper?
375.203	What actions of an individual shipper may limit or reduce my normal liability?.	
375.12		
General Responsibilities		
375.205	375.14	May I have agents?
375.207	375.17	What items must be in my advertisements?
375.209	375.13	How must I handle complaints and inquiries?
375.211	None	Must I have an arbitration program?
375.213	375.2	What information must I provide to a prospective individual shipper?
Collecting Transportation Charges		
375.215	373, subpart A	How must I collect charges?
375.217	377, subpart A	May I collect charges upon delivery?
375.219	377.215(a) and (b)	May I extend credit to shippers?
375.221	375.19	May I use a charge card plan for payments?
SUBPART C—SERVICE OPTIONS PROVIDED		
375.301	None	What service options may I provide?
375.303	375.11	If I sell excess liability insurance coverage, what must I do?
SUBPART D—ESTIMATING CHARGES		
375.401	None	Must I estimate charges?
375.403	375.3	How must I provide a binding estimate?
375.405	375.3	How must I provide a non-binding estimate?
375.407	375.3	Under what circumstances must I relinquish possession of a collect-on-delivery shipment transported under a non-binding estimate?
SUBPART E—PICK UP OF SHIPMENTS OF HOUSEHOLD GOODS		
Before Loading		
375.501	375.5	Must I write up an order for service?
375.503	375.6	Must I write up a bill of lading?
Weighing The Shipment		
375.505	375.7	Must I determine the weight of a shipment?
375.507	375.7	What is a certified scale?
375.509	375.7	How must I determine the weight of a shipment?
375.511	375.7	May I use an alternative method for shipments weighing 454 kilograms or less?
375.513	375.7	Must I give the individual shipper an opportunity to observe the weighing?
375.515	375.7	May an individual shipper waive his/her right to observe each weighing?
375.517	375.7	May an individual shipper demand re-weighing?
375.519	375.7	Must I obtain weight tickets?

PART 375.—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE—Continued

Proposed section	Old section	Title of proposed section
375.521	375.7	What must I do if an individual shipper wants to know the actual weight or charges for a shipment before I tender delivery?
SUBPART F—TRANSPORTATION OF SHIPMENTS		
375.601	375.8	Must I transport the shipment in a timely manner?
375.603	375.8	When must I tender a shipment for delivery?
375.605	375.8	How must I notify an individual shipper of any service delays?
375.607	375.8	What must I do if I am able to tender a shipment for final delivery more than 24 hours before a specified date?
375.609	375.12(c)	What must I do for shippers who store household goods in transit?
SUBPART G—DELIVERY OF SHIPMENTS		
375.701	375.10	May I provide for a release of liability on my delivery receipt?
375.703	375.3(d)	What is the maximum collect-on-delivery amount I may demand at the time of delivery?
375.705	375.16	If a shipment is transported on more than one vehicle, what charges may I collect at delivery?
375.707	375.15	If a shipment is partially lost or destroyed, what charges may I collect at delivery?
375.709	375.15	If a shipment is totally lost or destroyed, what charges may I collect at delivery?
SUBPART H—COLLECTION OF ACTUAL CHARGES		
375.801	None	What types of charges apply to subpart H?
375.803	377.205	How must I present my freight or expense bill?
375.805	375.3(d)	If I was forced to relinquish a collect-on-delivery shipment before the payment of ALL charges, how do I collect the balance?
375.807	377.215	(c) What actions may I take to collect the charges upon my freight bill?
SUBPART I—FILING ANNUAL ARBITRATION REPORTS		
375.901	375.18	What is an annual arbitration report?
375.903	None	Who must file an annual arbitration report?
375.905	None	Where and when do I file an annual arbitration report?
375.907	None	How must I prepare and submit an annual arbitration report?
SUBPART J—PENALTIES		
375.1001	None	What penalties do we impose for violations of this part?
APPENDIX A		
Part 375, Appendix A	Part 375—Form: Office of Compliance and Enforcement (OCE)—100.	Your Rights and Responsibilities When You Move.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket number appearing at the top of this document. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined this action is neither a significant regulatory action under Executive Order 12866 nor significant under the Department of Transportation's regulatory policies and procedures. It is anticipated the economic impact of this action will not be substantial because this proposed rule makes minor, technical changes to

the Federal Motor Carrier Commercial Regulations for household goods carriers. A full regulatory evaluation, therefore, is not warranted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule upon small entities. The Small Business Administration (SBA) requires Federal agencies to analyze the impact of proposed rules on small businesses using the SBA Small Business Size Standards. These standards are based on the number of employees or revenue generated, and small businesses are listed by standard industrial classification (SIC) code.

The FHWA believes there is no way to estimate the proportion of small

entities that are affected by motor carrier consumer protection regulations because the Motor Carrier Management Information System (MCMIS), the FHWA database of all entities which operate commercial motor vehicles, does not contain information pertaining to revenue, number of employees, or SIC codes. The most reliable method of determining the size of the motor carrier using MCMIS is by number of power units. For purposes of this analysis, a small motor carrier means a motor carrier with 10 power units or fewer.

The FHWA has, in its August 1996 databases, 10,097 motor common carriers who identified themselves as transporting household goods in interstate or foreign commerce. Of this number, 9,179 (or 90.9 percent) have identified themselves as having ten or fewer power units (i.e., straight trucks or truck tractors).

The FHWA believes this database significantly overstates the actual number of motor carriers subject to the household goods consumer protection regulations. The ICCTA created a new, more restrictive definition of transportation of household goods than the ICC had used. The FHWA's MCMIS database contains information based upon a motor carrier's determination of what it transported at the initial filing of the form MCS-150. This information may have been filed before the ICCTA and may have significantly changed since the filing.

The AMSA claims, as its members, most of the motor common carriers who transport household goods in interstate commerce. On March 4, 1997, the AMSA informed the FHWA that it had 1,754 members, who hold FHWA authority to operate in interstate commerce transporting household goods. The FHWA will assume the AMSA membership roll is closer to the true number. The FHWA will add 246 motor carriers as a cushion for those motor carriers who may not be AMSA members. Based upon the AMSA membership data, for purposes of these analyses, we will use 2,000 carriers as the estimated size of the regulated industry subject to this proposed rule.

This NPRM would amend and clarify the requirements for motor common carriers of household goods to provide service to each prospective individual shipper. These requirements include the following thirteen items:

- (1) Minimum advertising information soliciting prospective individual shippers.
- (2) Distribution of a document, specified in appendix A to part 375, noting the individual shipper's rights

and responsibilities under Federal Highway Administration regulations.

(3) A binding or non-binding estimate of transportation, accessorial, and incidental charges.

(4) An order for service.

(5) The selling of insurance policies.

(6) A bill of lading.

(7) Weight tickets.

(8) Notifications of reasonable dispatch service delays.

(9) Complaint and inquiry handling.

(10) Use of charge card plans.

(11) Agreements with agents

(12) Notification of storage-in-transit liability assignments.

(13) An arbitration results report.

The former ICC required motor common carriers to follow these requirements with the exception of item number 13. Congress transferred the authority to protect individual shippers to the FHWA in the ICCTA. The FHWA believes these are minimum requirements necessary to protect individual shippers. The AMSA has advised the FHWA, in correspondence placed in the docket, its members want these requirements to be continued with minor modifications, as discussed above, to protect individual shippers.

The FHWA calculates each entity will have to spend an average of \$7,967 and 2,105 annual burden hours to comply with all of the paperwork requirements of this action. The FHWA based this estimate upon the estimated costs identified below to create records, duplicate records, store the original and duplicated copies of records, and practice inventory control for the records.

The information required for preparing these documents is the type of information already developed by such entities in the normal course of conducting a household goods transportation business. The time necessary to compile the incremental data for the documents required in these regulations should be minimal and would vary proportionately with the number of shipments transported by the carrier.

Although transportation consumers will benefit from the availability of this information, the cost to small carriers should be relatively minimal. Accordingly, the FHWA certifies this action would not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Executive Order 12612 (Federalism Assessment)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order

12612. We have determined this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The amendments made by this proposed rule would not have a substantial direct effect on States nor on the relationship or distribution of power between the national government and the States because these changes do little to limit the policy making discretion of the States.

The rule is not intended to preempt any State law or State regulation. Moreover, the changes made by this rule would impose no additional cost or burden upon any State. The rule would not have a significant effect upon the ability of the States to discharge traditional State governmental functions. The FHWA, therefore, is not required to prepare a separate Federalism Assessment for this rule.

Unfunded Mandates Reform Act of 1995

This NPRM has been analyzed in accordance with the principles and criteria contained in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48). The FHWA has determined this action does not have sufficient unfunded mandate implications to warrant the preparation of an unfunded mandate assessment.

The amendments made by this proposed rule would not have a substantial direct effect on States nor on the relationship or distribution of power between the national government and the States because these changes do little to limit the policy making discretion of the States.

The rule is not intended to preempt any State law or State regulation. Moreover, the changes made by this rule would impose no additional cost or burden upon any State. The rule will not have a significant effect upon the ability of the States to discharge traditional State governmental functions.

For purposes of section 203 of the UMRA, the replacement of the annual performance report with an annual arbitration report would not impose a burden greater than \$100 million. Also, the addition of an explicit requirement to provide an estimate, either binding or non-binding, would not impose a \$100 million burden, either.

Under the Regulatory Flexibility Act discussion above, the FHWA estimates this proposal would have an annual burden of just under \$16 million. The FHWA, therefore, is not required to prepare a separate Unfunded Mandate Assessment for this rule.

Paperwork Reduction Act

Under the OMB regulations, 5 CFR 1320, Controlling Paperwork Burdens on the Public, the OMB requires the FHWA to estimate the burden its regulations impose to generate, maintain, retain, disclose, or provide information to or for the FHWA, including the nine following items:

1. Reviewing instructions.
2. Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information.
3. Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information.
4. Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information.
5. Adjusting the existing ways to comply with any previously applicable instructions and requirements.
6. Training personnel to be able to respond to a collection of information.
7. Searching data sources.
8. Completing and reviewing the collection of information.
9. Transmitting, or otherwise disclosing the information.

The OMB regulations permit the time, effort, and financial resources necessary to comply with a collection of information incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) to be excluded from the burden estimate if the FHWA demonstrates to the OMB that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary. A collection of information conducted or sponsored by the FHWA and also conducted or sponsored by a unit of State, local, or tribal government is presumed to impose a Federal burden, except to the extent the FHWA shows such State, local, or tribal requirement would be imposed even in the absence of a Federal requirement.

The collection of information requirements in this NPRM are to generate, maintain, retain, disclose, and provide information to or for the FHWA under 49 CFR part 375 to individual shippers as a consumer protection service. The collection of information would be used by prospective shippers to make informed decisions about contracts and services to be ordered, executed, and settled with interstate household goods carriers. The only information collection items the FHWA is changing from the former ICC's rules are the elimination of the annual performance report (previously

submitted to OMB) and the addition of an annual arbitration report. All other items were required under the former ICC regulations, although no assigned OMB control number was transferred from the ICC to the FHWA covering these collections of information.

The FHWA has calculated the 5 CFR 1320 paperwork financial resources burden for the collection of information contained in this NPRM. The FHWA used national averages of cost indicators developed by the Association of Records Managers and Administrators, Inc. (ARMA International). The ARMA International publication "Cost Indicators for Selected Records Management Activities (A Guide to Unit Costing for the Records Manager—Volume 1)" (1993) and its companion "Cost Finding for Records Management Activities (A Guide to Unit Costing for the Records Manager—Volume II)" (1996) by Jose-Marie Griffiths, Ph.D., and Donald W. King were used by the FHWA in calculating activity and organizational unit costs. The ARMA International guides determine organizational unit costs to be costs a parent organization may attach to records management activities. They include activity unit costs and records management general and administrative costs. Activity unit costs include salaries, benefits, supervision, training, staff and storage space, equipment, and supplies. General and administrative costs include staff compensation and space, non-productive time, furniture, supplies, and other direct and indirect costs associated with management and administration. The FHWA believes using organizational unit costs will more accurately estimate the actual costs for the entire CMV industry rather than activity unit costs and records management unit costs.

ESTIMATED PAPERWORK BURDEN

Type of burden	Financial cost	Hourly burden
Advertising	\$4,814	351
"Your Rights" Booklet	894,710	4,167
Estimates	4,251,240	3,060,000
Order for Service Insurance Policy Sales	1,417,080	300,000
Bills of Lading ..	236,180	100,000
Weight Tickets ..	2,877,240	300,000
Notice (Reasonable Dispatch) Complaint Handling	2,702,808	90,000
Charge Card Plans	507,816	10,000
Notice (SIT)	1,502,696	310,000
	1,502	584
	228,348	30,000

ESTIMATED PAPERWORK BURDEN—Continued

Type of burden	Financial cost	Hourly burden
Arbitration Report	1,310,722	4,000
Total	15,935,156	4,209,102

As stated above, the FHWA will use the figure of 2,000 motor carriers engaged in transportation of household goods in interstate or foreign commerce.

The FHWA has broken down each discussion of information collection requirements into the major areas of 49 CFR Part 375's requirements.

Minimum Advertising Information Soliciting Prospective Individual Shippers

Section 375.207 requires each advertisement of a motor carrier, or its agent, to include the name or trade name of the originating service motor carrier and the applicable FHWA-assigned U.S. DOT number. The FHWA believes identifying the name or trade name of a business entity in an advertisement is a usual and customary business practice. If the OMB agrees with the FHWA's assertion, this requirement would not be considered a burden defined by 5 CFR 1320, but would require approval by the OMB.

The requirement to specify the applicable FHWA-assigned U.S. DOT number in an advertisement, except for advertisements on radio broadcasts, would impose a slight burden. The FHWA estimates the 2,000 carriers subject to this requirement would have one advertisement in their local telephone yellow pages. In addition, each carrier would have one advertisement per year created for its local paper. The FHWA estimates the 17 large van lines would have 12 different advertisements per year created. The FHWA will estimate the cost of placing the U.S. DOT number in the created advertisement, but believes the advertisement's other time and financial costs are usual and customary business practices.

The ARMA International guide indicates the creation of one record costs an organization \$1.145. The FHWA determines 2,000 local telephone advertisements, 2,000 local newspaper advertisements, and 204 large van line advertisements must be created specifying the FHWA-assigned number. Multiplying 4,204 by \$1.145 results in \$4,814 (the FHWA rounds money up to the next whole dollar).

The FHWA has calculated the 5 CFR 1320 paperwork time burden for the

advertisement collection of information. Based upon 4,204 advertisements, the FHWA estimates each motor carrier would need 5 minutes to create the assigned number upon the advertisement. This result multiplied by 4,202 advertisements equals 351 hours for the household goods carrier industry.

Your Rights and Responsibilities When You Move

In February 1997, the FHWA asked the AMSA to estimate how many booklets would be distributed to individual shippers. The AMSA believes 580,000 orders for service are executed each year and recommends the FHWA round this number up by 20,000 to 600,000 orders for service. This would capture the additional booklets of "Your Rights And Responsibilities When You Move" distributed to prospective individual shippers who decide not to use the services of a motor common carrier, but who were supplied the booklet at the appropriate time based upon the regulation.

In the past, the ICC required motor common carriers to obtain the booklet "Your Rights and Responsibilities When You Move" from the ICC. A motor common carrier could add supplementary text about carrier-specific items relevant to its operations and its own carrier logo. The motor carrier would then distribute the booklet.

Although the FHWA does not have the resources to publish massive quantities of this important consumer publication, we strongly believe this publication should continue to be distributed. The AMSA agrees with us. The AMSA has advised us its members would provide the modified publication to consumers even without a regulatory requirement. However, we propose to continue requiring distribution of the publication to ensure consumers are provided with important knowledge to deal effectively with household goods carriers, particularly the few, unscrupulous carriers who treat them unfairly and are unlikely to provide this information voluntarily.

The FHWA would allow motor common carriers to reproduce or photocopy this document in one of the following three ways.

1. Distribute a subsequent Federal Register final rule (and successor final rules).
2. Distribute the appendix to 49 CFR Part 375 when it is published in October of each year (by the U.S. Government Printing Office).

3. Publish independently their own publication containing the text of appendix A to Part 375.

This would provide flexibility to small entities who are not agents for other larger motor common carriers. The FHWA expects large van lines will want to produce their own booklets containing the appendix to part 375.

Based upon an organizational unit cost analysis, the FHWA estimates the household goods carrier industry will incur an annual paperwork burden of \$894,710 to comply with the publication and distribution of the booklet. Each carrier may create its own carrier identifiable document for distribution. The organizational unit cost for creating a record using the ARMA International guide is \$1.145 per record. Multiplying 2,000 carriers by \$1.145 results in \$2,290 for all carriers to produce an original record. The organizational unit cost for duplicating the carrier's document is \$1.076 per record. This would cost \$645,600 for 600,000 requests for estimates. The organizational unit cost for storage of the documents is \$0.0228 per record. The FHWA estimates 602,000 must be stored. This is the sum for the storage of the original document plus all the duplicated documents. The storage cost is estimated to be \$13,726. The FHWA also estimates the document must be in inventory and must be controlled. The organizational unit cost for the practice of inventory control of documents is \$0.387 per record. The FHWA estimates this to be \$232,974. The total cost is \$894,710 based upon the organizational unit cost method.

Distribution of "Your Rights and Responsibilities When You Move" Booklet

The paperwork time burden for the 600,000 requests for orders for service requiring the distribution of this important consumer publication by 2,000 motor carriers results in an average of 300 copies distributed annually for each carrier. The FHWA estimates each carrier would need 1 hour to create each original document and approximately one additional hour to photocopy 300 copies of this document for distribution. The FHWA estimates carriers would need an additional 5 minutes to inventory their stored documents. The FHWA believes all household goods carriers usually and customarily distribute carrier-produced sales and information brochures and this document would be distributed with those documents when the prospective shipper is contacted. The FHWA, therefore, finds good cause to forego estimating a burden for

distribution of the information in the brochure in this NPRM. The FHWA's total time estimate per carrier for this action is 2 hours 5 minutes. This result multiplied by 2,000 carriers equals 4,167 hours for the household goods carrier industry.

Binding or Non-binding Estimate of Transportation, Accessorial, and Incidental Charges

Motor carriers are not required under current FHWA regulations to furnish individual shippers with any type of estimate, binding or non-binding. If an estimate is calculated, however, the regulations do specify certain information is to be recorded, maintained, retained, and provided to the individual shipper. The proposed retention period of one year would remain the same as the current period. See 49 CFR 379.13, Appendix A, item J.1.(a) (62 FR 32040, June 12, 1997).

The FHWA believes household goods carriers provide almost every individual shipper with an estimate of charges prior to loading. The FHWA is proposing to require motor carriers to provide an estimate to every individual shipper. The ICC's unpublished 1995 HHG Performance Report Study found motor carriers wrote binding estimates for about 55.8 percent of the 384,003 collect-on-delivery shipments transported. The FHWA will use 60 percent for the percentage of estimates motor carriers will write as binding estimates (an exact estimate of the charges to be paid) and 40 percent written as non-binding estimates (an approximate cost of the transportation charges). The FHWA believes each shipper obtains an average of three estimates before deciding upon a motor carrier to transport its household goods.

For binding estimates, the motor carrier calculates what the total bill would be based upon a detailed analysis of the services to be provided. If the individual shipper has additional services or items to be performed at the time of loading the shipment, the motor carrier may either reaffirm the binding estimate, reject the binding estimate, recalculate a new binding estimate, or calculate a non-binding estimate. If the motor carrier does nothing, this NPRM would require the carrier to honor the binding estimate.

The FHWA estimates a motor carrier's binding estimate takes an average of 2 hours to complete. This involves the following ten items:

1. Traveling to the shipment location.
2. Estimating the items to be transported and their weight.
3. Estimating accessorial/incidental charges.

4. Reviewing and obtaining information from tariffs, guides, schedules, etc.

5. Calculating the estimate.

6. Recording the estimate.

7. Copying the estimate.

8. Attaching the copy to the order for service/bill of lading.

9. Providing the estimate to the prospective individual shipper.

10. Return travel to the motor carrier's terminal.

Calculation of 2 hours multiplied by 1,080,000 binding estimates (600,000 times 60 percent times an average of 3 estimates per order for service) results in 2,160,000 hours.

The FHWA assumes 50 percent of non-binding estimates are completed exclusively by telephone and 50 percent are completed through a personal visit to the individual shipper's residence. The FHWA estimates a motor carrier's non-binding estimate takes an average of 30 minutes to complete by telephone. This involves the following eight items:

1. Asking the individual on the telephone certain questions (such as number of rooms, any extra heavy items, automobiles, etc.).

2. Estimating the weight to be transported.

3. Estimating accessorial/incidental charges.

4. Reviewing and obtaining information from tariffs, guides, schedules, etc.

5. Calculating an estimate.

6. Recording the estimate.

7. Copying the estimate and attaching the copy to the order for service/bill of lading.

8. Providing the estimate to the prospective individual shipper over the telephone.

Calculation of 30 minutes multiplied by 360,000 non-binding estimates (600,000 times 40 percent (non-binding estimate) times 50 percent (estimate by telephone) times 3 estimates per order for service (average)) results in 180,000 hours.

Providing a non-binding estimate by a personal visit involves essentially the same elements as a binding estimate and would consume the same amount of time.

Calculation of 2 hours multiplied by 360,000 non-binding estimates (600,000 times 40 percent (non-binding estimate) times 50 percent (estimate by personal visit) times 3 estimates per order for service (average)) results in 720,000 hours.

Thus, the FHWA calculates the total burden hours as 2,160,000 for binding estimates, 180,000 for non-binding telephone estimates, and 720,000 for non-binding personal visit estimates for

a grand total of 3,060,000 burden hours for estimates.

The FHWA estimates the financial burden in providing estimates would be creating a record of the estimate, copying the estimate, attaching it to the bill of lading, and filing and storing the estimate with the bill of lading. As discussed above, the FHWA estimates 600,000 orders for service are executed each year and the FHWA assumes each shipper obtains an average of 3 estimates prior to deciding upon a motor carrier. This means 1,800,000 estimates would be made each year, and 1,800,000 copies made, filed and stored. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to provide estimates of charges with the following four acts: 1,800,000 times \$1.145 for creating one record equals \$2,061,000. 1,800,000 times \$1.076 for duplicating one record equals \$1,936,800. 1,800,000 times \$0.118 for filing one record equals \$212,400. 1,800,000 times \$0.0228 for storing one record equals \$41,040. The total of the four results is \$4,251,240.

Order For Service

An order for service must contain the following eleven information items:

1. The carrier's name and address and the FHWA U.S. DOT number assigned to the carrier who is responsible for performing the service.

2. The individual shipper's name, address and, if available, telephone number.

3. The name, address and telephone number of the delivering carrier's office or agent located at or nearest to the destination of the shipment.

4. A telephone number where the individual shipper/consignee may contact the carrier or his designated agent.

5. *Dates and times.* One of the following three dates and times.

(a) The agreed pickup date and agreed delivery date of the move.

(b) The agreed period or periods of time of the entire move.

(c) If the shipment is to be transported on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation, and delivery. Any penalty or per diem requirements of the agreement must be entered under this item.

6. A complete description of any special or accessorial services ordered and minimum weight or volume charges applicable to the shipment.

7. Any identification or registration number assigned to the shipment.

8. For non-binding estimated charges, the amount of the charges, the method of payment of total charges, and, the maximum amount required to be paid at time of delivery to obtain possession of the shipment.

9. For binding estimated charges, the amount of charges required to be paid based upon a binding estimate and the terms of payment under this estimate.

10. Whether the individual shipper requests notification of the charges prior to delivery and the telephone number or address where such communications will be received.

11. Signature of the individual shipper, who is ordering the service, and signature of the carrier or his agent.

A copy of the order for service must be dated and furnished to the individual shipper at the time it is executed. The proposed retention period of one year would remain the same as the current period. See 49 CFR 379.13, Appendix A, item J.1.(b).

The FHWA estimates an order for service takes 30 minutes to complete. Multiplying this by 600,000 orders for service results in 300,000 burden hours.

The FHWA estimates the financial burden in providing orders for service would be in creating the order of service record, copying the order, attaching it to the bill of lading, and filing and storing the order with the bill of lading. As discussed above, the FHWA estimates 600,000 estimates for orders for service are executed each year. This means 600,000 orders would be made each year, and 600,000 copies made, filed and stored. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to provide orders for service using the following four calculations. 600,000 times \$1.145 for creating one record equals \$687,000. 600,000 times \$1.076 for duplicating one record equals \$645,600. 600,000 times \$0.118 for filing one record equals \$70,800. 600,000 times \$0.0228 for storing one record equals \$13,680. The total of the four results is \$1,417,080.

Selling Insurance Policies

The regulations do not require motor carriers to sell insurance to individual shippers. If a motor carrier does sell insurance, however, the insurance policy must be in plain English and clearly specify the nature and extent of coverage. The proposed retention period (until expiration of coverage plus one year) would remain the same as the current period. See 49 CFR 379.13, Appendix A, item F.1.(c).

The FHWA estimates motor carriers sell excess liability insurance policies on 100,000 shipments of the 600,000 shipments each year. The FHWA also estimates each policy takes 1 hour to process and copy. This would result in 100,000 hours of burden for selling insurance policies to individual shippers.

The FHWA estimates the financial burden in selling insurance policies would be creating the insurance policy record, copying the policy, providing one copy to the individual shipper, and filing and storing the policy. As discussed above, the FHWA estimates 100,000 insurance policies would be executed each year. This means 100,000 policies would be made each year, and 100,000 copies would be made, filed, and stored. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to provide insurance policies using the following four calculations. 100,000 times \$1.145 for creating one record equals \$114,500. 100,000 times \$1.076 for duplicating one record equals \$107,600. 100,000 times \$0.118 for filing one record equals \$11,800. 100,000 times \$0.0228 for storing one record equals \$2,280. The total of the four results is \$236,180.

Bills of Lading

A bill of lading must include the following twelve information items:

1. The carrier's name and address, or the name and address of the motor carrier issuing the bill of lading.

2. The names and addresses of any other motor carriers, when known, who will participate, through interline, in the transportation of the shipment.

3. The name, address, and telephone number of the office of the motor carrier to contact in relation to the transportation of shipments.

4. When the transportation is to be performed on a collect-on-delivery basis, the name, the address and, if furnished, the telephone number of a person to whom notification is provided for in proposed § 375.605 must be given.

5. For *non-guaranteed service*, the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods of time for pickup and delivery entered upon the bill of lading must conform to the agreed dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.

6. For *guaranteed service* subject to tariff provisions, the dates for pickup

and delivery and any penalty or per diem entitlements due the individual shipper under the agreement.

7. The actual date of pickup.

8. The company or carrier identification number of the vehicle(s) on which the motor carrier loads the shipment.

9. The terms and conditions for payment of the total charges including notice of any minimum charges.

10. When the transportation is to be performed on a collect-on-delivery basis and if a pre-move estimate of the charges is provided to the individual shipper, the maximum amount required to be paid at the time of delivery to obtain delivery of the shipment.

11. The required released rates valuation statement (see RELEASED RATES OF MOTOR COMMON CARRIERS OF HHG, 9 I.C.C. 2d 523 (1993)) (as amended), and the charges, if any, for optional valuation coverage.

12. Evidence of any insurance coverage sold to or procured for the individual shipper from an independent insurer, including the amount of the premium for such insurance.

A copy of the bill of lading must accompany a shipment at all times. When the shipment is loaded upon a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment. The proposed retention period would remain the same as the current period. See 49 CFR 379.13, Appendix A, item I.1.

The FHWA estimates a bill of lading takes 30 minutes to complete. Multiplying this by the estimated 600,000 bills of lading executed each year results in 300,000 burden hours.

The FHWA estimates the financial burden in providing bills of lading would be creating the bill of lading record, copying through the use of carbon or carbonless paper, attaching a copy to the estimate and order for service, providing a copy to accompany the load, and filing and storing the bill of lading with the estimate of charges and order for service. As discussed above, the FHWA estimates 600,000 orders for service are executed each year. This means 600,000 bills of lading would be made each year. The FHWA estimates at least three copies for each bill of lading would be made (1,800,000 copies), and 1,800,000 copies filed and stored. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to write bills of lading using the following four calculations: 600,000 times \$1.145 for creating one record equals \$687,000. 1,800,000 times \$1.076 for duplicating

one record equals \$1,936,800. 1,800,000 times \$0.118 for filing one record equals \$212,400. 1,800,000 times \$0.0228 for storing one record equals \$41,040. The total of the four results is \$2,877,240.

Weight Tickets

Every weight ticket must be signed by the person performing the weighing and must contain the following six information items:

1. The complete name and location of the scale.

2. The date of each weighing.

3. Identification of the weight entries as being the tare, gross, or net weights.

4. The company or carrier identification of the vehicle.

5. The last name of the individual shipper as it appears on the Bill of Lading.

6. The carrier's shipment registration or Bill of Lading number.

When both weighings are performed on the same scale, one weight ticket may be used to record both weighings. All freight bills presented to collect any shipment charges dependent on the weight transported must be accompanied by true copies of all weight tickets obtained in the determination of the shipment weight. The proposed retention period would remain the same as the current period. See 49 CFR 379.13, Appendix A, item J.5 for the current retention period.

The FHWA estimates weighing freight takes 5 minutes to complete. The FHWA estimates 5 percent of shipments move under a binding estimate and an additional 5 percent move under an estimate based upon volume. These two types of estimates do not require weighing—therefore, the FHWA will exclude 60,000 shipments from our calculations. The FHWA calculates 540,000 shipments times two weighings per shipment equals 1,080,000 weighings. This multiplied by 5 minutes per weighing results in 90,000 burden hours.

The FHWA estimates the financial burden in providing a weighing would be in creating the weight record, copying would generally be done through the use of carbon or carbonless paper, attaching a copy to the bill of lading and order for service, and filing and storing the weight ticket with the bill of lading and order for service.

The FHWA estimates one copy for each weight ticket would be made (1,080,000 copies), and 2,160,000 copies filed and stored. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to record weight tickets using the

following four calculations: 1,080,000 times \$1.145 for creating one record equals \$1,236,600. 1,080,000 times \$1.076 for duplicating one record equals \$1,162,080. 2,160,000 times \$0.118 for filing one record equals \$254,880. 2,160,000 times \$0.0228 for storing one record equals \$49,248. The total is \$2,702,808.

Notifications of Reasonable Dispatch Service Delays

At the time of notification of delay, a carrier must advise the individual shipper of the alternative dates or periods of time the carrier may be able to pickup and/or deliver the shipment. The needs of the individual shipper must always be considered in this advisement. Additional requirements include the following six information items:

1. If the notification of delay occurs prior to the pickup of the shipment, the carrier must amend the order for service.
2. If the notification of delay occurs subsequent to the pickup of the shipment, the carrier must notify the individual shipper of the delay.
3. The carrier must prepare a written record of the date, time and manner of notification.
4. The carrier must prepare a written record of the amended date or period of time for delivery.
5. These records must be retained by the carrier as part of its file on the shipment. The retention period would be one year from the date of notification.
6. A true copy of the written delay notification noting the date, time and manner of notification, along with a record of the amended date or period of time for delivery must be furnished to the individual shipper by first class mail or in person.

The proposed retention period of one year would remain the same as the current period. See 49 CFR 379.13, Appendix A, Item I.4.(b).

The FHWA estimates 20 percent of the 600,000 shipments transported each year experience some sort of delay requiring notification. This would result in 120,000 notifications. The FHWA believes 99.9 percent of these notifications occur by telephone and take an average of 5 minutes to complete. The FHWA believes telegram and in person notification is used rarely. The FHWA also believes 99.9 percent of the written records provided to the individual shipper are delivered by first class mail and not in person.

Multiplying 120,000 notifications by an average of 5 minutes results in 10,000 burden hours.

The FHWA estimates the financial burden in providing a notification of delay would be in disclosing information in a 5 minute telephone call, creating a record of the notification, copying the record through the use of carbon or carbonless paper, mailing a copy to the individual shipper, and filing and storing the written notice with the bill of lading and order for service documents.

The FHWA estimates one copy for each notice would be made (120,000 copies), and 120,000 copies must be filed and stored. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to notify individual shippers about reasonable dispatch delays using the following six calculations:

- 120,000 times \$0.31 per minute (A.T.&T. long distance telephone rate for a call from New York, NY, to Los Angeles, CA) times 5 minutes equals \$186,000.
- 120,000 times \$1.145 for creating one record equals \$137,400.
- 120,000 times \$1.076 for duplicating one record equals \$129,120.
- 120,000 times \$0.32 for mailing by U.S. Postal Service first class service to the individual shipper equals \$38,400.
- 120,000 times \$0.118 for filing one record equals \$14,160.
- 120,000 times \$0.0228 for storing one record equals \$2,736. The total is \$507,816.

Complaint and Inquiry Handling

The regulations require carriers establish and maintain a procedure for responding to inquiries and complaints from individual shippers. The procedure must be specified in a concise, easy to read summary of the program and include a communications system allowing individual shippers to communicate with the carrier's principal place of business by telephone. The carrier must make a written record of all inquiries and complaints received from an individual shipper by any means of communication. The proposed retention period of one year after settlement would remain the same as the current period. See 49 CFR 379.13, Appendix A, Item F.2.(a).

The FHWA estimates all 600,000 shipments transported each year have some sort of inquiry made about them by an individual shipper. The FHWA believes at least two are made by each shipper. This would result in 1,200,000 records of complaints and inquiries. The FHWA estimates each carrier would use an average of 30 minutes to establish,

document, and distribute its complaint and inquiry handling system in a concise, easy to read summary.

The FHWA multiplies 1,200,000 records by an average of 5 minutes and 600,000 records of summaries distributed by an average of 30 minutes. This results in 310,000 hours annual burden.

The FHWA estimates the financial burden in conducting complaint and inquiry procedures would include the following twelve information items:

1. Establishing the complaint and inquiry system.
 2. Creating a concise, easy to read summary record of the system.
 3. Copying the summary record 600,000 times.
 4. Filing the summary record until needed.
 5. Storing the summary record until needed.
 6. Distributing the summary record with other sales brochures as needed (including "Your Rights and Responsibilities When You Move" and the arbitration procedure).
 7. Disclosing information about complaints and inquiries in a 5 minute telephone call.
 8. Creating a record of the notification.
 9. Copying the record through the use of carbon or carbonless paper.
 10. Mailing a copy to the individual shipper (by regular mail).
 11. Filing the written notice.
 12. Storing the written notice with the bill of lading and order for service documents.
- The FHWA estimates one copy for each complaint or inquiry notice would be made (120,000 copies), and 120,000 copies filed and stored. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to notify individual shippers about complaint and inquiry handling using the following twelve calculations:

- 2,000 concise, easy to read summary records of the system times \$1.145 for creating one record equals \$2,000.
- 600,000 times \$1.076 for duplicating the summary record equals \$645,600.
- 600,000 times \$0.32 for mailing by regular service U.S. Mail to agents and salespeople for distribution equals \$192,000.
- 600,000 times \$0.118 for filing the summary record until needed equals \$70,800.
- 600,000 times \$0.0228 for storing the summary record until needed equals \$13,680.
- 600,000 times \$0.118 for distributing the summary record with other sales brochures equals \$70,800.

120,000 times \$0.31 per minute (A.T.&T. long distance telephone rate for a call from New York, NY to Los Angeles, CA) times 5 minutes equals \$186,000.

- 120,000 times \$1.145 for creating one record equals \$137,400.
- 120,000 times \$1.076 for duplicating one record equals \$129,120.
- 120,000 times \$0.32 for mailing by U.S. Postal Service first class service to the individual shipper equals \$38,400.
- 120,000 times \$0.118 for filing one record equals \$14,160.
- 120,000 times \$0.0228 for storing one record equals \$2,736. The total is \$1,502,696.

Use of Charge Card Plans

The regulations allow for the use of charge card plans, but do not require information collection requirements as a part of the regulation.

Agreements With Agents

The regulations require motor carriers have written agreements with their prime agents. The AMSA's information shows 1,151 motor carriers do not affiliate with any van line, while 1,167 carriers are affiliated with one of 17 van lines. These 1,167 carriers are probably prime agents. The prime agents must have written agreements with their motor carrier principal.

The FHWA estimates all 1,167 carriers have one written agreement with another motor carrier. This would result in 1,167 records of written agreements. The FHWA multiplies 1,167 records by an average of 30 minutes. This results in 584 annual burden hours.

The FHWA estimates the financial burden in executing a written agreement with prime agents would be in discussing the information with a potential agent, creating a record of the agreement, and filing and storing of the written agreement. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to execute written agreements with prime agents using the following three calculations:

- 1,167 times \$1.145 for creating one record equals \$1,337.
 - 1,167 times \$0.118 for filing one record equals \$138.
 - 1,167 times \$0.0228 for storing one record equals \$27.
- The total is \$1,502.

Notification of Storage-in-Transit Liability Assignments

Motor carriers who are holding goods for storage-in-transit and this period of

storage is about to expire must notify the individual shipper in writing about the following four information items:

1. The date of conversion to permanent storage.
2. The existence of a nine-month period subsequent to the date of conversion to permanent storage when the individual shipper may file claims against the carrier for loss or damage occurring to the goods in transit or during the storage-in-transit period.
3. The fact the carrier's liability will end.
4. The fact the individual shipper's property will be subject to the rules, regulations, and charges of the warehouseman.

The motor carrier must make this notification at least 10 days prior to the expiration date of one of the following two conditions.

- (1) The specified period of time when the goods are to be held in storage.
- (2) The maximum period of time provided in its tariff for storage-in-transit.

The motor carrier must notify the individual shipper by certified mail, return receipt requested. If the motor carrier is holding household goods in storage-in-transit for a period of time less than 10 days, within one day prior to the expiration date of the specified time when the goods are to be held in such storage, the carrier must give notification to the individual shipper.

The carrier must maintain a record of notifications as part of the records of the shipment.

The FHWA assumes 10 percent of the 600,000 shipments result in storage-in-transit situations where the time period expires. This would result in 60,000 records of notifications.

The FHWA multiplies 60,000 records by an estimated average of 30 minutes. This results in 30,000 annual burden hours.

The FHWA estimates the financial burden in notifying an individual shipper about the storage-in-transit expiration date and conditions would be creating a record, copying the record, mailing the original by certified (return receipt requested) service, filing the record, and storing the active record.

The FHWA estimates the original agreement would be made and mailed to the individual shipper. The carrier would file and store the copy. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to notify shippers regarding the expiration of storage-in-transit using the following four calculations:

- 60,000 times \$1.145 for creating one record equals \$68,700.
 - 60,000 times \$2.52 for postage (certified, return receipt requested U.S. Postal Service) for one record equals \$151,200.
 - 60,000 times \$0.118 for filing one record equals \$7,080.
 - 60,000 times \$0.0228 for storing one record equals \$1,368.
- The total is \$228,348.

Arbitration Results Report

Every motor carrier must have an arbitration program by statute. Each motor carrier must include in its annual arbitration report the following nine information items:

1. The total number of shipments transported.
2. The total number of claims in excess of \$1000.
3. The total number of claims of \$1000 or less.
4. The number of requests for arbitration on claims of \$1000 or less.
5. The results of those arbitrations (claim amounts and disposition).
6. The number of requests for arbitration on claims in excess of \$1000.
7. The number of requests for arbitration on claims in excess of \$1000 accepted by the carrier.
8. The results of the arbitrations the carrier accepted and reported under item 7 of this list, providing the claim amount and disposition.
9. An oath, completed by the carrier and signed by a company officer.

The FHWA requires all 600,000 orders for service include a concise, easy to read summary of the arbitration procedures. This would result in 600,000 records being distributed. In addition, the FHWA would require all motor carriers file annually a prepared summary of the previous year's results of their arbitration programs.

The FHWA estimates each carrier would use an average of 2 hours to establish, document, and distribute its arbitration program in a concise, easy to read summary.

The FHWA multiplies 2,000 motor carriers by an average of 2 hours to establish, document, copy, and distribute 600,000 records of summaries. This results in 4,000 annual burden hours.

The FHWA estimates the financial burden in establishing an arbitration program and filing the results of the program annually would include the following nineteen information items:

1. Establishing the arbitration program.
2. Creating a concise, easy to read summary record of the program.
3. Copying the summary record 600,000 times.

4. Filing the summary record until needed.
 5. Storing the summary record until needed.
 6. Distributing the summary record with other sales brochures as needed (including "Your Rights and Responsibilities When You Move" and the compliant and inquiry handling system).

7. Creating a record of each arbitration result.

8. Filing the record of the arbitration result.

9. Storing the active record of the arbitration result.

10. Requesting the active records of all arbitration results be sent to the annual record preparer's location.

11. Reviewing and compiling the records of all arbitration results.

12. Reviewing the regulations for the items to be reported.

13. Creating an annual record of the results of the program.

14. Copying the annual record for the carrier's files.

15. Mailing the annual record to Washington, DC.

16. Filing the copy of the annual record.

17. Storing the copy of the annual record.

18. Re-filing each record of arbitration results.

19. Storing each record of arbitration results.

The FHWA assumes 10 percent of household goods shippers would seek arbitration each year. This would result in 60,000 arbitrations being made each year. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to provide arbitration program summaries and preparation of a filed arbitration report using the following sixteen calculations:

2,000 concise, easy to read summary records of the system times \$1.145 for creating one record equals \$2,290.

600,000 times \$1.076 for duplicating the summary record equals \$645,600.

600,000 times \$0.32 for mailing by regular service U.S. Mail to agents and salespeople for distribution equals \$192,000.

600,000 times \$0.118 for filing the summary record until needed equals \$70,800.

600,000 times \$0.0228 for storing the summary record until needed equals \$13,680.

600,000 times \$0.118 for distributing the summary record with other sales brochures equals \$70,800.

60,000 times \$1.145 for creating one record of the arbitration result equals \$68,700.

60,000 times \$0.118 for filing one record equals \$7,080.

60,000 times \$0.0228 for storing one record equals \$1,368.

60,000 times \$1.789 for retrieving active records of all arbitration results be sent to the annual record preparer's location equals \$107,340.

2,000 times \$1.145 for creating an annual record of the results of the program equals \$2,290.

2,000 times \$1.076 for copying the annual record for the carrier's files equals \$2,152.

2,000 times \$0.32 for posting the annual record to Washington, DC by U.S. Postal Service equals \$640.

2,000 times \$0.118 for filing the copy of the annual record equals \$236.

2,000 times \$0.0228 for storing the copy of the annual record equals \$46.

60,000 times \$2.095 for re-filing each record of arbitration results equals \$125,700.

The total is \$1,310,722.

New Information Collection Request Summary

Title: Transportation of Household Goods; Consumer Protection Regulations.

Background: The Secretary of Transportation may promulgate "reasonable regulations, including regulations protecting individual shippers" 49 U.S.C. 14104. The FHWA's regulations require motor common carriers of household goods to generate, maintain, retain, disclose, and provide information to the FHWA or for the motor carriers to provide to third parties (individual shippers). The FHWA would continue most of these regulations. The FHWA would propose no requirement for specific forms. The FHWA regulations would also allow motor carriers to provide electronic documents. The FHWA estimates providing the information electronically may not be useful. It would, however, allow such disclosures provided the consumer has a system to read the electronic information readily. The FHWA believes the use of such electronic information is uncommon and is not likely to grow significantly based upon the current proposed regulations.

The FHWA believes these requirements are necessary for motor common carriers to properly protect the rights and responsibilities of individual shippers. The FHWA believes these requirements are not unnecessarily duplicative of information otherwise reasonably accessible to an individual shipper. The FHWA believes most individual shippers would not know about the FHWA or its regulations

published in Title 49, Code of Federal Regulations.

Respondents: Approximately 2,000 motor carriers who provide transportation of household goods in interstate commerce.

Average Burden per Year: 3,466,602 total hours divided by 2,000 motor carriers equals 1,734 hours annually.

Collection of Information Frequency: Upon set-up of a household goods motor carrier business, each time an individual shipper of household goods contemplates ordering service from a motor carrier, each time an individual shipper of household goods makes inquiries or complaints, each time a household goods shipment delay occurs, upon settlement of charges due, and annually for a report.

The FHWA will send a new burden estimate for this collection of information requirement to the Office of Management and Budget. This document serves as the FHWA's 60-day notice under 5 CFR 1320.8(d)(1).

The FHWA requests your comments regarding the accuracy of each estimate. If you believe an estimate is accurate, please tell us the reason why you believe it is accurate. If you believe the FHWA has miscalculated the burdens of time or financial burden, please tell us the reason why you believe it is inaccurate and provide us with better information to accurately estimate the burdens. The FHWA also requests your comments on the need for the collection of information requirements proposed in this NPRM, and on ways the FHWA may reduce the information collection burden while protecting consumers.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

Published in Title 49, Code of Federal Regulations.

Issued on: May 5, 1998.
Kenneth R. Wykle,
 Administrator, Federal Highway Administration.

List of Subjects in 49 CFR Part 377

Credit, Freight forwarders, Highways and roads, Motor carriers.

Issued on: May 5, 1998.

Kenneth R. Wykle,
 Administrator, Federal Highway Administration.

For the reasons set out in the preamble, the FHWA proposes to amend 49 CFR Chapter III as set forth below:

1. Part 375 is revised to read as follows:

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

Subpart A—General Requirements

Sec.

375.101 Who must follow these regulations?

375.103 What are the definitions of terms used in this part?

Subpart B—Before Offering Services to My Customers

Liability Considerations

Sec.

375.201 What is my normal liability for loss and damage when I accept goods from an individual shipper?

375.203 What actions of an individual shipper may limit or reduce my normal liability?

General Responsibilities

Sec.

375.205 May I have agents?

375.207 What items must be in my advertisements?

375.209 How must I handle complaints and inquiries?

375.211 Must I have an arbitration program?

375.213 What information must I provide to a prospective individual shipper?

Collecting Transportation Charges

Sec.

375.215 How must I collect charges?

375.217 May I collect charges upon delivery?

375.219 May I extend credit to shippers?

375.221 May I use a charge card plan for payments?

Subpart C—Service Options Provided

Sec.

375.301 What service options may I provide?

375.303 If I sell excess liability insurance coverage, what must I do?

Subpart D—Estimating Charges

Sec.

375.401 Must I estimate charges?

375.403 How must I provide a binding estimate?

375.405 How must I provide a non-binding estimate?

375.407 Under what circumstances must I relinquish possession of a collect-on-delivery shipment transported under a non-binding estimate?

Subpart E—Pick up of Shipments of Household Goods

Before Loading

Sec.

375.501 Must I write up an order for service?

375.503 Must I write up a bill of lading?

Weighing the Shipment

Sec.

375.505 Must I determine the weight of a shipment?

375.507 What is a certified scale?

375.509 How must I determine the weight of a shipment?

375.511 May I use an alternative method for shipments weighing 454 kilograms or less?

375.513 Must I give the individual shipper an opportunity to observe the weighing?

375.515 May an individual shipper waive his/her right to observe each weighing?

375.517 May an individual shipper demand re-weighing?

375.519 Must I obtain weight tickets?

375.521 What must I do if an individual shipper wants to know the actual weight or charges for a shipment before I tender delivery?

Subpart F—Transportation of Shipments

Sec.

375.601 Must I transport the shipment in a timely manner?

375.603 When must I tender a shipment for delivery?

375.605 How must I notify an individual shipper of any service delays?

375.607 What must I do if I am able to tender a shipment for final delivery more than 24 hours before a specified date or period of time?

375.609 What must I do for shippers who store household goods in transit?

Subpart G—Delivery of Shipments

Sec.

375.701 May I provide for a release of liability on my delivery receipt?

375.703 What is the maximum collect-on-delivery amount I may demand at the time of delivery?

375.705 If a shipment is transported on more than one vehicle, what charges may I collect at delivery?

375.707 If a shipment is partially lost or destroyed, what charges may I collect at delivery?

375.709 If a shipment is totally lost or destroyed, what charges may I collect at delivery?

Subpart H—Collection of Charges

Sec.

375.801 What types of charges apply to subpart H?

375.803 How must I present my freight or expense bill?

375.805 If I am forced to relinquish a collect-on-delivery shipment before the payment of ALL charges, how do I collect the balance?

375.807 What actions may I take to collect the charges upon my freight bill?

Subpart I—Filing Annual Arbitration Reports

Sec.

375.901 What is an annual arbitration report?

375.903 Who must file an annual arbitration report?

375.905 Where and when do I file an annual arbitration report?

375.907 How must I prepare and submit an annual arbitration report?

Subpart J—Penalties

Sec.

375.1001 What penalties do we impose for violations of this part?

Appendix A—Your Rights and Responsibilities When You Move

Authority: 5 U.S.C. 553; 49 U.S.C. 13301 and 14104; and 49 CFR 1.48.

Subpart A—General Requirements

§ 375.101 Who must follow these regulations?

You, a motor common carrier engaged in the transportation of household goods, must follow the regulations in this part when offering your services to individual shippers. You are subject to this part only when you transport household goods for individual shippers by motor vehicle in interstate commerce.

§ 375.103 What are the definitions of terms used in this part?

(a) Terms used in this part:

Advertisement means any communication to the public in connection with an offer or sale of any interstate transportation service. This includes written or electronic database listings of your name, address, and telephone number in an on-line database. This excludes advertisements over airwaves, including radio and television, and listings of your name, address, and telephone number in a telephone directory or similar publication.

Cashier's check means a check that has all four of the following characteristics:

(1) Drawn on a bank as defined in 12 CFR 229.2.

(2) Signed by an officer or employee of the bank on behalf of the bank as drawer.

(3) A direct obligation of the bank.

(4) Provided to a customer of the bank or acquired from the bank for remittance purposes.

Household goods, as used in connection with transportation, means

the personal effects or property used, or to be used, in a dwelling. The personal effects and property must be a part of the equipment or supplies of such a dwelling or similar property.

Individual shipper or householder means any person who is the consignor or consignee of a household goods shipment and you identify him or her as such in the bill of lading contract. The individual shipper owns the goods being transported.

May means an option. You may do something, but it is not a requirement.

Must means a legal obligation. You must do something.

Order for service means a document authorizing you to transport an individual shipper's household goods.

Reasonable dispatch means the performance of transportation on the dates, or during the period of time, agreed upon by you and the individual shipper and shown on the Order For Service/Bill of Lading. For example, if you deliberately withhold any shipment from delivery after an individual shipper offers to pay the binding estimate or 110 percent of a non-binding estimate, you have not transported the goods with reasonable dispatch. The term "reasonable dispatch" excludes transportation provided under your tariff provisions requiring guaranteed service dates. You will have the defenses of force majeure, i.e., superior or irresistible force, as construed by the courts. "Force majeure" in this context, means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.

Should means a recommendation. We recommend you do something, but it is not a requirement.

Transportation of household goods means either one of the following two provisions:

(1) The householder (an individual shipper) arranges and pays for transportation of household goods. This may include transportation from a factory or store, when the individual shipper purchases the household goods with the intent to use the goods in his or her own dwelling.

(2) Another party arranges and pays for the transportation of household goods.

We, us, and our means the Federal Highway Administration (FHWA).

You and your means a motor common carrier engaged in the transportation of household goods and its household goods agents.

(b) *Where may other terms used in this part be defined?* You may find other

terms used in this part defined in 49 U.S.C. 13102. The definitions in that statute control. If terms are used in this part and the terms are neither defined here nor in 49 U.S.C. 13102, the terms will have the ordinary practical meaning of such terms.

Subpart B—Before Offering Services to Customers

Liability Considerations

§ 375.201 What is my normal liability for loss and damage when I accept goods from an individual shipper?

(a) In general, you are legally liable for loss or damage if it happens during performance of any one of the following three services identified on your lawful bill of lading:

(1) Transportation of household goods.

(2) Storage-in-transit of household goods, including incidental pickup or delivery service.

(3) Servicing of an appliance or other article, if you or your agent performs the servicing.

(b) You are liable for loss of, or damage to, any household goods to the extent provided in the current Surface Transportation Board's released rates order (see RELEASED RATES OF MOTOR COMMON CARRIERS OF HHG, 9 I.C.C. 2d 523 (1993)).

(c) You may have additional liability if you sell excess liability insurance.

§ 375.203 What actions of an individual shipper may limit or reduce my normal liability?

(a) If an individual shipper includes perishable household goods without your knowledge, you need not assume liability for these items.

(b) If an individual shipper agrees to ship household goods released at a value greater than \$1.32 per kilogram (60 cents per pound) per article, your liability for loss and damage may be limited to \$220 per kilogram (\$100 per pound) per article if the individual shipper fails to notify you in writing of articles valued at more than \$220 per kilogram (\$100 per pound).

(c) If an individual shipper notifies you in writing that an article valued at greater than \$220 per kilogram (\$100 per pound) will be included in the shipment, the shipper will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.

General Responsibilities

§ 375.205 May I have agents?

(a) You may have agents provided you comply with paragraphs (b) and (c) of this section. A household goods agent is

defined as either one of the following two types of agents:

(1) A *prime agent* provides a transportation service for you or on your behalf, including the selling of, or arranging for, a transportation service. You permit or require the agent to provide services under the terms of an agreement or arrangement with you. A prime agent does not provide services on an emergency or temporary basis. A prime agent does not include a household goods broker or freight forwarder.

(2) An *emergency or temporary agent* provides origin or destination services on your behalf, excluding the selling of, or arranging for, a transportation service. You permit or require the agent to provide such services under the terms of an agreement or arrangement with you. The agent performs such services only on an emergency or temporary basis.

(b) If you have agents, you must have written agreements between you and your prime agents. You and your retained prime agent must sign the agreements.

(c) Copies of all your prime agent agreements must be in your files for a period of at least 24 months following the date of termination of each agreement.

§ 375.207 What items must be in my advertisements?

(a) You and your agents must publish and use only truthful, straightforward, and honest advertisements.

(b) You must include, and you must require each of your agents to include, in all advertisements for all services (including any accessorial services incidental to or part of interstate transportation), the following two elements:

(1) Your name or trade name, as it appears on our document assigning you a U.S. DOT number, or the name or trade name of the motor carrier under whose operating authority the advertised service will originate.

(2) U.S. DOT number, assigned by us authorizing you to operate as a for-hire motor carrier.

(c) Your FHWA-assigned U.S. DOT number must be displayed only in the following form in every advertisement: U.S. DOT No. (assigned number).

§ 375.209 How must I handle complaints and inquiries?

(a) You must establish and maintain a procedure for responding to complaints and inquiries from your individual shippers.

(b) Your procedure must include all four of the following items:

(1) A communications system allowing individual shippers to communicate with your principal place of business by telephone.

(2) A telephone number.

(3) A clear and concise statement about who must pay for complaint and inquiry telephone calls.

(4) A written or electronic record system for recording all inquiries and complaints received from an individual shipper by any means of communication.

(c) You must produce a clear and concise written description of your procedure for distribution to individual shippers.

§ 375.211 Must I have an arbitration program?

(a) You must have an arbitration program for individual shippers. You must establish and maintain an arbitration program with the following eleven minimum elements:

(1) You must design your arbitration program to prevent you from having any special advantage in any case where the claimant resides or does business at a place distant from your principal or other place of business.

(2) Before the household goods are tendered for transport, your arbitration program must provide notice to the individual shipper of the availability of neutral arbitration, including all three of the following items:

(i) A summary of the arbitration procedure.

(ii) Any applicable costs.

(iii) A disclosure of the legal effects of election to use arbitration.

(3) Upon the individual shipper's request, you must provide forms and information necessary for initiating an action to resolve a dispute under arbitration.

(4) You must require each person you authorize to arbitrate to be independent of the parties to the dispute and capable of resolving such disputes, and you must ensure the arbitrator is authorized and able to obtain from you or the individual shipper any material or relevant information to carry out a fair and expeditious decision making process.

(5) You must not charge the individual shipper more than one-half of the total cost for instituting the arbitration proceeding against you. In the arbitrator's decision, the arbitrator may determine which party must pay the cost or a portion of the cost of the arbitration proceeding, including the cost of instituting the proceeding.

(6) You must refrain from requiring the individual shipper to agree to use arbitration before a dispute arises.

(7) Arbitration must be binding for claims of \$1000 or less, if the individual shipper requests arbitration.

(8) Arbitration must be binding for claims of more than \$1000, if the individual shipper requests arbitration and the carrier agrees to it.

(9) If all parties agree, the arbitrator may provide for an oral presentation of a dispute by a party or representative of a party.

(10) The arbitrator must render a decision within 60 days of receipt of written notification of the dispute, and a decision by an arbitrator may include any remedies appropriate under the circumstances.

(11) The arbitrator may extend the 60-day period for a reasonable period of time if you or the individual shipper fail to provide, in a timely manner, any information the arbitrator reasonably requires to resolve the dispute.

(b) You must produce and distribute a concise, easy-to-read, accurate summary of the your arbitration program, including the items in this section.

§ 375.213 What information must I provide to a prospective individual shipper?

(a) Before you execute an order for service for a shipment of household goods, you must furnish to your prospective individual shipper, all four of the following documents:

(1) The contents of Appendix A of this part, "Your Rights and Responsibilities When You Move."

(2) A concise, easy-to-read, accurate estimate of your charges.

(3) A concise, easy-to-read, accurate summary of the your arbitration program.

(4) A concise, easy to read, accurate summary of your customer complaint and inquiry handling procedures. Included in this description must be both of the following two items:

(i) The main telephone number the individual shipper may use to communicate with you.

(ii) A clear and concise statement concerning who must pay for telephone calls.

(b) To comply with paragraph (a)(1) of this section, you must produce and distribute a document with the text and general order of appendix A to this part as it appears. The following three items also apply:

(1) If we, the Federal Highway Administration, choose to modify the text or general order of appendix A, we will provide the public appropriate notice in the *Federal Register* and an opportunity for comment as required by part 389 of this subchapter before making you change anything.

(2) If you publish the document, you may choose the dimensions of the publication as long as the type font size is at least 10 point or greater and the size of the booklet is at least as large as 232 square centimeters (36 square inches).

(3) If you publish the document, you may choose the color and design of the front and back covers of the publication. The following words must appear prominently on the front cover in at least 12 point or greater bold or full-faced type: "YOUR RIGHTS AND RESPONSIBILITIES WHEN YOU MOVE. OMB No. 2125-_____, Expires on _____, 200____."

Furnished By Your Mover, As Required By Federal Law. You may substitute your name or trade name in place of "Your Mover" if you wish (for example, *Furnished by XYZ Van Lines, As Required By Federal Law*).

(c) Paragraphs (b)(2) and (b)(3) of this section do not apply to exact copies of appendix A published in the *Federal Register* or the *Code of Federal Regulations*.

Collecting Transportation Charges

§ 375.215 How must I collect charges?

You must issue an honest, truthful freight or expense bill in accordance with subpart A of part 373 of this subchapter.

§ 375.217 May I collect charges upon delivery?

(a) Yes. You may maintain a tariff setting forth nondiscriminatory rules governing collect-on-delivery service and the collection of collect-on-delivery funds.

(b) If an individual shipper pays you at least 110 percent of the approximate costs of a non-binding estimate on a collect-on-delivery shipment, you must relinquish possession of the shipment at the time of delivery. You may specify the form of payment acceptable to you.

§ 375.219 May I extend credit to shippers?

You may extend credit to shippers in accordance with § 375.807.

§ 375.221 May I use a charge card plan for payments?

(a) You may provide in your tariffs for the acceptance of charge cards for the payment of freight charges.

(b) You may accept charge cards whenever shipments are transported under agreements and tariffs requiring payment by cash, certified check, or a cashier's check.

(c) If you allow an individual shipper to pay for a freight or expense bill by charge card, you are deeming such payment to be equivalent to payment by

cash, certified check, or a cashier's check.

(d) The charge card plans you participate in must be identified in your tariff rules as items permitting the acceptance of the charge cards.

(e) If an individual shipper causes a charge card issuer to reverse a charge transaction, you may consider the individual shipper's action tantamount to forcing you to provide an involuntary extension of your credit. In such instances, the rules in § 375.807 apply.

Subpart C—Service Options Provided

§ 375.301 What service options may I provide?

(a) You may design your household goods service to provide individual shippers with a wide range of specialized service and pricing features. Many carriers provide at least the following five service options:

- (1) *Space reservation.*
- (2) *Expedited service.*
- (3) *Exclusive use of a vehicle.*
- (4) *Guaranteed service on or between agreed dates.*

(5) *Excess liability insurance.*

(b) If you sell excess liability insurance, you must follow the requirements in § 375.303.

§ 375.303 If I sell excess liability insurance coverage, what must I do?

(a) You, your employee, or an agent, may sell, offer to sell, or procure excess liability insurance coverage for loss and damage to shipments of any individual shippers only under the following two conditions:

(1) The individual shipper releases the shipment for transportation at a value not exceeding \$1.32 per kilogram (60 cents per pound) per article.

(2) The individual shipper fails to declare a valuation of \$2.75 or more per kilogram (\$1.25 or more per pound) and pays, or agrees to pay, you for assuming liability for the shipment equal to the declared value.

(b) You may offer, sell, or procure any kind of excess liability insurance coverage.

(c) You may offer, sell, or procure any type of policy covering loss or damage in excess of the specified carrier liability.

(d) You must issue to the individual shipper a policy or other appropriate evidence of the insurance the individual shipper purchased.

(e) You must provide a copy of the policy or other appropriate evidence to the individual shipper at the time you sell or procure the insurance.

(f) You must issue policies written in plain English.

(g) You must clearly specify the nature and extent of coverage under the policy.

(h) Your failure to issue a policy, or other appropriate evidence of insurance purchased, to an individual shipper will subject you to full liability for any claims to recover loss or damage attributed to you.

(i) You must provide in your tariff for the provision of selling, offering to sell, or procuring excess liability insurance service. The tariff must also provide for the base transportation charge, including your assumption for full liability for the value of the shipment. This would be in the event you fail to issue a policy or other appropriate evidence of insurance to the individual shipper at the time of purchase.

Subpart D—Estimating Charges

§ 375.401 Must I estimate charges?

(a) Before you execute an order for service for a shipment of household goods for an individual shipper, you must estimate the total charges in writing. The written estimate must be one of the following two types:

(1) A *binding estimate*, an agreement made in advance with your individual shipper. It guarantees the total cost of the move based upon the quantities and services shown on your estimate.

(2) A *non-binding estimate*, what you believe the total cost will be for the move, based upon the estimated weight or volume of the shipment and the accessorial services requested. A non-binding estimate is not binding on you. You will base the final charges upon the actual weight of the individual shipper's shipment and the tariff provisions in effect.

(b) For non-binding estimates, you should provide your best estimate of the approximate costs the individual shipper should expect to pay for the transportation and services of such shipments. If you provide an inaccurately low estimate, you may be limiting the amount you will collect at the time of delivery as provided in § 375.407.

(c) You and the individual shipper must sign the estimate of charges. You must provide a dated copy of the estimate of charges to the individual shipper at the time you sign the estimate.

(d) Before loading a household goods shipment, and upon mutual agreement of both you and the individual shipper, you may amend an estimate of charges.

§ 375.403 How must I provide a binding estimate?

(a) You may provide a guaranteed binding estimate of the total shipment

charges to the individual shipper, so long as it is provided for in your tariff. The individual shipper must pay the amount for the services included in your estimate. You must comply with the following eight requirements:

(1) You must provide a binding estimate in writing to the individual shipper or other person responsible for payment of the freight charges.

(2) You must retain a copy of each binding estimate as an addendum to the bill of lading.

(3) You must clearly indicate upon each binding estimate's face the estimate is binding upon you and the individual shipper. Each binding estimate must also clearly indicate on its face the charges shown are the charges being assessed for only those services specifically identified in the estimate.

(4) You must clearly describe binding estimate shipments and all services you are providing.

(5) If it appears an individual shipper has tendered additional household goods or requires additional services not identified in the binding estimate, you are not required to honor the estimate. However, before loading the shipment, you must do one of the following three things:

(i) Reaffirm your binding estimate.

(ii) Negotiate a revised written binding estimate listing the additional household goods or services.

(iii) Agree with the individual shipper, in writing, that both of you will consider the original binding estimate as a non-binding estimate subject to § 375.405.

(6) Once you load a shipment, failure to execute a new binding estimate or a non-binding estimate signifies you have reaffirmed the original binding estimate. You may not collect more than the amount of the original binding estimate, except as provided in paragraph (a)(7) of this section.

(7) If the individual shipper adds additional services at the destination and the services fail to appear on your estimate, you may require full payment at the time of delivery for those services your individual shipper added at destination.

(8) Failure to relinquish possession of a shipment upon an individual shipper's offer to pay the binding estimate amount constitutes a failure to transport a shipment with "reasonable dispatch" and subjects you to cargo delay claims pursuant to 49 CFR part 370.

(b) If you do not provide a binding estimate to an individual shipper, you must provide a non-binding estimate to

the individual shipper in accordance with § 375.405.

(c) You must retain a record of all estimates of charges for at least one year from the date you made the estimate.

§ 375.405 How must I provide a non-binding estimate?

(a) If you do not provide a binding estimate to an individual shipper in accordance with § 375.403, you must provide a non-binding estimate to the individual shipper.

(b) If you provide a non-binding estimate to an individual shipper, you must provide your best estimate of the approximate costs the individual shipper should expect to pay for the transportation and services of such shipments. You must comply with the following six requirements:

(1) You must provide reasonably accurate non-binding estimates based upon the estimated weight or volume of the shipment and services required.

(2) You must explain to the individual shipper all final charges calculated for shipments moved on non-binding estimates will be those appearing in your tariffs applicable to the transportation. You must explain to the individual shipper these final charges may exceed the approximate costs appearing in your estimate.

(3) You must furnish non-binding estimates without charge and in writing to the individual shipper or other person responsible for payment of the freight charges.

(4) You must retain a copy of each non-binding estimate as an addendum to the bill of lading.

(5) You must clearly indicate on the face of a non-binding estimate, the estimate is not binding upon you and the charges shown are the approximate charges to be assessed for the services identified in the estimate.

(6) You must clearly describe on the face of a non-binding estimate the entire shipment and all services you are providing.

(b) If you furnish a non-binding estimate, you must enter the estimated charges upon the order for service and upon the bill of lading.

(c) You must retain a record of all estimates of charges for at least one year from the date you made the estimate.

§ 375.407 Under what circumstances must I relinquish possession of a collect-on-delivery shipment transported under a non-binding estimate?

(a) If an individual shipper pays you at least 110 percent of the approximate costs of a non-binding estimate on a collect-on-delivery shipment, you must relinquish possession of the shipment at

the time of delivery. You may specify the form of payment acceptable to you.

(b) Failure to relinquish possession of a shipment upon an individual shipper's offer to pay 110 percent of the estimated charges constitutes a failure to transport the shipment with "reasonable dispatch" and subjects you to cargo delay claims pursuant to 49 CFR part 370.

(c) You must defer demand for the payment of the balance of any remaining charges for a period of 30 days following the date of delivery.

After this 30-day period, you must demand payment of the balance of any remaining charges. For example, if your non-binding estimate to an individual shipper estimated total charges at delivery should be \$1,000, but your actual charges at destination are \$1,500, you must deliver the shipment upon payment of \$1,100 (110 percent of the estimated charges) and forego demanding payment. You then must issue a freight or expense bill demanding payment of the remaining \$400 after the 30-day period expires.

(d) You must retain a record of all estimates of charges for at least one year from the date you made the estimate.

Subpart E—Pick Up of Shipments of Household Goods

Before Loading

§ 375.501 Must I write up an order for service?

(a) Before you receive a shipment of household goods you will move for an individual shipper, you must prepare an order for service. The order for service must contain the information described in the following ten items:

(1) Your name and address and the FHWA U.S. DOT number assigned to the carrier who is responsible for performing the service.

(2) The individual shipper's name, address and, if available, its telephone number(s).

(3) The name, address and telephone number of the delivering carrier's office or agent located at or nearest to the destination of the shipment.

(4) A telephone number where the individual shipper/consignee may contact you or your designated agent.

(5) *Dates and times.* One of the following three entries must be on the order for service:

(i) The agreed pickup date and agreed delivery date of the move.

(ii) The agreed period or periods of time of the entire move.

(iii) If you are transporting the shipment on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation, and delivery.

You must enter any penalty or per diem requirements upon the agreement under this item.

(6) A complete description of any special or accessorial services ordered and minimum weight or volume charges applicable to the shipment, subject to the following two conditions.

(i) If you provide service for individual shippers on rates based upon the transportation of a minimum weight or volume, you must indicate on the order for service the minimum weight- or volume-based rates, and the minimum charges applicable to the shipment.

(ii) If you do not indicate the minimum rates and charges, your tariff must provide you will compute the final charges relating to such a shipment based upon the actual weight or volume of the shipment.

(7) Any identification or registration number you assign to the shipment.

(8) For non-binding estimates, your best estimate of the amount of the charges, the method of payment of total charges, and the maximum amount (no more than 110 percent of the non-binding estimate) you will demand at the time of delivery to relinquish possession of the shipment.

(9) For binding estimates, the amount of charges you will demand based upon the binding estimate and the terms of payment under this estimate.

(10) Whether the individual shipper requests notification of the charges before delivery. The individual shipper must provide you with the telephone number(s) or address(es) where you will transmit the notification.

(b) You and the individual shipper must sign the order for service. You must provide a dated copy of the order for service to the individual shipper at the time you sign the order.

(c) Before loading the shipment, and upon mutual agreement of both you and the individual shipper, you may amend an order for service.

(d) You must retain records of an order for service for at least one year from the date you made the order.

§ 375.503 Must I write up a bill of lading?

(a) You must issue a bill of lading.

The bill of lading must contain the terms and conditions of the contract. You must furnish a complete copy of the bill of lading to the individual shipper before beginning to load the shipment.

(b) On a bill of lading, you must include the following twelve items:

(1) Your name and address, or the name and address of the motor carrier issuing the bill of lading.

(2) The names and addresses of any other motor carriers, when known, who

will participate in interline transportation of the shipment.

(3) The name, address, and telephone number of your office (or the office of your agent) where the individual shipper can contact you in relation to the transportation of the shipment.

(4) When you transport under a collect-on-delivery basis, the name, address and, if furnished, the telephone number of a person to notify about the charges, as required in § 375.605.

(5) For non-guaranteed service, the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods of time for pickup and delivery entered upon the bill of lading must conform to the agreed dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.

(6) For guaranteed service, subject to tariff provisions, the dates for pickup and delivery and any penalty or per diem entitlements due the individual shipper under the agreement.

(7) The actual date of pickup.

(8) The company or carrier identification number of the vehicle(s) upon which you load the individual shipper's shipment.

(9) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(10) The maximum amount you will demand at the time of delivery to obtain possession of the shipment, when you transport under a collect-on-delivery basis.

(11) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage (see RELEASED RATES OF MOTOR COMMON CARRIERS OF HHC, 9 I.C.C. 2d 523 (1993)).

(12) Evidence of any insurance coverage sold to or procured for the individual shipper from an independent insurer, including the amount of the premium for such insurance.

(c) A copy of the bill of lading must accompany a shipment at all times while in your (or your agent's) possession. When you load the shipment upon a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment.

(d) You must retain bills of lading for at least one year from the date you created the bill of lading.

Weighing the Shipment

§ 375.505 Must I determine the weight of a shipment?

(a) When you transport household goods on a non-binding estimate dependent upon the shipment weight, you must determine the weight of each shipment transported before the assessment of any charges.

(b) You must weigh the shipment upon a certified scale.

§ 375.507 What is a certified scale?

A certified scale is any scale designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority (e.g., a State). A certified scale may also be a platform or warehouse type scale properly inspected and certified.

§ 375.509 How must I determine the weight of a shipment?

(a) You must weigh the shipment by using one of the following two methods:

- (1) *First method—origin weigh.* You determine the difference between the tare weight of the vehicle before loading at the origin of the shipment and the gross weight of the same vehicle after loading the shipment.

- (2) *Second method—back weigh.* You determine the difference between the gross weight of the vehicle with the shipment loaded and the tare weight of the same vehicle after you unload the shipment.

(b) The following three conditions must exist for both the tare and gross weighings:

- (1) The vehicle must have installed or loaded all pads, dollies, hand trucks, ramps, and other equipment required in the transportation of the shipment.

- (2) The driver and other persons must be off the vehicle at the time of either weighing.

- (3) The fuel tanks on the vehicle must be full at the time of each weighing, except when you use the *first method—origin weigh*, in paragraph (a)(1) of this section, where the tare weighing is the first weighing performed, you must refrain from adding fuel between the two weighings.

(c) You may detach the trailer of a tractor-trailer vehicle combination from the tractor and the trailer weighed separately at each weighing provided the length of the scale platform is adequate to accommodate and support the entire trailer at one time.

(d) You must use the net weight of shipments transported in containers. You must calculate the difference between the tare weight of the container (including all pads, blocking and

bracing used in the transportation of the shipment) and the gross weight of the container with the shipment loaded in the container.

§ 375.511 May I use an alternative method for shipments weighing 454 kilograms or less?

For shipments weighing 454 kilograms or less (1,000 pounds or less), you may weigh the shipment upon a platform or warehouse certified scale before loading for transportation or after unloading.

§ 375.513 Must I give the individual shipper an opportunity to observe the weighing?

You must give the individual shipper or any other person responsible for the payment of the freight charges the right to observe all weighings of the shipment. You must advise the individual shipper, or any other person entitled to observe the weighings, where and when each weighing will occur. You must give the person who will observe the weighings a reasonable opportunity to be present to observe the weighings.

§ 375.515 May an individual shipper waive his/her right to observe each weighing?

An individual shipper has the privilege to waive his/her right to observe any weighing or reweighing. This does not affect any other rights of the individual shipper under this part or otherwise.

§ 375.517 May an individual shipper demand reweighing?

After you inform the individual shipper of the billing weight and total charges and before actually beginning to unload a shipment weighed at origin (*first method* under § 375.509(a)(1)), the individual shipper may demand a reweigh. You must base your freight bill charges upon the reweigh weight.

§ 375.519 Must I obtain weight tickets?

(a) Yes, you must obtain weight tickets whenever we require you to weigh the shipment in accordance with this subpart. You must obtain a separate weight ticket for each weighing. The weigh master must sign each weight ticket. Each weight ticket must contain the following six items:

- (1) The complete name and location of the scale.

- (2) The date of each weighing.

- (3) The identification of the weight entries as being the tare, gross, or net weights.

- (4) The company or carrier identification of the vehicle.

- (5) The last name of the individual shipper as it appears on the bill of lading.

(6) The carrier's shipment registration or bill of lading number.

(b) When both weighings are performed on the same scale, one weight ticket may be used to record both weighings.

(c) As part of the file on the shipment, you must retain the original weight ticket or tickets relating to the determination of the weight of a shipment.

(d) All freight bills you present to an individual shipper must include true copies of all weight tickets obtained in the determination of the shipment weight in order to collect any shipment charges dependent upon the weight transported.

§ 375.521 What must I do if an individual shipper wants to know the actual weight or charges for a shipment before I tender delivery?

(a) You must comply with a request of an individual shipper of a shipment being transported on a collect-on-delivery basis who specifically requests notification of the actual weight or volume and charges on a shipment. This requirement is conditioned upon the individual shipper supplying you with an address or telephone number where the individual shipper will receive the communication. You must make your notification by telephone, telegram, or in person.

(b) The individual shipper must receive your notification at least one full 24-hour day before any tender of the shipment for delivery, excluding Saturdays, Sundays and Federal holidays.

(c) You may disregard the 24-hour notification requirement on shipments subject to any one of the following three conditions:

- (1) Back weigh (when you weigh an individual shipper's shipment at its destination).

- (2) Pickup and delivery encompassing two consecutive week days, if the individual shipper agrees.

- (3) Maximum payment amounts at time of delivery of 110 percent of the estimated charges, if the individual shipper agrees.

Subpart F—Transportation of Shipments

§ 375.601 Must I transport the shipment in a timely manner?

Yes. Transportation in a timely manner is also known as "reasonable dispatch service." You must provide a reasonable dispatch service to all individual shippers, except for transportation on the basis of guaranteed pickup and delivery dates.

§ 375.603 When must I tender a shipment for delivery?

You must tender a shipment for delivery for an individual shipper on the agreed delivery date or within the period of time specified on the bill of lading. Upon the request or concurrence of the individual shipper, you may waive this requirement.

§ 375.605 How must I notify an individual shipper of any service delays?

(a) When you are unable to perform either the pickup or delivery of a shipment on the dates or during the periods of time specified in the order for service and as soon as the delay becomes apparent to you, you must notify the individual shipper of the delay, at your expense, in one of the following three ways:

- (1) By telephone.
- (2) By telegram.
- (3) In person.

(b) At the time you notify the individual shipper of the delay, you must advise the individual shipper of the dates or periods of time you expect to be able to pickup and/or deliver the shipment. You must consider the needs of the individual shipper in your advisement. You also must do the following six things:

- (1) If your notification of delay occurs before the pickup of the shipment, you must amend the order for service.

- (2) If your notification of delay occurs after you pick up the shipment, you or your agent must notify the individual shipper of the delay.

- (3) You must prepare a written record of the date, time, and manner of notification.

- (4) You must prepare a written record of your amended date or period of time for delivery.

- (5) You must retain these records as a part of your file on the shipment. The retention period is one year from the date of notification.

- (6) You must furnish a true copy to the individual shipper by first class mail or in person.

§ 375.607 What must I do if I am able to tender a shipment for final delivery more than 24 hours before a specified date or period of time?

(a) You may ask the individual shipper to accept an early delivery date. If the individual shipper does not concur with your request or the individual shipper does not request an early delivery date, you may, at your discretion, place a shipment in storage under your own account and at your own expense in a warehouse located near the destination of the shipment. If you place the shipment in storage, you

must comply with paragraph (b) of this section. You may comply with paragraph (c) of this section, at your discretion.

(b) You must immediately notify the individual shipper of the name and address of the warehouse where you place the shipment. You must make and keep a record of your notification as a part of your shipment records. You have responsibility for the shipment under the terms and conditions of the bill of lading. You are responsible for the charges for redelivery, handling, and storage until you make final delivery.

(c) You may limit your responsibility to the agreed delivery date or the first day of the period of time of delivery as specified in the bill of lading.

§ 375.609 What must I do for shippers who store household goods in transit?

(a) If you are holding goods for storage-in-transit (SIT) and the period of time is about to expire, you must comply with this section.

(b) You must notify the individual shipper, in writing of the following four items:

- (1) The date of conversion to permanent storage.

- (2) The existence of a nine-month period after the date of conversion to permanent storage when the individual shipper may file claims against you for loss or damage occurring to the goods in transit or during the storage-in-transit period.

- (3) The fact your liability is ending.

- (4) The fact the individual shipper's property will be subject to the rules, regulations, and charges of the warehouseman.

(c) You must make this notification at least 10 days before the expiration date of either one of the following two periods:

- (1) The specified period of time when the goods are to be held in storage.

- (2) The maximum period of time provided in your tariff for storage-in-transit.

(d) You must notify the individual shipper by certified mail, return receipt requested.

(e) If you are holding household goods in storage-in-transit for a period of time less than 10 days, within one day before the expiration date of the specified time when the goods are to be held in such storage, you must give notification to the individual shipper of the information specified in paragraph (b) of this section.

(f) You must maintain a record of notifications as part of the records of the shipment.

(g) Your failure or refusal to notify the individual shipper will automatically

effect a continuance of your carrier liability according to the applicable tariff provisions with respect to storage-in-transit, until the end of the day following the date when you actually gave notice.

Subpart G—Delivery of Shipments

§ 375.701 May I provide for a release of liability on my delivery receipt?

(a) No. Your delivery receipt or shipping document must not contain any language purporting to release or discharge you or your agents from liability.

(b) The delivery receipt may include a statement the property was received in apparent good condition except as noted on the shipping documents.

§ 375.703 What is the maximum collect-on-delivery amount I may demand at the time of delivery?

(a) On a binding estimate, the maximum amount is the exact estimate of the charges. You may specify the form of payment acceptable to you.

(b) On a non-binding estimate, the maximum amount is 110 percent of the non-binding estimate of the charges. You may specify the form of payment acceptable to you.

§ 375.705 If a shipment is transported on more than one vehicle, what charges may I collect at delivery?

(a) At your discretion, you may do one of the following three things:

(1) You may defer the collection of all charges until you deliver the entire shipment.

(2) If you have determined the charges for the entire shipment, you may collect the portion of the shipment tendered for delivery. You must determine a percentage of the charges represented by the portion of the shipment tendered for delivery.

(3) If you cannot reasonably calculate the charges for the entire shipment, you must determine the charges for the portion of the shipment being delivered. You must collect this amount. The total charges you assess for the transportation of the separate portions of the shipment must not be more than the charges due for the entire shipment.

(b) In the event of the loss or destruction of any part of a shipment transported on more than one vehicle, you must collect the charges as provided in § 375.707.

§ 375.707 If a shipment is partially lost or destroyed, what charges may I collect at delivery?

(a) If a shipment is partially lost or destroyed, you may first collect your freight charges for the entire shipment,

if you choose. If you do this, you must refund the portion of your published freight charges corresponding to the portion of the lost or destroyed shipment (including any charges for accessorial or terminal services), at the time you dispose of claims for loss, damage, or injury to the articles in the shipment under 49 CFR part 370.

(b) To calculate the amount of charges applicable to the shipment as delivered, you must multiply the percentage corresponding to the delivered shipment by the total charges applicable to the shipment tendered by the individual shipper. The following four conditions also apply:

(1) If the charges computed exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges must apply. This will apply only to the transportation of household goods and not to charges for other services the individual shipper ordered.

(2) You must collect any specific valuation charge due.

(3) You may disregard paragraph (b) of this section if loss or destruction was due to an act or omission of the individual shipper.

(4) You must determine, at your own expense, the proportion of the shipment not lost or destroyed in transit.

(c) The individual shipper's rights are in addition to, and not in lieu of, any other rights the individual shipper may have with respect to a shipment of household goods you or your agent(s) partially lost or destroyed in transit. This applies whether or not the individual shipper exercises its rights provided in paragraph (a) of this section.

§ 375.709 If a shipment is totally lost or destroyed, what charges may I collect at delivery?

(a) You are forbidden from collecting, or requiring an individual shipper to pay, any freight charges (including any charges for accessorial or terminal services) when a household goods shipment is totally lost or destroyed in transit. The following three conditions also apply:

(1) You must collect any specific valuation charge due.

(2) You may apply paragraph (a) of this section only to the transportation of household goods and not to charges for other services the individual shipper ordered.

(3) You may disregard paragraph (a) of this section if loss or destruction was due to an act or omission of the individual shipper.

(b) The individual shipper's rights are in addition to, and not in lieu of, any

other rights the individual shipper may have with respect to a shipment of household goods you or your agent(s) totally lost or destroyed in transit. This applies whether or not the individual shipper exercises its rights provided in paragraph (a) of this section.

Subpart H—Collection of Charges

§ 375.801 What types of charges apply to subpart H?

(a) This subpart applies to all shipments, except as provided in paragraph (b) of this section.

(b) *Exception.* This subpart does not apply to collect-on-delivery shipments subject to the 110 percent rule for non-binding estimates.

§ 375.803 How must I present my freight or expense bill?

You must present your freight or expense bill in accordance with § 377.205 of this subchapter.

§ 375.805 If I am forced to relinquish a collect-on-delivery shipment before the payment of ALL charges, how do I collect the balance?

On "collect-on-delivery" shipments, you must present your freight bill for all transportation charges within seven days, measured from the date the shipment was delivered at its destination. This time period excludes Saturdays, Sundays, and Federal holidays.

§ 375.807 What actions may I take to collect the charges upon my freight bill?

(a) You must present a freight bill within 15 days (excluding Saturdays, Sundays, and Federal holidays) of the date of delivery of a shipment at its destination.

(b) The credit period must be seven days (excluding Saturdays, Sundays, and Federal holidays).

(c) You must provide in your tariffs the following four things:

(1) You must automatically extend the credit period to a total of 30 calendar days for any shipper who has not paid your freight bill within the 7-day period.

(2) The individual shipper will be assessed a service charge by you equal to one percent of the amount of the freight bill, subject to a \$20 minimum charge, for the extension of the credit period.

(3) You must deny credit to any shipper who fails to pay a duly presented freight bill within the 30-day period. You may grant credit to the individual shipper when the individual shipper satisfies he/she will promptly pay all future freight bills duly presented.

(4) You must ensure all payments of freight bills are strictly in accordance

with the rules and regulations of this part for the settlement of your rates and charges.

Subpart I—Filing Annual Arbitration Reports

§ 375.901 What is an annual arbitration report?

An annual arbitration report describes the results of all arbitrations requested and concluded in the previous calendar year.

§ 375.903 Who must file an annual arbitration report?

If you pickup or deliver shipments for individual shippers during the calendar year, you must file an annual arbitration report.

§ 375.905 Where and when do I file an annual arbitration report?

You must file an annual arbitration report on, or before, March 31 of each year. Send the report to the following address: Annual Arbitration Report, Licensing and Insurance Division (HIA-30), Office of Motor Carrier Information Analysis, Federal Highway Administration, 400 Virginia Avenue, S.W., Suite 600, Washington, D.C. 20024.

§ 375.907 How must I prepare and submit an annual arbitration report?

You must include in the annual arbitration report the following nine items:

(a) The total number of shipments transported for the calendar year covered by the report.

(b) The total number of claims in excess of \$1000.

(c) The total number of claims of \$1000 or less.

(d) The number of requests for arbitration on claims of \$1000 or less.

(e) The results of those arbitrations (list claim amount and disposition).

(f) The number of requests for arbitration on claims in excess of \$1000.

(g) The number of requests for arbitration on claims in excess of \$1000 you accepted.

(h) The results of the arbitrations you accepted and reported under paragraph (g) of this section, listing the claim amount and disposition of the arbitration you accepted.

(i) An oath, completed by you. The oath must be signed by one of your officers (e.g., President, Vice President, Secretary/Treasurer, Owner, Partner). The oath must be substantially in the following form:

Household Goods Carrier Oath (Must be Completed by a Carrier Official)
I, (name and title of carrier official), certify all information supplied in this report is true,

correct and complete to the best of my knowledge. Further, I certify I am qualified and authorized to certify the accuracy of the data. I know failing to file a complete and truthful report with the Federal Highway Administration could result in the assessment of civil penalties under 49 U.S.C. 14901 and criminal penalties under 18 U.S.C. 1001.

Signature _____
Title _____
Date _____

Subpart J—Penalties

§ 375.1001 What penalties do we impose for violations of this part?

(a) The penalty provisions of 49 U.S.C. Chapter 149, Civil and Criminal Penalties, apply to this part. These penalties do not overlap. The penalties are restated in this section for your convenience.

(b) You, or an officer, employee, or agent of yours, who by any means tries to evade regulation provided under this part for carriers or brokers, are/is liable to the United States for a civil penalty of \$200 for the first violation and at least \$250 for a subsequent violation.

(c) When another civil penalty is not provided under this part, if you violate a regulation or order under this part, you are liable to the United States for a civil penalty of \$500 for each violation. A separate violation occurs each day the violation continues.

(d) An act or omission committed by your corporation is the same as an act or omission by your director, officer, receiver, trustee, lessee, agent, or employee providing transportation or service. The penalties of this part apply to violations by the corporation. The actions and omissions of individuals acting for or employed by you are considered to be the actions and omissions of you as well as the individual, when the individual acts in the scope of his or her employment.

(e) If you, as a provider of transportation of household goods, or a receiver or trustee of yours, fail(s) or refuse(s) to comply with any regulation in this part relating to protection of individual shippers, you, the receiver, or the trustee are/is liable to the United States for a civil penalty of not less than \$1,000 for each violation and for each additional day while the violation continues.

(f) You are liable to the United States for a civil penalty of not less than \$2,000 for each violation, and of not less than \$5,000 for each subsequent violation, if you knowingly engage in or knowingly authorize an agent or other person to do one of the following three things:

(1) Falsify documents used in the transportation of household goods which evidence the weight of a shipment.

(2) Charge for accessorial services you failed to perform.

(3) Charge for accessorial services for which you are not entitled to be compensated because such services are not reasonably necessary in the safe and adequate movement of the shipment.

(g) You are liable to the United States for a civil penalty of not more than \$5,000, if you must make a report to us, answer a question, or make, prepare, or preserve a record under this part, and you or an officer, agent, or employee of yours, commit(s) one of the following seven acts:

(1) Does not make the report.

(2) Does not specifically, completely, and truthfully answer the question in 30 days from the date we require the question to be answered.

(3) Does not make, prepare, or preserve the record in the form and manner prescribed.

(4) Falsifies, destroys, mutilates, or changes the report or record.

(5) Files a false report or record.

(6) Makes a false or incomplete entry in the record about a business related fact or transaction.

(7) Makes, prepares, or preserves a record in violation of our regulations or orders.

(h) In determining and negotiating the amount of a civil penalty under paragraphs (e) and (g) of this section concerning transportation of household goods, we must take into account the following seven things:

(1) The degree of your culpability.

(2) Your prior conduct.

(3) The degree of harm you caused an individual shipper or shippers.

(4) Your ability to pay.

(5) The effect on your ability to do business.

(6) Whether you have adequately compensated the individual shipper before we began our proceeding.

(7) Other matters as fairness may require.

Appendix A—Your Rights and Responsibilities When You Move

You must furnish this document to prospective individual shippers as required by 49 CFR 375.213, or the text as it appears in this appendix may be reprinted in a form and manner chosen by you, the motor common carrier of household goods. You do not have to italicize titles of sections.

YOUR RIGHTS AND RESPONSIBILITIES WHEN YOU MOVE

OMB No. 2125—, Expires on ____, 200__.

Furnished By Your Mover, As Required By Federal Law.

Authority: 49 U.S.C. 13501 *et seq.*, 13704, 14104; and sec. 204, Pub. L. 104-88, 109 Stat. 803.

Why Was I Given This Pamphlet?

The Federal Highway Administration's (FHWA) regulations protect consumers on interstate moves and define the rights and responsibilities of consumers and household goods carriers.

The household goods carrier (mover) gives you this booklet to provide information about your rights and responsibilities as an individual shipper of household goods. You should talk to your mover if you have further questions. The mover will also furnish you with another booklet describing its procedure for handling your questions and complaints. The booklet will include a telephone number you can call to obtain additional information about your move.

What Is Included in This Pamphlet?

In this pamphlet, you will find a discussion of each of these topics.

Subpart A—General Requirements

Who must follow the regulations?
What definitions are used in this pamphlet?

Subpart B—Before Requesting Services From any Mover

What is my mover's normal liability for loss and damage when my mover accepts goods from me?
What actions by me limit or reduce my mover's normal liability?
May my mover have agents?
What items must be in my mover's advertisements?
How must my mover handle complaints and inquiries?
Do I have the right to inspect my mover's tariffs (schedules of charges) applicable to my move?
Must my mover have an arbitration program?
Must my mover inform me about my rights and responsibilities under Federal law?
What other information must my mover provide to me?
How must my mover collect charges?
May my mover collect charges upon delivery?
May my mover extend credit to me?
May my mover accept charge cards for my payments?

Subpart C—Service Options Provided

What service options may my mover provide?
If my mover sells excess liability insurance coverage, what must my mover do?

Subpart D—Estimating Charges

Must my mover estimate the transportation and accessorial charges for my move?
How must my mover estimate charges under the regulations?
What payment arrangements must my mover have in place to secure delivery of my household goods shipment?

Subpart E—Pickup of My Shipment of Household Goods

Must my mover write up an order for service?

Should I or my mover write up an inventory of the shipment?
Must my mover write up a bill of lading?
Should I reach an agreement with my mover about pickup and delivery times?
Must my mover determine the weight of my shipment?
How must my mover determine the weight of my shipment?

Subpart F—Transportation of My Shipment

Must my mover transport the shipment in a timely manner?
What must my mover do if it is able to deliver my shipment more than 24 hours before I am able to accept delivery?
What must my mover do for me when I store household goods in transit?
What must my mover do if I want to know the actual weight or charges for my shipment before delivery?

Subpart G—Delivery of My Shipment

May my mover ask me to sign a delivery receipt purporting to release it from liability?
What is the maximum collect-on-delivery amount my mover may demand I pay at the time of delivery?
If my shipment is transported on more than one vehicle, what charges may my mover collect at delivery?
If my shipment is partially or totally lost or destroyed, what charges may my mover collect at delivery?
How must my mover calculate the charges applicable to the shipment as delivered?

Subpart H—Collection of Charges

Does this subpart apply to all shipments?
How must my mover present its freight or expense bill to me?
If I requested my mover to relinquish a collect-on-delivery shipment before the payment of ALL charges, how must my mover collect the balance?
What actions may my mover take to collect from me the charges upon its freight bill?
Do I have a right to file a claim to recover money for property my mover lost or damaged?

Subpart I—Reports My Mover Files With the FHWA

What is an annual arbitration report?
Who must file an annual arbitration report?
Where and when does my mover file an annual arbitration report?
What is included in my mover's annual arbitration report?
How may I get a copy of my mover's annual arbitration report?

Subpart J—Resolving Disputes With My Mover

What may I do to resolve disputes with my mover?

Subpart K—What Else Should I Know?

What if I have more questions?
What are the most important points I should remember from this pamphlet?

Subpart A—General Requirements

Who Must Follow the Regulations?

The regulations inform motor common carriers engaged in the transportation of

household goods (movers) what standards the movers must follow when offering services to you. You are not directly subject to the regulations. Your mover may be required to force you to pay on time, though. The regulations only apply to your mover when the mover transports your household goods by motor vehicle in interstate commerce.

What Definitions Are Used in This Pamphlet?

Accessorial (Additional) Services—These are services such as packing, appliance servicing, unpacking, or piano stair carries you request to be performed (or are necessary because of landlord requirements or other special circumstances). Charges for these services are in addition to the transportation charges.

Advanced Charges—These are charges for services not performed by the mover, but by someone else. A professional, craftsman, or other third party may perform these services at your request. The mover pays for these services and adds the charges to your bill of lading charges.

Advertisement—This is any communication to the public in connection with an offer or sale of any interstate transportation service. This will include written or electronic database listings of your mover's name, address, and telephone number in an on-line database.

Agent—A local moving company authorized to act on behalf of a larger, national company.

Appliance Service—The preparation of major electrical appliances to make them safe for shipment.

Bill of Lading—The receipt for your goods and the contract for its transportation.

Carrier—The mover transporting your household goods.

Certified Scale—Any scale designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform or warehouse type scale properly inspected and certified. An on-board trailer scale is not a certified scale.

C.O.D. (Cash on Delivery)—This means payment is required at the time of delivery at the destination residence (or warehouse) for transportation for you, as an individual shipper.

Estimate, Binding—This is an agreement made in advance with your mover. It guarantees the total cost of the move based upon the quantities and services shown on the estimate.

Estimate, Non-Binding—This is what the carrier believes the cost will be based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on the mover. The final charges will be based upon the actual weight of your shipment and the tariff provisions in effect.

Expedited Service—This is an agreement with the mover to perform transportation by a set date in exchange for charges based upon a higher minimum weight.

Flight Charge—An extra charge for carrying items up or down flights of stairs.

Guaranteed Pickup and Delivery Service—An additional level of service featuring

guaranteed dates of service. Your mover will provide reimbursement to you for delays. This premium service is often subject to minimum weight requirements.

High Value Article—These are items included in a shipment valued at more than \$220 per kilogram (\$100 per pound).

Household goods as used in connection with transportation, means the personal effects or property used, or to be used, in a dwelling. The personal effects and property must be a part of the equipment or supplies of such a dwelling or similar property.

Household Goods Agents—There are two types of household goods agents.

(1) A **prime agent** provides a transportation service for your mover or on its behalf, including the selling of, or arranging for, a transportation service. Your mover permits or requires the agent to provide services under the terms of an agreement or arrangement with them. A prime agent does not provide services on an emergency or temporary basis.

(2) An **emergency or temporary agent** provides origin or destination services on your mover's behalf, excluding the selling of, or arranging for, a transportation service. Your mover permits or requires the agent to provide such services under the terms of an agreement or arrangement with them. The agent performs such services only on an emergency or temporary basis.

Inventory—The detailed descriptive list of your household goods showing the number and condition of each item.

Linehaul Charges—The charges of the vehicle transportation portion of your move. These charges apply in addition to the accessorial service charges.

Long Carry—An added charge for carrying articles excessive distances between the mover's vehicle and your residence.

May—An option. You or your mover may do something, but it is not a requirement.

Mover—A motor common carrier engaged in the transportation of household goods and its household goods agents.

Must—A legal obligation. You or your mover must do something.

Order for Service—The document authorizing the mover to transport your household goods.

Order (Bill of Lading) Number—The number used to identify and track your shipment.

Peak Season Rates—Higher linehaul charges applicable during the summer months.

Pickup and Delivery Charges—Separate transportation charges applicable for transporting your shipment between the storage-in-transit warehouse and your residence.

Reasonable Dispatch—The performance of transportation on the dates, or during the period of time, agreed upon by you and your mover and shown on the Order For Service/ Bill of Lading. For example, if your mover deliberately withholds any shipment from delivery after you offer to pay the binding estimate or 110 percent of a non-binding estimate, your mover has not transported the goods with reasonable dispatch. The term "reasonable dispatch" excludes transportation provided under your mover's tariff provisions requiring guaranteed service

dates. Your mover will have the defenses of force majeure, i.e., superior or irresistible force, as construed by the courts. "Force majeure" in this context, means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.

Should—A recommendation. We recommend you or your mover do something, but it is not a requirement.

Shuttle Service—The use of a smaller vehicle to provide service to residences not accessible to the mover's normal linehaul vehicles.

Storage-In-Transit (SIT)—The temporary warehouse storage of your shipment pending further transportation. For example, you may incur these charges if your new home is not quite ready to occupy. You must specifically request SIT service. This may not exceed a total of 180 days of storage. You will be responsible for the added charges for SIT service, as well as the warehouse handling and final delivery charges.

Tariff—A schedule of rates or charges.

Transportation of Household Goods—This means either one of the following two things:

(1) You arrange and pay for transportation of household goods. This may include transportation from a factory or store, when you purchase the household goods with the intent to use the goods in your own dwelling.

(2) Another party arranges and pays for the transportation of your household goods.

Valuation—The degree of "worth" of the shipment. The valuation charge compensates the mover for assuming a greater degree of liability than is provided for in its base transportation charges.

Warehouse Handling—An additional charge applicable each time SIT service is provided. This charge compensates the mover for the physical placement and removal of items within the warehouse.

We, Us, and Our—The Federal Highway Administration (FHWA).

You and Your—You are an individual shipper of household goods. You are a consignor or consignee of a household goods shipment and your mover identifies you as such in the bill of lading contract. You own the goods being transported.

Where may other terms used in this pamphlet be defined? You may find other terms used in this pamphlet defined in 49 U.S.C. 13102. The definitions in this statute control. If terms are used in this pamphlet and the terms are neither defined here nor in 49 U.S.C. 13102, the terms will have the ordinary practical meaning of such terms.

Subpart B—Before Requesting Services From Any Mover

What is my mover's normal liability for loss and damage when my mover accepts goods from me?

In general, your mover is legally liable for loss or damage if it happens during performance of any of these services identified on your mover's lawful bill of lading:

(1) Transportation of household goods.

(2) Storage-in-transit of household goods, including incidental pickup or delivery service.

(3) Servicing of an appliance or other article, if your mover or its agent performs the servicing.

Your mover is liable for loss of, or damage to, any household goods to the extent provided in the current Surface Transportation Board's Released Rates Order. Your mover may have additional liability if your mover sells excess liability insurance to you.

All moving companies are required to assume liability for the value of the goods transported. However, there are different levels of liability, and you should be aware of the amount of protection provided and the charges for each option.

Basically, most movers offer four different levels of liability (options 1 through 4, below) under the terms of their tariffs and pursuant to the Surface Transportation Board's Released Rates Orders. These orders govern the moving industry.

Option 1: Released Value

This is the most economical protection option available. This no-additional cost option provides minimal protection. Under this option, the mover assumes liability for no more than \$1.32 cents per kilogram (60 cents per pound), per article. Loss or damage claims are settled based upon the kilogram (or pound) weight of the article multiplied by \$1.32 cents per kilogram (60 cents per pound). For example, if your mover lost or destroyed a 4.54 kilogram (10 pound) stereo component valued at \$1000, your mover would be liable for no more than \$6.00. Obviously, you should think carefully before agreeing to such an arrangement. There is no extra charge for this minimal protection, but you must sign a specific statement on the bill of lading agreeing to it.

Option 2: Declared Value

Under this option, the valuation of your shipment is based upon the total weight of the shipment times \$2.75 per kilogram (\$1.25 per pound). For example, a 1,814.4 kilogram (4,000 pound) shipment would have a maximum liability value of \$5,000. Any loss or damage claim under this option is settled based upon the depreciated value of the lost or damaged item(s) up to the maximum liability value based upon the weight of the entire shipment. Under this option, if you shipped a 4.54 kilogram (10 pound) stereo component originally costing \$1000, your mover would be liable for up to \$1000, based upon the depreciated value of the item.

Unless you specifically agree to other arrangements, the mover must assume liability for the entire shipment based upon this option. Also, the mover is entitled to charge you \$7.00 for each \$1000 (or fraction thereof) of liability assumed for shipments transported under this option. In the example above, the valuation charge for a shipment valued at \$5,000 would be \$35.00. Under this option, your shipment is protected based upon its depreciated value, and the law allows your mover to charge you a fee for this extra protection.

Option 3: Lump Sum Value

Under this option, similar to Option 2, if the value of your shipment exceeds \$2.75 per kilogram (\$1.25 per pound) times the weight of the shipment, you may obtain additional liability protection from your mover. You do this by declaring a specific dollar value for your shipment. The amount you declare must exceed \$2.75 per kilogram (\$1.25 per pound) times the weight of the shipment. The amount of value you declare is subject to the same valuation charge (\$7.00 per \$1000) as described in Option 2. For example, if you declare your 1,814 4 kilogram (4,000 pound) shipment is worth \$10,000 (instead of the \$5,000 under Option 2), the mover will charge you \$7.00 for each \$1000 of declared value, or \$70.00 for this increased level of liability. If you ship unusually expensive articles, you may wish to declare this extra value. You must make this declaration in writing on the bill of lading.

Option 4: Full Value Protection

Many movers offer a fourth level of added-value protection, often referred to as "full value protection" or "full replacement value." If you elect to purchase full value protection, when your mover loses, damages or destroys your articles, your mover must repair, replace with like items, or settle in cash at the current market replacement value, regardless of the age of the lost or damaged item. Unlike the other options, depreciation of the lost or damaged item is not a factor in determining replacement value when the shipment is moved under full value protection.

The cost for full value protection is approximately \$8.50 per \$1000 of declared value; however, your minimum value declared must be equal to the weight of the shipment multiplied by \$7.70 per kilogram (\$3.50 per pound). This is further subject to a minimum declaration of \$21,000. For example, if your shipment weighs 2,268 kilograms (5,000 pounds), the minimum declared value must be at least \$21,000. The exact cost for full value protection may vary by mover and may be further subject to various deductible levels of liability. These liability levels may reduce your cost. Ask your mover for the details of its specific plan.

Under these four options, movers are permitted to limit their liability for loss or damage to articles of extraordinary value, unless you specifically list these articles on the shipping documents. An article of extraordinary value is any item whose value exceeds \$220 per kilogram (\$100 per pound). Ask your mover for a complete explanation of this limitation before your move. It is your responsibility to study this provision carefully and to make the necessary declaration.

These optional levels of liability are not insurance agreements governed by State insurance laws, but instead are authorized under Released Rates Orders of the Surface Transportation Board of the U.S. Department of Transportation.

In addition to these options, some movers may also offer to sell, or procure for you, separate liability insurance from a third-party insurance company when you release your

shipment for transportation at the minimum released value of \$1.32 per kilogram (60 cents per pound) per article (Option 1). This is not valuation coverage governed by Federal law, but optional insurance regulated under State law. If you purchase this separate coverage, in the event of loss or damage being the mover's responsibility, the mover is liable only for an amount not exceeding \$1.32 per kilogram (60 cents per pound) per article, and the balance of the loss is recoverable from the insurance company up to the amount of insurance purchased. The mover's representative can advise you of the availability of such liability insurance and the cost.

If you purchase liability insurance from or through your mover, the mover is required to issue a policy or other written record of the purchase and to provide you with a copy of the policy or other document at the time of purchase. If the mover fails to comply with this requirement, the mover becomes fully liable for any claim for loss or damage attributed to its negligence.

What actions by me limit or reduce my mover's normal liability?

Your actions may limit or reduce your mover's normal liability, under the following three circumstances:

- (1) You include perishable household goods without your mover's knowledge.
 - (2) You ship household goods valued at more than \$1.32 per kilogram (60 cents per pound) per article.
 - (3) You fail to notify your mover in writing of articles valued at more than \$220 per kilogram (\$100 per pound).
- In such cases, you will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.

May my mover have agents?

Yes, your mover may have agents. If your mover has agents, your mover must have written agreements with its prime agents. Your mover and its retained prime agent must sign their agreements. Copies of all your mover's prime agent agreements must be in its files for a period of at least 24 months following the date of termination of each agreement.

What items must be in my mover's advertisements?

Your mover must publish and use only truthful, straightforward, and honest advertisements. Your mover must include certain information in all advertisements for all services (including any accessorial services incidental to or part of interstate transportation). Your mover must require each of its agents to include the same information in its advertisements. The information must include the following two pieces of information about your mover:

- (1) Name or trade name of the company or individual, under whose U.S. DOT number the advertised service will originate.
- (2) U.S. DOT number, assigned by the FHWA authorizing your mover to operate. Your mover must display the information as: USDOT No. (assigned number.)

How must my mover handle complaints and inquiries?

All movers are expected to respond promptly to complaints or inquiries from you, its customer. Should you have a complaint or question about your move, you should first attempt to obtain a satisfactory response from the mover's local agent, the sales representative who handled the arrangements for your move, or the driver assigned to your shipment.

If for any reason you are unable to obtain a satisfactory response from one of these persons, you should then contact the mover's principal office. When you make such a call, be sure to have available your copies of all the documents relating to your move. *Particularly important is the number assigned to your shipment by your mover.*

Interstate movers are also required to offer neutral arbitration as a means of resolving consumer disputes. Your mover is required to provide you with information regarding its arbitration program.

All interstate moving companies are required to maintain a complaint and inquiry procedure to assist their customers. At the time you make the arrangements for your move, you should ask the mover's representative for a description of the mover's procedure, the telephone number to be used to contact the carrier, and whether the mover will pay for such telephone calls. Your mover's procedure must include the following four things:

- (1) A communications system allowing you to communicate with your mover's principal place of business by telephone.
- (2) A telephone number.
- (3) A clear and concise statement about who must pay for complaint and inquiry telephone calls.
- (4) A written or electronic record system for recording all inquiries and complaints received from you by any means of communication. Your mover must give you a clear and concise written description of its procedure.

Do I have the right to inspect my mover's tariffs (schedules of charges) applicable to my move?

The Surface Transportation Board, another Federal agency, requires your mover to advise you of your right to inspect your mover's tariffs (its schedules of rates or charges) governing your shipment. Mover tariffs are made a part of the contract of carriage (bill of lading) between you and the mover. You may inspect the tariff at the mover's facility, or, upon request, the mover will furnish you a free copy of any tariff provision containing the mover's rates, rules, or charges governing your shipment. The terms of the tariff cannot be changed.

Tariffs may include provisions limiting the mover's liability. This would generally be described in a section on declaring value on the bill of lading. A second tariff may set the time periods for filing claims. This would generally be described in Section 6 on the reverse side of a bill of lading. A third tariff may reserve your mover's right to assess additional charges for additional services performed. For non-binding estimates, another tariff may base charges upon the

exact weight of the goods transported. Your mover may have other tariffs, too. Please refer to your mover's tariffs for exactly what those might be.

Must my mover have an arbitration program?

Your mover must have an arbitration program for your use. Your mover must establish and maintain an arbitration program with the following eleven minimum elements:

- (1) The arbitration program offered to you must prevent your mover from having any special advantage, because you live or work in a place distant from the mover's principal or other place of business.
- (2) Before your household goods are tendered for transport, your mover's arbitration program must provide notice to you of the availability of neutral arbitration, including the following three things.

- (a) A summary of the arbitration procedure.
- (b) Any applicable costs.
- (c) A disclosure of the legal effects of election to use arbitration.
- (3) Upon your request, your mover must provide forms and information necessary for initiating an action to resolve a dispute under arbitration.

- (4) Each person authorized to arbitrate must be independent of the parties to the dispute and capable of resolving such disputes, and your mover must ensure the arbitrator is authorized and able to obtain from you or your mover any material or relevant information to carry out a fair and expeditious decision making process.
- (5) You must not be required to pay more than one-half of the arbitration's cost. If the arbitrator makes a determination as to the percentage of payment of the costs for each party in the arbitration decision, the arbitrator will maintain this right.
- (6) Your mover must refrain from requiring you to agree to use arbitration before a dispute arises.
- (7) Arbitration is binding for claims of \$1000 or less, if you request arbitration.
- (8) Arbitration is binding for claims of more than \$1000, only if you request arbitration and your mover agrees to it.
- (9) If all parties agree, the arbitrator may provide for an oral presentation of a dispute by a party or representative of a party.
- (10) The arbitrator must render a decision within 60 days of receipt of written notification of the dispute, and a decision by an arbitrator may include any remedies appropriate under the circumstances.

- (11) The 60-day period may be extended for a reasonable period if you or your mover fail to provide information in a timely manner.
- Your mover must produce and distribute a concise, easy-to-read, accurate summary of its arbitration program.

Must my mover inform me about my rights and responsibilities under Federal law?

Yes, your mover must inform you about your rights and responsibilities under Federal law. Your mover must produce and distribute this document. It is the text and in the general order of appendix A to 49 CFR Part 375.

What other information must my mover provide to me?

Before your mover executes an order for service for a shipment of household goods, your mover must furnish to you the following three documents:

- (1) The contents of appendix A, "Your Rights and Responsibilities When You Move," this pamphlet.
 - (2) A concise, easy-to-read, accurate summary of your mover's arbitration program.
 - (3) A concise, easy to read, accurate summary of your mover's customer complaint and inquiry handling procedures. Included in this summary must be the following two items:
 - (a) The main telephone number you may use to communicate with your mover.
 - (b) A clear and concise statement concerning who must pay for telephone calls.
- Your mover may, at its discretion, provide additional information to you.

How must my mover collect charges?

Your mover must issue you an honest, truthful freight or expense bill for each shipment transported. Your mover's freight or expense bill must contain the following 19 items:

- (1) Name of the consignor.
- (2) Name of the consignees.
- (3) Date of the shipment.
- (4) Origin point.
- (5) Destination points.
- (6) Number of packages.
- (7) Description of freight.
- (8) The weight of the freight, if applicable to the rating of the freight.
- (9) The volume of the freight, if applicable to the rating of the freight.
- (10) The measurement of the freight, if applicable to the rating of the freight.
- (11) Exact rate(s) assessed.
- (12) Disclose the actual rates, charges, and allowances for the transportation service, when your mover electronically presents or transmits freight or expense bills to you.
- (13) Indicate reductions, allowances, or other adjustments may apply when the actual rate, charge, or allowance is dependent upon the performance of a service by a third party to the transportation arrangement (such as, tendering a volume of freight over a stated period of time), when your mover electronically presents or transmits freight or expense bills to you.
- (14) Total charges due.
- (15) The nature and amount of any special service charges.
- (16) The points where special services were rendered.
- (17) Route of movement and name of each carrier participating in the transportation.
- (18) Transfer points where shipments moved.
- (19) Address where you must pay or address of bill issuer's principal place of business.

Your mover must present its freight or expense bill to you within 15 days of the date of delivery of a shipment at its destination. The computation of time excludes Saturdays, Sundays, and Federal holidays.

If your mover lacks sufficient information to compute its charges, your mover must

present its freight bill for payment within 7 days of the date when sufficient information does become available.

May my mover collect charges upon delivery?

Yes. Your mover may set nondiscriminatory rules governing collect-on-delivery service and the collection of collect-on-delivery funds. If you pay your mover at least 110 percent of the approximate costs of a non-binding estimate on a collect-on-delivery shipment, your mover must relinquish possession of the shipment at the time of delivery. Your mover may specify the form of payment acceptable to it.

May my mover extend credit to me?

Your mover may relinquish possession of freight before you pay its tariff charges. Your mover may extend credit to you in the amount of the tariff charges. Your mover must ensure you will pay its tariff charges within the credit period. The credit period must begin on the day following presentation of its freight bill to you. Under Federal regulation, the standard credit period is 15 days, including Saturdays, Sundays, and Federal holidays, except your mover may establish its own standard credit period of up to 30 calendar days. Your mover may also establish a service charge for extending credit, including a minimum service charge. Your mover's service charge only applies when your payments are made after its established standard credit period. For example, if your mover's established standard credit period is less than the maximum 30-calendar-day period, your mover may extend credit including a service charge for the additional time up to the maximum 30-calendar-day period. If your mover extends such credit, you may elect to postpone payment, including the service charge until the end of the extended credit period.

Your mover may establish additional service charges for payments made after the expiration of the 30-calendar-day period. If your mover establishes additional service charges, your mover must begin to compute service charges on the day following the last day of its standard credit period. If your mover establishes service charges, your mover must notify you about the following three things:

- (1) The only purpose of the service charge is to prevent you from having free use of its funds.
- (2) The service charge encourages your prompt payment.
- (3) Your failure to pay within the credit period will require your mover to determine whether you will comply with the Federal credit regulations in good faith in the future before extending credit again.

May my mover accept charge cards for my payments?

Your mover may allow you to use a charge card for the payment of the freight charges. Your mover may accept charge cards whenever you ship with it under an agreement and tariff requiring payment by cash, certified check, or a cashier's check (a check drawn by a financial institution—bank, credit union, savings & loan, etc.—upon itself

and signed by an officer of the financial institution).

If your mover allows you to pay for a freight or expense bill by charge card, your mover deems such a payment to be equivalent to payment by cash, certified check, or a cashier's check. The charge card plans your mover participates in must be identified in its tariff rules or items permitting the acceptance of the charge cards.

If you cause a charge card issuer to reverse a charge transaction, your mover may consider your action tantamount to forcing your mover to provide an involuntary extension of its credit.

Subpart C—Service Options Provided

What service options may my mover provide?

Your mover may provide any service options it chooses. It is customary for movers to offer several price and service options.

The total cost of your move may increase if you want additional or special services. Before you agree to have your shipment moved under a bill of lading providing special service, you should have a clear understanding with your mover what the additional cost will be. You should always consider whether you may find other movers who may provide the services you require without requiring you to pay the additional charges.

One service option is a **SPACE RESERVATION**. If you agree to have your shipment transported under a space reservation agreement, you will pay for a minimum number of cubic feet of space in the moving van regardless of how much space in the van your shipment actually occupies.

A second option is **EXPEDITED SERVICE**. This aids you if you must have your shipments transported on or between specific dates when the mover could not ordinarily agree to do so in its normal operations.

Another customary service option is **EXCLUSIVE USE OF A VEHICLE**. If for any reason you desire or require your shipment be moved by itself on the mover's truck or trailer, most movers will provide such service.

Still another service option is **GUARANTEED SERVICE ON OR BETWEEN AGREED DATES**. You enter into an agreement with the mover where the mover provides for your shipment to be picked up, transported to destination, and delivered on specific guaranteed dates. If the mover fails to provide the service as agreed, you are entitled to be compensated at a predetermined amount or a daily rate (per diem) regardless of the expense you actually might have incurred as a result of the mover's failure to perform.

Before requesting or agreeing to any of these price and service options, be sure to ask the mover's representatives about the final costs you will pay.

Transport of Shipments on Two or More Vehicles

Although all movers try to move each shipment on one truck, it becomes necessary, at times, to divide a shipment among two or more trucks. This may occur if your mover

has underestimated the cubic meters of space required for your shipment and it will not all fit on the first truck. Your mover will pick up the remainder or "leave behind" on a second truck at a later time and this part of your shipment may arrive at the destination at a later time than the first truck. When this occurs, your transportation charges will be determined as if the entire shipment moved on one truck.

If it is important for you to avoid this inconvenience of a "leave behind," be sure your estimate includes an accurate calculation of the cubic meters required for your shipment. Ask your estimator to use a "Table of Measurements" form in making this calculation. Consider asking for a binding estimate. A binding estimate is more likely to be conservative with regard to cubic meters than a non-binding estimate. If the mover offers space reservation service, consider purchasing this service for the necessary amount of space plus some margin for error. In any case, you would be prudent to "prioritize" your goods in advance of the move so the driver will load the more essential items on the first truck if some are left behind.

If my mover sells excess liability insurance coverage, what must my mover do?

If your mover provides the service of selling excess liability insurance, your mover must follow certain regulations.

Your mover, its employees, or its agents, may sell, offer to sell, or procure excess liability insurance coverage for you for loss and damage to your shipment, if both of the following two things are true:

- (1) You release the shipment for transportation at a value not exceeding \$1.32 per kilogram (60 cents per pound) per article.
- (2) You fail to declare a valuation of \$2.75 or more per kilogram (\$1.25 or more per pound) and pay, or agree to pay, your mover for assuming liability for your shipment equal to the declared value.

Your mover may offer, sell, or procure any type of insurance policy covering loss or damage in excess of its specified liability.

Your mover must issue you a policy or other appropriate evidence of the insurance you purchased. Your mover must provide a copy of the policy or other appropriate evidence to you at the time your mover sells or procures the insurance. Your mover must issue policies written in plain English.

Your mover must clearly specify the nature and extent of coverage under the policy. Your mover's failure to issue you a policy, or other appropriate evidence of insurance you purchased, will subject your mover to full liability for any claims to recover loss or damage attributed to them.

Your mover must provide in its tariffs for the provision of excess liability insurance coverage. The tariff must also provide for the base transportation charge, including its assumption for full liability for the value of the shipment. This would be in the event your mover fails to issue you a policy or other appropriate evidence of insurance at the time of purchase.

Subpart D—Estimating Charges

Must my mover estimate the transportation and accessorial charges for my move?

Your mover must provide you a written estimate of all charges, including transportation, accessorial, and advance charges. Your mover's "rate quote" is not an estimate.

A *binding estimate* is an agreement made in advance with your mover. It guarantees the total cost of the move based upon the quantities and services shown on your mover's estimate.

A *non-binding estimate* is what your mover believes the total cost will be for the move, based upon the estimated weight of the shipment and the accessorial services requested. A non-binding estimate is not binding on the your mover. Your mover will base the final charges upon the actual weight of your shipment and its tariff provisions in effect.

How must my mover estimate charges under the regulations?

Binding Estimates

Your mover may charge you for providing a binding estimate. The binding estimate must clearly describe the shipment and all services provided.

When you receive a binding estimate, you cannot be required to pay any more than the estimated amount. However, if you have requested the mover provide more services than those included in the estimate, the mover may demand full payment for those added services at time of delivery. Such services might include destination charges often not known at origin (i.e., long carry charges, shuttle charges, or extra stair carry charges).

A binding estimate must be in writing and a copy must be made available to you before you move.

If you agree to a binding estimate, you are responsible for paying the charges due by cash, certified check, or a cashier's check. The charges are due your mover at the time of delivery unless the mover agrees, before you move, to extend credit or to accept payment by charge card. If you are unable to pay at the time the shipment is delivered, the mover may place your shipment in storage at your expense until you pay the charges.

Other requirements of binding estimates include the following seven elements:

- (1) Your mover must retain a copy of each binding estimate as an addendum to the bill of lading.
- (2) Your mover must clearly indicate upon each binding estimate's face the estimate is binding upon you and your mover. Each binding estimate must also clearly indicate on its face the charges shown are the charges to be assessed for only those services specifically identified in the estimate.
- (3) Your mover must clearly describe binding estimate shipments and all services to be provided.
- (4) If your mover believes you are tendering additional household goods or are requiring additional services not identified in the binding estimate, your mover may not honor the binding estimate. However, before loading your shipment, your mover must do one of the following four things:

(a) Reaffirm the binding estimate.

(b) Negotiate a revised written binding estimate listing the additional household goods or services.

(c) Make a new agreement with you.

(d) Add an addendum to the contract, in writing, stating both of you will consider the original binding estimate as a non-binding estimate. You should read more below. This may seriously affect how much you may pay for the entire move.

(5) Once your mover loads your shipment, your mover's failure to execute a new binding estimate or a non-binding estimate signifies it has reaffirmed the original binding estimate. Your mover may not collect more than the amount of the original binding estimate, except as provided in the next paragraph.

(6) If you add additional services at the destination and the services fail to appear on your mover's estimate, your mover may require full payment for these additional destination services at the time of delivery.

(7) Failure of your mover to relinquish possession of a shipment upon your offer to pay the binding estimate amount constitutes a failure to transport a shipment with "reasonable dispatch" and subjects your mover to cargo delay claims pursuant to 49 CFR Part 370.

Non-Binding Estimates

The mover is not permitted to charge you for giving a non-binding estimate.

A non-binding estimate is not a bid or contract. It is provided by the mover to give you a general idea of the cost of the move, but it does not bind your mover to the estimated cost. You should expect the final cost to be more than the estimate. The actual cost will be in accordance with the mover's tariffs. Your mover is legally obligated to collect the charges shown in its tariffs, regardless of what your mover writes in its non-binding estimates. The charges contained in its tariffs are essentially the same for the same weight shipment moving the same distance. If you obtain differing non-binding estimates from different movers, you will be obligated to pay only the amount specified in your mover's tariff. Therefore, a non-binding estimate may have no effect on the amount you will have to pay.

Non-binding estimates must be in writing and clearly describe the shipment and all services provided. Any time a mover provides such an estimate, the amount of the charges estimated must be on the order for service and bill of lading relating to your shipment. When you are given a non-binding estimate, do not sign or accept the order for service or bill of lading unless the amount estimated is entered on each form when prepared by the mover.

When you are given a non-binding estimate, the mover cannot require you to pay more than the amount of the estimate, plus 10 percent, at the time of delivery. You will then have at least 30 days after delivery to pay any remaining charges.

If You Request The Mover To Provide More Services Than Those Included in The Estimate, The Mover May Demand Full Payment for Those Added Services at The Time of Delivery.

Other requirements of non-binding estimates include the following six elements:

(1) Your mover must provide reasonably accurate non-binding estimates based upon the estimated weight of the shipment and services required.

(2) Your mover must explain to you all final charges on shipments moved upon non-binding estimates will be those appearing in your mover's tariffs applicable to the transportation. If your mover provides a non-binding estimate of approximate costs, your mover is not bound by such an estimate.

(3) Your mover must furnish non-binding estimates without charge and in writing to you.

(4) Your mover must retain a copy of each non-binding estimate as an addendum to the bill of lading.

(5) Your mover must clearly indicate on the face of a non-binding estimate, the estimate is not binding upon your mover and the charges shown are the approximate charges to be assessed for the services identified in the estimate.

(6) Your mover must clearly describe on the face of a non-binding estimates the entire shipment and all services to be provided. If your mover furnishes a non-binding estimate, your mover must enter the estimated charges upon the order for service and upon the bill of lading.

Your mover must retain a record of all estimates of charges for at least one year from the date your mover made the estimate.

What payment arrangements must my mover have in place to secure delivery of my household goods shipment?

You may request delivery of your shipment at any time. If you pay your mover at least 110 percent of the approximate costs of a non-binding estimate on a collect-on-delivery shipment, your mover must relinquish possession of the shipment at the time of delivery. Your mover may specify its acceptable form of payment. Your mover's failure to relinquish possession of a shipment upon your offer to pay 110 percent of the estimated charges constitutes its failure to transport the shipment with "reasonable dispatch" and subjects your mover to your cargo delay claims under 49 CFR Part 370.

Your mover must defer demand for the payment of the balance of any remaining charges for a period of 30 days following the date of delivery. After this 30-day period your mover may demand payment of the balance of any remaining charges.

Subpart E—Pick Up of My Shipment of Household Goods

Must my mover write up an order for service?

We require your mover to prepare an order for service on every shipment transported for you. You are entitled to a copy of the order for service when your mover prepares it.

The order for service is not a contract. Should you cancel or delay your move or if you decide not to use the mover, you should promptly cancel the order.

If you or your mover change any agreed dates for pick up or delivery of your shipment, or agree to any change in the non-binding estimate, your mover may prepare a written change to the order for service. The

written change must be attached to the order for service.

The order for service must contain the following ten elements:

- (1) Your mover's name and address and the U.S. DOT number assigned to your mover.
- (2) Your name, address and, if available, your telephone number(s).
- (3) The name, address, and telephone number of the delivering carrier's office or agent located at or nearest to the destination of your shipment.
- (4) A telephone number where you may contact your mover or its designated agent.
- (5) *Dates and times*. One of the following three dates and times:
 - (a) The agreed pickup date and agreed delivery date of your move.
 - (b) The agreed period or periods of time of the entire move.
 - (c) If your mover is transporting the shipment on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation, and delivery. Your mover must enter any penalty or per diem requirements upon the agreement under this item.
- (6) A complete description of any special or accessorial services ordered and minimum weight or volume charges applicable to the shipment.
- (7) Any identification or registration number your mover assigns to the shipment.
- (8) For non-binding estimated charges, your mover's best estimate of the amount of the charges, the method of payment of total charges, and the maximum amount (110 percent of the non-binding estimate) your mover will demand at the time of delivery for you to obtain possession of the shipment.
- (9) For binding estimated charges, the amount of charges your mover will demand based upon the binding estimate and the terms of payment under the estimate.
- (10) An indication of whether you request notification of the charges before delivery. You must provide your mover with the telephone number(s) or address(es) where your mover will transmit such communications.

You and your mover must sign the order for service. Your mover must provide a dated copy of the order for service to you at the time your mover signs the order. Before loading your shipment, and upon mutual agreement of both you and your mover, your mover may amend an order for service. Your mover must retain records of an order for service for at least one year from the date your mover wrote the order.

Should I or my mover write up an inventory of the shipment?

Yes. You or your mover should prepare an inventory of your shipment before loading. If your mover's driver fails to prepare an inventory, you should write a detailed inventory of your shipment listing any damage or unusual wear to any items. The purpose is to make a record of the condition of each item.

After completing the inventory, you should sign each page and ask the mover's driver to sign each page. Before you sign it, it is important you make sure the inventory lists every item in the shipment and the entries

regarding the condition of each item are correct. You have the right to note any disagreement. When your mover delivers the shipment, if an item is missing or damaged, your ability to dispute the items lost or damaged may depend upon your notations.

You should retain a copy of the inventory. Your mover may keep the original if the driver prepared it. If your mover's driver completed an inventory, the mover will generally attach the complete inventory to the bill of lading as an addendum to the bill of lading.

Must my mover write up a bill of lading?

The bill of lading is the contract between you and the mover. The mover is required by law to prepare a bill of lading for every shipment it transports. *The information on a bill of lading is required to be the same information shown on the order for service.* The driver who loads your shipment must give you a copy of the bill of lading before loading your furniture and other household goods.

IT IS YOUR RESPONSIBILITY TO READ THE BILL OF LADING BEFORE YOU ACCEPT IT.

It is your responsibility to understand the bill of lading before you sign it. If you do not agree with something on the bill of lading, do not sign it until you are satisfied it is correct.

The bill of lading requires the mover to provide the service you have requested. You must pay the charges set forth in the bill of lading.

THE BILL OF LADING IS AN IMPORTANT DOCUMENT. DO NOT LOSE OR MISPLACE YOUR COPY. Have it available until your shipment is delivered, all charges are paid, and all claims, if any, are settled.

A bill of lading must include the following twelve elements:

(1) Your mover's name and address, or the name and address of the motor carrier issuing the bill of lading.

(2) The names and addresses of any other motor carriers, when known, who will participate in the transportation of the shipment.

(3) The name, address, and telephone number of the office of the motor carrier you must contact in relation to the transportation of the shipment.

(4) When your mover transports your shipment under a collect-on-delivery basis, your name, address, and telephone number where the mover will notify you about the charges.

(5) For non-guaranteed service, the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods of time for pickup and delivery entered upon the bill of lading must conform to the agreed dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.

(6) For guaranteed service, the dates for pickup and delivery and any penalty or per diem entitlements due you under the agreement.

(7) The actual date of pickup.

(8) The company identification number(s) of the vehicle in which your mover loads your shipment.

(9) The terms and conditions for payment of the total charges including notice of any minimum charges.

(10) The maximum amount your mover will demand from you at the time of delivery for you to obtain possession of your shipment, when your mover transports under a collect-on-delivery basis.

(11) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation coverage.

(12) Evidence of any insurance coverage sold to or procured for you from an independent insurer, including the amount of the premium for such insurance.

A copy of the bill of lading must accompany your shipment at all times while in the possession of your mover or its agent(s). When your mover loads the shipment upon a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment. Your mover must retain bills of lading for at least one year from the date your mover created the bill of lading.

Should I reach an agreement with my mover about pickup and delivery times?

You and your mover should reach an agreement for pickup and delivery times. It is your responsibility to determine on what date, or between what dates, you need to have the shipment picked up and on what date, or between what dates, you require delivery. It is your mover's responsibility to tell you if it can provide service on or between those dates, or, if not, on what other dates it can provide the service.

In the process of reaching an agreement with your mover, you may find it necessary to alter your moving and travel plans if no mover can provide service on the specific dates you desire.

Do not agree to have your shipment picked up or delivered "as soon as possible." The dates or periods of time you and your mover agree upon should be definite.

Once an agreement is reached, your mover must enter those dates upon the order for service and upon the bill of lading.

Once your goods are loaded, your mover is contractually bound to provide the service described in the bill of lading. Your mover's only defense for not providing the service on the dates called for is the "Defense of Force Majeure." This is a legal term. It means when circumstances change, were not foreseen, and are beyond the control of your mover, preventing your mover from performing the service agreed to in the bill of lading, your mover is not responsible for damages resulting from its non-performance.

Must my mover determine the weight of my shipment?

Generally yes. If your mover transports your household goods on a non-binding estimate under the mover's tariffs based upon weight, your mover must determine the weight of the shipment. If your mover provided a binding estimate and has loaded your shipment without claiming you have added additional items or services, the weight of the shipment will not affect the charges you will pay. If your mover is

transporting your shipment based upon the volume of the shipment (i.e., a set number of cubic meters or yards), the weight of the shipment will also not affect the charges you will pay.

Your mover must determine the weight of your shipment before requesting you pay for any charges dependent upon your shipment's weight.

Most movers usually have a minimum weight or volume charge for transporting a shipment. Usually the minimum is the charge for transporting a shipment of at least 454 kilograms (1,000 pounds).

If your shipment appears to weigh less than the mover's minimum weight, your mover must advise you on the order for service of the minimum cost before agreeing to transport the shipment. Should your mover fail to advise you of the minimum charges and your shipment is less than the minimum weight, your mover must base your final charges upon the actual weight instead of the minimum weight.

How must my mover determine the weight of my shipment?

Your mover must weigh your shipment upon a certified scale.

The weight of your shipment must be obtained by using one of two methods.

Origin Weighing—Your mover may weigh your shipment in the city or area where it loads your shipment. If it elects this option, the driver must weigh the truck before coming to your residence. This is called the **TARE WEIGHT**. At the time of this first weighing, the truck may already be partially loaded with one or more other shipments. This will not affect the weight of your shipment. The truck should also contain the pads, dollies, hand-trucks, ramps, and other equipment normally used in the transportation of household goods shipments.

After loading, the driver will weigh the truck again to obtain the loaded weight, called the **GROSS WEIGHT**. The net weight of your shipment is then obtained by subtracting the tare weight before loading from the gross weight.

GROSS WEIGHT - TARE WEIGHT BEFORE LOADING = NET WEIGHT

DESTINATION WEIGHING—The mover is also permitted to determine the weight of your shipment at the destination after it delivers your load. The fact your mover weighs your shipment at the destination instead of the origin will not affect the accuracy of the weight of your shipment. **THE MOST IMPORTANT DIFFERENCE IS YOUR MOVER WILL NOT DETERMINE THE EXACT CHARGES ON YOUR SHIPMENT BEFORE IT IS UNLOADED.**

Destination weighing is done in reverse of origin weighing. After arriving in the city or area where you are moving, the driver will weigh the truck. Your shipment will still be on the truck. Your mover will determine the **GROSS WEIGHT** before coming to your new residence to unload. After unloading your shipment, the driver will again weigh the truck to obtain the **TARE WEIGHT**. The net weight of your shipment will then be obtained by subtracting the tare weight after delivery from the gross weight.

GROSS WEIGHT - TARE WEIGHT AFTER DELIVERY = NET WEIGHT

At the time of both weighings, your mover's truck must have installed or loaded all pads, dollies, hand trucks, ramps, and other equipment required in the transportation of your shipment. The driver and other persons must be off the vehicle at the time of both weighings. The fuel tanks on the vehicle must be full at the time of each weighing. In lieu of this requirement, your mover must refrain from adding fuel between the two weighings when the tare weighing is the first weighing performed.

Your mover may detach the trailer of a tractor-trailer vehicle combination from the tractor and the trailer weighed separately at each weighing provided the length of the scale platform is adequate to accommodate and support the entire trailer at one time.

Your mover may use an alternative method to weigh your shipment if it weighs 454 kilograms or less (1,000 pounds or less). The only alternative method allowed is weighing the shipment upon a platform or warehouse certified scale before loading your shipment for transportation or after unloading.

Your mover must use the net weight of shipments transported in large containers, such as ocean or railroad containers. Your mover will calculate the difference between the tare weight of the container (including all pads, blocking and bracing used in the transportation of your shipment) and the gross weight of the container with your shipment loaded in the container.

You have the right, and your mover must inform you of your right, to observe all weighings of your shipment. Your mover must advise you where and when each weighing will occur. Your mover must give you a reasonable opportunity to be present to observe the weighings.

You may waive your right to observe any weighing or reweighing. This does not affect any of your other rights you have under Federal law.

Your mover may request you waive your right to have a shipment weighed upon a certified scale. Your mover may want to weigh the shipment upon a trailer's on-board non-certified scale. You should demand your right to have a certified scale used. The use of a non-certified scale may cause you to pay a higher final bill for your move, if the non-certified scale does not accurately weigh your shipment. Remember, certified scales are inspected and approved for accuracy by a government inspection or licensing agency. Non-certified scales are not.

Your mover must obtain a separate weight ticket for each weighing. The weigh master must sign each weight ticket. Each weight ticket must contain the following six items:

- (1) The complete name and location of the scale.
- (2) The date of each weighing.
- (3) Identification of the weight entries as being the tare, gross, or net weights.
- (4) The company or carrier identification of the vehicle.
- (5) Your last name as it appears on the Bill of Lading.
- (6) Your mover's shipment registration or Bill of Lading number.

Your mover must retain the original weight ticket or tickets relating to the determination

of the weight of your shipment as part of its file on your shipment.

When both weighings are performed on the same scale, one weight ticket may be used to record both weighings.

Your mover must present all freight bills with true copies of all weight tickets. If your mover does not present its freight bill with all weight tickets, your mover is in violation of Federal law.

Before the driver actually begins unloading your shipment weighed at origin and after your mover informs you of the billing weight and total charges, you have the right to demand a reweigh of your shipment. If you believe the weight is not accurate, you have the right to request your mover reweigh your shipment before unloading.

Your mover is prohibited from charging you for the reweighing. If the weight of your shipment at the time of the reweigh is different from the weight determined at origin, the mover must recompute the charges based upon the reweigh weight.

Before requesting a reweigh, you may find it to your advantage to estimate the weight of your shipment using the following three-step method:

1. Count the number of items in your shipment. Usually there will be either 30 or 40 items listed on each page of the inventory. For example, if there are 30 items per page and your inventory consists of four complete pages and a fifth page with 15 items listed, the total number of items will be 135. *If an automobile is listed on the inventory do not include this item in the count of the total items.*

2. Subtract the weight of any automobile included in your shipment from the total weight of the shipment. If the automobile was not weighed separately, its weight can be found on its title or license receipt.

3. Divide the number of items in your shipment into the weight. If the average weight resulting from this exercise ranges between 16 and 20 kilograms (35 and 45 pounds) per article, it is unlikely a reweigh will prove beneficial to you and could result in you paying higher charges.

Experience has shown the average shipment of household goods will weigh about 18 kilograms (40 pounds) per item. If a shipment contains a large number of heavy items, such as cartons of books, boxes of tools or heavier than average furniture, the average weight per item may be 20 kilograms or more (45 pounds or more).

Subpart F—Transportation of My Shipment

Must my mover transport the shipment in a timely manner?

Yes, your mover must transport your household goods in a timely manner. This is also known as "reasonable dispatch service." Your mover must provide reasonable dispatch service to you, except for transportation on the basis of guaranteed pickup and delivery dates.

When your mover is unable to perform either the pickup or delivery of your shipment on the dates or during the periods of time specified in the order for service, your mover must notify you of the delay by telephone, telegram or in person, at your mover's expense. As soon as the delay

becomes apparent to your mover, it must give you notification it will be unable to provide the service specified in the terms of the order for service.

At the time of your mover's notification of delay, it must advise you of the dates or periods of time it may be able to pickup and/or deliver the shipment. Your mover must consider your needs in its advisement. If its notification of delay occurs before the pickup of the shipment, your mover must amend the order for service. If your mover's notification of delay occurs after it picked up your shipment, your mover or its agent must notify you of the delay.

Your mover must prepare a written record of the date, time, and manner of its notification. Your mover must prepare a written record of its amended date or period of time for delivery. Your mover must retain these records as a part of its file on your shipment. The retention period is one year from the date of notification. Your mover must furnish a true copy of the notification to you by first class mail or in person.

Your mover must tender your shipment for delivery upon the agreed delivery date or within the period of time specified on the bill of lading. Upon your request or concurrence, your mover may deliver your shipment on another day.

The establishment of a delayed pickup or delivery date does not relieve your mover from liability for damages resulting from your mover's failure to provide service as agreed. However, when your mover notifies you of alternate delivery dates, it is your responsibility to be available to accept delivery on the dates specified. If you are not available and are not willing to accept delivery, your mover has the right to place your shipment in storage at your expense or hold the shipment on its truck and assess additional charges.

If after the pickup of your shipment, you request your mover to change the delivery date, most movers will agree to do so providing your request will not result in unreasonable delay to its equipment or interfere with another customer's move. However, your mover is under no obligation to consent to amended delivery dates. Your mover has the right to place your shipment in storage at your expense if you are unwilling or unable to accept delivery on the date agreed to in the bill of lading.

If your mover fails to pick up and deliver your shipment on the date entered on the bill of lading and you have expenses you otherwise would not have had, you may be able to recover those expenses from your mover. This is what is called an inconvenience or delay claim. Should your mover refuse to honor such a claim and you continue to believe you are entitled to be paid damages, you may sue the mover. *The FHWA has no authority to order the mover to pay such claims.*

While we hope your mover delivers your shipment in a timely manner, you should consider the possibility your shipment may be delayed and find out what payment you can expect if your mover delays service through its own fault before you agree with your mover to transport your shipment.

What must my mover do if it is able to deliver my shipment more than 24 hours before I am able to accept delivery?

At your mover's discretion, it may place your shipment in storage. This will be under its own account and at its own expense in a warehouse located in proximity to the destination of your shipment. Your mover may do this if you fail to request or concur with an early delivery date, and your mover is able to deliver your shipment more than 24 hours before your specified date or the first day of your specified period of time.

If your mover exercises this option, your mover must immediately notify you of the name and address of the warehouse where your mover places your shipment. Your mover must make and keep a record of its notification as a part of its shipment records. Your mover has full responsibility for the shipment under the terms and conditions of the bill of lading. Your mover is responsible for the charges for redelivery, handling, and storage until it makes final delivery. Your mover may limit its responsibility to the agreed delivery date or the first day of the period of time of delivery as specified in the bill of lading.

What must my mover do for me when I store household goods in transit?

If you request your mover hold your household goods in storage-in-transit (SIT) and the storage period of time is about to expire, your mover must notify you, in writing, about the four following items:

(1) The date when storage-in-transit will convert to permanent storage.

(2) The existence of a nine-month period after the date of conversion to permanent storage when you may file claims against your mover for loss or damage occurring to your goods while in transit or during the storage-in-transit period.

(3) Your mover's liability will end.

(4) Your property will be subject to the rules, regulations, and charges of the warehouseman.

Your mover must make this notification at least 10 days before the expiration date of one of the following two periods of time:

(1) The specified period of time when your mover is to hold your goods in storage.

(2) The maximum period of time provided in its tariff for storage-in-transit.

Your mover must notify you by mail.

If your mover holds your household goods in storage-in-transit for a period of time less than 10 days, within one day before the expiration date of the specified time when your goods are to be held in such storage, your mover must notify you of the same information specified above.

Your mover must maintain a record of all notifications to you as part of the records of your shipment. Your mover's failure or refusal to notify you will automatically effect a continuance of your mover's liability according to the applicable tariff provisions with respect to storage-in-transit, until the end of the day following the date when your mover actually gives you notice.

What must my mover do if I want to know the actual weight or charges for my shipment before delivery?

If you request notification of the actual weight or volume and charges upon your shipment, your mover must comply with your request when it is moving your goods on a collect-on-delivery basis. This requirement is conditioned upon you supplying your mover with an address or telephone number where you will receive the communication. Your mover must make its notification by telephone, telegram, or in person.

You must receive its notification at least one full 24-hour day before your mover's delivery, excluding Saturdays, Sundays and Federal holidays.

Your mover may disregard this 24-hour notification requirement on shipments subject to one of the following three things:

(1) Back weigh (when your mover weighs your shipment at its destination).

(2) Pickup and delivery encompassing two consecutive week days, if you agree.

(3) Maximum payment amounts at time of delivery of 110 percent of the estimated charges, if you agree.

Subpart G—Delivery of My Shipment

May my mover ask me to sign a delivery receipt purporting to release it from liability?

At the time of delivery, your mover will expect you to sign a receipt for your shipment. You generally will sign each page of your mover's copy of the inventory.

Your mover must exclude on its delivery receipt or shipping document any language purporting to release or discharge your mover or its agents from liability.

Your mover may include a statement about your receipt of your property in apparent good condition, except as noted on the shipping documents.

DO NOT SIGN the delivery receipt, if any language purporting to release or discharge your mover or its agents from liability appears on the delivery receipt. Strike out such language before signing or refuse delivery if the driver or mover refuses to provide a proper delivery receipt.

What is the maximum collect-on-delivery amount my mover may demand I pay at the time of delivery?

On a binding estimate, the maximum amount is the exact estimate of the charges. Your mover may specify the form of payment acceptable to it (e.g., a certified check).

On a non-binding estimate, the maximum amount is 110 percent of the approximate costs. Your mover may specify the form of payment acceptable to it (e.g., cash).

If my shipment is transported on more than one vehicle, what charges may my mover collect at delivery?

Although all movers try to move each shipment on one truck, it becomes necessary at times to divide a shipment among two or more trucks. This frequently occurs when an automobile is included in the shipment and it is transported on a vehicle specially designed to transport automobiles. When this occurs your transportation charges are the

same as if the entire shipment moved on one truck.

If your shipment is divided for transportation on two or more trucks, the mover may require payment for each portion as it is delivered.

Your mover may delay the collection of all the charges until the entire shipment is delivered, at its discretion, not yours. At the time you make the arrangements for your move, you should ask the mover about its policies in this respect.

If my shipment is partially lost or destroyed, what charges may my mover collect at delivery?

Movers customarily make every effort to not lose, damage, or destroy your items while your shipment is in their possession for transportation. However, despite the precautions taken, articles are sometimes lost or destroyed during the move.

In addition to any money you may recover from your mover to compensate for lost or destroyed articles, you may also recover the transportation charges represented by the portion of the shipment lost or destroyed.

Your mover must require you to pay any specific valuation charge due. Your mover may only apply this paragraph to the transportation of household goods. Your mover may disregard this paragraph if loss or destruction was due to an act or omission by you.

For example, if you pack a hazardous material (i.e., gasoline, aerosol cans, motor oil, etc.) and your shipment is partially lost or destroyed by fire in storage or in the mover's trailer, your mover may require you to pay for the full cost of transportation.

Your mover may first collect its freight charges for the entire shipment, if your mover chooses. At the time your mover disposes of claims for loss, damage, or injury to the articles in your shipment, it must refund the portion of its freight charges corresponding to the portion of the lost or destroyed shipment (including any charges for accessorial or terminal services).

Your mover is forbidden from collecting, or requiring you to pay, any freight charges (including any charges for accessorial or terminal services) when your household goods shipment is *totally lost or destroyed* in transit, unless the loss or destruction was due to an act or omission by you.

How must my mover calculate the charges applicable to the shipment as delivered?

Your mover must multiply the percentage corresponding to the delivered shipment times the total charges applicable to the shipment tendered by you to obtain the total charges it must collect from you.

If your mover's computed charges exceed the charges otherwise applicable to the shipment as delivered, the lesser of those charges must apply. This will apply only to the transportation of your household goods.

Your mover must require you to pay any specific valuation charge due.

Your mover may disregard this paragraph if loss or destruction was due to an act or omission by you. For example, you fail to disclose to your mover your shipment contains perishable live plants. Your mover

may disregard its loss or destruction of your plants, because you failed to inform your mover you were transporting live plants.

Your mover must determine, at its own expense, the proportion of the shipment not lost or destroyed in transit.

Your rights are in addition to, and not in lieu of, any other rights you may have with respect to your shipment of household goods your mover lost or destroyed, or partially lost or destroyed, in transit. This applies whether or not you have exercised your rights provided above.

Subpart H—Collection of Charges

Does this subpart apply to most shipments?

No, this subpart does not apply to most shipments. Most movers perform C.O.D. service subject to the 110 percent rule for non-binding estimates. Read and understand this subpart only if your mover is not providing this type of C.O.D. service subject to the 110 percent rule for non-binding estimates.

How must my mover present its freight or expense bill to me?

At the time for payment of transportation charges, the mover is required to give you a freight bill identifying the service provided and the charge for each service. It is customary for most movers to use a copy of the bill of lading as a freight bill; however, some movers use an entirely separate document for this purpose.

Except in those instances where a shipment is moving on a binding estimate, the freight bill must specifically identify each service performed, the rate per unit for each service, and the total charges for each service. *If this information is not on the freight bill, DO NOT accept or pay the freight bill.*

Movers customarily provide in tariffs the freight charges must be paid in cash, by certified check, or by a cashier's check. When this requirement exists, the mover will not accept personal checks. At the time you make arrangements for your move, you should ask your mover about the form of payment your mover requires.

Some movers permit payment of freight charges by use of a charge card. However, do not assume your nationally recognized charge, credit, or debit card will be acceptable for payment. Ask your mover at the time you request an estimate.

If you do not pay the transportation charges at the time of delivery, your mover has the right, under the bill of lading, to refuse to deliver your goods. The mover may place them in storage, at your expense, until the charges are paid. However, the mover must deliver your goods upon payment of 110 percent of a non-binding estimate.

If, before payment of the transportation charges, you discover an error in the charges, you should attempt to correct the error with the driver, the mover's local agent, or by contacting the mover's main office. If an error is discovered after payment, you should write the mover (the address will be on the freight bill) explaining the error and request a refund.

Movers customarily check all shipment files and freight bills after a move has been completed to make sure the charges were

accurate. If an overcharge is found, you will be notified and a refund made. If an undercharge occurred, you will be billed for the additional charges due.

On "to be prepaid" shipments, your mover must present its freight bill for all transportation charges within 15 days, from the date your mover received the shipment. This time period excludes Saturdays, Sundays, and Federal holidays.

On "collect" shipments, your mover must present its freight bill for all transportation charges on the date of delivery, or, at its discretion, within 15 days, measured from the date the shipment was delivered at your destination. This time period excludes Saturdays, Sundays, and Federal holidays.

Your mover's freight bills and accompanying written notices must state the following five items:

- (1) Penalties for late payment.
- (2) Credit time limits.
- (3) Service or finance charges.
- (4) Collection expense charges.
- (5) Discount terms.

If your mover extends credit to you, freight bills or a separate written notice accompanying a freight bill or a group of freight bills presented at one time must state "You may be subject to tariff penalties for failure to timely pay freight charges" or a similar statement. Your mover must state on its freight bills or other notices when it expects payment, and any applicable service charges, collection expense charges and discount terms.

When your mover lacks sufficient information to compute its tariff charges at its time of billing, your mover must present its freight bill for payment within seven days following the day when sufficient information becomes available. This time period excludes Saturdays, Sundays, and Federal holidays.

Your mover must refrain from extending more credit to you, if you fail to furnish sufficient information to your mover. Your mover must have sufficient information to render a freight bill within a reasonable time after the shipment.

When your mover presents freight bills by mail, it must deem the time of mailing to be the time of presentation of the bills. The term "freight bills," as used in this paragraph, includes both paper documents and billing by use of electronic media such as computer tapes, disks, or the Internet when the mails (U.S. mail, e-mail) are used to transmit them.

When you mail acceptable checks or drafts in payment of freight charges, your mover must deem the act of mailing the payment within the credit period to be the proper collection of the tariff charges within the credit period for the purposes of Federal law. In the case of a dispute as to the date of mailing, your mover must accept the postmark as the date of mailing.

If I forced my mover to relinquish a collect-on-delivery shipment before the payment of ALL charges, how must my mover collect the balance?

On "collect-on-delivery" shipments, your mover must present its freight bill for all transportation charges within seven days, measured from the date the shipment was

delivered at your destination. This time period excludes Saturdays, Sundays, and Federal holidays.

What actions may my mover take to collect from me the charges upon its freight bill?

Your mover must present a freight bill within 15 days (excluding Saturdays, Sundays, and Federal holidays) of the date of delivery of a shipment at your destination.

The credit period must be seven days (excluding Saturdays, Sundays, and Federal holidays).

Your mover must provide in its tariffs the following three things:

(1) A provision automatically extending the credit period to a total of 30 calendar days for you if you have not paid its freight bill within the 7-day period.

(2) A provision indicating you will be assessed a service charge by your mover equal to one percent of the amount of the freight bill, subject to a \$20 minimum charge, for the extension of the credit period.

(3) A provision your mover must deny credit to you, if you fail to pay a duly presented freight bill within the 30-day period. Your mover may grant credit to you, at its discretion, when you satisfy your mover's conditions you will pay all future freight bills duly presented. Your mover must ensure all your payments of freight bills are strictly in accordance with Federal rules and regulations for the settlement of its rates and charges.

Do I have a right to file a claim to recover money for property my mover lost or damaged?

Should your move result in the loss or damage to any of your property, you have the right to file a claim with your mover to recover money for such loss or damage.

You have nine months following either the date of delivery, or the date when the shipment should have been delivered, to file a claim. You should file a claim as soon as possible. If you fail to file a claim within 120 days following delivery and later bring a legal action against the mover to recover the damages, you may not be able to recover your attorney fees even though you win the court action.

While the Federal Government maintains regulations governing the processing of loss and damage claims, it cannot resolve those claims. If you cannot settle a claim with the mover, you may file a civil action to recover your claim in court. In this connection, you may obtain the name and address of the mover's agent for service of legal process in your state by contacting the Federal Highway Administration.

In addition, your mover must participate in an Arbitration Program. The program, described earlier in this pamphlet, provides you with the opportunity to settle certain types of unresolved loss or damage claims through a neutral arbitrator. You may find submitting your claim to arbitration under such a program to be a less expensive and more convenient way to seek recovery of your claim. If the mover does not provide you with information about its arbitration program before you move, ask the mover for the details of the program.

Subpart I—Reports My Mover Files With the FHWA**What is an annual arbitration report?**

A report describing the results of all arbitrations requested and concluded in the previous calendar year.

Who must file an annual arbitration report?

If your mover picks up or delivers shipments for individual shippers (like you) during any calendar year, your mover must file an annual arbitration report.

Where and when does my mover file an annual arbitration report?

Your mover must file an annual arbitration report with the Federal Highway Administration in Washington, D.C. by March 31 each year.

What is included in my mover's annual arbitration report?

Your mover must include in its annual arbitration report the following nine things:

- (1) The total number of shipments transported for the calendar year covered by the report.
- (2) The total number of claims in excess of \$1000.
- (3) The total number of claims of \$1000 or less.
- (4) The number of requests for arbitration on claims of \$1000 or less.
- (5) The results of those arbitrations (listing claim amount and disposition).
- (6) The number of requests for arbitration on claims in excess of \$1000.
- (7) The number of requests for arbitration on claims in excess of \$1000 your mover accepted.
- (8) The results of the arbitrations your mover accepted and reported listing claim amount and disposition.
- (9) An oath, completed by your mover. The oath must be signed by a company officer of your mover.

How may I get a copy of my mover's annual arbitration report?

Ask your mover for a copy of its report or write to the following address: Licensing and Insurance Division (HIA-30), Office of Motor Carrier Information Analysis, Federal Highway Administration, 400 Virginia Avenue, SW., Suite 600, Washington, D.C. 20024.

Subpart J—Resolving Disputes With My Mover**What may I do to resolve disputes with my mover?**

The Federal Highway Administration does not help you settle your dispute with your mover.

Generally, you must resolve your own disputes with your mover. You enter a contractual arrangement with your mover. You are bound by each of the following three things:

- (1) The terms and conditions you negotiated before your move.
 - (2) The terms and conditions you accepted when you signed the bill of lading.
 - (3) The terms and conditions you accepted when you signed for delivery of your goods.
- Your mover is required to offer you arbitration to settle your disputes with it. Otherwise, you have the right to take your mover to court.

The Federal Highway Administration does not have the resources to seek a court injunction on your behalf to obtain your household goods if your mover is holding your goods "hostage."

Subpart K—What Else Should I Know**What if I have more questions?**

If this pamphlet does not answer all of your questions about your move, do not hesitate to ask your mover's representative who handled the arrangements for your move, the driver who transports your

shipment, or the mover's main office for additional information.

What are the most important points I should remember from this pamphlet?

1. Movers must give written estimates.
2. Movers may give binding estimates.
3. Non-binding estimates are not always accurate; actual charges often exceed the estimate.
4. You should specify pickup and delivery dates in the order for service.
5. The bill of lading is your contract with the mover * * *. READ IT CAREFULLY * * *. If you have any questions ask your mover.
6. Be sure you understand the extent of your mover's liability for loss and damage.
7. You have the right to be present each time your shipment is weighed.
8. You may request a reweigh of your shipment.
9. If you have moved on a non-binding estimate, you should have enough cash, a certified check, or a cashier's check to pay the estimated cost of your move plus 10 percent more, at the time of delivery.
10. Unresolved claims for loss or damage may be submitted to arbitration; ask your mover for details.

PART 377—[AMENDED]

2. The authority citation for part 377 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13701–13702, 13706, 13707, and 14101; 49 CFR 1.48.

§ 377.215 [Amended]

3. Section 377.215 is removed and reserved.

[FR Doc. 98–12582 Filed 5–14–98; 8:45 am]

BILLING CODE 4910–22–P

Friday
May 15, 1998

Part III**Department of
Transportation**

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Cincinnati/
Northern Kentucky International Airport
Class B Airspace Area, and Revocation
of Cincinnati/Northern Kentucky
International Class C Airspace Area, KY;
Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-AWA-5]

RIN 2120-AE97

Proposed Establishment of Cincinnati/Northern Kentucky International Airport Class B Airspace Area, and Revocation of Cincinnati/Northern Kentucky International Class C Airspace Area; KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: On February 10, 1998, the FAA published an NPRM, which proposed to establish a Class B airspace area and to revoke the existing Class C airspace area at the Cincinnati/Northern Kentucky International Airport. This document announces the reopening of the comment period for an additional 60 days.

DATES: Comments must be received on or before July 14, 1998.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-200), Docket No. 93-AWA-5, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be also sent electronically to the following Internet address: 9-NPRM-CMTS@faa.dot.gov. Comments delivered must be marked Docket No. 93-AWA-5. The official docket may be examined in the Office of the Chief Counsel, Room 915G, weekdays,

between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Background**

Airspace Docket No. 93-AWA-5, published on February 10, 1998 (63 FR 6818), proposed to establish a Class B airspace area and to revoke the existing Class C airspace area at the Cincinnati/Northern Kentucky International Airport (CVG). CVG qualified as a candidate for Class B airspace based on the enplaned passengers and airport operations. The 60-day comment period for the notice closed on April 13, 1998.

By letters, on April 8 and 13 respectively, the Aircraft Owners and Pilots Association (AOPA) and Mercantile Stores Co. Inc. requested that the FAA extend the comment period from 60 days, to as long as 90 days, to enable those persons impacted by the proposal to submit meaningful comments. Additionally, AOPA requested that the FAA take action to conduct a second series of informal airspace meetings to present this proposal to the public.

The FAA agrees, in part, with these recommendations. The plan to establish a Class B airspace area for CVG and revoke the existing Class C airspace area, was introduced for public input at informal airspace meetings conducted in Ohio and Kentucky on September 3 and 4, 1992. These meetings were held to allow the public an opportunity to preview and comment on the planned

airspace design for CVG. Comments on the planned design were received from a variety of airspace users including the Ad Hoc User Group Advisory Committee for the area. All the comments received during these informal airspace meetings were given due consideration prior to issuing the NPRM. The proposed Class B airspace area configuration discussed in the NPRM is the same as presented during the 1992 informal airspace meetings. Therefore, the FAA finds that it is not necessary to hold further informal airspace meetings.

It is FAA policy to encourage full public participation in all regulatory actions. The FAA is aware that many general aviation pilots and others associated with the aviation industry receive notification of proposed rulemaking actions only through user organizations. Also, the FAA recognizes that a number of years have elapsed since the informal airspace meetings were held. Based on the above, the FAA has determined that reopening the comment period is reasonable and would ensure that all interested parties have an opportunity to respond to the NPRM. Accordingly, the FAA is reopening the comment period for this rulemaking effort for an additional 60 days. This additional period allows for a total comment period of 120 days instead of the original 60-day comment period.

Issued in Washington, DC on May 11, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98-12981 Filed 5-14-98; 8:45 am]

BILLING CODE 4910-13-P

Friday
May 15, 1998

Part IV**Department of
Agriculture****Food and Nutrition Service****7 CFR Parts 210 and 220****National School Lunch Program and
School Breakfast Program: Additional
Menu Planning Alternatives; Proposed
Rule; Republication**

fedderal register

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584-AC38

National School Lunch Program and School Breakfast Program: Additional Menu Planning Alternatives

Editorial Note: FR Doc. 98-11654 was originally published at 63 FR 24686-24709 in the issue of Monday, May 4, 1998. Due to numerous errors, the document is being republished in its entirety. The comment dates have changed. Also, disregard the correction document published at 63 FR 25569 May 8, 1998.

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The National School Lunch Act requires that schools that are participating in the National School Lunch or School Breakfast Programs claim reimbursements only for lunches or breakfasts which meet the nutrition standards of the National School Lunch Act, including compliance with the Dietary Guidelines for Americans. The Healthy Meals for Children Act expanded the number of menu planning alternatives available to school food authorities participating in the National School Lunch and School Breakfast Programs. In accordance with that legislation, this proposed rulemaking would reinstate the menu planning system in effect for School Year 1994-95 (the traditional meal pattern) as one of the menu planning alternatives available to local school food authorities. In addition, this proposal would permit school food authorities to use "any reasonable approach" to plan menus to meet the nutrition standards. The Department is also proposing to clarify and simplify several State agency monitoring responsibilities associated with the implementation of the nutrition standards of the National School Lunch Act.

DATES: To be assured of consideration, comments must be postmarked or e-mail comments dated on or before November 12, 1998.

ADDRESSES: Comments must be sent to: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302 or via the Internet at CNDProposal@FCS.USDA.GOV. All written submissions will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia

during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie at the above address or by telephone at 703-305-2620.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This proposed rule has been determined to be significant and is subject to review by the Office of Management and Budget under Executive Order 12866.

Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. However, a Regulatory Cost/Benefit Assessment is provided in the Appendix to this preamble.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Under Secretary for Food, Nutrition and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities. The Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact on local schools as the proposal would expand the number of options available to plan menus for school meals.

Executive Order 12372

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of Food and Nutrition Service (FNS) findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, this notice invites the general public and other public agencies to comment on the information collection.

Written comments must be received on or before July 14, 1998.

Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Laura Oliven, Desk Officer for FNS. A copy of these

comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their information collection requirements comments from their comments on the remainder of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and

assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 7 CFR Part 210, National School Lunch Program.

OMB Number: 0584-0006.

Expiration Date: October 31, 1999.

Type of Request: Revision of currently approved collection.

Abstract: The National School Lunch Act requires that schools that are

participating in the school lunch program claim reimbursements only for lunches under the program which meet the nutrition standards of the Act, including compliance with the Dietary Guidelines for Americans. The Healthy Meals for Children Act expanded the number of menu planning alternatives available to school food authorities participating in the NSLP. In accordance with that legislation, this proposed rulemaking would reinstate the menu planning system in effect for school year 1994-95 (the traditional meal pattern) as one of the menu planning alternatives available to local school food authorities. In addition, this proposal would permit school food authorities to use "any reasonable approach" to meet the requirements.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the information collection requirements of the proposed rule as noted below:

BILLING CODE 1505-01-F

Estimated Annual Recordkeeping Burden:

	Section	Annual Number of Respondents	Annual Frequency	Average Burden per Response	Annual Burden Hours
State agency establishes guidelines and approves school food authorities menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	58	1	1	58
State agency modifies menu planning alternatives or develops menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	5	1	20	100
School food authorities adopt menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	2,500	1	10.5	26,250
School food authorities modify menu planning alternatives or develop menu planning alternatives and submit them to the State agency for approval:					
Total Existing	7 CFR 210.10 (l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	100	1	20	2,000
Total Recordkeeping Burden:					
Total Existing	0				
Total Proposed	+28,408				
Change	+ 28,408				

BILLING CODE 1505-01-C

Background

On June 13, 1995, USDA published a final rule (60 FR 31188) updating the nutrition standards for the National School Lunch Program (NSLP) and School Breakfast Program (SBP). That rulemaking was the foundation of the Department's School Meals Initiative for Healthy Children, an integrated, comprehensive plan for promoting the health of the Nation's school children by updating the nutrition standards for school meals and by providing State agencies and local food service operators with the technical assistance to meet these standards. In addition to announcing a fundamental change in the direction of the school meals programs, the rulemaking implemented section 106(b) of Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994, which was enacted on November 2, 1994. That provision amended section 9(f) of the National School Lunch Act (NSLA) (42 U.S.C. 1758(f)) to require that school meals meet the Dietary Guidelines for Americans (hereinafter referred to as the Dietary Guidelines) by School Year 1996/1997, unless an implementation waiver of up to two years was approved by the State agency. The rule also established specific minimum standards for key nutrients (protein, calcium, iron, Vitamin A and Vitamin C), and calories which school meals must meet. (As discussed later, these standards are now also included in section 9(f) of the NSLA.)

To assist schools with implementation of the updated nutrition standards, the School Meals Initiative (SMI) rule provided three menu planning alternatives: Nutrient Standard Menu Planning (NSMP), Assisted Nutrient Standard Menu Planning (ANSMP) and a food-based menu planning alternative. After publication of the final SMI rule, Public Law 104-149, the Healthy Meals for Children Act, was enacted on May 29, 1996. It expanded the number of menu planning alternatives which school food authorities have available to them by including the menu planning system that was in effect for School Year 1994-95, as a permanent option as well as "any reasonable approach, within guidelines established by the Secretary * * *"

Before a proposed rule to implement Public Law 104-149 could be published, Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, was enacted on August 22, 1996. This law further amended section 9(f)(1)(B) of the NSLA to mandate that school

lunches and breakfasts provide, over a week, one-third and one-fourth, respectively, of the Recommended Dietary Allowances (RDA) established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Because these requirements are already included in the regulations establishing the new specific nutrition standards for school lunches and breakfasts (§ 210.10(b) and § 220.8(a), respectively), this proposal would only add the appropriate RDA requirements for the traditional meal pattern.

Menu Planning Systems

The sole menu planning system that was in effect for School Year 1994-95 was a meal pattern (the "traditional" meal pattern) which stipulated the food components (meat/meat alternate, fruits/vegetables, bread/bread alternate, and milk) and the minimum quantities of those components that had to be offered to children of specific age/grade groups. This meal pattern was virtually unchanged since the establishment of the NSLP in 1946 and, until the June 13, 1995, rulemaking, was the only menu planning system available to school food authorities.

In order to provide flexibility as well as the tools that school food authorities would need to meet modern nutrition standards for children, the Department developed new menu planning alternatives designed to facilitate compliance with the Dietary Guidelines and the other nutrition-related requirements of section 9(f) of the NSLA. NSMP and ANSMP provide menu planners with more flexible approaches by eliminating the strict component and quantity requirements. Also, NSMP and ANSMP provide actual nutrient information, including fat and saturated fat levels, to menu planners on an on-going basis. In addition, after the initial proposal in 1994, the Department developed the enhanced food-based menu planning option which increased the minimum number of servings over a week's time for the fruits/vegetables and grains/breads components in order to maintain calorie levels while keeping the percentages of calories from fat and saturated fat to 30 percent and less than 10 percent, respectively, as required. School food authorities were given the option of choosing which of these menu planning alternatives best suited their particular circumstances.

The Department developed these menu planning alternatives with the Dietary Guidelines nutrition standards of the NSLA as the fundamental element. The Department continues to believe that the enhanced food-based,

NSMP and ANSMP alternatives best support compliance with the Dietary Guidelines. However, the Department acknowledges that some school food authorities are progressing toward meeting the Dietary Guidelines under the traditional meal pattern. Therefore, the Department has concluded that, with increased emphasis on vegetables, fruits and grain products and with appropriate modifications to preparation techniques and product specifications, the traditional meal pattern may support all of the nutrition standards required by the NSLA. In recognition of this potential, the President signed Public Law 104-149 which amended section 9(f) of the NSLA to authorize the traditional meal pattern as a permanent menu planning alternative as well as any other reasonable approaches to menu planning under guidelines established by the Secretary.

The remainder of this preamble discusses the proposed implementation of the recent statutory amendments. This proposal also clarifies monitoring procedures for assessing compliance with the Dietary Guidelines and the other nutrition standards for all menu planning alternatives.

The 1994-95 Meal Pattern (The Traditional Meal Pattern)

This proposal would reinstate the menu planning system in effect for School Year 1994-1995 as a permanent alternative for planning school menus under the NSLP and SBP. The SMI final rulemaking did not allow continued use of the traditional meal pattern after June 30, 1996, the latest date that school food authorities could be authorized to delay compliance with the Dietary Guidelines. Therefore, the provisions for the traditional meal pattern for the NSLP were moved to a separate section (§ 210.10a) so that schools could continue using the traditional meal pattern until the newer menu planning alternatives had been fully implemented. Similarly, the traditional meal pattern for the SBP was redesignated as § 220.8a.

Now that Public Law 104-149 has reinstated the traditional meal pattern as a permanent, food-based menu planning alternative, this proposal would incorporate it into paragraphs (d) and (k) of § 210.10 and into paragraphs (c) and (g) of § 220.8 where the requirements for the food-based menu planning alternative established by the June 13, 1995, final rule are set forth. Sections 210.10a and 220.8a would be removed. Please note that, due to the statutory amendment made after publication of the final rule, the

traditional menu planning approach will remain in effect after the July 1, 1998, implementation deadline in § 210.10 (o) and § 220.8(m). To distinguish between the two food-based systems, the meal pattern in effect for School Year 1994/1995 would be formally renamed the "traditional food-based menu planning alternative." The food-based menu planning alternative established in the June 13, 1995, rulemaking would be renamed the "enhanced food-based menu planning alternative."

RDA for the Traditional Food-Based Menu Planning Alternative

One proposed revision to § 210.10(d) of the NSLP regulations would add a chart indicating the amounts of calories and required nutrients that equal one-third of the RDA for key nutrients and calories for the age/grade groups of the traditional food-based menu planning alternative. A similar chart showing one-fourth of the RDA for key nutrients and calories for breakfasts would be added to § 220.8(c). These additional charts are necessary as the traditional food-based menu planning alternative follows different age/grade groupings than used for the NSMP, ANSMP, and enhanced food-based menu planning alternatives.

The Department recognizes the importance of offering meals that provide a proportionate share of the nutritional needs of the nation's schoolchildren, and that determination of whether those needs are being met must be based on the most accurate data available. To this end, the Department has calculated the RDA for each age group using computer software specifically designed for this purpose. In creating the enhanced food-based menu planning alternative, the Department developed age/grade groupings that were averaged to more precisely meet the calorie and nutrient levels at each age or stage of development. Uniform groupings, based as closely as possible on the actual nutritional needs of the various ages, for the two food-based systems would be preferable. However, section 9(f)(4)(A)(i) of the NSLA requires the availability of the traditional meal pattern as it existed in the 1994-1995 school year. The Department, therefore, does not want to add complexity to the traditional approach by proposing to make more precise age/grade groupings apply to both food-based menu planning alternatives. While this means menu planners using the traditional meal pattern may continue to meet a single set of quantity requirements for all children in the school, regardless of

their age or grade, the Department is concerned that this practice could undermine the nutrition goals of the programs, since the food service would not be as responsive to respond to the varying needs of children of different ages. The Department recognizes the need to provide the traditional approach without additional requirements but is also concerned with the need to meet the appropriate nutrition standards. Therefore, interested parties in the food service, nutrition and scientific communities may wish to comment on the appropriateness of allowing a single age/grade grouping and the associated nutrition standards.

"Any Reasonable Approach"

Public Law 104-149 amended section 9(f)(4) of the NSLA to permit school food authorities to use "any reasonable approach" to menu planning not specifically delineated in section 9(f)(3) and (4) of the NSLA. The law makes it clear, however, that "reasonable approaches" must meet guidelines established by the Secretary. In developing appropriate guidelines, the Department believes there will be two distinct classes of proposed alternative approaches. First, some proposed alternatives will consist of relatively minor modifications to one or another of the four existing menu planning systems. For this type of suggested alternative, the Department is proposing to allow State agencies to establish a general policy allowing school food authorities to adopt such approaches without prior Departmental approval. The second class of alternatives will involve unique proposals that depart significantly from existing systems. The Department is proposing to redesignate § 210.10(l) through (o) as § 210.10(m) through (p) and to add a new § 210.10(l) to establish basic requirements for authorizing both classes of alternate menu planning approaches. For the SBP, § 220.8(h) through (m) would be redesignated as § 220.8(i) through (n) and § 220.8(h) would provide for alternate menu planning approaches.

Minor "Pre-Approved" Modifications

The first proposed class of alternate approaches is specific, minor modifications to provisions of the existing menu planning alternatives and would be added at § 210.10(l)(1) and § 220.8(h)(1). While the State agency may require prior approval or may establish additional guidelines for their adoption, these modifications would be considered "pre-approved" in that State agencies may allow their use without any additional review. Of course, as part of their general oversight

responsibilities under the NSLA, State agencies must ensure that the school food authority's operations, including these "pre-approved" options, are consistent with the NSLP and SBP regulatory standards, even if State agencies do not require pre-approval. The modifications are: a weekly meat/meat alternate standard (for the NSLP only) and flexible age/grade groupings for the food-based menu planning alternatives (for both the NSLP and SBP). While only two modifications are proposed, the Department solicits suggestions on similar variations that could be included under this category of other approaches.

The Department was also asked to consider extending a policy currently applicable only to lunches planned under the enhanced food-based menu planning approach to the traditional food-based menu planning approach. This policy, at § 210.10(k)(2), allows menu planners to credit up to one grain-based dessert daily towards the weekly grain/bread requirements. This policy was established to provide additional flexibility for menu planners as the number of required grain/bread items increased substantially over the number required for the traditional food-based menu planning approach. For example, for grades 7-12, the traditional food-based alternative required eight servings (but recommended 10) while 15 servings are required for the enhanced food-based approach.

The Department gave this suggestion serious consideration. However, crediting up to one grain-based dessert daily as a serving of grains/breads for the traditional food-based menu planning alternative is too significant a proportion of the total number of required grain/bread items. A child selecting a grains-based dessert on a daily basis would have the majority of their grains/breads component over the week met through the consumption of dessert. Given this concern, the Department is not proposing to extend this policy to the traditional food-based menu planning approach. However, the Department would appreciate comments on this issue.

1. Weekly Meat/Meat Alternate Quantity Standard

Some food service directors have indicated that it is not always practical to offer the full daily minimum portion of the meat/meat alternate component required for the NSLP under the food-based menu planning alternatives. For example, a serving of less than the required four tablespoons of peanut butter or two ounces of cheese in a sandwich may produce a more

appealing entree while the full amount required can lead to waste. To address this situation, those school food service directors have suggested that schools using either of the food-based menu planning systems be allowed the flexibility to vary the quantity of meat/meat alternate on a daily basis as long as the total amount served over the course of the school week equals the minimum daily quantity multiplied by the number of serving days in the week. For example, the amount of meat/meat alternate served on a given day could be only one ounce or the equivalent provided that the full 10 ounces (for grades 4-12) or equivalent of meat/meat alternate were available over a five day week. This alternative would enable meal planners using a food-based alternative much of the same flexibility enjoyed by their counterparts using NSMP while still ensuring that minimum quantities of essential foods were offered to children over a week's time.

After considering this suggestion, the Department agrees that it could provide additional flexibility without compromising the nutritional integrity of the meals served over the course of the school week. However, the Department does not believe that the school food authority's ability to vary the quantity of this component should be completely unrestricted. Therefore, the Department is proposing to require that a minimum of one ounce or its equivalent of meat/meat alternate be offered daily. This proposal would ensure that the amount of meat/meat alternate offered to the student will be reasonably consistent each day while still providing menu planners with enhanced flexibility. The Department emphasizes that the option to vary the size of the meat component would not apply to those situations in which the minimum quantity requirement is one ounce or less.

The Department is not proposing to extend this option to the meat/meat alternate-grains/breads component of school breakfasts because flexibility is already provided under the food-based menu planning alternatives. However, comments are requested on whether extending the weekly meat/meat alternate to the SBP would be useful and appropriate.

In proposing this option, the Department recognizes that there will be complexities with its implementation, especially in schools that offer multiple entree choices, since children may not select items over the week that equal the full weekly meal component requirement. Therefore, comments are particularly requested on these and

other potential difficulties as well as any suggestions on ways to ensure that the nutritional integrity of the meal service is not compromised. The modification for the meat/meat alternate component is proposed at § 210.10(l)(1)(i).

2. Flexible Age-Grade Groupings for Food-Based Alternatives

Children enrolled in a given school may span different age/grade groupings for purposes of the nutrient and calorie level requirements and corresponding portion sizes for components under the food-based menu planning alternatives. Under the NSMP and ANSMP menu planning alternatives, if only one age or grade is outside the established nutrient and calorie level requirements for the majority of children, schools are permitted, under § 210.10(i)(1)(ii) and § 220.8(e)(1)(ii), to use the nutrition standards for that majority. In the interests of consistency and flexibility, the Department is proposing to extend this option to the food-based alternatives as well.

Under the proposal, schools using the enhanced food-based alternatives would be permitted to plan menus using the minimum quantity requirements applicable to the majority of children provided that no more than one age or grade falls outside the requirements for the majority of children. For example, if a school following the enhanced food-based menu planning alternative serves children in grades 6, 7 and 8, the school may, if it chooses, plan menus meeting the nutrient levels and quantities for grades 7 through 12 in lieu of varying the menus and portion sizes for the children in grade 6. This option would eliminate the need to meet two sets of nutrient and calorie levels as well as portion requirements when only a limited number of children are affected. The Department notes that this option will generally be applicable to schools using the enhanced food-based alternative since it is not needed for the traditional food-based menu planning alternative because of the broader range of the groups and because schools may use the portion sizes for the grades 4-12 group when the school has a large number of grades. However, under the proposal, this option could be adopted by schools using either food-based menu planning alternative. This proposed change would be found at § 210.10(l)(1)(ii) for the lunch program and at § 220.8(h)(1) for the breakfast program.

The Department believes that school food authorities should plan menus and offer meals that best meet the nutrient and calorie levels for each age or grade

group of all of the children. The age/grade groupings are geared to best meet the recommended levels of calories and other nutrients for a particular period in a child's development. However, the Department also recognizes that allowing the proposed option for schools using the food-based alternatives provides increased flexibility.

Major Changes or New Alternatives

The second class of alternate approaches concerns major changes to one of the existing menu planning systems and may be developed by either school food authorities or State agencies. Within this second class, the regulations, as proposed, would require that any major change or new alternative developed by a school food authority be subject to State agency review and approval. State agency approval is critical because major variations developed and used only by a school food authority need to be carefully assessed to gauge potential impact on the delivery of meals to children, both nutritionally and fiscally. Further, school food authority-level approaches would not have the benefit of the State agency's expertise when forming their approach. State agency-developed alternatives would be subject to Departmental review and approval unless there was an on-going State agency/school food authority partnership and enough school food authorities intending to adopt the alternate approach to warrant the significant involvement of the State agency.

Written Submissions

The Department is proposing that any alternate approach developed by either a school food authority or State agency be committed to writing prior to its implementation. The written description must outline the intended procedures as well as indicate how the required elements for alternate approaches (as proposed under § 210.10(l)(3) and § 220.8(h)(3) for the lunch and breakfast programs, respectively) will be met. For those approaches subject to prior review, a written submission is needed to ensure a comprehensive review. For those approaches not subject to prior review, a written description needs to be available for monitoring purposes. The Department is not, however, proposing any specific format or requiring a formal plan, other than proposing that the intended procedures and the required elements be addressed in writing for any proposed alternative approach. This

provision is proposed at § 210.10(l)(2) and § 220.8(h)(2).

State Agency-Developed Systems: Approval Procedures

Some State agencies have developed or intend to develop their own menu planning alternatives for use by their school food authorities. State agency-developed alternatives could involve either extensive modifications to one of the existing menu planning alternatives or development of an altogether new alternative. As mentioned above, the Department is proposing different approval procedures for State agency-developed approaches depending on whether there is on-going, operational support from the State agency.

For the purpose of approval, the first type of a State-agency developed alternate approach is one that the State agency develops and then makes available to its school food authorities without on-going support and assistance. Because the State agency will not have any on-going operational role in such approaches, the Department believes independent review is essential prior to implementation of an alternate approach by any school food authority. This review would ensure that the changes or the new alternative adequately meets program requirements and goals. Therefore, the Department is proposing to require State agencies to submit this type of alternate approach to the Food and Nutrition Service (FNS) for review and approval before implementation. The approval procedures are proposed at § 210.10(l)(2) and § 220.8(h)(2), respectively, for the lunch and breakfast programs.

The second type of alternate approach would also involve either extensive modifications to one of the existing menu planning alternatives or development of an altogether new alternative. The Department is proposing that these approaches not be subject to approval by FNS when the State agency is an active and on-going partner with the school food authorities, if there are a sufficient number of school food authorities adopting it to warrant the State agency's commitment of resources necessary to its successful operation and the State agency issues an announcement notifying the public of the alternate approach. With the State agency's active involvement, there is oversight as well as the ability to promptly adjust the policies and procedures of the approach to ensure efficient and effective operation and compliance with all applicable requirements. The Department is proposing that these approaches must

be adopted by at least five school food authorities within the State. The proposed requirement for a public announcement allows for review of the State agency's approach by any concerned parents, students, program administrators, etc. In addition to the public announcement, the Department considered requiring that State agencies hold public hearings (in accordance with established State procedures) on these types of alternative approaches. The Department would appreciate comments on whether public hearings, in addition to the public announcement, are a more effective way to notify the public and whether the benefits of conducting a hearing outweigh the costs to the State agency.

This type of State agency-developed alternate approach is intended to allow innovative, large-scale State agency-sponsored menu planning systems to operate without prior approval. An example of a large-scale system that extensively modifies current regulatory requirements (specifically the weighting component and software requirements for NSMP) is the Shaping Health as Partners in Education (SHAPE) program, which has been successfully operated in California for several years. Because the SHAPE program is already operational, the requirement for issuing a public announcement is not applicable.

The Department emphasizes that the different approval requirements for the State agency-developed alternate approaches are based on the differing degrees of State agency involvement. When the State agency is acting as a partner and is routinely assisting school food authorities and providing technical assistance, it can, if needed, quickly determine if implementation at the local level is not successful or if the system itself needs to be modified to meet the required elements such as compliance with the nutrition standards. In the other situations, there is no continuous State agency presence. Instead, the State agency simply makes the system available to local school food authorities as another option from which they may choose and would only be able judge its effectiveness under normal review procedures. Therefore, the Department is proposing, at § 210.10(l)(2)(iii) and § 220.8(h)(2)(iii), that any State-agency developed system is not subject to prior FNS approval if five or more school food authorities adopt the approach, if the State agency maintains on-going oversight including making adjustments to the approach's policies and procedures, as needed, to ensure compliance with the nutritional and other meal service requirements, and if the State agency makes a public

announcement concerning the alternate menu planning approach prior to its implementation by any school food authority. Please keep in mind, though, that all alternate approaches would be subject to the proposed minimum requirements discussed below.

Required Elements for Alternate Approaches

In devising the guidelines for reasonable approaches other than the proposed "pre-approved" modifications, the Department balanced the necessity to foster innovation and flexibility with the equally compelling need to maintain program accountability administratively, fiscally and nutritionally. The basic consideration is that every menu planning alternative, regardless of the source or the level of approval, must meet all statutory requirements. Also, the Department is proposing to include a limited number of guidelines that are based on discretionary regulatory procedures that the Department feels are essential to effective and efficient program management unless the alternate approach is one of the distinct situations with on-going State involvement (the second type discussed above). With this extra involvement and oversight by the State agency, school food authorities would be provided additional flexibility.

Offering Fluid Milk

Section 9(a)(2) of the NSLA (42 U.S.C. 1758(a)(2)) requires that school food authorities offer fluid milk to children participating in the NSLP. Section 4(e)(1)(A) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1773 (e)(2)), requires that a combination of foods be served in the SBP and that breakfasts " * * * meet minimum nutritional requirements prescribed by the Secretary * * * ". The provision of fluid milk is one of the minimum nutritional requirements established for the SBP under § 220.8(h). Therefore, any alternate menu planning approach must also offer fluid milk for both the NSLP and SBP. The provisions requiring milk to be offered in the school programs for any alternate approach are proposed at § 210.10(l)(3)(i) and § 220.8(h)(3)(i), for the NSLP and SBP, respectively.

Offer Versus Serve (OVS)

Section 9(a)(3) of the NSLA (42 U.S.C. 1758(a)(3)) requires that schools implement OVS in the NSLP for senior high school children; at local option, school food authorities may adopt OVS in the lunch program for lower grades as well. Under section 4(e)(2) of the CNA (42 U.S.C. 1773 (e)(2)), local

school food authorities may also implement OVS for the SBP. OVS encourages children to make selections that they prefer, thus helping to reduce plate waste. Because of the statutory mandate, any menu planning alternative designed by an school food authority or State agency for use in the NSLP must include OVS for senior high school children. OVS will continue to be optional at the discretion of school food authorities in the SBP.

While OVS would continue to be required for senior high school students, school food authorities and State agencies would be permitted by this rulemaking to propose alternatives to the OVS approaches currently permitted in the regulations. Such approaches must be based on the existing regulatory OVS structures as much as possible. For example, OVS for alternate food-based systems must be patterned on the OVS requirements in § 210.10(k)(6) and § 220.8(g)(3), while those for alternate NSMP approaches must be based on the requirements of § 210.10(i)(2)(ii) and § 220.8(e)(2)(ii).

If the existing OVS procedures in § 210.10(k)(6)/§ 220.8(g)(3) or § 210.10(i)(2)(ii)/§ 220.8(e)(2)(ii) are not followed, the description of the alternate approach must indicate what age/grade groups are included, how plate waste would be reduced and how the meal, as taken, will provide a reasonable level of nutrients and calories. As discussed in more detail below, any modifications to the existing OVS procedures must include the number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable meal. These provisions on OVS in alternate menu planning approaches are proposed at § 210.10(l)(3)(ii) and § 220.8(h)(3)(vi) for the lunch and breakfast programs, respectively.

Nutrition Standards

As discussed earlier, the NSLA requires school lunches to approximate, over a week's time, one-third of the RDA needed by growing children of different ages. School breakfasts must provide one-fourth of the RDA. In addition, the menus must comply with the recommendations of the Dietary Guidelines. These requirements cannot be modified.

Therefore, any alternate menu planning approach must ensure that these standards, as implemented in § 210.10(b)(1)-(b)(4) for the NSLP and § 220.8(a)(1)-(a)(4) for the SBP, would be met or exceeded for the age/grade groups to be served. In addition, the alternate approach must indicate how the proposal is designed to meet these

standards. The requirements are proposed at § 210.10(l)(3)(iii) and § 220.8(h)(3)(iii).

Competitive Foods

For both the NSLP and SBP, Section 10(a) of the CNA (42 U.S.C. 1779(a)), requires regulations " * * * relating to the service of food * * * in competition with the [school meals] programs * * * ". To implement this provision, § 210.11(b) and § 220.12(a) prohibit the sale of foods of "minimal nutritional value" in the cafeteria area during the service of meals. Appendix B to each of these parts lists the foods considered to be foods of minimal nutritional value. Any alternate approach may not alter this statutory provision and the implementing regulations. This restriction is proposed at § 210.10(l)(3)(iv) and § 220.8(h)(3)(iii) for the lunch and breakfast programs, respectively.

Crediting Foods Under Food-Based Type Approaches

Paragraphs (k)(3)-(k)(5) and (m) of § 210.10; § 220.8(g)(2) and (i); and the Appendices to Parts 210 and 220 provide the basic crediting policies for food items offered in the school meals programs for food-based menu planning alternatives. These crediting policies are expanded upon in FNS instructions and guidance. This proposal would require that any alternate food-based menu planning approaches follow the existing food crediting policies for school meals. The Department's standards for crediting food items are designed to maintain the nutritional integrity of school meals by ensuring that foods used to satisfy quantity and component requirements provide a sufficient amount of the component or its equivalent to count toward meeting the meal requirements.

To be credited, foods must be both present in the minimum required quantities and identifiable as at least one of the required food components of the meal pattern (meat/meat alternate, fruits/vegetables, grains/breads and fluid milk). These foods may be served as single food items or as combinations in recipes or in commercially processed foods. To assist in the identification of the definition of the basic foods, the Department relies on government and industry standards of identity and/or specifications. These standards are essential to ensuring that the individual meal merits Federal reimbursement and that the meal service, over time, complies with the programs' nutrition standards. Therefore, the Department is proposing at § 210.10(l)(3)(v) and § 220.8(h)(3)(v) that the minimum

quantities established to credit food items as components under the food-based menu planning systems be adhered to in any food-based menu planning alternate approach.

Identification of a Reimbursable Meal

The concept of a reimbursable meal is essential to program integrity. Sections 210.10 and 220.8 of the regulations establish definitions of a reimbursable meal for the four menu planning alternatives currently recognized by the NSLA. Under the traditional meal pattern and the enhanced food-based menu planning system for lunches, the school food authority must offer minimum quantities of a meat/meat alternate, a grain/bread item, two separate fruits/vegetables and fluid milk as a beverage. This requirement is found at § 210.10(k). Under NSMP and ANSMP, the school must offer an entree, fluid milk and at least one additional menu item for lunches. This requirement is found at § 210.10(i)(2)(i) for the NSLP. The parallel requirements for the SBP are at § 220.8 (e) and (g).

This proposal would require that any alternate approach comply with the current requirements for reimbursable meals to the extent possible. When the existing procedures are not followed, the proposed alternate approach must detail what constitutes a reimbursable meal, including the number and type of item (and if applicable, the quantities for each item) and how a reimbursable meal is to be identified at the point of service by the children, the cashiers, and any reviewers. The proposals appear at § 210.10(l)(3)(vi) and § 220.8(h)(3)(v), respectively, for the school lunch and breakfast programs.

Monitoring Compliance

Section 210.18 of the regulations establishes methods for determining if school food authorities are meeting the administrative requirements for the school meals programs while § 210.19 provides for reviewing compliance with the nutrition standards. In determining the essential elements for any alternate approach, the Department believes that these monitoring aspects must be incorporated so that the State agency can determine if reimbursable meals are being offered, accepted, and properly counted and if the meal service is in compliance with all of the nutrition and administrative standards.

The Department expects that, in most cases, alternate approaches can be monitored within the existing criteria for both coordinated review effort (CRE) and nutrition reviews. As discussed below, some aspects of Performance Standard 2 in § 210.18 must be modified

to take into account the flexibility for alternate approaches. However, the Department does not believe that the procedures for conducting CRE reviews will need to be revised in order to accommodate alternate approaches. Therefore, this rule would require, in § 210.10(l)(vii) and § 220.8(h)(3)(vi), that the alternate approach be subject to CRE reviews under the current procedures provided in § 210.18.

However, in some cases, the proposed alternate approach may not lend itself to the established nutrition review methods. Therefore, to allow the State agency to ensure that an alternate approach can be reviewed adequately for compliance with the nutrition standards, any alternate approach must include either an explanation of how the alternate approach could be monitored within the existing criteria in § 210.19 or a comprehensive nutrition monitoring plan that the State agency could follow. As part of this plan, the alternate approach must include a description of the records it will maintain to document compliance with administrative and nutrition requirements. This provision is proposed at § 210.10(l)(3)(vii) and § 220.8(h)(3)(vi) for both the administrative and nutrition review aspects. Conforming amendments are also proposed to § 210.19(a) and are discussed in greater detail later in this preamble.

Weighted Averages for NSMP/ANSMP

Sections 210.10(i)(5) and 220.8(e)(5) require school food authorities using NSMP or ANSMP to conduct nutrition analyses by weighting all foods planned as part of the reimbursable meal service. This weighting is done according to the frequency with which each food is actually offered. The purpose of weighting is to assist in ensuring that meals actually offered to children meet the nutrition standards. The Department acknowledges that weighted averages are not the only way to ensure compliance with the nutrition standards. In fact, in order to make the transition to the updated menu planning methods easier and to ensure that every avenue for promoting sound nutrition is explored, the Department has authorized temporary waivers of this regulatory requirement. The waivers allow the Department the opportunity to evaluate weighted and unweighted averages to determine their accuracy in indicating determinations of compliance with the nutrition standards. The Department believes that this temporary postponement through a State agency waiver is the appropriate way to ease implementation and to permit further

evaluation of this requirement. As part of this evaluation process, the Department is particularly interested in receiving comments on the use of a weighted nutrient analysis versus nonweighted approaches. Comments from operators using nutrient analysis and their experiences with weighting would be especially helpful. The Department would also like comments from State agency reviewers and their experiences with weighting when evaluating meal services.

However, until the Department determines that alternatives to weighted averages adequately ensure that meals comply with the nutrition standards, weighted averages continue to be required for NSMP systems other than those for which a waiver has been granted. Accordingly, the Department is proposing to require compliance with the weighting requirements for alternate NSMP-type approaches. However, the Department is proposing to provide added flexibility in those instances in which the State agency has developed the alternate approach and is a partner with at least five school food authorities and maintains on-going oversight of the operation and evaluation. The level and consistency of the State agency's involvement coupled with a more rapid response to problems in order to make needed adjustments allows for further innovation. These provisions are proposed at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vi).

Approved Software for NSMP and ANSMP

Sections 210.10(i)(4) and 220.8(e)(4) require menu planners using NSMP or ANSMP to conduct or to have their analyses conducted using software that incorporates the National Nutrient Database for Child Nutrition Programs and is approved by FNS. The software must meet the minimum requirements established by FNS such as having the capability to perform all functions required after the basic data has been entered, including calculating weighted averages, and the optional combining of the analyses of the NSLP and SBP. The Department is aware that there are many nutrition software packages available; however, many of these are for individuals or for clinical settings such as hospitals. The software approved by FNS is designed to meet the needs of school food service professionals and fulfills two essential criteria—the ability to perform all the requirements of the regulations and the achievement of uniform results. The Department also notes that the number and variety of software packages approved to date ensures that school food authorities

have extensive flexibility in choosing a package that best meets their individual needs. Therefore, this proposal would require, at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vii), that any alternate approach use approved software.

Again, however, the Department is proposing to allow modification of the required specifications for software for any alternate approach under the same limited circumstances allowing for modification of weighted analysis. In those situations in which the State agency developed the alternate approach and remains an active partner and five or more school food authorities adopt the alternate approach, the Department is proposing, at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vii), to permit the use of software which does not meet the regulatory requirements. While this means that the software would not need to incorporate the National Nutrient Database nor would it be required to have prior FNS approval, the alternate approach would still need to meet all the nutrition standards. Again, the Department believes that the on-going State agency oversight provides sufficient assurance that any software will provide appropriate nutrient analysis and, to the extent that deficiencies are identified, that they will be rapidly addressed.

The Department also wishes to emphasize that weighted analyses and standard software packages do not, in and of themselves, determine the kinds and amounts of foods provided. Rather, they are fundamentals in the internal monitoring system which enables schools, school food authorities, and State agencies to measure the success of the food service in complying with the nutrition standards. Consequently, modification of these requirements, without substantial care and involvement by the State agency, may undermine the accuracy of the nutrition analysis and compromise the ability of menu planners to make necessary adjustments. This is the basis for the Department's decision to not apply the weighting and software specification requirements to those situations in which there will be substantial State agency involvement and oversight.

Monitoring Requirements for Compliance With the Nutrition Standards

The Department is proposing to clarify some aspects of the nutrition monitoring requirements in order to ensure appropriate State agency oversight of all menu planning alternatives. In addition, some conforming amendments are proposed due to the reinstatement of the

traditional food-based menu planning alternative and the availability of alternate approaches.

Monitoring Procedures for the Traditional System and for Alternate Approaches

The current monitoring provisions for the food-based and nutrient standard menu planning alternatives are found at § 210.18 and § 210.19. As discussed earlier, any alternate approach must be capable of being monitored under § 210.18. In addition, if the alternate approach cannot be monitored under § 210.19, there must be a description of alternate monitoring procedures to ensure compliance with the fiscal, administrative and nutrition standards.

This proposed rule would amend § 210.18 and § 210.19 to make clear that the existing monitoring requirements apply to the traditional food-based menu planning alternative as well as to the enhanced food-based and nutrient standard menu planning systems. In addition, technical amendments are made to modify the terminology in § 210.18 and § 210.19 related to Performance Standard 2 which establishes review criteria to assure that the lunches served by schools are reimbursable. In other words, any school lunch must contain whatever meal elements that are required for reimbursable lunches under each of the menu planning alternatives. In order to clarify that all the various menu planning approaches are subject to Performance Standard 2, technical amendments are proposed to § 210.18(b)(2)(ii), (g)(2), and (i)(3)(ii) and to § 210.19(c)(6)(i) to reference the various terms used to stipulate the elements in a reimbursable meal.

Finally, § 210.19 would be amended to make clear that the nutrition review procedures for food-based and nutrient standard alternate approaches are the same as those for food-based and nutrient standard menu planning systems, respectively, except for those alternate approaches that do not lend themselves to existing nutrition review procedures. In those cases, the nutrition review procedures are those review procedures developed under § 210.10(l).

Adjustments to Review Periods

The Department is proposing to adjust the review period for nutrition reviews. Currently, paragraphs (a)(1)(i) and (ii) of § 210.19 stipulate that the State agency is to review the school's nutrition analysis or conduct an independent analysis for the last completed week prior to the review. The intent of this provision was to ensure that the analysis reflected the current state of the

meal service. However, some State agencies have noted that, under CRE, as detailed in § 210.18, State agencies select the month prior to the month of the review as the sample period. Consequently, State agencies which would elect to conduct nutrition reviews concurrently with CRE reviews will likely need to look at two different review periods during the same visit. Therefore, in the interests of efficiency, this proposal would permit reviewers to conduct the assessment of compliance with nutrition standards for any week of the current school year prior to the month of the review. However, the week selected must continue to represent the current state of the meal service. The State agency could select, for example, a week for the nutrition review that was in the same month in which a CRE was scheduled. The Department believes that this proposed provision will still allow State agencies to determine whether the program is in compliance with the nutrition standards and, if necessary, prescribe appropriate steps for improvements by requiring review of a relatively current period that is typical of the on-going meal service. This change is proposed at § 210.19(a)(1)(i).

Extent of Reviews

Another proposal would amend § 210.19(a) to clarify that, during the review cycle, State agencies must review at least one school for each type of menu planning alternative used by the school food authority. For example, if eight schools in a school food authority use the traditional meal pattern, three use the enhanced food-based system and five use NSMP, the State would select at least one school from each category. The Department recognizes that, in some cases, this requirement would result in more schools being visited for nutrition compliance than are required to be reviewed under CRE. The Department believes, however, that this coverage is essential to ensure that the school food authority is following all alternatives correctly. For example, a school food authority may be achieving great success with the enhanced food-based system but may not be conducting NSMP properly. The only way for the State agency to identify this problem, provide appropriate technical assistance and require corrective action is to examine the school food authority's experience with all alternatives in use. This amended is proposed at § 210.19(a)(1).

The proposal would also clarify that State agencies are required to perform the necessary nutrition review on only the lunch program unless the school

food authority uses a particular menu planning alternative only for the breakfast program. For example, if all of the schools in a school food authority use either NSMP or the enhanced food-based system for lunch, and at least some of the schools use the traditional food-based menu planning alternative for breakfast, the State agency would need to conduct two lunch reviews (one of a school using NSMP and one of a school using the enhanced food-based system) and one review of a breakfast program which uses the traditional meal pattern. However, if all three of these alternatives are used for the lunch program in the school food authority, no review of the breakfast program would be needed. The Department cautions, however, that if the lunch review indicates that the school food authority needs technical assistance and/or corrective action, the State agency may wish to review a breakfast program as well to determine if the school food authority needs to take specific corrective action for that program as well. In these cases, the review of the breakfast program could be done either at the time of the initial lunch review or as part of any follow-up needed to further evaluate the results of technical assistance or corrective action.

Conforming Review Cycles

Finally, the Department is proposing a minor technical amendment to § 210.19(a)(1)(i) to make the cycle for nutrition reviews consistent with the cycle for administrative reviews under CRE. The SMI rule established a five-year cycle for reviews of nutrition compliance and intended that cycle to run concurrently with the CRE cycle so that those States electing to conduct nutrition reviews at the same time as administrative reviews could do so efficiently. The regulation currently stipulates that the first five-year cycle would begin on July 1, 1996, unless the State agency authorized a temporary waiver of compliance with the nutrition standards, in which case the first year of the cycle could begin as late as July 1, 1998. Consequently, the first five-year cycle would end as early as June 30, 2001 or as late as June 30, 2003, depending upon actual implementation. The current CRE cycle ends on June 30, 1998, however, and the next cycle will end on June 30, 2003. Therefore, the two review cycles would be out of sequence for State agencies which implement the regulations before School Year 1998/1999.

While State agencies are not required to conduct nutrition reviews at the same time as administrative reviews, the Department proposes to make the two

review cycles coincide so that State agencies may avail themselves of this option efficiently. To achieve this goal, therefore, the Department is proposing to establish an initial cycle of seven years for nutrition reviews, from July 1, 1996 through June 30, 2003. Thereafter, review cycles would be five years in length. This expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

The Department notes that the extended time frame for completing nutrition reviews increases the need for State agencies to identify school food authorities that may have menu planning difficulties in order to schedule visits to them as early as possible in the cycle. The Department also would like State agencies to comment on any increased potential for noncompliance that might result from this extension and whether or not the Department should consider establishing intermediate review goals within the cycle.

Updating the Dietary Guidelines and Other Technical Changes

Section 9(f)(1)(A) of the NSLA requires that schools offer meals consistent with the goals of the "most recent Dietary Guidelines for Americans." The June 13, 1995, SMI rulemaking incorporated the 1990 edition of the Dietary Guidelines as program requirements because they were, at that time, the latest official version. The Department indicated, however, that later editions would be incorporated to reflect any revisions to the recommendations. In December 1995, the Department, in partnership with the Department of Health and Human Services, issued the 1995 edition. While there were no substantive differences between the 1995 edition and the 1990 edition, there were some minor language revisions. Therefore, the Department is taking this opportunity to propose amending § 210.10(b)(3) and § 220.8(a)(3) to incorporate the minor wording changes of the 1995 guidelines, and to change references to the 1990 guidelines to 1995.

The 1995 Dietary Guidelines also include the suggestion that the diets of children between the ages of two and five should be gradually altered so that, by age five, they receive no more than 30 percent of their calories from fat. Since the Dietary Guidelines do not treat this suggestion as a formal recommendation, the Department is not incorporating it into § 210.10(b)(3) or § 220.8(a)(3), where the Dietary Guidelines' recommendations are

enumerated. However, a footnote containing this information would be added to the charts in § 210.10(c)(1), § 210.10(c)(2), § 210.10(d), § 220.8(b)(1), § 220.8(b)(2) and § 220.8(c)(1). The Department is also aware that the RDA are in the process of being reviewed and that an update is scheduled to be released in 1999. At that time, the Department will propose any needed revisions to the key nutrient and calorie levels.

The name of the database used in the nutrient analysis software has been changed from the "National Nutrient Database for the Child Nutrition Programs" to the "Child Nutrition Database." This proposal would, therefore, update the references to the database in § 210.10(i) and § 220.8(e).

It was brought to the Department's attention that there was a misstatement in the preamble of the final regulation published on June 13, 1995. The regulation, Child Nutrition Programs: School Meal Initiatives for Healthy Children, was published in the *Federal Register* at 60 FR 31188. The erroneous statement at 60 FR 31203 was:

... program regulations (§ 210.11(a) and § 220.12(a)) prohibit the sale of certain foods of minimal nutritional value in the food service area between the start of school and the last lunch period of the day.

The correct policy is contained in § 210.11(b) for the NSLP. The correct policy is:

Such rules or regulations [established by State agencies or school food authorities] shall prohibit the sale of foods of minimal nutritional value, as listed appendix B of this part, in the food service areas during the lunch periods.

(Emphasis added)

This policy may found for the SBP at § 220.12(a).

Although the statement in the preamble was incorrect, the actual regulatory language contained in § 210.11 (b) was correct. The Department regrets any confusion this error may have caused.

Appendix to Preamble—Regulatory Cost/Benefit Assessment

1. Title: National School Lunch Program and School Breakfast Program: Additional Menu Planning Alternatives.

2. Background:

a. Need for Action: Public Law 104-149, the Healthy Meals for Children Act, amended the National School Lunch Act by expanding the number of alternatives available to plan menus for the school meals programs. Section 9(f) of the National School Lunch Act was amended to allow schools to continue using the meal planning system in effect in School Year 1994-95 as well as the other meal planning alternatives already available. In addition, the Act was amended to allow

schools to use "... any reasonable approach, within guidelines established by the Secretary ..."

The menu planning system in effect in School Year 1994-95 was the "traditional pattern" which has been in use for many years, and which requires four components (meat/meat alternate, breads/grains, fruits/vegetables and milk) and five items. Because this alternative was to be deleted from the regulations at the end of the implementation period (July 1, 1998), this proposal would reinstate this alternative permanently. In addition, this proposal would establish the guidelines for "any reasonable approach" to ensure that schools continue to serve reimbursable meals and provide proper accountability for Federal reimbursement while still having the flexibility to design a menu planning alternative that meets their particular needs.

Before the Department issued a proposal to implement Public Law 104-149, Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was enacted on August 22, 1996. This law further amended the National School Lunch Act to mandate that school lunches provide, over a week, one-third of the Recommended Dietary Allowances (RDA) and that school breakfasts provide one-fourth of the RDA. These requirements are, however, already included in the school programs' regulations.

b. Affected parties: The entities affected by this proposal are State agencies, school food authorities, the nation's school children, and the Food and Nutrition Service.

c. Promotes the President's Priorities: This proposal would promote the President's commitment to flexibility for program administrators while continuing to support the objectives of providing meals to the nation's school children that meet the Dietary Guidelines for Americans and other established nutrition standards.

3. Statutory Authority: Public Law 104-149.

4. Cost-Benefit Assessment of Economic and Other Effects:

Reinstatement of the Traditional Meal Pattern

Background: The proposed regulation would reinstate the meal pattern in effect in School Year 1994-1995 as one menu planning alternative. The meal pattern would be incorporated into the section of the regulation establishing the food-based menu planning alternatives and would be entitled the "traditional food-based menu planning alternative." The food-based alternative implemented in the June 5, 1995, final rule would be renamed "the enhanced food-based menu planning alternative." The provision would provide a table with the minimum levels of nutrients (calories, protein, calcium, iron, Vitamin A, and Vitamin C) for the age/grade groups of the meal pattern. Further, the provision makes minor conforming amendments to allow for monitoring compliance with the nutrition standards for this additional menu planning alternative.

Effects of Reinstating the Traditional Meal Pattern

Benefits: The provision permanently reinstating the meal pattern in effect during

School Year 1994-1995 will allow schools to use a meal pattern with which they are familiar. Extensive experience with the traditional meal pattern has allowed schools to successfully develop menus that meet program requirements and are popular with students. The reinstatement of the traditional meal pattern provides schools with an additional menu planning option and even greater flexibility in meeting the nutritional needs of students.

The rule extends nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. School lunches are required to provide, over a week's time, one-third of the RDA for key nutrients (protein, calcium, iron, vitamin A and vitamin C) and calories needed by growing children of different ages. School breakfasts are required to provide, over a week's time, one-fourth of the RDA for key nutrients (protein, calcium, iron, vitamin A and vitamin C) and calories needed by growing children. In addition, schools should be making progress towards providing meals which comply with the Dietary Guidelines, including the recommendations that no more than 30 percent of calories come from fat and that saturated fat be limited to less than 10 percent of calories. The extension of this provision to the traditional food-based meal planning systems will ensure that children in schools using this system will receive meals of comparable nutritional quality as children in schools using the enhanced food-based menu plan. This provision does not require any additional burden of school food authorities as regulations require any menu planning system to provide comparable levels of RDAs for key nutrients and comply with the Dietary Guidelines.

Costs: The 1993 USDA School Nutrition Dietary Assessment Study (SNDA) assessed the nutritional quality of lunches served under the traditional meal pattern. SNDA found that the amount of nutrients in the average school lunch provided under the traditional meal pattern exceeded the standard of one-third of the daily RDA for the age groups at the elementary, middle, and high school level for most nutrients. However, the average percentage of food energy from total fat offered in school lunches was 38 percent, compared with the Dietary Guideline goal of not more than 30 percent; the percentage from saturated fat was 15 percent, compared with the Dietary Guideline of less than 10 percent.¹ In addition, the Continuing Survey of Food Intake by Individuals (CSFII), 1989-91 found that school-age children have average daily intakes of 33.7 to 34.7 percent of calories from fat, and 12.6 to 13.3 percent of calories from saturated fat depending on age-sex group.

The SNDA and CSFII findings heightened awareness of the need to improve the nutritional quality of school meals. In response the Department initiated the School Meals Initiative for Healthy Children, the

¹ Burghardt, J.C., A. Gordon, N. Chapman, P. Gleason, T. Fraker (1993). The School Nutrition Dietary Assessment Study: School Food Service, Meals, and Dietary Intakes. October 1993.

first program-wide reform of the school meals program since its establishment in 1946. Since the introduction of the School Meals Initiative the Department has provided training and technical assistance designed to assist school food service personnel in implementing the Dietary Guidelines. FNS has sponsored training on the preparation of healthier meals; provided recipes which are lower in fat and sodium; and issued grants to assist State agencies in establishing statewide training systems to assist local agencies in implementing the Dietary Guidelines. The Department has also increased efforts to provide lower fat commodities to local school districts.

Even with increased efforts by the Department, State agencies and school food authorities to provide schools with the knowledge and skills necessary to successfully implement the Dietary Guidelines, the possibility still exists that it might prove difficult for some schools using the traditional food-based meal pattern to comply with the recommendations. In these instances, it may be necessary for the school food authority or the State agency to provide further training of the school food service personnel to enable them to successfully develop meal patterns which comply with the Dietary Guidelines.

The State agency will be responsible for monitoring progress towards meeting the Dietary Guidelines and nutrition standards and for making adjustments in procedures that schools follow in order to ensure effective progress toward eventual compliance with the updated nutritional requirements. Should a number of schools using the traditional food-based menu pattern encounter difficulty in meeting the Dietary Guidelines, the State agency will need to cooperate with the school food authority in designing corrective action to rectify the deficiencies. Additionally, the State agency will need to monitor the execution of corrective action taken by the school food authority to ensure that progress is being made towards meeting the Dietary Guidelines.

Since most State agencies used the 1996-1997 school year to train staff to conduct the nutrient analyses, the number of analyses that were actually completed was fewer than expected. As a result, there is no data available on the number of school food authorities that fail to meet the nutrient standards and need to take corrective action.

Any Reasonable Approach to Meal Planning

Benefits: Public Law 104-149 permits school food authorities to use "any reasonable approach" to menu planning not specifically delineated in the regulations. The law makes it clear, however, that approval of other "reasonable approaches" must be in accordance with guidelines established by the Secretary. In developing appropriate guidelines, the Department considers that there are two classes of additional reasonable approaches. The first class of reasonable approaches consists of alternatives which are essentially relatively minor modifications to one or another of the existing menu planning systems. The second class of alternatives would involve unique

proposals that depart significantly from the existing systems.

Minor Modifications

The Department believes that minor modifications to existing meal planning systems do not pose significant questions about nutritional content or program integrity. Therefore, to reduce unnecessary paperwork, the Department is proposing to authorize State agencies to permit their school food authorities to choose any of the following adaptations without applying to the State agency for approval. The decision to authorize any or all of these modifications rests entirely with the State agency. State agencies may establish a general policy allowing school food authorities to adopt any or all of these approaches without prior approval or chose to review requests from school food authorities. The preapproved approaches are:

1. Weekly Meat/Meat Alternate Quantity Standard: Schools using one of the food-based menu planning systems would be allowed the flexibility to vary the quantity of the meat/meat alternate on a daily basis as long as the total amount served over the course of the school week equals the minimum daily quantity multiplied by the number of serving days in the week. Schools would still be required to serve a minimum of one ounce of meat/meat alternate daily.

2. Flexible Age-Grade Groupings for Food-Based Systems: Under the analysis-based menu planning options, if only one age or grade in a school is outside the established RDA and calorie requirements for the majority of students, schools are permitted to use the nutrition standards for that majority. In the interests of consistency and flexibility, the Department is proposing to extend this option to the food-based systems as well.

Innovative Approaches

The second class of other reasonable approaches involves innovative systems that are not currently established in program regulations and guidance. These innovative menu planning systems could be developed by school food authorities for use in their schools, or developed by State agencies and made available to their school food authorities. The Department envisions two approaches that State agencies could take in developing menu planning systems. It would be possible for a State to develop a unique menu planning system and then refrain from being involved in the operation or evaluation of the system. In these cases, the system would have to be submitted to the Department for approval before implementation. The second scenario involves systems developed by the State, used by multiple school food authorities (at least five) within the State, and the State agency remains an active partner in the operation and evaluation of the system on an ongoing basis and issues an announcement notifying the public of the alternate menu planning approach. In this case, the State would not be required to submit the system to the Department for approval prior to implementation.

Any meal planning system proposed by a school food authority or a State agency

would have to be assessed for its potential impact on the delivery of meals to children, both nutritionally and fiscally. To achieve these goals, the Department is proposing to establish a framework and criteria for consideration and approval of such requests. Any approach developed by a State agency or a school food authority would need to ensure that the following areas, which are critical to the proper and efficient operation of the program, be satisfied:

1. **Identification of Reimbursable Meals:** The definition of a reimbursable meal is essential to program integrity. The four menu planning systems specifically recognized by the statute have specific requirements for a reimbursable lunch or breakfast. In keeping with these principles, the school food authority would need to outline, in any proposed menu planning alternative, what constitutes a reimbursable meal; how these will be identified by the students in the line and by food service staff at the point of service; and how reviewers will be able to document compliance. Likewise, the State agency must determine that the reimbursable meal will offer sufficient nutrition on a daily basis to justify Federal reimbursement.

2. **Provide for Offer versus Serve:** When developing a menu planning alternative, school food authorities must provide for offer versus serve (OVS), as appropriate. Section 9(a)(4) of the NSLP requires that schools implement OVS in the NSLP for senior high students; at local option, school food authorities may adopt OVS in the lunch program for lower grades as well. Local school food authorities may also implement OVS for the SBP. The purpose of OVS is to encourage students to make selections that they prefer, thus helping to reduce plate waste. Therefore, because of the statutory mandate, any menu planning approach proposed by a school food authority or State agency must include OVS for senior high students at a minimum.

3. **Compliance with Nutrition Standards:** By law, school lunches are required to provide, over a week's time, one-third of the RDA for key nutrients and one-third of the calories needed by growing children of different ages. In addition, the meals must comply with the recommendations of the Dietary Guidelines. School breakfasts must provide one-fourth of the RDA and calorie needs and also must comply with the Dietary Guidelines. Under no circumstances can these requirements be modified. Therefore, any request to employ an alternate menu planning approach would need to demonstrate, to the satisfaction of the State agency, that the menus would continue to meet or exceed these standards. Furthermore, because the RDA can vary by age and/or grade group, the school food authority would need to specify which age/grade groups will be served and indicate what the appropriate RDA and calorie levels are for each age/grade group.

4. **Ability to Monitor:** Any alternate approach must be capable of being monitored by the State agency to determine that reimbursable meals are being offered, accepted, and properly counted and that the meal service is in compliance with all of the nutrition standards.

While the Department wishes to provide school food authorities with maximum flexibility to develop alternate menu planning approaches, this proposed rule would prohibit State agencies from approving modifications to the existing four menu planning options beyond those discussed above as automatic options. The Department considers that certain requirements governing these options must remain intact except for limited exceptions for special State-wide systems. Consequently, the following operational components of the established menu planning systems may not be modified except as discussed below:

1. **Weighted Averages for NSMP/ANSMP:** The regulations require schools employing NSMP or ANSMP to conduct their analyses by weighting all foods planned as part of the reimbursable meal service according to the amount of each food actually intended to be produced, based on production records or experience. However, in order to make the transition to updated menu planning methods as smooth as possible and to ensure that every avenue for promoting sound nutrition while minimizing burden is explored, the Department authorized a delay in implementing this regulatory requirement for all schools adopting NSMP until the Department has the opportunity to evaluate the ability of weighted and unweighted averages to provide accurate determinations of compliance with the nutrition standards.

2. **Use of Approved Software for NSMP and ANSMP:** The regulations also require menu planners electing to use NSMP or ANSMP to conduct or to have their analyses conducted using software approved by the Department. The Department is aware that there are many nutrition software packages available; however, many of these are for individuals or for clinical settings such as hospitals. The software approved by USDA is designed to meet the needs of school food service professionals and fulfills essential school-based needs.

3. **Crediting Requirements for Food-Based Alternatives:** This proposed rule would prohibit State agencies from disregarding any of the Department's crediting policies for schools electing to use a food-based menu planning system. The Department's standards for crediting food items are designed to maintain the nutritional integrity of school meals by ensuring that foods used to satisfy quantity and component requirements provide a sufficient amount of the component or its equivalent to count toward meeting the meal requirements, standards of identity and/or specifications.

4. **Foods of Minimal Nutritional Value:** The Department also wishes to emphasize that States may not, under any circumstances, approve the sale of foods of minimal nutritional value as defined in program regulations.

However, the Department is also proposing that, in certain limited situations, menu planning systems, supported by the knowledge and resources of a State agency, can operate with modifications beyond those available to school food authorities while maintaining the necessary control over the nutritional content of their meals. Therefore, this proposal would authorize modification

in some menu planning systems of the provisions on weighted nutrient analysis and approved software, provided that: these systems are operated under policies and procedures developed or adopted by a State agency; the State agency remains an active participant in the operation and evaluation of the project on an ongoing basis; and the system is used by multiple school food authorities (at least five) within the State and the State agency issues a public announcement concerning the alternative menu planning approach.

Effects of Implementing "Any Reasonable Means"

Benefits: The provision permitting the use of "any reasonable approach" to menu planning will provide school food authorities with even greater flexibility in developing a menu service which meets the needs and preferences of local children. The rule contains a provision allowing school food authorities to make minor modifications to existing meal planning systems. The rule also contains provisions which allow school food authorities or States to make extensive modifications to existing menu planning systems or to develop innovative systems that are not currently established in program regulations and guidance.

The rule proposes that certain minor modifications by a school food authority to one or another of the existing meal systems would be allowed, at the discretion of the State agency, without prior approval. An example of the additional flexibility to be gained by individual schools is the ability to vary the amount of meat/meat alternate served on daily basis. This provision provides schools with an option that allows them to produce a more appealing entree or to reduce the amount of plate waste while still meeting the minimum weekly serving requirement of a meat/meat alternate.

A school food authority desiring to make more than minor modifications would be permitted to develop a proposal which differs significantly from the existing meal planning systems. The authority to develop their own menu planning systems will allow school food authorities to take into consideration any unique local food preferences or dietary needs when planning such systems.

The provisions of this rule allow State agencies to develop their own menu planning alternatives and make them available to local school food authorities. State agencies will have the opportunity to develop, in consultation with school food authorities within their State, a menu planning system designed to meet the specific needs of the children of their State rather than one designed for the tastes and needs of the national student population.

The rule allows such a menu planning system to use alternate weighting procedures and software while continuing to operate within normal regulatory authority, provided that the system is used by at least five school food authorities within the State, the State agency remains an active participant in the

operation and evaluation of the system on an ongoing basis and notifies the public about their alternative menu planning approach. This provision would provide State agencies with increased flexibility in the selection of software used to conduct the nutrient analyses.

Costs: While it is entirely possible that local menu planners may devise systems which produce nutritious meals which are appealing to children, these innovative systems are, by their very nature, untested and subject to unforeseen consequences. Any unique meal planning system will be required to serve meals which provide the same level of key nutrients as any of the prescribed meal patterns. It is possible that a locally developed system might have difficulty complying with the recommendations. In these instances, school food authorities and States might find it necessary to provide additional training and technical assistance to those schools failing to meet the nutrition requirements. However, it is also reasonable to expect that innovation may result in lower costs methods being devised. In either case, the nutrient standards remain the same; and the anticipated impacts on agriculture and the children's health are verifiable.

As noted previously, the percentage of total calories from fat consumed by school aged children in the late 1980's and early 1990's was above what was recommended by the Dietary Guidelines for Americans. Because States will conduct reviews once every five years, several years may pass before problems in meeting the nutritional guidelines will be detected. If schools fail to meet the nutrient standards using innovative systems, it is possible that the nutritional quality of some school meals may be deficient for a period of up to five years. However, FNS has anecdotal evidence that school food authorities have made improvements in their ability to meet the Dietary Guidelines.

As with the traditional meal pattern, the State agency will still be responsible for monitoring the progress these locally developed systems make toward complying with the Dietary Guidelines and nutrition standards. Should any such system or systems fail to comply with these standards, the State agency would need to work with the school food authorities to devise corrective action that would ensure that the menu planning systems would make progress towards, and eventually comply with, the Dietary Guidelines. If locally developed systems prove to have difficulty meeting the required nutritional requirements, the State agency would be faced with an increased monitoring burden without a concomitant reduction in any other monitoring burdens.

At this time it is impossible to determine the additional burden that will be required of State agencies as a result of school food authorities developing their own menu planning systems and failing to meet the nutrition standards. As stated earlier, the 1996-1997 school year is the first one in which States have been required to conduct the nutrient analyses so no data is available as to the number of schools failing to meet the standards. Additionally, FNS has no indications as to how many local agencies

might choose to develop their own menu planning systems. It is also impossible to determine the additional nutritional risk placed on children in schools that have difficulty meeting the Dietary Guidelines. However, because there is a certain amount of uncertainty regarding the ability of schools to meet the nutritional requirements under innovative systems, FNS acknowledges that nutritional risk exists.

Miscellaneous Monitoring Provisions

Background: The Department is also proposing a number of amendments to the requirements for nutrition monitoring designed to ensure appropriate State agency oversight of all menu planning alternatives and to clarify some existing provisions.

First, the nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option would be extended to reviews of schools using the traditional meal pattern and other reasonable approaches. As part of these reviews, the State agency must conduct a nutrient analysis using the regulatory procedures schools follow for NSMP.

Second, the Department is proposing to redefine the review period for nutrition reviews which is currently the last completed week prior to the review in order to expedite concurrent reviews of the nutrition standards and reviews for compliance with serving reimbursable meals and free/reduced price application requirements as conducted under coordinated review effort (CRE) reviews. The proposal would permit reviewers to conduct the nutrition review for any week prior to the month of review as is allowed in other reviews.

A third proposed provision would clarify that State agencies must conduct at least one review of every menu planning option employed by the school food authority. The proposal also clarifies that State agencies would be required to review only the lunch program unless the school food authority uses a particular menu planning option for breakfast but not for lunch, in which case at least one school's breakfast program would need to be reviewed.

A fourth proposed change would require State agencies to ensure that there are appropriate methods for monitoring compliance with the nutrition standards in schools using approved reasonable approaches. At a minimum, nutrition monitoring in these schools would be required to include a nutrient analysis by the State agency using software approved for NSMP.

Finally, the Department is proposing a minor technical amendment to make the cycle for nutrition reviews consistent with the cycle for administrative reviews under CRE. The cycle for conducting nutrition standard reviews was intended to run concurrently with the CRE cycle so that those States electing to conduct nutrition reviews at the same time as administrative reviews could do so efficiently. While State agencies are not required to conduct nutrition reviews at the same time as administrative reviews, the Department intended to make the two review cycles coincide so that State agencies could avail themselves of this option

efficiently. To achieve this goal, therefore, the Department is proposing to establish an initial cycle for nutrition reviews as seven years, from July 1, 1996 through June 30, 2003. Thereafter, review cycles would be five years in length. This expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

Effects of Miscellaneous Monitoring Provisions

Benefits: The rule contains minor provisions which provide State agencies with greater flexibility in scheduling of nutrition reviews. The rule allows States to conduct the nutrient analysis based on one week in the month prior to the month of review. Current regulations require that the week chosen for analysis be the last completed week prior to review. Allowing the State agency to choose a week in any month prior to the month of review allows the States to coordinate their nutrition review with the CRE administrative reviews.

The rule proposes to alter the nutrition review cycles so that States wishing to conduct their nutrition reviews at the same time as their CRE administrative reviews will be able to do so. The June 13, 1995 final rule established a five-year cycle for reviews of nutrition compliance. The regulation stipulated that the first five-year cycle could begin as early as July 1, 1996 or as late as July 1, 1998. As a result, the first cycle could end as soon as June 30, 2001, or as late as June 30, 2003, depending upon implementation. The current CRE cycle ends on June 30, 1998 and the following cycle will end June 30, 2003. So that the two cycles might coincide, the rule proposes to establish an initial cycle for nutrition reviews of seven years, from July 1, 1996 to June 30, 2003. The expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

Costs: When the June 13, 1995 final rule established reviews of nutrition compliance, the Department did not anticipate that the traditional meal pattern would continue to be an option after June 30, 1998, so no provision was made requiring a nutrient analysis for schools using this meal pattern. The proposed rule extends nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. The requirement that a nutritional analysis be conducted on schools using the traditional meal plan does not place any additional burden on State agencies.

The rule requires that State agencies must conduct at least one review of every menu planning option employed by the school food authority. This requirement could result in more schools being reviewed for nutrition compliance than would be required to be reviewed under CRE. For each school it takes one staff person approximately one and a half days to complete a CRE review. This would come at the approximate cost of \$216 for

each additional school.² The Department believes this coverage is necessary to ensure that the school food authority is employing all menu planning systems correctly. The only way for the State agency to identify problems and provide technical assistance is to examine the school food authorities' experience with all systems. It is impossible to determine how many more schools State agencies will have to review for nutrition compliance than would be required for CRE as the Department has no data on how many school food authorities use multiple menu planning systems.

Other Effects of the Proposed Regulation

Effects of Rule on NSLP Participation

The provisions of this rule may have a small effect on participation in the National School Lunch Program. The provisions of this rule may have the effect of making meals more appealing which may increase participation. Implementation of the rule is not expected to increase meal prices or decrease meal acceptability. The rule allows schools to continue to use the current meal pattern. Additionally, school food authorities and States are now able to develop menu plans that they feel would be even more appealing to their student population than the menu plans prescribed by the Department.

Effects of Rule on Program Costs

The provisions in this proposed rule will provide increased flexibility to State or local program operators but have no budgetary impact.

Effects on Small Entities

This proposal will not have significant economic impact on a substantial number of small entities. This proposal does not add any new requirements and there are no required additional costs. School food authorities and schools may experience some positive effects from this proposed rule as noted previously.

Summary of the Effects of the Proposed Rule

The proposed rule provides school food authorities and State agencies with increased choices and flexibility in selecting a menu planning system by permanently reinstating the meal pattern in effect during the 1994-1995 school year and providing guidelines for approval of other reasonable approach alternatives that schools may develop.

The proposed rule contains minor monitoring provisions. It extends monitoring provisions pertaining to

reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. It provides State agencies with greater flexibility in selection of the week to be reviewed for nutrient compliance. Further, the proposed rule alters the nutrition review cycle so that it coincides with the CRE administrative review cycle. This will allow State agencies to more easily conduct nutrient reviews at the same time as administrative reviews.

The proposed rule is not expected to have any impact on program participation, nor is the rule expected to have any budgetary impact. The rule will not have a significant economic impact on a substantial number of small entities.

5. Public Comments: This proposal will provide a 180-day comment period.

List of Subjects

7 CFR Part 210

Commodity School Program, Food assistance programs, Grant programs—education, Grant programs—health, infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, Grant programs—education, Grant programs—health, infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR Parts 210 and 220 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751-1760, 1779.

§ 210.2 [Amended]

2. In § 210.2:

a. the definition of "Food component" is amended by removing the words "or one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and vegetable/fruit under § 210.10a";

b. the definition of "Food item" is amended by removing the words "or one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and two (2) servings of vegetables, fruits, or a combination of both for the purposes of § 210.10a"; and

c. the definition of "Lunch" is amended by removing the words "§ 210.10(k)(2) or the school lunch pattern for specified age/grade groups of children as designated in § 210.10a" and adding in their place the words "§ 210.10(k)(1) or § 210.10(k)(2), whichever is applicable".

§ 210.4 [Amended]

3. In § 210.4, paragraph (b)(3) introductory text is amended by removing the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable" and adding in their place a reference to "§ 210.10 (o)(1)".

§ 210.7 [Amended]

4. In § 210.7:

a. paragraph (c)(1)(v) is amended by removing the words "or § 210.10a(b), whichever is applicable"; and
b. paragraph (d) is amended by removing the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable" and adding in their place a reference to "§ 210.10(o)(1)".

§ 210.9 [Amended]

5. In § 210.9:

a. paragraph (b)(5) is amended by removing the words "or 210.10a, whichever is applicable";
b. paragraph (c) introductory text is amended by removing the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable" and adding in their place a reference to "§ 210.10(o)(1)"; and
c. paragraph (c)(1) is amended by removing the words "or § 210.10a, whichever is applicable".

6. In § 210.10:

a. paragraph (a)(1) is amended by revising the first sentence and by adding a new sentence at the end of the paragraph;

b. the second sentence of paragraph (a)(3) is amended by removing the word "or" and adding in its place a comma and by adding the words "or those developed under paragraph (l)" after the reference to "paragraph (i)(1)"; the third sentence of paragraph (a)(3) is amended by removing the third occurrence of the word "or" and adding in its place a comma, and adding the words "or those developed under paragraph (l)" after the reference to "paragraph (i)(1)";

c. paragraph (b)(1) is amended by making the word "paragraph" plural, by removing the second occurrence of the word "or" and adding in its place a comma and by adding the words "or (l)" after the reference to "(i)(1)";

d. paragraph (b)(2) is amended by removing the second occurrence of the word "or" and adding in its place a comma, and by adding the words "or (l)" after the reference to "(i)(1)";

e. paragraph (b)(3) is revised;
f. paragraph (b)(4) introductory text is amended by removing the reference to "1990" and adding in its place a reference to "1995";

g. the first sentence of paragraph (b)(5) is revised;

h. the table in paragraph (c)(1) is revised;

i. the table in paragraph (c)(2) is revised;

j. paragraph (d) is revised;

k. the heading of paragraph (i)(4) and paragraph (i)(9) are amended by removing the words "National Nutrient Database" and adding in their place the words "Child Nutrition Database";

l. paragraphs (i)(4) and (i)(8) are amended by removing the words "National Nutrient Database for the Child Nutrition Programs" wherever they appear and by adding the words "Child Nutrition Database" in their place;

m. the heading of paragraph (k) is revised and introductory text is added;

n. paragraph (k)(1) is revised;

o. the heading of paragraph (k)(2) and the introductory text before the chart are revised;

p. the first two sentences of paragraph (k)(4) are redesignated as paragraph (k)(4)(i) and the last sentence of paragraph (k)(4) is redesignated as paragraph (k)(4)(ii) and is revised;

q. paragraph (k)(5) is amended by adding a new paragraph (k)(5)(iii);

r. paragraph (k)(5)(ii) is amended by adding two new sentences between the second and third sentences;

s. paragraphs (l) through (o) are redesignated as paragraphs (m) through

(p), respectively, and a new paragraph (l) is added;

t. newly redesignated paragraph (o)(3)(iv) is amended by removing the reference to "(n)(3)" and adding in its place a reference to "(o)(3)"; and

u. in newly redesignated paragraph (p), the reference to "1990" is removed and a reference to "1995" is added in its place.

The additions and revisions read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

(a) *General requirements for school lunches.* (1) In order to qualify for reimbursement, all lunches served to children age 2 and older, as offered by participating schools, shall, at a minimum, meet the nutrition standards provided in paragraph (b) of this section and the appropriate levels of calories and nutrients provided in: paragraph (c) or paragraph (i)(1) of this section for nutrient standard menu planning and assisted nutrient standard menu planning; paragraph (d)(1) of this section for the traditional food-based menu planning alternative; paragraph (d)(2) of this section for the enhanced food-based menu planning alternative; or as developed in accordance with the provisions in paragraph (l) of this section for other menu planning alternatives, whichever is applicable. * * * In addition, those school food authorities that use menu planning approaches as allowed under paragraph (l) of this section shall ensure that sufficient quantities of food are planned and produced to meet the provisions in

paragraph (b) of this section and any minimum standards for food/menu items and quantities.

(b) *Nutrition standards for reimbursable lunches.* * * *

(3) The applicable recommendations of the 1995 Dietary Guidelines for Americans which are:

- (i) Eat a variety of foods;
- (ii) Limit total fat to 30 percent of calories;
- (iii) Limit saturated fat to less than 10 percent of calories;
- (iv) Choose a diet low in cholesterol;
- (v) Choose a diet with plenty of grain products, vegetables, and fruits;
- (vi) Choose a diet moderate in salt and sodium; and
- (vii) Choose a diet moderate in sugars.

(5) School food authorities have several alternatives for menu planning in order to meet the nutrition standards of this paragraph and the applicable nutrient and calorie levels: nutrient standard menu planning as provided for in paragraph (i) of this section; assisted nutrient standard menu planning as provided for in paragraph (j) of this section; traditional food-based menu planning as provided for in paragraph (d)(1) of this section; enhanced food-based menu planning as provided for in paragraph (d)(2) of this section; or other menu planning approaches as provided for in paragraph (l) of this section.

(c) *Nutrient levels for school lunches/nutrient analysis.*

² Cost calculated assuming 12 hours to review each school at a wage rate of \$18 an hour.

(1) . . .

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)				
Nutrients and energy allowances	Minimum requirements			Optional
	Preschool	Grades K-6	Grades 7-12	Grades K-3
Energy allowances (calories)	517	664	825	633
Total fat (as a percentage of actual total food energy)	¹	²	²	²
Total saturated fat (as a percentage of actual total food energy)	¹	³	³	³
RDA for protein (g)	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for Iron (mg)	3.3	3.5	4.5	3.3
RDA for Vitamin A (RE)	150	224	300	200
RDA for Vitamin C (mg)	14	15	18	15

¹ THE DIETARY GUIDELINES RECOMMEND THAT AFTER 2 YEARS OF AGE "...CHILDREN SHOULD GRADUALLY ADOPT A DIET THAT, BY ABOUT 5 YEARS OF AGE, CONTAINS NO MORE THAN 30 PERCENT OF CALORIES FROM FAT."

² NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK

³ LESS THAN 10 PERCENT OVER A SCHOOL WEEK

(2) . . .

OPTIONAL NUTRIENT LEVELS FOR SCHOOL LUNCHES NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)				
Nutrients and energy allowances	Ages 3-6	ages 7-10	Ages 11-13	Ages 14 and above
Energy allowances (calories)	558	667	783	846
Total fat (as a percentage of actual total food energy)	^{1,2}	²	²	²
Total saturated fat (as a percentage of actual total food energy)	^{1,3}	³	³	³
RDA for protein (g)	7.3	9.3	15.0	16.7
RDA for calcium (mg)	267	267	400	400
RDA for iron (mg)	3.3	3.3	4.5	4.5
RDA for Vitamin A (RE)	158	233	300	300
Vitamin C (mg)	14.6	15.0	16.7	19.2

¹ THE DIETARY GUIDELINES RECOMMEND THAT AFTER 2 YEARS OF AGE "...CHILDREN SHOULD GRADUALLY ADOPT A DIET THAT, BY ABOUT 5 YEARS OF AGE, CONTAINS NO MORE THAN 30 PERCENT OF CALORIES FROM FAT."

² NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK

³ LESS THAN 10 PERCENT OVER A SCHOOL WEEK

(d) Minimum nutrient levels for school lunches/food-based menu planning alternatives.

(1) Traditional food-based menu planning alternative. For the purposes

of the traditional food-based menu planning alternative, as provided for in paragraph (k)(1) of this section, the following chart provides the minimum

levels, by grade group, for calorie and nutrient levels for school lunches offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES TRADITIONAL FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)				
NUTRIENTS AND ENERGY ALLOWANCES	MINIMUM REQUIREMENTS			OPTIONAL
	PRESCHOOL	GRADES K-3 AGES 5-8	GRADES 4-12 AGES 9 AND OLDER	GRADES 7-12 AGES 12 AND OLDER
Energy allowances (calories)	517	633	785	825
Total fat (as a percentage of actual total food energy)	¹	²	²	²
Total saturated fat (as a percentage of actual total food energy)	¹	³	³	³
RDA for protein (g)	7	9	15	16
RDA for calcium (mg)	267	267	370	400
RDA for Iron (mg)	3.3	3.3	4.2	4.5
RDA for Vitamin A (RE)	150	200	285	300
RDA for Vitamin C (mg)	14	15	17	18

¹ THE DIETARY GUIDELINES RECOMMEND THAT AFTER 2 YEARS OF AGE "...CHILDREN SHOULD GRADUALLY ADOPT A DIET THAT, BY ABOUT 5 YEARS OF AGE, CONTAINS NO MORE THAN 30 PERCENT OF CALORIES FROM FAT."

² NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK

³ LESS THAN 10 PERCENT OVER A SCHOOL WEEK

(2) Enhanced food-based menu planning alternative. For the purposes of the enhanced food-based menu

planning alternative, as provided for in paragraph (k)(2) of this section, the following chart provides the minimum

levels, by grade group, for calorie and nutrient levels for school lunches over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES ENHANCED FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)				
NUTRIENTS AND ENERGY ALLOWANCES	MINIMUM REQUIREMENTS			OPTIONAL
	PRESCHOOL	GRADES K-6	GRADES 7-12	GRADES K-3
Energy allowances (calories)	517	664	825	633
Total fat (as a percentage of actual total food energy)	¹	²	²	²
Total saturated fat (as a percentage of actual total food energy)	¹	³	³	³
RDA for protein (g)	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for Iron (mg)	3.3	3.5	4.5	3.3
RDA for Vitamin A (RE)	150	224	300	200
RDA for Vitamin C (mg)	14	15	18	15

¹ THE DIETARY GUIDELINES RECOMMEND THAT AFTER 2 YEARS OF AGE "...CHILDREN SHOULD GRADUALLY ADOPT A DIET THAT, BY ABOUT 5 YEARS OF AGE, CONTAINS NO MORE THAN 30 PERCENT OF CALORIES FROM FAT."

² NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK

³ LESS THAN 10 PERCENT OVER A SCHOOL WEEK

(k) *Food-based menu planning alternatives.* School food authorities may choose to plan menus using either the traditional or enhanced food-based menu planning alternatives. Under these alternatives, specific food

components shall be offered as provided in either paragraphs (k)(1) or (k)(2) of this section, whichever is applicable, and in paragraphs (k)(3) through (k)(5) of this section, as appropriate.
(1) *Minimum quantities-traditional food-based menu planning alternative.*

(i) At a minimum, school food authorities choosing to plan menus using the traditional food-based menu planning alternative shall offer all five required food items in the quantities provided in the following chart:

TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE					
MINIMUM QUANTITIES					RECOMMENDED QUANTITIES
FOOD COMPONENTS AND FOOD ITEMS	GROUP I AGES 1-2 PRESCHOOL	GROUP II AGES 3-4 PRESCHOOL	GROUP III AGES 5-8 K-3	GROUP IV AGES 9 AND OLDER GRADES 4-12	GROUP V 12 YEARS AND OLDER GRADES 7-12
Milk (as a beverage)	6 fl. oz.	6 fl. oz.	8 fl. Oz.	8 fl. oz.	8 fl. oz.
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish	1 oz.	1½ oz.	1½ oz.	2 oz.	3 oz.
Cheese	1 oz.	1½ oz.	1½ oz.	2 oz.	3 oz.
Large egg	¼	¼	¼	1	1½
Cooked dry beans or peas	¼ cup	¾ cup	¾ cup	¼ cup	¼ cup
Peanut butter or other nut or seed butters	2 Tbs.	3 Tbs.	3 Tbs.	4 Tbs.	6 Tbs.
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					
Peanuts, soybeans, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 oz. of nuts/seeds=1 oz. of cooked lean meat, poultry, or fish)	½ oz.=50%	¾ oz.=50%	¾ oz.=50%	1 oz.=50%	1½ oz.=50%
Yogurt, plain or flavored, unsweetened or sweetened	4 oz. or ½ cup	6 oz. or ¾ cup	6 oz. or ¾ cup	8 oz. or 1 cup	12 oz. or 1 ½ cup
Vegetable or Fruit: 2 or more servings of vegetables, fruits or both	¼ cup	¼ cup	¼ cup	¼ cup	¼ cup
Grains/Breads: (Servings per week): Must be enriched or whole grain or made from flour which may include bran and/or germ. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains	5 per week – minimum of ½ day	8 per week – minimum of 1 per day	8 per week – minimum of 1 per day	8 per week – minimum of 1 per day	10 per week – minimum of 1 per day

(ii) Schools able to provide the appropriate quantities of food to children of each age/grade group should do so. Schools that cannot serve children of each age or grade level shall provide all school age children Group IV portions as specified in the table presented in this paragraph. Schools serving lunches to children of more than one age or grade level shall plan and produce sufficient quantities of food to provide Groups I-IV no less than the

amounts specified for those children in the table presented in this paragraph, and sufficient quantities of food to provide Group V no less than the specified amounts for Group IV. It is recommended that such schools plan and produce sufficient quantities of food to provide Group V children the larger amounts specified in the table. Schools that provide increased portion sizes for Group V may comply with children's requests for smaller portion

sizes of the food items; however, schools shall plan and produce sufficient quantities of food to at least provide the serving sizes required for Group IV.

(2) *Minimum quantities-enhanced food-based menu planning alternative.* At a minimum, school food authorities choosing to plan menus using the enhanced food-based menu planning alternative shall offer all five required

food items in the quantities provided in the following chart:

(4) *Vegetables and fruits.* * * *
(ii) Under the enhanced food-based menu planning alternative, the requirement for this component is based on minimum daily servings plus an additional one-half cup in any combination over a five day period for children in kindergarten through grade six.

(5) *Grains/breads.* * * *
(ii) * * * Schools serving lunch 6 or 7 days per week should increase the weekly quantity by approximately 20 percent (1/5) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (1/5) for each day less than five. * * *

(iii) Under the traditional food-based menu planning alternative, schools shall serve daily at least one-half serving of bread or bread alternate to children in Group I and at least one serving to children in Groups II-V. Schools which serve lunch at least 5 days a week shall serve a total of at least five servings of bread or bread alternate to children in Group I and eight servings per week to children in Groups II-V.

(1) *Other menu planning alternatives.*
(1) *Modifications.* School food authorities may adopt any or all of the following menu planning alternatives. State agencies may require prior approval for adopting the alternatives, may establish guidelines for their adoption, or may permit their adoption without prior approval.

(i) Under the traditional or enhanced food-based menu planning alternatives provided for in paragraph (k) of this section, the meat/meat alternate component may be provided as a weekly total with a one ounce (or its equivalent for certain meat alternates) minimum daily amount, except that this provision does not apply if the minimum serving of meat/meat alternate is less than one ounce; or

(ii) Under the traditional or enhanced food-based menu planning alternatives, if only one age or grade is outside the established levels, schools may use the levels for the majority of children for both portions and the Recommended Dietary Allowances and lunchtime energy allowances.

(2) *Major changes or new alternatives: use and approval.* Subject to the applicable requirements of paragraph (l)(3) of this section, school food authorities or State agencies may modify one of the menu planning alternatives established in paragraphs (i) through (k)

of this section or may develop their own menu planning approach. Any such alternate menu planning approaches shall be in writing for review and monitoring purposes, as applicable. No formal plan is required; the written alternate approach may be in the form of guidance, protocol, or the like. The alternate approach shall address how the provisions in paragraph (l)(3) shall be met.

(i) Any school food authority-developed menu planning approach must have prior State agency review and approval.

(ii) Except as noted in paragraph (l)(2)(iii), any State agency-developed menu planning approach must have prior FNS approval.

(iii) Any State agency-developed menu planning approach is not subject to FNS review if:

(A) Five or more school food authorities within the State use the approach;

(B) The State agency maintains ongoing oversight of the operation and evaluation of the alternative menu planning approach including making adjustments to the approach's policies and procedures, as necessary, to ensure compliance with the applicable provisions in paragraph (l)(3) of this section as needed; and

(C) The State agency issues an announcement notifying the public concerning the alternate menu planning approach prior to the implementation of the approach by any school food authority; such announcement shall be issued in a manner consistent with State procedures for public notification.

(3) *Major changes or new alternatives: required elements.* The following requirements shall be met by any alternate menu planning approach:

(i) The service of fluid milk, as provided in paragraph (m) of this section;

(ii) Offer versus serve for senior high students. To the extent possible, the offer versus serve procedures for an alternate approach shall follow the procedures in paragraphs (i)(2)(ii) and (k)(6) of this section, as appropriate.

Any alternate approach which deviates from the provisions in paragraphs (i)(2)(ii) or (k)(6) of this section shall, at a minimum, indicate what age/grade groups are included in offer versus serve and establish the number and type of items, (and, if applicable, the quantities for the items) that constitute a reimbursable meal under offer versus serve. In addition, the alternate offer versus serve procedures shall include an explanation of how such procedures will reduce plate waste and provide a

reasonable level of calories and nutrients for the meal as taken;

(iii) The nutrition standards in paragraphs (b)(1) through (b)(4) of this section. Any alternate approach shall indicate the age/grade groups to be served and how such approach is designed to meet these requirements for those age/grade groups;

(iv) The requirements for competitive foods in § 210.11 and Appendix B to this part.

(v) For alternate food-based menu planning approaches, the requirements for crediting food items and products provided for in paragraphs (k)(3) through (k)(5) and paragraph (m) of this section, in the appendices to this part, and in instructions and guidance issued by FNS;

(vi) Identification of a reimbursable meal at the point of service. To the extent possible, the procedures provided in paragraph (i)(2)(i) of this section for nutrient standard or assisted nutrient standard menu planning alternatives or for food-based menu planning alternatives provided in paragraph (k) of this section shall be followed. In addition, any instructions or guidance issued by FNS that further defines the elements of a reimbursable meal shall be followed when using the existing regulatory provisions. Any alternate approach that deviates from the provisions in paragraph (i)(2)(i) or paragraph (k) of this section shall indicate what constitutes a reimbursable meal, including the number and type of items (and, if applicable, the quantities for the items) which comprise the meal, and how a reimbursable meal is to be identified at the point of service.

(vii) An explanation of how the alternate approach can be monitored under the applicable provisions of § 210.18 and § 210.19, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, to the extent that the procedures under § 210.19 are inappropriate for monitoring the alternate approach, the alternate approach shall include a description of review procedures which will enable the State agency to assess compliance with the nutrition standards in paragraphs (b)(1) through (b)(4) of this section; and

(viii) the requirements for weighted analysis and for approved software for nutrient standard menu planning as required by paragraphs (i)(4) and (i)(5) of this section unless a State agency-developed approach meets the criteria in paragraph (l)(2)(iii) of this section.

§ 210.10a [Removed]

7. Section 210.10a is removed.

§ 210.15 [Amended]

8. In § 210.15:

a. paragraph (b)(2) is amended by removing the words "menu records as required under § 210.10a and production and"; and

b. paragraph (b)(3) is amended by removing the words "or § 210.10a(b), whichever is applicable".

§ 210.16 [Amended]

9. In § 210.16, paragraph (b)(1) is amended by removing the words "or § 210.10a, whichever is applicable," wherever they appear.

§ 210.18 [Amended]

10. In § 210.18:

a. paragraph (b)(2)(ii) is revised;
b. the heading of paragraph (g)(2) introductory text is amended by removing the words "food items/components as required by Program regulations" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

c. Paragraph (g)(2)(i) is amended by removing the words "required food items/components" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

d. Paragraph (g)(2)(ii) is amended by removing the words "the required number of food items/components" and adding in their place the words "the number of meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

e. Paragraph (g)(2)(iii) is amended by removing the words "required food items/components" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10";

f. paragraph (h)(2) is amended by removing the words "food items/components in the quantities required under § 210.10 or § 210.10a, in whichever is applicable" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10"; and

g. paragraph (i)(3)(ii) is amended by removing the words "required food items/components" and adding in their place the words "meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10".

The revision reads as follows:

§ 210.18. Administrative reviews.

• • • • •

(b) *Definitions.* • • •

(2) • • •

(ii) Performance Standard 2—Meal Elements. Lunches claimed for reimbursement within the school food authority contain meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

• • • • •

11. In § 210.19:

a. the first sentence of paragraph (a)(1) introductory text is amended by removing the reference to "§ 210.10(o)" and by adding in its place a reference to "§ 210.10(p)", and by removing the words "or (d)," and adding in their place the words " (d), or (i)(1) or the procedures developed under § 210.10(l).";

b. the second sentence of paragraph (a)(1) introductory text is amended by removing the words "At a minimum, these evaluations shall be conducted once every 5 years and" and adding in their place the words "These evaluations";

c. paragraph (a)(1) introductory text is further amended by adding five sentences at the end;

d. paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) are redesignated as paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(v), and (a)(1)(vi), respectively, and new paragraphs (a)(1)(i) and (a)(1)(iv) are added;

e. the first sentence of newly redesignated paragraph (a)(1)(ii) is revised;

f. newly redesignated paragraph (a)(1)(iii) introductory text is revised;

g. paragraph (a)(3) is amended by removing the words "or § 210.10a, whichever is applicable,"; and

h. paragraph (c)(6)(i) is amended by removing the words "food item required under the meal pattern in § 210.10a or the food-based menu planning alternative in § 210.10(k), whichever is applicable" and adding in their place the words "meal element (food item/component, menu item or other items, as applicable) as required under § 210.10".

The additions and revisions read as follows:

§ 210.19. Additional responsibilities.

• • • • •

(a) *General Program management.*

• • •

(1) *Compliance with nutrition standards.* • • • At a minimum, the State agency shall review at least one school for each type of menu planning alternative used in the school food

authority. Review activity may be confined to the National School Lunch Program unless a menu planning alternative is used exclusively in the School Breakfast Program. The review must examine compliance with the nutrition standards in § 210.10(b) and § 210.10(c), (d), (i)(1), or (l), and § 220.8 (a), (c), (e)(1), or (h), as appropriate.

State agencies are encouraged to review the School Breakfast Program as well if the school food authority requires technical assistance from the State agency to meet the nutrition standards or if corrective action is needed. Such review shall determine compliance with the appropriate requirements in § 220.8 and may be done at the time of the initial review or as part of a follow-up to assess compliance with the nutrition standards.

(i) At a minimum, State agencies shall conduct evaluations of compliance with the nutrition standards in § 210.10(b) and § 210.10(c), (d), (i)(1), or (l), as appropriate, at least once during each 5-year review cycle provided that each school food authority is evaluated at least once every 6 years, except that the first cycle shall begin July 1, 1996, and shall end on June 30, 2003. The compliance evaluation for the nutrition standards shall be conducted on the menu for any week of the current school year prior to the month in which such evaluation is conducted. The week selected must continue to represent the current menu planning system.

(ii) For school food authorities choosing the nutrient standard or assisted nutrient standard menu planning alternatives provided in § 210.10(i), § 210.10(j), or § 220.8(e), or § 220.8(f), or developed under the procedures in § 210.10(l) or § 220.8(h), the State agency shall assess the nutrient analysis to determine if the school food authority is properly applying the methodology in § 220.8(e), or § 220.8(f), or developed under the procedures in § 210.10(l) or § 220.8(h), as appropriate. • • •

(iii) For school food authorities choosing the food-based menu planning alternatives provided in § 210.10(k) or § 220.8(g) or developed under the procedures in § 210.10(l) or § 220.8(h), the State agency shall determine if the nutrition standards set forth in § 210.10(b) and § 210.10(d) are met. The State agency shall conduct a nutrient analysis in accordance with the procedures in § 210.10(i) or § 220.8(e), as appropriate, except that the State agency may:

• • • • •

(iv) For school food authorities following an alternate approach as

provided under § 210.10(l) or § 220.8(h) that does not allow for use of the monitoring procedures in paragraphs (a)(1)(ii) or (a)(1)(iii), the State agency shall monitor compliance following the procedures developed in accordance with § 210.10(l) or § 220.8(h), whichever is appropriate.

• • • • •

Appendix A [Amended]

12. In Appendix A to Part 210—Alternate Foods for Meals:

a. under Enriched Macaroni Products with Fortified Protein, paragraph 1.(a) is amended by removing the words "or § 210.10a, whichever is applicable,";

b. under Vegetable Protein Products, paragraph 1. introductory text is amended by removing the words "or § 210.10a, whichever is applicable,";

c. under Vegetable Protein Products, paragraph 1.(d) is amended by removing the words "or § 210.10a, whichever is applicable,";

d. under Vegetable Protein Products, paragraph 1.(e) is amended by removing the words "or § 210.10a, whichever is applicable,";

e. under Vegetable Protein Products, paragraph 3. is amended by removing the words "or § 210.10a, whichever is applicable".

Appendix C [Amended]

13. In Appendix C to Part 210—Child Nutrition Labeling Program:

a. paragraph 2.(a) is amended by removing the words "or § 210.10a, whichever is applicable";

b. paragraph 3.(c)(2) is amended by removing the words "or § 210.10a, whichever is applicable" and by removing the words "or § 220.8a, whichever is applicable";

c. paragraph 6. introductory text is amended by removing the words "or § 210.10a, whichever is applicable" and by removing the words "or § 220.8a, whichever is applicable".

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

§ 220.2 [Amended]

2. In § 220.2:

a. paragraph (b) is amended by removing the words "or § 220.8a, whichever is applicable,"; and

b. paragraph (t) is amended by removing the words "or § 220.8, whichever is applicable,".

§ 220.7 [Amended]

3. In § 220.7, paragraph (e)(2) is amended by removing the words "or § 220.8a, whichever is applicable,".

4. In § 220.8:

a. paragraph (a)(1) is amended by removing the second occurrence of the word "or" and adding in its place a comma and by adding the words " (h)" after the reference to "(e)(1)";

b. paragraph (a)(2) is amended by removing the second occurrence of the word "or" and adding in its place the words "or (h)" after the reference to "(e)(1)";

c. paragraph (a)(3) is revised;

d. paragraph (a)(4) is amended by removing the reference to "1990" and adding in its place a reference to "1995";

e. the first sentence of paragraph (a)(5) is revised;

f. the first sentence of paragraph (a)(6) is amended by removing the word "or" and adding in its place a comma and by adding the words "or those developed under paragraph (h)" after the reference to "paragraph (e)(1)" and the second sentence of paragraph (a)(6) is amended by removing the third occurrence of the word "or" and adding in its place a comma and by adding the words "or those developed under paragraph (h)" after the reference to "paragraph (e)(1)";

g. the table in paragraph (b)(1) is revised;

h. the table in paragraph (b)(2) is revised;

i. paragraph (c) is revised;

j. the heading of paragraph (e)(4) and paragraph (e)(9) are amended by removing the words "National Nutrient Database" and adding in their place the words "Child Nutrition Database";

k. paragraphs (e)(4) and (e)(8) are amended by removing the words "National Nutrient Database for the Child Nutrition Programs" wherever they appear and by adding the words

"Child Nutrition Database" in their place;

l. the heading of paragraph (g) is revised and introductory text is added;
m. the introductory text of paragraph (g)(1) is amended by removing the words "in the table in paragraph (g)(2) of this section" and adding in their place the words "either in the table in paragraph (g)(2) or (g)(3) of this section, whichever is applicable";

n. paragraph (g)(2) is revised;

o. paragraphs (h) through (m) are redesignated as paragraphs (i) through (n), respectively, and a new paragraph (h) is added; and

p. in newly redesignated paragraph (n), the reference to "1990" is removed and a reference to "1995" is added in its place.

The additions and revisions are as follows:

§ 220.8. Nutrition standards for breakfast and menu planning alternatives.

(a) *Nutrition standards for breakfasts for children age 2 and over.* • • •

(3) The applicable recommendations of the 1995 Dietary Guidelines for Americans which are: eat a variety of foods; limit total fat to 30 percent of calories; limit saturated fat to less than 10 percent of calories; choose a diet low in cholesterol; choose a diet with plenty of grain products, vegetables, and fruits; choose a diet moderate in salt and sodium; and choose a diet moderate in sugars.

(5) School food authorities have several alternatives for menu planning in order to meet the requirements of this paragraph including the appropriate nutrient and calorie levels: nutrient standard menu planning as provided for in paragraph (f) of this section; traditional food-based menu planning as provided for in paragraph (g)(1) of this section; enhanced food-based menu planning as provided for in paragraph (g)(2) of this section; or other menu planning approaches as provided for in paragraph (h) of this section.

• • • • •

(b) *Nutrient levels/nutrient analysis.*

(1) * * *

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFASTS NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)			
NUTRIENTS AND ENERGY ALLOWANCES	MINIMUM REQUIREMENTS		OPTIONAL
	PRESCHOOL	GRADES K-12	GRADES 7-12
Energy allowances (calories)	388	554	618
Total fat (as a percentage of actual total food energy)	¹	²	²
Total saturated fat (as a percentage of actual total food energy)	¹	³	³
RDA for protein (g)	5	10	12
RDA for calcium (mg)	200	257	300
RDA for Iron (mg)	2.5	3.0	3.4
RDA for Vitamin A (RE)	113	197	225
RDA for Vitamin C (mg)	11	13	14

¹ THE DIETARY GUIDELINES RECOMMEND THAT AFTER 2 YEARS OF AGE "...CHILDREN SHOULD GRADUALLY ADOPT A DIET THAT, BY ABOUT 5 YEARS OF AGE, CONTAINS NO MORE THAN 30 PERCENT OF CALORIES FROM FAT."

² NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK

³ LESS THAN 10 PERCENT OVER A SCHOOL WEEK

(2) * * *

OPTIONAL NUTRIENT LEVELS FOR SCHOOL BREAKFASTS NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)				
NUTRIENTS AND ENERGY ALLOWANCES	AGES 3-6	AGES 7-10	AGES 11-13	AGES 14 AND ABOVE
Energy allowances (calories)	419	500	588	625
Total fat (as a percentage of actual total food energy)	^{1,2}	²	²	²
Total saturated fat (as a percentage of actual total food energy)	^{1,3}	³	³	³
RDA for protein (g)	5.50	7.00	11.25	12.50
RDA for calcium (mg)	200	200	300	300
RDA for iron (mg)	2.5	2.5	3.4	3.4
RDA for Vitamin A (RE)	119	175	225	225
Vitamin C (mg)	11.00	11.25	12.50	14.40

¹ THE DIETARY GUIDELINES RECOMMEND THAT AFTER 2 YEARS OF AGE "...CHILDREN SHOULD GRADUALLY ADOPT A DIET THAT, BY ABOUT 5 YEARS OF AGE, CONTAINS NO MORE THAN 30 PERCENT OF CALORIES FROM FAT."

² NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK

³ LESS THAN 10 PERCENT OVER A SCHOOL WEEK

(c) Minimum nutrient levels for school breakfasts/food-based menu planning alternatives. (1) Traditional food-based menu planning alternative. For the

purposes of the traditional food-based menu planning alternative, as provided for in paragraph (g)(2) of this section, the following chart provides the

minimum levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFASTS TRADITIONAL FOOD -BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)			
NUTRIENTS AND ENERGY ALLOWANCES	AGE 2	AGES 3,4,5	GRADES K-12
Energy allowances (calories)	325	388	554
Total fat (as a percentage of actual total food energy)	¹	¹	²
Total saturated fat (as a percentage of actual total food energy)	¹	¹	³
RDA for protein (g)	4	5	10
RDA for calcium (mg)	200	200	257
RDA for Iron (mg)	2.5	2.5	3.0
RDA for Vitamin A (RE)	100	113	197
RDA for Vitamin C (mg)	10	11	13

¹ THE DIETARY GUIDELINES RECOMMEND THAT AFTER 2 YEARS OF AGE "...CHILDREN SHOULD GRADUALLY ADOPT A DIET THAT, BY ABOUT 5 YEARS OF AGE, CONTAINS NO MORE THAN 30 PERCENT OF CALORIES FROM FAT."

² NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK

³ LESS THAN 10 PERCENT OVER A SCHOOL WEEK

(2) Enhanced food-based menu planning alternative. For the purposes of the enhanced food-based menu

planning alternative, as provided for in paragraph (g)(1) of this section, the following chart provides the minimum

levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFAST ENHANCED FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)			
NUTRIENTS AND ENERGY ALLOWANCES	REQUIRED FOR		OPTION FOR
	PRESCHOOL	GRADES K-12	GRADES 7-12
Energy allowances (calories)	388	554	618
Total fat (as a percentage of actual total food energy)	^{1,2}	²	²
Total saturated fat (as a percentage of actual total food energy)	^{1,3}	³	³
RDA for protein (g)	5	10	12
RDA for calcium (mg)	200	257	300
RDA for iron (mg)	2.5	3.0	3.4
RDA for Vitamin A (RE)	113	197	225
Vitamin C (mg)	11	13	14

¹ THE DIETARY GUIDELINES RECOMMEND THAT AFTER 2 YEARS OF AGE "...CHILDREN SHOULD GRADUALLY ADOPT A DIET THAT, BY ABOUT 5 YEARS OF AGE, CONTAINS NO MORE THAN 30 PERCENT OF CALORIES FROM FAT."

² NOT TO EXCEED 30 PERCENT OVER A SCHOOL WEEK

³ LESS THAN 10 PERCENT OVER A SCHOOL WEEK

* * * * *
(g) Food-based menu planning alternatives. School food authorities may choose to plan menus using either the traditional or enhanced food-based menu planning alternatives. Under

these alternatives, specific food components shall be offered as provided in either paragraphs (g)(1) or (g)(2) of this section, whichever is applicable,

and in paragraphs (g)(3) and (g)(4) of this section, as appropriate.
* * * * *

(2) *Minimum quantities-food-based menu planning alternatives.* (i) At a minimum, schools using the traditional food-based menu planning alternative shall serve breakfasts in the quantities provided in the following chart:

MINIMUM REQUIREMENTS -TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE			
MEAL COMPONENT	AGES 1-2	AGES 3,4 AND 5	GRADES K-12
MILK (Fluid) (As a beverage, on cereal or both)	4 fl. oz.	6 fl. oz.	8 fl. oz.
JUICE/FRUIT/VEGETABLE: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice	¼ cup	¼ cup	¼ cup
SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS OR TWO FROM ONE COMPONENT:			
GRAINS/BREADS: one of the following or an equivalent combination:			
Whole-grain or enriched bread	½ slice	½ slice	1 slice
Whole-grain or enriched biscuit, roll, muffin, etc.	½ serving	½ serving	1 serving
Whole-grain, enriched or fortified cereal	¼ cup or 1/3 oz.	1/3 cup or ½ oz.	¾ cup or 1 oz.
MEAT OR MEAT ALTERNATES:			
Meat/poultry or fish	½ oz.	½ oz.	1 oz.
Cheese	½ oz.	½ oz.	1 oz.
Egg (large)	½	½	½
Peanut butter or other nut or seed butters	1 Tbsp.	1 Tbs.	2 Tbs.
Cooked dry beans and peas	2 Tbs.	2 Tbs.	4 Tbs.
Nuts and/or seeds (as listed in program guidance) ¹	½ oz.	½ oz.	1 oz.
Yogurt, plain or flavored, unsweetened or sweetened.	2 oz. or ¼ cup	2 oz. or ¼ cup	4 oz. or ½ cup

¹ No more than 1 ounce of nuts and/or seeds may be served in any one meal.

(ii) At a minimum, schools using the enhanced food-based menu planning alternative shall serve breakfasts in the quantities provided in the following chart:

MINIMUM REQUIREMENTS -ENHANCED FOOD -BASED MENU PLANNING ALTERNATIVE				
MEAL COMPONENT	REQUIRED FOR			OPTION FOR
	AGES 1-2	PRESCHOOL	GRADES K-12	GRADES 7-12
Milk (Fluid) (As a beverage, on cereal or both)	4 fl. oz.	6 fl. oz.	8 fl. oz.	8 fl. oz.
JUICE/FRUIT/VEGETABLE: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice	¼ cup	¼ cup	¼ cup	¼ cup
SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS OR TWO FROM ONE COMPONENT:				
GRAINS/BREADS: one of the following or an equivalent combination:				
Whole-grain or enriched bread	½ slice	½ slice	1 slice	1 slice
Whole-grain or enriched biscuit, roll, muffin, etc.	½ serving	½ serving	1 serving	1 serving
Whole-grain, enriched or fortified cereal	¼ cup or 1/3 oz.	1/3 cup or ½ oz.	¾ cup or 1 oz.	¾ cup or 1 oz. Plus an additional serving of one of the Grains/Breads above.
MEAT OR MEAT ALTERNATES:				
Meat/poultry or fish	½ oz.	½ oz.	1 oz.	1 oz.
Cheese	½ oz.	½ oz.	1 oz.	1 oz.
Egg (large)	½	½	½	½
Peanut butter or other nut or seed butters	1 Tbs.	1 Tbs.	2 Tbs.	2 Tbs.
Cooked dry beans and peas	2 Tbs.	2 Tbs.	4 Tbs.	4 Tbs.
Nuts and/or seeds (as listed in program guidance) ¹	½ oz.	½ oz.	1 oz.	1 oz.
Yogurt, plain or flavored, unsweetened or sweetened.	2 oz. or ¼ cup	2 oz. or ¼ cup	4 oz. or ½ cup	4 oz. or ½ cup

¹ No more than 1 ounce of nuts and/or seeds may be served in any one meal.

(h) *Other menu planning alternatives.*

(1) *Modification.* Under the traditional or enhanced food-based menu planning alternatives, school food authorities may, if only one age or grade is outside the established levels, use the levels for the majority of children for both portions and the Recommended Dietary

Allowances and breakfast energy allowances. State agencies may require prior approval for adopting this alternative, may establish guidelines for its adoption, or may permit its adoption without prior approval.

(2) *Major changes or new alternatives: use and approval.* Subject to the requirements of paragraphs (h)(3) of this

section, school food authorities or State agencies may modify one of the menu planning alternatives established in paragraphs (e) through (g) of this section or may develop their own menu planning approach. Any such alternate menu planning approaches shall be in writing for review and monitoring purposes, as applicable. No formal plan

is required; the written alternate approach may be in the form of guidance, protocol, or the like. The alternate approach shall address how the provisions in paragraph (h)(3) shall be met.

(i) Any school food authority developed menu planning approach shall have prior State agency review and approval.

(ii) Except as noted in paragraph (h)(2)(iii), any State agency-developed menu planning alternative shall have prior FNS approval.

(iii) Any State agency developed alternative is not subject to FNS review if:

(A) Five or more school food authorities within the State use the approach;

(B) The State agency maintains ongoing oversight of the operation and evaluation of the alternative menu planning approach including making adjustments to the approach's policies and procedures, as necessary, to ensure compliance with the applicable provisions in paragraph (h)(3) of this section as needed; and

(C) The State agency issues an announcement notifying the public concerning the alternate menu planning approach prior to the implementation of the approach by any school food authority; such announcement shall be issued in a manner consistent with State procedures for public notification.

(3) *Major changes or new alternatives: required elements.* The following requirements shall be met by any alternate menu planning approach:

(i) Service of fluid milk, as provided in paragraph (h)(1) of this section;

(ii) The nutrition standards in paragraphs (a)(1) through (a)(4) of this section. Any alternate approach shall indicate the age/grade groups to be served and how such approach is designed to meet these requirements for those age/grade groups.

(iii) The requirements for competitive foods in § 220.12 and appendix B to this part;

(iv) For alternate food-based menu planning approaches, the requirements for crediting food items and products provided for in paragraphs (g)(2) and (i) of this section, in the appendices to this part, in § 210.10(k)(3) through (k)(5), § 210.10 (m) and in the instructions and guidance issued by FNS;

(v) Identification of a reimbursable meal at the point of service. To the

extent possible, the procedures provided in paragraph (e)(2)(i) of this section for nutrient standard or assisted nutrient standard-type menu planning approaches or in paragraph (g) of this section for food-based-type menu planning approaches shall be followed. In addition, any instructions or guidance issued by FNS that further defines the elements of a reimbursable meal shall be followed when using the existing regulatory provisions. Any alternate approach that deviates from the provisions in paragraph (e)(2)(i) or paragraph (g) of this section shall indicate what constitutes a reimbursable meal, including the number and type of items (and, if applicable, the quantities for these items) which comprise the meal, and how a reimbursable meal is to be identified at the point of service. Further, if the alternate approach provides for offer versus serve as allowed under paragraph (e)(2)(ii) of this section for nutrient standard or assisted nutrient standard-type menu planning approaches or in paragraph (g)(3) of this section for food-based-type menu planning approaches, the alternate approach shall follow those provisions to the extent possible. Any alternate approach that deviates from the provisions in paragraph (e)(2)(ii) or (g)(3) of this section shall, at a minimum, indicate what age/grade groups are included in offer versus serve and establish the number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable meal under offer versus serve. In addition, the alternate offer versus serve procedures shall include an explanation of how such procedures will reduce plate waste and provide a reasonable level of calories and nutrients for the meal as taken;

(vi) An explanation of how the alternate approach can be monitored under the applicable provisions of § 210.18 and § 210.19, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, to the extent that the procedures under § 210.19 are inappropriate for monitoring the alternate approach, the alternate approach shall include a description of review procedures which will enable the State agency to assess compliance with the nutrition standards

in paragraphs (a)(1) through (a)(4) of this section; and

(vii) The requirements for weighted analysis and for approved software for nutrient standard menu planning as required by paragraphs (e)(4) and (e)(5) of this section unless a State agency developed approach meets the criteria in paragraph (h)(2)(iii) of this section.

§ 220.8a [Removed]

5. Section 220.8a is removed.

§ 220.9 [Amended]

6. In § 220.9, paragraph (a) is amended by removing the words "or § 220.8a, whichever is applicable,".

§ 220.14 [Amended]

7. In § 220.14, paragraph (h) is amended by removing the words "or § 220.8a(a)(1), (b)(2), and (b)(3), whichever is applicable".

Appendix A [Amended]

8. In Appendix A to Part 220—Alternate Foods for Meals, paragraph 1.(a) is amended by removing the words "or 220.8a, whichever is applicable".

Appendix C [Amended]

9. In Appendix C to Part 220—Child Nutrition (CN) Labeling Program:

a. paragraph 2.(a) is amended by removing the words "or 210.10a, whichever is applicable";

b. paragraph 3.(c)(2) is amended by removing the words "or 210.10a, whichever is applicable" and is further amended by removing the words "or 220.8a, whichever is applicable"; and

c. paragraph 6. is amended by removing the words "or 210.10a, whichever is applicable" and is further amended by removing the words "or 220.8a, whichever is applicable".

Dated: April 27, 1998.

Shirley R. Watkins,

Under Secretary for Food, Nutrition and Consumer Services.

Editorial Note: FR Doc. 98-11654 was originally published at 63 FR 24686-24709 in the issue of Monday, May 4, 1998. Due to numerous errors, the document is being republished in its entirety. The comment dates have changed. Also, disregard the correction document published at 63 FR 25569 May 8, 1998.

[FR Doc. 98-11654 Filed 5-1-98; 8:45 am]

BILLING CODE 1505-01-F

Friday
May 15, 1998

Part .V

The President

Proclamation 7095—Peace Officers
Memorial Day and Police Week, 1998

fedderal register

Federal Register

Vol. 63, No. 94

Friday, May 15, 1998

Presidential Documents

Title 3—

The President

Proclamation 7095 of May 12, 1998

Peace Officers Memorial Day and Police Week, 1998

By the President of the United States of America

A Proclamation

This week a grateful Nation pauses to honor the more than half a million dedicated law enforcement officers across our country who put their lives on the line each day to protect us. These courageous and dedicated men and women daily wage the timeless battle for right over wrong, peace over conflict, and the rule of law over anarchy.

We ask a great deal of our Federal, State, and local police officers. We ask them to stand between us and the forces of violence and chaos. We ask them to protect our homes and property and to save our lives at the risk of their own. We ask them to patrol our highways and our borders, to keep our children safe from drug dealers and gang leaders, and to bring to justice the murderers, terrorists, rapists, and other criminals who prey on our society. We lean heavily on this thin blue line, and it never breaks.

Last year, in carrying out their awesome responsibilities, 158 law enforcement officers lost their lives—and the lives of their families and friends were changed forever. After several years of decreased violence against our law enforcement community, we face the sobering reality that police officer fatalities rose 27 percent during 1997.

As we honor these heroes—those who still live and work among us, and those who have made the ultimate sacrifice for our well-being—let us reaffirm our efforts to end the violence that has taken such a heavy toll on our Nation's law enforcement community. Let us work to ensure that America's police officers have the training, resources, manpower, and community support they need to carry out the crucial responsibilities with which we charge them. In this way we can best honor the service and sacrifice of the thousands of fallen police officers whose memory we honor and whose devotion to duty has earned our respect and lasting gratitude.

By a joint resolution approved October 1, 1962 (76 Stat. 676), the Congress has authorized and requested the President to designate May 15 of each year as "Peace Officers Memorial Day" and the week in which it falls as "Police Week," and, by Public Law 103-322 (36 U.S.C. 175), has directed that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 15, 1998, as Peace Officers Memorial Day and May 10 through May 16, 1998, as Police Week. I call upon the people of the United States to observe these occasions with appropriate ceremonies, programs, and activities. I also request the Governors of the United States and of the Commonwealth of Puerto Rico, as well as the appropriate officials of all units of government, to direct that the flag of the United States be flown at half-staff on Peace Officers Memorial Day on all buildings, grounds, and naval vessels throughout the United States and all areas under its jurisdiction and control. I also invite all Americans to display the flag at half-staff from their homes on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William Clinton

[FR Doc. 98-13205
Filed 5-14-98; 8:45 am]
Billing code 3195-01-P

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H.J. Res. 102/P.L. 105-175

Expressing the sense of the Congress on the occasion of the 50th anniversary of the founding of the modern State of Israel and reaffirming the bonds of friendship and cooperation between the United States and Israel. (May 11, 1998; 112 Stat. 102)

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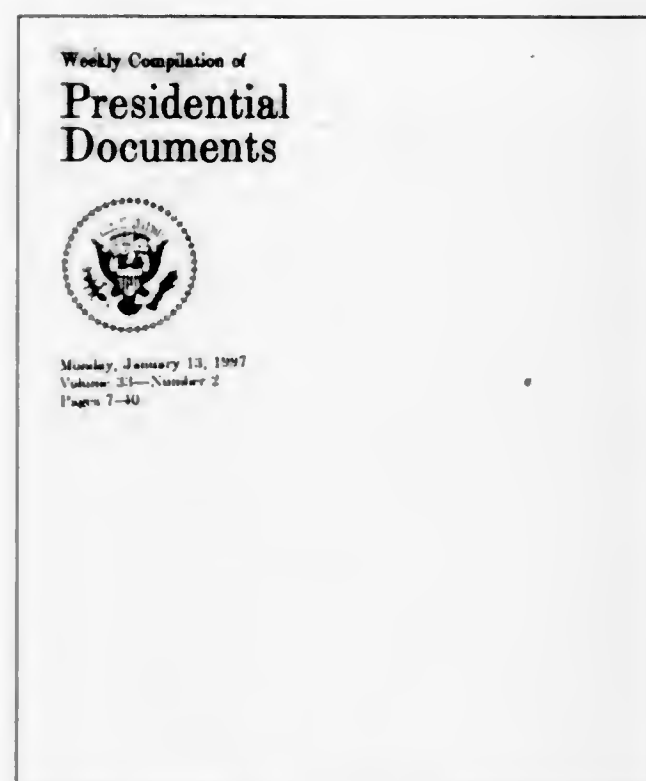
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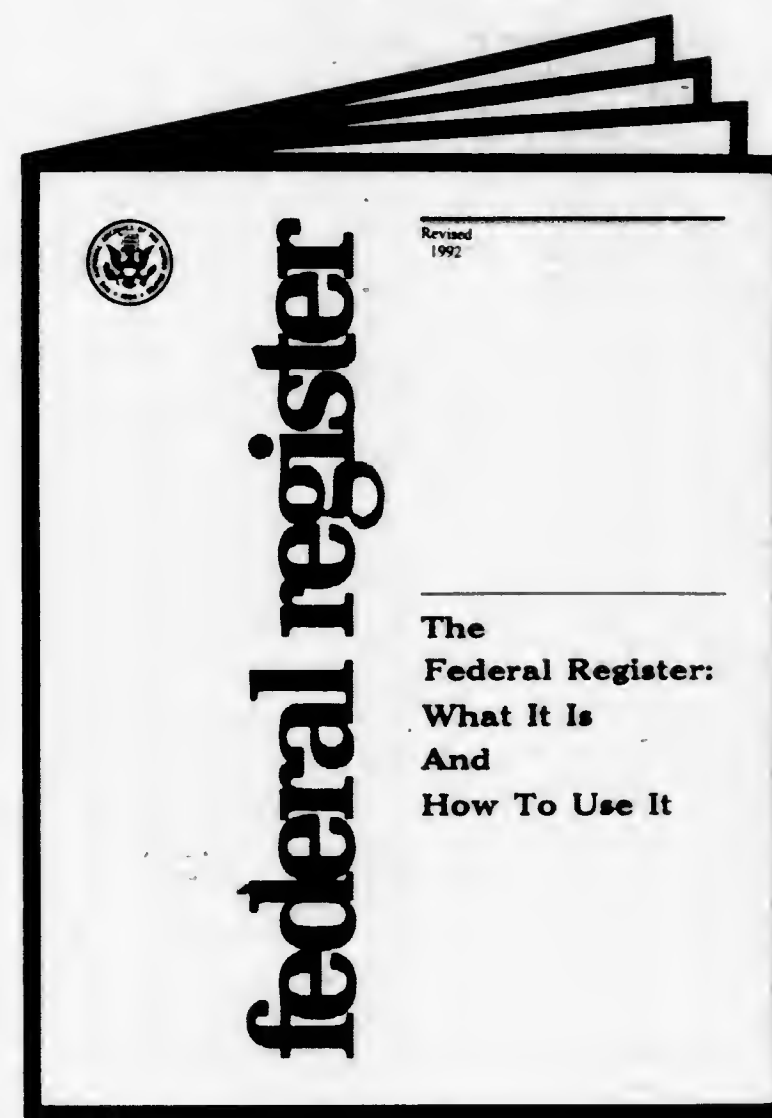
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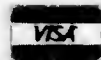
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